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THIS INDEX is based on a consolidation of contents entries appearing in the January-December subject references. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the **Federal Register** where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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Department of Health and Human Services, Public Health Service, Health Services Administration (HHS/PHS/HSA)	HSA Freedom of Information Act (FOIA) Index. Mar 1975 to June 30, 1982. The HSA FOIA index is a compilation of supplements to the departmental manual system, program level operations manuals, circulars, memoranda, notices and guides used by the components of HSA. All information included in this index is current as of June 30, 1982. The respective bureau level indexes are listed as follows: OA—OFFICE OF THE ADMINISTRATOR. OCPA—Public Affairs Management System Manual. OPEL—HSA forward plan, fiscal year 1979–83; OM/OCG—HSA procurement operating instructions; OM/OMP—HSA transmittal notices for supplements to HHS manuals; HSA Circulars; OM/OFS—policy decisions, procedures, and opinion. BMS—BUREAU OF MEDICAL SERVICES: Division of Hospitals and Clinics Operations Manual; BMS supplements to HHS manuals; Manual of Operations for PHS Health Unit, DFEH, BMS; BMS circulars; Contract Physician's Guide. IHS—INDIAN HEALTH SERVICES: IHS circulars; IHS supplements to HHS manuals; IHS Operations Manual; General Counsel opinions; policy and procedural manual and circulars. BCHS—BUREAU OF COMMUNITY HEALTH SERVICES: BCHS administrative guide system; BCHS Operations Manual; Emergency Medical Service Systems Program Guidelines; BCHS Regional Memorandum Series. BHPDS—BUREAU OF HEALTH PERSONNEL DEVELOPMENT AND SERVICE: BHPDS supplements to the HHS manuals; BHPDS operations manuals which include memoranda, guidelines, handbooks and procedures	Office of Communications and Public Affairs, HHS/PHS/HSA, Room 14A–39, 5600 Fishers Lane, Rockville, MD 20857. Checks payable to HHS/Public Health Service. Mail to HSA Collection Officer, HHS/PHS/HSA, Room 16–36, 5600 Fishers Lane, Rockville, MD 20857. Fees charged for research and reproduction of information are based upon the current departmental fee schedule for information under the FOI regulations (45 CFR part 5 subpart E)	Office of Communications and Public Affairs, HHS/PHS/HSA, Room 14A–39, 5600 Fishers Lane, Rockville, MD 20857
Department of the Interior, Office of the Secretary	Electronic Library of Interior Policies. Includes a Table of Contents of DOI Directives, i.e., Departmental Manual Chapters and Secretary's Orders. The documents in the system contain descriptions of DOI headquarters and field oranizations, delegations of authority, internal policies, guidelines, procedures, and other administrative matters..	Internet address: http://elips.doi.gov (Copies of documents in the system may be downloaded at no charge.)	Questions or requests for assistance in obtaining copies of documents listed but not in the system should be directed to: Office of Planning and Performance Management, U.S. Department of the Interior, Washington, DC 20240. One copy will be provided at no charge. Telephone 202–208–3059
Department of the Interior, Office of Acquisition and Property Management	401 DM - Departmental Manual Additions to the Federal Acquisition Regulation (FAR)	Hard copy no maintained.	Website: http://www.doi.gov/pam or Office of Acquisition and Property Management, Department of the Interior, 1849 C Street, NW., Room 5512, Washington, DC 20240 Telephone 202–208–3348

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	410 DM - Departmental Manual Addition to the Interior Property Management Regulations (IPMR)	Office of Acquisition and Property Management, Department of the Interior, 1849 C Street, NW., Room 5512, Washington, DC 20240	Office of Acquisition and Property Management, Department of the Interior, 1849 C Street, NW, Room 5512, Washington, DC 20240 Telephone 202–208–6649 or 202–208–4328 E-mail: chrismacarthur@os.doi.gov or teresa barry@os.doi.gov Website: http://www.doi.gov/pam
Department of the Interior, Office of Personnel Policy	Electronic Library of Interior human resources management issuances; includes an index of Personnel Bulletins, Personnel Management Letters, Personnel Handbooks, and Departmental Manual Chapters. These documents contain descriptions of delegations of personnel management authority, internal policies, guidelines, procedures, and other administrative matters dealing with human resources management.	Internet address: http://www.doi.gov/hrm/guidance/curronly.htm (Copies of documents in the system may be downloaded at no charge.)	Questions or requests for assistance in obtaining copies of these issuances should be directed to Office of Personnel Policy, U.S. Department of the Interior, Washington, DC 20240. Telephone 202–208–6751
Department of the Interior, Office of Aircraft Services	OAS Operational Procedures Memorandum No. 99-1, dated Jan. 1, 1999. Subject: Index of Departmental Manual (Aviation Management) and Operational Procedures Memoranda Information.	Office of Aircraft Services 2350 West Robinson Road P.O. Box 15428 Boise, ID 83715-5428.	Office of Aircraft Services FOIA Officer P.O. Box 15428 Boise, ID 83715–5428 Tele: (208) 387-5750 Fax: (208) 387-5830
Department of the Interior, Bureau of Indian Affairs	Bureau of Indian Affairs Index dated Aug. 31, 1992 1993 BIAM Releases 1993 BIAM Bulletins 1994 BIAM Releases 1994 BIAM Bulletins 1995 BIAM Releases 1995 BIAM Bulletins	Bureau of Indian Affairs Division of Management Support Code 850, MS 351 1951 Constitution Ave., NW. Washington, DC 20245 First copy no charge	Bureau of Indian Affairs Division of Management Support Code 850, MS 351 1951 Constitution Ave., NW. Washington, DC 20245 Telephone 202–208–2977
Department of the Interior, Bureau of Land Management	Instruction Memorandums, FY-98 to FY-2000 Information Bulletins, FY-98 to FY-2000 Director's Office Instruction Memorandums, FY-98 to FY-2000 Director's Office Instruction Bulletins, FY-98 to FY-2000 Manuals Issued Oct. 10, 1996 to Dec. 12, 1999 Handbooks Issued Oct. 10, 1996 to Dec. 12, 1999 Instruction Memorandums are temporary issuances containing new Bureau policy. Information Bulletins are temporary issuances containing informational material. Manuals and Handbooks are permanent issuances containing Bureau policy and procedures.	Available at not cost from the Bureau's Internet site at: http://www.blm.gov/nhp/efoia/wo/woerr.html Paper copies available at 13 cents per page from: Department of the Interior, Bureau of Land Management, 1849 C Street, NW., Mail Stop 750LS, Washington, DC 20240 Make checks payable to the Bureau of Land Management.	Department of the Interior; Bureau of Land Management; Directives, Records, and Internet Group; 1839 C Street, NW.; Mail Stop 750LS; Washington, DC 20240 Telephone: 202–452–5193 Facsimile: 202–452–0395 E-mail: Directives Washington@blm.gov
Department of the Interior, Bureau of Reclamation	Reclamation Manual Index dated July 21, 2000.	Bureau of Reclamation, Property & Office Services, D-7924, Denver Federal Center, P.O. Box 25007, Denver CO 80225-0007 No charge.	Bureau of Reclamation, Property & Office Services, D-7924, Denver Federal Center, Sixth Avenue & Kipling, Denver, CO 80225 Telephone 303–445–2048 Internet address: www.usbr.gov/recman/rm-index.htm
Department of the Interior, U.S. Geological Survey	Table of Contents, Checklist, and Subject Index relating to the U.S. Geological Survey Manual.	Directives Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192 No charge	Directives Officer, U.S. Geological Survey; 807 National Center, Reston, VA 20192 Telephone 703–648–7313

Agency and subagency name	Index title: period covered. brief description of contents	Order from: price: make checks payable to—	For inspection. copying, or additional information contact
Department of the Interior. Fish and Wildlife Service	Centralized Library of Servicewide Policies - contains indexes to Fish and Wildlife Service manuals. policy issuances. orders. handbooks. and other documents that guide employees in managing FWS programs. to include: Fish and Wildlife Service Manual National Policy Issuances Director's Orders Federal Register Documents (FWS) Handbooks Memoranda	Available at no cost from the Service's web sites listed below. Paper copies available in accordance with fee schedule in 43 CFR 2. Appendix A. http://policy.fws.gov/index.html http://policy.fws.gov/manual.html http://policy.fws.gov/npi.html http://policy.fws.gov/do.html http://policy.fws.gov/library/frindex.html http://policy.fws.gov/hbindex.html http://policy.fws.gov/library/memindex.html	Division of Policy and Directives Management Fish and Wildlife Service 4401 N. Fairfax Drive Room 222 Arlington. VA 22203 Telephone 703-358-2482 Email Address: Hope_Grey@mail.fws.gov
Department of the Interior. Minerals Management Service	Table of Contents and Checklist to Basic Minerals Management Service Manual. Listed numerically by part. series. chapter. release number. date. and pages.	In accordance with fee schedule in 43 CFR 2. Appendix A	Chief. Strategic Direction and Coordination Branch. 381 Elden Street. MS-2200. Herndon. VA 20170-4817 Telephone 703–787–1258
	Index of Director's appeal decisions	In accordance with fee schedule in 43 CFR 2. Appendix A	Chief. Appeals Division. Office of Policy and Management Improvement. 1849 C St., NW., MS-4230. Washington. DC 20240. Telephone 202–208–2622
Department of the Interior. National Park Service	Checklist of the NPS Guidelines and Directives Dated Jan. 1. 1993	U. S. Dept. of the Interior. National Park Service. P.O. Box 37127. Washington. DC 20013-7127 Attn: Management Services Division No charge Telephone 202–523–5043	U. S. Dept. of the Interior. National Park Service. P.O. Box 37127. Washington. DC 20013-7127 Attn: Management Services Division
Department of the Interior. National Park Service. Administrative Program Center	Electronic Director Orders/Procedures	No charge	http://www.nps.gov/refdesk/Refdesk.htm
Department of the Interior. National Park Service. Office of Policy	Listing of Director's orders. handbooks. reference manuals. and other documents that guide employees in managing parks/programs administered by the NPS. List of guidelines. special directives. and staff directives still in effect	Chief. Office of Policy. MS 2414. Main Interior Building. Washington. DC 20240. Telephone 202–208–7456.	Chief. Office of Policy. MS 2414. Main Interior Building. Washington. DC 20240. Telephone 202–208–7456. http://www.nps.gov/refdesk/policie.html
Department of the Interior. Office of Hearings and Appeals	Index-Digest. Index of synopses for all decisions decided by Office of Hearings and Appeals Boards of Appeal and published Solicitor's decisions under specific topical headings. Useful in researching legal holdings of Department of the Interior. Published quarterly. annually and on 5-year basis.	Editorial Branch. Office of Hearings & Appeals. 4015 Wilson Blvd. Arlington. VA 22203. Telephone 703–235–3791 Price: $495.00 annually for quarterly issues and bound cumulative issue at end of calendar year. Checks made payable to "Department of the Interior." Price for photocopies as prescribed in Department fee schedule for Freedom of Information Act information (43 CFR Part 2. Appendix A). Checks made payable to "Department of the Interior." Price on Quinquennial issue is set by Government Printing Office and available from that agency.	Editorial Branch. Office of Hearings and Appeals. 4015 Wilson Blvd. Arlington. VA 22203. Telephone 703–235–3791

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	Indian Citator. Index of authorities cited in decisions of the Interior Board of Indian Appeals (IBIA). Initial publication covers volumes 1-15 of IBIA decisions. Updated annually.	Administrative Division Subscription Service, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703–235–3799 Price: $40.00 for Citator. Checks made payable to: Department of the Interior.	Administrative Division Subscription Service, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703–235–3799
	Administrative Manual. Index related to administrative policies, procedures and standards as contained in the Administrative Manual	Administrative Division, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Price for photocopies as prescribed in Department fee schedule for Freedom of Information Act information (43 CFR Part 2, Appendix A). Checks made payable to Department of the Interior.	Administrative Division, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203 Telephone 703–235–3793
Department of the Interior, Office of Inspector General	Inspector General Manual Index, Dec. 17, 1992. Numeric and subject listing of internal policies and procedures by volume, chapter, section, and subsection	In accordance with fee schedule in 43 CFR Part 2, Appendix A - Fees Office of Inspector General	Richard Farr, Deputy Chief, Division of Acquisitions and Management Operations, Office of Inspector General, 1849 C Street, NW, MS 5341, Washington, DC 20240 Telephone 202–208–4599
Department of the Interior, Office of Surface Mining	Listing of Directives which are considered in effect with respect to current operations of the Bureau. Historical listing of Directives not currently in effect. Internet address: http://www.osmre.gov/directiv.htm	Office of Surface Mining, Office of Administration, ms-222-SIB ATTN: Directives Coordinator, 1951 Constitution Ave., NW., Washington, DC 20240 One copy only, no charge. Telephone 202–208–2593	Office of Surface Mining, Office of Administration, ms-222-SIB ATTN: Directives Coordinator, 1951 Constitution Ave., NW., Washington DC 20240 Telephone 202–208–2593
Department of Labor	Department of Labor Freedom of Information Act Index Overview and Guide to DOL agencies and subagencies with information on how to obtain more detailed indexes to records maintained by each subagency; includes cross-reference to agencies by statute or executive order; 28 pages	Mail $4.20 check payable to DEPARTMENT OF LABOR to: FOIA Index Request, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210.	Administrator, FOIA/PA, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210 Telephone 202–523–9277
Legal Services Corporation	LSC Index lists decisions, opinions, statements of policy, manuals, and other records of general interest to members of the public in understanding the activities of the Corporation. The index contains records from 1975 to date.	Freedom of Information Administrator, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250. No charge.	Freedom of Information Administrator, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250.
Department of Transportation, Federal Highway Administration (FHWA)	Cease and Desist and Driver Disqualification Final Orders by the Federal Highway Administrator: 1969-1984; listing of cease and desist and driver disqualification final orders of the Federal Highway Administrator; items listed are identified by case docket number, name of carrier and date notice of investigation was mailed	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
	Opinions and Final Orders of the FHWA in Regard to the Regulation of Toll Bridges: 1968-1984 listing of opinions and final orders regarding regulation of toll bridges issued by the Federal Highway Administrator, which identifies the case and the date issued	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590

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Department of the Treasury, Departmental Offices	Index of Selected Records, July 1967 to Dec. 31, 1994. Index either contains the following information or indicates where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined, a description of the central and field offices; rules of procedure, descriptions of forms, substantive rules and statements of general policy and interpretations adopted by the agency, and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and administrative staff manuals and instructions to staff that affect a member of the public for the Departmental Offices, Internal Revenue Service, United States Customs Service, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, Bureau of Engraving and Printing, Financial Management Service, United States Mint, Bureau of the Public Debt, Office of the Comptroller of the Currency, Federal Law Enforcement Training Center, Office of Thrift Supervision.	Library, Room 5010-MT, Department of the Treasury, Washington, DC 20220. Reproduced upon request; fees charged per page copied in accordance with fee schedule at 31 CFR 1.7. Make checks payable to Treasury of the United States	Treasury Department Library, Room 5010, Main Treasury Bldg., 15th and Pennsylvania Ave., NW., Washington, DC 20220 Telephone 202–622–0990
Architectural and Transportation Barriers Compliance Board	ATBCB Freedom of Information Index, June 1978 through November 1982: Final decisions made in adjudication of cases concerning alleged noncompliance to the Architectural Barriers Act of 1968; and a record of the final votes of each member of the Board in every Board proceeding. ATBCB annual reports, pamphlets describing the ATBCB, how to file complaints, and resource guides to literature in the area of creating an accessible environment	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. Reproduced upon request. Twenty cents per page, per copy. Make checks payable to the Department of Education Public Information Office, ATBCB, Rm. 1010, 330 C St., SW. Washington, DC 20202. No charge	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC Telephone: 202-245-1591 Public Information Office, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202 Telephone 202–245–1591
Committee for Purchase From the Blind and Other Severely Handicapped	Index of Additions and Deletions to the Procurement List. (a) Procurement List 1990 incorporates all additions and deletions through Nov. 3, 1989; (b) Current index November 1989-December 1991.	Order from: Executive Director, Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square Building No. 5, 1755 Jefferson Davis Highway, Suite 1107, Arlington, VA 22202-3509. Price: Ten cents per page, per copy. Make checks payable to: Treasurer of the United States	Committee for Purchase From the Blind and Other Severely Handicapped, Attention: Freedom of Information Officer
Commodity Futures Trading Commission	Index of final Commission opinions, including concurring and dissenting opinions, and orders in the adjudication of cases Apr. 21, 1975 to date (This index consists of separate chronological listings of final Commission opinions and orders in enforcement cases and reparations proceedings before the Commission) Index of statements of policy and interpretations adopted by the Commission and not published in the Federal Register Apr. 21, 1975 to date	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Price: 10 cents per page	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Telephone 202–254–6314

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	Index of Commission administrative manuals and instructions to staff that affect a member of the public. Apr. 21, 1975 to date. (Commission instructions no longer in use are not included in this index)		
General Services Administration (GSA)	GSA Freedom of Information index; July 4, 1967 through June 30, 1984. Category A information which is final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases. Category B information which is those statements of policy and interpretations which have been adopted by GSA and are not published in the FEDERAL REGISTER. Category C information which is administrative staff manuals and instructions to staff that affect members of the public	GSA, Freedom of Information Officer (ATRAR), Washington, DC 20405. Price: $4.75. Make checks payable to: General Services Administration	GSA Central Office Library and the business service centers located in each regional office listed below: Central Office Library, 18th & F Sts., NW., Rm. 1033, Washington, DC 20405 Business Service Centers: National Capital Region: 7th & D Sts., SW., Washington, DC 20407 Region 1: John W. McCormack Post Office and Courthouse, Boston, Mass. 02109 Region 2: 26 Federal Plaza, New York, NY 10278 Region 3: 9th & Market Sts., Philadelphia, PA, 19107 Region 4: Richard B. Russell Bldg., 75 Spring St., Atlanta, GA 30303 Region 5: 230 So. Dearborn St., Chicago, IL, 60604 Region 6: 1500 East Bannister Rd., Kansas City, MO 64131 Region 7: 819 Taylor St., Ft. Worth, TX 76102 Region 8: Building 41, Denver Federal Center, Denver, CO 80225 Region 9: 525 Market St., San Francisco, CA 94105 Region 10: GSA Center, Auburn, WA 98002
International Boundary and Water Commission, United States and Mexico, U.S. Section	Brochure: Amistad Dam and Reservoir	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840. No charge	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840
	Brochure: Falcon Dam and Power Plant	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545. No charge	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545
	Water Bulletins: Containing data for 1 year covering flow of Rio Grande and related data from Elephant Butte, NM, to Gulf of Mexico, re storage in major reservoirs, diversions, suspended silt, chemical analyses, sanitary aspects of water quality, meteorologic data, and irrigated areas–for years 1931 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $4.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Water Bulletins: Containing data for 1 year covering flow of Colorado River and other Western Boundary streams, and related data (including Tijuana, Santa Cruz, and San Pedro Rivers, and Whitewater Draw) for years 1960 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $5.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map – Lower Rio Grande Valley United States and Mexico	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Prices: 14≥x36≥ $4.00 per map; 10≥x28≥ $3.00 per map. Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902

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	Annual Report: Operation of Rio Grande Dams and Reservoirs. This report provides data concerning the operation of the international dams and reservoirs constructed by the Governments of the United States and Mexico on the reach of the Rio Grande which forms the boundary between the two countries	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. No charge	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map: El Paso Rio Grande Projects, Canalization and Rectification Projects	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $10.00 per map. Payable to International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Brochure: Joint Projects of the United States and Mexico through the International Boundary and Water Commission	Section Secreatry, U.S. Sec., IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $6.00 per brochure. Payable to International Boundary and Water Commission, U.S. Section	Section Secretary, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
National Archives and Records Administration (NARA)	NARA FOIA Index lists the following materials which have been adopted by NARA since Apr. 1, 1985, and which are not published in the Federal Register: NARA final opinions and orders, statements of policy and interpretations, and administrative staff manuals and instructions to staff that affect a member of the public	Policy and Program Analysis Division (NAA), National Archives, College Park, MD 20740-6001 One copy only (free).	Policy and Program Analysis Division (NAA), Room 3200, National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740-6001. Telephone 301-713-6730
National Science Foundation (NSF)	Reviewer panelist, alphabetical listing contains name, State, and institution of individuals who have reviewed proposals for the National Science Foundation for the previously completed fiscal year		NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550

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	Numerical index of the following NSF agency-wide issuances and Important Notices in effect as of Jan. 24, 1986: (1) Office of the Director Staff Memoranda (O/D's); (2) NSF Bulletins; (3) NSF Manuals/Circulars; (4) NSF Handbooks; and (5) NSF Important Notices. O/D's are used by the NSF Director and Deputy Director to communicate information to the staff. O/D's also may be used to convey short-term policy statements or the initial statement of long-term policy. NSF Bulletins transmit approved changes to policy and convey administrative or "housekeeping" information. Significant NSF policy and procedure are located in NSF Manuals. NSF Circulars (historically used to communicate policies and procedures of a continuing nature) are being converted to Manuals and will be discontinued. Handbooks, less formal than Manuals, provide compendia of information concerning NSF programs, i.e., they do not establish NSF policy. Important Notices are the Director's primary means of communicating with organizations receiving or eligible for NSF support. Important Notices are issued over the Director's signature and convey information on NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences.		
	Index of NSF regulations promulgated in the Code of Federal Regulations under Title 48, Public Contracts and Property Management; and Title 45, Public Welfare. A listing, by subject title, of current Foundation regulations with a brief description of the content of each		Office of the General Counsel, Room 501, 1800 G St., NW., Washington, DC 20550
	Publications of the National Science Foundation. An index by topical classification, as of April 1986, of current NSF publications issued and available to the public. Listing include annual reports, specific program announcements, and brochures, science resources studies pamphlets, special studies publications, and NSF periodicals. In addition to Titles, provides NSF publication numbers and copy prices. (NSF Publication 86-18)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy only (free)	For inspection or copying: NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550. For additional information: Public Affairs Group, room 527, 1800 G St., NW., Washington, DC 20550

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	NSF Guide to Programs. A composite listing of summary information about NSF support programs, as of October 1985. Provides general guidance and information describing the principal characteristics and basic purposes of each activity; eligibility requirements; closing dates (where applicable); and the address where more detailed information or applications may be obtained. (NSF Publication 85-40)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy gratis; or Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-00458-1. Unit price $5.00	
	NSF Grant Policy Manual. A compendium of basic NSF grant policies and procedures for use by the grantee community and NSF Staff. The Manual implements OMB Circular No. A-110, which is directed toward standardizing and simplifying the various accountability and reporting requirements amoung Federal granting agencies. (NSF Publication 77-47)	Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-81001-4. Unit Price $13.00	NSF Division of Grants and Contracts, Room 1150, 1800 G St., NW., Washington, DC 20550
Office of Personnel Management	Handbook of Publications, Periodicals, and Operating Manuals, OPM-OCAS-PSD-01. As of September 1996. A listing of publications, periodicals, and operating manuals arranged in alphabetical order by title within each OPM issuing organization. This handbook contains some information formerly published in the Index to Information (no longer published).	Publishing Management Branch, Office of Personnel Management, Room 5H35, 1900 E St. NW., Washington, DC 20415-0001.	OPM Library or any OPM Office, including regional and area offices
Pennsylvania Avenue Development Corporation	PADC Freedom of Information Act (FOIA) Index; this index contains numeric and subject listings of PADC policy statements; public improvement policies; development guidelines; final opinions and cases interpreting PADC enabling legislation; and internal policies, guidelines and administrative procedures. Contains records originated since Oct. 27, 1972, to date. The index is updated semi-annually (Mar. and Sept.).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004-1703. Fees charged for research and reproduction of information are based upon the current Corporation fee schedule for information under FOI regulations (36 CFR Part 902, Subpart I).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004-1703.
Pension Benefit Guaranty Corporation, Office of the General Counsel	Index to Pension Benefit Guaranty Corp. Opinion Manual; Sept. 2, 1974 to present; interpretive letters addressing the provisions of Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005; Charge $0.15 per page; payable to Pension Benefit Guaranty Corp.; or contact Disclosure Officer for information regarding a subscription to the Opinion Manual	Disclosure Officer, Communications and Public Affairs Department, Suite 240, 1200 K St., NW., Washington, DC 20005 Telephone 202–326–4040 (202–326–4179 for TTY and TDD)
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. Operating Policy Manual; Oct. 1, 1984, to present; contains basic policy statements used by the PBGC staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page. Payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operating Policy Manual	

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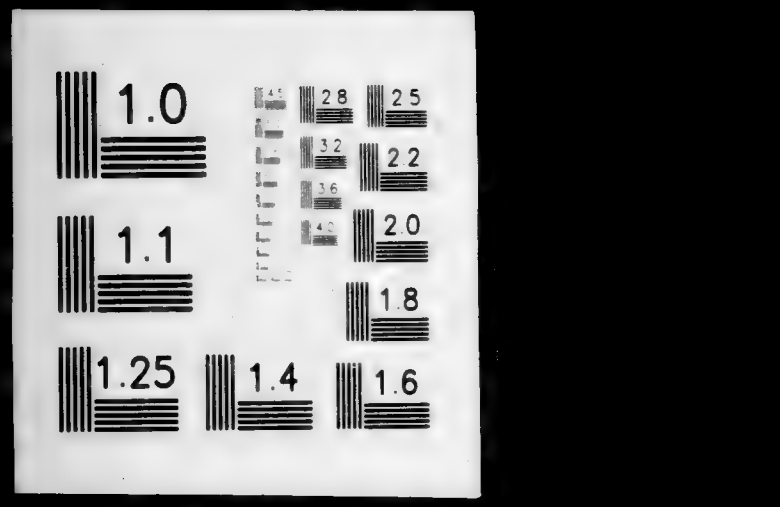

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Rules and Regulations

Federal Register
Vol. 66, No. 127
Monday, July 2, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991–AB58

Assistance Regulations; Administrative Amendment

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Assistance Regulations to make a change in the approval authority for a determination that a noncompetitive award is in the public interest.

EFFECTIVE DATE: This final rule is effective August 1, 2001.

FOR FURTHER INFORMATION CONTACT: Trudy Wood, Office of Procurement and Assistance Policy (MA–51), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; telephone: 202–586–5625.

SUPPLEMENTARY INFORMATION:

I. Explanation of Change
II. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act
H. Review Under the Treasury and General Government Appropriations Act, 1999

I. Explanation of Change

On October 20, 1999, the DOE published several administrative and technical amendments to the Department of Energy Assistance Regulations (64 FR 56418), including an amendment to 10 CFR § 600.6 ("Eligibility") that required the approval of the Secretary of Energy for any determination that a noncompetitive award is in the public interest. DOE has since concluded that the requirement for Secretarial approval on such determinations is more appropriately addressed in internal agency management documents, which permit greater flexibility in particular situations. Today's rule eliminates the requirement for Secretarial approval from 10 CFR 600.6. DOE has also updated the list of authorities at the end of the table of contents for 10 CFR 600 by adding the provisions that authorize the National Nuclear Security Administration within DOE.

II. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because DOE is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to propose financial assistance rules for public comment, DOE did not prepare a regulatory flexibility analysis for this rule.

C. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this final rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule deals only with agency procedures, and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately

defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This rulemaking is not subject to a requirement to propose for public comment, and section 654 therefore does not apply.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure.

Issued in Washington, on June 20, 2001.

Spencer Abraham,

Secretary of Energy.

For the reasons set out in the preamble, part 600 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq;* 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.*, unless otherwise noted.

2. Section 600.6 is amended by revising paragraph (c)(8) to read as follows:

§ 600.6 Eligibility.

* * * * *

(c) * * *

(8) The responsible program Assistant Secretary, Deputy Administrator, or other official of equivalent authority determines that a noncompetitive award is in the public interest. This authority may not be delegated.

* * * * *

[FR Doc. 01–16553 Filed 6–29–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 7, and 23

[Docket No. 01–13]

RIN 1557–AB94

Investment Securities; Bank Activities and Operations; Leasing

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing this final rule to amend its rules governing investment securities, bank activities and operations, and leasing. The revisions to the investment securities regulations incorporate the authority to underwrite, deal in, and purchase certain municipal bonds that is provided to well capitalized national banks by the Gramm-Leach-Bliley Act (GLBA). The final rule also makes the following revisions to the bank activities and operations regulations: it establishes the conditions under which a school where a national bank participates in a financial literacy program is not considered a branch under the McFadden Act; it revises the OCC's regulation governing bank holidays so that the wording of the rule conforms with the statute that authorizes the Comptroller to declare mandatory bank closings; it clarifies the scope of the term "NSF fees" for purposes of 12 U.S.C. 85, the statute that governs the rate of interest that national banks may charge; it simplifies the OCC's current regulation governing national banks' non-interest charges and fees; and it provides that State law applies to a national bank operating subsidiary to the same extent as it applies to the parent national bank. Finally, the revisions to the leasing regulations authorize the OCC to vary the percentage limit on the extent to which a national bank may rely on estimated residual value to recover its costs in personal property leasing arrangements. The purpose of these changes is to update and revise the OCC's regulations to keep pace with developments in the law and in the national banking system.

EFFECTIVE DATE: August 1, 2001.

FOR FURTHER INFORMATION CONTACT: For questions concerning 12 CFR 1.2, contact Beth Kirby, Special Counsel, Securities and Corporate Practices Division, (202) 874–5210. For questions concerning 12 CFR 7.3000, contact Michele Meyer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 7.1021, 7.4001, 7.4002 and 7.4006, contact Michele Meyer, Counsel, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 23.21, contact Steven Key, Senior Attorney, Bank Activities and Structure Division, (202) 874–5300.

SUPPLEMENTARY INFORMATION:

Introduction and Overview of Comments Received

On January 30, 2001, the OCC published in the **Federal Register** a notice of proposed rulemaking (the NPRM, proposed rules, or the proposal) concerning its rules governing investment securities, bank activities and operations, and leasing. *See* 66 FR 8178. The proposed revisions to the investment securities regulations incorporated the authority to underwrite, deal in, and purchase certain municipal bonds that is provided to well capitalized national banks by the Gramm-Leach-Bliley Act (GLBA). The proposed rules also contained several revisions to the OCC's bank activities and operations regulations. First, it established the conditions under which a school where a national bank participates in a financial literacy program is not considered a branch under the McFadden Act. Second, it revised the OCC's regulation governing bank holidays so that the wording of the rule conforms with the statute that

authorizes the Comptroller to declare mandatory bank closings. Third, the proposal clarified the scope of the term "NSF fees" for purposes of 12 U.S.C. 85, the statute that governs the rate of interest that national banks may charge. Fourth, it simplified the OCC's current regulation governing national banks' non-interest charges and fees. Fifth, it provided that State law applies to a national bank operating subsidiary to the same extent as it applies to the parent national bank. The proposal also contained revisions to the leasing regulations that authorized the OCC to vary the percentage limit on the extent to which a national bank may rely on estimated residual value to recover its costs in personal property leasing arrangements.

The OCC received approximately 30 comments in response to the proposed rules. Commenters included national banks, bank trade associations, consumer groups, members of Congress, State regulators, and individuals. The OCC received only one comment on the proposal to amend part 1 and three on the proposed revision to part 23. The majority of the comments concerned the proposed revisions to part 7. A number of these comments addressed the definition of "interest" for purposes of 12 U.S.C. 85 (revised § 7.4001(a)) and whether that definition should include some portion of the fee imposed by a national bank when it pays a check notwithstanding that its customer's account contains insufficient funds to cover the check. The remaining part 7 comments addressed the proposed changes to the OCC's current regulation governing national banks' non-interest charges and fees (revised § 7.4002) and proposed new § 7.4006, which addresses the applicability of State law to a national bank operating subsidiary.

The OCC is adopting most of the provisions we proposed without substantive changes. We have, however, modified certain provisions of the proposal in light of the comments we received. The most significant comments, and the OCC's responses, are discussed in the following section-by-section analysis.

Section-by-Section Description of the Final Rule

A. Part 1—Investment Securities

Pursuant to 12 U.S.C. 24(Seventh), the total amount of investment securities of any one obligor held by a national bank for its own account generally may not exceed 10 percent of the bank's capital and surplus. Section 24(Seventh), however, exempts certain types of securities from this limitation and permits a bank to underwrite, deal in, and purchase those securities without quantitative restriction. Section 151 of GLBA [1] amended section 24(Seventh) to exempt certain municipal bonds from the 10-percent limit and to permit a national bank to underwrite, deal in and purchase those securities without limit, if the national bank is well capitalized under the statutory and regulatory prompt corrective action standards.[2] In the NPRM, we proposed to amend part 1 of our regulations, which implements the statutory investment securities provisions, to reflect this change in the statute.

Part 1 classifies permissible national bank investment securities into several categories, or types.[3] Type I securities are securities—such as obligations issued by, or backed by the full faith and credit of, the United States—that a national bank may purchase, sell, deal in, and underwrite without regard to any capital and surplus limitation. The proposal made several changes to part 1. First, it added new § 1.2(g), which defines the municipal bonds described in section 151 of GLBA. As defined, the term "municipal bonds" means obligations of a State or political subdivision other than general obligations, and includes, *inter alia*, limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986, issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State.

Second, we proposed amending the list of Type I securities, which appears in redesignated § 1.2(j) of the regulation, to add the municipal bonds as defined in new § 1.2(g), subject to the requirement that the bank be well capitalized. The proposal applied the definition of well capitalized that the OCC uses for purposes of prompt corrective action standards.[4]

In addition, we proposed modifying the section that defines certain Type II securities, newly designated as § 1.2(k), to make it clear that obligations issued by a State or political subdivision or agency of a State, for housing, university, or dormitory purposes are Type II securities only when they do not qualify as Type I securities (which would result if the subject bank is not well capitalized under prompt corrective action standards). We also proposed modifying the paragraph that defines Type III securities (newly redesignated as § 1.2(l)) and uses municipal bonds as an example of that type, to make clear that municipal bonds are Type III securities only when they do not qualify as Type I securities (again, as a result of the national bank not being well capitalized). As we noted in the preamble to the proposal, regardless of the treatment of municipal bonds, safe and sound underwriting practices require a national bank to understand the fiscal condition of any municipality in whose bonds the bank invests.

The OCC received only one comment on the proposed changes to Part 1. The commenter pointed out that municipal bonds can be Type II securities as well as Type I or Type III securities. The commenter suggested that the OCC revise section 1.2 to clarify that municipal bonds that are Type III securities would include only those municipal bonds that do not satisfy the definition of Type I or Type II securities.

We agree with this commenter, and the final rule reflects this change from the proposal. Thus, under the final rule, a national bank that is well capitalized may deal in, underwrite, purchase, and sell municipal bonds for its own account without any limit tied to the bank's capital and surplus. This authority applies to *all* municipal bonds. If the bank is *not* well capitalized, then the universe of municipal bonds is divided into two types: (a) Municipal bonds that are investment securities representing obligations issued by a State, or a political subdivision or agency of a State, for housing, university, or dormitory purposes, and (b) all other types of municipal bonds. The former are treated as Type II securities, while the latter are treated as Type III securities.[5]

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[1] Pub. L. 106–102, section 151, 113 Stat. 1338, 1384 (November 12, 1999).

[2] 12 U.S.C. 1831*o* (statutory prompt corrective action standards); 12 CFR part 6 (OCC's implementing regulation).

[3] *See, e.g.*, 12 CFR 1.2(i) and 1.3(a) (defining Type I securities and providing that Type I securities are not subject to the 10 percent capital and surplus limit); 12 CFR 1.2(j) and 1.3 (defining Type II securities and describing the quantitative limit); and, 12 CFR 1.2(k) and 1.3(c) (defining Type III securities and describing the quantitative limit).

[4] *See* 12 CFR 6.4(b)(1) (defining the term "well capitalized").

[5] While a bank's transactions in either Type II and Type III securities are limited to 10 percent of the bank's capital and surplus (*see* 12 CFR 1.3(b) and (c)), a national bank may deal in, underwrite, purchase, and sell for its own account Type II securities while the bank may only purchase and sell for its own account Type III securities. Regardless of how a municipal bond is designated, it must satisfy the requirement set out in part 1 that the bond be an "investment security," as that term is defined. *See* 12 CFR 1.2(e).

The other proposed changes to part 1 are adopted without modification in the final rule.

B. Part 7—Bank Activities and Operations

The final rule makes five changes to part 7. First, it adds new § 7.1021, which defines the circumstances under which a bank that participates in a financial literacy program at a school is not considered to have established a branch of the bank under the McFadden Act. Second, the final rule amends § 7.3000 to conform it with the Comptroller's statutory authority to declare mandatory bank closings, as provided in 12 U.S.C. 95(b)(1). Third, the final rule revises current § 7.4001 to clarify the scope of the term "NSF fees" for purposes of 12 U.S.C. 85. Fourth, the final rule revises current § 7.4002, which governs non-interest charges and fees, to remove language that may be confusing. Finally, the final rule adds new § 7.4006, which provides that State laws apply to a national bank operating subsidiary to the same extent that they apply to the parent national bank. These changes are discussed below.

Bank Participation in Financial Literacy Programs (New § 7.1021)

The proposal added new § 7.1021(b) to provide that a school's premises or facility where a national bank participates in a financial literacy program is not a branch of the national bank under the McFadden Act[6] if the bank does not "establish and operate" the school premises or facility. The proposal was derived from the text of the statute, which describes the circumstances under which a national bank may "establish and operate" new branches and defines the term "branch,"[7] and from Federal judicial precedents determining when an off-premises location is a branch under these standards. Under those precedents, the court first determines whether the national bank has "establish[ed] and operate[d]" the off-premises location in question. If not, then the location will not be considered a "branch" for purposes of 12 U.S.C. 36.[8]

Consistent with the statute and applicable precedent, the proposed rule stated that a bank may participate in a financial literacy program if the bank does not establish or operate the school premises or facility on which the program is conducted and the principal purpose of the program is educational. As noted in the proposal, a program would be considered principally educational if it is designed to teach students the principles of personal economics or the benefits of saving for the future, without being designed for the purpose of making profits.[9]

The OCC received only supportive comments on proposed new § 7.1021(b) and adopts it without modification in the final rule.

Bank Holidays (Revised § 7.3000)

Under 12 U.S.C. 95(b)(1), in the event of natural or other emergency conditions existing in any State, the Comptroller may proclaim any day a legal holiday for national banks located in that State or affected area. In such a case, the Comptroller may require national banks to close on the day or days designated. If a State or State official designates any day as a legal holiday for ceremonial or emergency reasons, a national bank may either close or remain open unless the Comptroller directs otherwise by written order.

The NPRM proposed amending 12 CFR 7.3000, which implements 12 U.S.C. 95(b)(1), to more closely conform with the statute. The OCC received no comments on this portion of the proposal, and the final rule adopts § 7.3000 without change. Thus, under the final rule, if the Comptroller or a State declares a legal holiday due to emergency conditions, a national bank may temporarily limit or suspend operations at its affected offices or it may choose to continue its operations unless the Comptroller by written order directs otherwise.

Definition of "Interest" for Purposes of 12 U.S.C. 85 (Revised § 7.4001(a))

The OCC proposed revising § 7.4001 to clarify the scope of the term "NSF fees" for purposes of 12 U.S.C. 85. Section 85 governs the interest rates that national banks may charge, but it does not define the term "interest." Section 7.4001 generally defines the charges that are considered "interest" for purposes of section 85, and then sets out a nonexclusive list of charges covered by that definition. The list includes "NSF fees."

The inclusion of "NSF fees" in the definition of "interest" was intended to codify a position the OCC took in Interpretive Letter 452, issued in 1988.[10] IL 452 concluded that charges imposed by a credit card bank on its customers who paid their accounts with checks drawn on insufficient funds were "interest" within the meaning of section 85. The charges were referred to as "NSF charges" in the letter. The term, however,is also is commonly used to refer to fees imposed by a bank on its checking account customers whenever a customer writes a check against insufficient funds, regardless of whether the check was intended to pay an obligation due to the bank. These different uses of the term "NSF fees" have created ambiguity about the scope of the term as used in § 7.4001(a).

The proposal invited comments on a change to § 7.4001(a) that would clarify that the term "NSF fees" includes only those fees imposed by a *creditor* bank when a borrower attempts to pay an obligation to that bank with a check drawn on insufficient funds. Fees that a bank charges for its deposit account services—including overdraft and returned check charges—are not covered by the term "NSF fees" as that term is used in § 7.4001(a). The OCC received no objections on that proposed change, and, therefore, we adopt it in the final rule as proposed. change. Thus, we are clarifying the definition of "interest" by stating in the final rule that interest

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[6] This proposal is consistent with the limitation, found in 12 U.S.C. 93a, which states that the general rulemaking authority vested in the OCC by that section "does not apply to section 36 of [Title 12 of the United States Code]." This limitation simply makes clear that section 93a does not expand whatever authority the OCC has pursuant to other statutes to adopt regulations affecting national bank branching. Congress clearly contemplated that the OCC would implement section 36, as is evidenced by the repeated references to obtaining the OCC's approval throughout that section (*see, e.g.*, paragraphs (b)(1), (b)(2), (c), (g), and (i) of section 36). It would be illogical to conclude that the OCC, in implementing the provisions requiring national banks to obtain the OCC's prior approval under the sections cited, cannot interpret what the terms of the statute mean or that the interpretation must be made on a case-by-case basis. This rulemaking simply clarifies a situation that falls outside the branching restrictions imposed by section 36.

[7] *See* 12 U.S.C. 36(c) (describing the circumstances under which a national bank may "establish and operate" new branches); 12 U.S.C. 36(j) (defining the term "branch" to include "any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.").

[8] *See, e.g., First National Bank in Plant City* v. *Dickinson*, 396 U.S. 122, 126–29, 134–37 (1969); *Cades* v. *H & R Block, Inc.*, 43 F 3d 869, 874 (4th Cir. 1994).

[9] Students in the financial literacy program need not be of any particular age or income background in order for the program to be eligible under this proposal. If the students are low- or moderate-income individuals, however, a bank's participation in a school savings program may also be given positive consideration under the Community Reinvestment Act as a community development service. *See* Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment, 64 FR 23, 618 (May 3, 1999) (Q and A 3 addressing 12 CFR 25.12(j), 228.23(j), 345.23(j), and 563e.12(i) (examples of community development services)).

[10] Interpretive Letter No. 452 (Aug. 11, 1988), *reprinted in* [1988–89 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,676 (IL 452).

includes *creditor-imposed* NSF fees that are charged when a borrower tenders payment on a debt with a check drawn on insufficient funds.

We also invited comment on whether the term "NSF fees" as used in § 7.4001(a) should include at least some portion of the fee imposed by a national bank in the more common scenario when it pays a check notwithstanding that its customer's account contains insufficient funds to cover the check. We received numerous comments on this issue, the majority of which opposed including in the definition of "interest" any portion of the fee imposed by a national bank when it pays an overdraft.[11] Commenters raised a number of complex and fact-specific concerns related to inclusion of any portion of a charge imposed in connection with paying an overdraft constitutes "interest" for purposes of section 85. Accordingly, we have not amended § 7.4001(a) to address this issue.

National Bank Non-Interest Charges (Revised § 7.4002)

Current § 7.4002 sets out the basic authority to impose non-interest charges and fees, including deposit account service charges. It provides that the decision to do so and the determination of the amounts of charges and fees are business decisions to be made by each bank, in its discretion, according to sound banking judgment and safe and sound banking principles. It also provides that a bank "reasonably establishes" non-interest charges and fees if it considers, among other factors, the four factors enumerated in the regulation. As noted in the preamble to the proposal, the OCC construes § 7.4002 to mean that a national bank that considers at least these four factors in setting its non-interest charges and fees has satisfied the requirement that the charges and fees be set according to safe and sound banking principles and, therefore, faces no supervisory impediment to exercising the authority to set charges and fees that the regulation describes.[12]

The proposal was intended to eliminate certain ambiguities in the text of § 7.4002 without altering the substance of the regulation or the way in which the OCC intends that it operate. First, the proposal eliminated two examples in § 7.4002(a) of the types of non-interest charges and fees that national banks may impose: charges a bank's board determines to be reasonable on dormant accounts and reasonable fees for credit reports or investigations. The OCC removed these examples in the proposal because the explicit reference to the two types of fees is unnecessary and could be misinterpreted as a limitation on a national bank's ability to charge other types of fees. We note, however, that dormant account charges and fees for credit reports and investigations continue to be permissible non-interest charges and fees even though they are no longer specifically mentioned in the rule.

One commenter objected to the removal of the examples concerning the imposition of reasonable deposit account service charges and reasonable fees for credit reports or investigations. This commenter believed that removing these examples removed a requirement that non-interest charges and fees be reasonable. However, as noted below in the discussion of the proposed changes to § 7.4002(b), this comment misconstrues the OCC's regulation. The imposition of non-interest charges and fees is governed by the standards set out in § 7.4002(b), as revised (namely, that the charges and fees be arrived at on a competitive basis and be made according to sound banking judgment and safe and sound banking principles). If a bank adheres to those standards, the OCC will not substitute its judgment about how much a bank should charge for a given product or service. Thus, we have concluded that it is unnecessary to retain the examples in § 7.4002(a), and have, accordingly, adopted the changes as proposed.

We also proposed to amend § 7.4002(b), to clarify what a bank's obligations are under that section. Previously, the sentence in § 7.4002(b) that introduces the four factors provided that a bank "reasonably establishes" non-interest charges and fees if it considers those factors among others. The proposal revised that sentence to say that a bank establishes non-interest charges and fees "in accordance with safe and sound banking principles" if it employs a decision-making process through which it considers the four factors. This new language was intended to convey that the bank must exercise sound banking judgment and rely on safe and sound banking principles in setting charges and fees.

As proposed, § 7.4002(b) was also revised to clarify that the authorization it contains to establish fees and charges necessarily includes the authorization to decide the amount and method by which they are computed. Thus, for example, fees resulting from the method the bank employs to post checks presented for payment are included within the authorization provided by § 7.4002.

The OCC received several comments on the proposed change to § 7.4002(b), both from those favoring its adoption and those opposed. The latter were concerned that removing the "reasonably establishes" language eliminates an implied limitation on the fees a national bank may charge. We have never construed this language to permit the OCC to substitute its judgment about the appropriate pricing of a product or service for a bank's judgment, however. As the current text of the regulation says, the amount and type of fees established by a national bank are decisions committed to the business judgment of the bank. The "reasonably establishes" language was intended to describe the process of exercising that judgment; it was never intended to limit a national bank's authority to exercise its business judgment.

Accordingly, like the proposal, the final rule clarifies that consideration of the four factors is a process requirement to be implemented by the bank and more clearly establishes the connection between the required process and the safety and soundness considerations that underlie it. The four factors are the same as under the current regulation, including the factor addressing the maintenance of the bank's safety and soundness. We expect that, pursuant to this factor, a bank would consider any risks, such as reputation or litigation risk, that would be affected by the imposition of a particular fee. We note that consideration of the four factors is relevant both when establishing a new fee and when changing a fee that already has been established. The reference to factors other than the four that are enumerated in § 7.4002(b) has been retained in the final rule in order to avoid creating any doubt about a national bank's ability to rely on factors

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[11] In the most recent Federal case related to this issue of which the OCC is aware, the court held that overdraft fees were not "interest" within the meaning of 12 U.S.C. 85 and current § 7.4001(a). *Video Trax, Inc.* v. *NationsBank, N.A.*, 33 F. Supp. 2d 1041 (S.D. Fla. 1998); *aff'd per curiam* 205 F.3d 1358 (11th Cir. 2000); *cert. denied*, 121 S.Ct. 66 (2000).

[12] *See* Brief *Amicus Curiae* of the Office of the Comptroller of the Currency in Support of National Bank Plaintiffs, *Bank of America, N.A.* v. *San Francisco*, No. C 99 4817 VRW (N.D. Ca.) (citing OCC opinion letters construing and describing the operation of 12 CFR 7.4002). On July 11, 2000, the U.S. District Court for the Northern District of California granted the plaintiffs in this case permanent injunctive relief against San Francisco and Santa Monica city ordinances that purported to prohibit national banks from charging fees for providing banking services through automatic teller machines (ATMs). The case is currently pending appeal in the U.S. Court of Appeals for the Ninth Circuit.

in addition to those stated in the regulation.

The OCC also proposed to amend § 7.4002(d), which addresses our evaluations of whether Federal law preempts State laws that purport to limit or prohibit a national bank's ability to impose a charge or fee. The first clause of former § 7.4002(d) stated that the OCC evaluates on a case-by-case basis whether a national bank may establish fees pursuant to § 7.4002(a) and (b); the second clause provided that, in determining whether a State law purporting to limit or prohibit such fees is preempted, the OCC applies preemption principles derived from the Supremacy Clause of the United States Constitution and applicable judicial precedent. While the first clause simply underscored that a national bank's establishment of fees is governed by the preceding paragraphs of § 7.4002, it has been construed by some as requiring the OCC's confirmation prior to a bank charging a fee that the process followed by the bank in setting the fee conformed to the § 7.4002(b) factors and raises no safety and soundness concerns. To clarify that OCC confirmation is *not* required, we proposed to remove the first clause from § 7.4002(d) and retain only a statement that is intended to convey that the law as articulated by the Supreme Court and the lower Federal courts governs issues of Federal preemption.

We received a number of comments on proposed § 7.4002(d), many of which expressed concern that the proposed clarifying changes were, in fact, substantive changes to the rule. Several questioned whether the removal of the case-by-case evaluation language in former § 7.4002(d) meant that the OCC is seeking to eliminate case-by-case analyses of preemption questions. As previously noted, the reference in former § 7.4002(d) to paragraphs (a) and (b) have caused some to interpret § 7.4002(d) as *requiring* banks to seek our confirmation that the process followed by a given bank raises no safety and soundness concerns. In order to avoid this confusion going forward, the OCC proposed to remove the reference to the case-by-case evaluation of whether a national bank establishes its non-interest charges and fees pursuant to paragraphs (a) and (b) of § 7.4002. This does not, however, modify the OCC's practice of responding to requests for opinions on preemption questions on a case-by-case basis. We will continue to review these requests on a case-by-case basis and, in so doing, we will continue to apply the preemption standards articulated by the United States Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson*, 517 U.S. 25 (1996) and other applicable Federal judicial precedents. Minor changes to the language of the proposal have been made to clarify that point and to retain language from the former rule regarding the types of State laws at issue.

Several commenters also questioned the timing of the proposed changes to § 7.4002(d) in light of the pending appeal, in the U.S. Court of Appeals for the Ninth Circuit, of *Bank of America* v. *City of San Francisco*, Docket No. 00–16394. These commenters believe that by modifying the rule during litigation over its meaning, the OCC's proposal would have a chilling effect on State and municipal efforts to regulate national banks' fees. As explained above, our revisions to § 7.4002(d) do not change the OCC's process for evaluating whether State laws that limit or prohibit national banks' fees are preempted by the National Bank Act.[13]

Applicability of State Law to National Bank Subsidiaries (New § 7.4006)

Proposed § 7.4006 clarified that State laws apply to a national bank operating subsidiary to the same extent as those laws apply to the parent national bank. The majority of commenters who addressed this issue supported the proposal. Many of these commenters said that it is a permissible exercise of the authority granted by the National Bank Act for national banks to create operating subsidiaries that exercise both direct and incidental powers under 12 U.S.C. Section 24(Seventh). These commenters noted that operating subsidiaries have long been authorized for national banks and provide national banks with a convenient alternative to conduct activities that the bank could conduct directly. Further, they agreed that operating subsidiaries are, in essence, incorporated departments or divisions of the bank and, accordingly, should not be treated differently than their parent banks under State laws.[14]

A number of commenters, however, were opposed to the provision. These commenters read proposed § 7.4006 to mean that the OCC has concluded that certain types of State laws—several commenters mentioned licensing, corporate governance, and consumer protection laws in particular—do not apply to national bank operating subsidiaries. Some commenters also expressed a more general concern that Federal oversight of national bank operating subsidiaries is inadequate, and that States should be permitted to enforce compliance with State laws to protect the parent bank from any reputation or safety and soundness risks that may result from operating subsidiaries' noncompliance with those laws.

In our view, these comments do not warrant modification of proposed § 7.4006. For decades national banks have been authorized to use the operating subsidiary as a convenient and useful corporate form for conducting activities that the parent bank could conduct directly. Operating subsidiaries often have been described as the equivalent of departments or divisions of their parent banks.

Recent legislation has recognized this status of national bank operating subsidiaries. In GLBA, for example, Congress expressly acknowledged the authority of national banks to own subsidiaries that engage "solely in activities that national banks are permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by national banks."[15] Similarly, the OCC operating subsidiary regulation provides that an operating subsidiary conducts its activities subject to the same authorization, terms, and conditions that apply to the conduct of those activities by its parent bank.[16] A fundamental component of these descriptions of the characteristics of operating subsidiaries in GLBA and the OCC's rule is that state laws apply to operating subsidiaries to the same extent as they apply to the parent national bank. Thus, unless otherwise provided by Federal law or OCC regulation, State laws, such as licensing requirements, are applicable to a national bank operating subsidiary only to the extent that they are applicable to national banks.[17]

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[13] Although no substantive change is effected by the proposed revisions to § 7.4002(d), we note that the Supreme Court has held that the OCC may revise a rule during the pendency of litigation over matters governed by that rule. *See Smiley* v. *Citibank (South Dakota), N.A.*, 517 U.S. 735, 741 (1996) (upholding the OCC's regulation defining the term "interest" for purposes of 12 U.S.C. 85).

[14] Several commenters also requested that the final rule include, as an example, the express statement that 12 CFR 34 (Real Estate Lending and Appraisals) applies to operating subsidiaries. Inclusion of this statement in new § 7.4006 is unnecessary, however, because current § 34.1(b) already provides that part 34 applies to national banks and their operating subsidiaries.

[15] Pub. L. 106–102, § 121, 113 Stat. at 1378, *codified at* 12 U.S.C. 24a(g)(3).

[16] 12 CFR 5.34(e)(3).

[17] *See, e.g.*, Letter to Thomas A. Plant and Daniel Morton from Julie L. Williams, dated May 16, 2001 (published at 66 FR 28593 (May 23, 2001)) (Michigan law requiring national banks to obtain license to finance sales of motor vehicles would be preempted); letter to Thomas Vartanian from Julie L. Williams, dated March 7, 2000 (State licensing laws would be preempted to the extent that they apply to auction of certificates of deposit by

We disagree with those commenters who believe that new § 7.4006 will adversely affect the oversight of operating subsidiaries either from a consumer protection or a safety and soundness standpoint. The OCC considers the overall risk exposure of a national bank as part of its supervisory processes, including safety and soundness and compliance risk originating in, or resulting from, the bank's operating subsidiaries. Moreover, in specified cases, State law standards do apply both to a national bank and its operating subsidiary. For example, GLBA provides that insurance activities are to be functionally regulated by the States.[18] In its so-called safe-harbor provisions, section 104 of GLBA describes certain State insurance laws that are immune from preemption and that, therefore, apply to the conduct of insurance sales activities by either a depository institution or its subsidiary.

The preamble to the proposal noted that the Office of Thrift Supervision (OTS) has taken a similar approach with respect to the applicability of State law to the operating subsidiaries of Federal savings associations,[19] and that several courts have upheld this OTS rule.[20] Although the national banking laws differ in particular respects from the HOLA, national banks and Federal thrifts share the characteristics of a Federal charter. Like national banks, Federal thrifts are instrumentalities created by Congress for a national purpose—the HOLA was enacted in 1933 for the purpose of promoting home ownership in the United States. *See, e.g., Fidelity Federal Savings and Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141, 152–53 (1982). Like national banks, the charter and powers of Federal thrifts derive exclusively from Federal law. The same preemption principles developed in Federal judicial precedents under the Supremacy Clause apply to both national banks and Federal thrifts. *See First National Bank of McCook* v. *Fulkerson*, No. 98–D–1024 (D. Co. March 7, 2000) slip op. at 7 (principle of Federal preemption applies similarly to national banks and Federal savings associations). Moreover, as with national banks, consideration of the special Federal character of Federal thrifts has informed courts' application of these traditional preemption principles. *See Conference of State Bank Supervisors* v. *Conover*, 710 F.2d 878, 881–83 (D.C. Cir. 1983) *(per curiam)* (applying *de la Cuesta* to conclude that OCC regulations governing adjustable rate mortgages preempted State law).

In view of these similarities, differences in outcome on questions about what State laws apply to national banks and Federal thrifts are not warranted unless a Federal law provides otherwise,[21] and similar conclusions should be reached regarding the application of State laws to national banks and their operating subsidiaries as are reached for Federal thrifts and their operating subsidiaries.

For these reasons, § 7.4006 is adopted as proposed.

C. Part 23—Leasing

Estimated Residual Value for Section 24 (Seventh) Leases (Revised § 23.21)

Twelve CFR 23 authorizes national banks to engage in leasing activities pursuant to two distinct sources of authority: 12 U.S.C. 24 (Tenth), which expressly authorizes leasing subject to certain conditions specified in that statute, including a 10%-of-assets limit on the amount of the activity that the national bank may conduct; and 12 U.S.C. 24 (Seventh), which authorizes leasing as an activity that is part of the business of banking without imposing a percentage-of-assets limit.[22] These leases must be "full-payout leases." That term is defined to mean a lease in which the national bank reasonably expects to recover its investment in the leased property, plus its cost of financing, from rental payments, estimated tax benefits, and the estimated residual value of the leased property at the expiration of the lease term. The rules for section 24 (Seventh) leases further provide that the bank's estimate of the residual value of the leased property must be reasonable in light of the nature of the property and all the circumstances surrounding the lease transaction and that, in any event, the unguaranteed amount of residual value relied upon may not exceed 25% of the bank's original cost of the property. *See* 12 CFR 23.3, 23.2(e), and former § 23.21.

Because the OCC's experience supervising national banks that engage in the leasing business suggested that the 25% residual value limit may not be appropriate for all types of personal property leasing, we proposed to modify former § 23.21 to provide that the limit on the unguaranteed amount of estimated residual value is *either* 25% *or* the percentage for a particular type of personal property that is specified in guidance published by the OCC. This would permit the OCC to establish a different percentage requirement than 25% if a different limit is warranted. If the OCC does not specify a different limit, the 25% limit would continue to apply. In the proposal, we stated that we would apprise national banks of any different limit or limits established under this provision by publishing an OCC bulletin, which would subsequently be incorporated into the Comptroller's Handbook booklet on Lease Financing.

The OCC received several comments on the proposed changes to part 23 from national banks and bank trade groups questioning whether the proposal was establishing 25% as a floor or whether the OCC might intend to reduce the residual value limit. Those commenters argued, as a matter of policy, that the OCC should not lower the residual value limit below 25% and, as a matter of law, that the OCC would be required by the Administrative Procedure Act (APA), 5 U.S.C. 553(b), to use notice-and-comment rulemaking to effect any such reduction.

The OCC did not intend in the proposal to establish 25% as a floor. We believe that some types of leased property may warrant use of a higher or lower residual value. Establishing a 25% floor in § 23.21 would deprive the OCC of flexibility it may need in the future to respond to changes in the leasing business. Moreover, we do not believe that the APA's rulemaking requirements would be triggered by

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national bank over the Internet) (published at 65 FR 15037 (March 20, 2000)); OCC Interpr. Ltr. No. 749 (Sept. 13, 1996), reprinted in [1996–1997 Transfer Binder] Fed. Banking L. Rep. (CCH) P 81–114 (State law requiring national banks to be licensed by the state to sell annuities would be preempted); OCC Interpr. Ltr. 644 (March 24, 1994) reprinted in [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) P 83,553 (State registration and fee requirements imposed on mortgage lenders would be preempted).

[18] Pub. L. 106–102, section; 301, 113 Stat. at 1407, 15 U.S.C. 6711.

[19] 12 CFR 559.3(n). *See* 61 FR 66561, 66563 (December 18, 1996) (preamble to OTS final rule adopting section 559.3(n), explaining that the basis for the OTS rule is that the operating subsidiary of a Federal savings association "is treated as the equivalent of a department of the parent thrift for regulatory and reporting purposes").

[20] *See WPS Financial, Inc.* v. *Dean*, No. 99 C 0345 C (W.D. Wi. Nov. 26, 1999); *Chaires* v. *Chevy Chase Bank, FSB*, 131 Md. App. 64, 748 A.2d 34, 44 (Md. Ct. Sp. App. 2000).

[21] *See, e.g.*, 12 U.S.C. 1462a(f) (stating that no provision of law administered by the Director of the Office of Thrift Supervision shall be construed as superseding any homestead provision of any State constitution or implementing statute in effect on September 29, 1994, or any subsequent amendment, that exempts the homestead of any person form foreclosure or forced sale for the payment of debts, other than a purchase money obligation relating to the homestead, taxes due on the homestead, or an obligation arising from work and material used in constructing improvements on the homestead). There is no comparable provision in the laws applicable to national banks.

[22] *M&M Leasing* v. *Seattle First National Bank*, 563 F.2d 1377 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978) (bank leasing of personal property permissible because it was functionally equivalent to loaning money on personal security).

such a supervisory response.[23] Pursuant to this rulemaking, we are amending our rule in a way that preserves flexibility for the OCC to apply a different limit when faced with a given set of facts. This enables the OCC to apply a different limit without having to amend its rule. Interested parties are, as a result of this rulemaking, informed that the OCC may exercise its discretion to apply the limit that it thinks appropriate in a given circumstance. Accordingly, we have adopted the rule as proposed.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule implements statutory provisions and codifies caselaw and OCC interpretations, but adds no new requirements. Accordingly, a regulatory flexibility analysis is not needed.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives. As noted above, the final rule adds no new requirements.

Executive Order 13132—Federalism Summary Impact Statement[24]

Executive Order 13132 requires Federal agencies, including the OCC, to certify their compliance with that Order when they transmit to the Office of Management and Budget (OMB) any draft final regulation that has federalism implications. Under the Order, a regulation has federalism implications if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." In the case of a regulation that has federalism implications and that preempts State law, the Order imposes certain specific requirements that the agency must satisfy, to the extent practicable and permitted by law, prior to the formal promulgation of the regulation.

In general, the Executive Order requires the agency to adhere strictly to Federal constitutional principles in developing rules that have federalism implications; provides guidance about an agency's interpretation of statutes that authorize regulations that preempt State law; and requires consultation with State officials before the agency issues a final rule that has federalism implications or that preempts State law.

It is not clear that Executive Order 13132 applies to this rulemaking. The proposed change to § 7.4002(d) and the proposed addition of new § 7.4006 were cited by some commenters as having the effect of preempting State law. However, as previously discussed, the changes to § 7.4002(d) are not intended to affect any substantive change in our rule governing non-interest charges and fees. Rather, those changes remove language that created the misimpression that the OCC must approve the process a bank used when deciding to impose a non-interest charge or fee. The changes do not affect the OCC's intention to address questions of preemption on a case-by-case basis, according to preemption principles derived from the United States Constitution, as interpreted through judicial precedent. Section 7.4006 generally provides that national bank operating subsidiaries are subject to State law to the extent State law applies to their parent bank. The section itself does not effect preemption of any State law; it reflects the conclusion we believe a Federal court would reach, even in the absence of the regulation, pursuant to the Supremacy Clause and applicable Federal judicial precedent.

Even if the Executive Order were applicable to this rule, the final rule satisfies the requirements of that Order. If an agency promulgates a regulation that has federalism implications and preempts State law, the Executive Order requires the agency to consult with State and local officials, to publish a "federalism summary impact statement," and to make written comments from State and local officials available to the Director of OMB.

In addition to publishing our proposal for comment by all interested parties, including State and local officials, we also brought the proposal to the attention of the Conference of State Bank Supervisors and specifically invited its views, and the views of its constituent members, on the revisions we proposed. In the preamble to this final rule, we have described the comments we received from State officials or their representatives and our responses thereto. Finally, we have made those written comments we received from State or local officials available to the Director of OMB.

Effective Date

Any new regulation that imposes "additional reporting, disclosure, or other requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form," unless certain exceptions apply. Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, § 302(b) (September 23, 1994). This rulemaking imposes no such additional reporting, disclosure, or other requirements. Accordingly, the requirement to delay the effective date until the first day of the next calendar quarter does not apply, and the rule will become effective 30 days after publication, in accordance with 5 U.S.C. 553(d).

[23] When adopting a rule, the APA requires that an agency provide notice to the public of: (1) what it proposes to do; and (2) the bases for its proposed actions. Kenneth Culp Davis & Richard J. Pierce, Jr. *Administrative Law* § 7.3. We have complied with these requirements in this rulemaking by providing public notice of the OCC's intention to modify former § 23.21, for the reasons discussed above, in such a way that will permit the OCC to establish a different percentage requirement than 25% if a different limit is warranted in the future.

[24] Executive Order 13132 provides that a "federalism summary impact statement" consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns, the agency's position reflecting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. The following discussion, together with the preamble discussion concerning the provisions mentioned by the commenters on this issue, satisfies those requirements.

List of Subjects

12 CFR Part 1

Banks, banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 23

National banks.

Authority and Issuance

For the reasons set forth in the preamble, parts 1, 7 , and 23 of chapter I of title 12 of the Code of Federal Regulations are amended as follows:

PART 1—INVESTMENT SECURITIES

1. The authority citation for part 1 continues to read as follows:

Authority: 12 U.S.C. 1, *et seq.*, 12 U.S.C. 24(Seventh), and 93a.

2. In § 1.2, current paragraphs (g) through (m) are redesignated as (h) through (n), a new paragraph (g) is added, and newly designated paragraphs (j)(4), (k)(1), and (l) are revised to read as follows:

§ 1.2 Definitions.

* * * * *

(g) *Municipal bonds* means obligations of a State or political subdivision other than general obligations, and includes limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986 issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State.

* * * * *

(j) * * *

(4) General obligations of a State of the United States or any political subdivision thereof; and municipal bonds if the national bank is well capitalized as defined in 12 CFR 6.4(b)(1);

* * * * *

(k) * * *

(1) Obligations issued by a State, or a political subdivision or agency of a State, for housing, university, or dormitory purposes that would not satisfy the definition of Type I securities pursuant to paragraph (j) of § 1.2;

* * * * *

(*l*) *Type III security* means an investment security that does not qualify as a Type I, II, IV, or V security. Examples of Type III securities include corporate bonds and municipal bonds that do not satisfy the definition of Type I securities pursuant to paragraph (j) of § 1.2 or the definition of Type II securities pursuant to paragraph (k) of § 1.2.

* * * * *

PART 7—BANK ACTIVITIES AND OPERATIONS

3. The authority citation for part 7 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 92, 92a, 93, 93a, 481, 484, 1818.

4. A new § 7.1021 is added to subpart A to read as follows:

§ 7.1021 National bank participation in financial literacy programs.

A national bank may participate in a financial literacy program on the premises of, or at a facility used by, a school. The school premises or facility will not be considered a branch of the bank if:

(a) The bank does not establish and operate the school premises or facility on which the financial literacy program is conducted; and

(b) The principal purpose of the financial literacy program is educational. For example, a program is educational if it is designed to teach students the principles of personal economics or the benefits of saving for the future, and is not designed for the purpose of profit-making.

5. In § 7.3000, the last sentence of paragraph (b) is removed and two sentences are added in its place to read as follows:

§ 7.3000 Bank hours and legal holidays.

* * * * *

(b) * * * When the Comptroller, a State, or a legally authorized State official declares a legal holiday due to emergency conditions, a national bank may temporarily limit or suspend operations at its affected offices. Alternatively, the national bank may continue its operations unless the Comptroller by written order directs otherwise.

* * * * *

6. In § 7.4001, the second sentence of paragraph (a) is revised to read as follows:

§ 7.4001 Charging interest at rates permitted competing institutions; charging interest to corporate borrowers.

(a) * * * It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, creditor-imposed not sufficient funds (NSF) fees charged when a borrower tenders payment on a debt with a check drawn on insufficient funds, overlimit fees, annual fees, cash advance fees, and membership fees. * * *

* * * * *

7. Section 7.4002 is revised to read as follows:

§ 7.4002 National bank charges.

(a) *Authority to impose charges and fees.* A national bank may charge its customers non-interest charges and fees, including deposit account service charges.

(b) *Considerations.* (1) All charges and fees should be arrived at by each bank on a competitive basis and not on the basis of any agreement, arrangement, undertaking, understanding, or discussion with other banks or their officers.

(2) The establishment of non-interest charges and fees, their amounts, and the method of calculating them are business decisions to be made by each bank, in its discretion, according to sound banking judgment and safe and sound banking principles. A national bank establishes non-interest charges and fees in accordance with safe and sound banking principles if the bank employs a decision-making process through which it considers the following factors, among others:

(i) The cost incurred by the bank in providing the service;

(ii) The deterrence of misuse by customers of banking services;

(iii) The enhancement of the competitive position of the bank in accordance with the bank's business plan and marketing strategy; and

(iv) The maintenance of the safety and soundness of the institution.

(c) *Interest.* Charges and fees that are "interest" within the meaning of 12 U.S.C. 85 are governed by § 7.4001 and not by this section.

(d) *State law.* The OCC applies preemption principles derived from the United States Constitution, as interpreted through judicial precedent, when determining whether State laws apply that purport to limit or prohibit charges and fees described in this section.

(e) *National bank as fiduciary.* This section does not apply to charges imposed by a national bank in its capacity as a fiduciary, which are governed by 12 CFR part 9.

8. A new § 7.4006 is added to read as follows:

§ 7.4006 Applicability of State law to national bank operating subsidiaries.

Unless otherwise provided by Federal law or OCC regulation, State laws apply to national bank operating subsidiaries to the same extent that those laws apply to the parent national bank.

PART 23—LEASING

9. The authority citation for part 23 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24(Seventh), 24(Tenth), and 93a.

10. In § 23.21, paragraph (a)(2) is revised to read as follows:

§ 23.21 Estimated residual value.

* * * * *

(a) * * *

(2) Any unguaranteed amount must not exceed 25 percent of the original cost of the property to the bank or the percentage for a particular type of property specified in published OCC guidance.

* * * * *

Dated: June 21, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 01–16328 Filed 6–29–01; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5 and 9

[Docket No. 01–14]

RIN 1557–AB79

Fiduciary Activities of National Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing its final rule regarding the authority and standards for national banks to conduct multi-state trust operations. The purpose of these changes is to provide enhanced guidance to national banks engaging in fiduciary activities.

EFFECTIVE DATE: August 1, 2001.

FOR FURTHER INFORMATION CONTACT: Lisa Lintecum, Director, or Joel Miller, Senior Advisor, Asset Management, (202) 874–4447; Richard Cleva, Senior Counsel, Bank Activities and Structure Division, (202) 874–5300; Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; or William Dehnke, Assistant Director, Securities and Corporate Practices Division, (202) 874–5210.

SUPPLEMENTARY INFORMATION: On December 5, 2000, the OCC published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 75872) to amend 12 CFR part 9 to add provisions addressing the application of 12 U.S.C. 92a in the context of a national bank engaging in fiduciary activities in more than one state. The purpose of the rulemaking was to provide clarity and certainty for national banks' multi-state fiduciary activities. The standards contained in the NPRM reflected positions taken in three earlier OCC Interpretive Letters.[1] Interpretive Letter No. 695 found that a national bank authorized to engage in fiduciary activities may act in a fiduciary capacity in any state that permits its own in-state fiduciaries to act in that capacity, including at trust offices. Interpretive Letters Nos. 866 and 872 clarified that a national bank that acts in a fiduciary capacity in one state may market its fiduciary services to customers in other states, solicit business from them, and act as fiduciary for customers located in other states. The NPRM and the final rule are based upon the detailed analysis contained in these Interpretive Letters.

Along with the NPRM, we also published an advance notice of proposed rulemaking (ANPR) inviting comments on whether the OCC should establish uniform national standards for the conduct of fiduciary activities by national banks. The ANPR invited comments on whether uniform standards of care generally applicable to national bank trustees' administration of private trusts and investment of private trust property should be established.

We received comments on both the NPRM and the ANPR. As discussed further below, comments on the NPRM predominantly were favorable. Comments on the ANPR were more mixed, raising a significant number of issues that will require additional analysis before any determination is made concerning how to proceed. Rather than delay addressing the issues covered by the OCC interpretations, we are issuing this final rule, which covers only the matters included in the NPRM, and are reserving a decision whether to proceed with a proposal to establish uniform fiduciary standards pending completion of our analysis of the issues raised by the commenters.

The OCC received 25 comments on the NPRM. These comments included 4 from state bank supervisors' offices, 1 from a state bank supervisors' organization, 6 from banking trade associations, 13 from banks and bank holding companies, and 1 from a law firm. Most of the commenters supported the proposed changes, although several offered additional suggestions for changes. The state bank supervisors disagreed with the proposal and expressed concern about the effect the rule would have on the application of state laws to national banks engaged in fiduciary activities.

For the reasons discussed below, we have adopted the provisions of the NPRM substantially as proposed, but have made a number of changes in response to the comments received to clarify certain provisions.

Description of Proposal, Comments Received, and Final Rule

Definitions (Revised § 9.2)

Proposed § 9.2 defined "trust office" and "trust representative office" in §§ 9.2(j) and (k), respectively. A "trust office" was defined as an office of a national bank, other than a main office or a branch, at which the bank acts in a fiduciary capacity. A "trust representative office" was defined as an office of a national bank, other than a main office, branch, or trust office, at which the bank performs activities ancillary to its fiduciary business, but does not act in a fiduciary capacity.

The final rule modifies the definition of trust office to clarify that it includes all offices where the bank engages in one or more of the key fiduciary activities specified in § 9.7(d)—*i.e.*, accepting the fiduciary appointment, executing the documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary assets. The definition in the proposal focused on where the bank acted in a fiduciary capacity (where the key fiduciary activities were performed) and implicitly assumed that all of the key fiduciary activities would be performed in one state for each fiduciary relationship (so that "acting in a fiduciary capacity" and performing the key activities were the same). However, as discussed in detail below in connection with § 9.7(d), in some instances, the key activities may be performed at offices in different states for some fiduciary relationships. In those instances, as provided in § 9.7(d)

[1] OCC Interpretive Letter No. 872 (Oct. 28, 1999) *reprinted in* [1999–2000 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶81–366 (IL 872); OCC Interpretive Letter No. 866 (Oct. 8, 1999) *reprinted in* [1999–2000 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶81–360 (IL 866); and OCC Interpretive Letter No. 695 (Dec. 8, 1995), *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–010 (IL 695).

a bank must determine one state in which it acts in a fiduciary capacity for purposes of 12 U.S.C. 92a. That means that there will remain other offices in other states in which the bank performs key fiduciary activities that, under the definition in the proposal, would not have been considered to be trust offices. However, our intention was that because each of these key activities is significant standing alone, all offices in which a bank engages in *any* of the key fiduciary activities should be considered to be trust offices. Therefore, the final rule clarifies the definition of "trust office" to be an office of a national bank, other than a main office or a branch, at which the national bank engages in one or more of the activities specified in § 9.7(d). A corresponding change has been made to § 9.2(k). A "trust representative office" is defined as an office of a national bank, other than a main office, branch, or trust office, at which the bank performs activities ancillary to its fiduciary business, but does not engage in any of the activities specified in § 9.7(d).

Section 9.2(k) of the proposal listed the following examples of ancillary activities: advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer (*e.g.*, forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); or simply inspecting or maintaining custody of fiduciary assets.

A number of commenters suggested that various activities be added to the list of examples of ancillary activities. The list of ancillary activities set forth in § 9.2(k) is illustrative only, however, and not all-inclusive. While the OCC considers many of the suggested activities to be ancillary activities, we have not included most of them in the text of the final rule because the list set out in the definition is not intended to be comprehensive. A national bank may therefore identify additional activities as ancillary without seeking the express concurrence of the OCC. To make this clear, we have added to the text of the final rule an express statement that the items on the list are illustrative and that other activities may also be "ancillary" for the purposes of the definition.[2]

Two commenters urged that holding title to real property in any state be added to the list of ancillary activities in § 9.2(k), because some state laws attempt to prohibit out-of-state entities from taking title to real property without a state license or other authorization. Because this appears to be a specific issue warranting clarification, we have added holding title to real estate to the list of ancillary activities in § 9.2(k). The statutory authority for national banks to exercise fiduciary powers, 12 U.S.C. 92a, does not subject the exercise of a national bank's fiduciary powers to restrictions or preconditions, such as licensing requirements, under state law. State laws prohibiting out-of-state national banks from taking title to real property have such an effect. For these reasons, and because we believe that this activity is consistent with national banks' exercise of their fiduciary powers, we have added holding title to real property to the list of ancillary activities in the final rule.[3] Consistent with this change, we also have added language to § 9.7(b) to clarify that while acting in a fiduciary capacity in one state, a bank may act as fiduciary for relationships that include property located in other states.

As we stated in the NPRM, neither a trust office nor a trust representative office is a branch for purposes of the McFadden Act, 12 U.S.C. 36, which governs the location of national bank branches. In order to be considered a branch under the McFadden Act, a bank facility must perform at least one of the core branching functions of receiving deposits, paying checks, or lending money. 12 U.S.C. 36(j). The locational limitations of 12 U.S.C. 36 are not intended to reach all activities in which national banks are authorized to engage, but only core branching functions. *See Clarke* v. *Securities Industry Association*, 479 U.S. 388 (1987) (considering securities brokerage powers) (*Clarke*). Proposed §§ 9.2(j) and (k) therefore stated that a trust office or a trust representative office is not a branch unless it is also an office at which deposits are received, or checks paid, or money lent.[4]

Several state bank supervisors disagreed with the OCC's conclusion that fiduciary activities are not core branching functions and stated their belief that trust offices should be considered to be branches. They assert that the *Clarke* case held only that discount brokerage activities are not core branching functions and should not be read to conclude that any other activities are not core branching functions.

The OCC has carefully considered these comments, but remains of the view that fiduciary activities under section 92a do not constitute core branching functions and that a national bank office that provides only fiduciary services would not be subject to the McFadden Act. In *Clarke*, the Supreme Court held that the McFadden Act's locational limits do not reach all activities in which national banks engage. This conclusion in the *Clarke* case is reinforced by the recent decision in *First National Bank of McCook, Nebraska* v. *Fulkerson, et al.*, Civil Action No. 98–D–1024, slip op. (D.C. Co. March 7, 2000), where the court held that the combination of a deposit production office, a loan production office, and an ATM do not constitute a branch because no core branching functions are performed.[5]

Finally, the second sentence in current § 9.2(g) provides that the extent of fiduciary powers is the same for out-of-state national banks as in-state national banks. We proposed to remove this sentence as unnecessary in light of new § 9.7, which sets forth the rules concerning multi-state fiduciary operations. We received no comments on this proposed change, and have adopted it as proposed.

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[2] Classifying activities as "ancillary" in §§ 9.2(j) and (k) is meant only to assist in the determination of the state in which the bank is acting in a fiduciary capacity for section 92a purposes. Only the key fiduciary activities in § 9.7(d) are relevant for determining that state: *all* other activities are "ancillary" for this purpose. This classification does not affect the importance of such activities or change in any way a bank's fiduciary duty with respect to such activities.

[3] This is consistent with the Office of Thrift Supervision's (OTS) position under its parallel statute. *See* OTS Chief Counsel Opinion (August 8, 1996), *reprinted in* [1996–1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶83–102 (OTS August 1996 Opinion) (holding title to real property as trustee in a state would not cause a federal savings association to be located in that state because the activity is incidental and not discretionary).

[4] This final rule is consistent with the limitation, found in 12 U.S.C. 93a, which states that the general rulemaking authority vested in the OCC by that section "does not apply to section 36 of [Title 12 of the United States Code]." This limitation simply makes clear that section 93a does not expand whatever authority the OCC has pursuant to other statutes to adopt regulations affecting national bank branching. Congress clearly contemplated that the OCC would implement section 36, as is evidenced by the repeated references to obtaining the OCC's approval throughout that section (*see, e.g.*, paragraphs (b)(1), (b)(2), (c), (g), and (i) of section 36). It would be illogical to conclude that the OCC, in implementing the provisions requiring national banks to obtain the OCC's prior approval under the sections cited, cannot interpret what the terms of the statute mean or that the interpretation must be made on a case-by-case basis. This rulemaking simply clarifies a situation that falls outside the branching restrictions imposed by section 36.

[5] *See also Bank One, Utah* v. *Guttau*, 190 F. 3d 844 (8th Cir. 1999) (ATMs are excluded from the definition of "branch").

Approval Requirements (revised § 9.3)

Current § 9.3(a) provides that "[a] national bank may not exercise fiduciary powers unless it obtains prior approval from the OCC to the extent required under 12 CFR 5.26." Section 5.26(e)(5) currently provides that a national bank that has obtained the OCC's approval to exercise fiduciary powers does not need to obtain further approval to "commence fiduciary activities" in a state in addition to the state(s) described in the application for which it received OCC approval to exercise fiduciary powers. Instead, the bank is required only to provide written notice to the OCC within ten days after commencing fiduciary activities in a new state.

Under the proposal, a bank that has received OCC approval to exercise fiduciary powers does not need prior OCC approval each time it seeks to act in a fiduciary capacity in a new state or to conduct activities in a new state that are ancillary to its fiduciary business. Proposed paragraph (b) also directs the bank to follow the notice procedures in § 5.26(e)(5) (discussed below) in order to emphasize that revised § 9.3(b) is consistent with § 5.26(e)(5) and is not intended to impose any additional or different procedures on national banks. Current paragraph (b), which addresses the procedures for organizing a limited purpose trust bank, would be redesignated as paragraph (c).

We received one comment on this proposed change, suggesting that we clarify in § 9.3(b) that marketing and soliciting fiduciary business are included in ancillary activities. Because this is made clear in § 9.2(k), it is unnecessary to repeat it in this provision. The final rule has, however, been changed to reflect the modified definition of "trust office" in § 9.2(j). Consistent with § 5.26(e)(5) of the final rule, this provision now states that a national bank granted fiduciary powers by the OCC is not required to obtain the OCC's prior approval to engage in any of the activities specified in § 9.7(d) in a new state or to conduct ancillary fiduciary activities in a new state.

Multi-State Fiduciary Operations (New § 9.7)

The statutory authority for national banks to exercise fiduciary powers is contained in 12 U.S.C. 92a(a) and (b). In IL 872, IL 866, and IL 695, the OCC considered how the language of section 92a would be applied in an interstate context.

Under section 92a, national banks may exercise fiduciary powers with OCC approval. Section 92a(a) states:

> The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefor, *when not in contravention of State or local law, the right to act* as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located. (Emphasis added).

Section 92a(b) clarifies that, whenever state law permits state banks, trust companies, or other corporations that compete with national banks (State Fiduciaries) to exercise any of the fiduciary powers in section 92a(a), a national bank's exercise of those powers is deemed not to be in contravention of State or local law under section 92a.

Thus, "when not in contravention of State or local law" (the Contravention Clause), a national bank may act in any of the fiduciary capacities specified in section 92a(a). This statutory grant of authority does not limit where a national bank may act in a fiduciary capacity. Nor does it require that the customers for whom the bank may act or the property involved in the fiduciary relationship be located in the same state as the bank. A bank is free to act in a fiduciary capacity in more than one state.

The Contravention Clause in section 92a(a) requires that a national bank look to the laws of the state in which it acts, or proposes to act, in a fiduciary capacity to determine what fiduciary capacities are permissible.[6] The state in which the bank acts in a fiduciary capacity for each existing or proposed fiduciary relationship is the state in which the bank performs the key fiduciary activities of accepting fiduciary appointments, executing documents that create the fiduciary relationship, or making decisions regarding the investment or distribution of fiduciary assets. This state is also the state referred to in other provisions in section 92a that refer to state law (subsections 92a(b), (c), (f), (g) and (i)) (the Section 92a State).

Section 9.7 of the proposed rule reflected this interpretation of section 92a. In paragraph (a) of proposed § 9.7, we stated that a national bank may act in a fiduciary capacity in any state. Proposed § 9.7(a) went on to state that if a national bank acts, or proposes to act, in a fiduciary capacity in a particular state, the bank may act in any of the eight fiduciary capacities expressly listed in section 92a(a) unless the state affirmatively prohibits that capacity for its own State Fiduciaries as well as any other capacity a state permits for its own State Fiduciaries. This authority exists even if the state purports to restrict it for national banks. If state law is silent with respect to one (or more) of the eight capacities listed in section 92a(a), then that capacity is not in contravention of state law and a national bank may act in that capacity.

These conclusions, along with a more complete explanation of their underlying reasons, were stated in IL 695 and IL 872. As previously noted, the proposal intended to reflect the conclusions reached in those letters and is based on the reasoning stated therein.

Most of the comments on proposed § 9.7(a) supported its adoption. Of these, several requested that we clarify that the question of where a national bank is located for purposes of section 92a is a question of federal law. Comments from several state bank supervisors objected to proposed § 9.7(a), on the grounds that it would permit national banks a competitive advantage by being able to expand their fiduciary activities into states notwithstanding state limits on who may act as fiduciary. These commenters maintained that section 92a preserves for each state the right to establish such limits. They also suggested that the determination of which state's laws govern the permissible capacities should be resolved by whether a national bank has its main office or a branch located in that state.

As set out above, we believe that section 92a imposes no limitations on where a bank may act in a fiduciary capacity. Under the Contravention Clause, a state may not prohibit or restrict national banks (including out-of-state national banks) from acting in a fiduciary capacity in the state in any manner, unless it also limits its own State Fiduciaries.

Moreover, we disagree that "location" for purposes of section 92a is appropriately determined by the presence of a main office or bank branch. As previously discussed, the Contravention Clause of section 92a

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[6] The last phrase in paragraph (a) of section 92a refers to the state in which the national bank is "located." The primary reference to a state is in the Contravention Clause regarding the right to act in fiduciary capacities (the language emphasized above). That language was in the statute originally, before the phrase using the term "located" was added. Thus, we believe that the reference to the state in which a bank is located refers to the state in which the bank is acting in a fiduciary capacity. We note that the OTS construes its parallel statute in a similar way. The OTS concludes that a federal savings association may exercise fiduciary powers permitted for state fiduciaries in the states in which it is located, but it is "located" for this purpose in the state in which it performs key fiduciary functions. *See, e.g.*, OTS August 1996 Opinion.

requires that a bank look to the laws of the state in which it acts in one or more fiduciary capacities in order to determine the limits on those capacities.

For the reasons discussed above, we have adopted proposed § 9.7(a) as proposed, making only stylistic changes to improve the readability of this provision.

Once the state in which a national bank is acting in a fiduciary capacity is identified, the fiduciary services may be offered regardless of where the fiduciary customers reside or where property that is being administered is located. This point was incorporated in proposed § 9.7(b), which provided that a national bank may market its services to customers in other states and solicit business from them. It also may establish and use a trust representative office for these purposes. Accordingly, a state may not prohibit or restrict out-of-state national banks from marketing to, or performing fiduciary functions for, customers in that state. Such state laws are not within the powers reserved to the states by section 92a, and so they cannot prohibit or restrict a national bank's exercise of its federally granted powers.[7] These conclusions are consistent with the conclusions set out in IL 866 and IL 872.[8]

A few commenters asked that we clarify that § 9.7(b) does not require a national bank to establish a trust representative office in order to market its fiduciary services to, or act as a fiduciary for, customers in any state. We agree that a bank need not establish a trust representative office; the reference to trust representative offices was intended solely to illustrate one option available to national banks who seek to market their fiduciary services. The final rule, like the proposal, states that a national bank "may" use a trust representative office to market its fiduciary services to and act as a fiduciary for customers in any state, indicating that use of a trust representative office is discretionary. As noted earlier, we also have added language to § 9.7(b) to clarify that while acting in a fiduciary capacity in one state, a bank may act as fiduciary for relationships that include property located in other states.

As previously discussed, section 92a imposes no geographic limit on where a bank may act in a fiduciary capacity. Similarly, there is no geographic limit on where a bank may offer services that are incidental to acting in a fiduciary capacity. Accordingly, proposed § 9.7(c) reflected the conclusions stated in the Interpretive Letters that a national bank with fiduciary powers may establish a trust office or trust representative office in any state. We received no comments on proposed § 9.7(c) as such, and we have adopted it as proposed.

Proposed § 9.7(d) clarified how national banks may determine the state in which they are acting in a fiduciary capacity. In IL 866 and IL 872, we concluded that a national bank is deemed to be "acting in a fiduciary capacity" for purposes of section 92a in the state in which the bank performs the key fiduciary functions of executing the documents that create the fiduciary relationship, accepting the fiduciary appointment, and making decisions regarding the investment or distribution of fiduciary assets. As proposed, § 9.7(d) incorporated this position and further provided that, if with respect to a particular fiduciary relationship these key fiduciary activities take place in more than one state, then the state in which the bank acts in a fiduciary capacity will be the state that the bank and customer designate from among those states. We specifically invited comment on ways to simplify the determination of where a bank with multi-state operations is acting in a fiduciary capacity.

We received several comments relating to the determination of where a bank acts in a fiduciary capacity when the key fiduciary activities take place in more than one state. One commenter asked us to clarify whether it was our intent to have the choice of law clause in the trust's governing instrument be used to designate where the bank acted in a fiduciary capacity. Similarly, two commenters suggested that we look to the governing instrument to make the determination. A few commenters suggested that, where the designation could not be made by the governing instrument or the customer has not or cannot otherwise make the designation, the bank be permitted to do so alone. A few commenters also noted the importance of the meaning of the term "customer," noting that if defined too broadly, it could be quite burdensome for a bank to consult with customers to make the designation.

We agree with those commenters who pointed out the potential problems, in situations where a bank performs the key fiduciary activities in more than one state, of requiring a bank to obtain customer agreement concerning the state in which the bank will be deemed to be acting in a fiduciary capacity. For instance, a bank could be forced to obtain the agreement of many different people residing in several different locations. To avoid these problems, we have revised § 9.7(d) to provide that a bank performing the key fiduciary activities in more than one state for any particular fiduciary relationship may designate from among these states which state's laws are made applicable by operation of section 92a for that relationship. We have also made some minor changes intended to improve the readability of § 9.7(d), including a change in its heading.

Many of the commenters indicated some confusion over the significance of the determination of the Section 92a State. Section 92a directs the application of state law for purposes of determining a national bank's permissible fiduciary capacities (referred to in sections 92a(a) and (b)); for purposes of setting certain operational requirements for national banks as corporate fiduciaries (referred to in sections 92a(f), (g) & (i)); and for purposes of granting state banking authorities limited access to OCC examination reports relating to national bank trust departments (referred to in section 92a(c)). Proposed § 9.7(d) provided a means to identify which state's laws apply for purposes of section 92a when a bank is conducting multi-state fiduciary activities. As discussed more fully below, this determination is separate from the selection of the substantive law that governs matters affecting the exercise of the fiduciary appointment, such as standards of care.

Proposed § 9.7(e) provided a direct statement of how state law applies to a national bank engaging in fiduciary activities. As set out in the proposal, the state laws that apply to a national bank's fiduciary activities by operation of section 92a are the laws of the state in which the bank acts in a fiduciary capacity.

Two commenters suggested that we clarify that state laws may not impose operational requirements on national banks that engage only in limited trust operations. In both IL 866 and IL 872 we stated that section 92a does not "condition the exercise of fiduciary

[7] *See, e.g., Barnett Bank of Marion County* v. *Nelson*, 517 U.S. 25 (1996).

[8] The OTS has reached the same conclusions under its parallel statute. *See, e.g.*, OTS August 1996 Opinion (federal savings association will not be deemed located in a state where its only trust-related activities are marketing its trust services and performing incidental duties pursuant to its appointment as testamentary trustee or trustee holding real estate; and federal law would preempt state laws that prohibit or restrict an out-of-state federal thrift from engaging in these activities in the state); OTS Chief Counsel Opinion No. 94/CC–13 (June 13, 1994), *reprinted in* [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 82,814 (trust marketing and referral activities at affiliate's offices does not make federal savings association located at those offices; state laws that prohibit or restrict an out-of-state federal thrift from engaging in these activities in the state are preempted).

powers on compliance with state laws that purport to impose licensing or operating requirements on national banks."[9] This point is incorporated in § 9.7(e)(2) of the final rule, which provides that, with the exception of those state laws specifically referenced in section 92a, national banks' exercise of fiduciary powers is not subject to restrictions or preconditions under state law. Such restrictions and preconditions include, but are not limited to, state licensing requirements. This principle applies to the fiduciary activities of full service national banks as well as national banks that engage only in limited trust operations.

Section 9.7(e) does not affect the applicability of state substantive laws that govern the fiduciary relationship, such as the standard of care to be exercised by the fiduciary, or ability of a grantor to designate which state's laws govern the trust itself. A grantor is free to designate which state laws apply for all other purposes or to have the applicable law determined by choice-of-law rules. For example, if the bank acting in a fiduciary capacity in State A is trustee for a trust whose grantor and beneficiaries are located in State B and the trust, by its terms, is governed by the laws of State C, then the laws of State C will govern the administration of the trust. The choice of law clause in a trust instrument does not, however, determine where a bank is acting in a fiduciary capacity or the laws that apply by operation of section 92a. That determination is a matter of federal law pursuant to section 92a. It cannot be altered by agreement of the parties.

Several state bank supervisors objected to the conclusion that a national bank is not subject to state laws that restrict the activities of out-of-state fiduciaries. However, as discussed above, the Contravention Clause in section 92a only serves to limit national banks from engaging in fiduciary capacities that are not permitted for State Fiduciaries but does not otherwise limit a national bank's ability to exercise its federal authority in any state. State laws that are outside the ambit of the Contravention Clause, and so not authorized by Congress to apply to national banks, may not restrict or interfere with the exercise of permissible federal power. *See, e.g., Barnett Bank, supra.*

The state supervisors also pointed to discussion in earlier OCC interpretive letters, in particular IL 525, that suggested that all aspects of state law governing state fiduciary institutions applied to national banks. However, IL 525 was concerned primarily with the substantive fiduciary standards that would apply to national banks in certain trust contexts. As noted above, the substantive law governing a trust is a different matter than the law made applicable to national banks by operation of section 92a. Moreover, the discussion of state law in IL 525 did not involve an interstate situation and was focused on the issue of the substantive fiduciary law governing the fiduciary appointment. The OCC's analysis of the application of section 92a in the interstate context, including the manner in which it incorporates state law, is clearly set forth in ILs 872, 866, and 695, the NPRM, and this final rule. Any contrary implications in IL 525 do not represent the position of the agency.

Deposit of Securities with State Authorities (Revised § 9.14)

Under section 92a(f) and current § 9.14 of our regulations, a national bank must comply with state laws that require corporations that act in a fiduciary capacity to deposit securities with state authorities for the protection of private or court trusts. The proposal made a technical amendment to § 9.14 to conform to the terminology used in proposed § 9.7. The proposal replaced the phrase "administers trust assets" in paragraph (b) of that section with the phrase "acts in a fiduciary capacity." No substantive change was intended by this amendment.

The proposal also added a second sentence to § 9.14(b) to clarify how a bank that conducts fiduciary operations on a multi-state basis pursuant to proposed § 9.7 should compute the amount of deposit required by a state law that requires a deposit of securities on a basis other than assets (such as an amount equal to a percentage of capital). Pursuant to the proposal, in such a state, the bank may compute the amount of deposit required on a pro-rated basis, according to the proportion of fiduciary assets for which the bank is acting in a fiduciary capacity at offices located in that state.

A few commenters requested clarification of how the rule would apply to them, suggesting that sample calculations be included in the regulation. We believe that specific questions are better addressed by consultation with agency staff or in interpretive letters. Accordingly, we are adopting the proposal for this section without change.

Fiduciary Powers (Revised § 5.26)

Consistent with the proposed changes discussed above, we also proposed an amendment to 12 CFR 5.26(e) to clarify that a national bank that plans to act in a fiduciary capacity in a state in addition to the state described in the application for fiduciary powers that the OCC has approved need only give notice of commencing to act in a fiduciary capacity in a new state. The proposal would revise current § 5.26(e)(5) so that it reflects the distinction between acting in a fiduciary capacity and conducting activities ancillary to the bank's fiduciary business. The ten-day, after-the-fact notice requirement would apply only to acting in a fiduciary capacity.

The final rule has been changed to reflect the modified definition of "trust office" in § 9.2(j). This provision now states that no application is required when a national bank with fiduciary powers plans to engage in any of the fiduciary activities specified in § 9.7(d) or conduct ancillary activities in a new state. The final rule provides that, instead, the ten-day, after-the-fact notice to the OCC is required when a bank begins to engage in any of the key fiduciary activities specified in § 9.7(d) in a new state.

We received six comments requesting that we clarify that there is no need for prior approval or subsequent notice for establishing trust representative offices. As discussed above, a national bank that has received OCC approval to exercise fiduciary powers does not need to make any further application to the OCC when it plans to engage in any of the fiduciary activities specified in § 9.7(d) or conduct ancillary activities in a new state, but does need to provide notice to OCC within 10 days after it begins to engage in any of the fiduciary activities specified in § 9.7(d) in a new state. Since engaging in ancillary activities does not constitute engaging in any of the key fiduciary activities specified in § 9.7(d), and since only ancillary activities are undertaken at a trust representative office, a national bank is not required to get prior approval or give subsequent notice in order to establish a trust representative office. We have added a new sentence to clarify this point in the final rule.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this

[9] *See* IL 866 p. 9; IL 872 p. 10.

rulemaking will not have a significant economic impact on a substantial number of small entities. The final rule codifies case law and OCC interpretations, but adds no new requirements. Accordingly, a regulatory flexibility analysis is not needed.

Executive Order 12866

The OCC has determined that this final rulemaking is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. For the reasons outlined above, the OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

Executive Order 13132

Executive Order 13132 requires Federal agencies, including the OCC, to certify their compliance with that Order when they transmit to the Office of Management and Budget any draft final regulation that has Federalism implications. Under the Order, a regulation has Federalism implications if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." In the case of a regulation that has Federalism implications and that preempts State law, the Order imposes certain consultation requirements with State and local officials; requires publication in the preamble of a Federalism summary impact statement; and requires the OCC to make available to the Director of the Office of Management and Budget any written communications submitted to us by State and local officials. By the terms of the Order, these requirements apply to the extent that they are practicable and permitted by law and, to that extent, must be satisfied before the OCC promulgates a final regulation.

In our proposal relating to this final rule, we noted that certain provisions in the proposal may have Federalism implications, as that term is used in the Order, or may be found by a Federal court to preempt State law. The concern regarding Federalism was primarily directed to the advance notice, according to which the OCC proposed to establish uniform federal standards governing fiduciary activities that would be generally applicable to national bank trustees' administration of private trusts and investment of private trust property. A discussion of the Federalism issues arising from any uniform federal standard of fiduciary activities will be provided in any subsequent rulemaking document on that issue.

This final rule contains provisions that determine which States' laws apply to a national bank for purposes of 12 U.S.C. 92a, a Federal law. The determination of which State's rules apply for purposes of section 92a is governed, for the reasons set out above, by a determination of the State in which a national bank is acting in a fiduciary capacity. Once that determination is made, then, by operation of section 92a, other States' laws governing the operation of a national bank's fiduciary activities do not apply.

We note that there has been consultation with State officials on the issues addressed herein, both through this rulemaking and through other documents published in the **Federal Register** on which comment was invited. *See* 60 FR 66163 (December 21, 1995), 61 FR 68543 (December 30, 1996), 62 FR 19172 (April 18, 1997), and 62 FR 19173 (April 18, 1997). As discussed in this preamble, we received and considered a number of comments from states, and will make them available to the Director of the OMB.

List of Subjects

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

Authority and Issuance

For the reasons set forth in the preamble, parts 5 and 9 of chapter I of title 12 of the Code of Federal Regulations are amended as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a; and section 5136A of the Revised Statutes (12 U.S.C. 24a).

Subpart B—Initial Activities

2. Paragraph (e)(5) of § 5.26 is revised to read as follows:

§ 5.26 Fiduciary powers.

* * * * *

(e) * * *

(5) *Notice of fiduciary activities in additional states.* No further application under this section is required when a national bank with existing OCC approval to exercise fiduciary powers plans to engage in any of the activities specified in § 9.7(d) of this chapter or to conduct activities ancillary to its fiduciary business, in a state in addition to the state described in the application for fiduciary powers that the OCC has approved. Instead, unless the bank provides notice through other means (such as a merger application), the bank shall provide written notice to the OCC no later than ten days after it begins to engage in any of the activities specified in § 9.7(d) of this chapter in the new state. The written notice must identify the new state or states involved, identify the fiduciary activities to be conducted, and describe the extent to which the activities differ materially from the fiduciary activities that the bank was previously authorized to conduct. No notice is required if the bank is conducting only activities ancillary to its fiduciary business through a trust representative office or otherwise.

* * * * *

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

1. The authority citation for part 9 continues to read as follows:

Authority: 12 U.S.C. 24 (Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

2. § 9.2 is amended by removing the second sentence in paragraph (g) and adding new paragraphs (j) and (k) as follows:

§ 9.2 Definitions.

* * * * *

(j) *Trust office* means an office of a national bank, other than a main office or a branch, at which the bank engages in one or more of the activities specified

in § 9.7(d). Pursuant to 12 U.S.C. 36(j), a trust office is not a "branch" for purposes of 12 U.S.C. 36, unless it is also an office at which deposits are received, or checks paid, or money lent.

(k) *Trust representative office* means an office of a national bank, other than a main office, branch, or trust office, at which the bank performs activities ancillary to its fiduciary business, but does not engage in any of the activities specified in § 9.7(d). Examples of ancillary activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer (*e.g.*, forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); inspecting or maintaining custody of fiduciary assets or holding title to real property. This list is illustrative and not comprehensive. Other activities may also be "ancillary activities" for the purposes of this definition. Pursuant to 12 U.S.C. 36(j), a trust representative office is not a "branch" for purposes of 12 U.S.C. 36, unless it is also an office at which deposits are received, or checks paid, or money lent.

3. § 9.3 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 9.3 Approval requirements.

* * * * *

(b) A national bank that has obtained the OCC s approval to exercise fiduciary powers is not required to obtain the OCC s prior approval to engage in any of the activities specified in § 9.7(d) in a new state or to conduct, in a new state, activities that are ancillary to its fiduciary business. Instead, the national bank must follow the notice procedures prescribed by 12 CFR 5.26(e).

(c) A person seeking approval to organize a special-purpose national bank limited to fiduciary powers shall file an application with the OCC pursuant to 12 CFR 5.20.

4. A new § 9.7 is added to read as follows:

§ 9.7 Multi-state fiduciary operations.

(a) *Acting in a fiduciary capacity in more than one state.* Pursuant to 12 U.S.C. 92a and this section, a national bank may act in a fiduciary capacity in any state. If a national bank acts, or proposes to act, in a fiduciary capacity in a particular state, the bank may act in the following specific capacities:

(1) Any of the eight fiduciary capacities expressly listed in 12 U.S.C. 92a(a), unless the state prohibits its own state banks, trust companies, and other corporations that compete with national banks in that state from acting in that capacity; and

(2) Any other fiduciary capacity the state permits for its own state banks, trust companies, or other corporations that compete with national banks in that state.

(b) *Serving customers in other states.* While acting in a fiduciary capacity in one state, a national bank may market its fiduciary services to, and act as fiduciary for, customers located in any state, and it may act as fiduciary for relationships that include property located in other states. The bank may use a trust representative office for this purpose.

(c) *Offices in more than one state.* A national bank with fiduciary powers may establish trust offices or trust representative offices in any state.

(d) *Determination of the state referred to in 12 U.S.C. 92a.* For each fiduciary relationship, the state referred to in section 92a is the state in which the bank acts in a fiduciary capacity for that relationship. A national bank acts in a fiduciary capacity in the state in which it accepts the fiduciary appointment, executes the documents that create the fiduciary relationship, and makes discretionary decisions regarding the investment or distribution of fiduciary assets. If these activities take place in more than one state, then the state in which the bank acts in a fiduciary capacity for section 92a purposes is the state that the bank designates from among those states.

(e) *Application of state law.* (1) *State laws used in section 92a.* The state laws that apply to a national bank's fiduciary activities by virtue of 12 U.S.C. 92a are the laws of the state in which the bank acts in a fiduciary capacity.

(2) *Other state laws.* Except for the state laws made applicable to national banks by virtue of 12 U.S.C. 92a, state laws limiting or establishing preconditions on the exercise of fiduciary powers are not applicable to national banks.

5. Section 9.14(b) is revised to read as follows:

§ 9.14 Deposit of securities with state authorities

* * * * *

(b) *Acting in a fiduciary capacity in more than one state.* If a national bank acts in a fiduciary capacity in more than one state, the bank may compute the amount of securities that are required to be deposited for each state on the basis of the amount of assets for which the bank is acting in a fiduciary capacity at offices located in that state. If state law requires a deposit of securities on a basis other than assets (*e.g.*, a requirement to deposit a fixed amount or an amount equal to a percentage of capital), the bank may compute the amount of deposit required in that state on a pro-rated basis, according to the proportion of fiduciary assets for which the bank is acting in a fiduciary capacity at offices located in that state.

Dated: June 21, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 01–16329 Filed 6–29–01; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–261–AD; Amendment 39–12297; AD 2001–13–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model A310 and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes, that requires replacement of the ejection jack on the ram air turbine (RAT). The actions specified by this AD are intended to prevent the ejection jack on the RAT from failing when the RAT is deployed at high airspeeds, leading to a loss of ability to properly restrain the movement of the RAT, possibly resulting in damage to the RAT itself and to other airplane components. In the event of an emergency, failure of the ejection jack on the RAT could also result in a reduction of hydraulic pressure or electrical power on the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 6, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 6, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Ave., SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes was published in the **Federal Register** on February 14, 2001 (66 FR 10234). That action proposed to require replacement of the ejection jack on the ram air turbine (RAT).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter generally supports the proposed rule, but requests credit for accomplishment of the modification in accordance with the original issue of the service bulletins. The FAA agrees and has added a new NOTE 2 giving such credit.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 117 Model A310 and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. There will be no charge for required parts. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $42,120 or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–13–16 Airbus Industrie: Amendment 39–12297. Docket 2000–NM–261–AD.

Applicability: Model A310 and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes; certificated in any category, except for airplanes on which Airbus Modification 12259 has been embodied.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the ejection jack on the ram air turbine (RAT) from failing when the RAT is deployed at high airspeeds, leading to a loss of ability to properly restrain the movement of the RAT, possibly resulting in damage to the RAT itself and to other airplane components and in reduced hydraulic pressure or electrical power, if such failure occurs during an emergency, accomplish the following:

Modification

(a) Within 34 months after the effective date of this AD: Modify the RAT per Airbus Service Bulletin A310–29–2086, Revision 01 (for Model A310 series airplanes), or A300–29–6048, Revision 01 (for Model A300–600 series airplanes), both dated July 12, 2000, as applicable.

Note 2: Modification of the RAT accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–29–6048 or Airbus Service Bulletin A310–29–2086, both dated April 6, 2000, as applicable, is considered acceptable for compliance with the action specified in paragraph (a) of this AD.

(b) As of the effective date of this AD, no person shall install on any airplane an ejection jack, part number 730820, unless it has been modified per paragraph (a) of this AD.

Note 3: The Airbus service bulletins refer to Hamilton Sundstrand Service Bulletin No. ERPS03/04EJ–29–1, as an additional source of service information for accomplishment of the modification of the RAT and testing of the modified RAT.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The modification shall be done in accordance with Airbus Service Bulletin A300–29–6048, Revision 01, dated July 12, 2000; or Airbus Service Bulletin A310–29–2086, Revision 01, dated July 12, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 2000–284–317(B), dated July 12, 2000.

Effective Date

(f) This amendment becomes effective on August 6, 2001.

Issued in Renton, Washington, on June 21, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–16201 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–194–AD; Amendment 39–12299; AD 2001–13–17]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600); and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Airbus Model A300 B2 and A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes. This action requires revising the Airplane Flight Manual to advise the flight crew of appropriate procedures to follow in the event of lost or erroneous airspeed indications. This action is necessary to prevent inadvertent excursions outside the normal flight envelope. This action is intended to address the identified unsafe condition.

DATES: Effective July 17, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 2001.

Comments for inclusion in the Rules Docket must be received on or before August 1, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–194–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–194–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamra Elkins, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2669; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300 B2 and A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes. The DGAC advises that. Lost or erroneous airspeed indications could result in lack of sufficient information for the flight crew to safely operate the airplane, and consequent inadvertent excursions outside the normal flight fenvelope.

Explanation of Relevant Service Information

Airbus has issued the following Temporary Revisions (TRs) to the FAA-approved A300, A300–600, and A310 Airplane Flight Manuals (AFMs). The TRs provide updated procedures for the flight crew to follow in the event of lost or erroneous airspeed indications. The TRs are listed in the following table:

Model/series	Engine	TR No.	Date
A300	GE CF6–50C	4.02.00/08	April 25, 2001.
A300	GE CF6–50C2/C2R	4.02.00/09	April 26, 2001.
A300–600	GE CF6–80C2	4.02.00/11	March 21, 2000.
A300–600	PW 4000	4.02.00/13	March 28, 2000.
A310	GE CF6–80A3	4.02.00/11	March 21, 2000.
A310	GE CF6–80C2	4.02.00/12	March 22, 2000.
A310	PW JT9D–7R4	4.02.00/13	March 23, 2000.
A310	PW 4000	4.02.00/14	March 24, 2000.

The DGAC classified these TRs as mandatory and issued French airworthiness directive 2001–129(B), dated April 4, 2001, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent inadvertent excursions outside the normal flight envelope in the event of lost or erroneous airspeed indications. This AD requires revising the applicable FAA-approved AFMs to advise the flight crew of appropriate procedures to follow in the event of lost or erroneous airspeed indications.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2001–NM–194–AD." The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–13–17 Airbus Industrie: Amendment 39–12299. Docket 2001–NM–194–AD.

Applicability: All Model A300 B2 and A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent excursions outside the normal flight envelope in the event of lost or erroneous airspeed indications, accomplish the following:

Revision to Airplane Flight Manual (AFM)

(a) For Model A300 B2–1A series airplanes equipped with General Electric CF6–50A engines, and for Model A300 B4–600 series airplanes equipped with Pratt & Whitney JT9D–7R4H1 engines: Within 10 days after the effective date of this AD, revise the "Procedures Following Failure" Section of the FAA-approved AFM, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA.

(b) For all airplanes not identified in paragraph (a) of this AD: Within 10 days after the effective date of this AD, revise the "Procedures Following Failure" Section of the applicable AFM by inserting into the AFM a copy of the applicable Temporary Revision (TR) listed in the following table:

TABLE 1.—TEMPORARY REVISIONS

Model/series	Engine	TR No.	Date
A300	GE CF6–50C	4.02.00/08	April 25, 2001.
A300	GE CF6–50C2/C2R	4.02.00/09	April 26, 2001.
A300–600	GE CF6–80C2	4.02.00/11	March 21, 2000.
A300–600	PW 4000	4.02.00/13	March 28, 2000.
A310	GE CF6–80A3	4.02.00/11	March 21, 2000.
A310	GE CF6–80C2	4.02.00/12	March 22, 2000.
A310	PW JT9D–7R4	4 02.00/13	March 23, 2000.
A310	PW 4000	4.02.00/14	March 24, 2000.

(c) When the information in the applicable TR listed in Table 1 of this AD has been incorporated into the FAA-approved general revisions of the AFM, the general revisions may be incorporated into the AFM, and the TR may be removed from the AFM.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The AFM revision required by paragraph (b) of this AD shall be done in accordance with A300 Flight Manual Temporary Revision 4.02.00/08, dated April 25, 2001; A300 Flight Manual Temporary Revision 4.02.00/09, dated April 26, 2001; A300–600 Flight Manual Temporary Revision 4.02.00/11, dated March 21, 2000; A300–600 Flight Manual Temporary Revision 4.02.00/13, dated March 28, 2000; A310 Flight Manual Temporary Revision 4.02.00/11, dated March 21, 2000; A310 Flight Manual Temporary Revision 4.02.00/12, dated March 22, 2000; A310 Flight Manual Temporary Revision 4.02.00/13, dated March 23, 2000; and A310 Flight Manual Temporary Revision 4.02.00/14, dated March 24, 2000; as applicable. (Only page 2 of each Temporary Revision contains the document date; no other page of these documents contains this information.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW , suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French airworthiness directive 2001–129(B), dated April 4, 2001.

Effective Date

(g) This amendment becomes effective on July 17, 2001.

Issued in Renton, Washington, on June 21, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–16199 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–09–AD; Amendment 39–12300; AD 2001–13–18]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document supersedes Airworthiness Directive (AD) 99–12–02, which currently requires flight and operating limitations on Raytheon Aircraft Corporation (Raytheon) Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes. AD 99–12–02 resulted from a report of an in-flight separation of the right wing on a Raytheon Beech Model A45 (T–34A) airplane. The AD was issued as an interim action until the development of FAA-approved inspection procedures. Raytheon has developed procedures to inspect the wing spar assemblies of the above-referenced airplanes. This AD requires repetitive inspections of the wing spar assembly for cracks with replacement of any wing spar assembly found cracked (unless the spar assembly has a crack indication in the filler strip where the direction of the crack is toward the outside edge of the filler strip). This AD also includes a reporting requirement of the results of the initial inspection and maintains the flight and operating restrictions required by AD 99–12–02 until accomplishment of the initial inspection. The actions specified by this AD are intended to prevent wing spar failure caused by fatigue cracks in the wing spar assemblies and ensure the operational safety of the above-referenced airplanes.

DATES: This AD becomes effective on August 16, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 16, 2001.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–09–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

Has FAA taken any action to this point? In-flight separation of the right wing on a Raytheon Beech Model A45 (T34A) airplane caused FAA to issue AD 99–12–02, Amendment 39–11193 (64 FR 31689, June 14, 1999). This AD requires:

—Incorporating flight and operating limitations that restrict the airplanes

to normal category operation and prohibit them from acrobatic and utility category operations;
—Limiting the flight load factor to 0 to 2.5 G; and
—Limiting the maximum airspeed to 175 miles per hour (mph) (152 knots).

AD 99–12–02 was issued as an interim action until the development of FAA-approved inspection procedures.

What has happened since AD 99–12–02 to initiate this action? Raytheon has developed procedures to inspect the wing spar assemblies on Raytheon Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes. We have reviewed and approved the technical aspects of these procedures.

To address this issue, FAA issued a notice of proposed rulemaking (NPRM) to supersede AD 99–12–02. This NPRM was published in the **Federal Register** on May 5, 2000 (65 FR 26149). The NPRM proposed to supersede AD 99–12–02 with a new AD that would require:

—Repetitively inspecting the wing spar assemblies for cracks and replacing any cracked wing spar assembly. A crack indication in the filler strip is allowed if the direction of the crack is toward the outside edge of the filler strip;
—Reporting the results of the initial inspection; and
—Maintaining the flight and operating restrictions that AD 99–12–02 currently requires until accomplishing the initial inspection and possible replacement proposed in this AD.

The flight and operating restrictions that AD 99–12–02 currently requires may be changed after inspection of the wing spar assemblies, and the wing spar assembly either is replaced, is crack free, or only has a crack indication in the filler strip where the direction of the crack is toward the outside edge of the filler strip.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. At the request of several commenters, we issued an NPRM to extend the comment period from July 7, 2000, to October 15, 2000. This document was published in the **Federal Register** on July 5, 2000 (65 FR 41381). A summary of the comments received on both of these documents follow, along with our responses.

Comment Issue No. 1: Incorporate Alternative Methods of Compliance Into the Final Rule AD Action

What is the commenters' concern? The FAA received brief summaries of two requests for alternative methods of compliance to the actions in the proposed AD. Several commenters request that we incorporate each of these alternative methods of compliance into the final rule as a compliance option to the AD. A brief description of each alternative method of compliance follows:

—A proposal from the T–34 Technical Committee consists of accomplishing Raytheon SB 57–3329 as a one-time action (as long as no cracks are found) and cold working the boltholes. This would allow the airplanes to be operated at their original operating criteria; and
—A proposal from the T–34 Association consists of complying with parts of Raytheon SB 57–3329 and replacing the front spars with spars from Baron (55 and 58 series) airplanes as terminating action.

What is FAA's response to the concern? The brief summaries of these alternative methods of compliance do not contain sufficient data for us to consider them to provide an acceptable level of safety at the present time. If and when each of these groups submits the appropriate documentation, we will evaluate each proposal to see if it meets the safety intent of the AD. We will then approve any proposal that meets this criteria as an AMOC to the AD.

We are not changing the final rule as a result of these comments.

Comment Issue No. 2: Extend the Comment Period a Second Time

What is the commenters' concern? Several commenters request an extension to the comment period in order to have more time to finalize alternative methods of compliance.

What is FAA's response to the concern? As discussed previously, FAA extended the comment period to give the public an additional 60 days to respond. The comment period on the extension ended October 15, 2000. We have accepted late comments since that time. We have determined that the safety of the affected airplanes outweighs the necessity for waiting any longer for the completion of alternative methods of compliance, especially in light that it has been over 6 months since the comment period for the extension ended.

We are not changing the final rule as a result of these comments.

Comment Issue No. 3: Allow the Operating Restrictions and Limitations Required by AD 99–12–02 Instead of the Proposed Repetitive Inspections

What is the commenters' concern? Several commenters request that they be allowed to continue to implement the operating restrictions and limitations that are currently required by AD 99–12–02 rather than be required to accomplish the proposed repetitive inspections. These commenters state that the fastener removal process could cause more damage to the spars and the bolthole eddy current inspection method is subjective. For example, the commenters reference a recent inspection on 5 of the affected airplanes where the eddy current inspection revealed cracks in the front spar. According to the commenter, Raytheon then validated the inspection results and found no cracks in the front spars.

What is FAA's response to the concern? The FAA does not concur that the implementation of the flight and operating restrictions that are currently required by AD 99–12–02 should be an option to accomplishing this AD. We recognize that the fastener removal process could cause damage to the spars. However, the safety implications of allowing an airplane to continue operation with a cracked spar far outweigh the possible damage the fastener removal process could cause.

We established the current flight restrictions that AD 99–12–02 requires as a temporary safety solution until procedures were developed that could determine the condition of the wing spar assemblies of the affected airplanes. Once a crack develops, it can continue to grow through cyclic loads such as maneuvers or gusts, even while the airplane is operating under the current flight and operating restrictions. The only way we can ensure that the affected airplanes do not have cracked wing spar assemblies is through the accomplishment of this inspection and any necessary wing spar assembly replacement.

We also recognize that the Raytheon inspection procedure has the potential of indicating cracks when there are none. Again, the safety implications of allowing an airplane to continue operation with a cracked spar far outweigh the possibility of a false crack indication from the inspection.

We are not changing the final rule as a result of these comments.

Comment Issue No. 4: Return the Affected Airplanes to Their Original Flight Limitations and Limit the AD to Those Airplanes in Air Combat Operations

What is the commenters' concern? Several commenters state that only those airplanes that are utilized in air combat operations are subject to the fatigue stress that warrants this AD action. The commenters request that

FAA exempt those airplanes that do not fly in these operations.

Two other commenters state that the proposed AD is not necessary and recommend that we withdraw AD 99–12–02. These commenters also recommend closely monitoring the operations of air combat since they believe that is the reason for the fatigue damage to the wings of the affected airplanes.

What is FAA's response to the concern? Although we concur that air combat operations reduces the fatigue life of the wing spars of the affected airplane, fatigue problems can also exist for airplanes involved in acrobatic maneuvers, not just air combat operations. Therefore, we have determined that the AD is necessary for all of the airplanes referenced in the NPRM to address the unsafe condition.

We are not changing the final rule as a result of these comments.

Comment Issue No. 5: Change the Inspection Requirements

What is the commenters' concern? Several commenters provided information on the need for both initial and repetitive inspections. Specifically they are as follows:

—One commenter states that a one-time inspection in accordance with the service bulletin is sufficient;

—Four commenters recommend that FAA require only a visual inspection to locate displaced rivets, signs of fatigue, unusual wear, any stress related material, or corrosion. These commenters recommend this inspection to coincide with annual or 100-hour time-in-service (TIS) inspections;

—Six commenters recommend repetitive inspections at intervals of 500 hours TIS or 5 years, whichever occurs first. These commenters recommend more intense inspections for airplanes flown in high stress conditions;

—One commenter recommends repetitive inspections at intervals of 200 hours TIS;

—One commenter recommends no repetitive inspections if the airplane is found crack-free during the initial inspection; and

—Another commenter recommends no repetitive inspections or at the very least repetitive inspections at 1,000-hour TIS intervals. This commenter also suggests more stringent inspection requirements when cracks are found to monitor the crack growth.

What is FAA's response to the concern? We do not concur with any of these requests. Our analysis shows that the 80-hour TIS repetitive inspection interval is necessary to detect cracks at the earliest time before they progress to a point of failure. As discussed previously, we have data that shows fatigue problems for airplanes involved in acrobatic maneuvers as well as air combat operations.

However, we are changing the compliance time of the initial inspection to "within the next 80 hours time-in-service (TIS) after the effective date of this AD or within 12 months after the effective date of this AD, whichever occurs later" instead of "* * * whichever occurs first." This will give operators of high-usage airplanes 12 months to accomplish the inspection and will give those operators who do not operate 80 hours TIS in a year more time to comply. All operators must maintain the flight and operating restrictions required by AD 99–12–02 until the initial inspection.

Comment Issue No. 6: Either Limit the Affected Airplanes to Utility Category Operation or Exclude Those Airplanes Only Operating in Utility Category

What is the commenters' concern? One commenter requests that, since the Model D45 (T–34B) airplanes are operated in the Utility category and not the Acrobatic category, the AD should not apply to these airplanes. Another commenter recommends that FAA require all affected airplanes to operate according to Utility category operating requirements after accomplishing the initial inspection.

What is FAA's response to the concern? We do not concur with these requests. We can neither exempt the Model D–45 (T–34B) airplanes from the AD nor can we change the operational category of all of the affected airplanes because the wings of the Model A45 (T–34A, B–45) are interchangeable with wings of the Model D45 (T–34B) airplanes. Field experience reveals that the wings of these airplanes have been interchanged. We have no assurance that reliable records exist of wing interchange between these airplanes. Therefore, we have determined that, if we incorporated these requests, an unsafe condition could exist or develop on these airplanes.

We are not changing the final rule as a result of these comments.

Comment Issue No. 7: Correct the Airspeed Indicator Glass Modification Information in the AD

What is the commenters' concern? One commenter requests that FAA change the information from the modification to the red radial line on the airspeed indicator glass from 225 miles per hour (mph) to 252 mph. This commenter also states that the word "edge" should be added after the word "outside" in the fourth bullet in paragraph (e)(4)(iv)(A) of the NPRM.

What is FAA's response to the concern? We concur with these changes. Since these are the type-certificated operating limitations, we are not repeating these in the final rule.

Comment Issue No. 8: Withdraw the NPRM and AD 99–12–02

What is the commenters' concern? Several commenters state that FAA should not only withdraw the NPRM, but should also withdraw AD 99–12–02. The commenters believe that we have no justification for issuing either of these regulatory documents.

What is FAA's response to the concern? We do not concur with these comments. Our decision to issue AD 99–12–02 was based on our analysis and examination of all available data concerning an in-flight separation of the right wing on a Raytheon Beech Model A45 (T–34A) airplane. Our decision to issue the NPRM was based on the development of inspection procedures that when accomplished would allow the airplane to operate in accordance with the original flight and operating restrictions. As discussed earlier in this document, we have determined that the unsafe condition is addressed by:

—Repetitively inspecting the wing spar assembly for cracks and replacing any wing spar assembly found cracked (unless the spar assembly has a crack indication in the filler strip where the direction of the crack is toward the outside edge of the filler strip); and

—Continuing the flight and operating restrictions required by AD 99–12–02 until the initial inspection is accomplished.

We are not making any changes to the final rule based on these comments.

FAA's Determination and Provisions of the AD

What is FAA's Final Determination on this Issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the initial inspection compliance time and minor editorial corrections. We determined that this compliance time change and the minor editorial corrections:

—Will not change the meaning of the AD; and

Will not add any additional burden upon the public than was already

proposed (the compliance time change actually reduces the burden of when the inspection must be accomplished).

Why is the compliance of the initial inspection in hours time-in-service (TIS) and calendar time? We have established the compliance time of the initial inspection at the next 80 hours TIS or 12 months with the prevalent one being that which occurs later. This will give operators of high-usage airplanes 12 months to accomplish the inspection and will give those operators who do not operate 80 hours TIS in a year more time to comply. All operators must maintain the flight and operating restrictions required by AD 99–12–02 until the initial inspection. We have determined that the dual compliance time will ensure that the safety issue is addressed in a timely manner without inadvertently grounding any of the affected airplanes.

How many airplanes does this AD impact? The FAA estimates that this AD affects 476 airplanes in the U.S. registry.

What is the cost impact of the initial inspection on owners/operators of the affected airplanes? We estimate that it will take approximately 241 workhours per airplane to accomplish the initial inspection, at an average labor rate of $60 an hour. Based on these figures, FAA estimates the cost impact of the initial inspection on U.S. operators at $6,882,960, or $14,460 per airplane.

What about the cost of repetitive inspections and replacements? The figures above only take into account the cost of the initial inspection and do not take into account the cost of repetitive inspections or the cost to replace a cracked wing spar assembly. We have no way of determining the number of repetitive inspections each owner/operator will incur over the life of an affected airplane or the number of airplanes that will have a cracked wing spar(s) and need replacement.

The cost of each repetitive inspection will be $1,860 per airplane (31 workhours × $60 per hour).

Raytheon no longer produces wings spars for the affected airplanes. If a wing spar is found cracked, you will have to install an FAA-approved wing spar configuration in order to continue to operate the airplane. For cost estimate purposes, we are using information on installing a Raytheon Beech 55 or 58-series airplane wing spar on a Raytheon Beech Model A45 airplane in accordance with Supplemental Type Certificate (STC) No. SA5521NM. Nogle and Black Aviation, Inc., owns this STC. The cost to replace a cracked wing spar through this STC will be $14,100 (160 workhours × $60 per hour plus $4,500 for parts). The airplane will still be subject to the inspection requirements in this AD.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 99–12–02, Amendment 39–11193 (64 FR 31689, June 14, 1999), and by adding a new AD to read as follows:

2001–13–18 Raytheon Aircraft Company: Amendment 39–12300; Docket No. 2000–CE–09–AD, Supersedes AD 99–12–02, Amendment 39–11193.

(a) *What airplanes are affected by this AD?* This AD applies to Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the wing spar assemblies and ensure the operational safety of the above-referenced airplanes.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must maintain the actions of AD 99–12–02 (superseded by this AD) that are outlined in paragraphs (d)(1), (d)(2), and (d)(3) of this AD, including all subparagraphs, until you accomplish the initial inspection required in paragraph (d)(5) of this AD (paragraphs d(1)–(d)(4) are actions retained from AD 99–12–02, and paragraphs (d)(5)–(d)(7) on actions new to this AD:

Action	When	In accordance with
(1) Accomplish the following placard requirements: (i) Fabricate two placards using letters of at least 1/10-inch in height with each consisting of the following words: "Never exceed speed, Vne-175 MPH (152 knots) IAS; Normal Acceleration (G) Limits 0, and +2.5; ACROBATIC MANEUVERS PROHIBITED (ii) Install these placards on the airplane instrument panels (one on the front panel and one on the rear panel) next to the airspeed indicators within the pilot's clear view. (iii) Insert a copy of this AD into the Limitations Section on the Airplane Flight Manual (AFM).	All actions required prior to further flight after July 9, 1999 (the effective date of AD 99–12–02), unless already accomplished	Not Applicable.

Action	When	In accordance with
(2) Modify each airspeed indicator glass by accomplishing the following: (i) Place a red radial line on each indicator glass at 175 miles per hour (mph) (152 knots). (ii) Place a white slippage index mark between each airspeed indicator glass and case to visually verify that the glass has not rotated.	All actions required within 10 hours time-in-service (TIS) after July 9, 1999 (the effective date of AD 99–12–02), unless already accomplished	Not Applicable.
(3) Mark the outside surface of the "g" meters with lines of approximately 1/16-inch by 3/16-inch, as follows: (i) A red line at 0 and 2.5; and ..... (ii) A white slippage mark between each "g" meter glass and case to visually verify that the glass has not rotated.	All actions required within 10 hours time-in-service (TIS) after July 9, 1999 (the effective date of AD 99–12–02), unless already accomplished	Not Applicable.
(4) The actions required by paragraph (d)(1), (d)(2), and (d)(3) are no longer required after the initial inspection required in paragraph (d)(5) of this AD is accomplished.	Upon accomplishment of the initial inspection required in paragraph (d)(5) of this AD, unless already accomplished	Raytheon Aircraft Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000.
(5) Inspect the wing spar assemblies for cracks	Initially inspect within the next 80 hours time-in-service (TIS) after August 16, 2001 (the effective date of this AD) or within 12 months after August 16, 2001 (the effective date of this AD), whichever occurs later, unless already accomplished. Inspect thereafter at intervals not to exceed 80 hours TIS	Raytheon Aircraft Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000.
(6) Replace any cracked wing spar assembly. A crack indication in the filler strip is allowed if the direction of the crack is toward the outside edge of the filler strip. If the direction of the crack is toward the inside edge of the filler strip or any crack is found in any other area, you must replace the cracked wing spar assembly	Prior to further flight after the required inspection where the cracked wing spar assembly is found	The applicable maintenance manual.
(7) Submit a report to FAA that describes the damage found on the wing spar. Use the chart on pages 58 through 60 of Raytheon Aircraft Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000 (i) Submit this report even if no cracks are found ..... (ii) Submit this report to FAA at the address found in paragraph (f) of this AD.	Within 10 days after the initial inspection or within 10 days after August 16, 2001 (the effective date of this AD), whichever occurs later, unless already accomplished	Page 58 through 60 of Raytheon Aircraft Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(3) The one alternative method of compliance approved in accordance with AD 99–12–02, which is superseded by this AD, is approved as an alternative method of compliance with this AD.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul Nguyen, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* You must accomplish the actions required by this AD in accordance with Raytheon Aircraft Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 99–12–02, Amendment 39–11193.

(j) *When does this amendment become effective?* This amendment becomes effective on August 16, 2001.

Issued in Kansas City, Missouri, on June 22, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–16250 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–29]

Revision of Class E Airspace, Salmon, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace at Salmon, ID. Newly developed Area Navigation (RNAV) and VOR/DME Standard Instrument Approach Procedure (SIAP), and the RNAV Departure Procedure (DP) at the Salmon Lemhi County Airport made this action necessary. Additional Class E 700-feet and 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing the RNAV and VOR/DME SIAP's, and RNAV DP at Salmon Lemhi County Airport.

EFFECTIVE DATE: 0901 UTC, September 6, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–29, 1601 Lind Avenue SW., Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On April 11, 2001, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Salmon, ID, in order to accommodate new RNAV SIAP's at Salmon Lemhi County Airport, Salmon, ID (66 FR 18737). This amendment provides Class E5 airspace at Salmon, ID, to meet current criteria standards associated with the SIAP. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) revises Class E airspace at Salmon, ID, in order to accommodate a new SIAP to the Salmon Lemhi County Airport, Salmon, ID. This amendment revises Class E5 airspace at Salmon, ID, to meet current criteria standards associated with the RNAV and VOR/DME SIAP. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument Flight Rules (IFR) at the Salmon Lemhi County Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for the airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1. of the Federal Aviation Administration Order 7400.9 H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM ID E5 Salmon, ID [Revised]

Salmon, Lemhi County Airport, ID
(Lat. 45°07′26″ N., long. 113° 52′53″ W.)
Salmon VORTAC
(lat. 45°01′17″ N., long. 114°05′04″ W.)

That airspace extending upward from 700 feet above the surface within the 12.2-mile radius of the Lemhi County Airport, and within 6.5 miles each side of the 328° bearing from the 12.2 mile radius extending to 17.9 miles, and within 7.8 miles each side of the Salmon VORTAC 054° and 234° radial extending from the 12.2 mile radius of the Airport to 17.5 miles southwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 45°04′40″ N., long. 114°32′53″ W.; to lat. 45°12′31″ N., long. 114°16′24″ W.; to lat. 45°42′45″ N., long. 114°16′24″ W.; to lat. 45°42′45″ N., long. 113°48′29″ W.; to lat. 45°38′30″ N., long. 113°25′10″ W.; to lat. 45°24′35″ N., long. 113°18′25″ W.; to lat. 44°43′23″ N., long. 113°42′40″ W.; to lat. 44°43′23″ N., long. 114°32′53″ W. to the point of origin; excluding that airspace within Federal Airways.

* * * * *

Issued in Seattle, Washington, on June 26, 2001.

Lee Daniel,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–16605 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ANM–03]

Establishment of Class E Airspace, Malta, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Malta, MT. Newly developed Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) to the Malta Airport has made this action necessary. Class E 700-feet and 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing procedures in the Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC, September 6, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–03, 1601 Lind Avenue SW., Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On April 11, 2001, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Malta, MT, in order to accommodate new RNAV SIAP's at Malta Airport, Malta, MT (66 FR 18736). This amendment provides Class E5 airspace at Malta, MT, to meet current criteria standards associated with the SIAP. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) revises Class E airspace at Malta, MT, in order to accommodate new SIAP's to the Malta Airport, Malta, MT. This amendment revises Class E5 airspace at Malta, MT, to meet current criteria standards associated with the RNAV SIAP. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Malta Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Malta, MT [New]

Malta Airport, MT
(Lat. 48°22′01″ N., long. 107°55′10″ W.)

That airspace extending upward from 700 feet above the surface within the 4.3-mile radius of the Malta Airport, and within 2.5 miles each side of the 270° bearing from the Malta Airport extending from the 4.3-mile radius to 6.5 miles west of the Airport, and within 2.5 miles each side of the 090° bearing from the Malta Airport extending from the 4.3-mile radius to 5.4 miles east of the Airport; and that airspace extending upward from 1200 feet above the surface bounded by a line beginning at lat. 48°34′30″ N., long. 108°43′00″ W.; to lat. 48°34′30″ N., long. 107°00′00″ W.; to lat. 48°05′12″ N., long. 107°00′00″ W.; to lat. 48°17′41″ N., long. 108°43′00″ W., to the point of origin; excluding that airspace within Federal Airways.

* * * * *

Issued in Seattle, Washington, on June 26, 2001.

Lee Daniel,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–16604 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 99–ANM–15]

RIN 2120–AA66

Establishment and Revision of Restricted Areas, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies R–3202A Saylor Creek, ID, by establishing High and Low areas within the existing area A, and revoking R–3202B and C. Additionally this action establishes three new Restricted Areas (R–3204A, B, and C) at Juniper Butte, ID, as part of the Enhanced Training in Idaho (ETI) initiative. The FAA is taking this action in response to a US Air Force (USAF) request for airspace modifications to support its rapid-response air expeditionary wing training requirements.

EFFECTIVE DATE: 0901 UTC, September 6, 2001.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 2000, the FAA proposed to revise and establish restricted airspace in Idaho to support the USAF rapid-response air expeditionary wing training requirements (65 FR 24142). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA.

One comment was received objecting to the proposal from the Wilderness Society representing the Committee for Idaho's High Desert, Idaho Rivers United, Middle Snake River Chapter of the Sierra Club, and the Idaho Conservation League. The Wilderness Society objected to the FAA issuing a proposed rule without being initially

notified and kept informed of the issue. They further objected to the **Federal Register** notice since it did not contain detailed maps of the proposed action.

The FAA does not agree with this commenter. The purpose of the notice of proposed rulemaking (NPRM) was to inform, and solicit, public comments on the overall regulatory, aeronautical, economic, environmental, and energy related impacts of the proposal. While the chart was not published in the **Federal Register** with the NPRM, the FAA believes that the proposed action contained sufficient information to convey the proposed action. Notwithstanding, the Wilderness Society's comments concerning the environment were reviewed as part of the FAA in-depth review, and adoption, of the "Enhanced Training in Idaho Environmental Impact Statement (ETI EIS)."

Except for editorial changes, this amendment is the same as that proposed in the Notice.

The coordinates for this airspace docket are based on North American Datum 83. Section 73.32 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8H dated September 1, 2000.

The Rule

The FAA amends 14 CFR part 73 (part 73) of the Federal Aviation Regulations and re-designates R–3202A Saylor Creek ID, by reducing its size and sub-dividing the remaining airspace into High and Low areas, raising the ceiling of the high area from FL 180 to FL 290, and revoking R–3202B and C. In addition this action establishes three additional smaller Restricted Areas, R–3204A, R–3204B and R–3204C at Juniper, Butte, ID as part of the USAF ETI initiative.

The new restricted areas permit the safe delivery of training ordnance into an impact area. This action eliminates restricted airspace south of the existing Saylor Creek Range and results in an overall reduction of restricted airspace. The new restricted airspace for the Juniper Butte training range is being established over a 12,000-acre area with one 300-acre ordnance impact area. The USAF has requested these modifications to support its unique rapid-response air expeditionary wing training requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action was requested by the USAF as part of the ETI initiative, which also includes non-rulemaking airspace actions. Pursuant to Section 102(2) of the National Environmental Policy Act of 1969 (NEPA), regulations of the Council on Environmental Quality implementing NEPA, and other applicable law, the USAF prepared and published a Final Environmental Impact Statement (FEIS) that analyzed the potential environmental impacts associated with the ETI. The USAF issued a Record of Decision (ROD) for the ETI on March 10,1998, and selected the Juniper Butte alternative, which was identified as the environmentally preferred alternative. The ROD, and a Supplement to the ROD issued by the USAF in September 1998, included a number of measures to mitigate environmental impacts. Following litigation regarding the ETI and previous USAF actions in Idaho (*Greater Owyhee Legal Defense* v. *United States Department of Defense et al.*, No. CIV 92–0189–S–BLW (D. Idaho); *The Wilderness Society et al.* v. *United States Department of Defense et al.*, No. CIV 96–0326–BLW (D. Idaho); *Greater Owyhee Legal Defense* v. *Col. Gerald F. Pease, Jr. et al.*, No. CIV 98–0162–S–BLW (D. Idaho); *The Wilderness Society and Committee for Idaho's High Desert* v. *Bureau of Land Management*, IBLA No. 99–216 (Interior Board of Land Appeals 1999)), the USAF entered into a Settlement Agreement that included additional mitigation measures and established a Settlement Implementation Group.

The FAA has conducted a written reevaluation of the FEIS in accordance with FAA Order 1050.1D, paragraph 91, and is adopting the FEIS for this action pursuant to 40 CFR 1506.3(a) and (c). A copy of the written reevaluation has been placed in the public docket for this rulemaking. All practicable means to avoid or minimize environmental harm from the alternative selected have been adopted.

The FAA has also approved the non-rulemaking airspace actions included in the ETI initiative. The record of the non-rulemaking decision is contained in a Non-Rulemaking Decision Document (NRDD) dated June 22, 2001. A copy of the NRDD has been placed in the public docket for this rulemaking.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Amendment

The FAA amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.32 [Amended]

2. Section 73.32 is amended as follows:

* * * * *

R–3202A Saylor Creek, ID [Revoke]

R–3202B Saylor Creek, ID [Revoke]

R–3202C Saylor Creek, ID [Revoke]

R–3202 Low Saylor Creek, ID [New]

Boundaries. Beginning at lat. 42°53′00″ N., long. 115°42′20″ W.; at lat. 42°53′00″ N., long. 115°24′15″ W.; at lat. 42°36′00″ N., long. 115°24′15″ W.; at lat. 42°36′00″ N., long. 115°42′20″ W.; to the point of beginning.

Designated altitudes. Surface to but not including FL 180.

Times of use. 0730–2200 local time, Monday through Friday, other times by NOTAM.

Controlling agency. FAA Salt Lake City, ARTCC.

Using agency. USAF, 366th Wing, Mountain Home AFB, ID.

R–3202 High Saylor Creek, ID [New]

Boundaries. Beginning at lat. 42°53′00″ N., long. 115°42′20″ W.; at lat. 42°53′00″ N., long. 115°24′15″ W.; at lat. 42°36′00″ N., long. 115°24′15″ W.; at lat. 42°36′00″ N., long. 115°42′20″ W.; to the point of beginning.

Designated altitudes. FL 180 to FL 290.

Times of use. 0730–2200 local time, Monday through Friday, other times by NOTAM.

Controlling agency. FAA Salt Lake City, ARTCC.

Using agency. USAF, 366th Wing, Mountain Home AFB, ID.

R–3204A Juniper Buttes, ID [New]

Boundaries. Beginning at lat. 42°20′00″ N., long. 115°22′30″ W.; at lat. 42°20′51″ N., long. 115°18′00″ W.; at lat. 42°19′00″ N., long. 115°17′00″ W.; at lat. 42°16′35″ N., long. 115°17′00″ W.; at lat. 42°16′35″ N., long. 115°22′30″ W.; to the point of beginning.

Designated altitudes. Surface to 100 feet AGL.

Times of use. 0730–2200 local time, Monday through Friday, other times by NOTAM.

Controlling agency. FAA Salt Lake City, ARTCC.

Using agency. USAF, 366th Wing, Mountain Home AFB, ID.

R–3204B Juniper Buttes, ID [New]

Boundaries. The airspace within a 5–NM radius centered on (lat.42°18′00″ N., long. 115°20′00″ W.;)

Designated altitudes. 100 feet AGL to but not including FL 180.

Times of use. 0730–2200 local time, Monday through Friday, other times by NOTAM.

Controlling agency. FAA Salt Lake City, ARTCC.

Using agency. USAF, 366th Wing, Mountain Home AFB, ID.

R–3204C Juniper Buttes, ID [New]

Boundaries. The airspace within a 5–NM radius centered on (lat. 42°18′00″ N., long. 115°20′00″ W.;)

Designated altitudes. FL 180 to FL 290.

Times of use. 0730–2200 local time, Monday through Friday, other times by NOTAM.

Controlling agency. FAA Salt Lake City, ARTCC.

Using agency. USAF, 366th Wing, Mountain Home AFB, ID.

* * * * *

Issued in Washington, DC, on June 26, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–16603 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

15 CFR Part 303

[Docket No. 991228350–1118–02]

RIN: 0625–AA57

Changes in the Insular Possessions Watch, Watch Movement and Jewelry Program

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: The Departments amend their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands) . The rule amends ITA regulations by further clarifying the range of documents that may be needed for verification of duty-free shipments of jewelry into the United States and by clarifying which wages qualify as creditable and which do not for purposes of calculating the duty-refund for watches and jewelry. Also, the regulations were amended by making minor editorial changes within the definition of new firm for watches. Finally, we amend the duty refund process by dividing the amount of the annual duty refund certificate into two installments. These amendments make grammatical changes, clarify a portion of the regulations, update methods of documentation and help producers receive benefits in a more timely fashion.

DATES: July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: We published proposed regulatory revisions on May 23, 2001 (66 FR 28404) and invited comments. We received two letters with comments. Both letters pertained to the clarification of the definition of creditable wages. Both pointed out that the watch and jewelry factories have machinery that require plumbers, electricians and machine and maintenance people and that these people are integral to their assembly and manufacturing processes. It was also pointed out that security personnel were essential to the operations of some factories. We agree that wages paid to employees who maintain equipment essential to the assembly and manufacturing operations at the factories should be creditable towards the duty refund even if the employees include plumbers or electricians. We also agree wages paid to security staff should be creditable towards the duty refund and decided that specific language regarding security activities should be included in the regulations. In the proposed language we were trying to convey that wages paid for the construction of a building, an addition to an existing building or office construction within the shell of a building is beyond the scope of the program and the wages for those workers are not creditable. We thank the commenters for their input and we have revised the language to more clearly articulate which wages are creditable.

The insular possessions watch industry provision in Sec. 110 of Pub. L. No. 97–446 (96 Stat. 2331) (1983), as amended by Sec. 602 of Pub. L. No. 103–465 (108 Stat. 4991) (1994); additional U.S. Note 5 to chapter 91 of the Harmonized Tariff Schedule of the United States (" HTSUS"), as amended by Pub.L. 94–241 (90 Stat. 263)(1976) requires the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands ("CNMI"). After the Departments have verified the data submitted on the annual application (Form ITA–334P), the producers' duty-exemption allocations are calculated from the territorial share in accordance with 15 CFR 303.14 and each producer is issued a duty-exemption license. The law further requires the Secretaries to issue duty-refund certificates to each territorial watch and watch movement producer based on the company's duty-free shipments and creditable wages paid during the previous calendar year.

Pub. L. 106–36 (113 Stat. 127) (1999) authorizes the issuance of a duty-refund certificate to each territorial jewelry producer for any article of jewelry provided for in heading 7113 of the HTSUS which is the product of any such territory. The value of the certificate is based on creditable wages paid and duty-free units shipped into the United States during the previous calendar year. Although the law specifically mentions the U.S. Virgin Islands, Guam and American Samoa, the issuance of the duty-refund certificate would also apply to the CNMI due to the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. 94–241), which states that goods from the CNMI are entitled to the same tariff treatment as imports from Guam. *See also* 19 CFR 7.2(a). The law provides that during the first two years, beginning August 9, 1999, jewelry that is assembled in the territories shall be treated as a product of such territories. Thereafter, in order to be considered a product of such territories, the jewelry must meet the U.S. Customs Service substantial transformation requirements (the jewelry must become a new and different article of commerce as a result of production or manufacture performed in the territory). To receive duty-free treatment, the jewelry must also satisfy the requirements of General Note 3(a)(iv) of the HTSUS and applicable Customs Regulations (19 CFR 7.3).

The law specifies, in addition, that watch producer benefits shall not be diminished as a consequence of extending duty-refund benefits to jewelry manufacturers. In the event that the aggregate amount of the calculated duty refunds for both watches and jewelry exceeds the total amount available under Pub. L. 97–446, as amended by Pub. L. 103–465, the watch producers shall receive their calculated amounts; the jewelry producers would then receive amounts proportionately reduced from the remainder. *See* Pub. L. 106–36.

Amendments

We amend Subpart A § 303.2(a)(5), *see* 65 FR 8049 (Feb. 17, 2000), by making grammatical changes.

We also amend Subpart A § 303.2(a)(13) and Subpart B § 303.16(a)(9) to explain further what is meant by special services under the definition of wages excluded from being creditable towards the duty-refund in response to requests for additional clarification of this language. The new language on wages not creditable towards the duty refund includes wages paid for outside consultants or other professional personnel or those persons not involved in the day to day assembly operations or servicing and maintenance of equipment and fixtures necessary for the assembly or manufacturing operations or administrative work and security activities directly related to the operation of the company. Examples of wages that would not be creditable toward the duty refund would be wages paid to gardeners, construction workers or outside lawyers and accountants. A producer also wanted to know if two producers worked on the same single piece of jewelry, would each producer's wages for their portion of the work be creditable towards each producer's duty refund. The jewelry producer explained that the casting of precious metal is a highly technical process which is very capital intensive and expensive to set up. The producer explained that it would be very helpful if some companies could subcontract such work to a producer who was willing to make the capital investment. The producer also pointed out that having a local caster available would be an added inducement to other jewelry companies to locate in the insular possessions. We agree that given this unique two-step manufacturing process in the production of jewelry, that this request has merit. Therefore, we include specific language to address this situation. The regulatory language would allow two separate jewelry producers to have their portion of the wages credited toward their own duty refund for work on a single piece of jewelry which had entered the U.S. free of duty under the program if the companies demonstrate that they worked on the same piece of jewelry, the jewelry received duty-free treatment into the U.S., the companies maintained production and payroll records for dutiable as well as duty-free jewelry shipments into the U.S. or other destinations so that creditable as well as non-creditable wages may be determined, and the records are sufficient for the Departments' verification of the creditable wages and duty-free units shipped into the United States.

The rule adds alternative documents which may be needed or used during the verification of the amount of duty-free jewelry which entered the United States under the insular program. New shipping methods and the fact that jewelry, unlike watches, does not require a permit (Form ITA–340P), necessitate new ways to document duty-free entry into the United States. Therefore, we amend Subpart B § 303.17(b)(4) to include methods of verification such as requiring the consignee (receiver of goods in the U.S.) to certify that shipments which are otherwise unsupported by Customs entry documents or a certificate of origin did, in fact, receive duty-free treatment. These alternative reporting requirements are necessary in order to provide the Departments' auditors with sufficient documentation to verify duty-free shipments.

Finally, we amend Subpart A, § 303.2(b)(1) and § 303.12(a), and Subpart B, § 303.16(b)(1) and § 303.19(a)(1) by providing for the issuance of an interim duty refund certificate which would authorize a producer to receive a portion of the total amount of the annual duty refund certificate. The interim amount will be based on reported duty-free shipments and creditable wages paid during the first six months of the same calendar year in which the wages were paid. The interim duty refund certificate will be issued after the required company data are received and the calculations for each company are completed. We require the receipt of each producer's data by the end of July if the producer wishes to receive an interim duty refund certificate. The interim duty refund certificate will be issued by the end of August to all producers who have provided the Departments with the data necessary to calculate the duty refund by the end of July. The verification process and the calculation for the annual duty refund certificate will remain the same. However, that portion of the duty refund that has already been issued via the interim duty free certificate to each producer will be deducted from each producer's annual total duty refund amount. This amendment provides duty refund benefits to producers in a more timely fashion.

Under the Administrative Procedure Act, 5 U.S.C. 553(d)(1), the effective date of this rule need not be delayed for 30 days because this rule relieves a restriction by allowing each producer to receive a duty refund certificate in two installments instead of one.

Administrative Law Requirements

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant economic impact on a substantial number of small entities. This rulemaking will make minor editorial changes and clarify current language regarding creditable wages neither of which will impose any cost or have any other adverse economic effect on the producers. The rulemaking will also divide the total annual amount of the duty refund certificate into two installments, thereby allowing producers to receive benefits in a more timely fashion. Although the total amount of a duty refund certificate will not change, the rule is intended to have a positive effect on the insular economies by helping the producers improve their cash flows. Finally, the rulemaking includes an alternative method of verification of duty-free shipments of jewelry into the United States for those entries that did not receive Customs entry documents or a certificate of origin for each shipment. If producers want credit for these duty-free shipments, once a year the consignee (receiver of the jewelry shipped into the United States) or producer (if the producer knows that the shipment received duty-free entry into the United States) will prepare a written certification for the Departments' auditors that the shipments received duty-free treatment into the United States. The certification is expected to have little, if any, economic impact on a company that did not receive Customs entry documentation. We estimate the certification statement, if used, would create a burden of about ten minutes to complete at a cost of approximately $20 annually.

Paperwork Reduction Act. This rulemaking involves new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This collection has been approved by OMB. Changing the duty refund certificate from an annual to a biannual basis requires the use of three of the current forms, modified to accommodate the change. The public reporting burden for these collection-of-information requirements includes the time for reviewing instructions, searching existing data bases, gathering and maintaining the data needed, and completing and reviewing the collection of information. The issuance of payments under the duty refund certificate on a biannual bases requires the collection of data through the use of a modified version of the annual application, Form ITA–334P. We estimate this will involve a burden of about one hour per producer. One more certificate of entitlement to a duty refund, Form ITA–360P, will also need to be issued to each producer per year. This form is completed by the Department of Commerce and imposes no burden hours on the producers. Form ITA–361P, the request for refund of duties, is currently used once or twice a year per producer and takes about 10 minutes to complete. Because of the biannual duty refund, we anticipate that most producers will only complete the form between two to three times a year in order to receive such refunds in a more timely manner. We expect Form ITA–361P will only increase the burden by about 10 minutes per producer. Finally, the rulemaking will include an alternative method of verification of the duty-free shipments of jewelry into the United States for those entries that did not receive Customs entry documents or the country of origin certificates for each shipment. This alternative will be in the form of a written certification by the consignee or, if he or she knows, by the producer, that the shipments received duty-free treatment. Because the jewelry portion of the program is new, it is difficult at this time to determine whether this alternative certification will be needed by the new companies or whether they will be able to produce standard Customs entry documents or certificates of origin. The certification by the consignee or producer will be in the form of an annual statement prepared for the auditor. We estimate that it will take about ten minutes to complete at a cost of approximately $20. Collection activities are currently approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134. Send comments regarding any of these burden estimates or any other aspect of the collection-of-information to U.S. Department of Commerce , ITA Information Officer, Washington, DC 20230 and Office of Information and Regulations Officer, Office of Management and Budget, Washington, DC 20503 (Att: OMB Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

Plain English. The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule.

Executive Order 12866. It has been determined that this rulemaking is not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, The Departments amend 15 CFR Part 303 as follows:

PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAM

1. The authority citation for 15 CFR Part 303 continues to read as follows:

Authority: Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat.127,167.

2. Section 303.2 is amended as follows:

A. The first sentence of § 303.2(a)(5) is amended by removing "which may not be" and adding in its place "not'.

B. The second sentence of § 303.2(a)(13) is revised as set forth below.

C. The last sentence of § 303.2(b)(1) is amended by adding "and by producers who wish to receive the duty refund in installments on a biannual basis" at the end of the sentence.

§ 303.2 Definitions and forms.

(a) * * *

(13) * * * Excluded, however, are wages paid to any outside consultants or other professional personnel, such as lawyers and accountants, or to those persons not involved in the day-to-day assembly operations or servicing and maintenance of equipment and fixtures necessary for the assembly or manufacturing operations or administrative work and security activities directly related to the operations of the company, such as gardeners or construction workers, and for the repair of non-91/5 watches and movements to the extent that such wages exceed the foregoing percentage.

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3. Section 303.12(a)(1) is revised to read as follows:

§ 303.12 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) The total annual amount of the Certificate of Entitlement, Form ITA–360, may be divided and issued on a biannual basis. The first portion of the total annual certificate amount will be based on reported duty-free shipments and creditable wages paid during the first six months of the calendar year, using the formula in § 303.14(c). The Departments require the receipt of the data by July 31 for each producer who wishes to receive an interim duty refund certificate. The interim duty refund certificate will be issued on or before August 31 of the same calendar year in which the wages were earned unless the Departments have unresolved questions. The process of determining the total annual amount of the duty refund will remain the same. The completed annual application (Form ITA–334P) shall be received by the Departments on or before January 31 and the annual verification of data and the calculation of each producer's total annual duty refund, based on the verified data, will continue to take place in February. Once the calculations for each producer's duty refund has been completed, the portion of the duty refund that has already been issued to each producer will be deducted from the total amount of each producer's annual duty refund amount. The duty refund certificate will continue to be issued by March 1 unless the Departments have unresolved questions.

* * * * *

4. Section 303.16 is amended as follows:

A. The second sentence of § 303.16(a)(9) is removed and three sentences are added in its place as set forth below.

B. The last sentence of § 303.16(b)(1) is amended by adding "and , with special instructions for its completion, by producers who wish to receive the total annual amount of the duty refund in installments on a biannual basis' at the end of the sentence.

§ 303.16 Definitions and forms.

(a) * * *

(9) * * * Excluded, however, are wages paid for outside consultants or other professional personnel, such as lawyers and accountants, or those persons not involved in the day-to-day assembly operations or servicing and maintenance of equipment and fixtures necessary for the assembly or manufacturing operations or the administrative work and security activities directly related to the operations of the company, such as gardeners or construction workers, plus any wages paid for the assembly of dutiable jewelry or for the repair of dutiable jewelry to the extent that such wages exceed the percentage set forth above. No more than two insular producers may have their wages credited for their portion of the wages paid for work on a single piece of jewelry which entered the U.S. free of duty under the program. Wages paid by the two producers will be credited proportionally provided both producers demonstrate to the satisfaction of the Secretaries that they worked on the same piece of jewelry, the jewelry received duty-free treatment into the U.S., and the producers maintained production and payroll records sufficient for the Departments' verification of the creditable wage portion (see § 303.17(b)).* * *

* * * * *

§ 303.17 [Amended]

5. Section 303.17(b)(4) is amended by adding ", or the certificate of origin for the shipment, or, if a company did not receive such documents from Customs, a certification from the consignee that the jewelry shipment received duty-free treatment, or a certification from the producer, if the producer can attest that the jewelry shipment received duty-free treatment" at the end of the paragraph.

6. Section 303.19(a)(1) is revised to read as follows:

§ 303.19 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) The total annual amount of the Certificate of Entitlement, Form ITA–360, may be divided and issued on a biannual basis. The first portion of the total annual certificate amount will be based on reported duty-free shipments and creditable wages paid during the first six month of the calendar year, using the formula in § 303.20(b). The Departments require the receipt of the data by July 31 for each producer who wishes to receive an interim duty refund certificate. The interim duty refund certificate will be issued on or before August 31 of the same year in which the wages were earned unless the Departments have unresolved questions. The process of determining the total annual amount of the duty refund will remain the same. The completed annual application (Form ITA–334P) shall be received by the Departments on or before January 31 and the annual verification of data and calculation of each producer's total annual duty refund, based on the verified data, will continue to take place in February. Once the calculations for each producer's duty refund has been completed, the portion of the duty refund that has already been issued to each producer will be deducted from the total amount of each producer's annual duty refund amount. The duty refund certificate will continue to be issued by March 1 unless the Departments have unresolved questions.

* * * * *

Richard W. Moreland,

Acting Assistant Secretary for Import Administration, Department of Commerce.

Nikolao Pula,

Acting Director, Office of Insular Affairs, Department of the Interior.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 01–46]

RIN 1515–AC64

Time Limitation for Requesting Refunds of Harbor Maintenance Fees

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to establish a one year time limit within which a refund request must be filed for overpayments of Harbor Maintenance Fees that were paid on a quarterly basis. The time limit will provide an efficient and reasonable final resolution of claims against Customs, including claims for refunds of export harbor maintenance fees that were held unconstitutional by the United States Supreme Court in 1998. Refund requests for harbor maintenance fee payments that are more than a year old must be filed by the effective date of this document.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Deborah Thompson, Revenue Branch, National Finance Center (317) 298–1200 (ext. 4003).

SUPPLEMENTARY INFORMATION:

Background

The Harbor Maintenance Fee was created by the Water Resources Development Act of 1986 (Pub. L. 99–622; codified at 26 U.S.C. 4461 *et seq.*) (the Act) and is implemented by § 24.24 of the Customs Regulations (19 CFR 24.24). Pursuant to the Act, the harbor maintenance fee became effective on April 1, 1987.

Imposition of the fee is intended to require those who benefit from the maintenance of U.S. ports and harbors to share in the cost of that maintenance. The fee has been assessed on port use associated with imports, exports, imported merchandise admitted into a foreign trade zone, passengers, and movements of cargo between domestic ports. Since April of 1998, based on the U.S. Supreme Court's decision that harbor maintenance fees applied to exports of merchandise are unconstitutional (*United States Shoe Corporation* v. *United States*, 118 S. Ct. 1290, No. 97–372 (March 31, 1998)), Customs has not collected export harbor maintenance fees. Currently, except for export shipments, the fee is assessed based on 0.125 percent of the value of commercial cargo loaded or unloaded at certain identified ports or, in the case of passengers, on the value of the actual charge paid for the transportation.

Notice of Proposed Rulemaking Published on December 15, 2000

On December 15, 2000, Customs published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 78430) proposing to amend § 24.24(e)(4) of the Customs Regulations (19 CFR 24.24(e)) to require the filing of a refund request for harbor maintenance fees paid on a quarterly basis within one year of the date of payment of the fee, except for fees paid relative to imported merchandise admitted into a foreign trade zone and subsequently withdrawn from the zone under 19 U.S.C. 1309, for which the refund request would have to be filed within one year of the date of withdrawal. The NPRM also proposed to amend § 24.73 of the Customs

Regulations (19 CFR 24.73) to require the filing of general claims against Customs—those not otherwise provided for under the Customs laws—within one year of the act giving rise to the claim.

The NPRM sets forth the bases for proposing these time limits, including the Court of Appeals for the Federal Circuit's (CAFC) acknowledgement of Customs authority to impose a time limit on the filing of harbor maintenance fee refund requests (*Swisher International, Inc.* v. *United States*, 205 F. 3d 1358 (No. 99–1277 C.A.F.C. February 28, 2000), cert. denied). (In *Swisher*, the court held Customs denial of a request for a refund of export harbor maintenance fee payments to be a protestable decision under 19 U.S.C. 1514.)

The notice pointed out that for harbor maintenance fee payments that are more than a year old, a refund request would be required to be received by Customs prior to the effective date of the final rule adopting the proposal.

Interim Regulation Published on March 28, 2001

On March 28, 2001, Customs published an interim regulation in the **Federal Register** (66 FR 16854) (hereafter, Interim Regulation) amending § 24.24(e)(4) of the Customs Regulations, the same section of the regulations amended in this final rule document. The Interim Regulation, effective on the date of publication, amended the regulations to provide a new procedure for requesting refunds of export harbor maintenance fees. (On April 27, 2001, a correction to the Interim Regulation was published in the **Federal Register** (66 FR 21086).)

The main features of the new procedure are that: (1) Most refund requests (those covering payments made on and after July 1, 1990) can be filed and processed without supporting documentation; and (2) exporters filing refund requests that require supporting documentation (covering payments made prior to July 1, 1990) will have an additional 120 days to submit documents or additional documents from the date Customs initially denies a request for lack of or insufficient documentation.

This final rule document incorporates the procedure set forth in the Interim Regulation. It is noted that pursuant to Customs consideration of the comments received in response to the NPRM (see discussion below), the effective date of the one year time limitation is 180 days from its date of publication in the **Federal Register**. This differs from the Interim Regulation's background discussion where it is stated that the effective date of the time limitation would be 30 days from date of publication.

Discussion of Comments

Customs received 21 comments in response to the NPRM. The comments can be divided into five subject categories: (1) The proposed one-year filing requirement as applied to requests for refunds of export harbor maintenance fee payments made more than one year ago; (2) the applicability of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) to the proposed amendment's one-year filing requirement as applied to export fee refund requests; (3) the documentary requirements; (4) the applicability of interest to refunds of export fees; and (5) requests for a public hearing/meeting.

Most of the comments were provided on behalf of exporters concerned about filing requests for refunds of export harbor maintenance fees that were held unconstitutional in 1998 and are no longer required under the Customs Regulations. These exporters have a keen interest in Customs procedure for issuing refunds of these fees. The Interim Regulation's procedure for obtaining refunds of these fees addresses and, Customs believes, resolves satisfactorily the issues raised by the comments, as discussed below.

Comments concerning the proposed amendment of § 24.73 to impose a one year filing requirement relative to general claims against Customs are not discussed in this document, as Customs has decided to delay proceeding with that proposed amendment.

The One-Year Filing Requirement as Applied to Requests for Refunds of Export Fee Payments

Comment: Eighteen of the 21 commenters objected to the proposed amendment's one-year filing requirement for refund requests of quarterly-paid harbor maintenance fees. Some commenters objected to imposition of any time limit, while most others objected to how Customs would apply the time limit to refund requests covering payments made more than one year ago.

The various formulations of this objection can be summarized as a complaint that the time limit as applied to payments that are more than one year old—which includes all export harbor maintenance fee payments—does not provide exporters enough time to file claims, and to the extent that lack of time results in exporters being unable to file refund requests, it is unreasonable and unfair. At least one commenter pointed out how some exporters might have to review up to ten or eleven years of payments to Customs dating back to 1987, a formidible task, especially when records that old are often stored off-site. Many companies routinely and reasonably destroy records that old. One commenter contended that many companies have not been dilatory, but genuinely lack the resources necessary to stay on top of this matter. Some companies have been waiting for litigation to be resolved and then for Customs to issue instructions for a refund filing procedure. These companies, say the commenters, will need more time to prepare their requests for refund than the proposed time limit allows.

Some commenters characterized this provision as a time limit that retroactively cuts off rightful claims contrary to the spirit and language of the Swisher decision. For this reason, some raised due process objections. Some raised equal protection objections on the grounds that equally situated exporters will be treated differently where some are able to file their claims timely (and are issued refunds) while others are not (and are not issued refunds). All of these commenters feel strongly that the fact that the export fees at issue were unconstitutional and thus wrongly collected weighs in favor of Customs exercise of leniency regarding a time limit. Some stated that for this reason (unconstitutionality/wrongful collection), Customs should be assisting exporters to obtain refunds, not impeding them.

Many commenters believe that requiring refund requests for payments made more than a year ago by the effective date of the final rule would not be workable and would not be fair. (These comments indicate that most commenters contemplated a short period of delay between the publication date and the effective date. The usual delay period is 30 days. At least two commenters contemplated that the effective date would be the date of publication.) Some commenters suggested that this short deadline will result in a flood of claims that will be an inconvenience and distraction for Customs, will require much time to process, and will result in a "hurry up and wait" situation.

At least one commenter suggested that the effective date of the final rule should be delayed 60 days. Some commenters stated that there should not be a deadline for payments ruled unconstitutional. At least seven commenters recommended that, as applied to payments older than one year, filers should have one full year from the date of publication of the final

rule to file refund requests. Another commenter recommended that exporters should have eighteen months from the date of publication to file refund requests.

Customs response: Customs believes that a one year filing requirement is reasonable. Customs statutory and regulatory provisions that impose time limits generally do not provide more than a year to take whatever action is required under the provision. In fact, similar or shorter time limits exist in other contexts, such as the requirement to file a protest under 19 U.S.C. 1514 within 90 days of a Customs decision regarding the amount of duties chargeable, the amount of a charge or exaction, or the liquidation of an entry. The protest procedure is the basic procedure for challenging a variety of Customs decisions and obtaining a refund of overpaid duties or charges. It is noteworthy that the applicable Customs law grants no more than 90 days to take this important action. The requirement to file a petition for reliquidation to correct a clerical error under 19 U.S.C. 1520(c)(1) within one year of the date of liquidation is another example. A third example is the one year filing requirement of 19 U.S.C. 1520(d) imposed on requests for reliquidation of an entry involving goods qualifying under NAFTA rules of origin. The matter of requesting a refund of overpaid harbor maintenance fees is no more important than the matters these provisions address.

Generally, the process of obtaining refunds of harbor maintenance fees is well served by allowing up to one year to file the request/claim. It balances Customs legitimate need for efficient and final resolution of claims with the legitimate interest of exporters seeking to reclaim fees that should not have been paid or were paid in excess of what was due. Moreover, the CAFC in Swisher explicitly stated that Customs is "free to alter the regulation to impose a time limit." Thus, in imposing this one year time limit, Customs is simply acting on the Court's suggestion, in addition to seeking to bring more order and reasonable finality to the refund procedure.

Regarding application of the time limit to export fee payments (or other quarterly harbor maintenance fee payments) that were made more than a year ago (as is the case with all export fee payments), Customs does not agree with the contention that it is unfair and unreasonable to require filing of the refund request by the effective date of the final rule.

The notion that exporters will be confined to only a short period between publication of the final rule and its effective date to file refund requests is simply inaccurate. Customs notes that the regulation authorizing a refund request was promulgated in 1991. Thus, exporters have had 10 years to file refund requests. As far back as 1995 when the fee as applied to exports was initially found to be unconstitutional by the U.S. Court of International Trade (CIT) in *U.S. Shoe Corp.* v. *United States*, 19 CIT 1284, 907 F. Supp. 408 (CIT 1995), exporters were on notice of their ability to recover these fees. That was six years ago. The regulation authorizing refund requests had been effective for four years by that time. While the *U.S. Shoe* case was appealed and was not affirmed by the Supreme Court until its 1998 decision, exporters who paid export fees were on notice during that three year period that they may be entitled to a refund. Nothing prevented exporters from filing refund requests under the existing regulations at any time during that period and many exporters did so. Neither were exporters precluded from filing refund requests during the period following the Supreme Court's conclusive ruling in 1998, and many did so.

Since February of 2000, when the court in *Swisher* stated that it had jurisdiction to review a refund request denial if properly protested within 90 days of the denial, over 130 exporters followed these procedures, making it clear that they were available to all exporters. In December of 2000, the NPRM gave exporters notice regarding the proposed change to the Customs regulations to impose a one year time limit within which to file a refund request. This was the fourth in a series of public actions (by the courts and Customs) over a five year period that served as notice to exporters that refunds of export harbor maintenance fees were obtainable. By the time the NPRM's proposed amendment is published as a final rule, exporters will have had another four to five months since publication of the NPRM to file timely refund requests.

Nevertheless, while Customs believes that requiring the filing of export fee refund requests by the effective date of the final rule is not unfair or unreasonable, Customs acknowledges the validity of sentiments expressed by those commenters who believe that more time to file refund requests furthers the interest held by those who have not yet requested refunds on fees paid more than a year ago. Customs intent at the time it issued the NPRM and, indeed, at the time it issued the Interim Regulation (regarding the amended procedure for filing refund requests) was to make the one year time limitation effective on the usual effective date of a final rule, 30 days from the date of its publication in the **Federal Register**. Based on the commenters' concerns, Customs is delaying the effective date of this final rule document to the date that is 180 days after publication. This extends by 150 days the time within which refund requests for export fees (and other quarterly harbor maintenance fees) paid over a year ago can be filed, as compared to the 30 day effective period contemplated by Customs at the time the NPRM was published and as set forth in the background discussion of the Interim Regulation.

With a delayed effective date of 180 days, exporters will have had approximately 12 months from the date of publication of the NPRM to file refund requests. As of the date of publication of this final rule document, over 2000 exporters have already filed refund requests since publication of the NPRM.

Given all of the above considerations, including the extended delayed effective date, Customs believes that exporters have had, and still have, ample time to file a refund request.

In regard to comments that the proposed amendment's time limit is retroactive, particularly with respect to payments made more than a year ago, Customs notes that an NPRM, by its very nature, is prospective, not retroactive. The amendments it proposes will become effective only upon later publication of a final rule which itself will become efffective prospectively (usually not until at least 30 days after its publication but, as above, 180 days for this final rule document). Customs therefore disagrees that the time limit at issue is retroactive. The fact that it does not retroactively cut off claims is evidenced by the more than 2000 exporters who have filed refund requests since the NPRM was published and by the additional numbers of exporters who surely will file timely refund requests after publication of this final rule document.

As for the comment that some exporters were waiting to see events transpire before filing a refund request, Customs again notes that the procedure for filing refund requests has been provided for under the Customs Regulations for a decade. Any of these exporters could have filed refund requests at any time. Exporters who waited may have done so at their own peril, but they still will have time to file a timely refund request. Again, this final rule is not effective until 180 days after publication, and the procedure set forth

in the Interim Regulation is less burdensome than the procedure it replaced. The procedure set forth in the Interim Regulation provides a simpler process and more time to perfect a refund request than was made apparent in the NPRM. It provides that exporters filing for refunds of payments made on or after July 1, 1990, need only file a letter of request containing certain information, and those who are required to submit supporting documentation (proof of payment) with their requests for refund (relative to payments made prior to July 1, 1990) will have an additional 120-day period to file additional documentation if a timely filed request is denied for lack of or insufficient documentation.

Based on the foregoing, Customs believes that the time limit as applied to payments made more than a year ago, as set forth in this final rule document, is fair, reasonable, and eminently capable of being complied with under the amended refund request procedure. Customs believes that the time limit makes the refund regulation more consistent with other Customs laws and regulations governing refunds, while still affording quarterly payors ample opportunity to file refund requests. In imposing this time limit that brings more order, efficiency, and measured finality to the process, Customs believes it is acting reasonably and responsibly in furtherance of its mission to administer the law.

Comments Regarding Applicability of the Regulatory Flexibility Act

Comment: Three commenters asserted that the one-year filing requirement as proposed in the NPRM will have a significant impact on small business entities whose rightful claims may be cut off by the short deadline (relative to payments made more than a year ago). These commenters thus contended that Customs must perform an analysis under the Regulatory Flexibility Act (RFA).

Customs response: The RFA (or Act) requires that an agency perform an analysis when that agency's regulatory action will have a significant economic impact on a substantial number of small entities. Customs does not believe that its action (in amending the regulations to impose a one year filing requirement and require, for payments that are more than one year old, the filing of requests by the effective date of this final rule document) will produce an impact that falls within the purview of the Act. More specifically, Customs believes that the potential impact complained of (failure to file a timely refund request by the effective date of this final rule) will not result from its action but from the inaction of exporters or others eligible to file for refunds.

The potential impact complained of is capable of being avoided without significant inconvenience or difficulty. There is no reason why an exporter should be unable to file a refund request by what Customs believes is a reasonable deadline. Numerous refund requests have been filed already since publication of the NPRM on December 15, 2000, and many were filed even before the NPRM's publication. By the effective date of this final rule, exporters will have had at least twelve months to file a request for a refund since publication of the NPRM. This period is in addition to the one year exporters have had to file refund requests since the CAFC's decision in *Swisher* in February of 2000, the three years exporters have had to file requests since the Supreme Court's 1998 decision in *U.S. Shoe*, and the six years they have had to file requests since the initial holding of unconstitutionality by the CIT in its 1995 *U.S. Shoe* decision.

Moreover, an exporter wishing to secure its claim under the instant time limit and the Interim Regulation's procedure need only file a letter of request prior to the effective date of this final rule, as prescribed under the Interim Regulation. Supporting documentation will not be required in most cases, and where it is required (for payments made prior to July 1, 1990), exporters will have an additional 120 days to produce that documentation after an initial claim is denied for lack of or insufficient documentation. For these reasons, Customs believes that an impact of the kind that triggers an analysis under the RFA will not result from its action in imposing the regulatory filing requirement at issue.

Comments Concerning Documentary Requirements

Comment: Many commenters objected to the requirement in the NPRM that a CF 349 be filed with requests for refunds. These commenters pointed out that Customs accepted other documents with fee payments before the regulations required use of the CF 349 sometime in 1991. Some stated that Customs accepted payments and issued refunds without CF 349s even after 1991. According to these commenters, these other documents include the Vessel Export Summary Sheet (with payment), cancelled checks (as proof of payment), and other documents (for both purposes) from time to time. These commenters urge Customs to amend the regulation to permit alternative documentation that reasonably establishes payment of the fee.

One commenter recommended that Customs allow submission of reconstructed CF 349s. Many commenters stated that Customs should not make a determination on any refund request where the exporter has a FOIA request pending. Some suggested that the amended regulation should provide that an exporter can file a refund request within 60 days (or some other period of time) after its receipt of a FOIA response. Other commenters recommended that Customs delay a refund determination on a timely filed refund request until the exporter receives a response to the FOIA request and is given time to supplement the refund request with the documentation received.

Customs response: These comments were received before the Interim Regulation was published simplifying the procedure for filing refund requests. The Interim Regulation was published because Customs agrees with the general tenor of these comments that there should exist a more expeditious and streamlined procedure for requesting an export harbor maintenance fee refund and because Customs understands the difficulty some exporters face in providing supporting documentation with the refund request. Under the Interim Regulation, an exporter requesting a refund of export fees need not provide supporting documentation, such as the CF 349 or the Export Vessel Movement Summary Sheet, for any quarter from July 1990 forward (through April of 1998 when collection of export fees ceased). Customs has relieved these exporters from this burden because Customs has retained documentation relative to payments made during this period. Since Customs possesses this documentation, exporters need not file it.

In doing this (relieving exporters from the documentary requirement), Customs removed the 10-year-old regulatory requirement that refund requests include supporting documentation. Under the Interim Regulation procedure, if there is a dispute as to any quarter from July 1990 forward, the exporter must then submit supporting documentation for Customs review and consideration. This new procedure effectively addresses the concerns exporters raised about FOIA requests, as it eliminates any need to obtain supporting documentation through a FOIA request for payments made after July of 1990. Documents that might be obtained through a FOIA request are not necessary to obtain a refund. Customs will apply the new procedure to all

previously filed refund requests regardless of whether they included supporting documentation.

With regard to the quarters preceding July of 1990, the Interim Regulation did not amend the 10-year-old refund request procedure because Customs has not retained copies of supporting documentation for payments made during this period. Thus, exporters must submit supporting documentation with refund requests for any quarter preceding July of 1990. The fact that Customs does not possess pre-July 1990 documentation effectively eliminates any legitimate reason to link a FOIA request with a refund request; that is, since Customs does not possess and cannot provide copies of the supporting documentation requested, a FOIA request would be fruitless.

Regarding the points made by some commenters concerning the documents, Customs acknowledges that the CF 349 was not required until 1991. Prior to use of the CF 349, Customs required a certified Export Vessel Movement Summary Sheet or, if the exporter filed automated summary monthly Shippers Export Declarations, a letter containing the following information: The exporter's identification, its EIN, the appropriate Census Bureau reporting symbol, and the quarter involved. Since the Interim Regulation continues to provide that copies of supporting documentation must accompany refund requests for quarters preceding July of 1990, failure to submit this documentation will result in the denial of the refund request. However, under the Interim Regulation's procedure, an exporter, whose refund request (covering pre-July 1, 1990, payments) is denied for lack of or insufficient documentation, will have an additional 120 days from the date of denial to submit documentation or additional documentation to support its claim. Again, Customs believes that the procedure provided for in the Interim Regulation addresses and resolves the commenters concerns regarding documentation requirements and FOIA requests.

Comments Regarding Payment of Interest on Export Harbor Maintenance Fee Refunds

Comment: Three commenters urged Customs to apply interest to export harbor maintenance fee refunds. One commenter stated that the court in Swisher ordered that Customs pay interest on refunds issued under the court-imposed procedure (applicable to only those who filed complaints with the court). This commenter contended that Customs administrative procedure should be consistent with the court's intentions and provide for the payment of interest.

Customs response: Customs disagrees with the commenters who called for the payment of interest on administrative refunds of export harbor maintenance fee payments. The CAFC ruled in *International Business Machines Corp.* v. *United States*, 205 F. 3d 1367 (Fed. Cir. 2000) (hereafter, *IBM*), a test case designated to resolve all export fee interest issues, that exporters are not entitled to interest on the refund of these fees. The court opined that there is no statutory waiver of sovereign immunity which would allow the United States to pay interest on adminstrative refunds. IBM attempted to appeal this ruling to the United States Supreme Court, but the Supreme Court refused to hear the case (*IBM* v. *United States*, cert. denied, 69 U.S.L.W. 3259 (Feb. 20, 2001)).

In the meantime, several exporters have filed lawsuits in the CIT arguing that interest should be paid on adminstrative refunds of export fees on grounds they claim were not considered by the CAFC in *IBM*. Unless there is a final ruling awarding interest in these lawsuits, or in any test case designated by the CIT to resolve this issue, Customs will abide by the ruling in *IBM* that bars the payment of interest on adminstrative refunds of export fees.

In addition, it should be noted that, as in *Swisher*, post-judgment interest is paid in lawsuits where a request for export fee refunds was denied by Customs, a protest was filed and denied, and a lawsuit was commenced under 28 U.S.C. 1581(a). However, this payment of post-judgment interest, which is statutorily mandated, does not apply to adminstrative refunds of export fees.

Comment: Six commenters stated that Customs should hold a public hearing or meeting on the proposed amendment. These commenters alleged that the short deadline for filing refund requests for payments that are more than a year old will have a significant and harmful impact on small business entities. Thus, a public meeting or hearing would be appropriate to consider applicability of the provisions of the RFA and to discuss the time limit proposed and its effect on the capability of exporters to meet the deadline and submit required documentation.

Customs response: Customs believes that a public hearing or meeting is not necessary because the issues raised in the comments as reasons for the meeting have been addressed and resolved by Customs since publication of the NPRM. More specifically, Customs believes that the following provisions, which were not included in the NPRM, will satisfactorily resolve the commenters' concerns: (1) This final rule document's delayed effective date, which will extend the date by which refund requests for payments made more than a year ago must be filed to 180 days from the date of publication in the **Federal Register** (as opposed to 30 days after publication, as indicated in the Interim Regulation); (2) the Interim Regulation's provision that exporters need not file supporting documentation with refund requests for payments made on and after July 1, 1990; and (3) the Interim Regulation's provision of an additional 120 days for filing supporting documentation where supporting documentation is required.

As these provisions change the circumstances contemplated by the commenters who suggested a public meeting, and since Customs believes they put to rest the commenters' concerns, Customs believes that a public meeting is not necessary.

Conclusion

After analysis of the comments and further review and consideration of the matter, Customs has determined to adopt as final the amendment proposed in the NPRM published in the **Federal Register** (65 FR 78430) on December 15, 2000, setting forth in § 24.24(e)(4) the one year time limitation on requesting refunds of quarterly-paid harbor maintenance fees. It is noted that because Customs has issued the Interim Regulation that amended § 24.24(e)(4) to simplify the procedures for requesting refunds of export harbor maintenance fees, after publication of the NPRM, the structure of § 24.24(e)(4) is revised from how it is set forth in the NPRM to reflect the substance of the Interim Regulation.

Customs notes that the text of the amended regulation does not explicitly set forth that refund requests for export fee payments that were made more than a year ago must be filed by the effective date of this final rule document. It only sets forth the one-year-from-payment filing requirement (with the aforementioned exception for foreign trade zone withdrawals). Customs therefore emphasizes that export fee refund requests for payments made more than a year ago that are not filed on or before the effective date of this final rule will be rejected as untimely. After a reasonable time, the regulation will be amended to delete the provision concerning refunds of export harbor maintenance fees, as these fees are no longer collected by Customs (and haven't been since April of 1998).

Regarding the other proposed changes in the NPRM, the technical change

proposed to § 24.24(e)(2)(ii) is adopted as proposed. As mentioned in the comment discussion, Customs has determined not to proceed at this time with the proposed amendment to § 24.73 imposing a one year filing requirement on general claims.

Paperwork Reduction Act

The collection of information contained in this regulation has previously been reviewed and approved by the Office of Management and Budget (OMB) under OMB control number 1515–0158. This rule does not include any changes to the existing approved information collection.

Regulatory Flexibility Act

Insofar as this amendment to the regulations merely adds a reasonable time limit within which to file for an already provided for Customs procedure under an existing regulation, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Harbors, Imports, Reporting and recordkeeping requirements, Taxes, User fees.

Amendments to the Regulations

For the reasons stated in the preamble, Part 24 of the Customs Regulations (19 CFR Part 24) is amended as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

2. Section 24.24 is amended by revising the heading of paragraph (e), removing in paragraph (e)(2)(ii) the reference to "(e)(3)(iii)" and adding in its place "(e)(2)(iii)", and revising paragraph (e)(4) to read as follows:

§ 24.24 Harbor maintenance fee.

* * * * *

(e) *Collections, supplemental payments, and refunds*— * * *

(4) *Refunds and supplemental payments*—(i) *General.* To make supplemental payments or seek refunds of harbor maintenance fees paid relative to the unloading of imported cargo, the procedures applicable to supplemental payments or refunds of ordinary duties must be followed. To seek refunds of quarterly-paid harbor maintenance fees pertaining to export movements, the procedures set forth in paragraph (e)(4)(iv) of this section must be followed. To make supplemental payments on any quarterly-paid harbor maintenance fee or seek refunds of quarterly-paid harbor maintenance fees pertaining to other than export movements, the procedures set forth in paragraph (e)(4)(iii) must be followed. The address to mail supplemental payments of quarterly-paid harbor maintenance fees is: U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673–0915. The address to mail requests for refunds of quarterly-paid harbor maintenance fees is: U.S. Customs Service, HMT Refunds, 6026 Lakeside Blvd., Indianapolis, IN, 46278.

(ii) *Time limit for refund requests.* A refund request must be received by Customs within one year of the date the fee for which the refund is sought was paid to Customs or, in the case of fees paid relative to imported merchandise admitted into a foreign trade zone and subsequently withdrawn from the zone under 19 U.S.C. 1309, within one year of the date of withdrawal from the zone.

(iii) *For fees paid on other than export movements.* If a supplemental payment is made for any quarterly-paid harbor maintenance fee or a refund is requested relative to quarterly fee payments previously made regarding the loading or unloading of domestic cargo, the unloading of cargo destined for admission into a foreign trade zone, or the boarding or disembarking of passengers, the refund request or supplemental payment must be accompanied by a Harbor Maintenance Fee Amended Quarterly Summary Report, Customs Form 350, along with a copy of the Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, for the quarter(s) covering the payment to which the refund request or supplemental payment relates. A request for a refund must specify the grounds for the refund.

(iv) *For fees paid on export movements.* Customs will process refund requests relative to fee payments previously made regarding the loading of cargo for export as follows:

(A) For export fee payments made prior to July 1, 1990, the exporter (the name that appears on the SED or equivalent documentation authorized under 15 CFR 30.39(b)) or its agent must submit a letter of request for a refund specifying the grounds for the refund and identifying the specific payments made. The letter must be accompanied by proof of payment then required under the regulations relative to each payment claimed. Proof of payment can be either a copy of the Export Vessel Movement Summary Sheet or, where an Automated Summary Monthly Shipper's Export Declaration was filed, a letter containing the exporter's identification, its employer identification number (EIN), the Census Bureau reporting symbol, and the quarter for which the payment was made. Upon receiving a letter of request for a refund, Customs will evaluate the supporting documentation submitted and issue the refund to the exporter or its agent if warranted. If the request lacks documentation or the documentation submitted is insufficient, the exporter's refund request will be denied, in which case the exporter will have an additional 120 days from the date of denial to submit documentation or additional documentation. If the documentation submitted during the 120 day period is insufficient, Customs will deny the request.

(B) For export fee payments made on or after July 1, 1990, the exporter or its agent must submit a letter of request for a refund specifying the grounds for the refund, identifying the quarters for which a refund is sought, and containing the following additional information: The exporter's name, address, and employer identification number (EIN); the name and EIN of any freight forwarder or other agent that made export fee payments on the exporter's behalf; and a name, telephone number, and facsimile number of a contact person. If a refund request is filed by a freight forwarder or other agent on the exporter's behalf, the request must include a properly executed power of attorney and/or a letter signed by the exporter authorizing the representation. Refund requests for payments made on or after July 1, 1990, need not be accompanied by supporting documentation. Upon receipt of the letter of request, Customs will search its

records for export fee payments made by or on behalf of the requesting exporter during the quarters identified in the letter of request. Customs will then mail to the exporter or its agent a "Harbor Maintenance Fee Refund Report and Certification" (Report/Certification) containing the results of the search and a statement of the amount of refunds owed to the exporter, if any. If the exporter agrees with the information in the Report/Certification, the exporter must sign the Report/Certification and submit it to Customs with a letter containing an address for mailing the refund. The Report/Certification must be signed by an officer of the company duly authorized to bind the company, or an agent (such as a broker or freight forwarder) authorized to sign the document under a properly executed power of attorney or a letter signed by an authorized officer of the company. Upon receipt of the signed Report/Certification, Customs will issue the refund. If the exporter disagrees with the information in the Report/Certification, the exporter must submit a letter explaining its claim along with proof of payment, either a copy of a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, for the quarter(s) covering the refund requested or, if applicable, a copy of an Export Vessel Movement Summary Sheet or, where an Automated Summary Monthly Shipper's Export Declaration was filed, a letter containing the exporter's identification, its employer identification number (EIN), the Census Bureau reporting symbol, and the quarter for which the payment was made. Upon receiving the letter and documentation, Customs will conduct a second review and will either confirm the exporter's claim and mail a revised Report/Certification to the exporter or its agent, or notify the exporter or its agent that confirmation cannot be made. In the latter instance, the Report/Certification will not be revised. Upon receipt of a properly signed Report/Certification (initial or revised), Customs will issue the refund. The signed Report/Certification received by Customs constitutes the exporter's agreement that Customs payment of the refund amount determined to be owed in the Report/Certification is in full accord and satisfaction of all export fee refund claims. The signed Report/Certification also represents the exporter's release, waiver, and abandonment of all claims against the Government, its officers, agents, and assigns for costs, attorney fees, expenses, compensatory damages, and exemplary damages. Upon receipt of the signed Report/Certification, Customs releases, waives, and abandons all claims other than fraud against the exporter, its officers, agents, or employees arising out of all export fee payments.

* * * * *

Charles W. Winwood,

Acting Commissioner of Customs.

Approved: May 18, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 01–16479 Filed 6–29–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–031]

RIN 2115–AE46

Special Local Regulations for Marine Events; Maryland Swim for Life, Chester River, Chestertown, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations for the Maryland Swim for Life, a marine event to be held on the waters of the Chester River, Chestertown, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Chester River during the event.

DATES: This rule is effective from 6 a.m. to 2 p.m. eastern time on July 14, 2001.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or deliver them to the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–01–031 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, telephone number (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The need for special local regulations for this event was determined on May 21, 2001. The Coast Guard became aware of the need for special local regulations with insufficient time to publish an NPRM, allow for comments, and publish a final rule 30 days prior to the event on July 14, 2001.

Background and Purpose

On July 14, 2001, the Maryland Swim for Life Association will sponsor the Maryland Swim for Life on the waters of the Chester River. Approximately 100 swimmers will start from Rolph's Wharf and swim upriver 2 miles then swim down river returning back to Rolph's Wharf. A large fleet of support vessels will be accompanying the swimmers. To provide for the safety of participants and support vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the swim.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Chester River, Chestertown, Maryland. The temporary special local regulations will be in effect from 6 a.m. to 2 p.m. eastern time on July 14, 2001. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Chester River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Chester River during the event.

Although this regulation prevents traffic from transiting a portion of the Chester River during the event, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are specifically excluded from further analysis and documentation under that section. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary section, § 100.35–T05–031 is added to read as follows:

§ 100.35–T05–031 Maryland Swim for Life, Chester River, Chestertown, Maryland

(a) *Regulated Area.* The waters of the Chester River, from shoreline to shoreline bounded on the south by a

line drawn at latitude 39°10′16″ N and bounded on the north by a line drawn at latitude 39°11′35″ N. All coordinates reference Datum NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(c) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(d) *Effective Date.* This section is effective from 6 a.m. to 2 p.m. eastern time on July 14, 2001.

Dated: June 21, 2001.

J.E. Shkor,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 01–16487 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

CGD 13–01–004

RIN 2115–AE46

Modification to Special Local Regulation (SLR) for Seattle Seafair Unlimited Hydroplane Race

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is updating the Seafair Special Local Regulation (SLR) to enhance the safe execution of Seafair's hydroplane and air show event. The rule adds one week to the time period within which the regulations of the SLR can become effective each year and adds restrictions on swimming and rafting within the regulated areas.

DATES: This rule is effective August 1, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD 13–01–004 and are available for inspection or copying at Commander, Thirteenth Coast Guard District (m), Jackson Federal Building, 915 Second Avenue, Room 3506, Seattle, WA, 98174–1067 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Jane Wong, either at the above address, or by phone at (206) 220–7224.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 6, 2001 we published a notice of proposed rulemaking (NPRM) entitled Modification to Special Local Regulation (SLR) for Seattle Seafair Unlimited Hydroplane Race in the **Federal Register** (66 FR 18219). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

For more than 50 years the Seafair hydroplane races and air show on and over Lake Washington have been a Pacific Northwest tradition, entertaining millions of people over that period. However, these entertaining events involve risks to both spectators and participants. During the hydroplane races and air show, the marine congestion associated with the number of boats, swimmers, and spectators on shore challenges even the most experienced seaman. There is an inherent risk of a participating boat or plane losing control or crashing. This potentially violent and deadly scenario necessitates the maintenance of a regulated area to protect spectators while providing unobstructed vessel traffic lanes to ensure timely arrival of emergency response craft.

The Seafair SLR contained in 33 CFR 100.1301 has been in effect since 1986 and allows the regulations to be effective within a two-week time period. We are now expanding this to a three-week period. We are also adding language to address the hazards associated with swimmers and rafting of vessels, which are not included in 33 CFR 100.1301.

Discussion of Comments and Changes

No comments were received in connection with this rulemaking. No changes have been made to the proposed rule.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect any economic impact as a result of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This rulemaking slightly modifies existing safety regulations, and should not effect the economic activities of any Seafair participant or spectator.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

(1) Small entities this rule may affect include owners and operators of vessels, including small passenger vessels, intending to transit or anchor in a portion of Lake Washington during the event.

(2) This regulation will not have a significant economic impact on these small entities because there will be no substantial change from the way vessel operations have been running in years past. Because these regulations are aimed at recreational vessels, commercial vessels will not be impacted.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT P. M. Stocklin, Jr. at Marine Safety Office Puget Sound, Waterways Management Branch, (206) 217–6237.

Small businesses may send comments on the actions of Federal employees

who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated as a significant energy action by the Administrator of the Office of Information and Regulatory Affairs. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34) (h), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This rule makes minor changes to the existing rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record-keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Revise § 100.1301 to read as follows:

§ 100.1301 Seattle seafair unlimited hydroplane race.

(a) This section is in effect annually during the last week in July and the first two weeks of August from 8 a.m until 8 p.m. Pacific Daylight Time, as published in the Local Notice of Mariners. The event will be one week or less in duration. The specific dates during this time frame will be published in the Local Notice to Mariners.

(b) The area where the Coast Guard will restrict general navigation by this regulation during the hours it is in effect is: The waters of Lake Washington bounded by the Interstate 90 (Mercer Island /Lacey V. Murrow) Bridge, the western shore of Lake Washington, and the east/west line drawn tangent to Bailey Peninsula and along the shoreline of Mercer Island.

(c) The area described in paragraph (b) of this section has been divided into two zones. The zones are separated by a line perpendicular from the I–90 Bridge to the northwest corner of the East log boom and a line extending from the southeast corner of the East log boom to the southeast corner of the hydroplane race course and then to the northerly tip of Ohlers Island in Andrews Bay. The western zone is designated Zone I, the eastern zone, Zone II. (Refer to NOAA Chart 18447).

(d) The Coast Guard will maintain a patrol consisting of Coast Guard vessels, assisted by Auxiliary Coast Guard vessels, in Zone II. The Coast Guard patrol of this area is under the direction of the Coast Guard Patrol Commander (the "Patrol Commander"). The Patrol Commander is empowered to control the movement of vessels on the racecourse and in the adjoining waters during the periods this regulation is in effect. The Patrol Commander may be assisted by other federal, state and local law enforcement agencies.

(e) Only authorized vessels may be allowed to enter Zone I during the hours this regulation is in effect. Vessels in the vicinity of Zone I shall maneuver and anchor as directed by Coast Guard Officers or Petty Officers.

(f) During the times in which the regulation is in effect, swimming, wading, or otherwise entering the water in Zone I by any person is prohibited while hydroplane boats are on the racecourse. At other times in Zone I, any person entering the water from the shoreline shall remain west of the swim line, denoted by buoys, and any person entering the water from the log boom shall remain within ten (10) feet of the log boom.

(g) During the times in which the regulation is in effect, any person swimming or otherwise entering the water in Zone II shall remain within ten (10) feet of a vessel.

(h) During the times this regulation is in effect, rafting to a log boom will be limited to groups of three vessels.

(i) During the times this regulation is in effect, up to six (6) vessels may raft together in Zone II if none of the vessels are secured to a log boom.

(j) During the times this regulation is in effect, only vessels authorized by the Patrol Commander, other law enforcement agencies or event sponsors shall be permitted to tow other watercraft or inflatable devices.

(k) Vessels proceeding in either Zone I or Zone II during the hours this regulation is in effect shall do so only at speeds which will create minimum wake, seven (07) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

(l) Upon completion of the daily racing activities, all vessels leaving either Zone I or Zone II shall proceed at speeds of seven (07) miles per hour or less. The maximum speed may be reduced at the discretion of the Patrol Commander.

(m) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the Patrol Commander shall serve as signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard may be assisted by other federal, state and local law enforcement agencies, as well as official Seafair event craft.

Dated: June 13, 2001.

Erroll Brown,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth District.

[FR Doc. 01–16484 Filed 6–29–01, 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–030]

RIN 2115–AE46

Special Local Regulations for Marine Events; Northeast River, North East, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations for the Salute to Cecil County Veterans Fireworks Celebration, an event to be held over the waters of the Northeast River, North East, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Northeast River during the fireworks display.

DATES: This rule is effective from 9 p.m. to 10 p.m. eastern time on July 3, 2001.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or deliver them to the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–01–030 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, telephone number (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received the request for special local regulations on May 23, 2001. We were notified of the need for special local regulations with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the event on July 3, 2001.

Background and Purpose

On July 3, 2001, the Salute to Cecil County Veterans Committee will sponsor a fireworks display over the Northeast River, adjacent to North East Community Park, North East, Maryland. The pyrotechnics will be launched from a barge anchored approximately 1000 yards south of North East Community Park. A fleet of spectator vessels is expected to gather near the event site to view the fireworks display. To provide for the safety of spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the fireworks display.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Northeast River adjacent to North East Community Park, North East, Maryland. The regulated area is a 300 yard radius around the fireworks barge. The temporary special local regulations will be in effect from 9 p.m. to 10 p.m. eastern time on July 3, 2001. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance the safety of spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Northeast River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the effected portions of the Northeast River during the event.

Although this regulation prevents traffic from transiting a portion of the Northeast River during the event, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are specifically excluded from further analysis and documentation under that section. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary § 100.35–T05–030 is added to read as follows:

§ 100.35–T05–030 Northeast River, North East, Maryland.

(a) *Regulated area.* All waters of the Northeast River, enclosed within the arc of a circle 600-yards in diameter with the center at latitude 39°35′18″ N, longitude 075°57′18″ W. All coordinates reference Datum NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(c) *Official Patrol.* The Official Patrol is any commissioned, warrant, or petty officer of the Coast Guard on board a vessel displaying a Coast Guard ensign.

(d) *Special local regulations.*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(e) *Effective dates.* This section is effective from 9 p.m. to 10 p.m. eastern time on July 3, 2001.

Dated: June 21, 2001.

J.E. Shkor,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 01–16582 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–032]

RIN 2115–AE46

Special Local Regulations for Marine Events; Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Baltimore 4th of July Celebration, a fireworks display to be held over the waters of the Patapsco River, at Baltimore, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Patapsco River during the event.

DATES: This rule is effective from 9 p.m. eastern time on July 4, 2001 until 10 p.m. eastern time on July 5, 2001.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or deliver them to the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–01–032 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, telephone number (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received the request for special local regulations on May 21, 2001. We were notified of the need for special local regulations with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the event on July 4, 2001.

Background and Purpose

On July 4, 2001, the Baltimore Office of Promotions will sponsor fireworks displays over the waters of the Patapsco River, Baltimore, Maryland. The events consist of pyrotechnic displays fired from 2 barges positioned in the Inner Harbor and Northwest Harbor. A large fleet of spectator vessels gathers nearby to observe the fireworks. Due to the need for vessel control during the fireworks displays, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing special local regulations on specified waters of the Patapsco River. The special local regulations will temporarily restrict general navigation in the event area during the fireworks. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement time period. These regulations are needed to control vessel traffic during the fireworks displays to enhance the safety of spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Patapsco River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601—612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the effected portions of the Patapsco River during the event.

Although this regulation prevents traffic from transiting a portion of the Patapsco River during the event, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We prepared an "Environmental Assessment" in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary § 100.35–T05–032 is added to read as follows:

§ 100.35–T05–032 Patapsco River, Baltimore, Maryland.

(a) *Regulated areas.*

(1) *Inner Harbor Regulated Area.* The Inner Harbor Regulated Area is defined as the waters of the Patapsco River enclosed within the arc of a circle with a radius of 400 feet and with its center located at latitude 39°16.9′ N, longitude 076°36.3′ W. All coordinates reference Datum NAD 1983.

(2) *Northwest Harbor Regulated Area.* The Northwest Harbor Regulated Area is defined as the waters of the Patapsco River enclosed within the arc of a circle with a radius of 500 feet and with its center located at latitude 39°16.6′ N, longitude 076°35.8′ W. All coordinates reference Datum NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(c) *Official Patrol.* The Official Patrol is any commissioned, warrant, or petty officer of the Coast Guard on board a vessel displaying a Coast Guard ensign.

(d) *Special local regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the Inner Harbor Regulated Area or the Northwest Harbor Regulated Area.

(2) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(e) *Effective dates:* This section is effective from 9 p.m. eastern time on July 4, 2001 until 10 p.m. eastern time on July 5; 2001.

(f) *Enforcement times:* It is expected that this section will be enforced between 9 p.m. and 10 p.m. eastern time on July 4, 2001. If the fireworks display is cancelled for the evening due to inclement weather, then this section will be enforced between 9 p.m. and 10 p.m. eastern time on July 5, 2001. Notice of the enforcement time will be given via Marine Safety Radio Broadcast on VHF–FM marine band radio, Channel 22 (157.1 MHz).

Dated: 21 June 2001.

J.E. Shkor,

Vice Admiral, U.S. Coast Guard, Commander Fifth Coast Guard District.

[FR Doc. 01–16581 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–029]

RIN 2115–AE46

Special Local Regulations for Marine Events; Patuxent River, Solomons, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations for the Patuxent River 4th of July Fireworks Festival, an event to be held over the waters of the lower Patuxent River near Solomons, Maryland. These special

local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the lower Patuxent River during the fireworks display.

DATES: This rule is effective from 8:30 p.m. to 10 p.m. eastern time on July 4, 2001.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or deliver them to the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–01–029 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, telephone number (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received the request for special local regulations on May 10, 2001. We were notified of the need for special local regulations with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the event on July 4, 2001.

Background and Purpose

On July 4, 2001, the Solomons Business Association will sponsor a fireworks display above a portion of the lower Patuxent River, at Solomons, Maryland. The pyrotechnics will be launched from a barge anchored in the lower Patuxent River. A fleet of spectator vessels is expected to gather near the event site to view the aerial display. To provide for the safety of spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the fireworks display.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the lower Patuxent River. The regulated area is a 200-yard radius around the fireworks barge. The temporary special local regulations will be in effect from 8:30 p.m. to 10 p.m. eastern time on July 4, 2001. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance the safety of spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the lower Patuxent River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the lower Patuxent River during the event.

Although this regulation prevents traffic from transiting a portion of the lower Patuxent River during the event, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order

13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are specifically excluded from further analysis and documentation under that section. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary § 100.35–T05–029 is added to read as follows:

§ 100.35–T05–029 Patuxent River, Solomons, Maryland.

(a) *Regulated area.* All waters of the lower Patuxent River, enclosed within the arc of a circle 400-yards in diameter with the center at latitude 38°19′04.4″ N, longitude 076°27′42.5″ W. All coordinates reference Datum NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(c) *Official Patrol.* The Official Patrol is any commissioned, warrant, or petty officer of the Coast Guard on board a vessel displaying a Coast Guard ensign.

(d) *Special local regulations.*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(e) *Effective dates.* This section is effective from 8:30 p.m. to 10 p.m. eastern time on July 4, 2001.

Dated: 21 June 2001.

J.E. Shkor,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 01–16580 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–01–033]

Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.511 during a fireworks display to be held July 4, 2001, over the waters of Spa Creek and the Severn River, near the U.S. Naval Academy, Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the fireworks display. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.511 is effective from 8:30 p.m. eastern time on July 4, 2001 to 11 p.m. eastern time on July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2513.

SUPPLEMENTARY INFORMATION: The City of Annapolis will sponsor a fireworks display on July 4, 2001 over the waters of Spa Creek and the Severn River, near the U.S. Naval Academy, Annapolis, Maryland. The temporary special local regulations will be enforced from 8:30 p.m. to 11 p.m. eastern time on July 4, 2001. If the event is postponed due to weather conditions, the temporary special local regulations will be enforced from 8:30 p.m. to 11 p.m. eastern time on July 5, 2001. The fireworks display will be launched from a barge positioned within the regulated area. A fleet of spectator vessels is expected to gather nearby to view the aerial display. In order to ensure the safety of spectators and transiting vessels, 33 CFR 100.511 will be in effect

for the duration of the event. Under provisions of 33 CFR 100.511, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: June 21, 2001.

J.E. Shkor,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 01–16589 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–013]

Drawbridge Operating Regulation; Sabine Lake, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in governing the operation of the State Route 82, swing span bridge across Sabine Lake, mile 10.0 at Port Arthur, Texas. This deviation allows the State of Texas, Department of Transportation to close the bridge to navigation from 5 a.m. on July 9, 2001 through 9 p.m. on July 27, 2001. Presently, the draw is required to open on signal except that from 9 p.m. to 5 a.m., the draw shall open on signal if at least six hours notice is given to the Maintenance Construction Supervisor or the Maintenance Foreman at Port Arthur. This temporary deviation was issued to allow the replacement of mechanical and electrical equipment and switching over power and control to the recently constructed new control house.

DATES: This deviation is effective from 5 a.m. on July 9, 2001 through 9 p.m. on July 27, 2001.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (ob), 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The State Route 82, swing span bridge across Sabine Lake, mile 10.2, near Port Arthur, Texas, has a vertical clearance of 9 feet above high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists primarily of fishing vessels, and recreational craft, although the bridge is occasionally transited by small tugs with tows, transporting sand, gravel and marine shells. The State of Texas, Department of Transportation requested a temporary deviation from the normal operation of the drawbridge in 33 CFR 117.979 in order to accommodate the maintenance work, involving construction of a new operator house and replacement of the submarine power supply cable and other electrical and mechanical repairs. This maintenance is necessary for the continued operation of the bridge. An alternate route via the Gulf Intracoastal Waterway is available.

This deviation allows the draw of the State Route 82 Bridge swing span drawbridge across Sabine Lake, mile 10.0, to remain closed to navigation from 5 a.m. on July 9, 2001 through 9 p.m. on July 27, 2001.

Dated: June 21, 2001.

Roy J. Casto,

RADM, USCG Commander, 8th CG District.

[FR Doc.01–16481 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–075]

RIN 2115–AA97

Safety Zone; Summerfest 2000—Harbor Island Lagoon Activities, Milwaukee, Wisconsin

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone which encompasses all of the Harbor Island Lagoon area in Milwaukee Harbor. This safety zone is necessary to protect personnel and property associated with Summerfest's Hole-In-One Golf Shoot as well as waterborne stunt/skill shows. This safety zone is intended to restrict vessel traffic from the waters of Harbor Island Lagoon.

DATES: This regulation is effective from 6 a.m. (CST) on June 28, 2001, through 12 midnight (CST) on July 12, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–01–047 and are available for inspection or copying at Marine Safety Office (MSO) Milwaukee between 7 a.m. CST and 3:30 p.m. CST, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Timothy Sickler, Port Operations Chief, MSO Milwaukee, 2420 S. Lincoln Memorial Drive, Milwaukee, WI 53207. The phone number is (414) 747–7155

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application did not allow sufficient time for publication of an NPRM followed by a temporary final rule effective 30 days after publication. Any delay of the effective date of this rule would be contrary to the public interest due to the known hazards associated with the waterborne stunt/skill shows being performed in the Harbor Island Lagoon area and the possible loss of life, injury, and damage to property.

Background and Purpose

This safety zone is established to safeguard the public from hazards associated with the waterborne stunt/skill shows being performed in the Harbor Island Lagoon area. The size of the zone was determined by using previous experiences with waterborne stunt/skill shows in the Captain of the Port Milwaukee zone and local knowledge about wind, waves, and currents in this particular area.

The safety zone will be in effect from Thursday, June 28, 2001, at 6 a.m. (CST) through Thursday, July 12, 2001, at 12:00 midnight (CST) for the following coordinates: from 43° 02.015′N, 087° 53.767′W, on the Harbor Island point across the channel to 43° 02.058′N, 087° 53.841′W at the Summerfest Dock. The entire Harbor Island Lagoon will be secured for the duration of the festival.

Emergency vessels are permitted to enter the Safety Zone area with permission from the Captain of the Port or his duly appointed representative.

All persons and vessels shall comply with the instructions of the Captain of the Port Milwaukee or his designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on scene representative. The Captain of the Port Milwaukee may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). This safety zone should not adversely effect commercial shipping since shallow water depths do not allow them to transit the affected area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in the Harbor Island Lagoon area from June 28 to July 12, 2001.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The area that is being closed off is limited and its shallow water depths do not allow the transit of commercial shipping. Vessel traffic in the vicinity of Harbor Island Lagoon, Milwaukee, Wisconsin, is prohibited unless authorized by the Coast Guard Captain of the Port or his duly appointed representative. Before the effective period, we will issue maritime advisories widely available to users of the Port of Milwaukee.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee. (See **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Recordkeeping requirements, Security Measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–927 is added to read as follows:

§ 165.T09–927 Safety Zone: Milwaukee Harbor, Milwaukee, Wisconsin

(a) *Location:* All waters of Harbor Island Lagoon (Milwaukee Harbor) south of a line drawn at its mouth from 43° 02.015′ N, 087° 53.767′ W, on the Harbor Island point across to 43° 02.058′ N, 087° 53.841′ W (the Summerfest Dock).

(b) *Effective times and dates:* From Thursday, June 28, 2001 at 6 a.m. (CST), through Thursday, July 12, 2001, at 12 midnight (CST).

(c) *Regulation:* (1) The general regulations contained in § 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Milwaukee or the designated on scene patrol personnel. Coast Guard patrol personnel including commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a

U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) The Captain of the Port may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

Dated: June 8, 2001.

M.R. DeVries,

Commander, U.S. Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 01–16489 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–01–099]

RIN 2115–AA97

Safety Zone; Swampscott July 2nd Fireworks, Swampscott, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Swampscott July 2nd Fireworks, July 2, 2001 in Swampscott, MA. The safety zone will temporarily close all waters of Nahant Bay within a four hundred (400) yard radius of the fireworks barge. The safety zone prohibits entry into or movement within this portion of Nahant Bay and is needed to protect the maritime public from the hazards posed by a fireworks display.

DATES: This rule is effective from 8:30 p.m. July 2, 2001 until 10 p.m. on July 2, 2001.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) David Sherry, Marine Safety Office Boston, Waterways Management Division, at 617–223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about this event was not provided to the Coast Guard until June 13, 2001, making it impossible to draft or publish a NPRM or a final rule 30 days in advance of its effective date. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to prevent traffic from transiting a portion of Nahant Bay, Swampscott, Massachusetts, and provide for the safety of life on navigable waters. Additionally, this temporary safety zone is only for an 1 hour 30 minute long local event and should have negligible impact on vessel transits due to the fact that vessels can safely transit around the zone and that they are not precluded from using any portion of the waterway except the safety zone area itself.

Background and Purpose

This regulation establishes a safety zone on the waters of Nahant Bay within a four hundred (400) yard radius around the fireworks barge located at 42°29.81′ N, 070°54.95′. The safety zone is in effect from 8:30 p.m. July 2, 2001 to 10 p.m. July 2, 2001. This safety zone prohibits entry into or movement within this portion of Nahant Bay and is needed to protect the maritime public from the dangers posed by this event. Marine traffic may transit safely outside of the safety zone during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of Nahant Bay during this event, the effect of this regulation will not be significant for several reasons: The minimal time that vessels will be restricted from the area, that vessels may safely transit outside of the safety zone, and advance notifications which will be made to the local maritime community by marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Nahant Bay from 8:30 p.m. July 2, 2001 until 10 p.m. July 2, 2001. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can safely pass outside of the safety zone during the event, the event is limited in duration, and the Coast Guard will issue maritime advisories before the effective period widely available to users of Nahant Bay by marine information broadcasts.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under EXECUTIVE ORDER 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive

Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.

2. Add temporary § 165.T01–099 to read as follows:

§ 165.T01–099 Safety Zone: Swampscott July 2nd Fireworks, Swampscott, Massachusetts

(a) *Location.* The following area is a safety zone: All waters of the Nahant Bay within a four hundred (400) yard radius of the fireworks barge at position 42°29.81′ N, 070°54.95′ W.

(b) *Effective date.* This section is effective from 8:30 p.m. July 2, 2001 until 10 p.m. on July 2, 2001.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: 19 June, 2001.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 01–16488 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–033]

RIN 2115–AA97

Safety Zone: Northcoast Rockin' & Roarin' Offshore Grand Prix, Lake Erie and Cleveland Harbor, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary Safety Zone during the Northcoast Rockin' & Roarin' Offshore Grand Prix, Lake Erie and Cleveland Harbor, Cleveland, OH, between 12:30 p.m. and 4:30 p.m. on Saturday, August 11 and Sunday, August 12, 2001. The event will involve approximately 90 race boats traveling at speeds up to 125 m.p.h. These Safety Zone regulations are necessary to ensure the safe navigation of vessels and the safety of life and property. This safety zone is intended to restrict vessel traffic from a portion of the Cleveland Harbor and Lake Erie.

DATES: This rule is effective from 12:30 p.m. until 4:30 p.m. daily on Saturday, August 11 and on Sunday, August 12, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CDG09–01–033 and are available for copying at U.S. Coast Guard Marine Safety Office Cleveland, 1055 East Ninth Street, Cleveland, Ohio, 44114 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant John Natale, Chief Port Operations Department, U.S. Coast Guard Marine Safety Office, 1055 East Ninth Street, Cleveland, Ohio 44114; (216) 937–0111.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard had insufficient time to comply with the time requirements for publishing an NPRM. Publication of a notice of proposed rulemaking would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property due to spectator vessel coming into close proximity with racing boats traveling at excessive speeds.

Background and Purpose

During this event, approximately 90 boats ranging from 24′ to 40′ will participate in a series of races. The race course will be a 9.9 mile loop including the waters of Lake Erie and Cleveland Harbor. The race course will consist of a loop beginning at a point just east of the eastern end of the Cleveland Harbor breakwall, proceed in a northwesterly

direction toward the Cleveland Water Crib, then south through the Cleveland Harbor main entrance and east to the starting point. Races consist of 7 to 12 laps per race. The race boats will travel at speeds up to 125 miles per hour. Hazards will consist of the potential for collision with other race vessels, spectator boats or on-shore structures. A perimeter of patrol boats will be placed around the course to help ensure the safety of spectators and race boats. There will be a minimum of six anchored turn boats to mark the course, six medical boats and four or five pace boats. There will be a 1 hour and 15 minute break between the two races on each day if the request is made by commercial shipping vessels to allow commercial shipping traffic to enter and exit the harbor. Such requests can be made by calling Captain of the Port Cleveland or his designated on scene representative on VHF/FM channel 16.

The vessel congestion due to the large number of participating and spectator vessels poses a significant threat to the safety of life. This safety zone is necessary to ensure the safety of life on the navigable waters of the United States.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone will be in effect for a limited time, and extensive advance notice will be made to the maritime community via Local Notice to Mariners, facsimile, and marine safety information broadcasts. These temporary regulations are tailored to impose a minimal impact on maritime interests without compromising safety. Compensating for any adverse impacts are the favorable economic impacts that these events will have on commercial activity in the area as a whole from the boaters and tourists these events are expected to attract.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit within the area of the safety zone between 12:30 p.m. and 4:30 p.m. on Saturday, August 11 or Sunday, August 12, 2001. The rule will not have a significant economic impact on a substantial number of small entities for the following reasons: The rule will be in effect for a short time, and though it would apply to the harbor channel and entrance, commercial traffic may be allowed to pass through during a 1 hour and 15 minute break between races. Before the effective period, we will issue an extensive advance notice of the event to the maritime community via Local Notice to Mariners, facsimile, marine safety information broadcasts, and through the local Harbor Safety Committee.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact U.S. Coast Guard Marine Safety Office Cleveland (see **ADDRESSES**).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that

under figure 2–1, paragraph 34(g) and (h), and paragraph 35(a) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This rule will not cause significant impacts on the environment; significantly change existing environmental conditions; have more than a minimal impact on protected properties; or provide inconsistencies with State, local or Federal laws. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary section 165.T09–950 to read as follows:

§ 165.T09–950 Safety zone: Northcoast Rockin' & Roarin' Offshore Grand Prix, Lake Erie and Cleveland harbor, Cleveland, OH.

(a) *Location.* This safety zone includes all waters of Lake Erie within 300-yards of the powerboat race course which is defined by an imaginary line connecting the course turn markers. The race will proceed around the following turn markers, from race start to finish: Beginning at 41°32′34″ N, 081°39′02″ W, proceeding in a northerly direction to 41°32′37″ N, 081°39′02″ W; going westerly to 41°32′37″ N, 081°39′06″ W; continuing northwesterly to 41°31′24.5″ N, 081°41′50″ W, and then northwesterly to 41°31′33″ N, 081°43′38″ W; and continuing to 041°31′33″ N, 081°43′41″ W; then to 041°31′31″ N, 081°43′42″ W; then southerly to 41°30′27″ N, 081°42′48″ W; and back to the starting point. These coordinates are based on North American Datum 1983 (NAD 83).

(b) *Effective Dates.* These regulations are in effect between 12:30 and 4:30 p.m. on Saturday, August 11; and during these same times on Sunday, August 12, 2001.

(c) *Regulations.* (1) No vessels shall enter the Safety Zone during the specified times. Permission to deviate from this rule must be obtained from the Coast Guard Captain of the Port or his representative at (216)–937–0111, any time before August 11, 2001; and during the days of the event (August 11–12) by contacting the Captain of the Port designated on scene representative via VHF/FM radio Channel 16.

Dated: June 22, 2001.

R.J. Perry,

Commander, U.S. Coast Guard, Captain of the Port, Cleveland, Ohio.

[FR Doc. 01–16486 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–009]

RIN 2115–AA97

Tall Ships Challenge 2001, Moving Safety Zone, Muskegon Lake, Muskegon, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary Moving Safety Zone during the Tall Ships Challenge 2001 of tall ships in Muskegon Lake and vicinity, Muskegon, Michigan, from 11 a.m. until 5 p.m. on Monday, August 13, 2001. This regulation is necessary to control vessel traffic within the immediate vicinity of the event and to ensure the safety of life and property during this event. This rule is intended to restrict vessel traffic from a portion of Muskegon Lake and Lake Michigan.

DATES: This rule is effective from 11 a.m. (local) until 5 p.m. (local) on Monday, August 13th, 2001.

ADDRESSES: Comments and related material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–01–009 and are available for inspection of copying at U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street suite D, Burr Ridge, IL. 60521. Marine Safety Office between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM3 Joe C. Corpuz, U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd street suite D, Chicago, IL 60521, (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 4th, 2001 we published a notice of proposed rulemaking (NPRM) entitled Tall Ships Challenge 2001, Moving Safety Zone, Muskegon Lake; Muskegon, MI in the **Federal Register** (66 FR 17832). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay of this effective rule would be contrary to the public interest because immediate action is necessary to protect the spectators, spectator vessels, as well as the participating Tall Ships from possible loss of life, injury, or damage to property. Due to their design, the Tall Ships have restricted maneuverability and, in addition, will be transiting an area where maneuverability is restricted by water depths. A moving safety zone around the vessels will help ensure their safety as well as the safety of spectator vessels watching the vessels.

Background and Purpose

The Port of Muskegon American Sail Training Association Tall Ships Challenge 2001 will take place in Muskegon, Michigan, from August 9, 2001, through August 13, 2001. During the Tall Ships Challenge 2001, a large number of tall ships will visit Muskegon Lake, with waterside events, in-port tours, and waterside moored vessel viewing. On Monday, August 13, 2001, from 11 a.m. to 5 p.m., the tall ships will take part in a ceremonial departure parade of tall ships, which is expected to attract a large number of spectator vessels. The Coast Guard is establishing a Moving Safety Zone surrounding the participating tall ships to ensure the safety of participating and spectator vessels and personnel.

The Moving Safety Zone will include the areas around and between all the vessels participating in the Tall Ships Challenge 2001 parade of tall ships during their transit in Muskegon Lake and vicinity on Monday, August 13, 2001. The Moving Safety Zone will include the area extending a distance of 100 yards ahead of the lead vessel in the parade, 100 yards abeam each vessel in the parade, and 100 yards astern of the last vessel in the parade. The Moving Safety Zone will ensure that spectator craft do not impede the path of any of the parade vessels.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 on Regulatory Planning and Review and therefore does not require an assessment

of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this rule under that order. It is non-significant under Department of Transportation regulatory policies and procedures (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The moving safety zone will be in effect for a limited time, and extensive advance notice will be made to the maritime community via Local Notice to Mariners and marine safety information broadcasts. This temporary regulation is tailored to impose minimal impact on maritime interests without compromising safety. Compensating for economic impacts are the favorable economic impacts that these events will have on commercial activity in the area as a whole from the boaters and tourists these events are expected to attract.

Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), we have determined that this rule will not have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. The rule will affect the following entities, some of which might be small entities: the owners of businesses along Muskegon Lake and vicinity. The rule will not have a significant economic impact on a substantial number of small entities for the following reasons: the rule will be in effect for a short time, and we will issue extensive advance notice of the event to the maritime community via the methods discussed above.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T09–013 to read as follows:

§ 165.T09–013 Moving Safety Zone: tall ships challenge 2001, Muskegon Lake and Lake Michigan, Muskegon, Michigan.

(a) *Location.* The waters of Muskegon Lake and Lake Michigan. Muskegon, Michigan.

(b) *Effective date.* This rule is effective from 11 a.m. EDT until 5 p.m. EDT on Monday, August 13th, 2001.

(c) *Regulations.* (1) The following area is designated as a Moving Safety Zone for the Tall Ships Challenge 2001 parade of tall ships: All waters in an area extending a distance of 100 yards ahead of the lead vessel in the parade, 100 yards abeam of each vessel in the parade, and 100 yards astern of the last vessel in the Tall Ships Challenge 2001 parade of tall ships. The Moving Safety Zone for the parade will begin at 11 a.m. on Monday, August 13th, 2001 in Muskegon Lake at approximate position 43°14′36″ N, 086°15′44″ W, and will remain in effect for the parade of tall ships past waypoint 43°14′07″ N, 086°19′21″ W, then outbound through Muskegon Lake Entrance Channel to the final parade waypoint in Lake Michigan at 43°13′11″ N, 086°21′36″ W. These coordinates are based upon North American Datum 1983 (NAD 83).

(2) All vessel operators shall comply with the instructions of the Coast Guard Captain of the Port Chicago or the designated on-scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers. Permission to deviate from the above rules must be obtained from the Captain of the Port Chicago or his representative by VHF/FM radio, Channel 9 or by telephone at (616) 204–2877.

Dated: June 21, 2001.

James D. Hull,

Rear Admiral, U.S. Coast Guard, District Commander, Ninth Coast Guard District.

[FR Doc. 01–16485 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–074]

RIN 2115–AA97

Safety Zone; Firstar Fireworks Display, Milwaukee Harbor

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Firstar fireworks display on July 3, 2001. This safety zone is necessary to control vessel traffic within the immediate vicinity of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of Milwaukee Harbor.

DATES: This temporary final rule is effective from 9:25 p.m. on July 3, 2001, until 10 p.m. on July 3, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–046] and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Timothy Sickler, Port Operations Chief, Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The phone number is (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Milwaukee has determined firework launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platforms will help ensure the safety of person and property at these events and help minimize the associated risk.

The safety zone will be in effect on July 3 and 4, 2001, from 9:25 p.m. (CST) until 10 p.m. (CST). The safety zone will encompass all waters bounded by the arc of a circle with a 1000 foot radius with its center in approximate position 43°02.40 N, 087°53.50 W encompass all waters within 1000-yards of a fireworks barge located approximately 1000 ft offshore of Veterans Park, Milwaukee Harbor. The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this rule under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone, and the zone is in an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for few hours on the day of the event. Vessel traffic can safely pass outside the proposed safety zone during the event. Traffic may be allowed to pass through the safety zone under Coast Guard escort with the permission of the Captain of the Port Milwaukee. Before the effective period, we will issue maritime advisories widely available to users of the Port of Milwaukee by the Ninth Coast Guard District Local Notice to Mariners, Marine information broadcasts, and facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (see **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–917 is added to read as follows:

§ 165.T09–917 Safety zone: Firstar fireworks display, Milwaukee, Harbor.

(a) *Location.* The safety zone will encompass all waters bounded by the arc of a circle with a 1000 foot radius with its center in approximate position 43° 02.40 N, 087° 53.50 W encompass all waters within 1000-feet of a fireworks barge located approximately 1000 feet offshore of Veterans Park, Milwaukee Harbor.

(b) *Effective time and date.* This section is effective from 9:25 p.m. (local time) until 10 p.m. (local time) on July 3rd, 2001. In the event the fireworks display is cancelled due to inclement weather, this section is effective during these same times on July 4th, 2001. The Coast Guard Captain of the Port Milwaukee and the designated Patrol Commander have the authority to terminate this event at any time. The designated on scene Patrol Commander may be contacted via VHF Channel 16.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Milwaukee, or his designated on scene representative.

Dated: June 6, 2001.

M.R. Devries,

Commander, U.S. Coast Guard, Captain of the Port, Milwaukee.

[FR Doc. 01–16483 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–065]

RIN 2115–AA97

Safety Zone; 4th of July Celebration, Weymouth, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the 4th of July Celebration Fireworks, July 3, 2001 in Weymouth, MA. The safety zone will temporarily close all waters of the Weymouth Fore River within a four hundred (400) yard radius of the fireworks barge. The safety zone prohibits entry into or movement within this portion of the Weymouth Fore River and is needed to protect the maritime public from the hazards posed by a fireworks display.

DATES: This rule is effective from 8:30 p.m. July 3, 2001 until 11:15 p.m. on July 3, 2001.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) David Sherry, Marine Safety Office Boston, Waterways Management Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about this event was not provided to the Coast Guard until June 14, 2001, making it impracticable to draft or publish a NPRM or a final rule 30 days in advance of its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to prevent traffic from transiting a portion of the Weymouth Fore River, Weymouth, Massachusetts, and provide for the safety of life on navigable waters. Additionally, this temporary safety zone is only for a 2 hour 45 minute long local event and should have negligible impact on vessel transits due to the fact that vessels can safely transit around the zone and that they are not precluded from using any portion of the waterway except the safety zone area itself.

Background and Purpose

This regulation establishes a safety zone on the waters of the Weymouth Fore River four hundred (400) yards around the fireworks barge located at 42°15′12″ N, 070°56′45″ W. The safety zone is in effect from 8:30 p.m. July 3, 2001 to 11:15 p.m. July 3, 2001. This safety zone prohibits entry into or movement within this portion of the Weymouth Fore River and is needed to protect the maritime public from the dangers posed by this event. Marine traffic may transit safely outside of the safety zone during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10é of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Weymouth Fore River during this event, the effect of this regulation will not be significant for several reasons: The minimal time that vessels will be restricted from the area, that vessels may safely transit outside of the safety zone, and advance notifications which will be made to the local maritime community by marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Weymouth Fore River from 8:30 p.m. July 3, 2001 until 11:15 p.m. July 3, 2001. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can safely pass outside of the safety zone during the event, the event is limited in duration, and the Coast Guard will issue maritime advisories before the effective period widely available to users of the Harbor by marine information broadcasts.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.

2. Add temporary § 165.T01–065 to read as follows:

§ 165.T01–065 Safety zone: 4th of July celebration, Weymouth, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of the Weymouth Fore River within a four hundred (400) yard radius of the fireworks barge at position 42°15′12″ N, 070°56′45″ W.

(b) *Effective date.* This section is effective from 8:30 p.m. July 3, 2001 until 11:15 p.m. on July 3, 2001.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: June 19, 2001.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 01–16482 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–090]

RIN 2115–AA97

Safety Zone: Fireworks Display, Lewis Bay, Hyannis, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone within a five hundred (500) yard radius of the fireworks barge located in Lewis Bay, Hyannis, Massachusetts, on July 2, 2001. The safety zone is needed to safeguard the public from possible hazards associated with a fireworks display. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

EFFECTIVE DATE: This rule is effective from 8 p.m. on July 2 until 10 p.m. on July 3, 2001.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Marine Safety Office Providence, 20 Risho Avenue, E. Providence, RI. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Casey L. Chmielewski at Marine Safety Office Providence, (401) 435–2335.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing a NPRM. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The Town of Barnstable is hosting a fireworks display in celebration of the 4th of July. This regulation establishes a safety zone in all waters within a five hundred (500) yard radius of the fireworks barge located approximately 1000 yards to the northeast of Dunbar Point, Hyannis, Massachusetts, approximate position 41°38.2′ N, 070°15.8′ W, on July 2, 2001 from 8 p.m. until 10 p.m., with an inclement weather date of July 3, 2001 from 8 p.m. until 10 p.m.. This safety zone is needed to protect the maritime community from possible hazards associated with a fireworks display. No vessel may enter the safety zone without permission of the Captain of the Port (COTP), Providence, Rhode Island.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the

regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The effect of this regulation will not be significant due to the late hour it is effective, the safety zone involves a very small area of Lewis Bay, Hyannis Massachusetts, allowing vessel traffic to safely transit around this safety zone, and extensive maritime advisories will be made in advance of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit Lewis Bay in the fireworks area. The safety zone will not have a significant impact on a substantial number of small entities due to the late hour it is effective, the safety zone involves a very small area of Lewis Bay, Hyannis Massachusetts, allowing vessel traffic to safely transit around this safety zone, and extensive maritime advisories will be made in advance of the event.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this rule and you have any questions concerning its provisions or options for compliance, please call LT Casey Chmielewski at (401) 435–2335. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this action under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This temporary rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard has considered the environmental impact of implementing this temporary rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reports and Record Keeping Requirements, Security Measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–090 to read as follows:

§ 165.T01–090 Safety zone: fireworks display, Hyannis, MA.

(a) *Location.* The safety zone includes all waters within a five hundred (500) yard radius of the fireworks barge area located approximately 1000 yards to the northeast of Dunbar Point, Hyannis, Massachusetts, approximate position 41°38.2′ N, 070°15.8′ W.

(b) *Effective date.* This section is effective from 8 p.m. until 10 p.m. on July 2, 2001. If the evolution is cancelled due to inclement weather, than this section is effective from 8 p.m. until 10 p.m. on July 3, 2001.

(c) *Regulations.* (1) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 18, 2001.

Mark G. VanHaverbeke,

Captain, U.S. Coast Guard, Captain of the Port, Marine Safety Office Providence.

[FR Doc.01–16587 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–043]

RIN 2115–AA97

Safety Zone; Festa Italiana 2001, Milwaukee Harbor, WI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Milwaukee Harbor for the Festa Italiana 2001 fireworks display. This safety zone is necessary to protect spectators and vessels from the hazards associated with the storage, preparation, and launching of fireworks. This safety zone is intended to restrict vessel traffic from a portion of Milwaukee Harbor, Milwaukee, Wisconsin.

DATES: This temporary rule is effective from 9:50 p.m. (CST) on July 19 until 10:25 p.m. (CST) on July 22, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–043] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Timothy Sickler, Port Operations Chief, Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The phone number is (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application did not allow sufficient time for the publication of an NPRM followed by a temporary final rule effective 30 days after publication. Any delay of the effective date of this rule would be contrary to the public interest by exposing the public to the known dangers associated with fireworks displays and the possible loss of life, injury, and damage to property.

Background and Purpose

This Safety Zone is established to safeguard the public from the hazards associated with the launching of fireworks on the Milwaukee Harbor, Milwaukee, Wisconsin. The size of the zone was determined by using previous experiences with fireworks displays in the Captain of the Port Milwaukee zone and local knowledge about wind, waves, and currents in this particular area.

The safety zone will be in effect on July 19 through 22, from 9:50 p.m. (CST) until 10:25 p.m. (CST). The safety zone will encompass all waters bounded by the following coordinates: from the point of origin at 43° 02.209′ N, 087° 53.714′ W; southeast to 43° 02.117′ N, 087° 53.417′ W; south to 43° 01.767′ N, 087° 53.417′ W; southwest to 43° 01.555′ N, 087° 53.772′ W; then north along the shoreline back to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Captain of the Port Milwaukee or his designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on scene representative. The Captain of the Port Milwaukee may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: The owners or operators of vessels intending to transit or anchor in the vicinity of Harbor Island in Milwaukee's outer harbor from 9:50 p.m. (CST) until 10:25 p.m. (CST) on July 19 through 22, 2001.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only thirty five minutes on three days and late in the day when vessel traffic is minimal. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative. Before the effective period, we will issue maritime advisories widely available to users of the Milwaukee Harbor.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (See **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you

wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34) (g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–930 is added to read as follows:

§ 165.T09–930 Safety Zone: Milwaukee Harbor, Milwaukee, WI.

(a) *Location.* All waters of the Milwaukee Harbor encompassed by the following coordinates: from the point of origin at 43° 02.209′ N, 087° 53.714′ W; southeast to 43° 02.117′ N, 087° 53.417′ W; south to 43° 01.767′ N, 087° 53.417′ W; southwest to 43° 01.555′ N, 087° 53.772′ W; the north along the shoreline back to the point of origin (NAD 83).

(b) *Effective times and dates.* From 9:50 p.m. until 10:25 p.m. on July 19 through 22, 2001, unless terminated earlier by the Coast Guard Captain of the Port Milwaukee or the designated on scene Patrol Commander.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Milwaukee or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) This safety zone should not adversely affect shipping. However, commercial vessels may request permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

Dated: June 6, 2001.

M.R. DeVries,

Commander, U.S. Coast Guard, Captain of the Port Milwaukee, Milwaukee, Wisconsin.

[FR Doc. 01–16586 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–046]

RIN 2115–AA97

Safety Zone; Manitowoc 4th of July 2001, Manitowoc, WI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones in the waters off the Manitowoc municipal marina and in Manitowoc Harbor for the Manitowoc 4th of July 2001 fireworks display. These safety zones are necessary to protect spectators and vessels from the hazards associated with the storage, preparation, and launching of fireworks. These safety zones will restrict vessel traffic from a portion of the Manitowoc municipal marina and Manitowoc Harbor, Manitowoc, Wisconsin.

DATES: This temporary rule is effective from 8:20 p.m. through 10:10 p.m. (CST) on July 4, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of

docket [CGD09–01–046] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Timothy Sickler, Port Operations Chief, Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The phone number is (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application did not allow sufficient time for the publication of an NPRM followed by a temporary final rule effective 30 days after publication. Any delay of the effective date of this rule would be contrary to the public interest by exposing the public to the known dangers associated with fireworks displays and the possible loss of life, injury, and damage to property.

Background and Purpose

These safety zones are established to safeguard the public from the hazards associated with the launching of fireworks off Manitowoc's municipal marina, Manitowoc, Wisconsin. The size of the zone was determined by using previous experiences with fireworks displays in the Captain of the Port Milwaukee zone and local knowledge about wind, waves, and currents in this particular area.

The safety zones will be in effect on July 4, 2001, from 8:20 p.m. through 10:10 p.m. (CST). The primary safety zone encompasses all waters bounded by the arc of a circle with a 840-foot radius with its center in approximate position 44° 06.05′ N, 087° 38.37′ W, offshore of the Manitowoc Yacht Club, Manitowoc, Wisconsin. The secondary safety zone, to be used in the event of inclement weather, encompasses all waters bounded by the arc of a circle with a 420-foot radius with its center in approximate position 44° 05.34′ N, 087° 38.58′ W, located in the Manitowoc Harbor approximately 420 feet from the mouth of the Manitowoc River. The sizes of the zones were determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Captain of the Port Milwaukee or his designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on scene representative. The Captain of the Port Milwaukee may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in the vicinity of Manitowoc municipal marina in Manitowoc from 8:20 p.m. (CST) until 10:10 p.m. (CST) on July 4, 2001.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only one hour and 50 minutes on one day and late in the day when vessel traffic is minimal. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative. Before the effective period, we will issue maritime advisories widely available to users of the Manitowoc municipal marina.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (See **ADDRESSES**.)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–930 is added to read as follows:

§ 165.T09–930 Safety Zone: Waters off Manitowoc's Municipal Marina, Manitowoc, Wisconsin.

(a) *Location.* The following areas are safety zones:

(1) All waters bounded by the arc of a circle with a 840-foot radius with its center in approximate position 44° 06.05′ N, 087° 38.37′ W, located approximately 840 feet offshore from the Manitowoc Yacht Club, Manitowoc, Wisconsin, and

(2) All waters bounded by the arc of a circle with a 420-foot radius with its center in approximate position 44° 05.34′ N, 087° 38.58′ W, located in the Manitowoc Harbor approximately 420 feet from the mouth of the Manitowoc River, Manitowoc, Wisconsin.

(b) *Effective periods.* The primary safety zone in paragraph (a)(1) of this section will be effective from 8:20 p.m. through 10:10 p.m. (CST) on July 4, 2001. In the event of inclement weather, the secondary safety zone in paragraph (a)(2) of this section will be effective at the same time.

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Milwaukee or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) This safety zone should not adversely effect shipping. However, commercial vessels may request permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

Dated: June 22, 2001.

M.R. DeVries,

Commander, U.S. Coast Guard, Captain of the Port, Milwaukee, Milwaukee, Wisconsin.

[FR Doc. 01–16584 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–072]

RIN 2115–AA97

Safety Zone; South Shore Frolics Fireworks Display, Milwaukee Harbor

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the South Shore Frolics fireworks display on July 13, 14, and 15, 2001. This safety zone is necessary to ensure the safety of persons and property in this area during the event. This safety zone is intended to restrict vessel traffic from a portion of Milwaukee Harbor.

DATES: This temporary final rule is effective from 9:45 p.m. through 11 p.m. on July 13, 14 and 15, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–072] and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Timothy Sickler, Port Operations Chief, Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The phone number is (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received with sufficient time to publish an NPRM followed by a temporary final rule that would be effective before the required effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Milwaukee has determined firework launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platforms will help ensure the safety of person and property at these events and help minimize the associated risk.

The safety zone will be in effect on July 13, 14 and 15, from 9:45 p.m. through 11 p.m. (CST). The safety zone will encompass all waters bounded by the arc of a circle with a 700-foot radius with its center in approximate position 42° 34.50 N, 087° 52.75 W, offshore of South Shore Park, Milwaukee Harbor. The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this rule under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone, and the activated zone is located in an area where the Coast Guard expects insignificant adverse impact to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for few hours each day of the event; vessel traffic can safely pass outside the proposed safety zone during the event; and traffic may be allowed to pass through the safety zone under Coast Guard escort with the permission of the Captain of the Port Milwaukee. Before the effective period, we will issue maritime advisories widely available to users of the Port of Milwaukee by the Ninth Coast Guard District Local Notice to Mariners, Marine information broadcasts, and facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (see **ADDRESSES**.)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an

environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–933 is added to read as follows:

§ 165.T09–933 Safety Zone: South Shore Frolics Fireworks Display, Milwaukee, Harbor.

(a) *Location.* The safety zone encompasses all waters bounded by the arc of a circle with a 700-foot radius with its center in approximate position 42° 34.50 N, 087° 52.75 W located approximately 700 feet offshore South Shore Park, Milwaukee Harbor.

(b) *Effective time and date.* This section is effective from 9:45 p.m. until 11 p.m. (local time) on July 13, 14 and 15, 2001. The Coast Guard Captain of the Port Milwaukee and the designated Patrol Commander have the authority to terminate this event at any time. The designated on scene Patrol Commander may be contacted via VHF Channel 16.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Milwaukee, or his designated on scene representative.

Dated: June 6, 2001.

M.R. DeVries,

Commander, U.S. Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 01–16583 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–066]

RIN 2115–AA97

Safety Zone; City of Lynn Fireworks, Lynn, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the City of Lynn Fireworks, July 4, 2001 in Lynn, MA. The safety zone will temporarily close all waters of Nahant Bay within a four hundred (400) yard radius of the fireworks barge. The safety zone prohibits entry into or movement within this portion of Nahant Bay and is needed to protect the maritime public from the hazards posed by a fireworks display.

DATES: This rule is effective from 8 p.m. through 10 p.m. on July 4, 2001.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA 02109, between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) David Sherry, Marine Safety Office Boston, Waterways Management Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about this event was not provided to the Coast Guard until June 13, 2001, making it impracticable to draft or publish a NPRM or a final rule 30 days in advance of its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to prevent traffic from transiting a portion of Nahant Bay, Lynn, Massachusetts, and provide for the safety of life on navigable waters. Additionally, this temporary safety zone is only for a 2-hour long local event and should have negligible impact on vessel transits due to the fact that vessels can safely transit around the zone and that they are not precluded from using any portion of the waterway except the safety zone area itself.

Background and Purpose

This regulation establishes a safety zone on the waters of Nahant Bay within a four hundred (400) yard radius around the fireworks barge located at 42°27′34″ N, 070°55′33″ W. The safety zone is in effect from 8 p.m. through 10 p.m. July 4, 2001. This safety zone prohibits entry into or movement within this portion of Nahant Bay and is needed to protect the maritime public from the dangers posed by this event. Marine traffic may transit safely outside of the safety zone during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that

Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of Nahant Bay during this event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels may safely transit outside of the safety zone, and advance notifications which will be made to the local maritime community by marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Nahant Bay from 8 p.m. through 10 p.m. July 4, 2001. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: vessel traffic can safely pass outside of the safety zone during the event, the event is limited in duration, and the Coast Guard will issue maritime advisories before the effective period widely available to users of Nahant Bay by marine information broadcasts.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.

2. Add temporary § 165.T01–066 to read as follows:

§ 165.T01–066 Safety Zone: City of Lynn Fireworks, Lynn, Massachusetts

(a) *Location.* The following area is a safety zone: All waters of the Nahant Bay within a four hundred (400) yard radius of the fireworks barge at position 42°27′34″ N, 070°55′33″ W.

(b) *Effective Date.* This section is effective from 8 p.m. through 10 p.m. on July 4, 2001.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: 19 June, 2001.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 01–16579 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

CGD01–01–074

RIN 2115–AA97

Safety Zone: Fireworks Display, Provincetown, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone within a five hundred (500) yard radius of the fireworks barge located in Provincetown Harbor, Provincetown, Massachusetts, on July 4, 2001. The safety zone is needed to safeguard the public from possible hazards associated with a fireworks display. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

EFFECTIVE DATE: This rule is effective from 8 p.m. on July 4 until 10 p.m. on July 5, 2001.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Marine Safety Office Providence, 20 Risho Avenue, E. Providence, RI. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Casey L. Chmielewski at Marine Safety Office Providence, (401) 435–2335.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing a NPRM. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

This regulation establishes a safety zone in all waters within a five hundred (500) yard radius of the fireworks barge located approximately 800 yards to the southeast of Provincetown, Massachusetts, approximate position 42°02′00″ N, 070°10′00″ W, on July 4, 2001 from 8 p.m. until 10 p.m., with an inclement weather date of July 5, 2001 from 8 p.m. until 10 p.m.. This safety zone is needed to protect the maritime community from possible hazards associated with a fireworks display. No vessel may enter the safety zone without permission of the Captain of the Port (COTP), Providence, Rhode Island.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves a very small area of Provincetown Harbor, Provincetown, Massachusetts. The effect of this regulation will not be significant due to the lateness of the hour, all vessel traffic may safely transit around this safety zone, and extensive maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit Provincetown Harbor in the fireworks area. The safety zone will not have a significant impact on a substantial number of small entities due to the lateness of the hour, all vessel traffic may safely transit around this safety zone, and the extensive maritime advisories that will be made.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this rule and you have any questions concerning its provisions or options for compliance, please call LT Casey Chmielewski at (401) 435–2335. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this action under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This temporary rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary rule under E.O. 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard has considered the environmental impact of implementing this temporary rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket.

List of Subjects

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–074 to read as follows:

§ 165.T01–074 Safety Zone: Fireworks Display, Provincetown, MA.

(a) *Location.* The safety zone includes all waters within a five hundred (500) yard radius of the fireworks barge area located approximately 800 yards to the southeast of Provincetown Harbor, Provincetown, Massachusetts, approximate position 42°02′00″ N, 070°10′00″ W.

(b) *Effective date.* This section is effective from 8 p.m. until 10 p.m. on July 4, 2001. If the evolution is cancelled due to inclement weather, than this section is effective from 8 p.m. until 10 p.m. on July 5, 2001.

(c) *Regulations.*

(1) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 18, 2001.

Mark G. VanHaverbeke,

Captain, U.S. Coast Guard, Captain of the Port, Marine Safety Office Providence.

[FR Doc. 01–16588 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7004–3]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Arcanum Iron & Metal, Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region V is publishing a direct final notice of deletion of the Arcanum Iron & Metal, Superfund Site (Site), located near the Village of Arcanum, Twin Township, Darke County, Ohio from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the State of Ohio, through the Ohio Environmental Protection Agency because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective August 31, 2001 unless EPA receives adverse comments by August 1, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Kenneth Glatz, Remedial Project Manager (RPM), Glatz.Kenneth@EPA.Gov or Gladys Beard, State NPL Deletion Process Manager, *Beard.Gladys@EPA.Gov*, (SR–6J), U.S. EPA Region V, 77 W. Jackson, Chicago, Il 60604.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region V Library, 77 W. Jackson, Chicago, IL, 60604 (312) 353–5821, Monday through Friday 8:00 a.m. to 4:00 p.m.; Arcanum Public Library, 101 North Street, Arcanum, Ohio (937) 692–8484; Monday through Thursday 9:00 a.m to 8:00 p.m. and Friday and Saturday 9:00 a.m. to 5:00 p.m., Ohio Environmental Protection Agency, 122 S. Front Street, Lozarus Government Building, Columbus, OH 43215, (614) 644–3020, Monday through Friday 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Kenneth Glatz, Remedial Project Manager at (321) 886–1434, Glatz.Kenneth.@EPA.Gov or Gladys Beard, State NPL Deletion Process Manager at (312)886–7253, Beard.Gladys@EPA.Gov or 1–800–621–8431, (SR–6J), U.S. EPA Region V, 77 W. Jackson, Chicago, IL 60604.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region V is publishing this direct final notice of deletion of the Arcanum Iron & Metal, Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective August 31, 2001 unless EPA receives adverse comments by August 1, 2001 on this notice on this notice of deletion. If adverse comments are received within the 30-day public comment period on this notice of deletion, EPA will publish a timely

withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Arcanum Iron & Metal, Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with Ohio on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) Ohio concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the "Proposed Rules" section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice of deletion, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location

The Arcanum Iron & Metal (AIM) Site is located in west-central Ohio, approximately 25 miles northwest of Dayton, Ohio, in Twin Township, Darke County, Ohio. The site occupies about 4.5 acres and is just southeast of the Village of Arcanum, Ohio.

Site History

The AIM Site is zoned for light industrial or commercial operations. There is a Federal Lien on 18.341 acres of property owned by Mr. Harold M. Shane, which includes the 4.5 acre AIM Site. The lien is dated August 31, 1989, and was sent to the Darke County Recorder in Greenville, Ohio on September 19, 1989. EPA and the State of Ohio negotiated a Consent Decree in places of the lien on the property.

The AIM Site consisted of a lead battery reprocessing facility from the early 1960's until 1982. The AIM facility processed automobile and industrial batteries to recover the lead cores. This process generated by-product plastic, rubber casings and battery acid. The battery acid was dumped on the ground. The plastic and rubber by-products were recycled. An on-site lead smelter, used in the lead recovery step, may have emitted lead-containing particulates during operations.

During processing, lead oxide sludge from the batteries was stored on site. During dry weather the lead oxide sludge dust was controlled by water sprays. Run-off from the pile, contaminated with lead oxide particulate and soluble lead salts, flowed to ground surface depressions. The battery casings were ground and stockpiled for recycling. The battery casing chips also contained high concentrations of lead. During rainstorms lead particles were washed into on-site surface ponds. Approximately 3,200 cubic yards of battery casing chips were stored in the Saw Building, and about 800 cubic yards were in a pile at the southeastern portion of the Site, near the smelter building. A drainage pipe connecting the AIM Site to Sycamore Ditch also caused contamination of the ditch sediments.

The battery casing chips, lead oxide sludge, and contaminated soils were exposed and represented a continuing source of contamination at the AIM Site.

Site History

- The earliest date the State of Ohio has on file regarding the AIM site is 1964, when a fish kill was reported in Painter Creek caused by contamination flowing from Sycamore Ditch.
- In 1972, the Ohio EPA personnel visited the AIM Site in response to another fish kill in the local watershed, and determined that the source of the fish kill came from the AIM Site.
- In October 1973, the Ohio EPA's Division of Waste Management and Engineering made the first of many site visits to investigate AIM's operation.
- Over the next ten years, the Ohio EPA conducted data collection activities and took legal actions against AIM to install on-site water treatment and waste storage systems.

- In January 1974, the Ohio EPA requested that the owner of the AIM Site apply for a permit to install an acid treatment system.
- The Ohio EPA was unable to get AIM to install the treatment system and adhere to the conditions and restrictions of the permit.
- In June 1979, the Ohio Attroney General on behalf of the Ohio EPA initiated enforcement proceedings against AIM.
- In October 1979, a Consent Decree was signed by the site owner to clean up the site. However, cleanup efforts were not satisfactorily completed to Ohio EPA's satisfaction. Subsequently, AIM was found to be in contempt of court in April 1980.
- From April 1980, the Ohio Attroney General's office continued to pursue legal actions for the cleanup of the AIM Site.
- In September 1980, a Citation and Notification of Penalty were issued to AIM for failure to install a treatment system.
- In April 1982, the Ohio EPA requested that legal action be taken to close the AIM facility.
- The AIM Company ceased operations at the AIM Site in December 1982.
- The processing equipment was removed from the site by the owner in January 1983.
- The Site was proposed for listing on the NPL on December 30, 1982, 47 FR 58476 and was made final on the NPL on September 8, 1983, 48 FR 40658.
- The owner of the AIM Site had also operated a downtown Arcanum facility AIM II as a battery processing plant, prior to startup of the present AIM facility location.
- In January and February of 1986 approximately 300 cubic yards of lead-contaminated soils from AIM II were placed on the AIM Site during an emergency removal action conducted by the owner of the two Sites.

Remedial Investigation and Feasibility Study (RI/FS)

Groundwater investigations at the AIM Site have shown historical groundwater contamination of up to 980 parts per billion lead. The 1985 Remedial Investigation (RI) detected lead in 2 of 8 residential wells and 8 of 15 ground-water monitoring wells sampled. Concentrations in three monitoring wells exceeded the interim primary drinking water standard (50 ug/l) at the time the Record of Decision (ROD) was signed on September 26, 1986. However, sampling logs indicated turbidity in these samples. The same sampling methodology was used in 1989, and lead was detected in 20 of 22 unfiltered monitoring well samples, but filtered samples taken during the same sampling event were found to be mostly non-detects, indicating that lead detections were attributable to turbidity. Based upon groundwater monitoring from 1995 through 2000 by the U.S. Army Corps of Engineers (USACE), using low flow purging and sampling methodology (not used previously) to minimize turbidity, there is no evidence of groundwater contamination at the AIM Site.

Record of Decision Findings

The Record of Decision (ROD) was signed on September 26, 1986. The remedy consisted of the excavation, treatment, and disposal of battery casing chips and cleaning up lead-contaminated soils to industrial/commercial cleanup levels. Lead-contaminated sediments in Sycamore Ditch were excavated, treated on-site, and disposed of in an off-site U.S. EPA-approved landfill. The office, smelter, and saw buildings were decontaminated, demolished and hauled to a U.S. EPA approved landfill. All equipment, on-site drums (left by previous contractors), two flat-bed trailers, and a 500 gallon tank were demolished and disposed of along with the demolition debris. A ROD Amendment was signed on June 18, 1997, after the completion of a new human health and ecological risk assessment. The RI investigations indicated that there were lead levels above drinking water standards in several of the residential wells in the area. The wells were resampled, post ROD, using EPA recommended low-flow sampling methods. A risk analysis was conduced by the USACE using the results from this study. It indicated that there was no unacceptable human health or ecological risk at the site. Based on the results of the risk analysis a ROD amendment was issued in June, 1997, removing the ground water remedy component from the ROD.

The ROD Amendment signed on June 18, 1997, did not specify any remedial activity for groundwater. Based upon eight separate groundwater monitoring events to date: 1985 RI, 1989 site investigation, plus five sampling events by the USACE between 1996 and 1998, and three by the Settling Defendants (two conducted post RA), there is no evidence of groundwater contamination above drinking water standards. The U.S. EPA in consultation with the Ohio EPA, concluded that no groundwater remediation is necessary. All groundwater monitoring wells have been abandoned consistent with Ohio EPA guidelines.

The Consent Decree (CD) with the Settling Defendants was lodged on September 11, 1998, in the U.S. District Court for Southern District of Ohio, Western Division, Dayton, Ohio, for remedial design (RD) and remedial action (RA); and was entered by the Court on April 12, 1999. On October 19, 1999, the U.S. District Court entered a separated CD with Mr. Harold Shane, owner of the AIM Site property.

Characterization of Risk

The AIM Final Remedial Action Report was approved by EPA on July 26, 2000. The AIM Site remedial action performed by the AIM Settling Defendants, resulted in a clean closure. On December 1, 1999, the U.S. EPA, the Ohio EPA, and the USACE conducted the final inspection of the AIM Site. The Preliminary Close Out Report (PCOR) was issued in 1999. Since then two rounds of groundwater sampling have been completed, the groundwater monitoring wells have been properly abandoned, and two post excavation sampling events for Sycamore Ditch have confirmed that no contamination above clean-up levels has been left on or off the site. A Final Close-out Report was issued in March 2001.

Response Actions

- The RD/RA Work Plan was approved by the U.S. EPA on July 14, 1999.
- The Notice of Authorization to Proceed with RA was issued on July 14, 1999.
- The Pre-Construction Inspection Meeting was conducted on August 18, 1999.
- The RA construction commenced on Monday, August 30, 1999.
- The AIM Site was cleared of all trees and the cleared trees were disposed of in accordance with State of Ohio requirements.
- The drums left on-site by previous contractors, were cleaned, crushed, and disposed of along with the demolition debris.
- The office, smelter, and saw building were decontaminated, demolished and hauled to a U.S. EPA-approved landfill.
- All equipment, including the flat-bed trailers and a 500 gallon tank were demolished and disposed of along with the demolition debris from the buildings.
- No underground storage tanks were found on-site.
- Post-Excavation Confirmatory Soil Sampling was conducted to confirm that all soils with lead contamination above

400 parts per million, had been excavated and removed from the AIM Site.

- About 200 cubic yards of lead-contaminated sediments in Sycamore Ditch were excavated, treated on-site, and disposed of in an off-site U.S. EPA-approved landfill.
- Over 30,000 tons of treated battery casing chips, treated lead-contaminated soils, and construction debris were hauled off-site to a U.S. EPA-approved landfill.
- All areas disturbed during the RA were backfilled with clean backfill and a minimum of 6 inches of topsoil was placed over the backfill.
- The Site was regraded to promote positive drainage and prevent ponding of water.
- EPA, and the UACE conducted site inspections on August 18, 1999, September 22, 1999, October 20, 1999, and November 17, 1999.
- Air and groundwater monitoring were performed during the RA.
- The access road (Pop Rite Lane) to the AIM Site was resurfaced after completion of the AIM Site RA. The private road was used by contractor trucks to transport and dispose of the battery casing chips, contaminated soils, demolition debris, as well as to haul backfill to the AIM Site.
- Restrictive covenants that would limit land or water use will not need to be executed since the RA resulted in a clean up that allows unlimited use and unrestricted exposure. Cleanup Standards

A clean closure was implemented at the AIM Site. No hazardous substances remain on the AIM Site which present a health risk.

Five-Year Review—If Applicable

The selected RA utilized permanent solutions and considered the use of alternative treatment technologies to the maximum extent practicable. There is no health risk from remaining exposure to lead and therefore, the use of the AIM Site is not restricted. Consequently, a five-year review will not be required in accordance with section 121 of CERCLA.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the State of Ohio, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, are necessary. Therefore, EPA is deleting the AIM Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective August 31, 2001 unless EPA receives adverse comments by August 1, 2001. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 20, 2001.

David A. Ullrich,

Acting Regional Administrator, Region V.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the entry for "Arcanum Iron & Metal, Darke County, OH."

[FR Doc. 01–16287 Filed 6–29–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1160–05; I.D. 061401A]

RIN 0648–A082

Fisheries of the Exclusive Economic Zone Off Alaska; Correction to the Emergency Interim Rule; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to the emergency interim rule for Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska; Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska; Closure.

SUMMARY: NMFS amends an emergency interim rule by removing the 150 metric ton (mt) of the seasonal allocation of Pacific halibut prohibited species catch (PSC) apportioned to the "shallow water trawl fishery" during June 10 to July 1. NMFS is also prohibiting directed fishing by vessels using trawl gear in the Gulf of Alaska (GOA) for species that comprise the shallow water species fishery, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary to preserve limited bycatch amounts of Pacific halibut while NMFS reviews the seasonal allocation of GOA Pacific cod total allowable catch (TAC) recommended by the North Pacific Fishery Management Council (Council).

DATES: Tables 24 and 25 to the preamble are effective 1200 hrs, Alaska local time (A.l.t.), June 27, 2001, through 2400 hrs, A.l.t., July 17, 2001. The closure for the shallow water species fishery by vessels using trawl gear in the GOA is effective 1200 hrs, A.l.t., June 27, 2001, through 1200 hrs, A.l.t., July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations

governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Correction to the Emergency Interim Rule

In December 2000, the Council recommended seasonal Pacific halibut PSC apportionments in order to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of Pacific halibut. The seasonal apportionments of the Pacific halibut PSC were published in Tables 24 and 25 of the emergency interim rule implementing the Steller sea Lion Protection Measures for the Groundfish Fisheries Off Alaska; Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001). However, at an emergency January 12, 2001, meeting, NMFS presented the Council with the 2001 Steller sea lion protection measures, one of which separates the GOA Pacific cod TAC into two separate seasonal allowances. The A season, January 1, 2001, through noon, A.l.t., June 10, 2001, is allocated 60 percent of the annual TAC. The B season, starting at noon, A.l.t., June 10, 2001, through midnight, A.l.t., December 31, 2001, is allocated 40 percent of the annual TAC. In response to the new seasonal apportionments of the GOA Pacific cod TAC, the Council requested NMFS to also reapportion seasonal Pacific halibut PSC amounts to support the seasonal Pacific cod fisheries (66 FR 17087, March 29, 2001).

At its April 2001 meeting, the Council recommended delaying the Pacific cod "B" season from June 10 to September 1. When the Council made this recommendation, it took no action on the Pacific halibut PSC seasonal allowance, i.e., the seasonal allowance became available on June 10. At the Council's June 2001 meeting, certain industry representatives expressed their concern that fishermen could start fishing for the other species in the "shallow water trawl fishery" and could catch substantial amounts of the Pacific halibut PSC seasonal limit, leaving insufficient amounts of this seasonal limit to support a Pacific cod fishery "B" season.

Regulations at § 679.21(d)(3)(iii) authorize apportionments of the trawl Pacific halibut PSC limit to the "shallow water trawl fishery." This apportionment is further allocated seasonally. The current seasonal allowance is available June 10 to July 1. In response to industry concerns, at its June meeting, the Council recommended that the 150 mt seasonal apportionment of the Pacific halibut trawl PSC available during June 10 to July 1 season be held aside to preserve bycatch amounts of Pacific halibut that would be necessary to support a "B" season that may occur during the latter part of the year.

NMFS is reviewing the Council's recommendation to delay the Pacific cod "B" season from June 10 to September 1 and will make a final determination on that recommendation by July 17.

Accordingly, Tables 24 and 25 of the Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska; Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001) are adjusted to read as follows:

TABLE 24 - FINAL 2001 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR. THE HOOK-AND-LINE SABLEFISH FISHERY IS EXEMPT FROM HALIBUT PSC LIMITS.

(Values are in mt)

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
Jan 1-Apr 1	550 (28%)	Jan 1-May 7	205 (70%)	Jan 1-Dec 31	10 (100%)
Apr 1-Jun 10	400 (20%)	May 17-Aug 31	Any rollover		
Jun 1-Jul 1	0 (0%)	Aug 31-Dec 31	85 (30%)		
Jul 1-Sep 1	600 (7%)				
Oct 1-Dec 31	300 (15%)				
Total	1,850 (100%)		290 (100%)		10 (100%)

TABLE 25 - FINAL 2001 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX.

(Values are in metric tons)

Season	Shallow-water	Deep-water	Total
Jan. 20-Apr. 1	450	100	550
Apr. 1-Jun. 10	100	300	400
Jun. 10-Jul. 1	0	0	0
Jul. 1-Sep. 1	200	400	600
Subtotal			
Jan. 20-Sep. 30	750	.....	
Oct. 1-Dec. 31	.....	.....	300

TABLE 25 - FINAL 2001 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX.—Continued

(Values are in metric tons)

Season	Shallow-water	Deep-water	Total
Total	.....	.....	1,850

No apportionment between shallow-water and deep-water fishery complexes during October 1 through December 31.

Closure

The GOA trawl shallow-water species fishery started June 10, 2001, under the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001) and adjusted (66 FR 17087, March 29, 2001). Because this rulemaking removes the trawl Pacific halibut PSC for the June 10 to July 1 season, the Pacific halibut PSC allocation will no longer be available for the current shallow water species fishery.

Consequently, NMFS is prohibiting directed fishing for species included in the shallow-water species fishery by vessels using trawl gear in the GOA,

except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock, since such gear is expected to use little, if any, of the Pacific halibut PSC allocation. The species and species groups that comprise the shallow-water species fishery are: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ≥other species." Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this emergency interim rule is necessary for the conservation and management of the groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI) and GOA. The Regional Administrator also has determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This amendment has been determined to be not significant for purposes of Executive Order 12866. This amendment to an emergency interim rule contains no reporting, recordkeeping, or compliance requirements, and no relevant Federal rules exist that may duplicate, overlap, or conflict with this rule.

This amendment must be implemented immediately to avoid foregone catch in the B season GOA trawl gear Pacific cod fishery. By removing the halibut PSC available to trawl gear from the June 10 through July 1 seasonal allowance until subsequent interim rulemaking is implemented by mid-July 2001 to establish new fishing seasons for the shallow-water species fishery by vessels using trawl gear and other Steller sea lion protection measures for the second half of 2001, this amendment will accommodate the new Pacific cod season and optimize the harvest of Pacific cod. Therefore, NMFS finds that good cause exists to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to optimize the harvest of GOA Pacific cod constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Because this emergency interim rule is not subject to the requirement to provide notice or an opportunity for comment by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Thus, no initial or final regulatory flexibility analysis has been prepared.

Dated: June 26, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–16574 Filed 6–27–01; 4:09 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 127
Monday, July 2, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 7

[Docket No. 01–15]

RIN 1557–AB76

Electronic Banking

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its regulations in order to facilitate national banks' ability to conduct business using electronic technologies, consistent with safety and soundness. This proposal groups together new and revised regulations addressing: National banks' exercise of their Federally authorized powers through electronic means; the location, for purposes of the Federal banking laws, of a national bank that engages in electronic activities; and the disclosures required when a national bank provides its customers with access to other service providers through hyperlinks in the bank's website or other shared electronic "space."

DATES: Comments must be received by August 31, 2001.

ADDRESSES: Please send your comments to: Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219, Attention: Docket No. 01–15. You may make an appointment to inspect and photocopy comments at the same location by calling (202) 874–5043. In addition, you may fax your comments to (202) 874–4448 or electronic mail them to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: Stuart Feldstein, Assistant Director, or Heidi M. Thomas, Counsel, Legislative and Regulatory Activities, at (202) 874–5090; James Gillespie, Assistant Chief Counsel, at (202) 874–5200; or Clifford Wilke, Director, Bank Technology, at (202) 874–5920.

SUPPLEMENTARY INFORMATION:

Background

Automation, the Internet, wireless communications, and other technologies are impacting not just how financial products and services are delivered, but also the substantive characteristics of those products and services.[1] By the end of 2000, approximately 37 percent of national banks offered Internet banking via transactional World Wide Web (Web) sites, with another 18 percent expecting to offer Internet banking services in the future.[2] By the end of 2003, an estimated 25 million to 40 million households will bank on-line.[3]

The OCC has approved a number of activities involving innovative uses of new technology, including the establishment of transactional Web sites, virtual marketplaces, Internet access services, and electronic payment systems. We have also permitted national banks to provide digital certification and electronic correspondent banking services.[4]

To ensure that electronic banking activities are conducted consistent with bank safety and soundness, we have issued guidance addressing supervisory issues relating to banks' use of technology.[5] Together with the other Federal banking agencies, we have recently issued guidelines prescribing information security standards that implement the requirements of the Gramm-Leach-Bliley Act (GLBA).[6] We also have issued a comprehensive handbook on Internet banking that discusses business and technical issues associated with providing goods and services via the World Wide Web, the risks presented by these activities, and the OCC's procedures for Internet-related examinations.[7] In addition, we recently issued "The Internet and the National Bank Charter," as part of the Comptroller's Corporate Manual (January 2001). These and other issuances, including Internet-related regulatory updates, are available on our Electronic Banking website.

Finally, we have initiated a review of the OCC's regulations with a view toward removing unnecessary impediments to national banks' use of technology. In an advance notice of proposed rulemaking (ANPR) published on February 2, 2000,[8] the OCC invited public comment on issues involving Internet banking and other uses of electronic technology. Specifically, the ANPR focused on three issues: (1) How should the OCC adapt its regulations and supervisory policies to facilitate national banks' use of electronic technology consistent with bank safety and soundness? (2) What statutes can the OCC interpret more flexibly to accommodate new technologies? and (3) How can the OCC enhance the operational flexibility of banks engaging in electronic banking consistent with bank safety and soundness?[9]

The OCC received 16 comments on the ANPR, including 7 from banks, 6 from trade associations, 2 from individuals, and 1 from a company that provides information processing

[1] John D. Hawke, Jr., "The Internet Impact," Independent Banker, March 2001; Veronica Agosta, "Nation's Small Banks Have Big Plans for the Internet," The American Banker, March 9, 2001, at 5; Leslie Walker, "E-Mail Money Gains Currency," The Washington Post, October 5, 2000, at E1; Steve Marlin, "B2B: Swirling E-Marketplace Pulls in Banks," Bank Systems & Technology, June 2000, at 32; "Online Finance Survey: Paying Respects," The Economist, May 20, 2000, at 24; Carol Power, "Banks Start to Click into Wireless Banking," The American Banker, June 7, 2000, at 16.

[2] *See* OCC Internet Banking Questionnaire, December 31, 2000.

[3] "Online Finance Survey: Branching Out," The Economist, May 20, 2000, at 19.

[4] The OCC has established a website that contains information relating to electronic banking activities. *See www.occ.treas.gov/netbank/netbank.htm* (Electronic Banking website). The site includes a listing of opinions, approval letters, supervisory guidance, and other issuances on this subject and provides links to the documents listed.

[5] *See, e.g.*, OCC Bulletin 98–3, Technology Risk Management—Guidance for Bankers and Examiners (February 4, 1998).

[6] 66 FR 8616 (Feb. 1, 2001) (information security guidelines issued jointly by the OCC, the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision). These guidelines implement the requirements of section 501(b) of GLBA, Pub. L. 106–102, sec. 501(b), 113 Stat. 1338, 1436–37 (Nov. 12, 1999), *codified at* 15 U.S.C. 6801.

[7] Comptroller's Handbook, Other Income Producing Activities: Internet Banking (Oct. 1999).

[8] 65 FR 4895 (Feb. 2, 2000).

[9] Section 729 of GLBA requires the OCC and the other Federal banking agencies to conduct a study of banking regulations pertaining to the delivery of on-line financial services and to make recommendations on adapting existing regulations and legislative requirements to on-line banking and lending. We noted in the ANPR that commenters' suggestions would be helpful in formulating recommendations for legislative action or for actions that may be appropriately undertaken on an interagency basis. We continue to invite commenters to address these points.

management, outsourcing services, and application software to banks. The commenters strongly supported the OCC's initiative, emphasizing that outdated and inflexible regulations are one of the largest obstacles banks face as they attempt to adopt new technologies. The comments offered suggestions in each of the three areas identified in the ANPR and raised a wide variety of additional issues.

After reviewing these comments, the OCC has developed a proposed rule to update its regulations to reflect national banks' use of new technologies and to provide simpler, clearer guidance to banks engaging in electronic activities.

Shortly after the ANPR was published, Congress passed the Electronic Signatures in Global and National Commerce Act (the E-Sign Act), which was enacted on June 30, 2000.[10] Among other provisions, the E-Sign Act establishes certain uniform Federal rules concerning the use of electronic signatures and records in commercial and consumer transactions and establishes certain requirements for making disclosures to consumers electronically. Although it does not require implementing regulations, the E-Sign Act gives the OCC (and other Federal and state regulatory agencies) authority to interpret the Act's requirements with respect to the statutes they administer, subject to specified limitations. The OCC is considering whether it would be appropriate to further revise its regulations in light of the E-Sign Act. Any such revisions would be undertaken in a separate rulemaking, however, and are, accordingly, not covered by this proposal.

Section-by-Section Analysis of the Proposal

In the following discussion, the changes included in this proposal are grouped in three categories: national bank powers, location with respect to the conduct of electronic activities, and safety and soundness requirements for shared electronic "space."

A. National Bank Powers

1. National Bank Finder Authority (revised § 7.1002)

The OCC has long permitted a national bank to act as a finder to bring together buyers and sellers of financial and nonfinancial products and services. Under our current rules, a national bank, acting as a finder, may identify potential parties, make inquiries as to interest, introduce or arrange meetings of interested parties, and otherwise bring parties together for a transaction that the parties themselves negotiate and consummate.[11] National banks have used the finder authority to engage in several new activities made possible by technological developments, particularly the Internet.[12]

The proposal makes several changes to section 7.1002. First, the proposal clarifies that it is part of the business of banking for a national bank to engage in finder activities. This provision codifies the position the OCC has taken in recent interpretative letters.[13]

Second, the proposal adds a number of specific examples illustrating the full range of finder activities that we have authorized. For example, the proposal states that a national bank may communicate information about third-party providers, their services and products, and proposed offering prices and terms to potential markets. These examples are illustrative and not exclusive, and the OCC may find new activities to be authorized under the finder authority that are not included in the examples.

Finally, the current rule contains the express statement that acting as a finder does not include activities that would characterize the bank as a broker under applicable Federal law. Like other aspects of the financial services business, the concept of what constitutes acting as a broker is changing in response to technology and is expanding in some Federal regulatory regimes.[14] Accordingly, the proposed rule restates the exclusion contained in the current rule to provide that the authority to act as a finder does not enable a national bank to engage in activities that would characterize the bank as a broker under Federal law that are not otherwise permissible for national banks. This change is prompted in response to changes in the definition of "broker" under Federal law and does not affect whether activities regulated as brokerage under state law are permissible for a national bank. In addition, as under the current regulation, a national bank acting as finder may not represent or bind either of the parties to a transaction, nor may it take title to goods as finder.

2. Electronic Banking—Scope (new Subpart E and § 7.5000)

The proposal creates a new Subpart E to part 7, which collects regulations pertaining to electronic activities. New section 7.5000 describes the scope of Subpart E, which addresses national

[10] Pub. L. 106–2299, 114 Stat. 464 (June 30, 2000).

[11] 12 CFR 7.1002.

[12] *See* OCC Conditional Approval No. 369 (Feb. 25, 2000) (national bank may, incidental to its hosting of a virtual mall, provide at that site access to a limited amount of nonfinancial information (e.g., information on current events and weather) that is necessary to attract persons to the virtual mall site); OCC Interpretive Letter No. 875, *reprinted in* [Current Transfer Binder] Fed. Banking L.Rep. (CCH) ¶ 81–369 (Oct. 31, 1999) (the components of Internet services package that involve hosting of commercial web sites, registering merchants with search engines and obtaining URLs, and electronic storage and retrieval of the data set for a merchant's on-line catalog are permissible finders activities authorized for national banks pursuant to 12 U.S.C. 24(Seventh)); OCC Conditional Approval No. 221 (Dec. 4, 1996) (national banks, in the exercise of their finder authority, may establish hyperlinks between their home pages and the Internet pages of third party providers so that bank customers will be able to access those non-bank web sites from the bank site); Letter from Julie L. Williams, Chief Counsel, October 2, 1996 (unpublished) (national bank as finder could use electronic means to facilitate contacts between third party providers and potential buyers); OCC Interpretive Letter No. 611, reprinted in [1992–1993 Transfer Binder] Fed. Banking L. Rep. (CCH) P 83,449 (Nov. 23, 1992) (national bank linking non-bank service providers to its communications platform of smart phone banking services was within its authority as a finder "in bringing together a buyer and seller;" national banks may act as finders by providing to their customers links to non-banking, third-party vendors' Internet web sites); OCC Interpretive Letter No. 516, reprinted in [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) P 83,220 (July 12, 1990) (national banks as finder may provide electronic communications channels for persons participating in securities transactions).

[13] *See, e.g.*, OCC Interpretive Letter No. 824 (Feb. 27, 1998) (determining, in the context of insurance activities, that the "finder function is an activity authorized for national banks under 12 U.S.C. 24(Seventh) as part of the business of banking."). The OCC makes this determination pursuant to its authority under section 24(Seventh) to authorize activities as part of the business of banking. *NationsBank* v. *Variable Annuity Life Insurance Co.*, 513 U.S. 251, 258 n.2 (1995) (VALIC) ("We expressly hold that the "business of banking" is not limited to the enumerated powers in [section] 24(Seventh) and that the Comptroller therefore has discretion to authorize activities beyond those specifically enumerated."). In VALIC, the Court noted that the Comptroller's exercise of discretion is subject to a reasonableness standard. *Id.* It is clear that our determination that finder activities are part of the business of banking satisfies this standard. *See Norwest Bank* v. *Sween Corporation*, 118 F.3d 1255 (8th Cir. 1997) (determining that finder activities were authorized for a national bank because "allowing banks to use their expertise as an intermediary effectuating transactions between parties facilitates the flow of money and credit through the economy."). The *Sween* court did not distinguish between activities that are "part of" the business of banking and those that are "incidental to" that business, relying, instead, on the pre-VALIC formulation of the analysis as whether an activity is "closely related to an express power and is useful in carrying out the business of banking." *Id.* at 1260. The court's conclusions are nonetheless clear that finder activities are authorized pursuant to section 24(Seventh) and that the Comptroller's determination to that effect, embodied in the OCC's regulations, was a reasonable construction of the statute.

[14] *See, e.g.*, "SEC Redefines What Triggers B/D Registration," VII *Compliance Rep.* 1 (April 10, 2000) and "On-line Brokerage: Keeping Apace of Cyberspace," Report of Laura S. Unger, Commissioner, U.S. Securities and Exchange Commission 98–106 (Nov. 1999).

banks' use of electronic technology to deliver products and services, consistent with safety and soundness.

3. Electronic Banking Activities That Are Part of, or Incidental to, the Business of Banking (§ 7.5001)

The rapid development of new technologies requires banks to be able to respond quickly and effectively to changing customer needs. As they take up the new lines of business and offer the new financial products needed to serve their customers, national banks must continually evaluate their authority, pursuant to 12 U.S.C. 24(Seventh), to conduct electronic activities that are part of, or incidental to, the business of banking.[15] Proposed new § 7.5001 assists banks that are contemplating new electronic activities by identifying the factors the OCC uses to determine whether the electronic activity would be authorized pursuant to section 24(Seventh).

Section 7.5001(a) provides the purpose and scope of the new section and describes the general parameters of national banks' ability to engage in electronic activities. First, it sets out expressly the OCC's authority to impose conditions on the exercise of newly authorized activities if necessary to ensure that they are conducted safely and soundly and in accordance with applicable law and supervisory policies. Second, it clarifies that state law applies to a national bank's conduct of electronic activities to the extent it would apply if the activity were conducted through traditional means. The provision clarifies that the same analysis governs the applicability of state law to Federally authorized activities that national banks conduct whether using new technologies or using more traditional means.[16]

Electronic banking activities that are part of the business of banking (new § 7.5001(b)). Proposed § 7.5001(b) provides that an electronic activity is authorized for national banks as part of the business of banking if the activity is permitted under 12 U.S.C. 24(Seventh) or other statutory authority applicable to national banks, or otherwise constitutes part of the business of banking. The proposal sets forth four factors the OCC considers in determining whether an electronic activity is part of the business of banking. A proposed activity does not necessarily have to satisfy all four criteria in order to be permissible. Rather, we recognize that one or more of these factors may predominate, depending on the specific facts and circumstances presented.[17]

The first factor is whether the electronic activity is functionally equivalent to, or a logical outgrowth of, a recognized banking activity. This factor is based on judicial precedents approving activities that have traditionally been performed by banks, that are functionally similar to recognized banking activities, or that represent advances in recognized banking practices.[18]

The second factor that we consider is whether the proposed activity strengthens the bank by benefitting its customers or its business. Courts have long recognized that banks' ability to serve the needs of their customers by offering appropriate products and services is crucial to the capability of national banks to compete successfully. Therefore, the courts have also approved many activities on the basis that they benefit a bank's customers or the bank's business itself.[19] Examples of the types of activities the OCC would look to that would benefit bank customers or may be useful or convenient to banks include those where the activity increases service, convenience, or options for bank customers or lowers the cost to banks of providing a product or service.

The third factor that we consider in determining whether an electronic activity is part of the business of banking is whether the activity presents the types of risk that banks are experienced in managing.[20]

Finally, the proposal recognizes the relevance of state law in the analysis the OCC conducts when it receives requests regarding the permissibility of new electronic activities for national banks. Since the statutory reference to the "business of banking" does not imply that there are two distinct businesses of banking, one for Federally-chartered and another for state-chartered banks, activities that are recognized as permissible for state banks are at least a relevant factor in determining whether an electronic activity is part of the business of banking.[21]

Electronic activities that are incidental to the business of banking (new § 7.5001(c)). We are also proposing to set forth the factors the OCC considers in determining whether an electronic activity is incidental to the business of banking. In *Arnold Tours, Inc.* v. *Camp*, 472 F.2d 427, 432 (1st Cir. 1972), the court held that a national bank's activity is authorized as an incidental power if it is convenient or useful in connection with the performance of one of the bank's established activities pursuant to the five express powers enumerated in 12 U.S.C. 24(Seventh). Consistent with the Supreme Court's holding in *VALIC* that national banks' authority to engage in the business of banking is not limited to the five express powers, proposed § 7.5001(c) updates this standard to provide that an activity is incidental to the business of banking if it is convenient or useful to an activity that is specifically authorized for national banks or to an activity that is otherwise part of the business of banking.

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[15] *VALIC*, 513 U.S. at 258.

[16] In brief, state law applies to a national bank's exercise of a Federally authorized activity if a Federal statute directs that result or if the state law is found to apply under principles of Federal preemption derived from the Supremacy Clause of the U.S. Constitution and applicable judicial precedent. *See, e.g., Barnett Bank* v. *Nelson*, 517 U.S. 25 (1996).

[17] *See, e.g.*, Conditional Approval No. 267 (January 12, 1998) (A national bank may engage in certification authority activities that are the functional equivalent to and a logical outgrowth of established banking functions) and Conditional Approval No. 220 (December 2, 1996) (The creation, sale and redemption of electronic stored value in exchange for dollars are part of the business of banking because these activities comprise the electronic equivalent of issuing circulating notes or other paper-based payment devices like travelers checks).

[18] *See, e.g., M&M Leasing* v. *Seattle First National Bank*, 563 F.2d 1377 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978) (national bank leasing of personal property permissible because it was functionally interchangeable with loaning money on personal security and therefore incidental to the express power of loaning money on personal security); *VALIC*, 513 U.S. at 259–60 (national bank annuity sales are permissible because they are functionally similar to other financial investment products banks have long been authorized to sell).

[19] *Merchants' Bank* v. *State Bank*, 77 U.S. 604, 648 (1871) ("The practice of certifying checks has grown out of the business needs of the country.") *See Clement National Bank* v. *Vermont*, 231 U.S. 120, 140 (1923) ("the bank should be free to make * * *reasonable [depositors'] agreements, and thus promote the convenience of its business * * *.").

[20] *See Merchants' Bank*, 77 U.S. at 648 ("A bank incurs no greater risk in certifying a check than in giving a certificate of deposit."); *M&M Leasing*, 563 F. 2d at 1383 (leasing personal property functionally equivalent to secured lending because the risks to the bank of such leasing were essentially the same as if the bank had made secured loans to buyers of the same property). *See also* Decision of the Comptroller of the Currency on the Operating Subsidiary Application by Zions First National Bank, Salt Lake City, Utah, OCC Conditional Approval No. 267 (January 12, 1998) at 13 (acting as a certification authority involves core competencies of national banks and thus entails risks similar to those that banks are already expert in handling).

[21] The U.S. Supreme Court has relied upon the permissibility of an activity for state banks as a factor in the analysis of permissible national bank powers. *See Colorado National Bank* v. *Bedford*, 310 U.S. 41 (1940), in which the Court, concluding that national banks had the authority to conduct a safe-deposit business, stated that "State banks, quite usually, are given the power to conduct a safe-deposit business. We agree with the appellant bank that such a generally adopted method of safeguarding valuables must be considered a banking function authorized by Congress." 310 U.S. at 51.

Proposed § 7.5001(c) relies on Federal incidental powers precedents to identify the factors the OCC uses in determining whether an activity is convenient or useful to the business of banking. As with determinations about whether an activity is part of the business of banking, specific facts may implicate one or more factors, and the activity need not satisfy each factor to be permissible as incidental to that business.

The first factor listed in the proposal as part of the OCC's determination as to whether an electronic banking activity is incidental to the business of banking is whether the activity facilitates the production or delivery of a bank's products or services, enhances the bank's ability to sell or market its products or services, or improves the effectiveness or efficiency of the bank's operations in light of risks presented, innovations, strategies, techniques and new technologies for providing financial products and services. For example, relying on well established judicial precedents,[22] the OCC has determined that the provision of certain products and services is permissible as incidental to the business of banking when needed to package successfully or promote other banking services. [23]

In addition to incidental activities based on specific banking services or products, proposed § 7.5001(c)(1) also recognizes a category of incidental activities based on the operation of the bank itself as a business concern. Banking activities that fall in this category may include hiring employees, issuing stock to raise capital, owning or renting equipment, borrowing money for operations, purchasing the assets and assuming the liabilities of other financial institutions, and operating through optimal corporate structures, such as subsidiary corporations or joint ventures. Various Federal statutes have implicitly recognized national banks' authority to perform the activities necessary to conduct their business. For example, Federal laws refer to limits on persons who can serve as bank employees, to the permissible disposition of bank stock, and to the existence of bank subsidiaries.[24] In each case, the statutes presume the existence of corporate power to conduct the bank's business under 12 U.S.C. 24(Seventh).

The authority of banks to deliver and sell products and services or improve the effectiveness of its operations must be viewed in light of innovations, strategies, techniques and new technologies for marketing financial products and services. For example, in *VALIC*, the Supreme Court recognized that the concepts of the "business of banking" and of activities "incidental" to that business must be sufficiently flexible to accommodate the constant evolution of banking services. These grants of power must be given a broad and flexible interpretation to allow national banks to utilize modern methods and meet modern needs. The court in the *M&M Leasing* case also focused on this point noting that "commentators uniformly have recognized that the National Bank Act did not freeze the practices of national banks in their nineteenth century form* * *. [W]e believe the powers of national banks must be construed so as to permit the use of new ways of conducting the very old business of banking." [25] Proposed § 7.5001(c)(1) recognizes that market and technological changes that will affect the banking industry will shape the OCC's future determinations of whether an activity is incidental to the business of banking.

The second factor is whether the activity enables the bank to profitably use capacity acquired for its banking operations or otherwise avoid economic waste or loss. For example, it is well settled that a nonbanking activity can be validly incidental when it enables a bank to realize gain or avoid loss from activities that are part of, or necessary to, its banking business. Federal statutes and case law also recognize national banks' need to optimize the value of bank property by authorizing banks to sell excess space or capacity in that property.[26] Proposed § 7.5004, which pertains to excess capacity, is a specific application of this general principal.

4. Furnishing of Products or Services by Electronic Means and Facilities (§ 7.5002).

The OCC's rules currently provide that a national bank may perform, provide, or deliver through electronic means and facilities any function, product, or service that it is otherwise authorized to perform, provide or deliver.[27] This so-called "transparency doctrine" is a key provision for national banks engaging in electronic activities because it requires the OCC to look through the means by which the product is delivered and focus instead on the authority of the national bank to offer the underlying product or service.

The proposed rule moves the transparency rule to new subpart E and expands it to include examples of permissible activities under the rule. For example, we have relied on the transparency doctrine in § 7.1019 to approve a number of technology-based activities, such as web site hosting and the operation of a "virtual mall," that are otherwise permissible under a national bank's finder authority. Similarly, we have approved electronic bill presentment activities because billing and collecting services are permissible for national banks.[28] We believe that moving this section under new subpart E and providing concrete examples of how it may be used will provide clearer guidance to national banks that wish to engage in new electronic activities.[29]

5. Composite Authority To Engage in Electronic Banking Activities (§ 7.5003)

An electronic banking activity may appear to be novel but may actually comprise a collection of interrelated activities, each of which is permissible under well-settled authority. For example, the authority for a national bank to offer a commercially enabled web site service to merchants is actually

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[22] *See Franklin Nat'l Bank* v. *New York*, 347 U.S. 373 (1954) (national bank may advertise savings accounts); *Clement National Bank*, 231 U.S. at 140 (national bank may promote its deposit services by computing, reporting and paying the state tax levied upon the interest earned by bank customers on their deposits).

[23] *See* OCC Interpretative Letter No. 754, *reprinted in* [1996–97 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–118 (Nov. 6, 1996) (national bank operating subsidiary may sell general purpose computer hardware to other financial institutions as part of larger product or service when necessary, convenient, and useful to bank permissible activities.)

[24] *See, e.g.*, 12 U.S.C. 78 (defining persons ineligible to be bank employees); 12 U.S.C. 83 (limiting national bank's purchase of its own stock); 12 U.S.C. 24 (Seventh) (limiting presupposed authority of national bank to own a subsidiary engaged in the safe deposit business; 12 U.S.C. 371d(1994) (defining "affiliates" to include subsidiaries owned by national banks); GLBA section 121 (defining financial subsidiary as a subsidiary "other than" a subsidiary that conducts bank-permissible activities under the same terms and conditions as apply to the parent bank or a subsidiary expressly authorized by Federal statute).

[25] 563 F.2d at 1382.

[26] *See* 12 U.S.C. 24(Seventh) and 29; *Perth Amboy National Bank* v. *Brodsky*, 207 F.Supp. 785, 788 (S.D.N.Y. 1962) ("It is clear beyond cavil that the statute [12 U.S.C. 29] permits a national bank to lease or construct a building, in good faith, for banking purposes, even though it intends to occupy only a part thereof and to rent out a large part of the building to others.")

[27] 12 CFR 7.1019.

[28] OCC Conditional Approval No. 304 (Mar. 5, 1999).

[29] *See also*, Conditional Approval No. 220 (December 2, 1996) (The creation, sale and redemption of electronic stored value in exchange for dollars is part of the business of banking because it is the electronic equivalent of issuing circulating notes or other paper based payment devices like travelers checks); Conditional Approval No. 267 (January 12, 1998) (A national bank may store electronic encryption keys as an expression of the established safekeeping function of banks.)

a blend of established authorities to offer the constituent parts of the service, including the authorities to act as finder, to process banking or financial data, and to engage in payments processing and collection. To clarify national banks' conduct of this type of "composite" activity, proposed § 7.5003 codifies the approach we have used in our approval letters by providing that an electronic product or service that comprises several elements, or activities, is authorized if each of the constituent elements or activities is authorized. This provision does not authorize activities that are not otherwise permissible for national banks under Federal law.

6. Excess Electronic Capacity (§ 7.5004)

The OCC has long permitted national banks to rely on the "excess capacity" doctrine to avoid waste and deploy resources efficiently. The excess capacity doctrine holds that a bank acquiring an asset in good faith to conduct its banking business is permitted, under its incidental powers, to make full economic use of the property if using the property solely for banking purposes would leave the property underutilized.[30] While the doctrine originated to allow banks to use excess real property efficiently, it has taken on particular significance as banks conduct more business through developing technologies. We have applied the excess capacity doctrine to a broad range of electronic products and services, including Internet access, software production and distribution, long line telecommunications and data processing equipment, electronic security systems and a call center.[31]

The OCC's rules currently recognize the excess capacity doctrine with respect to excess electronic capacities acquired or developed by a bank in good faith for banking purposes. The proposal relocates the excess electronic capacity rule from current § 7.1019 to new subpart E and adds specific examples. These examples, while not exclusive, illustrate uses of excess electronic capacity that we have approved. The proposal retains the requirement that the excess capacity must be acquired in good-faith for banking purposes.[32] As our approvals to date demonstrate, the determination that a particular use of excess electronic capacity is permissible is fact specific. Accordingly, we encourage banks considering appropriate uses of excess electronic capacity to consult with the OCC.

This proposal does not affect other bases upon which the OCC has approved similar types of activities. For example, this proposal does not affect the so-called " by-product theory," where a national bank may sell by-products, such as software, developed by the bank for or during the performance of its permissible data processing functions.[33]

7. National Bank Acting as a Digital Certification Authority (§ 7.5005).

Digital signatures are a form of electronic authentication that permit the recipient of an electronic message to verify the sender's identity. In order for a digital signature system to operate successfully, the message recipient must have assurance that the public key[34] used to decode a message is uniquely associated with the sender. One method of providing that assurance is for a trusted third party—called a certification authority—to issue a digital certificate attesting to this association. The certification authority generates and signs digital certificates to verify the identity of the person transmitting a message electronically.

To date, we have permitted a national bank to act as a certification authority that issues certificates verifying the *identity* of the certificate holder.[35] The proposed rule would codify this position.

National banks also have demonstrated increasing interest in issuing certificates that verify the *authority* or *financial* capacity of the certificate holder. In these instances, for example, the bank could issue a certificate that the individual has the authority to debit a particular account (account authority digital certificates) or has the financial capacity to make a purchase or engage in a particular transaction. We invite comment on the extent to which national banks propose to engage in these activities, how they will be structured, and whether permitting national banks to issue certificates to verify authority or financial capacity presents unique risks.

8. Data Processing (§ 7.5006)

We have repeatedly confirmed that a national bank may collect, process, transcribe, analyze and store banking, financial and economic data for itself and its customers as part of the business of banking.[36] The proposed rule would codify these interpretations. Commenters are invited to address whether more modern terminology should be used to better describe what functions should be considered to be (or not to be) "data processing" in light of advances in technology.

We have also found that national banks, under their authority to conduct activities incidental to the business of banking, may provide limited amounts of nonfinancial information processing to their customers to enhance marketability or use of a banking service.[37] We typically inquire whether the processing of nonfinancial data is convenient or useful to the specific processing of financial data or other business of banking activities in a specific contract or relationship. In the final rule, we could codify this case-

[30] OCC Conditional Approval No. 361 (Mar. 3, 2000).

[31] *See* OCC Interpretative Letter No. 742, *reprinted in* [1996–1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶81–106 (Aug. 19, 1996); OCC Interpretative Letter No. 677, *reprinted in* [1994–1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625 (June 28, 1885); unpublished letter from William Glidden (June 6, 1986); unpublished letter from Stephen Brown (Dec. 20, 1989); and OCC Conditional Approval No. 361 (Mar. 3, 2000).

[32] *See* OCC Interpretive Letter No. 888 (Mar. 14, 2000).

[33] Until 1984, the OCC's data processing rule specifically recognized the by-product theory. 12 CFR 7.3500 (1983). Although this language was deleted from the rule in 1984, *see* 49 FR 11157 (Mar. 26, 1984), this deletion did not indicate a change in the OCC's position regarding this theory. The 1984 revision was merely a non-substantive format change in the rule. *Id; see also* 47 FR 46526 (Oct. 19, 1982).

[34] The mathematical function the sender uses to encode a message is called the sender's private key. The related function that the recipient of the message uses to decode the message is called the sender's public key. In public key infrastructure systems based on asymmetric encryption, each private key is uniquely associated with a particular counterpart public key. Thus, if one has assurance that a specific private key is associated with a person and under their sole control, any message that can be decoded using that person's public key may be assumed to have been sent by that person.

[35] *See* OCC Conditional Approval No. 267 (Jan. 12, 1998).

[36] *See, e.g.*, OCC Conditional Approval No. 289 (Oct. 2, 1998); OCC Interpretative Letter No. 805 (Oct. 9, 1997). A prior OCC interpretive ruling on electronic banking specifically stated that "as part of the business of banking and incidental thereto, a national bank may collect, transcribe, process, analyze and store for itself and others, banking, financial, or related economic data." 39 FR 14192, 14195 (Apr. 22, 1974). This language was deleted from former 12 CFR 7.3500 because the OCC was concerned that the specific examples of permissible activities in the ruling, such as the marketing of excess time, by-products, and the processing of "banking, financial, or related economic data" had led to confusion and misinterpretation. *See* 47 FR at 46526, 46529 (Oct. 19, 1982). However, the preamble to the proposal to simplify the rule stated that "the Office wishes to make clear that it does not intend to indicate any change in its position regarding the permissibility of data processing services." *Id.* Since 1982, the risk of confusion and misinterpretation of a regulation has significantly diminished due to, among other reasons, the substantial number of interpretive letters the OCC has issued on permissible data processing that can provide a context for understanding the proposed rule if it is adopted.

[37] *See, e.g.*, OCC Conditional Approval No. 369 (Feb. 25, 2000).

specific approach to incidental nonfinancial data processing.

However, we also are considering whether to issue a rule on incidental data processing that would recognize that a national bank may generally derive a certain specified percentage of its total annual data processing revenue from processing nonfinancial data as incidental to its financial data processing services. We are aware of anecdotal evidence suggesting that national banks attempting to market financial data processing services are frequently confronted with customer demands that the bank also process some nonfinancial data so that the customer can avoid the inconvenience of having to use two different processors: the bank for financial data and some other firm for nonfinancial data. Indeed, one commenter to the ANPR suggested that bank customers would like their banks to offer broader processing services and that competitors in the marketplace are providing these services. We are interested in comments and evidence on the extent of this phenomenon so we can determine whether it is so pervasive as to warrant a general rule establishing a limited and specific safe harbor for processing nonfinancial data in connection with financial data processing in lieu of our current case by case approach.[38]

We invite comment on all aspects of this provision. We specifically invite commenters to provide any evidence indicating whether or not national banks' data processing customers need incidental nonfinancial data processing services on a routine basis. We also invite comment on what percentage of nonfinancial data revenue would be appropriate for such a safe harbor if it were adopted.

9. Correspondent Banking (§ 7.5007)

The OCC has long permitted national banks to perform for other entities an array of activities called "correspondent services" as part of the business of banking.[39] These activities include any corporate or banking service that a national bank may perform for itself.[40] A national bank may perform these activities for any of its affiliates or for other financial institutions.[41] The proposed rule would codify this position.

In addition, the OCC has approved a number of electronic- and technology-related activities as permissible correspondent services for national banks. These activities have included:

- Providing computer networking packages and related hardware that meet the banking needs of financial institution customers;[42]
- Processing bank, accounting, and financial data, such as check data, other bookkeeping tasks, and general assistance of correspondents' internal operating, bookkeeping, and data processing;[43]
- Selling data processing software;[44]
- Developing, operating, managing, and marketing products and processing services for transactions conducted at electronic terminal devices including, but not limited to, ATMs, POS terminals, scrip terminals, and similar devices;[45]
- Item processing services and related software development;[46]
- Document control and record keeping through the use of electronic imaging technology;[47]
- Internet merchant hosting services for resale to merchant customers;[48] and
- Communication support services through electronic means, such as the provision of electronic "gateways" in order to communicate and receive financial information and to conduct transactions; creating, leasing, and licensing communications systems, computers, analytic software, and related equipment and services for sharing information concerning financial instruments and economic information and news; and the provision of electronic information and transaction services and linkage for financial settlement services.[49]

This proposal would codify these interpretations and include these activities in the text of the regulation as examples of electronic activities that banks may offer as correspondent services.

B. Location

1. Location of a national bank conducting electronic banking activities (§ 7.5008)

The effect of several statutes affecting national banks turns in part on where the bank in question is "located." The scope of this term—specifically, whether it refers only to the bank's main office, includes branches as well, or means something different—varies from statute to statute and depends on the specific statutory context.[50] Moreover, national banks often conduct a significant portion of their operations in locations that are distinct from their main office and branches. For example, a bank that has a branch in State A and its main office in State B may have an automated loan processing center in State C and depend on a third party vendor in State D for certain ministerial lending functions.

One commenter on the ANPR said that a national bank's location for Federal banking law purposes should not be determined by the physical site of its technology-related equipment. The OCC agrees with that result, and the

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[38] We note that the Board of Governors of the Federal Reserve System's Regulation Y currently authorizes bank holding companies to conduct data processing and data transmission activities where the data to be processed or furnished is not financial, banking, or economic if the total annual revenue derived from those activities does not exceed 30% of the company's total annual revenue derived from data processing and data transmission activities. 12 CFR 225.28(b)(14) (2000). Further, the Board of Governors recently proposed amending this rule to expand the permissible nonfinancial revenue percentage to 49%. 65 FR 80384 (Dec. 21, 2000).

[39] *See, e.g.*, OCC Interpretative Letter No. 875, *reprinted in* [1999–2000 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–369 (Oct. 31, 1999); OCC Interpretative Letter No. 811, *reprinted in* [1997–1998 Transfer Binder] Fed. Banking L. Rep. ¶ 81–259 (Dec. 18, 1997); Corporate Decision 97–79 (July 11, 1997).

[40] *See* OCC Interpretative Letter No. 467, *reprinted in* [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,691 (Jan. 24, 1989) (national bank may offer wide range of correspondent services); Letter from Wallace S. Nathan, Regional Counsel (Dec. 3, 1982) (unpublished) (microfiche services); Letter from John E. Shockey, Chief Counsel (July 31, 1978) (unpublished) (advertising services).

[41] *E.g.*, OCC Interpretative Letter No. 875, supra; OCC Interpretative Letter No. 513, *reprinted in* [1990–1991 Transfer Binder] Fed. Banking L. Rep. ¶ 83,215 (June 18, 1990).

[42] *See* OCC Interpretative Letter No. 754, *reprinted in* [1996–1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–118 (Nov. 6, 1996).

[43] *See, e.g.*, Letter from Vernon E. Fasbender, Director for Analysis, Southeastern District (Dec. 6, 1990); OCC Interpretative Letter No. 345, *reprinted in* [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,515 (July 9, 1985); Letter from Joe H. Selby, Deputy Comptroller (November 22, 1978); Letter from Vernon E. Fasbender, Director for Analysis, Southeastern District (Dec. 6, 1990).

[44] *See, e.g.*, OCC Interpretative Letter No. 868, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–362 (Aug. 16, 1999).

[45] *See, e.g.*, OCC Interpretative Letter No. 890, *reprinted in* [1999–2000 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–409 (May 15, 2000).

[46] *See, e.g.*, Letter from Vernon E. Fasbender, Director for Analysis, Southeastern District (Dec. 6, 1990); and Letter from J.T. Watson, Deputy Comptroller of the Currency (Mar. 22, 1973).

[47] *See* OCC Interpretative Letter No. 805, reprinted in [1997–1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–252 (Oct. 9, 1997).

[48] *See* Corporate Decision No. 2000–08 (June 1, 2000); and OCC Interpretative Letter No. 875, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–369 (Oct. 31, 1999).

[49] OCC Interpretative Letter No. 611, *reprinted in* [1992–1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,449 (Nov. 23, 1992); OCC Interpretative Letter No. 516, *reprinted in* [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,220 (July 12, 1990); and OCC Interpretative Letter No. 346, *reprinted in* [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,516 (July 31, 1985).

[50] *See*, 12 U.S.C. 24(8) (charitable contributions); 12 U.S.C. 29 (authority to hold real estate); 12 U.S.C. 36 (branching); 12 U.S.C. 72 (director qualifications); 12 U.S.C. 92a (trust powers); 12 U.S.C. 94 (venue); and 12 U.S.C. 548 (State taxation).

proposal, accordingly, provides that a national bank will not be considered located in a state solely because it physically maintains technology, such as a server or automated loan center, in that state, or because the bank's products or services are accessed through electronic means by customers located in the state. This is consistent with evolving case authority.[51]

2. Location of Internet-only bank under 12 U.S.C. 85 (§ 7.5009)

Twelve U.S.C. 85 authorizes a national bank to charge interest in accordance with the laws of the state in which it is located. In interpreting section 85, the Supreme Court has held that a national bank is "located" in the state where it has its main office (its home state).[52] Thus, a national bank may charge the interest rates permitted by its home state no matter where the borrower resides or what contacts with the bank occur in another state.

The OCC has chartered several Internet-only national banks that operate without physical branches and that make loans or extend credit primarily through the Internet. The proposal provides that, for purposes of 12 U.S.C. 85, the main office of a national bank that operates exclusively through the Internet is the office identified by the bank under 12 U.S.C. 22(Second) or as relocated pursuant to 12 U.S.C. 30 or other appropriate authority.

C. Safety and Soundness

Shared electronic space (§ 7.5010).

The advent of Internet technology has dramatically increased the ability of banks to enter into joint marketing relationships with third parties. For example, national banks are becoming increasingly involved in electronic marketing arrangements that involve providing bank customers with access to providers of retail or financial services through hyperlinks on the bank's web site or through other shared electronic "space." Under current OCC rules, a national bank may lease space on bank premises to other businesses and share space jointly with other businesses subject to certain conditions.[53] These conditions, set forth in section 7.3001(c), are intended to minimize customer confusion about the nature of the products offered and promote the safe and sound operation of the bank.

The proposal would extend the same general principles set forth in section 7.3001 to situations where banks share co-branded web sites or other electronic space with subsidiaries or unaffiliated third parties. Under the proposal, the bank would be required to take reasonable steps to enable customers to distinguish between products and services offered by the bank and those offered by the bank's subsidiary or a third party. The bank also should disclose its limited role with respect to the third party product or service.

The proposal also recognizes that the way disclosures are displayed and the context in which they are displayed may vary significantly. Thus, the proposal requires disclosures to be conspicuous, simple, direct, readily understandable, and designed to call attention to the fact that the bank does not provide, endorse, or guarantee any of the products or services available through third party web pages.

Comment Solicitation

The OCC requests comment on all aspects of this proposal, including the specific issues that follow.

The OCC seeks comment on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comment on the impact of the proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposal could be achieved, for community banks, through an alternative approach.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

Regulatory Analysis

A. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

B. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposal will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

C. Executive Order 12866

The Comptroller of the Currency has determined that this rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

D. Paperwork Reduction Act of 1995

For purposes of compliance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the OCC invites comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on the

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[51] *See, e.g., Amberson Holdings LLC* v. *Westside Story Newspaper*, 110 F. Supp. 2d 332 (D.N.J. 2000).

[52] *Marquette National Bank* v. *First of Omaha Service Corp.*, 439 U.S. 299 (1978).

[53] 12 CFR 7.3001.

respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Respondents are not required to respond to this collection of information unless the final regulation displays a currently valid Office of Management and Budget (OMB) control number.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Alexander Hunt, Desk Officer, Washington, DC 20503, with a copy to Jessie Dunaway, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Mailstop 8–4, Washington, DC 20219.

Section 7.5010 of the proposed rule requires a national bank that shares a co-branded website or other electronic space with a bank subsidiary or a third party to make certain disclosures designed to enable its customers to distinguish its products and services from those of the subsidiary or third party.

The likely respondents are national banks.

Estimated number of respondents: 1,609 respondents.

Estimated number of responses: 1,609 responses.

Estimated burden hours per response: 1 hour.

Estimated total annual burden hours: 1,609 hours.

List of Subjects in 12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

Authority and Issuance

For reasons set forth in the preamble, part 7 of chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 7—BANK ACTIVITIES AND OPERATIONS

1. The authority citation for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.* and 93a.

2. Revise § 7.1002 to read as follows:

§ 7.1002 National bank acting as finder.

(a) *General.* It is part of the business of banking under 12 U.S.C. 24(Seventh) for a national bank to act as a finder bringing together buyers and sellers.

(b) *Permissible finder activities.* A national bank that acts as a finder may identify potential parties, make inquiries as to interest, introduce or arrange contacts or meetings of interested parties, and otherwise bring parties together for a transaction that the parties themselves negotiate and consummate. For example, permissible finder activities include:

(1) Communicating information about providers of products and services, their products and services, and proposed offering prices and terms to potential markets for these products and services;

(2) Communicating to the seller an offer to purchase or a request for information, including forwarding completed applications, application fees, and requests for information to third-party service providers;

(3) Arranging for third-party providers to offer reduced rates to those customers referred by the bank;

(4) Providing administrative, clerical, and record keeping functions related to the bank's finder activity, including retaining copies of documents, instructing and assisting individuals in the completion of documents, scheduling sales calls on behalf of retailers, and conducting market research to identify potential new customers for retailers;

(5) Conveying between interested parties expressions of interest, bids, offers, orders, and confirmations relating to a transaction; and

(6) Conveying other types of information between potential buyers and sellers.

(c) *Limitation.* The authority to act as a finder does not enable a national bank to engage in brokerage activities that have not been found to be permissible for national banks.

(d) *Advertisement and fee.* Unless otherwise prohibited, a national bank may advertise the availability of, and accept a fee for, the services provided pursuant to this section.

§ 7.1019 [Removed]

3. Remove § 7.1019.

4. Add new subpart E to read as follows:

Subpart E—Electronic Banking

Sec.

7.5000 Scope.
7.5001 Electronic banking activities that are part of, or incidental to, the business of banking.
7.5002 Furnishing of products and services by electronic means and facilities.
7.5003 Composite authority to engage in electronic banking activities.
7.5004 Excess electronic capacity.
7.5005 National bank acting as digital certification authority.
7.5006 Data processing.
7.5007 Correspondent banking.
7.5008 Location of national bank conducting electronic banking activities.
7.5009 Location of Internet-only bank under 12 U.S.C. 85.
7.5010 Shared electronic space.

§ 7.5000 Scope.

This subpart applies to a national bank's use of technology to deliver services and products consistent with safety and soundness.

§ 7.5001 Electronic activities that are part of, or incidental to, the business of banking.

(a) *Purpose and scope.* This section identifies the criteria that the OCC uses to determine whether an electronic activity is authorized as part of, or incidental to, the business of banking under 12 U.S.C. 24(Seventh). The OCC may restrict or condition activities that are permissible under the statutory standard in order to ensure that they are conducted safely and soundly, and in accordance with applicable statutes, regulations, or supervisory policies. State laws may be applicable to the provision of activities by a national bank through electronic means to the extent that they apply to the activity otherwise conducted by the national bank.

(b) *Activities that are part of the business of banking.* An activity is authorized for national banks as part of the business of banking if the activity is described in 12 U.S.C. 24(Seventh) or other statutory authority, or is otherwise part of the business of banking. In determining whether an electronic activity is part of the business of banking, the OCC considers the following factors:

(1) Whether the activity is the functional equivalent to, or a logical outgrowth of, a recognized banking activity;

(2) Whether the activity strengthens the bank by benefitting its customers or its business;

(3) Whether the activity involves risks similar in nature to those already assumed by banks; and

(4) Whether the activity is expressly authorized by law for state-chartered banks.

(c) *Activities that are incidental to the business of banking.* An electronic banking activity is authorized for a national bank as incidental to the business of banking if it is convenient or useful to an activity that is specifically authorized for national

banks or to an activity that is otherwise part of the business of banking. In determining whether an activity is convenient or useful to such activities, the OCC considers the following factors:

(1) Whether the activity facilitates the production or delivery of a bank's products or services, enhances the bank's ability to sell or market its products or services, or improves the effectiveness or efficiency of the bank's operations, in light of risks presented, innovations, strategies, techniques and new technologies for producing and delivering financial products and services; and

(2) Whether the activity enables the bank to profitably use capacity acquired for its banking operations or otherwise avoid economic loss or waste.

§ 7.5002 Furnishing of products and services by electronic means and facilities.

(a) *Use of electronic means and facilities.* A national bank may perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that it is otherwise authorized to perform, provide, or deliver. For example, permissible activities under this authority include:

(1) Acting as an electronic finder by:

(i) Establishing, registering, and hosting commercially enabled web sites in the name of retailers;

(ii) Establishing hyperlinks between the bank's site and a third party site, including acting as a "virtual mall" by providing a collection of links to web sites of third party vendors, organized by product type and made available to bank customers;

(iii) Hosting an electronic marketplace on the bank's Internet web site by providing links to the web sites of third party buyers or sellers through the use of hypertext or other similar means;

(iv) Hosting on the bank's servers the Internet web site of:

(A) A buyer (or seller) that provides information concerning the buyer (or seller) and the products or services it seeks to buy (or sell) and allows sellers (or buyers) to submit expressions of interest, bids, offers, orders and confirmations relating to such products or services; or

(B) A governmental entity that provides information concerning the services or benefits made available by the governmental entity, assists persons in completing applications to receive such services or benefits from the governmental entity, and permits persons to transmit their applications for services or benefits to the governmental entity;

(v) Operating an Internet web site that permits numerous buyers and sellers to exchange information concerning the products and services that they are willing to purchase or sell, locate potential counter parties for transactions, aggregate orders for goods or services with those made by other parties, and enter into transactions between themselves; and

(vi) Operating a telephone call center that provides permissible finder services;

(2) Providing electronic bill presentment services;

(3) Offering electronic stored value systems; and

(4) Safekeeping for personal information or valuable confidential trade or business information, such as encryption keys.

(b) *State laws.* State laws are applicable to the activities of a national bank conducted through electronic means only to the extent that they would apply to the activities conducted otherwise by a national bank.

§ 7.5003 Composite authority to engage in electronic banking activities.

Unless otherwise prohibited by law, a national bank may engage in an electronic activity that is comprised of several component activities if each of the component activities is itself permissible as part of or incidental to the business of banking.

§ 7.5004 Excess electronic capacity.

A national bank may, in order to optimize the use of the bank's resources or avoid economic loss or waste, market and sell to third parties excess electronic capacities acquired or developed by the bank in good faith for its banking business. Examples of permissible excess electronic capacity that banks have acquired or developed in good faith for banking purposes include:

(a) Data processing services;

(b) Production and distribution of nonfinancial software;

(c) Providing periodic back-up call answering services;

(d) Providing full Internet access;

(e) Providing electronic security system support services;

(f) Providing long line communications services; and

(g) Electronic imaging and storage.

§ 7.5005 National bank acting as digital certification authority.

It is part of the business of banking under 12 U.S.C. 24(Seventh) for a national bank to act as a certificate authority and to issue digital certificates verifying the persons associated with a particular public/private key pair. As part of this service, the bank may also maintain a listing or repository of public keys.

§ 7.5006 Data processing.

It is part of the business of banking under 12 U.S.C. 24(Seventh) for a national bank to collect, transcribe, process, analyze, and store for itself and others, banking, financial, or economic data. A national bank also may collect, transcribe, process, and analyze other types of data if the derivative or resultant product is banking, financial, or economic data.

§ 7.5007 Correspondent banking.

It is part of the business of banking for a national bank to offer as a correspondent service to any of its affiliates or to other financial institutions any service it may perform for itself. Examples of electronic activities that banks may offer correspondents under this authority include the following:

(a) The provision of computer networking packages and related hardware;

(b) Data processing services;

(c) The sale of software that performs data processing functions;

(d) The development, operation, management, and marketing of products and processing services for transactions conducted at electronic terminal devices;

(e) Item processing services and related software;

(f) Document control and record keeping through the use of electronic imaging technology;

(g) The provision of Internet merchant hosting services for resale to merchant customers; and

(h) The provision of communication support services through electronic means.

§ 7.5008 Location of a national bank conducting electronic banking activities.

A national bank shall not be considered located in a state solely because it physically maintains technology, such as a server or automated loan center, in that state, or because the bank's products or services are accessed through electronic means by customers located in the state.

§ 7.5009 Location of Internet-only bank under 12 U.S.C. 85.

For purposes of 12 U.S.C. 85, the main office of a national bank that operates exclusively through the Internet is the office identified by the bank under 12 U.S.C. 22(Second) or as relocated under 12 U.S.C. 30 or other appropriate authority.

§ 7.5010 Shared electronic space.

A national bank that shares a co-branded web site or other electronic space with a bank subsidiary, affiliate, or a third party must take reasonable steps to enable customers to distinguish between products and services offered by the bank and those offered by the bank's subsidiary, affiliate, or the third party. The bank also should disclose its limited role with respect to the third party product or service. This disclosure should be conspicuous, simple, direct, readily understandable, and designed to call attention to the fact that the bank does not provide, endorse, or guarantee any of the products or services available through third party web pages.

Dated: June 19, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 01–16330 Filed 6–29–01; 8:45 am]

BILLING CODE 4810–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

RIN 3038–AB77

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–44475; File No. S7–11–01]

RIN 3235–AI13

Method for Determining Market Capitalization and Dollar Value of Average Daily Trading Volume; Application of the Definition of Narrow-Based Security Index

AGENCIES: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: The Commodity Futures Trading Commission ("CFTC") and Securities and Exchange Commission ("SEC") (collectively the "Commissions") are extending the comment period for proposed Subparts A and B of Part 41 of the CFTC's regulations under the Commodity Exchange Act ("CEA") and SEC Rules 3a55–1 through 3a55–3 under the Securities Exchange Act of 1934 ("Exchange Act"), contained in Release No. 34–44288 (May 10, 2001), 66 FR 27560 (May 17, 2001). The original comment period ended on June 18, 2001. The new deadline for submitting public comments is July 11, 2001.

DATES: Public comments are due on or before July 11, 2001.

ADDRESSES: Comments should be sent to both agencies at the addresses listed below.

CFTC: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581, Attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to secretary@cftc.gov. Reference should be made to "Narrow-Based Security Indexes."

SEC: Please send three copies of your comment letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments can also be sent electronically to the following e-mail address: rule-comments@sec.gov. Your comment letter should refer to File No. S7–11–01. If e-mail is used, include this file number on the subject line. Anyone can inspect and copy the comment letters in the Commission's Public Reference Room at 450 5th Street, NW., Washington, DC 20549–0102. Electronically submitted comments will be posted on the Commission's Internet web site (*http://www.sec.gov*). The SEC does not edit personal identifying information, such as names or e-mail addresses, from electronic submissions. Submit only the information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

CFTC: Elizabeth L.R. Fox, Acting Deputy General Counsel; Richard A. Shilts, Acting Director; or Thomas M. Leahy, Jr., Financial Instruments Unit Chief, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. Telephone: (202) 418–5000. E-mail: (EFox@cftc.gov), (RShilts@cftc.gov), or (TLeahy @cftc.gov).

SEC: Nancy J. Sanow, Assistant Director, at (202) 942–0771; Ira L. Brandriss, Special Counsel, at (202) 942–0148, or Sapna C. Patel, Attorney, at (202) 942–0166, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: On May 17, 2001, the Commissions published for public comment proposed Subparts A and B of Part 41 of the CFTC's regulations under the CEA and SEC Rules 3a55–1 through 3a55–3 under the Exchange Act. These proposed rules would implement new statutory provisions of the Commodity Futures Modernization Act of 2000 ("CFMA") concerning the definition of "narrow-based security index." The CFMA directed the Commissions jointly to specify by rule or regulation the method to be used to determine "dollar value of average daily trading volume" and "market capitalization" for purposes of the new definition of "narrow-based security index" in the CEA and the Exchange Act.

The proposing release established a deadline of June 18, 2001 for submitting public comments. The Commissions have received requests to extend the deadline. Therefore, the Commissions are extending the comment period to July 11, 2001 so that commenters will have adequate time to address the issues raised by the proposing release.

Dated: June 26, 2001.

By the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary.

Dated: June 26, 2001.

By the Securities and Exchange Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–16501 Filed 6–29–01; 8:45 am]

BILLING CODE 6351–01–P; 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 131a; FRL–7005–9]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Oxides of Nitrogen Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 30, 2001, Indiana submitted and requested parallel processing on a draft plan to control emissions of oxides of nitrogen (NO_X) throughout the State. The plan consists of two proposed rules, a preliminary budget demonstration, and supporting documentation. The plan will contribute to attainment and maintenance of the 1-hour ozone standard in several 1-hour ozone nonattainment areas including the Chicago-Gary-Lake County and Louisville areas. Indiana's plan, which focuses on electric generating units, large industrial boilers, turbines and cement kilns, was developed to achieve the majority of reductions required by EPA's October 27, 1998, NO_X State

Implementation Plan (SIP) Call. As of May 1, 2004, Indiana's plan will also provide reductions at units currently required to make reductions under the EPA's Clean Air Act Section 126 rulemaking. Through parallel processing, EPA is proposing to approve the plan as a SIP revision fulfilling the NO_X SIP Call Phase I requirements, provided Indiana corrects identified deficiencies in a manner that is consistent with this notice.

EPA notes that, as discussed in this **Federal Register** action, the State adopted final rules June 6, 2001. These rules and the supporting documents have not yet been submitted to EPA and thus EPA has not concluded its review and analysis. However, it is EPA's understanding and expectation that the rules resolve the deficiencies identified in this **Federal Register** proposal and do not introduce any unapprovable changes.

DATES: Written comments must be received on or before August 1, 2001.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the State's submittals and materials relevant to this proposed rulemaking are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604 (18th floor). (Please telephone Ryan Bahr at (312) 353–4366 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Ryan Bahr, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 353–4366, E-Mail Address: bahr.ryan@epa.gov.

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Note: In the following questions and answers, whenever the term "you" is used it refers to the reader of this proposed rule and "we," "us," or "our" refers to the EPA.

I. Background

A. Why Are Reductions in NO_X Important?

The Clean Air Act (Act or CAA) requires the EPA to establish National Ambient Air Quality Standards (NAAQS) for certain air pollutants that cause or contribute to air pollution and are reasonably anticipated to endanger public health or welfare. (CAA Sections 108 and 109) In 1979, EPA determined ground level ozone, at certain concentrations, to be one of those pollutants and promulgated the 1-hour ground-level ozone standard of 0.12 parts per million (ppm) or 120 parts per billion (ppb) to protect public health. 44 FR 8202 (February 8, 1979).

Ground-level ozone has long been recognized, in both clinical and epidemiological research, to affect public health. There is a wide range of ozone-induced health effects, including decreased lung function (primarily in children active outdoors), increased respiratory symptoms (particularly in highly sensitive individuals), increased hospital admissions and emergency room visits for respiratory causes (among children and adults with pre-existing respiratory disease such as asthma), increased inflammation of the lung. and possible long-term damage to the lungs.

Ground-level ozone is generally not directly emitted by sources. Rather, volatile organic compounds (VOC) and NO_X, both emitted by a wide variety of sources, react in the presence of sunlight to form additional pollutants, including ozone. NO_X and VOC are referred to as precursors of ozone.

Historically, EPA, State and industry efforts have focused on controlling VOC in urban areas to achieve the ozone standards. However, notwithstanding significant efforts, the 1-hour ozone standards have not been met in many areas, especially major urban areas. A detailed process was begun in 1995 to evaluate what effect transported pollution was having on ozone levels in nonattainment areas. This study determined, among other things, that NO_X emissions have contributed to significant transport of ozone and that a program to regulate regional NO_X emissions can provide the essential background reductions needed for the majority of nonattainment areas to attain the 1-hour ozone standard.

B. What Mechanism Is Indiana Using To Ensure That Regional NO_X Reductions Occur?

On October 27, 1998, the EPA published a final rule in the **Federal Register** finding certain States' SIPs deficient, since they failed to prohibit the interstate transport of oxides of nitrogen (63 FR 57356). This action is known as the "NO_X SIP Call," and applies to a number of States, primarily east of the Mississippi, including Indiana. The NO_X SIP Call adds and revises sections of 40 CFR parts 51 and 75 and adds part 96. The 40 CFR part 51 sections codify the requirements for

the State's submittal. These requirements are primarily to develop NO_X emission control regulations and the supporting documentation and programs necessary, for a SIP revision sufficient to provide for a prescribed NO_X emission budget in 2007. The 40 CFR part 75 revisions and additions revise the part 75 monitoring requirements so that they are appropriate for the NO_X SIP Call trading program. Finally, 40 CFR part 96 is the model NO_X budget trading program for SIPs. (You will also see 40 CFR part 97 discussed in this **Federal Register** action. 40 CFR part 97 was added to the CFR in a separate action in response to 126 petitions. It establishes a control program similar to 40 CFR part 96. However, unlike part 96, part 97 is not a model rule. It is actually a USEPA implemented program which regulates sources directly. 40 CFR part 97 and the section 126 Petitions are discussed in more detail in section I.E. of today's proposal.)

EPA promulgated the NO_X SIP Call under sections 110(a)(2)(D) and 110(k) of the CAA. Section 110(a)(2)(D) applies to all SIPs for each pollutant covered by a NAAQS and for all areas regardless of their attainment designation. It requires a SIP to contain adequate provisions that prohibit any source or type of source or other types of emissions within a State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in, or interfere with maintenance of attainment of a standard by, any other State with respect to any NAAQS. Section 110(k)(5) authorizes the EPA to find that a SIP is substantially inadequate to meet any CAA requirement when appropriate and, based on such a finding, to then require the State to submit a SIP revision within a specified time to correct such inadequacies.

Indiana submitted its plan and requested a SIP revision with parallel processing on March 30, 2001. EPA is proposing, in this **Federal Register**, to approve this plan as a SIP revision meeting the requirements of Phase I of the NO_X SIP Call, provided that Indiana corrects the identified deficiencies. Indiana adopted final rules on June 6, 2001. EPA has not concluded its analysis of these final adopted rules and the associated plan. However, based on our preliminary review and conversations with the State, we expect that the rules will address the deficiencies identified in this proposal. These final adopted rules are available on Indiana's website at: *http://www.state.in.us/idem/oam/standard/Sip/index.html*.

C. What Analyses and EPA Rulemaking Actions Support the Need for the NO_X Emission Control Regulations?

The State of Indiana has the primary responsibility under the CAA for ensuring that it meets the ozone NAAQS. For that reason, the State is required to submit a SIP that specifies emission limitations, control measures, and other measures necessary for attainment, maintenance, and enforcement of the NAAQS within the State. The SIP for ozone must meet the CAA requirements discussed above, be adopted pursuant to notice and comment rulemaking, and be submitted to the EPA for approval. A number of analyses and EPA rulemaking actions have affected the SIP revisions needed for the Chicago-Gary-Lake County ozone nonattainment areas, as discussed below.

The Chicago-Gary-Lake County ozone nonattainment area has not attained and continues to violate the 1-hour ozone standard. The States of Illinois, Indiana, and Wisconsin have worked cooperatively to provide the EPA with an ozone attainment demonstration for the Lake Michigan area, which includes the Chicago-Gary-Lake County ozone nonattainment area. Analyses conducted to support this ozone attainment demonstration indicate that reductions in upwind NO_X emissions are needed to reduce the transport of ozone into these nonattainment areas.

Recognizing the complexity of ozone pollution, on March 2, 1995, Mary D. Nichols, Assistant Administrator for EPA's Air and Radiation Division, issued a memorandum titled "Ozone Attainment Demonstrations." In this memorandum, the EPA recognized that the development of the necessary technical information, as well as the emission control measures necessary to achieve the attainment of the ozone NAAQS had been difficult for the States affected by significant ozone transport. EPA established a two-phased process for States with serious and severe ozone nonattainment areas, such as the Chicago/Northwest Indiana nonattainment area, to develop ozone attainment SIPs. Under Phase I, States were required to complete 1994 SIP requirements (with the exception of final ozone attainment demonstrations), submit regulations sufficient to meet rate of progress (ROP) requirements through 1999, and submit initial ozone modeling analyses, including preliminary ozone attainment demonstrations based on assumed reductions in upwind ozone precursor emissions. Phase II called for: a two-year consultative process to assess regional strategies to address ozone transport in the eastern United States and required submittal of all remaining ROP submittals to cover ROP through the attainment dates; final attainment demonstrations to address the emission reduction requirements resulting from the two-year consultative process; any additional rules and emission controls needed to attain the ozone standard; and, any regional controls needed for attainment by all areas in the eastern half of the United States.

In response to the problem of ozone transport, the Environmental Council of States (ECOS) recommended the formation of a national workgroup to develop a consensus approach to addressing the transport problem. As a result of ECOS' recommendation and in response to the March 2, 1995 EPA memorandum, the Ozone Transport Assessment Group (OTAG), a partnership among EPA, the 37 eastern States and the District of Columbia, and industrial, academic, and environmental groups, was formed to conduct regional ozone transport analyses and to develop a recommended ozone transport control strategy. OTAG was given the responsibility of conducting the two-years of analyses envisioned in the March 2, 1995 EPA memorandum.

OTAG conducted a number of regional ozone data analyses and regional ozone modeling analyses using photochemical grid modeling. In July 1997, OTAG completed its work and made recommendations to the EPA concerning the regional emissions reductions needed to reduce transported ozone as an obstacle to attainment in downwind areas. OTAG recommended a possible range of regional NO_X emission reductions to support the control of transported ozone. Based on OTAG's recommendations and other information, EPA issued the NO_X SIP Call rule on October 27, 1998. 63 FR 57356.

In the NO_X SIP Call, EPA determined that sources and emitting activities in 23 jurisdictions [1] emit NO_X in amounts that "significantly contribute" to ozone nonattainment or interfere with maintenance of the 1-hour ozone NAAQS in one or more downwind areas, in violation of CAA Section 110(a)(2)(D)(i)(I). EPA identified NO_X emission reductions by source sector that could be achieved using cost-effective measures and set state-wide NO_X emission budgets for each affected

[1] Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

jurisdiction for 2007 based on the possible cost-effective NO_X emission reductions. The source sectors included nonroad mobile, highway mobile, area, cement kilns, internal combustion engines, electricity generating units (EGUs) and non-EGU stationary point sources. EPA established recommended NO_X emissions caps for large EGUs and for large non-EGUs, and recommended emission limits for large cement kilns and large internal combustion engines. Large EGUs included stationary boilers, turbines and combined cycle systems, serving a generator 25 megawatts or larger, who generate electricity for sale to the electrical grid. Large non-EGUs included process stationary boilers, turbines and combined cycle systems, who are not EGUs and whose maximum design heat input is 250 million British thermal units [Btu] per hour [mmBtu/hr] or more. EPA determined that significant NO_X reductions using cost-effective measures could be obtained as follows: application of a 0.15 pounds NO_X/mmBtu heat input emission rate limit for large EGUs; a 60 percent reduction of NO_X emissions from large non-EGUs; a 30 percent reduction of NO_X emissions from large cement kilns; and a 90 percent reduction of NO_X emissions from large stationary internal combustion engines. The 2007 state-wide NO_X emission budgets were based on NO_X emissions projections to 2007 coupled with these levels of NO_X emission controls.

Although the state-wide NO_X emission budgets were based on the levels of reduction achievable through cost-effective emission control measures, the NO_X SIP Call allows each State to determine what measures it will choose to meet the state-wide NO_X emission budgets. It does not require the States to adopt the specific NO_X emission rates assumed by the EPA in establishing the NO_X emission budgets. The NO_X SIP Call merely requires States to submit SIPs, which, when implemented, will require controls that meet the NO_X state-wide emission budget. The NO_X SIP Call encourages the States to adopt a NO_X cap-and-trade program for large EGUs and large non-EGUs as a cost-effective strategy and provides an interstate NO_X trading program that the EPA can administer for the States. If States choose to participate in the national trading program, they must submit SIPs that conform to the trading program requirements in the NO_X SIP Call.

In its March 2, 1995 memorandum, EPA did not include moderate ozone nonattainment areas, such as the Louisville area, in the two-phased approach. The EPA, however, recognizes that some moderate ozone nonattainment areas may also have been significantly impacted by ozone transport from upwind areas, making attainment of the 1-hour ozone NAAQS difficult through the imposition of only local emission control measures. On July 16, 1998, EPA established a policy that allowed for a deferral of the attainment date for areas significantly impacted by ozone transport where certain conditions are met. The EPA published this policy (Extension Policy) in the **Federal Register** on March 25, 1999. 64 FR 14441.

Under the Extension Policy, the EPA would defer final findings on the attainment status for moderate nonattainment areas and would instead allow these areas to submit attainment SIPs that include boundary reductions in ozone achieved by controls measures in upwind areas. The attainment date for these areas would be the date by which the relevant upwind areas will have reduced emission, reducing the transported ozone.

On April 30, 1998, the State of Indiana submitted a major revision of the ozone attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area. In that revision, the State demonstrated that significant reductions in transported ozone and NO_X would be necessary to achieve attainment of the 1-hour ozone standard in the nonattainment area. Indiana committed to complete the ozone attainment demonstration and to adopt sufficient local and regional controls as needed to demonstrate attainment of the ozone standard and to submit the final attainment demonstration and adopted regulations to the EPA by December 2000. The EPA proposed to conditionally approve the 1-hour attainment demonstration based, in part, on the State's commitment to adopt and submit a final attainment demonstration and a post-1999 ROP plan, including the necessary State emission control regulations, by December 31, 2000. (December 16, 1999. 64 FR 70514). The NO_X regulations reviewed in this proposed rule are, in part, intended to meet part of the State's commitment to complete the ozone attainment demonstration for the Chicago-Gary-Lake County nonattainment area.

D. What Court Rulings Have Impacted EPA's NO_X Emission Control Regulations?

When the EPA published the NO_X SIP Call on October 27, 1998, a number of States and industry groups filed petitions challenging the rulemaking before the United States Court of Appeals for the District of Columbia Circuit. The Court, on May 25, 1999, stayed the states' obligation to submit SIPs in response to the NO_X SIP Call rule. Subsequently, on March 3, 2000, the Court upheld most of the NO_X SIP Call rule. The Court, however, vacated the rule as it applied to Missouri and Georgia, and remanded for further consideration the inclusion of portions of Missouri and Georgia in the rule. The Court also vacated the rule as it applied to Wisconsin because EPA had not made a showing that sources in Wisconsin significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS in any other State. Finally, the Court remanded to EPA two issues concerning a limited portion of the NO_X emission budgets. See *Michigan et al.* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000). Based on the remanded issues, on April 11, 2000, EPA initiated a two phase approach to implement the NO_X SIP Call. Phase I of this approach addresses the portion of the NO_X SIP Call upheld by the Court. It will achieve the majority of the reductions in the NO_X SIP Call. Based on the June 22 Court decision, discussed below, the Phase I plan was due from Indiana on October 30, 2000. The second phase will address the few narrow issues that the Court remanded to EPA, including: Whether, and if so, how, a small subclass of facilities that generate electricity should be included in the rule; and what control levels should be assumed for large, stationary internal combustion engines. Phase II of the NO_X SIP Call will not require a submittal from the States until EPA has proposed and finalized rules in response to the Court's remand.

On June 22, 2000, the Court removed the stay of the states' obligation to submit SIPs in response to the NO_X SIP Call and denied petitioners' motions for rehearing and rehearing en banc. In removing the stay, the Court provided that EPA should allow 128 days for States to submit SIPs to the EPA, i.e., by October 30, 2000. Shortly after removing the stay, petitioners requested that the Court adjust the NO_X SIP Call compliance date. The Court determined that the compliance date for the SIP Call would be May 31, 2004.

E. What Are Section 126 Petitions, and How Are They Related to This Proposal?

Section 126 of the CAA authorizes a downwind State to petition EPA for a finding that any new (or modified) or existing major stationary source or group of stationary sources upwind of the State emits or would emit in violation of the prohibition of section 110(a)(2)(D)(i) because the source(s) emissions contribute significantly to

nonattainment, or interfere with maintenance, of a NAAQS in the State. Sections 110(a)(2)(D)(i), 126(b)–(c). If EPA makes the requested finding, the source(s) must shut down within 3 months from the finding, unless EPA directly regulates the source(s) by establishing emissions limitations and a compliance schedule, extending no later than 3 years from the date of the finding, to eliminate the prohibited interstate transport of pollutants as expeditiously as possible. See sections 110(a)(2)(D)(i) and 126(c). Eight northeastern States, including Connecticut and New York, petitioned EPA requesting that EPA make a finding that certain major stationary sources or groups of sources in upwind States, including Indiana, emit NO_X emissions in violation of the CAA's prohibition on amounts of emissions that contribute significantly to ozone nonattainment or maintenance problems in the petitioning State.

EPA made affirmative technical determinations for six of these petitions on May 25, 1999 (64 FR 28250). EPA's approach was to defer making Section 126 findings as long as States and EPA stayed on track to meet the requirements of the NO_X SIP Call by May 1, 2003. This timing was synchronized such that approval of a complete NO_X SIP Call could supplant the section 126 rulemaking by ensuring that section 126 sources were no longer contributing significantly to downwind nonattainment. However, when the Court granted a motion to stay the compliance deadline for the NO_X SIP Call to May 31, 2004, the result was that the NO_X SIP Call no longer assured in 2003 that affected sources would not emit in violation of the prohibition in section 126 of the CAA. Thus, with the required compliance deadline for the NO_X SIP Call of May 31, 2004, the dates are no longer aligned.

EPA subsequently took final action making 126 findings on January 18, 2000 (65 FR 2674). The January 18, 2000, action also finalized the federal NO_X Budget Trading Program at 40 CFR part 97 as a means of mitigating the interstate transport of ozone and NO_X. The sources listed in the section 126 rulemaking are required to comply with the part 97 trading program by May 1, 2003. Several parties filed a petition for review of EPA's final action. On May 15, 2001, the United States Court of Appeals for the District of Columbia Circuit rendered its decision, largely upholding EPA's action. *Appalachian Power Co. et al.* v. *EPA*, No. 99–1200.

In the NO_X SIP call, EPA determined that emissions from sources throughout the entire State of Indiana significantly contribute to downwind areas. However, because the petitions from Connecticut and New York named sources in only part of the State, EPA limited its section 126 findings to the geographic scope of those petitions. Maps showing the geographic coverage of these two petitions are shown in Figures F–2 and F–6 of appendix F to 40 CFR part 52. Based on the geographic limits given in the petitions, all sources in Indiana located east of 86.0 degrees longitude are covered by the section 126 1-hour finding. The existing sources located in Indiana that are subject to the 1-hour section 126 finding are also listed in appendix A to 40 CFR part 97.

II. Summary of the State Submittal

A. When Did Indiana Develop and Submit the NO_X Emission Control Plan to the EPA?

On March 30, 2001, IDEM submitted its proposed NO_X emission control plan to the EPA and requested parallel processing.

IDEM had originated its rulemaking process on regional NO_X reductions in 1999. EPA has reviewed and provided extensive comments on several previous drafts of the rules. The State has adequately addressed most of these comments. Some of the issues raised, however, were very complex and the State was not able to address them before proposing the rule. These issues are discussed in this **Federal Register** action.

Parallel processing allows a State to submit a plan for approval prior to actual adoption by the State. 47 FR 27073 (June 23, 1982). A submittal for parallel processing must include the following three items: a letter from the State requesting parallel processing; a schedule for final adoption or issuance of the plan; and a copy of the proposed regulation or document. Indiana submitted this information in its March 30, 2001, letter.

B. What Are the Basic Components of the State's Draft Plan?

Indiana's proposed plan included a budget demonstration, supporting materials and two NO_X rules: 326 IAC 10–3, pertaining to cement kilns, and 326 IAC 10–4, a trading program focusing on reductions from EGUs and large boilers and turbines. The budget demonstration is discussed in more detail in section C, "How does Indiana address its statewide NO_X budget?". The supporting materials include information such as the number of allowances that Indiana intends to allocate to each unit for 2004–2006 and detailed inventories. The rules included in the plan require compliance statewide by May 31, 2004. This plan constitutes Indiana's response to Phase I of the NO_X SIP Call. The tables below summarize the requirements of the two draft rules as submitted and how the rules differ from the SIP Call. These tables are not meant to be exhaustive of every requirement in Indiana's rules. Rather, they are intended to provide a general idea of how Indiana's rules are structured and some of the significant requirements. For a complete understanding of the proposed rules, please see the applicable rulemaking package which is available at the locations listed in the **ADDRESSES** section of this proposal. As described in this proposal action, it is EPA's understanding that the State made changes in response to comments by EPA and affected stakeholders. (These tables, however, reflect the proposed rules as submitted.)

TABLE 1.—326 INDIANA ADMINISTRATIVE CODE 10–3

Cite	Section title/subject
326 IAC 10–3–1	Applicability—Generally Portland Cement Kilns larger than specified size with specified exceptions.
326 IAC 10–3–2	Definitions
326 IAC 10–3–3	Emission limits • Technology Requirements (mid-kiln firing or low NO_X burners) or • Ozone Season Emission Averages 2.8—6 pounds of NO_X per ton of clinker depending on type of kiln or • Approved alternatives to achieve 30% reductions
326 IAC 10–3–4	Monitoring and Testing Requirements • Technology Requirements—preventative maintenance plan • Ozone Season Emission Averages or Approved alternatives to achieve 30% reductions—initial and subsequent annual testing or NO_X Continuous Emission Monitoring Systems (CEMS)

TABLE 1.—326 INDIANA ADMINISTRATIVE CODE 10–3—Continued

Cite	Section title/subject
326 IAC 10–3–5(a)	Record keeping and Reporting (a) Record keeping—Begin May 31, 2004, and keep records at the unit for 5 years. • Technology Requirements—record maintenance, startup, shutdown, and malfunction information • Ozone Season Emission Averages or Approved Alternatives to achieve 30% reductions—emissions in pounds per ton of clinker, results of performance testing, CEMS data if CEMS are used, startup, shutdown and malfunction information (b) Reporting • By May 31, 2004 submit initial information to IDEM • By October 31, 2004 and before October 31 each year after submit NO_x emission information.

In addition to the specific rule for cement kilns, 326 IAC 10–3, Indiana proposed a rule to implement the 40 CFR part 96 Nitrogen Oxides Budget Trading Program.

TABLE 2.—326 IAC 10–4 NITROGEN OXIDES BUDGET TRADING PROGRAM

Cite/section	Title/subject	Comparable federal regulation/note
326 IAC 10–4–1	Applicability	§ 96.4—Indiana's rule includes same core sources (EGUs and large non utility boilers and turbines) as NO_x SIP Call and opt in provisions. It contains 2 additional 25 ton exemptions.
326 IAC 10–4–2	Definitions	§ 96.2—Indiana adds definition for "energy efficient or renewable energy projects." Indiana also adjusts some definitions to account for 2004 compliance date.
326 IAC 10–4–3	Retired Unit Exemption	§ 96.5
326 IAC 10–4–4	Standard Requirements	§ 96.6—Proposed rule does not include full liability requirements of SIP Call and will need to be revised.
326 IAC 10–4–5	Computation of time	§ 96.7—Indiana clarified that the ozone control period always begins and ends on the calendar dates specified in the definition.
326 IAC 10–4–6	NO_x Authorized Account Representative.	§ 96.10, § 96.11, § 96.12, § 96.13, § 96.14
326 IAC 10-4–7	Permit Requirements	§ 96.20, § 96.21, § 96.22, § 96.23, § 96.24, § 96.25—Indiana is implementing the permitting requirements with its existing permitting programs, 326 IAC 2–7.
326 IAC 10-4–8	Compliance Certification	§ 96.30, § 96.31.
326 IAC 10–4–9	Allowance Allocations	§ 96.40, § 96.41, § 96.42 State is establishing trading program budget of 43,654 tons of NO_x in 2004 and 2005 and 45,033 tons thereafter. The State requested changes to the SIP Call budget as discussed in the preliminary budget demonstration. The State also provides a mechanism to transition from the Section 126 petitions to the SIP Call. This issue is discussed in detail in this proposal. The State has developed an allocation methodology, utilizing the flexibility under the NO_x SIP Call.
326 IAC 10–4–10	NO_x allowance	§ 96.50, § 96.51, § 96.52, § 96.53, § 96.54, § 96.56, § 96.57.
326 IAC 10–4–11	NO_x allowance transfers	§ 96.60, § 96.61, § 96.62.
326 IAC 10–4–12	NO_x monitoring and reporting requirements.	§ 96.70, § 96.71, § 96.72, § 96.73, § 96.74, § 96.75, § 96.76—State's proposed rule would not require sources to begin monitoring May 1 of the year before the compliance year as required by the NO_x SIP Call as discussed in this proposal.
326 IAC 10—13	Individual opt-ins	§ 96.80, § 96.81, § 96.82, § 96.83,§ 96.84, § 96.85, § 96.86, § 96.87, § 96.88.
326 IAC 10–4–14	NO_x Banking	§ 96.55(a) and (b).
326 IAC 10–4–15	Compliance Supplement	§ 96.55(C)—The State has made several changes to this section to allow for an easier transition from the Section 126 rulemaking as discussed below.

TABLE 3

Sections of the 40 CFR Part 96 model rule not addressed by a specific section in Indiana's Rule	How Indiana has addressed or needs to address these sections.
40 CFR 96.1, 40 CFR 96.3	Indiana has addressed both of these sections by 1) submitting a rule, and 2) addressing specifics in various sections of its rule. For example, the requirement in 40 CFR 96.1 that, by adoption of the rule a state authorizes EPA to assist in operating the trading program, is addressed in the rule's definition of EPA in 326 IAC 10–4–2(65).

C. How Does Indiana Address Its Statewide NO_X budget?

1. What NO_X budget Did EPA Determine for the State?

In the October 27, 1998, NO_X SIP Call, Indiana's NO_X budget was set at 202,584 tons/season with a "compliance supplement pool" of 19,738 tons. The "compliance supplement pool" is a voluntary provision that provides flexibility to States in addressing concerns of full compliance by May 31, 2004. Each State will be able to use its pool to cover excess emissions from sources that are unable to meet the compliance deadline during the 2004 and 2005 timeframe. In the final NO_X SIP Call, EPA provided a 60-day public comment period on 2007 baseline sub-inventory revisions. The EPA received numerous requests to allow more time to accept revisions to source-specific inventory data used to establish each State's emissions baseline and budget in the NO_X SIP Call and also to allow revisions to vehicle miles traveled (VMT) projections. Therefore, by notice dated December 24, 1998, EPA published a "Correction and Clarification to the Finding of Significant Contribution and Rulemaking for Purposes of Reducing Regional Transport of Ozone" (63 FR 71220), which may be referred to as "the correction notice."

In the correction notice, EPA reopened and extended the comment period to February 22, 1999, on emissions inventory revisions for the 2007 baseline information used to establish each State's budget in the NO_X SIP Call. This included source-specific emission inventory data, data on VMT and nonroad mobile growth rates, VMT distribution by vehicle class, average speed by roadway type, inspection and maintenance program parameters, and other input parameters used in the calculation of highway vehicle emissions. In response to the comments received during this comment period, EPA published revised baseline inventories and budgets in the May 14, 1999 technical amendment (64 FR 26298).

Subsequently, on March 2, 2000 (65 FR 11222), the EPA proceeded to final action on a second technical amendment based on further comments received from the public in response to the NO_X SIP Call and the request for comments on inventory revisions as well as the May 14, 1999 technical amendment. The final NO_X SIP Call required that States submit the SIPs by September 30, 1999, and that the rules require the sources to implement the controls by May 1, 2003. The March 2, 2000, changes were also necessary to make the NO_X SIP Call inventory consistent with the inventory adopted when EPA granted section 126 petitions on December 17, 1999. The March 2, 2000, 2007 NO_X emission budget for the State of Indiana is 229,965 tons/season with a compliance supplement pool of 19,915 tons.

This revision did not address the issues remanded by the D.C. Circuit Court of Appeals on March 3, 2000. As discussed earlier, in this decision, the Court generally upheld the NO_X SIP Call. It did, however, vacate the standard for some states and portions of other states, and remanded two issues concerning a limited portion of the NO_X emission budgets. Based on this decision, EPA sent letters to the affected states' governors on April 11, 2000, to specify what portion of the budget needed to be met to achieve the reduction upheld by the Court. Consistent with the Court's opinion, these budgets, referred to as the "Phase I NO_X budgets," reflect controls on electricity generating units subject to the acid rain program; large boilers and turbines; and cement kilns. For Indiana, the Phase I budget was 234,625 tons for each NO_X SIP Call ozone control period. The compliance supplement pool was not affected by the phased approach.

2. What Changes Did The State Request to the NO_X Budget and Are Those Changes Approvable?

The State submitted its draft rules and preliminary budget demonstration to the EPA for parallel processing on March 30, 2001. In the preliminary budget demonstration, the State took a slightly different approach than that laid out by EPA in the phased approach, and also requested several changes to the statewide budget. The resulting overall budget for the State, that EPA is proposing approval on in this action, is 233,633 tons. These changes also affected the portion of the budget that is being used to ensure that the appropriate reductions are being achieved from EGUs and large industrial boilers and turbines in the State, namely the trading budget. The State trading portion of the budget, in its submittal, is 57,059 tons.

In the budget demonstration, IDEM used the same inventories as the EPA for area, on-road mobile and non-road mobile categories. IDEM also used the inventories from the NO_X SIP Call as a starting point for its budget demonstration for EGUs and the non-EGU point sources.

IDEM then requested moving several units at the Indianapolis Power & Light Perry K facility identified by EPA in the EGU inventory to the non-EGU inventory based on those units meeting the definition in 326 IAC 10–4–2 for "large affected units". The 2007 projected uncontrolled emissions from these units were then multiplied by 40% (to account for 60% control as non-EGU large affected units) and added to the non-EGU portion of the budget.

In addition to the changes to the Perry K facility, IDEM determined that 19 units that EPA had characterized as large non-EGUs in fact have capacities of less than 250 mmBtu/hr. As a result, they do not meet either EPA's or IDEM's definition for units that need to be controlled. Therefore, IDEM requested and EPA is proposing for approval that these units be shifted from the large non-EGU portion of the inventory to the small non-EGU portion. More information on the inventory and these changes is available in the Docket.

IDEM also presented inventory information that units at Bethlehem Steel and Purdue University are larger than 250 mm/Btu. Since these units meet the definition for "large affected units", IDEM has requested that they be moved to that category and with controls assumed to be 60%. IDEM also noted two numerical errors in the SIP call inventory; one affecting a New Energy unit and the other affecting two units at SIGECO's Warrick Station. The State has submitted inventory information to support correcting these errors. We are proposing to approve these inventory corrections. More information on these changes is available in the Docket.

The following table shows how IDEM's proposed inventories differed from those used by EPA.

TABLE 4.—EPA AND IDEM INVENTORIES

Source category	EPA		IEDM	
	2007 Projected uncontrolled	2007 Budget	2007 Projected uncontrolled	2007 Budget
Point:				
EGUs	136,773	47,712	136,773	46,778
Non-EGUs	69,011	52,042	67,263	51,984
Area	29,070	29,070	29,070	29,070
On-road Mobile	79,307	79,307	79,307	79,307
Non-road Mobile	26,494	26,494	26,494	26,494
Total	340,655	234,625	338,907	233,633

EPA is proposing to approve the changes submitted by IDEM in its budget demonstration. Based on these changes, the State's budget would be 233,633 tons.

3. How Does Indiana Demonstrate That It Is Meeting the Budget?

To meet the overall budget, Indiana is relying on reductions from cement kilns of 30% (326 IAC 10–3) and reductions equivalent to 0.15 pounds of NO_X per million BTU heat input for EGUs and a 60% reduction from industrial boilers and turbines with maximum rated heat input greater than 250 mmBtu/hr. The reductions from EGUs and large industrial boilers and turbines will be achieved through the State's trading program (326 IAC 10–4). The State demonstrates that, based on these regulations and the changes that it requested to its 2007 NO_X budget, it is controlling facilities to the extent necessary to ensure the budget is being met. The following table shows that, through the implementation of controls on EGUs, large industrial boilers and turbines and cement kilns, the State projects, in its submitted materials, that it will meet its 2007 budget.

TABLE 5.—IDEM'S SUBMITTED PRELIMINARY BUDGET DEMONSTRATION

Source category	2007 Projected uncontrolled	2007 Budget	Reductions	Trading portion of budget
EGUs	136,773	46,778	89,995	45,952
Non-EGUs:				
Boilers > 250 mmBtu/hr	24,715	11,107	13,608	11,107
Controlled cement kilns	5,572	3,900	1,672	
Uncontrolled	36,976	36,977	0	
Area	29,070	29,070	0	
On-road Mobile	79,307	79,307	0	
Non-road Mobile	26,494	26,494	0	
Total	338,907	233,633	[a] 105,274	57,059

[a] Slight difference due to rounding.

One of the most significant numbers in this chart is the total trading budget since, through the trading program, this budget will ensure that the majority of emission reductions are being obtained. As shown below, Indiana included "set-asides" for new sources, equivalent to 5% of the EGU portion of the budget and 1% of the non-EGU portion until 2006, with 2% and 1% respectively, thereafter. The State also included an energy efficiency set aside of 1% from the non-EGU category. The concept of a set aside was discussed in NO_X SIP Call Rulemaking **Federal Register** actions. The State may establish set-asides where a portion of the trading budget is reserved for a special purpose. It is a tool to help States manage their budgets. The result is that the total trading budget is 57,059, including the set-asides, and 53,509 tons, when considering that excess emission reductions will be required from existing facilities to provide for the tonnage reduction to supply the set-asides with allowances. The following table illustrates the total Indiana budget, the trading portion and the set-asides.

TABLE 6.—SUMMARY OF INDIANA'S PHASE I NO_X BUDGET

[(tons/season) (as submitted in Draft)]

	EGU	Non-EGU	Area	On-road Mobile	Non-road Mobile	Total
2007 Projected Uncontrolled Inventory	136,773	67,263	29,070	79,307	26,494	338,907
2007 Budget	46,778	51,984	29,070	79,307	26,494	233,633
NO_X Trading Budget Portion	45,952	11,107				57,059
New Source Set-Aside	2,298	111				2,409
Energy Efficiency Set-Aside		1,141				1,141
Trading Budget minus Set-Asides	43,654	9,855				53,509

As explained in section I below, where we discuss changes that IDEM has made in response to comments, the emissions from "blast furnace gas" units have been removed from the trading program in the final adopted rule. Indiana did not intend to require reductions from these units, regardless of whether the units were included in the trading program or not. For a more thorough discussion, please see section I below. The resulting impact on the budget is as follows:

TABLE 7.—SUMMARY OF INDIANA'S PHASE I NO_X BUDGET
[(tons/season) (as revised in final adopted rule)]

	EGU	Non-EGU	Area	On-road Mobile	Non-road Mobile	Total
2007 Projected Uncontrolled Inventory	136,773	67,263	29,070	79,307	26,494	338,907
2007 Budget	46,778	51,984	29,070	79,307	26,494	233,633
NO_X Trading Budget Portion	45,952	8,008				53,960
New Source Set Aside	2,298	80				2,378
Energy Efficiency Set Aside		1,079				1,079
Trading Budget minus Set-Asides	43,654	6,849				50,503

Either of these approaches is acceptable to EPA and should ensure that the required reductions will occur in the State. EPA is proposing for approval the trading budget and set-asides as revised in the final adopted rule and reflected in Table 7 above.

D. How Is the State Addressing the Units Covered by Section 126 Petitions?

IDEM's proposed trading rule states that sources subject to 40 CFR part 97 will be subject to the Indiana trading rule as of May 1, 2004. Indiana's intention is that, as of that date, its rule will ensure that those sources are no longer significantly contributing to downwind nonattainment and thus the sources would no longer need to be subject to the section 126 requirements.

Under certain circumstances in which the section 126 sources in a State are no longer significantly contributing to downwind nonattainment, EPA believes it would be appropriate to propose to withdraw the section 126 findings of significant contribution and the accompanying requirements for such sources. Specifically, where a State's regulation is approved into the SIP and requires at least the same total quantity of reductions from the same group of sources as would have been controlled under the section 126 rule, we believe it would be appropriate to propose withdrawal of the section 126 requirements. EPA believes it would be reasonable to find that, as of the required date of compliance with the State regulations, such sources were no longer contributing significantly to downwind nonattainment for purposes of section 126.

Under Indiana's proposed regulations, all of the section 126 sources in the State would be covered by the State rule, and the rule requires those sources to reduce a quantity of emissions greater than the quantity of reductions required under the section 126 rule. Under these circumstances, and assuming that EPA's final analysis of Indiana's adopted rule confirms that Indiana has addressed the other identified deficiencies, EPA intends to propose to withdraw the section 126 findings and requirements for sources in the State as of May 1, 2004.

As Indiana noted in correspondence to EPA, an Indiana state rule cannot operate to withdraw the section 126 findings, which can only be modified through further rulemaking under the section 126 rule. However, the submitted draft of the Indiana regulations contains a provision (326 IAC 10–4–1(c)) that suggests otherwise. In light of EPA's intention to propose withdrawal of the section 126 findings and requirements for the State as of May 1, 2004, this provision in the draft submittal needs to be removed. EPA expressed its concerns with this issue to the State in a May 3, 2001, letter from John S. Seitz, Director of the Office of Air Quality Planning and Standards to Lori F. Kaplan, Commissioner, IDEM. Indiana has removed the language referenced above from the final adopted rule. Indiana's NO_X SIP rule could meet the requirements of the NO_X SIP Call without addressing the section 126 requirements. However, Indiana and EPA have worked together to help ensure that Indiana's SIP Call rule is written to allow for a smooth transition to phase out the section 126 requirements.

In order to make this transition, EPA identified several other issues that Indiana must address in its final submittal so that EPA can propose to amend the applicability of the section 126 rulemaking. We are highlighting those issues in today's proposal because Indiana has made changes to the submitted NO_X regulations in response to our comments.

First, if Indiana were to have sole responsibility for distributing the "compliance supplement pool" for the State, it must account for the section 126 sources in the State, as well as the sources covered only by the State program. The submitted draft of the Indiana rule would provide allowances from the compliance supplement pool for early reductions made in 2002 and 2003. EPA recommended that Indiana consider also providing allowances from the compliance supplement pool for early reductions made in 2001, to assure that the section 126 sources have a full two years to earn early reduction credits before their compliance deadline of 2003. Indiana's final adopted rule provides the opportunity for sources to request early reduction credits for reductions made in 2001.

Second, the sources covered by the section 126 rule should not be able to earn early reduction credits for any reductions made in 2003. The Indiana draft rule provides that reductions already required by federal law are not eligible for early reduction credits. EPA interprets this language as precluding sources covered by the section 126 rule from being granted compliance supplement pool allowances for reductions made in 2003. It is our understanding that Indiana agrees and the State is expected to confirm this in its final submittal.

The third change to Indiana's proposed NO_X rule addresses a concern that arises because the NO_X SIP Call covers the full State, but the section 126 rule covers only a portion of the State. The statewide compliance supplement pool is substantially larger than either the compliance supplement pool for Indiana under section 126 or, for that matter, the entire budget for the section 126 sources in Indiana. Thus, if the State were to distribute the full compliance supplement pool for

Indiana in a manner that allowed the section 126 sources to use all of those allowances in 2003, the section 126 sources might not need to make any emissions reductions in 2003. This would undercut the benefits of the section 126 requirements and make it difficult for EPA to justify a proposal to withdraw the section 126 program for Indiana.

Indiana's final adopted rule removes this concern by limiting when the compliance supplement pool allowances can be used. The rule limits the compliance supplement pool allowances that could be used in 2003 to no more than 2,454 allowances (i.e., the quantity equal to the compliance supplement pool under the section 126 rule). The remainder could be used beginning in 2004. This limitation on the number of compliance supplement pool allowances that can be used in 2003, equal to the quantity of compliance supplement pool allowances under the section 126 rule, is included in IDEM's final rule and is being proposed for approval in this action.

Fourth, the State may change the rule to enable it to distribute the compliance supplement pool allowances at any time after the early reductions have been verified, but no later than the date that the source claiming the early reduction credit becomes subject to the requirement to hold allowances. Thus, for section 126 sources making early reductions, the State could distribute compliance supplement pool allowances up to April 30, 2003. For all other sources making early reductions, the State can distribute compliance supplement pool allowances up to May 30, 2004. The State's final rule specifies that the issuance of allowances, under these provisions, shall be completed by March 31, 2003 for section 126 sources and March 31, 2004, for non-section 126 sources.

E. What Public Review Opportunities Did the State Provide?

Indiana has led a proactive outreach effort with affected stakeholders throughout this rulemaking process. IDEM began conducting discussion with stakeholders prior to the publication of the NO_X SIP Call. In April 1999, IDEM drafted language for a NO_X rulemaking, considering options to fulfill the NO_X SIP Call requirements and a NO_X emission limit of 0.25 lb/mmBtu for EGUs, and began to hold monthly public meetings to discuss issues and receive feedback on the approaches it was developing to respond to the NO_X SIP Call. Indiana began its formal rulemaking process for the regulations in response to the NO_X SIP Call on July 1, 2000, opening a comment period for 30 days. (In the State of Indiana, at least three written public comment periods are required for each rulemaking.) The State opened the second comment period on December 1, 2000. Indiana preliminarily adopted the draft rule on February 7, 2001.

The proposed rule was published in the Indiana **Federal Register** on April 1, 2001, providing a third written comment period. The comment period closed on April 23, 2001. Indiana received numerous comments from EPA and affected stakeholders. Since preliminary adoption, IDEM has held numerous formal and informal meetings to discuss those comments and their resolution with affected stakeholders and EPA. IDEM and EPA have discussed several changes to the rules, significant and otherwise, that will need to be made or are being made in response to comments. The significant issues that are expected to be addressed are discussed in this proposal. The State will also need to include responses to these comments in its final submittal to EPA.

Indiana adopted final rules on June 6, 2001. EPA has not concluded its analysis of these final adopted rules and the associated plan. However, based on our preliminary review and conversations with the State, we expect that the rules will address the deficiencies identified in this proposal. These final adopted rules are available on Indiana's website at: *http://www.state.in.us/idem/oam/standard/Sip/index.html.*

F. What Guidance Did EPA Use To Evaluate Indiana's NO_X Control Program?

In evaluating Indiana's draft NO_X rules, EPA considered a number of documents related to the NO_X SIP Call, section 110 of the Clean Air Act and 40 CFR part 51. These documents include:

(1) "Federal Implementation Plans to Reduce the Regional Transport of Ozone; Proposed Rule," published October 21, 1998. (63 FR 56393)

(2) "Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Rule," published October 27, 1998. (63 FR 57356). This **Federal Register** is referred to as "The NO_X SIP Call" in today's action.

(3) "Correction and Clarification to the Finding of Significant Contribution and Rulemaking for Purposes of Reducing Regional Transport of Ozone," published December 24, 1998 (63 FR 71220).

(4) EPA's "NO_X SIP Call Checklist," (the checklist), issued on April 9, 1999. The checklist summarizes the requirements of the NO_X SIP Call set forth in 40 CFR 51.121 and 51.122.

(5) "Development of Emission Budget Inventories for Regional Transport NO_X SIP Call" issued by the EPA Office of Air Quality Planning and Standards May 1999 and technically-amended December 1999.

(6) Technical amendments to the NO_X SIP Call, published May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222).

(7) The section 126 findings and requirements as contained in the January 18, 2000, **Federal Register** (63 FR 2674).

(8) The April 11, 2000 letter from EPA Administrator Carol Browner to Indiana Governor Frank O'Bannon, regarding the phased approach to implement the issues upheld by the Court, based on the March 3, 2000, decision from the United States Court of Appeals for the District of Columbia Circuit regarding the NO_X SIP Call.

(9) "Summary of EPA's Approach to the NO_X SIP Call in Light of the March 3rd Court Decision" fact sheet issued April 11, 2000.

(10) EC/R, Inc., "NO_X Control Technologies for the Cement Industry." Chapel Hill, NC. September 19, 2000. This report updates information in the "Alternative Control Techniques Document- NO_X Emissions from Cement Manufacturing" (EPA–453/R–94–004), which was the primary reference used in preparing the cement kiln portion of the proposed Federal Implementation Plan (FIP) rulemaking. The report includes updated information on uncontrolled NO_X emissions from cement kilns and on the current use, effectiveness and cost of NO_X controls.

(11) A May 3, 2001, letter from John S. Seitz, Director of the Office of Air Quality Planning and Standards, to Lori F. Kaplan, Commissioner, IDEM.

As noted in the EPA's NO_X SIP Call checklist, the key elements of an approvable submittal are: a budget demonstration; enforceable control measures; legal authority to implement and enforce the control measures; adopted control measure compliance dates and schedules; monitoring, recordkeeping, and emissions reporting; and elements that apply to states that choose to adopt an emissions trading rule in response to the NO_X SIP Call. The documents related to the NO_X SIP Call are available to the public on EPA's website at: *http://www.epa.gov/ttn/otag/sip/related.html.*

G. Does Indiana's Proposed NO_X Emissions Control Plan Meet All of the Federal NO_X SIP Call Requirements?

Based on EPA's review, Indiana's proposed plan meets all of the federal requirements, including the Phase I NO_X SIP Call requirements, with the exception of the deficiencies identified in this document. In addition, the State's final submittal will need to include responses to comments on the preliminarily adopted rule. Furthermore, Indiana must have addressed the deficiencies identified in this proposal, including revisions to the preliminary budget demonstration to support those changes where appropriate. Finally, Indiana must not significantly change the submitted rules from those being proposed for approval today, other than to address EPA comments or changes that are discussed in this **Federal Register** action. In addition, if Indiana does not correct these deficiencies, EPA is proposing to disapprove these rules, in the alternative.

Indiana adopted final rules on June 6, 2001. EPA has not concluded its analysis of these final adopted rules and the associated plan. However, based on our preliminary review and conversations with the State, we expect that the rules will address the deficiencies identified in this proposal. These final adopted rules are available on Indiana's website at: *http://www.state.in.us/idem/oam/standard/Sip/index.html.*

H. What Deficiencies Are There in Indiana's Proposed NO_X Emissions Control Regulations, and Do Any of These Deficiencies Constitute an Approvability Issue?

EPA reviewed the State's proposed NO_X emissions control rules at 326 IAC 10–3 and 10–4 and offers the following comments on deficiencies found in the rules. Many of these comments are minor and should be readily correctable in the final rule adoption process. These deficiencies must be corrected before the EPA can give final approval on the Indiana NO_X rules. EPA is proposing disapproval, in the alternative, if the State does not correct these deficiencies.

1. The 25-Ton Exemptions

States may develop alternative 25-ton NO_X exemptions to the one included in the model rule (40 CFR part 96) provided they are based on permit restrictions that limit a unit's potential to emit during an ozone season to 25 tons or less. Indiana's proposed rule, 326 IAC 10–4, Nitrogen Oxides Budget Trading Program Section, includes in 10–4–1(b), the 25-ton exemption from the model rule and two additional exemptions. One of these alternatives relies on Continuous Emission Monitoring System (CEMS) data. In this exemption, units may use CEMS data to demonstrate that the unit is not emitting more than 25 tons during an ozone season. For this exemption to provide sufficient assurance that these units will not emit more than 25 tons per season, these units must still be required to monitor according to 40 CFR part 75, subpart H, even while they have the exemption. This requirement needs to be clarified in Indiana's rule.

The second alternative attempts to restrict the unit's usage of each fuel that it is authorized to burn (natural gas or fuel oil) such that the unit's potential NO_X mass emissions will not exceed 25 tons of NO_X during the ozone season. Indiana's intent in including this exemption appears to be to allow units which burn predominantly natural gas, and only a small amount of oil, to not have to use only the default emissions rate in 40 CFR 75.19, table 2, for oil when determining the 25-ton exemption. However, the provisions in Indiana's rule are unclear and would not result in limiting the unit's potential NO_X emissions to 25 tons or less. Indiana must either use the following language to correct this deficiency or use similar language which is as stringent and achieves similar and acceptable results. This language allows units the flexibility Indiana intended and also limits a unit's potential NO_X emissions to less than 25 tons:

326 IAC 10–4–1(b)(3)(B)(iii): Restrict the number of hours a unit may use each fuel that it is authorized to burn such that the unit's potential NO_X mass emissions will not exceed twenty-five (25) tons per ozone control period, calculated by dividing twenty-five (25) tons of potential NO_X mass emissions by the unit's maximum potential hourly NO_X mass emissions (DD), where the unit's maximum potential hourly NO_X mass emissions shall be calculated as follows:

(AA) Identify the percentage of hours in the ozone control period during which the unit intends to burn each type of fuel that is authorized under the fuel use restriction in clause (A).

(BB) For each fuel type identify the default NO_X emission rate in 40 CFR 75.19(c)(1)(ii), Table 2 for each type of fuel that the unit is allowed to burn under the fuel use restriction in clause (A).

(CC) For each fuel type multiply the default NO_X emission rate under subitem (BB) and the percentage of the unit's maximum rated hourly heat input for that fuel type identified under subitem (AA). The owner or operator of the unit may petition the department to use a lower value for the unit's maximum rated hourly heat input than the value as defined under section 2(24) of this rule. The department may approve the lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that the lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently;

(DD) Sum the products determined in (CC) for each fuel type.

In addition, when a unit receives a 25-ton exemption, the unit's emissions must be removed from the trading program budget to avoid double counting. EPA has concerns about how Indiana's submitted rule accounts for the emissions of the exempt units. Specifically, the provision at 326 IAC 10–4–9(a), which states that "the total number of NO_X allowances shall be adjusted, as needed, to account for units exempted under section (1)(b) of this rule" is not explicit enough to account for the emissions of units receiving the 25-ton exemption. IDEM needs to specify the mechanism that will be used to ensure that the emissions from these sources are removed from the trading budget.

There are many ways Indiana can account for the exempted units' emissions. If Indiana does not plan on allocating allowances to units which are exempt from the program based on the 25-ton exemption, then it must subtract the unit's potential tons of emissions from the trading budget. Alternatively, if Indiana chooses to allocate allowances to these exempt units, then immediately after EPA allocates allowances, IDEM's rule needs to provide that EPA should deduct from accounts the maximum number of tons of NO_X emissions the units have the potential to emit. The Authorized Account Representatives (AAR) for the units are required to ensure that enough allowances are in the units' accounts. EPA notes that Indiana has posted its final adopted NO_X regulation to its website, and this rule appears to address the EPA's concerns regarding Indiana's 25-ton exemptions.

2. Definition of "Maximum Design Heat Input"

Indiana's rule changes the definition of "maximum design heat input" to, "the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical characteristics of the unit *and the federally enforceable permit conditions limiting the heat input.*" This expansion of the term is unacceptable as it would exempt from the trading program units (both new and existing) that meet the definition of a large

electric generating unit or large non-electric generating unit under 40 CFR 51.121, which is based strictly on the physical characteristics of the unit.

Additionally, such a definition could result in load shifting from affected to non-affected units. If there is load shifting, the emissions from the affected units would decrease but there would be no net decrease in emissions because the emissions of the unaffected units that picked up the load would increase by a commensurate amount. This definition needs to be revised so that "maximum design heat input" is based solely on physical characteristics and not permitted limits. The State has made this change in its final adopted rule by removing the reference to permit limits.

3. Definition of "NO_X Budget Trading Program"

Indiana's submitted draft rule allows trading between Section 126 and NO_X SIP call sources. Because under the NO_X SIP Call, States have the option of developing their own *intrastate* trading programs, the State must add language to the definition of "NO_X budget trading program" to indicate that trading may only occur between sources that are participating in an EPA administered trading program. IDEM has added this language to its final adopted rule.

4. Definition of "Percent Monitoring Data Availability"

Indiana's submitted draft rule includes a definition of "percent monitoring data availability". The definition is not correct. (EPA notes that the definition of "percent monitoring data availability" in part 97 is also incorrect, and intends to take action to correct the definition.) Under Indiana's definition, a source would determine the percent availability based on the assumption that it is operating the entire ozone season. With this definition, a unit could fail to meet the 90% monitoring data availability requirement even if its monitors were available 90% of the time it operated. Thus, Indiana must revise the definition such that the unit's total operating hours constitute the denominator of the equation instead of the total potential operating hours in the season. IDEM has made this revision in the final adopted rule.

5. Monitoring Requirements

Indiana's 326 IAC 10–4–12(c) does not require units to comply with the rule's monitoring and reporting requirements until May 31, 2004 unless they are applying for early reduction credits. However, the model rule requires compliance with the monitoring and reporting requirements one year before the program begins (*i.e.*, May 31, 2003). The additional year of monitoring is for the benefit of the sources. It allows them to ensure that their monitoring and reporting systems are working and accurate before the program begins, thus avoiding unnecessary penalties once the trading program has begun. Additionally, Indiana may want to use the 2003 data for determining allocations under "326 IAC 10–4–9 NO_X allowance allocations." The date for required monitoring must be May 31, 2003 at the latest. However, EPA has recommended to Indiana that monitoring begin May 1, 2003, so that when Indiana updates its allocations, it has a full year of data to use. Indiana has revised this date in its final rule to require monitoring to begin May 1, 2003.

6. Indiana's New Source and Energy Efficiency and Renewable Energy "Set-Asides"

Indiana may include the new source, and energy efficiency and renewable energy "set-asides" outlined in 326 IAC 10–4–9(e). However, the allowances reserved for these set-asides must come from the trading program budget. While EPA believes this was Indiana's intent, Indiana should clarify that the allowances reserved for these set-asides are within the bounds of its trading program budget. EPA can only approve a rule where the set-asides come from the trading program budget. IDEM has clarified this issue in its final adopted rule.

7. Penalties

The following language in 40 CFR 96.54(d)(3)(i) must be added to the rule:

> For purposes of determining the number of days of violation, if a NO_X Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation, unless the owners and operators demonstrate that a lesser number of days should be considered.

The language stipulates the maximum number of days in which a violation could be sought. However, EPA notes that if an agency were to seek penalties for a violation, it has the discretion to seek penalties for fewer days of violation. Removing this language would limit both the State and EPA's ability to seek violation for the maximum number of days which would be a violation of the Clean Air Act, as interpreted in case law. IDEM has added this language to its final adopted rules.

8. 326 IAC 10–3 Nitrogen Oxide Reduction Program for Specific Source Categories

326 IAC 10–3, as submitted by Indiana, requires emission reductions at cement kilns. Model rules for cement kilns were not a part of the NO_X SIP Call. For this reason, the State used the proposed October 28, 1998, NO_X Federal Implementation Plan (FIP) as a starting point in developing its rules. Since much of the analysis and background materials for the proposed FIP are germane to cement kilns, as noted below, these materials were also used to provide information to review the State's submittal.

326 IAC 10–3–1 Applicability. Indiana's submitted rules contain a provision, 326 IAC 326 10–3–1(b), that would exempt cement kilns covered by the rule from the Clark and Floyd NO_X Reasonably Available Control Technology (RACT) rules at 326 IAC 10–1. EPA commented to Indiana that 326 IAC 10–3 can only supercede the Clark and Floyd NO_X RACT rules at 326 IAC 10–1 if the State either demonstrates that 326 IAC 10–3 is as stringent as 326 IAC 10–1 or provides photochemical dispersion modeling that shows the area remains in attainment without the RACT controls.

In response to EPA's comment, in the final adopted rule, Indiana significantly narrowed the scope of the provision and argued that for the group of cement kilns affected, 326 IAC 10–3 is as stringent as 326 IAC 10–1. Indiana narrowed the scope of the provision such that only cement kiln units operating low-NO_X burners would be exempt. Furthermore, the final adopted rule states that those units are only exempt from the emission limit in 326 IAC 10–1 and only during the ozone control period.

Indiana's argument is that based on the expected emission limits achievable for low-NO_X burners installed on cement kilns, those kiln's emissions under 326 IAC 10–3 are expected to be less than the emission limits required for those kilns under 326 IAC 10–1. The following table summarizes the emission limits in 326 IAC 10–1 compared to the expected emissions from a cement kiln with low-NO_X burners installed.

TABLE 8.—LOW-NO_X BURNER CEMENT KILN STRINGENCY

Cement Kiln Type	326 IAC 10–1 Pounds per ton of clinker		326 IAC 10–3 Pounds per ton of clinker
	30 day limit	Daily limit	Expected emissions averaged over 30 days
preheater kiln	4.4	5.9	3.8
long dry kiln	6.0	10.8	5.1

As discussed in the proposed October 28, 1998, NO_X FIP, EPA expects that low-NO_X burners can achieve a NO_X emission rate of 3.8 pounds per ton for any preheater kiln, and 5.1 pounds per ton of clinker for any long dry kiln averaged over 30 days. The RACT rule requires 4.4 and 6.0 pounds per ton of clinker produced on a thirty-day average basis, respectively, and 5.9 and 10.8 pounds per ton of clinker produced on a daily basis, respectively.

On a thirty-day rolling average basis, low-NO_X burners are expected to have lower emissions than the current requirement in the RACT rule. The expected emission rate is also 64% of the daily RACT requirement for preheater kilns and 47% of the daily RACT requirement for long dry kilns. Low-NO_X burners are a type of technology that, once installed, can not be bypassed or taken off-line unless the entire kiln is shut down. 326 IAC 10–3 requires that the low-NO_X burners be installed, operated and maintained. Keeping these burners properly maintained should ensure that they provide a relatively constant effect on NO_X emissions. Hence, EPA believes that the significantly lower expected emissions from having the low-NO_X burners installed should ensure that for cement kilns in Clark and Floyd Counties with low-NO_X burners installed 326 IAC 10–3 is as stringent as the applicable emission limits in 326 IAC 10–1. The State is also expected to submit supporting documentation with its final plan submittal.

326 IAC 10–3–3 Emission Limits. IDEM included an emission limit option at subdivision(a)(2), in which a unit could meet emission limits that were determined to be the equivalent of 30% reduction from the industry-wide average in the FIP proposed October 21, 1998 (63 FR 56393). The proposed FIP and the supporting documents have been used as tools for evaluating cement kiln provisions in State rules. While EPA agrees that the emission limit option can be provided, it was not proposed as part of the FIP and certain elements need to be incorporated into the State's rule to make it viable. The preamble to the FIP listed these emission limits to be based on a 30 day average. The State has asserted that the NO_X SIP Call is for the purposes of addressing regional transport on a seasonal basis. EPA has reconsidered the averaging time for these limits and determined that a seasonal average can be appropriate as long as the State adds compliance language to indicate that if the limit is exceeded at any time in the season, it constitutes a separate violation for every day in the season unless the unit can demonstrate otherwise. IDEM's final rule includes this language.

Under 326 IAC 10–3–3 (a)(3), IDEM has an emission limit option which allows a reduction equivalent to 30% subject to IDEM and EPA approval. EPA agrees that again, this is a reasonable approach to achieving the emissions decreases intended by the NO_X SIP Call. The approach in the submitted draft rule is a variation of the industry-wide average emissions rate provision described in the proposed FIP. It uses actual, measured uncontrolled emissions to set the baseline rate and then requires a 30 percent reduction from that baseline.

While this approach provides flexibility to sources and may reduce costs, we are concerned that the site-specific emissions baseline needs to be carefully determined. Due to the large variability of emissions at cement kilns cited in comments we received on the FIP proposal, and confirmed in the September 19, 2000, EC/R Incorporated report referenced above, we believe that short-term emissions testing is not appropriate for establishing a baseline or a seasonal emission average for this compliance option. An unduly high emissions reading with a short-term test could lead to a minimal emissions reduction requirement. Conversely, an unduly low emissions reading could lead to an unrealistically high emissions reduction requirement. For this reason, Indiana must require sources to establish baseline emissions with a CEMS or require in the rule that the 30% reduction be measured from industry wide average—the resulting emission limits being those required in 326 IAC 10–3–3(a)(2). The State has followed the second approach in its final adopted rule.

326 IAC 10–3–4 Monitoring and Testing Requirements. As discussed above, EPA believes IDEM's additional compliance options at 326 IAC 10–3–3 (a)(2)and (a)(3) to be reasonable, provided reliable seasonal emission averages can be determined. If the cement kiln is complying through subdivision (a)(2) or (a)(3), it needs to determine the seasonal average using an agreed-upon reliable mechanism such as CEMS data. This is due to the variability in NO_X emissions from cement kilns, as referenced above. In discussions with the State, it has agreed that CEMS is the only viable option for compliance with these provisions and IDEM has included the requirement for CEMS, if the unit is complying with one of these emission limit options, as part of its final adopted rule.

326 IAC 10–3–5 Record Keeping and Reporting. Sources that are complying by meeting the emission limits on a pound of NO_X per ton of clinker basis would need to keep daily cement kiln production records to ensure that the emission limits are complied with on at least a 30-day rolling average. Alternatively, if IDEM adds language to clarify that exceeding the emission limit at any time during the ozone control period constitutes a violation for every day in the period, it does not need to make this change. IDEM has included language in the final adopted rule that clarifies the violation issue and requires sources to report the daily cement kiln production records.

9. General SIP Requirements

Indiana's draft submittal did not fully address some of the general requirements required under the NO_X SIP Call for a SIP revision. These requirements must be addressed before EPA can take a final rulemaking action. The requirements include: that resources are available to implement the

program, that the State address the data availability requirements of 40 CFR 51.116, how the SIP provides for compliance with the annual and trienniel reporting requirements set forth in 40 CFR 51.122, that the State has the legal authority to carry out the SIP revision, and information that the general testing, inspection, enforcement and complaint mechanisms required under 40 CFR 51.121(f)(1) and 40 CFR 51.212 are in place to support implementation of this rule.

I. What Additional Significant Changes Has IDEM Incorporated in Response to Comments?

IDEM received comments on several aspects of its preliminarily adopted rule. EPA understands that several changes have been made to the final adopted rule to respond to these comments, as discussed above. In addition, EPA also sees the following changes as being reasonable for the reasons discussed below. Indiana posted final adopted rules on its website on June 14, 2001. *See http://www.state.in.us/idem/oam/standard/Sip/index.html.*

1. Blast Furnace Gas Units

The final adopted rule would include the regulating of blast furnace gas units under 326 IAC 10–3, as opposed to 326 IAC 10–4, as originally proposed. Since these units have a relatively low emission rate on a lb/mmBtu basis, IDEM was not anticipating requiring them to make reductions under the trading program. EPA generally requires, under the NO_X SIP Call, that if any type of unit in a category is regulated by the NO_X SIP Call trading program, the entire category must be covered by the trading program. This prevents production from getting shifted out of the trading program while it appears that units within the trading program have reduced their seasonal NO_X emissions. However, since the entire blast furnace gas boiler category is not included in the trading program, there is no possibility of shifting production of steel within the State from a unit covered by the trading program to one outside the program. Indiana has also argued that, because the availability of blast furnace gas is limited based on steel production, the shifting of production out of the trading program is prohibitive.

Since IDEM did not envision these units contributing to the reductions required in the State, removing them from the trading program will have no net effect on the amount of total reductions achieved. The most significant effect is that the emissions are being removed from the trading portion of the overall budget and hence the trading portion of the budget has been revised in the final adopted rule.

In IDEM's final adopted rule, it removed the blast furnace gas boilers' uncontrolled 2007 emissions from the trading budget. IDEM then developed an emission factor for the sources based on those uncontrolled emissions and 2007 projected heat inputs from the units. Since these units are not contributing to the required reductions, this emission factor was established to effectively limit the blast furnace gas units emissions assuming the growth factors in the NO_X SIP Call. Since this modification does not impact the reductions being achieved under IDEM's proposed rule, EPA proposes to approve this rule modification.

2. Definition of "Repowered Natural Gas-Fired Units"

IDEM's final adopted rule adds new language to define repowered natural gas-fired units". This term is defined for the purpose of determining the allowance allocations for these units. Since the addition of this term only affects the way that allowances are allocated, this rule modification also appears acceptable.

3. Utilization Correction for New Units

IDEM's submitted draft rules would have required an additional deduction of allowances from new sources. The deduction would have been to account for actual utilization of the unit as opposed to the projected utilization. This interpretation was more stringent than necessary as it could potentially permanently remove NO_X allowances from the trading program for emissions that had not occurred. The NO_X SIP Call model rule requires a similar correction based on actual utilization but intends for the excess allowances to be returned to the set aside instead of completely removing them from the trading program. The State's final adopted rule takes a slightly different approach. It requires any allowances remaining in a new NO_X budget unit's account at the end of each season to be returned to the new source set aside. Although this approach is different than used in the model trading rule, it should ensure the integrity of the trading program and that the NO_X budget is being met.

4. Centralized Recordkeeping

IDEM's final adopted rules allow recordkeeping at a central location. EPA discussed these recordkeeping requirements at length with the State. EPA was only able to agree to the provisions, under certain circumstances, for sources not participating in the trading program. The State choose to retain the provisions throughout the rule (since it had determined that the centralized recordkeeping could be acceptable to the State). However, the State also added language to clarify that the central recordkeeping provisions do not override or alter any of the record retention requirements for a source under 40 CFR part 75. (Since the recordkeeping requirements in 40 CFR part 75 need to be required for federal SIP approval.)

These recordkeeping requirements are included in three parts of the final adopted rule and apply to: (1) Units burning only natural gas or fuel oil during the ozone control period with potential NO_X mass emissions for the ozone control period twenty-five (25) tons or less; (2) Retired units; and (3) NO_X Budget Units covered by the trading program. As mentioned above, to the extent these units are required to comply with 40 CFR part 75, these centralized recordkeeping provisions do not alter those requirements. For example, each unit under the trading program must, as required by part 75, maintain its records on-site. Furthermore, any unit with an exemption based on part 75 monitoring, demonstrating 25 tons or less of emissions, must maintain records on-site and in accordance with part 75. Since the State has been explicit in its rule that the 40 CFR part 75 requirements stay in place, the centralized recordkeeping requirements appear acceptable.

5. Allocation Methodology

The final adopted rule incorporates several changes to the State's NO_X allowance allocation methodology. The State has provided more concise definitions of the projects that qualify for allowances from the energy efficiency and renewable energy set aside, for example. The State has also replaced the allocation methodology for existing non-EGUs with a table specifying the allowances that will be allocated to each non-EGU. EPA has reviewed the revisions to the allocation methodologies and determined that they do not adversely affect the State's demonstration that it meets the NO_X SIP Call budget. The changes only affect how the allowances will be allocated and do not affect the number of allowances that will be allocated. For these reasons, these changes appear acceptable.

III. Proposed Action

A. What Action Is EPA Proposing Today?

EPA proposes to approve Indiana's submitted plan as a revision to the SIP to fulfill the Phase I NO_X SIP Call requirements, if Indiana corrects the deficiencies discussed in this document and does not make additional significant revisions not discussed in this document. The submitted plan includes a budget demonstration, supporting materials and the NO_X SIP rules for cement kilns (326 IAC 10–3) and the trading program for EGUs, large non-EGU boilers and turbines and opt-in sources (326 IAC 10–4). The rules achieve 30% reductions from cement kilns, the equivalent of a 0.15 lb/mmBtu limit on EGUs and 60% reductions from large non-EGU boilers and turbines. In the alternative, if Indiana does not address the identified deficiencies, EPA is proposing to disapprove this plan.

Indiana adopted final rules on June 6, 2001. EPA has not concluded its analysis of these final adopted rules and the associated plan. However, based on our preliminary review and conversations with the State, we expect that the rules will address the deficiencies identified in this proposal. These final adopted rules are available on Indiana's website at: *http://www.state.in.us/idem/oam/standard/Sip/index.html.*

B. What Happens if Indiana Does Not Address the Deficiencies Identified or Has Significantly Changed the Regulations During the Final Adoption Process?

Since the EPA is proposing to rulemake on the Indiana NO_X plan under parallel processing procedures, it notes the possibility exists that Indiana will submit a final version of the plan which differs significantly from the version of the plan reviewed in this proposed rulemaking.

If the State makes significant changes to the plan as a result of its public comment and adoption process and based on further deliberation and/or on comments other than based on the discussion and deficiencies noted above, the EPA will need to re-evaluate the rules through a new proposed rulemaking. If, on the other hand, the State only makes changes in the plan to correct the deficiencies identified in this proposed rule consistent with the analysis presented here, the EPA will proceed to final approval rulemaking after considering public comments received in writing during the public comment period on this proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to approve State law as meeting federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve State rules implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 25, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01–16568 Filed 6–29–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI103–7333; FRL–7005–3]

Approval and Promulgation of Implementation Plans; Wisconsin; Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On December 22, 2000, the Wisconsin Department of Natural Resources submitted a revision to its State Implementation Plan for attainment of the one-hour ozone standard. The submittal includes, among other things, air quality modeling, rules to reduce emissions of ozone forming pollutants (i.e., nitrogen oxides (NO_X) and volatile organic compounds (VOC)), and a plan demonstrating how progress in emission reductions will be achieved through the area's attainment date of 2007 (i.e., Rate of Progress Plan (ROP)). In this action, EPA is proposing to approve the attainment demonstration, the NO_X

rules, the VOC rules, and the post-1999 ROP plan. We find the attainment year emissions budgets to be adequate for conformity. We are revising the NO_X waiver to reflect NO_X emission reductions in the Wisconsin nonattainment area that were included in the attainment modeling. We are proposing approval of a reasonably available control measure (RACM) analysis submitted by the state. We are also proposing to approve commitments by the state to complete a mid-course review of the attainment status of the one-hour ozone nonattainment area and to recalculate conformity budgets within one year of the release of MOBILE6.

DATES: EPA must receive written comments on or before August 1, 2001.

ADDRESSES: Written comments should be sent to: Carl Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of Wisconsin's submittal and EPA's Technical Support Document (TSD) for this proposed rule, and other relevant materials are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604 (Please telephone Randy Robinson at (312) 353–6713 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Randy Robinson, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6713, E-Mail Address: robinson.randall@epamail.gov

SUPPLEMENTARY INFORMATION:

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I. Background

1. Basis for Wisconsin's Attainment Demonstration SIP

What Are the Relevant Clean Air Act Requirements?

The Clean Air Act (Act or CAA) requires EPA to establish National Ambient Air Quality Standards (NAAQS) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. In 1979, EPA promulgated the one-hour ground-level ozone standard of 0.12 parts per million (ppm) (120 parts per billion [ppb]). 44 FR 8202 (February 8, 1979).

Ground-level ozone is not emitted directly by sources. Rather, volatile organic compounds (VOC) and oxides of nitrogen (NO_X), which are emitted by a wide variety of sources, react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

An area exceeds the one-hour ozone standard each time an ambient air quality monitor records a one-hour average ozone concentration above 0.124 ppm in any given day (only the highest one-hour ozone concentration at the monitor during any 24-hour day is considered when determining the number of exceedance days.) An area violates the ozone standard if, during three consecutive years, more than three days of exceedances occur at any monitor in the area or in its immediate downwind environs.

The highest of the fourth-highest daily peak ozone concentrations over the three-year period at any monitoring site in the area is called the ozone design value for the area: Section 107(d)(4) of the Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard, generally based on air quality monitoring data from 1987 through 1989. 56 FR 56694 (November 6, 1991). The Act further classified these areas, based on the area's ozone design values, as marginal, moderate, serious, severe, or extreme. Marginal areas were suffering the least significant ozone nonattainment problems, while the areas classified as severe and extreme had the most significant ozone nonattainment problems.

The control requirements and date by which attainment is to be achieved vary with an area's classification. Marginal areas are subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the one-hour standard by November 15, 1999, and severe areas are required to attain by November 15, 2005 or November 15, 2007, depending on the areas' ozone design values for 1987 through 1989. The Milwaukee-Racine nonattainment area is classified as severe and its attainment date is November 15, 2007. The Milwaukee-Racine nonattainment area includes the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha. Door and Manitowoc Counties also remain in nonattainment status. Manitowoc County was classified as a moderate area in response to the 1990 CAA Amendments and had an original attainment date of 1996. Since Manitowoc County is downwind of Milwaukee and subject to ozone transport, EPA completed an overwhelming transport rulemaking in 1997 (62 FR 39446), which made Manitowoc's attainment date the same as Milwaukee's date of 2007. Door County remains a rural transport nonattainment area.

An attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control measures necessary to achieve those reductions. Section 172(c)(6) of the Act requires SIPs to include enforceable emission limitations, and such other control measures, means, or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment date. Section 172(c)(1) requires the implementation of all reasonably available control measures (including Reasonably Available Control Technology [RACT]) and requires the SIP to provide for attainment of the NAAQS. Section 182(b)(1)(A) requires the SIP to provide for specific annual reductions in emissions of VOC and NO_X as necessary to attain the ozone NAAQS by the applicable attainment date. Finally, section 182(j)(1)(B) requires the use of photochemical grid modeling or other methods judged to be at least as effective to demonstrate attainment of the ozone NAAQS in multi-state ozone nonattainment areas. As part of today's proposal, EPA is proposing action on the attainment demonstration SIP revisions submitted by Wisconsin for the Milwaukee-Racine severe ozone nonattainment area and its associated ozone modeling domain.

The attainment demonstration SIPs must also include motor vehicle emission budgets for transportation conformity purposes. Transportation conformity is a process for ensuring that states consider the effects of emissions associated with federally-funded transportation activities on attainment of the standard. Attainment demonstrations must include the estimates of motor vehicle VOC and NO_X emissions that are consistent with attainment, which then act as a budget or ceiling for the purpose of determining whether transportation plans, programs, and projects conform to the attainment SIP.

What Is the History of the State Attainment Demonstration SIP?

Notwithstanding significant efforts by the states, in 1995 EPA recognized that many states in the eastern half of the United States could not meet the November 1994 time frame for submitting an attainment demonstration SIP because emissions of NO_X and VOC in upwind states (and the ozone formed by these emissions) affected these nonattainment areas and the full impact of this effect had not yet been determined. This phenomenon is called ozone transport.

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by the states but noting the remaining difficulties in making attainment demonstration SIP submittals.[1] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the states in the eastern half of the Country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)[2] and provided for the states to submit the attainment demonstration SIPs based on the expected time frames for OTAG to complete its evaluation of ozone transport.

In June 1997, OTAG concluded and provided EPA with recommendations regarding ozone transport. The OTAG generally concluded that transport of ozone and the precursor NO_X is significant and should be reduced regionally to enable states in the eastern half of the country to attain the ozone NAAQS. Building on the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, the EPA found that current SIPs in 22 states and the District of Columbia (23 jurisdictions) were insufficient to provide for attainment and maintenance of the one-hour standard because they did not regulate emissions that significantly contribute to ozone transport. 62 FR 60318 (November 7, 1997). The EPA finalized that rule in September 1998, calling on the 23 jurisdictions to revise their SIPs to require NO_X emission reductions within each state to a level consistent with a NO_X emissions budget identified in the final rule. 63 FR 57356 (October 27, 1998). This final rule is commonly referred to as the SIP Call. EPA is also requiring regional NO_X emission reductions under its authority in section 126 of the Act to assure that reductions occur in upwind areas that have been shown to impact attainment of the ozone standard in downwind areas. Wisconsin was originally one of the 23 areas subject to the NO_X emission reductions specified in the SIP Call. However, a March 3, 2000 Circuit Court ruling on the SIP Call, among other things, vacated and remanded EPA's decision to include Wisconsin. Thus, Wisconsin is not currently subject to the SIP Call requirements. However, Wisconsin benefits greatly from the upwind NO_X reductions and in fact is reliant upon them to reach attainment.

In recognition of the length of the OTAG process, in a December 29, 1997 memorandum, Richard Wilson, EPA's then Acting Administrator for Air and Radiation, provided until April 1998 for states to submit the following elements of their attainment demonstration SIPs for serious and higher classified nonattainment areas: (1) Evidence that the applicable control strategy measures in subchapter I, part D, subpart 2, of the Act, were adopted and implemented or that the state was on a course to adopt and implement the measures expeditiously; (2) a list of measures needed to meet the remaining ROP emissions reduction requirement and to reach attainment; (3) for severe areas only, a commitment to adopt and submit, by the end of 2000, target calculations for post-1999 ROP, the control measures necessary for attainment, and ROP plans through the attainment year; (4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the state submittal.

Wisconsin submitted the required elements on April 30, 1998. EPA published a rulemaking on December 16, 1999 (64 FR 70531), which proposed approval of the April 1998 submittal conditioned on the state conducting and submitting some additional material. The December 16, 1999 rulemaking conditioned final approval upon submittal of the following items.

1. A final modeled demonstration of attainment that considers the impacts of the regional NO_X emission reductions and local control measures and clearly identifies an attainment strategy.
2. Adoption and submission of all required CAA measures, including VOC RACT for plastic parts coating, industrial clean-up solvents, and ink manufacturing, and adoption and submission of measures relied on in the final modeled attainment demonstration.
3. Motor vehicle emission budgets for both VOC and NO_X.
4. Control measures necessary to meet the ROP requirement from 1999 to the attainment year of 2007, including target calculations
5. A commitment to perform a mid-course review and submit it by December 2003.

On July 28, 2000 (65 FR 46383), EPA published a supplemental notice of proposed rule titled "Motor Vehicle Emissions Budgets in Attainment Demonstration for the One-Hour National Ambient Air Quality Standard for Ozone." The notice discusses the need to commit to recalculate emission budgets using MOBILE6 within one-year after the models formal release if the attainment demonstration for the area relies on the Tier 2 program. The updated attainment demonstration for Wisconsin relies on Tier 2 so the state is subject to the MOBILE6 commitment.

What Is the Time Frame for Taking Action on the Attainment Demonstration SIPs?

EPA's December 16, 1999, proposed conditional approval required a new submittal by December 2000, which would replace the April 1998 submittal with updated and additional elements. EPA views the December 2000 submittal as a replacement to the April 1998 submittal. EPA, therefore, is not finalizing the December 16, 1999 proposed conditional approval, but rather reproposes it in this notice based on the new information in the December 2000 submittal. EPA will respond to comments received on the December 16, 1999 proposed rulemaking in conjunction with comments received on today's proposed rulemaking.

As a result of a settlement agreement with the National Resource Defense Council[3], EPA must propose a full attainment demonstration Federal Implementation Plan (FIP) by October 15, 2001, for any severe one-hour ozone nonattainment area attainment demonstrations that have not been fully approved by that date. If the attainment demonstration has not been fully

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[1] Memorandum, "Ozone Attainment Demonstrations," issued March 2, 1995. A copy of the memorandum may be found on EPA's web site at: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

[2] Letter from Mary A. Gade, Director, State of Illinois Environmental Protection Agency to Environmental Council of States (ECOS) Members, dated April 13, 1995.

[3] The National Resource Defense Council filed a complaint on November 8, 1999 against EPA, alleging that EPA had an outstanding obligation to promulgate federal implementation plans demonstrating attainment for several serious and severe ozone nonattainment areas.

approved by June 14, 2002, EPA must finalize the FIP by that date. EPA anticipates proceeding with a final approval of the Wisconsin SIP revision by the October 15, 2001 deadline.

2. Framework for Proposing Action on the Attainment Demonstration SIP

What Modeling Guidance Was Available To Develop and Review the Attainment Demonstration Submittal?

The EPA provides guidance for analyzing attainment of the one-hour standard for ozone. The following documents contain EPA's guidelines affecting the content and review of ozone attainment demonstration submittals:

1. *Guideline for Regulatory Application of the Urban Airshed Model*, EPA–450/4–91–013, July 1991. Web site: *http://www.epa.gov/ttn/scram/* (file name: "UAMREG").
2. Memorandum, "The Ozone Attainment Test in State Implementation Plan (SIP) Modeling Demonstrations," from Joseph A. Tikvart, Office of Air Quality Planning and Standards, December 16, 1992.
3. *Guidance on Urban Airshed Model (UAM) Reporting Requirements for Attainment Demonstrations*, EPA–454/R–93–056, March 1994. Web site: *http://www.epa.gov/ttn/scram/* (file name: "UAMRPTRQ").
4. Memorandum, "Ozone Attainment Demonstrations," from Mary D. Nichols, Assistant Administrator for Air and Radiation, March 2, 1995. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.
5. *Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, EPA–454/B–95–007, June 1996. Web site: *http://www.epa.gov/ttn/scram/* (file name: "O3TEST").
6. Memorandum, "Guidance for Implementing the one-hour Ozone and Pre-Existing PM10 NAAQS," from Richard Wilson, Office of Air and Radiation, December 29, 1997. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

What Are the Modeling Requirements for the Attainment Demonstration?

For purposes of demonstrating attainment, the Act requires nonattainment areas designated as serious or above to use photochemical grid modeling or an analytical method judged by EPA to be as effective. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone in the nonattainment area and its modeling domain. Emissions for a base year are used to evaluate the model's ability to reproduce monitored air quality values. Following validation of the modeling system for a base year, emissions are projected to an attainment year to predict air quality changes in the attainment year due to the emission changes, which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted ozone concentrations inside the modeling domain are at or below the ozone standard or an acceptable upper limit above the standard permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the standard or upper limit, EPA guidance allows an optional weight-of-evidence determination, which incorporates other analyses, such as air quality and emissions trends, to address uncertainty inherent in the application of photochemical grid models. States may use this latter approach under certain circumstances to support the demonstration of attainment.

The EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the state must develop and implement a modeling protocol. The modeling protocol describes the methods and procedures for the modeling analyses and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (state and local agencies, EPA, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the state must select air pollution days, (i.e., days in the past with high ozone concentrations exceeding the standard) that are representative of the ozone pollution problem for the nonattainment area. Third, the state must identify the appropriate dimensions of the area to be modeled, (i.e., the modeling domain size). The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include any large upwind sources just outside the nonattainment area. In general, the domain is the local area where control measures are most beneficial to bring the area into attainment. Alternatively, a much larger modeling domain may be established, addressing the impacts of both local and regional emission control measures on a number of ozone nonattainment areas. In both cases, the attainment determination is based on the review of ozone predictions within the local area where control measures are most beneficial to bring the area into attainment (referred to as the local modeling domain). Fourth, the state must determine the grid resolution. The horizontal and vertical resolutions in the model affect the dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may dilute concentrations and may not properly consider impacts of complex terrain, complex meteorology, and land/water interfaces. Fifth, the state must generate meteorological and emissions data that describe atmospheric conditions and emissions inputs reflective of the selected high ozone days. Finally, the state must verify that the modeling system is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests (generally referred to as model validation). Once these steps are satisfactorily completed, the model is ready for use to generate air quality estimates to support an attainment demonstration.

The modeled attainment test compares model predicted one-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the ozone standard. A predicted peak ozone concentration above 0.124 ppm (124 ppb) indicates that the area is expected to exceed the standard in the attainment year. This type of test is often referred to as an exceedance test. The EPA's June 1996 guidance recommends that states use either of two exceedance tests for the one-hour ozone standard: a deterministic test or a statistical test.

The deterministic test requires the state to compare predicted one-hour daily maximum ozone concentrations for each modeled day [4] to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

The statistical test includes a modeled test in which three benchmarks should be passed. First, the number of days with predicted exceedances in defined locations should not be greater than a specified number. Second, for episode days in which modeled exceedances are allowed, predicted daily maxima should not exceed a certain value. This value depends on the severity (in terms of the ability of the meteorology to form high levels of ozone) of the selected episode as well as the shape of distributions of observed daily maxima at sites which currently just attain the NAAQS. Third,

[4] The initial, "ramp-up" days for each episode are excluded from this determination.

for each day with an allowed exceedance, improvement in the number of hourly occurrences with predicted ozone greater than 124 ppb should be at least 80%. Thus, if the state models a severe day (considering meteorological conditions that are very conducive to high ozone levels) the statistical test provides that a prediction above 0.124 ppm up to a certain upper limit may be consistent with attainment of the standard.

What Additional Analyses May Be Considered?

As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. In light of these limitations, additional analyses may be considered. In particular, EPA's guidance explicitly recognizes that when the modeling does not demonstrate that the area will attain the standard, the state may present additional analyses. The process by which this is done is called a weight-of-evidence determination.

Under a weight-of-evidence determination, the state may rely on, and EPA will consider, factors such as: model performance and results, episode selection, other modeled attainment tests, e.g., relative reduction factor analysis; other modeled outputs, e.g., changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value; actual observed air quality trends; estimated emission trends; analyses of air quality monitored data; the responsiveness of the model predictions to further controls; and whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis. This list is not an exhaustive list of factors that may be considered, and these factors may vary from case to case.

The EPA's guidance does not state how close a modeled attainment test must be to passing to allow consideration of other evidence besides an attainment test to determine attainment. However, the further an area is from passing a modeled attainment test, the more compelling the weight-of-evidence must be.

Besides the Modeled Attainment Demonstration, What Other Issues Must Be Addressed in the Attainment Demonstration SIP?

In addition to the modeling analysis and weight-of-evidence determination demonstrating attainment, the EPA has identified the following key elements which must be present for EPA to approve the one-hour attainment demonstration SIP.

Clean Air Act measures and other measures relied on in the modeled attainment demonstration state implementation plan. The attainment demonstration must incorporate the emission impacts of, and the SIP submittal must address the rule development for, CAA measures and any additional emission control measures needed to achieve attainment. The rules for these emission controls must also have been adopted before the EPA can finally approve the attainment demonstration. The emission controls for these sources must be implemented prior to the beginning of the ozone season in the attainment year.

For purposes of fully approving the state's SIP, the state must adopt and submit all VOC and NO_X control regulations for affected sources within the state and within the local modeling domain as reflected in the adopted emission control strategy and in the attainment demonstration.

The table below presents a summary of the Act's requirements that must be met for each serious and severe nonattainment area for the one-hour ozone NAAQS. These requirements are specified in sections 172 and 182 of the Act.

Table 1—Clean Air Act Requirements for Severe Nonattainment Areas

- New Source Review (NSR) regulations for VOC and NO_X, including an offset ratio of 1.3:1 and a major VOC and NO_X source size cutoff of 25 tons per year (TPY).
- Reasonably Available Control Technology (RACT) for VOC and NO_X.[5]
- Enhanced Inspection and Maintenance (I/M) program.
- 15 percent Rate-Of-Progress (ROP) plan for VOC through 1996 and a Rate-of-Progress plan through 2007.
- 1990 baseline emissions inventory for VOC and NO_X
- Attainment demonstration.
- Clean Fuels program or substitute.
- Reformulated gasoline.
- RACM.
- Contingency Measures.
- Periodic emissions inventory and source emission statement regulations.
- Stage II vapor recovery.
- Enhanced monitoring Photochemical Assessment Monitoring Stations (PAMS).
- Requirement for fees for major sources for failure to attain.

Motorvehicle emissions bugget Additionally, the Act requires that the attainment demonstration SIP must estimate the motor vehicle emissions that will be produced in the attainment year and must demonstrate that this emissions level, when considered with emissions from all other sources, is consistent with attainment. For transportation conformity purposes, the estimate of motor vehicle emissions in a control strategy SIP such as an attainment demonstration (converted to a typical ozone season week day level) is defined as the motor vehicle emissions budget. The motor vehicle emissions budget must meet certain adequacy criteria, which are listed in the Transportation Conformity Rule (40 CFR part 93, subpart A, section 93.118), before the budget can be approved as part of the attainment demonstration SIP. When a motor vehicle emissions budget is found to be adequate, it is used to determine the conformity of the transportation plans and programs to the SIP, as required by section 176(c) of the Act. An appropriately identified motor vehicle emissions budget is a necessary part of an attainment SIP.

II. Technical Review of the Submittals

A. Summary of the State Submittals

1. General Information

When Were the Ozone Attainment Demonstration State Implementation Plan Revisions Submitted to the Environmental Protection Agency?

Wisconsin submitted its ozone attainment demonstration SIP revisions to EPA on December 22, 2000. Wisconsin held three public hearings on the ozone attainment demonstration SIP revision. A hearing was held in Kenosha on June 27, 2000; in Milwaukee on June 28, 2000; and in Appleton on June 29, 2000.

What Are the Components of the Wisconsin Attainment Demonstration Submittal?

The Wisconsin Attainment Demonstration submittal includes the following elements:

(1) A photochemical modeling analysis of a control strategy designed to

[5] Areas that are currently attaining the one-hour ozone standard or can demonstrate that NO_X controls will not contribute to or will interfere with attainment can request a NO_X waiver under section 182(f). Milwaukee-Racine is such an area and is currently covered by a NO_X waiver.

achieve attainment in the Wisconsin nonattainment counties and in the rest of the Lake Michigan area.

(2) A rate-of-progress (ROP) plan for reducing VOC and NO_X emissions by the required milestone years of 2002, 2005, and 2007.[6]

(3) VOC and NO_X budgets for transportation conformity based on the final attainment demonstration and ROP plan.

(4) An intrastate NO_X rule for electric generating sources in the nonattainment counties starting in 2002.

(5) A trading rule for NO_X compliance.

(6) A VOC RACT rule for industrial clean-up solvents, a draft rule for plastic parts coating, and an order for Flint Ink.

(7)An excess emissions fee rule for VOCs as required by the CAA.

(8) A request to revise the state's Inspection and Maintenance plan to include NO_X limits.

(9) A commitment to conduct a mid-course review of the attainment status of the Lake Michigan area.

(10) A commitment to recalculate conformity budgets using MOBILE6 within one-year of its formal release, and

(11) A request to revise the maintenance plans for Sheboygan and Kewaunee Counties.

Additionally, Wisconsin submitted information addressing Reasonably Available Control Measures (RACM) for transportation and stationary sources.

In this notice, EPA is not acting on the trading rule, the excess emissions fee rule, the revision to the state's Inspection and Maintenance (I/M) plan, or the request to revise the maintenance plans for Sheboygan and Kewaunee Counties. The state has asked that the trading and averaging provisions not be acted on at this time so that EPA and the WDNR can work together to resolve issues with the rules. EPA will process the I/M revision, the excess emission fee rule, and the maintenance plan revisions in separate rulemakings.

The state submittal package, in combination with previous submittals, addresses the five items upon which EPA conditioned the December 16, 1999, proposed approval (i.e., modeled attainment demonstration, VOC rules, motor vehicle emission budgets, ROP plan, mid-course review). Each of the submitted elements will be discussed in the following sections.

2. What Are the Basic Modeling Components of the Submittal?

Illinois, Indiana, and Wisconsin, as members of the Lake Michigan Air Directors Consortium (LADCO), used the same ozone modeling approach. The regional approach is documented in a September 27, 2000 technical support document (TSD) entitled "Technical Support Document—Midwest Subregional Modeling—one-hour Attainment Demonstration for Lake Michigan Area." LADCO is a technical organization originally developed by Illinois, Indiana, Wisconsin, and Michigan to deal with ozone air quality problems in the Lake Michigan area. LADCO conducted the majority of the attainment analysis submitted by Wisconsin. The terms LADCO and state are used interchangeably in the following modeling section.

The heart of the modeling system is the Urban Airshed Model-Version V (UAM–V) developed originally for application in the Lake Michigan area. The state used this photochemical model to model ozone and ozone precursors in a multiple, nested grid system. In the horizontal dimension, the extended modeling domain, referred to as Grid M, extends from −92 west longitude/35 degrees north latitude in the southwest corner to −82.28 degrees west longitude/45.37 degrees north latitude in the northeast corner (borders extend from west-central Wisconsin south to northeast Arkansas east to the western tip of North Carolina and north to include most of the lower peninsula of Michigan.) The regulatory modeling was done with 12 kilometer grid resolution. To assess the sensitivity of the model to grid resolution, some modeling was done using four kilometer grids. The modeled results using four kilometer grid size were generally comparable to the 12 kilometer modeling, although model performance was less satisfactory using the four kilometer grids. Additionally, modeling using four kilometer grid resolution requires much more computer resources than using 12 kilometer grid resolution. The use of 12 kilometer grids provided reasonable results and allowed the state to model more days with a variety of control strategies. Since the four kilometer grid modeling did not add any new information to the analysis and showed results generally comparable to 12 kilometer grid modeling, the attainment demonstration was conducted using 12 kilometer grid spacing. In the vertical dimension, seven layers were used to represent the atmosphere over all of Grid M.

What Meteorological Data Was Used?

UAM–V requires three-dimensional hourly values of various meteorological parameters including winds, temperatures, pressure, water vapor, and vertical diffusivity. The State developed most inputs through prognostic meteorological modeling with RAMS3a Cloud and precipitation fields were developed based on observed National Weather Service data. Early evaluation findings showed that the meteorological model results provided adequate representation of the general airflow features, and good agreement between modeled and measured wind speeds, temperatures, and water vapor. In general, the state determined the results were reasonable and could be used to provide inputs in UAM–V.

What Episodes Were Modeled?

The state used four episodes in the photochemical modeling.

June 22–28, 1991
July 14–21, 1991
June 13–25, 1995
July 7–18, 1995

These episodes were selected because they are representative of typical high ozone episodes in the Lake Michigan area, they reflect a variety of meteorological conditions, there is an intensive data base available from a 1991 field study program, and two were previously modeled for the Ozone Transport Assessment Group (OTAG) studies. While all of the above days were modeled, only a subset of those were used in the attainment demonstration. Some of the days were used for ramp-up purposes. Additionally, only those days that met the model performance specifications were used in the attainment demonstration test.

How Did the States Evaluate Model Performance?

LADCO conducted basecase modeling to evaluate model performance by comparing observed ozone against model predicted ozone. The model performance evaluation included comparisons of the spatial distribution of ozone, the creation and destruction of ozone over time, and the magnitude of measured and predicted values. LADCO modeled four high ozone episodes for use in the attainment demonstration: June and July 1991 and June and July 1995. Basecase modeling involves estimating emissions from the episode time period, developing meteorological data representing the episode, and running the model. The model predicted values are then compared to monitored data from the same time period to evaluate how well the model simulated ozone development and transport. The emissions used in the attainment demonstration were the

[6] The ROP plan for 1996–1999 is being approved in a separate rulemaking document.

latest available, from 1996. For the 1995 episodes the 1996 emissions were used without any modifications. However, for the 1991 episodes, the 1996 emissions were backcasted to 1991 to allow for a more representative evaluation.

Model evaluation criteria are specified in the Environmental Protection Agency's "Guideline for Regulatory Application of the Airshed Model, EPA–450/4–91–013, July 1991. This document provides statistical guidelines for unpaired peak accuracy (15–20%), normalized bias (5–15%), and normalized gross error (30–35%). The state and Region 5 placed more emphasis on the unpaired peak accuracy statistical guidelines because of its relevance to the regulatory attainment test methodology. The four LADCO episodes comprise 32 days. Model performance statistics were produced for all days. However, only those sets of days that generally fell within EPA's guidelines for model performance were used in the strategy runs and ultimately used for the attainment demonstration. Those days are shown in Table 2 below with negative values in the peak accuracy and normalized bias columns indicating days when the model underpredicted.

TABLE 2.—MODEL PERFORMANCE STATISTICS

Date	Peak Acc. 15–20%	Norm. Bias 5–15%	Norm. Gr. Err 30–35%	Date	Peak Acc. 15–20%	Norm. Bias 5–15%	Norm. Gr. Err 30–35%
6/25/91	18.3	19.3	22.9	6/21/95	9.8	−23.2	25.9
6/26/91	−22.3	0.5	22.2	6/22/95	10.1	2.3	16.1
6/27/91	17.8	4.3	17.7	6/23/95	4.1	−6.7	17.9
6/28/91	−10.1	−12.1	19.0	6/24/95	−18.1	−1.6	17.1
7/16/91	−0.8	−15.9	19.0	6/25/95	15.7	8.3	16.3
7/17/91	−13.1	−16.8	20.5	7/12/95	−19.2	−15.2	19.2
7/18/91	−19.4	−2.8	15.9	7/13/95	−17.4	−14.6	18.9
7/19/91	−19.4	−9.6	20.8	7/14/95	−6.7	−4.3	14.6
7/20/91	20.9	11.7	20.8	7/15/95	1.3	15.4	22.6

In addition to providing performance statistics, Wisconsin submitted information comparing the spatial and temporal representation of the surface ozone concentrations with measured ozone values. The model adequately represented the diurnal variation of ozone production and decay and also generally duplicated the locations where the highest ozone was observed. The model did demonstrate a tendency to underpredict the peak measured values on many, but not all, episode days. Overall, it is reasonable to conclude that model performance is acceptable for air quality planning and attainment demonstration purposes.

How Were the Base Year and Future Year Emissions Derived?

The process of demonstrating attainment in the Lake Michigan area involved investigating numerous control strategies ranging from CAA mandated controls only for VOCs and NO_x to full implementation of the SIP Call NO_x controls across the affected areas. A selection of the specific strategies are summarized below:

Base Emissions (1996). The state used the base year inventory to support the performance evaluation modeling as well as future year modeling. The base year emissions are representative of the modeling episode days and produce modeled concentrations that can be compared to monitored concentrations for performance purposes. The base year emissions were also used to project to the future year of interest and then reduced to reflect a specific control strategy. The base year inventory consisted of emissions for point, area, and mobile sources. Emission rates for point and area sources were provided by either EPA or the states. The emission rates for on-road mobile sources were calculated by EMS–95 based on activity level (i.e., vehicle miles traveled) and the MOBIL5b emission factor model. The latest base year inventory reflects higher speeds than in previous versions, a higher percentage of sport utility vehicles and small trucks, and the excess NO_x produced as a result of built-in defeat devices on heavy-duty diesel vehicles. Biogenic sources were calculated using EPA's Biogenic Emissions Inventory System (BEIS2) model. Isoprene emissions were reduced by 50% in the Ozarks region of Missouri based on analysis of field study data and discussions with EPA.

Future Year Emissions (2007). The state used the future year emissions inventories in the Lake Michigan area modeling that were derived from the base year inventory. Two adjustments were made to the base year inventory to generate future year values. The base year inventory was projected to the 2007 attainment year using growth factors. These adjusted values were then reduced to reflect the various control measures expected to occur by that time.

The growth factors used in the projection of emissions for each source sector are summarized below:

a. *Point sources*—for electric utilities—each state provided company specific data. For certain point sources, a growth factor of "0" was used to reflect shutdowns. All remaining point source emission categories growth factors were based on the EPA Economic Growth Analysis System (EGAS).

b. *Area Sources*—For base year emission estimates, growth was based on population. For gasoline marketing categories growth was based on projected gasoline sales. EGAS or state specific surrogates were used for other area source emissions.

c. *Mobile sources*—Vehicle miles traveled (VMT) projections were based on transportation modeling.

d. *Biogenic sources*—No growth was assumed.

How Were the 1996 and 2007 Emission Estimates Quality Assured?

To improve the reliability of the modeling source emission inventories, the state emission inventory personnel, the emission modelers, and the photochemical modelers performed several quality assurance (QA) activities. These activites included:

An Emissions Quality Assurance Plan. A LADCO draft emissions quality assurance plan documented a standardized set of data and file checks. This plan identifies the emissions quality assuance procedures to be followed by the state emission inventory personnel. Each state was responsible for quality assurance of its own emissions inventory data before providing these data to the LADCO emission modelers. The quality assurance of the state's data included the review of several EMS–95 emissions reports for consistency with other state-specific emissions data.

Emission Reports. EMS–95 itself performs a number of emission checks and generates reports flagging possible emission errors and summarizing data that can be checked against alternative emissions data sets/reports. LADCO generated these reports in the preparation of the Grid M emissions data and used them for QA efforts.

Review by Photochemical Modelers. The photochemical modelers quality assured the emissions inventories by generating and reviewing spatial plots of emissions by source sector/type. The review was designed to detect anomalies. The modelers also conducted emission total checks against EMS–95 summary reports.

Stack Parameter Checks. A contractor quality assured the point source emissions data. The contractor discovered errors in the stack parameters and other point source data, including potential errors in gas exit velocities, emission rates, and physical stack parameters, for many point sources in the previous versions of the modeling system emission inventories. This review was distributed to the LADCO states to correct their respective point source emissions data. Some stack data were shifted from the elevated point source data files to the ground-level data files based on adopted screening parameters.

What Control Strategies Were Modeled?

Strategy modeling was used to evaluate the air quality impact of various control scenarios. Over the past several years, the Lake Michigan states modeled 17 different strategies in the analysis. The primary difference between them is the level and spatial distribution of NO_X controls. The following section will discuss just one of those 17 scenarios, the future year attainment strategy. A description of the other strategies is included in the technical support document.

Future Year Attainment Strategy. This control strategy included the following assumptions: Tennessee Valley Authority utility sources at 0.15 pounds (lb) NO_X /million British thermal units (mmBtu), new VOC controls from the Illinois trading rule, Wisconsin modeled with their adopted state rule, Missouri modeled at SIP Call level of NO_X control, internal combustion engines at CAA level of control, increased vehicle miles traveled (VMT) growth for Southeast Wisconsin, consideration of the proposed diesel sulfur rule, reduced carbon monoxide emissions by 12.5% due to low sulfur and nonroad controls, Wisconsin with inspection and maintenance program NO_X cut-points, revised Chicago area transportation network data, updated/corrected MOBILE5 inputs for Illinois, Wisconsin, and Ohio, new boundary conditions considering reductions in Alabama, Tennessee, and Texas, reduced low-level NO_X emissions due to Tier II/low sulfur and nonroad controls.

Tables 3 and 4 below identify the anthropogenic emissions in tons per day associated with the 1996 baseyear strategy and the future year attainment strategy.

TABLE 3.—ANTHROPOGENIC VOC EMISSIONS SUMMARY (TONS PER DAY)

	Point	Area	Motor veh.	Total
Base	2367	6496	3633	12496
Attainment Strategy	1748	5577	2687	10072

TABLE 4.—ANTHROPOGENIC NO_X EMISSIONS SUMMARY (TONS PER DAY)

	Point	Area	Motor veh.	Total
1996 Base	7720	2740	5681	16141
SR Run 17	3833	2482	3230	9545

What Were the Ozone Modeling Results for the Base Period and for the Future Attainment Period?

Table 5 shows the peak value observed for each episode day, the model predicted ozone concentration for that episode day (used for the model performance evaluation), the model predicted ozone concentration for the 1996 basecase scenario, the ozone concentration from the 2007 attainment strategy, and the value allowed by the 1996 attainment test guidance. The model concentrations represent the peak value predicted in the Lake Michigan region of the modeling domain. Concentrations above the level of the one-hour ozone limit are in bold.

TABLE 5.—PEAK OBSERVED AND MODELED CONCENTRATIONS

Episode day	Episode observed value	Model perf. value	Modeled 1996 baseyear value	Attainment strategy 2007 value	Guidance allowed value
6/25/91	104	123	123	110	124
6/26/91	175	136	138	117	124
6/27/91	118	139	127	111	124
6/28/91	138	124	102	95	124
7/16/91	130	129	108	103	124
7/17/91	137	119	89	89	124
7/18/91	170	137	108	109	144
7/19/91	170	137	112	111	130
7/20/91	139	168	150	128	130
6/21/95	112	123	122	118	124
6/22/95	119	131	131	119	130
6/23/95	123	128	128	113	124
6/24/95	166	136	136	126	139

TABLE 5.—PEAK OBSERVED AND MODELED CONCENTRATIONS—Continued

Episode day	Episode observed value	Model perf. value	Modeled 1996 baseyear value	Attainment strategy 2007 value	Guidance allowed value
6/25/95	108	125	124	120	124
7/12/95	146	118	118	104	130
7/13/95	178	147	146	124	137
7/14/95	150	140	140	127	146
7/15/95	154	156	156	128	135

Do the Modeling Results Demonstrate Attainment of the Ozone Standard?

To assess attainment of the one-hour ozone standard, LADCO applied two approaches to review the results of emission control strategy modeling. These two approaches are defined in the Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS (June 1996). The first approach is the deterministic approach and requires that the daily peak one-hour ozone concentrations modeled for every grid cell (in the surface level) be at or below the ozone standard for all days modeled. If there are modeled ozone standard exceedances in only a few grid cells on a limited number of days, this approach can still be used through the use of weight-of-evidence information. As can be seen in Table 5, every strategy run has at least four days that exceed the ozone standard of 124 ppb. Consequently, the Lake Michigan area attainment demonstration does not pass the deterministic attainment test as outlined in the guidance.

The second approach allowed is the statistical approach. This approach permits occasional modeled ozone exceedances and reflects an approach comparable to the monitoring form of the one-hour ozone standard. Under the statistical approach, there are three benchmarks related to the frequency and magnitude of allowed exceedances and the minimum level of air quality improvement after application of emission controls. All three benchmarks must be passed in the statistical approach or, if one or more of the benchmarks are failed, a weight-of-evidence analysis must support the attainment demonstration. However, for the Lake Michigan area demonstration, all parties agreed that although the model performance generally fell within EPA's criteria, the model tended to underpredict on a significant number of days. Benchmark 3 provides a safeguard against cases where photchemical grid model predictions meet EPA performance criteria but tend to underpredict observed concentrations. All three benchmarks and LADCO's results are discussed below.

Benchmark 1. Limits on the number of modeled exceedance days. This benchmark is passed when the number of modeled exceedance days in each subregion is less than or equal to three or N–1 (N is the number of severe days), whichever is less. A subregion is an area roughly equaling 15 square kilometers. A day is considered severe if its "meteorological ozone forming potential" is expected to be exceeded less than twice per year. The technique ranked days based on their ozone forming potential using data from 1951 to 1995.[7] Any day with a ranking of 87 or less is considered to be severe. The Lake Michigan Area has 10 modeled days that are considered severe. Consequently, the limit on the number of modeled exceedance days for the Lake Michigan area is three. The attainment strategy had no more than one exceedance in any subregion and the exceedances occurred on days identified as severe. The attainment strategy passed benchmark 1.

Benchmark 2. Limits on the values of allowed exceedances. This benchmark sets acceptable upper limits for daily maximum ozone concentrations based on a ranking of severe days. For most severe days, the maximum modeled ozone concentration shall not exceed 130 ppb. For days that are extremely severe (a ranking of 22 or less in the Lake Michigan analysis), the maximum ozone allowed exceedances are higher. As can be seen from Table 5, the attainment strategy produced concentrations that are below the allowed values and thus passed Benchmark 2.

Benchmark 3. Required minimum level of improvement. Under this benchmark, the number of grid cells with modeled peak ozone concentrations greater than 124 ppb must be reduced by at least 80 percent on each day with allowed modeled ozone standard exceedances. This benchmark is included to provide protection in cases where the model underpredicts observed ozone concentrations; it is not required on days when the model does not underpredict peak values by more than 5%. This benchmark was met for the attainment strategy.

The results of the state modeling indicate that the attainment strategy selected by the state passed all three of the statistical test benchmarks.

What Additional Attainment Information Did the State Provide?

Although the WDNR modeling demonstrates attainment, the state submitted additional analyses. Although not explicitly called for in the guidance, in light of the inherent uncertainties of the modeling analyses, EPA is considering these analyses as components of the weight-of-evidence test.

EPA has developed a draft relative attainment test for use with the eight-hour ozone standard. This guidance is available in a draft document called "Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-hour Ozone NAAQS, May 1999." LADCO applied this relative test to the Lake Michigan area modeling. The relative test used observation-based design values along with modeled data. The observed design value was multiplied by a relative reduction factor representing the change in modeled ozone between the base year run and the future control strategy run. To demonstrate attainment, the projected future design value must be at or below the NAAQS. The results of the relative attainment test conducted by LADCO are consistent with those of the statistical attainment test. Attainment is demonstrated at all monitoring sites with the controls assumed in the attainment strategy. Table 6 shows the values for the monitoring sites with design values above the one-hour NAAQS and the adjusted value for the

[7] Cox, W.M. and S. Chu (1993), "Meteorologically Adjusted Ozone Trends in Urban Areas: A Probabilistic Approach", Atmospheric Environment, 27B, (4) pp. 425–434.

Cox, W.M. and S. Chu, (1996) "Assessment of Interannual Ozone Variation in Urban Areas from a Climatological Perspective", Atmospheric Environment 30, pp. 2615–2625.

attainment strategy. Modeled concentrations above the one-hour ozone limit are in bold.

TABLE 6.—RELATIVE REDUCTION ATTAINMENT APPROACH

Monitoring site	Observed design value (ppb)	Attainment strategy (ppb)
Pleasant Praire	131	113
Milwaukee—Bayside	128	113
Harrington—Beach	127	109
Sheboygan	125	108
Manitowoc	127	108
Michigan City	140	119
Holland	133	117
Muskegon	132	117
Mid-lake	140	122

WDNR also supplemented the photochemical modeling with additional air quality analyses. These additional analyses included air quality trends and methods that evaluate the effectiveness of VOC and NO_X controls.

The WDNR attainment demonstration TSD shows the number of exceedance days (monitors recording an hourly value over 124 ppb) and the number of "hot" days (i.e., over 90 degrees Fahrenheit) for the period 1981 through 1999. The number of ozone exceedances in the 1990s (89) is significantly lower than the number of exceedances in the 1980s (207). The trends show a clear decrease in the number of exceedance days through the 1980s with a flattening out in the 1990s. Additionally, the 1980s had 194 hot days compared to the 1990s hot days numbering 162. This provides evidence that the air quality improvement seen throughout the two decades is not the sole result of favorable meteorological conditions but rather that VOC and NO_X emission reduction programs implemented over the time period are reducing the amount of ozone being monitored in the Lake Michigan area.

Wisconsin also examined ozone trends information with techniques that filter out the influences of varying meteorology on the ozone concentrations. The state used three methods and the results indicated that daily peak one-hour ozone concentrations at most sites in the Lake Michigan area decreased until the mid-1990s and then leveled off, or slightly increased. A supplementary result found statistically significant downward trends at two sites in southeast Wisconsin; a statistically significant upward trend at a far downwind site, and statistically insignificant trends elsewhere.

The state also examined ozone precursor trends, although data on precursors is extremely limited. Only one site in Milwaukee has as much as 10 years of data. This data shows a decline in VOC concentrations since the mid-1980s. The NO_X data shows a flat to slight decline over the same 10 year period. This information indicates that reductions in VOC emissions have been very effective at reducing ozone levels and that a future control strategy with regional NO_X reductions combined with local VOC reductions should be beneficial. The Lake Michigan area Photochemical Assessment Monitoring Stations (PAMS) began operation in the mid-1990s and will in the future provide useful information on ozone precursor trends.

Lastly, the state used three observation-based analyses to evaluate the relative effectiveness of VOC and NO_X control strategies. The MAPPER program used monitoring data to estimate the extent of photochemical reactivity conditions in the Lake Michigan area. Receptor modeling was used to develop control curves for VOC-ozone and NO_X-ozone. And lastly, "indicator" species or ratios of species were used to distinquish between areas where VOC emission reductions versus NO_X emission reductions were most effective. These three analyses indicate that a control strategy featuring regional NO_X emission reductions combined with local VOC controls will be most effective at reducing ozone concentrations in the Lake Michigan area.

In summary, the trends analyses show that there has been considerable progress toward attainment of the one-hour ozone standard in the Lake Michigan area due to the implementation of emission control measures. Monitored levels of ozone have declined significantly over the past 20 years, especially during the 1980s. The reduction in ozone to this point can be attributed largely to the VOC control programs. Future improvements in ozone will rely more on regional NO_X controls. The air quality analysis information is consistent with the overall modeled attainment strategy submitted by WDNR which consists of local VOC controls and regional NO_X controls.

3. State Nitrogen Oxide (NO_X) Rule

What Are the Details of Wisconsin's State NO_X Reduction Rule?

Wisconsin submitted its NO_X regulations to EPA for inclusion in its SIP in response to two requirements: (1) the attainment demonstration requirement that the southeast Wisconsin area will attain the one-hour ozone standard as expeditiously as practicable but no later than 2007, and (2) the rate-of-progress (ROP) provision of the Act that Wisconsin achieve a nine-percent reduction in emissions in each of successive three-year periods until the attainment date of 2007. The reduction of NO_X is not specifically required as part of this area's attainment demonstration or ROP plan, because Wisconsin is not one of the 19 states and the District of Columbia required to reduce NO_x as a result of the EPA's NO_X SIP Call. However, Wisconsin has chosen to reduce NO_X emissions to claim credit toward both the attainment and ROP requirements. Under these circumstances, there is no specific guidance that directly addresses the review or approvability of the submitted NO_X rules. EPA has reviewed the rules, however, to determine consistency with general SIP requirements and, in particular, whether the emission limits are enforceable, are SIP approvable, and will achieve the reductions attributed to them. In general, the Wisconsin NO_X reduction rule contains two basic elements; (1) Combustion optimization and NO_X emission performance standards for existing sources in the nonattainment counties of Kenosha, Milwaukee, Manitowoc, Ozaukee, Racine, Washington, and Waukesha as well as in Sheboygan, and (2) NO_X emission performance standards for new sources in the six severe nonattainment counties (same as above except for Manitowoc and Sheboygan counties). The rules impact electric utility boilers as well as other stationary combustion sources. Details of the rule are discussed in the technical support document.

Is the NO_X Rule Approvable?

The emission limits and combustion optimization on the affected units have appropriate monitoring, recordkeeping, and reporting requirements to make them enforceable. Some sections of the rule contain "Director's Discretion" language that would allow the state to approve alternatives to monitoring methods without EPA concurrence. The WDNR has supplemented its package with a letter, dated May 28, 2001, clarifying the "Directors Discretion" language. In the letter, WDNR notes that the approval process is outlined in section NR 439.06 of the Wisconsin Admininstrative Code. That section, which EPA has approved as part of Wisconsin's SIP, requires the state to submit alternative or equivalent compliance methods to EPA as source specific SIP revisions. The alternative methods do not become effective until

approved by EPA. This clarification adequately addresses the EPA concerns.

The WDNR also submitted trading/averaging rules for those sources affected by the NO_x reduction rule. Because of concerns that EPA had raised regarding the approvability of this part of the rule, WDNR has requested that EPA not rulemake on the trading/averaging rules at this time. The NO_x rules have independent monitoring, reporting, and recordkeeping requirements and can be approved without the trading and averaging provisions. However, the trading/averaging rules did provide important compliance flexibility to a limited number of sources affected by the NO_x rule. EPA will continue to work with WDNR to develop an approach that provides appropriate flexibility.

4. Volatile Organic Compounds Reasonably Available Control Technology Rules

What Is Required?

Under section 182(b)(2) of the Act, ozone nonattainment areas that are classified as moderate or above must implement RACT to control VOC emissions from stationary sources. Sections 182(b)(2)(A) and (B) require these areas to implement RACT for those source categories for which EPA develops control technology guidelines (CTG). Section 182(b)(2)(C) requires that states develop and implement RACT for major sources of VOCs for which EPA has not issued a CTG document. The EPA was required to develop a CTG for industrial solvent cleaning by November 15, 1993. However, because EPA has not issued a final CTG for industrial solvent cleaning, the requirement of section 182(b)(2)(C) is applicable.

Industrial Solvent Cleaning Operations. As part of the December 2000 SIP package, Wisconsin submitted rules to control VOC emissions from industrial solvent cleaning operations. Sources in the six county severe area with maximum theoretical emissions of 25 tons per year or more, and sources in Kewaunee, Manitowoc, and Sheboygan counties with emissions of 100 tons per year or more are covered by this rule.

Although EPA failed to develop a CTG for industrial solvent cleaning, EPA did develop an Alternative Control Techniques Document (ACT) for industrial cleaning solvents. In the ACT, EPA recommends a two-phased approach. First, facilities would adopt a solvent accounting system to track the use and cost of cleaning solvents used in the plant. Then, plant managers and/or state agencies would take action to reduce emissions, using the information obtained from the accounting system.

Is the VOC RACT Rule for Industrial Clean Ups Approvable?

The VOC RACT rule adopted by Wisconsin is consistent with EPA's guidance. The state appropriately established the rule to cover industrial solvent cleaning operations at major sources in its nonattainment areas. Rather than merely setting up an accounting system and leaving it to the individual plants to determine what action to take, the state prescribed specific VOC content limits, work practice standards, recordkeeping requirements, and add-on control options. The limits and work practice standards all appear to be appropriate for the operations that they are designed to control and are based largely on rules developed by California's South Coast Air Quality Management District. The provision that allows sources to use solvents that have a composite partial vapor pressure of less than or equal to 10 mm of mercury at 20 degrees celsius, rather than meeting the specific VOC content limits, is consistent with the recommendations EPA made for cleaning solvents in the Lithographic Printing Act.

Plastic Parts Coating Operations. Wisconsin submitted a draft non-CTG RACT rule for plastic parts coating operations. The rule will regulate plastic parts coating in three broad industry segments: automotive/transpor'ation, business machines, and miscellaneous. The miscellaneous category includes items such as signs, weather stripping, and shutters.

In the Alternative Control Techniques Document (ACT) mentioned above, EPA presented two suggested control levels based on reformulation for the automotive/transportation and business machine sectors: level 1, a less stringent option and level 2, a more stringent option. In addition, EPA presented an alternative control option, level 4, for automotive/transportation exteriors. This level of control was based on newer, more accurate data. Wisconsin adopted the more stringent level of control, level 2, with the following exceptions: (1) For automotive/transportation interior air-dried nonclear coatings, Wisconsin set a limit between control levels 1 and 2; (2) for automotive/transportation exteriors the state adopted control level 4; (3) for business machine prime coats, the state set level 1 controls; and (4) for business machine nonclear coatings, the state set a limit between control levels 1 and 2. In addition, Wisconsin adopted VOC limits for miscellaneous plastic parts coating, which went beyond what was suggested in the ACT. The state applied these limits to the appropriate sources based on the areas' nonattainment classification and included appropriate recordkeeping requirements. EPA believes the state regulations meet the requirements of the Act as interpreted in EPA's RACT policy.

Are the Plastic Parts Coating Regulations Approvable?

Although the rules submitted in December 2000 are draft, the state has committed to submit a final plastic parts coating RACT rule in time for consideration in our final rulemaking. EPA is recommending approval of the rules if the final rules submitted by the state are substantially the same as the draft rules. If the state significantly modifies the draft rules, EPA would need to provide an additional opportunity for comment before it could take a final approval action.

Flint Ink Facility Order

On October 30, 2000, Wisconsin submitted a revision to its SIP for ozone to establish RACT for the Flint Ink facility located in Milwaukee. The SIP revision requires the use of lids, which is a common VOC control technology. The SIP revision includes an exemption for paste ink, which uses an oily disperser rather than solvents. The Flint Ink facility currently has fully enclosed screens for its existing horizontal mills. The SIP revision requires Flint Ink to comply with leak monitoring and repair provisions. Solvents used for cleaning ink manufacturing equipment must contain no more than 7.5 pounds of VOC per gallon of solvent and be kept in closed containers except while used for cleaning.

Is the Flint Ink SIP Revision Approvable?

The requirements set forth in the Flint Ink SIP revision are appropriate RACT measures and are approvable.

5. Nitrogen Oxide Waiver Revision

Why Is the Waiver Being Revised?

On January 26, 1996, EPA promulgated a NO_x waiver under section 182(f) of the Act for the Lake Michigan ozone nonattainment areas (61 FR 2428). The basis for granting the waiver at the time was that modeling indicated that NO_x reductions in the area would not contribute to or might interere with attainment of the ozone standard in the nonattainment area. In that rulemaking, EPA granted exemptions from the Reasonably Available Control Technology (RACT) and New Source Review (NSR)

requirements for major stationary sources of NO_X and from certain vehicle inspection and maintenance (I/M) and general and transportation conformity requirements for ozone nonattainment areas within the Lake Michigan area modeling domain, including southeast Wisconsin. The rulemaking also stated that EPA would reexamine the effectiveness of NO_X control when acting on the final attainment demonstration for areas within the region. The final demonstration, submitted in December 2000, includes a regional NO_X reduction strategy as the principle means for achieving attainment in the area.

The attainment strategy modeling runs include the Wisconsin NO_X control regulations described earlier. This modeling demonstrates attainment with NO_X reductions from the following counties: Kenosha, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha. The NO_X controls in the counties include emission limits at large coal fired power plants, emission limits or technology requirements for large industrial sources, implementation of pass/fail cutpoints for motor vehicle inspection and maintenance, and enhanced new source performance standards for major new sources in the six-county severe nonattainment area. The modeling demonstrates that the one-hour ozone standard will be attained due to implementation of the controls stemming from Wisconsin's NO_X and I/M cutpoint rules alone. Consequently, any additional NO_X requirements beyond those described above would be "excess reductions" since they would be in excess of the reductions shown to be needed to attain the ozone standard, as defined in section 182(f)(2) of the Act. In this notice, EPA is proposing to revise the waiver to indicate that the basis for the waiver has changed from being that NO_X reductions in the area "would not contribute to (or might interfere with) attainment" to additional NO_X reductions beyond those submitted by the state are "excess reductions" and are not required for attainment of the ozone standard. While the basis for the NO_X waiver is changed, the effect of the waiver on RACT for major NO_X sources, Lowest Achievable Emission Rate Technology for major new sources in the above mentioned counties, and offsets for major new sources locating in these counties does not change. The waiver is only being modified to no longer apply to the I/M program.

6. Post-1999 Rate-Of-Progress Plan

This section is divided into the following discussions.

A. The Wisconsin Post-1999 ROP Plan

(1) What is a post-1999 ROP plan?

(2) What Wisconsin counties are in the Milwaukee-Racine ozone nonattainment area?

(3) Who is affected by the Wisconsin post-1999 ROP plan?

(4) What criteria must a post-1999 ROP plan meet for approval?

(5) What are the special requirements for claiming NO_X reductions within and outside the nonattainment area boundary and VOC reductions outside the nonattainment area boundary?

(6) How did Wisconsin calculate the needed post-1999 ROP emission reduction requirement?

(A) The apportionment of VOC and NO_X emission reductions for each milestone year.

(B) Baseline emissions.

(C) Milestone year emission target levels.

(D) Projected emission growth levels.

(E) Emission reductions needed to achieve post-1999 ROP, net-of-growth.

(7) What are the criteria for acceptable post-1999 ROP control strategies?

(8) What are the emission control measures in Wisconsin's post-1999 ROP plan?

(A) VOC Control Strategies

(B) NO_X Control Strategies

(9) Are the emission control measures and calculated emission reductions acceptable, and is the post-1999 ROP plan approvable?

B. Contingency Plan

(1) What are the requirements for contingency measures?

(2) How do Wisconsin's attainment demonstration and post-1999 ROP plan SIPs address the contingency measure requirements?

(3) Do the Wisconsin attainment demonstration and post-1999 ROP plan meet the contingency measure requirements?

A. The Wisconsin Post-1999 ROP Plan

(1) *What Is a Post-1999 ROP Plan?* An ROP plan is a strategy to achieve timely periodic reductions of emissions that produce ground-level ozone in areas that are not attaining the ozone National Ambient Air Quality Standards (NAAQS). A post-1999 ROP plan demonstrates how ozone-forming VOC emissions affecting an area will be reduced by three percent per year averaged over three year intervals from 1999 to the area's attainment date.

ROP plans are a requirement of section 182 of Act. Section 182(c)(2)(B) requires states with ozone nonattainment areas classified as serious and above to adopt and implement plans to achieve periodic reductions in VOC emissions after 1996. The requirement is intended to ensure that an area makes steady progress toward attainment of the ozone NAAQS and doesn't delay reductions until the attainment year. The first three-year plan, called the "post-1996 ROP plan" should have achieved emission reductions by November 15, 1999. Many states found it difficult to meet the November 15, 1994, submittal date for an attainment demonstration and post-1996 ROP plan, due primarily to an inability to address or control ozone transport. We recognized the efforts made by the states and the challenges in developing technical information and control measures with respect to these submittals in a memorandum entitled "Ozone Attainment Demonstrations," dated March 2, 1995, from Mary D. Nichols, Assistant Administrator for Air and Radiation. The memorandum, in effect, provided new time frames for these SIP submittals and divided the required SIP submittals into two phases. Phase I included post-1996 ROP plans, providing for 9% emission reductions that were to be achieved by the end of 1999. Phase II included the post-1999 ROP plans, providing the remaining ROP SIP measures to be achieved from 1999 through the area's attainment date. Because the Milwaukee-Racine ozone nonattainment area is classified as a severe area, the latest attainment date for the area is November 15, 2007. The state has used this as its attainment date and thus, must show ROP through 2007.

The post-1999 ROP plan will contribute to continued progress toward and ultimate attainment of the ozone standard by the November 15, 2007, attainment date for the Milwaukee-Racine ozone nonattainment area.

Wisconsin submitted a post-1996 plan in 1997. We are taking rulemaking action on the post-1996 ROP plan in a separate **Federal Register** notice. The remainder of the ROP requirement, the post-1999 ROP emission reductions, must also be achieved at a rate of three percent per year relative to the 1990 baseline emissions, net of growth of emissions, averaged over three-year periods.

In lieu of achieving part or all of the post-1999 reductions only from VOC emissions, under section 182(c)(2)(C) of the Act, the post-1999 ROP plan may provide for reductions of NO_X emissions. The substitution of NO_X emission reductions is discussed below in more detail.

In general, the post-1999 ROP plan should contain: (1) Documentation showing how the state calculated the emission reduction(s) needed on a daily basis to achieve the ROP VOC and NO_X emission reductions; (2) a description of the control measures used to achieve the emission reductions; and (3) a description of how the state determined the emission reductions achievable from

each control measure. As discussed in more detail below, Wisconsin's post-1999 ROP plan adequately addresses all of these elements.

EPA's TSD for this proposed action contains the details of Wisconsin's post-1999 ROP plan. You may obtain the TSD for this proposed rulemaking from the Region 5 office at the address indicated above.

(2) *What Wisconsin Counties Are in the Milwaukee-Racine Ozone Nonattainment Area?* The Milwaukee-Racine ozone nonattainment area includes the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha.

(3) *Who is Affected by the Wisconsin Post-1999 ROP Plan?* The VOC and NO_X control measures in Wisconsin's plan affect a variety of industries, businesses, and motor vehicle owners. To meet the post-1999 ROP emission reduction requirements, Wisconsin established NO_X emission rates for stationary source Electric Generating Units (EGU) and non-EGUs through adoption of a state rule (NR 428). Additional NO_X emission reduction credits are claimed for implementation and enforcement of NO_X cutpoints established through the state's motor vehicle inspection and maintenance program. On-board diagnostic testing of automobiles must be incorporated into the state's overall I/M testing program. The state submitted the NO_X regulations identified in the post-1999 ROP plan for stationary and mobile sources as separate SIP revisions, which must be federally approved prior to or at the same time as the full and final approval of the post-1999 ROP plan. Wisconsin's NO_X stationary source rule (NR428) was submitted in December 2000 as part of the one-hour ozone attainment demonstration and is being approved in another section of this rulemaking. The state also submitted the revision to the motor vehicle inspection and maintenance program for NO_X cutpoints, and we will take action on that revision through a separate **Federal Register** notice and comment rulemaking process.

Wisconsin also claimed VOC emission reductions as a result of continued implementation of the following federally promulgated programs: Phase II of the reformulated gasoline program, on-board diagnostic testing of automobiles, National Low Emission Vehicle (NLEV), Tier 2 and low sulfur fuel.

In aggregate, these VOC and NO_X emission reductions are expected to achieve the post-1999 ROP plan emission reduction requirement.

(4) *What Criteria Must a Post-1999 ROP Plan Meet for Approval?* Section 182(c)(2)(B) establishes the elements that a post-1999 ROP plan must contain for approval. These elements are: (1) an emission baseline; (2) an emission target level; (3) an emission reduction estimate to compensate for emission growth projections and to reach the ROP emission reduction goal; and (4) emission reduction estimates for the plan's control measures. Through these elements, the plan must illustrate that the nonattainment area will achieve a three percent per year average of VOC and/or NO_X emission reductions over each three year interval from 1999 through 2007.

We have issued several guidance documents for states to use in developing approvable post-1996 ROP plans that also apply to post-1999 plans. These documents address such topics as: (1) the relationship of ROP plans to other SIP elements required by the Act; (2) calculation of baseline emissions and emission target levels; (3) procedures for projecting emission growth; and (4) methodology for determining emission reduction estimates for various control measures, including federal measures.

Our January 1994, policy document, *Guidance on the Post-1996 Rate-Of-Progress Plan and the Attainment Demonstration* (post-1996 policy), provides states with an appropriate method to calculate the emission reductions needed to meet the ROP emission reduction requirement. A complete list of ROP guidance documents is in the TSD for this rulemaking.

(5) *What Are the Special Requirements for Claiming NO_X Reductions Within and Outside the Nonattainment Area Boundary and VOC Reductions Outside the Nonattainment Area Boundary?* If a post-1999 ROP plan relies, in part, on NO_X reductions, it is subject to certain additional requirements. As noted above, under section 182(c)(2)(C) of the Act, a plan can substitute NO_X reductions for VOC if the resulting reduction in ozone concentrations is at least equivalent to the ozone reductions that would occur under a plan that relies only on VOC reductions. As required by section 182(c)(2)(C), we issued policy concerning the conditions for demonstrating equivalency (see "NO_X Substitution Guidance," December 1993). Our NO_X substitution policy provides that a ROP plan based in part on a NO_X substitution strategy must show that the sum of the creditable VOC and NO_X reduction percentages (relative to 1990 baseline emissions) equals or exceeds a total of nine percent (that is the total percentage for a three year interval). Moreover, the state must provide technical justification that the NO_X reductions will reduce ozone concentrations within the nonattainment area.

On December 29, 1997, we issued a policy memorandum entitled, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS" (December 1997 policy). This policy provides additional guidance on the types of emission reductions that are creditable towards ROP. This guidance provides for flexibility by recognizing emission reductions to meet the post-1996 ROP requirement from areas outside the nonattainment area that contribute to air quality in the nonattainment area. The geographic expansion for emission reductions occurring outside the nonattainment area is limited to an area within 100 kilometers from the nonattainment area boundary for VOC reductions and within 200 kilometers for substitution of NO_X reductions in the absence of additional justification and support from the state. These reductions are subject to the same restrictions as if they were obtained within the nonattainment area. NO_X emissions from sources outside the nonattainment area that are being substituted must be included in the baseline ROP emissions and target ROP reduction calculation.

This policy also applies to measures mandated by the Act and implemented by states that achieve reductions in ozone either from outside or within the nonattainment area including the regional NO_X SIP, Maximum Achievable Control Technology (MACT), Title IV NO_X.

Consequently, NO_X reductions from outside the Milwaukee-Racine ozone nonattainment area, but within 200 kilometers of the nonattainment area boundary, are creditable in the post-1999 ROP plan, as are VOC emission reductions from outside but within 100 kilometers of the nonattainment area boundary. Since Manitowoc and Sheboygan counties are within 100 kilometers of the nonattainment area boundary, both VOC and NO_X emission reductions from those counties are creditable toward post-1999 ROP. The emission reductions from these two counties were accounted for in the 1-hour attainment demonstration modeling which projects attainment of the 1-hour ozone standard in the Milwaukee-Racine nonattainment area by 2007. We believe that the 1-hour ozone modeled attainment demonstration supports the creditability of these outside nonattainment area

VOC and NO_X reduction for post-1999 ROP purposes.

The December 1997 policy also states that there are specific requirements for a nonattainment area which has been granted a NO_X waiver that want to claim NO_X reductions from outside the nonattainment area, but within the state's boundaries. This can be done the State provides an adequate technical justification that the substitution would result in a reduction in ozone concentrations in the nonattainment area with the NO_X waiver. Furthermore, states can claim ROP credits for NO_X reductions from within the nonattainment area for which a NO_X waiver was approved, provided the claim for ROP credits is accompanied by a showing that such NO_X reductions will lead to lower ozone concentrations in the nonattainment area and an amended NO_X waiver request with modeling data supporting the revised NO_X waiver. We granted a NO_X waiver for the Milwaukee-Racine ozone nonattainment area on January 26, 1996 (61 FR 2428). Wisconsin submitted urban-air shed modeling conducted by LADCO in cooperation with the Lake Michigan States of Wisconsin, Indiana, Illinois and Michigan as the basis of the one-hour ozone attainment demonstration modeling. The attainment demonstration modeling, which we are proposing to approve elsewhere in this **Federal Register** document, takes into account an attainment strategy for Wisconsin that incorporates the NO_X emission reductions achieved from the implementation of the I/M NO_X cutpoints in the State's I/M program and the state's stationary source NO_X rule, in conjunction with VOC emission reductions, from both within and outside the Milwaukee-Racine nonattainment area. This modeling shows that the post-1999 ROP VOC and NO_X emission reductions will decrease ozone concentrations to a level that demonstrates projected attainment of the one-hour ozone standard in the Milwaukee-Racine ozone nonattainment area by 2007. Wisconsin, therefore, satisfies the requirement that NO_X reductions inside a NO_X waiver area must reduce ozone concentrations within the nonattainment area to be creditable as ROP reductions.

Moreover, both Sheboygan and Manitowoc counties were granted a NO_X waiver with the January 26, 1996 approval. Consequently, Wisconsin submitted an amended NO_X waiver for these two counties, as well as the six-county Milwaukee-Racine nonattainment area, which we are proposing to approve elsewhere in this **Federal Register** notice. In conclusion, Wisconsin has satisfied the requirements for claiming NO_X ROP credits inside the NO_X waiver area, as well as in areas outside the nonattainment area.

(6) *How Did Wisconsin Calculate the Needed ROP Reduction Requirement?*

(a) The apportionment of VOC and NO_X emission reductions for each milestone year. The post-1999 ROP plan is based on a combination of VOC and NO_X emission reductions both inside and outside of the Milwaukee-Racine ozone nonattainment area but within 200 kilometers of the boundary. To achieve the 9 percent emission reduction for each three-year milestone year, Wisconsin chose the VOC/ NO_X emission reduction combinations presented in Tables 1 and 2.

Tables 7 and 8 summarize the state's post-1999 ROP calculations for determining the target levels and needed ROP emission reductions for each milestone year.

TABLE 7.—REQUIRED VOC REDUCTION BY 2002, 2005, AND 2007

[Rate of progress summary for the Milwaukee-Racine Post-1999 ROP plan area]

Calculation of VOC reduction needs for each milestone year	VOC emissions (tons/day)		
	2002	2005	2007
1990 VOC Emissions	536.4	536.4	536.4
1990 Rate-of-Progress Base Year Emission Inventory (Anthropogenic Only)	406.97	406.97	406.97
Total Non-creditable Emission Reductions from FMVCP and RVP expected by milestone year	81.26	83.06	83.26
1990 Adjusted Base Year Inventory (minus RVP and FMVCP)	325.71	323.91	323.71
Percent VOC Reduction for ROP	3.5	2	1
VOC ROP Reduction (Percent VOC Reduction for ROP * Adjusted Base Year Emissions)	11.40	6.48	3.24
FMVCP Fleet Turnover Correction Factor (FTC) (difference between previous milestone year and applicable milestone year FMVCP implementation)	3.3	1.8	0.2
Previous Milestone Year Target Level of Emissions	248.74	234.04	225.76
Milestone Year Target Level of Emissions (Previous Milestone Year Target level—percent VOC ROP—FTC)	234.04	225.76	222.32
Projected Milestone Year Anthropogenic Emissions	240.57	241.65	242.46
Required Reductions by Milestone Year to Meet the Rate-of-Progress Requirements (Projected—Target Level)	6.53	15.89	20 14

TABLE 8.—REQUIRED NO_X REDUCTION BY 2002, 2005, AND 2007

[Rate of progress summary for the Milwaukee-Racine Post-1999 ROP plan area]

Calculation of NO_X reduction needs for each milestone year	NO_X emissions (tons/day)		
	2002	2005	2007
1990 NO_X Emissions	396.32	396.32	396.32
1990 Rate-of-Progress Base Year Emission Inventory (Anthropogenic Only)	396.32	396.32	396.32
Total Non-creditable Emission Reductions from FMVCP and RVP expected by milestone year	33.2	35.5	36.2
1990 Adjusted Base Year Inventory (minus RVP and FMVCP)	363.12	360.82	360.12
Percent NO_X Reduction for ROP	5.5	7	5
NO_X ROP Reduction (Percent NO_X Reduction for ROP * Adjusted Base Year Emissions)	19.97	25.26	18.01
FMVCP Fleet Turnover Correction Factor (FTC) (difference between previous milestone year and applicable milestone year FMVCP implementation)	4.7	2.3	0.7
Previous Milestone Year Target Level of Emissions	367.82	343.15	315 59

TABLE 8.—REQUIRED NO_X REDUCTION BY 2002, 2005, AND 2007—Continued

[Rate of progress summary for the Milwaukee-Racine Post-1999 ROP plan area]

Calculation of NO_X reduction needs for each milestone year	NO_X emissions (tons/day)		
	2002	2005	2007
Milestone Year Target Level of Emissions (Previous Milestone Year Target level—percent NO_X ROP—FTC)	343.15	315.59	296.88
Projected Milestone Year Anthropogenic Emission	389.3	367.9	353.86
Required Reductions by Milestone Year to Meet the Rate-of-Progress Requirements (Projected—Target Level)	46.15	52.31	56.98

Under our post-1996 policy, the following steps may be used to calculate the needed emissions reduction:

(1) Establish the emission baselines for VOC and NO_X;

(2) Calculate the emission target level to meet the overall 9 percent reduction by the end of each three-year interval or milestone years 2002, 2005 and 2007;

(3) Estimate the projected emission growth that would occur if no ROP emission reduction takes place;

(4) Subtract the projected emission level from the emission target to determine the VOC and NO_X emission reduction needed, net of growth.

Application of these methods to Wisconsin's post-1999 ROP calculations is discussed below.

(b) Baseline emissions. The Act requires that the baseline emissions represent 1990 anthropogenic emissions on a peak ozone season weekday basis. Peak ozone season weekday emissions represent the average VOC and NO_X daily emissions that occur on weekdays during the peak three-month ozone period of June through August. The base year inventory for post-1999 ROP purposes must include 1990 base year emissions for the six county nonattainment area as well as for certain sources in Manitowoc and Sheboygan counties. Base year emissions from Manitowoc and Sheboygan counties must be included because Wisconsin is taking credit for emission reductions that occur in theses counties.

We approved Wisconsin's 1990 base year emission inventory for the Milwaukee-Racine area and Sheboygan and Manitowoc counties on June 15, 1994, 59 FR 30702. Therefore, the area has a comprehensive and accurate inventory of emissions from all relevant sources of VOC and NO_X in the nonattainment area.

Wisconsin identified the 1990 VOC and NO_X base year emission inventories as the basis for the post-1999 ROP calculations with several updates to reflect annual daily vehicle miles travelled (VMT), vehicle type mix, speed distribution for the 6-county area, average speed by HPMS class for Sheboygan and Manitowoc counties, and conversion factors to estimate summer weekday VMT. The total 1990 VOC and NO_X emissions are 536.4 tpd and 396.32 tpd, respectively. The Act requires adjusting the ROP baseline for VOC and NO_X to exclude emissions reductions achieved by the federal Motor Vehicle Control Program (FMVCP), and federal Reid Vapor Pressure (RVP) regulations promulgated before November 15, 1990, state regulations required to correct deficiencies in existing VOC RACT regulations, and state regulations required to correct deficiencies in existing I/M programs. Because these regulations were promulgated or required before the 1990 amendments to the Act, the Act prohibits states from claiming ROP reductions from these regulations. To achieve an accurate ROP target, the state must adjust the baseline to reflect these noncreditable reductions. The resulting inventory is called the "adjusted base year inventory."

Wisconsin determined the emission reductions associated with the noncreditable FMVCP and RVP programs by using the MOBILE5a model.

Wisconsin determined that the VOC RACT rule corrections in the state were technical in nature and, therefore, did not require any adjustments to the 1990 emission inventory. Wisconsin was not required to implement an I/M program before the 1990 amendments, and thus did not make adjustments to the 1990 emission inventory for I/M corrections.

Wisconsin provided the 1990 ROP adjusted base year emission inventories for VOC and NO_X for each milestone year.

(c) *Milestone year emission target levels.* After the adjusted base year emission inventory is established, the next step is to calculate the VOC and NO_X emission target level for each milestone year. For the post-1999 plan the milestone years are 2002, 2005, and 2007. The target level of emissions represents the maximum emissions that an area can emit for each of those milestone years while complying with the ROP requirement. Our post-1996 policy provides the method for calculating VOC and NO_X target levels. In general, the milestone year target levels of emissions for VOC and NO_X are determined by adjusting the baseline to account for (1) the percent reduction required to meet the ROP requirement, and (2) the fleet turnover correction (FTC) factor for each milestone year from the previous milestone year target level. In this case, the previous milestone targets for milestone years 2002, 2005 and 2007 are 1999, 2002 and 2005, respectively.

The FTC factor represents the emission reduction that has occurred under the pre-1990 Act FMVCP and RVP regulations between consecutive milestone years, for the post-1999 plan, from 1999 to 2002, 2002 to 2005 and 2005 to 2007. Since the previous milestone year target level and the ROP reduction do not factor in these reductions, the FTC factor is necessary to accurately calculate the emission level that must be achieved by each milestone year.

For the Milwaukee-Racine area's post-1999 ROP plan, it would not be appropriate to use the 1999 VOC target level from the post-1996 ROP plan to calculate the 2002 target level because that plan covered a different geographic area than the post-1999 ROP plan. Thus, Wisconsin recalculated the 1999 VOC target level consistent with the Act.

With respect to the NO_X target level calculations, since the area did not claim NO_X credits in the post-1996 plan, a 1999 NO_X target level of emissions does not exist. The 1999 NO_X target level is then replaced with the 1990 ROP NO_X base year inventory.

Wisconsin provides the methodology and documentation used to determine the VOC and NO_X target levels. The target levels are presented in Tables 1 and 2, above, for VOC and NO_X.

(d) *Projected emission growth levels.* To account for source emission growth between 1990 and each milestone year 2002, 2005 and 2007, the state must develop projected emission inventories

for VOC and NO_X. The projected emission inventories represent the emissions expected in each milestone year if no post-1999 ROP control measures are implemented. The TSD for the post-1999 ROP plan discusses Wisconsin's emission projections for each source category and pollutant.

In general, for NO_X, 1990 actual emissions were used as the basis for projected NO_X emissions, with the exception of point sources, where 1995, 1996 or 1997 emissions, normalized to 1990 were used. We believe that the use of actual normalized 1995, 1996 or 1997 emissions as the basis for 2002, 2005 and 2007 projections is likely to produce a more accurate projection than 1990 emissions, because the projection period is shorter, 7–12 years versus 12–17 years. For VOC, Wisconsin used 1990 emissions as the base year for projections.

Growth factors were either based on Economic Growth Analysis System (EGAS) or were state derived, and were consistent with those projections used in LADCO's attainment demonstration modeling. State specific factors were used when EGAS factors were determined to be inappropriate.

On-road projections were based on the MOBILE5a model with adjustments for Phase 2 RFG (NO_X only), Tier 2 standards/low sulfur gasoline, and excess emissions effect of heavy-duty diesel defeat devices. The state submittal provides mobile input and output files.

Wisconsin based growth projections on VMT coordinated with the Wisconsin Department of Transportation and the Metropolitan Planning Organizations. In addition, Wisconsin added a 7.5 percent growth buffer was added to VMT forecasts to minimize the probability of a transportation conformity failure. Transportation conformity means that the level of emissions from the transportation sector (cars, trucks and buses) must be consistent with the requirements in the SIP to attain and maintain the air quality standards. Section 176(c) of the Act requires conformity of transportation plans, programs and projects to an implementation plan's purpose of attaining and maintaining the air quality standards.

Wisconsin projects on-road mobile source emissions for VOC and NO_X with a number of programs and assumptions incorporated into the emissions modeling. The programs/assumptions are: (a) An increase in NO_X emissions in eight counties due to residual emissions increases after 90% retrofit of defeat devises from the heavy-duty diesel consent decree; (b) inclusion of NLEV vehicles based on local data and forecasts (MOBILE5a default distributions were not used); (c) low sulfur gasoline in eight counties in 2005 and 2007; (d) Tier 2 vehicles in 2005 and 2007; (e) On-board diagnostics (OBD) for model year 1996 and new vehicles; and (f) Phase 2 reformulated gasoline (RFG). Inclusion of these assumptions/programs into the modeling, in general, decreases the projected emissions. Wisconsin's May 25, 2001 supplement identifies several of these programs as VOC control programs for ROP purposes, and as a result, Wisconsin removed these VOC emission reductions from the projected emissions to avoid double counting of the emission reductions. None of these on-road mobile programs has been identified as a ROP measure for NO_X and thus continues to be incorporated into the emission projections. The total projected VOC and NO_X emissions for 2002, 2005 and 2007 for the entire eight county plan area and as identified by Wisconsin are in Tables 1 and 2, above.

(e) Emission reductions needed to achieve post-1999 ROP, net-of-growth. Based on the emission inventories and calculations, the NO_X emission reductions needed for the Milwaukee-Racine ozone area to meet the post-1999 ROP requirement for 2002, 2005, and 2007 are 46.15 tpd, 52.31 tpd, and 56.98 tpd, respectively. The required VOC emissions reductions to meet the post-1999 ROP requirement for 2002, 2005, and 2007 are 6.53 tpd, 15.89 tpd and 20.14 tpd, respectively. For both VOC and NO_X, this is the difference between the projected emissions with growth and with no post-1999 ROP controls and the target level of emissions calculated for each milestone year. Refer to Tables 1 and 2, above.

(7) *What Are the Criteria for Acceptable Post-1999 ROP Control Strategies?* Under section 182(b)(1)(C) of the Act, emission reductions claimed for ROP must be creditable to the extent that the reductions have actually occurred before the applicable ROP milestone date, that is by November 15 of each milestone year, 2002, 2005 and 2007. Furthermore, to be creditable, emission reductions must be real, permanent, and enforceable.

The post-1999 plan must also adequately document the methods used to calculate the emission reduction for each control measure. Our policy as described in the "General Preamble for the Implementation of Title I of the CAA amendments of 1990" (General Preamble) (57 FR 13498), provides that, at a minimum, the methods should meet the following four principles: (1) Emission reductions from control measures must be quantifiable; (2) control measures must be enforceable; (3) interpretation of the control measures must be replicable; and, (4) control measures must be accountable.

Section 182(b)(1)(D) of the Act prescribes limits on what control measures states can include in ROP plans. All permanent and enforceable control measures occurring after 1990 are creditable with the following exceptions: (1) FMVCP requirements promulgated by January 1, 1990; (2) RVP regulations promulgated by November 15, 1990; (3) Reasonably Available Control Technology (RACT) "Fix-Up" regulations required under section 182(a)(2)(A) of the Act; and (4) Inspection and Maintenance (I/M) program "Fix-Ups" as required under section 182(a)(2)(B) of the Act.

(8) What Are the Emission Control Measures in Wisconsin's Post-1999 ROP Plan?

(a) *VOC control strategies.* The VOC control measures identified in Wisconsin's post-1999 ROP plan are Phase 2 reformulated gasoline, on-board diagnostic testing of automobiles, NLEV, Tier 2 and low sulfur gasoline programs. The VOC emission reductions from each of these federal control programs is in Table 9, below. Phase 2 RFG is required in certain areas including the Milwaukee-Racine area and was introduced in 2001. Under section 182(c)(3) of the Act, Wisconsin must incorporate OBD testing into its overall I/M program. This test uses the emissions diagnostic system that manufacturers must include on all 1996 and newer automobiles. Wisconsin is phasing this required test into its program starting in May 2001 and is expected to submit a revision to the I/M SIP this summer. EPA must finally approve the OBD testing revision to the I/M SIP prior to full and final approval of the post-1999 ROP plan. Federal regulations for NLEV, Tier 2 motor vehicle emission standards and low sulfur gasoline motor vehicle emissions were promulgated by EPA (See 40 CFR parts 9, 80, 85 and 86) and will continue to reduce motor vehicle emissions. The VOC emission reductions from all these control measures were determined with the MOBILE5a model.

(b) *NO_X Control Strategies.* Wisconsin adopted a rule, NR 428, to reduce NO_X emissions from stationary sources, which it submitted to us as a SIP revision. NR 428 establishes system NO_X emissions for electric generating units starting at the end of 2002. NO_X emission limits for most of the utility boilers during the ozone season

established by the rule are 0.33 lbs/mmBTU effective on December 31, 2002, 0.29 lbs/mmBTU effective on December 31, 2005, and 0.28 lbs/mmBTU effective on December 31, 2007. The limits are applicable to sources in the eight county area. Emission reductions are estimated by applying the specific emission limits to each known source for each milestone year.

NR 428 also establishes NO_X emission rates and combustion optimization requirements for Non-EGUs, or existing large sources other than utilities based on the unit's capacity and utilization, starting at the end of 2002. Emission reduction estimates are based on historical data. Wisconsin applied the performance standards on a projection of potentially affected sources based on an analysis of 1995 data.

NR 428 also establishes annual NO_X emission limits for new stationary sources.based on unit capacity. This part of the rule is intended to capture sources that are not covered under the new source review or prevention of significant deterioration permitting provisions. The effective date for new sources is February 1, 2001. The emission reductions estimates were based on permitting trends of the past few years.

The emission reductions estimated from these controls are in Table 9.

The state submitted NR 428 to us as a SIP revision. We are proposing to approve NR 428 elsewhere in this **Federal Register**. NR 428 must be fully and finally approved no later than the time we fully approve the post-1999 ROP plan.

The compliance schedule in NR 428 for EGU emission rates and performance standards is December 31 of 2002, 2005, and 2007 and December 31, 2002 for non-EGU. A strict reading of the Act would require that the 2002, 2005 and 2007 ROP milestones be met by November 15 of that year, i.e. 9% by November 15, 2002, and 2005, and 6% by November 15, 2007. Although, some sources will comply in time to achieve emission reductions prior to the compliance date and in time to reduce emissions prior to the post-1999 ROP milestone date, some may not. It is difficult to determine what emission reductions will be achieved by November 15, 2002, 2005 and 2007. However, we believe that it is reasonable and appropriate to allow ROP credit for these emission reductions during the milestone periods, 00–02, 03–05, and 06–07, for the reasons discussed below.

- It would be severe to penalize Wisconsin for missing the November 15 milestone date by 6 weeks. Wisconsin believes that sources will be upgrading in advance to meet the December 31 compliance date established by its rule to avoid disruption in power supply.
- Wisconsin's ozone season starts on April 15. Consequently, a rule with a November 15 compliance date would have the same net effect as a rule with a December 31 compliance date. The net effect being ozone precursor reductions prior to the next ozone season, April 15 of 2003, 2006 and 2008. Because both November 15 and December 31 occur before the start of the next ozone season, the ambient air quality benefit that would be gained by advancing the compliance date by six weeks would be de minimus and would not justify the implementation of additional measures in the Milwaukee-Racine area for purposes of the post-1999 plan. See "Approval and Promulgation of Implementation Plans; Phoenix, Arizona Ozone Nonattainment Area, 15 Percent Rate of Progress Plan and 1990 Base Year Emission Inventory," proposed rule on January 26, 1998 (63 FR 3687) and final rule of May 27, 1998 (63 FR 28898).

Wisconsin's control strategy also includes emission reduction credits from the Enhanced Motor Vehicle Inspection and Maintenance Program NO_X Cutpoints. The Enhanced I/M program has operated in the six county Milwaukee-Racine severe area as well as Sheboygan county since December 1995. NO_X limits for this program were suspended but became effective on May 1, 2001. Wisconsin's rule AM–27–00 established enforceable limits on NO_X emissions for the I/M program. The emission reductions expected from the I/M NO_X cutpoints are in Table 9, below. Reduction estimates were determined through the MOBILE5a model. EPA published a conditional approval of Wisconsin's I/M SIP revision on January 12, 1995 (60 FR 2881). Wisconsin submitted a revision on December 30, 1998 and another revision is expected this summer. EPA must finally approve these revisions to the I/M SIP prior to full and final approval of the post-1999 ROP plan.

We have issued several policy documents, listed in the TSD for this proposed rulemaking, which provide guidance for states to use in quantifying emission reductions. We have also developed the MOBILE5a model for the states to calculate emission reductions from mobile sources.

Wisconsin appropriately used our policy documents and MOBILE5a model for calculating emission reductions for VOC and NO_X. Wisconsin obtained the necessary data for quantifying the source baselines and emission reductions from a variety of sources as previously discussed. Where Wisconsin had to develop its own assumptions regarding emission reductions, it justified the assumptions adequately based on existing data.

Table 9 summarizes the state's VOC and NO_X emission reduction claims for the post-1999 ROP control measures, and the amount of reductions we find approvable. Overall, Wisconsin's ROP plan provides for 11.8 tpd, 19.6 tpd and 24.5 tpd of VOC emission reductions and 56.47 tpd, 69.24 tpd, and 71.88 tpd of NO_X emission reductions by 2002, 2005 and 2007, respectively.

TABLE 9.—SUMMARY OF CONTROL MEASURES AND EMISSION REDUCTIONS

[Control measures summary for the Milwaukee-Racine area]

Control measures within the 6 County Milwaukee-Racine severe ozone nonattainment area and Manitowoc and Sheboygan Counties (within 100 kilometer boundary area) to meet ROP requirement	VOC emission reductions (tpd)			NO_X emission reductions (tpd)		
	2002	2005	2007	2002	2005	2007
Utility—System Emission Rate, 0.33	.....	.....	.....	38.07	.....	.....
Utility—System Emission Rate, 0.29	.....	.....	.....	.....	53.34	.....
Utility—System Emission Rate, 0.28	.....	.....	.....	.....	.....	58.68
Performance Standards for Existing Facilities	.....	.....	.....	4.6	4.6	4.6
Performance Standards for New Sources	.....	.....	.....	0.2	1.2	1.8
Motor Vehicle Inspection and Maintenance (I/M) NO_X Cutpoints	.....	.....	.....	13.6	10.1	6.8
Phase 2 RFG	5.80	5.80	5.80	.....	.....	.....
OBD Testing	1.40	3.40	4.40	.....	.....	.....
Fleet Effect of NLEV, Tier 2, and Low Sulfur Fuel	4.60	10.40	14.30	.....	.....	.....

TABLE 9.—SUMMARY OF CONTROL MEASURES AND EMISSION REDUCTIONS—Continued
[Control measures summary for the Milwaukee-Racine area]

Control measures within the 6 County Milwaukee-Racine severe ozone nonattainment area and Manitowoc and Sheboygan Counties (within 100 kilometer boundary area) to meet ROP requirement	VOC emission reductions (tpd)			NO_x emission reductions (tpd)		
	2002	2005	2007	2002	2005	2007
Total Emission Reductions From Control Measures	11.80	19.60	24.50	56.47	69.24	71.88

Tables 10 and 11 summarize and demonstrate that Wisconsin's post-1999 ROP plan will achieve sufficient VOC and NO_x emission reductions to satisfy the ROP requirement and target levels.

TABLE 10.—COMPARISON OF REQUIRED EMISSION REDUCTIONS TO CONTROL MEASURE EMISSION REDUCTIONS AND TARGET LEVELS TO PROJECTED CONTROLLED EMISSIONS FOR VOC

Year	Required emission reductions	Control measures emission reductions	Target levels	Projected controlled emissions
2002	6.53	11.8	234.04	228.77
2005	15.89	19.6	225.76	218.72
2007	20.14	24.5	222.32	212.33

TABLE 11.—COMPARISON OF REQUIRED EMISSION REDUCTIONS TO CONTROL MEASURE EMISSION REDUCTIONS AND TARGET LEVELS TO PROJECTED EMISSIONS FOR NO_x

Year	Required emission reductions	Control measures emission reductions	Target levels	Projected controlled emissions
2002	46.15	56.47	343.15	332.83
2005	52.31	69.24	315.59	298.66
2007	56.98	71.88	296.88	281.99

(9) *Are the emission control measures and calculated emission reductions acceptable, and is the post-1999 ROP plan approvable?* The emission control measures and associated emission reductions are creditable for purposes of the post-1999 ROP plan, and the plan is approvable provided that NR 428, the state's stationary NO_x rule, the OBD testing of automobiles and the I/M NO_x cutpoints SIP revisions to the I/M program are fully and finally approved into the SIP prior to or at the same time as the post-1999 ROP plan. Table 12 provides the status of the VOC and NO_x control measures with respect to state adoption, SIP approval or federal promulgation.

TABLE 12.—FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES IN THE MILWAUKEE-RACINE AREA POST-1999 RATE-OF-PROGRESS PLAN

Control measure	Status of rules
Phase 2 RFG	Federal Regulation, 40 CFR 80, Subpart D, February 16, 1994 (59 FR 7716).
NLEV	Federal Regulation, 40 CFR Parts 9, 85 and 86, January 6, 1998 (63 FR 925).
Tier 2; Low Sulfur Fuel	Federal Regulation, 40 CFR Parts 80, 85 and 86, February 10, 2000 (65 FR 6698).
Stationary Source NO_x Rule	State rule (NR 428) adopted and submitted to EPA on 12/22/00 as SIP revisions. Region 5 is reviewing and processing the submittal. The rule must be fully and finally approved prior to approval of the post-1999 ROP plan.
Motor Vehicle Inspection and Maintenance—NO_x Cutpoints and OBD Testing.	Conditional Approval on January 12, 1995 (60 FR 2881). Revision submitted on December 30, 1998. Additional supplement is expected from the State by summer 2001. NO_x Cutpoints and OBD testing must be fully and finally approved prior to approval of the post-1999 ROP plan.

B. Contingency Plan

(1) *What are the requirements for contingency measures?* Section 172(c)(9) of the Act required states with ozone nonattainment areas classified as moderate and above to adopt contingency measures by November 15, 1993. Such measures were to provide for the implementation of specific emission control measures if an ozone nonattainment area failed to achieve ROP or failed to attain the NAAQS within the time-frame specified under the Act. Section 182(c)(9) of the Act requires that, in addition to the contingency measures required under section 172(c)(9), the contingency measure SIP revisions for serious and above ozone nonattainment areas must also provide for the implementation of specific measures if the area fails to meet any applicable milestone in the Act. The contingency measures must take effect without further action by the state or by the EPA Administrator upon failure by the state to: meet ROP emission reduction milestones; achieve attainment of the one-hour ozone NAAQS by the Act's required deadline;

or achieve other applicable milestones of the Act.

Our policy, as provided in the April 16, 1992 "General Preamble," states that the contingency measures, in total, must generally be able to provide for a 3 percent reduction of 1990 VOC baseline emissions beyond the ROP reduction required for each particular milestone year.

While all contingency measures must be fully adopted rules or measures, states can use the measures in two different ways. A state can choose to implement contingency measures before the milestone deadline. Alternatively, a state may decide not to implement contingency measures until an area has actually failed to achieve a ROP or attainment milestone. In the latter situation, the state must implement the contingency measure within one year following identification of a milestone failure.

Finally, EPA believes that it is illogical to penalize states for early implementation of contingency measures by requiring additional adopted contingency measures to backfill the early implemented measures. But, if an area fails to attain, demonstrate RFP or misses a milestone, then additional contingency measures are needed and must be adopted. (See August 13, 1993, memorandum from G. T. Helms, "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas").

The additional 3 percent reduction would ensure that progress toward attainment occurs at a rate similar to that specified under the Reasonable Further Progress (RFP)(also called the Rate of Progress or ROP) requirements for severe areas (3 percent per year) and that the state will achieve these reductions while conducting additional control measure development and implementation as necessary to correct the shortfall in emissions reductions or to adopt newly required measures necessary to reach attainment.

2. *How do Wisconsin's attainment demonstration and post-1999 ROP plan SIPs address the contingency measure requirements?* EPA approved a contingency plan for Wisconsin with the approval of the 15% ROP plan on March 22, 1996 (61 FR 11735). The contingency plan contained four contingency measures: Class C reformulated gasoline (RFG) in moderate counties, Class B RFG in severe counties, federal non-road engine standards and federal consumer and commercial products. All of these measures have been implemented and are thus no longer valid as contingency measures, with the exception of Class C RFG in moderate counties. Therefore, Wisconsin must provide a new contingency plan.

Wisconsin's December 22, 2000 one-hour attainment demonstration submittal suggests that, since contingency measures do not have to be implemented until a year after a milestone failure, *i.e.* 2003, 2006 and 2008, and our policy allows early implementation of contingency measures, the state's stationary source NO_X rule, in particular emission reductions that will be achieved from electric generating units and VOC emissions from OBD testing, will achieve the necessary emission reductions to meet the 3% contingency plan requirement. The submittal provides calculations illustrating what the contingency plan emission reduction requirement is (in tpd) and demonstrates that the contingency measure requirement will be met with the reductions achieved by OBD testing and the state's stationary source NO_X rule.

The state also commits to work with EPA to address any additional shortfalls that may occur due to unforseen circumstances.

The contingency requirement for each milestone year is in Table 13 with the VOC/ NO_X apportionment of the 3% identified by Wisconsin:

TABLE 13.—CONTINGENCY REQUIREMENTS

Pollutant	2002	2005	2007
1990 Adjusted VOC ROP Base Year Emission Inventory for Milestone Year	325.71	323.91	323.71
Percent of Contingency from VOC	0.12	0.3	0.6
Required VOC Contingency	0.39	0.97	1.94
1990 Adjusted NO_X ROP Base Year Emission Inventory for Milestone Year	363.12	360.82	360.12
Percent of Continency from NO_X	2.88	2.7	2.4
Required NO_X Contingency	10.46	9.74	8.64

Thus, consistent with the apportionment of VOC and NO_X in Wisconsin's post-1999 ROP plan, the contingency plan must provide for 0.39 tpd, 0.97 tpd and 1.94 tpd of VOC reductions and 10.46 tpd, 9.74 tpd and 8.64 tpd of NO_X reductions, by 2003, 2006 and 2008, respectively, in addition to the required post-1999 ROP reductions, to satisfy the contingency measure requirements of the Act.

(3) Do the Wisconsin Attainment Demonstration and Post-1999 ROP Plan Meet the Contingency Measure Requirements? The following tables present a comparison of the needed emission reductions for post-1999 ROP and contingency measures and the emission reductions provided by the control measures in the post-1999 ROP plan. Again, Wisconsin identified the state's stationary source NO_X rule and OBD testing as the measures that would achieve the required contingency emission reductions.

TABLE 14.—COMPARISON OF NEEDED AND CREDITABLE EMISSION REDUCTIONS FOR 2002

VOC Reduction Needed for 3.5 percent ROP (tpd)	6.53
VOC Reduction Needed for 0.12 percent Contingency (tpd)	0.39
Total VOC Reductions Needed for ROP and Contingency (tpd)	6.92
Total Creditable VOC Reduction (tpd)	11.8
NO_X Reduction Needed for 5.5 percent ROP (tpd)	46.15
NO_X Reduction Needed for 2.88 percent Contingency (tpd)	10.46
Total NO_X Reductions Needed for ROP and Contingency (tpd)	[8]56.61

TABLE 14.—COMPARISON OF NEEDED AND CREDITABLE EMISSION REDUCTIONS FOR 2002—Continued

Total Creditable NO_X Reduction (tpd)	[6] 56.47

[8] Although the total creditable NO_X emissions are about 0.1 tpd less than the total required NO_X emission reductions necessary for ROP and contingency in 2002, there are enough excess VOC emission reductions (about 1.6%) that are anticipated to cover the contingency and ROP requirement. Thus, the contingencies are acceptable.

TABLE 15.—COMPARISON OF NEEDED AND CREDITABLE EMISSION REDUCTIONS FOR 2005

VOC Reduction Needed for 2.0 percent ROP (tpd)	15.89
VOC Reduction Needed for 0.3 percent Contingency (tpd)	0.97
Total VOC Reductions Needed for ROP and Contingency (tpd)	16.86
Total Creditable VOC Reduction (tpd)	19.6
NO_X Reduction Needed for 7.0 percent ROP (tpd)	52.31
NO_X Reduction Needed for 2.7 percent Contingency (tpd)	9.74
Total NO_X Reductions Needed for ROP and Contingency (tpd)	62.05
Total Creditable NO_X Reduction (tpd)	69.24

TABLE 16.—COMPARISON OF NEEDED AND CREDITABLE EMISSION REDUCTIONS FOR 2007

VOC Reduction Needed for 1 percent ROP (tpd)	20.14
VOC Reduction Needed for 0.6 percent Contingency (tpd)	1.94
Total VOC Reductions Needed for ROP and Contingency (tpd)	22.08
Total Creditable VOC Reduction (tpd)	24.5
NO_X Reduction Needed for 5 percent ROP (tpd)	56.98
NO_X Reduction Needed for 2.4 percent Contingency (tpd)	8.64
Total NO_X Reducfions Needed for ROP and Contingency (tpd)	65.62
Total Creditable NO_X Reduction (tpd)	71.88

Since the contingency measures will be implemented early, *i.e.* in advance of an identified milestone or attainment failure, Wisconsin states that it will work with EPA to address any failure or shortfall should one occur despite the early implementation of the contingency measures.

In summary, Wisconsin adequately demonstrates that the post-1999 ROP and attainment demonstration control strategy will achieve VOC and NO_X emission reductions sufficient to achieve the required post-1999 ROP toward attaining the 1-hour ozone NAAQS as well as satisfy the contingency provisions for the Milwaukee-Racine ozone nonattainment area. We are, therefore, proposing to approve Wisconsin's post-1999 ROP plan in this action.

7. Transportation Conformity

Did the State Address Transportation Conformity in the Submittal and Did the State Adopt Motor Vehicle Emission Budgets?

Section 176(c) of the Act requires a showing that regional transportation plans, and transportation improvement programs, conform to the emissions budgets for the mobile sector in the applicable implementation plan, in this case for the milestone years of 2002, 2005, and 2007. Conformity motor vehicle emissions budgets (MVEB) must address both VOC and NO_X emissions for nonattainment areas. The MVEBs must be developed using consistent air quality and transportation planning assumptions, and include the impact of emission control programs incorporated in ROP plans and attainment demonstrations.

The WDNR attainment demonstration submittal included ROP MVEBs for VOC and NO_X for 2002 and 2005 for the six-county Milwaukee nonattainment area, the Manitowoc nonattainment area, and the Sheboygan maintenance area. The submittal also included a ROP/attainment MVEB for 2007 for the above areas. EPA's conformity regulation (40 CFR 93.118(e)(4)) identifies the minimum criteria to judge the adequacy of motor vehicle emission budgets for conformity purposes. The six adequacy criteria and a description of how the submittal addresses them are listed below.

a. The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his designee) and was subject to a state public hearing. The WDNR submitted the rate-of-progress/attainment demonstration package on December 22, 2000, by letter signed by Tommy Thompson, Governor. The state held a public hearing from June 27–29, 2000.

b. Before the control strategy SIP revision or maintenance plan was submitted to EPA, consultation among federal, state, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns were addressed. The WDNR developed the motor vehicle emission budgets for both the attainment demonstration and the ROP plan through a consultative process. Transportation stakeholders from the Metropolitan Planning Organizations (MPO), state Department of Transportation, Federal Highway Administration, and EPA participated in this process. Documentation of this process was included in the submittal.

c. The motor vehicle emissions budget(s) is clearly identified and precisely quantified. The MVEB's for 2002, 2005, and 2007 are clearly identified and precisely quantified in Table 17 below.

TABLE 17.—MOTOR VEHICLE EMISSION BUDGETS

Area	2002 ROP		2005 ROP		2007 ROP/Attainment	
	VOC (tpd)	NO_x (tpd)	VOC (tpd)	NO_x (tpd)	VOC (tpd)	NO_x (tpd)
Milwaukee	43.5	103.5	36.7	84.1	32.2	71.4
Manitowoc	5.4	10.0	5.2	8.8	5.2	8.3
Sheboygan	4.5	9.4	3.7	7.4	3.3	6.4

d. The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission). The ROP MVEB's for 2002 and 2005, and the MVEB for the 2007 ROP/attainment year are consistent with the requirements for ROP reductions and attainment, as delineated in EPA guidance. The UAM–V modeling, submitted to support the demonstration of attainment, shows that Wisconsin can reach attainment of the standard with the control strategies described in the submittal.

e. The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan. The budgets for 2002 and 2005 ROP, and 2007 ROP/attainment are calculated appropriately using the control strategies identified in the ROP plan and the attainment demonstration. The emissions inventory estimates and the VMT estimates used in the ROP and attainment plan were used to calculate the budgets.

f. Revision to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures, impacts on point and area source emissions; any changes to established safety margins and reason for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled). The 2002 and 2005 ROP budgets are new budgets and do not replace any previously established budgets. The 2007 ROP/attainment demonstration budgets, when found adequate, will replace the 2007 VOC and NO_x budgets that were established by the April 30, 1998 attainment demonstration submittal. The 2007 budgets in the December 22, 2000 submittal are well documented and impacts on all sources including point, area and mobile sources are considered. This information is based on the most up to date planning assumptions available.

g. EPA review of the state's compilation of public comments and response to comments. EPA has reviewed the public comments submitted to the state during the state public comment period. The state received four comments on the development and assumptions used in the motor vehicle emissions budgets. There were no adverse public comments on the proposed budgets for Milwaukee, Sheboygan, and Manitowoc counties.

Additionally, the state submitted conformity budgets in conjunction with its April 1998 one-hour ozone submittal. EPA found those budgets adequate on an interim basis in May 2000, but required the state to resubmit budgets consistent with its December 2000 attainment demonstration. EPA also required the state to commit to revise the 2007 attainment year budget from the December 2000 attainment demonstration within one-year from the formal release of MOBILE6 to more accurately represent the emission estimates associated with the Tier 2/ Low Sulfur gasoline program. In its December 2000 submittal, Wisconsin committed to recalculate the 2002 and 2005 ROP budgets and the 2007 ROP/ attainment budgets in the attainment demonstration "in a timely fashion." In a letter dated May 28, 2001, the state clarified this commitment to mean within one year from the formal release of MOBILE6.

Today's proposed action to approve the 2002 and 2005 ROP budgets and the 2007 attainment budgets contained in the December 2000 submittal would be effective for conformity purposes only until the revised motor vehicle emissions budgets are submitted and EPA has found them adequate. We are proposing to limit the duration of our approval in this manner because we would only approve the attainment demonstration and its budget contingent on the State's commitment to revise the budget within one year of the formal release of MOBILE6. Therefore, once the state has revised its budgets and EPA has established an effective date for the adequacy of the revised budgets, the revised budget (recalculated with MOBILE6) would apply for conformity purposes. If the revised budgets raise issues about the sufficiency of the attainment demonstration, EPA will work with the state to address those issues. If the revised budgets show that motor vehicle emissions budgets are lower than the budgets we are proposing to approve today, a reassessment of the attainment demonstration's analysis will be necessary before reallocating the emission reductions or assigning them as a safety margin. In other words, the area must assess how its attainment demonstration is impacted by using MOBILE6 vs. MOBILE5 before it reallocates any apparent emission reductions resulting from the use of MOBILE6.

8. Commitment To Conduct a Mid-Course Review

In response to EPA's December 16, 1999, notice of proposed conditional approval, the state submitted a commitment to perform a mid-course review (MCR) of its attainment demonstration. The 1996 attainment test guidance discusses the need for periodic reviews of the monitoring, modeling, and inventory data to assess whether original attainment strategies need to be refined. A MCR is a reassessment of modeling analyses and more recent monitored air quality data to determine if a prescribed control strategy is resulting in emission reductions and air quality improvements needed to attain the ambient air quality standard for ozone as expeditiously as practicable but no later than the statutory date. The state submitted its commitment in a letter dated February 22, 2000, from Lloyd Eagan, Director, Bureau of Air Management to Mr. Francis X. Lyons, Region 5 Administrator. The letter commits to perform a reassessment of the attainment status of the one-hour ozone nonattainment areas in the Lake Michigan region by December 31, 2003.[9]

[9] Because the regional NO_x controls resulting from the SIP Call measures in upwind states will not be implemented until 2004, the WDNR may change the date of the MCR from 2003 to 2004 to coincide with the SIP Call NO_x reductions. EPA would consider that change acceptable.

9. Reasonably Available Control Measures (RACM)

What Are the Requirements for RACM Technology? Section 172(c)(1) of the Act requires SIPs to contain RACM as necessary to provide for attainment as expeditiously as practicable. EPA has previously provided guidance interpreting the RACM requirements of section 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA stated that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in the guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in the SIP submittals whether the measures considered are reasonably available or not, and if the measures are reasonably available, they must be adopted as RACM. Finally, EPA indicated that states could reject potential RACM either because they would not advance the attainment date or would cause substantial widespread and long-term adverse impacts. States could also consider local conditions, such as economics or implementation concerns, in rejecting potential RACM. The EPA also issued a recent memorandum on this topic, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999.

How Does the State Analysis Address the RACM Requirement? The Wisconsin RACM analysis discusses the reasonableness and effectiveness of both additional transportation control measures and additional stationary source control measures. The state concludes that there are no control measures, above and beyond what the state is already implementing, that would advance the Act's specified attainment date of 2007. Furthermore, the reductions from any potential additional RACM measures are very small compared to the ROP reductions that will be reached by 2007.

Consideration and Implementation of Transportation Control Measures (TCMs). This section describes the analysis the state submitted to evaluate and implement available transportation control measures (TCMs) in the Milwaukee-Racine area. The WDNR and the Wisconsin Department of Transportation used the 1996 Regional Travel Demand Strategy (TDS) as a blueprint for actions considered for implementation in southeastern Wisconsin in place of the Employee Commute Options program. The state-selected actions included in the Regional TDS strategy were selected on the basis of their implementation feasibility. The emissions reduction potential of the TDM actions are very small. The total VOC and NO_X emission reduction potential of the strategy for 2007 is estimated to be 0.26 tons per hot summer weekday and 0.46 tons per hot summer weekday, respectively.

A technical committee was developed to evaluate TCM's as part of a working dialogue between WDNR and transportation stakeholders. The committee consists of representatives from the DNR, the Department of Transportation, the Southeastern Wisconsin Regional Planning Commission, and Citizens for a Better Environment. The committee evaluated a full list of potential TCMs on VMT reduction, NO_X and/or VOC emission reductions, cost per ton, implementation timeline, and feasibility (e.g., administrative costs, funding, political/public acceptance). Although the state may consider this list of measures for future SIP actions and planning, the measures would not be effective at advancing the attainment date earlier than 2007.

Stationary Source and Area Sources RACM Analysis. The state has pursued all reasonable VOC RACT, implemented enhanced I/M requirements and reformulated gasoline, and must show no growth in emissions based on growth in VMT for a 10-year period after the attainment demonstration. The nonattainment area has a waiver from EPA regarding NO_X control requirements, specifically NO_X RACT, New Source Review, and certain NO_X vehicle inspection/maintenance requirements. As part of the attainment demonstration and the 2002–2007 rate-of-progress analysis, the WDNR evaluated which NO_X control measures might prove beneficial to timely ozone attainment in the region. It found that NO_X reductions from the use of NO_X cutpoints for vehicles in the I/M program, selective NO_X limitations on some of the major point sources, and tightened emission limits for many new NO_X sources would be beneficial. The NO_X reduction from these programs from 2000–2007 is roughly 96 tons per day. More rapid attainment depends on the speed of the vehicle and off-road equipment fleet transition to newer technology and on the speed of the regional NO_X controls associated with the NO_X SIP Call. Given the status of the NO_X waiver in the nonattainment area, the implementation of select NO_X control programs in Wisconsin, and the regional NO_X reductions expected from the SIP Call, the state concludes that no further stationary source control measures, beyond those considered in the attainment demonstration, can impact the state's attainment status for the years 2002–2006.

Additionally, the photochemical modeling accompanying the state submittal shows that ozone concentrations in the Lake Michigan region stem from local and regional emissions. NO_X and VOC emissions in the Wisconsin portion of the modeling domain represent a small portion of regional emissions and since the state has already implemented emission control programs as required by the Act for severe areas (considering the NO_X waiver), there are no reasonable control measures available to the state that will accelerate attainment of the standard. This conclusion is indicated in the modeling documentation submitted by the state in support of the SIP revision. The documentation contains a sensitivity run evaluating the incremental impact of one of the more substantial emission reduction measures, Tier II/low-sulfur gasoline. This measure is expected to reduce VOC emissions by about 200 tons per day and NO_X emission by about 700 tons per day across the larger regional modeling domain known as grid M. This level of reduction resulted in a decrease in ozone peak values in the modeling domain of roughly 1–2 ppb. Reductions of VOC and NO_X across Wisconsin due to the implementation of the Tier II/low-sulfur gasoline program are about 15 tons per day and 70 tons per day, respectively. Reductions within the nonattainment area would be even less. Any of the control measures that Wisconsin did not select for implementation as part of its ROP or attainment program are significantly smaller in terms of reduction potential than the Tier II/low-sulfur program. Thus, their contribution to improving ozone air quality would be much less than 1 ppb and would not advance attainment of the ozone standard earlier than 2007.

Modeling conducted by LADCO and EPA has shown that regional reductions of NO_X are required for the Lake Michigan area to attain the ozone standard. Sensitivity tests showed that without regional reductions in NO_X and boundary ozone levels, VOC must be reduced as much as 90% in the Lake

Michigan area to achieve attainment.[10] This level of VOC reduction is obviously not possible without extremely harsh and expensive measures. The Ozone Transport Assessment Group (OTAG) process and resultant NO_X SIP Call reduction requirements apply in areas upwind of the Milwaukee-Racine nonattainment area and provide for boundary level ozone reduction. These reductions, in combination with local controls, are instrumental in the area achieving attainment.

Does the Milwaukee-Racine Attainment Demonstration Submittal Meet the RACM Requirement? The EPA has reviewed the submitted attainment demonstration documentation, the process used by the control agencies to review and select TCMs, other possible reduction measures for point and area sources, and the emissions inventory for the Milwaukee-Racine area. Although EPA encourages areas to implement available RACM measures as potentially cost effective methods to achieve emissions reductions in the short term, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow the area to achieve attainment in advance of full implementation of all other required measures.

The attainment demonstration for the Milwaukee-Racine severe nonattainment areas indicates that the ozone benefit expected from regional NO_X reductions is substantial. In addition, many of the measures designed to achieve emissions reductions from within the nonattainment area will not be fully implemented prior to the 2007 nonattainment date. Therefore, EPA concludes, based on the available documentation, that since the reductions from potential RACM measures do not nearly equate to the reductions needed to demonstrate attainment, none of the measures could advance the attainment date prior to full implementation of the SIP call and full implementation of the ROP measures, and thus there are no additional potential local measures that can be considered RACM for this area.

III. Proposed Actions

EPA is proposing action on several different components of the Milwaukee-Racine one-hour ozone attainment demonstration package submitted by WDNR on December 22, 2000. Most of the components are approvable as submitted. One requires action by the WDNR to be found fully approvable. Consequently, EPA is proposing approval of most components and parallel processing one component.

EPA is proposing approval of: The modeled attainment demonstration, the NO_X rule, the revision to the NO_X waiver, the rule to control VOCs from industrial solvent cleaning operations, the SIP order requiring VOC control for Flint Ink, the conformity budgets for the 2007 attainment year, until such time that a revised budget is submitted and found adequate for conformity purposes as called for by the state in its commitment to recalculate and apply a revised budget for conformity within one year of the formal release of MOBILE6, the RACM analysis, the commitment to conduct a mid-course review of the attainment status of the Lake Michigan area, and the post-1999 ROP plan. EPA is also proposing to approve, with a disapproval in the alternative, the draft rule requiring VOC controls from plastic parts coating operations. The plastic parts coating operations rule will proceed with a final approval if the final rule is not significantly different from the draft and is submitted before September 1, 2001. If the final rule is not submitted in a timely fashion, EPA will proceed with a disapproval without reproposing.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism

[10] Lake Michigan Ozone Study—Lake Michigan Ozone Control Program Project Report, Volume II—Overview, December 1995.

implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the federal-state relationship under the Act, preparation of flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action proposes to approve pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 21, 2001.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 01–16567 Filed 6–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FL–T5–2001–01a; FRL–7006–4]

Clean Air Act Proposed Full Approval of Operating Permit Program; State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: EPA proposes to fully approve the operating permit program of the Florida Department of Environmental Protection (FDEP). Florida's operating permit program was submitted in response to the directive in title V of the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted interim approval to Florida's Title V operating permit program on September 25, 1995. The State revised its program to satisfy the conditions of the interim approval and this action proposes approval of those revisions. Also, other program changes made by the State since the interim approval are being proposed for approval as part of this action.

DATES: Comments on the program revisions discussed in this proposed action must be received in writing by August 31, 2001.

ADDRESSES: Written comments on this action should be addressed to Gracy R. Danois, Air Permits Section, Air & Radiation Technology Branch, EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8909. Copies of Florida's submittals and other supporting documentation relevant to this proposed action are available for inspection during normal business hours at EPA Region 4, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8909.

FOR FURTHER INFORMATION CONTACT: Gracy R. Danois, Air Permits Section, EPA Region 4, at (404) 562–9119 or danois.gracy@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?

What is being addressed in this document?

What are the program changes that EPA is approving?

What is involved in this final action?

What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the title V operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the title V operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable

requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year (tpy) or more of volatile organic compounds (VOCs), carbon monoxide (CO), lead, sulfur dioxide (SO_2), nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tpy of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tpy or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, CO, or PM_{10}, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "serious," major sources include those with the potential of emitting 50 tpy or more of VOCs or NO_X.

What Is Being Addressed in This Document?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the State revising its program to correct the deficiencies. Because Florida 's operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the program in a rulemaking published on September 25, 1995 (60 FR 49343). The interim approval notice stipulated four conditions that had to be met in order for the State's program to receive full approval. Florida submitted seven revisions to its interimly approved operating permit program; these revisions were dated April 29, 1996, February 11, 1998, June 11, 1998, April 9, 1999 (two submittals), July 1, 1999, and October 1, 1999. This **Federal Register** notice describes changes that have been made to Florida's operating permit program since interim approval was granted.

What Are the Program Changes That EPA Proposes To Approve?

As stipulated in EPA's September 25, 1995 rulemaking, full approval of Florida's Title V operating permit program was made contingent upon the following rule changes:

I. Insignificant Activities Provisions

A. Provide EPA with an acceptable justification for establishing a source's aggregate emissions threshold of 50 tpy for triggering the State's CO reporting requirements in the permit application. Otherwise, the State must establish CO emissions thresholds that are consistent with its emissions thresholds for PM_{10}, SO_2, NO_X, and VOCs. In response to this deficiency, the State revised Rule 62–213.420(3)(c)3.a., Florida Administrative Code (F.A.C.) to include a reduced reporting threshold of 5 tpy for CO. The state-effective rule revision was submitted to EPA on April 29, 1996.

B. Revise Rules 62–4.040(1)(b), 62–210.300(3), and 62–213.400, F.A.C. to provide that:

(1) Permit applications do not omit information needed to determine or impose applicable requirements (as defined in Rule 62–213.200(6), F.A.C.);

(2) Insignificant activities or emission units will be included in the determination of whether a source is major; and

(3) Emissions thresholds for insignificant activities or emission units will not exceed 5 tpy for regulated air pollutants and 1000 pounds per year for individual HAPs, or different thresholds that the State demonstrates are insignificant.

In response to these deficiencies, the State revised Rule 62–210.300(3), F.A.C. to establish that the list of activities "exempted from permitting requirements" contained in Rule 62–210.300(3), F.A.C. and the general exemption contained in Rule 62–4.040, F.A.C. can only be used for title V purposes if the activities proposed for consideration as "insignificant" also comply with the criteria contained in Rule 62–213.430(6)(b), F.A.C. Rule 62–213.430(6)(b), F.A.C., in turn, establishes the emission thresholds for individual activities or units, which are no more than 500 pounds per year of lead and lead compounds expressed as lead, 1,000 pounds per year of any individual HAPs, 2,500 pounds per year of total HAPs, and 5 tpy of regulated air pollutants. Rule 62–210.300(3), F.A.C, also establishes that "the emissions from the exempt units or activities shall be considered in determining whether a facility containing such emissions units or activities would be subject to any applicable requirement", which adequately addresses the deficiency noted in B.(2) above. Further, Rule 62–213.400, F.A.C. was revised to delete all references to Rules 62–210.300(3) and 62–4.040, F.A.C. The state-effective rule revision was submitted to EPA on April 29, 1996.

With regard to the deficiency noted in item B.(1) above, Rule 62–213.420(3)(n), F.A.C. was revised to require the applicant to submit any information needed to demonstrate that the units or activities are considered insignificant under the provisions of Rule 62–213.430(6), F.A.C. This rule revision was also submitted to EPA on April 29, 1996. Of note is that the citation for the definition of applicable requirement given in item B.(1) is no longer correct; the correct citation is now Rule 62–210.200(31), F.A.C.

In addition, in the discussion regarding insignificant activities contained in the **Federal Register** notice granting final interim approval to Tennessee's operating permit program (61 FR 39335, July 29, 1996), EPA responded to the June 17, 1996, Ninth Circuit Court of Appeals decision in *Western States Petroleum Association (WSPA)* v. *EPA*, No. 95–700034 (June 17, 1996) [87 F.3d 280 (9th Cir. 1996)] by stating that the language contained in Florida's Rule 62–210.300(3) "can be read as creating an exemption from permit content." In a February 14, 1997, letter to Florida (R. Douglas Neeley, Chief, Air & Radiation Technology Branch, EPA Region 4, to Howard L. Rhodes, Director, Division of Air Resources Management, FDEP), EPA identified additional problematic language in Rules 62–4.040(1) and 62–213.430(6)(a), F.A.C. In response to EPA's concerns, Florida deleted the language "exempted from permitting" and replaced it with "considered insignificant" in Rules 62–213.300 and 62–213.430, F.A.C. And though Rules 62–4.040(1) and 62–210.300(3), F.A.C. still provide for exemptions from permitting, Rules 62–213.300(3)(a) and 62.213.430(6)(b), F.A.C. take precedence and dictate how the other rules are to be applied for title V purposes. The State voluntarily took this action in order to avoid any further misinterpretations of their intent to consider certain emission units or activities "insignificant" for title V purposes. The state-effective rule revisions rules were submitted to EPA on February 11, 1998.

C. Remove or revise the following specific exemptions:

(1) Rule 62–210.300(3)(a), F.A.C. exempting "(s)team and hot water

generating units located within a single facility and having a total heat input, individually or collectively, equaling 50 million BTU/hr or less, and fired exclusively by natural gas except for periods of natural gas curtailment during which fuel oil containing no more than one percent sulfur is fired * * *."

(2) Rule 62–210.300(3)(r), F.A.C. exempting "[p]erchloroethylene dry cleaning facilities with a solvent consumption of less than 1,475 gallons per year."

(3) Rule 62–210.300(3)(u), F.A.C. exempting "[e]mergency electrical generators, heating units, and general purpose diesel engines operating no more than 400 hours per year * * *."

(4) Rule 62–210.300(3)(x), F.A.C. exempting "[p]hosphogypsum disposal areas and cooling ponds."

In response to these deficiencies, Florida made the following revisions to Rule 62–210.300(3), F.A.C. and submitted the state-effective rule revisions to EPA on April 29, 1996:

(a) Rule 62–210.300(3)(a), F.A.C. was changed to limit the units to operate no more than 3000 hours per year while firing natural gas and no more than 400 hours per year while firing fuel oil containing no more than 1.0% sulfur. In a subsequent rulemaking, this exemption was redefined to address steam and hot water generating units located within a single facility and having a total heat input, individually or collectively, equaling 100 million BTU/hr or less. All references to units with a total heat input of 50 million BTU/hr or less were deleted from the rule language. The new exemption restricts the annual use of fuel oil containing no more than 1.0% sulfur to 145,000 gallons, fuel oil containing no more than 0.5% sulfur to 290,000 gallons, fuel oil containing no more than 0.05% sulfur to one million gallons, natural gas to no more than 150 million standard cubic feet, or propane to no more than one million gallons;

(b) Rule 62–210.300(3)(a)20, F.A.C. (previously 62–210.300(3)(r), F.A.C.) was changed to limit the fuel consumption of emergency generators to 32,000 gallons per year diesel fuel, 4,000 gallons per year of gasoline, 4.4 million standard cubic feet per year of natural gas or propane, or an equivalent prorated amount if multiple fuels are used; and,

(c) Rule 62–210.300(a)25, F.A.C. (previously Rule 62–210.300(3)(x), F.A.C.) was modified to provide an exemption only for phosphogypsum cooling ponds and inactive phosphogypsum stacks that have demonstrated compliance with the requirements of 40 CFR 61, Subpart R.

To address item C.(2) above, Florida deleted the temporary exemption for small dry cleaners contained in Rule 62–210.300.(3)(b)2., F.A.C. (previously contained in Rule 62–210.300(3)(r), F.A.C.), because these facilities were going to be permitted under a title V general permit. In addition to redefining the exemptions described above to ensure that potential major sources are not inadvertently exempted from state permitting requirements, the State included language in Rule 62–210.300(3)(a), F.A.C., to clarify that in order for the exemptions to be considered insignificant for title V purposes, they must also meet the criteria contained in Rules 62–213.300(3)(a) and 62.213.430(6)(b), F.A.C. The State submitted the state-effective rule revisions to EPA on February 11, 1998.

II. Permit Reopening Provisions

The State was required to make the regulatory provisions for permit reopenings for cause consistent with 40 CFR 70.7(f)(1) (i), (iii), and (iv). In response, Florida revised Rules 62–213.430(4) and 62–213.430(5), F.A.C. to reference the provisions contained in 40 CFR 70.7(f). The State submitted the revised rules to EPA on April 29, 1996.

III. Other Program Revisions

In addition to the changes described above, the State of Florida made the following substantive changes to its program after it received interim approval:

A. Rule Repeals/Conforming Amendments

In response to an Executive Order from the Florida Governor, all of the State's agencies were required to significantly reduce their number of administrative rules. To address that order, the Florida Department of Environmental Protection repealed rules in Chapters 62–213 and 62–214, F.A.C., and made conforming amendments within Chapters 62–210, 62–213, and 62–214, F.A.C. In most cases, the language in the various rules was moved without changes. The title V-related rule changes primarily involved corrections to internal rule citations that were made necessary by the rule reorganization. The following substantive changes were submitted for EPA's approval on April 29, 1996:

(1) All of the definitions in Rules 62–210, 62–213, 62–214, 62–296, and 62–297, F.A.C. were consolidated in Rule 62–210.200, F.A.C.;

(2) The definition of "applicable requirement" in Rule 62–210.200(29), F.A.C. was modified to include permit conditions contained in a federally enforceable state operating permit (FESOP);

(3) The definition of "major source of air pollution or title V source" in Rule 62–210.200(172), F.A.C. was revised to exclude the Standard Industrial Classification (SIC) code when determining whether a facility is a major source of HAPs; and,

(4) The definition of "modification" in Rule 62–210.200(182), F.A.C. was revised to include the terms from the definition of "modification" in former Rule 62–213.200, F.A.C.

B. Incorporation of White Paper Guidance

Florida revised Rules 62–210.900(1), 62–210.900(2), and 62–213.420(3), F.A.C. to incorporate the flexibility described in the EPA's July 10, 1995, guidance memorandum entitled "White Paper for Streamlined Development of Part 70 Permit Applications." The following revisions were submitted to EPA for approval on April 29, 1996:

(1) The title V permit application now requires identification only, at the facility level, of all pollutants with potential to emit (PTE) equal to or greater than a major source thresholds, all synthetically minor pollutants, and all pollutants subject to a numerical emissions limitation or work practice standard at one or more emissions unit at the facility;

(2) As a result of the change described in item (1), the requirement to perform facility-wide reporting was eliminated from the permit application requirements, except for those sources subject to a facility-wide emissions cap;

(3) The permit application requirements were modified to clarify that for regulated emissions units (i.e., those which emit at least one emission-limited pollutant or are subject to a unit-specific work practice standard for the control of a pollutant or family of pollutants or to a unit-specific visible emissions standard), all parts of the application must be completed. However, only quantitative emissions information needs to be provided for the emissions-limited pollutants;

(4) For unregulated emissions units (i.e., those with no emission-limited pollutants and no applicable work practice standards), the permit application requirements were modified to require descriptions, not quantification, of the pollutants emitted. The required information also includes the pertinent SIC code, the maximum emission rate, and descriptions of the

emission units and any air pollution control equipment; and,

(5) For all emission units, the permit application requirements were modified to require identification of all pollutants emitted at a source as follows:

(a) Each emission-limited pollutant (for regulated emissions units only); and,

(b) Each pollutant emitted in a significant amount. Specifically, CO, NO_X, SO_2, PM_{10}, and VOC must be identified if the emissions unit has a PTE equal to or greater than 5 tpy. Lead must be identified if the emissions unit has a PTE equal to or greater than 500 pounds per year. Each HAP must be identified if the emissions unit has a PTE equal to or greater than 1000 pounds per year and the facility is major for such HAP. Total HAPs must be identified if the emissions unit has a PTE equal to or greater than 2,500 pounds per year and the facility is major for total HAPs.

C. Title V General Permits

Florida's definition of a title V source includes any source subject to standards or regulations under section 112 of the CAA, except that a source is not subject to the State's operating permit program solely because it is regulated under section 112(r) of the CAA or solely because it is subject to a reporting requirement under section 112. The effect of this provision is to bring all sources subject to the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) program into the State's Title V program even though EPA has allowed "area sources" to be deferred from permitting. An "area source" is defined as any stationary source of HAPs that does not emit more than 10 tpy of any single HAP or 25 tpy of any combination of HAPs.

To reduce the burden of permitting area sources, Florida developed five general permits covering the following NESHAP requirements: asbestos manufacturing and fabrication facilities (40 CFR 61, Subpart M), perchloroethylene dry cleaning facilities (40 CFR 63, Subpart M), chromium electroplating and anodizing facilities (40 CFR 63, Subpart N), ethylene oxide sterilization facilities (40 CFR 63, Subpart O), and halogenated solvent degreasing facilities (40 CFR 63, Subpart T). Florida's general permits are permits-by-rule and are contained in Rule 62–213.300, F.A.C. Approximately 1,280 facilities in Florida are operating under these general permits, and most of them are perchloroethylene dry cleaning facilities.

The State submitted a request for approval of its general permit provisions to EPA on February 11, 1998. A revised request for approval of Rule 62–213.300, F.A.C. was submitted on April 9, 1999. In the revised request, the State asked for EPA's approval of an adjustment to the requirement for perchloroethylene dry cleaning facilities to submit semiannual startup, shutdown, and malfunction reports. The State requested that, in lieu of submitting semiannual reports, these facilities be allowed to retain the records onsite and submit reports of such deviations during facility inspections and with the annual compliance certifications required by 40 CFR 70.7(c)(5). The State's revised request was also submitted pursuant to section 112(l) of the CAA and EPA granted approval of the section 112(l) request on December 28, 1999 (64 FR 72568). However, as stated in the notice, this change does not exempt or delay any title V recordkeeping and compliance reporting requirements required of all title V sources in Florida.

Florida's implementation of its general permits program has brought about 85% of the covered area sources into compliance; sources that would otherwise be deferred from permitting requirements. Success of the State's program has been attributed to periodic inspection of the sources to ensure that the requirements of the general permits are being properly implemented. In addition, Florida has documented that perchloroethylene use has decreased throughout the state, thus contributing to a significant reduction in emissions from perchloroethylene dry cleaning facilities.

D. Fee Reassessment

On June 11, 1998, Florida sent a letter to EPA redefining the costs eligible for funding with title V fee revenues. Title V-related ambient air monitoring and State Implementation Plan development activities were deleted from Florida's list of eligible costs because the activities were being funded with other monies. As a result of this action, Florida expects to avoid a fee increase until the year 2003.

Additionally, Florida submitted an update regarding its title V fee program on October 1, 1999. The information provided in this update showed that no significant changes have been made to the State's fee program and it also demonstrated that Florida's Title V program is adequately funded by the fees collected. Because Florida has demonstrated that its operating permit program is adequately funded, EPA finds that the program satisfies the fee requirements of 40 CFR 70.9.

E. Minor Source Air Construction Permits (New Source Review) Partially Merged Program

On January 22, 1999, the State of Florida adopted amendments to Rule 62–210.300(1)(b)1., F.A.C. allowing conditions in minor source air construction permits to be changed when a title V permit or a FESOP containing these conditions is issued. These actions are, however, limited to changes that do not constitute modifications under Title I of the CAA (i.e., physical changes in, changes in the method of operation of, or additions to facilities that would result in increased emissions). The practical effect of these rule changes is to streamline the permitting process by eliminating the need for permittees to request that old minor source construction permits be reissued to make the changes approvable and federally enforceable before incorporating them into a FESOP or title V permit. The state-effective rule revision was submitted to EPA on April 9, 1999.

F. Compliance Assurance Monitoring (CAM) Rule Adoption

On April 7, 1998, the State of Florida adopted the CAM rule (40 CFR part 64) by reference into Rule 62–204.800(11), F.A.C. and made conforming amendments to Rule 62–213.440, F.A.C. These rule revisions were submitted to EPA on April 9, 1999.

G. Periodic Monitoring Rule

On July 7, 1998, EPA sent a letter to the State of Florida (from Winston A. Smith, Director, Air, Pesticides, and Toxics Management Division, EPA Region 4, to Howard L. Rhodes, Director, Division of Air Resources Management, FDEP) declaring that the State was inadequately administering its title V operating permit program by failing to include adequate periodic monitoring requirements in its title V permits (pursuant to 40 CFR 70.6). The State was also notified that EPA would issue a formal notification of deficiency, in accordance with the procedures outlined in 40 CFR 70.10, if action was not taken to rectify the deficiency. The basis for EPA's finding of deficiency was the State's assertion that it lacked regulatory authority to require periodic monitoring beyond that already included in the underlying applicable requirement. EPA had granted interim approval to Florida's Title V program with the understanding that since Florida's rules were essentially identical to the part 70 rule, the State would implement its program consistent with EPA's interpretation of 40 CFR 70.6 by

requiring insufficient monitoring already contained in applicable requirements to be supplemented with periodic monitoring requirements in title V permits. However, in practice, the State did not interpret its regulatory language in this manner and as a result was preparing permits that did not require monitoring sufficient to assure compliance with applicable requirements.

In response to the issues described in the July 7, 1998 letter, Florida initiated rulemaking and submitted revisions to Chapter 62–213, F.A.C. to EPA on July 1, 1999. The following rule changes became state-effective on July 15, 1999:

(1) Rule 62–213.420, F.A.C. was amended to clarify that the State may require additional periodic monitoring related information in the title V permit application in order to better evaluate the sufficiency of the monitoring requirements; and, (2) Rule 62–213.440, F.A.C. was amended to require the inclusion of periodic monitoring requirements in title V permits, to clarify what constitutes sufficient monitoring, to state the conditions under which monitoring records must be retained, and to provide examples of applicable requirements that contain sufficient monitoring requirements.

EPA believes that the changes described in this portion of the notice are appropriate and it is therefore proposing to approve these regulatory changes along with the State's Title V program final full approval.

What Is involved in This Final Action?

The Florida Department of Environmental Protection has fulfilled the conditions of the interim approval granted on September 25, 1995, and EPA is proposing full approval of the State's operating permit program. EPA is also proposing approval of other program changes made by the State since the interim approval was granted.

Administrative Requirements

I. Request for Public Comments

EPA requests comments on the program revisions discussed in this proposed action. Copies of the Florida submittals and other supporting documentation used in developing the proposed full approval are contained in a docket maintained at the EPA Region 4 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by August 1, 2001.

II. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

III. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.

IV. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

V. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This proposed action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

VI. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that

has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this proposed approval does not create any new requirements, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (see Union Electric Co. v. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2)).

VIII. Unfunded Mandates Reform Act of 1995

Under sections 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this proposed approval action does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This proposed federal action approves pre-existing requirements under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this proposed action.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This proposed action is not a "major rule" as defined by 5 U.S.C. section 804(2).

X. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this proposed action must be filed in the United States Court of Appeals for the appropriate circuit by August 31, 2001. Filing a petition for reconsideration by the Administrator of this proposed rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2) of the CAA.]

XI. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In reviewing operating permit programs, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use VCS, EPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of an operating permit program that otherwise satisfies the provisions of the CAA. Therefore, the requirements of section 12(d) of NTTAA do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 22, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–16570 Filed 6–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7004–4]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Arcanum Iron & Metal Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region V is issuing a notice of intent to delete the Arcanum Iron & Metal Superfund Site (AIM Site) located in Arcanum, Twin Township, Drake County, Ohio from the National Priorities List (NPL) and requests public

comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Ohio, through the Ohio Environmental Protection Agency, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund. In the "Rules and Regulations" section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Arcanum Iron & Metal Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by August 1, 2001.

ADDRESSES: Written comments should be addressed to: Denise Battaglia, Community Involvement Coordinator, U.S. EPA (P–19J), 77 W. Jackson, Chicago, IL 60604 or fax number at, (312) 353–1155.

FOR FURTHER INFORMATION CONTACT: Kenneth Glatz, Remedial Project Manager at (312) 886–1434 or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253 or 1–800–621–8431, Superfund Division, U.S. EPA (SR–6J), 77 W. Jackson, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Information Repositories

Repositories have been established to provide detailed information concerning this decision at the following address: U.S. EPA Region V Library, 77 W. Jackson, Chicago, IL 60604, (312) 353–5821, Monday through Friday 8 a.m. to 4 p.m.; Arcanum Public Library, 101 North Street, Arcanum, OH, 55802, (937) 692–8484, Monday to Thursday 9 p.m. to 8 a.m. and Friday and Saturday 9 a.m. to 5 p. m. ; Ohio Environmental Protection Agency, 122 S. Front Street, Lazarus Government Building, Columbus, OH 43215, (614) 644–3020, Monday through Friday 8 a.m. to 5 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: June 20, 2001.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 01–16288 Filed 6–29–01; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 66, No. 127
Monday, July 2, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, July 13, 2001. The meeting will be held in the Paris North Room, Hotel Monaco, 501 Geary Street at Taylor, San Francisco, California, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Chairman's Report
III. Policy Issues
  A. Section 106 and the National Energy Policy—Action
  B. Preservation Initiatives for the Administration—Report and Possible Action
IV. Improving Federal Stewardship
  A. Task Force on Balancing Cultural and Natural Values in National Parks—Report and Discussion
  B. Proposed Alternate Section 106 Procedures for the Army—Action
  C. Chairman's Citation for Historic Preservation Achievement—Action
  D. Preservation of Manhattan Project Historic Properties—Action
  E. Preservation and the Military Construction Process—Report and Possible Action
V. Section 106 Issues
  Program Alternatives Underway—Report
VI. Executive Director's Report
  A. Major Section 106 Cases—Report and Possible Action
  B. Council Operating Procedures—Action
VII. New Business
VIII. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC 20004, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004, 202–606–8503.

Dated: June 27, 2001.

John M. Fowler,

Executive Director.

[FR Doc. 01–16529 Filed 6–29–01; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–053–1]

Notice of Request for Reinstatement of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a reinstatement of an information collection in support of regulations governing the importation of fresh Hass avocados into the United States.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by August 31, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–053–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Rverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 01–053–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information on the regulations governing the importation of fresh Hass avocados into the United States, contact Mr. Wayne W. Burnett, Senior Import Specialist, Phytosanitary Issues Management Staff, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6799.

For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Mexican Hass Avocado Import Program.

OMB Number: 0579–0129.

Type of Request: Reinstatement of an information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for preventing plant pests from entering the United States and controlling and eradicating plant pests in the United States. The Plant

Protection Act authorizes the Department to carry out this mission. The Plant Protection and Quarantine (PPQ) program of USDA's Animal and Plant Health Inspection Service is responsible for implementing the regulations that carry out the intent of this Act. The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

The regulations in § 319.56–2ff allow fresh Hass avocados grown in approved orchards in Michoacan, Mexico, to be imported into certain areas of the United States under conditions designed to ensure that the avocados do not harbor insect pests (including avocado stem weevils, seed weevils, and seed moths) that could harm U.S. agriculture. To reduce the pest risk to a negligible level, the regulations stipulate conditions for the importation of avocados, which include pest surveys, packinghouse procedures, inspection and shipping procedures, and restrictions on the time of year shipments may be imported into the United States.

Allowing avocados to be imported necessitates the use of certain information collection activities, including the use of an application for permit, a trust fund agreement, a phytosanitary certificate, certain marking requirements, seals, an annual workplan, and fruit fly surveys.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collections for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.165 hours per response.

Respondents: Packinghouse owners/operators in Mexico, importers, shippers, distributors, and handlers of fresh Hass avocados imported into the United States from Mexico.

Estimated annual number of respondents: 380.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 380.

Estimated total annual burden on respondents: 443 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 26th day of June 2001.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–16578 Filed 6–29–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Giant Sequoia National Monument Scientific Advisory Board Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Scientific Advisory Board established for the Giant Sequoia National Monument will hold its second meeting, July 17 and 18, 2001. The meeting will be held at the River Island Country Club, 31989 River Island Drive, Porterville, California. Topics for the meeting include: Allow for comments from the public; review and approve the minutes from the meeting held June 12 and 13, 2001; discuss and agree on advice regarding the Proposed Action (June 8, 2001 letter); and discuss the questions presented to the Scientific Advisory Board by the Forest. A final agenda can be obtained by contacting the Designated Federal Official to the Scientific Advisory Board Act Gaffrey or by visiting the Giant Sequoia National Monument web site at www.r5.fs.fed.us/giant_sequoia. Some members of the Scientific Advisory Board may participate in the meeting via telephone. In that event, arrangements will be made to enable the public to listen to all the members participating in the meeting. Scientific Advisory Board meetings are open to public attendance.

DATES: The meeting will begin on July 17, starting 8 a.m. and ending at 5 p.m. A field visit to the southern portion of the Giant Sequoia National Monument is scheduled July 18, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at River Island Country Club, 31989 River Island Drive, Porterville, CA 93257.

FOR FURTHER INFORMATION CONTACT: To receive further information contact Arthur L. Gaffrey, Designated Federal Official to the Scientific Advisory Board, telephone: (559) 784–1500, extension 111.

SUPPLEMENTARY INFORMATION: A field visit to parts of the Giant Sequoia National Monument may be held as part of the meeting on July 18. The field visit is open to the public. Anyone wishing to attend the field visit must provide his or her own transportation.

Written comments for the Scientific Advisory Board may be submitted to Forest Supervisor Arthur L. Gaffrey, Sequoia National Forest, 900 West Grand Avenue, Porterville, CA 93257.

To ensure adequate seating on July 17, public contact Forest Supervisor Gaffrey, if you are planning to attend. Guidelines for the public participation portion of the Scientific Advisory Board's meeting are as follows: The public will be allowed to address the Scientific Advisory Board during the first 30 minutes of the meeting on July 17. The public must provide a written copy of their presentation for inclusion in the meeting minutes. Each person wishing to make an oral presentation may do so for no more than 5 minutes, depending on the number of people wishing to address the Board. All presentations to the Board must be relative to the science surrounding the development of the Management Plan for the Giant Sequoia National Monument.

Dated: June 26, 2001.

Arthur L. Gaffrey,

Forest Supervisor, Sequoia National Forest.

[FR Doc. 01–16531 Filed 6–29–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 351.213 (1999) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of July 2001, interested parties may request an administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

	Period
Antidumping Duty Proceedings	
Belarus: Solid Urea, A–822–801	7/1/00–6/30/01
Brazil:	
Industrial Nitrocellulose, A–351–804	7/1/00–6/30/01
Silicon Metal, A–351–806	7/1/00–6/30/01
Chile: Fresh Atlantic Salmon, A–337–803	7/1/00–6/30/01
Estonia: Solid Urea, A–447–801	7/1/00–6/30/01
France: Stainless Steel Sheet and Strip in Coils, A–427–814	7/1/00–6/30/01
Germany:	
Industrial Nitrocellulose, A–428–803	7/1/00–6/30/01
Stainless Steel Sheet and Strip in Coils, A–428–825	7/1/00–6/30/01
Iran: In-Shell Pistachio Nuts, A–507–502	7/1/00–6/30/01
Italy: Certain Pasta, A–475–818	7/1/00–6/30/01
Italy: Stainless Steel Sheet and Strip in Coils, A–475–824	7/1/00–6/30/01
Japan:	
Cast Iron Pipe Fittings, A–588–605	7/1/00–6/30/01
Clad Steel Plate, A–588–838	7/1/00–6/30/01
Industrial Nitrocellulose, A–588–812	7/1/00–6/30/01
Stainless Steel Sheet and Strip in Coils, A–588–845	7/1/00–6/30/01
Lithuania: Solid Urea, A–451–801	7/1/00–6/30/01
Mexico: Stainless Steel Sheet and Strip in Coils, A–201–822	7/1/00–6/30/01
Republic of Korea:	
Industrial Nitrocellulose, A–580–805	7/1/00–6/30/01
Stainless Steel Sheet and Strip in Coils, A–580–834	7/1/00–6/30/01
Romania: Solid Urea, A–485–601	7/1/00–6/30/01
Russia:	
Ferrovanadium and Nitrided Vanadium, A–821–807	7/1/00–6/30/01
Solid Urea, A–821–801	7/1/00–6/30/01
Tajikistan: Solid Urea, A–842–801	7/1/00–6/30/01
Taiwan:	
Stainless Steel Sheet and Strip in Coils, A–583–831	7/1/00–6/30/01
Butt-Weld Pipe Fittings, A–549–807	7/1/00–6/30/01
Canned Pineapple, A–549–813	7/1/00–6/30/01
Furfuryl Alcohol, A–549–812	7/1/00–6/30/01
The People's Republic of China:	
Bulk Aspirin, A–570–853	1/3/00–6/30/01
Carbon Steel Butt-Weld Pipe Fittings, A–570–814	7/1/00–6/30/01
Industrial Nitrocellulose, A–570–802	7/1/00–6/30/01
Persulfates, A–570–847	7/1/00–6/30/01
Sebacic Acid, A–570–825	7/1/00–6/30/01
The United Kingdom:	
Industrial Nitrocellulose, A–412–803	7/1/00–6/30/01
Stainless Steel Sheet and Strip in Coils, A–412–818	7/1/00–6/30/01
Turkmenistan: Solid Urea, A–843–801	7/1/00–6/30/01
Turkey: Certain Pasta, A–489–805	7/1/00–6/30/01
Ukraine: Solid Urea, A–823–801	7/1/00–6/30/01
Uzbekistan: Solid Urea, A–844–801	7/1/00–6/30/01
Countervailing Duty Proceedings	
Brazil: Certain Hot-Rolled Carbon Steel Flat Products, C–351–829	1/1/00–12/31/00
European Economic Community: Sugar, C–408–046	1/1/00–12/31/00
Italy: Certain Pasta, C–475–819	1/1/00–12/31/00
Turkey: Certain Pasta, C–489–806	1/1/00–12/31/00
Suspension Agreements	
Brazil:	
Hot-Rolled Flat-Rolled Carbon-Quality Steel Products, C–351–829	1/1/00–12/31/00
Hot-Rolled Flat-Rolled Carbon-Quality Steel Products, A–351–828	1/1/00–12/31/00

	Period
Russia: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products, A–821–809	1/1/00–12/31/00

In accordance with § 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of July 2001. If the Department does not receive, by the last day of July 2001, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 25, 2001.

Holly A. Kuga.

Senior Office Director, Group II, Office 4, AD/CVD Enforcement.

[FR Doc. 01–16597 Filed 6–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Stainless Steel Plate in Coils From Belgium; Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Abdelali Elouaradia, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230 at (202) 482–0197 or (202) 482–1374, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1999, the Department published in the **Federal Register** the antidumping duty order on certain stainless steel plate in coils from Belgium (64 FR 27756). On May 31, 2000, in accordance with 19 CFR 351.213, respondent ALZ and its affiliated U.S. importer TrefilARBED, Inc., and the petitioners, Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Speciality Steel Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL–CIO/CLC (collectively, petitioners), requested a review of the antidumping duty order on certain stainless steel plate in coils from Belgium. On July 7, 2000, we published a notice of "Initiation of Antidumping Review." *See* 65 FR 41942. On August 14, September 5, and September 15, 2000, ALZ responded to sections A, B and D, then C, respectively, of the Department's antidumping questionnaire. On October 5, 2000, ALZ submitted a timely request for withdrawal from the administrative review pursuant to section 351.213(d) of the Department's regulations, and requested the return or destruction of its questionnaire responses. On October 20, 2000, the petitioners objected to ALZ's request for the return or destruction of the information submitted in the course of the proceeding. In accordance with the Department's practice, we granted ALZ its request to remove its questionnaire responses from the Department's record. For a detailed discussion regarding the removal of questionnaire responses from the administrative record, *see Memorandum to Barbara E. Tillman through Sally Gannon from Abdelali Elouaradia: Return or Destruction of ALZ, N.V. Questionnaire Response,* December 19, 2000 (on file in the Department's Central Records Unit, Room B–099). Given that petitioners also requested a review, we continued conducting this administrative review pursuant to section 751(a) of the Act. In light of the petitioners' request to continue the review process, the Department published in the **Federal Register** the preliminary results of review on February 26, 2001 (66 FR 11559–01), applying adverse facts available in accordance with section 776(b) of the Act to determine ALZ's rate.

Extension of Time Limits for Final Results

The parties in this proceeding have submitted extensive briefs concerning the Department's choice of facts available. In order to consider these comments, it is not practicable to complete this review by the current deadline of June 26, 2001. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results

of review until no later than October 24, 2001.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act and § 351.213(h)(2) of the Department's Regulations.

Dated: June 26, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 01–16598 Filed 6–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review, application no. 99–1A005.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted originally to California Almond Export Association ("CAEA") on December 27, 1999. Notice of issuance of the Certificate was published in the **Federal Register** on January 6, 2000 (65 FR 760).

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or by E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–4021) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2000).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR § 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 99–00005, was issued to California Almond Export Association, L.L.C. on December 27, 1999 (65 FR 760, January 6, 2000).

California Almond Export Association L.L.C's Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1): Fisher Nut Company, Modesto, California; Minturn Nut Company, LeGrand, California; Quality Nut Company, Escalon, California; and Ryan*Parreira Almond Company, Los Banos, California; and;

2. Delete Dole Nut Company, Bakersfield, California and Santa Fe Nut Company of Ballico, California, as "Members" of the Certificate.

The effective date of the amended certificate is March 26,2001. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 26, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading, Company Affairs.

[FR Doc. 01–16475 Filed 6–29–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldridge National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldridge National Quality Award on Wednesday, August 2, 2001. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to discuss the criteria for moving applicants to consensus/site visits; review of Stage I process; a review of Stage I data and selection of applicants for consensus; a report on segmentation of Judges survey data; a discussion of the draft issue sheet on CEO engagement; a discussion of the draft flowchart for the November process; and a review of senior training. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene August 2, 2001, at 9 a.m. and adjourn at 4:30 p.m. on August 2, 2001. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Chemistry Building, Training Room 1, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 12, 2001, that the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: June 26, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–16530 Filed 6–29–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 010501107–1107–01]

RIN 0648XA67

Termination of 121.5/243 MHz Satellite Alerting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the International Cospas-Sarsat Program plans on terminating 121.5/243 MHz satellite alerting on February 1, 2009. This action responds to guidance provided by the United States National Search and Rescue Committee, the International Maritime Organization, and the International Civil Aviation

Organization. These organizations have requested that 121.5/243 MHz satellite alerting be terminated, due to the high number of false alerts and the negative impact on 121.5/243 MHz emergency beacons users and search and rescue responders. The intended effect of this action is to transition the public from 121.5/243 MHz emergency beacons to emergency beacons operating at 406 MHz.

DATES: The termination of 121.5/243 MHz satellite alerting is expected to take place on February 1, 2009.

FOR FURTHER INFORMATION CONTACT: Ajay Mehta, SARSAT Program Manager, at (301) 457–5678.

SUPPLEMENTARY INFORMATION:

Background

The National Oceanic and Atmospheric Administration's National Environmental Satellite, Data, and Information Service (NESDIS) manages the Nation's operational geostationary and polar-orbiting environmental satellites, and manages a large collection of atmospheric, geophysical and oceanographic data. Within NESDIS, the Office of Satellite Data Processing and Distribution (OSDPD) manages and directs the operation of the central ground facilities which ingest, process, and distribute environmental satellite data and derived products to domestic and foreign users. OSDPD manages the United States Search and Rescue Satellite-Aided Tracking (SARSAT) Program, and represents the United States to the international Cospas-Sarsat Program. NOAA, along with the United States Coast Guard, United States Air Force and the National Aeronautics and Space Administration, is responsible for implementing the Cospas-Sarsat Program at the national level in the United States.

Cospas-Sarsat's ultimte mission is to assist in saving lives. The Cospas-Sarsat System has assisted in the rescue of more than 11,000 persons since its inception in 1982. The current Cospas-Sarsat Program was established by an inter-governmental agreement signed in 1988 between the Governments of Canada, France, the former Soviet Union and the United States.

The system works in the following manner: Search and rescue instruments are flown on the United States's NOAA polar-orbiting and geostationary-orbiting satellites and Russian Nadezhda series of polar-orbiting satellites. These instruments are capable of detecting signals from emergency beacons referred to as Emergency Locator Transmitters (ELTs), Emergency Position Indicating Radio Beacons (EPIRBs), or Personal Locator Beacons (PLSs). ELTs are primarily used by aircraft, EPIRBs by maritime vessels, and PLSb by individuals on land.

ELTs, EPIRBs, and PLBs may operate on either the 121.5, 243 or 406 MHz frequencies. 121.5/243 MHz beacons transmit an analog signal that does not contain any information about the beacon or user. Alternatively, the 406 MHz beacons transmit a digital code that contains information about the type of beacon. Each 406 MHz beacon in the world has a unique identifier. The unique identifier allows for additional information called registration data to be linked to each beacon. After receipt of ELT, EPIRB or PLB signals by the satellite, the satellite relays the signals to earth stations referred to as Local User Terminals (LUTs).

The LUT, after computing the location of the emergency beacon using Doppler technology, transmits an alert message to its respective Mission Control Center (MCC) via a data communication network. The MCC performs matching and merging of alert messages with other received messages, geographically sorts the data to determine the appropriate search and rescue authority, and subsequently transmits a distress messge to another MCC, an appropriate search and rescue authority such as a national Rescue Coordination Center (RCC) or a foreign SAR Point of Contact (SPOC). In the United States, distress alert data is transmitted to one of the following search and rescue authorities: the United States Air Force Rescue Coordination Center (AFRCC) at Langley AFB in Virginia; the 11th Rescue Coordination Center at Elmondorf AFB in Alaska; one of 10 United States Coast Guard Rescue Coordination Centers; or the Joint Rescue Coordination Center located in Key West, Florida that is responsible for some overseas search and rescue regions.

The USMCC also transmits distress messages internationally to: SAR Points of Contact (SPOCs) in other nations that are considered within the USMCC service area, but outside of its national search and rescue region; or MCCs in other nations.

Termination of 121.5/243 MHz Satellite Alerting

The Cospas-Sarsat Program made the decision to terminate 121.5/243 MHz satellite alerting services in response to guidance from the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO). These two agencies of the United Nations are responsible for regulating the safety of ships and aircraft respectively, on international transits, and handling international standards and plans for maritime and aviation search and rescue. More than 180 nations are members of IMO and ICAO.

Another major factor in the decision to stop satellite processing of 121.5/243 MHz signals is due to problems in this frequency band which inundate search and rescue authorities with false alerts, adversely impacting the effectiveness of lifesaving services. Although the 406 MHz beacons currently cost more, they provide search and rescue agencies with more reliable and complete information to do their job more efficiently and effectively.

The implication of this Cospas-Sarsat decsion is that users of ELTs, EPIRBs, and PLBs that operate on 121.5/243 MHz should eventually begin using beacons operating on 406 MHz if they wish to continue having their beacons detected by satellites. United States registered civil aircraft may carry a 121.5 MHz ELT to satisfy the requirements described in CFR Title 14, part 91, section 207. At the present time, the United States does not mandate the carriage of 406 MHz ELTs. The carriage of 406 MHz ELTs is optional. The United States does not have any mandatory carriage requirements for 121.5 MHz EPIRBs.

Cospas-Sarsat is an international program and the decision to terminate satellite processing of distress signals at 121.5/243 MHz does not mean that users cannot continue to use 121.5/243 MHz emergency beacons. The result of this termination process is that the 121.5/243 MHz signals will no longer be detected by satellites, under the auspices of Cospas-Sarsat. This lack of signal processing could result in a distress signal from a 121.4/243 MHz emergency beacon not being detected, or the detection being significantly delayed. The termination of 121.5/243 MHz processing is planned far enough into the future to allow current 121.5/243 MHz emergency beacon users to transition smoothly to 406 MHz beacons.

(Authority: Pub. L. 98–8, Title I, 104 (1983); 15 U.S.C. 313; 33 U.S.C. 883a; 49 U.S.C. 44720(b))

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 01–16575 Filed 6–29–01; 8:45 am]

BILLING CODE 3510–HR–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Public Comment Period on the Elimination of the Paper Visa Requirement with the Hong Kong Special Administrative Regime of the People's Republic of China (HKSAR)

June 26, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Seeking public comments on the elimination of the paper visa requirement with the HKSAR.

FOR FURTHER INFORMATION CONTACT: Lori Mennitt, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Electronic Visa Information System (ELVIS) allows foreign governments to electronically transfer shipment information to the U.S. Customs Service on textile and apparel shipments. On November 9, 1995, a notice was published in the **Federal Register** (61 FR 56576) seeking public comments on the implementation of ELVIS. Subsequently, a document published on December 29, 1998 (63 FR 71621) announced that, starting on January 1, 1999, the HKSAR would implement the ELVIS system. This implementation did not eliminate the requirement for a valid paper visa to accompany each shipment for entry into the United States.

As a result of successful use of the dual visa system, preparations are under way to move beyond the current dual system to the paperless ELVIS system with Hong Kong.

The Committee for the Implementation of Textile Agreements is requesting interested parties to submit comments on the elimination of the paper visa requirement for Hong Kong and utilization of the ELVIS system exclusively. Comments must be received on or before *insert date 60 days from publication*. Comments may be mailed to D. Michael Hutchinson, Acting Chairman, Committee for the Implementation of Textile Agreements, room 3001, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–16590 Filed 6–29–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancellation of Certain Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Lesotho

June 26, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs canceling certain export visa requirements.

EFFECTIVE DATE: August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On December 9, 1992, the Governments of the United States and the Kingdom of Lesotho agreed to establish an export visa arrangement for certain textiles and textile products, produced or manufactured in Lesotho and exported from Lesotho. CITA directed the U.S. Customs Service to prohibit entry of textile and textile products covered by the arrangement for which the Government of Lesotho had not issued an appropriate export visa. (See 58 FR 26121, published on April 30, 1993).

The African Growth and Opportunity Act (AGOA) provides that eligible textile and apparel articles enter free of duty and free of quantitative limitation, provided, inter alia, that the country has adopted an effective visa system to prevent unlawful transshipment of the articles and the use of counterfeit documents relating to importation of the articles into the United States. Pursuant to this requirement, the Governments of the United States and Lesotho agreed to a new, AGOA visa system, which entered into effect on April 23, 2001. (See 66 FR 21192, published on April 27, 2001)

As a result of the new, AGOA visa system, the Governments of the United States and Lesotho have agreed to terminate the 1992 visa arrangement, effective August 20, 2001. On and after this date, textiles and textile products will not be subject to the requirements of the 1992 visa arrangement. However, importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the requirements of the new, AGOA visa system. (See 66 FR 7837, published on January 25, 2001).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the directive issued to you on April 23, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Lesotho which were not properly visaed by the Government of Lesotho.

The African Growth and Opportunity Act (AGOA) provides that eligible textile and apparel articles enter free of duty and free of quantitative limitation, provided, inter alia, that the country has adopted an effective visa system to prevent unlawful transshipment of the articles and the use of counterfeit documents relating to importation of the articles into the United States. Pursuant to this requirement, the Governments of the United States and Lesotho agreed to a new, AGOA visa system, which entered into effect on April 23, 2001. (See 66 FR 21192, published on April 27, 2001)

As a result of the new, AGOA visa system, the Governments of the United States and Lesotho have agreed to terminate the 1992 visa arrangement, effective August 20, 2001. On and after this date, textiles and textile products will not be subject to the requirements of the 1992 visa arrangement. However, importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the requirements of the new, AGOA visa system. (See 66 FR 7837, published on January 25, 2001).

Therefore, effective on August 20, 2001, you are directed to terminate the textile visa requirement set forth in the April 23, 1993 directive. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles must continue to meet the requirements of the new, AGOA visa system. (See 66 FR 7837, published on January 25, 2001)

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–16591 Filed 6–29–01; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is a necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 31, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy/Military Personnel Policy/Compensation), ATTN: Thomas R. Tower, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 693-1059.

Title, Associated Form, and OMB Control Number: Application for Annuity Certain Military Surviving Spouses, Form #: DD Form 2769, OMB Number: 0704–0402.

Needs and Uses: This information collection requirement is necessary to identify and pay surviving spouses who meet the criteria established for benefits under the provisions of The National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85, Section 644, as amended. The DD Form 2769, "Application for Annuity—Certain Military Surviving Spouses," used in this information collection, provides a vehicle for the surviving spouse to apply for the annuity benefit. The Department will use this information to determine if the applicant is eligible for the annuity benefit and make payment to the surviving spouse. The respondents of this information collection are a never-remarried surviving spouse of a member of a Uniformed Service who (1) died before March 21, 1974, and was entitled to retired or retainer pay on the date of death, or (2) was a member of a Reserve Component of the Armed Forces who died before October 1, 1978 and on the date of death would have been entitled to retired pay except for not yet being 60 years of age.

Affected Public: Individuals.

Annual Burden Hours: 200.

Number of Respondents: 200.

Responses Per Respondent: 1.

Average Burden per Response: 1 hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The National Defense Authorization Act of FY 1998, Public Law 105–85, section 644, requires the Secretary of Defense to pay an annuity to qualified surviving spouses. As required by the Act, no benefit shall be paid to any person under this section unless an application for such benefit is filed with the Secretary concerned by or on behalf of such person. This information collection is needed to obtain the necessary data so that the Department can determine is the applicant is eligible for the annuity benefit and make payment to the surviving spouse.

Dated: June 25, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 01–16537 Filed 6–29–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01–20]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)91) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, transmittal 01–20 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 25, 2001.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 JUN 2001
In reply refer to:
I-01/005626

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-20 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Hungary for defense articles and services estimated to cost $370 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

Tome H Walters Jr

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 01-20

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Hungary**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 6 million
Other	$364 million
TOTAL	$370 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: In support of the proposed F-16A/B aircraft lease being notified separately, four F-16A Block 10 operational capabilities upgrade aircraft for cannibalization and regeneration/upgrade of aircraft and engines, together with spare and repair parts, devices, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support.**

(iv) **Military Department: Air Force (SAE)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress: 18 JUN 2001**

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Hungary - Support for F-16A/B Aircraft

The Government of Hungary has requested a possible sale of four F-16A Block 10 operational capabilities upgrade aircraft for cannibalization and regeneration/upgrade of aircraft and engines, together with spare and repair parts, devices, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support in support of an F-16 lease. The estimated cost is $370 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Hungary while enhancing weapon system standardization and interoperability with U.S. forces.

The Hungarian Air Force (HAF) currently operates MiG-29 aircraft. These former Warsaw Pact fighters are expensive to operate and maintain, lack essential NATO interoperability capabilities, and are nearing the end of their useful service lives. This proposed sale and the associated lease aircraft will enhance NATO interoperability while simultaneously providing operational capabilities as the Soviet-era aircraft in Hungarian inventory are eventually retired. This proposed sale would not impact the regional military balance of power. It will also allow the HAF to meet training requirements, as well as national air defense and NATO commitments, starting in early 2004.

The principal contractors will be Lockheed Martin Tactical Aircraft Systems of Fort Worth, Texas and Pratt and Whitney of East Hartford, Connecticut. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of 11 U.S. Government and two contractor representatives for a period of up to three years to provide program support commencing with delivery of the aircraft to Hungary.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 01-20

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The F-16A Block 10 operational capability upgrade aircraft and Pratt and Whitney F-100-PW-200 engine are unclassified. The aircraft does not contain state-of-the-art technology.

2. The F-100-PW-200 engines and the associated component parts used in F-16A aircraft are unclassified. However, several manufacturing processes, design practices, and metallurgical fabrication techniques used are advanced technology methods found only in the U.S. propulsion technology industry. The sale of the engines to Hungary will not include the transfer of sensitive technology since the proposed sale does not include manufacturing processes, design practices, or metallurgical fabrication techniques.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Hungary can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 01–16540 Filed 6–29–01; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Postponement of the Defense Finance and Accounting Service Board of Advisors

AGENCY: Department of Defense, Office of the Secretary of Defense (Comptroller).

ACTION: Notice of postponement of June 27, 2001 meeting.

SUMMARY: On Monday, June 18, 2001 (66 FR 32795), the Department of Defense published a notice of meeting of the Defense Finance and Accounting Service (DFAS) Board of Advisors scheduled for Wednesday, June 27, 2001. The meeting has been postponed and will be rescheduled and announced at a later date.

Dated: June 25, 2001.
L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 01–16538 Filed 6–29–01; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–412–001]

Algonquin Gas Transmission Company; Notice of Compliance Filing

June 26, 2001.

Take notice that on June 21, 2001, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet, to be effective on June 7, 2001:

Fourth Revised Volume No. 1
Sub Second Revised Sheet No. 610

Algonquin states that the purpose of this filing is to comply with the directives of the Commission's Letter Order dated June 6, 2001, in Docket No. RP01–412–000 (June 6 Order).

On May 7, 2001, Algonquin filed revised tariff sheets in order to permit customers to electronically request service and execute service agreements via the LINKr System.

Algonquin states that the June 6 Order accepted certain tariff sheets in Algonquin's May 7 tariff filing, effective June 7, 2001, and required that Algonquin submit revised tariff sheets, as necessary, implementing the electronic version of the service request form on Algonquin's website and reflecting the elective nature of the electronic process.

Algonquin states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–16505 Filed 6–29–01; 8:45 am]

BILLING CODE 6717–0–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–413–001]

East Tennessee Natural Gas Company; Notice of Compliance Filing

June 26, 2001.

Take notice that on June 21, 2001, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective on June 7, 2001:

Sub Seventh Revised Sheet No. 111
Sub Second Revised Sheet No. 111A

East Tennessee states that the purpose of this filing is to comply with the directives of the Commission's Letter Order dated June 6, 2001, in Docket No. RP01–413–000 (June 6 Order).

East Tennessee states that, on May 7, 2001, revised tariff sheets were filed in this docket in order to permit customers to electronically request service and execute service agreements via the LINKr System.

East Tennessee states that the June 6 Order accepted certain of the tariff sheets in East Tennessee's May 7 tariff filing effective June 7, 2001, and required that East Tennessee file, as necessary, revised tariff sheets implementing the electronic version of the service request form on East Tennessee's website and reflecting the elective nature of the electronic process.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–16506 Filed 6–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–1740–002]

New York Independent System Operator, Inc.; Notice of Filing

June 21, 2001.

Take notice that on June 18, 2001, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Open Access Transmission Tariff in order to include a description of the cost allocation methodology for its Incentivized Day-Ahead Economic Load Curtailment Program, pursuant to the Commission's order issued on May 16, 2001 in the above-captioned proceeding. The NYISO has requested an effective date of May 1, 2001.

The NYISO has served a copy of this filing upon parties on the official service lists maintained by the Commission for the above-captioned dockets.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214d of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 9, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http:www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–16504 Filed 6–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–159–002)]

Southern Natural Gas Company; Notice of Compliance Filing

June 26, 2001.

Take notice that on June 19, 2001, Southern Natural Gas Company (Southern), tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, with an effective date of June 4, 2001:

Second Substitute Second Revised Sheet No. 45
Second Substitute Second Revised Sheet No. 45
Substitute Original Sheet No. 45A

Southern states that the purpose of the filing is to clarify the circumstances under which Southern would pay to construct delivery and receipt point facilities or offer the Shipper a contribution in aid of construction (CIAC) under Southern's Rate Schedule FT. Southern is making this filing in compliance with the Commission's June 4, 2001 Order in this proceeding.

Southern states that copies of the filing will be served upon its shippers and interested state commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and

Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–16507 Filed 6–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–52–043]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Refund Report

June 26, 2001.

Take notice that on May 31, 2001, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing its report of activities during the past year regarding collection of Kansas ad valorem tax refunds.

Williams states that this filing is being made in compliance with Commission order issues September 10, 1997 in Docket Nos. RP97–369–000, et al. The September 10 order requires first sellers to make refunds for the period October 3, 1983 through June 28, 1988. The Commission also directed that pipelines file a report annually concerning their activities to collect and flow through refunds of the taxes at issue.

Williams states that a copy of its filing was served on all parties included on the official service list maintained by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 6, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission's and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–16508 Filed 6–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1721–001, et al.]

Entergy Nuclear Indian Point 2, LLC, et al.; Electric Rate and Corporate Regulation Filings

June 25, 2001.

Take notice that the following filings have been made with the Commission:

1. Entergy Nuclear Indian Point 2, LLC

[Docket No. ER01–1721–001]

Take notice that on June 21, 2001, Entergy Nuclear Indian Point 2, LLC ("ENIP2") tendered for filing a designation for a long term power purchase agreement and revised tariff sheets to ENIP2's FERC Electric Tariff, Original Volume No.1 in compliance with the Letter Order issued on May 24, 2001 in this Docket No. ER01–1721–000. The tariff revision incorporates a prohibition on power purchases from any affiliated public utility with a franchised service territory absent a rate filing under Section 205 of the Federal Power Act.

Comment date: July 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Wildflower Energy LP

[Docket No. ER01–1822–000]

Take notice that on June 21, 2001, Wildflower Energy LP (Wildflower) submitted a redesignated rate schedule, in compliance with the Commission's order in this docket issued on June 12, 2001.

Comment date: July 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Caithness Energy Marketing, LLC

[Docket No. ER01–2353–000]

Caithness Energy Marketing, LLC (Caithness Marketing) petitioned the Commission on June 19, 2001, for authority to sell electricity at market-based rates under Section 205(a) of the Federal Power Act, 16 U.S.C. § 824d(a); for the granting of certain blanket approvals and for the waiver of certain Commission regulations. Caithness Marketing is a Delaware limited liability company that proposes to engage in the wholesale sale of electric power.

Comment date: July 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Xcel Energy Services Inc.

[Docket No. ER01–2356–000]

Take notice that on June 19, 2001, Xcel Energy Services Inc.(XES), on behalf of Southwestern Public Service Company (Southwestern), submitted for filing a Service Agreement between Southwestern and Midwest Energy, Inc., which is an umbrella service agreement under Southwestern's Rate Schedule for Market-Based Power Sales (FERC Electric Tariff, Second Revised Volume No. 3).

XES requests that this agreement become effective on May 29, 2001.

Comment date: July 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Xcel Energy Operating Companies, Northern States Power Company, Northern States Power Company,(Wisconsin)

[Docket No. ER01–2358–000]

Take notice that on June 19, 2001, Northern States Power Company and Northern States Power Company (Wisconsin) (jointly NSP), wholly-owned utility operating company subsidiaries of Xcel Energy Inc., tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Axia Energy, LP. NSP proposes the Agreements be included in the Xcel Energy Operating Companies FERC Joint Open Access Transmission Tariff, Original Volume No. 1, as Service Agreements 189–NSP and 190–NSP, pursuant to Order No. 614.

NSP requests that the Commission accept the agreement effective May 19, 2001, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: July 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER01–2359–000]

Take notice that on June 19, 2001, Portland General Electric Company (PGE) filed revised tariff sheets to its Open Access Transmission Tariff. The revised sheets are intended: (1) to clarify that Energy Service Suppliers under Oregon's retail access provisions are deemed to be eligible customers; and (2) to revise PGE's Energy Imbalance provisions to require payments for imbalances based on the market price of energy.

PGE requests that the Commission make the revised tariff sheets effective as of September 1, 2001.

Comment date: July 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Northern Indiana Public Service Company

[Docket No. ER01–2360–000]

Take notice that on June 19, 2001, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Exelon Generation Company, LLC (Exelon). Copies of this filing have been sent to Exelon Generation Company, LLC the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Non-Firm Point-to-Point Transmission Service to Exelon pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of June 20, 2001.

Comment date: July 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. ER01–2361–000]

Take notice that on June 19, 2001, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Mirant Americas Energy Marketing, LP (Mirant).Copies of this filing have been sent to Mirant Americas Energy Marketing, LP, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Non-Firm Point-to-Point Transmission Service to Mirant pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of June 20, 2001.

Comment date: July 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Old Dominion Electric Cooperative

[Docket No. ES01–38–000]

Take notice that on June 15, 2001, Old Dominion Electric Cooperative (Old Dominion) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue mortgage bonds in an amount not exceeding an aggregate of $250 million.

Old Dominion also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the Comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–16503 Filed 6–29–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11150–000—Michigan]

Cameron Gas and Electric Company; Notice of Availability of Environmental Assessment

June 26, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the unlicensed Smithville and Mix Hydroelectric Project located on the Grand River, in the city of Easton Rapids, Eaton County, Michigan, and has prepared a Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental effects of the project and has concluded that approval of the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm*. Please call (202) 208–2222 for assistance. For further information, contact William Guey-Lee at (202) 219–2808.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–16510 Filed 6–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Protests, and Motions to Intervene

June 26, 2001.

Take notice that the following hydroelectric applications have been

filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project Nos.:* 12029–000, 12030–000 12031–000, 12032–000, 12040–000, 12041–000, 12042–000, 12043–000, 12044–000, and 12045–000.

c. *Date filed:* May 29 and June 4, 2001.

d. *Applicant:* Hydrodynamics, Inc.

e. *Name and Location of Projects:* All of these projects would be located on the U.S. Bureau of Reclamation's existing Greenfield Irrigation District canal system, using irrigation diversions from the Sun River below Gibson Dam, at the canal and drop structure identified in item j below, in Teton and Cascade Counties, Montana.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

g. *Applicant Contact:* Mr. Roger Kirk, Hydrodynamics, Inc., P.O. Box 1136, Bozeman, MT 59771, (406) 587–5086.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and motions to intervene may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the noted project numbers on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Projects:* The name of each project identifies the drop structure at which it would be located; all of the described project works are proposed. (1) The Upper Turnbull Project No. 12029 would consist of a diversion structure, crest elevation 4,322 feet, on the Spring Valley Canal; a 1200-foot-long, 8-foot-diameter pen stock; a powerhouse containing a 4-MW generating unit; a tailrace returning flows to the canal at elevation 4,220 feet; and a 2-mile-long transmission line. (2) The Lower Turnbull Project No. 12030 would consist of a diversion structure, crest elevation 4,219 feet, on the Spring Valley Canal; a 2500-foot-long, 8-foot-diameter penstock; a powerhouse containing a 6-MW generating unit; a tailrace returning flows to the canal at elevation 4,067 feet; and a 2-mile-long transmission line. (3) The Mill Coulee Upper Project No. 12031 would consist of a diversion structure, crest elevation 4,010 feet, on the Mill Coulee Canal; an 800-foot-long, 54-inch-diameter penstock; a powerhouse containing a 1-MW generating unit; a tailrace returning flows to the canal at elevation 3,893 feet; and a ¾-mile-long transmission line. (4) The Mill Coulee Lower Project No. 12032 would consist of a diversion structure, crest elevation 3,893 feet, on the Mill Coulee Canal; a 480-foot-long, 54-inch-diameter penstock; a powerhouse containing a 370-kW generating unit; a tailrace returning flows to the canal at elevation 3,847 feet; and a ¼-mile-long transmission line. (5) The Mary Taylor Project No. 12040 would consist of a diversion structure, crest elevation 4,019 feet, on the Greenfield Main Canal; a 630-foot-long, 8-foot-diameter penstock; a powerhouse containing a 1.25-MW generating unit; a tailrace returning flows to the canal at elevation 3,976 feet; and a ⅓-mile-long transmission line. (6) The Woods Project No. 12041 would consist of a diversion structure, crest elevation 3,972 feet, on the Greenfield Main Canal; a 750-foot-long, 8-foot-diameter penstock; a powerhouse containing a 1.25-MW generating unit; a tailrace returning flows to the canal at elevation 3,919 feet; and a 0.1-mile-lone transmission line. (7) The Greenfield Project No. 12042 would consist of a diversion structure, crest elevation 3,918 feet, on the Greenfield Main Canal; a 650-foot-long, 5-foot-diameter penstock; a powerhouse containing an 0.8-MW generating unit; a tailrace returning flows to the canal at elevation 3,880 feet; and a 0.1-mile-long transmission line. (8) The A-Drop Project No. 12043 would consist of a diversion structure, crest elevation 4,054 feet, on the Greenfield Main Canal; a 570-foot-long, 8-foot-diameter penstock; a powerhouse containing a 1.25-MW generating unit; a tailrace returning flows to the canal at elevation 4,020 feet; and a .05-mile-long transmission line. (9) The Johnson Project No. 12044 would consist of a diversion structure, crest elevation 4,018 feet, on the Greenfield South Canal; a 900-foot-long, 8-foot-diameter penstock; a powerhouse containing a 1.0-MW generating unit; a tailrace returning flows to the canal at elevation 3,972 feet; and a ⅓-mile-long transmission line. (10) The Knights Project No. 12045 would consist of a diversion structure, crest elevation 3,878 feet, on the Greenfield Main Canal; a 1400-foot-long, 8-foot-diameter penstock; a powerhouse containing a 1.25-MW generating unit; a tailrace returning flows to the canal at elevation 3,818 feet; and a ¼-mile-long transmission line.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be

served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–16509 Filed 6–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 06/25/2001, 66 FR 33676.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 27, 2001, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket No. has been added to Item CAG –29 on the Commission Meeting of June 27, 2001.

Item No. CAG–29.

Docket No. and Company: MG98–13–001, Tuscarora Gas Transmission Company.

David P. Boergers,

Secretary.

[FR Doc. 01–16666 Filed 6–28–01; 11:23 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7003–3]

Investigator-Initiated Grants: Request for Applications

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of request for applications.

SUMMARY: This notice provides information on the availability of fiscal year 2001 investigator-initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research areas within the solicitations and are listed below.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research (8703R), 1200 Pennsylvania Avenue, NW., Washington DC 20460, telephone (800) 490–9194. The complete announcements can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa under "announcements."

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Mercury: Transport, Transformation, and Fate in the Atmosphere; (2) Corporate Environmental Behavior: Examining the Effectiveness of Government Interventions and Voluntary Initiatives; (3) Issues in Human Health Risk Assessment: Novel Mechanistic Approaches in Human Health Risk Assessment; (4) Health Effects of Chemical Contaminants in Drinking Water; and (5) Microbial Risk in Drinking Water. Applications must be received as follows: August 15, 2001, for topics (1) and (2); September 12, 2001, for topic (3); September 17, 2001, for topics (4) and (5). The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contact person for the Mercury RFA is William Stelz (*stelz.william@epa.gov*, telephone 202–564–6834. Contact person for the Corporate Environmental Behavior RFA, is Susan Carillo (*carillo.susan@epa.gov*), telephone 202–564–4664. Contact person for the Human Health Risk Assessment RFA is Chris Saint, telephone 202–564–6909 (*saint.chris@epa.gov*) or Nigel Fields, telephone 228–688–1981 (*fields.nigel@epa.gov*). Contact person for the Drinking Water RFAs is Maggie Breville, telephone 202–564–6893 (*breville.maggie@epa.gov*).

Dated: June 13, 2001.

Approved for publication:

Ann Akland,

Acting Assistant Administrator for Research and Development.

[FR Doc. 01–16571 Filed 6–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7005–7]

EPA Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees (Executive Committee (EC), Ecological Processes and Effects Committee (EPEC), Clean Air Scientific Advisory Committee (CASAC), Environmental Health Committee

(EHC)/Integrated Human Exposure Committee (IHEC) joint meeting, and Arsenic Rule Benefits Review Panel) of the EPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Standard Time. The meetings are open to the public, however, seating is limited and available on a first come basis.

1. Executive Committee—July 17–18, 2001

The US EPA Science Advisory Board's (SAB's) Executive Committee will meet on Tuesday and Wednesday, July 17–18, 2001 from 8:30 am to 5:00 pm on July 17 and 8:30 to 12:00 noon on July 18. The meeting will be held in the USEPA, National Risk Management Research Laboratory (NRMRL), 26 West Martin Luther King Drive, Cincinnati, Ohio 45268. Telephone: (513) 569–7418.

Purpose of the Meeting—At this meeting, the Executive Committee expects to review the following draft reports prepared by its Committees or subcommittees. Please check with SAB Staff (see below) prior to the meeting to determine the final list of review issues.

(a) Executive Committee (EC) of the EPA Science Advisory Board (SAB) "Improving Science-Based Environmental Stakeholder Processes; an SAB Commentary"

(b) Scientific and Technological Achievement Awards Subcommittee (STAA) of the EPA Science Advisory Board (SAB) "Recommendations on the FY2000 Scientific and Technological Achievement Award Nominations" (see 66 **Federal Register** 19933, dated April 18, 2001 for details).

(c) Scientific and Technological Achievement Awards Subcommittee (STAA) of the EPA Science Advisory Board (SAB) "The Process of the Scientific and Technological Achievement Awards; An SAB Commentary" (see 66 **Federal Register** 19933, dated April 18, 2001 for details).

The SAB may review other reports if they are available in time. Additional issues on the agenda include: (a) activities of the various SAB committees; (b) consideration of Cumulative Risk issues; (c) addressing concerns raised about activities during the course of preparing reports; (d) the role of social science in SAB activities; and (e) project planning for FY2002.

Charge to the Executive Committee—The focus of the Executive Committee review of draft reports prepared by its Committees or subcommittees is normally limited to the following issues: (a) Does the draft report adequately responded to the questions posed in the Charge? (b) Are the statements and/or responses in the draft report clear? (c) Are there any errors of fact in the draft report?

In accord with the Federal Advisory Committee Act (FACA), the public and the Agency are invited to submit written comments on these three questions. Submissions should be received by July 13, 2001 by Ms. Diana Pozun, EPA Science Advisory Board, Mail Code 1400A, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. (Telephone (202) 564–4544, FAX (202) 501–0582; or via e-mail at *pozun.diana@epa.gov*). Submission by e-mail to Ms. Pozun will maximize the time available for review by the Executive Committee.

The SAB will have a brief period available for applicable public comment. Anyone wishing to make oral comments on the three focus questions above, and that are not duplicative of previously submitted written comments, should contact the Designated Federal Officer for the Executive Committee, Dr. Donald G. Barnes (Tel: 202–564–4533; Fax: 202–501–0323; USEPA Science Advisory Board, Mail Code 1400A, USEPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460; *barnes.don@epa.gov*) by July 10, 2001. See below for more information on providing comments.

Availability of Materials—The draft meeting agenda and drafts of any reports that will be reviewed at the meeting will be available to the public on the SAB website (*http://www.epa.gov/sab*) by close-of-business on July 6, 2001.

For Further Information—Any member of the public wishing further information concerning this meeting should contact Dr. Donald G. Barnes, Designated Federal Officer (DFO) for the Executive Committee at US EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; phone (202) 564–4533; fax (202) 501–0323; or via e-mail at *barnes.don@epa.gov*.

2. Ecological Processes and Effects Committee (EPEC)—July 18–20, 2001

The Ecological Processes and Effects Committee of the US EPA Science Advisory Board (SAB), will meet on Wednesday through Friday, July 18–20, 2001 at The Westin Cincinnati, 21 East 5th Street, Cincinnati, OH, telephone 513–621–7700. The meeting will begin at 12:30 p.m. on July 18 and adjourn no later than noon on July 20.

Purpose of the Meeting—(a) Review the draft Agency document, Planning for Ecological Risk Assessment: Developing Management Objectives: The draft document, developed by a technical panel of the EPA Risk Assessment Forum, is designed to help decision-makers work with risk assessors, stakeholders, and other analysts to plan for ecological risk assessments that will effectively inform the decisions they need to make. The document presents the three steps of Planning: Identify Decision Context, Develop Objectives, and Identify Information Needs. It also describes how planning fits into the overall risk-assessment process and provides several case examples showing how the process might be applied in EPA programs.

Charge to the Panel: The Agency has asked the SAB to respond to the following questions:

(1) The primary audience for the guidance document is EPA risk managers, but also should be useful to managers and decisionmakers outside the Agency. Overall, does the SAB think this guidance may be useful and help decisionmakers improve the planning of ecological risk assessments? What additional principles should be included or excluded in the document?

(2) Are the steps in setting management objectives clear and is the overall process logical? Are the key concepts well defined?

(3) Is the depth of discussion and level of technical detail appropriate? If not, how would the SAB change it?

(4) Discuss the flexibility afforded by the guidance and its applicability to different situations (e.g., site-specific, national level, etc.)?

(5) Comment on the effectiveness of the examples, figures, tables, and text boxes.

(b) *Review the Southeastern Ecological Framework (SEF):* EPA Region 4, working with the University of Florida, has developed the Southeastern Ecological Framework, a Geographic Information System (GIS)-based approach for identifying a network of important regional ecological hubs and "greenways" corridors that connect them throughout the 8-state region. The SEF builds on the approach developed in Florida for identification of a network of greenways (the Florida Ecological Network). The hubs of the framework are typically land areas with high habitat diversity, little forest fragmentation, and greater than 5,000 acres in size. The corridors of the framework connect the hubs and typically follow natural land forms and water features, allowing ecosystem processes to operate at a larger scale. The model depicts a functioning whole system that integrates ecosystem processes across many scales by maintaining connectivity among the parts. The SEF is designed to be a planning tool that can be used by

anyone interested in protecting water quality, species habitat, important ecological areas, quality of life and other important natural features by preserving connectivity between those natural areas.

Charge to the Panel: The Agency has asked the SAB to respond to the following questions:

(1) Is the Florida Ecological Network approach consistent with modeling an ecological framework for a region?

(2) Are the data layers used in developing the Southeastern Ecological Framework sufficient to indicate ecological integrity?

(3) Would a similar model or approach be applicable for developing a framework for the U.S.?

(4) Would additional or alternate data layers be needed for a national framework?

(5) What modification might be made to increase the utility of the approach as a decision support tool in meeting EPA's program activities and Government Performance and Results Act (GPRA) goals?

(6) Discuss what linkages between various indicators and EPA programs or control authorities may help to elevate the use of SEF as a decision support tool?

Availability of Review Materials: A copy of the draft document, Planning for Ecological Risk Assessment: Developing Management Objectives is available from Ms. Marilyn Brower, U.S. Environmental Protection Agency, Risk Assessment Forum Staff (8601D), 1200 Pennsylvania Ave, NW., Washington, DC 20460, telephone (202) 564–3363, or e-mail at *brower.marilyn@epa.gov*. Review materials describing the Southeastern Ecological Framework are available from Dr. Cory Berish, Chief of the Planning and Analysis Branch, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, telephone (404) 562–8276, or e-mail at *berish.cory@epa.gov*.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Ms. Stephanie Sanzone, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4561; FAX (202) 501–0582; or via e-mail at *sanzone.stephanie@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. Sanzone no later than noon Eastern Standard Time on July 11, 2001.

3. Environmental Health Committee and the Integrated Human Exposure Committee (EHC/IHEC)—Joint Meeting—July 19–20, 2001

The Environmental Health Committee and the Integrated Human Exposure Committee (EHC/IHEC) of the US EPA Science Advisory Board (SAB), will meet jointly on Thursday and Friday, July 19–20, 2001 at The Westin Cincinnati, 21 East 5th Street, Cincinnati, OH, telephone 513–621–7700. The meeting will begin 9 am Eastern Standard Time on July 19, and adjourn no later than 5 pm on July 20.

Purpose of the Meeting—EPA is currently developing an indoor air toxics strategy to reduce risks from toxic air pollutants indoors, using non-regulatory, voluntary actions. To help focus Agency efforts on the most substantial risks, the Office of Radiation and Indoor Air (ORIA) developed a draft strategy presenting an "order-of-magnitude," screening-level ranking and selection of key air toxics indoors. The ranking analysis used a methodology similar to that used to select key pollutants for the National Air Toxics Program/Urban Air Toxics Strategy, as presented in the Technical Support Document for that program (for more details, please see http://www.epa.gov/ttn/uatw/urban/urbanpg.html).

Charge to the Committee—The Charge asks the EHC/IHEC to respond to the following four primary questions:

(a) Is the overall methodology suitable for the purposes of the ranking analysis (i.e., development of an "order-of-magnitude," screening-level ranking and selection of key air toxics indoors)?

(b) Are the criteria used to select the monitoring studies for the analysis appropriate? Are the studies chosen for the ranking analysis suitable, and are there other studies that you believe should be included in this analysis? Were the methods used to select and statistically analyze the data within the studies useful to the analysis?

(c) Is the methodology for selection of the "risk-based concentrations" (based on that presented in the Technical Support Document for the National Air Toxics Program/Urban Air Toxics Strategy) useful in the context of this analysis?

(d) How well are adequacy, limitations, and uncertainties of the analysis described and addressed, including:

(1) Incomplete data on indoor concentrations and hazard/risk indices.

(2) Difficulties in determining the representativeness/accuracy of the "typical" levels indoors.

(3) The use of short-term monitoring data to represent chronic exposure periods.

(4) Issues related to the age of the data.

(5) Variations in the methods used by the various agencies to arrive at the health indices, which are the basis for the "risk-based concentrations?"

Availability of Review Materials: The principal review document is available via request to Ms. Mary Clark, phone (202) 564–9348, or by email to *clark.marye@epa.gov*.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Samuel Rondberg, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (301) 812–2560, FAX (410) 286–2689; or via e-mail at samuelr717@aol.com. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Rondberg no later than noon (EDT) on July 13, 2001.

4. The Arsenic Rule Benefits Review Panel (ARBRP)—July 19–20, 2001

The Arsenic Rule Benefits Review Panel (ARBRP) of the US EPA Science Advisory Board, will meet in the Ronald Reagan Building/International Trade Center Conference Center (Polaris Suite), 1300 Pennsylvania Avenue, NW., Washington, DC 20005. The meeting will begin by 8:30 a.m. and adjourn no later than 5 p.m. Eastern Standard Time on both days. The meeting is open to the public, however, seating is limited and available on a first come basis.

Purpose of the Meeting—The Panel will meet to review the Agency's report Arsenic in Drinking Water Rule Economic Analysis (EPA 815–R–00–026; December 2000). A report will be prepared and delivered to the EPA Administrator as a result of the review.

Background—Studies have linked long-term exposure to arsenic in drinking water to cancer of the bladder, lungs, skin, kidney, nasal passages, liver, and prostate. Non-cancer effects associated with arsenic ingestion include effects to the cardiovascular, pulmonary, immunological, neurological, and endocrine (e.g., diabetes) systems. The current standard of 50 ppb was set by EPA in 1975, based on a Public Health Service standard originally established in 1942. A March 1999 report by the National Academy of Sciences concluded that the current standard does not achieve EPA's goal of

protecting public health and should be lowered as soon as possible.

The Safe Drinking Water Act, as amended, 1996, (SDWA) requires EPA to revise the existing 50 parts per billion (ppb) arsenic standard. In response to this mandate, the Agency published a standard of 10 ppb to protect consumers against the effects of long-term, chronic exposure to arsenic in drinking water on January 22, 2001. The rule is significant in that it is the second drinking water regulation for which EPA has used the discretionary authority under section 1412(b)(6) of the SDWA to set the Maximum Contaminant Level (MCL) higher than the technically feasible level, which is 3 ppb for arsenic—based on a determination that the costs would not justify the benefits at this level. The January 22, 2001 arsenic rule is based on the conclusion that a 10 ppb MCL maximizes health risk reduction at a cost justified by the benefits.

The January 22, 2001 rule will apply to all 54,000 community water systems and requires compliance by 2006. A community water system is a system that serves 15 locations or 25 residents year-round, and includes most cities and towns, apartments, and mobile home parks with their own water supplies. EPA estimates that roughly five percent, or 3000, of the community water systems, serving 11 million people, will have to take corrective action to lower the current levels of arsenic in their drinking water. The new standard will also apply to 20,000 "non-community" water systems that serve at least 25 of the same people more than six months of the year, such as schools, churches, nursing homes, and factories. EPA estimates that five percent, or 1,100, of these water systems, serving approximately 2 million people, will need to take measures to comply with the January 22, 2001 rule. Of all of the affected systems, 97 percent are small systems that serve fewer than 10,000 people each.

Following the January 22, 2001 **Federal Register** promulgation of the arsenic rule, a number of issues were raised to EPA by States, public water systems, and others regarding the adequacy of science and the basis for national economic analyses informing decisions about the rule. Because of the importance of the arsenic rule and the national debate surrounding it related to the science and economic analyses that inform the decision, EPA's Administrator publicly announced on March 20, 2001, that the Agency would take additional steps to reassess the scientific and economic issues associated with this rule, to gather more information, and to seek further public input on each of these important issues.

Key stakeholder concerns on the benefits component of the economic analysis include the following issues: (1) The timing of health benefits accrual (latency); (2) the use of the Value of Statistical Life as a measure of health benefits; (3) the use of alternative methodologies for benefits estimation; (4) how the Agency considered non-quantifiable benefits in its regulatory decision-making process; (5) the analysis of incremental costs and benefits; and (6) the Agency's assumption that health risk reduction benefits will begin to accrue at the same time costs begin to accrue.

Charge to the Committee—The EPA Science Advisory Board (SAB) will convene a panel of nationally recognized technical experts to review the methods for estimating the benefits associated with the final arsenic in drinking water rule. The Panel has been asked to review the Agency's analysis of quantified and unquantified benefits associated with the arsenic drinking water rule (see 66 FR 6976–7066, dated January 22, 2001, *www.epa.gov/safewater/ars/arsenic_finalrule.htm*), specifically, the Agency asks the SAB to evaluate whether the components, methodology, criteria and estimates reflected in EPA's economic analysis (Arsenic in Drinking Water Rule Economic Analysis; EPA 815–R–00–26, 2001), are reasonable and appropriate in light of: (1) The EPA Science Advisory Board's (SAB) benefits transfer report (EPA–SAB–EEAC–00–013, July 2000, entitled An SAB Report on EPA's White Paper Valuing the Benefits of Fatal Cancer Risk Reductions—available on the SAB Website at www.epa.gov/sab/eeacf013.pdf), (2) EPA's Guidelines for Preparing Economic Analyses (EPA 240–R–00–003; September 2000; *www.epa.gov/economics*), (3) relevant requirements of the Safe Drinking Water Act (SDWA—www.epa.gov/safewater/sdwa/sdwa.htm), (4) the National Drinking Water Advisory Council recommendations to EPA on benefits (Benefits Working Group Report to the National Drinking Water Advisory Council; unpublished, October 29, 1998), and (5) recent literature. As part of a general review, consideration should be given to the following issues:

(a) How should total benefits and costs and incremental benefits and costs be addressed in analyzing regulatory alternatives to ensure appropriate consideration by decision makers and the public?

(b) How should latency be addressed in the benefits estimates when existing literature does not provide specific quantitative estimates of latency periods associated with exposure to arsenic in drinking water?

(c) Should reduction/elimination of exposure be evaluated as a separate benefits category, in addition to or in conjunction with mortality and morbidity reduction?

(d) How should health endpoints (other than bladder and lung cancer) be addressed in the analysis, when [existing] literature does not provide specific quantification, to ensure appropriate consideration by decision makers and the public?

(e) How should uncertainties be addressed in the analysis to ensure appropriate consideration by decision makers and the public?

In order to ensure that the SAB's recommendations are fully considered in decision making, the Agency has asked for a report to be made available to the Administrator in August 2001 to coincide with the findings and recommendations from independent reviews of the health effects by the National Academy of Sciences and costs by the National Drinking Water Advisory Council.

For Further Information—Any member of the public wishing further information concerning this meeting should contact Mr. Thomas O. Miller, Designated Federal Officer, EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–4558; FAX (202) 501–0582; or via e-mail at *miller.tom@epa.gov*. For a copy of the draft meeting agenda, please contact (primary) Ms. Wanda Fields, Management Assistant at (202) 564–4539, or by FAX at (202) 501–0582; or (alternate) Ms. Rhonda Fortson, Management Assistant at (202) 564–4563 or by FAX at (202) 501–0582 or via e-mail at *fortson.rhonda@epa.gov*.

Materials that are the subject of this review are available on the EPA Website as noted in the section on "Charge to the Committee" above or from Ms. Rebecca K Allen, US EPA, Office of Water (OW)(MS 4607), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Phone: (202) 260–6667 or via e-mail at *allen.rebeccak@epa.gov*.

Public Oral or Written Comments—Members of the public who wish to make a brief oral presentation (5 minutes or less per person or organization, depending on the number of requests) to the Panel must contact Mr. Miller *in writing* (by letter or by fax—see contact information above) no later than 12 noon Eastern Standard Time, Monday, July 16, 2001 in order to be included on the Agenda. The request

should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself. See below for more information on providing written or oral comments.

5. Clean Air Scientific Advisory Committee (CASAC)—July 23–24, 2001

The Particulate Matter Review Panel of the Clean Air Scientific Advisory Committee (CASAC) of the EPA Science Advisory Board (SAB) will meet on Monday and Tuesday, July 23–24, 2001 in the Main Auditorium, US Environmental Protection Agency Environmental Research Center, Route 54 and Alexander Drive, Research Triangle Park, NC. The meeting will begin at 8:30 am and end no later than 5:30 pm on each day.

Purpose of the Meeting: (a) The CASAC PM Review Panel will conduct a *peer review* of the EPA Air Quality Criteria for Particulate Matter (Second External Review Draft) prepared by EPA's National Center for Environmental Assessment (NCEA); and (b) The CASAC PM Review Panel will also conduct a *Consultation* with the EPA's Office of Air Quality Planning and Standards (OAQPS) on the preliminary draft of OAQPS's Staff Paper for particulate matter, Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information, and the draft Particulate Matter NAAQS Risk Analysis Scoping Plan.

Availability of Review Materials: (a) EPA Air Quality Criteria for Particulate Matter (Second External Review Draft)—This document assesses the latest available scientific information on the effects of airborne particulate matter (PM) on human health and welfare. To obtain a copy of the EPA Air Quality Criteria for Particulate Matter (Second External Review Draft), or to obtain further information concerning this document, please refer to 66 FR 18929, April 12, 2001. (b) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information and the Draft Particulate Matter NAAQS Risk Analysis Scoping Plan—These documents have both been released for comment. To obtain copies or further information, please refer to 66 FR 32621, dated June 15, 2001.

For Further Information—Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Officer, Clean Air Scientific Advisory Committee, US EPA Science Advisory Board (1400A), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (FedEx address: US EPA SAB, Suite 6450, 1200 Pennsylvania Ave. NW, Washington, DC 20004); telephone/voice mail at (202) 564–4546; fax at (202) 501–0582; or via e-mail at *flaak.robert@epa.gov*. The draft agenda will be available approximately two weeks prior to the meetings on the SAB website (*http://www.epa.gov/sab*) or from Ms. Rhonda Fortson, Management Assistant, at (202) 564–4563; FAX: (202) 501–0582; or e-mail at: *fortson.rhonda@epa.gov*.

Public Oral or Written Comments—Members of the public who wish to make a brief oral presentation at the meeting must contact Mr. Flaak *in writing* (by letter, fax, or e-mail—see previously stated information) no later than 12 noon Eastern Standard Time, Friday, July 13, 2001 in order to be included on the Agenda. For this meeting, we have allocated a total of 2.5 hours for public comments to be divided equally among those requesting speaking time, with a maximum of ten minutes per speaker or organization. See below for more information on providing written or oral comments. Written comments of any length will be accepted up until the date of the meeting.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible (*unless otherwise stated*). The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise stated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 27, 2001.

Donald G. Barnes,

Staff Director, EPA Science Advisory Board.

[FR Doc. 01–16569 Filed 6–29–01; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00729; FRL–6790–8]

National Assessment of the Worker Protection Program-Workshop #3; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The National Assessment of the Worker Protection Program-Workshop #3 will be held in Lake Buena Vista, Florida. The purpose of this meeting is to continue the nationwide assessment of the agricultural worker protection program. The regulation (40 CFR part 170) that implements this program was fully implemented in 1995. The national assessment meeting is being co-hosted by the National Environmental

Education and Training Foundation and EPA's Office of Pesticide Programs. The meeting will continue discussions of the agricultural worker protection regulation, the implementation and effectiveness of its provisions, the enforcement at the state level, and the possible future directions for the program. This is the third in a series of workshops and represents an opportunity for EPA, states, agricultural employers, worker representatives, and other program stakeholders to engage in problem solving workgroup discussions on major aspects of the regulation. The first workshop was held on June 6–7, 2000, in Austin, Texas and the second workshop was held in Sacramento, California on December 11–13, 2000.

DATES: The meeting will be held July 30 to August 1, 2001 from 8 a.m to 5:30 p.m.

ADDRESS: The meeting will be held at the Hilton, 1751 Hotel Plaza Boulevard, P.O. Box 22781, Lake Buena Vista, FL; 32830–2781; telephone number: (407) 827–4000.

FOR FURTHER INFORMATION CONTACT: Sara Ager, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 305–7666; e-mail address: Ager.Sara@epa.gov.

SUPPLEMENTARY INFORMATION:

1. Does this Action Apply to Me?

This action is directed to the public in general, however, the size of the meeting facilities could limit the number of participants. This action may be of interest to farm worker groups, agricultural employers, state governments, county extension services, and pesticide product manufacturers. If you have any questions regarding the applicability of this action to a particular entity, consult the party listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document or Related Documents?

Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. You may also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

III. How Can I Request to Participate in this Meeting and is There a Deadline?

You may request to participate in and register for this meeting by phone, by fax, through the mail, or electronically by no later than June 28, 2001 to: Meetings Management, Inc., P.O. Box 30045, Alexandria, VA. 22310, telephone number: (703) 922–7944; Fax number: (703) 922–7780; e-mail address: Mmagnini@BellAtlantic.net. Since space is limited, we recommend registering as soon as possible. We discourage people from registering on-site as facilities are limited. Please also note that you must make your own hotel room reservations.

The National Assessment of the Worker Protection Program-Workshop #3 will continue workgroup discussions about EPA's national agricultural worker protection program implementation and effectiveness as related to training, enforcement, compliance, and communications.

List of Subjects

Environmental protection; Pesticides.

Dated: June 20, 2001.

Jay Ellenberger,

Director, Field and External Affairs Division,Office of Pesticide Programs.

[FR Doc. 01–16572 Filed 6–29–01; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7004–8]

Intent To Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: Pursuant to 35 U.S.C. 207 and 37 CFR part 404, EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing revocable license to practice the invention described and claimed in the patent application listed below, all patent applications derived therefrom, and all patents granted in connection with such patent applications, to Composite Membranes Corporation, Castlerock, Colorado.

The patent application is:

U.S. Patent Application No. 09/212.375, entitled "Novel Pervoporation Membrane for Separation and Recovery of Volatile Organic Compounds from Wastewater," filed December 16, 1998.

The invention was announced as being available for licensing in the March 1, 1999 issue of the **Federal Register** (60 FR 9990). The proposed exclusive license will contain appropriate terms, limitations and conditions to be negotiated in accordance with 35 U.S.C. 209 and the U.S. Government patent licensing regulations at 37 CFR part 404.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days from the date of this Notice, EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patent application should include an application for exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Counsel and other EPA officials will review all written responses and then make recommendations on a final decision to the Director, National Risk Management Research Laboratory, who has been delegated the authority to issue patent licenses under 35 U.S.C. 207.

DATES: Comments to this notice must be received by EPA at the address listed below by August 31, 2001.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Patent Counsel, Office of General Counsel (Mail Code 2377A), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–5457.

Dated: June 18, 2001.

Marla E. Diamond,

Associate General Counsel.

[FR Doc. 01–16565 Filed 6–29–01; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

June 25, 2001.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0988.
Expiration Date: 12/31/2001.
Title: Election to Freeze Part 36 Categories and Allocations.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 700 respondents; .50 hours per response (avg.); 350 total annual burden hours (for all collections approved under this control number).

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: One-time Requirement; Third Party Disclosure.

Description: In a Report and Order issued in CC Docket No. 80–286, released May 22, 2001 (FCC 01–162), the Commission adopted the recommendation of the Federal-State Joint Board to impose an interim freeze of the Part 36 category relationships and jurisdictional cost allocation factors. Specifically, pending comprehensive reform of the Part 36 separations rules, the Commission adopted a freeze of all Part 36 category relationships and allocation factors for price cap carriers, and a freeze of all allocation factors for rate-of-return carriers. The interim freeze will be in effect for five years or until the Commission has completed comprehensive separations reform, whichever comes first. The Commission further concluded that several issues, including the separations treatment of Internet traffic, should be addressed in the context of comprehensive separations reform. The Commission believes that these measures will bring simplification and regulatory certainty to the separations process in a time of rapid market and technology changes until reform is completed. The Commission recognized that smaller rate-of-return ILECs, because of their differing business structures, would not be required to freeze both their Part 36 categories and allocation factors, unlike price cap carriers. The Commission found, however, that those rate-of-return carriers that desire to freeze their categories may elect to do so by July 1, 2001. Accordingly, the Commission adopted a final rule providing that rate-of-return carriers participating in the National Exchange Carrier Association (NECA or Association) tariffs should notify NECA by July 1, 2001, if they elect to freeze their categories. Rate-of-return carriers that do not participate in Association tariffs will be able to elect to freeze their categories by notifying the Commission of their election by July 1, 2001. The Commission will use the information to verify which rate of rate-of-return ILECs have decided to freeze their Part 36 categories, as well as their allocation factors. Obligation to respond: Required to obtain or retain benefits.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–16478 Filed 6–29–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1381–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1381–DR), dated June 17, 2001, and related determinations.

EFFECTIVE DATE: June 17, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 17, 2001, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from Tropical Storm Allison on June 11–15, 2001, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Charles M. Butler of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Gadsden, Jefferson, Leon, Liberty and Wakulla Counties for Individual Assistance.

Bay, Calhoun, Gadsden, Holmes, Leon and Liberty Counties for Public Assistance.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–16525 Filed 6–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1381–DR]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida, (FEMA–1381–DR), dated June 17, 2001, and related determinations.

EFFECTIVE DATE: June 19, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 17, 2001:

Jefferson and Wakulla Counties for Public Assistance (already designated for Individual Assistance).
Washington County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–16526 Filed 6–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1380–DR]

Louisiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1380–DR), dated June 11, 2001, and related determinations.

EFFECTIVE DATE: June 22, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 22, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–16524 Filed 6–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1370–DR]

Minnesota; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota, (FEMA–1370–DR), dated May 16, 2001, and related determinations.

EFFECTIVE DATE: June 21, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 16, 2001:

Crow Wing and Meeker Counties for Individual Assistance (already designated for Public Assistance).

Kandiyohi and Lake of Woods Counties for Individual and Public Assistance.

Mower County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–16521 Filed 6–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1382–DR]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1382–DR), dated June 21, 2001, and related determinations.

EFFECTIVE DATE: June 21, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 21, 2001, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, as follows:

I have determined that the damage in certain areas of the State of Mississippi, resulting from Tropical Storm Allison on June 6–13, 2001, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David J. Fukutomi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

George, Hancock, Harrison, Jackson, and Pearl River Counties for Public Assistance.

All counties within the State of Mississippi are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–16527 Filed 6–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1382–DR]

Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–1382–DR), dated June 21, 2001, and related determinations.

EFFECTIVE DATE: June 21, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Gracia Szczech of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of David J. Fukutomi as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–16528 Filed 6–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1379–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1379–DR), dated June 9, 2001, and related determinations.

EFFECTIVE DATE: June 20, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 20, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Archibald C. Reid, III,

Deputy Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–16523 Filed 6–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1378–DR]

West Virginia; Amendment 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1378–DR), dated June 3, 2001, and related determinations.

EFFECTIVE DATE: June 20, 2001

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carlos N. Mitchell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Charles M. Butler as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–16522 Filed 6–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1369–DR]

Wisconsin; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1369–DR), dated May 11, 2001, and related determinations.

EFFECTIVE DATE: June 21, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the reopening of the incident period and expansion of the incident type for this disaster. The incident period for this declared disaster is now April 10, 2001, and continuing. The incident type is now amended to include tornadoes.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–16519 Filed 6–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1369–DR]

Wisconsin; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin, (FEMA–1369–DR), dated May 11, 2001, and related determinations.

EFFECTIVE DATE: June 21, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 11, 2001:

Calumet, Portage, Rusk, Waupaca, Waushara, and Wood Counties for Public Assistance.
Outagamie and Winnebago Counties for Individual and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–16520 Filed 6–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 16, 2001.

A. *Federal Reserve Bank of Atlanta* (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Wilhelmina Parish Belcer, Robert Allen Bowen, Joseph Dennis DuRant, Bobby Lamar George, Don Williams Hersman, and Michael Shay McCormick, all of Bonifay, Florida; James Ferris Adams, Robert Earl Black, and Brian Keiffer James, all of Destin, Florida; Orilious Gaither Banks and Franklin Lee Fisher of Ft. Walton Beach, Florida; Michael Prewitt McCann and Charles Richard Vawter, Jr. of Sylacauga, Alabama; Guy Fletcher Medley, Dothan, Alabama; Machael Alan Medley, Louisville, Alabama; Rupert Earl Phillips, Baker, Florida; Claude Carroll Royster, III, Shalimar, Florida; and Donald Terry Tillman, Ariton, Alabama; to acquire voting shares of Bonifay Holding Company, Inc., Bonifay, Florida, and thereby indirectly acquire voting shares of The Bank of Bonifay, Bonifay, Florida.

B. *Federal Reserve Bank of Minneapolis* (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Davis Bancshares Limited Partnership, Rapid City, South Dakota; to retain voting shares of Belle Fourche Bancshares, Inc., Belle Fourche, South Dakota, and thereby indirectly retain voting shares of Pioneer Bank & Trust, Belle Fourche, South Dakota.

2. Joseph M. Skophammer Trust and Nancy L. Skophammer, both from Hartland, Minnesota; to acquire voting shares of Hartland Bancshares, Inc., Hartland, Minnesota, and thereby indirectly acquire voting shares of Farmers State Bank of Hartland, Hartland, Minnesota.

C. *Federal Reserve Bank of Kansas City* (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Thomas G. Fitzgerald, James G. Fitzgerald, Joyce M. Fitzgerald, Jane M. Fitzgerald, the Andrew James Fitzgerald Irrevocable Trust Dated December 15, 1982, the Timothy Edward Fitzgerald Irrevocable Trust Dated May 1, 1983, the Lauren Webb Fitzgerald Irrevocable Trust Dated May 1, 1983, and the Thomas Gosselin Fitzgerald Jr. Irrevocable Trust Dated January 3, 1985, all of Inverness, Illinois, to acquire voting shares of First Bancorp of Durango, Inc., Durango, Colorado, and thereby indirectly acquire voting shares of The First National Bank of Durango, Durango, Colorado.

Board of Governors of the Federal Reserve System, June 26, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–16511 Filed 6–29–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the

proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 2001.

A. *Federal Reserve Bank of New York* (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Canadian Imperial Bank of Commerce, Toronto, Canada; CIBC World Markets Inc., Toronto, Canada; CIBC Delaware Holdings, New York, New York; and Amicus Holdings, Inc., Cicero, Illinois; to acquire 95 percent of Series C preferred stock and 51 percent of total voting shares of Juniper Financial Corp., Wilmington, Delaware, and thereby indirectly acquire Juniper Bank, Wilmington, Delaware.

B. *Federal Reserve Bank of Atlanta* (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Newnan Coweta Bancshares, Inc., Newnan, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Newnan Coweta Bank, Newnan, Georgia.

2. Central Alabama Bancshares, Inc., Wetumpka, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank of Central Alabama (in organization), Wetumpka, Alabama.

C. *Federal Reserve Bank of San Francisco* (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Centennial First Financial Services, Redlands, California; to acquire 100 percent of the voting shares of Palomar Community Bank, Escondido, California.

Board of Governors of the Federal Reserve System, June 26, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–16512 Filed 6–29–01; 8:45 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Government Auditing Standards: Independence

AGENCY: General Accounting Office.

ACTION: Notice of document availability.

SUMMARY: On May 4, 2001, the U.S. General Accounting office (GAO), on the recommendation of the Advisory Council on Government Auditing Standards, issued an exposure draft of a proposed revision to Government Auditing Standards (also known as the Yellow Book) titled Government Auditing Standards: Independence (GAO/GAGAS–ED–4). The proposed revision would expand the definition of personal impairments, highlight the distinction between external and internal reporting, and acknowledge the ways that organizations can be free from organizational impairments to independence. Specifically, the exposure draft proposes expanding the examples of personal impairments and adding criteria to help audit organizations understand whether the provisions of nonaudit service affect the subject matter of the audit. The exposure draft emphasizes that auditors and audit organizations have an obligation to evaluate the circumstances and relationships on each assignment to identify situations that could result in an actual or perceived impairment to independence, including whether the performance of nonaudit services affects the subject matter being audited. The exposure draft also recognizes that internal auditors play a vital role in government auditing and can be free from organizational impairments to independence. However, since internal auditors are responsible to management while external auditors are responsible to third parties outside the audited entity, a fundamental difference exists between internal and external auditors. The exposure draft acknowledges this difference by retaining the sections on internal audit in the 1994 revision of Government Auditing Standards but refocusing the discussion to organizational impairment considerations when reporting internally to management. In addition, the exposure draft expanded by two ways the criteria that define organizations that can report externally. First, the exposure draft expands the presumptive criteria by specifying additional ways for an organization to be free from organizational impairments to independence. If the audit organization meets any of the presumptive criteria listed in the exposure draft, it can be considered organizationally independent to audit externally. Second, the exposure draft recognizes that other organizational structures can provide sufficient safeguards to prevent the audited entity from interfering with the audit organization's ability to perform the work and report the results impartially. If the audit organization meets all the statutory protections listed in the exposure draft, it can be considered organizationally independent to report externally.

DATES: Comments are accepted through July 30, 2001.

ADDRESSES: A copy of the exposure draft can be obtained on the Internet on GAO's Home Page (www.gao.gov). Additional copies of these proposed standards can be obtained from the U.S. General Accounting Office, Room 1100 700 4th Street, NW., Washington, DC 20548, or by calling (202) 512–6000.

FOR FURTHER INFORMATION CONTACT: Marcia Buchanan, Assistant Director, Government Auditing Standards, 202–512–9321.

SUPPLEMENTARY INFORMATION: To facilitate analysis of your comments, it would be helpful if you sent them both in writing and on diskette (in Word or ASCII format). To ensure that your comments are considered by the council in their deliberations, please submit them by July 30, 2001, to the following address: Government Auditing Standards Comments, Independence Exposure Draft, U.S. General Accounting Office, Room 5X16 (FMA), 441 G Street, NW., Washington, DC 20548. (31 U.S.C. 7501–7507).

Jeffrey C. Steinhoff,

Managing Director, Financial Management and Assurance.

[FR Doc. 01–16560 Filed 6–29–01; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–01–51]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic

summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments Invited

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Pulmonary Function Testing Course Approval Program, 29 CFR 1910.1043 (OMB NO. 0920–0138)—Extension—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The mission of the National Institute for Occupational Safety and Health is to promote safety and health at work for all people through research and prevention.

NIOSH has responsibility under the Cotton Dust Standard, 29 CFR 1910.1043, for approving courses to train technicians to perform pulmonary function testing in the Cotton Dust Industry. Successful completion of a NIOSH approved course is mandatory under the Standard. To carry out its responsibility, NIOSH maintains a Pulmonary Function Testing Course Approval Program. The program consists of an application submitted by potential sponsors who seek NIOSH approval to conduct courses, and if approved, notification to NIOSH of any course or faculty changes during the period of approval. The application form and addend materials, including agenda, vitae and course materials, is reviewed by the National Institute for Occupational Safety and Health to determine if the applicant has developed a program which adheres to the criteria required in the Standard. Following approval, any subsequent changes to the course are submitted by course sponsors via letter and reviewed by NIOSH staff to assure that changes in faculty or course content continue to meet course requirements. Applications and materials to be a course sponsor and carry out training are submitted voluntarily by institutions and organizations from throughout the country. This is required for NIOSH to evaluate a course to determine whether it meets the criteria in the Standard and whether technicians will be adequately trained as mandated under the Standard. The estimated annual cost to respondents is $1058.00.

Respondents	Number of respondents	Number of responses	Avg. burden/ response (in hrs.)	Total burden hours
Sponsoring organization	71	1	1	71
Total				71

Dated: June 22, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–16490 Filed 6–29–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–01–49]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments Invited

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Hanford Birth Cohort Study—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Re-authorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. This legislation was, in part, in response to the lack of scientific information about potential adverse health effects resulting from exposure of a general population to hazardous substances. Although environmental exposures have been documented at many hazardous waste sites in the United States, most existing data are for occupational exposures. However, environmental exposure of a general population is more likely to include exposure of vulnerable subpopulations (e.g., pregnant women, children, elderly, and the infirm). ATSDR plans activities to address these issues which include conducting health studies at sites on the Environmental Protection Agency's (EPA) National Priorities List (NPL) to determine whether and to what degree exposure to hazardous substances at these sites are harmful to human health.

The Hanford Nuclear Reservation, in south central Washington State, is on EPA's National Priorities List. Between 1944 when it opened until its closing in 1972, radioactive Iodine was released to the air from chemical separation facilities funded to produce plutonium for atomic weapons. The Hanford Environmental Dose Reconstruction Project (HEDR) estimates that the majority of releases of Iodine–131 occurred between 1944 and 1951. Broad-based scientific studies indicate that exposure to radioactive materials (including Iodine–131), may be associated with an increased risk of developing autoimmune or cardiovascular diseases. Children up to five years of age may be at higher risk than the general population of developing these diseases after exposure.

The objective of the Hanford Birth Cohort Study is to compare information on the rates of autoimmune and cardiovascular diseases among a population exposed to radioactive contaminants during 1945–1951 and the rates of a less-exposed comparison population. This study may have applicability to other sites where exposure to radioactive contaminants has occurred.

ATSDR currently has underway an information collection at the Hanford Nuclear Reservation to develop educational materials and interventions related to thyroid disease for individuals exposed to I–131 as young children—the Hanford Community Health Project (OMB No. 0923–031). This Hanford Birth Cohort Study is a separate project which will collect information on rates of autoimmune and cardiovascular disease among the selected population. Integral to designing this project, ATSDR reviewed the work of the National Cancer Institute's (NCI) Committee on Exposure of the American People to I–131 from the Nevada Atomic Bomb Tests as well as the NCI's report titled "Exposure of the American People to IODINE–131 from Nevada Nuclear-Bomb Tests."

In another ATSDR project (OMB No. 0923–0006), approximately 6,000 people were located who were born between 1940 and 1951 in three high-exposed counties nearest the Hanford site (Benton, Franklin, and Adams). For the currently proposed study, ATSDR will randomly select and interview up to 1,000 individuals from this entire birth cohort of 15,001 (including the 6,000 people who were previously located). The comparison population will include a random selection of 1,000 persons born in three low-exposed counties located farther away from the Hanford site (San Juan, Whatcom, and Mason).

To reduce the amount of time required by the respondents, Computer Assisted Telephone Interviews (CATI) will be conducted. Following completion of all respondent interviews, the data will be tabulated and analyzed (the high exposed group will be compared with the low exposed group). The information collected in this proposed study will provide reliable baseline information on the incidence of autoimmune and cardiovascular diseases as related to exposure to releases from the Hanford facility and will also provide the information needed to generate appropriate and valid hypotheses for future activities, such as other epidemiologic studies.

Other than their time to participate, there is no cost to the respondents.

Respondents	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)	Total annual burden in hours
High Exposed Population	1,000	1	30/60	500
Low Exposed Population	1,000	1	30/60	500
Total				1,000

Dated: June 25, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–16491 Filed 6–29–01; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–01–50]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments Invited

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project:

Contents of a Request for a Health Hazard Evaluation (OMB No. 0920–0102)—EXTENSION—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The mission of the National Institute for Occupational Safety and Health is to promote safety and health at work for all people through research and prevention.

Each year, in accordance with its mandates under the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977, the National Institute for Occupational Safety and Health (NIOSH) responds to approximately 450 requests for health hazard evaluations to identify potential chemical, biological or physical hazards at the workplace. A printed NIOSH form is available for requesting these health hazard evaluations. The form is also available on the Internet and differs

from the printed version only in format and in the fact that it uses an Internet address to which recipients can submit the form to NIOSH. Both the printed and Internet versions of the form provide the mechanism for employees, employers, and other authorized representatives to supply the information required by the regulations which govern the NIOSH health hazard evaluation program (42 CFR 85.3–1). In general, if employees are submitting the form it must contain the signatures of three or more current employees. However, regulations allow a single signature if the requestor is one of three (3) or fewer employees in the process, operation, or job of concern. It takes approximately six (6) NIOSH employees about five (5) minutes to evaluate the submitted form. The information provided is used by NIOSH to determine whether there is reasonable cause to justify conducting an investigation. The purpose of investigations conducted in the health hazard evaluation program is to help employers and employees identify and eliminate occupational health hazards. Without the information requested on this form, NIOSH would be unable to perform its legislated function of conducting health hazard evaluations in workplaces. There are no costs to respondents to obtain this form or to request a health hazard evaluation.

Respondents	No. of respondents	No. of responses per respondent	Avg. burden per response (in hrs.)	Total burden hours
Employees and representatives	290	1	12/60	58
Employers	160	1	12/60	32
Total	450			90

Dated: June 22, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–16492 Filed 6–29–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01158]

Human Immunodeficiency Virus (HIV) Related Applied Research; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for human immunodeficiency virus (HIV) related applied research for the control and prevention of HIV. This program addresses the "Healthy People 2010" focus area of HIV. For a copy of "Healthy People 2010" visit the internet site: *http://www.health.gov/healthypeople.*

The purpose of this program is to encourage new and innovative methods to further the prevention of HIV infection.

Projects that will be considered for funding are applied research for the control and prevention of HIV that address only the following Research Topics:

1. Community Interventions Among Adolescents

Funds are available to support formative research that will lead to community or structural based interventions to prevent HIV among high-risk adolescents, aged 17 or younger. High-risk adolescents is defined as youth 17 or younger who engage in activities that put them at higher risk for becoming HIV infected. Structural interventions are defined as factors that are barriers to, or facilitators of, an individual's HIV prevention behaviors. They directly or indirectly affect an individual's ability to avoid exposure to HIV and include physical, social, cultural, organizational, community, economic, legal or policy aspects of the individual's environment.

2. Demonstration Projects for the Efficient Allocation of HIV Prevention Resources

Funds are available to support research to develop decision making tools for the efficient allocation of HIV prevention resources. An efficient allocation is defined as expending resources on interventions that are cost-effective, producing an optimal outcome at the least cost. The research should fully address the data needs and requirements for the practical use of cost effectiveness analysis to allocate resources. Applicants must demonstrate the ability to either identify and evaluate models and tools currently being used by state and local health departments and community based organizations or the ability to develop, pilot and evaluate models and tools usable by state and local health departments and community based organizations. Applicants should also demonstrate a willingness to collaborate with CDC and others in the documentation and dissemination of the research findings.

3. Biologic Determinants of HIV Transmission

Funds are available to support research on biologic determinants of HIV transmission. These determinants will include the effect of antiretroviral use by source partners and other factors such as viral load, viral resistance and replication fitness, genetic factors including HLA class, and mucosal and humoral immunity. Applicants must demonstrate the potential to recruit at least 10 recently infected individuals (ie., infected less than six months) per month with their source partners and a comparison cohort of uninfected but exposed individuals and their partners. The applicants should demonstrate adequate laboratory capacity and a willingness to collaborate with the CDC laboratory.

4. HIV Testing Survey Among Asians/Pacific Islanders

Funds are available to implement the HIV testing survey (HITS) among Asians/Pacific Islanders in urban settings in geographic areas highly impacted by the HIV epidemic. HITS assesses determinants of HIV-related risk, testing and care-seeking behaviors. Applicants must demonstrate the ability to cooperate with health officials and community groups to gain access to this target population and to interview at least 300 persons during the one-year project period. Applicants should also

demonstrate a willingness to collaborate with CDC in developing and disseminating findings from this survey.

5. HIV Testing Survey Among American Indians/Alaska Natives

Funds are available to implement the HIV testing survey (HITS) among American Indians/Alaska Natives in urban settings in geographic areas highly impacted by the HIV epidemic. HITS assesses determinants of HIV-related risk, testing and care-seeking behaviors. Applicants must demonstrate the ability to cooperate with health officials, community groups and/or tribal leaders to gain access to this target population and to interview at least 300 persons during the one-year project period. Applicants should also demonstrate a willingness to collaborate with CDC in developing and disseminating findings from this survey.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, public and private non-profit organizations, State and local governments or their bona fide agents or instrumentalities, federally recognized Indian Tribal governments, Indian tribes or organizations.

Note: Title 2 United States Code Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

1. Community Interventions Among Adolescents

Approximately $200,000 is available in FY 2001 to fund approximately one to two new awards. It is expected that the award will begin September 30, 2001, and will be made for a 12 month budget period within a project period of up to four years. Funding estimates are subject to change.

2. Demonstration Projects for the Efficient Allocation of HIV Prevention Resources

Approximately $1,250,000 is available in FY 2001 to fund approximately five new awards. It is expected that the average award will be $250,000. It is expected that awards will begin September 30, 2001, and will be made for a 12 month budget period within a project period of one year. Funding estimates are subject to change.

3. Biologic Determinants of HIV Transmission

Approximately $1,000,000 is available in FY 2001 to fund approximately up to two new awards. It is expected that the average award will be $500,000, ranging from $500,000 to $1,000,000. It is expected that awards will begin September 30, 2001, and will be made for a 12 month budget period within a project period of up to five years. Funding estimates are subject to change.

4. HIV Testing Survey Among Asians/Pacific Islanders

Approximately $100,000 is available in FY 2001 to fund approximately one new award. It is expected that the award will begin September 30, 2001, and will be made for a 12 month budget period for a one year project period. Funding estimates are subject to change.

5. HIV Testing Survey Among American Indians/Alaska Natives

Approximately $100,000 is available in FY 2001 to fund approximately one new award. It is expected that the award will begin September 30, 2001, and will be made for a 12 month budget period for a one year project period. Funding estimates are subject to change.

Continued awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities under 2. (CDC Activities). Recipient activities to achieve the purposes of this program will vary by project.

1. Recipient Activities

a. Develop research protocol.

b. Carry out the activities according to the approved protocol.

c. Ensure that appropriate approvals are secured for the protection of human subjects, Office of Management and Budget and Paperwork Reduction Act, privacy, confidentiality, and data security.

d. Compile and disseminate findings.

2. CDC Activities

a. Through publications and other methods, CDC will collaborate as necessary in the development of a research common protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

b. Monitor and evaluate scientific and operational accomplishments of the project through periodic site visits, frequent telephone calls, and review of technical reports and interim data analysis.

c. Assist in facilitating the planning and implementation of the necessary linkages with local or State health departments and assist with the developmental strategies for applied clinical or prevention oriented research programs, for recipients whose projects involve collaboration with a State or local health department.

d. Assist with the facilitation of the technological and methodological dissemination of successful prevention and intervention models among appropriate target groups, such as, State and local health departments, community based organizations, and other health professionals.

e. Provide technical assistance in planning and evaluating strategies and protocols, as requested.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative, excluding the budget, should be no more than 11 doubled-spaced pages, printed on one side, with one inch margins, and unreduced font.

The application narrative should consist of:

1. Abstract (Not to exceed 1 page): An executive summary of your program covered under this announcement. Identify the Research Topic that the application addresses.

2. Program Plan (Not to exceed 10 pages): In developing the application under this announcement, please review the recipient activities and, in particular, evaluation criteria and respond concisely and completely.

3. Budget: Submit an itemized budget and supporting justification that is consistent with your proposed program plan.

F. Submission and Deadlines

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

On or before August 17, 2001, submit your application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (1) or (2) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. CDC will act as reviewer for these applications.

1. The inclusion of a brief review of the scientific literature pertinent to the study being proposed and specific research questions or hypotheses that will guide the research. The originality and need for the proposed research, the extent to which it does not replicate past or present research efforts, and how findings will be used to guide prevention and control efforts. (25 points)

2. The quality of the plans to develop and implement the study. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(b) The proposed justification when representation is limited or absent.

(c) A statement as to whether the design of the study is adequate to measure differences when warranted.

(d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits. (25 points)

3. Extent to which proposed activities, if well executed, support attaining project objectives. (25 points)

4. Extent to which personnel involved in this project are qualified, including evidence of past achievements appropriate to the project, and realistic and sufficient time commitments. Evidence of adequacy of facilities and other resources supported to carry out the project. (25 points)

5. Other (not scored)

(a) *Budget:* Will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of the funds, and allowable. All budget categories should be itemized.

(b) *Human Subjects:* Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. An annual progress report;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of the announcement in the application kit.

AR–1—Human Subjects Requirements
AR–2—Inclusion of Women and Racial and Ethnic Minorities in Research Requirements
AR–4—HIV/AIDS Confidentiality Provisions
AR–5—HIV Program Review Panel Requirements
AR–6—Patient Care Prohibitions
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions
AR–22—Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Section 317(k)(2) [42 U.S.C. 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number 93.943, Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection in Selected Population Groups.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page e-mail address *www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Brenda Hayes, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, telephone (770) 488–2741, or facsimile at (770) 488–2847, or Email address: *www.bkh4@cdc.gov*.

You may obtain programmatic technical assistance from: Sharon Robertson, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Atlanta, GA 30333, Telephone (404) 639–4592, Email address: *www.sqr2@cdc.gov*.

Dated: June 26, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–16532 Filed 6–29–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01140]

Expansion of HIV/AIDS/STD Surveillance, Care, and Prevention Activities in the Republic of Uganda; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for the expansion of HIV/AIDS/STD surveillance, care, and prevention activities in the Republic of Uganda.

The purpose of this cooperative agreement is to improve HIV/AIDS

surveillance, care, and prevention capacity and activities in Uganda. This will be accomplished by cooperation between CDC and the Ministry of Health AIDS Control Program (MOH/ACP) of Uganda. These collaborative activities could profoundly change the focus and activities of the Ugandan National AIDS Policy. Most importantly, having a better understanding of the association between specific behaviors, STDs, and HIV prevalence will likely improve AIDS control programs and prevention efforts in Uganda and eventually throughout sub-Saharan Africa.

The U.S. Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through its Leadership and Investment in Fighting an Epidemic (LIFE) initiative. Through this LIFE program, CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of (1) HIV primary prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. government agencies are already active. Uganda is one of these targeted countries.

As a key partner in the U.S. Government's LIFE initiative, CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic in LIFE initiative countries. In particular, CDC's mission in Uganda is to work with Ugandan and international partners in discovering and applying effective interventions to prevent HIV infection and associated illness and death from AIDS.

Uganda has been a global leader in the development of programs to combat the spread of HIV. Although Uganda was one of the first countries in the world to experience an AIDS epidemic, it was also one of the first to show a sustained decline in HIV/AIDS prevalence rates, due in part to a rapid national response. However, despite intensive interventions, incidence and prevalence rates of HIV infection are still unacceptably high in Uganda. It is estimated that about 1,500,000 people (7–8 percent of the general population) in the country are living with HIV. These statistics suggest the need for the expansion and improvement of a range of surveillance, care, and prevention activities and services.

Accurate surveillance is the mainstay of public health programs, providing essential information for focusing prevention activities, allocating resources, and monitoring effectiveness of programs. While Uganda has shown a decrease in HIV prevalence, questions remain as to which specific behavior changes are partly responsible for this decrease and how much of the reduction is due to a lessening of HIV/STD incidence versus mortality rates. Additionally, gaps in care and prevention activities are factors that must be addressed to reduce the epidemic's burdensome impact in Uganda. The prevention and control of HIV/AIDS in Uganda will continue to depend on the availability of accurate surveillance data and the continuation and expansion of basic care and prevention activities.

B. Eligible Applicants

Assistance will be provided only to the AIDS Control Program (ACP) of the Uganda Ministry of Health (MOH). No other applications are solicited.

The ACP is the only appropriate and qualified organization to conduct a specific set of activities supportive of the CDC Global AIDS Program's technical assistance to Uganda because:

1. The ACP is uniquely positioned, in terms of legal authority, ability, and credibility among Ugandan citizens, to collect crucial data on HIV/AIDS prevalence and incidence, as well as other health information, among Ugandan citizens.

2. The ACP already has established mechanisms to access health information, enabling it to immediately become engaged in the activities listed in this announcement.

3. The purpose of the announcement is to build upon the existing framework of health information and activities that the MOH itself has collected or initiated.

4. The Ministry of Health in Uganda has been mandated by the Ugandan constitution to coordinate and implement activities necessary for the control of epidemics, including HIV/AIDS and STDs.

C. Availability of Funds

Approximately $700,000 is available in FY 2001 to fund this award. It is expected that the award will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of five years. Annual funding estimates may change.

Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Use of Funds

Funds received under this announcement may not be used for the direct purchase of antiretroviral drugs to treat established HIV infection, occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested.

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

A. *Alterations and Renovations:* Unallowable.

B. *Customs and Import Duties:* Unallowable. This includes consular fees, customs surtax, value added taxes, and other related charges.

C. *Indirect Costs:* With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

D. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

On or before July 25, 2001, submit an electronic or hard copy of the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. If you choose to

submit your application electronically, you should submit hard copies of your application on or before August 9, 2001.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group.

Late Applications: Applications which do not meet the criteria 1. or 2. above will be returned to the applicant.

E. Where To Obtain Additional Information

Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements." To obtain business management technical assistance, contact: Dorimar Rosado, Grants Management Specialists, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2782, Email: *dpr7@cdc.gov*.

For program technical assistance, contact: Jonathan Mermin, MD, MPH, Global AIDS Program (GAP), Uganda Country Team, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), P.O. Box 49, Entebbe, Uganda, Telephone: 41–32–0776, Email: *jhm7@cdc.gov*.

Dated: June 26, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–16533 Filed 6–29–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01141]

Developing HIV/AIDS Management and Research Capacity in Uganda: Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for developing management, evaluation, and research capacity for HIV/AIDS programs in Uganda.

The purpose of this program is to produce public health specialists who possess the knowledge, skills, and professional approach required to assume HIV/AIDS leadership roles within the public health systems of Uganda. This will be accomplished by supporting the provision of training through short courses and a fellowship in HIV/AIDS program management and evaluation and in HIV/AIDS research in Uganda. The fellowship will also improve communication among the country's AIDS specialists, encouraging future collaboration and information-sharing. In general, the development of well-trained specialists will help to assure that the country meets, in a self-reliant manner, the current and future challenges that HIV/AIDS presents to public health in Uganda.

The U.S. Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through its Leadership and Investment in Fighting an Epidemic (LIFE) initiative. Through this LIFE program, CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of (1) HIV primary prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. Government agencies are already active. Uganda is one of these targeted countries.

Uganda has been a global leader in the development of programs to combat the spread of HIV. Despite intensive interventions and reduced HIV incidence, however, incidence and prevalence rates of HIV infection are still unacceptably high. It is estimated that 1,500,000 people (7–8 percent of the adult population) in Uganda are living with HIV. In addition, Uganda's success in developing these innovative HIV/AIDS intervention programs has generated a strong demand for people with the time and skills to manage and evaluate the programs and to conduct high-level HIV/AIDS research. Currently, the supply of qualified people able to devote all of their time to HIV/AIDS program management or HIV/AIDS research is limited; persons running HIV programs are often too involved with day-to-day activities to be able to stay abreast of issues related to the multiple aspects of the HIV epidemic or to meet all of the daily management demands created by the new programs. The availability of training in HIV/AIDS-specific program management and research to meet this demand is also limited in Uganda. In fact, no systematic public health training specifically oriented towards HIV/AIDS is currently offered in Uganda.

Establishing a core group of well-trained experts in the various aspects of HIV/AIDS will expand the country's capacity in HIV/AIDS programs and research and will provide much-needed cross-fertilization of disciplines.

B. Eligible Applicants

Assistance will be provided only to the Institute of Public Health (IPH) at Makerere University in Kampala, Uganda. No other applications are solicited.

The Institute of Public Health at Makerere University is the most appropriate and qualified organization for conducting activities under this program, because it is the only public health education facility in Uganda with the resources necessary to adequately train the participants of this fellowship. This unique capability is partly due to its Masters in Public Health (MPH) program, which the University has offered since 1994. This "Public Health School Without Walls (PHSWOW)" provides both classroom and field-based experiences for their MPH students during the two-year curriculum. IPH also has previous experience in offering short courses in health program management for middle-level managers as part of its public health curriculum.

Additional important and unique resources include fourteen staff members specializing in relevant fields of public health, on-line access to databases on CD-ROM, a data management center equipped with ten computers that have word processing and statistical programs, and Internet connectivity with unlimited access for students.

A. Availability of Funds

Approximately $700,000 is available in FY 2001 to fund this award. It is expected that the award will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

All requests for funds, including the budget contained in the application,

shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Use of Funds

Funds awarded through this announcement may be used for salaries, equipment, supplies, travel, and other costs required to run the fellowship and courses.

Funds may not be used for major capital expenditures, such as a large volume purchase of computers and data storage systems. Additionally, funds may not be used for the direct purchase of antiretroviral drugs for treatment of established HIV infection.

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection, occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities including program management and operations and delivery of prevention services for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

A. *Alterations and Renovations:* Unallowable.

B. *Customs and Import Duties:* Unallowable. This includes consular fees, customs surtax, value added taxes, and other related charges.

C. *Indirect Costs:* With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

D. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before July 25, 2001, submit an electronic or hard copy of the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. If you choose to submit your application electronically, you should submit hard copies of your application on or before August 9, 2001.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group.

Late Applications: Applications which do not meet the criteria 1. or 2. above will be returned to the applicant.

E. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

To obtain additional information, contact: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000 MS–15 Atlanta, GA 30341–4146, Telephone: (770) 488–2782 Email: *dpr7@cdc.gov.*

For program technical assistance, contact: Jonathan Mermin, MD, MPH, Global AIDS Program (GAP), Uganda Country Team, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), P.O. Box 49, Entebbe, Uganda, Telephone: 41–320–776, Email: *jhm7@cdc.gov.*

Dated: June 26, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–16534 Filed 6–29–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01142]

Clinical and Laboratory Training in HIV/AIDS Care in the Republic of Uganda; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for clinical and laboratory training in HIV/AIDS Care in the Republic of Uganda.

The purpose of this program is to improve quality of life for people living with AIDS in Uganda by training health care providers in HIV/AIDS-related care.

The U.S. Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through its Leadership and Investment in Fighting an Epidemic (LIFE) initiative. Through this LIFE program, CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of (1) HIV primary prevention; (2) HIV care, support, and treatment, and capacity and infrastructure development. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. Government agencies are already active. Uganda is one of these targeted countries.

Uganda has an estimated population of over 21 million, of which 8.3 percent (one out of twelve people) are thought to be HIV-positive. Training in appropriate in-patient, out-patient, and home-based care of people with HIV/AIDS are critical components of holistic health services. However, public and private health units have a notable shortage of clinical staff with the necessary skills and knowledge to provide comprehensive care to adults and children living with HIV/AIDS, particularly in rural areas. There is also a demonstrated need to increase access to effective home-based care, since access to in-patient care facilities is limited and expensive.

A program to offer and expand training is therefore essential in order for care-givers throughout the country to acquire the knowledge necessary to give quality HIV/AIDS care. The aim of improving the quality of life of adults

and children living with AIDS in Uganda can be achieved by making training in HIV/AIDS care accessible to health care providers throughout the country and by building local capacity in order to deal effectively with the health care needs of people living with AIDS.

B. Eligible Applicants

Applications may be submitted by public and private non-profit organizations that meet the following criteria:

1. Have at least three years of documented HIV/AIDS-related clinical training experience in Uganda; and
2. Have existing laboratory and clinical facilities and training programs in Uganda.

C. Availability of Funds

Approximately $1,500,000 is available in FY 2001 to fund one award. It is expected that the award will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be used for:

1. Expenses required to provide training (both at the central facility and at field locations), including salaries, travel for training staff to rural areas, reference materials (periodicals, journals, books, etc.), and renovation or expansion of clinical/training facilities;
2. Acquisition or improvement of services and equipment for the designated purpose of enhancing training of health care providers; this may include laboratory, radiology, and information technology equipment as needed for the central training facility;
3. Development and reproduction of training guidelines, care handbooks, and other materials;
4. Follow-up and evaluation activities.

Funds may not be used for the direct provision of clinical care, to purchase pharmaceuticals, or for activities or facilities unrelated to training in HIV/AIDS care and support.

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection, occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities including program management and operations and delivery of prevention services for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

1. *Customs and Import Duties:* Unallowable. This includes consular fees, customs surtax, value added taxes, and other related charges.
2. *Indirect Costs:* With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.
3. *Patient Care:* Patient care costs under foreign grants will be provided only in exceptional circumstances and then only with the prior approval of the PHS awarding office.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop and provide training, based on needs analysis for health care providers in the form of both (1) courses and (2) the provision of supervised clinical care situations (*e.g.*, hospital or HIV/AIDS-focused clinic) for theoretical, experiential, and participatory learning purposes; training should be held at both the central facility and at rural sites.

b. Develop and offer a wide range of relevant courses based on needs analysis; for example, training in the prevention of opportunistic infections; training in diagnosis and treatment of the most common opportunistic infections and those that cause the most morbidity and mortality in Uganda; training in laboratory equipment, consumables, and skills necessary for making basic diagnoses of HIV and opportunistic infections such as cryptococcal meningitis, tuberculosis, and STDs; an advanced course in the appropriate use of antiretrovirals (ARVs), including laboratory monitoring; and training in the provision of social and psychological support for persons with HIV and their families.

c. Collaborate with CDC and the Ministry of Health in developing and maintaining medical record information forms suitable for facilities working in HIV/AIDS care.

d. Collaborate with the Ugandan Ministries of Health and Education and the Uganda AIDS Commission to develop appropriate and approved training packages.

e. Collaborate with The AIDS Support Organization (TASO) in designing and implementing training for its staff.

f. Develop curricula and training materials and guidelines related to HIV/AIDS care for multiple levels of health care providers (*e.g.*, doctors, nurses, community health workers, and/or other care-givers); these materials should meet high standards of technical content and training methodology and should include handbooks, trainer manuals, and training-of-trainer manuals.

g. Train health care providers from district and rural health facilities to become trainers in order to implement standardized, cascading training programs in AIDS care in rural settings throughout Uganda.

h. Conduct follow-up assessment and further training of training alumni at their rural work sites, providing additional focused support as necessary to facilitate implementation of a clinical care program tailored to individual sites.

i. Evaluate the impact of the training on care and develop further appropriate training initiatives.

j. Ensure that the above activities are undertaken in a manner that is integrated with the national HIV/AIDS strategy.

2. CDC Activities

a. Provide technical assistance, as needed, in the development of training curricula, materials, and diagnostic therapeutic guidelines.

b. Collaborate with recipient, as needed, in the development of an information technology system for medical record-keeping and information access and in the analysis of data derived from such records.

c. Assist, as needed, in evaluation of training and in development of further appropriate training initiatives.

d. Assist, as needed, in appropriate analysis and interpretation of data

collected during training sessions as needed.

e. Provide input, as needed, into the criteria for selection of candidates, clinics, and districts involved in training.

f. Provide input, as needed, into the overall program strategy.

g. Collaborate, as needed, with the recipient in the selection of key personnel to be involved in the activities performed under this agreement.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and unreduced font. Pages should be numbered, and a complete index to the application and any appendices must be included.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before July 25, 2001, submit an electronic or hard copy of the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. If you choose to submit your application electronically, you should submit hard copies of your application on or before August 9, 2001.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group.

Late Applications: Applications which do not meet the criteria 1 or 2 above will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Understanding of the Problem (10 points)

The extent to which the applicant demonstrates a clear, concise understanding of the nature of the problem to be addressed; this specifically includes a description of the gaps in current programs and related activities in Uganda, as well as a realistic presentation of proposed objectives

2. Training Opportunities (30 points)

(a) The number, depth, variety, and value of training and learning opportunities that the applicant proposes to offer, as well as the variety of trainees the applicant is prepared to target; (b) the extent to which the training proposed by the applicant includes participatory, experiential learning for the trainees; and (c) the extent to which the applicant specifies the content and structure of the training materials and programs.

3. Strategy (20 points)

The extent to which the applicant has developed a strategic approach to the development of a training program that balances urgency with the time required to develop quality services and materials.

4. Ability To Carry Out the Project (10 points)

The extent to which the applicant documents having the organizational infrastructure and documented experience necessary to achieve the purpose of this project.

5. Program Objective and Plan (15 points)

The extent to which program objectives are specific, measurable, time phased and realistic; and the extent to which the plans for implementing project activity mirror program objectives and will facilitate their achievement.

6. Personnel (15 points)

The extent to which professional personnel involved in this project are qualified, including evidence of experience similar to this project.

7. Budget (not scored)

The extent to which itemized budget for conducting the project, along with justification, is reasonable and consistent with stated objectives and planned program activities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. quarterly progress reports;

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial and performance reports, no more than 90 days after the end of the project period.

4. awardee is required to obtain annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standards(s) approved in writing by CDC.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–6 Patient Care

AR–10 Smoke-Free Workplace Requirements

AR–12 Lobbying Restrictions

AR–14 Accounting System Requirements

AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, (42 U.S.C. section 242l), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2782, Email: *dpr7@cdc.gov.*

For program technical assistance, contact: Jonathan Mermin, MD, MPH, Global AIDS Program (GAP), Uganda Country Team, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), P.O. Box 49, Entebbe, Uganda, Telephone: 41–320–776, Email: *jhm7@cdc.gov.*

Dated: June 26, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–16535 Filed 6–29–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Workshop on Preclinical Testing for Endovascular Grafts

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

This notice announces the forthcoming workshop on preclinical testing for endovascular grafts, sponsored by the Food and Drug Administration (FDA). The meeting will be open to the public.

Date and Time: The meeting will be held on July 31, 2001, 9 a.m. to 6 p.m., and August 1, 2001, 9 a.m. to 5 p.m.

Location: Gaithersburg Holiday Inn, Walker-Whetstone Room, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: The workshop organizers are Megan Moynahan, 301–443–8517, ext. 171, mbm@cdrh.fda.gov, and Dorothy Abel, 301–443–8262, ext. 165, dba@cdrh.fda.gov, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850.

Agenda: The workshop will concern endovascular grafts used in the treatment of abdominal aortic aneurysms. The goal of the workshop is to find ways to improve how these grafts are tested. Participants of the workshop will first be asked to describe the environment to which these grafts are exposed. Then they will identify the failure modes of the grafts and examine how the devices have been tested to date. Finally, the participants will be asked to suggest ways to modify the testing of these devices by taking into consideration the graft environment.

Workshop participation is by invitation only and is therefore limited. However, the public may observe as audience members. Background information for the workshop will be available to the public on the Internet at http://www.fda.gov/cdrh/meetings/073101workshop.html.

Procedure: Members of the public who are interested in attending as audience members should contact the workshop organizers by July 13, 2001.

If you need special accommodations due to a disability, please contact either one of the contact persons listed above at least 7 days in advance.

Dated: June 25, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–16471 Filed 6–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0239]

Medical Devices; Guidance on Resolving Scientific Disputes Concerning the Regulation of Medical Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Resolving Scientific Disputes Concerning the Regulation of Medical Devices." The guidance describes the role and operation of the Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee (the Dispute Resolution Panel), the types of controversies eligible for review by the Dispute Resolution Panel, and recommendations for submitting a request for review.

DATES: Submit written comments at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled "Resolving Scientific Disputes Concerning the Regulation of Medical Devices" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Les S. Weinstein, Center for Devices and Radiological Health (HFZ–5), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–6220, ext. 119.

SUPPLEMENTARY INFORMATION:

I. Background

Section 404 of the Food and Drug Administration Modernization Act (FDAMA) of 1997 (section 562 of the Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bbb-1)) requires FDA to establish procedures for the review of scientific controversies where there is not already an existing right of review. Although FDA believes existing procedures, such as internal agency review of decisions under § 10.75 (21 CFR 10.75), provide for an appropriate review of most, if not all, disputes, the Center for Devices and Radiological Health (CDRH) is developing new procedures to ensure effective and timely review of scientific disputes. In fact, CDRH has recently taken significant steps to achieve this objective, including the appointment of its first CDRH Ombudsman and the establishment of an advisory Dispute Resolution Panel. CDRH is now announcing a final guidance document on the use of this new Dispute Resolution Panel to facilitate the fair and rapid resolution of scientific disputes.

This guidance supersedes the April 27, 1999 (64 FR 22617), draft guidance document entitled "Resolving Scientific Disputes Concerning the Regulation of Medical Devices: An Administrative Procedures Guide to Use of the Medical Devices Dispute Resolution Panel."

The Dispute Resolution Panel, chartered on August 18, 1999, has five standing members (including a nonvoting industry representative and a nonvoting consumer representative), and three additional temporary voting members appointed for each particular dispute. Standing members will have broad, crosscutting scientific, clinical, analytical, or mediation skills. Temporary members will be chosen based on their experience, expertise, or analytical skills relevant to the review of each particular dispute. FDA published a notice in the **Federal Register** of November 10, 1999 (64 FR 61352), requesting nominations for the Dispute Resolution Panel members. The five standing members have since been appointed, and the first meeting of the Dispute Resolution Panel, an open public session, was held on October 31, 2000; the Dispute Resolution Panel members heard presentations from FDA and the device industry on the role of this panel in dispute resolution.

A. Response to Comments on the Draft Guidance

Three comments were submitted concerning the April 27, 1999, draft guidance, two from medical device industry associations—Health Industry Manufacturers Association (now AdvaMed) and the Medical Device Manufacturers Association, and one from a device firm. CDRH's response to the significant comments follows:

Why a guidance document and not a regulation?

Two comments stated that FDA should issue a regulation instead of a guidance document to establish procedures to resolve scientific disputes.

FDA believes that it is not required to issue a regulation concerning the Dispute Resolution Panel procedures. The relevant section of FDAMA required a regulation only in those cases where no other statutory provision or a codified regulation provided a right of review of the matter in controversy. At the time of FDAMA's enactment, FDA already had a wide range of dispute resolution mechanisms in place, including § 10.75, "Internal agency review of decisions." That regulation permits any interested person to obtain review of any FDA decision. To implement the dispute resolution section of FDAMA, FDA amended § 10.75 to make it clear that a scientific controversy may be brought before an advisory panel or committee in appropriate circumstances. The agency concluded that a new regulation was not required. However, each center prepared guidance setting forth procedures tailored to meet the needs of persons affected by the different processes used by each center. CDRH published a general guidance on dispute resolution within the center, "Medical Device Appeals and Complaints" (February, 1998), chartered and staffed the Dispute Resolution Panel in 2000, and is issuing this guidance to facilitate use of that Panel. Furthermore, FDA believes it is important to develop experience under the final guidance before considering whether it might be useful, even though not required, to issue a regulation at some point in the future. The guidance permits both CDRH and industry greater flexibility in resolving a particular controversy than a regulation would.

B. Independence of the Process

One comment argued that the Dispute Resolution Panel should have final authority to reverse FDA decisions rather than just make recommendations to the CDRH Director. Another comment believed a Dispute Resolution Panel recommendation to the CDRH Director should stand unless the decision would be unlawful or pose a significant threat to public health.

The legislative history indicates that the purpose of section 562 of the act is "to assure that the regulated industry receives a fair and impartial hearing and that the FDA *receives sound recommendations and advice*" (H. Rept. 105–310 at 373 (October 7, 1997)) (emphasis added). Congress intends and expects any panel that reviews disputes will provide "recommendations and advice," and that FDA must retain the final decisionmaking responsibility. The Dispute Resolution Panel will provide an important independent source of additional analysis and additional views that FDA will then use in making a final decision.

Two comments focused on the independence of the process related to the role of CDRH officials in deciding whether a request for Dispute Resolution Panel review would be granted or denied.

FDA is responding to these comments by strengthening the independence of the CDRH Ombudsman in that process. The Ombudsman will have authority to grant requests for Dispute Resolution Panel reviews, in consultation with the panel chair, without obtaining the approval of the Center Director, a Deputy Center Director, or anyone else in CDRH, although he would not be precluded from discussing the request with them to get background information about the dispute that would be helpful in making the decision to grant or deny review. However, if the Ombudsman wishes to deny a request for Dispute Resolution Panel review, the Ombudsman will consult with, and obtain the concurrence of, the appropriate Deputy Center Director.

C. Thresholds for Review of Scientific Disputes

Two comments objected to statements in the draft guidance to the effect that a request for Dispute Resolution Panel review must primarily concern a scientific controversy regarding an FDA "decision or action." The comments prefer an approach that would permit disagreements to be brought to the Dispute Resolution Panel "early" in the product review process, such as disagreements about the reasonableness of FDA data requirements, before there was an actual decision or action by the agency.

FDA agrees that there may be some early disputes that would be appropriate for, and could benefit from, a review by the Dispute Resolution Panel and has revised the guidance to include such examples.

D. Timeliness of the Process

Several comments were concerned that the process described in the draft guidance will not ensure timely review of disputes.

FDA has revised the guidance to streamline the process and tighten some of the timeframes for processing and reviewing disputes. In most cases, CDRH expects matters accepted for Dispute Resolution Panel review to receive a final decision within 90 to 120 days of receipt of the request. Practical and administrative constraints preclude developing a timeframe shorter than this.

II. Significance of Guidance

This guidance document represents the agency's current thinking on the Dispute Resolution Panel procedures for resolving scientific disputes. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute and regulations.

The agency has adopted good guidance practices (GGPs), which set forth the agency's regulations for the development, issuance, and use of guidance documents (21 CFR 10.115; 65 FR 56468, September 19, 2000.) This guidance document is issued as a level 1 guidance in accordance with the GGP regulations.

As the agency gains experience with the Dispute Resolution Panel process, this guidance document may be revised from time to time.

III. Electronic Access

In order to receive "Resolving Scientific Disputes Concerning The Regulation Of Medical Devices" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1121) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

IV. Paperwork Reduction Act of 1995

The information collection provisions contained in this guidance have been approved by the Office of Management and Budget (OMB) under OMB control number 0910–0467.

V. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 15, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–16472 Filed 6–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4653–N–09]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability and Application Kit and Reporting Forms for the Hispanic-Servicing Institutions Work Study Program (HIS–WSP)

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 31, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and be sent to: Reports Liaison Officer, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships—telephone (202) 708–1537. This is not a toll-free number. Copies of the proposed forms and other available documents to be submitted to OMB may be obtained from Ms. Karabil.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction act of 995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected entities concerning the proposed information collection to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of information to be collected; and (4) minimize the burden of collection of information on those who are to respond; including through the use of appropriate technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of the Proposal: Notice of Funding Availability and Application Kit and Reporting Forms for the Hispanic-Serving Institutions Work Study Program (HSI–WSP).

Description of the need for the information and proposed use: The information is being collected to select grantees in this statutorily-created competitive grant program (if it is ever funded again by the Congress). More importantly, the information is being used to monitor the performance of grantees to ensure that they meet statutory and program goals and requirements.

Members of the affected public: Certain Hispanic-serving institutions of higher education: 40 applicants and 30 grantees.

Estimation of the total number of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response: Information pursuant to submitting applications will be submitted once. Information pursuant to grantee monitoring requirements will be submitted once a year.

The following chart details the respondent burden on an annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Application	40	40	40	1,600
Annual Reports	30	30	6	180
Final Reports	30	15	8	120
Recordkeeping	30	15	5	75
Total	.....	.....	.....	2,050

Status of proposed information collection: OMB approved an emergency paperwork clearance for this information collection and assigned it OMB Control No. 2528–0182, expiration date March 31, 2000. The information collection was allowed to expire because Congress stopped funding the program. However, there are ongoing monitoring and reporting responsibilities for the existing grants which will require an information collection control number.

Authority: Sec. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 25, 2001.

Lawrence L. Thompson,

General Deputy, Assistant Secretary for Policy Development and Research.

[FR Doc. 01–16596 Filed 6–29–01; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for an Incidental Take Permit for three karst cave invertebrates from a Residential and Commercial Development on approximately 1,000 acres in Bexar County, Texas

SUMMARY: La Cantera Development Company, Ltd. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–044512–0. The requested permit, which is for a period of 30 years, would authorize the incidental take of *Cicurina madla* (Madla's Cave spider), *Rhadine exilis* and *Rhadine infernalis* (no common names). The proposed take would occur as a result of the construction of commercial developments on 1,000 acres in an area bounded by I–10 to the east, Loop 1604 to the south, Babcock Road to the west, and Camp Bullis Road to the north in the City of San Antonio, Bexar County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 60 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: August 31, 2001.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCPs may obtain a copy by contacting Christina Longacre, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 am to 4:30 pm), U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Field Office, Austin, Texas at the above address. Please refer to permit number TE–044512–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Christina Longacre at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the *Cicurina madla* (Madla's Cave spider), *Rhadine exilis* and *Rhadine infernalis* (no common names). However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: La Cantera Development Company plans to construct a commercial and residential development on approximately 1,000 acres generally bounded by I–10 to the east, Loop 1604 to the south, Babcock Road to the west, and Camp Bullis Road to the north in the City of San Antonio, Bexar County, Texas. This action will occur on all portions of the property except those designated as necessary to protect on-site karst areas and will impact Caves #1 and #2, which contain the endangered *Rhadine exilis* and Cicurina madla, and Cave #3, which contains only *Cicurina*. No take of any other listed endangered species is expected to result from completion of the Proposed Alternative. However, since *Rhadine infernalis* is known from the general area and it has been adequately mitigated for within the proposed preserves, the Applicant will be covered for this species.

The development will eliminate most of the habitat for these species on site, and will cause deterioration of the cave ecosystem by encouraging fire ants, altering the surface and subsurface moisture and temperature regimes and increasing human impacts. The applicant proposes to compensate for this incidental take of the three listed species by protecting seven karst preserves totaling 181 acres to be protected and managed in perpetuity. The karst preserves include one-acre on-site preserves for La Cantera Caves 1 and 2, and five off-site preserves totaling approximately 179 acres. In addition, undeveloped portions of the property would be monitored and treated for introduced fire ants, use of pesticides and herbicides would be restricted, and use of the premises for businesses that have the potential to contaminate sub-surface karst and/or groundwater (i.e., gas stations and dry cleaners) would be prohibited.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would increase the impacts.

Bryan Arroyo,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 01–16493 Filed 6–29–01; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–929–01–1420–HE]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

T. 20 N., R. 58 E., P.M., MT

The plat, representing the dependent resurvey of portions of the south boundary, subdivisional lines and the adjusted original meanders of the right bank of a channel of the Yellowstone River, downstream, through section 34, the subdivision of section 34, and the survey of the present right bank of a channel of the Yellowstone River, downstream, through section 34 and a certain division of accretion line in section 34, Township 20 North, Range 58 East, Principal Meridian, Montana, was officially accepted May 29, 2001.

The survey was requested by the Miles City Field Office and was necessary to identify accretion and

erosion to original lots 3 and 8 in section 34 of the subject township.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filing, the filing will be stayed pending consideration of the protests.

This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: June 12, 2001.

Robert L. Brockie,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 01–16576 Filed 6–29–01; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Anacostia Park General Management Plan; Public Notice

In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) to assess the impacts of alternative management strategies for the General Management Plan (GMP) for Anacostia Park, Washington, DC.

The GMP/EIS will evaluate a range of alternatives that address cultural and natural resources protection, socioeconomic concerns, traffic and pedestrian circulation, and visitor use.

Public involvement will be a key component in the preparation of the GMP/EIS.

As part of the Anacostia Waterfront Initiative (AWI), NPS is conducting a GMP for Anacostia Park. This riverine park is composed of a series of 8 areas that are better known by their individual names. They are Kenilworth Aquatic Gardens, Kenilworth Park, River Terrace, Fairlawn/Twining, Boathouse Row, Robert F. Kennedy (RFK) Stadium Shoreline, the Arboretum Shoreline and Langston Golf Course. All of these areas lay along the Anacostia River between the 11th Street Bridges and the Maryland State line. The areas are collectively named and managed as Anacostia Park. The purpose of this GMP/EIS is to give vision and unity of purpose as well as functional specificity these areas.

A separate planning effort is being undertaken for Poplar Point. This is an area of approximately 100 acres that involves lands under the jurisdiction of NPS and the District of Columbia. Sixty acres of this is composed of lands transferred to NPS in 1984 from the Architect of the Capitol and the District of Columbia that had used these properties for plant nursery purposes for 65 years. The Act of Congress which transferred these lands provided for a joint planning process between the Secretary of the Interior and the Mayor of the District of Columbia which was to include transportation facilities related to the Metro stop and other uses to be determined by the planning process. Although this area will become part of the family of parks that are a part of Anacostia Park, its unique circumstance at this point in time requires a separate planning process as part of the AWI. The plan will also be accompanied by an EIS.

The RFK Stadium and its parking lots are on lands under the jurisdiction of NPS but are leased to the District of Columbia for 49 years with another 49-year renewable clause as provided for in Public Law 85–300 as amended (September 7, 1957). This law retained a strip of land, a minimum of 200-feet wide, along the shoreline as parkland that will be addressed as part of the GMP/EIS. The remainder of the RFK Stadium property will be included in the AWI planning.

The responsible official is Terry R. Carlstrom, Regional Director, National Capital Region, NPS. Written comments should be submitted to Superintendent of National Capital Parks—East, 1900 Anacostia Drive, SE., Washington, DC—20020.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 01–16544 Filed 6–29–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Draft Environmental Impact Statement, Devils Tower National Monument, Wyoming

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of draft environmental impact statement and general management plan for devils tower national monument.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a Draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for Devils Tower National Monument, Wyoming.

DATE: The DEIS/GMP will remain available for public review until August 31, 2001.

Comments: If you wish to make comments, you may submit them by any one of several methods. You may mail comments to Devils Tower National Monument, Planning Team, P.O. Box 10, Devils Tower, WY, 82714. You may also send comments by email to: deto—planning@nps.gov. If you do not receive a confirmation from the system that we have received your email message, you may contact Chris Moos [(307) 467–5283 ext 15)] at Devils Tower National Monument. Finally, you may hand-deliver comments to Park Headquarters/Administration Office, Devils Tower National Monument. Please include your name and return address regardless of the method you choose to make comments. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

ADDRESSES: Copies of the DEIS/GMP are available from the Superintendent, Devils Tower National Monument, P.O. Box 10, Devils Tower, WY, 82714. Public reading copies of the DEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Park Headquarters (Administration Office), Devils Tower National Monument, P.O. Box 10, Devils Tower, WY, 827124, Telephone: (307) 467–5283.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Denver, CO 80225–0287,

Telephone: (303) 969–2851 [or (303) 969–2377].

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW, Washington, D.C. 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The DEIS/GMP analyzes a "no-action" alternative and 4 "action" alternatives:

- *Alternative 1* (the no-action alternative) represents the continuation of existing conditions and management at the monument.
- *Alternative 2* would reduce overall development to improve the monument's natural setting; institute a reservation system during periods of peak visitation; convert the parking area at the base of the Tower to a pedestrian plaza; selectively restore natural vegetation; improve trail accessibility; and reduce the size of the Belle Fourche River campground.
- *Alternative 3* (the NPS preferred alternative) would institute a shuttle system for use during peak visitation periods; construct a shuttle staging area and visitor orientation facilities within the monument; convert the parking area at the base of the Tower to a pedestrian plaza; remove the Belle Fourche River campground and restore/revegetate disturbed areas; construct and reconfigure trails.
- *Alternative 4* would also institute a shuttle system, but would construct/relocate staging and visitor orientation facilities, along with headquarters and maintenance facilities, outside the monument boundaries; convert the parking area at the base of the Tower to a pedestrian plaza; retain camping in a portion of the Belle Fourche River campground; convert another part of the campground to a shuttle stop with visitor facilities; construct and reconfigure trails.
- *Alternative 5* would continue to offer visitor experiences similar to those presently available, but would expand, pave, and upgrade parking areas and roads, and/or add facilities to reduce visitor congestion.

The DEIS/GMP evaluates the environmental consequences of the proposed action and the other alternatives on natural resources (e.g. air quality, soils, vegetation, wildlife, wetlands, floodplains, threatened and endangered species); cultural resources (e.g. ethnographic resources of importance to American Indian tribes, Civilian Conservation Corps-constructed roadway features, etc.); the visitor experience; and socioeconomic resources (e.g. local businesses, construction-related employment, etc.).

FOR FURTHER INFORMATION CONTACT: Contact Superintendent, Devils Tower National Monument, at the above address and telephone number.

Dated: June 14, 2001.

Jack Neckels,

Director, Intermountain Region, National Park Service.

[FR Doc. 01–16497 Filed 6–29–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service, Interior.

Environmental Assessment for Proposal To Address Safety Concerns Along the Mount Vernon Trail in and Around Bridge #12

AGENCY: National Park Service, Interior.

ACTION: Availability of the environmental assessment (EA) for the proposed safety improvements to Bridge #12 located approximately ¼ mile north of the southbound Fort Hunt exit off of the George Washington Memorial Parkway (GWMP) along the Mount Vernon Trail (MVT).

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service (NPS) policy, the NPS announces the availability of an EA for the proposed safety improvements on and around MVT Bridge #12 within GWMP. The EA examines several alternatives aimed to increase safety for trail users while maintaining the integrity of the natural and cultural resources at Bridge #12. The area on and around Bridge #12 has been identified as a safety concern, primarily due to the bridge and trail designs in relationship to the existing terrain and the increased speeds that bicyclists are now able to obtain. As the trail approaches the bridge from both the north and the south, it combines a series of sharp curves with a steep downhill grade which has resulted in serious accidents to bicyclists, especially when the bridge deck is wet or damp. The NPS is soliciting comments on this EA. These comments will be considered in evaluating it and making decisions pursuant to the National Environmental Policy Act.

DATES: The EA will remain available for public comment until August 1, 2001. Written comments should be received no later than this date.

ADDRESSES: Comments on this EA should be submitted in writing to: Ms. Audrey F. Calhoun, Superintendent, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia, 22101. The EA will be available for public inspection Monday through Friday, 8 a.m. through 4 p.m., at GWMP Headquarters, Turkey Run Park, McLean, Virginia; on the NPS Website, www.nps.gov/gwmp; and at several libraries in Alexandria, Fairfax and Arlington, Virginia.

SUPPLEMENTARY INFORMATION: The NPS proposes to increase safety for trail users while maintaining the integrity of the natural and cultural resources at Bridge #12, located approximately ¼ mile north of the southbound Fort Hunt exit off of the GWMP on the MVT. Approximately nine years ago, both ends of the bridge were widened to allow a greater turning radius for bicyclists to make the turn onto the bridge, a non-slip coating was applied to the bridge deck surface, and warning signs were posted at each end of the bridge. Although these modifications have lessened the existing safety hazards, accidents continue to occur on and around this bridge structure and it requires reconsideration. A 1990 NPS trail study entitled *Paved Recreational Trails of the National Capital Region: Recommendations for Improvements and Coordination to Form a Metropolitan Multi-Use Trail System* identified this area as a priority for safety improvements. The bridge traverses a ravine with a wetland area and small creek running through it. The existing bridge is approximately 165 feet long and is constructed from a combination of pressure treated lumber and creosote piles.

The following primary needs have been identified with this project to address the existing safety issues. There is a need:

1. For design changes to the bridge itself to make it a more sustainable structure and provide for safety on the bridge.
2. To change the steep, sharp curved approaches to the bridge.
3. To protect natural and cultural resources in and around the bridge area.

Incidents that have occurred at this location have been informally documented by observations by park staff and through conversations with visitors who have reported incidents. Physical evidence such as skid marks and bicycle paint and scrape marks on the wood of the bridge have also been observed. Finally, park staff have assisted injured bicyclists on several occasions on and around the bridge.

All interested individuals, agencies, and organizations are urged to provide comments on this EA. The NPS, in making a final decision regarding this matter, will consider all comments received by the closing date.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Sealy (703) 289–2530 or via email at GWMP_IRRM_SECRETARY@NPS.GOV.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 01–16499 Filed 6–29–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for Proposal to Replace the Existing Deteriorated North Arcade Structure and Damaged Portions of the Adjacent Arcade Structure With a New North Arcade Structure in Glen Echo Park, MD

AGENCY: National Park Service, Interior.

ACTION: Availability of the Environmental Assessment (EA) for the proposal to replace the existing deteriorated North Arcade structure, and damaged portions of the adjacent arcade structure with a new North Arcade structure in Glen Echo Park (GLEC). Both structures are listed as contributing elements of the Glen Echo Park Historic District, Maryland.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service (NPS) policy, the NPS announces the availability of an EA for the proposed replacement of the existing deteriorated North Arcade structure and damaged portions of the adjacent arcade structure with a new North Arcade structure in GLEC, a unit of the George Washington Memorial Parkway (GWMP). The EA examines several alternatives aimed to correct the advanced deterioration and design deficiencies of the North Arcade structure. The building currently provides marginal space for park administrative offices, classrooms, a photography studio, and a police substation. The use of these spaces is severely impacted by this advanced deterioration.

The NPS is soliciting comments on this EA. These comments will be considered in evaluating it and making decisions pursuant to the National Environmental Policy Act.

DATES: The EA will remain available for public comment until August 1, 2001. Written comments should be received no later than this date.

ADDRESSES: Comments on this EA should be submitted in writing to: Ms. Audrey F. Calhoun, Superintendent, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia, 22101. The EA will be available for public inspection Monday through Friday, 8:00 a.m. through 4:00 p.m. at GWMP Headquarters, Turkey Run Park, McLean, Virginia; on the NPS Website, www.nps.gov/gwmp; at GLEC and at the following Montgomery County libraries: Bethesda Regional Library, Davis Library, and Little Falls.

SUPPLEMENTARY INFORMATION: The NPS proposes to replace the existing deteriorated North Arcade structure and damaged portions of the adjacent arcade structure with a new North Arcade structure in GLEC. The intent of the proposed action is to: provide an interpretive area and classroom space to conduct and possibly expand programs; provide alternative space for the Puppet Company or a similar theatre group so that the main entrance of the Spanish Ballroom can be restored and used again; maintain and upgrade the space currently occupied by Photoworks, a portion of the lower level within the North Arcade; provide useful, efficient office space in place of what currently occupies a portion of the upper level within the North Arcade; address and correct structural deficiencies of the current structure (note that 40% of the current structure is vacant because of deterioration) and make the building accessible; address and correct Life and Safety Code deficiencies, including exit and egress requirements; address and correct Americans with Disabilities Act accessibility deficiencies; replace deteriorating mechanical and electrical systems that have exceeded their expected life cycle; enhance protection of natural and cultural resources within the park, especially those of the Glen Echo Historic District; attract more programs and users to the park to possibly create self-sufficiency; and respond to public requests for better facilities, maintenance and upkeep.

The proposed action is based on the fact that the building and canopy of the North Arcade have not fared well over time. This action aims to address structural deterioration of the outdoor concrete deck which has advanced to a state that does not allow use of the lower level rooftop plaza or the spaces below. It will also address other deficiencies, such as multiple floor level changes and varied construction practices that make the building generally unsafe to use and difficult to rehabilitate. In addition, the mechanical and electrical systems, which have been compromised through alteration and have far exceeded their expected life cycles will be replaced.

All interested individuals, agencies, and organizations are urged to provide comments on this EA. The NPS, in making a final decision regarding this matter, will consider all comments received by the closing date.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Sealy (703) 289–2530 or via email at GWMP__IRRM__SECRETARY@NPS.GOV.

Dottie P. Marshall,

Acting Superintendent, George Washington Memorial Parkway.

[FR Doc. 01–16498 Filed 6–29–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service, Interior

Notice of Availability of a Plan of Operations and Environmental Assessment for a Proposed Three Dimensional Seismic Survey Within the Barataria Preserve Unit of Jean Lafitte National Historical Park and Preserve, Jefferson Parish, LA

SUMMARY: In accordance with § 9.52 of title 36 of the Code of Federal Regulations and the National Environmental Policy Act of 1969, notice is hereby given that the National Park Service has a received a Plan of Operations and Environmental Assessment from Seitel Data, Inc. of Houston, Texas, for a Proposed Three Dimensional Seismic Survey within and near the Barataria Preserve unit of Jean Lafitte National Historical Park and Preserve.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice, in the office of the Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 2400, New Orleans, Louisiana and will be sent upon written request.

DATES: The proposed seismic operation will be initiated following the approval of the Plan of Operations and a Finding of No Significant Impact by the National Park Service Regional Director. Field operations will last approximately six weeks within the Preserve.

FOR FURTHER INFORMATION CONTACT: Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 2400, New Orleans, Louisiana, 70130.

SUPPLEMENTARY INFORMATION: Jean Lafitte National Historical Park and Preserve was established by Congress on November 10, 1978 (Public Law 95–625)

in order to "* * * preserve for the education, inspiration, and benefit of present and future generations significant examples of natural and historical resources of the Mississippi Delta region * * *" When the park was established, all subsurface mineral interests were retained by private owners, thus the federal government does not own any of the subsurface oil and gas rights within the park boundary.

Seitel Data Incorporated is proposing to conduct a three dimensional seismic survey encompassing approximately 105 square miles in Jefferson and St. Charles Parishes, Louisiana. A portion of the proposed survey area includes the northernmost 1,500 acres of the Barataria Preserve unit of Jean Lafitte National Historical Park and Preserve.

In accordance with the National Park Service Organic Act and section 902(a) of the park's enabling legislation, Congress authorized the Secretary of the Interior to promulgate regulations to control nonfederal oil and gas development in the park. These regulations are published as the NPS Nonfederal Oil and Gas Rights Regulations, in the Code of Federal Regulations, part 9, subpart B (36 CFR 9B), and include the following:

> These regulations control all activities within any unit of the National Park System in the exercise of rights to oil and gas not owned by the United States where access is on, across, or through federally owned or controlled lands or waters * * * These regulations are designed to insure that activities undertaken pursuant to these rights are conducted in a manner consistent with the purposes for which the National Park System and each unit thereof were created, to prevent or minimize damage to the environment and other resource values, and to insure to the extent feasible that all units of the National Park System are left unimpaired for the enjoyment of future generations. These regulations are not intended to result in the taking of a property interest, but rather to impose reasonable regulations on activities which involve and affect federally-owned lands (36 CFR 9.30(a)).

Jean Lafitte National Historical Park and Preserve has a lawful obligation to provide for the exercise of nonfederal oil and gas rights within its boundary. The NPS Nonfederal Oil and Gas Rights Regulations require that a Plan of Operations and Environmental Assessment be submitted and approved by the park Superintendent and Regional Director prior to the initiation of oil and gas exploration activities. A Plan of Operations and Environmental Assessment has been prepared by Seitel Data, which documents the procedures required by the National Park Service to accomplish the three dimensional survey while avoiding and minimizing adverse environmental impacts to park resources.

Dated: June 12, 2001.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 01–16495 Filed 6–29–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan/ Environmental Impact Statement for Mary McLeod Bethune Council House National Historic Site, Washington, DC; Notice of Availability

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service has prepared a Draft General Management Plan/Environmental Impact Statement (GMP/EIS) that evaluates four alternatives for Mary McLeod Bethune Council House National Historic Site (Council House). The document describes and analyzes the environmental impacts of a preferred action, two action alternatives and a no-action alternative. When approved, the plan will guide management actions during the next 15–20 years.

Alternatives

Alternative 1, the no-action alternative, would maintain current management direction. The Council House would continue to operate as a visitor center and administrative office area; archival collections and archive staff offices would remain in the carriage house. Conflicts would continue to occur between visitor and administrative functions in the limited space of the Council House resulting in a less than desirable visitor experience and operational inefficiency. Storage space for archival collections would remain inadequate. Alternative 2, the preferred action, would place dual emphasis on the Council House, which would be used as a museum, and on the archives. Under this alternative new space would be acquired to accommodate some visitor services and most administrative offices. The visitor experience would be enhanced with adequate space to provide broad and comprehensive interpretive opportunities and exhibits in the Council House. The primary storage for archival collections would be in an offsite state-of-the-art facility that would provide enhanced preservation and protection of stored items. The carriage house would be renovated and would house a research room, offices for archival staff, an area for some processing of collections, and space for frequently accessed collections. Alternative 3 would commemorate the site through the establishment of the Bethune Center for Human Rights. The Council House would be used for interpretation and also would provide a place for groups to meet and engage in activities, workshops and programs. Materials related to social justice and human rights would be emphasized in the archival collections. Additional property would be leased or acquired for administrative offices and would be the primary space for meetings and workshops. This space would be the main contact point for visitors, and access and programmatic interpretation would be provided for visitors with mobility disabilities at this site. Offsite interpretation would be expanded with traveling exhibits. The carriage house would be renovated and expanded to include the archival collections, archival staff offices, and research space. Under Alternative 4, the Council House would be used as a traditional National Park Service museum commemorating the life and times of Mary McLeod Bethune. The Council House would have expanded exhibit space and an orientation area for visitors. Period furnishings would be in the Council House and archival collections would illustrate the highlights of Mary McLeod Bethune's life and activities. Educational materials would focus on the life contributions and legacy of Mary McLeod Bethune. Space would be leased offsite to accommodate current archival collections that would be managed through a contract with others. The carriage house would be torn down and replaced with a new building that would house a bookstore, visitor restrooms and administrative offices.

Public Review

A 60-day public review period for comment on the draft document will begin after publication of this notice. In order to facilitate the review process, public reading copies of the GMP/EIS will be available for review at the following locations:

Mary McLeod Bethune Council House National Historic Site, 1318 Vermont Avenue, NW., Washington, DC 20005

National Capital Parks—East, 1900 Anacostia Drive, SE., Washington, DC 20020

National Capital Region Office of Lands, Resources and Planning Attention: Gail Cain 1100 Ohio Drive, NW., Washington, DC 20242

Frederick Douglass National Historic Site Visitor Center, 1411 W Street, SE., Washington, DC 20020

In addition, the document will be posted on the National Park Service Planning site under Mary McLeod Bethune Council House National Historic Site, *http://www.nps.gov/mamc/pphtml/facts.html*. A limited number of printed copies will be available on request.

Comments on the draft GMP/EIS should be received (or transmitted by e-mail) no later than 60 days after publication of this **Federal Register** notice. Written comments may be submitted to: Terri Urbanowski, PDS, National Park Service, P.O. Box 25287, Denver, CO 80225–0287 or eMailed to: *MAMC_GMP@nps.gov*.

All comments received will be available for public review at Mary McLeod Bethune Council House National Historic Site. If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the National Park Service will withhold a respondent's identity as allowable by law. As always, the National Park Service will make available for public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses. Anonymous comments may not be considered.

Decision Process

Notice of the availability of the final document will be published in the **Federal Register**. Subsequently, notice of an approved Record of Decision will be published in the **Federal Register** not sooner than 30 days after the final document is distributed. The official responsible for the decision is the Regional Director, National Capital Region, National Park Service; the official responsible for implementation is Superintendent John Hale, National Capital Parks-East at (202) 690–5185.

FOR FURTHER INFORMATION CONTACT: Site Manager Diann Jacox, Mary McLeod Bethune Council House National Historic Site, 1318 Vermont Avenue, NW., Washington, DC 20005, (202) 673–2402, fax (202) 673–2414, eMail *Diann_Jacox@nps.gov*.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 01–16545 Filed 6–29–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Final Supplemental Environmental Impact Statement for Construction of the Natchez Trace Parkway (Section 3P13), Ridgeland, MS

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a final supplemental environmental impact statement for construction of the Natchez Trace Parkway (Section 3P13), Ridgeland, Mississippi.

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969 (Public Law 91–190, as amended), this notice announces the availability of the Final Supplemental Environmental Impact Statement (FSEIS) for the construction of the segment of the Natchez Trace Parkway (Section 3P13) through Ridgeland, Mississippi. The FSEIS evaluates the environmental consequences associated with the proposed action and the other alternatives on local traffic and transportation routes, cultural resources, wetlands, visual quality, visitor experience, economics and land use, and impact on nearby residents, among other topics.

DATES: The Final SEIS will be on public review for 30 days following the date of the Environmental Protection Agency's (EPA) publication of their notice of receipt of the Final Supplemental Environmental Impact Statement in the **Federal Register**. Upon completion of the 30-day review period, a Record of Decision will be prepared and signed by the Regional Director of the Southeast Region of the National Park Service and will be published at a later date.

ADDRESSES: Public reading copies of the Natchez Trace Parkway's (Section 3P13) Final Supplemental Environmental Impact Statement will be available for public review at the following locations:

1. Natchez Trace Parkway Headquarters, 2680 Natchez Trace Parkway, Tupelo, Mississippi 38804, (662) 680–4004.
2. Jackson/Hinds Library System, Eudora Welty Library, 300 North State Street, Jackson, Mississippi 39201, (601) 968–5809

(This is the headquarters or main library in Jackson)

FOR FURTHER INFORMATION CONTACT: For copies of the FSEIS or additional information, please contact: Superintendent Wendell A. Simpson, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, Mississippi 38804, Telephone: (662) 680–4004.

SUPPLEMENTARY INFORMATION: The Natchez Trace Parkway was established in 1938 to commemorate the Old Natchez Trace, a primitive network of trails that stretched from Natchez, Mississippi, to Nashville, Tennessee. Designed to follow the alignment of the historic trace as closely as the requirements of modern road construction allows, upon completion the Natchez Trace Parkway will extend diagonally from Natchez to Nashville, a distance of approximately 444 miles.

The completion of a continuous parkway motor road between Natchez and Nashville by the National Park Service has been underway for more than 60 years. A decision on and construction of this short segment of the parkway motor road, combined with other completed, in-progress, and planned NPS construction projects between I–20 and I–55 would permit the opening of the parkway motor road to through visitor vehicular use without the need for a detour through the greater metropolitan area of Jackson, Mississippi. The parkway's 1987 General Management Plan ranks the completion of the parkway motor road as one of its prominent management objectives.

Those listed on the Natchez Trace Parkway's database who have commented on the Draft SEIS or shown interest in the proposed project will receive notification of the 30-day review period along with a copy of the FSEIS personally by letter from the Parkway Superintendent.

Our practice is to make comments, including names and home addresses of respondents, available for public review during business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

Dated: February 13, 2001.

Patricia A. Hooks,

Acting Regional Director, Southeast Region.

[FR Doc. 01–16542 Filed 6–29–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Mary McLeod Bethune Council House National Historic Site Advisory Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Mary McLeod Bethune Council House National Historic Site Advisory Commission will be held on August 13, 2001 at 1 pm to 5 pm and on August 14, 2001 at 8 am to 1 pm, at the Wyndham Washington, DC located at 1400 M Street, NW., Washington, DC.

The Advisory Commission was authorized on December 11, 1991, by Public Law 102–211 for the purpose of advising the Secretary of the Interior in the development of a General Management Plan for the Mary McLeod Bethune Council House National Historic Site.

The members of the Commission are as follows: Dr. Bettye Collier-Thomas; Ms. Brandi L. Creighton; Dr. Ramona Edelin; Dr. Shelia Flemming; Dr. Bettye J. Gardner; Ms. Brenda Girton-Mitchell; Dr. Janette Hoston Harris; Dr. Dorothy I. Height; Mr. Eugene Morris; Dr. Frederick Stielow; Dr. Rosalyn Terborg-Penn; Mrs. Romaine B. Thomas; Ms. Barbara Van Blake, and Mrs. Bertha S. Waters.

The purpose of the meeting will be to continue planning and development a general management plan for the Mary McLeod Bethune Council House National Historic Site. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish further information concerning this meeting or who wish to file a written statement or testify at the meeting may contact Ms. Diann Jacox, the Federal Liaison Officer for the Commission, at (202) 673–2402. Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Mary McLeod Bethune Council House National Historic Site, located at 1318 Vermont Avenue, NW., Washington, DC 20005.

Dated: June 14, 2001.

John Hale,

Superintendent, National Capital Parks—East.

[FR Doc. 01–16543 Filed 6–29–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 16, 2001 Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 17, 2001.

Patrick W. Andrus,

Acting Keeper of the National Register of Historic Places.

COLORADO

Gunnison County

Town of Crested Butte (Boundary Increase and Boundary Decrease), Roughly bounded by Gothic Ave., 6th St., White Rock Ave., and First St., Crested Butte, 01000738

FLORIDA

Polk County

Dundee ACL Railroad Depot, Old, 103 Main St., Dundee, 01000739

GEORGIA

Chatham County

Gordonston Historic District, Roughly bounded by Skidaway Rd., Goebel Ave., Gwinnett St., and Pennslyvania Ave., Savannah, 01000741

Clarke County

Winterville Historic District, Roughly center on Main St. and on the abandoned Georgia RR line within the city limits of Winterville, Winterville, 01000742

Greene County

Siloam Historic District, Roughly centered on Main St., Union Point Hwy., and Church St., Siloam, 01000740

KENTUCKY

Carter County

Saltpeter Cave, Carter Caves State Resort Park, Olive Hill, 01000743

MARYLAND

Baltimore Independent city

Guilford Historic District, Rghly bnded by N. Charles St, Warrenton Rd, Linkwood Rd, Cold Spring Ln, York Rd, Southway, University Pky and Bishops Rd., Baltimore (Independent City), 01000745

Frederick County

Tipahato, 17130 Raven Rock Rd., Cascade, 01000744

MASSACHUSETTS

Hampden County

Dewey, Joseph, House, 87 S. Maple St., Westfield, 01000746

MINNESOTA

Becker County

Holmes Block, 710–718 Washington Ave., Detroit Lakes, 01000748

Fillmore County

Commercial House Hotel, 146 S. Broadway, Spring Valley, 01000747

Hennepin County

North East Neighborhood House, 1929 Second St. NE, Minneapolis, 01000749

MISSISSIPPI

Choctaw County

Choctaw Lake Ranger House, Address Restricted, Ackerman, 01000753

Holmes County

Lexington Historic District, Roughly Courthouse Sq., along Yazoo, Vine, Tchula, Boulevard, Springs, Race Sts., and Old Tchula Rd., Lexington, 01000754

MISSOURI

Butler County

Rodgers Theatre Building, 204, 214, 216, 218, 220, 222 and 224 N. Broadway, Poplar Bluff, 01000750

SOUTH CAROLINA

Spartanburg County

Hurricane Tavern, 4101 SC 101, Woodruff, 01000755

TENNESSEE

Montgomery County

Northington—Beach House, (Clarksville MPS) 512 Madison St., Clarksville, 01000758

Sevier County

Headrick's Chapel, Wears Valley Rd., Harchertown, 01000756

Wilson County

Chandler Stone Wall, Old Lebanon Rd., 2 mi. W of Mount Juliet Rd., Mount Juliet, 01000757

[FR Doc. 01–16496 Filed 6–29–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American

Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the American Museum of Natural History professional staff in consultation with representatives of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin; Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan; Huron Potawatomi, Inc., Michigan; Pokagon Band of Potawatomi Indians of Michigan; and Prairie Band of Potawatomi Indians, Kansas.

At an unknown date, human remains representing a minimum of two individuals from the vicinity of Peru, La Salle County, IL, were obtained by the Giffort brothers. The American Museum of Natural History has no information regarding who collected these remains or their collection date. The American Museum of Natural History acquired these remains as a purchase from the Giffort brothers in 1896. No known individuals were identified. No associated funerary objects are present.

These individuals have been identified as Native American based on the American Museum of Natural History's catalog description, which refers to the remains as "Pottawatomie," and on cranial morphology. The remains originate from within the postcontact territory of the Potawatomi Indians.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of two individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin; Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan; Huron Potawatomi, Inc., Michigan; Pokagon Band of Potawatomi Indians of Michigan; and Prairie Band of Potawatomi Indians, Kansas.

This notice has been sent to officials of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin; Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan; Huron Potawatomi, Inc., Michigan; Pokagon Band of Potawatomi Indians of Michigan; and Prairie Band of Potawatomi Indians, Kansas. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Martha Graham, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5846, before August 1, 2001. Repatriation of the human remains to the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin; Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan; Huron Potawatomi, Inc., Michigan; Pokagon Band of Potawatomi Indians of Michigan; and Prairie Band of Potawatomi Indians, Kansas may begin after that date if no additional claimants come forward.

Dated: June 8, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–16548 Filed 6–29–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Denver Department of Anthropology and Museum of Anthropology professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; and Kiowa Indian Tribe of Oklahoma.

Some time between the 1920s and the 1950s, human remains representing two individuals were recovered from Mitchell County, TX, by N.J. Vaughn, who subsequently deposited them in the University of Denver Museum of Anthropology. No known individuals were identified. No associated funerary objects are present.

The physical anthropological characteristics of these remains and the manner of collection indicate that these remains are Native American. Collections documentation is nonexistent concerning possible dates, cultural affiliation(s), or the precise circumstances under which these Native American human remains were found.

The "Indian Land Areas Judicially Established 1978 Map" indicates the legal claim to land based upon traditional use for the Eastern Apache, Kiowa, and Comanche. The "Early Indian Tribes, Culture Areas, and Linguistic Stocks Map" establishes the presence of the Comanche, Kiowa, and Wichita. Representatives of the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Fort Sill Apache; and Jicarilla Apache presented oral testimony that confirmed their presence in Mitchell County, TX.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology

and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

This notice has been sent to officials of the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator, University of Denver Department of Anthropology and Museum of Anthropology, 2000 Asbury, Sturm Hall S-146, Denver, CO 80208-2406, e-mail jbernste@du.edu, telephone (303) 871-2543, before August 1, 2001. Repatriation of the human remains to the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma may begin after that date if no additional claimants come forward.

Dated: June 8, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–16546 Filed 6–29–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Denver Department of Anthropology and Museum of Anthropology professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Between the 1920s and the 1950s, human remains representing one individual (catalog number DU6065) were collected by Dr. E.B. Renaud, founder of the University of Denver Department of Anthropology. The remains were collected from an unknown location in the Southwestern United States. No known individual was identified. No associated funerary objects are present.

Dr. Renaud identified this individual as "Basket Maker." Information in the museum's records provides details of Dr. Renaud's expeditions, collecting techniques, and research. This evidence indicates that he designated remains from northern Arizona and New Mexico as being from the "Southwest." It further suggests that he used the term "Basket Maker" to designate remains from northeastern New Mexico, which makes it possible that the remains identified as DU6065 are from that area.

In 1929, human remains representing one individual (catalog number DU6067) were recovered from a cave on the T.O. Ranch, near Folsom, Colfax County, NM, by H.B. Roberts and/or Dr. E.B. Renaud of the University of Denver Department of Anthropology. H.B. Roberts and/or Dr. Renaud collected these remains while on an expedition sponsored by the Colorado Museum of Natural History. No known individual was identified. The 198 associated funerary objects are 9 bone awls, 1 antler flaker, 124 bone beads, 1 hammerstone, 2 choppers, 1 stone pounder, 1 metate, and 59 chipped stone tools.

Dr. Renaud identified this individual as "Basket Maker." The remains come from northeastern New Mexico.

Northeastern New Mexico has been identified as the ancestral territory of the Apache, Arapahoe, Cheyenne, Comanche, Kiowa, and Puebloan peoples. The "Indian Land Areas Judicially Established 1978 Map" indicates the legal claim to land based upon traditional use for the Eastern Apache, Kiowa, and Comanche. The "Early Indian Tribes, Culture Areas, and Linguistic Stocks Map" establishes the presence of the Apache, Comanche, and Kiowa. Oral testimony provided by representatives of the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes of Oklahoma; Jicarilla Apache Tribe; and Fort Sill Apache Tribe confirm their presence in northeastern New Mexico. The Lipan Apache and Mescalaro Apache are culturally connected and therefore the Eastern and Western Apache cultural affiliation is strengthened.

The scientific literature provides significant evidence of cultural affiliation between Basketmaker period (200 B.C.-A.D. 700) and the pueblos. Representatives of the Hopi Tribe of Arizona, Pueblo of Acoma, Pueblo of Isleta, Pueblo of Jemez, and Zuni Tribe provided written and oral testimony confirming the cultural affiliation of Puebloan peoples with Basketmaker period.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 198 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator, University of Denver Department of Anthropology and Museum of Anthropology, 2000 Asbury, Sturm Hall S-146, Denver, CO 80208-2406, e-mail jbernste@du.edu, telephone (303) 871-2543, before August 1, 2001. Repatriation of the human remains and associated funerary objects to the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: June 12, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–16547 Filed 6–29–01; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting; Emergency Notice of Time Change

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME: June 29, 2001.

ORIGINAL TIME: 2:00 p.m.

NEW TIME: 1:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

In accordance with 19 CFR 201.35(d)(1), the Commission hereby gives notification that the time of the meeting being held June 29, 2001, has changed from 2:00 p.m. to 1:30 p.m. Earlier notice of such change was not possible.

By order of the Commission:

Issued: June 27, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–16646 Filed 6–27–01; 5:01 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that on May 23, 2001, a proposed Consent Decree (proposed Decree) in *United States* v. *Holmes & Co., Inc.*, Civil Action No. 1:01–CV–198, was lodged with the United States District Court for the Northern District of Indiana (Fort Wayne Division).

In this action the United States seeks relief under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, for recovery of response costs relating to releases of hazardous substances at the Wayne Reclamation and Recycling Site (Site), located near Columbia City, Indiana.

The proposed Decree would resolve certain liability of Holmes & Company, Inc., regarding the Site. Holmes & Co. is alleged to be the owner and operator of portions of the property that make up the Site.

Under the proposed Decree Holmes & Co. receives, among other things, certain contribution protection for response costs incurred and to be incurred in cleaning up the Site, as well as covenants not to sue from the United States under sections 106 and 107(a) of CERCLA and under section 7003 of the Resource Conservation Act (RCRA), subject to various reservations and re-openers.

The State of Indiana, which also has filed a complaint against Holmes & Co. in the same Court concerning this same Site, also is party to the proposed Decree. Under the proposed Decree the State would resolve certain claims it may have against Holmes & Co. regarding the Site.

Under the Decree, Holmes & Co. will, among other things, provide access to portions of the Site and also will place certain environmental easements and institutional controls on certain property that is part of the Site. To resolve certain contribution litigation brought against Holmes & Co. by other, potentially responsible parties who settled previously with the United States and the State and who have helped undertake remedial action at the Site, Holmes & Co. will pay those potentially responsible parties about $70,000 under this Decree and thus resolve that contribution litigation.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Holmes & Co., Inc.*, Civil Action No. 1:01–CV–198, D.J. Ref. 90–11–3–603B. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

A copy of the proposed Decree may be examined at the Office of the United States Attorney, 3128 Federal Building, 1300 S. Harrison Street, Fort Wayne, Indiana 46802, and at the Office of Regional Counsel, U.S. EPA Region 5, Chicago, Illinois. a copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. When requesting a copy please refer to *United States* v. *Holmes & Co., Inc.* (N.D. Ind.) DOJ Ref. No. 90–11–3–603B and enclose a check in the amount of $13.25 (25 cents per page reproduction costs, for the decree and all its appendices), payable to the Consent Decree Library.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–16593 Filed 6–29–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Certificate of Training, MSHA Form 5000–23

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before August 31, 2001.

ADDRESSES: Send comments to Lynnette M. Haywood, Deputy Director, Administration and Management, 4015 Wilson Boulevard, Room 611, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to lhaywood&msha.gov, along with an original printed copy. Ms. Haywood can be reached at (703) 235–1383 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Lynnette M. Haywood, Deputy Director, Administration and Management, U.S. Department of Labor, Mine Safety and Health Administration, Room 611, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Haywood can be reached at lhaywood@msha.gov (Internet E-mail), (703) 235–1383 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 115(a) of the Mine Act requires that each mine operator have a program approved by the Secretary for training miners in the health and safety aspects of mining. Section 115(c) requires (a) that the mine operator certify on a form approved by the Secretary that the miner has received the specified training in each subject area of the approved health and safety training plan; (b) that the certificates be maintained by the operator and be available for inspection at the mine site; and (c) that the miner is entitled to a copy of the certificate upon completion of the training and when he leaves the operator's employ. Title 30, CFR Part 48 implements Section 115 of the Act by setting forth the requirements for obtaining approval of training programs and specifying the kinds of training, including refresher and hazard training, which must be provided to the miners.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Certificate of Training, MSHA Form 5000–23. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting "Statutory and Regulatory Information" then "Paperwork Reduction Act submission (*http://www.msha. gov/regspwork.htm*)", or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

MSHA Form 5000–23, Certificate of Training, is used by mine operators to record mandatory training received by miners. Each form provides the mine operator with a recordkeeping document, the miner with a certificate of training, and MSHA a monitoring tool for determining compliance requirement.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Certificate of Training, MSHA Form 5000–23.

OMB Number: 1219–0070.

Agency Number: MSHA Form 5000–23.

Recordkeeping: Two years or 60 days after termination of employment.

Affected Public: Business or other for-profit institutions

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden hours
48.9 and 48.29	3,730	Annually	105,040	0.08 (hours)	8,393

Estimated Total Burden Cost: $210,074.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 26, 2001.

Lynnette M. Haywood

Deputy Director, Administration and Management.

[FR Doc. 01–16549 Filed 6–29–01; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming conference call for NCD's Cultural Diversity Advisory Committee. Notice of this conference call is required under section 10(a)(1)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Cultural Diversity Advisory Committee: The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

DATES: July 31, 2001, 2:30 p.m.–3:30 p.m. EDT

FOR FURTHER INFORMATION CONTACT: Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), ghawkins@ncd.gov (e-mail).

Agency Mission: The National Council on Disability is an independent federal composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on disability issues.

We currently have a membership reflecting our nation's diversity and representing a variety of disabling conditions from across the United States.

Open Meeting: This advisory committee meeting/conference call of the National Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference call at the NCD office. Those interested in joining this conference call should contact the appropriate staff member listed above.

Records will be kept of all Cultural Diversity Advisory Committee meetings/calls and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on June 26, 2001.

Ethel D. Briggs,

Executive Director.

[FR Doc. 01–16474 Filed 6–29–01; 8:45 am]

BILLING CODE 6820–MA–M

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting for NCD's Youth Advisory Committee. Notice of this meeting is required under section 10(a)(1)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Youth Advisory Committee: The purpose of NCD's Youth Advisory Committee is to provide input NCD activities consistent with the values and goals of the Americans with Disabilities Act.

DATES: August 6, 2001, 11 a.m.–12 p.m. EDT

Location: Marriott at Metro Center, Montreal II Room, 775 12th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 1050, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–

272–2022 (fax), ghawkins@ncd.gov (e-mail).

Agency Mission: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on disability issues.

We currently have a membership reflecting our nation's diversity and representing a variety of disabling conditions from across the United States.

Open Meeting: This advisory committee meeting of the National Council on Disability will be open to the public. Those interested in attending the meeting should contact the appropriate staff member listed above. Space is limited.

Records will be kept of all Youth Advisory Committee meetings calls and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on June 26, 2001.

Ethel D. Briggs,

Executive Director.

[FR Doc. 01–16473 Filed 6–29–01; 8:45 am]

BILLING CODE 8820–MA–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530]

In the Matter of Public Service Company of New Mexico (Palo Verde Nuclear Generating Station, Units 1, 2, and 3); Superseding Order Approving Modified Application Regarding Proposed Corporate Restructuring

I

Public Service Company of New Mexico (PNM) holds minority ownership interests (both owned and leased) in Palo Verde Nuclear Generating Station (Palo Verde) Units 1, 2, and 3, and in connection therewith is a holder of Facility Operating Licenses Nos. NPF–41, NPF–51, and NPF–74 for Palo Verde. The facility is located in Maricopa County, Arizona. Other co-licensees for Palo Verde are Arizona Public Service Company (APS) (owner or lessee of a 29.1 percent share of each of the three units), Salt River Project Agricultural Improvement and Power District (owner of a 17.49 percent share), El Paso Electric Company (owner of a 15.8 percent share), Southern California Edison Company (owner of a 15.8 percent share), Southern California Public Power Authority (owner of a 5.91 percent share), and Los Angeles Department of Water and Power (owner of a 5.70 percent share). APS is the licensed operator of the Palo Verde units. The remaining licensees hold possession-only licenses.

II

Pursuant to section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80, PNM filed an application dated March 3, 2000, requesting approval of the indirect transfer of the Palo Verde licenses, to the extent held by PNM, to a new holding company to be established, then proposed to be named Manzano Corporation (Manzano). Supplemental information on this application was forwarded to the NRC by PNM's outside counsel, Shaw Pittman, in letters dated August 14, August 17, and September 7, 2000. The new holding company was to be established to implement the public utility restructuring requirements of the New Mexico Electric Utility Industry Restructuring Act of 1999. The proposed restructuring of PNM would have encompassed the formation of Manzano and Manzano becoming the holding company for PNM, the transfer by PNM of its electric and gas transmission and distribution businesses to an affiliated company to be named "Public Service Company of New Mexico" (with PNM and such affiliated company being under common control by Manzano), and a change in PNM's name to Manzano Energy Corporation (Manzano Energy). By application dated April 26, 2000, APS requested approval, pursuant to 10 CFR 50.90, of proposed conforming amendments to reflect in the Palo Verde licenses the name change of PNM to Manzano Energy Corporation that would have occurred in connection with the planned restructuring. APS would have retained its existing ownership interest in, and would have remained the licensed operator of Palo Verde after the above restructuring of PNM, and otherwise would not have been involved in the restructuring. Similarly, none of the other co-licensees would have been involved in the restructuring of PNM. No physical changes to the facility or operational changes were being proposed in the applications filed by PNM and APS. Notice of the applications and an opportunity for hearing was published in the **Federal Register** on May 26, 2000 (65 FR 34370). No written comments or hearing requests were received.

III

By an Order dated September 29, 2000, the application regarding the proposed restructuring of PNM was approved, subject to certain conditions contained in that Order. To date, the proposed restructuring has not occurred. The application for conforming license amendments was also approved by the Order, but the amendments were to be issued and made effective only at the time the proposed restructuring action was completed, including in particular the name change of PNM.

Subsequently, by letters dated March 20 and May 15, 2001, from counsel for PNM, the Commission was informed that in March of 2001 the State of New Mexico enacted into law Senate Bill 266, "An Act Relating to Electric Utilities; Delaying Customer Choice Provisions and Implementation of the Electric Utility Industry Restructuring Act of 1999" (SB 266). With respect to PNM's proposed restructuring that was the subject of the September 29, 2000, Order, SB 266 does not affect PNM's plans to establish a new holding company for PNM. However, it delays until January 1, 2007, the start of customer choice in the retail electricity market, and, therefore, delays PNM's plans to separate its transmission and distribution assets into a new affiliate. Any such plans for separation will now be required to be refiled with the New Mexico Public Regulation Commission (NMPRC) by 2005, and approved by NMPRC by 2006.

According to the March 20 and May 15, 2001, submittals, in light of SB 266, there have been several changes to the information provided in the March 3, 2000, application and supplements thereto. In summary, in contrast to earlier information provided in the March 3, 2000, application and supplements thereto, PNM was an "electric utility," under the definition set forth in 10 CFR 50.2, in the year 2000, and expects to continue to be such until at least 2007, notwithstanding the establishment of a new holding company; the name of the company, which has already been formed, to eventually become the holding company for PNM is "PNM Resources, Inc." and it will keep that name following its establishment as PNM's holding company. PNM will not change its name at this time.

The March 20 and May 15, 2001, submittals state that the establishment of the new holding company will have no effect on current decommissioning funding arrangements for PNM's share of decommissioning costs for the facility, and will not affect the technical qualifications of the licensed operator, APS. Previous information regarding the nationality of the holding company, its directors, principal officers, and shareholders provided in the March 3, 2000, application, and supplement thereto, remains valid, according to PNM. Also, PNM does not now intend to change its name, so the previously approved conforming amendments to the operating licenses to reflect a new name of the licensee are no longer required at this time.

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted by PNM in its March 20 and May 15, 2001, submittals, and other information before the Commission, the NRC staff has determined that the proposed restructuring of PNM, as modified, described in the March 20 and May 15, 2001, submittals, will not affect the qualifications of PNM to hold the licenses referenced above to the same extent now held by PNM, and that the indirect transfer of the licenses, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. The NRC staff has further found that license amendments approved by the Order dated September 29, 2000, are no longer appropriate in light of the modified proposed restructuring of PNM. These findings are supported by a Safety Evaluation dated June 25, 2001.

IV

Accordingly, pursuant to sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o) and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the Order dated September 29, 2000, is withdrawn and superseded in its entirety by this Order, and that the application regarding the proposed restructuring of PNM and corresponding indirect license transfers, as modified by the March 20 and May 15, 2001, submittals referenced above, is approved, subject to the following conditions:

1. PNM shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from PNM to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of PNM's consolidated net utility plant, as recorded on PNM's books of account.

2. PNM shall notify the Director of the Office of Nuclear Reactor Regulation in writing within thirty (30) days after PNM undergoes any change in status from an electric utility, as defined in 10 CFR 50.2, to a non-electric utility.

3. Should the restructuring of PNM, as described in the March 20 and May 15, 2001, submittals, not be completed by June 30, 2002, this Order shall become null and void, provided, however, upon application and good cause shown, such date may be extended. Any direct or indirect transfers of the Palo Verde licenses as held by PNM, to the extent effected by any further restructuring of PNM involving the separation of its transmission and distribution assets from its generation assets, are not being approved at this time and must be the subject of a new application for prior written consent.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated March 3, 2000, supplemental application and submittals dated April 26, August 14, August 17, and September 7, 2000, the Safety Evaluation dated September 29, 2000, submittals dated March 20 and May 15, 2001, and the Safety Evaluation dated June 25, 2001, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 25th day of June 2001.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 01–16552 Filed 6–29–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–390–CivP, 50–327–CivP, 50–328–CivP, 50–259–CivP, 50–260–CivP, 50–296–CivP (EA 99–234); ASLBP No. 01–791–01–CivP]

Tennessee Valley Authority Nuclear Power Plants; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and sections 2.205, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Tennessee Valley Authority,

Watts Bar Nuclear Plant, Unit 1;

Sequoyah Nuclear Plant, Units 1 & 2,

Browns Ferry Nuclear Plant, Units 1, 2 & 3,

Order Imposing Civil Monetary Penalty

This Board is being established pursuant to the request of the Tennessee Valley Authority (TVA), the licensee for the Watts Bar (Unit 1), Sequoyah (Units 1 & 2), and Browns Ferry (Units 1, 2 & 3) Nuclear Plants, for a hearing regarding an Order issued by the Director, Office of Enforcement, dated May 4, 2001, entitled "Order Imposing Civil Monetary Penalty" (65 FR 27,166 (May 4, 2001)).

The Board is comprised of the following administrative judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Ann Marshall Young, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents and other materials shall be filed with the Panel Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 26th day of June 2001.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 01–16551 Filed 6–29–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Performance of Commercial Activities

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Proposed change to the OMB circular A–76 revised supplemental handbook.

SUMMARY: . The Office of Management and Budget (OMB) publishes a request for agency and public comments on proposed changes to the OMB Circular A–76, Performance of Commercial Activities, Revised Supplemental Handbook. The proposed changes eliminate the "grandfather clauses" at Part 1, Chapter 2, paragraph A.5 and paragraph 5.a., of the Handbook. The Handbook would then be changed to expand public-private competition for all Inter-Service Support Agreements (ISSAs), by requiring competitions on a recurring 3–5 year review cycle, similar to the competitions required for the renewal of service contracts with the private sector. These changes are an important first step in OMB's efforts to expand competition, improve service quality, and enhance agency accountability by integrating budgeting and performance.

OMB is requesting public and agency comment on these revisions. OMB expects that the expanded competition requirements of the Circular will encourage the service requesting or customer agencies to take full account of their support agreements, the alternative levels of service available, and the most efficient and cost effective private sector or other public offeror.

DATES: Agency and public comments on the proposed changes are due to OMB not later than August 16, 2001.

ADDRESSES: Address all comments to the Office of Federal Procurement Policy, NEOB Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, FAX Number (202) 395–5105.

Availability: Copies of the OMB Circular A–76, its Revised Supplemental Handbook, currently applicable Transmittal Memoranda and additional information regarding the Federal Activities Inventory Reform Act (FAIR Act) and its implementation may be obtained at the OMB home page. The online address (URL) http://www.whitehouse.gov/OMB/procurement/fair-index.html. Paper copies of this information can also be obtained by contacting the Office of Federal Procurement Policy, NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Telephone No. (202) 395–7579.

FOR FURTHER INFORMATION CONTACT: Mr. David C. Childs, Office of Federal Procurement Policy, NEOB Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Telephone No. (202) 395–6104.

SUPPLEMENTARY INFORMATION:

Background

The activities of most Federal agencies can be divided into two categories, *program activities*, which provide goods and services directly to the agency mission recipients, e.g., Federal transfers of funds, grants, services and credit to the public and *support activities*, which provide administrative, professional and logistical support to an agency itself in meeting its mission requirements.

The number and amount of support activities are wide-ranging. They include personnel services; safety and health services; security; legal services; financial management services; information technology, automated data processing, and communications services; mail and messenger services; public affairs; publications, reproduction, graphics, and video services; library services; scientific facilities; research and analytical services; office and commissary supplies; office and grounds maintenance; procurement and contracting services; services to acquire, maintain, rent, and operate plant and equipment; and more.

Many support activities are financed by their own direct appropriations and provided to the programs, without charge, in their own agency and even to other agencies. Others are provided for a price by agency franchise, working capital, or other revolving funds on a reimbursable basis. Even when a reimbursable rate or price is charged by a providing agency, it may not cover the full cost of the goods and services provided to programs—in part because the support activity agencies themselves are not charged for the full cost of the resources they use or get some financing from direct appropriations, and in part because their prices may include cross-subsidies and other pricing strategies to expand their volume of business.

It is for this reason that the March 1996 A–76 Supplemental Handbook introduced, for the first time, the requirement to compete for new or expanded reimbursable work on the basis of an A–76 cost comparison. A–76 competitions can be a key driver to encourage agencies to understand the real cost of their programs. They also serve to invite private sector and other public offerors into the mix of possible offerors, by competing on a level playing field.

However, the March 1996 A–76 Supplemental Handbook did not require reimbursable support service providers or their customers to undergo competition for this work on a recurring basis. In effect, while competitions for work that is performed by contract are on a recurring 3–5 year review cycle, work performed by a reimbursable support activity provider (ISSA) has not been required to undergo recurring competition once that agency is awarded the work. In addition, a policy decision was made that the March 1996 A–76 Supplemental Handbook would not require recurring competitions for existing reimbursable support activity work—work that was already performed under an ISSA before October 1, 1997. As a result, a large and increasing amount of commercial work is being performed under reimbursable service agreements without the benefits of recurring competition. These reimbursable service agreements are not competing with the private sector or with other public offerors who might be able to provide higher levels of service at less cost.

As a result, OMB hereby proposes to revise the A–76 Supplemental Handbook at Part 1, Chapter 2 paragraph 5 and paragraph 5.a, to delete the "grandfathering clauses" that permit reimbursable agreements for commercial services to continue indefinitely and without competition and to replace them with a requirement that all ISSA's be recompeted every 3–5 years or as otherwise permitted by related procurement regulations for comparable types of commercial work (see Competition-in-Contracting Act (CICA) and the Federal Acquisition Regulations). OMB recognizes that the burden of this requirement falls to the customer or consuming agency to conduct these competitions. It also falls to the prospective reimbursable service provider to submit an A–76 comparable offer, in accordance with Part 1, Chapter 2 paragraph B, for the renewal of existing service agreements or for the award of new or expanded work.

The proposed recurring ISSA competition requirement would not apply—at this time—to reimbursable support agreements within a single agency. The head of the agency must maintain flexibility to manage mission resources. The proposed competition requirement would only apply to reimbursable agreements between one department or executive agency and

another non-mission agency, e.g., between the Environmental Protection Agency and the Department of Commerce, between the Agriculture Department's National Finance Center and the Department of Justice or between the Office of Personnel Management and the Department of Housing and Urban Development for the provision of background investigation services. It would not apply to services provided within the reimbursable service providers host agency or any such agreement within the Department of Defense.

OMB also recognizes that the proposed requirement to conduct competitions on a level playing field and on the basis of the full cost of performance to the taxpayer poses other budgetary challenges. The President's FY 2002 Budget includes a proposal to integrate performance and budget data. Three major changes are presently envisioned. They include: (1) identifying high quality outcome measures, accurately monitoring the performance of programs, and integrating this presentation with associated cost, (2) changes to create a market based government, of which this initiative is a part, to open the government's activities to more competition, and to require agencies to budget for costs in a way that will simplify cost comparison for A–76, competition, and (3) full integration of financial (finance, budget, and cost), program, and oversight information, and processes. The government's chief financial officers have endorsed as a long-term goal that program and financial officers work in partnership, to achieve the full integration of financial (finance, budget, and cost), program, and oversight information and processes. The Administration will soon transmit legislative proposals to support changes in the way costs are charged in the budget to permit the consideration of full budget costs in a cost comparison. However, in the interim, while competitions and the decisions to award shall be based upon comparisons conducted in accordance with the A–76 Revised Supplemental Handbook, the reimbursable costs charged to a customer agency, if a public reimbursable service provider wins such a competition, will rely on budget based reimbursable rates, prepared under current law.

OMB requests comment on the proposed revisions.

Sean O'Keefe,

Deputy Director.

Executive Office of the President

Office of Management and Budget

[Circular No. A–76 (Revised) Proposed Transmittal Memorandum No. 24]

June 26, 2001.

To the Heads of Executive Departments and Agencies

From: Sean O'Keefe, Deputy Director

Subject: Performance of Commercial Activities

This Transmittal Memorandum implements changes to the OMB Circular A–76 Revised Supplemental Handbook in furtherance of the President's FY 2002 Budget Blueprint commitment to expand the level of competition for the acquisition of commercial support work required by the Federal Government and to establish a competitive baseline in preparation for the integration of other budgeting, performance and accountability initiatives. The March 1996 Revised Supplemental Handbook was issued through Transmittal Memorandum No. 15 (61 FR 14338). The March 1996 Revised Supplemental Handbook was further revised to implement the requirements of the Federal Activities Inventory Reform Act through Transmittal Memorandum No. 20 (64 FR 33927) and Transmittal Memorandum No. 22 (65 FR 54568). Transmittal Memorandum No. 23 (66 FR 14943) provided updated labor and non-labor related escalation factors for use in A–76 cost comparisons.

OMB is making two changes to the A–76 Revised Supplemental Handbook. First, Part 1, Chapter 2, paragraph 5 and paragraph 5.a. are deleted. Paragraph 5 has permitted agencies to consolidate administrative, logistical and other commercial support activities through the transfer of work to Inter-Service Support Agreements (ISSAs), within and between agencies, without cost comparison if the consolidation was accomplished prior to October 1, 1997, and if the consolidation did not involve the conversion of work to or from in-house or contract performance. Paragraph 5.a., has exempted existing reimbursable support work and the renewal of related ISSAs from the cost comparison requirements of the Circular. However, paragraph 5.a. also established a government-wide requirement that all new and expanded ISSAs shall be justified on the basis of a cost comparison, conducted in accordance with the requirements of the Circular and Supplemental Handbook, unless as otherwise provided by the Supplemental Handbook or by law.

In order to emphasize the need to expand the level of competition required and to establish a consistent baseline for the acquisition of commercial support, OMB is revising Part 1, Chapter 2, paragraph 5, to read as follows:

"5. Reimbursable support service providers within the Federal Government are providing a large and an increasing amount of commercial work to Federal program activities (customers) under reimbursable service agreements and without the benefits of recurring competitions. These ISSAs are not competing with the private sector or with other public offerors who might be able to provide higher levels of service at less cost. Therefore, not later than October 1, 2001, each customer agency shall establish a recurring schedule for all work performed for it on a reimbursable basis by another agency for competition. ISSAs shall be recompeted every 3–5 years or as otherwise permitted by related procurement regulations for comparable types of commercial work (see Competition-in-Contracting Act (CICA) and the Federal Acquisition Regulations). These competitions shall permit offers from the private sector, the current reimbursable service provider and other public offerors, as appropriate. In addition, all new or expanded work required by a customer agency shall be submitted to competition, as provided in this Chapter."

A conforming change is also hereby made to Part 1, Chapter 2, paragraph B.1, as follows: "1. The prospective providing agency will furnish the requesting agency a firm price or reimbursable rate for the existing, new or expanded workload * * *."

This change is effective immediately. Current A–76 and FAIR Act implementation guidance can be accessed at OMB's home page at:
http://www.whitehouse.gov/OMB/procurement/fair-index.html.

[FR Doc. 01–16480 Filed 6–29–01; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Draft Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of extension of public comment period.

SUMMARY: On May 2, 2001, OMB published a notice and request for comments for its Draft Report to Congress on the Costs and Benefits of Federal Regulations. The comment period was scheduled to end on July 2, 2001. This notice extends the public

comment period on the draft report to August 15, 2001.

DATES: *Comment Due Date:* August 15, 2001.

ADDRESSES: Comments on this draft report should be addressed to John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW., Washington, DC 20503.

You may submit comments by regular mail, by facsimile to (202) 395–6974, or by electronic mail to *jmorrall@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can review the Report on the Internet at: *http://www.whitehouse.gov/omb/fedreg/cb_report_notice.pdf*.

You may also request a copy from John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW., Washington, DC 20503. Telephone: (202) 395–7316. E-mail: *jmorrall@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: On May 2, 2001, OMB published in the **Federal Register** (66 FR 22041) a notice and request for comment for its Draft Report to Congress on the Costs and Benefits of Federal regulations. The comment period on the draft report was scheduled to end July 2, 2001. Members of the public and Congress have asked for additional time to allow the public a better opportunity to participate in the comment process. Accordingly, OMB has decided to extend the public comment period on the draft report to August 15, 2001.

Donald R. Arbuckle,

Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 01–16690 Filed 6–29–01; 1:02 pm]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established under the Excepted Service provisions of 5 CFR part 213 on April 11, 2001, (66 FR 18824). Individual authorities established under Schedule C during March, April and May 2001, appear in the listing below. There were no Schedule C approvals for February 2001. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule C

The following Schedule C authorities were established during March, April and May 2001:

Department of Agriculture

Special Assistant to the Under Secretary for Farm and Foreign Agricultural Service. Effective May 22, 2001.

Special Assistant to the Under Secretary for Natural Resources and Environment. Effective May 22, 2001.

Confidential Assistant to the Under Secretary for Food, Nutrition and Consumer Services. Effective May 30, 2001.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective May 30, 2001.

Confidential Assistant to the Under Secretary for Research, Education and Economics. Effective May 30, 2001.

Commission on Civil Rights

Special Assistant to the Commissioner. Effective March 31, 2001.

Department of Commerce

Legislative Specialist for National Oceanic and Atmospheric Administration and Environment to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective April 30, 2001.

Intergovernmental Affairs Specialist to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective May 2, 2001.

Legislative Specialist for Technology and Telecommunications to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective May 2, 2001.

Director, Office of External Affairs to the Secretary of Commerce. Effective May 2, 2001.

Press Secretary to the Director of Public Affairs. Effective May 3, 2001.

Special Assistant to the Assistant Secretary of Commerce, Director General of the U.S. and Foreign Commercial Service. Effective May 8, 2001.

Special Assistant to the Director, Office of White House Liaison. Effective May 9, 2001.

Deputy Director to the Director, Office of Public Affairs. Effective May 9, 2001.

Department of Education

Confidential Assistant to the Chief of Staff. Effective May 21, 2001.

Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective May 21, 2001.

Confidential Assistant to the Chief of Staff. Effective May 21, 2001.

Confidential Assistant to the Chief of Staff. Effective May 22, 2001.

Confidential Assistant to the Director, Office of Public Affairs. Effective May 24, 2001.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective May 24, 2001.

Steward to the Chief of Staff. Effective May 24, 2001.

Special Assistant (White House Liaison) to the Chief of Staff. Effective May 24, 2001.

Department of Energy

Special Assistant to the Secretary of Energy. Effective May 8, 2001.

Staff Assistant to the Director, Office of Scheduling and Advance. Effective May 8, 2001.

Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 8, 2001.

Special Assistant to the Director, Civilian Radioactive Waste Management. Effective May 8, 2001.

Special Assistant to the Director, Office of Public Affairs. Effective May 8, 2001.

Special Assistant to the Director, Office of Scheduling and Advance. Effective May 8, 2001.

Special Assistant to the General Counsel. Effective May 8, 2001.

Special Assistant to the Deputy Assistant Secretary for Intergovernmental and External Affairs. Effective May 8, 2001.

Special Assistant to the Director, Office of Public Affairs. Effective May 8, 2001.

Special Assistant to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective May 9, 2001.

Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 9, 2001.

Special Advisor to the Chief of Staff. Effective May 29, 2001. Special

Assistant to the Administrator, Energy Information Administration. Effective May 29, 2001.

Deputy Director to the Director, Office of Public Affairs. Effective May 29, 2001.

Special Assistant to the Director, Office of Scheduling and Advance. Effective May 30, 2001.

Department of Health and Human Services

Special Assistant to the Secretary of Health and Human Services. Effective May 22, 2001.

Special Outreach Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective May 30, 2001.

Department of Housing and Urban Development

Staff Assistant to the Assistant Secretary for Public Affairs. Effective May 22, 2001.

Deputy Chief of Staff for Operations and Intergovernmental Relations to the Chief of Staff. Effective May 22, 2001.

Deputy Chief of Staff for Policy and Programs to the Chief of Staff. Effective May 22, 2001.

Staff Assistant to the Assistant Secretary for Administration. Effective May 22, 2001.

Special Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations. Effective May 24, 2001.

Department of the Interior

White House Liaison to the Deputy Chief of Staff. Effective April 11, 2001.

Special Executive Assistant to the Secretary of the Interior. Effective May 17, 2001.

Director of Scheduling and Advance to the Deputy Chief of Staff. Effective May 17, 2001.

Department of Justice

Counsel to the Assistant Attorney General, Office of Policy Development. Effective May 18, 2001.

Special Assistant to the Deputy Attorney General. Effective May 29, 2001.

Attorney Advisor to the Assistant Attorney General, Civil Division. Effective May 29, 2001.

Confidential Assistant to the Attorney General. Effective May 30, 2001.

Department of Labor

Director of Communications to the Assistant Secretary for Public Affairs. Effective April 18, 2001.

White House Liaison to the Secretary of Labor. Effective May 8, 2001.

Staff Assistant to the Chief of Staff. Effective May 9, 2001.

Staff Assistant to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective May 18, 2001.

Staff Assistant to the Executive Secretary. Effective May 30, 2001.

Department of the Navy (DOD)

Special Assistant to the Secretary of the Navy. Effective April 23, 2001.

National Credit Union Administration

Special Assistant for Public Affairs to the Chairman, National Credit Union Administration. Effective April 23, 2001.

Department of Transportation

Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective May 30, 2001.

Special Assistant for Scheduling and Advance to the Secretary of Transportation. Effective May 30, 2001.

Special Assistant to the Secretary of Transportation. Effective May 30, 2001.

Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective May 30, 2001.

Department of the Treasury

Deputy Assistant Secretary (Public Liaison) to the Assistant Secretary (Public Affairs). Effective April 18, 2001.

Deputy Director to the Director of Scheduling. Effective April 27, 2001.

Special Assistant to the Assistant Secretary for Public Affairs. Effective May 8, 2001.

Deputy to the Assistant Secretary, Legislative Affairs. Effective May 9, 2001.

Special Assistant to the Director of Scheduling. Effective May 18, 2001.

Environmental Protection Agency

Special Assistant to the Associate Administrator for Congressional and Intergovernmental Relations. Effective May 21, 2001.

Special Assistant to the Administrator. Effective May 22, 2001.

Special Assistant to the Administrator. Effective May 22, 2001.

Special Assistant to the Associate Administrator for Communications, Education and Media Relations. Effective May 22, 2001.

Director, Office of Communications to the Associate Administrator for Communications, Education and Media Relations. Effective May 24, 2001.

Federal Communications Commission

Chief, Consumer Information Bureau to the Chairman, Federal Communications Commission. Effective May 9, 2001.

Office of the United States Trade Representative

Special Assistant to the United States Trade Representative. Effective April 18, 2001.

Confidential Assistant to the United States Trade Representative. Effective May 30, 2001.

Deputy Assistant United States Trade Representative for Congressional Affairs to the Assistant United States Trade Representative. Effective May 30, 2001.

United States Tax Court

Trial Clerk to a Judge. Effective April 3, 2001.

Secretary (Confidential Assistant) to a Judge. Effective April 4, 2001.

Trial Clerk to a Judge. Effective March 12, 2001.

Official Residence of the Vice President

Residence Manager and Social Secretary to the Assistant to the Vice President and Chief of Staff to Mrs. Cheney. Effective May 17, 2001.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Steven R. Cohen,

Acting Director.

[FR Doc. 01–16577 Filed 6–29–01; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

[Extension:
Rules 17Ad–6 and 17Ad–7; SEC File No. 270–151; OMB Control No. 3235–0291]

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rules 17Ad–6 and 17Ad–7: Recordkeeping requirements for transfer agents Rule 17Ad–6 under the Securities Exchange Act of 1934 (15 U.S.C. 78b *et seq.*) requires every registered transfer agent to make and keep current records about a variety of

information, such as: (1) Specific operational data regarding the time taken to perform transfer agent activities (to ensure compliance with the minimum performance standards in Rule 17Ad–2 (17 CFR 240.17Ad–2)); (2) written inquiries and requests by shareholders and broker-dealers and response time thereto; (3) resolutions, contracts or other supporting documents concerning the appointment or termination of the transfer agent; (4) stop orders or notices of adverse claims to the securities; and (5) all canceled registered securities certificates.

Rule 17Ad–7 under the Securities Exchange Act of 1934 (15 U.S.C. 78b *et seq.*) requires each registered transfer agent to retain the records specified in Rule 17Ad–6 in an easily accessible place for a period of six months to six years, depending on the type of record or document. Rule 17Ad–7 also specifies the manner in which records may be maintained using electronic, microfilm, and microfiche storage methods.

These recordkeeping requirements ensure that all registered transfer agents are maintaining the records necessary to monitor and keep control over their own performance and for the Commission to adequately examine registered transfer agents on an historical basis for compliance with applicable rules.

We estimate that approximately 1,000 registered transfer agents will spend a total of 500,000 hours per year complying with Rules 17Ad–6 and 17Ad–7. Based on average cost per hour of $50, the total cost of compliance with Rule 17Ad–6 is $25,000,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: June 22, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–16555 Filed 6–29–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25050; 813–238]

Community Investment Partners IV, L.P., LLLP and The Jones Financial Companies, L.L.L.P.; Notice of Application

June 26, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") exempting the applicants from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations under those sections.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited liability companies or other entities ("Partnerships") formed for the benefit of key employees of The Jones Financial Companies L.L.L.P. and its affiliates from certain provisions of the Act. Each Partnership will be an "employees' securities company" as defined in section 2(a)(13) of the Act.

Applicants: Community Investment Partners IV, L.P., LLLP (the "Initial Partnership") and The Jones Financial Companies, L.L.L.P ("Jones Financial").

Filing Date: The application was filed on March 1, 2000 and amended on May 21, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 23, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 12555 Manchester Road, St. Louis, MO 63131.

FOR FURTHER INFORMATION CONTACT: Sara Crovitz, Senior Counsel, at (202) 942–0667 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0101, (202) 942–8090.

Applicants' Representations

1. Jones Financial is a full-service provider of securities brokerage, insurance brokerage, planning and other financial services and also has a specialized investment banking practice. Jones Financial is a member of the New York, American, Chicago, Toronto, Montreal and London stock exchanges and is a broker-dealer registered under the Securities Exchange Act of 1934 (the "1934 Act"). Jones Financial and its affiliates, as defined in rule 12b–2 under the 1934 Act, are referred to collectively as the "Jones Financial Companies." Community Investment Partners IV, L.P., LLLP is a limited partnership registered under the laws of the state of Missouri.

2. Applicants intend to establish investment programs for the benefit of certain individual current or former partners of the Jones Financial Companies. The Initial Partnership and other partnerships that may in the future be offered to the same class of investors will be limited liability companies or other entities formed under the laws of the state of Missouri, Delaware or another jurisdiction (such other partnerships or other investment vehicles being referred to as "Other Partnerships" and together with the Initial Partnerships, the "Partnership(s)"). Each Partnership is or will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act and will operate as a closed-end management investment company. The goal of the Partnerships is to create investment opportunities that are competitive with those at other brokerage, insurance, investment banking and financial services firms and to facilitate recruitment and retention of high

caliber professionals. Participation in a Partnership will be voluntary.

3. CIP Management L.P., LLLP, which is controlled by Jones Financial, will act as the general partner of the Initial Partnership (together with any Jones Financial Companies entity that acts as the general partner of a Partnership, the "General Partner"). The General Partner of the Initial Partnership will not be registered under the Investment Advisers Act of 1940 (the "Advisers Act") pursuant to an exemption from registration set forth in section 203(b)(3) of the Advisers Act and rule 203(b)(3)–1 under the Advisers Act, but will register as an investment adviser if required under applicable law. The General Partner, or another Jones Financial Companies entity, will manage, operate and control each of the Partnerships. The General Partner will be authorized to delegate to another Jones Financial Companies entity or to a committee of Jones Financial Companies employees such management responsibilities.

4. Limited partner interests in the Partnerships ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "1933 Act"), or Regulation D under the 1933 Act and will be sold only to "Eligible Employees" and "Qualified Participants" (collectively "Participants," in each case as defined below). Prior to offering Interests, the General Partner must reasonably believe that each Eligible Employee or Eligible Family Member, as defined below, is a sophisticated investor capable of understanding and evaluating the risks of participating in such Partnership without the benefit of regulatory safeguards and can afford a complete loss of such investment. An Eligible Employee is an individual who is a former or current partner of Jones Financial Companies and who meets the standards of an "accredited investor" under Rules 501(a)(5) or 501(a)(6) of Regulation D, or one of no more than 35 partners who meet certain salary and other requirements ("Other Investor").

5. An Other Investor will be permitted to invest in a Partnership if each such person (a) is a "knowledgeable employee," as defined in rule 3c–5 under the Act, of such Partnership (with the Partnership treated as though it were a "covered company" for purposes of such rule) or (b) has a graduate degree in business, law or accounting; has a minimum of five years of consulting, investment banking or similar business experience; and has a reportable income from all sources in the two calendar years immediately preceding the Other Investor's participation in the Partnership of at least $100,000 and will have a reasonable expectation of reportable income from all sources of at least $140,000 in each year in which the Other Investor will be committed to make investments in a Partnership. In addition, an Other Investor qualifying under (b) in the immediately preceding sentence will not be permitted to invest or commit to invest in any calendar year more than 10% (or such lesser percentage as shall be determined by the General Partner and set forth in the private placement memorandum relating to such Partnership) of such person's income from all sources for the immediately preceding calendar year in the aggregate in a Partnership and in all other Partnerships in which such Other Investor has previously invested.

6. A Qualified Participant is an Eligible Family Member or Qualified Entity (in each case as defined below) of an Eligible Employee. An "Eligible Family Member" is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. An Eligible Family Member, if such individual or entity is purchasing an Interest from a partner of the Partnership ("Partner" or "Participant") or directly from the Partnership, must be an accredited investor. A "Qualified Entity" is (a) a trust of which the trustee, grantor and/or beneficiary is an Eligible Employee; (b) a partnership corporation or other entity controlled by an Eligible employee [1] or (c) a trust or other entity established solely for the benefit of Eligible Family Members of an Eligible Employee. A Qualified Entity must be either an accredited investor or an entity for which an Eligible Employee or Eligible Family Member is a settlor and principal investment decision-maker.

7. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send annual reports, which will contain audited financial statements, to each Participant within 120 days after the end of the fiscal year of each of the Partnerships or as soon as practicable thereafter. In addition, each Participant will receive a copy of Schedule K–1 showing the Participant's share of income, credits, deductions and other tax items.

8. The specific investment objectives and strategies for a particular Partnership will be set forth in a private placement memorandum relating to the Interests offered by the Partnership and each Eligible Employee and Qualified Participant will receive a copy of the private placement memorandum and the limited partnership agreement (or other constitutive document) of the Partnership.

9. Interests in each Partnership will be non-transferable except with the prior written consent of the General Partner. No person or entity will admitted into a Partnership unless such person is an Eligible Employee, Qualified Participant of an Eligible Employee or a Jones Financial Companies entity. Interests in each Partnership will not be subject to repurchase, cancellation or redemption. No sales load or similar fee of any kind will be charged in connection with the sale of Interests. The General Partner, the Jones Financial Companies or any employees of the General Partner or the Jones Financial Companies will be entitled to receive any compensation from, or a performance-based fee ("carried interest") [2] based on, the gains and losses of the investment program or the Partnership's investment portfolio.

10. Subject to the terms of the applicable limited partnership agreement (or other constitutive documents), a Partnership will be permitted to enter into transactions involving (a) a Jones Financial Companies entity, (b) a portfolio company, (c) any Partner or person or entity affiliated with a Partner, (d) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with Jones Financial Companies and over which a Jones Financial Companies entity exercises investment discretion (a "Third-Party Fund"), or (e) any partner

[1] The inclusion of partnerships, corporations or other entities that are controlled by Eligible Employees in the definition of "Qualified Entity" is to enable such individuals to make investments in the Partnerships through personal investment vehicles for the purpose of implementing their personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between Jones Financial Companies and these investment vehicles.

[2] A "carried interest in an allocation to the General Partner based on the net gains of an investment program and is in addition to the amount that is allocable to the General Partner in proportion to its capital contributions. With respect to a General Partner that is registered under the Advisers Act, any carried interest may be charged only if it is permitted under Rule 205–3 under the Advisers Act; with respect to a General Partner that is not registered under the Advisers Act, any carried interest charged will comply with section 205(b)(3) of the Advisers Act (with the Partnership treated as though it were a business development company solely for purposes of that section). The General Partner of the Initial Partnership is not eligible to register as an investment adviser under the Advisers Act pursuant to section 203A(1) of the Advisers Act.

or other investor in a Third-Party Fund that is not affiliated with Jones Financial Companies ("Third-Party Investor"). These transactions may include a Partnership's purchase or sale of an investment or an interest from or to any Jones Financial Companies entity or Third-Party Fund, acting as principal. Prior to entering these transactions, the General Partner must determine that the terms are fair to the Partners.

11. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds). A Partnership will not acquire any security issued by a registered investment company if immediately after such acquisition, such Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

12. A Jones Financial Companies entity, acting as an agent or broker, may receive placement fees, advisory fees or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities; provided that such placement fees, advisory fees or other compensation can be deemed "reasonable and customary" Fees or other compensation will be deemed "reasonable and customary" only if (a) the Partnership is purchasing or selling securities alongside other unaffiliated third parties (including Third-Party Funds), (b) the fees or other compensation that are being charged to the Partnership are also being charged to the unaffiliated third parties (including Third-Party Funds), and (c) the amount of securities being purchased or sold by the Fund does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties (including Third-Party Funds). Jones Financial Companies entities (including the General Partner) also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities and may otherwise engage in normal business activities that conflict with the interests of the Partnerships.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employee's securities companies from the provisions of the Act to the extent that the exemption is consistent with the production of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exemptions an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g) and (j), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations under those sections.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit (a) a Jones Financial Companies entity or a Third-Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (b) any Partnership to invest in or engage in any transaction with any entity acting as principal, (1) in which the Partnership, any company controlled by the Partnership, or any Jones Financial Companies entity, or a Third-Party Fund has invested or will invest, or (2) with which the Partnership, any company controlled by the Partnership, or any Jones Financial Companies entity, or a Third-Party Fund is or will become affiliated; and (c) a Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purpose of the Partnerships. Applicants state that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with Jones Financial Companies. Applicants also state that, as professionals employed in the securities and insurance brokerage, investment banking, investment management or financial services businesses, or in the administrative, financial, accounting, legal or operational activities related thereto, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and Jones Financial Companies will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint enterprise or other joint arrangement unless authorized by the Commission. Applicants request approval to permit affiliated persons of each Partnership or affiliated persons of any of these persons, to participate in any joint arrangement in which the Partnership or a company controlled by such Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with Jones Financial Companies or Jones Financial Companies' large geographic scope, capital resources and experience in business. In addition, attractive investment opportunities of the types considered by a Partnership often require each participant in the transaction to make available funds in an amount that may be substantially greater than may be available to such Partnership alone. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in such opportunities may be to co-invest with other persons, including affiliates. Applicant note that each Partnership primarily will be organized for the benefit of the limited partner employee participants, as an incentive for them to remain with Jones Financial Companies and for the generation and maintenance of goodwill. Applicants believe that if co-investments with Jones Financial Companies are prohibited, the appeal of a Partnership for Eligible Employees will be significantly diminished. Applicants assert that

Eligible Employee wish to participate in such co-investment opportunities because they believe that (a) the resources of Jones Financial Companies enable it to analyze investment opportunities to an extent that individual employees would have neither the time nor resources to duplicate, (b) investments made by Jones Financial Companies will not be generally available to investors even of the financial status of the Eligible Employees, and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants state that the concern that permitting co-investments by Jones Financial Companies, on the one hand, and a Partnership on the other, might lead to less advantageous treatment of the Partnership should be mitigated by the fact that Jones Financial Companies, in addition to its stake through the General Partner and its co-investment, will be acutely concerned with its relationship with the personnel who invest in such Partnership and senior officials and directors of Jones Financial Companies entities will be investing in such Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause the Partnerships to forego investment opportunities simply because a Participant or other affiliated person of the Partnership (or any affiliate of the affiliated person) made or may make a similar investment.

8. Co-investments with Third-Party Funds, or by a Jones Financial Companies entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3 below. Applicants note that it is common for unaffiliated investors in Third-Party Funds to require that Jones Financial Companies invest their own capital in Third-Party Fund investments, and that such Jones Financial Companies investments will be subject to substantially the same terms as those applicable to the Third-Party Fund. Applicants state that it is important that the interests of the Third-Party Funds take priority over the interests of the Partnerships, and that the activities of the Third-Party Funds not be burdened or otherwise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third-Party Fund is fundamentally different from such Partnership's relationship with Jones Financial Companies. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by Jones Financial Companies in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships and a Third-Party Fund.

9. Section 17(e) of the Act and rule 17e–1 under the Act limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a Jones Financial Companies entity (including the General Partner) that acts as an agent or broker, to receive placement fees, advisory fees or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that such fees are deemed "reasonable and customary." Applicants state that for the purposes of the application, fees or other compensation that is charged or received by a Jones Financial Companies entity will be deemed "reasonable and customary" only if (a) the Partnership is purchasing or selling securities alongside other unaffiliated third parties (including Third-Party Funds) who are also similarly purchasing or selling securities, (b) the fees or other compensation that are being charged to the Partnership are also being charged to the unaffiliated third parties (including Third-Party Funds), and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties (including Third-Party Funds). Applicants assert that because Jones Financial Companies does not wish to appear as if the Partnership is being treated in a more favorable manner, compliance with section 17(e) would prevent a Partnership from participating in a transaction where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to a Jones Financial Companies entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of the directors who are not "interested persons" (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees or other remuneration. Applicants request an exemption from rule 17e–1 to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not "interested persons" take actions and make approvals as set forth in the rule. Applicants state that because all the directors of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1. Applicants state that each Partnership will comply with rule 17e–1 by having a majority of the directors of the General Partner take such actions and make such approvals as are set forth in rule 17e–1. Applicants state that each Partnership will comply with all other requirements of rule 17e–1.

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to the extent necessary to permit a Jones Financial Companies entity to act as custodian without a written contract. Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent account conduct periodic verifications. Applicants state that, because of the community of interest between Jones Financial Companies and the Partnerships and the existing requirement of an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f–1.

12. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants requests relief to permit the General Partner's directors, who may be deemed interested persons, to take actions and make determinations as set forth in the rule. Applicants state that, because all of the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the directors of the General Partner take such actions and make such approvals as are set forth in rule 17g–1. Applicants also state that each

Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) and rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of the investment company report personal securities transaction. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to a Partnership and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership or others who may be deemed members of an advisory board of such Partnership from filing Forms 3, 4 and 5 under section 16(a) of the 1934 Act with respect to their ownership of Interests in such Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests are severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicant's Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the "Section 17 Transactions") will be effected only if the General Partner determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners of such Partnership and do not involve overreaching of such Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners of such Partnership, such Partnership's organizational documents and such Partnership's report to its Partners.

In addition, the General Partner of each Partnership will record and preserve a description of Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based and the basis for the findings. All records relating to an investment program will be maintained until the termination of such investment program and at least two years thereafter, and will be subject to examination by the Commission and its staff.[3]

2. In connection with the Section 17 Transactions, the General Partner of each Partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Partnership, or any affiliated person of such a person, promoter or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of such Partnership in any investment in which a "Coinvestor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, if the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which such Partnership and the Coinvestor are participants, unless any such Coinvestor, prior to disposing of all or part of its investment (a) gives such General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless such Partnership has the opportunity to dispose of such Partnership's investment prior to or concurrently with, and on the same terms as, and pro rata with the Coinvestor. The term "Coinvestor" with respect to any Partnership means any person who is: (a) An "affiliated person" (as such term is defined in section 2(a)(3) of the Act) of such Partnership (other than a Third-Party Fund); (b) Jones Financial Companies; (c) an officer or director of Jones Financial Companies; or (d) an entity (other than a Third-Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by a Coinvestor: (a) To its direct or indirect wholly owned subsidiary, to any company (a "parent") of which such Coinvestor is a direct or indirect wholly owned subsidiary, or to a direct or indirect wholly owned subsidiary of its parent; (b) to immediate family members of such Coinvestor or a trust or other investment vehicle established for any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the 1934 Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the 1934 Act and rule 11Aa2–1 under the 1934 Act; or (e) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintain and preserve, for the life of such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in such Partnership, and each annual report of such Partnership required to be sent to such Participants, and agree that all such records will be subject to examination by the Commission and its staff.[4]

5. The General Partner of each Partnership will send to each Participant in such Partnership who had an interest in any capital account of such Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by such Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of such

[3] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[4] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of such Partnership will send a report to each person who was a Participant in such Partnership at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Participant of his or its federal and state income tax forms.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with such Partnership by reason of a 5% or more investment in such entity by a Jones Financial Companies director, officer or employee, such individual will not participate in such Partnership's determination of whether or not to effect such purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–16556 Filed 6–29–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25049; 812–12478]

UBS PaineWebber Inc. et al.; Notice of Application

June 26, 2001.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application to amend a prior order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") exempting applicants from sections 17(a) and 17(e) of the Act, and under section 17(d) of the Act and rule 17d–1 permitting certain joint transactions.

SUMMARY OF THE APPLICATION: Applicants seek an order ("Amended Order") to amend a prior order that permits certain registered investment companies to use cash collateral from securities lending transactions and uninvested cash to purchase shares of an unregistered investment vehicle formed and advised by UBS PaineWebber Inc. ("UBS PaineWebber") or Brinson Advisor, Inc. ("Brinson Advisors") or a person controlling, controlled by, or under common control with UBS-PaineWebber and Brinson Advisors ("New Fund"); UBS Paine Webber and Brinson Advisors to accept fees from certain other registered investment companies; UBS PaineWebber and certain affiliated broker-dealers to borrow portfolio securities from certain affiliated registered investment companies and to receive brokerage commissions from, and engage in principal securities transactions with, the other registered investment companies ("Prior Order").[1]

APPLICANTS: UBS PaineWebber; Brinson Advisors; UBS PaineWebber Cashfund, Inc., Brinson Managed Investments Trust, UBS PaineWebber Managed Municipal Trust, Brinson Master Series, Inc., Brinson Financial Services Growth Fund Inc., UBS PaineWebber RMA Money Fund, Inc., UBS PaineWebber RMA Tax-Free Fund, Inc., Brinson Securities Trust, Brinson Series Trust, Strategic Global Income Fund, Inc., 2002 Target Term Trust Inc., All-American Term Trust Inc., Global High Income Dollar Fund Inc., Investment Grade Municipal Income Fund Inc., Insured Municipal Income Fund Inc., UBS PaineWebber Municipal Money Market Series, Brinson Investment Trust, Liquid Institutional Reserves, PaineWebber PACE Select Advisors Trust, Brinson Index Trust, Managed High Yield Plus Fund Inc., and Brinson Money Series (collectively, the "Affiliated Funds").

FILING DATES: The application was filed on March 15, 2001 and amended on June 13, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 23, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 1285 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 460 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Each Affiliated fund is registered as an open-end or closed-end investment company under the Act. USB PaineWebber, a wholly owned subsidiary of UBS Americas Inc., currently serves as investment adviser and Brinson Advisors, also a wholly owned subsidiary of USB Americas Inc., serves as sub-adviser to USB PaineWebber Cashfund, Inc., UBS PaineWebber RMA Money Fund, Inc., UBS PaineWebber RMA Tax-Free Fund, Inc., UBS PaineWebber Managed Municipal Trust, UBS PaineWebber Municipal Money Market Series and Liquid Institutional Reserves. Brinson Advisors serves as investment adviser to the remaining Affiliated Funds.[2] UBS PaineWebber and Brinson Advisors are broker-dealers registered under the Securities Exchange Act of 1934, and investment advisers registered under the Investment Advisers Act of 1940.

2. On July 21, 1998, the Commission issued the Prior Order under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a) and 17(e) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act, permitting certain joint transactions. The Prior Order permits: (a) The Affiliated Funds and any other registered investment company or series thereof that may invest in shares of beneficial interest ("Shares") issued by New Fund (each such other registered investment company, an "Other Fund" and collectively, the "Other Funds" and, together with the Affiliated Funds, the "Investing Funds"), to purchase and redeem Shares issued by New Fund

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[1] PaineWebber America Fund, Investment Company Act Release Nos. 23284 (June 24, 1998) (notice) and 23322 (July 21, 1998) (order).

[2] Applicants request that the Amended Order also apply to any other registered investment company or series thereof that currently is, or in the future may be, advised by UBS PaineWebber or Brinson Advisors or any other entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with, UBS PaineWebber or Brinson Advisors. All registered investment companies advised by UBS PaineWebber or Brinson Advisors or an entity controlling, controlled by, or under common control with UBS PaineWebber or Brinson Advisors that currently intend to rely on the Amended Order have been named as applicants. Any other existing or future registered investment companies that may rely on such relief in the future will do so in accordance with the terms and conditions of the application.

using cash from normal operations ("Uninvested Cash") or cash received as collateral in connection with portfolio securities lending ("Cash Collateral"), (b) New Fund to sell Shares to the Investing Funds and redeem Shares from the Investing funds, (c) UBS PaineWebber, Brinson Advisors, the Investing Funds, New Fund and the trustee/managing member of New Fund ("Trustee") to engage in certain transactions incident to the Investing Funds' investment in the Shares, (d) UBS PaineWebber and any other broker-dealer that may be controlled by or under common control with UBS PaineWebber (collectively, the "Affiliated Broker-Dealers") to borrow portfolio securities from the Affiliated Funds, (e) UBS PaineWebber and the Affiliated Broker-Dealers to engage in principal transactions in securities with the Other Funds, (f) UBS PaineWebber and the Affiliated Broker-Dealers to borrow securities from the Other Funds, (g) the Other Funds to pay, and UBS PaineWebber and the Affiliated Broker-Dealers to receive, commissions from the Other Funds for acting as brokers in connection with the purchase or sale of securities for the Other Funds, and (h) the Other Funds to pay, and UBS PaineWebber to accept, fees based on a share of the revenue generated from securities lending transactions and Brinson Advisors to accept fees for providing certain services in connection with securities lending transactions.[3]

3. New Fund is an investment vehicle that serves as an investment option for managing Cash Collateral and Uninvested Cash of the Investing Funds. New Fund operates as a private investment company and is not registered under the Act in reliance on section 3(c)(7) of the Act. Brinson Advisors currently serves as New Fund's Trustee and investment adviser. New Fund currently has one series, which operates as a money market portfolio and complies with the requirements of rule2a–7 under the Act.

4. Condition 9 to the Prior Order provides that UBS PaineWebber or Brinson Advisors will reduce its advisory fee charged to an Affiliated Fund that invests in Shares of New Fund in an amount equal to the net asset value of the Affiliated Fund's holdings in New Fund multiplied by the rate at which advisory fees are charged by Brinson Advisors to New Fund. Applicants seek to amend the Prior Order to modify condition 9 so that it would apply only with respect to an Affiliated Fund's investment of Uninvested Cash in New Fund and would not apply with respect to an Affiliated Fund's investment of Cash Collateral in New Fund. Since investment advisory fees are calculated on the net, rather than the total, assets of the Affiliated Funds, and since Cash Collateral does not increase net assets because it is offset by the liability to repay it to the borrower, the Affiliated Funds will pay no additional advisory fees with respect to investments made with Cash Collateral. Applicants will continue to comply with all the other conditions to the Prior Order.

[3] The Prior Order grants relief for the Other Funds to the extent that the Other Funds are affiliated with UBS PaineWebber, Brinson Advisors, Affiliated Broker-Dealers, or New Fund solely by reason of owning 5% or more of the shares of a series of New Fund.

Applicants' Condition

Applicants agree that condition 9 to the Prior Order is revised to read as follows:

9. With respect to any Affiliated Fund that invests Uninvested Cash in Shares of New Fund, UBS PaineWebber or Brinson Advisors will reduce its advisory fee charged to the Affiliated Fund in an amount (the "Reduction Amount") equal to the net asset value of the Affiliated Fund's Uninvested Cash invested in the New Fund multiplied by the rate at which advisory fees are charged by Brinson Advisors to the New Fund. Any fees remitted or waived pursuant to this condition will not be subject to recoupment by UBS PaineWebber or Brinson Advisors or their affiliates at a later date.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–16557 Filed 6–29–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44470; File No. SR–DTC–2001–10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated, Temporary Approval of a Proposed Rule Change to the Admission of Non-U.S. Entities as Direct Depository Participants

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 1, 2001, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated, temporary approval of the proposed rule change through May 31, 2002.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to extend the Commission's temporary approval of DTC's admission criteria for entities that are organized in a country other than the United States ("non-U.S. entities").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to extend the Commission's temporary approval of DTC's admission criteria for non-U.S. entities.[3]

The proposed rule change seeks to extend approval of established admissions criteria that permit a well-qualified foreign entity to obtain direct access to DTC's services without requiring the foreign entity to obtain financial guarantees. The policy was established by DTC in response to requests received from certain participants to consider changes in DTC's admissions policy that would allow foreign affiliates to become direct participants without having to obtain financial guarantees.

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] DTC's admission criteria for non-U.S. entities were first temporarily approved on May 16, 1997. Securities Exchange Act Release No. 38600 (May 16, 1997), 62 FR 27086. Since then, the non-U.S. admission criteria have been temporarily approved several times. Securities Exchange Act Release Nos. 40064 (June 3, 1998), 63 FR 31818; 41466 (May 28, 1999), 64 FR 30077; and 42865 (May 30, 2000), 65 FR 36188.

In November 1999, DTC admitted one non-U.S. entity as a direct participant under the standards for admission of foreign entities. DTC has received several inquiries from other non-U.S. entities and expects to admit several other foreign entities in 2001 under the standards for the admission of foreign entities. DTC is seeking an extension of the temporary approval so DTC can complete the admission of these foreign entities and gain additional experience with the new admission standards for foreign entities and the unique risks posed by the activities of foreign entities as direct DTC participants.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(F) of the Act[4] and the rules and regulations thereunder applicable to DTC because the proposed policy does not unfairly discriminate against foreign entities seeking admission as participants because it appropriately takes into account the unique risks to the depository raised by their admission.

(B) Self-Regulatory Organization's Statement on Burden on Competition

While DTC acknowledges that the proposed additional admissions criteria applicable to foreign entities may impose some additional burden, for the reasons stated above, we believe that any such burden is necessary and appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not sought or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[5] The Commission finds that the rule change is consistent with this obligation because DTC's admission criteria for non-U.S. entities has been designed in a manner that takes into account jurisdiction differences in regulatory structure and in business operations of non-U.S. entities with respect to DTC's risk control and management. Furthermore, DTC admission criteria should bind non-U.S. entities to DTC's rules and procedures in a manner similar to domestic participants and should lessen or eliminate the negative effects that jurisdictional issues could have on DTC's exercise of its rights against non-U.S. entities. Therefore, the Commission finds that the admissions criteria are designed in a manner that will assist DTC in assuring the safeguarding of securities and funds which are in its custody, control, or for which it is responsible.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day because accelerated approval will permit DTC to continue to use and study the effectiveness of its admission criteria for non-U.S. entities without interruption when the current temporary approval of these criteria expires on May 31, 2001.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–2001–10 and should be submitted by July 23, 2001.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2001–10) be, and hereby is, approved on an accelerated basis through May 31, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–16558 Filed 6–29–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44467; File No. SR–NASD–2001–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing of Additional Shares

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq has filed the proposed rule change to amend Nasdaq Marketplace Rules 4320, 4510, and 4520, regarding the listing of additional shares. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the

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[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

following criteria for inclusion in Nasdaq:

(1)–(14) No change

(15) The issuer *of any class of securities included in Nasdaq, except for American Depositary Receipts,* shall be required to notify Nasdaq on the appropriate form no later than 15 calendar days prior to:

(A)–(D) No change

(16)–(25) No change

(f) No change

Rule 4510. The Nasdaq National Market

(a) No change

(b) Additional shares

(1) The issuer of each class of security that is a domestic issue which is listed in [t]*T* he Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security.

(2) The fee in connection with additional shares shall be $2,000 or $.01 per additional share, whichever is higher, up to a maximum of [$17,500] *$22,000* per quarter and an annual maximum of [$35,000] *$45,000* per issuer. *There shall be no fee, however, for issuances of up to 49,000 additional shares per quarter.*

(3) No change

(4) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the additional shares fee prescribed herein.

(c)–(d) No change

Rule 4520. The Nasdaq SmallCap Market

(a) No change

(b) Additional Shares

(1) The issuer of each class of security that is a domestic issue which is listed in The Nasdaq SmallCap Market shall pay to The Nasdaq Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security.

(2) The fee in connection with additional shares shall be $2,000 or $.01 per additional share, whichever is higher, up to a maximum of [$17,500] *$22,000* per quarter and an annual maximum of [$35,000] *$45,000* per issuer. *There shall be no fee, however, for issuances of up to 49,000 additional shares per quarter.*

(3) No change

(4) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the additional shares fee prescribed herein.

(c)–(d) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to amend Nasdaq Marketplace Rules 4320, 4510, and 4520, regarding the listing of additional shares ("LAS Program"). These amendments include revising the fees for the listing of additional shares ("LAS"), providing the Board or its designee with the discretion to defer or waive fees relating to the LAS program, and clarifying that American Depositary Receipts are exempt from the LAS notification requirements contained in Nasdaq Marketplace Rule 4320(e)(15).

The LAS program involves notification and fee requirements for the issuance of additional shares. In January 2000, the notification process was simplified so that today issuers must notify Nasdaq only of a transaction that may implicate Nasdaq's corporate governance requirements contained in Nasdaq Marketplace Rules 4310(c)(25) and 4320(e)(21).[3] The LAS fee schedule was also amended last year to provide that the fees for the issuance of additional shares would be $0.01 per share or a minimum of $2,000, whichever is higher, based upon quarterly changes in total shares outstanding, subject to a cap of $17,500 per quarter and $35,000 per year.[4]

Since the LAS fee schedule was amended, Nasdaq has received several complaints from issuers regarding these changes. Specifically, issuers have noted that the $2,000 minimum fee results in a significant per share cost for minor issuances. Issuers have further indicated that many of these minor issuances have resulted from employees exercising stock options, a circumstance over which issuers have no control. As such, several issuers have requested that their LAS fees be waived.

In response to these concerns, Nasdaq proposes to amend Nasdaq Marketplace Rules 4510(b)(2) and 4520(b)(2) to provide a "carve-out" for issuances of up to 49,999 shares per quarter. To offset the loss in revenues resulting from this "carve-out," Nasdaq proposes to change the maximum quarterly fee from $17,500 to $22,500 and the maximum annual fee from $35,000 to $45,000. These changes will alleviate issuers' concerns regarding small issuances while maintaining the revenues generated by the current LAS fee schedule.

Nasdaq also proposes to amend Nasdaq Marketplace Rules 4510(b)(4) and 4520(b)(4) to give the Board of Directors, or its designee, the ability to defer or waive all or any part of the fees relating to the LAS program. Nasdaq believes that it is appropriate for its Board to have the ability to defer or waive LAS fees in those situations where such action would be justified to achieve an equitable result, consistent with Nasdaq's current ability to defer or waive entry and annual fees.[5]

Lastly, Nasdaq proposes to clarify the LAS notification requirement for foreign issuers. Originally, Nasdaq Marketplace Rule 4320(e)(15) excluded American Depositary Receipts (ADRs) from the LAS notification requirements for foreign issuers because it is very difficult to track the creation as well as unwinding of ADRs and their creation may not implicate any Nasdaq regulatory requirements. When the notification requirements were amended in January 2000,[6] the exclusion of ADRs was inadvertently omitted from Rule 4320(e)(15). As such, Nasdaq propbses to amend this Rule to add that ADRs are not subject to the LAS notification requirement.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) and (6) of the Act.[7] The proposed rule change is consistent with section 15A(b)(5) in that it provides for the equitable allocation of reasonable dues, fees, and other charges among issuers using the Nasdaq system. Specifically, the LAS

[3] *See* Securities Exchange Act Release No. 42351 (January 20, 2000), 65 FR 1210 (January 7, 2000).

[4] *See* Securities Exchange Act Release No. 42300 (December 30, 1999), 65 FR 4457 (January 27, 2000).

[5] *See* Nasdaq Marketplace Rules 4510(a)(3), 4510(c)(2), 4520(a)(2), and 4520(c)(2).

[6] *See* Securities Exchange Act Release No. 42351 (January 20, 2000), 65 FR 4457 (January 27, 2000).

[7] 15 U.S.C. 78*o*–3(b)(5) and (6).

program fees were adopted to fund issuer-related operations that include educational initiatives, issuer service initiatives and NASD surveillance measures.[8] The proposed rule change is also consistent with Section 15A(b)(6) in that it is designed to promote just and equitable principles of trade and does not permit unfair discrimination between customers, issuers, brokers or dealers. As previously mentioned, the LAS program fees are used to fund various operations relating to issuers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Nasdaq consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2001–38 and should be submitted by July 23, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–16559 Filed 6–29–01; 8:45 am]

BILLING CODE 8010–01–M

[8] *See* Securities Exchange Act Release No. 31586, 53 S.E.C. Docket 2 (December 11, 1992).

[9] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Public Meeting To Receive Comments on the Draft Environmental Impact Statement for Addition of Electric Generation Baseload Capacity in Franklin County, TN

AGENCIES: Tennessee Valley Authority and U.S. Air Force.

ACTION: Notice of meeting.

SUMMARY: The Tennessee Valley Authority (TVA) with the U.S. Air Force will hold a public meeting to receive comments on the Draft Environmental Impact Statement (DEIS) titled, "Addition of Electric Generation Baseload Capacity in Franklin County, Tennessee." The meeting will be held on July 10, 2001, at the University of Tennessee Space Institute Auditorium near Tullahoma, Tennessee. Registration for the meeting will begin at 5:30 p.m. Central Time and the meeting will begin at 6 p.m. Central Time. TVA staff will be available to answer questions concerning the environmental review process, the project schedule and other details of the proposed power plant. The public will then have an opportunity to provide oral or written comments on the DEIS. Comments may be submitted on comment cards available at the meeting, or subsequently mailed by the date indicated to the address provided below. Comments will also be accepted by mail or e-mail at the addresses listed below.

DATES: The meeting will be held on Tuesday, July 10 at 6 p.m. Central Time. Registration for the meeting will begin at 5:30 p.m. Central Time. Comments on the DEIS must be postmarked or e-mailed no later than July 30, 2001, to ensure consideration. Late comments will receive every consideration possible.

ADDRESSES: The meeting will be held at the Auditorium of the University of Tennessee Space Institute, 411 B. H. Goethert Parkway, Tullahoma, Tennessee. Written comments should be sent to Bruce L. Yeager, Senior Specialist, National Environmental Policy Act, Tennessee Valley Authority, Mail Stop WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499. Comments may also be e-mailed to blyeager@tva.gov.

FOR FURTHER INFORMATION CONTACT: Bruce L. Yeager, Senior Specialist, National Environmental Policy Act, Tennessee Valley Authority, Mail Stop WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

SUPPLEMENTARY INFORMATION:

Project Description

In accordance with the National Environmental Policy Act (NEPA), regulations specified in Title 40 of the Code of Federal Regulations, parts 1500–1508, and implementing procedures of the TVA and U.S. Air Force, TVA as lead agency, and the U.S. Air Force as a cooperating agency, have prepared a Draft Environmental Impact Statement on TVA's proposal to construct a natural gas-fired combined cycle power plant in Franklin County, Tennessee. TVA and the U.S. Air Force are using the EIS process and meetings, such as that currently announced, to obtain public involvement on this proposal. Public comment is invited concerning the alternatives and environmental issues addressed as a part of this DEIS.

This DEIS tiers from TVA's *Energy Vision 2020:* An Integrated Resource Plan and Final Programmatic Environmental Impact Statement. *Energy Vision 2020* was completed in December 1995 and a Record of Decision issued on February 28, 1996 (61 FR 7572). *Energy Vision 2020* analyzed a full range of supply-side and demand-side options to meet customer energy needs for the period 1995 to 2020. These options were ranked using several criteria including environmental performance. Favorable options were formulated into strategies. A group of options drawn from several effective strategies was chosen as TVA's preferred alternative. The supply-side options selected to meet peaking and baseload capacity needs through the 2005 period included: (1) Addition of simple cycle or combined cycle combustion turbines to TVA's generation system, (2) purchase of call options for peaking or baseload capacity, and (3) market purchases of peaking or baseload capacity. Because

Energy Vision 2020 identified and evaluated alternative supply-side and demand-side energy resources and technologies for meeting peak and baseload capacity needs, the present DEIS does not re-evaluate those alternatives. This DEIS focuses on the site-specific impacts of constructing and operating a combustion turbine combined cycle plant at one of the two candidate sites.

A Notice of Intent for the EIS appeared in the **Federal Register** on March 14, 2001. A locally publicized public scoping meeting was held on March 8, 2001, at the same location as the presently announced meeting. This meeting was publicized through notices in local newspapers, by TVA press releases, and in meetings between TVA officials and local elected officials preceding the public meetings. The period for public scoping comments for the EIS closed April 16, 2001. A Notice of Availability of the DEIS was published in the **Federal Register** on June 15, 2001 and the DEIS has been circulated for comment to agencies, organizations and individuals previously requesting it. Copies of the DEIS have also been placed for public review in the Argie Cooper Public Library in Shelbyville, Tennessee; Franklin County Public Libraries in Fayetteville and Winchester, Tennessee; Moore County Public Library in Lynchburg, Tennessee; the Lannon Memorial Public Library in Tullahoma and the Manchester Public Library in Manchester, Tennessee.

The proposed power plant would provide 510 megawatts (MWs) of intermediate baseload generating capacity as early as June 2003 at one of two sites. In addition to the No Action alternative, two alternative sites, located on the southwestern portion of Arnold Air Force base, are under consideration. Use of either of these sites would require approval by the U.S. Air Force. The proposed sites are currently undeveloped for industrial purposes and are either forested or in pasture. Under the preferred alternative (construct and operate the combined cycle plant at Site 4 in Franklin County, Tennessee), approximately 135 acres of land would be utilized, of which 65 acres would be disturbed during construction. Under the No Action Alternative TVA would not construct the plant at either of the sites. TVA would either undertake no new activities to meet anticipated demands by June 2003 for baseload power, or would rely exclusively on options from the *Energy Vision 2020* portfolio that do not involve construction and operation of new TVA fossil power capacity.

Candidate sites were identified through a detailed screening process that considered: (1) TVA's transmission system capacity at the locale; (2) reliable and economical long-term supply of natural gas; (3) engineering suitability of the site; (4) compatibility with surrounding land use; and (5) environmental factors including wetlands, floodplains, water supply, water quality, air quality, and historic and archaeological resources.

An installed plant would consist of two GE 7FA combustion turbine units, each configured with a heat recovery steam generator (HRSG). Steam produced in the HRSGs would be sent to a GE D11 steam turbine. Electricity would be produced by both the combustion turbines and the steam turbine. Natural gas would be the sole fuel. To control nitrogen oxides (NO_X) emissions, turbines would employ dry low NO_X burners and selective catalytic reduction systems. Excavation would be required to construct foundations for the turbine units, HRSGs, cooling towers, steam turbine, switchyard, and other components. A 500-kV transmission line would be constructed to the existing TVA Franklin Substation located nearby, and a transmission line would be constructed from the local distribution system to obtain construction/emergency power to the site. Water supply and wastewater discharge pipelines would be constructed to Woods Reservoir. Potable water would be obtained by tapping into a local supply line form Estill Springs. A short natural gas pipeline would be constructed to connect with pipelines owned by East Tennessee Natural Gas Company which pass a few miles to the south of the proposed sites. The local access road, Substation Road, would be upgraded from local major highways (Wattendorf Highway and Northshore Road) to the chosen site. Other appurtenances and ancillary equipment could include transformers, demineralized-water supply, parking areas, and support buildings, as well as upgrades to the main supply line of East Tennessee Natural Gas Company.

The DEIS describes the existing environmental and socioeconomic resources at and in the vicinity of each candidate site that would be affected by construction and operation of a power plant. TVA's and the U.S. Air Force's evaluation of environmental impacts to these resources include the potential impacts on air quality, water quality of surface and groundwaters, floodplains and flood risk, aquatic and terrestrial ecology, endangered and threatened species, wetlands, aesthetics and visual resources, noise, safety and health, land use, seismology, recreation, historic and archaeological resources, and socioeconomic resources.

After consideration of agency and public comments on the DEIS, including those received at the public meeting on July 10, 2001, TVA and the U.S. Air Force will prepare a Final EIS by September 2001.

Dated: June 26, 2001.

Jon M. Loney,

Manager, NEPA Administration, Environmental Policy & Planning.

[FR Doc. 01–16550 Filed 6–29–01; 8:45 am]

BILLING CODE 8120–08–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Department of Transportation's (DOT) intention to request the extension of a previously approved collection.

DATES: Comments on this notice must be received by August 31, 2001.

ADDRESSES: Policy and Information Team (HEPR), Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: *James E. Ware,* Policy and Information Team, Office of Real Estate Services (HEPR), Federal Highway Administration, U.S. Department of Transportation, Room 3221, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2019

SUPPLEMENTARY INFORMATION:

Title: Relocation Assistance and Real Property Acquisition Regulations For Federal and Federally Assisted Programs.

OMB Number: 2105–0508.

Expiration Date: September 30, 2001.

Type of Request: Extension of a previously approved collection.

Affected Public: Federal Government, State, Local or Tribal Government, individuals, business, farms and not-for-profit institutions.

Abstract: This regulation implements amendments to 42 U.S.C. 4601 et. seq. concerning acquisition of real property and relocation assistance for displaced

persons for Federal and federally-assisted programs. It prohibits the provision of relocation assistance and payments to persons not legally in the United States (with certain exceptions).

Respondents: State highway agencies, local government highway agencies, and airport sponsors receiving financial assistance for expenditures of Federal funds or acquisition and relocation payments and required services to displaced persons.

Estimated Number of Respondents: 1,443 for file maintenance and 52 state highway agencies for statistical reports.

Average Annual Burden Per Respondent: 8.5 hours.

Estimated Total Burden on Respondents: 29,043 hours.

These information collections are available for inspection at the Office of Real Estate services, Federal Highway Administration, Department of Transportation, at the address above.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on June 26, 2001.

Randall Bennett,

Director, Office of Aviation Analysis.

[FR Doc. 01–16601 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–9977]

Recreational Boating Safety Projects, Programs and Activities Funded Under Provisions of the Transportation Equity Act for the 21st Century; Accounting of

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Subsection (c) of section 7405 of the Transportation Equity Act for the 21st Century makes $5,000,000 available each of five fiscal years to the Secretary of Transportation for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. The Act requires that the Secretary publish annually in the **Federal Register** a detailed accounting of the projects, programs, and activities under this subsection.

ADDRESSES: You may obtain a copy of this notice by calling the U. S. Coast Guard Infoline at 1–800–368–5647. This notice is available on the Internet at *http://dms.dot.gov* and at *http://www.uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Captain Scott Evans, USCG, Chief, Office of Boating Safety, telephone 202–267–1077, fax 202–267–4285, or Mr. Albert J. Marmo, Chief, Program Management Division, telephone 202–267–0950, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century became law on June 9, 1998. The Act requires that of the $5 million made available to carry out the national recreational boating safety program, each year, $2,000,000 shall be available only to ensure compliance with Chapter 43 of title 46, U.S. Code—Recreational Vessels. The responsibility to administer these funds is delegated to the Commandant of the United States Coast Guard. The statute directs that no funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized; namely, for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Amounts made available each fiscal year, 1999–2003, shall remain available until expended. Use of these funds requires compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. The following activities have been initiated using fiscal year 1999–2001 funds transferred to the Coast Guard from the Aquatic Resources (Wallop-Breaux) Trust Fund. The total amount of fiscal year 1999, 2000 and 2001 funding committed, obligated and/or expended for each activity is shown.

Factory Visit Program: An initial contract was awarded to establish a national recreational boat factory visit program using contractor personnel. The contract included the development of a plan of action and an eighteen-month pilot program to validate the elements of the plan and the concept of the program. The pilot program commenced in the summer of 2000. "Compliance associates" (inspectors) were trained and formal factory visits were initiated in January 2001. The factory visit program allows contractor personnel, acting on behalf of the Coast Guard, to visit approximately 2,000 recreational boat manufacturers each year to inspect for compliance with the Federal regulations, communicate with the manufacturers as to why they need to comply with the Federal regulations, and educate them, as necessary, on how to comply with the Federal regulations. ($2,981,840)

Boat Compliance Testing: Funding is providing for expansion of the boat compliance testing program whereby new manually propelled and outboard recreational boats are purchased in the open market and tested for compliance with the Federal flotation standards. The expanded program will include inboard/sterndrive boats and used boats. ($244,000)

Associated Equipment Compliance Testing: A contract was awarded to buy recreational boat "associated equipment," e.g., starters, alternators, fuel pumps, bilge pumps, etc., and test this equipment for compliance with Federal safety regulations. This new initiative complements the boat compliance testing program. ($182,446)

Compliance Associated Travel: Travel by employees of the Office of Boating Safety is being performed to carry out additional compliance actions and to gather background and planning information for new compliance initiatives. ($27,568)

New Boat Manufacturer Outreach Package: A contract was awarded to design and develop a comprehensive and user-friendly outreach package for distribution to new recreational boat manufacturers. Included are a brochure and video that outline the many facets of the recreational boat manufacturing business, including, Federal regulations, voluntary standards, self-certification, financial aspects, insurance concerns, liability issues, points of contact and the steps necessary to become a new recreational boat manufacturer. The package also includes plain language guidelines that help clarify Federal requirements. The new outreach package is aimed at increasing the level of new recreational boat manufacturer compliance with applicable Federal regulations. ($357,582)

National Boating Survey: A contract has been awarded for a comprehensive major national recreational boating survey scheduled to be conducted during the fall of 2001. The purpose of this project is to obtain up-to-date

statistical estimates of recreational boats, boating households, boaters, boating exposures, practices and activities for the 2001 boating season. This data will be extrapolated to produce national, regional and state estimates of boat use as well as the characteristics of boat operators, passengers, boats and the operating environment ($1,528,514). Additionally, $800,000 has been set aside for a subsequent national survey.

Boating Accident Report Database (BARD): A contract has been awarded to enhance the capability of all States and the Coast Guard for the successful electronic exchange, management, and reporting of recreational boating accident report data using the BARD software application. This contract provides for software module development, software module testing, applicable rework, implementation, maintenance, and technical support for the user community in the 50 States, five Territories, and the District of Columbia. ($765,697)

State Incident Notification: The Coast Guard Search and Rescue Management Information System (SARMIS) software has been modified to electronically notify the relevant State boating law administrators regarding any fatal recreational boating incident cases to which the Coast Guard responds. The intent of this notification is to ensure that these cases are captured in the accident report data submitted by the State boating law administrators to the Boating Accident Report Database (BARD). ($12,678)

Articulated Mannequins/Computer Simulation Model: The objective of this contracted program is to improve the safety of recreational boaters by fostering developmental technology for improved personal flotation devices (PFDs). This program is furthering development of flotation mannequins and a water forces computer simulation program to promote the rapid, objective evaluation of different PFD designs on various body types that are representative of the recreational boating population. The computer simulation program will be validated through the use of a family of anthropomorphic, articulated mannequins. Under the contract to develop the articulated mannequins and computer simulation model, a male model has been built and is almost perfected. Next, female and child mannequins will be built. The development of a computer simulation program will facilitate evaluation of the effectiveness of new and unique PFD designs. ($270,723)

Risk-Based Personal Flotation Device Approval Process: This contracted effort will improve the approval process for personal flotation devices (PFDs) by developing a risk-based compliance system that is based on an objective Life Saving Index. This index will provide a formal structure and consistency to the process for accepting new approaches to designing devices for drowning prevention. The risk-based process identifies critical factors for evaluating PFD lifesaving potential and defines the minimum level of performance necessary for approval. ($211,086)

Carbon Monoxide Research: The Office of Boating Safety has entered into a Memorandum of Agreement with the Department of Health and Human Services, U.S. Public Health Service, Federal Occupational Health Program to continue investigation into identifying and classifying additional recreational boating carbon monoxide related deaths and injuries. ($238,025)

Houseboat Manufacturers Workshop/ Conference Support: Funding provided support services for a Coast Guard-sponsored gathering of the houseboat industry to explore potential design solutions to the carbon monoxide poisonings that have occurred on recreational houseboats. ($17,030)

Hull Identification Number (HIN) Economic Analysis: The objective of this contracted effort is to provide the Coast Guard with a cost/benefit analysis on the effects of expanding the current 12-character HIN to a 17-character HIN for all newly constructed recreational boats. ($47,626)

Virtual Reality Personal Watercraft (PWC): A virtual reality PWC was developed under contract to provide a platform to gather objective data on operator reactions to various scenarios. This information would otherwise be unobtainable or would require more costly methods and sources, due to the risk of injury to the operator as well as due to the difficulty of accurately replicating conditions for all operators. The virtual reality PWC will be used in various test scenarios to collect human factors data including the measurement of reactive movements and reaction time that will assist in making decisions or taking action to improve personal watercraft safety. The data from this effort will give greater insight into the human/machine interface related to PWC operation and will assist in the effort to attempt to reduce PWC accidents. ($133,628)

Knowledge Management System: The first phase of this three-phase contracted effort entailed the development of a comprehensive Knowledge Management plan for automating office processes in the Office of Boating Safety. The second phase, when implemented, will install document imaging software to capture and fully automate product assurance and consumer files and provide support that will ultimately enhance efficiency in supporting customers, partners and stakeholders. The third phase, if implemented, would provide quicker, more effective and efficient program oversight while providing customers with the ability to do business with the Coast Guard via web-based technology, thus enabling the Coast Guard to reduce the amount of paper transactions involved in servicing external customers. This system will assist in the electronic monitoring, storage and daily use of information and materials within the Office of Boating Safety. ($380,787)

Coast Guard Infoline/Office of Boating Safety Website: Funding has been provided for both technological and educational enhancements to the toll free Coast Guard Infoline and the Office of Boating Safety Website to create a "one-stop" customer service center. The Infoline provides information about safety, regulations, communications, Coast Guard policy, and available material related to boating safety issues. Additionally, this effort provides a complete interactive recreational boating safety website that offers the public and boating safety agencies and organizations real-time information on every aspect of recreational boating safety. One of the goals of this program is to create a "one-stop" customer service center for all users. ($387,628)

Federal Requirements Publication: A customer-friendly "Federal Requirements and Safety Tips for Recreational Boats" publication was developed based on easy-to-read, high visibility graphics, and with subject-specific safety tips that promote high retention by the reader. Both hard copy and electronic interactive versions have been created for the public. The enhanced Federal Requirements brochure is being widely distributed, and in addition, can be downloaded from the Office of Boating Safety Website (http://www.uscgboating.org). ($254,429)

Emergency Radio Call Procedures Decal: An emergency radio call procedures decal was produced and disseminated that provides the recreational boater with the proper procedures to use in making an emergency or distress call via VHF-FM Channel 16. This decal will be distributed via the Coast Guard Auxiliary, U.S. Power Squadrons, and State boating offices, as well as U.S. Army Corps of Engineers, Tennessee Valley Authority, and the Bureau of

Land Management. This item also supports the Vessel Safety Check (VSC) program provided by the Coast Guard Auxiliary, U.S. Power Squadrons and States. The VSC program is a free service provided by these organizations offering a safety check of recreational boats 65' or less in length. ($25,810)

Aids to Navigation Booklet: A full-color booklet, "U.S. Aids to Navigation System," was produced to assist recreational boaters in better understanding the use and identification of navigational aids. This booklet is now used as an educational adjunct to the safe boating classes taught by the Coast Guard Auxiliary, U. S. Power Squadrons, and many of the States. It is also distributed in conjunction with the Vessel Safety Check program. ($80,000)

"Operation BoatSmart" Support: Funding is providing support to "Operation BoatSmart." This new multi-year initiative undertaken by the Coast Guard and other boating safety organizations aims to energize recreational boating safety programs by strengthening and extending partnerships at the national, State and local levels. Through combined and coordinated efforts, the BoatSmart partners are targeting those activities and behaviors that entail the greatest risk for the recreational boater. "Operation BoatSmart" is bringing together these organizations to work in tandem to promote a positive change in boater awareness and behavior, with special emphasis on inland waters where most recreational boating takes place. Special emphasis is focused on encouraging life jacket wear, boater education, and scrupulous enforcement of boating under the influence laws by appropriate authorities. ($112,055)

Recreational Boating Safety Program Marketing Support: A national marketing, awareness and education campaign in support of "Operation BoatSmart," as well as America's Boating Course, Boating Under the Influence Campaign, and the Vessel Safety Check (VSC) Program has been funded. America's Boating Course is a joint boating safety education course developed by the U.S. Coast Guard Auxiliary and the U.S. Power Squadrons, supported by the Coast Guard. This course, available via CD-Rom or Internet will set the standard for recreational boating safety in our country. The Boating Under the Influence (BUI) campaign, "It's a Different World on the Water," is a multi-year effort to educate the recreational boater about the hazards of boating under the influence of alcohol or drugs. The markoting plan will utilize nationally recognized cartoon characters, Popeye and Olive Oyl, to advertise the VSC program to the boating public at marinas, yacht clubs, boat storage facilities, retail outlets and other recreational outlets. ($98,935)

Seventeenth Coast Guard District Boating Safety Detachment: Funding was provided on a one-time, non-recurring basis to the Seventeenth Coast Guard District in support of a Coast Guard Boating Safety Detachment to assist in the transition of the State of Alaska's assumption of Recreational Boating Safety Program responsibilities. ($25,000)

National Boating Registration System: As a service for States/Territories that currently have inadequate (or no) computer software program to maintain their vessel numbering system information, funding was provided to the U.S. Coast Guard Operations Systems Center (OSC) to develop a National Boating Registration System software program that can easily be adapted by any State/Territory for their own use. The software that has been provided to States/Territories at no cost includes a function to automatically generate the annual report on numbered vessels that must be submitted to the Coast Guard each year. ($25,000)

Marine Dealer Literature Display Racks: Display racks for U.S. Coast Guard and U.S. Coast Guard Auxiliary literature were purchased to improve distribution of boating safety literature. These display racks are intended to be used at retail outlets and marine dealers. ($23,725)

Personnel Support: Funding is providing for personnel to support the development of new regulations, to support new contracting activities associated with the additional funding, and to monitor and manage the contracts awarded. ($281,428)

A total of $8,713,240 of the $15,000,000 made available to the Coast Guard through annual transfers of $5 million in fiscal years 1999, 2000 and 2001, has been committed, obligated or expended as of June 15, 2001, and $800,000 is being held for a national boating survey.

Dated: June 20, 2001.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 01–16585 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request to Release Airport Property at the Snohomish County Airport/Paine Field, Everett, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at Snohomish County Airport/ Paine Field under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before August 13, 2001.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dave Waggoner, Airport Director, 3220–100th Street, SW., Everett, Washington 98204–1390.

FOR FURTHER INFORMATION CONTACT: Ms. Cayla Morgan, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

The request to release property may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Snohomish County Airport/Paine Field under the provisions of the AIR 21.

On June 26, 2001, the FAA determined that the request to release property at Snohomish County Airport/ Paine Field submitted by the county met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than August 13, 2001.

The following is a brief overview of the request:

The Snohomish County Airport/Paine Field requests the release of 10.60 acres of non-aeronautical airport property to the Snohomish County Public Works Department. The purpose of this release

is to transfer ownership to the Public Works Department for expansion of existing Airport Road, the major arterial running northwest from State Route 99 to State Route 526. Snohomish County, a political subdivision of the State of Washington, on behalf of the Snohomish County Airport at Paine Field requests the release from the terms, conditions, reservations, and restrictions imposed upon the property deeded to the Airport by the United States of America, and the release of the subject property from any assurances of the County as sponsor as contained in the Surplus Property Act of 1944 and any FAAP, ADAP, or AIP grant agreement. The release of the property will benefit the users of the airport as it will allow expansion of Airport Road and provide transportation and pedestrian improvements along Airport Road, thereby reducing traffic congestion to and from the airport and the Airport's Terminal entrance. In addition, revenues generated from the sale of the property will be applied to offset Airport funds used to acquire two parcels of real estate in 1996 and 1997. Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Snohomish County Airport, 3220–100th Street, SW., Everett, Washington 98204–1390.

Issued in Renton, Washington on June 26, 2001.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 01–16607 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Final Environmental (EA) and Draft Finding of No Significant Impact (FONSI)/Record of Decision (ROD) For Toledo Express Airport, Toledo, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of documents and soliciting comments.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of the availability of a Final EA and a Draft FONSI/ROD. This EA contains a scaled-back version of a portion of projects from an earlier Draft Environmental Impact Statement (DEIS). The DEIS was initiated in 1996/1997 to assess air traffic noise abatement measures from the 1998 FAR Part 150 Study Update, the development and operation of a second air cargo hub, and aviation-related industrial development.

Interested parties are invited to submit comments on the Final EA and the Draft FONSI/ROD. Based on the information received, the FAA will make a determination whether to approve the Draft FONSI/ROD for the proposed development at Toledo Express Airport or prepare a new Environmental Impact Statement (EIS) on the proposed development.

FOR FURTHER INFORMATION CONTACT: Ernest P. Gubry, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 734–487–7280.

SUPPLEMENTARY INFORMATION: The FAA accepted a Final EA for the development depicted on the Airport Layout Plan (ALP) for Toledo Express Airport on June 26, 2001.

The development included:

1. Construction of a 1,159,365 square foot cargo aircraft-parking apron.
2. Construction of two buildings totaling 400,000 square feet housing the Perishable Preparation Center and Dry Freight Sort Facility.
3. Construction of an entrance road.
4. Construction of out buildings
5. Construction of a vehicle parking lot.

This EA contains a scaled-back version of a portion of projects from an earlier Draft Environmental Impact Statement (DEIS). The DEIS assessed air traffic noise abatement measures from the 1998 FAR Part 150 Study Update, the development and operation of a second air cargo hub, and aviation-related industrial development.

The FAA issued a **Federal Register** notice on June 27, 1996 announcing its intent to prepare an Environmental Impact Statement and to hold a public scoping meeting on August 6, 1996. The FAA issued a subsequent **Federal Register** notice on February 2, 1999, announcing the availability of a DEIS for public review and comment and that a Public Hearing would be held on March 10, 1999 to receive public comments concerning the social, economic, and environmental effects of the proposed actions.

The DEIS public hearing raised concerns about the need for cargo related development and the fact that at the time, the Toledo-Lucas County Port Authority (TLCPA) did not have a tenant. However, TLCPA has identified a tenant for a portion of the Southwest Quadrant as proposed in this EA. Questions were also raised about purpose and need and alternatives; and impacts to threatened and endangered species, air quality, Section 4(f) resources, archaeological resources and wetlands. For the development proposed in the EA these issues have been addressed. A subsequent Ohio Environmental Protection Agency Section 401 Public Hearing was held on March 28, 2000.

The Draft Environmental Assessment was distributed to the agencies and the FAA was involved with agency consultation and coordination at the federal and state levels. Comments on the Proposed Project included concerns about impacts to threatened and endangered species, streams, and wetlands. The Section 404 permit was issued. These issues have been addressed in the EA were appropriate and in addition, a response to comments has been prepared.

Because the second air cargo hub and other aviation-related industrial developments proposed in the earlier DEIS are neither reasonably foreseeable nor ripe for review at this time, an Environmental Assessment was initiated by TLCPA to independently assess the potential impacts associated with construction and operation of a proposed Perishable Preparation Center and Dry Freight Sort Facility, aircraft parking apron, entrance road and related airport improvements in the southwest quadrant of the airport. The site of this proposed facility (73 acres) was included in a portion of the land identified for the larger development projects proposed in the earlier Draft Environmental Impact Statement (DEIS) prepared by the FAA.

For purposes of disclosure it should be noted that the remainder of the Southwest Quadrant site might be developed in the future for other aviation-related industrial uses. However, to date no other future development plans have been prepared for this site and no other tenants have been identified. Any development plans for the possible development in the remainder of the Southwest Quadrant site in the future are not discussed in this EA. All future development would require an additional environmental review that would include a discussion of cumulative impacts of the project assessed under this EA. Any other actions considered in the 1999 DEIS also would be subject to separate environmental review if they become ripe for decision at a later date.

The Proposed Project assessed in this EA has independent utility from the air

traffic noise abatement measures, the development and operation of a second air cargo hub, and other aviation-related industrial development assessed in the earlier DEIS. No further development of the Southwest Quadrant would be needed to support the development project proposed in this EA. Likewise the proposed Perishables Preparation Center and Dry Freight Sort Facility would not prevent any other future airport development at this site.

Additionally for purposes of disclosure it should also be noted that the air traffic noise abatement measures may also be considered for implementation at a future date. However, they are not assessed in the EA and are not considered for approval in the FONSI/ROD. Prior to their being considered for approval, they would be subject to environmental reevaluation. The reevaluation would include a discussion of the cumulative impacts of the projects assessed in this EA.

The EA includes an assessment of cumulative noise impacts for these projects. The noise impacts from this EA and air traffic noise abatement measures assessed in the 1999 Draft EIS were used to determine if significant increases in noise were likely to occur with the implementation of both projects. It was determined that there would be no significant cumulative noise impacts with the implementation of these projects. This finding is based on the determination that the incremental growth in cargo operations forecast in the 1999 EIS noise analysis sufficiently encompassed the addition of 18 operations per week proposed by the Project in this EA. This is further bolstered by the fact that existing cargo operations are not meeting forecast levels (down 22 percent in 2001 from 2000 levels). The EA also disclosed the cumulative impacts for the other NEPA categories.

Based on the analysis presented in the Environmental Assessment, it is determined that there is no practicable alternative to the proposed construction in wetlands and that the proposed action included all practicable measures to minimize harm to wetland which may result from such uses. TLCPA has developed and will implement a wetland mitigation plan that was found to be acceptable to the State of Ohio and the United States Army Corps of Engineers.

The Draft Environmental Assessment was distributed and the FAA was involved with agency consultation and coordination at the federal and state levels. Additionally, on March 28, 2000, the State of Ohio, Environmental Protection Agency held a public hearing for the issuance of a 401 wetland permit that was need for construction of the project. On August 28, 2000 the OEPA issued the Section 401 Water Quality Certification, conditional upon approval of the wetlands mitigation plan. The U.S. Army Corps of Engineers issued a validated Section 404 permit on September 11, 2000, The required mitigation plan has been approved.

The Section 404 validated permit stipulates that wetland mitigation must include on-site creation of appropriate wetland habitat to support state threatened and endangered plant species that would be lost through the construction of the Proposed Project. The on-site mitigation must include a wild lupine (*Lupinus perennie*) that is part of the life cycle for the Karner blue butterfly (*Lycacides melissa*). No other Federally listed species would be impacted by the Proposed Project.

The TLCPA will be required to implement the mitigation measures identified in the Draft FONSI/ROD as a condition of environmental approval for the proposed development/action items listed above to support existing and proposed aeronautical activities at the airport.

The purpose of this notice is to provide the public an opportunity to submit information to the FAA prior to its reaching a decision on this matter.

In accordance with 40 CFR 1501.4(c) of the Council on Environmental Quality, there will be a thirty (30) day comment period before the FAA makes its final determination on the FONSI/ROD. Interested individuals, government agencies, and private organizations are invited to send comments on the Draft FONSI/ROD to the address set forth above. Absent receipt of additional substantive information on environmental impacts the FAA anticipates that it will sign the Draft FONSI/ROD thirty days after this notice appears in the **Federal Register**.

The Final EA and supporting documents and the Draft FONSI/ROD may be viewed duing normal business hours at the following locations:

Airport Manager's Office, Toledo Express Airport, 11013 Airport Highway Swanton, Ohio 43558.

Toledo-Lucas County Public Library, 1032 South McCord Road Holland, Ohio 43528.

Swanton Public Library, 305 Chestnut Street, Swanton, Ohio 43558.

Federal Aviation Administration, Detroit Airports, District Office, Willow Run Airport, east, 8820 Beck Road, Belleville, Michigan 48111.

Questions may be directed to the individual named above under the heading. **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, on June 26, 2001.

Barry D. Cooper,

Acting Manager, Airports Division, FAA, Great Lakes Region.

[FR Doc. 01–16606 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice; Correction

ACTION: Notice; correction.

SUMMARY: The Federal Aviation Administration (FAA) published a Notice of Intent to prepare an Environmental Impact Statement for proposed master plan development at San Diego International Airport—Lindbergh Field in the **Federal Register** on Thursday, June 21, 2001. The published Notice of Intent omitted two work items that should have been identified under Alternative One.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, AICP, Environmental Protection Specialist, AWP–611.2, Planning Section, Airports Division, Federal Aviation Administration, Western-Pacific Region, PO Box 92007, Los Angeles, California 90009–2007, Telephone: 310/725–3615.

Correction

In the **Federal Register** issue of Thursday, June 21, 2001, Volume 66, page 33294–33295, make the following specific corrections which are underlined to facilitate the changes: In the second paragraph under the heading **SUPPLEMENTARY INFORMATION** replace the second sentence with the following: "FAA anticipates that the Port of San Diego will publish their Draft EIR during the summer *or fall* of 2001." Under the heading "Alternative One—Construct New North Terminal and Cargo Area," replace the first work item with "Construct new 10–*14*. Gate North Terminal (approximately 255,000–303,000 square feet)." At the end of the listing of work items for Alternative One, add the following work item: *"Construct area for aircraft remaining overnight."*

These changes in the Notice of Intent do not require any changes to the dates and times of the public and governmental agency scoping meetings as published in the **Federal Register** on June 21, 2001.

Issued in Hawthorne, California on Thursday, June 21, 2001.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 01–16608 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held August 8, 2001, at 10 a.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave., SW., Room 1014, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Gerri Robinson, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9678; fax (202) 267–5075; e-mail Gerri.Robinson@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on August 8, 2001, at the Federal Aviation Administration, 800 Independence Ave., SW., Room 1014, Washington, DC 20591. The agenda will include:

- Fuel Tank Inerting Working Group report
- Nominations for Vice Chair
- Status reports from Assistant Chairs

The Fuel Tank Inerting Working Group plans to request ARAC approval of its report on recommended regulatory text for new rulemaking and the data needed to evaluate the options for implementing new regulations that would require eliminating or significantly reducing the development of flammable vapors in fuel tanks on in-service, new production, and new type design transport category airplanes.

Attendance is open to the interested public but will be limited to the space available. The FAA will arrange teleconference capability for individuals wishing to participate by teleconference if we receive that notification by July 27, 2001. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

The public must make arrangements by July 27 to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on June 21, 2001.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–16476 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dane County Regional Airport, Madison, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dane County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 1, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Peter L. Drahn, Airport Director of Dane County Regional Airport, Madison, Wisconsin at the following address: 4000 International Lane, Madison, Wisconsin 53704–3120.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Dane under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450, 612–713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dane County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 31, 2001 the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Dane was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 4, 2001.

The following is a brief overview of the application.

PFC application number: 01–05–C–00–MSN.

Level of the proposed PFC: $4.50.

Proposed charge effective date: December 1, 2006.

Proposed charge expiration date: March 1, 2014.

Total estimated PFC revenue: $46,656,115.00.

Brief description of proposed projects: Realignment of taxiway "E" at east ramp, terminal apron expansion, terminal building expansion, airfield storm water study and improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators filing FAA form 1800–31. Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Dane County Regional Airport.

Issued in Des Plaines, Illinois on June 21, 2001.

Robert Benko,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 01–16610 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Hector International Airport, Fargo, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Hector International under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 1, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Bismarck Airports District Office, 2301 University Drive, Building 23B, Bismarck, North Dakota 58504. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Shawn A. Dobberstein, Executive Director of Hector International Airport at the following address: P.O. Box 2845, Fargo, North Dakota 58108.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Fargo Municipal Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Tom Schauer, Acting Manager, Bismarck Airports District Office, 2301 University Drive, Building 23B, Bismarck, North Dakota 58504 (701–323–7380). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Hector International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 11, 2001 the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Fargo Municipal Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 14, 2001.

The following is a brief overview of the application.

PFC application number: 01–05–C–00–FAR.

Level of the proposed PFC: $4.50.

Proposed charge effective date: September 1, 2002.

Proposed charge expiration date: January 1, 2004.

Total estimated PFC revenue: $1,942,080.00.

Brief description of proposed projects: Emergency electrical generator for the passenger terminal facility, jet bridge conversion equipment, UHF frequency airport radio system, security announcement system, automated passenger boarding bridges, rehabilitate passenger terminal exterior and upgrade heating, ventilating and air conditioner system, emergency generator in snow removal equipment maintenance facility, airport signage, PFC development costs, purchase snow removal equipment, security system modifications, passenger lift and stairs, PFC audit fees and administrative reimbursement for years 1997, 1998 and 1999, flight information and display system, forward looking infrared system for aircraft rescue and fire fighting vehicle, rehabilitate runway 17 threshold lights, purchase runway pavement friction measuring device, terminal apron rehabilitation, taxiway B3 reconstruction, eastside general aviation apron improvements, eastside general aviation storm sewer rehabilitation, eastside commercial apron improvements, year 2000 upgrade of security access control and runway surface sensor systems, rehabilitate runway 13/31, improve drainage along taxiway A, install runway threshold lights on runway 8/26, construct county drain 10, construct perimeter road, prepare plans and specifications for runway 8/26 extension and perimeter road, master plan update.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Hector International Airport.

Issued in Des Plaines, Illinois on June 21, 2001.

Robert Benko,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 01–16609 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement Number ANM–01–04; System Wiring Policy for Certification of Part 25 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy statement; request for comments.

SUMMARY: This notice announces the FAA's policy with respect to the type design data needed for the certification of wiring installed on transport category airplanes. The policy is necessary to correct deficiencies associated with the submittal of design data and instructions for continuing airworthiness involving airplane system wiring for type design, amended design, and supplemental design changes. This notice advises the public, in particular applicants for type certificates, amended type certificates, supplemental type certificates, or type design changes, of the range and quality of type design data that the FAA will expect applicants to submit as part of any certification project. This notice is necessary to advise the public of FAA policy and give all interested persons an opportunity to present their views on the policy statement.

DATES: Send your comments on or before August 1, 2001.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Gregory Dunn, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane and Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2799; fax (425)

227–1320; e-mail: gregory.dunn@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites your comments on this proposed general statement of policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, "Comments to Policy Statement ANM–01–04."

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed general statement of policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposals contained in this notice because of the comments received.

Background

The safety standards for civil transport category airplanes are specified in Title 14, Code of Federal Regulations (CFR), part 25. If an applicant demonstrates that a particular design (i.e., a particular model) complies with these standards, the FAA issues it a design approval. The drawings and other data that describe that design are known as the "type design." When an applicant submits the necessary documents required for type certification to the FAA for approval, the compilation of those documents is known as the "type design data package."

Certification projects submitted to the FAA for approval generally fall into two different categories:

1. *Multiple Approvals:* Multiple approvals are approvals for modifications that may be installed on any airplane of a specific type. These approvals require a data package that defines the installation so that it may be duplicated on another airplane by an installer. It is FAA's policy to require that type design data packages for multiple approvals include the following:

- A drawing package that completely defines the configuration, material, and production processes necessary to produce each part in accordance with the certification basis of the product.
- Any specifications referenced by the required drawings.
- Drawings that completely define the location, installation, and routing, as appropriate, of all equipment in accordance with the certification basis of the product. If the modification being approved is a change to a type certificated product, the modification must be equivalent to and compatible with the previously approved type design standards.

In addition, any applicant for a type certificate (TC), supplemental type certificate (STC), or type design change must submit Instructions for Continued Airworthiness in accordance with § 21.50 ("Instructions for continued airworthiness and manufacturer's maintenance manuals having airworthiness limitations sections").

2. *One-Only Approvals:* Some modification approvals are specific to only one airplane by serial number. These modifications are often referred to as "one-only approvals." For one-only approvals, duplication of the installation is not necessary and different (i.e., lesser) data standards may apply. The certification regulations for one-only approvals permit the use of photographs and other similar data to document the modification. The degree of compliance of the policy statement herein for one-only design approvals is left to discretion of the certification engineer.

Based on certification projects submitted to the FAA for review in recent years, the FAA has become aware that there is some confusion among applicants as to the definition of "type design," especially with respect to the inclusion of drawings and specifications necessary to define the wiring configuration associated with equipment installation. In a number of recent certification projects, type design data packages that were submitted did not include wiring diagrams showing the source and destination of all wire associated with the installation. Also, wire installation drawings showing airplane wire routing, grounding, shielding, clamping, conduits, etc., either were missing or lacked sufficient detail. The wiring diagrams and installation drawings did not contain the necessary information intended by the relevant regulations. These drawing packages did not adequately and clearly define the configuration of the model to be certificated. In addition, Instructions for Continued Airworthiness, as required by the regulations, were not defined.

Current Regulatory Requirements

The type and quality of data required for type design data packages and requirements for Instructions for Continuing Airworthiness are indicated in the regulations. The pertinent sections of 14 CFR are as follows:

§ 21.31 ("Type design"): This section defines and describes "type design."

§ 21.33 ("Inspection and tests"): This section, specifically § 21.33(b), provides additional insight as to the contents of the type design data package.

§ 21.21 ("Issue of type certificate: normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons, special classes of aircraft, aircraft engines; propellers"): This section lists pertinent requirements for a type certificate.

§ 21.50 ("Instructions for continued airworthiness and manufacturer's maintenance manuals having airworthiness limitations sections"): This section requires applicants to submit instructions for continued airworthiness as part of their type design data package. Paragraph 21.50(b) is relevant to this policy statement.

§ 21.101 ("Designation of applicable regulations") and *§ 21.115* ("Applicable requirements"): These sections make it clear that these data requirements apply to changes to type certificates.

Procedures for accomplishing the evaluation and approval of airplane type design data can be found in FAA Order 8110.4B, "Type Certification," dated April 24, 2000. This document gives comprehensive guidance on what constitutes a design package and what is necessary to make acceptable findings of compliance.

Identified Problems

Ambiguous Definition of Configuration: As mentioned above, the FAA has identified a number of recently submitted type design data packages that did not meet the intent of § 21.31(a). Specifically, these packages did not completely define the certification configuration. For example, these packages did not completely define specific routing and installation of wiring on the airplane, which then left an inordinate portion of the installation to the discretion of the installer.

The routing of wiring is an important aspect not only to the system being modified, but also to other systems that can be affected by that wiring. It is important that the routing of wiring strictly follow the criteria established by the FAA in the certification basis, as reflected in the holder's original or subsequently approved type design. This requires installation drawings and instructions that completely define the required routing and installation with sufficient detail to allow repeatability of the installation.

System Safety Assessment: A system safety assessment is done as part of the installation of any equipment on the airplane. This typically consists of a functional hazard analysis, failure mode and effects analysis, zonal analysis, or other safety analyses appropriate to the system being installed. In the past, insufficient emphasis has been placed on an examination of failures of wiring external to the actual line replaceable units being installed. Failure of wiring in bundles due to chaffing, contamination, or other causes may affect the continued safe operation of the airplane.

References to General Guidance: Problems occur when applicants over rely on "standard practices" or other general guidance for installation details. Often, type design data packages make references to FAA Advisory Circular (AC) 43–13, "Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair," for installation instructions. That guidance is general in nature and offers applicants multiple options for compliance. Because the installer can choose from a number of options for installation details, it is difficult for the FAA to find that the configuration complies with the criteria established by the FAA in the certification basis for a previously approved type design. An installer could make inappropriate choices of method, depending upon his or her previous experience and training.

The practice of referencing general guidance, on those occasions when safety assurances and certification criteria necessitate strict adherence to specified certification standards, could result in an incomplete definition of the installation configuration.

Omission of Manufacturing Process Specifications: There also have been cases where crucial manufacturing process specifications were omitted in the type design data packages pertaining to wiring installation details. This has led to insufficient control of the production of parts, and consequent airworthiness problems related to faulty parts manufacturing. This omission error frequently occurs when the type design approval holder routinely uses a complex process, but has not carefully defined the process in the type design data. As a consequence, it can result in approval of replacement parts that may not comply with necessary but undefined processing requirements.

Modifications Not Compatible With Original Type Design Standards: Another common problem occurs when a modifier is unaware of, or does not specify, installation and routing practices that are compatible with the certification standards established for the original type design.

Some manufacturers provide an abbreviated version of their installation and routing specifications in the maintenance manual that they prepare for their products. These specifications may not be readily available to modifiers. This can result in "inadvertent non-compliance" with certification requirements. One example of this kind of inadvertent non-compliance would be the installation of a power wire for a modification in a wire bundle containing critical wiring that the original manufacturer was required to isolate from other systems. This type of situation can be prevented by the applicant using experienced design engineers, doing physical inspections of the airplanes to be modified to ensure compatibility, and using the original airplane manufacturer's wiring installation guidelines.

Instructions for Continued Airworthiness: A review of past certification projects indicates that the maintenance aspects of system wire external to the installed equipment is not being adequately addressed. The integrity of the wiring is typically left to those doing general airplane maintenance that relies on visual inspections. However, visual inspections may not be adequate for wiring routed in metal or opaque conduits, wire in high vibration areas, or wire located in difficult to inspect areas. Equipment installers need to address any special maintenance requirements for the airplane wiring associated with equipment installation.

Statement of FAA Policy

Unambiguous Definition of Configurations: Type design data packages should meet the intent of § 21.31(a). These packages should completely define the certification configuration. Specifically, routing and installation of wiring on the airplane should be addressed. It is important that the routing of wiring strictly follow the intent of the criteria established by the FAA in the certification basis as reflected in the original or subsequently approved type design approval holder's design. The installer should provide with each application for design approval the following:

- Wiring diagrams showing source and destination of all airplane wiring associated with equipment installation;
- Installation drawings.

Installation drawings that completely defines the configuration typically will identify:

- Equipment locations,
- Wiring routings,
- Mounting and support details, and
- Other such details of features.

System Safety Assessment: Certain airworthiness criteria require failure analyses (i.e., failure mode and effect analysis, zonal analysis, or other safety analysis) to demonstrate that a failure of the system under consideration:

- Does not, in itself, constitute an unacceptable hazard, and
- Does not result in damage to other systems that are essential to safety.

The system safety assessment should include an assessment of the effects of failures of the airplane wire and its associated wire bundle for equipment installed on the airplane. The analysis should consider the possible effects wire system failures would have on systems required for safe flight and landing due to damage in collocated wiring bundles and the possibility of smoke and/or fire events.

Failure of other systems must not damage a system being modified if the modified system is essential to safety. Such analysis requires that any possible interaction between systems be examined. This, in turn, requires definitive knowledge of the configuration through design control and an understanding of the airplane manufacturer's wire installation rules, especially any requirements that pertain to wire separation.

Specific Installation Drawings Instead of General References: The FAA expects the applicant to provide definitive drawings instead of merely statements such as "install in accordance with industry standard practices," or "install in accordance with AC 43.13." The FAA considers such statements inadequate because the standard practices cannot define the precise location or routing of the wiring.

Process Specifications and Modifications Compatible with Original Standards: As noted in § 21.21, certain of the airworthiness requirements require analysis or tests to define the strength, durability, and life of components associated with the installation of wiring in the airplane (i.e., connectors, brackets, wire constraints, grommets, ground terminations, etc.). These tests and analyses require complete definition of the parts so that:

- Conformity of the parts to the type design may be verified, and
- The characteristics of the parts important for test or analysis may be determined.

The airplane wiring parts specification provides the basis for necessary stress, durability, and life analysis. A complete definition of the

parts, including wiring and wire installation hardware, requires a drawing package that clearly and completely identifies:

- Shape,
- Material,
- Production processes,
- Any other properties affecting strength or functionality of each part, and
- The arrangement of each part in the final assembly.

As an example, the FAA expects drawings to identify the material specification, heat treat, corrosion protection or other finish, and any other important characteristic of each part subject to test or analysis for showing compliance with the airworthiness requirements. Much of this information can be provided by reference on the drawings to material or process specifications; the references then become part of the drawing and, consequently, part of the type design data package.

Modifiers of aeronautical products should use practices that reflect the certification criteria applicable to the original airplane manufacturer (OAM). The applicant should demonstrate that installation specifications and routing practices for the wiring used by modifiers is either the same as, or compatible with, those that are used presently for showing compliance to the type design certification requirements. Specifically, wire separation, wire types, wire bundle sizes, brackets, and clamping should be consistent with the approved standards. This may require the applicant and/or modifier to:

- Obtain or determine the applicable OAM design standards and/or practices for a given installation,
- Do a physical inspection of the airplanes to be modified to ensure compatibility, and
- Develop processes and procedures to address compatibility between the original installation and the modification.

Modifiers and installers should use the airplane manufacture's maintenance manuals, such as Maintenance Manual Chapter 20 ("Standard Practices Airframe"), Maintenance Manual Chapter 70 ("Standard Practices Engines"), or Chapter 20 ("Standard Practices Wiring") as the primary source of wiring installation information.

Instructions for Continued Airworthiness: Paragraph 21.50(b) of the regulations requires that Instructions for Continued Airworthiness (ICA) be supplied by the modifier for modifications to aircraft and related products. The ICA for any specific wiring maintenance should be addressed where § 25.1529 is included in the certification basis.

Assessment of wire condition relies heavily on visual inspection. Consequently, the ICA should address inspectability of wire in conduits and difficult to inspect areas of the airplane. Where wire cannot be inspected visually, the ICA should address wire removal for inspection, when necessary, and the use of inspection techniques that do not rely on visual inspection alone. For example, wire in metal conduits may require repeated inspections for wear.

The FAA expects applicants for modifications to provide airworthiness instructions for the proposed changes in a format compatible with other maintenance instructions for the aircraft involved.

Effect of This Statement of Policy

The general policy stated in this document is not intended to establish a binding norm. It does not constitute a new regulation and the FAA would not apply or rely upon it as a regulation. Those tasked with the responsibility of airplane certification should generally attempt to follow this policy, when appropriate. In determining compliance with certification standards, each certification office has the discretion not to apply these guidelines where it determines that they are inappropriate. However, the certification office should strive to implement this guidance to the fullest extent possible to facilitate standardization and ensure that wiring installation details are adequately addressed during certification. Applicants should expect that the certificating officials will consider this information when making findings of compliance relevant to certification actions. Applicants also may consider the material contained in this policy statement as supplemental to that currently contained in 14 CFR part 21 when developing a means of compliance with the relevant certification standards.

Finally, as with all advisory material, this statement of policy identifies one means, but not the only means, of compliance.

Issued in Renton, Washington, on June 25, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–16602 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 188: Minimum Aviation System Performance Standards for High Frequency Data Link

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 188 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 188: Minimum Aviation System Performance Standards for High Frequency Data Link.

DATES: The meeting will be held July 10, 2001 starting at 1 pm.

ADDRESSES: The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub.L. 92–463, 5 U.S.C. appendix 2), notice is hereby given for a Special Committee 188 meeting. The agenda will include:

July 10, 2001

- Opening Plenary Session (Chairman's Introductory Remarks, Approval of Previous Meeting Summary, Review of Agenda and Work Plan)
- Working Group 1, Review of High Frequency Data Link (HFDL) Minimum Aviation System Performance Standard (MASPS) Status and Draft Report
- Closing Plenary Session (Review Actions Items, Make Assignments, Other Business, Date, Place and Time of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 21, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 01–16477 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–10011]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Balboa Clipper.*

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 1, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10011. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement:

(1) Name of vessel and owner for which waiver is requested. Name of vessel: *Balboa Clipper.* Owner: Christopher L. Crowell.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Size (length) 41 ft, Beam 12 ft 2 inches, Capacity 6 persons maximum, Tonnage 12.6."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Northeast New England Coast (Martha's Vineyard), Charters."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1974. Place of construction: Taiwan, China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The granting of this waiver would have little impact on existing passenger vessels in this area, specifically there are currently only 8 similar small vessels operating around the waters off Martha's Vineyard, and only one out of the harbor of Oak Bluffs which my vessel would operate."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Only one shipyard for building vessels currently exists in this area of the U.S. and it only builds wooden vessels. Therefore adverse impact locally would be non-existent. Since the boat requires yearly hauling and maintenance, operation of this vessel for commercial passenger use (charters) would bring further business to the local shipyards."

Dated: June 26, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–16514 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–10012]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Jule III.*

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 1, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10012. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket

is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement:

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: *Jule III*. Owner: Robert E. Todd.

(2) Size, capacity and tonnage of vessel. According to the applicant: "The sailing vessel Jule III is a 38 foot length overall ketch. Passenger capacity is limited to 5 passengers given the cockpit and berthing constraints. Net tonnage is 11 tons (determined by Atlantic Boat Document Inc, 58 Leeland Rd, Edgewater MD, 21037)."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Non bareboat charter; multi-mast sail training; onboard maritime electronics and communications training; Chesapeake Bay (concentration below West River); Florida East Coast (training only."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1978. Place of construction: Arnis/Schlei, Germany.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The applicant believes that the intended commercial operations of the sailing vessel Jule III will have no adverse effect on other commercial operations for the following reasons:

a. Our major regions (please refer to (8) above) do not have significant commercial operations relative to Jule III's intended use. Non-bareboat Charter (i.e., charter with licensed master) is very uncommon below Annapolis in Maryland and above Norfolk in Virginia.

b. Training specializing in multi-masted sailing vessels of Jule III's size (38 foot ketch) is not routinely conducted in the section 8 regions. Onboard electronics and communications training by a licensed FCC operator is not routinely conducted in the section 8 regions."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The applicant believes that approval of the requested waiver will have no impact on United States vessel builders for the following reason: United States vessel builders no longer routinely build or advertise multi masted sailing vessels in the size category of the Jule III (38 feet). Multi masted sailing vessels below 50 feet have not been common since the early 1990's."

Dated: June 26, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–16513 Filed 6–29–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub–No. 4)]

Railroad Cost of Capital—2000

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On July 2, 2001 the Board served a decision to update its computation of the railroad industry's cost of capital for 2000. The composite after-tax cost of capital rate for 2000 is found to be 11.0%, based on a current cost of debt of 8.0%; a cost of common equity capital of 13.9%; a cost of preferred equity capital of 6.3%; and a capital structure mix comprised of 45.4% debt, 52.1% common equity, and 2.5% preferred equity. The cost of capital finding made in this proceeding will be used in a variety of Board proceedings.

EFFECTIVE DATE: This action is effective July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [TDD for the hearing impaired: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: The cost of capital finding in this decision may be used for a variety of regulatory purposes. To obtain a copy of the full decision, write to, call, or pick up in person from: Da-To-Da Office Solutions., Room 405, 1925 K Street, N.W., Washington, DC 20423. Telephone: 202 293–7776, Fax 202 293–0770. Assistance for the hearing impaired is available through TDD services 1–800–877–8339. The decision is also available on the Board's internet site at www.stb.dot.gov.

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of this action are to update the annual railroad industry cost of capital finding by the Board. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Authority: 49 U.S.C. 10704(a).

Decided: June 26, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–16592 Filed 6–29–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the quarter beginning July 1, 2001, the interest rates for overpayments will be 6 percent for corporations and 7 percent

for non-corporations, and the interest rate for underpayments will be 7 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the short-term Federal rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2001–32 (*see*, 2001–26 IRB 1, dated June 25, 2001), the IRS determined the rates of interest for the fourth quarter of fiscal year (FY) 2001 (the period of July 1–September 30, 2001). The interest rate paid to the Treasury for underpayments will be the short-term Federal rate (4%) plus three percentage points (3%) for a total of seven percent (7%). For corporate overpayments, the rate is the Federal short-term rate (4%) plus two percentage points (2%) for a total of six percent (6%). For overpayments made by non-corporations, the rate is the Federal short-term rate (4%) plus three percentage points (3%) for a total of seven percent (7%). These interest rates are subject to change the first quarter of FY–2002 (the period of October 1–December 31, 2001).

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	(In percent)		Corporate Overpayments (Eff. 1–1–99)
		Under-payments	Over-payments	
Prior to:				
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	093001	7	7	6

Dated: June 27, 2001.

Charles W. Winwood,

Acting Commissioner of Customs.

[FR Doc. 01–16541 Filed 6–29–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate; Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning July 1, 2001 and ending on December 31, 2001 the prompt payment interest rate is 5.875 per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to Eleanor Farrar, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328. A copy of this Notice will be available to download from http://www.publicdebt.treas.gov.

DATES: This notice announces the applicable interest rate for the July 1, 2001 to December 31, 2001 period.

FOR FURTHER INFORMATION CONTACT: Frank Dunn, Manager, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–5170; Eleanor Farrar, Team Leader, Borrowings Accounting Team, Office of Public Debt Accounting, Bureau of the Public Debt, (304) 480–5166; Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–3692; or Mary C. Schaffer, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–3682.

SUPPLEMENTARY INFORMATION: Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 Sec. 2, Pub. L. 92–41, 85 Stat. 97. For example, the Contract Disputes Act of 1978 Sec. 12, Pub. L. 95–563, 92 Stat. 2389 and the Prompt Payment Act of 1982 Sec. 2, Pub. L. 97–177, 96 Stat. 85, provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. 3902(a).

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable, for the period beginning July 1, 2001 and ending on December 31, 2001, is 5.875 per centum per annum. This rate is determined pursuant to the above-mentioned sections for the purpose of said sections.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 01–16691 Filed 6–29–01; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 709–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 709–A, United States Short Form Gift Tax Return.

DATES: Written comments should be received on or before August 31, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: United States Short Form Gift Tax Return.

OMB Number: 1545–0021.

Form Number: Form 709–A.

Abstract: Form 709–A is an annual short form gift tax return that certain married couples may use instead of Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to report nontaxable gifts that they elect to split. The IRS uses the information on the form to assure that gift-splitting was properly elected.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 45,000.

Estimated Time Per Respondent: 59 minutes.

Estimated Total Annual Burden Hours: 44,100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 26, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–16613 Filed 6–29–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–NA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–NA, United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States.

DATES: Written comments should be received on or before August 31, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States.

OMB Number: 1545–0531.

Form Number: 706–NA.

Abstract: Form 706–NA is used to compute estate and generation-skipping transfer tax liability for nonresident alien decedents in accordance with section 6018 of the Internal Revenue Code. IRS uses the information on the form to determine the correct amount of tax and credits.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 4 hours, 36 minutes.

Estimated Total Annual Burden Hours: 4,607.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 26, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–16614 Filed 6–29–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8804, 8805 and 8813

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8804, Annual Return for Partnership Withholding Tax (Section 1446), Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax and Form 8813, Partnership Withholding Tax Payment Voucher (Section 1446).

DATES: Written comments should be received on or before August 31, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 8804, Annual Return for Partnership Withholding Tax (Section 1446); Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax; and Form 8813, Partnership Withholding Tax Payment Voucher (Section 1446).

OMB Number: 1545–1119.

Form Number: 8804, 8805 and 8813.

Abstract: Internal Revenue Code section 1446 requires partnerships that are engaged in the conduct of a trade or business in the United States to pay a withholding tax if they have effectively connected taxable income that is allocable to foreign partners. The partnerships use Form 8813 to make payments of withholding tax to the IRS. They use Forms 8804 and 8805 to make annual reports to provide the IRS and affected partners with information to assure proper withholding, crediting to partners' accounts and compliance.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 24 hr., 14 min.

Estimated Total Annual Burden Hours: 121,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 26, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–16615 Filed 6–29–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2848

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2848, Power of Attorney and Declaration of Representative.

DATES: Written comments should be received on or before August 31, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Power of Attorney and Declaration of Representative.

OMB Number: 1545–0150.

Form Number: 2848.

Abstract: Form 2848 issued to authorize someone to act for the taxpayer in tax matters. It grants all powers that the taxpayer has except signing a return and cashing refund checks. The information on the form is used to identify representatives and to ensure that confidential information is not divulged to unauthorized persons.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and farms.

Estimated Number of Respondents: 800,000.

Estimated Time Per Respondent: 1 hour, 53 minutes.

Estimated Total Annual Burden Hours: 1,504,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 26, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–16616 Filed 6–29–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8826

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8826, Disabled Access Credit.

DATES: Written comments should be received on or before August 31, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Disabled Access Credit.

OMB Number: 1545–1205.

Form Number: 8826.

Abstract: Internal Revenue Code section 44 allows eligible small businesses to claim a nonrefundable income tax credit of 50% of the amount of eligible access expenditures for any tax year that exceed $250 but do not exceed $10,250. Form 8826 figures the credit and the tax liability limit.

Current Actions: There are no changes being made to Form 8826 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms and individuals.

Estimated Number of Respondents: 26,133.

Estimated Time Per Respondent: 9 hr., 12 min.

Estimated Total Annual Burden Hours: 240,424.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 26, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–16617 Filed 6–29–01; 8:45 am]

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Corrections

Federal Register
Vol. 66, No. 127
Monday, July 2, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CO–001–0058a, CO–001–0059a; FRL–6989–3]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Designation of Areas for Air Quality Planning Purposes, Telluride and Pagosa Springs

Correction

In rule document 01–15029 beginning on page 32556 in the issue of Friday, June 15, 2001, make the following corrections:

§81.306 [Corrected]

1. On page 32563, in §81.306, in the first column of the table, under "San Miguel County: Telluride", in the first paragraph, the first sentence, "The Telluride attainment/maintenance area begins 28 at the intersection ofColorado State Highway 145 and the Telluride service area boundary, existed in 1991." should read "The Telluride attainment/maintenance area begins at the intersection of Colorado State Highway 145 and the Telluride service area boundary, as it existed in 1991. ".

2. On the same page, in the same section, in the same table column, in the same paragraph, in the fourth line, remove the numeral "2" between "the" and "nonattainment".

[FR Doc. C1–15029 Filed 6–29–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

RIN 1210–AA69; 1210–AA55

Amendments to Summary Plan Description Regulations

Correction

In rule document 00–29765 beginning on page 70226 in the issue of Tuesday, November 21, 2000 make the following corrections

§2520.102 [Corrected]

1. On page 70241, in the second column, in §2520.102-3(d), in the second line, "i.e. for pension plans-" should read "e.g. ".

2. On the same page, in the third column, in §2520.102-3(j)(3), in the fifth line, "a description of any cost sharing provisions" should read "a description of: any cost sharing provisions".

§2520.104b-3 [Corrected]

3. On page 70244, in the third column, in §2520.104b-3(d)(3)(ii), in the sixteenth line, "new conditions or requirements (i.e.," should read "new conditions or requirements (e.g.,".

[FR Doc. C0–29765 Filed 6–29–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
July 2, 2001

Part II

Department of Health and Human Services

Administration for Children and Families

Fiscal Year 2001 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications; Notice

VOL 66 ISS 127 JL 2 2001 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 2001–08]

Fiscal Year 2001 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications

AGENCY: Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Request for Applications under the Office of Community Services' Training, Technical Assistance and Capacity-Building Program.

SUMMARY: The Office of Community Services announces that competing applications will be accepted for new grants pursuant to the Secretary's authority under section 674(b) of the Community Services Block Grant (CSBG) Act, as amended, by the Community Opportunities, Accountability, and Training, and Educational Services (Coats) Human Services Reauthorization Act of 1998, (Pub.L. 105–285). This program announcement consists of seven parts. Part A provides information on the legislative authority and defines terms used in the program announcement. Part B describes the purposes of the program, the priority areas that will be considered for funding, and which organizations are eligible to apply in each priority area. Part C provides details on application prerequisites, anticipated amounts of funds available in each priority area, estimated number of grants to be awarded, and other grant-related information. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package. Part F provides instructions for completing an application. Part G details post-award requirements.

DATES: Closing Date: The closing date for submission of applications is August 16, 2001. Mailed applications shall be considered as meeting the announced deadline if they are received on or before deadline date or are postmarked on or before the deadline date. Applications received after the closing date will be classified as late and not considered for funding. Applications that are handcarried will be classified as late if they are received after 4:30 p.m., EST, on the deadline date. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U. S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing. Detailed application submission instructions, including addresses where applications must be sent are found in Part D of this program announcement.

FOR FURTHER INFORMATION CONTACT: Margaret Washnitzer, Director, Division of State Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447 (202) 401–9343. This program announcement is accessible on the OCS web site for reading or downloading at: http://www/acf/dhhs/gov/programs/ocs.

Additional copies of this program announcement can be obtained by calling (202) 401–9343.

(The Catalog of Federal Domestic Assistance number is "93.570." This Program announcement title is "Training, Technical Assistance, and Capacity-Building Program.")

Part A—Preamble

1. Legislative Authority

Sections 674(b)(2) and 678E(b) of the Community Services Block Grant (CSBG) Act of 1981, (Pub. L. 97–35) as amended by the Coats Human Services Reauthorization Act of 1998, (Pub. L. 105–285) authorizes the Secretary of Health and Human Services to utilize a percentage of appropriated funds for: training, technical assistance, planning, evaluation, performance measurement, monitoring, to assist States in carrying out corrective actions and to correct programmatic deficiencies of eligible entities, and for reporting and data collection activities related to programs or projects carried out under the CSBG Act. The Secretary may carry out these activities through grants, contracts, or cooperative agreements. To address program quality in financial management practices, management information and reporting systems, and measurement of program results and to ensure responsiveness to identified local needs, the Secretary is required to distribute funds directly to eligible entities, or statewide or local organizations or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities. The Secretary may carry out the remaining activities through appropriate entities.

The process for determining the technical assistance, training and capacity-building activities to be carried out must (a) ensure that the needs of eligible entities and programs relating to improving program quality, including financial management practices, are addressed to the maximum extent feasible; and (b) incorporate mechanisms to ensure responsiveness to local needs, including an on-going procedure for obtaining input from State and national networks of eligible entities. Thus, the CSBG Monitoring and Assessment Task Force (MATF) continues to focus on implementation of the Results-Oriented Management and Accountability (ROMA) system to address the challenges and unmet needs of States and Community Action Agencies and to increase program quality and management within the Community Services Network. The Task Force has taken a comprehensive approach to monitoring, including establishing national goals and outcome measures, and established target dates for nation-wide implementation; reviewing data needs relevant to these outcome measures; and assessing technical assistance and training provided toward capacity building within the Community Services Network.

2. Definitions of Terms

For purposes of the FY 2001 CSBG Training, Technical Assistance and Capacity-Building Program, the following definitions apply:

At-Risk Agencies refers to CSBG eligible entities in crises. The problem(s) to be addressed must be of a complex or pervasive nature that cannot be adequately addressed through existing local or State resources.

Capacity-building refers to activities that assist Community Action Agencies (CAAs) and other eligible entities to improve or enhance their overall or specific capability to plan, deliver, manage and evaluate programs efficiently and effectively to produce intended results for low-income individuals. This may include upgrading internal financial management or computer systems, establishing new external linkages with other organizations, improving board functioning, adding or refining a program component or replicating techniques or programs piloted in another local community, or making other cost effective improvements.

Community in relationship to broad representation refers to any group of individuals who share common

distinguishing characteristics including residency, for example, the "low-income" community, or the "religious" community or the "professional" community. The individual members of these "communities" may or may not reside in a specific neighborhood, county or school district but the local service provider may be implementing programs and strategies that will have a measurable affect on them. Community in this context is viewed within the framework of both community conditions and systems, i.e., (1) public policies, formal written and unstated norms adhered to by the general population; (2) service and support systems, economic opportunity in the labor market and capital stakeholders; (3) civic participation; and (4) an equity as it relates to the economic and social distribution of power.

Community Services Network (CSN) refers to the various organizations involved in planning and implementing programs funded through the Community Services Block Grant or providing training, technical assistance or support to them. The network includes local Community Action Agencies and other eligible entities; State CSBG offices and their national association; CAA State, regional and national associations; and related organizations which collaborate and participate with Community Action Agencies and other eligible entities in their efforts on behalf of low-income people.

Cooperative Agreement is an award instrument of financial assistance where "substantial involvement" is anticipated between the awarding agency and the recipient during the performance of the contemplated project or activity. "Substantial involvement" means that the recipient can expect Federal programmatic collaboration or participation in managing the award.

Eligible entity means any organization that was officially designated as a Community Action Agency (CAA) or a community action program under section 673(1) of the Community Services Block Grant Act, as amended by the Human Services Amendments of 1994 (Pub. L. 103–252), and meets all the requirements under Sections 673(1)(A)(I), and 676A of the CSBG Act, as amended by the Coats Human Services Reauthorization Act of 1998. All eligible entities are current recipients of Community Services Block Grant funds, including migrant and seasonal farmworker organizations that received CSBG funding in the previous fiscal year. In cases where eligible entity status is unclear, a final determination will be made by OCS/ACF.

Hub is a Department of Health and Human Services designation for multiple regional locations.

Local service providers are local public or private non-profit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low-income people.

Nationwide refers to the scope of the technical assistance, training, data collection, or other capacity-building projects to be undertaken with grant funds. Nationwide projects must provide for the implementation of technical assistance, training or data collection for all or a significant number of States, and the local service providers who administer CSBG funds.

Outcome Measures are indicators that focus on the direct results one wants to have on customers.

Performance Measurement is a tool used to objectively assess how a program is accomplishing its mission through the delivery of products, services, and activities.

Program technology exchange refers to the process of sharing expert technical and programmatic information, models, strategies and approaches among the various partners in the Community Services Network. This may be done through written case studies, guides, seminars, technical assistance, and other mechanisms.

Regional Networks refers to CAA State Associations within a region.

Results-Oriented Management and Accountability (ROMA) System: ROMA is a system, which provides a framework for focusing on results for local agencies funded by the Community Services Block Grant Program. It involves setting goals and strategies for developing plans and techniques that focus on a result-oriented performance based model for management.

State means all of the 50 States and the District of Columbia. Except where specifically noted, for purposes of this program announcement, it also includes specified Territories.

State CSBG Lead Agency (SCLA) is the lead agency designated by the Governor of the State to develop the State CSBG application and to administer the CSBG Program.

Statewide refers to training and technical assistance activities and other capacity building activities undertaken with grant funds that will have significant impact, i.e. activities should impact at least 50 percent of the eligible entities in a State.

Technical assistance is an activity, generally utilizing the services of an expert (often a peer), aimed at enhancing capacity, improving programs and systems, or solving specific problems. Such services may be provided proactively to improve systems or as an intervention to solve specific problems.

Territories refer to the Commonwealth of Puerto Rico, and American Samoa for the purpose of this announcement.

Training is an educational activity or event which is designed to impart knowledge, understanding, or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, conferences or programs of self-instructional activities.

Part B—Purposes/Program Priority Areas

The principal purpose of this Training, Technical Assistance and Capacity funding is to stimulate and support planning, training, technical assistance and data collection activities that strengthen the Community Services Network. New and revised techniques and tools are needed to fundamentally change the way the Network does business on a daily basis.

In addition, there are specific changes in sections 676(b)(12) and 678(E) of the CSBG Act, as amended in 1998, that mandate data collection and performance measurement systems by Fiscal Year 2001. The system developed under the leadership of OCS is called the Results-Oriented Management and Accountability system (ROMA). Technical assistance and training activities described in this program announcement are also impacted by the Government Performance and Results Act of 1993 (Pub L. 103–62). This Act requires Federal programs describe expected program "outcomes" and the Monitoring and Assessment Task Force (MATF) develop and implement a process (ROMA) to assist the Community Services Network in managing the results. Thus, strong training, technical assistance, planning and data collections are essential to the continued results-oriented strategy to strengthen the management and delivery of services to low-income people.

Subject to the availability of funds, OCS is soliciting applications that implement these legislative mandates in a comprehensive and systematic manner on a nationwide or statewide basis, as appropriate to the priority area. OCS believes that identifying training and technical assistance needs requires substantial involvement of eligible entities working in partnership at local, State and national levels. Funds will be

awarded in the form of both grants and cooperative agreements.

Priority areas of the Office of Community Services' Fiscal Year 2001 Training, Technical Assistance and Capacity-Building Program are as follows:

Priority Area 1.0: Training and Technical Assistance for ROMA Implementation

Sub-Priority Areas

1.1 National Academy (NA)
2.1 Leadership Development (LD)
2.2 Train-the-Trainers (TT)
2.3 Best Practices (BP)
2.4 Impact Information (IF)
2.5 Special ROMA Technical Assistance (RM)

Priority Area 2.0: CAA Capacity Building

Sub-Priority Areas

2.1 National Training (CB)
1.2 Collection, Analysis and Dissemination of Information On the CSBG Activities (IS)
2.3 Local Capacity Building (CP)
1.3 Strengthening CAA Capacity to Address Legal Issues (LF)
1.4 Addressing Urban Needs (UI)
1.5 State CAA Association Capacity Building (EQ)

Priority Area 3.0: Strengthening At-Risk Agencies

2.1 Special State Technical Assistance
2.2 National Peer-to-Peer Assistance

Priority Area 4.0: Information Sharing

3.1 Information Sharing Tools

Activities under Sub-Priority Areas 2.1, National Training and Technical Assistance (CB); 2.2 Data Collection, Analysis and Dissemination (CP); 2.4, Strengthening CAA Capacity on Legal Issues Toward Problem Solving (LF); and 2.5 Technical Assistance to Address Urban Issues (UI) will be carried out under a continuation grant in FY 2001 without further competition and are included in the Availability of Funds section of this Announcement. Under Sub-Priority 1.2, Leadership Development (LD), OCS will provide continuation funding to an existing grantee and fund on additional new two-year project.

In order to ensure that OCS meets its compliance and technical assistance responsibilities for the CSBG Program continues its effective partnership with the Community Services Network; several of these continuation grants will be funded in the form of Cooperative Agreements.

Also, applications from States for funds under Sub-Priority 3.1, (ST) Special State Technical Assistance Activities, are being supported under a separate non-competitive grant application process. These State awards will address fiscal and program deficiencies.

Priority Area 1.0: Training and Technical Assistance for ROMA Implementation

This Priority Area addresses the development and implementation of coordinated, comprehensive, nationwide or statewide training and/or technical assistance programs to assist State CSBG Lead Agency (SCLA) staff, staff of State and regional organizations representing eligible entities, and staff of local service providers which receive funding under the CSBG Act to acquire the skills and knowledge needed to achieve universal ROMA implementation by Fiscal Year 2003. Priority Area 1.10 also aims to reduce the number of "at risk" agencies through timely and effective management and program interventions, including planning, monitoring and evaluation of programs designed to ameliorate the causes of poverty in local communities. Proposals should include a description of how the applicant will collaborate with State CSBG staff and local service providers.

Sub-Priority Area 1.1: National Academy (NA)

OCS intends to fund one national "academy" to provide training in program administration and financial management. Through such support, OCS will provide the Community Services Network (CSN) with a national resource to address ROMA Goal #5: "Agencies increase their capacity to achieve results." The applicant under this Sub-Priority must be able to demonstrate a strong and effective history of providing basic program administration and fiscal management training on a local, regional, or national basis to new CAA officials or those in "at risk" CAAs. Applicants must demonstrate an understanding of the unique role of CAAs in coordinating a variety or programs, funding sources, and activities both within and outside the agency to achieve client and community outcomes. The application must document proposed course content, logistics, and means to evaluate the effectiveness of "academy" training based on a performance based model (ROMA) in such areas as, but not limited to: (1) Long-range and annual planning, (including needs assessment, board participation and governance, resource acquisition, relationship to other programs/services in the community); (2) Program administration (including resource allocation, oversight, record keeping, and reporting); (3) Human resource management (staff recruitment, training, retention); (4) Facilities management; (5) Information systems (design, implementation, control and support); and (6) Program evaluation (including design implementation, reporting and board participation).

The successful applicant for the grant in this priority area will make available intensive, i.e., weeklong, training opportunities to CAA officials throughout the CSN based on needs identified by State CSBG Lead Agency officials (SCLAs). Some of these needs will be identified during the summer 2001 Regional Implementation Planning Meetings. The successful applicant must have the capacity to train a minimum of 200 participants a year at reasonable unit costs per participant. OCS intends to fund one project at a funding level of $250,000 annually. The project period will be 36 months, and the funding will be awarded under a cooperative agreement.

Eligible Applicants: Community Action Agencies, and/or State CAA Associations.

Sub-Priority Area 1.2: Leadership Development (LD)

OCS intends to fund two national training initiatives focused specifically on helping States and local CSBG leaders understand and embrace the program renewal concepts embodied in the ROMA. One project will be funded under a continuation award to "Move the Mountain Leadership Center, Inc., Iowa; a second project will be a new three-year project under this competition.

The successful applicant under this sub-priority must demonstrate in its application experience in using ROMA to change the fundamental approach of CAAs from managing discrete programs and services to organizing efforts to achieve client and community outcomes. Applicants are asked to describe a proposed leadership training curriculum that focuses on but is not limited to:

(1) The use of ROMA as a strategic planning tool (including the creation of an overall mission for community action at the State, or local level which addresses relationships to other service providers and programs at the State or local level with broad participation);

(2) The use of ROMA to set specific performance measures related to client and community outcomes across all agency programs and services;

(3) Organizing programs and services to achieve client/community results;

(4) Measuring and reporting client/community outcomes; and

(5) Using ROMA generated data to advocate for additional resources with the community or State.

Successful applicants will be expected to address the needs of States and CSBG eligible entities. Each applicant must have the capacity to train 200 applicants in 2–4 day training sessions at a reasonable cost per participant.

OCS intends to fund one new three-year project at a level of $138,000 annually and one continuation project at a funding level of $136,000. The continuation grantee is Move the Mountain Leadership Center, Inc.

Eligible Applicants: Private non-profit organizations, eligible entities, State CSBG Agencies and State CAA Associations.

Sub-Priority Area 1.3: Train-the-Trainers

OCS intends to support the expansion of a "training-the-trainers" approach to implementing ROMA. By spreading the training capacity and making available a group of trained trainers in each of the DHHS Regional hubs, more community action agencies will have access to ROMA training. Applicants under this project must provide intensive training to participants who will be recruited from nominations made by the SCLAs and State Community Action Agency Associations. The training should be comprehensive and extensive, such that those completing the course will be certified as competent to train individually, or in groups, and all CAA staff levels on ROMA concepts and implementation. Applicants must provide for follow-up assistance to trainers, including consultation and sharing of new and updated information on training techniques and content.

This project will be funded for 36 months. The goal for the first year will be to train teams of five participants in each hub. The second year goal will be a shared training capacity between SCLAs and CAA State Associations in 25 States. The third year goal will establish a shared training capacity in an additional 25 States. Applicants must have a demonstrated capacity both in content knowledge and in this specific type of training. Applicants must base their training on the standards and goals for ROMA implementation as described in OCS Information Memorandum No. 49 (IM #49) dated February 21, 2001. IM #49 can be down-loaded from the OCS web site *http://www.acf.gov/programs/ocs/csbg/documents/im49.htm*. The training costs per participants under this project are to be included in this funding. The number of participants to be trained each year should be 30. The funding level is $300,000 annually and the project will be funded under a cooperative agreement.

Eligible Applicants: Private Non-profit Organizations, CAA State Associations and Eligible Entities

Sub-Priority Area 1.4: Best Practices

Six years of pioneering work in performance-based management has provided the Community Services Network with an abundance of best practices and model programs. While this knowledge base of successful ROMA implementers is known and available to some in the CSN, OCS believes that best practices and performers ought to be available to a broader audience of State and local agencies.

OCS intends to support up to 20 ROMA best practice implementers through grants under this Sub-Priority. Grants are to be used to subsidize the costs of having, "best practice consultants" provide training and technical assistance at regional, State or local community action meetings, as well as national association training and technical assistance conferences supported by the Office of Community Services. OCS seeks models for grants under this Sub-Priority from all agencies in the CSN. We are particularly interested in models and practitioners/consultants who have demonstrated successes in the following areas of ROMA implementation at the State or local levels:

(1) Leadership Training and the Use of ROMA for Program Renewal;

(2) ROMA-based Needs Assessment and Strategic Planning;

(3) Development and Use of Client, Community, or Organizational Outcome Measures;

(4) Board Involvement in Agency Goal Setting and Results-Oriented Oversight;

(5) Client and/or Community-Focused Programming and Service Delivery;

(6) ROMA-Focused Staffing (training, linkage to client/community outcomes);

(7) ROMA Compatible Information Systems (collection, analysis and report of client, community and/or organizational outcomes);

(8) Use of ROMA to Expand Program Linkages within and outside of Agency;

(9) Results-Oriented Financial Management;

(10) Ways of Using ROMA to "Tell Our Story" Better to State legislatures, local governing authorities, or the public; and

(11) Other.

Applicants should include in the work program narrative of their application the following information: (1) A general agency program description; (2) Goals of ROMA implementation based on the categories above; (3) Strategies adopted; (4) Problems encountered and addressed; (5) Program results; (6) Lessons learned; (7) Names of individuals responsible for best practices; and (8) Estimate of the availability of the individual(s) responsible for the lesson learned to participant on site visits, conference training, interactions by mail, electronic communication, etc. (up to 35 days).

OCS will publish a series of "Best Practices Papers" based on successful applications, which will be posted on the ROMA web sites and disseminated throughout the network. A panel of ROMA experts chosen by the OCS will review applications. Up to 20 grants will be awarded under cooperative agreements out of a total of $100,000. The project period is 12 months.

Eligible Applicants: State CSBG Agencies, State CAA Associations, eligible entities, and private non-profit organizations in collaboration with a State CSBG Agency or local CSBG eligible entity.

Sub-Priority 1.5: ROMA Impact Information

OCS will fund a maximum of five (5) projects, (one State, two urban, and two rural grants) which demonstrate the use of ROMA-generated results information about results (changes in the lives of clients and communities) that can be used to advocate for additional State funding resources, local government resources and other private funds.

OCS believes that one of the most important elements of effective ROMA implementation lies in the creative use of outcome and impact information, which demonstrates that community action works. By demonstrating measurable outcomes in communities, the CSN can affect the growth and expansion of efforts to assist the low-income population more effectively. OCS wishes, therefore, to further encourage experimentation in targeting and using ROMA generated information by seeking model approaches to "Tell Our Story."

Applicants for grants under this Sub-Priority Area must provide examples that describe the kinds of information being generated by ROMA in their State community. They must also document the potential audiences with which they plan to share the information and for what purpose. Finally, the application should contain a plan which describes how the information will be presented, i.e., written, oral, electronically or multi-media; whether assistance in preparing such presentations is required; and how they plan to evaluate

the success of their advocacy. Examples of previous successful efforts should also be included.

Applicants must indicate a willingness to report on their activities, provide data sets, and work with the OCS selected experts to produce model program information. Models produced through this effort will be widely disseminated to the CSN.

Approximately five (5) cooperative agreements will be awarded for a total of $100,000. Subject to the availability of funds, the project period is two years.

Eligible Applicants: State CSBG Agencies, State CAA Associations, and Eligible Entities.

Sub-Priority 1.6: State Specific Special ROMA Technical Assistance

OCS will work with each State at regional meetings during the summer of 2001 to develop State ROMA Implementation Plans through Fiscal Year 2003. As a result of these regional meetings, OCS will make available to individual States or to regional consortiums of States organized around common issues, additional training and technical assistance funds to complete ROMA Implementation Plans. OCS plans to hold funds in reserve for project applications submitted in response to State specific ROMA Implementation Plans and timetables developed in concert with OCS at the summer 2001 Regional Meetings. OCS envisions that grants made under this Sub-Priority will be used for needs outside the scope or capacity of the training and technical assistance initiatives described under Sub-Priorities 1.1 through 1.5 above. Up to 30 grants will be awarded out of total of $375,000. The project period will be 24 months.

Eligible Applicants: State CSBG Agencies in concert with State CAA Associations.

Priority Area 2.0: CAA Capacity Building

This priority area addresses activities to: assist states and eligible entities to acquire skills; improve the collection, analysis, dissemination and utilization of data and information on CSBG activities; promote management efficiency and program productivity by sharing effective management and program techniques; further understand legal frameworks; address urban needs; and build the expertise of State CAA associations to assistance eligible entities to better achieve the goals of the CSBG Program. Only projects under Sub-Priority Area 2.3, Local Capacity Building Projects are being competed under this program announcement.

Grants under Sub-Priority Areas 2.1, 2.2, 2.4, and 2.5 are included as a part of the OCS comprehensive training and technical assistance strategy. However, they are being funded as continuation grants and cooperative agreements and; therefore, they are not being competed under this program announcement. Grantees awarded continuation under this Priority Area include:

—National Association of Community Action Agencies, Wash., D.C.—$500,000; Sub-Priority Area 2.1—National Training (CB)
—National Association for State Community Services Programs—$516,000; Sub-Priority 2.2—Collection, Analysis and Dissemination of Information on CSBG Activities (IS)
—Community Action Program Legal Services, Wash., D.C.—$250,000; Sub-Priority 2.4—Legal Capacity Building (CP)
—The African American Community Action Leaders, Wash., D.C.—$100,000; Sub-Priority 2.5—Addressing Urban Needs (UI)
—State CAA Association Capacity-Building (EQ)—50 CAA State Associations—$2,500,000; Sub-Priority 2.6

Sub-Priority Area 2.3: Local Capacity Building

Project descriptions for continuation grants can be found on the Office of Community Services web site at *http://www.acf.gov/programs/ocs/csbg.*

The purpose of this sub-priority area is to promote management efficiency and program productivity. It is essential that local CAAs and other partners in the Community Services Network share effective program/management techniques and information systems technology being used and/or developed by eligible entities to address various aspects of poverty and the implementation of ROMA by the Community Services Network. Grants under this sub-priority will be made to Community Action Agencies to promote local CAA capacity building. Activities may include sharing of model needs assessment tools; sharing of effective data processing innovations; development of effective community organizing techniques; demonstration of scaling techniques; use of tracking systems; internal and external communication networks; effective integration of information systems; and sharing successful leveraging strategies. Applicants must include a plan that describes how the results achieved under this project will be shared with the larger Community Services Network.

OCS intends to fund approximately ten projects with a 12-months duration at a funding level of approximately $200,000.

Eligible Applicants: Eligible Entities.

Priority Area 3.0: Strengthening at-Risk Agencies

The purpose of this Priority Area is to strengthen the fiscal and management capacity of eligible entities. The CSBG Act requires a State to offer appropriate technical assistance, if appropriate, to an eligible entity in crisis prior to instituting termination proceedings to stabilize such an entity. Projects funded under this priority area provide resources to assist eligible entities in addressing structural, financial and program deficiencies of at-risk agencies.

Sub-Priority Area 3.1: Special State Technical Assistance (ST)

A separate non-competitive awarded process has been established to carry out projects under Sub-Priority Area 3.1, Special State Technical Assistance. The goal of this sub-priority is to prevent the disruption of services to clients by stabilizing an eligible entity through the correction and improvement of identified programmatic deficiencies. Funds will be used to support comprehensive interventions in cases where an eligible entity is in a crisis situation. The CSBG legislation requires that States provide training and technical assistance prior to any termination procedures. Applications under this sub-priority must be submitted prior to June 29, 2001. Because this sub-priority is a part of the overall training and technical assistance strategy of the Office of Community Services, it is included for information purposes only.

OCS intends to fund approximately 20 projects with duration of 12 months at a funding level of approximately $375,000.

Sub-Priority Area 3.2: National Peer-to-Peer Assistance (PP)

The purpose of this Sub-Priority area is to strengthen the fiscal and management capacity of eligible entities. OCS will fund one project which will provide coordinated, timely peer-to-peer technical assistance and crisis aversion intervention strategies for CAAs which have identified themselves as experiencing programmatic, administrative, board, and/or fiscal management problems. Also continuation funding in the amount of $177,000 will be provided to the Mid-Iowa Community Action, Inc. Such technical assistance should be designed to prevent fiscal and management

problems from deteriorating into crisis situations that could threaten the capacity of the CAA to provide quality services to their communities or give rise to possible termination of funding. Based on written agreements with selected CAAs, the successful applicant will coordinate and deploy the technical assistance resources of experienced individuals within the CSN, or other agencies which administer similar programs in the identification and resolution of problems through necessary actions, including training, to ensure that relevant and timely assistance is provided. Such assistance may be requested to help an agency resolve adverse program monitoring or audit findings, improve or upgrade financial management systems, prevent losses of funds, avert serious deterioration of the board of directors, or other immediate assistance as requested. To the extent feasible, the applicant will be expected to develop an expert technical assistance resource bank of experienced individuals from the CSN who may be deployed to provide peer technical assistance. Approximately two new projects will be funded at a funding level of $350,000 for duration of 12 months.

Eligible Applicants: Community Action Agencies and other eligible entities and statewide organizations or associations of Community Action Agencies.

Priority Area 4.0: Information Sharing

Web sites have proven to be an effective information-sharing tool and have become an integral part of the OCS CSBG training and technical assistance strategy. There is an official agency OCS/CSBG web site that contains basic program information as well as official regulations and communications to States and Community Action Agencies. Many of the State CAA Associations have web sites including the National Association of State Community Services Programs and the National Association of Community Action Agencies. These web sites contain valuable information and provide access to training and technical assistance resources and materials.

Under the leadership of the Office of Community Services, the Community Services Network is now entering an intense effort to ensure that the implementation of a major performance outcome system as mandated by the CSBG legislation and referred to as Results Oriented Management Accountability (ROMA) is operational. The CSN is fortunate to have initiated its own performance based ROMA system six years ago. As a voluntary effort, ROMA built a strong foundation to ensure continuous program improvement and accountability among State agencies and local CSBG-service providers. As a part of this effort, six national goals for community action that both respect the diversity of the CSN network and provide clear expectations of results from efforts were identified. A number of performance measurement tools were developed and disseminated. A ROMA Guide was published and distributed to States and local CSBG entities. A pilot web site devoted to advancing ROMA knowledge, experience and success was designed and pilot tested.

Pursuant to the legislative mandate, the CSN network continues to work together to achieve universal acceptance and adoption of ROMA. There is an even greater need for effective exchange of information, and maximum access to materials, training and technical assistance resources.

Sub-Priority Area 4.1: Information Sharing Tools

As an important part of meeting this need, the OCS will fund under Priority Area 4.0 a fully operational, specialized ROMA web site. The website will be built upon the current web site model but provide enhancements such as an increased capacity to handle a larger volume of materials, and easier access and downloading capacity. Sections of the web site should relate to the core activities as outlined in the OCS Information Memorandum #49 and the areas contained in the Sub-Priority Areas under Priority #1 of this Program Announcement. The application narrative should also address the web site evaluation findings that indicate which topic areas are most useful and which areas should be eliminated. Copies of Information Memorandum #49 and the evaluation of the current model ROMA web site are available on the CSBG web site at *http://www.acf.gov/programs/ocs/csbg/index.*

To be eligible for funding under this priority, an applicant must first demonstrate a thorough understanding of ROMA and the CSBG Program. Second, an interested applicant must be prepared to assure that the latest computer technology will be utilized which make for efficient, quick access and downloading capabilities. The applicant must also assure that it will have a database capable of handling large volumes of resource materials and best practice documentation. Finally, in order to be successful, the applicant must document the knowledge and capacity to:

- Check and print traffic reports. Harvest submitted forms, i.e., update new Subscribers, schedule training sessions;
- Recalculate hyperlinks to keep search functions operational;
- Perform ENG library update categorizing and updating topical archives by adding new messages from weekly digests;
- Send out ROMA web weekly updates;
- Maintain a subscriber database that currently totals 800 e-mail addresses with an expected 25 percent increase;
- Post new materials as they become available and delete time sensitive materials;
- Adjust organizational and categorization of existing pages to best fit evolving content;
- Establish a database to manage a substantial increase in the volume of new and/or updated materials generated;
- Conduct reviews and analysis of e-mail discussion groups. To be useful, this will require the investment of a considerable amount of time. Work with the OCS to develop additional discussion groups related to training and technical assistance resources being developed under this Program Announcement and elsewhere by the OCS. OCS will establish an advisory group on content to work with the ROMA web site to facilitate these efforts.
- Work with the OCS to develop an evaluation of the web site which will be linked to the overall goals of the ROMA implementation plan; and
- Provide demonstrations and promotional materials on the use of the web site at a minimum of two national CSN conferences and video-link demonstrations to selected OCS regional meetings and conferences and State CAA Association Meetings.

OCS plans to fund one 36-month cooperative agreement (subject to the availability of funds) under this Sub-Priority Area at a funding level of $40,000 annually.

Eligible Applicants: State CSBG Agency, CAA State Associations, eligible entities or partnerships thereof.

Part C—Application Prerequisites

1. Eligible Applicants

See individual sub-priority areas in Part B.

2. Forms of Awards

The Office of Community Services intends to support new projects under Sub-Priority Areas: 1.1: National Academy, 1.3: Train-the-Trainers, 1.4:

Best Practices, and 4.1: Information-Sharing Tools under Cooperative Agreements. A cooperative agreement is an award instrument of financial assistance when substantial involvement is anticipated between the awarding office and the recipient organization during performance of the contemplated project. The Office of Community Services will outline plans of interaction with grantees for the implementation of Cooperative Agreements during pre-award negotiations. It is anticipated that OCS responsibilities will not change the requirements for project identified in this Announcement. Plans under cooperative agreements will describe the general and specific responsibilities of the grantee and the grantor as well as foreseeable joint responsibilities. A schedule of tasks will be developed and agreed upon in addition to any special conditions relating to the implementation of such projects.

Availability of Funds

The total amount of funds currently available for new grant awards in FY 2001 under this Program Announcement is $1,853,000. Subject to the availability of funds, an additional $4,986,573 will be committed for continuation grants and cooperative agreements. For multi-year projects, continued funding is dependent upon proof of satisfactory performance and the availability of Federal funds. Amounts expected to be available and numbers of grants under each sub-priority area stated in Part B are as follows:

Sub-priority area	Approx. funds available for new projects	Estimated number of new grants
1.1 National Academy (NA)	$ 250,000	1
1.2 Leadership Development (LD)	138,000	1(2)
1.3 Train-the -Trainers (TT)	300,000	Up to 2
1.4 Best Practices (BP)	100,000	Up to 20
1.5 ROMA Impact Information (IF)	100,000	1
1.6 State Special ROMA Technical Assistance (RM)	375,000	Up to 30
2.1 National Training (CB)	*(2)	*(2)
2.2 Collection, Analysis, and Dissemination of Information on CSBG Activities Nationwide (IS)	*(2)	*(2)
2.3 Local Capacity-Building (CP)	200,000	Up to 10
2.4 Strengthening CAA Capacity to Address Legal Issues (LF)	*(2)	*(2)
2.5 Addressing Urban Needs (UI)	*(2)	*(2)
2.6 State CAA Association Capacity Building (EQ)	*(2)	*(2)
3.1 Special Technical Assistance (ST)	375,000	*(3)
3.2 National Peer-to-Peer Technical Assistance (PP)	350,000	Up to 2
4.1 Information Sharing Tools (WB)	40,000	
Total	1,853,000	Up to 68 New Grants

[1] This does not include the continuation grant in amount of $136,753.
[2] Represent continuation grant awards in the amount of $4,986,573.
[3] Projects under this Sub-priority area are being handled under a separate application process.

Project and Budget Periods

For projects included in the FY 2001 CSBG T&TA Program Announcement, the budget periods are 12 months and the project periods vary depending on the Sub-Priority Area. All continuation grants under Sub-Priority Areas 1.2 and 2.1, 2.2, 2.4, 2.5 and 3.2 will be made for 12-month budget periods (subject to the availability of funds).

Project Beneficiaries

The overall intended beneficiaries of the projects to be funded under the FY 2001 CSBG T&TA Program Announcement are the various "partners" in the Community Services Network. Specific beneficiaries are indicated under each sub-priority area in Part B. It is the intent of OCS, through funding provided under this program announcement, to significantly strengthen the capacity of State and regional CAA associations to provide technical assistance and support to local service providers; to strengthen the capacity of State CSBG offices to collect and disseminate accurate and reliable data and to provide support for local service providers; and to enhance the capacities of local service providers themselves. The ultimate beneficiaries of improved program management, data and information collection and dissemination, and service quality of local service providers are low-income individuals, families, and communities.

Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. This prohibition does not bar the making of subgrants or subcontracting for specific services or activities needed to conduct the project. However, the applicant must have a substantive role in the implementation of the project for which funding is requested.

Separate Multiple Applications

Separate applications must be made for each sub-priority area. An applicant will receive only one grant in a sub-priority area and no more than two grants under this FY 2001 CSBG T&TA Program Announcement. Applicants that receive more than one grant for a common budget and project period must be mindful that salaries and wages claimed for the same persons cannot collectively exceed 100 percent of the total annual salary. The sub-priority area must be clearly identified by title and number.

Project Evaluations

Each application must include an assessment or self-evaluation to determine the degree to which the goals and objectives of the project are met, such as client satisfaction surveys, administration of simple before/after tests of knowledge with comparison of scores to show grasp of teaching points, simple measures of the results of service delivery, and others as appropriate. Goal setting and goal measurement should be the framework for evaluation. Goals, to the extent suitable, should be impact-oriented.

Part D—Application Procedures

1. Availability of Forms

Applications for awards under the FY 2001 CSBG T&TA Program must be

submitted on Standard Forms (SF) 424, 424A, and 424B. Part F and the attachments to this program announcement contain all the instructions and forms required for submission of an application. These forms may be photocopied for use in developing the application.

Part F also contains instructions for the project narrative. The project narrative must be submitted on plain bond paper along with the SF–424 and related forms.

A copy of this program announcement is available on the Internet through the OCS web site at: http://www.acf.dhhs.gov/programs/ocs.

If the program announcement cannot be accessed through the OCS web site, it can be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION** at the beginning of this program announcement.

2. Deadlines

Refer to the section entitled "Closing Date" at the beginning of this program announcement for the last day on which applications should be submitted.

Mailed applications shall be considered as meeting the announced deadline if they are received on or before deadline date or postmarked on or before the deadline date and received by ACF in time for the independent review. Mailed applications must be sent to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center 901 D Street, SW., Washington, DC 20024, Attn: CSBG Training, Technical Assistance, and Capacity-Building Program.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m. EST, Monday through Friday, excluding Federal holidays, at the: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center 901 D Street, SW., Washington, DC 20024, Attn: CSBG Training, Technical Assistance, and Capacity-Building Program.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt. Applications, once submitted, are considered final and no additional materials will be accepted.

Late applications. Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. ACF may extend the deadline for all applicants affected by acts of God such as floods and hurricanes, when there is widespread disruption of the mail service. A determination to extend or waive deadline requirements rest with the Chief Grants Management Officer.

3. Number of Copies Required

One signed original application and two copies should be submitted at the time of initial submission (OMB 0970–0062). Two additional copies would be appreciated to facilitate the processing of applications.

4. Designation of Sub-Priority Area

The first page of the SF–424 must contain in the lower right-hand corner a designation indicating under which sub-priority are funds are being requested. For example, if you are applying for Sub-Priority Area 2.6—Local Capacity Building, you must have a designation of 2.6 in the lower right-hand corner. Without this clear designation, your proposal may not be reviewed correctly.

5. Paperwork Reduction Act of 1995 (P.L. 104–13)

Public reporting burden for this collection of information is estimated to average 10 hours per response, including time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

The project description is approved under OMB Control Number 0970–0062 which expires 12/31/2003.

An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

6. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

The following States and Territories have elected to participate under the Executive Order process and have established a Single Point of Contact (SPOC): Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam, Puerto Rico, the Commonwealth of Northern Mariana Islands, and the United States Virgin Islands.

Applicants for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that OCS can obtain and review SPOC comments as a part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424A, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those Official State process recommendations which they intend to trigger the "accommodate or explain" rule under 45 CFR 100.10.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor, Aerospace Center, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment I to this program announcement.

7. Application Consideration

Applications that meet the screening requirements in Sections 8.a. and 8.b. below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement.

Qualified panelist not directly responsible for programmatic management of the grant will review applications. The results of these reviews will assist OCS in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will be ranked and generally considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors deemed relevant may be considered including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the past five years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

8. Criteria for Screening Applications

a. Initial Screening

All applicants will receive a written acknowledgment with an assigned identification number. This number, along with any other identifying codes, must be referenced in all subsequent communications concerning the application. If an acknowledgment is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–5103.

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this Announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget (SF–424A), and signed "Assurances" (SF–424B) completed according to instructions published in Part F and Attachments A, B, and C of this program announcement.

(2) A budget narrative, which corresponds to the object class categories in the SF 424A for the use of Federal funds, must be included in the application.

(3) The SF–424 and the SF–424B must be signed by an official of the applicant organization who has authority to obligate the organization legally.

(4) A project narrative must also accompany the standard forms.

b. Pre-Rating Review

Applications, which pass the initial screening, will be forwarded to reviewers and/or OCS staff to verify, prior to the programmatic review, that the applications comply with this program announcement in the following areas:

(1) Eligibility: Applicant meets the eligibility requirements found in Part B. Applicant also must be aware that the applicant's legal name as required on the SF 424 (item 5) *must match* that listed as corresponding to the Employer Identification Number (Item 6).

(2) Duration of Project: The application contains a project that can be successfully implemented in the project period.

(3) Target Populations: The application clearly targets the specific outcomes and benefits of the project to State staff administering CSBG funds, CAA State or regional associations, and/or local providers of CSBG-funded services and activities. Benefits to low-income consumers of CSBG services also must be identified.

(4) Program Focus: The application must address the purpose of the sub-priority area under which funding is being requested.

An application may be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

e. Evaluation Criteria

Applications that pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score to each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in this announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained in Part B.

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

(1) Criterion I: Need for Assistance (Maximum: 20 Points)

(a) The application documents that the project addresses vital needs related to the purposes stated under the appropriate sub-priority area discussed in this program announcement (Part B) and provides statistics and other data and information in support of its contention. (0–10 points).

(b) The application provides current supporting documentation or other testimonies regarding needs from State CSBG Directors, local service providers and/or State and Regional organizations of local service providers. (0–10 points)

(2) Criterion II: Work Program (Maximum: 30 Points)

The work program is results-oriented, appropriately related to the legislative mandate and specifically related to the sub-priority area under which funds are being requested.

Applicant addresses the following: Specific outcomes to be achieved; performance targets that the project is committed to achieving, including reasons for not setting lower or higher target levels and how the project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained; organizational support, including priority this project has for the agency; past performance in similar work; and specific resources contributed to the project that are critical to success.

Applicant defines the comprehensive nature of the project and methods that will be used to ensure that the results can be used to address a statewide or nationwide project as defined by the priority area.

(3) Criterion III: Significant and Beneficial Impact: (Maximum: 15 Points)

Applicant adequately describes how the project will assure long-term program and management improvements and have advantages over other products offered to achieve the same outcomes for State CSBG offices, CAA State and/or regional associations, and/or local providers of CSBG services and activities.

The applicant indicates the types and amounts of public and/or private resources it will mobilize, how those resources will directly benefit the project, and how the project will ultimately benefit low-income individuals and families.

If proposing a project with a training and technical assistance focus, applicant indicates the number of organizations and/or staff it will impact.

If proposing a project with a data collection focus, applicant provides a description of the mechanism it will use to collect data, how it can assure collections from a significant number of States, and the number of States willing to submit data to the applicant.

If proposing to develop a symposium series or other policy-related project(s), the applicant identifies the number and types of beneficiaries.

Methods of securing participant feedback and evaluations of activities are described in the application.

(4) Criterion IV: Evidence of Significant Collaborations (Maximum 10 Points)

Applicant describes how it will involve partners in the Community Services Network in its activities. Where appropriate, applicant describes how it will interface with other related organizations.

If subcontracts are proposed, documentation of the willingness and capacity for the subcontracting organization(s) to participate is described.

(5) Criterion V: Ability of Applicant to Perform (Maximum: 20 Points)

(a) The applicant demonstrates that it has experience and a successful track record relevant to the specific activities and program area that it proposes to undertake.

If applicant is proposing to provide training and technical assistance, it details its competence in the specific program priority area and as a deliverer with expertise in the specific fields of training and technical assistance on a nationwide basis.

If applicable, information provided by the applicant also addresses related achievements and competence of each cooperating or sponsoring organization. (0–10 points)

(b) Applicant fully describes, for example in a resume, the experience and skills of the proposed project director and primary staff showing specific qualifications and professional experiences relevant to the successful implementation of the proposed project. (0–10 points)

(6) Criterion VI: Adequacy of Budget (Maximum: 5 Points)

(a) The resources requested are reasonable and adequate to accomplish the project. (0–3 points)

(b) Total costs are reasonable and consistent with anticipated results. (0–2 points)

Part E—Contents of Application and Receipt Process

1. Contents of Application

A cover letter containing an e-mail address and a facsimile (FAX) number, if available, should accompany the application. This will facilitate receipt of an acknowledgment from ACF that the application has been received. (See Part D., 8.a.)

Each application should include one original and three additional copies of the following:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that, in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

b. "Budget Information-Non-Construction Programs" (SF–424A). (Attachment B)

c. A completed, signed and dated "Assurances—Non-Construction Programs" (SF–424B). (Attachment C)

d. Drug-free Certification. (The applicant is certifying that it will comply with this requirement by signing and submitting the SF–424.) (Attachment D)

e. Debarment Certification. (Attachment E)

f. Certification Regarding Environmental Tobacco Smoke. (The applicant is certifying that it will comply with this requirement by signing and submitting the SF–424.) (Attachment F)

g. Disclosure of Lobbying Activities, SF–LLL. Complete, sign and date form, as appropriate. (Attachment G)

h. A Project Abstract of 500 words or less. The abstract should provide a succinct description of the need, project goals, and a summary of work plan and the proposed impact. Abstract will be maintained as part of the Grantee Administration Tracking System (GATES).

i. A Project Narrative consisting of the following elements preceded by a consecutively numbered table of contents that will describe the project in the following order:

(i) Need for Assistance.
(ii) Work Program.
(iii) Significant and Beneficial Impact.
(iv) Evidence of Significant Collaborations.
(v) Ability of Applicant to Perform.
(vi) Appendices including proof of non-profit status, such as IRS determination of non-profit status, where applicable; relevant sections of by-laws, articles of incorporation, and/or statement from appropriate State CSBG office which confirms eligibility; resumes; Single Point of Contact comments, where applicable; and any partnership/collaboration agreements.

The original must bear the signature of the authorizing official representing the applicant organization.

The total number of pages for the entire application package should not exceed 35 pages, including appendices. Pages should be numbered sequentially throughout.

If appendices include photocopied materials, they must be legible.

Applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip. The submission of bound applications or applications enclosed in a binder are specifically discouraged.

Applications must be submitted on white 8½ x 11-inch paper only since OCS may find it necessary to duplicate them for review purposes. They must not include colored, oversized or folded materials; organizational brochures or other promotional materials; slides; films; clips; etc. They will be discarded if included.

Part F—Instructions for Completing Application Package

(Approved by the OMB under Control Number 0970–0062)

The standard forms attached to this program announcement shall be used when submitting applications for all funds under this announcement.

It is recommended that the applicant reproduce the SF–424, (Attachment A), SF–424A (Attachment B), SF–424B (Attachment C) and that the application be typed on the copies. If an item on the

SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, the applicant should write "NA" for "Not applicable."

The application should be prepared in accordance with the standard instructions in Attachments A and B corresponding to the forms, as well as the specific instructions set forth below:

1. SF–424 "Application for Federal Assistance"

Item

1. For the purposes of this program announcement, all projects are considered "Applications"; there are no "Pre-Applications."

5. and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

7.If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status such as IRS determination, artícles of incorporation, or by-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are "New."

9. Enter "DHHS–ACF/OCS."

10. The Catalog of Federal Domestic Assistance number for the OCS program covered under this announcement is "93.570."

11. In addition to a brief descriptive title of the project, the following priority area designations must be used to indicate the priority and sub-priority areas for which funds are being requested:

NA—Sub-Priority Area 1.1—National Academy
LD— Sub-Priority Area 1.2—Leadership Development
TT—Sub-Priority Area 1.3— Train-the-Trainers
BP— Sub-Priority Area 1.4—Best Practices
IF-Sub-Priority Area 1.5—ROMA Impact Information
RM—Sub-Priority Area 1.6— State Special ROMA Technical Assistance
CB—Sub-Priority Area 2.1—National Training
IS—Sub-Priority Area 2.2—Collection, Analysis, and Dissemination of Information on CSBG Activities Nationwide
CP— Sub-Priority Area 2.3— Local Capacity Building
LF—Sub-Priority Area 2.4—Strengthen CAA Capacity to Address Legal Issues
UI—Sub-Priority Area 2.5—Addressing Urban Problems
PP— Sub-Priority Area 3.1— Special Technical Assistance
WB—Sub-Priority Area 4.1—Information Sharing Tools

The title is "Office of Community Services' Discretionary CSBG Awards—Fiscal Year 2001 Training, Technical Assistance, and Capacity-Building Programs."

15a. For purposes of this announcement, this amount should reflect the amount requested for the entire project period.

15b–e. These items should reflect both cash and third party in-kind contributions for the total project period.

2. SF–424A—"Budget Information-Non-Construction Programs"

See instructions accompanying the form as well as the instructions set forth below:

In completing these sections, the Federal budget entries will relate to the requested OCS Training and Technical Assistance Program funds only, and Non-Federal will include mobilized funds from all other sources—applicant, State, and other. Federal funds, other than those requested from the Training and Technical Assistance Program should be included in Non-Federal entries.

Sections A and D must contain entries for both Federal (OCS) and non-Federal (mobilized).

Section A—Budget Summary

Col. (a): Line 1—Enter "OCS Training and Technical Assistance Program";
Col. (b): Line 1—Enter "93.570".
Col. (c) and (d): Not Applicable.
Col. (e)–(g): For lines 1 enter in column (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.

Line 5—Enter the figures from Line 1 for all columns completed under (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column #1. Allowability of costs is governed by applicable cost principles set forth in 45 CFR parts 74 and 92.

A separate itemized budget justification should be included to explain fully and justify major items, as indicated below. The budget justification should immediately follow the Table of Contents.

Column 5: Enter total requirements for Federal funds by the Object Class Categories of this section.

Line 6a—Personnel: Enter the total costs of salaries and wages.

Justification: Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and Non-Federal) of the organization's staff who will be working on the project.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification: Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Line 6c—Travel: Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all non-expendable personal property to be acquired by the project. Equipment means tangible non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6j—Indirect Charges: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. With the exception of States and local governments, applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. For an educational institution, the indirect costs on training grants will be allowed at the lesser of the institution's actual indirect costs or 8 percent of the total direct costs.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately, upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent *DHHS Guide for Establishing Indirect Cost Rates,* and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be budgeted or charged as direct costs to the grant.

Line 6k—Totals: The total amount shown in Section B, Column (5), should be the same as the amount shown in Section A, line 5, column (e).

Line 7—Program Income: Enter the estimated amount of income, if any is expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from column 1 to column 5 for all line items.

Justification: Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of Non-Federal resources that will be used to support the project. Non-Federal resources refer to other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Categories, section B.6) and whether it is cash or third party in-kind. The firm commitment of these required funds must be documented and submitted with the application.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8—Col. (a): Enter the project title.

Col. (b): Enter the amount of cash or donations to be made by the applicant.

Col. (c): Enter the State contribution.

Col. (d): Enter the amount of cash and third party in-kind contributions to be made from all other sources.

Col. (e): Enter the total of column (b), (c), and (d). Lines 9, 10, and 11 should be left blank.

Line 12: Carry the total of each column of line 8, (b) through (e). The amount in column (e) should be equal to the amount on section A, Line 5, and column (f).

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant for first year and by quarter, during the first 12-month budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of Lines 13 and 14 for all columns.

Section E—Budget Estimates of Federal Funds Needed for Balance of the Project

To be completed by applicants applying for funds for a three year project period.

Section F—Other Budget Information

Line 21—Include narrative justification required under Section B for each object class category for the total project period.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. If the applicant decides not apply an indirect cost rate to the proposal, then "this line should be left blank."

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3.SF–424B "Assurances Non-Construction"

Applicant must sign and return the "Assurances" found at Attachment C with its application.

4. Project Narrative

Each narrative section of the application must address one or more of the focus areas described in Part B and follow the format outlined below:

(a) Need for Assistance
(b) Work Program
(c) Significant and Beneficial Impact
(d) Evidence of Significant Collaborations
(e) Ability of the Applicant to Perform
(f) Adequacy of the Budget

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award, which indicates, the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

In addition to the standard terms and conditions which will be applicable to grants, grantee will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circulars A–122 (nonprofit) and A–87 (governmental).

Grantees will be required to submit semi-annual program progress narrative and financial reports (SF–269) as well as a final program progress narrative report and a final financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circular A–133.

Section 319 of Public Law 101–121, signed into law on October 23, 1989 imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their sub-tier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and

their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier Contractors or subgrantee will pay with profits or *non-appropriated* funds on or after December 22, 1989, and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See Attachment F for certification and disclosure forms to be submitted with the applications for this program.

Public Law 103–227, Part C. Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through States or local government by Federal grant, contract, loan or loan guarantee. The law does not apply to facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for in-patient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application, the applicant/grantee certifies that it will comply with the requirement of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any sub-awards, which contain provisions for children's services and that all subgrantees shall certify accordingly.

Attachment H indicates the regulations that apply to all applicants/grantees under this program.

Dated: June 25, 2001.

Robert Mott,

Acting Director, Office of Community Services.

CSBG Training, Technical Assistance and Capacity-Building Program

List of Attachments

A—Application for Federal Assistance, SF 424
B—Budget Information—Non-Construction Programs, SF 424A
C—Assurances—Non-Construction Programs, SF 424B
D—Certification Regarding Drug-Free Work Place
E—Debarment Certification
F—Certification Regarding Environmental Tobacco Smoke
G—Disclosure of Lobbying Activities, SF–LLL
H—DHHS/ACF Standard Terms and Conditions—Discretionary Grants
I—Listing of State Single Points of Contact

BILLING CODE 4184–01–P

Attachment A, Page 1

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:

Application: ☐ Construction ☐ Non-Construction

Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

Instructions for the SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization by submitted as part of the application.

BILLING CODE 4184–01–P

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-102

Attachment B, Page 1

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page

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Instructions for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All publications should contain a breakdown by the object class categories should in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities. enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b), For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) an (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For the supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 89–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not to be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individuals direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment C—Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the

date needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, it appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 U.S.C. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basic of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basic of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits, discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statue(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable, requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Signature of Authorizing Official

Title

Applicant Organization

Date Submitted

Attachment D—Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which

reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (Street address, city, county, state, zip code):

_____

_____

_____

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant.

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Attachment E—Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or egency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause for default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered

transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntary excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it not its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment F—Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor

routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment G—Certification Regarding Lobbying

Certificate for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempt to influence an officer or employee of an agency, a Member of Congress, an officer of employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Issuance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

BILLING CODE 4184–01–P

Attachment G, Page 2

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $	
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184-01-C

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

The disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filling of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing service, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Note: According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Managemente and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)

ADMINISTRATION FOR CHILDREN AND FAMILIES (ACF)

STANDARD TERMS AND CONDITIONS—DISCRETIONARY GRANTS

The attached Financial Assistance Award is subject to Federal legislation and to DHHS and ACF regulations and policies. These include the following:

1. For institutions of higher education, hospitals, other non-profit organizations, and commercial (for-profit) organizations, Title 45 of Code of Federal Regulations (45 CFR) Part 74, "Uniform Administrative Requirements for Awards and Sub-awards to Institutions of Higher Education, Hospitals, Other Non-Profit Organizations; and Commercial Organizations; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments." http://www.access.gpo.gov/nara/cfr/waisdx_99/45cfr74_99.html

2. For States, local governments and Federally recognized Indian Tribes, 45 CFR Part 92, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." http://www.access.gpo.gov/nara/cfr/waisidx_99/45cfr92_99.html

3. Other DHHS regulations codified in Title 45 of the Code of Federal Regulations: http://www.access.gpo.gov/nara/cfr/waisidx_00/45cfrv1_00.html

Part 16—Procedures of the Departmental Grants Appeals Board
Part 30—Claims Collections
Part 46—Protection of Human Subjects
Part 76—Government-wide Debarment and Suspension (Non-Procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)
Part 80—Nondiscrimination Under Programs Receiving Federal Assistance through the DHHS Effectuation of Title VI of the Civil Rights Acts of 1964
Part 81—Practice and Procedure of Hearings Under Part 80 of this Title
Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities receiving Federal Financial Assistance
Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities receiving or benefiting from Federal Financial Assistance
Part 91—Nondiscrimination on the Basis of Age in DHHS programs or Activities receiving Federal Financial Assistance
Part 93—New Restriction on Lobbying
Part 100—Intergovernmental review of DHHS Program and Activities

4. 37 CFR Part 401—Right to Inventions made by Nonprofit Organizations and Small Business firms under Government Grants, Contracts, and Cooperative Agreements. http://www.access.gpo.gov/nara/cfr/waisidx_00/37cfr401_00.html

5. The recipient organization must carry out the project according to the application as approved by the Administration for Children and Families (ACF), including the proposed work program and any amendments, all of which are incorporated by reference in these terms and conditions.

6. If this is a multi-year project and it is not the final budget period, the grantee is advised that future awards for continuation of this project will be dependent upon the availability of Federal funds, satisfactory progress by the granted, and ACF's determination that continued funding is in the best interest of the Federal government.

7. Grantees shall liquidate all obligations incurred under the award no later than 90 days after the end of the project period. The only exceptions to this rule are the basic Head Start grants with an indefinite project period. For these grants, liquidation of obligations should occur no later than 90 days after each budget period. In either case, an unobligations balance from a prior budget period does not authorize a grantee to obligate funds in excess of the total federally approved budget reflected on the FAA for the current budget period.

8. The DHHS Inspector General maintains a toll free number, 800–HHS–TIPS (800–447–8477), for receiving information concerning fraud, waste or abuse under grants and cooperative agreements. Such reports are kept confidential, and callers may decline to give their names if they choose to remain anonymous. http://www.dhhs.gov/progorg/oei/hotline/hhshot.html

9. The grantee will take all necessary affirmative steps to ensure that small, minority and women-owned business firms are utilized when possible as sources of supplies services, equipment and construction. To the extent practicable, all equipment and products purchased with funds made available through this award should be American made.

10. Failure to submit reports (i.e., financial, progress, or other required reports) on time may be the basis for withholding financial

assistance payments, suspension termination or denial or refunding. A history of such unsatisfactory performance may result in designation of "high-risk" status for the recipient organization and may jeopardize potential future funding from DHHS.

11. Under Section 508 of Public Law 103–333, the following condition is applicable to all Federal awards:

"When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments and recipient of Federal research grants shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) the percentage and dollar amount of total costs of the project or program that will be refinanced by nongovernmental sources."

12. Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children's Act of 1994 requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantees. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. http:///www.ed.gov/legislation/GOALS2000/TheAct/sedc1043.html

13. For purposes of this award each item of equipment with acquisition cost of less than $5,000 is included under supplies, is allowable as a direct cost of this project, and does not require prior approval of the Grants Officer. Conversely, an item of equipment with an acquisition cost of $5,000 or more is NOT considered an allowable project cost without prior approval of the Grants Management Officer.

14. The Grantee shall comply with all provisions of OMB Circular A–133 (revised June 24, 1997), "Audit of State, Local Governments and Non-Profit Organizations." http://www.whitehouse. gov/omb/circulars/a133/a133.html Grantees that expend a total of $300,000 or more in Federal funds are required to submit an annual audit within nine months after the end of the audit period. The Reporting Package should include: (1) SF–SAC–Data Collection Form for Reporting on Audits of State, Local Governments and Non-Profit Organizations. http://harvester.census.gov/fac/collect/formoptions.html; (2) Summary of prior audit findings; (3) Auditors reports and (4) Corrective action plans. Copies of this Reporting Package are to be sent to: Single Audit Clearinghouse, Bureau of the Census, 1201 East 10th Street, Jeffersonville, Indiana 47132.

15. Grantee shall comply with the particular set of Federal cost principles that applies in determining allowable cost. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs:

- The allowability of costs incurred by State, local or Federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for States and Local Governments." http://www.whitehouse. gov/omb/circulars/a087/a087.html
- The allowability of costs incurred by nonprofit organizations (except for those listed in Attachment C of Circular A–122) is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Nonprofit Organizations" and paragraph (b) of 45 CFR, 74.27. http://www.whitehouse. gov/omb/circulars/a122/a122.html
- The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." http://www.whitehouse. gov/omb/circulars/a021/a021.html
- The allowability of costs incurred by hospital is determined in accordance with the provisions of Appendix E of 45 CFR Part 74, "Principles for Determining Cost Applicable to Research and Development Under Grants and Contracts with Hospitals."
- The allowability of cost incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provision of the Federal Acquisition Regulation (FAR) at 48 CFR Part 31, except that independent research and development costs are unallowable http://www.access.gpo.gov/nara/cfr/waisidx_99/48cfr31_99.html

Office of Management and Budget

It is estimated that in 2001 the Federal Government will outlay $305.6 billion in grants to State and local governments. Executive Order 12372, "Intergovernmental Review of Federal Programs," was issued with the desire to foster the intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform this function. Below is the official list of those entities. For those States that have a home page for their designated entity, a direct link has been provided below. States that are not listed on this page have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of these States, you may still send application materials directly to a Federal awarding agency.

Arkansas

Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, Fax: (501) 682–5206, tlcopeland@dfa.state.ar.us

California

Grants Coordination, State Clearinghouse, Office of Planning and Research, P.O. Box 3044, Room 222, Sacramento, California 95812–3044, Telephone: (916) 445–0613, Fax: (916) 323–3018, state.clearinghouse@opr.ca.gov

Delaware

Charles H. Hopkins, Executive Department, Office of the Budget, 540 S. Dupont Highway, 3rd Floor, Dover, Delaware 19901, Telephone: (302) 739–3323, Fax: (302) 739–5661, chopkins@state.de.us

District of Columbia

Ron Seldon, Office of Grants Management and Development, 717 14th Street, NW., Suite 1200, Washington, DC 20005, Telephone: (202) 727–1705, Fax: (202) 727–1617, ogmd-ogmd@degov.org

Florida

Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438, (850) 414–5495 (direct), Fax: (850) 414–0479

Georgia

Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia, 30334, Telephone: (404) 656–3855, Fax: (404) 656–7901, gach@mail.opb.state.ga.us

Illinois

Virginia Bova, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, Fax (312) 814–8485, vbova@commerce.state.il.us

Iowa

Steven R. McCann, Division of Community and Rural Development, Iowa Department of Economic Development, 200 East Grant Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, Fax: (515) 242–4809, steve.mccann@ided.state.ia.us

Kentucky

Ron Cook, Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Telephone: (502) 573–2382, Fax: (502) 573–2512, ron.cook@mail.state.ky.us

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, (207) 287–1461 (direct), Fax: (207) 287–6489, joyce.benson@state.me.us

Maryland

Linda Janey, Manager, Clearinghouse and Plan Review Unit, Maryland Office of Planning, 301 West Preston Street—Room 1104, Baltimore, Maryland 21201–2305, Telephone: (410) 767–4490, Fax: (410) 767–4480, linda@mail.op.state.md.us

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 535 Griswold, Suite 300, Detroit, Michigan 48226, Telephone: (313) 961–4266, Fax: (313) 961–4869, pfaff@semcog.org

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 1301 Woolfolk Building, Suite E, 501 North West Street, Jackson, Mississippi 39201, Telephone: (601) 359–6762, Fax: (601) 359–6758

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Truman Building, Room 840, Jefferson City, Missouri 65102, Telephone: (573) 751–4834, Fax: (573) 522–4395, pohll_@mail.oa.state.mo.us

Nevada

Heather Elliott, Department of Administration, State Clearinghouse, 209 E. Musser Street, Room 200, Carson City, Nevada 89701, Telephone: (775) 684–0209, Fax: (775) 684–0260, helliott@govmail.state.nv.us

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2–½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 27–2155, Fax: (603) 271–1728, jtaylor@osp.state.nh.us

New Mexico

Ken Hughes, Local Government Division, Room 201 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–4370, Fax: (505) 827–4948, khughes@dfa.state.nm.us

North Carolina

Jeanette Furney, Department of Administration, 1302 Mail Service Center, Raleigh, North Carolina 27699–1302, Telephone: (919) 807–2323, Fax: (919) 733–9571, jeanette.furney@ncmail.net

North Dakota

Jim Boyd, Division of Community Services, 600 East Boulevard Ave, Dept 105, Bismarck, North Dakota 58505–0170, Telephone: (701) 328–2094, Fax: (701) 328–2308, jboyd@state.nd.us

Rhode Island

Kevin Nelson, Department of Administration, Statewide Planning Program, One Capitol Hill, Providence, Rhode Island 02908–5870, Telephone: (401) 222–2093, Fax: (401) 222–2083, knelson@doa.state.ri.us

South Carolina

Omeagia Burgess, Budget and Control Board, Office of State Budget, 1122 Ladies Street, 12th Floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, Fax: (803) 734–0645, aburgess@budget.state.sc.us

Texas

Denise S. Francis, Director, State Grants Team, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 305–9415, Fax: (512) 936–2681, dfrancis@governor.state.tx.us

Utah

Carolyn Wright, Utah State Clearinghouse, Governor's Office of Planning and Budget, State Capitol, Room 114, Salt Lake City, Utah 84114, Telephone (801) 538–1535, Fax: (801) 538–1547, cwright@gov.state.ut.us

West Virginia

Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 558–4010, Fax: (304) 558–3248, fcutlip@wvdo.org

Wisconsin

Jeff Smith, Section Chief, Federal/State Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, Fax: (608) 267–6931, jeffrey.smith@doa.state.wi.us

American Samoa

Pat M. Galea'i, Federal Grants/Programs Coordinator, Office of Federal Programs, Office of the Governor/Department of Commerce, American Samoa Government, Pago Pago, American Samoa 96799, Telephone: (684) 633–5155, Fax: (684) 633–4195, pmgaleai@samoatelco.com

Guam

Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, Fax: 011–472–2825,, jer@ns.gov.gu

Puerto Rico

Jose Caballero / Mayra Silva, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (787) 723–6190, Fax: (787) 722–6783

North Mariana Islands

Ms. Jacoba T. Seman, Federal Programs Coordinator, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2289, Fax: (670) 664–2272, omb.jseman@saipan.com

Virgin Islands

Ira Mills, Director, Office of Management and Budget, #41 Norre Gade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802, Telephone: (340) 774–0750, Fax: (340) 766–0069, lrmills@usvi.org

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Federal Register

Monday,
July 2, 2001

Part III

Department of the Treasury

Fiscal Service

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies; Notice

DEPARTMENT OF THE TREASURY

FISCAL SERVICE
(Dept. Circular 570; 2001 Revision)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective July 1, 2001

This Circular is published annually, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the Circular and interim changes may be obtained directly from the internet or from the Government Printing Office (202) 512-1800. (Interim changes are published in the FEDERAL REGISTER and on the internet as they occur.) Other information pertinent to Federal sureties may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6A04, Hyattsville, MD 20782, Telephone (202) 874-6850 or Fax (202) 874-9978.

The most current list of Treasury authorized companies is always available through the Internet at http://www.fms.treas.gov/c570/index.html. In addition, applicable laws, regulations, and application information are also available at the same site.

Please note that the underwriting limitation published herein is on a per bond basis but this does not limit the amount of a bond that a company can write. Companies are allowed to write bonds with a penal sum over their underwriting limitation as long as they protect the excess amount with reinsurance, coinsurance or other methods as specified at 31 CFR 223.10-11. Please refer to footnote (b) at the end of this publication.

The following companies have complied with the law and the regulations of the U.S. Department of the Treasury. Those listed in the front of this Circular are acceptable as sureties and reinsurers on Federal bonds under Title 31 of the United States Code, Sections 9304 to 9308 [See Note (a)]. Those listed in the back are acceptable only as reinsurers on Federal bonds under 31 CFR 223.3(b) [See Note (e)].

If we can be of any assistance, please feel free to contact the Surety Bond Branch at (202) 874-6850.

Judith R. Tillman
Assistant Commissioner
Financial Operations
Financial Management Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

Acadia Insurance Company

BUSINESS ADDRESS: P.O. Box 9010, Westbrook, ME 04098-5010. PHONE: (207) 772-4300. UNDERWRITING LIMITATION *b/*: $1,902,000. SURETY LICENSES *c,f/*: CT, DE, ME, MD, MA, NH, NY, PA, RI, VT. INCORPORATED IN: Maine.

ACCREDITED SURETY AND CASUALTY COMPANY, INC.

BUSINESS ADDRESS: P.O. Box 2067, Winter Park, FL 32790-2067. PHONE: (407) 629-2131. UNDERWRITING LIMITATION *b/*: $931,000. SURETY LICENSES *c,f/*: AL, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WA, WY. INCORPORATED IN: Florida.

ACSTAR INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 224-2000. UNDERWRITING LIMITATION *b/*: $1,916,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

ACUITY, A Mutual Insurance Company 1/

BUSINESS ADDRESS: 2800 South Taylor Drive, P.O. Box 58, Sheboygan, WI 53082-0058. PHONE: (920) 458-9131. UNDERWRITING LIMITATION *b/*: $20,341,000. SURETY LICENSES *c,f/*: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NV, ND, OH, OR, PA, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Aegis Security Insurance Company

BUSINESS ADDRESS: P.O. Box 3153, Harrisburg, PA 17105. PHONE: (717) 657-9671. UNDERWRITING LIMITATION *b/*: $2,165,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Affiliated FM Insurance Company

BUSINESS ADDRESS: P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION *b/*: $2,524,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

ALL AMERICA INSURANCE COMPANY

BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891. PHONE: (419) 238-5551. UNDERWRITING LIMITATION *b/*: $3,831,000. SURETY LICENSES *c,f/*: AZ, CA, CT, GA, IL, IN, IA, KY, MA, MI, NV, NJ, NY, NC, OH, OK, TN, TX, VA. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

Allegheny Casualty Company

BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335-7116. PHONE: (814) 336-2521. UNDERWRITING LIMITATION *b/*: $1,411,000. SURETY LICENSES *c,f/*: AL, CA, DC, FL, ID, IL, IN, LA, MD, MI, MS, MO, NV, NJ, NM, NY, NC, OH, OK, PA, SC, SD, TN, TX, VA, WA, WI, WY. INCORPORATED IN: Pennsylvania.

AMCO Insurance Company

BUSINESS ADDRESS: 701 Fifth Avenue, Des Moines, IA 50391-2007. PHONE: (515) 280-4211. UNDERWRITING LIMITATION *b/*: $31,173,000. SURETY LICENSES *c,f/*: AZ, CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OH, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

AMERICAN ALTERNATIVE INSURANCE CORPORATION

BUSINESS ADDRESS: 555 College Road East - P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION *b/*: $3,385,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

AMERICAN AND FOREIGN INSURANCE COMPANY

BUSINESS ADDRESS: 9300 Arrowpoint Blvd., P. O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION *b/*: $9,018,000. SURETY LICENSES *c,f/*: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MA, MI, MS, MO, MT, NE, NV, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

American Automobile Insurance Company

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION *b/*: $6,637,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA

BUSINESS ADDRESS: 11222 Quail Roost Drive, Miami, FL 33157. PHONE: (305) 253-2244. UNDERWRITING LIMITATION *b/*: $5,629,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Florida.

American Casualty Company of Reading, Pennsylvania

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION *b/*: $44,425,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

AMERICAN CONTRACTORS INDEMNITY COMPANY 2/

BUSINESS ADDRESS: 9841 Airport Blvd., 9th Floor, Los Angeles, CA 90045. PHONE: (310) 649-0990. UNDERWRITING LIMITATION *b/*: $1,308,000. SURETY LICENSES *c,f/*: AL, AZ, AR, CA, CO, FL, GA, GU, HI, ID, IN, IA, KS, LA, MD, MT, NE, NV, NM, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

American Economy Insurance Company

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION *b/*: $39,526,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Fire and Casualty Company

BUSINESS ADDRESS: 9450 Seward Road, Fairfield, OH 45014. PHONE: (513) 603-2400. UNDERWRITING LIMITATION *b/*: $7,710,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NJ. NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

American Guarantee and Liability Insurance Company

BUSINESS ADDRESS: 1400 American Lane, Tower I, 19th Floor, Schaumburg, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION *b/*: $5,981,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Home Assurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION *b/*: $237,886,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Insurance Company (The)

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION *b/*: $28,353,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

AMERICAN INTERNATIONAL INSURANCE COMPANY OF PUERTO RICO

BUSINESS ADDRESS: P.O. Box 10181, San Juan, PR 00908-1181. PHONE: (787) 767-6400. UNDERWRITING LIMITATION *b/*: $5,484,000. SURETY LICENSES *c,f/*: PR, VI. INCORPORATED IN: Puerto Rico.

See Footnotes/Notes at end of Circular

American International Pacific Insurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION *b/*: $2,474,000. SURETY LICENSES *c,f/*: AK, CO, CT, DC, IA, ME, MD, MA, MS, MT, NE, NH, ND, RI, SD, UT, VT, WV, WY. INCORPORATED IN: Colorado.

American Interstate Insurance Company

BUSINESS ADDRESS: 2301 Highway 190 West, DeRidder, LA 70634-6005. PHONE: (800) 256-9052. UNDERWRITING LIMITATION *b/*: $4,603,000. SURETY LICENSES *c,f/*: AK, AR, DE, DC, GA, HI, ID, IL, IA, KS, KY, LA, MA, MI, MN, MT, NE, NV, NY, PA, RI, SC, SD, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Louisiana.

American Manufacturers Mutual Insurance Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION *b/*: $25,428,000. SURETY LICENSES *c,f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American Motorists Insurance Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION *b/*: $42,070,000. SURETY LICENSES *c,f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American Re-Insurance Company

BUSINESS ADDRESS: 555 College Road East, P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION *b/*: $216,537,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

AMERICAN RELIABLE INSURANCE COMPANY

BUSINESS ADDRESS: 8655 East Via De Ventura, Scottsdale, AZ 85258. PHONE: (480) 483-8666. UNDERWRITING LIMITATION *b/*: $2,946,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

American Safety Casualty Insurance Company

BUSINESS ADDRESS: 1845 The Exchange, Suite 200, Atlanta, GA 30339. PHONE: (770) 916-1908. UNDERWRITING LIMITATION *b/*: $1,203,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

See Footnotes/Notes at end of Circular

American States Insurance Company

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION *b/*: $33,332,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Surety Company

BUSINESS ADDRESS: 3905 Vincennes Road, Suite 200, Indianapolis, IN 46268. PHONE: (317) 875-8700. UNDERWRITING LIMITATION *b/*: $484,000. SURETY LICENSES *c,f/*: AL, CA, CT, DE, FL, HI, ID, IN, IA, KS, LA, MD, MS, MO, NE, NV, ND, OH, PA, SC, SD, TN, TX, UT, VA, WA, WY. INCORPORATED IN: California.

Amerisure Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 2060, Farmington Hills, MI 48333-2060. PHONE: (248) 615-9000. UNDERWRITING LIMITATION *b/*: $8,398,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

Antilles Insurance Company

BUSINESS ADDRESS: P.O. Box 9023507, San Juan, PR 00902-3507. PHONE: (787) 721-4900. UNDERWRITING LIMITATION *b/*: $3,646,000. SURETY LICENSES *c,f/*: PR. INCORPORATED IN: Puerto Rico.

Associated Indemnity Corporation

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION *b/*: $3,939,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

ATLANTIC ALLIANCE FIDELITY AND SURETY COMPANY

BUSINESS ADDRESS: 8000 Midlantic Drive, Suite 410 North, Mt. Laurel, NJ 08054. PHONE: (856) 439-0066. UNDERWRITING LIMITATION *b/*: $300,000. SURETY LICENSES *c,f/*: AL, CT, DE, DC, FL, GA, IL, IN, KS, KY, MD, MA, MN, MO, NJ, NY, NC, OK, PA, TN, TX. INCORPORATED IN: New Jersey.

Atlantic Mutual Insurance Company

BUSINESS ADDRESS: 140 Broadway, New York, NY 10005-1101. PHONE: (212) 943-1800. UNDERWRITING LIMITATION *b/*: $47,171,000. SURETY LICENSES *c,f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

ATLAS ASSURANCE COMPANY OF AMERICA

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (315) 431-6100. UNDERWRITING LIMITATION *b/*: $34,975,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Auto-Owners Insurance Company

BUSINESS ADDRESS: P.O. Box 30660, Lansing, MI 48909-8160. PHONE: (517) 323-1200. UNDERWRITING LIMITATION *b/*: $297,040,000. SURETY LICENSES *c,f/*: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NM, NC, ND, OH, OR, SC, SD, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Michigan.

Berkley Insurance Company

BUSINESS ADDRESS: 100 Campus Drive, P.O. Box 853, Florham Park, NJ 07932-0853. PHONE: (973) 301-8000. UNDERWRITING LIMITATION *b/*: $43,719,000. SURETY LICENSES *c,f/*: AL, AK, AR, CA, CO, DE, DC, FL, ID, IL, IN, IA, KY, LA, MD, MI, MN, MS, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, WA, WV, WI. INCORPORATED IN: Delaware.

BITUMINOUS CASUALTY CORPORATION

BUSINESS ADDRESS: 320 - 18th Street, Rock Island, IL 61201-8744. PHONE: (309) 786-5401. UNDERWRITING LIMITATION *b/*: $17,494,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

BOND SAFEGUARD INSURANCE COMPANY

BUSINESS ADDRESS: 1919 S. Highland Ave., Bldg. A, Suite 300, Lombard, IL 60148. PHONE: (630) 495-9380. UNDERWRITING LIMITATION *b/*: $531,000. SURETY LICENSES *c,f/*: IL, IN, KS, MO, NC, OK, TN, TX. INCORPORATED IN: Illinois.

BRITISH AMERICAN INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 1590, Dallas, TX 75221-1590. PHONE: (214) 443-5500. UNDERWRITING LIMITATION *b/*: $2,117,000. SURETY LICENSES *c,f/*: TX. INCORPORATED IN: Texas.

Buckeye Union Insurance Company (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION *b/*: $22,324,000. SURETY LICENSES *c,f/*: AK, DC, FL, IL, IN, IA, KS, KY, MD, MI, MO, NY, OH, PA, RI, SD, VA, WV. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

Capital City Insurance Company, Inc.

BUSINESS ADDRESS: P.O. Box 212157, Columbia, SC 29221-2157. PHONE: (803) 731-7728. UNDERWRITING LIMITATION *b/*: $1,705,000. SURETY LICENSES *c,f/*: AL, AR, GA, IL, LA, MS, NC, OK, PA, SC, TN, TX, VA, WV. INCORPORATED IN: S. Carolina.

Capitol Indemnity Corporation

BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. PHONE: (608) 231-4450. UNDERWRITING LIMITATION *b/*: $10,792,000. SURETY LICENSES *c,f/*: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Wisconsin.

Carolina Casualty Insurance Company

BUSINESS ADDRESS: P.O. Box 2575, Jacksonville, FL 32203. PHONE: (904) 363-0900. UNDERWRITING LIMITATION *b/*: $3,280,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

Centennial Insurance Company

BUSINESS ADDRESS: 140 Broadway, New York, NY 10005-1101. PHONE: (212) 943-1800. UNDERWRITING LIMITATION *b/*: $9,245,000. SURETY LICENSES *c,f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

CENTRAL MUTUAL INSURANCE COMPANY

BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891. PHONE: (419) 238-5551. UNDERWRITING LIMITATION *b/*: $17,743,000. SURETY LICENSES *c,f/*: AZ, CA, CT, DE, GA, IL, IN, IA, KY, MA, MI, NV, NH, NJ, NM, NY, NC, OH, OK, PA, TN, TX, VT, VA, WV. INCORPORATED IN: Ohio.

CENTURY SURETY COMPANY

BUSINESS ADDRESS: P.O. Box 163340, Columbus, OH 43216-3340. PHONE: (614) 895-2000. UNDERWRITING LIMITATION *b/*: $1,190,000. SURETY LICENSES *c,f/*: AZ, IN, OH, WV, WI. INCORPORATED IN: Ohio.

CGU INSURANCE COMPANY

BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108-3100. PHONE: (617) 725-6000. UNDERWRITING LIMITATION *b/*: $112,260,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

Cherokee Insurance Company

BUSINESS ADDRESS: 34200 Mound Road, Sterling Heights, MI 48310. PHONE: (800) 201-0450. UNDERWRITING LIMITATION b/: $1,002,000. SURETY LICENSES c,f/: CA, GA, ID, IN, IA, LA, MI, MN, MO, ND, OH, TN, WV. INCORPORATED IN: Michigan.

CHRYSLER INSURANCE COMPANY

BUSINESS ADDRESS: CIMS:465-20-85, P.O. Box 5168, Southfield, MI 48086-5168. PHONE: (248) 948-3443. UNDERWRITING LIMITATION b/: $19,610,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Michigan.

CHUBB INDEMNITY INSURANCE COMPANY

BUSINESS ADDRESS: 55 Water Street, New York, NY 10041. PHONE: (212) 612-4000. UNDERWRITING LIMITATION b/: $1,327,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Cincinnati Casualty Company (The)

BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION b/: $21,117,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Cincinnati Insurance Company (The)

BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION b/: $264,313,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

BUSINESS ADDRESS: 1400 American Lane, Tower 1, 19th Floor, Schaumburg, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION b/: $1,746,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Maryland.

COLONIAL SURETY COMPANY

BUSINESS ADDRESS: 50 Chestnut Ridge Road, Montvale, NJ 07645. PHONE: (201) 573-8788. UNDERWRITING LIMITATION b/: $327,000. SURETY LICENSES c,f/: AL, AK, AR, CA, CT, DE, DC, FL, IN, KS, MD, MA, MT, NE, NV, NJ, NM, NY, NC, ND, OK, OR, PA, SD, TN, TX, UT, WV, WY. INCORPORATED IN: Pennsylvania.

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Columbia Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 618, Columbia, MO 65202. PHONE: (573) 474-6193. UNDERWRITING LIMITATION ***b/***: $6,576,000. SURETY LICENSES ***c,f/***: AL, AZ, AR, CO, GA, ID, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NM, ND, OK, SD, TN, TX, VA, WA, WV, WY. INCORPORATED IN: Missouri.

Commercial Casualty Insurance Company of Georgia

BUSINESS ADDRESS: P.O. Box 926270, Norcross, GA 30010-6270. PHONE: (770) 729-8101. UNDERWRITING LIMITATION ***b/***: $834,000. SURETY LICENSES ***c,f/***: CA, FL, GA, IN, LA, NV, NC, PA, SC, WA. INCORPORATED IN: Georgia.

Commercial Insurance Company of Newark, New Jersey

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION ***b/***: $6,607,000. SURETY LICENSES ***c,f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

Commercial Union Insurance Company

BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108-3100. PHONE: (617) 725-6000. UNDERWRITING LIMITATION ***b/***: $28,750,000. SURETY LICENSES ***c,f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Consolidated Insurance Company

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (317) 581-6400. UNDERWRITING LIMITATION ***b/***: $3,710,000. SURETY LICENSES ***c,f/***: FL, IL, IN, IA, KY, MI, MN, OH, TN, WA, WI. INCORPORATED IN: Indiana.

Continental Casualty Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION ***b/***: $346,528,000. SURETY LICENSES ***c,f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Continental Insurance Company (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION ***b/***: $52,946,000. SURETY LICENSES ***c,f/***: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

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CONTRACTORS BONDING AND INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 9271, Seattle, WA 98109-0271. PHONE: (206) 628-7200. UNDERWRITING LIMITATION *b/*: $2,418,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico

BUSINESS ADDRESS: G.P.O. Box 363846, San Juan, PR 00936-3846. PHONE: (787) 758-8585. UNDERWRITING LIMITATION *b/*: $12,640,000. SURETY LICENSES *c,f/*: PR. INCORPORATED IN: Puerto Rico.

CUMBERLAND CASUALTY & SURETY COMPANY

BUSINESS ADDRESS: 4311 West Waters Avenue Suite 401, Tampa, FL 33614. PHONE: (813) 885-2112. UNDERWRITING LIMITATION *b/*: $544,000. SURETY LICENSES *c,f/*: AL, AR, DE, DC, FL, GA, GU, ID, IN, KS, KY, LA, MD, MA, MO, MT, NE, NV, ND, OR, PA, SC, SD, TN, TX, WA, WV, WY. INCORPORATED IN: Florida.

CUMIS INSURANCE SOCIETY, INC.

BUSINESS ADDRESS: P. O. Box 1084, Madison, WI 53701. PHONE: (608) 238-5851. UNDERWRITING LIMITATION *b/*: $23,757,000. SURETY LICENSES *c,f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Developers Surety and Indemnity Company

BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92613. PHONE: (949) 263-3300. UNDERWRITING LIMITATION *b/*: $1,506,000. SURETY LICENSES *c,f/*: AK, AZ, CA, CO, DC, FL, HI, ID, IL, IN, IA, KS, KY, MD, MN, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Iowa.

DIAMOND STATE INSURANCE COMPANY

BUSINESS ADDRESS: Three Bala Plaza, East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION *b/*: $5,352,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company

BUSINESS ADDRESS: P.O. Box 8017, Wausau, WI 54402-8017. PHONE: (715) 845-5211. UNDERWRITING LIMITATION *b/*: $5,050,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

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Employers Mutual Casualty Company

BUSINESS ADDRESS: P. O. Box 712, Des Moines, IA 50303-0712. PHONE: (515) 280-2511. UNDERWRITING LIMITATION *b/*: $52,626,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation

BUSINESS ADDRESS: P.O. Box 2991, Overland Park, KS 66201-1391. PHONE: (913) 676-5200. UNDERWRITING LIMITATION *b/*: $317,696,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Erie Insurance Company

BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. PHONE: (814) 870-2000. UNDERWRITING LIMITATION *b/*: $8,252,000. SURETY LICENSES *c, f/*: DC, IL, IN, KY, MD, NY, NC, OH, PA, TN, VA, WV, WI. INCORPORATED IN: Pennsylvania.

Everest Reinsurance Company

BUSINESS ADDRESS: P.O. Box 830, Liberty Corner, NJ 07938-0830. PHONE: (908) 604-3000. UNDERWRITING LIMITATION *b/*: $89,553,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

Evergreen National Indemnity Company

BUSINESS ADDRESS: P.O. Box 163340, Columbus, OH 43216-3340. PHONE: (614) 895-1773. UNDERWRITING LIMITATION *b/*: $1,356,000. SURETY LICENSES *c, f/*: AL, AK, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, WA, WI, WY. INCORPORATED IN: Ohio.

Excelsior Insurance Company

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION *b/*: $4,074,000. SURETY LICENSES *c, f/*: CT, DE, DC, FL, GA, IN, KY, ME, MD, MA, NH, NJ, NY, NC, PA, VT, VA. INCORPORATED IN: New Hampshire.

Executive Risk Indemnity Inc.

BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION *b/*: $27,156,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Delaware.

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EXPLORER INSURANCE COMPANY (THE)

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (858) 350-2400. UNDERWRITING LIMITATION *b/*: $2,784,000. SURETY LICENSES *c,f/*: AZ, CA, FL, HI, ID, IL, IA, MT, NV, NM, OR, PA, TX, UT, WA. INCORPORATED IN: Arizona.

Factory Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION *b/*: $244,006,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

FAR WEST INSURANCE COMPANY

BUSINESS ADDRESS: 5230 Las Virgenes Road, Calabasas, CA 91302. PHONE: (818) 871-2000. UNDERWRITING LIMITATION *b/*: $1,027,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

Farmers Alliance Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 1401, McPherson, KS 67460. PHONE: (316) 241-2200. UNDERWRITING LIMITATION *b/*: $7,431,000. SURETY LICENSES *c,f/*: AZ, CO, ID, IN, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, SD, TX. INCORPORATED IN: Kansas.

Farmington Casualty Company

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION *b/*: $15,694,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Farmland Mutual Insurance Company

BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315-1030. PHONE: (515) 245-8800. UNDERWRITING LIMITATION *b/*: $7,070,000. SURETY LICENSES *c,f/*: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

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Federal Insurance Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION *b/*: $301,341,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

FEDERATED MUTUAL INSURANCE COMPANY

BUSINESS ADDRESS: 121 East Park Square, Owatonna, MN 55060. PHONE: (507) 455-5200. UNDERWRITING LIMITATION *b/*: $104,256,000. SURETY LICENSES *c,f/*: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Fidelity and Casualty Company of New York (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION *b/*: $24,137,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Fidelity and Deposit Company of Maryland

BUSINESS ADDRESS: 1400 American Lane, Tower 1, 19th Floor, Schaumburg, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION *b/*: $14,321,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

FIDELITY AND GUARANTY INSURANCE COMPANY

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION *b/*: $1,327,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Fidelity and Guaranty Insurance Underwriters, Inc.

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION *b/*: $3,121,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Financial Pacific Insurance Company

BUSINESS ADDRESS: P.O. Box 292220, Sacramento, CA 95829-2220. PHONE: (916) 630-5000. UNDERWRITING LIMITATION *b/*: $1,997,000. SURETY LICENSES *c,f/*: AK, AZ, AR, CA, CO, ID, KS, MO, MT, NE, NV, NM, ND, OK, OR, SD, UT, WA, WI. INCORPORATED IN: California.

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Fireman's Fund Insurance Company

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION *b/*: $123,980,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Firemen's Insurance Company of Newark, New Jersey

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION *b/*: $30,843,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

First Community Insurance Company

BUSINESS ADDRESS: 360 Central Avenue, St. Petersburg, FL 33701. PHONE: (727) 823-4000. UNDERWRITING LIMITATION *b/*: $966,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

First Insurance Company of Hawaii, Ltd.

BUSINESS ADDRESS: P.O. BOX 2866, HONOLULU, HI 96803. PHONE: (808) 527-7777. UNDERWRITING LIMITATION *b/*: $9,992,000. SURETY LICENSES *c,f/*: GU, HI. INCORPORATED IN: Hawaii.

First Liberty Insurance Corporation (The)

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION *b/*: $1,745,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Iowa.

First National Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION *b/*: $6,481,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

FOLKSAMERICA REINSURANCE COMPANY

BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006-1404. PHONE: (212) 312-2500. UNDERWRITING LIMITATION *b/*: $38,046,000. SURETY LICENSES *c,f/*: AL, AZ, AR, CO, DC, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MS, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, SC, TX, UT, VA, WA, WI. INCORPORATED IN: New York.

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GENERAL ACCIDENT INSURANCE COMPANY

BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108-3100. PHONE: (617) 725-6000. UNDERWRITING LIMITATION *b/*: $9,791,000. SURETY LICENSES *c,f/*: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

General Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION *b/*: $50,143,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

General Reinsurance Corporation

BUSINESS ADDRESS: 695 East Main Street, P.O. Box 10350, Stamford, CT 06904-2350. PHONE: (203) 328-5000. UNDERWRITING LIMITATION *b/*: $292,574,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Global Surety & Insurance Co.

BUSINESS ADDRESS: 3555 Farnam Street, Omaha, NE 68131. PHONE: (402) 271-2840. UNDERWRITING LIMITATION *b/*: $2,866,000. SURETY LICENSES *c,f/*: AZ, CA, CO, NE. INCORPORATED IN: Nebraska.

GLOBE INDEMNITY COMPANY

BUSINESS ADDRESS: 9300 Arrowpoint Blvd.,P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION *b/*: $37,593,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Grain Dealers Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 1747, Indianapolis, IN 46206. PHONE: (317) 923-2453. UNDERWRITING LIMITATION *b/*: $1,296,000. SURETY LICENSES *c,f/*: AZ, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NV, NM, NC, ND, OH, OK, OR, SD, TN, TX, VA, WA, WI, WY. INCORPORATED IN: Indiana.

GRANITE RE, INC.

BUSINESS ADDRESS: P.O. Box 20683, Oklahoma City, OK 73156. PHONE: (405) 752-2600. UNDERWRITING LIMITATION *b/*: $303,000. SURETY LICENSES *c,f/*: AZ, AR, CO, KS, MN, MT, ND, OK, SD. INCORPORATED IN: Oklahoma.

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Granite State Insurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $2,490,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Great American Alliance Insurance Company

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION b/: $1,044,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Great American Insurance Company

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION b/: $107,445,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

GREAT AMERICAN INSURANCE COMPANY OF NEW YORK

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION b/: $2,694,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Great Northern Insurance Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $11,727,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

GREAT RIVER INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 152180, Irving, TX 75015-2180. PHONE: (972) 719-2400. UNDERWRITING LIMITATION b/: $942,000. SURETY LICENSES c,f/: AL, AR, GA, KY, LA, MS, SC, TN, TX, UT. INCORPORATED IN: Mississippi.

Greenwich Insurance Company

BUSINESS ADDRESS: Seaview House, 70 Seaview Avenue, Stamford, CT 06902-6040. PHONE: (203) 964-5200. UNDERWRITING LIMITATION b/: $2,439,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

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Gulf Insurance Company

BUSINESS ADDRESS: P.O. Box 131771, Dallas, TX 75313-1771. PHONE: (972) 650-2800. UNDERWRITING LIMITATION *b/*: $31,044,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Hanover Insurance Company (The)

BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION *b/*: $103,277,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

HARCO NATIONAL INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. PHONE: (847) 734-4100. UNDERWRITING LIMITATION *b/*: $5,689,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Harleysville Mutual Insurance Company

BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438-2297. PHONE: (215) 256-5000. UNDERWRITING LIMITATION *b/*: $55,101,000. SURETY LICENSES *c,f/*: AL, AR, CA, CO, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Harleysville Worcester Insurance Company 12/

BUSINESS ADDRESS: 120 Front Street, Ste 500, Worcester, MA 01608-1408. PHONE: (508) 751-8100. UNDERWRITING LIMITATION *b/*: $10,189,000. SURETY LICENSES *c,f/*: CT, ME, MA, MI, NH, NY, RI, VT. INCORPORATED IN: Massachusetts.

Hartford Accident and Indemnity Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION *b/*: $88,608,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

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Hartford Casualty Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION *b/*: $47,708,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Fire Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION *b/*: $550,553,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD. TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Illinois

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION *b/*: $46,154,000. SURETY LICENSES *c,f/*: IL, PA. INCORPORATED IN: Illinois.

Hartford Insurance Company of the Midwest

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION *b/*: $8,042,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Insurance Company of the Southeast .

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION *b/*: $3,141,000. SURETY LICENSES *c,f/*: CT, FL, GA, LA, PA. INCORPORATED IN: Florida.

Heritage Mutual Insurance Company 1/

ICI MUTUAL INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 730, Burlington, VT 05402-0730. PHONE: (802) 863-0096. UNDERWRITING LIMITATION *b/*: $10,881,000. SURETY LICENSES *c,f/*: VT. INCORPORATED IN: Vermont.

Indemnity Company of California

BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92623. PHONE: (949) 263-3300. UNDERWRITING LIMITATION *b/*: $535,000. SURETY LICENSES *c,f/*: AK, AZ, CA, HI, ID, IN, NV, OR, SC, UT, VA, WA. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

Indemnity Insurance Company of North America

BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 41484, Philadelphia, PA 19101-1484. PHONE: (215) 640-1000 x-2324. UNDERWRITING LIMITATION *b/*: $1,106,000. SURETY LICENSES *c,f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Independence Casualty and Surety Company

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (858) 350-2400 x-2550. UNDERWRITING LIMITATION *b/*: $1,934,000. SURETY LICENSES *c,f/*: TX. INCORPORATED IN: Texas.

Indiana Insurance Company

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (317) 581-6400. UNDERWRITING LIMITATION *b/*: $8,503,000. SURETY LICENSES *c,f/*: FL, IL, IN, IA, KY, MI, MN, NJ, OH, TN, WA, WI. INCORPORATED IN: Indiana.

Indiana Lumbermens Mutual Insurance Company

BUSINESS ADDRESS: 3600 Woodview Trace, Indianapolis, IN 46268-0600. PHONE: (800) 428-1441. UNDERWRITING LIMITATION *b/*: $3,743,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Inland Insurance Company

BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION *b/*: $5,760,000. SURETY LICENSES *c,f/*: AZ, CO, IA, KS, MN, MO, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska.

Insurance Company of the State of Pennsylvania (The)

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION *b/*: $70,054,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the West

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (858) 350-2400 x-2550. UNDERWRITING LIMITATION *b/*: $23,722,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

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Insurors Indemnity Company

BUSINESS ADDRESS: P.O. Box 2683, Waco, TX 76702-2683. PHONE: (254) 750-8128. UNDERWRITING LIMITATION b/: $250,000. SURETY LICENSES c,f/: TX. INCORPORATED IN: Texas.

INTEGRAND ASSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 70128, San Juan, PR 00936-8128. PHONE: (787) 781-0707. UNDERWRITING LIMITATION b/: $3,443,000. SURETY LICENSES c,f/: PR, VI. INCORPORATED IN: Puerto Rico.

International Business & Mercantile REassurance Company

BUSINESS ADDRESS: 307 North Michigan Avenue, Chicago, IL 60601. PHONE: (312) 346-8100. UNDERWRITING LIMITATION b/: $8,360,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

International Fidelity Insurance Company

BUSINESS ADDRESS: One Newark Center, 20th Floor, Newark, NJ 07102-5207. PHONE: (973) 624-7200. UNDERWRITING LIMITATION b/: $3,402,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

ISLAND INSURANCE COMPANY, LIMITED

BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96806-1520. PHONE: (808) 564-8200. UNDERWRITING LIMITATION b/: $11,033,000. SURETY LICENSES c,f/: HI. INCORPORATED IN: Hawaii.

Kansas Bankers Surety Company (The)

BUSINESS ADDRESS: P. O. Box 1654, Topeka, KS 66601-1654. PHONE: (785) 228-0000. UNDERWRITING LIMITATION b/: $7,755,000. SURETY LICENSES c,f/: AZ, AR, CO, ID, IL, IN, IA, KS, KY, LA, ME, MI, MN, MS, MO, MT, NE, NM, ND, OK, SD, TN, TX, WI, WY. INCORPORATED IN: Kansas.

LEXINGTON NATIONAL INSURANCE CORPORATION

BUSINESS ADDRESS: 214 East Lexington Street, Baltimore, MD 21202. PHONE: (410) 625-0800. UNDERWRITING LIMITATION b/: $483,000. SURETY LICENSES c,f/: CA, CO, DE, FL, IN, MD, MS, NJ, PA. - INCORPORATED IN: Maryland.

Liberty Insurance Corporation

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: $18,900,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Vermont.

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LIBERTY MUTUAL FIRE INSURANCE COMPANY

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION *b/*: $72,871,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Liberty Mutual Insurance Company

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION *b/*: $300,609,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Lincoln General Insurance Company

BUSINESS ADDRESS: 3350 Whiteford Road, P.O. Box 3709, York, PA 17402-0136. PHONE: (717) 757-0000. UNDERWRITING LIMITATION *b/*: $1,709,000. SURETY LICENSES *c,f/*: AL, AR, CO, DE, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

LM Insurance Corporation

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION *b/*: $1,489,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Lumbermens Mutual Casualty Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION *b/*: $93,628,000. SURETY LICENSES *c,f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Lyndon Property Insurance Company

BUSINESS ADDRESS: 520 Maryville Centre Drive, Ste 500, St. Louis, MO 63141. PHONE: (314) 275-5200. UNDERWRITING LIMITATION *b/*: $2,878,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

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MARKEL INSURANCE COMPANY

BUSINESS ADDRESS: 4600 Cox Road, Glen Allen, VA 23060. PHONE: (800) 431-1270. UNDERWRITING LIMITATION b/: $7,684,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Massachusetts Bay Insurance Company

BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200 x-4373. UNDERWRITING LIMITATION b/: $1,942,000. SURETY LICENSES c,f/: AL, AR, CA, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OR, PA, RI, SC, TN, TX, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

Merchants Bonding Company (Mutual)

BUSINESS ADDRESS: 2100 Fleur Drive, Des Moines, IA 50321-1158. PHONE: (515) 243-8171. UNDERWRITING LIMITATION b/: $2,897,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Michigan Millers Mutual Insurance Company

BUSINESS ADDRESS: P. O. Box 30060, Lansing, MI 48909-7560. PHONE: (517) 482-6211 x-765. UNDERWRITING LIMITATION b/: $8,009,000. SURETY LICENSES c,f/: AZ, AR, CA, ID, IL, IN, IA, KS, KY, MI, MN, MO, NE, NY, NC, OH, OK, PA, VA, WI. INCORPORATED IN: Michigan.

Mid-Century Insurance Company

BUSINESS ADDRESS: P. O. Box 2478, Terminal Annex, Los Angeles, CA 90051-2478. PHONE: (323) 932-3200. UNDERWRITING LIMITATION b/: $63,951,000. SURETY LICENSES c,f/: AZ, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: California.

MID-CONTINENT CASUALTY COMPANY

BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221. UNDERWRITING LIMITATION b/: $6,234,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, IL, IN, IA, KS, LA, MN, MS, MO, MT, NE, NM, ND, OH, OK, OR, SD, TN, TX, UT, WA, WY. INCORPORATED IN: Oklahoma.

Mid-State Surety Corporation

BUSINESS ADDRESS: 102 Kercheval, Grosse Pointe Farms, MI 48236. PHONE: (313) 886-2200. UNDERWRITING LIMITATION b/: $1,207,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NE, NV, NJ, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. INCORPORATED IN: Michigan.

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MIDWESTERN INDEMNITY COMPANY (THE) 3/

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (513) 576-3200. UNDERWRITING LIMITATION *b/*: $2,282,000. SURETY LICENSES *c,f/*: AL, AR, CT, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NJ, NY, NC, OH, OK, PA, SC, TN, VA, WV, WI. INCORPORATED IN: Ohio.

Minnesota Surety and Trust Company

BUSINESS ADDRESS: P. O. Box 463, Austin, MN 55912. PHONE: (507) 437-3231. UNDERWRITING LIMITATION *b/*: $186,000. SURETY LICENSES *c,f/*: CO, MN, MT, ND, SD, UT. INCORPORATED IN: Minnesota.

Motors Insurance Corporation

BUSINESS ADDRESS: 300 Galleria Officentre, Southfield, MI 48034. PHONE: (248) 263-6900. UNDERWRITING LIMITATION *b/*: $114,964,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

Mountbatten Surety Company, Inc. (The)

BUSINESS ADDRESS: 33 Rock Hill Road, Bala Cynwyd, PA 19004. PHONE: (610) 664-2259. UNDERWRITING LIMITATION *b/*: $1,215,000. SURETY LICENSES *c,f/*: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KY, MD, MI, MS, NJ, NY, NC, OH, PA, SC, TN, TX, VA, WV, WI. INCORPORATED IN: Pennsylvania.

MUTUAL SERVICE CASUALTY INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 64035, St. Paul, MN 55164-0035. PHONE: (651) 631-7000. UNDERWRITING LIMITATION *b/*: $1,427,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

NAC Reinsurance Corporation 6/

National American Insurance Company

BUSINESS ADDRESS: 1010 Manvel Avenue, Chandler, OK 74834. PHONE: (405) 258-0804. UNDERWRITING LIMITATION *b/*: $4,392,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Oklahoma.

National Fire Insurance Company of Hartford

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION *b/*: $79,284,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

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National Grange Mutual Insurance Company

BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. PHONE: (603) 352-4000. UNDERWRITING LIMITATION b/: $25,819,000. SURETY LICENSES c,f/: CT, DE, DC, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company

BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131-3580. PHONE: (402) 536-3000. UNDERWRITING LIMITATION b/: $403,474,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

National Surety Corporation

BUSINESS ADDRESS: 233 South Wacker Drive, Suite 2000, Chicago, IL 60606-6308. PHONE: (312) 441-5400. UNDERWRITING LIMITATION b/: $8,329,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $274,657,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

National-Ben Franklin Insurance Company of Illinois

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $8,934,000. SURETY LICENSES c,f/: DC, FL, IL, IN, IA, KY, MD, MI, MN, NY, NC, ND, RI, SD, WI. INCORPORATED IN: Illinois.

Nationwide Mutual Insurance Company

BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. PHONE: (614) 249-7111. UNDERWRITING LIMITATION b/: $483,284,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Netherlands Insurance Company (The)

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $3,042,000. SURETY LICENSES c,f/: AZ, CA, CT, DC, GA, ID, IL, IN, IA, KY, ME, MD, MA, MI, MN, NV, NH, NJ, NY, NC, OH, OR, PA, RI, SC, TN, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

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New Hampshire Insurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION *b/*: $27,054,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY

BUSINESS ADDRESS: 650 Elm Street, Manchester, NH 03101. PHONE: (603) 644-6600. UNDERWRITING LIMITATION *b/*: $10,176,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

NORTHLAND INSURANCE COMPANY

BUSINESS ADDRESS: P. O. Box 64816, St. Paul, MN 55164-0816. PHONE: (651) 688-4100. UNDERWRITING LIMITATION *b/*: $10,855,000. SURETY LICENSES *c,f/*: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

NORTHWESTERN PACIFIC INDEMNITY COMPANY

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (503) 221-4240. UNDERWRITING LIMITATION *b/*: $3,107,000. SURETY LICENSES *c,f/*: CA, OK, OR, TX, WA. INCORPORATED IN: Oregon.

NOVA Casualty Company

BUSINESS ADDRESS: 180 Oak Street, Buffalo, NY 14203-1610. PHONE: (716) 856-3722. UNDERWRITING LIMITATION *b/*: $878,000. SURETY LICENSES *c,f/*: AZ, FL, GA, IN, IA, MS, NV, NY, ND, PA, TN. INCORPORATED IN: New York.

Ohio Casualty Insurance Company (The)

BUSINESS ADDRESS: 9450 Seward Road, Fairfield, OH 45014. PHONE: (513) 603-2400. UNDERWRITING LIMITATION *b/*: $81,213,000. SURETY LICENSES *c,f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Ohio Farmers Insurance Company

BUSINESS ADDRESS: P. O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION *b/*: $67,620,000. SURETY LICENSES *c,f/*: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

Oklahoma Surety Company

BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221. UNDERWRITING LIMITATION b/: $555,000. SURETY LICENSES c,f/: AR, KS, LA, OK, TX. INCORPORATED IN: Oklahoma.

OLD DOMINION INSURANCE COMPANY

BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. PHONE: (904) 739-0873. UNDERWRITING LIMITATION b/: $1,191,000. SURETY LICENSES c,f/: DE, FL, GA, MD, SC, VA. INCORPORATED IN: Florida.

Old Republic Insurance Company

BUSINESS ADDRESS: P.O. Box 789, Greensburg, PA 15601-0789. PHONE: (724) 834-5000. UNDERWRITING LIMITATION b/: $40,579,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company

BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. PHONE: (262) 797-2640. UNDERWRITING LIMITATION b/: $2,884,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

ORISKA INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 855, Oriskany, NY 13424. PHONE: (315) 768-2726. UNDERWRITING LIMITATION b/: $303,000. SURETY LICENSES c,f/: DC, GA, NY, NC, PA, TN, WV. INCORPORATED IN: New York.

Pacific Employers Insurance Company

BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 41484, Philadelphia, PA 19101-1484. PHONE: (215) 640-1000 x-2324. UNDERWRITING LIMITATION b/: $2,963,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Pacific Indemnity Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $42,152,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

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PARTNER REINSURANCE COMPANY OF THE U.S.

BUSINESS ADDRESS: One Greenwich Plaza, Greenwich, CT 06830-6352. PHONE: (203) 485-4200. UNDERWRITING LIMITATION *b/*: $27,200,000. SURETY LICENSES *c,f/*: AL, AK, AZ, CA, CO, DC, GA, IL, IA, MS, NE, NV, NY, OH, SD, TX, WA. INCORPORATED IN: New York.

PARTNERRE INSURANCE COMPANY OF NEW YORK

BUSINESS ADDRESS: One Greenwich Plaza, Greenwich, CT 06830-6352. PHONE: (203) 485-4200. UNDERWRITING LIMITATION *b/*: $7,827,000. SURETY LICENSES *c,f/*: AL, AZ, CA, CO, DE, DC, IL, IN, IA, KS, KY, MD, MI, MN, MS, MT, NE, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA, WV, WI. INCORPORATED IN: New York.

Peerless Insurance Company

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION *b/*: $16,760,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Pekin Insurance Company

BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. PHONE: (309) 346-1161. UNDERWRITING LIMITATION *b/*: $5,195,000. SURETY LICENSES *c,f/*: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Penn Millers Insurance Company

BUSINESS ADDRESS: P. O. Box P, Wilkes-Barre, PA 18773-0016. PHONE: (570) 822-8111. UNDERWRITING LIMITATION *b/*: $4,775,000. SURETY LICENSES *c,f/*: AL, AR, CT, DC, FL, GA, IL, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company

BUSINESS ADDRESS: P.O. Box 2361, Harrisburg, PA 17105-2361. PHONE: (717) 234-4941. UNDERWRITING LIMITATION *b/*: $17,921,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Pioneer General Insurance Company

BUSINESS ADDRESS: 6780 East Hampden Avenue, Denver, CO 80224. PHONE: (303) 758-8122. UNDERWRITING LIMITATION *b/*: $264,000. SURETY LICENSES *c,f/*: CO, MT. INCORPORATED IN: Colorado.

PLANET INDEMNITY COMPANY

BUSINESS ADDRESS: 9025 N. Lindbergh Dr., Peoria, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION *b/*: $1,210,000. SURETY LICENSES *c,f/*: AZ, CO, DC, FL, ID, IL, IN, KS, KY, MI, MN, MO, NE, NV, ND, OH, OR, PA, SC, SD, UT, VA, WA. INCORPORATED IN: Illinois.

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Progressive Casualty Insurance Company

BUSINESS ADDRESS: 6300 Wilson Mills Road, W33, Mayfield Village, OH 44143-2182. PHONE: (440) 461-5000. UNDERWRITING LIMITATION b/: $57,267,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Protective Insurance Company

BUSINESS ADDRESS: 1099 North Meridian Street, Indianapolis, IN 46204. PHONE: (317) 636-9800. UNDERWRITING LIMITATION b/: $29,009,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Providence Washington Insurance Company

BUSINESS ADDRESS: P.O. Box 518, Providence, RI 02901-0518. PHONE: (401) 453-7000. UNDERWRITING LIMITATION b/: $7,094,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Ranger Insurance Company

BUSINESS ADDRESS: P.O. Box 2807, Houston, TX 77252. PHONE: (713) 954-8100. UNDERWRITING LIMITATION b/: $4,838,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Republic - Franklin Insurance Company

BUSINESS ADDRESS: P. O. Box 530, Utica, NY 13503-0530. PHONE: (315) 734-2000. UNDERWRITING LIMITATION b/: $2,598,000. SURETY LICENSES c,f/: CT, DE, DC, GA, IL, IN, KS, MD, MA, MI, NJ, NY, NC, OH, PA, RI, TN, TX, VA, WI. INCORPORATED IN: Ohio.

Republic Western Insurance Company

BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004-1163. PHONE: (602) 263-6755. UNDERWRITING LIMITATION b/: $4,051,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

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RLI Insurance Company

BUSINESS ADDRESS: 9025 N. Lindbergh Drive, Peoria, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION b/: $25,780,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Royal Indemnity Company

BUSINESS ADDRESS: 9300 Arrowpoint Boulevard, P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION b/: $5,680,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

ROYAL INSURANCE COMPANY OF AMERICA

BUSINESS ADDRESS: 1240 E. Diehl Rd., Ste 500, P. O. Box 3144, Naperville, IL 60566. PHONE: (630) 577-9200. UNDERWRITING LIMITATION b/: $40,598,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

SAFECO Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $70,632,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

Safeguard Insurance Company

BUSINESS ADDRESS: 9300 Arrowpoint Blvd., P. O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION b/: $11,285,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Safety National Casualty Corporation

BUSINESS ADDRESS: 2043 Woodland Parkway, Suite 200, St. Louis, MO 63146. PHONE: (314) 995-5300. UNDERWRITING LIMITATION b/: $11,935,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

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Seaboard Surety Company

BUSINESS ADDRESS: 5801 Smith Avenue, Baltimore, MD 21209-3653. PHONE: (410) 205-3000. UNDERWRITING LIMITATION b/: $14,562,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Select Insurance Company

BUSINESS ADDRESS: P.O. Box 131771, Dallas, TX 75313-1771. PHONE: (972) 650-2800. UNDERWRITING LIMITATION b/: $4,832,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MS, MO, MT, NE, NV, NM, NC, OH, OR, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Selective Insurance Company of America

BUSINESS ADDRESS: 40 Wantage Avenue, Branchville, NJ 07890. PHONE: (973) 948-3000. UNDERWRITING LIMITATION b/: $25,105,000. SURETY LICENSES c,f/: AL, CT, DE, DC, GA, IL, IN, IA, KY, MD, MI, MN, MS, MO, NJ, NY, NC, OH, PA, RI, SC, SD, TN, TX, VA, WV, WI. INCORPORATED IN: New Jersey.

Seneca Insurance Company, Inc.

BUSINESS ADDRESS: 160 Water Street, New York, NY 10038-4922. PHONE: (212) 344-3000. UNDERWRITING LIMITATION b/: $4,954,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Sentry Insurance A Mutual Company

BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481-8020. PHONE: (715) 346-6000. UNDERWRITING LIMITATION b/: $169,521,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Sentry Select Insurance Company 4/

BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481-8020. PHONE: (715) 346-6000. UNDERWRITING LIMITATION b/:.$9,500,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

SERVICE INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 9729, Bradenton, FL 34206-9729. PHONE: (941) 746-4107 x-273. UNDERWRITING LIMITATION b/: $677,000. SURETY LICENSES c,f/: AL, DE, FL, GA, IA, NE, NC, SC, TN, VA. INCORPORATED IN: Florida.

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SERVICE INSURANCE COMPANY INC. (THE)

BUSINESS ADDRESS: 80 Main Street, West Orange, NJ 07052. PHONE: (973) 731-7650. UNDERWRITING LIMITATION *b/*: $181,000. SURETY LICENSES *c,f/*: NJ. INCORPORATED IN: New Jersey.

SOREMA NORTH AMERICA REINSURANCE COMPANY

BUSINESS ADDRESS: 199 Water Street, New York, NY 10038-3526. PHONE: (212) 480-1900. UNDERWRITING LIMITATION *b/*: $12,153,000. SURETY LICENSES *c,f/*: AL, AK, AZ, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: New York.

St. Paul Fire and Marine Insurance Company

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION *b/*: $173,101,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

ST. PAUL GUARDIAN INSURANCE COMPANY

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION *b/*: $3,494,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION *b/*: $6,698,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Standard Fire Insurance Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION *b/*: $67,909,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Star Insurance Company

BUSINESS ADDRESS: 26600 Telegraph Road, Southfield, MI 48034. PHONE: (248) 358-1100. UNDERWRITING LIMITATION *b/*: $1,008,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

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State Auto Property and Casualty Insurance Company

BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43215. PHONE: (864) 877-3311. UNDERWRITING LIMITATION b/: $21,709,000. SURETY LICENSES c,f/: AL, AZ, AR, DC, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, OK, PA, SC, SD, TN, UT, VA, WV, WI, WY. INCORPORATED IN: S. Carolina.

State Automobile Mutual Insurance Company

BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43215-3976. PHONE: (614) 464-5000. UNDERWRITING LIMITATION b/: $70,666,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DC, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, OK, PA, SC, SD, TN, VA, WV, WI, WY. INCORPORATED IN: Ohio.

State Farm Fire and Casualty Company

BUSINESS ADDRESS: One State Farm Plaza, Bloomington, IL 61710. PHONE: (309) 766-2311. UNDERWRITING LIMITATION b/: $437,916,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Statewide Insurance Company

BUSINESS ADDRESS: P.O. Box 799, Waukegan, IL 60079-0799. PHONE: (847) 662-0073 x152. UNDERWRITING LIMITATION b/: $600,000. SURETY LICENSES c,f/: AZ, AR, ID, IL, IN, IA, KS, KY, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SC, SD, TN, UT, WA, WI, WY. INCORPORATED IN: Illinois.

Suretec Insurance Company

BUSINESS ADDRESS: 10000 Memorial Dr. Suite 330, Houston, TX 77024. PHONE: (713) 812-0800. UNDERWRITING LIMITATION b/: $330,000. SURETY LICENSES c,f/: TX. INCORPORATED IN: Texas.

Surety Company of the Pacific

BUSINESS ADDRESS: P.O. Box 10289, Van Nuys, CA 91410-0289. PHONE: (818) 609-9232. UNDERWRITING LIMITATION b/: $567,000. SURETY LICENSES c,f/: CA. INCORPORATED IN: California.

Swiss Reinsurance America Corporation

BUSINESS ADDRESS: 175 King Street, Armonk, NY 10504. PHONE: (914) 828-8000. UNDERWRITING LIMITATION b/: $153,704,000. SURETY LICENSES c,f/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

TEXAS PACIFIC INDEMNITY COMPANY

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (214) 754-0777. UNDERWRITING LIMITATION b/: $930,000. SURETY LICENSES c,f/: AR, TX. INCORPORATED IN: Texas.

TRANSATLANTIC REINSURANCE COMPANY

BUSINESS ADDRESS: 80 Pine Street, New York, NY 10005. PHONE: (212) 770-2000. UNDERWRITING LIMITATION b/: $128,892,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, DE, DC, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NV, NJ, NM, NY, OH, OK, PA, SD, UT, WA, WI. INCORPORATED IN: New York.

Travelers Casualty and Surety Company

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $175,366,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Casualty and Surety Company of America

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $58,568,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Casualty and Surety Company of Illinois

BUSINESS ADDRESS: 215 Shuman Boulevard, Naperville, IL 60563. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $36,436,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Travelers Indemnity Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $116,607,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Trinity Universal Insurance Company

BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION b/: $51,020,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, MT, NE, NM, OH, OK, OR, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Texas.

See Footnotes/Notes at end of Circular

Underwriters Indemnity Company

BUSINESS ADDRESS: 9025 N. Lindbergh Dr., Peoria, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION *b/*: $1,356,000. SURETY LICENSES *c,f/*: AL, AR, DE, DC, GA, HI, ID, IL, IN, KS, KY, LA, MS, MO, MT, NE, NV, NM, NC, ND, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI. INCORPORATED IN: Texas.

Union Insurance Company

BUSINESS ADDRESS: P.O. Box 1594, Des Moines, IA 50306. PHONE: (515) 278-3000. UNDERWRITING LIMITATION *b/*: $567,000. SURETY LICENSES *c,f/*: AR, CO, DC, ID, IA, KS, MD, MN, MS, MO, MT, NE, NC, ND, OK, SD, TN, TX, UT, VA, WA, WY. INCORPORATED IN: Nebraska.

UNITED CASUALTY AND SURETY INSURANCE COMPANY

BUSINESS ADDRESS: 170 Milk Street, Boston, MA 02109. PHONE: (617) 542-3232. UNDERWRITING LIMITATION *b/*: $241,000. SURETY LICENSES *c,f/*: DC, MA, NY, ND, PA. INCORPORATED IN: Massachusetts.

United Coastal Insurance Company 5/

BUSINESS ADDRESS: 233 Main Street P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 223-5000. UNDERWRITING LIMITATION *b/*: $2,349,000. SURETY LICENSES *c,f/*: AZ. INCORPORATED IN: Arizona.

United Fire & Casualty Company

BUSINESS ADDRESS: P.O. Box 73909, Cedar Rapids, IA 52407-3909. PHONE: (319) 399-5700. UNDERWRITING LIMITATION *b/*: $18,360,000. SURETY LICENSES *c,f/*: AK, AZ, AR, CA, CO, FL, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Iowa.

UNITED NATIONAL INSURANCE COMPANY

BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION *b/*: $22,913,000. SURETY LICENSES *c,f/*: PA. INCORPORATED IN: Pennsylvania.

United States Fidelity and Guaranty Company

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION *b/*: $49,729,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

UNITED STATES FIRE INSURANCE COMPANY

BUSINESS ADDRESS: 305 Madison Avenue, Morristown, NJ 07960. PHONE: (973) 490-6600. UNDERWRITING LIMITATION *b/*: $32,145,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

United States Surety Company

BUSINESS ADDRESS: P.O. Box 5605, Timonium, MD 21094. PHONE: (410) 453-9522. UNDERWRITING LIMITATION *b/*: $251,000. SURETY LICENSES *c,f/*: DE, DC, MD, PA, WV. INCORPORATED IN: Maryland.

UNITED SURETY AND INDEMNITY COMPANY

BUSINESS ADDRESS: P.O. Box 2111, San Juan, PR 00922-2111. PHONE: (787) 273-1818 x2090. UNDERWRITING LIMITATION *b/*: $3,257,000. SURETY LICENSES *c,f/*: PR. INCORPORATED IN: Puerto Rico.

UNIVERSAL BONDING INSURANCE COMPANY

BUSINESS ADDRESS: 518 Stuyvesant Avenue, Lyndhurst, NJ 07071. PHONE: (201) 438-7223. UNDERWRITING LIMITATION *b/*: $1,310,000. SURETY LICENSES *c,f/*: NJ, NY, PA. INCORPORATED IN: New Jersey.

UNIVERSAL INSURANCE COMPANY

BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. PHONE: (787) 793-7202. UNDERWRITING LIMITATION *b/*: $7,582,000. SURETY LICENSES *c,f/*: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company

BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION *b/*: $3,357,000. SURETY LICENSES *c,f/*: AZ, AR, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WA, WI, WY. INCORPORATED IN: Nebraska.

Universal Surety of America

BUSINESS ADDRESS: P.O. Box 1068, Houston, TX 77251-1068. PHONE: (713) 722-4600. UNDERWRITING LIMITATION *b/*: $1,689,000. SURETY LICENSES *c,f/*: AL, AK, AR, CA, CO, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY

BUSINESS ADDRESS: 7045 College Boulevard, Overland Park, KS 66211. PHONE: (913) 339-1000. UNDERWRITING LIMITATION *b/*: $12,682,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Kansas.

Utica Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503-0530. PHONE: (315) 734-2000. UNDERWRITING LIMITATION *b/*: $35,150,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

VAN TOL SURETY COMPANY, INCORPORATED

BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. PHONE: (605) 692-6294. UNDERWRITING LIMITATION *b/*: $279,000. SURETY LICENSES *c,f/*: SD. INCORPORATED IN: South Dakota.

Vigilant Insurance Company

BUSINESS ADDRESS: 55 Water Street, New York, NY 10041. PHONE: (212) 612-4000. UNDERWRITING LIMITATION *b/*: $4,164,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Washington International Insurance Company

BUSINESS ADDRESS: 1200 Arlington Heights Road, Suite 400, Itasca, IL 60143-2625. PHONE: (630) 227-4700. UNDERWRITING LIMITATION *b/*: $2,925,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

West American Insurance Company

BUSINESS ADDRESS: 9450 Seward Road, Fairfield, OH 45014. PHONE: (513) 603-2400. UNDERWRITING LIMITATION *b/*: $45,161,000. SURETY LICENSES *c,f/*: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

WEST BEND MUTUAL INSURANCE COMPANY

BUSINESS ADDRESS: 1900 South 18th Avenue, West Bend, WI 53095. PHONE: (262) 334-5571. UNDERWRITING LIMITATION *b/*: $17,949,000. SURETY LICENSES *c,f/*: IL, IN, IA, MI, MN, OH, WI. INCORPORATED IN: Wisconsin.

Westchester Fire Insurance Company

BUSINESS ADDRESS: 1601 Chestnut Street, P. O. Box 41484, Philadelphia, PA 19101-1484. PHONE: (215) 640-1000. UNDERWRITING LIMITATION *b/*: $19,747,000. SURETY LICENSES *c,f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Western Insurance Company

BUSINESS ADDRESS: P.O. Box 21030, Reno, NV 89515. PHONE: (775) 829-6650. UNDERWRITING LIMITATION *b/*: $438,000. SURETY LICENSES *c,f/*: NV, UT. INCORPORATED IN: Nevada.

See Footnotes/Notes at end of Circular

Western Surety Company

BUSINESS ADDRESS: P.O. Box 5077, Sioux Falls, SD 57117-5077. PHONE: (605) 336-0850. UNDERWRITING LIMITATION *b/*: $16,874,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

Westfield Insurance Company

BUSINESS ADDRESS: P. O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION *b/*: $36,090,000. SURETY LICENSES *c, f/*: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Westfield National Insurance Company

BUSINESS ADDRESS: P. O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION *b/*: $9,628,000. SURETY LICENSES *c, f/*: CA, IA, KY, ND, OH. INCORPORATED IN: Ohio.

Westport Insurance Corporation

BUSINESS ADDRESS: P.O. Box 2979, Overland Park, KS 66201-1379. PHONE: (913) 676-5270. UNDERWRITING LIMITATION *b/*: $15,016,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Worcester Insurance Company 12/

XL Reinsurance America Inc. 6/

BUSINESS ADDRESS: Seaview House, 70 Seaview Avenue, Stamford, CT 06902-6040. PHONE: (203) 964-5200. UNDERWRITING LIMITATION *b/*: $38,336,000. SURETY LICENSES *c, f/*: AL, AK, AZ, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

XL Specialty Insurance Company

BUSINESS ADDRESS: 1450 East American Lane, 20th Floor, Schaumburg, IL 60173. PHONE: (847) 517-2990. UNDERWRITING LIMITATION *b/*: $4,571,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Zurich American Insurance Company

BUSINESS ADDRESS: 1400 American Lane, Tower 1, 19th Floor, Schaumburg, IL 60196. PHONE: (847) 605-6000. UNDERWRITING LIMITATION *b/*: $164,423,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

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COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 [See Note (e)]*

GE Reinsurance Corporation 7/

BUSINESS ADDRESS: 475 Half Day Road, Suite 300, Lincolnshire, IL 60069. PHONE: (847) 876-1500. UNDERWRITING LIMITATION b/: $63,644,000.

Generali - U.S. Branch

BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 602-7600. UNDERWRITING LIMITATION b/: $5,801,000.

GERLING GLOBAL REINSURANCE CORPORATION OF AMERICA

BUSINESS ADDRESS: 717 Fifth Avenue, New York, NY 10022. PHONE: (212) 754-7500. UNDERWRITING LIMITATION b/: $48,791,000.

NATIONAL REINSURANCE CORPORATION

BUSINESS ADDRESS: 695 East Main St., P.O. Box 10350, Stamford, CT 06904-2350. PHONE: (203) 328-5000. UNDERWRITING LIMITATION b/: $54,274,000.

NORTHBROOK PROPERTY AND CASUALTY INSURANCE COMPANY

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION b/: $16,498,000.

Odyssey Reinsurance Corporation

BUSINESS ADDRESS: 300 First Stamford Place, Stamford, CT 06902. PHONE: (203) 977-8000. UNDERWRITING LIMITATION b/: $31,523,000.

Phoenix Insurance Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $55,210,000.

SAFECO Insurance Company of Illinois 8/

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $15,293,000.

SAFECO National Insurance Company 9/

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $6,202,000.

SCOR REINSURANCE COMPANY 10/

BUSINESS ADDRESS: 2 World Trade Center, New York, NY 10048-2495. PHONE: (212) 390-5200. UNDERWRITING LIMITATION b/: $27,644,000.

See Footnotes/Notes at end of Circular

ZENITH INSURANCE COMPANY 11/

BUSINESS ADDRESS: 21255 Califa Street, Woodland Hills, CA 91367. PHONE: (818) 713-1000. UNDERWRITING LIMITATION b/: $10,514,000.

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FOOTNOTES

1 Heritage Mutual Insurance Company changed its name to ACUITY, A Mutual Insurance Company, effective June 1, 2001.

2 AMERICAN CONTRACTORS INDEMNITY COMPANY is required by state law to conduct business in the state of Texas as TEXAS BONDING COMPANY, assumed name of AMERICAN CONTRACTORS INDEMNITY COMPANY.

3 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

4 Sentry Select Insurance Company changed its state of incorporation from Illinois to Wisconsin effective January 1, 2001.

5 United Coastal Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

6 NAC Reinsurance Corporation changed its name to XL Reinsurance America Inc., effective January 16, 2001.

7 GE Reinsurance Corporation's Treasury authority has changed from an acceptable surety on Federal bonds to an acceptable reinsurer on Federal bonds, effective July 1, 2001.

8 SAFECO Insurance Company of Illinois Treasury authority has changed from an acceptable surety on Federal bonds to an acceptable reinsurer on Federal bonds, effective July 1, 2001.

9 SAFECO National Insurance Company's Treasury authority has changed from an acceptable surety on Federal bonds to an acceptable reinsurer on Federal bonds, effective July 1, 2001.

10 SCOR REINSURANCE COMPANY's Treasury authority has changed from an acceptable surety on Federal bonds to an acceptable reinsurer on Federal bonds, effective July 1, 2001.

11 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular. Do not hesitate to contact the Company to verify the authenticity of a bond.

12 Worcester Insurance Company changed its name to Harleysville Worcester Insurance Company, effective July 1, 2001.

See Footnotes/Notes at end of Circular

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) The Underwriting Limitations published herein are on a per bond basis. Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a bond of this type as an Excess Risk. When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Federal reinsurance form to be filed with the bond or within 45 days thereafter. In protecting such excess risks, the underwriting limitation in force on the day in which the bond was provided will govern absolutely. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

(c) A surety company must be licensed in the State or other area in which it provides a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. For updated license information, you may contact the company directly or the applicable State Insurance Department. Refer to the list of state insurance departments at the end of this publication. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

(d) FEDERAL PROCESS AGENTS: Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event that an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

See Footnotes/Notes at end of Circular

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(f) Some companies may be approved surplus lines carriers in various states. Such approval may indicate that the company is authorized to write surety in a particular state, even though the company is not licensed in the state. Questions related to this may be directed to the appropriate State Insurance Department. Refer to the list of state insurance departments at the end of this publication.

See Footnotes/Notes at end of Circular

STATE INSURANCE DEPARTMENTS	TELEPHONE NO.
Alabama, Montgomery 36130-3401	(334) 269-3550
Alaska, Juneau 99811-0805	(907) 465-2515
Arizona, Phoenix 85012	(602) 912-8400
Arkansas, Little Rock 72204	(501) 371-2600
California, Sacremento 95814	(916) 492-3500
Colorado, Denver 80202	(303) 894-7499
Connecticut, Hartford 06142-0816	(860) 297-3800
D. C., Washington 20013-7200	(202) 727-8000
Delaware, Dover 19901	(302) 739-4251
Florida, Tallahasse 32399-0300	(850) 922-3100
Georgia, Atlanta 30334	(404) 656-2056
Hawaii, Honolulu 96811	(808) 586-2790
Idaho, Boise 83720	(208) 334-4250
Illinois, Springfield 62767	(217) 782-4515
Indiana, Indianapolis 46204-2787	(317) 232-2385
Iowa, Des Moines 50319	(515) 281-5705
Kansas, Topeka 66612	(785) 296-7801
Kentucky, Frankfort 40602	(502) 564-3630
Louisiana, Baton Rouge 70804	(225) 342-5900
Maine, Augusta 04333	(207) 624-8475
Maryland, Baltimore 21202	(410) 468-2090
Massachusetts, Boston 02114	(617) 521-7794
Michigan, Lansing 48909	(517) 373-9273
Minnesota, St. Paul 55101	(651) 296-6848
Mississippi, Jackson 39205	(601) 359-3569
Missouri, Jefferson City 65102-0690	(573) 751-4126
Montana, Helena 59604-4009	(406) 444-2040
Nebraska, Lincoln 68508	(402) 471-2201
Nevada, Carson City 89710	(775) 687-4270
New Hampshire, Concord 03301	(603) 271-2261
New Jersey, Trenton 08625	(609) 292-5360
New Mexico, Sante Fe 87504-1269	(505) 827-4500
New York, New York 10013	(212) 480-6400
North Carolina, Raleigh 27611	(919) 733-7349
North Dakota, Bismarck 58505	(701) 328-2440
Ohio, Columbus 43266-0566	(614) 644-2658
Oklahoma, Oklahoma City 73152-3408	(405) 521-2828
Oregon, Salem 97310	(503) 947-7980
Pennsylvania, Harrisburg 17120	(717) 787-5173
Puerto Rico, Santurce 00910-8330	(787) 722-8686
Rhode Island, Providence 02903	(401) 222-2223
South Carolina, Columbia 29202-3105	(803) 737-6160
South Dakota, Pierre 57501	(605) 773-3563
Tennessee, Nashville 37243-0565	(615) 741-2241
Texas, Austin 78714-9104	(512) 463-6464
Utah, Salt Lake City 84114-1201	(801) 538-3800
Vermont, Montpelier 05620-3101	(802) 828-3301
Virgin Islands, St. Thomas 00802	(340) 773-6449
Virginia, Richmond 23209	(804) 371-9741
Washington, Olympia 98504	(360) 753-7301
West Virginia, Charleston 25305	(304) 558-3394
Wisconsin, Madison 53707-7873	(608) 266-0102
Wyoming, Cheyenne 82002	(307) 777-7401

See Footnotes/Notes at end of Circular

[FR Doc. 01–16502 Filed 6–29–01; 8:45 am]
BILLING CODE 4810–35–C

Federal Register

Monday,
July 2, 2001

Part IV

Department of Housing and Urban Development

24 CFR Part 207

Mortgage Insurance Premiums in Multifamily Housing Programs; Increase in Certain FHA Multifamily Mortgage Insurance Premiums; Interim Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 207

[Docket No. FR–4679–I–01]

RIN 2502–AH64

Mortgage Insurance Premiums in Multifamily Housing Programs

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: HUD currently has statutory authority to set the mortgage insurance premiums ("MIP") for multifamily programs from one-fourth to one percent of the outstanding principal balance per annum. However, HUD's current regulations currently set the MIP at a specific figure, one-half of one percent in most programs. This interim rule revises current regulations to permit the Secretary to set mortgage insurance premiums by program within the full range of HUD's statutory authority through notice, making it easier for HUD to respond more efficiently to changing market and programmatic conditions, and making it possible to continue these programs for the remainder of fiscal year 2001 and into 2002.

DATES: *Effective Date:* August 1, 2001.

Comment Due Date: August 31, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, at (202) 708–1142. Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

Section 203(c)(1) of the National Housing Act authorizes the Secretary to set the premium charge for insurance of mortgages under the various programs in Title II of the National Housing Act. The range within which the Secretary may set such charges must be between one-fourth of one percent per annum and one percent per annum of the amount of the principal obligation of the mortgage outstanding at any time. (See 12 U.S.C. 1709(c)(1)).

HUD's multifamily mortgage insurance program regulations have generally set the MIP at a specific percentage amount within the authorized range and have not reflected the authorized range. Thus, for example, 24 CFR 207.252 and 207.252a(a) have set the general MIP rate for most mortgage insurance programs at one-half of one percent of the average outstanding principal balance of the mortgage per year. There are other programs where the MIP has been set at the maximum authorized amount, for example, the first year mortgage insurance premium for section 223(f) specified in section 207.252b.

Each year, Congress appropriates funds to cover HUD's credit subsidy needs, based on an assessment of the probable risk of loss in the insurance programs. The Federal Credit Reform Act of 1990, 2 U.S.C. 661 *et seq.* ("FCRA") requires that the budgetary treatment for all direct loan and loan guarantee programs recognize, in advance, the estimated net cost to the Federal Government resulting from these transactions. In other words, under FCRA, HUD is required to estimate the probable cost to the agency of all multifamily mortgages it insures and must request "credit subsidy" as part of its budget each fiscal year to cover those costs. For example, the most popular of HUD's multifamily construction programs, Section 221(d)(4), currently requires a subsidy of 3.35 cents for each dollar of loan insured.

Due to greater than anticipated requests for loan insurance commitments by HUD, the existing credit subsidy is insufficient for HUD to continue the following programs: section 207 for new construction/substantial rehabilitation and manufactured home parks, section 220 for housing in urban renewal areas, sections 221(d)(3), 221(d)(4), 223(d) operating loss loans, section 231 housing mortgage insurance for the elderly, Section 234(d) for condominiums, section 241(a) supplemental loans for multifamily projects, and HOPE VI projects under the sections 207, 220, 221(d)(4) and 231 programs. Because of this lack of necessary credit subsidy, these programs will not be able to continue to operate throughout the fiscal year. HUD is anticipating some additional credit subsidy to be appropriated in the near future for the remainder of Fiscal Year (FY) 2001, but it will not be sufficient to fund all outstanding requests for commitments. In addition, it is anticipated that only a small amount of credit subsidy will be available in FY 2002. For these reasons, HUD is revising certain multifamily mortgage insurance programs to eliminate or substantially reduce the need for credit subsidy by amending its regulations to allow the Secretary to raise mortgage insurance premiums to the full extent of his statutory authority. The Secretary will proceed to set the actual MIP within the statutory and new regulatory limits by notice as described below.

B. This Interim Rule

This interim rule revises Subpart B "Contract Rights and Obligations" of Part 207 "Multifamily Housing Mortgage Insurance" so that the provisions on mortgage insurance premiums reflect the statutory language, and allow the Secretary to raise or lower mortgage premiums within the statutory limits through notice.

Where "one-half of one percent" appears in §§ 207.252 and 207.252a, this interim rule changes that phrase to "not less than one-fourth of one percent nor more than one percent as the Secretary shall determine." Where the regulations have specified that a one percent premium will be charged, including during the first year mortgage insurance premium for the Section 223(f) program specified in § 207.252b, and for properties located near military installations insured under Special Risk Insurance Fund, as set forth in § 207.252c, the one percent premium remains and there is no change in the regulations to §§ 207.252b or 207.252c. There is no change to regulations at § 207.252d (late charge) or to § 207.252e (electronic transmission of premiums).

An increase as described below in the mortgage premium for mortgages under the section 221(d)(4), section 207, section 207 for mobile home parks, section 220, section 231, section 234(d) and HOPE VI projects under sections 207, 220, 221(d)(4), and 231 will result in a decrease in the credit subsidy needed for those programs for the remainder of FY 2001, and the elimination of credit subsidy requirements for FY 2002. The section 221(d)(3), section 223(d), and section 241(a) for apartments programs will continue to require some credit subsidy in both FY 2001 and FY 2002, albeit a reduced amount.

C. Changes in MIP

No later than the date this interim rule becomes effective, HUD will issue a separate notice increasing its mortgage insurance premium requirements for certain multifamily programs that currently require credit subsidy to reduce the credit subsidy rates and the need for credit subsidy. Other programs will keep the premiums in effect prior to the notice. Based on HUD's analysis of credit subsidy needs, for the period from the effective date of this rule to September 30, 2001, the notice will change certain mortgage insurance programs, now having a mortgage premium of 0.5% of the outstanding principal balance of the insured loan, to programs with a mortgage premium of 0.8% of the outstanding principal balance. HUD will make future changes by notice as credit subsidy allocations and program needs dictate, although HUD currently plans to keep the 0.8% rate in effect through FY 2002. HUD will provide 30 days for public comment on all such future changes in mortgage insurance premiums. Changes made by this rule in the method for setting mortgage insurance premiums will be applied in accordance with 24 CFR 207.499.

The mortgage insurance premiums, by program, will be:

Multifamily loan program	Percent [1]
Section 207—Multifamily Housing—new/sub. Rehab	0.8
Section 207—Mobile Home Parks	0.8
Section 220—Housing In Urban Renewal Areas	0.8
Section 221(d)(3) and 221(d)(4)—Moderate Income Housing	0.8
Section 223(a)(7) Refinancing of Insured Multifamily Project	0.5
Section 223(d) Operating Loss Loans	0.8
Section 207/223(f) Purchase or Refinance—housing	0.5
Section 231 Housing for the Elderly	0.8
Section 232 Health Care Facilities	0.5
Section 232 pursuant to Section 223(f) Purchase or Refinance Transactions	0.5
Section 234(d) Condominium Housing	0.5
Section 241(a) Additions & Improvements for Apartments	0.8
Section 241(a) Additions & Improvements for Health Care Facilities	0.5
Section 242—Hospitals	0.5
Title XI—Group Practice	0.5
HOPE VI Projects—[207, 220, 221(d)(4) and 231]	0.8
Low Income Tax Credit Projects [207, 220, 221(d)(4) and 231] without HOPE VI	0.5

[1] Annual mortgage insurance permiums charged.

Absent any change in law, premium rate changes will not apply to mortgages which have received a firm commitment and a sufficient obligation of credit subsidy; such mortgagees may continue to proceed to closing at the committed amount with the premium rate in effect before the change made by this rule and the notice to be issued on or before its effective date. An obligation of credit subsidy occurs when the mortgagee has notified the appropriate HUD office in writing of the acceptance of the firm commitment by the mortgagee and the borrower, and has received notice in writing from HUD that there is sufficient credit subsidy to cover the mortgage amount for which a firm commitment was received.

All firm commitments for these programs to be issued, reissued or amended on or after the effective date of this rule and its implementing notice must be processed at the 0.8% rate. In the case of commitments having a sufficient obligation of credit subsidy, amendments to those commitments that do not affect the mortgage amount need not be reprocessed at the new premium rate. All projects in the Headquarters queue that did not receive an obligation of credit subsidy prior to the effective date of this rule and its implementing notice will, subject to the availability of credit subsidy and any conditions that may be imposed on such availability, not be reprocessed at the new rate but will continue to be processed at the rate on which the commitment was based. Notwithstanding the previous sentence, all projects in the Headquarters queue that did not receive an obligation of credit subsidy prior to the effective date of this rule and implementing notice, upon the request of the mortgagee, will be reprocessed at the new premium rates.

In accordance with 24 CFR 200.40, HUD will refund to the mortgagee any firm commitment application fee, if the mortgagee advises the Field Office in writing that it wishes to withdraw its application or surrender its outstanding firm commitment because of the increase in the mortgage insurance premium.

D. Findings and Clearances

Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is "impractical, unnecessary, or contrary to the public interest" (see 24 CFR 10.1). Because the credit subsidy appropriated for FY 2001 HUD mortgage insurance programs affected by this rule has been almost completely committed, and the additional credit subsidy HUD is anticipating will not suffice to cover upcoming requests currently in the application pipeline, HUD is facing the near-term shutdown of those programs. It is in the public interest for those programs to continue so that the various low and moderate income multifamily projects, for which mortgage insurance is made available by HUD's programs, can continue to receive the HUD-insured mortgage funding that makes such housing possible. The business community, as well, needs continuity if these programs are to remain useful vehicles for housing production. Therefore, HUD finds that good cause exists to have the regulations reflect the statutory requirements so that the Secretary has the flexibility to adjust the MIPs within those requirements as necessary so that the programs can continue uninterrupted throughout the fiscal year. The changes being made by this rule are prospective only and do not affect existing commitments.

HUD will be accepting comments on this interim rule for a 60-day period. HUD will consider these comments in promulgating the final rule.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule will not have a significant

economic impact on a substantial number of small entities. While this rule does raise mortgage insurance premiums in certain programs, the amount of increase, which is constrained by HUD's statutory authorization, is relatively small. Furthermore, without the increase, it is likely that the effect on business entities will be much greater, as a number of HUD's mortgage insurance programs would have to cease operations completely, causing hardship and uncertainty to those who depend upon these programs to secure mortgages. Thus, this rule acts to minimize adverse impacts on the business community.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comment regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble.

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of HUD's regulations, this rule involves establishment of rate or cost determinations and related external administrative requirements and procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.134.

List of Subjects in 24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

For the reasons stated in the preamble, HUD amends 24 CFR part 207 as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 207 is revised to read as follows:

Authority: 12 U.S.C. 1701z-11(e), 1709(c)(1), 1713 and 1715b; 42 U.S.C. 3535(d).

Subpart B—Contract Rights and Obligations—Premiums

2. Revise § 207.252 to read as follows:

§ 207.252 First, second and third premiums.

The mortgagee, upon the initial endorsement of the mortgage for insurance, shall pay to the Commissioner a first mortgage insurance premium equal to not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the original face amount of the mortgage. The specific premium to be charged will be set forth in **Federal Register** notice.

(a) If the date of the first principal payment is more than one year following the date of such initial insurance endorsement, the mortgagee, upon the anniversary of such insurance date, shall pay a second premium equal to not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the original face amount of the mortgage. On the date of the first principal payment, the mortgagee shall pay a third premium equal to not less than one-fourth of one percent nor more than one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said three premiums shall equal the sum of:

(1) One percent of the average outstanding principal obligation of the mortgage for the year following the date of initial insurance endorsement; and

(2) Not less than one-fourth of one percent nor more than one percent per annum as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(b) If the date of the first principal payment is one year, or less than one year following the date of such initial insurance endorsement, the mortgagee, upon such first principal payment date, shall pay a second premium equal to not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of:

(1) One percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date of first principal payment; and

(2) Not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment.

(c) Where the credit instrument is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the mortgagee on the date of the first principal payment shall pay a second premium equal to not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of not less than one-fourth of one percent nor more than one percent per annum as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(d) Until the mortgage is paid in full, or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the mortgagee, on each anniversary of the date of the first principal payment, shall pay an annual mortgage insurance premium equal to

not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the year following the date on which such premium becomes payable.

(e) The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

(f) Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums are payable in advance and no refund can he made of any portion thereof except as hereinafter provided in this subpart.

(g) Any change in mortgage insurance premiums pursuant to this section will apply to new commitments issued or reissued on or after August 1, 2001 and any notice setting mortgage insurance premiums issued pursuant to this section.

3. Revise § 207.252a to read as follows:

§ 207.252a Premiums—operating loss loans.

(a) The mortgagee, upon the insurance endorsement of the increase loan credit instrument covering the operating loss loan, shall pay to the Commissioner a first mortgage insurance premium of not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the original amount of the loan.

(b) The provisions of paragraphs (d), (e), (f) and (g) of Sec. 207.252 shall apply to operating loss loans.

4. Add a new 24 CFR 207.254 to read as follows:

§ 207.254 Changes in premiums; manner of publication.

Notice of future premium changes will be published in the **Federal Register**. The Department will propose MIP changes for multifamily mortgage insurance programs and provide a 30-day public comment period for the purpose of accepting comments on whether the proposed changes are appropriate. After the comments have been considered, the Department will publish a final notice announcing the premiums for each program and their effective date. The provisions of paragraph (g) of 24 CFR 207.252 shall apply to any notice of future premium changes published pursuant to this section.

Dated: June 12, 2001.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 01–16594 Filed 6–29–01; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4679–N–02]

Increase in Certain FHA Multifamily Mortgage Insurance Premiums

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice sets new mortgage insurance premiums (MIPs) in multifamily housing programs pursuant to the interim rule entitled "Mortgage Insurance Premiums in Multifamily Housing Programs" published elsewhere in today's **Federal Register**. This notice raises the multifamily insurance premium to 80 basis points in certain FHA multifamily programs where the premium was previously set at 50 basis points.

DATES: *Effective Date:* August 1, 2001.

ADDRESSES: Interested persons are invited to submit comments and responses to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1142. Hearing or speech-impaired individuals may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Introduction

HUD's interim rule titled "Mortgage Insurance Premiums in Multifamily Housing Programs," published elsewhere in today's Federal Register ("the interim rule") revises HUD's regulations at 24 CFR 207.252 and 207.252a, and adds a new § 207.254 to permit the Secretary of HUD to set the mortgage insurance premium (MIP) at a rate between one-fourth of one percent and one percent of the outstanding principal balance per annum. With this change, these revised regulations, which are incorporated by reference in the regulations of each of the multifamily programs listed in this Notice, reflect the statutory authority to set MIP interest rates as authorized in section 203(c)(1) of the National Housing Act. Until this change, the annual MIP had been set by regulations at one-half of one percent for almost all of HUD's FHA multifamily mortgage insurance programs.

The interim rule also provides notice that the Secretary will increase the MIP for certain multifamily insured mortgage programs. The new MIP will take effect upon the effective date of the interim rule, which is 30 days after publication in the Federal Register. This Notice sets the MIP for the programs listed in the table below as of the effective date of the interim rule.

As of the effective date of the interim rule, the multifamily mortgage insurance premiums shall be those premiums as provided in the following table:

Multifamily Loan Program	Annual mortgage insurance premiums charged
Section 207—Multifamily Housing—new construction/substantial rehabilitation	.8%
Section 207—Manufactured Home Parks	.8%
Section 220—Housing In Urban Renewal Areas	.8%
Section 221(d)(3) and 221(d)(4)—Moderate Income Housing	.8%
Section 223(a)(7) Refinancing of Insured Multifamily Project	.5%
Section 223(d) Operating Loss Loans, both apartments and health care facilities	.8%
Section 207/223(f) Purchase or Refinance—housing	.5%
Section 231 Housing for the Elderly	.8%
Section 232 Health Care Facilities	.5%
Section 232 pursuant to Section 223(f) Purchase or Refinance Health Care Facilities	.5%
Section 234(d) Condominium Housing	.5 %
Section 241(a) Additions & Improvements for Apartments	.8%
Section 241(a) Additions & Improvements for Health Care Facilities	.5%
Section 242—Hospitals	.5%
Title XI—Group Practice	.5%
HOPE VI Projects—[207, 220, 221(d)(4) and 231]	.8%
Tax Credit Projects [207, 220, 221(d)(4) and 231] without HOPE VI	.5%

The multifamily mortgage insurance premiums are increased to 80 basis points from 50 basis points for the following programs, as shown in the table, above. The programs are the same as those which require credit subsidy in FY 2001, as specified in Mortgagee Letter 01–10: Section 221(d)(3) apartments or cooperatives; sections 207, 220, 221(d)(4) and 231 HOPE VI transactions with or without Low Income Housing Tax Credits; New construction/substantial rehabilitation apartments financed without Low Income Housing Tax Credits under sections 207, 220, 221(d)(4) and 231; section 207 manufactured home parks, section 241(a) supplemental loans for additions or improvements of apartments, with or without Low Income Housing Tax Credits, and section 223(d) operating loss loans on apartments and health care facilities.

The mortgage insurance premium remains at 50 basis points for mortgages insured under sections 223(a)(7), 207 pursuant to 223(f), 232, 232 pursuant to 223(f), 234(d), 241(a) for health care facilities, 242, Title XI, and for new construction/substantial rehabilitation under sections 207, 220, 221(d)(4), and 231 with Tax Credits, but without HOPE VI.

For Programs Subject to the Increased Premiums

The following rules are applicable for those programs, shown in the table above, where the mortgage insurance premium is increased to 80 basis points.

A. Firm Commitments Issued or Reissued on or After the Effective Date of This Notice

The mortgagee, upon the initial endorsement of the mortgage for insurance, shall pay to the Commissioner a first mortgage insurance premium equal to 0.8 percent of the original face amount of the mortgage.

(a) If the date of the first principal payment is more than one year following the date of such initial endorsement, the mortgagee, upon the anniversary of such insurance date, shall pay a second premium equal to 0.8 percent of the original face amount of the mortgage. On the date of the first principal payment, the mortgagee shall pay a third premium equal to 0.8 percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the three premiums shall equal the sum of:

(1) One percent of the average outstanding principal obligation of the mortgage for the year following the date of initial insurance endorsement, and

(2) 0.8 percent per annum of the average outstanding principal obligation for the period following the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(b) If the date of the first principal payment is one year, or less than one year following the date of the such initial insurance endorsement, the mortgagee, upon such first principal date, shall pay a second premium of 0.8 percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted to accord with such date and so that the aggregate of the said two premiums shall equal the sum of:

(1) One percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date of first principal payment, and

(2) 0.8 percent of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment.

(c) Where the credit instrument is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the mortgagee on the date of the first principal payment shall pay a second premium equal to 0.8 percent of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of 0.8 percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

Until the mortgage is paid in full, or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the mortgagee, on each anniversary of the date of the first principal payment, shall pay an annual mortgage insurance premium equal to 0.8 percent of the average outstanding principal obligation of the mortgage for the year following the date on which such premium becomes payable.

B. For Those Programs Where the Premium Remains at 0.5 Percent

For those programs where the premium is unchanged at 0.5 percent, according to the chart, above, the mortgage insurance premium is in accordance with paragraph 1(a), (b),(c), and (d), above, except that wherever 0.8 percent appears, the number 0.5 percent should be inserted in lieu of 0.8 percent.

Transition Rules

The interim rule on this subject published elsewhere in today's Federal Register includes transition provisions. There may be changes in those transition provisions due to potential changes in law being contemplated. HUD will advise on whether the transition provisions in the interim rule remain in effect or are changed in a future Notice.

Credit Subsidy

Mortgagee Letters will be issued from time to time to advise mortgages of any requirements for credit subsidy, and the availability of credit subsidy. The increase in the MIP substantially reduces the requirement for credit subsidy in FY 2001, and for FY 2002 it is expected that only three programs will require credit subsidy: section 221(d)(3) for nonprofits and certain other borrowers for new construction or substantial rehabilitation, section 223(d) for operating loss loans for housing and health care facilities, and section 241(a) for supplemental loans for additions or improvements to existing apartments.

Refund of Application Fees

The Multifamily Hubs or Program Centers will refund FHA application fees without question to mortgagees who wish to surrender outstanding commitments or to withdraw their pending applications because of the increase in MIP. The refund policy includes applications in the SAMA, Feasibility, Conditional Commitment (Section 241(a) only) stages as well as the firm commitment.

Dated: June 26, 2001.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 01–16595 Filed 6–29–01; 8:45 am]

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H.R. 1914/P.L. 107–17

To extend for 4 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted. (June 26, 2001; 115 Stat. 151)

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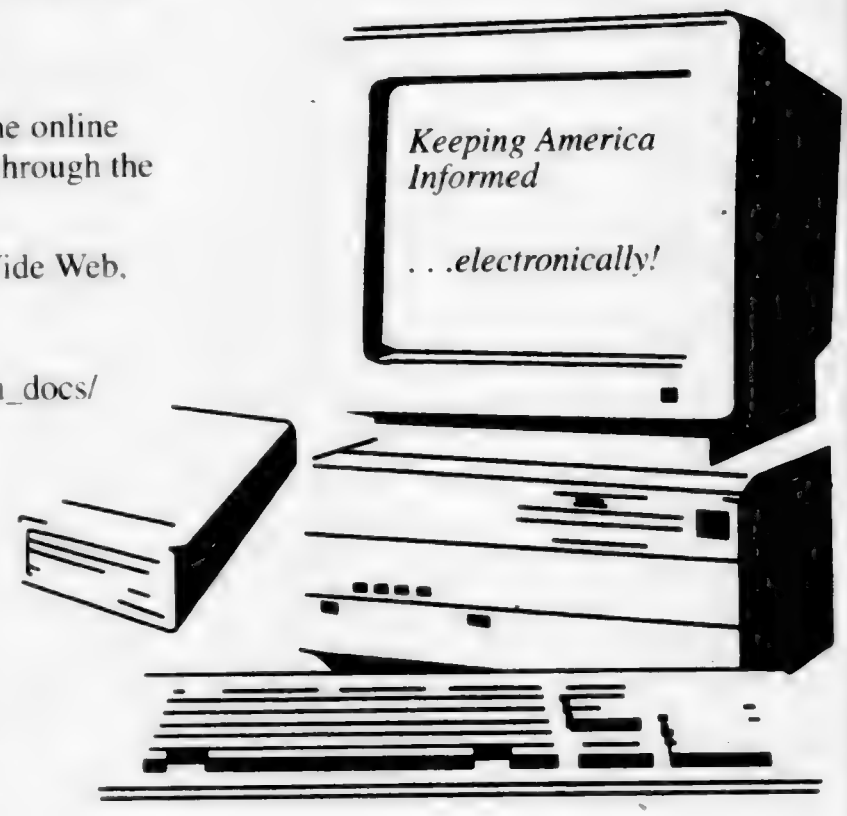

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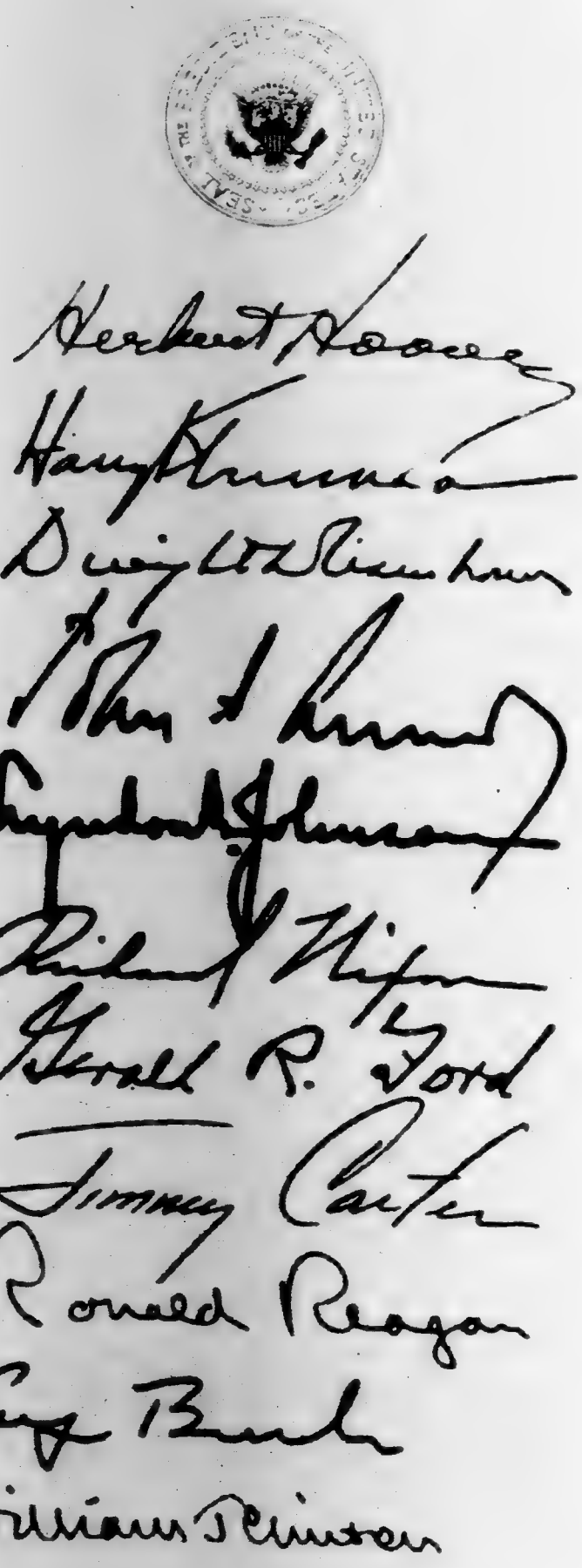

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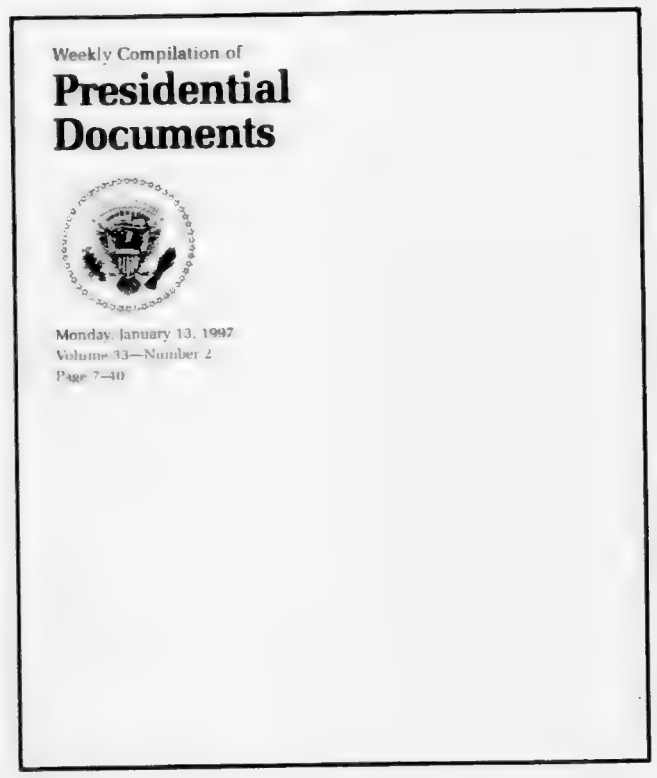

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Rules and Regulations

Federal Register
Vol. 66, No. 128
Tuesday, July 3, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–57; Amendment 39–12124; AD 2001–04–06]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. CFM56–3, –3B, and –3C Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2001–04–06 applicable to CFM International, S.A. CFM56–3, –3B, and –3C series turbofan engines that was published in the **Federal Register** on February 28, 2001 (66 FR 12726). The information in paragraph (i) in the regulatory information is incorrect. This document corrects paragraph (i). In all other respects, the original document remains the same.

EFFECTIVE DATE: April 4, 2001.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to CFM International, S.A. CFM56–3, –3B, and –3C series turbofan engines, was published in the **Federal Register** on February 28, 2001 (66 FR 12726). Paragraph (i) of the AD provided that inspection is not required for disks that have been rebroached "prior to exceeding the .004 inch wear limit." This was incorrect as disks that have not yet reached the wear limit will not go through the rebroaching process. Only if a disk has exceeded the wear limit, will that disk be rebroached. Therefore, the FAA is correcting the AD by deleting reference to the wear limit in paragraph (i). Make the following correction to FR Doc. 01–4216:

§ 39.13 [Corrected]

On page 12729, in the second column, in AD 2001–04–06, in the Compliance Section, paragraph (i) is corrected to read as follows:

2001–04–06 CFM International: Amendment 39–12124. Docket 98–ANE–57–AD.

* * * * *

Compliance * * *

* * * * *

(i) Inspection is not required for fan disks that used lubricants identified in paragraph (g) of this AD but were then rebroached, then were not lubricated with the lubricants identified in paragraph (g) of this AD AND were equipped with fan blade configurations specified either in subparagraph (h)(1) or (h)(2) of this AD.

* * * * *

Issued in Burlington, MA, on June 19, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–16048 Filed 7–2–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–271–AD; Amendment 39–12296; AD 2001–13–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped with Rolls Royce Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that requires a one-time inspection to find wire chafing of the left and right engine fuel shutoff valve wire bundles at Power Plant Station 278 on each engine strut, and repair if necessary. This amendment also requires replacement of three wire support brackets with improved wire support brackets. This amendment is prompted by reports that such wire support brackets failed due to fatigue, which subsequently caused the fuel shutoff valve wire to chafe and to experience a short circuit. The actions specified by this AD are intended to prevent such conditions, which could result in either the possible ignition of fuel vapors in a flammable leakage zone or in the inability to stop the flow of fuel in the event of an engine fire.

DATES: Effective August 7, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 7, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes was published in the **Federal Register** on August 4, 1999 (64 FR 42050). That action proposed to require repetitive inspections to detect wire chafing of the left and right engine fuel shutoff valve wire bundles at Power Plant Station 278 on each engine strut, and repair if necessary. That action also proposed to require repetitive replacement of three wire support brackets with improved wire support brackets.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the comments received.

Addition of Service Bulletin Information Notice

One commenter, the airplane manufacturer, indicates that during its investigation of the wire support bracket failure it established that Boeing Service Bulletin 757–54–0013, Revision 3, dated October 23, 1997 (cited in the proposal as the source of service information for doing the specified actions) contained an incorrect part number for an attachment fastener. The commenter adds that the part number was corrected in Boeing Information Notice 757–54–0013 IN 01, dated October 22, 1998.

The FAA infers that the commenter wants to add IN 01 to the service information cited in the final rule. Subsequent to receipt of this comment, we reviewed and approved Boeing Information Notice 757–54–0013 IN 02, dated April 8, 1999, which supersedes IN 01. IN 02 contains additional information for proper accomplishment of the modifications described in the service bulletin, as well as the corrected part number specified by the commenter. We concur with the commenter's request, but will add IN 02 to the service information cited in the final rule.

Revise Paragraph (a)

One commenter, the airplane manufacturer, states that it did an analysis of the new, improved wire support brackets to determine the fatigue level allowable. The analysis showed that the two lower aluminum brackets were undersized for the vibration environment in the aft strut area, and that the nickel alloy brackets were capable of withstanding the vibration environment, with fatigue allowables that exceed the stress levels by 80 percent. Analysis done on the third bracket showed that the aluminum brackets are also satisfactory. This analysis was conducted per standard Boeing practice for equipment in the nacelle and strut areas, using well-established stress values.

Based on the above information, the commenter states that replacing all 6 brackets every 12 months is unnecessary and will impose a considerable economic burden on affected operators. The commenter proposes revising paragraph (a) of the proposed rule as follows:

- Incorporate Boeing Service Bulletin 757–54–0013, Revision 3, dated October 23, 1997, within 12 months after the effective date of the AD. This would constitute terminating action for the proposed rule. Or
- For operators that do not incorporate the Revision 3 of the service bulletin, repetitively inspect the installation for chafing or damage of the wire bundle, and for cracked or fractured brackets. The repetitive inspection should be accomplished at intervals not to exceed 18 months, with bracket replacement if any evidence of cracking or damage is found.

The FAA partially agrees with the commenter's proposal, as follows:

We agree with the assessment that the replacement brackets specified in Revision 3 of the service bulletin are adequate to meet the strut vibration environment, and that incorporation of such replacement brackets would eliminate the need for the repetitive inspections and repetitive replacements of the wire support brackets specified in the proposed rule. Therefore, paragraphs (a) and (b) have been combined into paragraph (a) with the repetitive inspections and replacements omitted, and subsequent paragraphs have been re-numbered accordingly. Additionally, the preamble and the cost impact sections of the final rule have been changed.

We do not agree with the commenter's proposal to allow continued use of the existing brackets with repetitive inspections beyond the initial 12-month compliance time. The commenter did not submit adequate justification for allowing the continued use of these brackets, or extending the compliance time for the repetitive inspections from 12 to 18 months. The existing brackets can fail in service, and such failures could result in damage to wiring, ignition of fuel vapors in a flammable leakage zone, or loss of the fuel shutoff valve function. Considering these safety concerns, repetitive inspections without replacement of the wire support brackets after the doing the inspection would not adequately address the identified unsafe condition.

Withdraw Proposed Rule

One commenter asks that the FAA withdraw the proposed rule. The commenter provided in service data showing that airplanes which have replaced the wire support brackets per Boeing Service Bulletin 757–54–0013, Revision 3, have experienced no problems with the brackets. The commenter states that the annual bracket replacement (every 12 months) is not possible or practical because the repetitive bracket replacements would involve repetitive replacement of close tolerance fasteners, and would require repeated oversizing of the existing airplane mounting holes. This could result in the holes being too large for proper installation of the brackets. The commenter adds that a deviation to the proposed rule would be necessary each time the fasteners are replaced.

The FAA concurs with the commenter's assessment that the brackets that were replaced per Revision 3 of the service bulletin are adequate; however, we do not agree with the request to withdraw the proposed rule. Failure to install the replacement brackets per the referenced service bulletin could result in the unsafe conditions stated under the previous section titled "Revise Paragraph (a)." Also stated in that section is our intent to omit the repetitive inspections and repetitive bracket replacements specified in paragraph (a) of the proposed rule. Paragraph (a) of the final rule has been revised to require a one-time inspection and one-time replacement of the wire support brackets.

Reduce Compliance Time

One commenter asks that the FAA reduce the proposed compliance time for the initial inspection specified in paragraph (a) of the proposed rule from 12 months to 6 months after the effective date of the AD. The commenter states that 12 months is too long and notes that, based on previous administrative procedures and industry practices, it could be almost 18 months before an airplane is inspected. The commenter adds that this places the traveling public at an elevated risk and greatly reduces the margin of safety on the airplane.

The FAA does not agree. As discussed in the section "Differences Between Proposed Rule and Service Bulletin" in the preamble of the proposed rule, we find that a 12-month compliance time for the initial inspection would address the unsafe condition in a timely manner. In developing an appropriate compliance time for the proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to do the initial inspection/modification.

Operators are always permitted to accomplish the requirements of an AD at a time earlier than that specified as the compliance time; therefore, if an operator wants to do the initial inspection required by paragraph (a) of this AD earlier than 12 months after the effective date of the AD, the operator can do so. Therefore, no change to the compliance time for the initial inspection required by paragraph (a) of the final rule is necessary.

Extend Compliance Time

One commenter states that the proposed 12-month compliance timetable for the bracket replacement is unrealistic and asks that the compliance time be extended to 18 months. The commenter notes that it is currently implementing the modification at its C-check, and requires 18 months to modify its entire fleet. The commenter also states that the manufacturer has quoted a 22-month lead time for obtaining the necessary kits, which is not compatible with the timetable specified in the proposed rule.

The FAA does not agree. As stated above, we find that a 12-month compliance time for the initial inspection/modification is appropriate.

Fuel Shutoff Valve (FSOV)

One commenter notes that the FSOV can be closed using the redundant circuit routed on the front spar, as long as power is available to that circuit. The FAA agrees with the statement and infers that the commenter wants further explanation of the procedures available should this situation occur. This can occur only if the engine fuel cutoff switch is placed in the "cutoff" position before the engine fire handle is pulled. The procedural information is described in the Emergency Procedures section of the 757 Airplane Flight Manual.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 501 airplanes of the affected design in the worldwide fleet. The FAA estimates that 249 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours to accomplish the required inspection and approximately 6 work hours per airplane to accomplish the required replacement. The average labor rate is estimated to be $60 per work hour. Required parts will cost approximately $525 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $250,245, or $1,005 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–13–15 Boeing: Amendment 39–12296. Docket 98–NM–271–AD.

Applicability: Model 757 series airplanes, certificated in any category, equipped with Rolls Royce engines.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit that could result in either the possible ignition of fuel vapors in a flammable leakage zone or in the inability to stop the flow of fuel in the event of an engine fire, accomplish the following:

Inspection/Corrective Action

(a) Within 12 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Do a one-time detailed visual inspection of the wire bundles that pass through the three wire support brackets located at Power Plant Station (PPS) 278 on each engine strut, to find wire chafing. If any chafing is found, before further flight, repair the wire bundle per the Boeing Standard Wiring Practices Manual, Document D6–54446, Revision 23, dated August 1998.

(2) Replace all three existing wire support brackets located at PPS 278 on each engine strut with new, improved wire support brackets, per Boeing Service Bulletin 757–54–0013, Revision 3, dated October 23, 1997, as revised by Boeing Information Notice 757–54–0013 IN 02, dated April 8, 1999.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Spares Paragraph

(b) As of the effective date of this AD, no person shall install a wire support bracket having P/N 287N1112–8, –9, –20, or –21 on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance

Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provide by paragraph (a)(1) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 757–54–0013, Revision 3, dated October 23, 1997, as revised by Boeing Information Notice 757–54–0013 IN 02, dated April 8, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 7, 2001.

Issued in Renton, Washington, on June 21, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–16200 Filed 7–2–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2001–ASW–08]

Revision of Class E Airspace, Farmington, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises the Class E Airspace, Farmington, NM.

EFFECTIVE DATE: The direct final rule published at 66 FR 20587 is effective 0901 UTC, September 6, 2001.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 24, 2001, (66 FR 20587). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 6, 2001. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on June 26, 2001.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 01–16710 Filed 7–2–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–044]

RIN 2115–AA97

Safety Zone; Irish Festival 2001, Milwaukee Harbor, WI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Milwaukee Harbor for the Irish Festival 2001 fireworks display. This safety zone is necessary to protect spectators and vessels from the hazards associated with the storage, preparation, and launching of fireworks. This safety zone is intended to restrict vessel traffic from a portion of Milwaukee Harbor, Milwaukee, Wisconsin.

DATES: This temporary rule is effective from 9:20 p.m. until 9:50 p.m. (CST) on August 19, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–044] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Timothy Sickler, Port Operations Chief, Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The phone number is (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application did not allow sufficient time for the publication of an NPRM followed by a temporary final rule effective 30 days after publication. Any delay of the effective date of this rule would be contrary to the public interest by exposing the public to the known dangers associated with fireworks displays and the possible loss of life, injury, and damage to property.

Background and Purpose

This safety zone is established to safeguard the public from the hazards associated with the launching of fireworks on the Milwaukee Harbor, Milwaukee, Wisconsin. The size of the zone was determined by using previous experiences with fireworks displays in the Captain of the Port Milwaukee zone and local knowledge about wind, waves, and currents in this particular area.

The safety zone will be in effect on August 19, 2001, from 9:20 p.m. until 9:50 p.m. (CST). The safety zone will encompass all waters bounded by the following coordinates: from the point of origin at 43°02.209′ N, 087°53.714′ W; southeast to 43°02.117′ N, 087°53.417′ W; south to 43°01.767′ N, 087°53.417′ W; southwest to 43°01.555′ N, 087°53.772′ W; then north along the shoreline back to the point of origin.

All persons and vessels shall comply with the instructions of the Captain of the Port Milwaukee or his designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on scene representative. The Captain of the Port Milwaukee may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of

Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in the vicinity of Harbor Island in Milwaukee's outer harbor from 9:20 p.m. until 9:50 p.m. (CST) on August 19, 2001.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only thirty minutes on one day and late in the day when vessel traffic is minimal. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative. Before the effective period, we will issue maritime advisories widely available to users of the Milwaukee Harbor.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (See **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–930 is added to read as follows:

§ 165.T09–930 Safety Zone: Milwaukee Harbor, Milwaukee, Wisconsin.

(a) *Location.* All waters of the Milwaukee Harbor encompassed by the following coordinates: from the point of origin at 43°02.209′ N, 087°53.714′ W; southeast to 43°02.117′ N, 087°53.417′ W; south to 43°01.767′ N, 087°53.417′ W; southwest to 43°01.555′ N, 087°53.772′ W; then north along the shoreline back to the point of origin.

(b) *Effective times and dates.* From 9:20 p.m. until 9:50 p.m. (CST) on August 19, 2001.

(c) *Regulations.* (1) The general regulations contained in § 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Milwaukee or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) This safety zone should not adversely effect shipping. However, commercial vessels may request permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

Dated: June 6, 2001.

M.R. DeVries,

Commander, U.S. Coast Guard, Captain of the Port, Milwaukee, Milwaukee, Wisconsin.

[FR Doc. 01–16709 Filed 7–2–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024–AC88

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is amending the language of its concession contracting regulations, promulgated on April 17, 2000 ("Regulations"), to amend those portions of the Regulations that require or may be read as requiring a concessioner to engage in binding arbitration for the final determination of construction costs and the valuation of leasehold surrender interest. The amendment makes binding arbitration optional in the discretion of a concessioner. This amendment assures that the Regulations are in legal conformance with Section 575 of the Administrative Disputes Resolution Act.

DATES: This rule becomes effective July 3, 2001.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., Room 7313, Washington, DC 20240. Phone (202) 565–1212.

SUPPLEMENTARY INFORMATION: The National Park Service has determined that section 575 of the Administrative Disputes Resolution Act, 5 U.S.C. 575, may preclude the agency from enforcing provisions of its Regulations (36 CFR part 51) and Standard Contract which require, or may be read as requiring, a concessioner to enter into binding arbitration with respect to the final determination of construction costs and the valuation of leasehold surrender interest. Accordingly, the language of the Regulations, promulgated in 65 FR 20630 (April 17, 2000), regarding binding arbitration for (a) the final determination of construction costs, 36 CFR 51.56 and 51.57, is amended to clarify that, unless a concessioner chooses to request binding arbitration, the Director's decision as to construction costs is a final administrative decision; and (b) the valuation of leasehold surrender interest, 36 CFR 51.62, is amended to make binding arbitration as to leasehold surrender interest value an option available only to the concessioner. After the publication of this rule, the National Park Service will amend the language of its Standard Concessions Contract, promulgated in 65 FR 26052 (May 4, 2000) ("Standard Contract"), to reflect these regulatory amendments.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and is subject to review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83–I is not required.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly

stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading.)

Administrative Procedure Act

Because this revision of the Regulations and Standard Contract is necessary to assure that the Regulations and Standard Contract are in legal conformance with section 575 of the Administrative Disputes Resolution Act, 5 U.S.C. 575, NPS is publishing this revision as a final rule. In accordance with the requirements of the Administrative Procedure Act, 5 U.S.C. 553, we have determined that publishing a proposed rule would be unnecessary and contrary to the public interest. Publishing a proposed rule is unnecessary because it is clear, as a matter of law, that the Regulations and Standard Contract should be amended to ensure that they are not in conflict with the Administrative Disputes Resolution Act. Publishing a proposed rule is also contrary to the public interest because the public is best served by the swift amendment of the Regulations and Standard Contract to assure compliance with the Administrative Disputes Resolution Act. We believe that publishing this rule 30 days before the rule becoming effective would be unnecessary and contrary to the public interest. Therefore, under the Administrative Procedure Act, 5 U.S.C. 553, we have determined that this final rulemaking is excepted from the 30-day delay in the effective date and will therefore become effective on the date published in the **Federal Register**.

List of Subjects in 36 CFR Part 51

Concessions, Government contracts, National parks, Reporting and recordkeeping requirements.

Accordingly, 36 CFR Part 51 is amended as set forth below:

PART 51—CONCESSION CONTRACTS

1. The authority for part 51 continues to read as follows:

Authority: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391).

2. Revise § 51.56 to read as follows:

§ 51.56 How will the construction cost for purposes of leasehold surrender interest value be determined?

After receiving the detailed construction report (and certification, if requested), from the concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this part. The construction cost determined by the Director will be the final determination of construction cost for purposes of the leasehold surrender interest value in the related capital improvement unless the concessioner requests arbitration of the construction cost under § 51.57. The Director may at any time review a construction cost determination (subject to arbitration under § 51.57) if the Director has reason to believe that it was based on false, misleading or incomplete information.

3. Revise § 51.57 to read as follows:

§ 51.57 How does a concessioner request arbitration of the construction cost of a capital improvement?

If a concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under § 51.56. The arbitration procedures are described in § 51.51. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the concessioner and the Director.

4. Revise § 51.62 to read as follows:

§ 51.62 What is the process to determine the leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?

Leasehold surrender interest concession contracts must contain provisions under which the Director and the concessioner will seek to agree in advance of the expiration or other termination of the concession contract as to what the concessioner's leasehold surrender interest value will be on a unit-by-unit basis as of the date of expiration or termination of the concession contract. In the event that agreement cannot be reached, the provisions of the leasehold surrender interest concession contract must provide for the Director to make a final determination of leasehold surrender interest value unless binding arbitration as to the value is requested by the concessioner. The arbitration procedures are described in § 51.51. A prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this part are final and not subject to further arbitration.

Dated: June 11, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–16612 Filed 7–2–01; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6996–7]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Chemical Accident Prevention Provisions; Risk Management Plans; New Jersey Department of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action grants the New Jersey Department of Environmental Protection (NJDEP) the authority to implement and enforce portions of the State of New Jersey's Toxic Catastrophe Prevention Act Program (TCPA), codified at New Jersey Administrative Code (NJAC) 7:31, in place of the Federal Chemical Accident Prevention regulations, promulgated by EPA under section 112(r) of the Clean Air Act (CAA), for all stationary sources with covered processes ("subject sources") under New Jersey's jurisdiction. New Jersey's regulations will be incorporated by reference as "New Jersey's Toxic Catastrophe Prevention Act Program" in the Code of Federal Regulations. Pursuant to section 112(l) of the CAA, NJDEP requested approval to implement and enforce its TCPA rule in place of the Federal Chemical Accident Prevention regulations. NJDEP requested this authority for all subject sources under its jurisdiction except those that are covered only because they contain regulated quantities of LPG gases regulated under the New Jersey Liquified Petroleum Gas Act of 1950 (NJSA 21:1B). The EPA has reviewed this request and has concluded that it satisfies all of the requirements necessary to qualify for approval under section 112(l). With the exceptions noted in section III of the

SUPPLEMENTARY INFORMATION, EPA substitutes the provisions of NJAC 7:31–1.1 through 1.10 and NJAC 7:31–2.1 through 8.2, effective July 20, 1998, for EPA regulations.

DATES: This rule is effective on September 4, 2001 without further notice, unless EPA receives relevant adverse comments by August 2, 2001. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2001.

ADDRESSES: Written comments should be addressed to: Steven C. Riva, Chief, Permitting Section, Air Programs Branch, U. S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007–1866, with a copy to Ms. Shirlee Schiffman, Chief, Bureau of Release Prevention, New Jersey Department of Environmental Protection, P.O. Box 422, 401 East State Street, Trenton, New Jersey 08625–0422. Copies of the submitted requests are available for public review at EPA Region 2's office during normal business hours (docket # A–2000–23). Any State responses to comments must be submitted to the Administrator within 30 days of the close of the public comment period.

FOR FURTHER INFORMATION CONTACT: Umesh Dholakia at (212) 637–4023.

SUPPLEMENTARY INFORMATION:

I. Background

The 1990 CAA Amendments added section 112(r) to provide for the prevention and mitigation of accidental chemical releases. Sections 112(r) (3)–(5) mandate that EPA promulgate a list of "regulated substances" with threshold quantities. Processes at stationary sources that contain a threshold quantity of a regulated substance are subject to accidental release prevention regulations promulgated under CAA section 112(r)(7). Pursuant to section 112(r)(7), EPA published the list of regulated substances on January 31, 1994 (59 FR 4478), published the risk management program regulations on June 20, 1996 (61 FR 31668), and subsequently amended both sets of regulations several times. These regulations are set forth at 40 CFR part 68.

40 CFR part 68 requires, among other things, that owners and operators of stationary sources with more than a threshold quantity of a regulated substance in a process submit a risk management plan (RMP) by June 21, 1999, to a central location specified by EPA. A RMP must include an Off-site Consequence Analysis (OCA), a prevention program, and an emergency response program.

It should be noted that the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act, Public Law No. 106–40, which was enacted on August 5, 1999, excludes from coverage by the Federal Chemical Accident Prevention regulations any flammable fuel when used as fuel or held for sale as fuel by a retail facility. 40 CFR part 68 was modified to conform with this provision on March 13, 2000 (65 FR 13243). A rule concerning access to OCA information became effective on August 4, 2000 (65 FR 48108).

The regulations at 40 CFR part 68 encourage sources to reduce the probability of accidentally releasing substances that have the potential to cause harm to public health and the environment. Further, the regulations are intended to stimulate dialog between industry and the public on ways to improve accident prevention and emergency response practices. Notwithstanding the emphasis of this program as delegated on risk management planning, owners and operators of stationary sources producing, processing, handling or storing a chemical listed in 40 CFR part 68 or any other extremely hazardous substance are still subject to a general duty to identify hazards and to design and maintain safe facilities as required by section 112(r)(1) of the Act and are subject to such requirements as the Administrator may determine are necessary in the case of an imminent and substantial endangerment pursuant to section 112(r)(9) of the Act. Under section 112(l)(2) of the Act, EPA is required to publish guidance that governs how state, local, and territorial agencies, and Indian tribes as defined in 40 CFR 71.2 (S/L's), may develop and submit, and how we may approve, S/L air toxics rules or programs that meet the goals of the Act and the Federal air toxics program. On November 26, 1993, we finalized regulations that carried out this mandate. (58 FR 62262, Approval of State Programs and Delegation of Federal Authorities, Final Rule). The November 26, 1993 regulations, which can be found in 40 CFR part 63, subpart E, provide regulatory guidance regarding approval of S/L rules or programs that can be implemented and enforced in place of Federal section 112 rules as well as the delegation of our authorities and responsibilities associated with those rules. Final amendments to the November 26, 1993 federal regulations were published on September 14, 2000 (65 FR 55810). Under subpart E, agencies may obtain approval from EPA to implement and enforce provisions of their own air pollution control programs in lieu of federally promulgated NESHAP and other section 112 requirements for stationary sources. Once a state program is approved pursuant to the rule substitution provisions of subpart E, S/L rules and applicable requirements resulting from those rules are considered federally enforceable and substitute for the Federal requirements that would otherwise apply to those stationary sources.

On May 13, 1999, EPA Region 2 received NJDEP's request for delegation of the Federal Chemical Accident Prevention Provisions promulgated under section 112(r) of the CAA and codified at 40 CFR part 68, for all stationary sources with covered processes except those having certain specified flammable liquified petroleum gases (LPG), regulated under the New Jersey Liquified Petroleum Gas Act of 1950 (NJSA 21:1B).

Section 112(l) of the CAA and 40 CFR 63.91, 63.93, and 63.95, authorize EPA, in part, to delegate the authority to implement 112(r)(7) to any state or local agency which submits an approvable program to implement and enforce the section 112(r)(7) requirements, including the Chemical Accident Prevention regulations set forth at 40 CFR part 68. An appropriate plan must contain, among other criteria, the following elements: a demonstration of the state's authority and resources to implement and enforce regulations that are at least as stringent as section 112(r) regulations; procedures that assure EPA's ability to receive, review, and make publicly available RMPs; and procedures for providing technical assistance to subject sources, including small businesses.

II. NJDEP TCPA Rule

New Jersey's TCPA, N.J.S.A. 13:1K–19 *et seq.*, was enacted in 1985 and became effective on January 8, 1986. In 1988, at N.J.A.C. 7:31, the Department adopted rules implementing the TCPA that became effective on June 20, 1988. These rules were readopted with amendments on June 18, 1993, and became effective on July 9, 1993. Following the promulgation of the Federal rules in 40 CFR part 68, NJDEP readopted its TCPA rules on June 18, 1998, to be consistent with the Federal requirements. The structure of the TCPA rules was also revised to conform with the structure of the Federal regulations. The proposal and adoption of these new rules was published in the New Jersey

Register in accordance with New Jersey's Administrative Procedures Act. The amendments, new rules, repeals and modifications became effective July 20, 1998.

New Jersey's TCPA program has the authority and resources to provide technical assistance, review and make publicly available risk management plans, and adequately implement and enforce its TCPA program. During the readoption process, NJDEP supplemented many of the Federal rules with stricter and/or additional requirements to fulfill the mandates of the TCPA or to maintain coverage under the TCPA program at its previous level. Although Federal regulations and the NJDEP's readopted TCPA regulations are similar, there are some differences. Most notably, (1) the Federal rule contains requirements for three program levels, Program 1 having the least stringent requirements, while the readopted TCPA rule eliminates Program 1 and requires all subject sources to meet stricter Program 2 or Program 3 requirements, (2) the TCPA rules will regulate more chemicals and in some cases at a lower threshold than the Federal rules require and, (3) the TCPA requires the subject sources to perform risk assessment to determine any additional risk reduction measures the sources should take.

III. Approval and Delegation

Under CAA section 112(l), EPA may approve S/L rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 Federal rules, emission standards, or requirements. The Federal regulations governing EPA's approval of S/L rules or programs under section 112(l) are located at 40 CFR part 63, subpart E. Under these regulations a S/L has the option to request EPA's approval to substitute a local rule for the applicable Federal rule. Upon approval, the S/L rule will be implemented in place of the counterpart EPA rule and EPA will enforce the state rule in place of the otherwise applicable Federal rule. To receive EPA approval using this option, the requirements of 40 CFR 63.91, 63.93, and 63.95 must be met. In summary, the criteria require that a S/L rule or program: (1) Is "no less stringent" than the corresponding Federal rule or program, (2) has adequate legislative authority and resources, (3) has scheduled a timely implementation of the rule, and (4) is otherwise in compliance with Federal guidance.

Based on the review of New Jersey's delegation application, its pertinent laws, rules and regulations, EPA concludes that New Jersey's request satisfies the criteria for approval and substitution in 40 CFR 63.91, 63.93 and 63.95. EPA therefore approves as a direct final rule NJDEP's TCPA rule, effective July 20, 1998, at NJAC 7:31–1.1 through 1.10 and NJAC 7:31–2.1 through 8.2 as equivalent to Federal regulations in 40 CFR part 68 and grants the substitution of the authority to implement and enforce these requirements. The following summarizes the important intents of this delegation.

(1). New Jersey does not intend to regulate and has not sought authority to regulate processes that are covered only because they contain regulated quantities of LPG gases regulated under the New Jersey Liquified Petroleum Gas Act of 1950 (NJSA 21:1B). As previously noted, 40 CFR part 68 was modified on March 13, 2000 to comply with the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act, Public Law No. 106–40, which was enacted on August 5, 1999, and which excludes from coverage by the Federal Chemical Accident Prevention regulations any flammable fuel when used as fuel or held for sale as fuel by a retail facility.

(2). Pursuant to CAA section 112(r)(3), EPA retains the authority to add or delete substances from the list of substances established under section 112(r) and set forth in 40 CFR part 68, subpart F. The additions or deletions are automatically incorporated into the approved state program (see item 5 below).

(3). NJAC 7:31–1.11 and –1.11A refer exclusively to NJDEP authorities and concern matters beyond the scope of 40 CFR part 68. EPA does not approve the fee structure set forth in NJSA 7:31–1.11 and –1.11A for federal enforceability purposes. Rather, the fee structure constitutes part of the demonstration of adequate resources required by 40 CFR sections 63.95(b)(1) and 63.91(d)(3)(iii).

(4). NJAC 7:31–1.12 and subchapters 9, 10, and 11 refer exclusively to NJDEP authorities and, as such, concern matters beyond the scope of 40 CFR part 68.

(5). NJAC 7:31–1.7, insofar as it asserts the Department's authority to rescind, amend or expand these rules, must be read in a manner that is not inconsistent with NJAC 7:31–1.4 (e) or (g). NJAC 7:31–1.4 (e) provides that in the event there are inconsistencies or duplications in requirements incorporated by reference from 40 CFR part 68 and NJAC 7:31, the provisions incorporated by reference from 40 CFR part 68 shall prevail, except where the rules set forth in NJAC 7:31 are more stringent. NJAC 7:31–1.4(g) provides that any future additional subparts of 40 CFR part 68 are incorporated by reference. In addition, NJAC 7:31, subchapters 1–8, which incorporate by reference 40 CFR part 68, subparts A–H, each state that they are incorporating by reference all future amendments and supplements to 40 CFR part 68, except as specifically provided.

(6). NJAC 7:31, subchapter 7, incorporates the federal requirement of 40 CFR Part 68, subpart G, that subject sources must submit Risk Management Plans to EPA in accordance with 40 CFR section 68.150. In taking delegation a state can add state only requirements to those imposed by subpart G but cannot delete or revise the requirements of subpart G.

(7). Among the revisions to 40 CFR part 68 is the addition of more detailed confidentiality provisions to subpart G. The confidentiality provisions of 40 CFR part 68 vary from the requirements of NJAC 7:31–10. The revised part 68 regulations require any source claiming CBI to substantiate that claim at the time the source makes the claim and to provide a public copy, with the confidential material deleted, at the time the source makes the claim. New Jersey's confidentiality provisions, NJAC 7:31–10, which are not substituted for 40 CFR part 68 (see item 5 above), only require the substantiation and the public copy if the Department receives a request for the material or if the Department decides to determine if the material is entitled to confidential treatment. All material submitted to EPA will be subject only to Federal freedom of information and confidentiality requirements.

(8). EPA does not substitute a State's enforcement authority for its own enforcement authority when delegating standards under Clean Air Act section 112(l). In the event it is necessary for EPA to take an enforcement action, EPA may seek the maximum statutorily allowed penalties available under the Clean Air Act ($27,500/day/violation) and apply its own policies regarding settlement. Therefore, EPA does not approve the penalty structure set forth in NJSA 7:31–11 for federal enforceability purposes (see item 4 above). Rather, EPA approves the penalty structure in the rule as meeting the requirements set forth in 40 CFR 63.91(d)(3)(i), which direct that the state demonstrate enforcement authorities that meet the requirements of 40 CFR 70.11. New Jersey's request for approval of the authority to implement and enforce the TCPA rule includes a written statement by the State Attorney General that laws of the State of New

Jersey provide adequate authority for the State to carry out all aspects for the section 112(r) program for which it is seeking delegation, including enforcement action.

As part of its request for approval of the authority to implement and enforce the TCPA rule, NJDEP submitted the criteria for approval required by 40 CFR 63.91(d), 63.93(b) and 63.95. As of the effective date of this action, with the limitations noted above, NJAC 7:31 will substitute for 40 CFR part 68 and will be the federally enforceable standard for subject sources under New Jersey's jurisdiction. This rule will be enforceable by the EPA and citizens under the CAA. Although NJDEP now has the primary implementation and enforcement responsibility for 40 CFR part 68, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable standards or requirements under the CAA section 112(r) including the authority to seek civil and criminal penalties up to the maximum amounts specified in CAA section 113. While EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable standards or requirements under the CAA section 112(r), EPA finds that compliance with the NJDEP TCPA rule, NJAC 7:31, effective July 20, 1998, will assure compliance with 40 CFR part 68.

IV. Opportunity for Public Comment

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this action should adverse comments be filed. This rule will become effective September 4, 2001 without further notice unless the Agency receives adverse comments by August 2, 2001.

If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, this rule will become effective on September 4, 2001 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled Regulatory Planning and Review.

B. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The State of New Jersey has voluntarily requested delegation of this program. The state will be relying on its own resources to implement and enforce 40 CFR part 68 as described in the summary section of this notice. Thus, Executive Order 13132 does not apply to this rule.

C. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The State of New Jersey has voluntarily requested delegation of this program. The state will be implementing and enforcing its own requirements, which have been reviewed and approved by EPA. Thus, Executive Order 13175 does not apply to this rule.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements. EPA has already satisfied the requirements under the Paperwork Reduction Act to collect information needed to meet the federal requirements through OMB Control No. 2050–0144. 64 FR 69636.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, Public Law 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a regulatory flexibility analysis must be prepared if a screening analysis indicates a regulation will have significant impact on a substantial number of small entities. This rule will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in estimated costs of $100 million or more in one year to either State, local, or tribal governments in the aggregate, or to the private sector. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing, educating and advising any small governments that may be significantly impacted by the rule. EPA has estimated that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

H. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of this rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Chemical accident prevention, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: May 25, 2001.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

Part 63, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

2. Section 63.14 is amended by revising paragraph (d)(2) to read as follows:

§ 63.14 Incorporations by reference.

* * *

(d) * * *

(2) New Jersey's *Toxic Catastrophe Prevention Act Program*, (July 20, 1998), Incorporation By Reference approved for § 63.99 (a)(30)(i) of subpart E of this part.

* * *

Subpart E—Approval of State Programs and Delegation of Federal Authorities

3. Section 63.99 is amended by adding a new paragraph (a)(30) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(30) New Jersey

(i) Affected sources must comply with the Toxic Catastrophe Prevention Act Program (TCPA), (July 20, 1998), (incorporated by reference as specified in § 63.14) as described in paragraph (a)(30)(i)(A) of this section:

(A) Except for authorities identified as not being delegated, the regulations incorporated in New Jersey's "Toxic Catastrophe Prevention Act Program," Title 7, Chapter 31, of the New Jersey Administrative Code: Subchapter 1, "General Provisions" (sections 1.1 to 1.10 except for the definition of "What if Checklist"), Subchapter 2, "Hazard Assessment," Subchapter 3, "Minimum Requirements for a Program 2 TCPA Risk Management Program," Subchapter 4, "Minimum Requirements for a Program 3 TCPA Risk Management Program," Subchapter 5, "Emergency Response," Subchapter 6, "Extraordinarily Hazardous Substances," Subchapter 7, "Risk Management Plan and TCPA Submission," and Subchapter 8, "Other Federal Requirements," (effective July 20, 1998), pertain to the sources affected by 40 CFR part 68 and have been approved under the procedures in §§ 63.91, 63.93 and 63.95 to be implemented and enforced in place of 40 CFR part 68, Subparts A through H, as may be amended.

(*1*) Authorities not delegated:

(*i*) The New Jersey Department of Environmental Protection is not delegated the Administrator's authority to implement and enforce New Jersey's Toxic Catastrophe Prevention Act Program, Title 7, Chapter 31, of the New Jersey Administrative Code, in lieu of the provisions of 40 CFR part 68 as they apply to the regulation of processes that are covered only because they contain regulated quantities of liquid petroleum gases (LPG) regulated under the New Jersey Liquified Petroleum Gas Act of 1950 (N.J.S.A. 21:1B),

(*ii*) Pursuant to § 63.90(c) the New Jersey Department of Environmental Protection is not delegated the Administrator's authority to add or delete substances from the list of substances established under section 112(r) and set forth in 40 CFR 68.130.

[FR Doc. 01–16561 Filed 7–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 264

[FRL–7001–8]

RIN 2050

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on targeted amendments to the regulations for hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators promulgated on September 30, 1999 (NESHAP: Final

Standards for Hazardous Air Pollutants for Hazardous Waste Combustors). The revisions make improvements to the implementation of the emission standards, primarily in the areas of compliance, testing and monitoring. We are approving these revisions to make it easier to comply with the September 30, 1999 final rule.

DATES: This rule is effective on October 16, 2001 without further notice, unless EPA receives adverse comment by August 17, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: If you wish to comment on this direct final rule, you must send an original and two copies of the comments referencing Docket Number F–2001–RC4F–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002; or, if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the "Supplementary Information" section below.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday–Friday, 9 am to 4 pm, Eastern Standard Time. For more information on specific aspects of the NESHAP portion of this direct final rule, contact Mr. Frank Behan at 703–308–8476, *behan.frank@epa.gov*, or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view these as noncontroversial amendments. We anticipate no adverse comment because we have worked with the interested parties in their development. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to amend the emissions standards for hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators promulgated on September 30, 1999, if adverse comments are filed. This direct final rule will be effective on October 16, 2001 without further notice unless we receive adverse comment by August 17, 2001. If EPA receives adverse comment on one or more distinct amendments of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any of the distinct amendments in today's rulemaking for which we do not receive adverse comment will become effective on the date set above. We will address all public comments in a subsequent final rule based on the proposed rule, including any adverse comment on any distinct amendment, paragraph, or section of today's rule. We will not institute a second comment period on this action. Any parties interested in commenting on any amendment must do so at this time.

Electronic Submittal of Comments

You may submit comments electronically by sending electronic mail through the Internet to: *rcra-docket@epamail.epa.gov*. You should identify comments in electronic format with the docket number F–2001–RC4F–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. The official record for this action will be kept in the paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC as described above. We may seek clarification of electronic comments that are garbled in transmission or during conversion to paper form.

You should not electronically submit any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Acronyms Used in the Rule

BIF—Boilers and industrial furnaces
CAA—Clean Air Act
CEMS—Continuous emissions monitors/monitoring system
CFR—Code of Federal Regulations
DOC—Documentation of Compliance
DRE—Destruction and removal efficiency
dscf—Dry standard cubic feet
dscm—Dry standard cubic meter
EPA/USEPA—United States Environmental Protection Agency
gr—Grains
HAP—Hazardous air pollutant
HWC—Hazardous waste combustor
MACT—Maximum Achievable Control Technology
MTEC—Maximum theoretical emissions concentration
NESHAP—National Emission Standards for Hazardous Air Pollutants
NIC—Notice of Intent to Comply
NOC—Notification of compliance
NODA—Notice of data availability
OPL—Operating parameter limit
PM—Particulate matter
POHC—Principal organic hazardous constituent
ppmv—Parts per million by volume
RCRA—Resource Conservation and Recovery Act
SVM—Semivolatile metals (lead and cadmium)
µg—Microgram

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Part Four: State Authority

Part One: Overview and Background for This Direct Final Rule

I. What Is the Purpose of This Direct Final Rule?

Today's notice makes specific changes to the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I) rule, published September 30, 1999 (64 FR 52828). After promulgation, commenters (primarily the regulated community) raised numerous potential issues through informal comments and during litigation settlement discussions. After considering the issues raised, we have decided to promulgate a limited number of changes to the final rule, most of them relating to compliance and implementation.

In a separate action today, we are proposing and soliciting comment on several additional amendments to the Phase I rule. If you wish to comment on those amendments, you must submit comments following the directions in the **ADDRESSES** section of that action.

The remaining sections of this part provide additional background information on the Phase I final rule.

II. What Is the Phase I Rule?

In the Phase I final rule, we adopted National Emissions Standards for Hazardous Air Pollutants to control toxic emissions from the burning of hazardous waste in incinerators, cement kilns, and lightweight aggregate kilns. These emission standards created a technology-based national cap for hazardous air pollutant emissions from the combustion of hazardous waste in these devices. Additional risk-based conditions necessary to protect human health and the environment may be imposed (assuming a proper, site-specific justification) under section 3005(c)(3) of the Resource Conservation and Recovery Act (RCRA).

Section 112 of the Clean Air Act (CAA) requires emissions standards for hazardous air pollutants to be based on the performance of the Maximum Achievable Control Technology (MACT). These standards apply to the three major categories of hazardous waste burners—incinerators, cement kilns, and lightweight aggregate kilns. For purposes of today's notice, we refer to these three categories collectively as hazardous waste combustors (HWC). Hazardous waste combustors burn about 80% of the hazardous waste combusted annually within the United States. The Phase I HWC MACT standards are expected to achieve significant reductions in the amount of hazardous air pollutants being emitted each year.

Additionally, the Phase I HWC MACT rule satisfies our obligation under RCRA (the main statute regulating hazardous waste management) to ensure that hazardous waste combustion is conducted in a manner protective of human health and the environment. By using both CAA and RCRA authorities in a harmonized fashion, we consolidate regulatory control of hazardous waste combustion into a single set of regulations, thereby minimizing the potential for conflicting or duplicative federal requirements.

More information on the Phase I HWC MACT rule is available electronically from the World Wide Web at *www.epa.gov/hwcmact.*

III. What Related Actions Have Been Taken Since Publication of the Phase I Rule?

On November 19, 1999, we issued a technical correction to the Phase I HWC MACT final rule (64 FR 63209). It clarified our intent with respect to certain aspects of the Notification of Intent to Comply and Progress Report requirements of the 1998 "Fast Track" final rule (63 FR 33783). Additionally, specific to the Phase I HWC MACT final rule, we corrected several typographical errors and omissions.

On July 10, 2000, we issued a second technical correction to the Phase I HWC MACT final rule (65 FR 42292). This action corrected additional typographical errors and clarified several issues to make the Phase I rule easier to understand and implement. This action also supplied one omission from the technical correction published on November 19, 1999, and made one correction to the related June 19, 1998 "Fast Track" final rule (63 FR 33783).

On July 25, 2000, the Court of Appeals for the District of Columbia decided *Chemical Manufacturers Association* v. *EPA*, 217 F. 3d 861 (D.C. Cir. No. 99–1236). The court held that EPA had the legal authority to promulgate a requirement of early cessation of hazardous waste burning activity for those sources not intending to comply with the MACT emission standards. However, the court also held that we had not adequately explained our reasons for imposing the early cessation requirement. As a result, the court vacated the early cessation requirement and the related Notice of Intent to Comply (NIC) and Progress Report requirements. This vacature took effect on October 11, 2000. Since the requirements were not vacated until after sources were required to submit their NICs (on October 2, 2000), we determined that the court's action does not impact a source's ability to request a RCRA permit modification using the streamlined procedures of 40 CFR 270.42(j)(1). As long as a source complied with the NIC provisions (including filing the NIC before the provision was vacated), the source has met the requirements in 40 CFR 270.42(j)(1) and is therefore eligible for the streamlined RCRA permit modification process. The court's decision does not impact the emission standards or compliance schedule for the other requirements of the HWC NESHAP Subpart EEE.

On November 9, 2000, we issued a third technical correction to the Phase I HWC MACT final rule (65 FR 67268). It clarified our intent with respect to the applicability of new source versus existing source standards for hazardous waste incinerators. This action also clarified three issues to make the Phase I rule easier to understand and implement.

On May 14, 2001, we issued a final rule implementing two court orders that removed affected provisions of the Phase I HWC MACT final rule from the Code of Federal Regulations (66 FR 24270). This action removed the Notice of Intent to Comply provisions (discussed above) and certain operating parameter limits of baghouses and electrostatic precipitators.

Part Two: NESHAP—Amendments to the HWC Final Rule

I. Hazardous Waste Residence Time

"Hazardous waste residence time" is defined at § 63.1201(a) as the time elapsed from cutoff of the flow of hazardous waste into the combustor (including, for example, the time required for liquids to flow from the cutoff valve into the combustor) until solid, liquid, and gaseous materials from the hazardous waste, excluding residues that may adhere to combustion chamber surfaces, exit the combustion chamber. As stakeholders recognize, hazardous waste residence time has significant regulatory and enforcement implications. For example, if sources

were to exceed an operating requirement or emission standard after the hazardous waste residence time has expired, it is not a violation if the exceedance occurred because of a start-up, shut-down, or malfunction and sources follow the procedures and corrective measures prescribed in the start-up, shut-down, and malfunction plan. In addition, after the hazardous waste residence time has expired, sources may elect to comply with emission standards the Agency has promulgated under sections 112 and 129 of the Clean Air Act for source categories that do not burn hazardous waste. They would comply with these standards in lieu of the hazardous waste combustor standards of Subpart EEE, Part 63. See § 63.1206(b)(1).

Since promulgation of the hazardous waste combustor rule, stakeholders have raised an issue: what is the hazardous waste residence time for sources that continuously recycle hazardous waste-derived materials?

We are taking direct final action so that recycled hazardous waste-derived materials should not be considered when calculating hazardous waste residence time.[1] See revision to the definition of hazardous waste residence time at § 63.1201(a).

A. What Causes Recycle Loops and What Is the Potential Consequence?

Cement kilns, and possibly other hazardous waste combustors, continuously volatilize and condense toxic constituents derived from hazardous waste in recycle loops within the kiln. For example, chlorine and semivolatile metal hazardous air pollutants, such as lead and cadmium, will volatilize in the kiln and partition to the combustion gas. A portion of these waste-derived, toxic materials will condense before the combustion gas exits the kiln and will partition back into the raw material bed. Thus, these waste-derived, toxic materials are recycled internally within the kiln.

In addition, cement kilns generally recycle a portion of their collected particulate matter, known as cement kiln dust, back into the kiln. This cement kiln dust contains toxic constituents derived from hazardous waste fuel, including metals that are hazardous air pollutants.

Stakeholders request that these recycle loops not be considered when calculating hazardous waste residence time. Stakeholders note that if the hazardous waste-derived materials in these recycle loops were to be considered in calculating residence time, then: (1) It would be very problematic to document when the recycled waste constituents finally exit the kiln; and (2) the hazardous waste residence time would not elapse for an unnecessarily protracted period of time.

B. How Are We Addressing This Issue?

We conclude that recycle loops need not be considered in calculating hazardous waste residence time to ensure compliance with the emission standards. Emissions of semivolatile metals, low volatile metals, and particulate matter immediately prior to a waste feed cutoff will typically be well below levels demonstrated during the performance test and thus below the emission standard. This is because sources typically spike metals (add extra metals to the waste fuel) during performance testing to establish a wide envelope of operating limits to reflect the maximum operating variability they are likely to encounter in actual operation, providing sufficient operating flexibility for unexpected situations. We do not believe, though, that conditions will invariably reflect this maximum variability before a waste feed cutoff. In addition, notwithstanding recycle loops, hazardous waste-derived metals emissions will begin to decrease upon waste feed cutoff. The levels will continue to decrease while the hazardous waste residence time elapses and will decrease to very low levels after the electrostatic precipitator or baghouse undergoes a cleaning cycle. Therefore, the metal emission standards should not be exceeded due to recycle loops containing hazardous waste-derived materials.

For these reasons, we are revising the definition of hazardous waste residence time at § 63.1201(a).

II. Deletion of One-Time Notification of Compliance With Alternative Clean Air Act Standards

If a source is not feeding hazardous waste and the hazardous waste residence time has expired, the source may elect to comply temporarily with alternative, otherwise applicable standards promulgated under the authority of sections 112 and 129 of the Clean Air Act. If a source makes this election, § 63.1206(b)(1)(ii)(A) currently requires the source to submit to the Administrator a written, one-time notification documenting compliance with those requirements and standards.

The rule requires this notice to alert regulatory officials that a source claims to have met the regulatory requirements for the otherwise applicable standards (i.e., section 112 and 129 standards the source would be subject to if the source did not burn hazardous waste). For example, a hazardous waste burning cement kiln may elect to comply with the MACT standards and operating requirements applicable to Portland cement manufacturing facilities provided under Subpart LLL after the hazardous waste residence time has transpired. The notice enables regulatory officials to know which sources claim to be in full compliance with such otherwise applicable standards and will assist those officials in establishing source inspection priorities.

Stakeholders have raised two issues since promulgation, however, that have led us to conclude that this notification requirement is unnecessary. First, stakeholders have indicated that virtually all sources are likely to want to have the option to switch temporarily to compliance under otherwise applicable section 112 or 129 standards at some point during their operations. Thus, the notice would not have the intended effect of singling out those sources that chose to do so for the purpose of establishing inspection priorities.

Stakeholders also point out that this notification requirement is duplicative of the title V compliance certification requirement of § 70.5(c)(9) that requires permit applicants to include in their application a detailed description of the source's compliance status and a certification by a responsible official of compliance with all applicable requirements. In addition, stakeholders state that title V sources must submit annual certifications of compliance with all applicable requirements. See § 70.6(c)(5). Thus, stakeholders note that the only scenario where the § 63.1206(b)(1)(ii)(A) notification requirement is not duplicative is for sources that have not yet been required to submit a certification under title V.

In addition, if sources anticipate complying temporarily with the alternative standards for nonhazardous waste combustors after the hazardous waste residence time has expired, sources may include appropriate terms and conditions in the title V permit using the "reasonably anticipated operating scenario" provisions of

[1] Another special case for addressing residence time is vitrification melter units, where certain inorganic waste components are incorporated into the vitrified melt, and where it is not desirable to remove the entire melt (i.e., the melt is removed from the chamber at lengthy, infrequent intervals). In these cases, it may be appropriate for sources to recommend an alternative "effective waste treatment" residence time under § 63.1209(g)(1).

§ 70.6(a)(9).[2] Once both scenarios (i.e., for burning hazardous waste and not burning hazardous waste) are included in the permit, sources simply document in the operating record when they switch from one scenario to another.

Finally, we also note that this notification requirement has been targeted for deletion under the Office of Solid Waste Burden Reduction Project. *See* 64 FR 32859 for the goals and objectives of this project.

For these reasons, we are deleting the notification requirement of § 63.1206(b)(1)(ii)(A).

III. Use of DRE Data in Lieu of Testing

We are revising two provisions associated with the allowance to use previously collected data in lieu of the initial performance test or the Destruction and Removal Efficiency (DRE) test under §§ 63.1206(b)(6), 63.1206(b)(7), and 63.1207(c)(2). We are taking final action to: (1) Remove the existing restriction preventing the use of DRE test data collected prior to March 1998 to document compliance with the DRE standard [3]; and (2) eliminate the requirement limiting previous data to only RCRA permit issuance or reissuance testing results.

A. Why Are We Allowing DRE Data Obtained Prior to March 1998 To Be Used in Lieu of a New DRE Test?

Stakeholders question why the rule restricts the age of DRE data for sources required to conduct only one DRE test for the life of the source. For DRE testing, the rule states that if you fire hazardous waste in the flame zone, and the system is not modified, then you are only required to demonstrate compliance with the MACT DRE emissions standard once over the operational life of the device. However, as part of the final rule data in lieu provisions, we limit the use of previous test data submitted for the initial comprehensive performance test to data collected after March 1998. Stakeholders believe that this limit substantially reduces the number of sources that can submit previous DRE test data in lieu of conducting an additional DRE test. They say that most sources conducted their RCRA trial burns before March 1998 and therefore would be ineligible to submit these tests. Stakeholders point out that if a one-time test is sufficient for the life of the source, then we should not place a limit on previous RCRA data. We agree with this logic and are revising the rule today to require testing only for those sources that are modified or that fire at a location other than the flame zone.

B. Why Are We Allowing the Use of Data Obtained for Purposes Other Than RCRA Permit Issuance or Reissuance?

Stakeholders also express concern about the restrictions the rule places on the type of data that can substitute for a MACT performance test. The rule now stipulates that only data collected for the purpose of RCRA permit issuance or re-issuance can be submitted as in lieu data. Our primary concern with in lieu data submittals is to ensure data quality. Upon reevaluation, we believe data that is not associated with RCRA permit issuance or re-issuance can be reviewed by the regulatory authority to determine whether they are suitable for demonstrating compliance with the DRE standard and for setting MACT operating limits. We now understand that several sources engage in other types of CAA performance testing with oversight and quality assurance requirements comparable to RCRA testing. This modification will allow sources to coordinate CAA and RCRA testing that may facilitate early compliance. In today's direct final rule, we are modifying the current data in lieu provisions to allow sources to submit any test data in lieu of conducting a MACT performance test provided that the data meet our quality assurance requirements (except for DRE, as discussed above). We emphasize that a data in lieu of request must provide adequate quality assurance and quality control documentation. In most cases, tests conducted without significant regulatory oversight (and particularly without a reasonable opportunity for significant oversight) would not be considered to be of sufficiently known quality for use as data in lieu of testing.

For these reasons, we are revising the requirements of §§ 63.1206(b)(6), 63.1206(b)(7), and 63.1207(c)(2).

IV. Time Extension for Waiving PM and Opacity Standards To Correlate PM CEMS

For facilities voluntarily using a particulate matter (PM) continuous emissions monitoring system (CEMS), the final rule allows the particulate matter standard and operating parameter limits used to ensure compliance with that standard to be waived for up to a 96-hour period during a PM CEMS correlation test. (*See* 64 FR 53046). This waiver period is necessary because PM CEMS outputs must be correlated to manual method results and during this time it is sometimes necessary to exceed the applicable operating parameter limits to produce an accurate correlation. The correlation is most accurate over the range of particulate matter emissions tested, so correlation tests should be performed over the full range of expected particulate matter emissions for the particular facility. We determined that allowing a facility to operate above the particulate matter standard for a 96-hour period is reasonable because this is a sufficient amount of time to: (1) Increase emissions to the desired level and reach system equilibrium; (2) perform correlation tests at the equilibrium condition; (3) return to normal equipment settings indicative of compliance with emissions standards and operating parameter limits; and (4) achieve equilibrium at normal conditions. (64 FR 52929).

Stakeholders contend that 96 hours may be too short of a time period to fulfill the testing requirements and that the regulations should allow for a longer time period. From the limited information available on the time required for PM CEMS correlation, they believe that 96 hours may be insufficient to complete the testing, particularly for HWCs that burn a variety of solid wastes. Petitioners suggest we change this provision to allow periods longer than 96 hours with the Administrator's approval.

In a March 2, 2000 letter to EPA, stakeholders describe the time necessary to complete PM CEMS correlation tests at an Eli Lilly incinerator as an indication of the need for additional time beyond the existing 96 hours. In Phase II of Eli Lilly's CEMS tests, Eli Lilly needed approximately 54 hours to achieve a successful correlation (Eli Lilly collected 34 data points requiring approximately three hours per data point above the particulate matter standard). This 54 hours only represented the testing time and did not include pre-and post-testing adjustments or the time before and after the tests when the incinerator was reaching equilibrium. The petitioners also point out that Eli Lilly had personnel with extensive experience in adjusting their incinerator to achieve desired HWC MACT particulate matter concentrations. Facilities with personnel who do not have this experience will go through a lengthy learning process and may need even more time. Therefore, stakeholders believe the current 96-hour allowance is not adequate to correlate a PM CEMS device in an accurate manner.

[2] Note that Subpart EEE incorporates this provision as § 63.1209(q), operating under different modes of operation.

[3] If hazardous waste is fed at a location other than the normal flame zone, sources must conduct periodic DRE testing. See § 63.1206(b)(7)(ii).

Based on the Eli Lilly experience and discussions with PM CEMS testing personnel, we agree that the 96-hour period may not be sufficient for hazardous waste combustors to correlate their PM CEMS. Furthermore, we do not want a 96-hour time limit to be a disincentive to use of PM CEMS. We conclude a site specific extension is the appropriate mechanism to ensure accurate calibrations and to encourage the use of particulate matter continuous emissions monitoring systems. Therefore, we are adding the phrase "unless more time is approved by the Administrator" to § 63.1206(b)(8)(v).

V. Alternative Hydrocarbon Monitoring Location for Short Cement Kilns Burning Hazardous Waste at Locations Other Than the "Hot" End of the Kiln

Section 63.1206(b)(13)(i) requires new and existing cement kilns to comply with a main stack hydrocarbon standard of 20 ppmv if hazardous waste is fed at a location other than the kiln end where fuels are normally fired and products are normally discharged (this is also described as the "hot" end of the kiln). These other locations can include firing hazardous waste at midkiln, at the upper end of the kiln where raw materials are fed, or in the calciner. In addition, if hazardous waste is fed at these other locations, the rule does not give a cement kiln the option to comply with a carbon monoxide standard in the main stack in lieu of the hydrocarbon standard.

After promulgation of the final rule, stakeholders provided additional information supporting an alternative to the mandatory monitoring location for hydrocarbons in the main stack for short, dry process cement kilns. In today's notice, we are revising the requirements of § 63.1206(b)(13) to allow short, dry process cement kilns to continuously monitor hydrocarbons in both the alkali by-pass duct and at a "preheater tower combustion gas monitoring location" as an alternative to hydrocarbon monitoring in the main stack.[4] In addition, we are revising the requirements of § 63.1206(b)(13) to allow short dry process cement kilns to continuously monitor both carbon monoxide in the alkali by-pass duct and hydrocarbons at a "preheater tower combustion gas monitoring location" under limited circumstances.

[4] In today's action, we are defining "preheater tower combustion gas monitoring location." See definition in § 63.1201

A. Why Are We Finalizing an Alternative to Hydrocarbon Monitoring in the Main Stack for Certain Cement Kilns?

At the time of the final rule, we were not aware of any short, dry process cement kilns firing hazardous waste at other locations than the kiln end where clinker product is discharged. As a result, we adopted the approach used in the Boiler and Industrial Furnace (BIF) rule[5] to control emissions of organic hazardous air pollutants from cement kilns that fire hazardous waste at these other locations as the best regulatory model. The BIF rule requires cement kilns that fire hazardous waste at locations other than the kiln end where clinker product is normally discharged to comply with a hydrocarbon limit in the main stack. Since promulgation of the rule, however, stakeholders submitted information about a new precalciner[6] cement kiln that will fire hazardous waste at locations other than the kiln end where clinker is normally discharged. One stakeholder also indicated that the main stack hydrocarbon standard may not be achievable due to hydrocarbons released from the raw materials in the upper stages of the preheater tower. Therefore, we are finalizing an alternative to main stack hydrocarbon monitoring that addresses a hazardous waste firing scenario not specifically considered during the development of the rule.

B. What Alternative to Hydrocarbon Monitoring in the Main Stack Are We Finalizing for Cement Kilns?

As an alternative to hydrocarbon monitoring in the main stack,[7] we are allowing short, dry process cement kilns to continuously comply with a hydrocarbon limit, and, under limited circumstances, a carbon monoxide limit at two separate locations within the kiln system. The two monitoring locations are: (1) In the alkali by-pass duct; and (2) in the upper stages of the preheater tower. The latter location is termed a "preheater tower combustion gas monitoring location." These two locations are located downstream (in terms of gas flow) of all hazardous waste firing locations. In addition, all combustion gases pass one of these two locations.

The stakeholders claim that continuously monitoring hydrocarbons at both locations provides the best assessment of the quality of combustion and offers the same level of assurance that hazardous waste is effectively combusted as does a main stack hydrocarbon standard. Monitoring for efficient combustion of the hazardous wastes at these two locations also avoids the potential problem of hydrocarbons generated from organics in the raw materials and entrained in the gas stream.

1. Why Is Hydrocarbon Monitoring in the Alkali By-Pass Duct Appropriate?

Short, dry process cement kilns may be equipped with an alkali by-pass system where 10–30 percent of the rotary kiln combustion gas is diverted to a separate air pollution control device and sometimes to a separate stack. These kiln gases are diverted to avoid a build-up of metal salts that can adversely affect cement manufacturing operations. Hydrocarbon levels in the by-pass duct are indicative of the combustion efficiency of hazardous waste and fossil fuels fired in the rotary kiln. This is because the by-pass duct draws off combustion gases from the kiln prior to the point that hydrocarbons generated by organic materials in the raw material can be problematic.

We are finalizing a hydrocarbon standard of 10 ppmv in the by-pass duct (in addition to the preheater tower combustion gas monitoring location standards discussed below) for new and existing cement kilns that fire hazardous waste at a location other than the kiln end that clinker product is discharged because this level is indicative of good combustion conditions in the rotary kiln. Limiting hydrocarbons to 10 ppmv in the by-pass is identical to how a cement kiln with a by-pass duct or midkiln sampling system that only feeds hazardous waste at the kiln end where clinker product is normally discharged is regulated in the final rule. See §§ 63.1204(a)(5)(i)(B) and (b)(5)(i)(A)(2). For the same reasons a hydrocarbon standard of 10 ppmv was adopted in the rule, we likewise believe a hydrocarbon standard of 10 ppmv is appropriate in this situation. See 64 FR at 52887.

In today's direct final rule, with the exception discussed below, we are not allowing new and existing short, dry process cement kilns the option to comply with a carbon monoxide standard in the alkali by-pass duct when feeding hazardous wastes at any point in the rotary kiln downstream (in terms of gas flow) of the kiln end where

[5] See 56 FR at 7158.

[6] See "Final Technical Support Document for Hazardous Waste Combustor MACT Standards, Volume I: Description of Source Categories," July 1999, for a process description of precalciner cement kilns.

[7] The alternative hydrocarbon standard would not replace the hydrocarbon standard of 20 ppmv in the main stack as provided in § 63.1206(b)(13)(i). Cement kilns would continue to have the option to monitor hydrocarbons in the main stack.

clinker product is normally discharged. We do not allow this option because we do not have sufficient emissions data, using this alternative hazardous waste firing scenario, to fully evaluate the impacts. We are concerned that organic compounds in the hazardous waste could be thermally cracked to form pyrolysis by-products rather than be completely combusted. If so, little carbon monoxide may be generated by the process and monitoring carbon monoxide alone would not ensure that hydrocarbons were minimized. Without these emissions data, we believe hydrocarbon monitoring is a more conservative, direct surrogate for control of organic hazardous air pollutants than are carbon monoxide emissions.

2. Under What Circumstances Is Monitoring of Carbon Monoxide in the Alkali By-Pass Appropriate?

There may be limited circumstances where carbon monoxide monitoring (as an option to hydrocarbon monitoring) in the alkali by-pass duct may be appropriate. An example would be a cement kiln whose only hazardous waste firing location upstream (in terms of gas flow) of the point where combustion gases are diverted into the alkali by-pass duct is at the kiln end where products are normally discharged. Another example would be a cement kiln that only fires hazardous waste at a location(s) downstream (in terms of gas flow) of the point where combustion gases are diverted into the alkali by-pass duct. Firing hazardous waste under these circumstances reduces our concern that organic compounds in the hazardous waste could be thermally cracked to form pyrolysis by-products rather than be completely combusted.

We are finalizing a carbon monoxide standard of 100 ppmv (as an option to hydrocarbon monitoring) in the by-pass duct (in addition to the preheater tower combustion gas monitoring location standards discussed below) for new and existing cement kilns whose only hazardous waste firing location upstream of the point where combustion gases are diverted into the alkali by-pass duct is at the kiln end where products are normally discharged. Thus, if sources feed hazardous waste at the upper end of the kiln where raw materials are fed, or any other location upstream of where gases enter the by-pass duct other than the kiln end where products are discharged, then a cement kiln would not be eligible for this option to monitor carbon monoxide instead of hydrocarbons.

We are finalizing a carbon monoxide standard of 100 ppmv for control of organic hazardous air pollutants. A level of 100 ppmv is the same level that we established in the rule for cement kilns that only fire hazardous waste at the kiln end where products are normally discharged. See §§ 63.1204(a)(5)(i)(A) and (b)(5)(i)(A)(1). For the same reasons a carbon monoxide standard of 100 ppmv was adopted in the rule, we likewise believe the same carbon monoxide standard of 100 ppmv is appropriate in this situation. See 64 FR at 52887.

In addition, if a source elects to comply with the carbon monoxide standard in the by-pass duct, we are requiring the source to demonstrate compliance with a hydrocarbon standard of 10 ppmv in the by-pass duct during the comprehensive performance test. This is consistent with the requirements for cement kilns that comply with a carbon monoxide standard in the by-pass duct when only firing hazardous wastes at the kiln end where clinker is normally discharged. See §§ 63.1204(a)(5)(i)(A) and (b)(5)(i)(A)(1).

3. Why Is Hydrocarbon Monitoring at the "Preheater Tower Combustion Gas Monitoring Location" Appropriate?

Since only 10–30 percent of combustion gas is routed through the alkali by-pass duct, most short, dry process cement kilns' combustion gas travels through the cyclone stages of the preheater tower. Typically, raw material is introduced at the top of the preheater tower, which is a series of cyclones. Hot kiln flue gases move counter-current through the downward-moving raw material prior to introduction into the cement kiln. The cyclones are used to separate the raw material from the combustion gases and collected raw material sequentially is dropped into the next lower stage. Fossil and hazardous waste fuels can be fired in a calciner burner prior to the series of cyclones to further increase the raw material temperatures prior to introduction into the cement kiln.

A stakeholder identified a flue gas sampling location within the preheater tower where they believe a representative sample of combustion gas can be continuously monitored for hydrocarbons to demonstrate efficient combustion of the hazardous wastes. The stakeholder states that the preheater tower combustion gas monitoring location allows for continuous monitoring of hydrocarbons at a location downstream of the last point of hazardous waste fuel combustion, yet upstream of where non-fuel hydrocarbons from organics in the raw materials are generated and entrained in the gas stream. This location is termed a "preheater tower combustion gas monitoring location."

We are finalizing a hydrocarbon standard of 10 ppmv at the preheater tower combustion gas monitoring location (in addition to the alkali by-pass duct standards above) as an alternative to the main stack standard of 20 ppmv. Monitoring of hydrocarbons at the preheater tower combustion gas monitoring location is necessary to control emissions of organic hazardous air pollutants. We are finalizing a hydrocarbon standard of 10 ppmv for the same reasons discussed above for monitoring in the alkali by-pass duct. In addition, we are not allowing carbon monoxide monitoring at the preheater tower combustion gas monitoring location as an alternative to hydrocarbon monitoring for the same reasons discussed above for monitoring in the alkali by-pass duct.

VI. Alternative to the Particulate Matter Standard for Incinerators Feeding Low Levels of Metals

The final rule establishes a particulate matter emissions standard of 0.015 gr/dscf for new and existing incinerators as a surrogate to control non-mercury, CAA metal hazardous air pollutants (HAPs).[8] The rule also offers an alternative particulate matter emissions standard of 0.03 gr/dscf for incinerators that demonstrate the use of superior feedrate control of HAP metals in their hazardous waste feed. See § 63.1206(b)(14). Today, we are eliminating the alternative particulate matter emissions standard and replacing it with an alternative metal emissions control requirement. An incinerator source may elect to comply with this alternative requirement in lieu of complying with the 0.015 gr/dscf particulate matter standard. This source would remain subject to the existing standard for particulate matter in RCRA rules of 0.08 gr/dscf (a standard which would remain in the source's RCRA permit, should a source elect to comply with the alternative standard). See § 264.343(c). We are finalizing this option because we conclude that the alternative metal emissions control requirements control metal HAP emissions to levels based on MACT absent a particulate matter standard.

[8] Particulate matter is not a CAA HAP. The HWC MACT rule establishes a particulate matter standard to control non-mercury CAA HAP metals that are not directly controlled with an emission standard. See 64 FR at 52846–47.

A. Why Is EPA Eliminating the Alternative Particulate Matter Standard and Replacing It With Alternative Metal Emission Control Requirements?

We included the alternative particulate matter standard in the final rule after receiving comments that a particulate matter standard of 0.015 gr/dscf is not an appropriate surrogate to control metal hazardous air pollutants in situations where the particulate matter does not contain significant levels of metal HAPs. For example, this would include situations where the hazardous waste does not contain metals, and the resulting ash contains only relatively benign salts. (See § 63.1206(b)(14) and 64 FR 52972 for further discussion). To be eligible for the original alternative standard, incinerators must demonstrate that: (1) Non-mercury, metal HAPs are not detected in any feedstream; and (2) the maximum theoretical emission concentrations (MTEC)[9] for semivolatile and low volatile HAP metals are lower than the corresponding semivolatile and low volatile metal emission standards, assuming that non-detect metals are present at one-half the detection limit.

Based on additional information from stakeholders, we have determined that this approach did not provide the intended relief to incinerators with low levels of hazardous air pollutant metals in their feedstreams for two reasons. First, even for incinerators with very low levels of these metals in their feeds, over time metals measurements above detection limits will occasionally occur. This can occur as a result of trace metal contamination due to corrosion and/or inherent impurities in raw materials, as well as potential anomalies and variability of the analytical measurement method. Second, high detection limits that occur as a result of complex feedstream matrices may prevent a source from demonstrating that the MTECs are less than the low volatile or semivolatile metal emission standards. Because this original approach did not provide the intended relief, we are finalizing a more effective alternative to the particulate matter emission standard.

B. What Alternative Is EPA Finalizing?

In today's notice, we are allowing a source to operate under alternative HAP metal emission control requirements reflecting MACT in lieu of complying with the 0.015 gr/dscf particulate emission standard. Under the alternative, no particulate matter emission standard will apply to the incinerator under Subpart EEE; however, the incinerator will remain subject to the RCRA particulate matter standard of 0.08 gr/dscf pursuant to § 264.343(c). This is because without a sufficiently protective particulate matter standard under Subpart EEE, we cannot defer our RCRA obligation to provide for a particulate matter requirement to Subpart EEE.[10]

The alternative to the particulate matter standard has three components. The first component is simply to meet metal emission standards for semivolatile and low volatile metals. The level of the standard is the same as that which applies to other incinerators, but the standard would apply to all HAP metals, not just those enumerated in the present semi-and low volatile metal standards. The second component is a requirement for the incinerator to demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., a defined metal feedrate that is better than the MACT-defining metal feedrate floor control level.[11] The third component is a requirement for the incinerator to demonstrate that its air pollution control system achieves, at a minimum, a 90 percent system removal efficiency for semivolatile metals. These components, which are described separately below, should provide for adequate control of non-mercury HAP metals in lieu of a particulate matter standard.

1. What Emission Limitation Must the Incinerator Comply With Under This Alternative?

Incinerators must comply with the same semivolatile and low volatile metal emission limitations that are specified in the final rule; however, the emission limitations apply to both enumerated *and* non-enumerated metal HAPs, excluding mercury. As discussed in the rule, enumerated metals are those metals that are directly controlled with a numerical emission standard, i.e., cadmium, lead, arsenic, beryllium, chromium. Non-enumerated metals are those metals, i.e., antimony, cobalt, manganese, nickel, and selenium that are not controlled directly with an emission standard, but are controlled through the surrogate particulate matter standard. For purposes of these alternative requirements, the non-enumerated metals are classified as either a semivolatile or a low volatile metal, and included in the calculation of compliance with the corresponding emissions limit.

For existing incinerators, the resulting emissions limits are: (1) A semivolatile emission limitation of 240 µg/dscm for the combined emissions of lead, cadmium, and selenium; and (2) a low volatile emission limitation of 97 µg/dscm for combined emissions of arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel (all emissions corrected to 7% oxygen).

For new sources, the resulting emissions limits are: (1) A semivolatile emission limitation of 24 µg/dscm for combined emissions of lead, cadmium, and selenium; and (2) a low volatile emission limitation of 97 µg/dscm for emissions of arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel (all emissions corrected to 7% oxygen).

We conclude it is appropriate to incorporate both the enumerated and non-enumerated metals into the semivolatile and low volatile metal emissions limits because this, in combination with the other two requirements discussed below, provides a reasonable approach to directly assure that the non-enumerated metal emissions are controlled to levels representative of MACT, in lieu of a particulate matter standard. This approach, in effect, lowers the existing semivolatile and low volatile metal emissions limits because the contribution of non-enumerated metals must be accounted for when achieving the same numerical semivolatile and low volatile emission limits. We believe this is appropriate because this effectively lower emissions limit for enumerated metals compensates for the lower emission levels that would have been achieved if the source used a particulate matter control device capable of achieving 0.015 gr/dscf, i.e., a control device that is an integral part of MACT control for semivolatile and low volatile metals. Put another way, we regard this emission limitation as an equivalent means of meeting the floor standard for HAP metals (except mercury) already established in the rule.

[9] We developed the term "Maximum Theoretical Emissions Concentration" to compare metals feedrates across sources of different sizes. MTEC is defined as the metals feedrate divided by the gas flowrate, and is expressed in µg/dscm.

[10] Sources electing to comply with these alternative requirements will be subject to the RCRA PM standard in their RCRA permit. The RCRA permit must include applicable operating limits that ensure compliance with the RCRA PM limit. Permit writers can impose a lower PM limit where necessary pursuant to the omnibus authority under section 3005(c)(3) of RCRA.

[11] These MACT defining feedrates are set out in "Final Technical Support Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies," Chapter 6, July 1999.

2. What Hazardous Waste Metal Feedrate Control Requirement Must the Incinerator Comply With Under This Alternative?

Each incinerator that elects to operate under these alternative requirements must demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., it complies with a defined hazardous waste metal feedrate limit that is significantly lower than the MACT-defining metal feedrate floor control level. We define "reasonable hazardous waste metal feedrate control" as a hazardous waste metal HAP feedrate that does not exceed 25 percent of the MACT defining MTEC level.[12] Consistent with the above discussed emission standards, the hazardous waste metal feedrate limits apply to both enumerated and non-enumerated metal HAPs. The non-enumerated metal HAPs are categorized as either semivolatile or low volatile, and are incorporated into a corresponding semivolatile or low volatile hazardous waste metal feedrate limit.[13]

For existing incinerators, the resulting hazardous waste metal feedrate limits are: (1) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 1,325 µg/dscm; and (2) the twelve-hour rolling average of the maximum theoretical emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 6,000 µg/dscm.[14]

For new sources, the resulting hazardous waste metal feedrate limits are: (1) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 875 µg/dscm; and (2) the twelve-hour rolling average of the maximum theoretical emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 3250 µg/dscm.

We believe hazardous waste metal feedrate limits are essential parts of these alternative requirements. As discussed in the final rule preamble and in comment response documents, particulate matter control is an integral part of controlling both the enumerated and non-enumerated semivolatile and low volatile metals.[15] Therefore, any source that uses a particulate matter control technique that is less efficient than the MACT particulate floor standard should be required to use a "better than MACT" hazardous waste metal feedrate control (i.e., a level of feedrate control that compensates for the inefficient particulate control collection so that actual emissions of HAP metals reflect MACT). We believe that 25 percent of the MACT feedrate control levels for the combined enumerated and non-enumerated metal HAPs is within a reasonable range of values that are significantly lower than the MACT feedrate control levels. This feedrate control requirement, when combined with the emissions limit and system removal efficiency requirement, provides adequate control of metal HAPs (control equivalent to promulgated MACT).

3. How Efficient Must the Incinerator's Air Pollution Control Equipment Operate in Order To Comply With This Alternative?

If you elect to operate under these alternative requirements, you must demonstrate that the air pollution control system achieves at least a 90 percent system removal efficiency for semivolatile metals. Metal removal efficiency—whether measured by control of the surrogate particulate matter or directly through control of HAP metals—remains an essential element (along with feedrate control of HAP metals) of MACT for the non-mercury HAP metals, as demonstrated by the performance achievable by (and achieved by) the average of the best performing sources. In making this demonstration, you may spike semivolatile metals above 25 percent of the MACT defining MTEC level provided the emissions limits discussed above are achieved during the test. You may perform this test independently of the comprehensive performance test; however, you must use this test to establish applicable operating parameter limits as described in § 63.1209(n), excluding the § 63.1209(n)(2) metal feedrate limit requirements. These operating limits are needed to assure that a 90 percent semivolatile metal system removal efficiency is achieved during normal operations at the metal feedrates demonstrated during the test.

The 90 percent system removal efficiency requirement is based on the use of a well designed and well operated high energy venturi type wet scrubber. An analysis of hazardous waste incinerator trial burn data shows that systems with well operated and well designed venturi scrubbers have semivolatile metal system removal efficiencies ranging from approximately 90 percent to greater than 99.9 percent.[16] Thus, we are finalizing a semivolatile metal system removal efficiency of 90 percent as a conservative representation of control using a well designed and well operated high energy venturi scrubber. This method to select an appropriate control level is similar to the approach we used to develop the alternative particulate matter standard 0.03 gr/dscf that also was based on the use of well designed and well operated high energy venturi scrubbers.

System removal efficiency provides a direct indicator of the non-mercury metal HAP control efficiency of the hazardous waste incinerator system. The shift away from the use of a direct particulate matter emission standard to control non-mercury metal HAPs is a result, in part, of the reduced need for low metal feeding facilities to control particulate matter. For low metals feeding facilities, particulate matter may be composed primarily of non-metal HAP constituents such as silica, alumina, iron, etc., or HAP metals not present in hazardous waste. Thus, the control of particulate matter is not as strongly related to the control of HAP metals contributed by the hazardous waste compared with facilities which have feeds containing higher levels of those metals.

We also believe it is appropriate to require a 90 percent semivolatile metal system removal efficiency as part of these alternative requirements because,

[12] I.e., the MTEC level that was determined as a result of the aggregate feedrate analysis that was used to determine metal feedrate floor control levels in the September 30, 1999 rule.

[13] Thus, unlike the current rule where sources can choose whatever means they wish to comply with the emissions standard and so are not required to control feedrates below a regulatory level (so long as they achieve the emission standard), sources are required to comply with a specified metal feedrate limit under the alternative.

[14] These metal feedrate limits correspond to 25 percent of the MACT-defining MTEC levels. These MACT defining feedrates are set out in "Final Technical Support Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies," Chapter 6, July 1999.

[15] See, for example, Table 8–1, pages 2 and 3, "Final Technical Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies," Chapter 3, July 1999, showing that sources with SVM feedrates below the MACT defining level but lacking proper PM control (i.e., emitting more PM than allowed by the PM standard) were unable to achieve the SVM emission standard.

[16] See Figure 4–3, "Draft Technical Support Document for HWC MACT Standards (NODA), Volume 1::MACT Evaluations Based on Revised Database," April 1997.

absent a particulate matter standard, there would be no explicit requirement for sources to use an air pollution control method that effectively removes metal HAPs from the exhaust emissions.[17] This provision therefore requires sources that operate under these alternative requirements to use a particulate matter control device. Even though this control device does not have to be a MACT particulate matter control device (i.e., a control device that achieves 0.015 gr/dscf) we believe that this requirement to achieve a 90 percent system removal efficiency, when combined with the hazardous waste metal feedrate limits and emissions limits, provides for an adequate level of control for HAP metals—that is, a level of control reflecting the level of performance achieved by, and achievable by, the average of the best performing 12 percent of sources.

4. What Operating Requirements Are Associated With This Alternative?

Semivolatile and low volatile metal operating parameter limits will be established to ensure compliance with the alternative emissions limits pursuant to § 63.1209(n), except that the semivolatile and low volatile metal feedrate limits apply to both the enumerated and non-enumerated HAP metals as previously discussed. We believe this approach is consistent with the final rule methodology to assure compliance with the semivolatile and low volatile metal emission standards and should be applied here. Note that the metal feedrate limits established to ensure compliance with the alternative emissions limit are mass feedrate limits for all feedstreams, including nonhazardous feeds. This is in contrast to the hazardous waste metal feedrate limits discussed below that are based only on hazardous waste metal MTEC levels.

You must also establish operating parameter limits to ensure compliance with the 90 percent system removal efficiency requirement. Consistent with the operating limits to ensure compliance with the alternative metal emission limitations, these operating limits would be established pursuant to § 63.1209(n), except that metal feedrate limits are not required for purposes of ensuring compliance with system removal efficiency provision.

The twelve-hour rolling average hazardous waste metal feedrate limits are based on the combined hazardous waste feedstreams to the incinerator and may be expressed either as a maximum theoretical emission concentration limit or as a restriction on maximum hazardous waste metals mass feedrate and minimum gas flow rate. In doing so, sources must account for each hazardous waste feedstream when determining compliance with the maximum theoretical emission concentration limits. Metal constituents not detected in hazardous waste feedstreams would be assumed to be present at one-half the detection limit when calculating the maximum theoretical emission concentration for compliance purposes, applicable to each hazardous waste feedstream.

VII. Deletion of Baghouse Inspection Requirements

Section 63.1206(c)(7)(ii) of the final rule prescribes baghouse operation and maintenance requirements for incinerators and lightweight aggregate kilns. These requirements are not applicable to cement kilns equipped with baghouses because cement kilns must continuously monitor opacity and comply with an opacity standard. Nonetheless, cement kilns are required to address baghouse operation and maintenance in the operation and maintenance plan required under § 63.1206(c)(7)(i).

The operation and maintenance requirements under § 63.1206(c)(7)(ii): (1) Prescribe the frequency of inspection of specific baghouse operations; and (2) require the use of a bag leak detector as a continuous monitor. We are today deleting the prescribed baghouse inspection requirements of § 63.1206(c)(7)(ii)(B)(1–10). Instead we will rely on the general operation and maintenance plan requirements under § 63.1206(c)(7)(i) and the use of a bag leak detector to ensure proper operation and maintenance of the baghouse.

Stakeholders question the rationale for prescribing generic inspection frequencies for various baghouse operations, given that each baghouse must be equipped with a bag leak detector. Stakeholders believe that each source should identify appropriate, site-specific inspection intervals for baghouse operations in the facility operations and maintenance plan required under § 63.1206(c)(7)(i). In particular, they highlight two burdensome inspection requirements: (1) Monthly visual inspection of the interior of the baghouse for physical integrity; and (2) monthly inspection of bags and bag connections.[18]

We agree with stakeholders that these generic provisions are unnecessary and therefore are deleting the inspection requirements of § 62.1206(c)(7)(ii)(B)(1–10). We plan to develop guidance recommendations on baghouse inspection procedures that can be used to develop appropriate inspection procedures for the operation and maintenance plan required by § 63.1206(c)(7)(i). In addition, we are deleting the requirements of § 63.1206(c)(7)(ii)(A) requiring submittal of the baghouse operations and maintenance plan to the Administrator. Given that the operation and maintenance plan required under § 63.1206(c)(7)(i) is not submitted to the Administrator for review and approval, we do not see the need to single out the baghouse operation and maintenance plan for review and approval, particularly given that sources must continuously operate a bag leak detector system.

VIII. Feedstream Analysis for Organic HAPs

Section 63.1207(f)(1)(ii) of the final rule requires sources to include in their site-specific comprehensive performance test plan an analysis of all CAA hazardous air pollutants that could reasonably be present in their feedstreams. Regulatory officials will use this analysis to ensure compliance with the destruction and removal (DRE) standards of §§ 63.1203 through 63.1205. Stakeholders raised three questions about this requirement after promulgation: (1) Did we consider the implications of requiring analysis of HAPs rather than the RCRA organic compounds on Appendix VIII, Part 261; (2) why must the test plan for periodic comprehensive performance testing include an analysis of organic HAP compounds for sources that comply with the DRE standard with a one-time test; and (3) did we intend to require analysis of organic compounds for all feedstreams or just the hazardous waste feedstreams.

A. What Are the Implications of Requiring Analysis of CAA HAPs Rather than RCRA Appendix VIII, Part 261 Organic Compounds?

For the DRE standard, the final rule requires demonstration of compliance with one or more principal organic hazardous pollutants (POHCs) selected

[17] Absent a metal system removal efficiency requirement under these alternative requirements, an incinerator could comply with the emission limitations with feedrate control only without the use of particulate matter control. This would not be appropriate if metals are present in the feedstreams because particulate matter control is an integral part of controlling metal HAP emissions.

[18] Letter from Michelle Lusk, CKRC, Thomas Nilan, CMA, and Melvin Keener, CRWI, to Elizabeth Cotsworth, EPA, Re. Multi-Industry HWC MACT Concerns and Solutions, dated March 2, 2000, p. 29 of the attachment.

from the list of HAPs established by 42 U.S.C. 7412(b)(1), excluding caprolactam. The basis for the HWC MACT DRE standard is the current RCRA requirement to ensure destruction of Appendix VIII, Part 261, organic compounds. In demonstrating compliance under RCRA, sources must select POHCs from the Appendix VIII list of organic compounds.

Stakeholders note that selecting POHCs from the list of organic CAA HAPs rather than RCRA organic compounds has several implications. Stakeholders question whether RCRA DRE test data can be used in lieu of MACT DRE testing if the POHCs selected during the RCRA test are not organic HAPs under the CAA. Stakeholders also question how to ensure DRE of organic HAPs for which thermal stability data (e.g., low oxygen thermal stability; heat of combustion) are not available. In response, we note that, to satisfy the MACT DRE standard, sources must ensure that the POHCs used to demonstrate compliance are representative of the most difficult to destroy organic compounds in their feedstream. For example, if the most difficult to destroy POHCs for RCRA DRE testing were used, those POHCs are also representative of the most difficult to destroy organic HAPs (irrespective of whether thermal stability data are available for a HAP).

B. For Sources That Comply With the DRE Standard With a One-Time Test, Why Must Their Periodic Comprehensive Performance Test Plan Include an Analysis of Organic HAP Compounds?

Section 63.1206(b)(7) allows demonstration of compliance with the DRE standard only once for the life of the source provided the source: (1) Is not modified in a manner than could affect achievability of the DRE standard; and (2) does not feed hazardous waste at a location other than the normal flame zone. Once a source has demonstrated compliance with the DRE standard, stakeholders question why analysis of waste streams for organic HAP compounds must be included with the site-specific test plan for comprehensive performance testing every five years.

The rule requires continued analyses of organic compounds with each comprehensive performance test plan to enable regulatory officials to determine whether the POHCs selected for the original DRE test continue to represent the organic HAPs being fed to the combustor. POHCs are representative of the organic HAPs fed to the combustor if they are equally or more difficult to destroy than those organic HAPs. In addition, POHCs are selected based on factors including the concentration of the organic compound in the feedstream and the toxicity of particular organic compounds.[19]

In retrospect, however, we do not believe that the comprehensive analysis required by § 63.1207(f)(1)(ii)(A)[20] is necessary in all cases to ensure that the POHCs continue to be representative of the organic HAPs being fed to the combustor. For example, if a source demonstrates compliance with the DRE standard with POHCs that represent the most difficult to destroy organic compounds, a less rigorous feedstream analysis may be appropriate to address other concerns, e.g., whether the feedstream has changed to include additional organic HAPs that are fed at high concentrations or that are particularly toxic. It may also be appropriate to waive the comprehensive analysis for organic compounds based on the generator's knowledge or on a combination of waste knowledge and sampling and laboratory analysis that the POHCs selected represent the most difficult to destroy organic compounds in the waste. Accordingly, we are amending § 63.1207(f)(1)(ii) to allow regulatory officials to waive the comprehensive analysis of organic compounds if a source documents that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams.

C. We Intended To Require Analysis of Organic HAPs in Hazardous Waste Feedstreams Only

Section 63.1207(f)(1)(ii) implies that sources must analyze all feedstreams for organic HAPs. The rule should have required analysis for hazardous waste feedstreams only. Regulatory officials will use the analysis to ensure that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams. We are amending § 63.1207(f)(1)(ii) accordingly.

IX. Revisions to the Metals Feedrate Extrapolation Procedures

For sources using the metal extrapolation procedures, the final rule requires documentation that the levels of metal spiking (adding metals to the waste feed) be sufficient to demonstrate that the extrapolation procedures are as accurate and precise as if full spiking (no extrapolation) were used. See § 63.1207(f)(1)(x)(C). Today we are amending this provision to require documentation that spiking levels result in an extrapolation procedure that adequately assures compliance with the emission standard.

We included this requirement in the final rule to address the uncertainties that may be associated with extrapolating low metal feedrates, as demonstrated during testing, to higher metal feedrate limits. This documentation ensures that the uncertainties associated with the procedure are adequately addressed and that the extrapolated metal feedrate limits ensure compliance with the emission standard(s).

After discussions with stakeholders, we determined that the final rule regulatory language is too prescriptive and does not directly address our goal of assuring compliance with the emission standard. Stakeholders believe that it may not be possible to spike metals to levels such that the extrapolation procedures are as accurate and precise as if full spiking were used. They also question the accuracy and precision of the "fully spiked" feedstream and emissions analyses.

To address these concerns, we are requiring that sources document a level of spiking that ensures the extrapolation methodology is adequate to demonstrate compliance with the emission standard. The content and scope of this documentation should be determined on a site-specific basis, and should consider the uncertainties involved with extrapolating the tested low metal feedrates to higher metal feedrate limits. Examples of types of information that can document that the extrapolation methodology adequately assures compliance with the emission standards may include: (1) A description of the uncertainties associated with the extrapolation procedure, such as a description of the linearity of metal feedrates as compared to metal emission rates; (2) a description of the uncertainties associated with the data to be used in the extrapolation procedure; [21] and (3) the extent that

[19] In cases where an organic HAP is fed at particularly high concentrations, or where an organic HAP in the feedstream is particularly toxic, it is prudent to select such compounds as POHCs rather than relying only on surrogates that are considered to be equally or more difficult to destroy.

[20] That is, all organic HAPs except those that would not reasonably be expected to be found in the feedstream. Further, sources must identify any constituents excluded from the analysis and explain the basis for excluding them.

[21] For example, a description of the accuracy of the feedstream metal analysis considering the

Continued

these uncertainties are multiplied by the extrapolation procedure.

X. Feedrate Limits for Undetectable Constituents

The final rule requires sources to establish separate feedrate limits during the comprehensive performance test for semivolatile metals, low volatile metals, mercury, total chlorine, and/or ash for each feedstream that does not contain detectable levels of these constituents. See § 63.1207(n). The rule specifies that these separate feedrate limits must be established as "non-detect" feedrate limits. Under this approach, during normal operations, the feed locations that have "non-detect" limits cannot be fed detectable levels of the constituents unless certain criteria are met. Today, we are deleting this provision and, instead, are requiring sources to document, on a site-specific basis, the method they will use to account for non-detects when establishing feedrate limits.

We included this "non-detect feedrate limit" provision in the rule so sources would use a consistent methodology when establishing feedrate limits that best assures compliance with the emission standards. After discussions with stakeholders, we conclude that our approach to addressing detection limits when establishing feedrate limits is too prescriptive and that there are possibly alternative approaches that adequately assure compliance with the emission standards. Therefore, we are eliminating the requirements of § 63.1207(n) that require use of a specific method to address non-detects when establishing feedrate limits. As a replacement, we are requiring sources, on a site-specific basis, to specify in the comprehensive performance test workplan the method they will use to account for non-detects when establishing their feedrate limits. This will allow the method to be reviewed and approved by the regulatory official on a site-specific basis.

We continue to believe that the approach outlined in the final rule can be used to account for non-detects during the performance test. However, as previously mentioned, there may be alternative approaches that can be used that adequately assure compliance with the standards.[22]

We believe today's amendments to address non-detects on a site-specific basis will simplify the operating requirements for many combustors. We anticipate that regulatory officials will evaluate these site-specific approaches in part by considering: (1) Proximity of test results to the regulatory emission standard(s); (2) site-specific detection limit levels; and (3) the method or approach to address feedstream non-detects on a daily basis to demonstrate feedrate compliance. Accordingly, we are removing the requirements of § 63.1207(n) and adding § 63.1207(f)(xxvi).

XI. Revisions To Assist Early Compliance

In the final rule, we did not fully consider situations where sources would conduct performance testing prior to the compliance date. This "early compliance" prior to the September 30, 2002 deadline, is likely to occur to coordinate CAA and RCRA testing or to ensure the deadline for conducting the initial comprehensive performance test (i.e. 180 days after the compliance date) is met. We are particularly concerned that the regulation may inadvertently impede sources that would like to come into early compliance. Therefore, we are eliminating two impediments identified by stakeholders: (1) The requirement to stop burning hazardous waste if a source fails the comprehensive performance test; and (2) the requirement for the Documentation of Compliance.

A. When Is the Compliance Date for Sources that Comply Early?

Sources that choose to comply early are establishing a compliance date for themselves prior to the regulatory compliance date of September 30, 2002. On their compliance date, the source becomes subject to the substantive requirements of Subpart EEE. For example, on the compliance date, an exceedance of an emission standard (e.g., carbon monoxide) is a violation of the standard, and an exceedance of an operating parameter limit is evidence of failure to ensure compliance with an emission standard.

After considering the implications of early compliance, we are identifying the point at which the early complying source becomes subject to the substantive requirements of Subpart EEE as the postmark date for the Notification of Compliance (NOC). This is an appropriate point because the NOC is a legally enforceable document that contains all of the standards and operating parameters for a source complying with Subpart EEE.[23] See new § 63.1206(a)(4).

B. Sources That Fail a Comprehensive Performance Test Prior to the Compliance Date Are Not Required To Stop Burning Hazardous Waste

Section 63.1207(l) requires sources that fail a performance test for a mode of operation to stop burning hazardous waste immediately under that mode of operation. In retrospect, we conclude that this requirement is not appropriate for sources that conduct the performance test prior to the compliance date, including early complying sources, because compliance with the substantive requirements Subpart EEE is not yet triggered. Therefore, we are revising the rule accordingly. See revised § 63.1207(l)(1).

C. Early Complying Sources Would Be Exempt From the Documentation of Compliance Requirements

Section 63.1211(d) requires sources to place their Documentation of Compliance (DOC) in the operating record by the regulatory compliance date. The DOC identifies the applicable emission standards under Subpart EEE and the limits on the operating parameters under § 63.1209 that ensure compliance with those emission standards. In addition, the DOC identifies enforceable operating requirements from the compliance date until postmark of the Notification of Compliance. Given that the compliance date for early complying sources is the date the NOC is postmarked, the DOC would serve no purpose. Therefore, we are exempting early complying sources from the DOC requirement. See revised § 63.1211(d).

D. Notification of Testing for Sources That Choose To Comply Early

As with all Subpart EEE sources, those that comply early must notify permit officials of the scheduled performance test date and submit for review and approval the emissions test plan and continuous monitoring system evaluation test plan. See § 63.1207(e). Review and approval of test plans is appropriate for sources that comply early for the same reasons it is

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representativeness (whether the feedstream is homogenous) of the feedstream samples if actual, unspiked feedstream metal levels are used to calculate metal feedrates.

[22] For example, separate limits for each location may not be needed to assure compliance with the standards if the detection limits are low. In this situation, a source could assume the constituent is not present in the non-detect feedstreams, or perhaps assume it is present at one-half the detection limit, and establish one total system feedrate limit instead of separate limits. This would be accomplished by adding these assumed non-detect feedrate values to the other known feedrates from the other feed locations.

[23] Sources will want to delete RCRA permit requirements that have been superseded by the Subpart EEE standards. See 64 FR at 52988. Modifying the RCRA permit precludes concerns about dual enforcement of emission standards.

appropriate for other sources—to ensure that the source's performance test plans will effectively determine whether the source is in compliance with the requirements of Subpart EEE. We encourage permit officials to review performance test plans expeditiously for sources that elect to comply early.

XII. Accuracy Requirements for Weight Measurement Devices

Section 63.1209(b)(2)(ii) specifies that the accuracy of weight measurement devices used to monitor flowrate of a feedstream must be ± 1 percent of the weight being measured. In addition, sources are required to verify the calibration of the device at least once every three months.

Stakeholders express concerns about these requirements. We concur with many of stakeholders' concerns about the accuracy requirement for weight measurement devices and are revising the rule to specify an accuracy requirement only for activated carbon feedrate measurement devices.

Stakeholders state that the ± 1 percent accuracy requirement is not appropriate for all weight measurement devices. This accuracy requirement is the same as we used in another rulemaking where it is applied only to the device used to measure carbon feedrate in an activated carbon injection system. Stakeholders state that the ± 1 percent accuracy is not achievable by many weight measurement devices, such as devices that measure the weight of raw materials.[24] Stakeholders also note that the implementation document for the boiler and industrial furnace standards under Part 266, Subpart H, lists acceptable measurement devices than cannot achieve this level of accuracy.

We agree with the stakeholders' concerns and are revising § 63.1209(b)(2)(ii) so that the accuracy requirement applies only to a carbon injection weight measurement device. Nonetheless, sources must include in the continuous monitoring system evaluation test plan the accuracy and calibration procedures for each monitor required under § 63.1209. This evaluation test plan must be submitted along with the comprehensive performance test plan for review and approval. See § 63.1207(e).

[24] For example, a clamshell bucket cannot achieve this level of accuracy for the feedstock because of the large weight of the clamshell relative to the feedstock and because some of the feedstream will stick to the bucket.

XIII. Deletion of Requirement for Establishing a Scrubber Liquid Minimum pH Operating Parameter Limit for Mercury Control for Wet Scrubbers

The final rule states that mercury emissions from hazardous waste combustors are controlled by: (1) Controlling the feedrate of mercury; (2) wet scrubbing to remove soluble mercury (e.g., mercuric chloride); and (3) carbon adsorption. There are specific operating parameter limits (OPL) that apply to each control technology.

For hazardous waste combustors using wet scrubbers to control mercury the OPLs are identical to those that are required to assure compliance with the hydrochloric acid/chlorine gas emission standard. See §§ 63.1209(l)(2) and (o)(3). We inadvertently established an inappropriate OPL requirement for mercury in developing the final rule. While a minimum pH of the scrubber water is an important parameter for chlorine control as required by § 63.1209(o)(3)(iv), it is not an appropriate OPL for mercury control. The Agency is amending the final rule by deleting the requirement for establishing a scrubber liquid minimum pH as an OPL for mercury control. Today's action does not change the requirements for hydrochloric acid and chlorine, however.

Part Three: Analytical and Regulatory Requirements

I. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

—Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or
—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, we have determined that this rule is a "significant regulatory action" because it may be considered significant under point four above: "Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The aggregate annualized compliance costs for this rule are estimated to be less than $100 million. Furthermore, this rule is not expected to adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The benefits to human health and the environment resulting from today's final action have not been monetized but are deemed to be less than $100 million per year.

We have prepared two economic support documents for this action. These are: Assessment of Potential Costs, Benefits and Other Impacts NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments (Assessment), and, Regulatory Flexibility Screening Analysis (RFSA) For NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments. The Assessment addresses economic impacts of the thirteen direct final amendments to the September 30, 1999 final rule. The Assessment also briefly examines equity considerations and other impacts. The Regulatory Flexibility Screening Analysis (RFSA) briefly examines small entity impacts potentially resulting from this action. This Part presents a summary of findings from the Assessment and the RFSA documents. The complete Assessment and RFSA documents are available in the RCRA docket established for this action. Interested readers are encouraged to read these documents.

A. Why Is This Direct Final Rule Necessary?

The environmental regulations promulgated by EPA seek to correct market failures through the internalization of negative environmental externalities. That is not the case with today's rule. This action is necessary in order to clarify and improve compliance, testing and monitoring requirements, and general

implementation efficiency associated with the final rule NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (64 FR 52828, September 30, 1999).

B. Were Non-Regulatory Alternatives First Considered?

Section 1(b)(3) of Executive Order 12866 instructs Executive Branch Agencies to consider and assess available alternatives to direct regulation prior to making a determination for regulation. This regulatory determination assessment should be considered, "to the extent permitted by law, and where applicable." The ultimate purpose of the regulatory determination assessment is to ensure that the most efficient tool, regulation, or other type of action is applied in meeting the targeted statutory objective(s).

We have already employed education and outreach programs designed to help accomplish the objectives of the amendments in this rule. We believe that, at this point, a regulatory approach will ensure appropriate technical clarification and the necessary implementation efficiency designed to fully accomplish our objectives.

C. What Regulatory Options Were Considered?

This is a direct final action that does not facilitate the assessment of alternative regulatory options.

D. What Are the Potential Costs or Cost Savings of This Direct Final Rule?

The thirteen direct final amendments presented in today's action vary considerably in scope and substance. Many of the amendments are anticipated to result in minor to negligible incremental cost impacts (savings or increases) to both the regulated community and the Agency. Three of the amendments are expected to result in more substantive cost impacts to the regulated community. These findings are briefly summarized below. The Assessment document presents a detailed review of our methodology, data, findings, and analytical limitations.

1. Deletion of One-Time Notification of Compliance with Alternative Clean Air Act Standards (Amendment II)

In the final rule, a source that is not feeding hazardous waste when the hazardous waste residence time expires may elect to comply temporarily with alternative standards promulgated under the authority of sections 112 and 129 of the Clean Air Act. If a source chooses this option, § 63.1206(b)(1)(ii)(A) requires the source to submit to the Administrator a written, one-time notification documenting compliance with those requirements and standards. Since this stipulation duplicates requirements under title V of the CAA, such a requirement is redundant.

A deletion of this requirement reduces the administrative costs associated with compliance notification. Estimates of labor costs and administrative time spent on such a task suggest that about three hours per respondent would be saved. Out of this, two hours are estimated to be technical time (costed at a rate of $55 per hour), and one hour is likely to be management time (costed at $71 per hour). All facilities are likely to benefit from this exemption, thus leading to aggregate industry-wide cost savings of approximately $31,000 per year.

2. Alternative to the PM Standard for Incinerators Feeding Low Levels of Metals (Amendment VI)

The final rule established a particulate matter emission standard of 0.015 gr/dscf for new and existing sources as a surrogate for control of non-mercury CAA metal hazardous air pollutants (HAPs). The rule also offered an alternative particulate matter emission standard of 0.03 gr/dscf for sources that demonstrate the use of superior federate control of metals in their hazardous waste. Today, we are eliminating the alternative particulate matter emission standard and replacing it with metal emissions control requirements. As a result of this amendment, no particulate matter emissions standard would apply to the incinerator under Subpart EEE. However, the incinerator would remain subject to the RCRA particulate matter standard of 0.08 gr/dscf pursuant to § 264.343(c). In addition to the 0.08 gr/dscf standard, the alternative standard requires sources to comply with the following four requirements: (1) A metal emissions limitation for semivolatile and low volatile metals that applies to all CAA HAP metals, excluding mercury; (2) A requirement for the incinerator to demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., a defined metal feedrate that is better than the MACT defining metal feedrate floor control level; (3) A requirement for the incinerator to demonstrate that its air pollution control system achieves, at a minimum, a 90 percent system removal efficiency for semivolatile metals; and (4) A set of operating requirements pursuant to § 63.1209(n).

These four components collectively provide for MACT control of non-mercury CAA metal HAPs in the absence of a MACT particulate matter standard. Hence, we believe that while this amendment would provide some reduced regulatory requirements to industry, there would be no adverse impact on the environment or any associated social costs.

The cost savings resulting from this amendment will have two components: Savings in up-front capital costs and operation and maintenance cost savings. The capital cost savings would be a result of not needing a control device that meets MACT PM control standards (i.e., a control device that achieves 0.015 gr/dscf). The unit capital cost savings for the five sources that are expected to avail themselves of this standard in a given year are estimated to be $150,000. Annualizing this amount over ten years, using a discount rate of 7 percent, gives an annual savings of approximately $21,500 for capital costs per facility.

Operation and maintenance costs for a less complex system would amount to approximately $120,000 per year per facility. These savings arise from reductions in energy usage (pressure drop devices can be very energy intensive); lower solid waste handling costs, and reduced baghouse maintenance costs. Assuming that five facilities are able to take advantage of this alternative, the total cost savings per year associated with this amendment would be approximately $707,500. It is important to note that the exact number of facilities that will take advantage of this standard is difficult to determine and is likely to change over time.

3. Feedstream Analysis Requirements for Organic HAPs (Amendment VIII)

Section 63.1207(f)(1)(ii) requires sources to include in their site-specific plan for a comprehensive performance test an analysis of all Clean Air Act hazardous air pollutants that could reasonably be present in "the feedstream." Regulators would use these analyses to ensure compliance with the destruction and removal efficiency standards of §§ 63.1203 through 63.1205.

However, upon further review, we believe that the comprehensive analyses required by § 63.1206(f)(1)(ii)(A) are not necessary in all cases to ensure compliance with the DRE standard. For example, if the source can demonstrate compliance with the DRE standard using POHCs that represent the most persistent organic compounds, a less rigorous analysis may be appropriate to address other concerns, such as whether

feedstream has changed to include additional organic HAPs that are fed at high concentrations or that are particularly toxic.

We are, therefore, amending § 63.1207(f)(1)(ii) to allow regulatory officials to waive the comprehensive analysis of organic compounds if sources can document that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams. This amendment will result in cost savings in operation and maintenance expenses, estimated at $4,000 per facility per year. With 45 facilities expected to be affected by this amendment per year, the total annual cost savings from this effort amount to approximately $180,000.

In addition to the cost savings of $918,500 identified above we estimate that two of the thirteen amendments would result in quantifiable cost burdens to industry and the regulatory agency and/or states. These amendments are projected to result in aggregate cost increases of approximately $8,700 per year. The net aggregate cost impact associated with the thirteen amendments is estimated to be $909,800 per year. This cost impact estimate will marginally decrease the total annual social cost projection of $50 to $63 million [25] estimated for compliance with the final rule. All cost impacts are dependant upon the regional enforcement regime.

II. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, a small entity is defined as: (1) A small business that has fewer than 750, or 500 employees per firm depending upon the SIC code the firm is primarily classified in; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that only amendment II is likely to impact one or more of the six small hazardous waste combustors. Under our assumed worst-case scenario where the maximum cost impacts of this amendment ($31,000 savings) are attributed to only these six small sources, we find that no source would experience impacts beyond 0.14 percent of annual gross revenues.[26] This does not represent a significant economic impact.

Although this rule will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of this rule on small entities. Although not specifically directed toward small business outreach, we have met with industry representatives during the developmental phase and requested comment and suggestions on all aspects of this rulemaking. No small business concerns were brought up by these industry representatives.

We have completed the analysis: *Regulatory Flexibility Screening Analysis (RFSA) For NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments,* in support of the direct final rule. This RFSA document is available for review in the docket established for today's action.

III. Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks"

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Furthermore, we do not have reason to believe that environmental health or safety risks addressed by this action present a disproportionate risk to children.

In addition, these amendments, as part of the HWC MACT standards, are exempt from the requirements of Executive Order 13045 because the final rule is a technology-based regulation rather than a risk-based one. Nevertheless, the amendments would not result in any incremental environmental harm that would affect children's health.

IV. Environmental Justice Executive Order 12898

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

We have no data indicating that today's rule would result in disproportionately negative impacts on minority or low income communities.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA,

[25] U.S. Environmental Protection Agency, Office of Solid Waste, "Addendum to the Assessment of the Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Standards: Final Rule," July 23, 1999.

[26] Based on the July 1999 Assessment, we found that the smallest annual firm revenue associated with the six small facilities was $3.6 million. Dividing $31,000 by the six facilities results in approximately $5,200 maximum impact per small facility. ($5,200/$3.6 million = 0.14 percent).

EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any single year. It is estimated that the direct final amendments will result in increased costs to all states (or the Agency) of approximately $2,100 per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

VI. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule is projected to result in economic impacts to privately owned hazardous waste combustion facilities. Marginal administrative burden impacts may occur to selected States an/or EPA Regional Offices if these entities experience increased administrative needs, enforcement requirements, or information requests. However, this rule will not have substantial direct effects on the States, intergovernmental relationships, or the distribution of power and responsibilities. Thus, Executive Order 13132 does not apply to this rule.

VII. Consultation With Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's action will not significantly or uniquely affect the communities of Indian tribal governments, nor will it impose substantial direct compliance costs on them. Tribal communities are not known to own or operate any hazardous waste combustion facilities, nor are these communities disproportionately located adjacent to or near such facilities. Finally, tribal governments will not be required to assume any administrative or permitting responsibilities associated with this rule.

VIII. Paperwork Reduction Act

We have prepared an Information Collection Request (ICR) document (ICR No. 1773.03) listing the information collection requirements of this direct final rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has assigned a control number 2050–0171 for this ICR. A copy of this ICR may be obtained from Sandy Farmer, OPIA Regulatory Information Division, U.S. Environment Protection Agency (2137), 1200 Pennsylvania Avenue NW., Washington DC 20460, or by calling (202) 260–2740.

Some of the amendments finalized today pertain to RCRA provisions of the rule (i.e., to 40 CFR parts 260 thru 271), and were covered under an earlier ICR No. 1361.08. Today's amendments to these RCRA provisions are all de-regulatory, and do not impose any burden on the regulated community. They only reduce the existing burden shown in that ICR. The ICR No. 1361.08 will be revised to show the reduced burden when the direct final rule is promulgated. The public burden associated with other provisions of this direct final rule (which are under the Clean Air Act) is projected to affect approximately 171 HWC units and is estimated to average 1.7 hours per respondent annually. The reporting and recordkeeping cost burden is estimated to average $118 per respondent annually. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

IX. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary

consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, we are not considering the use of any voluntary consensus standards.

X. The Congressional Review Act (5 U.S.C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This direct final rule will be effective on October 16, 2001 unless EPA receives adverse comment by August 17, 2001.

Part Four: State Authority

States can implement and enforce the new MACT standards through their delegated 112(l) CAA program and/or by having title V authority. A State's title V authority is independent of whether it has been delegated section 112(l) of the CAA. Additional information on state authority under the CAA may be found in the HWC MACT rule (64 FR at 52991).

List of Subjects

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

Dated: June 18, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.1201 is amended by revising the definition of "Hazardous waste residence time" and adding the definition of "Preheater tower combustion gas monitoring location" to paragraph (a) in alphabetical order to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Hazardous waste residence time means the time elapsed from cutoff of the flow of hazardous waste into the combustor (including, for example, the time required for liquids to flow from the cutoff valve into the combustor) until solid, liquid, and gaseous materials from the hazardous waste (excluding residues that may adhere to combustion chamber surfaces and excluding waste-derived recycled materials such as cement kiln dust and internally recycled metals) exit the combustion chamber. For combustors with multiple firing systems whereby the residence time may vary for the firing systems, the hazardous waste residence time for purposes of complying with this subpart means the longest residence time for any firing system in use at the time of the waste cutoff.

* * * * *

Preheater tower combustion gas monitoring location means a location within the preheater tower of a dry process cement kiln downstream (in terms of gas flow) of all hazardous waste firing locations and where a representative sample of combustion gas to measure combustion efficiency can be monitored.

* * * * *

3. Section 63.1206 is amended by:

a. Adding paragraph (a)(4).

b. Revising paragraphs (b)(1)(ii), (b)(6)(i), (b)(7)(i)(B), (b)(7)(ii)(B), (b)(8)(v), (b)(13)(i), and (b)(14).

c. Revising paragraph (c)(7)(ii).

The revisions and additions read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

(a) * * *

(4) *Early compliance.* If you choose to comply with the emission standards of this subpart prior to September 30, 2002, your compliance date is the date you postmark the Notification of Compliance under § 63.1207(j)(1).

(b) * * *

(1) * * *

(ii) When hazardous waste is not in the combustion chamber (i.e., the hazardous waste feed to the combustor has been cut off for a period of time not less than the hazardous waste residence time) and you have documented in the operating record that you are complying with all otherwise applicable requirements and standards promulgated under authority of sections 112 (e.g., subpart LLL of this part for cement kilns) or 129 of the Clean Air Act in lieu of the emission standards of §§ 63.1203 through 63.1205; the monitoring and compliance standards of this section and §§ 63.1207 through 63.1209, except the modes of operation requirements of § 63.1209(q); and the notification, reporting, and recordkeeping requirements of §§ 63.1210 through 63.1212.

* * * * *

(6) * * *

(i) If a DRE test performed prior to the compliance date is acceptable as documentation of compliance with the DRE standard, you may use the highest hourly rolling average hydrocarbon level achieved during the DRE test runs to document compliance with the hydrocarbon standard. An acceptable DRE test is any test for which the data and results are determined to meet quality assurance objectives (on a site-specific basis) such that the results adequately demonstrate compliance with the DRE standard.

* * * * *

(7) * * *

(i) * * *

(B) You may use any DRE test data that documents that your source achieves the required level of DRE provided:

(*1*) You have not modified the design or operation of your source in a manner that could effect the ability of your source to achieve the DRE standard since the DRE test was performed; and,

(*2*) The DRE test data meet quality assurance objectives determined on a site-specific basis.

(ii) * * *

(B) You may use any DRE test data that documents that your source achieves the required level of DRE provided:

(*1*) You have not modified the design or operation of your source in a manner that could affect the ability of your source to achieve the DRE standard since the DRE test was performed; and,

(*2*) The DRE test data meet the quality assurance objectives determined on a site-specific basis.

* * * * *

(8) * * *

(v) The particulate matter and opacity standards and associated operating limits and conditions will not be waived for more than 96 hours, in the aggregate, for a correlation test, including all runs of all test conditions, unless more time is approved by the Administrator.

* * * * *

(13) * * *

(i) Cement kilns that feed hazardous waste at a location other than the end where products are normally discharged and where fuels are normally fired must comply with the carbon monoxide and hydrocarbon standards of § 63.1204 as follows:

(A) For existing sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(*1*) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*2*) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*3*) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1207(b)(7).

(B) For new sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(*1*) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*2*)(*i*) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and

(*ii*) Hydrocarbons in the main stack, if construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*3*)(*i*) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1207(b)(7).

(*ii*) If construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, hydrocarbons are limited to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane.

* * * * *

(14) *Alternative to the particulate matter standard for incinerators.* (i) *General.* In lieu of complying with the applicable particulate matter standard of § 63.1203(a)(7) or (b)(7), existing and new incinerators may elect to instead comply with the alternative metal emission control requirements described in paragraph (b)(14)(ii) or (b)(14)(iii) of this section, respectively.

(ii) *Alternative metal emission control requirements for existing incinerators.* (A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain lead, cadmium, and selenium in excess of 240 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(B) You must not discharge or cause combustion gases to be emitted into the

atmosphere that contain arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel in excess of 97 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(C) You must comply with the provisions specified in paragraph (b)(14)(iv) of this section.

(iii) *Alternative metal emission control requirements for new incinerators.* (A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain lead, cadmium, and selenium in excess of 24 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel in excess of 97 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(C) You must comply with the provisions specified in paragraph (b)(14)(iv) of this section.

(iv) *Other requirements.* Existing and new incinerators must document in the operating record that they meet the requirements of paragraph (b)(14)(iv)(A) through (C) of this section.

(A) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed:

(*1*) For existing incinerators, 1,325 µg/dscm.

(*2*) For new incinerators, 875 µg/dscm.

(B) The twelve-hour rolling average of the maximum theoretical emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed:

(*1*) For existing incinerators, 6,000 µg/dscm.

(*2*) For new incinerators, 3250 µg/dscm.

(C) You must document that your air pollution control system achieves at least a 90 percent system removal efficiency for semivolatile metals. In making this demonstration, you may spike semivolatile metals above the applicable levels of paragraph (b)(14)(iv)(A) or (B) of this section provided that the applicable alternative emission limitation of paragraph (b)(14)(ii)(A) or (iii)(A) of this section is attained during the test. This test may be performed independently of the comprehensive performance test and must be used to establish applicable operating parameter limits as described in § 63.1209(n), not including § 63.1209(n)(2), to ensure that a 90 percent semivolatile metal system removal efficiency is achieved during normal operations.

(v) *Operating limits.* (A) Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (b)(14)(ii) and (iii) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits would apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits would apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

(B) Twelve-hour rolling average hazardous waste metal feedrate limits required pursuant to paragraphs (b)(14)(iv)(A) and (B) of this section are based on the combined hazardous waste feedstreams to the incinerator and may be expressed either as an maximum theoretical emission concentration limit or as a restriction on maximum hazardous waste metals mass feedrate and minimum gas flow rate.

(C) For purposes of complying with the twelve-hour rolling average hazardous waste metal feedrate limits of paragraphs (b)(14)(iv)(A) and (B) of this section, non-detectable metal constituents in each hazardous waste feed must be assumed to be present at one-half the detection limit.

(c) * * *

(*7*) * * *

(ii) *Bag leak detection system requirements for baghouses at lightweight aggregate kilns and incinerators.* If you own or operate a hazardous waste incinerator or hazardous waste burning lightweight aggregate kiln equipped with a baghouse (fabric filter), you must continuously operate a bag leak detection system that meets the specifications and requirements of paragraph (c)(*7*)(ii)(A) of this section and you must comply with the corrective measures requirements of paragraph (c)(*7*)(ii)(B) of this section:

(A) *Bag leak detection system specification and requirements.* (*1*) The bag leak detection system must be certified by the manufacturer to be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligram per actual cubic meter or less;

(*2*) The bag leak detection system shall provide output of relative particulate matter loadings;

(*3*) The bag leak detection system shall be equipped with an alarm system that will sound an audible alarm when an increase in relative particulate loadings is detected over a preset level;

(*4*) The bag leak detection system shall be installed and operated in a manner consistent with available written guidance from the U.S. Environmental Protection Agency or, in the absence of such written guidance, the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system;

(*5*) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time;

(*6*) Following initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the operation and maintenance plan required under paragraph (c)(*7*)(i) of this section. You must not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365 day period unless such adjustment follows a complete baghouse inspection which demonstrates the baghouse is in good operating condition;

(*7*) For negative pressure or induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector shall be installed downstream of the baghouse and upstream of any wet acid gas scrubber; and

(*8*) Where multiple detectors are required, the system's instrumentation and alarm system may be shared among the detectors.

(B) *Bag leak detection system corrective measures requirements.* The operating and maintenance plan required by paragraph (c)(*7*)(i) of this section must include a corrective measures plan that specifies the procedures you will follow in the case of a bag leak detection system alarm. The corrective measures plan must include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective measures taken to correct the control device malfunction or minimize emissions as specified in this paragraph. Failure to initiate the corrective measures required by this paragraph is failure to ensure compliance with the emission standards in this subpart.

(*1*) You must initiate the procedures used to determine the cause of the alarm within 30 minutes of the time the alarm first sounds; and

(*2*) You must alleviate the cause of the alarm by taking the necessary corrective

measure(s) which may include, but are not to be limited to, the following measures:

(*i*) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions;

(*ii*) Sealing off defective bags or filter media;

(*iii*) Replacing defective bags or filter media, or otherwise repairing th control device;

(*iv*) Sealing off a defective baghouse compartment;

(*v*) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system; or

(*vi*) Shutting down the combustor.

4. Section 63.1207 is amended by:

a. Revising paragraph (c)(2)(i).

b. Revising paragraphs (f)(1)(ii)(A), (f)(1)(ii)(B), (f)(1)(ii)(C), and (f)(1)(x)(C).

c. Revising paragraph (l)(1) introductory text.

d. Redesignating paragraph (f)(1)(xxvi) as (f)(1)(xxvii).

e. Adding paragraph (f)(1)(ii)(D).

f. Adding new paragraph (f)(1)(xxvi).

g. Removing paragraph (n).

The revisions and additions read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(c) * * *

(2) * * *

(i) You may request that previous emissions test data serve as documentation of conformance with the emission standards of this subpart provided that the previous testing:

(A) Results in data that meet quality assurance objectives (determined on a site-specific basis) such that the results adequately demonstrate compliance with the applicable standards;

(B) Was in conformance with the requirements of paragraph (g)(1) of this section; and,

(C) Was sufficient to establish the applicable operating parameter limits under § 63.1209.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) Except as provided by paragraph (f)(1)(ii)(D) of this section, an identification of such organic hazardous air pollutants that are present in each hazardous waste feedstream. You need not analyze for organic hazardous air pollutants that would reasonably not be expected to be found in the feedstream. You must identify any constituents you exclude from analysis and explain the basis for excluding them. You must conduct the feedstream analysis according to § 63.1208(b)(8);

(B) An approximate quantification of such identified organic hazardous air pollutants in the hazardous waste feedstreams, within the precision produced by analytical procedures of § 63.1208(b)(8); and

(C) A description of blending procedures, if applicable, prior to firing the hazardous waste feedstream, including a detailed analysis of the materials prior to blending, and blending ratios.

(D) The Administrator may approve on a case-by-case basis a hazardous waste feedstream analysis for organic hazardous air pollutants in lieu of the analysis required under paragraph (f)(1)(ii)(A) of this section if the reduced analysis is sufficient to ensure that the POHCs used to demonstrate compliance with the applicable DRE standard of § 63.1203, § 63.1204, or § 63.1205, continue to be representative of the organic hazardous air pollutants in your hazardous waste feedstreams;

* * * * *

(x) * * *

(C) Documentation that the level of spiking recommended during the performance test will mask sampling and analysis imprecision and inaccuracy to the extent that the extrapolated feedrate limits adequately assure compliance with the emission standards;

* * * * *

(xxvi) For purposes of calculating semivolatile metal, low volatile metal, mercury, and total chlorine (organic and inorganic), and ash feedrate limits, a description of how you will handle performance test feedstream analytical results that determines these constituents are not present at detectable levels.

* * * * *

(l) * * *

(1) *Comprehensive performance test.* The provisions of this paragraph do not apply to the initial comprehensive performance test if you conduct the test prior to September 30, 2002 (or a later compliance date approved under § 63.6(i).

* * * * *

5. Section 63.1209 is amended by:

a. Revising paragraph (b)(2)(ii).

b. Revising paragraph (l)(2).

The revisions read as follows:

§ 63.1209 What are the monitoring requirements?

* * * * *

(b) * * *

(2) * * *

(ii) *Accuracy and calibration of weight measurement devices for activated carbon injection systems.* If you operate a carbon injection system the accuracy of the weight measurement device must be ±1 percent of the weight being measured. The calibration of the device must be verified at least once every three months.

* * * * *

(1) * * *

(2) *Wet scrubber.* If your combustor is equipped with a wet scrubber, you must establish operating parameter limits prescribed by paragraph (o)(3) of this section, except for paragraph (o)(3)(iv).

* * * * *

6. Section 63.1211 is amended by revising paragraph (c)(1) to read as follows:

§ 63.1211 What are the record keeping and reporting requirements?

* * * * *

(c) * * *

(1) By the compliance date, you must develop and include in the operating record a Documentation of Compliance. You are not subject to this requirement, however, if you submit a Notification of Compliance under § 63.1207(j) prior to the compliance date.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

7. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

8. Section 264.340 is amended by revising the first sentence of paragraph (b)(1) and adding paragraph (b)(3) to read as follows:

§ 264.340 Applicability.

* * * * *

(b) * * *

(1) Except as provided by paragraphs (b)(2) and (b)(3) of this section, the standards of this part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE of this chapter.

* * *

(3) The particulate matter standard of § 264.343(c) remains in effect for incinerators that elect to comply with

the alternative to the particulate matter standard of § 63.1206(b)(14) of this chapter.

* * * * *

[FR Doc. 01–16425 Filed 7–2–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 01–162]

Jurisdictional Separations Reform and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the amendments to our rules for implementing a five-year interim "Freeze" of the jurisdictional separations process in order to simplify and stabilize the separations process pending more comprehensive separations reform. We believe these modifications will bring simplification and regulatory certainty to the separations process in a time of rapid market and technology changes, until the comprehensive reform is completed. The Report and Order in CC Docket No. 80–286 was published in the **Federal Register** on June 21, 2001. One of the rules contained information collection requirements.

DATES: Section 36.3(b), published at 66 FR 33202, June 21, 2001, was approved by the Office of Management and Budget (OMB) on June 22, 2001 and became effective on June 22, 2001.

FOR FURTHER INFORMATION CONTACT: Eric Einhorn or Andrew Firth, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On May 21, 2001, the Commission released a Report and Order in CC Docket No. 80–286 (Order), 66 FR 33202, June 21, 2001, that took action in response to the Federal-State Joint Board on Jurisdictional Separations' recommended reforms to the jurisdictional separations process codified at part 36 of the Commission's rules, 47 CFR 36 *et seq.*, as a means to simplify and stabilize the separations process pending more comprehensive reform. Specifically, pending further reform, the Commission adopts a five-year freeze of all part 36 category relationships and jurisdictional allocation factors for price cap incumbent local exchange carriers, and a freeze of all allocation factors for rate-of-return incumbent local exchange carriers. The Commission believes these modifications will bring simplification and regulatory certainty to the separations process in a time of rapid market and technology changes, until comprehensive reform is completed. A summary of the Order was published in the **Federal Register**. See 66 FR 33202, June 21, 2001. One of the rules contained information collection requirements that required OMB approval. On June 22, 2001, OMB approved the information collections. See OMB No. 3060–0988. The rule amendments adopted by the Commission in the Order took effect on June 22, 2001. This publication satisfies the statement in the Order that the Commission would publish a document in the **Federal Register** announcing the effective date of that rule.

List of Subjects in 47 CFR Part 36

Jurisdictional separations, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–16651 Filed 7–2–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[DA 01–1239; MM Docket No. 01–37, RM–10065]

Radio Broadcasting Services; Houston and Anchorage, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of June 6, 2001, a document concerning the allotment of channels in the State of Alaska. In that Report and Order, the Commission inadvertently modified the license of Ubik Corporation, licensee of Station KNIK–FM, Anchorage, Alaska, to specify operation on Channel 286C1 in lieu of Channel 287C1. This document corrects that action to modify Station KNIK–FM to Channel 289C1, the correct channel.

EFFECTIVE DATES: July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418–2180.

SUPPLEMENTARY INFORMATION: In FR Doc. 01–14017 published in the **Federal Register** of June 6, 2001, (66 FR 30335) Commission inadvertently modified the license of Ubik Corporation, licensee of Station KNIK–FM, Anchorage, Alaska, to specify operation on Channel 286C1 in lieu of Channel 287C1, rather than Channel 289C1, the correct channel.

In rule FR Doc. 01–14017, published on June 6, 2001 (66 FR 30335), make the following correction. On page 30335, in the preamble, in the first column, and in the amendment to § 73.202 in the second column, remove channel "286C1" and add "289C1" in its place.

Federal Communications Commission.

John A Karousos,

Chief, Allocation Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–16649 Filed 7–2–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 97–81; FCC 01–171]

Multiple Address Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration; clarification.

SUMMARY: The document addresses four petitions for reconsideration and/or clarification of the *MAS Report and Order*. Specifically, the Commission responds to requests for reconsideration and/or clarification of issues relating to the types of services classified as private internal, shared use and private carrier service in the private internal bands, grandfathering provisions as they relate to transfers and assignments, service area coverage of the Gulf of Mexico, operational flexibility, and other minor points that help clarify its intentions for the MAS service. In addition, the Commission makes minor changes to certain technical requirements in part 101, as well as, the current application freeze in the 928/959 megahertz (MHz) MAS bands. In this document, the Commission grants two petitions and grants a third petition, in part. The fourth petition is dismissed as moot.

DATES: Effective September 4, 2001.

FOR FURTHER INFORMATION CONTACT: Shellie Blakeney at (202) 418–0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION:

1. This document is a summary of the Commission's *Memorandum Opinion and Order*, FCC 01–171 in WT Docket No. 97–81, adopted on May 22, 2001, and released on May 29, 2001. The full text of this *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, S.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Jenifer Simpson at (202) 418–0008 or TTY (202) 418–2555.

Summary of the Memorandum Opinion and Order

2. The *Memorandum Opinion and Order* responds to four petitions for reconsideration and/or clarification of certain decisions in the *MAS Report and Order*, 65 FR 17445 (April 3, 2000). MAS consists of 3.2 MHz of electromagnetic spectrum in the 900 MHz band and is licensed under part 101 of the Commission's rules. The *Memorandum Opinion and Order:* (1) Will enable the MAS service to effectively accommodate the wireless communications needs of its various users. Overall, the decisions contained in the *MAS Memorandum Opinion and Order* will not only enable the Commission to better serve current and future MAS licensees, but will help conserve scarce Commission resources, thereby, advancing the Commission's spectrum management goals, including fostering efficient and effective radio operations.

3. Specifically, the Commission concludes that the type of service provided by Radscan, Inc. on MAS frequencies is a private internal use in the context of MAS. This clarification better explains the Commission's position with respect to the intended users of the private internal MAS bands and enhances the ability of current and future MAS licensees to acquire MAS spectrum. In addition, the Commission reinstates non-profit, cost-shared use in the private internal bands. The Commission believes that this type of spectrum use serves the public interest and affords a vital alternative for securing MAS spectrum in the highly encumbered private internal bands. Moreover, the Commission creates an EA-like area covering the Gulf of Mexico which will ensure that the wireless needs of this region are better met. With regard to the MAS operational policies, the Commission modifies some of the policies that were relaxed in the *MAS Report and Order*, 65 FR 17445 (April 3, 2000), and introduces policies that may be described as less flexible. However, the Commission believes that the changes to the operational policies mitigate potential instances of interference among MAS users and will ultimately benefit all MAS users.

Supplemental Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA), Initial Regulatory Flexibility Analyses (IRFA) were incorporated in the Amendment of the Commission's Rules Regarding Multiple Address Systems, *Notice of Proposed Rule Making*, 62 FR 11407 (March 12, 1997) and *Further Notice of Proposed Rule Making*, 64 FR 38617 (July 19, 1999). The Commission sought written public comment on the proposals in the *Notice and Further Notice*, 62 FR 11407 (March 12, 1997) and 64 FR 38617 (July 19, 1999) including comment on the IRFA. This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA.

I. Reason for, and Objectives of, the Memorandum Opinion and Order

5. These proceedings were initiated to secure public comment on proposals to maximize the efficient and effective use of spectrum allocated to MAS in the Microwave Services and to analyze the impact of the Balanced Budget Act on these proposals. The rules adopted in this *Memorandum Opinion and Order* continue the Commission's efforts to promote effective radio operations, improve the efficiency of spectrum use and reduce the regulatory burden on spectrum users.

II. Summary of Significant Issues Raised by Public Comments in Response to the Previous Final Regulatory Flexibility Analysis

6. No reconsideration petitions/comments were filed in direct response to the previous Final Regulatory Flexibility Analysis (FRFA). However, the Commission has reviewed general comments that may impact small businesses. In this instance, the petitioners are existing MAS licensees, many of whom qualify as small businesses. Generally, the petitioners applaud the Commission's efforts in this service. The requests for reconsideration and/or clarification involve issues relating to the types of services classified as private internal, grandfathering provisions as they relate to transfers and assignments, shared use and private carrier service in the private internal bands, operational flexibility, service area coverage of the Gulf of Mexico and other minor points that will help clarify the Commission's intentions for this service. In addition, this *Memorandum Opinion and Order* makes minor changes to certain technical requirements in part 101, as well as, the current application freeze in certain MAS bands in an effort to promote effective radio operations and to reduce regulatory burdens on MAS licensees.

III. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

8. Last, the definition of "small governmental entity" is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, the Commission estimates that ninety-six percent, or about 81,600, are small entities that may be affected by the rules. The Commission describes and estimates the number of small business licensees and

regulatees that may be affected by the rules.

9. The rules adopted in this *Memorandum Opinion and Order* affect a number of small entities that are either licensees, or may choose to become applicants for licenses, in the MAS Service. Such entities, in general, fall into two categories: (1) Those using MAS spectrum for profit-based uses and (2) those using MAS spectrum for private internal uses.

10. With respect to the first category, the Commission has developed and received approval from the Small Business Administration for two definitions of small entities applicable to MAS licensees that do not provide private internal service. The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service.

11. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, the Commission notes that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the definition under the SBA rules applicable to establishments engaged in radiotelephone communications. This definition provides that a small entity is any entity employing no more than 1,500 persons. The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

12. This *Memorandum Opinion and Order* requires MAS licensees that are operating in the MAS spectrum designated for private internal use to limit mobile operations to mobile master stations only, for the 952 MHz and certain channels in the 941 MHz bands, if frequencies in the 956 MHz band are unavailable. In addition, the *Memorandum Opinion and Order* prohibits mobile operation for site-based licensees in the 959 MHz band and modifies permissible frequency tolerance levels for MAS operations to conform with the *MAS Report and Order*, 65 FR 17445 (April 3, 2000). Compliance with these modifications to the Commission's rules, as well as the other modifications described in the *MAS Memorandum Opinion and Order*, will facilitate efficient radio operations by reducing opportunities for radio interference.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

13. The Commission has reduced the economic burden placed on small businesses where possible. In response to petitions/comments filed in this proceeding, the Commission has adopted rule modifications that will, through more effective radio operations and a reduction of regulatory burdens, foster the growth of small businesses providing wireless services. For instance, this *Memorandum Opinion and Order* eliminates the requirement for licensees to submit waiver requests (1) to operate mobile master stations in certain MAS bands and (2) to expand systems in the 928/959 MHz MAS bands as described in the Commission's rules. This action, in turn, will reduce administrative burdens for MAS licensees, as well as, the Commission, which will ultimately result in less economic burden on MAS licensees. Additionally, the Commission is providing specific parameters for mobile operations in this service which will assist small businesses by mitigating instances of potential interference, thus preserving valuable resources.

Report to Congress: The Commission will send a copy of the *MAS Memorandum Opinion and Order*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the MAS *Memorandum Opinion and Order*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *MAS Memorandum Opinion and Order* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

14. Accordingly, *It is Ordered* that, pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by CellNet Data Systems, Inc. on May 3, 2000, is *Granted in Part* consistent with the decisions set forth herein.

15. *It is Further Ordered* that, pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Clarification and Reconsideration filed by Radscan, Inc. on May 3, 2000 is *Granted*, consistent with the decisions set forth herein.

16. *It is Further Ordered* that, pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration/Clarification filed by the Critical Infrastructure Communications Coalition on May 3, 2000, is *Granted*, consistent with the decisions set forth herein.

17. *It is Further Ordered* that, pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration/Clarification filed by the United States Environmental Protection Agency on February 7, 2000, is *Dismissed, as* moot.

18. *It is Further Ordered* that, pursuant to the authority contained in section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), the application freeze set forth in the *Notice of Proposed Rule Making*, 62 FR 11407 (March 12, 1997), in WT Docket No. 97–81, is *Modified*, as set forth herein.

19. *It is Further Ordered* that, part 101 of the Commission's rules is AMENDED, as set forth in Rule Changes, effective sixty days after its publication in the **Federal Register**.

20. *It is Further Ordered* that the Commission's Consumer Information Bureau, Reference Information Center, Shall Send a copy of this *Memorandum Opinion and Order*, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

21. *It is Further Ordered* that the above-captioned proceeding is *Terminated*.

List of Subjects in 47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 101 as follows:

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for part 101 is amended to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 101.105 is amended by revising (c)(5) to read as follows:

§ 101.105 Interference protection criteria.

* * * * *

(c) * * *

(5) Multiple address frequencies in the 956.25–956.45 MHz bands may be assigned for use by mobile master stations on a primary basis. Multiple address frequencies in the 941.0–941.5 MHz bands that are licensed on a site-by-site basis and the 952 MHz bands may be assigned for use by primary mobile master stations on a case-by-case basis if the 956.25–956.45 MHz frequencies are unavailable. Multiple address mobile (master and remote) operation is permitted on frequencies licensed by geographic area subject to the interference protection criteria set forth in § 101.1333, *i.e.*, adjacent channel site-based licensees and co-channel operations in adjacent EAs. Mobile operation in the 959.85–960 MHz band is not permitted.

* * * * *

3. Section 101.107(a) is amended by revising the table and revising footnotes (5) and (7) to read as follows:

§ 101.107 Frequency tolerance.

(a) * * *

Frequency (MHz)	Frequency Tolerance (percent)		
	All fixed and base stations	Mobile stations over 3 watts	Mobile stations 3 watts or less
928 to 929 (2)(5)	0.0005	.....	.....
932 to 932.5 (2)(5)	0.00015	.....	.....

(5) Used for remote stations. For remotes with 12.5 KHz bandwidth or less, the tolerance is ±0.00015%. Remote mobiles are only allowed in the portion of the 932–932.5 MHz band that is licensed by geographic area.

(7) For private operational fixed point-to-point microwave systems, with a channel greater than or equal to 50 KHz bandwidth, ±0.0005%; for multiple address master stations, regardless of bandwidth, ±0.00015%; for multiple address remote stations with 12.5 KHz bandwidths or less, ±0.00015%; for multiple address remote stations with channels greater than 12.5 KHz bandwidth, ±0.0005%.

4. Section 101.113(a) is amended by revising the first six rows as follows:

§ 101.113 Transmitter power limitations.

(a) * * *

Frequency Band (MHz)	Maximum allowable EIRP (1)(2)	
	Fixed (dBW)	Mobile (dBW)
928.0–929.0(2)	+17	.....
932.0–932.5(2)	+17	.....
932.5–935.0	+40	.....
941.0–941.5(2)	+30	+14
941.5–944.0	+40	.....
952.0–960.0(2)	+40	+14

* * * * *

5. Section 101.135 is amended by revising paragraph (e) to read as follows:

§ 101.135 Shared use of radio stations and the offering of private carrier service.

* * * * *

(e) Applicants licensed in the MAS frequencies after June 2, 2000, shall not provide service to others on a for-profit private carrier basis in the 928–928.85/952–952.85/956.25–956.45 MHz bands and the 932.25–932.5/941.25–941.5 MHz bands.

6. Section 101.147 is amended by revising note (28) in paragraph (a) and revising paragraph (b) introductory text to read as follows:

§ 101.147 Frequency assignments.

(a) * * *

(28) Licensees that obtain authorizations in the 928/952/956 MHz MAS bands subsequent to July 1, 1999 are limited to private internal services, as defined in § 101.1305. Incumbent operations in the 928/952/956 MHz MAS bands, as defined in § 101.1331(a), are subject to grandfather rights pursuant to § 101.1331. The 928.85–929.0 MHz and 959.85–960.0 MHz bands are licensed on a geographic area basis with no eligibility restrictions. The 928.0–928.85 MHz band paired with the 952.0–952.85 MHz band, in addition to unpaired frequencies in the 956.25–956.45 MHz band, are licensed on a site-by-site basis and used for terrestrial point-to-point and point-to-multipoint fixed and limited mobile operations. The 928.85–929.0 MHz band paired with the 959.85–960.0 MHz band is licensed by Economic Area and used for terrestrial point-to-point and point-to-multipoint fixed operations.

* * * * *

(b) Frequencies normally available for assignment in this service are set forth with applicable limitations in the following tables: 928–960 MHz Multiple address system (MAS) frequencies are available for the point-to-multipoint and

point-to-point transmission of a licensee's products or services, excluding video entertainment material, to a licensee's customer or for its own internal communications. The paired frequencies listed in this section are used for two-way communications between a master station and remote stations. Ancillary one-way communications on paired frequencies are permitted on a case-by-case basis. Ancillary communications between interrelated master stations are permitted on a secondary basis. The normal channel bandwidth assigned will be 12.5 kHz. EA licensees, however, may combine contiguous channels without limit or justification. Site-based licensees may combine contiguous channels up to 50 kHz, and more than 50 kHz only upon a showing of adequate justification. Any bandwidth (12.5 kHz, 25 kHz or greater) authorized in accordance with this section may be subdivided into narrower bandwidths to create additional (or sub) frequencies without the need to specify each discrete frequency within the specific bandwidth. Equipment that is used to create additional frequencies by narrowing bandwidth (whether authorized for a 12.5 kHz, 25 kHz or greater bandwidth) will be required to meet, at a minimum, the ± 0.00015 percent tolerance requirement so that all subfrequencies will be within the emission mask. Systems licensed for frequencies in these MAS bands prior to August 1, 1975, may continue to operate as authorized until June 11, 1996, at which time they must comply with current MAS operations based on the 12.5 kHz channelization set forth in this paragraph. Systems licensed between August 1, 1975, and January 1, 1981, inclusive, are required to comply with the grandfathered 25 kHz standard bandwidth and channelization requirements set forth in this paragraph. Systems originally licensed after January 1, 1981, and on or before May 11, 1988, with bandwidths of 25 kHz and above, will be grandfathered indefinitely.

* * * * *

7. Section 101.1307 is revised to read as follows:

§ 101.1307 Permissible communications.

MAS users may engage in terrestrial point-to-point and point-to-multi-point fixed and limited mobile operations.

8. Section 101.1315 is revised to read as follows:

§ 101.1315 Service areas.

In the frequency bands not licensed on a site-by-site basis, the geographic service areas for MAS are Economic Areas (EAs) which are defined by the Department of Commerce's Bureau of Economic Analysis, as modified by the Commission. The EAs will consist of 176 areas, which includes Guam and the Northern Marianas Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico.

9. Section 101.1331 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101.1331 Treatment of incumbents.

(a) Any MAS station licensed by the Commission prior to July 1, 1999 in the 928.0–928.85 MHz/952.0–952.85 MHz/956.25–956.45 MHz and 928.85–929.0 MHz/959.85–960.0 MHz bands, as well as assignments or transfers of such stations approved by the Commission and consummated as of January 19, 2000, shall be considered incumbent.

(b) Incumbent operators in the 928.0–928.85 MHz/952.0–952.85 MHz/956.25–956.45 MHz bands are grandfathered as of January 19, 2000, and may continue to operate and expand their systems pursuant to the interference protection and co-channel spacing criteria contained in § 101.105.

(1) MAS operators are prohibited from acquiring additional frequencies in the 928.0–928.85 MHz/952.0–952.85 MHz/956.25–956.45 MHz bands and the 932.25625–932.49375 MHz/941.25625–941.49375 MHz bands for the purpose of expanding private carrier service and from changing the use of their frequencies in any manner that is inconsistent with this part. Refer to § 101.147 for designated uses.

(2) Incumbent operators in the 928.0–928.85 MHz/952.0–952.85 MHz/956.25–956.45 MHz bands will include incumbents as defined in § 101.1331(a), as well as, their transferees and/or assignees and the successors of the transferees and/or assignees and retain their grandfathered status, provided that the use of the MAS frequencies remains unchanged from that of the transferor and/or assignor of the license.

* * * * *

[FR Doc. 01–16650 Filed 7–2–01; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 66, No. 128
Tuesday, July 3, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 301, 303, 317, 318, 319, 320, 325, 331, 381, 417, and 430

[Docket No. 97–013N2]

Performance Standards for the Production of Processed Meat and Poultry Products; Reopening of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening and extending until September 10, 2001, the comment period for the proposed regulations concerning ready-to-eat and partially heat-treated meat and poultry products that closed on June 28, 2001. As of June 28, 2001. As of June 28, 2001, FSIS is reopening and extending the comment period in response to a request from a consortium of trade associations.

DATES: Comments on the proposed regulations must be received on or before September 10, 2001.

ADDRESSES: Send all written comments on the proposed regulations to: FSIS Docket No. 97–013P, Department of Agriculture, Food Safety and Inspection Service, Room 102, 300 12th Street, SW., Washington, DC 20250–3700. All comments received will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, Room 112 Cotton Annex, 300 12th Street, SW, Washington, DC 20250. Telephone number (202) 720–5627, fax number (202) 690–0486.

SUPPLEMENTARY INFORMATION: On February 27, 2001, FSIS published a proposed rule "Performance Standards for the Production of Processed Meat and Poultry Products" (66 FR 12590). In that document, the Agency proposed food safety performance standards applicable to all ready-to-eat and all partially heat-treated meat and poultry products, as well as environmental testing requirements intended to reduce the incidence of *Listeria monocytogenes* in RTE meat and poultry products. FSIS also proposed to convert to performance standards the existing regulatory requirements for thermally-processed, commercially sterile (most often canned) meat and poultry products and to rescind certain requirements requiring the elimination of trichina from products that contain pork.

FSIS originally provided for a 90-day comment period on the proposed regulations ending on May 29, 2001. On April 13, 2001 (66 FR 19102), FSIS extended the comment period an additional 30 days, through June 28, 2001, to provide opportunity for the public to comment on issues raised at the technical conference and public meetings concerning the proposed regulations, which were held May 8 through 10, 2001. As of June 28, 2001, FSIS is reopening and again extending the comment period on the proposed regulations, this time until September 10, 2001.

On May 22, 2001, a consortium of trade associations representing the meat and poultry industries requested that FSIS extend the comment period for 120 days, until October 28, 2001. The consortium noted that FSIS has solicited a great deal of scientific and economic data regarding the proposed regulations and stated that it needed additional time to provide this data. The consortium also requested additional time to review the draft compliance guidance for the regulations, distributed by FSIS at the May 9 and 10 public meetings, as well as the draft risk assessment on the relationship between foodborne *L. monocytogenes* and human health developed by the Food and Drug Administration in cooperation with FSIS and the Centers for Disease Control and Prevention.

FSIS agrees that additional time is necessary for regulated industries, consumers, and other interested parties to submit comments, collect and submit the solicited data, and review the related draft compliance guidance and risk assessment documents. FSIS is reopening and extending the comment period until September 10, 2001, which will provide additional time for comments to be made, while ensuring that the rulemaking proceeds in a timely manner. As a result of this reopening and extension, the comment period for the proposed regulations will total 195 days.

Thomas J. Billy,
Administrator.

[FR Doc. 01–16618 Filed 6–27–01; 4:09 pm]
BILLING CODE 3410–DM–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113910–98]

RIN 1545–AW54

Special Rules Regarding the Simplified Production and Simplified Resale Methods With Historic Absorption Ratio Election

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking requiring that a historic absorption ratio used with either the simplified production or simplified resale methods be recalculated when the ratio becomes materially inaccurate that was published in the **Federal Register** on May 24, 1999. The withdrawal is in response to written comments received, oral comments presented at a public hearing and an internal IRS survey.

FOR FURTHER INFORMATION CONTACT: Cheryl Oseekey, (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1999, the IRS issued proposed regulations (REG–113910–98) in the **Federal Register** (64 FR 27936) under section 263A, that required that the historic absorption ratio used with either the simplified production or simplified resale methods be reviewed

for accuracy. If the historic absorption ratio is found to be materially inaccurate, the ratio could no longer be used. The proposed regulations defined an historic absorption ratio as being materially inaccurate when (1) the taxpayer's actual absorption ratio deviates by more than 50 percent from the taxpayer's historic absorption ratio, (2) the taxpayer's actual absorption ratio deviates by more than one-half of one percentage point from the taxpayer's historic absorption ratio, and (3) the amount of additional section 263A costs capitalizable to items on hand at year-end using the actual absorption ratio deviates by more than $100,000 from the amount of additional section 263A costs capitalizable to items on hand at year-end using the historic absorption ratio. In response to the written comments received and the oral comments presented at a public hearing held on September 1, 1999, and based on an internal IRS survey, it has been determined that the potential for abuse using the current regulations' rule of reviewing a historic absorption ratio every six years is small. Further, this potential for abuse is outweighed by the burden that would be placed on taxpayers by requiring an annual review of the accuracy of their ratios. Accordingly, these proposed regulations are being withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–113910–98) that was published in the **Federal Register** on May 24, 1999 (64 FR 27936) is withdrawn.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue Service.

[FR Doc. 01–16717 Filed 7–2–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. R–02A]

RIN 1218–AC00

Occupational Injury and Illness Recording and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed delay of effective date; request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) issued a final rule on Occupational Injury and Illness Recording and Reporting Requirements (66 FR 5916, January 19, 2001), which is scheduled to become effective on January 1, 2002. Following a careful review conducted pursuant to White House Chief of Staff Andrew Card's memorandum (66 FR 7702), the Agency has determined that all but a few of the provisions of the final rule should take effect as scheduled.

OSHA has also determined that it will reconsider the provisions in the final rule for: recording occupational hearing loss based on the occurrence of a Standard Threshold Shift (STS) in hearing acuity (Section 1904.10); and defining "musculoskeletal disorder" (MSD) and checking the column on the OSHA 300 Log identifying a recordable MSD (Section 1904.12). Accordingly, OSHA proposes to delay the effective date of Sections 1904.10 and 1904.12 until January 1, 2003. Employers should read carefully Section II. of this document, Effect of Proposal Delay on Employer Recordkeeping Obligations in Calendar Year 2002, to understand what their recordkeeping obligations would be during the period January 1, 2002 through January 1, 2003 if the proposed delay takes effect. OSHA is also asking for comment on the appropriate criteria for recording hearing loss cases. See Section III.

DATES: Written comments must be postmarked by September 4, 2001.

ADDRESSES: Comments are to be submitted in writing in triplicate. All comments shall be submitted to: Docket Officer, Docket No. R–02A, Occupational Safety and Health Administration, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Comments of 10 pages or less may be faxed to (202) 693–1648. You may also submit your comments electronically through OSHA's home page at *www.osha.gov*. Please note that you may not attach materials such as studies or journal articles to your electronic statement. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic statement by name, date, and subject, so that we can attach the materials to your electronically submitted statement.

FOR FURTHER INFORMATION CONTACT: Jim Maddux, Occupational Safety and Health Administration, U.S. Department of Labor, Directorate of Safety Standards Programs, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION: Because OSHA's final recordkeeping rule was published on January 19, 2001, with an effective date of January 1, 2002, it was subject to the regulatory review required by the Andrew Card memorandum. The Agency has carefully considered the rulemaking record and the submissions of interested parties, and has had several meetings with business and labor representatives. As a result of this process, the Secretary has determined that the final recordkeeping rule should be implemented in large part, on January 1, 2002, as scheduled. The final rule is the result of an effort begun in the 1980s, involving businesses, labor organizations, health professionals and others, to improve the quality of the injury and illness records maintained under the Occupational Safety and Health Act. The new rule simplifies the recordkeeping process by making the record requirements more logical and coherent, by explaining the requirements in plain language, by consolidating the interpretations and guidance previously found in a host of secondary sources, and by providing new recordkeeping forms that are easier to understand and complete. However, the Agency's review has identified grounds for reconsidering two elements of the final rule, and for delaying the effective date of the requirements related to these elements, as explained below.

I. Why OSHA Is Proposing To Delay the Effective Date of the Final Rule Requirements on Hearing Loss and the MSD Definition and Column

A. Recording occupational hearing loss cases: Section 1904.10 of the final rule requires employers to record, by

checking the "hearing loss" column on the OSHA 300 Log (Log), a case in which an employee's hearing test (audiogram) reveals that a Standard Threshold Shift (STS) in hearing acuity has occurred. An STS is defined as "a change in hearing threshold, relative to the most recent audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000 and 4000 hertz in one or both ears." Section 1904.10(b)(1). The final rule itself does not require testing of employees' hearing. However, OSHA's occupational noise standard (29 C.F.R. 1910.95) requires employers in general industry to conduct periodic audiometric testing of employees when employees' noise exposures are equal to, or more than, an 8-hour time-weighted average 85dB. If such testing reveals that an employee has sustained hearing loss equal to an STS, the employer must take protective measures, including requiring the use of hearing protectors, to prevent further hearing loss.

The current recordkeeping rule, which remains in effect until January 1, 2002, contained no specific threshold for recording hearing loss cases. In 1991, OSHA issued an enforcement policy on the criteria for recording occupational hearing loss, to remain in effect until new criteria were established by rulemaking. The 1991 policy stated that OSHA would cite employers for failing to record work related shifts in hearing of an average of 25dB or more at 2000, 3000, and 4000 Hertz in either ear.

One of the major issues in the recordkeeping rulemaking was to quantify the level of hearing loss that should be recorded as a "significant" health condition. This was critical because OSHA determined that minor or insignificant health conditions should no longer be recordable. See, e.g., 66 FR 5931. OSHA proposed a requirement to record hearing loss averaging 15dB at 2000, 3000 and 4000 Hertz in one or both ears. The agency asked for comment on several alternative criteria, including, 10, 20 and 25dB. The final rule used the STS criterion of 10dB instead of the proposed 15dB level.

In selecting an STS as the appropriate criterion for recording hearing loss, OSHA relied heavily on evidence submitted by the Coalition to Preserve OSHA and NIOSH and Protect Workers' Hearing that a 10dB loss in hearing acuity represents a serious health problem. "OSHA [was] particularly persuaded by the Coalition's argument that 'An age-corrected STS is a large hearing change that can affect communicative competence' because an age-corrected STS represents a significant amount of cumulative hearing change from baseline hearing levels." 66 FR 6008. Based on this and other evidence, OSHA found that an STS "represents a non-minor injury or illness of the type Congress identified as appropriate for recordkeeping purposes." 66 FR 6009.

Following publication of the final rule in January 2001, OSHA received submissions from interested parties criticizing the finding that an STS represents a significant health condition. Exhibits 1–2, 1–3, 1–4, 1–5, 1–6, 1–7. These parties argue that an STS is not necessarily considered a serious health problem by the medical community, by State workers compensation systems, or by the occupational noise standard (29 CFR 1910.95). The American Iron and Steel Institute noted that, "According to the AMA, a person has suffered material impairment when testing reveals a 25dB average hearing loss from audiometric zero at 500, 1000, 2000, and 3000 hertz." AISI and other commenters assert that an STS is merely a precursor event indicating the need for follow-up actions, not a material health impairment standing alone.

OSHA has reviewed the record and agrees that reconsideration of the criteria for recording hearing loss is warranted. There is evidence in the record suggesting that an STS can constitute a serious health problem for individuals with pre-existing hearing loss. See 66 FR 6008 ("For an individual with pre-existing high frequency hearing loss on the baseline, STS usually involves substantial progression into the critical speech frequencies.") There is also evidence that an STS is not necessarily a serious condition, and some commenters have questioned whether it is even a reliable criterion under real-world testing conditions. See, e.g., Exhibit 1–2. Finally, NIOSH notes in its Criteria for a Recommended Standard—Noise Exposure, "the incipient permanent threshold shift may manifest itself with the same order of magnitude as typical audiometric measurement variability; about a 10-dB change in hearing thresholds." In view of this uncertainty, OSHA believes that the record should be reopened to permit consideration of additional medical and other relevant evidence, and to explore alternative approaches. For example, Organization Resources Counselors, Inc. (ORC) in its post-promulgation submissions urged the Agency to consider a sliding scale which would take account of an individual's existing level of impairment in determining whether further occupational hearing loss warrants recording. (Exhibits 1–6, 1–7). ORC's suggested approach, which was not addressed in the rulemaking, also deserves careful consideration.

In light of the decision to reconsider the 10dB criterion, OSHA is proposing to delay the effective date of Section 1904.10 until January 1, 2003, and to remove the "Hearing loss" column from the version of the Log to be used during calendar year 2002. OSHA believes that this proposed action is appropriate for several reasons. If OSHA decides to change the hearing loss criterion beginning in 2003, records of hearing loss cases based on the 10dB level for 2002 will be of little value since they could not be compared to records maintained either under the former rule's 25dB level or any new level effective in 2003. On the other hand, continuing the 25dB recording requirement for 2002 will yield data comparable to that for earlier years even if OSHA implements a new requirement for 2003. Furthermore, the proposed delay of the effective date would avoid the confusion and additional paperwork burden that would result if employers were required to implement the 10dB requirement for 2002, only to change over to a new requirement in 2003. These factors appear to outweigh any potential benefit to be gained by permitting Section 1904.10 to become effective while OSHA is reconsidering the 10dB criterion. If implementation of Section 1904.10 is delayed as proposed in this document, OSHA will provide new forms to be used for calendar year 2002 that do not contain a "Hearing loss" column.

B. Defining an MSD and checking the MSD column: Section 1904.12 of the final rule states that if an employee experiences a recordable musculoskeletal disorder (MSD), the employer must record it on the OSHA Log and must check the MSD column. For recordkeeping purposes, the rule defines MSDs as disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs that are not caused by slips, trips, falls, motor vehicle accidents or other similar accidents (see Section 1904.12(b)(1)). The Section also explains that in determining whether an MSD is recordable, the employer must use the same criteria that apply to other injuries or illnesses. To be recordable, the disorder must be work-related, must be a new case, and must meet one or more of the general recording criteria. Section 1904.12(b)(2) states that "[t]here are no special criteria for determining which musculoskeletal disorders to record," and refers the reader to other sections of the rule in which the basic recording criteria are found.

OSHA's purpose in including an MSD column on the Log was to gather data on "musculoskeletal disorders" as that term is defined in Section 1904.12. Following Congressional disapproval of OSHA's ergonomics standard (PL 107.5, Mar. 20, 2001), the Secretary announced that she intends to develop a comprehensive plan to address ergonomic hazards and scheduled a series of forums to consider basic issues related to ergonomics (66 FR 31694, 66 FR 33578). One of the key issues to be considered in connection with the Secretary's comprehensive plan is the approach to defining an ergonomic injury.

Based on these developments, the Secretary believes that it is premature to define an MSD for recordkeeping purposes. Any definition of "musculoskeletal disorder" or other term for soft tissue injuries in the recordkeeping rule should be informed by the views of business, labor and the public health community on the problem of ergonomic hazards in the workplace, which the Secretary's forums are intended to elicit. Furthermore, to require employers to implement a new definition of MSD while the Agency is considering the issue in connection with the comprehensive ergonomics plan could create unnecessary confusion and uncertainty. Therefore, OSHA is proposing to delay the effective date of § 1904.12. Accordingly, the Log to be used for calendar year 2002 would not contain a definition for MSD or an MSD column. When the Department has progressed further in developing its comprehensive approach to ergonomic hazards, it will be in a better position to consider how employers will be required to report work-related ergonomics injuries.

This proposed action does not affect the employer's obligation to record all injuries and illnesses that meet the criteria set out in Sections 1904.4–1904.7, regardless of whether a particular injury or illness meets the definition of MSD found in Section 1904.12. Employers will be required to record soft-tissue disorders, including those involving subjective symptoms such as pain, as injuries or illnesses if they meet the general recording criteria that apply to all injuries and illnesses. The proposed delay of the effective date of Section 1904.12 does not affect this basic requirement. It simply means that employers will not have to determine which injuries should be classified under the category of "MSDs" or "ergonomic injuries" during the calendar year 2002.

II. Effect of the Proposed Delay of the Effective Date on Employer's Recordkeeping Obligations in Calendar Year 2002

A one-year delay of the effective date of the specified recordkeeping provisions would have the following effect on an employer's recordkeeping obligations during the 2002 calendar year:

Hearing loss cases: Employers would continue to record work-related shifts of an average of 25 dB or more at 2000, 3000, and 4000 hertz (Hz) in either ear on the OSHA 300 Log. When a recordable hearing loss occurs, the audiogram indicating the hearing loss would become the new baseline for determining whether future additional hearing loss by the individual must be recorded. Employers would check either the "injury" or the "all other illness"column, as appropriate.

Soft-tissue disorder: Employers would record disorders affecting the muscles, nerves, tendons, ligaments and other soft tissue areas of the body in accordance with the general criteria in Sections 1904.4–1904.7 applicable to any injury or illness. Employers would also treat the symptoms of soft-tissue disorders the same as symptoms of any other injury or illness. Soft-tissue cases would be recordable only if they are work-related (Sec. 1904.5), are a new case (Sec. 1904.6), and meet one or more of the general recording criteria (Sec. 1904.7). Employers would check either the "injury" or the "all other illness" column, as appropriate.

III. Issues for Public Comment

OSHA particularly invites comment on the following issues. Issue 1. What is the appropriate criterion for recording cases of occupational hearing loss? OSHA is particularly interested in comments on the advantages and disadvantages of various hearing loss levels, including 10, 15, 20 and 25 dB, on alternative approaches such as the use of a sliding scale in which smaller incremental shifts would be recordable for employees with significant pre-existing hearing loss, and on the frequency of "false positive" results or other errors in audiometric measurements associated with each of these levels and approaches. Issue 2. What is the variability of audiometric testing equipment and how should this variability be taken into account, if at all, in the recordkeeping rule? Issue 3. What is the appropriate benchmark against which to measure hearing loss, e.g., the employee's baseline audiogram, audiometric zero, or some other measure? Issue 4. Should the recordkeeping rule treat subsequent hearing losses in the same employee as a new case for recording purposes?

Paperwork Reduction Act

On January 22, 2001, the Office of Management and Budget (OMB) received OSHA's request under the Paperwork Reduction Act of 1995 for approval of the information collection requirements in the final recordkeeping rule. This request for approval was withdrawn by the Agency on March 26, 2001, before OMB acted on it. OSHA will resubmit a request for OMB approval of the information collection requirements in the final rule, including appropriate changes in such requirements resulting from this proposal.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), the Acting Assistant Secretary certifies that the proposed rule will not have a significant adverse impact on a substantial number of small entities.

Executive Order

This document has been deemed significant under Executive Order 12866 and has been reviewed by OMB.

Authority

This document was prepared under the direction of R. Davis Layne, Acting Assistant Secretary for Occupational Safety and Health. It is issued under Section 8 of the Occupational Safety and Health Act (29 U.S.C. 657), and 5 U.S.C. 553.

Issued at Washington, DC this 28th day of June, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–16669 Filed 6–29–01; 9:53 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–7006–7]

Proposed Approval of the Clean Air Act, Section 112(l), Delegation of Authority to Washington Department of Ecology and Four Local Air Agencies in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the authority of Clean Air Act (CAA), section 112(l), EPA proposes to approve the State of

Washington Department of Ecology's (Ecology) request, and the requests of four local air pollution control agencies in Washington, for program approval and delegation of authority to implement and enforce specific federal National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations (as they apply to both part 70 and non-part 70 sources) which have been adopted into state law. EPA proposes to delegate these programs to Ecology for the purpose of direct implementation and enforcement (within Ecology's jurisdiction). EPA also proposes to delegate these programs to the following four local agencies: the Benton Clean Air Authority (BCAA), the Olympic Air Pollution Control Authority (OAPCA), the Spokane County Air Pollution Control Authority (SCAPCA), and the Yakima Regional Clean Air Authority (YRCAA).

EPA also proposes to approve a mechanism by which Ecology and the four local agencies will receive delegation of future NESHAPs; and proposes to waive its notification requirements such that sources within Ecology and SCAPCA's jurisdictions would only need to send notifications and reports to Ecology or SCAPCA, and would *not* need to send a copy to EPA, Region X.

Delegation to the remaining local agencies in the State of Washington (the Northwest Air Pollution Authority, the Puget Sound Clean Air Agency, and the Southwest Air Pollution Control Authority) was promulgated in a direct final rule on December 1, 1998. A correction and clarification to that direct final rule was published on February 17, 1999, and amendments updating this delegation were published on April 22, 1999, and February 28, 2000.

DATES: Written comments must be received on or before August 2, 2001.

ADDRESSES: Written comments should be submitted concurrently to the addressees listed below:

Tracy Oliver, U.S. Environmental Protection Agency, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101.

Mary Burg, Washington State Dept of Ecology, P.O. Box 47600, Olympia, WA 98504–7600.

Copies of the delegation requests and other supporting documentation are available for public inspection at US EPA, Region X office during normal business hours. Please contact Doug Hardesty to make an appointment.

FOR FURTHER INFORMATION CONTACT: Tracy Oliver, US EPA, Region X (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101, (206) 553–1172.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

I. EPA Action

What Action is EPA Proposing Today?
Why is EPA Proposing this Action?
What Changes Would this Delegation Create?
What Specific Standards Does EPA Propose to Delegate?
What Specific Standards Does EPA Propose *Not* to Delegate?
What General Provisions Authorities Does EPA Propose to Delegate?
What General Provisions Authorities are Automatically Granted as Part of These Agencies' Part 70 Operating Permits Program Approval?
What General Provisions Authorities Are Not Delegated?
How Would This Delegation Affect the Regulated Community?
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How Would This Delegation Affect Indian Country?
What Would be Ecology and the Four Local Agencies' Reporting Requirements to EPA?
How Would These Agencies Receive Delegation for Future Standards?
How Frequently Should These Agencies Update their Delegation?
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II. Background and Purpose

What Authority Does EPA Have to Grant Delegations?
What is the History of this Delegation?
Why Did EPA Grant Only Interim Approval of the Original Request?
How Have These Agencies Satisfied Enforcement Authority Deficiencies?
What Changes Have Been Made to the Original Delegation Request?

III. Summary of Action

IV. Administrative Requirements

I. EPA Action

What Action Is EPA Proposing Today?

In this action, under the authority of CAA section 112(l)(5) and 40 CFR 63.91, EPA proposes approval of Ecology's request, and the requests of BCAA, OAPCA, SCAPCA and YRCAA, for program approval and delegation of authority to implement and enforce specific 40 CFR parts 61 and 63 subparts, as listed in the tables at the end of this rule. Along with these specific standards, EPA proposes to delegate certain General Provisions authorities, as explained below. EPA proposes to delegate this authority to Ecology for the purpose of direct implementation (within Ecology's jurisdiction). EPA also proposes to delegate this authority to BCAA, OAPCA, SCAPCA and YRCAA.

In this action, EPA proposes to waive its notification requirements such that sources within Ecology and SCAPCA's jurisdictions would only need to send notifications and reports to Ecology or SCAPCA, and would *not* need to send a copy to EPA, Region X. (Sources within BCAA, OAPCA or YRCAA's jurisdictions would need to continue sending notifications to both the respective agency and EPA, Region X).

Under the authority of CAA section 112(l)(5) and 40 CFR 63.91, EPA is also proposing approval of Ecology and the four locals agencies' mechanism for streamlining future delegation of those federal NESHAP regulations that are adopted unchanged into state and local laws. This mechanism is explained in a separate paragraph below.

Delegation to the remaining local agencies in the State of Washington (the Northwest Air Pollution Authority (NWAPA), the Puget Sound Clean Air Agency (Puget Sound Clean Air), and the Southwest Air Pollution Control Authority (SWAPCA)) was promulgated in a direct final rule on December 1, 1998 (*see* 63 FR 66054) and became effective on February 1, 1999. A correction and clarification to that direct final rule was published on February 17, 1999 (*see* 64 FR 7793). Additionally, amendments updating this delegation were published on April 22, 1999 (*see* 64 FR 19719) and February 28, 2000 (*see* 65 FR 10391). Therefore, this action will not apply to NWAPA, Puget Sound Clean Air, or SWAPCA.

Why Is EPA Proposing This Action?

EPA is proposing this action because it has determined that these agencies have met the following criteria for approval:

(1) The state or local program is "no less stringent" than the corresponding federal program or rule;

(2) The State or local has adequate authority and resources to implement the program;

(3) The schedule for implementation and compliance is sufficiently expeditious; and

(4) The program is otherwise in compliance with federal guidance.

What Changes Would This Delegation Create?

If EPA approves this proposal, Ecology and the four local agencies will have primary implementation and enforcement responsibility for the adopted NESHAP regulations. This means that if approved, sources subject to the delegated standards would send notifications and reports to these agencies (and send a copy to EPA, Region 10, except for those sources within Ecology and SCAPCA's jurisdictions). Questions and

compliance issues would also be directed to these agencies. As with any delegation, however, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. Additionally, if approved, EPA would retain certain General Provisions authorities, as explained below.

What Specific Standards Does EPA Propose to Delegate?

EPA proposes to delegate certain 40 CFR parts 61 and 63 NESHAPs in effect on July 1, 2000, as adopted by reference into WAC 173–400–075 on November 22, 2000. In most cases, this delegation would apply to all sources (exceptions are explained below). The standards to be delegated are specified in the tables at the end of this rule.

EPA agrees with the position of the Office of the Attorney General of Washington's office that the November 22, 2000 revision to WAC 173–400–075(5)(a) adopts as state rules those parts of Part 63 that EPA proposes to delegate. A revision to the state rule, which will clarify the provision, is currently being processed by the State.

EPA proposes to delegate 40 CFR part 61, subpart M (Asbestos NESHAP) to Ecology, BCAA, and OAPCA as it applies to major sources only, based on their requests. Also, EPA proposes to delegate 40 CFR part 63, subpart M (Perchloroethylene Dry Cleaning NESHAP) to Ecology and YRCAA as it applies to major sources only.

Also, Ecology has a working relationship with BCAA to manage the Asbestos NESHAP for sources located on the Hanford Nuclear Reservation. Ecology retains enforcement authority for the Asbestos NESHAP consistent with RCW 70.105.240. EPA acknowledges this managerial relationship between Ecology and BCAA concerning the Asbestos NESHAP since both agencies are delegated the authority to implement this program. However, EPA asserts that Ecology retains enforcement authority for sources located on the Hanford Nuclear Reservation because Ecology is the enforcing agency.

What Specific Standards Does EPA Propose Not to Delegate?

EPA proposes *not* to delegate to Ecology and the four local agencies any 40 CFR part 61, subparts pertaining to radon or radionuclides. Typically, EPA delegates all standards adopted (and requested) by an air agency and in effect as of a certain date, regardless of whether or not there are any applicable sources within that agency's jurisdiction. As an exception, EPA proposes *not* to delegate the 40 CFR part 61, subparts pertaining to radon or radionuclides which includes: subparts B, H, I, K, Q, R, T, and W. EPA has determined that there are either no sources in these agencies' jurisdictions (and that no new sources are likely to emerge), or if there are sources, the agency does not have sufficient expertise to implement these NESHAPs.

The State Department of Health is currently implementing 40 CFR part 61, subparts H and I as the state radionuclide standards for the State of Washington. The State Department of Health had received interim delegation for these two radionuclide standards (as they pertain to part 70 sources only) on August 2, 1995 (*see* 60 FR 39263). However, this interim delegation lapsed on November 9, 1996, because the State had not received full approval of the Washington Title V operating permits program. (*see* 60 FR 39264). Therefore, EPA is currently responsible for federal implementation of 40 CFR part 61, subparts H and I. (Note: EPA recently received a request from the Department of Health for delegation of federal radionuclide standards at 40 CFR part 61, subparts H and I. EPA is evaluating this request.)

Additionally, EPA is *not* proposing delegation of the regulations implementing CAA sections 112(g) and 112(j), codified at 40 CFR part 63, subpart B, to Ecology and the four local agencies. EPA recognizes that subpart B need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing CAA section 112(g), EPA stated its view that "the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g)" (*see* 61 FR 68397). Similarly, when promulgating the regulations implementing section 112(j), EPA stated its belief that "section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the Title V permit process as the primary vehicle for establishing requirements" (*see* 59 FR 26447). Therefore, state or local agencies implementing the requirements under sections 112(g) and 112(j) do not need approval under section 112(l).

What General Provisions Authorities Does EPA Propose to Delegate?

In a memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July 10, 1998, entitled, "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies," EPA clarified which of the authorities in the General Provisions may and may not be delegated to state and local agencies under 40 CFR part 63, subpart E. Based on this memo, EPA proposes to delegate the part 63, subpart A, sections that are listed below. Delegation of these General Provisions Authorities would enable Ecology and the four local agencies to carry out the Administrator's responsibilities in these sections of subpart A. In delegating these authorities, EPA would be granting Ecology and the four local agencies the authority to make decisions which are not likely to be nationally significant or to alter the stringency of the underlying standard. The intent is that these agencies would make decisions on a source-by-source basis, *not* on a source category-wide basis.

PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES WHICH EPA PROPOSES TO DELEGATE TO ECOLOGY AND THE FOUR LOCALS

Section	Authorities
63.1	Applicability Determinations
63.6(e)	Operations and Maintenance Requirements—Responsibility for Determining Compliance
63.6(f)	Compliance with Non-Opacity Standards—Responsibility for Determining Compliance
63.6(h) [except 63.6(h)(9)].	Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance
63.7(c)(2)(i) and (d).	Approval of Site-Specific Test Plans
63.7(e)(2)(i)	Approval of Minor Alternatives to Test Methods
63.7(e)(2)(ii) and (j).	Approval of Intermediate Alternatives to Test Methods
63.7(e)(2)(iii)	Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors
63.7(e)(2)(iv) and (h)(2), (3).	Waiver of Performance Testing
63.8(c)(1) and (e)(1).	Approval of Site-Specific Performance Evaluation (monitoring) Test Plans
63.8(f)	Approval of Minor Alternatives to Monitoring

PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES WHICH EPA PROPOSES TO DELEGATE TO ECOLOGY AND THE FOUR LOCALS—Continued

Section	Authorities
63.8(f)	Approval of Intermediate Alternatives to Monitoring
63.9 and 63.10 [except 63.10(f)].	Approval of Adjustments to Time Periods for Submitting Reports

In delegating 40 CFR 63.9 and 63.10, "Approval of Adjustments to Time Periods for Submitting Reports," these agencies would have the authority to approve adjustments to the timing that reports are due, but would not have the authority to alter the contents of the reports. For Title V sources, semiannual and annual reports are required by part 70 and nothing herein would change that requirement.

What General Provisions Authorities Are Automatically Granted as Part of These Agencies' Part 70 Operating Permits Program Approval?

Certain General Provisions authorities are automatically granted to Ecology and the four local agencies as part of their part 70 operating permits program approval (regardless of whether the operating permits program approval is interim or final). These are 40 CFR 63.6(i)(1), "Extension of Compliance with Emission Standards," and 63.5(e) and (f), "Approval and Disapproval of Construction and Reconstruction."[1] Additionally, for 40 CFR 63.6(i)(1), Ecology and the four local agencies do not need to have been delegated a particular standard or have issued a part 70 operating permit for a particular source to grant that source a compliance extension. However, Ecology or the local agency must have authority to implement and enforce the particular standard against the source in order to grant that source a compliance extension.

What General Provisions Authorities Are Not Delegated?

In general, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. Listed in the footnotes of the parts 61 and 63 delegation tables at the end of this rule are the specific authorities which cannot be delegated to any state or local agency; which EPA therefore would retain.[2]

How Would This Delegation Affect the Regulated Community?

After a state or local agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency (in this case, Ecology and the four locals) becomes the primary point of contact with respect to that NESHAP. Therefore, if EPA approves this proposal, regulated facilities would direct questions and compliance issues to these agencies. Additionally, all pending questions and compliance issues, even those which may currently be under consideration by EPA, will be resolved by Ecology or the appropriate local agency.

Where Would the Regulated Community Send Notifications and Reports?

If this proposal is approved, facilities within BCAA, OAPCA or YRCAA's jurisdictions would need to submit notifications directly to the respective agency, and also send a copy to EPA, Region X.

Pursuant to 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii), EPA, Region X, proposes to waive the requirement for sources to submit notifications to both Ecology or SCAPCA and EPA, Region X. If approved, facilities within Ecology and SCAPCA's jurisdictions would need to submit notifications and reports directly to Ecology or SCAPCA, and would *not* need to send a copy to EPA, Region X.

How Would This Delegation Affect Indian Country?

The delegation proposed for Ecology and the four local agencies to implement and enforce NESHAPs would not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous federal program approvals or delegations, EPA will continue to implement the NESHAPs in Indian country because these agencies did not adequately demonstrate their authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

What Would Be Ecology and the Four Local Agencies' Reporting Requirements to EPA?

In delegating the authority to implement and enforce these rules, EPA would require that these delegated agencies submit to EPA the following information:

(1) These agencies must input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources. The agencies must enter the information into the AIRS system by September 30 of each year;

(2) These agencies must also report to EPA, Region X, all MACTRAX information upon request, which is typically semiannually. (MACTRAX provides summary data for each implemented NESHAP that EPA uses to evaluate the Air Toxics Program);

(3) These agencies must also provide any additional compliance related information to EPA, Region X, as agreed upon in the Compliance Assurance Agreement;

(4) In receiving delegation for specific General Provisions authorities, these agencies must submit to EPA, Region X, copies of determinations issued pursuant to these authorities (which are listed in the table above);

(5) These agencies must also forward to EPA, Region X, copies of any notifications received pursuant to § 63.6(h)(7)(ii) pertaining to the use of a continuous opacity monitoring system; and

(6) These agencies must submit to EPA's Emission Measurement Center of the Emissions Monitoring and Analysis Division copies of any approved intermediate changes to test methods or monitoring. (For definitions of major, intermediate and minor alternative test methods or monitoring methods, see the

[1] Sections 112(i)(1) and (3) state that "Extension of Compliance with Emission Standards" and "Approval and Disapproval of Construction and Reconstruction" can be implemented by the "Administrator (or a State with a permit program approved under Title V)." EPA interprets that this authority does not require delegation through subpart E and, instead, is automatically granted to States as part of their part 70 operating permits program approval.

[2] For authorities which are not addressed in this rulemaking and not identified in any part 61 or 63 subparts as authorities that cannot be delegated, the agencies may assume that the authorities in question would be delegated.

July 10, 1998, memorandum from John Seitz, referenced above). These intermediate test methods or monitoring changes should be sent via mail or facsimile to: Chief, Source Categorization Group A, U.S. EPA (MD–19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541–1039.

How Would These Agencies Receive Delegation for Future and Revised Standards?

If this proposed delegation is approved, Ecology or a local agency would receive delegation of future standards by the following process:

(1) Ecology or the local agency will send a letter to EPA requesting delegation for future NESHAP standards adopted by reference into state regulations;

(2) EPA will send a letter of response back to Ecology or the local agency granting this delegation request (or explaining why EPA cannot grant the request);

(3) Ecology or the local agency does not need to send a response back to EPA;

(4) If EPA does not receive a negative response from Ecology or the local agency within 10 days of EPA's letter to Ecology or the local agency, then the delegation will be final 10 days after the date of the letter from EPA; and

(5) Periodically, EPA will publish a notice in the **Federal Register** informing the public of the updated delegation.

How Frequently Should These Agencies Update Their Delegation?

Ecology and the four local agencies should update their incorporations by reference of 40 CFR parts 61 and 63 standards and request updated delegation annually, as current standards are revised and new standards are promulgated.

Does the Public Have an Opportunity to Comment?

EPA is seeking comment on its proposal to grant Ecology and the four local agencies the authority to implement and enforce certain 40 CFR parts 61 and 63 NESHAPs. EPA will consider all public comments submitted during the public comment period. Issues raised by the comments will be carefully reviewed and considered in the decision to approve or disapprove Ecology's request. EPA will provide notice of its final decision in the **Federal Register**, including a summary of the reasons for the final decision and a summary of all major comments.

Please note that the public was provided the opportunity to comment on the proposed interim approval of Ecology and the four locals' delegation request for certain 40 CFR part 61 standards, as they apply to part 70 sources, on February 16, 1996 (*see* 61 FR 6184). EPA received public comments on that proposal and responded to them in the August 26, 1996, **Federal Register** (*see* 61 FR 43675). The public has not been given an opportunity to comment on requests submitted since the February 16, 1996, **Federal Register**, on delegation of 40 CFR part 61 standards as they apply to non-part 70 sources, and on delegation of 40 CFR part 63 standards as they apply to both part 70 and non-part 70 sources. That is why EPA is requesting comments at this time.

II. Background and Purpose

What Authority Does EPA Have to Grant Delegations?

Section 112(l) of the federal Clean Air Act (CAA) enables the EPA to approve state and local air toxics programs or rules to operate in place of the federal air toxics program or rules. The federal air toxics program implements the requirements found in section 112 of the CAA pertaining to the regulation of hazardous air pollutants. Approval of an air toxics program is granted by EPA if the Agency finds that:

(1) the state (or local) program is "no less stringent" than the corresponding federal program or rule,

(2) the State (or local) has adequate authority and resources to implement the program,

(3) the schedule for implementation and compliance is sufficiently expeditious, and

(4) the program is otherwise in compliance with federal guidance.

Once approval is granted, the air toxics program can be implemented and enforced by state or local agencies, as well as EPA.

What Is the History of This Delegation?

On February 16, 1996 (*see* 61 FR 6184), EPA proposed to approve the request of Ecology and the Washington local agencies, including BCAA, OAPCA, SCAPCA and YRCAA, for delegation of authority to implement and enforce certain 40 CFR part 61 NESHAP rules, as they apply to part 70 sources. On August 26, 1996 (*see* 61 FR 43675), under the authority of CAA section 112(l)(5) and 40 CFR 63.91, EPA promulgated final interim approval of this request. EPA also promulgated interim approval of a mechanism for Ecology and the four locals to receive future delegation of CAA section 112 standards that are adopted unchanged from federal standards as promulgated.

Why Did EPA Grant Only Interim Approval of the Original Request?

In the August 26, 1996, rulemaking, EPA granted only interim approval of the request for delegation because EPA determined that the criminal authorities under Ecology's statute, RCW 70.94.430, did not meet the stringency requirements of 40 CFR 70.11. In this respect, EPA retained implementation and enforcement authority for these rules as they applied to non-part 70 sources during the interim period or until such time as Ecology and the local agencies could demonstrate that their criminal authorities met EPA stringency requirements. Full approval has been contingent upon a demonstration that Ecology and the local agencies' criminal enforcement authorities are consistent with the requirements of 40 CFR 70.11(a), and therefore 40 CFR 63.91(b)(1) and (b)(6). Specifically, in the proposed interim approval notice (*see* 61 FR 6184), EPA requested the following of Ecology and the local agencies:

(1) Revise RCW 70.94.430 to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

(2) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation, and

(3) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation, or

(4) Demonstrate to the satisfaction of EPA that these authorities are consistent with 40 CFR 70.11, and therefore 40 CFR 63.91.

How Have These Agencies Satisfied Enforcement Authority Deficiencies?

In response to EPA's request, Ecology submitted a letter dated October 7, 1996, that addressed these issues. This documentation included a legal memorandum from the Attorney General of Washington's office dated May 23, 1996, explaining how the statutory authority in RCW 70.94.430(1) may be interpreted to provide the required authority, which satisfied condition 1. In addition, Ecology amended the state regulation at

Washington Administrative Code (WAC) 173–400–105(7) and (8) to include prohibitions against knowingly making false statements and knowingly rendering inaccurate any monitoring device, thus satisfying requirements 2 and 3. Furthermore, in a letter dated February 28, 1997, Ecology provided supporting documentation from BCAA, SCAPCA, and OAPCA describing how they each have addressed these issues. In a letter dated May 5, 1997, Ecology provided supporting documentation from YRCAA describing how it has addressed these issues. Ecology also updated SCAPCA and OAPCA's supporting documentation in letters dated June 4, 1997, and October 27, 1997, respectively. All four local agencies committed to enforcing WAC 173–400–105(7) and (8) until such time as they might adopt their own equivalent regulations on this subject. Based on information provided by Ecology and the four locals, EPA has determined that these actions adequately address the issue of adequate criminal authorities needed to meet the requirements of 40 CFR 63.91 and 70.11, and to obtain final delegation for all sources within Ecology and the four locals' jurisdiction.

After resolving the above issues related to criminal authorities, this delegation was again delayed due to certain state regulations which EPA believed conflicted with the enforcement authorities required for delegation of federal programs. The Regulatory Reform Act of 1995 ("Act"), codified at Chapter 43.05 RCW precludes "regulatory agencies," as defined in RCW 43.05.010, from assessing civil penalties except for a violation of a specific permit term or condition; a repeat violation; a violation that is not corrected within a reasonable period of time; or a violation that has a probability of placing a person in danger of death or bodily harm, a probability of causing more than minor environmental harm, or of causing physical damage to the property of another in excess of one thousand dollars. Counsel for Puget Sound Clean Air has provided EPA with a legal opinion stating that the Act does not apply to local air pollution control authorities in Washington because local air pollution control authorities are not "regulatory agencies" within the meaning of the Act. EPA has reviewed the statutory and regulatory language relied on by Puget Sound Clean Air's counsel in reaching this conclusion and agrees that the Act does not constrain the enforcement authority of local air pollution control authorities and therefore does not pose a bar to delegation of CAA programs to local air pollution control agencies in Washington. As for the Act's applicability to Ecology's enforcement authorities, in letters dated June 10, 1997, and November 20, 1997, EPA advised Ecology that the Act conflicted with the necessary enforcement authority required for authorization or approval of federal environmental programs to Ecology. Subsequently, on December 10, 1997, in accordance with RCW 43.05.902, Ecology formally notified the Governor of Washington that a conflict existed between the Act and the requirements for State authorization or approval of certain federal environmental programs. As a result of the determination of an existing conflict, RCW 43.05.040, .050, .060(3), and .070, which prohibit the State from issuing civil penalties except under certain circumstances, were deemed to be inoperative to several State environmental programs administered by the Department of Ecology, including the CAA program. In reliance on this determination, EPA believes that the conflict between the Act and the requirements for EPA approval of Ecology's CAA programs has been addressed by rendering inoperative those portions of the Act that conflicted with Ecology's required enforcement authorities.

What Changes Have Been Made to the Original Delegation Request?

Since the August 26, 1996, rulemaking, Ecology has submitted several updated delegation requests on behalf of itself and the four local agencies to reflect the adoption of revised or newly promulgated federal standards. Based on these updated requests, Ecology and the four locals' current request includes certain subparts in 40 CFR parts 61 and 63 in effect on July 1, 2000, as adopted by reference into WAC 173–400–075 on November 22, 2000, as they apply to all sources. Two exceptions to this are: (1) Ecology, BCAA, and OAPCA, have requested the Asbestos NESHAP for part 70 sources only; and (2) Ecology has requested the Perchloroethylene Dry Cleaning NESHAP for part 70 sources only, as is allowed by their rule.

Both Ecology and SCAPCA have requested that EPA waive the part General Provisions notification requirements, in accordance with 40 CFR 63.9 and 63.10, such that sources would not need to send notifications and reports to EPA, Region X. Ecology submitted these requests in its letter dated November 1, 1999, and SCAPCA submitted a request in a letter dated March 3, 1997. Ecology and SCAPCA prefer to be the sole recipient of notifications and reports to reduce the burden on sources and EPA. By this action, EPA, Region X is waiving the notification and reporting requirements in accordance with 40 CFR 63.9 and 63.10, such that sources only need to provide notification and reports to Ecology or SCAPCA, and would not need to send notifications and reports to EPA, Region X.

In addition, Ecology and SCAPCA clarified to EPA, Region X that they seek delegation of the reporting requirements of 40 CFR 61.10 such that sources covered by this provision need only send reports to Ecology or SCAPCA and not to EPA. By this action, EPA is delegating the reporting requirements of 40 CFR 61.10 to Ecology and SCAPCA, and sources only need to provide the reports under that section to Ecology or SCAPCA.

Ecology also requested approval of Ecology's state regulation at WAC 173–400–091 to recognize this regulation as federally enforceable for purposes of establishing potential-to-emit limitations. EPA is not taking action on this request because this regulation has already received federal approval in a final **Federal Register** rule dated June 2, 1995 (see 60 FR 28726).

III. Summary of Action

Pursuant to the authority of CAA section 112(l) of the Act and 40 CFR part 63, subpart E, EPA is proposing to approve Ecology's request, and the requests of BCAA, OAPCA, SCAPCA and YRCAA, for program approval and delegation of authority to implement and enforce specific 40 CFR parts 61 and 63 Federal NESHAP regulations (as they apply to both part 70 and non-part 70 sources) which have been adopted into state law. EPA is proposing to delegate this authority to Ecology for the purpose of direct implementation (within Ecology's jurisdiction). EPA is also proposing to delegate this authority to BCAA, OAPCA, SCAPCA and YRCAA. Additionally, EPA proposes to approve the mechanism by which Ecology and the four local agencies will receive delegation of future NESHAP regulations that are adopted unchanged into state law; and also proposes to waive the requirement for sources within Ecology and SCAPCA's jurisdictions to send copies of notifications and reports to EPA.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive

Order 12866, entitled "Regulatory Planning and Review."

This rule is not subject to Executive Order 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State program and rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of the Executive Order does not apply to this rule, EPA did consult with representatives of State and local governments in developing this rule, and this rule is in response to the State's and local's delegation request.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government entities with jurisdiction over populations of less than 50,000.

Delegation of authority to implement and enforce unchanged federal standards under section 112(l) of the CAA does not create any new requirements but simply transfers primary implementation authorities to the State (or local) agency. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the delegation action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

G. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 4, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 5, 2001.

Ron Kreizenbeck,

Acting Regional Administrator, Region X.

Title 40, chapter I, parts 61 and 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

Subpart A—General Provisions

2. Section 61.04 is amended by revising paragraphs (b)(WW)(i), (iv), (v), and (vi), by adding paragraph (b)(WW)(viii); and by revising the table in paragraph (c)(10) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(WW)(i)Washington: State of Washington, Department of Ecology (Ecology), P.O. Box 47600, Olympia, WA 98504–7600.

Note: For a table listing Ecology's delegation status, see paragraph (c)(10) of this section.

* * * * *

(iv) Spokane County Air Pollution Control Authority (SCAPCA), West 1101 College Avenue, Suite 403, Spokane, WA 99201.

Note: For a table listing SCAPCA's delegation status, see paragraph (c)(10) of this section.

(v) Yakima Regional Clean Air Authority (YRCAA), 6 South 2nd, Room 1016, Yakima, WA 98901.

Note: For a table listing YRCAA's delegation status, see paragraph (c)(10) of this section.

(vi) Olympic Air Pollution Control Authority (OAPCA), 909 Sleater-Kinney Road SE, Suite 1, Lacey, WA 98503.

Note: For a table listing OAPCA's delegation status, see paragraph (c)(10) of this section.

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(viii) Benton Clean Air Authority (BCAA), 650 George Washington Way, Richland, WA 99352.

Note: For a table listing BCAA's delegation status, see paragraph (c)(10) of this section.

* * * * *

(c) * * *

(10) * * *

DELEGATION STATUS FOR PART 61 STANDARDS—REGION X

Subpart	AK	ID	Oregon		Washington							
	ADEC[1]	IDE Q[2]	ODEQ[3]	LRAPA[4]	Ecology[5]	BCAA[6]	NWAPA[7]	OAPCA[8]	PSCAA[9]	SCAPCA[10]	SWAPCA[11]	YRCAA[12]
A. General Provisions[13]	X				X	X	X	X	X	X	X	X
B. Radon from Underground Uranium Mines												
C. Beryllium					X	X	X	X	X	X	X	X
D. Beryllium Rocket Motor Firing					X	X	X	X	X	X	X	X
E. Mercury	X				X	X	X	X	X	X	X	X
F. Vinyl Chloride					X	X	X	X	X	X	X	X
H. Emissions of Radionuclides other than Radon from Dept of Energy facilities												
I. Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H												
J. Equipment Leaks of Benzene	X				X	X	X	X	X	X	X	X
K. Radionuclides from Elemental Phosphorus Plants												
L. Benzene from Coke Recovery					X	X	X	X	X	X	X	X
M. Asbestos	[1]X				[5]X	[6]X	X	[8]X	X	X	X	X
N. Arsenic from Glass Plants					X	X	X	X	X	X	X	X
O. Arsenic from Primary Copper Smelters					X	X	X	X	X	X	X	X
P. Arsenic from Arsenic Production Facilities					X	X	X	X	X	X	X	X
Q. Radon from Dept of Energy facilities												
R. Radon from Phosphogypsum Stacks												
T. Radon from Disposal of Uranium Mill Tailings												
V. Equipment Leaks	X				X	X	X	X	X	X	X	X
W. Radon from Operating Mill Tailings												
Y. Benzene from Benzene Storage Vessels	X				X	X	X	X	X	X	X	X
BB. Benzene from Benzene Transfer Operations					X	X	X	X	X	X	X	X
FF. Benzene Waste Operations	X				X	X	X	X	X	X	X	X

[1] Alaska Department of Environmental Conservation (1/18/97)
Note: Alaska received delegation for § 61.145 and § 61.154 of subpart M (Asbestos), along with other sections and appendices which are referenced in § 61.145, as § 61.145 applies to sources required to obtain an operating permit under Alaska's regulations. Alaska has not received delegation for subpart M for sources not required to obtain an operating permit under Alaska's regulations.
[2] Idaho Division of Environmental Quality.
[3] Oregon Department of Environmental Quality.
[4] Lane Regional Air Pollution Authority.
[5] Washington Department of Ecology (7/1/00)
Note: Delegation of subpart M of this part applies to major Title V sources only, including Hanford. (Pursuant to RCW 70.105.240, only Ecology can enforce regulations at Hanford).
[6] Benton Clean Air Authority (7/1/00)
Note: Delegation of subpart M of this part applies to major Title V sources only (excluding Hanford).
[7] Northwest Air Pollution Authority (7/1/99).
[8] Olympic Air Pollution Control Authority (July 1, 2000).
Note: Delegation of subpart M of this part applies to major Title V sources only.
[9] Puget Sound Clean Air Agency (7/1/99).

[10] Spokane County Air Pollution Control Authority (7/1/00).
[11] Southwest Air Pollution Control Authority (8/1/98).
[12] Yakima Regional Clean Air Authority (7/1/00).
[13] Authorities which are not delegated include: §§ 61.04(b); 61.12(d)(1); 61.13(h)(1)(ii) for approval of major alternatives to test methods; § 61.14(g)(1)(ii) for approval of major alternatives to monitoring; § 61.16; § 61.53(c)(4); any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring; and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated. For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July 10, 1998, entitled, "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies."

Note to paragraph (c)(10): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by revising the table in paragraph (a) (47)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(47) * * *

(i) * * *

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF WASHINGTON

Subpart	Ecology[2]	BCAA[3]	NWAPA[4]	OAPCA[5]	PSCAA[6]	SCAPCA[7]	SWAPCA[8]	YRCAA[9]
A General Provisions[1]	X	X	X	X	X	X	X	X
D. Early Reductions	X	X	X	X	X	X	X	X
F. HON–SOCMI	X	X	X	X	X	X	X	X
G. HON–Process Vents	X	X	X	X	X	X	X	X
H. HON–Equipment Leaks	X	X	X	X	X	X	X	X
I. HON–Negotiated Leaks	X	X	X	X	X	X	X	X
L. Coke Oven Batteries	X	X	X	X	X	X	X	X
M. Perchloroethylene Dry Cleaning	[2]X		X		X		X	[9]X
N. Chromium Electroplating	X	X	X	X	X	X	X	X
O. Ethylene Oxide Sterilizers	X	X	X	X	X	X	X	X
Q. Industrial Process Cooling Towers	X	X	X	X	X	X	X	X
R. Gasoline Distribution	X	X	X	X	X	X	X	X
S. Pulp and Paper[10]	X	X	X	X	X	X	X	X
T. Halogenated Solvent Cleaning	X	X	X	X	X	X	X	X
U. Polymers and Resins I	X	X	X	X	X	X	X	X
W. Polymers and Resins II–Epoxy	X	X	X	X	X	X	X	X
X. Secondary Lead Smelting	X	X	X	X	X	X	X	X
Y. Marine Tank Vessel Loading			X		X		X	
AA. Phosphoric Acid Manufacturing Plants	X	X	X	X	X	X		X
BB. Phosphate Fertilizers Production Plants	X	X	X	X	X	X		X
CC. Petroleum Refineries	X	X	X	X	X	X	X	X
DD. Off-Site Waste and Recovery	X	X	X	X	X	X	X	X
EE. Magnetic Tape Manufacturing	X	X	X	X	X	X	X	X
GG. Aerospace Manufacturing & Rework	X	X	X	X	X	X	X	X
HH. Oil and Natural Gas Production Facilities	X	X	X	X	X	X		X
II. Shipbuilding and Ship Repair	X	X	X	X	X	X	X	X
JJ. Wood Furniture Manufacturing Operations	X	X	X	X	X	X	X	X
KK. Printing and Publishing Industry	X	X	X	X	X	X	X	X
LL. Primary Aluminum[11]	X		X		X			
OO. Tanks—Level 1	X	X	X	X	X	X		X
PP. Containers	X	X	X	X	X	X		X
QQ. Surface Impoundments	X	X	X	X	X	X		X
RR. Individual Drain Systems	X	X	X	X	X	X		X
SS. Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process	X	X	X	X	X	X		X
TT. Equipment Leaks—Control Level 1	X	X	X	X	X	X		X
UU. Equipment Leaks—Control Level 2	X	X	X	X	X	X		X
VV. Oil-Water Separators and Organic-Water Separators	X	X	X	X	X	X		X
WW. Storage Vessels (Tanks)—Control Level 2			X		X			
YY. Source Categories: Generic MACT			X		X			
CCC. Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants			X		X			
DDD. Mineral Wool Production			X		X			
EEE.Hazardous Waste Combustors			X		X			
GGG. Pharmaceuticals Production			X		X			
HHH. Natural Gas Transmission and Storage Facilities			X		X			
III. Flexible Polyurethane Foam Production			X		X			
JJJ. Polymers and Resins IV			X		X		X	
LLL. Portland Cement Manufacturing			X		X			
MMM. Pesticide Active Ingredient Production			X		X			
NNN. Wool Fiberglass Manufacturing			X		X			
OOO. Manufacture of Amino Phenolic Resins								
PPP. Polyether Polyols Production			X		X			
RRR. Secondary Aluminum Production								
TTT. Primary Lead Smelting			X		X			
VVV. Publicly Owned Treatment Works								

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF WASHINGTON—Continued

Subpart	Ecology[2]	BCAA[3]	NWAPA[4]	OAPCA[5]	PSCAA[6]	SCAPCA[7]	SWAPCA[8]	YRCAA[9]
XXX. Ferroalloys Production: Ferromanganese & Silicomanganese			X		X			

[1] General Provision authorities which may not be delegated include: §§ 63.6(g); 63.6(h)(9); 63.7(e)(2)(ii) and (f) for approval of major alternatives to test methods; § 63.8(f) for approval of major alternatives to monitoring; § 63.10(f); and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated. For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies."

[2] Washington Department of Ecology (July 1, 2000)

Note: Delegation of Subpart M to Ecology applies to part 70 sources only.

[3] Benton Clean Air Authority (July 1, 2000)

[4] Northwest Air Pollution Authority (July 1, 1999)

[5] Olympic Air Pollution Control Authority (July 1, 2000)

[6] Puget Sound Clean Air Agency (July 1, 1999)

[7] Spokane County Air Pollution Control Authority (July 1, 2000)

[8] Southwest Air Pollution Control Authority (August 1, 1998)

[9] Yakima Regional Clean Air Authority (July 1, 2000)

Note: Delegation of Subpart M to YRCAA applies to part 70 sources only.

[10] Subpart S of this part is delegated to these agencies as applies to all applicable facilities and processes as defined in 40 CFR 63.440, *except* kraft and sulfite pulping mills. The Washington Department of Ecology (Ecology) retains the authority to regulate kraft and sulfite pulping mills in the State of Washington, pursuant to Washington Administrative Code (WAC) 173–405–012 and 173–410–012.

[11] Subpart LL of this part cannot be delegated to any local agencies in Washington because Ecology retains the authority to regulate primary aluminum plants, pursuant to WAC 173–415–012.

Note to paragraph (a)(47): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

[FR Doc. 01–16692 Filed 7–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6996–8]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Chemical Accident Prevention Provisions; Risk Management Plans; New Jersey Department of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA), the New Jersey Department of Environmental Protection (NJDEP) requested delegation of the Federal Chemical Accident Prevention Provisions promulgated by EPA under section 112(r) of the CAA for all stationary sources with covered processes (subject sources) under its jurisdiction except those having certain specified flammable liquified petroleum gases (LPG). This action proposes to grant such authority. In the Rules section of this **Federal Register**, EPA is granting NJDEP the authority to implement and enforce the Toxic Catastrophe Prevention Act Program rule, effective July 20, 1998, at New Jersey Administrative Code (NJAC) 7:31–1.1 through 1.10 and NJAC 7:31–2.1 through 8.2 in place of the Federal Chemical Accident Prevention Provisions for all subject sources under NJDEP's jurisdiction. EPA retains the authority to regulate subject sources having processes covered only because they contain regulated quantities of LPG gases regulated under the New Jersey Liquified Petroleum Gas Act of 1950 (NJSA 21:1B). The direct final rule explains the rationale for this approval. EPA is taking direct final action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time. In the spirit of Executive Orders 13132 and 13175, and consistent with EPA policy to promote communications between EPA and State, local and tribal governments, EPA specifically solicits comments on this proposed rule from State, local and tribal officials.

DATES: Written comments must be received by August 2, 2001.

ADDRESSES: Written comments should be addressed to: Steven C. Riva, Chief, Permitting Section, Air Programs Branch, U. S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007–1866, with a copy to Ms. Shirlee Schiffman, Chief, Bureau of Chemical Release Information and Prevention, New Jersey Department of Environmental Protection, P.O. Box 424, 22 South Clinton Avenue, Trenton, New Jersey 08625–0424. Copies of the submitted requests are available for public review at EPA Region 2's office during normal business hours (docket # A–2000–23). Any State responses to comments must be submitted to the Administrator within 30 days of the close of the public comment period.

FOR FURTHER INFORMATION CONTACT: Umesh Dholakia at (212) 637–4023

SUPPLEMENTARY INFORMATION:

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: May 25, 2001.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

[FR Doc. 01–16562 Filed 7–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 264

[FRL–7002–8]

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take action on NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors. The revisions make targeted amendments to the regulations for hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators promulgated on September 30, 1999 (NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors). The revisions make improvements to the implementation of the emission standards, primarily in the areas of compliance, testing and monitoring. We are proposing these revisions to make it easier to comply with the September 30, 1999 final rule.

In the "Rules and Regulations" section of the **Federal Register**, we are amending the September 30, 1999 final rule without prior proposal to incorporate these revisions because we view the amendments as noncontroversial and anticipate no adverse comment. We have explained our reasons for this approach in the preamble to the direct final rule. If we receive adverse comment on a distinct amendment, however, we will withdraw the direct final action for that amendment and the amendment will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on any amendment must do so at this time.

DATES: Written comments must be received by August 17, 2001.

ADDRESSES: If you wish to comment on this proposed rule, you must send an original and two copies of the comments referencing Docket Number F–2001–RC4P–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002; or, (2) if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the **SUPPLEMENTARY INFORMATION** section below.

You may view public comments and supporting materials in the RIC. The RIC is open from 9 am to 4 pm Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $ 0.15 per page. For information on accessing an electronic copy of the data base, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday–Friday, 9 am to 4 pm, Eastern Standard Time. For more information on specific aspects of this proposed rule, contact Mr. Frank Behan at 703–308–8476, *behan.frank@epa.gov*, or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: This document concerns NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Submittal of Comments

You may submit comments electronically by sending electronic mail through the Internet to: *rcra-docket@epamail.epa.gov*. You should identify comments in electronic format with the docket number F–2001–RC4P–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. The official record for this action will be kept in the paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC as described above. We may seek clarification of electronic comments that are garbled in transmission or during conversion to paper form.

You should not electronically submit any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

If you do not submit comments electronically, we are asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential that you specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow us to convert the comments into one of the word processing formats used by the Agency. Please use mailing envelopes designed to protect the diskettes. We emphasize that submission of diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

I. Description of Proposed Amendments

Today's notice proposes specific changes to the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I) rule, published September 30, 1999 (64 FR 52828). After promulgation, commenters (primarily the regulated community) raised numerous issues through informal comments and during litigation settlement discussions. After considering the issues raised, we have decided to propose for comment a limited number of changes to the Phase I final rule, most of the proposed changes relating to compliance and implementation of the rule.

In the "Rules and Regulations" section of the **Federal Register**, we are amending the September 30, 1999 final rule without prior proposal to incorporate these revisions because we view the amendments as noncontroversial and anticipate no adverse comment. We have explained our reasons for this approach in the preamble to the direct final rule, and do not believe it necessary to repeat those discussions here. If we receive adverse comment on a distinct amendment, we will withdraw the direct final action for that amendment and the amendment will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on any amendment must do so at this time.

For further information, please see the "Rules and Regulations" section of today's **Federal Register** publication.

II. How Can I Influence EPA's Thinking on This Rule?

In developing this rule, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this rule may effect you, or other relevant information. We welcome your views on all aspects of this rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns. Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.

• Make sure to submit your comments by the deadline in this notice.

• Be sure to include the name, date, and docket number with your comments.

List of Subjects

40 CFR Part 63

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 264

Air pollution control, Environmental Protection Agency, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

Dated: June 18, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–16427 Filed 7–2–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 264, 265, 266, and 270

[FRL–7001–9]

RIN 2050–AE79

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Proposed Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act (CAA), EPA established new emissions standards for hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators on September 30, 1999 (NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors). Following promulgation of this final rule, the regulated community, through informal comments and through litigation, raised numerous issues related to specific requirements of the final rule. In response to relevant concerns, we are proposing and taking comment on certain targeted changes to the final rule. These regulatory changes do not propose to amend the numerical emission standards, but rather focus on improvements to the implementation of the emission standards, primarily in the areas of compliance, testing and monitoring.

DATES: Comments must be submitted by August 17, 2001.

ADDRESSES: If you wish to comment on this proposed rule, you must send an original and two copies of the comments referencing Docket Number F–2001–RC5P–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460–0002; or, (2) if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the **SUPPLEMENTARY INFORMATION** section below.

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SUPPLEMENTARY INFORMATION:

Submittal of Comments

You may submit comments electronically by sending electronic mail through the Internet to: *rcra-docket@epamail.epa.gov*. You should identify comments in electronic format with the docket number F–2001–RC5P–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. The official record for this action will be kept in the paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC as described above. We may seek clarification of electronic comments that are garbled in transmission or during conversion to paper form.

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If you do not submit comments electronically, we are asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential that you specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow us to convert the comments into one of the word processing formats used by the Agency. Please use mailing envelopes designed to protect the diskettes. We emphasize that submission of diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

Acronyms Used in the Rule

APCD—Air pollution control device
ASME—American Society of Mechanical Engineers
CAA—Clean Air Act
CEMS—Continuous emissions monitors/monitoring system
COMS—Continuous opacity monitoring system
CFR—Code of Federal Regulations
DOC—Documentation of Compliance
DRE—Destruction and removal efficiency
dscf—Dry standard cubic feet
dscm—Dry standard cubic meter
EPA/USEPA—United States Environmental Protection Agency
gr—Grains
HAP—Hazardous air pollutant
HWC—Hazardous waste combustor
MACT—Maximum Achievable Control Technology
NESHAP—National Emission Standards for HAPs
ng—Nanograms
NIC—Notice of Intent to Comply
NOC—Notification of compliance
OPL—Operating parameter limit
PM—Particulate matter
POHC—Principal organic hazardous constituent
ppmv—Parts per million by volume
RCRA—Resource Conservation and Recovery Act
TEQ—Toxicity equivalence

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Part One: Overview and Background for This Proposed Rule

I. What Is the Purpose of This Proposed Rule?

Today's notice proposes specific changes to the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I) rule, published September 30, 1999 (64 FR 52828). After promulgation, commenters (primarily the regulated community) raised numerous potential issues through informal comments and during litigation settlement discussions. After considering the issues raised, we have decided to propose for comment twenty amendments to the final rule, most of the proposed changes relating to compliance and implementation of the rule.

The ability of facilities to meet the September 30, 2002 compliance date may be dependent upon when these proposed changes are made final. While we expect to complete the rulemaking process and publish final amendments in a timely manner, we request comments on how the timing of these rule changes could impact compliance. In addition, we solicit comments on solutions to address compliance problems should they arise (e.g., use of § 63.1206(b)(4) to obtain an extension of compliance with the emission standards of up to one year).

In the "Rules and Regulations" section of the **Federal Register**, we are taking direct final action on thirteen additional amendments to the Phase I rule. If you wish to comment on those amendments, you must submit comments following the directions in the **ADDRESSES** section of that action.

The remaining sections of this part provide additional background information on the Phase I final rule.

II. What Is the Phase I Rule?

In the Phase I final rule, we adopted National Emissions Standards for Hazardous Air Pollutants to control toxic emissions from the burning of hazardous waste in incinerators, cement kilns, and lightweight aggregate kilns. These emission standards created a technology-based national cap for hazardous air pollutant emissions from the combustion of hazardous waste in these devices. Additional risk-based conditions necessary to protect human health and the environment may be imposed (assuming a proper, site-specific justification) under section 3005(c)(3) of the Resource Conservation and Recovery Act (RCRA).

Section 112 of the CAA requires emissions standards for hazardous air pollutants to be based on the performance of the Maximum Achievable Control Technology (MACT). These standards apply to the three major categories of hazardous waste burners—incinerators, cement kilns, and lightweight aggregate kilns. For purposes of today's proposal, we refer to these three categories collectively as hazardous waste combustors (HWC). Hazardous waste combustors burn about 80% of the hazardous waste combusted annually within the United States. The Phase I HWC MACT standards are expected to achieve significant reductions in the amount of hazardous air pollutants being emitted each year.

Additionally, the Phase I HWC MACT rule satisfies our obligation under RCRA (the main statute regulating hazardous waste management) to ensure that hazardous waste combustion is conducted in a manner protective of human health and the environment. By using both CAA and RCRA authorities in a harmonized fashion, we consolidate regulatory control of hazardous waste combustion into a single set of regulations, thereby minimizing the potential for conflicting or duplicative federal requirements.

More information on the Phase I HWC MACT rule is available electronically from the World Wide Web at *www.epa.gov/hwcmact*.

III. What Related Actions Have Been Taken Since Publication of the Phase I Rule?

On November 19, 1999, we issued a technical correction to the Phase I HWC MACT final rule (64 FR 63209). It clarified our intent with respect to certain aspects of the Notification of Intent to Comply and Progress Report requirements of the 1998 "Fast Track" final rule (63 FR 33783). Additionally, specific to the Phase I HWC MACT final rule, we corrected several typographical errors and omissions.

On July 10, 2000, we issued a second technical correction to the Phase I HWC MACT final rule (65 FR 42292). This action corrected additional typographical errors and clarified several issues to make the Phase I rule easier to understand and implement. This action also supplied one omission from the technical correction published on November 19, 1999, and made one correction to the related June 19, 1998 "Fast Track" final rule (63 FR 33783).

On July 25, 2000, the Court of Appeals for the District of Columbia decided *Chemical Manufacturers Association* v. *EPA*, 217 F. 3d 861 (D.C. Cir. No. 99–1236). The court held that EPA had the legal authority to

promulgate a requirement of early cessation of hazardous waste burning activity for those sources not intending to comply with the MACT emission standards. However, the court also held that we had not adequately explained our reasons for imposing the early cessation requirement. As a result, the court vacated the early cessation requirement and the related Notice of Intent to Comply (NIC) and Progress Report requirements. This vacature took effect on October 11, 2000. Since the requirements were not vacated until after sources were required to submit their NICs (on October 2, 2000), we determined that the court's action does not impact a source's ability to request a RCRA permit modification using the streamlined procedures of 40 CFR 270.42(j)(1). As long as a source complied with the NIC provisions (including filing the NIC before the provision was vacated), the source has met the requirements in 40 CFR 270.42(j)(1) and is therefore eligible for the streamlined RCRA permit modification process. The court's decision does not impact the emission standards or compliance schedule for the other requirements of the HWC NESHAP Subpart EEE.

On November 9, 2000, we issued a third technical correction to the Phase I HWC MACT final rule (65 FR 67268). It clarified our intent with respect to the applicability of new source versus existing source standards for hazardous waste incinerators. This action also clarified three issues to make the Phase I rule easier to understand and implement.

On May 14, 2001, we issued a final rule implementing two court orders that removed affected provisions of the Phase I HWC MACT final rule from the Code of Federal Regulations (66 FR 24270). This action removed the Notice of Intent to Comply provisions (discussed above) and certain operating parameter limits of baghouses and electrostatic precipitators.

IV. How Can I Influence EPA's Thinking on This Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this rule may effect you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below;

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

Part Two: NESHAP—Proposed Amendments to the HWC Final Rule

I. Definition of Research, Development, and Demonstration Sources

Section 63.1200, Table 1, exempts research, development, and demonstration sources from the Part 63, Subpart EEE, hazardous waste combustor MACT standards.[1] We explained at promulgation that the hazardous waste combustor emission standards and compliance assurance requirements may not be appropriate for these sources because of their typically intermittent operations and small size. See 64 FR at 52839.

The rule defines research, development, or demonstration sources as those sources engaged in laboratory, pilot plant, or prototype demonstration operations: (1) Whose primary purpose is to conduct research, development, or short-term demonstration of an innovative and experimental hazardous waste treatment technology or process; and (2) where the operations are under the close supervision of technically-trained personnel.

Stakeholders express concern that the definition of demonstration source and the provision to allow unlimited one-year time extensions to the exemption may result in commercial, production sources taking inappropriate advantage of the exemption. We request comment on approaches to preclude inappropriate use of the exemption for demonstration sources. Approaches that we are considering include: (1) Clearly distinguishing between research and development sources versus demonstration sources, and limiting the exemption for demonstration sources to one year or less; or (2) requiring documentation of how a source's demonstration of an innovative or experimental hazardous waste treatment technology or process is different from the waste management services provided by a commercial hazardous waste combustor.

II. Identification of an Organics Residence Time That Is Independent of and Shorter Than the Hazardous Waste Residence Time

"Hazardous waste residence time" is defined at § 63.1201(a) as the time elapsed from cutoff of the flow of hazardous waste into the combustor (including, for example, the time required for liquids to flow from the cutoff valve into the combustor) until solid, liquid, and gaseous materials from the hazardous waste, excluding residues that may adhere to combustion chamber surfaces, exit the combustion chamber. As stakeholders recognize, hazardous waste residence time has significant regulatory and enforcement implications. For example, if a source were to exceed an operating requirement or emission standard after the hazardous waste residence time has expired, it is not a violation if the exceedance occurred during start-up or shut-down, or because of a malfunction provided that the source follows the procedures and corrective measures prescribed in the start-up, shut-down, and malfunction plan. In addition, after the hazardous waste residence time has expired, sources may elect to comply with emission standards the Agency has promulgated under sections 112 and 129 of the Clean Air Act for source categories that do not burn hazardous waste in lieu of the hazardous waste combustor standards of Subpart EEE, Part 63. See § 63.1206(b)(1).[2]

Since promulgation of the hazardous waste combustor rule, stakeholders have raised the issue of whether a hazardous waste organics residence time should be defined that is independent of and shorter than the bulk solids residence time.

Industry stakeholders recommend an approach to calculate a hazardous waste organics residence time that defines when organic constituents in solid materials have been destroyed.[3] Although the concept has merit, several

[1] Hazardous waste research, development, and demonstration sources remain subject to RCRA permit requirements under § 270.65. See 64 FR at 52839.

[2] As discussed in Section XIX, if sources elect to comply temporarily with alternative section 112 or 129 MACT standards after the hazardous waste residence time has expired, sources nonetheless remain an affected source only under Subpart EEE for hazardous waste combustors.

[3] Email from David Case, Environmental Treatment Council, to Bob Holloway, EPA, with attachment entitled "Proposed Method for Calculation of Hazardous Constituents Retention Time," dated June 7, 2000.

issues must be addressed prior to revising the rule to allow sources to petition the Administrator for case-by-case determinations of an organics residence time. We therefore are not proposing a change at this time but are requesting comment on the concept and implementation of an organic residence time.

As contemplated by stakeholders, the hazardous waste organics residence time would be independent of and considerably shorter than the bulk hazardous waste residence time discussed above. As with the bulk hazardous waste residence time, an organics residence time would have significant regulatory and enforcement implications. After the hazardous waste organics residence time has expired, an exceedance of the carbon monoxide or hydrocarbon emission standard or an operating parameter limit associated with the destruction and removal efficiency (DRE) or dioxin/furan emission standards would not be a violation if the exceedance occurred during start-up or shut-down or were caused by a malfunction and sources comply with the procedures and corrective measures prescribed in the start-up, shut-down, and malfunction plan. In addition, it seems appropriate to allow sources to elect to comply with standards the Agency has promulgated under sections 112 or 129 of the Clean Air Act to control organic emissions for source categories that do not burn hazardous waste in lieu of the hazardous waste combustor standards of Subpart EEE, Part 63. As discussed in Section III below, however, providing only a partial transition from the hazardous waste combustor MACT standards of Subpart EEE may be problematic.

A. What Is the Approach Stakeholders Recommend to Calculate Hazardous Waste Organics Residence Time?

Stakeholders suggest that a hazardous waste organics residence time can be calculated as the sum of: (1) The time for the solid matrix containing the organic constituents to reach the target temperature required to destroy the organics; (2) the time for the organic constituent to be destroyed at the target temperature; and (3) the time for the gas to pass through the combustion chamber and exit the air pollution control system. The time required for the organic constituents within the solid matrix to reach the target temperature would be calculated using standard heat transfer equations which are available in chemical engineering references.[4] Stakeholders state that these equations can be applied to various materials, assuming the thermal conductivity of the material. These equations also can be applied easily to various geometries, such as a 55 gallon drum (right circular cylinder), or to irregular shaped items resulting from shredder feed.

Stakeholders state that once the solid is at the target temperature the time for the hazardous constituent to be destroyed can be calculated using equations that are readily available from Dr. Dellinger's work on developing the low oxygen thermal stability index for hazardous organic compound incinerability.[5] Using Dellinger's kinetic models under low oxygen conditions, the destruction time for hazardous constituents can be calculated.

To implement this approach to calculate a hazardous waste organics residence time, stakeholders suggest that sources should include the retention time evaluation and calculations in a report developed by an independent Professional Engineer with combustion engineering expertise. Sources would submit the report to the Administrator for review and approval.

B. How Would Site-Specific Factors Be Addressed?

Stakeholders state that the general approach can be readily applied to various scenarios as necessary on a site-specific basis. Stakeholders have considered how some scenarios could be addressed, as discussed below, and believe that approaches to address other scenarios would become apparent as the approach is applied to the site-specific situation.

1. How Would Various Geometric Shapes and Sizes of Solids Be Addressed?

Stakeholders acknowledge that an incineration process can have several types of solid feed such as bulk solids, direct drum feed in various sizes, shredded waste feed, and other mechanisms. Each of these solid feed scenarios can be evaluated for the heat transfer step by assigning an appropriate geometry to the solid for use in the heat flux equations. Heat transfer will take place more rapidly in shredded waste feed, in which the particle size of the solids is reduced. At the other extreme is a monolith in a 55 gallon drum, which will require a longer time for the center point to reach the target temperature. The center point of the monolith can be considered the point where the organic constituent is located for ensuring a worst case for the heat transfer step. Site-specific feed can be modeled by evaluating the actual geometry and size of solid feed and post-shredder feed.

2. How Would the Thermal Conductivity of the Solid Be Determined?

The time for the solid mass to reach temperature will depend on the thermal conductivity of the solid mass. The thermal conductivity is a key parameter in the heat transfer equation. The types of solid feed managed at a particular site can be used to select a worst case material for thermal conductivity. Stakeholders present as an example a facility that feeds certain polymeric monolithic materials in 55 gallon drums. Certain polymers may have a low thermal conductivity that can be used as a worst case. References such as Perry's Chemical Engineering Handbook can be consulted to provide a range of thermal conductivities for consideration. For example, stakeholders note that polypropylene has one of the lower thermal conductivities of 0.08 BTU/hr-sq.ft.-°F (see Table 23–10 in Perry's Handbook). This might provide a good worst case value to use for the solid mass thermal conductivity for this source.

3. How Would a Worst-Case Organic Constituent Be Selected?

Stakeholders suggest that a worst-case hazardous organic constituent could be selected on the basis of its ranking in various incinerability indices, just as principal organic hazardous constituents (POHCs) are selected for demonstrating destruction and removal efficiency (DRE). A constituent that ranks high in both the heat of combustion and low oxygen thermal stability indices could be used. In addition, a few compounds with complex structures that would be expected to yield various decomposition byproducts could be modeled. Examples of such compounds are pentachlorophenol, perchloroethylene, and certain pesticides. Stakeholders suggest that Dr. Dellinger's work, cited above, can be consulted to select additional worst case constituents.

[4] Geankoplis, C.J., "Transport Processes and Unit Operations," Chapters 3 and 4, Allyn and Bacon, Inc., Boston, 1978.

[5] B. Dellinger, et al, "Development of a Thermal Stability Based Index of Hazardous Waste Incinerability," University of Dayton Research Institute Final Report Under EPA Cooperative Agreement CR–813936, November 15, 1991. Also, B. Dellinger, et al, "Development of a Thermal Stability Based Index of Hazardous Organic Compound Incinerability," *Environmental Science and Technology*, 24, p.316, March 1990.

4. How Would the Target Destruction Temperature Be Selected?

Stakeholders suggest that target destruction temperatures can be selected based on the kinetic studies of Dr. Dellinger. Stakeholders state that Dellinger has generally found that any organic chemical and its organic byproducts can be completely destroyed at 800°C.[6] Also, the range of destruction temperatures published by Dellinger can be consulted to select a target temperature on a site-specific basis for the types of wastes that are managed.

5. How Would Paralytic and Starved Air Conditions Be Addressed?

Stakeholders acknowledge that certain solid geometries may result in the organic constituent being isolated from combustion air, such that pyrolytic conditions must be assumed. Nonetheless, stakeholders state that a destruction time can still be calculated and the low oxygen conditions can be incorporated into the kinetic model. Dellinger has published such calculations in developing the low oxygen thermal stability index for incinerability.[7] Stakeholders state that pyrolytic conditions would likely be required to be assumed for monolithic feed. They note that shredder-feed, however, substantially reduces the particle size of the solid feed, and mixing with combustion air is achieved.

6. How Would Heat Sink and Other Heat Consuming Factors Be Addressed?

Stakeholders acknowledge that other factors in a given waste may consume energy, requiring another step or two to the retention time calculation. For example, a solid waste monolith that is a low melting point solid will go through a melting transition that will consume heat before the temperature of the mass rises past the transition point. Stakeholders state that this step can be easily added to the retention time calculation, if necessary. Similarly, a waste may contain a pocket of water or other low boiling point material, and a step for enthalpy of vaporization may need to be added. Stakeholders note that these calculations can also be performed as a form of sensitivity analysis to determine how conservative the retention time calculation is.

[6] See Attachment 5 of ETC's Comments to the MACT Rule, Docket F–96–RCSP–FFFFF, filed August 19, 1996.

[7] Dellinger, B. et al, "PIC Formation Under Pyrolytic and Starved Air Conditions," EPA Publication No. EPA/600/S2–86/006, July 1986.

B. What Are the Unresolved Issues About Stakeholders' Recommended Approach?

We acknowledge that the residence time for organic constituents in a solid matrix is generally less than the residence time for the bulk hazardous waste residue. Thus, ideally, sources should be eligible for the reduced regulatory and enforcement burden discussed above once the organics residence time has expired. One promising feature of the stakeholders' approach is that it would conservatively predict how long it takes the waste monolith to heat up to volatilize the organic constituent. We are concerned, however, that their approach does not explicitly address how long it would take for: (1) The generated volatiles or their potentially toxic intermediates to diffuse to the surface of the monolith where oxygen is present for destruction; or (2) alternatively for oxygen in the bulk gas to diffuse from the surface of the monolith to reach the volatiles. In lieu of accounting for the time required to destroy organic constituents under oxidative conditions, stakeholders' approach assumes that destruction would occur within solid matrices under pyrolytic conditions. Further, stakeholders believe that calculations developed by Dellinger while developing the low oxygen thermal stability index could be used to model those pyrolytic reactions. We request comments on whether Dellinger's work on low oxygen destruction would adequately model destruction under the pyrolytic conditions that occur within solid matrices, with respect to either the time required for destruction of the initial organic constituent or the types of intermediates that would be formed and the time required to destroy the intermediates. Finally, we request comments on whether it is practicable to perform valid engineering calculations for multiple waste streams that are not homogenous and that contain multiple organic constituents of concern.

We request comment on stakeholders' approach to calculate an organics residence time and specifically whether it can be revised to address our concerns.

III. Controls on APCDs After the Hazardous Waste Residence Time Has Expired

For sources equipped with a dry particulate matter control device, we propose to maintain the semivolatile metal, low volatile metal, and particulate matter[8] emission standards and the associated particulate matter control device operating requirements after the hazardous waste residence time has expired and until the control device undergoes a complete cleaning cycle (e.g., for all compartments of a baghouse; for all fields of an electrostatic precipitator).[9] For sources equipped with activated carbon injection, the dioxins/furans and mercury emission standards would also continue to apply after the hazardous waste residence time has expired until the control device undergoes a complete cleaning cycle.

A. What Concern Would This Requirement Address?

Dry particulate matter emission control devices such as electrostatic precipitators and baghouses retain collected particulate matter in the device until the sections of the device are cleaned sequentially, e.g., rapping of electrostatic precipitator plates, bag cleaning. This retained particulate matter contains metal hazardous air pollutants other than mercury due to its volatility. In addition, if the source is equipped with activated carbon injection, the collected particulate matter also will contain mercury and dioxins/furans. Our concern is that these pollutants could be emitted at levels exceeding the hazardous waste combustor emission standards after the hazardous waste residence time has expired.

After the hazardous waste residence time has expired, sources may choose to comply with MACT standards the Agency has promulgated under sections 112 and 129 of the Clean Air Act for source categories that do not burn hazardous waste in lieu of the Subpart EEE standards. See § 63.1206(b)(1).[10] If sources choose to comply with those

[8] The particulate matter emission standard is included because particulate matter is a surrogate for metal hazardous air pollutants other than mercury, the enumerated semivolatile metals, and the enumerated low volatile metals.

[9] If sources comply with the semivolatile and low volatile metal emission standards without emissions testing by assuming all metals in feedstreams are emitted, and therefore do not rely on the particulate matter control device to comply with the emission standards for these metals, the proposed requirements to maintain compliance with the semivolatile and low volatile metals emission standards and control device operating parameter limits would not apply.

[10] As discussed in Section XIX of the text, if sources choose to comply with otherwise applicable section 112 or 129 requirements (e.g., Subpart LLL for cement kilns) after the hazardous waste residence time has expired, sources remain an affected source under Subpart EEE only. Sources would comply with those otherwise applicable MACT standards under an alternative mode of operation that sources would specify under § 63.1209(q).

otherwise applicable MACT standards, we are concerned that these standards may not adequately ensure that the hazardous waste-derived pollutants remaining in the dry particulate matter control device are controlled to the level required by the hazardous waste combustor rules of Subpart EEE. For example, if the alternative particulate matter standard were substantially higher than the hazardous waste combustor MACT standard, sources may be able to operate the control device under less stringent operating levels (e.g., lower power to a field of an electrostatic precipitator) which could cause the accumulated particulate matter (containing hazardous waste-derived pollutants) retained within the device to be reentrained in the stack gas. This could allow hazardous waste-derived pollutants to be emitted at levels exceeding the hazardous waste combustor MACT emission standards. When the particulate matter control device undergoes a complete cleaning cycle, the accumulated hazardous waste-derived pollutants are removed, thus precluding an exceedance of the hazardous waste combustor emission standards.

B. Is It Necessary To Require Continued Compliance With the Limit on Gas Temperature at the Inlet to the Dry Particulate Matter Control Device?

We considered whether increasing the gas temperature at the inlet to the dry particulate matter control device, absent a requirement to maintain the temperature operating limit, could cause hazardous waste-derived semivolatile metals (and mercury and dioxins/furans if sources use activated carbon injection) contained in the accumulated particulate matter to volatilize and be emitted at levels that exceed an emission standard.

We initially conclude that, absent a gas inlet temperature limit, gas temperatures are not likely to increase to the levels necessary to volatilize enough semivolatile metals to cause an exceedance of the emission standards. This is particularly true if we consider that many sources should be able to complete a cleaning cycle of their electrostatic precipitator or baghouse within 30 minutes after the hazardous waste residence time has expired. We are concerned, however, that, for sources equipped with activated carbon injection, increases in inlet gas temperatures above the operating limit may potentially revolatilize captured mercury and dioxins/furans. We request comment on the extent to which mercury and dioxins/furans may revolatilize and be emitted because of increased gas temperatures in the short period after the hazardous waste residence time has expired and the cleaning cycle for the dry particulate matter control device has been completed.

C. Would the Proposed Requirement Increase Cleaning Cycle Frequency and Potentially Emissions of Hazardous Air Pollutants?

As discussed above, we propose to require continued compliance with the semivolatile metal, low volatile metal, and particulate matter standards (and the dioxin/furan and mercury standards if sources use carbon injection) after the hazardous waste residence time has expired until the dry particulate matter control device undergoes a complete cleaning cycle. However, we are concerned, that unless additional controls are applied, this requirement could potentially result in an increase in particulate emissions and associated hazardous air pollutants.

When a dry particulate matter control device is cleaned, collection efficiency is temporarily degraded. For example, when the plates in the last field of an electrostatic precipitator are rapped, some of the resuspended particulate matter is unavoidably emitted. For baghouses, when the bags are cleaned, typically using a pulse of air, the collection efficiency of the cleaned bags is reduced until a layer of particulate matter reforms on the bags. Thus, increasing the cleaning frequency of a baghouse decreases its collection efficiency.

To comply with the proposed requirement to clean the particulate matter control device before the Subpart EEE metals and particulate matter standards are waived in lieu of other standards, sources may want to initiate a cleaning cycle immediately after the hazardous waste residence time has expired. Further, they may want to restart the timing of the cleaning cycle beginning with the cleaning that occurs after the hazardous waste residence time has expired. Increasing the cleaning cycle frequency could potentially result in an exceedance of the emission standards, however, if compliance with the standards has not been demonstrated during performance testing at that cleaning cycle frequency. To ensure that the emission standards are not exceeded due to increased cleaning cycle frequency, sources may not increase the cleaning cycle frequency beyond the frequency used during the comprehensive performance test.

D. How Would This Requirement Be Implemented?

If sources elect to comply temporarily with the otherwise applicable section 112 or 129 Clean Air Act standards after the hazardous waste residence time has expired, sources would remain subject to certain Subpart EEE standards and associated compliance requirements until sources completed a cleaning cycle of the dry particulate matter control device: Particulate matter, semivolatile metals, low volatile metals, and, if sources use activated carbon injection, dioxin/furan and mercury. Given that sources remain an affected source only under Subpart EEE when sources elect to comply temporarily with otherwise applicable MACT standards, sources would identify this operating scenario as an alternative mode of operation under § 63.1209(q).[11] Consequently, sources would specify the applicable emission standards and compliance requirements for this alternative mode of operation as: (1) Those standards and compliance requirements of Subpart EEE that remain in effect; and (2) those otherwise applicable standards and compliance requirements established under section 112 or 129 (e.g., Subpart LLL for cement kilns). If an otherwise applicable section 112 or 129 standard or compliance requirement were more stringent than a Subpart EEE standard or compliance requirement that remains in effect, sources would comply with the more stringent standard or compliance requirement.

Exceedance of a Subpart EEE operating parameter limit (OPL) for a dry particulate matter control device after the hazardous waste residence time has expired but before a cleaning cycle of the device has been completed would be evidence of failure to maintain compliance with the Subpart EEE emission standards. Given that the hazardous waste residence time has expired, however, the exceedance need not be considered for the excessive exceedance reporting requirement under § 63.1206(c)(vi). Similarly, if the exceedance occurs because of a malfunction, the exceedance would not be evidence of failure to maintain compliance with an emission standard if the source followed the corrective measures prescribed in its startup, shutdown, and malfunction plan. Thus, the consequences of an exceedance would be the same after the hazardous waste residence time has expired whether the exceedance occurs before or

[11] See Section XIX below in the text for additional discussion on using § 63.1209(q) to specify operations under otherwise applicable section 112 or 129 MACT standards.

after the cleaning cycle has been completed if the source chose to continue to comply with the Subpart EEE emission standards (i.e., in lieu of otherwise applicable MACT standards under a different mode of operation). Having equivalent consequences of an exceedance of an OPL after the hazardous waste residence time has expired irrespective of whether the cleaning cycle has been completed is appropriate. Our objective is simply to ensure that the Subpart EEE OPLs for the dry particulate matter control device are maintained until the cleaning cycle is completed to minimize emissions of hazardous waste-derived HAPs to below the Subpart EEE emissions standards. Our intent is not to penalize a source for exceedances that may be attributable to unavoidable malfunctions after the source has taken the preventative measures to minimize emissions of HAPs by cutting off the hazardous waste feed and allowing the hazardous waste residence time to expire.

Some stakeholders have expressed initial concern with the technical feasibility of these proposed requirements. We will be considering these concerns prior to issuing a final rule.

IV. Instantaneous Monitoring of Combustion Zone Pressure

The final rule requires sources to control combustion system leaks by either: (1) Keeping the combustion zone sealed; (2) maintaining the maximum combustion zone pressure lower than the ambient pressure measured using an instantaneous monitor; or (3) using an alternative means to provide control of system leaks. See §§ 63.1201(a), 63.1206(c)(5)(ii), and 63.1209(p). The rule defines an "instantaneous monitor" as one that continuously samples, detects and records the regulated parameter without use of an averaging period. In today's notice, we propose to revise the combustion system leak requirements to better clarify the intent of this provision, and we are taking comment on whether we should allow sources to average pressure readings over short periods of time when demonstrating that their combustion system is maintained below ambient pressure.

After publication of the final rule, stakeholders expressed concern that the requirement to maintain the combustion zone pressure lower than ambient pressure (option 2 above) could result in an overly prescriptive requirement. Stakeholders believe this regulatory language can be interpreted to require sources to monitor and record combustion zone pressure at a frequency of every 50 milliseconds.[12] Stakeholders state such an interpretation would be problematic because of the enormous number of data points that must be recorded and because such a frequent monitoring frequency would greatly increase the number of automatic waste feed cutoffs. Stakeholders also requested that we clarify that combustion system leaks refer to fugitive emissions resulting from the combustion of hazardous waste, and not fugitive emissions that originate from nonhazardous process streams (e.g., the clinker product at a cement kiln).

After careful review of the regulatory language and after considering our original intent, we agree that the final rule is ambiguous and may be conservatively interpreted to require sources to monitor and record combustion zone pressure at a frequency of every 50 milliseconds. Therefore, in today's notice, we clarify that our intent is to require sources to use a pressure monitor and recording frequency that is adequate to detect combustion system leak events. We also clarify that the intent of the combustion system leak requirement is to prevent fugitive emissions from the combustion of hazardous waste, not fugitive emissions that originate from nonhazardous process streams.

To make these clarifications, we propose to modify the § 63.1201(a) definition of an instantaneous pressure monitor to read as follows: "Instantaneous monitoring for combustion system leak control means detecting and recording pressure without use of an averaging period, *at a frequency adequate to detect combustion system leak events from hazardous waste combustion*" (emphasis added).[13] We also propose to revise the § 63.1209(p) automatic waste feed cutoff regulatory language to read as follows: "If you comply with the requirements for combustion system leaks under § 63.1206(c)(5) by maintaining the maximum combustion chamber zone pressure lower than ambient pressure to prevent combustion system leaks from hazardous waste combustion, sources must perform instantaneous monitoring of pressure and the automatic waste feed cutoff system must be engaged when negative pressure is not maintained" (emphasis added).

We do not specify the monitoring and recording frequencies in the regulations, however, because sources differ in design and operation such that different monitoring and recording frequencies may be needed to ensure that fugitive emissions do not occur. Rather, sources and permit officials should determine on a site-specific basis what frequency of monitoring and recording would be appropriate. Each source should describe in the comprehensive performance test workplan and Notification of Compliance how their compliance method will ensure that fugitive emissions will not occur. We propose that this description specify the monitoring and recording frequency and how the monitoring approach will be integrated into the automatic waste feed cutoff system.

Stakeholders also suggest that we allow averaging of the pressure readings over short periods of time, e.g., a 5-second rolling average updated every second, in demonstrating the combustion system is maintained below ambient pressure. Averaging of pressure readings is less stringent than the current final rule instantaneous monitoring requirements. We request comment on whether such a monitoring approach is appropriate, and specifically, whether averaging pressure readings can adequately detect pressure excursion events that result in combustion system leaks.

V. Operator Training and Certification

On July 10, 2000, we issued a technical correction to the operator training and certification requirements of § 63.1206(c)(6) to clarify which employees are subject to the training and certification requirements and to note that the training and certification program should be tailored to the responsibilities of the employee. See 65 FR at 42295. Subsequent to this technical correction, incinerator stakeholders raised concerns about the requirement for incinerator control room operators and shift supervisors to be trained and certified under the American Society of Mechanical Engineers (ASME) Standard Number QHO–1–1994. Although the rule allows incinerator control room operators to be trained and certified under either a State program or ASME's program, stakeholders note that they are required to use the ASME program because there are no State programs at this time. Stakeholders raise the following concerns: (1) The scope of the ASME training and certification program is too broad; (2) the ASME certification

[12] The final rule preamble states that typical pressure transducers in use today are capable of responding to pressure changes once every 50 milliseconds. See 64 FR 52920.

[13] Note that this newly proposed definition removes the word "sampling" from the definition of instantaneous pressure monitor because a pressure monitor is not thought to physically withdraw a combustion gas sample.

program is problematic for new sources and newly hired operators because it requires 6 months of operating experience at the source before full certification may be awarded; (3) the ASME control room operator training and certification program is not necessary for shift supervisors; and (4) the ASME training and certification program cannot be implemented by the regulatory compliance date.

We provide below our reasons for preferring the ASME training and certification program over site-specific, source-implemented programs, but acknowledge stakeholders' concerns that the program may be more comprehensive than necessary to ensure compliance with the requirements of Subpart EEE. Accordingly, we propose to allow incinerator control room operators to be trained and certified under: (1) A site-specific, source-developed and implemented program; (2) the ASME program; or (3) a State program. We also conclude that it may be difficult for sources that choose to use the ASME program to fully certify their control room operators by the compliance date. Therefore, we propose to require only provisional certification by the compliance date for such sources. In addition, for sources that choose to use the ASME program, only provisional certification would be required for new employees and employees at new facilities prior to their assuming duties. Finally, we propose that control room operator training and certification is not necessary for shift supervisors to help ensure that the source operates within the limits established under the rule and that emissions of hazardous air pollutants are minimized.

A. How Do We Address Concerns About the ASME Training and Certification Program?

1. Is the Scope of the ASME Program Too Broad?

Incinerator stakeholders state that the scope of the ASME training and certification program for incinerator control room operators is too broad to apply generically to all control room operators. They prefer a tailored, site-specific, source-developed and implemented training and certification program.

The ASME program requires that control room operators be trained and certified to ensure a broad knowledge of operational, preventive maintenance, safety procedures, and practices for various types of incineration systems, emission control systems, and continuous emissions monitoring systems. Incinerator stakeholders state that there is no obvious benefit of requiring a broad knowledge of incineration issues; knowledge of only the equipment and operations at the operator's site are important. They question the benefit of, for example, an operator of a small liquid waste incinerator equipped with a wet scrubber knowing how to operate a rotary kiln incinerator equipped with a baghouse. They note further that it is unnecessarily time-consuming and stressful for operators that are unfamiliar with equipment they have never operated to undergo a rigorous training and certification program for that equipment. In addition, they note that the ASME standard was developed as a voluntary standard. Finally, they note that cement kiln and lightweight aggregate kiln control room operators may be trained and certified under a site-specific program.

The ASME program is comprised of a broad training curriculum that is implemented by each source followed by a provisional certification that is administered by ASME. Provisional certification is awarded after the operator passes a comprehensive, generic written test addressing operations of various types of incinerators and control systems. Operators with provisional certification may apply to ASME for full certification. Full certification is awarded after passing an on-site, site-specific oral examination.

We continue to believe that a broad training and certification program can be beneficial. A broad training program may enable control room operators to recommend modifications to existing equipment or make recommendations for new equipment, which may reduce HAP emissions. In addition, certification under a broad training curriculum would avoid the retraining and recertification that would be required if the source modifies the design or operation of the unit in a manner that could affect compliance with the emission standards and operating requirements of Subpart EEE.

Nonetheless, we agree with incinerator stakeholders that the broad scope of the ASME program may not be necessary to ensure compliance with the provisions of Subpart EEE. Accordingly, we propose to allow sources to use site-specific, source-developed and implemented training and certification programs, as discussed under Section B below.

2. Full Certification Under the ASME Program Cannot Be Achieved by the Compliance Date

The rule currently requires full ASME (or State) certification by the compliance date. We agree with stakeholders that this is not workable because ASME does not have the resources to implement the site-specific oral examination requisite for full certification by the compliance date. After passing the written examination and achieving provisional certification, control room operators must apply to ASME for the oral examination. Stakeholders indicate that it will take one half day per control room operator to administer the site-specific oral examination. For many facilities, the ASME oral examination team [14] will require approximately one week, including travel time, to administer the exam to all control room operators. Although ASME may train several examination teams, it is unlikely that full certification examinations can be implemented at all 149 hazardous waste incineration facilities prior to the compliance date.

To address this concern, we propose to require only provisional certification by the compliance date for sources that choose to use the ASME certification program. In addition, the operator would be required to submit an application to ASME for full certification and be scheduled for the certification examination. Finally, the operator would be required to achieve full certification within 1 year of the compliance date. We hope that providing this flexibility in the deadline for full certification will encourage use of the ASME program. We specifically request comment on whether the proposed deadlines for implementing the ASME certification program are appropriate.

3. Requiring Six Months of Operating Experience at the Source Before Full Certification Is Problematic

The ASME standard requires that control room operators have six months of operating experience at the source before they can be fully certified. This is a problem for new sources and for newly hired operators. We propose to preclude this problem by requiring only provisional certification before operators at new sources and newly hired operators could assume their duties. Also, we would require that

[14] The examination team is comprised of representatives from ASME, the hazardous waste industry, the operator's facility, and/or the regulatory agency or jurisdictional authority applicable to the facility.

provisionally certified operators apply to ASME for, and be scheduled for, full certification before they assume their duties. In addition, we would require that they achieve full certification within one year of assuming their duties. This will ensure that full certification will be achieved in a timely manner.

B. What Would Be the Requirements for Site-Specific, Source-Developed and Implemented Training and Certification Programs?

Under today's proposed rule, a source could choose to develop and implement a site-specific training and certification program in lieu of the ASME program or a State program. Certification under a site-specific program would be required by the compliance date given that the source will implement both the training and certification (i.e., written examination at a minimum). We note that cement and lightweight aggregate kiln sources are currently allowed to use site-specific training and certification programs because there is no ASME or other standard for these sources that addresses their hazardous waste burning activities. Because the requirements discussed below are appropriate for these sources as well, we propose to require that the requirements also apply to cement and lightweight aggregate kilns.

We propose to specify a training curriculum to ensure that the scope of the training is sufficient to ensure the control room operator can maintain compliance with the requirements of Subpart EEE. The certification program (i.e., written examination at a minimum) would be required to address the topics in the training curriculum. The training curriculum would be required to include the following topics: (1) Environmental concerns, including types of emissions; (2) basic combustion principals, including products of combustion; (3) operation of the specific type of combustor used by the operator, including proper startup, waste firing, and shutdown procedures; (4) combustion controls and continuous monitoring systems; (5) operation of air pollution control equipment and factors affecting performance; (6) inspection and maintenance of the combustor, continuous monitoring systems, and air pollution control devices; (7) actions to correct malfunctions or conditions that may lead to malfunctions; (8) residue characteristics and handling procedures; and (9) applicable Federal, state, and local regulations, including Occupational Safety and Health Administration workplace standards. This training curriculum is modeled after the requirements the Agency recently promulgated for commercial and industrial solid waste incinerators. See 65 FR 75338 (December 1, 2000). We believe this training is also appropriate for hazardous waste combustors.

To maintain certification, an operator would be required to complete an annual review or refresher course covering, at a minimum, the following topics: (1) Update of regulations; (2) combustor operation, including startup and shutdown procedures, waste firing, and residue handling; (3) inspection and maintenance; (4) responses to malfunctions or conditions that may lead to malfunction; and (5) operating problems encountered by the operator. These are the same requirements the Agency recently promulgated for commercial and industrial solid waste incinerators at § 60.2085, and we believe they are also appropriate for hazardous waste combustors.

C. Control Room Operator Training and Certification Would Not Be Required for Shift Supervisors

The final rule requires the same level of training and certification for shift supervisors and control room operators. Incinerator stakeholders question whether shift supervisors need to meet these training and certification requirements. Stakeholders note that shift supervisors often have administrative duties that are not closely related to the technical knowledge required to operate and maintain a combustor.

After reconsideration, we agree with stakeholders' reasons for not requiring that shift supervisors be trained and certified to the level of a control room operator. Accordingly, we propose to require that shift supervisors, like personnel other than control room operators, be trained and certified to the technical level commensurate with the employee's job duties.

D. A Certified Control Room Operator Must Be on Duty At All Times

We propose to revise the rule to clarify that a certified control room operator must be on duty at the source at all times the source is in operation. Having a certified operator present at all times is necessary to ensure compliance with the emission standards and operating requirements, and to take appropriate corrective measures when malfunctions occur.

VI. Bag Leak Detection System

Section 63.1206(c)(7)(ii) of the hazardous waste combustor rule prescribes baghouse operation and maintenance requirements for incinerators and lightweight aggregate kilns, including a requirement for the continuous operation of a bag leak detection system as a continuous monitor. Since promulgation of the rule, stakeholders have raised two issues: (1) Can less sensitive bag leak detectors be approved under the alternative monitoring provisions; and (2) why did we conclude that opacity monitors meeting revised Performance Specification 1 are not likely to be acceptable bag leak detectors.

A. Can Less Sensitive Bag Leak Detectors Be Approved Under the Alternative Monitoring Provisions?

Section 63.1206(c)(7)(ii)(D)(*1*) requires the bag leak detector system to be capable of continuously detecting and recording mass changes in particulate matter emissions at concentrations of 1.0 milligrams per actual cubic meter or less. Stakeholders state that monitors with higher detection limits are able to detect subtle changes in baseline, normal emissions as well as catastrophic events, and question whether these monitors can be approved under the alternative monitoring petitioning procedures of § 63.1209(g)(1).

We support the use of monitors with higher detection limits provided the monitor is sensitive enough to detect subtle increases in baseline, normal emissions, and we plan to develop guidance recommendations on this issue. We request comment on whether § 63.1206(c)(7)(ii)(D)(*1*) should be revised to explicitly allow the use of monitors with higher detection limits, or whether the existing alternative monitoring provisions coupled with guidance recommendations is sufficient. In addition, we request comment on how a source would document that a bag leak detection system, with a detection level higher than 1.0 milligrams per actual cubic meter, can detect subtle changes in baseline, normal mass emissions of particulate matter. For example, should we require site-specific tests to document that alternative detectors provide a measurable and repeatable change in opacity output with an increase in particulate matter mass emissions?

B. Why Did We Conclude That Opacity Monitors Meeting Revised Performance Specification 1 Are Not Likely To Be Acceptable Bag Leak Detectors?

EPA promulgated a significantly improved Performance Specification 1 (PS1) for opacity monitors on August 10, 2000. See 65 FR at 48914. We considered whether to allow use of

opacity monitors meeting PS1 as bag leak detectors, but conclude that they are not likely to be sensitive enough to detect subtle increases in mass particulate matter emissions from a source equipped with a well designed and operated baghouse.

Revised PS1 includes additional design and performance specifications as well as new test procedures that provide a profound improvement on opacity data accuracy and precision. Collectively, the additional measures provide a comprehensive, in-depth functional test of the complete measurement procedure, thereby eliminating many of the performance problems associated with previous opacity monitors.

The revisions go far beyond the previous version of PS1, drawing on recent technological advancements in optics, electronics, and information transfer. There are similar specifications for such monitors in Europe. The stipulation of automatic self-diagnosing capability is one of the many modern features incorporated into the new PS1. Taken together, the additional measures reflect a distinct new generation in the state-of-the-art of opacity monitors.

Notwithstanding the improvements that revised PS1 requires, opacity monitors are generally not acceptable for use as a bag leak detector because they are not sensitive enough to detect subtle increases in baseline, normal emissions. Baghouse emission opacity levels are very nearly zero at particulate matter concentrations below emission standards and are very near the lower detection limits of a continuous opacity monitoring system (COMS). COMS manufacturers have collectively raised the concern about COMS sensitivity limitations at low opacity levels. (See ASTM D–6216–98, Standard Practices for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications.) Although the increase in particulate matter mass emissions that would trigger a measurable opacity change that a COMS could detect is usually site-specific and would depend on the particle size and reflective and refractive properties. We are concerned that particulate matter emission concentrations may have to double or triple before a COMS could detect a significant opacity change at the low opacity levels associated with baghouse emissions. For these reasons, we conclude that COMS meeting Performance Specification 1 are not likely to be suitable as bag leak detectors. Nonetheless, as discussed above, we request comment on whether an approach could be developed to allow use of bag leak detectors that have detection limits above 1.0 milligrams per actual cubic meter.

Moreover, we note that electrodynamic and triboelectric bag leak detectors have proven to be much more sensitive and cost about the same or less than COMS to install and operate. In addition, some particulate matter continuous emissions monitors (CEMS) have been shown to be able to detect very small changes in particulate matter mass emissions at low emission levels. If sources were to use a particulate matter CEMS as a bag leak detector, sources need not correlate the detector to particulate matter emission concentrations. Rather, sources would be required to document that the CEMS provides a measurable and repeatable change in output with an increase in particulate matter mass emissions.

VII. Time Extensions For Performance Testing if the Test Plan Has Not Been Approved

During the comment period of the final rule and after promulgation, stakeholders raised the concern that the rule requires sources to commence performance testing within 180 days after September 30, 2002, even if the test plan has not been approved. Although the rule requires submittal of the test plan 12 months prior to the scheduled test date to provide a nine-month review period, stakeholders are concerned that the test plan may not be approved at the conclusion of that review period. Stakeholders state that they may spend hundreds of thousands of dollars to conduct a test under an unapproved test plan, only to learn after the test that EPA or the state may not accept the results as a valid demonstration of compliance with the emission standards due to differences of opinion on test design. In the preamble to the final rule, we address this issue by stating that "If permit officials nevertheless fail to act within the nine-month review and approval period, a source could argue that this failure is tacit approval of the plan and that later "second-guessing" is not allowable." See 64 FR at 52912. However, stakeholders are concerned that this preamble language does not guarantee that they will not have to repeat the test. Stakeholders recommend revising the rule to allow sources to wait until a test plan has been approved before conducting a performance test.

We are reluctant to deviate from the Part 63 General Provision's six-month deadline after the compliance date for conducting the initial comprehensive performance test. We continue to believe that an open-ended test date will not provide an incentive for either sources or regulatory officials to resolve differences related to a test plan, thereby unnecessarily delaying testing. Nonetheless, we acknowledge that there may be situations where a source and regulatory officials are making genuine efforts to complete review of the test plan, but for reasons beyond their control, the review cannot be completed prior to the testing deadline. Accordingly, we propose to revise the rule to address these particular situations.

Under today's proposal, a source may petition the Administrator, under the authority of § 63.7(h), to obtain a "waiver" of any performance test—initial or periodic performance test; comprehensive or confirmatory test. The "waiver" would not eliminate the test, but would be used to grant an extension of time to conduct the performance test. To qualify for the waiver, a source must make a good faith effort to comply with the testing requirements in a timely manner. First, as currently required, sources must submit a site-specific emissions testing plan and a continuous monitoring system performance evaluation test plan at least one year before a comprehensive performance test is scheduled to begin (see § 63.1207(c)(1)), or at least 60 days before a confirmatory performance test is scheduled to begin (see § 63.1207(d)). Sources also must submit all other documentation required by Subpart EEE to be included with the performance test plans. The submitted test plans must fulfill the substantive content requirements of §§ 63.1207(f) and 63.8(e). Second, a source must make a good faith effort to accommodate the Administrator's comments on the test plans. Finally, the Administrator must not take final action, through a notification of intent to deny (see § 63.7(c)(3)(i)(B)), to deny the source's test plan(s).

Under today's proposal, sources must submit to the Administrator a waiver petition or request to renew the petition under § 63.7(h), separately for each source, at least 60 days prior to the scheduled date of the performance test. The Administrator would approve or deny the petition within 30 days of receipt and promptly notify the source of the decision. The Administrator would not approve extensions of the test date for a duration exceeding 6 months, and the Administrator would include in granted petitions a sunset provision to end the waiver within 6 months.

To renew a waiver, we are proposing that sources must submit a revised petition under § 63.7(h)(3)(iii) at least 60 days prior to the end date of the most recently approved waiver petition. The Administrator could approve a revised

petition for a total waiver period up to 12 months. A performance test could not be delayed more than a total of 12 months, irrespective of the status of approval of the test plan.

If the Administrator denies a § 63.7(h) waiver petition, we are proposing that the source must commence the performance test, with or without approved test plans, by either the deadline provided by Subpart EEE or by the expiration date of their most recently approved waiver petition, whichever is later.

Sources would also need to address, in the waiver petition, the following requirements of § 63.7(h). A source must provide documentation to enable the Administrator to determine if "the source is meeting the relevant standard(s) on a continuous basis * * *." See § 63.7(h)(2). For extension requests of the initial comprehensive performance test, a source must submit the Documentation of Compliance to assist the Administrator in making this determination. In addition, § 63.7(h)(3)(iii) requires sources to "include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test."

In order to continue to keep the public informed of the source's compliance status, the source would need to notify the public (i.e., the source's public mailing list) of their § 63.7(h) petition to "waive" a performance test.

The following is an example time line indicating how the proposed § 63.7(h) waiver petitioning process would work for the initial comprehensive performance test. All end dates should be read as "no later than" X number of months. The time line assumes the source has submitted its performance test plans (i.e., for emissions testing and continuous monitoring system evaluation) on the deadline date—one year before the performance test must be conducted (i.e., sources submit the test plans 6 months prior to the compliance date).

0 time—Submittal of performance test plans for review (1 year prior to test date; 6 months prior to compliance date).

9 months—Administrator does not approve or deny test plans, even though the source has acted in good faith to obtain approval

10 months—Submittal of performance test waiver petition and notify public (2 months prior to test date).

11 months—Administrator approves or denies the performance test waiver (1 month after receipt of waiver).

12 months—Commence performance test if the Administrator denies waiver.

12 months + ≤6months—Extended performance test commencement date if the Administrator approves waiver.

16 months—If needed, submit performance test waiver renewal petition and notify public (2 months prior to sunset of latest approved waiver).

17 months—Administrator approves or denies renewal petition (1 month after receipt of renewal petition).

18 months—Maximum extension of test date for unrenewed performance test waivers.

18 months + ≤6months—Extended performance test commencement date with renewed waiver.

24 months—Maximum extension of test date for renewed performance test waivers.

VIII. Flexibility in Operations During Confirmatory Performance Testing for Dioxin/Furan

During the confirmatory performance test, the final rule requires sources to operate so that carbon monoxide or hydrocarbon levels, and operating parameter limits associated with the dioxin/furan emission standard, are within the range of the average values over the previous 12 months. Sources also must stay within the maximum or minimum value, as appropriate, that is allowed. See § 63.1207(g)(2). These requirements ensure that during the confirmatory performance test, dioxin/furan emissions are within the range of the normal to the highest allowable emissions.

Stakeholders express concern that it may be difficult to "dial in" operation of the combustor to the required range for each operating parameter simultaneously. Sources are particularly concerned about having to operate within a potentially narrow range of carbon monoxide levels for sources that normally operate close to the 100 ppmv limit. This is because carbon monoxide levels are dependent on many combustion-related factors and cannot be directly "dialed in" as can be done for other parameters (e.g., activated carbon injection federate).

Although this is not likely to be a widespread problem, we acknowledge there may be a problem in some situations. Accordingly, we propose today to revise the rule to: (1) Allow approval in the test plan for operations under a wider operating range for a particular parameter based on information justifying that operating within the required range may be problematic; and (2) allow the Administrator to accept test results during the finding of compliance based on operations outside of the range specified in the confirmatory test plan.

Allowing the Administrator to accept test results based on operations outside of the range specified in the test plan would address when a source did not anticipate a problem in maintaining the operating levels within the required range (and therefore did not request advance approval to do so), but because of unforeseen factors, were unable to maintain the required range. This provision would give permit writers discretion to accept emissions data obtained when operating outside of the prescribed range so that sources would not have to incur the costs of an additional confirmatory test. In determining whether to accept test results from operations outside of the range specified in the test plan, permit writers would consider factors including: (1) The magnitude and duration of the deviation from the required range; (2) the historical range of the parameter (e.g., the range between the 10th and 90th percentile time-weighted average values for the parameter); (3) the proximity of the emission test results to the standard; and (4) the reason for not maintaining the required range. These factors determine whether the operations are reasonably representative of normal operations and how important it may be that test operations be truly representative of normal operations.

IX. Waiving Operating Parameter Limits During Performance Testing

Section 63.1207(h) automatically waives the operating parameter limits (OPLs) during subsequent comprehensive performance tests under an approved performance test plan. After promulgation, stakeholders raised two concerns. They believe that: (1) OPLs defined in the Documentation of Compliance should be waived during the initial comprehensive performance test and associated pretesting; and (2) OPLs should be waived during testing and pretesting irrespective of whether the test plan has been approved.

A. Should We Waive OPLs During the Initial Comprehensive Performance Test?

Section 63.1211(d) requires sources to include in the operating record a Documentation of Compliance (DOC) that establishes limits on the operating parameters under § 63.1209 that, based

on an engineering evaluation, will ensure compliance with the emission standards. The DOC may be revised at any time prior to submitting the Notification of Compliance. If additional engineering information becomes available that leads sources to conclude that they can operate under less stringent OPLs during the initial comprehensive performance test and demonstrate compliance with the emission standards, the DOC may be revised accordingly. Therefore, we do not believe that additional regulatory language is needed to enable source to operate during pretesting or the initial comprehensive performance test under OPLs less stringent than those identified in the DOC. We specifically request comment on this issue.

B. Should We Allow the OPLs To Be Waived if the Test Plan Has Not Been Approved?

Section 63.1207(h) waives the OPLs during performance testing under an approved test plan. We required pretesting and testing operations to be conducted under an approved test plan as a prerequisite for the waiver. This will ensure that operations, when the OPLs are waived, are likely to remain in compliance with the emission standards. In retrospect, however, we acknowledge that stack emissions measurements will be taken during both pretesting (see § 63.1207(h)(2)) and testing. Given that there will be documentation of any exceedance of an emissions standard during a performance test, potentially indicating a violation during such testing, it is not necessary to require that the test plan be approved before the OPLs can be waived. Similarly, if a source records the results of pretesting, the OPLs should be waived without approval of the test plan. Accordingly, we propose to revise the rule to waive the OPLs during pretesting (if the source records the results of the pretest) and performance testing. See proposed § 63.1207(h).

Although stakeholders have raised concerns about testing under an unapproved test plan (see Section VII above), there may be instances where a source may choose to test under such conditions. Consequently, the regulatory revision appears to be warranted.

X. Method 23 as an Alternative to Method 0023A for Dioxin/Furans

The final rule requires use of Method 0023A to determine compliance with the dioxin and furan emission standard. See § 63.1208(b)(1). Based on discussions with stakeholders after promulgation of the final rule, we believe it is appropriate to request comment on amending the final rule to allow petitions for the use of Method 23 in lieu of Method 0023A.[15]

Method 23 is the Clean Air Act dioxin/furan air emission test method found in 40 CFR Part 60, Appendix A. Method 0023A is the RCRA dioxin/furan air emission test method found in SW–846.[16] The final rule requires use of Method 0023A because this method is the updated version of Method 23. At the time of final rule publication, we believed that the improvements to the updated method warranted use of Method 0023A.

Stakeholders request that we give sources the option to use Method 23 or Method 0023A because: (1) The dioxin/furan standard is based on emissions data that was collected using Method 23 procedures; (2) Method 0023A is more expensive because of additional analytical costs; and (3) Method 0023A results in higher detection limits.

Method 23 and Method 0023A are similar methods. Method 23 combines the front half of the filter and probe rinse with the back half of the sorbent and rinses to perform a single extraction and analysis. Recovery of spiked standards into the sorbent are used to serve as an indicator of overall recovery. Method 0023A differs from Method 23, primarily in that Method 0023A uses the addition of standards to both the filter (front half) and sorbent (back half), and then separates the front half and back half for analysis in order to determine the recovery from each half. They are separated in order to better quantify recoveries for both the back half and front half fractions. This is important, because low recoveries in Method 23 are sometimes associated with dioxin/furan contained in solid phase particulate that may go unnoticed due to the combined front half and back half analysis. This may be of particular importance for sources that use activated carbon injection, or sources whose particulate matter contains significant levels of carbonaceous material. In other words, Method 0023A was designed as an improvement to Method 23 by incorporating separate recovery, spiking, and analysis of front half and back half samples to improve the quality assurance of the front half and back half analysis. The benefits of Method 0023A compared to Method 23 include accurate recovery data and known data quality. The downsides to Method 0023A include higher analytical costs and possibly higher detection limits.

Although the detection limits of Method 0023A may be higher than Method 23 detection limits, we do not believe that these higher detection limits will adversely affect a source's ability to adequately demonstrate compliance with the dioxin/furan standard, as we explained in the technical support document to the final rule.[17] This is true because analytical detection limits have decreased over recent years.

We request comment on whether we should amend the final rule to give the option to use Method 23 in lieu of Method 0023A. We are considering allowing sources to petition the authorized regulatory agency to use Method 23 in lieu of Method 0023A. Under such an approach, a source would have to justify why the use of Method 23 is warranted. Factors that could be considered by the regulatory official in reviewing these petitions include: (1) The carbonaceous content of the particulate that is emitted from the source; (2) analytical costs; (3) data quality; and (4) detection limits. For example, under this approach, we believe that a source could address Method 23 data quality concerns by submitting previous Method 0023A results to the regulatory official that document: (1) The recovery percentages of the front and back half of the analysis; and (2) the amount of dioxin and furans present in the front half. Method 0023A results that indicate good front half recoveries could support a source's claim that Method 23 is an appropriate method to demonstrate compliance with the dioxin/furan emission standard.[18] The added data quality checks associated with Method 0023A may not be needed if the results of previous Method 0023A analyses indicate good front half recovery percentages. Method 23 may also be warranted if dioxin and furans are not detected, or are detected at low levels in the front half of Method 0023A.

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[15] Sources can currently petition EPA to use alternative test methods pursuant to § 63.7(f). The petition process that we are requesting comment on would not require sources to submit the results of a Method 301 validation process as is required under § 63.7(f).

[16] Method 0023A was proposed on July 25, 1995 (see 60 FR 37974). EPA received comments on Method 0023A and later incorporated the method into SW 846 in a final rule on June 13, 1997 (see 62 FR at 32451).

[17] See "Final Technical Support Document for HWC Standards, Volume IV: Compliance with HWC MACT Standards," Chapter 16, July 1999.

[18] This assumes, however, that method recoveries do not significantly vary at a source for different emissions tests. Any petition to use Method 23 should address whether method recoveries are expected to change from one emission test to another.

XI. Calibration Requirements for Thermocouples

Section 63.1209(b)(2)(i) of the final rule requires verification of the calibration of each thermocouple or other temperature sensor at least once every three months. Stakeholders express concern that recalibration of each temperature measurement device every three months is a significant undertaking. Stakeholders explain that, for example, temperature measurement devices on the air pollution control train are typically flanged onto the process piping and/or vessels. To recalibrate these devices without shutting the combustor down is an involved process. Removing these measurement devices for recalibration would require the operator to enter a static value in the automatic waste feed cutoff system to avoid a cutoff, and have a technician equipped with appropriate personal protective equipment receive the appropriate line and equipment opening permits, and then try to safely remove the instrument from the process while the combustor is still running. For configurations that have pressurized portions of the air pollution control train, the combustor would be required to shut down to avoid release of fugitive emissions. Stakeholders question whether the benefits outweigh the burden of recalibrating each temperature device every three months.

Stakeholders also state that recalibration of pyrometers is particularly problematic. Optical pyrometers are often sealed at the factory to prevent adjustment of the calibration. To check calibration on an optical pyrometer is difficult and stakeholders believe it is not a task that should be undertaken every three months unless there are clear benefits.

It is not clear to us that recalibration of all types of temperature measurement devices every three months is as burdensome an undertaking as stakeholders suggest. Thermocouples are the most common temperature measurement device used for compliance assurance. We believe that their calibration can generally be confirmed without removing them from the combustor. Thermocouples may malfunction either by a failure in the circuit (*e.g.*, the junction between the two wires at the bead may break) or the electronics may drift. If the circuit fails, the thermocouple will give clearly erroneous readings. Drift in the electronics can be corrected without removing the thermocouple. We specifically request comment on whether thermocouples can be recalibrated without removing them from the combustor.

Although it may be impractical to calibrate the internal operations of a pyrometer every three months, as stakeholders suggest, there are other maintenance activities such as cleaning of the optics and alignment checks that will help ensure that the pyrometer is performing correctly. We specifically request comment on whether the rule should require that these and other maintenance activities should be performed every three months.

If based on review of comments to this notice and reevaluation we determine that recalibration of temperature monitoring devices every three months is not practicable, we would revise the rule to delete § 63.1209(b)(2)(i). In lieu of a generic recalibration requirement that applies to all temperature monitors, we would require that you develop an appropriate calibration procedure and frequency and include that information in the evaluation plan required by § 63.8(e)(3)(i).

XII. Alternative Approach To Establish Operating Parameter Limits

The rule requires sources to establish most operating parameter limits as the average of the test run averages of the comprehensive performance test. Each test run average is calculated by summing all the one-minute readings within the test run and dividing that sum by the number of one-minute readings. See 64 FR at 52922.

Stakeholders state that this is an unreasonably conservative approach to establish operating parameter limits in that sources would not be allowed to operate in the way that they did 50% of the time during the performance test (when demonstrating compliance with the emission standards). This may overstate the conservatism inherent in this approach.[19] Nevertheless, we believe that a conservative approach is warranted because: (1) These parameters can have a significant effect on emissions; and (2) the approach is consistent with how manual method emissions results are determined (*i.e.*, manual method emission test results for each run represent average emissions over the entire run).[20]

Stakeholders also maintain that it is not technically practicable to establish some operating parameter limits using the average of the test run averages. Stakeholders present examples including cement kiln minimum combustion chamber temperature (see discussion in Section XIV below), and secondary power input to an ionizing wet scrubber or wet electrostatic precipitator.

In light of stakeholders' concerns, we are considering an alternative approach to establish operating parameter limits that provides assurance of compliance with the emission standard: establishing multiple limits for a given parameter that ensures that the profile of the

[19] For example, if the duration of each run of the performance test were 60 minutes, establishing parameter limits based on the average of the run averages allow sources to continue to operate as during the performance test. This is because 1-minute values that are higher than the average would be off-set by 1-minute values that are correspondingly lower than the average. Because most performance test runs have a duration longer than 60 minutes, however, the "average of the run averages" approach coupled with an hourly rolling average averaging period for most parameter limits, will require that sources operate more conservatively than during the performance test as a practical matter.

[20] Petitioners in litigation challenging the underlying rule have maintained that the one-hour averaging time to demonstrate compliance with the dioxin standard effectively amends the standard. The argument goes that the one-hour averaging period is shorter than that used in the source's performance test. EPA disagrees; the dioxin standard does not prescribe any particular averaging time, or other monitoring regime, for achieving a temperature level, so that using a one-hour averaging time does not amend the standard. However, even if (against our view) the temperature monitoring requirement is considered to change the emission standard, it appears justifiable as a beyond the floor standard under CAA section 112(d)(2). First, the standard is readily achievable technically. Spray quenching, the means of control, merely requires turning of a control valve to allow quenching. USEPA, "Final Technical Support Document for Hazardous Waste Combustor MACT Standards, Volume IV: Compliance with the Hazardous Waste Combustor Standards," July 1999, p. 2–16. Operators can readily determine when quenching is needed, since thermocouples report instantaneous temperature changes, allowing immediate reaction to temperature changes. Ibid, p. 2–10. Second, EPA has already considered this cost (*i.e.*, the cost of quenching) in determining the standards for HWCs. EPA does not believe that there would be any incremental cost associated with the one-hour averaging requirement, because it is based on the same spray quenching technology which is the basis for the standards already adopted. See also 64 FR at 52892 (finding that the cost of spray quenching technology for lightweight aggregate kilns is reasonable, in adopting the beyond-the-floor standard for dioxin/furans). In addition, the one-hour averaging requirement is needed to prevent exceedances of the emission standard itself, see Ibid, at 2–8 to 2–9 and 3–8 to 3–9 (documenting how net dioxin/furan emissions would increase over the amounts allowed by the emission standard without this requirement, but further explaining why the ten-minute averaging time that EPA initially proposed is not essential). See also EPA's Brief in *CKRC* v. *EPA*, no. 99–1457 (D.C. Cir. 2001) at pp. 113–120 (a copy of this brief is part of the record for this proposal). Finally, we do not believe there are any adverse non-air or energy impacts associated with the averaging requirement (and again, EPA has already assessed energy impacts and waste generation impacts of the standard when promulgating the standard in the first place). See generally USEPA, "Final Technical Support Document for Hazardous Waste Combustor MACT Standards, Volume V: "Emissions Estimates and Engineering Costs," July 1999 (RC2F–S0011) chapter 10.

parameter does not exceed the profile documented during the comprehensive performance test. We call this the "matching-the-profile" approach.

Under the matching-the-profile approach, a source would establish multiple limits for a given parameter that ensure that the profile of the parameter does not exceed the profile documented during the comprehensive performance test. This approach has the advantage of allowing operations at parameter levels above the average level of the performance test for the same period of time and at the same levels, as shown during the performance test. Provided that the source operates below the average level of the performance test for the same period of time, and at the same levels, as during the performance test. One disadvantage is that, to effectively implement the approach, sources would be required to establish multiple operating limits for a single parameter.

As an example of how this matching-the-profile approach would work for establishing the gas temperature operating limit at the inlet to an electrostatic precipitator, consider the following hypothetical gas temperature data for three runs of a comprehensive performance test. The individual run times are presented, and the total of the run times is nine hours.

TABLE 1.—ALTERNATIVE APPROACH TO ESTABLISH AN OPL WHEREBY THE PARAMETER PROFILE DOCUMENTED DURING THE COMPREHENSIVE PERFORMANCE TEST CANNOT BE EXCEEDED

[Example Parameter: Gas temperature at the inlet to an ESP.]

[Assume Run Times as Follows: Run 1–180 minutes; Run 2–150 minutes; Run 3–210 minutes. Total time of 540 minutes (9 hrs).]

Percent of time	1-Min avg temperature that was not exceeded the specified % of Time (°F)			Average of run averages	Time that avg run avg can be exceeded in any 9-hr block
	Run 1	Run 2	Run 3		
100% (max T)	405	415	425	415	0 min
90%	395	398	390	394	54 min
50%	375	380	375	377	270 min
25%	370	350	360	360	405 min

In this example, we have assumed that four operating limits would be needed to ensure adequately that the performance test profile is not exceeded: a maximum temperature that could not be exceeded, and three temperature limits that could be exceeded for prescribed periods of time during each 9-hour block average. In practice, the number of parameter limits would be established on a site-specific basis and would be a function of factors including: (1) The variability of the parameter during the test (i.e., range from the high to low value [21]); (2) whether the performance test emission levels were close to or well below the emission standard; and (3) the relationship between the parameter and emission levels. [22]

In the example presented above, 1-minute average temperature levels are ranked from highest to lowest for each run, and the temperature associated with various time percentiles (i.e., 100%, 90%, 50%, and 25%) are identified. In Run 1, for example, temperatures below 395°F were achieved 90% of the time. Then, a time-weighted average temperature across the runs is calculated for each of the percentiles. Finally, the time percentiles are converted to the number of minutes in a block period of time (corresponding to the time required to conduct all runs of the performance test). We now have a series of temperature limits that can be exceeded only for a specified period of time. Compliance with these time/temperature limits should ensure that the temperature profile of the performance test is not exceeded during normal operations, and that the emission standard is not exceeded.

We request comment on whether this approach to establish operating parameter limits as an alternative to calculating the limit as the average of the test run averages would be less burdensome for regulated sources while ensuring compliance with the emission standards. We also note that sources can request alternative monitoring approaches under § 63.1209(g)(1) and may request to use this (or other) alternative approach whether or not EPA finalizes this proposal. We request comment on whether we should explicitly include this approach in the rule, or use this discussion as guidance recommendations. Explicitly defining the approach in the rule may better facilitate efforts by sources to adopt the approach to their needs, and review and approval of the approach by regulatory officials.

[21] The greater the range of values for a parameter within a percentile, the less certain we can be that the performance test profile (and emission levels) will be maintained. This is because a source could theoretically operate for extended periods of time (i.e., longer than during the performance test) at the upper end of the range (or the lower end for parameters for which minimum limits are established).

[22] For example, more rather than fewer parameter limits would be appropriate to characterize the profile for gas temperature at the inlet to an electrostatic precipitator given that dioxin/furan emissions relate exponentially to inlet gas temperature.

XIII. Extrapolation of Operating Parameter Limits

Stakeholders suggest that the rule inappropriately penalizes sources that achieve comprehensive performance test emission levels well below the standard by establishing operating parameter limits based on performance test operations at those low emission levels. Operating under conditions to artificially increase emissions during testing (e.g., by detuning emission control equipment) may not be feasible or desirable from a worker/public health and cost perspective.

To address this concern, we request comment on whether the rule should allow extrapolation of an operating parameter limit [23] established as currently required to a higher limit (or lower limit if the parameter limit is a minimum limit) using a site-specific, empirically-derived relationship between the parameter and emissions of the pollutant in question.[24] An example is extrapolation of the gas temperature limit at the inlet to the dry particulate matter control device to a higher limit based on the relationship between gas temperature and dioxin/furan emissions. To use this approach, a source must document the relationship

[23] Requests to extrapolate metal feedrates would continue to be considered under § 63.1209(n)(2)(ii).

[24] In addition to using site-specific, empirically-derived relationships, we also request comment on whether the rule should allow use of established engineering principles that define the relationship between operating parameters and emissions to extrapolate operating limits and emissions.

empirically for their source. To remain in compliance with the emission standard, however, the temperature limit could be extrapolated to levels higher than 400 °F only if the extrapolated dioxin/furan emissions were below 0.2 ng TEQ/dscm.

Sources could not take advantage of this extrapolated gas temperature limit in this example without also extrapolating the gas temperature limit for compliance assurance with the semivolatile and low volatile metals standards.[25] This is because gas inlet temperature is a compliance parameter for both dioxin/furans and semivolatile and low volatile metals. We would also consider allowing extrapolation of the metals compliance assurance inlet gas temperature limit using engineering calculations to a temperature limit that would correspond to metals levels close to the emission standards.

We believe that extrapolated limits should be less than 100% of the standard. Such conservatism is important because sources would not have actually demonstrated compliance with the emission standards at the extrapolated operating parameter limit. We request comment on what upper level of extrapolation would be appropriate (e.g., 75%, 80%) and whether the upper level of extrapolation should vary depending on the level of confidence in the empirical relationship or other approach that is used to calculate the extrapolation.

The Administrator would grant (or deny) a petition to extrapolate an operating parameter limit on a case-by-case basis considering factors including whether: (1) The operating parameter values during the performance test were at the upper (or lower for minimum limits) range of historical, normal levels; (2) the extrapolated level sources request is warranted considering historical levels of the parameter; (3) it is impracticable to demonstrate compliance with the emission standard when operating at the desired (i.e., extrapolated) operating limit during the performance test; and (4) the extrapolation procedure will conservatively predict the relationship between the operating parameter and emissions. To determine if the extrapolation procedure conservatively relates the operating parameter to emissions, the Administrator would consider factors including how far the source requests to extrapolate the limit beyond the value calculated from the performance test and how close the emissions during the performance test were to the standard.

We also note that sources can request alternative monitoring approaches under § 63.1209(g)(1) and may request to use this (or other) alternative approach prior to promulgation of a final rule. We request comment on whether we should explicitly include this approach in the rule, or use this discussion as guidance recommendations. Explicitly defining the approach in the rule may better facilitate efforts by sources to adopt the approach to their needs, and review and approval of the approach by regulatory officials.

XIV. Limit on Minimum Combustion Chamber Temperature for Cement Kilns

Stakeholders have expressed concern that it is technically impracticable for cement kilns to establish a minimum combustion chamber temperature based on the average of the test run averages for each run of the comprehensive performance test. Stakeholders state that combustion chamber temperatures cannot be maintained at low enough levels for the duration of the comprehensive performance test to establish workable operating limits that would allow them to burn hazardous waste fuels economically without frequent waste feed cutoffs because of potential exceedences of the limit. Stakeholders indicate that combustion chamber temperature levels are fairly constant within a narrow range and note that there is a very narrow range of temperatures and feed composition in which a cement kiln must operate in order to produce quality clinker and a marketable product.

Stakeholders further note that they must take extreme actions under the current RCRA requirements to establish an economically viable minimum combustion chamber limit based on the average of the lowest hourly rolling averages for each run. Stakeholders relate that during one hour of each run of the RCRA compliance test, they must take unusual and potentially equipment-damaging steps to lower temperatures.[26] Those problems are compounded by the requirement in the MACT rule to establish the limit based on the average temperature level.

In addition, stakeholders note that it is difficult to accurately monitor combustion chamber temperature in a cement kiln. We already acknowledge this concern and, accordingly, the rule allows measurement of the temperature at a location that best represents, as practicable, the bulk gas temperature in the combustion zone. See § 63.1209(j)(1)(i). The rule also allows sources to petition the permit writer to request approval of an alternative temperature monitoring approach. See § 63.1209(g)(1).

We have responded, in the final rule Comment Response Document, to stakeholder's questions about the need for monitoring combustion chamber temperature by noting that combustion chamber temperature is a principal factor in ensuring combustion efficiency and destruction of toxic organic compounds. Although we acknowledge that a cement kiln inherently controls the kiln temperature to produce clinker, this inherent control may not be adequate to assure compliance with the dioxin/furan and destruction and removal efficiency emission standards. For example, we understand that cement kilns occasionally undergo upsets and produce substandard clinker. If lower than normal combustion chamber temperatures can result from an upset, we do not know how compliance with the emission standards can be assured.

Notwithstanding these reservations, and in light of stakeholders' continued concerns, we request comment on whether the rule should continue to require cement kilns to establish and comply with a minimum combustion chamber temperature limit. Stakeholders have indicated that they have produced additional data supporting their views. We also request comment on whether the alternative approaches discussed above which can be used to establish alternative operating parameter limits (i.e., match-the-profile and extrapolation) would address some of stakeholders' concerns with establishing a minimum

[25] A gas inlet temperature limit is not required, however, if the source feeds low levels of metals and complies with the semivolatile and low volatile metals standards without emissions testing by documenting compliance with the emissions standards assuming all metals that are fed are emitted. In addition, even if the source were required to comply with a lower gas temperature limit for compliance assurance for metals, there may still be advantages to establishing an extrapolated temperature limit for compliance with the dioxin/furan standard. For example, if the source had a performance test-based temperature limit (i.e., metals temperature limit) exceedance that did not exceed the extrapolated dioxin/furan-based limit, the temperature exceedance would not represent failure to maintain compliance with the dioxin/furan emission standard.

[26] We note that allowing sources to establish operating limits under current RCRA regulations based on the average minimum or maximum hourly rolling average (rather than the average of the average values as required under Subpart EEE) is intended to address routine deviations that can occur even though steady-state operating conditions are maintained. Modifying operating conditions during compliance testing to induce temporary, artificial perturbations is inappropriate. Such operations are not representative of operations under the test condition.

combustion chamber temperature limit for cement kilns. We note, again, that sources may use § 63.1209(g)(1) to request alternative monitoring approaches and need not wait for the Agency's final determinations subsequent to this notice.

XV. Revisions to Operating Requirements for Activated Carbon Injection and Carbon Bed Systems

The final rule requires sources using carbon beds or activated carbon injection systems to limit particulate matter emissions to the level achieved during the comprehensive performance test. See §§ 63.1209(k)(5) and 63.1209(l)(3). We have since determined that: (1) It is inappropriate to explicitly require a site-specific particulate matter limit if a carbon injection system is used; and (2) particulate matter control downstream of a carbon bed is not a critical operating parameter to ensure compliance with the dioxin/furan and mercury emission standards. We propose, therefore, to delete the site-specific particulate matter limit requirement for activated carbon injection systems. We also propose to delete the requirement for sources equipped with carbon beds to establish particulate matter operating parameter limits to ensure compliance with the dioxin/furan and mercury emission standards.

Dioxin/furan and mercury will adhere to the solid carbon used in an activated carbon injection systems. The final rule requires a site-specific particulate matter limit for this type of control system because an increase in particulate matter emissions could also correspond to an increase in dioxin/furan and mercury emissions. After considering stakeholder comments, we believe it is inappropriate to explicitly require a site-specific particulate matter limit if a carbon injection system is used because the rule does not require continuous monitoring of particulate matter emissions with a continuous emission monitor. The use of a site-specific particulate matter limit was originally thought to go in tandem with the requirement to use particulate matter CEMS. Since we do not require sources to use particulate matter CEMS for compliance purposes, we believe it is inappropriate to require site-specific particulate matter limits.[27] Particulate matter emissions are instead controlled by complying with operating limits on the particulate matter control devices (e.g., minimum power to an electrostatic precipitator). Therefore, we propose to revise § 63.1209(k)(5) to require sources to establish operating limits on the particulate matter control device consistent with the approach used to control particulate emissions for compliance assurance with the semivolatile and low volatile metals emission standards.

We also believe that particulate matter control downstream of a carbon bed is not a critical operating parameter to ensure compliance with the dioxin/furan and mercury emission standards. We note that most, if not all, carbon bed systems in use today are positioned downstream from particulate matter control devices to minimize particulate buildup in the carbon bed. Carbon beds are also designed so that carbon leakage into the flue gas is minimized.[28] We, therefore, propose to delete the language in § 63.1209(k)(5) that requires control of particulate matter emissions to ensure compliance with the dioxin/furan and mercury standards for sources with a carbon bed.

XVI. Clarification of Requirements to Confirm Carbon Bed Age

When demonstrating compliance with the dioxin/furan (and mercury) emission standard during the initial comprehensive performance test, sources may use the manufacturer's specification for the limit on carbon bed age rather than the actual age of the bed during the performance test. If using the manufacturer's specification for carbon bed age, § 63.1209(k)(7)(i)(C) requires sources to recommend in the initial comprehensive performance test plan a schedule for subsequent dioxin/furan emissions testing, prior to the confirmatory performance test, that will be used to document to the Administrator that the initial limit on maximum bed age ensures compliance with the dioxin/furan emission standard.

Stakeholders express several concerns with these requirements: (1) How much testing and what type of testing is required to confirm bed life; (2) if the manufacturer's specification for bed life is such that it extends beyond the deadline to conduct the dioxin/furan confirmatory test, testing to confirm bed life should not be required before that dioxin/furan confirmatory test; and (3) given that a carbon bed controls mercury as well as dioxin/furan, testing to confirm bed life should be required to demonstrate compliance with both the dioxin/furan and mercury emission standards. We address each of these issues below.

A. How Much Testing and What Type of Testing Is Required to Confirm Bed Life?

We intended that testing equivalent to the dioxin/furan confirmatory test would be required to confirm the life of the carbon bed. Therefore, a test comprised of at least three runs would be required. The operating conditions would be the same as required for the dioxin/furan confirmatory test under § 63.1207(g)(2).[29]

B. What Happens If Bed Life Extends Beyond the Deadline for Dioxin/Furan Confirmatory Testing?

If the manufacturer's specification calls for a bed life beyond the deadline for confirmatory testing, the source must conduct the dioxin/furan confirmatory test by the deadline and also conduct the bed life confirmatory test at any time prior to the manufacturer's specification for bed life. We are proposing to revise the rule so that in this situation bed life confirmatory testing would not be required prior to dioxin/furan confirmatory testing.

If, for example, the manufacturer's specification for bed life was 3.5 years and the bed was installed just prior to the comprehensive performance test, the source must conduct the dioxin/furan confirmatory test within 2.5 years after the comprehensive performance test. In addition, the source must conduct a bed life confirmatory test within 3.5 years of the comprehensive performance test. Of course, sources may elect to forgo the additional year of bed life to avoid the expense of conducting the carbon bed life confirmatory test.

C. Should Bed Life Confirmatory Testing Include Testing To Confirm Compliance With Both the Dioxin/Furan and Mercury Emission Standards?

Given that carbon beds control both dioxin/furan and mercury emissions, bed life confirmatory testing must document compliance with both the dioxin/furan and mercury emissions standards. Not requiring mercury testing during bed life confirmatory testing was an oversight when we promulgated the rule. We are proposing to revise the rule accordingly. See proposed revision to § 63.1209(l)(4).

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[27] The issue of the use of site-specific particulate matter limits to assure compliance with metal and dioxin/furan standards, when sources use a particulate matter CEM, will likely be addressed in any future particulate matter CEM proposal.

[28] See memo from S. Schliesser to M. Galbraith, June 7, 2000, regarding "Carbon Bed Reentrainment Issue" for more information.

[29] Given that carbon bed removal efficiency is closely related to combustion gas temperature at the inlet to the bed system, we request comment on whether the carbon bed life confirmatory test should be conducted at inlet gas temperatures at or near the maximum allowed (i.e., rather than at levels within the range of normal levels to the maximum allowed).

The bed life confirmatory testing for mercury must be conducted under normal conditions for the operating parameters used to control mercury emissions. See § 63.1209(l). This is the same concept that is used to confirm bed life for dioxins/furans, and for the dioxin/furan confirmatory test. Thus, the parameters specified under § 63.1209(l) must be held within the range of the average value over the previous 12 months and the maximum or minimum, as appropriate, that is allowed.

XVII. Revisions to Operating Parameter Limits for Wet Scrubbers

The final rule controls mercury emissions from hazardous waste combustors by: (1) Controlling the feedrate of mercury; (2) wet scrubbing to remove soluble mercury (e.g., mercuric chloride); and (3) carbon adsorption. See § 63.1209(l). There are specific operating parameter limits that apply to each control technology.

For hazardous waste combustors using wet scrubbers to control mercury, the operating parameter limits are identical to those that are required to assure compliance with the hydrochloric acid/chlorine gas emission standard. Specifically, those requirements include establishing hourly rolling average limits on minimum pH of the scrubber water based on operations during the comprehensive performance test. The hourly rolling average is established as the average of the test run averages. The pH of the scrubber water is an important parameter for chlorine control because, at low pH, the scrubber solution is more acidic and removal efficiency of hydrochloric acid and chlorine gas decreases.

A. What Is the Issue With the Minimum Operating Parameter Limit Requirement for Wet Scrubbers With Regard to Mercury Control?

Since promulgation of the rule, we've become aware of evidence that the scrubber liquid pH can have an important effect on the control and fate of mercury in wet scrubbers. In particular, various wet scrubber manufacturers and operators have observed that low pH (acidic) scrubber liquid solutions improve the control of mercury in hazardous waste combustor stack gases. There also is some recent work supporting the idea that scrubber liquid pH is an important factor in mercury capture and removal. In addition to low pH liquids increasing the control of elemental mercury, there's also evidence that high pH liquids may tend to reduce the captured soluble mercury back to the elemental form of mercury, which would then be re-released with the liquid during the liquid recycle. This line of thinking suggests that it may be necessary to establish a maximum scrubber liquid pH during the compliance test to ensure sufficient mercury control. However, a maximum scrubber liquid pH is opposite to the minimum liquid pH limit that is set and used to control chlorine emissions.

B. How Would a Low pH Scrubber Liquid Improve Mercury Control?

There are a number of reasons why a low pH scrubber liquid is thought to improve mercury control:

—Most elemental mercury formed in combustion is thought to favor conversion (or oxidation) to ionic mercury, such as $HgCl_2$, mercuric chloride, under typical air pollution control device conditions on hazardous and other waste combustors (e.g., see Lee and Kilgroe (1998), Hall (1991)).

—Oxidized mercury is very soluble in low pH scrubbing solutions (e.g., see Siret et al. (1997)). Also, strong reducing agents in scrubber liquid (which are more likely in higher pH scrubbing liquids) will reduce and revolatilize captured mercury.

—Scrubber liquids with high pH (i.e., added NaOH) may inhibit the oxidation of elemental mercury, and its subsequent absorption into the scrubber liquid (i.e., the ability to be controlled by the scrubber), see Soelberg (1998).

—In high pH reducing liquids, captured soluble ionic mercury may be reduced back to elemental forms in the scrubber liquid and then re-released during the liquid during recycle. The use of low pH solutions minimizes this possibility by favoring the formation of stable $HgCL_4$ (e.g., see Krivanek (1993)). Ionic mercury with a (Hg^{+2}) oxidation state is very soluble in water, especially in low pH scrubbing solutions. This enables the mercury to be readily absorbed from the flue gases. Elemental mercury has a low solubility and would typically pass through a wet scrubbing system unabsorbed. Without some way to avoid mercury revolatilization, it has been observed that elemental mercury emissions downstream of a wet scrubber can actually be higher than the inlet loading (see Siret *et al.* (1997), DeVito and Rosenhoover (undated).

Alternatively, there is some work on mercury control in coal fired utility power plants with limestone-based wet scrubbers indicating that changes in scrubber liquid pH in the range of 5 to 7 does not impact mercury control (see Miller, (undated), McDermott Technology (undated)). However, these data may not be directly applicable to the case of hazardous waste combustors due to the following: Basic scrubber liquids of pH greater than 7 were not evaluated; the use of limestone in these data, which is uncommon in hazardous waste combustor wet scrubbers; high levels of sulfur and lower levels of chlorine in coal stack gases; very low levels of mercury measured both upstream and downstream of the scrubber; and conflicting data on the predominant mercury species being emitted (whether it is elemental mercury or ionic mercury).

C. When Should a Maximum pH Limit Be Considered for Mercury Control?

The use of a operating parameter limits on maximum scrubber liquid pH may be appropriate to ensure that mercury emissions are minimized. In particular, there are several cases where requiring this as an operating parameter limit for mercury control may be desirable when:

—The scrubber is relied upon for achieving a certain mercury control efficiency in order to achieve the mercury emission standard.

—The facility has a history of a wide range of mercury concentrations in the feed waste streams.

—The facility has a history of a wide range of variations in scrubber liquid pH, oxidation potential, or composition.

—There is a wide range of HCl, NO_x, and SO_2 emission levels expected in the flue gas based on waste composition.

D. How Would We Set a Maximum pH Limit in the Scrubber Liquid?

If it is determined to be necessary to achieve a high level of mercury control, it may be appropriate to establish both an upper and a lower pH operating range. The lower pH limit maybe set based on either (1) manufacturer/designer recommendations (which would have to be reviewed and approved by the Agency and contained in the performance test plan), or (2) with a separate compliance test required for determining the lower pH operating parameter limit for chlorine. At that time, an operating range could be specified which would also consider the upper end of pH allowable for the desired mercury control. If the wet scrubber is staged, or if two wet scrubbers are operated in series, it may be appropriate to establish during the same performance test, a maximum pH limit on one scrubber for mercury control and a minimum pH limit on the other scrubber for chlorine control.

If a "total species" mercury continuous emissions monitor is used, then no monitoring of operating

parameters related to mercury is required. However, if only an elemental mercury monitor is used, wet scrubber operating parameters may also need to be monitored.

E. What Are Other Factors Affecting a Wet Scrubber's Ability to Control Mercury?

In addition to pH, there are a number of factors affecting the wet scrubber's ability to control mercury. For instance, it is well documented that the oxidizing potential of the scrubber solution has a direct impact on the control of elemental mercury. The recent use of scrubber liquid oxidizing additives such as $NaClO_2$, acidified $KMnO_3$, Na_2S, and Cl_2 has been shown to enhance elemental mercury control. Other factors influencing mercury control include: scrubber design, chloride concentration, mercury concentration and speciation at the inlet to the scrubber, and the use of special reagents (as mentioned above) to chemically convert and capture some of the elemental mercury.

F. What Are the Agency's Options To Ensure That the Scrubber Liquid pH Is Appropriate for Mercury Control?

We request comment on requiring sources with wet scrubbers to establish a maximum pH operating parameter limit for mercury control. This maximum pH level could be based on manufacturer specifications, compliance test results, or specified by the permit writer on a case-by-case basis. Another option is to require a scrubber liquid oxidation meter be used to comply with a minimum liquid oxidation potential limit. If chlorine is a concern, a pH range could be specified, or, as mentioned earlier, if two scrubbers are used, one could have a maximum pH specified for mercury control and a minimum pH specified for chlorine control.

XVIII. Reproposal of kVA Limits for Electrostatic Precipitators and Request for Comment on Approaches To Ensure Baghouse Performance

The final rule establishes operating parameter limits for electrostatic precipitators (ESPs) and baghouses: (1) Minimum kVA per field of an ESP; and (2) minimum and maximum pressure drop (delta P or dP) for each cell of a baghouse. See § 63.1209(m)(1)(ii and iii). At EPA's request, however, the D.C. Circuit has vacated these provisions in order that EPA repropose and seek additional comment on them. See 66 FR 24270. Today, we repropose the requirement to establish minimum limits on each field of an ESP and request comment on alternative approaches to ensure such performance. For baghouses, we request comment on alternative approaches to ensure performance.

A. Requirements To Ensure Electrostatic Precipitator Performance

Stakeholders express concern that limiting the kVA to each field of an electrostatic precipitator is problematic because: (1) It precludes the flexibility to shut down one or more fields of a multi-field electrostatic precipitator for maintenance while continuing hazardous waste burning; (2) it is difficult to establish minimum kVA limits on each field of the ESP during the comprehensive performance test that provide a wide enough operating envelop for economical operations; and (3) kVA to the first few fields of a multi-field ESP are not that important and should not be limited.

We respond to these concerns by noting that power distribution across the fields of an ESP is very important to performance. EPA testing at a cement kiln showed that individual field power level distribution was critical to performance.[30] When power input to the last field of a four-field ESP was decreased while total power input was held constant (i.e., by slightly increasing the power to the second and third fields), emissions of particulate matter doubled from 0.06 to 0.12 gr/dscf. In addition, recent comparisons of the results from predictive emission models to actual emissions indicate that power input by field is an important refinement to the code predictions.

Furthermore, we do not believe that limits on kVA to each field of the ESP are as burdensome as stakeholders state. For example, we do not believe it is a common problem to have a situation where a single field is down for repair and, thus, not operating at its minimum kVA, while the ESP is kept on line. Generally, when an ESP field needs repair, the ESP is taken off line. In addition, the comprehensive performance test may be structured to provide operational flexibility as needed. For example, a source seeking flexibility to continue burning hazardous waste with one field down could conduct the performance test under that mode of operation. Alternatively, the source could simulate the operational flexibility during the comprehensive performance test. For example, the source could conduct each run of the performance test with all fields operational 90% of the time, and with one field down 10% of the time. Then, the source would need to limit the time of operation with one field down to 10% of each block period of time (i.e., block average) equivalent to the time required to conduct the performance test.

Finally, another remedy may be to use the authority of § 63.1209(g)(1) to petition the permit writer for an alternative monitoring approach to ensure performance of the ESP is maintained.

Given that we believe that power distribution across the ESP is important to ensure performance and that minimum limits on power input to each field would not be overly burdensome, we today repropose the kVA limits originally promulgated at § 63.1209(m)(1)(iii).

Notwithstanding this proposal, however, we request comment on several alternatives to limiting kVA to each field of the ESP (which may ultimately serve as alternatives which can be pursued under § 63.1209(g)(1)), as discussed below. Note that several of these alternatives are not mutually exclusive. After considering comments and further evaluation, we also may decide to promulgate several alternatives.

1. Require an Increasing KVA Pattern Across the ESP

Under this approach, sources would be required to establish a minimum limit on total kVA to the ESP based on the performance test, and to assure that kVA levels increase from the inlet to outlet fields. In addition, we would require establishment of a minimum limit on total kVA to the ESP.

Maintaining a minimum total kVA with a pattern of progressively increasing kVA from the inlet fields to the outlet field is generally a good indicator that the entire ESP, as well as each field, is performing adequately. The rationale for this approach is that the power suppression effect from high particle concentrations progressively diminishes from the inlet field to the outlet field. Implementation of this approach would mean that the actual kVA levels for each field, or the absolute or relative difference in kVA from field to field that was achieved during the performance test, would not be considered in compliance assurance.

2. Limit KVA on Only the Back ⅓ of Fields

This approach would require establishment of minimum kVA to each of the last ⅓ of the fields in the ESP, as well as a minimum limit on total kVA

[30] See memorandum from Bruce Springsteen, EER–GC, to Bob Holloway, US EPA, entitled "Relationship Between PM Emissions and ESP Total kVA Vs Field kVA", dated November 21, 2000.

to the ESP based on the performance test.[31] The rationale for this approach has a similar basis to the approach in paragraph 1, but with an altered interpretation. Given that high particle concentration suppresses ESP power levels, the outlet fields can only achieve high power levels when the inlet fields are performing adequately. If the inlet fields are not performing well (as well as during the performance test), then the minimum kVA on the last few fields cannot be maintained.

Under this approach, if the source has a 2 or 3-field ESP, they would establish a minimum kVA limit on the last field. If it's a 4, 5, or 6-field ESP, then establish minimum kVA limits on the last 2 fields. If it's a 7, 8, or 9-field ESP, then establish minimum kVA limits on the last 3 fields.

3. Use a Continuous Monitor That Measures Relative Particulate Matter Loadings

Under this approach, sources would use a continuous monitor that can detect relative particulate matter loadings. The device must be sensitive enough to detect subtle increases in baseline, normal emissions. The monitor could be a baghouse leak detector, an opacity monitor, or a particulate matter continuous emissions monitoring system. Given that the source would be continuously monitoring relative particulate matter emissions under this approach, they would not need to establish kVA limits on the ESP.

To implement this approach, the source would establish an operating parameter limit that is based on the response from the continuous monitor during the comprehensive performance test. In addition, we would require interconnection of the limit to the automatic waste feed cutoff system. The source would also be required to take corrective measures as prescribed in the operations and maintenance plan if there was an increase in the baseline, normal response (i.e., generally well below the response during the performance test). This would be similar to how a bag leak detector is used to ensure that performance of a baghouse is maintained.

4. Use of Predictive Emission Monitoring Systems

This approach would use one of the available ESP performance models to characterize and correlate ESP performance with particulate matter emissions as a predictive emission monitoring system (PEMS). There are three personal-computer models (Electric Power Research Institute, EPA, and Southern Research Institute) that use the same first-principle equations. These models attest to using field-by-field electrical data, or similarly derived approaches, for compliance assurance. In combination with particulate matter measurements, each of these models has produced results with correlation coefficients greater than 0.98. Once adequately demonstrated to predict emissions, the model results would then serve as a compliance monitoring protocol able to account for any combination of power distribution levels and other contributing factors. If a source were to use this PEMS approach, they would have the flexibility to operate with a field out of operation and without the need for limits on field or total kVA while giving regulatory officials a means for ensuring compliance. This PEMS approach is based on a similar methodology advanced by industry that is undergoing review by EPA's Office of Air Quality Planning and Standards as a compliance assurance method (CAM).

Implementation of the PEMS could follow a two-pronged procedure:

a. Operations under the Green Zone. When particulate matter emissions are expected to be well below the particulate matter limit,[32] referred to as the "green zone," the source would use a secondary indicator (e.g., opacity) to monitor compliance. For example, the green zone could be defined as when the secondary indicator is below 75% of the level predicted by the model when operating at the particulate matter limit. There would be no need to apply the model when the secondary indicator (i.e., and therefore emissions) remains in the green zone.

b. Operations under the Red Zone. When the secondary indicator value exceeds 75% of the level predicted by the model when operating at the particulate matter limit, the source would be in the "red zone." During a red zone episode, they would apply the model at prescribed intervals (e.g., every 4 to 8 hours). Representative data (e.g., secondary voltage and current for each field, and gas temperature and flowrate) would be collected during the interval, averaged, and input to the model. Model results would predict the emission level and serve as the regulatory emission monitor for determining compliance. Depending on the model results, the source would respond appropriately.

If the results indicate that the particulate matter limit has not been exceeded, the source would continue to operate. If the source were still in the red zone, they would either continue to apply the model at the prescribed interval, or perform corrective measures (e.g., remedying the ESP performance problem) to return to the green zone. If the model results indicate that emissions exceeded the PM limit, then the source has failed to comply with one or more of the emission standards.[33]

B. Requirements To Ensure Baghouse Performance

The final rule required sources to establish limits on minimum and maximum pressure drop (delta P or dP) across each cell of the baghouse based on manufacturer specifications and to interconnect the limits with the automatic waste feed cutoff system. See § 63.1209(m)(1)(ii). The rule also required incinerators and lightweight aggregate kilns to install a bag leak detector and cement kilns to install opacity monitors. As noted earlier, this provision was vacated by the D.C. Circuit at EPA's request so that EPA could repropose and seek further comment on the issue.

We promulgated the requirement to establish dP limits because dP may provide an indication of adequate filter cake build-up to ensure performance. In addition, low dP may indicate the presence of filter holes or leakage between sections of the filter housing

[31] Stakeholders also suggest another approach whereby limits would be established on minimum total kVA to the ESP, and minimum kVA only to the last field of the ESP. We request comment on this alternative approach as well.

[32] The particulate matter limit would be the PM emission standard or a lower PM emission level that is extrapolated from comprehensive performance test emission levels to a level that ensures compliance with the semivolatile and low volatile emission standards (and the dioxin/furan emission standards if sources use activated carbon injection). For example, if during the performance test the PM emissions were 50% of the PM standard, but the semivolatile metal emissions were 75% of the semivolatile metal standard, the source's PM compliance limit to ensure compliance with the semivolatile metal standard would be 75% of the particulate matter standard. This compliance assurance approach is based on the reasonable assumption that for a percentage increase in PM emissions, emissions of metals (and dioxin/furan when activated carbon injection is used) will increase by that percentage or less. This is because low volatile metals are evenly distributed over the range of PM particle sizes, while semivolatile metals and dioxin/furan on adsorbed carbon, are enriched on the smaller particulates. As the performance of the PM control device degrades and PM emissions increase, some of the larger particles that were being captured would be emitted while the smaller particulates continue to be emitted as before.

[33] For example, if the predicted emissions were higher than the PM standard and the extrapolated PM emission levels associated with the semivolatile and low volatile metal standards, as well as the dioxin/furan standard if sources use activated carbon injection, the model results would be evidence that the source has exceeded all four emission standards.

while high dP may indicate the potential to create pinhole leaks, or bag blinding or plugging. We acknowledge, however, the minimum dP may not effectively detect fabric holes, especially in large facilities with multiple chamber filter housing units that operate in parallel.[34]

In addition, since promulgation of the rule, stakeholders state that system or manifold dP is the same as the dP for each cell or compartment. Therefore, monitoring dP for each cell is redundant and unnecessary. Stakeholders also state that baghouses for sources with large gas flowrates (e.g., a cement kiln) can have 30 or more cells and because of the large number of cells, establishing limits on, or even monitoring, dP is impracticable.

Finally, stakeholders recently submitted data confirming our concern that cell dP is not sensitive to substantial increases in opacity for large baghouses.[35] Stakeholders conducted experimentation at a cement kiln with a baghouse where dP was monitored for a cell in which collection performance was intentionally degraded. The baghouse has 32 cells and each cell is comprised of 56 bags. Prior to degrading the cell's performance, cell dP was monitored for several hours. The detector appeared to be responding appropriately to pressure changes as the pressure dropped to zero each time the cell was cleaned on a 25-minute cycle and then rapidly increased to approximately 3.5 inches water column. The pressure then gradually increased to 4 to 5 inches water column prior to the next cleaning cycle. While performance of one cell was artificially degraded, opacity was also monitored. There was no discernable change in cell dP during the episode while opacity increased dramatically from baseline levels of 4 to 5 percent to 10 to 12 percent. These opacity levels represent particulate matter emissions on the order of 0.01 gr/dscf at 5 percent opacity to 0.02 gr/dscf at 10 to 12 percent opacity. Although this experiment indicates that dP is not always sensitive to significant changes in opacity, it also shows that an opacity monitor can detect significant changes in mass particulate matter emissions at concentrations in the 0.01 to 0.02 gr/dscf range.

We generally disagree with many of stakeholders' views on the value of monitoring cell dP. System or manifold dP is usually higher than cell dPs because of the dP contributed by plenums (including dust buildup) and compartment isolation valving. Many baghouses operate with uneven cell dP because of complex factors.[36] For example, inlet flow design factors lead to gas flow imbalance among cells and to uneven cell dPs. Also, bag cleaning mechanisms degrade over time leading to varying levels of cleaning among cells and varying cell flow and dP. In addition, monitoring cell and system dPs is recommended by virtually all baghouse manufacturers and consultants because of the cost-effectiveness in preventing small problems from escalating into large ones.

We acknowledge again, however, that minimum cell dP may not effectively ensure performance of a large baghouse. Consequently, we are not reproposing limits on cell dP. Rather, we request comment on whether decisions to require monitoring of cell dP should be made on a site-specific basis (pursuant to § 63.1209(g)(1) or (g)(2)) considering factors such as: (1) Whether the baghouse is equipped with a device (e.g., bag leak detector) that is properly tuned and has the sensitivity to detect both broken bags (i.e., emission spikes) and gradual increases in baseline, normal emissions that may be caused by small holes; and (2) the approach that would used to identify the poorly performing cell when the detector notes a gradual degradation in performance; and (3) size of the baghouse. In addition, in situations where commenters believe that monitoring cell dP should be required, we request comment on whether cell dP should be monitored as an operating parameter limit that is interconnected to the automatic waste feed cutoff system, or whether cell dP monitoring should simply be one component of the source's operation and maintenance plan (under which appropriate corrective measures would be taken if cell dP were to fall below or above manufacturer specifications).

Pending final action on this notice, regulatory officials should use the authority of § 673.1209(g)(2) to determine on a site-specific basis what operating requirements may be appropriate to ensure that baghouse performance is maintained at levels that ensure compliance with the particulate matter, semivolatile metals, and low volatile metals emission standards (and the dioxin/furan and mercury standards if activated carbon injection is used).

XIX. How To Comply Temporarily with Alternative, Otherwise Applicable MACT Standards

Section 63.1206(b)(1)(ii) allows sources to stop complying with the emission standards and operating requirements of Subpart EEE temporarily after the hazardous waste residence time has expired and to comply with otherwise applicable Clean Air Act requirements promulgated under Sections 112 and 129,[37] provided the source: (1) Submits a one-time notice to the Administrator documenting compliance with those alternative standards; [38] and (2) documents in the operating record that they are complying with those alternative standards.

Stakeholders have asked how the transition between the Subpart EEE standards and the otherwise applicable Section 112 or 129 MACT standards would work. Specifically, stakeholders question: (1) whether sources would alternate as affected sources under different MACT standards for stack emissions, or become affected sources under different MACT standards concurrently; [39] and (2) whether they should use § 63.1209(q) to identify operations under the alternative Section 112 or 129 MACT standards as an alternative mode of operation.

A. Hazardous Waste Combustors Are Affected Sources Only Under Subpart EEE

Even though sources may invoke § 63.1206(b)(1)(ii) to become temporarily exempt from the substantive requirements of Subpart EEE, they remain an affected source under Subpart EEE, and only Subpart EEE (with respect to stack emissions requirements [40]), until the source meets

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[34] US EPA, "Final Technical Support Document for Hazardous Waste Combustor MACT Standards, Volume IV: Compliance with the Hazardous Waste Combustor Standard," July 1999, p. 4–6.

[35] Data submitted by Norris Johnson, Lone Star Industries, Inc., to Bob Holloway, US EPA, on November 16, 2000.

[36] See H.H. Nierman and A.M.Hood, "How to Monitor Pulse Jet Baghouses," Chemical Engineering, March 1996, pp. 114–119

[37] If the Agency has not promulgated CAA Section 112 or 129 MACT standards for the non-hazardous waste burning class of sources in a particular source category, there are no "otherwise applicable" MACT standards for the source. For example, the Agency has not yet promulgated Section 129 standards for non-hazardous waste incinerators. In these cases, the source would not be subject to any MACT standards for stack emissions after the hazardous waste residence time has expired. The source must define such operations as a mode of operation under § 63.1209(q), and must note in the operating record when they begin this mode of operation.

[38] Note that, in a separate rulemaking, EPA would delete the requirement for the one-time notification.

[39] For example, the hazardous waste burning cement kiln MACT standards of Part 63, Subpart EEE and the Portland Cement manufacturing MACT standards of Part 63, Subpart LLL.

[40] Note, however, that sources may be an affected source under different MACT standards concurrently for control of HAPs from different sources at the facility. For example, all hazardous waste burning cement kilns are affected sources

Continued

the requirements specified in Table 1 to § 63.1200 for no longer being an affected source. Because those requirements include being in compliance with the RCRA closure requirements of Subpart G, Parts 264 or 265, they remain an affected source until it is determined they no longer burn hazardous waste.

To implement this clarification, we propose revising the rule to require that, if a source becomes temporarily exempt from the substantive requirements of Subpart EEE by halting hazardous waste burning activities, they must comply, during that temporary period, with all otherwise applicable Section 112 or 129 MACT standards. We use the term "otherwise applicable" because, after the hazardous waste residence time has expired, and if the source was not an affected source only under Subpart EEE, they would be subject to any and all Section 112 and 129 MACT standards we have promulgated for sources in the particular source category that do not burn hazardous waste (e.g., the MACT standards for Portland cement kilns in Part 63, Subpart LLL).

In addition, we propose revising the rule to clarify that otherwise applicable Section 112 and 129 MACT standards are applicable requirements under Subpart EEE, if the source elects to comply with those requirements after the hazardous waste residence time has expired. This term has significant implications in that applicable requirements are implemented and enforced under Subpart EEE as discussed below.

B. How Are Otherwise Applicable Requirements Implemented and Enforced Under Subpart EEE

Section 63.1209(q) requires establishment of operating requirements under different modes of operation. When electing to comply with the otherwise applicable MACT requirements (promulgated under Section 112 or 129 of the CAA) after the hazardous waste residence time has transpired, the source must use § 63.1209(q) to identify operating parameter limits that apply during that mode of operation. Section 63.1209(q) also requires documentation in the operating record when changing a mode of operation and beginning to comply with a different set of operating limits. In addition, that paragraph requires sources to begin calculating rolling averages anew (i.e., without considering previous recordings) when changing modes of operation.

Upon reevaluation of the requirement to begin calculating rolling averages anew when sources change modes of operation, we now believe that it would be more appropriate to use the most recent continuous monitoring system recordings when operating under a mode of operation to calculate rolling averages when renewing operations under that mode.[41] For example, if operating a hazardous waste burning cement kiln and electing to switch to the Part 63, Subpart LLL, requirements after the hazardous waste residence time has expired, the first rolling hourly average value for gas temperature at the inlet to the electrostatic precipitator would be calculated after the first minute of compliance with the Subpart LLL requirements based on the last 59 minutes of operations under the Subpart LLL requirements and the first minute of renewed operations under the Subpart LLL requirements. This would be the case regardless of how long ago the source last operated under the mode of operation in question.

In the Documentation of Compliance (DOC) under § 63.1211(d) and the Notification of Compliance (NOC) under § 63.1207(j) the source must specify the operating parameter limits that apply when operating under the mode of operation when complying with otherwise applicable requirements.[42] This requirement applies to all other modes of operation as well. For the mode of operation when complying with otherwise applicable requirements, however, the source must specify in the DOC and NOC any otherwise applicable Section 112 or 129 MACT standards and requirements that apply, including monitoring and compliance requirements and notification, reporting, and recordkeeping requirements. We limit this requirement to otherwise applicable Section 112 or 129 MACT standards because the source may be subject to other Clean Air Act standards while being an affected source under Subpart EEE, but it is not an affected source under any Section 112 or 129 MACT standards other than Subpart EEE. Thus, the source would not be subject to any otherwise applicable Section 112 or 129 MACT requirements that were not included in the DOC, NOC, and, ultimately, title V permit for that mode of operation.

C. Exemption From All Substantive Requirements of Subpart EEE During the Mode of Operation When Complying With Otherwise Applicable Section 112 or 129 MACT Standards

Section 63.1206(b)(1) exempts sources from the emission standards and operating requirements of Subpart EEE when operating under otherwise applicable Section 112 or 129 MACT standards after the hazardous waste residence time has expired. We propose to revise this requirement to exempt sources from all substantive Subpart EEE standards during this mode of operation such that the source would only be subject to the § 63.1209(q) provisions that it specifies for this mode of operation. This is appropriate because, as discussed above, sources must specify under § 63.1209(q) that, during this mode of operation, they will comply with all requirements of the otherwise applicable requirements of Section 112 or 129 MACT standards. Accordingly, we propose to exempt sources during this mode of operation from the emission standards of §§ 63.1203–63.1205; the monitoring and compliance standards of §§ 63.1206–63.1209, except the modes of operation requirements of § 63.1209(q); and the notification, reporting, and recordkeeping requirements of §§ 63.1210–63.1212.

XX. RCRA Permitting Requirements for Sources Entering the RCRA Process Post-Rule Promulgation

A. What Are We Proposing To Amend?

We are proposing to amend the language in 40 CFR 270.19, 270.22, 270.62, 270.66, 266.100, 265.340, and 264.340 regarding the applicability of those sections to hazardous waste burning incinerators, cement kilns and lightweight aggregate kilns. In particular, we want to clarify that any of these types of sources newly entering the RCRA permitting process or the hazardous waste burning universe after promulgation of the hazardous waste combustor MACT rule on September 30, 1999 are not subject to certain specified RCRA permit requirements, or to the RCRA combustor performance standards.

Since we are revisiting these sections to clarify their applicability, we are taking this opportunity to clarify a point about the Notification of Compliance, as referenced in these sections. Under § 63.1207(j), sources must postmark within 90 days of completing a comprehensive performance test an NOC documenting compliance or noncompliance with the emissions standards. We are clarifying that in

under Subpart EEE for stack emissions, and Subpart LLL for other sources of HAP emissions (e.g., clinker handling).

[41] Note, however, that may average operating parameter values continuously across various modes of operation provided that the averaging periods and limits for the parameter are the same under the various modes of operation.

[42] Furthermore, the title V permit must contain terms and conditions for all reasonably anticipated modes of operation (see 40 CFR 70.6(a)(9)).

order for the part 270 requirements to no longer apply, the NOC must document compliance.

1. How Had We Changed Part 270 in the HWC Rule?

In the final rule, we amended language in part 270 to accommodate the permit transition from RCRA to the CAA. In § 270.19, we added new paragraph (e) and in §§ 270.22, 270.62, and 270.66 we added similar language as introductory text (with slight variations in 270.22 and 270.66 to specify cement kilns and lightweight aggregate kilns). In brief, the amended language in these sections said that once a source demonstrates compliance with the standards in 40 CFR part 63 subpart EEE, the requirements in the specified part 270 sections would no longer apply. In order to retain a procedural framework for any risk burns[43] that might prove to be necessary under RCRA, we also included a provision allowing the Director to apply the provisions of those sections, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

2. Why Do We Need To Revisit these Sections in Part 270?

As they were written for the final rule, these sections will continue to apply until a source demonstrates compliance with the standards in 40 CFR part 63 subpart EEE. This approach makes sense for sources who were currently in the RCRA permitting process at the time we published the final rule. Our primary concern at that time was on the transition from the RCRA process to the CAA. Since sources do not have to complete performance testing until May 2003, it is appropriate for sources already in the RCRA permitting process to continue the combustor portions of the process, including the trial burn requirements. We did not want the new rule to result in unnecessarily delayed testing, particularly if the testing is needed to ensure performance and to generate data for a risk assessment. In the preamble to the final rule, we discussed how sources already in the process of obtaining a RCRA permit could be transitioned to a title V permits (see 64 FR 52989, September 30, 1999). We identified some factors to be considered, as well as some examples to assist permit writers and facility owners or operators in developing a sound approach. We neglected to consider, however, what this approach would mean for new sources that did not exist at the time the final rule was promulgated.

Under RCRA, new sources must obtain a permit (or permit modification) before they may start construction of a new unit. Since new sources subject to the final rule will not be able to demonstrate compliance with the part 63 standards until after the units are built and they conduct performance testing, the part 270 language as currently promulgated would force them to complete the entire RCRA permitting process (including combustion portions) beforehand. For new facilities, this means they would have to submit a trial burn plan with their RCRA permit application and also submit suggested conditions for the various phases of operation—start-up/shake-down, trial burn, post-trial burn, and final operations. The permit writer would have to review this information and write conditions into the RCRA permit governing all phases of combustor operations.

It is our intent that new sources subject to the HWC final rule not follow the traditional RCRA combustion permitting process. Although new sources still must obtain a RCRA permit (or permit modification) prior to construction, our intent was that the permit instead focus on the other RCRA requirements applicable to all units (i.e., general facility standards, corrective action, financial responsibility, and closure), any non-emissions related combustor-specific concerns (i.e., materials handling), and requirements related to other RCRA units on site. In addition, if the alternative to the particulate matter standard revisions proposed today are promulgated, incinerators that comply with these alternative requirements would need to have the RCRA particulate matter performance standard and related operating conditions included in their RCRA permits. Also, if the permit writer determines that additional risk-based conditions for the combustion unit are necessary to supplement the MACT requirements, those conditions will be part of the RCRA permit.[44] We would not expect new sources to follow the RCRA requirements governing development and submittal of trial burn plans and setting of operating conditions for the various phases of operation, because these activities implement RCRA performance standards which are being replaced by the HWC NESHAP standards. We included requirements in the HWC NESHAP governing implementation of the MACT performance standards. For example, sources must submit performance test plans and must identify operating parameters that they anticipate will ensure compliance with the emission limits in their Documentation of Compliance. The CAA process, not RCRA, is the appropriate mechanism to ensure compliance with the MACT standards. Under the CAA permitting programs, these sources will be subject to New Source Review permits prior to construction as well as to title V operating permits which will incorporate the applicable requirements from the HWC NESHAP.[45]

3. What Are We Proposing To Amend in Parts 264, 265, 266?

In today's notice, we also propose to make conforming changes in parts 264, 265, and 266 for the above mentioned reasons. Specifically, we propose to revise 40 CFR 264.340(b), 265.340(b), and 266.100(b) to specify that hazardous waste burning incinerators, cement kilns, and lightweight aggregate kilns that are newly constructed, reconstructed, or modified such that they become affected sources following September 30, 1999 are not subject to the RCRA combustor treatment standards (except as noted) of parts 264, 265, and 266.

Part Three: Analytical and Regulatory Requirements

I. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant

[43] A risk burn is any emissions testing performed for the purpose of collecting data for subsequent evaluation in a site-specific risk assessment. The testing may occur in conjunction with a RCRA trial burn or MACT performance test, or the risk burn may consist of a completely separate test effort.

[44] We expect that, in most cases, any additional risk-based conditions imposed under RCRA omnibus authority will reside in RCRA permits. However, a state regulatory agency may choose to incorporate those conditions into the title V permit as a matter of convenience or as part of developing a multi-media permit. In this situation, the conditions would still remain under RCRA authority and the permit would have to be signed by all appropriate officials (unless the state has omnibus-type authority in its air statute).

[45] Only those sources that meet the definition of a major source under the New Source Review permitting program are subject to federal New Source Review permits. The definition of "major" within the context of New Source Review permitting is different from that used when establishing MACT standards. Therefore, a new source subject to the Phase I MACT standards may not be required to obtain a federal New Source Review permit prior to construction. However, since all states have minor New Source Review permitting programs, it is likely that the source would still have to obtain a minor New Source Review permit.

regulatory action is defined by the Order as one that may:

—Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or

—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it may be considered significant under point four above: "Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The aggregate annualized compliance costs for this rule, as proposed, are estimated to be less than $100 million. Furthermore, this proposed rule is not expected to adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The benefits to human health and the environment resulting from today's proposed action have not been monetized but are deemed to be less than $100 million per year.

We have prepared two economic support documents for this proposed action. These are: Assessment of Potential Costs, Benefits and Other Impacts NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments (Assessment), and, Regulatory Flexibility Screening Analysis (RFSA) For NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments. The Assessment addresses economic impacts of the twenty proposed amendments to the Phase I MACT final rule. The Assessment also briefly examines equity considerations and other impacts. The Regulatory Flexibility Screening Analysis (RFSA) briefly examines small entity impacts potentially resulting from this proposed action. This Part presents a summary of findings from the Assessment and the RFSA documents. The complete Assessment and RFSA documents are available in the RCRA docket established for this action. Interested readers are encouraged to read and comment on these documents.

A. Why Is This Proposed Rule Necessary?

The environmental regulations promulgated by EPA seek to correct market failures through the internalization of negative environmental externalities. That is not the case with today's proposed rule. This action is necessary in order to clarify and improve compliance, testing, and monitoring requirements associated with the final rule NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors. See 64 FR 52828.

B. Were Non-Regulatory Alternatives First Considered?

Section 1(b)(3) of Executive Order 12866 instructs Executive Branch Agencies to consider and assess available alternatives to direct regulation prior to making a determination for regulation. This regulatory determination assessment should be considered, "to the extent permitted by law, and where applicable." The ultimate purpose of the regulatory determination assessment is to ensure that the most efficient tool, regulation, or other type of action is applied in meeting the targeted statutory objective(s).

We have already employed education and outreach programs designed to accomplish the objectives of the amendments proposed in this rule. We believe that technical clarification and improved implementation efficiency will be best accomplished through a regulatory approach in order to fully accomplish our objectives.

C. What Regulatory Options Were Considered?

For this action we considered the proposed regulatory approach for all the technical amendments as a group, or in some cases, for an amendment that was presented for comment only. We also considered the "no action" option, which would result in zero cost impacts beyond the baseline established in the final rule.

D. What Are the Potential Costs or Cost Savings of This Proposed Rule?

The twenty proposed amendments presented in today's action vary considerably in scope and substance. Nearly all of the amendments, however, are anticipated to result in minor to negligible incremental cost impacts (savings or increases) to both the regulated community and the Agency. Two or three of the amendments may result in more substantive cost impacts. These findings are briefly summarized below. The complete Assessment document presents a detailed review of our methodology, data, findings, and analytical limitations.

Cost Savings:

The amendments resulting in projected minor cost savings to the regulated community are generally associated with the increased compliance and administrative flexibility, technical clarifications, time extensions, and reduced monitoring/testing requirements. One amendment, however, may result in significant net incremental cost savings to the regulated community. Amendment number X (Method 23 as an Alternative to Method 0023A for Dioxin/Furans), is designed to provide flexibility in selection of test methods for dioxins and furans. To test for dioxins and furans under the CAA, Appendix A of 40 CFR Part 60 prescribes Method 23. This method combines the front half of the filter and probe rinse with the back half of the sorbent and rinses to perform a single extraction and analysis. Recovery of spiked standards into the sorbent are used to serve as an indicator of overall recovery.

Method 0023A is the RCRA dioxins/furans air emission test method found in SW–846 (incorporated within SW–846 in June, 1997). The updated Method 0023A differs from Method 23 primarily in that the former uses the addition of spike standards to both the filter (front half) and sorbent (back half), and then separates the front half and back half for analysis in order to determine the recovery from each half. While more expensive, this process helps to quantify recoveries more accurately for both the back half and front half fractions.

The final rule requires sources to use Method 0023A. At that time we believed the improvements method 0023A offered over Method 23 warranted a requirement that all sources use the new method. By incorporating separate recovery, spiking, and analysis of front half and back half samples the new method helps better quantify recoveries for both the back half and front half fractions thereby improving quality

assurance. The benefits of Method 0023A compared to Method 23 thus include more accurate recovery data and improved data quality. The downside to Method 0023A is its higher analytical cost and, possibly higher detection limits. Furthermore, we have not documented the potential magnitude of the incremental benefits of Method 0023A.

We estimate that potentially significant cost savings may result from the reduced analytical expenses of using Method 23 as an alternative to Method 23A for dioxin/furans. The difference in unit cost between the methods is approximately $3,000 per source. Industry estimates indicate that about half of all facilities are likely to make use of this alternative. However, this test is only required to be performed every two and a half years. Based on these factors, we estimate total cost savings to the regulated community at about $102,600 per year.

Cost Increases:

There may be cost increases associated with some of the proposed amendments. Many of the amendments associated with potential cost increases, however, propose alternatives that a source may voluntarily choose to apply. Cost increases would occur to both the regulated community and the regulatory agency and/or states. Most of these cost increases are expected to be minor, resulting from development and submission of alternative plans and/or test data. There may also be some minor additional cost burdens associated with potential increases in violations.

We estimate that five of the proposed amendments may result in measurable incremental cost burdens to industry and the regulatory agency. These amendments are projected to result in aggregate cost increases to industry of $199,300 per year. The government cost increase is estimated at $161,800 per year. Amendment V (Operator Training and Certification) is the single largest cost contributor to the cost increase for both industry and government. This amendment is projected to result in an aggregate incremental cost increase of nearly $154,000 to industry and $150,700 to the regulatory agency.

We estimate a net cost increase of $258,500 per year from all proposed amendments for which we were able to developed quantified cost impact estimates. This cost impact estimate will marginally increase the total annual social cost projection of $50 to $63 million [46] estimated for compliance with the final rule. We believe that our net cost impact (increase) estimate of $258,500 may be high because it was not feasible to quantify some of the potential cost savings that are likely to result from many of the proposed amendments. All cost impacts are dependant upon the regional enforcement regime.

II. Regulatory Flexibility Act (RFA), as amended by the Small Business Regualtory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, a small entity is defined as: (1) A small business that has fewer than 750, or 500 employees per firm depending upon the SIC code the firm is primarily classified in; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that only amendment X (Method 23 as an Alternative to Method 0023A for Dioxin/Furans) is likely to impact one or more of the six small hazardous waste combustors. Under our assumed worst-case scenario where the maximum cost impacts of this amendment ($102,600 savings) are attributed to only these six small sources, we find that no source would experience impacts beyond 0.48 percent of annual gross revenues [47]. This does not represent a significant economic impact.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of this rule on small entities. Although not specifically directed toward small business outreach, we have met with industry representatives during the developmental phase and requested comment and suggestions on all aspects of this proposed rulemaking. No small business concerns were brought up by these industry representatives. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

We have completed the analysis: Regulatory Flexibility Screening Analysis (RFSA) For NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments, in support of the proposed rule. This RFSA document is available for review in the docket established for today's action.

III. Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks"

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Furthermore, we do not have reason to believe that environmental health or safety risks addressed by this action present a disproportionate risk to children.

In addition, these amendments, as part of the HWC MACT standards, are exempt from the requirements of Executive Order 13045 because the rule is a technology-based regulation rather than a risk-based one. Nevertheless, the proposed amendments would not result in any incremental environmental harm that would affect children's health.

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[46] U.S. Environmental Protection Agency, Office of Solid Waste, Addendum to the Assessment of the Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Standards: Final Rule, July 23, 1999.

[47] Based on July 1999 Assessment, we found that the smallest annual firm revenue associated with the six small facilities were $3.6 million. Dividing $102,600 by the six facilities results in $17,100 maximum impact per small facility. ($17,100/$3.6 million = 0.48 percent).

IV. Environmental Justice Executive Order 12898

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

We have no data indicating that today's proposal would result in disproportionately negative impacts on minority or low income communities. The public is invited to comment and submit data related to environmental justice issues potentially associated with today's proposal.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any single year. The amendments, as proposed, may result in increased costs to all states (or the Agency) of no more than approximately $160,000 per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

VI. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule, as proposed, is projected to result in economic impacts to privately owned hazardous waste combustion facilities. Marginal administrative burden impacts may occur to selected States an/or EPA Regional Offices if these entities experience increased administrative needs, enforcement requirements, or information requests. However, this rule, as proposed, will not have substantial direct effects on the States, intergovernmental relationships, or the distribution of power and responsibilities. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, we specifically solicit comment on this proposed rule from State and local officials.

VII. Consultation With Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's proposal would not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Tribal communities are not known to own or operate any hazardous waste combustion facilities, nor are these communities disproportionately located adjacent to or near such facilities. Finally, tribal governments will not be required to assume any administrative or permitting responsibilities associated with this proposed rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, we specifically request comment on this proposed rule from tribal officials.

VIII. Paperwork Reduction Act

We have prepared an Information Collection Request (ICR) document (ICR No. 1773.03) listing the information collection requirements of this proposed rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has assigned a control number 2050–0171 for this ICR. A copy of this ICR may be obtained from Sandy Farmer, OPIA Regulatory Information Division, U.S. Environment Protection Agency (2137), 1200 Pennsylvania Avenue NW, Washington, DC 20460, or by calling (202) 260–2740.

Some of the amendments proposed today pertain to RCRA provisions of the rule (i.e. to 40 CFR parts 260 thru 271), and were covered under an earlier ICR No. 1361.08. Today's amendments to these RCRA provisions are all de-regulatory, and do not impose any burden on the regulated community. They only reduce the existing burden shown in that ICR. The ICR No. 1361.08 will be revised to show the reduced burden when the final rule is promulgated. The public burden associated with other provisions of this proposed rule (which are under the Clean Air Act) is projected to affect approximately 171 HWC units and is estimated to average 8.7 hours per respondent annually. The reporting and recordkeeping cost burden is estimated to average $511 per respondent annually. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Comments are requested on the need of this information, accuracy of the provided burden estimates, and any suggested methods for minimizing the respondent burden. Send comments to Sandy Farmer at the address given above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to all OMB and public comments on the information collection requirements contained in this proposal.

We note that the recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The EPA will amend the table in 40 CFR part 9 of currently approved information collection request (ICR) control numbers issued by OMB upon finalization of this rule and list the information collection requirements contained in the final rule.

IX. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, we are not considering the use of any voluntary consensus standards. We welcome comments on this aspect of the proposed rulemaking and, specifically, invite the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

Part Four: State Authority

States can implement and enforce the new MACT standards through their delegated 112(l) CAA program and/or by having title V authority. A State's title V authority is independent of whether it has been delegated section 112(l) of the CAA. Additional information on state authority under the CAA may be found in the HWC MACT rule (64 FR at 52991).

List of Subjects

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: June 18, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, it is proposed that title 40 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.14 is amended by adding paragraph (i) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) *ASME standard.* This standard is available from the American Society of Mechanical Engineers, 345 East 47th Street, New York, N.Y. 10017: Standard for the Qualification and Certification of Hazardous Waste Incinerator Operators, ASME QHO–1–1994.

3. Section 63.1201 is amended by revising the definition of "Instantaneous monitoring" in paragraph (a) to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Instantaneous monitoring for combustion system leak control means detecting and recording pressure, without use of an averaging period, at a frequency adequate to detect combustion system leak events from hazardous waste combustion.

* * * * *

4. Section 63.1206 is amended by revising paragraph (c)(5)(ii) and (c)(6) to read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

* * * * *

(c) * * *

(5) * * *

(ii) You must specify in the performance test workplan and Notification of Compliance the method that will be used to control combustion system leaks. If you control combustion system leaks by maintaining the combustion zone pressure lower than ambient pressure using an instantaneous monitor, you must also specify in the performance test workplan and Notification of Compliance the monitoring and recording frequency of the pressure monitor, and specify how the monitoring approach will be integrated into the automatic waste feed cutoff system.

(6) *Operator training and certification.* (i) You must establish training programs for all categories of personnel whose activities may reasonably be expected to directly affect emissions of hazardous air pollutants from the source. Such persons include, but are not limited to, chief facility operators, control room operators, continuous monitoring system operators, persons that sample and analyze feedstreams, persons that manage and charge feedstreams to the combustor, persons that operate emission control devices, and ash and waste handlers. Each training program shall be of a technical level commensurate with the person's job duties specified in the training manual. Each commensurate training program shall require an examination to be administered by the instructor at the end of the training course. Passing of this test shall be deemed the "certification" for personnel, except that, for control room operators, the training and certification program shall be as specified in paragraphs (c)(6)(iii) through (c)(6)(vi) of this section.

(ii) You must ensure that the source is operated and maintained at all times by persons who are trained and certified to perform these and any other duties that may affect emissions of hazardous air pollutants. A certified control room operator must be on duty at the site at all times the source is in operation.

(iii) Hazardous waste incinerator control room operators must:

(A) Be trained and certified under a site-specific, source-developed and implemented program that meets the requirements of paragraph (c)(6)(v) of this section; or

(B) Be trained under the requirements of, and certified under, the American Society of Mechanical Engineers Standard Number QHO–1–1994 (incorporated by reference—see § 63.14(e)). If you choose to use the ASME program:

(*1*) Control room operators must, prior to the compliance date, achieve provisional certification, and must submit an application to ASME and be scheduled for the full certification exam. Within one year of the compliance date, control room operators must achieve full certification;

(*2*) New operators and operators of new sources must, before assuming their duties, achieve provisional certification, and must submit an application to ASME, and be scheduled for the full certification exam. Within one year of assuming their duties, these operators must achieve full certification; or

(C) Be trained and certified under a State program.

(iv) Cement kiln and lightweight aggregate kiln control room operators must be trained and certified under:

(A) A site-specific, source-developed and implemented program that meets the requirements of paragraph (c)(6)(v) of this section; or

(B) A State program.

(v) Site-specific, source developed and implemented training programs for control room operators must include the following elements:

(A) Training on the following subjects:

(*1*) Environmental concerns, including types of emissions;

(*2*) Basic combustion principles, including products of combustion;

(*3*) Operation of the specific type of combustor used by the operator, including proper startup, waste firing, and shutdown procedures;

(*4*) Combustion controls and continuous monitoring systems;

(*5*) Operation of air pollution control equipment and factors affecting performance;

(*6*) Inspection and maintenance of the combustor, continuous monitoring systems, and air pollution control devices;

(*7*) Actions to correct malfunctions or conditions that may lead to malfunction;

(*8*) Residue characteristics and handling procedures; and

(*9*) Applicable Federal, state, and local regulations, including Occupational Safety and Health Administration workplace standards; and

(B) An examination designed and administered by the instructor; and

(C) Written material covering the training course topics that may serve as reference material following completion of the course.

(vi) To maintain control room operator qualification under a site-specific, source developed and implemented training program as provided by paragraph (c)(6)(v) of this section, control room operators must complete an annual review or refresher course covering, at a minimum, the following topics:

(A) Update of regulations;

(B) Combustor operation, including startup and shutdown procedures, waste firing, and residue handling;

(C) Inspection and maintenance;

(D) Responses to malfunctions or conditions that may lead to malfunction; and

(E) Operating problems encountered by the operator.

(vii) You must record the operator training and certification program in the operating record.

* * * * *

5. Section 63.1207 is amended by:

a. Revising paragraphs (g)(2)(i) and (g)(2)(ii).

b. Revising paragraph (h)(2) introductory text.

c. Revising paragraph (j)(1)(i).

d. Adding paragraph (e)(3).

e. Adding paragraph (g)(2)(iv).

f. Adding paragraph (j)(5).

The revisions and additions read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(e) * * *

(3) *Petitions for time extension if Administrator fails to approve or deny test plans.* You may petition the Administrator under § 63.7(h) to obtain a "waiver" of any performance test—initial or periodic performance test; comprehensive or confirmatory test. The "waiver" would be implemented as an extension of time to conduct the performance test at a later date.

(i) *Qualifications for the waiver.* (A) You may not petition the Administrator for a waiver under this section if the Administrator has issued a notification of intent to deny your test plan(s) under § 63.7(c)(3)(i)(B).

(B) You must submit a site-specific emissions testing plan and a continuous monitoring system performance evaluation plan at least one year before a comprehensive performance test is scheduled to begin as required by paragraph (c)(1) of this section, or at least 60 days before a confirmatory performance test is scheduled to begin as required by paragraph (d) of this section. The test plans must include all documentation required to be included, including the substantive content requirements of paragraph (f) of this section and § 63.8(e); and

(C) You must make a good faith effort to accommodate the Administrator's comments on the test plans.

(ii) *Procedures for obtaining a waiver and duration of the waiver:* (A) You must submit to the Administrator a waiver petition or request to renew the petition under § 63.7(h) separately for each source at least 60 days prior to the scheduled date of the performance test.

(B) The Administrator will approve or deny the petition within 30 days of receipt and notify you promptly of the decision.

(C) The Administrator will not approve an individual waiver petition for a duration exceeding 6 months;

(D) The Administrator will include a sunset provision in the waiver ending the waiver within 6 months;

(E) You may submit a revised petition to renew the waiver under § 63.7(h)(3)(iii) at least 60 days prior to the end date of the most recently approved waiver petition;

(F) The Administrator may approve a revised petition for a total waiver period up to 12 months.

(iii) *Content of the waiver.* (A) You must provide documentation to enable the Administrator to determine that the source is meeting the relevant standard(s) on a continuous basis as required by § 63.7(h)(2). For extension requests for the initial comprehensive performance test, you must submit your Documentation of Compliance to assist the Administrator in making this determination.

(B) You must include in the petition information justifying your request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test, as required by § 63.7(h)(3)(iii).

(iv) *Public notice.* You must notify the public (e.g., distribute public mailing list) of your petition to waive a performance test.

* * * * *

(g) * * *

(2) * * *

(i) Carbon monoxide (or hydrocarbon) CEMS emissions levels must be within the range of the average value to the maximum value allowed, except as provided by paragraph (g)(2)(iv) of this section. The average value is defined as the sum of the hourly rolling average values recorded (each minute) over the previous 12 months divided by the number of rolling averages recorded during that time;

(ii) Each operating limit (specified in § 63.1209) established to maintain compliance with the dioxin/furan emission standard must be held within the range of the average value over the previous 12 months and the maximum or minimum, as appropriate, that is allowed, except as provided by paragraph (g)(2)(iv) of this section. The average value is defined as the sum of the rolling average values recorded over the previous 12 months divided by the number of rolling averages recorded during that time. The average value must not include calibration data, malfunction data, and data obtained when not burning hazardous waste;

* * * * *

(iv) The Administrator may approve an alternative range to that required by paragraphs (g)(2)(i) and (ii) of this section if you document in the confirmatory performance test plan that it may be problematic to maintain the required range during the test. In addition, when making the finding of compliance, the Administrator may consider test conditions outside of the range specified in the test plan based on a finding that you could not reasonably maintain the range specified in the test plan and considering factors including whether the time duration and level of the parameter when operations were out of the specified range were such that operations during the confirmatory test are determined to be reasonably representative of normal operations. In addition, the Administrator will consider the proximity of the emission test results to the standard.

* * * * *

(h) * * *

(2) Current operating parameters limits are also waived during pretesting prior to comprehensive performance testing for an aggregate time not to exceed 720 hours of operation under an approved test plan or if the source records the results of the pretesting. Pretesting means:

* * * * *

(j) * * *

(1) * * *

(i) Except as provided by paragraphs (j)(4) and (j)(5) of this section, within 90 days of completion of a comprehensive performance test, you must postmark a Notification of Compliance documenting compliance or noncompliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under § 63.1209.

* * * * *

(5) *Early compliance.* If you conduct the initial comprehensive performance test prior to September 30, 2002 (or a later compliance date approved under § 63.6(i)), you need not postmark the Notification of Compliance within 90 days of completion of the performance test.

* * * * *

6. Section 63.1209 is amended by:

a. Revising paragraphs (k)(5) and (k)(7)(i)(C).

b. Revising paragraphs (l)(3) and (l)(4).

c. Revising paragraph (p).

d. Revising paragraph (q).

e. Adding paragraph (k)(6)(iv).

These revisions and additions read as follows:

§ 63.1209 What are the monitoring requirements?

* * * * *

(k) * * *

(5) *Particulate matter operating limit.* If your combustor is equipped with an activated carbon injection system, you must establish operating parameter limits on the particulate matter control device as specified by paragraph (m)(1) of this section;

(6) * * *

(iv) Control device operating parameter limits (OPLs). You must establish operating parameter limits on the particulate matter control device as specified by paragraph (m)(1) of this section.

(7) * * *

(i) * * *

(C) For the initial comprehensive performance test, you may base the initial limit on maximum bed age of the carbon in each segment of the bed on manufacturer's specifications. If you use manufacturer's specifications rather than actual bed age to establish the initial limit, you must also conduct a bed life confirmatory test prior to the manufacturer's specification of bed age. That bed life confirmatory test must be conducted under the procedures required for a dioxin/furan confirmatory test as specified by § 63.1207(g)(2). The purpose of the bed life confirmatory test is to document to the Administrator that

the initial limit on maximum bed age ensures compliance with the dioxin/furan emission standard. If you fail to confirm compliance with the dioxin/furan emission standard during this testing, you must conduct additional testing as necessary to document that a revised lower limit on maximum bed age ensures compliance with the dioxin/furan standard.

* * * * *

(l) * * *

(3) *Activated carbon injection.* If your combustor is equipped with an activated carbon injection system, you must establish operating parameter limits prescribed by paragraphs (k)(5) and (k)(6) of this section.

(4) *Activated carbon bed.* If your combustor is equipped with a carbon bed system, you must establish operating parameter limits prescribed by paragraph (k)(7) of this section. In addition, if you elect to establish the initial limit on carbon bed age based on the manufacturer's specification, you must:

(i) Operate the combustor during the bed life confirmatory test required by paragraph (k)(7)(i)(C) of this section such that each operating limit specified in paragraph (l) of this section is held within the range of the average value over the previous 12 months and the maximum or minimum, as appropriate, that is allowed. The term "average value" is defined in § 63.1207(g)(2)(ii); and

(ii) Conduct mercury emissions testing to document compliance with the mercury emission standard. If you fail to confirm compliance with the mercury emission standard during this testing, you must conduct additional testing as necessary to document that a revised lower limit on maximum bed age ensures compliance with the standard.

* * * * *

(p) *Maximum combustion chamber pressure.* If you comply with the requirements for combustion system leaks under § 63.1206(c)(5) by maintaining the maximum combustion chamber zone pressure lower than ambient pressure to prevent combustion system leaks from hazardous waste combustion, you must perform instantaneous monitoring of pressure and the automatic waste feed cutoff system must be engaged when negative pressure is not adequately maintained.

(q) *Operating under different modes of operation.* If you operate under different modes of operation, you must establish operating parameter limits for each mode. You must document in the operating record when you change a mode of operation and begin complying with the operating limits for an alternative mode of operation.

(1) *Operating under otherwise applicable standards after the hazardous waste residence time has transpired.* As provided by § 63.1206(b)(1)(ii), you may operate under otherwise applicable requirements promulgated under sections 112 and 129 of the Clean Air Act in lieu of the substantive requirements of this subpart.

(i) The otherwise applicable requirements promulgated under sections 112 and 129 of the Clean Air Act are applicable requirements under this subpart.

(ii) You must specify (e.g., by reference) the otherwise applicable requirements as a mode of operation in your Documentation of Compliance under § 63.1211(d), your Notification of Compliance under § 63.1207(j), and your title V permit application. These requirements include the otherwise applicable requirements governing emission standards, monitoring and compliance, and notification, reporting, and recordkeeping.

(2) *Calculating rolling averages under different modes of operation.* When you transition to a different mode of operation, you must calculate rolling averages anew using the continuous monitoring system values previously recorded for that mode of operation (i.e., you ignore continuous monitoring system values recorded under other modes of operations when you transition back to a mode of operation).

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

7. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

8. Section 264.340 is amended by redesignating paragraph (b)(2) as paragraph (b)(3); revising the first sentence in paragraph (b)(1); and adding new paragraph (b)(2) to read as follows:

§ 264.340 Applicability.

* * * * *

(b) * * *

(1) Except as provided by paragraph (b)(3) of this section, the standards of this part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE of this chapter. * * *

(2) Except as provided by paragraph (b)(3) of this section, the standards of this section do not apply to an owner or operator of a hazardous waste incinerator (as defined at § 63.1201 of this chapter) that begins construction, reconstruction, or becomes an affected source of part 63, subpart EEE of this chapter, after September 30, 1999.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

9. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937.

10. Section 265.340 is amended by redesignating paragraph (b)(2) as paragraph (b)(3); revising the first sentence in paragraph (b)(1); and adding a new paragraph (b)(2) to read as follows:

§ 265.340 Applicability.

* * * * *

(b) * * *

(1) Except as provided by paragraph (b)(3) of this section, the standards of this part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE of this chapter. * * *

(2) Except as provided by paragraph (b)(3) of this section, the standards of this section do not apply to an owner or operator begins construction, reconstruction, or becomes an affected source of part 63, subpart EEE of this chapter, after September 30, 1999.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

11. The authority citation for part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 6905, 6906, 6912, 6922, 6925, and 6937.

12. Section 266.100 is amended by redesignating paragraph (b)(2) as paragraph (b)(3); revising the first sentence of paragraph (b)(1); and adding new paragraph (b)(2) to read as follows:

§ 266.100 Applicability.

* * * * *

(b) * * *

(1) Except as provided by paragraph (b)(3) of this section, the standards of this part no longer apply when an affected source demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of subpart EEE. * * *

(2) Except as provided by paragraph (b)(3) of this section, the standards of this section do not apply to an owner or operator of a hazardous waste burning cement kiln, or hazardous waste lightweight aggregate kiln (as defined at § 63.1201 of this chapter) that begins construction, reconstruction, or becomes an affected source of part 63, subpart EEE of this chapter, after September 30, 1999.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

13. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

14. Section 270.19 is amended by revising paragraph (e) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

* * * * *

(e) When an owner or operator who submitted a permit application under this part before September 30, 1999, demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance documenting compliance with all applicable requirements of part 63, subpart EEE), the requirements of this section do not apply. When an owner or operator submits a permit application under this part on or after September 30, 1999, the requirements of this section do not apply. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

15. Section 270.22 is amended by revising the introductory text to read as follows:

§ 270.22 Specific part B information requirements for boilers and industrial furnaces burning hazardous waste.

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance documenting compliance with all applicable requirements of part 63, subpart EEE), the requirements of this section do not apply. When an owner or operator of a cement or lightweight aggregate kiln submits a permit application under this part on or after September 30, 1999, the requirements of this section do not apply. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

16. Section 270.62 is amended by revising the introductory text to read as follows:

§ 270.62 Hazardous waste incinerator permits.

When an owner or operator who submitted a permit application under this part before September 30, 1999, demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE), the requirements of this section do not apply. When an owner or operator submits a permit application under this part on or after September 30, 1999, the requirements of this section do not apply. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

17. Section 270.66 is amended by revising the introductory text to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

When an owner or operator of a cement or lightweight aggregate kiln who submitted a permit application under this part before September 30, 1999, demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE), the requirements of this section do not apply. When an owner or operator of a cement or lightweight aggregate kiln submits a permit application under this part on or after September 30, 1999, the requirements of this section do not apply. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

[FR Doc. 01–16426 Filed 7–2–01; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–99–5013 (HM–229)]

RIN 2137–AD21

Hazardous Materials: Revisions to Incident Reporting Requirements and the Hazardous Materials Incident Report Form

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing revisions to the current incident reporting requirements of the Hazardous Materials Regulations and the hazardous materials incident report form, DOT Form F 5800.1. The major changes proposed by RSPA in this NPRM include: collecting more specific information on the incident reporting form; expanding reporting exceptions; expanding reporting requirements to persons other

than carriers; reporting undeclared shipments of hazardous materials; notifying shippers of incidents; and reporting non-release incidents involving bulk packages. The revisions are intended to increase the usefulness of data collected for risk analysis and management by government and industry and, where possible, provide relief from regulatory requirements.

DATES: Send your comments on or before October 1, 2001. To the extent possible, we will consider comments received after this date in making our decision on a final rule.

ADDRESSES: Address your comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW, Washington, DC 20590–0001. You must identify the docket number, RSPA–99–5013 (HM–229) at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that your comments have been received, include a self-addressed stamped postcard. You may also submit your comments and review all comments by accessing the Docket Management System website at *http://dms.dot.gov*. Click on "Help and Information" to obtain instructions for filing a document electronically.

The Dockets Unit is located on the Plaza Level of the Nassif Building at the U.S. DOT at the above address. You may view public dockets between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except on Federal holidays. An electronic copy of this document may be downloaded from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register's** home page at: http://www.nara.gov/nara/fedreg, the Government Printing Office's database at http://www.access.gpo.gov/su_docs, or the Office of Hazardous Materials Safety at http://rspa.dot.gov/rulemake.htm. You may obtain copies of DOT Form F 5800.1 and the instruction booklet for completing DOT Form F 5800.1 at the Office of Hazardous Materials Safety's web site at http://hazmat.dot.gov/spills.htm or http://hazmat.dot.gov/ohmforms.htm#incidents.

FOR FURTHER INFORMATION CONTACT: Michael Johnsen or Diane LaValle, at the Office of Hazardous Materials Standards, telephone (202) 366–8553 or Kevin Coburn, at the Office of Hazardous Materials Planning & Analysis, telephone (202) 366–4555, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

I. Background

Quality data supporting causal, trend, and risk analysis is fundamental to an effective safety program. The importance of data to the hazardous materials transportation safety program was highlighted in both a ONE DOT Flagship Initiative on Hazardous Materials Handling/Incidents (HazMat Flagship) and a recently completed Department-wide Hazardous Materials Program Evaluation (HMPE). The HazMat Flagship identifies the set of new and ongoing actions relating to hazardous materials transportation that has the greatest potential impact on safety and program operation and that benefits from a cooperative ONE DOT approach. Information on DOT's Flagship Initiatives can be found at: *http://www.dot.gov/onedot/flagship.htm*. The HMPE used a multi-modal team to conduct a Department-wide program evaluation to document and assess the effectiveness of the Department's hazardous materials transportation safety program. The team's final report can be found at: *http://hazmat.dot.gov/hmpe.htm*.

The hazardous materials transportation safety program relies on DOT Form F 5800.1, Hazardous Materials Incident Report, to gather basic information on incidents that occur during transportation and that meet specified criteria as required in § 171.16 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). RSPA last revised this form in 1989. In 1999, we received roughly 17,500 incident reports. The Research and Special Programs Administration (RSPA, we) use the data and information reported by carriers to:

- Evaluate the effectiveness of the existing regulations and industry operating procedures;
- Determine the need for regulatory changes to cover changing transportation safety problems; and
- Identify major problem areas that should receive priority attention.

In addition, both the government and industry use this information to chart trends, identify problems and training inadequacies, evaluate packagings, and assess ways to reduce releases.

Although the current incident report form provides useful information and is generally recognized as being fundamentally sound, room for improvement exists. Both the HazMat Flagship initiative and the HMPE emphasized the need to obtain more accurate and complete data on incidents. We believe the opportunity exists to obtain better, more detailed information on events with potentially greater consequences; to provide more descriptive information to help determine root causes of events; to offer better linkages so that data can be coupled (for example, registration numbers and fire and police report numbers); and to better structure the report form to facilitate complete and accurate responses.

Our experience using data generated by the current form has identified certain deficiencies. Rulemakings such as HM–225A, "Revision to Regulations Governing Transportation and Unloading of Liquefied Compressed Gases," and HM–213B, "Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids," have demonstrated the difficulties involved with using DOT Form 5800.1 data to determine precise failure modes and causes. These rulemakings also underscore the unreliability of cost information and the need to update this and other data as better information becomes available after initial submission of the form in the time period prescribed by regulation.

The National Transportation Safety Board (NTSB) has issued a number of recommendations related to data collection and processing developed during the course of their investigations. NTSB Recommendation H–92–6 suggests establishment of a program to collect information necessary to identify patterns of cargo tank equipment failures, including the reporting of all accidents involving a DOT specification cargo tank. Revising DOT Form 5800.1 offers a viable way to implement this recommendation by enabling us to obtain a more complete profile of accident scenarios, including "success stories," through which packaging integrity issues can be more thoroughly evaluated. We believe gathering such information on all bulk packagings involved in incidents where the packaging, appurtenances, or damage protection devices receive structural damage is a logical extension of this philosophy.

Another example of an NTSB recommendation that can be implemented though revision to DOT Form 5800.1 is ensuring that there is formal feedback from carriers to shippers when an incident has occurred (recommendation R–89–52). The need for this latter recommendation is supported by FAA experience with shippers who have been unaware of packaging failures.

In addition, the National Risk Assessment for Selected Hazardous Materials performed for RSPA by the

Argonne National Laboratory and the University of Illinois relied on incident data as a basic input into the study and recommended changes in a number of areas. Risk practitioners in government and industry offered suggestions for improved reporting of incident data in a white paper produced under the auspices of the Transportation Research Board.

Undeclared hazardous materials shipments, particularly in the air mode, are a safety issue of high visibility and concern within the Department. This issue received significant attention in the HazMat Flagship and was recognized by the HMPE as an important area where better understanding of the frequency and impact of such shipments is essential. Data obtained through reporting of discoveries of such shipments, whether or not the material is released, can help in defining the extent of the problem and developing programs to mitigate the risk involved. DOT Form 5800.1 is an efficient way to capture this data. Such data, even though it represents only undeclared hazardous materials that are discovered rather than the full spectrum of undeclared hazardous material shipments, can play a significant role in monitoring trends and measuring the effects of efforts to reduce undeclared shipments.

We are cognizant of the burden often imposed by regulatory requirements. As we develop proposed changes to the incident reporting requirements, we are seeking to minimize any additional burden associated with the revised requirements. For instance, we are proposing to add exceptions to reporting requirements for small releases of materials that pose the least hazard where sufficient data already exists to manage risk. Further, we believe certain data fields that ask for information that is obtainable from other sources can be deleted. Land use at the incident site is an example of the latter case.

As part of early efforts to consider possible revisions and following a meeting between DOT and members of several trade associations concerning hazardous materials incident reporting, the Association of American Railroads sponsored a workgroup with segments of the transportation community to discuss the DOT Form F 5800.1 and reporting requirements of §§ 171.15 and 171.16. The workgroup meetings were held during the winter of 1997–98. Participants included representatives of all four transportation modes and RSPA, shippers, container manufacturers, and labor. The workgroup drafted suggestions and submitted them to RSPA. We developed questions based on input from these meetings, the DOT modal agencies, and other concerned individuals, and on our own initiative.

On March 23, 1999, we published an advance notice of proposed rulemaking (ANPRM; 64 FR 13943) that asked a series of questions regarding the need to change the current reporting requirements or the current incident report form. We received approximately 40 comments from industry associations, state and local governments, non-profit associations, and carriers. These comments are discussed in Section III of this preamble.

II. Current Requirements

Currently, § 171.15 requires carriers to immediately notify the National Response Center (NRC) after any incident that occurs during transportation in which, as a direct result of hazardous materials:

(1) A person is killed;

(2) A person receives injuries requiring hospitalization;

(3) Estimated carrier or other property damage exceeds $50,000;

(4) An evacuation of the general public occurs for one hour or more;

(5) One or more major transportation arteries or facilities are closed for one hour or more;

(6) The operational flight pattern or routine of an aircraft is altered;

(7) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipments of radioactive material or infectious substances;

(8) There has been a release of a marine pollutant in a quantity exceeding 450 L (119 gallons) for liquids or 400 kg (882 pounds) for solids; or

(9) A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the judgment of the carrier, it should be reported to the Department even though it does not meet any other immediate notification criteria.

Carriers may report any of these incidents involving aircraft to the Federal Aviation Administration (FAA). In addition, certain incidents involving infectious substances must be reported to the Centers for Disease Control (CDC).

Each carrier required to make a report under § 171.15 is also required to complete DOT Form F 5800.1 in accordance with § 171.16. Additionally, unless excepted, a carrier is required to submit DOT Form F 5800.1 for any incident occurring during transportation that results in an unintentional release of a hazardous material from its package or the discharge of any quantity of hazardous waste.

We use the data and information reported by carriers to:

(1) Evaluate the effectiveness of the existing regulations and industry operating procedures;

(2) Determine the need for regulatory changes to cover changing transportation safety problems; and

(3) Identify major problem areas that should receive priority attention.

In addition, both the government and industry use this information to chart trends, identify problems and training inadequacies, evaluate packagings, and assess ways to reduce releases.

In considering how to update the incident report form, our primary objective is to ensure that useful information is captured in an efficient manner. We believe it is possible to improve the structure and format of the form to make it easier to understand and complete accurately. To reduce the reporting burden on persons responsible for completing the incident report, we believe certain existing fields that ask for information that is obtainable from other sources can be deleted. Land use at the incident site is an example. We also believe it is appropriate to add information in certain areas where it can help determine future program direction and support measures of program effectiveness. For example, a good description of packaging performance, documenting both failures and successes, helps us define future requirements. In addition, undeclared hazardous materials is a problem area of significant safety concern to DOT, and the ability to identify the frequency and source of such shipments is important in efforts to reduce their occurrence. A complete description of changes to the content of the form is provided in the following sections.

III. Summary of Issues, Comments and RSPA Proposals

The major changes proposed by RSPA in this NPRM include:

(1) collecting more specific information on the incident reporting form;

(2) expanding reporting exceptions;

(3) expanding reporting requirements to persons other than carriers;

(4) reporting undeclared shipments of hazardous materials;

(5) notifying shippers of incidents; and

(6) reporting non-release incidents involving bulk packages.

These and other proposals are discussed in detail in the following paragraphs.

In the ANPRM, we posed 35 questions concerning possible revisions to DOT

Form F 5800.1 and the associated sections of the HMR. These 35 questions are grouped into the following ten general issues:

(1) Electronic filing
(2) Revisions to the form
(3) One-call reporting
(4) Expansion of reporting requirements to persons other than carriers
(5) Exceptions to incident reporting
(6) Criteria for telephonic notification
(7) Updates to reports
(8) Reporting when no hazardous material is released during an incident
(9) Undeclared shipments of hazardous materials that do not result in a release
(10) Notifying shippers of incidents.

1. *Electronic filing.* The ANPRM noted that we are considering optional filing of incident reports by facsimile (fax), electronic mail (e-mail), and the Internet, and asked for recommendations concerning implementation of an electronic filing option. Electronic filing of incident reports is consistent with the requirements of the Government Paperwork Elimination Act (GPEA), which generally mandates that, by October 2003, agencies accept electronic documents and electronic signatures for the transactions that they conduct with the public and regulated parties.

All commenters support an electronic filing option. Commenters state that fax, e-mail, and Internet submissions should be available to facilitate reporting. However, commenters also state that electronic filing should be optional rather than mandatory.

We agree that electronic filing of incident reports would reduce the reporting burden on industry and increase reporting flexibility. However, because of logistical difficulties, all means of electronic filing will not be immediately available. In this NPRM, we are proposing to accept incident reports by fax and e-mail. Concurrent with the continued development of this rulemaking action, we intend to develop a capability to receive incident report forms through additional electronic means, such as a web-based form and electronic file transfers.

2. *Revisions to the form.* We received a number of comments concerning the format of the current DOT Form F 5800.1. Some commenters suggest that we develop a different form for each mode or packaging type. Commenters also state that an abbreviated form would be useful for reporting smaller incidents.

We agree that more detailed information concerning specific modes of transportation or specific packaging types would improve our incident database. However, we believe that having more than one incident report form would be confusing to the regulated industry. Therefore, in this NPRM, we are proposing a single multi-section form. Reporting incidents on a single form will avoid confusion as to which form to submit. The proposed form includes "General Incident Information," "Consequences," and "Packaging Information" sections that would be completed by everyone reporting an incident. In addition, the proposed form includes modal or special information sections that would be completed only if certain conditions were met.

In considering how to update the incident report form, our primary objective is to ensure that useful information is captured in an efficient manner. We believe it is possible to improve the structure and flow of the form to make it easier to understand and complete accurately. We are proposing to delete certain existing fields that ask for information that is obtainable from other sources or can be extrapolated from other fields. We believe the fields "Is material a hazardous substance?," "Was the RQ met?," and the "Land Use and Community Type" questions fall into this category. Similarly, the "Highway Type" and "Number of Lanes at a Vehicle Accident/Derailment site" can be determined from other sources. In addition, the consignee name and address information and the type of labeling or placarding fields have been found to offer limited benefit to safety improvements, and we propose to remove them.

Additional information in certain areas is needed to help determine future program direction and support measures of program effectiveness. Separate fields for information on packing group, hazardous wastes and toxic by inhalation materials would allow us to better identify the materials involved in incidents. Further, we believe the inclusion of cross-reference fields, such as the NRC report number and the Hazardous Materials registration number, will help broaden the ties the incident data has with other Federal hazardous materials data.

We also believe gathering additional information on the types of persons who respond to incidents, the types of persons who are killed, injured or need to be evacuated, as well as how long evacuations or closures last, will contribute to incident risk analysis. The more detailed questions concerning air transport incidents and questions directed to specific types of packagings will allow for more focused review of where and how packages fail. Additionally, the ability to identify the frequency and source of undeclared hazardous materials shipments, an area of significant safety concern to DOT, is important to reducing their occurrence.

We are also proposing to revise the packaging sections of the incident report form to eliminate duplicative and confusing formatting and to enable us to gather more specific packaging information. For example, we propose to replace check boxes to identify damage to packagings with failure codes specific to each packaging type. Use of failure codes was one of the recommendations coming from the Association of American Railroads workgroup discussed in Section I. Use of failure codes allows the preparer to select from a set of choices appropriate to the particular packaging type involved. Also, we believe use of terminology appropriate for the particular packaging type will help avoid confusion and ultimately make it easier for the preparer to complete the incident report.

The expansion will add about 15 data fields to the basic incident information. We believe the benefits to be gained by collecting more detailed information will require only minimal additional time to report these mostly short yes/no or fill-in-the-blank fields. Further, we have reformatted the proposed incident report form to facilitate completion (e.g., more white space and a more logical flow from item to item). While this reformatting has added more pages to the form, we believe that this design will improve accuracy and make the form easier to complete.

The draft of the form that appears in the appendix to this NPRM is for review of question format and content only and does not reflect the final layout of the actual form. We anticipate that the form layout will be similar to the most recent U.S. Census form, which included proper spacing for digital scanning and ease of use considerations.

The proposed revised form is included as Appendix A to this NPRM. The proposed instructions for completing the form appear as Appendix B. We ask that reviewers of the proposed incident report form focus on the following questions related to the contents of the form: (1) are critical data elements missing that should be added?; (2) what data elements currently included on the form are candidates for elimination?; (3) do the failure codes accurately represent modes of packaging failure?; and (4) what are your suggestions for additional or more descriptive failure codes?

3. *One-call reporting.* As provided by § 171.15, certain incidents require immediate telephonic notification. Currently, except for incidents involving transportation by aircraft or releases of infectious substances, carriers are required to call the NRC. Notice involving air shipments of hazardous materials must be given to the nearest FAA Civil Aviation Security Office. Notification of incidents involving infectious substances may be made to the CDC rather than the NRC.

In this NPRM, we are proposing to eliminate the separate telephonic notification requirement for air shipments and to require all air carriers to report incidents subject to § 171.15(a) to the NRC. NRC would then make any subsequent notifications. NRC personnel are trained specifically as to which notification requirements pertain to which entities; thus, this change should result in more accurate notification to parties with a need to know. It should be noted that CDC continues to require telephonic notification for releases of infectious substances (etiologic agents). In another rulemaking (Docket No. RSPA–98–3971, HM–226, 66 FR 6942, January 22, 2001), we are proposing to clarify that a written report of an incident involving an infectious substance that is reported by telephone to CDC must also be submitted to RSPA.

4. *Expansion of reporting requirements to persons other than carriers.* Currently, the requirements for telephonic and written reporting of transportation incidents apply to carriers only. Operators of transportation facilities, such as marine terminals, who do not perform carrier functions are not required to report transportation incidents involving hazardous materials. Most commenters to the NPRM agree that the person in physical control of a hazardous material when an incident occurs during transportation should be responsible for reporting that incident. One commenter states that the person in control of a hazardous material during transportation would most likely be the person most knowledgeable about the circumstances surrounding the incident. Other commenters disagree, stating that confusion and duplicative reporting would likely result if incident reporting is required by persons other than carriers.

We agree that the person in direct control of the hazardous material while it is being transported in commerce should report any incidents. Such a requirement would capture incidents that occur when a hazardous material is outside a carrier's direct possession, but while the material is still in transportation in commerce, such as while the material is being stored incident to movement at a transfer facility.

Therefore, in this NPRM we are proposing to require each person in physical control of a hazardous material while it is in transportation in commerce to report any incident that occurs while the material is in his or her possession. For example, a temporary storage facility owner would have to report any event that meets the provisions of §§ 171.15 or 171.16 and that occurs during the time that a hazardous material is stored incident to movement. Consistent with current HMR requirements, administrative determinations, and interpretations, storage incidental to movement is storage of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes possession of the hazardous material until it is delivered to its destination, as indicated on the shipping paper. We believe this proposal will provide more accurate and complete information regarding hazardous materials incidents. We estimate that extending reporting requirements to persons in physical control of a hazardous material during transportation would increase the number of incident reports by about 2,040 per year.

In addition, we are proposing to revise § 171.21 to require "the person responsible for reporting the incident," rather than the "carrier," to make available all records and information pertaining to the incident.

5. *Exceptions to incident reporting.* Currently, the HMR provide exceptions to incident reporting for the following:

(1) Consumer commodities;

(2) Batteries, electronic storage, wet, filled with acid or alkali; and

(3) Paint and paint-related materials when shipped in packagings of five gallons or less.

In addition, hazardous materials prepared and transported as limited quantities in accordance with the HMR are excepted from incident reporting requirements. However, these exceptions do not apply to:

(1) Incidents required to be reported under § 171.15(a);

(2) Incidents involving transportation aboard aircraft;

(3) Materials in Packing Group I (except for consumer commodities); or

(4) Incidents involving the transportation of hazardous waste.

Most commenters support expansion of the current exceptions to incident reporting. One commenter suggests that exceptions be expanded to include all incidents involving loading and unloading where a small release occurs as a result of connecting and disconnecting hoses or transfer lines. Other commenters suggest that hazardous materials in smaller packagings (e.g., 5 gallons or less) be excepted from incident reporting.

We agree that exceptions to incident reporting should be applicable to small amounts of most hazardous materials that fall into our lowest risk category of hazardous materials (PG III). We now have ample data from past incidents spanning over 20 years involving PG III hazardous materials in smaller packagings to warrant a reporting exception. Incident reporting should be focused on more substantial releases where the consequences of an incident may be significant.

In this NPRM, we are proposing to except from incident reporting requirements hazardous materials incidents meeting all of the following criteria:

(1) The shipment is not being offered for transportation or transported by air;

(2) None of the criteria in § 171.15(a) apply;

(3) The material is not a hazardous waste;

(4) The material is properly classed as—

(i) ORM–D; or

(ii) A packing Group III material in Class or Division 3, 4, 5, 6.1, 8, or 9;

(5) Each packaging has a capacity of less than 20 liters (5 gallons) for liquids or less than 30 kg (66 pounds) for solids; and

(6) The total aggregate release is less than 20 liters (5 gallons) for liquids or less than 30 kgs (66 pounds) for solids.

(7) The material does not meet the definition of an undeclared hazardous material in § 171.8.

We are proposing to except small spills from the reporting requirements. We wanted only to require that an aggregate spill of 20 liters (5 gallons) or over for liquids or 30 kg (66 pounds) or over for solids of otherwise excepted hazardous materials be reported. For example, if twelve 5-gallon containers of paint are spilled, no incident report would be required unless the aggregate amount of paint released from the twelve containers is over 5 gallons or one of the conditions in § 171.15(a) is met. Based on reports received over the past five years, we expect that the proposed exceptions would reduce the total number of incident reports filed each year by about 5,000.

In addition, we are proposing to clarify existing rules to except minimal amounts of hazardous materials

escaping: (1) due to disconnecting a loading or unloading line or from the operation of venting devices (for which venting is authorized); or (2) from the manual operation of seals in equipment such as pumps, compressors, and valves during the normal course of transportation if the release does not trigger any of the provisions for a telephonic notification described in § 171.15 of this subpart and does not result in property damage.

We are requesting comments regarding additional exceptions or alternative methods for excepting small spills from the reporting requirements. We may modify the proposed exception in response to such comments.

6. *Criteria for telephonic notification.* Under current § 171.15 requirements, one of the criteria that triggers the requirement for immediate notification is property damage that exceeds $50,000. Most commenters agree that a monetary limit should not be used as a criterion for telephonic notification; they state that such a limit is arbitrary and has not been adjusted to reflect inflation. We agree and are proposing to remove the monetary criterion.

We are also proposing to clarify the requirements for "immediate notification" by specifying that telephonic notification must be made as soon as practicable following the occurrence of an incident and in all instances within 12 hours after an event requiring notification. This eliminates confusion surrounding the term "immediate notification." This proposed revision also responds to National Transportation Safety Board (NTSB) recommendation H–99–58 to provide a specific time period to report by telephone. We invite comments as to the appropriateness of this time period or a different time period (e.g., 2 hours, 4 hours, or 24 hours).

In addition to the above, we propose to expand the telephonic notification reporting requirements to the person who has physical control of the material at the time of the transportation incident. Most commenters agree that the person in physical control of a material at the time of an incident should call the NRC.

Commenters also suggest that incidents resulting in significant environmental damage and incidents involving certain high-hazard materials be added to the current criteria for telephonic notification. We believe that the current criteria requiring immediate telephonic notification are sufficient and are not proposing any additional criteria.

7. *Updates to reports.* Commenters disagree about whether we should require updates to incident reports. Some commenters suggest that we develop criteria to identify when an incident report requires updating. Other commenters state that updates should be required when there is any change to an incident result.

We believe that substantive changes to the outcome of an incident should be updated by submitting updates to the original DOT Form F 5800.1 report. Updated information ensures the accuracy and quality of data we collect. In this NPRM, we propose to require updated incident reports for up to one year after the date of an incident for the following: (1) death resulting from injuries caused by a hazardous material; (2) corrections to the identification of the hazardous material or packaging information; and (3) certain updated damage costs as additional information becomes available. Cost information would be updated when: (1) costs not known at the time the report was filed became known; or (2) original damage/cost estimates were revised by more than $25,000. In some cases, certain costs (such as decontamination and cleanup) may not be known within 30 days of the incident's occurrence, and would not be included in the initial incident report. In other cases, some costs (such as property damage) may be significantly higher than the original estimate. We estimate that about 800 incidents reported each year would require an update.

Under § 171.21, persons required to report an incident are required to cooperate with any further investigation of that incident. In particular, incidents that we categorize as significant may require further investigation, or reports that are incomplete may require a follow-up.

8. *Reporting when no hazardous material is released during an incident.* In the ANPRM, we asked whether the incident reporting requirements should be expanded to include certain incidents that do not result in release of a hazardous material. We suggested that such information could provide a broader base for risk management in more critical transportation situations and that additional information could be used to gauge the performance and integrity of certain packagings.

Most commenters oppose data collection for an incident that does not result in a release of hazardous materials because of the increased reporting burden. We do not agree. We believe that certain incidents should be reported whether or not there is a release of hazardous material. The potential burden on operators is offset by the safety information that will be provided. For example, such reporting can provide information concerning packaging integrity, particularly the circumstances under which a packaging is able to withstand a collision or accident without releasing its contents. Thus, we are proposing to require an incident report when a bulk packaging (other than a tank car tank) has received structural damage to the lading retention system or damage that requires repair to systems intended to protect the lading retention even if no hazardous material is released. This responds to NTSB recommendation H–92–6, which requests that we collect information on cargo tanks involved in accidents with no release of a hazardous material. There is no need to collect such data for a tank car tank because this information is already required to be reported to the Federal Railroad Administration. We also propose to include Type B packagings (for radioactive materials) that have received structural damage that may adversely affect the packaging's ability to retain lading, even if no hazardous material is released, to gather statistical information compatible with our criteria for a significant incident.

9. *Undeclared shipments of hazardous materials that do not result in a release.* Undeclared shipments, particularly when offered for transportation or transported by air, pose a significant safety problem because of the potential for improper packaging, handling, and failure to communicate the hazard. Emergency responders and transportation workers are unaware of the presence of undeclared hazardous materials. Certain hazardous materials that are forbidden for air transportation may make their way onto a passenger-carrying or cargo-only aircraft, and may inadvertently be handled in an unsafe manner by transportation workers. In a hazardous material release from an undeclared shipment, the crew does not know that a hazardous material is present or what response measures to take. Commenters support gathering information on undeclared shipments of hazardous materials that do not result in a release. However, the commenters are divided as to how we should gather this information. Some commenters state that a reporting requirement specific to undeclared hazardous materials would expose their companies to undue liability and possible enforcement actions for accepting an undeclared shipment. Other commenters state that this requirement would place carriers in an enforcement role.

We believe that information on undeclared shipments should be

collected and that the incident report form is the most accessible method for collecting such data. In this NPRM, we are proposing to require an incident report when an undeclared shipment of hazardous materials is discovered. This requirement would apply to parties who are likely to discover undeclared shipments and who would benefit greatly from a reduction in such shipments, which is a goal of this rulemaking. Based on information provided by FAA, we anticipate that an increase of about 1,500 incident reports per year would result from this proposal.

If persons filing these reports had no reason to believe that they were accepting hazardous materials, DOT would not hold them responsible. Parties filing these reports would be advising DOT of unsafe conditions; DOT would independently determine whether enforcement is appropriate.

10. *Notifying shippers of incidents.* We propose to require the person responsible for completing an incident report to provide a copy of the report to the shipper whose packages were the subject of the report. The report would have to be provided within 30 days of the incident and may be provided in an electronic or written form. The 30-day time period is consistent with the time required to submit the report to RSPA. This proposal responds to NTSB Recommendation R–89–52, which recommends requiring carriers reporting hazardous materials incidents under the provisions of § 171.16 to notify shippers whose hazardous materials shipments are involved. NTSB is concerned that shippers are not receiving information about packages that are prone to failure during transportation. Since we are proposing to expand reporting requirements to persons other than carriers who have possession of a hazardous material while in transportation, the person required to report would also be required to notify the shipper of the packages involved in the incident.

We believe that this shipper notification already often occurs; however, we request comments concerning the costs of, and need to create, a requirement to assure that shippers are notified when their packages are involved in incidents.

Miscellaneous Proposals

New Definitions

We are proposing new definitions in § 171.8 for "unintentional release," and "undeclared hazardous material shipment" to assist in clarifying the regulations.

Hazardous Waste Manifest

We are proposing removal of the requirement in § 171.16 to attach a hazardous waste manifest to the incident report form when a release involves a hazardous waste. The proposed incident report form requires the hazardous waste manifest number to be reported and provides a field for entering the number. In addition, we are proposing to remove the requirements for: 1) an estimate of the quantity of waste removed from the scene; 2) the name and address of the facility to which it was taken; and 3) the manner of disposition of any removed waste. This information is already available as a result of EPA's hazardous waste manifest regulations; thus, continued reporting of this information to RSPA is unnecessary. Removing these requirements would eliminate reporting information that is obtainable through other sources.

Record Retention Location

In this NPRM, we are proposing to require that the report be retained at either the reporter's principal place of business or other record retention site provided the report is available at the reporter's principal place of business within 24 hours of request. Currently, there is a provision in § 171.16 that requires a person reporting an incident to retain a copy of the report for two years at the reporter's principal place of business or at another place that has been authorized under the terms of an approval. We are not aware of any approvals issued under this section. We believe this proposal would provide flexibility in maintaining records without the need for an approval from DOT.

Incidents at Registered Cargo Tank Facilities

The Federal Motor Carrier Safety Administration (FMCSA) has notified RSPA of several fatalities that have occurred in registered cargo tank facilities during inspection and repair of DOT specification cargo tanks. In most cases, the cause of the incident was a failure to comply with the HMR requirements applicable to such operations (inadequate training programs, failing to clean and purge a tank before repair, etc.) Over the course of the last several years, FMCSA has attempted to gather anecdotal evidence to determine the frequency of these events. It appears that up to 10 fatalities a year may occur due to work on DOT specification cargo tanks. Because of the apparent frequency and severity of these incidents, we are interested in collecting information on these occurrences.

We request comments regarding the following:

1. Should we require the reporting of incidents that occur at registered cargo tank facilities during the inspection, testing and repair process?

2. Is this information available from other sources, such as the Occupational Health and Safety Administration or state worker protection agencies?

3. What incidents should be reported—only consequential incidents, such as those requiring telephonic reporting under § 171.15, any release requiring reporting under § 171.16, or some other criteria?

4. Should we collect information on incidents that occur while work is performed on DOT specification cargo tanks, all specifications packages or all hazardous materials packages?

Any action based on these questions would be considered in a future rulemaking.

State Notification

In addition, we were contacted by a state official, who requested that we require incidents meeting the immediate notification criteria in § 171.15 to be reported to the state in which the incident occurred. We do not believe that this is necessary. A state may require immediate, oral accident/incident reports for emergency response purposes. Further, any state may request that NRC notify it of incidents occurring within the state.

IV. Summary and Conclusion

We are proposing, among others, the following changes to the current HMR reporting requirements and to DOT Form F 5800.1:

(1) Reporting of incidents involving bulk packagings (other than tank car tanks) that receive structural damage that may adversely affect the packaging's ability to retain lading even when no hazardous material is released. (This includes Type B RAM packagings.)

(2) Reporting discoveries of undeclared hazardous material shipments.

(3) Updating incident reports when significant new information becomes available.

(4) Requiring the person in physical control of a hazardous material during transportation to report an incident.

(5) Excepting small releases of specified materials that pose the least hazard from reporting requirements.

(6) Restructuring the form to utilize failure codes to obtain information on packaging failures.

In addition, we are requesting specific comments in the following areas:

(1) What changes should be made in report content (specific data elements) and in failure codes?

(2) Are additional exceptions or alternative methods for excepting small spills from the reporting requirements appropriate?

(3) Is a 12-hour maximum an appropriate standard for "immediate" telephonic reporting or is a different time period (*e.g.*, 2 hours, 4 hours, or 24 hours) warranted?

(4) What would be the impact if the proposal to create a requirement assuring that shippers are notified (including possible telephonic notification) when their packagings are involved in incidents is adopted?

(5) Should we require the reporting of incidents that occur at registered cargo tank facilities during the inspection, testing, and repair process? (Also see related questions in the previous section.)

V. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not a significant regulatory action under Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This proposed rule is not a significant regulatory action under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A preliminary regulatory evaluation that considers various regulatory alternatives is available for review in the public docket.

The costs of these proposed regulations identified in the regulatory evaluation are attributed to: (1) Expansion of reporting requirements to persons other than a carrier in possession of a hazardous material during transportation; (2) implementation of a requirement to update incident reports under certain conditions; (3) expansion of reporting requirements to incidents involving certain bulk packagings where no hazardous material is released; and (4) implementation of a requirement to report to the shipper that an incident has occurred. Reductions in the total costs associated with incident reporting requirements are attributed to implementation of an electronic filing option and expansion of current exceptions to the reporting requirements. The expected reductions in total costs generally offset the anticipated cost increases; thus, the proposals should result in only minimal increased costs of compliance.

While it is difficult to estimate the net benefit resulting from this rulemaking, we believe that the proposed revisions to the incident reporting requirements will greatly enhance our ability to develop strategies to reduce the risks associated with the transportation of hazardous materials. The non-quantifiable benefits of the increase in data quality attributable to this rulemaking are expected to be far greater than the negligible cost increase to the regulated community.

B. Executive Order 13132

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses covered subject item number 4 above and would preempt State, local, and Indian tribe written incident reporting requirements not meeting the "substantively the same" standard.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. We propose that the effective date of Federal preemption be 180 days from publication of a final rule in this matter in the **Federal Register**.

C. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of the Executive Order do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Based on the assessment in the final regulatory evaluation, I hereby certify that, while the final rule will affect a substantial number of small businesses, there will be no significant economic impact.

Potentially affected small entities. The proposals in this NPRM will apply to persons in physical control of a hazardous material during transportation in commerce. Such persons primarily include motor carriers, air carriers, vessel operators, rail carriers, temporary storage facilities, and intermodal transfer facilities. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration, the definition of "small business" has the same meaning as under the Small Business Act (15 CFR Parts 631–657c). Therefore, since no such special definition has been established, RSPA employs the thresholds (published in 13 CFR 121.201) of 1,500 employees for air carriers (NAICS Subgroup 481), 500 employees for rail carriers (NAICS Subgroup 482), 500 employees for vessel operators (NAICS Subgroup 483), $18.5 million in revenues for motor carriers (NAICS Subgroup 484), and $18.5 million in revenues for warehousing and storage companies (NAICS Subgroup 493). Of the approximately 116,000 entities to which the proposals in this NPRM would

apply (104,000 of which are motor carriers), we estimate that about 90 percent are small entities.

Potential cost impacts. The NPRM proposal to expand reporting requirements to any person in physical possession of a hazardous material while it is being transported in commerce will primarily affect storage and intermodal transfer facilities. We estimate that expanding the reporting requirements will increase the number of incident reports submitted each year by about 2,040 reports, or about 12 percent. Thus, the approximately 6,500 warehousing and storage entities subject to this requirement will incur total increased compliance costs of about $84,000 (about $13/year/company).

The proposal to require updating of incident reports under certain conditions applies to all persons subject to the HMR incident reporting regulations. We estimate that this proposal will result in about 800 updates to reports each year for a total annual cost to the approximately 116,000 transportation companies subject to this requirement of $4,800 (about 4¢/year/company).

The proposal to require reporting of certain incidents involving bulk packagings that do not result in a release of hazardous materials will apply to about 104,000 motor carriers. We estimate that this proposal will result in about 2,800 additional incident reports each year. Motor carriers will incur increased compliance costs of about $109,000 (about $1.05/year/company).

The proposal to require reporting of undeclared shipments of hazardous materials discovered during transportation will apply to all persons subject to the HMR incident reporting regulations. We estimate that this proposal will result in an increase of 1,500 incident reports per year, with corresponding increased compliance costs of $57,600 (about 50¢/year/company).

The proposal to require persons who are subject to the HMR incident reporting requirements to also report incidents to the hazardous material shipper will apply to all persons subject to the HMR incident reporting regulations. We estimate that this proposal will result in an increase in compliance costs of about $17,000 (about $1.20/year/company).

Potential cost savings. The proposals in the NPRM that will permit electronic filing of incident reports and expand the current exceptions from incident reporting requirements will offset the increased compliance costs described above. Taken together, the potential cost savings attributable to the proposals in this NPRM total about $276,000 (about $2.40/year/company).

Alternate proposals for small businesses. The Regulatory Flexibility Act suggests that it may be possible to establish exceptions and differing compliance standards for small businesses and still meet the objectives of the applicable regulatory statutes. However, given the importance of small business, as defined for purposes of the Regulatory Flexibility Act, in hazardous materials transportation, we do not believe that it would be possible to establish such differing standards and still accomplish the objectives of federal hazardous materials transportation law. The information provided in hazardous materials incident reports serves as the basis for critical RSPA safety functions, including identification of safety problems, regulations development, training programs, outreach efforts, and enforcement strategies. The risks posed by a hazardous material offered for transportation or transported by a small entity are the same as the risks posed by the same hazardous material when offered for transportation or transported by a large entity. Thus, it is entirely reasonable and appropriate for the HMR incident reporting requirements to apply equally to any person who offers for transportation or transports hazardous materials in commerce.

Conclusion. Based on the above analysis, we certify that while the proposals in this NPRM will affect a significant number of small businesses or other small entities, there will be no substantial economic impact on the identified classes of small businesses. If your business or organization is a small entity and if adoption of some or all of the proposed provisions could have a significant economic impact on your operations, please submit a comment to explain how and to what extent your business or organization could be affected.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. RSPA has a current information collection approval under OMB No. 2137–0039, Hazardous Materials Incident Reports, with 33,811 burden hours, $811,221.66 in annual costs, and 22,500 submitted incident reports per year. This information collection estimate, drafted in 1998, accounted for a 40% increase in incident reporting due to inclusion of intrastate carriers required to report incidents under the HM–200 rulemaking docket. The actual rate of increase attributed to that rulemaking has not been fully realized.

The average number of incident reports RSPA received for the years 1997–2000 is about 17,300, and for the years 1995–2000 is about 16,000. Our regulatory evaluation for this proposed rule uses a base number of 17,000 annual incident reports.

The proposals in this NPRM would only change information collection requirements for the DOT Form F 5800.1 under § 171.16—and not for telephonic notification requirements under § 171.15.

RSPA believes that this proposed rule may result in a modest increase in annual burden and costs. Even so, the estimated increase of an additional 810 reports per year proposed in this NPRM would result in total reports numbering far less than the 22,500 approved through our current information collection approval under OMB No. 2137–0039. Total estimated costs of written reports, including the estimated costs of this proposed rule, are also lower than the approved amount. The following figures are based on receiving 17,000 incident reports per year and only include estimates for written incident reports:

Total Annual Respondents: 1,781.
Total Annual Responses: 17,810.
Total Annual Burden Hours: 23,746.
Total Annual Burden Cost: $569,904.

RSPA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Requests for a copy of the information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

Written comments should be addressed to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. Comments should be received prior to the close of the comment period identified in the **DATES** section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This rulemaking would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector.

H. Environmental Assessment

RSPA believes that the proposed changes to the incident reporting system would have no significant impact on the environment. The changes proposed in this NPRM should increase the quality of data collected on hazardous materials spills, thus probably increasing our ability to evaluate potential packaging problems that result in releases to the environment. Thus, the proposed revisions should produce a small net benefit to the environment by improving the data sources used in regulatory development. Therefore, we find that there are no significant environmental impacts associated with this proposed rule.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and record keeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR part 171 as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.8 the following definitions are added in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Undeclared hazardous material means a hazardous material:

(1) That is required to be described on a shipping paper in the manner required by subpart C of part 172 of this subchapter, but is offered for transportation with no indication on the shipping paper or other documentation that it is hazardous; or

(2) That is excepted from the requirements of subpart C of part 172 of this subchapter (e.g., a small quantity or ORM–D material as defined in § 173.4 and 173.144, respectively) and is in a packaging that is not marked in the manner specified in this subchapter to indicate it contains a hazardous material.

* * * * *

Unintentional release means the escape of a hazardous material from a package. This includes releases resulting from collision, packaging failures, human error, vandalism, negligence, improper packaging, or unusual conditions such as the operation of pressure relief devices as a result of over-pressurization, overfill or fire exposure. It does not include intentional releases, such as venting of packages, where allowed, and the intentional discharge of contents from packagings.

3. Section 171.15 is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

(a) When a hazardous materials incident occurs during transportation in commerce, each person in physical possession of the hazardous material must provide notice by telephone, as described in paragraph (b) of this section, as soon as practicable but no later than 12 hours after the incident, to the DOT's National Response Center (NRC) on 800–424–8802 (toll free) or 202–267–2675 (toll call). Notice involving an infectious substance (etiologic agent) may be given to the Director, Center for Disease Control, U.S. Public Health Service, Atlanta, Ga., 800–232–0124 (toll free), in place of notice to the NRC. Each notice must include the following information:

(1) Name of reporter;

(2) Name and address of carrier represented by reporter;

(3) Phone number where reporter can be contacted;

(4) Date, time, and location of incident;

(5) The extent of injury, if any;

(6) Class or division, proper shipping name, and quantity of hazardous materials involved, if such information is available; and

(7) Type of incident and nature of hazardous material involvement and whether a continuing danger to life exists at the scene.

(b) A telephonic report is required when an incident occurs during the course of transportation in commerce (including loading, unloading, and temporary storage) and:

(1) As a direct result of a hazardous material—

(i) A person is killed;

(ii) A person receives an injury requiring admittance to a hospital;

(iii) The general public is evacuated for one hour or more;

(iv) A transportation artery or facility is closed or shut down for one hour or more;

(v) The operational flight pattern or routine of an aircraft is altered;

(2) Fire, breakage, spillage, or suspected radioactive contamination occurs involving a radioactive material (see also § 176.48 of this subchapter);

(3) Fire, breakage, spillage, or suspected contamination occurs involving an infectious substance other than a diagnostic specimen or regulated medical waste;

(4) There has been a release of a marine pollutant in a quantity exceeding 450 L (119 gallons) for a liquid or 400 kg (882 pounds) for a solid; or

(5) A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the judgment of the person in possession of the hazardous material, it should be reported to the NRC even though it does not meet the criteria of paragraph (b) (1), (2), (3) or (4) of this section.

(c) Each person making a report under this section must also make the report required by § 171.16.

Note to § 171.15: Under 40 CFR 302.6, EPA requires persons in charge of facilities (including transport vehicles, vessels, and aircraft) to report any release of a hazardous substance in a quantity equal to or greater than its reportable quantity, as soon as that person has knowledge of the release, to DOT's National Response Center at (toll free) 800–424–8802 or (toll) 202–267–2675.

4. Section 171.16 is revised to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

(a) *General.* Each person in physical possession of a hazardous material during transportation at the time of a reportable incident must report the incident in writing on DOT Form F 5800.1 (Rev. XX/XX).

(b) *Reportable Incident.* A reportable incident is one that occurs during the course of transportation (including loading, unloading, and temporary storage) in which—

(1) Any of the circumstances set forth in § 171.15(a) occurs;

(2) There is an unintentional release of a hazardous material or any quantity of hazardous waste has been discharged during transportation;

(3) A bulk packaging (other than a tank car tank) containing any hazardous material or a Type B packaging containing a Class 7 hazardous material receives structural damage to the lading retention system or damage that requires repair to a system intended to protect the lading retention system, even if there is no release of hazardous material; or

(4) An undeclared hazardous material is discovered.

(c) *Updating the incident report.* An incident report must be updated within one year of the incident if—

(1) A death results from injury caused by a hazardous material;

(2) There was a misidentification of the hazardous material or packaging information on the incident report;

(3) Damage, loss or related cost that was not known when the initial report was filed becomes known; or

(4) Damage, loss, or related cost changes by $25,000 or more.

(d) *Sending and retaining copies of the report.* Each person reporting under this section must—

(1) Send the report within 30 days of the date of discovery of the incident to the Information Systems Manager, DHM–63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001; and, for incidents involving transportation by aircraft, also send a copy of the report to the FAA Civil Aviation Security Office nearest the location of the incident;

(2) Retain a copy of the report, including electronically generated reports, for a period of two years at the reporter's principal place of business, or other record retention site if available at the reporter's principal place of business within 24 hours of request; and

(3) Send a copy of the report to the person who offered the hazardous material for transportation within 30 days following discovery of the incident.

(e) *Exceptions.* The requirements of paragraphs (a), (b), (c) and (d) of this section do not apply to—

(1) Releases of minimal amounts of material released from manual operation of seals, pumps, compressors, valves, during connection or disconnection of loading or unloading lines or, for materials for which venting is authorized, from vents, provided the release does not require a telephone report under the provisions of § 171.15 or result in property damage; or

(2) Incidents involving the unintentional release of hazardous material when all of the following apply:

(i) The material is not being offered for transportation or transported by air;

(ii) None of the criteria in § 171.15(a) apply;

(iii) The material is not a hazardous waste;

(iv) The material is properly classed as—

(A) ORM–D; or

(B) Class or Division 3, 4, 5, 6.1, 8, or 9 in Packing Group III;

(v) Each packaging has a capacity of less than 20 liters (5 gallons) for liquids or less than 30 kg (66 pounds) for solids;

(vi) The total aggregate release is less than 20 liters (5 gallons) for liquids or less than 30 kgs (66 pounds) for solids; and

(vii) The material does not meet the definition of an undeclared hazardous material.

5. Section 171.21 is revised to read as follows:

§ 171.21 Assistance in investigations and special studies.

(a) A shipper, carrier, packaging owner, packaging manufacturer or certifier, repair facility, or person associated with an incident under the provisions of § 171.16 must—

(1) Make all records and information pertaining to the incident available to an authorized representative or special agent of the Department of Transportation upon request.

(2) Give an authorized representative or special agent of the Department of Transportation reasonable assistance in the investigation of the incident.

(b) If an authorized representative or special agent of the Department of Transportation makes an inquiry of a person required to complete an incident report in connection with a study of incidents, the person shall—

(1) Respond to the inquiry within 30 days after its receipt or within such other time as the inquiry may specify; and

(2) Provide true and complete answers to any questions included in the inquiry.

Issued in Washington, DC, on June 27, 2001 under the authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

BILLING CODE 4910–60–P

Appendix to Preamble—Hazardous Material Incident Report Form and Instructions

U.S. Department of Transportation
Research and Special Programs Administration

Hazardous Materials Incident Report

Form Approved OMB No.

INSTRUCTIONS: Submit this report to the Information Systems Manager, Office of Hazardous Materials Safety, DHM-63, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590. If space provided for any item is inadequate, complete that item under Part 6, identifying the entry number being completed. Copies of this form, in limited quantities, may be obtained from the Information Systems Manager or from our Website at http://hazmat.dot.gov.

1. This form is submitted to report: ☐ A hazardous material incident ☐ An undeclared shipment with no release
☐ A bulk packaging (other than a tank car tank) containing any hazardous materials or a Type B packaging containing a Class 7 hazardous material that (1) received structural damage to the lading retention system or damage that requires repair to a system intended to protect the lading retention system and (2) did not have a release

2. Indicate whether this is: ☐ An Initial Report ☐ A Supplemental (Follow-up) Report

3. Date of Incident: _____ 4. Time of Incident (use 24-hour time): _____

5. Enter National Response Center Report Number (If applicable): _____

6. If you submitted a report to another Federal DOT agency, enter the agency and report number: _____

7. Location of Incident:

City _____ County _____ State _____ Zip Code (if known) _____

Street Address/Mile Marker/Yardname/ Airport/Body of Water/River Mile _____

8. Mode of Transportation: _____ 1 = Air 2 = Highway 3 = Rail 4 = Water

9. Transportation Phase: _____ 1 = In Transit 2 = Loading 3 = Unloading 4 = Temporary Storage

10. Carrier/ Reporter: Name _____

Street _____

City _____ State _____ Zip Code _____

Federal DOT ID Number _____ Hazmat Registration Number _____

11. Shipper/ Offeror: Name _____

Street _____

City _____ State _____ Zip Code _____

Hazmat Registration Number _____ Waybill/Shipping Paper Number _____

12. Origin: (If different from shipper address)

Street _____

City _____ State _____ Zip Code _____

13. Destination:

Street _____

City _____ State _____ Zip Code _____

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14. Proper Shipping Name of Hazardous Material: _____

15. Technical/Trade Name: _____

16. Hazard Class/ Division: _____

17. Identification Number: _____ (E.g. UN 2764, NA 2020)

18. Packing Group: _____ (If Applicable)

19. Quantity Released: _____ (Include Measurement Units)

20. Was the material shipped as a hazardous waste? ☐ Yes ☐ No If yes, provide the EPA Manifest Number: _____

21. Is this a Toxic by Inhalation (TIH) material? ☐ Yes ☐ No If yes, provide the Hazard Zone: _____

22. Was the material shipped under an Exemption, Approval, or Competent Authority Certificate? ☐ Yes ☐ No

If yes, provide the Exemption, Approval, or CA number: _____

23. Was this an undeclared hazardous materials shipment? ☐ Yes ☐ No

If this is an undeclared shipment and no material was released, go to Part 4 for Air Incidents, go to Part 5 for all others.

24. Result of Incident (check all that apply): ☐ Spillage ☐ Fire ☐ Explosion ☐ Material Entered Waterway/Storm Sewer ☐ Vapor (Gas) Dispersion ☐ Environmental Damage ☐ No Release

25. Emergency Response: The following entities responded to and/or cleaned up the release: (Check all that apply.)

☐ Fire/EMS _____ (Fire/EMS Report #) ☐ Police _____ (Police Report #) ☐ In-house cleanup ☐ Other Cleanup

26. Damages:

Was the total damage cost more than $[illegible]? ☐ Yes ☐ No

If yes, enter the following information: If yes, go to question 27.

Material Loss:	Carrier Damage:	Property Damage:	Response Cost:	Remediation/Cleanup Cost:
$ _____	$ _____	$ _____	$ _____	$ _____

(See damage definitions in the instructions.)

☐ Yes ☐ No 27a. Did the hazardous material cause or contribute to a human fatality?

If yes, enter the number of fatalities resulting from the hazardous material:

Fatalities: _____ Employees ____ Responders _____ General Public

☐ Yes ☐ No 27b. Were there human fatalities that did not result from the hazardous material? If yes, how many? _____

☐ Yes ☐ No 28. Did the hazardous material cause or contribute to a personal injury?

If yes, enter the number of injuries resulting from the hazardous material:

Hospitalized: (Admitted Only) _____ Employees ____ Responders _____ General Public

Non-Hospitalized: (On Site First Aid; Observation, Released) _____ Employees ____ Responders _____ General Public

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☐ Yes ☐ No 29. Did the hazardous material cause or contribute to an evacuation?
If yes, provide the following information:

Number of persons evacuated: _____ Class of persons evacuated: _____ Employees _____ General Public

Duration of evacuation: _____ (hours)

☐ Yes ☐ No 30. Was a major transportation artery or facility closed? If yes, how long? _____ (hours)

☐ Yes ☐ No 31. Was the material involved in a crash or derailment?
If yes, provide the following information: Estimated speed (mph): _____ Weather conditions: _____

Vehicle overturn? ☐ Yes ☐ No Vehicle left roadway/track? ☐ Yes ☐ No

☐ Yes ☐ No 32. Was the shipment on a passenger aircraft?
If so, was it tendered as cargo, or was the hazardous material in passenger baggage?

_____ Cargo _____ Passenger baggage

33. Where did the incident occur (If unknown, enter the location where the incident was discovered)?

_____ Air carrier cargo facility _____ Sort center _____ Baggage area

_____ By surface to/from airport _____ During flight _____ During loading/unloading of aircraft

34. What phase(s) had the shipment already undergone prior to the incident? (Check all that apply)

_____ Shipment had not been transported _____ Transport by air (subsequent flights)

_____ Initial transport by highway to cargo facility _____ Transfer at sort center/cargo facility

_____ Transport by air (first flight)

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36. Check Packaging Type: ☐ Non-bulk ☐ IBC ☐ Cargo Tank Motor Vehicle (CTMV) ☐ Tank Car
☐ Cylinder ☐ RAM ☐ Portable Tank ☐ Other _____

36. Enter the appropriate failure codes (found at the end of this form or in the instructions). Be sure to enter the codes from the list corresponding to the particular packaging type checked above.

What Failed: _____ _____ _____ (Enter up to 3 Codes)
How Failed: _____ _____ _____ (Enter up to 3 Codes)
Cause(s) of Failure: _____ _____ _____ (Enter up to 3 Codes)

37. Provide the packaging identification markings, if available.

Identification Markings: _____
(Examples: 1A1/Y1.4/150/92 /USA/RB/93/RL, UN 31H1/Y0493/USA/M9399/10800/1200, DOT-105A100W (rail), DOT 406 (highway), DOT 51, DOT-3A)

For Non-bulk, IBC, or non-specification packaging, if identification markings are incomplete or unavailable, see instructions and complete the following:

Single or Outer Packaging:
Type: _____
Material of Construction: _____
Head Type (Drums only): ☐ Removable ☐ Non-Removable

Inner Packaging (if any):
Type: _____
Material of Construction: _____

38. Describe the packaging capacity and the quantity:

Single or Outer Packaging:
Packaging Capacity: _____
Amount in Package: _____
Number in Shipment: _____
Number Failed: _____

Inner Packaging (if any):
Packaging Capacity: _____
Amount in Package: _____
Number in Shipment: _____
Number Failed: _____

39. Provide packaging construction and test information, as appropriate:

Manufacturer: _____ Manufacture Date: _____
Serial Number: _____ Last Test Date: _____
Material of Construction: _____ (if Tank Car, CTMV, Portable Tank, or Cylinder)
Design Pressure: _____ (if Tank Car, CTMV, or Portable Tank)
Shell Thickness: _____ (if Tank Car, CTMV, or Portable Tank)
Head thickness: _____ (if Tank Car or CTMV)
Service Pressure: _____ (if Cylinder)
If valve or device failed:
Type: _____ Manufacturer: _____ Model: _____

40. If the packaging is for Radioactive Materials, complete the following:

Packaging Category: _____ A = Type A B = Type B C = Type C E = Excepted I = Industrial
Packaging Certification: ☐ Self Certified ☐ U.S. Certification Certification Number _____
Nuclide(s) Present: _____ Transport Index: _____
Activity: _____ Criticality Safety Index: _____

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Describe the sequence of events that led to the incident and the actions taken at the time it was discovered. Describe the package failure, including the size and location of holes, cracks, etc. Photographs and diagrams should be submitted if needed for clarification. Estimate the duration of the release, if possible. Describe what was done to mitigate the effects of the release. Continue on additional sheets if necessary.

DRAFT

Describe changes (such as better training, use of stronger packaging, or improved operating procedures) made to help prevent recurrences. Provide recommendations for improvements to hazardous materials transportation beyond the control of an individual company. Continue on additional sheets if necessary.

Preparer's Name (Type or Print): _____ Telephone Number: (___) _____

Preparer's Title: _____ Fax Number: _____

Business Name and Address: _____ Hazmat Registration Number (if not already provided):

_____ # _____

E-mail Address: _____ Date: _____

Preparer is: ☐ Carrier ☐ Shipper ☐ Facility ☐ Other _____
(Describe Other)

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BILLING CODE 4910–60–C

Instructions for Completing the Hazardous Materials Incident Report—Department of Transportation Form F 5800.1

General Overview

Who Must Complete the Report?

Any person in possession of a hazardous material during transportation, including loading, unloading and storage incidental to transportation, must report to the Department of Transportation (DOT) if there is:

- an unintentional release of a hazardous material from a packaging;
- any release of a hazardous waste from a packaging;
- a bulk packaging (other than a tank car tank) or Type B packaging (used for RAM) containing a hazardous material that (1) received structural damage to the lading retention system or damage that requires repair to a system intended to protect the lading retention system and (2) did not have a release;
- an undeclared shipment of a hazardous material; OR
- a condition that meets 49 CFR 171.15.

When Is a Release Not Required To Be Reported?

You are not required to report a release of a hazardous material if ALL of the following apply:

- The shipment is not being offered for transportation or being transported by air;
- None of the criteria in § 171.15(a) apply;
- The material is not a hazardous waste;
- The material is properly classed as an ORM–D or Class or Division 3, 4, 5, 6.1, 8, or 9 in Packing Group III;
- Each packaging has a capacity of less than 20 liters (5 gallons) for liquids or less than 30 kg (66 pounds) for solids; and
- The total aggregate release is less than 20 liters (5 gallons) for liquids or less than 30 kg (66 pounds) for solids.
- The material does not meet the definition of an undeclared hazardous material in § 171.8.

Also, you are not required to report releases of minimal amounts (*e.g.*, a pint or less) of material released from the manual operation of seals of pumps, compressors, and valves, during the connecting or disconnecting of loading and unloading lines or, for materials for venting is authorized, from vents provided these releases do not result in property damage or trigger any of the telephonic notification requirements found in § 171.15.

What Is the Purpose of the Report?

The information you are providing in this report is fundamental to hazardous material transportation risk analysis and risk management by government and industry. It allows us to better understand the causes and consequences of hazardous material transportation incidents. The data is used to identify trends and provide basic program performance measures. It helps to demonstrate the effectiveness of existing regulations and to identify areas where changes should be considered. It also assists all parties, including industry segments and individual companies, in understanding the types and frequencies of incidents, what can go wrong, and possible measures that would prevent their recurrence. Your accurate and complete description of incidents can make a significant contribution to continual safety improvement through better regulations, cooperative partnerships, and individual efforts.

What Federal Regulation Requires Me To Submit the Report?

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) require that certain types of incidents be reported to the Research and Special Programs Administration (RSPA). Section 171.15 requires an immediate telephonic report (within 12 hours) of certain types of hazardous materials incidents and a follow-up written report. Section 171.16 requires a written report for certain types of hazardous materials incidents within 30 days. Each type of report is explained below.

What Definitions Should I Know in Order To Complete the Report?

In order to accurately complete the report, you should be familiar with the following terms. These definitions and several others are contained in § 171.8.

Bulk packaging—a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has:

(1) A maximum capacity greater than 450 liters (119 gallons) as a receptacle for a liquid;

(2) A maximum net mass greater than 400 kilograms (822 pounds) and a maximum capacity greater than 450 liters (119 gallons) as a receptacle for a solid; or

(3) A water capacity greater than 454 kilograms (1000 pounds) as a receptacle for a gas as defined in § 173.115.

Hazardous material—a substance or material, that has been determined to be capable of posing an unreasonable risk to health, safety and property when transported in commerce, and that has been so designated. The term includes hazardous substances, hazardous wastes, marine pollutants, and elevated temperature materials as defined in 49 CFR, materials designated as hazardous under the provisions of § 172.101, and materials that meet the criteria for hazard classes and divisions in Part 173.

Hazardous substance—for the purposes of the HMR, a material, including its mixtures and solutions, that—

(1) Is listed in Appendix A of § 172.101;

(2) Is in a quantity, in one package, that equals or exceeds the reportable quantity (RQ) listed in Appendix A to § 172.101; and

(3) When in a mixture or solution—

(i) For radionuclides, conforms to paragraph 7 of Appendix A to § 172.101.

(ii) For other than radionuclides, is in a concentration by weight that equals or exceeds the concentration corresponding to the RQ of the material, as shown in the following table:

RQ Pounds (Kilograms)	Concentration by weight—Percent	Concentration by weight—PPM
5000 (2270)	10	100,000
1000 (454)	2	20,000
100 (45.4)	0.2	2,000
10 (4.54)	0.02	200
1 (0.454)	0.002	20

The term *hazardous substance* does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in Appendix A to § 172.101, and the term does not include natural gas, natural gas liquids, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Hazardous waste—any material that is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR Part 262.

Marine pollutant—a material that is listed in Appendix B to § 172.101 (the Hazardous Materials Table) (also see § 171.4) and, when in a solution or mixture of one or more marine pollutants, is packaged in a concentration which equals or exceeds:

(1) Ten percent by weight of the solution or mixture for materials listed in Appendix B; or

(2) One percent by weight of the solution or mixture for materials that are identified as severe marine pollutants in Appendix B.

Undeclared hazardous material—a hazardous material: (1) That is required to be described on a shipping paper in the manner required by subpart C of part 172 of this subchapter, but is offered for transportation with no indication on the shipping paper or other documentation that it is hazardous; or (2) for a hazardous material excepted from the requirements of subpart C of part 172 of this subchapter (*e.g.*, a small quantity or ORM–D material as defined in § 173.4 and 173.144, respectively) is not marked in the manner specified in this subchapter to indicate it contains a hazardous material.

Unintentional release—the escape of a hazardous material from a package. This includes releases resulting from collision, packaging failures, human error, vandalism, negligence, improper packaging, or unusual conditions such as the operation of pressure relief devices as a result of over-pressurization, overfill or fire exposure. It does not include intentional releases, such as venting of packages, where allowed, and the intentional discharge of contents from packagings.

When Must I Make a Telephonic Report?

Under § 171.15, you must provide telephone notice within 12 hours after the incident occurs when one of the following conditions occurs during the course of transportation and is a direct result of the hazardous material:

- a person is killed or hospitalized;
- the general public is evacuated for one hour or more;
- one or more major transportation arteries or facilities are closed for one hour or more;
- the operational flight plan or routine of an aircraft is altered;
- fire, breakage, spillage or suspected radioactive contamination occurs involving a radioactive material;
- fire, breakage, spillage or suspected contamination occurs involving an infectious substance (etiologic agent); or
- there is a release of a marine pollutant in a quantity exceeding 450 liters (119 gallons) for liquids or 400 kilograms (882 pounds) for solids.

You may decide that the situation should be reported even though it does not meet any of the above criteria.

What Telephone Number Do I Call To Report an Incident?

You must call 800–424–8802 (toll-free) or 202–267–2675 (toll-call) to make a telephonic incident report. This is the number to the National Response Center, which is operated by DOT. If the incident involves an infectious substance, you may notify the Director, Center for Disease Control (CDC), U.S. Public Health Service, Atlanta, Georgia, 800–232–0124 (toll-free). This call must be made within 12 hours of the events that trigger this requirement.

When Must I Submit a Written Report (DOT Form F 58001.)?

Under § 171.16, you must submit a written report within 30 days after any of the following:

- an incident that was reported by telephonic notice under § 171.15;
- an unintentional release (see definitions) of a hazardous material during transportation including loading, unloading and temporary storage related to transportation;
- a hazardous waste is released;
- an undeclared shipment with no release is discovered; OR
- a bulk packaging (other than a tank car tank) or Type B packaging (used for RAM) containing a hazardous material that (1) received structural damage that may adversely affect the packaging's ability to retain lading and (2) did not have a release.

You do not need to submit a written report for a release of a hazardous material from a package that meets ALL of the following:

- The shipment is not being offered for transportation or being transported by air;
- None of the criteria in § 171.15(a) apply;
- The material is not a hazardous waste;
- The material is properly classed as an ORM–D or Class or Division 3, 4, 5, 6.1, 8, or 9 in Packing Group III;
- Each packaging has a capacity of less than 20 liters (5 gallons) for liquids or less than 30 kg (66 pounds) for solids;
- The total aggregate release is less than 20 liters (5 gallons) for liquids or less than 30 kg (66 pounds) for solids; and
- The material does not meet the definition of an undeclared hazardous material.

Also, you are not required to report releases of minimal amounts of material released from the manual operation of seals of pumps, compressors, and valves, during the connecting or disconnecting of loading and unloading lines or, for materials for venting is authorized, from vents provided these releases do not result in property damage or trigger any of the telephonic notification requirements found in § 171.15.

A lading retention system consists of those items or equipment that provide containment of hazardous materials at some point during transportation, including loading and unloading. A cargo tank and associated piping and valves is an example of a lading retention system. Dents in a tank or damage requiring repair to an accident protection guarding the tank are examples of incidents that must be reported. Paint chips and scratches to either the tank or the accident protection are examples of incidents which do not require reporting.

How Long Do I Have To Complete the Written Report?

You must submit your written report within 30 days of discovery of the incident. You must notify the shipper of the packages that are the subject of the report within 30 days of discovery.

How and Where Do I Submit My Completed Report?

There are several ways to submit your report:

- You can mail paper copies of the report to: Information Systems Manager, DHM–63, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20509–0001.
- RSPA also provides a number of ways to submit the DOT Form F 5800.1 electronically.
- You may FAX your completed report to (202) XXX–XXXX
- You may complete the report over the internet through our secure website at:
- You may submit an electronic copy of your completed report to our e-mail address: spills@rspa.dot.gov
- You may also submit bulk batches of the report through bulk file transfers.

In addition, you must notify the shipper of the packages that were the subject of the incident report that an incident occurred involving their packages. This notification may be by phone, letter, e-mail,

Am I Required To Update The Information in the Report?

Yes. You must use DOT Form F 5800.1 and check "Supplemental (Follow-up) Report" on question #2 to provide additional information after the initial report. You are required to

provide updates for up to one year after the initial filing if more information is gained or new developments arise concerning the following:

- A death results from injuries caused by a hazardous material;
- The person responsible for preparing the original report learns that there is a misidentification of the hazardous material or packaging information;
- Damage, loss or related costs that were not known at the time the report was filed become known; or
- Revised estimates of damages, losses, and related costs result in a change of $25,000 or more to original cost estimates, even if the original estimate was under $500.

How Long Must I Keep a Copy of the Report?

You must keep a copy of each report or an electronic image of the report for two years after the date you submit it to RSPA.

Where Must I Keep a Copy of the Report?

The report must be accessible through your company's principal places of business. You must be able to make the report available upon request to authorized representatives or a special agent of the Department within 14 hours of such a request.

How Can I Get a Blank Copy of the Form F 5800.1?

There are a variety of sources for obtaining the Form F 5800.1. Please note that you are allowed to make unlimited photocopies of the form and distribute them.

- You may obtain limited copies of the form from the Information Systems Manager at the above address.
- You may download a copy of the form from our website at *http://hazmat.dot.gov/spills.htm*
- You may also fill out the Form F 5800.1 online through our secure web server at (location TBA)
- Our Fax on Demand service has copies of the instructions and the form. Call 1–800–467–4922 and choose the Fax on Demand option #2. You will want document #XXX

How Long Does it Take To Complete the Report?

RSPA anticipates that it will take you approximately 1.6 hours to complete this report. This estimate includes the time it will take you to review the instructions, search your existing data sources for information, gather the required data, and complete and review the report.

How Can I Comment on the Length of Time Needed To Complete the Report or on the Amount of Information Required in the Report?

You can send your comments on the report, and any suggestions you have for reducing the amount of time needed to complete the report, to the following address:

(1) Information Systems Manager, Office of Hazardous Materials Transportation, DHM–63, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20509.

Please verify that your information is accurate. Although the required information is generally available at the time of the incident, you may need to do some additional investigation in order to obtain all of the facts pertaining to deaths, injuries or damage amounts. If you submit complete and accurate information at the time you file the report, it will decrease the chance of your having to supply missing information to DOT at a later date. RSPA may follow-up on incomplete forms.

Instructions For 5800.1 Form

Please print. Fill in all applicable blanks accurately to the best of your ability.

Part 1: Report Type

Item

(1) *This form is submitted to report:* Check the box that describes why you are filling out this form. This will normally be "a hazardous material incident." If you are reporting an undeclared shipment, check the corresponding box. If you are reporting a bulk packaging (other than a tank car tank) or a Type B packaging (used for RAM) containing a hazardous material that received structural damage to the lading retention system that may affect its ability to retain lading but does not release a hazardous material, check that appropriate box. You do not have to report tank car tanks receiving damage or de-railing where a release did not occur because the Federal Railroad Administration collects these incidents.

(2) *Indicate what type of report this is:* If this is an initial report, check the "initial report" box. If this is a follow-up to a previous report, check the "Supplemental (follow-up) Report" box.

Part 2: General Incident Information

(3), (4) *Date & Time of incident:* Enter the date and time the incident occurred. If you do not know the actual date and time, give the date and time you discovered the incident. Use 24-hour time for the incident time (e.g. "2400" for midnight, "1200" for noon, "0747" for 7:47 a.m., "2115" for 9:15 p.m.).

(5) *Enter National Response Center report number:* If this incident was reported to the National Response Center (NRC), fill in the report number NRC assigned to the incident.

(6) *If you were required to fill out a report for a Federal DOT modal administration, enter the modal report number:* If you were required to fill out a report for another federal DOT agency, such as the Federal Railway Administration or the Federal Motor Carrier Safety Administration, for this incident, please include the report number. This will facilitate our combination of information.

(7) *Location of Incident:* Enter the geographic location of the incident (city, county, state, street, etc.). If you do not know the actual location where the incident occurred, give the location where it was discovered. If the incident occurred at an airport or rail yard, include the name of the facility. If the incident occurred on a body of water, include the name or river mile. If you do not know the street address, or if the incident occurred on a highway, you may include a description such as "On I–70, 15 miles west of Baltimore, MD."

(8) *Mode of Transportation:* Enter the code that corresponds to the mode of transportation in which the incident occurred or was discovered. If the incident occurred or was discovered in a temporary storage area (e.g., a terminal or warehouse), check the box that corresponds to the mode by which the package was last transported.

(9) *Transportation Phase:* Enter the code that describes where the incident occurred in the transportation system. In transit means the incident occurred or was first discovered while the package was in the process of being transported. Temporary storage is storage incident to transportation, such as at a terminal waiting for the next leg of transportation.

(10) *Carrier/Reporter:* Provide the name, street address, Federal DOT number (if applicable), and hazmat registration number of the carrier or the person reporting the incident (if other than a carrier) in possession of the material when the incident occurred or was discovered.

(11) *Shipper/Offeror:* Enter the information about the person or entity that originally offered for transportation the material or package involved in the incident.

(12) *Origin:* Enter the origin of the shipment if the address is different than the shipper/offeror information entered in item #11.

(13) *Destination:* Enter the final destination of the shipment involved in the incident.

(14) through (19) *Hazardous Material Description:* Enter the shipping name, technical or trade name, hazard class or division, ID number, packing group and amount of material released. This information (except for the amount released) should be on the shipping paper as required in § 172.202. Include units of measurements (examples: 115 gallons, 69 tons)

(20) *Was the material shipped as a hazardous waste?* Check the box yes if the material meets the definition of a hazardous waste in § 171.8 (requires an EPA Uniform Hazardous Waste Manifest). Include the EPA Manifest number.

(21) *Is this a Toxic by Inhalation (TIH) material?* If the material involved in the incident meets the definition of a Toxic by Inhalation material in § 173.132, check the yes box and enter the Hazard Zone in the space provided.

(22) *Was the material shipped under an Exemption, Approval, or Competent Authority Certificate?* If the shipment was shipped under an exemption, an approval, or a Competent Authority Certificate, check this box and provide the assigned number.

(23) *Was this an undeclared hazardous materials shipment?* If this material was not indicated in any way to be a hazardous material even though it was required to be described as such on a shipping paper, or if the material would normally be excepted from the shipping paper requirements (such as a small quantity material) and does not have the required markings, it is considered an undeclared hazardous material shipment. If the material is an undeclared hazardous materials shipment intended or transported by air, and there was NOT a release, go to Part 4. For all other situations, skip Part 4 and proceed with Part 5.

Part 3: Consequences

(24) *Result of Release:* Check all boxes that describe what occurred during the incident or as a result of the incident. For example, in a situation where a truckload of 55 gallon drums of corrosive liquids overturns resulting in a release that contaminates a nearby wetlands and stream, the boxes "Spillage", "Material Entered Waterway/Storm Sewer" and "Environmental Damage" may apply.

(25) *Emergency Response:* Check all boxes that correspond with any emergency response and cleanup crews that participated in resolving the incident. If a fire crew, EMS, or police unit responded to the incident, include the report number.

(26) *Damages:* You are required to provide information on estimated damages if your damages exceed $500.00. This figure includes the cost of the material lost, property damage, vehicle damages, response costs, and clean-up costs. If you do not know these amounts at the time you complete the report, or the actual costs are revised by more than $25,000, you must submit a follow-up report after you determine the amounts. The following definitions explain each of the costs:

Material Loss: Enter the value of material released and unrecoverable. Base this entry on the amount of material released multiplied by the unit value (e.g., price per gallon or price per pound) as listed on the shipper's invoice. If the invoice is not available, estimate the cost per unit using the shipper's basis.

Carrier Damage: Enter the total value of damage incurred by the carrier. Major components include costs to repair the damaged vehicle and costs resulting from damage to cargo. If the vehicle is declared "totaled," enter the insured value of the vehicle. This entry should not include damage to other property or to vehicles owned by other persons.

Property Damage: Enter the total value of costs resulting from damage to the property of others indirectly involved in the incident. These include: repair and replacement costs of other vehicles; repair and replacement costs to buildings and other fixed facilities; and restoration of open land beyond decontamination and cleanup.

Decontamination/Cleanup Cost: This value is the sum of response, disposal, and remediation costs. *Response* costs are those costs incurred immediately after the incident, and include local emergency response from police and fire departments and emergency response teams, as well as costs incurred by the responsible party. *Response* costs also include costs to contain the hazardous material released. *Disposal* costs are those costs incurred to collect, transport, and ultimately dispose of all material collected during the response phase. *Remediation* costs are those costs incurred to restore the incident scene to its pre-incident state, and could include excavation, disposal and replacement of contaminated soil, pumping, treatment and re-injection of contaminated groundwater, or absorption and disposal of hazardous material released into surface water.

(27) A: *Did the incident/accident cause or contribute to a human fatality?* If a person was fatally injured in the incident/accident, check yes and indicate the number of fatalities which resulted directly from the hazardous material.

B: *Were there fatalities that did not result from the hazardous material?* If the fatalities were not caused directly by the hazardous material, enter yes and the number of fatalities. An example: if a passenger car collided with a cargo tank carrying gasoline and the automobile driver was killed due to the collision, then the fatality was *not* caused by the hazardous material released. If, however, the accident resulted in the release of the gasoline and a resulting fire killed the driver, then the fatality *was* caused by the hazardous material

(28) *Did the hazardous material cause or contribute to a personal injury?* Enter the number of persons injured by the hazardous material. Hospitalized means *admitted* to a medical facility, not treated and released from a facility where the person was never admitted. Non-hospitalized individuals are those who may have received attention from medical personnel on-site or at a facility, but were not admitted to a medical facility. Indicate the number of employees, emergency responders (firefighters, police, medics, etc.) and members of the general public.

(29) *Did the hazardous material cause or contribute to an evacuation?* Indicate if the incident required the evacuation or removal of persons from a specific area because of possible or actual contact with the hazardous materials involved in the incident. Separately specify the numbers of employees and members of the general public. Indicate the length of the evacuation.

(30) *Was a transportation artery or facility closed?* If a road or transportation facility was closed due to the incident, indicate the duration (in hours) here.

(31) *Was the material involved in a crash or derailment?* Indicate if the hazardous material was involved in a crash or derailment. Provide the estimated speed and weather conditions at the time of the crash, such as rain, blowing snow, sleet, iced roadway, sun glare, fog, dry pavement, high winds, etc. Indicate if the vehicle overturned or left the roadway or track.

Part 4: Air Incident Information

This section is for incidents with packagings transported or intended for transportation by aircraft. If your package was not transported or intended to be transported by air, skip this section.

(32) *Was the shipment on a passenger aircraft?* Indicate whether the shipment in question was on a commercial

passenger aircraft. If so, indicate if the material was located in a passenger's baggage, either in the cabin or baggage compartment, or if the material was tendered as cargo.

(33) *Where did the incident occur or where was the discrepancy discovered?* Indicate where in the course of transportation the incident occurred or was discovered.

(34) *What phase(s) had the shipment already undergone prior to the incident?* Check all boxes which indicate the various modes the shipment had undergone before the incident occurred or was discovered.

Part 5: Packaging Information

(35) *Packaging Type:* Check the box that corresponds to the type of packaging involved in the incident. If there are multiple packaging types involved in an incident, reproduce Part 5 of the form and fill out this section for each of the packaging types. For example, if you have three different packaging types involved in the incident, you should fill out Part 5 three separate times (one for each packaging type). If the type of packaging it not represented, check the "other" box and enter a brief description such as "non-specification bulk bin."

(36) *Enter the appropriate failure codes (found at the end of this form or in the instructions). Be sure to enter the codes from the list corresponding to the particular packaging type checked above:* The failure codes that are to be entered describe what failed on the packaging, how the packaging failed, and the cause(s) of the failure. The failure codes are located on pages 16 and 17 of these instructions, as well as on the back of the actual incident reporting form. Be sure to enter the code from the list that corresponds to the particular packaging type checked above (#35). More than one code may be entered to describe the cause of failure.

(37) *Provide the complete packaging identification markings, if available:* Every specification packaging, UN or DOT, has a packaging identification printed or stamped on it or a plate attached to the packaging. Examples are provided on the form. Only fill out the second part if the marking is incomplete, destroyed, or unknown. Fill in the Outer and Inner packaging type and material of construction information, as appropriate. If the packaging is Non-bulk or Intermediate Bulk Container (IBC), use the codes below to enter the number or letter that applies for either Non-bulk or IBC packaging.

Non-bulk Packaging Identification Codes

Outer Packaging

Type

1 = Drum
2 = Wooden Barrel
3 = Jerrican
4 = Box
5 = Bag
6 = Composite Packaging

Material

A = Steel
B = Aluminum
C = Natural Wood
D = Plywood
E = Reconstituted Wood
F = Fiberboard
G = Plastic
H = Textile
I = Paper, multi-wall
J = Metal other than steel or aluminum
K = Glass, porcelain, or stoneware

Head Type

1 = Non-removable
2 = Removable

Inner Packaging

Type

1 = Bottle
2 = Can
3 = Box
4 = Bag
5 = Cylinder

Material

A = Metal (any type)
B = Glass, porcelain, or stoneware
C = Plastic
D = Fiberboard or cardboard
E = Wood (any type)

IBC Packaging Identification Codes

Material of Construction

1—Metal
2—Plastic
3—Composite
4—Fiberboard
5—Wooden
6—Flexible

(38) *Describe the packaging capacity and the quantity:* Indicate the total capacity of the inner and outer packaging. Include the actual amount in the packaging, the number of packages in the shipment, and the number of packagings that failed. Please include the units of measurements (liters, gallons, pounds, cubic feet, etc.).

(39) *Provide packaging construction and test information, as appropriate:* In the case of non-bulk packagings or IBCs enter the name of the packaging manufacturer or the symbol of the manufacturer *only if* complete identification markings were not provided in #37. Enter the date of manufacture and the serial number, if applicable. Enter the last test date if the packaging requires periodic testing. Also include the design pressure, shell thickness, head thickness, and service pressure if the failed packagings are of the type indicated in parenthesis after each question. If the packaging contained a valve, or other device that failed and resulted in a hazardous material release, enter the type, manufacturer, and model number.

(40) *If the packaging is for Radioactive Materials, complete the following:* Complete this question *only* if you had a release of a radioactive material. Indicate the package category, the packaging certification, certification number, and which nuclides were present, the transportation index (TI), activity of the nuclides, and the critical safety index.

Part 6: Description of Events and Packaging Failure

Please describe the events involved in the incident to allow us to get a better understanding of the incident. Include information that has not been collected elsewhere on this form, and include special scenarios, outstanding circumstances, or other information that provides a complete picture of the incident. Describe the sequence of events that led to the incident, the packaging failure (if any) and actions taken at the time of discovery. Submit photographs and diagrams when necessary for clarification. You may continue on additional sheets if necessary.

Part 7: Recommendations/Actions Taken to Prevent Future Incidents

Describe any recommendations you have to improve the packaging, handling, or transportation of hazardous materials. You may continue on additional sheets if necessary.

Part 8: Preparer

Provide the requested information. Make sure to check the box that describes the function you perform, either carrier, shipper, facility owner/operator, or other (and describe). Thank you for your time and effort in completing this form.

Failure Codes for Part 5 of Form DOT F 5800.1

Non-Bulk Packaging and Intermediate Bulk Containers (IBCs)

What Failed

101—Basic Material
102—Closure (e.g., cap or top)
103—Weld/Seam
104—Inner Packaging
105—Chime
106—Liner
107—Body (IBCs)
108—Inner Receptacle (IBCs)
109—Outer Frame (IBCs)
112—Pressure Relief Valve/Device
124—Hose (IBCs)

131—Gasket (IBCs)
133—Bolts (IBCs)
134—Cover (IBCs)
151—Lifting Features (IBCs)

How Failed

301—Punctured
302—Crushed
303—Cracked
304—Burst/Rupture
305—Torn Off/Damaged
306—Ripped/Torn
307—Abraded
308—Leaked
309—Vented
310—Gouged/Cut
312—Failed to Operate

Cause(s) of Failure

501—Dropped (less than 4 feet)
502—Dropped (over 4 feet)
503—Overfilled
504—Overpressurized
505—Fire, Temperature, or Heat
506—Freezing
507—Water
508—Vehicular Crash or Accident Damage
511—Inadequate Blocking and Bracing
513—Interior Corrosion
514—Exterior Corrosion
515—Abrasion
516—Too Much Weight on Package
517—Forklift Accident
518—Conveyer/Handling Equip. Mishap
519—Vandalizm
522—Defective Component/Device
524—Impact with Sharp or Protruding Object (e.g., nails)
527—Material Deterioration
528—Incompatible Product
534—Inadequate Training
535—Inadequate Procedures
537—Improper Preparation for Transportation
538—Human Error

Cylinders

What Failed

103—Weld/Seam
110—Cylinder Valve
112—Pressure Relief Valve/Device
135—Sidewall
136—Sidewall near Base
137—Neck/Shoulder

How Failed

301—Punctured
303—Cracked
304—Burst/Rupture
307—Abraded
308—Leaked
309—Vented
310—Cut/Gouged
312—Failed to Operate

Cause(s) of Failure

501—Dropped (less than 4 feet)
502—Dropped (over 4 feet)
504—Overpressurized
505—Fire, Temperature, or Heat
508—Vehicular Crash or Accident
511—Inadequate Blocking and Bracing
513—Interior Corrosion
514—Exterior Corrosion
515—Abrasion
517—Forklift Accident
518—Conveyer/Handling Equipment Mishap
519—Vandalism
520—Loose Closure/Component/Device
522—Defective Component/Device
524—Impact with Sharp or Protruding Object (e.g., nails)
528—Incompatible Product
534—Inadequate Training
535—Inadequate Procedures
538—Human Error

Portable Tanks

What Failed

103—Weld/Seam
106—Liner
109—Outer Frame
111—Safety Vent/Frangible Disc
112—Pressure Relief Valve/Device
113—Fusible Pressure Relief Device/Fusible Element
114—Vacuum Relief Valve
116—Check Valve
118—Inlet (Loading) Valve
119—Bottom Outlet Valve
124—Hose
125—Hose Adapter/Coupling
126—Loading/Unloading Line(s)
127—Pipings/Fittings
129—Flange
130—Threaded Connections
131—Gasket
133—Bolts
134—Cover
138—Tank Shell
139—Tank Head
140—Manway or Dome Cover
150—Lifting lug

How Failed

301—Punctured
302—Crushed
303—Cracked
304—Burst/Rupture
305—Torn Off/Damaged
306—Ripped/Torn
307—Abraded
308—Leaded
309—Vented
310—Cut/Gouged
311—Structural
312—Failed to Operate

Cause(s) of Failure

501—Dropped (less than 4 feet)
502—Dropped (over 4 feet)
503—Overfilled
505—Fire, Temperature, or Heat
508—Vehicular Crash or Accident
509—Rollover Accident
510—Derailment
511—Inadequate Blocking and Bracing
513—Interior Corrosion
514—Exterior Corrosion
515—Abrasion
519—Vandalism
520—Loose Closure/Component Device
521—Missing Component/Device
522—Defective Component/Device
528—Incompatible Product
529—Commodity Self-ignited, Initiating Event
530—Broken Component/Device
531—Misaligned Material/Component
534—Inadequate Training
535—Inadequate Procedures
536—Inadequate Maintenance
537—Improper Preparation for Transportation
538—Human Error

Bulk Tank Vehicles—Cargo Tank Motor Vehicles (CTMVs) and Tank Cars

What Failed

103—Weld/Seam
106—Liner
111—Safety Vent/Frangible Disc
112—Pressure Relief Valve/Device
113—Fusible Pressure Relief Device/Fusible Element
114—Vacuum Relief Valve
115—Excess Flow Valve
116—Check Valve
117—Remote Control Device
118—Inlet (Loading) Valve
119—Bottom Outlet Valve
120—Discharge Valve/Coupling
122—Vapor valve
124—Hose
125—Hose Adapter/Coupling
126—Loading/Unloading Line(s)
127—Piping/Fittings
128—Piping Shear Section (CTMVs)
129—Flange
130—Threaded Connections
131—Gasket
132—O-Rings/Seals
133—Bolts
134—Cover
138—Tank Shell
139—Tank Head
140—Manway or Dome Cover
141—Heater Coils
142—High Level Sensor
143—Fill Hole Cover
144—Gauging Device
145—Sample Line
146—Liquid Line
147—Thermometer Well
148—Washout
149—Sump

How Failed

301—Punctured
303—Cracked
304—Burst/Rupture
305—Torn Off/Damaged
307—Abraded
308—Leaked
309—Vented
310—Cut/Gouged
311—Structural
312—Failed to Operate

Cause(s) of Failure

503—Overfilled
505—Fire, Temperature, or Heat
508—Vehicular Crash or Accident
509—Rollover Accident
510—Derailment (Tank Cars)
513—Interior Corrosion
514—Exterior Corrosion
515—Abrasion
519—Vandalism
520—Loose Closure/Component/Device
521—Missing Component/Device
522—Defective Component/Device
527—Material Deterioration
528—Incompatible Product
529—Commodity Self-ignited, Initiating Event
530—Broken Component/Device
531—Misaligned Material/Component
532—Stub Sill Separation from Tank (Tank Cars)

533—Inadequate Accident Damage Protection
534—Inadequate Training
535—Inadequate Procedures
536—Inadequate Maintenance
537—Improper Preparation for Transportation
538—Human Error

Complete Listing—All Packaging Types

What Failed

101—Basic Material
102—Closure (e.g., cap or top)
103—Weld/Seam
104—Inner Packaging
105—Chime
106—Liner
107—Body
108—Inner Receptacle
109—Outer Frame
110—Cylinder Valve
111—Safety Vent/Frangible Disc
112—Pressure Relief Valve/Device
113—Fusible Pressure Relief Device/Fusible Element
114—Vacuum Relief Valve
115—Excess Flow Valve
116—Check Valve
117—Remote Control Device
118—Inlet (Loading) Valve
119—Bottom Outlet Valve
120—Discharge Valve/Coupling
122—Vapor valve
123—Liquid valve
124—Hose
125—Hose Adapter/Coupling
126—Loading/Unloading Line(s)
127—Piping/Fittings
128—Piping Shear Section
129—Flange
130—Threaded Connections
131—Gasket
132—O-Rings/Seals
133—Bolts
134—Cover
135—Sidewall
136—Sidewall near Base
137—Neck/Shoulder
138—Tank Shell
139—Tank Head
140—Manway or Dome Cover
141—Heater Coils
142—High Level Sensor
143—Fill Hole Cover
144—Gauging Device
145—Sample Line
146—Liquid Line
147—Thermometer Well
148—Washout
149—Sump
150—Lifting lug
151—Lifting Feaures

How Failed

301—Punctured
302—Crushed
303—Cracked
304—Burst/Rupture
305—Torn Off/Damaged
306—Ripped/Torn
307—Abraded
308—Leaked
309—Vented
310—Cut/Gouged
311—Structural
312—Failed to Operate

Cause(s) of Failure

501—Dropped (less than 4 feet)
502—Dropped (over 4 feet)
503—Overfilled
504—Overpressurized
505—Fire, Temperature, or Heat
506—Freezing
507—Water Damage
508—Vehicular Crash or Accident
509—Rollover Accident
510—Derailment
511—Inadequate Blocking and Bracing
513—Interior Corrosion
514—Exterior Corrosion
515—Abrasion
516—Too Much Weight on Package
517—Forklift Accident
518—Conveyer/Handling Equipment Mishap
519—Vandalism
520—Loose Closure/Component/Device
521—Missing Componet/Device
522—Defective Component/Device
524—Impact with Sharp or Protruding Object (e.g., nails)
527—Material Deterioration
528—Incompatible Product
529—Commodity Self-ignited, Initiating Event
530—Broken Component/Device
531—Misaligned Material/Component
532—Stub Sill Separation from Tank
533—Inadequate Accident Damage Protection
534—Inadequate Training
535—Inadequate Procedures
536—Inadequate Maintenance
537—Improper Preparation for Transportation
538—Human Error

[FR Doc. 01–16661 Filed 7–2–01; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–01–9171]

Federal Motor Vehicle Safety Standards (FMVSS); Small Business Impacts of Motor Vehicle Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) seeks comments on the economic impact of its regulations on small entities. As required by section 610 of the Regulatory Flexibility Act, we are attempting to identify rules that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand. The focus of this notice is rules that specifically relate to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles.

DATES: Comments must be received on or before August 14, 2001.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590. You may call Docket Management at: (202) 366–9324. You may visit the Docket from 10 am to 5 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nita Kavalauskas, Office of Regulatory Analysis and Evaluation, Office of Plans and Policy, National Highway Traffic Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC, 20590. Telephone: (202) 366–2584. Facsimile (fax): (202) 366–2559.

SUPPLEMENTARY INFORMATION:

I. Section 610 of the Regulatory Flexibility Act

A. Background and Purpose

Section 610 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires agencies to conduct periodic reviews of final rules that have a significant economic impact on a substantial number of small business entities. The purpose of the reviews is to determine whether such rules should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

B. Review Schedule

The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on November 22, 1999, listing in Appendix D (64 FR 64684) those regulations that each operating administration will review under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all of its existing regulations.

The National Highway Traffic Safety Administration (NHTSA, "we") has divided its rules into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process-an

Analysis Year and a Review Year. For purposes of these reviews, a year will coincide with the fall-to-fall publication schedule of the Semiannual Regulatory Agenda. Thus, Year 1 (1998) began in fall of 1998 and ends in the fall of 1999; Year 2 (1999) begins in the fall of 1999 and ends in the fall of 2000; and so on.

During the Analysis Year, we will request public comment on and analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. At the end of the Review Year, we will publish the results of our review.

The schedule has been revised from its listing in the Semiannual Regulatory Agenda on November 22, 1999. A major revision to Parts 591 through 594 has been proposed. Thus, we deemed it appropriate to delay our small business impact review of these parts from year 3 to year 8, and move the other regulations forward one year.

The following table shows the 10-year analysis and review schedule:

NHTSA SECTION 610 REVIEW PLAN [1]

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 501 through 526 and 571.213	1998	1999
2	49 CFR 571.131, 217, 220, 221, and 222	1999	2000
3	49 CFR 571.101 through 571.110 and 571.135	2000	2001
4	49 CFR parts 529 through 579, except part 571	2001	2002
5	49 CFR 571.111 through 571.129 and parts 580 through 590	2002	2003
6	49 CFR 571.201 through 571.212	2003	2004
7	49 CFR 571.214 through 571.219, except part 217	2004	2005
8	49 CFR parts 591 through 594	2005	2006
9	49 CFR 571.223 through 571.304, part 500 and new parts and subparts under 49 CFR	2006	2007
10	23 CFR parts 1200's and 1300's and new parts and subparts under 23 CFR	2007	2008

[1] Revised schedule.

C. Regulations Under Analysis

During Year 3 (2000), the Analysis Year, we will conduct a preliminary assessment of the following sections of 49 CFR part 571:

Section	Title
571.101 ..	Controls and displays.
571.102 ..	Transmission shift lever sequence, starter interlock, and transmission braking effect.
571.103 ..	Windshield defrosting and defogging systems.
571.104 ..	Windshield wiping and washing systems.
571.105 ..	Hydraulic and electric brake systems.
571.106 ..	Brake hoses.
571.108 ..	Lamps, reflective devices, and associated equipment.
571.109 ..	New pneumatic tires.
571.110 ..	Tire selection and rims.
571.135 ..	Passenger car brake systems.

We are seeking comments on whether any requirements in §§ 571.101 through 571.110 and 571.135 have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. Business entities are generally defined as small businesses by Standard Industrial Classification (SIC) code, for the purposes of receiving Small Business Administration (SBA) assistance. Size standards established by SBA in 13 CFR 121.201 are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small. If your business or organization is a small entity and if any of the requirements in §§ 571.101 through 571.110 and 571.135 have a significant economic impact on your business or organization, please submit a comment to explain how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

If the agency determines that there is a significant economic impact on a substantial number of small entities, it will ask for comment in a subsequent notice during the Review Year on how these impacts could be reduced without reducing safety.

II. Plain Language

A. Background and Purpose

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

B. Review Schedule

In conjunction with our section 610 reviews, we will be performing plain language reviews over a ten-year period on a schedule consistent with the section 610 review schedule. We will review §§ 571.101 through 571.110 and 571.135 to determine if these regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as for putting information in tables that may make the regulations easier to use.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at http://dms.dot.gov. Click on "Help & Information" or "Help/Info" to obtain instructions for filing your comments electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(2) On that page, click on "search."

(3) On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

William H. Walsh,

Associate Administrator for Plans and Policy.

[FR Doc. 01–16684 Filed 7–2–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA–2001–9663]

Consumer Information Regulations; Federal Motor Vehicle Safety Standards; Rollover Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces NHTSA's plans to evaluate a number of driving maneuver tests for rollover resistance in accordance with the requirements of the TREAD Act. The agency will develop a dynamic test on rollovers of light motor vehicles for a consumer information program, and seeks comments on the subject of dynamic rollover testing and our approach to developing meaningful consumer information.

DATES: *Comment Date:* Comments must be received by August 17, 2001.

ADDRESSES: All comments should refer to Docket No. NHTSA–2001–9663 and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Docket hours are 10 a.m. to 5 p.m. Monday through Friday.

For public comments and other information related to previous notices on this subject, please refer to DOT Docket Nos. NHTSA–2000–6859 and 8298 also available on the web at *http://dms.gov/search*, and NHTSA Docket No. 91–68; Notice 3, NHTSA Docket, Room 5111, 400 Seventh Street, SW, Washington; DC 20590. The NHTSA Docket hours are from 9:30 am to 4 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For technical questions you may contact Patrick Boyd, NPS–23, Office of Safety Performance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Mr. Boyd can be reached by phone at (202) 366–6346 or by facsimile at (202) 493–2739.

SUPPLEMENTARY INFORMATION:

I. Safety Problem.

II. Background.
III. Preparatory Activity.
IV. Difficulties Common to Various Dynamic Rollover Tests Using Driving Maneuvers.
V. Path-Following Driving Maneuver Tests.
A. CU Double Lane Change.
B. VDA Double Lane Change.
C. Open-Loop Pseudo-Double Lane Change.
D. Path-Corrected Limit Lane Change.
VI. Open Loop Fishhook Maneuvers—Defined Steering Tests.
VII. Dynamic Tests Other Than Driving Maneuvers.
A. Centrifuge Test.
B. Driving Maneuver Simulation.
VIII. Solicitation of Comments.
IX. Rulemaking Analyses and Notices.
X. Submission of Comments.

I. Safety Problem

Rollover crashes are complex events that reflect the interaction of driver, road, vehicle, and environmental factors. We can describe the relationship between these factors and the risk of rollover using information from the agency's crash data programs. We limit our discussion here to light vehicles, which consist of (1) passenger cars and (2) multipurpose passenger vehicles and trucks under 4,536 kilograms (10,000 pounds) gross vehicle weight rating.[1]

According to the 1999 Fatality Analysis Reporting System (FARS), 10,140 people were killed as occupants in light vehicle rollover crashes, including 8,345 killed in single-vehicle rollover crashes. Eighty percent of the people who died in single-vehicle rollover crashes were not using a seat belt, and 64 percent were partially or completely ejected from the vehicle (including 53 percent who were completely ejected). FARS shows that 55 percent of light vehicle occupant fatalities in single-vehicle crashes involved a rollover event. The proportion differs greatly by vehicle type: 46 percent of passenger car occupant fatalities in single-vehicle crashes involved a rollover event, compared to 63 percent for pickup trucks, 60 percent for vans, and 78 percent for sport utility vehicles (SUVs).

Using data from the 1995–1999 National Automotive Sampling System (NASS) Crashworthiness Data System (CDC), we estimate that 253,000 light vehicles were towed from a police-reported rollover crash each year (on average), and that 27,000 occupants of these vehicles were seriously injured (defined as an Abbreviated Injury Scale (AIS) rating of at least AIS 3).[2] Of these 253,000 light vehicle rollover crashes, 205,000 were the result of a single vehicle crash. (The present rollover resistance ratings estimate the risk of rollover if a vehicle is involved in a single vehicle crash.) Sixty-five percent of those people who suffered a serious injury in single-vehicle tow-away rollover crashes were not using a safety belt, and 50 percent were partially or completely ejected (including 41 percent who were completely ejected). Estimates from NASS-CDC indicate that 81 percent of tow-away rollovers occurred in single-vehicle crashes, and that 87 percent (178,000) of the single-vehicle rollover crashes occurred after the vehicle left the roadway. An audit of 1992–96 NASS-CDC data showed that about 95 percent of rollovers in single vehicle crashes were tripped by mechanisms such as curbs, soft soil, pot holes, guard rails, and wheel rims digging into the pavement, rather than by tire/road interface friction as in the case of untripped rollover events.

According to the 1995–1999 NASS-General Estimates System (GES) data, 57,000 occupants annually received injuries rated as K or A on the police KABCO injury scale in rollover crashes. (The police KABCO scale calls "A" injuries "incapacitating," but their actual severity depends on local reporting practice. An "incapacitating" injury may mean that the injury was visible to the reporting officer or that the officer called for medical assistance. A "K" injury is fatal.) The data indicate that 205,000 single-vehicle rollover crashes resulted in 46,000 K or A injuries. Fifty-four percent of those with K or A injury in single-vehicle rollover crashes were not using a seat belt, and 20 percent were partially or completely ejected from the vehicle (including 18 percent who were completely ejected). Estimates from NASS-GES indicate that 16 percent of light vehicles in police-reported single-vehicle crashes rolled over. The estimated risk of rollover differs by light vehicle type: 13 percent of cars and 14 percent of vans in police-reported single-vehicle crashes rolled over, compared to 24 percent of pickup trucks and 32 percent of SUVs. The percent of all police reported crashes for each vehicle type that resulted in rollover was 1.6 percent for cars, 2.0 percent for vans, 3.7 percent for pickup trucks and 5.1 percent for SUVs as estimated by NASS-GES.

II. Background

In a June 1, 2000 notice (65 FR 34998), NHTSA announced its intention to include consumer information ratings for rollover resistance of passenger cars and light trucks in its New Car Assessment Program (NCAP). NCAP has provided comparative consumer information on vehicle performance in frontal and side impact crashes for many years. About 22 percent of passenger car occupants killed in crashes are killed in rollover crashes, as compared with more than 70 percent killed in frontal and side crashes combined. In the case of light trucks, however, about as many occupants are killed in rollover crashes as in frontal and side crashes combined. NHTSA proposed a rating system based on the Static Stability Factor (SSF) which is the ratio of one half the track width to the center of gravity height.

SSF was chosen over vehicle maneuver tests because it represents the first order factors that determine vehicle rollover resistance in the 95 percent of rollovers that are tripped. Driving maneuver tests represent on-road untripped rollover crashes which are about 5 percent of the total. Other reasons for selecting the SSF measure are: driving maneuver test results are greatly influenced by SSF; the SSF is highly correlated with actual crash statistics; it can be measured accurately and explained to consumers; and changes in vehicle design to improve SSF are unlikely to degrade other safety attributes.

The industry comments to the June 2000 notice were that SSF was too simple because it did not include the effects of suspension deflections, tire traction and electronic stability control (ESC) and that the influence of vehicle factors on rollover risk was so slight that vehicles should not be rated for rollover resistance. In the conference report dated October 23, 2000 of the FY2001 DOT Appropriation Act, Congress permitted NHTSA to move forward with the rollover rating proposal and directed the agency to fund a National Academy of Sciences' study on vehicle rollover ratings. The study topics are "whether the static stability factor is a scientifically valid measurement that presents practical, useful information to the public including a comparison of the static stability factor test versus a test with rollover metrics based on dynamic driving conditions that may induce rollover events."

The Consumers Union (CU) commented to the June 2000 notice that although SSF is a useful predictor of tripped rollover, it should be used in

[1] For brevity, we use the term "light trucks" in this document to refer to vans, minivans, sport utility vehicles (SUVs) and pickup trucks, under 4,536 kilograms (10,000 pounds) gross vehicle weight rating. NHTSA has also used the term "LTVs" to refer to the same vehicles.

[2] A broken hip is an example of an AIS 3 injury.

conjunction with a dynamic stability test using vehicle maneuvers to better predict the risk of untripped rollovers. CU also believes that NHTSA underestimated the incidence of on-road untripped rollover by relying upon 1992–1996 data.

Section 12 of the "Transportation Recall, Enhancement, Accountability and Documentation (TREAD) Act of November 2000" reflects CU's concern. It directs the Secretary to "develop a dynamic test on rollovers by motor vehicles for a consumer information program; and carry out a program conducting such tests. As the Secretary develops a [rollover] test, the Secretary shall conduct a rulemaking to determine how best to disseminate test results to the public." The rulemaking and test program must be carried out by November 1, 2002. This notice is part of NHTSA's work to satisfy the requirements of Section 12 of the TREAD Act.

NHTSA responded to these and other technical comments to the June 2000 notice in a January 12, 2001 notice (66 FR 3388) and announced the agency's decision to use the SSF as a measure, along with publishing the initial rollover resistance ratings. As of April 2001, the agency has added the rollover resistance ratings of 104 vehicles to the frontal and side crash ratings given by NCAP (see *www.nhtsa.dot.gov/hot/rollover/* for ratings, vehicle details and explanatory information).

NHTSA awarded a grant to the National Academy of Sciences for its study of vehicle rollover ratings on December 15, 2000 and its first public meeting on the subject took place on April 11 and 12, 2001. A second open meeting will allow for consideration of alternatives to SSF for rating vehicles, and presentations on consumer information and risk communication. At a closed meeting the NAS committee will finalize its draft report. The study will conclude with the required report to Congress.

III. Preparatory Activity

In response to the TREAD Act, NHTSA met with the Alliance of Automobile Manufacturers, Nissan, Toyota, Ford, Consumers Union (CU), Automotive Testing, Inc. (an independent test lab), MTS Systems Corp., the University of Michigan Transportation Research Institute (UMTRI), Daimler-Chrysler, BMW, Volkswagen and Volvo to gather information on possible approaches for dynamic rollover tests. These parties made specific suggestions about approaches to dynamic testing of vehicle rollover resistance. In addition, recent NHTSA research summarized in the report entitled "An Experimental Examination of Selected Maneuvers That May Induce On-Road Untripped, Light Vehicle Rollover—Phase II of NHTSA's 1997–1998 Vehicle Rollover Research Program" [3] is relevant to the development of a dynamic rollover test suitable for inclusion in our consumer information program.

This notice identifies a variety of dynamic rollover tests that we have chosen to evaluate in our research program and what we believe to be their potential advantages and disadvantages. It also discusses other possible approaches we considered but decided not to pursue. Table 1 summarizes the advantages and disadvantages we anticipate for the various approaches prior to research which will increase our understanding. We invite public comment on our decisions, on our observations and on the general subject of rollover resistance testing for consumer information.

Track testing using the maneuvers discussed in this notice began in April 2001 at NHTSA's Vehicle Research and Test Center in East Liberty, Ohio. We intend to publish a second notice in early 2002 presenting a tentative dynamic rollover test procedure chosen on the basis of this research and the comments to today's notice. We will review the comments to today's notice expeditiously and may revise the test development research based on the comments. A final notice responding to the comments to the second notice, presenting the final dynamic rollover test procedure, and containing an initial set of rollover resistance ratings will be published in October 2002.

The test vehicles chosen for the evaluation of potential maneuver tests are the 2001 Ford Escape (without electronic stability control (ESC [4])), the 2001 Chevrolet Blazer (without ESC), the 2001 Toyota 4Runner (with and without ESC enabled) and the 1999 Mercedes ML–320 (with and without ESC enabled). They represent the significant range of static stability factors that characterize today's SUVs. They also include two ESC systems with possible differences in operation. The vehicles will be tested in a base load configuration with driver, instruments and outriggers, in a second configuration with a roof load to reduce SSF by .05, and in other load configurations intended to influence handling. The loads will be positioned so as to change one coordinate of the c.g. location without influencing the other two. For example, in the second load configuration, about 200 pounds will be secured to the roof in a position that maintains the fore-aft and side-to-side location of the c.g. but raises it enough to cause a reduction of 0.05 in the SSF (while also increasing the vehicle's mass moments of inertia).

The test vehicles will be equipped with special wheel force sensors at each wheel during some of the evaluation of potential maneuver tests. They will provide better information for our evaluation of how these vehicles react to different characteristics of the candidate test maneuvers. Wheel force measurements will determine absolutely when two wheel lift occurs. Also, they will allow us to measure the degree of load transfer during runs that do not cause wheel lift, a capability not possible in our previous research. The sensors also can reveal possible interactions between vertical and lateral wheel forces that maneuvers may produce in some vehicles.

IV. Difficulties Common to Various Dynamic Rollover Tests Using Driving Maneuvers

We considered some methods of dynamic testing for rollover resistance that did not use driving maneuvers, but decided to concentrate our research on driving maneuver tests for the reasons discussed in Section VII. However, driving maneuver tests share some significant difficulties in comparison to laboratory tests. Since they directly represent a deadly type of crash, the safety of test drivers will always be a concern, even though drivers will be belted and outriggers will be used in most circumstances. Outriggers are the usual means of minimizing the chance of an actual rollover crash during a test, but they also introduce problems. If an outrigger digs into the pavement, it can cause the vehicle to "pole vault" resulting in an even worse rollover crash. The weight of the outrigger(s) may change the vehicle's c.g. location and will increase its mass moments of inertia, placing restraints on the natural desire to overdesign the outriggers for safety. The mounting of the outrigger can also influence vehicle handling by changing its structural stiffness. We will choose outriggers designed to the best contemporary practices and evaluate their effect on maneuver test results.

Maneuver tests are expensive. Besides the labor involved in performing the maneuvers and interpreting the results,

[3] Available at http://www-nrd.nhtsa.dot.gov/vrtc/ca/rollover.htm.

[4] ESC is a safety system that can apply the brake at one or more wheels automatically to keep the yaw rate of the vehicle proportional to its speed and lateral acceleration. For example, braking the outside front wheel can correct the heading of a vehicle beginning to oversteer (spin out).

the test methods require that each test vehicle be custom fitted with costly precision instruments, onboard computers, probably an array of special steering and braking controls, and possibly telemetry. The wheel force transducers included in these developmental tests are not expected to be necessary for routine tests in a consumer information program, but there may be a need for less intrusive means of load transfer monitoring. Frequent tire changes, adding to cost and labor, are necessary in maneuver tests because tire shoulder wear can significantly influence force generation. Part of this research will define the need for tire changes in the selected maneuver in routine consumer information testing. Finally, damage to the vehicles as a result of the tests or the installation of equipment is a cost factor.

The use of driving maneuver tests to rate rollover resistance presents some questions beyond test methodology, danger and expense. A high statistical correlation based on a large sample of police reports of rollover crashes was possible for the present ratings based on SSF because SSF is a good predictor of tripped rollovers, in particular, and the preponderance of rollovers in state crash reports are tripped. As part of NHTSA' s dynamic maneuver test program in 1997 and 1998, we tried to correlate the performance of the test vehicles on various maneuvers to their rates of on-road untripped rollover crashes. We found that it is not possible to obtain sufficient data, even on high volume vehicles, to determine a correlation between maneuver test outcome and untripped rollover involvement. The only data base we are aware of that contains data identifying untripped rollover crashes is NHTSA's NASS–CDS. However, only about 4300 crashes of all types (frontal, side, rear and rollover) are researched in depth each year for inclusion in this data base and only about ten of those cases are untripped rollovers.[5] The NASS–CDS data base is usually used with weighting factors for different types of crashes to represent national trends. However, the number of observations is too small to support make/model correlations between maneuver test results and real-world untripped rollover rates.

Some of the 17 states in NHTSA's State Data System (SDS) data base[6] attempt to distinguish between on-road and off-road rollover crashes. While it seems inviting to use on-road rollover as a surrogate for untripped rollover, this is not strictly accurate. Most on-road rollovers occur when the vehicle is tripped by road surface irregularities or the wheel rim digging into the pavement.[7] Also, police may code a rollover crash as "on-road" because the vehicle was found at rest on the roadway. The designation "on-road" does not necessarily mean that the roll initiation occurred on the roadway.

The correlation, by make/model, of performance in a maneuver test to the rate of *all* rollovers would be highly dependent on the degree to which good performance in the driving maneuver test is the result of low c.g. height, large track width and other factors which also increase resistance to tripped rollovers. Optimization of tire properties and ESC operation for a particular maneuver test would likely decrease this level of correlation over time if effective ways of improving test performance are developed that do not improve the tripped rollover resistance of vehicles. Therefore, it is unlikely that the choice of any particular maneuver test or tests can be justified on the basis of the correlation of the test results to real-world rollover rates. This situation makes the resemblance of the chosen maneuver test or tests to documented crash scenarios even more important.

Ratings based on driving maneuvers may be complex and hard to communicate to the public because the usual rollover criterion of two wheel lift can be at odds with the handling capability of the vehicle. In a path following maneuver, the test is terminated when the vehicle can no longer follow the path. For example, consider a vehicle that cannot negotiate the path beyond 38 mph, but it departs the path before it achieves two wheel lift. Consider a second vehicle that can follow the path at 45 mph but lifts the inside tires three inches off the pavement. Which vehicle should be rated higher? Departing the roadway, as the first vehicle would seem likely to do more often than the second vehicle, can expose a vehicle to a high risk of tripped rollover.

ESC was originally designed to keep the vehicle headed in the direction desired by the driver rather than to plow-out (understeer) or to spin-out (oversteer) in a limit cornering situation by using one or more brakes to help turn the vehicle to the correct heading. ESC cannot increase the maximum traction, and consequently prevent a vehicle from leaving the road, if the vehicle is going too fast. ESC may help drivers regain control rather than overreact in situations like an abrupt "road-edge recovery" where there is sufficient traction to recover. In this way, ESC has the potential to reduce the number of single vehicle crashes that turn into tripped rollovers. However, ESC can be programmed to work in many other ways. In one way, it can apply the brakes automatically to slow the vehicle at a selected value of lateral acceleration or at a similar criterion. While this is a plausible safety strategy, it has the potential to overwhelm the other aspects of vehicle behavior measured in a maneuver test. In most maneuver tests, the vehicle is steered through the maneuver while coasting because any attempt to keep a steady throttle position tends to make the tests less repeatable. Even in a short maneuver, the vehicle scrubs off some speed. For example, a vehicle entering a short maneuver coasting at 50 mph is likely to exit at 45 mph or less. However, with braking intervention programed into the ESC, a vehicle could easily slow to 25 mph during the test. While both vehicles would be rated on their entry speed, the ESC vehicle may be going much slower at the critical part of the maneuver. It is possible that maneuver tests could simply result in segregating vehicles with automatic brake intervention from those without it. Automatic brake intervention may produce some safety benefits. NHTSA believes, however, that the vast majority of drivers also apply the brakes in difficult situations, regardless of whether the vehicle has automatic brake intervention. Thus, a maneuver test conducted while coasting could reward this type of ESC design excessively. NHTSA expects that most drivers would brake during similar maneuvers, and that automatic brake intervention would make less difference in real driving than during tests in which drivers are not permitted to brake.

Important environmental conditions also will influence the results of any driving maneuver test for rollover ratings. The pavement friction of even a dedicated test area does not remain constant. There is a cycle of polishing and weathering during periods of use and disuse, and a possible temperature effect on pavement friction. The usual method of determining pavement friction is a locked wheel braking test conducted at a constant 40 mph using

[5] 1998–1999 NASS–CDS annual averages.

[6] A collection of data from the police accident reports (PARs) of 17 participating states. This data is limited to what was recorded by the responding officer(s) at the time of the crash.

[7] "Analysis of Untripped Rollovers"; Calspan Corporation for American Automobile Manufacturer's Association and Association of International Automobile Manufacturers; May 15, 1998, and "NASS Rollover Study Evaluation Report"; NHTSA National Center for Statistics and Analysis; August 1998.

a "skid trailer" with a water nozzle to wet the surface immediately ahead of the skidding tire. The pavement friction coefficient generated by this test is called the "skid number". General Motors has reported that moderate differences in skid number, even when measured without pavement wetting, do not correspond well to differences in lateral force generated by vehicles on different pavements. Our planned test program includes hot weather and cold weather testing as well as tests conducted on different surfaces at three to date undetermined test facilities. The result we hope for is a definition of a minimum friction level for a valid test as tracked by tests using a control vehicle.

Not every vehicle is tested each year in the new car assessment program. The results for vehicles without substantial changes tested in previous years are carried over to represent vehicles of the current model year. The test results, and the resulting rollover ratings, from the previous year might not be comparable to the new year's results if there were significant differences in pavement friction.

V. Path-Following Driving Maneuver Tests

The driving maneuver tests for rollover resistance that have received the most publicity over the years are the "emergency double lane change" of Consumer Reports magazine and the European "moose test." The first test was the basis of criticism by Consumer Reports that the 1988 Suzuki Samurai and the 1996 Isuzu Trooper were "not acceptable." The "moose test" was used by a European auto magazine to demonstrate that the 1998 Mercedes-Benz A Class minicar could experience on-road untripped rollover in a similar maneuver. We classify both tests as path following tests to distinguish them from another type of maneuver tests in which explicit steering inputs are required without reference to the path they cause the vehicle to take. We will evaluate both the CU double lane change (CU is the publisher of Consumer Reports) and a version of the moose test recommended by Daimler-Chrysler. We will also evaluate the use of mathematical path correction and an automated steering controller [8] to improve these driving maneuver tests.

A. CU Double Lane Change

The CU double lane change short course (figure 1) was developed in order to replicate an unintentional rollover experienced by a Consumer Reports staff member driving a Suzuki Samurai. It consists of a 70-foot-long, 8-foot-wide entrance lane that is centered in a 12-foot-wide first (right) lane, a 50-foot-long area to make the first lane change (to the left), a set of gate cones at this 50-foot mark that are 12 feet apart (with the right cone three feet into the left lane), a 60-foot-long area to make the second lane change back to the right lane, and a 12-foot-wide exit lane. The test driver steers the vehicle through the course at successively higher entry speeds until the vehicle either plows out, spins out, or tips up. The vehicle is coasting through the maneuver. The driver does not apply the brakes, and driver releases the throttle 35 feet into the 70 foot entrance lane.

An advantage of the CU double lane change is its face validity, that is, drivers can imagine a situation in which they may try to make a similar maneuver. However, NHTSA believes that there are good arguments that simply braking without steering or braking and steering with an ABS equipped vehicle are better strategies to avoid the hypothetical object in the road that is the basis of the CU test. In addition, it is hard to find actual crashes that resemble the test. Nevertheless, driving through a tight double lane change without wheel lift is probably a good representation of what the public expects of a personal vehicle.

An important part of the double lane change is the immediate steering reversal necessary to get back in the right lane after steering sharply into the left lane to avoid the hypothetical object in the roadway. This steering reversal allows the energy stored in the suspension springs during the left steer and the roll momentum of the sprung mass when that energy is released at the steering reversal to add to the load transfer caused by the sharp right steer. The dynamics of the steering reversal are not included in SSF, Tilt Table Ratio, or even the J-turn maneuver (see 65 FR 34998 for details about these rollover resistance metrics). So this aspect of the double lane change better represents the dynamics that may result in an untripped rollover.

However, if the only criterion for success in a double lane change maneuver is whether or not two-wheel lift can be made to occur, any vehicle will pass such a test if equipped with tires of sufficiently low traction or with chassis tuning that produces the same effect. In this case, the vehicle will simply run off the desired path at a speed and lateral acceleration too low to produce two-wheel lift. On the other hand, an inherent advantage of path-following maneuvers like the double lane change is that the maximum speed through the maneuver can be used as part of the vehicle score to reward good handling and avoid creating a rollover resistance rating with incentives for reduced handling and braking performance. Like all the driving maneuvers we are considering, the CU double lane change also has the advantage of displaying the operation of electronic stability control systems.

The foremost disadvantage of the CU double lane change is that differences in driving style can strongly influence the test results. The time history of the steering wheel angle may vary considerably for runs of the same vehicle at the same speed (figure 2). Tests in which the driver starts the steering movements earlier seem to produce a moderately smaller initial left steer and a much smaller amount of right steer after passing through the offset gate. The steering reversal (from maximum left steer to maximum right steer) can vary significantly at the same test speed, and the runs with a greater steering reversal appear more likely to produce two-wheel lift. For example, during CU tests of the Isuzu Trooper, one driver ran the course at 37.5 mph with a left steer of 183 degrees followed by a right steer of 216 degrees (399 degree steering reversal) and did not knock down the course boundary cones or experience two-wheel lift. Another driver ran the same course at 37.5 mph using an initial left steer of 191 degrees followed by a right steer of 388 degrees (579 degree steering reversal) and experienced two-wheel lift.

Another potential disadvantage of the double lane change maneuver is the possibility that the course layout may cause the steering reversal and roll momentum effect to be more critical for some vehicles than for others. The course originally used by Consumer Reports had the offset gate forcing the lane change positioned 60 feet from the end of the entrance lane and also 60 feet from beginning of the exit lane. When the publication tried to replicate its staff member's rollover crash of a Suzuki Samurai, it found that shortening the distance from the end of the entrance lane to the offset gate by 10 feet and moving the offset gate three feet further to the left made two wheel lift of the Samurai more likely. This suggests that tuning of the course to the vehicle may be necessary to create a worst case condition and that a course tuned to one vehicle may not be the worst case for another vehicle to which it is compared.

[8] The automated steering controller was referred to as a "Programmable Steering Machine" in our June 1, 2000 notice (65 FR 34998).

B. VDA Double Lane Change

The VDA Double Lane Change is a variant of the "moose test" used by a Scandinavian automotive magazine. It was developed by the German Alliance of Automotive Industry (VDA) to minimize the influence of driving style on the original moose test for use as an industry standard rollover and handling test procedure. As a double lane change maneuver, it is identical in concept to the CU test, and it is useful to contrast the two maneuvers.

The method VDA used to minimize driver influence was to reduce the lane and gate widths and tie these parameters to the width of the test vehicle. Using the VDA course (figure 3) for a 70 inch wide vehicle (typical of the most popular SUVs and mid-sized cars) the widths of the entrance lane, offset gate, and exit lane are 7.25 feet, 9.12 feet and 9.9 feet, respectively, compared with 8 feet, 12 feet and 12 feet for the same components of the CU double lane change course. The distance from the end of the entrance lane to the beginning of the offset gate is 44.3 feet rather than 50 feet for the CU test, and the distance from the end of the offset gate to the beginning of the exit lane is only 41 feet, compared to 60 feet for the CU test. There is also a difference in the amount of offset of the left lane gate. In the CU test, the inside of the gate is offset 5 feet to the left of the inside of the entrance lane and 3 feet to the left of the exit lane (because the exit lane is 4 feet wider than the entrance lane). In the VDA test, the left edges of the entrance and exit lanes are in line, and right edge of the offset gate is 3.3 feet to the left.

The fundamental difference between the CU and VDA courses is that while the vehicle has to pass through a gate comprised of two cones marking a 12 foot left lane width in the CU test, it has to traverse a 36-foot-long by 9.12-foot-wide left lane in the VDA test before turning right to re-enter the right lane. The VDA test is more like a single lane change to the left immediately followed by a second single lane change to the right and does not have as sharp a steering reversal as the CU double lane change test. In both tests, the vehicle begins to coast about 35 feet before the end of the entrance lane.

The VDA double lane change shares with the CU test the advantage of face validity, but the VDA test would appear to be less subject to variability in driving style. It also uses a rating criteria that implicitly rewards good handling. It is scored by the maximum entry speed of the vehicle's clean runs along with a notation of the limiting event: understeer, oversteer or two-wheel lift. Like all the other maneuver tests we are considering, it has the advantage of displaying the operation of ESC systems, but the entry speed criteria may disproportionately favor ESC systems with simple brake intervention.

Efforts to reduce driver variability may also introduce problems. The least serious problem is that narrow lanes may make the course so hard to follow that imprecise driving rather than actual oversteer or understeer may cause collisions with the course marking cones. Daimler-Chrysler reports that expert drivers can negotiate the course at about 4 mph faster than average drivers. It is unclear whether this is due to expert steering strategy optimizing the vehicle path for lower peak lateral acceleration even within the reduced boundaries or simply to better ability to judge cone position and control vehicle position. If this problem exists, simply allowing the driver more tries at a given speed may be all that is necessary to determine whether vehicle handling is really the limiting factor.

The more serious potential problem is the use of a 36 foot long left lane, rather than just a gate to drive around. It potentially removes the roll momentum effect associated with the sharp steering reversals. While this effect increases the variability of CU test results due to differences in driving style, it also reveals rollover propensities that would not likely show up in a test like the J-turn.

Assuming that the VDA double lane change does not suppress the potential effects of unfavorable roll momentum, it also shares the question of steering reversal timing with the CU test. Namely, does the course layout present a worst case timing in which roll momentum reinforces the side to side load transfer at peak lateral acceleration for some vehicles but not for others?

C. Open-Loop Pseudo-Double Lane Change

In its 1997–1998 rollover research, NHTSA made use of an automated steering controller to achieve highly repeatable J-turn and fish hook maneuvers. As discussed above, the potential problems of double lane change tests are the lack of repeatability caused by variations in driving style and the possibility that a course producing worst case roll momentum for one vehicle may not do so for the next vehicle. We will attempt to solve these problems by using the steering controller in a non-path following maneuver approximating a double lane change.

The idea is to use steering rates and magnitudes typical of driver-controlled CU tests, but to use the automated controller for repeatability. Separate circular path tests of each vehicle would be done to relate lateral acceleration to steering angle in the linear range. This information would be used to tailor the steering angles for the pseudo-double lane change to the steering ratio and wheelbase of each test vehicle. The steering controller would also tailor the course for the worst case roll momentum for each vehicle. Body roll rate feedback would be used to time the first steering reversal left to right and also the second steering reversal right to straight ahead.

This is not a maneuver established in literature or in practice. It is little more than a concept now. Its potential drawback is that the maneuver may stray too far from an actual double lane change to retain any face validity. Also, it is unclear if the advantage of a simple speed and limit circumstance score would remain applicable to a double lane change performed in this manner.

D. Path-Corrected Limit Lane Change

From a vehicle manufacturer's prospective, the double lane change maneuver is a good test to evaluate a vehicle's limit handling behavior, because it is a realistic maneuver and it allows engineers to simultaneously evaluate the three main behaviors that affect limit handling safety (responsiveness, lateral stability and rollover resistance). However, lane changes are driver-dependent (meaning vehicle performance is heavily influenced by how the driver drives the vehicle) and their rating scales are usually subjective (meaning based on driver expert evaluation rather than on measured data). To solve this problem, Ford Motor Company has developed Path-Corrected Limit Lane Change (PCLLC). It is claimed to be a driver-independent, objective way to run limit handling lane changes. First, vehicles are run through a series of maneuvers much like the CU double lane change except that a range of course lengths and degrees of lane offsets are used to measure their responses to steering inputs in a range of frequencies. The data is then normalized mathematically to show how each of those vehicles would have performed had they followed precisely the same paths in the lane change. This is what "Path-Correction" means, and this normalization reduces the driver influence in the maneuver.

PCLLC is a proprietary technique, and the details have not been reported publicly by Ford. Ford is allowing

NHTSA to evaluate this technique under a confidentiality agreement. NHTSA will run Ford's specified suite of vehicle characterization tests using its own vehicles and test track with Ford's assistance in instrumenting the vehicles for the measurements required for the mathematical path corrections. Ford will explain the theory of the mathematical corrections to NHTSA, and perform the corrections on NHTSA's vehicle test data in a confidential report. If NHTSA decides to propose this technique as the best way of accomplishing the dynamic rollover tests required by the TREAD Act, it expects that Ford will release it from the confidentiality agreement so that the test procedure can be proposed in detail in our next notice early in 2002.

We view PCLLC as a mathematical technique which allows the construction of "perfect test runs" for an objective comparison of vehicles from a suite of similar test runs which expose each vehicle to a range of speeds, steering frequencies, rates and amplitudes. It looks like a good approach to overcoming the disadvantages discussed earlier for the more conventional driver controlled lane change maneuver tests. Driving style variability would clearly be eliminated, and it appears that this technique can construct a number of standard paths to examine the question of how many courses are necessary for a fair evaluation of the roll momentum effect for vehicles with different properties.

NHTSA has envisioned that PCLLC could be used as a way of producing the equivalent of a CU double lane change test with every vehicle following exactly the same geometric path up to the point that it either has two-wheel lift or can no longer maintain the prescribed path as a result of limit understeer or oversteer. Under this idea, the rating criteria could be speed and the limiting circumstance (plow, spin or two wheel lift) as with the Daimler-Chrysler recommendation, with the possibility of greater rating complexity if more than one test course were required.

However, it is not clear whether the PCLLC technique can be used this way and whether this would be the best way to use it. Ford is looking at many different vehicle handling metrics and cited three examples. *Responsiveness* could be represented by a delay time from steering input to yaw response evaluated on a path corrected to the same time history of yaw angle for each vehicle. *Lateral stability* could be characterized by rear tire slip angle on a path corrected to equal lateral acceleration for each vehicle. *Untripped rollover resistance* could be characterized by the degree of side to side load transfer evaluated on a path representing the maximum lateral acceleration capacity of the vehicle (considering such factors as practical limits on steering angle and rate and limit oversteer). Since the vehicle characterization runs are performed with ESC operating, the results should reflect its influence in the same way as other driving maneuver tests.

VI. Open Loop Fishhook Maneuvers—Defined Steering Tests

The fishhook maneuver was originally developed by Toyota Motor Corporation as a maneuver with a strong roll momentum effect and a simple steering regime that would be fairly repeatable by test drivers. The maneuver requires the driver to steer as quickly as possible 270 degrees of steering wheel angle, and then to steer 870 degrees in the opposite direction as quickly as possible (figure 4). At less than limit speed runs, the vehicle's path resembles a fishhook shape (figure 5), but the actual path is immaterial to the scoring. The maneuver is repeated in each direction of initial steering and at increasing speed until two-wheel lift or loss of control occurs, or until preset maximum speed for test driver safety is reached. Toyota also added pulse braking [9] to make the maneuver more likely to induce two-wheel lift if the vehicle under test would not lift wheels without braking. The lateral acceleration at two-wheel lift (LAR) is Toyota's figure of merit for this maneuver.

NHTSA's 1997–98 research program made use of two variations on the Toyota "fishhook" maneuver theme. Since these tests are described by the steering input without regard for different paths taken by different vehicles, they are considered "open-loop". They were also perfect candidates for NHTSA's goal of using an automated steering controller for precise repeatability for maximum objectivity. NHTSA's tests did not use pulse braking because we were concerned that pulse braking tests were not merely a more stringent level of the basic fishhook, but a test of different vehicle dynamics. In one version, the steering rate was set at 750 degrees per second for all vehicles and the dwell time [10] between steering reversals was "tuned" for each vehicle to resemble half a sine wave at what we thought was the roll natural frequency of each vehicle. In the other variation, we attempted to represent a road edge recovery maneuver by setting the initial steer angle to 7.5 degrees of the road wheels (to represent the front tire slip angle possible when a vehicle mounts a four inch pavement height above the road shoulder), using a constant 0.5 second dwell time and a more moderate steering rate of 500 steering wheel degrees per second. The first maneuver was generally more severe than the second. It was configured to represent a steering frequency of 0.5 Hz, which was the roll natural frequency assumed for most vehicles because our attempts at measuring roll natural frequency were thwarted by vehicle suspension damping. However, some of the vehicles responded with greater load transfer to the seemingly gentler "road-edge recovery" fishhook which used a different steering frequency. This suggests the possible importance of roll momentum timing.

Open loop fishhook maneuver tests are like the mirror image of the double lane change tests because their principle advantages and disadvantages are reversed. Aided by a steering controller, driving style differences are absolutely eliminated. These maneuvers also present the best possibility for tuning the maneuver to the roll characteristics of each test vehicle, thereby eliminating the suspicion that the steering frequency of a fixed double lane change makes the test inherently more stringent for some vehicles than others. However, the fishhook maneuver has much less face validity than the double lane change maneuver. Even the "road edge recovery" version of the fishhook does not look, to a ordinary driver, like a maneuver he or she would ever be called upon to make.

There is another disadvantage to open loop tests. Because the vehicle path does not matter, two-wheel lift can be prevented simply by using tires of sufficiently low traction or chassis tuning that produces the same effect. Unless an open loop test is accompanied by other tests of specific handling properties, it could have the perverse effect of encouraging manufacturers to sacrifice handling and braking to make superficial refinements to improve a rollover rating. Also, improvements in a rollover rating gained by special original equipment tire properties may be negated when the tires are replaced later in the life of the vehicle.

NHTSA will evaluate three types of fishhook maneuvers. In one maneuver the counter steer will be limited to about 500 to 600 degrees, rather than

[9] Pulse braking is a short hard brake application that creates a transient increase in lateral acceleration upon release.

[10] Dwell time is the short time internval of less than one second between the initial steering angle (shown as negative angle in Figure 4) and larger steering movement in the reverse direction.

870, because the large countersteer is thought to scrub off so much speed that it reduces the severity of the maneuver. Also, instead of a fixed 270 degree initial steer, a steering wheel angle derived from the steering angle causing a fixed lateral acceleration, in the linear range, will be chosen to put vehicles with differences in steering gear ratio and wheelbase on an equal footing. A fixed steering rate of 720 degrees per second and a fixed time from the beginning of steering to its return to zero angle during countersteer will be used.

In the second fishhook, the timing of the steering reversal will be based on roll rate feedback. The worse case roll momentum effect is expected when the start of the steering reversal coincides with the instant of maximum roll angle resulting from the first steer. We expect to use an approximate zero reading of a roll rate sensor to indicate maximum roll angle and trigger the countersteer by the automatic steering controller.

The third variation will use a counter steer timing technique suggested by Nissan (figure 6). In this method, the first part of the fishhook is studied separately prior to the fishhook test maneuvers in order to define the worst case dwell time. This is done by running a step steer maneuver (the same as a J turn) at the same steering rate and maximum angle as the first steering movement of the fishhook. The roll rate is measured to determine the time of the maximum roll angle of the second oscillation. Nissan believes that the most severe fishhook for each vehicle is the one in which the lateral acceleration zero crossing during countersteering in the fishhook occurs at the second oscillation peak time as measured in the J turn maneuver. The dwell time from initial steer to countersteer would be adjusted accordingly. The theoretical basis for Nissan's observation on fishhook severity is not obvious. Nissan's belief is based on experimental studies during which dwell time was varied. Its technique appears to produce a countersteer timing similar to that produced by roll rate feedback.

As mentioned above, fishhook tests contain no inherent disincentives for rollover resistance strategies that sacrifice handling. NHTSA is considering adding some objective measure of handling ability to any fishhook test used for consumer information. We are considering a steering response time test possibly based on a J-turn (step steer) and a maximum lateral acceleration test based on either a constant steer input with slowly increasing speed regime or a constant speed with slowly increasing steer regime. We are concerned, however, that even this limited NHTSA definition of handling may produce undesirable trade-offs of less measurable aspects of vehicle handling when manufacturers design to the test. We are particularly interested in comments on how likely it is that vehicle manufacturers would make such trade-offs to "beat" the test.

VII. Dynamic Tests Other Than Driving Maneuvers

NHTSA also considered two dynamic tests that did not involve driving maneuvers, namely the centrifuge test and driving maneuver simulation using computational models. Both of these tests have the major benefit of being independent of pavement friction, whereas the problem of pavement friction variation is perhaps the most vexing issue common to all the driving maneuver tests discussed above. However, we decided not to include these tests in our research plan under TREAD for the reasons explained below.

A. Centrifuge Test

The test device for the centrifuge test is similar in concept to a merry-go-round. A person seated at the edge of the merry-go-round feels a lateral force pushing him or her away from the spinning surface that increases with the rotational speed of the merry-go-round. The centrifuge device test (figure 7) consists of an arm attached to a powered vertical shaft. At the end of the arm is a horizontal platform upon which the test vehicle is parked. As the vertical shaft rotates, the parked vehicle is subjected to a lateral acceleration that can be precisely controlled and measured. The basic measurement is the lateral acceleration at which the parked vehicle experiences two-wheel lift. The outside tires are restrained by a low curb so the measurement is independent of surface friction, and the vehicle is tethered to prevent excessive wheel lift. This test method was suggested by the University of Michigan Transportation Research Institute (UMTRI) both in comments to our notice about the present rollover resistance ratings and more recently in the context of the TREAD Act. The test method is directed primarily at tripped rollover, which UMTRI noted accounts for all but a small percentage of rollovers.

The centrifuge test has many advantages. It can produce measurements which are accurate, repeatable and economical in labor costs. It includes the effects of tire and suspension deflections, and its measurements would be expected to correlate well with the actual rollover rates of vehicles, because those statistics are largely driven by tripped rollovers. The centrifuge test is arguably more accurate than SSF in evaluating tripped rollover resistance because it evaluates the outward c.g. movement as a result of suspension and tire deflections. Its basic measurement of a vehicle, lateral acceleration at two-wheel lift, is roughly 15 percent less than the vehicle's SSF with about a +/−5 percent range to cover extremes in roll stiffness.

Despite these advantages, we did not choose to investigate the centrifuge test under the TREAD Act. Improvements in centrifuge test performance can be made by suspension changes that degrade handling. The best performance in the centrifuge test (and in the closely related but less accurate tilt table test) occurs when the front and rear inside tires lift from the platform at the same time. The tuning of the relative front/rear suspension roll stiffness to accomplish this will cause the vehicle to oversteer more than most manufacturers would otherwise desire. We do not want to tempt manufacturers to make this kind of trade-off. Further, we understood the intention behind TREAD to be that NHTSA should give the American public information on performance in a driving maneuver that would evaluate the performance of new technologies like ESC. The centrifuge test would not do so.

B. Driving Maneuver Simulation

Computational models that simulate test maneuvers are used by vehicle manufacturers to assess handling and rollover performance of vehicle designs prior to building prototypes, and to evaluate the effect of suspension changes in prototypes and production vehicles. They present a potential solution to the safety, repeatability and pavement surface variability of real driving maneuver tests. Unfortunately, simulations now also carry enough disadvantages to disqualify their use for rollover resistance ratings. The various models used by different manufacturers produce different results, especially in simulating limit maneuvers. There is no agreement among manufacturers on a single model sufficient for this purpose. The time and cost of measuring the vehicle properties necessary for a limit maneuver model exceed that of running a real driving maneuver test. Validation testing of a model is necessary and greatly resembles the real tests the model hoped to avoid. Testing of the operation of ESC is problematic because the algorithms are often proprietary at the supplier level and not well known by the vehicle manufacturers. Given these difficulties, NHTSA has concluded that it is extremely unlikely

they could be resolved in time for us to use computer modeling for the information we must provide to the American public beginning in November 2002.

VIII. Solicitation of Comments

NHTSA solicits general and specific comments on the subject of the development of a dynamic test for vehicle rollover resistance. We also wish to bring the following specific questions to the attention of commenters:

1. NHTSA has decided to devote its available time and resources under the TREAD Act to develop a dynamic test for rollover based on driving maneuver tests. Is this the best approach to satisfy the intent of Congress in the time allotted? Are there additional maneuvers that NHTSA should be evaluating? Which maneuver or combination of maneuvers do you believe is the best for rollover rating? Are these other approaches well enough developed and validated that they could be implemented 18 months from now?

2. How should NHTSA address the problem of long term and short term variations in pavement friction in conducting comparative driving maneuver tests of vehicle rollover resistance for a continuing program of consumer information?

3. Some ESC systems presently have two functions. One is yaw stability which uses one or more brakes to keep the vehicle headed in the right direction in a limit maneuver, and the other is simple brake intervention in excess of the braking required for yaw stability. It is expected that the presence of a brake intervention function in ESC will have a large effect on the rating of vehicles because the average speed through a given test maneuver for vehicles having this function will be much less than for vehicles without it (even if equipped with ESC for yaw stability) under the usual test protocols of coasting through maneuvers and using the entry speed as the test speed. Is the value given to the brake intervention function of ESC as opposed to the yaw stability function by potential rollover rating tests commensurate with its safety value to consumers? Please provide all the data and reasoning that support your view. Should NHTSA measure the vehicle speed at the completion of the maneuver as well as vehicle speed at entry?

4. If open-loop (defined steering input) maneuvers are used to determine whether a vehicle is susceptible to two wheel lift as a result of severe steering actions, superficial changes that reduce tire traction or otherwise reduce vehicle handling (but prevent wheel lift) would be rewarded the same as more fundamental or costly improvements. The same is true of closed loop (path following) maneuvers that use wheel lift as the sole criterion. Should measures of vehicle handling be reported so that consumers can be aware of possible trade-offs. What indicators of vehicles handling would be appropriate to measure and how should this consumer information be reported?

5. What criteria should NHTSA use to select the best vehicle maneuver test for rollover resistance? Should the maneuver that has the greatest chance of producing two wheel lift in susceptible vehicles be chosen regardless of its resemblance to driving situations? Is it more important that the maneuver resemble an emergency maneuver that consumers can visualize? How important is objectivity and repeatability?

IX. Rulemaking Analyses and Notices

Executive Order 12866

This request for comment was not reviewed under Executive Order 12866 (Regulatory Planning and Review). Agency actions to develop tests for NHTSA's New Car Assessment Program are not rulemaking actions because the program does not impose requirements on any party.

X. Submission of Comments

A. How Can I Influence NHTSA's Thinking on This Document?

In developing this document, we tried to address the concerns of all our stakeholders. Your comments will help us improve this notice. We invite you to provide different views on options we propose, new approaches we have not considered, new data, how this document may affect you, or other relevant information. We welcome your views on all aspects of this document, but request comments on specific issues throughout this document. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts of this document you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of this document.
- Be sure to include the name, date, and docket number with your comments.

B. How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

C. How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

D. How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

E. Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. However, late comments will not likely be able to influence our testing program. We encourage commenters to respond as soon as possible since the testing described in this notice is already underway. If Docket Management receives a comment too late for us to consider it in completing our test program developing a proposal on dynamic rollover performance, we will consider that comment as an informal suggestion for future enhancements to our rollover program.

F. How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(2) On that page, click on "search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

G. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

Issued on June 27, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

Table 1.—Summary of Anticipated Advantages and Disadvantages for Possible Dynamic Rollover Tests

Note: The extent to which many of these anticipated attributes are realized will not be known until the completion of the resesarch project.

1. Path Following Driving Maneuver Tests

A. CU Double Lane Change

Anticipated advantages: Familiar to the public, represents a real maneuver, considers roll momentum, use of speed as criteria implicitly rewards good handling, demonstrates action of ESC.

Anticipated disadvantages: Poor repeatability due to large driver influence, use of wheel lift as main criterion invites trade-offs in tire traction, may operate at a worst case suspension frequency for some vehicles but not others.

B. VDA/ISO/Moose Test

Anticipated advantages: Like CU but with less room for driver variability through tight cone placement, represents a real maneuver, use of speed as criteria implicitly rewards good handling, demonstrates action of ESC.

Anticipated disadvantages: Driver influence is reported to be still on the order of 4 mph, tight lane widths may test driver ability as much a vehicle handling, more like 2 back to back single lane changes—may not include roll momentum, may operate at a worst case suspension frequency for some vehicles but not others (course adjustments for wheelbase mentioned).

C. Open Loop Pseudo-Double Lane Change (Concept for Automating the CU to the Extent Possible Using a Automated Steering Controller)

Anticipated advantages: Eliminates repeatability issues due to driver influences, attempts to represent a real maneuver, considers roll momentum, may use roll feedback to find worst case steering timing for each vehicle, use of speed as criteria implicitly rewards good handling? demonstrates action of ESC.

Anticipated disadvantages: Exists only as a concept—may prove to be entirely impractical, use of wheel lift as main criterion invites trade-offs in tire traction, failure to replicate a realistic path would devalue face validity and speed criterion, may be difficult to develop with available resources.

D. Ford Path Corrected Limit Lane Change

Anticipated advantages: Objective and repeatable, can it "perfect" the double lane change? considers roll momentum, demonstrates action of ESC.

Anticipated disadvantages: Suggested criteria requires handling definition and still may reward poor tire traction as it currently operates, rollover resistance is rated on different paths for different vehicles.

2. Open Loop (Defined Steering) Fishhook Maneuver Tests (With Several Steering Timing Ideas To Be Evaluated)

Anticipated advantages: Performed by automated steering controller for maximum objectivity and repeatability, considers roll momentum and seeks worst case for every vehicle, demonstrates action of ESC.

Anticipated disadvantages: Lacks face validity of lane change maneuvers, actual paths may differ widely between vehicles, needs separate handling criteria because poor tire traction is otherwise rewarded.

3. Dynamic Tests Other Than Driving Maneuvers—Not Planned for Evaluation

A. Centrifuge

Advantages: A "perfection" of the well known tilt table, expandable to test performance at road perturbations, accounts for suspension and tire deflections (unlike SSF), can represent tripped rollover (like SSF), accurate, repeatable and relatively cheap measurements.

Disadvantages: Suspension optimization for centrifuge test score can degrade handling (unlike SSF), not be perceived as "dynamic enough" for TREAD requirements, does not demonstrate action of ESC.

B. Mathematic Simulation

Advantages: Objective and repeatable, solves pavement friction issues, any maneuver is possible.

Disadvantages: Cost of vehicle characterization even greater than for maneuver tests, ESC algorithms proprietary and possibly not known to vehicle mfgr., no universally accepted mathematic model.

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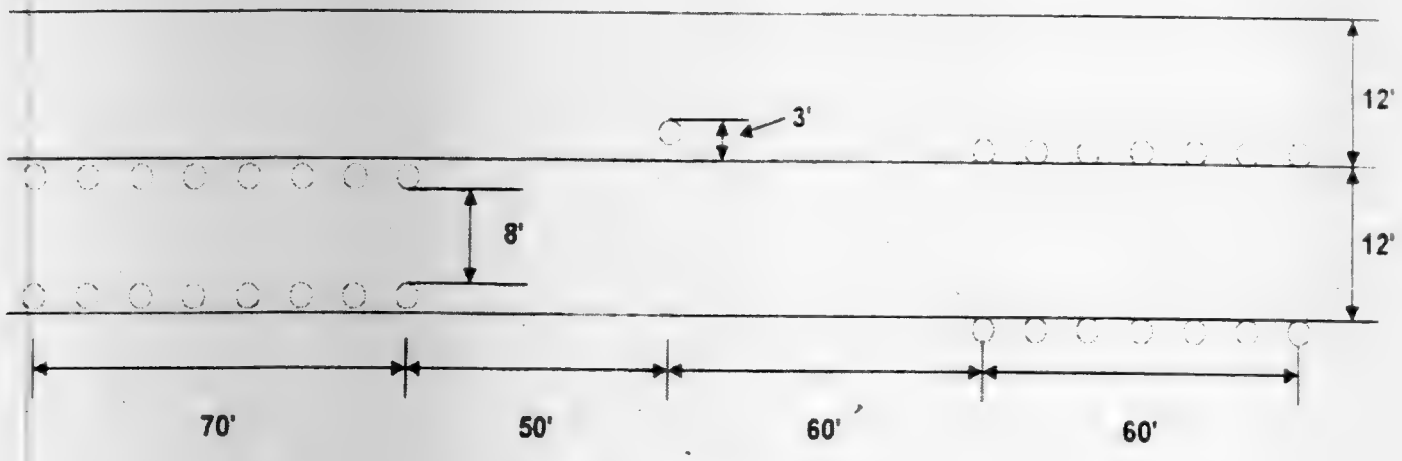

Fig. 1: CU Short Course

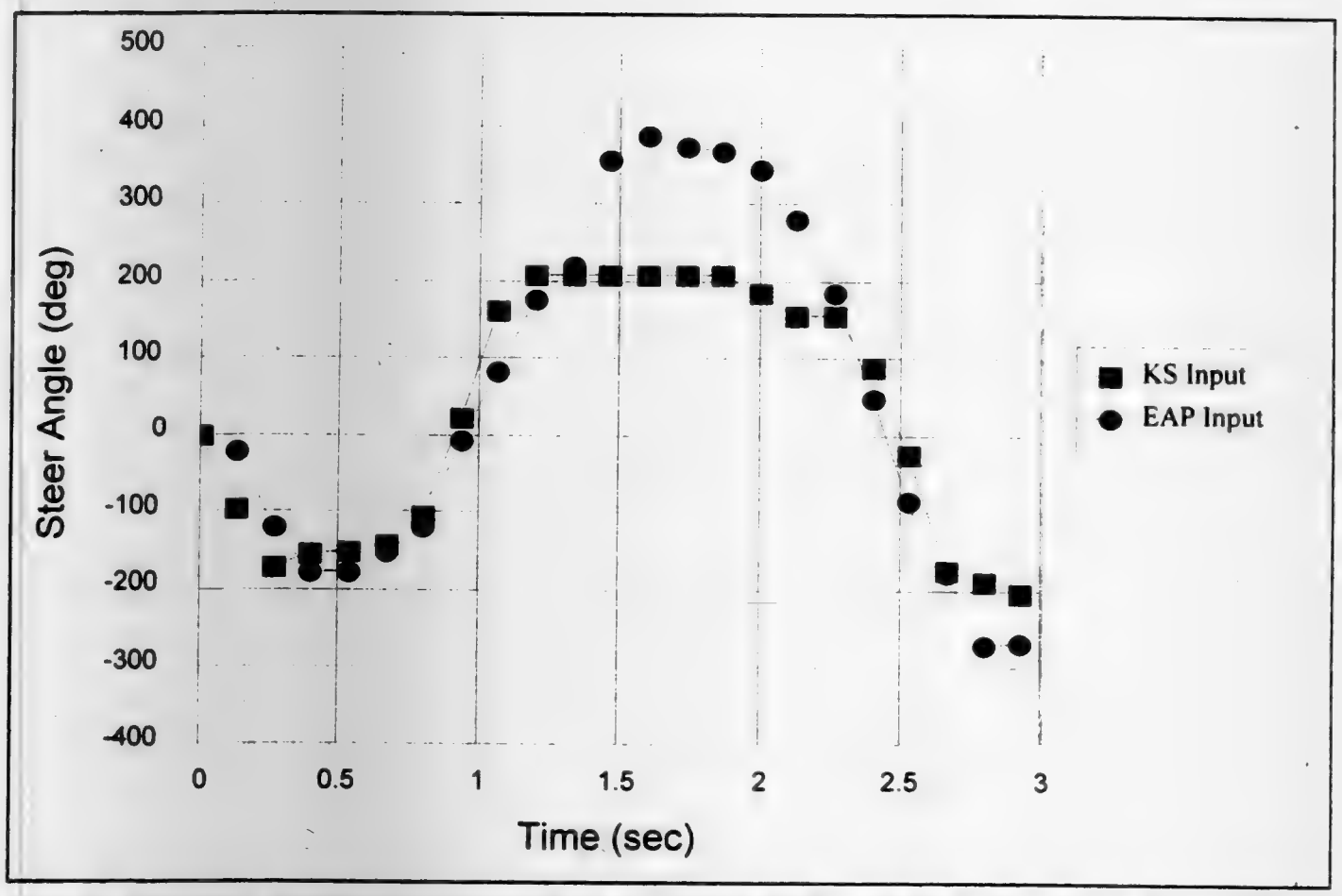

Fig. 2: Steering Profiles for Clean Run by Driver 'KS' and High Tip-Up by Driver 'EAP'

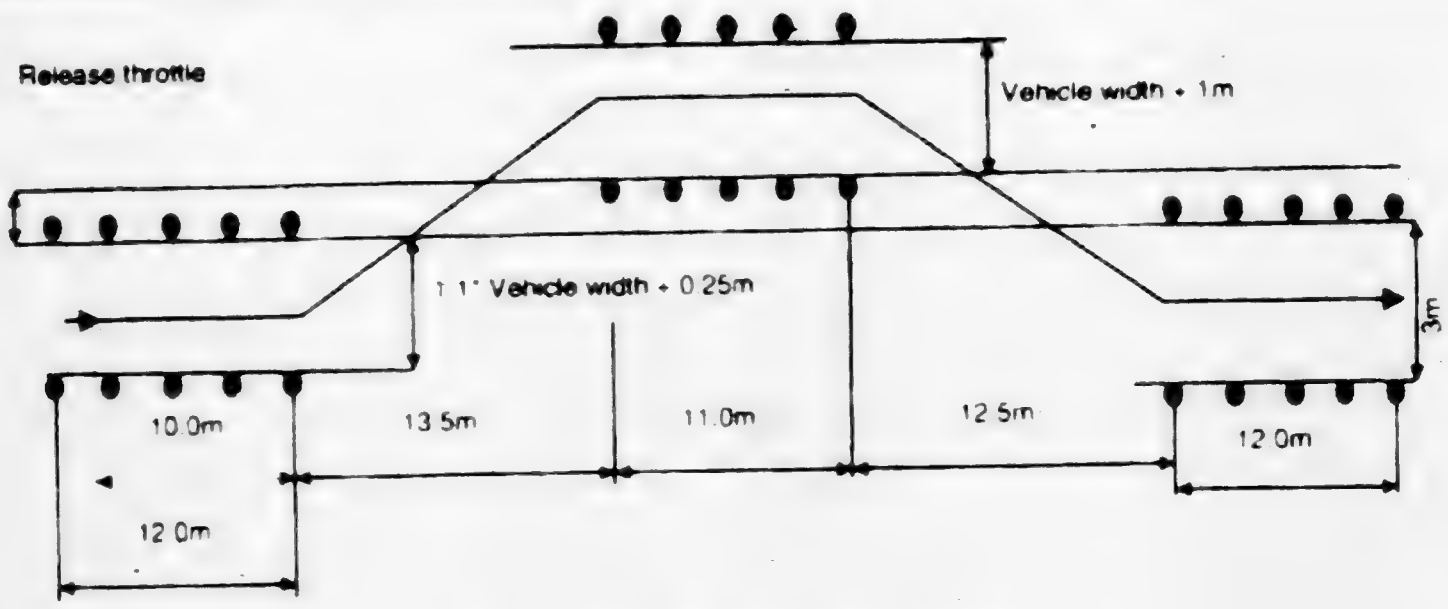

Fig. 3: VDA "Moose" Test Course

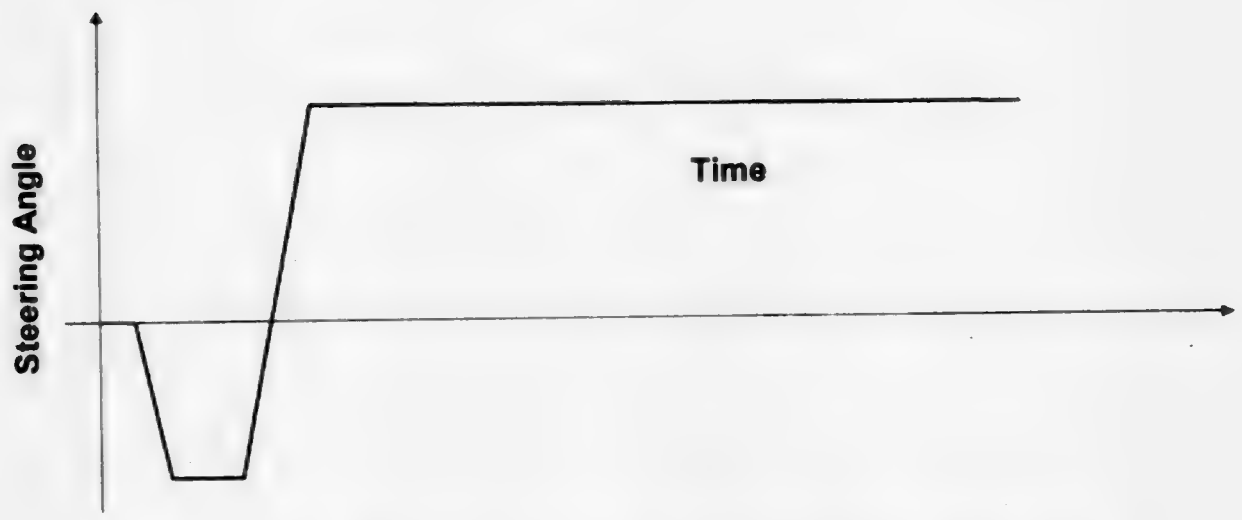

Fig. 4: Defined Steering Input for Basic Fishhook Maneuver

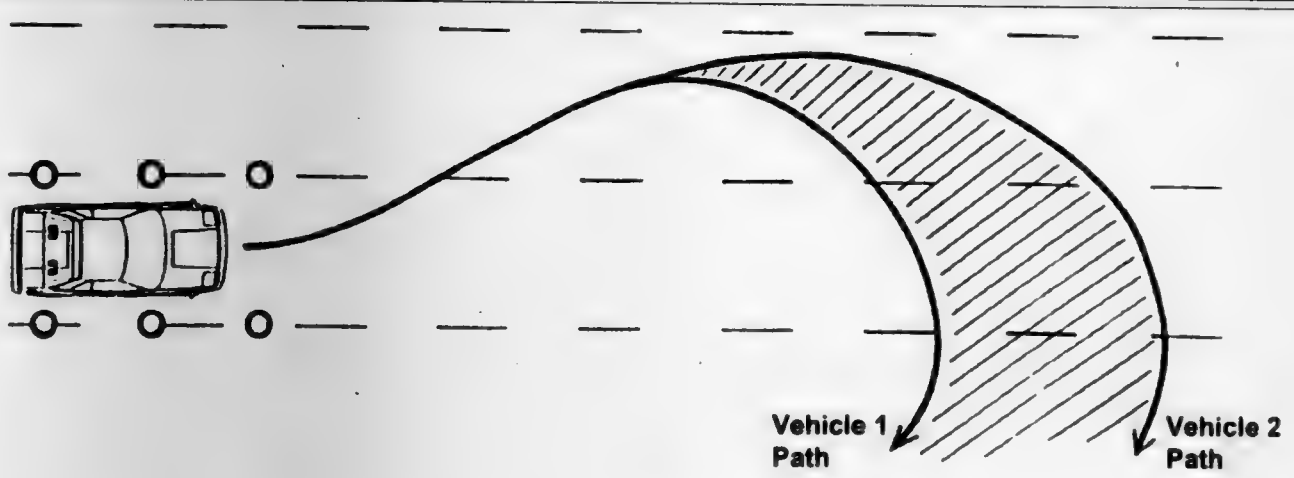

Fig. 5: Path of a Fishhook Maneuver

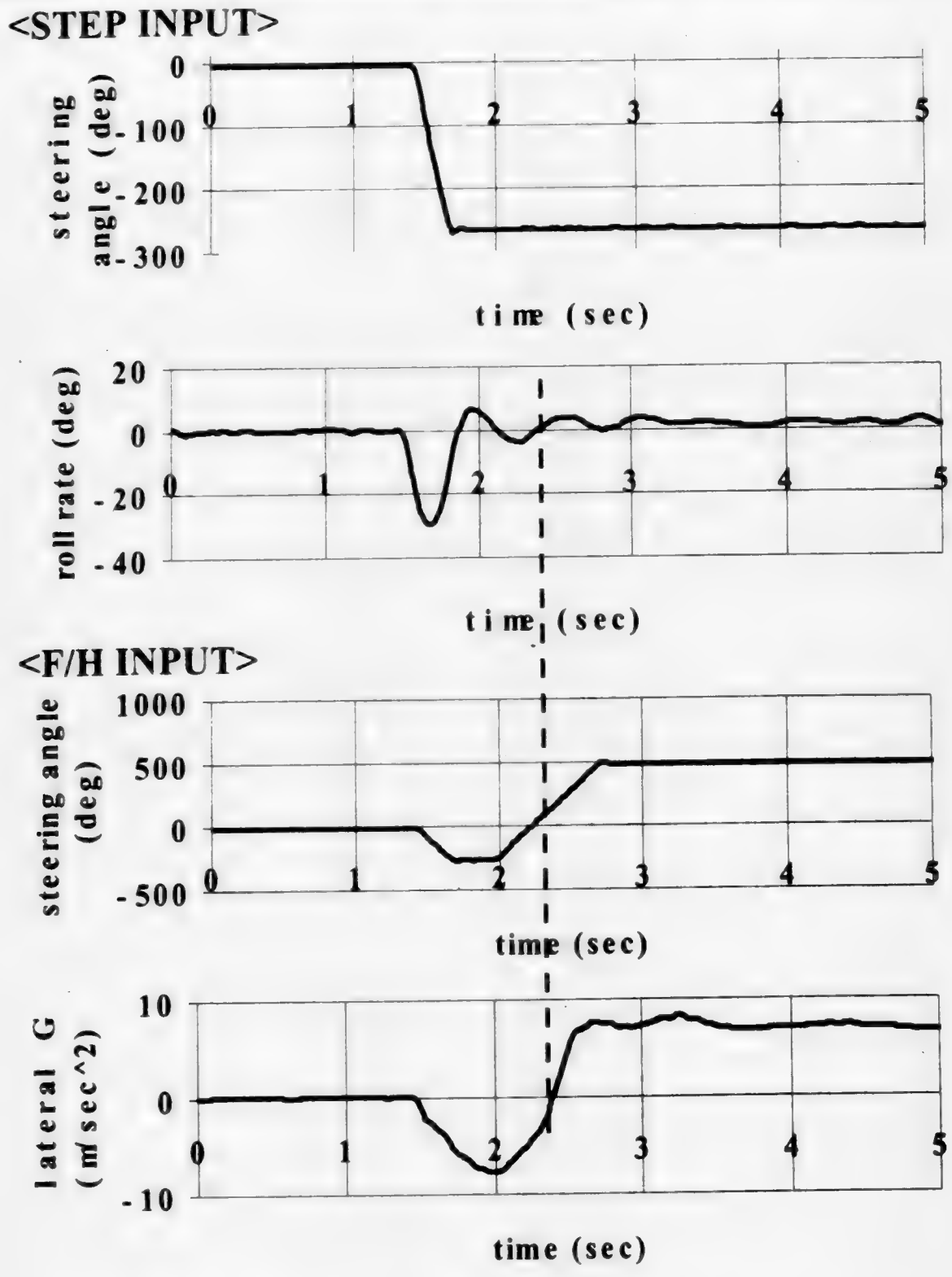

Fig. 6: Nissan Method of Timing Fishhook for Greatest Severity

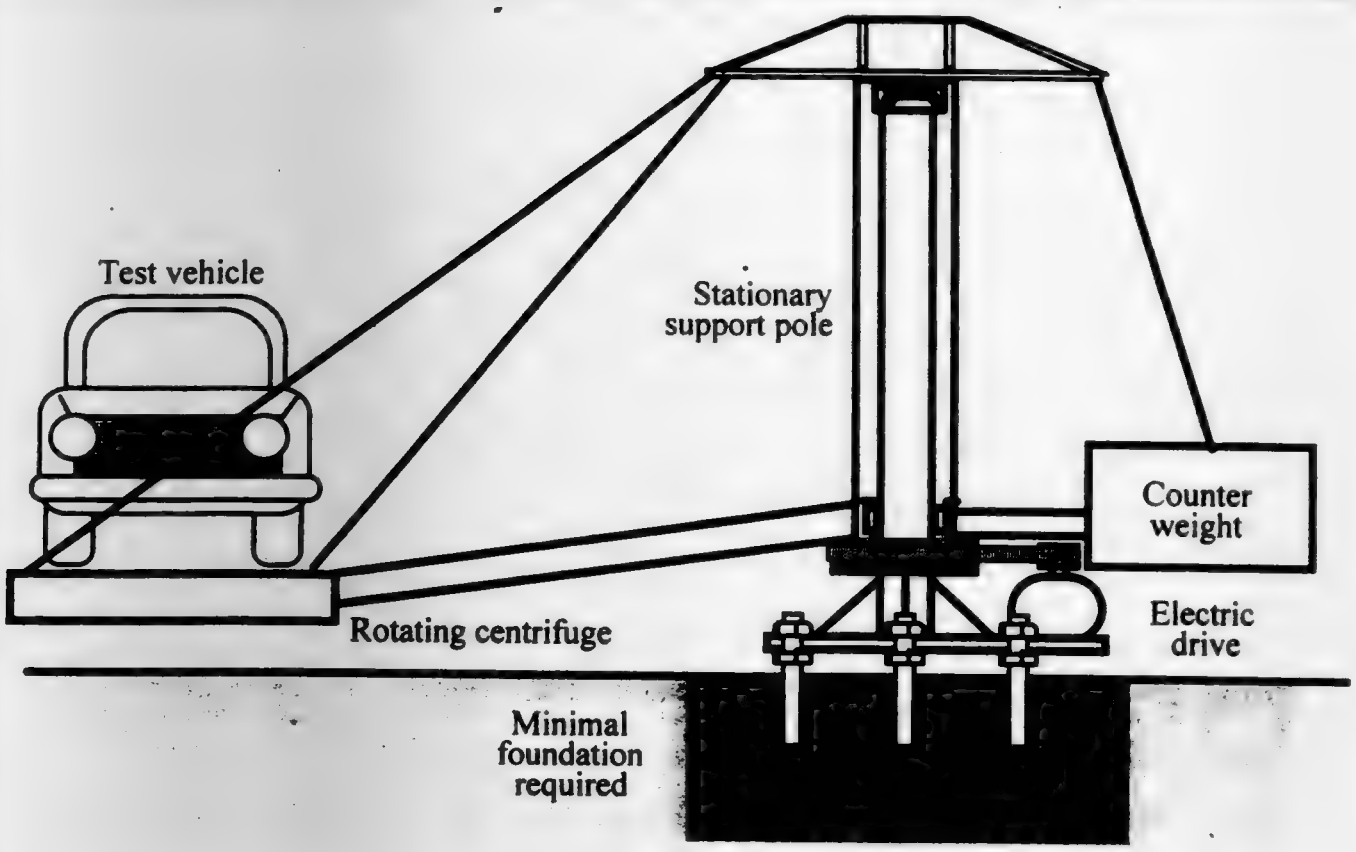

Fig. 7: Centrifuge Test Device for the Measurement of Rollover Threshold

[FR Doc. 01–16659 Filed 7–2–01; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AG58

2001–2002 Refuge-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (we or the Service) proposes to add seven national wildlife refuges (refuges) to the list of areas open for hunting and/or sport fishing, along with pertinent refuge-specific regulations for such activities; and amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for 2001–2002.

DATES: You should submit comments on or before August 2, 2001.

ADDRESSES: Submit written comments to Acting Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 670, Arlington, VA 22203. See **SUPPLEMENTARY INFORMATION** for information on electronic submission.

FOR FURTHER INFORMATION CONTACT: Leslie A. Marler, (703) 358–2397; Fax (703) 358–2248.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 (NWRSAA) closes national wildlife refuges to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or fishing, upon a determination that such uses are compatible with the purposes of the refuge. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State wildlife agency(ies), must be consistent with the principles of sound fish and wildlife management and administration, and must be otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System (System) for the benefit of present and future generations of Americans.

We review refuge hunting and fishing programs annually to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications, deletions, or additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and fishing programs and that these programs will not materially interfere with or detract from the fulfillment of the System's mission or the purposes of the refuge.

You may find provisions governing hunting and fishing on national wildlife refuges in Title 50 of the Code of Federal Regulations in part 32. We regulate hunting and fishing on refuges to:

- Ensure compatibility with the purpose(s) of the refuge;
- Properly manage the fish and wildlife resource;
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for high-quality recreational and educational experiences.

On many refuges where we decide to allow hunting and fishing, our general policy of adopting regulations identical to State hunting and fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined under the section entitled "Statutory Authority." We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to either migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or those species subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and fishing in 50 CFR part 32. In this rulemaking, we are promulgating many of the amendments to these sections to standardize and clarify the existing language of these regulations.

Some refuges make seasonal information available in brochures or leaflets, which we provide for in 50 CFR 25.31, to supplement these refuge-specific regulations.

Plain Language Mandate

In this rule some of the revisions to the individual refuge units are to comply with a Presidential mandate to use plain language in regulations and do not modify the substance of the previous regulations. These types of changes include using "you" to refer to the reader and "we" to refer to the Service and using the word "allow" instead of "permit" when we do not require the use of a permit for an activity.

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966 (16 U.S.C. 668dd–668ee, as amended), and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k–460k–4) govern the administration and public use of national wildlife refuges.

Amendments enacted by the National Wildlife Refuge System Improvement Act (NWRSIA or Act) of 1997 amend and build upon the NWRSAA in a manner that provides an improved "Organic Act" for the System similar to those that exist for other public lands. The Act serves to ensure that we effectively manage the System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The NWRSAA states first and foremost that we focus the mission of the System on conservation of fish, wildlife, and plant resources and their habitats. This Act requires the Secretary, before initiating or allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible and promotes public safety. The NWRSIA establishes as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the System, through which the American public can develop an appreciation for fish and wildlife. The NWRSIA establishes six wildlife-dependent recreational uses, when compatible, as the priority general public uses of the System. Those priority uses are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The RRA authorizes the Secretary to administer areas within the System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. This act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The NWRSAA and RRA also authorize the Secretary to issue regulations to carry out the purposes of the acts and regulate uses.

We develop hunting and sport fishing plans for each refuge prior to opening it to hunting or fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge. We have ensured initial compliance with the NWRSAA and the RRA for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. This policy ensures that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. We ensure continued compliance by the development of Comprehensive Conservation Plans, long-term hunting and sport fishing plans, and by annual review of hunting and sport fishing programs and regulations.

In preparation for new openings, we include the following documents in the refuges' "opening package:" (1) Step-down hunting and/or fishing management plan; (2) Appropriate NEPA documentation (Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement); (3) Appropriate decision documentation (e.g., Finding of No Significant Impact); (4) Section 7 evaluation; (5) Copies of letters requesting State and, where appropriate, Tribal involvement and the results of the request; (6) A draft news release; (7) Outreach plan; and (8) Draft refuge-specific regulation. Upon review of these documents, we have determined that the opening of these national wildlife refuges to hunting and fishing is compatible with the principles of sound fish and wildlife management and administration and otherwise will be in the public interest.

We are correcting administrative errors in 50 CFR part 32 that occurred when we inadvertently dropped migratory game bird hunting and sport fishing as activities open to the public in Lacreek National Wildlife Refuge in the State of South Dakota and sport fishing as an activity open to the public in Minidoka National Wildlife Refuge in the State of Idaho, and when we did not remove sport fishing from the list of activities open to the public in Delevan National Wildlife Refuge in the State of California. Lacreek National Wildlife Refuge has been open to sport fishing and migratory game bird hunting since the late 1960's. Minidoka National Wildlife Refuge has been open to sport fishing since the late 1980's. Delevan National Wildlife Refuge closed to sport fishing over a decade ago. We are adding Litchfield Wetland Management District in the State of Minnesota, which has been open since 1978, to clarify a hunting blind issue. Wetland management districts contain numerous waterfowl production areas. Land acquired as a "waterfowl production area" is annually open to hunting of migratory game birds, upland game, and big game (see 50 CFR 32.1).

We are making another technical correction by removing Mark Twain National Wildlife Refuge from the States of Illinois, Iowa, and Missouri. We have officially renamed units of Mark Twain National Wildlife Refuge as Great River National Wildlife Refuge, Middle Mississippi River National Wildlife Refuge, Port Louisa National Wildlife Refuge, Two Rivers National Wildlife Refuge, and Clarence Cannon National Wildlife Refuge. The headquarters administrative site will retain the name Mark Twain Refuge Complex.

We propose to allow the following wildlife-dependent recreational activities:

Hunting of migratory game birds on nine refuges, including:

- Grand Bay National Wildlife Refuge, Alabama and Mississippi
- Great River National Wildlife Refuge, Illinois and Missouri
- Middle Mississippi River National Wildlife Refuge, Illinois and Missouri
- Port Louisa National Wildlife Refuge, Illinois and Iowa
- Two Rivers National Wildlife Refuge, Illinois and Missouri
- Clarks River National Wildlife Refuge, Kentucky
- Petit Manan National Wildlife Refuge, Maine
- Clarence Cannon National Wildlife Refuge, Missouri
- Deep Fork National Wildlife Refuge, Oklahoma

Upland game hunting on seven refuges, including:

- Grand Bay National Wildlife Refuge, Alabama and Mississippi
- Great River National Wildlife Refuge, Illinois and Missouri
- Middle Mississippi River National Wildlife Refuge, Illinois and Missouri
- Port Louisa National Wildlife Refuge, Illinois and Iowa
- Two Rivers National Wildlife Refuge, Illinois and Missouri
- Clarks River National Wildlife Refuge, Kentucky
- Clarence Cannon National Wildlife Refuge, Missouri

Big game hunting on nine refuges, including:

- Grand Bay National Wildlife Refuge, Alabama and Mississippi
- Great River National Wildlife Refuge, Illinois and Missouri
- Middle Mississippi River National Wildlife Refuge, Illinois and Missouri
- Port Louisa National Wildlife Refuge, Illinois and Iowa
- Two Rivers National Wildlife Refuge, Illinois and Missouri
- Big Oaks National Wildlife Refuge, Indiana
- Clarks River National Wildlife Refuge, Kentucky
- Petit Manan National Wildlife Refuge, Maine
- Clarence Cannon National Wildlife Refuge, Missouri

Sport fishing on nine refuges, including:

- Sacramento River National Wildlife Refuge, California
- Great River National Wildlife Refuge, Illinois and Missouri
- Middle Mississippi River National Wildlife Refuge, Illinois and Missouri
- Port Louisa National Wildlife Refuge, Illinois and Iowa
- Two Rivers National Wildlife Refuge, Illinois and Missouri
- Big Oaks National Wildlife Refuge, Indiana
- Clarks River National Wildlife Refuge, Kentucky
- Clarence Cannon National Wildlife Refuge, Missouri
- Supawna Meadows National Wildlife Refuge, New Jersey

In accordance with NWRSAA and the RRA, we have determined that these openings are compatible and consistent with the purpose(s) for which we established the respective refuges. A copy of the compatibility determinations for these respective refuges is available by request to the contact noted under the heading **ADDRESSES.**

Request for Comments

You may comment on this proposed rule by any one of several methods:

1. You may mail comments to: Acting Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 670, Arlington, VA 22203.

2. You may comment via the Internet to: Refuge_Specific_Comments@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: "Attn: 1018–AG58" and your full name and return mailing address in your Internet message. If you only use your e-mail address, we will consider your comment to be anonymous. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–1744.

3. You may fax comments to: Acting Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, (703) 358–2248.

4. Finally, you may hand-deliver comments to the address mentioned above.

We seek comments on this proposed rule and will accept comments by any of the methods described above. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. We considered providing a 60-day rather than a 30-day comment period. However, we determined that an additional 30-day delay in processing these refuge-specific hunting and fishing regulations would hinder the effective planning and administration of our hunting and fishing programs. That delay would jeopardize establishment of hunting and fishing programs this year, or shorten their duration. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, in order to continue to provide for previously authorized hunting opportunities while at the same time provide for adequate resource protection, we must be timely in providing modifications to certain hunting programs on some refuges.

When finalized, we will incorporate this regulation into 50 CFR part 32. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on national wildlife refuges.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Service asserts that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes

the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and full economic analysis is not required. The purpose of this rule is to open 12 refuges to hunting and fishing activities. We created five of these refuges from existing units of Mark Twain National Wildlife Refuge in Illinois, Iowa, and Missouri and, as such, hunting and fishing activities were already available to the public. We exclude these five refuges from the analysis because they are not an increase in supply of hunting and fishing opportunities. The seven new refuges are located in the States of Alabama, Mississippi, Kentucky, Indiana, Oklahoma, Maine, California, and New Jersey. Fishing and hunting are two of the priority public uses of national wildlife refuges recognized as legitimate and appropriate, and we should facilitate their implementation, subject to such restrictions or regulations as may be necessary to ensure their compatibility with the purpose of each refuge. Many of the 535 existing national wildlife refuges already have programs where we allow fishing and hunting. Not all refuges have the necessary resources and landscape that would make fishing and hunting opportunities available to the public. By opening these seven new refuges, we have determined that we can make high-quality and safe experiences available to the public. This rule establishes new hunting and/or fishing programs at the following refuges: Grand Bay, Clarks River, Big Oaks, Deep Fork, Petit Manan, Sacramento River, and Supawna Meadows National Wildlife Refuge.

Following a best-case scenario, if the refuges establishing new fishing and hunting programs were a pure addition to the supply of such activities, it would mean an estimated increase of 14,630 days of hunting and 18,460 user days of fishing (Table 1). However, the number of Americans participating in fishing and hunting activities has been stable since 1991. Any increase in the supply of these activities introduced by adding refuges where the activity is available will most likely be offset by other sites losing participants, especially if the new sites have higher quality fishing and/or hunting opportunities. Using the value of the difference in the upper and lower bounds of the 95 percent confidence interval for average consumer surplus to represent the estimate of the increase in consumer surplus for higher quality fishing and hunting (Walsh, Johnson, and McKean, 1990 [1]) yields an estimated increase in consumer surplus of $672,000 annually (2001 dollars based on consumer surplus quality change). If the possible fishing and hunting opportunities attributable to this rule are a pure addition to the current supply, then the consumer surplus will be slightly over $2 million annually. As stated earlier, the trend is flat in participation in fishing and hunting activities in the last 10 years and, therefore, if new refuges are open to these activities, the true estimate of the benefits will be closer to $672,000 annually. Consequently, this rule will have a small measurable economic benefit on the United States economy.

TABLE 1.—ESTIMATED CHANGES IN CONSUMER SURPLUS FROM ADDITIONAL FISHING AND HUNTING OPPORTUNITIES IN 2001

Refuge	Additional Fishing Days	Additional Hunting Days	Fishing and Hunting Combined
Grand Bay	.....	330	330
Clarks River	5,000	5,000	10,000
Big Oaks	7,000	9,000	16,000
Deep Fork	.....	250	250
Petit Manan	.....	50	50
Sacramento River	1,000	.....	1,000
Supawna Meadows	5,460	.....	5,460
Total Days/Year	18,460	14,630	33,090
Consumer Surplus per Day (1987$)	$39.25	$41.69	
Consumer Surplus for Quality Change	$14.90	$10.66	
Change in Total Consumer Surplus	$724,555	$609,925	(1987$) $1,334,480 (2001$) $2,080,661
Change in Quality Consumer Surplus	$275,054	$155,956	(1987$) $431,010 (2001$) $672,011

b. This proposed rule will not create inconsistencies with other agencies' actions. This action pertains solely to the management of the National Wildlife Refuge System. The fishing and hunting activities located on national wildlife refuges account for approximately 1 percent of the available supply in the United States. Any small, incremental change in the supply of fishing and hunting opportunities will not measurably impact any other agency's existing programs.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This proposed rule does not affect entitlement programs. There are no grants or other Federal assistance programs associated with public use of national wildlife refuges.

d. This proposed rule will not raise novel legal or policy issues. It opens seven additional refuges for fishing and hunting activities and continues the practice of allowing recreational public use of national wildlife refuges. Many refuges in the System currently have opportunities for the public to hunt and fish on refuge lands.

[1] Article presented at the Western Regional Science Association Annual Meeting in Molokai, Hawaii on February 22, 1990.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Congress created the National Wildlife Refuge System to conserve fish, wildlife, and plants and their habitats and facilitated this conservation mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation, including fishing and hunting, as priority general uses on national wildlife refuges and to better appreciate the value of, and need for, wildlife conservation.

This proposed rulemaking does not increase the types of recreation allowed on the System but establishes hunting and/or fishing programs on seven additional refuges. As a result, there will be opportunities for an increase in wildlife-dependent recreation on national wildlife refuges. The changes in the amount of permitted use are likely to increase visitor activity on the seven national wildlife refuges. But, as stated above, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity. To the extent visitors spend time and money in the area of the refuge that would not have been spent there anyway, they contribute new income to the regional economy and benefit local businesses.

For purposes of analysis, we will assume that any increase in refuge visitation is a pure addition to the supply of the available activity. This will result in a best-case scenario and is expected to overstate the benefits to local businesses. The latest information on the distances traveled for fishing and hunting activities indicates that over 80 percent of the participants travel less than 100 miles from home to engage in the activity. This indicates that participants will spend their travel-related expenditures in the local economy. Since participation is scattered across the country, many small businesses benefit. The National Survey of Fishing, Hunting, and Wildlife Associated Recreation identifies expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the expected maximum additional participation on the System as a result of this proposed rule yields the following estimates (Table 2) compared to total business activity for these sectors.

TABLE 2.—ESTIMATION OF THE ADDITIONAL FISHING AND HUNTING OPPORTUNITIES WITH THE OPENING OF SEVEN REFUGES TO FISHING AND/OR HUNTING IN 2001

	U.S. total participation in 1996	Average per day	Current refuge participation w/o duplication	Possible additional refuge participation
Anglers				
Total Days Spent	626 Mil.		6.7 Mil.	18,460
Total Expenditures	$38.0 Bil.	$61	$406.3 Mil.	$1,120,575
Trip Related	$15.4 Bil.	$25	$164.6 Mil.	$454,128
Food and Lodging	$6.0 Bil.	$10	$64.1 Mil.	$176,933
Transportation	$3.7 Bil.	$6	$39.6 Mil.	$109,109
Other	$5.7 Bil.	$9	$60.9 Mil.	$168,086
Hunters				
Total Days Spent	257 Mil.		2.0 Mil.	14,630
Total Expenditures	$21 Bil.	$82	$164.4 Mil.	$1,195,447
Trip Related	$5.2 Bil.	$20	$40.7 Mil.	$296,016
Food and Lodging	$2.5 Bil.	$10	$19.6 Mil.	$142,315
Transportation	$1.8 Bil.	$7	$14.1 Mil.	$102,467
Other	$900 Mil.	$4	$7.0 Mil.	$51,233

Using a national impact multiplier for wildlife-associated recreation developed for the report "1996 National and State Economic Impacts of Wildlife Watching" for the estimated increase in direct expenditures yields a total economic impact of $7.7 million dollars (2001 dollars). Since we know that most of the fishing and hunting occur within 100 miles of a participant's residence, then it is unlikely that most of this spending would be "new" money coming into a local economy and, therefore, would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than $7.7 million and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns would not add new money in the local economy and, therefore, the real impact would be on the order of $1.5 million annually. Taken as percent of similar figures for this type of economic activity, it shows that the maximum increase at most (if all spending were new money) ranges from .01 percent to 3.58 percent for local retail trade spending (Table 3). Even the three counties in Indiana (Big Oaks National Wildlife Refuge) that would have a share of the $3.7 million increase in recreationist spending (if all spending were from outside the retail area) would average approximately $7,000 per establishment.

The majority of affected counties have a large percentage of their retail trade establishments that qualify as small businesses. With such a small increase in overall spending that we anticipate from this proposed rule, it is unlikely that a substantial number of small entities will have more than a small benefit from the increased recreationist spending near the affected refuges.

TABLE 3.—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION IN 2001

Refuge/county(ies)	Retail trade in 1997 (in mil.)	Estimated max. refuge addition	Addition as a % of total	Total retail establ.	Establ. with <10 emp.
Grand Bay		$77 thou	.01		
Mobile, AL	$608			2,229	1,467
Jackson, MS	$131			681	491
Clarks River		$2.3 mil	1.03		
Graves, KY	$ 37			175	119
McCracken, KY	$154			659	443
Marshall, KY	$ 36			168	122
Big Oaks		$3.7 mil	3.58		
Jefferson, IN	$ 45			218	153
Jennings, IN	$ 32			100	70
Ripley, IN	$ 27			168	113
Deep Fork		$58 thou	.18		
Okmulgee, OK	$ 32			194	140
Petit Manan		$12 thou	03		
Washington, ME	$ 40			281	206
Sacramento River		$233 thou	.06		
Butte, CA	$287			1,095	736
Lake, CA	$ 58			296	229
Tehama, CA	$ 70			244	168
Supawna Meadows		$1.3 mil	1.93		
Salem, NJ	$ 66			305	203

Many small businesses may benefit from some increased wildlife refuge visitation. However, we expect that much of this benefit will be offset as recreationists spend the same money in a different location. We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in any region or nationally.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The additional fishing and hunting opportunities at the seven refuges that do not currently have these programs would generate expenditures by anglers and hunters with an economic impact estimated at $7.7 million per year (2001 dollars). Consequently, the maximum benefit of this rule for businesses, both small and large, would not be sufficient to make this a major rule. The impact would be scattered across the country and would most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This proposed rule will have only a slight effect on the costs of hunting and fishing opportunities of Americans. Under the assumption that any additional hunting and fishing opportunities would be of high quality, participants would be attracted to the refuge. If the refuge were closer to the participant's residence, then a reduction in travel costs would occur and benefit the participants. We do not have information to quantify this reduction in travel cost; but we have to assume that, since most people travel less than 100 miles to hunt and fish now, the reduced travel cost would be small for the additional days of hunting and fishing generated by this proposed rule. We do not expect this proposed rule to affect the supply or demand for fishing and hunting opportunities in the United States and, therefore, it should not affect prices for fishing and hunting equipment and supplies, or the retailers that sell equipment. Additional refuge hunting and fishing opportunities would account for less than .04 percent of the available opportunities in the United States.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Because this proposed rule represents such a small proportion of recreational spending of a small number of affected hunters and anglers (approximately a maximum impact of $7.7 million annually), there will be no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide. This proposed rule adds seven refuges to the list of refuges that have hunting and/or fishing programs. Refuges that establish hunting and fishing programs may hire additional staff from the local community to assist with the programs, but this would not be a significant increase with this proposed rule adding only seven refuges. Consequently, there are no anticipated significant employment or small business effects.

Unfunded Mandates Reform Act

Since this rule applies to public use of federally owned and managed refuges, it does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This regulation will affect only visitors at national wildlife refuges and limit what they can do while they are on a refuge.

Federalism (Executive Order 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. In

preparing this proposed rule, we worked with State governments.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation will clarify established regulations and result in better understanding of the regulations by refuge visitors.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only adds seven refuges to the list of refuges that have hunting and/or fishing programs and makes minor changes to other refuges open to those activities, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Consultation and Coordination with Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations. This regulation is consistent with and not less restrictive than Tribal reservation rules.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB Control Number is 1018–0102). See 50 CFR 25.23 for information concerning that approval. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Endangered Species Act Section 7 Consultation

In preparation for new openings, we include Section 7 consultation documents approved by the Service's Endangered Species program in the refuge's "openings package" for Regional review and approval from the Washington Office. We reviewed the changes in hunting and fishing regulations herein with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543). For the national wildlife refuges proposed to open for hunting and/or fishing we have determined that Grand Bay, Supawna Meadows, Petit Manan, Sacramento River (for valley elderberry longhorn beetle), and Clarks River (for bald eagles) National Wildlife Refuges will not likely adversely affect and Clarks River (for Indiana bat) and Sacramento River National Wildlife Refuges will not affect the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat of such species within the System.

We also comply with Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) when developing Comprehensive Conservation Plans, step-down management plans for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We also make determinations required by the Endangered Species Act on a case-by-case basis before the addition of a refuge to the lists of areas open to hunting or fishing as contained in 50 CFR 32.7.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and 516 DM 6, Appendix 1. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required.

A categorical exclusion from NEPA documentation applies to this amendment of refuge-specific hunting and fishing regulations since it is technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (516 DM 2, Appendix 1.10).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge Comprehensive Conservation Plans (CCPs) and/or other step-down management plans, pursuant to our refuge planning guidance in 602 FW 1, 3, and 4. We prepare these CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans.

Available Information for Specific Refuges

Individual refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs and maps of their respective areas. You may also obtain information from the Regional offices at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, New Mexico 87103; Telephone (505) 248–7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612)–713–5401.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345; Telephone (404) 679–7166.

Region 5—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8306.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South

Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236–8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Primary Author

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List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend Title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

2. In § 32.7 "What refuge units are open to hunting and/or fishing?" by:

a. Alphabetically adding Grand Bay National Wildlife Refuge in the States of Alabama and Mississippi;

b. Alphabetically adding Sacramento River National Wildlife Refuge, removing "Salton Sea National Wildlife Refuge" and alphabetically adding "Sonny Bono Salton Sea National Wildlife Refuge" in the State of California;

c. Removing Mark Twain National Wildlife Refuge in the States of Illinois, Iowa, and Missouri;

d. Alphabetically adding Great River National Wildlife Refuge, Middle Mississippi River National Wildlife Refuge, Port Louisa National Wildlife Refuge, and Two Rivers National Wildlife Refuge in the State of Illinois;

e. Alphabetically adding Big Oaks National Wildlife Refuge in the State of Indiana;

f. Alphabetically adding Port Louisa National Wildlife Refuge in the State of Iowa;

g. Alphabetically adding Clarks River National Wildlife Refuge in the State of Kentucky;

h. Alphabetically adding Petit Manan National Wildlife Refuge in the State of Maine;

i. Alphabetically adding Litchfield Wetland Management District in the State of Minnesota;

j. Alphabetically adding Clarence Cannon National Wildlife Refuge, Great River National Wildlife Refuge, Middle Mississippi River National Wildlife Refuge, and Two Rivers National Wildlife Refuge in the State of Missouri; and

k. Removing "Arid Lands National Wildlife Refuge" in the State of Washington and alphabetically adding "Hanford Reach National Monument/ Saddle Mountain National Wildlife Refuge" to read as follows:

§ 32.7 What refuge unit are open to hunting and/or fishing.

3. In § 32.20 Alabama by alphabetically adding Grand Bay National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

Grand Bay National Wildlife Refuge

Refer to § 32.43 Mississippi for regulations.

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4. In § 32.22 Arizona by:

a. Revising paragraph A., adding paragraph B.4., and revising paragraphs C., and D. of Bill Williams River National Wildlife Refuge;

b. Revising paragraph A. of Cibola National Wildlife Refuge; and

c. Revising paragraph A.4.i., adding paragraphs A.4.iii, and A.4.iv., revising paragraph A.5., adding paragraphs A.6., and B.5., and revising paragraph D. of Havasu National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

* * * * *

Bill Williams River National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning and white-winged doves on designated areas of the refuge subject to the following conditions:

1. We allow only shotguns.

2. You may possess only nontoxic shot while in the field.

3. You may not hunt within 50 yards (45 m) of any building, road, or levee.

B. Upland Game Hunting. * * *

* * * * *

4. You may not hunt within 50 yards (45 m) of any building, road, or levee.

C. Big Game Hunting. We allow hunting of desert bighorn sheep on designated areas of the refuge with a valid State permit.

D. Sport Fishing. We allow sport fishing in designated areas subject to the following condition: We prohibit personal watercraft (PWC, as defined by State law), air boats, or hovercraft on all waters within the boundaries of the refuge.

* * * * *

Cibola National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens, common snipe, and mourning and white-winged doves on designated areas of the refuge subject to the following conditions:

1. We allow only shotguns.

2. You may possess only approved nontoxic shot while in the field.

3. You must obtain a permit to enter the Island Unit.

4. You must pay a hunt fee in portions of the refuge. Consult refuge hunting leaflet for locations.

5. We do not allow pit or permanent blinds.

6. You may hunt only during seasons, dates, times, and areas posted by signs and/ or indicated on refuge leaflets, special regulations, and maps available at the refuge office.

7. You must remove all temporary blinds, boats, and decoys from the refuge following each day's hunt.

8. We do not allow hunting within 50 yards (45 m) of any public roads or levees.

9. We close Farm Unit 2 to all hunting except goose hunting during the Arizona waterfowl season.

10. Consult the refuge hunt leaflet for the shot limit.

11. The area known as Pretty Water is open to waterfowl hunting from ½ hour before sunrise to 3:00 p.m. MST during the Arizona and California waterfowl seasons.

12. The Hart Mine Marsh area is open to hunting from 10 a.m. to 3 p.m. daily during goose season.

* * * * *

Havasu National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. * * *

i. We require a fee for waterfowl hunting, and you must have in your possession proof of payment (refuge permit) while hunting.

* * * * *

iii. Waterfowl hunters must hunt only at the assigned location.

iv. We limit waterfowl hunters to 16 shells each.

5. You must remove temporary blinds, boats, hunting equipment, and decoys from the refuge following each day's hunt.

6. You may not hunt within 50 yards (45m) of any building, road, or levee.

B. Upland Game Hunting. * * *

* * * * *

5. You may not hunt within 50 yards (45 m) of any building, road, or levee.

* * * * *

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We close designated portions of the Topock Marsh to all entry from October 1 through January 31.

2. We prohibit personal watercraft (PWC, as defined by State law), air boats, or hovercraft on all waters within Topock Marsh or other waters indicated by signs or buoys.

* * * * *

5. In § 32.24 California by:

a. Revising paragraph D. of Delevan National Wildlife Refuge;

b. Revising paragraph A. of Humboldt Bay National Wildlife Refuge;

c. Alphabetically adding Sacramento River National Wildlife Refuge;

d. Revising the heading of "Salton Sea National Wildlife Refuge" to read "Sonny Bono Salton Sea National Wildlife Refuge," placing it in appropriate alphabetical order and revising paragraph A.2.;

e. Revising paragraphs A.1. and D.2. of San Luis National Wildlife Refuge; and

f. Revising San Pablo Bay National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Delevan National Wildlife Refuge

* * * * *

D. Sport Fishing. [Reserved]

* * * * *

Humboldt Bay National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese (except Canada geese), ducks, coots, common moorhens, and snipe on designated areas of the refuge subject to the following conditions:

1. We allow hunting on Salmon Creek only on Tuesdays and Saturdays from ½ hour before sunrise until 1:00 p.m., and we require a valid refuge daily permit issued prior to each hunt by random drawing.

2. We restrict hunters on Salmon Creek to within 100 feet (30 m) of the assigned hunt site except for placing and retrieving decoys, retrieving downed birds, or traveling to and from the parking area.

3. The Teal Island and Egret Island units of the refuge are open on Saturday, Sunday, Wednesday, Federal holidays, and the opening and closing days of the State waterfowl hunting season.

4. Portions of the Jacoby Creek, Eureka Slough, and Table Bluff units of the refuge are open during the State waterfowl hunting season. We designate the Jacoby Creek and Eureka Slough units boat access only.

5. We require that adults 18 years of age or older accompany hunters under the age of 16.

6. You must unload firearms while transporting them between the parking area and designated blind sites in the Salmon Creek unit.

7. You may possess no more than 25 approved nontoxic shells while in the field.

8. You may use only portable blinds or blinds constructed of vegetation in the free-roam hunting areas.

9. You must remove all blinds, decoys, shell casings, and other personal equipment from the refuge following each day's hunt.

* * * * *

Sacramento River National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. We allow fishing on Packer Lake subject to the following conditions:

1. Due to primitive access, you may fish only from boats up to 14 feet (4.2 m) long and canoes.

2. You may fish from the western shoreline from sunrise to sunset.

* * * * *

San Luis National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. You may use only portable blinds or blinds constructed of vegetation in the free-roam hunting area.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. We allow only the use of pole and line or rod and reel, and anglers must attend their equipment at all times.

* * * * *

San Pablo Bay National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. Access is by foot, bicycle, and boat only.

3. You must remove all portable blinds, decoys, and personal equipment following each day's hunt.

4. We allow floating blinds on the refuge, and they are available to any hunter on a first-come, first-serve basis. Floating blinds require refuge manager approval or are subject to removal.

5. We prohibit digging into levees and slough channels.

6. We allow only dogs engaged in hunting activities on the refuge during waterfowl season.

B. Upland Game Hunting. We allow hunting of pheasant on designated areas of the refuge in accordance with State hunting regulations and the following conditions:

1. Contact the refuge manager for details.

2. You may possess a maximum of 25 approved nontoxic shot while in the field.

3. Access is by foot and bicycle only.

4. We allow only dogs engaged in hunting activities on the refuge during pheasant season.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Sonny Bono Salton Sea National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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2. You must hunt from assigned blinds on the Union Tract and within 100 feet (30 m) of blind sites on the Hazard Tract, except when shooting to retrieve crippled birds.

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6. In § 32.27 Delaware by revising Prime Hook National Wildlife Refuge to read as follows:

§ 32.27 Delaware.

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Prime Hook National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

1. Consult the refuge hunting brochure for specific information regarding species, areas, and days open to hunting, rules, and regulations.

2. We require a refuge permit and fee for waterfowl hunting.

3. Refuge hunt dates will correspond with State-established migratory game bird seasons.

B. Upland Game Hunting. We allow hunting of upland species on designated areas of the refuge subject to the following conditions:

1. Consult the refuge hunting brochure for specific information regarding species, areas, and days open to hunting, rules, and regulations.

2. You may possess only approved nontoxic shot while in the field.

3. We do not allow upland game hunting beginning March 1 through August 31.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

1. Consult the refuge hunting brochure for specific information regarding areas and days open to hunting, rules, and specific regulations.

2. You may use only portable tree stands and must remove them from the refuge following each day's hunt.

3. During the firearm deer season, hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (10.16 m2) of solid-colored hunter orange clothing or material.

4. We require a refuge permit and fee for deer hunting.

D. Sport Fishing. We allow fishing and crabbing on designated areas of the refuge subject to the following conditions:

1. Consult refuge regulations regarding access areas, launch points, and motor restrictions.

2. We allow fishing only from sunrise to sunset in all areas except those areas marked by signs as closed to public entry.

7. In § 32.28 Florida by:

a. Adding paragraph D.8. of J. N. "Ding" Darling National Wildlife Refuge;

b. Revising paragraphs A.5., A.7., A.8., A.17., and D. of Merritt Island National Wildlife Refuge; and

c. Revising paragraph A. of Ten Thousand Islands National Wildlife Refuge to read as follows:

§ 32.28 Florida.

* * * * *

J. N. "Ding" Darling National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

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8. With the exception of those nonregulated species generally used as bait, all fish caught for commercial purposes in the waters of the refuge or transported into the refuge must remain in an intact and

whole condition until removed from the refuge.

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Merritt Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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5. All persons must successfully complete a Firearm Hunter Education course before they may hunt and must possess the Firearm Hunter Education certificate when hunting.

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7. We close the refuge between sunset and sunrise except waterfowl hunters may enter at 4:00 a.m. on hunting days with a valid Refuge Hunt Permit.

8. You may not park along Blackpoint Wildlife Drive, Playalinda Beach Road, or Scrub Ridge Trail for the purpose of waterfowl hunting.

* * * * *

17. Boats must not exceed idle speed in Bairs Cove and KARS (Kennedy Athletic Recreational Social Organization) Marina or 8 mph in Haulover Canal.

* * * * *

D. Sport Fishing. You may fish, crab, clam, oyster, and shrimp in designated areas of the refuge subject to the following conditions:

1. We close the refuge between sunset and sunrise except anglers may enter after dark to fish from a boat with a valid Refuge Night Fishing Permit. We allow nighttime boat launching only at Bairs Cove and Beacon 42 Fish Camp. We allow night fishing only in Haulover Canal and the open waters of Mosquito Lagoon, Indian River Lagoon, and Banana River.

2. Anglers must attend their lines at all times.

3. Vehicles must use only designated public access routes and boat launching areas north and south of Haulover Canal.

4. You may not launch boats, crab, or fish from Black Point Wildlife Drive.

5. You may not use air-thrust boats, hovercraft, personal watercraft, or similar craft on refuge waters.

6. You may not use motorized boats in the Banana River Manatee Sanctuary (north of KARS Park on the west side of the Barge Channel and north of the Air Force power line on the east side of the Barge Channel). This includes any boat having an attached motor or a nonattached motor capable of use (including electric trolling motors). This is in effect throughout the year.

7. Boats must not exceed idle speed in Bairs Cove and KARS Marina or 8 mph in Haulover Canal.

8. We prohibit harvest or possession of horseshoe crabs while on the refuge.

* * * * *

Ten Thousand Islands National Wildlife Refuge

A. Hunting of Migratory Game Birds. You may hunt ducks and coots in designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We allow hunting only on Wednesday, Saturday, Sunday, Thanksgiving, Christmas, and New Year's Day within the State season from ½ hour before sunrise until noon.

2. You must possess a valid refuge hunt permit at all times while hunting on the refuge.

3. You will need to break down temporary blinds, including those of native vegetation, following each day's hunt. We prohibit the construction of permanent or pit blinds.

4. You must remove decoys, guns, blinds, and boats from the refuge by 1:00 p.m. daily.

5. We allow public hunting only in the area shown on the refuge hunt brochure. We will post closed areas with signs or delineate them by red reflectors on posts along the small road extending south off U.S. 41. Entry into the refuge for hunting may not begin until 4:00 a.m. for designated hunt days.

6. We prohibit air-thrust boats, hovercraft, personal watercraft, and off-road vehicles at all times. We limit watercraft to outboard engines with a maximum of 25 hp.

7. We encourage the use of dogs to retrieve dead or wounded waterfowl. Dogs must remain under the control of their handlers at all times.

8. You may possess only approved nontoxic shot while in the field.

9. We require all guides to purchase and possess a refuge Special Use Permit.

10. We prohibit the possession of alcoholic beverages.

11. Hunters under the age of 16 may hunt only with an adult 21 years of age or older, and they must remain in sight and normal voice contact with the adult.

12. You may take ducks and coots with shotguns only. We prohibit the possession of handguns and other long guns.

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8. In § 32.29 Georgia by revising paragraph C. of Okefenokee National Wildlife Refuge to read as follows:

§ 32.29 Georgia.

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Okefenokee National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following condition: We require a refuge permit for Suwannee Canal Unit.

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9. In § 32.31 Idaho by:

a. Revising paragraphs A.1., A.3., A.4., and D.1. of Deer Flat National Wildlife Refuge; and

b. Revising paragraph D. of Minidoka National Wildlife Refuge to read as follows:

§ 32.31 Idaho.

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Deer Flat National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. You may hunt only ducks, coots, and doves on the Lake Lowell sector.

* * * * *

3. Snipe and dove hunters may possess only approved nontoxic shot while in the field.

4. We restrict nonmotorized boats and boats with electric motors only to the area bounded by the water's edge and extending to a point 200 yards (180 m) lakeward in hunting area 1 on the Lake Lowel sector.

* * * * *

D. Sport Fishing. * * *

1. During the waterfowl season, we allow fishing only within the area bounded by the water's edge extending to a point 200 yards (180 m) lakeward in front of the Lower Dam, fishing area A and in front of the Upper Dam, and fishing area B on the Lake Lowell sector.

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Minidoka National Wildlife Refuge

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D. Sport Fishing. We allow sport fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing from boats on the main reservoir from Minidoka Dam to the west tip of Bird Island, April 1 through September 30.

2. We allow fishing from boats within boating lanes at Smith and Gifford Springs year around.

3. We allow bank fishing all year.

10. In § 32.32 Illinois by:

a. Alphabetically adding Great River National Wildlife Refuge;

b. Removing Mark Twain National Wildlife Refuge;

c. Alphabetically adding Middle Mississippi River National Wildlife Refuge;

d. Alphabetically adding Port Louisa National Wildlife Refuge;

e. Alphabetically adding Two Rivers National Wildlife Refuge; and

f. Revising paragraphs A.1., B.1., B.2., B.3., C.1., C.2., C.3., D.1. and D.2. of Upper Mississippi River National Wildlife and Fish Refuge to read as follows:

§ 32.32 Illinois.

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Great River National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas of the refuge subject to brochures and posted regulations.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to brochures and posted regulations.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to brochures and posted regulations.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to brochures and posted regulations.

* * * * *

Middle Mississippi River National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas of the refuge subject to brochures and posted regulations.

B. Upland Game Hunting. We allow hunting of upland game on designated areas

of the refuge subject to brochures and posted regulations.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to brochures and posted regulations.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to brochures and posted regulations.

Port Louisa National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas of the refuge subject to brochures and posted regulations.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to brochures and posted regulations.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to brochures and posted regulations.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to brochures and posted regulations.

Two Rivers National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to brochures and posted regulations.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to brochures and posted regulations.

Upper Mississippi River National Wildlife and Fish Refuge

A. Hunting of Migratory Game Birds. * * *

1. In areas posted "Area Closed" or "No Hunting Zone," we prohibit hunting of migratory game birds at any time.

* * * * *

B. Upland Game Hunting. * * *

1. In areas posted "No Hunting Zone," we prohibit hunting or possession of firearms at all times.

2. In areas posted "Area Closed," we only allow hunting beginning the day after the close of the applicable State duck hunting season until upland game season closure or March 15, whichever occurs first, except we allow spring turkey hunting during State seasons.

3. On areas open to hunting, we prohibit hunting or possession of firearms from March 16 until the opening of State fall hunting seasons, except we allow spring turkey hunting during State seasons.

* * * * *

C. Big Game Hunting. * * *

1. In areas posted "No Hunting Zone," we prohibit hunting or possession of firearms at all times.

2. In areas posted "Area Closed," we only allow hunting beginning the day after the close of the applicable State duck hunting season until big game season closure or March 15, whichever occurs first.

3. On areas open to hunting, we only allow hunting or possession of firearms until season closure or March 15, whichever occurs first.

* * * * *

D. Sport Fishing. * * *

1. On Spring Lake Closed Areas, Carroll County, Illinois, we prohibit fishing from October 1 until the day after the close of the State duck hunting season.

2. On Mertes Slough, Buffalo County, Wisconsin, we allow only hand-powered boats or boats with electric motors.

11. In § 32.33 Indiana by alphabetically adding Big Oaks National Wildlife Refuge to read as follows:

§ 32.33 Indiana.

* * * * *

Big Oaks National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following condition: We require a refuge access permit.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following condition: We require a refuge access permit.

* * * * *

12. In § 32.34 Iowa by:

a. Revising paragraphs B. and C. of Driftless Area National Wildlife Refuge;

b. Removing Mark Twain National Wildlife Refuge;

c. Revising paragraph B. of Neal Smith National Wildlife Refuge;

d. Alphabetically adding Port Louisa National Wildlife Refuge; and

e. Revising Union Slough National Wildlife Refuge to read as follows:

§ 32.34 Iowa.

* * * * *

Driftless Area National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

1. In areas posted "Area Closed," we prohibit entry, including hunting.

2. In areas open to hunting, we allow hunting beginning November 1 until the close of State hunting seasons or January 15, whichever occurs first.

3. You may possess only approved nontoxic shot while hunting for any allowed birds or other small game.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

1. In areas posted "Area Closed," we prohibit all public entry, including hunting.

2. In areas open to hunting, we allow hunting beginning November 1 until the close of State hunting seasons or January 15, whichever occurs first.

3. We allow archery and muzzleloader hunting only.

4. We allow deer drives only during lawful party hunting conducted within the refuge, in accordance with State regulations. We prohibit driving deer from or through the refuge to any persons hunting outside the refuge boundary.

5. We do not allow construction or use of permanent blinds, platforms, or ladders.

6. You must remove all stands from the refuge following each day's hunt.

* * * * *

Neal Smith National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of ringnecked pheasant, bobwhite quail, cottontail rabbit, and squirrel on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while hunting for any permitted birds or other small game.

2. We allow hunting only during the dates posted at the refuge.

3. All hunters must wear one or more of the following articles of visible, external, solid-blaze-orange clothing: a hat, vest, coat, jacket, sweatshirt, sweater, shirt, or coveralls.

* * * * *

Port Louisa National Wildlife Refuge

Refer to § 32.32 Illinois for regulations.

Union Slough National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas of the refuge subject to brochures and posted regulations.

B. Upland Game Hunting. We allow upland game hunting on designated areas of the refuge subject to brochures and posted regulations.

C. Big Game Hunting. We allow big game hunting on designated areas of the refuge subject to brochures and posted regulations.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to brochures and posted regulations.

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13. In § 32.36 Kentucky by alphabetically adding Clarks River National Wildlife Refuge to read as follows:

§ 32.36 Kentucky.

* * * * *

Clarks River National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, woodcock, snipe, and mourning doves on designated areas of the refuge subject to State regulations and the following conditions:

1. Hunting of waterfowl will cease at 2:00 p.m. each day of open season.

2. You may use only portable or temporary blinds.

3. You must remove portable or temporary blinds and decoys from the refuge following each day's hunt.

4. You may possess only approved nontoxic shot while hunting waterfowl in the field.

5. The refuge is a day-use area only with the exception of legal hunting activities.

6. We prohibit the use of all-terrain vehicles on all refuge hunts.

7. We prohibit target practice on refuge property.

8. We prohibit mules and horses on refuge hunts.

9. You must unload and encase or dismantle firearms before transporting them in a vehicle or boat within the boundaries of the refuge or along rights-of-way for public or private land within the refuge.

10. Each hunter must have in his/her possession a current, signed copy of the Clarks River National Wildlife Refuge Hunting/Fishing Permit while participating in refuge hunts.

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, raccoon, opossum, bobcat and coyote on designated areas of the refuge subject to State regulations and the following conditions:

1. We prohibit mules and horses on refuge hunts.

2. We prohibit all-terrain vehicles on all refuge hunts.

3. The refuge is a day-use area only with the exception of legal hunting activities.

4. We prohibit target practice on refuge property.

5. We limit shotguns to no larger than 10 gauge. All shotgun ammunition must meet legal shot-size requirements for each hunted species. We limit the use of rifles and pistols to rimfire only for upland game.

6. You must unload and encase or dismantle firearms before transporting them in a vehicle or boat within the boundaries of the refuge or along rights-of-way for public or private land within the refuge.

7. You must have in your possession a current, signed copy of the Clarks River National Wildlife Refuge Hunting/Fishing Permit while participating in refuge hunts.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to State regulations and the following conditions:

1. We prohibit the use or construction of any permanent tree stand.

2. We allow portable stands and climbing stands, but you must remove them from the tree when they are not in use.

3. We require safety belts at all times with the use of tree stands.

4. The refuge is a day-use area only with the exception of legal hunting activities.

5. We prohibit the use of all-terrain vehicles on all refuge hunts.

6. We prohibit mules and horses on refuge hunts.

7. You may not hunt by organized deer drives of two or more hunters. The definition of drive is: the act of chasing, pursuing, disturbing, or otherwise directing deer so as to make the animals more susceptible to harvest.

8. We prohibit target practice on refuge property.

9. You must unload and encase or dismantle firearms before transporting them in a vehicle or boat within the boundaries of the refuge or along rights-of-way for public or private land within the refuge.

10. You must have in your possession a current, signed copy of the Clarks River National Wildlife Refuge Hunting/Fishing Permit while participating in refuge hunts.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge subject to State regulations, any refuge-specific regulations listed in the Clarks River National Wildlife Refuge Hunting/Fishing Permit, and the following conditions:

1. The refuge is a day-use area only with the exception of legal fishing activities.

2. You must have in your possession a current, signed copy of the Clarks River National Wildlife Refuge Hunting/Fishing Permit while fishing on the refuge.

* * * * *

14. In § 32.37 Louisiana by:

a. Adding paragraphs A.3., B.3., and C.3., and revising paragraph D.2. of Atchafalaya National Wildlife Refuge;

b. Revising paragraphs A. and D.1. of Bayou Cocodrie National Wildlife Refuge;

c. Revising the introductory text of paragraph A., paragraph A.1., the introductory text of paragraph B., and paragraphs B.1., C.1., and D.1. of Lake Ophelia National Wildlife Refuge; and

d. Revising paragraphs A., B., and C. of Upper Ouachita National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

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Atchafalaya National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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3. For the Shatters Bayou Unit, hunting must be in accordance with the Attakapas Wildlife Management Area rules and regulations.

B. Upland Game Hunting. * * *

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3. For the Shatters Bayou Unit, hunting must be in accordance with the Attakapas Wildlife Management Area rules and regulations.

C. Big Game Hunting. * * *

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3. For the Shatters Bayou Unit, hunting must be in accordance with the Attakapas Wildlife Management Area rules and regulations.

D. Sport Fishing. * * *

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2. For the Indian Bayou and Shatters Bayou Unit, we require an Army Corps of Engineers permit for commercial shellfishing.

Bayou Cocodrie National Wildlife Refuge

A. Hunting of Migratory Game Birds. You may hunt ducks, coots, woodcock, and snipe on designated areas of the refuge subject to the following condition: We require a refuge permit.

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D. Sport Fishing. * * *

1. Anglers must possess a refuge permit.

* * * * *

Lake Ophelia National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, geese, coots, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

1. We require a refuge permit.

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B. Upland Game Hunting. We allow hunting of squirrel, rabbit, raccoon, feral hog, beaver, nutria, and coyote on designated areas of the refuge subject to the following conditions:

1. We require a refuge permit.

* * * * *

C. Big Game Hunting. * * *

1. We require a refuge permit.

* * * * *

D. Sport Fishing. * * *

1. We require a refuge permit.

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Upper Ouachita National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, geese, coots, mourning doves, and woodcock on designated areas of the refuge subject to the following condition: We require a refuge permit.

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge subject to the following condition: We require a refuge permit.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require a refuge permit.

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15. In § 32.38 Maine by alphabetically adding Petit Manan National Wildlife Refuge to read as follows:

§ 32.38 Maine.

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Petit Manan National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, geese, woodcock, rails, gallinules, and snipe on designated areas of the refuge subject to the following conditions:

1. You may not erect permanent waterfowl blinds on the refuge.

2. You must remove all temporary blinds, concealment materials, boats, and decoys following each day's hunt.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. We prohibit the use of pursuit or trailing dogs on the refuge.

3. We prohibit the hunting of crows on the refuge.

4. The refuge will be open to hunting of coyotes no earlier than November 1 and no later than March 31.

C. Big Game Hunting. We allow hunting of white-tailed deer and bear on designated areas of the refuge subject to the following conditions:

1. We prohibit the use of pursuit or trailing dogs on the refuge.

2. We allow black bear hunting only during the firearm season for white-tailed deer.

3. You must remove all tree stands by the last day of the white-tailed deer hunting season.

4. We close the refuge to all visitation from sunrise to sunset. However, during hunting season, we allow hunters to enter the refuge ½ hour prior to sunrise and remain on the refuge ½ hour after sunset.

D. Sport Fishing. [Reserved]

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16. In § 32.40 Massachusetts by revising paragraph D.1. of Parker River National Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

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Parker River National Wildlife Refuge

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D. Sport Fishing. [Reserved]

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1. We allow saltwater fishing on the ocean beach and the surrounding waters of the Broad Sound.

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17. In § 32.42 Minnesota by:

a. Revising Fergus Falls Wetland Management District;

b. Alphabetically adding Litchfield Wetland Management District; and

c. Revising paragraphs A., B., and C., in Windom Wetland Management District to read as follows:

§ 32.42 Minnesota.

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Fergus Falls Wetland Management District

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds throughout the district except that we allow no hunting on the Townsend, Headquarters, Mavis, and Gilmore Waterfowl Production Areas (WPA) in Otter Tail County, and Larson WPA in Douglas County.

B. Upland Game Hunting. We allow upland game hunting throughout the district except that we allow no hunting on the Townsend, Headquarters, Mavis, and Gilmore WPAs in Otter Tail County, and Larson WPA in Douglas County.

C. Big Game Hunting. We allow big game hunting throughout the district except that we allow no hunting on the Townsend, Headquarters, Mavis, and Gilmore WPAs in Otter Tail County, and Larson WPA in Douglas County.

D. Sport Fishing. We allow sport fishing throughout the district except that we allow no fishing on the Townsend, Headquarters, Mavis, and Gilmore WPAs in Otter Tail County, and Larson WPA in Douglas County.

Litchfield Wetland Management District

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds throughout the district subject to the following conditions:

1. You must remove boats, decoys, and other personal property following each day's hunt.

2. You must remove portable or temporary blinds and any material brought onto the area for blind construction following each day's hunt.

B. Upland Game Hunting. We allow upland game hunting throughout the district.

C. Big Game Hunting. We allow big game hunting throughout the district subject to the following conditions:

1. We do not allow construction or use of permanent blinds, stands, or platforms.

2. You must remove all temporary blinds, stands, or platforms following each day's hunt.

D. Sport Fishing. We allow fishing throughout the district.

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Windom Wetland Management District

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds throughout the district except that you may not hunt on the Worthington Waterfowl Production Area (WPA) in Nobles County, Headquarters WPA in Jackson County, or designated portions of the Wolf Lake WPA in Cottonwood County.

B. Upland Game Hunting. We allow hunting of upland game throughout the district except that you may not hunt on the Worthington WPA in Nobles County, Headquarters WPA in Jackson County, or designated portions of the Wolf Lake WPA in Cottonwood County.

C. Big Game Hunting. We allow hunting of big game throughout the district except that you may not hunt on the Worthington WPA in Nobles County, Headquarters WPA in Jackson County, or designated portions of the Wolf Lake WPA in Cottonwood County.

* * * * *

18. In § 32.43 Mississippi by:

a. Alphabetically adding Grand Bay National Wildlife Refuge;

b. Revising Hillside National Wildlife Refuge;

c. Revising Mathews Brake National Wildlife Refuge;

d. Revising Morgan Brake National Wildlife Refuge;

e. Revising Panther Swamp National Wildlife Refuge; and

f. Revising Yazoo National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

* * * * *

Grand Bay National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, and mourning doves on designated areas of the refuge subject to State regulations and the following conditions:

1. Hunting of waterfowl will cease at 2:00 p.m. each day of open season.

2. You may use only portable or temporary blinds.

3. You must remove portable or temporary blinds and decoys from the refuge following each day's hunt.

4. You may possess only approved nontoxic shot while hunting waterfowl in the field.

5. The refuge is a day-use area only with the exception of legal hunting activities.

6. We prohibit the use of all-terrain vehicles on all refuge hunts.

7. We prohibit target practice on refuge property.

8. We prohibit mules and horses on refuge hunts.

9. You must unload and encase or dismantle firearms before transporting them in a vehicle or boat within the boundaries of the refuge or along rights-of-way for public or private land within the refuge.

10. Each hunter must have in his/her possession a current, signed copy of the Grand Bay National Wildlife Refuge Hunting Permit while participating in refuge hunts.

B. Upland Game Hunting. We allow hunting of squirrel on designated areas of the refuge subject to State regulations and the following conditions:

1. We prohibit mules and horses on refuge hunts.

2. We prohibit the use of all-terrain vehicles on all refuge hunts.

3. The refuge is a day-use area only with the exception of legal hunting activities.

4. We prohibit target practice on refuge property.

5. We limit shotguns to no larger than 10 gauge. All shotgun ammunition must meet legal shot-size requirements.

6. You must unload and encase or dismantle firearms before transporting them in a vehicle or boat within the boundaries of the refuge or along rights-of-way for public or private land within the refuge.

7. Each hunter must have in his/her possession a current, signed copy of the Grand Bay National Wildlife Refuge Hunting Permit while participating in refuge hunts.

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to State regulations and the following conditions:

1. We prohibit the use or construction of any permanent tree stand.

2. We allow portable and climbing stands, but you must remove them from the tree when not in use or they will be subject to confiscation.

3. We require safety belts at all times with the use of tree stands.

4. The refuge is a day-use area only with the exception of legal hunting activities.

5. We prohibit the use of all-terrain vehicles on all refuge hunts.

6. We prohibit the use of mules and horses on refuge hunts.

7. You may not hunt by organized deer drives of two or more hunters. The definition of drive is: the act of chasing, pursuing, disturbing, or otherwise directing deer so as to make the animals more susceptible to harvest.

8. We prohibit target practice on refuge property.

9. You must unload and encase or dismantle firearms before transporting them in a vehicle or boat within the boundaries of the refuge or along rights-of-way for public or private land within the refuge.

10. You must have in your possession a current, signed copy of the Grand Bay National Wildlife Refuge Hunting Permit while participating in refuge hunts.

D. Sport Fishing. [Reserved]

Hillside National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning doves, waterfowl, and coots on designated areas of the refuge

subject to the following condition: We require a refuge permit.

B. Upland Game Hunting. We allow hunting of quail, rabbit, squirrel, and raccoon on designated areas of the refuge subject to the following condition: We require a refuge permit.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require a refuge permit.

D. Sport Fishing. We allow fishing and frogging in designated portions of the refuge subject to the following condition: We require a refuge permit.

Mathews Brake National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning doves, waterfowl, and coots on designated areas of the refuge subject to the following condition: We require a refuge permit.

B. Upland Game Hunting. We allow hunting of quail, rabbit, squirrel, and raccoon on designated areas of the refuge subject to the following condition: We require a refuge permit.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require a refuge permit.

D. Sport Fishing. We allow fishing and frogging in designated portions of the refuge subject to the following condition: We require a refuge permit.

* * * * *

Morgan Brake National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning doves, waterfowl, and coots on designated areas of the refuge subject to the following condition: We require a refuge permit.

B. Upland Game Hunting. We allow hunting of quail, rabbit, squirrel, and raccoon on designated areas of the refuge subject to the following condition: We require a refuge permit.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require a refuge permit.

D. Sport Fishing. We allow fishing and frogging in designated portions of the refuge subject to the following condition: We require a refuge permit.

* * * * *

Panther Swamp National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning doves, waterfowl, and coots on designated areas of the refuge subject to the following condition: We require a refuge permit.

B. Upland Game Hunting. We allow hunting of quail, rabbit, squirrel, and raccoon on designated areas of the refuge subject to the following condition: We require a refuge permit.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following condition: We require a refuge permit.

D. Sport Fishing. We allow fishing and frogging in designated portions of the refuge subject to the following condition: We require a refuge permit.

* * * * *

Yazoo National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of waterfowl on designated areas of the refuge subject to the following condition: We require a refuge permit. Please consult the refuge brochure for species information.

B. Upland Game Hunting. We allow hunting of rabbit, squirrel, and raccoon on designated areas of the refuge subject to the following condition: We require a refuge permit.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following condition: We require a refuge permit.

D. Sport Fishing. [Reserved]

19. In § 32.44 Missouri by:

a. Alphabetically adding Clarence Cannon National Wildlife Refuge;

b. Alphabetically adding Great River National Wildlife Refuge;

c. Removing Mark Twain National Wildlife Refuge;

c. Alphabetically adding Middle Mississippi River National Wildlife Refuge; and

d. Alphabetically adding Two Rivers National Wildlife Refuge to read as follows:

§ 32.44 Missouri.

* * * * *

Clarence Cannon National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to posted regulations.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to posted regulations.

Great River National Wildlife Refuge

Refer to § 32.32 Illinois for regulations.

Middle Mississippi River National Wildlife Refuge

Refer to § 32.32 Illinois for regulations.

* * * * *

Two Rivers National Wildlife Refuge

Refer to § 32.32 Illinois for regulations.

20. In § 32.47 Nevada by revising paragraphs A. and D. of Ruby Lake National Wildlife Refuge to read as follows:

§ 32.47 Nevada.

* * * * *

Ruby Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuge in accordance with State laws and subject to the following conditions:

1. The refuge is open to the public from 1 hour before sunrise until 2 hours after sunset.

2. We do not allow off-road vehicles on the refuge.

3. We do not allow permanent or pit blinds on the refuge. You must remove all blind materials and decoys following each day's hunt.

* * * * *

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State laws and subject to the following conditions:

1. The refuge is open to the public from 1 hour before sunrise until 2 hours after sunset.

2. We allow fishing only from the dikes in the areas north of the Brown Dike and east of the Collection Ditch, with the exception that you may fish from foot-propelled, personal flotation devices (float tubes) in designated areas.

3. We prohibit fishing from the bank on the South Marsh except at Brown Dike, the Main Boat Landing, and Narciss Boat Landing.

4. You may use only artificial lures in the Collection Ditch and spring ponds adjoining the ditch.

5. We do not allow boats on the refuge beginning January 1 through June 14.

6. During the boating season, we allow boats only on the South Marsh. Beginning June 15 through July 31, we allow only motorless boats or boats with battery-powered electric motors. Beginning August 1 through December 31, we allow only motorless boats and boats propelled by motors with a total of 10 hp or less.

7. You may launch boats only from designated landings.

8. We do not allow storage of boats of any kind on the refuge beginning January 1 through May 31.

9. We do not allow off-road vehicles on the refuge.

* * * * *

21. In § 32.49 New Jersey by revising paragraphs A., C.5., and D. of Supawna Meadows National Wildlife Refuge to read as follows:

§ 32.49 New Jersey.

* * * * *

Supawna Meadows National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese and ducks on designated areas of the refuge during designated refuge seasons subject to the following conditions:

1. We allow loaded and uncased firearms in an unanchored boat only when retrieving crippled birds.

2. You must remove all hunting blind materials, boats, and decoys following each day's hunt. We do not allow permanent blinds.

3. You may possess only approved nontoxic shot while in the field.

* * * * *

C. Big Game Hunting. * * *

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5. You may use only single-projectile ammunition when hunting from a stand elevated at least 6 feet (1.8 m) above ground level and only in firearms equipped with adjustable sights or a scope. Hunters may use buckshot when hunting from the ground or from stands less than 6 feet above ground level.

D. Sport Fishing. We allow fishing and crabbing on the refuge in designated areas subject to the following conditions:

1. We prohibit the taking of frogs, salamanders, and turtles from all nontidal waters and refuge lands.

2. We prohibit fishing in designated nontidal waters from sunset to sunrise.

3. We prohibit bow fishing in nontidal waters.

* * * * *

22. In § 32.50 New Mexico by:

a. Revising Bitter Lake National Wildlife Refuge; and

b. Revising paragraph C. of Bosque del Apache National Wildlife Refuge to read as follows:

§ 32.50 New Mexico.

* * * * *

Bitter Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, mourning doves, and sandhill cranes on designated areas of the refuge subject to the following conditions:

1. You may hunt during seasons, dates, times, and areas posted by signs and/or indicated on refuge leaflets, special regulations, and maps available at the refuge office.

2. You may possess only approved nontoxic shot while in the field.

3. We do not allow pit or permanent blinds.

4. Neither hunters nor dogs may enter closed areas to retrieve game.

B. Upland Game Hunting. We allow hunting of pheasant, quail, cottontail, and jack rabbit on designated areas of the refuge subject to the following conditions:

1. We allow hunting during seasons, dates, times, and areas as posted by signs and/or indicated on refuge leaflets, special regulations, and maps available at the refuge office.

2. You may possess only approved nontoxic shot while in the field.

C. Big Game Hunting. We allow hunting of mule deer and white-tailed deer on designated areas of the refuge subject to the following condition: We allow hunting during seasons, dates, times, and areas as posted by signs and/or indicated on refuge leaflets, special regulations, and maps available at the refuge office.

D. Sport Fishing. [Reserved]

Bosque del Apache National Wildlife Refuge

* * * * *

C. Big Game Hunting. We allow hunting of mule deer on designated areas of the refuge subject to the following conditions:

1. Refer to refuge map for designated areas.

2. Hunts are subject to State regulations and seasons.

* * * * *

23. In § 32.52 North Carolina by:

a. Revising paragraph D. of Pea Island National Wildlife Refuge; and

b. Revising paragraphs A., B.1., and C. of Roanoke River National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

* * * * *

Pea Island National Wildlife Refuge

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D. Sport Fishing. We allow fishing and crabbing on designated areas of the refuge subject to the following conditions:

1. We prohibit fishing and crabbing in North Pond, South Pond, and Newfield impoundments.

2. We require a refuge permit for night fishing.

* * * * *

Roanoke River National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks and coots on designated areas of the refuge subject to the following condition: We require a State-issued refuge permit.

B. Upland Game Hunting. * * *

1. We require a State-issued refuge permit.

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following condition: We require a State-issued refuge permit.

* * * * *

24. In § 32.53 North Dakota by:

a. Revising Lake Alice National Wildlife Refuge;

b. Revising paragraph C.2. of Long Lake National Wildlife Refuge; and

c. Revising paragraph C. of Slade National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

* * * * *

Lake Alice National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, tundra swans, ducks, coots, and mourning doves on designated areas of the refuge; consult refuge publication.

B. Upland Game Hunting. We allow upland game and furbearer hunting on designated portions of the refuge at certain times of the year; consult refuge publication.

C. Big Game Hunting. We allow special refuge permit holders to hunt deer and fox with rifles during the State firearm deer season on designated portions of the refuge subject to the following conditions:

1. We allow fox hunting on certain areas of the refuge outside of the State firearm deer season without a special refuge permit; consult refuge publication.

2. We allow archery hunting on designated portions of the refuge; consult refuge publication.

D. Sport Fishing. [Reserved]

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Long Lake National Wildlife Refuge

* * * * *

C. Big Game Hunting.

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2. We restrict archery hunters to the portions of the refuge open to firearm deer hunting during the State firearm deer season. Prior to and following the firearm deer season, we open additional refuge areas as designated to archery deer hunting.

* * * * *

Slade National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge subject to the following condition: Hunters may enter the refuge on foot only.

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25. In § 32.55 Oklahoma by:

a. Revising paragraphs A., B., C., and revising the introductory text of paragraph D. and paragraph D.1. of Deep Fork National Wildlife Refuge;

b. Adding paragraph A.6., revising paragraph B.5., the introductory text of paragraph C. and paragraph C.1., adding paragraphs C.3. and C.4., and revising the introductory text of paragraph D. and paragraph D.1. of Little River National Wildlife Refuge; and

c. Adding paragraph B.3. of Washita National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

* * * * *

Deep Fork National Wildlife Refuge

A. Hunting of Migratory Game Birds. You may hunt ducks in designated areas of the refuge subject to the following condition: You must possess a refuge permit.

B. Upland Game Hunting. You may hunt squirrel, rabbit, and raccoon in designated areas of the refuge subject to the following condition: You must possess a refuge permit.

C. Big Game Hunting. You may hunt white-tailed deer in designated areas of the refuge subject to the following condition: You must possess a refuge permit.

D. Sport Fishing. You may sport fish on the refuge in designated areas subject to the following conditions:

1. The refuge is open to fishing as specified in refuge leaflets, special regulations, permits, maps or as posted on signs.

* * * * *

Little River National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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6. You must obtain a refuge permit.

B. Upland Game Hunting. * * *

* * * * *

5. You must obtain a refuge permit.

C. Big Game Hunting. You may hunt deer and feral hog on designated areas of the refuge subject to the following conditions:

1. Deer hunters must obtain a refuge permit and pay fees.

* * * * *

3. You may hunt feral hog during any established refuge hunting season. Refuge permits and legal weapons apply as for the current hunting season.

4. You must obtain a refuge permit.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. You may fish from sunrise to sunset.

* * * * *

Washita National Wildlife Refuge

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B. Upland Game Hunting.

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3. You may possess only approved nontoxic shot while in the field.

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26. In § 32.56 Oregon by revising paragraphs A.1. and C. of Malheur National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

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Malheur National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. We allow only nonmotorized boats or boats with electric motors.

* * * * *

C. Big Game Hunting. We allow hunting of deer and pronghorn during the authorized State seasons on the refuge area west of Highway 205 and south of Foster Road.

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27. In § 32.57 Pennsylvania by revising paragraph B.1. of Erie National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

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Erie National Wildlife Refuge

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B. Upland Game Hunting. * * *

1. We require refuge permits for hunting fox, raccoon, and coyote.

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28. In § 32.60 South Carolina by revising paragraphs A., B., and C., of Santee National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

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Santee National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning doves on designated areas of the refuge subject to the following condition: We require a refuge permit.

B. Upland Game Hunting. We allow hunting on designated areas of the refuge subject to the following condition: We require a refuge permit.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require a refuge permit.

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29. In § 32.61 South Dakota by revising paragraphs A. and D. of Lacreek National Wildlife Refuge to read as follows:

§ 32.61 South Dakota

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Lacreek National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow waterfowl hunting on designated areas of the refuge in accordance with State law.

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D. Sport Fishing. We allow fishing in areas posted as open in accordance with State law.

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30. In § 32.62 Tennessee by revising paragraphs B., C., and D.4. of Cross Creeks National Wildlife Refuge to read as follows:

§ 32.62 Tennessee.

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Cross Creeks National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of squirrel on designated areas of the refuge subject to the following condition: We require a refuge permit.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following condition: We require a refuge permit.

D. Sport Fishing. * * *

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4. Fish lengths and daily creel limits established for Barley Reservoir by the Tennessee Wildilfe Resources Agency apply to all waters within the boundary of the refuge.

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31. In § 32.63 Texas by:

a. Revising paragraphs C. and D. of Aransas National Wildlife Refuge; and

b. Revising paragraph A.5. and adding paragraphs C.9., C.10., and C.11. of Balcones Canyonlands National Wildlife Refuge to read as follows:

§ 32.63 Texas.

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Aransas National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

1. We may immediately close the entire refuge or any portion thereof to hunting in the event of the appearance of whooping cranes in the hunt area.

2. You must obtain a refuge permit and pay a fee.

3. You may not use dogs to trail game.

4. You may not possess alcoholic beverages while on the refuge.

5. We will annually designate bag limits in the refuge hunt brochure.

6. We allow archery hunting in October within the deer season for the county on specified days listed in the refuge hunt brochure.

7. We allow firearm hunting in November within the deer season for the county on specified days listed in the refuge hunt brochure.

8. Firearm hunters must wear a total of 400 square inches (10.16 m^2) hunter orange including 144 square inches (936 cm^2) visible in front and 144 square inches visible in rear. Some hunter orange must appear on head gear.

9. You must unload and encase all firearms while in a vehicle.

10. You may not hunt on or across any part of the refuge road system, or hunt from a vehicle on any refuge road or road right-of-way.

11. You may hunt white-tailed deer and feral hog on designated areas of Matagorda Island in accordance with the State permit system as administered by Texas Parks and Wildlife Department.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. You may not use crab traps in any refuge marshes, including Matagorda Island.

2. Beginning April 15 through October 15, you may fish on the refuge only in areas designated in the refuge fishing brochure.

3. You may fish all year in marshes on Matagorda Island and in areas designated in the refuge fishing brochure.

Balcones Canyonlands National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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5. We allow dogs to retrieve game birds during the hunt, but the dogs must be under control of the handler at all times and not allowed to roam free.

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C. Big Game Hunting. * * *

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9. You may not use dogs for hunting.

10. You may not camp.

11. You may only use vehicles on designated roads and parking areas.

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32. In § 32.67 Washington by:

a. Removing Arid Lands National Wildlife Refuge Complex;

b. Alphabetically adding Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge; and

c. Revising paragraphs A. and C. of Willapa National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, mourning doves, and common snipe on the Wahluke Unit and designated Columbia River islands (those islands downstream of the Bonneville Powerline crossing, between River Mile 351 and 341) of the Monument/Refuge in accordance with State regulations and subject to the following conditions:

1. You may possess only approved nontoxic shot while on the refuge.

2. We allow access from 2 hours before sunrise to 2 hours after sunset. We do not allow overnight camping and/or parking.

3. We close the furthest downstream island (Columbia River Mile 341–343) to hunting.

B. Upland Game Hunting. We allow hunting of pheasant, quail, and partridge on designated areas on the Wahluke Unit of the Monument/Refuge in accordance with State regulations and subject to the conditions listed below:

1. You may possess only approved nontoxic shot while on the refuge.

2. We allow only shotguns and archery hunting.

3. We allow access from 2 hours before sunrise to 2 hours after sunset. We prohibit overnight camping and/or parking.

C. Big Game Hunting. We allow hunting of deer on the Wahluke Unit of the Monument/Refuge in accordance with State regulations and subject to the following conditions:

1. We allow only shotguns, muzzleloaders, and archery hunting.

2. We allow access from 2 hours before sunrise to 2 hours after sunset. We prohibit overnight camping and/or parking.

D. Sport Fishing. We allow fishing on the Wahluke Unit and designated Columbia River islands of the Monument/Refuge (those islands downstream of the Bonneville Powerline crossing, between River Mile 351 and 341) in accordance with State regulations and subject to the following conditions:

1. We allow access to the islands from July 1 to September 30, except for Islands 18 and 19 (downstream of Johnson Island), where we allow access from July 31 to September 30.

2. We allow access from 2 hours before sunrise to 2 hours after sunset. We prohibit overnight camping and/or parking.

3. We allow nonmotorized boats and boats with electric motors on the WB–10 Ponds, with walk-in access only.

* * * * *

Willapa National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, and snipe on designated areas of Riekkola, Lewis, Tarlatt Slough, and Leadbetter Units in accordance with State hunting regulations and subject to the following conditions:

1. Prior to entering the hunt area at the Riekkola and Tarlatt Slough Units, we require you to obtain a refuge permit, pay a recreation user fee, and obtain a blind assignment.

2. At the Riekkola and Tarlatt Slough Units, you may take ducks and coots only coincidental to hunting geese.

3. We allow hunting on Wednesday and Saturday in the Riekkola and Tarlatt Slough Units only from established blinds.

4. At the Lewis Unit, we prohibit hunting from the outer dike that separates the bay from the freshwater wetlands.

5. At the Riekkola and Tarlatt Slough Units, you may possess no more than 25 approved nontoxic shells per day while in the field.

6. At the Leadbetter Unit, you may possess only approved nontoxic shot.

* * * * *

C. Big Game Hunting. We allow hunting of deer, elk, and bear on Long Island and on designated areas of the Bear River Unit, in accordance with State hunting regulations and subject to the following conditions:

1. At Long Island you must possess a valid refuge permit and report game taken, as specified with the permit.

2. At Long Island we allow only archery hunting and prohibit firearms.

3. At Bear River we do not allow bear hunting.

4. We prohibit dogs.

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33. In § 32.69 Wisconsin by:

a. Revising paragraph C.1. of Fox River National Wildlife Refuge;

b. Revising paragraph D. of Horicon National Wildlife Refuge;

c. Revising paragraphs A. and B. of St. Croix Wetland Management District; and

d. Revising Trempealeau National Wildlife Refuge to read as follows:

§ 32.69 Wisconsin.

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Fox River National Wildlife Refuge

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C. Big Game Hunting. * * *

1. We require refuge permits during designated time periods.

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Horicon National Wildlife Refuge

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D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following condition: We allow only bank fishing.

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St. Croix Wetland Management District

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds throughout the district except that you may not hunt on designated portions posted as closed of the St. Croix Prairie Waterfowl Production Area (WPA) in St. Croix County.

B. Upland Game Hunting. We allow hunting of upland game throughout the district except that you may not hunt on designated portions posted as closed of the St. Croix Prairie WPA in St. Croix County.

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Trempealeau National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas of the refuge subject to the following condition: We require a refuge permit.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to the following condition: We require a refuge permit.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require a refuge permit.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow only hand-powered boats or boats with electric motors on the refuge.

2. You must remove ice fishing shelters from the refuge following each day's hunt.

3. We prohibit possessing archery or spearing equipment on refuge pools at any time. We allow taking rough fish by bow and arrow or spear only along the refuge boundary in the backwaters of the Trempealeau River, in accordance with State regulations.

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34. In § 32.72 Guam by revising paragraph D. of Guam National Wildlife Refuge to read as follows:

§ 32.72 Guam.

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Guam National Wildlife Refuge

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D. Sport Fishing. Anglers may fish and collect marine life on designated areas of the refuge only in accordance with refuge and Government of Guam laws and regulations. The leaflet is available at the refuge headquarters and anglers are subject to the following additional conditions:

1. Anglers may be on the refuge from 8:30 a.m. until 5:00 p.m. daily, except Thanksgiving, Christmas, and New Year's Day.

2. We prohibit overnight camping on the refuge.

3. You may not possess surround or gill nets on the refuge.

4. We prohibit the collection of corals, giant clams (*Tridacna* and *Hippopus* spp.), and coconut crabs (*Birgus latro*) on the refuge.

Dated: May 23, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–16500 Filed 7–2–01; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 001031304–0304–01; I.D. 080299B]

RIN 0648–AH26

Protected Species Special Exception Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: NMFS is proposing to amend the regulations for permits to capture or import marine mammals for purposes of public display under the Marine Mammal Protection Act of 1972 (MMPA). The proposed revisions would implement amendments to the MMPA enacted April 30, 1994, affecting marine

mammals held captive for public display purposes and clarify the public display requirements relating to permits to capture or import, transport or transfer, and export marine mammals.

DATES: Comments on this proposed rule must be postmarked or received by September 4, 2001.

ADDRESSES: Comments on this proposed rule may be mailed to the National Marine Fisheries Service, Office of Protected Resources, Permits Division (F/PR1), 1315 East-West Highway, Rm. 13705, Silver Spring, MD 20910. Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Ann Terbush, National Marine Fisheries Service, Office of Protected Resources, Permits Division (301/713–2289).

SUPPLEMENTARY INFORMATION:

General Background

A proposed rule was published on October 14, 1993 (58 FR 53320), to consolidate existing permit regulations promulgated under the MMPA, the Endangered Species Act, and the Fur Seal Act (Acts), governing the take, import, or export of protected species under the jurisdiction of NMFS for purposes of scientific research, enhancement, and public display. That proposed rule also clarified procedures for the disposition of rehabilitated stranded marine mammals.

On April 30, 1994, amendments to the MMPA, Pub. L. 103–238, 16 U.S.C. 1361 *et seq.* (1994 amendments) added a prohibition on marine mammal exports and significantly changed the scope and extent of permitting authority for public display purposes. These amendments eliminated the basis for many of the public display provisions in the 1993 proposed rule. NMFS determined that permitting and other requirements specific to capturing, importing, exporting, or transporting marine mammals for public display under the 1994 MMPA amendments could only be addressed in a new proposed rule.

A final rule was issued on May 10, 1996, (61 FR 21926) implementing some of the changes proposed in 1993. That final rule, which became effective on June 10, 1996, established basic permit requirements under the Acts to take, import, and export marine mammals and marine mammal parts for purposes of scientific research, enhancement, photography, and, where captures and initial imports are involved, for public display. That final rule also provided additional permit criteria specific to scientific research and to enhancement, and established clarified administrative procedures for determining the releasability or the non-releasability and subsequent disposition of rehabilitated stranded marine mammals.

This Proposed Rule

In addition to implementing the revised public display requirements of the MMPA, this proposed rule would amend the regulations governing the taking and importing of marine animals to (1) incorporate the MMPA marine mammal export prohibition, (2) provide an opportunity for public comment on the acquisition of an unreleasable beached or stranded animal by a facility that has not previously held marine mammals for public display, (3) clarify that a permit is needed to retain a releasable beached or stranded marine mammal, and (4) establish a means for identifying parts taken from public display animals and authorize the importation of parts for medical examination.

This proposed rule specifies particular requirements for the issuance of permits, the transfer or transport of marine mammals, the exportation of marine mammals, and the reporting of information to NMFS by marine mammal holders. The proposed rule also provides general requirements applicable to holders of marine mammals under the MMPA.

1. Scope

The MMPA and implementing regulations do not apply to marine mammals and marine mammal parts taken or born in captivity before December 21, 1972. The prior status of a marine mammal may be established by submitting an affidavit to the Director, Office of Protected Resources (Office Director) in accordance with § 216.14.

2. General Requirements

Animals held under a special exception permit may not be sold, purchased, exported, transferred, or transported for any purpose other than public display, scientific research, or enhancement.

The Office Director may also authorize the retention or transfer of custody of non-releasable rehabilitated marine mammals for public display purposes in accordance with § 216.27 (c).

A marine mammal held for public display may not be released into the wild unless such release is specifically authorized under the terms of a scientific research or enhancement permit.

3. Disposition for a Special Exception Purpose

The proposed rule provides that in cases where the proposed recipient of a rehabilitated non-releasable marine mammal is a new facility or does not currently hold U.S. marine mammals for public display purposes, NMFS will publish a notice in the **Federal Register** to open a special 30–day public comment period as part of the review of the facility to determine that MMPA requirements will be met. This comment period will provide an opportunity for NMFS to gather information from the public and consider whether to authorize the permanent placement of the rehabilitated marine mammal at that facility. In instances where a rehabilitated beached and stranded marine mammal has been determined releasable, it may be held for public display, scientific research, or enhancement in lieu of a direct capture from the wild. A permit would be required for the permanent retention of the animal for public display, scientific research, or enhancement.

Captive marine mammals may not be released into the wild. From a scientific perspective, the release of captive marine mammals is considered experimental. Scientists question the effect of time in captivity on marine mammals' ability to survive in the wild. Captivity can affect marine mammals' ability to forage in the wild, avoid predators, integrate with wild stocks, and avoid interactions with humans and vessels. Additionally, release poses risks to wild stocks, including the risk that released animals will introduce contagious diseases, disrupt essential social structures, pass on behaviors acquired in captivity that can be harmful in the wild, and alter the genetic composition of wild populations. These concerns are compounded by the fact that no established scientific protocols exist to guide researchers in the proper selection, training, release and follow-up of candidate marine mammals. Many of these concerns are highlighted in a detailed study of release conducted in 1993 by the Department of the Navy in an effort to consider management options for marine mammals it maintained.

The Conference Report on the Department of Defense Appropriations Act of 1995 specifically addressed the need to obtain a scientific research permit for the release of captive marine mammals:

Given the potential for 'takes' under the Marine Mammal Protection Act or the Endangered Species Act, the conferees direct that in no case shall any release be attempted unless authorized by a scientific research permit issued by the Secretary of Commerce under the appropriate statutory authority.

H.R. Conf. Rep. No. 747, 103rd Cong., 2nd Sess. 9643 (1994).

On a related issue, there has been interest in conducting "pinger-recall" training of captive dolphins outside of pens or enclosures in the open ocean. While NMFS believes that this is primarily under the purview of APHIS, NMFS remains concerned about the potential effect on wild populations of marine mammals and their possible interactions with captive dolphins. These risks have been noted earlier in this section. Another consideration associated with any inadvertent release is the potential disruption of long-term studies of resident populations of marine mammals in certain locations. Based on the risks to captive marine mammals as well as resident wild populations of dolphins or other marine mammals in the area, the proposed regulations provide that any release of captive marine mammals for purposes of recall training requires advance authorization by the Office Director. This authorization would provide conditions similar to those that would be included in scientific research or enhancement permits that authorize release of marine mammals to the wild.

Under the proposed regulations, the only purpose for which an authorization would be granted is to train the animals for pinger-recall or similar behavioral conditioning to retrieve the animals should an inadvertent release occur or a release is required for the health and welfare of the animals in the event of a natural disaster or facility failure. Since this training would not be part of an interactive program or show, the general public (including paying customers to that facility) would not participate in this training. In addition, facility operators and trainers engaging in this activity would be expected to provide a contingency plan for approval by NMFS to locate and retrieve their animals should an inadvertent release occur. Finally, NMFS must consider the status of any wild marine mammal stocks in the area and the potential effects of inadvertent release of the captive marine mammals on these wild stocks in evaluating such requests.

4. General Public Display Requirements

Some activities involving animals held for public display can only occur as authorized under scientific research permits. The conduct of intrusive research (see definition, § 216.3) on any marine mammal held for public display is prohibited except under the conditions of a research permit.

5. Falsification of Reports

The proposed regulations would make it unlawful for any person subject to the jurisdiction of the United States to fail to disclose materially relevant information or to falsify information in connection with marine mammal inventory, permit-related reports, or transport notifications required under this subpart D of 50 CFR part 216.. Any person who violates these provisions would be subject to the imposition of penalties in accordance with the procedures set forth in 15 CFR part 904.

6. Marine Mammal Parts

As originally mandated in 1972, the restriction against the import and export of marine mammal parts was designed to prevent the development of commercial markets for marine mammal parts or products derived therefrom. However, the circumstances of bona fide scientific research involving import and export of marine mammal parts are varied, making clarity in regulations difficult. In addition, previously only the export of ESA listed species and parts was prohibited. The 1994 Amendments extended this prohibition to all marine mammals and marine mammal parts, except for the export of living marine mammals for purposes of public display.

In response, NMFS has made every effort to implement the intent of the law without unduly burdening scientific research activities by ensuring that adequate documentation is provided for a part's acquisition, location and possession.

The proposed regulations would revise §–216.37 to allow for the import, without a specific permit, of specimens for diagnostic or necropsy purposes from marine mammals that have been legally exported from the United States and are held in foreign jurisdictions. In lieu of a permit, the Office Director will issue a letter of authorization to the requestor that must accompany the shipment.

7. Permits to Capture or Import

Prior to the 1994 amendments, under section 104 (c)(1) of the MMPA, NMFS was charged with specifying in its permits the methods of care and transportation that must be used both during and after the capture or importation of marine mammals. Under this provision, NMFS was responsible for including captive care requirements in permits issued to both the initial holders of captured or imported animals and to the recipients of those animals when they were transferred from one facility to another. The facilities receiving marine mammals were thus generally required to have permits before they could assume custody of the animals.

The 1994 amendments removed the authority of NMFS to specify methods of care and transportation of marine mammals held for public display purposes. Public display permits are now required only for the capture or importation of marine mammals, and not for the possession of marine mammals in captivity. Captive care and maintenance of marine mammals held for public display are now under the sole jurisdiction of the Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), which administers the Animal Welfare Act (AWA).

By removing the jurisdiction of NMFS over public display captive animal care, the amendments eliminated the basis for NMFS requirement that all public display facilities be issued permits before acquiring marine mammals. The MMPA now specifically states that a permit issued by NMFS to take or import a marine mammal for the purpose of public display grants the holder the right to transfer the marine mammal from one public display facility to another without obtaining any additional permit or authorization. However, this right to transfer may only be invoked under certain specified circumstances, including the requirement that the recipient complies with the three basic public display criteria requirements of section 104 (c)(2)(A) of the MMPA.

a. *Applicants.* An applicant for a public display permit is the person (or entity) that will assume custody of the marine mammal to be captured or imported under the permit. All applicants for public display permits must comply with permit-application submission requirements. These requirements are stated in § 216.33.

b. *Applications and Issuance Criteria.* Under the MMPA as amended, permits to take or import a marine mammal for public display may be issued only to an applicant who (1) is registered or licensed under the AWA, (2) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and provides access to such facilities that is not limited or restricted other than by charging of an admission fee, and (3) offers a program for education or conservation that is based on professionally recognized standards of the public display community.

NMFS is proposing that the introductory phrase of the second criterion, "maintains facilities for the public display of marine mammals . . .," means facilities that comply with all applicable APHIS standards (9 CFR 3.104 through 3.118). In this regard, such facilities include traveling displays/exhibits where the primary enclosure used as the animal's permanent housing structure is used to transport the marine mammal and also complies with all applicable APHIS standards (9 CFR 3.104). In addition, if any marine mammal is to be held at a facility other than one maintained by the applicant, the applicant must include a letter from that facility agreeing to hold those marine mammals, and certifying that the facility is registered or licensed under the AWA and meets APHIS standards for holding marine mammals.

Documentation of compliance with the requirement that public display facilities be "open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee" may include a brochure, flyer, or other publicly distributed document that states the dates, times, and, where applicable, admission fee, for the public display facility involved.

Prior to the 1994 amendments, section 104 (c)(2) of the MMPA required that NMFS determine whether the program for education or conservation offered by the applicant was acceptable based on professionally recognized standards of the public display community. In 1989, NMFS determined that the statutory phrase "professionally recognized standards of the public display community" did not refer to any standards that had been established; i.e., such standards did not exist. Therefore, on May 22, 1989, NMFS published in the **Federal Register** (54 FR 22001) a notice of interim policy stating that, in order to be determined acceptable by NMFS, "an applicant's education or conservation program must include a program of formal or informal learning that conveys accurate information about the marine mammals being displayed and communicates in an effective manner a message and purpose that are consistent with the policies of the MMPA."

There are no uniform professionally recognized standards established by the entire public display community for education or conservation programs. The Alliance of Marine Mammal Parks and Aquariums and the American Zoo and Aquarium Association, together, represent approximately 60 percent of the facilities that hold marine mammals for public display. Following enactment of the 1994 MMPA amendments, NMFS asked both of these organizations to prepare a list of standards. These two organizations prepared and submitted their separate respective standards, which were then published by NMFS for reference purposes (59 FR 50900, October 6, 1994) as examples of standards on which education or conservation programs are based. Other professionally recognized standards may also be used.

These proposed regulations, therefore, specify that any receiver of captive marine mammals (i.e., any person, including any permit applicant or display facility, to which captive animals are to be transported, sold, imported, exported, or otherwise transferred) must submit a description of their education or conservation program to NMFS.

Applicants for permits to capture or import marine mammals for public display purposes must provide NMFS with documentation confirming that they: (1) are registered or hold a license issued under 7 U.S.C. 2131 *et seq.*; (2) maintain facilities for the public display of captive marine mammals that is open to the public on a regularly scheduled basis with access not limited or restricted other than by charging of an admission fee; and (3) offer a program for education or conservation purposes based on professionally recognized standards of the public display community.

In addition, applicants must also demonstrate that the proposed capture or importation is from a source that will have the least possible effect on wild populations and that any capture is consistent with quotas established by NMFS on captures and, where no quota is in effect, that it will not have a significant adverse impact on the species or stock of the animals to be captured. The capture of marine mammals to be imported must also be consistent with requirements for capturing animals in waters under U.S. jurisdiction.

c. *Restrictions.* The final rule that became effective June 10, 1996, contained general restrictions, conditions, and reporting requirements applicable as appropriate to any special exception permit, including public display permits. This proposed rule includes additional restrictions specific to public display permits and holders of captive marine mammals.

8. Re-export of Marine Mammals

When a marine mammal is imported into the United States under an import permit, the permit will authorize re-export of that animal to the original foreign holder provided NMFS is given 15 days advance notice of the re-export. This will facilitate the re-export of animals that are in the United States on temporary public display or breeding loans.

9. Transport or Transfer of Captive Animals and Notifications

Holders of captive marine mammals for public display have the right to transport, export, sell, purchase, transfer an interest in or otherwise transfer marine mammals for public display purposes without authorization from NMFS, provided that the recipient is in compliance with the MMPA and certain other requirements, including advance notifications, are met. All holders of marine mammals are required to provide identification data for each animal they hold, its location, and information about any animal transport or transfer. This requirement applies to holders of animals exported from the United States as well as transfers and transports within the United States. The proposed rule states that NMFS must be notified at least 15 days, but not more than 90 days, in advance of the transport, export, sale, purchase, transfer of an interest in or other transfer of any animal held for public display under the MMPA. Holders must submit a new transport notification if the marine mammals are not transferred within 60 days after the planned transfer date, if the species to be transported changed or increased, or if the number of animals to be transported is increased.

This 15–day advance notification requirement would apply to the transport of marine mammals among facilities maintained by the same permittee or holder as well as among those facilities maintained by different persons. Marine mammal holders that transport animals from one site to another as traveling exhibits must also comply with the 15-day advance notification requirement, although a transport schedule may be provided in these cases.

There are two proposed exceptions to this 15–day advance notification requirement. In the first, NMFS may authorize a marine mammal transfer before the full 15–day notification period has elapsed on the basis of a request that details circumstances which justify the inability to provide 15 days advance notice of the transfer (e.g., time critical business opportunity). In the second, a documented medical emergency that justifies the transport is provided to the Office Director within 24 hours. These limited exceptions to

the 15-day advance notification requirement are not applicable to exports.

Where animals are transported among display facilities, notification must include a certification from the recipient facility that it meets the requirements for a public display permit. Since the 1994 MMPA amendments, NMFS has asked both the shipper and the receiver of marine mammals to certify that the receiver is in compliance with the MMPA. In this manner the receiver documents his or her compliance with the basic criteria for holding marine mammals for public display purposes, and the shipper/holder is assured, to the extent practicable, that the intended recipient meets the criteria necessary for the shipper to invoke the right to transport or otherwise transfer marine mammals without obtaining any additional permit or authorization.

To ensure that all certification and notification requirements under the MMPA are met, holders must use NMFS' Marine Mammal Transport Notification (MMTN). The receiver must verify receipt of transferred marine mammals within 30 days.

10. Reporting

All holders of marine mammals under the MMPA must comply with certain marine mammal inventory reporting requirements. Holders are required to notify NMFS within 30 days of the birth or death of animals. Stillbirths must be reported so that they can be distinguished for inventory purposes from successful births and from other mortalities. If the cause of death will not be known within 30 days, holders may note in the death notification that the cause of death is undetermined, and must then notify NMFS of the cause of death upon completion of necropsy analysis.

NMFS will also periodically request holders to verify data in its Marine Mammal Inventory database. To facilitate the entry and ensure consistency in the information reported by marine mammal holders into the database, such information must be submitted in accordance with any reporting formats that NMFS may establish. Holders must use NMFS' Marine Mammal Data Sheet (MMDS) to report changes in their inventories (i.e., births and deaths).

11. Submission of Notifications and Reports

To ensure compliance with the statutory requirements and to reduce and streamline reporting and notification requirements, NMFS has entered into a Cooperative Agreement, under the authority of section 112 (c) of the MMPA (16 U.S.C. 1382), with the International Species Information System (ISIS) to administer the captive marine mammal inventory database, including marine mammal transport notifications. ISIS is an international non-profit membership organization that manages a database and information system for wild animal species in captivity, including marine mammals, at more than 500 institutions in 54 countries. Under this cooperative agreement, ISIS will administer the captive marine mammal inventory information in consultation with NMFS as part of the central ISIS captive wildlife database and information system.

Many of the marine mammal holders who currently report marine mammal inventory information and transport/transfer notifications to NMFS also voluntarily contribute their inventory information to the ISIS. It is estimated that one-half of the marine mammal specimens are reported separately to both databases; therefore, converting to ISIS administration of the marine mammal database should ease the reporting burden for many marine mammal holders.

The major objectives of this Cooperative Agreement are to: (1) improve the long-term efficiency and quality of the captive Marine Mammal Inventory and Transport/Transfer database, (2) increase convenience and efficiency, and reduce cost and burden for reporting required under the MMPA by all holders of marine mammals, (3) eliminate duplicative reporting by many of the marine mammal holders, (4) enhance public access to the captive marine mammal information required under the MMPA, (5) eliminate duplication of data-collection efforts, and (6) avoid current duplication of development and maintenance of custom inventory database software by the ISIS and NMFS.

Under the proposed rule all marine mammal holders would be required to submit their 15–day transport notifications and birth/death reports directly to ISIS for processing and entering into the Marine Mammal Inventory database. Since exceptional transfer-related activities may require NMFS authorization, proposed Table 1 of this document outlines the types of inventory/transfer submissions and the locations for submission.

12. Export of Captive Marine Mammals

Prior to the 1994 MMPA amendments, NMFS' policy dictated that the export of captive marine mammals for public display purposes could occur only if NMFS issued a public display permit to the recipient. Under this policy, NMFS made the issuance of permits to export marine mammals for public display contingent on (1) certification of the accuracy of information from foreign permit applicants by the government with jurisdiction over the applicants' facilities; and (2) certification by that government that it would afford comity to any decision by NMFS to amend, modify, suspend or revoke a permit.

"Comity" is generally understood to be a rule of courtesy by which one government honors decisions made by another government. It is in situations where the United States lacks jurisdiction over persons or things located abroad that the U.S. Government may need to seek assurances of comity from foreign governments. Executive Branch agencies have inherent authority to ask foreign governments to honor decisions of the U.S. Government on the basis of comity. It has been the policy of NMFS since 1975 to require a comity statement for the export of marine mammals.

When Congress amended the MMPA in 1994, it prohibited the export of marine mammals. However, it also provided that, if certain conditions are met and maintained, persons holding marine mammals for public display purposes could export marine mammals without obtaining additional permits or authorizations from NMFS.

NMFS determined that, based on sections 104 (c)(2)(C), 104 (c)(2)(D), and 104 (c)(9), of the MMPA, Congress intended that any person receiving marine mammals via export meet standards comparable to the public display requirements of the MMPA. Since NMFS has no jurisdiction over the animals once they are exported, but is at the same time required to maintain an inventory of captive marine mammals and ensure comparability, NMFS concluded that the requirement of a comity statement is a reasonable means of ensuring that comparable public display requirements will be met. In that context NMFS intends that through comity agreements, using their own laws, the foreign governments will ensure that: (1) care and maintenance standards comparable to the APHIS standards that apply in the U.S. are met; (2) marine mammals continue to be held for purposes consistent with section 104 of the MMPA; and (3) marine mammal inventory information for exported animals is provided to NMFS.

The export of marine mammals has proven to be one of the more controversial provisions of the MMPA. Since 1994, NMFS has heard from various parties with divergent views.

Some have argued that, because NMFS has no jurisdiction in foreign countries and the ability to ensure comparable standards are met is subject to changing political situations of foreign governments, exports must be banned altogether. Others argue that public display facilities should be free to exercise their rights to export with 15 days notice. They contend that NMFS has no authority to determine comparability, or to require comity letters, and that the requirement to meet comparable standards ends at the time of the export. Others argue that more stringent requirements are needed, such as the posting of a surety bond prior to export, requiring that annual on-site inspections be performed at the expense of the foreign facility receiving marine mammals from the United States, or seeking a statutory amendment clarifying Congressional intent. NMFS believes that requiring a comity letter is the most practical and reasonable solution. However, NMFS is specifically requesting comments on this issue.

13. Seizure of Marine Mammals

This section clarifies that the loss of an APHIS Exhibitor's License is grounds for NMFS to revoke permits or seize marine mammals held for public display. Receipt from APHIS of a letter of intention to revoke such a license may indicate that a person or facility holding marine mammals is not reasonably likely to meet the requirements to hold them in the future and, therefore, those animals may be seized. At NMFS' discretion, the animals may be maintained in the same physical location with the assistance of any person under the direct control of, employed by or under contract to NMFS, or the animals may be physically moved to a new location. NMFS may recover expenses incurred for the seizure from the holder in accordance with section 104 (c)(2)(D) of the MMPA.

Classification

NMFS prepared a Draft EA for this action and will finalize it before the final rule is published. Copies of the Draft EA are available on request (see **ADDRESSES**). NEPA requirements as they pertain to individual permits that may be issued under these proposed regulations will be addressed on a case-by-case basis.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would not alter the structure of any business or require any modification to these businesses. The types of businesses that this proposed rule would affect are marine mammal parks and aquariums, oceanariums and zoos. The number of these businesses that would qualify as small businesses under the Small Business Administration's criteria is unknown. However, the only costs to these entities would be the administrative costs associated with applying for permits or major permit amendments and for various reports required for tracking the status of marine mammals held for display purposes. Permit fees would not be required, and the anticipated administrative costs should be minimal.

Accordingly, an Initial Regulatory Flexibility Analysis was not prepared.

A Regulatory Impact Review (RIR) was prepared by NMFS and is available upon request (see **ADDRESSES**).

The RIR describes the reasons why the action is being considered and contains a succinct summary of the objectives of, and the legal basis for, the proposed rule. These are described earlier in this preamble.

The RIR contains a description of the entities to which the proposed rule will apply. The Small Business Administration Standard Industrial Code for businesses of this type is 8422 – Arboreta and Botanical or Zoological Gardens. The entities within this group that would be affected are primarily existing public display and scientific research entities that hold marine mammals for public display purposes or conduct scientific research on captive marine mammals. The proposed rules may also affect entities that, although subject previously to MMPA requirements, were uncertain regarding such effects due to the less than specific nature of the previous regulations. The more explicit provisions of the proposed regulations are likely to affect entities whose circumstances or characteristics were not addressed directly or otherwise provided for in previous regulations, i.e., traveling exhibitors. The proposed rule establishes uniform criteria and requirements for all public display permit applicants and permit holders and others holding marine mammals for public display purposes, as well as consistent procedural, reporting and notification requirements.

The projected economic impact of the proposed revisions on affected small business entities consists primarily of a reduction in paperwork burden costs and is, therefore, expected to be beneficial. No other costs have been identified.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648–0084. Public reporting burden for these collections of information is estimated to average 20 hours per response for public display permit applications, 29 hours per response for major amendments, 1 hour for transport/transfer notifications, and 30 minutes for each marine mammal inventory report.

This proposed rule also contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements and their estimated response times have been submitted to OMB for approval. Public reporting burden for these collections of information is estimated to average 2 hours for a permit capture report, 30 minutes for a permit import report, 30 minutes for a permit capture notification, 30 minutes for a waiver request of the 15–day advance notice of transport, 30 minutes for an initial escape report, 1 hour for an escape report filed a week after the event, 2 hours for an escape report filed six months after the event, and 1 hour for an export certification.

The response estimates above include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed , and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Permits Division, Office of Protected Resources listed under the **ADDRESSES** heading of this document, and to OMB at the Office

of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

The proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order12612.

NOAA has determined that these proposed regulations do not directly affect the coastal zone of any state with an approved coastal zone management program.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: June 21, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE ANIMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 216.13, paragraphs (c) and (d) are redesignated as paragraphs (e) and (f), respectively, and new paragraphs (c), (d), and (g) are added to read as follows:

§ 216.13 Prohibited uses, possessions, transportation, sales and permits.

* * * * *

(c) Any person subject to the jurisdiction of the United States to purchase, possess, export, import, transport, or transfer a captive marine mammal, except as authorized under the Act or this part 216 and pursuant to a special exception permit, where required (i.e., for the purpose of public display, scientific research, or enhancing the survival or recovery of the species).

(d) Any person subject to the jurisdiction of the United States to release into the wild a captive marine mammal, except where the release into the wild of such a marine mammal is authorized specifically under a special exception permit, or pursuant to § 216.27 for beached and stranded marine mammals.

* * * * *

(g) Any person to submit false information to any person authorized by the Secretary to implement or enforce the regulations of this part 216.

3. In § 216.27, paragraphs (c)(3) through (c)(6) are redesignated as (c)(5) through (c)(8), respectively, paragraph (c)(2) is redesignated as paragraph (c)(3), and new paragraphs (c)(2) and (c)(4) are added to read as follows:

§ 216.27 Release, non-releasability, and disposition under special exception permits for rehabilitated marine mammals.

* * * * *

(c) * * *

(2) A special exception permit is required to retain a beached or stranded marine mammal that has been determined to be releasable to the wild following rehabilitation (see §§ 216.33 through 216.38 and § 216.43) for scientific research, enhancement or public display. Retention of any such marine mammal pending issuance of a special exception permit is prohibited unless authorized by the Office Director and must comply with paragraph (b)(5) and (c) of this section.

* * * * *

(4) Upon receipt of a request to retain or transfer a non-releasable marine mammal for public display at a facility that has not previously held marine mammals for public display, the Office Director shall publish a notice of receipt of the request in the **Federal Register** and invite comments from interested parties. The notice will establish a 30–day comment period which must elapse before action can be taken on the request.

* * * * *

4. In § 216.32, paragraph (a) is revised to read as follows:

§ 216.32 Scope.

* * * * *

(a) All marine mammals and marine mammal parts taken, including marine mammals born in captivity after December 20, 1972. The prior status of a marine mammal may be established in accordance with 50 CFR 216.14; and

* * * * *

5. In § 216.37, the introductory text and (d)(2) are revised, and a new paragraph (e) is added to read as follows:

§ 216.37 Marine mammal parts.

With respect to marine mammal parts acquired by take or import authorized under a permit issued under this subpart or obtained from or following the death of a captive marine mammal held for public display:

* * * * *

(d) * * *

(2) A unique number assigned by the permit holder or for parts obtained from or following the death of a captive marine mammal held for public display, the NMFS Marine Mammal Inventory Identification Number assigned to the subject captive marine mammal is marked on or affixed to the marine mammal specimen or container;

* * * * *

(e) The Office Director may authorize the importation, without a permit, of any marine mammal part derived from a marine mammal exported from the United States if the purpose of the importation is for medical examination and diagnosis concerning that marine mammal's health if it is alive or the cause of death if it has died. Further disposition of any such part must be in accordance with paragraphs (a) through (d) of this section.

6. Section 216.43 is added to read as follows:

§ 216.43 Public display.

(a) *General Public Display Requirements.* (1) For the purposes of the section, the terms "Custody," "Holder," "Receiver," "Transfer," and "Transports" are defined as follows:

(i) *Custody* means the responsibility for and the authority to determine the disposition of the captive marine mammal, including transfer and transport.

(ii) *Holder* means any person who has custody of a captive marine mammal. A holder may also be a public display permit holder.

(iii) *Receiver* means a person who receives custody of a transferred marine mammal. Where an interest in a marine mammal is being purchased or otherwise transferred, the receiver is the purchaser or transferee. After a marine mammal is transferred, the receiver becomes a holder.

(iv) *Transfer* means to convey any custodial interest in a marine mammal by any means including, but not limited to donation, purchase, or sale. A conveyance of interest in a marine mammal means the transfer of a whole interest. A transfer of a marine mammal may occur without a transport from one facility to another.

(v) *Transport* means the physical movement of marine mammals between facilities or between distinct geographic locations.

(2) Holders of marine mammals for public display purposes must comply with the three public display requirements at paragraphs (b)(3)(i) through (iii) of this section.

(3) No person, holder, or facility may conduct intrusive research on any captive marine mammal held for public display purposes unless the Office Director authorizes such research under

a separate scientific research or enhancement permit.

(4) Right of inspection. To facilitate compliance with the requirements of § 216.43:

(i) The holder shall allow any designated employee of NOAA, or any person designated by the Office Director to:

(A) Examine any marine mammal held for public display;

(B) Inspect all facilities and operations which support any marine mammal held for public display; and

(C) Review and copy all records concerning any marine mammal held for public display.

(ii) The holder shall cooperate with any examination, inspection, or review conducted pursuant to paragraph (b)(6) of this section, and shall provide any other relevant information requested.

(5) Temporary release authorizations for purposes of open-water training of captive marine mammals may be granted by the Office Director.

(b) *Permits to capture or import marine mammals.* No person may capture a marine mammal from the wild or import a marine mammal for public display purposes, except pursuant to a special exception permit for public display. In addition to the provisions at § 216.33 through § 216.38, permits for public display are governed by the following requirements:

(1) *Applicant.* The applicant must be the person with or seeking custody of the marine mammal. If the applicant is a corporation or partnership, the application must indicate the date of incorporation or when the partnership was formed, and the State in which the corporation or partnership was formed. In the case of imports, if authority over the custody of the marine mammal remains with a foreign entity, the applicant must be the U.S. entity that will assume temporary custody of the marine mammal while in the United States.

(2) *Application submission.* (i) An Applicant must submit a complete permit application at least 90 days before the desired effective date of the permit. Application instructions can be obtained from the Permits Division, Office of Protected Resources.

(ii) Upon receipt of an incomplete or inaccurate application, the Office Director will notify the applicant of the deficiency. If the applicant fails to correct any deficiencies within 60 calendar days, the application will be deemed withdrawn.

(3) *Issuance criteria.* For the Office Director to issue a public display permit, the applicant must:

(i) Offer a program for education or conservation purposes based on professionally recognized standards of the public display community;

(ii) Be registered or hold an exhibitor's license issued under the Animal Welfare Act (AWA), 7 U.S.C. 2131 *et seq.*, and comply with all applicable Animal and Plant Health Inspection Service (APHIS) standards at 9 CFR subpart E;

(iii) Maintain a facility for the public display of captive marine mammals that is open to the public on a regularly scheduled basis, with access not limited or restricted other than by charging of an admission fee. For purposes of this paragraph (b)(3)(iii):

(A) A facility includes a traveling display/exhibit where the primary enclosure used to transport a marine mammal is also used as the permanent housing enclosure;

(B) "Maintaining" a facility includes leasing, owning, or otherwise controlling the facility where the marine mammal will be kept; and

(C) If an applicant's facility is under construction at the time application is made and may not be licensed by APHIS before the Office Director's decision to issue or deny a permit, the applicant must, as part of the application, identify an alternative licensed facility and include a letter from the facility agreeing to hold the subject marine mammals;

(iv) Demonstrate that the proposed capture or importation of living marine mammals is one that will present the least practicable effect on wild populations;

(v) Demonstrate that any proposed permanent removal from the wild:

(A) Is consistent with any applicable quota established by NMFS, or

(B) Where there is no quota in effect, will not have, by itself or in combination with all other known takes and sources of mortality, a significant direct or indirect adverse effect on the protected species or stock, as determined on the basis of the best available information on cumulative take for the species or stock, including information gathered by the applicant concerning the status of the species or stock; and

(vi) Demonstrate that the capture of any marine mammal proposed for importation was, or will be, consistent with the MMPA, as outlined in § 216.34.

(4) *Permit restrictions.* In addition to the general permit restrictions outlined in § 216.35, the following restrictions apply to all public display permits issued under subpart D:

(i) Permit holders must comply with the requirements of paragraphs (b)(3)(i) through (iii) of this section.

(ii) Permit holders may not capture or import a marine mammal that is:

(A) From a species or stock designated as depleted under the MMPA or proposed by NMFS to be designated as depleted unless, for imports, the marine mammal to be imported is captive born and the provisions of paragraph (b)(6)(iv)(A) of § 216.41 are met; or

(B) At the time of capture or import, pregnant, lactating, or either unweaned or less than 8 months old unless the Office Director determines that such capture or importation is necessary for the protection or welfare of the animal.

(iii) Permit holders may not transfer or transport captive marine mammals unless:

(A) The receiver meets the public display criteria outlined in paragraphs (b)(3)(i)through(iii) of this section; and

(B) The permit holder has met all marine mammal transfer/transport notification requirements of § 216.43(e).

(iv) The authorization to capture a marine mammal from the wild or to import a marine mammal shall be valid for a period of time as set forth in the permit. If the capture or import does not occur during the period initially authorized, the Office Director may extend the authorized period upon request of the permit holder.

(5) *Permit conditions.* All public display permits issued under this subpart shall, in addition to the specific conditions set forth in § 216.36(a), contain other conditions deemed appropriate by the Office Director, including but not limited to the following:

(i) For a capture from the wild, the permit holder must provide the Office Director with 15 days notice in advance of the actual date(s) and location of the capture authorized by the permit to allow for the presence of an NMFS observer, if requested by the Office Director.

(ii) The importation of marine mammals is subject to the provisions of 50 CFR part 14. No marine mammal may be imported without the permits required under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Information regarding CITES permits may be obtained from the U.S. Fish and Wildlife Service.

(iii) The permit holder must provide the Office Director with at least 15 days notice in advance of the actual date, time, and port of entry for imports.

(iv) In the case of imports, marine mammals must be transported from the foreign facility to the United States in

accordance with the U.S. Department of Agriculture's Transportation Standards outlined in 9 CFR subpart E. Ports of entry for imports of marine mammals or marine mammal parts are listed in § 216.50 (a) through (d).

(v) For any subsequent transfer and/or transport, or export of the subject marine mammal, the permit holder and receiver must comply with the notification and certification requirements of § 216.43 (d) or § 216.43 (f), as appropriate.

(vi) Progeny of marine mammals imported into the United States are subject to MMPA reporting and transfer notification requirements. The permit holder and any subsequent holder of captive marine mammals must report births, deaths, and any transfer according to the notification and reporting provisions of § 216.43 (e).

(vii) The permit holder may hold a marine mammal captured from the wild in a temporary facility, including a facility not licensed by APHIS, for the purpose of acclimation for a period not greater than 6 months provided:

(A) The holding facility's sole purpose is the acclimation of marine mammals captured from the wild, and

(B) The temporary holding facility meets all applicable AWA standards.

(viii) The terms and conditions of a public display permit are effective as long as the permit holder maintains custody of the marine mammal authorized to be captured from the wild or imported.

(6) *Permit reports.* In addition to the notification and reporting requirements under § 216.38 and § 216.43 (e), all permit holders are subject to the following reporting requirements:

(i) *Collection reports.* Permit holders must submit a collection report within 30 days of the capture of a marine mammal authorized under a public display permit. The collection report must describe:

(A) The name of the individual who captured the marine mammal(s) and other personnel involved in the capture activities;

(B) The method of taking for each marine mammal, including the gear used;

(C) The specific date, time and location of the taking, including latitude and longitude and geographical location;

(D) Any problems, injuries or complications that may have occurred during the collection,

(E) The taking of any other marine mammals, including by harassment, that occurred during the collection;

(F) Any lethal takes which occurred in connection with the capture, including the date, time, location, number, and to the extent possible, the age, sex and reproductive condition of the marine mammal(s);

(G) A description of each marine mammal retained by the permit holder in accordance with the marine mammal inventory requirements of § 216.43 (e)(3); and

(H) Any other information that the Office Director may require in the permit.

(ii) *Verification of import.* Within 30 days of an import, the permit holder must verify the importation into the United States of the living marine mammal identified in the permit by submitting updated inventory information in accordance with the inventory requirements of § 216.43 (e)(2).

(c) *Re-export of marine mammals imported into the United States.* (1) Holders of marine mammals imported into the United States under the authority of a public display permit may re-export these marine mammals without the foreign certifications specified in § 216.43 (f)(4)(i) through (iii), provided the marine mammal is returning to the original foreign holder and foreign facility.

(2) Marine mammals re-exported under paragraph (c)(1) of this section are no longer subject to the MMPA transfer notification or reporting requirements.

(3) A holder exporting the U.S. born progeny of the marine mammals identified in paragraph (c)(1) of this section must comply with the MMPA transfer notification and reporting requirements under § 216.43(e) and any export requirement under CITES.

(4) The re-export of a marine mammal to a different holder or facility must conform to the export requirements under § 216.43 (f).

(5) Once a marine mammal is re-exported, the permit holder may not re-import the subject marine mammal unless a new permit to import has been issued by the Office Director pursuant to § 216.43 (b).

(d) *Transfer and/or transport of captive marine mammals within the United States*—Transfer and/or transport of marine mammals legally held for public display within the U.S. does not require a permit provided that the receiver complies with the public display requirements of § 216.43 (b)(3)(i) through (iii), and both holder and receiver comply with the notification requirements of § 216.43 (e). Upon satisfaction of these requirements:

(1) A holder may:

(i) Transfer a marine mammal without physically transporting the marine mammal to another facility/physical location;

(ii) Transport a marine mammal from one facility/physical location to another without transfer, including for purposes of a breeding loan; or

(iii) Transfer a marine mammal and physically transport the marine mammal to another facility/physical location.

(2) A receiver may:

(i) Purchase or otherwise acquire a marine mammal through a transfer without physically transporting the marine mammal from another facility/physical location;

(ii) Transport or receive a marine mammal from one facility or physical location to another without transfer, including for purposes of a breeding loan; or

(iii) Purchase or otherwise acquire an interest in a marine mammal through a transfer, and physically transport the marine mammal from another facility/physical location.

(e) *Notifications and reporting.* Any holder of a marine mammal must comply with the following notification and reporting requirements. If either the holder or receiver fail to meet the public display and/or notification requirements of § 216.43 (b)(3)(i) through (iii) and § 216.43 (e) the conditional right to transfer or transport marine mammals may not be invoked. Holders may obtain complete information regarding submission procedures and reporting from the Permits Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910 or NMFS Marine Mammal Inventory c/o International Species Information System, 12101 Johnny Cake Ridge Road, Apple Valley, MN 55124 8151.

(1) *Fifteen–day notification of transfers/transports of captive marine mammals.* Except as provided in paragraph (e)(3) of this section, the Office Director must receive written notification at least 15 days in advance of any transfer or transport of captive marine mammals held for public display purposes. Holders may submit a Marine Mammal Transport Notification (MMTN) by facsimile, provided the original is forwarded to the Office Director by certified mail within 3 business days. Notification must be provided in the following manner:

(i) The holder and receiver must submit a completed MMTN together with a supporting Marine Mammal Data Sheet (MMDS) for each marine mammal to be transferred. A completed MMTN includes a MMDS for each animal proposed for transfer and/or transport and a certification signed by both the holder and the receiver which provides

that the receiver and/or receiving facility meets the requirements of paragraphs (b)(3)(i) through (iii) of this section.

(ii) In the case of traveling exhibits, the holder must notify the Office Director at least 15 days in advance of each transport from one location to another, unless the Office Director has approved an alternative notification schedule.

(iii) In cases involving the transport of a marine mammal for a school visit or similar outreach event in which the marine mammal will be returning to the original holding facility more than 12 hours after departure, the holder must comply with the 15–day notification requirement. In the absence of 15 days advance notice, the holder must request a transport authorization pursuant to paragraph (e)(3)(i) of this section.

(iv) Upon receipt of a MMTN, the Office Director will acknowledge receipt of the notification and enter the proposed transfer and/or transport dates into the Marine Mammal Inventory database for those marine mammals identified in the MMTN.

(v) A new MMTN must be submitted if:

(A) Transfer and/or transport does not occur within 90 days of the proposed date;

(B) The receiver or facility changes; or

(C) Other animals will be transferred and/or transported.

(2) *Verification of receipt.* Receivers must provide verification within 30 days of the date of transfer and/or transport. Verifications must include a revised MMDS for each marine mammal, indicating the actual date of transfer and/or arrival, the animal name and number assigned by the receiver, and the 8-digit identification number assigned by NMFS. If the holder does not verify the transfer and/or transport or notify the Office Director of a cancellation, the proposed action will be subject to deletion from the inventory database after 90 days.

(3) *Special authorizations*—(i) A holder may receive authorization from the Office Director to transfer and/or transport, but not export, captive marine mammals with less than 15 days advance notification prior to transfer or transport, if the holder and proposed receiver submit a written request for such a transfer and/or transport authorization to the Office Director that includes:

(A) An explanation why the transfer and/or transport must be conducted in less than 15 days,

(B) A completed and signed MMTN, NOAA Form 89–881, and

(C) a MMDS, NOAA Form 89–882, for each affected marine mammal.

(ii) A holder may transfer and/or transport, but may not export, a captive marine mammal without 15 days advance notification or the Office Director's written authorization in the case of an emergency involving the imminent and serious jeopardy to the health or welfare of the marine mammal, provided that within 24 hours of an emergency transfer and/or transport, the holder or the holder's attending veterinarian submits to the Office Director:

(A) A written explanation of the emergency circumstances and justification for the transfer and/or transport, and

(B) A MMDS for each affected marine mammal.

(iii) Upon resolution of the emergency, the holder must notify the Office Director of the subsequent return of the marine mammal to the holder's facility or transfer and/or transport to another facility.

(iv) The Office Director may periodically review emergency transfers and/or transports conducted under the provisions of paragraphs (e)(3)(i) and (ii) of this section. If the Office Director determines that there is a reasonable basis for questioning whether a holder has abused the emergency transfer/transport allowance, the Office Director may notify a holder:

(A) That they are not authorized to conduct emergency transfers or transports; or

(B) Of the conditions under which subsequent emergency transfers/transports may be conducted; and

(C) What steps the holder may take to remove the restrictions imposed under paragraph (e)(3)(iv)(A) or (B) of this section.

(4) *Marine mammal inventory.* The Office Director maintains a computerized Marine Mammal Inventory database of all captive marine mammals subject to the MMPA. To enable the Office Director to maintain this inventory, holders of captive marine mammals must provide an updated MMDS to the Office Director whenever a change in inventory occurs. To satisfy the 30–day requirement for reporting births, deaths, transfers or other changes in inventory, holders must submit by mail or facsimile written reports on a MMDS to the Office Director. The Office Director will not accept telephone notification. This updated MMDS must include:

(i) The name or other identification of the marine mammal involved;

(ii) Its sex;

(iii) Its actual or estimated birth date;

(iv) The date of the holder's acquisition or disposition of the marine mammal;

(v) The source from which the marine mammal was acquired including the location of the stranding or take from the wild, if applicable;

(vi) If a marine mammal is being transferred and/or transported, the name and street address of the receiver and/or receiving facility and the operator of that facility if other than the current holder of the marine mammals being transferred and/or transported; and

(vii) If a marine mammal dies, including stillbirths and animals that undergo euthanasia, the holder must notify the Office Director within 30 days of the date of death. Notification must include the date and cause of death. If the cause of death has not been determined within 30 days, holders must submit an amended notification once the cause of death is determined. A reasonable effort to determine the cause of death must be made by the holder.

(viii) If a marine mammal escapes from a facility or is inadvertently released it must be reported immediately by phone or fax to the Office Director. A status report on the recovery effort and the conditions of escape is required within one week of the event. An updated MMDS noting the escape or release is required within 30 days. The holder must report the results of all reasonable efforts to recapture the marine mammal within 6 months of the escape or release.

(5) *Marine Mammal Inventory Report-Summary (MMIRS) by holder/species.* Upon request of the Office Director, holders of marine mammals subject to the MMPA must review, verify, and correct any discrepancies regarding the marine mammals in their custody and listed in the Marine Mammal Inventory database. Holders may obtain information about the marine mammals listed on their inventory and request a MMIRS for the marine mammals in their collection at any time by sending a request to the NMFS Marine Mammal Inventory at the address listed in paragraph (e)(8) of this section.

(6) *Change of address or trade name.* Holders must notify the Office Director by certified mail 15 days in advance of any change in name, address or ownership. An updated Person/Holder/Facility Sheet, NOAA Form 89–871, should accompany the holder's notification.

(7) *Eligibility.* Holders must notify the Office Director immediately of any other change in operations that adversely affects the holder's ability to meet the criteria set forth in § 216.43 (b)(3),

including but not limited to the expiration, suspension, revocation, of any APHIS registration or license, or voluntary termination upon request of the holder or licensee.

(8) *Submission address.* Effective (30 days after publication of the final rule in the **Federal Register**), all transfer and transport notifications and inventory reports must be submitted to NMFS Marine Mammal Inventory, c/o International Species Information System (ISIS), 1201 Johnny Cake Ridge Road, Apple Valley, MN 55124–8151. Notifications of releases or escapes of marine mammals, collection reports, requests for waivers of the 15–day advance notification requirement, changes in eligibility to hold marine mammals, export notifications, and foreign government certifications, must continue to be provided to the Office Director as specified in § 216.43 (e)(1)(iii),(3), (4)(viii), and (7), and § 216.43 (f).

(f) *Export of captive marine mammals.* Marine mammals may be exported under the authority of this section only for public display. Export of marine mammals legally held for public display within the U.S. does not require a permit provided that the receiver complies with the public display requirements of § 216.43 (b)(3)(i) through (iii), and both holder and receiver comply with the requirements of this section.

(1) Holders intending to export marine mammals to a foreign holder or facility for public display purposes must follow the notification requirements at § 216.43 (e) and ensure the documentation required in paragraphs (f)(3) through (6) of this section is submitted to the Office Director, together with a copy of any export permit required under CITES, at least 15 days in advance of the proposed export.

(2) Persons intending to receive marine mammals for public display by export from the United States must meet the public display criteria at § 216.43 (b)(3)(i) through (iii) and § 216.43 (f)(1). To ensure compliance with this requirement, persons intending to receive marine mammals must submit to the Office Director, pursuant to § 216.43 (f)(4), the following:

(i) A description of their program for education or conservation and identification of the professionally recognized standards upon which their education program is based;

(ii) A letter from APHIS certifying that:

(A) The receiving facility meets standards comparable to those applicable to U.S. licensees and registrants under the AWA, 7 U.S.C. 2131 *et seq.*;

(B) The transportation arrangements between the port of entry and the foreign facility comply with the AWA transportation standards at 9 CFR 3.112 through 3.118; and

(C) If the export does not occur within 1 year of the certification, a new letter from APHIS must be provided. For evaluation under the AWA, persons intending to import marine mammals from the United States should contact APHIS, U.S. Department of Agriculture, Riverdale, MD.

(iii) The name and mailing address of the foreign receiver, the name and street address of the facility where the marine mammals will be maintained, the hours during which the facility is open to the public, and the cost of admission.

(iv) If the foreign receiver maintains more than one public display facility and the marine mammals will be transported among these facilities, the receiver must provide the documentation requested in paragraphs (f)(2)(i) through (iii) of this section for each of the facilities, including a Person/Holder/Facility Sheet, NOAA Form 89–871, for each facility.

(v) If the foreign receiver will lease the marine mammals to a public display facility maintained by any person other than the receiver, the receiver must provide, in addition to the documentation requested in paragraphs (f)(2)(i) through (iii) of this section, a letter from the head of the facility certifying that the facility meets comparable standards under the AWA for the term of the contract.

(4) At least 15 days in advance of any proposed export of a marine mammal from the United States for public display, the Office Director must receive a statement from an appropriate agency of the government of the country where the foreign receiver/facility is located certifying that:

(i) The information submitted by the foreign receiver/facility is accurate;

(ii) The laws and regulations of the foreign government involved permit that government to enforce requirements equivalent to the requirements of the U. S. Marine Mammal Protection Act and U.S. Animal Welfare Act. The foreign government will enforce such requirements, and take protective measures where necessary for marine mammals exported from the United States; and

(5) If the foreign receiver has submitted a government certification as specified in paragraphs (f)(4)(i) through (iii) of this section to the Office Director within the 1–year period leading to the export, the foreign recipient need only submit re-certification of accuracy as required by paragraph (f)(4)(i) of this section.

(6) Documentation, including government certifications submitted under this section, must be provided in English or be accompanied by a certified English translation.

(7) Marine mammals held for public display by U.S. holders that are exported but not transferred may be imported back into the U.S. by the holder without additional MMPA permits, provided all other requirements are met, including appropriate CITES export authorization from the foreign government.

(g) *Seizure of captive marine mammals.* (1) Marine mammals held for public display are subject to seizure under the following circumstances:

(i) The holder does not offer, and is not reasonably likely to offer in the near future, a program for education or conservation purposes that is based upon professionally recognized standards of the public display community;

(ii) The holder does not maintain, and is not reasonably likely to maintain in the near future, facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis, with access not limited or restricted other than the charge of an admission fee;

(iii) The Office Director, with the concurrence of the Secretary of Agriculture, determines that the holder does not possess, and is not reasonably likely to possess in the near future, a registration or license issued pursuant to the Animal Welfare Act (AWA). For purposes of this subparagraph, marine mammals may be subject to seizure upon the expiration, suspension, revocation, or notice of intent to suspend or revoke any registration or license issued by the Secretary of Agriculture.

(2) The holder shall reimburse the Secretary for any costs associated with the seizure of a marine mammal that occurs under paragraph (g)(1) of this section.

TABLE 1 TO § 216.43. SUBMISSION SCHEDULE

Time	Location	
	NMFS (MD)	NMFS c/o ISIS (MN)
Permit Application: At least 90 days in advance	X	
Application Amendment: At least 90 days in advance	X	
Collection Report:Within 30 days	X	
Birth and Death Reports: Within 30 days		X
Other Marine Mammal Inventory Updates: As requested by OD		X
Domestic Transfer Notifications: At least 15 days in advance		X
Export Notifications: At least 15 days in advance	X	
Foreign Government Certifications: At least 15 days in advance	X	
Transfer/Export Verifications: Within 30 days		X
Transfer Authorization Requests: Less than 15 days in advance	X	
Traveling Exhibitor's Transfer Notifications: 15 days in advance unless otherwise arranged with OD	X	
Address/Trade Name Changes: Within 15 business days		X
Termination of Exhibitor's License/Registration: Immediately	X	

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BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 128
Tuesday, July 3, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–047–1]

Horse Protection Act; List of Designated Qualified Persons

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice advises the public and the horse industry of the organizations that have a Designated Qualified Person program currently certified by the United States Department of Agriculture and the designated qualified persons currently licensed under each certified organization.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Tuck, Senior Program Analyst, Policy and Program Development, APHIS, 4700 River Road Unit 116, Riverdale, MD 20737–1236; (301) 734–5819.

SUPPLEMENTARY INFORMATION:

Background

The practice known as "soring" causes a horse to suffer pain in any of its limbs for the purpose of affecting its performance in the show ring. In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821–1831), referred to below as the Act, to eliminate the practice of soring by prohibiting the showing, selling, or transporting of sored horses. Exercising its rulemaking authority under the Act, the Animal and Plant Health Inspection Service (APHIS) enforces regulations in 9 CFR part 11, referred to below as the regulations, that prohibit devices and methods that might sore horses.

In 1979, in response to an amendment to the Act, we established regulations under which show management must, to avoid liability for any sore horses that are shown, appoint individuals trained to conduct preshow inspections to detect or diagnose sored horses. These individuals, referred to as designated qualified persons (DQP's), are trained and licensed under industry-sponsored DQP programs that we certify and monitor. The requirements for DQP programs and licensing of DQP's are set forth in § 11.7 of the regulations.

Section 11.7 also requires that we publish a current list of horse industry organizations that have certified DQP programs and a list of licensed DQP's in the **Federal Register** at least once each year. The list reads as follows:

Heart of America Walking Horse Association, Lynn B. Bridwell, President, 4201 North Farm Road 205, Stafford, MO 65757.
Licensed DQP's: Ryan Bennett, Chad Campbell, Jennifer Campbell, Larry Carrigan, Ronnie D. Couseler, Atkon Curelon, A.L. Forgey, Lawanda Foust, Robert B. Foust, R. Dewey Foust, Billy Grooms, Floyd Hampsmire, Philip Mankin, Stephen Mullins, Steve Skopec, Charlie Smart, Robert H. Smith, William Stotler, Jerry Williams, John C. Williams.

Horse Protection Commission, Inc., Donna Benefield, Administrative Director, P.O. Box 1330, Frazier Park, CA 93225.
Licensed DQP's: M. Avila, D. Benefield, D. Collins, L. Connelly, J. Hampton, R. Harris, K. Hester, T. Hubbard, S. Kolbusz, B. Lauer, P. Mitchell, D. Moore, L. Peterson, C. Pitts, C. Shepherd, J. Singleton, P. Snodgrass, V. Stamper, J. Stamper, K. Thompson.

Humane Instruction Technocracy, Inc., Cherie Beatty, 159 Hopkins Bridge Road, Unionville, TN 37180.
Licensed DQP's: Randy Adams, Doug Barlow, Cherie Beatty, Ken DeLana, James Fox, Lisa Harris, Chris Lynch, Fields Richardson, Jim Scullin.

Kentucky Walking Horse Association—HIO, Kenny Smith, HIO Director, Route 6, Box 11, Manchester, KY 40962.
Licensed DQP's: Les W. Acree, Jackie Brown, Ray Burton, Michael Conley, Eddie Ray Davis, Terry Doyle, James Floyd, John Goldey, James M. Goode, J. Scott Helton, Leon Hester, Dave Jividen, Paul Lasure, Ricky McCammon, Rick O'Neal, Curtis Pittman, Ted Poland, Arnold "Sarg" Walker, Johnnie Zeller.

Missouri Fox Trotting Horse Breed Association, Inc., Hoover Case, Executive Director, P.O. Box 1027, Ava, MO 65608.
Licensed DQP's: Jan Alford, Julie Alford, Bob Blackwell, Everett Clamp, Kenneth Cochran, Donald J. Daughtery, Gail Geilenfeldt-Freed, Patricia Harris, Deb Heggerston, Mark Landers, Edward Lee, Geno Middleton, Jeanie Nichols, David Ogle, Mike Osborn, Danny Sublett, Shawn Sublett, Lee Yates.

National Horse Show Commission, Inc., Bill Young, Chairperson, P.O. Box 167, Shelbyville, TN 37160.
Licensed DQP's: Melanie Allen, Nolan Benton, Johnny Black, Neal Byrd, Ray Cairnes, Ronnie Campbell, Harry Chaffin, John Cordell, Joe L. Cunningham, Sr., Jessie Davis, Jerry Eaton, William Edwards, Anthony Eubanks, Craig Evans, James Fields, Bob Flynn, Benny Givens, Kathy Givens, Iry Gladney, Jimmy House, Larry R. Landreth, Earl Melton, Andy Messick, Lonnie Messick, Richard Messick, Cary C. Myers, Harlan Pennington, Ricky D. Rutledge, Ronnie Slack, Virginia Stanley, Ricky L. Statham, Charles Thomas, Mark Thomas, Greg Thomason, Melissa Tilley, Clarence Wenham, Ellyn Whitehouse, John F. Wilson.

National Walking Horse Association, Don Bell, Director of Operations, P.O. Box 28, Petersburg, TN 37144.
Licensed DQP's: Don Bell, Hal Bowden, Jim Chipman, Murral R. Johnson, Ralph Lakes, Debbie Matson, Terri Lynn Neuendorf, Jeff Smith, Pamela Wisecup.

Spotted Saddle Horse Breeders and Exhibitors Association, Roger Malone, 1st VP, P.O. Box 1046, Shelbyville, TN 37162.
Licensed DQP's: Joe L. Beard, Marty Coleman, Danny Ray Davis, Tony Edwards, Steve Johnson, Mac McGee, Boyd Melton, E.W. Murray, Russell Phipps, Larry "Keith" Smith, Don Woodson.

Western International Walking Horse Association, David Swingley, President, P.O. Box 2075, Wilsonville, OR 97070.
Licensed DQP's: Larry Corbett, Don Douglas, Ross Fox, Dennis Izzi, Terry Jerke, Joe Nelson, Kelly Smith, Dave Swingley, Kim Swingley.

Done in Washington, DC, this 27th day of June 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–16693 Filed 7–2–01; 8:45 am]
BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Meeting

AGENCY: Department of Agriculture; Natural Resources Conservation Service, USDA.

ACTION: Notice of meetings.

SUMMARY: Notice is hereby given that the United States Department of

Agriculture, Natural Resources Conservation Service (NRCS), will conduct six public forums whereby interested individuals can provide comments and ideas regarding the role, capacity, and capability of private sector vendors in providing technical services related to assisting animal feeding operation (AFO)/concentrated animal feeding operation (CAFO) owners and operators with the development and implementation of comprehensive nutrient management plans (CNMPs), or specific elements of CNMPs. The specific elements of a CNMP that private sector vendors may provide technical services for include:

- Manure and wastewater handling and storage
- Land treatment practices
- Nutrient management
- Record keeping
- Feed management
- Other manure and wastewater utilization activities (alternatives to land application)

The public is invited to attend. Speakers will be limited to 5 minutes and should respond to the questions below. Those who wish to speak at a forum may make arrangements in advance by calling the state contact listed or may sign up at the forum. All are encouraged to provide detailed written answers and comments to the following questions:

1. What do you believe the role of private sector vendors should be in providing technical services to AFO/CAFO owners and operators with the development and implementation of their CNMPs? Is there a distinction in this role with regard to regulated versus non-regulated AFOs?

2. What are the technical capabilities and capacities of private sector vendors in relation to the skills, knowledge, and experience needed to provide technical services associated with the development and/or implementation of CNMPs?

3. How do you see the capabilities and capacities of the private sector vendor community changing over the next few years? Over the next decade?

4. What is needed for a successful public/private partnership that will facilitate AFO/CAFO owners' and operators' development and/or implementation of CNMPs?

Written comments will be accepted at the forums and by mail or facsimile. Written comments must be postmarked or faxed by August 15, 2001 and addressed to: Thomas Christensen, Director, Animal Husbandry and Clean Water Programs, USDA, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Mail Stop 5473, Beltsville, Maryland 20705, FAX: (301) 504–2264.

USDA/Natural Resources and Environment and NRCS leadership will participate in each meeting.

Location	Date	Contact name	Phone
Woodland, California	July 11	Rachel Lopez	(530) 792–5600
Austin, Texas	July 17	Norman Bade	(254) 742–9800
Denver, Colorado	July 20	John Andrews	(720) 544–2834
Raleigh, North Carolina	July 24	Charlene Wood	(919) 873–2102
Frederick, Maryland	July 30	Carol Hollingsworth	(443) 482–2902
Indianapolis, Indiana	July 31	Paula Mulligan	(317) 290–3200

Please call the contact person of the meeting that you wish to attend to obtain specific meeting time and location details.

FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Dawn Lamb, Office of the Deputy Chief for Programs, telephone: (202) 720–4527; fax: (202) 720–6559; email: dawn.lamb@usda.gov

Thomas W. Christensen,

Director, Animal Husbandry and Clean Water Programs, USDA/Natural Resources Conservation Service.

[FR Doc. 01–16625 Filed 7–2–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Population Survey, October School Enrollment Supplement.

Form Number(s): CPS Automated CAPI Instrument.

Agency Approval Number: 0607–0464.

Type of Request: Revision of a currently approved collection.

Burden: 3,325 hours.

Number of Respondents: 57,000.

Avg Hours Per Response: 3 minutes and 30 seconds.

Needs and Uses: The Census Bureau is requesting clearance for the collection of data concerning the School Enrollment Supplement to be conducted in conjunction with the October Current Population Survey (CPS). The Census Bureau, the Bureau of Labor Statistics, and the National Center for Education Statistics (NCES) sponsor the basic annual school enrollment questions which have been collected annually in the CPS for 40 years. Additional questions will be added to monitor changes in the types of vocational education.

This survey provides information on public/private elementary and secondary school enrollment, and characteristics of private school students and their families, which is used for tracking historical trends and for policy planning and support. This survey is the only source of national data on the age distribution and family characteristics of college students, and the only source of demographic data on preprimary school enrollment. As part of the federal government's efforts to collect data and provide timely information to local governments for policymaking decisions, the survey provides national trends in employment and progress in school.

The data are used by federal agencies; state, county, and city governments; and private organizations responsible for education to formulate and implement education policy. They are also used by employers and analysts to anticipate the composition of the labor force in the future. The NCES will use the data concerning language proficiency, disabilities, and grade retention to study the phenomenon of children being retained in grade.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182; Title 29 U.S.C., Sections 1–9.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by

calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 28, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–16647 Filed 7–2–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2002 New York City Housing and Vacancy Survey.

Form Number(s): H–100, H–105, H–108, H–100(L), H–100(L)A.

Agency Approval Number: 0607–0757.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 11,200 hours.

Number of Respondents: 17,200.

Avg Hours Per Response: 35 minutes.

Needs and Uses: The Census Bureau plans to conduct the 2002 New York City Housing and Vacancy Survey (NYCHVS) under contract for the City of New York. The purpose of the survey is to measure the supply, condition, and vacancy rate of housing in the City. Vacancy rate is the primary factor in determining the continuation of rent control regulations. Other survey information is used by city and state agencies for planning purposes as well as the private sector for business decisions. The laws of New York require such a survey to be conducted every three years.

Census Bureau interviewers will conduct personal visit interviews at a sample of housing units in the city, the vast majority of which are apartments in apartment buildings. Basic demographic information will be collected from residents along with information about living conditions (rent, facilities, maintenance, neighborhood, etc.). This information will be collected from rental agents or other knowledgable persons in the case of vacant units. A small number of reinterviews with agents or landlords will be conducted for quality assurance purposes. We will also determine, by observation only, if a sample of units known to have been lost to the housing inventory have been reconverted for residential use.

Affected Public: Individuals or households, Businesses or other for-profit.

Frequency: Every 3 years.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 8b.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 28, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–16648 Filed 7–2–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 27–2001]

Foreign-Trade Zone 158—Jackson, MS; Application for Subzone Status, Nissan North America, Inc., Plant (Motor Vehicles), Canton, MS

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Vicksburg-Jackson Foreign-Trade Zone, Inc., grantee of FTZ 158, requesting special-purpose subzone status for the motor vehicle manufacturing plant of Nissan North America, Inc. (NNA)(a subsidiary of Nissan Motor Co., Ltd., of Japan) located in Canton, Mississippi. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 26, 2001.

The NNA plant (1,350 acres/ 2.6 million sq.ft.) is to be located on Nissan Drive adjacent to U.S. Highway 51 in Canton (Madison County), Mississippi, some 20 miles north of Jackson. The facility, currently under construction, will be used to produce light-duty passenger vehicles (pickup trucks, sport utility vehicles, minivans) for export and the domestic market. At full capacity, the facility (up to 4,000 employees) will manufacture up to approximately 250,000 vehicles annually. Components to be purchased from abroad (approximately 44% of material value) would include: engines and parts of engines, labels, body parts and trim, fasteners, catalytic converters, parts of steering systems, brake fittings, half shafts, transmissions and parts of transmissions, differentials, bearings and bearing housings, flywheels/ pulleys, wiring harnesses, handles/ knobs, gaskets, fasteners, carpet sets, windshields and windows, springs, relays, and switches (duty rate range: free—8.6%). Engines and transmissions would be sourced from NNA's production facility in Dechard, Tennessee (Subzone 78A-Site 2), which is currently undergoing a capital expansion for this activity. The application indicates that NNA's domestic sourcing will increase in the future.

FTZ procedures would exempt NNA from Customs duty payments on the foreign components used in export production (forecasted to be 6% of shipments). On its domestic sales and exports to NAFTA countries, NNA would be able to choose the duty rate that applies to finished passenger vehicles (2.5%) for the foreign inputs noted above that have higher rates. Customs duties would be deferred and possibly reduced on foreign status production equipment. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 4, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 17, 2001).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commere, Export Assistance Center 704 E. Main Street, Raymond, MS 39154.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th Street & Constitution Avenue, NW., Washington, DC 20230–0002

Dated: June 26, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–16705 Filed 7–2–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 01–014.

Applicant: Woods Hole Oceanographic Institution, 266 Woods Hole Road, Woods Hole, MA 02543.

Instrument: (2) Low-level beta Multicounter Systems, Model GM–25–5. Manufacturer: Riso National Labs, Denmark.

Intended Use: The instrument is intended to be used for sampling the ocean at different depths to estimate carbon fluxes out of the upper water. This number is needed to plug into ocean/atmosphere models to estimate such things as global warming.

Application accepted by Commissioner of Customs: June 11, 2001.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–16706 Filed 7–2–01; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in India

June 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 3, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryover and the 5% adjustment for 100% cotton apparel items of handloomed fabric.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 79344, published on December 19, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 27, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on July 3, 2001, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
218	21,224,532 square meters.
219	94,113,507 square meters.
313	56,788,990 square meters.
314	11,245,609 square meters.
315	18,888,117 square meters.
317	52,137,749 square meters.
334/634	190,142 dozen.
335/635	846,510 dozen.
336/636	1,210,430 dozen.
340/640	2,458,888 dozen.
342/642	1,714,186 dozen.
347/348	863,553 dozen.
351/651	362,346 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–16700 Filed 7–2–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

June 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 3, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69742, published on November 20, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 27, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on, July 3, 2001, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
338/339	3,260,602 dozen.
351/651	973,889 dozen.
433	4,129 dozen.
638/639	2,847,072 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–16701 Filed 7–2–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DOD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 4, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (For Management Policy) (Military Personnel Policy)/Accession Policy, ATTN: Major Brenda Leong, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 695–5529.

Title, Associated Form, and OMB Control Number: Request for Reference, DD Form 370, OMB Control Number: 0704–0167.

Needs and Uses: This information collection requirement is necessary to obtain personal reference data, in order to request a waiver, on a military applicant who has committed a civil or criminal offense and would otherwise be disqualified for entry to the Armed Forces of the United States. The DD Form 370 is used to obtain references information evaluating the character, work habits, and attitudes of an applicant from a person of authority or standing within the community.

Affected Public: Individuals or households, non-profit or other for profit businesses, non-profit institutions, local, tribal and state agencies. Normally, this form would be completed by responsible community leaders such as school officials, ministers and law enforcement officials.

Annual Burden Hours: 12,500.

Number of Respondents: 75,000.

Responses Per Respondent: 1.

Average Burden Per Response: 10 minutes per respondent.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information is collected to provide the Armed Services with specific background information on an applicant. History of criminal activity, arrests, or confinement is disqualifying for military service. An applicant, with such a disqualifier, is required to submit references from community leaders who will attest to his or her character, attitudes or work habits. The DD Form 370 is the method of information collection which requests an evaluation and reference from a specific individual, within the community, who has the knowledge of the applicant's habits, behaviors, personality and character. The information will be used to determine suitability of the applicant for

military service and the issuance of a waiver for acceptance.

June 11, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–16678 Filed 7–2–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Proposed Rule Changes

ACTION: Notice of Proposed Changes to the Rules of Practice and and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 13(c), 20 (b) and (c), 21 (b), 24, and 41(a) of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment:

Proposed Revision to Rule 13(c)

Attorneys

Rule 13. Qualifications to Practice

(a) [Same]

(b) [Same]

(c) Each applicant shall file with the Clerk an application for admission on the form prescribed by the Court, together with an application fee ***in an amount prescribed by Court order,*** and a certificate from the presiding judge, clerk, or other appropriate officer of a court specified in (b) above * * *

(d) [Same]

Proposed Revision to Rule 20(b) and (c)

Rule 20. Form of Petition for Grant of Review

* * * * *

(b) Form to be used by an appellant's counsel. A petition for grant of review under Rule 18(a)(1) filed by counsel on behalf of an appellant will be substantially in the following form:

_____

(Signature of counsel)

_____

(Typed name of counsel)

_____

(Address of counsel)

_____

(Telephone no. of counsel)

(E-mail address, if any)

_____

(Date and manner of filing—*see* Rules 36 and 39))

(c) An appellant or counsel on behalf of an appellant shall file a petition for grant of review in the manner and within the time limits set forth in Rule 19(a). ***Upon receipt, the Clerk shall stamp the petition indicating the date it was received and, if filed by mail under Rule 36(c), shall retain the envelope showing the postmark thereon.***

Proposed Revision to Rule 21(b)

Rule 21. Supplement to Petition for Grant of Review

(a) Review on petition for grant of review requires a showing of good cause. Good cause must be shown by the appellant in the supplement to the petition, which shall state with particularity the error(s) claimed to be materially prejudicial to the substantial rights of the appellant. *See* Article 59(a), UCMJ, 10 USC § 859(a).

(b) The supplement to the petition shall be filed in accordance with the applicable time limit set forth in Rule 19(a)(5)(A) or (B), shall include an Appendix required by Rule 24(a), shall conform to the provisions of Rules 24(b), 35A, and 37, and shall contain:

(1) A statement of the errors assigned for review by the Court;

(2) A statement of statutory jurisdiction, including:

(A) the statutory basis of the Court of Criminal Appeals jurisdiction;

(B) the statutory basis upon which this Court's jurisdiction is invoked;

(3) A statement of the case setting forth a concise chronology, including **all relevant dates.** The chronology shall specify: **(A)** the results of the trial; **(B)** the actions of the intermediate reviewing authorities and the Court of Criminal Appeals; **(C) the disposition of a petition for reconsideration or rehearing, if filed;** and (D) any other pertinent information regarding the proceedings, **[including, if set forth in the record, the date when service upon the accused of the decision of the Court of Criminal Appeals was effected.];**

(4) A statement of facts of the case material to the errors assigned, including specific page references to each relevant portion of the record of trial;

(5) A direct and concise argument showing why there is good cause to grant the petition, demonstrating with particularity why the errors assigned are materially prejudicial to the substantial rights of the appellant. Where applicable, the supplement to the petition shall also indicate whether the court below has:

(A) Decided a question of law which has not been, but should be, settled by this Court;

(B) Decided a question of law in a way in conflict with applicable decisions of (i) this Court, (ii) the Supreme Court of the United States, (iii) another Court of Criminal Appeals, or (iv) another panel of the same Court of Criminal Appeals;

(C) Adopted a rule of law materially different from that generally recognized in the trial of criminal cases in the United States district courts;

(D) Decided the validity of a provision of the UCMJ or other act of Congress, the Manual for Courts-Martial, a service regulation, a rule of court or a custom of the service the validity of which was directly drawn into question in that court;

(E) Decided the case (i) en banc or (ii) by divided vote;

(F) So far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a court-martial or other person acting under the authority of the UCMJ, as to call for an exercise of this Court's power of supervision; or

(G) Taken inadequate corrective action after remand by the Court subsequent to grant of an earlier petition in the same case and that appellant wishes to States; and

(6) A certificate of filing and service in accordance with Rule 39(e).

(c)(1)*Answer/reply in Article 62, UCMJ, appeals.* An appellee's answer to the supplement to the petition for grant of review in an Article 62, UCMJ, 10 U.S.C § 862 (1983), case shall be filed no later than 10 days after the filing of such supplement. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer.

(2) *Answer/reply in other appeals.* An appellee's answer to the supplement to the petition for grant of review in all other appeal cases may be filed no later than 30 days after the filing of such supplement, *see* Rule 21(e); as a discretionary alternative in the event a formal answer is deemed unwarranted, an appellee may file with the Clerk of the Court a short letter, within 10 days after the filing of the appellant's supplement to the petition under Rule 21, setting forth one of the following alternative positions: (i) that the United States submits a general opposition to the assigned error(s) of law and relies on its brief filed with the Court of Criminal Appeals; or (ii) that the United States does not oppose the granting of the petition (for some specific reason, such as an error involving an unsettled area of the law). A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.

(d) The Court may, in its discretion, examine the record in any case for the purpose of determining whether there appears to be plain error not assigned by the appellant. The Court may then

specify and grant review of any such errors as well as any assigned errors which merit review.

(e) Where no specific errors are assigned in the supplement to the petition, the Court will proceed to review the petition without awaiting an answer thereto. *See* Rule 19(a)(5).

(f) An appellant or counsel for an appellant may move to withdraw his petition at any time. *See* Rule 30.
[Amended October 1, 1987; amended July 16, 1990, effective August 15, 1990; amended October 12, 1994; amended January 20, 1999, effective February 1, 1999.]

Proposed Revision to Rule 24

Rule 24. Form, Content, and Page Limitations

(a) Form and content. All briefs shall conform to the printing, copying, and style requirements of Rule 37, shall be legible, and shall be substantially as follows:

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, (Appellee) (Appellant) (Respondent) v. _____ (Full typed name, rank, & service of accused) (Service no. ___), (Appellant) (Appellee) (Petitioner)	BRIEF ON BEHALF OF (APPELLANT, APPELLEE, ETC.) Crim. App. Dkt. No. _____ USCA Dkt. No. _____

Index of Brief
[See Rule 37(c)(1)]

Table of Cases, Statutes, and Other Authorities

Issue(s) Presented

[Set forth, *in a concise statement*, each issue granted review by the Court, raised in the certificate for review or mandatory review case, or presented in the petition for extraordinary relief, writ-appeal petition, or petition for new trial. Issues presented will be set forth in upper case letters.]

Statement of Statutory Jurisdiction

[Set forth the statutory basis of the Court of Criminal Appeals jurisdiction and the statutory basis for this Court's jurisdiction.]

Statement of the Case

[Set forth a concise chronology, including **all relevant dates, to include:** (**A**) the results of the ~~accused's~~ trial~~,~~; (**B**) action**s of the intermediate reviewing authorities** ~~by the convening authority~~ and the Court of Criminal Appeals;~~, and as well as any other pertinent information regarding the proceedings, including, where applicable, the date the petition for review was granted.~~]

(C) the disposition of a petition for reconsideration or rehearing, if filed; and (D) any other pertinent information regarding the proceedings, *including, where applicable, the date the petition for review was granted.*]

Statement of Facts

[Set forth a concise statement of the facts of the case material to the issue or issues presented, including specific page references to each relevant portion of the record of trial. Answers may adopt the appellant's or petitioner's statement of facts if there is no dispute, may state additional facts, or, if there is a dispute, may restate the facts as they appear from the appellee's or respondent's viewpoint. The repetition of uncontroverted matters is not desired.]

Summary of Argument

[*Each brief and answer shall contain a summary of argument, suitably paragraphed to correspond to each issue presented. The summary should be a succinct but accurate and clear condensation of the arguments made in the body of the brief.*]

Argument

[Discuss briefly the point of law presented, citing and quoting such authorities as are deemed pertinent. *The argument must also include for each issue presented a statement of the applicable standard of review. The standard of review may appear in the discussion of each issue or under a separate heading.*]

Conclusion

[State the relief sought as to each issue presented, for example, reversal of the Court of Criminal Appeals decision and dismissal of the charges, grant of a new trial, the extraordinary relief sought, etc. No particular form of language is required, so long as the brief concludes with a clear prayer for specific Court action.]

BILLING CODE 5001-08-C

Appendix

[The brief of the appellant or petitioner shall include an appendix containing a copy of the Court of Criminal Appeals decision, unpublished opinions cited in the brief, and relevant extracts of rules and regulations. The appellee or respondent shall similarly file an appendix containing a copy of any additional unpublished opinions and relevant extracts of rules and regulations cited in the answer.]

(Signature of counsel)

(Typed name of counsel)

(Address of counsel)

(Telephone no. of counsel)

Certificate of Filing and Service

I certify that a copy of the foregoing was [mailed] [delivered] to the Court and [mailed] [delivered] to (enter name of each counsel of record) on

(date)

(Typed name and signature)

(Address and telephone no.)

(b) Page limitations. Unless otherwise authorized by order of the Court or by motion of a party granted by the Court (*see* Rule 30), the page limitations for briefs filed with the Court, not including appendices, shall be as follows:

(1) Briefs of the appellants/petitioners shall not exceed 50 pages;

(2) Answers of the appellees/respondents shall not exceed 50 pages;

(3) Replies of the appellants/petitioners shall not exceed 15 pages.

Proposed Revision to Rule 41(a)

Rule 41. Photographing, Televising, *Recording*, or Broadcasting of Hearings

(a) The photographing, televising, ***recording***, or broadcasting of any session of the Court or other activity relating thereto is prohibited within the confines of the courthouse unless authorized by the Court.

(b) Any violation of this rule will be deemed a contempt of this Court and, after due notice and hearing, may be punished accordingly. See 18 U.S.C Sec. 401.

DATES: Comments on the proposed changes must be received by (60 days from date of publication).

ADDRESSES: Forward written comments to William A. DeCicco, Clerk of the Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20442–0001.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of the Court, telephone (202) 761–1448 (Ext. 600).

Rules Advisory Committee Comment on Rule 13(c)

The current rule requires payment of $25.00 for admission to the Court's Bar. Due to an increase in the cost of printing bar admission certificates, the fee needs to be changed. Rather than simply changing the amount in the Rule, however, an easier solution is to allow the Court to modify the amount of the fee by court order instead of a formal rule change. This procedure is similar to that of other courts and will make future changes less cumbersome. It will also give the Court more flexibility.

Rules Advisory Committee Comment on Rule 20(b) and (c)

The proposed revision to Rule 20(b) will require counsel to include on the petition for grant of review an e-mail address, if any, and information regarding the date and manner of filing. Having counsel's e-mail address will aid the Court in contacting counsel should questions arise while the case is pending. Requiring the date and manner of filing will clarify exactly when the petition was filed and whether it was mailed or delivered by hand to the Court. The proposed revision to Rule 20(c) requires the Clerk to stamp the petition with the date it was received and, for petitions filed by mail, to retain the envelope showing the postmark thereon. This change will better enable the Court to record the filing date of the petition in case the timeliness of filing becomes an issue in the case.

Rules Advisory Committee Comment on Rule 21(b)

Revised subsection (b)(2) is based upon Supreme Court Rule 14(e)(iv) and Federal Rule of Appellate Procedure 28(a)(4). Its purpose is to demonstrate that the petition is based upon a decision or order from which review may be sought and that the petition falls within the ambit of the Court's jurisdictional authority to grant review.

An example of a statement of statutory jurisdiction under this subsection would read as follows:

The jurisdictional of the [service] Court of Criminal Appeals rested upon Article 66(b)(1), UCMJ. This Court's jurisdiction is revoked under Article 67(a)(3), UCMJ.

The purpose of the revision to the extent subsection (b)(2) is to provident a concise but comprehensive summary of the history of the case with respect to which review is sought. The changes will make more information available to the Court, including the statutory basis for invoking the jurisdiction of the Court. To the extent that dates relevant to the jurisdiction of the Court are established in the record, they are to be included in this section.

Rules Advisory Committee Comment on Rule 24

This revision is based upon Supreme Court Rule 24(e) and Federal Rule of Appellate Procedure 28(a)(4). As in the case of the amendment to Rule 21(b), its purpose is to set out the statutory authorities vesting this Court with jurisdiction.

The "Statement of the Case" is modified to require a brief but comprehensive summary of the prior disposition of the case.

Rules Advisory Committee Comment on Rule 41

This revision adds a prohibition on the recording of appellate sessions within the confines of the courthouse unless authorized by the Court. This is consistent with the practice of other appellate courts and includes both video and audio record of proceedings.

Dated: June 25, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 01–16539 Filed 7–2–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 2, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or

Recordkeeping burden. OMB invites public comment.

Dated: June 27, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Report of Financial Need and Certification for the Jacob K. Javits Fellowship Program (JS).

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 100; Burden Hours: 400.

Abstract: The Department of Education (ED) uses this form to collect financial need information of students who have Javits fellowships and certification of academic progress of Javits fellows from institutions where Javits fellows attend. ED uses the data to calculate fellowship amounts for individuals and the total amount of program funds to be sent to the institution.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov/owa-cgi/owa/browsecoll?psn=01401*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address *OCIO__RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–16643 Filed 7–2–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science

Office of Science Financial Assistance Program Notice 01–27: Advanced Detector Research Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Division of High Energy Physics of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for support under its Advanced Detector Research Program. Applications should be from investigators who are currently involved in experimental high energy physics, and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of the new detector technologies needed to perform future high energy physics experiments.

DATES: To permit timely consideration for award in fiscal year 2002, formal applications submitted in response to this notice should be received before October 30, 2001.

Applicants are requested to submit a letter of intent by September 25, 2001, which includes the title of the proposal, the name of the principal investigator(s), the requested funding and a one-page abstract. Failure to submit a letter of intent will not negatively prejudice a responsive formal application submitted in a timely manner. Electronic submission of letters of intent is both acceptable and preferred.

ADDRESSES: Completed formal applications referencing Program Notice 01–27 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 01–27. The above address must also be used when submitting applications by U.S. Postal Service Express Mail, any other commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted. Due to the anticipated number of reviewers, it would be helpful for each applicant to submit an additional four copies of the application. In addition, for this notice, project descriptions must be 25 pages or less, including tables and figures, but excluding attachments. The application must also contain an abstract or project summary, letters of intent from all non-funded collaborators, and short curriculum vitae of all senior personnel.

Letters of intent referencing Program Notice 01–27, should be forwarded to: U.S. Department of Energy, Office of Science, Division of High Energy Physics, SC–221, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Michael Procario. Letters of intent can also be submitted via E-mail at the following E-mail address: *michael.procario@science.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Procario, Division of High Energy Physics, SC–221 (GTN), U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–2890. E-Mail: *michael.procario@science.doe.gov*.

SUPPLEMENTARY INFORMATION: Future high energy physics experiments will require higher performance detectors to exploit the higher beam energies and intensities of new or upgraded accelerators. Higher performance detectors are also needed to probe for new physical processes in both accelerator and non-accelerator based experiments. Proposed detector research should be driven by the anticipated needs of experiments to be built within the foreseeable future, as well as upgrades to current experiments. Interesting technologies would include, but not be limited to charged particle track detectors, calorimeters or particle identification detectors that are less sensitive to radiation, have higher resolution, are lower in cost, or can be read out faster than currently available detectors.

It is anticipated that in fiscal year 2002, approximately $500,000 will be awarded in total, subject to availability of appropriated funds. The number of awards will be determined by the number of excellent applications and the total funds available for this program. Multiple year funding of grant awards is possible, with funding provided on an annual basis subject to availability of funds. Cost sharing is encouraged but not required. It is expected that the final development or fabrication of detectors for specific experiments will not be funded by this program.

Applicants are welcome to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including DOE National Laboratories, such as Fermi National Accelerator Laboratory. In the case of collaborative applications submitted from different institutions that are directed at a single research activity, each application must have a different scope of work and a qualified principal investigator who is responsible for the research effort being performed at his or her institution. There must be a single technical description of the proposed work, and separate face pages and budget pages for each institution. The scope of work at

each institution must be clearly specified. While collaborations with researchers at FFRDCs are encouraged, no funds will be provided to those organizations under this notice. The procedure for submitting a collaborative application can be accessed via the web at *http://www.science.doe.gov/production/grants/Colab.html*. This section provides specific details regarding collaborating institutions and states, "The lead organization must submit their own grant application plus the other collaborator's applications to DOE in one package with a cover letter, which describes the role to be played by each organization, the managerial arrangements, and the advantages of the multi-organizational effort."

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605.10(d):

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

In considering item 1 particular attention will be paid to:

- The importance of the physics that motivates developing the proposed detector,
- Whether the proposed research is generic detector research that will benefit more than one experiment,
- The magnitude of the potential impact versus the risk of failure.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. Electronic access to the application guide and required forms is available on the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on June 26, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 01–16696 Filed 7–2–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Science

DOE/NSF Nuclear Science Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Department of Energy/National Science Foundation Nuclear Science Advisory Committee (NSAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, July 23, 2001; 8:30 a.m. to 6:00 p.m. and Tuesday, July 24, 2001; 8:30 a.m. to 12:00 p.m.

ADDRESSES: Doubletree Hotel, 1750 Rockville Pike, Regency Conference Room, Rockville, Maryland 20852–1699

FOR FURTHER INFORMATION CONTACT: Cathy A. Hanlin, U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–3613

SUPPLEMENTARY INFORMATION:

Purpose of Meeting

To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda

Monday, July 23, 2001, and Tuesday, July 24, 2001

- Report from the Department of Energy.
- Report from the National Science Foundation.
- Status Report on the NSAC Long Range Plan.
- Presentation of Charge to NSAC to Review and Evaluate the Scientific Opportunities in the DOE Low Energy Nuclear Physics Subprogram.
- Status Report on the Michigan State University National Superconducting Cyclotron Laboratory.
- Public Comment (10-minute rule).

Public Participation

The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Cathy A. Hanlin at 301–903–3613. You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes

The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW.; Washington, D.C., between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on June 27, 2001.

Belinda Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01–16697 Filed 7–2–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, July 12, 2001, 6 p.m.–9 p.m.

ADDRESSES: Fernald Environmental Management Project Site, Services Building Conference Room, 7400 Willey Road, Hamilton, OH 45219.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (703) 971–0030 or (513) 648–6478, or e-mail; *djsarno@theperspectivesgroup.com*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to the Department of Energy in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m.—Call to Order
6:00–6:30 p.m.—Chair's Remarks and Ex Officio Announcements

6:30–7:30 p.m.—Feasibility Study for On-Site Facilities
7:30–8:15 p.m.—Update on Site Issues
8:15–8:45 p.m.—Identify Issues for Annual Retreat Planning
8:45–9:00 p.m.—Public Comment
9:00 p.m.—Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This Notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, c/o Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on June 27, 2001.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01–16698 Filed 7–2–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, July 25, 2001; 6 p.m.–9 p.m.

ADDRESSES: Cities of Gold Hotel, 10–A Cities of Gold Road, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone (505) 989–1662; fax (505) 989–1752 or e-mail: *adubois@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00–7:00 p.m.—Opening Activities
7:00–7:30 p.m.—Public Comments
7:30–8:15 p.m.—Discussion on Recommendation requesting DOE fund a research and development project to reduce High Wattage containers
8:15–9:00 p.m.—Committee Reports: Monitoring and Surveillance, Waste Management, Environmental Restoration, Community Outreach, Bylaws, Budget

Other Board business will be conducted as necessary.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting. This **Federal Register** notice is being published less than 15 days prior to the meeting due to programmatic issues that had to be resolved prior to the meeting date.

Minutes

Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1640 Old Pecos Trail, Suite H, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http:www.nnmcab.org.*

Issued at Washington, DC on June 27, 2001.

Belinda Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01–16699 Filed 7–2–01; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–459–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 27, 2001.

Take notice that on June 19, 2001 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket bear a proposed effective date of July 1, 2001.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission (Columbia) under its Rate Schedule FSS. The costs of the above referenced storage service comprise the rates and charges payable under ESNG's respective Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's

Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 395.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–16640 Filed 7–2–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–69–001]

Petal Gas Storage, L.L.C., Notice of Amendment

June 27, 2001.

Take notice that on June 19, 2001, Petal Gas Storage, L.L.C. (Petal), 1001 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP01–69–001 an amendment to its initial application filed in Docket No. CP01–69–000, requesting authority to revise the rate Petal will charge the Southern Company Services, Inc. (Southern Company) for firm transportation service on the pipeline and the recourse rate proposed in the original application all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.rimsweb1.ferc.fed.us/rims.q?rp2~intro.* (call 202–208–2222 for assistance).

On January 23, 2001, Docket No. CP00–69–000, Petal filed to construct and operate approximately 59.0 miles of bi-directional 36-inch diameter pipeline, compression and appurtenant facilities that would commence at the terminus of Petal's storage header facility approximately 5.5 miles east of Hattiesburg, Mississippi and terminate adjacent to an existing Southern Natural Gas Company Compressor Station approximately two miles southwest of Enterprise, Mississippi. As noted in the application, the purpose of the project is to enable Petal to connect its existing storage complex with several interstate pipelines.

In the amended application, Petal states that it has revised the earlier December 22, 2000 Discount Agreement with Southern Company such that Southern Company shall pay the lesser of: (i) A monthly reservation rate of $1.20 per MMBtu or (ii) Petal's maximum FTS reservation rate.

Petal also states that it has revised its recourse rate to account for a longer depreciation period. Petal initially requested a 20-year depreciation period which corresponded with the term of the agreement with Southern Company. Petal now proposes a 40-year depreciation period (2.5% per year) reflecting the life of the proposed facilities. The longer depreciation period yields a monthly reservation recourse rate of $2.2862 per MMBtu.

Any questions regarding this application should be directed to Mr. David E. Maranville, Senior Counsel, Petal Gas Storage, L.L.C., 1001 Louisiana Street, Houston, Texas 77002–2511 or call (713) 420–3525.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 18, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a

final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–16638 Filed 7–2–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–388–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

June 27, 2001.

Take notice that on June 18, 2001, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251–1096, filed in Docket No. CP01–388–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157(A) of the regulations of the Federal Energy Regulatory Commission (Commission), for a certificate of public convenience and necessity authorizing Transco's Momentum Expansion Project (Momentum), an incremental expansion of Transco's existing pipeline system which will provide 525,896 dekatherms per day (dt/d) of new firm transportation capacity to serve increased market demand in the Southeastern region of the United States by a proposed in-service date of May 1, 2003, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed on the web at *http://www.rimsweb1.ferc.fed.us/rims.q?rp2-intro* (call 202–208–2222 for assistance).

Specifically, Transco states that it proposes to construct and operate the following facilities on its mainline pipeline system:

1. 9.22 miles of 42-inch diameter pipeline loop from Mile Post 632.89 on Transco's mainline in Amite County, Mississippi to Mile Post 642.03 in Pike County, Mississippi (the Magnolia Loop);

2. 7.90 miles of 42-inch diameter pipeline loop from Mile Post 732.65 on Transco's mainline in Jones County, Mississippi to Mile Post 740.50 (the suction side of Compressor Station No. 80) in Jones County (the Seminary Loop);

3. 16.06 miles of 42-inch diameter pipeline loop from Mile Post 756.94 on Transco's mainline in Clarke County, Mississippi to Mile Post 772.80 in Clarke County (the Hale Loop);

4. 30.00 miles of 48-inch diameter pipeline loop from Mile Post 860.78 on Transco's mainline in Perry County, Alabama to Mile Post 890.61 (the suction side of Compressor Station No. 100) in Chilton County, Alabama (the Jones Loop);

5. 3.49 miles of 42-inch diameter pipeline loop from Mile Post 905.74 on Transco's mainline in Chilton County, Alabama to Mile Post 909.20 in Chilton County (the Richville Loop);

6. 21.54 miles of 42-inch diameter pipeline loop from Mile Post 926.87 (the discharge side of Compressor Station No. 105) on Transco's mainline in Coosa County, Alabama to Mile Post 948.13 in Tallapoosa County, Alabama (the Kellyton Loop);

7. 7.51 miles of 42-inch diameter pipeline loop from Mile Post 1,124,74 (the discharge side of Compressor Station No. 130) on Transco's mainline in Madison County, Georgia to Mile Post 1,132.23 in Elbert County, Georgia (the Bowman Loop);

8. 4.18 miles of 42-inch diameter pipeline loop from Mile Post 1,201.71 on Transco's mainline in Spartanburg County, South Carolina to Mile Post 1,205.81 (the suction side of Compressor Station No. 140) in Spartanburg County (the Greenville Loop);

9. The installation of one new 15,000 horsepower compressor unit at Transco's existing Compressor Station No. 90, which is located in Marengo County, Alabama;

10. The installation of one new 15,000 horsepower compressor unit at Transco's existing Compressor Station No. 105, which is located in Coosa County, Alabama;

11. The installation of one new 15,000 horsepower compressor unit at Transco's existing Compressor Station No. 110, which is located in Randolph County, Alabama;

12. The uprating of an existing 18,975 horsepower compressor unit (Unit No. 3) to 22,500 horsepower at Transco's existing Compressor Station No. 115, which is located in Coweta County, Georgia;

13. The installation of one new 15,000 horsepower compressor unit at Transco's existing Compressor Station No. 125, which is located in Walton County, Georgia;

14. The installation of gas coolers for existing Unit No. 18 at Transco's existing Compressor Station No. 130, which is located in Madison County, Georgia; and

15. The installation of one new 15,000 horsepower compressor unit with gas coolers and the installation of high-pressure fuel injection on existing Unit No. 10 at Transco's existing Compressor Station No. 160, which is located in Rockingham County, North Carolina.

Transco states that it estimates that the proposed facilities will cost approximately $300 million. Transco states that the construction and operation of the proposed facilities will not have a significant impact on human health or the environment. The proposed facilities, for the most part, will be installed either entirely within or immediately adjacent to existing pipeline or utility rights-of-way and Transco's existing compressor station yards. Transco certifies that the proposed facilities will be designed, constructed, inspected, tested, operated and maintained in accordance with all applicable safety standards and plans for maintenance and inspection.

Transco states that it held an open season from August 31 through September 29, 2000, during which it received written requests from potential shippers desiring new firm transportion service to be made available as a result of the Momentum project. As a result of the open season, Transco executed precedent agreements with the following nineteen shippers: Athens Development Company, L.L.C. (85,000 dt/d); Calpine Energy Services, L.P. (30,000 dt/d); Cardinal FG (3,400 dt/d); Cargill Inc. (750 dt/d); Carolina Power & Light Company (75,000 dt/d); City of Buford, Georgia (2,070 dt/d); City of Covington, Georgia (518 dt/d); City of Elberton, Georgia (207 dt/d); City of Lawrenceville, Georgia (10,350 dt/d); City of Madison, Georgia (207 dt/d); City of Sugar Hill, Georgia (776 dt/d); City of Winder, Georgia (518 dt/d); Clinton-Newberry Natural Gas Authority (1,500 dt/d); Exelon Generating Company, L.L.C. (80,000 dt/d); Fort Hill Natural Gas Authority (3,000 dt/d); Genpower Anderson, L.L.C. (60,000 dt/d); Hartwell Development Company, L.L.C. (85,000 dt/d); Oglethorpe Power Corporation (An Electric Membership Corporation) (81,600 dt/d); and Sylacauga Utilities Board (6,000 dt/d). Transco states that 100% of the firm capacity to be created by the Momentum project is subscribed to by these nineteen shippers.

Transco states that the firm transportation service under the Momentum project will be provided under Rate Schedule FT of Transco's FERC Gas Tariff, Volume No. 1, and Transco's blanket certificate under Part 284 (G) of the Commission's regulations. Transco states that the proposed cost-based resources rates for the Momentum project are based on a straight fixed-variable rate design methodology and an incremental cost of service.

Transco states that it requests that the Commission issue a preliminary

determination on the non-environmental aspects of this proposal by December 1, 2001 and a final order granting the authorizations requested herein by April 15, 2002.

Any questions regarding this application should be directed to Toi Anderson, Transcontinental Gas Pipe Line Corporation, P.O. 1396, Houston, Texas 77251–1396 or call (713) 215–4540. In addition, Transco states that it will establish a toll-free telephone number so that interested parties can call with questions about the Momentum project.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 18, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–16639 Filed 7–2–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–95–000, *et al.*]

Kinder Morgan Power Company, *et al.*; Electric Rate and Corporate Regulation Filings

June 26, 2001.

Take notice that the following filings have been made with the Commission:

1. Kinder Morgan Power Co.

[Docket No. EL01–95–000]

Take notice that on June 15, 2001, Kinder Morgan Power Company (Petitioner), on behalf of certain grantor trusts, business trusts and/or limited liability companies of which financial institutions would be the sole beneficiaries or members filed with the Federal Energy Regulatory Commission (Commission), a petition for declaratory order disclaiming jurisdiction and request for expedited consideration.

Petitioner is seeking a disclaimer of jurisdiction on connection with a lease financing involving three Facilities under development.

Comment date: July 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Tucson Electric Power Company

Docket Nos. ER01–208–003, ER00–771–005

Take notice that on June 20, 2001, Tucson Electric Power Company (Tucson) tendered for filing its compliance filing in response to the Commission's order dated November 30, 2000, which required Tucson to modify its Protocol Manual found as Attachment K to its open access transmission tariff.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Progress Energy on Behalf of Carolina Power & Light Company

[Docket No. ER01–1708–001]

Take notice that on June 20, 2001, Carolina Power & Light Company (CP&L) amended the Service Agreement originally filed in this docket to reflect the correct Service Agreement number. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates. Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

CP&L requests an effective date of June 1, 2001 for this Service Agreement.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Fountain Valley Power, L.L.C.

[Docket No. ER01–1784–001

Take notice that on June 20, 2001, Fountain Valley Power, L.L.C. and Public Service Company of Colorado, tendered for filing with the Federal Energy Regulatory Commission (Commission), revised First Substitute Service Agreement No. 1 in accordance with the Commission's June 11, 2001 Order in Docket No. ER01–1784–000.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER01–1789–001]

Take notice that on June 20, 2001, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, filed with the Commission a service agreement designation as required by Order No. 614 and the Letter Order issued on May 24, 2001 in this docket.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Warren Power, LLC

[Docket No. ER01–1804–001]

Take notice that on June 20, 2001, Warren Power, LLC tendered a compliance filing for authorization to sell power at market-based rates. Copies of this filing have been served on the Arkansas Public Service Commission, Mississippi Public Service Commission, Louisiana Public Service Commission, Public Utility Commission of Texas, and the Council of the City of New Orleans.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Beacon Generating LLC

[Docket No. ER01–2355–000]

Take notice that on June 19, 2001, Becaon Generating LLC (Beacon), tendered for filing with the Federal Energy Regulatory Commission (Commission), a Petition requesting acceptance of Beacon's Initial Rate Schedule FERC No. 1, Waivers and Blanket Authority.

Comment date: July 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Xcel Energy Services Inc.

[Docket No. ER01–2357–000]

Take notice that on June 20, 2001, Xcel Energy Services Inc. (XES), on behalf of Southwestern Public Service Company (Southwestern), submitted for filing a Transaction Agreement and Master Power Sale Agreement (Master Agreement) between Southwestern and Midwest Energy, Inc., The Master Agreement is an umbrella service agreement under Southwestern's Rate Schedule for Market-Based Power Sales (FERC Electric Tariff, Second Revised Volume No. 3). XES requests that this agreement become effective on May 31, 2001.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER01–2362–000]

Take notice that on June 20, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing two unexecuted Generator Interconnection and Operating Agreements (Interconnection Agreements) with Old Dominion Electric Cooperative (Old Dominion) for the Louisa CT Project and the Marsh Run Project. The Interconnection Agreements set forth the terms and conditions under which Dominion Virginia Power will provide interconnection service for the two projects. Dominion Virginia Power requests an effective date of August 20, 2001 for the two Interconnection Agreements.

Copies of the filing were served upon Old Dominion and the Virginia State Corporation Commission.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. PPL EnergyPlus, LLC

[Docket No. ER01–2363–000]

Take notice that on June 20, 2001, PPL EnergyPlus, LLC (PPL EnergyPlus) filed with the Commission a Generation Supply Agreement between PPL EnergyPlus and PPL Electric Utilities Corporation. PPL EnergyPlus requests that the Commission permit the Generation Supply Agreement to become effective on January 1, 2002.

PPL EnergyPlus states that it has served a copy of this filing on PPL Electric Utilities Corporation.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator Corporation

[Docket No. ER01–2364–000]

Take notice that the California Independent System Operator Corporation, on June 20, 2001, tendered for filing an Amendment to Schedule 1 of the Participating Generator Agreement between the ISO and Fresno Cogeneration Partners, LP (Fresno Cogen) for acceptance by the Commission. The ISO states that this filing has been served on Fresno Cogen and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective June 15, 2001.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. California Independent System Operator Corporation

[Docket No. ER01–2365–000]

Take notice that the California Independent System Operator Corporation, on June 20, 2001, tendered for filing an Amendment to Schedule 1 of the Participating Generator Agreement between the ISO and Sierra Power Corporation (Sierra Power) for acceptance by the Commission. The ISO states that this filing has been served on Sierra Power and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective June 13, 2001.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Company

[Docket No. ER01–2366–000]

Take notice that on June 20, 2001, New England Power Company (NEP) submitted for filing a Related Facilities Agreement (Agreement) between NEP and Sithe Fore River Development LLC (Sithe) for replacement and/or relocation of certain transmission facilities owned by NEP. The Agreement is designated as NEP's Rate Schedule FERC No. 510. Copies of the filing were served upon Sithe and the Department of Telecommunications and Energy of the Commonwealth of Massachusetts.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Reliant Energy Aurora, LP

[Docket No. ER01–2367–000]

Take notice that on June 21, 2001 Reliant Energy Aurora, LP (Reliant Aurora) tendered for filing a Master Power Purchase and Sale Agreement between Reliant Energy Services, Inc. (RES) as agent for Reliant Aurora and Alliant Energy Corporate Services, Inc. (Alliant) as agent for Wisconsin Electric

Power Company or IES Utilities, Inc or Interstate Power Company establishing WEPCO as a customer under Reliant Aurora's market-based tariff. Reliant Aurora its requests an effective date of June 1, 2001.

Reliant Aurora states that a copy of the filing was served on Alliant.

Comment date: July 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Reliant Energy Aurora, LP

[Docket No. ER01–2368–000]

Take notice that on June 21, 2001 Reliant Energy Aurora, LP (Reliant Aurora) tendered for filing a service agreement establishing Reliant Energy Services, Inc. (RES) as a customer under Reliant Aurora's market-based rate tariffs. Reliant Aurora requests an effective date of June 1, 2001 for the service agreement.

Comment date: July 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Public Service Corporation

[Docket No. ER01–2369–000]

Take notice that, on June 21, 2001, Wisconsin Public Service Corporation (WPSC) filed an unexecuted long-term service agreement with Duke Energy Lee, LLC (Duke) under WPSC's market-based rate tariff, FERC Electric Tariff, Third Revised Volume No. 10 (Tariff). A copy of the filing was served upon Duke.

WPSC requests that the Commission waive its notice of filing requirements to allow the service agreement to become effective on May 22, 2001.

Comment date: July 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Idaho Power Company

[Docket No. ER01–2372–000]

Take notice that on June 21, 2001, Idaho Power Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Duke Energy Trading and Marketing, LLC, under its open access transmission tariff in the above-captioned proceeding.

Idaho Power requests the Commission accept this Service Agreement for filing and designate an effective date of June 11, 2001.

Comment date: July 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Idaho Power Company

[Docket No. ER01–2373–000]

Take notice that on June 21, 2001, Idaho Power Company filed a Service Agreement for Non-Firm Point-to-Point Transmission Service between Idaho Power Duke Energy Trading and Marketing, LLC, under its open access transmission tariff in the above-captioned proceeding.

Idaho Power requests the Commission accept this Service Agreement for filing and designate an effective date of June 11, 2001.

Comment date: July 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Puget Sound Energy, Inc.

[Docket No. ER01–2374–000]

Take notice that on June 21, 2001, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a service agreement for Firm Point-To-Point Transmission Service and a service agreement for Non-Firm Point-To-Point Transmission Service with Duke Energy Trading and Marketing, LLC (DETM), as Transmission Customer. A copy of the filing was served upon DETM.

Comment date: July 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Michigan Electric Transmission Company

[Docket No. ER01–2375–000]

Take notice that on June 21, 2001 Michigan Electric Transmission Company (Michigan Transco) tendered for filing an unexecuted Generator Interconnection and Operating Agreement Between Consumers and Covert Generating Company, LLC (Generator) (Agreement). Generator had requested that the unexecuted Agreement be filed. Consumers requested that the Agreement be allowed to become effective June 21, 2001.

Copies of the filing were served upon Generator and the Michigan Public Service Commission.

Comment date: July 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Tucson Electric Power Company

[Docket No. ER01–2384–000]

Take notice that on June 20, 2001, Tucson Electric Power Company (Tucson) filed proposed modifications to its Retail Competition Protocols (Attachment K of Tucson's open access transmission tariff), reflecting changes to the definitions of System Incremental Cost and Market Price. A copy of this filing has been served on all parties to the official service list.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–16665 Filed 7–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2864–016 Washington]

Calligan Hydro Inc., Notice of Availability of Draft Environmental Assessment

June 27, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for amendment of the license for the Calligan Creek Hydroelectric Project, located on Calligan Creek in King County, Washington, and has prepared a Draft Environmental Assessment (DEA) for the project. No federal lands are affected by this project.

The DEA contains the staff's analysis of the potential environmental impacts of modifications to the project and concludes that amending the license for the project, with appropriate environmental protective measures, would not constitute a major federal

action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The DEA may be viewed on the web at http// www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 8864–016 to all comments. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

For further information, contact Kenneth Hogan at (202) 208–0434.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–16642 Filed 7–2–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

June 27, 2001.

a. *Type of Application:* Settlement Agreement on New License Application.

b. *Project No.:* 1927–008.

c. *Date filed:* June 21, 2001.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* North Umpqua Hydroelectric Project.

f. *Location:* On the North Umpqua River, in Douglas County, Oregon. The project occupies about 2, 725 acres of land within the Umpqua National Forest, and about 117 acres of land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Timothy C. O'Connor, Director, Hydro Operations, PacifiCorp 825 Multnomah, Suite 1500, Portland, OR 97232, (503) 813–6660, and James M. Lynch, Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, WA 98101–3197, (206) 624–0900.

i. *FERC Contact:* John Smith, 202–219–2460, john.smith@ferc.fed.us.

j. *Deadline for filing comments:* July 27, 2001. Reply comments due August 11, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Filing:* PacifiCorp filed the Settlement Agreement on behalf of itself and the U.S. Department of Agriculture's Forest Service, U.S. Department of Commerce's National Maritime Fisheries Service, U.S. Department of the Interior's Fish and Wildlife Service and Bureau of Land Management, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, and Oregon Water Resources Department. The purpose of the Settlement Agreement is to resolve among the signatories all issues regarding relicensing of the North Umpqua Hydroelectric Project (FERC Project No. 1927). The signatories request that the Commission accept and incorporate, without material modification, as license articles in the new license all of the Governmental Parties' Final Terms and Conditions filed with the Commission in connection with this agreement. Comments and reply comments on the Settlement Agreement are due on the dates listed above.

l. Copies of the Settlement Agreement are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). Copies are also available for inspection and reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–16641 Filed 7–2–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7006–3]

Agency Information Collection Activities: Continuing Collection; Comment Request; Regulation of Fuels and Fuel Additives; Gasoline Volatility; Reporting Requirements for Refiners, Blenders, Importers, and Transferors of Gasoline Containing Ethanol, and Reporting Requirements for Parties Seeking a Testing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Regulation of Fuels and Fuel Additives; Gasoline Volatility; Reporting Requirements for Refiners, Blenders, Importers, and Transferors of Gasoline Containing Ethanol, and Reporting Requirements for Parties Seeking a Testing Exemption (40 CFR 80.27), (EPA ICR Number 1367.06, OMB Control Number 2060–0178, expiration date: 12–31–01). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 4, 2001.

ADDRESSES: Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation, Mail Code 6406J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001. A paper or electronic copy of the draft ICR may be obtained without charge by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, (202) 564–9303, fax: (202) 565–2085, caldwell.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which produce, import, or transfer gasoline

containing ethanol, or who wish to obtain a testing exemption.

Title: Regulation of Fuels and Fuel Additives; Gasoline Volatility; Reporting Requirements for Refiners, Blenders, Importers, and Transferors of Gasoline Containing Ethanol, and Reporting Requirements for Parties Seeking a Testing Exemption (40 CFR 80.27), EPA ICR Number 1367.06, OMB Control Number 2060–0178, expiring 12–31–01.

Abstract: Gasoline volatility, as measured by Reid Vapor Pressure (RVP) in pounds per square inch (psi), is controlled in the spring and summer in order to minimize evaporative hydrocarbon emissions from motor vehicles. RVP ranges generally from about 7 psi to 9 psi, depending on location. The addition of ethanol to gasoline increases the RVP by about 1 psi. Gasoline that contains at least 9 volume percent ethanol is subject to a standard that is 1 psi greater. As an aid to industry compliance and EPA enforcement, the product transfer document which accompanies a shipment of gasoline containing ethanol is required by regulation to contain a legible and conspicuous statement that the gasoline contains ethanol and the percentage concentration of ethanol. This is intended to deter the mixing within the distribution system, particularly in retail storage tanks, of gasoline which contains ethanol with gasoline which does not contain ethanol. Such mixing would likely result in a gasoline with an ethanol concentration of less than 9 volume percent but with an RVP above the standard. Parties wishing a testing exemption must submit certain information to EPA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA estimates that there at 3,000,000 shipments annually of gasoline containing ethanol. Thus the required statement must be placed on 3,000,000 product transfer documents annually. Such documents are a customary business practice, so the burden is limited to the placement of the statement, which is generally computer-generated or hand-stamped. EPA estimates an average burden of 5 seconds per document, for a total annual burden for 3,000,000 documents of 4,170 hours. At an estimated industry labor cost of $60 per hour, EPA estimates the labor cost burden at $250,200 for about 1,000 parties which produce or import gasoline containing ethanol. Thus the cost per party is about $250 annually. There are no start-up costs, as they were incurred some years ago at the start of the program. There are no annualized capital costs and no operation and maintenance costs because the product transfer documents are in use for other reasons and there are no recordkeeping requirements. There are no purchase-of-services costs. There is no burden for transferors of gasoline containing ethanol because the product transfer document that accompanies each shipment is already handled as a customary business practice. It is estimated that EPA will receive 2 requests annually for testing exemptions, at 4 hours burden and $240 labor cost per request. An operating and maintenance cost for postage and copying of $10 per request is estimated. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 22, 2001.

Michael G. Shields,

Acting Director, Transportation and Regional Programs Division.

[FR Doc. 01–16688 Filed 7–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7006–5]

Program To Build Local Capacity To Conduct Assessments of the Impacts of Climate Change and Variability on Aquatic Ecosystems and Water Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of funds and request for applications for cooperative agreements.

SUMMARY: The Environmental Protection Agency (EPA), Office of Research and Development, National Center for Environmental Assessment, Global Change Research Program is issuing a Request for Applications (RFA) for Cooperative Agreements to Provide Assistance to State/Tribal/Other Local Environmental Protection Agencies to Conduct Location-Specific Assessments of the Impacts of Climate Change and Variability on Aquatic Ecosystems and Water Quality. (For the purposes of this solicitation, "local" describes any entity that operates at a smaller spatial scale than the regional or national scale. Examples include states, tribes, U.S. territories, counties, municipalities, and watersheds.) In addition, universities and non-profit organizations may apply for assistance under this program if they will use EPA funds to provide support to state/tribal/other local government environmental protection agencies.

Specifically, funding recipients will assess the potential effects of climate change and variability on water quality (with respect to drinking water, wastewater treatment, surface water, and/or ground water) and/or the effects on aquatic ecosystems (streams, rivers, lakes, wetlands, estuaries, and/or coral reefs). The purpose of these cooperative agreements is to build local capacity by providing physical resources (through cooperative agreement funding) and technical assistance necessary to conduct pilot assessment projects. These pilot projects will help groups that receive funds to develop the capacity to conduct additional assessments on their own, and will generate model methodologies and approaches that can be applied by other local authorities. Applicants are encouraged to develop cooperative

relationships with other organizations, educational institutions, citizens groups, water quality authorities (e.g., water suppliers, treatment plants) and/or other non-federal governmental entities to achieve these purposes. Any transactions with such groups involving transfer of EPA funds must comply with applicable regulations. Awards are estimated to range from $25,000 to $100,000 total over a one- to three-year period. Depending on funding availability, up to approximately $300,000 will be available to fund approximately three to six awards.

DATES: Applications must be postmarked, dated by a delivery service, or marked received by NCEA/Global personnel by October 18, 2001.

ADDRESSES: Solicitation packages are available on NCEA's web site (http://www.epa.gov/ncea/) and on the Global Change Research Program's web site (http://www.epa.gov/globalresearch/). A list of resources that may be useful to applicants is also posted on the Global Change Research Program web site. Information about the full application process and application forms are found in the "Application Kit for Assistance." Paper copies may be requested from the EPA contact person at the address and phone number below.

FOR FURTHER INFORMATION CONTACT: David Kelley, preferably by email: kelley.dave@epa.gov; also by mail: National Center for Environmental Assessment (8623D); Office of Research and Development, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; physical location and overnight delivery: 808 17th Street, NW., 5th floor, Washington, DC 20006; telephone: 202–564–3263; or facsimile: 202–564–2268.

Dated: June 21, 2001.

Arthur F. Payne,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 01–16686 Filed 7–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7006–2]

Public Water System Supervision Program Revision for the State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Texas is revising its approved Public Water System Supervision Program. Texas has adopted an Interim Enhanced Surface Water Treatment Rule to improve control of microbial pathogens in drinking water, including specifically the protozoan Cryptosporidium, and a Stage 1 Disinfectant/Disinfection Byproducts Rule, setting new requirements to limit the formation of chemical disinfectant byproducts in drinking water. Texas has also adopted drinking water regulations requiring consumer confidence reports from all community water systems, has adopted a revised definition for public water system, and has revised Texas administrative penalty authority. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted by August 2, 2001 to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by August 2, 2001, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on August 2, 2001. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Texas Natural Resource Conservation Commission, Water Permits and Resource Management Division, Public Drinking Water Section (MC–155), Building F, 12100 Park 35 Circle, Austin, TX 78753; and United States Environmental Protection Agency, Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Tom Poeton, EPA Region 6, Drinking Water Section at the Dallas address given above or at telephone (214) 665–2757.

Authority: (Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations)

Dated: June 25, 2001.

Sam Becker,

Acting Regional Administrator, Region 6.

[FR Doc. 01–16687 Filed 7–2–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 99–216; DA 01–1485]

The Commission Will No Longer Accept Applications for Certification and Petitions for Waiver of Technical Criteria

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 22, 2001, the Commission released a public notice announcing that after July 23, 2001, the Commission will no longer accept applications for certification of terminal equipment and petitions for waiver of technical criteria. The intended effect of this action is to make the public aware of the changes to the rules.

FOR FURTHER INFORMATION CONTACT: Bill Howden at (202) 418–2343, *whowden@fee.gov* or Susan Magnotti, at (202) 418–0871, *smagnotti@fee.gov*. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, SW, Suite 6A207, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Pursuant to *In the Matter of 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations*, CC Docket 99–216, *Report and Order*, FCC 00–400, 66 FR 7579 (January 24, 2001) (*Order*), the Commission will no longer accept applications for certification of terminal equipment under 47 CFR part 68 as of July 23, 2001. Also, petitions for waiver of the part 68 rules that were eliminated in the *Order*, including those pertaining to the Commission's streamlined waiver process for stutter dial tone (section 68.312(i)) and ADSL/RADSL terminal equipment (section 68.308(e)(1)), should

no longer be filed with the Commission after July 23, 2001. As of July 23, 2001, parties seeking to request exceptions or interim criteria for their terminal equipment that does not meet the published technical criteria should contact the Administrative Council for Terminal Attachments (ACTA). The Commission's rules pertaining to hearing aid compatibility and volume control are not affected by this action.

The ACTA, established by the Commission in the *Order*, is responsible for establishing and maintaining a database of equipment found to be compliant with industry-established technical criteria, establishing numbering and labeling requirements, and establishing filing requirements for certification.

The *Order* requires certification of terminal equipment by one of two methods. The first method, which is currently available to applicants, is certification by a Telecommunication Certification Body (TCB). Once ACTA establishes filing requirements for TCBs and so notifies them, TCBs must send their certificates to ACTA's designated receiver. Until that time, TCBs may continue to send their certificates to the Commission.

Once ACTA establishes the supporting database, numbering and labeling requirements, and data filing requirements, the second method, self-declaration of conformity (SDoC) certification, will be available to terminal equipment suppliers. At that time, suppliers declaring conformity may send required data to ACTA's designated receiver. Parties seeking information on the SDoC certification method may contact Tim Jeffries, (202) 662–8669, email: *tjeffries@atis.org*.

Federal Communications Commission.

Diane Griffin Harmon,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 01–16652 Filed 7–2–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10 a.m.—August 15, 2001.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be open to the public, and the remainder of the meeting will be closed.

MATTERS TO BE CONSIDERED: The Open Portion of the Meeting:

1. Ocean Shipping Reform Act Impact Study; Docket No. 01–01—The Impact of the Ocean Shipping Reform Act of 1998.

The Closed Portion of the Meeting:

1. Docket No. 98–14—Shipping Restrictions, Requirements and Practices of the Peoples Republic of China.

2. Petition No. P3–00—Petition of China Ocean Shipping (Group) Company for a Partial Exemption from the Controlled Carrier Act.

3. Petition No. P2–00—Petition of China National Foreign Trade Transportation (Group) Corp. (SINOTRANS) for Exemption from Section 9(c) of the Shipping Act of 1984.

4. Issues Arising Under the Shipping Act of 1984 Relating to Controlled Carriers of the People's Republic of China.

5. Docket No. 99–18— Stallion Cargo, Inc.—Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–16803 Filed 6–29–01; 2:42 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq. (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 27, 2001.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Maryland Bankcorp, Inc., Lexington Park, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Maryland Bank & Trust Company, N.A., Lexington Park, Maryland.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. JSA Family Limited Partnership, Frankston, Texas; to become a bank holding company by acquiring 16 percent of the voting shares of Austin Bancorp, Inc., Jacksonville, Texas, and thereby indirectly acquire TEB, Inc., Shreveport, Louisiana, and Austin Bank, Texas; National Association, Jacksonville, Texas; 12.10 percent of the voting shares of Capital Bancorp, Inc., Jacinto City, Texas; and thereby indirectly acquire voting shares of JACI, Inc., Wilmington, Delaware, and Capital Bank, Jacinto City, Texas; 7.73 percent of the voting shares of Frankston Bancorp, Inc., Frankston, Texas, and thereby indirectly acquire voting shares of FDB. Inc., Dover, Delaware, and First State Bank, Frankston, Texas; and 4.31 percent of the voting shares of First State Bank, Athens, Texas.

Board of Governors of the Federal Reserve System, June 27, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–16624 Filed 7–2–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 11 a.m., Monday, July 9, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 29, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–16802 Filed 6–29–01; 2:42 pm]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10 a.m. (EDT); July 9, 2001.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the June 11, 2001, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: June 28, 2001.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 01–16776 Filed 6–29–01; 10:59 am]

BILLING CODE 6760–01–M

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request: Proposed Updated Qualified Trust Model Certificates and Model Trust Documents

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: This notice informs the public and executive branch agencies that, after this first round notice and comment period, OGE plans to submit updated executive branch qualified trust model certificates and model trust documents to the Office of Management and Budget (OMB) for review and three-year extension of approval under the Paperwork Reduction Act. In all, a total of twelve OGE model certificates and model documents for qualified trusts are involved. The notice also identifies a minor revision proposed to these documents.

DATES: Comments by the public and agencies on this information collection as proposed for revision and extension are invited and should be received by September 17, 2001.

ADDRESSES: Any comments should be sent to: James V. Parle, Chief, Office of Information Resources Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Comments may also be sent electronically to OGE's Internet E-mail address at usoge@oge.gov (for E-mail messages, the subject line should include the following reference—"Qualified trust model certificates and model trust documents paperwork comment").

FOR FURTHER INFORMATION CONTACT: Mr. Parle at the Office of Government Ethics; telephone: 202–208–8000, ext. 1113; TDD: 202–208–8025; FAX: 202–208–8037. A copy of all of the updated model trust documents and certificates may be obtained, without charge, by contacting Mr. Parle.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act of 1978 (Ethics Act). Presidential nominees to executive branch positions subject to Senate confirmation and any other executive branch officials may seek OGE approval for Ethics Act qualified blind or diversified trusts to be used to avoid conflicts of interest.

The Office of Government Ethics is the sponsoring agency for the model certificates and model trust documents for qualified blind and diversified trusts of executive branch officials set up under section 102(f) of the Ethics Act, 5 U.S.C. app. § 102(f), and OGE's implementing financial disclosure regulations at subpart D of 5 CFR part 2634. The various model certificates and model trust documents are utilized by OGE and settlors, trustees and other fiduciaries in establishing and administering these qualified trusts.

This notice describes a minor proposed change to the qualified trust model documents. The proposed updating change is a minor improvement that will enhance privacy with respect to trust instruments once executed. The Office of Government Ethics proposes to substitute the words "mailing address" for the words "home address" where they appear within the model trust documents. No change is needed for the model certificates of independence and compliance as codified at appendices A–C to 5 CFR part 2634.

The Office of Government Ethics is planning to submit, after this first round notice and comment period, updated versions of all twelve qualified trust certificates and model documents described below (all of which are included under OMB paperwork control number 3209–0007) for a three-year extension of approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). At that time, OGE will publish a second paperwork notice in the **Federal Register** to inform the public and the agencies. The current paperwork approval for the model certificates and model trust documents is scheduled to expire at the end of October 2001.

There are two categories of information collection requirements which OGE plans to submit, each with its own related reporting model certificates or model trust documents which are subject to paperwork review and approval by OMB. The OGE regulatory citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. Qualified trust certifications—5 CFR 2634.401(d)(2), 2634.403(b)(11), 2634.404(c)(11), 2634.406(a)(3) & (b), 2634.408, 2634.409 and appendices A & B to part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are codified respectively in the cited appendices; see also the Privacy Act and Paperwork Reduction Act notices thereto in appendix C); and

ii. Qualified trust communications and model provisions and agreements—5 CFR 2634.401(c)(1)(i) & (d)(2),

2634.403(b), 2634.404(c), 2634.408 and 2634.409 (the nine implementing forms are the: (A) Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications); (B) Model Qualified Blind Trust Provisions; (C) Model Qualified Diversified Trust Provisions; (D) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries); (E) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (F) Model Qualified Diversified Trust Provisions (Hybrid Version); (G) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries); (H) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (I) Model Confidentiality Agreement Provisions (For Use in the Case of a Privately Owned Business); and (J) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities)).

The various model trust certificates and model trust documents as proposed to be modified are available without charge to the public upon request as indicated in the "For Further Information Contact" section above.

The communications formats and the confidentiality agreements (items ii (A), (I) and (J) above) would not be available to the public because they contain sensitive, confidential information. All the other completed model trust certificates and model trust documents (except for any trust provisions that relate to the testamentary disposition of trust assets) are publicly available based upon a proper Ethics Act request (by filling out an OGE Form 201 access form).

The total annual public reporting burden represents the time involved for completing qualified trust certificates and model trust documents which are processed by OGE. The burden is based on the amount of time imposed on private citizens. Virtually all filers/document users are private trust administrators and other private representatives who help to set up and maintain the qualified blind and diversified trusts. The detailed paperwork estimates below for the various trust certificates and model trust documents, which remain the same as for the last paperwork clearance three years ago, are based primarily on OGE's experience with administration of the qualified trust program.

i. Trust Certificates:

A. Certificate of Independence: Total filers (executive branch): 10; Private citizen filers (100%): 10; OGE-processed certificates (private citizens): 10; OGE burden hours (20 minutes/certificate): 3.

B. Certificate of Compliance: Total filers (executive branch): 35; Private citizen filers (100%): 35; OGE-processed certificates (private citizens): 35; OGE burden hours (20 minutes/certificate): 12; and

ii. Model Qualified Trust Documents:

A. Blind Trust Communications: Total Users (executive branch): 35; Private citizen users (100%): 35; OGE-processed documents (private citizens): 210 (based on an average of six communications per user, per year); OGE burden hours (20 minutes/communication): 70.

B. Model Qualified Blind Trust: Total Users (executive branch): 10; Private citizen users (100%): 10; OGE-processed models (private citizens): 10; OGE burden hours (100 hours/model): 1,000.

C. Model Qualified Diversified Trust: Total users (executive branch): 15; Private citizen users (100%): 15; OGE-processed models (private citizens): 15; OGE burden hours (100 hours/model): 1,500.

D.–H. Each of the five remaining model qualified trust documents: Total users (executive branch): 2; Private citizen users (100%): 2; OGE-processed models (private citizens): 2, multiplied by 5 (five different models) = 10; OGE burden hours (100 hours/model): 200, multiplied by 5 (five different models) = 1,000.

I.–J. Each of the two model confidentiality agreements: Total users (executive branch): 2; Private citizens users (100%): 2; OGE-processed agreements (private citizens): 2, multiplied by 2 (two different models) = 4; OGE burden hours (50 hours/agreement): 100, multiplied by 2 (two different models) = 200.

Based on these estimates, the total number of forms expected annually at OGE is 294 with a cumulative total of 3,785 burden hours.

Public comment is invited on each aspect of the model qualified trust certificates and model trust documents, and underlying regulatory provisions, as set forth in this notice, including specifically views on the need for and practical utility of this set of collections of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of the OMB paperwork approval for the set of the various existing qualified trust model certificates, the model communications package, and the model trust documents as updated. The comments will also become a matter of public record.

Approved: June 25, 2001.

Amy L. Comstock,

Director, Office of Government Ethics.

[FR Doc. 01–16619 Filed 7–2–01; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Notice of a Cooperative Agreement With the Manpower Demonstration Research Corporation

AGENCY: Office of the Assistant Secretary for Planning and Evaluation (ASPE).

The Office of the Assistant Secretary for Planning and Evaluation's (ASPE) Office of Human Services Policy announces its intention to award a non-competitive continuation to a cooperative agreement with the Manpower Demonstration Research Corporation (MDRC) in support of the Project on Devolution and Urban Change.

The purpose of this cooperative agreement is to support research to understand the impacts of welfare reform and welfare to work programs on low-income individuals, families, and the communities in which they live, with an emphasis on urban areas.

ASPE will have substantial involvement in all stages of the project, including: identifying potential questions that could be answered using the data; prioritizing among them based on the available resources; determining appropriate methods of data analysis; reviewing draft papers and reports; and assisting in their dissemination.

The goal of ASPE in entering into this cooperative agreement is to improve our understanding of the impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in high-poverty urban areas.

Authorizing Legislation

This cooperative agreement is authorized under Section 1110 of the Social Security Act (42 U.S.C. 1310) and the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001 (P.L. 106–387).

Background

Assistance will be provided to MDRC. No other applications are solicited. ASPE is committed to supporting high-quality research in the area of welfare

policy, and has a particular interest in understanding the effects of welfare reform in urban areas. Most welfare reform studies to date have not been in large cities, and thus have not addressed the challenges posed by high levels of unemployment and by concentrated poverty. These questions are critical because caseloads have not declined as much in cities as in other parts of the country, and also because the lessons from urban areas may be applicable elsewhere in the case of an economic downturn.

ASPE believes that MDRC is uniquely qualified to work with ASPE to meet this goal for the following reasons:

1. The Project on Devolution and Urban Change presents a unique opportunity to learn about the implementation and impacts of welfare reform in four large urban areas—Cleveland, Philadelphia, Los Angeles, and Miami. MDRC has an ongoing working relationship with key officials in each city and has already obtained commitments from the state and local governments in these areas to provide extensive longitudinal administrative data for research purposes.

2. This project brings together data from an unusually wide array of sources: longitudinal administrative data for all families receiving AFDC/TANF or Food Stamps dating back to 1992; survey data; an implementation study; neighborhood indicators; an institutional study focusing on local service providers; and an ethnographic study of a limited number of families. This will allow the researchers to capture effects that might be missed in one approach, and to improve our understanding of the strengths and weaknesses of each approach. It is unlikely that this breadth of sources could be replicated. MDRC has assembled a multi-disciplinary team of distinguished researchers to collect and analyze this data.

3. This project leverages a substantial commitment of private sector funding. Of the total $20.4 million cost of the Project on Devolution and Urban Change, over $16 million has already been committed by private funders, with an additional $1.7 million in pending proposals. This funding allows for a breadth of research far beyond what could be obtained through the federal support alone.

4. MDRC is one of the pre-eminent institutions in the area of welfare and welfare-to-work research, having conducted projects in over 400 communities in 40 states. MDRC has developed a reputation for objective, high-quality work. This project will involve several of MDRC's senior researchers, as well as consultants who are recognized as leaders in their areas of concentration.

Approximately $600,000 is available in FY 2001 for a one-year project period for this cooperative agreement. A portion of this support is provided by the Administration for Children and Families, DHHS, and the Economic Research Service, U.S. Department of Agriculture.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, contact Ms. Elizabeth Lower-Basch, Office of Human Services Policy, ASPE, 200 Independence Ave. SW, Room 404E, Washington, DC, 20201 or telephone: 202 690–6808.

Dated: June 25, 2001.

William F. Raub,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 01–16622 Filed 7–2–01; 8:45 am]

BILLING CODE 4154–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Notice of an Extension of Cooperative Agreements for National Poverty Research Centers

The Office of the Assistant Secretary for Planning and Evaluation (OASPE) announces its intention to award a one year non-competitive extension of its poverty research center cooperative agreements. In FY 1996 the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services (DHHS) awarded two five-year cooperative agreements to support national poverty research centers. The poverty center program provides basic and applied research into the causes, consequences and remedies of poverty as well as provide for the mentoring and training of poverty scholars, and a forum for dissemination of research and evaluation findings. The recipients of the cooperative agreements were the Joint Center for Poverty Research at Northwestern University/University of Chicago (JCPR) and the Institute for Research on Poverty at the University of Wisconsin (IRP). The current grant period expires in late FY 2001.

OASPE intends to extend the cooperative agreements for one-year at current funding levels: $1,500,000 to JCPR and $500,000 to IRP. The extension will allow sufficient time for OASPE to reexamine the purposes and goals of its poverty center program and provide ample time for a new full and open competition. This extension will allow the current national poverty research centers to continue to provide high quality basic and applied poverty research, mentoring and training activities, and dissemination of policy relevant findings as specified in the cooperative agreements.

Authorizing Legislation

These cooperative agreements are authorized under Section 1110 of the Social Security Act.

Nothing in this announcement commits OASPE to renewing or re-competing the poverty center program.

Comments and questions related to this extension will be accepted until July 18, 2001. Written comments should be directed to Donald T. Oellerich, OASPE Project Officer by e-mail at *doelleri@osaspe.dhhs.gov* or fax at 202–690–6562 or by mail at DHHS, OASPE, 200 Independence Av. SW., Room 404E, Washington, DC 20201.

Dated: June 25, 2001.

William F. Raub,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 01–16621 Filed 7–2–01; 8:45 am]

BILLING CODE 4154–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 01103]

Alaska Traditional Diet Project; Notice of Availability of Funds

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2001 funds for a grant program for the Alaska Traditional Diet Project. This program addresses the "Healthy People 2010" focus areas for Environmental Health; Maternal, Infant, and Child Health; and Educational and Community-Based Programs.

Congress has directed ATSDR to identify and study contaminants in the environment, subsistence resources, and people in Alaska Native populations. The scope of the project covers all users of Alaska traditional foods, including subsistence, commercial and recreational, and does not focus solely on Alaska Native users.

The purpose of the program is to begin defining the dietary consumption patterns of rural Alaska subsistence diet

users. This dietary information will be used by Alaskans for public health data collection. The data collected will support other efforts by public health entities in Alaska to better define both the risk of exposures to environmental contaminants in the diet and the nutritional benefits of the foods. Due to the diversity of lifestyles, cultures, and foods harvested in different areas of Alaska, dietary consumption data collections must be completed in various regions of Alaska.

B. Eligible Applicants

Assistance will be provided only to the Alaska Native Health Board. No other applications are solicited. The fiscal year 2001 Federal appropriations specifically direct ATSDR to study contaminants in the environment, subsistence resources, and people in Alaska Native populations. The Alaska Native Health Board (ANHB) is uniquely qualified to coordinate activities as directed by the congressionally appropriated money to ATSDR since it's programs and functions are directed by the 22 Alaska Native regional health organizations that serve 108,000 Alaska Natives. ANHB's activities have evolved to provide statewide support through technical assistance, research, wellness, environmental and contaminant programs.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $350,000 is available in FY 2001 to fund one award. It is expected that the award will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of one year. Funding estimates may change.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies, and services. Funds for contractual services may be requested; however, the awardee, as the direct and primary recipient of ATSDR grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with grant funds. However, the equipment proposed should be appropriate and reasonable for the research activity to be conducted. Property may be acquired only when authorized in the grant. The awardee, as part of the application process, should provide a justification of need to acquire property, the description, and the cost of purchase versus lease. At the completion of the project, the equipment will be returned to ATSDR.

D. Program Requirements

The purpose of the program is to define the dietary consumption patterns of rural Alaska subsistence diet users. Data from this grant will be utilized by the public health agencies and organizations in Alaska, and the Alaska Native health corporations, as they develop a coordinated response to contaminant issues in traditional food supplies.

In conducting activities to achieve the purpose and objectives of this program, the recipient will be responsible for the following activities:

1. Identify an appropriate Alaska-specific dietary survey. The survey (or surveys) should contain a core section that is applicable to all Alaska regions and provide for the collection of regional-specific information as appropriate.
2. Establish an ad hoc oversight group to provide advice on the identification of regions to be surveyed and to advise on other technical aspects on the conduct of the survey.
3. Conduct training for the staff selected to conduct the survey and for staff compiling the data.
4. Provide education and consultation with the communities selected regarding the program throughout the various stages of the survey implementation.
5. Identify regions in Alaska to be surveyed; and complete the surveys within the defined populations to include needed seasonal variations and complete definition of diets within the regions being surveyed. The data collected should also include the amounts of traditional foods consumed by Alaska Native villagers and others residing in the villages, the portion of the diet that is non-traditional, seasonal dietary variations, and the methods of preservation and preparation of the food items.
6. Compile the data, extracting the information as appropriate, and organizing the results in a database format that can be utilized for inter-regional analysis.

E. Application Content

In a narrative form, the application should include a discussion of areas under the "Evaluation Criteria" section of this announcement as they relate to the proposed program. These criteria serve as the basis for evaluating the application; therefore, omissions or incomplete information may affect the rating of the application. This program does not require in-kind support or matching funds, however, the applicant should describe any in-kind support in the application.

The narrative should be no more than 25 pages, double-spaced, printed on one-side, with 1" margins, and unreduced fonts (font size 12 point) on 8½" by 11" paper. The pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and two copies of the application must be submitted unstapled and unbound.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*, or in the application kit.

On or before August 15, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

G. Evaluation Criteria

The application will be evaluated against the following criteria by an independent review group appointed by ATSDR.

1. Proposed Program (50 percent)

The extent to which the application addresses:

(a) The approach, feasibility, adequacy, and rationale of the proposed project design;

(b) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program description as described in the purpose and program requirements sections of the announcement;

(c) the proposed project timeline, including clearly established project objectives for which progress toward attainment can and will be measured;

(d) the proposed community involvement strategy;

(e) the proposed method to disseminate the results to the village communities and tribal governments, State and local public health officials, and other concerned individuals and organizations;

(f) a plan for evaluating the project's effectiveness in meeting the objectives.

2. Program Personnel (25 percent)

The extent to which the application has described the qualifications, experience, and commitment of the principal investigator (or project director) and his/her ability to devote adequate time and effort to provide effective leadership.

3. Applicant Capability and Coordination Efforts (25 percent)

The extent to which the application has described:

(a) the capability of the applicant's administrative structure to foster successful scientific and administrative management of the program;

(b) the capability of the applicant to demonstrate an appropriate plan for interaction with the community; and

(c) the level of collaboration needed to conduct the program; and demonstrate that an advisory group can be established at the onset of the project.

4. Program Budget—(not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement/grant funds.

5. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of—

1. Annual progress report;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement in the application kit.

AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 104 (i)(5)(A) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604 (i)(5)(9A), and (15)] and U.S. Senate Report 106–410. The Catalog of Federal Domestic Assistance number is 93.161.

J. Where To Obtain Additional Information

This and other ATSDR announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Nelda Y. Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2722, Email address: *nag9@cdc.gov*

For program technical assistance, contact: Leslie C. Campbell, Environmental Health Scientist, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, MS E–32, Atlanta, GA 30333, Telephone number: 404–498–0473, Email address: *lcampbell@cdc.gov*

or

William Cibulas, Chief, Research Implementation Branch, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, MS E–29, Atlanta, GA 30333, Telephone number: 404–498–0715, Email address: *wcibulas@cdc.gov*.

Dated: June 26, 2001.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–16626 Filed 7–2–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–41–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

National Exposure Registry—Extension—(OMB No. 0923–0006) Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC). The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Re-authorization Act (SARA), to establish and maintain a national registry of persons who have been exposed to hazardous substances in the environment and a national registry of persons with illnesses or health problems resulting from such exposure. ATSDR created the National Exposure Registry (NER) as a result of this legislation in an effort to provide scientific information about potential adverse health effects people develop as a result of low-level, long-term exposure to hazardous substances.

The National Exposure Registry is a program that collects, maintains, and analyzes information obtained from participants (called registrants) whose exposure to selected toxic substances at specific geographic areas in the United States was documented. Relevant health data and demographic information are also included in the NER database. The NER databases furnish the information needed to generate appropriate and valid hypothesis for future activities such as epidemiologic studies. The NER also serves as a mechanism for longitudinal health investigations that follow registrants over time to ascertain

adverse health effects and latency periods.

The NER is currently composed of four sub-registries of persons known to have been exposed to specific chemicals: 1,1,1,-Trichloroethane (TCA), Trichloroethylene (TCE), 2,3,7,8-tetrachlorodibenzo-p-dioxin (dioxin), and benzene. In 2001, the NER will establish a new asbestos subregistry.

Participants in each subregistry are interviewed initially with a baseline questionnaire. An identical follow-up telephone questionnaire is administered to participants every three years until the criteria for terminating a specific subregistry have been met. The annual number of participants varies greatly from year to year. Two factors influencing the number of respondents per year are the number of subregistry updates that are scheduled and whether a new subregistry will be established.

The addition of the new asbestos subregistry is expected to add approximately 6,000 persons to the NER. This increase is reflected in the following estimated burden table.

The following table is annualized to reflect one new subregistry (asbestos) and five updates for the requested three-year extension of OMB No. 0923–0006. The estimated annualized burden is 3,053 hours.

Respondents	Number of responses	Responses per respondent	Avg. burden per response (in hours)
One New Subregistry	2,000	1	30/60
Five Updates	4,927	1	25/60

Dated: June 25, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–16627 Filed 7–2–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–40–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Model Performance Evaluation Program for Retroviral and AIDS-Related Testing—Revision—OMB No. 0920–0274 Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC). The Centers for Disease Control and Prevention Model Performance Evaluation Program (MPEP) currently assesses the performance of laboratories that test for human immunodeficiency virus type 1 (HIV–1) antibody, human T-lymphotropic virus types I and II (HTLV–I/II) antibody, perform CD4 T-cell testing or T-lymphocyte immunophenotyping (TLI) by flow cytometry or alternate methods, perform HIV–1 ribonucleic acid (RNA) determinations (viral load), and test for HIV–1 p24 antigen through the use of mailed sample panels. The CDC MPEP is proposing to use annual data collection documents to gain updated information on the characteristics of testing laboratories and their testing practices.

Two data collection instruments, or survey questionnaires will be used. The first data collection instrument will be concerned with laboratories that perform HIV–1 antibody (Ab) testing, HTLV–I/II Ab testing, HIV–1 viral RNA determinations, and HIV–1 p24 antigen (Ag) testing. Laboratories enrolled in the MPEP will be mailed a survey questionnaire and be asked to complete the sections pertinent to their laboratory's testing. The survey instrument will collect demographic information related to laboratory type, primary purpose for testing, types of specimens tested, minimum education requirements of testing personnel, laboratory director, and laboratory supervisor, and training required of testing personnel. The demographic section will be followed by more specific sections related directly to HIV–1 Ab testing, HTLV–I/II Ab testing, HIV–1 RNA, and HIV–1 p24 Ag testing. Included in the latter sections will be questions related to the types of tests performed, the algorithm of testing, how test results are interpreted, how results are reported, how specimens may be rejected for testing, if some testing is referred to other laboratories, and what quality control and quality assurance procedures are conducted by the laboratory. Similarly, the TLI survey questionnaire will also collect demographic information about each laboratory, as well as, the type(s) of flow cytometer used, educational and training requirements of testing personnel, the types of monoclonal antibodies used in testing, how specimens are received, prepared, and stored, how test results are recorded and reported to the test requestor, and what quality control and quality assurance procedures are practiced.

Information collected through the use of these instruments will enable CDC to determine if laboratories are conforming to published recommendations and guidelines, whether education and training requirements of testing personnel are conforming to current legislative requirements, and whether problems in testing can be identified through the collection of information. Information collected through the survey instruments will then be compared statistically with the performance evaluation results reported by the enrolled laboratories to determine if characteristics of laboratories that perform well can be distinguished from laboratories not performing as well. Upon enrolling in the MPEP, participants are assigned an MPEP number used to report testing results and survey questionnaire responses allowing the individual responses of each laboratory participant to be treated in confidence. When participants respond to the surveys by sending CDC completed questionnaires, the collected information is developed into aggregate reports. A copy of the completed report is provided to each participating laboratory. Total annual burden for this data collection is 941 hours.

Respondents	No. of respondents	No. of respondents per response	Average burden per response (in hrs)
MPEP Enrollment Form	100	1	6/60
Retroviral Survey	1,000	1	30/60
TLI Survey	325	1	30/60
HIV–1 Ab PE Results Form	900	2	10/60
HIV–1 p24 Ag PE Results Form	175	2	10/60
HIV–1 RNA PE Results Form	210	2	10/60
HTLV I/II Ab PE Results Form	225	2	10/60
TLI PE Results Form	300	2	10/60

Dated: June 25, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–16628 Filed 7–2–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–39–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

SAFE—Know Now—Media Campaign Evaluation—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease and Prevention (CDC) proposes a media campaign to promote knowledge of HIV status, using marketing clusters to target media messages. The purpose of this campaign is to increase the number of HIV positive people who are aware of their status and are receiving appropriate medical treatment. It is believed that knowledge of infection will reduce risk behavior and medical treatment will reduce infectiousness. The Safe—Know Now—campaign has identified segments or 'clusters' of potential audience members based on geographic and demographic information. By targeting communications at these specific clusters, messages can be more effectively and efficiently conveyed to the proper audiences. CDC has utilized this approach to design media communications for target audiences as defined by Claritas PRIZM clusters. Beyond the immediate effectiveness of the campaign, the evaluation also seeks to determine if PRIZM targeting has proven to be an effective tool for communicating health messages.

CDC will conduct an evaluation of this campaign which will target five Claritas PRIZM clusters that currently have the highest incidences of AIDS cases. This clusters include Bohemian Mix (cluster 10), Single City Blues (cluster 45), Hispanic Mix (cluster 46), Inner Cities (cluster 47), and Southside City (cluster 51). The primary method for data collection will be a 15-minute campaign tracking survey administered via telephone in three markets, including two test markets and one control market. The test markets will be exposed to the campaign materials, while the control market will not. Pre- and post-exposure telephone surveys will be collected in each of the three markets, allowing comparison before and after effects of the campaign. Both the pre- and post-exposure market readings will be conducted with different samples, not with the same individuals across both waves. The total response burden for this data collection is 1,800 hours.

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
Telephone Survey—Pre	3,600	1	15/60.
Telephone Survey—Post	3,600	1	15/60.

Dated: June 25, 2001.

Nancy Cheal,

Deputy Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–16629 Filed 7–2–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01161]

Enhance Research, Infrastructure, and Capacity Building for American Indian Tribal Colleges and Universities; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program. The purpose of the program is to assist the American Indian Tribal Colleges and Universities in developing the commitment and capacity to promote education, development, research, leadership and community partnerships that enhance the participation of American Indians in the health professions; and to enhance the health status of American Indians in the United States.

The CDC and ATSDR are committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010", a national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the "Healthy People 2010" objectives which specify improving the health of groups of people bearing a disproportionate burden of poor health as compared to the total population. The framework of "Heathy People 2010" consists of two broad goals which are to:

1. increase quality and years of healthy life; and
2. eliminate health disparities.

"Healthy People" is the national prevention initiative that identifies opportunities to improve the health of all Americans. For a copy of "Healthy People 2010" visit the internet site: http://www.health.gov.healtlhypeople.

B. Eligible Applicants

To be eligible for funding under this announcement, applicants must be a tax-exempt private or public non-profit organization with Internal Revenue Service (IRS) Code, Section 501(c)(3) status; tribal colleges in the United States; or federally recognized Indian Tribal governments, Indian tribes or Indian Tribal organizations.

If the applicant is applying as a tax exempt non-profit organization, proof of non-profit tax-exempt status must be provided with the application. CDC will not accept an application without proof of tax-exempt status. Non-profit tax-exempt status is determined by the IRS Code, Section 501(c)(3). Tax-exempt status may be proved by providing a current copy of the 501(c)(3) non-profit tax-exempt of the current IRS Determination Letter.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately $200,000 is available in FY 2001 to fund the Central Coordinating Organization for this cooperative agreement. It is expected that additional funds may be made available through other Centers, Institutes and Program Offices (CIOs), within the CDC/ATSDR to fund supplemental awards under this cooperative agreement for projects of Tribal Colleges and Universities with whom the applicant collaborates. It is expected that the awards will begin on or about September 1, 2001, and will be made for a 12-month budget period, within a project period of up to five years. Funding estimates may change.

Continuation awards within the project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities:

a. Curriculum, Technology, and Infrastructure Development

(1) Determine what the Tribal Colleges and Universities are currently doing in regards to Public Health and Health prevention, *e.g.* curriculum, program prevention services, and health promotion activities.

(2) Assist Tribal Colleges and Universities in increasing their knowledge of the Federal grants application process, such as budget initiation and grant writing.

(3) Develop distance based learning programs, satellite and video conferencing opportunities, and other information systems for Tribal Colleges and Universities to enhance the educational opportunities in the fields of public health and to enhance the research, statistical, and public health educational skills of the students.

(4) Enhance access to culturally relevant instructional material focusing on epidemiology, environmental health, public health, and biostatistics for the Tribal Colleges and Universities.

b. Professional Development and Continuing Education

(1) Assist Tribal Colleges and Universities in developing curricula for educating and training students in introductory courses in the fields of public health, occupational health, environmental health, allied health, and other health related areas.

(2) Assist Tribal Colleges and Universities in establishing faculty development opportunities at the CDC/ATSDR.

c. Student Training Opportunities, Fellowship Programs, and Internship Programs

(1) Assist Tribal Colleges and Universities in establishing CDC/ATSDR internship and fellowship opportunities that will enable students to gain knowledge and experience in public health practices.

(2) Assist the Tribal Colleges and Universities in developing public health classroom instructional materials and practicum opportunities for field assignees for their member schools.

(3) Assist Tribal Colleges and Universities in identifying other new public health field experiences for American Indians.

d. Capacity Building and Resource Development

(1) Serve as a resource for Tribal Colleges and Universities in developing educational programs targeting public health professionals.

(2) Enhance access to health related resource information, instructional material, and teaching techniques for health professionals at the Tribal Colleges and Universities.

(3) Assist Tribal Colleges and Universities in developing culturally competent prevention research and related educational programs for communities serving American Indians.

e. Program Coordination and Coalition Building

(1) Assist Tribal Colleges and Universities in collaborating with State and local health departments, as well as community-based organizations, in providing special needs projects that provide an opportunity for "hands on" experience for instructors and students.

(2) Sponsor and facilitate conferences/forums that promote collaboration and coalition building among Tribal Colleges and Universities, Federal, and private partners.

f. Needs Assessment

(1) Conduct a needs assessment with Tribal Colleges and Universities' faculty and students to identify educational needs and current public health practices.

(2) Assist Tribal Colleges and Universities in establishing research priorities for funding purposes, and to assist Tribal Colleges and Universities in identifying health disparities.

g. Public Health Research in Prevention, Policy, and Dissemination

(1) Assist Tribal College and Universities in evaluating multi-component, community-based intervention strategies that address health disparities among American Indians.

(2) Assist Tribal Colleges and Universities in developing research activities that have an impact on eliminating health disparities among American Indians.

(3) Assist Tribal Colleges and Universities in assessing the impact of public health infrastructure, and policy changes on disease, injury, and disability.

(4) Assist Tribal Colleges and Universities in providing faculty and student training and other career development opportunities in prevention research that are critical to the mission and goals of CDC and ATSDR.

2. CDC/ATSDR Activities:

CDC/ATSDR will provide technical assistance and guidance as requested for the activities provided under recipient requirements.

E. Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated based on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

(The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.)

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398)]. Forms are available in the application kit and *www.cdc.gov/od/pgo/forminfo.htm.*

On or before August 13, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmark shall not be acceptable as proof of timely mailing.)

Late: Applications which do not meet the criteria in 1. or 2. above, will be returned to the applicant.

G. Evaluation Criteria

The funding provided in this announcement is being made only for the Central Coordinating Organization. When applications for special projects (those submitted by Tribal Colleges and Universities) are later submitted, they will be funded separately. Each application will be evaluated individually by an independent review group appointed by CDC/ATSDR. Special projects will be evaluated based on criteria for special projects. Applications from Central Coordinating Organizations will be evaluated in accordance with the following criteria:

1. Organizational Summary: (25 points)

a. The extent to which the applicant describes the history, nature, and extent of its relevant experience within the last two years with supporting documentation.

b. The extent to which the applicant describes existing facilities and staff (including resumes and job descriptions) to accomplish the desired outcomes.

2. History and Experience in working with public health programs with Ethnic/Racial Groups: (20 points)

a. Extent to which the applicant documents at least two years of experience and success in operating and administering a public health or related program serving the target population.

b. Extent to which applicant documents experience in working on public health programs with ethnic/racial groups.

c. The adequacy of the organization's proposed staffing and collaborations with partners, to meet the design and evaluation needs of the project. Include the nature of the partnership, members of the partnership, and relevant experience.

3. Capacity of the organization to work with Tribal Colleges and Universities: (25 points)

a. Organization must show proof of previous experience in working with Tribal Colleges and Universities; or with the target population group within the last four years.

b. Organization must provide letters of support from several Tribal Colleges and Universities showing that a collaborative partnership has been formed.

4. Action Plan: (15 points)

a. Extent to which the applicant demonstrates a thorough and reasonable plan in developing the program, including assurance of community participation and participation of Tribal Colleges and Universities in the planning process.

b. The extent to which the applicant provides a reasonable and complete schedule for implementing all activities.

c. The extent to which concurrence with the applicant's plans are concurred by Tribal Colleges and Universities.

5. Evaluation Plan: (15 points)

a. The extent to which the proposed evaluation plan is detailed and will document program process, effectiveness, impact and outcome.

b. The extent to which the applicant demonstrates potential data sources for evaluation purposes, and documents staff availability, expertise, and capacity to perform the evaluation.

c. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included.

6. Budget and Justification: (not scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated

objectives and planned program activities.

Applications for special projects (those submitted by member schools and the Cental Coordination Organization) will be evaluated individually in accordance with the following criteria:

1. Background, Purpose, and Priority Area(s): (20 points)

a. The extent to which the applicant described the health status of the target population group(s) geographic community, and priority area(s) to be addressed.

b. The extent to which the applicant uses data (if available) and other supporting evidence to document the health status of the racial/ethnic population groups and health disparities within the group, the appropriateness of the target population sizes for the priority area(s) selected.

c. The degree of the disparity between the target population and the general population based on local, State, and national data which directly supports the basis for the health disparity in the priority area(s) selected.

2. Program Objectives: (15 points)

a. The extent to which the proposed objectives are specific, measurable, time-phased, and consistent with the program purpose and the proposed activities, and consistent with the applicant organization's overall mission.

b. The extent to which the applicant has included objectives which are feasible to be accomplished during the budget period, and which address all activities necessary to accomplish the purpose of the proposal.

3. Action Plan: (20 points)

a. Extent to which the applicant demonstrates a thorough and reasonable plan in developing the program, including assurance of community participation and participation in the planning process.

b. The extent to which the applicant provides a reasonable and complete schedule for implementing all activities.

c. The extent to which concurrence with the applicant's plans are concurred by all collaborating parties.

4. Evaluation Plan: (15 points)

a. The extent to which the proposed evaluation plan is detailed and will document program process, effectiveness, impact and outcome.

b. The extent to which the applicant demonstrates potential data sources for evaluation purposes, and documents staff availability, expertise, and capacity to perform the evaluation.

c. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included.

5. Research Plan: (20 points)

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

6. Personnel and Staffing: (10 points)

Qualifications and experience of professionals to carry out the project activities.

7. Budget and Justifications: (not scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

8. Human Subjects: (not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

9. Review of Non-Competing Continuation Applications within the project period will be made on the basis of the following criteria:

a. Availability of funds;

b. Satisfactory progress made in meeting project objectives;

c. Objectives for the new budget period that are realistic, specific, and measurable;

d. Any proposed changes that benefit the objectives, methods of operation, and continuing need for cooperative agreement support;

e. Evaluation procedures which will lead to achievement of project objectives; and

f. The budget request which is clearly justified and consistent with the intended use of cooperative agreement funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. quarterly progress reports;

2. financial status report, due no more than 90 days after the end of the budget period; and

3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–5 HIV Program Review Panel Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Section 301 (a) and 317(k)(2) [42 U.S.C. 214(a) and 247b(k)(2)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–472–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Program Announcement number of interest.

If you have questions after reviewing the contents of all the documents,

business management technical assistance may be obtained from: Peaches Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000 MS–15, Atlanta, Georgia 30341–4146, Telephone number: 770–488–2738, Email address: prb0@cdc.gov

For program technical assistance, contact: Karen H. Bouye, Senior Advisor for Research, Office of the Associate Director for Minority Health, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road, Northeast, Mailstop D–39, Atlanta, Georgia 30333, Telephone: (404) 639–4313, Email address: keh2@cdc.gov

Dated: June 27, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–16656 Filed 7–2–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10033]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Data Collection to Support Policy Analysis of Choices Offered to Medicare+Choice Enrollees and Choices Made by Enrollees;

Form No.: HCFA–10033 (OMB#0938–NEW);

Use: The purpose of this information collection is to collect data from Medicare+Choice (M+C) organizations regarding choices that Medicare beneficiaries make as M+C enrollees. Information will be collected regarding enrollment and benefits, particularly for employment-connected individuals and will help HCFA fully evaluate the effectiveness of the M+C program. All Medicare Managed Care organizations will be surveyed;

Frequency: Other: One-time;

Affected Public: Business or other for-profit;

Number of Respondents: 200;

Total Annual Responses: 200;

Total Annual Hours: 1,600.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 22, 2001.

John P. Burke, III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–16632 Filed 7–2–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1147–CN]

RIN 0938–AK51

Medicare Program; Update to the Prospective Payment System for Home Health Agencies for FY 2002; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period; correction.

SUMMARY: We published a notice with comment period in the **Federal Register** on June 29, 2001, setting forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies. The document was missing the addenda for the rural and urban hospital wage indexes. This notice corrects the June 29, 2001 document by adding the addenda.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT:

Bob Wardwell, Project Manager, (410) 786–3254.

Susan Levy, Policy, (410) 786–9364.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of June 29, 2001 in FR Doc. 01–16384, we published a notice with comment period setting forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies. The document was missing the addenda for the rural and urban hospital wage indexes. This notice corrects the June 29, 2001 document by adding the addenda.

Attachments

Addendum A—FY 2001 Wage Index For Rural Areas—Pre-floor and Pre-reclassified

Addendum B—FY 2001 Wage Index For Urban Areas—Pre-floor and Pre-reclassified

Addendum A—FY 2001 Wage Index for Rural Areas—Pre-floor and Pre-reclassified

WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage Index
Alabama	0.7489
Alaska	1.2392
Arizona	0.8317
Arkansas	0.7445
California	0.9861
Colorado	0.8968
Connecticut	1.1715
Delaware	0.9074
Florida	0.8919
Georgia	0.8329
Guam	0.9611
Hawaii	1.1059
Idaho	0.8678
Illinois	0.8160
Indiana	0.8602
Iowa	0.8030
Kansas	0.7605
Kentucky	0.7931
Louisiana	0.7681
Maine	0.8766
Maryland	0.8651
Massachusetts	1.1204
Michigan	0.8987
Minnesota	0.8881
Mississippi	0.7491
Missouri	0.7698

WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage Index
Montana	0.8688
Nebraska	0.8109
Nevada	0.9232
New Hampshire	0.9845
New Jersey [1]	
New Mexico	0.8479
New York	0.8499
North Carolina	0.8441
North Dakota	0.7716
Ohio	0.8670
Oklahoma	0.7491
Oregon	1.0132
Pennsylvania	0.8578
Puerto Rico	0.4264
Rhode Island [1]	
South Carolina	0.8370
South Dakota	0.7570
Tennessee	0.7838
Texas	0.7502
Utah	0.9037
Vermont	0.9274
Virginia	0.8189
Virgin Islands	0.6306
Washington	1.0434
West Virginia	0.8231
Wisconsin	0.8880
Wyoming	0.8817

[1] All counties within the State are classified as urban.

Addendum B—FY 2001 Wage Index For Urban Areas—Pre-floor and Pre-reclassified

MSA	Urban area (Constituent counties)	Wage index
0040	Abilene, TX	0.8240
	Taylor, TX.	
0060	Aguadilla, PR	0.4391
	Aguada, PR.	
	Aguadilla, PR.	
	Moca, PR.	
0080	Akron, OH	0.9736
	Portage, OH.	
	Summit, OH.	
0120	Albany, GA	0.9933
	Dougherty, GA.	
	Lee, GA.	
0160	Albany-Schenectady-Troy, NY.	0.8549
	Albany, NY.	
	Montgomery, NY.	
	Rensselaer, NY.	
	Saratoga, NY.	
	Schenectady, NY.	
	Schoharie, NY.	
0200	Albuquerque, NM	0.9136
	Bernalillo, NM.	
	Sandoval, NM.	
	Valencia, NM.	
0220	Alexandria, LA	0.8123
	Rapides, LA.	
0240	Allentown-Bethlehem-Easton, PA.	0.9925
	Carbon, PA.	
	Lehigh, PA.	
	Northampton, PA.	
0280	Altoona, PA	0.9346
	Blair, PA.	
0320	Amarillo, TX	0.8715
	Potter, TX	
	Randall, TX.	
0380	Anchorage, AK	1.2793
	Anchorage, AK.	
0440	Ann Arbor, MI	1.1254
	Lenawee, MI.	
	Livingston, MI.	
	Washtenaw, MI.	
0450	Anniston, AL	0.8284
	Calhoun, AL.	
0460	Appleton-Oshkosh-Neenah, WI.	0.9052
	Calumet, WI.	
	Outagamie, WI.	
	Winnebago, WI.	
0470	Arecibo, PR	0.4525
	Arecibo, PR.	
	Camuy, PR.	
	Hatillo, PR.	
0480	Asheville, NC	0.9516
	Buncombe, NC.	
	Madison, NC.	
0500	Athens, GA	0.9739
	Clarke, GA.	
	Madison, GA.	
	Oconee, GA.	
0520	Atlanta, GA	1.0096
	Barrow, GA.	
	Bartow, GA.	
	Carroll, GA.	
	Cherokee, GA.	
	Clayton, GA.	
	Cobb, GA.	
	Coweta, GA.	
	DeKalb, GA.	
	Douglas, GA.	
	Fayette, GA.	
	Forsyth, GA.	
	Fulton, GA.	
	Gwinnett, GA.	
	Henry, GA.	
	Newton, GA.	
	Paulding, GA.	
	Pickens, GA.	
	Rockdale, GA.	
	Spalding, GA.	
	Walton, GA.	
0560	Atlantic-Cape May, NJ	1.1182
	Atlantic, NJ	
	Cape May, NJ	
0580	Auburn-Opelka, AL	0.8106
	Lee, AL.	
0600	Augusta-Aiken, GA–SC	0.9160
	Columbia, GA.	
	McDuffie, GA.	
	Richmond, GA.	
	Aiken, SC.	
	Edgefield, SC.	
0640	Austin-San Marcos, TX	0.9577
	Bastrop, TX.	
	Caldwell, TX.	
	Hays, TX.	
	Travis, TX.	
	Williamson, TX.	
0680	Bakersfield, CA	0.9678
	Kern, CA.	
0720	Baltimore, MD	0.9365
	Anne Arundel, MD.	
	Carroll, MD.	
	Harford, MD.	
	Howard, MD.	
	Queen Anne's, MD.	
0733	Bangor, ME	0.9561
	Penobscot, ME.	
0743	Barnstable-Yarmouth, MA.	1.3839
	Barnstable, MA.	
0760	Baton Rouge, LA	0.8842
	Ascension, LA.	
	East Baton Rouge, LA.	
	Livingston, LA.	
	West Baton Rouge, LA.	
0840	Beaumont-Port Arthur, TX.	0.8744
	Hardin, TX.	
	Jefferson, TX.	
	Orange, TX.	
0860	Bellingham, WA	1.1439
	Whatcom, WA.	
0870	Benton Harbor, MI	0.8671
	Berrien, MI.	
0875	Bergen-Passaic, NJ	1.1848
	Bergen, NJ.	
	Passaic, NJ.	
0880	Billings, MT	0.9585
	Yellowstone, MT.	
0920	Biloxi-Gulfport-Pascagoula, MS.	0.8236
	Hancock, MS.	
	Harrison, MS.	
	Jackson, MS.	
0960	Binghamton, NY	0.8690
	Broome, NY.	
	Tioga, NY.	
1000	Birmingham, AL	0.8452
	Blount, AL.	
	Jefferson, AL.	
	St. Clair, AL.	
	Shelby, AL.	
1010	Bismarck, ND	0.7705
	Burleigh, ND.	
	Morton, ND.	
1020	Bloomington, IN	0.8733
	Monroe, IN.	
1040	Bloomington-Normal, IL	0.9095
	McLean, IL.	
1080	Boise City, ID	0.9006
	Ada, ID.	
	Canyon, ID.	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.	1.1160
	Bristol, MA.	
	Essex, MA.	
	Middlesex, MA.	
	Norfolk, MA.	
	Plymouth, MA.	
	Suffolk, MA.	
	Worcester, MA.	
	Hillsborough, NH.	
	Merrimack, NH.	
	Rockingham, NH.	
	Strafford, NH.	
1125	Boulder-Longmont, CO	0.9731
	Boulder, CO.	
1145	Brazoria, TX	0.8658
	Brazoria, TX.	
1150	Bremerton, WA	1.0975
	Kitsap, WA.	
1240	Brownsville-Harlingen-San Benito, TX.	0.8722

MSA	Urban area (Constituent counties)	Wage index
	Cameron, TX.	
1260	Bryan-College Station, TX.	0.8237
	Brazos, TX.	
1280	Buffalo-Niagara Falls, NY.	0.9580
	Erie, NY.	
	Niagara, NY.	
1303	Burlington, VT	1.0735
	Chittenden, VT.	
	Franklin, VT.	
	Grand Isle, VT.	
1310	Caguas, PR	0.4562
	Caguas, PR.	
	Cayey, PR.	
	Cidra, PR.	
	Gurabo, PR.	
	San Lorenzo, PR.	
1320	Canton-Massillon, OH	0.8584
	Carroll, OH.	
	Stark, OH.	
1350	Casper, WY	0.8724
	Natrona, WY.	
1360	Cedar Rapids, IA	0.8736
	Linn, IA.	
1400	Champaign-Urbana, IL	0.9198
	Champaign, IL.	
1440	Charleston-North Charleston, SC.	0.9038
	Berkeley, SC.	
	Charleston, SC.	
	Dorchester, SC.	
1480	Charleston, WV	0.9240
	Kanawha, WV.	
	Putnam, WV.	
1520	Charlotte-Gastonia-Rock Hill, NC–SC.	0.9391
	Cabarrus, NC.	
	Gaston, NC.	
	Lincoln, NC.	
	Mecklenburg, NC.	
	Rowan, NC.	
	Stanly, NC.	
	Union, NC.	
	York, SC.	
1540	Charlottesville, VA	1.0789
	Albemarle, VA.	
	Charlottesville City, VA.	
	Fluvanna, VA.	
	Greene, VA.	
1560	Chattanooga, TN–GA	0.9833
	Catoosa, GA.	
	Dade, GA.	
	Walker, GA.	
	Hamilton, TN.	
	Marion, TN.	
1580	Cheyenne, WY	0.8308
	Laramie, WY.	
1600	Chicago, IL	1.1146
	Cook, IL.	
	DeKalb, IL.	
	DuPage, IL.	
	Grundy, IL.	
	Kane, IL.	
	Kendall, IL.	
	Lake, IL.	
	McHenry, IL.	
	Will, IL.	
1620	Chico-Paradise, CA	0.9918
	Butte, CA.	
1640	Cincinnati, OH–KY–IN	0.9415
	Dearborn, IN.	
	Ohio, IN.	
	Boone, KY.	
	Campbell, KY.	
	Gallatin, KY.	
	Grant, KY.	
	Kenton, KY.	
	Pendleton, KY.	
	Brown, OH.	
	Clermont, OH.	
	Hamilton, OH.	
	Warren, OH.	
1660	Clarksville-Hopkinsville, TN–KY.	0.8204
	Christian, KY.	
	Montgomery, TN.	
1680	Cleveland-Lorain-Elyria, OH.	0.9597
	Ashtabula, OH.	
	Cuyahoga, OH.	
	Geauga, OH.	
	Lake, OH.	
	Lorain, OH.	
	Medina, OH.	
1720	Colorado Springs, CO	0.9697
	El Paso, CO.	
1740	Columbia, MO	0.8961
	Boone, MO.	
1760	Columbia, SC	0.9554
	Lexington, SC.	
	Richland, SC.	
1800	Columbus, GA–AL Russell, AL.	0.8568
	Chattahoochee, GA.	
	Harris, GA.	
	Muscogee, GA.	
1840	Columbus, OH	0.9619
	Delaware, OH.	
	Fairfield, OH.	
	Franklin, OH.	
	Licking, OH.	
	Madison, OH.	
	Pickaway, OH.	
1880	Corpus Christi, TX	0.8726
	Nueces, TX.	
	San Patricio, TX.	
1890	Corvallis, OR	1.1326
	Benton, OR.	
1900	Cumberland, MD–WV	0.8369
	Allegany, MD.	
	Mineral, WV.	
1920	Dallas, TX	0.9913
	Collin, TX.	
	Dallas, TX.	
	Denton, TX.	
	Ellis, TX.	
	Henderson, TX.	
	Hunt, TX.	
	Kaufman, TX.	
	Rockwall, TX.	
1950	Danville, VA	0.8589
	Danville City, VA.	
	Pittsylvania, VA.	
1960	Davenport-Moline-Rock Island, IA–IL.	0.8898
	Scott, IA.	
	Henry, IL.	
	Rock Island, IL.	
2000	Dayton-Springfield, OH	0.9442
	Clark, OH.	
	Greene, OH.	
	Miami, OH.	
	Montgomery, OH.	
2020	Daytona Beach, FL	0.9200
	Flagler, FL.	
	Volusia, FL.	
2030	Decatur, AL	0.8534
	Lawrence, AL.	
	Morgan, AL.	
2040	Decatur, IL	0.8125
	Macon, IL.	
2080	Denver, CO	1.0181
	Adams, CO.	
	Arapahoe, CO.	
	Denver, CO.	
	Douglas, CO.	
	Jefferson, CO.	
2120	Des Moines, IA	0.9118
	Dallas, IA.	
	Polk, IA.	
	Warren, IA.	
2160	Detroit, MI	1.0510
	Lapeer, MI.	
	Macomb, MI.	
	Monroe, MI.	
	Oakland, MI.	
	St. Clair, MI.	
	Wayne, MI.	
2180	Dothan, AL	0.7943
	Dale, AL.	
	Houston, AL.	
2190	Dover, DE	1.0078
	Kent, DE.	
2200	Dubuque, IA	0.8746
	Dubuque, IA.	
2240	Duluth-Superior, MN–WI.	1.0032
	St. Louis, MN.	
	Douglas, WI.	
2281	Dutchess County, NY	1.0249
	Dutchess, NY.	
2290	Eau Claire, WI	0.8790
	Chippewa, WI.	
	Eau Claire, WI.	
2320	El Paso, TX	0.9346
	El Paso, TX.	
2330	Elkhart-Goshen, IN	0.9145
	Elkhart, IN.	
2335	Elmira, NY	0.8546
	Chemung, NY.	
2340	Enid, OK	0.8610
	Garfield, OK.	
2360	Erie, PA	0.8985
	Erie, PA.	
2400	Eugene-Springfield, OR.	1.0965
	Lane, OR.	
2440	Evansville-Henderson, IN–KY.	0.8173
	Posey, IN.	
	Vanderburgh, IN.	
	Warrick, IN.	
	Henderson, KY.	
2520	Fargo-Moorhead, ND–MN.	0.8749
	Clay, MN.	
	Cass, ND.	
2560	Fayetteville, NC	0.8655
	Cumberland, NC.	
2580	Fayetteville-Springdale-Rogers, AR.	0.7910
	Benton, AR.	
	Washington, AR.	
2620	Flagstaff, AZ–UT	1.0686
	Coconino, AZ.	

MSA	Urban area (Constituent counties)	Wage index
	Kane, UT.	
2640	Flint, MI	1.1205
	Genesee, MI.	
2650	Florence, AL	0.7616
	Colbert, AL.	
	Lauderdale, AL.	
2655	Florence, SC	0.8777
	Florence, SC.	
2670	Fort Collins-Loveland, CO.	1.0647
	Larimer, CO.	
2680	Ft. Lauderdale, FL	1.0121
	Broward, FL.	
2700	Fort Myers-Cape Coral, FL.	0.9247
	Lee, FL.	
2710	Fort Pierce-Port St. Lucie, FL.	0.9538
	Martin, FL.	
	St. Lucie, FL.	
2720	Fort Smith AR–OK	0.8052
	Crawford, AR.	
	Sebastian, AR.	
	Sequoyah, OK.	
2750	Fort Walton Beach, FL	0.9607
	Okaloosa, FL.	
2760	Fort Wayne, IN	0.8665
	Adams, IN.	
	Allen, IN.	
	De Kalb, IN.	
	Huntington, IN.	
	Wells, IN.	
	Whitley, IN.	
2800	Fort Worth-Arlington, TX.	0.9527
	Hood, TX.	
	Johnson, TX.	
	Parker, TX.	
	Tarrant, TX.	
2840	Fresno, CA	1.0104
	Fresno, CA.	
	Madera, CA.	
2880	Gadsden, AL	0.8423
	Etowah, AL.	
2900	Gainesville, FL	1.0074
	Alachua, FL.	
2920	Galveston-Texas City, TX.	0.9918
	Galveston, TX.	
2960	Gary, IN	0.9454
	Lake, IN.	
	Porter, IN.	
2975	Glens Falls, NY	0.8361
	Warren, NY.	
	Washington, NY.	
2980	Goldsboro, NC	0.8423
	Wayne, NC.	
2985	Grand Forks, ND–MN	0.8816
	Polk, MN.	
	Grand Forks, ND.	
2995	Grand Junction, CO	0.9109
	Mesa, CO.	
3000	Grand Rapids-Muskegon-Holland, MI.	1.0248
	Allegan, MI.	
	Kent, MI.	
	Muskegon, MI.	
	Ottawa, MI.	
3040	Great Falls, MT	0.9065
	Cascade, MT.	
3060	Greeley, CO	0.9814
	Weld, CO.	
3080	Green Bay, WI	0.9225
	Brown, WI.	
3120	Greensboro-Winston-Salem-High Point, NC.	0.9131
	Alamance, NC.	
	Davidson, NC.	
	Davie, NC.	
	Forsyth, NC.	
	Guilford, NC.	
	Randolph, NC.	
	Stokes, NC.	
	Yadkin, NC.	
3150	Greenville, NC	0.9384
	Pitt, NC.	
3160	Greenville-Spartanburg-Anderson, SC.	0.9003
	Anderson, SC.	
	Cherokee, SC.	
	Greenville, SC.	
	Pickens, SC.	
	Spartanburg, SC.	
3180	Hagerstown, MD	0.9409
	Washington, MD.	
3200	Hamilton-Middletown, OH.	0.9061
	Butler, OH.	
3240	Harrisburg-Lebanon-Carlisle, PA.	0.9386
	Cumberland, PA.	
	Dauphin, PA.	
	Lebanon, PA.	
	Perry, PA.	
3283	Hartford, CT	1.1373
	Hartford, CT.	
	Litchfield, CT.	
	Middlesex, CT.	
	Tolland, CT.	
3285	Hattiesburg, MS	0.7490
	Forrest, MS.	
	Lamar, MS.	
3290	Hickory-Morganton-Lenoir, NC.	0.9008
	Alexander, NC.	
	Burke, NC.	
	Caldwell, NC.	
	Catawba, NC.	
3320	Honolulu, HI	1.1863
	Honolulu, HI.	
3350	Houma, LA	0.8086
	Lafourche, LA.	
	Terrebonne, LA.	
3360	Houston, TX	0.9732
	Chambers, TX.	
	Fort Bend, TX.	
	Harris, TX.	
	Liberty, TX.	
	Montgomery, TX.	
	Waller, TX.	
3400	Huntington-Ashland, WV–KY–OH.	0.9876
	Boyd, KY.	
	Carter, KY.	
	Greenup, KY.	
	Lawrence, OH.	
	Cabell, WV.	
	Wayne, WV.	
3440	Huntsville, AL	0.8932
	Limestone, AL.	
	Madison, AL.	
3480	Indianapolis, IN	0.9787
	Boone, IN.	
	Hamilton, IN.	
	Hancock, IN.	
	Hendricks, IN.	
	Johnson, IN.	
	Madison, IN.	
	Marion, IN.	
	Morgan, IN.	
	Shelby, IN.	
3500	Iowa City, IA	0.9657
	Johnson, IA.	
3520	Jackson, MI	0.9134
	Jackson, MI.	
3560	Jackson, MS	0.8812
	Hinds, MS.	
	Madison, MS.	
	Rankin, MS.	
3580	Jackson, TN	0.8796
	Madison, TN.	
	Chester, TN.	
3600	Jacksonville, FL	0.9208
	Clay, FL.	
	Duval, FL.	
	Nassau, FL.	
	St. Johns, FL.	
3605	Jacksonville, NC	0.7777
	Onslow, NC.	
3610	Jamestown, NY	0.7818
	Chautauqua, NY.	
3620	Janesville-Beloit, WI	0.9585
	Rock, WI.	
3640	Jersey City, NJ	1.1502
	Hudson, NJ.	
3660	Johnson City-Kingsport-Bristol, TN–VA.	0.8272
	Carter, TN.	
	Hawkins, TN.	
	Sullivan, TN.	
	Unicoi, TN.	
	Washington, TN.	
	Bristol City, VA.	
	Scott, VA.	
	Washington, VA.	
3680	Johnstown, PA	0.8846
	Cambria, PA.	
	Somerset, PA.	
3700	Jonesboro, AR	0.7832
	Craighead, AR.	
3710	Joplin, MO	0.8148
	Jasper, MO.	
	Newton, MO.	
3720	Kalamazoo-Battle Creek, MI.	1.0453
	Calhoun, MI.	
	Kalamazoo, MI.	
	Van Buren, MI.	
3740	Kankakee, IL	0.9902
	Kankakee, IL.	
3760	Kansas City, KS-MO	0.9527
	Johnson, KS.	
	Leavenworth, KS.	
	Miami, KS.	
	Wyandotte, KS.	
	Cass, MO.	
	Clay, MO.	
	Clinton, MO.	
	Jackson, MO.	
	Lafayette, MO.	
	Platte, MO.	
	Ray, MO.	
3800	Kenosha, WI	0.9611
	Kenosha, WI.	
3810	Killeen-Temple, TX	1.0119
	Bell, TX.	

MSA	Urban area (Constituent counties)	Wage index
3840	Coryell, TX. Knoxville, TN	0.8340
	Anderson, TN. Blount, TN. Knox, TN. Loudon, TN. Sevier, TN. Union, TN.	
3850	Kokomo, IN	0.9518
	Howard, IN. Tipton, IN.	
3870	La Crosse, WI-MN	0.9211
	Houston, MN. La Crosse, WI.	
3880	Lafayette, LA	0.8490
	Acadia, LA. Lafayette, LA. St. Landry, LA. St. Martin, LA.	
3920	Lafayette, IN	0.8834
	Clinton, IN. Tippecanoe, IN.	
3960	Lake Charles, LA	0.7399
	Calcasieu, LA.	
3980	Lakeland-Winter Haven, FL.	0.9239
	Polk, FL.	
4000	Lancaster, PA	0.9259
	Lancaster, PA.	
4040	Lansing-East Lansing, MI.	0.9934
	Clinton, MI. Eaton, MI. Ingham, MI.	
4080	Laredo, TX	0.8168
	Webb, TX.	
4100	Las Cruces, NM	0.8658
	Dona Ana, NM.	
4120	Las Vegas, NV-AZ	1.0796
	Mohave, AZ. Clark, NV. Nye, NV.	
4150	Lawrence, KS	0.8190
	Douglas, KS.	
4200	Lawton, OK	0.8996
	Comanche, OK.	
4243	Lewiston-Auburn, ME	0.9036
	Androscoggin, ME.	
4280	Lexington, KY	0.8866
	Bourbon, KY. Clark, KY. Fayette, KY. Jessamine, KY. Madison, KY. Scott, KY. Woodford, KY.	
4320	Lima, OH	0.9320
	Allen, OH. Auglaize, OH.	
4360	Lincoln, NE	0.9626
	Lancaster, NE.	
4400	Little Rock-North Little Rock, AR.	0.8906
	Faulkner, AR. Lonoke, AR. Pulaski, AR. Saline, AR.	
4420	Longview-Marshall, TX	0.8922
	Gregg, TX. Harrison, TX. Upshur, TX.	
4480	Los Angeles-Long Beach, CA.	1.1996
	Los Angeles, CA.	
4520	Louisville, KY–IN	0.9350
	Clark, IN. Floyd, IN. Harrison, IN. Scott, IN. Bullitt, KY. Jefferson, KY. Oldham, KY.	
4600	Lubbock, TX	0.8838
	Lubbock, TX.	
4640	Lynchburg, VA	0.8867
	Amherst, VA. Bedford, VA. Bedford City, VA. Campbell, VA. Lynchburg City, VA.	
4680	Macon, GA	0.8974
	Bibb, GA. Houston, GA. Jones, GA. Peach, GA. Twiggs, GA.	
4720	Madison, WI	1.0271
	Dane, WI.	
4800	Mansfield, OH	0.8690
	Crawford, OH. Richland, OH.	
4840	Mayaguez, PR	0.4589
	Anasco, PR. Cabo Rojo, PR. Hormigueros, PR. Mayaguez, PR. Sabana Grande, PR. San German, PR.	
4880	McAllen-Edinburg-Mission, TX.	0.8566
	Hidalgo, TX.	
4890	Medford-Ashland, OR	1.0344
	Jackson, OR.	
4900	Melbourne-Titusville-Palm Bay, FL.	0.9688
	Brevard, Fl.	
4920	Memphis, TN–AR–MS	0.8723
	Crittenden, AR. DeSoto, MS. Fayette, TN. Shelby, TN. Tipton, TN.	
4940	Merced, CA	0.9646
	Merced, CA.	
5000	Miami, FL	1.0059
	Dade, FL.	
5015	Middlesex-Somerset-Hunterdon, NJ.	1.1075
	Hunterdon, NJ. Middlesex, NJ. Somerset, NJ.	
5080	Milwaukee-Waukesha, WI.	0.9767
	Milwaukee, WI. Ozaukee, WI. Washington, WI. Waukesha, WI.	
5120	Minneapolis-St. Paul, MN–WI.	1.1017
	Anoka, MN. Carver, MN. Chisago, MN. Dakota, MN. Hennepin, MN. Isanti, MN. Ramsey, MN. Scott, MN. Sherburne, MN. Washington, MN. Wright, MN.	
	Pierce, WI. St. Croix, WI.	
5140	Missoula, MT	0.9274
	Missoula, MT.	
5160	Mobile, AL	0.8163
	Baldwin, AL. Mobile, AL.	
5170	Modesto, CA	1.0396
	Stanislaus, CA.	
5190	Monmouth-Ocean, NJ	1.1278
	Monmouth, NJ. Ocean, NJ.	
5200	Monroe, LA	0.8396
	Ouachita, LA.	
5240	Montgomery, AL	0.7653
	Autauga, AL. Elmore, AL. Montgomery, AL.	
5280	Muncie, IN	1.0969
	Delaware, IN.	
5330	Myrtle Beach, SC	0.8440
	Horry, SC.	
5345	Naples, FL	0.9661
	Collier, FL.	
5360	Nashville, TN	0.9490
	Cheatham, TN. Davidson, TN. Dickson, TN. Robertson, TN. Rutherford TN. Sumner, TN. Williamson, TN. Wilson, TN.	
5380	Nassau-Suffolk, NY	1.3932
	Nassau, NY. Suffolk, NY.	
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT.	1.2297
	Fairfield, CT. New Haven, CT.	
5523	New London-Norwich, CT.	1.2063
	New London, CT.	
5560	New Orleans, LA	0.9295
	Jefferson, LA. Orleans, LA. Plaquemines, LA. St. Bernard, LA. St. Charles, LA. St. James, LA. St. John The Baptist, LA. St. Tammany, LA.	
5600	New York, NY	1.4651
	Bronx, NY. Kings, NY. New York, NY. Putnam, NY. Queens, NY. Richmond, NY. Rockland, NY. Westchester, NY.	
5640	Newark, NJ	1.1837
	Essex, NJ. Morris, NJ. Sussex, NJ. Union, NJ.	

MSA	Urban area (Constituent counties)	Wage index
	Warren, NJ.	
5660	Newburgh, NY–PA	1.0847
	Orange, NY.	
	Pike, PA.	
5720	Norfolk-Virginia Beach-Newport News, VA–NC.	0.8412
	Currituck, NC.	
	Chesapeake City, VA.	
	Gloucester, VA.	
	Hampton City, VA.	
	Isle of Wight, VA.	
	James City, VA.	
	Mathews, VA.	
	Newport News City, VA.	
	Norfolk City, VA.	
	Poquoson City, VA.	
	Portsmouth City, VA.	
	Suffolk City, VA.	
	Virginia Beach City VA.	
	Williamsburg City, VA.	
	York, VA.	
5775	Oakland, CA	1.4983
	Alameda, CA.	
	Contra Costa, CA.	
5790	Ocala, FL	0.9243
	Marion, FL.	
5800	Odessa-Midland, TX ...	0.9205
	Ector, TX.	
	Midland, TX.	
5880	Oklahoma City, OK	0.8822
	Canadian, OK.	
	Cleveland, OK.	
	Logan, OK.	
	McClain, OK.	
	Oklahoma, OK.	
	Pottawatomie, OK.	
5910	Olympia, WA	1.0677
	Thurston, WA.	
5920	Omaha, NE–IA	0.9572
	Pottawattamie, IA.	
	Cass, NE.	
	Douglas, NE.	
	Sarpy, NE.	
	Washington, NE.	
5945	Orange County, CA	1.1467
	Orange, CA.	
5960	Orlando, FL	0.9610
	Lake, FL.	
	Orange, FL.	
	Osceola, FL.	
	Seminole, FL.	
5990	Owensboro, KY	0.8159
	Daviess, KY.	
6015	Panama City, FL	0.9010
	Bay, FL.	
6020	Parkersburg-Marietta, WV–OH.	0.8274
	Washington, OH.	
	Wood, WV.	
6080	Pensacola, FL	0.8176
	Escambia, FL.	
	Santa Rosa, FL.	
6120	Peoria-Pekin, IL	0.8645
	Peoria, IL.	
	Tazewell, IL.	
	Woodford, IL.	
6160	Philadelphia, PA–NJ ...	1.0937
	Burlington, NJ.	
	Camden, NJ.	
	Gloucester, NJ.	
	Salem, NJ.	
	Bucks, PA.	
	Chester, PA.	
	Delaware, PA.	
	Montgomery, PA.	
	Philadelphia, PA.	
6200	Phoenix-Mesa, AZ	0.9669
	Maricopa, AZ.	
	Pinal, AZ.	
6240	Pine Bluff, AR	0.7791
	Jefferson, AR.	
6280	Pittsburgh, PA	0.9741
	Allegheny, PA.	
	Beaver, PA.	
	Butler, PA.	
	Fayette, PA.	
	Washington, PA.	
	Westmoreland, PA.	
6323	Pittsfield, MA	1.0288
	Berkshire, MA.	
6340	Pocatello, ID	0.9076
	Bannock, ID.	
6360	Ponce, PR	0.5006
	Guayanilla, PR.	
	Juana Diaz, PR.	
	Penuelas, PR.	
	Ponce, PR.	
	Villalba, PR.	
	Yauco, PR.	
6403	Portland, ME	0.9748
	Cumberland, ME.	
	Sagadahoc, ME.	
	York, ME.	
6440	Portland-Vancouver, OR–WA.	1.0910
	Clackamas, OR.	
	Columbia, OR.	
	Multnomah, OR.	
	Washington, OR.	
	Yamhill, OR.	
	Clark, WA.	
6483	Providence-Warwick-Pawtucket, RI.	1.0864
	Bristol, RI.	
	Kent, RI.	
	Newport, RI.	
	Providence, RI.	
	Washington, RI.	
6520	Provo-Orem, UT	1.0029
	Utah, UT.	
6560	Pueblo, CO	0.8815
	Pueblo, CO.	
6580	Punta Gorda, FL	0.9613
	Charlotte, FL.	
6600	Racine, WI	0.9246
	Racine, WI.	
6640	Raleigh-Durham-Chapel Hill, NC.	0.9646
	Chatham, NC.	
	Durham, NC.	
	Franklin, NC.	
	Johnston, NC.	
	Orange, NC.	
	Wake, NC.	
6660	Rapid City, SD	0.8865
	Pennington, SD.	
6680	Reading, PA	0.9152
	Berks, PA.	
6690	Redding, CA	1.1664
	Shasta, CA.	
6720	Reno, NV	1.0550
	Washoe, NV.	
6740	Richland-Kennewick-Pasco, WA.	1.1460
	Benton, WA.	
	Franklin, WA.	
6760	Richmond-Petersburg, VA.	0.9617
	Charles City County, VA.	
	Chesterfield, VA.	
	Colonial Heights City, VA.	
	Dinwiddie, VA.	
	Goochland, VA.	
	Hanover, VA.	
	Henrico, VA.	
	Hopwell City, VA.	
	New Kent, VA.	
	Petersburg City, VA.	
	Powhatan, VA.	
	Prince George, VA.	
	Richmond City, VA.	
6780	Riverside-San Bernardino, CA.	1.1239
	Riverside, CA.	
	San Bernardino, CA.	
6800	Roanoke, VA	0.8750
	Botetourt, VA.	
	Roanoke, VA.	
	Roanoke City, VA.	
	Salem City, VA.	
6820	Rochester, MN	1.1315
	Olsted, MN.	
6840	Rochester, NY	0.9182
	Genesee, NY.	
	Livingston, NY.	
	Monroe, NY.	
	Ontario, NY.	
	Orleans NY.	
	Wayne, NY.	
6880	Rockford, IL	0.8819
	Boone, IL.	
	Ogle, IL.	
	Winnebago, IL.	
6895	Rocky Mount, NC	0.8849
	Edgecombe, NC.	
	Nash, NC.	
6920	Sacramento, CA	1.1950
	El Dorado, CA.	
	Placer, CA.	
	Sacramento, CA.	
6960	Saginaw-Bay City-Midland, MI.	0.9575
	Bay, MI.	
	Midland, MI.	
	Saginaw, MI.	
6980	St. Cloud, MN	1.0016
	Benton, MN.	
	Stearns, MN.	
7000	St. Joseph, MO	0.9071
	Andrew, MO.	
	Buchanan, MO.	
7040	St. Louis, MO-IL	0.9049
	Clinton, IL.	
	Jersey, IL.	
	Madison, IL.	
	Monroe, IL.	
	St. Clair, IL.	
	Franklin, MO.	
	Jefferson, MO.	
	Lincoln, MO.	
	St. Charles, MO.	
	St. Louis, MO.	
	St. Louis City, MO.	
	Warren, MO.	

MSA
7080 ..
7120 ..
7160 ..
7200 ..
7240 ..
7320 ..
7360 ..
7400 ..
7440 ..
7460 ....
7480 ....
7485 ....
7490 ....
7500 ....
7510 ....

MSA	Urban area (Constituent counties)	Wage index
7080	Salem, OR	1.0189
	Marion, OR.	
	Polk, OR.	
7120	Salinas, CA	1.4502
	Monterey, CA.	
7160	Salt Lake City-Ogden, UT.	0.9807
	Davis, UT.	
	Salt Lake, UT.	
	Weber, UT.	
7200	San Angelo, TX	0.8083
	Tom Green, TX.	
7240	San Antonio, TX	0.8580
	Bexar, TX.	
	Comal, TX.	
	Guadalupe, TX.	
	Wilson, TX.	
7320	San Diego, CA	1.1784
	San Diego, CA.	
7360	San Francisco, CA	1.4156
	Marin, CA.	
	San Francisco, CA.	
	San Mateo, CA.	
7400	San Jose, CA	1.3656
	Santa Clara, CA.	
7440	San Juan-Bayamon, PR.	0.4690
	Aguas Buenas, PR.	
	Barceloneta, PR.	
	Bayamon, PR.	
	Canovanas, PR.	
	Carolina, PR.	
	Catano, PR.	
	Ceiba, PR.	
	Comerio, PR.	
	Corozal, PR.	
	Dorado, PR.	
	Fajardo, PR.	
	Florida, PR.	
	Guaynabo, PR.	
	Humacao, PR.	
	Juncos, PR.	
	Los Piedras, PR.	
	Loiza, PR.	
	Luguillo, PR.	
	Manati, PR.	
	Morovis, PR.	
	Naguabo, PR.	
	Naranjito, PR.	
	Rio Grande, PR.	
	San Juan, PR.	
	Toa Alta, PR.	
	Toa Baja, PR.	
	Trujillo Alto, PR.	
	Vega Alta, PR.	
	Vega Baja, PR.	
	Yabucoa, PR.	
7460	San Luis Obispo-Atascadero-Paso Robles, CA.	1.0673
	San Luis Obispo, CA.	
7480	Santa Barbara-Santa Maria-Lompoc, CA.	1.0597
	Santa Barbara, CA.	
7485	Santa Cruz-Watsonville, CA.	1.4040
	Santa Cruz, CA.	
7490	Santa Fe, NM	1.0537
	Los Alamos, NM.	
	Santa Fe, NM.	
7500	Santa Rosa, CA	1.2646
	Sonoma, CA.	
7510	Sarasota-Bradenton, FL.	0.9809
	Manatee, FL.	
	Sarasota, FL.	
7520	Savannah, GA	0.9697
	Bryan, GA.	
	Chatham, GA.	
	Effingham, GA.	
7560	Scranton-Wilkes-Barre-Hazleton, PA.	0.8421
	Columbia, PA.	
	Lackawanna, PA.	
	Luzerne, PA.	
	Wyoming, PA.	
7600	Seattle-Bellevue-Everett, WA.	1.0996
	Island, WA.	
	King, WA.	
	Snohomish, WA.	
7610	Sharon, PA	0.7928
	Mercer, PA.	
7620	Sheboygan, WI	0.8379
	Sheboygan, WI.	
7640	Sherman-Denison, TX	0.8694
	Grayson, TX.	
7680	Shreveport-Bossier City, LA.	0.8750
	Bossier, LA.	
	Caddo, LA.	
	Webster, LA.	
7720	Sioux City, IA–NE	0.8473
	Woodbury, IA.	
	Dakota, NE.	
7760	Sioux Falls, SD	0.8790
	Lincoln, SD.	
	Minnehaha, SD.	
7800	South Bend, IN	1.0000
	St. Joseph, IN.	
7840	Spokane, WA	1.0513
	Spokane, WA.	
7880	Springfield, IL	0.8685
	Menard, IL.	
	Sangamon, IL.	
7920	Springfield, MO	0.8488
	Christian, MO.	
	Greene, MO.	
	Webster, MO.	
8003	Springfield, MA	1.0637
	Hampden, MA.	
	Hampshire, MA.	
8050	State College, PA	0.9038
	Centre, PA.	
8080	Steubenville-Weirton, OH–WV.	0.8548
	Jefferson, OH.	
	Brooke, WV.	
	Hancock, WV.	
8120	Stockton-Lodi, CA	1.0629
	San Joaquin, CA.	
8140	Sumter, SC	0.8271
	Sumter, SC.	
8160	Syracuse, NY	0.9549
	Cayuga, NY.	
	Madison, NY.	
	Onondaga, NY.	
	Oswego, NY.	
8200	Tacoma, WA	1.1564
	Pierce, WA.	
8240	Tallahassee, FL	0.8545
	Gadsden, FL.	
	Leon, FL.	
8280	Tampa-St. Petersburg-Clearwater, FL.	0.8982
	Hernando, FL.	
	Hillsborough, FL.	
	Pasco, FL.	
	Pinellas, FL.	
8320	Terre Haute, IN	0.8304
	Clay, IN.	
	Vermillion, IN.	
	Vigo, IN.	
8360	Texarkana, AR-Texarkana, TX	0.8363
	Miller, AR.	
	Bowie, TX.	
8400	Toledo, OH	0.9832
	Fulton, OH.	
	Lucas, OH.	
	Wood, OH.	
8440	Topeka, KS	0.9117
	Shawnee, KS.	
8480	Trenton, NJ	1.0137
	Mercer, NJ.	
8520	Tucson, AZ	0.8794
	Pima, AZ.	
8560	Tulsa, OK	0.8454
	Creek, OK.	
	Osage, OK.	
	Rogers, OK.	
	Tulsa, OK.	
	Wagoner, OK.	
8600	Tuscaloosa, AL	0.8064
	Tuscaloosa, AL.	
8640	Tyler, TX	0.9404
	Smith, TX.	
8680	Utica-Rome, NY	0.8560
	Herkimer, NY.	
	Oneida, NY.	
8720	Vallejo-Fairfield-Napa, CA.	1.2847
	Napa, CA	1.1030
	Solano, CA.	
8735	Ventura, CA.	
	Ventura, CA.	
8750	Victoria, TX	0.8154
	Victoria, TX.	
8760	Vineland-Millville-Bridgeton, NJ.	1.0501
	Cumberland, NJ.	
8780	Visalia-Tulare-Porterville, CA.	0.9551
	Tulare, CA.	
8800	Waco, TX	0.8314
	McLennan, TX.	
8840	Washington, DC-MD-VA-WV.	1.0755
	District of Columbia, DC.	
	Calvert, MD.	
	Charles, MD.	
	Frederick, MD.	
	Montgomery, MD.	
	Prince Georges, MD.	
	Alexandria City, VA.	
	Arlington, VA.	
	Clarke, VA.	
	Culpeper, VA.	
	Fairfax, VA.	
	Fairfax City, VA.	
	Falls Church City, VA.	
	Fauquier, VA.	
	Fredericksburg City, VA.	
	King George, VA.	
	Loudoun, VA.	
	Manassas City, VA.	
	Manassas Park City, VA.	

MSA	Urban area (Constituent counties)	Wage index
	Prince William, VA.	
	Spotsylvania, VA.	
	Stafford, VA.	
	Warren, VA.	
	Berkeley, WV.	
	Jefferson, WV.	
8920	Waterloo-Cedar Falls, IA.	0.8404
	Black Hawk, IA.	
8940	Wausau, WI	0.9418
	Marathon, WI.	
8960	West Palm Beach-Boca Raton, FL.	0.9682
	Palm Beach, FL.	
9000	Wheeling, WV-OH	0.7733
	Belmont, OH.	
	Marshall, WV.	
	Ohio, WV.	
9040	Wichita, KS	0.9544
	Butler, KS.	
	Harvey, KS.	
	Sedgwick, KS.	
9080	Wichita Falls, TX	0.7668
	Archer, TX.	
	Wichita, TX.	
9140	Williamsp;port, PA	0.8392
	Lycoming, PA.	
9160	Wilmington-Newark, DE-MD.	1.1191
	New Castle, DE.	
	Cecil, MD.	
9200	Wilmington, NC	0.9402
	New Hanover, NC.	
	Brunswick, NC.	
9260	Yakima, WA	0.9907
	Yakima, WA.	
9270	Yolo, CA	1.0199
	Yolo, CA.	
9280	York, PA	0.9264
	York, PA.	
9320	Youngstown-Warren, OH.	0.9543
	Columbiana, OH.	
	Mahoning, OH.	
	Trumbull, OH.	
9340	Yuba City, CA	1.0706
	Sutter, CA.	
	Yuba, CA.	
9360	Yuma, AZ	0.9529
	Yuma, AZ.	

Dated: June 28, 2001.

Brian P. Burns,

Deputy Assistant Secretary for Information Resources Management.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3073–N]

Medicare Program; Town Hall Meeting on Physician Query Forms

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a Town Hall meeting to discuss the use of coding summary forms (in this case, physician query forms) when the record is reviewed by a Peer Review Organization (PRO) to validate DRG coding. Physicians, providers, coding specialists, medical records staff, quality improvement professionals, and other interested parties are invited to this meeting to present their individual views on physician query forms. The opinions and alternatives provided during this meeting will assist us as we evaluate our policy on the use of physician query forms by PROs in verifying hospital coding. The meeting is open to the public, but attendance is limited to space available.

DATES: *Meeting Date:* The Town Hall meeting announced in this notice will be held on Friday, July 27, 2001, from 1:30 p.m. to 5:00 p.m. (Eastern Standard Time).

ADDRESSES: The Town Hall meeting will be held in the main auditorium of the Centers for Medicare and Medicaid Services building, 7500 Security Boulevard, Baltimore, MD 21244.

Written Questions or Statements: Any interested party may send written comments by mail, fax, or electronically. We will accept written testimony, questions, or other statements, not to exceed (4) single-spaced, typed pages, before the meeting, and up until August 10, 2001. Send written testimony, questions or other statements to: Sheila Blackstock, Quality Improvement Group, Office of Clinical Standards and Quality, Centers for Medicare and Medicaid Services, S3–021–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Sheila Blackstock, (410) 786–3502 or Lana Reed, (410) 786–6875. You may also send inquiries about this meeting via email to *www.querymtg@hcfa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1866(a)(1)(F) of the Social Security Act and 42 CFR Part 476.71(a) require PROs to perform a number of review activities, including DRG validation review of inpatient hospital prospective payment system cases to make determinations as appropriate, in accordance with the terms of their contracts.

Section 4130 of the PRO Manual directs PROs to:

- Review medical records to ensure that the record and the information on the claim submitted by the hospital agree;
- Base DRG validation upon accepted principles of coding practice; and
- Verify a hospital's coding in accordance with the coding principles reflected in the current edition of the ICD–9–CM coding manual.

In January, 2001, we issued a policy memorandum to PROs directing them not to accept coding summary forms (physician query forms) as documentation in the medical record following DRG validation procedures specified in section 4130 of the PRO Manual. While this memorandum did not mandate an outright prohibition of the use of summary forms, it did prohibit PROs from using coding summary forms *as a substitute for documentation in the medical record.*

The policy memorandum generated a high level of public interest. Subsequently, we recognized that there are varied interpretations of what constitutes proper supplemental usage of coding summary forms. As a result, in March 2001, we issued a second policy memorandum that suspended implementation of the January 2001 memorandum until October 1, 2001. We now seek individual input from interested parties so that it may be considered as we re-evaluate this policy.

II. Meeting Format

The initial portion of the meeting will be a presentation of our policy and our concerns with the use of physician query forms. The remainder of the meeting will be reserved for individual statements from interested parties.

Time for participants to make a statement will be limited according to the number of registered participants. Therefore, individuals who wish to make a statement must contact the individuals identified in **FOR FURTHER INFORMATION**, above, as soon as possible to sign up to make a statement. Participants will be permitted to speak in the order in which they sign up. Comments from individuals not registered to speak will be heard after scheduled statements only if time permits.

Written submissions will also be accepted.

III. Registration Instructions

The Office of Clinical Standards and Quality is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register by sending a fax to the attention of Lana Reed or Sheila Blackstock. The fax number is (410) 786–8532. Please include your name, address, telephone number, and, if available, email address and fax number. You will receive a

registration confirmation with instructions for your arrival at the CMS complex. If seating capacity has been reached, you will be notified that the meeting has reached capacity.

Authority: Sec. 1871 of the Social Security Act (42 U.S.C. 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: June 28, 2001.

Thomas A. Scully,

Administrator, Health Care Financing Administration.

[FR Doc. 01–16744 Filed 7–2–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is also available on the internet at the following website: *http://www.health.org/workplace*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115 (Formerly: Hartford Hospital Toxicology Laboratory)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (Formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 1301 18th Ave NW, Suite 110, Austin, MN 55912, 507–437–7322

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Integrated Regional Laboratories, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–777–0018, 800–522–0232 (Formerly: Cedars Medical Center, Department of Pathology)

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive,

Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272 (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/ 800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/ 800–322–3361 (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 11604 E. Indiana Ave., Spokane, WA 99206, 509–926–2400/ 800–541–7891

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800 (Formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 248–373–9120/800–444–0106 (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–842–6152 (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 801 East Dixie Ave., Suite 105A, Leesburg, FL 34748, 352–787–9006x4343 (Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

Universal Toxicology Laboratories, LLC, 9930 W. Highway 80, Midland, TX 79706, 915–561–8851/888–953–8851

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,
Executive Officer, Substance Abuse and Mental Health Services Administration.
[FR Doc. 01–16657 Filed 7–2–01; 8:45 am]
BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2001 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Reissued Notice of Funding Availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) is reissuing the announcement of the availability of FY 2001 funds for grants for the following activity. This announcement changes the submission date to August 10, changes the address to which applications must be submitted, changes eligibility requirements, and adds the requirement for letters of support. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, Cooperative Agreement for a Technical Assistance Center for Statewide Family Networks (short title: Statewide Networks Technical Assistance), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. Funds FY 2001	Est. No. of Awards	Project period
Statewide Family Networks Technical Assistance Center	August 10, 2001	$300–600,000	One	3 years.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2001 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement application were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

GENERAL INSTRUCTIONS: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Mental Health Services Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015, Telephone: 1–800–789–2647.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov.*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of Fiscal Year 2001 funds for implementing a cooperative agreement for a Technical Assistance Center for Statewide Family Networks. The Technical Assistance Center will serve Networks receiving a grant under SAMHSA GFA No. SM01–004. The purpose of the Technical Assistance Center is to provide training, mentoring by peers in the field, help with problem solving, a communications link for the Center for Mental Health Services to the grantees, and logistical arrangements for a mandatory annual technical assistance meeting.

Eligibility: Nonprofit private entities that meet all of the following requirements are eligible to apply:

(1) nonprofit private entities that have a board of directors comprise of no less than 25 to 51 percent family members whose children, youth, or adolescents have a serious emotional, behavioral, or mental disorder. This may include youth members serving as part of the board of directors.

(2) The entities organizational mission and scope of work must solely focus on families whose children, youth, and adolescents age 18 and under or 21 and under if served by an Individual Education Plan (IEP); with serious emotional, behavioral, or mental disorder.

Availability of Funds: Approximately $300,000 to $600,000 will be available for one award. Actual funding levels will depend upon the availability of funds.

Period of Support: The project period is three years. Annual continuation awards will be made subject to continued availability of funds and progress achieved.

Criteria for Review and Funding:

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process.

Availability of funds will also be an award criteria.

Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.230.

Program Contact: For questions concerning program issues: Elizabeth Sweet, M.Ed. and Gary DeCarolis, M.Ed., Child, Adolescent, and Family Branch, Center for Mental Health Services, Substance Abuse and Mental

Health Services Administration, 5600 Fishers Lane, Room 11C–16, Rockville, MD 20857, (301) 443–1333, E-Mail: *esweet@samhsa.gov*, *gdecarol@samhsa.gov*

Questions on grants management issues should be directed to: Steve Hudak, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 13–103, Rockville, MD 20857, (301) 443–4456, E-Mail: shudak@samhsa.gov

Public Health Grants Management System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2001 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2001 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process.

For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: June 25, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–16620 Filed 7–2–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Applicant: Jack Gayden, Memphis, TN, PRT–043613

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Applicant: Alan Chopp, Edison, NJ, PRT–044694

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Applicant: Jeffrey Everett Rhees, Oakwood, OH, PRT–040140

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Applicant: Ludwid F. Kroner, III, Rock Springs, WY, PRT–044693

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Applicant: Glenn D. Vondra, Johnston, IA, PRT–044701

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Applicant: Russell J. Lafave, Midland, MI, PRT–044744

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Applicant: William K. Wright, Jr., Virginia Beach, VA, PRT–044761

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Applicant: William K. Wright, Virginia Beach, VA, PRT–044762

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Applicant: Zoological Society of San Diego, Escondido, CA, PRT–042002

The applicant requests a permit to import one male captive-born lion-tailed macaque (*Macaca silenus*) from the Toronto Zoo, Ontario, Canada, for the purpose of enhancement of the survival of the species through captive propagation.

Applicant: Feld Entertainment, Inc. dba Ringling Brothers and Barnum & Bailey, Vienna, VA, PRT–043769 and 043770

The applicant requests a permit to export, re-export and re-import captive born and captive-held Asian elephants (*Elephas maximus*), captive born tigers (*Panthera tigris*), captive born Bengal tigers (*Panthera tigris tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Applicant: Kellie Heckman/ Northwestern University, Evanston, IL, PRT–041135

The applicant requests a permit to import biological samples from woolly lemur (*Avahi laniger*), aye-aye (*Daubentonia madagascariensis*), brown lemur (*Eulemur fulvus*), red-bellied lemur (*Eulemur rubriventer*), golden bamboo lemur (*Hapalemur aureus*), grey gentile lemur (*Hapalemur griseus*), broad-nosed gentile lemur (*Hapalemur simus*), sportive lemur (*Lepilemur mustelinus*), diademed sifaka (*Propithecus diadema*), ruffed lemur (*Varecia variegata*), greater dwarf lemur (*Cheirogaleus major*), and brown mouse lemur (*Microcebus rufus*) collected in the wild in Madagascar, for scientific research.

Applicant: AZA Rhinoceros Advisory Group (Rhino TAG) on behalf of Fossil Rim Wildlife Center, Glen Rose, TX, PRT–042655

The applicant requests a permit to import 1.0 captive-born black rhinoceros (*Diceros bicornis*) from the Western Plains Zoo, Dubbo, Australia for the purpose of enhancement of the species through captive propagation.

Applicant: AZA Rhinoceros Advisory Group (Rhino TAG) c/o The Wilds, Cumberland, OH, PRT–042654

The applicant requests a permit to export 2.0 captive-born black rhinoceros (*Diceros bicornis*) to the Mkomazi Rhino Sanctuary, Mkomazi Game Reserve, Kilimanjaro Region, Tanzania, to enhance the survival of the species through reintroduction into the wild.

Applicant: Nancy Ellen Drilling/ University of Minnesota, St. Paul. MN, PRT–042484

The applicant requests a permit to import feathers from white-winged duck (*Cairina scutulata*) collected in the wild in Indonesia, for scientific research.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361, *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Written data, comments or requests for copies of these complete applications or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281. These requests must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Charles W. Helscel, Owasso, OK, PRT–044695

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population in Canada for personal use, taken May, 2001.

The U.S. Fish and Wildlife has information collection approval from OMB through February 28, 2001. OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 22, 2001.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–16708 Filed 7–2–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On May 7, 2001, a notice was published in the **Federal Register**, Vol. 66, No. 88, Page 23044, that an application had been filed with the Fish and Wildlife Service by Lee R. Anderson, Sr., for a permit (PRT–042004) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 13, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On March 20, 2001, a notice was published in the **Federal Register**, Vol. 66, No. 54, Page 15736, that an application had been filed with the Fish and Wildlife Service by Donald L. Fetterolf, for a permit (PRT–040021) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 7, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended*, (16 U.S.C. 1361 *et*

seq.) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: June 22, 2001.

Michael S. Moore,

Senior Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–16707 Filed 7–2–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Revision: Piscataway Park

AGENCY: National Park Service, Interior.

ACTION: Notice of boundary revision.

SUMMARY: Notice is hereby given that the National Park Service (NPS) is revising the boundary of Piscataway Park to include two additional tracts of land.

FOR FURTHER INFORMATION CONTACT: Chief, Land Resources Program Center, National Park Service, National Capital Region, 1100 Ohio Drives, SW., Washington, D.C. 20242, (202) 619–7034; or Superintendent, National Capital Parks-East, 1900 Anacostia Drive, SW., Washington, D.C. 20020, (202) 690–5185.

SUPPLEMENTARY INFORMATION: Public Law 87–362 enacted October 4, 1961, authorizes the Secretary of the Interior to acquire lands and interests therein for Piscataway Park. Section 7(c)(ii) of the Land and Water Conservation Fund Act, as amended by Section 814(b) of Public Law 104–333, authorizes minor boundary revisions of areas within the National Park System. Such boundary revisions may be made when necessary, after advising the appropriate Congressional Committees, and following publication of a revised boundary map, drawing or other boundary description in the **Federal Register**. In order to preserve lands, which comprise the principal viewshed from Mount Vernon and Fort Washington in a manner that will ensure, insofar as practicable, the natural beauty of such land as it existed at the construction and active use of Mount Vernon Mansion and Fort Washington, it is necessary to revise the existing boundary of Piscataway Park to include two additional tracts of land comprising approximately 141 acres. The owners of Tract Number 01–264, a 40-acre parcel of unimproved land, have offered to donate the fee-simple interest in the property to NPS. A scenic easement interest in Tract Number 02–219, a 101-acre parcel of unimproved land, will also be acquired by NPS as a donation.

Notice is hereby given that the boundary of Piscataway Park is hereby revised to include two additional tracts of land as more particularly described as follows:

Tract Number 01–264, consisting of 40 acres of unimproved land located within the Fifth Election District of Prince Georges County, Maryland, and identified as part of Parcel Number 8 on Prince Georges County, Maryland Tax Map 141.

Tract Number 02–219, consisting of 101 acres of unimproved land located within the Seventh Election District of Charles County, Maryland, and identified as Parcel Number 126 on Charles County, Maryland Tax Map 1.

The above referenced properties are also depicted on Piscataway Park land status maps numbered 836/80036 which are available for inspection in the office of the Land Resources Program Center, National Park Service, National Capital Region, 1100 Ohio Drive, SW., Washington, D.C. 20242.

Dated: June 14, 2001.

Terry R. Carlstrom,

Regional Director, National Park Service, National Capital Region.

[FR Doc. 01–16715 Filed 7–2–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the Procedures and Criteria for Approval or Disapproval of State Program Submissions, 30 CFR 732; and General Reclamation Requirements, 30 CFR 874, have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and their expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by August 2, 2001, in order to be assured of consideration.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783. You may also contact Mr. Trelease at jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval for the collections of information found at 30 CFR parts 732 and 874. OSM is requesting a 3-year term of approval for these information collection activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are 1029–0024 for Part 732 and 1029–0113 for Part 874, and may be found in OSM's regulations at 732.10 and 874.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collections of information for Parts 732 and 874 was published on April 6, 2001 (66 FR 18298). No comments were received from that notice. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Procedures and Criteria for Approval or Disapproval of State Program Submissions, 30 CFR 732.

OMB Control Number: 1029–0024.

Summary: Part 732 establishes the procedures and criteria for approval and disapproval of State program submissions. The information submitted is used to evaluate whether State regulatory authorities are meeting the provisions of their approved programs.

Bureau Form Number: None.

Frequency of Collection: Once and annually.

Description of Respondents: 24 State regulatory authorities.

Total Annual Responses: 65.

Total Annual Burden Hours: 9,205.

Title: General Reclamation Requirements, 30 CFR 874.

OMB Control Number: 1029–0113.

Summary: Part 874 establishes land and water eligibility requirements, reclamation objectives and priorities and reclamation contractor responsibility. 30 CFR 874.17 requires consultation between the AML agency and the appropriate Title V regulatory authority on the likelihood of removing the coal under a Title V permit and concurrences between the AML agency and the appropriate Title V regulatory authority on the AML project boundary and the amount of coal that would be extracted under the AML reclamation project.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 26 State regulatory authorities and Indian tribes.

Total Annual Responses: 45.

Total Annual Burden Hours: 3,240.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

Dated: June 6, 2001.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 01–16716 Filed 7–2–01; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–73]

Steel

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) (the Act).

SUMMARY: Following receipt of a request from the United States Trade Representative on June 22, 2001, the Commission instituted investigation No. TA–201–73 under section 202 of the Act to determine whether certain steel products,[1] are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206).

EFFECTIVE DATE: June 22, 2001.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176) for general procedural questions; Mary Messer (202–205–3193) for carbon and alloy flat products; D.J. Na (202–708–4727) for carbon and alloy long products; Christopher Cassise (202–708–5408) for carbon and alloy tubular products and fittings and specialty products, Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION:

[1] The request letter and the accompanying annexes listing the covered products by HTS categories are on the Commission's website (http://www.usitc.gov).

Participation in the Investigation and Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Confidential Business Information (CBI) Under an Administrative Protective Order (APO) and CBI Service List

Pursuant to section 206.17 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than 21 days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Hearings on Injury and Remedy

The Commission has scheduled a series of separate hearings in connection with the injury and remedy phases of this investigation. The hearings on injury will begin the week of September 17, 2001, at the U.S. International Trade Commission Building and will continue for additional days to be determined. Requests to appear at the hearings should be filed in writing with the Secretary to the Commission on or before August 22, 2001. Requests should identify the products to be addressed and the amount of time requested. The Commission intends to publish a notice no later than September 5, 2001 concerning specific dates for the hearings and the products that will be the subject of each hearing. All persons desiring to appear at the hearings and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 12, 2001 at the U.S. International Trade Commission Building. In the event that the Commission makes an affirmative injury determination or is equally divided on the question of injury in this investigation, hearings on the question of remedy will begin the week of November 5, 2001 and will continue for additional days to be determined. Requests to appear at these hearings should be filed in writing with the

Secretary to the Commission on or before October 23, 2001. All persons desiring to appear at the hearings and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 30, 2001 at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearings are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the dates of the hearings.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs on injury is September 10, 2001; that for filing prehearing briefs on remedy, including any commitments pursuant to 19 U.S.C. 2252(a)(6)(B), is October 29, 2001. Parties may also file posthearing briefs. The deadline for filing posthearing briefs on injury will be announced at the hearings; that for filing posthearing briefs on remedy will also be announced at the hearings. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of injury by a date to be announced at the hearings, and pertinent to the consideration of remedy also by a date to be announced at the hearings. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 202 of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

Issued: June 28, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–16779 Filed 7–2–01; 8:45 am]

BILLING CODE 7020–02–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 9, 2001 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–935–942 (Preliminary)(Certain Structural Steel Beams from China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on July 9, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on July 16, 2001.)
5. Inv. Nos. 731–TA–943–947 (Preliminary)(Circular Welded Non-Alloy Steel Pipe from China, Indonesia, Malaysia, Romania, and South Africa)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on July 9, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on July 16, 2001.)
6. Outstanding action jackets:

Document No. GC–01–068: Concerning Inv. No. 337–TA–455 (Certain Network Interface Cards and Access Points for Use in Direct Sequence Spread Spectrum Wireless Local Area Networks and Products Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission. Issued: June 29, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–16857 Filed 6–29–01; 3:44 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated September 8, 2000, and published in the **Federal Register** on September 25, 2000 (65 FR 57621), Abbott Laboratories, 1776 North Centennial Drive, McPherson, Kansas 67460–1247, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of remifentanil (9739), a basic class of controlled substance listed in Schedule II.

The firm plans to import the remifentanil to manufacture Ultiva for the U.S. market.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Abbott Laboratories to import remifentanil is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Abbott Laboratories on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 22, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–16679 Filed 7–2–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 4, 2000, and published in the **Federal Register** on January 10, 2001, (66 FR 2004), Medeva Pharmaceuticals CA, Inc., 3501 West Garry Avenue, Santa Ana,

California 92704, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in schedule II.

The firm plans to manufacture the listed controlled substance to make finished dosage forms for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Medeva Pharmaceuticals CA, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Medeva Pharmaceuticals CA, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 19, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–16680 Filed 7–2–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 18, 2001, National Center for Natural Products Research-NIDA MProject University of Mississippi, 135 Coy Waller Complex, University, Mississippi 38677, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The firm will cultivate marihuana for the National Institute of Drug Abuse for research approved by the Department of Health and Human Services.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 4, 2001.

Dated: June 19, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration.

[FR Doc. 01–16682 Filed 7–2–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 5, 2000, and published in the **Federal Register** on January 10, 2001 (66 FR 2004), the National Center for Development of Natural Products, the University of Mississippi, 135 Coy Waller Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The firm plans to bulk manufacture for product development.

No comments or objections have been received. DEA has considered the factors in Title 21, Untied States Code, section 823(a) and determined that the registration of National Center for Development of Natural Products to manufacture the listed controlled substances is consistent with the public interest at this time. This determination was based on, among other things, DEA's on-site investigation of the National Center for Development for Natural Products. The investigation included inspection and testing of the applicant's qualifications and experience, verification of the applicant's compliance with state and local laws, and a review of the firm's background and history. DEA has further determined that the registration will be consistent with United States obligations under international treaties. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 19, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–16683 Filed 7–2–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 5, 2000, and published in the **Federal Register** on January 10, 2001, (66 FR 71), Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture tetrahydrocannabinols (THC) for use in treatment of AIDS wasting syndrome and as an antiemetic.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Norac Company, Inc. to manufacture tetrahydrocannabinols is consistent with the public interest at this time. DEA has investigated Norac Company, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. Thee investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore,

pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 19, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–16681 Filed 7–2–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2148–01; AG Order No.]

RIN 1115—AE26

Automatic Extension of Work Authorization for Hondurans and Nicaraguans Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: On May 8, 2001, the Immigration and Naturalization Service (Service) published notices in the **Federal Register** extending the designation of Honduras and Nicaragua under the Temporary Protected Status (TPS) Program until July 5, 2002. The extension for TPS allows eligible nationals of Honduras and Nicaragua to re-register for TPS and extend employment authorization. The Service is aware that may re-registrants will not receive their new employment authorization documents (EADs) until after their current EADs expire on July 5, 2001. Accordingly, this notice extends until December 5, 2001, the validity of EADs that were issued to Honduran or Nicaraguan nationals (or aliens having no nationality who last habitually resided in Honduras or Nicaragua) that are set to expire on July 5, 2001, under the extension of the TPS program. To be eligible for this automatic extension of employment authorization, an individual must be a national of Honduras or Nicaragua (or an alien having no nationality who last habitually resided in Honduras or Nicaragua) who currently holds an EAD that expires on July 5, 2001 and that was issued in conjunction with the TPS program for Honduras or Nicaragua. This automatic extension is limited to EADs bearing date of July 5, 2001 and the notation:

• "A–12" or "C–19" on the face of the card under "Category" for EADs issued on Form I–766; or, "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law" for EADs issued on Form I–688B.

DATES: This notice is effective July 3, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Biggs, Office of Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Why Is the Service Automatically Extending the Expiration Date of EADs From July 5, 2001 to December 5, 2001?

Considering both the number of applications that the Service anticipates it will receive for extension, Service processing capabilities, and given the short timeframe provided by statute for the decision to extend the Attorney General's designation of Honduras and Nicaragua under the TPS program, it is likely that many re-registrants will receive their new EAD after the expiration date of their current EAD. Unless an extension of the expiration date of their EAD is provided, re-registrants may experience a gap in employment authorization and be barred from working. Therefore, to afford the Service sufficient processing time or to ensure that re-registrants will be able to maintain their employment authorization until they receive a new EAD in connection with their re-registration for the new period of TPS, the Service through this notice, is extending the validity of applicable EADs to December 5, 2001.

Who Is Eligible To Receive an Automatic Extension of Employment Authorization?

To be eligible for an automatic extension of employment authorization, an individual must be a national of Honduras or Nicaragua (or an alien having no nationality who last habitually resided in Honduras or Nicaragua) who previously applied for an received an EAD under the initial January 5, 1999, designation of Honduras or Nicaragua for TPS. This automatic extension is limited to EADs bearing an expiration date of July 5, 2001, and the notation:

• "A–12" or "C–19" on the face of the card under "Category" for EADs issued on Form I–766; or,

• "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law" for EADs issued on Form I–688B.

Does a Qualified Individual Have To Apply to the Service for the Automatic Extension to December 5, 2001, of His or Her TPS-related EAD?

No, the extension of the validity of the previously issued EADS to December 5, 2001, is automatic and there is no fee. However, qualified individuals must re-register by August 6, 2001, in order to be eligible for a new EAD that is valid until July 5, 2002.

What Documents Can a Qualified Individual Show to His or Her Employer as Proof of Employment Authorization and Identify When Completing the Employment Eligibility Verification Form (Form I–9)?

For completion of the Form I–9 at the time of hire or re-verification, qualified individuals who have received an extension of employment authorization by virtue of this **Federal Register** notice may present to their employer a TPS-related EAD as proof of valid employment authorization and identity until December 5, 2001. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present to their employer a copy of this **Federal Register** notice regarding the extension of employment authorization to December 5, 2001. In the alternative to presenting a TPS-related EAD, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

How Can Employers Determine Which EADs That Have Been Automatically Extended Through December 5, 2001, Are Acceptable for Completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until December 5, 2001, employers of TPS Honduran or Nicaraguan nationals (or aliens having no nationality who last habitually resided in Honduras or Nicaragua) whose employment authorization has been automatically extended by this notice mut accept an EAD that contains an expiration date of July 5, 2001, and that bears that notation:

• "A–12" or "C–19" on the face of the card under "Category" for EADs issued on Form I–766; or,

• "274A.12(A) (12)" or "274A.12(c) (19)" on the face of the card under "Provision of Law" for EADs issued on Form I–688B.

New EADs or extension stickers showing the December 5, 2001,

expiration date will not be issued. Employers should not request proof of Honduran or Nicaraguan citizenship. Employers presented with an EAD that has been extended by this **Federal Register** notice and that appears to be genuine and to relate to the employee should accept the document as a valid List A document and should not ask for additional Form I–9 documentation. This action by the Service through this **Federal Register** notice does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment. Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force.

Employers may call the Service's Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a Service representative about this Notice. Employers can also call the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155. Employees or applicants can call the OSC Employee Hotline at 1–800–255–7688 about the automatic extension.

Does This Notice Affect Any Other Portion of the May 8, 2001, Federal Register Notices Extending TPS Designation for Honduras and Nicaragua Until July 5, 2002?

No, all other TPS requirements contained in the May 8, 2001, **Federal Register** notices at 66 FR 23269 and 66 FR 23271, respectively, are accurate and remain in effect.

Dated: June 28, 2001.

Kevin D. Rooney,

Commissioner.

[FR Doc. 01–16745 Filed 6–29–01; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2–92]

Canadian Standards Association, Renewal and Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on: (1) the application of the Canadian Standards Association (CSA) for renewal of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and (2) the application of the Canadian Standards Association for expansion of its recognition to use additional standards.

EFFECTIVE DATE: The renewal becomes effective on July 3, 2001 and will be valid until July 3, 2006, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the renewal and expansion of recognition of the Canadian Standards Association (CSA) as a Nationally Recognized Testing Laboratory (NRTL). CSA's expansion request covers the use of additional test standards. The NRTL's scope of recognition may be found in OSHA's informational web page for the NRTL (http://www.osha-slc.gov/dts/otpca/nrtl/csa.html).

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope.

CSA originated in 1919 as the Canadian Engineering Standards Association (CESA), which was changed in 1944 to the present name. In 1940, CSA began to test and certify products.

CSA received its recognition as an NRTL on December 24, 1992 (see 57 FR 61452), for a period of five years ending December 24, 1997. Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. CSA submitted its renewal request on March 20, 1997 (see Exhibit 26A), within the time allotted, and CSA retains its recognition pending OSHA's final decision in this renewal process.

In July 1997, CSA acquired additional testing facilities from the American Gas Association (AGA). OSHA had recognized AGA operation of these facilities for NRTL status in 1990 (June 7, 1990, 55 FR 23312). OSHA was in the process of renewing its recognition of these facilities when CSA acquired them. Although OSHA was generally aware that CSA had made this acquisition, CSA did not officially inform OSHA until March 1999 as to how it wanted to treat these sites within its NRTL operations. The NRTL Program staff withheld action on CSA's renewal request until it received this information.

CSA has submitted a request, dated June 16, 1999 (see Exhibit 26B), to expand its recognition as an NRTL to include 195 additional test standards. The NRTL Program staff has determined that 51 of the 195 standards are not "appropriate test standards," within the meaning of 29 CFR 1910.7(c). The staff makes such determinations in processing expansion requests from any NRTL. Therefore, OSHA is approving 144 test standards for the expansion, which are listed below in the section on expansion.

OSHA published the required notice in the **Federal Register** on March 16, 2001, (66 FR 15281) to announce CSA's renewal and expansion requests. This notice included a preliminary finding that CSA could meet the requirements in 29 CFR 1910.7 for renewal and expansion of its recognition and invited public comment by April 2, 2001. OSHA received no comments concerning this notice.

In processing CSA's requests, OSHA performed on-site reviews of CSA's facilities listed below. NRTL Program staff recommended the renewal and expansion of CSA's recognition in the on-site review report (see Exhibit 27).

The following is a chronology of the other **Federal Register** notices published by OSHA concerning CSA's recognition, all of which have involved an expansion of recognition for additional sites, standards, or programs:

a request announced on July 20, 1999 (64 FR 38926) and granted on November 4, 1999 (64 FR 60240) a request announced on December 10, 1993 (58 FR 64973) and granted on February 4, 1994 (59 FR 5446); a request announced on March 3, 1994 (59 FR 10173) and granted on August 9, 1994 (59 FR 40602); a request announced on December 8, 1994 (59 FR 63383) and granted on March 24, 1995 (60 FR 15595); and a request announced on July 12, 1996 (61 FR 36763) and granted on November 20, 1996 (61 FR 59110). The renewal incorporates all recognitions granted to CSA through the date of publication of this preliminary finding.

You may obtain or review copies of all public documents pertaining to the CSA application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, D.C. 20210. You should refer to Docket No. NRTL–2–92, the permanent record of public information on the CSA recognition.

The current address of the CSA testing facilities already recognized by OSHA are:

Canadian Standards Association, Etobicoke (Toronto), 178 Rexdale Boulevard, Etobicoke, Ontario, M9W 1R3

CSA International, Pointe-Claire (Montreal), 865 Ellingham Street, Pointe-Claire, Quebec H9R 5E8

CSA International, Richmond (Vancouver), 13799 Commerce Parkway, Richmond, British Columbia V6V 2N9

CSA International, Edmonton, 1707–94th Street, Edmonton, Alberta T6N 1E6

CSA International, Cleveland, 8501 East Pleasant Valley Road, Cleveland, Ohio 44131 (formerly part of the American Gas Association)

CSA International, Irvine, 2805 Barranca Parkway, Irvine, California 92606 (formerly part of the American Gas Association)

Programs and Procedures

The renewal of recognition includes CSA's continued use of the following supplemental programs and procedures, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA has already recognized CSA for these programs, which are listed, as shown below, in OSHA's informational web page on the CSA recognition (http://www.osha-slc.gov/dts/otpca/nrtl/csa.html).

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 5: Acceptance of testing data from non-independent organizations.

Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).

Program 7: Acceptance of continued certification following minor modifications by the client.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Final Decision and Order

The NRTL Program staff has examined the applications, the assessor's report, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that the Canadian Standards Association has met the requirements of 29 CFR 1910.7 for renewal and expansion of its NRTL recognition. The renewal applies to the sites listed above. In addition, it covers the test standards listed below, and it is subject to the limitations and conditions, also listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews and expands the recognition of CSA, subject to these limitations and conditions.

Limitations

Renewal of Recognition of Facilities

OSHA limits the renewal of recognition of CSA to the 6 sites listed above. In addition, similar to other NRTLs that operate multiple sites, the Agency's recognition of any CSA testing site is limited to performing testing to the test standards for which OSHA has recognized CSA and for which the site has the proper capability and control programs.

Renewal of Recognition of Test Standards

OSHA further limits the renewal of recognition of CSA to testing and certification of products to demonstrate conformance to the test standards listed below (see Listing of Test Standards). OSHA has determined that each test standard meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c). Some of the test standards for which OSHA previously recognized CSA were no longer appropriate at the time of preparation of the preliminary notice, primarily because they had been withdrawn by the standards developing organization. As a result, we have excluded these test standards in the listing below. However, under OSHA policy, the NRTL may request recognition for comparable test standards, i.e., other appropriate test standards covering similar types of product testing. Since a number of NRTLs are affected by such withdrawn standards, OSHA will publish a separate notice to make the appropriate substitutions for CSA and other NRTLs that were recognized for these standards. The Agency has contacted these NRTLs regarding this matter.

The Agency's recognition of CSA, or any other NRTL, for a particular test standard is always limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. An NRTL's scope of recognition excludes any product(s) falling within the scope of the test standard for which OSHA has no such requirements.

Listing of Test Standards

ANSI A17.5 Elevators and Escalator Electrical Equipment

ANSI C37.20.1 Metal-Enclosed Low-Voltage Power Circuit-Breaker Switchgear [1]

ANSI C37.20.2 Metal-Clad and Station-Type Cubicle Switchgear [1]

ANSI C37.20.3 Metal-Enclosed Interrupter Switchgear [1]

ANSI C37.21 Control Switchboards [1]

ANSI C37.23 Metal Enclosed Bus and Calculating Losses in Isolated-Place Bus [1]
ANSI C37.41 Design Tests for High-Voltage Fuses, Distribution Enclosed Single Pole Air Switches, Fuse Disconnecting Switches and Accessories [1]
ANSI C37.46 Specifications for Power Fuses and Fuse Disconnecting Switches [1]
ANSI C37.54 Indoor Alternating-Current High Voltage Circuit Breakers Applied as Removable Elements in Metal-Enclosed Switchgear Assemblies—Conformance Test Procedures [1]
ANSI C37.55 Metal-Clad Switchgear Assemblies—Conformance Test Procedures [1]
ANSI C37.57 Metal-Enclosed Interrupter Switchgear Assemblies—Conformance Testing [1]
ANSI C37.58 Indoor AC Medium-Voltage Switches for Use in Metal-Enclosed Switchgear—Conformance Testing Procedures [1]
ANSI C37.121 Unit Substations—Requirements [1]
ANSI C62.11 Metal Oxide Surge Arresters for AC Power Circuits [1]
ANSI Z21.1 Household Cooking Gas Appliances
ANSI Z21.5.2 Gas Clothes Dryers, Type 2, Volume II
ANSI Z21.10.3 Gas Water Heaters, Volume III Storage, With Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous Water Heaters
ANSI Z21.12 Draft Hoods
ANSI Z21.13 Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.15 Manually Operated Gas Valves
ANSI Z21.17 Domestic Gas Conversion Burners
ANSI Z21.18 Gas Appliance Pressure Regulators
ANSI Z21.20 Automatic Gas Ignition Systems and Components
ANSI Z21.21 Automatic Valves for Gas Appliances
ANSI Z21.22 Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply Systems
ANSI Z21.23 Gas Appliance Thermostats
ANSI Z21.35 Gas Filters on Appliances
ANSI Z21.40.1 Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.47 Gas-Fired Central Furnaces
ANSI Z21.48 Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49 Gas-Fired Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.56 Gas-Fired Pool Heaters
ANSI Z21.61 Gas-Fired Toilets
ANSI Z21.66 Automatic Vent Damper Devices for Use With Gas-Fired Appliances Electrically Operated
ANSI Z21.73 Portable Camp Lanterns for Use With Propane Gas
ANSI Z83.3 Gas Utilization Equipment in Large Boilers
ANSI Z83.4 Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.6 Gas-Fired Infrared Heaters
ANSI Z83.7 Gas-Fired Construction Heaters
ANSI Z83.8 Gas Unit Heaters
ANSI Z83.11 Gas Food Service Equipment—Ranges and Unit broilers
UL 1 Flexible Metal Conduit
UL 3 Flexible Nonmetallic Tubing for Electric Wiring
UL 4 Armored Cable
UL 5 Surface Metal Raceways and Fittings
UL 6 Rigid Metal Conduit
UL 13 Power-Limited Circuit Cables
UL 20 General-Use Snap Switches
UL 22 Electric Amusement Machines
UL 44 Rubber-Insulated Wires and Cables
UL 45 Portable Electric Tools
UL 48 Electric Signs
UL 50 Electrical Cabinets and Boxes
UL 51 Power-Operated Pumps for Anhydrous Ammonia and LP-Gas
UL 62 Flexible Cord and Fixture Wire
UL 65 Electric Wired Cabinets
UL 67 Electric Panelboards
UL 69 Electric Fence Controllers
UL 73 Electric-Motor-Operated Appliances
UL 79 Power-Operated Pumps for Petroleum Product Dispensing Systems
UL 82 Electric Gardening Appliances
UL 83 Thermoplastic-Insulated Wires and Cables
UL 87 Power-Operated Dispensing Devices for Petroleum Products
UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
UL 98 Enclosed and Dead-Front Switches
UL 104 Elevator Door Locking Devices
UL 122 Electric Photographic Equipment
UL 125 Valves for Anhydrous Ammonia and LP-Gas (Other Than Safety Relief)
UL 130 Electric Heating Pads
UL 132 Safety Relief Valves for Anhydrous Ammonia and LP-Gas
UL 141 Garment Finishing Appliances
UL 144 Pressure Regulating Valves for LP-Gas
UL 147 LP-and MPS-Gas Torches
UL 150 Antenna Rotators
UL 153 Portable Electric Lamps
UL 174 Household Electric Storage-Tank Water Heaters
UL 183 Manufactures Wiring Systems
UL 187 X-Ray Equipment
UL 197 Commercial Electric Cooking Appliances
UL 198B Class H Fuses
UL 198C High-Interrupting-Capacity Fuses, Current Limiting Type
UL 198D High-Interrupting-Capacity Class K Fuses
UL 198E Class R Fuses
UL 198F Plug Fuses
UL 198G Fuse for Supplementary Overcurrent Protection
UL 198H Class T Fuses
UL 198L DC Fuses for Industrial Use
UL 198M Mine-Duty Fuses
UL 207 Nonelectrical Refrigerant Containing Components and Accessories
UL 209 Cellular Metal Floor Electrical Raceways and Fittings
UL 224 Extruded Insulating Tubing
UL 228 Door Closers-Holders, and Integral Smoke Detectors
UL 231 Electrical Power Outlets
UL 244A Solid-State Controls for Appliances
UL 250 Household Refrigerators and Freezers
UL 291 Automated Teller Systems
UL 294 Access Control System Units
UL 296 Oil Burners
UL 298 Portable Electric Hand Lamps
UL 310 Electrical Quick-Connect Terminals
UL 325 Door, Drapery, Gate, Louver and Window Operators and Systems
UL 343 Pumps of Oil-Burning Appliances
UL 347 High-Voltage Industrial Control Equipment
UL 351 Electrical Rosettes
UL 353 Limit Controls
UL 355 Electric Cord Reels
UL 360 Liquid Tight Flexible Steel Conduit
UL 372 Primary Safety Controls for Gas- and Oil-Fired Appliances
UL 378 Draft Equipment
UL 391 Solid-Fuel and Combination-Fuel Control and Supplementary Furnaces
UL 399 Drinking-Water Coolers
UL 412 Refrigeration Unit Coolers
UL 414 Electrical Meter Sockets
UL 416 Refrigerated Medical Equipment
UL 427 Refrigerating Units
UL 429 Electrically Operated Valves
UL 430 Electric Waste Disposers
UL 444 Communications Cables
UL 448 Pumps for Fire Protection Service
UL 452 Antenna Discharge Units
UL 464 Audible Signal Appliances
UL 466 Electric Scales
UL 467 Electrical Grounding and Bonding Equipment
UL 469 Musical Instruments and Accessories

UL 471 Commercial Refrigerators and Freezers
UL 474 Dehumidifiers
UL 482 Portable Sun/Heat Lamps
UL 484 Room Air Conditioners
UL 486A Wire Connectors and Soldering Lugs for Use With Copper Conductors
UL 486B Wire Connectors for Use With Aluminum Conductors
UL 486C Splicing Wire Connectors
UL 486D Insulated Wire Connectors for Use With Underground Conductors
UL 486E Equipment Wiring Terminals for Use With Aluminum and/or Copper Conductors
UL 489 Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
UL 493 Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
UL 495 Power-Operated Dispensing Devices for LP-Gas
UL 496 Edison-Base Lampholders
UL 497 Protectors for Communication Circuits
UL 497A Secondary Protectors for Communication Circuits
UL 497B Protectors for Data Communication and Fire Alarm Circuits
UL 498 Attachment Plugs and Receptacles
UL 499 Electric Heating Appliances
UL 506 Specialty Transformers
UL 507 Electric Fans
UL 508 Electric Industrial Control Equipment
UL 508C Power Conversion Equipment
UL 5 0 Insulating Tape
UL 511 Porcelain Electrical Cleats, Knobs, and Tubes
UL 512 Fuseholders
UL 514A Metallic Outlet Boxes, Electrical
UL 514B Fittings for Conduit and Outlet Boxes
UL 514C Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
UL 541 Refrigerated Vending Machines
UL 542 Lampholders, Starters, and Starter Holders for Fluorescent Lamps
UL 544 Electric Medical and Dental Equipment
UL 551 Transformer-Type Arc-Welding Machines
UL 561 Floor Finishing Machines
UL 563 Ice Makers
UL 574 Electric Oil Heater
UL 603 Power Supplies for Use With Burglar-Alarm Systems
UL 609 Local Burglar-Alarm Units and Systems
UL 621 Ice Cream Makers
UL 632 Electrically Actuated Transmitters
UL 636 Holdup Alarm Units and Systems
UL 639 Intrusion-Detection Units
UL 651 Schedule 40 and 80 Rigid PVC Conduit
UL 651A Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664 Commercial (Class IV) Electric Dry-Cleaning Machines
UL 674 Electric Motors and Generators for Use in Hazardous (Classified) Locations
UL 676 Underwater Lighting Fixtures
UL 680 Emergency Vault Ventilators and Vault Ventilating Parts
UL 696 Electric Toys
UL 697 Toy Transformers
UL 698 Industrial Control Equipment for Use in Hazardous (Classified) Locations
UL 705 Power Ventilators
UL 710 Grease Extractors for Exhaust Ducts
UL 719 Nonmetallic Sheathed Cables
UL 726 Oil-Fired Boiler Assemblies
UL 727 Oil-Fired Central Furnaces
UL 729 Oil-Fired Floor Furnaces
UL 730 Oil-Fired Wall Furnaces
UL 731 Oil-Fired Unit Heaters
UL 732 Oil-Fired Water Heaters
UL 733 Oil-Fired Air Heaters and Direct-Fired Heaters
UL 746A Polymeric Materials—Short Term Property Evaluations
UL 746B Polymeric Materials—Long Term Property Evaluations
UL 746C Polymeric Materials—Use in Electrical Equipment Evaluations
UL 746E Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre and Materials Used in Printed Wiring Boards
UL 749 Household Dishwashers
UL 751 Vending Machines
UL 756 Coin and Currency Changers and Actuators
UL 763 Motor-Operated Commercial Food Preparing Machines
UL 773 Plug-In Locking-Type Photocontrols for Use With Area Lighting
UL 773A Nonindustrial Photoelectric Switches for Lighting Control
UL 775 Graphic Arts Equipment
UL 778 Motor-Operated Water Pumps
UL 781 Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
UL 783 Electric Flashlights and Lanterns for Use in Hazardous Locations, Class I, Groups C and D
UL 795 Commercial-Industrial Gas-Heating Equipment
UL 796 Printed-Wiring Boards
UL 797 Electrical Metallic Tubing
UL 810 Capacitors
UL 813 Commercial Audio Equipment
UL 814 Gas-Tube-Sign and Ignition Cable
UL 817 Cord Sets and Power-Supply Cords
UL 823 Electric Heaters for Use in Hazardous (Classified) Locations
UL 826 Household Electric Clocks
UL 834 Heating, Water Supply, and Power Boilers—Electric
UL 842 Valves for Flammable Fluids
UL 844 Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
UL 845 Electric Motor Control Centers
UL 858 Household Electric Ranges
UL 858A Safety-Related Solid-State Controls for Electric Ranges
UL 864 Service Entrance Cable
UL 857 Electric Busways and Associated Fittings
UL 858 Household Electric Ranges
UL 858A Safety-Related Solid-State Controls for Electric Ranges
UL 859 Personal Grooming Appliance
UL 863 Electric Time-Indicating and -Recording Appliances
UL 867 Electrostatic Air Cleaners
UL 869A Reference Standard for Service Equipment
UL 870 Wireways, Auxiliary Gutters, and Associated Fittings
UL 873 Electrical Temperature-Indicating and -Regulating Equipment
UL 875 Electric Dry Bath Heaters
UL 877 Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
UL 879 Electrode Receptacles for Gas-Tube Signs
UL 884 Underfloor Electrical Raceways and Fittings
UL 886 Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
UL 891 Dead-Front Electrical Switchboards
UL 894 Switches for Use in Hazardous (Classified) Locations
UL 896 Oil-Burning Stoves
UL 910 Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables
UL 913 Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, III and III, Division I, Hazardous (Classified) Locations
UL 916 Energy Management Equipment
UL 917 Clock-Operated Switches
UL 921 Commercial Electric Dishwashers
UL 923 Microwave Cooking Appliances
UL 924 Emergency Lighting and Power Equipment
UL 935 Fluorescent Lamp Ballasts
UL 943 Ground-Fault Circuit Interrupters
UL 961 Hobby and Sports Equipment
UL 964 Electrically Heating Bedding
UL 969 Marking and Labeling Systems

UL 977 Fused Power-Circuit Devices
UL 982 Motor-Operated Food Preparing Machines
UL 983 Surveillance Cameras
UL 984 Hermetic Refrigerant Motor-Compressors
UL 987 Stationary and Fixed Electric Tools
UL 991 Tests for Safety-Related Controls Employing Solid-State Devices
UL 998 Humidifiers
UL 1002 Electrically Operated Valve for Use in Hazardous (Classified) Locations
UL 1004 Electric Motors
UL 1005 Electric Flatirons
UL 1008 Automatic-Transfer Switches
UL 1010 Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations
UL 1012 Power Supplies
UL 1017 Electric Vacuum Cleaning Machines and Blower Cleaners
UL 1018 Electric Aquarium Equipment
UL 1020 Thermal Cutoffs for Use in Electrical Appliances and Components
UL 1022 Line Isolated Monitors
UL 1026 Electric Household Cooking and Food-Serving Appliances
UL 1028 Electric Hair-Clipping and -Shaving Appliances
UL 1029 High-Intensity Discharge Lamp Ballasts
UL 1030 Sheathed Heater Elements
UL 1037 Antitheft Alarms and Devices
UL 1042 Electric Baseboard Heating Equipment
UL 1047 Isolated Power Systems Equipment
UL 1053 Ground-Fault Sensing and Relaying Equipment
UL 1054 Special-Use Switches
UL 1059 Terminal Blocks
UL 1063 Machine-Tool Wires and Cables
UL 1066 Low-Voltage AC and DC power Circuit Breakers Used in Enclosures
UL 1069 Hospital Signaling and Nurse Call Equipment
UL 1072 Medium Voltage Power Cables
UL 1076 Proprietary Burglar-Alarm Units and Systems
UL 1077 Supplementary Protectors for Use in Electrical Equipment
UL 1081 Electric Swimming Pool Pumps, Filters and Chlorinators
UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
UL 1083 Household Electric Skillets and Frying-Type Appliances
UL 1086 Household Trash Compactors
UL 1087 Molded-Case Switches
UL 1088 Temporary Lighting Strings
UL 1090 Electric Snow Movers
UL 1097 Double Insulation Systems for Use in Electrical Equipment
UL 1203 Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206 Electric Commercial Clothes-Washing Equipment
UL 1207 Sewage Pumps for Use in Hazardous (Classified) Locations
UL 1230 Amateur Movie Lights
UL 1236 Electric Battery Chargers
UL 1238 Control Equipment for Use With Flammable Liquid Dispensing Devices
UL 1240 Electric Commercial Clothes-Drying Equipment
UL 1241 Junction Boxes for Swimming Pool Lighting Fixtures
UL 1242 Intermediate Metal Conduit
UL 1244 Electrical and Electronic Measuring and Testing Equipment
UL 1261 Electric Water Heaters for Pools and Tubs
UL 1262 Laboratory Equipment
UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1277 Electrical Power and Control Tray Cables With Optional Optical-Fiber Members
UL 1278 Movable and Wall- or Ceiling-Hung Electric Room
UL 1283 Electromagnetic-Interference Filter
UL 1286 Office Furnishings
UL 1310 Direct Plug-In Transformer Units
UL 1313 Nonmetallic Safety Cans for Petroleum Products
UL 1323 Scaffold Hoists
UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
UL 1410 Television Receivers and High-Voltage Video Products
UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances
UL 1412 Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances
UL 1413 High-Voltage Components for Television-Type Appliances
UL 1414 Across-the-Line, Antenna-Coupling, and Line-by-Pass Capacitors for Radio- and Television-Type Appliances
UL 1416 Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
UL 1417 Special Fuses for Radio- and Television-Type Appliances
UL 1418 Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
UL 1419 Professional Video and Audio Equipment
UL 1424 Cables for Power-Limited Fire-Protective-Signaling Circuits
UL 1429 Pullout Switches
UL 1433 Control Centers for Changing Message Type Electric Signs
UL 1436 Outlet Circuit Testers and Similar Indicating Devices
UL 1437 Electrical Analog Instruments, Panelboard Types
UL 1441 Coated Electrical Sleeving
UL 1446 Electric Water Bed Heaters
UL 1447 Electric Lawn Mowers
UL 1448 Electric Hedge Trimmers
UL 1449 Transient Voltage Surge Suppressors
UL 1453 Electric Booster and Commercial Storage Tank Water Heaters
UL 1459 Telephone Equipment
UL 1484 Residential Gas Detectors
UL 1492 Audio and Video Equipment
UL 1557 Electrically Isolated Semiconductor Devices
UL 1558 Metal Enclosed Low-Voltage Power Circuit Breaker Switchgear
UL 1559 Insect-Control Equipment, Electrocution type
UL 1561 Large General Purpose Transformers
UL 1562 Transformers, Distribution, Dry Type—Over 600 Volts
UL 1564 Industrial Battery Chargers
UL 1565 Wire Positioning Devices
UL 1567 Receptacles and Switches Intended for Use With Aluminum Wire
UL 1569 Metal-Clad Cables
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 1573 Stage and Studio Lighting Units
UL 1574 Track Lighting Systems
UL 1577 Optical Isolators
UL 1581 Reference Standard for Electrical Wires, Cables, and Flexible Cords
UL 1585 Class 2 and Class 3 Transformers
UL 1594 Sewing and Cutting Machines
UL 1604 Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations
UL 1610 Central-Station Burglar-Alarm Units
UL 1635 Digital Burglar Alarm Communicator System Units
UL 1638 Visual Signaling Appliances
UL 1647 Motor-Operated Massage and Exercise Machines
UL 1651 Optical Fiber Cable
UL 1660 Liquid-Tight Flexible Nonmetallic Conduit
UL 1662 Electric Chain Saws
UL 1666 Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1676 Discharge Path Resistors
UL 1681 Wiring Device Configurations

UL 1690 Data-Processing Cable
UL 1727 Commercial Electric Personal Grooming Appliances
UL 1773 Termination Boxes
UL 1776 High-Pressure Cleaning Machines
UL 1778 Uninterruptible Power Supply Equipment
UL 1786 Nightlights
UL 1795 Hydromassage Bathtubs
UL 1812 Ducted Heat Recovery Ventilators
UL 1815 Nonducted Heat Recovery Ventilators
UL 1863 Communication Circuit Accessories
UL 1876 Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1917 Solid-State Fan Speed Controls
UL 1950 Information Technology Equipment Including Electrical Business Equipment
UL 1951 Electric Plumbing Accessories
UL 1963 Refrigerant Recovery/Recycling Equipment
UL 1993 Self-Ballasted Lamps and Lamp Adapters
UL 1995 Heating and Cooling Equipment
UL 1996 Duct Heaters
UL 2044 Commercial Closed Circuit Television Equipment
UL 2083 Halon 1301 Recovery/Recycling Equipment
UL 2097 Reference Standard for Double Insulation Systems for Use in Electronic Equipment
UL 2601–1 Medical Electrical Equipment
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements
UL 6500 Audio/Visual and Musical Instrument Apparatus for Household, Commercial, and Similar General Use
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements

(1) These standards are approved for equipment or materials intended for use in commercial and industrial power system applications. These standards are not approved for equipment or materials intended for use in installations that are excluded from the provisions of Subpart S in 29 CFR 1910, in particular Section 1910.302(a)(2).

Note. —Testing and certification of gas operated equipment is limited to equipment for use with "liquefied petroleum gas" ("LPG" or "LP-Gas").

Footnote "(1)" has been added for clarification and for consistency with similar standards that are included for the expansion request.

The designations and titles of the above test standards were current at the time of preparation of the notice of preliminary finding.

Expansion of Recognition—Additional Test Standards

OSHA limits the expansion of recognition of CSA to testing and certification of products to demonstrate compliance to the following 144 test standards. OSHA has determined that each standard meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c).

ANSI C37.09 Standard Test Procedure for AC High-Voltage Circuit Breakers Rated on a Symmetrical Current Basis (1)
ANSI C37.013 AC High-Voltage Generator Circuit Breakers Rated on a Symmetrical (1)
ANSI C37.13 Low-Voltage AC Power Circuit Breakers Used In Enclosures (1)
ANSI C37.14 Low-Voltage DC Power Circuit Breakers Used in Enclosures (1)
ANSI C37.17 Trip Devices for AC and General Purpose DC Low-Voltage Power Circuit Breakers (1)
ANSI C37.18–1979 Enclosed Field Discharge Circuit Breakers for Rotating Electric Machinery (1)
ANSI C37.29–1981 Low-Voltage AC Power Circuit Protectors Used in Enclosures (1)
ANSI C37.45 Distribution Enclosed Single-Pole Air Switches (1)
ANSI C37.47–1981 Specifications for Distribution Fuse Disconnecting Switches, Fuse Supports, and Current-Limiting Fuses (1)
ANSI C37.50 Low-Voltage AC Power Circuit Breakers Used in Enclosures—Test Procedures (1)
ANSI C37.51 Metal-Enclosed Low-Voltage AC Power Circuit-Breaker Switchgear Assemblies—Conformance Test Procedures (1)
ANSI C37.52 Low-Voltage AC Power Circuit Protectors Used in Enclosures—Test Procedures (1)
ANSI C37.53.1 High-Voltage Current Motor-Starter Fuses—Conformance Test Procedures (1)
ANSI C37.66 Oil-Filled Capacitor Switches for Alternating-Current Systems—Requirements (1)
ANSI C37.71 Three Phase, Manually Operated Subsurface Load Interrupting Switches for Alternating-Current Systems (1)
ANSI C57.13 Requirements for Instrument Transformers (1)
ANSI C57.13.2 Instrument Transformers—Conformance Test Procedures (1)
ANSI S82.02.01 Electric and Electronic Test, Measuring, Controlling, and Related Equipment: General Requirement
ANSI/NEMA 250 Enclosures for Electrical Equipment
ANSI Z21.5.1 Gas Clothes Dryers—Type 1
ANSI Z21.10.1 Gas Water Heaters—Automatic Storage Type Water Heaters with Inputs of 70,000 Btu Per Hour or Less
ANSI Z21.24 Metal Connectors for Gas Appliances
ANSI Z21.40.2–1996 Gas-Fired, Work Activated Air-Conditioning and Heat Pump Appliances (Internal Combustion)
ANSI Z21.41 Quick-Disconnect Devices for Use with Gas Fuel
ANSI Z21.50 Vented Decorative Gas Appliances
ANSI Z21.60 Decorative Gas Appliances for Installation in Vented Fireplaces
ANSI Z21.69 Connectors for Movable Gas Appliances
ANSI Z83.17 Direct Gas Fired Door Heaters
ANSI Z83.18 Direct Gas-Fired Industrial Air Heaters
FMRC 3600 Electrical Equipment for Use in Hazardous (Classified) Locations, General Requirements
FMRC 3610 Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II and III, Division 1 Hazardous (Classified) Locations
FMRC 3611 Electrical Equipment for Use in Class I, Division 2; Class II, Division 2; and Class III, Division 1 and 2 Hazardous Locations
FMRC 3615 Explosionproof Electrical Equipment, General Requirements
FMRC 3620 Purged and Pressurized Electrical Equipment for Hazardous (Classified) Locations
FMRC 6310 Combustible Gas Detectors
UL 5A Nonmetallic Surface Raceways and Fittings
UL 5B Strut-Type Channel Raceways and Fittings
UL 96 Lightning Protection Components
UL 201 Garage Equipment
UL 218 Fire Pump Controllers
UL 234 Low Voltage Lighting Fixtures for Use in Recreational Vehicles
UL 248–1 Low-Voltage Fuses—Part 1: General Requirements
UL 248–2 Low-Voltage Fuses—Part 2: Class C Fuses
UL 248–3 Low-Voltage Fuses—Part 3: Class CA and CB Fuses
UL 248–4 Low-Voltage Fuses—Part 4: Class CC Fuses
UL 248–5 Low-Voltage Fuses—Part 5: Class G Fuses
UL 248–6 Low-Voltage Fuses—Part 6: Class H Non-Renewable Fuses

UL 248–7 Low-Voltage Fuses—Part 7: Class H Renewable Fuses
UL 248–8 Low-Voltage Fuses—Part 8: Class J Fuses
UL 248–9 Low-Voltage Fuses—Part 9: Class K Fuses
UL 248–10 Low-Voltage Fuses—Part 10: Class L Fuses
UL 248–11 Low-Voltage Fuses—Part 11: Plug Fuses
UL 248–12 Low-Voltage Fuses—Part 12: Class R Fuses
UL 248–13 Low-Voltage Fuses—Part 13: Semiconductor Fuses
UL 248–14 Low-Voltage Fuses—Part 14: Supplemental Fuses
UL 248–15 Low-Voltage Fuses—Part 15: Class T Fuses
UL 248–16 Low-Voltage Fuses—Part 16: Test Limiters
UL 252 Compressed Gas Regulators
UL 296A Waste Oil-Burning Air-Heating Appliances
UL 307A Liquid Fuel-Burning Heating Appliances for Manufactured Homes and Recreational Vehicles
UL 331 Strainers for Flammable Fluids and Anhydrous Ammonia
UL 363 Knife Switches
UL 365 Police Station Connected Burglar Alarm Units and Systems
UL 441 Gas Vents
UL 497C Protectors for Coaxial Communications Circuits
UL 536 Flexible Metallic Hose
UL 567 Pipe Connectors for Flammable and Combustible Liquids and LP-Gas
UL 569 Pigtails and Flexible Hoses
UL 588 Christmas-Tree and Decorative-Lighting Outfits
UL 634 Connectors and Switches for Use with Burglar-Alarm Systems
UL 651B Continuous Length High Density Polyethylene Conduit
UL 745–1 Portable Electric Tools
UL 745–2–1 Particular Requirements of Drills
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
UL 745–2–4 Particular Requirements for Sanders
UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
UL 745–2–6 Particular Requirements for Hammers
UL 745–2–8 Particular Requirements for Shears and Nibblers
UL 745–2–9 Particular Requirements for Tappers
UL 745–2–11 Particular Requirements for Reciprocating Saws
UL 745–2–12 Particular Requirements for Concrete Vibrators
UL 745–2–14 Particular Requirements for Planers
UL 745–2–17 Particular Requirements for Routers and Trimmers
UL 745–2–30 Particular Requirements for Staplers
UL 745–2–31 Particular Requirements for Diamond Core Drills
UL 745–2–32 Particular Requirements for Magnetic Drill Presses
UL 745–2–33 Particular Requirements for Portable Bandsaws
UL 745–2–34 Particular Requirements for Strapping Tools
UL 745–2–35 Particular Requirements for Drain Cleaners
UL 745–2–36 Particular Requirements for Hand Motor Tools
UL 745–2–37 Particular Requirements for Plate Jointers
UL 854 Service Entrance Cable
UL 963 Sealing, Wrapping, and Marking Equipment
UL 1248 Engine-Generator Assemblies for Use in Recreational Vehicles
UL 1363 Temporary Power Taps
UL 1425 Cables for Non-Power-Limited Fire-Alarm Circuits
UL 1431 Personal Hygiene and Health Care Appliances
UL 1434 Thermistor-Type Devices
UL 1472 Solid-State Dimming Controls
UL 1482 Solid-Fuel Room Type Heaters
UL 1637 Home Health Care Signaling Equipment
UL 1640 Portable Power Distribution Units
UL 1653 Electrical Nonmetallic Tubing
UL 1664 Immersion-Detection Circuit-Interrupters
UL 1682 Plugs, Receptacles, and Cable Connectors, of the Pin and Sleeve Type
UL1684 Reinforced Thermosetting Resin Conduit
UL 1699 Arc-Fault Circuit-Interrupters
UL 1703 Flat Plate Photo Voltaic Modules and Panels
UL 1711 Amplifiers for Fire Protective Signaling Systems
UL 1740 Industrial Robots and Robotic Equipment
UL 1741 Static Inverters and Charge Controllers for use in Photovoltaic Power Systems
UL 1838 Low Voltage Landscape Lighting Systems
UL 1889 Commercial Filters for Cooking Oil
UL 1994 Low-Level Path Marking and Lighting Systems
UL 2021 Fixed and Location-Dedicated Electric Room Heaters
UL 2024 Optical Fiber Cable Raceway
UL 2034 Single and Multiple Station Carbon Monoxide Detectors
UL 2089 Vehicle Battery Adapters
UL 2111 Overheating Protection for Motors
UL 2125 Vehicle Battery Adapters
UL 2157 Electric Clothes Washing Machines and Extractors
UL 2158 Electric Clothes Dryers
UL 2161 Neon Transformers and Power Supplies
UL 2200 Stationary Engine Generator Assemblies
UL 2225 Metal-Clad Cables and Cable-Sealing Fittings for Use in Hazardous (Classified) Locations
UL 2250 Instrumentation Tray Cable
UL 3101–2–20 Electrical Equipment for Laboratory Use; Part 2: Laboratory Centrifuges Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3121–1 Process Control Equipment
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1; General Requirements
UL 60335–2–34 Household and Similar Electrical Appliances, Part 2; Particular Requirements for Motor-Compressors
UL 60730–2–10 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically-Operated Motor Starting Relays
UL 60730–2–11 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically-Operated Doors
UL 60730–2–13 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–16 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level-Operating Controls of the Float Type for Household and Similar Applications
UL 61058–1 Switch for Appliances
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type
UL 8730–2–6 Automatic Electrical Controls for Household and Similar Use; Part 2: particular Requirements for Automatic Electrical Pressure Sensing Controls Including Mechanical Requirements
UL 8730–2–7 Automatic Electrical Controls for Household and Similar

Use; Part 2: Particular Requirements for Timers and Time Switches
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves
UL 8730–2–9 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Temperature Sensing Controls
UL 8730–2–14 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators

(1) These standards are approved for equipment or materials intended for use in commercial and industrial power system applications. These standards are not approved for equipment or materials intended for use in installations that are excluded from the provisions of Subpart S in 29 CFR 1910, in particular Section 1910.302(a)(2).

Note.— Testing and certification of gas operated equipment is limited to equipment for use with "liquefied petroleum gas" ("LPG" or "LP-Gas").

The designations and titles of the above test standards were current at the time of the preparation of the notice of the preliminary finding.

Many of the test standards listed above and under the renewal section are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we show the designation of the standards developing organization (e.g., UL 1950) for the standard, as opposed to the ANSI designation (e.g., ANSI/UL 1950). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of which version appears in its list of test standards. Contact ANSI or the ANSI web site *(www.ansi.org)* and click "NSSN" to find out whether or not a standard is currently ANSI-approved.

Conditions

The Canadian Standards Association must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to the CSA facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If CSA has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

CSA must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, CSA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

CSA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

CSA will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

CSA will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, D.C. this 15 day of June, 2001.

R. Davis Layne,

Acting Assistant Secretary.

[FR Doc. 01–16671 Filed 7–2–01; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2–93]

Entela, Inc., Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of Entela, Inc., for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This renewal becomes effective on July 3, 2001 and will be valid until July 3, 2006, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the renewal of recognition of Entela, Inc. (ENT), as a Nationally Recognized Testing Laboratory (NRTL). ENT's renewal covers its existing scope of recognition, which may be found in OSHA's informational web page for the NRTL (http://www.osha-slc.gov/dts/otpca/nrtl/ent.html).

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding, and in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope.

Entela, Inc., was originally founded in 1974 as a Michigan Corporation specializing in structural steel inspection. In 1981, equipment and personnel were added to initiate an in-house materials laboratory. This was followed by a formation of certification programs within Entela, Inc. The original company was founded as Entel Engineering Services.

Entela received its recognition as an NRTL on July 26, 1994 (59 FR 37997), for a period of five years ending July 26, 1999. Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. Entela submitted a request to renew its recognition on August 10, 1998 (see Exhibit 15), within the time allotted, and retains its recognition pending OSHA's final decision in this renewal process.

OSHA published the required notice in the **Federal Register** on March 16, 2001 (66 FR 15288) to announce ENT's renewal request. This notice included a preliminary finding that ENT could meet the requirements in 29 CFR 1910.7 for renewal of its recognition and invited public comment by April 2, 2001. OSHA received no comments concerning this notice.

In processing ENT's request, OSHA performed an on-site review (audit) of ENT's NRTL facilities listed below. NRTL Program assessment staff reviewed information from these reviews and, in a memo dated October 6, 2000 (see Exhibit 20), recommended the renewal of ENT's recognition.

The following is a chronology of the other **Federal Register** notices published by OSHA concerning Entela's recognition, all of which involved an expansion of recognition for additional sites, standards, or programs: a request announced on February 21, 1997 (62 FR 8041) and granted on May 22, 1997 (62 FR 28066); and a request announced on April 17, 1998 (63 FR 19275) and granted on July 10, 1998 (63 FR 37416). OSHA also published a correction of recognition on July 13, 1999 (64 FR 37815).

You may obtain or review copies of all public documents pertaining to the ENT application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, D.C. 20210. You should refer to Docket No. NRTL2–93, the permanent record of public information on the ENT recognition.

The current addresses of the ENT testing facilities recognized by OSHA are: Entela, Inc., 3033 Madison, S.E., Grand Rapids, Michigan 49548, Entela Taiwan Laboratories, 3F No. 260 262 Wen, Lin North Road, Pei Tou, Taipei, Taiwan.

Programs and Procedures

The renewal of recognition includes ENT's continued use of the supplemental programs listed below, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980). This notice lists nine (9) programs and procedures (collectively, programs), eight of which (called supplemental programs) an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA previously granted ENT recognition to use these programs, which are listed, as shown below, in OSHA's informational web page on the ENT recognition (http://www.osha-slc.gov/dts/otpca/nrtl/ent.html).

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.
Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.
Program 4: Acceptance of witnessed testing data.
Program 5: Acceptance of testing data from non-independent organizations.
Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).
Program 7: Acceptance of continued certification following minor modifications by the client.
Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.
Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to accept the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Final Decision and Order

The NRTL Program staff has examined the applications, the audit reports, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that Entela, Inc., has met the requirements of 29 CFR 1910.7 for renewal of its NRTL recognition. The renewal applies to the sites listed above. In addition, it covers the test standards listed below, and it is subject to limitations and conditions, also listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of ENT, subject to these limitations and conditions.

Limitations; Renewal of Recognition of Facilities

OSHA limits the renewal of recognition of ENT to the 2 sites listed above. In addition, similar to other NRTLs that operate multiple sites, the Agency's recognition of any ENT testing site is limited to performing testing to the test standards for which OSHA has recognized ENT, and for which the site has the proper capability and control programs.

The following limitations currently apply to the recognition of the Taiwan facility, and continue to apply for the renewal:

a. The Taiwan facility shall be limited to carrying out minor mechanical and electrical testing of instruments and small appliances.

b. Performance of inspections shall be limited to Entela personnel.

Renewal of Recognition of Test Standards

OSHA further limits the renewal of recognition of ENT to testing and certification of products to demonstrate conformance to the test standards listed below (see Listing of Test Standards). OSHA has determined that each test standard meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c). Some of the test standards for which OSHA previously recognized ENT were no longer appropriate at the time of preparation of the preliminary notice, primarily because they had been withdrawn by the standards developing organization. As a result, we have excluded these test standards in the listing below. However, under OSHA policy, the NRTL may request recognition for comparable test standards, i.e., other appropriate test standards covering similar type of product testing. Since a number of NRTLs are affected by such withdrawn standards, OSHA will publish a separate notice to make the appropriate substitutions for ENT and other NRTLs that were recognized for these standards. The Agency has contacted these NRTLs regarding this matter.

This current notice includes all of OSHA's current limitations on ENT with regard to the standards listed below. These limitations appear at the end of the list of standards, and standards to which a specific limitation applies are denoted by the use of asterisks.

The Agency's recognition of ENT, or any other NRTL, for a particular test standard is always limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. An NRTL's scope of recognition excludes any product(s) falling within the scope of the test standard for which OSHA has no testing and certification requirements.

Listing of Test Standards

UL 22 Amusement and Gaming Machines
UL 45 Portable Electric Tools
UL 48 Electric Signs
UL 50 Electric Cabinets and Boxes
UL 67 Electric Panelboards
UL 73 Motor-Operated Appliances
UL 82 Electric Gardening Appliances
UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances*
UL 98 Enclosed and Dead-Front Switches
UL 122 Photographic Equipment
UL 130 Electric Heating Pads
UL 141 Garment Finishing Appliances
UL 153 Portable Electric Lamps
UL 174 Household Electric Storage-Tank Water Heaters
UL 187 X-Ray Equipment
UL 197 Commercial Electric Cooking Appliances
UL 213 Rubber Gasketed Fittings for Fire Protection Service
UL 244A Solid State Controls for Appliances
UL 250 Household Refrigerators and Freezers
UL 298 Portable Electric Hand Lamps
UL 325 Door, Drapery, Louver, and Window Operators and Systems
UL 353 Limit Controls
UL 355 Cord Reels
UL 429 Electrically Operated Valves
UL 467 Grounding and Bonding Equipment
UL 469 Musical Instruments and Accessories
UL 471 Commercial Refrigerators and Freezers
UL 482 Portable Sun/Heat Lamps
UL 484 Room Air Conditioners
UL 496 Edison-Base Lampholders
UL 499 Electric Heating Appliances
UL 506 Specialty Transformers
UL 507 Electric Fans
UL 508 Electric Industrial Control Equipment**
UL 541 Refrigerated Vending Machines
UL 542 Lampholders, Starters, and Starter Holders for Fluorescent Lamps
UL 544 Electric Medical and Dental Equipment
UL 563 Ice Makers
UL 609 Local Burglar-Alarm Units and Systems
UL 696 Electric Toys
UL 745–1 Portable Electric Tools
UL 745–2–1 Drills
UL 745–2–2 Screwdrivers and Impact Wrenches
UL 745–2–3 Grinders, Polishers and Disk-type Sanders
UL 745–2–4 Sanders
UL 745–2–5 Circular Saws and Circular Knives
UL 745–2–6 Hammers
UL 745–2–8 Shears and Nibblers
UL 745–2–9 Tappers
UL 745–2–11 Reciprocating Saws
UL 745–2–12 Concrete Vibrators
UL 745–2–14 Planers
UL 745–2–17 Routers and Trimmers
UL 745–2–30 Staplers
UL 745–2–31 Diamond Core Drills
UL 745–2–32 Magnetic Drill Press
UL 745–2–33 Portable Bandsaws
UL 745–2–34 Strapping Tools
UL 745–2–35 Drain Cleaners
UL 745–2–36 Hand Motor Tools
UL 745–2–37 Plate Joiners
UL 749 Household Dishwashers
UL 751 Vending Machines
UL 756 Coin and Currency Changers and Actuators
UL 763 Motor Operated Commercial Food Preparing Machines
UL 778 Motor-Operated Water Pumps
UL 796 Printed-Wiring Boards
UL 813 Commercial Audio Equipment
UL 817 Cord Sets & Power-Supply Cords
UL 826 Household Electric Clocks
UL 858 Household Electric Ranges
UL 859 Household Electric Personal Grooming Appliances
UL 863 Time-Indicating and Recording Appliance
UL 867 Electrostatic Air Cleaners
UL 869A Reference Standard for Service Equipment
UL 873 Temperature-Indicating and Regulating Equipment
UL 916 Energy Management Equipment
UL 917 Clock Operated Switches
UL 921 Commercial Electric Dishwashers
UL 923 Microwave Cooking Appliances
UL 924 Emergency Lighting and Power Equipment
UL 935 Fluorescent-Lamp Ballasts
UL 961 Electric Hobby and Sports Equipment
UL 969 Marking and Labeling Systems
UL 982 Motor Operated Household Food Preparing Machines
UL 984 Hermetic Refrigerant Motor-Compressors
UL 987 Stationary and Fixed Electric Tools
UL 998 Humidifiers
UL 1004 Electric Motors * * *
UL 1005 Electric Flatirons
UL 1008 Transfer Switch Equipment
UL 1012 Power Units Other Than Class 2
UL 1018 Electric Aquarium Equipment
UL 1026 Electric Household Cooking and Food-Serving Equipment
UL 1028 Hair Clipping and Shaving Appliances
UL 1029 High-Intensity Discharge Lamp Ballasts
UL 1042 Electric Baseboard Heating Equipment
UL 1069 Hospital Signaling and Nurse-Call System
UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
UL 1083 Household Electric Skillets and Frying Type Appliances
UL 1086 Household Trash Compactors
UL 1088 Temporary Lighting Strings
UL 1206 Electric Commercial Clothes Washing Machines
UL 1230 Amateur Movie Lights
UL 1236 Battery Chargers For Charging Engine-Starter Batteries
UL 1244 Electrical and Electronic Measuring and Testing Equipment
UL 1261 Electric Water Heaters for Pools and Tubs
UL 1262 Laboratory Equipment
UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1286 Office Furnishings
UL 1310 Class 2 Power Units
UL 1410 Television Receivers and High-Voltage Video Products
UL 1418 Cathode-Ray Tubes
UL 1431 Personal Hygiene and Health Care Appliances
UL 1433 Control Centers for Changing Message Type Electric Signs
UL 1445 Electric Water Bed Heaters
UL 1447 Electric Lawn Mowers
UL 1448 Electric Hedge Trimmers
UL 1459 Telephone Equipment
UL 1472 Solid-State Dimming Controls
UL 1492 Audio-Video Products & Accessories
UL 1564 Industrial Battery Chargers
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 1573 Stage and Studio Lighting Units
UL 1574 Track Lighting Systems
UL 1585 Class 2 and Class 3 Transformers
UL 1594 Sewing and Cutting Machines
UL 1638 Visual Signaling Appliances
UL 1647 Motor-Operated Massage and Exercise Machines
UL 1727 Commercial Electric Personal Grooming Appliances
UL 1786 Nightlights
UL 1838 Low Voltage Landscape Lighting Systems
UL 1950 Information Technology Equipment Including Electrical Business Equipment
UL 1993 Self-Ballasted Lamps and Lamp Adapters
UL 2044 Commercial Closed Circuit Television Equipment
UL 2157 Electric Clothes Washing Machines and Extractors
UL 2161 Neon Transformers and Power Supplies

UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3044 Surveillance Closed Circuit Television Equipment
UL 3101–1 Electric Equipment for Laboratory Use, Part 1, General
UL 3111–1 Electrical Measuring and Test Equipment, Part 1: General
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for TubuLar Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

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*Exclusive of radiant panel testing.
**Limited to equipment of no greater than 500 amperes.
***Limited to motors rated no greater than one-half horsepower.

Note: Testing and certification of gas operated equipment is limited to equipment for use with "liquefied petroleum gas" ("LPG" or "LP-Gas").

The designations and titles of the above test standards were current at the time of the preparation of the notice of the preliminary finding.

Many of the test standards listed above are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we show the designation of the standards developing organization (e.g., UL 1950) for the standard, as opposed to the ANSI designation (e.g., ANSI/UL 1950). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of which version appears in its list of test standards. Contact ANSI or the ANSI web site (*www.ansi.org*) and click "NSSN" to find out whether or not a standard is currently ANSI-approved.

None of the above standards had been withdrawn by the standards developing organization (SDO) at the time of the preparation of the notice of preliminary finding.

Conditions

Entela, Inc. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to the ENT facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ENT has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ENT must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ENT agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ENT must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

ENT will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

ENT will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, D.C. this 15 day of June, 2001.

R. Davis Layne,

Acting Assistant Secretary.

[FR Doc. 01–16670 Filed 7–2–01; 8:45 am]

BILLING CODE 4510–26–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 10, 2001.
Time: 8:30 a.m. to 6:00 p.m.
Room: 415.
Program: This meeting will review applications for Colleges, Universities, Other Educational Organizations I, submitted to the Office of Challenge Grants at the May 1, 2001 deadline.

2. *Date:* July 17, 2001.
Time: 8:30 a.m. to 6:00 p.m.
Room: 420.
Program: This meeting will review applications for History Museums, Historical Societies, Historic Sites, submitted to the Office of Challenge Grants at the May 1, 2001 deadline.

3. *Date:* July 17, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for American History, submitted to the Division of Research Programs at the May 1, 2001 deadline.

4. *Date:* July 18, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for History of Science and Medicine, submitted to the Division of Research Programs at the May 1, 2001 deadline.

5. *Date:* July 18, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Music and Dance, submitted to the Division of Research Programs at the May 1, 2001 deadline.

6. *Date:* July 19, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Religious Studies, submitted to the Division of Research Programs at the May 1, 2001 deadline.

7. *Date:* July 19, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for American and Latin American Literature, submitted to the Division of Research Programs at the May 1, 2001 deadline.

8. *Date:* July 20, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Philosophy, submitted to the Division of Research Programs at the May 1, 2001 deadline.

9. *Date:* July 20, 2001.
Time: 8:30 a.m. to 6:00 p.m.
Room: 420.
Program: This meeting will review applications for Colleges, Universities, Other Educational Organizations II, submitted to the Office of Challenge Grants at the May 1, 2001 deadline.

10. *Date:* July 23, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for European History, submitted to the Division of Research Programs at the May 1, 2001 deadline.

11. *Date:* July 23, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Latin American History and Studies, submitted to the Division of Research Programs at the May 1, 2001 deadline.

12. *Date:* July 24, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Anthropology and Archaeology, submitted to the Division of Research Programs at the May 1, 2001 deadline.

13. *Date:* July 24, 2001.
Time: 8:30 a.m. to 6:00 p.m.
Room: 420.
Program: This meeting will review applications for Art, Anthropology, Cultural Organizations, submitted to the Office of Challenge Grants at the May 1, 2001 deadline.

14. *Date:* July 25, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for American History, submitted to the Division of Research Programs at the May 1, 2001 deadline.

15. *Date:* July 26, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for East Asian Studies, submitted to the Division of Research Programs at the May 1, 2001 deadline.

16. *Date:* July 27, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for British Literature, submitted to the Division of Research Programs at the May 1, 2001 deadline.

17. *Date:* July 30, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for British Literature, submitted to the Division of Research Programs at the May 1, 2001 deadline.

18. *Date:* July 31, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Political Science, International Affairs, and Jurisprudence, submitted to the Division of Research Programs at the May 1, 2001 deadline.

Laura S. Nelson,
Advisory Committee Management Officer.
[FR Doc. 01–16623 Filed 7–2–01; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Consolidated Edison Company of New York, Inc.; Indian Point Nuclear Generating Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–26, issued to Consolidated Edison Company of New York, Inc., (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the facility Technical Specifications (TSs) to correct various editorial errors and make other administrative changes.

The proposed action is in accordance with the licensee's application for amendment dated February 14, 2000, as supplemented by letter dated May 3, 2001.

The Need for the Proposed Action

The proposed action corrects various editorial errors and makes other administrative changes in the TSs. Specifically, the amendment makes administrative changes that revise: (a) TS Tables 3.6–1 and 4.4–1 to correct listing and editorial errors, (b) TS 3.8.B.10 to reflect the wording in 10 CFR 50.54(m)(2)(iv), (c) Figures 3.10–2 through 3.10–6 to remove these figures, (d) Table 4.1–1 to reflect change in level indication components, (e) TS 4.19.B and 6.14.1.1 to correct editorial errors, (f) TS 6.12.1 to reflect an organizational title change, and (g) TS 6.13.2 to correct a typographical error. In its May 3 letter, the licensee requested that the proposed changes to TS 6.12.1 regarding references to the current sections of 10 CFR Part 20 be withdrawn.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the administrative and editorial changes correct errors that currently exist in the TSs. The proposed action does not modify the facility or affect the manner in which the facility is operated.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental

Statement for the Indian Point Nuclear Generating Unit No. 2.

Agencies and Persons Consulted

In accordance with its stated policy, on June 26, 2001, the staff consulted with the New York State official, Mr. John P. Spath of the Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 14, 2000, as supplemented by letter dated May 3, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 27th day of June 2001.

For the Nuclear Regulatory Commission.

Richard P. Correia,

Acting Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–16654 Filed 7–2–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company Turkey Point Units 3 and 4; Notice of Extension of the Public Comment Period for the Environmental Impact Statement for the License Renewal of Turkey Point Units 3 and 4

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has extended the public comment period for the draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–31 and DPR–41 for an additional 20 years of operation at Turkey Point Units 3 and 4 (Turkey Point).

The draft supplement to the GEIS is available electronically for public inspection in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room). In addition, the Homestead Branch Library, located at 700 North Homestead Boulevard, Homestead, Florida, has agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by September 6, 2001. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D 59, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Submittal of electronic comments may be sent by the Internet to the NRC at TurkeyPointEIS@nrc.gov. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's Public Document Room in Rockville, Maryland or from the PARS component of (ADAMS).

The NRC staff will hold public meetings to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meetings will be held at the Harris Field Complex—Homestead YMCA, 1034 Northeast 8th Street, Homestead, Florida, on July 17, 2001. There will be two meeting sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7:00 p.m. and will continue until 10:00 p.m. Both meeting sessions will be transcribed and will include (1) a presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the Homestead YMCA. No comments on the draft plant-specific GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed above. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. James H. Wilson by telephone at 1–800–368–5642, extension 1108, or by Internet to the NRC at TurkeyPointEIS@nrc.gov no later than July 12, 2001. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Wilson's attention no later than July 12, 2001, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Wilson, Generic Issues, Environmental, Financial, and Rulemaking Branch, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Mr. Wilson may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 27th day of June 2001.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 01–16655 Filed 7–2–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support Network; Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Licensing Support Network Advisory Review Panel (LSNARP) will hold its next meeting on Wednesday, August 8, 2001, at the Crowne Plaza Hotel located at 4255 South Paradise Road, Las Vegas, Nevada 89109. The meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94–463, 86 Stat. 770–776).

Agenda: The meeting will be held from 8:30 a.m. to 5:00 p.m. on Wednesday, August 8, 2001. The purpose of the meeting is to discuss issues concerning the design and operation of the Licensing Support Network (LSN). The LSN is an internet based electronic discovery database being developed to aid the NRC in complying with the schedule for decision on the construction authorization for the high-level waste repository contained in Section 114(d) of the Nuclear Waste Policy Act of 1982, as amended.

SUPPLEMENTARY INFORMATION: In 1998, the NRC Rules of Practice in 10 CFR Part 2, Subpart J, were modified to provide for the creation and operation of the LSN, an internet-based technological solution to the submission and management of records and documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste. (63 FR 71729.) Pursuant to 10 CFR 2.1011(d), the agency has chartered the LSNARP, an advisory committee that provides advice to the NRC on fundamental issues relating to LSN design, operation, maintenance, and compliance monitoring. At the August 8, 2001 LSNARP meeting, the principal topics will include discussion of the recent revisions to 10 CFR Part 2 (66 FR 29453–29467—May 31, 2001); discussion of LSNA guidance materials, functional requirements, etc. that were released June 13, 2001; demonstration of the LSN portal and software; a presentation of a technical scenario for a small participant system with some projections about what it will actually take to put "100 documents" on the web; and, any other items that DOE or other participants would like to put on the table.

FOR FURTHER INFORMATION CONTACT: U.S. Nuclear Regulatory Commission, Office of the Secretary, Mail Stop O–16 C1, Washington, DC 20555–0001; Attn: Andrew Bates (telephone 301–415–1963; e-mail *ALB@NRC.GOV*) or Atomic Safety and Licensing Board Panel, Mail Stop T–3 F23, Attn: Jack G. Whetstine (telephone 301–415–7391; e-mail *JGW@NRC.GOV*).

Public Participation: Interested persons may make oral presentations to the LSNARP or file written statements. An oral presentations request should be made to one of the contact persons listed above as far in advance as practicable so that appropriate arrangements can be made.

Dated: June 27, 2001.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–16653 Filed 7–2–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of July 2, 9, 16, 23, 30, August 6, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 2, 2001

There are no meetings scheduled for the Week of July 2, 2001.

Week of July 9, 2001—Tentative

Monday, July 9, 2001

1:25 p.m.
Affirmation Session (Public Meeting (If needed)

Week of July 16, 2001—Tentative

Thursday, July 19, 2001

9:25 a.m.
Affirmation Session (Public Meeting (If needed)

9:30 a.m.
Briefing on Results of Agency Action Review Meeting—Reactors (Public Meeting) (Contact: Ron Frahm, 301–415–2986)

1:30 p.m.
Briefing on Readiness for New Plant Applications and Construction (Public Meeting) (Contact: Nanette Gilles, 301–415–1180)

Friday, July 20, 2001

9:30 a.m.
Briefing on Results of Reactor Oversight Process Initial Implementation (Public Meeting) (Contact: Tim Frye, 301–415–1287)

1:00 p.m.
Briefing on Risk-Informing Special Treatment Requirements (Public Meeting) (Contact: John Nakoski, 301–415–1278)

Week of July 23, 2001—Tentative

Wednesday, July 25, 2001

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

Week of July 30, 2001—Tentative

Tuesday, July 31, 2001

1:25 p.m.
Affirmation Session (Public Meeting (If needed)

Week of August 6, 2001—Tentative

There are no meetings scheduled for the Week of August 6, 2001.

* The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

ADDITIONAL INFORMATION: By a vote of 4–0 on June 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Intragovernmental Issues (Closed—Ex. 1 and 9)" be held on June 22, and on less than one week's notice to the public.

By a vote of 5–0 on June 26, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22; Review of LBP–01–09" be held on June 27, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/SECY/smj/schedule.htm*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, D.C. 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: June 28, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–16765 Filed 6–29–01; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Extension: Rule 301 and Forms ATS and ATS–R, SEC File No. 270–451, OMB Control No. 3235–0509; Rule 302, SEC File No. 270–453, OMB Control No. 3235–0510; Rule 303, SEC File No. 270–450, OMB Control No. 3235–0505]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Regulation ATS provides a regulatory structure that directly addresses issues related to alternative trading systems' role in the marketplace. Regulation ATS allows alternative trading systems to choose between two regulatory structures. Alternative trading systems have the choice between registering as broker-dealers and complying with Regulation ATS or registering as national securities exchanges. Regulation ATS provides the regulatory framework for those alternative trading systems that choose to be regulated as broker-dealers.

Rule 301 of Regulation ATS contains certain notice and reporting requirements, as well as additional obligations that only apply to alternative trading systems with significant volume. Rule 301 describes the conditions with which an alternative trading system must comply to be registered as a broker-dealer. Rule 301 requires all alternative trading systems that wish to comply with Regulation ATS to file an initial operation report on Form ATS. The initial operation report requires information regarding operation of the system including the method of operation, access criteria and the types of securities traded. Alternative trading systems are also required to supply updates on Form ATS to the Commission, describing material changes to the system, and quarterly transaction reports on Form ATS–R. Alternative trading systems are also required to file cessation of operations reports on Form ATS.

Alternative trading systems with significant volume are required to comply with requirements for fair access and systems capacity, integrity and security. Under Rule 301, such alternative trading systems are required to establish standards for granting access to trading on its system. In addition, upon a decision to deny or limit an investor's access to the system, an alternative trading system is required to provide notice to the investor of the denial or limitation and their right to an appeal to the Commission. Regulation ATS requires alternative trading systems to preserve any records made in the process of complying with the systems' capacity, integrity and security requirements. In addition, such alternative trading systems are required to notify Commission staff of material systems outages and significant systems changes.

The Commission uses the information provided pursuant to Rule 301 to comprehensively monitor the growth and development of alternative trading systems to confirm that investors effecting trades through the systems are adequately protected, and that the systems do not impede the maintenance of fair and orderly securities markets or otherwise operate in a manner that is inconsistent with the federal securities laws. In particular, the information collected and reported to the Commission by alternative trading systems enables the Commission to evaluate the operation of alternative trading systems with regard to national market system goals, and monitor the competitive effects of these systems to ascertain whether the regulatory framework remains appropriate to the operation of such systems. Without the information provided on Forms ATS and ATS–R, the Commission would not have readily available information on a regular basis in a format that will allow it to determine whether such systems have adequate safeguards.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 69 respondents.

An estimated 69 respondents will file an average total of 493 responses per year, which corresponds to an estimated annual response burden of 1,988.5 hours. At an average cost per burden hour of approximately $77.07, the resultant total related cost of compliance for these respondents is $153,263.14 per year (1,988.5 burden hours multiplied by $77.07/hour).

Rule 302 of Regulation ATS describes the recordkeeping requirements for alternative trading systems that are not national securities exchanges. Under Rule 302, alternative trading systems are required to make a record of subscribers to the alternative trading system, daily summaries of trading in the alternative trading system and records of order information in the alternative trading system.

The information required to be collected under Rule 302 should increase the abilities of the Commission, state securities regulatory authorities, and the SROs to ensure that alternative trading systems are in compliance with Regulation ATS as well as other rules and regulations of the Commission and the SROs. If the information is not collected or collected less frequently, the Commission would be severely limited in its ability to comply with its statutory obligations, provide for the protection of investors and promote the maintenance of fair and orderly markets.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 69 respondents.

Sixty-nine respondents will spend approximately 2,484 hours per year to comply with the recordkeeping requirements of Rule 302. At an average cost per burden hour of $86.54, the resultant total related cost of compliance for these respondents is $214,965.36 per year (2,484 burden hours multiplied by $86.54/hour).

Rule 303 of Regulation ATS describes the record preservation requirements for alternative trading systems that are not national securities exchanges.

For alternative trading systems that register as broker-dealers, comply with Regulation ATS and meet certain volume thresholds, such alternative trading systems would be required to preserve all records made pursuant to Rule 302, which includes information relating to subscribers, trading summaries and order information. Such alternative trading systems would also be required to preserve records of any notices communicated to subscribers, a copy of the systems' standards for granting access and any documents generated in the course of complying with the systems' capacity, integrity and security requirements under Regulation ATS. Rule 303 also describes how such records must be kept and how long they must be preserved.

The information contained in the records required to be preserved by Rule 303 will be used by examiners and other representatives of the Commission, state securities regulatory authorities, and the SROs to ensure that alternative trading systems are in compliance with

Regulation ATS as well as other rules and regulations of the Commission and the SROs. Without the data required by Rule 303, the Commission would be severely limited in its ability to comply with its statutory obligations, provide for the protection of investors and promote the maintenance of fair and orderly markets.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 69 respondents.

Sixty-nine respondents will spend approximately 276 hours per year (69 respondents at 4 burden hours/respondent) to comply with the record preservation requirements of Rule 303. At an average cost per burden hour of $86.54, the resultant total related cost of compliance for these respondents is $23,885.04 per year (276 burden hours multiplied by $86.54/hour).

Compliance with Rules 301, 302, and 303 is mandatory. The information required by the Rules 301, 302, and 303 is available only to the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 ("FOIA"), and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

Regulation ATS requires alternative trading systems to preserve any records, for at least three years, made in the process of complying with the systems capacity, integrity and security requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (b) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: June 26, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–16633 Filed 7–2–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25052; 812–11262]

Apex Municipal Fund, Inc., et al.; Notice of Application

June 26, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under sections 6(c), 10(f), and 17(b) of the Investment Company Act of 1940 ("Act") for exemptions from sections 10(f) and 17(a) of the Act.

Summary of Application: The requested order would permit certain management investment companies to purchase municipal securities through group orders where an affiliated broker-dealer is a member of the underwriting syndicate.

Applicants: Apex Municipal Fund Inc., CMA Multi-State Municipal Series Trust, CMA Tax-Exempt Fund, Merrill Lynch California Municipal Series Trust, Merrill Lynch High Income Municipal Bond Fund, Inc., Merrill Lynch Institutional Tax-Exempt Fund, Merrill Lynch Multi-State Limited Maturity Municipal Series Trust, Merrill Lynch Multi-State Municipal Series Trust, Merrill Lynch Municipal Bond Fund, Inc., Merrill Lynch Municipal Strategy Fund, Inc., Merrill Lynch Municipal Series Trust, MuniAssets Fund, Inc., The Municipal Fund Accumulation Program, Inc., MuniEnhanced Fund, Inc., MuniHoldings California Insured Fund, Inc., MuniHoldings Florida Insured Fund, MuniHoldings Fund, Inc., MuniHoldings Fund II, Inc., MuniHoldings Insured Fund, Inc., MuniHoldings Insured Fund II, Inc., MuniHolding Michigan Insured Fund II, Inc., MuniHoldings New Jersey Insured Fund, Inc., MuniHoldings New York Insured Fund, Inc., MuniInsured Fund, Inc., MuniVest Fund, Inc., MuniVest Fund II, Inc., MuniYield Arizona Fund, Inc., MuniYield California Fund, Inc., MuniYield California Insured Fund, Inc., MuniYield California Insured Fund II, Inc., MuniYield Florida Fund, MuniYield Florida Insured Fund, MuniYield Fund, Inc., MuniYield Insured Fund, Inc., MuniYield Michigan Fund, Inc., MuniYield Michigan Insured Fund, Inc., MuniYield New Jersey Fund, Inc., MuniYield New Jersey Insured Fund, Inc., MuniYield New York Insured Fund, Inc., MuniYield Pennsylvania Insured Fund, MuniYield Quality Fund, Inc., MuniYield Quality Fund II, Inc. (collectively, the "Funds"); Merrill Lynch Investment Managers, L.P. ("MLIM") and Fund Asset Management, L.P. ("FAM") (each an "Adviser" and, collectively, the "Advisers"); and Merrill Lynch Pierce, Fenner & Smith Incorporated ("MLPF&S").

Filing Dates: The application was filed on August 14, 1998, and amended on June 25, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 23, 2001 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Philip L. Kirstein, Esq., MLIM, Box 9011, Princeton, NJ 08543–9011.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942–0646, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Each fund is an open-end or closed-end management investment company registered under the Act. The investment objective of each Fund is to seek as high a level of current income exempt from federal tax and, to the

extent applicable, state and local taxes as is consistent with its investment approach. To meet this objective, the Funds invest in Eligible Municipal Securities, as that term is defined in rule 10f–3(a)(3) under the Act.[1] Applicants state that, with approximately $40.4 billion in assets under management, the Funds comprise one of the largest municipal bond fund complexes.

2. Each Fund has an investment advisory agreement with an Adviser pursuant to which the Adviser provides investment advisory services to the Fund. Each Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. Both Advisers are owned and controlled by Merrill Lynch & Co., Inc. ("ML & Co.").

3. MLPF&S, a registered broker-dealer, is a wholly-owned subsidiary of ML & Co. MLPF&S participates as an underwriter in a substantial number of public offerings. Applicants state that MLPF&S is one of the top underwriters in most types of municipal securities. In 1999, for example, MLPF&S was lead manager or co-manager of approximately $50.95 billion, or 23.25%, of the dollar volume of new issues of municipal securities having a remaining maturity of more than thirteen months, and of approximately $3.10 billion, or 10% of those having a remaining maturity of thirteen months or less.

4. Applicants request relief from section 10(f) of the Act under section 10(f) and from section 17(a) of the Act under sections 6(c) and 17(b) of the Act to permit the Funds to place group orders for Eligible Municipal Securities with an underwriting syndicate that includes MLPF&S. A group order is an order that is allocated to all members of the syndicate in proportion to their respective participations. The requested relief would extend only to situations where: (i) the syndicate is accepting only group orders; or (ii) the lead manager of the syndicate believes the offering will be oversubscribed at the time the Funds place their order, and group orders will be given priority over net designated orders.[2] Applicants also request that the relief apply to registered management investment companies organized in the future that invest in Eligible Municipal Securities and are advised by an Adviser (including any successors in interest)[3] or by an entity controlling, controlled by, or under common control with an Adviser ("Future Funds").

Applicant's Legal Analysis

1. Section 10(f), in relevant part, prohibits a registered investment company from purchasing securities from an underwriting syndicate in which an affiliated person of the company's investment adviser acts as a principal underwriter. Under section 2(a)(3) of the Act, MLPF&S is an affiliated person of each Adviser because all three entities are under the control of ML & Co.

2. Section 10(f) further provides that the Commission, by rule or order, may exempt any transaction or class of transactions from the provisions of section 10(f) to the extent that the exemption is consistent with the protection of investors. Rule 10f–3 under the Act permits a registered investment company to make purchases otherwise prohibited by section 10(f) under certain conditions, including that purchases of municipal securities may not be made through group orders or otherwise allocated to the account of an underwriter affiliated with the company's investment adviser. Applicants state that rule 10f–3 prevents the Funds from placing group orders for Eligible Municipal Securities with an underwriting syndicate that includes MLPF&S.

3. Section 17(a) generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling securities to the investment company. Applicants submit that a Fund's submission of a group order for Eligible Municipal Securities to a syndicate that includes MLPF&S may be deemed a principal transaction between the Fund and MLPF&S and thus prohibited by section 17(a).

4. Section 17(b) authorizes the Commission to exempt a transaction from the provisions of section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company and the general purposes of the Act. Section 6(c), in relevant part, permits the Commission to exempt a class of transactions from any provision of the Act if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested exemptions meet the standards for relief set forth in sections 6(c), 10(f), and 17(b).

5. According to applicants, several factors have had, and increasingly will have, a significant negative impact on the ability of the Advisers to make appropriate municipal securities investments of the Funds. Applicants contend that increased investor demand for tax-exempt investment opportunities has resulted in fierce competition or municipal securities among individual investors and funds investing in such securities and that, at the same time, the supply of new issues of municipal securities has declined. Applicants further contend that, since passage of the Tax Reform Act of 1986, a number of underwriters have reduced or eliminated their municipal bond business. Applicants assert that this development has been coupled with a dramatic consolidation among investment banks acting as underwriters and dealers. According to applicants, this consolidation among underwriters has had the effect of boosting MLPF&S's participation in municipal securities underwritings generally and that, as a result, the Funds' opportunities to purchase municipal securities from syndicates that do not include MLPF&S have diminished significantly.

6. Applicants also assert that there is an increasing tendency in municipal securities offerings for the underwriting syndicate to give a higher priority to group orders than to net designated orders, and that group orders are comprising an increasing percentage of MLPF&S's negotiated transaction business. For example, in the calendar year period ending December 31, 1999, 23.08% of MLPF&S's total senior managed negotiated transaction business was conducted on a group order basis, compared with only 10.05% for the corresponding period in 1998.

7. Applicants assert that, without the requested relief, the Funds may have to pay higher prices for Eligible Municipal Securities in the secondary market and may risk being underinvested at times due to a lack of other appropriate

[1] The term Eligible Municipal Securities generally refers to municipal securities that have received an investment grade rating from at least one NRSRO. The term "municipal securities," as defined in section 3(a)(29) of the Securities Exchange Act of 1934, generally refers to securities that are issued by or on behalf of states or their political subdivisions, agencies and instrumentalities, the interest on which is exempt from federal taxation.

[2] In a net designated order, the designated members of the syndicate sharing the order retain the entire commission generated by the order.

[3] The term "successors in interest" is limited to entities that result from a reorganization into another jurisdiction or change in the type of business organization. Each Fund that currently intends to rely upon the requested order has been named as an applicant. Any Future Fund and any investment adviser of a Future Fund that relies on the order will comply with the terms and conditions of the application. For purposes of determining compliance with rule 10f–3(b)(7) under the Act, FAM, MLIM and any investment adviser of a Future Fund will be considered the same investment adviser.

investment opportunities. Applicants believe that the conditions to the order will ensure that the Funds place group orders only where reasonably necessary to enable them to purchase suitable portfolio securities in the desired quantities.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The terms of the order will apply only to purchases of Eligible Municipal Securities in negotiated underwritings.

2. Applicants will comply with all provisions of rule 10f–3 except for paragraph (b)(8) to the extent that it prohibits the purchase of Eligible Municipal Securities through group orders when MLPF&S is a member of the underwriting syndicate.

3. The Advisers may enter group orders on behalf of the funds when MLPF&S is a member of the underwriting syndicate only where: (i) the lead manager for the syndicate has informed the Advisers that only group orders are being accepted; or (ii) as of the time the Advisers placed an order, and based on the orders received by the syndicate through that time, the lead manager believed that total orders would exceed the available quantity of Eligible Municipal Securities (*i.e.*, the Eligible Municipal Securities will be oversubscribed) and group orders will receive a higher priority than net designated orders.

4. At the time of purchase by a Fund, MLPF&S will not be obligated for more than 50% of the Eligible Municipal Securities being offered by the relevant underwriting syndicate.

5. The Advisers may place group orders on behalf of the Funds through MLPF&S or any unaffiliated member of the syndicate, but may not, under any circumstances, place a net designated order for the credit of or through MLPF&S.

6. For all purchases by a Fund of Eligible Municipal Securities when MLPF&S is a member of the underwriting syndicate, there will be a substantially contemporaneous notation made at the time the Advisers place an order indicating that the lead manager has stated that only group orders will be accepted, or that the lead manager believed at such time that the Eligible Municipal Securities will be oversubscribed and group orders will receive a higher priority than net designated orders. Where MLPF&S is the lead manager, such notation will be provided in writing by MLPF&S to the Advisers. Where there is an unaffiliated lead manager, the Advisers will obtain orally from the lead manager a representation to the foregoing effect and will note the receipt thereof on the trade ticket. The Advisers also will obtain from the lead manager a copy of the information described in rule G–11(f) of the Municipal Securities Rulemaking Board. At the close of the offering, the Advisers will make a notation as to whether the offering was oversubscribed. This documentation will be included as part of the Fund's compliance with the periodic reporting and recordkeeping requirements of rule 10f–3, set forth in paragraphs (b)(9) and (b)(11)(ii), respectively.

7. The board of directors (or trustees) of the Fund, including a majority of the directors (or trustees) who are not interested persons under section 2(a)(19) of the Act, will review no less frequently than quarterly each purchase of Eligible Municipal Securities made by the Fund pursuant to the order. The board will determine that the terms of the transactions were reasonable and fair to the shareholders of the Fund and did not involve overreaching of the Fund or its shareholders on the part of any person concerned. Among other things, the board will consider the number of instances in which a notation made pursuant to condition 6 above indicated that the offering was going to be oversubscribed when, according to the notation made at the close of the offering pursuant to condition 6 above, it was not oversubscribed. In considering whether the price paid for the Eligible Municipal Securities was reasonable and fair, the price of the Eligible Municipal Securities will be analyzed with respect to comparable transactions identified by MLPF&S or the Advisers involving similar securities being purchased or sold during a comparable period of time, if such transactions could reasonably be found to have existed.

8. The order will be valid only so long as the Advisers, on the one hand, and MLPF&S, on the other, operate as separate entities and independent profit centers within the holding company framework of ML & Co., with separate capitalization, separate books and records, and substantially separate officers and employees. ML & Co. will not have any involvement with respect to proposed transactions pursuant to the order and will not attempt to influence or control in any way the placing by the Funds or the Advisers of orders with MLPF&S.

9. The legal departments of MLPF&S and the Advisers will prepare guidelines for personnel of MLPF&S and the Advisers to make certain that transactions conducted pursuant to the order comply with the above conditions, and that the parties maintain arm's length relationships. In the training of personnel of MLPF&S, particular emphasis will be given to the fact that the subject transactions may occur only where the lead manager has informed the Advisers in the manner described in condition 6 above that group orders are required for purchase, or that the lead manager believes the Eligible Municipal Securities will be oversubscribed and that group orders will receive a higher priority than net designated orders. and that the Advisers may not place net designated orders for the credit of or through MLPF&S. the legal departments will periodically monitor the activities of MLPF&S and the Advisers to make certain of adherence to the conditions set forth in the order.

10. For three years following the issuance of the order, the Advisers will produce data listing the purchases of Eligible Municipal Securities made by the Funds pursuant to the order during the preceding year, indicating whether each purchase was effected under the circumstances described above in condition 3(i) or 3(ii) and the percentage of the offering that was purchased by the Funds. MLPF&S will produce data and provide copies to the Advisers showing the number of Eligible Municipal Securities underwritings when: (i) MLPF&S was a member of the underwriting syndicate and only group orders were accepted or the Eligible Municipal Securities were oversubscribed and group orders received a higher priority than net designated orders; and (ii) MLPF&S was lead manager or co-manager and only group orders were accepted or the Eligible Municipal Securities were oversubscribed and group orders received a higher priority than net designated orders; and (ii) MLPF&S was lead manager or co-manager and only group orders were accepted or the Eligible Municipal Securities were oversubscribed and group orders received a higher priority than net designated orders. The above information will be included as part of the Funds' compliance with the periodic reporting and recordkeeping requirements of rule 10f–3, set forth in paragraphs (b)9) and (b)(11)(ii), respectively.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–16634 Filed 7–2–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25053; 812–12302]

The Huntington Funds, et al.; Notice of Application

June 27, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of the Application: Applicants request an order to permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

Applicants: The Huntington Funds, Huntington, VA Funds (collectively, the "Trusts"), and Huntington Asset Advisors, Inc. (the "Adviser").

Filing Dates: The application was filed on October 16, 2000 and amended on June 14, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 23, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Paul R. Rentenbach, Esq., Dykema Gossett, PLLC, 400 Renaissance Center, Detroit, Michigan 48243–1668.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Attorney-Adviser, at (202) 942–0611, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trusts, organized as Massachusetts business trusts, are registered under the Act as open-end management investment companies. The Huntington Funds currently consists of twelve series and the Huntington VA Funds currently consists of two series (together with any registered open-end management investment company or series thereof that currently, or in the future, is advised by the Adviser, the "Funds").[1] The shares of the Huntington VA Funds are sold exclusively to insurance company separate accounts that fund variable annuity and variable life contracts. Certain Funds hold themselves out as money market Funds and comply with rule 2a–7 under the Act (the "Central Funds"). The Adviser is an indirect wholly-owned subsidiary of Huntington Bancshares Incorporated, a publicly-held bank holding company. The Adviser is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.[2]

2. Applicants state that each Participating Fund (as defined below) has, or may be expected to have, cash that has not been invested in portfolio securities ("Uninvested Cash"). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments, or money received from investors. A Fund that purchases shares of the Central Funds is referred to as a Participating Fund. The Funds also may participate in a securities lending program under which a Fund may lend its portfolio securities to broker-dealers or other institutional investors ("Securities Lending Program"). The loans are continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash ("Cash Collateral," and together with Uninvested Cash, "Cash Balances").

3. Applicants request an order to permit each of the Participating Funds to invest their Cash Balances in one or more of the Central Funds, and the Central Funds to sell their shares to, and redeem their shares from, the Participating Funds. Investment of Cash Balances in shares of the Central Funds will be made only to the extent that such investments are consistent with each Participating Fund's investment restrictions and policies as set forth in the Participating Fund's prospectus and statement of additional information. Applicants state that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act, in pertinent part, provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent that, such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from the limitations of sections 12(d)(1)(A) and (B) to permit the Participating Funds to invest Cash Balances in the Central Funds.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants

[1] Each Fund that currently intends to rely on the requested relief is a series of one of the Trusts named as an applicant. Any future Fund that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

[2] For the purposes of this application, the term "Adviser" includes, in addition to Huntington Asset Advisors, Inc., any other person controlling, controlled by or under common control with Huntington Asset Advisors, Inc. that acts in the future as an investment adviser to a Fund.

state that because each Central Fund will maintain a highly liquid portfolio, a Participating Fund will not be in a position to gain undue influence over a Central Fund through threat of redemption. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Central Funds sold to the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' ("NASD") Conduct Rules). Applicants state that if a Central Fund offers more than one class of shares, a Participating Fund will invest its Cash Balances only in the class with the lowest expense ratio (taking into account the expected impact of the Participating Funds investment) at the time of investment. In connection with approving any advisory contract for a Participating Fund, the Participating Fund's board of trustees (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act (the "Disinterested Trustees") will consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for reduced services provided to the Fund by the Adviser as a result of the investment of Uninvested Cash in the Central Funds. Applicants represent that no Central Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an "affiliated person" of an investment company to include, among others, any person directly or indirectly controlling, controlled by, or under common control with the investment company and any investment adviser to the investment company. Applicants state that, because the Funds share a common Board, each Fund may be deemed to be under common control with each of the other Funds, and thus an affiliated person of each of the other Funds. In addition, because a Participating Fund may acquire 5% or more of a Central Fund, each Fund may be deemed to be an affiliated person of the other Fund. As a result, section 17(a) would prohibit the sale of the shares of a Central Fund to the participating Funds, and the redemption of the shares by a Central Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Central Funds by the participating Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that shares of the Central Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Participating Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that a Central Fund has the right to discontinue selling shares to any of the Participating Funds if the Central Fund's Board determines that such sale would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Participating Fund, by purchasing shares of a Central Fund, the Adviser, by managing the assets of the Participating Funds investing in a Central Fund, and a Central Fund, by selling shares to the Participating Funds, could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

8. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the investment by the Participating Funds in shares of a Central Fund would be on the same basis and would be indistinguishable from any other shareholder account maintained by the Central Fund and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Shares of the Central Funds sold to and redeemed by the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD's Conduct Rules).

2. Before the next meeting of the Board is held for purposes of voting on an advisory contract under section 15 of the act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Participating Fund that can be expected to be invested in the Central Funds. Before approving any advisory contract for a Participating Fund, the Board, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for reduced services provided to the Funds by the Adviser as a result of the Uninvested Cash being invested in the Central Fund. The minute books of the Participating Fund will record fully the Board's considerations in approving the advisory contract, including the considerations referred to above.

3. Each of the Participating Funds will invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the Participating Fund's aggregate investment of Uninvested Cash in the Central Funds does not exceed 25 percent of the Participating Fund's total assets. For purposes of this limitation, each Participating Fund or series thereof will be treated as a separate investment company.

4. Investment of Cash Balances in shares of the Central Funds will be in accordance with each Participating Fund's respective investment restrictions, if any, and will be consistent with each Participating Fund's policies as set forth in the prospectus and statement of additional information.

5. Each Participating Fund, Central Fund, and any future Fund that may rely on the order shall be advised by the Adviser.

6. No Central Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the Securities Lending Program, a majority of the Board, including a majority of the Disinterested Trustees, will approve the Fund's participation in the Securities Lending Program. Such Trustees also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Central Funds is in the best interest of the shareholders of the Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–16635 Filed 7–2–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44477; File No. SR–AMEX–2001–14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the American Stock Exchange LLC Relating to Members' Written Proposals To List Equity Option Classes

June 27, 2001.

I. Introduction

On March 8, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change adopting formal procedures for members to submit proposals to list option classes on the Exchange. The Exchange submitted an amendment to the proposed rule change on April 17, 2001.[3] the **Federal Register** published the proposed rule change for comment on April 30, 2001.[4] The Commission receive no comments on the proposal. The Exchange filed Amendment No. 2 to the proposed rule change on June 22, 2001.[5] This order approves the proposed rule change and grants accelerated approval to Amendment No. 2. The Commission also is soliciting comment on Amendment No. 2 to the proposed rule change.

II. Description of the Proposal

The proposed rule change would adopt formal procedures for members to submit proposals to list option classes on the Exchange, and would codify the factors considered by the Exchange in listing option classes.[6] The Exchange would be required to review and make a determination regarding a member's listing proposal within 25 days of receipt of the proposal. If the Exchange decides not to list the proposed option class or to limit or condition the listing of the option in any way, the Exchange would be required, in writing and within the 25-day period, to inform the member of the basis for denial of the proposal or the basis for any limitation or condition put on its acceptance.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission believes that the proposed rule change is consistent with the section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanisms of a free and open market by providing formal procedures for members to request the listing of options on the Exchange. The proposal would required the Exchange to respond in writing within 25 days to requests by members to list options. The Commission believes that the proposed procedures and time frames set forth in the proposed rule change are reasonable and adequately balance the Exchange's need to thoroughly examine proposed listings before making its determination with its members' need for a prompt and specific response to its listing recommendation.

In addition, the proposed rule change codifies the factors to be considered by the Exchange in determining whether to list a recommended option. The Commission believes that the proposed factors represent legitimate issues that the Exchange may consider when making a listing decision. The Commission notes that if the Exchange denies or places conditions or limitations upon a proposed listing, it must include its reasons in the letter notifying the member of its decision. The Commission believes that this requirement should help to ensure that the Exchange relies on upon the factors codified in its rules when making a listing decision.

The Commission finds good cause for accelerating approval of Amendment No. 2 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that Amendment No. 2 provides useful clarification to the proposed

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Elizabeth King, Associate Director, Division of Market Regulation ("Division"), Commission, dated April 16, 2001 ("Amendment No. 1"). Amendment No. 1 revises proposed Commentary .08 to Amex Rule 915 to require the Amex to maintain a record of any bona fide business considerations it relies upon in denying or placing limitations or conditions upon a proposal listing.

[4] Securities Exchange Act Release No. 44211 (April 23, 2001), 66 FR 21421.

[5] *See* letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated June 21, 2001 ("Amendment No. 2"). Amendment No. 2 revised Commentary .08 to Amex Rule 915 to clarify that when the Exchange relies upon other bona fide business considerations in denying or placing conditions or limitations upon a member listing proposal, the Exchange must provide the member with a written response specifying that the Exchange has relied upon other bona fide business considerations, in addition to maintaining a record of the bona fide business considerations supporting its decision.

[6] As part of a settlement of an enforcement action by the Commission, four of the five options exchanges, including the Amex, are required to adopt rules to codify listing procedures to be carried out when a member or member organization requests the exchange to list options not currently trading on the exchange. *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 200).

[7] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

rules. Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5)[9] and 19(b) of the Act,[10] to accelerate approval of Amendment No. 2 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–AMEX–2001–14 and should be submitted by July 24, 2001.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–AMEX–2001–14), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–16676 Filed 7–2–01; 8:45 am]

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[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44466; File No. SR–BSE–2001–03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to Its Specialist Performance Evaluation Program

June 22, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 7, 2001, the Boston Stock Exchange ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which Items have been prepared by the Exchange. On June 15, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its SPEP Pilot until March 31, 2002. The text of the proposed rule change follows. New text is italicized.

Chapter XV

Specialists

Specialist Performance Evaluation Program

Sec. 17(a)–(e) no change

(f) This program will expire on March 31, 2002, unless further action is taken by the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange requested to have the one-year extension of its Specialist Performance Evaluation Pilot Program ("SPEP Pilot") applied retroactively to April 1, 2001. In addition, the Exchange added rule text language that sets forth the expiration date of the SPEP Pilot. *See* letter from John A. Boese, Assistant Vice President, Rule Development and Market Structure, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 14, 2001 ("Amendment No. 1").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to have a one-year extension of its SPEP Pilot applied retroactively from April 1, 2001, until March 31, 2002.[4] Under the SPEP Pilot program, the Exchange regularly evaluates the performance of its specialists by using objective measures, such as turnaround time, price improvement, depth, and added depth. Generally, any specialist who receives a deficient score in one or more measures may be required to attend a meeting with the Performance Improvement Action Committee, or the Market Performance Committee.

While the Exchange believes that the SPEP Pilot has been a very successful and effective tool for measuring specialist performance, it realizes that modifications are necessitated as a result of recent changes in the industry, particularly decimalization. Accordingly, the Exchange is seeking to extend the pilot period of this program so that evaluation and modification can be undertaken before permanent approval is requested.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[5] in that the proposed rule change is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and

[4] The SPEP Pilot expired on March 31, 2001. *See* Securities Exchange Act Release No. 42585 (March 28, 2000), 65 FR 17687 (April 4, 2000); *see also* Amendment No. 1, *supra* note 3 (requesting retroactive approval).

[5] 15 U.S.C. 78f(b)(5).

open market and a national market system; and in general to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change and Amendment No. 1 thereto, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to SR–BSE–2001–03 and should be submitted by July 24, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Exchange's proposal to retroactively extend the SPEP Pilot from April 1, 2001 until March 31, 2002 is consistent with the requirements of the Act and the rules and regulation thereunder. Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[6] which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Commission believes that the retroactive extension of the SPEP Pilot should allow the Exchange to continue to assess specialist performance without interruption, while allowing the Exchange adequate time to consider amending the SPEP Pilot program in response to decimal pricing.

The Commission expects that during the SPEP Pilot the Exchange will continue to monitor threshold levels and propose adjustments as necessary and continue to assess whether each SPEP measure is assigned an appropriate weight.[7] In addition, the Exchange should continue to closely monitor the conditions for review and should take steps to ensure that all specialists whose performance is deficient and/or diverges widely from the best units will be subject to meaningful review. Finally, the Commission repeats its request that the Exchange incorporate additional objective criteria into the SPEP, most importantly, a measure of quote performance.[8] As previously noted, the Commission would have difficulty granting permanent approval to a SPEP that did not include a satisfactory response to the concerns described above.[9]

The Commission finds good cause for granting the Exchange's request for a twelve-month extension of the SPEP Pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.[10] Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules promulgated thereunder, is the maintenance of fair and orderly markets in their securities. To ensure that specialists fulfill these obligations, it is important that the Exchange be able to evaluate specialist performance. The Exchange's SPEP Pilot assists the Exchange in conducting its evaluation and accelerated approval of the proposed rule change permits the SPEP Pilot to continue on an uninterrupted basis. Therefore, the Commission believes good cause exists to approve the extension of the SPEP Pilot from April 1, 2001 until March 31, 2002, on an accelerated basis. Accordingly, the Commission finds that granting accelerated approval of the requested extension is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.[11]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change, as amended, (SR–BSE–2001–03) is hereby approved on an accelerated basis through March 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–16637 Filed 7–2–01; 8:45 am]

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[6] 15 U.S.C. 78f(b)(5).

[7] *See* Securities Exchange Act Release No. 39730 (March 6, 1998), 63 FR 12847 (March 16, 1998) (order approving amendment to SPEP Pilot). In Securities Exchange Act Release No. 39730, the Commission stated certain terms and conditions for approving the SPEP Pilot program on a permanent basis, including the need to provide a study to the Commission regarding the SPEP Pilot program. Those terms and conditions are hereby incorporated by reference.

[8] *Id.*

[9] *Id.*

[10] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44476; File No. SR–BSE–2001–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to the Trading of Nasdaq Securities on the Floor of the Exchange

June 26, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2001, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 15, 2001; the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated June 14, 2001 ("Amendment No. 1").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to add Chapter XXXV, Trading in Nasdaq Securities, to the Rules of the Board of Governors of the Boston Stock Exchange ("BSE Rules"). The proposed chapter sets forth rules governing the trading of Nasdaq securities on the Exchange. The text of the proposed rule change follows in italics.

Chapter XXXV

Trading in Nasdaq Securities

All of the Rules, Policies, and Procedures, set forth in the Rules of the Board of Governors of the Boston Stock Exchange ("Boston Stock Exchange Rules"), and elsewhere, shall apply to the trading Nasdaq securities in the same way as they do to the trading of non-Nasdaq securities, with the addition of the rules set forth in this Chapter XXXV, detailed below.

Definitions

Sec. 1. (a) "Nasdaq security"—any security listed on the Nasdaq National Market or Nasdaq Small Cap Market.

(b) "Nasdaq System"—the NASD's Automated Quotation System.

(c) "listed security"—a stock or bond, other than a Nasdaq security, that has been accepted for trading by the Boston Stock Exchange, or any of the other registered securities exchanges in the United States.

Order Transmission

Sec. 2. (a)(i) Each Exchange specialist shall provide direct telephone access to the specialist post to Nasdaq System market makers, acting in their capacity as market makers, for each Nasdaq security in which the market maker is registered as a market maker. Access shall include appropriate procedures which assure the timely response to telephonic communications. Nasdaq System market makers may use such telephone access to transmit orders for execution on the Exchange.

Any order received on the floor via telephone from a Nasdaq System market maker shall be effected in accordance with the rules applicable to the making of bids, offers and transactions on the Floor (see Chapter II, Dealings on the Exchange, Chapter XV, Specialists). All limit orders shall be immediately displayed upon receipt, in accordance with Chapter II, Dealings on the Exchange, Section 40, Limit Order Display Rule.

(ii) Exchange specialists may send orders from the Floor for execution via telephone to any Nasdaq System market maker in each Nasdaq security in which it is registered as specialist. All of the Boston Stock Exchange Rules related to the trading of securities shall be applicable to bids and offers transmitted via telephone, in the same way as they apply to orders transmitted via automated trading systems.

(iii) Comparisons of transactions effected with a Nasdaq System market maker via telephone access will be made pursuant to procedures to be established between Nasdaq and the Exchange.

(b) Orders may be transmitted to a specialist via Nasdaq Workstation II ("NWII") at the election of a Nasdaq market maker originating the order. Orders transmitted through NWII may be executed by the system automatically or on a manual basis in accordance with the provisions of this Chapter XXXV.

(c) Specialists will have "Level 3 Service," as defined by the Nasdaq Unlisted Trading Privileges Plan, on the Nasdaq System. As such, specialists will have input and query ability with respect to quotations and sizes in securities included in the Nasdaq System. Access to the specialist via the Nasdaq System will be limited to floor brokers, BSE members, NASD members, NAS non-BSE members (including Electronic Communications Networks), and certain other member firms and other professionals represented by member firms ("clients"). Clients may have access to enter orders to the specialist either electronically, through the Nasdaq System, or telephonically. Any order received by the specialist telephonically, or verbally in any manner other than electronically through the Nasdaq System must be memorialized in accordance with Chapter II, Dealings on the Exchange, Section 2, Recording of Sales, and Section 15, Record of Orders from Offices to Floor.

(d) Access to the specialist via the Nasdaq System, or electronic access, includes

(i) orders sent by clients through Nasdaq's ACES Pass Thru capability (which consolidates orders sent by various client systems to the Nasdaq System);[4]

(ii) orders sent by BSE floor brokers directly through the BSE Nasdaq trading system (currently Nasdaq Tools);[5]

(iii) orders sent by clients directly into the Nasdaq System and routed to the specialist; and,

(iv) orders sent by Nasdaq and NASD Market Makers through the Nasdaq System.

Reporting of Transactions

Sec. 3. All transactions in Nasdaq securities shall be reported through the Automated Confirmation Transaction Reporting Service ("ACT"), in accordance with NASD Rule 4630, et. seq., unless other arrangements are made with, and approved by, the Exchange. Any transaction for which electronic submission into ACT is not possible must be reported to the NASD's Market Regulation Department on Form T as specified in paragraph (a)(5) of NASD Rule 4632.[6]

Trading

Sec. 4. (a) Automatic Execution of Nasdaq orders. If the specialist is quoting at the National Best Bid or Offer ("NBBO") at the time a market or marketable limit order is received, the order shall automatically be filled at the NBBO up to the size of the specialist's bid or offer. The specialist's bid or offer will be decrementated by the size of the execution. In the event that the specialist's bid or offer is exhausted, the system will generate a quote at an increment away from the NBBO as determined by the specialist from time to time, for 100 shares. If the specialist is not quoting at the NBBO at the time a market or marketable limit order is received, such order shall be automatically filled at the NBBO up to the size of the auto-execution threshold if the specialist has not, within 20 seconds after receipt of the order, complied with the manual execution requirement detailed below. The automatic-execution guarantee only applies to orders which are equal to or less than the size of the auto-execution parameter.

(b) In Nasdaq securities, the auto-execution parameter must be set at 300 shares or greater. For the purposes of this rule, odd-lot orders will be considered to be round lot orders for the purposes of rounding up to the size of the auto-execution guarantee parameter. An odd-lot order shall not increase the size of the execution guarantee to an amount greater than the auto-execution parameter. Rather an odd lot order would be added to any round lots less than the size of the auto-execution parameter and the execution guarantee would apply only to that number of shares, which would be less than or equal to, but in no case greater than, the size of the auto-execution guarantee.

[4] The Commission notes that Amendment No. 1 contained an incorrect reference, which BSE intends to correct in a future amendment to the proposed rule change.

[5] *Id.*

[6] *Id.*

(c) In unusual trading situations, specialists may switch from automatic execution to manual execution mode. "Manual execution mode" shall include any instance in which a specialist reduces the auto execution threshold below the minimum set forth in paragraph (b) of this section 4. For the purposes of this rule, "unusual trading situations" for Nasdaq securities include the existence of large order imbalances or significant price volatility. If a specialist elects to switch to manual execution mode based on the existence of unusual trading situations, the specialist must (1) document the basis for election of a manual execution mode; and (2) in the event that the specialist remains in manual execution mode for more than ten minutes, seek relief from the requirements of this section 4 from two floor officials.

All automatic execution parameters and practices shall be in accordance with NASD Rule IM–2110–02, Trading Ahead of Customer Limit Orders, and NASD Rule IM–2110–3, Front Running Policy.

Sec. 5. Manual Execution of Nasdaq securities. With respect to agency market or marketable limit orders in Nasdaq securities which have a size equal to or less than the auto execution threshold but which are not auto-executed under the provisions of this Chapter, a specialist shall be obligated to either (i) manually execute such orders at the NBBO in existence when the order is received or better, or (ii) act as agent for such orders in seeking to obtain the best available price for such orders on a marketplace other than the Exchange.

Preopenings/Trading Halts

Sec. 6. Pre-opening orders in Nasdaq securities must be accepted and filled at the Exchange opening trade price. In trading halt situations, orders will be executed based on the Exchange reopening price. (Note: In the case of a trading halt in a Nasdaq security, notice will be provided via the Nasdaq "NEWS" frame, in accordance with NASD Rule 4120.)

Orders To Buy and Sell the Same Security

Sec. 7. Pursuant to Chapter II, Section 18, Orders to Buy and Sell the Same Security, for cross transactions in Nasdaq securities,[7] a specialist must refrain from interfering at the cross price with an agency cross which is to be effected at a price between the disseminated Exchange market, unless the specialist is willing to better one side of the cross.

When a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are for 5,000 shares or more and are for accounts other than the accounts of the executing member, the member may cross such orders at a price which is at or within the prevailing bid or offer. The member's bid or offer shall be entitled to priority at such cross price, provided that the proposed cross transaction is of a size greater than the aggregate size of all of the interest communicated on the Exchange floor at that price. Another member may trade with either the bid or offer side of the presented cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction.

Dealings on Floor—Hours

Sec. 8. Pursuant to Chapter I–B, Sec. 2, Dealings on the Floor—Hours, no member or member organization shall make any bid, offer or transaction upon the floor of the Exchange, issue a commitment to trade through ITS or send an order for a Nasdaq security to a Nasdaq System market maker other than during the hours the Exchange is open for the transaction of business. Nasdaq securities will not be eligible to participate in the Post Primary Session.

Order Acceptance Guarantee

Sec. 9. An Order Acceptance Guarantee shall be available to each member firm in all Nasdaq securities traded on the Exchange. Specialists must accept all agency market and marketable limit orders in Nasdaq securities up to and including 1000 shares in accordance with this rule. Specialists must accept all agency non-marketable limit orders in Nasdaq securities up to and including 10,000 shares for placement in the limit order book.

An Exchange specialist in a Nasdaq security shall only be obligated to guarantee execution on the first agency market order placed with him by a Floor broker or other Floor member, at any given best bid or offer. Subsequent to any such execution, the specialist may, but shall not be obligated to, guarantee the execution of such price of other orders placed with him.

Specialist's Responsibilities

Sec. 10. (a) Orderly Markets. In accordance with the responsibilities of specialists, as set forth in Chapter XV, Specialists, Sec. 2., Responsibilities, in relation to Nasdaq securities, an "orderly market" is defined as one with regularity and reliability of operation manifested by the presence of price continuity and depth exhibited by the avoidance of large and unreasonable price variations between consecutive sales on the Nasdaq system and the avoidance of overall price movements without appropriate accompanying volume.

A specialist in a Nasdaq security is responsible for insuring that each opening and reopening price in respect to Nasdaq securities reflects a professional assessment of market conditions at the time with due consideration being given to the balance of supply and demand as reflected by public orders. Additionally, the specialist should insure that the opening is not unduly hasty, particularly when at a price disparity from the previous close, and that the price reflects a thorough and professional assessment of market conditions at the time.

(b) Best Execution. Specialists dealing in Nasdaq securities shall use diligence to ascertain the best market for a particular security and provide the customer with a price which is as favorable as possible under the prevailing market conditions. Furthermore, no specialist shall interject a third party between himself and the best available market unless he can demonstrate that the total costs of the resultant transactions was better that the prevailing inter-dealer market for the security.

Registration of Specialists

Sec. 11. Specialists who wish to trade Nasdaq securities must be registered and qualified by the Exchange. As such, they must first make application to and be approved by the Exchange. In addition, and in accordance with the requirements set forth in Chapter XV, Specialists; Chapter XX, Employees for the Solicitation of Business; Chapter XXV, Registration of Member-Corporations; and elsewhere, specialists who trade Nasdaq securities will be required to:

(1) Be associated with an existing or newly created specialist unit approved by the Exchange, in accordance with all applicable rules, policies and procedures; and,

(2) Successfully complete the Boston Stock Exchange Floor Exam, including

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[7] *Id.*

the sections regarding Nasdaq trading; and,

(3) Obtain a Series 63, NASAA Uniform State Law Exam, license; and,

(4) If conducting business with the public, obtain a Series 7, General Securities Representtive, license under the sponsorship of a NASD registered Broker-Dealer; and,

(5) Complete a training period as deemed adequate by the Market Performance Committee; and,

(6) Ensure that the specialist unit with which he is associated meets all of the Exchange's financial requirements, as set forth in Chapter VII, Minimum Amount of Margin on Transactions Made During the Course of a Single Day in Accounts of Members, Allied-Members and Member-Organizations, Chapter IX, Unissued Securities—Margin Requirements, Chapter XXII, Financial Reports and Requirements—Aggregate Indebtedness—Net Capital, Chapter XXII–A, Blanket and Fidelity Bonds, and elsewhere.

Limitations on Specialists

Sec. 12. Any individual member who is registered as a specialist is not permitted to maintain a book, as defined in Chapter XV, Specialists, Section 6, The Specialist's Book, in both Nasdaq securities and listed securities. Nasdaq securities must comprise a separate book which must be solely traded by a separate specialist. A specialist who is qualified under the provisions of this Chapter XXXV, and the provisions of Chapter XV, Specialists, Section 1, Registration, to trade either listed or Nasdaq securities, or both, cannot accept orders in, nor effect transactions in, both types of securities, at the same time.

Nothing in this section shall preclude any duly qualified specialist from occasionally substituting for, or acting as an alternate for, another specialist in either listed or Nasdaq securities, in accordance with Article XVI of the Constitution of the Boston Stock Exchange, Officers and Associates, Section 7, Alternatives for Members Absent. A specialist substituting for another specialist in accordance with the provisions of this section will be permitted to trade both Nasdaq and listed securities at the same time, during the period of substitution. In the case of an extended or permanent absence of a specialist qualified to trade Nasdaq securities, the firm from which the specialist is absent must promptly notify the Exchange and make arrangements to permanently replace the absent specialist in a reasonable amount of time, as determined by the Exchange. The Exchange reserves the right to temporarily reassign some or all of the Nasdaq securities comprising an absent specialist's book in the event that a firm does not make suitable or timely arrangements for the replacement of the absent specialist.

Floor Clerks

Sec. 13. A qualified clerk under the control and supervision of a specialist may assist the specialist, in accordance with Chapter I–B, Section 3, Dealings on Floor—Persons.

Odd-Lots and Odd-Lot Dealers

Sec. 14. Notwithstanding any of the requirements regarding Odd-Lots and Odd-Lot dealers set forth in Chapter XII, Odd-lot Dealers in Securities the Primary Market for Which is on Another Exchange, Chapter XIII, Odd-Lot Dealers in Fully Listed Securities Having a Primary Market on this Exchange, Chapter II, Dealings on the Exchange, Chapter V, Units of Delivery—Payment for Deliveries—Transfers, a member or member organization registered as a specialist in a Nasdaq security shall automatically be registered as the Odd-Lot Dealer in such security. Market orders will be accepted for execution as an odd-lot based on the best bid disseminated pursuant to SEC Rule 11Ac1–1 on a sell order, or the best offer disseminated pursuant to SEC Rule 11Ac1–1 on a buy order in effect at the time the order is presented at the specialist post, provided the order is for a number of shares less than full lot in said stock.

Synchronization of Business Clocks

Sec. 15. In accordance with NASD Rule 6953, each specialist trading Nasdaq securities shall synchronize his business clocks with a time source as specified by Nasdaq.

Capital and Equity Requirements

Sec. 16. Pursuant to Chapter XXII, Financial Reports and Requirements—Aggregate Indebtedness—Net Capital, Section 2, Capital and Equity Requirements, each member firm involved in the trading of Nasdaq securities shall maintain a liquidating equity for each specialist account of not less than $200,000 in cash or securities. This equity requirement, as well as all other provisions of the section (including capital maintenance requirements), applies to each specialist account, without regard to the number of specialist accounts per firm.

Margin Procedures

Sec. 17. The Boston Stock Exchange Clearing Corporation will provide margin financing for approved specialists dealing in Nasdaq securities, subject to the requirements and guidelines set forth in Chapter VIII, Minimum Amount of Margin on Transactions Made During the Course of a Single Day in Accounts of Members, Allied-Members, and Member-Organizations. For the purposes of this rule, transactions in Nasdaq securities will be considered to have been effected on the Boston Stock Exchange, and Nasdaq securities will be considered to be classified as stocks.

Limitations on Trading Nasdaq Securities

Sec. 18. (a) Minimum Number of Nasdaq securities. The first specialist in a firm will be required to register in and trade at least 20 Nasdaq securities. A specialist associated with a member firm, and associated with another specialist registered in the minimum number of BSE traded stocks shall register and act as specialist in not less than 15 Nasdaq securities.

(b) Minimum Holding Period for Nasdaq securities. Any stock awarded or assigned to a specialist must be held by the specialist for at least 6 months (excluding unprotected allocations), and the specialist is required to actively trade and maintain a market in each security in which he is registered.

Application Procedure

Sec . 19. Specialists are required to apply for registration in Nasdaq securities by utilizing either the UTP Form or the Add/Drop Form, depending on the status of the security being applied for. The allocation process will take place as specified elsewhere in this chapter.

Consistent with general Exchange stock allocation procedures, a specialist who first requests registration in an established Nasdaq security will generally be allocated that security, except where the performance of the specialist has been called into question. In that event, the Stock Allocation Committee may elect to competitively allocate that security.

New Listing or New UTP

Sec. 20. A specialist may apply to trade a newly admitted Nasdaq security, pursuant to the Nasdaq UTP plan (which permits trading of UTP admitted securities) as well as those newly dually listed. Such application will be subject to the allocation process.

Allocation of Nasdaq Securities

Sec. 21. The following procedures regarding the initial allocation of Nasdaq securities are designed to ensure an equitable representation of

member support of Nasdaq securities trading on the Boston Stock Exchange. They are structured so as to protect the firms who have established Nasdaq operations on the floor of the Exchange, while at the same time providing an opportunity for new interest and growth of this program in the foreseeable future from firms seeking to trade Nasdaq securities on the Exchange through meaningful stock allocations. Priority for admittance will be based on the date that the new firm becomes qualified to trade Nasdaq securities on the Exchange, as determined by Exchange staff. These procedures will remain in place for a two-year maturation period, following approval and commencement of trading. At the conclusion of this period, the Exchange will review the process and establish permanent Nasdaq security allocation procedures.

It should be understood that the registration rights to any Nasdaq securities awarded under this program through the allocation process may be transferred, rescinded or withdrawn by the Exchange. The initial two-year maturation period, by design, may entail the reallocation of an "unprotected" security. Further, any such specialist unit must continuously maintain fair and equitable markets in all issues assigned to it and may not for any reason transfer, sell or otherwise shift the benefit or responsibilities for trading securities awarded to it to another member firm. The Exchange will promptly initiate steps to reassign such trading privileges as deemed necessary if such circumstances arise. A minimum six-month holding period will be strictly enforced. The intent of this program is to establish competitive and liquid markets through solid support and a sustained commitment by its members.

Note: A firm may swap allocated stocks, with other existing and established BSE Nasdaq trading participants, in accordance with Section 25 of this Chapter XXXV. Further, in limited and exceptional circumstances, a member firm may petition the Executive Committee of the Exchange for permission to sell or otherwise transfer its Nasdaq trading privileges to another member firm prior to the end of the mandated six-month holding period. The responsibility to provide sufficient and justifiable reasons to seek such approval will be on the member firm registrant and must overcome the intent of this allocation process for a sustained commitment by such member. (Factors will include length of time trading, number of issues in each category and whether the proposed transferee is a new applicant.) The Executive Committee will evaluate any such request on its merits, and will ultimately base its decision on its determination of whether such a transfer is in the best interests of the Exchange.* The Executive Committee's decision in such a case shall be final.

*Under certain circumstances, the Exchange (Executive Committee or its designated representative) may temporarily reassign some or all of the securities in question until an acceptable arrangement can be reached.

Allocation Procedures

Any member firm currently trading listed securities on the Exchange may apply for Nasdaq trading privileges, but may not drop listed securities in order to seek allocation of Nasdaq securities. The Exchange's goal is to establish a new product, which will expand the number of stocks available for execution on the BSE, rather than to replace or substitute its current market for listed securities.

The following procedures pertaining to the allocation of Nasdaq securities **apply on a member firm basis**, regardless of the number of specialists trading Nasdaq securities within a particular firm. The minimum number of stocks per book pursuant to this Chapter XXXV, Sec 18, will be 20 for the first specialist in a member firm and 15 for subsequent specialists in that same member firm. The initial allocation of Nasdaq securities will be limited to those member firms approved by the Exchange as of commencement date, and will be limited to those firms for the first 30 days.

Following this initial allocation, other firms may apply for Nasdaq securities, provided that they have met all of the requirements and have been approved by the Exchange to trade Nasdaq securities, as set forth in this Chapter XXXV, and elsewhere. The procedures for the allocation of Nasdaq securities will be based in part on the trading volume in Nasdaq securities and are as follows:

Note: The determination of which securities fall within the categories below (i.e., the top 100, top 300, etc.) will be based on the ranking on Nasdaq securities by the National Association of Securities Dealers, and published on the appropriate Nasdaq website as of the end of the preceding calendar quarter.

After the initial 30-day period, commencing on a date the Exchange specifies as the official start date of the trading of Nasdaq securities on the floor of the Exchange ("start date"), other qualified firms may apply for allocation of Nasdaq securities from the pool of unallocated securities. After an ensuing 30-day period (i.e. 60 days from the start date), each firm who is actively trading Nasdaq securities at the time a new firm applies for allocation ("existing firm") of Nasdaq securities may protect ("freeze") securities registered to it within the rankings noted below and at the times **as specified below**. The remaining ("unprotected") securities that the firm is trading will be available for re-allocation to a new firm (including any new firms which commenced trading 30 days after the start date), although no new firm may take more than 30% from within each of the four rankings of any one existing firm's ("unprotected") securities available for allocation. Thus, existing firms will not have their entire inventory, above the securities it has frozen, subject to reallocation at any one time, by any one firm. Notwithstanding this 30% provision, a new firm may seek reallocation of the at least one uprotected secrity for an existing firm, if 30% of the existing unprotected securities is less than one, and provided that the number of unprotected securities exceeds the freeze limits as set forth below. An existing firm will be able to freeze securities each time a new firm applies for allocation during the first six months of Nasdaq trading, according to the following restrictions:

Category 1—10 securities of the top 100
Category 2—20 securities from those rated 101–300
Category 3—20 securities from those rated 301–500
Category 4—20 securities from those rated 501 and above

Note: After the initial allocation of securities to those firms which are initially participating in the trading of Nasdaq securities, the Exchange reserves the right to reallocate any number of securities above 25 per firm which the firm has been initially allocated from the top 100 ranked securities, if it determines that it is in the best interest of the Exchange and the overall Nasdaq program.

As an example, assume four firms initially apply for, and receive allocations as follows:

Category	1	2	3	4
Firm A	25	25	25	25
Firm B	20	25	20	20
Firm C	25	20	20	20
Firm D	25	50	100	0

If **Firm E** applies for allocations during this initial six month period, **Firm A** can freeze 10 of the securities it has been allocated from the top 100 and 20 from each of the three remaining categories. Thus 15 securities from category 1, and 5 securities from categories 2, 3, and 4 would be available to **Firm E**. However, due to the 30% restriction, only 5 securities (30% × 15 unprotected) from category 1 and 2 securities from categories 2, 3, and 4 could be reallocated from Firm A.

Firm B *would be able to freeze 10 of the 20 securities which it had been allocated from the top 100, although only 3 of the unprotected securities could be reallocated to Firm E. Likewise, Firm B would be able to freeze 20 of the securities which it had been allocated from category 2, and could lose up to 30%, or 2 securities from category 2 to Firm E. Categories 3 and 4 would be protected.*

Firm C *would be able to freeze all of the securities it has been allocated in categories 2, 3, and 4 but could lose 5 of the 15 unprotected securities in category 1.*

Firm D *would be able to freeze 10 of the securities it has been allocated from the top 100 (category 1). 30% of 30, or 9 securities, would be available from category 2, and 24 securities from category 3 would be available.*

Note: *Firm E, and any subsequent new firms applying for allocation, can not exceed the same restriction levels as set forth above (i.e., 10 of the top 100 or 20 from categories 2, 3, or 4) in total from the composite of issues drafted from the allocated but unprotected portions of existing Nasdaq books. It could however, request additional allocation from the remaining "unallocated" issues in any category. The intent here is to maintain an equitable distribution of protected stocks among the participants during this initial period of reallocations to new firms.*

Now, assume ***Firm G*** *is approved and applies for allocation one month after Firm E. Firms A through E would all be subject to reallocation under the same guidelines as above. Firms A–E would not be exempt from any future allocations, but would be able to freeze the prescribed amount of securities each time a* ***new*** *firm applies for allocation. Firm G, likewise, is subject to future allocations under the same guidelines.*

Note: *In the event an existing firm seeks additional allocations at any point during the two-year maturation period, notice will automatically be given to all other existing firms of the allocation request, allowing the other existing firms the opportunity to compete for allocation in the requested securities, within a prescribed time frame. The intent of this provision is to ensure fairness to all firms during maturation and evaluation stages of the Nasdaq stock allocation process. Additionally, no existing firm will be permitted to seek reallocation of unprotected securities from any other existing firm(s).*

After the first six months from commencement of trading, and at each six-month anniversary interval through the remainder of the two-year maturation period, firms will be able to freeze an additional number of securities, as established by the Exchange, within each category. As the ***example*** *below indicates these additional protective limits will depend upon the remaining number of unprotected securities available in each category.*

Category 1—3 additional securities within the top 100
Category 2—6 additional securities from those rated 101–300
Category 3—6 additional securities from those rated 301–500
Category 4—6 additional securities from those rated 501 and above

In certain, limited circumstances, an existing specialist may object to the re-allocation of a particular unprotected security or securities. In such a case, both the existing firm and the new firm will be asked to present to the Market Performance Committee ("MPC") their reasons for objecting to or supporting the allocation request. Existing firms will not be permitted to make blanket objections to having their unprotected securities reallocated, and they will be required to set forth tangible rationale justifying their objections. Likewise, new firms must justify their allocation requests. The firms will be allowed to present any documentation, testimonials or other relevant evidence supporting their position which they feel would benefit the MPC in their determination of whether the security[ies] in question should be allocated as requested, including, but not limited to, reasons based on market quality, payment for order flow, customer relationships, or other factors considered to be in the best interests of the Exchange's markets. The MPC will, based on the presentations and evidence, ultimately decide whether or not a particular security[ies] should be allocated to the new firm. The decision of the MPC can be appealed to the Board of Governors of the Exchange, whose decision shall be final. During the allocation request period, and any subsequent periods of committee deliberations and/or appeals, the security[ies] in question shall remain in the control of, and actively traded by, the existing firm.

The Exchange may limit the frequency and dates for allocation to additional participants in order to evaluate the impact of reallocations during this two-year maturation period. Although more than one new firm may be approved to begin trading Nasdaq securities on the floor of the Exchange at the same time, the first firm to be approved, chronologically, will be the first allowed to seek reallocation of securities from existing forms. Any such reallocation which may take place will result in new compositions of existing firm's books. Subsequently approved new firms may seek reallocations from the newly composed books of the existing firms. In this way, existing firms are further protected from the possible burden of contemporaneous reallocations. The Exchange will monitor the effectiveness of the program in order to ensure that no disruption of markets will result from frequent reallocations among member firm specialists, and reserves the right to alter this stock allocation process at any time.

Finally, in the event that the number of protected securities (i.e., 10 firms with 10 each in the top 100) matches the limit within a particular category prior to the two year maturation period, the Exchange may re-evaluate those remaining securities unprotected to provide some form of meaningful competitive allocation process to ensure continued growth of this program. Following the two-year period the Exchange will examine its overall program to ensure competitive quality markets are maintained. All allocations regardless of the class or category of registration are subject to review by the Exchange pursuant to its Specialist Performance Evaluation Program ("SPEP").

Criteria for Stock Allocation Committee To Consider During Nasdaq Security Allocation

Sec. 22. In considering the allocation of Nasdaq securities, the Stock Allocation Committee shall consider the following factors, among other, giving proper weight to each of these measures as it sees fit, while maintaining consistency with previous decisions:

- *Specialist Performance (SPEP)*
- *Specialist experience generally*
- *Specialist experience trading Nasdaq securities*
- *Specialist contributions to the market quality of the Boston Stock Exchange*
- *Specialist's reputation as to quality to executions*
- *Length of time elapsed since last allocation to specialist*
- *"Quality" of Nasdaq securities in specialist's book, in terms of volume, liquidity and volatility*
- *Specialist's reasons for seeking to trade the security, as set forth in his application and/or supplemental materials*
- *Documented marketing concerns of specialists form, e.g., order flow arrangements which are contingent on the retention of certain securities*
- *Market Quality criteria as set forth under the requirements of SEC Rules 11Ac1–5 and 11Ac1–6*

Change in Listing Status of Nasdaq Security

Sec. 23. (a) If a company which has its security solely registered as a Nasdaq security transfers to become an exchange listed security, or in the event of a merger of a Nasdaq security company with a listed security company whereby the listed company is the "survivor" of the merger, the firm whose specialist was registered in the Nasdaq security shall be given preference to register to trade the listed security (subject to acceptable performance), provided that:

(1) the firm is eligible to trade, and currently registered in at least the minimum number of, as well as involved in the trading of, listed securities on the Exchange;

(2) no other member firm is currently registered in and trading the listed security of the surviving company. If another member firm is currently registered in the surviving company's listed security, that member firm will be allowed to continue to trade the security, whether registered as a primary or a competing specialist. The firm who originally traded the Nasdaq security of the company which was not a survivor of a merger, or which transferred its status and became an exchange listed security, will be eligible to apply as a competing specialist in that security, provided that all of the other requirements related to the trading of listed securities on the floor of the Exchange are met.

(b) In the event that a company changes its status from a listed security to become registered as a Nasdaq security, allocation preference will be provided to the firm which traded the listed security prior to its status change, provided that the firm is eligible to trade, and engaged in the trading of, Nasdaq securities. If the firm is not eligible to trade the newly registered Nasdaq security, the security's allocation will be subject to standard allocation procedures as outlined in this section, including, if necessary, deliberation and determination of allocation by the Stock Allocation Committee.

Merger of Two Nasdaq Securities

Sec. 24. In the event of a merger of two companies whose securities are both registered as Nasdaq securities, with the resultant company's security remaining registered as a Nasdaq security, the surviving company's security shall be subject to Exchange allocation procedures governing such actions. As such, if two separate member firms are registered in the separate Nasdaq securities prior to the merger, the allocation of the resultant security shall be subject to the following:

(1) If the surviving company remains in control of the newly formed or merged company, as determined by Exchange staff, the member firm, which was originally registered in the security of the surviving company, shall retain that security.

(2) If Exchange staff cannot determine the control of the surviving company, the Stock Allocation Committee, taking all relevant factors into consideration, shall determine the allocation of the security of the surviving company.

Swapping Stocks

Sec. 25. Specialists shall be permitted to swap stocks on an "as requested" basis, subject to the following:

(1) Specialists who are interested in swapping stocks with another specialist are responsible for initiating and engaging in negotiations to arrange for the swap.

(2) Swapping of stocks must take place between two separate specialist firms.

(3) Specialists, may swap up to three stocks every six months, and must retain any swapped stocks for at least six months.

(4) Swapping for the intention of circumventing assignment, reassignment or any other procedures regarding Nasdaq securities is strictly forbidden.

(5) All swap arrangements must be submitted to the MPC for review, on the Stock Swap Agreement form.

(6) Repetitive stock swaps between two or more firms, or otherwise, for stock retention or any other purpose, are forbidden.

Specialist Request to Deregister in a Nasdaq Security

Sec. 26. Generally, a specialist will be permitted to drop an allocated Nasdaq security, provided that a period of at least six months has elapsed since the original assignment. If a specialist is approved for deregistration in a Nasdaq security, the effective date of the deregistration will be no earlier than 5 days after notice is provided to all order sending firms and other floor specialists registered to trade Nasdaq securities that the specialist is deregistering in such security.

Disciplinary Action

Sec. 27. As detailed in Chapter XV, Dealer Specialists, Section 17, Specialist Performance Evaluation Program, one possible sanction in the Exchange's disciplinary system regarding poor performance of specialists is the temporary or permanent cancellation of a specialist's registration in one or more securities. Should this occur, the MPC will temporarily assign the security[ies] affected to another specialist. If the disciplinary action is, or becomes, permanent, the security[ies] will be available for assignment under the current stock allocation procedures.

Short Sales

Sec. 28. No specialist shall effect a short sale for the account of a customer or for his own account in a Nasdaq security at or below the current best (inside) bid when the current best (inside) bid is below the preceding best (inside) bid in the security.

The provisions of this rule shall not apply to short sales by specialists that are in furtherance of the specialist's bona fide market making activities. Bona fide market making activity does not include activity that is unrelated to market making functions, such as index arbitrage and risk arbitrage that is independent from a member's market making functions. In the event that a short sale does occur pursuant to this bona fide market making exception, the burden is on the specialist to show that such sale was in furtherance of their bona fide market making activities.

Discussion

Any activity by a specialist which is designed to circumvent this Short Sale rule through indirect actions, such as executions with other specialists or the facilitation of customer orders while being protected from loss are antithetical to the purposes of this rule, as are any manipulative type actions. For example, it would be considered a manipulative act, and in violation of this rule if either of the following occurred:

(1) A specialist alone at the inside best bid lowered its bid and then raised it to create an "up-bid" for the purpose of facilitating a short sale.

(2) A specialist with a long position raised its bid above the inside bid and then lowered it to create a "down-bid" for the purpose of precluding other market participants from selling short.

(3) a specialist agrees with another specialist or a customer to raise its bid in order to effect a short sale for the other party and is protected against loss on the trade or any other executions effected at its new bid price.

(4) a specialist entered into an agreement with another market participant or customer whereby it uses its exemption from this rule to sell short at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged

price, for the purpose of avoiding compliance with this rule, and with the understanding that the specialist would be guaranteed against losses on those trades.

Non-Liability of Exchange

Sec. 29. In accordance with Article IX, Section 10 of the Exchange Constitution, the Exchange shall not be liable for any loss sustained by a member or member organization resulting from the use of, or reliance on, the system through which the Exchange provides its members access to trade Nasdaq securities. Generally, a loss pertaining to an order that is entered through the BSE Nasdaq trading system that does not appear on a saved file will be absorbed by the entering member organization. A loss pertaining to an order that is entered through the BSE Nasdaq trading system which was designated for a particular specialist's post and which does appear on a saved file within the system will generally be absorbed by the specialist.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Exchange, the purpose of the proposed rule change is to set forth rules regarding the trading of certain over-the-counter ("OTC") securities, Nasdaq securities, on the floor of the Exchange, pursuant to unlisted trading privileges ("UTP") under Section 12(f) of the Act.[8] To facilitate this process, the Exchange is proposing to add Chapter XXXV to the BSE Rules. The rules set forth in Chapter XXXV specifically govern the trading of Nasdaq securities, with references to various sections of other Exchange rules relating to the trading of equity securities, as well as references to selected NASD rules, where appropriate. Included within the Chapter are provisions for a two-year maturing Nasdaq stock allocation process, designed so as to provide meaningful allocation opportunities for firms that wish to become members of the Exchange and trade Nasdaq securities throughout the two-year maturation period. The following series of provisions appear in Chapter XXXV.

Section 1: defines various terminology used throughout the Chapter XXXV;

Section 2: discusses how orders for Nasdaq securities are to be transmitted to and from Exchange specialists. This section references other sections of the BSE Rules related to order display rules. Additionally, this section addresses the telephonic transmission of orders;

Section 3: references NASD Rule 4630, and sets forth the reporting requirements for Nasdaq securities transactions;

Sections 4 & 5: address automatic and manual execution of Nasdaq securities, and sets the minimum size parameter for automatic execution;

Section 6: discusses preopening orders and trading halts;

Section 7: discusses how cross transactions in Nasdaq securities are to be handled, with references to other BSE rules;

Section 8: designates the hours of business for the trading of Nasdaq securities on the floor of the Exchange, pursuant to Exchange rule;

Section 9: sets forth the parameters and conditions for guaranteed order acceptance and execution;

Section 10: pursuant to Exchange and NASD rules, designates various specialist responsibilities regarding orderly markets and best execution practices;

Section 11: in accordance with other Exchange rules, sets forth the registration requirements for Nasdaq specialists;

Section 12: discusses, in light of other Exchange Rules, limitations on specialists;

Section 13: discusses, in light of other Exchange Rules, limitations on floor clerks;

Section 14: addresses odd-lot orders and dealers, in reference to other similar Exchange rules;

Section 15: discusses the synchronization of business clocks, in concert with NASD Rule 6953;

Section 16: pursuant to Exchange rules, sets forth minimum capital and equity requirements for Nasdaq specialists;

Section 17: references existing BSE rules regarding margin procedures for all specialists;

Section 18: sets forth limitations on the number of Nasdaq securities held by a specialist, and the amount of time a specialist must hold and actively trade a Nasdaq security;

Sections 19 & 20: explain the application procedure for registration in Nasdaq securities;

Section 21: sets forth the Exchange's procedures regarding the allocation of Nasdaq securities. The procedures are designed to cover the initial two-year period of Nasdaq trading on the floor of the Exchange. At the conclusion of the two-year period, the Exchange intends to re-examine the process and adopt permanent Nasdaq stock allocation procedures;

Section 22: lists the criteria which the Stock Allocation Committee can consider during Nasdaq security allocation;

Sections 23 & 24: discuss the procedures to be followed in the event that a Nasdaq security experiences certain corporate actions, or changes its listing status;

Section 25: explains the limitations on the swapping of Nasdaq securities between specialists;

Section 26: sets forth requirements for a specialist regarding deregistering in a Nasdaq security;

Section 27: references another Exchange rule in explaining possible disciplinary action in relation to the trading of Nasdaq securities;

Section 28: sets forth the Exchange's Short Sale Rule regarding Nasdaq securities; and

Section 29: explains the Exchange's liability limitations regarding the trading system used for the trading of Nasdaq securities.

2. Basis

The Exchange believes that the basis for the proposed rule change is Section 6(b)(5)[9] of the Act, along with Sections 6(b)(8),[10] 11A,[11] and 12(f)[12] of the Act. Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5)[13] of the Act because permitting BSE specialists to trade eligible Nasdaq securities will promote just and equitable principles of trade and facilitate transactions in securities, thereby removing impediments to and perfecting the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

[8] 15 U.S.C. 78l(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78k–1.

[12] 15 U.S.C. 78*l*(f).

[13] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2001–01 and should be submitted by July 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority [14].

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–16672 Filed 7–2–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44469; File No. SR–CBOE–2001–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Marketing and Administrative Fees

June 22, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (Act) [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 2001, the Chicago Board Options Exchange, Inc. (CBOE) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items the CBOE has prepared. The CBOE submitted Amendment No. 1 to the proposed rule change on June 18, 2001. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to pay interest on the funds collected through its marketing fee program, to obtain the authority to refund periodically the excess collected balances in the marketing fee accounts, and to assess an administrative fee, effective July 1, 2001, to cover the costs of implementing these steps and to offset the overall cost of administering the marketing fee program. The text of the proposed rule change is available at the principal offices of the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In August 2000, the CBOE instituted a marketing fee program that imposed a $.40 per contract marketing fee on various options transactions executed on the CBOE. Under the plan, the proceeds from the fee were to be used by the appropriate Designated Primary Market Maker ("DPM") for marketing its services and attracting order flow to the CBOE.[3] The funds have been placed in separate accounts for each DPM according to the class of options involved in each transaction in which the fee was imposed. The fees collected in a particular class of option are applied only to the marketing expenses applicable to that class of option.

At times, some accounts have taken in more money than the DPMs have chosen to spend for marketing. The CBOE wishes periodically to refund account balances of $50 or more to those who contributed the fees. Moreover, in collecting these fees over the last nine months, the CBOE has found that the proceeds from the fee are typically received into separate DPM accounts and kept there for at least several days before the DPM uses them. At the request of the association representing the CBOE's DPMs, the CBOE has determined to credit the accounts with interest earned from the collected funds. Finally, effective July 1, 2001, the CBOE intends to impose a monthly $10,000 administrative fee to fund the implementation of these steps and to offset the overall costs related to its marketing fee program.

The CBOE proposes periodically to refund proceeds collected through the marketing fee program that exceed a specific percentage of the amounts collected in the previous three months. The refunds would be made on a *pro rata* basis to the market makers that contributed the funds. Currently, the CBOE anticipates refunding account balances that exceed 15% of the amount collected in each account from February 1, 2001 through April 30, 2001. The CBOE also proposes to implement any

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43112 (August 3, 2000) 65 FR 49040 (August 10, 2000) (File No. SR–CBOE–2000–28).

future refunds in similar fashion, if and when the circumstances warrant. Recommendations as to the specific timing and amounts of any future refunds would be made by the CBOE's Financial Planning Committee, subject to approval by the Board of Directors.

In order to reduce the costs and administrative burdens placed upon the CBOE and the clearing firms in processing refunds, the CBOE would not issue refunds of less than $50. The CBOE believes that the cost of processing refunds of such small amounts would likely exceed the value of the refunds.

The CBOE also proposes to credit interest to the DPM accounts retroactively from the beginning of the marketing fee program, based on the average daily balance of each DPM account and the interest rate (currently about 5.5%) that the CBOE earns on its own excess cash.

In addition, effective July 1, 2001, the CBOE proposes to impose a monthly $10,000 administrative fee to cover its costs of administering the marketing fee program and the refund program. The monthly $10,000 administrative fee would be divided among the accounts of the various DPM stations trading equity options (currently numbering approximately 68). Under the proposal, each DPM would be assessed its *pro rata* share of the monthly $10,000 administrative fee, which would be offset against the amount of interest the CBOE will pay to each DPM account. The CBOE believes that this procedure will ensure that the fee is imposed on each DPM account fairly, based on each account's relative size.

The CBOE believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The CBOE neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the CBOE, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(2) thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should fix six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number SR–CBOE–2001–25 and should be submitted by July 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44478; File No. SR–CBOE–2001–10]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Adopting Formal Procedures for Members To Submit Proposals To List Option Classes on the Exchange

June 27, 2001.

I. Introduction

On March 13, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change adopting formal procedures for members to submit proposals to list option classes on the Exchange. The **Federal Register** published the proposed rule change for comment on April 17, 2001.[3] The Commission received no comments on the proposal. The Exchange filed Amendment No. 1 to the proposed rule change on May 25, 2001.[4] This order approves the proposed rule change and grants accelerated approval to Amendment No. 1. The Commission also is soliciting comment on Amendment No. 1 to the proposed rule change.

II. Description of Proposal

The proposed rule change would adopt formal procedures for members to submit proposals to list option classes on the Exchange, and would codify the factors considered by the Exchange in listing option classes.[5] The proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 44173 (April 10, 2001), 66 FR 19819.

[4] *See* letter from Angelo Evangelou, Legal Division, CBOE, to Sonia Patton, Attorney, Division of Market Regulation, Commission, dated May 24, 2001 ("Amendment No. 1"). Amendment No. 1 revises Interpretation and Policy .07 to CBOE Rule 5.3 to clarify that when the Exchange relies upon other bona fide business considerations in denying or placing conditions or limitations upon a member listing proposal, the Exchange must provide the member with a written response specifying that the Exchange has relied upon other bona fide business considerations, in addition to maintaining a record of the bona fide business considerations supporting its decision.

[5] As part of a settlement of an enforcement action by the Commission, four of the options exchanges, including the CBOE, are required to adopt rules to codify listing procedures to be carried out when a

rule would permit a member to submit a written request that the Exchange list a particular option class, specifying the reasons why the member believes the Exchange should list the option class. The Stock Selection Committee would be required to make a decision regarding the request within 35 days of its receipt and to provide the member that submitted the request with a written response setting forth the rationale for the decision within ten days of making the decision.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission believes that the proposed rule change is consistent with the section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanisms of a free and open market by providing formal procedures for members to request the listing of options on the Exchange. The proposal would require the Exchange to respond in writing within 45 days to requests by members to list options. The Commission believes that the proposed procedures and time frames set forth in the proposed rule change are reasonable and adequately balance the Exchange's need to thoroughly examine proposed listings before making its determination with its members' need for a prompt and specific response to its listing recommendation.

In addition, the proposed rule change codifies the factors to be considered by the Exchange in determining whether to list a recommended option. The Commission believes that the proposed factors represent legitimate issues that the Exchange may consider when making a listing decision. The Commission notes that if the Exchange denies or places conditions or limitations upon a proposed listing, it must include its reasons in the letter notifying the member of its decision. The Commission believes that this requirement should help to ensure that the Exchange relies only upon the factors codified in its rules when making a listing decision.

The Commission finds good cause for accelerating approval of Amendment No. 1 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that Amendment No. 1 provides useful clarification to the proposed rules. Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5)[8] and 19(b) of the Act,[9] to accelerate approval of Amendment No. 1 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–2001–10 and should be submitted by July 24, 2001.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2001–10), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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member or member organization requests the exchange to list options not currently trading on the exchange. *See* Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions ("Settlement Order"). Securities Exchange Act Release No. 43268 (September 11, 2000).

[6] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44481; File No. SR–NYSE–2001–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to the NYSE's Financial Standards for Listing and the Procedures Applied by the Exchange to Companies Below the Exchange's Continued Listing Criteria

June 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 25, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Sections 102, 103, and 802 of the Exchange's *Listed Company Manual* ("*Manual*") and Exchange Rule 499. The proposed amendments to Sections 102 and 103 of the *Manual* implement a modification to generally accepted accounting principles (GAAP), while proposed amendments to Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President & Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission (April 24, 2001). Amendment No. 1 replaces the proposed rule change in its entirety.

802 consist of technical changes in how certain requirements are applied, and provide some alternative measures by which a company operating under a plan to bring itself into conformity with continued listing standards within 18 months of falling below the Exchange's continued listing criteria ("Plan")[4] may be deemed to have returned to compliance. The proposed amendments to NYSE Rule 499 reflect the proposed amendments to Section 802 of the *Manual*.

The text of the proposed rule change, as amended, is as follows. New text is italicized and deleted text is bracketed.

* * * * *

102.00 Domestic Companies

102.01 Minimum Numerical Standards—Domestic Companies—Equity Listings

* * * * *

102.01C. A company must meet one of the following financial standards.

(I)(1) Pre tax earnings from continuing operations and after minority interest, *amortization* and equity in the earnings or losses of investees as adjusted (E) for items specified in (2)(a) through (i) below (F) must total at least:

$2,500,000 in the latest fiscal year together with $2,000,000 in each of the preceding two years; or

$6,500,000 in the aggregate for the last three fiscal years together with a minimum of $4,500,000 in the most recent fiscal year, and positive amounts for each of the preceding two years.

* * * * *

103.00 Non-U.S. Companies

103.01 Minimum Numerical Standards Non-U.S. Companies Equity Listings Distribution

* * * * *

103.01B. A company must meet one of the following financial standards:

(I)(1) Pre tax earnings from continuing operations and after minority interest, *amortization* and equity in the earnings or losses of investees are adjusted (C)(D) for items specified in para. 102.01C (I)(2)(a) through (i) above, and 103.01(I)(2) below, must total at least:

$100,000,000 in the aggregate for the last three fiscal years together with a minimum of $25,000,000 in each of the most recent two years.

* * * * *

802.00 Continued Listing

802.01 Continued Listing Criteria

The Exchange would normally give consideration to delisting a security either a domestic or non-U.S. issuer when:

* * * * *

802.01B Numerical Criteria for Capital or Common Stock

If a company falls below any of the following criteria, it is subject to the procedures outlined in Paras. 802.02 and 802.03:

[•] *(i)* [Total] *Average* global market capitalization *over a consecutive 30 trading-day period* is less than $50,000,000 and total stockholders' equity [or, for partnerships, both the general and limited partners' capital as applicable,] is less than $50,000,000 (C); or

[•] *(ii)* Average global market capitalization over a consecutive 30 trading-day period is less than $15,000,000; or

[•] *(iii)* For companies that [qualify] *qualified for original listing* under the "global market capitalization" standard:

[Total] *Average* global market capitalization *over a consecutive 30 trading-day period* is less than $500,000,000 and total revenues are less than $20,000,000 over the last 12 months (unless the resultant entity qualifies as an original listing under one of the other original listing standards) [(C)] *(D)*; or

Average global market capitalization over a consecutive 30 trading-day period is less than $100,000,000.

When applying the market capitalization test in any of the *above* three standards, the Exchange will generally look to the total common stock outstanding (excluding treasury shares) as well as any common stock that would be issued upon conversion of another outstanding equity security. The Exchange deems these securities to be reflected in market value to such an extent that the security is a "substantial equivalent" of common stock. In this regard, the Exchange will only consider securities (1) publicly traded (or quoted), or (2) convertible into a publicly traded (or quoted) security. For partnerships, the Exchange will analyze the creation of the current capital structure to determine whether it is appropriate to include other publicly traded securities in the calculation.

Affiliated Companies—Will not be subject to the $50,*000,000* [million] *average global* market capitalization and stockholders' equity test unless the parent/affiliated company no longer controls the entity or such parent/affiliated company itself falls below the continued listing standards *described* in this section.

Funds, *REITS and Limited Partnerships*—will be subject to immediate suspension and delisting procedures if (1) the *average* market capitalization over 30 consecutive trading days is below $15,000,000 or (2) [the Fund] *in the case of a Fund, it* ceases to maintain its closed-end status, *and in the case of a REIT, it fails to maintain its REIT status (unless the resultant entity qualifies for an original listing as a corporation.)* The Exchange will notify the fund, *REIT or limited partnership* if the average market capitalization falls below $25,000,000 and advise the [f]*Fund, REIT or limited partnership* of the delisting standard. Funds, *REITs and limited partnerships* are not subject to the procedures outlined in Paras. 802.02 and 802.03.

[REITs—Until a REIT has operated for three years, it shall be held to a continued listing standard of $30,000,000 in both total market capitalization and stockholders' equity. Regardless of the length of time a REIT has been operating at the time of its initial listing, once it has operated for three years, it shall be held to the financial criteria outlined at the beginning of this Para.802.01B. At all times, all REITs must (1) maintain their REIT status (unless the resultant entity qualifies as an original listing as a corporation), and (2) maintain a minimum market capitalization of $15,000,000.]

* * * * *

(C) *To be considered in conformity with continued listing standards pursuant to Paras. 802.02 and 802.03, a company that is determined to be below this continued listing criterion must do one of the following:*

(i) Reestablish both its market capitalization and its stockholders' equity to the $50,000,000 level, or

(ii) Achieve average global market capitalization over a consecutive 30 trading-day period of at least $100,000,000, or

(iii) Achieve average global market capitalization over a consecutive 30 trading-day period of $60,000,000, with either (x) stockholders' equity of at least $40,000,000, or (y) an increase in stockholders' equity of at least $40,000,000 since the company was notified by the Exchange that it was below continued listing standards.

(D) A company that is determined to be below this continued listing criterion must reestablish both its market capitalization and its [stockholders' equity or] revenues[, as applicable,] to be considered in conformity with continued listing standards pursuant to Paras. 802.02 and 802.03.

[4] Section 802.02 of the *Manual*.

802.01C Price Criteria

Average closing price of a security is less than $1.00 over a consecutive 30 trading-day period ([D]*E*)

([D]*E*) Once notified, the company must bring its *share price and* average share price back above $1.00 by [the later of its subsequent annual meeting date or] six months following receipt of the notification. If this is the only criteria that makes the company below the Exchange's continued listing standards, the procedures outlined in Paras. 802.02 and 802.03 do not apply. The company must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency or be subject to suspension and delisting procedures. In the event that at the expiration of the six-month cure period, *both a $1.00 share price and* a $1.00 average share price over the preceding 30 trading days [is] *are* not attained, the Exchange will commence suspension and delisting procedures. *Notwithstanding the foregoing, if a company determines that, if necessary, it will cure the price condition by taking an action that will require approval of its shareholders, it must so inform the Exchange in the above referenced notification, must obtain the shareholder approval by no later than its next annual meeting, and must implement the action promptly thereafter. The price condition will be deemed cured if the price promptly exceeds $1.00 per share, and the price remains above that level for at least the following 30 trading days.*

Nowithstanding the foregoing, if the subject security is not the primary trading common stock of the company (e.g., a tracking stock or a preferred class) or is a stock listed under the Affiliated Company standard where the parent remains in "control" as that term is used in that standard, the Exchange may determine whether to apply the Price Criteria to such security after evaluating the financial status of the company and/or the parent/affiliated company, as the case may be.

* * * * *

802.02 Evaluation and Follow-up Procedures for Domestic Companies

The following procedures shall be applied by the Exchange to domestic companies which are identified as being below the Exchange's continued listing criteria. Notwithstanding the above, when the Exchange deems it necessary for the protection of investors, trading in any security can be suspended immediately, and application made to the SEC to delist the security.

Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Para. 802.01 *(and not able to otherwise qualify under an original listing standard)*, the Exchange will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange with a plan (the "Plan") advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with continued listing standards within 18 months of receipt of the letter. Within 10 business days after receipt of the letter, the company must contact the Exchange to confirm receipt of notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, suspension and delisting procedures will commence. If the company submits a Plan, it must identify specific quarterly milestones against which the Exchange will evaluate the company's progress.

The company has 45 days from the receipt of the letter to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures will commence. *If the company is determined to be below the criteria listed in Section 802.01B(i) or 802.01B(iii), the Plan it presents must demonstrate how it will reestablish both its market capitalization and stockholders' equity (or revenues, as applicable), to the levels specified in such clauses. In any event, all companies submitting a Plan must include quarterly financial projections, details related to any strategic initiatives the company plans to complete, and market performance support.* Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to [(1) whether the Plan shows the company meeting the continued listing standards within the 18 months and (2) whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with continued listing standards.] *whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with the relevant standard(s) within 18 months.* The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

The company also has 45 days from receipt of the letter to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the company fails to issue this press release during the allotted 45 days, the Exchange will issue the requisite press release.

If the Exchange does not accept the Plan, the Exchange will promptly initiate suspension and delisting procedures and issue a press release disclosing the forthcoming suspension and application to the SEC for delisting of the company's securities.

If the Exchange accepts the Plan, the Exchange will review the company on a quarterly basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the quarterly milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. *The Exchange will deem the Plan period over prior to the end of the 18 months if a company is able to demonstrate returning to compliance with the applicable continued listing standards, or achieving the ability to qualify under an original listing standard, for a period of two consecutive quarters. This early Plan termination will not be available to a company based on satisfying the alternate criteria specified in clauses (ii) or (iii) of footnote C to Para. 802.01B.* In any event, if the company does not meet continued listing standards (*including the criteria specified in footnote C to Para. 802.01B, if applicable*) at the end of the 18-month period, the Exchange promptly will initiate suspension and delisting procedures.

If the company, [did meet continued listing standards at the end of the 18-month Plan period but] within twelve months of the end of the [18-month] *Plan* period (*including any early termination of the Plan period under the procedures described above*), [it] is again determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. It will then take appropriate action, which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating suspension and delisting procedures.

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802.03 Continued Listing

Evaluation and Follow-up Procedures for Non-U.S. Companies

The following procedures shall be applied by the Exchange to non-U.S. companies who are identified as being below the Exchange's continued listing criteria. Notwithstanding the above, when the Exchange deems it necessary for the protection of the investors, trading in any security can be suspended immediately, and application made to the SEC to delist the security.

Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Para. 802.01 *(and not able to otherwise qualify under an original listing standard)*, the Exchange will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange with a plan (the "Plan") advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with the standards within 18 months of receipt of the letter. Within 30 business days after receipt of the letter, the company must contact the Exchange to confirm receipt of notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, suspension and delisting procedures will commence. If the company submits a Plan, it must identify specific semi-annual milestones against which the Exchange will evaluate the company's progress.

The company has 90 days from the receipt of the letter to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures will commence. *If the company is determined to be below the criteria listed in Section 802.01B(i) or 802.01B(iii), the Plan it presents must demonstrate how it will reestablish both its market capitalization and stockholders' equity (or revenues, as applicable), to the levels specified in such clauses. In any event, all companies submitting a Plan must include quarterly financial projections, details related to any strategic initiatives the company plans to complete, and market performance support.* Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to [(1) whether the Plan shows the company meeting the continued listing standards within the 18 months and (2) whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with continued listing standards.] *whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with the relevant standard(s) within 18 months.* The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

The company also has 90 days from receipt of the letter to issue *a* press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the company fails to issue this press release during the allotted 90 days, the Exchange will issue the requisite press release.

If the Exchange does not accept the Plan, the Exchange will promptly initiate suspension and delisting procedures and issue a press disclosing the forthcoming suspension and application to the delisting of the company's securities.

If the Exchange accepts the Plan, the Exchange will review the company on a semi-annual basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the semi-annual milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. *The Exchange will deem the Plan period over prior to the end of the 18 months if a company is able to demonstrate returning to compliance with the applicable continued listing standards, or achieving the ability to qualify under an original listing standard, for a period of two consecutive quarters. This early Plan termination will not be available to a company on satisfying the alternate criteria specified in clauses (ii) or (iii) of footnote C to Para. 802.01B.* In any event, if the company does not meet continued listing standards *(including the criteria specified in footnote C to Para. 802.01B, if applicable)* at the end of the 18-month period, the Exchange promptly will initiate suspension and delisting procedures.

If the company, [did meet continued listing standards at the end of the 18-month Plan period but] within twelve months of the end of the [18-month] *Plan* period *(including any early termination of the Plan period under the procedures above)*, [it] is again determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. It will then take appropriate action, which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating suspension and delisting procedures.

Delisting of Securities

Suspension from Dealings or removal from List by Action of the Exchange

* * * * *

Rule 499. Securities admitted to the list may be suspended from dealings or removed from the list at any time.

• • • ***Supplementary Material:***

* * * * *

.20 NUMERICAL AND OTHER CRITERIA.

* * * * *

The Exchange would normally give consideration to suspending or removing from the list a security of a company, whether it be a domestic or non-U.S. issuer, when:

* * * * *

4. [* Total] *Average* global market capitalization *over a consecutive 30 trading-day period* is less than $50,000,000, and total stockholders' equity [or, for partnerships, both the general and limited partners' capital as applicable,] is less than $50,000,000 **; or* [A company that is determined to be below this continued listing criteria must reestablish both its market capitalization and its stockholders' equity *(or net assets for Funds)* to be considered to conformity with continued listing standards pursuant to Sections .50 and .60]

** To be considered in conformity with continued listing standards pursuant to Paras .50 and .60 of this Rule 499, a company that is determined to be below this continued listing criterion must do one of the following:*

(i) Reestablish both its market capitalization and its stockholders' equity to the $50,000,000 level, or

(ii) Achieve average global market capitalization over a consecutive 30 trading-day period of at least $100,000,000, or

(iii) Achieve average global market capitalization over a consecutive 30 trading-day period of $60,000,000, with either (x) stockholders' equity of at least $40,000,000, or (y) an increase in stockholders' equity of at least .

$40,000,000 since the company was notified by the Exchange that it was below continued listing standards.

5. [*] Average global market capitalization over a consecutive 30 trading-day period is less than $15,000,000[.]; *or*

6. [*] For companies that [qualify] *qualified for original listing* under the "global market capitalization" standard:

• [Total] *Average* global market capitalization *over a consecutive 30 trading-day period* is less than $500,000,000 and total revenues are less than $20,000,000 over the past 12 months (unless the resultant entity qualifies as an original listing under one of the other standards). ** [A company that is determined to be below this continued listing criteria must reestablish both its market capitalization and its revenues to be considered in conformity with continued listing standards pursuant to Sections .50 and .60]

OR

• Average global market capitalization over a consecutive 30 trading-day period is less than $100,000,000.

** * A company that is determined to be below this continued listing criteria must reestablish both its market capitalization and its revenues to be considered in conformity with continued listing standards pursuant to Paras. .50 and .60 of this Rule 499.*

[*] When applying the market capitalization test *in any of the three standards described in sections 4–6*, the Exchange will generally look to the total common stock outstanding (excluding treasury shares) as well as any common stock that would be issued upon conversion of another outstanding equity security. The Exchange deems these securities to be reflected in market value to such an extent that the security is a "substantial equivalent" of common stock. In this regard, the Exchange will only consider securities (1) publicly traded (or quoted), or (2) convertible into a publicly traded (or quoted) security. For partnerships, the Exchange will analyze the creation of the current capital structure to determine whether it is appropriate to include other publicly-traded securities in the calculation.

Affiliated companies will not be subject to the $50,000,000 average global market capitalization and stockholders' equity test unless the parent or affiliated company no longer controls the equity or such parent/affiliated company itself falls below the continued listing standards described herein.

7. Funds, *REITs and Limited Partnerships* will be subject to immediate suspension and delisting procedures if (1) the average market capitalization over 30 consecutive trading days is below $15,000,000 or (2) [the Fund] *in the case of a Fund*, it ceases to maintain its closed-end status, *and in the case of a REIT, it fails to maintain its REIT status (unless the resultant entity qualifies for an original listing as a corporation)*. The Exchange will notify the [f]Fund, *REIT or limited partnership* if the average market capitalization falls below $25,000,000 and advise the fund, *REIT of limited partnership* of the delisting standard. Funds, *REITs and limited partnerships* are not subject to the procedures outlined in [Paras. 802.02 and 802.03] *Paras. .50 and .60 of this Rule 499.*

[8. REITs—Until a REIT has operated for three years, it shall be held to a continued listing standard of $30,000,000 in both total market capitalization and stockholders' equity. Regardless of the length of time a REIT has been operating at the time of its initial listing, once it has operated for three years, it shall be held to the financial criteria outlined in sections 4–6 above. At all times, all REITs must (1) maintain their REIT status (unless the resultant entity qualifies as an original listing as a corporation), and (2) maintain a minimum market capitalization of $15,000,000.]

[9] *8.* Average closing price of a security is less than $1.00 over a consecutive 30 trading-day period. Once notified, the company must bring its *share price and* average share price back above $1.00 by [the later of its subsequent annual meeting date or] six months following receipt of the notification. If this is the only criteria that makes the company below the Exchange's continued listing standards, the procedures outlined in Paras. .50 and .60 of this Rule 499 do not apply. The company must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency. In the event that at the expiration of the cure period, *both a $1.00 share price and* a $1.00 average share price over the preceding 30 trading days [is] *are* not attained, the Exchange will commence suspension and delisting procedures. *Notwithstanding the foregoing, if a company determines that, if necessary, it will cure the price condition by taking an action that will require approval of its shareholders, it must so inform the Exchange in the above referenced notification, must obtain the shareholder approval by no later than its next annual meeting, and must implement the action promptly thereafter. The price condition will be deemed cured if the price promptly exceeds $1.00 per share, and the price remains above that level for at least the following 30 trading days.*

Notwithstanding the foregoing, if the subject security is not the primary trading common stock of the company (e.g., a tracking stock or a preferred class) or is a stock listed under the Affiliated Company standard where the parent remains in "control" as that term is used in that standard, the Exchange may determine whether to apply the Price Criteria to such security after evaluating the financial status of the company and/or the parent/affiliated company, as the case may be.

* * * * *

.50 Continued Listing Evaluation and Follow-up Procedures for Domestic Companies—

The following procedures shall be applied by the Exchange to domestic companies, which are identified as being below the Exchange's continued listing criteria. Notwithstanding the above, when the Exchange deems it necessary for the protection of investors, trading in any security can be suspended immediately, and application made to the SEC to delist the security.

Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in [¶ 802.01] *Par. .20 of this Rule 499 (and not able to otherwise qualify under an original listing standard)*, the Exchange will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange with a plan (the "Plan") advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with continued listing standards within 18 months of receipt of the letter. Within 10 business days after receipt of the letter, the company must contact the Exchange to confirm receipt of notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, suspension and delisting procedures will commence. If the company submits a Plan, it must identify specific quarterly milestones against which the Exchange will evaluate the company's progress.

The company has 45 days from the receipt of the letter to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures

will commence. *If the company is determined to be below the criteria listed in subparagraphs 4 or 6*[5] *of Para. .20 of this Rule 499, the Plan it presents must demonstrate how it will reestablish both its market capitalization and stockholders' equity (or revenues, as applicable), to the levels specified in such clauses. In any event, all companies submitting a Plan must include quarterly financial projections, details related to any strategic initiatives the company plans to complete, and market performance support.* Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to [(1) whether the Plan shows the company meeting the continued listing standards within the 18 months and (2) whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with continued listing standards.] *whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with the relevant standard(s) within 18 months.* The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

The company also has 45 days from receipt of the letter to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the company fails to issue this press release during the allotted 45 days, the Exchange will issue the requisite press release.

If the Exchange does not accept the Plan, the Exchange will promptly initiate suspension and delisting procedures and issue a press release disclosing the forthcoming suspension and application to the SEC for delisting of the company's securities.

If the Exchange accepts the Plan, the Exchange will review the company on a quarterly basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the quarterly milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. *The Exchange will deem the Plan period over prior to the end of the 18 months if a company is able to demonstrate returning to compliance with the applicable continued listing standards, or achieving the ability to qualify under an original listing standard, for a period of two consecutive quarters. This early Plan termination will not be available to a company based on satisfying the alternate criteria specified in clauses (ii) or (iii) of footnote * to subparagraph 4*[6] *of Para. .20 of this Rule 499.* In any event, if the company does not meet continued listing standards (*including the criteria specified in footnote * to subparagraph4*[7] *of Para. .20 of this Rule 499, if applicable*) at the end of the 18-month period, the Exchange promptly will initiate suspension and delisting procedures.

If the company, within twelve months of the end of the Plan period (including any early termination of the Plan period under the procedures described above), is again determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. It will then take appropriate action, which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating suspension and delisting procedures.

.60 Continued Listing Evaluation and Follow-up Procedures for Non-U.S. Companies—

The following procedures shall be applied by the Exchange to non-U.S. companies who are identified as being below the Exchange's continued listing criteria. Notwithstanding the above, when the Exchange deems it necessary for the protection of the investors, trading in any security can be suspended immediately, and application made to the SEC to delist the security.

Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in [¶. 802.01] *Para. .20 of this Rule 499 (and not able to otherwise qualify under an original listing standard),* the Exchange will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange with a plan (the "Plan") advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with the standards within 18 months of receipt of the letter. Within 30 business days after receipt of the letter, the company must contact the Exchange to confirm receipt of notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, suspension and delisting procedures will commence. If the company submits a Plan, it must identify specific semi-annual milestones which the Exchange will evaluate the company's progress.

The company has 90 days from the receipt of the letter to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures will commence. *If the company is determined to be below the criteria listed in subparagraphs 4 or 6*[8] *of Para. .20 of this Rule 499, the Plan it presents must demonstrate how it will reestablish both its market capitalization and stockholders' equity (or revenues, as applicable,) to the levels specified in such clauses. In any event, all companies submitting a Plan must include quarterly financial projections, details related to any strategic initiatives the company plans to complete, and market performance support.* Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to [(1) whether the Plan shows the company meeting the continued listing standards within the 18 months and (2) whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with continued listing standards.] *whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with the relevant standard(s) within 18 months.* The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

The company also has 90 days from receipt of the letter to issue *a* press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the company fails to issue this press release during the allotted 90 days, the Exchange will issue the requisite press release.

If the Exchange does not accept the Plan, the Exchange will promptly

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[5] The NYSE corrected a typographical error that appeared in the proposed rule language. Telephone conversation between James F. Duffy, Senior Vice President and Associate General Counsel, NYSE; Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission; and Susie Cho, Special Counsel, Division, Commission, June 26, 2001.

[6] *Id.*

[7] *Id.*

[8] *Id.*

initiate suspension and delisting procedures and issue a press release disclosing the forthcoming suspension and application to the delisting of the company's securities.

If the Exchange accepts the Plan, the Exchange will review the company on a quarterly basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the quarterly milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. *The Exchange will deem the Plan period over prior to the end of the 18 months if a company is able to demonstrate returning to compliance with the applicable continued listing standards, or achieving the ability to qualify under an original listing standard, for a period of two consecutive quarters. This early Plan termination will not be available to a company based on satisfying the alternate criteria specified in clauses (ii) or (iii) of footnote * to subparagraph 4 [9] of Para. .20 of this Rule 499.* In any event, if the company does not meet continued listing standards (*including the criteria specified in footnote * subparagraph 4 [10] of Para. .20 of this Rule 499, if applicable*) at the end of the 18-month period, the Exchange promptly will initiate suspension and delisting procedures.

If the company, within twelve months of the end of the Plan period (including any early termination of the Plan period under the procedures described above), is again determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. It will then take appropriate action, which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating suspension and delisting procedures.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Stautory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of amendments to Sections 102, 103, and 802 of the *Manual* and corresponding changes to Exchange Rule 499. Sections 102 and 103 of the *Manual* take into account a modification to generally accepted accounting principles (GAAP), while proposed amendments to Section 802 consist of technical changes in how certain requirements are applied, and provide some alternative measures by which companies operating under a Plan (as such term defined in Section 802.02 of the *Manual*) may be deemed to have returned to compliance with continued listing standards. The proposed amendments to Rule 499 reflect the proposed amendments to Section 802 of the *Manual*.

Amendments to Sections 102 and 103 of the Manual (Original Listing)

Sections 102 and 103 of the *Manual* set forth the criteria for original listing of, respectively, domestic and foreign issuers. In each case, one of the available criteria focuses on pre-tax earnings. Traditionally, GAAP required amortization expense to be reflected in the calculation of pre-tax earnings. Under a modification to GAAP, however, amortization expense may now be taken below the pre-tax earnings line on the income statement. Accordingly, the NYSE proposes to amend the existing criteria to specify that amortization expense should be deducted when computing pre-tax earnings for purposes of determining eligibility under the Exchange's earnings criteria.

Amendments to Section 802 (Continued Listing)

Last year, the Exchange implemented revisions to the continued listing standards and to the structure of the Plan process.[11] The Exchange believes that the changes have worked well. However, the Exchange represents that as it has gained additional experience, the need for adjustments or clarification became apparent. The proposed amendments to Section 802 are refinements that the Exchange believes will make the process more transparent and more effective.

Background

Section 802.01B establishes a "conjunction test" pursuant to which a company is considered below continued listing standards if both its market capitalization and its stockholders' equity fall below $50,000,000. Similar tests with different market capitalization requirements apply to companies listed on the basis of global market capitalization, and to real estate investment trusts (REITs). The *Manual* specifies that the Exchange requires a company to raise *both* measures back above the specified level to be considered again in compliance with continued listing standards. Section 802 of the *Manual* also specifies that a company is below standards if its market capitalization is below $15,000,000, without regard to stockholders' equity. Listed closed-end funds, as to which stockholders' equity is not relevant, are subject only to the latter standards.

Section 802.02 of the *Manual* specifies the process by which a listed company that is determined to be below standards may submit to the Exchange a plan (the "Plan") demonstrating how it will return to compliance with continued listing standards within 18 months. The Exchange monitors a company's performance under the Plan, and companies that cannot return to standards in 18 months are delisted. Section 802.03 of the *Manual* contains parallel provisions for non-U.S. companies.

Separately, Section 802.01C of the *Manual* provides that a company will be below listing criteria if its average closing share price over a consecutive 30 trading-day period is less than $1.00. Such a company is required to bring its 30 trading-day average closing price above $1.00 by the later of its next annual meeting date or six months after receipt of notification from the Exchange.

Proposed Changes

Financial Criteria. Section 802.01B specifies that the $15,000,000 market capitalization test is measured over a consecutive 30 trading-day period. In contrast, the market capitalization part of the "conjunction test" and the global market capitalization standard are measured at a point in time. The Exchange now believes that a market

[9] *Id.*
[10] *Id.*
[11] *See* Securities Exchange Act Release No. 43288 (September 13, 2000), 65 FR 56974 (September 20, 2000).

value snapshot is of limited utility, and that these criteria should be measured over 30 consecutive trading days. Separately, the Exchange believes that stockholders' equity is not a useful measure when applied to limited partnerships or REITs listed on the Exchange, and the Exchange proposes to apply to limited partnerships and REITs the same $15,000,000 market capitalization-only test that is applied to closed-end funds.

Financial Plan. The Exchange is proposing several modifications to the Plan process. The Exchange will continue to ask companies to demonstrate how they will reestablish both sides of the "conjunction test" within 18 months.

For companies that have fallen below the $50,000,000 market capitalization/stockholders' equity "conjunction test," however, the Exchange has identified certain alternate recovery measures in Footnote C of Section 802.01B. A company that achieves any of the alternate recovery measures ("Footnote C Company") would be considered in conformity with continued listing standards pursuant to Sections 802.02 and 802.03 of the *Manual.* In essence, the Exchange proposes that such a company be considered in compliance with standards even without restoring both market capitalization and stockholders' equity to above $50,000,000, if the company, by the end of the Plan period, either

(i) Reestablishes both its market capitalization and its stockholders' equity to the $50,000,000 level;

(ii) Achieves an average global market capitalization over a consecutive 30 trading-day period of $100,000,000; or

(iii) Achieves an average global market capitalization over a consecutive 30 trading-day period of $60,000,000, together with either a stockholders' equity of $40,000,000, or an increase in stockholders' equity of at least $40,000,000 since the company was notified by the Exchange that it was below standards.

The Exchange considers these appropriate alternative recovery measures to apply at the end of an 18-month financial Plan period, but it will still require a company to provide a financial Plan that addresses how the company will restore its market capitalization and equity to the $50,000,000 level. Companies that return to compliance by satisfying one of the Footnote C alternate criteria will be considered in conformity with continued listing standards pursuant to Sections 802.02 and 802.03 unless they fall below the continued listing criteria specified in Section 802.01B, *i.e.*, the $50,000,000 "conjunction test" or the minimal market capitalization test of $15,000,000.[12]

Some companies operating under a Plan are able to return to full compliance with continued listing standards (or are able to demonstrate an ability to meet original listing standards) well before the expiration of the 18-month Plan period. In such circumstances, the Exchange will deem the Plan period over, although it will wait to see that the reestablished standard is maintained for two quarters before doing so. This *early* Plan termination, however, will not be made available to a company that only achieves compliance by meeting the alternative criteria described in clauses (ii) and (iii) to Footnote C of Section 802.01B.

Finally, under the existing Plan process described in Sections 802.02 and 802.03 of the *Manual,* a company is in a sense "on probation" for 12 months after the end of a successfully-implemented Plan. Under the proposed rule change, the Exchange will measure those 12 months from the early termination date when that occurs.

Price Criteria. Section 802.01C currently provides that a company must cure a $1.00 price condition by bringing its 30 trading-day average share price above $1.00 within six months, or by the company's next annual meeting date, whichever is later. The Exchange, however, represents that it always intended that the company would not only restore its 30-day average share price, but also its closing price, to above $1.00 by the target date. The Exchange also represents that Section 802.01C's option of giving a company until its next annual meeting to bring its average share price back above $1.00 was intended to accommodate a company that intended to cure the price condition by taking an action requiring the approval of its stockholders; in this case, the company would then need at least some trading time following the approval of the reverse split to evidence the increase in the share price. The proposed rule change amends the Section so that the provisions read as originally intended by the Exchange.

Amendments to Rule 499

The proposed amendments to Exchange Rule 499 correspond with the proposed amendments to Section 802 of the *Manual.* Exchange Rule 499 also reflects certain previous amendments to Section 802 that were inadvertently omitted from the Rule.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No.SR–

[12] For example, if a Footnote C Company had returned to compliance by achieving a market capitalization of $60,000,000 and stockholders' equity of $40,000,000, that company would be considered in compliance with continued listing standards, unless both its market capitalization *and* total stockholders' equity were less than $50,000,000, or unless its minimal market capitalization was less than $15,000,000. Telephone conversation between James F. Duffy, Senior Vice President and Associate General Counsel, NYSE; Florence Harmon, Senior Special Counsel, Division, Commission; and Susie Cho, Special Counsel, Division, Commission, June 26, 2001.

NYSE–2001–02 and should be submitted by July 24, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act,[14] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public.

The amendments to Sections 102 and 103 of the *Manual* reflect a modification to GAAP and will bring uniform accounting principles to the process of determining eligibility under the Exchange's earnings criteria for original listing of domestic and foreign issuers. Regarding the numerical criteria of Section 802.01B, the Commission believes that it is reasonable for the Exchange to apply the global market capitalization/total stockholders' equity standard over a consecutive 30 trading-day period, as is currently specified for the $15,000,000 market capitalization test. The Commission also believes that it is reasonable for the Exchange to apply to limited partnerships and REITs the same $15,000,000 market capitalization-only test that is applied to closed-end funds, since in its experience implementing the criteria, the Exchange has observed that stockholders' equity is not a useful measure when applied to limited partnerships or REITs listed on the Exchange.

In addition, the Commission believes that the amendments to Section 802.01C regarding price criteria are a reasonable means of effectuating the Exchange's original intent. The Exchange had intended that a company with an average closing price less than $1.00 over a consecutive 30 trading-day period would not only restore its 30-day average share price, but also its closing price, to above $1.00 by the target date. The Exchange also represents that Section 802.01C's option of giving a company until its next annual meeting to bring its average share price back above $1.00 was intended to accommodate a company that intended to cure the price condition by taking an action requiring the approval of its stockholders; in this case, the company would then need at least some trading time following the approval of the reverse split to evidence the increase in the share price. The proposed rule change clarifies these points.

The Commission also believes that the modifications to the Plan process under Sections 802.02 and 802.03 strike a permissible balance between the Exchange's obligation to protect investors and their confidence in the market, with its parallel obligation to perfect the mechanism of a free and open market. The alternate recovery measures by which a company may return to compliance with continued listing standards are explicitly delineated, providing greater transparency to the Plan process and sustaining investor confidence in the integrity of the markets.

The Commission, however, specifically notes that the Footnote C Companies fall under a unique category vis-à-vis other companies regarding the application of the 18-month Plan process. For example, even with the alternative recovery measures in place, the Exchange will still require a company to provide a financial Plan that addresses how the company will restore both its market capitalization and stockholders' equity to the $50,000,000 level. In the instance where a company is eligible for early termination of its Plan, the NYSE has established a concrete time period during which the company must maintain its re-established continued listing standards before termination of the Plan. This early Plan termination, however, will not be made available to a company that only achieves the alternative criteria set forth in clauses (ii) and (iii) to Footnote C of Section 802.01B.

Moreover, under the existing Plan process described in Sections 802.02 and 802.03 of the *Manual*, a company is in a sense "on probation" for 12 months after the end of a successfully-implemented Plan. In the order approving this probation period provision, the Commission stated that "the [provision] would allow the Exchange to scrutinize a company's recovery tactics if the company emerges from being below continued listing standards but then falls below continued listing standards within 12 months. In such a case, the Exchange could truncate the evaluation and follow-up procedures for companies falling below maintenance standards. Furthermore, if a company meets any of the "other" delisting criteria, the proposal would permit the Exchange to require that the company immediately comply with the evaluation and follow-up procedures outlined in the *Listing Manual*. In enhancing its market, the NYSE has determined to remove stocks that repeatedly fall below continued listing standards. The Commission believes that to uphold the quality of its market, it is reasonable for the NYSE to implement a procedure that allows it to abridge the follow-up procedure after it has evaluated a company's situation." [15]

The one-year probation period was therefore intended as a monitoring period to ensure that companies stay above the continued listing criteria. The Commission stresses that Footnote C Companies should not view the one-year probation period as an extension of the 18-month Plan period and an opportunity to gain additional time to achieve compliance. Absent extraordinary circumstances, the Commission expects the Exchange to suspend and institute delisting proceedings for the security of any Footnote C Company that falls below the Footnote C criteria during the one-year probation period.

The NYSE has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that it is reasonable to grant accelerated approval to allow for the efficient administration of the Exchange's original and continued listing programs as promptly as possible. Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act.[16]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change, SR–NYSE–2001–02, as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–16673 Filed 7–2–01; 8:45 am]

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[13] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] Securities Exchange Act Release No. 42194 (December 1, 1999), 64 FR 69311 (December 10, 1999).

[16] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44479; File No. SR–PCX–00–47]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Pacific Exchange, Inc. Adopting Formal Procedures for Members To Submit Proposals To List Option Classes on the Exchange

June 27, 2001.

I. Introduction

On December 13, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change adopting formal procedures for members to submit proposals to list options classes on the Exchange. The PCX submitted Amendment Nos. 1[3] and 2[4] to the proposed rule change on February 13, 2001 and March 14, 2001, respectively. The **Federal Register** published the proposed rule change for comment on April 13, 2001.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of Proposal

The PCX proposes to adopt new PCX Rule 3.8 to provide procedures for member organizations to propose the listing of options on the Exchange.[6] The Exchange would provide a written response, setting forth the basis for the denial or placement of limitations or conditions, to the requesting member organization within ten business days of the date of the request. The proposed rule change also sets forth the qualitative and quantitative procedures that the Exchange's Options Listings Committee would follow in making a listing determination.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission believes that the proposed rule change is consistent with the section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanisms of a free and open market by providing formal procedures for members to request the listing of options on the Exchange. The proposal would require the Exchange to respond in writing within ten business days to requests by members to list options. The Commission believes that the proposed procedures and time frames set forth in the proposed rule change are reasonable and adequately balance the Exchange's need to thoroughly examine proposed listings before making its determination with its members' need for a prompt and specific response to its listing recommendation.

In addition, the proposed rule change codifies the factors to be considered by the Exchange in determining whether to list a recommended option. The Commission believes that the proposed factors represent legitimate issues that the Exchange may consider when making a listing decision. The Commission notes that if the Exchange denies or places conditions or limitations upon a proposed listing, it must include its reasons in the letter notifying the member of its decision. The Commission believes that this requirement should help to ensure that the Exchange relies only upon the factors codified in its rules when making a listing decision.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change, as amended (SR–PCX–00–47), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–16677 Filed 7–2–01; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 13, 2001, the PCX submitted a new Form 19b–4, which replaces and supersedes the original filing in its entirety ("Amendment No. 1").

[4] *See* letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 13, 2001 ("Amendment No. 2"). Amendment No. 2 revises proposed PCX Rule 3.8(c) to require the Exchange to provide a written response within ten business days to the requesting member specifying that a denial or placement of limitations or conditions is due to other bona fide business considerations that are specifically documented and maintained in the minutes of the Exchange's Options Listings Committee.

[5] Securities Exchange Act Release No. 44149 (April 4, 2001), 66 FR 19273.

[6] As part of a settlement of an enforcement action by the Commission, four of the options exchanges, including the PCX, are required to adopt rules to codify listing procedures to be carried out when a member or member organization requests the exchange to list options not currently trading on the exchange. *See* Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[7] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44480; File No. SR–Phlx–2001–02]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Codifying Formal Procedures for Members To Submit Proposals To List Option Classes on the Exchange

June 27, 2001.

I. Introduction

On January 11, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change codifying formal procedures for members to submit proposals to list option classes on the Exchange. The Phlx filed Amendment Nos. 1[3] and 2[4] to the proposed rule change on February

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CRF 240.19b–4.

[3] *See* letter from Richard Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 20, 2001 ("Amendment No. 1"). Among other things, Amendment No. 1 clarifies that the Exchange: (1) May consider bona fide business interests in determining whether to list an option; (ii) must send letters to members setting forth in reasonable detail the basis on which a decision not to list a proposed option was made; and (iii) must forward its written response within three business days of its determination to deny a proposed listing.

[4] *See* letter from Richard Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated May 1, 2001 ("Amendment No. 2"). Amendment No. 2 clarifies that the Exchange must notify the member in writing if the Exchange determines not to list, or to place conditions or limitations upon, a proposed listing. Amendment No. 2 also clarifies that the Exchange must maintain a record of any bona fide business interests supporting a decision not to list, or to place conditions or limitations upon, a proposed listing.

21, 2001 and May 2, 2001, respectively. The **Federal Register** published the proposed rule change, as amended, for comment on May 15, 2001.[5] The Commission received no comments on the proposed rule change. This order approves the proposal, as amended.

II. Description of Proposal

The proposed rule change would establish procedures for Exchange members or member organizations to request the Exchange to list options not currently traded on the Exchange, and would codify the factors considered by the Exchange in listing option classes.[6] The Exchange would be required to review a proposed option's eligibility for listing within three business days of receiving a listing recommendation. If the Exchange determines that the proposed listing does not satisfy the Exchange's listing standards, the Exchange would be required to send a written response notifying the member within three days of the determination.

If the Exchange determines that the proposed option meets the Exchange's listing standards, Exchange staff would be required to present the proposal to the Chairman of the Board of Governors or his designee within ten business days of the determination. If the Exchange decides to deny or place limitations or conditions upon the proposed listing, the Exchange would be required to send a written response to the requesting member within three business days, setting forth in reasonable detail the basis on which the decision not to list, or to place limitations or conditions upon, the proposed option was made.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission believes that the proposed rule change is consistent with the section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanisms of a free and open market by providing formal procedures for members to request the listing of options on the Exchange. The proposal would require the Exchange to respond in writing within a maximum of sixteen business days to requests by member to list options. The Commission believes that the proposed procedures and time frames set forth in the proposed rule change are reasonable and adequately balance the Exchange's need to thoroughly examine proposed listings before making its determination with its members' need for a prompt and specific response to its listing recommendation.

In addition, the proposed rule change codifies the factors to be considered by the Exchange in determining whether to list a recommended option. The Commission believes that the proposed factors represent legitimate issues that the Exchange may consider when making a listing decision. The Commission notes that if the Exchange denies or places conditions or limitations upon a proposed listing, it must include its reasons in the letter notifying the member of its decision. The Commission believes that this requirement should help to ensure that the Exchange relies only upon the factors codified in its rules when making a listing decision.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change, as amended, (SR–Phlx–2001–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–16674 Filed 7–2–01; 8:45 am]

BILLING CODE 8010–01–M

[5] Securities Exchange Act Release No. 44235 (May 9, 2001), 66 FR 26901

[6] As part of a settlement of an enforcement action by the Commission, four of the five options exchanges, including the Phlx, are required to adopt rules to codify listing procedures to be carried out when a member or member organization requests the exchange to list options not currently trading on the exchange. *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[7] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed priorities; request for public comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the Commission has identified certain tentative priorities that may be the focus of its policy development work during the amendment cycle ending May 1, 2002. The Commission envisions that much of this policy work may continue into the amendment cycle ending May 1, 2003. The Commission is seeking comment on these tentative priority issues.

DATES: Public comment should be received on or before August 3, 2001.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs-Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

For the amendment cycle ending May 1, 2002, and possibly continuing into the amendment cycle ending May 1, 2003, the Commission has identified the following tentative priorities:

(1) In anticipation of the 15-year anniversary of the federal sentencing guidelines, the Commission has decided to undertake a 15–Year Study composed of a number of projects geared toward analyzing the guidelines in light of the goals of sentencing reform described in the Sentencing Reform Act and the statutory purposes of sentencing set forth in 18 U.S.C. 3553(a)(2).

(2) Possibly in conjunction with the 15-Year Study identified in paragraph (1), the Commission may begin an assessment of, and possibly consider guideline amendment proposals for, the following guideline areas: (A) Chapter Two, Part D (Offenses Involving Drugs); (B) Chapter Four (Criminal History); and (C) miscellaneous and discreet issues such as offenses involving damage to cultural heritage resources. As part of this work, the Commission may address any conflicts among the circuits related to the operation of the guidelines in these areas.

The Commission invites comment on these tentative priorities and on any other issues that interested persons believe the Commission should address during the amendment cycle ending May 1, 2002, including short- and long-term research issues. To the extent practicable, comments submitted on such issues should include the following: (1) A statement of the issue, including the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional provisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Diana E. Murphy,
Chair.
[FR Doc. 01–16714 Filed 7–2–01; 8:45 am]
BILLING CODE 2210–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before September 4, 2001.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, S.W., Suite 8300, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, (202) 205–7528 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Personal Financial Statement.
Form No: 413.
Description of Respondents: Small Business Loan Applicants.
Annual Responses: 160,000.
Annual Burden: 240,000.

Title: U.S. Small Business Administration Application for Section 504 Loan.
Form No: 1244.
Description of Respondents: Small Businesses Applying for Financial Assistance.
Annual Responses: 5,200.
Annual Burden: 11,700.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 01–16630 Filed 7–2–01; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3351]

State of Kansas

Leavenworth County and the contiguous counties of Atchison, Douglas, Jefferson, Johnson and Wyandotte in the State of Kansas; and Platte County in the State of Missouri constitute a disaster area as a result of damages caused by severe thunderstorms and flash flooding that occurred on June 19, 2001. Applications for loans for physical damage may be filed until the close of business on August 27, 2001 and for economic injury until the close of business on March 26, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 335111 for Kansas and 335211 for Missouri. The number assigned to this disaster for economic injury is 9M0400 for Kansas and 9M0500 for Missouri.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 26, 2001.

John Whitmore,
Acting Administrator.
[FR Doc. 01–16631 Filed 7–2–01; 8:45 am]
BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Trade and Environment Policy Advisory Committee (TEPAC)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the July 25, 2001, meeting of the Trade and Environment Policy Advisory Committee will be held from 9:30 a.m. to 12:30 p.m. The meeting will be closed to the public from 9:30 a.m. to 12 noon and open to the public from 12 noon to 12:30 p.m.

SUMMARY: The Trade and Environment Policy Advisory Committee will hold a meeting on July 25, 2001, from 9:30 a.m. to 12:30 p.m. The meeting will be closed to the public from 9:30 a.m. to 12 noon. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 12 p.m. to 12:30 p.m., when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the

committee will not be invited to comment.

DATES: The meeting is scheduled for July 25, 2001, unless otherwise notified.

ADDRESSES: The meeting will be held at the USTR ANNEX Building in Conference Rooms 1 and 2, located at 1724 F Street, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Heather K. Wingate, Office of the United States Trade Representative, (202) 395–6120.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 01–16645 Filed 7–2–01; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the President's Advisory Committee on Trade Policy and Negotiations (ACTPN)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the July 30, 2001, meeting of the President's Advisory Committee on Trade Policy and Negotiations will be held from 1:30 p.m. to 4:30 p.m. The meeting will be closed to the public from 1:30 p.m. to 4:00 p.m. and open to the public from 4:00 p.m. to 4:30 p.m.

SUMMARY: The President's Advisory Committee on Trade Policy and Negotiations will hold a meeting on July 30, 2001 from 1:30 p.m. to 4:30 p.m, The meeting will be closed to the public from 4:00 p.m. to 4:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 4:00 p.m. to 4:30 p.m., when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for July 30, 2001, unless otherwise notified.

ADDRESSES: The meeting will be held at the USTR ANNEX Building in Conference Rooms 1 and 2, located at 1724 F Street, NW, Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Heather Wingate, Office of the United States Trade Representative, (202) 395–6120.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 01–16644 Filed 7–2–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collections and the expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on 4/26/01, pages 21037–21038.

DATES: Comments must be submitted on or before August 2, 2001. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. *Title:* Certification Procedures for Products and Parts, FAR 21.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0018.

Form(s): FAA Forms 8110–12, 8130–1, 8130–6, 8130–9, 8130–12.

Affected Public: The respondents are an estimated 5100 aircraft part's designers, manufacturers, and aircraft owners.

Abstract: The information collected is used to determine compliance and applicant eligibility. FAA Airworthiness inspectors, designated inspectors, engineers, and designated engineers review the required data submittals to determine that the products and manufacturing facilities comply with the applicable requirements, and that the products have no unsafe features. Those products and facilities that comply with the minimum requirements are issued one or more appropriate certificates.

Estimated Annual Burden Hours: 44,101 hours annually.

2. *Title:* Air Taxi and Commercial Operator Activity Survey.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0067.

Form(s): FAA Form 1800–31.

Affected Public: The respondents are an estimated 500 air taxi/commercial operators who are subject to the passenger transportation tax.

Abstract: The data collected is to serve as an input to the FAA revenue enplanement database which is used in allocating Airport Improvement Program (AIP) funds to airports.

Estimated Annual Burden Hours: 750 hours.

3. *Title:* Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0508.

Form(s): None.

Affected Public: 6 engine manufacturers (estimated 1200 engines).

Abstract: This is a labeling requirement to put the date of manufacture and compliance status on the identification plate. The information is used by FAA inspectors, purchasers, owners and operators periodically, during the course of the year, to confirm that the engines meet U.S. EPA pollution requirements in lieu of searching through extensive paper records.

Estimated Annual Burden Hours: 100 hours.

4. *Title:* Airports Grants Program.
Type of Request: Extension of a currently approved collection.
OMB Control Number: 2120–0569.
Form(s): FAA Forms 5100–100, 5100–108, 5100–125, 5100–126, 5370–1.
Affected Public: 1,950 airport sponsors and planning agencies.
Abstract: The FAA collects information from airport sponsors and planning agencies in order to administer the Airports Grants Program. Data is used to determine eligibility, ensure proper use of Federal funds, and ensure project accomplishments.
Estimated Annual Burden Hours: 67,714 hours annually.

5. *Title:* Terrain Awareness and Warning System (TAWS).
Type of Request: Extension of a currently approved collection.
OMB Control Number: 2120–0631.
Form(s): None.
Affected Public: Device installed in all turbine-powered airplanes of 6 or more passengers seating.
Abstract: This is considered a passive information collection. The rule requires TAWS for all turbine-powered airplanes of 6 or more passenger seating. The TAWS is a passive, electronic, safety device located in the avionics bay of the airplane. TAWS alerts pilots when there is terrain in the airplane's flight path.
Estimated Annual Burden Hours: 1 hour.

Issued in Washington, DC, on June 27, 2001.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 01–16711 Filed 7–2–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–48]

Petitions for Exemption Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 24, 2000.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR §§ 11.91.

Issued in Washington, DC, on June 28, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–9490 (previously Docket No. 28672).
Petitioner: Alaska Airlines, Inc.
Section of 14 CFR Affected: 14 CFR § 121.709(b)(3).
Description of Relief Sought: To amend Exemption No. 6603, as amended, which permits Alaska Airlines' flight crewmembers who hold current pilot certificates to install and/or remove medevac stretchers in Alaska Airlines aircraft, by allowing Alaska Airlines' certificated flightcrew members to supervise and/or verify the installation and removal of medevac stretchers performed by Alaska Airlines' non-certificated flightcrew members.

Docket No.: FAA–2001–9780.
Petitioner: Schwartz Engineering Company.
Section of 14 CFR Affected: 14 CFR § 25.813(e).
Description of Relief Sought: To allow Schwartz to install a interior "hinged" door between passenger compartments on a Boeing Model 737–700IGW airplane, to be used in a private, not for hire, operation.

[FR Doc. 01–16712 Filed 7–2–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–49]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91.

Issued in Washington, D.C., on June 28, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–9134.
Petitioner: Aviation Services, Ltd. dba Freedom Air.

Section of 14 CFR Affected: 14 CFR § 121.314(c).

Description of Relief Sought/ Disposition: To permit Freedom Air's one Model SD3–30 airplane to operate through April 15, 2002, or through the 30th day after delivery to Freedom Air of the aircraft modification kit by the aircraft manufacturer, whichever is sooner.

Partial Grant, 06/18/2001, Exemption No. 7466.

Docket No.: FAA–2001–8933.

Petitioner: Pacific Island Aviation, Inc.

Section of 14 CFR Affected: 14 CFR §§ 25.857(c).

Description of Relief Sought/ Disposition: To permit PIVA's three Model SD3–60 airplanes to operate through April 15, 2002, or through the 30th day after delivery to PIVA of the aircraft modification kits by the aircraft manufacturer, whichever is sooner.

Grant, 06/18/2001, Exemption No. 7465A.

[FR Doc. 01–16713 Filed 7–2–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 2, 2001.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 28, 2001.

Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12714–N	RSPA–01–9834	Scientific Cylinder Corporation, Englewood, CO.	49 CFR 173.302(c)(2), (4) & (5), 173.34(c)(2), (e)(3), (e)(4).	To authorize the transportation in commerce of certain cylinders which have been alternatively ultrasonically retested for use in transporting Division 2.1, 2.2 and 2.3 materials. (Modes 1, 2, 3, 4.).
12715–N	RSPA–01–9926	Arkansas Eastman, Eastman Chemical Co., Batesville, AR.	49 CFR 172.203(a), 172.302(c), 174.67(i) & (j).	To authorize rail cars containing chlorine to remain standing while connected without the physical presence of an unloader. (Mode 2.).
12716–N	RSPA–01–9930	Air Liquide America Corporation, Houston, TX.	49 CFR 173.304(a)(2)	To authorize the transportation in commerce of chlorine in uninsulated DOT Specification 3AAX cylinders permanently mounted on a motor vehicle. (Mode 1.).
12718–N	RSPA–01–9921	Weldship Corporation, Bethlehem, PA.	49 CFR 172.301, 173.34(e), 173.34(e)(3), 173.34(e)(4), 173.34(e)(5), 173.34(e)(6), 173.34(e)(7), 173.34(e)(8).	To authorize the transportation in commerce of certain DOT–3AL seamless aluminum cylinders constructed of alloy 6061 that have been alternatively ultrasonically retested for use in transporting Division 2.1, 2.2, 2.3 materials. (Modes 1, 2, 3, 4.).
12719–N	RSPA–01–9931	Bechtel Jacobs Company LLC; Oak Ridge, TN.	49 CFR 173.211, 173.244	To authorize the transportation in commerce of bulk and non-bulk aluminum containers used in transporting sodium, Division 4.3. (Mode 1.).
12720–N	RSPA–01–9917	American Honda Motor Company, Torrance, CA.	49 CFR 176.76(a)(4)	To authorize the transportation in commerce of electrolyte batteries in specially designed packagings, overpacked in a motor vehicle not subject to the requirements of the HMR, without securing the overpack to the floor of the intermodal freight container or trailer. (Modes 1, 2, 3, 4.).
12724–N	RSPA–01–9888	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 178.345–10(b)(3), 180.405(h).	To authorize the transportation in commerce of MC 312 cargo tanks equipped with pressure relief systems that do not withstand the dynamic pressure surges in excess of the design set pressure. (Mode 1.).

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12726–N	RSPA–01–9884	Air Transport Association, Washington, DC.	49 CFR 173.304(a)(1), 173.305, 173.309, 173.34(e), 175.3.	To authorize the transportation in commerce of fire extinguishers to be shipped with an alternative proper shipping name as specified in several exemptions. (Modes 1, 2, 4, 5.).
12727–N	RSPA–01–9987	Tri-West Packaging, Corona, CA.	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, marking and sale of certain UN 11HH2 intermediate bulk containers for use as the outer packaging for lab pack applications. (Mode 1.).
12728–N	RSPA–01–9889	Eagle-Picher Technologies, LLC, Joplin, MO.	49 CFR 173.3, 173.302(a), 173.34(d).	To authorize the transportation in commerce of certain non-DOT specification pressure vessels containing compressed hydrogen, which are a component part of a nickel-hydrogen battery. (Modes 1, 4.).
12729–N	RSPA–01–9883	Mallinckrodt/Tyco Healthcare, Indianapolis, IN.	49 CFR 178.57(d)(5), (e)(3), (e)(4).	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders conforming in part with DOT Specification 4L used for crygenic materials, Division 2.2. (Mode 1.).

[FR Doc. 01–16662 Filed 7–2–01; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modifications of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportations, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.*, to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before July 18, 2001.

ADDRESSES COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 28, 2001.

Ryan Posten,

Exemption Program Officer, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
4884–M		Matheson Tri-Gas, East Rutherford, NJ [1]	4884
8995–M		BASF Corporation, Mount Olive, NJ [2]	8995
9421–M		Taylor-Wharton (Harsco Corporation), Harrisburg, PA [3]	9421
9508–M		Callery Chemical Company, Pittsburgh, PA [4]	9508
10798–M		Lyondell Chemical Co/EQUISTAR Chemicals, LP, Houston, TX [5]	10798
11153–M		Pacific Northwest National Laboratory, Richland, WA [6]	11153
11786–M		Dow Corning Corporation, Midland, MI [7]	11786
12515–M		FIBA Technologies, Inc., Westboro, MA [8]	12515
12628–M		Arbel Fauvet Rail (AFR), 59500 Douai, FR [9]	12628

[1] To modify the exemption to authorize intermediate pick-up and deliveries of non-DOT specification cylinders, without an overpack, when transporting Class 8, Division 2.1, 2.2, 2.3 and 4.3 materials.

[2] To modify the exemption to allow for the transportation of an additional Division 2.2 material in non-DOT specification steel portable tanks.

[3] To modify the exemption to eliminate the Fracture Toughness Test requirement and to authorize extending the initial requalification period from 5 years to 10 years of the non-DOT specification steel cylinders when used in specific non-corrosive, dry gas service.

[4] To modify the exemption to authorize periodic external inspection of DOT–4BW240 cylinders as an alternative to periodic hydrostatic testing and inspeciton for the transportation of certain Division 4.3 materials.

[5] To modify the exemption to allow for the transportation of additional Division 2.1 and Class 3 materials in DOT specification tank cars.

[6] To modify the exemption to specifically authorize the transport of waste materials in combination packaging in the same transport vehicle with other Class/Division materials.

[7] To modify the exemption to allow for the transportation of Division 2.1 and additional Class 8 materials in DOT Specification tank cars.

[8] To modify the exemption to authorize, as an optional requirement, the installation of a manhole for non-DOT specification vacuum insulated portable tanks in oxygen service.

[9] To reissue the exemption originally issued on an emergency basis authorizing the use of DOT Specification 51 tank containers that have been designed, constructed and "U" stamped in accordance with Section VIII, Division 1 of the ASME Code transporting Division 2.1 and 2.2 materials.

[FR Doc. 01–16663 Filed 7–2–01; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. RSPA–99–6355]

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Hazardous Liquid Operators With 500 or More Miles of Pipeline)

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of workshop.

SUMMARY: This notice announces two, two-day workshops on 49 CFR part 195.452, "Pipeline Integrity Management in High Consequence Areas", effective May 29, 2001. On Day 1, OPS will familiarize participants with the new requirements, and present and seek comments on the approach OPS plans to use for achieving compliance. On Day 2, OPS will provide a forum for participants to share and discuss noteworthy integrity management practices that achieve compliance with the rule.

Workshop Dates and Addresses

(1) The first workshop will be on August 7–8, 2001, from 8:30 a.m. to 5 p.m., at the DoubleTree Hotel Post Oak, 2001 Post Oak Boulevard, Houston, Texas, 77056, 713–961–9300 or 800–566–5216. No later than July 23, 2001, rooms may be reserved within a block identified as "DOT/IMP Public Meeting Block".

(2) The second workshop will be on October 10–11, from 8:30 a.m. to 5 p.m., at the Renaissance Houston Hotel, 6 Greenway Plaza East, Houston, Texas, 77046, 713–629–1200 or 800-Hotels-1. No later than September 12, 2001, rooms may be reserved within a block identified as "DOT/IMP Public Meeting Block".

FOR FURTHER INFORMATION CONTACT: Beth Callsen (tel: 202–366–4572; E-mail: beth.callsen@rspa.dot.gov). For event planning purposes, please let Ms. Callsen know if you will attend. Also notify Ms. Callsen if you are interested in being a presenter on Day 2 of one or both of the workshops. You can read comments and other related material in the docket on the Internet at: *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

OPS's integrity management initiative is intended to improve safety and environmental protection and to provide better assurance to the public about the safety of pipelines. It is also intended to comprehensively address National Transportation Safety Board (NTSB) recommendations, Congressional mandates and pipeline safety and environmental issues raised over the years. It is based on the culmination of experience OPS has gained from pipeline inspections, accident investigations and risk management and system integrity initiatives.

OPS's first integrity management rule (65 FR 75378), issued on November 3, 2000 and effective on May 29, 2001, applies to hazardous liquid operators who own or operate 500 or more miles of pipeline. The rule applies to pipelines that can affect high consequence areas (HCAs), which include populated areas defined by the Census Bureau as urbanized areas or places, unusually sensitive environmental areas, and commercially navigable waterways.

OPS believes that the new rule requires fundamental change in the integrity management practices of many affected pipeline operators. As compliance deadlines approach, OPS is hosting two workshops to promote a better understanding of the new requirements, and to discuss compliance approaches operators are applying to various aspects of the rule. OPS will host additional workshops if needed.

Day 1: Integrity Management Rule—Compliance and Available Resources

Day 1 will feature presentations intended to familiarize participants with the rule requirements and available resources and guidance material. OPS will also present and seek comment on the inspection approach OPS is developing to achieve compliance. Topics will include:

- The rule requirements
- API Standard 1160
- The National Pipeline Mapping System
- The proposed inspection approach
  - —Segment identification inspection and completeness check
  - —Comprehensive program reviews
  - —Inspection of operator program implementation
  - —Managing operator notifications
  - —Enforcement
  - —Clearinghouse and points of contact for questions about the rule
- Additional resources for the industry
- Questions and Answers

Day 2: Forum to Share Noteworthy Integrity Management Practices

Day 2 will feature a series of presentations by pipeline operators on features of their Integrity Management Programs that OPS believes merit wider dissemination. Via the presentations, OPS hopes to encourage a peer-to-peer exchange among operators of innovative approaches being developed to enhance pipeline integrity and comply with the rule. Each presentation will be followed by an open discussion among meeting participants. Based on these discussions, OPS will kick-off development of an on-line forum that will enable continued exchanges between federal and state regulators, representatives of public interest and environmental organizations, the pipeline industry, and other interested parties about noteworthy practices.

Issued in Washington, DC, on June 27, 2001.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 01–16664 Filed 7–2–01; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34059]

Providence and Worcester Railroad Company—Operation Exemption—Massachusetts Bay Transportation Authority

Providence and Worcester Railroad Company (P&W) has filed a verified notice of exemption under 49 CFR 1150.31 to operate railroad trackage owned by the Massachusetts Bay Transportation Authority (MBTA), a noncarrier,[1] between milepost QVJ 0.6

[1] MBTA is an agency of the Commonwealth of Massachusetts.

and milepost QVJ 3.1, a distance of approximately 2.5 miles, near Seekonk, Bristol County, MA (line).[2]

According to P&W, it cannot begin operations over the line until the at-grade crossing at Newman Avenue, which was removed by third parties in connection with a roadway improvement project, is restored. P&W notes that it has proceeded with discussions with MBTA and the Town of Seekonk and intends to press for prompt restoration of the crossing. The earliest the transaction could have been consummated was June 27, 2001, 7 days after the exemption was filed.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34059, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Mary A. Tanona, Esq., Providence and Worcester Railroad Company, 75 Hammond Street, Worcester, MA 01610.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: June 27, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–16694 Filed 7–2–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–246256–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, REG–246256–96, Excise Taxes on Excess Benefit Transactions (§ 53.4958–6).

DATES: Written comments should be received on or before September 4, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Excise Taxes on Excess Benefit Transactions.

OMB Number: 1545–1623.

Regulation Project Number: REG–246256–96.

Abstract: This regulation relates to the excise taxes on excess benefit transactions under section 4958 of the Internal Revenue Code and affects certain tax-exempt organizations described in Code sections 501(c)(3) and (4). The collection of information entails obtaining and relying on appropriate comparability data and documenting the basis of an organization's determination that compensation is reasonable, or a property transfer (or transfer of the right to use property) is at fair market value.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 150,427.

Estimated Time Per Respondent: 6 hr., 3 minutes.

Estimated Total Annual Burden Hours: 910,083.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 26, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–16718 Filed 7–2–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8835

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8835, Renewable Electricity Production Credit.

DATES: Written comments should be received on or before September 4, 2001 to be assured of consideration.

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[2] CSX Transportation, Inc.'s (CSX) discontinuance of trackage rights on the line was previously exempted by the Board in *CSX Transportation, Inc.—Discontinuance of Trackage Rights Exemption—in Bristol County, MA*, STB Docket No. AB–55 (Sub-No. 582X) (STB served Nov. 1, 2000). P&W indicates that CSX has not yet implemented its discontinuance and that CSX is still technically an operator of the line.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Renewable Electricity Production Credit.

OMB Number: 1545–1362.

Form Number: 8835.

Abstract: Form 8835 is used to claim the renewable electricity production credit. The credit is allowed for the sale of electricity produced in the United States or U.S. possessions from qualified energy resources. The IRS uses the information reported on the form to ensure that the credit is correctly computed.

Current Actions: There are no changes being made to Form 8835 at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 70.

Estimated Time Per Respondent: 12 hrs., 14 min.

Estimated Total Annual Burden Hours: 857.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 27, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–16719 Filed 7–2–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–L

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–L, U.S. Life Insurance Company Income Tax Return.

DATES: Written comments should be received on or before September 4, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Life Insurance Company Income Tax Return.

OMB Number: 1545–0128.

Form Number: 1120–L.

Abstract: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that the companies have correctly reported taxable income and paid the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,440.

Estimated Time Per Respondent: 162 hours, 2 minutes.

Estimated Total Annual Burden Hours: 388,863.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 27, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–16720 Filed 7–2–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453–NR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453–NR, U.S. Nonresident Alien Income Tax Declaration for Electronic Filing.

DATES: Written comments should be received on or before September 4, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Nonresident Alien Income Tax Declaration for Electronic Filing.

OMB Number: 1545–1274.

Form Number: Form 8453–NR.

Abstract: Form 8453–NR is used to secure taxpayer signatures and declaration in conjunction with the Electronic Filing Program. This form, together with the electronic transmission, will comprise the taxpayer's income tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 27, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–16721 Filed 7–2–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–100–88]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–100–88 (TD 8540), Valuation Tables (§§ 1.7520–1 through 1.7520–4, 20.7520–1 through 20.7520–4, and 25.7520–1 through 25.7520–4).

DATES: Written comments should be received on or before September 4, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Valuation Tables.

OMB Number: 1545–1343.

Regulation Project Number: PS–100–88.

Abstract: Internal Revenue Code section 7520 provides rules for determining the valuation of an annuity, an interest for life or a term of years, or a remainder or reversionary interest. Code section 7530(a) allows a respondent to make an election to value an interest that qualifies, in whole or in part, for a charitable deduction, by use of a different interest rate component that is more favorable to the respondent. This regulation requires individuals or fiduciaries making the election to file a statement with their estate or gift tax return.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6000.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 4,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 27, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–16722 Filed 7–3–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–89–91]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–89–91 (TD 8622), Exports of Chemicals That Deplete the Ozone Layer; Special Rules for Certain Medical Uses of Chemicals That Deplete the Ozone Layer (§§ 52.4682–2(b), 52.4682–2(d), 52.4682–5(d), and 52.4682–5(f)).

DATES: Written comments should be received on or before September 4, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Exports of Chemicals That Deplete the Ozone Layer; Special Rules for Certain Medical Uses of Chemicals That Deplete the Ozone Layer.

OMB Number: 1545–1361.

Regulation Project Number: PS–89–91.

Abstract: This regulation provides reporting and recordkeeping rules relating to taxes imposed on exports of ozone-depleting chemicals (ODCs), taxes imposed on ODCs used as medical sterilants or propellants in metered-dose inhalers, and floor stocks taxes on ODCs. The rules affect persons who manufacture, import, export, sell, or use ODCs.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Recordkeepers: 705.

Estimated Time Per Recordkeeper: 12 minutes.

Estimated Total Annual Recordkeeping Burden Hours: 141.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Reporting Burden Hours: 60.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 27, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–16723 Filed 7–2–01; 8:45 am]

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Federal Register

Tuesday,
July 3, 2001

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6939–2]

RIN 2060–AH55

National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for new and existing coke oven batteries. The EPA has identified coke oven batteries as a major source of hazardous air pollutants (HAP) emissions. These NESHAP address emissions from pushing, quenching, and battery stacks. Emission standards previously promulgated address emissions from charging, topside leaks, and door leaks.

These proposed standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The HAP emitted by this source category include coke oven emissions, polycyclic organic matter, and volatile organic compounds such as benzene and toluene. Exposure to these substances has been demonstrated to cause chronic and acute health effects.

DATES: *Comments.* Submit comments on or before October 1, 2001.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by July 23, 2001, a public hearing will be held on August 2, 2001.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–34, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A–2000–34, Room M–1500, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC beginning at 10 a.m.

Docket. Docket No. A–2000–34 contains supporting information used in developing the proposed standards. The docket is located at the U.S. EPA, 401 M Street SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Lula Melton, Metals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2910, electronic mail address melton.lula@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: air-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–2000–34. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Roberto Morales, U.S. EPA, OAQPS Document Control Officer, c/o Lula Melton, 411 W. Chapel Hill Street, Room 740B, Durham, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mary Hinson, Metals Group, Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5601, in advance of the public hearing. Persons interested in attending the public hearing must also call Mary Hinson to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this proposed rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Example of regulated entities
Coke oven batteries.	3312	331111	Coke plants at integrated iron and steel companies.
		324199	Coke plants not at integrated iron and steel companies.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine

whether your facility is regulated by this action, you should examine the applicability criteria in § 63.7281 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline

The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What source category is affected by the proposed rule?
D. What is cokemaking?
E. What HAP are emitted from cokemaking?
F. What are the health effects associated with emissions from pushing, quenching, and battery stacks?

II. Summary of the Proposed Rule
A. What are the affected sources and emission points?
B. What are the requirements for pushing?
C. What are the requirements for soaking?
D. What are the requirements for quenching?
E. What are the requirements for battery stacks?
F. What are the operation and maintenance requirements?
G. What are the notification, recordkeeping, and reporting requirements?
H. What are the compliance deadlines?

III. Rationale for Selecting the Proposed Standards
A. How did we select the affected source?
B. How did we select the pollutants?
C. How did we determine the bases and levels of the proposed standards?
D. How did we select the operation and maintenance requirements?
E. How did we select the notification, recordkeeping, and reporting requirements?

IV. Summary of Environmental, Energy, and Economic Impacts
A. What are the air quality impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air environmental and energy impacts?

V. Solicitation of Comments and Public Participation

VI. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us (the EPA) to establish technology-based regulations for all categories and subcategories of major and area sources emitting one or more of the HAP listed in section 112(b). Major sources are those that emit or have the potential to emit at least 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. Additional standards may be developed later under section 112(f) to address residual risk that may remain even after application of the technology-based controls.

B. What Criteria Are Used in the Development of NESHAP?

The NESHAP for new and existing sources developed under section 112 must reflect the maximum degree of reduction of HAP emissions that is achievable taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental benefits, and energy requirements. Emissions reductions may be accomplished through promulgation of emission standards under section 112(d). These may include, but are not limited to:

- Reducing the volume of emissions of HAP, or eliminating the emissions through process changes, substitution of materials, or other modifications;
- Enclosing systems or processes to eliminate emissions;
- Collecting, capturing, or treating such pollutants when released from a process, stack, storage, or fugitive emissions point;
- Design, equipment, work practice or operational standards or any combination thereof if it is not feasible to prescribe or enforce an emission standard (including requirements for operator training or certification); or
- A combination of the above.

Section 112 requires us to establish a minimum baseline or "floor" for standards. For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The standards for existing sources can be less stringent than the standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (excluding certain sources) for categories and subcategories with 30 or more sources. For categories and subcategories with fewer than 30 sources, the standards cannot be less stringent than the average emission limitation achieved by the best-performing five sources.

For NESHAP developed to date, we have used several different approaches to determine the MACT floor for individual source categories depending on the type, quality, and applicability of available data. These approaches include determining a MACT floor based on: (1) Emissions test data that characterize actual HAP emissions from presently controlled sources included in the source category, (2) existing federally-enforceable emission limitations specified in air regulations and facility air permits applicable to the individual sources comprising the source category, and (3) application of a specific type of control technology for air emissions currently being used by sources in the source category or by sources with similar pollutant stream characteristics.

To determine the MACT standard, we evaluate several alternatives (which may be different levels of emission control or different levels of applicability or both) to select the one that best reflects the appropriate MACT level. The selected alternative may be more stringent than the MACT floor, but the control level selected must be technically achievable. In selecting an alternative, we consider the achievable HAP emissions reductions (and possibly other pollutants that are co-controlled), cost and economic impacts, energy impacts, and other environmental impacts. The objective is to achieve the maximum degree of emission reduction without unreasonable economic or other impacts. The regulatory alternatives selected for new and existing sources may be different because of different MACT floors, and separate regulatory decisions may be made for new and existing sources.

C. What Source Category Is Affected by the Proposed Rule?

The source category affected by the proposed rule is defined as pushing, quenching, and battery stacks at coke plants. Section 112(c) of the CAA requires us to list all categories of major and area sources of HAP for which we would develop national emission standards. We published the initial list of source categories on July 16, 1992 (57 FR 31576). The list contains a category

entitled "Coke Ovens: Pushing, Quenching, and Battery Stacks" based on our determination that coke oven batteries are (or are a part of) a major source of HAP emissions and emit several of the HAP listed in section 112(b) of the CAA. Emissions data show that coke oven batteries emit, or have the potential to emit 10 tpy or more of coke oven emissions or 25 tpy or more of coke oven emissions and other listed HAP.

D. What Is Cokemaking?

The coke industry consists of two sectors, integrated plants and merchant plants. Integrated plants are owned by or affiliated with iron- and steel-producing companies that produce furnace coke primarily for consumption in their own blast furnaces. There are 14 integrated plants owned by nine iron and steel companies. These plants account for 80 percent of United States (U.S.) coke production. Independent merchant plants produce mostly foundry coke for sale on the open market. Foundry coke is used in foundry furnaces for melting scrap iron to produce iron castings. There are 11 merchant plants. Although coke is produced in 11 States, two-thirds of the capacity is in three States: Indiana, Pennsylvania, and Alabama. As of January 2000, there were 25 coke plants operating 68 coke oven batteries; 58 were by-product batteries, and 10 were non-recovery batteries.

A by-product battery consists of 20 to 100 adjacent ovens with common side walls made of high quality silica and other types of refractory brick. Typically, the individual slot ovens are 11 to 16.8 meters (m) long, 0.35 to 0.5 m wide, and 2.5 to 6 m high. The walls separating adjacent ovens, as well as each end wall, are made up of a series of heating flues. Most by-product batteries in the U.S. (56 out of 58) use a vertical flue design. Each oven wall typically has 25 to 37 flues that run vertically from the bottom to the top of the oven, and the flues heat the walls of adjacent ovens. The heating (underfire) systems for vertical flue batteries fall into two general classes: underjet and gun-flue. In the underjet heating system, the flue gas is introduced into each flue from piping in the basement of the battery, and the gas flow to each flue can be metered and controlled. The gun-flue system introduces the gas through a horizontal gas duct extending the length of each wall slightly below the oven floorline. Two by-product batteries referred to as Semet Solvay batteries have horizontal flues with physical and operational characteristics that differ substantially from vertical flue batteries.

In a coke oven battery, coal undergoes destructive distillation to produce coke. A weighed amount or specific volume of coal is discharged from the coal bunker into a larry car—a charging vehicle that moves along the top of the battery. The larry car is positioned over the empty, hot oven; the lids on the charging ports are removed; and the coal is discharged from the hoppers of the larry car into the oven. Each oven holds between 15 and 25 tons of coal. To minimize the escape of gases from the oven during charging, steam aspiration is used to draw gases from the space above the charged coal into a collecting main. The charging port lids are replaced and peaks of coal that form directly under the charging ports are leveled.

The coal is heated in the oven in the absence of air to temperatures approaching 2,000°F which drives off most of the volatile organic constituents of the coal as gases and vapors, forming coke which consists almost entirely of carbon. The organic gases and vapors that evolve are removed through an offtake system and sent to a by-product plant for chemical recovery and coke oven gas cleaning. Air is prevented from leaking into the ovens by maintaining a positive back pressure of about 10 millimeters (mm) of water.

Coking temperatures generally range from 1,650 to 2,000°F and are on the higher side of the range to produce blast furnace coke. Coking continues for 15 to 18 hours to produce blast furnace coke and 25 to 30 hours to produce foundry coke. The coking time is determined by the coal mixture, moisture content, rate of underfiring, and the desired properties of the coke. When demand for coke is low, coking times are extended and temperatures lowered. Battery shut downs are avoided because cooling the battery results in structural damage.

At the end of the coking cycle, the oven is dampered off the collection main, and the standpipe cap is opened to relieve oven pressure. This period in the coking cycle is called soaking. Volatile gases exiting through the open standpipe are ignited if they fail to self-ignite and are allowed to burn until the oven has been pushed. Doors at both ends of the oven are removed, and the incandescent coke is pushed out of the oven by a ram that is extended from the pusher machine. The coke is pushed through a coke guide into a special rail car, called a quench car, which traverses the coke side of the battery. The quench car carries the coke to a quench tower, typically located at the end of a row of batteries. Inside the quench tower, the hot coke is deluged with water so that it will not continue to burn after being exposed to air. The quenched coke is discharged onto an inclined "coke wharf" to allow excess water to drain and to cool the coke.

There are two non-recovery plants operating in the U.S. As the name implies, this process does not recover the chemical by-products as does the by-product coking process discussed above. All of the coke oven gas is burned, and instead of recovery of chemicals, this process allows for heat recovery and cogeneration of electricity. Non-recovery ovens are of a horizontal design (as opposed to the vertical slot oven used in the by-product process) with a typical range of 30 to 60 ovens per battery. The oven is generally between 9 and 14 m long and 1.8 to 3.7 m wide. The internal oven chamber is usually semi-cylindrical in shape with the apex of the arch 1.5 to 3.7 m above the oven floor. Each oven is equipped with two doors, one on each side of the horizontal oven, but there are no lids or offtakes as found on by-product ovens. The oven is charged through the oven doorway with a coal conveyor rather than from the top through charging ports.

After an oven is charged, carbonization begins as a result of the hot oven brickwork from the previous charge. Combustion products and volatiles that evolve from the coal mass are burned in the chamber above the coal, in the gas pathway through the walls, and beneath the oven in sole flues. Each oven chamber has two to six downcomers in each oven wall, and the sole flue may be subdivided into separate flues that are supplied by the downcomers. The sole flue is designed to heat the bottom of the coal charge by conduction while radiant and convective heat flow is produced above the coal charge.

Primary combustion air is introduced into the oven chamber above the coal through one of several dampered ports in the door. The dampers are adjusted to maintain the proper temperature in the oven crown. Outside air may also be introduced into the sole flues; however, additional air is usually required in the sole flue only for the first hour or two after charging. All gas flow is a result of the natural draft (there are no exhausters), and the oven is maintained under a negative pressure. Consequently, the ovens do not leak as do the by-product ovens maintained under a positive pressure. The combustion gases are removed from the ovens and directed to the stack through a waste heat tunnel that is located on top of the battery centerline and extends the length of the battery.

Pushing and quenching operations are similar to those at by-product coke oven batteries. One difference in pushing is that the height of fall of the hot coke is less for the non-recovery oven because of its horizontal rather than vertical design. With respect to emissions, there are two major advantages of the non-recovery process: (1) The ovens operate under negative pressure which eliminates leaks from doors, lids and offtakes during coking; and (2) wastewater and solid wastes associated with by-product recovery plants are not generated.

E. What HAP Are Emitted From Cokemaking?

The primary HAP emitted from cokemaking is listed as "coke oven emissions," which includes many organic compounds. Constituents of primary interest because of adverse health effects include semi-volatiles such as polycyclic organic matter (POM) and polynuclear aromatic hydrocarbons (PAH). The emissions also include volatile organic compounds, such as benzene, toluene, and xylene.

Coke oven emissions can be released when the oven is charged with coal. During coking with the oven under positive pressure, emissions occur from leaking doors, lids, and offtakes. On rare occasions during an equipment failure or process upset, coke oven emissions may occur from bypass stacks. We have developed emission standards for each of these emission points with limits for charging, doors, lids, and offtakes and a requirement to flare any bypassed coke oven gas (40 CFR part 63, subpart L).

Coke oven emissions are also released from pushing and quenching, and emissions are especially heavy when the coal is not fully coked. This condition is called a "green push" and results in a large plume of emissions when the coke is pushed. These emissions typically overwhelm any capture system that may be employed at the oven to control particulate emissions. Green pushes are minimized by diligent work practices that include routine operation and maintenance procedures. In addition, diagnostic procedures are initiated when a green push occurs to determine its cause followed by corrective actions to prevent its recurrence. Additional procedures used to control emissions from quench towers include prohibiting the use of untreated wastewater for quenching, using baffles in the quench tower to control particulate matter, and maintaining the baffles in good operating condition.

Coke oven emissions also occur from battery stacks when raw coke oven gas leaks through cracks in the oven wall and into the heating flues. Battery stack emissions are controlled by monitoring the stack opacity when each oven is charged, and if a high opacity occurs, by implementing diagnostic procedures to determine the cause of the problem and taking corrective actions.

Emissions of HAP also occur from the by-product plant that recovers various chemicals from the coke oven gas. The primary HAP in these emissions is benzene. We promulgated NESHAP for benzene emissions from by-product plants (40 CFR part 61, subpart L).

F. What Are the Health Effects Associated With Emissions From Pushing, Quenching, and Battery Stacks?

The HAP that would be controlled with this proposed rule are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (e.g., blood disorders, damage to the central nervous system, and respiratory lesions) and acute health disorders (e.g., irritation of skin, eyes, and mucous membranes and depression of the central nervous system). We have classified coke oven emissions and benzene as known human carcinogens and seven PAH components as probable human carcinogens.

No information is available on the effects of coke oven emissions in humans from acute (short-term) exposure. Animal studies have reported weakness, depression, shortness of breath, general edema, and effects on the liver from acute oral exposure to coke oven emissions. Chronic (long-term) exposure to coke oven emissions in humans results in conjunctivitis, severe dermatitis, and lesions of the respiratory system and digestive system. Studies of coke oven workers have reported an increase in cancer of the lung, trachea, bronchus, kidney, prostate, and other sites. Animal studies have reported tumors of the lung and skin from inhalation exposure to coal tar. We have classified coke oven emissions as a Group A, known human carcinogen.

The term POM defines a broad class of compounds that includes the PAH compounds, of which benzo[a]pyrene is a member. Skin exposures to mixtures of PAH cause skin disorders in humans and animals. No information is available on the reproductive or developmental effects of POM in humans, but animal studies have reported that oral exposure to benzo[a]pyrene causes reproductive and developmental effects. Human studies have reported an increase in lung cancer in humans exposed to POM-bearing mixtures including coke oven emissions, roofing tar emissions, and cigarette smoke. Animal studies have reported respiratory tract tumors from inhalation exposure to benzo[a]pyrene and forestomach tumors, leukemia, and lung tumors from oral exposure to benzo[a]pyrene. We have classified seven PAH compounds (benzo[a]pyrene, benz[a]anthracene, chrysene, benzo[b]fluoranthene, benzo[k]fluoranthene, dibenz[a,h]anthracene, and indeno[1,2,3-cd]pyrene) as Group B2, probable human carcinogens.

Acute (short-term) inhalation exposure of humans to benzene may cause drowsiness, dizziness, headaches, as well as eye, skin, and respiratory tract irritation, and, at high levels, unconsciousness. Chronic (long-term) inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells and aplastic anemia in occupational settings. Reproductive effects have been reported for women exposed by inhalation to high levels, and adverse effects on the developing fetus have been observed in animal tests. Increased incidence of leukemia (cancer of the tissues that form white blood cells) has been observed in humans occupationally exposed to benzene. We have classified benzene as a Group A, known human carcinogen.

Acute (short-term) inhalation of toluene by humans may cause effects to the central nervous system (CNS), such as fatigue, sleepiness, headache, and nausea, as well as irregular heartbeat. Adverse CNS effects have been reported in chronic abusers exposed to high levels of toluene. Symptoms include tremors, decreased brain size, involuntary eye movements, and impaired speech, hearing, and vision. Chronic (long-term) inhalation exposure of humans to lower levels of toluene also causes irritation of the upper respiratory tract, eye irritation, sore throat, nausea, dizziness, headaches, and difficulty with sleep. Studies of children whose mothers were exposed to toluene by inhalation of mixed solvents during pregnancy have reported CNS problems, facial and limb abnormalities, and delayed development. However, these effects may not be attributable to toluene alone.

We recognize that the degree of adverse health effects experienced by exposed individuals can range from mild to severe. The extent and degree to which the health effects may be experienced depend on:

- Pollutant-specific characteristics (e.g., toxicity, half-life in the environment, bioaccumulation, and persistence);

- Ambient concentrations observed in the area (e.g., as influenced by emission rates, meteorological conditions, and terrain);
- Frequency and duration of exposures; and
- Characteristics of exposed individuals (e.g., genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population.

II. Summary of the Proposed Rule

A. What Are the Affected Sources and Emission Points?

The affected source is each new or existing coke oven battery at a coke plant that is a major source of HAP emissions. A new affected source is one constructed or reconstructed after July 3, 2001. An existing affected source is one constructed or reconstructed on or before today's date. The proposed rule covers fugitive pushing emissions, emissions from control devices applied to pushing emissions, and emissions from quenching, soaking, and battery stacks.

B. What Are the Requirements for Pushing?

1. By-product Coke Oven Batteries with Vertical Flues

We are proposing two options for controlling fugitive pushing emissions—numerical opacity limits (Option 1) and work practice standards (Option 2). Based on comments received on the proposed rule, we will promulgate Option 1, Option 2, or a combination of the two options. Under both options, the requirements are the same for new and existing batteries.

Option 1 (the numerical standard) limits the daily average opacity of fugitive pushing emissions to 20 percent for a short battery and 25 percent for a tall battery. A short battery has ovens that are less than five m high, and a tall battery has ovens that are five m high or more. The daily average opacity would be determined from opacity observations made for four consecutive pushes per battery per day. The average opacity per push would be determined by averaging the six highest consecutive observations made at 15-second intervals.

Option 2 (the work practice standard) is based on an opacity trigger for a single push that would require the plant to correct the problem or remove the oven from service. The proposed work practice requirements are:

- Observe and record the opacity of fugitive pushing emissions for four consecutive pushes each day for each battery.
- If the average opacity of the six highest consecutive readings for any individual push is more than the opacity trigger (30 percent for short batteries and 35 percent for tall batteries), take corrective action to fix the problem and demonstrate that the corrective action has been successful within a certain number of days. Plants must calculate the allowed number of days using the equation, (15 pushes × coking time)/24 hours or 0.63 × coking time. The corrective action would be considered successful if neither of the opacity observations for two consecutive daytime pushes exceed the opacity trigger.
- If the oven-directed procedure has not been successful within the allowable number of days, remove the oven from service until repairs are completed. Observe two daytime pushes within the first four pushes after the oven is returned to service. If neither push exceeds the opacity trigger, the corrective action was successful and the oven may be taken out of the oven-directed program. If the opacity trigger was exceeded for either push, the oven must be removed from service and the process repeated. If any oven is removed from service more than four times in any semiannual reporting period as a result of exceeding the opacity trigger, the oven must not be returned to service without the permission of the permitting authority. Plants would also be required to mitigate possible adverse effects on adjacent ovens due to removing the oven from service.
- If extended coking is the corrective action, keep the oven on extended coking until the problem is corrected and the plant demonstrates the corrective action has been successful.

Under Option 1, plants would be required to conduct a performance test to demonstrate initial compliance with the applicable opacity limit. In the test, an independent certified observer would make opacity observations according to the procedures in EPA Method 9 (40 CFR part 60, appendix A) for four consecutive pushes, calculated from the six highest 15-second readings for each push. No performance test would be required to demonstrate initial compliance with the work practice standards in Option 2. The plant owner or operator would certify, as part of the notification of compliance status, that the facility will meet each of the requirements in the work practice standard.

Under Options 1 and 2, continuous compliance would be demonstrated by opacity observations. Both options allow two batteries to be treated as a single battery if they are served by the same pushing equipment and contain a total of no more than 60 ovens. An independent certified observer would determine the daily average opacity from four consecutive pushes for each battery every day and for each oven in a battery at least every 3 months. The proposed rule prohibits plants from altering an oven's pushing schedule to change the sequence of pushes designated for observation.

Records of all observations and calculations needed to document compliance would be required for Options 1 and 2. Additional records would be required under Option 2 if the opacity trigger is exceeded.

2. By-Product Coke Oven Batteries with Horizontal Flues

Under the work practice standards, plants would be required to operate each battery according to a written plan designed to prevent green pushes. The plan would establish minimum flue temperatures at different coking times and a lowest acceptable minimum flue temperature consistent with the prevention of green pushes. Provisions are included in the proposed rule for performing a study to determine the minimum flue temperatures. After developing a plan, plants would be required to:

- Measure and record the temperature of all flues on two ovens per day for each battery within 2 hours of the scheduled pushing time. Two batteries can be treated as one if both are served by the same pushing equipment and contain a total of no more than 60 ovens.
- Measure and record the temperature of all flues on each oven at least once a month.
- Determine and record the time each oven is charged and pushed and the net coking time for each oven.
- If the measured flue temperature is below the minimum flue temperature for that coking time, extend the coking time for the oven by the amount specified in the plan for that flue temperature before pushing the oven and take corrective action. While the oven is on extended coking, continue to measure the flue temperatures within 2 hours of the scheduled pushing time until the measurements prior to two consecutive pushes meet the minimum temperature requirements for the extended coking time. An oven could be returned to the battery's general pushing schedule once the heating problem is corrected.
- Remove the oven from service for repairs if any flue temperature measurement is below the lowest acceptable minimum temperature. After

repairing the oven, follow the procedures in the written plan for returning the oven to service after the repairs are complete. Plants also must take temperature measurements within 2 hours of the scheduled pushing time. If any flue temperature measurement is below the minimum flue temperature in the plan, plants would repeat the procedures for extended coking.

No performance test would be required to demonstrate initial compliance with the work practice standards. The plant owner or operator would certify, as part of the notification of compliance status, that the facility has submitted the written plan to prevent green pushes and the supporting study to their permitting authority for review and approval, and that the plant will meet each of the requirements in the work practice standard.

Continuous compliance would be demonstrated by: (1) Measuring and recording flue temperature measurements for two ovens a day for each battery and for all ovens in each battery at least once a month, and (2) recording the time each oven is charged and pushed with the net coking time. Additional records would be required to show that the correct procedures were followed if any measured flue temperature is below the minimum flue temperature or the lowest acceptable minimum temperature.

3. Non-Recovery Coke Oven Batteries

The proposed work practice standards require plants to visually inspect each oven prior to pushing by opening the door damper and observing the bed of coke. The oven cannot be pushed unless the visual inspection confirms that there is no smoke in the open space above the coke bed, and that there is an unobstructed view of the door on the opposite side of the oven. Plants would demonstrate initial compliance by certifying in their initial notification of compliance status that they will follow the work practice standards. Continuous compliance would be demonstrated by maintaining records of each visual inspection.

4. Control Devices

We are proposing emission limits for particulate matter (PM) as a measure of control device performance. Facilities that currently use capture and control equipment must continue to use such equipment and must meet the applicable emission limitations. The proposed PM limits for a control device applied to pushing emissions from a coke oven battery are:

- 0.004 grain per dry standard cubic foot (gr/dscf) where a cokeside shed is used as the capture system.
- 0.017 pound per ton (lb/ton) of coke if a moveable hood vented to a stationary control device is used to capture emissions.
- If a mobile scrubber car that does not capture emissions during travel is used, 0.023 lb/ton of coke for a short coke oven battery or 0.010 lb/ton of coke for a tall coke oven battery.
- 0.039 lb/ton of coke if a mobile scrubber car that does capture emissions during travel is used.

Operating limits are also proposed for control devices and capture systems applied to pushing emissions. If a baghouse is used, the alarm on the bag leak detection system must not sound for more than 5 percent of the total operating time in a semiannual reporting period. If a venturi scrubber is used, the daily average pressure drop and scrubber water flow rate must remain at or above the minimum level established during the initial performance test. Two options are proposed for a capture system applied to pushing emissions: (1) Maintain the fan motor amperes at or above the minimum level established during the initial performance test, or (2) maintain the volumetric flow rate at the inlet of the control device at or above the minimum level established during the initial performance test.

The proposed rule requires a performance test for each control device to demonstrate it meets the emission limit. The concentration of PM would be measured using EPA Method 5 or 5D in 40 CFR part 60, appendix A. The proposed testing requirements also include procedures for establishing operating limits for venturi scrubbers and capture systems and for revising the limits, if needed, after the performance test. To demonstrate continuous compliance with the applicable emission limit, plants would be required to conduct performance tests for each control device at least twice during each term of their title V operating permit (at midterm and renewal).

If a baghouse is applied to pushing emissions, plants would monitor the relative change in PM loading using a bag leak detection system and make inspections at specified intervals. The basic inspection requirements include daily, weekly, monthly, or quarterly inspections of specified parameters or mechanisms with monitoring of bag cleaning cycles by an appropriate method. Each bag leak detection system must:

- Be capable of detecting PM at concentrations of 10 milligrams per actual cubic meter or less and provide an output of relative PM loading;
- Be installed and operated according to our guidance ("Fabric Filter Bag Leak Detection Guidance," EPA 454/R–98–015, September 1997, available on the TTN at *http://www.epa.gov/ttnemc01/cem/tribo.pdf*). If the system does not work based on the triboelectric effect, it must be installed and operated consistent with the manufacturer's written specifications and recommendations; and
- Be equipped with an alarm system that: (1) Will alert operators if PM is detected above a preset level, and (2) has a sensitivity that is never increased by more than 100 percent or decreased by more than 50 percent over a 1-year period, unless a responsible official certifies, in writing, that the baghouse has been inspected and found to be in good operating condition.

To demonstrate continuous compliance with the operating limit, plants would be required to maintain each baghouse such that the operating limit is not exceeded and keep records of bag leak detection system alarms. They also would be required to keep records documenting conformance with the inspection and maintenance requirements.

If a venturi scrubber is applied to pushing emissions, plants would monitor the daily average pressure drop and scrubber water flow rate using continuous parameter monitoring systems (CPMS). The CPMS would measure and record the pressure drop and scrubber water flow rate at least once per push and determine and record the daily average of the readings. To demonstrate continuous compliance with the operating limits, plants would maintain the daily average pressure drop and scrubber water flow rate at levels no lower than those established during the performance test. Valid monitoring data must be available for all pushes. In addition, plants must keep records documenting compliance with the proposed installation, operation, and maintenance requirements for the CPMS.

For a capture system applied to pushing emissions, plants would be required to check the fan motor amperes or the volumetric flow rate at least once each 8-hour period to verify it is at or above the level established during the initial performance test and to record the results of each check.

C. What Are the Requirements for Soaking?

A work practice standard is proposed for emissions that occur when the oven is prepared for pushing by venting the oven to the atmosphere (soaking). If the gases from the standpipe do not ignite automatically, plants would be required to manually ignite the gases within 3 minutes after opening the standpipe cap.

To demonstrate initial compliance, the owner or operator would certify, in the notification of compliance status, that the work practice requirements will be met. To demonstrate continuous compliance, plants would keep records documenting the automatic or manual ignition of vented gases from each standpipe. If the gases do not ignite automatically, the records would include the time the standpipe cap is opened and the time the gases are manually ignited.

D. What Are the Requirements for Quenching?

The proposed equipment and work practice standards for quenching apply to all coke oven batteries. Plants would be required to equip each quench tower with baffles that cover at least 95 percent of the cross-sectional area, clean the baffles daily, and inspect each quench tower at least monthly for damaged or missing baffles and blockage. If the monthly inspection reveals any damaged or missing baffles, plants must repair or replace them within 1 month (i.e., before the next inspection). The proposed rule also requires plants to use clean water as makeup water.

To demonstrate initial compliance, the plant owner or operator would certify, as part of the notification of compliance status, that the equipment standard has been met and the work practice requirements will be met. To demonstrate continuous compliance, plants would be required to maintain baffles in each quench tower to meet the rule requirements and keep records documenting conformance with the work practice requirements.

E. What Are the Requirements for Battery Stacks?

The proposed opacity standards apply to all coke oven by-product batteries. The proposed rule requires plants to monitor the opacity exiting each battery stack using a continuous opacity monitoring system (COMS).

The proposed opacity limits are a daily average of 15 percent for a by-product coke oven battery on a normal coking cycle and a daily average of 20 percent for a by-product coke oven battery on battery-wide extended coking.

The proposed rule requires a performance test to demonstrate initial compliance with the applicable opacity limit. Using a COMS, plants would measure the opacity of emissions from each battery stack for 24 hours and determine the daily average. A performance evaluation is also required to show that the COMS meets Performance Specification 1 in appendix B to 40 CFR part 60.

To demonstrate continuous compliance, plants would monitor opacity using the COMS and would determine and record the 24-hour average opacity of all recorded 6-minute measurements. Other operational requirements are based on requirements in the 40 CFR part 63 General Provisions. Monthly compliance reports would also be required.

F. What Are the Operation and Maintenance Requirements?

All plants subject to the proposed rule would be required to prepare and implement a written startup, shutdown, and malfunction plan according to the operation and maintenance requirements in 40 CFR 63.6(e). Operation and maintenance plans would also be required for: (1) By-product coke oven batteries, and (2) capture systems and control devices applied to pushing emissions from any coke oven battery.

The plan for general operation and maintenance of each by-product coke oven battery would cover:

- Frequency and method of recording underfiring gas parameters and battery operating temperature;
- Procedures to prevent pushing an oven out of sequence, pushing prematurely, and undercharging or overcharging; and
- Frequency and method for inspecting flues, burners, and nozzles.

The operation and maintenance plan for capture systems and control devices applied to pushing emissions would describe procedures for monthly inspections of capture systems, preventative maintenance requirements for control devices, and corrective actions requirements for baghouses. In the event of a bag leak detection system alarm, the plan must include specific requirements for initiating corrective action to determine the cause of the problem within 1 hour, initiating corrective action to fix the problem within 1 working day, and completing all corrective actions needed to fix the problem as soon as practicable.

To demonstrate initial compliance, plants would certify in their notification of compliance status that they have prepared the plans according to the rule requirements. To demonstrate continuous compliance, plants must adhere to the requirements in the plan and keep records documenting conformance with these requirements.

G. What Are the Notification, Recordkeeping, and Reporting Requirements?

The proposed notification, recordkeeping, and reporting requirements rely on the NESHAP General Provisions in 40 CFR part 63, subpart A. Table 1 to proposed subpart CCCCC shows each of the requirements in the General Provisions (§§ 63.2 through 63.15) and whether they apply.

The proposed rule requires the owner or operator to submit each initial notification in the NESHAP General Provisions that applies to them. An initial notification of applicability with general information about the facility must be submitted within 120 days of the effective date of the final rule (or for a new affected source, 120 days after becoming subject to the rule). A notification of performance tests must be provided at least 60 calendar days before each test. A notification of compliance status must be submitted within 60 calendar days of the compliance demonstration if a performance test is required or within 30 calendar days if no performance test is required. Other notification requirements that may apply are shown in Table 1 to subpart CCCCC.

The proposed rule requires plants to maintain the records required by the NESHAP General Provisions that are needed to document compliance, such as performance test results; copies of startup, shutdown, and malfunction plans and associated corrective action records; monitoring data; and inspection records. Except for the operation and maintenance plans for by-product batteries, capture systems, and control devices, all records must be kept for a total of 5 years, with the records from the most recent 2 years kept onsite. The proposed rule requires that both operation and maintenance plans be kept onsite and available for inspection upon request for the life of the affected source or until the affected source is no longer subject to the rule requirements.

Plants would make monthly reports of any deviation from the emission limits for battery stacks. For other affected sources, semiannual reports would be required for any deviation from an emission limitation (including an operating limit), work practice standard,

or operation and maintenance requirement. Each report would be due no later than 30 days after the end of the reporting period. If no deviation occurred and no continuous monitoring systems were out of control, only a summary report would be required. If a deviation did occur, more detailed information would be required.

An immediate report would be required if there were actions taken during a startup, shutdown, or malfunction that were not consistent with the startup, shutdown, and malfunction plan. Deviations that occur during a period of startup, shutdown, or malfunction are not violations if the owner or operator demonstrates to the authority with delegation for enforcement that the source was operating in accordance with the startup, shutdown, and malfunction plan.

H. What Are the Compliance Deadlines?

The owner or operator of an existing affected source would have to comply within 24 months of the effective date of the final rule. New or reconstructed sources that startup on or before the effective date of the final rule must comply by the effective date. New or reconstructed sources that startup after the effective date must comply upon initial startup.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Affected Source?

Affected source means the collection of equipment and processes in the source category or subcategory to which the emission limitations, work practice standards, and other regulatory requirements apply. The affected source may be the same collection of equipment and processes as the source category or it may be a subset of the source category. For each rule, we must decide which individual pieces of equipment and processes warrant separate standards in the context of the CAA section 112 requirements and the industry operating practices.

We considered three different approaches for designating the affected source: The entire coke plant, groups of emission points, and individual emission points. We did not designate the entire coke plant as the affected source because this broad approach would require us to establish the MACT floor by the total HAP emissions indicative of best-performing facilities. Applying a single MACT floor to groups of processes and fugitive emission points would be impracticable.

We concluded that designating the group of emission points associated with the coke oven battery as the affected source is the most appropriate approach. The battery is the basic operating unit for the emission points covered under the proposed rule, and the overall condition and operation of the battery has a direct effect on emissions from pushing, quenching, and battery stacks. This is also consistent with previous State and Federal rules for cokemaking operations.

In selecting the coke oven battery as the affected source for regulation, we identified the HAP-emitting operations, the HAP emitted, and the quantity of HAP emissions from the individual or groups of emission points. As a result, the proposed rule includes emission limits or standards for the control of emissions from pushing, soaking, quenching, and battery stacks.

B. How Did We Select the Pollutants?

Coke oven emissions are the dominant HAP emitted from pushing, soaking, quenching, and battery stacks. We decided to establish standards for opacity as a surrogate for coke oven emissions from pushing and battery stacks. For control devices applied to pushing emissions, we established standards for PM as a measure of the level of performance of the equipment.

Opacity limits have traditionally been used in State and Federal standards because of the strong correlation to PM. In addition, there is no practical way to capture and measure all of the specific HAP compounds in fugitive pushing emissions. Standards for opacity also limit coke oven emissions, and opacity provides a measure of battery performance in terms of minimizing the frequency of green pushes.

For control devices applied to pushing emissions, PM standards provide a meaningful measure of the device's level of performance, and PM is easily measured using EPA reference methods. The technologies that control PM achieve comparable levels of performance for coke oven emissions. Therefore, good control of PM will also generally achieve good control of coke oven emissions.

C. How Did We Determine the Bases and Levels of the Proposed Standards?

Pushing From By-Product Batteries with Vertical Flues

Coke oven emissions occur during pushing from incomplete coking, which results in a "green" push. Green pushes can be caused by overcharging an oven, cold flues due to plugging or poor combustion, non-uniform heating, and cold spots on the ends of ovens. Emissions from green pushes range from moderate (relatively small amounts of green coke) to severe (large amounts of green coke). Green pushes generate voluminous plumes of emissions that can overwhelm the capture systems which are used to control the comparatively small amounts of PM emissions during ordinary operation. Consequently, capture and control systems used for PM emissions from pushing are only marginally more effective, for example, no more than 10 percent for movable hoods on severely green pushes.

The most effective measures for purposes of reducing HAP emissions from pushing are to: (1) minimize the frequency of green pushes by implementing a preventative maintenance program for the battery, and (2) implement work practices that include diagnostic procedures to identify the cause of green pushes and to trigger corrective actions to prevent recurrence. Batteries that have implemented these procedures on a continuing basis have few green pushes and, thus, substantially lower levels of HAP emissions. Once such measures have been implemented, the remaining HAP benefits of capture and control are substantially lessened.

State and local regulations limit opacity from batteries during pushing using different formats. One of the most common formats is the average opacity of four pushes determined from the six highest consecutive opacity readings taken at 15-second intervals. This format is consistent with Method 9 in appendix A to 40 CFR part 60. Other batteries have opacity limits based on a single push, and some have limits based on any instantaneous opacity observation.

We obtained opacity data for pushing from State agencies and several coke plants with vertical flues. Although the data are in different formats, we were able to use the data to identify batteries that are low emitters and have only infrequent green pushes. We gathered additional opacity data from the low-emitting batteries that we had identified. An important part of the data collection effort was to use a consistent methodology for the opacity observations to allow us to compile all of the data on a uniform basis. The data were collected using EPA Method 9 and analyzed based on the six highest consecutive 15-second readings per push. Observations were made from the time coke began to fall from the oven until the quench car entered the quench tower.

We analyzed data from 15 well-controlled batteries at eight coke plants. The batteries have different combinations of oven height and type of underfiring systems. Eight are four-meter gun flue batteries, three are four-meter underjet batteries, and four are six-meter underjet batteries. The number of pushes observed for each battery ranges from 45 to 1,539 with a total of 3,630 data points. We examined the frequency of high opacity pushes and concluded that this group of batteries represents good performance in terms of minimizing green pushes. For example, the average opacity per push never exceeds 30 percent for nine of the short batteries, and the other two short batteries exceed 30 percent only once. Two of the tall batteries never exceed 35 percent, and the other two exceed it only once.

In general, the opacities during pushing for tall batteries are higher than those for short batteries. This is due to the longer flame height needed in tall batteries that makes uniform heating more difficult. In addition, the greater height of fall of the coke from a tall oven can result in more visible emissions. Consequently, we developed separate subcategories for short and tall batteries. We also examined underfiring systems and found no difference in the performance of gun flue and underjet systems.

We investigated the technology used at these good performing batteries to minimize the frequency of green pushes. This information was collected from site visits, discussions with industry experts, a survey of industry practices, and publications. There are two important components of the technology—routine operation and maintenance procedures for the general battery and a work practice program for green pushes.

A good operation and maintenance program includes several elements that help prevent green pushes. These include checking coal properties (bulk density and moisture) to prevent overcharging an oven or undercoking wet coal, checking flue temperatures and cleaning flues and burners to avoid cold flues, documenting coking time and following the pushing schedule to avoid pushing an oven early, and operating the underfiring system properly to ensure complete coking. When a green push occurs, diligent work practices are initiated to identify the cause of the green push and to take corrective actions to fix the problem. Corrective actions may include cleaning blocked flues or burners, placing an oven on an extended coking time, or repairing a damaged oven.

We conclude that batteries that are implementing this technology are successful in minimizing the frequency of green pushes. Furthermore, because at least 15 of 58 batteries (more than 12 percent) use these procedures, we conclude that this is the floor technology for fugitive emissions from pushing.

We also examined opportunities for a level of control beyond the floor. It is our opinion that capture and control systems applied to pushing emissions do not contribute materially to the control of HAP emissions from green pushes. Consequently, we conclude that the floor, which is based on the technology for minimizing the frequency of green pushes, represents MACT for new and existing sources.

We are proposing two distinct options for the implementation of standards and other requirements for pushing. One is an opacity standard, and the other is a work practice standard.[1] We are considering an opacity limit because most State regulations include opacity limits. We are considering a work practice standard because we believe that it may provide a more effective means of ensuring that proper corrective action is taken to avoid green pushes. We request comments on the two options. After consideration of comments on these options, we will promulgate one of these options or a combination of the two options.

The format for the proposed opacity limit is the average opacity of four consecutive pushes (based on the six highest consecutive 15-second observations during each push) using Method 9 in 40 CFR part 60, appendix A. This format can accommodate an occasional (unavoidable) green push if the other pushes are well controlled, and it is consistent with the 6-minute average (24 observations) typically used for Method 9.

We analyzed our database described earlier based on the averages of four pushes. For short batteries, more than 99 percent of the averages of four pushes are less than 20 percent opacity. For tall batteries, more than 99 percent of the averages of four pushes are less than 25 percent. The database shows that these opacities have been achieved by batteries using MACT, and these opacities are used as the standard for the opacity limit option.

We also considered an opacity limit based on a 30-day rolling average. However, a 30-day rolling average does not provide a good distinction between well-controlled and poorly-controlled batteries, and it is not effective in achieving our goal of minimizing green pushes.

The proposed work practice standard has an opacity level per push that triggers diagnostic procedures and corrective actions when exceeded. We chose the average opacity per push rather than averaging over multiple pushes because the goal of the work practice standard is to identify a problem oven that produces a green push. Once a problem oven is identified, diagnostic procedures to determine the cause are initiated and corrective actions are taken to fix the problem.

We analyzed our data for the group of well-controlled batteries previously described based on the average opacity per push to characterize the frequency of green pushes. We examined potential trigger levels of 20, 25, 30, and 35 percent. The batteries that were well-controlled have several pushes that exceed 20 and 25 percent, and we do not believe that these opacities represent a green push. However, opacities of 30 and 35 percent occur when there are high individual opacity readings characteristic of green coke. In addition, these opacities are seldom exceeded by well-controlled batteries. Nine of the short batteries do not exceed 30 percent opacity, and the other two exceed 30 percent only once. Similarly, two of the four tall batteries do not exceed 35 percent opacity, while the other two exceed 35 percent once. Consequently, we selected opacity triggers of 30 percent for short batteries and 35 percent for tall batteries. These levels are appropriate as a trigger to identify a problem oven and to initiate corrective actions.

We also considered what amount of time would be appropriate to investigate the cause of a green push, perform repairs or corrective actions, and demonstrate that the problem has been corrected. We decided that the time limit should be based on a number of pushes to compensate for differences in coking time for furnace and foundry coke batteries. We believe 15 pushes is a reasonable estimate of the maximum time required after considering that about half of the pushes can occur at night when it is more difficult to assess greenness and impossible to perform Method 9 observations. We transformed the estimate of 15 pushes to a number of days to be calculated from the battery's coking time (15 pushes × coking time in hours/24 hours = 0.63 × coking time).

[1] CAA section 112(h) allows the establishment of work practice standards in lieu of emission standards when pollutant specific emission standards are not feasible (such as in the case of fugitive pushing emissions when they are not captured and confined in a conveyance).

We selected EPA Method 9 in 40 CFR part 60, appendix A, for opacity observations to be consistent with the test data used to develop the proposed standard. We chose initial compliance provisions that would use this method for both the emission limit option (Option 1) and the work practice standard (Option 2). For the emission limit option, four consecutive pushes must be observed using EPA Method 9. Initial compliance is demonstrated if the average for the four pushes is below the limit.

For the work practice option, initial compliance is demonstrated through observation of the four requisite pushes. If any push exceeds its opacity trigger, the oven-directed procedures must be implemented to demonstrate initial compliance.

Daily vigilance is required to prevent green pushes and to take corrective actions when they occur. Consequently, we conclude that daily inspection of four consecutive pushes per battery would be needed to demonstrate continuous compliance and to ensure that green pushes were identified. Compliance with the opacity limit option must be determined daily.

The work practice option also requires the daily inspection of four consecutive pushes per battery to demonstrate continuous compliance. If the opacity trigger is exceeded for any push, continuous compliance must be demonstrated by diagnosing the cause of the problem, assigning the problem oven to the oven-directed program, taking appropriate corrective actions, and demonstrating that the problem has been corrected by two subsequent opacity observations that are below the trigger.

• Pushing From By-product Batteries With Horizontal Flues

The vast majority of by-product batteries in the U.S. have vertical flues (56 out of 58 batteries). Two batteries in Holt, AL, however, have horizontal flues that materially affect pushing emissions and possible approaches to regulation. Both are Semet Solvay batteries with an antiquated design built in the early 1900's. Battery 1 was built in 1903 and is comprised of 40 ovens, and Battery 2 was built in 1913 and has 20 ovens. We are establishing a subcategory for batteries with horizontal flues because of unique physical and operational differences from vertical flue batteries.

Unlike vertical flue batteries which include 25 to 37 individual flues along each oven wall, the flue system of the Semet Solvay design includes only five horizontal flues which convey the combustion gases from top to bottom in serpentine fashion. Because the hot combustion products flow from one flue to the next, the heat control of each upper flue materially affects the heating conditions in the next flue down. Each flue in the horizontal design affects a larger percentage of the total coke mass than for the vertical flue design. Consequently, the occurrence of a heating or combustion problem in any of the single horizontal flues could have a significant adverse effect on the degree and uniformity of coking across the entire length of the coke bed.

As with other types of coke oven batteries, the primary source of HAP emissions from batteries with horizontal flues is the occurrence of green pushes. To develop MACT for batteries with horizontal flues, we visited the plant and held discussions with plant personnel to learn more about their operation and how the production of green coke could be minimized. Both existing batteries currently use a combination of coking time and flue temperature controls and routine operation and maintenance to control HAP emissions. The most important factor affecting the production of green coke is a combination of coking time and flue temperature. If the flue temperature is too low at a given coking time, green coke will be produced. Consequently, we find that monitoring flue temperatures and coking time and taking corrective actions if the temperature is too low is the MACT floor for batteries with horizontal flues. Temperature measurements are made prior to the push, and if a low temperature is detected, the coking time is extended to prevent a green push. Routine operation and maintenance include monitoring underfiring gas parameters and adjusting as necessary; implementing procedures to avoid pushing out of sequence, pushing prematurely, or overcharging an oven; and routine inspection of flues, burners, and nozzles. We know of no practical approach to setting an emission limitation that could be feasibly implemented or enforced that would result with the same degree of assurance in emission reductions to that achieved by these work practices. Consequently, these work practices are also the MACT floor for new units.

We are proposing a work practice standard for batteries with horizontal flues. The standard implements MACT by requiring that the temperature of all of the flues on two ovens in each battery be measured each day, and that the temperature of all flues in each oven must be measured at least once per month. The plant must perform a study to establish minimum flue temperatures to prevent green pushes, and the results must be documented in a plan that is submitted for approval to the applicable permitting authority. The study must include consideration of different means for determining the minimum flue temperatures, such as the percent volatile matter in the coke, the color of emissions, the density and duration of emissions, and whether emissions continue during quench car travel. The study must also establish the time and lowest acceptable minimum temperature correlation for which extended coking can be used. This minimum represents the lowest temperature at which coal can reasonably be expected to be fully coked no matter how long the coking time is. If flue temperatures fall below this minimum, the oven must not be charged with coal again until the problem is corrected.

If the flue temperatures are less than the established minimum for the oven's coking time, the coking time of the oven must be extended by an amount prescribed in the plan prior to pushing to prevent a green push. Oven-directed procedures must be used to find the cause of the low temperature and to correct the problem. The flue temperatures must be measured on any oven placed on extended coking prior to the next two consecutive pushes to ensure that the problem has not worsened. If any flue temperature is below the lowest minimum for complete coking established in the plan, the oven must be removed from service.

We developed initial compliance provisions that are consistent with the work practice standard. We require that the work practice plan and supporting documentation be submitted to the applicable permitting authority for review and approval. As part of a plant's notification of compliance status, we require a signed statement certifying that the flue temperatures of two ovens will be measured each day, and the flue temperatures on all ovens will be measured at least once per month.

Daily vigilance is required to prevent green pushes and to take corrective action when they occur. Consequently, we conclude that daily measurements of the flue temperatures of two ovens per battery would be needed to demonstrate continuous compliance. In addition, temperature measurements must be made on each oven at least once per month. We require that a plant keep all necessary records documenting conformance with the work practice plan and that the records be made available to the permitting authority upon request.

• Pushing From Non-recovery Batteries

Non-recovery coke oven batteries differ from by-product coke oven batteries both physically and operationally. Physically, the ovens that comprise non-recovery batteries are horizontal in configuration (short and wide) unlike the vertically configured slot ovens (tall and narrow) used in the by-product recovery design. In addition, non-recovery batteries have no underfiring systems and do not burn clean coke oven gas for heating. Rather, non-recovery batteries are heated by the complete combustion of the raw gases evolved during the coking process in the free space above the coke bed and in flues in the oven walls and floors.

The principal difference operationally is that the non-recovery batteries are maintained at all times under negative pressure rather than positive pressure. This results in the virtual elimination of door leaks and, relative to limiting pushing emissions, allows for the visual inspection of the coke mass throughout the coking cycle including just prior to pushing. If the coal is not fully coked, the coking time can be extended to avoid a green push. In addition, PM emissions are lower from non-recovery ovens because the height of fall of the coke mass is about 50 percent less than that of by-product ovens. Based on these dissimilarities and their effect on emissions, we conclude that it is appropriate to establish separate requirements for non-recovery batteries.

There are two non-recovery coke plants in the U.S., one in Vansant, VA with six batteries and another in East Chicago, IN with four batteries. Both plants have cokeside sheds. At the Vansant plant, the sheds act as large settling chambers with no ventilation. The four East Chicago batteries are equipped with sheds that are ventilated along the entire length of the battery to baghouses for particulate control.

The MACT floor for non-recovery batteries is based on the control measures used at both plants to prevent green pushes. Prior to each push, a small door (oven damper) on the oven is opened, and the bed of coke is observed to determine whether it is fully coked. This is possible because the oven configuration provides an unobstructed view of the free space across the entire length of the coke bed. If the oven is not fully coked (as indicated by smoke or an obstructed view of the opposite side of the oven), the coking time is extended, and the oven is not pushed until coking is reasonably complete. We believe that this pollution prevention control measure provides the most effective demonstrated approach to reducing, if not virtually eliminating green pushes. Therefore, we conclude that the inspection of each oven prior to pushing, coupled with extended coking if needed, constitutes the floor technology for both new and existing non-recovery coke oven batteries. We know of no practical approach to setting an emission limitation that could be feasibly implemented or enforced that would result with the same degree of assurance in emission reductions to that achieved with a work practice standard.

To implement MACT, we selected a work practice standard to minimize the frequency of green pushes that requires use of the control measures associated with the MACT floor. Specifically, each oven must be inspected prior to each push, and ovens may be pushed only if there is no smoke in the open space above the coke bed and there is an unobstructed view of the door on the opposite side of the oven. If these conditions do not exist (indicating incomplete coking), the coking time must be extended.

We developed initial compliance provisions that are consistent with the work practice standard. As part of a plant's notification of compliance status, we require a signed statement certifying that each oven will be inspected prior to pushing and that the oven will be pushed only if coking is complete.

We developed continuous compliance provisions to ensure that plants keep all necessary records verifying that each oven is inspected prior to pushing, and that ovens are pushed only if coking is complete. We require that records be made available to the permitting authority upon request.

• Capture and Control Systems

In addition to good operating and maintenance practices to prevent green pushes, most batteries are equipped with capture and control systems for routine PM emissions from pushing. There are 30 control devices applied to pushing emissions at 56 coke oven batteries, and there are three combinations of capture and control systems used. The most common capture system is a moveable hood. There are 19 moveable hood systems. Sixteen moveable hood systems serving 30 batteries are vented to a baghouse, and three systems serving four batteries are vented to a venturi scrubber. There are 15 batteries equipped with cokeside sheds that enclose the entire length of the battery and are served by six baghouses. There are six batteries equipped with cokeside sheds that serve as settling chambers and are not ventilated. Seven batteries are equipped with mobile scrubber cars which transport venturi scrubbers. Six batteries do not have capture and control systems.

Most of these capture and control systems were installed as a result of State implementation plan requirements to limit PM emissions in nonattainment areas. Most HAP emissions from pushing occur as a result of pushing moderately green to severely green coke. During such an event, capture systems designed and installed primarily to address routine PM emissions from non-green pushes are typically overwhelmed. Visual observations indicate that the capture efficiency during a moderately to severely green push is poor with significant amounts of fume and smoke escaping capture both during the actual push and during quench car travel. The only control measure that has been demonstrated to be effective at mitigating these emissions is eliminating or minimizing the frequency of green pushes.

While it is reasonable to expect that the current use of capture and control systems for purposes of reducing PM emissions also results in some HAP emission benefits, we do not have sufficient data regarding capture effectiveness to quantify these benefits. However, any HAP emission benefits from the use of capture and control equipment must result primarily from the reduction of emissions during moderately to severely green pushes (when significant amounts of HAP emissions typically occur). Accordingly, any HAP emission benefits of capture and control systems are rendered less significant (and less certain) by the adoption of requirements aimed at eliminating or minimizing the frequency of green pushes. That is, when a coke mixture is fully coked (i.e., in the absence of green pushes) there are very little HAP emissions during pushing, because most HAP have been removed from the coke mixture and converted to other useful products through a by-product recovery process or combusted in order to provide heat energy for the coking process. Therefore, very little HAP emissions are captured and, overall, there is no significant additional reduction in the emissions of HAP. Consequently, we are unable to identify HAP emission benefits that would be useful for purposes of evaluating the individual or relative performance of different types of capture and control equipment applied to pushing. For these reasons, we do not believe that it is appropriate at this point to include capture and control systems as a

component of the MACT floor for pushing.

Nonetheless, we believe that it is appropriate for owners and operators of coke oven batteries to operate such facilities, at all times, in a manner consistent with good air pollution control practices. We believe that this includes the proper operation of any capture and control systems. Therefore, we believe that it is appropriate for us to establish requirements to ensure proper operation of such systems and to ensure that these control devices perform within reasonable limits wherever such systems are installed. Such operational limitations will help to minimize emissions from coke oven batteries to the level contemplated by the MACT floor, by mitigating the impact of occasional green pushes. Accordingly, it is appropriate for these limits to differ depending on the type of capture system being used.

We believe that the best measure of proper operation for capture and control equipment is emissions performance. Therefore, in order to ensure proper operation of such equipment, we are proposing emission performance requirements for capture and control equipment applied to pushing.

We considered the design and operation of the capture and control systems in developing emission limits. Two important distinctions evident between moveable hoods and cokeside sheds are their method of operation and ventilation rate. Sheds are ventilated at all times while moveable hoods are ventilated only during pushes (about 2 minutes every 10 to 20 minutes). Sheds have much higher ventilation rates (150,000 to 480,000 actual cubic feet per minute (acfm)), and they capture emissions from door leaks as well as pushing. Another difference is that many moveable hood systems mix cooling air with the hot gases from pushing prior to treatment in a baghouse. These differences can have a significant influence on the selection of the format most appropriate for the type of capture and control system regulated.

Most moveable hood systems are subject to existing PM emission limits expressed in lb/ton of coke pushed. This format is more appropriate than a concentration format (gr/dscf) for several reasons. Both pounds emitted and the quantity of coke produced during an EPA Method 5 (40 CFR part 60, appendix A) test run can be determined with reasonable accuracy while sampling over several pushes. These measurements are not dependent on how long the ventilation fan is running before or after the push or the amount of ambient air that is admitted to cool the gases prior to the baghouse. On the other hand, concentration is not a meaningful measure of performance for this type of system because the resulting measurement can be quite variable depending on how the system is operated and when sampling is started and stopped. For example, if the fan runs longer or more cooling air is admitted, the resulting concentration measurement will be lower. Consequently, we selected a lb/ton format as the most appropriate for moveable hood systems that ventilate only during the push.

A concentration format is more appropriate for cokeside sheds than a lb/ton format. Because cokeside sheds ventilate continuously and capture emissions from points other than pushing, performance is much less dependent on the quantity of coke pushed. In this case, concentration can be determined with reasonable accuracy because the ventilation rate is continuous and relatively constant. In addition, concentration has been used in many State and Federal regulations because it has been shown to be one of the best measures of control performance for a baghouse, which is the type of control device used on sheds. For these reasons, we conclude that a concentration format (gr/dscf) is the most appropriate for control devices used on cokeside sheds.

We have source test data for three of the six coke plants that use cokeside sheds and baghouses. The data consist of three individual test runs per baghouse. All three baghouses are similar in design and operation (i.e., pulse jet units with polyester bags, operated at air-to-cloth ratios of 5 to 5.5 acfm/ft_2). The test results for one plant range from 0.001 to 0.004 gr/dscf and average 0.003 gr/dscf. The three runs conducted at another plant range from 0.003 to 0.004 gr/dscf and average 0.004 gr/dscf. Results for the third plant range from 0.002 to 0.003 gr/dscf and average 0.002 gr/dscf. Considering that all three baghouses are designed and operate similarly, the highest three-run average recorded is 0.004 gr/dscf, and no individual test run exceeded 0.004 gr/dscf, we conclude that an appropriate limit for the proposed standard is 0.004 gr/dscf. This limit accounts for variability in the performance of the control technology and represents the level of performance that has been demonstrated to be achievable by these units using the MACT.

As discussed previously, the most common capture and control system for pushing emissions is a moveable hood that is ducted to a stationary (land-based) control device, usually a baghouse. These systems have a hood that is usually moved along the battery by a belt system. During pushing, the moveable hood is connected to a fixed duct that evacuates the gases to the stationary control device. Evacuation rates range from about 100,000 to 150,000 acfm. Some of these systems cool the hot gases from pushing by mixing with ambient air prior to the baghouse.

We have test data on control devices serving 12 of 19 moveable hood systems, 12 are baghouses and one is a land-based venturi scrubber. The baghouses are mostly pulse jet units and operate at air-to-cloth ratios of 5 to 6 acfm/ft_2. The venturi scrubber is a medium to high energy unit, operating at a pressure drop of 50 to 60 inches of water.

The test results for the 12 systems are quite variable from plant to plant and among individual runs at a single plant. Five of the tests averaged less than 0.010 lb/ton, and eight averaged 0.010 to 0.017 lb/ton. The two baghouses with the highest three-run averages averaged 0.016 and 0.017 lb/ton, respectively. Both are pulse jet units that are similar in design and operation to the other baghouses with lower recorded average emissions. Since we are unable to draw any meaningful distinctions between the lower and higher emitting units, we can only conclude that the higher test results represent normal variability under a reasonable worst situation. Therefore, we conclude that a limit of 0.017 lb/ton is appropriate for a standard for a moveable hood vented to a stationary control device, and we have selected this limit for such units.

Mobile scrubber cars are operated at five plants and serve seven batteries. During pushing, the hood is positioned above the quench car, the scrubber car air mover is activated, and the gases are pulled through the scrubber and are subsequently discharged to the atmosphere. Two of the five scrubber cars that serve three batteries have the hood affixed to the mobile scrubber car which is coupled to the quench car. This allows operation and capture both during pushing and travel to the quench tower. The other three scrubber cars serving four batteries have hoods affixed to the coke guide and door machine and cannot travel to the quench tower. Ventilation rates are on the order of 40,000 to 70,000 acfm. These rates are about half those used for the moveable hoods with land-based controls.

We have test data for all five mobile scrubber cars. The test data indicate that emissions, expressed in lb/ton of coke, are affected by both oven size, and whether emissions are captured only

during pushing or during pushing and travel. The test data indicate that mass rate (lbs/hr) emissions are not affected materially by oven size. However, since six-meter batteries produce about twice as much coke per oven as do smaller four-meter batteries, emissions, adjusted for production, must of necessity be substantially lower for tall batteries than for short batteries.

When emissions are captured during pushing and travel as opposed to pushing only, the scrubber operates on average about 1.5 to 2 minutes longer than for pushing only (about 1.5 minutes). Operating capture and control equipment for a longer time will result in more PM collected per pushing event and thus, of necessity, result in a higher value in the lb/ton format for pushing and travel versus pushing only. Consequently, we are developing emission limits for mobile scrubber cars to accommodate three variations that affect emissions: Tall batteries, short batteries, and batteries that capture during both pushing and travel.

We have data from five tests of two identical scrubber cars that serve two six-meter batteries at the Gary, IN plant. These five tests include three runs each and were conducted over a 15-year period spanning 1982 to 1997. The three-run averages range from 0.002 to 0.010 lb/ton. The average value is 0.005 lb/ton. Considering the variability in three-run averages, we conclude that an appropriate limit for tall batteries with mobile scrubber cars, as evidenced by the test data obtained for the Gary plant, is 0.010 lb/ton which is the highest three-run average recorded.

We have data from three tests of a scrubber car that does not capture during travel and serves two short batteries at a plant in Erie, PA. These three tests are comprised of two runs per test and span 3 recent years. The two-run averages are 0.015, 0.017, and 0.023 lb/ton. Given that we have no basis to conclude that the variation shown in these results represents anything other than normal variability, we conclude that an appropriate limit for short batteries with mobile scrubber cars is 0.023 lb/ton. This limit has been demonstrated achievable during three separate tests over a 3-year period.

We have data for three batteries served by two scrubber cars that capture and control emissions during both pushing and travel at plants in Warren, OH and Granite City, IL. Two tests at one battery averaged 0.011 to 0.026 lb/ton, and three tests conducted on a scrubber car serving two batteries averaged 0.026 to 0.039 lb/ton. These scrubber cars are similar in design and operation, and both capture emissions during travel to the quench tower. Considering the similarity in operation of the scrubber cars and the variability in three-run averages, we conclude that an appropriate limit for mobile scrubber cars that also capture and control emissions during travel is 0.039 lb/ton. This limit has been achieved during five tests conducted at three batteries over a 20-year period.

We chose initial compliance provisions that require EPA Method 5 in 40 CFR part 60, appendix A, to determine compliance. Operating limits for scrubbers (pressure drop and scrubber water flow rate) and capture systems (volumetric flow rate or fan amperes) must be established during the initial compliance test. The pressure drop and water flow rate for scrubbers must be measured at least once per push during each run of the initial compliance test and averaged across each run. The operating limits are the lowest average values during any run that meets the applicable emission limit. The volumetric flow rate or fan amperes must be recorded for each push during each run of the initial compliance test. The operating limit is the second lowest value recorded during any run that meets the applicable emission limit.

To demonstrate continuous compliance with the emission limit, we require PM tests no less frequently than twice (at mid-term and renewal) during each term of the title V operating permit. We believe this frequency is appropriate because we are requiring continuous or periodic monitoring of capture and control systems to ensure they are operating properly. For baghouses, we chose continuous monitoring by a bag leak detector to ensure that corrective actions are taken when a leak occurs. The alarm must not sound for more than five percent of the operating hours in a semiannual reporting period. For scrubbers, we require that the pressure drop and scrubber water flow rate be monitored during each push to ensure that they are within the operating limit established during the initial performance test. The volumetric flow rate or fan amperes must be checked every 8 hours to ensure the capture system continues to operate as it did during the initial performance test.

- Soaking

Emissions from soaking are most pronounced when green coke is produced. Consequently, the technology for fugitive pushing emissions that minimizes the frequency of green coke will also reduce emissions from soaking. However, most batteries also perform other procedures that reduce emissions from soaking.

We reviewed the work practices at well-controlled batteries to determine the MACT floor for soaking operations. Most batteries have work practices in place to ensure that the gases from open standpipes are ignited during soaking. For example, survey responses show that 26 of the 58 by-product batteries (more than the top 12 percent) have procedures to manually ignite the gases from the standpipe if they do not self ignite. Consequently, we determined that the floor and MACT for soaking for both new and existing units are a work practice standard that ensures that gases vented from the oven are ignited. We chose a time limit of 3 minutes after the standpipe cap is opened to manually ignite if necessary because it provides sufficient time for the topside worker who opened the standpipe to ignite the gases. Compliance is demonstrated through the maintenance of records that document conformance.

- Quenching

Quenching emissions escape through quench towers with huge steam plumes that are released when hot incandescent coke is deluged with water. It is not feasible to capture or measure these emissions. Consequently, as allowed under section 112(h) of the CAA, we developed a quenching standard that is based on design, work practice, and operational requirements.

We reviewed all current State regulations for quenching and determined that all quench towers are subject to design and operational standards. Most regulations prohibit the use of untreated wastewater as make-up water for quenching, require the use of baffles for grit elimination, and include minimum specifications for baffle coverage. These requirements are consistent with our objectives to eliminate the use of dirty hydrocarbon-laden water (as make-up water for quenching) and to improve grit elimination.

Most States also limit total dissolved solids (TDS) in the make-up water used for quenching. The TDS limits range from 500 to 1600 milligrams per liter (mg/L). We believe that a TDS limit is unnecessary to control HAP emissions during quenching because the primary contributor of HAP emissions during quenching is wastewater contaminated with organics from the by-product plant, and solids in the wastewater are not a source of HAP emissions except for trace metals.

We surveyed all coke plants to determine what plants are doing to control quenching emissions. We found

that more than the top 12 percent were implementing specific work practices and equipment requirements. Of the 43 existing quench towers, 40 have baffles, 22 have the baffles cleaned daily, 21 are subject to a TDS limit, 18 have the baffles inspected monthly, and at least 12 have baffles that cover 95 percent or more of the cross sectional area of the tower. Although only four of the eleven States with coke plants ban the use of untreated wastewater, no plants currently use untreated wastewater as make-up water for quenching.

Based on our assessment of the survey results, we conclude that the MACT floor is as follows: (1) Using clean water (i.e., a prohibition of the use of untreated wastewater) as make-up water for quenching, (2) installing baffles that cover at least 95 percent of the cross sectional area of the quench tower (i.e., no more than 5 percent of the cross sectional area of the tower may be uncovered or open to the sky), (3) cleaning baffles daily, (4) inspecting baffles monthly for damaged or missing baffles and blockage, and (5) repairing or replacing any damaged or missing baffles within 1 month. A TDS limit is not included in the MACT floor because we do not believe one is necessary as discussed previously. No plants implement control measures more stringent than this floor, and no such more stringent controls are available and practicable. Consequently, there is no technology beyond the floor. We conclude that the floor is MACT for existing plants and for new plants since the best controlled similar plants are existing plants that implement MACT.

The standard for quenching prohibits the use of untreated wastewater (i.e., dirty water) as make-up water for quenching and requires the installation and maintenance of baffles.

We developed initial compliance provisions that are consistent with the design, work practice, and operational requirements. As part of a plant's notification of compliance status, we require a signed statement certifying that: (1) Only clean water will be used as make-up water for quenching, (2) each quench tower is equipped with baffles that cover at least 95 percent of the cross sectional area of the tower, (3) the baffles will be cleaned at least daily, (4) each quench tower will be inspected monthly for damaged or missing baffles and blockage, and (5) all necessary repairs will be made and any damaged or missing baffles will be repaired or replaced within 1 month (i.e., before the next inspection).

We developed continuous compliance provisions to ensure that plants keep all necessary records verifying that baffles are maintained. The records must be available at any time for inspection.

- Battery Stacks

There are 53 battery stacks that serve 58 batteries. Five plants have a pair of batteries served by one stack, and all other stacks are associated with a single battery. Battery stack emissions occur when raw coke oven gas leaks through oven walls into flues and when there is poor combustion in the underfiring system. Emissions from stacks are usually most noticeable when ovens are charged with coal. Elevated opacity values occur due to the substantial and sudden increase in oven pressure and the resulting leakage of raw coke oven gas into the flue system. The intensity and duration of the in-leakage and impact on stack opacity is a direct result of the physical condition of the oven walls and presence of sealing carbon.

Coke oven emissions from battery stacks are controlled by good operation and maintenance which includes using a COMS in the stack. Good operation and maintenance involves identifying problem ovens that produce high stack opacity emissions when ovens are charged, diagnosing problems, and repairing ovens or adjusting the underfiring system. No batteries currently use add-on control devices for control of emissions from battery stacks.

Most State and local regulations include opacity limits for battery stacks. Examples are 20 percent opacity on six-minute averages, 20 percent opacity for 3 minutes per hour with a cap of 60 percent, and 30 percent opacity with a cap ranging from 30 to 60 percent for 8 minutes per hour. Many require the operation of COMS for diagnostic purposes and as performance indicators. Some States and local agencies also require the use of COMS for continuous compliance determinations.

Based on information from an industry survey and site visits, we determined that the batteries in Burns Harbor, IN and Clairton, PA use good operation and maintenance coupled with COMS to control stack emissions. These data represent the performance of 10 batteries—two at Burns Harbor and eight at Clairton. Battery stacks at both plants use COMS that trigger an alarm when the opacity suddenly increases. The oven that is charged when the alarm sounds is investigated for flue leakage and combustion conditions (flame characteristics, gas pressure, stack draft), and corrective actions are taken as needed. Minor repairs may include spray patching or silica dusting; and if the problem is severe, the oven may be taken out of service for more rigorous repairs including ceramic welding, brick replacement, or repair of the entire oven (e.g., end flue or through wall repairs).

Routine and preventative maintenance are also important control measures and include a daily inspection of flues and walls, cleaning gas piping, checking the reversing mechanism and flue combustion, and measuring flue temperatures. If the removal of excess carbon results in inadequate carbon to seal cracks, the oven wall is sprayed before being charged with coal.

Based on the control measures used by the top 12 percent of units for which we have data, the control measures associated with the MACT floor are good operation and maintenance (as described above) combined with COMS.

No plants implement control measures more stringent than this floor. For example, no plants currently use add-on control devices to treat the emissions from the battery stack. Consequently, we conclude that this is the MACT floor for both new and existing units.

In order to determine what emission limitation is achievable using the control measures associated with the MACT floor, we examined available opacity data for the units using these measures. We analyzed data for batteries with various underfiring systems and battery heights. Specifically, we analyzed data for two tall (six-meter) batteries at a coke plant in Burns Harbor, IN. Data for one tall battery cover a continuous period of 50 months, and data for the other tall battery cover a continuous period of 65 months. We also analyzed data for an 18-month period for eight batteries at another plant in Clairton, PA (seven short four-meter batteries and one tall battery).[2] The daily average opacity rarely exceeds 15 percent for any battery. These data

[2] We also analyzed COMS data for four batteries at a plant in Gary, IN. We did not use these data, however, because we do not believe they represent periods of good systematic operation and maintenance associated with MACT. Some periods of several days of high opacity were documented as caused by cracks or holes in a single oven's walls. Good operation and maintenance would have resulted in the oven being repaired or taken out of service rather than continuing for several days. We found that several days of COMS readings that had not been flagged as invalid were due to a COMS malfunction. Other high opacity readings exist for these batteries, and while we do not have specific information concerning the cause of other such readings, we expect (based on the above information) that they may have been due to problems with the COMS, or other operation and maintenance issues. In any event, the information available to EPA suggests that these batteries did not consistently utilize the operation and maintenance techniques associated with the MACT floor. For these reasons, we do not believe the data for these batteries should be included in the MACT floor analysis.

indicate that each of these batteries is well controlled for stack emissions.

These batteries are representative of the various types of batteries in the U.S. in terms of oven height, types of underfiring systems, and battery age. They include both underjet and gun flue systems, oven heights that range from four to six meters, and battery ages from 6 to 46 years. The data also include temporal effects because they cover at least a 1-year period, and for two batteries cover a 4- to 5-year period.

We examined the data to determine if there are differences in performance associated with oven height and type of underfiring system. Seven short batteries averaged 1 to 4 percent opacity, and three tall batteries averaged 3, 4, and 5 percent opacity. The average opacities of the short and tall batteries overlap, and there is no significant difference in the level of control that is achieved. Similarly, there is no difference in performance between underjet and gun flue underfiring systems.

We evaluated several averaging times to determine an appropriate one for the standard. We determined that conventional short-term averaging times (such as 6-minute averages) are not appropriate for implementing good operation and maintenance. For example, problems with ovens or combustion systems can develop unexpectedly and lead to short-term high opacity events. A longer averaging time is needed to allow adequate time to diagnose the problem and to take corrective actions.

We also evaluated an averaging time based on a 30-day rolling average, which is consistent with the format used in the existing NESHAP for coke oven batteries (40 CFR part 63, subpart L). However, averaging over a 30-day period results in opacity limits of 10 percent or less. The average opacity would be dominated by many very low opacity readings, and the errors in COMS readings at low opacities can have a significant effect on the 30-day average.

After analyzing the COMS data using different averaging times, we selected a daily averaging time as the most appropriate format for the standard. The data show that with few exceptions a daily average limit of 15 percent opacity has been achieved by the ten MACT batteries 99.7 percent of the time.

Data for five batteries at the Clairton, PA plant indicate that stack opacity increases when batteries are placed on extended coking time. The average opacities for batteries on extended coking are approximately twice those of batteries on a normal coking time. This results from less formation of protective sealing carbon that seals small cracks in the oven walls. Battery-wide extended coking is a relatively rare event and is used primarily when the demand for coke drops. We developed a daily average limit of 20 percent opacity for batteries on extended coking to reflect the level achievable by MACT batteries.

We define extended coking as an increase of 25 percent or more in the normal coking time, based on data for one of the Clairton, PA batteries which showed an increase in stack opacity when the coking time was extended from 18 to 23 hours, an increase of about 25 percent. Data for three other batteries also in Clairton showed an increase in opacity when the coking time was increased from 18 to 36 hours.

We considered developing procedures for an alternative opacity limit in the event a battery has implemented all of the components of MACT and cannot achieve the opacity standard. Such an approach would be similar to the adjustment to an opacity emission standard allowed in § 63.6(h)(9) of the NESHAP General Provisions. However, we have been unable to develop criteria that would be used to allow an alternative opacity limit. We are requesting comments on appropriate criteria and supporting rationale.

We also conclude that MACT for new plants is the same as MACT for existing plants since the best-controlled similar plants are existing plants that implement MACT.

We considered whether there were any reasonable options available for above-the-floor controls for battery stacks during either regular or extended coking. As indicated above, no units currently use any other control measures, such as add-on controls,[3] and we don't believe that add-on controls would provide additional HAP reductions significant enough to justify the installation and operational costs.

Therefore, we are proposing the MACT floor limits, daily average limits of 15 percent opacity for batteries on a normal coking time and 20 percent for batteries on an extended coking time, as MACT for both new and existing batteries.

We require COMS because they are a part of the technology associated with MACT and provide a means of measuring opacity and showing continuous compliance. We selected the initial compliance provisions to be consistent with the format of the standard, which is a daily average opacity limit. Opacity measurements must be made with a COMS, and the daily average opacity must be determined. Compliance is demonstrated if the daily average does not exceed 15 percent for a battery on a normal coking cycle or 20 percent for a battery on extended coking.

We selected a daily compliance determination to show continuous compliance because it is consistent with the derivation of the limit and is the approach used for other coke battery emission points regulated under the existing NESHAP for coke ovens (40 CFR part 63, subpart L). Each day, a new daily average is calculated from a continuous record of stack opacity provided by the COMS.

D. How Did We Select the Operation and Maintenance Requirements?

Routine operation and maintenance for the batteries, capture systems, and control devices prevent excess emissions. We collected information from batteries that are well-controlled for pushing and stack emissions from industry surveys, site visits, and consultation with industry experts. For example, we obtained details on the battery preservation program used at a coke plant in Clairton, PA. Subsequently, we developed a list of the operation and maintenance procedures that are applicable to all batteries including routine oven repairs; maintaining the combustion system (inspection of flues, temperature measurements, monitoring air and fuel flow rates); control of coal quality; ensuring complete coking; and preventative maintenance for capture systems and control devices.

E. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

We selected the notification, recordkeeping, and reporting requirements to be consistent with the NESHAP General Provisions (40 CFR part 63, subpart A). Monthly reports for battery stacks and semiannual reports for other affected sources would also be required. A summary report would be submitted if no deviation occurred; more detailed information must be included if a deviation occurred; a monitoring system was out of control; or there was a startup, shutdown, or malfunction event. An immediate report would be required if actions taken to respond to a startup, shutdown, or malfunction were not consistent with the procedures in the startup,

[3] We note that during the 1970's and 1980's, several batteries used add-on control devices (electrostatic precipitators or baghouses) to control particulate matter emissions from battery stacks. The use of thse devices was subsequently terminated as a result of several plant closures and the increased use of desulfurized coke oven gas.

shutdown, and malfunction plan. The records required by the proposed rule are the minimum needed to demonstrate continuous compliance.

IV. Summary of Environmental, Energy, and Economic Impacts

A. What Are the Air Quality Impacts?

Accurate emission estimates are difficult to make, especially for fugitive pushing emissions. When green pushes occur, most of the organic HAP escape the capture system and are unmeasurable. Our estimate for pushing emissions is based on our best estimates of the capture efficiency and frequency of green pushes. For battery stacks, we have opacity and emissions data for the best-controlled batteries. We had to extrapolate the test data to account for higher emissions from batteries with higher battery stack opacities.

Based on these approaches, we estimate that the proposed rule would reduce coke oven emissions, measured as methylene chloride extractable organic compounds, from pushing, quenching, and battery stacks to approximately 500 tpy from a baseline level of about 1,000 tpy. The proposed rule would also reduce emissions of other HAP, such as metals, benzene, toluene, and other volatiles that are not included with the extractable organics. Emissions of PM would also be reduced.

B. What Are the Cost Impacts?

As with the emission estimates, there is uncertainty in the cost estimates. However, we obtained data from the best controlled plants for their emission controls, oven repairs, and work practices. We then applied these costs to those batteries that we estimate would be impacted by the proposed rule. We estimate that five batteries would incur capital costs to rebuild ovens to meet the proposed standards for pushing and battery stacks. In addition, we estimate that 40 of the 58 by-product batteries would incur additional annual operating costs to implement a baseline program of diagnostic procedures and oven repairs similar to the programs already in place at well-controlled batteries. Three batteries would have to install baffles in their quench towers to control quenching emissions. Monitoring is also an important component of MACT and the cost estimate. Approximately 31 batteries would have to install COMS in their battery stacks, 56 would incur the cost of visible emissions observers for daily observation of pushing emissions, and 42 would install bag leak detection systems for control devices applied to pushing emissions. The control technology and monitoring are expected to result in a nationwide capital cost of about $12 million with a total annualized cost of $14 million per year.

C. What Are the Economic Impacts?

We conducted a detailed assessment of the economic impacts associated with the proposed rule. The compliance costs associated with the proposed rule are expected to increase the price of coke, steel mill products, and iron castings and to reduce their domestic production and consumption. The price of furnace and foundry coke is projected to increase by about 1.5 and 3 percent, respectively. Domestic production of furnace coke is expected to decline by 180,000 tons, or 2.3 percent, with foreign imports increasing by 167,000 tons, or 4.4 percent. For foundry coke, domestic production is expected to decline by only 1,500 tons, or 0.1 percent.

In terms of industry impacts, the integrated steel producers and foundries with cupola furnaces are projected to experience a slight decrease in operating profits, which reflects increased costs of furnace and foundry coke inputs and associated reductions in revenues from producing their final products. Our analysis indicates that one of the captive batteries ceases to supply furnace coke to the market but continues to satisfy internal coke requirements at the integrated steel plant. Through the market impacts described above, the proposed rule has distributional impacts within the merchant segment. The majority of merchant facilities are projected to experience profit increase with the proposed rule; however, some facilities are projected to lose profits. Furthermore, the economic impact analysis indicates that one of the 13 merchant-owned batteries producing furnace coke is at risk of closure because of the proposed rule, while none of the foundry coke producing batteries are at risk of closure. For more information, consult the economic impact analysis supporting this proposed rule.

D. What Are the Non-air Environmental and Energy Impacts?

The technology associated with MACT relies primarily on pollution prevention techniques in the form of work practices and diagnostic procedures to prevent green pushes and leakage through oven walls. Consequently, there are no significant non-air environmental and energy impacts.

V. Solicitation of Comments and Public Participation

We seek full public participation in arriving at final decisions and encourage comments on all aspects of this proposal from all interested parties. You need to submit full supporting data and a detailed analysis with your comments to allow us to make the best use of them. Be sure to direct your comments to the Air and Radiation Docket and Information Center, Docket No. A–2000–34 (see **ADDRESSES**).

We are specifically requesting comments on proposed Options 1 and 2 for fugitive pushing emissions. Proposed Option 1 is an opacity limit based on the average of four pushes. Proposed Option 2 is a work practice standard that includes opacity triggers based on a single push. Exceeding the applicable trigger requires corrective action to identify and correct the problem that caused the green push.

We are also specifically requesting comments on procedures for developing an alternative opacity limit for battery stacks in the event a battery has implemented all of the components of MACT and cannot achieve the opacity standard. We are requesting comments on appropriate criteria and supporting rationale.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined

that this regulatory action is not a "significant regulatory action" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments, and the proposed rule requirements will not supercede State regulations that are more stringent. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments

On January 1, 2001, Executive Order 13084 was superseded by Executive Order 13175. However, this proposed rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084. Development of the final rule will address tribal considerations under Executive Order 13175. Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate coke oven batteries. The proposed rule is required by statute and will not impose any substantial direct compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is technology based and not based on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Further, this proposed rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-

burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. The maximum total annual cost of this proposed rule for any year has been estimated to be less than $19 million. Thus, today's proposed rule is not subject to sections 202 and 205 of the UMRA. In addition, the EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) A small business ranging from 500 to 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. In accordance with the RFA, we conducted an assessment of the proposed rule on small businesses within the coke manufacturing industry. Based on SBA size definitions for the affected industries and reported sales and employment data, we identified three of the 18 companies within this source category as small businesses. Although small businesses represent 16 percent of the companies within the source category, they are expected to incur only 11 percent of the total industry compliance costs of $14.3 million. The average total annual compliance cost is projected to be $533,000 per small company, while the average for large companies is projected to be $840,000 per company. Under the proposed rule, the mean annual compliance cost, as a share of sales, for small businesses is 1.3 percent, and the median is 1.4 percent, with a range of 0.04 to 2.4 percent. We estimate that two of the three small businesses may experience an impact greater than 1 percent of sales, but no small businesses will experience an impact greater than 3 percent of sales.

We performed an economic impact analysis to estimate the changes in product price and production quantities for the firms affected by this proposed rule. Although this industry is characterized by average profit margins of close to 4 percent, our analysis indicates that none of the coke manufacturing facilities owned by small businesses are at risk of closure because of today's proposed rule. In fact, the two facilities manufacturing furnace coke are projected to experience a slight increase in profits because of market feedbacks related to higher costs incurred by competitors, while the one facility manufacturing foundry coke is projected to experience a decline in profits of slightly more than 1 percent.

In summary, the economic impact analysis supports today's certification under the RFA because, while a few small firms may experience initial impacts greater than 1 percent of sales, no significant impacts on their viability to continue operations and remain profitable are indicated. See Docket A–2000–34 for more information on the economic analysis.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, we have nonetheless worked aggressively to minimize the impact of this proposed rule on small entities, consistent with our obligations under the CAA. We have made site visits to these plants and discussed potential impacts and opportunities for emission reductions with company representatives. Company representatives have also attended meetings held with industry trade associations to discuss the proposed rule, and we have included provisions in the proposed rule that address their concerns.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 1995.01), and a copy may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The proposed rule requires maintenance inspections of control devices, two types of written plans (in addition to the startup, shutdown, and malfunction plan required by the NESHAP General Provisions), and a special study of flue temperatures for by-product coke oven batteries with horizontal flues. Monthly reports of any deviations from the applicable limits for battery stacks are required, with semiannual reports for other affected sources. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to total 11,000 labor hours per year at a total annual cost of $710,000. This estimate includes one-time performance tests and reports (with repeat tests where needed); subsequent tests, preparation and submission of operation and maintenance plans, and a special study of flue temperatures; one-time purchase and installation of continuous monitoring systems; one-time preparation of a standard operating procedures manual for baghouses; one-time preparation of a startup, shutdown, and malfunction plan with semiannual reports if procedures in the plan were followed or emergency reports if they weren't followed; monthly and semiannual deviation summary reports; and inspections, notifications, and recordkeeping. Total capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR is estimated at $46,000 per year, with operation and maintenance costs of $76,000 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after July 3, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by August 2, 2001. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C 272 note), directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. The EPA proposes to use EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, and 9 in 40 CFR part 60, appendix A, and Performance Specification 1 in 40 CFR part 60, appendix B. Consistent with the NTTAA, we conducted searches to identify voluntary consensus standards in addition to these EPA methods.

One voluntary consensus standard was identified as applicable to Performance Specification 1. The standard, ASTM D6216 (1998), Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications, has been incorporated by reference into Performance Specification 1 (65 FR 48920, August 10, 2000).

Our search for emissions monitoring procedures identified 16 other voluntary consensus standards. We determined that 13 of these standards identified for measuring emissions of HAP or surrogates would not be practical due to lack of equivalency, detail, or quality assurance/quality control requirements. The three remaining consensus standards identified in the search are under development or under EPA review. Therefore, we do not propose to use these voluntary consensus standards in the proposed rule. See Docket A–2000–34 for more detailed information on the search and review results.

The EPA requests comments on the proposed compliance demonstration requirements in the proposed rule and specifically invites the public to identify potentially applicable voluntary consensus standards. Commenters should also explain why this proposed rule should adopt these voluntary consensus standards in lieu of, or in addition to, EPA's methods. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedures used to validate the candidate method (if a method other Method 301 in 40 CFR part 63, appendix A was used).

Section 63.7322 of proposed subpart CCCCC lists the EPA test methods that coke plants would be required to use when conducting a performance test. Most of these methods have been used by States and the industry for more than 10 years. Nevertheless, § 63.7(e) and (f) of the NESHAP General Provisions in 40 CFR part 63, subpart A, allows any State or source to apply to EPA for permission to use an alternative method in place of any of the EPA test methods or performance specifications required by the proposed rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Coke ovens, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 19, 2001.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart CCCCC to read as follows:

Subpart CCCCC—National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

Sec.

What This Subpart Covers

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63.7290 What emission limitations must I meet for capture systems and control devices applied to pushing emissions?
63.7291 What emission limitations or work practice standards must I meet for fugitive pushing emissions if I have a by-product coke oven battery with vertical flues?
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Tables to Subpart CCCCC

Table 1 to Subpart CCCCC—Applicability of General Provisions to Subpart CCCCC

Subpart CCCCC—National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

What This Subpart Covers

§ 63.7280 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for pushing, quenching, and battery stacks at coke oven batteries. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations, work practice standards, and operation and maintenance requirements in this subpart.

§ 63.7281 Am I subject to this subpart?

You are subject to this subpart if you own or operate a coke oven battery at a coke plant that is (or is part of) a major source of hazardous air pollutants (HAP) emissions on the first compliance date that applies to you. Your coke plant is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

§ 63.7282 What parts of my plant does this subpart cover?

(a) This subpart applies to each new or existing coke oven battery at your coke plant.

(b) This subpart covers emissions from pushing, soaking, quenching, and battery stacks from each affected source.

(c) An affected source at your coke plant is existing if you commenced construction or reconstruction of the affected source before July 3, 2001.

(d) An affected source at your coke plant is new if you commence construction or reconstruction of the affected source on or after July 3, 2001. An affected source is reconstructed if it meets the definition of "reconstruction" in § 63.2.

§ 63.7283 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than [2 YEARS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(b) If you have a new affected source and its initial startup date is on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) If you have a new affected source and its initial startup date is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your coke plant is an area source that becomes a major source of HAP, the following compliance dates apply to you.

(1) Any portion of the existing coke plant that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the coke plant must be in compliance with this subpart no later than 2 years after it becomes a major source.

(e) You must meet the notification and schedule requirements in § 63.7340. Several of these notifications must be submitted before the compliance date for your affected source.

§§ 63.7284—63.7289 [Reserved]

Emission Limitations and Work Practice Standards

§ 63.7290 What emission limitations must I meet for capture systems and control devices applied to pushing emissions?

(a) You must not discharge to the atmosphere emissions of particulate matter from a control device applied to pushing emissions from a new or existing coke oven battery that exceed the applicable limit in paragraphs (a)(1) through (4) of this section.

(1) 0.004 grain per dry standard cubic foot (gr/dscf) if a cokeside shed is used to capture emissions.

(2) 0.017 pound per ton (lb/ton) of coke if a moveable hood vented to a stationary control device is used to capture emissions.

(3) If a mobile scrubber car that does not capture emissions during travel is used:

(i) 0.023 lb/ton of coke for a control device applied to pushing emissions from a short coke oven battery; or

(ii) 0.010 lb/ton of coke from control device applied to pushing emissions from a tall coke oven battery.

(4) 0.039 lb/ton of coke if a mobile scrubber car that captures emissions during travel is used.

(b) You must meet each operating limit in paragraphs (b)(1) through (3) of this section that applies to you for a new or existing coke oven battery.

(1) For each baghouse applied to pushing emissions, you must operate the baghouse such that the bag leak detection system, if applicable, does not alarm for more than 5 percent of the total operating time in any semiannual reporting period.

(2) For each venturi scrubber applied to pushing emissions, you must maintain the daily average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial performance test.

(3) For each capture system applied to pushing emissions, you must:

(i) Maintain the fan motor amperes at or above the minimum level established during the initial performance test; or

(ii) Maintain the volumetric flow rate at the inlet of the control device at or above the minimum level established during the initial performance test.

§ 63.7291 What emission limitations or work practice standards must I meet for fugitive pushing emissions if I have a by-product coke oven battery with vertical flues?

(a) Opacity limit (Option 1). [**Note:** This is one of two options being proposed for comment. Based on comments we receive on proposed subpart CCCCC, we will promulgate Option 1 in this paragraph (a) or Option 2 in paragraph (b) of this section or some combination of these two options.] You must not discharge to the atmosphere fugitive pushing emissions from a new or existing by-product coke oven battery that exhibit an opacity, as determined by the procedures in § 63.7324(b), in excess of 20 percent for each short battery and 25 percent for each tall battery.

(b) Work practice standard (Option 2). [**NOTE:** This is one of two options being proposed for comment. Based on comments we receive on proposed subpart CCCCC, we will promulgate Option 1 in paragraph (a) of this section or Option 2 in this paragraph (b) or some combination of these two options.] You must comply with each of the requirements in paragraphs (b)(1) through (11) of this section for each new or existing by-product coke oven battery.

(1) Observe and record the opacity of fugitive pushing emissions from four consecutive pushes each operating day.

(2) Conduct all opacity observations using the procedures in § 63.7324(b)(1) through (3).

(3) Do not alter the pushing schedule so as to change the sequence of consecutive pushes to be observed in any day.

(4) Observe and record the opacity of emissions from each oven at least once every 3 months. If an oven cannot be observed during any 3-month period because it has been taken out of service, you must observe and record the opacity of emissions from the oven during the first daytime push once the oven is brought back into service.

(5) If the average opacity of the six highest consecutive 15-second readings (or the actual number of readings if there are fewer than six readings) for any individual push is more than 30 percent for any short battery or 35 percent for any tall battery, you must take corrective action and demonstrate that corrective action was successful within the allowed number of days according to Equation 1 of this section, or remove the oven from service:

$$X = 0.63 * Y \qquad \text{(Eq. 1)}$$

Where:

X = Number of days allowed to take corrective action and demonstrate that the corrective action has been successful; and

Y = Normal coking time for the oven, hours.

(6) To demonstrate that corrective action was successful, observe and record two consecutive daytime pushes for the oven within the allowed number of days. If neither observation exceeds the applicable opacity trigger, the corrective action was successful, and you may return the oven to normal status. If an opacity observation for one or both of the two consecutive pushes exceeds the applicable opacity trigger, the corrective action was not successful. If the corrective action was not successful within the allowed number of days, remove the oven from service until repairs have been completed.

(7) When an oven is removed from service and is subsequently returned to service after repairs have been completed, observe and record two daytime pushes of the oven within the first four pushes after the oven is returned to service to confirm that the repairs were successful. You have demonstrated that the repairs were successful if neither of the observations exceeds the applicable opacity trigger. If the opacity trigger is exceeded for either push, the repair was not successful, and you must remove the oven from service until additional repairs or corrective action are completed and you demonstrate in accordance with this paragraph(b)(7) that the subsequent repairs were successful.

(8) If any oven is removed from service more than four times in any semiannual reporting period as a result of exceeding the opacity trigger, remove the oven from service and notify your permitting authority. You may not return the oven to service until your permitting authority determines that you have taken all appropriate actions and provides you written authorization to return the oven to service.

(9) If you use extended coking as the corrective action, keep the oven on extended coking unless you correct the problem. You may return to normal coking time only after you have demonstrated, based on the observation of the first two consecutive daytime pushes while on normal coking time, that neither of the observations exceeds the applicable opacity trigger. If either observation exceeds the applicable opacity trigger, you must return the oven to extended coking or remove the oven from service until repairs or other corrective actions have been completed.

(10) You may decrease your extended coking time after you have demonstrated, based on the observation of the first two consecutive daytime pushes after the coking time was reduced, that neither of the observations exceeds the applicable opacity trigger. If either observation exceeds the applicable opacity trigger, you must return the oven to the previous extended coking time or remove the oven from service until repairs or other corrective actions have been completed.

(11) If you remove an oven from service, take measures to mitigate possible adverse effects on adjacent ovens due to removing the oven from service.

(c) As provided in § 63.6(g), you may request to use an alternative to the work practice standards in paragraph (b) of this section.

§ 63.7292 What work practice standards must I meet for fugitive pushing emissions if I have a by-product coke oven battery with horizontal flues?

(a) You must comply with each of the requirements in paragraphs (a)(1) through (6) of this section.

(1) Prepare and operate by a written plan designed to prevent green pushes from each by-product coke oven battery with horizontal flues. The written plan must establish minimum flue temperatures at different coking times and the lowest acceptable minimum flue temperature.

(i) The minimum flue temperatures must be based on a study conducted by the plant that considers different means for correlating flue temperature and coking time, including the percent volatile matter in the coke, the color of emissions, the opacity and duration of emissions, and whether emissions continue during quench car travel.

(ii) Submit the written plan and supporting documentation to the applicable permitting authority for review and approval.

(2) Measure and record the temperature of all flues on two ovens per day for each battery within 2 hours of the scheduled pushing time for each oven. If two or more batteries are served by the same pushing equipment and total no more than 60 ovens, the batteries as a unit can be considered a single battery.

(3) Measure and record the temperature of all flues on each oven at least once each month.

(4) Record the time each oven is charged and pushed. Calculate and record the net coking time for each oven.

(5) If any measured flue temperature for an oven is below the minimum flue temperature for an oven's coking time established in the written plan, extend the coking time of the oven by the amount specified in the written plan for that flue temperature before pushing the oven. For any oven put on extended coking you must:

(i) Use oven-directed procedures to find the cause of the low flue temperature. Take corrective action to fix the problem;

(ii) Continue to measure and record the flue temperatures for the oven within 2 hours of the scheduled pushing time until the measurements prior to two consecutive pushes meet the minimum temperature requirements for the extended coking time; and

(iii) Once the heating problem has been corrected, the oven may be returned to the battery's general coking schedule. Measure and record the flue temperatures for the oven within 2 hours of the scheduled pushing time for the next two consecutive pushes. If any flue temperature measurement is below the minimum flue temperature for that coking time established in the written plan, repeat the procedures in paragraphs (a)(5)(i) and (ii) of this section.

(6) If any flue temperature measurement is below the lowest acceptable minimum temperature for complete coking established in the written plan, remove the oven from service for repairs. After repairing the oven, you must:

(i) Follow the procedures outlined in the written work practice plan to return the oven to service after repairs are complete; and

(ii) Measure and record the flue temperatures for the oven within 2 hours of the scheduled pushing time. If any flue temperature measurement is below the minimum flue temperature for that coking time established in the written plan, repeat the procedures in paragraph (a)(5) of this section.

(b) As provided in § 63.6(g), you may request to use an alternative to the work practice standards in paragraph (a) of this section.

§ 63.7293 What work practice standards must I meet for fugitive pushing emissions if I have a non-recovery coke oven battery?

(a) You must meet the requirements in paragraphs (a)(1) and (2) of this section for each new and existing non-recovery coke oven battery.

(1) You must visually inspect each oven prior to pushing by opening the door damper and observing the bed of coke.

(2) Do not push the oven unless the visual inspection indicates that there is no smoke in the open space above the coke bed and that there is an unobstructed view of the door on the opposite side of the oven.

(b) As provided in § 63.6(g), you may request to use an alternative to the work practice standard in paragraph (a) of this section.

§ 63.7294 What work practice standard must I meet for soaking?

(a) For each new or existing by-product coke oven battery, you must manually ignite within 3 minutes after opening the standpipe cap any gases vented to the atmosphere from a standpipe during soaking that do not ignite automatically.

(b) As provided in § 63.6(g), you may request to use an alternative to the work practice standard in paragraph (a) of this section.

§ 63.7295 What work practice standards must I meet for quenching?

(a) You must meet each of the requirements in paragraphs (a)(1) through (5) of this section for each quench tower for a new or existing coke oven battery.

(1) You must equip each quench tower with baffles such that at least 95 percent of the cross-sectional area of the tower is covered.

(2) You must wash the baffles in each quench tower daily.

(3) You must inspect each quench tower monthly for damaged or missing baffles and blockage.

(4) You must repair or replace all damaged or missing baffles before the next scheduled inspection.

(5) You must use clean water, as defined in § 63.7352, as make-up water.

(b) As provided in § 63.6(g), you may request to use an alternative to the work practice standards in paragraph (a) of this section.

§ 63.7296 What emission limitations must I meet for battery stacks?

(a) You must not discharge to the atmosphere any emissions that exit the stack of a new or existing by-product coke oven battery and exhibit an opacity greater than the applicable limit in paragraphs (a)(1) and (2) of this section.

(1) Daily average of 15 percent opacity for a battery on a normal coking cycle.

(2) Daily average of 20 percent opacity for a battery on batterywide extended coking.

(b) [Reserved]

§§ 63.7297–63.7299 [Reserved]

Operation and Maintenance Requirements

§ 63.7300 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for the general operation and maintenance of new or existing by-product coke oven

batteries. Each plan must address, at a minimum, the elements listed in paragraphs (b)(1) through (5) of this section.

(1) Frequency and method of recording underfiring gas parameters, including at a minimum, measurement of fuel: air ratio and fuel flow rate.

(2) Frequency and method of recording battery operating temperature, including measurement of individual flue and cross-wall temperatures.

(3) Procedures to prevent pushing an oven out of sequence or pushing prematurely.

(4) Procedures to prevent undercharging and overcharging of ovens, including measurement of coal moisture, coal bulk density, and volume of coal charged.

(5) Frequency and procedures for inspecting flues, burners, and nozzles.

(c) You must prepare and operate at all times according to a written operation and maintenance plan for each capture system and control device applied to pushing emissions from a new or existing coke oven battery. Each plan must address at a minimum the elements in paragraphs (c)(1) through (3) of this section.

(1) Monthly inspections of the equipment that are important to the performance of the total capture system (e.g., pressure sensors, dampers, and damper switches). This inspection must include observations of the physical appearance of the equipment (e.g., presence of holes in ductwork or hoods, flow constrictions caused by dents or accumulated dust in ductwork, and fan erosion). The operation and maintenance plan must also include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection.

(2) Preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

(3) Corrective action for all baghouses applied to pushing emissions. In the event a bag leak detection system alarm is triggered, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Actions may include, but are not limited to:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

§§ 63.7301–63.7309 [Reserved]

General Compliance Requirements

§ 63.7310 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations, work practice standards, and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction as defined in § 63.2.

(b) During the period between the compliance date specified for your affected source in § 63.7283 and the date upon which continuous monitoring systems have been installed and certified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

§§ 63.7311–63.7319 [Reserved]

Initial Compliance Requirements

§ 63.7320 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) As required in § 63.7(a)(2), you must conduct a performance test for each coke oven battery within 180 calendar days of the compliance date that is specified in § 63.7283 for your affected source to demonstrate initial compliance with the emission and opacity limits in this subpart.

(b) For each work practice standard and operation and maintenance requirement that applies to you where initial compliance is not demonstrated using a performance test or opacity observation, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.7283.

(c) If you commenced construction or reconstruction between July 3, 2001 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must demonstrate initial compliance with either the proposed emission limit or the promulgated emission limit no later than [180 DAYS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or no later than 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction between July 3, 2001 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by [3 YEARS AND 180 DAYS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.7321 When must I conduct subsequent performance tests?

For each control device subject to an emission limit for particulate matter in § 63.7290(a), you must conduct subsequent performance tests no less frequently than twice (at mid-term and renewal) during each term of your title V operating permit.

§ 63.7322 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraph (b) of this section.

(b) To determine compliance with the emission limit of 0.004 gr/dscf for particulate matter from a control device applied to pushing emissions where a cokeside shed is the capture system, follow the test methods and procedures in paragraphs (b)(1) and (2) of this section. To determine compliance with a process-weighted mass rate of particulate matter (lb/ton of coke) from a control device applied to pushing emissions where a cokeside shed is not used, follow the test methods and procedures in paragraphs (b)(1) through (4) of this section.

(1) Determine the concentration of particulate matter according to the following test methods in appendix A of 40 CFR part 60.

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5 or 5D, as applicable, to determine the concentration of particulate matter in the stack gas.

(2) During each particulate matter test run, sample only during periods of actual pushing when the capture system fan and control device are engaged. Collect a minimum sample volume of 30 cubic feet of gas during each test run. Three valid test runs are needed to comprise a performance test. Each run must start at the beginning of a push and finish at the end of a push (i.e., sample for an integral number of pushes).

(3) Determine the total combined weight in tons of coke pushed during the duration of each test run according to the procedures in your source test plan for calculating coke yield from the quantity of coal charged to an individual oven.

(4) Compute the process-weighted mass emissions (E_p) for each test run using Equation 1 of this section as follows:

$$E_p = \frac{C \times Q \times T}{P \times K} \qquad \text{(Eq. 1)}$$

Where:

E_p = Process weighted mass emissions of particulate matter, lb/ton;

C = Concentration of particulate matter, gr/dscf;

Q = Volumetric flow rate of stack gas, dscf/hr;

T = Total time during a run that a sample is withdrawn from the stack during pushing, hr;

P = Total amount of coke pushed during the test run, tons; and

K = Conversion factor, 7,000 gr/lb.

§ 63.7323 What procedures must I use to establish operating limits?

(a) For a venturi scrubber applied to pushing emissions from a coke oven battery, you must establish site-specific operating limits for pressure drop and scrubber water flow rate according to the procedures in paragraphs (a)(1) and (2) of this section.

(1) Using the continuous parameter monitoring systems (CPMS) required in § 63.7330(b), measure and record the pressure drop and scrubber water flow rate for each particulate matter test run during periods of pushing. A minimum of one pressure drop measurement and one scrubber water flow rate measurement must be obtained for each push.

(2) Compute and record the average pressure drop and scrubber water flow rate for each test run. Your operating limits are the lowest average pressure drop and scrubber water flow rate values recorded for any push in any of the three runs that meet the applicable emission limit.

(b) For a capture system applied to pushing emissions from a coke oven battery, you must establish a site-specific operating limit for the fan motor amperes or volumetric flow rate according to the procedures in paragraph (b)(1) or (2) of this section.

(1) If you elect the operating limit in § 63.7290(b)(3)(i) for fan motor amperes, measure and record the fan motor amperes during each push sampled for each particulate matter test run. Your operating limit is the second lowest fan motor amperes recorded during any of the three runs that meets the emission limit.

(2) If you elect the operating limit in § 63.7290(b)(3)(ii) for volumetric flow rate, measure and record the total volumetric flow rate at the inlet of the control device during each push sampled for each particulate matter test run. Your operating limit is the second lowest volumetric flow rate recorded during any of the three runs that meets the emission limit.

(c) You may change the operating limit for a venturi scrubber or capture system if you meet the requirements in paragraphs (c)(1) through (3) of this section.

(1) Submit a written notification to the Administrator of your request to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate that emissions of particulate matter from the control device do not exceed the applicable limit in § 63.7290(a).

(3) Establish revised operating limits according to the applicable procedures in paragraph (a) or (b) of this section.

§ 63.7324 · What test methods and other procedures must I use to demonstrate initial compliance with the opacity limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(h)(5) and the conditions detailed in paragraphs (b) and (c) of this section.

(b) To determine compliance with the opacity limit of 20 percent for a short battery or 25 percent for a tall battery for fugitive pushing emissions (Option 1), follow the test methods and procedures in paragraphs (b)(1) through (4) of this section.

(1) Determine and record the opacity of fugitive emissions for four consecutive pushes per battery. If two or more batteries are served by the same pushing equipment and total no more than 60 ovens, the batteries as a unit can be considered a single battery. All observations and calculations for the initial performance test, compliance monitoring, and subsequent performance tests must be made by an independent Method 9 certified observer using Method 9 in appendix A of 40 CFR part 60.

(2) Begin observations for a push when the coke begins to fall into the quench car. End observations of a push when the quench car enters the quench tower. Remain stationary whenever possible while observing emissions during travel to the quench tower. Do not reposition after the push to observe emissions during travel.

(i) For a battery without a cokeside shed, observe fugitive pushing emissions from a position that provides an unobstructed view and avoids interferences from the topside of the battery at least 10 meters from the quench car. This usually requires the observer to be positioned at an angle to the quench car rather than perpendicular to it. Typical interferences to avoid include emissions from open standpipes and charging. Read the opacity of emissions above the battery top with the sky as the background where possible. Record any push not observed because of obstructions or interferences.

(ii) For batteries with a cokeside shed, the observer must be positioned to observe fugitive emissions that escape from the open end of the shed nearest to the oven being pushed. Observations must include any fugitive emissions that escape from the top of the shed or from the area where the shed is joined to the battery. If the observer does not have a clear view to identify when a push starts, a second observer must be positioned to observe the start of the push and notify the observer when to start the Method 9 readings. Radio communications with other plant personnel (e.g., pushing ram operator or quench car operator) may also serve to notify the observer of the start of a push. Record any push not observed because of obstructions or interferences.

(3) Record opacity observations to the nearest 5 percent at 15-second intervals as required in section 2.4 of Method 9 (40 CFR part 60, appendix A). The requirement in section 2.4 of Method 9 for a minimum of 24 observations does not apply, and the data reduction requirements in section 2.5 of Method 9 do not apply. The requirement in § 63.6(h)(5)(ii)(B) for obtaining at least 3 hours of observations (30, 6-minute averages) to demonstrate initial compliance does not apply.

(4) Calculate and record the average of the four consecutive pushes using the six highest consecutive 15-second readings for each push (or the actual number of readings if there are fewer than six readings).

(c) To determine compliance with the daily average opacity limit for stacks of 15 percent for a by-product coke oven battery on a normal coking cycle or 20 percent for a by-product coke oven battery on batterywide extended coking, follow the test methods and procedures in paragraphs (c)(1) through (3) of this section.

(1) Using the continuous opacity monitoring system (COMS) required in § 63.7330(d), measure and record the opacity of emissions from each battery stack for a 24-hour period.

(2) Reduce the monitoring data to hourly averages as specified in § 63.8(g)(2).

(3) Compute and record the 24-hour (daily) average of the COMS data.

§ 63.7325 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) For each coke oven battery subject to the emission limit for particulate matter from a control device applied to pushing emissions, you have demonstrated initial compliance if you meet the requirements in paragraphs (a)(1) through (3) of this section that apply to you.

(1) The concentration of particulate matter, measured in accordance with the performance test procedures in § 63.7322(b)(1) and (2), did not exceed 0.004 gr/dscf for a control device where a cokeside shed is used to capture pushing emissions or the process-weighted mass rate of particulate matter (lb/ton of coke), measured in accordance with the performance test procedures in § 63.7322(b)(1) through (4), did not exceed:

(i) 0.017 lb/ton of coke if a moveable hood vented to a stationary control device is used to capture emissions.

(ii) If a mobile scrubber car that does not capture emissions during travel is used, 0.023 lb/ton of coke from a control device applied to pushing emissions from a short coke oven battery or 0.010 lb/ton of coke from a control device applied to pushing emissions from a tall coke oven battery.

(iii) 0.039 lb/ton of coke if a mobile scrubber car that captures emissions during travel is used.

(2) For each venturi scrubber applied to pushing emissions, you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.7323(a).

(3) For each capture system applied to pushing emissions, you have established an appropriate site-specific operating limit, and:

(i) If you elect the operating limit in § 63.7290(b)(3)(i) for fan motor amperes, you have a record of the fan motor amperes during the performance test in accordance with § 63.7323(b)(1); or

(ii) If you elect the operating limit in § 63.7290(b)(3)(ii) for volumetric flow rate, you have a record of the total volumetric flow rate at the inlet of the control device measured during the performance test in accordance with § 63.7323(b)(2).

(b) For each by-product coke oven battery with vertical flues subject to the opacity limit in § 63.7291(a) for fugitive pushing emissions (Option 1), you have demonstrated initial compliance if the average opacity of four consecutive pushes, calculated from the six highest consecutive 15-second readings (or the actual number if there are fewer than six readings) for each push, as determined using the performance test procedures in § 63.7324(b), is no more than 20 percent for a short battery or 25 percent for a tall battery.

(c) For each new or existing by-product coke oven battery subject to the opacity limit for stacks in § 63.7296(a), you have demonstrated initial compliance if the daily average opacity, as measured according to the performance test procedures in § 63.7324(c), is no more than 15 percent for a battery on a normal coking cycle or 20 percent for a battery on batterywide extended coking.

(d) For each emission limitation that applies to you, you must submit a notification of compliance status containing the results of the performance test according to § 63.7340(e).

§ 63.7326 How do I demonstrate initial compliance with the work practice standards that apply to me?

(a) For each by-product coke oven battery with vertical flues subject to the work practice standards for fugitive pushing emissions (Option 2) in § 63.7291(b), you have demonstrated initial compliance if you certify in your notification of compliance status that you will meet each of the work practice requirements.

(b) For each by-product coke oven battery with horizontal flues subject to the work practice standards for fugitive pushing emissions in § 63.7292(a), you have demonstrated initial compliance if you have met the requirements of paragraphs (b)(1) and (2) of this section:

(1) You have prepared and submitted a written plan and supporting documentation establishing appropriate minimum flue temperatures for different coking times and the lowest minimum temperature for which extended coking can be used to the applicable permitting authority for review and approval; and

(2) You certify in your notification of compliance status that you will meet each of the work practice requirements.

(c) For each non-recovery coke oven battery subject to the work practice standards for fugitive pushing emissions in § 63.7293(a), you have demonstrated initial compliance if you certify in your notification of compliance status that you will meet each of the work practice requirements.

(d) For each by-product coke oven battery subject to the work practice standard for soaking in § 63.7294(a), you have demonstrated initial compliance if you certify in your notification of compliance status that you will meet each of the work practice requirements.

(e) For each coke oven battery, you have demonstrated initial compliance with the work practice standards for quenching in § 63.7295(a) if you certify in your notification of compliance status that you have met the requirements of paragraphs (e)(1) and (2) of this section:

(1) You have installed the required equipment in each quench tower; and

(2) You will meet each of the work practice requirements.

(f) For each work practice standard that applies to you, you must submit a notification of compliance status according to the requirements in § 3.7340(e).

§ 63.7327 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

(a) You have demonstrated initial compliance if you certify in your notification of compliance status that you have met the requirements of paragraphs (a)(1) through (3) of this section:

(1) You have prepared the operation and maintenance plans according to the requirements in § 63.7300(b) and (c);

(2) You will operate each by-product coke oven battery and each capture system and control device applied to pushing emissions from a coke oven battery according to the procedures in the plans; and

(3) You submit a notification of compliance status according to the requirements in § 63.7340(e).

(b) [Reserved]

§§ 63.7328–63.7329 [Reserved]

Continuous Compliance Requirements

§ 63.7330 What are my monitoring requirements?

(a) For each baghouse applied to pushing emissions from a coke oven battery, you must at all times monitor the relative change in particulate matter loadings using a bag leak detection system according to the requirements in § 63.7331(a) and conduct inspections at their specified frequency according to the requirements in paragraphs (a)(1) through (8) of this section.

(1) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range identified in the manual;

(2) Confirm that dust is being removed from hoppers through weekly visual inspections or equivalent means of ensuring the proper functioning of removal mechanisms;

(3) Check the compressed air supply for pulse-jet baghouses each day;

(4) Monitor cleaning cycles to ensure proper operation using an apprcpriate methodology;

(5) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means;

(6) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or laying on their sides. You do not have to make this check for shaker-type baghouses using self-tensioning (spring-loaded) devices;

(7) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks; and

(8) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

(b) For each venturi scrubber applied to pushing emissions from a coke oven battery, you must at all times monitor the pressure drop and water flow rate using a CPMS according to the requirements in § 63.7331(b).

(c) For each capture system applied to pushing emissions, you must at all times monitor the fan motor amperes according to the requirements in § 63.7331(c) or the volumetric flow rate according to the requirements in § 63.7331(d).

(d) For each by-product coke oven battery, you must monitor at all times the opacity of emissions exiting each stack using a COMS according to the requirements in § 63.7331(e).

§ 63.7331 What are the installation, operation, and maintenance requirements for my monitors?

(a) For each baghouse applied to pushing emissions from a coke oven battery, you must install, operate, and maintain each bag leak detection system according to the requirements in paragraphs (a)(1) through (7) of this section.

(1) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less;

(2) The system must provide output of relative changes in particulate matter loadings;

(3) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings is detected over a preset level. The alarm must be located such that it can be heard by the appropriate plant personnel;

(4) Each system that works based on the triboelectric effect must be installed, operated, and maintained in a manner consistent with the guidance document, "Fabric Filter Bag Leak Detection Guidance" (EPA–454/R–98–015), September 1997. You may install, operate, and maintain other types of bag leak detection systems in a manner consistent with the manufacturer's written specifications and recommendations;

(5) To make the initial adjustment of the system, establish the baseline output by adjusting the sensitivity (range) and the averaging period of the device. Then, establish the alarm set points and the alarm delay time;

(6) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in your operation and maintenance plan. Do not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365-day period unless a responsible official certifies, in writing, that the baghouse has been inspected and found to be in good operating condition; and

(7) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(b) For each venturi scrubber applied to pushing emissions from a coke oven battery, you must install, operate, and maintain CPMS to measure and record the pressure drop across the scrubber and scrubber water flow rate during each push according to the requirements in paragraphs (b)(1) through (3) of this section.

(1) For the pressure drop CPMS, you must:

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure and that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion;

(ii) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range;

(iii) Check the pressure tap for pluggage daily;

(iv) Using a manometer, check gauge calibration quarterly and transducer calibration monthly;

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor; and

(vi) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) For the scrubber water flow rate CPMS, you must:

(i) Locate the flow sensor and other necessary equipment in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances;

(ii) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flow rate;

(iii) Conduct a flow sensor calibration check at least semiannually according to the manufacturer's instructions; and

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(3) You must install, operate, and maintain each venturi scrubber CPMS according to the requirements in paragraphs (b)(3)(i) through (iii) of this section.

(i) Each CPMS must complete a measurement at least once per push;

(ii) Each CPMS must produce valid data for all pushes; and

(iii) Each CPMS must determine and record the daily (24-hour) average of all recorded readings.

(c) If you elect the operating limit in § 63.7390(b)(3)(i) for a capture system applied to pushing emissions from a coke oven battery, you must install, operate, and maintain a device to measure the fan motor amperes.

(d) If you elect the operating limit in § 63.7390(b)(3)(ii) for a capture system applied to pushing emissions from a coke oven battery, you must install, operate, and maintain a device to measure the total volumetric flow rate at the inlet of the control device.

(e) For each by-product coke oven battery, you must install, operate, and maintain a COMS to measure and record the opacity of emissions exiting each stack according to the requirements in paragraphs (e)(1) through (4) of this section.

(1) You must install each COMS and conduct a performance evaluation of each COMS according to the requirements in § 63.8 and Performance Specification 1 in appendix B of 40 CFR part 60;

(2) You must develop and implement a quality control program for operating and maintaining each COMS according to the requirements in § 63.8(d). At minimum, the quality control program must include a daily calibration drift assessment, quarterly performance audit, and an annual zero alignment audit of each COMS;

(3) You must operate and maintain each COMS according to the requirements in § 63.8(e). Identify periods the COMS is out-of-control, including any periods that the COMS fails to pass a daily calibration drift assessment, quarterly performance audit, or annual zero alignment audit; and

(4) You must determine and record the hourly and daily (24-hour) average opacity according to the procedures in § 63.7324(c) using all the 6-minute averages collected for periods during which the COMS is not out-of-control.

§ 63.7332 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times the affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, or in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitor to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

§ 63.7333 How do I demonstrate continuous compliance with the emission limitations that apply to me?

(a) For each control device applied to pushing emissions from a coke oven battery and subject to the emission limit in § 63.7290(a), you must demonstrate continuous compliance by:

(1) Maintaining emissions of particulate matter at or below the applicable limits in paragraphs (a)(1)(i) through (iv) of this section.

(i) 0.004 gr/dscf if a cokeside shed is used to capture emissions;

(ii) 0.017 lb/ton of coke if a moveable hood vented to a stationary control device is used to capture emissions;

(iii) If a mobile scrubber car that does not capture emissions during travel is used, 0.023 lb/ton of coke from a control device applied to pushing emissions from a short coke oven battery or 0.010 lb/ton of coke from a control device applied to pushing emissions from a tall coke oven battery; and

(iv) 0.039 lb/ton of coke if a mobile scrubber car that captures emissions during travel is used.

(2) Conducting subsequent performance tests to demonstrate continuous compliance no less frequently than twice (at mid-term and renewal) during each term of your title V operating permit.

(b) For each baghouse applied to pushing emissions from a coke oven battery and subject to the operating limit in § 63.7290(b)(1), you must demonstrate continuous compliance by having met the requirements of paragraphs (b)(1) through (3) of this section:

(1) Maintaining each baghouse such that the bag leak detection system alarm does not sound for more than 5 percent of the operating time during any semiannual reporting period. Follow the procedures in paragraphs (b)(1)(i) through (v) of this section to determine the percent of time the alarm sounded.

(i) Alarms that occur due solely to a malfunction of the bag leak detection system are not included in the calculation.

(ii) Alarms that occur during startup, shutdown, or malfunction are not included in the calculation if the condition is described in the startup, shutdown, and malfunction plan and all the actions you took during the startup, shutdown, or malfunction were consistent with the procedures in the startup, shutdown, and malfunction plan.

(iii) Count 1 hour of alarm time for each alarm when you initiated procedures to determine the cause of the alarm within 1 hour.

(iv) Count the actual amount of time you took to initiate procedures to determine the cause of the alarm if you did not initiate procedures to determine the cause of the alarm within 1 hour of the alarm.

(v) Calculate the percentage of time the alarm on the bag leak detection system sounds as the ratio of the sum of alarm times to the total operating time multiplied by 100.

(2) Maintaining records of the times the bag leak detection system alarm sounded, and for each valid alarm, the time you initiated corrective action, the corrective action(s) taken, and the date on which corrective action was completed.

(3) Inspecting and maintaining each baghouse according to the requirements in § 63.7330(a)(1) through (8) and recording all information needed to document conformance with these requirements. If you increase or decrease the sensitivity of the bag leak detection system beyond the limits specified in § 63.7331(a)(6), you must include a copy of the required written certification by a responsible official in the next semiannual compliance report.

(c) For each venturi scrubber applied to pushing emissions from a coke oven battery and subject to the operating limits in § 63.7290(b)(2), you must demonstrate continuous compliance by having met the requirements of paragraphs (c)(1) through (3) of this section:

(1) Maintaining the daily average pressure drop and scrubber water flow rate at levels no lower than those established during the initial or subsequent performance test;

(2) Inspecting and maintaining each CPMS according to § 63.7331(b)(1) and (2) and recording all information needed to document conformance with these requirements; and

(3) Collecting and reducing monitoring data for pressure drop and scrubber water flow rate according to § 63.7331(b)(3).

(d) For each capture system applied to pushing emissions from a coke oven battery and subject to the operating limit in § 63.7290(b)(3), you must demonstrate continuous compliance by having met the requirements of paragraphs (d)(1) and (2) of this section:

(1) If you elect the operating limit for fan motor amperes in § 63.7290(b)(3)(i):

(i) Maintaining the fan motor amperes at or above the minimum level established during the initial or subsequent performance test; and

(ii) Checking the fan motor amperes at least every 8 hours to verify the amperes are at or above the minimum level established during the initial or

subsequent performance test and recording the results of each check.

(2) If you elect the operating limit for volumetric flow rate in § 63.7290(b)(3)(ii):

(i) Maintaining the volumetric flow rate at the inlet of the control device at or above the minimum level established during the initial or subsequent performance test; and

(ii) Checking the volumetric flow rate at least every 8 hours to verify the volumetric flow rate is at or above the minimum level established during the initial or subsequent performance test and recording the results of each check.

(e) For each by-product coke oven battery with vertical flues subject to the opacity limit for fugitive pushing emissions (Option 1) in § 63.7291(a), you must demonstrate continuous compliance by having met the requirements of paragraphs (c)(1) and (2) of this section:

(1) Maintaining the daily average opacity of fugitive emissions at no more than 20 percent for a short battery or 25 percent for a tall battery; and

(2) Determining and recording the opacity of fugitive emissions for four consecutive pushes per operating day according to the performance test procedures in § 63.7324(b), and ensuring that each oven in an affected battery is observed at least once every 3 months.

(f) For each by-product coke oven battery subject to the opacity limit for stacks in § 63.7296(a), you must demonstrate continuous compliance by having met the requirements of paragraphs (f)(1) and (2) of this section:

(1) Maintaining the daily average opacity at or below 15 percent for a battery on a normal coking cycle or 20 percent for a battery on batterywide extended coking; and

(2) Operating and maintaining a COMS and collecting and reducing the COMS data according to § 63.7331(e).

§ 63.7334 How do I demonstrate continuous compliance with the work practice standards that apply to me?

(a) For each by-product coke oven battery with vertical flues subject to the work practice standards for fugitive pushing emissions (Option 2) in § 63.7291(b), you must demonstrate continuous compliance by having met the requirements of paragraphs (a)(1) and (2) of this section:

(1) Determining and recording the opacity of fugitive emissions for four consecutive pushes per operating day according to the procedures in § 63.7324(b)(1) through (3), and ensuring that each oven in an affected battery is observed at least once every 3 months; and

(2) Assigning each oven observed that exceeds the opacity trigger of 30 percent for any short battery or 35 percent for any tall battery to the oven-directed program and recording all relevant information according to the requirements in § 63.7291(b)(5) through (11), including but not limited to, daily pushing schedules, records of diagnostic procedures, corrective actions, and oven repairs.

(b) For each by-product coke oven battery with horizontal flues subject to the work practice standards for fugitive pushing emissions in § 63.7292(a), you must demonstrate continuous compliance by having met the requirements of paragraphs (b)(1) through (3) of this section:

(1) Measuring and recording the temperature of all flues on two ovens per day within 2 hours of the oven's scheduled pushing time and ensuring that the temperature of each oven is measured and recorded at least once every month;

(2) Recording the time each oven is charged and pushed and calculating and recording the net coking time for each oven; and

(3) Extending the coking time for each oven that falls below the minimum flue temperature trigger established for that oven's coking time in the written plan required in § 63.7292(a)(1), assigning the oven to the oven-directed program, and recording all relevant information according to the requirements in § 63.7292(a)(6) including, but not limited to, daily pushing schedules, diagnostic procedures, corrective actions, and oven repairs.

(c) For each non-recovery coke oven battery subject to the work practice standards in § 63.7293(a), you must demonstrate continuous compliance by maintaining records that document each visual inspection of an oven prior to pushing and that the oven was not pushed unless there was no smoke in the open space above the coke bed and there was an unobstructed view of the door on the opposite side of the oven.

(d) For each by-product coke oven battery subject to the work practice standard for soaking in § 63.7294(a), you must demonstrate continuous compliance by maintaining records that document the automatic or manual ignition of vented gases from each standpipe. If the vented gases do not ignite automatically, the records must include the time the standpipe cap is opened and the time the vented gases are manually ignited.

(e) For each coke oven battery, you must demonstrate continuous compliance with the work practice standard for quenching in § 63.7295(a) by having met the requirements of paragraphs (e)(1) and (2) of this section:

(1) Maintaining baffles in each quench tower such that at least 95 percent of the cross-sectional area of the tower is covered as required in § 63.7295(a)(1); and

(2) Maintaining records that document conformance with the washing, inspection, and repair requirements in § 63.7295(a)(2) through (4).

§ 63.7335 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each by-product coke oven battery, you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.7300(b) by adhering at all times to the plan requirements and recording all information needed to document conformance.

(b) For each coke oven battery with a capture system or control device applied to pushing emissions, you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.7300(c) by meeting the requirements of paragraphs (b)(1) through (3) of this section:

(1) Making monthly inspections of capture systems according to § 63.7300(c)(1) and recording all information needed to document conformance with these requirements;

(2) Performing preventative maintenance for each control device according to § 63.7300(c)(2) and recording all information needed to document conformance with these requirements; and

(3) Initiating and completing corrective action for a bag leak detection system alarm according to § 63.7300(c)(3) and recording all information needed to document conformance with these requirements.

(c) You must maintain a current copy of the operation and maintenance plans required in § 63.7300(b) and (c) onsite and available for inspection upon request. You must keep the plans for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

§ 63.7336 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* You must report each instance in which you did not meet each emission limitation in this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. You must also report each instance in which you did not meet

each work practice standard or operation and maintenance requirement in this subpart that applies to you. These instances are deviations from the emission limitations (including operating limits), work practice standards, and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements in § 63.7341.

(b) *Startup, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

§§ 63.7337–63.7339 [Reserved]

Notification, Reports, and Records

§ 63.7340 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (h)(5), 63.7(b) and (c), 63.8(e) and (f)(4), and 63.9(b) through (h) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you startup your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than [120 DAYS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you startup your new affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, opacity observation, or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following completion of the performance test according to § 63.10(d)(2).

§ 63.7341 What reports must I submit and when?

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit monthly compliance reports for battery stacks and semiannual compliance reports for all other affected sources to your permitting authority according to the requirements in paragraphs (a)(1) through (4) of this section.

(1) The first monthly compliance report for battery stacks must cover the period beginning on the compliance date that is specified for your affected source in § 63.7283 and ending on the last date of the same calendar month. Each subsequent compliance report must cover the next calendar month.

(2) The first semiannual compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7283 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your affected source. Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(3) All monthly compliance report for battery stacks must be postmarked or delivered no later than one calendar month following the end of the monthly reporting period. All semiannual compliance reports must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(4) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(a)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (3) of this section.

(b) *Monthly compliance report contents.* Each monthly report must provide information on compliance with the emission limitations for battery stacks in § 63.7296. The reports must include the information in paragraphs (c)(1) through (3), and as applicable, paragraphs (c)(4) through (8) of this section.

(c) *Semiannual compliance report contents.* Each compliance report must provide information on compliance with the emission limitations, work practice standards, and operation and maintenance requirements for all affected sources except battery stacks. The reports must include the information in paragraphs (c)(1) through (3) of this section, and as applicable, paragraphs (c)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with the official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in § 63.7333(f) for battery stacks, a statement that there were no deviations from the emission limitations during the reporting period. If there were no deviations from the continuous compliance requirements in §§ 63.7333 through 63.7335 that apply to you (for all affected sources other than battery stacks), a statement that there were no deviations from the emission limitations, work practice standards, or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a continuous monitoring system (including COMS, continuous emission monitoring system (CEMS), or CPMS) was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which a continuous monitoring system was out-of-control during the reporting period.

(7) For each deviation from an emission limitation in this subpart and for each deviation from the

requirements for work practice standards in this subpart that occurs at an affected source where you are not using a continuous monitoring system (including a COMS, CEMS, or CPMS) to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(4) and (c)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) as applicable and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a continuous monitoring system (including COMS, CEMS, or CPMS) to comply with the emission limitation in this subpart, you must include the information in paragraphs (c)(4) and (c)(8)(i) through (xii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring system (including COMS, CEMS, or CPMS) was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system (including COMS, CEMS, or CPMS) was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) An identification of each HAP that was monitored at the affected source.

(ix) A brief description of the process units.

(x) A brief description of the continuous monitoring system.

(xi) The date of the latest continuous monitoring system certification or audit.

(xii) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(d) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(e) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emission limitation or work practice standard in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements to your permitting authority.

§ 63.7342 What records must I keep?

(a) You must keep the records specified in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, performance evaluations, and opacity observations as required in § 63.10(b)(2)(viii).

(b) For each COMS or CEMS, you must keep the records specified in paragraphs (b)(1) through (4) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Monitoring data for COMS during a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(3) Previous (that is, superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records in § 63.6(h)(6) for visual observations.

(d) You must keep the records required in §§ 63.7333 through 63.7335 to show continuous compliance with each emission limitation, work practice standard, and operation and maintenance requirement that applies to you.

§ 63.7343 In what form and how long must I keep my records?

(a) You must keep your records in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

§§ 63.7344–63.7349 [Reserved]

Other Requirements and Information

§ 63.7350 What parts of the General Provisions apply to me?

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.7351 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities

contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities in paragraphs (c)(1) through (5) of this section will not be delegated to State, local, or tribal agencies.

(1) Approval of alternatives to work practice standards for fugitive pushing emissions (Option 2) in § 63.7291(b) for a by-product coke oven battery with vertical flues, fugitive pushing emissions in § 63.7292(a) for a by-product coke oven battery with horizontal flues, fugitive pushing emissions in § 63.7293 for a non-recovery coke oven battery, soaking for a by-product coke oven battery in § 63.7294(a), and quenching for a coke oven battery in § 63.7295(a) under § 63.6(g).

(2) Approval of alternative opacity emission limitations for fugitive pushing emissions (Option 1) in § 63.7291(a) and battery stacks in § 63.7296(a) for a by-product coke oven battery under § 63.6(h)(9).

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.7352 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA), in § 63.2, and in this section as follows:

Baffles means an apparatus comprised of obstructions for checking or deflecting the flow of gases. Baffles are installed in a quench tower to remove droplets of water and particles from the rising vapors by providing a point of impact. Baffles may be installed either inside or on top of quench towers and are typically constructed of treated wood, steel, or plastic.

Battery stack means the stack that is the point of discharge to the atmosphere of the combustion gases from a battery's underfiring system.

Batterywide extended coking means increasing the average coking time for all ovens in the coke oven battery by 25 percent or more over the normal coking time.

By-product coke oven battery means a group of ovens connected by common walls, where coal undergoes destructive distillation under positive pressure to produce coke and coke oven gas from which by-products are recovered.

Clean water means surface water from a river, lake, or stream; water meeting drinking water standards; water that has been used for non-contact cooling; or process wastewater that has been treated to remove organic compounds and/or dissolved solids.

Coke oven battery means a group of ovens connected by common walls, where coal undergoes destructive distillation to produce coke. A coke oven battery includes by-product and non-recovery processes.

Coke plant means a facility that produces coke from coal in either a by-product coke oven battery or a non-recovery coke oven battery.

Cokeside shed means a structure used to capture pushing emissions that encloses the cokeside of the battery and ventilates the emissions to a control device.

Coking time means the time interval that starts when an oven is charged with coal and ends when the oven is pushed.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including operating limits) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, or operating limit.

Extended coking means increasing the charge-to-push time for an individual oven.

Four consecutive pushes means four pushes observed successively. Exclude any push during which the observer's view is obstructed or obscured by interferences, and observe the next available push to complete the set of four pushes.

Fugitive pushing emissions means emissions from pushing that are not collected by a capture system.

Horizontal flue means a type of coke oven heating system used on Semet-Solvay batteries where the heating flues run horizontally from one end of the oven to the other end, and the flues are not shared with adjacent ovens.

Independent certified observer means a visible emission observer certified to perform opacity observations under EPA Method 9 in appendix A of 40 CFR part 60 that is not an employee of or consultant to the owner or operator of the coke plant or coke oven battery.

Non-recovery coke oven battery means a group of ovens connected by common walls and operated as a unit, where coal undergoes destructive distillation under negative pressure to produce coke, and which is designed for the combustion of the coke oven gas from which by-products are not recovered.

Normal coking time means the batterywide coking time that is representative of routine operation.

Oven means a chamber in the coke oven battery in which coal undergoes destructive distillation to produce coke.

Pushing means the process of removing the coke from the oven. Pushing begins when coke first begins to fall from the oven into the quench car and ends when the quench car enters the quench tower.

Quenching means the wet process of cooling (wet quenching) the hot incandescent coke by direct contact with water that begins when the quench car enters the quench tower and ends when the quench car exits the quench tower.

Quench tower means the structure in which hot incandescent coke in the quench car is deluged or quenched with water.

Remove from service means that an oven is not charged with coal and is not used for coking. When removed from service, the oven may remain at the operating temperature or it may be cooled down for extensive repairs.

Responsible official means responsible official as defined in § 63.2.

Short battery means a by-product coke oven battery with ovens less than five meters in height.

Soaking means that period in the coking cycle that starts when an oven is dampered off the collecting main and vented to the atmosphere through an open standpipe prior to pushing and ends when the coke begins to be pushed from the oven.

Standpipe means an apparatus on the oven that provides a passage for gases from an oven to the collecting main or to the atmosphere when the oven is dampered off the collecting main and the standpipe cap is opened.

Tall battery means a by-product coke oven battery with ovens five meters or more in height.

Vertical flue means a type of coke oven heating system in which the heating flues run vertically from the

bottom to the top of the oven, and flues are shared between adjacent ovens.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

§§ 63.7353–63.7359 [Reserved]

Tables to Subpart CCCCC

Table 1 to Subpart CCCCC. Applicability of General Provisions to Subpart CCCCC

As required in § 63.7350, you must comply with each applicable requirement of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table:

Citation	Subject	Applies to Subpart CCCCC?	Explanation
§ 63.1	Applicability	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5	Construction/Reconstruction	Yes.	
§ 63.6(a), (b), (c), (d), (e), (f), (g), (h)(2)(ii)–(8).	Compliance with Standards and Maintenance Requirements.	Yes.	
§ 63.6(h)(2)(i)	Determining Compliance with Opacity and VE Standards.	No	Subpart CCCCC specifies Method 9 (40 CFR Part 60) for determining the opacity of fugitive emissions from pushing under Option 1 for proposal.
§ 63.6(h)(9)	Adjustment to an Opacity Emission Standard.	Yes	Except subpart CCCCC specifies additional information to be submitted.
§ 63.7(a)(3), (b), (c)–(h)	Performance Testing Requirements	Yes.	
§ 63.7(a)(1)–(2)	Applicability and Performance Test Dates.	No	Subpart CCCCC specifies applicability and dates.
§ 63.8(a)(1)–(3), (b), (c)(1)–(3), (c)(4)(i)–(ii), (c)(5)–(8), (f) (1)–(5), (g) (1)–(4).	Monitoring Requirements	Yes	CMS requirements in § 63.8(c)(4)(i)–(ii),(c)(5), (c)(6), (d), and (e) apply only to COMS for battery stacks.
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Flares are not a control device for Subpart CCCCC affected sources.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	No	Subpart CCCCC specifies requirements for operation of CMS.
§ 63.8(f)(6)	RATA Alternative	No	Subpart CCCCC does not require CEMS.
§ 63.8(g)(5)	Data Reduction	No	Subpart CCCCC specifies data that can't be used in computing averages for COMS.
§ 63.9	Notification Requirements	Yes	Additional notifications for CMS in § 63.9(g) apply only to COMS for battery stacks.
§ 63.10(a), (b)(1)–(b)(2)(xii), (b)(2)(xii) (b)(2)(xiv), (b)(3), (c)(1), (6), (c)(9)–(6), (c)(9), (15), (d), (e)(1)–(2), (e) (4), (f).	Recordkeeping and Reporting Requirements.	Yes	Additional records for CMS in § 63.10(c) (1)–(6), (9)–(15), and reports in § 63.10(d) (1)–(2) apply only to COMS for battery stacks.
§ 63.10(b)(2)(xi–(xii)	CMS Records for RATA Alternative	No	Subpart CCCCC doesn't require CEMS.
§ 63.10(c) (7)–(8)	Records Parameter Monitoring Exceedances for CMS.	No	Subpart CCCCC specifies record requirements.
§ 63.10(e)(3)	Excess Emission Reports	No	Subpart CCCCC specifies reporting requirements.
§ 63.11	Control Device Requirements	No	Subpart CCCCC does not require flares.
§ 63.12	State Authority and Delegations	Yes.	
§§ 63.13–63.15	Addresses, Incorporation by Reference, Availability of Information.	Yes.	

[FR Doc. 01–16192 Filed 7–2–01; 8:45 am]
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Federal Register

Tuesday,
July 3, 2001

Part III

The President

Proclamation 7453—Black Music Month, 2001

Notice of June 30, 2001—Continuation of Emergency With Respect to the Taliban

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Vol. 66, No. 128
Tuesday, July 3, 2001

Presidential Documents

Title 3—

The President

Proclamation 7453 of June 29, 2001

Black Music Month, 2001

By the President of the United States of America

A Proclamation

America's rich musical heritage reflects the diversity of our people. Among many influences, the cultural traditions brought to this land from Africa more than four centuries ago and the remarkable musical achievements of African Americans since then have strongly and unmistakably improved the sound of American music.

From historical burdens such as slavery and injustice to the celebration of faith, much of the origin of African-American music reflects our national story. The work songs, shouts and hollers, spirituals, and ragtime of an earlier era laid the creative foundation for many of America's most distinctive and popular musical genres. These include rhythm and blues, jazz, hip hop, gospel, rap, and the roots of rock and roll.

Jazz, often called America's classical music, so influenced our culture that Americans named a decade after it. Like the country of its birth, jazz blends many traditions, such as African-American folk, rhythm and blues, French Creole classical form, and gospel. Through the creation and performance of music like jazz, black Americans were better able to exchange ideas freely across racial and cultural barriers. Before our Nation made significant strides in truly promoting equal justice and opportunity for all, black and white musicians in the genres of jazz, blues, and country played together in jam sessions, recording studios, and small bands. In many ways, their art preceded social change, allowing black and white musicians to meet as equals and to be judged on their musical ability, rather than the color of their skin. Their music also provided an outlet for African Americans to speak passionately and brilliantly to the rest of the Nation and the world.

From New Orleans and the back roads of the Mississippi Delta to Harlem and Chicago, black musicians set enduring and distinctive standards for American creativity. The blues of Ma Rainey and Bessie Smith, the gospel of Mahalia Jackson, the jazz of Duke Ellington, and the soul of Marvin Gaye claim fans of all ages from around the world. The trumpeting genius of Louis Armstrong and Dizzy Gillespie illustrate the exceptional musicianship so prominent in various genres of African-American music.

The career of Marian Anderson, the world-class contralto who was denied permission to sing in Constitution Hall because of her race, symbolizes the achievements of so many black American musicians. Performing instead at the Lincoln Memorial in 1939, she drew an audience of 75,000 and inspired the world not only with her rich musical gifts, but also with her determination and courage.

The music of Marian Anderson and other African-American artists has greatly enriched our quality of life and created one of our Nation's most treasured art forms. As universal and original expressions of the human experience, their body of work, both past and present, entertains, inspires, and thrills countless people around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution

and the laws of the United States, do hereby proclaim June 2001, as Black Music Month. I encourage all Americans to learn more about the contributions of black artists to America's musical heritage and to celebrate their remarkable role in shaping our history and culture.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of June, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.

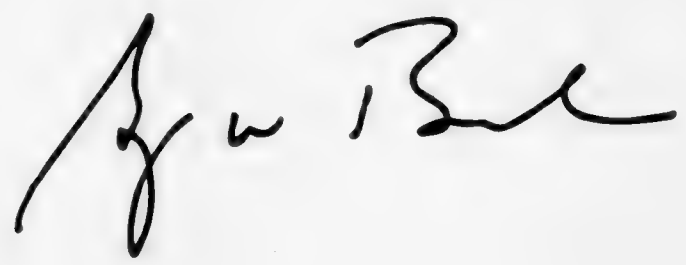

[FR Doc. 01–16911
Filed 07–02–01; 10:54 am]
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Presidential Documents

Notice of June 30, 2001

Continuation of Emergency With Respect to the Taliban

On July 4, 1999, the President issued Executive Order 13129, "Blocking Property and Prohibiting Transactions with the Taliban," to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the actions and policies of the Taliban in Afghanistan. The order blocks all property and interests in property of the Taliban and prohibits trade-related transactions by United States persons involving the territory of Afghanistan controlled by the Taliban. The last notice of continuation was signed on June 30, 2000.

The Taliban continues to allow territory under its control in Afghanistan to be used as a safe haven and base of operations for Usama bin Laden and the al-Qaida organization who have committed and threaten to continue to commit acts of violence against the United States and its nationals. For these reasons, I have determined that it is necessary to maintain in force these emergency authorities beyond July 4, 2001. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared on July 4, 1999, with respect to the Taliban. This notice shall be published in the **Federal Register** and transmitted to the Congress.

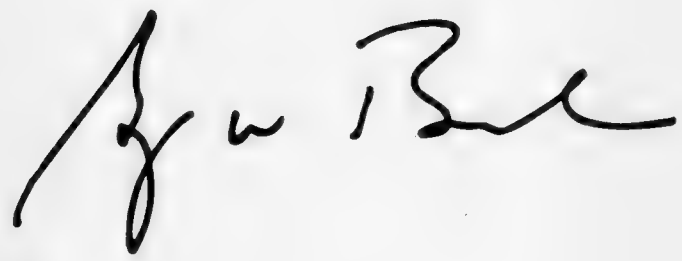

THE WHITE HOUSE,
June 30, 2001.

[FR Doc. 01–16912
Filed 7–2–01; 10:52 am]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Texas; published 6-5-01
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National Park Service

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- Salute to Cecil County Veterans Fireworks Celebration; published 7-2-01

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- Value-added wheat gluten and wheat starch product market development program; comments due by 7-9-01; published 6-8-01

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CONSUMER PRODUCT SAFETY COMMISSION

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- Temporary Assistance for Needy Families Program—
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  - Fair market rent schedules for rental certificate, loan management, property disposition, moderate rehabilitation, rental voucher program; comments due by 7-9-01; published 5-9-01

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H.R. 1914/P.L. 107–17

To extend for 4 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted. (June 26, 2001; 115 Stat. 151)

Last List June 11, 2001

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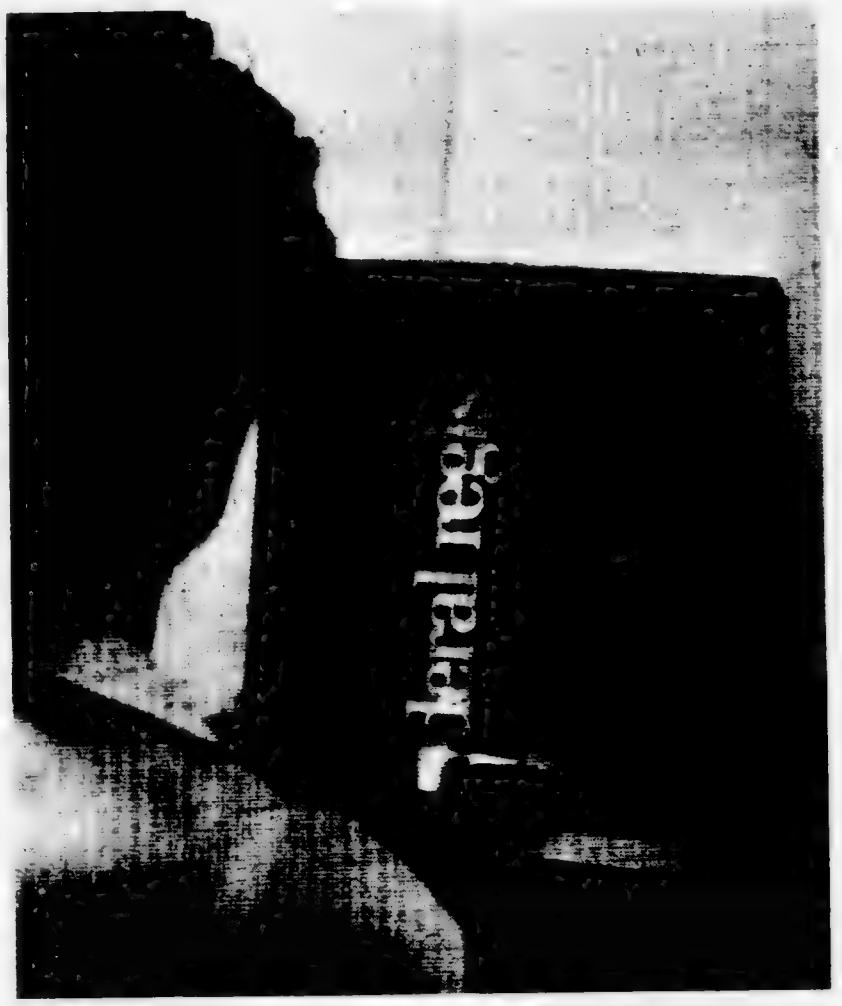

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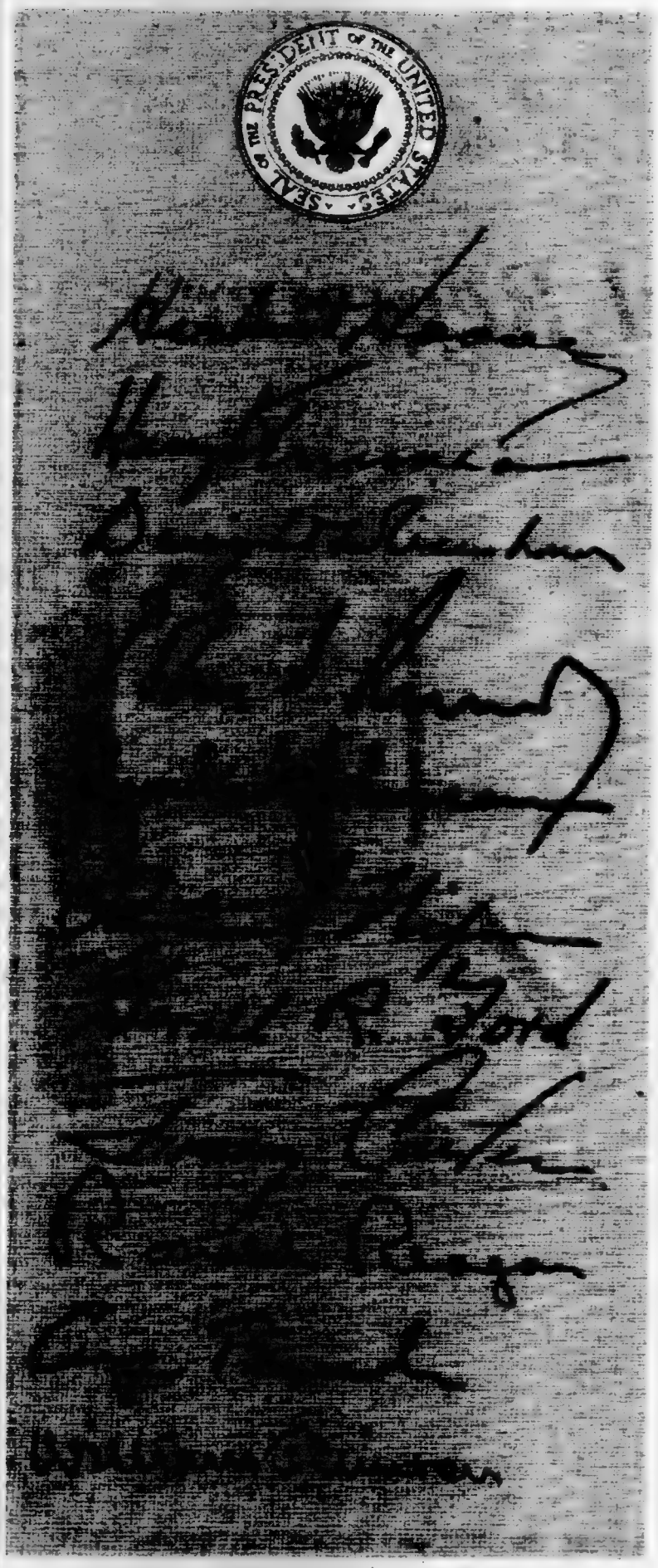

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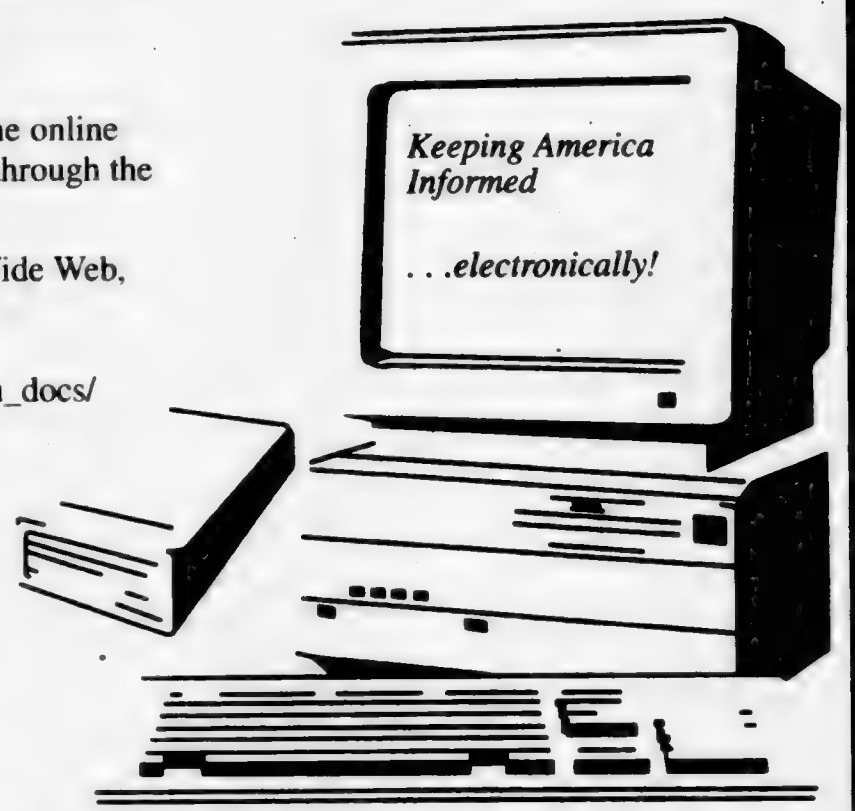

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Presidential Documents

Title 3—

The President

Proclamation 7454 of June 29, 2001

To Modify Duty-Free Treatment Under the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Sections 501 and 502 of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2461 and 2462), authorize the President to designate countries as beneficiary developing countries for purposes of the Generalized System of Preferences (GSP).

2. Section 503(c)(2)(A) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)) provides that beneficiary developing countries, except least-developed beneficiary developing countries or beneficiary sub-Saharan African countries, are subject to competitive need limitations on the preferential treatment afforded under the GSP to eligible articles.

3. Section 503(c)(2)(C) of the 1974 Act (19 U.S.C. 2463(c)(2)(C)) provides that a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the competitive need limitations in section 503(c)(2)(A) during the preceding calendar year.

4. Section 503(c)(2)(F) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)) provides that the President may disregard the competitive need limitation provided in section 503(c)(2)(A)(i)(II) (19 U.S.C. 2463(c)(2)(A)(i)(II)) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed an amount set forth in section 503(c)(2)(F)(ii) (19 U.S.C. 2463(c)(2)(F)(ii)).

5. Section 503(d) of the 1974 Act (19 U.S.C. 2463(d)) provides that the President may waive the application of the competitive need limitations in section 503(c)(2)(A) with respect to any eligible article of any beneficiary developing country if certain conditions are met.

6. Pursuant to sections 501 and 502 of the 1974 Act, and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Georgia as a beneficiary developing country for purposes of the GSP.

7. Pursuant to section 503(c)(2)(A) of the 1974 Act, I have determined that certain beneficiary countries should no longer receive preferential tariff treatment under the GSP with respect to certain eligible articles imported in quantities that exceed the applicable competitive need limitation.

8. Pursuant to section 503(c)(2)(C) of the 1974 Act, I have determined that certain countries should be redesignated as beneficiary developing countries with respect to certain eligible articles that previously had been imported in quantities exceeding the competitive need limitations of section 503(c)(2)(A). For certain articles, I have decided that the effective date of the redesignation shall be determined by the United States Trade Representative (USTR).

9. Pursuant to section 503(c)(2)(F) of the 1974 Act, I have determined that the competitive need limitation provided in section 503(c)(2)(A)(i)(II) should

be waived with respect to certain eligible articles from certain beneficiary developing countries. For certain articles, I have decided that the effective date of the waiver shall be determined by the USTR.

10. Pursuant to section 503(d) of the 1974 Act, I have determined that the competitive need limitations of section 503(c)(2)(A) should be waived with respect to certain eligible articles from a beneficiary developing country. I have received the advice of the International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c), that such waivers are in the national economic interest of the United States. I have decided that the effective date of the waivers shall be determined by the USTR.

11. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to reflect in the HTS the addition of Georgia as a beneficiary developing country under the GSP, general note 4(a) to the HTS is modified as provided in section A(1) of Annex I to this proclamation.

(2) In order to provide that one or more countries that have not been treated as beneficiary developing countries with respect to one or more eligible articles should be redesignated as beneficiary developing countries with respect to such article or articles for purposes of the GSP, and in order to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to one or more eligible articles for purposes of the GSP, general note 4(d) to the HTS is modified as provided in section A(2) of Annex I and paragraph (1) of Annex III to this proclamation.

(3) (a) In order to provide preferential tariff treatment under the GSP to a beneficiary developing country that has been excluded from the benefits of the GSP for certain eligible articles, the Rates of Duty 1-Special subcolumn for each of the HTS subheadings enumerated in section A(3)(a) of Annex I and paragraph (2) of Annex III to this proclamation is modified as provided in such section and paragraph.

(b) In order to provide that one or more countries should not be treated as beneficiary developing countries with respect to certain eligible articles for purposes of the GSP, the Rates of Duty 1-Special subcolumn for each of the HTS subheadings enumerated in section A(3)(b) of Annex I to this proclamation is modified as provided in such section.

(4) A waiver of the application of section 503(c)(2)(A)(i)(II) of the 1974 Act shall apply to the eligible articles in the HTS subheadings and to the beneficiary developing countries listed in section B of Annex I to this proclamation.

(5) A waiver of the application of section 503(c)(2)(A) of the 1974 Act shall apply to the eligible articles in the HTS subheadings and to the beneficiary developing country set forth in Annex II to this proclamation.

(6) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(7) (a) The modifications made by Annex I to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2001.

(b) The action taken in paragraph (5) of this proclamation shall be effective on the date of signature of this proclamation.

(c) The modifications made by Annex III to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after a date to be announced in the **Federal Register** by the USTR.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of June, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.

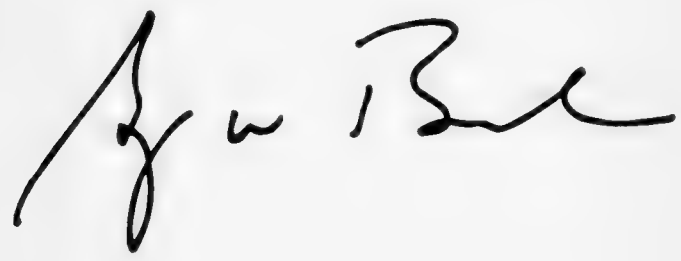

Billing code 3195–01–P

Annex I

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2001.

Section A. Modifications to the Harmonized Tariff Schedule of the United States (HTS).

(1). General note 4(a) to the HTS is modified by adding "Georgia", in alphabetical order, to the list of independent countries.

(2). General note 4(d) to the HTS is modified by:

(a). deleting the following provisions and the country set out opposite such provision:

0802.50.20 Turkey	7904.00.00 South Africa
2516.90.00 South Africa	9614.20.60 Turkey

(b). deleting the country set out opposite the following subheadings:

2840.11.00 Turkey
2840.19.00 Turkey

(c). adding, in numerical sequence, the following provisions and countries set out opposite them:

0708.20.10 Peru	4012.90.45 Sri Lanka
0710.80.65 Guatemala	4601.10.00 India
0713.40.20 India	7604.10.50 Russia
1806.10.34 Colombia	8414.51.00 Thailand
2207.10.30 Barbados	8419.50.10 Malta
2305.00.00 Argentina	8419.60.10 Malta
2306.30.00 Ukraine	

(d). adding, in alphabetical order, the country or countries set out opposite the following subheadings:

0805.90.00 Jamaica	2933.39.23 Guatemala
1701.11.05 Colombia	5904.92.00 India
2804.29.00 Ukraine	7113.19.29 Turkey
2909.19.14 Brazil	
2924.21.16 Brazil	7403.11.00 Kazakhstan;
2928.00.10 Colombia	Russia

(3). Each enumerated article's preferential tariff treatment under the Generalized System of Preferences (GSP) in the HTS is modified as provided in this section.

(a). For the following provisions, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A*" and inserting an "A" in lieu thereof.:

0802.50.20	7904.00.00
2516.90.00	9614.20.60

(b). For the following provisions, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A" and inserting an "A*" in lieu thereof:

0708.20.10	1806.10.34	2306.30.00	7604.10.50	8419.60.10
0710.80.65	2207.10.30	4012.90.45	8414.51.00	
0713.40.20	2305.00.00	4601.10.00	8419.50.10	

Annex I (con.)
-2-

Section B. HTS subheadings and countries for which the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act is waived.

0305.20.20 Russia	2840.11.00 Turkey	4602.10.23 Philippines
0410.00.00 Indonesia	2840.19.00 Turkey	5208.31.20 India
0712.90.70 Egypt	2841.61.00 Czech Republic	5208.32.10 India
0802.50.20 Turkey	2841.90.20 Kazakhstan	5208.41.20 India
0802.50.40 Turkey	2909.50.40 Indonesia	5208.42.10 India
0813.30.00 Chile	2912.13.00 Czech Republic	5209.31.30 India
0813.40.10 Thailand	2917.19.10 Hungary	5209.41.30 India
0904.20.76 India	2918.21.10 Brazil	5607.30.20 Philippines
1102.30.00 Thailand	2918.90.35 Romania	5702.39.10 India
1301.90.40 Brazil	2929.10.30 Poland	5702.99.20 India
1604.15.00 Chile	2931.00.25 Brazil	7113.20.25 India
1605.90.10 Thailand	2933.40.08 Hungary	7202.21.10 Macedonia, Former Yugoslav Republic of
1702.90.35 Brazil	2933.59.10 Hungary	
1901.20.02 Turkey	2938.10.00 Brazil	
2002.90.40 Morocco	3801.10.10 Brazil	7202.99.10 Brazil
2008.99.28 Turkey	4106.20.60 India	7403.12.00 Russia
2008.99.35 Thailand	4202.22.35 Philippines	8112.91.50 Chile
2008.99.45 Philippines	4202.29.20 Philippines	8112.99.00 Chile
2103.90.74 Croatia	4302.20.60 Brazil	8528.12.80 Thailand
2603.00.00 Philippines	4412.13.25 Brazil	9303.30.40 Czech Republic
2811.29.50 Brazil	4412.14.25 Brazil	9614.20.60 Turkey
2819.10.00 Kazakhstan	4412.99.45 Brazil	

Annex II

Harmonized Tariff Schedule of the United States (HTS)
Subheadings and Countries Granted Waivers of the
Application of Section 503(c)(2)(A) of the 1974 Act

HTS Subheading	Country
7113.19.25	India
7113.19.29	India
7113.19.50	India
7418.19.10	India
9405.50.30	India

Annex III

Modifications to the Harmonized Tariff Schedule of the United States (HTS).

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after a date to be announced in the *Federal Register* by the United States Trade Representative, the following modifications to the HTS shall take effect.

(1). General note 4(d) to the HTS is modified by:

(a). deleting the following provisions and the country set out opposite such provision:

0708.90.15 India	5209.51.30 India
0713.90.60 India	5307.20.00 India
0713.90.80 India	5702.39.10 India
0802.31.00 India	5702.49.15 India
0904.20.76 India	5702.99.20 India
0910.10.40 India	5904.91.00 India
1006.30.10 India	6302.99.10 India
1403.90.40 India	6814.90.00 India
2001.90.45 India	7113.19.25 India
2101.20.32 India	7113.20.21 India
2516.22.00 India	7113.20.25 India
3920.63.20 India	7113.20.29 India
3920.93.00 India	7418.19.10 India
4104.39.20 India	8540.12.10 India
4106.19.20 India	8606.30.00 India
5007.90.30 India	9405.50.30 India

(b). deleting the country set out opposite the following subheadings:

1701.11.05 India	4106.19.30 India
1701.91.05 India	4106.20.30 India
1806.10.65 India	4106.20.60 India
4104.39.50 India	7113.19.29 India
4106.12.00 India	7113.19.50 India

(2). For the following provisions, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A*" and inserting an "A" in lieu thereof.

0708.90.15	1403.90.40	4106.19.20	5904.91.00	7418.19.10
0713.90.60	2001.90.45	5007.90.30	6302.99.10	8540.12.10
0713.90.80	2101.20.32	5209.51.30	6814.90.00	8606.30.00
0802.31.00	2516.22.00	5307.20.00	7113.19.25	9405.50.30
0904.20.76	3920.63.20	5702.39.10	7113.20.21	
0910.10.40	3920.93.00	5702.49.15	7113.20.25	
1006.30.10	4104.39.20	5702.99.20	7113.20.29	

[FR Doc. 01-16951
Filed 7-3-01; 8:45 am]
Billing code 3190-01-C

Rules and Regulations

Federal Register
Vol. 66, No. 129
Thursday, July 5, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–396–AD; Amendment 39–12304; AD 2001–13–22]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A Military), and –40 Series Airplanes; and Model MD–10–10F and MD–10–30F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A military), and –40 series airplanes; and Model MD–10–10F and MD–10–30F series airplanes, that currently requires, among other actions, performing repetitive ultrasonic inspections of the attaching bolts on the inboard and outboard support on the inboard and outboard flap assembly to detect failed bolts, or verifying the torque of the attaching bolts on the inboard support on the outboard flap; and follow-on actions. This amendment, among other actions, adds a requirement to verify the torque of the attaching bolts on the outboard support on the inboard and outboard flaps, and allows repetitive torque verifications. This amendment is prompted by a review that revealed inadvertent omission of a requirement. The actions specified by this AD are intended to prevent in-flight loss of inboard and outboard flap assemblies due to failure of H–11 attaching bolts, which could result in reduced controllability of the airplane.

DATES: Effective August 9, 2001.

The incorporation by reference of certain publications listed in the regulations has been approved previously by the Director of the Federal Register as of September 25, 2000 (65 FR 50621, August 21, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–16–10, amendment 39–11866 (65 FR 50621, August 21, 2000), which is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A military), and –40 series airplanes; and Model MD–10–10F and MD–10–30F series airplanes, was published in the **Federal Register** on February 21, 2001 (66 FR 10970). The action proposed to continue to require repetitive ultrasonic inspections of the attaching bolts on the inboard and outboard support on the inboard and outboard flap assembly to detect failed bolts, or verifying the torque of the attaching bolts on the inboard support on the outboard flap; and follow-on actions. The action also proposed to continue to require replacement of all attaching bolts with bolts made from Inconel, which would constitute terminating action for the repetitive inspection requirements. In addition, the action proposed to add a requirement to verify the torque of the attaching bolts on the outboard support on the inboard and outboard flaps, and to allow repetitive torque verification in lieu of the repetitive ultrasonic inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 412 McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A military), and –40 series airplanes; and Model MD–10–10F and MD–10–30F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 244 airplanes of U.S. registry will be affected by this AD.

The inspection/torque verification that is currently required by AD 2000–16–10, and retained in this new AD, takes approximately 2 to 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be between $29,280 and $117,120, or between $120 and $480 per airplane, per inspection cycle.

The bolt replacement that is currently required by AD 2000–16–10, and retained in this new AD, takes approximately 288 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,987 per airplane. Based on these figures, the cost impact of the currently required replacement on U.S. operators is estimated to be $4,945,148, or $20,267 per airplane.

The cost impact of the new torque verification required by this AD is included in the cost estimate above for the inspection/torque verification.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD

were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11866 (65 FR 50621, August 21, 2000), and by adding a new airworthiness directive (AD), amendment 39–12304, to read as follows:

2001–13–22 McDonnell Douglas: Amendment 39–12304. Docket 2000–NM–396–AD. Supersedes AD 2000–16–10, Amendment 39–11866.

Applicability: Model DC–10–10, –15, –30, –30F (KC–10A military), and –40 series airplanes; and Model MD–10–10F and MD–10–30F series airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December 20, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight loss of inboard and outboard flap assemblies due to failure of H–11 attaching bolts, which could result in reduced controllability of the airplane, accomplish the following:

Inspection or Torque Verification, and Corrective Actions, if Necessary

(a) Within 2 months after September 25, 2000, (the effective date of AD 2000–16–10, amendment 39–11866), do an ultrasonic inspection of the attaching bolts on the inboard and outboard support on the outboard flap assembly and on the outboard support on the inboard flap assembly to detect failed bolts, or verify the torque of the attaching bolts on the inboard support on the outboard flap, per McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December 20, 1999.

(1) If no failed bolt is found, repeat the ultrasonic inspection or torque verification every 6 months.

(2) If any failed bolt is found, before further flight, replace the bolt and associated parts with a new Inconel bolt and new associated parts per the service bulletin, except as provided by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD. Accomplishment of the replacement constitutes terminating action for the repetitive requirements of paragraph (a)(1) of this AD for that bolt.

(i) If an Inconel bolt is not available for accomplishment of the replacement, replacement with a new H–11 steel bolt is acceptable provided that operators repeat the ultrasonic inspection or torque verification every 6 months until the requirements of paragraph (c) of this AD are accomplished.

(ii) If a PLI washer is not available for accomplishment of the Inconel replacement, a new Inconel bolt can be temporarily installed without a new PLI washer provided that the bolt is torqued to the applicable value specified in the service bulletin. Within 6,000 flight hours after an Inconel bolt is torqued, replace the PLI washer with a new washer per the service bulletin.

Torque Verification

(b) For airplanes on which the verification of the torque of the attaching bolts on the inboard support on the outboard flap was done per paragraph (a) of this AD: Within 2 months after the effective date of this AD, verify the torque of the attaching bolts on the outboard support on the inboard and outboard flaps, per McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December 20, 1999; and do the applicable action(s) specified in paragraph (a)(1) or (a)(2) of this AD.

Bolt Replacement

(c) Within 2 years after accomplishing the initial inspection required by paragraph (a) of this AD or the torque verification required by paragraphs (a) and (b) of this AD, do the action specified in paragraph (a)(2) of this AD for all H–11 bolts. Accomplishment of the replacement of all H–11 bolts with Inconcel bolts constitutes terminating action for the requirements of this AD.

Spares

(d) As of 2 years after the effective date of this AD, no person shall install, on any airplane, an H–11 steel bolt, part number 71658–8–44, 71658–7–44, 71658–7–54, 71658–7–56, 71658–7–29, 71658–9–31, 71658–9–34, 71658–9–38, 71658–9–41, 71658–10–41, 71658–7–26, 71658–7–27, or 71658–8–29, on the inboard or outboard flap assembly.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance, approved previously per AD 2000–16–10, amendment 39–11866, are considered to be approved as alternative methods of compliance with this AD.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December 20, 1999. This incorporation by reference of that document was approved previously by the Director of the Federal Register as of September 25, 2000 (65 FR 50621, August 21, 2000). Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long

Beach, California 90846, Attention: Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on August 9, 2001.

Issued in Renton, Washington, on June 27, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–16739 Filed 7–3–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 129 and 165

[Docket No. 01N–0126]

Beverages: Bottled Water; Technical Amendment; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; technical amendment; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of January 1, 2002, for the direct final rule that appeared in the **Federal Register** of March 28, 2001 (66 FR 16858). The direct final rule amends the bottled water quality standard regulations (part 165 (21 CFR part 165)) by establishing allowable levels for three residual disinfectants (chloramine, chlorine, and chlorine dioxide) and three types of disinfection byproducts (DBPs) (bromate, chlorite, and haloacetic acids (HAA5)) and revised the existing allowable level in part 165 for the DBP total trihalomethanes (TTHM). The direct final rule also revised, for the three residual disinfectants and four types of DBPs only, the monitoring requirement for source water found in the current good manufacturing practice (CGMP) regulations for bottled water in part 129 (21 CFR part 129). FDA is also making a technical amendment to part 165 to correct an editorial error introduced in the direct final rule of March 28, 2001 (66 FR 16858 at 16866). This document confirms the effective date of the direct final rule.

DATES: The effective date for the regulation confirmed: January 1, 2002. The technical amendment to part 165 is also effective January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Lauren Posnick, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–358–3568.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 28, 2001 (66 FR 16858), FDA gave interested persons until June 11, 2001, to comment on the direct final rule. FDA stated that the effective date of the direct final rule would be January 1, 2002, and, if the agency received no significant adverse comment, it would publish a notice of confirmation of the effective date no later than July 5, 2001. FDA received no significant adverse comments within the comment period. Therefore, FDA is confirming that the effective date of the regulation is January 1, 2002.

As noted in the direct final rule, FDA is publishing this confirmation notice 180 days before the effective date to permit affected firms adequate time to take appropriate steps to bring their product into compliance with the standard imposed by the new rule. However, FDA recognizes that some bottled water products may be in the marketplace and remain there for 2 or more years. Thus, there may be some products already in interstate commerce on the effective date that have not been tested under the new part 129 requirements for disinfectants and disinfection by-products and that do not meet the revised standard of quality.

Under 403(h)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343 (h)(1)), such products are considered to be misbranded if they do not meet the revised quality standard for the three residual disinfectants and the four types of DBPs unless they bear a statement of substandard quality. However, FDA believes that it would be appropriate to exercise its enforcement discretion as to those bottled water products that: (1) Are already in interstate commerce before January 1, 2002; (2) do not meet the revised quality standard for the three residual disinfectants and the four types of DBPs; and (3) do not bear a statement of substandard quality–provided that such products are not adulterated. Therefore, the agency does not plan to take enforcement action against such bottled water products, provided that such products are safe.

FDA is making a technical amendment to part 165 to correct an editorial error introduced in the direct final rule of March 28, 2001 (66 FR 16858 at 16866). In §165.110(b)(1)(ii), the agency is correcting the phrase "three significant figures" to read "two significant figures." The error also appears in 21 CFR part 165.100 (21 CFR revised as of April 1, 2001), on page 535, in the first column, under "Effective Date Note." Publication of this document constitutes final action of this change under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment is nonsubstantive. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, notice is given that no objections or requests for a hearing were filed in response to the March 28, 2001, direct final rule. Accordingly, the amendments issued thereby, including the technical amendment below, are effective January 1, 2002.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 165 is amended as follows:

PART 165—BEVERAGES

1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343–l, 348, 349, 371, 379e.

2. Section 165.110 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 165.110 Bottled water.

* * * * *

(b) * * *

(1) * * *

(ii) *Total trihalomethanes* (TTHM) means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane, dibromochloromethane, bromodichloromethane, and tribromomethane), rounded to two significant figures.

* * * * *

Dated: June 29, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–16909 Filed 7–2–01; 4:22 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 236–2001]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a Privacy Act System of records for subsections (c)(3), and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), and (g) of the Privacy act, 5 U.S.C. 552a. This system of records is maintained by the Immigration and Naturalization Service (INS) and is entitled "National Automated Immigration Lookout System (NAILS), JUSTICE/INS–032."

The NAILS system facilitates INS in its inspection and investigation process. The automated system provides quick and easy retrieval of biographical or case data on persons who may be either inadmissible to the United States, or of interest to other Federal agencies.

The exemptions are necessary to avoid interference with law enforcement operations. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory or other law enforcement process such as, deportation/removal proceedings.

EFFECTIVE DATE: This final rule is effective July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Cahill—(202) 307–1823.

SUPPLEMENTARY INFORMATION: On April 4, 2001 (66 FR 17828) a proposed rule was published in the **Federal Register** with an invitation to comment. The INS accepted three comments on the proposed rule from interested parties on or before April 13, 2001. One commenter expressed support for the proposed rule. Two commenters believed that exceptions were being made to the Privacy Act. No exceptions were being made to the Privacy Act. As in the proposed rule, the final rule specifically states that exemptions will apply only to the extent that information in the system is subject to exemption. The INS cited the same exemptions for law enforcement records as any other agency that has law enforcement functions. The exemptions are warranted and do not make exceptions that may violate the Privacy Act.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, Title 28 of the Code of Federal Regulations, part 16 is amended as set forth below.

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534, 31 U.S.C. 3717.

2. 28 CFR 16.99 is amended by adding paragraph (a)(3) to read as follows:

§ 16.99 Exemption of the Immigration and Naturalization Service System-limited access.

* * * * *

(a) * * *

(3) The Immigration and Naturalization Service "National Automated Immigration Lookout System (NAILS) JUSTICE/INS–032." The exemptions apply only to the extent that records in the system are subject to exemptions pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

* * * * *

Dated: June 21, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

[FR Doc. 01–16824 Filed 7–3–01; 8:45 am]

BILLING CODE 4410–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0055; FRL–7005–8]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy of State Implementation Plan for Class I Visibility Protection: Craig Station Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the long-term strategy portion of Colorado's State Implementation Plan (SIP) for Class I Visibility Protection, contained in section III of the document entitled "Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements," as submitted by the Governor with a letter dated June 7, 2001. The revision will incorporate into the SIP emissions reduction requirements for the Craig Station (a coal-fired steam generating plant located near the town of Craig, Colorado). EPA is approving the SIP revision, which is expected to remedy Craig Station's contribution to visibility impairment in the Mt. Zirkel Wilderness Area and, therefore, make reasonable progress toward the Clean Air Act National visibility goal with respect to such contribution. On May 1, 2001, EPA published a notice of proposed rulemaking that proposed to approve this SIP revision and provided a thirty-day period for public comment. EPA received one letter of supportive comments regarding the proposed revision and is finalizing the proposal without modification.

EFFECTIVE DATE: This action is effective August 6, 2001. .

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air and Radiation Programs, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2405; Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Air and Radiation Programs, Environmental Protection Agency, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" are used it means the Environmental Protection Agency.

I. Background

Section 169A of the Clean Air Act (CAA),[1] 42 U.S.C. 7491, establishes as a National goal the prevention of any future, and the remedying of any existing, anthropogenic visibility impairment in mandatory Class I Federal areas [2] (referred to herein as the

[1] The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401 *et seq.*

[2] Mandatory class I Federal areas include international parks, national wilderness areas, and national memorial parks greater than five thousand

"National goal" or "National visibility goal"). Section 169A called for EPA to, among other things, issue regulations to assure reasonable progress toward meeting the National visibility goal, including requiring each State with a mandatory Class I Federal area to revise its State Implementation Plan (SIP) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the National goal. CAA section 169A(b)(2). Section 110(a)(2)(J) of the CAA, 42 U.S.C. 7410(a)(2)(J), similarly requires SIPs to meet the visibility protection requirements of the CAA.

We promulgated regulations that required affected States to, among other things, (1) coordinate development of SIPs with appropriate Federal Land Managers (FLMs); (2) develop a program to assess and remedy visibility impairment from new and existing sources; and (3) develop a long-term (10–15 years) strategy to assure reasonable progress toward the National visibility goal. See 45 FR 80084, December 2, 1980 (codified at 40 CFR 51.300–51.307). The regulations provide for the remedying of visibility impairment that is reasonably attributable to a single existing stationary facility or small group of existing stationary facilities. These regulations require that the SIPs provide for periodic review, and revision as appropriate, of the long-term strategy not less frequently than every three years, that the review process include consultation with the appropriate FLMs, and that the State provide a report to the public and EPA that includes an assessment of the State's progress toward the National visibility goal. See 40 CFR 51.306(c).

On July 12, 1985 (50 FR 28544) and November 24, 1987 (52 FR 45132), we disapproved the SIPs of states, including Colorado, that failed to comply with the requirements of the provisions of 40 CFR 51.302 (visibility general plan requirements), 51.305 (visibility monitoring), and 51.306 (visibility long-term strategy). We also incorporated corresponding Federal plans and regulations into the SIPs of these states pursuant to section 110(c)(1) of the CAA, 42 U.S.C. 7410(c)(1).

The Governor of Colorado submitted a SIP revision for visibility protection on December 21, 1987, which met the criteria of 40 CFR 51.302, 51.305, and 51.306 for general plan requirements, monitoring strategy, and long-term strategies. We approved this SIP revision in the August 12, 1988 **Federal Register** (53 FR 30428), and this revision replaced the Federal plans and regulations in the Colorado Visibility SIP.

The Governor of Colorado submitted subsequent SIP revisions for visibility protection with letters dated November 18, 1992, August 23, 1996, and August 19, 1998. These revisions were made to fulfill the requirements to periodically review and, as appropriate, revise the long-term strategy for visibility protection. We approved the first two long-term strategy revisions on October 11, 1994 (59 FR 51376), and January 16, 1997 (62 FR 2305), respectively. The 1998 revisions will be addressed at a later date.

After Colorado's 1992 long-term strategy review, the U.S. Forest Service (USFS) certified visibility impairment in Mt. Zirkel Wilderness Area (MZWA) and named the Hayden and Craig generating stations in the Yampa Valley of Northwest Colorado as suspected sources. The USFS is the FLM for MZWA. This certification was issued on July 14, 1993. Hayden Station was addressed in the State's 1996 long-term strategy review and revision (see 62 FR 2305, January 16, 1997).

Craig Station, which is the focus of this SIP revision, is located 40 miles upwind from MZWA. The facility consists of three units, but only Units 1 and 2 are subject to this action. Unit 1 is a 428 megawatt steam generating unit that commenced commercial operation in 1980 and Unit 2 is a 428 megawatt steam generating unit that commenced commercial operation in 1979. The existing emission control equipment on Units 1 and 2 consists of the following: wet scrubbers to control sulfur dioxide (SO_2) (currently achieve 65% SO_2 removal), electro-static precipitators to control particulate pollution, and low nitrogen oxides (NO_X) burners to control NO_X emissions. The 1999 emissions inventory for Craig Station Units 1 and 2, as reported to EPA's Acid Rain database, indicated that these units emitted 9,216 tons of SO_2 and 12,501 tons of NO_X. Particulate emissions have been more difficult to estimate since continuous emissions rate data is not available.

On October 9, 1996, Sierra Club, Inc. ("Sierra Club") sued the owners of the Craig Station in United States District Court, alleging numerous violations of State and Federal opacity standards from 1991–1996. In the Fall of 1996, the State, Craig Station owners, and EPA initiated a joint study to develop information on SO_2 emission reduction options and associated costs for Craig Station Units 1 and 2. This joint study, referred to as the "Craig Flue Gas Desulfurization Study (Craig FGD Study)," was viewed as a means to move the parties to a negotiated resolution of Craig Station's contribution to visibility impairment in MZWA, and if negotiations failed, as a possible basis for a Best Available Retrofit Technology (BART) determination under State and EPA visibility regulations. The Craig FGD Study was completed on August 31, 1999.

The Craig FGD Study identified several options, at reasonable costs, for addressing Craig Station's contribution to visibility impairment at MZWA. This information and the results of other technical analyses led us, on September 22, 1999, to call for a revision to the Colorado Visibility SIP to resolve the long outstanding certification of visibility impairment for MZWA with respect to Craig Station (see 64 FR 54010, October 5, 1999). The State was given 12 months to revise the SIP accordingly.

In October 1999, the Sierra Club, the Colorado Air Pollution Control Division (APCD), EPA, USFS, and the Craig Station owners entered into negotiations to try to reach a "global settlement" of the various issues facing the power plant. These issues included the Sierra Club lawsuit and the USFS certification of impairment in MZWA.

On October 17, 2000, the Sierra Club and owners of Craig Station reached an agreement in principle to resolve the Sierra Club lawsuit. Sierra Club and the Craig Station owners subsequently negotiated and signed a consent decree that they filed with the United States District Court for the District of Colorado on January 10, 2001 (Civil Action No. 96–N–2368) (referred to hereafter as "Craig Consent Decree" or "Consent Decree.") The Court entered the Consent Decree on March 19, 2001.

The Consent Decree resolves the Sierra Club complaint regarding opacity violations and also requires substantial reductions in air pollutants that are intended to resolve Craig Station's contribution to visibility impairment in MZWA. The Consent Decree contemplates that its requirements will be incorporated into the Colorado SIP. Although we were not involved in the direct negotiations between Sierra Club and the Craig Station owners regarding the terms of the Consent Decree, during negotiations Sierra Club and the Craig Station owners sought, and we provided, our input regarding terms of

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acres in size, and national parks greater than six thousand acres in size, as described in section 162(a) of the Act (42 U.S.C. 7472(a)). Each mandatory Class I Federal area is the responsibility of a "Federal land manager" (FLM), the Secretary of the department with authority over such lands. See section 302(i) of the Act, 42 U.S.C. 7602(i).

the settlement. In particular, in a December 20, 2000 letter, we commented on a final draft of the Consent Decree and gave our preliminary views of the settlement with respect to the SO_2 limits for Craig Station. We made clear that only through our public rulemaking process would we reach final judgment regarding a Visibility SIP revision based on the Consent Decree. This final rulemaking is the last step in that public rulemaking process. The Sierra Club and Craig Station owners also asked the State, USFS, and National Park Service to provide input on the Consent Decree during the negotiations of the final agreement.

On May 1, 2001, we announced our proposed approval of proposed revisions to the long-term strategy portion of Colorado's SIP for Class I Visibility Protection, contained in section III of the document entitled "Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements," dated February 1, 2001. We based our proposed approval on a February 20, 2001 letter to EPA from Governor Bill Owens requesting that we "parallel process" the State's proposed revision. In that proposed rulemaking action, we described in detail our rationale for proposing approval. As indicated in that action, we based our proposed approval on our understanding that the State would make two minor changes to the February 1, 2001 proposed SIP revisions before final adoption. The April 19, 2001 SIP revision that the State adopted and which we are approving with this action, includes the two minor changes we described in our proposed approval. The public should review the notice of proposed rulemaking for further background on this final rulemaking action.

We requested public comments on the proposal (see 66 FR 21721). We received one letter of supportive comments regarding the proposed revision, and are finalizing our approval with this action.

II. Revision Submitted June 7, 2001

With a letter dated June 7, 2001, the Governor of Colorado submitted the revision to the long-term strategy portion of Colorado's SIP for Visibility Protection that the State finally adopted on April 19, 2001. This revision is contained in Section III of the April 19, 2001 document entitled "Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements." The revision was made to fulfill, with respect to Craig Station's contribution to visibility impairment in MZWA, the Federal and Colorado requirements to revise the long-term strategy to include emission limitations and schedules for compliance necessary to demonstrate reasonable progress toward the National visibility goal.[3] Among other things, the SIP revision incorporates provisions of the Craig Consent Decree that require the owners of Craig Station to install control equipment and meet stringent emission limitations for particulates (including opacity), NO_X and SO_2.

A. Analysis of State's Revision

1. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing.

On April 19, 2001, the Colorado Air Quality Control Commission (AQCC), after providing adequate notice, held a public hearing to consider the revisions to the Long-term Strategy of the Visibility SIP and subsequently adopted the revisions.

2. Content of SIP Revision

The SIP revision is contained in section III of the submittal entitled "Revision of Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements," dated April 19, 2001. Only Section III contains provisions that are enforceable against the Craig Station owners. Part III incorporates relevant portions of the Craig Consent Decree into the long-term strategy. The remainder of the SIP revision contains provisions that are explanatory and analyses that are required by section 169A of the CAA, Federal visibility regulations (40 CFR 51.300 to 51.307), and/or the Colorado Visibility SIP.

a. *Section III: Enforceable Portion of the Proposed SIP Revision:*

Craig Station Units 1 and 2 Requirements. The State incorporated into its Visibility SIP revision provisions of the Craig Consent Decree including Definitions, Emission Controls and Limitations, Continuous Emission Monitors, Construction Schedule, Emission Limitation Compliance Deadlines, and Reporting. Such provisions must be met by the Craig Station owners and are enforceable. The Consent Decree numbering scheme was retained to avoid confusion between the SIP and the Consent Decree, but only the Consent Decree's emission controls and limitations, construction schedule, and sections necessary to ensure enforceability of these requirements were included in the SIP. Some changes were made to Consent Decree language to conform to a SIP framework. Finally, changes were made to the force majeure provisions of the Consent Decree to ensure that a demonstration of reasonable progress could be made at this time. Provisions of particular interest incorporated from the Craig Consent Decree are summarized below.

SO_2 Emission Limitations—Craig Units 1 and 2 will be designed to meet at least a 93.7% SO_2 removal rate. The Craig Station owners must design, construct and operate FGD upgrades and related equipment to reliably treat 100% of the flue gas and to meet the following emissions limitations:

—No more than 0.160 lbs SO_2 per million Btu heat input on a 30 boiler operating day rolling average basis;
—No more than 0.130 lbs SO_2 per million Btu heat input on a 90 boiler operating day rolling average basis;
—At least a 90% reduction of SO_2 on a 90 boiler operating day rolling average basis, unless Craig Station owners show this limit cannot be met, in which case an alternative limit shall be established, not to be less than an 85% reduction of SO_2 on a 30 boiler operating day average or 86% on a 90 boiler operating day average;[4] and
—A unit cannot operate for more than 72 consecutive hours without any SO_2 emissions reductions; that is, it must shut down if the control equipment is not working at all for three days.

Particulate Emission Limitations—The Craig Station owners must install and operate a Fabric Filter Dust Collector (known as a baghouse or FFDC) on Craig Units 1 and 2. Particulate emission limitations for each unit are:

[3] This revision is specific to requirements for Craig Station and does not constitute the State's three year review of the components of the Long-term Strategy, as required by 40 CFR 51.306(c). That review and report are not due from the State until September 2001, at which time the public will be able to review and comment on the State's full Long-term Strategy.

[4] Any changes made to the percentage reduction requirement will be made pursuant to the requirements of the Consent Decree, and if the ultimate percentage reduction requirement changes from 90%, the State has indicated that it would report the changes in its next long-term strategy review. We would provide an information notice on any such changes as well.

—No more than 0.03 lbs of particulate matter per million Btu heat input; and
—No more than 20.0% opacity, with certain limited exceptions, as averaged over each separate 6-minute period within an hour as measured by continuous opacity monitors.

NO_X Emissions Limitations—NO_X reductions are to be achieved through the requirement to install "state-of-the-art" low-NO_X burners utilizing two-stage combustion with supplemental over-fire air systems. The emissions limitations on each of Craig Station Units 1 and 2 are:

—No more than 0.30 lbs per million Btu heat input on a calendar year annual average basis.

Compliance With Emissions Limits—All required controls must be designed to meet enforceable emission limits. Compliance with the emission limits shall be determined by continuous emission monitors. Compliance with the percentage reduction requirement for SO_2 shall be determined by comparing SO_2 emissions from the stack (measured by continuous emissions monitors—"CEMs") to potential SO_2 emissions from coal combusted (determined through coal sampling and analysis).

Construction Schedule—The final deadlines for constructing control equipment are as follows:

Unit 1—Completion of construction and initiation of start-up of all upgrades by 12/31/03.

Unit 2—Completion of construction and initiation of start-up of all upgrades by 6/30/04.

The schedule for commencement of compliance with the emissions limitations is as follows:

SO_2—For Unit 1, within 180 days after completion of construction of the additional SO_2 control equipment, or by June 30, 2004, whichever date is earlier, except for 90% SO_2 reduction, which must be achieved within 270 days of the above compliance date, but no later than March 31, 2005.

—For Unit 2, within 180 days after completion of construction of the additional SO_2 control equipment, or by December 31, 2004, whichever date is earlier, except for 90% SO_2 reduction, which must be achieved within 270 days of the above compliance date, but no later than September 30, 2005.

Particulates

—For Unit 1, within 180 days after completion of construction of baghouse system, or by April 30, 2004, whichever date is earlier.
—For Unit 2, within 180 days after completion of construction of baghouse system, or by October 31, 2004, whichever date is earlier.

NO_X

—June 30, 2004 for Unit 1 and December 31, 2004 for Unit 2.

These construction deadlines and emission limitation compliance deadlines are subject to the "force majeure" provisions of the Consent Decree, which have been included in the SIP revision. A force majeure event refers to an excused delay in meeting construction deadlines or in meeting emission limitation compliance deadlines due to certain limited circumstances wholly beyond the control of the Craig Station owners.

To help ensure that reasonable progress continues to be made, the State commits in the SIP revision to reopen the SIP (with public notice and hearing) after it is determined that a construction schedule or an emission limitation schedule has been, or will be, delayed by more than 12 months as a result of a force majeure determination or determinations. The State will re-evaluate the SIP at that time to determine whether revisions are necessary to continue to demonstrate reasonable progress, and to ensure that the emission limitations are met. In addition, the SIP revision also contains a clarification that the force majeure provisions are not to be construed to authorize or create any preemption or waiver of the requirements of State or Federal air quality laws, or of the requirements contained in the SIP or Consent Decree.

EPA believes that the language of the SIP revision should assure reasonable progress toward the National visibility goal. If deadlines extend more than twelve months, we expect the State to revise the SIP.

b. *Analysis of Reasonable Progress.* Congress established as a National goal "the prevention of any future, and the remedying of any existing" anthropogenic visibility impairment in mandatory Class I Federal areas. The statute does not mandate that the national visibility goal be achieved by a specific date but instead calls for "reasonable progress" toward the goal. Section 169A(b)(2) of the CAA requires EPA to issue implementing regulations requiring visibility SIPs to contain such "emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward the National goal."

EPA's implementing regulations provided for an initial round of visibility SIP planning which included a long-term strategy to make reasonable progress toward the National goal. See 40 CFR 51.302(c)(2)(i) and 51.306. Section 169A(g)(1) of the CAA specifies factors that must be considered in determining reasonable progress including: (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of the source. Protection of visibility in a mandatory Class I Federal area is the objective.

In this unique case, the Craig Station owners have agreed in the context of a judicially-enforceable Consent Decree to meet emissions limitations that are expected to reduce Craig Station's contribution to visibility impairment in MZWA to below perceptible levels. The State has analyzed the emission reductions provided for in the Consent Decree in light of the statutory factors for determining reasonable progress and the ultimate objective of protecting visibility. The State believes that the measures assure reasonable progress by remedying Craig Station's contribution to perceptible visibility impairment in MZWA and has adopted a Visibility SIP revision containing these measures.

Further, in a December 14, 2000 letter from Tom Thompson, USFS, Rocky Mountain Region, to Margie Perkins, APCD, the USFS concluded that "the proposed reductions of both sulfur dioxide and nitrogen oxides will resolve all Forest Service issues relative to the Craig Station and our 1993 Certification of Impairment." Based in part on this letter, the State believes that the pertinent provisions of the Craig Consent Decree, as embodied in the SIP revision, effectively resolve the USFS certification of impairment in MZWA in relation to Craig Station.

We have reviewed the State's SIP revision and supporting information in light of the statutory and regulatory requirements and approve it. The State adequately addressed our concerns by making the two minor changes to the finally adopted SIP revision that we described in our proposed approval (see 66 FR 21721, 21724, May 1, 2001).

We agree with the State that the emission reduction measures at Craig Station required by the Consent Decree and contained in the Visibility SIP revision will remedy Craig Station's contribution to perceptible visibility impairment at MZWA, with reasonable costs, an expeditious compliance schedule, and no significant adverse energy or non-air quality environmental impacts. The State's April 19, 2001 SIP revision and accompanying information, available at the addresses listed at the beginning of this document, provides a detailed analysis of each of the "reasonable progress" considerations. For a summary of the State's analysis,

please see our notice of proposed rulemaking (66 FR 21721, May 1, 2001). We agree with the State that the SIP revision will assure reasonable progress in remedying Craig Station's contribution to visibility impairment in MZWA. In particular, we note that the enhanced FGD control systems will lower Craig Station Units 1 and 2's combined SO_2 emissions to a total of approximately 2,600 tons per year from the current level of over 9,300 tons per year. This emissions reduction should effectively address visibility problems in MZWA caused by SO_2 from Craig Units 1 and 2 and lower the threshold of SO_2 emissions from the units to below perceptible levels in MZWA.

c. *Six Factors Considered in Developing the Long-Term Strategy*. The State considered the six factors contained in 40 CFR 51.306(e) when developing this revision to its long-term strategy. Please refer to EPA's May 1, 2001 notice of proposed rulemaking (66 FR 21721) for a discussion of these six factors.

3. Additional Requirements

The State met the requirements for FLM consultation prior to adopting the SIP. The SIP also meets EPA requirements related to enforceability. Please refer to our May 1, 2001 notice of proposed rulemaking (66 FR 21721) for a discussion of these requirements.

III. Public Comments and EPA Responses

EPA received only one set of comments—from the Rocky Mountain Chapter of the Sierra Club. Several of their comments were not relevant to this action, and we will not respond to them here. A summary of their remaining comments, and EPA's responses, is provided below.

Comment: The Sierra Club fully supports EPA's proposed approval of Colorado's Visibility SIP revision regarding the Craig Station. The Sierra Club believes that as long as the owners of the Craig Station comply with the requirements of the Craig Consent Decree, Craig Station's contribution to visibility impairment in MZWA will be appropriately resolved.

Response: EPA notes the Sierra Club's support for the proposed action and agrees that compliance with the Consent Decree requirements should adequately resolve Craig Station's contribution to visibility impairment in MZWA.

Comment: The Sierra Club notes that the Craig Consent Decree does not purport to resolve Craig Station's responsibilities under EPA's regional haze regulations, and no regional haze resolution should be accepted by EPA.

Response: There is nothing in the State's Visibility SIP revision intended to resolve regional haze requirements related to Craig Station or any other sources, and EPA's approval of the revision is not intended in any way to relieve the State of its responsibilities under the regional haze program regarding Craig Station. We expect the State to submit another Visibility SIP revision to address regional haze requirements, and we will assess the adequacy of that submittal at that time through notice and comment rulemaking.

IV. Final Action

We have reviewed the adequacy of the State's revision to the long-term strategy portion of Colorado's SIP for Class I Visibility Protection, contained in section III of the April 19, 2001 document entitled "Revision of Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements," as submitted by the Governor with a letter dated June 7, 2001. We are approving the revision, which includes the incorporation of certain requirements from the Craig Consent Decree.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 6, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 4, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 21, 2001.

Carol Rushin,

Acting Regional Administrator, Region 8.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(93) to read as follows:

§ 52.320 Identification of plan.

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(c) * * *

(93) On June 7, 2001, the Governor of Colorado submitted a revision to the long-term strategy portion of Colorado's State Implementation Plan (SIP) for Class I Visibility Protection. The revision was made to incorporate into the SIP emissions reduction requirements for the Craig Station (a coal-fired steam generating plant located near the town of Craig, Colorado). This SIP revision is expected to remedy Craig Station's contribution to visibility impairment in the Mt. Zirkel Wilderness Area.

(i) Incorporation by reference.

(A) Revision of Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements, Section III, effective on April 19, 2001.

[FR Doc. 01–16689 Filed 7–3–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH–FRL–6999–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Spent Catalysts from Dual-Purpose Petroleum Hydroprocessing Reactors

AGENCY: Environmental Protection Agency.

ACTION: Notice of opportunity for public comment on memoranda clarifying the scope of petroleum hazardous waste listings.

SUMMARY: The Environmental Protection Agency (EPA) today is providing the public an opportunity to comment on Agency memoranda that explain how current RCRA regulations apply to spent catalyst wastes removed from dual purpose hydroprocessing reactors and generated at petroleum refining facilities. The regulations addressed in these memoranda were promulgated under the Resource Conservation and Recovery Act (RCRA) on August 6, 1998 (63 FR 42110) and among other things, listed spent hydrotreating catalysts (K171) and spent hydrorefining catalysts (K172) as hazardous wastes. Subsequent to that final rule and in response to inquiries from handlers of certain spent petroleum hydroprocessing catalysts, EPA issued two memoranda explaining that spent catalysts from dual purpose petroleum hydroprocessing reactors fall within the scope of the final listing determinations for K171 and K172. Today the Agency is notifying the public of the opportunity to comment on these previously issued memoranda.

DATES: EPA will accept public comments until September 4, 2001. Comments postmarked after this date will be marked "late" and may not be considered.

ADDRESSES: If you wish to comment on the memoranda discussed below, you must send an original and two copies of your comments referencing docket number F–2001–PR2P–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Ariel Rios, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address listed in the **SUPPLEMENTARY INFORMATION.** You also may submit comments electronically by sending electronic mail through the Internet to: *rcradocket@epamail.epa.gov*. See the beginning of **SUPPLEMENTARY INFORMATION** for instructions on electronic submissions.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA Ariel Rios, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

FOR FURTHER INFORMATION: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–3323. For information on specific aspects of the information contained in the memoranda discussed below, contact Patricia Overmeyer of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency Ariel Rios, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (E-mail address and telephone number: *Overmeyer.patricia@epa.gov*, (703) 605–0708.)

SUPPLEMENTARY INFORMATION: You should identify comments in electronic format with the docket number F–2001–PR2P–FFFFF. You must submit all electronic comments as an ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats used by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Some of the supporting documents in the docket also are available in electronic format on the Internet at URL: *http://www.epa.gov/epaoswer/hazwaste/id/petroleum/catalyst.htm*

EPA will keep the official record for this action in paper form. Accordingly, we will transfer all comments received electronically into paper form and place

them in the official record, which also will include all comments submitted directly in writing. The official administrative file is the paper file maintained at the RCRA Docket, the address of which is in **ADDRESSES** at the beginning of this document.

EPA's responses to public comments, whether the comments are received in written or electronic format, will be published in the **Federal Register** or in a response to comments document placed in the public docket. We will not reply immediately to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

You may view public comments and the supporting materials for the issues and memoranda discussed below in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review file materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any file maintained at the RCRA Docket at no charge. Additional copies cost $0.15/per page.

Customer Service

How Can I Influence EPA's Thinking on the Memoranda?

We invite you to provide your comments on the memoranda that are described below and included in the appendices. Your views on the issues discussed in these documents, your ideas on new approaches we have not considered, any new and/or relevant data you may have, your views on how these memoranda may affect you, and other relevant information are requested. Your comments must be submitted by the deadline shown in the section titled **DATES** above. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and provide a summary of the reasoning you used to arrive at your conclusions. Provide examples to illustrate your views wherever possible.
- If you estimate potential costs, explain how you arrived at your estimate.
- Tell us which aspects of the memoranda you support, as well as which parts with which you disagree.
- Offer specific alternatives.
- Clearly label any CBI submitted as part of your comments (send all CBI information according to the special procedures listed above under **ADDRESSES.**) Please also provide non-CBI summaries of any CBI information, if possible.
- Include your name, date, and the EPA docket number (F–2001–PR2P–FFFFF) with your comments.

I. Background

A. What Is the Reason for Today's Publication?

On August 6, 1998, EPA listed as hazardous wastes spent hydrotreating catalysts (K171) and spent hydrorefining catalysts (K172) generated in petroleum refining operations (63 FR 42110). These regulations were promulgated under RCRA, 42 U.S.C. 6901, *et seq.* EPA took no action with regard to a third type of spent hydroprocessing catalyst generated by petroleum refineries, hydrocracking catalysts.

Subsequent to the promulgation of the hazardous waste listing determination, a number of industry and environmental groups filed lawsuits challenging the validity of the listings. These cases were consolidated in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *American Petroleum Institute* v. *EPA,* Docket No. 94–1683.

Among the petitioners was Gulf Chemical and Metallurgical Corporation. Gulf asserted that the final rulemaking did not provide adequate definitions of the spent catalysts covered within the scope of the hazardous waste listing descriptions for K171 and K172. In particular, Gulf stated that the scope of the final listing descriptions did not adequately address the regulatory status of spent catalysts from petroleum hydroprocessing reactors that perform both hydrotreating and hydrocracking functions (*i.e.,* spent catalysts from dual purpose reactors). Gulf pointed out that such dual purpose reactors perform functions meeting both the definitions of "hydrotreating" and "hydrocracking" provided in DOE's Petroleum Supply Annual (PSA) and presented in the preamble to the August 6, 1998 final petroleum refining listing determination.

After reviewing the issues raised by Gulf in its petition, we concluded that the Agency had no dispute with the petitioner with regard to the regulatory status of spent catalysts removed from dual purpose reactors. In fact, we saw no grounds for Gulf's challenge to the August 1998 rulemaking given that our interpretation of the final listing descriptions for K171 and K172 is that spent catalysts from petroleum hydroprocessing units that perform hydrorefining and hydrotreatment functions are captured by the listing.

Gulf's challenge did, however, serve to highlight the potential for confusion regarding the regulatory status of spent catalysts removed from dual purpose reactors. Although a straight reading of the regulatory language promulgated in the final rule should result in a conclusion that spent catalysts from units or reactors that perform hydrotreatment or hydrorefining functions are listed hazardous wastes, EPA's Office of Solid Waste decided to distribute to the Agency's Senior RCRA Policy Advisors a memorandum explaining the regulatory status of spent catalysts from dual purpose petroleum hydroprocessing operations. The memorandum was issued on November 29, 1999, and was distributed to industry trade associations and posted on EPA's "RCRA On-line" website (*http://www.epa.gov/rcraonline*). The text of the memorandum is included as an appendix to this publication and a copy of the original memorandum is contained in the docket. After the memorandum was issued, Gulf dismissed its lawsuit on the hazardous waste listings (K171 and K172).

The views expressed in the November 29, 1999 memorandum are based upon the fact that spent catalysts removed from dual purpose reactors facilitate hydrotreatment or hydrorefining of petroleum feedstock. Dual purpose reactors are hydroprocessing reactors that perform hydrotreatment or hydrorefining functions while simultaneously hydrocracking petroleum feedstock. We further explained in the memorandum that the fact that such reactors hydrocrack petroleum feedstocks does not exclude the spent catalysts from the hazardous waste listing. It was never the Agency's intent to exclude a spent catalyst from the listings for K171 and K172 on the basis that a spent catalyst may be removed from a unit or reactor that hydrocracks, if that unit or reactor also hydrotreats or hydrorefines the petroleum stream.

In February 2000, API filed a lawsuit in the D.C. Circuit challenging the validity of the November 29, 1999 memorandum. *API* v. *EPA, Docket No. 00–1069.* API, however, agreed to hold this lawsuit in abeyance until the court decided the challenge to the original hazardous waste listing determinations.

While awaiting the opinion of the court in the first API lawsuit, and while the second suit was being held in abeyance, EPA received further inquiries on the regulatory coverage of spent catalysts from dual purpose hydroprocessing reactors. In response to

these additional inquiries, EPA distributed a second memorandum on June 1, 2000 further clarifying the scope of the K171 and K172 hazardous waste listings with regard to spent catalysts removed from dual purpose reactors. EPA also responded to two letters from individual petroleum refineries that requested information on the regulatory status of spent catalysts from two specific types of hydroprocessing reactors.

On June 27, 2000, the D.C. Circuit issued an opinion in the first lawsuit that upheld EPA's hazardous waste listing determinations. *API* v. *EPA*, 216 F.3d 50. API, thereupon, reactivated its lawsuit on the November 29, 1999 memorandum.

In June 2001, API and EPA entered into an agreement settling the second lawsuit. Under the terms of the settlement agreement EPA has agreed to publish this announcement offering the opportunity for public comment. EPA will evaluate and respond to the public comments and publish a response in the **Federal Register** announcing EPA's decision whether to maintain, and possibly clarify, the positions expressed in the memoranda or to change them.

B. What Are Dual Purpose Reactors?

Petroleum refineries use hydroprocessing units to prepare residual stream feedstocks for cracking and coking units and to polish final products (*e.g.*, diesel fuels). Hydroprocessing reduces the boiling range of petroleum feedstock and removes substantial amounts of impurities from the feed.[1] During hydroprocessing, molecules are split or saturated in the presence of hydrogen. Hydroprocessing is a broad term encompassing the more specific processes of hydrotreating, hydrorefining, and hydrocracking. Hydroprocessing reactors that hydrotreat petroleum feedstock stabilize the feed and remove impurities catalytically and react the feed with hydrogen. Hydrotreating includes the removal of sulfur, nitrogen, metals and other impurities from petroleum feedstocks. Spent catalysts removed from hydrotreating reactors are listed hazardous wastes (K171). Hydrorefining also removes impurities, but uses more severe operating conditions than hydrotreating, and treats heavier molecular weight petroleum fractions (e.g., residual fuel oil and heavy gas oil). Spent catalysts removed from hydrorefining reactors also are listed hazardous wastes (K172). Hydrocracking is a process in which the primary purpose is to reduce the boiling range of petroleum feedstocks. EPA has not made a hazardous waste listing determination with regard to the status of spent catalysts removed from petroleum hydrocracking reactors.

Dual purpose hydroprocessing reactors process petroleum feedstocks by both hydrotreating (or hydrorefining) the feedstock (i.e., removing sulfur, nitrogen, metals, and/or other impurities) and hydrocracking the feedstock (i.e., reducing boiling points). Given that the catalysts in dual purpose reactors are used to promote a hydrotreating or hydrorefining function, as well as a hydrocracking function, such catalysts when spent, are listed hazardous wastes under the plain language of the regulation.

The Agency knows of three specific types of dual purpose hydroprocessing reactors currently in use at petroleum refineries. All are expanded- or ebullating-bed processes. These are the H-Oil, the LC-Fining, and the T-Star reactors. These reactors are designed to process heavy feeds and use catalysts to perform hydrotreating (*i.e.*, metals removal, desulfurization) and hydrocracking functions. Ebulatted bed hydroprocessing is a process that takes place in a reactor bed that is not fixed. In such a process, hydrocarbon feed streams enter the bottom of the reactor and flow upwards passing through the catalyst which is kept in suspension by the pressure of the fluid feed.

LC-Fining and H-Oil both use similar technologies but offer different mechanical designs. The purpose of an ebullating bed reactor is to convert the most problematic feeds, such as atmospheric residuum, vacuum residues, and heavy oils having a high content of asphaltenes, metals, sulfur, and sediments, to lighter, more valuable products while simultaneously removing contaminants. The function of the catalyst is to remove contaminants such as sulfur and nitrogen heteroatoms, which accelerate the deactivation of the catalyst, while cracking (converting) the feed to lighter products.

The H-Oil reactor is used to process residue and heavy oils to produce upgraded petroleum products such as LPG, gasoline, middle distillates, gas oil, and desulfurized fuel oil. Stable operation is achieved through a high operating pressure which ensures a sufficient reactor outlet hydrogen partial pressure. The H-Oil process can achieve conversion rates of 45 to 90 percent, desulfurization of 55 to 92 percent, and demetallization of 65 to 90 percent.[2]

The LC-Fining process serves the purposes of desulfurization, demetallization, Conradson Carbon Residue (CCR) reduction,[3] and hydrocracking of atmospheric and vacuum residuum. The LC-Fining process can be used to yield a full range of high quality distillates including residuals that may be used as fuel oil, synthetic crude or feedstock for a residuum FCC, coker, visbreaker or solvent deasphalter. The LC-Fining process can achieve conversion rates of 40 to 97 percent, desulfurization of 60 to 90 percent, and a demetallization rate of 50 to 98 percent.

The T-Star Process also is an ebullated bed hydrotreating/hydrocracking process designed to process very difficult feedstocks (*e.g.*, atmospheric residuum, vacuum residues, and heavy oils with high levels of sulfur and/or metals). T-Star units can maintain conversion rates in the range of 20 to 60 percent and hydrodesulfurization rates in the range of 93 to 99 percent.[4] Additional information on each of the dual-purpose technologies is provided in "Background Document Clarifying the Scope of Petroleum Hazardous Waste Listings: Supplemental Information Regarding Petroleum Hydroprocessing Units" which can be found in the docket.

II. Summary of the Agency's Views on Dual Purpose Catalysts

EPA believes that spent catalysts removed from dual purpose reactors (*i.e.*, those hydroprocessing reactors that perform both hydrotreating, or hydrorefining, and hydrocracking functions) are listed hazardous wastes. In the November 29, 1999 memorandum, the Agency clarified that these spent catalysts meet the listing descriptions for K171 and/or K172. Such materials include spent catalysts removed from expanded- or ebullated-bed reactors (*e.g.*, H-Oil, T-Star, and LC-fining processes).

As explained in the preamble to the August 6, 1998 final rule, definitions for petroleum hydrotreating, hydrorefining, and hydrocracking operations are not

[1] Gary, James H. and Handwerk, Glenn E., "Petroleum Refining Technology and Economics," Third Edition, Marcel Dekker, Inc., New York, 1994, p. 174.

[2] See "Background Document Clarifying the Scope of Petroleum Hazardous Waste Listings: Supplemental Information Regarding Petroleum Hydroprocessing Units."

[3] Carbon residue is roughly related to the asphalt content of crude and to the quantity of lubricating oil fraction that can be recovered from it. It often is expressed in terms of weight percent carbon residue by the Conradson ASTM test procedure.

[4] Hydrocarbon Processing. "Refining Processes 2000." Process descriptions of hydroprocessing units. November 2000.

universally established. After considering all relevant materials in the rulemaking record, EPA decided that the simplest way to differentiate between hydrocracking and hydrotreating or hydrorefining is to rely on definitions provided in the Department of Energy's (DOE) Petroleum Supply Annual (PSA). The PSA contains operational definitions of hydrotreating and hydrocracking for purposes of submitting form EIA–820 to DOE. In the August 1998 final rule, EPA rejected reliance on other methods of differentiation, such as specific percentages of the feed that are converted, or reduced in molecular size, for each of the operations. EPA rejected the option of relying on specific conversion rates to differentiate between hydrocracking reactors and other hydroprocessing reactors. Our reasons for rejecting the use of conversion rates included the fact that the ability to vary the operating conditions for some reactors, or changes to the manner in which feedstock conversion is calculated or accounted for, may allow refineries to re-classify particular reactors without significantly altering the amount of hydrotreatment or hydrorefining conducted in the reactor.

In addition, the Agency, in the November 1999 memorandum, clarified that the listing should not be interpreted as providing that spent catalysts from any hydrocracking process—regardless of whether or not hydrotreatment also occurs—are, by definition, outside the scope of the K171 and K172 listings (*i.e.*, if a spent catalyst otherwise meets the K171 or K172 listings because it comes from a unit that performs a hydrotreating function, the fact that the spent catalyst is removed from a unit that also hydrocracks does not exclude the spent catalyst from the hazardous waste listing). In the August 1998 final rule, we did not define hydrocracking and then provide that hydrotreating and hydrorefining are "not hydrocracking." The final listing determinations were meant to include spent catalysts removed from reactors that perform hydrotreating and hydrorefining functions, even if the reactors also perform a hydrocracking function. This is consistent with EPA's decision in the final rulemaking to rely on the PSA definitions in determining the function or functions performed by a reactor. The PSA definitions of hydroprocessing take into account the function or operation performed by a reactor when distinguishing between hydroprocessing operations. We, therefore, clarified in the November 1999 memorandum that it was based upon these functions, hydrotreatment and hydrorefining, that we determine the regulatory status of the spent catalysts from dual purpose reactors. It was never our intent to allow the scope of the hazardous waste listing determination to be defined or superseded by the fact that any particular catalyst performs a hydrocracking function, when that same catalyst also facilitates a hydrotreatment or hydrorefining function in the same unit or reactor.

Further, in the November 29, 1999 memorandum, EPA explained that spent catalysts generated by refineries that self-classify spent catalyst from dual purpose hydroprocessors as hydrocracking catalyst, by identifying a unit as a hydrocracking unit when reporting to DOE, will nonetheless be K171 or K172 listed wastes if the unit performs a hydrotreatment or hydrorefining function. The final rule should not be interpreted as allowing petroleum refineries to classify dual purpose reactors as hydrocracking reactors and in doing so claim that the spent catalysts removed from these reactors are spent hydrocracking catalysts (which are not listed hazardous wastes). Rather, EPA relied on the PSA definitions because they are operational definitions. Thus, the rule does not permit refineries to avoid identifying spent catalysts from dual purpose reactors as listed hazardous wastes simply because they classified (or reclassified) the unit from which the catalyst is removed as a hydrocracking unit (this is based on the fact that the catalyst promotes hydrocracking as well as hydrotreating or hydrorefining). Catalysts removed from reactors that perform a hydrotreating or hydrorefining function, regardless of whether hydrocracking is performed in the same unit, are listed hazardous wastes, when spent.

After EPA distributed the November 29, 1999 memorandum, it was brought to the Agency's attention that the memorandum could be interpreted as indicating that spent catalysts from petroleum hydroprocessing reactors that hydrocrack are captured by the hazardous waste listings, even though such reactors may conduct minimal and incidental hydrotreatment or hydrorefining of previously treated feedstock. For example, some reactors that hydrocrack petroleum feedstock treated previously to remove sulfur, metals and other impurities, may also in practice perform incidental and minimal hydrotreating or hydrorefining due to the operating parameters employed and the nature of the pre-treated feed entering the reactor.

The Agency did not intend, when issuing the November 29, 1999 memorandum, to include within the scope of the hazardous waste listings spent catalyst from hydroprocessing reactors, if such reactors perform only a minimal and incidental amount of hydrotreatment or hydrorefining. Therefore, we issued a memorandum dated June 1, 2000, clarifying that spent catalysts removed from hydroprocessing reactors that hydrocrack petroleum feedstocks and perform no more than "minimal and incidental" hydrotreatment or hydrorefining are not within the scope of the hazardous waste listing descriptions for K171 or K172. This is consistent with the regulatory language, and with the intention stated in the preamble and the November 1999 memorandum, to adopt an operational approach to defining hydroprocessing catalysts. A spent catalyst removed from a unit that performs hydrotreating or hydrorefining operations is a "spent hydrotreating catalyst" or a "spent hydrorefining catalyst" within the meaning of the regulation, even if the unit also performs a hydrocracking function. However, EPA does not consider a spent catalyst removed from a reactor that performs hydrocracking operations to be a "spent hydrotreating catalyst" or "spent hydrorefining catalyst" simply because some hydrotreating or hydrorefining unavoidably occurs in the unit. A copy of the Agency's June 1, 2000 memorandum also is included in the docket. The text of the memorandum also is included as an appendix to this announcement.

EPA also received requests from members of the petroleum refining industry for clarification of the regulatory status of two specific types of spent catalysts. In response to these requests, we issued two letters to the requesting parties on June 1, 2000. We briefly summarize these letters below to provide an illustration of the application of the principles set out in the November 1999 and June 2000 memoranda.

In a letter to Motiva Enterprises LLC, we concluded that the spent catalyst from the Motiva refinery's H-Oil unit is a listed hazardous waste. Based upon our determination that the H-Oil unit is a dual purpose hydroprocessing reactor designed to both hydrotreat and hydrocrack petroleum feedstock in the same reactor using a single, ebullating bed catalyst with no guard bed [5] reactor, we found that the spent catalyst from

[5] A guard bed is used to mitigate pressure drop problems in the reactor due to contaminants in the feedstock.

the H-Oil unit meets the listing description for spent hydrotreating catalyst (K171). The H-Oil unit is precisely the type of dual purpose reactor addressed in our memorandum of November 29, 1999, in that the H-Oil unit uses a single catalyst to achieve both a high level of hydrocracking (*i.e.*, the boiling point of a high percentage of the feed is reduced) and a significant amount of hydrotreatment (*i.e.*, a high percentage of heteoratoms are removed).

In a second letter, to Chevron Research and Technology Company, we evaluated the regulatory status of spent catalysts from Chevron's two-stage ISOCRACKING hydroprocessing unit. In this letter, we stated that spent catalyst removed from the first stage of the ISOCRACKING unit, which performs a predominant treatment function, is a listed hazardous waste (K171). The inclusion of spent catalysts from the first stage reactor of this unit closely follows our determination that spent catalysts from guard bed reactors are within the scope of the listing descriptions for K171 and K172. This determination was clarified in the preamble to the August 6, 1998 final rule. Also, the final listing descriptions for K171 and K172 clearly designate spent catalysts from guard bed reactors as included within the scope of the listings (see 40 CFR 261.32). In addition, we also concluded that spent catalysts removed from the second stage reactor of Chevron's ISOCRACKING unit are not spent hydrotreating or hydrorefining catalysts and are not captured by the listing descriptions for K171 and K172. The second stage reactor within the ISOCRACKING unit receives pretreated feed and performs a predominant hydrocracking function; any hydrotreatment that occurs in the second stage of the reactor is minimal and incidental.

III. Scope of the Public's Opportunity To Comment

EPA is providing this opportunity for the public to comment on the memoranda described above to settle the lawsuit filed by API in February 2000. EPA believes that the explanation of the hazardous waste listings' applicability to spent catalysts removed from dual purpose reactors, as expressed in the memoranda, is correct both as a procedural and substantive matter. However, the Agency acknowledges that the memoranda are controversial within the regulated community and believes that providing this opportunity for public comment is in the interest of good government because it will provide interested parties with a chance to influence the Agency's thinking on this issue and avoid potentially unnecessary litigation.

EPA is soliciting comment on the regulatory interpretation presented in the November 29, 1999 and the June 1, 2000 memoranda which establish the Agency's position that spent catalysts removed from petroleum hydroprocessing reactors that perform both a hydrotreatment (or hydrorefining) function and a hydrocracking function are captured by the hazardous waste listings K171 and K172. In addition to receiving general comments on the content of the memoranda, the Agency solicits comments as to whether there are specific situations where it is not clear whether, or relatively how much, hydrotreatment or hydrorefining is either occurring or intended. If such cases exist, EPA is interested in hearing whether there is some way to provide greater clarity in general guidance for distinguishing those situations. For example, EPA is interested in comment on whether there is a better test for generally describing dual purpose units that are not H-Oil, LC-Fining, or T-Star reactors (the reactors that, as noted above, EPA knows about) but perform more than "minimal and incidental" hydrotreating or hydrorefining, or whether decisions regarding the regulatory status of these other reactors must be made on a case-by-case basis in all instances. EPA particularly requests that any improvements suggested by commenters be consistent with our focus on determining when a catalyst is used in a reactor that performs a hydrotreatment or hydrorefining function, regardless of whether it also is performing a hydrocracking function. Based on comments received, EPA may further clarify, or change, the approach taken in the November 1999 and June 2000 memoranda for identifying dual purpose reactors.

EPA will evaluate comments relevant to the issues discussed in the two memoranda and will publish a response to comments in the **Federal Register** announcing its intention either to reaffirm (and possibly clarify) the memoranda, or to take a different approach, based on the comments received. EPA will continue to apply the approach set forth in the memoranda during the pendency of this proceeding.

EPA is not reopening comment on any substantive or procedural issues affecting the August 6, 1998 hazardous waste listing rule. Comments are requested solely on the issues addressed within the context of the two memoranda. EPA is not soliciting comment on the hazardous waste listings themselves and does not intend to respond to such comments, if received.

Likewise, we are not soliciting comments on the applicability of the existing petroleum refining listings to the provisions of CERCLA. Wastes listed as hazardous wastes under RCRA are by definition hazardous substances under CERCLA, and are included in the list of hazardous substances in 40 CFR 302.4, along with their corresponding reportable quantities ("RQs"). Hazardous substance RQs are those quantities of the designated chemical or waste that trigger certain reporting requirements if released to the environment.

Dated: June 11, 2001.

Michael Shapiro,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Appendix A: November 29, 1999 Memorandum on Dual Purpose Catalysts

Memorandum

Subject: Spent Catalysts From Petroleum Refining "Dual Process" Units.

From: Elizabeth Cotsworth, Director, Office of Solid Waste (5301W).

To: RCRA Senior Policy Advisors, Regions I–X.

On August 6, 1998, EPA listed as hazardous waste spent hydrotreating catalysts (K171) and spent hydrorefining catalysts (K172) generated in petroleum refining operations (63 FR 42110). The Agency took no action regarding a listing determination for a third type of spent petroleum hydroprocessing catalyst, spent hydrocracking catalysts.

Since promulgation of the final rule, questions have been raised with regard to the regulatory status of spent catalysts removed from "dual purpose" reactors. Such reactors process refinery streams by both treating the feed to remove contaminants, such as sulfur, nitrogen and metal compounds (*i.e.*, hydrotreating), in addition to converting petroleum molecules to lighter fractions (*i.e.*, hydrocracking). In addition, it has come to the Agency's attention that some affected parties may believe that the definitions provided for catalytic hydrotreating and catalytic hydrocracking processes in the final Petroleum Rule, as well as the listing descriptions for spent hydrotreating catalysts (K171) and spent hydrorefining catalysts (K172), allow petroleum refineries to self-classify spent catalysts from dual purpose hydroprocessors as hydrocracking catalysts (which are not listed hazardous wastes), even in cases where such spent catalysts are functioning, at least in part, as hydrotreating (or hydrorefining) catalysts.

As explained in the preamble to the final rule, definitions for petroleum hydrotreating, hydrorefining, and hydrocracking operations are not universally established. After considering all relevant materials in the rulemaking record, EPA decided that the simplest way to differentiate between

hydrocracking and the other two petroleum hydroprocessing operations is to rely on definitions provided in the Department of Energy's (DOE) Petroleum Supply Annual (PSA). The PSA contains operational definitions of hydrotreating and hydrocracking for purposes of submitting form EIA–820 to DOE. EPA rejected reliance on other methods of differentiation, such as specific percentages of the feed that are reduced in molecular size for each of the operations.

The Agency's interpretation of the final listing determinations for spent hydroprocessing catalysts is that spent catalysts from petroleum hydroprocessors performing hydrotreating or hydrorefining operations are captured by the listings, regardless of whether hydrocracking also occurs in a dual purpose unit. This is because the final rule, as well as the PSA, defines a spent catalyst as hydrotreating or hydrocracking on the basis of the type of hydroprocessing operation in which the catalyst was used. This is consistent with the intent of the listing to identify wastes containing the hazardous constituents that are removed by catalytic hydrotreating or hydrorefining, regardless of whether hydrocracking also is occurring.

In addition, there may be a misunderstanding involving whether refineries may self-classify spent catalyst from dual purpose hydroprocessors as hydrocracking catalyst, by merely identifying a unit as a hydrocracking unit when reporting to DOE. The final rule should not be interpreted as allowing petroleum refineries to classify "dual purpose" units as hydrocracking units and in doing so claim that the spent catalysts removed from these units are spent hydrocracking catalysts (which are not listed hazardous wastes). In the preamble to the final rule, EPA explained that relying on the PSA is the "simplest" way to differentiate among the processes and that, if a refinery has been classifying its hydroprocessor as a hydrocracker, the unit would generally not be covered by K171 or K172. Rather, as noted above, EPA relied on the PSA definitions because they are operational definitions. Thus, the rule does not permit refineries to avoid identifying spent catalysts from dual purpose units as listed hazardous wastes simply because they classified (or reclassified) the unit from which the catalyst is removed as a hydrocracking unit, based solely on the fact that some hydrocracking takes place in the presence of the catalyst. Catalysts that perform a hydrotreating function, regardless of whether hydrocracking is performed in the same unit, are listed hazardous wastes, when spent. Consequently, as explained above, the Agency's position with regard to spent catalysts removed from dual purpose reactors is that these spent catalysts are listed hazardous wastes.

As you know, in addition to correctly classifying spent catalysts as solid and/or hazardous wastes, generators also are required to determine if spent catalysts that are hazardous wastes (either because they meet the definitions of listed wastes K171 or K172 or because the spent catalyst exhibits a characteristic of hazardous waste) have to be treated to meet the land disposal restrictions standards before being land disposed. Please note that treatment of spent catalysts that are listed hazardous wastes K171 and K172 may require a combination of thermal treatment (to oxidize sulfides and vanadium), vanadium recovery, and stabilization (without improper dilution) to achieve the applicable land disposal restrictions.

Should you have any questions with regard to this issue, please feel free to contact Patricia Overmeyer of my staff at (703) 605–0708.

cc:

Mr. Ralph Colleli, American Petroleum Institute.

Mr. John W. Hilbert III, The Ferroalloys Association

Association of State and Territorial Solid Waste Management Officials

Appendix B: June 1, 2000 Memorandum on Spent Dual Purpose Catalysts

Memorandum

Subject: Spent Catalysts From Petroleum Refining "Dual Process" Reactors

From: Elizabeth Cotsworth, Director, Office of Solid Waste (5301W).

To: RCRA Senior Policy Advisors, Regions I–X.

On November 29, 1999, I sent you a memorandum entitled "Spent Catalysts from Petroleum Refining 'Dual Process' Units." In that memorandum, I described the Agency's position on the regulatory status of certain spent hydroprocessing catalysts. I stated that, in response to questions raised regarding the regulatory status of spent catalysts removed from "dual purpose" reactors [1] in petroleum refineries, EPA considers spent catalysts from such units to be listed hazardous wastes (*i.e.*, K171, K172).

After this memorandum was distributed to stakeholders, the Agency received questions from interested parties regarding its potential scope. A primary concern raised was that the wording of the memorandum may be interpreted by Regional and State officials in a way that would define virtually all spent hydroprocessing catalysts generated by the petroleum refining industry as listed hazardous waste under RCRA Subtitle C. There was concern that because *some* hydrotreating may occur in all hydroprocessing reactors, regulators would conclude that *any* hydrotreating occurring in a reactor would cause the spent catalyst removed from the reactor to be considered a listed hazardous waste. This was not our intention.

I would like to clarify that we do not consider spent catalysts from a petroleum hydroprocessing reactor to be a listed hazardous waste (meeting the definitions of either K171 or K172) solely because some incidental and minimal amount of hydrotreatment of feeds occurs in such unit. These catalysts are, however, subject to evaluation against the existing hazardous characteristics. We recognize that some minimal amount of hydrotreating may occur in any hydroprocessing reactor, even reactors that hydrocrack feedstreams containing very low levels of sulfur, nitrogen, and metals. As a general rule, we consider the definitions provided in the Department of Energy's Petroleum Supply Annual (PSA) to be the best way to identify processes that hydrotreat and processes that hydrocrack. The definitions used in the PSA define hydroprocessing in terms of the function performed. A more complete description of these definitions is provided in the preamble to the petroleum refining listing determination (63 FR 42110, August 6, 1998, see Pp. 42155–42156).

Again, the November 29, 1999 memorandum was directed more at alerting Regional and State officials to the issue of the status of spent catalysts removed from reactors that both hydrotreat and hydrocrack petroleum feedstreams in a single reactor. We are alerting all interested parties that we continue to stand by the determination in the November 29 memorandum that such "dual purpose" reactors generate spent catalysts that are listed hazardous wastes subject to regulation under RCRA Subtitle C. At the same time, we also are clarifying that spent catalysts from hydrocracking reactors that do only minimal and incidental hydrotreating are not listed hazardous wastes. However, as noted previously, spent catalysts from hydrocracking reactors are subject to evaluation against the hazardous waste characteristics.

If you should have any questions regarding this clarification, please feel free to contact either Rick Brandes at (703) 308–8871 or Patricia Overmeyer at (703) 605–0708.

cc:

Mr. Ralph Colleli, American Petroleum Institute

Mr. John W. Hilbert III, The Ferroalloys Association

Mr. Thomas Kennedy, Association of State and Territorial Solid Waste Management Officials

[FR Doc. 01–16685 Filed 7–3–01; 8:45 am]

BILLING CODE 6560–50–P

[1] Note that the words "unit" and "reactor" are used interchangeably by EPA. A petroleum refinery may consider a unit to be made up of a number of reactors. Our concern is with the proper classification of a spent catalyst from or generated from a single specific vessel based on the function performed by the catalyst, regardless of the configuration or terminology used by individual refineries.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7003–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial direct final deletion of the Jacobs Smelter Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region VIII announces its deletion of the residential soil portions of the Jacobs Smelter Superfund Site, Utah, known as Operable Unit One (OU1), from the National Priorities List and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This partial deletion of the Jacobs Smelter Site is in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995).

This partial deletion affects only OU1—the residential soils portion of the Jacobs Smelter Site which is within, but not all inclusive of, the town limits of Stockton, Utah. The Utah Department of Environmental Quality (UDEQ), under cooperative agreement with EPA, recently completed the remedial action for OU1. EPA bases its decision to delete OU1 on the joint determination by EPA and UDEQ that all appropriate actions under CERCLA have been implemented to protect human health, welfare, and the environment at OU1.

This partial deletion pertains only to OU1 and does not include Operable Unit 2 (OU2) or Operable Unit 3 (OU3). OU2 addresses other media and non-residential soils outside the general town limits of Stockton, Utah. OU3 addresses Union Pacific Railroad right of way within OU1. These OU's will remain on the NPL and response activities will continue.

DATES: This "direct final" action will be effective September 4, 2001 unless EPA receives significant adverse or critical comments by August 6, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to: Mr. Jim Christiansen, Remedial Project Manager, U.S. EPA Region VIII, EPR–SR, 999 18th Street, Suite 300, Denver, CO 80202, (303) 312–6748. Email: christiansen.jim@epa.gov

INFORMATION REPOSITORIES: Comprehensive information on the Jacobs Smelter Site as well as information specific to this proposed partial deletion is available for review at EPA's Region VIII office in Denver, Colorado. The Administrative Record for OU1 and the Deletion Docket for this partial deletion are maintained at the following information repositories:U.S. EPA Region VIII, Superfund Records Center, 5th Floor, 999 18th Street, Denver, Colorado, 80202, (303) 312–6473, Hours of Operation: M–F 8:00 a.m. to 4:30 p.m.Tooele County Library, 100 West Vine Street, Tooele, Utah, 84074

FOR FURTHER INFORMATION CONTACT: Mr. Jim Christiansen, Remedial Project Manager, U.S. EPA Region VIII, EPR–SR, 999 18th Street, Suite 300, Denver, CO 80202, (303) 312–6748. Email: christiansen.jim@epa.gov

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Deletion

I. Introduction

The United States Environmental Protection Agency (EPA) Region VIII announces its deletion of the residential soil portion of the Jacobs Smelter Superfund Site, known as Operable Unit One (OU1), from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests public comment on this action.

The Jacobs Smelter Site is located in Tooele County, Utah. OU1 is within, but not all inclusive of, the town limits of Stockton, Utah, and consists of privately owned residential properties and vacant lots. Also included are several vacant lots, dirt roads, and dirt alleys. The OU is generally bounded by the extent of single-family residential lots centered on Stockton.

In July 1999, EPA issued a Record of Decision (ROD) for OU1 that called for remediation of approximately 130 residential properties within the town of Stockton. Based on the ROD, the Utah Department of Environmental Quality (UDEQ), under cooperative agreement with EPA, completed a remedial action for OU1 in March 2001. EPA bases its proposal to delete OU1 on the joint determination by EPA and UDEQ that all appropriate actions under CERCLA have been implemented to protect human health, welfare, and the environment at OU1. Response activities at OU Nos. 2 and 3 will continue and these OU's will remain on the NPL.

The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund (Fund). Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning this partial deletion for thirty (30) days following publication of this notice in the **Federal Register** and a newspaper of record.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment, and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

The following procedures were used for the deletion of OU1 of the Jacobs Smelter Site:

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The State of Utah, through the Utah Department of Environmental Quality, concurred in a letter dated May 10, 2001, with this partial deletion.

(3) Concurrent with this national Notice of Intent for Partial Deletion, a notice has been published in a newspaper of record and has been distributed to appropriate Federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and a newspaper of record.

(4) EPA has made all relevant documents available at the information repositories listed previously.

This **Federal Register** document, and a concurrent notice in a newspaper of record, announce the initiation of a thirty (30) day public comment period and the availability of the Notice of Partial Direct Deletion. The public is asked to comment on EPA's decision to delete OU1 from the NPL. All critical documents needed to evaluate EPA's decision are included in the Deletion Docket and are available for review at the EPA Region VIII information repositories. EPA is requesting only dissenting comments on the Direct Final Action to Delete. EPA Region VIII will accept and evaluate public comments on this action before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously.

IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of OU1 from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied:

Background

The Jacobs Smelter Site is located in and around Stockton, Utah. Contamination at the site originated from historic smelting and milling activities that occurred primarily in the 1870s and 1880s. Several former smelter locations have been found, including the Jacobs, the Waterman, the Chicago, and the Carson-Buzzo. Soil contamination from these sources is often intermingled and difficult to attribute to a particular smelter operation. The Jacobs Smelter was the largest of these operations and was located within the current town limits of Stockton. Waste from the Jacobs Smelter contaminated the surrounding soils of Stockton. The primary contaminants at the site are heavy metals, with lead and arsenic the primary contaminants of concern regarding human health.

In order to expedite Superfund response action at the site, EPA divided the site into three operable units:

OU1—Residential soils
OU2—Non-residential Soils, other media
OU3—Union Pacific Railroad right of way

EPA has been investigating, conducting human health risk assessments, and making CERCLA response action decisions for each OU separately.

OU1 comprises residential properties within, but not all inclusive of, the town limits of Stockton, Utah. Also included are several vacant lots, dirt roads, and dirt alleys. The OU is generally bounded by the extent of single-family residential lots centered on Stockton.

The Jacobs Smelter, formerly located in the northeast corner of Stockton, operated for a short period in the late 1800s and intermittently for several decades after. The smelter and an associated milling operation sat on a topographic high relative to Stockton. Waste material, such as slag, was deposited around the smelter during normal operations. Rainfall and snow melt transported the waste downhill through the town toward Rush Lake, approximately ½ mile to the west of OU1. A large portion of the residential properties in Stockton were eventually contaminated. A responsible party search conducted by EPA found no remaining viable parties associated with the operation or ownership of the Jacobs Smelter.

In 1997–98, UDEQ performed a preliminary assessment/site inspection of the area. Elevated levels of heavy metals were found in soils around the site and in the sediments of Rush Lake. The potential for significant exposure to area residents was established. Based on this information and subsequent information collected by EPA Region VIII, the site was proposed to the NPL on July 22, 1999 (64 FR 39886). The final listing was published in the **Federal Register** on February 4, 2000 (65 FR 5435).

OU1 Response Actions

Sampling performed by EPA Region VIII in 1998 established the general extent of contamination in the vicinity of Stockton. This sampling also identified approximately 29 residential properties that contained levels of lead in soils (greater than 3000 parts per million) deemed to present an acute threat to human health. In 1999, Region VIII conducted a Fund-financed time critical removal action for OU1. Soils from the 29 properties were excavated to a depth of 18 inches and disposed of at an off-site landfill, and clean backfill was placed on the excavated properties. Additionally, the source area of the former Jacobs Smelter was excavated to ensure contamination would not migrate in the future.

During the removal action, UDEQ conducted a remedial investigation/feasibility study (RI/FS) for the remaining areas of OU1. A ROD was published in July 1999 which defined the boundary of OU1 and called for similar excavation and backfill of approximately 130 additional residential properties, vacant lots, dirt roads, and alleys with surface soil lead concentrations greater than 500 parts per million, subsurface soil lead concentrations greater than 800 parts per million, or surface arsenic concentration greater than 100 parts per million. Institutional controls designed to preserve the remedy and prevent exposure to soils not excavated during remedial action were also called for.

In February 2000, immediately after final listing of the site on the NPL, UDEQ began the Fund-financed remedial action for OU1. The remedial action was completed in March 2001, and all remedial action objectives and performance standards set forth in the ROD were met. The Town of Stockton passed a local ordinance implementing the institutional controls requirement in the ROD on May 8, 2000. A remedial action completion report was signed in March 2001, indicating that no further CERCLA action is necessary to protect human health and the environment at OU1.

Community Involvement

Public participation requirements for OU1 have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and Section 117, 42 U.S.C. 9617. The Remedial Investigation Reports, Baseline Human Health Risk Assessment Report, and the Proposed Plan for OU1 were formally released to the public on May 27, 1999. The notice of availability of the Proposed Plan was published in the Tooele Transcript-Bulletin on May 27, 1999. The public comment period for the proposed plan ran from May 27, 1999 to July 15, 1999. A public meeting was held on June 9, 1999 to receive public comments from

the community. Responses to all comments received during the public comment period were included in the Responsiveness Summary included in the ROD for OU1. Additionally, the administrative record for OU1 was made available at the Tooele Public Library throughout the OU1 investigation process. Monthly town forums were held to receive feedback and disseminate information throughout the OU1 investigation and cleanup process.

Current Status

Based on the successful completion of EPA's removal action and UDEQ's remedial action, there are no further response actions planned or scheduled for OU1. Pursuant to the NCP, a five-year review will be performed at OU1.

While EPA and UDEQ do not believe that any future response actions at OU1 will be needed, if future conditions warrant such action, the proposed deletion area remain eligible for future Fund-financed response actions. Furthermore, this partial deletion does alter the status of OU2 or OU3 which are not proposed for deletion and remain on the NPL.

EPA, with concurrence from the State of Utah, has determined that all appropriate CERCLA response actions have been completed at OU1 and protection of human health and the environment has been achieved. Therefore, EPA is deleting OU1 of the Jacobs Smelter Superfund Site from the NPL. This action will be effective July 31, 2001. However, if EPA receives dissenting comments within thirty (30) days following publication of this notice in the **Federal Register**, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 15, 2001.

Patricia D. Hull,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

Title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351, E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended under UT by revising the entry for "Jacobs Smelter" to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes (a)
*	*	*	*
*	*		
UT	Jacobs Smelter.	Stockton/ Tooele.	P
*	*	*	*
*	*		

(a) * * *
P = Sites with partial deletion(s)

[FR Doc. 01–16434 Filed 7–3–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 1

[CC Docket No. 96–238; FCC 01–78]

Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of certain changes in rules and procedures to be followed when formal complaints are filed against common carriers that were adopted in the Order on Reconsideration. The Order on Reconsideration was published in the **Federal Register** on March 27, 2001.

DATES: The amendments to 47 CFR Part 1 published in at 66 FR 16611 (March 27, 2001) become effective on July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Alexander Starr, Division Chief, Market Disputes Resolution Division, Enforcement Bureau, 418–7330.

SUPPLEMENTARY INFORMATION: In the Order on Reconsideration, released March 7, 2001, the Federal Communications Commission revised its rules for filing formal complaint against common carriers. The Office of Management and Budget (OMB) approved the information collections contained in sections 1.721, 1.722, 1.724, 1.726, 1.735 on June 7, 2001. OMB.Control No.3060–0411.

List of Subjects in 47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–16790 Filed 7–3–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1479; MM Docket No. 01–70, RM–10082; MM Docket No. 01–71, RM–10083].

Radio Broadcasting Services; Quartzsite, AZ; Leesville, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants two proposals that allot new FM channels to Quartzsite, Arizona, and Leesville, Louisiana. Filing windows for Channel 275C3 at Quartzsite, Arizona, and Channel 252A at Leesville, Louisiana, will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

DATES: Effective August 6, 2001.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 01–70 and MM Docket No. 01–71, adopted June 13, 2001, and released June 22, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

The Commission, at the request of McMullen Valley Broadcasting Company, allots Channel 275C3 at Quartzsite, Arizona, as the community's second local FM transmission service. *See* 66 FR 17843 (April 4, 2001).

Channel 275C3 can be allotted at Quartzsite in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 275C3 at Quartzsite are 33–39–50 North Latitude and 114–13–45 West Longitude.

The Commission, at the request of Stargazer Broadcasting of Western Louisiana, allots Channel 252A at Leesville, Louisiana, as the community's fourth local aural transmission service. *See* 66 FR 17843 (April 4, 2001). Channel 252A can be allotted to Leesville in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.7 kilometers (1 mile) west of Leesville. The coordinates for Channel 252A at Leesville are 31–08–30 North Latitude and 93–16–41 West Longitude.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Quartzsite, Channel 275C3.

3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Leesville, Channel 252A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–16796 Filed 7–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1480; MM Docket No. 99–2157; RM–9337, RM–9892]

Radio Broadcasting Services; Alamo Community, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Alamo Navajo School Board, Inc., this document allots Channel 298A* Alamo Community, New Mexico. As proposed, this allotment is reserved for noncommercial educational use. The reference coordinates for the Channel 298A* allotment at Alamo Community, New Mexico, are 34–25–01 and 107–30–04. *See* 65 FR 55930, published September 15, 2000.

DATES: Effective August 7, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 00–158, adopted June 20, 2000, and released June 22, 2001. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Alamo Community, Channel 298A*.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–16794 Filed 7–3–01; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 001226367–0367–01; I.D. 062601A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit adjustments; fishing restrictions for the Pacific Coast groundfish fishery; request for comments.

SUMMARY: NMFS announces changes in the following trip limits for the Pacific Coast groundfish fisheries: Limited entry trawl and fixed gear for minor slope rockfish north and south; limited entry trawl and fixed gear for splitnose rockfish south; limited entry trawl and fixed gear for Pacific Ocean perch (POP); limited entry trawl and fixed gear for Dover sole north and south; limited entry trawl and fixed gear for flatfish north; limited entry trawl for yellowtail rockfish north; limited entry trawl for widow rockfish taken with mid-water trawl gear; and limited entry fixed gear and open access for sablefish north. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to help the fisheries achieve optimum yield (OY) while protecting overfished and depleted stocks.

DATES: Changes to management measures are effective 0001 hours (local time) July 1, 2001, unless modified, superseded, or rescinded. These changes are effective until the effective date of the 2002 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments on this rule will be accepted through July 20, 2001.

ADDRESSES: Submit comments to Donna Darm, Acting Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko, Northwest Region, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council,) in consultation with the States of Washington, Oregon, and California, at its June 11–15, 2001, meeting in San Francisco, CA. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments to the trip limits will be made as necessary to stay within the OYs and allocations announced in the annual specifications and management measures for the groundfish fishery, published in the **Federal Register** at 66 FR 2338 (January 11, 2001), as amended at 66 FR 10208 (February 14, 2001), at 66 FR 18409 (April 9, 2001), at 66 FR 22467 (May 4, 2001), and at 66 FR 286767 (May 24, 2001).

Limited Entry Trawl and Fixed Gear for Minor Slope Rockfish North and South of 40°10′ N. Lat.

Landings of minor slope rockfish in the limited entry fisheries south and north of 40°10′ N. lat. have been slow during the first half of 2001. The best available information indicates that the southern limited entry fishery had landed 18.9 percent and the northern fishery had landed 7.1 percent of the minor slope rockfish set-asides for those fisheries, through the end of April. Given the low landings rates, the Council recommended increasing the limited entry minor slope rockfish cumulative landing limits for both the trawl and fixed gear fisheries. The cumulative landing limits for the fishery south of 40°10′ N. lat. will be increased from 14,000 lb (6350 kg) to 25,000 lb (11,340 kg) per 2 months, and the cumulative landing limits for the northern fishery will increase from 1,500 lb (68 kg) to 2,000 lb (907 kg) per 2 months. These increased cumulative landing limits will allow for higher landings without exceeding the OYs for overfished and depleted stocks.

On January 11, 2001 (66 FR 2338), NMFS announced that darkblotched rockfish was overfished. Although only 7.1 percent of the northern slope rockfish had been landed through April, concerns about darkblotched rockfish catch resulted in only minor increases in the limits for the fisheries north of 40°10′ N. lat rather than the larger cumulative landing limits that could have been allowed. Because darkblotched rockfish is not a major component of the slope rockfish assemblage south of 40°10′ N. lat., larger increases were recommended for the southern area.

Limited Entry Trawl and Fixed Gear for Splitnose Rockfish South of 40°10′ N. Lat.

As with minor slope rockfish, landings of splitnose rockfish in the limited entry fishery south of 40°10' N. lat. have been slow during the first half of 2001. The best available information indicated that limited entry trawl and fixed gear fisheries had landed 3.1 percent of splitnose rockfish set-aside for those fisheries, through the end of April. Given the low landing rates, the Council recommended increasing cumulative landing limits to levels that would allow higher landings without exceeding the OYs for overfished and depleted stocks. The Council recommended increasing the limited entry splitnose slope rockfish cumulative landing limits for both trawl and fixed gear south of 40°10′ N. lat. from 14,000 lb (6,350 kg) to 25,000 lb (11,340 kg) per 2 months.

Limited Entry Trawl and Fixed Gear for POP

Previously published trip limits for POP were intended to accommodate the increased incidental catch of POP during the summer months by increasing the monthly cumulative landing limits for the May through October periods. Because landings of POP in the limited entry trawl and fixed gear fisheries have been slower than expected, with only 18.4 percent of the allowance landed through the end of April 2001, the Council recommended increasing cumulative landing limits for the remainder of the year. The limited entry POP cumulative landing limits for both trawl and fixed gear will be increased from 2,500 lb (1,134 kg) to 3,500 lb (1,588 kg) per month for the July through October periods, then decreased, as previously announced to 1,500 lb (680 kg) per month for the November and December periods. The increased cumulative landing limits will allow higher landings without exceeding the POP OY or the OYs established for other overfished or depleted stocks.

Limited Entry Trawl and Fixed Gear for Dover Sole North and South of 40°10′ N. Lat.

During the first 4 months of 2001, the limited entry trawl and fixed gear Dover sole cumulative landing limits north of 40°10' N. lat. were set at 65,000 lb (2,948 kg) per 2 months and the cumulative landing limits south of 40°10′ N. lat. were set at 35,000 lb (15,876 kg) per 2 months. The cumulative landing limits were set higher in the northern area to allow for the harvest of winter concentrations of Dover sole at a time when they are not closely associated with depleted or overfished rockfish species. Under these cumulative landing limits, 1,700 mt were landed during the first 2 months and 2,500 mt were landed during the second 2 months. The best available information indicated that the limited entry fisheries had landed 57.5 percent of the Dover sole allowance through the end of April 2001. In May, the northern limit was reduced to 20,000 lb (9,072 kg) per 2 months, while the southern limit remained at 35,000 lb (15,876 kg) per 2months. Despite the reduced limits in the northern area, the coastwide landings of Dover sole remained higher than expected. In response to the rapid pace of Dover sole landings, the Council recommended reducing the trawl and fixed gear limits in both areas by 5,000 lb (2,268 kg) per 2 months, resulting in a Dover sole limit of 15,000 lb (6,804 kg) per 2 months for the area north of 40°10′ N. lat. and a Dover sole limit of 30,000 lb (13,608 kg) per 2 months for the area south of 40°10′ N. lat. For the September through December periods, the 2 month limits will be converted to monthly limits.

Limited Entry Trawl and Fixed Gear for Flatfish North of 40°10′ N. Lat.

In April, the Council adopted an interim change in the trip limits for the limited entry trawl fishery for flatfish north of 40°10′ N. lat. This limit allowed up to 50,000 lb (22,680 kg) per month of non-Dover flatfish, caught with a small footrope, to be landed providing that no more than 15,000 lb (6,804 kg) of petrale sole and 10,000 lb (4,536 kg) of arrowtooth flounder are landed. The sub-limits were established as a measure to restrict harvest of canary rockfish, which was designated as overfished on January 4, 2000 (65 FR 221). To reduce the discard of incidentally caught arrowtooth flounder, without encouraging targeting, the Council recommended changing the structure of northern flatfish trawl and fixed gear limits from July through October. The small footrope trawl limit is decreased from 50,000 lb (22,680 kg) to 45,000 lb (20,412 kg) per month; the sub-limit for petrale sole remains at 15,000 lb (6,804 kg) per month. In addition, the arrowtooth flounder limit is no longer a sub-limit and is changed from a per month limit of 10,000 lb (4,536 kg) to a per trip limit of no more than 7,500 lb (3,402 kg), not to exceed 30,000 lb (13,608 kg) per month. The large footrope limit for arrowtooth flounder remains at 5,000 lb (2,268 kg) per trip, not to exceed 30,000 lb (13,608 kg) per month; petrale sole which has been

prohibited, is increased to 100 lb (45 kg per trip and all other flatfish remains at 1,000 lb (454 kg) per trip. Although flatfish are rarely taken with fixed gear, the Limited Entry Fixed gear limits for flatfish will be the same as the small footrope trawl limits.

Limited Entry Trawl for Yellowtail Rockfish North of 40°10′ N. lat. and Widow Rockfish

The best available information indicates that 59.0 percent of the limited entry widow rockfish coastwide and 52.3 percent of the yellowtail rockfish north of 40°10′ N. lat. had been landed through the end of April. To reduce the likelihood of reaching the widow rockfish OY early, the mid-water trawl option for widow rockfish and yellowtail rockfish north will be restricted to the small footrope limit for the July through September periods. At its September meeting, the Council intends to review the October yellowtail limits of 15,000 lb (6,804 kg) per month, and the widow rockfish limits of 10,000 lb (4,536 kg) per month. If necessary, the Council will adjust these limits to keep landings within the OYs. The small footrope limits for both species will remain unchanged at 1,000 lb (454 kg) per month for widow rockfish and 1,500 (680 kg) per month for yellowtail rockfish that is not taken as flatfish bycatch.

To allow for incidental catch of widow rockfish and yellowtail rockfish taken during the primary whiting fishery, whiting fishers will be allowed to land cumulative landing limits that are twice the amount of the small footrope limits, providing that at least 10,000 lb (4,536 kg) of whiting are landed in the same trip. In addition, a per trip limit of 500 lb (227 kg) for widow and yellowtail rockfish combined will apply. Widow and yellowtail rockfish in excess of these amounts will be forfeited to the states by fishers operating under an exempted fishing permit.

Limited Entry Fixed Gear and Open Access for Sablefish North of 36° N. Lat.

Daily trip limit sablefish landings in both the limited entry fixed gear and open access fisheries were relatively low through the spring months. The best available information at the June Council meeting indicated that 24.5 percent of the limited entry fixed gear and open access sablefish allocations combined had been landed through May 2001. Since January, both fisheries have operated under landing limits of 300 lb (136 kg) per day, not to exceed 2,700 lb (1,225 kg) per 2 months. To allow fisheries access to sablefish allocations during the more active summer fishing months, when more small vessels participate in the fishery, the Council recommended re-instating a once per week delivery option. The landing limits for the limited entry fisheries north of 36° N. lat. for the July to August periods will be 300 lb (136 kg) per day or one landing per week up to 900 lb (408 kg), not to exceed 3,600 lb (1,633 kg) per 2 months. Beginning on September 1, a monthly limit of 1,800 lb (816 kg) per month will become effective. The landing limits for the open access fisheries north of 36° N. lat. for the July through periods will be 300 lb (136 kg) per day or one landing per week up to 800 lb (363 kg), not to exceed 4,800 lb (2,177 kg) per 2 months. Beginning on September 1, 2001, a monthly limit of 2,400 lb (1,089 kg) per month will become effective.

NMFS Actions

For the reasons stated here, NMFS concurs with the Council's recommendations and announces the following changes to the 2001 annual management measures at 66 FR 2338, January 11, 2001, as amended at 66 FR 10208, February 14, 2001; 66 FR 18409, April 9, 2001; 66 FR 22467, May 4, 2001, and 66 FR 28676, May 24, 2001, to read as follows:

(1) In Section IV, under B. *Limited Entry Fishery* Tables 3 and 4 are revised; in Section IV, under C. *Trip Limits in the Open Access Fishery*, Table 5 is revised.

IV. NMFS Actions

B. Limited Entry Fishery

* * * * *

BILLING CODE 3510-22-S

Table 3. 2001 Trip Limits [1/] and Gear Requirements [2/] for Limited Entry Trawl Gear
Read Section IV.A. NMFS Actions before using this table.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish**						
2	North	1,500 lb/ 2 months			2,000 lb/ 2 months		
3	South	14,000 lb/ 2 months			25,000 lb/ 2 months		
4	**Splitnose - South**	8,500 lb/ 2 months		14,000 lb/ 2 months	25,000 lb/ 2 months		
5	**Pacific ocean perch [6/]**	1,500 lb/ month		2,500 lb/ month	3,500 lb/ month		1,500 lb/ month
6	**DTS complex - North**						
7	Sablefish	5,000 lb/ 2 months		14,000 lb/ 2 months			5,000 lb/ 2 months
8	Longspine thornyhead	6,000 lb/ 2 months		6,000 lb/ 2 months			6,000 lb/ 2 months
9	Shortspine thornyhead	1,500 lb/ 2 months		1,500 lb/ 2 months			1,500 lb/ 2 months
10	Dover sole	85,000 lb/ 2 months		20,000 lb/ 2 months	15,000 lb/ 2 months		7,500 lb/ month
11	**DTS complex - South**						
12	Sablefish	8,000 lb/ 2 months		11,000 lb/ 2 months			8,000 lb/ 2 months
13	Longspine thornyhead	6,000 lb/ 2 months		6,000 lb/ 2 months			6,000 lb/ 2 months
14	Shortspine thornyhead	1,500 lb/ 2 months		1,500 lb/ 2 months			1,500 lb/ 2 months
15	Dover sole	35,000 lb/ 2 months			30,000 lb/ 2 months		15,000 lb/ month
16	**Flatfish - North**						
17	Arrowtooth flounder	20,000 lb/ trip		Small footrope: 50,000 lb/month, of which no more than 15,000 lb may be petrale sole and 10,000 lb may be arrowtooth; Large footrope: arrowtooth, 15,000 lb/trip for May and 5,000 lb/trip for June; petrale sole, prohibited; all other flatfish, 1,000 lb/trip.	Small footrope: 45,000 lb/month, of which no more than 15,000 lb may be petrale sole; arrowtooth 7,500 lb/trip not to exceed 30,000 lb/month. Large footrope: arrowtooth, 5,000 lb/trip not to exceed 30,000 lb/month; petrale sole 100 lb/trip; all other flatfish, 1,000 lb/trip.		20,000 lb/ trip
18	Petrale sole	No restriction					No restriction
19	Rex sole	No limit					No limit
20	All other flatfish [3/]	Small footrope, no limit; large footrope, 1,000 lb/ trip					Small footrope, no limit; large footrope, 1,000 lb/ trip
21	**Flatfish - South**						
22	Arrowtooth flounder	20,000 lb/ trip		small footrope, no limit. large footrope, 5,000 lb/ trip			20,000 lb/ trip
23	Petrale sole	No restriction		No limit (small footrope required)			No restriction
24	Rex sole	No limit					
25	All other flatfish [3/]	small footrope, no limit; large footrope, 1,000 lb/ trip					
26	**Whiting shoreside [4/]**	20,000 lb/ trip		Primary Season			20,000 lb/ trip
27	**Use of small footrope bottom trawl [5/] or midwater trawl required for landing all of the following species:**						
28	**Minor shelf rockfish**						
29	North	300 lb/ month		1,000 lb/ month			300 lb/ month
30	South	500 lb/ month		1,000 lb/ month			500 lb/ month
31	**Canary rockfish**	100 lb/ month		300 lb/ month			100 lb/ month
32	**Widow rockfish**						
33	mid-water trawl	20,000 lb/ 2 months		10,000 lb/ 2 months	July thru September,In trips where 10,000 lb or more of whiting are landed, 2,000 lb/ month, with a combined widow/yellowtail limit of 500 lb per trip, otherwise 1,000 lb/month; October 10,000 lb/month		10,000 lb/ 2 months
34	small footrope trawl	1,000 lb/ month					
35	**Yellowtail - North [6/]**						
36	mid-water trawl	30,000 lb/ 2 months		15,000 lb/ 2 months	July thru September, In trips where 10,000 lb or more of whiting are landed, 3,000 lb/ month with a combined widow/yellowtail limit of 500 lb/trip, otherwise 1,500 lb/month; October 15,000 lb/month		20,000 lb/ 2 months
37	small footrope trawl	Without flatfish, 1,500 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 2,500 lb/ trip and 30,000 lb/ 2 months.		Without flatfish, 1,500 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 7,500 lb/ trip and not to exceed 15,000 lb/ 2 months.			Without flatfish, 1,500 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 2,500 lb/ trip and 20,000 lb/ 2 months
38	**Bocaccio - South [6/]**	300 lb/ month		300 lb/ month			300 lb/ month
39	**Chilipepper - South [6/]**						
40	mid-water trawl	25,000 lb/ 2 months					
41	small footrope trawl	7,500 lb/ 2 months					
42	**Cowcod**	Retention is Prohibited					
43	**Minor nearshore rockfish**						
44	North	200 lb/ month					
45	South	200 lb/ month					
46	**Lingcod [7/]**	No retention		400 lb/ month			No retention

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border.
"South" means 40°10' N. lat. To the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.
2/ Gear requirements and prohibitions are explained at paragraph IV.A.(14)
3/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with a trip limit.
4/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. See IV.B.(3)(c)
The 20,000 lb/ trip limit applies before and after the primary season.
5/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.
Midwater gear also may be used; the footrope must be bare. See paragraph IV.A. (14).
6/ Yellowtail rockfish and POP in the south, and bocaccio, and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).
7/ The size limit for lingcod is 24 inches (61 cm) total length.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4. 2001 Trip Limits[1] for Limited Entry Fixed Gear
Read Section IV.A. NMFS Actions before using this table.

Line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish**						
2	North	1,500 lb/ 2 months			2,000 lb/ 2 months		
3	South	14,000 lb/ 2 months			25,000 lb/ 2 months		
4	**Splitnose - South**	8,500 lb/ 2months		14,000 lb/ 2 months	25,000 lb/ 2 months		
5	**Pacific ocean perch 5/**	1,500 lb/ month		2,500 lb/ month	3,500 lb/ month		1,500 lb/ month
6	**Sablefish**						
7	North of 36° N. lat.	300 lb/ day, 2,700 lb/ 2 months			300 lb/ day or 1 landing per week up to 900 lb, not to exceed 3,600 lb/ 2 months	300 lb/ day or 1 landing per week up to 900 lb, not to exceed 1,800 lb / month	
8	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
9	**Longspine thornyhead**	6,000 lb/ 2 months		6,000 lb/ 2 months			6,000 lb/ 2 months
10	**Shortspine thornyhead**	1,500 lb/ 2 months		1,500 lb/ 2 months			1,500 lb/ 2 months
11	**Dover sole**						
12	North	65,000 lb/ 2 months		20,000 lb/ 2 months	15,000 lb/2 months	7,500 lb/ month	
13	South	35,000 lb/ 2 months		35,000 lb/ 2 months	30,000 lb/2 months	15,000 lb/ month	
14	**Flatfish - North**						
15	Arrowtooth flounder	20,000 lb/ trip		30,000 lb/ month for all flatfish except Dover sole	45,000 lb/month, of which no more than 15,000 lb may be petrale sole; arrowtooth no more than 7,500 lb/trip or not to exceed 30,000 lb/month.		20,000 lb/ trip
16	Petrale sole	No restriction					No restriction
17	Rex sole	No limit					No limit
18	All other flatfish 2/	No limit					No limit
19	**Flatfish - South**						
20	Arrowtooth flounder	20,000 lb/ trip		No limit			20,000 lb/ trip
21	Petrale sole	No limit					
22	Rex sole	No limit					
23	All other flatfish 2/	No limit					
24	**Whiting 3/**	20,000 lb/ trip		Primary Season			20,000 lb/ trip
25	**Minor shelf rockfish**						
26	North	300 lb/ month		1,000 lb/ month			300 lb/ month
27	South						
28	40°10' - 34°27' N. lat.	500 lb/ month	CLOSED 4/		1,000 lb/ month		500 lb/ month
29	South of 34°27' N. lat.	CLOSED 4/	500 lb/ month				
30	**Canary rockfish**						
31	North	100 lb/ month		300 lb/ month			100 lb/ month
32	South						
33	40°10' - 34°27' N. lat.	100 lb/ month	CLOSED 4/		300 lb/ month		100 lb/ month
34	South of 34°27' N. lat.	CLOSED 4/	100 lb/ month				
35	**Widow rockfish**						
36	North	3,000 lb/ month					
37	South						
38	40°10' - 34°27' N. lat.	3,000 lb/ month	CLOSED 4/		3,000 lb/ month		
39	South of 34°27' N. lat.	CLOSED 4/	3,000 lb/ month				
40	**Yellowtail - North 5/**	1,500 lb/ month					
41	**Bocaccio - South 5/**						
42	40°10' - 34°27' N. lat.	300 lb/ month	CLOSED 4/		500 lb/ month		300 lb/ month
43	South of 34°27' N. lat.	CLOSED 4/	300 lb/ month				
44	**Chilipepper - South 5/**						
45	40°10' - 34°27' N. lat.	2,500 lb/ month	CLOSED 4/		2,500 lb/ month		
46	South of 34°27' N. lat.	CLOSED 4/	2,500 lb/ month				
47	**Cowcod**	CLOSED 4/ – All Retention is Prohibited					
48	**Minor nearshore rockfish**						
49	North	10,000 lb/ 2 months, no more than 4,000 lb of which may be species other than black or blue rockfish 6/		7,000 lb/ 2 months, no more than 4,000 lb of which may be species other than black or blue rockfish 6/			
50	South						
51	40°10' - 34°27' N. lat.	2,000 lb/ 2 months	CLOSED 4/	Shoreward of 20 fm depth 2,000 lb/ 2 months, otherwise CLOSED 4/	2,000 lb/ 2 months		
52	South of 34°27' N. lat.	Shoreward of 20 fm depth 2,000 lb/ 2 months, otherwise CLOSED 4/	2,000 lb/ 2 months				
53	**Lingcod 7/**						
54	North	CLOSED 4/		400 lb/ month			CLOSED 4/
55	South						
56	40°10' - 34°27' N. lat.	CLOSED 4/			400 lb/ month		CLOSED 4/
57	South of 34°27' N. lat.	CLOSED 4/		400 lb/ month			CLOSED 4/

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border.
"South" means 40°10' N. lat. To the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with a trip limit.
3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. See IV.B.(3)(c).
4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).
in the time or area indicated. See IV.A.(7).
5/ Yellowtail rockfish and POP in the south, and bocaccio, and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).
6/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV.B.(4).
7/ The size limit for lingcod is 24 inches (61 cm) in the north, and 26 inches (66 cm) in the south, total length.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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C. Trip limits in the Open Access Fishery

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Table 5. 2001 Trip Limits[1/] for Open Access Gears
Read Section IV.A. NMFS Actions before using this table. (Exceptions for exempted gears at Section IV.C.)

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish**						
2	North	500 lb/ 2 months					
3	South	5,000 lb/ 2 months					
4	**Splitnose - South**	200 lb/ month					
5	**Pacific ocean perch 4/**	100 lb/ month					
6	**Sablefish**						
7	North of 36° N. lat.	300 lb/ day, 2,700 lb/ 2 months			300 lb/ day or 1 landing per week up to 800 lb, not to exceed 4,800 lb/ 2 months		300 lb/ day or 1 landing per week up to 800 lb, not to exceed 2,400 lb/ month
8	South of 36° N. lat.	350 lb/ day					
9	**Thornyheads (longspine and shortspine combined)**						
10	North of 34°27' N. lat.	CLOSED 3/ -- Retention is Prohibited					
11	South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months					
12	**Arrowtooth**	200 lb/ month					
13	**Dover sole**	(included in "other" flatfish limit)					
14	**Petrale sole**	(included in "other" flatfish limit)					
15	**Nearshore flatfish**	(included in "other" flatfish limit)					
16	**"Other" flatfish 2/**	300 lb/ month					
17	**Whiting**	300 lb/ month					
18	**Minor shelf rockfish**						
19	North	100 lb/ month					
20	South						
21	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED 3/		200 lb/ month		
22	South of 34°27' N. lat.	CLOSED 3/	200 lb/ month				
23	**Canary rockfish**						
24	North	50 lb/ month					
25	South						
26	40°10' - 34°27' N. lat.	50 lb/ month	CLOSED 3/		50 lb/ month		
27	South of 34°27' N. lat.	CLOSED 3/	50 lb/ month				
28	**Widow rockfish**						
29	North	3,000 lb/ month					
30	South						
31	40°10' - 34°27' N. lat.	3,000 lb/ month	CLOSED 3/		3,000 lb/month		
32	South of 34°27' N. lat.	CLOSED 3/	3,000 lb/ month				
33	**Yellowtail - North 4/ 8/**	100 lb/ month					
34	**Bocaccio - South 4/**						
35	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED 3/		200 lb/ month		
36	South of 34°27' N. lat.	CLOSED 3/	200 lb/ month				
37	**Chilipepper - South 4/**						
38	40°10' - 34°27' N. lat.	2,500 lb/ month	CLOSED 3/		2,500 lb/ month		
39	South of 34°27' N. lat.	CLOSED 3/	2,500 lb/ month				
40	**Cowcod**	**Closed 3/ -- Retention is Prohibited**					
41	**Minor nearshore rockfish**						
42	North 6/	3,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish 5/		7,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish 5/			
43	South						
44	40°10' - 34°27' N. lat.	1,800 lb/ 2 months	CLOSED 3/	Shoreward of 20 fm depth: 1,200 lb/ 2 months, otherwise CLOSED 3/	1,200 lb/ 2 months		
45	South of 34°27' N. lat.	Shoreward of 20 fm depth: 1,800 lb/ 2 months, otherwise CLOSED 3/	1,800 lb/ 2 months	1,200 lb/ 2 months			
46	**Lingcod 7/**						
47	North	CLOSED 3/		400 lb/ month			CLOSED 3/
48	South						
49	40°10' - 34°27' N. lat.	CLOSED 3/			400 lb/ month		CLOSED 3/
50	South of 34°27' N. lat.	CLOSED 3/		400 lb/ month			CLOSED 3/

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N lat to the U.S. - Canada border. "South" means 40°10' N lat to the U.S.-Mexico border. 40°10' N lat is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with a trip limit.
3/ Closed means that it is prohibited to take, retain, possess, or land the designated species in the time or area indicated. (See IV.A. (7).)
4/ Yellowtail rockfish and POP in the south, and bocaccio, and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).
5/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV.B (4).
6/ See IV.C.(4) for limits specific to Pacific City, Oregon.
7/ The size limit for lingcod is 24 inches (61 cm) in the north, and 26 inches (66 cm) in the south, total length.
8/ See IV.C.(5) for limits specific to the salmon troll fishery.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510-22-C

Classification

These actions are authorized by the regulations implementing the FMP and the annual specifications and management measures published at 66 FR 2338 (January 11, 2001), as amended at 66 FR 10208 (February 14, 2001), at 66 FR 18409 (April 9, 2001), at 66 FR 22467 (May 4, 2001), and at 66 FR 286767 (May 24, 2001), and are based on the most recent data available.

The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and comment on this action pursuant to 5 U.S.C. 553 (b)(3)(B), providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the groundfish cumulative landing limit period begins on July 1, 2001, and affording additional notice and opportunity for public comment would impede the agency's responsibility under the FMP for managing fisheries to achieve OY. Increases to trip limits relieve restrictions on the public and decreases to trip limits must be implemented in a timely manner to stretch the season out as long as possible through the year, which is a major goal of the FMP. If the changes were delayed, a fisher may not be able to achieve the higher limit allowed during this cumulative landing limit period; thereby unnecessarily restricting the fisher. For species where cumulative landing limits have been lowered, a fisher may be able to achieve the pre-existing higher limits, and thus frustrate the conservation objectives of the cumulative landing limit changes, or force further reductions for the entire fleet later in the season. In short, the benefits to be obtained by making new limits effective during this cumulative landing limit period (either additional fish available to the fisher, or reduced limits to protect a species) would not be available during this cumulative landing limit period.

In addition, the affected public had the opportunity to comment on these actions at the June 2001 Council meeting. For these reasons, good cause also exists to waive the 30-day delay in effectiveness requirement of 5 U.S.C. 553(d)

These actions are taken under the authority of 50 CFR 660.323 (b)(1), and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 29, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–16801 Filed 6–29–01; 2:26 pm]

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Proposed Rules

Federal Register
Vol. 66, No. 129
Thursday, July 5, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7003–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) Region VIII proposes to delete the residential soil portions of the Jacobs Smelter Superfund Site, Utah, known as Operable Unit One (OU1), from the National Priorities List and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This action is being taken because EPA, with concurrence from the Utah Department of Environmental Quality (UDEQ), has determined that all appropriate response actions have been taken and that no further response at OU1 is appropriate.

A detailed rationale for this Proposal to Delete is set forth in the direct final rule which can be found in the Rules and Regulations section of this **Federal Register**. The direct final rule is being published because EPA views this deletion action as a noncontroversial revision and anticipates no significant adverse or critical comments. If no significant adverse or critical comments are received, no further activity is contemplated. If EPA receives significant adverse or critical comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this action must be received by EPA on or before August 6, 2001.

ADDRESSES: Comments may be mailed to: Mr. Jim Christiansen, Remedial Project Manager, U.S. EPA Region VIII, EPR–SR, 999 18th Street, Suite 300, Denver, CO 80202, (303) 312–6748. Email: christiansen.jim@epa.gov.

Information Repositories: Comprehensive information on the Jacobs Smelter Site as well as information specific to this proposed partial deletion is available for review at EPA's Region VIII office in Denver, Colorado. The Administrative Record for OU1 and the Deletion Docket for this partial deletion are maintained at the following information repositories:U.S. EPA Region VIII, Superfund Records Center, 5th Floor, 999 18th Street, Denver, Colorado, 80202, (303) 312–6473, Hours of Operation: M–F 8:00 a.m. to 4:30 p.m. Tooele County Library, 100 West Vine Street, Tooele, Utah, 84074.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Christiansen, Remedial Project Manager, U.S. EPA Region VIII, EPR–SR, 999 18th Street, Suite 300, Denver, CO 80202, (303) 312–6748. Email: christiansen.jim@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 33 U.S.C. 1312(c)(2); 42 U.S.C. 9601–9657, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351, E.O. 12580, 52 FR 2923; 3 CFR 1987 Comp., p. 193.

Dated: June 15, 2001.

Patricia D. Hull,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 01–16435 Filed 7–3–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 416, 482, and 485

[HCFA–3070–P]

RIN 0938–AK95

Medicare and Medicaid Programs; Hospital Conditions of Participation: Anesthesia Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the physician supervision requirement for certified registered nurse anesthetists furnishing anesthesia services in hospitals, critical access hospitals, and ambulatory surgical centers that participate in the Medicare and Medicaid programs. Under this proposed rule, the current physician supervision requirement would be maintained, unless the Governor of a State, in consultation with the State's Boards of Medicine and Nursing, exercises the option of exemption from this requirement, consistent with State law.

These proposed changes are an integral part of our efforts to improve the quality of care furnished through Federal programs, while at the same time recognizing a State's traditional domain in establishing professional licensure and scope-of-practice laws. It will give States the flexibility to improve access and address safety issues.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 4, 2001.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address only: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–3070–P, P.O. Box 8013, Baltimore, MD 21207–8013.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver (by hand or courier) your written comments (1 original and 3 copies) to one of the

following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–3070–P. For information on viewing public comments see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Stephanie Dyson, RN (410) 786–9226. Jeannie Miller, RN (410) 786–3164.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at 7500 Security Blvd, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. by calling (410) 786–7197.

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This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Website address is: http://www.access.gpo.gov/nara/index.html.

I. Background

A. Statutory Provisions

Sections 1861(e)(1) through (e)(8) of the Social Security Act (the Act) provide that a hospital participating in the Medicare program must meet certain specified requirements. Section 1861(e)(9) of the Act specifies that a hospital also must meet other requirements that we find necessary in the interest of the health and safety of the hospital's patients. Section 1820 of the Act contains criteria that a critical access hospital (CAH) must meet in order to be designated as a CAH by a State. Sections 1832(a)(2)(F)(i) and 1833(i) of the Act provide coverage requirements for ambulatory surgical centers (ASCs). Section 1861(bb) of the Act defines "certified registered nurse anesthetists" (CRNAs) and their services.

B. General

On December 19, 1997, we published a proposed rule entitled, "Hospital Conditions of Participation, Provider Agreements and Supplier Approval", (62 FR 66726) in the **Federal Register**.

The final rule was published January 18, 2001 (66 FR 4674) and was to have been effective March 19, 2001. This rule eliminated the federal physician supervision requirement for CRNAs furnishing anesthesia services in participating hospitals, ASCs, and CAHs. Instead, under the January 2001 rule, the level of supervision of CRNAs in participating Medicare facilities would be determined according to state law. On March 19, 2001, the effective date was delayed 60 days in accordance with the memorandum to the President from the Chief of Staff, dated January 20, 2001, and published in the **Federal Register** (see 66 FR 15352). On May 18, the rule was further delayed for 180 days in order to explore alternatives for implementation (see 66 FR 27598). Upon review of the January 2001 final rule, we identified two important questions that were not raised and thus not addressed previously.

- One question concerned the States' reliance on Medicare physician supervision requirements in establishing State scope-of-practice laws and monitoring practices. In some cases, State laws and regulations may have been written with the assumption that Medicare would continue its longstanding policy requiring physician supervision of the anesthesia care provided by CRNAs. Eliminating the federal CRNA supervision requirements for participating Medicare facilities could mean that some States would change their supervision practices without considering its potential safety impact. In the absence of federal regulations, we were concerned that States might have promulgated different laws or different monitoring practices.
- The second question was whether a prospective study or monitoring should be undertaken to assess the impact in those States where CRNAs practice without physician supervision, or where physicians practice without the assistance of CRNAs. To date, no study has definitively addressed these issues, although the literature we reviewed indicated that the anesthesia-related death rate is extremely low, and that the administration of anesthesia in the United States is safe relative to surgical risk. However, in the absence of clear research evidence it is impossible to definitively document outcomes related to these practices.

We have concluded that we must resolve these implementation questions before we will consider eliminating entirely the federal CRNA supervision requirement. At the same time, however, we wish to give States the flexibility they need to ensure that their citizens have appropriate access to quality anesthesia services. Accordingly, we again have delayed the effective date of the final rule and are proposing an alternative method in lieu of proposing an immediate removal of the federal supervision requirement. Our alternative proposed method would be to—

(1) Establish an exemption from the physician supervision requirement by recognizing a Governor's written request to us attesting that, after consultation with the State's Boards of Medicine and Nursing on issues related to access to and the quality of anesthesia services, and consistent with state law, he or she is aware of the State's right to an exemption from the requirement and has determined that it is in the best interests of the State's citizens to exercise this exemption, and

(2) Have the Agency for Health Research and Quality (AHRQ), with input from HCFA and that of other stakeholders, including anesthesiologists and CRNAs, design and conduct a prospective study or monitoring effort to assess outcomes of care issues relating to CRNA practice and involvement. One approach that we are seeking comment on would be to create a voluntary registry that could prospectively monitor these practices. We are interested in comments on other approaches, as well.

The Secretary is specifically seeking comments on both aspects of our alternative implementation approach.

II. Provisions of the Proposed Regulations

A. Overview

Under the proposal, we would continue to require CRNA supervision by a physician in hospitals, CAHs, and ASCs that participate in the Medicare program. However, we would add a new standard, entitled "State Exemptions."

This new standard would allow State Governors, following consultation with the State's Boards of Medicine and Nursing on issues related to access to and the quality of anesthesia services, and consistent with state law, to exercise their option of exemption from the physician supervision requirement in anesthesia administration through a letter of attestation. The Governor seeking such an exemption would be required to submit a letter to us, attesting that it is in the best interests of the State's citizens to opt-out of the requirement of physician supervision, and that such an opt-out is consistent with State law. We are developing a model letter of attestation that a Governor may send to the HCFA Administrator to signify that the State is exempt from the physician supervision requirement. The request to opt-out, and any withdrawal of a request to opt-out, would both be automatic and effective upon submission to HCFA. As with the current conditions of participation, the exemption would apply to all patients receiving anesthesia services in Medicare participating hospitals, CAHs, and ASCs, assuring that Medicare patients would not receive a different level of care from non-Medicare patients.

B. Discussion

We continue to believe that States are best positioned to regulate practitioners' scope-of-practice and that our proposal will allow Governors, in consultation with the State's Boards of Medicine and Nursing, to make important safety-related determinations when electing to exercise authority over anesthesia services. It will effectively provide greater discretion to State authorities that are experienced at regulating the licensing, education, training, and performance of the professionals practicing under their purview, without the burden associated with duplicative regulatory oversight. Allowing States to make determinations about health care professional standards of practice, and hospitals, CAHs, and ASCs to make decisions regarding the delivery of care, assures that those closest to, and who know the most about, the health care delivery system are accountable for the outcomes of that care. Since the January 2001 rule is not yet effective, the regulatory changes we are proposing here are drafted as revisions to the 2000 CFR.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This rule is not considered to have a significant economic impact on hospitals and, therefore, is not considered a major rule. There are no requirements for hospitals, CAHs, and ASCs to initiate new processes of care, reporting, or to increase the amount of time spent on providing or documenting patient care services. This proposed rule would provide hospitals, CAHs, and ASCs with more flexibility in how they provide quality anesthesia services, and encourage implementation of the best practice protocols.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million to $25 million or less annually (65 FR 69432). For purposes of the RFA, all non-profit hospitals, CAHs, and other hospitals with revenues of $25 million or less annually are considered to be small entities. Individuals and States are not included in the definition of small entities. In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, that exceeds the inflation-adjusted threshold of $110 million. This rule places no additional costs for implementation on the governments mentioned. It will allow the Governor through a letter to us, to opt-out of the physician supervision requirement for CRNAs and allow the CRNAs to practice independently where State law permits. This change is consistent with our policy of respecting State control and oversight of health care professions by deferring to State laws to regulate professional practice.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have examined this proposed rule and have determined that this rule will not have a negative impact on the rights, rules, and responsibilities of State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 416

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Health Care Financing Administration proposes to amend 42 CFR chapter IV as follows:

PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 416.42, revise paragraph (b), and add a new paragraph (d) to read as follows:

§ 416.42 Condition for coverage—Surgical services.

* * * * *

(b) *Standard: Administration of anesthesia.* Anesthetics must be administered by only—

(1) A qualified anesthesiologist; or

(2) A physician qualified to administer anesthesia, a certified registered nurse anesthetist (CRNA) or an anesthesiologist's assistant as defined in § 410.68(b) of this chapter, or a supervised trainee in an approved educational program. In those cases in which a non-physician administers the anesthesia, unless exempted in accordance with paragraph (d) of this section, the anesthetist must be under the supervision of the operating physician, and in the case of an anesthesiologist's assistant, under the supervision of an anesthesiologist.

* * * * *

(d) *Standard: State exemption.* (1) An ASC may be exempted from the requirement for physician supervision of CRNAs as described in paragraph (b)(2) of this section, if the State in which the ASC is located submits a letter to HCFA signed by the Governor, following consultation with the State's Boards of Medicine and Nursing, requesting exemption from physician supervision of CRNAs. The letter from the Governor must attest that he or she has consulted with State Boards of Medicine and Nursing about issues related to access to and the quality of anesthesia services in the State and has concluded that it is in the best interests of the State's citizens to opt-out of the current physician supervision requirement, and that the opt-out is consistent with State law.

(2) The request for exemption and recognition of State laws, and the withdrawal of the request may be submitted at any time, and are effective upon submission.

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

2. In § 482.52, revise paragraph (a), and add a new paragraph (c) to read as follows:

§ 482.52 Condition of participation: Anesthesia services

* * * * *

(a) *Standard: Organization and staffing.* The organization of anesthesia services must be appropriate to the scope of the services offered. Anesthesia must be administered only by—

(1) A qualified anesthesiologist;

(2) A doctor of medicine or osteopathy (other than an anesthesiologist);

(3) A dentist, oral surgeon, or podiatrist who is qualified to administer anesthesia under State law;

(4) A certified registered nurse anesthetist (CRNA), as defined in § 410.69(b) of this chapter, who, unless exempted in accordance with paragraph (c) of this section, is under the supervision of the operating practitioner or of an anesthesiologist who is immediately available if needed; or

(5) An anesthesiologist's assistant, as defined in § 410.69(b) of this chapter, who is under the supervision of an anesthesiologist who is immediately available if needed.

* * * * *

(c) *Standard: State exemption.* (1) A hospital may be exempted from the requirement for physician supervision of CRNAs as described in paragraph (a)(4) of this section, if the State in which the hospital is located submits a letter to HCFA signed by the Governor, following consultation with the State's Boards of Medicine and Nursing, requesting exemption from physician supervision of CRNAs. The letter from the Governor must attest that he or she has consulted with State Boards of Medicine and Nursing about issues related to access to and the quality of anesthesia services in the State and has concluded that it is in the best interests of the State's citizens to opt-out of the current physician supervision requirement, and that the opt-out is consistent with State law.

(2) The request for exemption and recognition of State laws, and the withdrawal of the request may be submitted at any time, and are effective upon submission.

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395 (hh)).

2. In § 485.639, paragraph (c) is revised and new paragraph (e) is added to read as follows:

§ 485.639 Condition of participation: Surgical services.

* * * * *

(c) *Administration of anesthesia.* The CAH designates the person who is allowed to administer anesthesia to CAH patients in accordance with its approved policies and procedures and with State scope-of-practice laws.

(1) Anesthesia must be administered by only—

(i) A qualified anesthesiologist;

(ii) A doctor of medicine or osteopathy other than an anesthesiologist; including an osteopathic practitioner recognized under section 1101(a)(7) of the Act;

(iii) A doctor of dental surgery or dental medicine;

(iv) A doctor of podiatric medicine;

(v) A certified registered nurse anesthetist (CRNA), as defined in § 410.69(b) of this chapter;

(vi) An anesthesiologist's assistant, as defined in § 410.69(b) of this chapter; or

(vii) A supervised trainee in an approved educational program, as described in §§ 413.85 or 413.86 of this chapter.

(2) In those cases in which a CRNA administers the anesthesia, the anesthetist must be under the supervision of the operating practitioner except as provided in paragraph (e) of this section. An anesthesiologist's assistant who administers anesthesia must be under the supervision of an anesthesiologist.

* * * * *

(e) *Standard: State exemption.* (1) A CAH may be exempted from the requirement for physician supervision of CRNAs as described in paragraph (c)(2) of this section, if the State in which the CAH is located submits a letter to HCFA signed by the Governor, following consultation with the State's

Boards of Medicine and Nursing, requesting exemption from physician supervision for CRNAs. The letter from the Governor must attest that he or she has consulted with State Boards of Medicine and Nursing about issues related to access to and the quality of anesthesia services in the State and has concluded that it is in the best interests of the State's citizens to opt-out of the current physician supervision requirement, and that the opt-out is consistent with State law.

(2) The request for exemption and recognition of State laws and the withdrawal of the request may be submitted at any time, and are effective upon submission.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)
(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 6, 2001.

Thomas A. Scully,

Administrator, Health Care Financing Administration.

Approved: July 2, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–16964 Filed 7–3–01; 8:45 am]
BILLING CODE 4210–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, 101

[IB Docket No. 97–95; FCC 01–182]

Allocation and Designation of Spectrum in the 36.0–43.5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: This document proposes rule changes to the domestic frequency spectrum plan to provide satellite and terrestrial operators greater certainty about the scope of operations in the 36.0–43.5 GHz band. This document also proposes to adopt specific power flux-density limits on satellite operations in portions of this band. The proposed rules reflect decisions reached at the 2000 World Radiocommunication Conference (WRC–2000) in Istanbul, Turkey.

DATES: Submit comments on or before September 4, 2001. Submit reply comments on or before October 3, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Trey Hanbury, Planning and Negotiations Division, International Bureau (202) 418–0766 or via electronic mail: *ghanbury@fcc.gov*, or Charles Breig, Planning and Negotiations Division, International Bureau (202) 418–2156 or via electronic mail: *cbreig@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document is a summary of the Commission's Further Notice of Proposed Rulemaking in IB Docket No. 97–95, RM–8811, adopted May 24, 2001 and released May 31, 2001. The Report and Order in IB Docket 97–95, RM–8811, was adopted December 17, 1998 and released December 23, 1998. 64 FR 2585, January 15, 1999. The full text of this Commission further notice of proposed rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) 445 12th Street, S.W., Washington, DC and may also be purchased from the Commission copy contractor, International Transcription Services (ITS), Inc., (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036. The full text of this Commission further notice of proposed rulemaking is also available online at *http://www.fcc.gov/ib/docs/finalcir.doc*.

Summary of the Further Notice of Proposed Rulemaking

This document seeks comment on proposed modifications to the 36.0–43.5 GHz portion of the band plan that would harmonize the domestic band plan with the international sharing arrangement established at WRC–2000 and promote spectrum efficiency. In general, the Commission proposes to designate the 37.0–40.0 GHz band and the 42.0–42.5 GHz band for wireless services and to designate the 40.0–42.0 GHz band for satellite services. Specifically, the Commission proposes: (1) To re-designate the 41.0–42.0 GHz band for satellite services and the 37.6–38.6 GHz band for wireless services; and (2) to add a designation to the 40.5–41.0 GHz band for MSS. The Commission also proposes to adopt or to consider several changes to the table of frequency allocations, including the following: (1) Adding a Fixed-Satellite Service (FSS) allocation in the 37.5–37.6 GHz band; (2) shifting the Mobile-Satellite Service (MSS) allocation from the 39.5–40.0 GHz band to the 40.5–41.0 GHz band; (3) adding a primary Government FSS allocation to the 40.5–41.0 GHz band; (4) adding a primary FSS allocation in the 41.0–42.0 GHz band; (5) considering the addition of fixed and mobile for non-Government use to the 42.5–43.5 GHz band; and (6) providing additional protection to Radio Astronomy in the 42.5–43.5 GHz band. Finally, the Commission proposes to better define the spectrum designations that the Commission chose for the 36.0–51.4 GHz band. The Commission seeks comment on the general approach to the proposed domestic implementation of the U.S. achievements at WRC–2000 and on each of the proposals individually. While the proposed band plan alters the layout of satellite and terrestrial service designations in the band to recognize the U.S. achievements at WRC–2000, the proposed band plan would not change the total spectrum currently designated for use by satellite and terrestrial wireless services.

Paperwork Reduction Act Analysis

Because there are no new or modified paperwork requirements in the proposed rules, there is no increase in paperwork burden associated with this rulemaking.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking. The Commission will send a copy of the Further Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

A. Need for and Objectives of the Proposed Rules

In this Further Notice of Proposed Rulemaking, the Commission proposes to modify the band segmentation plan governing operations in the 36.0–43.5 GHz band to reflect decisions reached at the 2000 World Radiocommunication Conference (WRC–2000). To provide satellite and terrestrial operators with greater certainty about the scope of operations in this band, the Commission also proposes specific power flux density (PFD) limits on satellite operations in portions of this band. In the Further Notice of Proposed Rulemaking, the Commission proposes to re-designate the 41.0–42.0 GHz band

for satellite services and the 37.6–38.6 GHz band for wireless services and to add a designation to the 40.5–41.0 GHz band for MSS. The Commission also proposes to adopt or consider adopting several changes to the table of frequency allocations, including: Adding an FSS allocation in the 37.5–37.6 GHz band that would give FSS gateways more flexibility by allowing access to an additional 100 megahertz of spectrum; shifting the MSS allocation from the 39.5–40.0 GHz band to the 40.5–41.0 GHz band to meet specific U.S. government requirements, including NATO treaty obligations; adding a primary government FSS allocation to the 40.5–41.0 GHz band to offset the proposal to designate the 37.0–40.0 GHz band for wireless services that would eliminate a portion of the one gigahertz of spectrum that the U.S. government has sought for its use; adding a primary FSS allocation in the 41.0–42.0 GHz band to shift FSS to above 40 GHz, while maintaining the 2 gigahertz of spectrum the Commission has designated for its use; adding non-government fixed and mobile services to the 42.5–43.5 GHz band that is currently available only for U.S. government use; and providing additional protection to Radio Astronomy in the 42.5–43.5 GHz band.

B. Legal Basis

The proposed action is taken pursuant to sections 1, 4(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304, and 307.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (96 percent) are small entities.

Regarding future satellite use of the bands that are the subject of this rulemaking, the Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite service applicants or licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified, which could potentially fall into the geostationary or non-geostationary orbit fixed-satellite service category. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities. Generally, these NGSO and GSO FSS systems cost several millions of dollars to construct and operate. Therefore the NGSO and GSO FSS companies, or their parent companies, rarely qualify under this definition as a small entity. In addition, the proposed rules may affect allocations for the space research (passive) and radio astronomy services. There are no small entities affected by this action because only Federal agencies currently make use of these services.

The Commission notes that the rules proposed in this order provide spectrum for future wireless and satellite licensees and the proposal would not affect any current non-Federal Government users. Regarding future terrestrial fixed and mobile use of the subject bands, the definition of small entity under the SBA rules for the radiotelephone industry provides that a small entity is a radiotelephone company employing no more than 1,500 persons. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. While the Commission cannot at this time know precisely which entities will ultimately be utilizing all the subject spectrum, the following services are possibilities:

1. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will use the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. The Commission estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

2. *39 GHz Service.* The Commission defined "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of 39 GHz auctions have been approved by the SBA. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

3. *Local Multipoint Distribution Service.* The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar year. An additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of LMDS auctions

have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, the Commission concludes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

None. No incumbents are effected by this proposed action. The only service rule changes proposed concern power flux density limits and frequency tolerance and emission limitations, which do not have associated compliance burdens.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In this Further Notice of Proposed Rulemaking, the Commission proposes to modify the band segmentation plan governing operations in the 36.0–43.5 GHz band to reflect decisions reached at WRC–2000. The Commission also proposes specific power flux density (PFD) limits on satellite operations in portions of this band.

The Commission is initiating this proceeding to solicit comment on how best to domestically accommodate the changes to the international Radio Regulations adopted at WRC–000. The proposed changes to the domestic allocations seek to maximize efficient use of the radio spectrum by both satellite and terrestrial uses, with minimal changes to the existing Table of Allocations. These changes will provide satellite and terrestrial operators, including small entity operators, with greater certainty about the scope of operations in this band.

Currently, with a proposal primarily attempting to settle spectrum allocation and segmentation issues, there are few alternatives being considered other than frequency parameters. Nevertheless, the Commission notes that, with respect to power flux density limits, the Commission considered the alternative of delaying the implementation of such limits until after the outcome of WRC–2003 to take into account further studies regarding the issue taking place at the International Telecommunication Union. However, the Commission rejected this proposal, concluding that U.S. terrestrial licensees, including small entities, would benefit greatly in the designing and deployment of their systems by knowing with certainty the limits that would apply in the United States. Similarly, the Commission considered and rejected alternative band sharing and hard segmentation plans because those alternatives might be overly burdensome to licensees, including small entity operators, or might overly restrict flexible future uses of the bands.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

List of Subjects

47 CFR Part 2

Radio, Telecommunications.

47 CFR Part 25

Communications common carriers, Radio, Satellites, Telecommunications.

47 CFR Part 101

Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2, 25, and 101 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154. 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Revise pages 76, 77, and 78.

b. Add, under International Footnotes, I. New "S" Numbering Scheme, footnotes S5.551AA and S5.551G in numerical order and remove footnotes S5.551.B, S551.C, S551.D, and S551.E.

c. Add United States footnotes USXXX and USYYY in numerical order.

d. Revise Federal Government footnote G117.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) S5.149	36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263 US342		
37-37.5 FIXED MOBILE SPACE RESEARCH (space-to-Earth) S5.547	37-38 FIXED MOBILE SPACE RESEARCH (space-to-Earth)	37-37.5 FIXED MOBILE	
37.5-38 FIXED FIXED-SATELLITE (space-to-Earth) S5.551AA MOBILE SPACE RESEARCH (space-to-Earth) Earth exploration-satellite (space-to-Earth) S5.547		37.5-38.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	Satellite Communications (25)
38-39.5 FIXED FIXED-SATELLITE (space-to-Earth) S5.551AA MOBILE Earth exploration-satellite (space-to-Earth) S5.547	38-38.6 FIXED MOBILE		
	38.6-39.5 US291	38.6-39.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE US291	Auxiliary Broadcasting (74) Fixed Microwave (101) Satellite Communications (25)
39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) S5.551AA MOBILE MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite (space-to-Earth) S5.547	39.5-40 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US291 USYYY G117	39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE US291 USYYY	

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
40-40.5 EARTH EXPLORATION-SATELLITE (Earth-to-space) FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth) SPACE RESEARCH (Earth-to-space) Earth exploration-satellite (space-to-Earth)			40-40.5 EARTH EXPLORATION-SATELLITE (Earth-to-space) FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) SPACE RESEARCH (Earth-to-space) Earth exploration-satellite (space-to-Earth) G117	40-40.5 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25)
40.5-41 FIXED FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE Mobile S5.547	40.5-41 FIXED FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE Mobile Mobile-satellite (space-to-Earth) S5.547	40.5-41 FIXED FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE Mobile S5.547	40.5-41 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US211 G117	40.5-41 FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE Mobile Mobile-satellite (space-to-Earth) Fixed US211	
41-42.5 FIXED FIXED-SATELLITE (space-to-Earth) S5.551AA BROADCASTING BROADCASTING-SATELLITE Mobile S5.547 S5.551F S5.551G			41-42.5 US211 USXXX	41-42 FIXED FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE MOBILE US211 USXXX	
				42-42.5 FIXED BROADCASTING BROADCASTING-SATELLITE MOBILE US211 USXXX	

42.5-43.5 FIXED FIXED-SATELLITE (Earth-to-space) S5.552 MOBILE except aeronautical mobile RADIO ASTRONOMY S5.149 S5.547	42.5-43.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE except aeronautical mobile RADIO ASTRONOMY US342	42.5-43.5 RADIO ASTRONOMY US342	
43.5-47 MOBILE S5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE	43.5-45.5 MOBILE-SATELLITE (Earth-to-space) FIXED-SATELLITE (Earth-to-space) G117	43.5-45.5	
	45.5-46.9 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE S5.554		RF Devices (15)
	46.9-47 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE S5.554	46.9-47 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE FIXED S5.554	
S5.554			
47-47.2 AMATEUR AMATEUR-SATELLITE	47-48.2	47-47.2 AMATEUR AMATEUR-SATELLITE	Amateur (97)
47.2-50.2 FIXED FIXED-SATELLITE (Earth-to-space) S5.552 MOBILE		47.2-48.2 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE US264	
	48.2-50.2 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE US264 S5.555 US342		Satellite Communications (25)
S5.149 S5.340 S5.552A S5.555			

* * * * *

International Footnotes

* * * * *

I. New "S" Numbering Scheme

* * * * *

S5.551AA In the bands 37.5–40 GHz and 42–42.5 GHz, non-geostationary-satellite systems in the fixed-satellite service should employ power control or other methods of downlink fade compensation of the order of 10 dB, such that the satellite transmissions are at power levels required to meet the desired link performance while reducing the level of interference to the fixed service. The use of downlink fade compensation methods are under study by ITU–R (see Resolution 84 (WRC–2000)).

* * * * *

S5.551G In order to protect the radio astronomy service in the band 42.5–43.5 GHz, the aggregate power flux-density in the 42.5–43.5 GHz band produced by all the space stations in any non-geostationary-satellite system in the fixed-satellite service (space-to-Earth) or in the broadcasting-satellite service (space-to-Earth) system operating in the 41.5–42.5 GHz band shall not exceed -167 dB(W/m^2) in any 1 MHz band at the site of a radio astronomy station for more that 2% of the time. The power flux-density in the band 42.5–43.5 GHz produced by any geostationary station in the fixed-satellite service (space-to-Earth) or in the broadcasting-satellite service (space-to-Earth) operating in the band 42–42.5 GHz shall not exceed -167 dB(W/m^2) in any 1 MHz band at the site of a radio astronomy station. These limits are provisional and will be reviewed in accordance with Resolution 128 (Rev.WRC–2000).

* * * * *

United States (US) Footnotes

* * * * *

USXXX To protect the radio astronomy service in the band 42.5–43.5 GHz, the aggregate power flux-density in the 42.5–43.5 GHz band produced by all the space stations in any non-geostationary-satellite system in the fixed-satellite service (space-to-Earth) operating in the 41.5–42.0 GHz band or in the broadcasting-satellite service (space-to-Earth) system operating in the 41.5–42.5 GHz band shall not exceed -167 dB(W/m^2) in any 1 MHz band at the site of a radio astronomy station for more that 2% of the time. The power flux-density in the band 42.5–43.5 GHz produced by any geostationary station in the broadcasting-satellite service (space-to-Earth) operating in the band 42–42.5 GHz shall not exceed -167 dB(W/m^2) in any 1 MHz band at the site of a radio astronomy station.

USYYY In the band 39.5–40 GHz, Government earth stations in the mobile-satellite service (space-to-Earth) shall not claim protection from non-Government stations in the fixed and mobile services. S5.43A does not apply.

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Federal Government (G) Footnotes

* * * * *

G117 In the bands 7.25–7.75 GHz, 7.9–8.4 GHz, 17.8–21.2 GHz, 30–31 GHz, 33–36 GHz, 39.5–41 GHz, 43.5–45.5 GHz and 50.4–51.4 GHz, the Government fixed-satellite and mobile-satellite services are limited to military systems.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

4. Section 25.202(a)(1) is revised as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a)(1) *Frequency band.* The following frequencies are available for use by the fixed-satellite service. Precise frequencies and bandwidths of emission shall be assigned on a case-by-case basis. The table follows:

Space-to-earth (GHz)
3.7–4.2[1]
10.7–10.95[1 12]
10.95–11.2[1 2 12]
11.2–11.45[1 12]
11.45–11.7[1 2 12]
11.7–12.2[3]
12.2–12.7[13]
18.3–18.58[1 10]
18.58–18.8[6 10 11]
18.8–19.3[7 10]
19.3–19.7[8 10]
19.7–20.2[10]
37.5–40[14]
40–42

Earth-to-space (GHz)
5.925–6.425[1]
12.75–13.15[1 12]
13.2125–13.25[1 12]
13.75–14[4 12]
14–14.2[5]
14.2–14.5
17.3–17.8[9]
27.5–29.5[1]
29.5–30
48.2–50.2

[1] This band is shared coequally with terrestrial radiocommunication services.

[2] Use of this band by geostationary satellite orbit satellite systems in the fixed-satellite service is limited to international systems; *i.e.*, other than domestic systems.

[3] Fixed-satellite transponders may be used additionally for transmissions in the broadcasting-satellite service.

[4] This band is shared on an equal basis with the Government radiolocation service and grandfathered space stations in the Tracking and Data Relay Satellite System.

[5] In this band, stations in the radionavigation service shall operate on a secondary basis to the fixed-satellite service.

[6] The band 18.58–18.8 GHz is shared co-equally with existing terrestrial radiocommunication systems until June 8, 2010.

[7] The band 18.8–19.3 GHz is shared co-equally with terrestrial radiocommunication services, until June 8, 2010. After this date, the sub-band 19.26–19.3 GHz is shared co-equally with existing terrestrial radiocommunication systems.

[8] The use of the band 19.3–19.7 GHz by the fixed-satellite service (space-to-Earth) is limited to feeder links for the mobile-satellite service.

[9] The use of the band 17.3–17.8 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for broadcasting-satellite service, and the sub-band 17.7–17.8 GHz is shared co-equally with terrestrial fixed services.

[10] This band is shared co-equally with the Federal Government fixed-satellite service.

[11] The band 18.6–18.8 GHz is shared co-equally with the non-Federal Government and Federal Government Earth exploration-satellite (passive) and space research (passive) services.

[12] Use of this band by non-geostationary satellite orbit systems in the fixed-satellite service is limited to gateway earth station operations.

[13] Use of this band by the fixed-satellite service is limited to non-geostationary satellite orbit systems.

[14] Use of this band by the fixed-satellite service is limited to "gateway" earth station operations, provided the licensee under this part obtains a license under part 101 of this chapter or an agreement from a part 101 licensee for the area in which an earth station is to be located. Satellite earth station facilities in this band may not be ubiquitously deployed and may not be used to serve individual consumers.

* * * * *

5. Section 25.208 is amended by adding new paragraphs (n), (o), (p), (q) and (r) to read as follows:

§ 25.208 Power flux density limits.

* * * * *

(n)(1) In the band 37.5–40.0 GHz, the power flux-density at the Earth's surface produced by emissions from a non-geostationary space station for all conditions and for all methods of modulation shall not exceed the following values:

(i) -132 dB(W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

(ii) $-132 + 0.75\ (\delta - 5)$ dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 5 and 25 degrees above the horizontal plane; and

(iii) -117 dB(W/m^2) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

(2) These limits relate to the power flux-density that would be obtained under assumed free-space propagation conditions. These PFD limits may be exceeded by up to 12 dB under fade conditions.

(o)(1) In the band 37.5–40.0 GHz, the power flux-density at the Earth's surface produced by emissions from a geostationary space station for all conditions and for all methods of modulation shall not exceed the following values:

(i) -139 dB(W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

(ii) $-139 + 4/3\ (\delta - 5)$ dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 5 and 20 degrees above the horizontal plane;

(iii) $-119 + 0.4\ (\delta - 20)$ dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 20 and 25 degrees above the horizontal plane; and

(iv) -117 dB(W/m^2) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

(2) These limits relate to the power flux-density that would be obtained under assumed free-space propagation conditions. These PFD limits may be exceeded by up to 12 dB under fade conditions.

(p)(1) In the band 40.0–40.5 GHz, the power flux-density at the Earth's surface produced by emissions from a space station for all conditions and for all methods of modulation shall not exceed the following values:

(i) -115 dB(W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

(ii) $-115 + 0.5\ (\delta - 5)$ dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 5 and 25 degrees above the horizontal plane; and

(iii) -105 dB(W/m^2) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

(2) These limits relate to the power flux-density that would be obtained under assumed free-space propagation conditions.

(q)(1) In the band 40.5–42.0 GHz, the power flux density at the Earth's surface produced by emissions from a non-geostationary space station for all conditions and for all methods of modulation shall not exceed the following values:

(i) -115 dB(W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

(ii) $-115 + 0.5\ (\delta - 5)$ dB(W/m^2) in any 1 MHz band for angles of arrival (in degrees) between 5 and 25 degrees above the horizontal plane; and

(iii) -105 dB(W/m^2) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

(2) These limits relate to the power flux density that would be obtained under assumed free-space propagation conditions.

(r)(1) In the band 40.5–42.0 GHz, the power flux-density at the Earth's surface produced by emissions from a geostationary space station for all conditions and for all methods of modulation shall not exceed the following values:

(i) -120 dB(W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

(ii) $-120 + (\delta - 5)$ dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 5 and 15 degrees above the horizontal plane;

(iii) $-110 + 0.5(\delta - 15)$ dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 15 and 25 degrees above the horizontal plane; and

(iv) -105 dB(W/m^2) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

(2) These limits relate to the power flux-density that would be obtained under assumed free-space propagation conditions.

PART 101—FIXED MICROWAVE SERVICES

6. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

7. Section 101.147 is amended in paragraph (a) by revising the entry for 38,600–40,000 MHz in the listing of assignments and adding a new note (31) to read as follows:

§ 101.147 Frequency assignments.

(a) * * *

38,600–40,000 MHz				(4)(31)
*	*	*	*	*

Notes

*	*	*	*	*

(31) Frequencies in this band are shared with stations in the fixed-satellite service, subject to the conditions specified in footnote 14 in 47 CFR 25.202(a)(1).

*	*	*	*	*

[FR Doc. 01–15972 Filed 7–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1482; MM Docket No. 01–130, RM–10147; MM Docket No. 01–131, RM–10148; MM Docket No. 01–132, RM–10149]

Radio Broadcasting Services; Batesville, TX; Benjamin, TX; and Junction, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes new allotments to Batesville, TX; Benjamin, TX; and Junction, TX. The Commission requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 250A at Batesville, Texas, as the community's first local aural transmission service. Channel 250A can be allotted to Batesville in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.9 kilometers (8.0 miles) northeast of Batesville. The coordinates for Channel 250A at Batesville are 29–01–34 North Latitude and 99–30–59 West Longitude. Since Batesville is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be filed on or before August 13, 2001, and reply comments on or before August 28, 2001.

ADDRESSES: Federal Communications Commission, Washington, DC, 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Charles Crawford, 4553 Bordeaux Ave., Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–130; MM Docket No. 01–131; and MM Docket No. 01–132, adopted June 13, 2001, and released June 22, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

The Commission requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 257C2 at Benjamin, Texas, as the community's first local aural transmission service. Channel 257C2 can be allotted to Benjamin in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.4 kilometers (2.7 miles) northwest of Benjamin. The coordinates for Channel 257C2 at Benjamin are 33–36–04 North Latitude and 99–50–04 West Longitude.

The Commission requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 297A at Junction, Texas, as the community's second local aural FM transmission service. Channel 297A can be allotted to Junction in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.5 kilometers (2.2 miles) southeast of Junction. The coordinates for Channel 297A at Junction are 30–27–37 North Latitude and 99–45–22 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Batesville, Channel 250A; Benjamin, Channel 257C2; and Channel 297A at Junction.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–16795 Filed 7–3–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1388; MM Docket No.01–121, RM–10125]

Radio Broadcasting Services; Manning, Moncks Corner, South Carolina

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed by Cumulus Licensing Corp., requesting the reallotment of Channel 223C from Manning to Moncks Corner, South Carolina, as the community's first local aural transmission service. Petitioner is asked to provide additional information in support of the requested reallotment, specifically the short spacing to Station WMYB(FM), Myrtle Beach, South Carolina, due to Section 73.215 processing. No change of transmitter site is proposed. Channel 223C can be allotted at Moncks Corner at petitioner's site 37.7 kilometers (23.4 miles) north of the community. Coordinates for Channel 223C at Monck's Corner are 33–32–05 NL and 79–59–15 WL.

DATES: Comments must be filed on or before July 30, 2001, and reply comments on or before August 14, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: David D. Burns, Kathrine L. Calderazzi, Paul, Hastings, Janofsky & Walter, 1299 Pennsylvania Ave., NW., Tenth Floor, Washington, DC 20004–2400 .

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–121 adopted May 30, 2001 and released June 8, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 223C at Manning, and adding Moncks Corner, Channel 223C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–16793 Filed 7–3–01; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. 062701A]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final determination and discussion of underlying biological analysis.

SUMMARY: NMFS has evaluated the Tribal Resource Management Plan (Tribal Plan) submitted by the Northwest Indian Fisheries Commission (NWIFC), presented by the Bureau of Indian Affairs, Portland, OR on behalf of the Northwest Indian Tribes for tribal research and assessment activities pursuant to the protective regulations promulgated for Puget Sound chinook salmon under the Endangered Species Act (ESA). The Tribal Plan specifies the future scientific research and assessment activities in the Puget Sound region that potentially affect listed Puget Sound chinook salmon.

This document serves to notify the public that NMFS, by delegated authority from the Secretary of Commerce, has determined that implementing and enforcing the Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the Puget Sound chinook salmon Evolutionarily Significant Unit (ESU). This document also includes a summary of the underlying biological analysis used in the determination (Evaluation).

DATES: The determination of the take limit was made on June 14, 2001.

ADDRESSES: Protected Resources Division, National Marine Fisheries Service, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737.

FOR FURTHER INFORMATION CONTACT: Leslie Schaeffer at: 503/230–5433, or e-mail: *leslie.schaeffer@noaa.gov* regarding the Tribal Plan.

SUPPLEMENTARY INFORMATION: This document is relevant to the Puget Sound chinook salmon (*Oncorhynchus tshawytscha*) ESU

Background

The NWIFC submitted a Tribal Plan, presented by the Bureau of Indian Affairs on behalf of the Northwest Indian Tribes for scientific research and assessment activities in the Puget Sound region affecting the Puget Sound chinook salmon ESU. The activities are intended to provide the technical basis for fisheries management and for the conservation and restoration of salmon stocks and their habitat. The Tribal Plan also includes implementation, monitoring, evaluation, enforcement, and reporting procedures designed to ensure the research is consistent with these objectives. The research activities described in the Tribal Plan span a 5–year period beginning on January 1, 2001.

On April 12, 2001, at 66 FR 18904, NMFS published a notice of availability for public review and comment on its Evaluation of how the Tribal Plan addressed the factors in § 223.209 (65 FR 42481, July 10, 2000) of the ESA Tribal Plan Limit.

As required by § 223.209 of the ESA Tribal Plan Limit, NMFS must determine whether the Tribal Plan would appreciably reduce the likelihood of survival and recovery of the Puget Sound chinook salmon and other affected threatened ESUs. NMFS must take comments on how the Tribal Plan addresses the factors in § 223.209 in making that determination.

Discussion of the Biological Analysis Underlying the Determination

The Tribal Plan describes tribal research and assessment activities in the Puget Sound region that provide the technical basis for fisheries management and for the conservation and restoration of salmon stocks and their habitat. The need for improved and more quantitative understanding of salmonid freshwater and marine survival motivates much of the current research. Many of the activities are also intended to provide information for the planning, implementation, and monitoring of habitat protection and restoration efforts. Tribal resource management entities cooperate with the Washington Department of Fish and Wildlife and other state and local agencies in many research activities. The Tribal Plan describes only those activities that are principally funded through, and managed by, tribal agencies.

The Tribal Plan is organized into three sections: (1) Spawning escapement surveys, (2) smolt production studies, and (3) habitat utilization and life history studies. Each section further describes the significance of the research and assessment activities and the sampling methods proposed.

It is NMFS' determination that the research and assessment activities included in the Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild based on the current status of this ESU. This research-related take is not expected to reach a level that will significantly affect any single chinook population in the ESU.

The Tribal Plan contains a section describing a protocol for assuring that the level and extent of take associated with the activities do not reduce the likelihood of survival and recovery of this ESU. The Tribal Plan states that monitoring of take during the course of each activity will determine whether take and mortality are occurring at a level greater than the expected level. The Tribal Plan contains procedures whereby the overall impact of research and assessment activities can be regularly evaluated. Sampling methods and schedules will be altered as necessary to minimize take. Annual reports will include the actual take associated with each activity. NMFS will be informed when take exceeds the projected level for any activity and will be consulted regarding subsequent changes in methodology.

NMFS Evaluation contains general and specific conditions and operating requirements the tribes will follow to have the Tribal Plan Limit apply. Further, the Evaluation contains reporting requirements, a modification process should the tribes propose new or modified research, and a reevaluation process. This information will be used by NMFS and the tribes at least annually or as needed to assess whether impacts to listed fish are as expected, and to revise the Tribal Plan as necessary.

Summary of Comments Received in Response to the Proposed Evaluation and Recommended Determination

NMFS published notification of its evaluation and pending determination on the Tribal Plan for public review and comment on April 12, 2001 (66 FR 18904). The public comment period closed on May 14, 2001. NMFS received no comments concerning this document.

Based on its Evaluation and the fact that no public comments were received, NMFS issued its final determination on the Tribal Plan on June 14, 2001.

Authority

Under section 4 of the ESA, NMFS, by delegated authority from the Secretary of Commerce, is required to adopt such regulations as it deems necessary and advisable for the conservation of the species listed as threatened. The ESA Tribal Plan Limit (65 FR 42481, July 10, 2000) states that the ESA section 9 take prohibitions will not apply to any activity undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in compliance with a Tribal Plan determined by NMFS to not appreciably reduce the likelihood of survival and recovery of the listed salmonids.

Dated: June 28, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–16843 Filed 7–3–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 129
Thursday, July 5, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Solicitation for Membership to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces solicitation for nominations to fill 11 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: Deadline for Advisory Board member nominations is August 15, 2001.

SUPPLEMENTARY INFORMATION: Section 802 of the Federal Agricultural Improvement and Reform Act of 1966 (The Farm Bill) authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is comprised of 30 members, each representing a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed in September 1996 and one-third of the 30 members were appointed for a 1, 2, and 3 year term, respectively.

As a result of the staggered appointments, the terms for 10 of the 30 members who represent 10 specific categories will expire September 30, 2001. Nominations for a 3-year appointment for all 10 of the vacant categories are sought.

In addition, the current member of the category P, Hispanic Serving Institutions, will not be serving out the remainder of his term. Therefore, this slot will be vacant as well and available for a 2-year term nomination. Nominees will be carefully reviewed for their broad expertise, leadership, and relevancy to a category. The full 11 slots to be filled are:

5. National Animal Commodity Organizations
8. National Food Animal Science Societies
1. National Crop, Soil, Agronomy, Horticulture or Weed Sciences Societies
14. Land-Grant Colleges and Universities—1890; including Tuskegee University
15. 1994 Equity in Education Land-Grant Institutions
16. Hispanic-Serving Institutions (2-year term)
T. Food Retailing and Marketing
V. Rural Economic Development
23. National Consumer Interest Groups
24. National Forestry Groups
25. National Conservation or Natural Resource Groups

Nominations are being solicited from organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests. Nominations for one individual who fits several of the categories listed above, or for more than one person who fits one category will be accepted. Please indicate the specific membership category for each nominee. Each nominee must fill out a form AD–755, "Advisory Committee Membership Background Information" (which can be obtained from the contact person below) and will be vetted before selection. Send nominee's name, resume, and their completed AD–755 to the Office of the Advisory Board, Research, Education, and Economics, 1400 Independence Avenue, SW., Room 344–A, JL Whitten Building, Washington, DC 20250–2255, no later than August 15, 2001.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, 1400 Independence Avenue, SW., Room 344–A, JL Whitten Building, Washington, DC 20250–2255. Telephone 202–720–3684. Fax: 202–720–6199, or e-mail, *dhanfman@reeusda.gov*.

Done at Washington, DC this 27th day of June 2001.

Dawn R. Riley,

Acting Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 01–16783 Filed 7–3–01; 8:45 am]
BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lolo National Forest Post Burn EIS, Lolo National Forest, Missoula, Mineral, and Sanders Counties, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; Intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to implement post fire forest management and watershed rehabilitation activities.

DATES: Comments concerning the scope of the analysis should be received in writing by July 30, 2001.

ADDRESSES: Send written comments to: Team Leader, Lolo National Forest Post Burn EIS, Plains/Thompson Falls Ranger District, P.O. Box 429, Plains, MT, 59859.

FOR FURTHER INFORMATION CONTACT: Chris Partyka, Interdisciplinary Team Leader, (406) 826–4355. E-Mail: cpartyka@fs.fed.us.

SUPPLEMENTARY INFORMATION: An exceptional number of wildland fires burned on the Lolo National Forest in the summer of 2000. The direct effects of the fires, along with resource conditions caused by previous land uses, drive the need to conduct vegetation management and watershed rehabilitation activities in and near some of the burned areas.

The Proposed Action includes a variety of management activities on and near the Upper Ninemile Complex (19,900 acres), Alpine Divide (3,600 acres), Thompson-Flat Complex (9,500 acres), and Landowner (5,700 acres) fires. These activities include: (1) Salvaging approximately 5,000 acres of timber burned by moderate to high fire severities, (2) commercially thinning approximately 10,000 acres of unburned

timber and timber burned by low severity fires, (3) salvaging approximately 100 acres of insect killer timber adjacent to the fire perimeters, (4) conducting prescribed burns (following salvage and commercial thinning activities) on approximately 1,600 acres, (5) conducting ecosystem-management prescribed burns on approximately 1,300 acres, (6) planting approximately 12,000 acres of areas burned by moderately-high to high fire severities where natural regeneration is absent or insufficient, (7) constructing approximately 3 miles of temporary road to access harvest areas, (8) reconstructing approximately 185 miles of deteriorating road, (9) decommissioning approximately 140 miles of unneeded roads, (10) removing or replacing up to 350 undersized or improperly positioned culverts (priority on structures that are fish passage barriers or that pose greatest potential for causing stream sedimentation), (11) evaluating need for and implementing stabilization and rehabilitation activities on approximately 30 miles of stream, (12) evaluating need for and implementing soil erosion control measures on approximately 14,000 acres burned by moderately-high to high fire severities, (13) completing fire line stabilization activities on approximately 14 miles of fire line near streams, and (14) providing interpretive information for 3 historical sites.

The purpose and need for the actions are to: (1) Provide wood fiber to support local communities that continue to be associated with commodity outputs from the National Forest, (2) provide for healthy stands and optimize timber growing potential in areas allocated for timber management within the Forest Plan, (3) improve vegetation structure in order to: (a) reduce future fire intensity, (b) reduce the potential for epidemic bark beetle infestations in "at-risk" stands, (c) improve habitat for flammulated owls, and (d) enhance the potential for old growth forest conditions in low elevation, drier, forest habitats, (4) reestablish or promote "at risk" ponderosa pine, western larch and whitebark pine tree species and other sensitive plant species, (5) reduce the potential for runoff, accelerated erosion, and sediment delivery to stream channels from roads, (6) reduce economic burdens associated with maintaining unneeded roads, (7) remove fish passage barriers at road/stream interfaces and improve fish habitat, (8) protect soil quality and stability, and (9) protect cultural and historical resources.

Overall guidance for land management activities in the project area is provided by the Lolo National Forest Plan (U.S. Department of Agriculture, 1986).

Several preliminary issues of concern have been identified regarding the Proposed Action. These issues include:

(1) *Black Backed Woodpecker:* Burned trees provide a food source and nesting habitat for Black Backed woodpecker. There is a concern that the removal of burned trees may affect population viability for this sensitive species.

(2) *Lynx Habitat:* The fires impacted suitable habitat for Canada Lynx. Course woody debris is an important component of denning habitat, and if a reburn does not occur, the fire areas are expected to produce denning and foraging habitat. There is a concern that post fire recovery of timber products would reduce or remove important denning habitat.

(3) *Aquatic Habitat:* Inappropriately sized or placed culverts at stream crossings can prevent upstream fish passage, thus reducing the ability of fish populations to persist in a healthy state or to recover from landscape disturbances such as wildfire. There is a concern that delays in eliminating migration barriers may impair function and recovery of fish populations, as well as increase the risk of sediment production and delivery to instream habitat.

(4) *Water Quality:* Streams in or downstream of the fire areas have been impacted by past management and by the wildfires of 2000. Two streams (Ninemile and Trout Creeks) are listed by the State of Montana as "Water Quality Impaired or Threatened" under section 303(d) of the Clean Water Act. Although the Proposed Action is intended to provide long-term benefits, there is a concern that the cumulative effects of past land use, the fires, and the Proposed Action may have short-term negative impacts to some watersheds.

(5) *Forest Access:* Some Forest roads have provided public access for decades. There is a concern that decommissioning these roads to improve water quality may conflict with long established public use patterns.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations of activities that could meet the purpose and need, as well as to respond to identified issues and other resource values.

The DEIS (Draft Environmental Impact Statement) will analyze the direct, indirect, and cumulative environmental effects of the proposed action and alternatives, including ongoing and reasonably foreseeable activities on National Forest System Lands and adjacent land ownerships within the project area. The DEIS will also disclose the analysis of site-specific mitigation measures and their effectiveness. The DEIS is expected to be filed with the EPA (Environmental Protection Agency) and made available for public review by October 2001.

The public is encouraged to take part in the process and to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, Indian tribes, individuals, and organizations that may be interested in, or affected by, the Proposed Action. This input will be used to identify issues which will drive the analysis and determine alternatives to the Proposed Action.

The comment period on the DEIS (Draft Environmental Impact Statement) will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS (Final Environmental Impact Statement) may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and

discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

As the Forest Supervisor of the Lolo National Forest, Building 24, Fort Missoula, Missoula, MT 59804, I am the responsible official. As the responsible official I will decide if the proposed project will be implemented. I will document the decision and reasons for the decision in the Record of Decision.

Dated: June 15, 2001.

Deborah L.R. Austin,

Forest Supervisor.

[FR Doc. 01–16817 Filed 7–3–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Stainless Steel Flanges From India; Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, AD/CVD Enforcement, Office 8, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5222, or (202) 482–0649, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act) requires the Department of Commerce (the Department) to make a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Tariff Act allows the Department to extend the time limit for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On March 9, 2001, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain stainless steel flanges from India, covering the period February 1, 1999 through January 31, 2000 (Certain Forged Stainless Steel Flanges From India; Preliminary Results of Antidumping Duty Administrative Review, 66 FR 14127). The final results are currently due no later than July 7, 2001. The respondents are Echjay Forgings Ltd. (with affiliate Pushpaman), Isibars, Ltd., Panchmahal Steel Ltd., Patheja Forgings & Auto Parts, Ltd., and Viraj Forgings, Ltd. The Department has determined that it is not practicable to complete the final results of review within the original time limit mandated by section 751(a)(3)(A) of the Tariff Act and section 351.213(h)(1) of the Department's regulations. *See* Memorandum from Richard A. Weible to Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III, dated June 25, 2001. Accordingly, the Department is extending the time limit for completion of the final results until September 5, 2001, in accordance with section 351.213(h)(2).

Dated: June 25, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 01–16855 Filed 7–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Notice of Extension of Time Limit for New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

EFFECTIVE DATE: July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder or S. Anthony Grasso, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0189 or (202) 482–3853, respectively.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and a final determination within 90 days after the date on which the preliminary results were issued. However, if the Department concludes that the case is extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend these deadlines to a maximum of 300 days and 150 days, respectively.

Background

On January 24, 2001, the Department published a notice of initiation of new shipper antidumping duty reviews of TRBs from the PRC, covering the period June 1, 2000 through November 30, 2000 (66 FR 8385) for Yantai Timken Company Limited and Peer Bearing Company—Changshan ("CPZ"). On May 9, 2001, the Department expanded CPZ's period of review to January 31, 2001. The preliminary results for the new shipper reviews of TRBs from the PRC are currently due no later than July 23, 2001.

Extension of Time Limits for Preliminary Results

Due to the complexity of the issues, the Department concludes that these reviews are extraordinarily complicated. *See* Memorandum from Team to Richard W. Moreland, "Extension of Time Limit for Preliminary Results," dated, June 27, 2001. Therefore, the Department is extending the time limit for completion of these preliminary results to not later than November 20, 2001, in accordance with section 751(a)(2)(B)(iv) of the Act.

This extension is in accordance with section 751(a)(2)(B) of the Act.

June 28, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 01–16856 Filed 7–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Intent To Prepare an Environmental Impact Statement on the Proposed Indiana Coastal Zone Management Program

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of change of date for close of comment period.

SUMMARY: On June 11, 2001, the National Oceanic and Atmospheric Administration announced its intent to prepare an environmental impact statement on the Proposed Indiana Coastal Zone Management Program (66 FR 31215). The public scoping period began with the publication of that notice in the **Federal Register**. Notice is hereby given of a new closing date for submission of written comments of August 6, 2001.

FOR FURTHER INFORMATION CONTACT: John King, Acting Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, tel. 301–713–3155, extension 195, e-mail *john.king@noaa.gov*.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 2, 2001.

Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce.

[FR Doc. 01–16952 Filed 7–2–01; 3:21 pm]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061501D]

Marine Mammals; File No. 358–1564–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that the Alaska Department of Fish and Game, 1255 W. 8th Street, P.O. Box 25526, Juneau, Alaska 99802–5526 [P.I. Thomas Gelatt], has requested an amendment to scientific research Permit Number 358–1564–00.

DATES: Written or telefaxed comments must be received on or before August 6, 2001.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. 21668, Juneau, AK 99802–1668 (907/586–7248).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 358–1564–00, issued on June 28, 2000 (65 FR 39878) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 358–1564–00 authorizes the permit holder to: take Steller sea lions (Eumetopias jubatus) of all ages and both sexes over a five-year period in Alaska and British Columbia by aerial/boat surveys, capturing, handling, tagging, blood/biopsy sampling, and branding (of pups). The permit holder requests authorization to: administer Evans blue dye, collect additional blood and tissue samples from, and attachment of instruments to Steller sea lions already authorized to be captured and handled, and increase the frequency of aerial surveys and recaptures for purposes of scientific research.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 27, 2001.

Ann Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–16842 Filed 7–3–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Prospective Grant of Exclusive Patent License

AGENCY: U.S. Army Soldier and Biological Chemical Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with the provisions of 35 U.S.C. 209 (c)(1) and 37 CFR Part 404.7 (a)(1)(i), SBCCOM hereby gives notice that it is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application 09/662,787, "Method and Apparatus for Counting Submicron Sized Particles", 09/662,788, "Method and System for Detecting and Recording Submicron Sized Particles", and U.S. Patent 6,051,189, "System and Method for Detection, Identification and Monitoring of Submicron-Sized Particles" to Virus Detection System Co, LLC, 245 C. Street, Suite 01, P.O. Box 378, Solomons, MD 20688.

This technology relates to a system and method for detection, identification, and monitoring of submicron sized particles, the method includes the steps of collecting a sample, extracting existing submicron particles from the collected sample based on density, purifying the extracted submicron particles by concentrating the extracted submicron particles based on size and, detecting and identifying the purified extracted submicron particles based on size and density thereby determining submicron particles present in the collected sample. The submicron particles detected and identified include viruses and virus-like agents such as prions. Thus, virus and virus-like agents can be detected and identified based only on their physical properties without the use of biochemical reagents or assays. A system for carrying out the method of detection and identification of these particles is also disclosed.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey L. Hinte, Technology Transfer Office, U.S. Army SBCCOM, ATTN: AMSSB–RAS, 5183 Blackhawk Road (Bldg E3330), APG, MD 21010–5423,

Phone: (410) 436–2901 or E-mail: *jlhinte@sbccom.apgea.army.mil*

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted, unless within fifteen days from the date of this published Notice, SBCCOM receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–16835 Filed 7–3–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Coastal Engineering Research Board (CERB)

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: July 31—August 1, 2001.

Place: U.S. Army Engineer District, Galveston, Galveston, Texas.

Time: 8:00 a.m. to 6:00 p.m. (July 31, 2001); 8:00 a.m. to 1:30 p.m. (August 1, 2001).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Mr. Thomas W. Richardson, Acting Director, Coastal and Hydraulics Laboratory, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* On Tuesday, July 31, the morning session will consist of presentations concerning Muddy Coast Problems, Feasibility Study on Upper Third of the Texas Coast, and status reports on Section 227 Demonstration Projects. A field trip is planned for the afternoon of July 31. On Wednesday, August 1, there will be presentations on the following: Regional Sediment Management Status Report; Regional Sediment Management Research and Development Initiative; System-Wide Modeling, Assessment, and Restoration Technology (SMART) Research and Development Initiative; Navigation Trends Work Unit; and Civil Works Strategic Planning Process, followed by an Executive Working Session.

These meetings are open to the public; participation by the public is scheduled for 11:30 a.m. on July 31.

The entire meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Thomas W. Richardson,

Acting Director, Coastal and Hydraulics Laboratory.

[FR Doc. 01–16834 Filed 7–3–01; 8:45 am]

BILLING CODE 3710–61–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy. U.S. Patent No. 5,889,871 entitled "Surface-Laminated Piezoelectric Film Sound Transducer" and U.S. Patent No. 6,104,816 entitled "High Noise Communication System".

ADDRESSES: Requests for copies of the patents cited should be directed to Coastal Systems Station, Dahlgren Division, NSWC, 6703 W. HWY 98, Code CP20L, Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey A. Gilbert, Counsel, Coastal Systems Station, 6703 W. HWY 98, Code CP20L, Panama City, FL 32407–7001, telephone (850) 234–4646.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: June 22, 2001.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–16818 Filed 7–3–01; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC01–525–001, FERC–525]

Information Collection Submitted for Review and Request for Comments

June 28, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of April 4, 2001 (66 FR 17870–71) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, Room 10202 NEOB, 725 17th Street, NW., Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC–525 "Financial Audits."

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: OMB No. 1902–0092. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no change to the existing collection. There is a decrease in the reporting burden due to the Commission's shift in emphasis from periodic audits that ensure companies' financial records conform to FERC's accounting and reporting requirements to audits that assess and evaluate the regulatory implication of industry practices and standards. These are mandatory information collection requirements.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (EPA), the Natural Gas Act (NGA) and the Interstate Commerce Act (ICA). These statutes provide the Commission with the authority and responsibility for ensuring compliance by jurisdictional companies with the Acts' requirements. The information gathered under Commission identifier FERC–525 is obtained during financial/compliance audits of jurisdictional companies forming the basis of the audit staff's opinion regarding (1) the reliability of financial data filed with the FERC by companies, (2) the extent of conformance by the companies with the Uniform System of Accounts and other regulations of the FERC, and (3) compliance with the FERC's regulation for open access transportation of natural gas and electric energy including standards of conduct and electronic bulletin board postings of transportation/transmission availability and pricing.

5. Respondent Description: The respondent universe currently comprises on average, 50 companies subject to a Commission audit annually.

6. Estimated Burden: 5,000 total burden hours, 50 respondents, 1 response annually, 100 hours per response (average).

7. Estimated Cost Burden to Respondents: 5,000 hours ÷ 2,080 hours per year × $117,041 per year = $281,349 total costs and average cost per respondent = $5,627.

Authority: Sec. 4(b), 208, 301(b), 302, 307 and 308 of the Federal Power Act, U.S.C. 792–828g; sec. 6, 8(b), 9 and 10 of the Natural Gas Act, 15 U.S.C. 717–717w; and sec. 19 and 20 of the Interstate Commerce Act, 49 U.S.C. 19–20.

David P. Boergers,

Secretary.

[FR Doc. 01–16747 Filed 7–03–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC01–546–001, FERC–546]

Information Collection Submitted for Review and Request for Comments

June 28, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under the provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission did not receive any comments in response to an earlier **Federal Register** notice of December 26, 2000 (65 FR 81517–18) and has made a notation in this submission.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before August 6, 2001.

ADDRESSES: Address comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer, Room 10202 NEOB, 725 17th Street, NW., Washington DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Michael Miller, CI–1, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–1415, and by e-mail at *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–546 "Certificated Rate Filings: Gas Pipeline Rates".

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0155. The Commission is requesting reinstatement, without change, of the previously approved data collection for which approval expired January 31, 2001, and a three-year approval of the collection of data. This is a mandatory information collection requirement.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to implement the statutory provisions of Title IV of the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301–3432, Pub. L. 95–621) and sections 4, 5, and 16, of the Natural Gas Act (NGA) (15 U.S.C. 717–717o, Pub. L. 75–688). These statutory provisions require natural gas pipeline companies to obtain Commission authorization for all rates and charges made, demanded, or in connection with the transportation or sale of natural gas in interstate commerce. The Commission is authorized to investigate the rates charged by natural gas pipeline companies subject to its investigation. The data filed in certificated rate filings are used to implement new or revised service proposals for the transportation or sale of natural gas and for compliance with subsequent Commission orders. The distinction between FERC–546 and other rate/tariff data collections is that data collected under FERC–546 involve initial service and tariff revisions due to changes in service rather changes in existing rates. The Commission implements these filings requirements in the Code of Federal Regulations (CFR) under 18 CFR 154.4; 154.7; 154.202; 154.204–.209; 154.602–.603.

5. *Respondent Description:* The respondent universe currently comprises approximately 77 natural gas pipeline companies.

6. *Estimated Burden:* 12,320 hours, 77 respondents, 308 responses, 40 hours per response. This estimate is a decrease from OMB's previous inventory. The decrease is an adjustment and reflects a reduction in the average number of annual filings from 100 to 77.

Authority: Sect. 4, 5 and 16 of the Natural Gas Act (15 U.S.C. 717–717w) and sect. 403

of the Natural Gas Policy Act (NGPA) (15 U.S. 3393).

David P. Boergers,

Secretary.

[FR Doc. 01–16748 Filed 7–3–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1949–000]

Power Provider LLC; Notice of Issuance of Order

June 28, 2001.

Power Provider LLC (Power Provider), an affiliate of Baltimore Gas & Electric Company and a newly created electric power marketer, filed with the Commission in the above-docketed proceeding, a proposed tariff under which Power Provider will engage in the sale of electric energy and capacity at market-based rates with affiliated and non-affiliated entities. Power Provider's filing also requested certain waivers and authorizations. In particular, Power Provider requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Power Provider. On June 27, 2001, the Commission issued an order that accepted the tariff for sales of capacity and energy at market-based rates (Order), in the above-docketed proceeding.

The Commission's June 27, 2001 Order granted Power Provider's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Power Provider should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Power Provider is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Power Provider, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Power Provider's issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 27, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–16789 Filed 7–3–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2318–000]

San Diego & Electric Co., Errata Notice; Notice of Filing

June 18, 2001.

Take notice that in the above referenced notice (66 FR 33958, pub. June 26, 2001) the caption was inadvertently named Idaho Power Company. The correct name is San Diego Gas & Electric Company.

The following paragraphs replaces the first paragraph issued on the Notice of Filing June 18, 2001:

Take notice that on June 13, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing as service agreements to its Federal Energy Regulatory Commission Electric Tariff, First Revised Volume No. 6, two interconnection agreements. Both agreements related to the interconnection of a new generation plant to be owned by Wildflower Energy, LP (Wildflower). The plant, with a capacity of approximately 92 megawatts, is being constructed on an expedited basis to meet potential shortfalls this summer in the Wester states' electricity supplies. It will be located in the City of San Diego, County of San Diego, California and is expected to being service on or about July 1, 2001.

Service Agreement No. 7 is an Expedited Interconnection Facilities Agreement dated June 13, 2001, between SDG&E and Wildflower, dated June 13, 2001, under which SDG&E will construct, operate, and maintain the proposed interconnection facilities. Service Agreement No. 8, the Interconnection Agreement between SDG&E and Wildflower dated June 13, 2001, establishes interconnection and operating responsibilities and associated communications procedures between the parties. SDG&E states that copies of the filing have been served on Wildflower and on the California Public Utilities Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 9, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbeell.htm

David P. Boergers,

Secretary.

[FR Doc. 01–16749 Filed 7–3–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–240–000, et al.]

Odessa-Ector Power Partners, L.P., et al. Electric Rate and Corporate Regulation Filings

June 27, 2001.

Take notice that the following filings have been made with the Commission:

1. Odessa-Ector Power Partners, L.P.

[Docket No. EG01–240–000]

Take notice that on June 21, 2001, Odessa-Ector Power Partners, L.P. (OEPP), filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

OEPP is a Delaware limited partnership which will own and/or operate a natural gas-fired electric generating facility with an expected generating capacity of 1,000 MW to be located in Ector County, Texas within the region governed by the Electric Reliability Council of Texas (ERCOT) and sell electricity at wholesale.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Electric City Energy Producers, LLC

[Docket No. EG01–241–000]

Take notice that on June 21, 2001, Electric City Energy Producers, LLC (ECEP), a Montana limited liability company, 1900 10th St. NE, Great Falls, MT, 59404 filed with the Federal Energy Regulatory Commission as application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

ECEP is engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities and selling electric energy and capacity at wholesale. ECEP intends to produce electricity using diesel generators. ECEP is owned by the Montana Refining Company of Great Falls, MT and the Warren Administration Company or Midland, TX.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. GNA Energy, LLC

[Docket No. EG01–242–000]

Take notice that on June 22, 2001, GNA Energy, LLC, 2727 NW Westover, Portland, Oregon 97210, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant proposes to develop and own a natural gas-fired electric generation plant. The facility will have a maximum capacity of 225 megawatts. The facility will be located in Klickitat County, Washington. The facility is scheduled to be completed in February 2002.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. LLP Power Generation L.L.C.

[Docket No. EG01–244–000]

Take notice that on June 22, 2001, LLP Power Generation L.L.C. (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935 and part 365 of the Commission's regulations.

Applicant, a Delaware limited liability company with its principal place of business at Four Embarcadero Center, Suite 2200, San Francisco, CA 94111, is a wholly-owned subsidiary of Locomotive Leasing Partners, L.L.C., which, in turn, is jointly owned by GATX Capital Corp. and the Electro-Motive Division of General Motors Corporation. Applicant proposes to acquire and own certain diesel locomotives and lease those locomotives to various parties, who will operate the facilities and make sales of electric energy.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Consumers Union of U.S. Inc.

[Docket No. EL01–90–000]

Take notice that on June 15, 2001, Consumers Union of U.S. Inc. (Consumers Union) tendered for filing a request for the Federal Energy Regulatory Commission to take immediate action to protect consumers against unjust and unreasonable charges for electricity in the Western United States pursuant to Section 205 and 206 of the Federal Power Act. Consumers Union request that the Commission adopt certain remedial measures for all states in the Western States Coordinating Council for a period of three years.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. The Detroit Edison Company

[Docket No. ER01–2002–001]

Take notice that on June 22, 2001, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements (Service Agreements) for Short-term Firm and Non-Firm Point -to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and Mirant Americas Energy Marketing, LP, dated as of March 29, 2001. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing. Detroit Edison requests that the Service Agreements be made effective as rate schedules as of July 21, 2001.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. The Detroit Edison Company

[Docket No. ER01–2003–001]

Take notice that on June 22, 2001, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements (Service Agreements) for Short-term Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and Allegheny Energy Supply Company, LLC dated as of April 20, 2001. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing. Detroit Edison requests that the Service Agreements be made effective as rate schedules as of July 20, 2001.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. The Detroit Edison Company

[Docket No. ER01–2004–001]

Take notice that on June 22, 2001, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement (Service Agreement) for

Long Term Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1. This Service Agreement is between Detroit Edison and Detroit Edison Merchants, dated as of February 12, 2001. Detroit Edison requests that the Service Agreements be made effective as rate schedules as of July 21, 2001.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. The Detroit Edison Company

[Docket No. ER01–2005–001]

Take notice that on June 22, 2001, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements (Service Agreements) for Short-term Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and Consumers Energy d/b/a Consumers Energy Traders dated as of February 13, 2001. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing. Detroit Edison requests that the Service Agreements be made effective as rate schedules as of July 21, 2001.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. UGI Development Company

[Docket No. ER01–2370–000]

Take notice that on June 22, 2001, UGI Development Company (UGID) tendered for filing a Service Agreement for wholesale power sales transactions under UGID's Wholesale Power Sales Tariff, FERC Electric Tariff First Revised Volume No. 1, by and between UGID and UGI Utilities, Inc. UGID requests an effective date of July 1, 2001 for the Service Agreement.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Indiana Gas & Electric Company

[Docket No. ER01–2371–000]

Take notice that, on June 22, 2001, Southern Indiana Gas & Electric Company doing business as Vectren Energy Delivery of Indiana, Inc. (the Company) filed a Service Agreement with the City of Huntingburg, Indiana (Huntingburg) under the Company's market-based tariff. The Company requests that the Commission allow the Service Agreement to become effective on June 1, 2001. The Service Agreement, which is intended to be effective from June 1, 2001 through December 31, 2004, replaces the pre-existing contract (Rate Schedule FERC No. 40) under which the Company had provided all requirements service to Huntingburg. The Service Agreement provides for a change in the rate paid by Huntingburg and also gives Huntingburg the option of purchasing a portion of its electric requirement during the four peak summer months from alternative suppliers. A copy of the filing was served upon Huntingburg and on the Public Service Commission of Indiana.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LL

[Docket No. ER01–2376–000]

Take notice that on June 22, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 134 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of April 13, 2001 for Sacramento Municipal Utility District.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2377–000]

Take notice that on June 22, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 133 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of May 14, 2001 for Tucson Electric Power Company.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2378–000]

Take notice that on June 22, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 131 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of April 19, 2001 for Salt River Project Agricultural Improvement.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2379–000]

Take notice that on June 22, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 132 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of April 5, 2001 for Morgan Stanley Capital Group Inc.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2380–000]

Take notice that on June 22, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 130 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of April 16, 2001 for Wisconsin Electric Power Marketing.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2381–000]

Take notice that on June 22, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 129 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of June 5, 2001 for Public Service Company of New Mexico.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2382–000]

Take notice that on June 22, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 127 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of April 26, 2001 for Pinnacle West Capital Corporation.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2383–000]

Take notice that on June 22, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 128 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of June 1, 2001 for Nevada Power Company.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Company Services, Inc.

[Docket No. ER01–2385–000]

Take notice that on June 22, 2001, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Interconnection Agreement between Georgia Power and Southern Power Company (Southern Power) for Goat Rock CC Unit 1 (the Agreement), as a service agreement under Southern Operating Companies' Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5) and is designated as Service Agreement No. 381. The Agreement provides the general terms and conditions for the interconnection and parallel operation of Southern Power's electric generating facility located in Lee County, Alabama. The Agreement terminates forty (40) years from the effective date unless terminated earlier by mutual written agreement.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Southern Company Services, Inc.

[Docket No. ER01–2386–000]

Take notice that on June 22, 2001, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Interconnection Agreement between Georgia Power and Southern Power Company (Southern Power) for Wansley CC Units 6 & 7 (the Agreement), as a service agreement under Southern Operating Companies' Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5) and is designated as Service Agreement No. 380. The Agreement provides the general terms and conditions for the interconnection and parallel operation of Southern Power's electric generating facility located in Heard County, Georgia. The Agreement terminates forty (40) years from the effective date unless terminated earlier by mutual written agreement.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Commonwealth Edison Company

[Docket No. ER01–2387–000]

Take notice that on June 22, 2001, Commonwealth Edison Company (ComEd) submitted for filing an Interconnection Agreement with LSP-Nelson Energy LLC (LSP-Nelson). ComEd requests an effective date of June 23, 2001 and accordingly seeks waiver of the Commission's notice requirements. Copies of the filing were served on LSP-Nelson and the Illinois Commerce Commission.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company

[Docket No. ER01–2388–000]

Take notice that on June 22, 2001, Commonwealth Edison Company (ComEd) submitted for filing an Interconnection Agreement with Granite Power Partners II, L.P.(Granite). ComEd requests an effective date of June 23, 2001 and accordingly seeks waiver of the Commission's notice requirements. Copies of the filing were served on Granite and the Illinois Commerce Commission.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Commonwealth Edison Company

[Docket No. ER01–2389–000]

Take notice that on June 22, 2001, Commonwealth Edison Company (ComEd) submitted for filing an Interconnection Agreement with Lockport Power Generation, LLC (Lockport). ComEd requests an effective date of June 23, 2001 and accordingly seeks waiver of the Commission's notice requirements. Copies of the filing were served on Lockport and the Illinois Commerce Commission.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Huntington Beach Development, L.L.C.

[Docket No. ER01–2390–000]

Take notice that on June 20, 2001, Huntington Beach Development, L.L.C. (Huntington Beach) tendered for filing an application for an order accepting its FERC Electric Rate Schedule No. 1, granting certain blanket approvals, including the authority to sell electricity at market-based rates, and waiving certain regulations of the Commission. Huntington Beach requested expedited Commission consideration. Huntington Beach requested that its Rate Schedule No. 1 become effective upon the earlier of the date the Commission authorizes market-based rate authority, or the date Huntington Beach is operationally able to generate, but no later than July 15, 2001. Huntington Beach also filed its Rate Schedule FERC No. 1 and a Supplemental Code of Conduct thereto.

Huntington Beach intends to sell energy and capacity from its facility in the wholesale power market at market-based rates, and on such terms and conditions to be mutually agreed to with the purchasing party.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. Progress Energy on Behalf of Florida Power Corporation

[Docket No. ER01–2391–000]

Take notice that on June 20, 2001, Florida Power Corporation (FPC) tendered for filing Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Cinergy Services, Inc. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of FPC. A copy of the filing was served upon the Florida Public Service Commission.

FPC is requesting an effective date of June 20, 2001 for the Service Agreements.

Comment date: July 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–16746 Filed 7–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application to Amend License and Soliciting Comments, Motions To Intervene, and Protests

June 28, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-capacity amendment of license.

b. *Project No.:* 1494–232.

c. *Date Filed:* June 19, 2001.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola Dam.

f. *Location:* The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. The project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mary E. Von Drehle, Assistant General Counsel, Grand River Dam Authority, PO Box 409, Vinita, OK 74301.

i. *FERC Contact:* Steve Naugle, *steven.naugle@ferc.fed.us.* 202–219–2805.

j. *Deadline for filing comments and or motions:* August 10, 2001.

All document (original and eight copies) should be filed with Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Please reference the following number, P–1494–232, on any comments or motions filed.

k. *Description of the Application:* The applicant requests Commission approval to grant a permit to Arrowhead Investment & Development Company to replace and relocate certain boat docks and to add two new docks at an existing commercial facility known as Arrowhead Marina. The marina, which is located on the Duck Creek arm of Grand Lake O' the Cherokees, currently consists of nine docks with 111 boat slips. After completing the proposed improvements, the marina would consist of 11 docks with 175 boat slips. The expanded docking facilities would be used by patrons of the marina.

l. *Locations of the Applications:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling 202–208–1371. The application may be viewed on-line at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the

Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all Capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Mail Stop PJ–12.1, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–16750 Filed 7–3–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7007–3]

Adequacy Status of Submitted State Implementation Plan for Transportation Conformity Purposes; Houston-Galveston Area (HGA) Ozone Attainment Demonstration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of inadequacy determination.

SUMMARY: The EPA is notifying the public that we have found the motor vehicle emissions budgets (the budgets), in the HGA Ozone Attainment Demonstration State Implementation Plan (SIP) submitted on November 12, 1999, inadequate for transportation conformity purposes. The EPA's determination of inadequacy is based on the fact that it is clear that the budgets in the November 12, 1999, SIP submission can no longer be considered adequate and consistent with attainment requirements. As explained in detail in the Office of Transportation and Air Quality (OTAQ) guidance memorandum entitled "Application of 40 CFR 93.104(e) to Houston Attainment SIP", dated May 9, 2001, the 1999 Rate-Of-Progress budgets are considered the applicable budgets until replaced by subsequent budgets in accordance with 40 CFR 93.118. In addition, this determination that the budgets are not adequate does not have any adverse implications on the conformity process or the current conforming transportation Plan or program.

DATES: This inadequacy determination is effective on May 9, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E., The U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that EPA has already made. The EPA sent a letter to the Texas Natural Resource Conservation Commission (TNRCC) on May 9, 2001, finding that the budgets submitted on November 12, 1999, are not adequate.

Transportation conformity is required by section 176(c) of the Clean Air Act (CAA). The EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes criteria and procedures for making conformity determinations. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The EPA described the process for determining adequacy of the submitted SIP budgets in a guidance memorandum entitled Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision, dated May 14, 1999. This guidance is used in making the adequacy determination on the budgets contained in the control strategy SIPs. The criteria by which EPA determines whether a SIP's budgets are adequate for conformity purpose are specified in 40 CFR 93.118(e)(4). An adequacy review is a separate process from EPA's SIP completeness review, and also it should not be used to prejudge EPA's ultimate action to approve or disapprove the SIP.

The Governor of Texas submitted the HGA Ozone Attainment Demonstration SIP on November 12, 1999. The HGA Ozone Attainment Demonstration SIP contained the year 2007 budgets of 79.00 tons/day for Volatile Organic Compounds (VOC) and 195.00 tons/day for Nitrogen Oxides (NO_x) for the ozone nonattainment area. On May 31, 2000, the EPA sent a letter to the TNRCC stating that the budgets for VOC and NO_x in the November 12, 1999, HGA Ozone Attainment Demonstration SIP were adequate for transportation conformity purposes. The EPA published a notice in the **Federal Register** on June 14, 2000, (65 FR 37368) announcing that we had made an adequacy determination for the budgets submitted in HGA Ozone Attainment Demonstration SIP. This finding was also announced on EPA's conformity web site, http://www.epa.gov/oms/traq.

On December 20, 2000, the Governor of Texas submitted another revision to the HGA Attainment Demonstration SIP which contained a set of revised year 2007 budgets for the on-road mobile sources. These budgets were 79.51 tons/day and 151.6 tons/day for VOC and NO_x, respectively. Subsequently, the EPA posted these budgets on its web site for public review. However, the EPA has not made any adequacy determination on these budgets. On May 30, 2001, the TNRCC proposed additional revisions to the HGA Attainment Demonstration SIP that will further change the budgets for the on-road mobile sources.

The EPA has now determined that the budgets contained in the HGA Ozone Attainment Demonstration SIP submitted on November 12, 1999, are inadequate for transportation conformity purposes. We cannot support adequacy of these budgets because they do not accurately reflect the HGA on-road mobile source emissions and are not consistent with HGA reaching attainment of the ozone air quality standard. One of the criteria for budget adequacy is that the budgets, when considered together with all other emissions sources, are consistent with applicable requirements for the given implementation plan submission, in this case attainment of the ozone standard by the applicable CAA attainment date. We have determined, by following our rule and guidance, that the HGA Ozone Attainment Demonstration SIP budgets submitted on November 12, 1999, are not consistent with attainment of the ozone standard and therefore are not adequate.

As explained in detail in the OTAQ's memorandum referenced earlier, the 1999 Rate-Of-Progress budgets are

considered the applicable budgets until replaced by subsequent budgets in accordance with 40 CFR 93.118. In addition, this determination that the budgets are not adequate does not have any adverse implications on the conformity process or the current conforming transportation Plan or program.

The effective date of this determination is May 9, 2001, the date of the EPA's letter that notified the TNRCC of our inadequacy determination. Even though adequacy determinations are not considered rulemaking subject to procedural requirements of the Administrative Procedures Act, the EPA's policy is to provide a notice and comment period on adequacy determinations through its conformity web site. However, we are not providing opportunity for comment on this inadequacy determination because adequacy determinations are not considered rulemaking subject to the procedural requirements of the Administrative Procedures Act. In addition, the EPA does not believe that it was necessary to provide an opportunity for advance notice or comment on this inadequacy determination because we believe it is clear that the budgets can no longer be considered adequate and consistent with attainment. There was also good cause to act expeditiously in order to protect the public interest, given the potential May 12, 2001, conformity lapse date under 40 CFR 93.104(e)(2) and its associated restrictions. Making this action effective on May 9, 2001, would relieve these restrictions. The substance of the revised attainment budgets will be further reviewed by EPA as part of its final decision to approve or disapprove the HGA Ozone Attainment Demonstration SIP for the Houston nonattainment area. The EPA will consider all of these submissions as well as all public comments in our evaluation whether to approve or disapprove the HGA Ozone Attainment Demonstration SIP.

The EPA will also announce this inadequacy determination on its conformity web site at http://www.epa.gov/oms/traq.

Dated: June 19, 2001.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 01–16810 Filed 7–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7006–8]

Adequacy Status of Motor Vehicle Budgets in Submitted State Implementation Plans for Transportation Conformity Purposes; Maryland; Revisions to the Phase II Plan for the Baltimore Ozone Nonattainment Area: Revised To Reflect the Benefits of the Tier 2/ Sulfur-in-Fuel Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: EPA is announcing that the revised motor vehicle emissions budgets (budgets) contained in the revised Phase II Plan for the Baltimore Ozone Nonattainment Area (the Baltimore area) submitted by the Maryland Department of the Environment (MDE) as a State Implementation Plan (SIP) revision are adequate for transportation conformity purposes. The revised Phase II Plan was submitted to EPA on December 28, 2001. These amendments to Maryland's Phase II Plan for the Baltimore area include revisions to its budgets to reflect the emission reduction benefits associated with the Tier 2 Vehicle Standards/Sulfur-in Fuel rule. EPA has found the budgets in Maryland's revised Phase II Plan for the Baltimore area adequate for transportation conformity purposes.

DATES: The findings that the budgets are adequate were made in a letter dated June 19, 2001, from EPA Region III to the Maryland Department of the Environment. These adequacy findings are effective on July 20, 2001.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, P.E., U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–2183 or by e-mail at: wentworth.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document "we," "us," or "our" refer to EPA. The word "budgets" refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_x). The word "SIP" in this document refers to the revised Phase II Plan for the Baltimore area submitted by MDE to EPA on December 28, 2000. The revised Phase II Plan includes the 2005 attainment demonstration motor vehicle emissions budgets for the Baltimore nonattainment area.

On March 2, 1999, the D.C. Circuit Court ruled that budgets contained in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. By a transmittal letter dated December 28, 2000, the MDE formally submitted revisions to the Phase II Plan for the Baltimore area. On January 17, 2001, we posted the availability of the revised Phase II Plan and the budgets on our conformity website for the purpose of soliciting public comment on the adequacy of the budgets. The comment period closed on February 16, 2001.

On June 19, 2001, EPA Region III sent a letter to the Maryland Department of the Environment which constitutes final Agency action on the adequacy of the budgets contained in the revised Phase II SIP. Those actions were EPA's findings that the budgets of the revised Phase II plan submitted by MDE for the Baltimore area are adequate for transportation conformity purposes. As a result of our June 19, 2001 findings, the attainment budgets for 2005 contained in Maryland's December 28, 2000 revised Phase II SIP for the Baltimore nonattainment area may be used for future conformity determinations.

This is an announcement of adequacy findings that we have already made on June 19, 2001. The effective date of these findings is July 20, 2001. These findings will also be announced on EPA's website: http://www.epa.gov/oms/traq (once there, click on the "Conformity" button, then look for "Adequacy Review of Submissions for Conformity"). The website will also contain a detailed analysis of our adequacy findings and our responses to the comments submitted during our January 17, 2001–February 16, 2001 public comment period.

Transportation conformity is required by section 176 of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the National Ambient Air Quality Standards. The criteria by which EPA determines whether a SIP's budgets are adequate for conformity purposes are found 40 CFR 93.118(e)(4).

Please note that an adequacy finding for budgets contained in a SIP is separate from EPA's completeness determination of the SIP submission, and separate from EPA's action to approve or describe our process for determining the adequacy of submitted SIP budgets in guidance memorandum dated May 14, 1999 and titled

"Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision". We followed this guidance in making these adequacy findings of the budgets in Maryland's revised Phase II plan. You may obtain a copy of this guidance from EPA's conformity web site: http://www.epa.gov/oms/traq (once there, click on the "Conformity" button) or by calling the contact name listed in "For Further Information Contact" section of this notice.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 22, 2001.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 01–16811 Filed 7–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7006–6]

Final Information Products Bulletin Framework Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Information Products Bulletin (IPB) is a new joint effort between the U.S. Environmental Protection Agency (EPA) and The Environmental Council of the States (ECOS). The purpose of this framework plan is to outline the basis and scope of the IPB. The IPB will be launched in Summer 2001 and will be updated every four months, both in hard copy and on the World Wide Web. It will inform stakeholders and the public about upcoming significant information products being produced by EPA and some of the states. This will include, in some cases, the identification of opportunities for stakeholder and public involvement in the development of such products.

ADDRESSES: U.S. Environmental Protection Agency, Office of Environmental Information/Office of Information Analysis and Access, Mail Code: 2843, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For further information about the Information Products Bulletin (IPB), please contact the EPA's Office of Information Analysis and Access/Information Access Division at (202) 260–2846, Fax: 202–401–1315.

SUPPLEMENTARY INFORMATION:

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I. What Is the Information Products Bulletin?

The Information Products Bulletin (IPB) is a joint effort between the U.S. Environmental Protection Agency (EPA) and the Environmental Council of the States (ECOS) to inform stakeholders and the public about upcoming significant information products being produced by EPA and states. ECOS is the national nonprofit, nonpartisan association of state and territorial environmental commissioners. EPA and the states are committed to ensuring that the significant information products we produce are accurate and useful, and that we clearly characterize the data incorporated into these products.

The Information Products Bulletin will:

- Notify interested parties about significant information products under development or major modification by EPA and some states.
- Alert stakeholders and the public about opportunities to provide input regarding the development of some significant information products.
- Be launched in Summer 2001 and will be updated every four months.
- Be available on the Web, as well as in hard copy for those who do not have access to the Internet.

The IPB is NOT intended to provide a comprehensive list of the information products that EPA or states have already completed and released to the public.

EPA has already developed an interim IPB Web site. It is not as detailed as the full IPB will be and does not include information about stakeholder or public involvement opportunities for individual products. You can view the interim IPB Web site at [*www.epa.gov/ipbpages*].

II. Changes Since Draft Framework Plan

A draft IPB Framework Plan was published in the **Federal Register** on November 30, 2000 (65 FR 71314). EPA received comments from five organizations and individuals. This final Framework Plan reflects changes made in response to the comments submitted, as well as editorial changes made to clarify the purpose and scope of the IPB. A Response to Comments document is included at the end of this Framework Plan.

III. Background on Creation of the IPB

Each year, EPA and the states produce information products for the general public that are derived from federal, state, local, tribal or other organizations' data. These products may include analyses and/or draw conclusions about primary data in order to describe environmental conditions, trends, potential risks, and/or the performance of companies, facilities and communities.

In November 1999, EPA and the Environmental Council of the States (ECOS) met with representatives from states, tribes, industry, environmental and public interest groups to discuss issues regarding public access to information products. The IPB was initiated as an outgrowth of discussions that took place at that meeting. It is one of several efforts by EPA and the states to advance the creation and use of data to enhance public health and environmental protection, inform decision-making, and improve the public's access to information about environmental conditions and trends. Informing the public and providing access to sound environmental information, in formats that meet the needs of major stakeholders and the public, are essential components of a comprehensive environmental protection program. The IPB is intended to notify the public of "significant information products" under development, and identify opportunities for stakeholder and public involvement during the development of certain products. The IPB is not intended to be the initial or primary notification device for informing state co-regulators about significant new products.

IV. Criteria for Including and Excluding Products

The IPB includes a description of the upcoming significant information products being produced by EPA and some states. Only those products currently under development that meet the following definition of a "significant information product" will be included in the IPB:

A "significant information product" uses national or regional data to describe environmental conditions, trends, and/or the performance of companies, facilities and communities.

In addition, the following criteria have been developed for determining

which products developed by EPA and the states will be included in the IPB:

- Products that analyze and/or compare data collected by, acquired by, or directly reported to EPA or states from various agencies and organizations, including industry, as well as various federal, state, tribal and local agencies;
- Significant data collected by, acquired by, or directly reported to EPA or states from various agencies and organizations that EPA or the states have not interpreted or analyzed;
- Products produced by one or more state environmental agencies that are regional or national in scope and aggregate data from more than one state;
- Products that apply to a large segment of the population or large geographic area;
- Models used by the public to perform environmental analyses based upon data from various agencies and organizations; and
- Annual reports and other products released on a regular basis that use national or regional data to describe environmental conditions, trends, and/or the performance of companies, facilities and communities.

The following are examples of the kind of products that meet the definition of "significant information product" and would be listed in the IPB while under development or major modification:

Sector Facility Indexing Project (SFIP)—a community-right-to-know and data integration project that provides environmental performance data for facilities within several industry sectors.

National-Scale Air Toxics Assessment (NATA)—characterizes the potential health risks associated with inhalation exposures for 33 priority toxic air pollutants.

Water Quality Standards Database (WQSDB)—an integration of Geographical Information Systems (GIS) and relational database technologies employed to deliver information on specific water bodies in 20 states (to be expanded to all U.S. states and territories in the future).

The following are the kinds of products that will not be included in the IPB, because they either: (1) Do not meet the definition of a significant information product, (2) are used for internal purposes only, and/or (3) must be released immediately to protect human health:

- Action plans
- Analytic tools used exclusively for internal purposes by EPA
- Announcements
- Annual reports that provide only broad, general information, program descriptions and/or accomplishments
- Brochures
- Chemical alerts
- Citizen guides
- Compliance guides
- Conference summaries
- Fact sheets
- Information describing environmental threats that must be released immediately in order to protect public health
- Journal articles
- Policy statements
- Press releases
- Products produced by organizations or agencies other than EPA that are funded through EPA grants or cooperative agreements
- Rulemakings and supporting documents (including guidance, directives, studies, etc.)
- Strategies, strategic plans
- Training materials

The criteria and types of products listed above regarding which products will and will not be included in the IPB are not exhaustive.

V. State Products

The IPB will include some significant information products produced by the states and territories. Such products will be regional or national in scope, including aggregated data from more than one state. EPA might include products about one state, if the product is a prototype or concerns national issues, or the data reflect national or regional environmental conditions, risks, and/or trends.

VI. Stakeholder and Public Involvement Opportunities

For purposes of the IPB, "stakeholders" refers to individuals who represent groups or specific segments of the public with a vested interest in the development and use of a significant information product. In many cases, stakeholders may be directly affected by the use of such a product. "Public involvement" refers to soliciting input and feedback from members of the public in the development of EPA and state products and policies. "Stakeholder involvement" refers to soliciting input and feedback from stakeholders, as described above. Stakeholder involvement primarily includes representatives of industry sectors, communities, government agencies and non-governmental organizations (NGOs).

For further information on EPA policies regarding stakeholder and public involvement, please refer to the EPA report released in December 2000, entitled: Engaging the American People: A review of EPA's Public Participation Policy and Regulations with Recommendations for Action. The report can be viewed at www.epa.gov/stakeholders/policy.htm. EPA is also revising its 1981 Public Participation Policy for release in 2001.

How Will the IPB Affect EPA's and States' Current Stakeholder and Public Involvement Processes?

The IPB will provide pre-publication notification of significant information products being developed by the EPA, as well as some states. The IPB also identifies opportunities for stakeholders and the public to provide input into the development of some of these products. Procedures have already been established for obtaining stakeholder and public input for significant information products. The IPB will not replace or duplicate existing stakeholder or public involvement processes associated with the development of EPA or state products. What the IPB does is identify existing stakeholder and public involvement processes that are currently underway or are planned for certain products.

It should be noted that it may not be useful or appropriate to provide an opportunity for stakeholder or public input for some products on the IPB list. Examples of such products are those produced on a routine or annual basis, or those that are technical, science-based documents that undergo a rigorous peer review process.

How Does the Stakeholder and Public Involvement Process Work?

Stakeholders and the public can become involved in the development of significant information products in different ways, depending upon the individual product. Various methods are described in Table 1 and 2 below. In considering which method(s) to use for any given product, EPA and states must consider the purpose of producing the product and the target audience, as well as available resources, time frame, and other possible limitations. For example, it might be more suitable to obtain stakeholder and public input through face-to-face meetings. In other cases, one or more electronic communication methods may reach a wider interested audience, and thus be a more effective means of getting feedback. EPA and the states often use a combination of stakeholder and public involvement methods.

Table 1 below shows methods that EPA and the states use to present information on upcoming significant

information products to stakeholders and the public. Table 2 below describes methods that EPA and many states use to collect comments on a specific product under development. Many of the methods described in both tables have been used routinely by EPA and many states for years. Electronic communication mechanisms may not be used routinely but their use is growing.

TABLE 1.—STAKEHOLDER AND PUBLIC INVOLVEMENT METHODS USED BY EPA AND THE STATES FOR DEVELOPING SIGNIFICANT INFORMATION PRODUCTS

[These may vary from state to state]

Stakeholder/public involvement method	Description
A. Public meeting	Presentation by EPA or states before a public gathering, often with a question and answer session.
B. Stakeholder meeting	Brief discussion with representatives of various government agencies and/or organizations, including industry, trade associations, environmental organizations, local elected officials, community activists, etc. with a vested interest in the development and use of a significant information product.
C. Forum/workshop	Discussion with stakeholders and/or the public that generally allows for more in-depth discussion than a public or stakeholder meeting.
D. Focus group	Discussion with potential users about the usefulness of one or more specific products, in which participants generally offer suggestions for improvements.
E. Stakeholder or expert consultation	Extended communication with representatives of various government agencies and/or organizations as subject experts, regarding specific technical issues or data related to the product.
F. Survey/questionnaire	Quantitative and/or qualitative input sought in writing from the public and/or stakeholders about a product from which key comments can be extrapolated.
G. **Federal Register** notice	Official method of notifying the public about a particular product, which often includes a formal comment process. Printed daily by the U.S. Government.
H. E-mail/Listserv	E-mail = electronic messages distributed through a computer network or the Internet. Listserv = e-mail-based mailing list for a group of people with a common interest. E-mail and listservs can be used for distributing information about products, and seeking input from stakeholders and potential product users.
I. Electronic bulletin board	Electronic means of publically posting questions and comments submitted by stakeholders and/or the public.
J. Web site/Web page	Web site = groups of Web pages. Web page = electronic means of disseminating information about one or more topics and/or products globally on the World Wide Web. Also can be used to collect user comments.
K. Hotline/Public Information Line	Telephone number supplied by EPA/states that allows for direct answering of caller questions.
L. Media advertisement	Announcement distributed through various media outlets that features a few key points about the product to spark interest in it.
M. Information fact sheet and other similar materials	Brief description of the product (generally one page), sometimes inviting public comments.
N. Mailing to stakeholders	Information about the product targeted to specific stakeholders and/or potential product users.

TABLE 2.—RESPONSE MECHANISMS USED BY EPA AND THE STATES

[These may vary from state to state]

A. Verbal comment(s) recorded during a public meeting, forum, workshop, focus group session or stakeholder meeting.
B. Telephone hotline.
C. Telephone survey/questionnaire.
D. Written comment(s) submitted for a public meeting, forum, workshop, focus group session or stakeholder meeting.
E. Formal written comment(s) sent to EPA in response to a **Federal Register** Notice.
F. Written comment(s) sent to EPA by Fax, e-mail, listserv e-mail, or through e-mail to an electronic bulletin board.
G. Feedback form located on EPA or state Web site.
H. Survey and/or questionnaire distributed by mail, e-mail or Fax.

The IPB will list the stakeholder and public involvement method(s) expected to be used for each of the products offering stakeholder and/or public involvement opportunities. Table 3 below provides a template that EPA and the states plan to use for each of the significant information products listed in the IPB.

TABLE 3.—INFORMATION THAT WILL BE INCLUDED IN THE IPB ABOUT SIGNIFICANT INFORMATION PRODUCTS THAT PROVIDE AN OPPORTUNITY FOR STAKEHOLDER AND/OR PUBLIC INVOLVEMENT

Title	[The name of the significant information product. Please note that titles may be subject to change for some products under development.]
Description	[A brief explanation that provides a basic understanding of the purpose and content of the significant information product.]
Contact	[Phone number to use to get further information about the product and/or the stakeholder/public involvement process. When practical, a specific contact name will be listed and/or an e-mail address.]
Expected Release Date	[When the product is expected to be made available to the public. Please note that such dates are the best estimates available to date; schedules are subject to change.]
Comment Period	[The start and end date of the public comment period if applicable; OR the date that the comment period ends if the comment period has already begun. Please note that the public comment period may differ from the time frames provided for other types of stakeholder/public involvement.]
Stakeholder/Public Involvement Methods	[The method(s) that EPA or the states plans to use to obtain stakeholder/public input and/or feedback on a specific significant information product—see examples of Stakeholder and Public Involvement Methods in Table 1 above.]
How to Access the Draft Product (if available)	[The various electronic and non-electronic ways that stakeholders and the public can use to access a draft copy and/or prototype of the product.]

At What Stage in the Development of a Product Can I Get Involved?

The time frame for the development of each significant information product varies. Thus the time frame for stakeholder and/or public involvement varies as well. Some software models, for example, require early and close collaboration with one or more groups of stakeholders in order to produce an initial version of the product. In some cases, various methods of stakeholder and/or public involvement may be used during different stages of a product's development. Some input may be sought early in the development of a product to determine how best to meet the needs of the product's expected primary users. Then at a later stage in the product's development, the product developer may obtain additional feedback on a draft copy or product prototype.

As explained above, EPA and the states will provide general information in the IPB about the timing of the product's development, along with the time frame for submitting public comments. *Specific* information regarding dates for public meetings, workshops, forums, etc. may be obtained about individual products by contacting the number listed under each product description.

Can I View a Draft Copy or Prototype of Products Under Development?

Where possible, efforts will be made on the IPB Web site to include Web site links to draft copies and/or prototypes of EPA and some state products under development. Those without access to the Internet may be able to obtain hard copies of draft products listed in the IPB by contacting the number listed for obtaining further information. Please note that there will not always be a draft copy or prototype available for every significant information product under development.

Stakeholder and Public Involvement Opportunities for State Significant Information Products

The states generally use the same type of stakeholder and public involvement methods as EPA, which are described in Tables 1 and 2. While states may provide a range of opportunities for stakeholder and public involvement, not all opportunities listed in Tables 1 and 2 may be available in all states. As with EPA products, specific information regarding dates for public meetings, workshops, forums, and other public/stakeholder involvement activities may be obtained through the contact information listed under appropriate product descriptions.

VII. IPB Archive and Notification of Product Releases

The IPB will develop an archival database that will include previous IPB publications. The archive will be searchable by product title and date. In addition, each IPB publication will list those products that were completed and released since the last update.

VIII. Legal Status

The inclusion of a particular significant information product in the IPB, in and of itself, does not confer any special legal status on the product. The IPB is not intended to be used to publish regulatory matters requiring publication in the **Federal Register**.

IX. IPB Publication Schedule

The IPB will be available on the Web [www.epa.gov/ipbpages] and in hard copy format. Both the Web site and the hard copy version will be published every four months. Hard copies will be made available through U.S. mail and/or Fax-on-Demand (202–651–2084) upon request. Contact numbers will be supplied in each IPB publication.

X. Evaluation of IPB

EPA and ECOS recognize the importance of, and are committed to, evaluating the effectiveness of the IPB. Within two years of the publication of the first full IPB volume this summer, we will evaluate whether the IPB is improving the public's access to information products under development. The resulting documentation will be publicly available.

XI. Response to Comments on the Draft IPB Framework Plan

The following Response to Comments section provides EPA's responses to the concerns raised by commenters regarding the draft IPB Framework Plan, published in the **Federal Register** on November 30, 2000 (65 FR 71314). EPA received comments from five organizations and individuals on the draft IPB Framework Plan. Copies of the original comments can be viewed on the Interim IPB Web site at [www.epa.gov/ipbpages].

1. Support for IPB

A. One commenter stated that the value of the IPB had already been established since it enabled them to identify several information products under development on the Interim IPB Web site that they would not have known about otherwise. Another comment expressed support for the IPB as a new public access tool for accessing, analyzing and using information collected by EPA.

Response: Thank you for your comment.

2. Products Defined as "Significant Information Products"

A. One commenter requested that we add the following to the definition of "significant information product": "Products that characterize the performance of particular companies, facilities or products, or that characterize environmental conditions in particular communities."

Response: The definition of "significant information product" has been revised as follows: "A significant information product uses national or regional data to describe environmental conditions, trends, and/or the performance of companies, facilities and communities." While a significant information product may contain data about individual facilities, the data are presented on a national or regional scale, and the product does not solely characterize a particular company, facility or community.

B. One commenter requested that we include compliance guides in the IPB, particularly since the July 1999 Aiming for Excellence report announced a new commitment to develop compliance guides for new, "economically significant" regulations, and to seek input from States, the regulated community and other stakeholders. The commenter further noted that compliance guides should be interpreted broadly to include products like the Sector Facility Indexing Project. Two commenters requested that we include citizen guides, training materials and annual reports in the IPB. They argued that these type of products should be evaluated on their individual merits. One comment stated that the Risk Screening Environmental Indicators project might be considered a citizen guide.

Response: Neither compliance guides, citizen guides or training materials use national or regional data to describe environmental conditions, trends, and/or the performance of companies, facilities and communities. Thus, none of these information products fall within the definition of "significant information products." Compliance guides help the regulated community understand and comply with their obligations under EPA regulations. Citizen guides are generally used to explain EPA's regulations and programs, and training materials are generally used to train people about such regulations and programs. The Sector Facility Indexing Project meets the definition of a significant information product; it is not a compliance guide. The Risk Screening Environmental Indicators project also meets the definition; it is not a citizen guide.

The framework plan explains which types of annual reports will and will not be listed in the IPB.

C. Two commenters recommended that we exclude from the definition of significant information products, analytic tools used by EPA to create analyses and comparisons.

Response: The IPB includes significant information products that are developed for use by the public. It is not intended to include products used for internal EPA or state purposes only.

D. Two commenters recommended that we exclude from the definition of significant information products, "raw" underlying data, such as data collected under TRI or the Biennial Reporting System.

Response: "Raw" data are not expected to be published separately in the IPB, and even if they were, they would be subject to quality assurance and error correction procedures, but not stakeholder or public review. Often, however, raw data are incorporated into the kind of information products that will be listed in the IPB. Stakeholder and/or public involvement opportunities are often provided during the development of these products.

E. Two commenters recommended that we exclude from the definition of significant information products, data elements whose specific purpose is to identify and locate specific facilities or entities that provide environmental reports to EPA and the states.

Response: Facility identification data and other data elements are not expected to be included in the IPB per se. However, the products that will be listed in the IPB may contain data elements for facility identification. EPA and the States may receive comments about these data elements during the product development process.

F. Two commenters recommended that we exclude from the definition of significant information products, information describing imminent public health or environmental threats.

Response: This language has been added to the list of items excluded from the IPB.

G. One commenter stated that the definition of a significant information product was unclear, especially with the long list of excluded products.

Response: The definition of "significant information product" has been revised to make it clearer (see IV. Criteria for Including Products in the IPB above). The lists were intended to provide useful examples of the types of products that will and will not be included in the IPB, and to help provide context for the definition. We have thus retained them in the final framework plan. However, the lists are not all-inclusive. The major factor that will be used to determine whether or not an item is included in the IPB is whether or not it meets the definition of "significant information product."

H. One commenter requested that we include some examples of products that meet the definition of "significant information product."

Response: The final framework plan includes several examples of the types of products that are considered to be significant information products. A longer list of significant information products is available for viewing on the Interim IPB Web site at www.epa.gov/ipbpages.

3. Delay of Product Completion

A. Two commenters requested that the framework plan include a statement that the IPB will not delay the release of any information product. One commenter stated that it might be necessary to release a product upon short notice, before it can be listed in the IPB. Another commenter asked if EPA would delay a product's release, if for some reason the product was not listed in the IPB prior to completion. If not, how could the IPB be a "comprehensive vehicle?"

Response: The IPB is not expected to delay release of a product that has gone through the appropriate product development process. Neither is there a legal requirement that products be listed in the IPB prior to release. EPA will make case-by-case determinations regarding whether to delay releasing a significant information product not yet listed in the IPB. Significant information products released since the last IPB publication will be listed in the following IPB publication (see comment 9. C. below).

4. Stakeholder/Public Involvement

A. One commenter recommended that EPA clarify that the IPB is not intended to replace or amend formal notification and public participation procedures. The comment further stated that all questions of participation should be dealt with under other EPA initiatives.

Response: The primary purpose of the IPB is to provide pre-publication notification of products under development. While some information is provided in the IPB about the public and stakeholder involvement processes used by EPA and some states, the IPB is not intended to replace any of EPA's or the states' formal notification and public involvement processes.

B. One commenter stated that the IPB should include, at minimum, the following options related to public participation for all products listed in the IPB: (1) A contact for each product and an opportunity for stakeholders to submit written or oral comments, and (2) an electronic bulletin board so that comments can be viewed by everyone. Furthermore, the commenter stated that IPB Web site should be the home for electronic comments about individual products, placed in a format that encourages stakeholder input and "cyber-discussions."

Response: As stated above, the primary purpose of the IPB is to provide pre-publication notification of products under

development. The IPB is not intended to be the vehicle that stakeholders and the public use to provide comments about individual products. Contact information will be provided so that readers can contact the originating EPA or state program office about a particular product. We believe that such an approach provides the fastest, most direct and comprehensive way for stakeholders and the public to provide input into the development of significant information products, and allows the IPB to be an efficient entry point for the process.

C. One commenter asked if a product undergoing modification would be subject to stakeholder and/or public involvement procedures. Two examples were included: (1) adding a GIS front end to OTIS from OECA, and (2) adding a new TRI report to Envirofacts.

Response: Only products that meet the definition for significant modifications will be included in the IPB. Some of the products listed in the IPB that are undergoing significant modifications will provide opportunities for stakeholder and/or public involvement. Data added through the formal regulatory review process, e.g., lead reports added to TRI, do not qualify for inclusion in the IPB.

D. Two commenters requested that we define stakeholder broadly to include any member of the general public. One further stated that the general public has a vested interest in the outcomes of environmental policies and programs.

Response: The IPB Framework Plan applies to both stakeholders and the general public, though these terms are not interchangeable. We agree that the general public has a vested interest in the outcomes of environmental policies and programs, and we are working on a variety of efforts to address public involvement. (See VI above.)

E. One commenter requested that we seek input early in the development of a product from both primary and secondary users.

Response: The primary purpose of the IPB is to provide pre-publication notification of products under development. Since products differ widely in design and purpose, they are not developed in a uniform way. As described under VI. Stakeholder and Public Involvement Opportunities above, EPA and the states employ various stakeholder and public involvement methods for individual products, which differ in scope and timing.

5. Publication Frequency and Dissemination

A. One commenter stated that the IPB should be published quarterly since many information products can be developed much more quickly than rulemakings, which are listed semi-annually in EPA's Regulatory Agenda. Another commenter stated that the draft IPB Framework Plan was unclear about whether "soon to be released" products would be listed in the IPB every 3 or 6 months.

Response: In response to comments submitted, we decided to change the frequency at which the IPB will be published to every four months. This will eliminate the originally proposed hybrid of producing a full publication every six months and partial updates every three months. We recognize that such an approach could have been confusing for many IPB readers, and that a shorter interval between full publications would be helpful.

B. One commenter stated that the IPB should be a living document that can be modified at any time. The comment also included the following statements: "The digital divide problem should not restrain EPA from updating the IPB regularly. Those without a computer can access the Web site in public libraries. Web updates serve computer and non-computer users better than 'a policy that simply defers public release of information.' There is no reason to withhold information about new products under development until the next IPB cycle occurs."

Response: Collecting and assembling the information necessary to produce every IPB publication is a resource intensive effort. EPA does not have the resources it would take to adequately update the IPB more than every four months. In addition, we believe that many users lack the resources necessary to keep a daily watch on the IPB Web site for constant changes. Thus, we believe it is best to publish the IPB at regular, reliable intervals to reduce the burden on the public and the Agency.

C. Two commenters supported the draft IPB Framework Plan's proposal to make the IPB available in both print and electronic forms as a means to "pre-empt 'digital divide' issues." One commenter opposed such an approach, stating that the IPB should be maintained exclusively as an electronic service, in order to save trees and keep costs down. This commenter asked if the IPB were to be made available in hard copy, where the hard copies would be placed.

Response: EPA wants to encourage electronic access to the IPB. However, we believe that it is important to provide hard copies of the IPB to those without access to a computer or the Internet, so that they have equal access to information about significant information products under development by EPA and some of the states. Hard copies will be produced at the same time the IPB Web site is updated and will be made available upon request through Fax-on-Demand or by mail.

D. Two commenters requested that EPA disseminate the IPB via email.

Response: EPA does not plan to distribute the IPB via email. EPA believes that the IPB Web site will be easily accessible electronically through various links on EPA's Web site, as well through the ECOS Web site and several state Web sites. IPB updates will also be made available by request through Fax-on-Demand and by mail.

6. Interim IPB List

A. One commenter stated that "Some important initiatives are missing from the Interim IPB, such as 'Window to My Environment,' as well as some products that are undergoing major modifications, such as various OW watershed-related Web sites, and potentially significant changes to AIRNOW and EMPACT."

Response: The Interim IPB Web site was intended to provide an "initial" list of significant information products and did not provide as much detail as will be provided in the full IPB. "Window to My Environment" was included in the Interim IPB as part of the description for the "Information Integration Initiative."

Although some design features were changed for AIRNOW on EPA's Web site this past Fall, no new significant information or data sets were added. Thus, AIRNOW was not included in the Interim IPB.

The EMPACT program is not a significant information product. It is an EPA program that helps communities to collect, manage, and present real-time environmental information to the public. EPA has produced several significant information products through the EMPACT program. In addition, many locally sponsored projects have been funded through EPA's EMPACT Metro Grant Projects Initiative. Only future non-grant-funded EMPACT products will be listed in the IPB, as explained below under 6.C.

B. One commenter asked why the TRI annual report was included in the Interim IPB, but not the Fuel Economy Guide, and why the New Jersey Pesticide Exposure Study was included, but no other such local/state studies.

Response: The only significant information products listed in the Interim IPB were those that were to be released between the time when the Web site was launched in October 2000 and Summer 2001, when the first, full IPB was expected to be launched. The Fuel Economy Guide was not included in the Interim IPB because it was released in September 2000, prior to the release of the Interim Web site. Future annual publications of the Fuel Economy Guide will be included in the IPB.

The New Jersey Pesticide Exposure Study was included in the Interim IPB because it was originally expected to be used as a pilot for a nation-wide project. However, expansion of the project will depend upon results from field tests conducted in the New Jersey project. We will make case-by-case determinations regarding the likelihood that a product being piloted or tested in a particular state will eventually be expanded nation-wide, and thus eligible for inclusion in the IPB.

C. One commenter stated that projects that cross several states or regions, like

many of the EMPACT projects, should be included.

Response: Many EMPACT products are funded through EPA grants and cooperative agreements. According to the EPA financial assistance regulations, products produced under grants and cooperative agreements belong to the financial assistance recipient, not EPA. The Agency can use a product produced with financial assistance for federal purposes but cannot unilaterally decide on the content of the product. Thus products produced with EPA financial assistance will not be included in the IPB. Non-grant-funded EMPACT products that cross several states or regions and meet the definition of significant information product will be included in the IPB.

7. Special Status/Legal Standing

A. One commenter recommended that EPA clearly state that products included in the IPB have no special status or standing beyond their inclusion in the IPB, and that they will not be subject to additional review by the agency, the courts or other entities beyond the processes for public participation and review already in place.

Response: The inclusion of a particular information product in the IPB, in and of itself, does not confer any special legal status on the product. In addition, it should be noted that the IPB is not intended to be used to publish regulatory matters requiring publication in the Federal Register.

8. State Participation

A. One commenter asked if the states that are participating in the IPB will be listed as participants. The commenter further noted that not all states participate in ECOS.

Response: Any state can participate in the IPB, regardless of whether or not it is a member of ECOS. State participation is, however, entirely voluntary. The IPB will include only those significant information products produced by one or more states, that are regional or national in scope and include aggregated data from more than one state.

9. Product Listings and Descriptions

A. One commenter requested that all product descriptions include a brief statement about the origins of each product, and statutory citations where appropriate. The commenter recommended that it would also be helpful to include some type of policy context/link to an aspect of EPA's mission, and a reference to appropriate GPRA strategic objective.

Response: The IPB is a notification mechanism. It is not intended to provide detailed information about each product. Contact information will be provided for all those interested in getting more in-depth information about individual products.

B. One commenter recommended that in addition to including product prototypes for review and comment, EPA should post explanations of methodologies used in modeling components and/or analytical tools.

Response: As explained above, the IPB is not intended to provide detailed information about each product. Contact information will be provided for all those interested in getting more in-depth information about individual products.

C. One commenter requested that the IPB allow users to view already-released, as well as upcoming significant information products. The commenter further stated: "We support initiatives to provide more finder tools to the public, such as an index of information products that would be more comprehensive in scope and an information locator system."

Response: The primary purpose of the IPB is to provide pre-publication notification of significant information products under development. The IPB is not intended to provide a list of EPA's completed information products. However, EPA plans to archive previous IPB publications, and each new IPB publication will list those products completed and released since the previous update.

D. One commenter recommended that the IPB be edited in order to "normalize the submissions" and ensure completeness.

Response: The EPA or state program responsible for producing an individual information product is most familiar with it, and is thus best able to describe it. However, EPA's Office of Environmental Information will review and edit items to ensure that they are written in plain English and use a consistent format.

10. IPB and the EPA Web Site

A. One commenter recommended that the IPB serve as a "hub" site, i.e., a gateway to other information and web pages, with links to key supporting documents and program descriptions associated with the listed documents.

Response: The IPB is not intended to be an EPA hub site. However, links to key supporting documents will be provided as appropriate.

B. One commenter stated that EPA's home page should be improved to better track new developments at the Agency and on EPA's various Web sites.

Response: The IPB is a separate initiative from the EPA home page. EPA has several initiatives in place to improve the usefulness of the EPA homepage, as well as the Agency's various Web sites.

Dated: June 4, 2001.

Elaine G. Stanley,

Director, Office of Information Analysis and Access.

[FR Doc. 01–16808 Filed 7–3–01; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Public Meeting on Other Financing Institutions and Alternative Funding Mechanisms

ACTION: Notice of meeting.

SUMMARY: The Farm Credit Administration (FCA) announces a forthcoming public meeting relating to the funding and discount relationship between other financing institutions' (OFIs) and Farm Credit System (FCS or System) banks.[1] Through this meeting, we are seeking the public's view on what changes should be considered to the current regulatory framework, and seek your suggestions for other types of partnering relationships between System and non-System lending institutions that would increase the availability of funds to agriculture and rural America. This meeting will provide an opportunity for existing and potential OFIs, FCS banks and associations, commercial banks, other lending institutions, and other interested parties to express their views and offer constructive suggestions.

DATES: The public meeting will begin at 8:30 a.m. local time on August 3, 2001, in Des Moines, Iowa. Interested parties wishing to present their testimony in person may notify us prior to the scheduled meeting date, or may register to speak on the day of the meeting. Interested parties wishing to provide oral testimony as part of a panel presentation should notify us of their request by July 27, 2001. Requests to provide testimony in person will be honored in order of receipt. Requests for sign language interpretation or other auxiliary aids should be received by FCA's Office of Congressional and Public Affairs at (703) 883–4056 (TDD (703) 883–4444) by July 27, 2001.

ADDRESSES: The public meeting will be held in Des Moines, Iowa. We will publish the name and address of the meeting facility on our Web site and in the **Federal Register** at least 15 days prior to the date of the public meeting. You may submit requests to appear and present testimony for the public meeting by electronic mail to *reg-comm@fca.gov*

[1] The terms "Farm Credit, FCS, or System" banks include the Farm Credit Banks (FCBs) and an agricultural credit bank (ACB).

or through the Pending Regulations section of our Web site at "*www.fca.gov*." You may also submit your request in writing to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, or by facsimile transmission to (703) 734–5785.

FOR FURTHER INFORMATION CONTACT:

Dennis Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444, or Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: This public notice announces our intention to hold a public meeting that would explore ways to increase the availability of funds to agriculture and rural America through: (1) The funding and discount relationships between System banks and OFIs, and (2) other partnering relationships between FCS banks and associations and non-System financial institutions through alternative funding means. The purpose of this meeting will be to allow us to hear your views on our OFI regulations, existing and potential OFI credit relationships with Farm Credit banks, and other methods for the System and non-System financial institutions to work together to deliver funding to agriculture and rural America. Your suggestions will help us revise our regulations governing the funding and discount relationship between System banks and OFIs. We also welcome your ideas about how we can encourage the FCS and non-System financial institutions to form other partnering relationships that increase the flow of funds to farmers, ranchers, cooperatives, farm-related businesses, and rural utilities through loan participations, Farmers' notes, Aggie bonds, and other similar programs.

This public meeting is another step in the OFI rulemaking process we began with an advance notice of proposed rulemaking (ANPRM) that was published in the **Federal Register** on April 20, 2000, (65 FR 21121). The meeting will allow us to continue to explore regulatory approaches that will enable FCS institutions to form alliances with commercial banks and other agricultural lenders. Such delivery mechanisms can include funding of OFIs, loan participations, investments in Farmers' notes,[2] and other similar programs.

I. Objective

This public meeting is another step in supporting the FCA Board's commitment to give farmers and ranchers greater access to credit. We hope to identify solutions that would increase the availability of funds through OFI relationships as well as other funding alternatives. This meeting aims to identify new methods and tools that would help meet the financing needs of agriculture and rural America in the 21st century. Specifically, we expect to identify any regulatory barriers that may impede access to funds through the FCS.

II. Background

The comment period for our ANPRM ended on July 19, 2000. We received 37 comment letters from FCS institutions, commercial banks, existing OFIs, and other interested parties. Given the nature of the comments received and the broad spectrum of suggestions offered, we have decided to hold a public meeting in order to seek additional input about various approaches that could be available for FCS institutions to increase the availability of funding to non-System lenders that serve agriculture and rural America. We are also asking additional questions and seeking additional information from OFIs, System institutions, non-System financial institutions, and other interested parties on ways to improve the delivery of credit to agriculture through OFI funding relationships. Additionally, we are seeking information on other alternative funding programs, such as loan participations, investments in Farmers' notes, and similar programs.

Section 1.7(b) of the Farm Credit Act of 1971, as amended (Act), authorizes the Farm Credit banks to fund and discount short- and intermediate-term loans for OFIs, which are non-System lenders. Under section 1.7(b) of the Act, OFIs include:

- National and State banks;
- Trust companies;
- Agricultural credit corporations;
- Incorporated livestock loan companies;
- Savings institutions;
- Credit unions;
- Any association of agricultural producers making loans to farmers and ranchers; and
- Any corporation making loans to producers or harvesters of aquatic products.

[2] Investments in Farmers' notes are authorized by § 615.5172 of our regulations.

Section 1.7(b) of the Act enables OFIs to obtain funding from Farm Credit banks for any loan that a production credit association (PCA) could make under section 2.4 of the 1971 Act. PCAs are authorized to make short- and intermediate-term loans with maturities ranging up to 10 years (15 years to producers or harvesters of aquatic products). An OFI can fund or discount through FCS banks only those loans it makes to farmers, ranchers, aquatic producers and harvesters, processing and marketing operators, farm-related businesses, and rural homeowners, who are eligible to borrow under our regulations in subpart A of part 613.

The OFI discount and funding authorities of System banks help to fulfill their mission of financing agriculture, aquaculture, and other specified rural needs. Legislative history shows that Congress originally granted OFIs discount privileges at System banks because operating credit for farmers and ranchers was scarce. Since then, Congress has updated the authorities of System banks to fund and aid both System and non-System lenders to increase the flow of credit to underserved sectors of agriculture and the rural economy. We continue to explore ways of making competitive credit available through more avenues to farmers, ranchers, and other eligible borrowers.

In the early 1980s, both the number of OFIs and the volume of business they did with System banks peaked, then subsequently declined. As of March 31, 2001, twenty-six (26) OFIs have funding relationships for approximately $297 million with FCS banks. In 1998, we sought to expand OFI access to System funding and discounting by amending our regulations to remove many OFI eligibility limits not required by the 1971 Act.[3] We also required a System bank's assessment of total charges for an OFI loan to be comparable to the charges the bank imposes on its direct lender System associations. In addition, to improve safety and soundness, those amendments also required all OFI loans to be full recourse loans.

However, despite these regulatory changes, the program continues to be underused. We are now considering a new rulemaking with the intent of improving non-System agricultural lenders' access to FCS funding as a means of improving the availability of credit to agriculture and rural America through the OFIs, loan participations, the existing investment in Farmers' notes program, or other investment vehicles, such as Aggie bonds.

[3] *See* 63 FR 36541 (July 7, 1998).

We continue to believe that the FCS institutions can more fully serve the credit needs of agriculture and other eligible borrowers, as Congress intended, if they work cooperatively and enhance relationships with other rural credit providers. The OFI relationship is one method that helps FCS banks achieve their objective. For this reason, we continue to look for ways to improve OFIs' access to System funding. We wish to consider whether revising regulatory requirements will spur development of more OFI relationships. We also invite your comments on other funding avenues and partnerships between FCS institutions and non-System lenders that would increase the availability of credit to underserved sectors of the agricultural and rural economy.

III. Questions

In this public meeting, we seek additional information from all interested parties to aid us in developing proposed regulations that increase opportunities for all types of agricultural lenders to access funds through the FCS to the extent allowed by the Act and within appropriate safety and soundness boundaries. Specifically, we seek input on the following questions.

1. What problems/impediments, if any, do you believe exist with the current regulatory requirements relating to OFIs? Please address:

a. Structural impediments (e.g., What type of corporate structure or ownership structure works best for OFI borrowers?)

b. Operational impediments (e.g., cost of establishing an OFI, loan pricing, collateral requirements, capital required, etc.)

c. Geographical impediments (e.g., Where may an OFI establish a funding relationship?); and,

d. Other impediments?

2. What other regulatory changes, if any, are needed to improve the availability and efficiency of OFI relationships?

3. In addition to OFIs, how can we amend our regulations to encourage greater cooperation and partnering between FCS institutions and non-System lenders in increasing credit availability to eligible farmers, ranchers, aquatic producers and harvesters, their cooperatives, rural utilities, and farm-related businesses?

4. What other types of market-based solutions and financial arrangements (e.g., loan participation programs, investments in Farmers' notes, other similar types of programs) could be used to improve the availability of funds to non-System lenders through the FCS?

5. How can such alternative funding arrangements be used to improve the efficiency and availability of funding to agriculture and related rural businesses, including rural utilities and rural housing? Under what conditions should these arrangements be provided?

6. If lending institutions are granted greater flexibility to access FCS funding through OFI relationships, other partnering arrangements, or alternative funding mechanisms (e.g., loan participations, investments in Farmers' notes, Aggie bonds, and other similar programs and activities), what measures should be instituted to ensure the safety and soundness of the FCS institutions?

IV. Request To Present Testimony

In addition to comments on the preceding topics, the FCA invites testimony on all issues relating to existing OFI regulations contained in 12 CFR part 614, subpart P. We anticipate a significant number of presenters and as such, oral testimony at the meeting will be limited to 5 minutes per person and 10 minutes for follow-up questions.

Any interested party wishing to present testimony at the meeting may submit a request to the FCA at one of the addresses we listed at the outset of this notice. You may also identify yourself and your intent to speak the day of the public meeting. In order to provide the most opportunity for interested parties to present their views, we encourage interested parties to provide their testimony in a panel format. However, as time permits we will also accept individual testimony. A request to speak should provide the name, address and telephone number of the person wishing to testify and the general nature of the testimony. Requests will be honored in order of receipt.

We intend to include all comments in our official public record and as such we ask that you provide us with written statements or detailed summaries of the text of your testimony. Such written comments should be presented to us by the close of the public meeting. If time permits, at the end of the public meeting, additional parties who were not scheduled to speak may be invited to provide their thoughts and comments on the questions posed in this notice. For those parties that wish to provide testimony on the day of the meeting, but are not able or do not desire to present testimony in person in front of the meeting panel, we intend to make available additional means of recording such testimony.

In the event that more people wish to testify than time permits, the FCA will accept their written statements for the record. Written copies of the testimony along with a recorded transcript of the proceedings will be included in our rulemaking files. The FCA Board will accept written comments, in support of or in rebuttal to testimony presented at the public meeting or comments submitted for the record. The comment period for such additional comments will end 30 days following the date of this public meeting.

The comments, as well as all documents and testimony received by the FCA as part of the public meeting process, will be available for public inspection at the FCA's Office of Policy and Analysis in McLean, Virginia.

V. Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be received by FCA's Office of Congressional and Public Affairs at (703) 883–4056 (TDD (703) 883–4444) by July 27, 2001.

Dated: June 28, 2001.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 01–16799 Filed 7–3–01; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

June 28, 2001.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0978.
Expiration Date: 06/30/04.
Title: Revision of the Commission's Rules to Ensure Compatibility with

Enhanced 911 Emergency Calling Systems, Fourth R&O.

Form No.: N/A.

Estimated Annual Burden: 32,000 burden hours annually, 2 hours per response; 16,000 responses.

Description: The information submitted in the quarterly reports will be used by the Commission to keep track of the carriers' progress in complying with E911 TTY requirements and also to monitor the progress technology is making towards compatibility with TTY devices.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–16791 Filed 7–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 01–1551]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 29, 2001, the Commission released a public notice announcing the July 17–18, 2001, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–2320 or dblue@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW, Suite 6A207, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: June 29, 2001.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, July 17, 2001, from 8:30 a.m. until 5:00 p.m., and on Wednesday, July 18, 2001, from 8:30 a.m., until 12:00 noon (if required). The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW, Room TW–C305, Washington, DC.

This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda

1. Announcements and Recent News
2. Approve Minutes
   —Meeting of June 18–19, 2001
3. Report of North American Numbering Plan Administrator (NANPA)
   —Final exhaust projection assumptions
   —Status of 500/900 NXX code assignments
   —Further discussion re: "orphaned" number blocks
4. Presentation by National Thousands-Block Pooling Administrator
5. Report of NANPA Oversight Working Group
6. Report of Numbering Resource Optimization Working Group
   —Complete NANP Exhaust Assumption 6 (impact of CMRS pooling)
7. Report of NANP Expansion/ Optimization IMG
8. Status of Industry Numbering Committee activities
   —Revised guidelines for reclaiming 555 numbers
9. Report of the Local Number Portability Administration (LNPA) Working Group
10. Report of NAPM LLC
11. Report from NBANC
12. Report of Cost Recovery Working Group
13. Steering Committee
    —Table of NANC Projects
14. Report of Steering Committee
15. Action Items
16. Public Participation (5 minutes each)
17. Other Business

Adjourn (5:00 p.m.)

Wednesday, July 18 (If Required)

NANC will reconvene at 8:30 a.m. to complete any business not completed on July 17; adjournment will be no later than 12:00 Noon.

Next Meeting: September 11–12, 2001.

Federal Communications Commission.

Diane Griffin Harmon,

Acting Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 01–16797 Filed 7–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CS Docket No. 01–129, FCC 01–191]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. This document solicits information from the public for use in preparing the competition report that is to be submitted to Congress in December 2001. The document will provide parties with an opportunity to submit comments and information to be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

DATES: Comments are due on or before August 3, 2001, and reply comments are due on or before September 5, 2001.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Cable Services Bureau, (202) 418–7200, TTY (202) 418–7172 or via Internet at mglauber@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry* in CS Docket No. 01–129, FCC 01–191, adopted June 20, 2001, and released June 25, 2001. The complete text of this *Notice* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be viewed via Internet at http://www.fcc.gov/csb/.

Synopsis of Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming. This *Notice of Inquiry* ("*Notice*") solicits data and information on the status of competition in the market for the delivery of video programming for our eighth annual report ("2001 Report"). The Commission will report on the current state of competition and report on changes in the competitive environment since our 2000 Report.

2. We seek information, comment and analyses that will allow us to compare video delivery technologies and to evaluate the status of competition in the video marketplace, prospects for new entrants to that market, and its effect on the cable television industry and consumers. The accuracy and the usefulness of the 2001 Report are directly related to the information we receive from commenters. To the extent feasible, we request data as of June 30, 2001, to facilitate our analysis of competitive trends over time. Comments submitted in this proceeding will be augmented with information from publicly available sources.

Competition in the Market for the Delivery of Video Programming

3. Video distributors using both wired and wireless technologies serve the market for the delivery of video programming. Video programming distributors include cable systems, direct broadcast satellite ("DBS") service, home satellite dish ("HSD") service, private cable or satellite master antenna television ("SMATV") systems, open video systems ("OVS"), multichannel multipoint distribution service ("MMDS"), and over-the-air broadcast television service.

4. Congress and the Commission have sought to eliminate barriers to competitive entry and establish market conditions that promote competition to foster more and better options for consumers at reasonable prices. The Telecommunications Act of 1996 ("1996 Act") extended the pro-competitive provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act") and established a "pro-competitive de-regulatory national policy framework" for the telecommunications industry. For this year's report, we seek comment and information on the extent to which changes in the Communications Act and the Commission's rules have encouraged new competitors in the market for the delivery of video programming. We also seek comment on any remaining, or impending, statutory or regulatory barriers to new entrants in the video market.

5. One goal of the 1992 and 1996 Acts is to promote competitive choices for consumers. To what extent do consumers have multiple options for video programming services? We seek data regarding areas where head-to-head competition exists between cable and other video programming distributors, or among various types of video programming distributors. As in previous Reports, we request information for case studies on the effects of competition in local markets where consumers have a choice among video programming distributors.

6. For consumers to have access to competitive alternatives for video services, video programming distributors must have access to programming and other services as well as the facilities needed to distribute these services. We seek information regarding video programming distributors' ability to acquire or license programming. We also note that the prohibition on exclusive contracts in the program access rules ceases to be effective on October 5, 2002, unless the Commission finds that the prohibition continues to be necessary. We seek suggestions on the methods we should use to evaluate whether this provision of the program access rules is still needed.

7. We also recognize that new service offerings (e.g., data access, telephony, video-on-demand, interactive television) and new ways of offering service (e.g., personal video recorders, streaming video) are being deployed by a number of different video delivery technologies. Are there economic, technical or regulatory factors influencing the ability of providers to include these services along with more video programming? We also request comment on whether the ability to offer advanced services (e.g., telephony, data access) affects competition in the video marketplace?

8. Video programming distributors must be able to deliver their services to consumers. In this regard, we seek comment and information regarding the ability of video programming distributors to have access to rights-of-way, pole attachments, conduits, and ducts for the delivery of their services to consumers. We also seek to update our information on video delivery competition for and within multiple dwelling units ("MDUs"), which we consider a separate submarket.

9. As in previous Reports, we seek factual information and statistical data about the current status of each type of video programming distributor and any changes that have occurred during the past year. For each video programming distribution technology, we seek information on: (1) The number of homes passed by wired technologies; (2) the number of homes capable of receiving service by wireless technologies; (3) the number of video distribution firms in a given industry; (4) the number of subscribers and penetration rates; (5) channel capacities and the number, type, and identity of video programming channels offered; (6) prices charged for the various programming packages offered; and (7) industry and firm financial information, such as revenues, in the aggregate and by source (e.g., programming, advertising), cash flow, and expenditures. Finally, we invite comment on a variety of issues associated with specific segments of the video programming distribution industry as well as any other relevant comments.

10. *Cable Television.* We seek to update and refine our report on the performance of the cable television industry. We invite comment and request data on cable television's financial performance, capital acquisition and disposition, system transactions, rates, channel capacity, programming costs, subscribership, viewership, and new service offerings.

11. Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the U.S. and are subscribed to by 70 percent of those households, the Commission may promulgate any additional rules necessary to provide diversity of information sources. In the 2000 Report, we found that both benchmarks had not been met. Have there been any developments in the last year that would change this determination? With respect to channel capacity, we request data on the distribution of cable systems and cable subscribers classified by channel capacity. We also seek information on the extent to which cable operators currently are using all their required set-aside channels for the carriage of local broadcast signals, pursuant to sections 614 and 615 of the Communications Act. We further note that, under 47 CFR 76.921, the exception to the "buy through prohibition" expires on October 5, 2002. Are there cable systems that will not meet the October 2002 deadline for the capability to allow "buy-through"?

12. We seek information on mergers, acquisitions, consolidations, swaps and

trades, cross-ownership, and other structural development that affect the delivery of video programming. For the past several years, cable operators have engaged in a strategy of buying and/or swapping cable systems to create regional clusters cable systems. We request comment on the practice of clustering and its effect on competition in the video programming distribution market. We also are interested in learning whether noncable video programming distributors (e.g., MMDS, SMATV) cluster their systems.

13. We further seek comment on whether cable operators are changing the way they package programming. To what extent are cable operators offering smaller basic tiers (i.e., "lifeline" tiers) or shifting programming from the basic service tier ("BST") to cable programming service tier ("CPST") or from these tiers to digital tiers? To what extent are operators shifting services to create uniform program offerings across their regional or clustered systems?

14. *Direct-to-Home Satellite Services.* We seek updated information about direct-to-home ("DTH") satellite services, which includes direct broadcast satellite ("DBS") and home satellite dish ("HSD" or "C-Band") services. Previous Reports have noted the continued growth of DBS subscribership and the increased proportion of video programming subscribers choosing alternatives to cable television. We also observed a decline in the number of HSD subscribers. Are these trends continuing? Are there identifiable differences between consumers who choose to subscribe to DBS rather than cable or another video programming distributor? We request data that will allow us to compare DBS and cable rates for programming packages and equipment.

15. Some of the increase in DBS's share of multichannel video programming distributor ("MVPD") subscribers has been attributed to the carriage of local broadcast stations ("local-into-local service") by DBS operators, pursuant to the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"). We request updated information on the number of markets where local-into-local service is offered and the percent of DBS subscribers opting for such packages.

16. *Broadcast Television.* We seek information on the role of broadcast television in market for the delivery of video programming. We request information regarding the extent to which broadcast television competes as a distribution medium with multichannel video programmers for audiences and for advertising revenue. We seek information on the number and percentage of households that rely on over-the-air broadcast television reception for some or all the television sets in their homes.

17. Broadcasters are in the process of rolling out digital television ("DTV"). We request comment on the role of DTV in the market for the delivery of video programming. We request information regarding the amount and type of DTV programming currently being offered. We also seek information on the sales of DTV consumer equipment and factors affecting consumer adoption of DTV equipment. Further, in conjunction with the on-going consideration of issues relating to the carriage of DTV stations by cable operators, we seek information and comment on DTV carriage agreements between broadcasters and cable operators.

18. *Wireless Cable.* In the 2000 Report, we reported an almost 15 percent decline in MMDS video subscribers, a trend that has continued from previous years. We observed that the MMDS industry provides competition to the cable industry for MVPD service only in limited areas and that the industry is transitioning from offering video programming to offering data service. What effect will this transition have on the status of MMDS as a competitor in the market for the delivery of video programming and consumer choice?

19. *Satellite Master Antenna Systems.* Video distribution facilities that use closed transmission paths without using any public right-of-way, known as SMATV or private cable systems, primarily serve MDUs, such as apartment buildings. The 2000 Report noted that SMATV subscribership has remained relatively unchanged in recent years, but we recognized that our estimate of SMATV subscribership may be inexact since the SMATV industry consists of hundreds of small and medium size firms. To provide the most accurate and reliable estimate of SMATV subscribership, we request data for SMATV markets, including subscribership levels, service areas, the identities of the largest operators, types of services offered, and the price charged for those services.

20. *Open Video Systems.* We request data on the status of open video systems, including the number of homes passed, the number of subscribers, the types of services offered, the packaging of services, and the cost of services. To what extent are open video systems joint ventures between video service providers and other entities (e.g., utility companies, Internet service providers)? An OVS operator must make channel capacity available for use by unaffiliated programmers. We solicit information on unaffiliated programmers seeking carriage on open video systems and the number and types of such programming. Under the *City of Dallas, Texas* v. *FCC* decision, local governments have the ability to impose franchise requirements on OVS operators. What effect has this decision had on the growth of OVS?

21. *Local Exchange Carriers and Utilities.* For the 2001 Report, we request information regarding LECs, long distance telephone companies, and utility companies that provide video services. In the 2000 Report, we found that the rate of entry by LECs appeared to be slowing even by the most aggressive telephone companies, and several LECs have reduced or eliminated their MVPD efforts. With respect to LECs, we request information about the current status of their activities and any changes that have occurred since the 2000 Report.

22. *Broadband Providers.* In previous Reports, in the context of overbuilding, we mentioned several broadband providers, which are newer firms that are building state-of-the-art facilities-based networks to provide video, voice and data services over a single network. We note that some broadband providers offer video services as franchised cable operators and some have obtained OVS certification. We seek information regarding broadband providers, including data on the geographic locations of such systems, and whether they operate as franchised cable systems or some other model. We also ask for information regarding the number of homes passed, the number of subscribers, video service packages offered, non-video service offerings in combination with video services, and the rates charged for the various packages. What are the technical, economic and regulatory obstacles to the successful operation of systems of this type?

23. *Home Video Sales and Rentals.* The Commission has considered home video sales and rentals as part of the video marketplace because they offer services similar to premium and pay-per-view programming services. The home video marketplace includes videocassettes, DVDs, laser discs, and personal video recorders ("PVRs"). For the 2001 Report, we seek information and updated statistics regarding the home video sales and rental market.

Convergence of Services and Technologies

24. *Convergence of Service Offerings.* The 1996 Act removed barriers to LEC

entry into the video marketplace in order to facilitate competition between incumbent cable operators and telephone companies. In the 2000 Report, as in previous years, we found that the expected technological convergence between telephone and cable companies had not yet occurred. However, we observed that the most significant convergence of service offerings has been the pairing of Internet service with video services by a wide range of companies throughout the communications industries. We request information on the current state of high-speed data offerings by each delivery technology and comparable statistics on the availability of such service, the cost of such service, the number of homes to which the service is available, and the number of subscribers of these services. What effect, if any, does the provision of these ancillary services have on competition in the video marketplace?

25. *Convergence of Television and the Internet.* A number of recent developments point to the convergence of television and the Internet. In recent Reports, we addressed Internet video, i.e., real-time and downloadable video accessible over the Internet. We seek comment as to if, and when, Internet video will become a viable competitor in the market for the delivery of video programming. We also solicit information on the technological, legal, and competitive factors that may promote or impede the provision of video over the Internet.

26. In the 2000 Report, we observed that interactive television ("ITV") services were beginning to be offered through cable, satellite, and terrestrial technologies. ITV combines television with many of the functions of the personal computer ("PC"). We seek comment on the development and deployment of these services, specifically the types of services being offered and the technologies used to provide them to consumers. We also seek information on electronic program guides ("EPGs"), which are sometimes considered an ITV service.

Programming Issues

27. For the 2001 Report, we seek information that will allow us to update our information on existing and planned national and local/regional programming services and to assess the extent to which video programming services are affiliated with cable multiple system operators ("MSOs"). We also request data on the extent to which there are programming networks affiliated with noncable video programming distributors and whether such programming networks are available to competitors, including cable operators. We request comment on whether there are certain programming services (i.e., "marquee" program services) or types of services (e.g., movie, sports, or news channels) without which competitive video service providers may find themselves unable to effectively compete. We further seek information and comment regarding public, educational, and governmental ("PEG") access and leased access channels.

28. In the 2001 Report, we will continue to report on the effectiveness of our program access, program carriage and channel occupancy rules that govern the relationships between cable operators and programming providers. In particular, we seek information on cases of video programming distributors being denied programming when a satellite-delivered service becomes terrestrially-delivered, or being denied programming by non-vertically integrated programmers?

Technical Advances

29. Cable operators and other video programming distributors continue to develop and deploy advanced technologies, especially digital compression techniques, to increase their capacities and to enhance the capabilities of their transmission systems. We request information on the various aspects of these technical advances, including information on investments in facilities and equipment upgrades by cable and other MVPDs. As digital services and other new technologies are deployed by video programming distributors, changes in consumer premises equipment design, function, and availability may affect consumer choice and competition between firms in the video programming market. We solicit updated information on the developments regarding consumer equipment.

Procedural Matters

Ex Parte

30. There are no ex parte or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

Filing of Comments and Reply Comments

31. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 3, 2001, and reply comments on or before September 5, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

32. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

33. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. The Cable Services Bureau contact for this proceeding is Marcia Glauberman at (202) 418–7046, TTY (202) 418–7172, or at mglauber@fcc.gov.

34. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Marcia Glauberman, Cable Services Bureau, 445 12th Street SW., Room 3–A738, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and Microsoft Word, or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding (including the lead docket number in this case [CS Docket No. 00–129]), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, referable in a single electronic file. In addition, commenters must send diskette copies to the

Commission's copy contractor, International Transcription Service, 1231 20th Street, NW., Washington, DC 20036.

Ordering Clause

35. This Notice is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–16792 Filed 7–3–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011700–003.

Title: Senator/CSAV Slot Charter Agreement.

Parties: Compania Sud Americana de Vapores S.A., Norasia Container Lines Limited, Senator Lines GmbH.

Synopsis: The proposed modification adds Norasia to the agreement as a charterer of slots from Senator Lines in trades between North Europe, the Far East, Central America, Mexico and U.S. Atlantic and Pacific Coasts.

Agreement No.: 011736–001.

Title: Sen/CSAV Cross Slot Charterparty Agreement on AMA/APX.

Parties: Compania Sud Americana de Vapores S.A., Norasia Container Lines Limited, Senator Lines GmbH.

Synopsis: The proposed modification adds Norasia to the agreement as a charterer of slots from Senator Lines in trades between South Europe, the Near, Middle and Far East, and Western Pacific Islands on the one hand and the U.S. Atlantic Coast.

Agreement No.: 011770.

Title: NSCSA/Oldendorff Slot Exchange Agreement.

Parties: National Shipping Company of Saudi Arabia, Oldendorff Carriers (Indotrans) Ltd.

Synopsis: The proposed agreement establishes a vessel-sharing agreement between the parties in the trade between U.S. East and Gulf Coast ports and ports in India, Pakistan, Sri Lanka and on the Arabian Gulf, the Red Sea, and the Mediterranean Sea. The parties have requested expedited review.

Agreement No.: 201100–001.

Title: Oakland/Italia Terminal Use Agreement.

Parties: Port of Oakland, Italia di Navigazione-Societa per Azione.

Synopsis: The proposed amendment permits cargo discharged from or loaded onto Medbulk Maritime Corporation vessels at the Charles P. Howard Terminal to be regarded as cargo discharged or loaded by Italia vessels. The agreement continues to run through September 30, 2004.

Agreement No.: 201123.

Title: SSA Terminals (Long Beach) Cooperative Working Agreement.

Parties: SSA Terminals, LLC, SSA Pacific Terminals, Inc., Terminal Investment Limited.

Synopsis: The proposed agreement provides for the joint ownership of SSA Terminals (Long Beach), LLC that will provide container stevedoring, terminal, and related services on A at the Port of Long Beach.

Dated: June 29, 2001.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–16852 Filed 7–3–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

License Number: 4503F
Name: Aimar USA, Inc.
Address: 9111 N.W. 105 Way, Medley, FL 33178
Date Revoked: May 24, 2001.
Reason: Failed to maintain a valid bond.
License Number: 10873N
Name: Ameripak Services, Inc.
Address: 7301 N.W. 41 Street, Miami, FL 33166
Date Revoked: April 22, 2001.
Reason: Failed to maintain a valid bond.
License Number: 15759N
Name: Ben L. Poblete dba APC World Freight Services
Address: 1 So. Linden Avenue, Suite 2, So. Francisco, CA 94080
Date Revoked: April 18, 2001.
Reason: Failed to maintain a valid bond.
License Number: 14520N
Name: Bulkmatic Transport Company
Address: 2001 North Cline Avenue, Griffith, IN 46319
Date Revoked: March 26, 2001.
Reason: Surrendered license voluntarily.
License Number: 4556NF
Name: Cross Trans Service USA, Inc.
Address: 1480 Elmhurst Road, Elk Grove Village, IL 60007
Date Revoked: May 24, 2001.
Reason: Failed to maintain valid bonds.
License Number: 14998N
Name: D.S.C.V. Transport, Inc.
Address: 8210 Cinder Bed Road, Suite 7, Lorton, VA 22079
Date Revoked: May 27, 2001.
Reason: Failed to maintain a valid bond.
License Number: 6248N
Name: Flagship Container & Distribution, Inc.
Address: 22029 West Conway Place, Saugus, CA 91350
Date Revoked: March 31, 2001.
Reason: Surrendered license voluntarily.
License Number: 15877N
Name: Glory Harbor International Inc.
Address: 1107 E. Chapman Avenue, Suite 201, Orange, CA 92866
Date Revoked: April 17, 2001
Reason: Surrendered license voluntarily.
License Number: 16880F
Name: Hanover Navigation Limited
Address: 55 Green Street, San Francisco, CA 94111
Date Revoked: May 9, 2001.
Reason: Failed to maintain a valid bond.
License Number: 3483F
Name: Itochu Express (America) Inc.
Address: 335 Madison Avenue, New York, NY 10017
Date Revoked: May 4, 2001.
Reason: Failed to maintain a valid bond.
License Number: 8438N
Name: Pacon Express, Inc.
Address: 20620 So. Leapwood Avenue, Suite K, Carson, CA 90746
Date Revoked: May 24, 2001.
Reason: Failed to maintain a valid bond.
License Number: 4147F
Name: RMG International, Inc.
Address: 755 Bradfield, Houston, TX 77086
Date Revoked: May 4, 2001.
Reason: Failed to maintain a valid bond.
License Number: 1335F
Name: Royal Sales & Shipping
Address: 915 S. Rimpau Blvd., Los Angeles, CA 90019
Date Revoked: May 7, 2001.

Reason: Surrendered license voluntarily.
License Number: 16403N
Name: RTW Co For Shipping & Trad dba J&M Shipping
Address: 500 S. Kraemer #301, Brea, CA 92821
Date Revoked: May 17, 2001.
Reason: Failed to maintain a valid bond.
License Number: 16994N
Name: Total Transport International Corp.
Address: 1031 W. Manchester Blvd., Unit F, Inglewood, CA 90301
Date Revoked: March 30, 2001.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 01–16854 Filed 7–3–01; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/Address	Date Reissued
14952N	Eagle Transportation Services, Inc., 848 Jesse Jewell Parkway, S.W., Gainesville, GA 30501	April 3, 2001.
3240F	Freight Connections International, Ltd., 935 W. 175th Street, Homewood, IL 60430	March 24, 2001.
16123N	Mid Cities Motor Freight, Inc., 6006 Lake Avenue, St. Joseph, MO 64504	March 23, 2001.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 01–16853 Filed 7–3–01; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 01–07]

Tignes, Inc.—Application for a License as an Ocean Transportation Intermediary

Notice is given that on June 25, 2001, the Federal Maritime Commission served an Order of Investigation to determine whether Tignes, Inc. is qualified by the experience and character standards of section 19 of the Shipping Act of 1984 to be licensed to render services as an Ocean Transportation Intermediary ("OTI").

Tignes submitted an application for a license as an OTI to operate as a Non-Vessel Operating Common Carrier ("NVOCC"). Sergio Lemme is identified in the application as Tignes' Qualifying Individual, as well as its President and sole owner. On April 30, 2001, the Commission sent a letter of intent to deny the license application to Tignes pursuant to 46 CFR 515.15. The letter of intent to deny was based upon a staff determination that Tignes and Mr. Lemme did not have the experience or character necessary to perform OTI services. The staff made this determination based on admitted violations of the 1984 Act in FMC Docket No. 99–20, *GSTAAD, Inc. and Sergio Lemme Possible Violations of Section 10(a)(1) of the Shipping Act of 1984*, and indications that GSTAAD, continued to solicit new business after approval of the settlement agreement by the ALJ in Docket No. 99–20. The staff also found indications that Southern Group, of which Mr. Lemme is President and Owner, provided NVOCC services without a license and that materially false and misleading statements were made with respect to Tignes' OTI application. As entitled by 46 CFR 515.15, Tignes, through counsel, requested a hearing on the proposed denial of its license application. The Commission issued the Order of Investigation in Docket No. 01–07 in response to this request. The full text of the Commission's Order of Investigation can be found on the Commission's homepage at www.fmc.gov.

Bryant L. VanBrakle,
Secretary.
[FR Doc. 01–16851 Filed 7–3–01; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. American Community Financial, Inc., Woodstock, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of American Community Bank & Trust, Woodstock, Illinois.

Board of Governors of the Federal Reserve System, June 28, 2001.

Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 01–16743 Filed 7–3–01; 8:45 am]
BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on Friday August 24, 2001 from 9 a.m. to 5 p.m. The meeting will take place at the Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Ave., NW., Washington, DC 20001. The meeting will be entirely open to the public.

The purpose of this meeting will be to present the Department's current and future plans to monitor supply and demand for blood and plasma products, and to solicit public comment on these plans.

Public comment will be limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business August 9, 2001. In addition, anyone planning to comment on either item is encouraged to contact the Executive Secretary at her/his earliest convenience.

FOR FURTHER INFORMATION CONTACT: CAPT Lawrence C. McMurtry, Deputy Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Science, 200 Independence Ave., SW., Room 736–E, Washington, DC 20201. Phone (202) 690–5558, FAX (202) 690–7560, e-mail lmcmurtry@osophs.dhhs.gov.

Lawrence C. McMurtry,

Deputy Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 01–16752 Filed 7–3–01; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Presidential Advisory Council on HIV/AIDS

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS (Council) scheduled for July 19, 2001, extending possibly into July 20th, 2001 at a downtown Washington, DC location to be determined. The meeting of the Presidential Advisory Council on HIV/AIDS will take place on Thursday, July 19th, 2001 (8:30 am to 6 pm). Once a draft agenda is prepared, if deemed necessary the meeting will continue on July 20th (8:30 am to 12 pm). The meetings will be open to the public, however space may be limited. Possible attendees are strongly encouraged to pre-register by calling Shellie Abramson at (202) 860–8863.

Greg Smiley, Designated Federal Official, Presidential Advisory Council on HIV and AIDS, 200 Independence Avenue, SW., Room 733–E, Washington, DC, (phone: (202) 205–1839, Fax: (202) 690–7560, E-mail: *gsmiley@OSOPHS.dhhs.gov*) will furnish the meeting agenda and roster of committee members upon request. Once a draft agenda has been finalized, it may also be accessed through the Council's website: *www.pacha.gov*. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Brand Rymph at (301) 986–4870 no later than July 12, 2001.

Greg Smiley,

Health Policy Analyst, Designated Federal Official,Presidential Advisory Council on HIV and AIDS.

[FR Doc. 01–16813 Filed 7–3–01; 8:45 am]

BILLING CODE 3195–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Centers for Medicare & Medicaid Services; Statement of Organization, Functions and Delegations of Authority; Reorganization Order

Under the authority of Section 6 of Reorganization Plan No. 1 of 1953 and pursuant to the authorities vested in me as Secretary of Health and Human Services, I hereby order organizational changes in the Department of Health and Human Services (HHS) as follows. Under Part F, (Health Care Financing Administration) Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Part F, as amended at 46 FR 13262–63, dated March 9, 1977, and most recently amended at 65 FR 43771, dated July 14, 2000, is being amended to retitle, Part F, Health Care Financing Administration, as the Centers for Medicare & Medicaid Services. The changes are as follows:

1. Under Part F, all references to the Health Care Financing Administration (HCFA), are hereby changed to the Centers for Medicare & Medicaid Services (CMS); and all references to HCFA are changed to CMS.

2. All references to the HCFA "Administrator" are changed to the "Administrator of CMS."

3. Delegations of Authority. All delegations of authority from the Secretary or other HHS officials to the Administrator, Health Care Financing Administration and redelegations from the Administrator to subordinate employees pertaining to the Health Care Financing Administration are vested in the Administrator, Centers for Medicare & Medicaid Services and such subordinate employees and remain in effect until revoked or modified.

Dated: June 29, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–16800 Filed 6–29–01; 3:24 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Administration on Aging

Public Information Collection Requirement Submitted to the Office of Management and Budget for Clearance

AGENCY: Administration on Aging, HHS.

SUMMARY: The Administration on Aging (AoA), Department of Health and Human Services, in compliance with the Paperwork Reduction Act (Pub. L. 96–511), is submitting to the Office of Management and Budget for clearance and approval an information collection instrument, entitled Performance (Progress) Reports for Title IV Grantees.

Type of Request: Extension of currently approved collection.

Use: Consistent with 45 CFR part 74, subpart J, the AoA requires grantees funded under Title IV of the Older Americans Act to report on the performance of their projects. The report is used by the AoA to review and monitor the grantee's progress in achieving project objectives, to provide advice and assistance, and to take corrective action as necessary.

Frequency: Semiannual.

Respondent: Title IV grantees.

Estimated number of respondents: 199.

Estimated burden hours: 20 hours for each semiannual report.

Additional Information: Each progress report, typically five pages in length, is expected to cover the following subjects: recent major activities and accomplishments, problems encountered, significant findings and events, dissemination activities, and activities planned for the next 6 months.

OMB Comment: A comment is best assured of having its full effect if OMB receives it as soon as possible after its publication. Written comments and recommendations for the proposed information collection should be sent to the following address within 30 days of the publication of this notice: Office of Information and Regulatory Affairs, Attention: Allison Herron Eydt, AoA Desk Officer, Office of Management and Budget, Washington, DC 20503.

Dated: June 28, 2001.

Norman L. Thompson,

Acting Principal Deputy Assistant Secretary for Aging.

[FR Doc. 01–16830 Filed 7–3–01; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–01–52]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Youth Risk Behavior Survey (YRBS) Methodological Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention, (CDC). The purpose of this request is to obtain OMB clearance to conduct a methodological study in the Spring of 2002 to assess the contributions of question wording, questionnaire context, and appeals for honesty on prevalence and, thereby, to provide methodological guidance for future surveys, especially surveys of adolescents. In 2000, the Office of the Assistant Secretary for Planning and Evaluation (ASPE) commissioned five expert papers written on the topic "Examining Substance Abuse Data Collection Methodologies." The papers focused on the YRBS, the National Household Survey of Drug Abuse (NHSDA), and Monitoring the Future (MTF). A consensus among the authors was that disparate results across the studies are most likely a product of methodological differences across the surveys. This YRBS Methodological Study is designed to measure the effect of several critical aspects of the data collection protocol: (1) Question wording, (2) questionnaire context, (3) appeals for honesty, and (4) students' perception of their honesty and accuracy. Approximately 100 students in 40 high schools will be given one of four questionnaires. Elucidation of the impact of these factors on prevalence will assist in reducing response effects and improving the quality of the YRBS data.

The total estimated cost to student respondents is $15,750, which is calculated in terms of their time spent in responding to the survey and is based on an assumed minimum wage of $5.25/hour for the 2001–2002 school year. The total estimated cost to school administrators is $1,400 which is calculated in terms of their time spent in recruitment and is based on an assumed average hourly rate of $34. Thus, the total costs to respondents, based on the costs of their time, are $17,150.

Respondents	Number of respondents	Number of responses per respondents	Burden per response (in hrs.)	Total burden hours
High school student	4,000	1	45/60	3,000
School administrators	80	1	30/60	40

Dated: June 27, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–16735 Filed 7–3–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Refugee Resettlement Program Estimates: CMA.

OMB No.: 0970–0030.

Description: ORR reimburses, to the extent of available appropriations, certain non-Federal costs for the provision of cash and medical assistance to refugees, along with allowable expenses in the administration of the Refugee Resettlement Program. ORR needs sound State estimates of likely expenditures for refugee cash, medical, and administrative (CMA) expenditures so that it can anticipate Federal costs in upcoming quarters. If Federal costs are anticipated to exceed budget allocations, ORR must take steps to reduce Federal expenses, such as limiting the number of months of eligibility for Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA).

To meet the need for reliable State estimates of anticipated expenses, ORR has developed a single-page form in which States estimate the average number of recipients for each category of assistance, the average unit cost over the next 12 months, and the expense for the overall administration of the program. This form, the ORR–1 must be submitted prior to the beginning of each Federal fiscal year. Without this information, ORR would be out of compliance with the intent of its legislation and otherwise unable to estimate program costs adequately.

In addition, the ORR–1 serves as the State's application for reimbursement of

its CMA expenses. Submission of this form is thus required by section 412(a)(4) of the Immigration and Nationality Act, which provides that "no grant or contract may be awarded under this section unless an appropriate proposal and application * * * are submitted to, and approved by, the appropriate administering official."

Respondents: State, Local, or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–1	48	1	.5	24
Estimated Total Annual Burden Hours				24

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: June 28, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–16751 Filed 7–3–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0280]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it does not need to issue a standard of quality regulation for bottled water in response to the Environmental Protection Agency's (EPA's) issuance of National Primary Drinking Water Regulations (NPDWRs) for the control of *Cryptosporidium* contamination in surface water sources for public drinking water, to protect the public health. This action is in accordance with the Federal Food, Drug, and Cosmetic Act (the FFDCA), which requires that, whenever EPA issues NPDWRs for a contaminant in public drinking water, FDA must issue a standard of quality regulation for the same contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems but not in water used for bottled drinking water.

FOR FURTHER INFORMATION CONTACT: Paul South, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–358–3571.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 16, 1998 (63 FR 69478), EPA published the Interim Enhanced Surface Water Treatment Rule (IESWTR) that established NPDWRs consisting of treatment technique requirements for reduction of *Cryptosporidium* in surface water and in ground water under the direct influence of surface water that public water systems serving 10,000 people or more use as their source water. This rulemaking finalized a proposed rule that EPA published in the **Federal Register** on July 29, 1994 (59 FR 38832).

Cryptosporidium is a gastrointestinal illness caused by ingestion of *Cryptosporidium* oocysts. The mode of transmission for *Cryptosporidium* is through the fecal-oral route and occurs by ingestion of infective oocysts from contaminated water or food, or by direct or indirect contact with infected persons or animals. While cryptosporidiosis generally is considered a self-limiting disease, it can be chronic and life threatening in immunocompromised individuals. Recently, a waterborne outbreak of *Cryptosporidium* was documented in association with public drinking water (Ref. 1).

Under the Safe Drinking Water Act (SDWA), as amended in 1996, EPA issues NPDWRs to protect the public health from the adverse effects of contaminants in public drinking water. NPDWRs specify maximum contaminant levels (MCLs) or treatment techniques for public drinking water contaminants. At the same time that it issues NPDWRs, EPA publishes maximum contaminant level goals (MCLGs), which are not regulatory requirements, but rather nonenforceable health goals that are based solely on considerations of protecting the public from adverse health effects of public drinking water contamination.

Under section 410(b)(1) of the FFDCA (21 U.S.C. 349(b)(1)), not later than 180 days before the effective date of a NPDWR issued by EPA for a contaminant under section 1412 of the SDWA (42 U.S.C. 300g-l)[1], FDA is required to issue a standard of quality regulation for the contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems, but not in water used for bottled drinking water. The effective date for any such standard of quality regulation is to be the same as the effective date of the NPDWR. In addition, section 410(b)(2) of the FFDCA provides that a quality standard regulation issued by FDA shall include monitoring requirements that the agency determines to be appropriate for bottled water. Further, section 410(b)(3) of the FFDCA requires a quality standard regulation for a contaminant in bottled water to be no less stringent than EPA's MCL and no less protective of the public

[1]FDA considers EPA's compliance date for subpart H public water systems (systems using surface water or ground water under the direct influence of surface water) that serve a population of 10,000 or more to be the effective date for purposes of section 410 of the FFDCA. The compliance date was set at December 16, 2001, in the IESWTR (63 FR 69478, December 16, 1998) and revised in a subsequent rule to January 1, 2002 (65 FR 20304, April 14, 2000).

health than EPA's treatment technique requirements for the same contaminant.

II. EPA Standards

The SDWA, as amended in 1996, requires EPA to publish an NPDWR that specifies either an MCL or treatment technique requirement for contaminants that may have an adverse effect on the health of persons, are known to occur or have a substantial likelihood of occurring in public water systems with a frequency and at levels of public health concern, and for which regulation presents a meaningful opportunity for health risk reduction for persons served by public water systems (section 1412(b)(1)(A) of the SDWA). The SDWA (section 300g-l(a)(3)) also requires that EPA issue MCLGs at the time that it issues NPDWRs. MCLGs are nonenforceable health goals based solely on considerations of protecting the public from the adverse health effects of contaminants, and are not based on other considerations, such as potential cost of regulating contaminants and potential technical difficulties of achieving the health goals. EPA sets MCLs, the enforceable contaminant levels, as close as feasible to the nonenforceable MCLGs. When it is not economically or technologically feasible to set MCLs, EPA establishes treatment technique requirements that can reduce the levels of such contaminants to protect the public health (section 1412(b)(1)(A) of the SDWA).

In the **Federal Register** of December 16, 1998 (63 FR 69478), EPA published the IESWTR establishing treatment technique requirements for public water systems that use surface water or ground water under the direct influence of surface water and serve at least 10,000 people. The primary purpose of the IESWTR is to improve control of microbial pathogens in public drinking water, particularly for the protozoan *Cryptosporidium*. Key provisions established in the IESWTR include (63 FR 69478 at 69483):

(a) An MCLG of zero for the protozoan genus *Cryptosporidium*.

(b) A 2-log (99 percent) removal of *Cryptosporidium* in public water systems that use surface water or ground water under the direct influence of surface water, serve 10,000 or more people, and are required to filter their source water under the Surface Water Treatment Rule (SWTR) (54 FR 27486, June 29, 1989).

(c) Strengthened turbidity performance requirements for the combined filter effluent. The turbidity of a system's combined filtered water at each plant must be below levels established by EPA for public water systems when the plant uses surface water or ground water under the direct influence of surface water, serves 10,000 or more people, and is required to filter its source water under the SWTR.

(d) New requirements for individual filters. The turbidity for each individual filter effluent at each plant must be monitored continuously and be below levels established by EPA for public water systems when the plant uses surface water or ground water under the direct influence of surface water, serves 10,000 or more people, and is required to filter its source water under the SWTR.

III. FDA Standards

A. The Agency's Approach to Bottled Water Quality Standards Established Under Section 410 of the FFDCA

Under section 401 of the FFDCA (21 U.S.C. 341), FDA may issue a regulation establishing a standard of quality for a food under its common or usual name when the Secretary of Health and Human Services determines that such action will promote honesty and fair dealing in the interest of consumers. On November 26, 1973 (38 FR 32558), FDA established a quality standard for bottled water set forth in § 165.110 (21 CFR 165.110).

Producers of bottled water are responsible for ensuring, through appropriate manufacturing techniques and sufficient quality control procedures, that all bottled water products introduced or delivered for introduction into interstate commerce comply with the quality standard (§ 165.110(b)). Bottled water that is of a quality below the prescribed standard is required by § 165.110(c) to be labeled with a statement of substandard quality. Moreover, any bottled water containing a substance at a level that causes the food to be adulterated under section 402(a)(1) of the FFDCA (21 U.S.C. 342(a)(1)) is subject to regulatory action, even if the bottled water bears a label statement of substandard quality.

FDA traditionally has fulfilled its obligation under section 410 of the FFDCA to respond to EPA's issuance of NPDWRs by amending the quality standard regulations for bottled water to maintain compatibility with EPA's public drinking water regulations. In general, FDA believes that, with few exceptions, EPA standards for contaminants in public drinking water are appropriate as allowable levels for contaminants in the quality standard for bottled water when bottled water may be expected to contain the same contaminants.

FDA generally has not duplicated the efforts of EPA in judging the adequacy of MCLs or treatment techniques in NPDWRs for contaminants when determining their applicability to bottled water in order to protect the public health. FDA believes that it would be redundant for FDA to reevaluate the public drinking water standards prescribed by EPA. Further, because bottled water increasingly is used in some households as a replacement for tap water, consumption patterns considered by EPA for tap water can be used as an estimate for the maximum expected consumption of bottled water by some individuals. Therefore, in cases where bottled water is subject to the same contaminants as tap water, FDA believes it should establish standard of quality regulations for bottled water that are no less stringent and no less protective of the public health, respectively, than EPA's MCLs and treatment technique requirements.

B. The EPA's IESWTR and Bottled Water

FDA has evaluated the treatment technique requirements for the reduction of *Cryptosporidium* in public drinking water established in EPA's IESWTR and finds that a standard of quality regulation for bottled water to reduce *Cryptosporidium* is not necessary to protect the public health.

According to industry information (Ref. 2), approximately 75 percent of bottled water sold in the United States originates from ground water (e.g., artesian well water, spring water, mineral water). Under the standard of identity regulations for bottled water (§ 165.110(a)), FDA has defined ground water as"* * * water from a subsurface saturated zone that is under a pressure equal to or greater than atmospheric pressure * * *. Ground water must not be under the direct influence of surface water as defined in 40 CFR 141.2." (See 21 CFR 165.110(a)(2)(ii).) In an EPA **Federal Register** proposal (65 FR 30194, May 10, 2000) to require a targeted risk-based regulatory strategy for all ground water systems to reduce public health risk associated with waterborne pathogens (Ground Water Rule), EPA stated that, when *Cryptosporidium* occurs in ground water systems, it occurs in ground water under the direct influence of surface water (65 FR 30194 at 30204). In light of this, ground water, as defined in § 165.110(a)(2)(ii), used for bottled water is not expected to contain the contaminant *Cryptosporidium* because, by definition, it cannot be under the direct influence of surface water. Therefore, FDA concludes that

EPA's IESWTR establishing treatment technique requirements for *Cryptosporidium* in ground water under the influence of surface water does not apply to ground water used for the production of bottled water.

In addition, according to industry information (Ref. 2), the remaining 25 percent of bottled water sold in the United States is derived from public water systems. Public water systems serving at least 10,000 people or more, using surface water or ground water under the direct influence of surface water, must comply with EPA's IESWTR. In the **Federal Register** of April 10, 2000 (65 FR 19046), EPA published a proposed rule (Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule (LT1FBR)) to establish NPDWRs consisting of treatment technique requirements for reduction of *Cryptosporidium* in surface water and in ground water under the direct influence of surface water that public water systems serving less than 10,000 people use as their source water. Therefore, public water systems serving less than 10,000 people using surface water or ground water under the direct influence of surface water, will be subject to any EPA final rule on LT1FBR. Thus, under the EPA's IESWTR and LT1FBR if finalized as proposed, all water obtained from public water systems used for bottled water would be treated previously by public water systems to reduce the contaminant *Cryptosporidium*.

FDA concludes that because surface water and ground water under the direct influence of surface water would be subject to EPA's treatment technique requirements to reduce *Cryptosporidium*, a standard of quality regulation for bottled water derived from public water systems is not necessary to protect the public health. The contaminant may be contained in public water systems, which would be treated to reduce *Cryptosporidium* before such water would be used for bottled water. Further, because bottled water sources other than public drinking water are from ground water, which by definition (§ 165.110(a)(2)(ii)) must not be ground water under the direct influence of surface water, *Cryptosporidium* would not be expected to be present. Thus, FDA also concludes that a standard of quality regulation for bottled water derived from ground water is not necessary to protect the public health because *Cryptosporidium* would not be in ground water used for bottled water.

IV. References

The following references are on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. MacKenzie, W. R., N. J. Hoxie, M. E. Proctor, M. S. Gradus, K. A. Blair, D. E. Peterson, J. J. Kazmierczak, D. G. Addiss, K. R. Fox, J. B. Rose, and J. P. Davis, "A Massive Outbreak in Milwaukee of Cryptosporidium Infection Transmitted Through the Public Water Supply," *New England Journal of Medicine* 331:161–167 (1994).

2. Yablonski, C., International Bottled Water Association, letter to Henry Kim, March 23, 2001.

Dated: June 27, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–16910 Filed 7–2–01; 4:22 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–724]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare/Medicaid Psychiatric Hospital Survey Data and Supporting Regulations Contained in 42 CFR 482.60, 482.61 and 482.62; *Form No.:* HCFA–724 (OMB# 0938–0378); *Use:* The information collected on this form will assist HCFA in maintaining an accurate data base on providers participating in the Medicare psychiatric hospital program; *Frequency:* Annually; *Affected Public:* Federal government, Business or other for-profit, Not-for-profit institutions, and State, local or tribal government; *Number of Respondents:* 250; *Total Annual Responses:* 250; *Total Annual Hours:* 125.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer:OMB Human Resources and Housing Branch,Attention: Wendy Taylor,New Executive Office Building, Room 10235,Washington, DC 20503.

Dated: May 22, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services,Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–16819 Filed 7–3–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–417]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The

necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Hospice Request for Certification in the Medicare Program; *Form No.:* HCFA–417 (OMB# 0938–0313); *Use:* The Hospice Request for Certification Form is used for hospice identification, screening, and to initiate the certification process. The information captured on this form is entered into a data base which assists HCFA in determining whether providers have sufficient personnel to participate in the Medicare program; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, and State, local or tribal government; *Number of Respondents:* 2,286; *Total Annual Responses:* 2,286; *Total Annual Hours:* 572.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer:OMB Human Resources and Housing Branch,Attention: Allison Eydt,New Executive Office Building, Room 10235,Washington, DC 20503.

Dated: May 22, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services,Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–16820 Filed 7–3–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1060–N3]

RIN 0938–AJ57

Medicare Program; Cost-of-Living Adjustment (COLA) for the Territory of Guam in the Schedules of Per-Visit Limitations on Home Health Agency Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the cost-of-living adjustment for the territory of Guam for the schedules of per-visit limitations on home health agency (HHA) costs for open cost reporting periods beginning on or after October 1, 1997 and portions of cost reporting periods beginning before October 1, 2000.

EFFECTIVE DATE: This notice is effective on August 6, 2001.

FOR FURTHER INFORMATION CONTACT: Michael D. Bussacca, (410) 786–4602.

SUPPLEMENTARY INFORMATION: We have published the following notices to announce the HHA interim payment system per-visit limitations and updates to those limitations. These notices were published on January 2, 1998 (63 FR 89), effective on October 1, 1997; August 1, 1998 (63 FR 42911), effective October 1, 1998; and August 5, 1999 (64 FR 42766), effective on October 1, 1999.

It was our intention to include a COLA for each U.S. State and Territory eligible for those adjustments under the Office of Personnel Management (OPM) regulations. We inadvertently published these notices without a COLA for the Territory of Guam because we did not include COLA factors for Guam in the per-visit tables in the applicable notices. The COLA factor for Guam should have been 1.225 in each of these notices. The OPM has not updated the factor for Guam for these 3 cost reporting years; therefore, the COLA remains 1.225 for each cost reporting period. The COLA factor applies to the per-visit limitations for all open cost reporting periods beginning on or after October 1, 1997 (COLA Table at 63 FR 96), October 1, 1998 (COLA Table at 63 FR 42926), and October 1, 1999 (COLA Table at 64 FR 42777).

Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). We have determined that this is not a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, most HHAs are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. We believe that there are no costs associated with this notice that apply to these governmental and private sectors. Therefore, the law does not apply.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that

this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

This notice is not a major rule as defined in title 5, United States Code, section 804(2).

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Authority: Section of the Social Security Act (42 U.S.C.) (Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: February 16, 2001.

Michael McMullan,

Acting Deputy Administrator,Health Care Financing Administration.

Dated: March 14, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–16865 Filed 7–3–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Opportunity for License(s) and/or Cooperative Research and Development Agreement(s) (CRADAs) for the Development of Geldanamycin Analogs for Clinical Use

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) seeks Licensee(s) and/or Cooperative Research and Development Agreement (CRADA) Collaborator(s) for the development of geldanamycin analogs for clinical use in three areas. The three areas are: (1) A unique clinical formulation of 17-allylaminogeldanamycin (17–AAG). (2) A suite of geldanamycin analogs (other than 17–AAG) modified at the 11 and/or 17 positions, several of which have improved solubility and reduced toxicity in comparison to geldanamycin. (3) A coupled met kinase-uPA kinase assay, as described in Cancer Research 60 (2): 342–9, and data and expertise regarding geldanamycin analog activity as measured by that assay. The invention for item (1) is claimed in PCT Patent Application PCT/US99/30631 entitled "Water-Insoluble Drug Delivery System"; the inventions for item (2) are claimed in U.S. Patent Application 60/246,258, entitled "Geldanamycin Derivatives having Selective Affinity for HSP–90 and Methods of Using Same," U.S. Patent Application 60/280,016, entitled "Geldanamycin Derivatives Having Selective Affinity for HSP90 over GRP94 and Method of Using Same," and U.S. Patent Application 60/280,078, entitled "Geldanamycin Derivatives and Method of Treating Cancer Using Same"; the technology for item (3) is described in Cancer Research 60 (2): 342–9, "The Geldanamycins Are Potent Inhibitors of the Hepatocyte Growth Factor/Scatter Factor-Met-Urokinase Plasminogen Activator-Plasmin Proteolytic Network."

DATES: Respondees interested in licensing the invention(s) will be required to submit an "Application for License to Public Health Service Inventions" no later than sixty (60) days from the date of this announcement. Applications submitted thereafter may be considered if a suitable Licensee is not selected from among the timely responses.

Interested CRADA applicants must submit to the NCI Technology Transfer Branch (TTB) a confidential proposal summary no later than sixty (60) days from the date of this announcement for consideration. CRADA proposal summaries submitted thereafter may be considered if a suitable CRADA Collaborator is not selected from among the timely responses. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest.

ADDRESSES: Inquiries directed to obtaining license(s) for the technology should be addressed to Kai Chen, Ph.D., M.B.A., Supervisory Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, (Tel. 301–496–7056, extension 247; FAX 301–402–0220).

CRADA inquiries and proposals regarding this opportunity should be addressed to Robert Wagner, M.S., M. Phil., Technology Transfer Specialist (Tel. 301–496–0477, FAX 301–402–2117), Technology Transfer Branch, National Cancer Institute, 6120 Executive Blvd., Suite 450, Rockville, MD 20852.

SUPPLEMENTARY INFORMATION: Respondees interested in licensing the technology will be required to submit an Application for License to Public Health Service Inventions. Inventions described in the patent applications are available for either exclusive or non-exclusive licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404. Information about patent application(s) and pertinent information not yet publicly described can be obtained under the terms of a Confidential Disclosure Agreement.

A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into with NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987, as amended. A CRADA is an agreement designed to enable certain collaborations between Government laboratories and non-Government laboratories. It is not a grant, and it is not a contract for the procurement of goods/services. The NCI is prohibited from transferring funds to a CRADA collaborator. Under a CRADA, NCI can contribute facilities, staff, materials, and expertise. The CRADA Collaborator will have an option to negotiate the terms of an exclusive or nonexclusive commercialization license to subject inventions arising under the CRADA. CRADA applicants should be aware that a license to the above mentioned patent rights may be necessary in order to commercialize products arising from a CRADA. The expected duration of the CRADA(s) would be for up to five (5) years. The goals of CRADAs include the rapid publication of research results and timely commercialization of products, diagnostics, and treatments that result from the research.

The NCI Seeks Licensee(s) and/or CRADA Collaborator(s) in One or More of the Following Areas for the Development of Geldanamycin Analogs for Clinical Use

1. *Clinical Development of 17–AAG:* Patent protection for the formulation of 17-allylaminogeldanamycin (17–AAG) for clinical use is pending. NCI is actively engaged in the clinical development of this agent and is seeking a CRADA collaborator whose role would include production of the drug for clinical trials. CRADA applicants should be aware that a license to the related patent rights may be necessary in order to commercialize products arising from the CRADA. 17–AAG is currently in Phase 1 clinical trials under an NCI-sponsored Investigational New Drug Application (IND). The data contained in this IND, along with the data that will emerge from NCI's ongoing clinical trials, would be available to the CRADA Collaborator.

2. *Optimization of Compounds for Cytotoxic Endpoints:* A suite of geldanamycin analogs (other than 17–

AAG) modified at the 11 and/or 17 positions, several of which have improved solubility and altered toxicity in comparison to geldanamycin, are described in several pending NCI patent applications. NCI is seeking a licensee(s) and/or CRADA Collaborator(s) interested in continued optimization of compound pharmacology for selection of a compound to enter the clinic. Criteria for selection of a compound would include cytotoxic endpoints and regression of model tumors. Such a resulting compound(s) would be expected to have a different spectrum of activity or formulation as that for 17–AAG as described in (1) above.

3. *Optimization of Compounds for Anti-Metastatic Endpoint:* The technology for the coupled met kinase—uPA Kinase assay is described in Cancer Research 60 (2): 342–9. NCI research has defined this assay as generating lead compounds for anti-metastatic use. While encompassing some compounds from (2) above, lead compounds will have a very distinct set of development endpoints demonstrating suitability for long term chronic oral dosing, and will show evidence of activity in anti-metastasis and/or anti-angiogenesis assays without necessarily having evidence of activity in classical cytotoxic models. NCI is seeking a CRADA Collaborator(s) interested in using this assay to optimize compounds related to geldanamycin for use as anti-metastatic agents.

Party Contributions to CRADAS

The Role of the NCI in Each of the CRADAs May Include, but Not Be Limited to

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the CRADA Collaborator with information and data relating to the CRADA technology.
3. Planning research studies and interpreting research results.
4. Carrying out research pursuant to the planned collaboration, including, but not limited to:

(a). Screening, pharmacology and in vivo model studies for compounds pertinent to cytotoxic endpoints;

(b). Assays to optimize compounds with desired pharmacology for chronic use;

(c). Pharmacology and determination of in vivo activity of anti-metastatic compounds;

(d). Production of precursors and prodrugs from fermentation sources; and

(e). Possible sponsorship of clinical trials of promising compounds.

5. Publishing research results.

The Role of the CRADA Collaborator May Include, but Not Be Limited to

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project, including, but not limited to:

(a). Structure-based design of geldanamycin analogs with suitable properties;

(b). Chemical modification of fermented lead structures;

(c). Pharmacology, toxicology, and formulation;

(d). Support for clinical trials in the form of drug and funding.

2. Planning research studies and interpreting research results.
3. Providing technical and/or financial support to facilitate scientific goals and to further design applications of the technology outlined in the agreement.
4. Publishing research results.

Selection Criteria for Choosing the CRADA Collaborator May Include, but Not Be Limited to

1. A demonstrated background and expertise in the preclinical and clinical development of antineoplastic agents, structure-based design, and the conduct of in vivo animal model studies pertaining to metastasis or tumor regression.
2. A demonstrated record of success in pre-clinical lead selection and optimization and/or successful clinical trials of antineoplastic therapeutics leading to a commercial product.
3. The demonstration of the necessary resources to produce sufficient drug for all clinical trials in a timely manner.
4. The ability to collaborate with NCI on further research and development of the technology. This ability will be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.
5. The demonstration of adequate resources to perform the research and development of the technology (e.g. facilities, personnel and expertise) and to accomplish the objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
6. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.
7. The demonstration of expertise in the commercial development and production of products related to this area of technology.
8. The ability to provide financial support for CRADA-related Government activities.
9. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.
10. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
11. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These legal provisions govern the distribution of future patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: June 25, 2001.

Kathleen Sybert,

Chief, Technology Transfer Branch, National Cancer Institute, National Institutes of Health.

Dated: June 27, 2001.

Jack Spiegel,

Director, Division of Technology Transfer and Development, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–16762 Filed 7–3–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive Kidney Diseases Special Emphasis Panel, ZDK1 GRB–6(01).

Date: July 23–24, 2001.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Dan E. Matsumoto, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–6(04).

Date: July 24, 2001.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Dan E. Matsumoto, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–16756 Filed 7–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: July 16, 2001.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, Room 2223, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nancy B. Saunders, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2223, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550, ns120v@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–16757 Filed 7–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: July 12, 2001.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 400C, Rockville, MD 20852.

Contact Person: Craig A. Jordan, PhD., Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, national Institutes of Health, HHS)

Dated: June 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–16758 Filed 7–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 11, 2001.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 13, 2001.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institutes on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–16759 Filed 7–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 19, 2001.

Time: 2 p.m to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd. Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joel Sherrill, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–16760 Filed 7–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 01–44, Review of P01s.

Date: July 11–12, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Embassy Suites, 4300 Military Road, NW., Chevy Chase, MD 20015.

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301)594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 01–45, review of P01.

Date: July 17–18, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 01–64, Review of R44s.

Date: August 2, 2001.

Time: 10 a.m to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive Natcher Building, Conference Room C, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 01–60, Review of RFA DE–01–001.

Date: August 6, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Ritz Carlton Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm 4AN44F, Bethesda, MD 20892, (301) 594–3089.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 01–59, Review of R44 Grants.

Date: August 14, 2001.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room H, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.121, Oral Diseases of Disorders Research, National Institutes of Health, HHS)

Dated: June 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–16761 Filed 7–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 9, 2001.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific review Special Emphasis Panel.
Date: July 10, 2001.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gopal C. Sharma, DVM, MS, PhD, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, sharmag@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR.
Date: July 12–13, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037–1417.
Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Peter Lyster, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7806, Bethesda, MD 20892, 301–435–1175.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Special Emphasis Panel.
Date: July 12–13, 2001.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, Kaleidoscope Room, 2101 Wisconsin Avenue, Washington, DC 20007.
Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12–13, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Willard Inter-Continental Washington, 1401 Pennsylvania Venue, NW., Washington, DC 20004–1010.
Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC7890, Bethesda, MD 20892–7890, 301–435–1159, ameros@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Integrated Review Group Biological Sciences Subcommittee 1.
Date: July 12, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.
Contact Person: Bruce Maurer, PhD, Scientific Review Administrator, Center For Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2205, MSC 780, Bethesda, MD 20892, (301) 435–2477, brucevicki@ispchannel.com.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12–13, 2001.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Hyatt Hotel, 7400 Wisconsin Avenue, Bethesda, MD 20841.
Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301/435–1045, corsaroc@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12–13, 2001.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, national Institutes of health, 67012 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, 301–435–0676, siroccok@csr.nih.gov.
This notice is being published less than 15 days prior the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12, 2001.
Time: 9 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House, 17th & Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Thomas A Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of health, 67601 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12, 2001.
Time: 11 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rocklege 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, sinnett@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 12, 2001.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victor A. Fund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, fungv@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 12, 2001.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 12, 2001.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036, (Telephone Conference Call).

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review and Special Emphasis Panel.

Date: July 13, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Debora L. Hamernik, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, Bethesda, MD 20892, 301–435–4511, hamernid@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 13, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Lyster, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7806, Bethesda, MD 20892, 301–435–1175

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 13, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, Maryland Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 13, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Name of Contact Person: Luigi Giacometti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 13, 2001.

Time: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Richard D. Rodewald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rickledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024, rodewalr@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 13, 2001.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3182, MSC, Bethesda, MD 20892, (301) 435–0902, mkrause@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16, 2001.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, NW., Washington, DC 20007.

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7840, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Panel.

Date: July 16–17, 2001.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave. NW., Washington, DC 20007.

Contact Person: Prabha L Atreya, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockldge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–8367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Michael A. Lange, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16, 2001.

Time: 8:30 a.m. to 2 p.m.

Agenda: to review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16, 2001.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16, 2001.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 17, 2001.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 17, 2001.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Drause, MED, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3182, MSC, Bethesda, MD 20892, (301) 435–0902, mkrause@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 17, 2001.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 17, 2001.

Time: 3 p.m. to 4:30 p.m.

Agenda: to review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 17, 2001.

Time: 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Adminsitrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 17–19, 2001.

Time: 8 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Dylan Hotel, 52 East 41st St., New York, NY 10017.

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 17, 2001.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence N. Yager, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, 301–435–0903, yagerl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 17, 2001.

Time: 12:30 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael H. Sayre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–16755 Filed 7–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Evaluation of the CMHS/CSAT Collaborative Program on Homeless Families: Women With Psychiatric, Substance Use, or Co-Occurring Disorders and Their Dependent Children, Phase II—New—SAMHSA's Center for Mental Health Services (CMHS) and Center for Substance Abuse Treatment (CSAT), through a set of cooperative agreements, proposes to conduct a longitudinal, multi-site evaluation study assessing mental health, substance abuse, and trauma interventions received by homeless mothers with psychiatric, substance use, or co-occurring disorders and their dependent children. The study will advance knowledge on appropriate and effective approaches to improving families residential stability, overall

functioning, and ultimate self-sufficiency.

Data collection will be conducted over a 33-month period. A total of 1,600 participants will be recruited from eight sites. At each site, a documented treatment intervention will be tested in comparison to an alternative treatment condition. Participants will be interviewed at baseline (within two weeks of entering a program) as well as three additional times (3 months after program entry, 9 months after program entry, and 15 months after program entry). Trained interviewers will administer the interviews to participating mothers. Information on the children will be obtained from the mother.

Key outcomes for the mothers are increased residential stability, decreased substance use, decreased psychological distress, improved mental health functioning, increased trauma recovery, improved health, improved functioning as a parent, and decreased personal violence. Outcomes for the children are reduced emotional/behavioral problems and improved school attendance.

To reduce burden and increase uniformity across the study sites, a central Coordinating Center will develop and administer common data entry and tracking computer programs. A variety of quality control procedures will also be implemented to ensure the integrity and uniformity of the data collected. Data will be submitted to the Coordinating Center via electronic means. Training and technical assistance will be provided to all sites on data submission. Sites will be asked to follow uniform procedures for submitting their data.

The estimated response burden is as follows:

Interview	Number of respondents	Responses per respondent	Burden per response (hrs.)	Total burden hours
Screening—MINI	2,280	1	.25	570
Baseline	1,600	1	1.58	2,528
Follow-Up 1 (3 months)	1,600	1	1.25	2,000
Follow-Up 2 (9 months)	1,600	1	1.25	2,000
Follow-Up 3 (15 months)	1,600	1	1.25	2,000
Total	2,280			9,098
3-yr annual average	2,280			3,032

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 27, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–16777 Filed 7–3–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–45]

Notice of Submission of Proposed Information Collection to OMB; Use of Materials Bulletins for the HUD Building Products Standards and Certification Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 6, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0526) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Use of Materials Bulletins for the HUD Building Products Standards and Certification Program.

OMB Approval Number: 2502–0526.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Ued: HUD has adopted a uniform procedure for accepting materials and products to be used in structures approved for mortgages or loans insured under the National Housing Act. HUD uses the information submitted, under the Administrator Qualifications and Procedures described in 24 CFR 200.935, to determine the acceptability of third-party certification organizations. This submission requests renewal of the currently approved collection of information.

Respondents: Business or other for-profits.

Frequency of Submission: On occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden	20		1		20		400

Total Estimated Burden Hours: 400.

Status: Extension of currently approved collection.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 22, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–16732 Filed 7–3–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Environmental Assessment

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Request for public comments on an environmental assessment for Nutria (*Myocastor coypus*) marsh damage reduction on the Eastern Shore of Maryland.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the U.S. Fish and Wildlife Service (Service) is requesting public comments on an Environmental Assessment (EA) for nutria (*Myocastor coypus*) marsh damage reduction on the Eastern Shore of Maryland. The EA addresses research to determine the most effective methods for nutria control and implementation of a comprehensive control program throughout the range of nutria in Maryland.

The EA contains an analysis of the potential environmental impacts of four alternatives for managing Maryland's nutria population. Included is an assessment of potential impacts on federally threatened and endangered species, in accordance with section 7 of the Endangered Species Act.

DATES: All comments must be received on or before August 6, 2001.

ADDRESSES: Copies of the EA are available for review at the Dorchester County Library, 303 Gay Street, Cambridge, Maryland; the Talbot County Free Library, 100 W. Dover Street, Easton, Maryland; the Wicomico County Free Library, 122 S. Division Street, Salisbury, Maryland; and the visitor's center at Blackwater National Wildlife Refuge, 2145 Key Wallace Drive, Cambridge, Maryland. The EA may be obtained on the web at http://www.fws.gov/r5cbfo/nutria.htm; by written request to Maryland Nutria Partnership, c/o U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401; or by calling Mark Sherfy, at 410–573–4556. Comments may be submitted by electronic mail to nutria@fws.gov, or by writing to the Maryland Nutria Partnership at the above address.

Author

The primary author of this notice is Mark Sherfy, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, Maryland, 21401, phone: 410–573–4556.

Authority: The authority for this action is the National Environmental Policy Act of 1969.

Dated: June 13, 2001.

Mamie A. Parker,

Acting Regional Director, Region 5, Fish and Wildlife Service.

[FR Doc. 01–16821 Filed 7–3–01; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Conduct Public Scoping and Prepare an Environmental Impact Statement Regarding the Lincoln County Multiple Species Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act, this notice advises the public that the Fish and Wildlife Service (Service) intends to gather information necessary to prepare an Environmental Impact Statement (EIS) regarding the proposed Lincoln County, Nevada, Multiple Species Habitat Conservation Plan (MSHCP) and issuance of an incidental take permit (Permit) to take endangered and threatened species in accordance with section 10(a) of the Endangered Species Act of 1973, as amended (Act). The possible Permit applicants include, but are not limited to: Lincoln County Commissioners, City of Caliente, City of Mesquite, Nevada Fish and Wildlife, Coyote Springs Investments, and Union Pacific Railroad (Applicants). The application is related to potential development activities in southern Lincoln County. The Applicants intend to request a Permit for federally listed threatened or endangered species and/or Evaluation List species. Evaluation List species include species that have been petitioned for listing, state listed species, species that have been nominated for inclusion by technical specialists, and other species of concern that co-occur with federally listed species. The Evaluation List is being refined as a part of the scoping process. In accordance with the Act, the Applicants will prepare a Habitat Conservation Plan (Plan) for, among other things, minimizing and mitigating any such take that could occur incidental to the proposed Permit activities.

The Service is furnishing this notice to: (1) Advise other Federal and State agencies, affected Tribes, and the public of our intentions; (2) announce the initiation of a 60-day public scoping period, and (3) obtain suggestions and information on the scope of issues to be included in the EIS.

DATES: Written comments from all interested parties must be received on or before September 4, 2001.

ADDRESSES: Comments and requests for information should be sent to Robert D. Williams, Field Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502, telephone 775–861–6300, facsimile 775–861–6301. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

SUPPLEMENTARY INFORMATION: The proposed project area generally includes the area in southern Lincoln County, Nevada, north of the Clark County line, west of the Utah/Nevada state line, south of the southern Township 3 South line, east of the eastern Range 63 East

line (Mt. Diablo Meridian) and a small portion of lands in Clark County, Nevada, within the Coyote Springs Valley in the vicinity of Highways 168 and 93.

Some of the Applicants' future activities have the potential to impact species subject to protection under the Act. Section 10(a)(1)(B) permits non-Federal landowners to take endangered and threatened species, provided the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood for the survival and recovery of the species in the wild, among other permit issuance criteria. An applicant for a Permit under section 10 of the Act must prepare and submit to the Service for approval a Plan containing, among other things, a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for implementation of the Plan will be provided.

The Applicants have initiated discussions with the Service regarding the possibility of a Permit and associated MSHCP for their activities on lands to be covered by a Permit. General activities proposed for Permit coverage include residential, commercial and industrial development, construction, and maintenance activities.

The Service will conduct an environmental review of the Plan and prepare an EIS. The environmental review will analyze the Applicants' proposed plan as well as a full range of reasonable alternatives and the associated impacts of each. The Service is currently in the process of developing alternatives for analysis.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to the permit request are addressed and that all significant issues are identified. Comments or questions concerning this proposed action and the EIS should be directed to the Service (see **ADDRESSES**).

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR parts 1500 through 1508), and with other appropriate Federal laws and regulations, policies, and procedures of the Service for compliance with those regulations. It is estimated that the draft EIS will be available for public review in early or mid-2002.

Dated: June 21, 2001.

Mary Ellen Mueller,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 01–16778 Filed 7–3–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA–668–1220–AA]

Extension of Date for Call for Advisory Committee Nominations

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) and U.S. Forest Service have extended the date to receive nominations to serve on the new Santa Rosa and San Jacinto Mountains National Monument Advisory Committee through Friday, July 20, 2001. A previous notice, published in the May 31, 2001, **Federal Register**, announced the agencies' intent to establish the Committee under the Santa Rosa and San Jacinto Mountains National Monument Act of 2000, Public Law 106–351 (U.S.C. 431 note) and called for nominations no later than July 2, 2001. This extension, calling for nominations no later than July 20, 2001, is granted in response to public requests for additional time.

ADDRESSES: Send nominations to: Mr. James G. Kenna, Bureau of Land Management, P.O. Box 581260, North Palm Springs, California 92258, 760–251–4800 or Mr. Fran Colwell, Forest Service, 1824 S. Commercenter Circle, San Bernardino, California 92408, 909–884–6634, x 3144.

FOR FURTHER INFORMATION CONTACT: Mr. James G. Kenna, Bureau of Land Management, 760–251–4800 or Mr. Fran Colwell, Forest Service, 909–884–6634, x 3144.

SUPPLEMENTARY INFORMATION: Any individual or organization may nominate one or more persons to serve on the committee. Individuals may nominate themselves for Committee membership. Nomination forms can be obtained by contacting the individuals listed in **ADDRESSES** above. To make a nomination, submit a completed nomination form, letters of reference from the represented interests or organization, and any other information that speaks to the nominee's qualifications to the offices listed above. You may make nominations for the following categories of interest, as specified in the Act: (1) A representative with expertise in natural science and research selected from a regional college or university; (2) a representative of the California Department of Fish and Game or the California Department of Parks and Recreation; (3) a representative of the County of Riverside, California; (4) a representative from each of the following cities: Palm Springs, Cathedral City, Rancho Mirage, La Quinta, Palm Desert, and Indian Wells; (5) a representative of the Agua Caliente Band of Cahuilla Indians; (6) a representative of the Coachella Valley Mountains Conservancy; (7) a representative of a local conservation organization; (8) a representative of a local developer or builder organization; (9) a representative of the Winter Park Authority; and (10) a representative of the Pinyon Community Council. Nominations to the Committee should describe and document the proposed member's qualifications for membership on the Advisory Committee.

Committee members will be appointed to serve 3-year terms, except that, of the members first appointed, one-third of the members shall be appointed for a term of 1 year and one-third of the members shall be appointed for a term of 2 years. All members will serve without pay but will be reimbursed for travel and per diem expense at current rates for government employees under 5. U.S.C. 5703.

Appointments to the Committee will be made by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.

Dated: June 20, 2001.

Tim Salt,

California Desert District Manager, Bureau of Land Management.

Dated: June 21, 2001.

Gene Zimmerman,

Forest Supervisor, San Bernardino National Forest.

[FR Doc. 01–16787 Filed 7–3–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–01–5101–ER–F329; N–11028, N–74762, N–74763, N–74764]

Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Gas Fired Electric Power Plant and Ancillary Facilities in Clark and Lincoln Counties, Nevada, and Notice of Public Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) and notice of EIS public scoping meetings for construction of a gas fired, water cooled, electric power plant and ancillary facilities (Meadow Valley Generating Project) in the Moapa Valley area of Clark County and ancillary facilities in both Clark and Lincoln Counties, Nevada.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Las Vegas Field Office, will be directing the preparation of an EIS and conducting public scoping meetings for the Meadow Valley Generating Project to assess the potential impacts of rights-of-way (ROW), a conveyance, or a commercial lease for a proposed power-generating facility and ROW for the proposed associated ancillary facilities in Clark and Lincoln Counties.

The proposed Meadow Valley Generating Project includes a nominal 1,100-megawatt power-generating facility in Moapa Valley and an approximate 19.3-mile, 500 kV alternating current transmission line to interconnect the generating facility to the existing Nevada Power Company's Crystal Substation in Clark County. Natural gas would be supplied by an approximate 0.8-mile, 20-inch diameter natural gas supply line from a tie-in point with the BLM authorized and existing Kern River Transmission system in Clark County. Water facilities will include a 0.8-mile, 20-inch diameter wastewater discharge line to agricultural lands located northeast of the generating facility in Clark County; a 17.5-mile, 20-inch diameter water pipeline in Clark and Lincoln Counties with approximately twelve, one-acre well sites in Lincoln County, and a new 8.5-mile, 20-inch diameter water pipeline running parallel to BLM authorized and existing Moapa Valley Water District's water pipelines extending from the Bowman Reservoir to the Meadow Valley Generating Project site. Additional electric facilities include a nine-mile 69kV transmission line, a 10MVA Substation, and approximately nine-miles of 34.5 kV (maximum) distribution line maintained by the Lincoln County Power District in Clark and Lincoln Counties. There would be a relocation of the existing water and electrical transmission lines that currently traverse the generating facility site to the southern boundary of the site in Clark County. The BLM will require a bond in accordance with 43 CFR 2803.1–4.

SUPPLEMENTARY INFORMATION: The Meadow Valley project area is located in the southeastern part of Nevada in Lincoln and Clark Counties, Nevada. The area is accessible by Interstate 15 and State Highway 168. There are existing dirt roads throughout the area to provide access to the proposed project area. Ancillary facilities are located in a variety of settings, including upland and flat terrain.

The proposed power generating facility development area encompasses approximately 155 acres of public lands. The legal description of the public land proposed to be available for the power generating facility is:

Mount Diablo Meridian, Clark County, Nevada

T.14 S., R. 66 E.,
Sec. 28, SW¼, except the E½ NE¼ NE¼ SW¼.

containing 155 acres more or less.

The legal description of the public land for the ancillary ROW facilities (electrical transmission lines, water, and gas pipelines) is not provided here due to the length of the legal description. However, maps of the proposed project are available for viewing at the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108.

Preliminary Issues

Tentatively identified issues of concern include threatened and endangered species, water resources, wilderness, visual resources, wildlife, cultural resources, and land use.

Possible Alternatives

The EIS will analyze the Proposed Actions and No Action Alternative. Other alternatives may include modifying proposed locations of roads and linear ROW, analyzing a smaller output facility and cooling options, and a conveyance or commercial lease of the public lands for the power plant site.

Decisions To Be Made

The Record of Decision to the EIS is whether to grant ROW for the power plant and ancillary facilities, or to convey or commercially lease the public land for the power plant site.

Public Scoping Meetings

Three public scoping meetings are planned. The meetings will provide the public an opportunity to present comments or issues that will be addressed in the EIS. The meetings will be held in an "open house format" beginning at 6:00 p.m. and ending at 9:00 p.m. At 7:00 p.m., the EIS process will be explained. An opportunity will be given for verbal comments specific to the proposal and written comments can also be submitted.

Meetings have been scheduled for the following locations:

Monday, July 23, 2001, at the Clark County Government Center, ETD Room 3, 500 S. Grand Central Parkway, Las Vegas, NV 89155

Tuesday, July 24, 2001, at the Moapa Courthouse, 1340 East Hwy 168, Moapa, NV 89025

Wednesday, July 25, 2001, at the Caliente City Hall Council Chambers, 100 Depot Ave, Caliente, NV 89008

Public Input Requested

Comments concerning the Proposed Actions and EIS should address issues to be considered, feasible alternatives to examine, possible mitigation, and information relevant to, or having a bearing on the Proposed Action.

Comment Dates

The comment period for scoping the EIS will commence with the publication of this notice. Those having concerns, issues, or alternatives they would like to see addressed in the EIS should respond with written comments within 30 days from the date of this notice. This Scoping Notice will be distributed by mail on or about the date of this notice.

All comments received at the public scoping meetings or through written comments submitted will aid the BLM in identifying alternatives and assuring all issues are analyzed in the environmental impact statement.

ADDRESSES: Information and a copy of this Notice of Intent for the Meadow Valley EIS can be obtained by either writing to or visiting the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Comments and issues on the proposed EIS should be mailed to Jacqueline Gratton, Project Manager, Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108, or at e-mail jgratton@nv.blm.gov.

FOR FURTHER INFORMATION CONTACT: Jacqueline Gratton, (702) 647–5054, or at e-mail jgratton@nv.blm.gov.

Dated: June 22, 2001.

Rex Wells,

Acting Field Manager.

[FR Doc. 01–16784 Filed 7–3–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–01–1020–PE: GP1–010222]

Notice of Meeting of John Day/Snake Resource Advisory Council

August 7, 2001.

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Meeting of John Day/Snake Resource Advisory Council (RAC): Pendleton, Oregon.

SUMMARY: On August 7, 2001 at 10:00 a.m. there will be a meeting of the John Day/Snake RAC at Tamastslikt Cultural Center located at the Wildhorse Resort Hotel, 72779 Highway 331, Pendleton, Oregon. The meeting is open to the public. Public comments will be received at 1 p.m. on August 7, 2001. The following topics will be discussed by the council: Program of work review; Counties Payment Act (1608 Act) update; Hells Canyon Subgroup update; RAC membership update; Blue Mountain Subgroup update; ICBEMP Subgroup update; OHV Subgroup update; Noxious Weeds Subgroup update; National Fire Plan update; John Day River Management Plan Update; Sage Grouse Subgroup update; a 15 minute round table for general issues.

FOR FURTHER INFORMATION CONTACT: Sandra L. Guches, Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, Telephone (541) 473–3144.

Sandra L. Guches,

Acting District Manager.

[FR Doc. 01–16785 Filed 7–3–01; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–76060]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

June 25, 2001.

In accordance with the Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–76060 for lands in Grand County, Utah, was timely filed and required rentals accruing from January 1, 2001, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–76060, effective January 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rate cited above.

Robert Lopez,

Chief, Branch of Minerals Adjudication.

[FR Doc. 01–16786 Filed 7–3–01; 8:45 am]

BILLING CODE 4310–$$–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–439]

Certain HSP Modems, Software and Hardware Components Thereof, and Products Containing Same; Notice of a Commission Determination not to Review an Initial Determination Terminating the Investigation as to the Smart Link Respondents on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") terminating the Smart Link respondents from the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 11, 2000, based on a complaint filed by PCTEL, Inc. ("PCTEL") of Milpitas, California. The complaint named Smart Link Ltd. of Netanya, Israel and Smart Link Technologies, Inc. of Watertown, Massachusetts (collectively "Smart Link") and ESS Technology, Inc. ("ESS") of Fremont California as respondents. The complaint alleged that Smart Link and ESS had violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and/or selling within the United States after importation certain HSP modems, software and hardware components thereof, and products containing the same by reason of infringement of claims 1–2 of U.S. Letters Patent 5,787,305, claims 1–4, 7–8, and 11–15 of U.S. Letters Patent 5,931,950, claims 1, 2, 10, and 15–17 of U.S. Letters Patent 4,841,561, and claims 1, 6–7, 10–12, and 15–19 of U.S. Letters Patent 5,940,459.

On May 17, 2001, PCTEL and Smart Link entered into a settlement agreement. On May 30, 2001, PCTEL and Smart Link filed the joint motion to terminate the investigation as to Smart Link. The Commission investigative attorney supported the joint motion.

On May 30, 2001, the presiding ALJ issued an ID (Order No. 73) granting the motion to terminate the investigation as to Smart Link. No petitions for review of the ID were filed.

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Copies of the public version of the ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

Issued: June 28, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–16725 Filed 7–3–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Public Meeting Concerning Heavy Duty Diesel Engine Consent Decrees; Thursday, July 26, 2001

The Department of Justice and the Environmental Protection Agency will

hold a public meeting on Thursday, July 26, 2001 at 10 a.m. in the 13th floor conference room, 1425 New York Avenue NW., Washington, DC. The subject of the meeting will be implementation of the provisions of the seven consent decrees signed by the United States and diesel engine manufacturers and entered by the United States District Court for the District of Columbia on July 1, 1999. (*United States* v. *Caterpillar*, Case No. 1:98CV02544; *United States* v. *Cummins Engine Company*, Case No. 1:98CV02546; *United States* v. *Detroit Diesel Corporation*, Case No. 1:98CV02548; *United States* v. *Volvo Truck Corporation*, Case No. 1:98CV02547; *United States* v. *Mack Trucks, Inc.* Case No. 1:98CV01495; and *United States* v. *Renault Vehicles Industries, S.A.*, Case No. 1:98CV02543). In supporting entry by the court of the decrees, the United States committed to meet with states, industry groups, environmental groups, and concerned citizens to discuss consent decree implementation issues. This will be the sixth of a series of public meetings held quarterly during the first year of implementation of the consent decrees and at least annually thereafter.

Future meetings will be announced in the **Federal Register** and/or on EPA's Diesel Engine Settlement web page at: *www.epa.gov/oeca/ore/aed/diesel.*

For further information, please contact: Anne Wick, EPA Diesel Engine Consent Decree Coordinator, U.S. Environmental Protection Agency (Mail Code 2242A), EPA Headquarters, Washington, DC 20460, e-mail: *wick.anne@epa.gov.*

Karen S. Dworkin,

Assistant Section Chief, Environment & Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 01–16768 Filed 7–3–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

United States and Air Liquide America Corp.; Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on June 21, 2001 a proposed Consent Decree ("Decree") in *United States and Air Liquide America Corporation*, Civil Action No. 01–S–0113 was lodged with the United States District Court for the Southern District of Texas. The United States filed this action pursuant to section 113(b) of the Clean Air Act (the "Act"), 42 U.S.C. 7413(b), for noncompliance with the industrial refrigerant repair, testing, record-keeping, and reporting regulations at 40 CFR part 82, subpart F, §§ 82.152–82.166 (the "Subpart F Regulations"), promulgated pursuant to Subchapter VI of the Act, 42 U.S.C. 7671–7671q. at 22 industrial process refrigeration systems owned and operated by Air Liquide America Corporation in 18 states.

Under the terms of the Decree Air Liquide America Corporation will pay the United States a civil penalty in the amount of $4.5 million, and perform a supplemental environmental project in Calcasieu Parish, Louisiana. Air Liquide America Corporation will also replace, convert, or take out of service fifty of its industrial refrigeration systems now using regulated "class II" refrigerants with non-ozone depleting refrigerants.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Air Liquide America Corporation*, D.J. Ref. 90–5–2–1–07132. The Decree may be examined at the offices of EPA Region VIII, 999 18th Street, Suite 500 South Tower, Denver, Colorado. A copy of the Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy of the Decree, please enclose a check payable to the Consent Decree Library for $17.00 for a complete copy of the decree (25 cents per page reproduction cost).

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–16822 Filed 7–3–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

United States v. Charles T. Cannada; Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Charles T. Cannada*, Civil Action No. 5:99–cv–270Br S (S.D. Miss.), was lodged with the United States District Court for the Southern District of Mississippi on June 20, 2001. This proposed Consent Decree concerns a complaint filed by the United States against Charles T. Cannada, pursuant to sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. 1311(a) and 1344, and imposes civil penalties against Defendant Charles T. Cannada, for the unauthorized discharge of dredged or fill material into waters of the United States located in wetlands on property known as Cypress Lake, in Warren County, Mississippi.

The proposed Consent Decree requires the payment of civil penalties in the amount of $50,000.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to David N. Usry, Assistant United States Attorney, United States Attorney's Office, 188 E. Capitol Street, Suite 500, Jackson, Mississippi 39211 and refer to *United States* v. *Charles T. Cannada*, DJ # 90–5–1–1–05799.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Southern District of Mississippi, 245 East Capitol Street, Suite 316, Jackson, MS 39201.

David N. Usry,

Assistant United States Attorney, United States Attorney's Office, Jackson, Mississippi.

[FR Doc. 01–16770 Filed 7–3–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

United States of America v. Cenex Harvest States Cooperatives; Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

Notice is hereby given that on June 15, 2001, a proposed consent decree was lodged with the United States District Court for the District of Minnesota in a civil action captioned *United States of America* v. *Cenex Harvest States Cooperatives*, Civil Action No. 01–1096 (PAM/SRN).

In this action the United States sought civil penalties and injunctive relief against Defendant Cenex Harvest States Cooperatives ("Cenex") for violations of the Clean Water Act ("CWA") in connection with the operations of its facility at 2020 Riverfront Drive, Mankato, Minnesota. The United States alleged violations for failure to file a revised Facility Response Plan in violation of 40 CFR 112.20 and 112.21, 33 U.S.C. 1321(j)(5); failure to prepare and maintain a Spill Prevention, Control and Countermeasures Plan in violation of 40 CFR 112.3, 33 U.S.C. 1321(j)(1)(C); failure to file a response to an information request in violation of 33 U.S.C. 1318(a) and 1321(m); and for allowing an authorizing discharge from the facility in violation of 33 U.S.C. 1321(b)(3).

The consent decree would resolve the claims by the payment of a civil penalty of $56,250 plus the implementation of two Supplemental Environmental Projects to cost Cenex no less than $300,000. The projects are (1) to install actuators on two gates that would allow the gates to be shut down by the press of a switch from various locations within the facility; and (2) to replace the tank farm monitoring and control system with a modern computer system.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Cenex Harvest States Cooperatives*, Civil No. 01–1096 (PAM/SRN), District of Minnesota, USAO File No. 1999V00714, DOJ Ref. No. 90–5–1–1–07000.

The proposed consent decree may be examined at the Office of the United States Attorney, Room 600 United States Courthouse, 300 South Fourth Street, Minneapolis MN 55415 (Attention: Freidrich A.P. Siekert, AUSA), and at U.S. EPA Regional Counsel's Office (Attention: Peter Felitti), 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost for 28 pages) payable in the Consent Decree Library.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–16769 Filed 7–3–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Three Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that three proposed consent decrees in *United States* v. *Drum Service Company of Florida, et al.*, Civil No. 98–697–Civ–Orl–28C, were lodged on June 28, 2001, with the United States District Court for the Middle District of Florida.

The first proposed consent decree ("Drum Service Consent Decree") would resolve certain claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, against Drum Service Co. of Florida ("Drum Service") for performance of response work and recovery of response costs incurred and to be incurred by the Environmental Protection Agency in connection with the release of hazardous substances at the Zellwood Groundwater Contamination Superfund Site ("Site") in Zellwood, Orange County, Florida. The United States alleges that Drum Service is liable as a person who owns and operates a portion of the Site and who owned and operated a portion of the Site at the time of the release of a hazardous substance.

The proposed Drum Service Consent Decree would resolve the liability of Drum Service with respect to the Site. The proposed Drum Service Consent Decree would release claims against Drum Service for performance of the remedy selected in the Record of Decision entitled "Groundwater Operable Unit 2 (OU2) at the Zellwood Groundwater Contamination Site, Zellwood, Orange County, Florida" signed by the Environmental Protection Agency on August 23, 2000 ("ROD"). The proposed Drum Service Consent Decree would also release claims for response costs incurred and to be incurred by the Environmental Protection Agency in responding to releases and threatened releases of hazardous substances at and from the Site. To resolve these claims, Drum Service would perform the remedy selected in the ROD, would pay $3,000,000.00 to the Hazardous Substances Superfund to reimburse the United States for Past Response Costs, and would reimburse the United States for certain Future Response Costs. The proposed Drum Service Consent Decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607.

The second proposed consent decree ("Murphy Consent Decree") would resolve certain claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606, 9607, as amended, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, against J. Michael Murphy, for performance of response work and recovery of response costs incurred and to be incurred by the Environmental Protection Agency in connection with the release and threatened release of hazardous substances at the Site. The United States alleges that Mr. Murphy is liable as a person who operated a portion of the Site at the time of the release of a hazardous substance.

The proposed Murphy Consent Decree would resolve the liability of Mr. Murphy with respect to the Site. The proposed Murphy Decree would release claims against Mr. Murphy for performance of the remedy selected in the ROD, and for response costs incurred and to be incurred by the Environmental Protection Agency in responding to releases and threatened releases of hazardous substances at and from the Site. To resolve these claims, Mr. Murphy agrees to held jointly and severally liable for the $3,000,000.00 payment to be made by Drum Service pursuant to the Drum Service Consent Decree. The proposed Murphy Consent Decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973.

The third proposed consent decree ("Other Parties Consent Decree") would resolve certain claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606, 9607, as amended, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, against Douglass Fertilizer & Chemical Co., Spencer Douglass, Mallory Corporation, the Estate of Irving Feinberg and CSX Transportation (collectively the "Other Parties"), for performance of response work and recovery of response costs incurred and to be incurred by the Environmental Protection Agency in connection with the release and threatened release of hazardous substances at the Site. The United States alleges that Douglass Fertilizer & Chemical Co. and Mallory Corporation are liable as persons who owned and operated a portion of the Site at the time of the release of a hazardous substance. The United States alleges that Spencer Douglass and the Estate of Irving Feinberg are liable as persons who operated a portion of the Site at the time of the release of a hazardous substance. The United States alleges that CSX Transportation is liable as a person who owned a portion of the Site at the time of the release of a hazardous substance.

The proposed Other Parties Consent Decree would resolve the liability of the

Other Parties with respect to the Site. The proposed Other Parties Consent Decree would release claims against the Other Parties for performance of the remedy selected in the ROD, and would release claims for response costs incurred and to be incurred by the Environmental Protection Agency in responding to releases and threatened releases of hazardous substances in and from the Site. To resolve these claims, the Other Parties agree to pay a total of $381,000.00 to the Hazardous Substances Superfund. The proposed Other Parties Consent Decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973.

In addition, the proposed Other Parties Consent Decree contains a covenant not to take administrative action under these statutes against six Settling Federal Agencies, including Defense Reutilization and Marketing Service (DRMS), United States Department of the Navy, United States Department of the Army, United States Department of the Air Force, United States Department of Energy, United States General Services Agency, and National Aeronautics & Space Administration. The Environmental Protection Agency would make this covenant in return for a payment by the six Settling Federal Agencies of $375,000.00 to the Hazardous Substances Superfund.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the three proposed consent decrees. Commenters on the proposed Murphy Consent Decree and Other Parties Consent Decree may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d). Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, PO Box 7611, Washington, DC 20530, and should refer to *United States* v. *Drum Service Company of Florida, et al.*, M.D. FL, Civil No. 98–687–Civ–Orl–28C, DOJ Ref. #90–11–2–266 and #90–11–2–266/1.

The proposed consent decrees may be examined at the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, Atlanta, GA 30303 and the United States Attorney's Office for the Middle District of Florida, Federal Building & U.S. Courthouse, 80 N. Hughey Avenue, Orlando, Florida 32801, c/o Assistant U.S. Attorney Roberto Rodriguez. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044. In requesting copies please refer to the referenced case and enclose a check in the amount of $58.00 for the Drum Service Consent Decree; $4.75 for the Murphy Consent Decree, and $7.50 for the Other Parties Consent Decree (25 cents per page reproduction costs), payable to the Consent Decree Library.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–16754 Filed 7–3–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

United States and the State of Indiana v. Guide Corp. and Crown E.G., Inc.; Notice of Lodging of Consent Decree Pursuant to the Clean Water Act, the Resource Conservation and Recovery Act, the Emergency Planning and Community Right-to-Know Act, and the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree with Guide Corporation ("Guide") in the case captioned *United States and the State of Indiana* v. *Guide Corporation and Crown EG, Ind.*, Civil Action No. IP00–0702–C–D/F (S.D. Ind.) was lodged with the United States District Court for the Southern District of Indiana on June 18, 2001. The proposed consent decree relates to a massive fish kill that occurred in the White River in December 1999 and January 2000, from the City of Anderson, Indiana downstream past the City of Indianapolis, Indiana. Guide operates an automotive lighting parts production facility in Anderson, Indiana (the "Anderson Facility"), and is alleged to have discharged industrial wastewater from the Anderson Facility that caused the fish kill.

The proposed consent decree would resolve civil claims of the United States and the State of Indiana against Guide under: (1) The Clean Water Act (the "CWA"), 33 U.S.C. 1251 *et seq.*, and corresponding state law; (2) the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.*, and corresponding state law; (3) the release reporting provisions of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, ("CERCLA"), 42 U.S.C. 9603, and section 304 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. 11004; (4) the natural resource damage provisions of CERCLA Section 107, CWA Section 311(f), and corresponding state law; (5) the response cost recovery provisions of CERCLA Section 107 and corresponding state law; and (6) state common law. To the extent provided by the proposed consent decree, certain specified benefits of the settlement would also extend to four non-defendants, as Additional Covered Persons, namely: Lightsource Parent Corporation (Guide's parent corporation), Vehicle Lighting, Inc. (the parent corporation of Lightsource Parent Corporation), Guide Indiana, LLC (a Guide affiliate and the Anderson Facility's lessee), and General Motors Corporation (the owner of the Anderson Facility).

As required by the proposed consent decree, Guide already has paid $10,025,000 into a Court Registry Account administered by United States District Court for the Southern District of Indiana. If the proposed consent decree is approved and entered by the Court, that $10,025,000 could be disbursed from the Court Registry Account and divided as follows: (1) $2,000,000 in civil penalties would be split evenly between the United States and the State; (2) $2,000,000 in CERCLA response costs and natural resource damage assessment costs would be paid to the State; (3) $25,000 in natural resource damage assessment costs would be paid to the U.S. Department of the Interior; and (4) $6,000,000 would be paid into two "White River Restoration Funds" to be established by the State, to fund fish restocking and river restoration projects.

The proposed consent decree also would require that Guide complete a RCRA Compliance Audit Program, designed to ensure that waste materials are not being improperly stored in pipes, equipment, tanks, sumps, and trenches in specified areas at the Anderson Facility. After completing the Compliance Audit Program, Guide would be required to submit a comprehensive Compliance Audit Report to the U.S. Environmental Protection Agency and the Indiana Department of Environmental Management.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed consent decree. Comments should be

addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, PO Box 7611, Washington, DC 20044–7611, and should refer to *United States and the State of Indiana* v. *Guide Corporation and Crown EG, Inc.*, Civil Action No. IP00–0702–C–D/F (S.D. Ind.), and DOJ Reference Numbers 90–5–2–1–07043 and 90–5–2–1–07043/1.

An electronic copy of the proposed consent decree is posted on the Indiana Department of Environmental Management's website at www.IN.gov/idem/macs/factsheets/whiteriver. A signed copy of the proposed consent decree, including all appendices, may be examined at: (1) The Office of the United States Attorney for the Southern District of Indiana, 10 West market Street, Suite 2100, Indianapolis, Indiana 46204 (contact Thomas E. Kieper (317–226–6333)); and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604 (contact Nicole Cantello (312–886–2870)). Copies of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. In requesting copies, please refer to the above-referenced case name and DOJ Reference Numbers, and enclose a check made payable to the Consent Decree Library for $18.75 (75 pages at 25 cents pre page reproduction cost).

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–16823 Filed 7–3–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

United States v. Sterling Minter and JoAnn Minter; Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Sterling Minter and Jo Ann Minter* (W.D.Va.), C.A. No. 7:01CV00449, was lodged on June 19, 2001, with the United States District Court for the Western District of Virginia. The Consent Decree resolves the United States' claims against Sterling Minter and Joan Minter with respect to response costs incurred, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9607, in connection with the clean-up of the Old Salem Tannery Site, located near Salem, Roanoke County, Virginia. The Consent Decree also resolves the United States' civil penalty claim, pursuant to section 106(b) of CERCLA, 42 U.S.C. 9606(b), related to an administrative clean-up order dated November 24, 1992.

Under the Consent Decree, Sterling Minter and JoAnn Minter will pay the Environmental Protection Agency ("EPA") $100,000 in reimbursement of response costs incurred by EPA in connection with the clean-up of the site. In addition, Sterling Minter will pay $10,000 to resolve EPA's claim, pursuant to section 106(b) Of CERCLA, 42 U.S.C. 9606(b), related to Sterling Minter's failure to comply fully with the November 24, 1992 administrative order.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to proposed Consent Decree. Comments should be addressed to Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States Sterling* v. *Minter and JoAnn Minter*, C.A. No. 7:01CV00449, DOJ Reference No. 90–11–3–06312/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 105 Franklin Road, SW., Suite One, Roanoke, Virginia 24011–2305; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $9.00 (.25 cents per page production costs), payable to the Consent Decree Library.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–16771 Filed 7–3–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 237–2001]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Executive Office for Immigration Review (EOIR), Department of Justice, proposes modifying "Records and Management Information System (JUSTICE/EOIR–001)," last published October 10, 1995 (60 FR 52690, 52695), to add two new routine use provisions.

The first routine use allows contractors and others working on behalf of EOIR to have access to the information in the records to properly assist in the completion of EOIR functions. The second routine use allows disclosure to former employees for purposes of responding to official inquiries by government entities or professional licensing authorities in accordance with the Department of Justice's regulation governing access under such circumstances, 28 CFR 16.300–01. This routine use also allows disclosure to former employees where the Department requires information and/or consultation assistance from the former employee that is necessary for personnel-related or other official purposes.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by August 6, 2001. The public, OMB and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r) the Department has provided a report to OMB and the Congress.

Dated: June 22, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

Justice/EOIR–001

SYSTEM NAME:

Records and Management Information System.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

* * * may be disseminated to the appropriate Federal, State or local agency charged with the responsibility of investigating or prosecuting such

violation or with enforcing or implementing such law.

[Following this sentence insert the two new paragraphs below.]

Relevant information contained in this system of records may also be released to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

[The following section of the text and thereafter does not change.]

Release of information to the news media and the public:

* * * * *

[FR Doc. 01–16825 Filed 7–3–01; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Personalization Consortium, Inc.

Notice is hereby given that, on June 1, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Personalization Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Guardent, Inc., Waltham, MA; and 180 Solutions, Inc., Bothell, WA have been added as parties to this venture. Also, SPSS, Chicago, IL; eCustomers, Austin, TX; NextClick: The Personalization Agency, Calgary, Alberta, Canada; Yo.com, New York, NY have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Personalization Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On June 15, 2000, Personalization Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 11, 2000 (65 FR 49266).

The last notification was filed with the Department on March 5, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 29, 2001 (66 FR 17202).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–16772 Filed 7–3–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on May 23, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Square USA, Inc., Ramsey, NJ has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 1995 (60 FR 33233).

The last notification was filed with the Department on March 2, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 29, 2001 (66 FR 17203).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–16773 Filed 7–3–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Aseel, Incorporated, Wholesale Division; Denial of Application

On or about May 8, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Aseel Incorporated, Wholesale Division (Aseel), located in Dallas, Texas, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated July 7, 1998, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Aseel that, should no request for hearing be filed within 30 days, the right to hearing would be waived.

The DEA mailed the show cause order on May 11, 2000, to Aseel at the proposed registered location in Dallas, Texas by certified mail. At the same time, a copy of the show cause order was sent by regular first class mail to the Murphy, Texas home address of Aseel's President, Mr. Husham Awadelkariem. The certified letter was returned to DEA by the U.S. Postal Service, marked "moved, left no address." The copy sent by first class mail was not returned, and presumably was delivered.

Subsequently, on May 25, 2000, a DEA Diversion Investigator in the Dallas, Texas office, received a telephone call from Mr. Awadelkariem, who stated he received the show cause order and inquired whether he could limit his distribution of chemicals to convenience stores without a DEA registration. Since that time, no response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days have passed since receipt

of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Aseel is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46 (1999).

The Administrator finds that on August 3, 1998, an application dated July 7, 1998, was received by the DEA Chemical Operations Registration Section on behalf of Aseel for DEA registration as a distributor of the List I chemicals pseudoephedrine, phenylpropanolamine, and ephedrine. Aseel did not file this application in time to qualify for temporary exemption from registration pursuant to 21 CFR 1310.09. Accordingly, Aseel was not authorized to distribute these chemicals before approval of the application for registration.

The Administrator finds that during the period from February 24, 1998 to June 1, 1998, Aseel sold over 122,767 bottles of List I chemicals to an unregistered distributor when Aseel was not listed to do so, in violation of 21 U.S.C. 843(a)(9).

The Administrator also finds that during the period from May 25, 1998, to July 14, 1998, Aseel sold over 21,748 bottles of List I chemicals when Aseel was not licensed to do so, in violation of 21 U.S.C. 843(a)(9).

The Administrator further finds that during the period from January 1998 to May 1998, Aseel purchased in excess of 164,012 bottles of List I chemicals while not registered with DEA, in violation of 21 USC 822(a)(1), which requires *inter alia* that every person who distributes a List I chemical "shall obtain annually a registration issued by the Attorney General" and also in violation of the registration requirements set forth at 21 CFR 1309.21(a) and 1310.09.

Finally, the Administrator finds that on November 19, 1999, DEA investigators learned that Aseel was no longer located at the proposed registered location and had been evicted due to non-payment of rent. Aseel subsequently requested that DEA amend Aseel's application to include two prospective storage sites in Dallas. DEA investigators were unable to inspect these sites. The investigation further revealed Aseel no longer has valid state permits to distribute list chemicals.

While Mr. Awadelkariem stated that at one point he had two employees other than himself at Aseel, the Administrator finds that with regard to all the incidents described herein, Mr. Awadelkariem acted as the sole agent for Aseel.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See, e.g. Energy Outlet, FR 14,269 (DEA 1999). See also Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (DEA 1989).

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the Administrator finds that Aseel's proposed registered address has been vacated, and that Aseel has failed to provide the addresses for the two storage buildings where it allegedly currently conducts business. Therefore, no pre-registration inspection has been performed at Aseel's places of business. The Administrator consequently finds no evidence that Aseel has any controls whatsoever against diversion. Furthermore, and as set forth more fully below, the DEA investigation revealed that Aseel failed to exercise discretion in selling list chemicals, and routinely sold list chemicals to individuals and entities it should have known presented diversion risks.

Regarding factor two, the applicant's compliance with applicable law, the Administrator finds that the evidence shows Aseel significantly violated applicable law by distributing over 164,012 bottles of List I chemicals from February 24, 1998 through July 14, 1998, when not licensed to do so, in violation of 21 U.S.C. 843(a)(9).

Regarding factor three, there is no evidence that Aseel or Mr. Awadelkariem has a record of convictions related to controlled substances or to chemicals controlled under Federal or State law.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the Administrator finds that the DEA investigation revealed that during late 1996, Aseel had distributed 94 cases of a List I chemical to an individual who came from California to Dallas to make the purchase. This individual provided no identification, nor any addresses, business or otherwise. The only way Mr. Awadelkariem could contact this individual was *via* pager. During the interview with DEA investigators that elicited this information, and after the investigators explained the illicit uses of List I chemicals, presented Mr. Awadelkariem with the DEA "Red Notice", and explained the applicable laws regarding List I chemicals, Mr. Awadelkariem stated he would no longer purchase this List I chemical product again. In April 1997, DEA investigators from the Dallas Diversion Group contacted Mr. Awadelkariem, who voluntarily agreed to stop conducting business regarding List I chemicals.

Subsequently, DEA investigators received documents indicating sales of List I chemicals totaling 132 cases to Aseel during September 9, 1997, to October 1, 1997. When Aseel's sales and purchases records covering this time period were subpoenaed, DEA investigators discovered through sales records that List I chemicals were being sold by Aseel to two companies and that both recipient companies were suspect, having been linked to the diversion of List I chemicals to clandestine laboratories in California. In addition, one of the recipient companies was owned by the same previously mentioned individual from California to whom Aseel had distributed the 94 cases of List I chemicals during the latter part of 1996, and the other recipient company was effectively controlled by this same individual. The Administrator further finds that Mr. Awadelkariem knew this individual truly owned and controlled these two companies by at least May or June 1997. The subpoenaed records further revealed that Aseel had sold a total of 376 cases of List I chemicals to these two suspect companies during the period from July 1997 to September 1997. Follow up investigation revealed that the addresses provided by these

two companies were false. One of the addresses was a used car lot. Interviews with the owner of the car lot revealed that Mr. Awadelkariem would meet with the previously mentioned individual from California at the car lot to consummate business deals for List I chemicals. Shortly after this interview, Mr. Awadelkariem called a DEA investigator and stated that he had received a call from the individual from California, who stated to Mr. Awadelkariem that he was upset with DEA's inquiries, and further that he already had two List I chemical shipments seized by DEA in the past.

In November 1997, Mr. Awadelkariem contacted DEA regarding an alleged suspicious order by an unknown female from California, but the deal was never consummated. Also in November 1997, Mr. Awadelkariem assisted DEA in the seizure of 100 cases of a List I chemical that were eventually forfeited to the United States.

The Administrator further finds that from January 1, 1998, to July 31, 1998, Aseel purchased and distributed over 164,012 bottles of List I chemicals, as determined from subpoenaed documents. Over 100,800 bottles of List I chemicals were shipped by Aseel to a company that had neither a pending nor an approved DEA registration.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that, when confronted with his earlier statements that he would stop doing business in List I chemicals, Mr. Awadelkariem stated the he meant "at the time, he was not going to deal in these products because he had no customers for them." The Administrator finds this lack of candor, especially taken together with Aseel's demonstrated cavalier disregard of law and regulations concerning registration and distribution of List I chemicals, makes questionable Aseel's commitment to the DEA regulatory requirements designed to protect the public from diversion of controlled substances and listed chemicals. See Terrence E. Murphy, 61 FR 2841 (DEA 1996).

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Aseel. The applicant has failed to demonstrate that it has effective controls against the diversion of listed chemicals. Additionally, as described above, the evidence indicates that Aseel has violated applicable law regarding the distribution of List I chemicals on several occasions by distributing List I chemicals while not registered with DEA, and by distributing List I chemicals to companies who also were not registered with DEA. Aseel's lack of effective controls against diversion and its lack of commitment to comply with the laws and regulations designed to prevent diversion, exemplified by its failure to exercise discretion in distributing List I chemicals when it knew or should have known such chemicals were being diverted into other than legitimate channels, present a grave risk of future diversion.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Aseel be denied. This order is effective August 6, 2001.

Dated: June 20, 2001.

Donnie R. Marshall,

Administrator.

Certificate of Service

This is to certify that the undersigned, on June 25, 2001, caused a copy of the Final Order to be mailed, postage prepaid, registered return receipt to Respondent Husham Awadelkariem, 401 Hawthorne Drive, Murphy, Texas 75094–3598.

Karen C. Grant

[FR Doc. 01–16728 Filed 7–3–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; new collection; community gun violence prosecution.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by July 20, 2001. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer, (202) 395–7860, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Paul Kendall, General Counsel the Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531, or facsimile at (202) 307–1419.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information

(1) *Type of Information Collection:* New.

(2) *Title of the Form/Collection:* Community Gun Violence Prosecution Program application on the Grants Management System.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be as or required to respond, as well as a brief abstract:* Primary: State local or Tribal Government. Other: None. The Community Gun Violence Prosecution Program was authorized under Public Law 106–553, 114 Stat. 2762, App.–155 (2000) to provide funding directly to chief local or Tribal Government. Other: None. The Community Gun Violence Prosecution Program was authorized under Public Law 106–553, 114 Stat. 2762, App.–155 (2000) to provide

funding directly to chief prosecutors (state, local and tribal) to hire assistant prosecutors who will focus their attention on the prosecution of cases involving violent crimes committed with guns and other violations of gun statutes involving drug trafficking and gang-related crimes in high firearms-related violence areas.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The time burden of the estimated 1000 respondents to complete the application on-line is 4-hours per application.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete applications for the Community Gun Violence Prosecution Program is 4000 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: June 28, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 01–16798 Filed 7–3–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,239 and NAFTA–3642]

DeZurik Corporation, McMinnville, Tennessee; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for voluntary remand for further investigation of the negative determination in *Former Employees of DeZurik Corporation* v. *U.S. Secretary of Labor* (Court No. 00–07–00319).

On March 30, 2000, the Department issued negative determinations regarding Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance, applicable to workers producing industrial valves at DeZurik Corporation, McMinnville, Tennessee. The notices were published in the **Federal Register** on April 21, 2000; the TAA petition TA–W–37,239 (65 FR 21473) and the NAFTA–TAA petition NAFTA–3642 (65 FR 21475).

On April 15, 2000, the International Association of Machinists (IAM), Local 1941, requested administrative reconsideration of the Department's denial of TA–W–37,239 and NAFTA–3642, which also resulted in affirmation of the initial negative decision. The determination was issued on June 5, 2000, and published in the **Federal Register** on June 15, 2000 (65 FR 32275).

On remand, the Department obtained new information regarding the production of components produced at the McMinnville, Tennessee plant, which were used in the production of the industrial valves sold by DeZurick. Investigation findings on remand show that the company relied on imports of some of the components formerly produced at the McMinnville, Tennessee plant. Other investigation findings on remand revealed that the subject firm has shifted a portion of the production of valves at the McMinnville, Tennessee plant to Canada.

Conclusion

After careful review of the additional facts obtained on remand, I conclude that there were increased imports of articles like or directly competitive with those produced by the subject firm and that there was a shift in production to Canada. In accordance with the provisions of the Trade Act, I make the following certification:

"All workers of DeZurik Corporation, McMinnville, Tennessee, who became totally or partially separated from employment on or after December 6, 1998, through two years from the issuance of this revised determination, are eligible to apply for adjustment assistance under Section 223 and NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, D.C. this 13th day of June 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–16846 Filed 7–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,719; Weyerhaeuser Co., Southern Lumber and Plywood Div., Dierks, AR

TA–W–39,346; Acadia Elastomers Corp., Acadia Polymers Div., Acadia Paragould, Acadia, AR

TA–W–39,722; Lancaster Electro Plating, Lancaster, OH

TA–W–39,264; Cummins Engine Co., Fleetguard/Nelson Div., Neillsville, WI

TA–W–38,682 & A; Cummins Engine Co., Fleetguard/Nelson Div., Viroqua, WI and Black River Falls, WI

TA–W–38,809; Blue Mountain Products LLC, Pendleton, OR

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,341; Dairy Farmers of America, IN., Fergus Falls, MN

TA–W–39,241; Johnson Controls, Sycamore, IL

TA–W–39,360; Kachina Communications, Inc., Cottonwood, AZ

TA–W–39,186; Renfro Hosiery, Mount Airy, NC

TA–W–39,226; Texler, Inc., Macedonia, OH

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–39,317; Alltel Communications, Inc., Savannah, GA

TA–W–39,400; P.J. Sewing Co., Inc., Ivyland, PA

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–39,207; Prairie Wood Products, Prairie City, OR

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–38,803; Carlisle Motion Control Industries, Inc., Ridgway, PA: February 23, 2000.

TA–W–39,086; Dunbrooke Industries, Inc., Lexington, MO: April 6, 2000.

TA–W–38,972; KoSa, Shelby, NC: March 22, 2000.

TA–W–39,193; Dani Max, New York, NY: April 7, 2000.

TA–W–38,939; Litton Network Access Systems, A Div. Litton Systems, Roanoke, VA: March 16, 2000.

TA–W–38,455; Plainwell, Inc., Plainwell, MI: December 7, 1999.

TA–W–39,050; SCI Systems, Inc., Augusta, ME: June 23, 2000.

TA–W–39,009; Astaris LLC, Pocatello, ID: April 2, 2000.

TA–W–39,304; Berg Lumber Co., Lewiston, MT: May 7, 2000.

TA–W–39,425; Hoover Precision Products, Inc., Washington, IN: May 24, 2000.

TA–W–39,318; Continental Industries, Mesa, AZ: May 24, 2000.

TA–W–39,029; Atofina Chemicals, Inc., Portland, OR: April 4, 2000.

TA–W–39,011; Texas Boot, Inc., Hartsville, TN and Nashville, TN: June 16, 2001.

TA–W–39,235; Krupp Hoesch Suspensions, Inc., Hamilton, OH: April 27, 2001.

TA–W–39,336; Meridian Automotive Systems, Lapeer Operations, Lapeer, MI: April 4, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employments and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04741; Berlog, Inc., Warren, OR

NAFTA–TAA–04878; Dairy Farmers of America, Inc., Fergus Falls, MN

NAFTA–TAA–04766; Cummings Engine Co., Fleetguard/Nelson Div., Neillsville, WI

NAFTA–TAA–04534 & A; Cummings Engine Co., Fleetguard/Nelson Div., Viroqua, WI and Black River Falls, WI

NAFTA–TAA–04601; Blue Mountain Products, LLC, Pendleton, OR

NAFTA–TAA–045701; Detroit Tool and Engineering, Lebanon, MO

NAFTA–TAA–04892; Acadia Elastomers Corp., Acadia Polymers Div., Acadia Paragould, Acadia, AR

NAFTA–TAA–04825; Texler, Inc., Macedonia, OH

NAFTA–TAA–04317; Plainwell, Inc., Plainwell, MI

NAFTA–TAA–04541; Weyerhaeuser Co., Southern Lumber and Plywood Div., Dierks, AR

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

NAFTA–TAA–04904; Illinois Tool Works, Smartcycle, Austin, TX

The investigations revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural form or appropriate subdivision thereof) have been totally or partially separated from employment.

NAFTA–TAA–04783; Prairie Wood Products, Prairie City, OR

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04885; Continental Industries, Mesa, AZ: May 14, 2000.

NAFTA–TAA–04847; Oglevee, Ltd, Fredonia, PA: April 30, 2000.

NAFTA–TAA–04916; Hoover Precision Products, Inc., Washington, IN: May 24, 2000.

NAFTA–TAA–04721; Atofina Chemicals, Inc., Portland, OR: April 4, 2000.

NAFTA–TAA–04576; API Gettys, Inc., Including Leased Workers of QPS and Ranstand, Racine, WI: February 19, 2000.

NAFTA–TAA–04893; Kimberly Clark, Conway, AR: May 14, 2000.

NAFTA–TAA–04846; Lear Corp., Interior Systems Div., Lewistown, PA: May 2, 2000.

NAFTA–TAA–04735; SCI Systems, Inc., Augusta, ME: April 6, 2000.

NAFTA–TAA–04934; Cooper Tolls, Inc., Apex, NC: May 30.

I hereby certify that the aforementioned determinations were issued during the month of June, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 25, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–16848 Filed 7–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 16, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 16, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 11th day of June, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 06/11/2001]

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
39,408	Alcoa Fujikura (Co.)	El Paso, TX	05/24/2001	Administrative Service—Harnesses
39,409	General Cable Corp (USWA)	Cass City, MI	05/16/2001	Wire and Cable
39,410	North Star Steel (USWA)	Wilton, IA	05/16/2001	Steel Angles and Flats
39,411	Johnson Electric Auto. (Co.)	Columbus, MS	05/22/2001	Small Motors
39,412	M. Fine and Sons Mfg. (UNITE)	New Albany, IN	05/25/2001	Men's Work Shirts
39,413	Sportswear USA (Co.)	Wallace, NC	05/29/2001	Boy's Suits, Blazers, Pants
39,414	Marshall and Williams (Wkrs)	Providence, RI	05/30/2001	Tenter Clips for Textile Machinery
39,415	Tyco Printed Circuit (Wkrs)	White City, OR	05/22/2001	Printed Circuit Boards
39,416	Pillowtex Fieldcrest (UNITE)	Kannapolis, NC	05/30/2001	Home Furnishings
39,417	Innovex (Wkrs)	Chandler, AZ	05/24/2001	Flexible Interconnect Circuits
39,418	MCMS, Inc. (Wkrs)	Nampa, ID	05/22/2001	Circuit Boards
39,419	Kentucky Electric (Co.)	Ashland, KY	05/30/2001	Steel Bar, Flats
39,420	Price Pfister (Wkrs)	Pacoima, CA	05/09/2001	Water Faucets
39,421	Dunbrook Industries (Co.)	Canton, SD	05/17/2001	Headwear
39,422	Leatex Chemical (Co.)	Philadelphia, PA	06/04/2001	Speciality Chemicals

[FR Doc. 01–16844 Filed 7–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,470]

Clestra Hauserman, Inc., Solon, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 18, 2001, in response to a worker petition which was filed by a company official on behalf of workers at Clestra Hauserman, Inc., Solon, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 25th day of June, 2001.

Edward A. Tomchick,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–16849 Filed 7–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,218; TA–W–39,218A]

Compaq Computers, Houston, TX and Flextronics International, San Jose, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 7, 2001 in response to a petition filed on April 23, 2001 on behalf of workers at Compaq Computers, Offline System Support, Houston, Texas; and, Flextronics International, Offline System Support, San Jose, California.

The petitioning workers were not employees of either of the subject firms on the date of their separation. Therefore it is determined that the petition is invalid, and the investigation has been terminated.

Signed in Washington, DC this 25th day of June, 2001.

Edward A. Tomchick,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–16850 Filed 7–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 16, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 16, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 20 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington DC this 4th day of June, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 06/04/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
39,363	Pratt and Whitney, HAC (Co.)	Grand Prairie, TX	05/29/2001	Composites
39,364	Spartan Int'l, Rosemont (Wrks)	Jonesville, SC	05/11/2001	Woven Fabrics and Yarn
39,365	Eagle Affiliates (Wrks)	Harrison, NJ	05/14/2001	Houseware Items
39,366	Mattel-Murray (Co.)	Murray, KY	04/27/2001	Toys
39,367	Computrex, Inc. (Co.)	Nicholasville, KY	04/27/2001	Freight Bill Processing
39,368	Siemens Automotive Corp. (Co.)	Johnson City, TN	05/18/2001	Electronic Controls for Airbags
39,369	Hager Hinge Co (Co.)	Greenville, MS	05/16/2001	Door Hinges
39,370	Securing Plastics, Inc. (Wrks)	Miami Lakes, FL	05/17/2001	Plastic Components
39,371	Dev and P, Inc (Wrks)	New York, NY	05/18/2001	Ladies' Apparel
39,372	Rockwell Collins (Co.)	Pomona, CA	05/11/2001	In Flight Entertainment Systems
39,373	Carbide/Graphite Group (Wrks)	St. Marys, PA	05/18/2001	Electrodes
39,374	Signature Cloth (UNITE)	Clifton, NJ	05/18/2001	Textiles Fabrics
39,375	Sun Studs, Inc. (Co.)	Roseburg, OR	05/18/2001	Veneer
39,376	Ocello, Inc (Wrks)	Richland, PA	05/17/2001	Knit Garments—Men, Women & Children
39,377	Nabisco Biscuit (IAMAW)	Niagara Falls, NY	05/18/2001	Triscuit Crackers
39,378	Flextronics (Co.)	Chambersburg, PA	05/18/2001	Outdoor Enclosures—Telecommunication
39,379	Savannah Luggage Works (Co.)	Vadalia, GA	05/14/2001	Luggage
39,380	Spinnaker Coating Maine (Co.)	Westbrook, ME	05/22/2001	Pressure Sensitive Papers
39,381	Electrolux Home Products (Wrks)	Nashville, AR	05/15/2001	Electrical Cords
39,382	Allied Vaughn (Wrks)	Clinton, TN	05/17/2001	Compact Disc and Video Cassettes
39,383	Tridelta Industries, Inc. (Co.)	Mentor, OH	05/18/2001	Pneumatic Controls
39,384	Electrolux, Inc. (Co.)	Piney Flats, TN	05/17/2001	Vaccum Cleaner Motors
39,385	AMI Semiconductor (Wrks)	Pocatello, ID	05/17/2001	Integrated Circuits
39,386	Bennett Pump Co. (Co.)	Springlake, MI	05/17/2001	Hydraulic Fluid Measuring Device
39,387	Steiger Lumber Co (Co.)	Bessemer, MI	05/21/2001	Hardwood
39,388	Carolina Mills, Inc. (Co.)	Lincolnton, NC	05/20/2001	Textile Yarns
39,389	Precision Marshall Steel (Wrks)	Washington, PA	05/12/2001	Finished Tool Steel
39,390	J and A Manufacturing Co (Co.)	Scranton, PA	05/21/2001	Vests and Tuxedo Jackets
39,391	BMH Chronos Richardson (Co.)	Fairfield, NJ	05/17/2001	Packaging Equipment
39,392	Aavid Thermalloy (Co.)	Dallas, TX	05/25/2001	Heat Sinks, & Semi Conductor Accessories
39,393	UCAR Carbon Co., Inc (IUOE)	Columbia, TN	05/23/2001	Graphic Electrodes
39,394	Pittsburgh Gear Works (USWA)	Pittsburgh, PA	05/23/2001	Shafts, Wheels and Gears
39,395	Flynt Fabrics, Inc. (Co.)	Graham, NC	05/24/2001	Circular Knit Fabrics
39,396	Carter Industries, Inc (Wrks)	Brooklyn, NY	05/22/2001	Jackets, Uniforms, Coveralls—Pilots
39,397	Teleflex-Morse (USWA)	Hudson, OH	05/25/2001	Conduit and Cable Components
39,398	Boss Industries, Inc. (Wrks)	Erie, PA	05/16/2001	Plastic Injection Molds
39,399	Lomac LLC (Wrks)	Muskegon, MI	05/18/2001	Dichlorobenzene and Dihydrochloride
39,400	P.J. Sewing Co., Inc. (Co.)	Ivyland, PA	05/24/2001	Sell, Install & Service Sewing Machines
39,401	Industrial Seaming Co (Co.)	Granite Falls, NC	05/24/2001	Crib Sheets and Diaper Stackers
39,402	Chino Mines Co (Wrks)	Hurley, NM	05/25/2001	Copper
39,403	Phelps Dodge Tyrone, Inc. (Wrks)	Tyrone, NM	05/24/2001	Copper Cathodes
39,404	Empire Specialty Steel (USWA)	Dunkirk, NY	05/24/2001	Stainless Steel Bar, Rod, Wire, Tubes
39,405	Vishay Roederstein (Co.)	Statesville, NC	05/23/2001	Electronic Components
39,406	Artesyn Technologies (Wrks)	Redwood Falls, MN	05/21/2001	Power Supplies
39,407	Greer Steel Co (USWA)	Dover, OH	05/07/2001	Strip Steel Products

[FR Doc. 01–16845 Filed 7–3–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4584 and NAFTA–4584A]

International Paper Castigan Mill, Milford, ME; and International Paper Passadumkeag Mill, Passadumkeag, ME; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of May 10, 2001, counsel on behalf of the company, requests administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA–TAA) applicable to workers and former workers of the subject firm plants. The denial notice was signed on March 13, 2001, and was published in the **Federal Register** on April 16, 2001 (66 FR 19522).

The company presents new information regarding U.S. imports of stud grade lumber.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 25th day of June, 2001

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–16847 Filed 7–3–01; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Agency Information Collections Activities; Submission for OMB Review, Comment Request; Survey on the Partnerships in the Community Grant Program (Evaluation of IMLS Museum Leadership Initiative Grant Program)

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of request for new information collection approval.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). Currently, the Institute of Museum and Library Services is soliciting comment concerning extending collection entitled, Technology Survey for Libraries and Museums. A copy of this proposed form, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Public and Legislative Affairs, Mamie Bittner at (202) 606–8339. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

DATES: Comments must be received by August 6, 2001. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Send comments to: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, Room 510, Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 104–208 enacted on September 30, 1996 contains the former Museum Services Act and the Library Services and Technology Act Public Law 104–208 authorizes the Director of the Institute of Museum and Library Services to make grants to improve museum and library service throughout the United States.

Agency: Institute of Museum and Library Services.

Title: Survey on Partnerships in Museums in Community Grant Program.

OMB Number: none.

Agency Number: 3137.

Frequency: One-time.

Affected Public: Museums.

Number of Respondents: 118.

Estimated Time Per Respondent: 45–60 minutes for survey, 30–45 minutes for pilot.

Total Burden Hours: 135.

Total Annualized capital/startup costs: 0.

Total Annual Costs: $2,187.00.

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 01–16753 Filed 7–3–01; 8:45 am]
BILLING CODE 7036–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel; Meetings

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Museums (Creativity and Organizational Capacity categories): July 24–27, 2001, Room 716. A portion of this meeting, from 11 a.m. to 12 p.m. on July 27th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on July 24th–26th, and from 9 a.m. to 11 a.m. and 12 p.m. to 2:30 p.m. on July 27th, will be closed.

Dance (Creativity & Organizational Capacity categories): August 6–10, 2001, Room 716. A portion of this meeting, from 9:30 a.m. to 11 a.m. on August 10th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on August 6th–9th, and from 11 a.m. to 2:30 p.m. on August 10th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant

applicants. In accordance with the determination of the Chairman of May 22, 2001, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY-TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: June 28, 2001.

Kathy Plowitz-Worden,

Panel Coordinator.

[FR Doc. 01–16839 Filed 7–3–01; 8:45 am]

BILLING CODE 7537–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Leadership Initiatives Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that three meetings of the Leadership Initiatives Advisory Panel will be held by teleconference at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C., 20506 as follows:

Presenting Section: from 1:00 p.m. to 4:00 p.m. on Tuesday, July 9, 2001 in Room 703;

Local Arts Agencies Section: from 4:00 p.m. to 4:30 p.m. on Wednesday, July 10, 2001 in Room 726;

Arts Education Section: from 1:00 p.m. to 4:00 p.m. on Wednesday, July 10, 2001 in Room 716.

These meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 22, 2001, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: July 2, 2001.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations National Endowment for the Arts.

[FR Doc. 01–16965 Filed 7–3–01; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL INDIAN GAMING COMMISSION

Paperwork Reduction Act; Information Collection Activities

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The National Indian Gaming Commission (NIGC), in accordance with the Paperwork Reduction Act of 1995, is submitting to the Office of Management and Budget (OMB) a request to review and extend approval for the information collection activity associated with the payment annual fees by Indian tribes conducting gaming under the Indian Gaming Regulatory Act. The OMB will consider comments from the public on this information collection activity.

DATES: Comments regarding the NIGC's evaluation of the information collection activity and its request to OMB to extend approval for the information collection must be received by August 1, 2001. When providing comment, a respondent should specify the particular collection activity to which the comment pertains.

ADDRESSES: *Send comments to:* Office of Information and Regulatory Affairs (Attn: Desk Officer for the National Indian Gaming Commission), Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503. The NIGC regulation to which the information collection pertains is available on the NIGC website, www.nigc.gov. The regulation is also available by written request to the NIGC (Attn: Ms. Cindy Altimus), 1441 L Street, NW., Suite 9100, Washington, DC 20005, or by telephone request at (202) 632–7003. This is not a toll-free number. All other requests for information should be submitted to Ms. Altimus at the above address for the NIGC.

SUPPLEMENTARY INFORMATION: *Title:* Annual Fees Payable by Indian Gaming Operations. *OMB Number:* 3141–0007. *Abstract:* The Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.*, authorizes the NIGC to establish a schedule of fees to be paid to the NIGC by each gaming operation under the jurisdiction of the NIGC. Fees are computed using rates set by the NIGC and the assessable gross revenues of each gaming operation. The total of all fees assessed annually cannot exceed $8,000,000. Under its implementing regulation for the fee payment program, 25 CFR part 514, the NIGC relies on a quarterly statement of gross gaming revenues provided by each gaming operation that is subject to the fee requirement. The required information is needed for the NIGC to both set and adjust fee rates and to support the computation of fees paid by each gaming operation. *Respondents:* Indian tribal gaming operations. *Estimated Number of Respondents:* 320. *Estimated Annual Responses:* 1280. *Estimated Annual Burden Hours per Respondent:* 8. *Estimated Total Annual Burden on Respondents:* 2,560 hours.

Jacqueline Agtuca,

Chief of Staff.

[FR Doc. 01–16764 Filed 7–3–01; 8:45 am]

BILLING CODE 7565–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–390–CivP; 50–327–Civ.P; 50–328–CivP; 50–259–CivP; 50–260–CivP; 50–296–CivP; ASLBP No. 01–791–01–CivP EA 99–234]

Atomic Safety and Licensing Board; Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 & 2; Browns Ferry Nuclear Plant, Units 1, 2 & 3); Notice of Hearing

June 28, 2001.

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. Richard F. Cole, Ann Marshall Young

This proceeding involves a proposed civil penalty of $110,000, sought to be imposed by the NRC Staff on the Tennessee Valley Authority (TVA or Licensee) for an alleged violation of NRC's employee-protection requirements set forth in 10 C.F.R. 50.7, based upon the asserted discrimination against a former employee for engaging in protected activities. In response to an Order Imposing Civil Monetary Penalty, published at 66 FR 27166 (May 16,

2001), TVA on June 1, 2001, filed a timely request for a hearing. On June 26, 2001, an Atomic Safety and Licensing Board, consisting of Dr. Richard F. Cole, Ann Marshall Young, and Charles Bechhoefer, who serves as Chairman, was established to preside over this proceeding.

Notice is hereby given that, by Memorandum and Order dated June 28, 2001, the Atomic Safety and Licensing Board has granted the request for a hearing submitted by TVA. This proceeding will be conducted under the Commission's hearing procedures set forth in 10 C.F.R. Part 2, Subparts B and G. Parties to this proceeding are TVA and the NRC Staff. The issues to be considered, as set forth in the Order Imposing Civil Monetary Penalty, are (a) whether the Licensee violated the Commission's requirements, as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, dated February 7, 2001; and, if so, (b) whether, on the basis of such violation, the Order Imposing Civil Monetary Penalty should be sustained.

Documents related to this proceeding, issued prior to December 1, 1999, are available in microfiche form (with print form available on one-day recall) for public inspection at the Commission's Public Document Room (PDR), Room 0–1 F21, NRC One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. Documents issued subsequent to November 1, 1999 are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, *<http://www.nrc.gov/NRC/ADAMS/index.html>*). The PDR and many public libraries have terminals for public access to the Internet.

During the course of this proceeding, the Licensing Board may conduct one or more prehearing conferences and evidentiary hearing sessions. The time and place of these sessions will be announced in Licensing Board Orders. Except as limited by the parameters of telephone conferences (which are in any event to be transcribed), members of the public are invited to attend any such sessions.

Dated: Rockville, Maryland, June 28, 2001.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 01–16774 Filed 7–3–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–40]

Duke Energy Corporation, Oconee Nuclear Site; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.212(a)(2) and 72.214 to Duke Energy Corporation (Duke). The requested exemption would allow Duke to store Babcock and Wilcox (B&W) 15x15 spent nuclear fuel assemblies with a nominal width of 8.536 inches in the NUHOMS®–24P storage system at the Oconee Nuclear Site Independent Spent Fuel Storage Installation (ISFSI).

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated June 8, 2001, Duke requested an exemption from the requirements of 10 CFR 72.212(a)(2) and 72.214 to permit storage of B&W 15x15 spent nuclear fuel assemblies with a nominal width of 8.536 inches in the NUHOMS®–24P storage system at the Oconee Nuclear Site ISFSI. Duke is a general licensee, authorized by NRC to use spent fuel storage casks approved under 10 CFR Part 72, Subpart K. Furthermore, Duke is currently using the NUHOMS®–24P storage system design approved by NRC under Certificate of Compliance (CoC) No. 1004 to store spent fuel at the ISFSI.

By exempting Duke from both 10 CFR 72.214 and 72.212(a)(2), Duke will be authorized to use its general license to store B&W 15x15 spent nuclear fuel assemblies with nominal widths of 8.536 inches in casks approved under Part 72, as exempted. The proposed action before the Commission is whether to grant these exemptions under 10 CFR 72.7.

The ISFSI is located 30 miles west of Greenville, South Carolina, on the Oconee Nuclear Power Plant site. The Oconee Nuclear Site ISFSI is an existing facility constructed for interim dry storage of spent nuclear fuel.

On June 8, 2001, Transnuclear West Inc. (TN West), the certificate holder, submitted a revised amendment request for CoC No. 1004 to correct the fuel specification tables; Tables 1–1a and 1–1b of the Technical Specifications (TS) for the Standardized NUHOMS® storage system. The NRC staff will address the proposed changes to the CoC in conjunction with its ongoing review of the amendment request previously submitted by TN West on February 23, 2001. However, the staff's review and final action on that pending amendment request will not be completed on a schedule consistent with Duke's stated need for the Oconee Nuclear Site; thus Duke has requested that an exemption be granted by July 9, 2001.

The proposed change would revise Amendment 2 to CoC No. 1004, which became effective on September 5, 2000. Amendment 2 changed the title of one of the parameters in the fuel specification table, (Table 1–1a of the Technical Specifications), from "Nominal Cross-Sectional Envelope" to "Maximum Assembly Width (unirradiated)." The staff has reviewed the technical and safety bases supporting the approval of Amendment 2 and has determined that the maximum fuel assembly widths are not critical values affecting the basis for the safety analysis. The original certificate and Amendment 1 to CoC No. 1004 approved by the NRC both specified the "nominal" fuel assembly width in the fuel specification table, and the design of the B&W 15x15 fuel has not been altered with respect to that dimension. Amendment 2 approved the storage of higher burnup fuel and burnable poison rod assemblies in the NUHOMS®–24P system, and the fuel specification tables were revised to reflect those changes; however, those changes did not involve any change to the "nominal" fuel assembly width previously accepted by the staff. The NRC staff has reviewed the exemption request and has determined that storing B&W 15x15 spent fuel assemblies with a nominal width of 8.536 inches in the NUHOMS®–24P storage system at the Oconee ISFSI is consistent with the design basis and would not be inimical to public health and safety.

Need for the Proposed Action: Duke has an imminent need to reduce the inventory of spent nuclear fuel assemblies in the spent fuel pool at the Oconee Nuclear Site prior to upcoming refueling activities that require empty fuel pool storage locations. Furthermore, Duke must load additional B&W 15x15 spent fuel assemblies in the Oconee ISFSI to accommodate those planned and potential refueling activities scheduled for late 2001 that require empty spent fuel pool storage locations Because the 10 CFR Part 72 rulemaking to amend the CoC will not be completed prior to the date that Duke needs to begin loading the NUHOMS®–24P with additional B&W 15x15 spent fuel assemblies, the NRC is granting this exemption based on the staff's review of information submitted by Duke and TN West.

Environmental Impacts of the Proposed Action: The potential environmental impact of using the NUHOMS®–24P storage system was initially presented in the Environmental Assessment (EA) for the Final Rule to add the NUHOMS®–24P to the list of approved spent fuel storage casks in 10 CFR 72.214 (59 FR 65898 (1994)). Furthermore, each general licensee must assess the environmental impacts of the specific ISFSI in accordance with the requirements of 10 CFR 72.212(b)(2). This section also requires the general licensee to perform written evaluations to demonstrate compliance with the environmental requirements of 10 CFR 72.104, "Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS [Monitored Retrievable Storage Installation]."

The NUHOMS®–24P storage system is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI include tornado winds and tornado generated missiles, design basis earthquake, design basis flood, accidental cask drop, lightning effects, fire, explosions, and other incidents.

Special cask design features of the NUHOMS®–24P storage system include a horizontal canister system composed of a steel dry shielded canister (DSC), a reinforced concrete horizontal storage module (HSM) and a transfer cask (TC). The welded DSC provides confinement and criticality control for the storage and transfer of spent nuclear fuel. The concrete module provides radiation shielding and allows cooling of the DSC and fuel by natural convection during storage. The TC is used for transferring the DSC between the spent fuel pool building and the HSM.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. Without the loss of either containment, shielding, or criticality control, the risk to public health and safety is not compromised.

The staff performed a review of the proposed exemption request and found that the loading of B&W 15x15 spent fuel assemblies with a nominal width as previously specified in the TS does not reduce the safety margin. In addition, the staff has determined that the storage of B&W 15x15 spent fuel assemblies in the NUHOMS®–24P storage system as requested does not pose any increased risk to public health and safety. Furthermore, the proposed action now under consideration would not change the potential environmental effects assessed in the initial rulemaking (59 FR 65898 (1994)).

Therefore, the staff has determined that there is no reduction in the safety margin nor significant environmental impact as a result of storing B&W 15x15 spent fuel assemblies with a nominal width of 8.536 inches in the NUHOMS®–24P storage system at the Oconee Independent Spent Fuel Storage Installation.

Alternative to the Proposed Action: The staff evaluated other alternatives to the transfer of additional B&W 15x15 spent fuel assemblies from the spent fuel pool to the ISFSI and found that these alternatives produced a greater occupational exposure, increased handling and storage costs, and an increased environmental impact as a result of generating additional low-level radioactive waste. The alternative to the proposed action would be to deny approval of the exemption and, therefore, require Duke to conduct refueling activities and subsequent plant operations with limited space available in the spent fuel pool. This lack of space would limit Duke's ability to implement contingency actions, if needed, such as fuel inspection, movement of refueling equipment and full core offload (the temporary removal of all fuel assemblies from the reactor vessel).

Agencies and Persons Consulted: On June 21, 2001, Mr. Henry Porter, Assistant Director of the Division of Waste Management, South Carolina Department of Health and Environmental Control, was contacted about the EA for the proposed action and had no concerns.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2) and 72.214 so that Duke may store B&W 15x15 spent nuclear fuel in the NUHOMS®–24P storage system at the Oconee ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this exemption request, see the Duke exemption request dated June 8, 2001, which is docketed under 10 CFR part 72, Docket No. 72–40.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 29th day of June 2001.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–16775 Filed 7–3–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 94–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 94–7, Death Benefit Payment Rollover Election for Federal Employees Retirement System (FERS), provides FERS surviving spouses and former spouses with the means to elect payment of the FERS rollover-eligible benefits directly or to an Individual Retirement Arrangement.

Approximately 1,850 RI 94–7 forms will be completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual estimated burden is 1,850 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to mbtoomey@opm.gov. Please provide a mailing address with your request.

DATES: Comments on this proposal should be received on or before August 6, 2001.

ADDRESSES: Send or deliver comments to:

John C. Crawford, Chief,FERS Division,Retirement and Insurance

Service,U.S. Office of Personnel Management, 1900 E Street, NW, Room 3313,Washington, DC 20415; and

Joseph Lackey,OPM Desk Officer,Office of Information & Regulatory Affairs,Office of Management & Budget,New Executive Office Building, NW,Room 10235,Washington, DC 20503.

For Information Regarding Administrative Coordination Contact:Donna G. Lease, Team Leader,Forms Analysis and Design,Budget and Administrative Services Division,(202) 606–0623,Office of Personnel Management.

Steven R. Cohen,

Acting Director.

[FR Doc. 01–16805 Filed 7–3–01; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44482; File No. 4–429]

Joint Industry Plan; Order Approving Amendment to the Options Intermarket Linkage Plan to Conform the Options Intermarket Linkage Plan to the Requirements of Securities Exchange Act Rule 11Ac1–7

June 27, 2001.

I. Introduction

On March 13, 2001, the American Stock Exchange LLC ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), International Securities Exchange LLC ("ISE"), Pacific Exchange, Inc. ("PCX"), and Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, the "Participants") submitted to the Securities and Exchange Commission ("SEC" or "Commission") in accordance with Section 11A(a)930 of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 11Aa3–2 thereunder,[2] a proposed amendment to the options intermarket linkage plan ("Linkage Plan"),[3] The amendment proposes to conform the Linkage Plan to the requirements of recently adopted Exchange Act Rule 11Ac1–7, the Trade-Through Disclosure Rule.[4] The proposed amendment to the Linkage Plan was published in the **Federal Register** on April 4, 2001.[5] Three comment letters were received in response to the notice.[6] This order approves the proposed amendment to the Linkage Plan.

II. Description of the Proposed Amendment

On November 17, 2000, the Commission adopted Exchange Act Rule 11Ac1–7 to require a broker-dealer to disclose to its customer when the customer's order for listed options is executed at a price interior to a better quote displayed by another market ("intermarket trade-through"), and to disclose the better published quote available at that time. Under the rules, however, a broker-dealer is not required to disclose to its customer an intermarket trade-through if the broker-dealer effects the transaction on an exchange that participates in an approved linkage plan that includes provisions reasonably designed to limit intermarket trade-throughs.

In the Adopting Release, the Commission noted that to conform to the requirements of the Trade Through Disclosure Rule, a linkage plan must, at a minimum, contain provisions to: (1) Limit participants from trading through, not only the quotes of other linkage plan participants, but also, the quotes of exchanges that are not participants in an approved linkage plan; (2) require plan participants to actively surveil their markets for trades executed at prices inferior to those publicly quoted on other exchanges; and (3) make clear that the failure of a market with a better quote to complain within a specified period of time that its quote was traded-through may affect potential liability, but does not signify that a trade-through has not occurred.[7] The proposed amendment to the Linkage Plan was intended to add such provisions to the Linkage Plan.

First, the proposed Amendment would change the definitions of "National Best Bid or Offer" ("NBBO") and "Trade-Throughs" so that the terms would apply to unlinked, as well as linked, exchanges. Second, the proposed amendment would require Participants to establish procedures for conducting surveillance for trade-throughs, both respect to trading through linked and unlinked markets. Third, it would require that Participants adopt uniform rules that make it a violation of a participant's rules for a member to engage in a pattern or practice of trading through bids and offers in other linked markets, unless one of the enumerated exceptions to the Linkage Plan's Trade-Through provisions applies and, in the case of a Block Trade, where the initiating member has satisfied aggrieved parties at the block price. Lastly, the proposed amendment would add a provision to the Linkage Plan that states that a failure to a lodge a Trade-Through complaint will not signify that a Trade-Through has not occurred, but instead, affects only liability.

III. Summary of Comments

The Commission received comment letters from three participants in response to the notice published in the **Federal Register.**[8] In these letters, the Participants expressed concerns regarding the reference in the Notice to footnote 62 of the Adopting Release. The Notice states "[n]otwithstanding the more limited language in the proposed amendment to the Linkage Plan, each exchange's rules must address trade-throughs of better quotes displayed by both linked and unlinked markets."[9]

The commenters stated that they believe that the proposed amendment to the Linkage Plan fully complies with the requirements of the Trade-Through Disclosure Rule, and that it is not necessary for the exchanges to adopt rules to address trade-throughs in addition to complying with the requirements of the Linkage Plan, as amended.[10] The commenters argued that the proposed amendment clearly provides that members should not effect trade-throughs, and that participants to the Linkage Plan should conduct surveillance to detect any violations of this mandate.[11] One commenter further noted that Section 4(b) of the Linkage Plan specifically requires that all

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[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage Plan") proposed by the Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, the Phlx and PCX agreed to participate in the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000).

[4] 17 CFR 240.11Ac1–7. *See* Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000) ("Adopting Release").

[5] *See* Securities Exchange Act Release No. 44106 (March 27, 2001), 66 FR 17977 (April 4, 2001) ("Notice").

[6] *See* Letter to Jonathan G. Katz, Secretary, Commission, from Joseph B. Stefanelli, Executive Vice president, Derivative Securities, Amex, dated May 7, 2001 ("Amex letter); Letter to Jonathan G. Katz, Secretary, Commission, from Charles Rogers, Executive Vice President, Phlx, dated May 1, 2001 ("Phlx Letter"); and Letter to Jonathan G. Katz, Secretary, Commission, from Edward J. Joyce, President and Chief Operating Officer, CBOE, dated April 26, 2001 ("CBOE Letter").

[7] *See* Adopting Release, *supra* note 4, at n.2 and accompanying text.

[8] *See* Amex Letter; CBOE Letter; and Phlx Letter, *supra* note 6.

[9] *See* Notice, *supra* note 5, at n.5.

[10] *See* Amex Letter; CBOE Letter; and Phlx Letter, *supra* note 6.

[11] *Id.*

participants enforce the provisions of the Linkage Plan.[12]

Another commenter questioned how else the partipants could address trade-throughs beyond the requirements contained in the proposed amendment.[13] The commenter disagreed that the participants must adopt rules to mandate disciplinary action against members for trading through unliked markets in order to comply with the Trade-Through Disclosure Rule, expressing frustration that this view was not expressed by the Commission before the proposed amendment was submitted.[14]

One commenter expressed concern regarding a requirement that the exchanges impose sanctions on their members for trading through unlinked markets.[15] This commenter stated that while it agreed that members who trade through quotes from unlinked markets without justification or due diligence should be subject to investigation and possible sanction, it would be unfair for the exchanges to adopt rules under which members would be sanctioned if they traded through an unlinked market when investigation revealed that such market was inaccessible to members, or information concerning the validity of that market unreliable.[16] This commenter also stated that upon submitting the proposed amendment to the Commission it did not understand that it also would be required to adopt specific exchange rules providing for sanctions on members that trade through unlinked markets.

Finally, one commenter argued that the Commission's position that the proposed Linkage Plan does not satisfy the rule may severely impact broker-dealers due to the additional cost and potential liability associated with detecting and disclosing possible trade-throughs resulting from a failure to have in place a Commission-approved linkage.[17] This commenter suggested that the compliance date of the rule should be coordinated with the implementation date of the proposed Linkage Plan.

IV. Discussion

The Commission finds that the proposed amendment to the Linkage Plan satisfies the three minimal requirements set out in the Adopting Release to conform the Linkage Plan to the requirements of the Trade-Through Disclosure Rule. Specifically, the Commission finds that by amending the definitions of "NBBO" and "Trade-Throughs" so that the terms apply to unlinked, as well as linked, exchanges, the proposed amendment would add to the Linkage Plan a provision to limit participants from trading through, not only the quotes of other linkage plan participants, but also, the quotes of exchanges that are not participants in an approved linkage plan. The Commission also finds that the proposed amendment would add to the Linkage Plan a requirement that each participant establish procedures for conducting surveillance for trade-throughs of both linked and unlinked markets. In addition, the Commission finds that the proposed amendment to the Linkage Plan clarifies that the failure of a market with a better quote to complain within a specified period of time that its quote was traded through may affect potential liability, but does not signify that a trade-through has not occurred.

Further, the Commission has carefully considered the comment letters submitted by the CBOE, Phlx, and Amex. The Commission reiterates its statement made in the Adopting Release that, in addition to the minimal provisions that must be included in an intermarket linkage plan to allow broker-dealers effecting transactions on exchanges participating in the plan to be excepted from the disclosure requirements of the Trade-Through Disclosure Rule, each exchange participating in a linkage plan would have to adopt certain rules. The Adopting Release stated that an exchange participating in the Linkage Plan:

> Would have to adopt rules to allow the exchange to sanction specialists or market makers that trade through better prices of other exchanges, maintain policies and procedures that would limit the occurrence of intermarket trade-throughs, and maintain records that would identify intermarket trade-thoughs and any review or remedial action taken by the exchange in response to such intermarket trade-throughs.[18]

The Commission believes that the requirement set forth in the Adopting Release, detailed above, that the Linkage Plan participants adopt rules regarding trade-throughs of better prices of other exchanges, not only linked markets, provided adequate notice to the participants in the Linkage Plan that such rules were expected to be filed for Commission approval. The Commission again restates here that the Commission fully expects the Linkage Plan participants to satisfy this requirement. Moreover, the Commission notes that the concerns raised by commenters are, at this time, purely academic because all of the options exchanges currently are participants in the Linkage Plan.

Finally, the Commission strongly believes that each exchange must have rules to allow it to sanction any member who has the ability to execute a transaction in its market at a price inferior to a price displayed by another exchange. In connection with the requirement set forth in the Adopting Release that each exchange adopt rules to allow it to sanction "specialists or market makers that trade through better prices of other exchanges," the Commission believes that this language cannot be read as limiting the reach of the exchanges' rules to only specialists or market makers in each market. Rather, this provision must be read in conjunction with the other requirements set forth in the Adopting Release and consistent with a plain reading of the Linkage Plan. Specifically, the Commission believes that the requirement in the Adopting Release that, in addition to provisions that the Linkage Plan must contain to conform to the requirements of the Trade-Through Disclosure Rule, each exchange participating in the Linkage Plan has to "maintain policies and procedures that would limit the occurrence of intermarket trade-throughs,"[19] can only be read to require that such policies and procedures limit the occurrence of intermarket trade-throughs for all trades, other than those trades expressly excluded from the Trade-Through Disclosure Rule, regardless of the member affecting such trade. Moreover, Section 8(c) of the Linkage Plan states that "the Participants agree that absent reasonable justification and during normal market conditions, *members* in their markets should not effect trade-throughs (emphasis added)."

Finally, after careful review, the Commission finds that the proposed amendment to the Linkage Plan to consistent with the requirement of the Act and the rules and regulations thereunder, Specifically, the Commission believes that the proposed amendment is consistent with Section 11A of the Act,[20] and Rule 11Aa3–2 thereunder,[21] in the it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove

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[12] *See* Amex Letter, *supra* note 6.

[13] *See* CBOE Letter, *supra* note 6.

[14] *See* CBOE Letter, *see also* Amex Letter, *supra* note 6.

[15] *See* Phlx Letter, *supra* note 6.

[16] *Id.*

[17] *See* Amex Letter, *supra* note 6.

[18] *See* Adopting Release, *supra* note 4, at n.62.

[19] *See* Adopting Release, *supra* note 4, at n.62.

[20] 15 U.S.C. 78k–1.

[21] 17 CFR 240.11Aa3–2.

impediments to, and perfect the mechanisms of, a national market system. Moreover, the Commission believes that the Linkage Plan, as amended, satisfies the minimal requirements of the Trade-Through Disclosure rule to except broker-dealers who effect transactions on one of the linked markets from making the required disclosures under the Trade-Through Disclosure Rule, so long as each of the linked markets has adopted the required rules, discussed above.

V. Conclusion

It is Therefore Ordered, pursuant to Section 11A of the Act [22] and Rule 11Aa3–2 thereunder,[23] that the proposed Linkage Plan amendment is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–16734 Filed 7–03–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44491; File No. SR–DTC–00–17]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Eliminate DTC's Option To Resell to Deliverers the Securities They Had Previously Delivered by Book Entry to the Account of a Participant That Has Failed To Settle Its Debit Obligation to DTC

June 28, 2001.

I. Introduction

On November 14, 2000, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–00–17) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on April 17, 2001.[2] The Commission received two comment letters in support of the proposal.[3] For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

If a participant fails to pay its settlement obligation to DTC at the end of the day, DTC will use its liquidity resources (all-cash participants fund and bank line of credit) to complete settlement. Currently, DTC's rules provide that if the participant is insolvent and use of the participant's participants fund deposit does not eliminate its net debit obligation, DTC may on the business day following the failure-to-settle either: (1) Resell to deliverers the securities they had delivered to the insolvent participant on the day of the failure ("resale procedure") or (2) sell in the open market those securities and other collateral in the insolvent participant's account. Under the proposed rule change, DTC would amend its Rule 9(B) to eliminate DTC's option to resell to deliverers the securities they had previously delivered by book-entry to the account of a participant that has failed to settle its debit obligation to DTC.

The resale procedure was included in DTC's rules prior to the industry's conversion to same-day funds settlement and DTC's adoption of associated risk management controls, including the collateral monitor and the imposition of net debit caps.[4] The collateral monitor systematically prevents a participant from accruing a net debit that exceeds the value of the collateral in its account by blocking any transaction that would have that effect. For this purpose, collateral includes: (1) The participant's deposit to the participants fund, (2) the value of securities in the participant's account that it has designated as collateral, and (3) the value of securities that are the subject of deliveries from other participants. The collateral value attributed to securities is equal to their market value minus a "haircut" determined by DTC. DTC believes that its risk management controls adequately limit DTC's risk exposure in the event of a participant insolvency and that there is no need to rely upon the resale procedure.

III. Discussion

Section 17A(b)(3)(F) [5] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that DTC's risk management controls such as collateral monitoring and the use of net debit caps adequately limit DTC's exposure in the event of a participant failure to settle an insolvency situation. The Commission further believes that DTC's right to sell the insolvent's collateral in the open market give DTC a sufficient means to eliminate any unsatisfied net debit obligation of the insolvent participant. Therefore, the Commission finds DTC's decision to eliminate its right to resell securities to deliverers and to rely upon its risk management controls and its right to resell collateral into the open market is consistent with DTC's obligations to assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible because use of the risk management controls and open market sales should provide DTC with the means to meet its financial obligations in the event of a participant's failure to settle.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–00–17) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–16788 Filed 7–3–01; 8:45 am]

BILLING CODE 8010–01–M

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[22] 15 U.S.C. 78k–1.

[23] 17 CFR 240.1Aa3–2.

[24] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44172, (April 10, 2001), 66 FR 19820.

[3] Letters from Diane L. Schueneman, First Vice President, Merrill Lynch Investment Managers Operations and Arthur L. Thomas, Chief Operating Officer, Merrill Lynch Securities Services Division, to Dennis Dirks, President, Depository Trust Company (June 7, 2000) ("Merrill Lynch") and from Jeffrey P. Neubert, President and Chief Executive Officer, New York Clearing House, to John Mancuso, Senior Systems Director, The Depository Trust & Clearing Corporation (September 22, 2000)("NYCH").

[4] For a description of same day funds settlement and DTC's adoption of associated risk management controls, refer to Securities Exchange Act Release Nos. 24689 (July 9, 1987), 52 FR 26613 [File No. SR–DTC–87–04] (order granting temporary approval to DTC's same-day fund settlement service), 26051 (August 31, 1988), 53 FR 34853 [File No. SR–DTC–88–06] (order granting permanent approval to DTC's same-day fund settlement service), 27360 (May 16, 1995), 60 FR 27360 [File No. SR–DTC–95–06] (order modifying DTC's same-day funds settlement system to accommodate the overall conversion to same-day settlement for securities transactions), and 36843 (February 14, 1996), 61 FR 6672 [File No. SR–DTC–96–03] (order granting modifications to certain DTC procedures in order to facilitate conversion to entirely same-day funds settlement system).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3341]

State of Minnesota; (Amendment #5)

In accordance with a notice received from the Federal Emergency Management Agency, dated June 26, 2001, the above-numbered Declaration is hereby amended to include McCleod and Pope Counties in the State of Minnesota as disaster areas caused by severe winter storms, flooding and tornadoes occurring between March 23, 2001 and continuing.

Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 15, 2001 and for economic injury the deadline is February 15, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 27, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–16727 Filed 7–3–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3353]

State of Mississippi

Harrison County and the contiguous counties of Hancock, Jackson, Pearl River and Stone constitute a disaster area due to damages caused by Tropical Storm Allison that occurred on June 11, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 27, 2001 and for economic injury until the close of business on March 26, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

The interest rates are:

	Percent
For physical damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 335308 and for economic injury the number assigned is 9M1100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 27, 2001.

John Whitmore,

Acting Administrator.

[FR Doc. 01–16726 Filed 7–3–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Notice of Teleconferences

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Teleconferences.

DATES:
July 9, 2001, 1:30 pm–3:30 pm (ET)
July 9, 2001, 3:30 pm–5:00 pm (ET)
July 25, 2001, 1:00 pm–3:30 pm (ET)
September 11, 2001, 1:30 pm–4:30 pm (ET)
September 12, 2001, 1:00 pm–3:30 pm (ET)

ADDRESSES: Ticket to Work and Work Incentives Advisory Panel Office, Social Security Administration,400 Virginia Avenue, SW, Suite 700, Washington, D.C. 20024.

TELECONFERENCES:
Monday, July 9, 2001, 1:30 pm–3:30 pm (ET)
Evaluation and Design Committee Conference Call
Call-in number: 1–888–677–1801
Pass code: evaluation
Leader: Theda Zawaiza
Monday, July 9, 2001, 3:30 pm–5:00 pm (ET)
Ticket to Work and Work Incentives Advisory Panel Conference Call
Call-in number: 1–888–677–1801
Pass code: evaluation
Leader: Theda Zawaiza
Wednesday, July 25, 2001, 1:00 pm–3:30 pm (ET)
Planning and Operations Committee Conference Call
Call-in number: 1–888–552–9191
Pass code: 12211
Leader: Tamara Allen
Tuesday, September 11, 2001, 1:30 pm–4:30 pm (ET)
Evaluation and Design Committee Conference Call
Call-in number: 1–888–677–1801
Pass code: evaluation
Leader: Theda Zawaiza
Wednesday, September 12, 2001, 1:00 pm–3:30 pm (ET)
Planning and Operations Committee Conference Call
Call-in number: 1–888–396–9185
Pass code: 12211
Leader: Tamara Allen

SUPPLEMENTARY INFORMATION: *Type of meetings:* These teleconference meetings are open to the public. The interested public is invited to participate by coming to the address listed above or calling into the teleconferences. Public testimony will not be taken.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a series of teleconference meetings of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) Advisory Panel (the Panel) and the Committees thereof. Section 101(f) of Public Law 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Agenda: The Panel, the Evaluation and Design Committee, and the Planning and Operations Committee will deliberate on the implementation of TWWIIA, conduct committee activities and administrative business. The agenda for these meetings will be posted on the Internet at *http://www.ssa.gov/work/panel/* one week prior to the teleconference or can be received in advance electronically or by fax upon request. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff by mail addressed to Ticket to Work and Work Incentives Advisory Panel Staff, Social Security Administration, 700 Virginia Avenue, SW, Washington, DC, 20024, telephone contact with Kristen Breland at (202) 358–6423, fax at (202) 358–6440 or e-mail to *TWWIIAPanel@ssa.gov*.

Dated: June 29, 2001.
Deborah M. Morrison,
Designated Federal Officer.
[FR Doc. 01–16908 Filed 7–3–01; 10:46 am]
BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 3713]

Bureau of Educational and Cultural Affairs: Request for Grant Proposals: Educational Partnerships Program (Formerly College and University Affiliations Program)

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for the Educational Partnerships Program, previously known as the College and University Affiliations Program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to pursue institutional or departmental objectives in partnership with foreign counterpart institutions with support from the Educational Partnerships Program. These objectives should support the overall goal of the Program: To strengthen mutual understanding and cooperation between U.S. and foreign educational institutions on subjects of enduring common interest to the United States, to other countries, and to the institutions participating in the Program.

Program Overview

The Educational Partnerships Program has developed from its predecessor, the College and University Affiliations Program, which since 1982 has provided grants to U.S. colleges and universities for international cooperation. The Program's new name underscores the expectation that the successful pursuit of project objectives will require all institutional partners to be actively engaged with one another. Current and former participants in the Fulbright Senior Scholar Program and other university teachers and administrators with knowledge of educational institutions in other countries are encouraged to build on this knowledge through institutional cooperation with support from the Educational Partnerships Program. The review criteria outlined in this document emphasize the importance of mutual commitment and shared benefits. Potential applicants are discouraged from proposing projects that have been developed previously for other programs unless the projects are reconceived with the overall goals and review criteria for the Educational Partnerships Program clearly in mind.

The Educational Partnerships Program supports institutional linkages in higher education with every world region except the New Independent States of the former Soviet Union. It is anticipated that separate Requests for Grant Proposals for institutional partnerships in higher education with the New Independent States (NIS College and University Partnerships Program and the NIS Community College Partnerships Program) will be published in the summer of 2001. For additional information about these NIS programs please refer to the "Foreign Country and Location Eligibility" section of this RFGP. Other RFGPs for educational partnerships may also be published this fiscal year.

This RFGP for the Educational Partnerships Program does not prescribe specific project objectives, but establishes the parameters within which applicants are invited to propose projects. Institutional objectives should be consistent with the Program's goal of equipping the participating institutions with a stronger ability to address, through teaching, research, or outreach, critical issues in the fields eligible in FY 2002: The social, political, and economic sciences; business; journalism and media studies; law; public administration; public health policy and administration; the humanities (excluding the fine arts); the Teaching of English as a Foreign Language; and educational development or administration (excluding educational projects in the physical, technical, and medical sciences). Additional information on themes of special interest in specific world regions may be found under the heading "Foreign Country and Location Eligibility."

Institutional Objectives for Applicants

While the benefits of the project to each of the participating institutions may differ significantly in nature and scope based on their respective needs and resource bases, proposals should outline well-reasoned strategies that are designed to meet specific objectives for each participating U.S. and foreign department or institution as a whole.

For example, proposals may outline the parameters and possible content of new courses, new research or teaching specializations or methodologies, new or revised curricula, new programs for educational outreach, or other changes specifically anticipated as a result of the project. Proposals to pursue a limited number of related thematic objectives at each institution are preferred to proposals addressing a large number of unrelated objectives.Proposals that do not benefit all institutional partners are not eligible for funding from this Program.

In addition to demonstrating how each participating institution can assist its partner(s) to meet institutional goals, proposals should also explain how this cooperation will enable each institution to address its own needs. Accordingly, applicants are encouraged to describe the needs and deficiencies as well as the capabilities and strengths of each participating department and institution, and how each institution will contribute to and benefit from the achievement of project objectives. Proposals that realistically assess institutional capacities will be better able to outline compelling objectives that address institutional needs and justify a request for support. To be competitive, proposals should demonstrate that the participating institutions understand one another and are committed to mutual support and cooperation in project implementation.

If the proposed partnership would occur within the context of a previous or ongoing project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects. Previous projects should be described, with details about the amounts and sources of support and the results of previous cooperative efforts.

Institutions receiving partnership grant awards will be expected to submit periodic reports on the results of program activities. Proposals should outline and budget for a methodology for project evaluation. The evaluation plan should include an assessment of the current status of each participating department's and institution's needs at the time of program inception with specific reference to project objectives; formative evaluation to allow for mid-course revisions in the implementation strategy; and, at the conclusion of the project, summative evaluation of the degree to which the project's objectives have been achieved together with observations about the project's continuing potential to influence the participating institutions and their surrounding communities or societies. The final evaluation should also include recommendations about how to build upon project achievements. Evaluative observations by external consultants with appropriate subject and regional expertise are especially encouraged.

Costs

The commitment of all partner institutions to the proposed project should be reflected in the cost-sharing which they offer in the context of their respective institutional capacities. Although the contributions offered by U.S. and foreign institutions with relatively few resources may be less than those offered by applicants with greater resources, all participating institutions should identify appropriate cost-sharing. These costs may include estimated in-kind contributions. Consistent with the review criteria listed elsewhere in this RFGP and with specific reference to cost-sharing and institutional commitment to cooperation, proposed cost-sharing will be considered an important indicator of each participating institution's interest in the project and potential to benefit from it.

A U.S. college or university must submit the proposal and must be prepared to serve as grant recipient with responsibility for project coordination. Proposals must include letters of commitment from all institutional partners. Each letter must be signed by an official who is authorized to commit institutional resources to the project.

The Bureau's support may be used to assist with the costs of the exchange visits as well as the costs (up to a maximum of 20 percent of the total grant) of the administration of the project at any partner institution. However, governmental institutions except universities may not charge administrative costs to the grant. Administrative costs include administrative salaries and direct administrative costs but not indirect costs. Although each grant will be awarded to a single U.S. institutional partner, adequate provision in the proposal for the administrative costs of the project at all non-governmental partner institutions, including the foreign partner(s), is encouraged. More information on partner institution eligibility in this competition is found in this RFGP under the headings "U.S. Partner and Participant Eligibility" and "Foreign Partner and Participant Eligibility."

Salary support for administrative activity may be included within the 20 percent maximum. The Bureau will not fund salaries, stipends, consultant fees or honoraria for participants from the project's program budget. However, fees for translation services and for outside consultants reporting on the status of project objectives are allowable as program expenses.

The proposal may include a request for funding to reinforce the activities of exchange participants through the establishment and maintenance of Internet and/or electronic mail facilities as well as through interactive technology or non-technology-based distance-learning programs. However, the establishment and maintenance of these facilities at governmental organizations in the U.S. or at foreign governmental organizations other than universities is not eligible for funding. Projects focusing primarily on technology or physical infrastructure development are not encouraged, and the amount that may be requested for educational and technical materials should not exceed 20 percent of the Bureau's funding for the project. Proposals that include Internet, electronic mail, and other interactive technologies in countries where these technologies are not easily maintained or financed should discuss how the foreign partner institution will cover their costs after the project ends. Applicants may propose other project activities not specifically mentioned in this solicitation if the activities reinforce the impact of the project.

The maximum award in the FY 2002 competition will be$120,000, with the exceptions noted under the heading "Foreign Country and Location Eligibility." The minimum period of award is two years, and the maximum period of award is three years. Awards may be extended on a no-cost basis beyond the initial grant period by mutual agreement if progress toward project goals is satisfactory. Requests for amounts smaller than the maximum are eligible. Budgets and budget notes should carefully justify the amounts requested. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Grants are subject to the availability of funds for FY 2002. In FY 2000, the last year for which complete data are available, 112 eligible proposals were submitted to the College and University Affiliations Program, and 17 awards were made. The response to Requests for Grant Proposals for the support of partnerships in higher education has been unusually strong in recent years while, except for the New Independent States of the former Soviet Union, the funds available have fallen significantly short of the demand for them. Special FY 2002 funding with higher grant maximums and more favorable grant-to-application ratios is expected for projects in Albania, Algeria, Kosovo, Montenegro, the New Independent States of the former Soviet Union, Serbia outside Kosovo, and Tunisia. Additional details are provided under the heading "Foreign Country and LocationEligibility."

U.S. Institution and Participant Eligibility

The lead institution and grant recipient in the project must be an accredited U.S. college or university. Applications from community colleges, minority-serving institutions, undergraduate liberal arts colleges, comprehensive universities, research universities, and combinations of these types of institutions are eligible. The lead U.S. organization in a consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners. Secondary U.S. partners may include governmental or non-governmental organizations as well as non-profit service and professional organizations.

Applicants that have not previously received grants under an educational partnership or affiliations program administered by the Bureau are especially encouraged to apply. The Bureau intends to provide at least 20 percent of the awards under the FY 2002 Educational PartnershipsProgram to U.S. colleges and universities that have not received funding from the Bureau under an educational partnership or affiliations program during the previous seven fiscal years (since FY 1995). A list of previously issued educational partnership and affiliations grants can be found on the following website: *http://exchanges.state.gov/education/cuap/history*.

With the exception of translators and outside consultants reporting on the status of project objectives, participation is limited to teachers, advanced graduate students, and administrators from the participating U.S. institution(s). All participants who are funded by the Bureau under the program budget and represent the U.S. institution must be U.S. citizens. Advanced graduate students at the U.S. institution(s) are eligible for support from the project only as visiting instructors or researchers at a foreign partner institution.

Foreign Institution and Participant Eligibility

In other countries, participation is open to recognized institutions of post-secondary education, which may include independent research institutes,

relevant governmental organizations, and private non-profit organizations with project-related educational objectives. Except for translators and outside consultants reporting on the status of project objectives, participation is limited to teachers, administrators, researchers, or advanced students from the participating foreign institution(s). Any advanced student participant must either have teaching responsibilities or be preparing for such responsibilities.Foreign participants must be citizens, nationals, or permanent residents of the country of the foreign partner, and must be both qualified to receive U.S. J–1 visas and willing to travel to the U.S. under the provisions of a J–1 visa during the exchange visits funded by this Program.

Foreign Country and Location Eligibility

To increase the percentage of competitive proposals that can be funded, the number of eligible countries and locations is limited each year. However, country eligibility is expected to rotate within most of the following seven world regions according to the cycles outlined below. Proposals may not include more than one country or location except as noted below under the headings "Western Hemisphere" and "South Asia." Countries or locations may be added to those listed in the Request for Grant Proposals for FY 2003 and FY 2004. Separate Requests for Grant Proposals will be issued in the spring of 2002 for FY 2003 and in the spring of 2003 for FY 2004. Although these sections indicate priority concerns and emphases within the world regions listed, applicants are reminded that their proposals should outline anticipated benefits to the U.S. partner(s) as well.

(1) *New Independent States (former Soviet Union):* Institutions interested in partnerships with institutions of higher education in the New Independent States should consult separate Requests for Grant Proposals for the NIS College and University Partnerships Program and for the NIS Community College Partnerships Program. For information about these programs, contact the Humphrey Fellowships and Institutional LinkagesBranch, Office of Global Educational Programs (ECA/A/S/U),Room 349, U.S. Department of State, State Annex 44, 3014th Street, SW., Washington, DC 20547, phone: (202)619–5289, fax: (202) 401–1433.

(2) *Sub-Saharan Africa:* We encourage projects that will strengthen the role of African institutions of higher education in an eligible country's development and that will encourage increased involvement of African universities with other local and international institutions that contribute to African social, political or economic development.

Eligible for FY 2002: Kenya, Mozambique, Namibia, Nigeria, Tanzania, Uganda, and Zimbabwe.

Anticipated eligibility for FY2003: Nigeria, Eritrea, Ethiopia, and Zambia. Subjects to be determined.

Anticipated eligibility for FY 2004: Countries and subjects to be determined.

(3) *Western Hemisphere:* We encourage projects that will strengthen civic, economic, or educational reform, or that address current issues in journalism and media studies, public administration, or the social sciences. Beyond the countries listed below as eligible in FY 2002, we encourage proposals for trilateral cooperation among institutions in the U.S., Canada, and Mexico. In addition, any country in the Western Hemisphere may be proposed in a trilateral configuration with a country listed as eligible for this region in FY 2002. Applicants proposing to involve partners in more than one country should ensure that there are significant benefits to each partner in the project.

Eligible for FY 2002: Costa Rica, El Salvador, Mexico, Guatemala, Honduras, Nicaragua, Panama and Paraguay. Up to two of these listed countries may be included with the U.S. in a project, and any country in the Western Hemisphere may be included with the U.S. and any one of the countries listed.

Anticipated Eligibility for FY2003: Bolivia, Colombia, Dominican Republic, Ecuador, Haiti, Peru, and Venezuela. Subjects to be determined.

Anticipated eligibility for FY2004: Argentina, Barbados, Brazil, Chile, Jamaica, Trinidad and Tobago, and Uruguay. Subjects to be determined.

(4) *East Asia and the Pacific:* We encourage projects that will promote democratic values and practices, that will encourage good governance and responsible administrative practices in either the public sector or the private sector, that will strengthen civil society or the freedom and independence of the media, or that will help to create more transparent, market-oriented economies.

Eligible for FY 2002: People's Republic of China, Republic of Korea, Mongolia, Taiwan, and Thailand.

Anticipated Eligibility for FY 2003: Cambodia, People'sRepublic of China, Indonesia, and Laos. Subjects to be determined.

Eligible for FY 2004: People's Republic of China, Malaysia, Philippines, and Vietnam. Subjects to be determined.

(5) *Europe:* We encourage proposals that will equip universities to assist with the transitions to more market-oriented economies, to democratic political life, to a strengthened civil society, or to responsible administrative practices in the public sector.

Eligible for FY 2002: Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, and Slovakia.

Also eligible for special funding in FY 2002 in designated fields or locations and with higher maximum awards:

Albania (political science only, maximum request $225,000), Kosovo (civic education encouraged, public administration and business administration not encouraged, maximum request$240,000), Montenegro (public administration or business administration only, maximum request $180,000), Serbia outside Kosovo (maximum request $180,000, projects encouraged with institutions outside Belgrade).

Anticipated Eligibility for FY 2003: Former Yugoslav Republic of Macedonia, Poland, and Romania. Subjects to be determined.

Anticipated Eligibility for FY 2004: Bosnia and Herzegovina, Croatia, Hungary, Slovenia, and Turkey. Subjects to be determined.

(6) *North Africa and the Middle East:* We encourage projects that will strengthen civil society, support the development of university-based programs in American Studies or the Teaching of English, support economic development, or encourage responsible, transparent administration in the public sector.

Eligible for FY 2002: Bahrain, Lebanon, Syria, and United Arab Emirates.

Also eligible for special funding in FY 2002 in designated countries and with higher maximum awards: Algeria (maximum request $215,000), Tunisia (maximum request $180,000). Projects with Algeria and Tunisia should contribute to economic modernization in the respective countries.

Anticipated Eligibility for FY 2003: Algeria, Gaza, Qatar, Saudi Arabia, and West Bank. Subjects to be determined.

Anticipated Eligibility for FY 2004: Israel, Jordan, Kuwait, Morocco, and Oman. Subjects to be determined.

(7) *South Asia:* We encourage projects that will promote the development of good governance and responsible administrative practices in either the public sector or the private sector, that will strengthen educational or economic institutions, or that will address issues of social or religious diversity. Due to

the relatively small number of proposals submitted for South Asia in recent years, proposals in FY 2002 may include more than one of the South Asian countries listed in this section. Proposals involving partners in more than one country should ensure that the anticipated benefits of the project to each partner are significant.

Eligible for FY 2002: Bangladesh, India, Nepal, Pakistan, and Sri Lanka.

Anticipated eligibility for FY 2003 and FY 2004: Countries and subjects to be determined.

Ineligibility

A proposal may be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established in this document and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) One of the partner institutions is ineligible;

(5) The foreign country or geographic location is ineligible.

Grant-Making Authority

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the UnitedStates and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world. The funding authority for the program cited above is provided through the Fulbright-Hays Act. Additional funding may be provided through separate appropriations that may be made available to the Bureau to support international educational partnerships.

Projects must conform with the Bureau's requirements and guidelines outlined in the solicitation package for this RFGP. The Project Objectives, Goals, and Implementation (hereafter, POGI) and the Project Specific Instructions (hereafter, PSI), which contain additional guidelines, are included in the Solicitation Package. Proposals that do not follow RFGP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

Announcement Title and Number

All communications with the Bureau concerning this announcement should refer to the Educational Partnerships Program and reference number ECA/A/S/U–02–01.

Deadline for Proposals

All copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, January 11, 2002. Faxed documents will not be accepted (although faxed letters of commitment from non-U.S. institutional partners may be submitted as part of the original proposal), nor will documents postmarked on Friday, January 11, 2002 but received on a later date.

Approximate Grant Duration

Grant activities should begin on or about September 16, 2002.

For Further Information

To request a solicitation package, contact the HumphreyFellowships and Institutional Linkages Branch (EducationalPartnerships Program); Office of Global EducationalPrograms; Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349; U.S. Department of State; SA–44, 301 Fourth Street, SW.; Washington, DC 20547; phone: (202) 619–5289, fax: (202) 401–1433. The Solicitation Package includes more detailed award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Applicants desiring more information may send a message to one of the following Educational Partnerships regional program officers: For Africa and the Middle East: Mary LouJohnson-Pizarro, e-mail: *mpizarro@pd.state.gov;* for the Western Hemisphere and Europe outside the NIS: Maria Urbina, e-mail: *murbina@pd.state.gov;* and for East Asia and South Asia: Joan Zaffarano, e-mail: *jzaffara@pd.state.gov.*

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at: *http://exchanges.state.gov/education/rfgps.* Please read all information before downloading.

Prospective applicants should read the complete Request for Grant Proposals as published in the **Federal Register** and available on the Bureau's website before addressing inquiries to the Educational Partnerships Program staff or submitting their proposals. Once the RFGP deadline has passed, Department staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application should be sent by the project's lead U.S. college or university to:U.S. Department of State,SA–44, Bureau of Educational and Cultural Affairs,Ref: ECA/A/S/U–02–01,Program Management, ECA/EX/PM, Room 534,301 4th Street, SW.,Washington, DC 20547.

Applicants must also submit the "Proposal Title Sheet,""Executive Summary," and "Proposal Narrative" sections of the proposal as e-mail attachments in Microsoft Word (preferred), WordPerfect, or as ASCII text files to the following e-mail address: partnerships@pd.state.gov. In the e-mail message subject line, include the following: ECA/A/S/U–02–01 and the country or countries of the foreign partner(s) together with the names of the U.S. and foreign partner institutions. To reduce the time needed to obtain advisory comments from the Public Affairs Sections of U.S. Embassies overseas and from binational Fulbright Commissions, the Bureau will transmit these files electronically to these offices.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content.Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and

democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals may be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the SolicitationPackage. All eligible proposals will be evaluated by independent external reviewers. These reviewers, who will be professional, scholarly, or educational experts with appropriate regional and thematic knowledge, will provide recommendations and assessments for consideration by the Bureau. The Bureau will consider for funding only those proposals which are recommended for funding by the independent external reviewers.

Proposals may also be reviewed by the Office of the Legal Advisor or by other offices of the U.S. Department of State. In addition, U.S. Embassy or binational Fulbright Commission officers may provide advisory comment. Funding decisions will be made at the discretion of the Department of State's Acting Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) will reside with the Bureau's grants officer.

Review Criteria

All reviewers will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be reviewed competitively according to these criteria, which are not rank-ordered or weighted.

(1) Broad and Enduring Significance of InstitutionalObjectives: Project objectives should have significant and ongoing results for the participating institutions and for their surrounding societies or communities by providing a deepened understanding of critical issues in one or more of the eligible fields. Project objectives should relate clearly to institutional and societal needs.

(2) Creativity and Feasibility of Strategy to Achieve Project Objectives: Strategies to achieve project objectives should be feasible and realistic within the projected budget and timeframe. These strategies should utilize and reinforce exchange activities creatively to ensure an efficient use of program resources.

(3) Institutional Commitment to Cooperation: Proposals should demonstrate significant understanding by each institution of its own needs and capacities and of the needs and capacities of its proposed partner(s), together with a strong commitment by the partner institutions, during and after the period of grant activity, to cooperate with one another in the mutual pursuit of institutional objectives.

(4) Project Evaluation: Proposals should outline a methodology for determining the degree to which a project meets its objectives, both while the project is underway and at its conclusion. The final project evaluation should include an external component and should provide observations about the project's influence within the participating institutions as well as their surrounding communities or societies.

(5) Cost-effectiveness: Administrative and program costs should be reasonable and appropriate with cost-sharing provided by all participating institutions within the context of their respective capacities. We view cost-sharing as a reflection of institutional commitment to the project. Although indirect costs are eligible for inclusion as cost-sharing by the applicant, contributions should not be limited to indirect costs.

(6) Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in project objectives for all institutional partners. Issues resulting from differences of race, ethnicity, gender, religion, geography, socio-economic status, or physical challenge should be addressed during project implementation. In addition, project participants and administrators should reflect the diversity within the societies which they represent (see the section of this document on "Diversity, Freedom, and DemocracyGuidelines"). Proposals should also discuss how the various institutional partners approach diversity issues in their respective communities or societies.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any StateDepartment representative. Explanatory information provided by the Department of State that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: June 22, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and CulturalAffairs, Department of State.

[FR Doc. 01–16703 Filed 7–3–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3712]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Census of Foreign Students in the United States

SUMMARY: The Educational Information and ResourcesBranch, Office of Global Educational Programs, Bureau of Educational and Cultural Affairs (the Bureau) announces an open competition for a Census of ForeignStudents in the United States. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to conduct a statistical survey (census) of foreign nationals affiliated with institutions of higher learning in the United States. The census should identify in the most economical way possible the number of foreign students and scholars studying, conducting research, or teaching at all accredited universities and colleges in the United States starting in the 2000/2001 academic year; it must provide detailed individual student profile data, country-specific aggregate data in the form of Country Locator Reports, and data about the number of American students studying abroad. Proposals should describe the methodology which will be used to collect the data and how the material will be analyzed and presented to the public. The proposals must also include plans to establish an advisory board to provide assistance in identifying and framing policy issues to be addressed.

Program Information

Overview

As the Federal Department tasked with promoting international educational exchange, the Bureau considers it essential to have an

accurate picture of foreign study and scholarship in the United States, such as that provided by the statistical survey. This survey should provide a detailed and comprehensive picture of the number and characteristics of foreign nationals (excluding permanent residents and refugees) affiliated with American institutions of higher learning and the number of U.S. students studying abroad. Topics of interest include the number of students and scholars, their gender, countries of origin, and fields of study. Information about students' academic level (undergraduate, graduate, post-doctorate), primary source of financial support, financial contributions they make while in the UnitedStates, and location of study should be included. A survey of students in intensive English language programs is also of interest. The Bureau will consider funding a publication, website, database, newsletter, or any other medium presented as a viable vehicle for making census data about the U.S. and foreign student population widely available in a timely manner and in a clear and concise format. Continued support, assuming availability of funding, will be contingent upon accurate data collection, quality of presentation of that data, and prompt publication of the census. The Bureau reserves the right to reproduce, publish or otherwise use any work developed under this grant for Government purposes.

Guidelines

Proposals should include a description of the methodology to be used to canvass colleges and universities for information about their statistics.Provision should be made for securing the highest possible response rate.Data collected from the surveys of foreign students enrolled in regionally accredited U.S. institutions of higher learning should be collected annually with 1,000 copies of the first edition being published in hard-copy and shipped to the Bureau in late fall 2002. For a more detailed analysis and cross tabulation of the characteristics of the foreign student population, individual student profile data should be collected from selected institutions. This individual student profile data should be provided to the Bureau in a format that is country-specific and should show the number of students from a specific country attending selected institutions of higher education in each state of the U.S. Applicants are encouraged to explore electronic collection of this data.

The Bureau is interested in a clear presentation of the data collected as well as a rigorous analysis of the data, which will draw conclusions about trends in international study in the U.S. that can be used to guide policy discussions for both government and academia. An advisory board must be established to provide assistance in identifying and framing policy issues to be addressed; the board should meet at least once a year. Board members would likely be drawn from a broad range of disciplines and organizations such as NAFSA: Association of International Educators and the American Association of Collegiate Registrars and Admissions Officers, and would be expected to provide fresh perspectives on topics that are related to the internationalization of higher education.

Scholarly analyses of census data addressing pertinent policy issues should be included, taking into consideration a wide range of prospective readers and policy makers in government, academia, and business. The publication should include a section on the mechanics and uses of data analysis, highlighting how conclusions can be drawn from the data collected, what some of the limitations of that analysis can be, and how the data can benefit those supplying it, i.e. as a campus advocacy or recruiting tool. Please include with the proposal a complete list of proposed chapter headings and sample analyses.

We welcome innovative approaches to the presentation of material, including possible breakdowns for Historically Black Colleges and Universities and the Hispanic Association of Colleges and Universities. Topics we would be interested in exploring include:

(1) Demonstrated benefits of study abroad, e.g. as seen by employers;

(2) How sociological and economic trends in other countries are reflected in student flows to the U.S.;

(3) The impact of international students and scholars on U.S. academic institutions and departments;

(4) How the international exchange population is affected by U.S. visa policies;

(5) U.S. academics lecturing and researching abroad: the countries/regions they are going to, the fields of study, and who pays for it;

(6) Data on foreign students who participate in U.S. study abroad programs;

(7) International student flows as an element of global trade and further study and analysis to enable judgments on the commercial significance of foreign markets for education and training;

(8) Additional information on programs of other countries promoting international education on a commercial basis; and

(9) Information on U.S. institutions' activities to educate foreign students in their home countries, to complement the data now collected on education of foreign students in the United States;

(10) A survey of foreign faculty teaching in U.S.

Grant should begin on or about October 1, 2001 and run through September 30, 2002.

Budget Guidelines

Grants awarded to eligible organizations with less than four years experience in conducting international exchange programs will be limited to $60,000. The Bureau anticipates awarding one grant amount of $190,000 to support program and administrative costs required to implement this program. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $190,000. There must be a summary budget as well as breakdown reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Allowable costs for the program include the following:

(1) Salaries and fringe benefits; travel and per diem;

(2) Other direct costs, inclusive of rent, utilities, etc.;

(3) Overhead expenses and auditing costs. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All communications with the Bureau concerning this RFGP should refer to the announcement's title and reference number *ECA/A/S/A 02–01*

FOR FURTHER INFORMATION, CONTACT: The Office of GlobalEducational Programs, Educational Information and Resource Branch, U.S. of Department of State, 301 4th Street, SW., (SA–44), Washington, DC 20547, Tel: (202) 619–5549, Fax: (202) 401–1433, E-mail: *aprince@pd.state.gov* to request a Solicitation Package.

The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program OfficerAnne Prince on all other inquiries and correspondence.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on August 1, 2001. Faxed documents will not be accepted at any time.Documents postmarked by August 1, 2001 but received at a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, SA–44 Bureau of Educational and Cultural Affairs, Reference: ECA/A/S/A–02–01, Program Management, ECA/EX/PM, Room 534, 301 4th St., SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5 diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life."Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges.Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Acting Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards Census of Foreign Students in the United States resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

(1) Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

(2) Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

(3) Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible.

Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

(4) Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content(orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

(5) Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

(6) Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

(7) Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

(8) Cost-Effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

(9) Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

(10) Improved Productivity and Innovation: TheProposal should specify and verify the prospect of improved productivity as well as proposed program innovations in implementing the activity.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the UnitedStates and the other countries of

the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: June 22, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 01–16702 Filed 7–5–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3716]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Open Grants Competition

SUMMARY: The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs of the U.S. Department of State, announces an open competition for an assistance award program. U.S. public or private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501 [c] may apply to develop projects that link their international exchange interests with counterpart institutions/groups in ways supportive of the aims of the Bureau of Educational and Cultural Affairs.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until after the Bureau program and project review process has been completed.

Announcement Name and Number

All communications concerning this announcement should refer to the Annual Open Grant Program. The announcement number is ECA/PE/C–02–1. Please refer to title and number in all correspondence or telephone calls to the Office of Citizen Exchanges.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, ECA/PE/C, Room 216, Bureau of Educational and Cultural Affairs, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, (202) 619–5348, to request detailed application packets which include award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

Program Information

We welcome proposals that directly respond to the following suggestions in each of the following countries. Given budgetary considerations, projects in other countries and for other themes will not be eligible for consideration.

Applicants should carefully review the following recommendations for proposals in specific geographical areas:

Africa (AF)

Proposals are requested for projects that would advance sustainable democracy by building human capital in Sub-Saharan Africa, and strengthening partnerships between the United States and Africa in the thematic categories delineated below. These themes are presented in order to stimulate thinking and planning in areas important to the Office of Citizen Exchanges, but no guarantee is made or implied that grants will be made in all categories.

Proposals for single country, sub-regional and regional projects will be accepted. The Bureau encourages applicants to consider carefully the choice of target countries. In order to prevent duplication of effort, applicants should research the work of development agencies on the target themes, and select countries for which there has been limited investment on the issue, or for which exchange activities would complement—not duplicate—current programs.

ECA seeks programs for Sub-Saharan Africa that address the following themes:

1. Joining Forces to Combat HIV/AIDS
2. Education for Democracy
3. Conflict Management and Resolution
4. Trade and Investment; AGOA
5. Strengthening an Independent Media
6. Environmental Protection; Environmental Education; Wildlife Conservation

(**Please note:** A separate Request for Grant Proposals will be published by the Office of Citizen Exchanges for projects addressing governance partnerships in Sub-SaharanAfrica.)

1. Joining Forces To Combat HIV/AIDS

The Bureau welcomes proposals for creative community-based initiatives that will promote better health care and prevent the spread of HIV/AIDS. Projects should explore the need to develop and reward leadership in these efforts, to improve community health education, and to remove barriers that impede a cooperative multi-sectoral response to HIV/AIDS. Projects should address some of following topics: Prevention and stigma reduction strategies for people living with HIV/AIDS, especially women and youth; engagement of political, religious, cultural and other leaders in public education efforts; grassroots mobilization and advocacy. Of special interest to the Bureau would be projects addressing the link between cultural practices, the empowerment of women and girls, and the spread of HIV/AIDS in Africa.

2. Education for Democracy

The Bureau welcomes proposals that strengthen civic education in Africa. Proposals should include development of curricula (in close cooperation with African partners), as well as training of teachers in participatory classroom methodologies. Curricula should focus on the role that individuals (in particular, youth) should and can play in a democracy. Issues to be addressed would include the meaning of civil society, the separation of powers, the role of non-governmental organizations, components of democracy, issues of national identity, democratic and team-centered approaches to decision-making, etc. The exchange should encompass both the theoretical and the experiential, with participants working with and learning from American teachers and young leaders. Of special interest to ECA are curricula that focus on leadership development for at-risk youth. Another special interest is school-based programs aimed as inculcating a culture of lawfulness that counters crime and corruption by educating young people on their civil, moral, and legal obligations to society.

3. Conflict Management and Resolution

If peace is to have meaning, citizens of the region must address one another in constructive ways, overcoming the

fears and resentments that have built up over time. A project should include stakeholders from different nations, ethnic groups, or religious communities in an effort to expand the dialogue for coexistence. The Bureau is especially interested in proposals that highlight the role of civil society—including women and young leaders—in resolving conflicts and participating in negotiations for implementation of peace accords.

4. Trade and Investment; AGOA

The African Growth and Opportunities Act (AGOA), signed into law in May of 2000, offers qualifying African countries (there are 35 as of this time) preferential access to U.S. markets for their industries. We invite proposals to 'jumpstart' the AGOA process by providing medium and small African business entrepreneurs and members of business association's exposure to AGOA and to the American market in order to increase capacity to develop new African-U.S. trade linkages. Proposed programs should include activities to enhance participants' understanding of American business norms and actual practices, provide them with knowledge of U.S. customs operations, product distribution and retailing, and, finally, help them develop business linkages and relationships with manufacturers and businesses in their respective sectors.

5. Strengthening an Independent Media

We invite proposals to build professionalism in the media—i.e., gaining an appreciation of and skill for objective reporting; developing subject specialization (e.g. justice/legal issues); giving fair coverage to positive as well as negative news; separating comment from news coverage; avoiding inflammatory presentations; maintaining independence from special interests; etc. Concomitantly, attention must be given to laws that constrain freedom of information and to forces that urge journalists, editors, producers and publishers to censor themselves, lest governments punish the media for having conveyed the message. Program activities should emphasize hands-on activities such as professional internships, small group training and specially tailored projects, rather than academic seminars. Of special interest are programs on political reporting in a multi-party democracy.

6. Environmental Protection; Environmental Education; Wildlife Conservation

Environmental degradation undermines the quality of human life. It is closely linked, both directly and indirectly, with issues of public health (air and water pollution; solid waste management) and economic welfare (preservation of natural sites; eco-tourism; agricultural productivity; the rational management of natural resources). Environmental protection and conservation are trans-boundary issues, faced by all countries/entities. Projects are sought that enhance public awareness of the threat posed by environmental deterioration, that facilitate efforts to combat the threat by mobilizing either governmental or non-governmental organizations, and that work at multiple levels to educate and to develop solutions. Of special interest are projects that would build the capacity of national park systems, strengthen local economies, and promote regional/cross-border cooperation in the Great Lakes region (Rwanda, Uganda and the Democratic Republic of Congo), as well as projects to clean up major cities in other countries.

Contact for AF programs: Curtis Huff, 202/619–5972; e-mail *chuff@pd.state.gov* or James Ogul, 202/205–0535; e-mail: *jogul@pd.state.gov*.

East Asia and the Pacific (EAP)

For China

1. Rule of Law: Projects, which include the development of an independent judiciary, the enforcement of laws concerning intellectual property rights (IPR), government accountability and alternative dispute resolution (ADR). The objective is to expose officials, journalists, lawyers and other relevant professionals to the concepts and practice of law in the U.S.

2. WTO Implementation: Projects, which include TRIPS compliance, IPR enforcement, regulatory transparency, sector reforms and measures that government and business can take to ease the displacement of workers in the process of economic liberalization.

3. Volunteerism: Projects which emphasize the role that volunteer groups play in giving voice to citizens' concerns and how U.S. organizations have succeeded in developing effective volunteer networks in the U.S.

4. Women in Society: Projects which foster a dialogue on effectively addressing the common challenges women face in both countries, including the combating of family violence, a rapidly growing concern in China.

The need to involve individuals and organizations in the Western region of China's vast interior should be reflected in successful proposals, particularly in the Rule of Law and WTO proposals.

For Indonesia

1. Conflict resolution: Projects focused on the promotion of cultural and religious tolerance in an ethnically diverse society. Activities located in regions outside of Java, such as Aceh, Maluku, Irian Jaya/Papua are especially welcomed, as are those emphasizing the role of the media in promoting tolerance and the resolution of conflict.

2. Media: Projects, which emphasize the role that a free and professional media play in a democracy. Activities taking place outside of Jakarta are recommended, as is the involvement of media organizations such as the Press Council, the Alliance of Indonesian Journalists and Media Watch.

3. Rule of Law: Projects concentrated on the use of the legal system to improve the protection of human rights. Potential participants include: members of the Constitution Drafting Committee on the development of human rights law; lawyers and/or judges on the use of the court system to protect human rights; a human rights NGO on the provision of legal services for the indigent. Also favorably looked upon would be a project on the issues of reconciliation and justice, with the need for both.

For Malaysia

1. Intellectual Property Rights (IPR): Projects to design courses on recent developments in IPR law and cyber law. Malaysia, according to the USTR, is a main producer and exporter of pirated products, partially due to its lack of expertise in IPR law and low prosecution rates for IPR offenses. An institutional affiliation with the University of Malaya Law Faculty, including faculty exchanges and a possible distance education component, would help confront rampant IPR piracy and also contribute to a greater understanding of the U.S. legal system. Projects that incorporate workshops and training on these issues for staff of the Attorney General's office and the judiciary are also welcomed.

2. Judicial Reform: Projects to aid in the implementation of recent legal reforms, especially alternative dispute resolution and case management. Other high priority projects relate to judicial accountability, including training on the role of an independent judiciary, appropriate conduct for judges and institutional mechanisms for ensuring judicial independence and impartiality.

3. Mutual Understanding: Projects designed to strengthen meaningful exchange between young Malaysians and Americans, especially on issues pertaining to globalization, human

rights and democracy. Because the numbers of Malaysians studying in the U.S. have recently and dramatically decreased, a generation of young professionals will soon have no direct knowledge or understanding of U.S. society. However, there is also growing interest in the Islamic community in the U.S.; thus a project focused on Islam and interfaith dialogue would help dispel what is perceived as the USG's "anti-Islamic" agenda.

For Mongolia

1. Media in a New Democracy: Projects that emphasize the role of a free and independent press in strengthening a new democracy and media strategies to accomplish that goal. Upgrade professional skills of journalists in order to bolster their role in the building of democracy. Training could emphasize standards of objectivity and media ethics and issues such as anti-corruption.

2. Promoting Democratic Government: Projects that demonstrate how a democratic government functions from the community to the national level. Designed for mid to upper level government officials and Parliamentarians relatively unfamiliar with the democratic process, these programs should focus on such issues as deregulation, the role of the media in a democracy, separation of powers and the government's role in social and economic development.

For the Philippines

1. Projects focused on the Philippines' capacity to assess and remedy environmental problems and on the formulation and enforcement of regulations that protect threatened land, coastal and marine resources. Since the Philippines has received international priority for assistance in reducing greenhouse gas emissions, projects that promote the use of clean fuels and renewable energy to improve efficiency in energy generation, transmission, distribution and usage are also welcomed.

2. Economic Prosperity: Projects focused on increasing market access through the liberalization of trade and investment and on expanding awareness of the potential benefits of globalization and the interconnectedness of the world economy are welcomed. As the poorest market economy in the region, the Philippines would benefit from improved economic access to the American market and U.S. exports and investments in the Philippines would also benefit. Projects that assist in the design and funding of a social welfare net for those at the bottom of the economic ladder are also solicited.

For Vietnam

1. Bilateral Trade: Proposals in the public administration of trade regimes, such as training for customs officials, product promotion of both exports and imports, port administration, accountability, tracking systems development, etc.

2. Public Health Administration: Projects that support low-cost sanitation efforts and basic health education.

ECA contact for EA programs: Steve Lebens, 202/260–5485; E-Mail{SLebens@pd.state.gov}

Near East and North Africa (NEA); South Asia (SA)

Proposals that respond to the following suggested themes and organizational approaches will be considered Near East, North Africa, and South Asia. Not all countries listed in parentheses as potential participants under the theme must be included in the exchange, and proposals for single-country projects will receive full consideration. Project proposals that bring together representatives from three or more countries will receive priority consideration. Additionally, not all components mentioned in relation to a given theme must be addressed in a proposal; the paragraphs below are intended as a stimulus to critical thinking, not as immutable frameworks.

The countries/entities comprising the NEA and SA Areas are listed below. Currently there is no U.S. mission in Afghanistan, Iran, Iraq, or Libya. Please consider countries listed (specific interest) as potential exchange partners in projects that address the theme, but recognize that all themes may be appropriate for region-wide (any country or group of countries) consideration.

Countries/Entities of the Near East and North Africa—Algeria; Bahrain; Egypt; Iran; Iraq; Israel; Jordan; Kuwait; Lebanon; Libya; Morocco; Oman; Qatar; Saudi Arabia; Syria; Tunisia; the United Arab Emirates (UAE); the West Bank and Gaza; Yemen

Countries of South Asia—Afghanistan; Bangladesh; Bhutan; India; the Maldives; Nepal; Pakistan; Sri Lanka

1. Citizen Participation and Advocacy (Building and Strengthening Non-governmental Organizations)

For India; Bangladesh; Pakistan; Nepal; Egypt; Morocco; Israel, the West Bank and Gaza; Lebanon; Syria; Saudi Arabia; Kuwait; the UAE:

Social and political activism, encouraged, focused, and channeled through non-governmental organizations, is a basic underpinning of democratic society. Strengthening NGO advocacy skills, management, grassroots support, recruitment and motivation of volunteers, fundraising and financial management, media relations, and networking for mutual support and reinforcement will strengthen democratic/civil society trends in the region. Among other emphases, this project should focus on answering questions about the proper role of NGO's, about facilitating Internet communication and about developing cooperation between educators and NGO's and between government agencies and NGO's for community action. It is essential that organizations submitting proposals in this category recognize that democratic activism is viewed with distrust by some of the governments in the area and that foreign involvement with local NGO's must be carefully thought out and approached with subtlety and sensitivity, as such involvement may be viewed with suspicion. Close consultation with American Embassy/Consulate officers is critical.

2. Women's Activism, Organizational Skills, and Political Leadership

For Egypt; India; Israel; Lebanon; Saudi Arabia; Kuwait; UAE; Bahrain; Oman; Qatar; Yemen:

This theme is also appropriate for a South Asia regional exchange or a regional project involving the countries of the Arabian Gulf. Throughout the region, women exercise disproportionately little political and social influence. While some women's groups have organized themselves and actively campaign for equal rights and a greater say in local issues, women need to learn how to develop consensus on issues and build a constituency, mobilize support—both urban/political and grassroots—raise money at the municipal, state, and national levels, and how to win elections. Once elected, at either the state or the national level, how can they most effectively represent the interests of their constituents? What can women activists do to affect policy as well as practice in the areas of health care, education, domestic violence, and equal treatment under the law? Elected women need skills training in budget, human resource management, policy analysis, legislative drafting, and fighting corruption.

3. Environmental Protection; Environmental Education; Urban Environment

For Egypt; Israel; the West Bank and Gaza; Lebanon; Bahrain; India; Nepal:

Environmental degradation undermines the quality of human life. It is closely linked, both directly and indirectly, with issues of public health (air and water pollution; solid waste management) and economic welfare (preservation of natural sites; ecotourism; agricultural productivity; the rational management of natural resources; the balance between industrial growth and environmental concerns, especially in urban areas). Pollutant-laden air and impure groundwater are trans-boundary issues, faced by all countries/entities. Projects are sought that enhance public awareness of the threat posed by environmental deterioration, that facilitate efforts to combat the threat by mobilizing either governmental or non-governmental organizations, that engage municipal officials, planners, and service providers, and that work at multiple levels to educate and to develop solutions. Of special concern to India is the need for increased awareness and training regarding the treatment and disposal of hazardous, often medical/bio-medical waste.

4. Professionalism in Media and the Strengthening of Journalistic Independence

For Israel; Jordan; the Wet Bank and Gaza; Lebanon; Tunisia; Morocco; India; Nepal; and Pakistan:

The development of professionalism in media—gaining an appreciation for the importance of objective reporting; developing subject specialization; applying rational management techniques to newspaper publishing; etc.—remains an area in which serious efforts must be expended if the fourth estate is to fulfill its potential as a pillar of democratic society. Concomitantly. Laws throughout the region constrain press freedoms' and journalists' editors' and publishers are forced to self-censor, lest governments punish the media for having conveyed the message. Projects are needed to address professionalism and to focus on training and advice to individuals and organizations devoted to the protection of press freedoms and to the defense of journalists and their right to practice their profession with integrity.

5. Rule of Law/Administration of Justice

For Nepal and Egypt:

A well-trained, independent judiciary is fundamental to a democratic political and social system. The integrity of the judicial process, affecting public confidence in the ability of the judicial process to deliver justice, must be protected from political interference. Public perception of unequal and unfair treatment before the bench of women, members of ethnic minority communities and the poor is widespread. Even well qualified and well-intentioned judges are obstructed in their efforts to deliver justice by case backlog, by procedural delay, and by insufficient authority to exercise judicial discretion in court management. It is important that judges of both lower and higher courts be introduced to the principles and practices of U.S. jurisprudence and that such fundamental procedures as alternate dispute resolution, early neutral evaluation, case management, the acceptance of guilty pleas, continuous trial proceedings, and arbitration/mediation.

For Pakistan or South Asia Regional:

In many countries the legal profession is itself a major impediment to legal reform.

Members of the bar take to the streets in semi-violent protest when the judiciary suggests reforms. Local bar associations function more as clubs than as professional institutions. Judges feel vulnerable to the legal profession and cannot formally relate to its practitioners. Proposals are sought from American institutions with experience in training members of the bench and the bar to work together to resolve such issues as performance standards (efficiency; competence; fairness of administration), ethical standards (impropriety; corruption; discrimination against specific groups, such as women or minorities), and other related concerns. The goal of such a project would be to enhance the professionalism of the judiciary, the quality of the relationship between the judiciary and the bar, and, by extrapolation, to raise the quality of the administration of justice.

For Jordan:

A project is sought to institute private sector or university-based programs to train paralegals and court administrators. Participants might be unemployed or underemployed university graduates. It would be essential to work with the Ministry of Justice, the judiciary, and the bar association to assure that the trained graduates could be integrated into the court system, with the goal of contributing to the more efficient functioning of the judicial process.

6. Public Health

Issues of public health are central to the social well-being and to the economic productivity and stability of a country. Some such issues are directly related to the physical environment; others are more appropriately addressed through the introduction of programs or the institution of educational/training designed to modify the behavior of individual citizens.

For India:

Programs are sought that will result in the modification of current practices having a deleterious impact on public health, such as inadequate or nonexistent to water treatment and purification, inadequate exhaust standards, food processing facilities, waste collection and disposal (including biomedical waste), unsterile practices at hospitals, the absence of screening at blood banks, the operation of aging smokestack industries, etc.

For Israel; the West Bank and Gaza:

Statistics in Israel indicate an alarming increase in incidents of violence in Israeli society, particularly school violence and domestic violence. Similar patterns appear to exist in the West Bank and Gaza. Educators posit that the overall violence of the Israeli-Palestinian confrontation has a spillover effect, with students acting out in the schools what they witness in the streets and at home. An exchange both to investigate the causes of increased in-school violence and to develop educational programs focused on youth and young adults—the most common perpetrators and victims of the violence—would be welcomed.

7. Combating Narcotic Abuse and Developing Positive Approaches to Rehabilitation and Re-integration

For Israel; Jordan; India:

Narcotics trafficking and abuse is an increasing problem for countries in the Near East and South Asia. There is a need for a regional project, to include educators, community leaders, medical practitioners, and drug rehabilitation experts, to work with American counterparts in building a strategy to contain the spread of drug use. Emphasis should be placed on dealing with the issue on a community level, and there should be a focus on rehabilitation and the re-integration into society of former addicts through such undertakings as job skills training programs and family and community support efforts including initiatives and mechanisms for minimizing the likelihood of relapse.

For India:

NGO's in India dealing with substance abuse have adopted diverse approaches to treatment, follow-up, aftercare, and rehabilitation. The greatest problem they face is the relapse of recovering addicts. The three major NGO's in this field in Calcutta are interested in working with American specialists who can provide updated

strategies of relapse prevention. Similarly these NGO's need to develop low-cost but effective "care and support" programs for HIV positive individuals, including counseling training.

8. Good Governance

For Morocco and Nepal:

Although concepts such as good governance and ethics, transparency, responsiveness, and the fight against corruption play an increasing role in public debates, in the media, and in regional conferences, there is little evidence of reform. The populace, experiencing abuses of power and corruption on a daily basis, lacks confidence in its institutions. A proposal is sought that would assist in the development of mechanisms of control to counteract corruption. The American NGO would work with indigenousNGO's, citizens' rights groups, journalists; human rights organizations, and government officials to determine how best to expose and combat corruption. Success in making government at all levels accountable and transparent would contribute greatly toward the development of democratic institutions and civic responsibility and would encourage increased foreign investment.

For India and Jordan:

With the creation of new governmental units in some countries and the increasing need for more sophisticated knowledge and skills among legislators and professional parliamentary staff in others, there is a need for training both elected officials and professional staff in management and research skills, legislative drafting, program analysis, and computer skills.

9. Conflict Management/Resolution

For Jordan:

The absence of local or neighborhood dispute resolution centers staffed by individuals trained in mediation, minor disputes, often within families or between neighbors, may escalate into formal conflict, enter the legal system, and evolve into win-lose situations. A project is sought to establish and provide support—training; administrative skills development—for local alternative dispute resolution efforts.

For Israel; the West Bank and Gaza; India; Pakistan; Lebanon; Sri Lanka:

A community that must expend its time, its energy, and its material resources on offensive or defensive combat is unable to develop or maintain a civil basis for democratic institutions. Projects are sought that will focus on redefining inter-communal conflict in specific situations and, through facilitating dialogue—among teachers, professionals, businesspersons, journalists, community activists—promote better understanding among parties in conflict.

10. Human Rights

For Nepal:

Following the establishment of democracy, the government of Nepal made various commitments to ensure the rights of women and children. Diverse organizations are available to work with American specialists in the areas of child labor and trafficking in women and children. A proposal is sought to work with Nepalese counterparts in combating child labor and in promoting the rights of women and children in an environment in which trafficking remains a major threat.

ECA/PE/C/NEA contact for NEA and SA programs: Thomas Johnston, 202/619–5325;{*tjohnsto@pd.state.gov*} or Susan Krause, 202/619–5332; {skrause@pd.state.gov}

Western Hemisphere Affairs (WHA)

The Bureau of Western Hemisphere Affairs includes the countries of Canada, Mexico, Central and South America, and the Caribbean.

For All of WHA

We welcome proposals which contribute to strengthening democratic institution building; administration of justice, including exchanges of judges and prosecutors and between associations and NGOs promoting justice; law enforcement, including community-based anti-gang or anti-drug organizations; and economic reform, free trade and regional economic integration, sustainable development, environmental education, public administration, and municipal government for all countries in the region. In addition, we welcome proposals that improve civil rights for Afro-Latino minorities in the region, with special attention to the goals of economic development and full participation in their nation's democratic institutions and civic life. For the countries mentioned below, some preference may be given to proposals that track closely the following suggestions:

For Mexico

We welcome proposals that would create opportunities for Mexican and U.S. cities to better understand how effective communities can and do resolve problems via strategic planning and implementation. Project activities might focus on how municipal teams, including government officials, educational leaders, NGOs, business leaders, etc., join forces to develop approaches to economic development or solutions to major problems (environment, crime, drug use, etc.) Ideally, participants will be involved in this kind of strategic committee and will share ideas, successes, and challenges from the two countries.

For Brazil

We welcome proposals for projects designed to work with the Brazilian judiciary and legal establishment on implementing alternative dispute resolution, particularly mediation, in the country.

For El Salvador

We welcome proposals that involve participants in development of public environmental education campaigns in which the private sector, media and NGOs play important roles in the fields of promoting and implementing programs on resource conservation, recycling in areas outside the major metropolitan areas and sustainable development. Special focus should be devoted towards the strengthening of local Salvadoran environmental NGOs, many of which do not have the personnel or resources to support large-scale public environmental education projects. Competitive proposals should emphasize preventive maintenance and regular cleaning of water drainage systems during the rainy season (May–November).

For Costa Rica, Honduras and Panama

We welcome proposals that involve participants in developing environmental education programs in schools and to the public with use of the media and/or with selected municipalities, capitalizing on the new interest of fledgling NGO environmental groups. Hurricane Mitch's destruction raised awareness throughout Central America of the potential for deforestation to intensify the severity of natural disasters. A particularly vulnerable area is the Panama Canal Watershed, whose protection is vital to ensuring adequate water supply for the functioning of the Canal. InPanama there is growing public awareness that the time for action is now and that education is the key. Therefore, for Panama we welcome proposals that focus on environmental education in the public schools as well as community-based projects on recycling, resource conservation, and sustainable development.

For Nicaragua and Guatemala

We welcome projects that work to strengthen institutions of government whose work has a direct impact on the quality of a country's democracy and to increase their transparency, accountability, and responsiveness, and effectiveness of operations. Especially welcome would be proposals that address anti-corruption methods. Projects might focus on local government or elements of executive branches, legislatures, or judicial systems. One example might be an exchange for local mayors to see innovations in city government and citizen participation in municipal affairs, with a return visit by a group of U.S. mayors and city managers and municipal experts to hold larger workshops on the same theme.

For Peru

We welcome proposals on decentralization and resource management issues for local government. Competitive proposals should include an exchange for a group of local mayors and other decentralization specialists who would meet with U.S. local government representatives, businesses and neighborhood groups in order to gain a more in-depth understanding of local government in the U.S.

For Jamaica

We welcome proposals that would create opportunities for Jamaican communities to better understand how to resolve problems via citizen participation and multi-sectoral cooperation. Project activities might focus on how municipal teams, including NGOs, civic and educational leaders, government officials, business leaders, media, etc., join forces to develop approaches to economic development or solutions to major problems (crime, HIV/AIDS, domestic violence, drug use, environment, etc.). Of special interest are programs that encourage participation and leadership by women and youth at risk.

For Haiti

We welcome proposals for the strengthening of civil society organizations.

ECA/PE/C/WHA/EAP contact for WHA programs: Laverne Johnson, 202/619–5337; E-Mail {LJohnson@pd.state.gov}

Central and Eastern Europe (CEE) and the NewlyIndependent States (NIS)

Requests for proposals involving the following countries will be announced in separate competitions: CEE—Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Slovak Republic, and Slovenia; NIS—Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Proposals involving these regions WILL NOT be accepted under this competition.

Western Europe (WEU)

Proposals involving this region WILL NOT be accepted under this competition.

Selection of Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of U.S. internships include letters tentatively committing host institutions to support the internships. In the selection of foreign participants, the Bureau and U.S. Embassies abroad retain the right to review all participant nominations and to accept or deny participants recommended by grantee institutions. However, grantee institutions should describe in detail the recruitment and selection process they recommend. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously traveled to the United States.

Guidelines

The Office of Citizen Exchanges works with U.S. private sector and governmental, non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures and international interests. The Office supports international projects in the United States or overseas involving leaders or potential leaders in the following fields and professions: urban planners, jurists, specialized journalists (specialists in economics, business, environmental, political analysis, international affairs), business professionals, NGO and community leaders, environmental specialists, parliamentarians, educators, economists, and other government officials

The themes addressed in exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including, where applicable, the expected yield of any associated conference. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. All applicants should contact the Office of Citizen Exchanges to discuss program concepts prior to proposal submission. In addition, applicants are encouraged to contact the Public Affairs Sections in U.S. Embassies to discuss proposed activities and their relevance to mission priorities.

Bureau-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas. Examples of possible program activities include:

1. A U.S.-based program that includes: orientation to program purposes and to U.S. society; study tour/site visits; professional internships/placements; interaction and dialogue; hands-on training; professional development; and action plan development.

2. Capacity-building/training-of-trainer (TOT) workshops to help participants to identify priorities, create work plans, strengthen professional and volunteer skills, share their experience to committed people within each country, and become active in a practical and valuable way.

3. Seed/small grants to indigenous non-profit organizations to support community-based educational projects that build upon exchange activities and that address issues of local concern. Projects may include a component for a Seed/Small Grants Competition (often referred to as 'sub-grants' or 'secondary grants'). This requires a detailed plan for recruitment and advertising; description of the proposal review and award mechanism; a plan for how the grantee would monitor and evaluate small grant activity; and a proposed amount for an average grant. The small grants should be directly linked to exchange activities.

4. Site visits by U.S. facilitators/experts to monitor projects in the region and to provide additional training and consultations as needed.

5. Content-based Internet training/cyber-training to encourage citizen participation in workshops, fora, chats, and/or discussions via the Internet that will stimulate communication and information sharing among key opinion leaders on priority topics as a form of

cost sharing. Proposals that include Internet utilization must reflect knowledge of the opportunities and obstacles that exist for use of information technologies in the target country or countries, and, if needed, provide hardware, software and servers, preferably as a form of cost sharing. Federal standards are under review and their adoption may impact on the implementation of these programs.

The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; i.e., clerical work, auto maintenance, etc., and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support.

The Office does not support proposals limited to conferences or seminars (i.e., one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope that is receiving Bureau funding from this competition. The Office does support workshops, seminars and training sessions that are an integral part of a larger project. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. The Office of Citizen Exchanges encourages project proposals involving more than one country. Pertinent rationale that links countries in multi-country projects should be included in the submission. Single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals are subject to review and comment by the U.S. Embassy representative in the relevant country, and pre-selected participants will also be subject to Embassy review and approval.

3. Programs should clearly identify any counterpart organization(s) mentioned in the proposal and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities that take place exclusively in other countries when U.S. Embassies are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

5. Office of Citizen Exchanges grants are not given under this RFGP to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for sports and/or sports related programs. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by otherBureau offices are also announced in the **Federal Register**.

For projects that would begin after December 31, 2002, competition details will be announced in the **Federal Register** on or about June 1, 2002. Inquiries concerning technical requirements are welcome prior to submission of applications.

Funding and Cost Sharing

Although there are not set funding limits, proposals for less than $165,000 will receive preference. Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate Bureau decisions on funding. While an all-inclusive budget must be provided with each proposal, separate component budgets are optional. Competition for Bureau funding support is keen.

The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, and ability to carry out the program successfully. Since Bureau grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Proposals with substantial private sector support from foundations, corporations, and other institutions, will be deemed highly competitive. The Recipient must provide a minimum of 33 percent cost sharing of the total project cost.

The following project costs are eligible for consideration for funding:

1. Travel costs. International and domestic airfares; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at http://www.policyworks.gov/.

3. Interpreters: If needed, interpreters for the U.S. program are available through the U.S. Department of State Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country: Grant proposal budgets should contain a flat $160/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget. Locally arranged interpreters with adequate skills and experience may be used by the grantee in lieu of State Department interpreters, with the same 1:4 interpreter to participant ratio. Costs associated with using their services may not exceed rates for U.S. Department of State interpreters.

4. Book and cultural allowance: Foreign participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. program staff members are not eligible to receive these benefits.

5. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Subcontracts should be itemized in the budget.

6. Room rental. Room rental may not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. Equipment. Proposals may contain limited costs to purchase equipment crucial to the success of the program, such as computers, fax machines and copy machines. However, equipment costs must be kept to a minimum, and costs for furniture are not allowed.

9. Working Meal. The grant budget may provide for only one working meal during the program. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. Interpreters must be included as participants.

10. Return travel allowance. A return travel allowance of $70 for each foreign participant may be included in the budget. This may be used for incidental expenses incurred during international travel.

11. Health Insurance. Foreign participants will be covered under the terms of a U.S. Department of State-sponsored health insurance policy. The premium is paid by the U.S. Department of State directly to the insurance company. Applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grant organization employees, benefits, and other direct or indirect costs per detailed instructions in the Solicitation Package. Note: the 20 percent limitation of "administrative costs" included in previous announcements does not apply to this RFP. Please refer to the Solicitation Package for complete budget guidelines.

Review Process

All proposals will be forwarded to panels of Bureau officers for advisory review. The program office will review each proposal. U.S. Embassy officers will also review proposals, where appropriate. Proposals may also be reviewed by the Office of the Legal Advisor or by other offices in the Department of State. Final funding decisions are at the discretion of the Department of State's Acting Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's GrantsOfficer.

Review Criteria

The Bureau will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency mission.

2. *Program Planning/Ability to Achieve Program Objectives:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

3. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of Diversity:* Proposals should demonstrate the substantive support of the Bureau's policy on diversity. Program content (training sessions, resource materials, follow-on activities) and program administration (participant selection process, orientation, evaluation, resource/staff persons) should address diversity in a comprehensive and innovative manner. Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines on page four of the Proposal Submission Instructions (PSI).

5. *Institutional Capacity/Reputation/Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's or project's goal. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) that ensures that Bureau-supported programs are not isolated events.

7. *Evaluation Plan:* Proposals should provide a plan for a thorough and objective evaluation of the program/project by the grantee institution.

8. *Cost-Effectiveness/Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Deadline for Proposals

The Bureau of Educational and Cultural Affairs must receive all copies by 5 p.m. Washington, DC time on Friday, October 5, 2001. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through October 5, 2001, for projects where activities will begin between April 1, 2002 and December 31, 2002.

To Download a Solicitation Package Via Internet

The Solicitation Package may be downloaded from Department of State's website at http://exchanges.state.gov/education/rfgps/. Please read all information before beginning to download.

Addresses

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, REF: ECA/PE/C/–02–1 Annual Open Grant Competition, Program Management, ECA/EX/PM, 301 4th Street, SW., Room 534, Washington, DC 20547.

Applicants must also submit to E/XE the "Executive Summary" and "Proposal Narrative" of each proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to U.S. embassies overseas for their review, with the goal of reducing the time it takes to get the respective Embassy's comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the

advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; * * * to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the need of the program and the availability of funds. Organizations will be expected to cooperate with the Bureau in evaluating their programs under the principles of the Government Performance and Results Act of 1993, which requires federal agencies to measure and report on the results of their programs and activities.

Notification

Final awards cannot be made until funds have been fully appropriated by the Congress, allocated, and committed through internal Bureau procedures. Grant awards will be announced after February 1, 2002.

Dated: June 28, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–16836 Filed 7–3–01; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 3714]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Education for Development and Democracy: U.S.-Africa Governance Partnerships

Summary

The Near East/South Asia/Africa Division of the Office of Citizen Exchanges, of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition to build and strengthen U.S.-Africa partnerships in the government sector. U.S.-based public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to conduct international exchange programs. Grants are subject to the availability of funds under the Education for Development and Democracy Initiative.

Please note: Proposals for civil society, professional and business linkages will not be considered under this competition.

Programs and projects must comply with Bureau requirements and guidelines outlined in the Solicitation Package: this includes the Request for Grant Proposals (RFGP) and the Proposal Submission Instructions (PSI).

Announcement Title and Number

All communications with the Bureau concerning this Request for Grant Proposal (RFGP) should refer to the announcement title "Education for Development and Democracy: U.S.-AfricaGovernance Partnerships" and reference number ECA/PE/C/NEA–AF–02–08.

Overview

The Bureau welcomes proposals for governance partnerships linking U.S. professionals with judicial, executive and legislative institutions in Africa to strengthen their effective, accountable, and transparent service to the public. The partnership concept is emphasized as a mutually beneficial, direct and efficient method of promoting education, democracy, and free market economics. Partnerships promote the interests and long-term commitment of African and American participants going beyond U.S. government financing. Partnerships also help to establish a strong network of counterpart institutions in the U.S. and Africa, which invigorate and inform each other, enable collaborations and joint projects, and promote the exchange of information and resources.

Education for Development and Democracy Initiative (EDDI)

EDDI is an African-led development program with special emphasis on girls and women, concentrating on improving the quality and access to education; enhancing the availability of technology; and increasing citizen participation in government to accelerate Africa's integration into the world community of free-market democracies. In addition to governance projects, it promotes sustainable partnerships among African education and democracy organizations and between them and their sister organizations in the United States to educate children, involve communities, implement new business modes, and extend quality educational services.

Guidelines

Proposals for governance partnerships should include a bi-lateral, multi-phase, integrated approach to program activities, which build sequentially from exploratory work to cooperative action plans and concrete outcomes. TheOffice of Citizen Exchanges encourages applicants to be creative in planning project activities. Proposals should include practical, hands-on, community-based initiatives, designed to achieve concrete objectives in the field. The proposal should not focus on theoretical/academic workshops, seminars, studies or research.

In an effort to increase mutual understanding and build long-lasting linkages between our countries, proposals should include, to the fullest extent possible, equal numbers of American and African participants in international travel. In addition, applicants are encouraged to include American participants who are new to international exchanges and/or to the target countries.

The Bureau encourages applicants to consider carefully the choice of target countries. In order to prevent duplication of effort, applicants should

research the work of development agencies (such as USAID, UN agencies) on the target themes, and select countries for which there has been limited investment on the issue. Applicants are welcome to contact the Public Affairs Sections (PAS) in U.S. Embassies in Africa, and the Office of Citizen Exchanges, to discuss proposed activities and their relevance to mission priorities.

Applicants may design single-country or multiple-country projects. The Bureau offers the following programming ideas and suggestions.

Judicial Reform and the Administration of Justice

A well-trained, independent judiciary is fundamental to a democratic political and social system. The judiciary must be protected from political interference in legal proceedings and public perception of unequal and unfair treatment before the bench of women, members of ethnic minority communities, and the poor. Even well qualified and well-intentioned judges are obstructed in their efforts to deliver justice by case backlog, by procedural delay, and by insufficient authority to exercise judicial discretion in court management. It is important that judges of both lower and higher courts be introduced to the principles and practices of U.S. jurisprudence and that such fundamental procedures as alternative dispute resolution, early neutral evaluation, case management, plea bargaining, continuous trial proceedings, and arbitration/mediation be familiar to them. The Bureau invites proposals that strengthen the integrity of the judicial process, and that consequently build public confidence in the ability of the judicial process to deliver justice.

Legislative Research and Legislative Drafting

In many countries of Sub-Saharan Africa, newly elected legislators take office with little practical experience to prepare them in writing new laws. There are "infant" drafting programs at a few South African universities (Pretoria, Stellenbosch), but more help is needed in South Africa and throughout the region. Legislators, however, do not work on their own; the breadth, depth and utility of the laws they write are dependent on the input from aides or researchers who search for models or "best practices" from elsewhere. We believe programs meant to help both legislators and legislative researchers would be useful. A program aimed at legislators could bring in experts to work with local universities, organizations or government institutions in developing legislative-training programs. If neighboring posts are interested, they could send academic or "political" participants to drafting workshops held in the host country. ECA also welcomes proposals with a focus on training legislative researchers. Participants would be trained for 3–4 months performing research and policy analysis. Participants may include employees of foreign governments, employees of political parties, or university students.

Legislative Management

The Bureau invites proposals with the purpose of promoting and improving the effectiveness of African legislatures through development of procedural and organizational options and opportunities, which serve themselves, the public, and other elements of government. These proposals might address matters such as staff organization and management, public accessibility and accountability, constituent relations, public information and media relations, and enhancing transparency of the legislative process. Also of interest are proposals that explore the impact of legislation on national and state budgets or address the role of legislatures in fiscal and programmatic oversight.

Local Government Administration

The Bureau is interested in programs that will enhance management skills of local government officials and administrators. Applicants must demonstrate expertise and knowledge of the political landscape and how the system of local government functions in the target country or countries. Programs may include a combination of U.S.-based internships, in-country workshops, roundtables, panel discussions, case studies and specially tailored projects. Suggested topics include accountability to and communication with constituencies; relationship with provincial and national governments; fiscal management; working with the press; negotiation skills and conflict resolution; consensus building; coalition building (particularly related to bloc or partisan communications); ethics in government; working with diverse populations; conducting issue-related casework; drafting legislation and implementing policy; promoting public participation in local government decision making.

Program activities for the above-listed themes may include:

1. A U.S.-based program that includes: Orientation to program purposes and to U.S. society; study tour/site visits; professional internships/placements; interaction and dialogue; hands-on training; professional development; and action plan development.

2. Capacity-building/training-of-trainer (TOT) workshops in Africa to help participants to identify priorities, create work plans, strengthen professional and volunteer skills, share their experience to committed people within each country, and become active in a practical and valuable way.

3. Site visits by U.S. facilitators/experts to monitor projects in the region and to provide additional training and consultations as needed.

4. Content-based Internet training/cyber-training to encourage citizen participation in workshops, fora, chats, and/or discussions via the Internet that will stimulate communication and information sharing among key opinion leaders on priority topics. Internet and Cyber Training should be only one component of an overall program, not the main focus of the proposal.

Additional Guidance

Content-Based Internet Training: As noted above, the Bureau encourages applicants to use the Internet to assist African counterparts in networking, communicating and organizing on the above-listed priority issues. Proposals that include content-based Internet training must reflect knowledge of the opportunities and obstacles that exist for use of information technologies in the target country or countries, and, if needed, provide hardware, software and servers, preferably as a form of cost sharing. Internet and Cyber Training should be only one component of an overall program, not the main focus of the proposal.

In-Country Partners: Applicants should identify the U.S. and African partner organizations and individuals with whom they are proposing to collaborate. Specific information about the African partners' activities and accomplishments is required and should be included in the section on "Institutional Capacity." Resumes for individuals mentioned in the proposal should be included, including proposed U.S. and African staff, trainers, consultants, etc.

Multiplier Effect/Impact: Programs should be designed so that the sharing of information and training that occurs during the grant period will continue long after the grant period is over. Proven methods of sustainability include, but are not limited to: a model TOT program that would include initial training, practice presentation sessions

for the African participants, followed by training activities coordinated and implemented by the African participants in their home countries; a commitment to create or support in-country training/resource centers; a curriculum program that would include teacher training, lesson plan development, and cooperation with ministries of education and related education administrators on implementation; development of online communities, professional networks or professional associations; regularly published electronic and/or hard-copy newsletters.

Evaluation: Short- and long-term evaluation is critical to the success of any professional development program. In accordance with the Government Performance and Results Act (GPRA) of 1993, Federal Agencies must create strategic plans, set performance goals, and develop methods for measuring how well the goals of this program are realized. The grantee would be required to work closely with the Bureau to fulfill this responsibility. Applicants are asked to submit an evaluation plan that would address the GPRA requirements and assess the long-term impact and effectiveness of this program. The evaluation plan should include a summation of goals and results desired, and an indication of what types of information would be used to determine if these goals were met or results achieved, as well as a description of how the applicant would gather and evaluate this information. Please include with the proposal any evaluation tools (survey/focus group questions) that would be used as part of the overall plan.

Selection of Participants

To be competitive, proposals should include a description of an open, merit-based participant selection process, including advertising, recruitment and selection. A sample application should be submitted with the proposal. Applicants should expect to carry out the entire selection process, but the Bureau and the Public Affairs Sections of the U.S. Embassies abroad should be consulted. The Bureau and the U.S. Embassies retain the right to nominate participants and to approve or reject participants recommended by the grantee institution. Priority must be given to foreign participants who have not traveled to the United States. ECA encourages applicants to design programs for non-English speakers, as appropriate. The Bureau is particularly interested in projects that focus on or include persons with disabilities in any of the above-listed themes. Please refer to the sections on "Budget Guidelines" and "Review Criteria" for additional information.

Visa Regulations

Foreign participants on programs sponsored by The Bureau are granted J–1 Exchange Visitor visas by the U.S. Embassy in the sending country. All programs must comply with J–1 visa regulations. Please refer to the Proposal SubmissionInstructions (PSI) for further information.

Public Affairs Section (PAS) Involvement

The Public Affairs Sections of the U.S. Embassies (formerly known as USIS posts) play a key role throughout every phase of project development. Posts evaluate project proposals; coordinate planning with the grantee organization and in-country partners; facilitate in-country activities; nominate participants and vet grantee nominations; observe in-country activities; debrief participants; and evaluate project impact. Posts are responsible for issuing IAP–66 forms in order for overseas participants to obtain necessary J–1 visas for entry to the United States. They also serve as a link to in-country partners and participants.

Project administration and implementation are the responsibility of grantee. The grantee must inform the PAS in participating countries of its operations and procedures and coordinate with and involve PAS officers in the development of project activities. The PAS should be consulted regarding country priorities, current security issues, and related logistical and programmatic issues.

Budget Guidelines

A total of $835,000 will be available to support multiple grant awards. The funding available under this competition will be disbursed through grants to several organizations. Although no funding limit exists, organizations are strongly encouraged to submit proposals that do not exceed $225,000. Proposals that do not exceed $225,000 will be given priority. Organizations with less than four years of experience in managing international exchange programs are limited to $60,000.

The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs.

Applicants are strongly encouraged to consult with African partners in the design of the proposal budget. Competitive proposals will demonstrate a thorough and realistic understanding of the costs for in-country administration, communication, transportation, per diem, etc.

Format: Applicants must submit a comprehensive line item budget based on the model in the Proposal Submission Instructions, but are encouraged to provide the optional separate sub-budgets for each program component, location or activity in order to facilitate decisions on funding. Applicants should include a budget narrative or budget notes for clarification of each line item.

Cost sharing: Since the Bureau's grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other sources of cost sharing, including financial and in-kind support. Proposals with substantial private sector support from foundations, corporations, and other institutions will be considered highly competitive. Please refer to the statement on cost sharing in the Proposal Submission Instructions.

The following program costs are eligible for funding consideration:

1. Transportation. International and domestic airfares (per the Fly America Act), transit costs, ground transportation costs, and visas for U.S. participants to travel to African countries (visas for African participants to travel to the U.S. for travel funded by the Bureau's grant assistance are issued at no charge).

2. Per Diem. For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. For activities in Africa, the Bureau strongly encourages applicants to budget realistic costs that reflect the local economy. Domestic and foreign per diem rates may be accessed at: *http://www.policyworks.gov/*. Applicants may opt to provide "home-stay" accommodations as a way to reduce per diems costs and as a way to enhance cross-cultural understanding.

3. Interpreters. Local interpreters with adequate skills and experience may be used for program activities. Typically, one interpreter is provided for every four visitors who require interpreting, with a minimum of two interpreters. The Bureau grants do not pay for foreign interpreters to accompany delegations from their home country. Salary costs for local interpreters must be included in the budget. Costs associated with using their services may not exceed rates for U.S. Department of State interpreters. The Bureau strongly encourages applicants to use local interpreters. U.S. Department of State Interpreters may be used for highly technical programs with the approval of the Office of Citizen Exchanges. Proposal budgets should contain a flat $170/day per diem for each U.S.

Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter, reimbursements for taxi fares, plus any other transportation expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria cannot exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Subcontracts should be itemized in the budget.

6. Room rental. Room rental may not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop and translate materials for participants. The Bureau strongly discourages the use of automatic translation software for the preparation of training materials or any information distributed to the group of participants or network of organizations. Costs for good-quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to the Bureau.

8. Equipment. Proposals may contain costs to purchase equipment for Africa-based programming such as computers, fax machines and copy machines. Please note, however, that the Bureau encourages cost sharing for these expenses. Costs for furniture are not allowed. Equipment costs must be kept to a minimum.

9. Working meal. Only one working meal may be provided during the program. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. Interpreters must be included as participants.

10. Return travel allowance. A return travel allowance of $70 for each foreign participant should be included in the budget. The allowance may be used for incidental expenses incurred during international travel.

11. Health Insurance. Foreign participants will be covered under the terms of a Bureau-sponsored health insurance policy. The premium is paid by the Bureau directly to the insurance company. Applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the PSI. Applicants are encouraged to provide administrative costs for African partner organizations to cover their in-country costs. While there is no rigid ratio of administrative to program costs, priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total requested from the Bureau. Proposals should show strong administrative cost-sharing contributions from the applicant, the African partner and other sources.

Please refer to the Proposal Submission Instructions (PSI) for complete budget guidelines.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all are important in the proposal evaluation:

1. Program Planning and Ability to Achieve Objectives: Program objectives should be stated clearly and precisely and should reflect the applicant's expertise in the subject area and the region. Objectives should respond to the priority topics in this announcement, clearly meet the strategic objectives of EDDI, and relate to the current conditions in the target country or countries. Objectives should be reasonable, attainable, and tied to the anticipated outcomes of the project. A detailed work plan should explain step-by-step how objectives would be achieved and should include a timetable for completion of major tasks. The substance of project planning, orientation sessions, workshops, presentations, consultations, site visits and seed/sub-grant projects should be included as attachments (i.e. sample agendas, draft applications, etc.). Responsibilities of U.S. and in-country partners should be clearly described.

2. Institutional Capacity: The proposal should include: (1) The U.S. institution's mission and date of establishment; (2) detailed information about the capacity of any partner institutions, and the history of the partnership(s); (3) an outline of prior awards—U.S. government and private support received for the target theme/region; and (4) descriptions of experienced staff members and other resource persons who would implement the program. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The narrative should demonstrate proven ability to handle logistics. The proposal should reflect the institution's expertise in the subject area and knowledge of the conditions in the target country/region(s). Specific information about the African partners' activities and accomplishments is required and should be included in the section on "Institutional Capacity." Resumes for individuals mentioned in the proposal should be included, including proposed U.S. and African staff, trainers, consultants, etc.

3. Cost Effectiveness and Cost Sharing: Overhead and administrative costs for the proposal, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Applicants are encouraged to cost share a portion of overhead and administrative expenses. Cost sharing, including contributions from the applicant, U.S. or African partners, and other sources, should be included in the budget. Although no minimum cost sharing is stipulated in this competition, previous grantees have routinely covered more than 20 percent of total project costs.

4. Program Evaluation: The proposal must include a plan and methodology to evaluate the program's successes, both as activities unfold and at the program's conclusion. ECA recommends that the proposal include a draft survey questionnaire or other technique (such as a series of questions for a focus group) to link outcomes to original program objectives. The evaluation plan should include a summation of goals and results desired, and an indication of what types of information would be used to determine if these goals were met or results achieved, as well as a description of how the applicant would gather and evaluate this information. Please include with the proposal any evaluation tools (survey/focus group questions) that would be used as part of the overall plan.

5. Multiplier Effect/Impact: The proposal should show how the program would strengthen long-term mutual understanding and institutionalization of program objectives. Applicants should describe how responsibility and ownership of the program would be transferred to the African participants to ensure continued activity and impact. ECA places a priority on programs that include convincing plans for sustainability.

6. Follow-on Activities: The proposal should provide a plan for continued follow-on activity (beyond the ECA grant period), ensuring that ECA-supported programs are not isolated events. Follow-on activities sponsored by the applicant should be clearly outlined.

7. Support of Diversity: The proposed project should demonstrate substantive support of the Bureau's policy on diversity. Program content (training sessions, resource materials, follow-on activities) and program administration (participant selection process, orientation, evaluation, resource/staff persons) should address diversity in a comprehensive and innovative manner. Applicants should refer to ECA's Diversity,Freedom and Democracy Guidelines on page four of the Proposal Submission Instructions (PSI).

8. Multiplier Effect/Impact: Programs should be designed so that the sharing of information and training that occurs during the grant period will continue long after the grant period is over. Proven methods of sustainability include, but are not limited to: A model TOT program that would include initial training, practice presentation sessions for the African participants, followed by training activities coordinated and implemented by the African participants in their home countries; a commitment to create or support in-country training/resource centers; a curriculum program that would include teacher training, lesson plan development, and cooperation with ministries of education and related education administrators on implementation; development of online communities, professional networks or professional associations; regularly published electronic and/or hard-copy newsletters.

Highly competitive proposals usually have the following characteristics: An active, existing partnership between a U.S. organization and African institution(s); a proven successful track record for conducting program activity; cost-sharing from U.S. and African sources, including donations of air fares, hotel and/or housing costs, ground transportation, interpreters, room rentals, etc.; experienced staff with relevant language ability; a clear, convincing plan outlining exactly how the program components will be carried out and how permanent results will be accomplished as a result of the grant; and a follow-on plan that extends beyond the Bureau grant period. Please refer to the section on Review Criteria in the RFGP for additional information.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Acting Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Funding authority for the program cited above is provided through the Fulbright-Hays Act and the Education for Development and Democracy Initiative (EDDI).

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

To Download a Solicitation Package Via Internet

The entire Solicitation Package (includes two documents: the RFGP and the PSI) may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/RFGPs* or the division's website at *http://exchanges.state.gov/education/citizens/africa*. Please read all information before downloading.

For Further Information, Contact

The Office of Citizen Exchanges, ECA/PE/C/NEAAF, Room 220, U.S. Department of State, 301 4th Street, S.W., Washington, DC 20547, attention: Orna Blum, telephone: (202) 260–2754 and fax number: (202) 619–4350, Internet address: *oblum@pd.state.gov*.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and

Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, September 7, 2001. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions given in the Application Package. The applicant's original proposal and ten (10) copies (unbound) should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/NEA–AF–02–08, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format or Microsoft Word format. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal U.S. Department of State procedures.

Dated: June 22, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–16704 Filed 7–3–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3715]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: U.S.-China Youth Exchange Initiative

SUMMARY: The Youth Programs Division, Office of Citizen Exchanges, of the Bureau of Educational and Cultural Affairs announces an open competition for the U.S.-China YouthExchange Initiative. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to support institutional partnerships and to administer a reciprocal youth exchange between secondary schools in the United States and in China. This program will develop linkages between schools and communities in the U.S. and China for the purpose of mutual education and the development of student participation in community affairs. The Bureau expects to award one grant, not to exceed $475,000, to support exchanges for seven school partnerships and technology assistance for 25 partnerships.

Program Information

Overview

The focus of this youth exchange program is to support the partnership of schools and communities in China with schools and communities in the United States and to foster interaction and lasting relationships between these partnered schools through reciprocal student and educator exchanges with strong academic content and through Internet connections. This initiative, begun in December 2000 as a pilot project, will support student participation in community affairs and will advance mutual understanding between the youth and teachers of the U.S. and China.

The long-term goals of the principal program are to: (1) Develop lasting, sustainable institutional ties between U.S. and Chinese schools and communities; (2) support student involvement in community affairs; (3) advance mutual understanding between the youth and teachers of the U.S. and China; and (4) promote partnerships developed through governmental, educational, and not-for-profit sector cooperation that serve the needs and interests of the schools and communities.

The program has several defining features to help the participating schools develop their partnership:

- Each partnership has a project theme and the students and teachers in the two schools work on a joint project throughout the school year related to this theme.
- The two schools develop a relationship over the course of an academic year, through the planning process and the work on their joint project, which is highlighted by exchanges of three to five weeks in duration. Exchanges take place while the host school is in session.
- The student and teacher exchanges must be reciprocal.
- The program includes educators (teachers and/or administrators) in order to involve them in all aspects of the partnership and to provide them access to resources for curriculum development and educational training.

In 2000, the Bureau of Educational and Cultural Affairs (ECA) provided a grant for a pilot project with two components: The recruitment and selection of schools and the implementation of a pilot partnership with a reciprocal exchange and joint project activity. Through this pilot project, an open recruitment process is underway in both the United States and China for applications from school and community representatives. Based on these applications, the grantee organization for this pilot project, in consultation with ECA, will select the top 25 applicants in each country, match the schools (unless they apply as partners), and rank order these selected schools. This list of selected schools will be available to all applicants in August.

Since ECA and the U.S. Mission in China plan to expand this program incrementally over the next few years, the funding under this assistance award is expected to support seven partnerships, i.e., exchanges of about 75–80 students and teachers from each country. The grant is subject to renewal for the program's expansion, depending on the availability of funding and the grantee organization's performance.

Partnerships will focus on a theme relevant to their communities; students will work together to complete a joint project related to that theme. Support for Internet connectivity and computer training is also an important component of the program so that the paired schools can communicate throughout the school year and work on these joint projects. The three- to five-week exchange visits to the partner community will involve studying at the host school, working on the thematic project, participating in cultural activities, and spending time with host families. An enhancement program will be provided for the Chinese participants.

The recipient of this grant will be responsible for the oversight and coordination of all programmatic and logistical aspects, including coordination with partnering organizations, local committees, and school representatives; oversight of open, merit-based participant selection processes and of the orientations, facilitation of the academic content of the partnership activities, and management of the enhancement program.

Guidelines

Dates: The grant will begin on or about November 15, 2001. Facilitation of communication between the partnered schools should begin immediately. The exchanges may take place in Spring 2002 and/or Fall 2002.

As is the case with all Bureau exchange programs, actual funding for

future activities is contingent upon the Congressional Appropriation and Authorization Process and final availability of funds. Upon successful implementation of this portion of the program and pending the availability of funds, ECA reserves the right to amend the grant to support future program activities.

Because future funding and other factors will limit the growth of this program, the rank-ordered list of the schools will be used as a guide in approaching schools for participation in subsequent years. ECA expects to work up to the participation of as many as 50 schools over the course of the initiative.

Eligible applicant organizations will have the following:

- Experience working in China
- A demonstrated track record of conducting youth exchange
- Experience with managing international institutional linkages and/or experience developing the program content for short-term exchanges
- An established partnership with an educational organization based in China or its own branch office there.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Important Note: The complete solicitation package includes a copy of the application form that schools/local committees are using to apply for participation in the program through the pilot project currently underway. Having this form will enhance the ability of organizations to respond to this solicitation. Please contact the Youth Programs Division as soon as possible to have a copy of this application form sent to you and to provide contact information. By providing complete organizational information and the name of a point of contact, we will be able to send you the list of selected schools once it is available. We expect to be able to provide this to applicants no later than August 20, 2001.

Budget Guidelines

The Bureau expects to provide an assistance award in an amount not to exceed $475,000 to one organization to support the program and administrative costs required to implement this program. Organizations with less than four years of experience in conducting international exchange programs are not eligible for this competition.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–01–85.

FOR FURTHER INFORMATION CONTACT: The Youth Programs Division, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4thStreet, SW., Washington, DC 20547, telephone (202) 619–6299; fax (202) 619–5311; e-mail address: *clantz@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Carolyn Lantz on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/RFGPs. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m., Washington, DC time, on Friday, September 7, 2001. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–01–85, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Acting Assistant Secretary for Educational and CulturalAffairs. Final

technical authority for assistance awards resides with the Bureau's Grants Officer.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: June 26, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–16611 Filed 7–3–01; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Agency Clearance Officer no later than September 4, 2001.

Type of Request: Regular submission.

Title of Information Collection: TVA Aquatic Plant Management.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 2,000.

Estimated Total Annual Burden Hours: 400.

Estimated Average Burden Hours Per Response: 0.2 (12 minutes).

Need For and Use of Information: TVA committed to involving the public in developing plans for managing aquatic plants in individual TVA lakes under a Supplemental Environmental Impact Statement completed in August 1993. This proposed survey will provide a mechanism for obtaining input into this planning process from a representative sample of people living near each lake. The information obtained from the survey will be factored into the development of aquatic plant management plans for mainstream Tennessee River lakes.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 01–16826 Filed 7–3–01; 8:45 am]

BILLING CODE 8120–08–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection requests described in this notice to the Office of Management and Budget (OMB) for review and approval. We published a **Federal Register** notice with a 60-day public comment period on these information collections on March 16, 2001 (66 FR 15316). We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 6, 2001.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

SUPPLEMENTARY INFORMATION:

1. *Title:* Voucher for Federal-aid Reimbursements.

OMB Control Number: 2125–0507 (Expiration Date: September 30, 2001).

Abstract: The Federal-aid Highway Program includes provisions for the reimbursement to States for expenditure of State funds for eligible Federal-aid highway projects. The Voucher for Work Performed Under Provisions of the Federal-Aid and Federal Highway Acts, As Amended (Form PR–20) is utilized by the States to provide project financial data regarding the expenditure of State funds and to request progress payments from the FHWA.

Respondents: 50 State Transportation Departments, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

Estimated Total Annual Burden: Approximately 12,300 vouchers per year. Each voucher requires an estimated 30 minutes completion time. The total annual burden for all respondents is estimated to be 6,150 hours.

For Further Information Contact: Ms. Debra Bargar, 202–366–2877, Department of Transportation, Federal Highway Administration, Office of Budget and Finance, 400 Seventh Street,

SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

2. *Title:* Develop and Submit Utility Accommodation Policies

OMB Control Number: 2125–0514 (Expiration Date: September 30, 2001).

Abstract: State Departments of Transportation are required to develop and submit to FHWA a policy statement on the authority of utilities to use and occupy highway rights-of-way; the State's authority to regulate such use; and the policies and/or procedures employed for accommodating utilities within the rights-of-way of Federal-aid highway projects. Upon FHWA's approval of the policy statement, the State DOT may take any action required in accordance with the approved policy statement without case-by-case review by the FHWA. In addition, the utility accommodation policy statements that have been approved previously by the FHWA are periodically reviewed by the State DOTs to determine if updating is necessary to reflect policy changes.

Respondents: 52 State Transportation Departments, including the District of Columbia and Puerto Rico.

Frequency: Once initially, then updates for review as required at the States' discretion.

Estimated Total Annual Burden: The average burden for updating an existing policy is 280 hours per response. The estimated total annual burden, based upon an estimated 5 updates per year, is 1,400 hours.

For Further Information Contact: Mr. Paul Scott, 202–366–4104, Department of Transportation, Federal Highway Administration, Infrastructure Core Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

3. *Title:* Eligibility Statement for Utility Adjustments.

OMB Control Number: 2125–0515 (Expiration Date: September 30, 2001).

Abstract: State Departments of Transportation are required to submit to the FHWA a statement which establishes the State DOT's legal authority or obligation to pay for utility adjustments. The FHWA has previously reviewed and approved these eligibility statements for each State DOT. The statements are used as a basis for Federal-aid reimbursement in utility relocation costs under the provisions of 23 U.S.C. 123. Updated statements may be submitted for review at the States' discretion where circumstances have modified (for example, a change in State statute) the extent to which utility adjustments are eligible for reimbursement by the State or those instances where a local State DOT's legal basis for payment of utility adjustments differs from that of the State.

Respondents: 52 State Transportation Departments, including the District of Columbia and Puerto Rico.

Frequency: Once initially, then updates for review as required at the States' discretion.

Estimated Total Annual Burden: The average burden for preparing and submitting an updated eligibility statement is 18 hours per response. The estimated total annual burden, based upon 5 updated eligibility statements per year, is 90 hours.

For Further Information Contact: Mr. Paul Scott, 202–366–4104, Department of Transportation, Federal Highway Administration, Infrastructure Core Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

4. *Title:* Certificate of Enforcement of Heavy Vehicle Use Tax.

OMB Control Number: 2125–0541 (Expiration Date: September 30, 2001).

Abstract: Title 23, United States Code, Section 141(c), provides that a State's apportionment of funds under 23 U.S.C. 104(b)(5) shall be reduced in an amount up to 25 percent of the amount to be apportioned during any fiscal year beginning after September 30, 1984, if vehicles subject to the Federal heavy vehicle use tax are lawfully registered in the State without having presented proof of payment of the tax. The annual certification by the State Governor or designated official regarding the collection of the heavy vehicle use tax serves as the FHWA's primary means of determining State compliance. The FHWA has determined that an annual certification of compliance by each State is the least obtrusive means of administering the provisions of the legislative mandate. In addition, States are required to retain for one year Schedule 1, Form 2290, (or other suitable alternative provided by regulation). FHWA periodically conducts compliance reviews to determine if the annual certification is adequate to ensure effective administration of 23 U.S.C.141(c).

Respondents: 51 State Transportation Departments, including the District of Columbia.

Frequency: Annually.

Estimated Total Annual Burden: The average burden to submit the certification and retain required records is 12 hours per respondent. The estimated total annual burden is 612 hours.

For Further Information Contact: Ms. Gloria Williams, 202–366–5032, Department of Transportation, Federal Highway Administration, Policy Service Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the Federal Register's home Office's database at *http://www.access.gpo.gov/nara*.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: June 28, 2001.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 01–16731 Filed 7–3–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bellevue, King County, WA; Cancellation of Notice of Intent

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised cancellation of notice of intent (FR document 97–13308; Filed 5–20–97).

SUMMARY: The FHWA is issuing this revised notice to rescind the previous Notice of Intent issued on May 9, 1997 (appeared in the **Federal Register** on May 21, 1997), to prepare an environmental impact statement (EIS) for the proposed highway project in Bellevue, King County, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Mathis, Federal Highway Administration, Evergreen Plaza Building, Suite 501, 711 South Capitol Way, Olympia, Washington, 98501–1284, Telephone: (360) 753–9413; John Okamoto, WSDOT Northwest Region Administrator, 15700 Dayton Avenue North, P.O. Box 330310, Seattle,

Washington 98133–9710, Telephone: (206) 440–4691, or Len Pavelka, City of Bellevue Senior Transportation Planner, PO Box 90012, Bellevue, Washington 98009–9012 (425) 452–2035.

SUPPLEMENTARY INFORMATION: The FHWA, with the co-lead agencies of the Washington State Department of Transportation (WSDOT) and the city of Bellevue, issued a Notice of Intent on May 9, 1997 to prepare an EIS on a proposal to provide additional eastbound and westbound access to SR 520 between Interstate 405 and 148th Avenue NE in Bellevue, Washington.

Following an alternative screening process, the Bellevue City Council acted on October 23, 2000 upon a recommendation by the project Interdisciplinary team and confirmed the selection of the "No Action" alternative as the preferred alternative for this project. Further work on the EIS was terminated.

The decision was based on three primary factors: (1) A review of the technical analysis summarized in the Transportation Technical Report revealed a very low benefit to cost relationship, (2) the analysis showed that the interchange alternatives at 124th Avenue NE and 130th Avenue NE would have a negligible effect on reducing congestion to meet the project purpose, and (3) the TransLake Washington EIS is evaluating long-term needs for SR 520. The EIS intends to evaluate interchanges between I–405 and Redmond. The TransLake Washington EIS may recommend widening or other interchange improvements to the corridor or recommendations that would be constrained by a new interchange in the Bel-Red area of SR 520.

Costs for the build alternatives were estimated to range from $35 million to $80 million. These latest cost estimates were substantially higher than previous estimates and exceeded available funds to construct any type of added access improvements to/from SR 520.

In further response to the Council action, the City removed the project from its short-range (6 year) Capital Investment Program. The City is also removing the project from its mid-range (12 year) transportation programming document, the Transportation Facilities Plan.

Authority: Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program.

Issued on: June 27, 2001.

James A. Leonard,

Urban Transportation and Environmental Engineer, Olympia, Washington, for the Division Administrator.

[FR Doc. 01–16831 Filed 7–3–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Blacklands Railroad

[Docket Number FRA–2000–8366]

The Blacklands Railroad (BLR) of Sulphur Springs, Texas, has petitioned for a permanent waiver of compliance for one locomotive from the requirements of the Safety Glazing Standards, 49 CFR part 223, which requires certified glazing. BLR states that this locomotive is used in light switching service and operates over 65 miles of track from Greenville, Texas, through Commerce, Sulphur Springs, Texas. BLR also states that it has an additional 10 miles of trackage rights over the Union Pacific Railroad for interchange in its Mt. Pleasant yard. The average track speed is 10 to 15 mph with a maximum speed of 20 mph.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2000–8366) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, D.C. on June 29, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–16833 Filed 7–3–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Boone & Scenic Valley Railroad

[Docket Number FRA–2001–9607]

The Iowa Railroad Historical Society has petitioned on behalf of Boone & Scenic Valley Railroad for a permanent waiver of compliance from the requirements of the Railroad Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses, Title 49 Code of Federal Regulations § 223.11 which requires locomotives, other than yard locomotives, built or rebuilt prior to July 1, 1980, to be equipped with glazing which meets the requirements of appendix "A" of this part by June 30, 1984.

The Boone & Scenic Valley Railroad is a nonprofit railroad operating four locomotives, all of which are historic in nature. The locomotives will be used to switch approximately four freight cars a month to service two industries. The locomotives presently operate an excursion train over 11.95 miles of right-of-way northwest of Boone, Iowa and 1.66 miles of right-of way through Boone to the Boone Industrial Park. The Boone & Scenic Valley Railroad is connected to the Union Pacific Railroad

by a transfer that is guarded by a Union Pacific derail. Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Docket Number FRA–2001–9607) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, D.C., 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, D.C. on June 29, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–16832 Filed 7–3–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

RIN 2127–AI23

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Correction; extension of comment period.

SUMMARY: On June 4, 2001, we published a Notice reporting that we had submitted to OMB a request for an extension of a previously approved collection of information. That Notice is contained within document 01–13798 and is located at 66 FR 30046. The approved collection of information pertained to a statutorily-mandated rule requiring that any person who knowingly and willfully sells or leases a defective or noncompliant tire for use on a motor vehicle, with actual knowledge that the manufacturer of the tire has notified its dealers of the defect or noncompliance, report that sale or lease to us.

The Notice published on June 4, 2001, contained several errors, which we believe require correction. The purpose of today's Notice is to notify the public of the errors and the correct information, and provide the public an additional thirty (30) days within which to submit any comments in relation to the collection of information and the requested extension. Specifically, the June 4, 2001 Notice is modified in the following ways:

Under the section labeled **SUPPLEMENTARY INFORMATION**, the text of the subsection labeled "Type of Request" should be changed to read: Extension of a currently approved collection for three years from the approval date.

In the same **SUPPLEMENTARY INFORMATION** section, the text of the subsection labeled "Abstract," should be replaced with the following text:

This information collection is statutorily mandated. NHTSA anticipates using the information collected to inform purchasers of those defective or noncompliant tires of the existence of the defect or noncompliance, to investigate sales and leases of tires that are defective or noncompliant, and/or facilitate the providing of a remedy to the purchasers of such tires. Respondents are expected to be tire dealers and retailers.

The text of the subsection labeled "Affected Public" located within the **SUPPLEMENTARY INFORMATION** portion of the Notice, should be replaced with the following text:

Any person who knowingly and willfully sells or leases a defective or noncompliant tire for use on a motor vehicle with actual knowledge that the manufacturer of the tire has notified dealers of the defect or noncompliance. Persons who sell or lease new or used motor vehicles equipped with defective or noncompliant tires are not subject to this reporting requirement with respect to vehicle sales. Motor vehicle lessors and rental companies are also excluded.

In light of the above changes, the comment period with respect to this action has been extended for an additional 30 days. Accordingly, all comments must be submitted on or before August 6, 2001. As requested in the June 4, 2001 notice, comments must be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Issued on: June 28, 2001.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 01–16780 Filed 7–3–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Correction; extension of comment period.

SUMMARY: On June 13, 2001, we published a Notice to report that we had submitted to the Office of Management and Budget (OMB) a request for an extension of a previously approved collection of information. That notice is contained in notice document 01–14834, is located at 66 FR 31974, and has OMB control number 2127–0609. The approved collection of information pertained to a statutorily-mandated rule requiring NHTSA to establish by regulation what constitutes a "reasonable time" and a sufficient manner of "correction" under the Criminal Penalty Safe Harbor Provision in section 5 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414).

The Notice published on June 13, 2001, contained an error which we believe requires correction. The purpose of this Notice is to notify the public as to the error, to correct it, and to provide the public with an additional thirty (30) days within which to submit any comments in relation to the collection of information. Specifically, the Notice of June 13, 2001 is modified in the following manner:

On page 31975, in the fifth paragraph of the first column, the section labeled "Affected Public" was previously published with the following text: "foreign manufacturers of motor vehicles and motor vehicle equipment located outside of the United States, which are importing these items into the United States." This section should be changed to read as follows: "This collection of information would apply to any person who seeks a "safe harbor" from potential criminal liability under 49 U.S.C. 30170. Thus, the collection of information could apply to motor vehicle and motor vehicle equipment manufacturers, any officers or

employees thereof, and other persons who respond, or have a duty to respond, to an information provision requirement pursuant to 49 U.S.C. 30166 or a regulation, requirement, request or order issued thereunder."

In light of the above change, the date for comments to be submitted, which was previously published in the **Federal Register** in the last paragraph of the third column on page 31974, is extended and changed from "on or before July 13, 2001" to read "on or before August 6, 2001."

As requested in the Notice of June 13, 2001, comments are to be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Issued on: June 28, 2001.

John Womack,

Acting Chief Counsel.

[FR Doc. 01–16781 Filed 7–3–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support Rural Pickup Truck Safety Initiative

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of discretionary cooperative agreements to increase seat belt and child safety seat education and use among pickup truck occupants in rural areas.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a cooperative agreement program to provide funding to two communities in support of the Buckle Up America (BUA) campaign. Created in 1997, two major goals exist for this campaign: (1) To increase the national seat belt use rate from 71 percent (November 2000) to 90 percent by 2005 and (2) to decrease the number of child passenger fatalities (0–4 years of age) by 25 percent by 2005 (using 653 fatalities in 1996 as a baseline). NHTSA solicits applications from rural community-based organizations or coalitions interested in developing and implementing a community demonstration project characterized by a public information and education program coupled with highly visible law enforcement efforts designed to increase seat belt and child restraint use among pickup truck occupants in rural areas. Rural organizations or rural community-based coalitions that promote injury prevention and safety programs are encouraged to apply. For the purposes of this notice, the word community can be interpreted to mean a single community, a county, or a specific geographic area that meets the population criteria specified in this notice.

DATES: Applications must be received by the office designated below on or before 2:00 p.m. on Thursday, August 9, 2001.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, S.W.. Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–01–H–05266.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Rose Watson, Office of Contracts and Procurement, by e-mail at *rwatson@nhtsa.dot.gov*, or by telephone at (202) 366–9557. Programmatic questions should be directed to Mr. Edward Pacchetti, Occupant Protection Division (NTS–12), NHTSA, 400 7th Street, S.W., Room 5118, Washington, D.C., 20590, by e-mail at *epacchetti@nhtsa.dot.gov*, or by phone at (202) 366–5198. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

Motor vehicle crashes are the single leading cause of death for Americans 1–24 years of age and the third leading cause of death for Americans 25–44 years of age. In 1999, traffic crashes claimed over 41,000 lives and produced over three million injuries. These crashes resulted in approximately $150 billion in economic costs, including $17 billion in medical care and emergency services expenses and $107 billion in lost productivity and property loss. In April 1997, the Buckle Up America (BUA) Campaign was established to increase the seat belt and child safety seat use rate nationwide. The BUA Campaign advocates a four-part strategy: (1) Building public-private partnerships; (2) enacting strong legislation; (3) maintaining high visibility enforcement; and (4) conducting effective public education. Central to the campaign's success is the implementation of two major law enforcement mobilizations each year. These mobilizations, known as Operation ABC: *A*merica *B*uckles Up *C*hildren, are held in conjunction with the Air Bag & Seat Belt Safety Campaign in May and November, during the Memorial Day and Thanksgiving Day holidays.

According to NHTSA data, there were 6,125 fatalities among pickup truck occupants in 1999. One major reason for this high number of fatalities is the relative lack of seat belt and child restraint use among pickup truck occupants. Research has shown that seat belts reduce the risk of fatal injury by 60 percent for light truck occupants; this effectiveness increases to 80 percent in rollover crashes of these vehicles. Despite this evidence showing seat belt effectiveness, pickup truck occupants continue to have significantly lower rates of use than occupants of other vehicle types. The national seat belt use rate among pickup truck occupants in November 2000 was only 59 percent, compared to 74 percent for passenger car occupants. The rate of seat belt use among pickup truck occupants varies significantly among geographical regions: 68 percent in the West, 58 percent in the Midwest, 56 percent in the South, and 45 percent in the Northeast. Nationwide, 69 percent of light truck occupants killed in 1999 were unrestrained, compared to 51 percent of passenger car occupants who were killed during that same year while unrestrained. NHTSA data further reveal that 41 percent of light truck occupants killed in 1999 were ejected from their vehicles, compared to 21 percent of passenger car occupants killed in 1999.

For the purposes of the two demonstration projects to be awarded, NHTSA is focusing on initiatives to increase seat belt use among pickup truck occupants in rural communities. Sixty-one percent of traffic fatalities (25,453 of 41,611 total fatalities) occurred on rural roadways in 1999. A 1996 NHTSA report showed that a larger proportion of fatal crashes in rural areas involve light trucks compared to fatal crashes in urban areas (21 percent and 14 percent, respectively). Another NHTSA report referencing State data recounted that young, rural male pickup drivers in Kentucky and Texas consistently had low rates of seat belt use. This latter report suggested that there were numerous obstacles to overcome when conducting outreach to this population. Such obstacles included the false belief that being unbelted in a crash is actually safer than being belted, social norms that discourage belt use, and a fatalistic view of life that questions the effectiveness of seat belts. Another problem that has

been identified among pickup truck occupants is the practice of riding in the cargo areas of these vehicles. Each year, almost 200 people die as a result; approximately half of those who die are children and teenagers. These data underscore the importance of program activity designed to increase seat belt and child restraint seat use among pickup truck occupants in rural areas.

Objectives

The principal purpose of this cooperative agreement program is to increase seat belt and child restraint use among pickup truck occupants in rural communities. Cooperative Agreements will be awarded in two geographically separate communities for this purpose. Each project will consist of a two-part strategy of public information and education supported by a highly visible law enforcement component. The objective of increasing restraint use and decreasing fatalities and injuries of pickup truck occupants will be met by:

1. *Developing and Implementing a Community-Wide Public Information and Education Campaign.* The cooperative agreement recipient will be expected to coordinate an intense, community-wide public information and education campaign that focuses on the effectiveness of seat belts and child safety seats in preventing deaths and injuries in motor vehicle crashes. This campaign should convey the importance of being properly restrained whenever riding in any vehicle, but the need for pickup truck occupants to be properly restrained at all times shall be given special emphasis due to the low seat belt use rate of these occupants compared to occupants of other vehicle types. This campaign will utilize culturally relevant messages for rural pickup truck occupants that encourage seat belt and child safety seat use on every trip. The dangers of allowing passengers to ride in pickup truck cargo areas should also be highlighted. Most importantly, the public information and education campaign will convey the message that seat belt use and child restraint laws in the community are enforced. The recipient will be expected to form partnerships with representatives in educational, judicial, law enforcement, public health, and media agencies and organizations within the community to disseminate these campaign messages. Additional partnerships with local emergency medical services and local business communities should also be developed. Partnerships should also be developed with organizations representing diverse populations within the community. Such agencies and organizations can then work within their respective professional areas to provide education and generate support for the campaign.

2. *Periodic "Waves" of High Visibility Enforcement.* In addition to the community-based public information and education campaign described above, a plan that emphasizes periodic waves of high visibility enforcement of seat belt and child restraint laws will be developed. To forge such a plan, this cooperative demonstration project should seek assistance from the Governor's SHSA representative, State police, and local law enforcement officials in the demonstration community. It is important to emphasize that during the law enforcement component of the project, law enforcement activities shall focus on increasing restraint use equally among occupants of all vehicle types, not solely among pickup truck occupants. Enforcement activities shall include, but not be limited to, participation in the national Operation ABC Mobilizations held each May and November.

The case for conducting high visibility enforcement of seat belt and child restraint laws is well documented. An example of the combined approach of law enforcement and media saturation is South Carolina's Click It or Ticket Campaign, initiated in November 2000. During a 14-day period, over 200 law enforcement agencies participated in a monumental enforcement effort that was coupled with frequent media messages. Ninety-five percent of motorists surveyed reporting reading, seeing, or hearing Click It or Ticket messages by the final week of the campaign. As a result, seat belt use increased significantly—from 66 percent to 74 percent. Seat belt use among males, a key pickup truck driver population, increased from 59 percent to 68 percent. This increase in seat belt use contributed to a 30 percent reduction in fatalities in South Carolina compared to the same period during 1999. On the community level, an example of a successful initiative using media saturation and enforcement strategies to increase seat belt use occurred in Elmira, New York. During an intense media and enforcement campaign in October 1999, the seat belt use rate increased from 63 percent to 90 percent in three weeks. A report documenting Elmira's success can be accessed at http://www.nhtsa.dot.gov/people/outreach/traftech/tt246.htm.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and administration of the cooperative agreements and to coordinate activities between the cooperative agreement recipients and NHTSA;

2. Provide information and technical assistance from government sources, within available resources and as determined appropriate by the COTR; and

3. Act as a liaison between the cooperative agreement recipients and with other government and private agencies as appropriate.

Availability of Funds and Period of Support

It is anticipated that two cooperative agreements, in the amount of $175,000 each, will be awarded to provide for a performance period of 15 months. The application should address what is proposed and can be accomplished during this period which includes evaluation and preparation of the final report. NHTSA estimates that the award of the two cooperative agreements will occur by September 30, 2001.

Federal monies allocated for cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing a demonstration project. Therefore, applicants should describe their commitment of financial and/or in-kind resources that will be used to complete their proposed demonstration project. Allowable uses of federal funds shall be governed by the applicable federal cost principles.

Eligibility Requirements

To be eligible to participate in this cooperative agreement program, an applicant must be an agency or organization serving a rural area that is poised to conduct a community-wide public information and education campaign and to participate in or coordinate law enforcement mobilizations designed to increase seat belt and child restraint use. Community-based coalitions or organizations that promote injury prevention, especially traffic safety may apply. Such rural community coalitions/organizations include, but are not limited to: law enforcement agencies, public health and safety organizations, education organizations, media groups, organizations representing diverse populations, local private-sector organizations, and non-profit organizations. Applicants must represent a rural demonstration

community with a population of at least 75,000 but not exceeding 150,000 based upon Census 2000 data of the U.S. Census Bureau. Also, the community should not be closer than 100 miles to a major metropolitan area, which is defined as a city of more than 250,000 people.

Application Procedure

Each applicant must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, S.W., Room 5301, Washington, D.C. 20590. Submission of four additional copies will expedite processing, but is not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–01–H–05266. Only complete application packages received by 2 p.m. on Thursday, August 9, 2001 will be considered.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (Rev. 7–97), Application for Federal Assistance, including 424A, Budget Information-Nonconstruction Program, and 424B Assurances-Nonconstruction Programs, with the required information filled in and the certified assurances included. The OMB Standard Forms SF–424, SF–424A and SF424B may be downloaded directly from the OMB Internet website at *http://www.whitehouse.gov/omb/grants/*. While the Form 424–A deals with budget information, and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs (direct labor, including labor categories, level of effort and rate; direct material, including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontracts/subgrants with similar cost detail, if known; and overhead costs), as well as any resources which the applicant and/or other coalition participant proposes to contribute in support of this effort.

2. The application package must also include a program narrative statement which does not exceed 20 pages, excluding letters of endorsement and resumes, and which addresses the following:

a. A description of the rural demonstration community which includes demographic information and a description of law enforcement agencies that have traffic enforcement jurisdiction in the community. The proportion of pickup trucks in the demonstration community in relation to other vehicle types (passenger cars, minivans and SUVs) in that community should be provided based on data regarding the number of registered vehicles in the community.

b. A detailed explanation of the proposed plan to develop and conduct a community-wide public information and education campaign regarding the extreme importance of seat belt and child safety seat use among occupants of all vehicle types, but especially among pickup truck occupants. The plan shall identify strategies for participation in Operation ABC Mobilizations and plans to conduct waves of highly publicized seat belt and child passenger safety enforcement. A description of efforts to address training needs (i.e., differential enforcement or diversity sensitivity) should be included; such knowledge would help law enforcement officers in partnering with the community when the demonstration project is underway. This section shall include a list of project activities in chronological order to show the schedule or planned accomplishments and their target dates. The applicant shall identify the various participating community agencies/organizations and their involvement in the demonstration project. Letters of support from participating community partners shall be included. Documentation of existing public and/or political support must be included (e.g., endorsement of applicable law enforcement agencies, community health organizations, Mayor or other chief executive officer, etc.). In addition, a letter demonstrating support and coordination with State plans must be provided by the Governor's Representative or his/her designee in the State Highway Safety Agency (SHSA).

c. An evaluation section which describes how the recipient will evaluate and measure the project activities and outcomes. Increases in observed seat belt and child safety seat use among pickup truck occupants are the ultimate measures of success. However, evaluation of the specific elements of the public education and information component and law enforcement component of the program should be performed to provide an assessment of the program's effectiveness.

(1) Data for measuring the activities and effectiveness of the public information and education campaign include, but are not limited to: (i) Level of earned media coverage; (ii) level of paid media coverage, and (iii) results of pre- and post-program surveys (on-site or telephonic) regarding awareness of occupant restraint issues, especially those for pickup truck occupants. Data sources should be identified and collection and analysis approaches should be described. Sample data collection forms and instructions (in-person, telephone, and seat belt observation survey forms) are available from NHTSA that can be customized by the recipient. A booklet entitled Achieving a High Seat Belt Use Rate: A Guide for Selective Traffic Enforcement Programs is available at *http://www.nhtsa.dot.gov/people/injury/research/index.html*.

(2) Data for measuring the activities and effectiveness of law enforcement efforts include, but are not limited to: (i) The number of seat belt and child safety seat citations issued; (ii) the number of officer hours or special enforcement efforts during the mobilization or enforcement periods, DWI arrests, and other non-traffic related crimes; (iii) increases in the number of law enforcement personnel trained to enforce occupant protection laws; (iv) community participation in Operation ABC Mobilizations; (v) increased perception of ongoing enforcement and public education activities (may be obtained from the on-site or telephone surveys conducted to measure effectiveness of the public information and education campaign in the preceding paragraph); (vi) incentive programs to complement enforcement efforts, and (vii) pre- and post-program observational seat belt surveys. Data sources should be identified and collection and analysis approaches should be described.

d. A detailed description of the applicant's previous involvement in community-based coalitions to promote injury prevention and especially traffic safety in the past and how this experience will assist the applicant in the demonstration project. The applicant should describe any prior media campaigns and/or work with media professionals in conducting public outreach, as well as any past participation in highly publicized enforcement or participation in Operation ABC Mobilizations. Prior experience in working with educational, judicial, law enforcement, and public health and safety organizations within the demonstration community should be described, as well as partnerships with organizations representing diverse populations within the community.

e. A personnel section which identifies the proposed project coordinator and other key personnel necessary to perform the public information campaign, enforcement activities and evaluation component shall be provided. This section shall include a description of their qualifications, the nature of their contribution, their respective organizational responsibilities, and the proposed level of their effort.

Review Process and Criteria

Initially, each application will be reviewed to confirm that the applicant meets the eligibility requirements and that the application contains all of the information required by the Application Contents section of this notice. Each complete application from an eligible applicant will then be evaluated by a NHTSA Technical Evaluation Committee. The applications will be evaluated using the following criteria:

1. Project Plan: The overall soundness and feasibility of the rural demonstration community project plan and the potential effectiveness of the described public information and education campaign and highly visible law enforcement activities to increase seat belt and child safety seat use among occupants of pickup trucks (50 percent).

2. The applicant's planned partnerships with other community agencies/organizations promotes the requisite participation among those groups considered necessary to conduct an effective community demonstration project. In addition, the applicant's prior successful experience with community-based coalitions demonstrates the necessary organizational skills to effectively coordinate the proposed project (30 percent).

3. The proposed personnel resources demonstrate effective project coordination capability and the requisite breadth of expertise to successfully perform the described activities that will result in increasing seat belt and child safety seat use among occupants of pickup trucks (20 percent).

Terms and Conditions of Award

1. Prior to award, the recipients must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restriction on Lobbying, and 49 CFR Part 29, Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

2. During the effective period of the cooperative agreements awarded as a result of this Notice, the agreements shall be subject to NHTSA's General Provisions for Assistance Agreements (7/95).

3. Reporting Requirements and Deliverables:

a. Quarterly Reports, which shall be due 15 days after the end of each quarter, shall be submitted to document project efforts and results. The reports should include up-to-date information summarizing accomplishments during the quarter including: data gathered to-date (such as earned and paid media events, observation and awareness surveys, and enforcement data); obstacles or problems encountered and proposed solutions; noteworthy activities, events or successes; and funds and in-kind contributions expended to date. The quarterly reports will form the basis for the final report to disseminate the lessons learned and successes of the recipient. The COTR will approve invoices upon receipt of each quarterly report.

b. Draft Final Report: The recipient shall prepare a draft Final Report that includes a complete description of the overall project implementation, including a project time-line; the activities conducted, including partners; data collection efforts; evaluation methodology; and findings from the program evaluation. In terms of information transfer, it is important to know what worked and what did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The report should provide information that will be helpful in assembling a "Best Practices" guide for use by other communities. The grantee shall submit the draft Final Report to the COTR 60 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

c. Final Report: The grantee shall revise the draft Final Report to reflect the COTR's comments. The revised final report shall be delivered to the COTR 15 days before the end of the performance period. For the final report, the Grantee shall supply the COTR:

—A camera ready version of the document as printed.

—A copy, on appropriate media (diskette, Syquest disk, etc.), of the document in the original program format that was used for the printing process.

Note: Some documents require several different original program languages (e.g., PageMaker was the program format for the general layout and design and Power Point was used for charts and yet another was used for photographs, etc.). Each of these component parts should be available on disk, properly labeled with the program format and the file names. For example, Power Point files should be clearly identified by both a descriptive name and file name (e.g., 1994 Fatalities—chart1.ppt).

—A complete version of the assembled document in portable document format (PDF) for placement of the report on the world wide web (WWW). This will be a file usually created with the Adobe Exchange program of the complete assembled document in the PDF format that will actually be placed on the WWW. The document would be completely assembled with all colors, charts, side bars, photographs, and graphics. This can be delivered to NHTSA on a standard 1.44 diskette (for small documents) or on any appropriate archival media (for large documents) such as a CD ROM, TR–1 Mini cartridge, Syquest disk, etc.

—Four additional hard copies of the final document.

d. The recipients may be requested to conduct an oral presentation of their respective project activities for the COTR and other interested NHTSA personnel. For planning purposes, assume that these presentations will be conducted at the NHTSA Office of Traffic and Injury Control Programs, Washington, DC. An original and three copies of briefing materials shall be submitted to the COTR.

Issued on: June 28, 2001.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 01–16763 Filed 7–3–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9848]

Notice of Receipt of Petition for Decision that Nonconforming 1997 Chevrolet Cavalier Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1997 Chevrolet Cavalier passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that the 1997 Chevrolet Cavalier that was not originally manufactured to comply with

all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 6, 2001.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Bayway Auto, Inc. of Elizabeth, New Jersey ("BWA") (Registered Importer 98–166) has petitioned NHTSA to decide whether 1997 Chevrolet Cavalier passenger cars, originally manufactured for sale in the Middle-East, are eligible for importation into the United States. The vehicle which BWA believes is substantially similar is the 1997 Chevrolet Cavalier that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, General Motors, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1997 Chevrolet Cavalier passenger car to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

BWA submitted information with its petition intended to demonstrate that the non-U.S. certified 1997 Chevrolet Cavalier, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1997 Chevrolet Cavalier is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 108 *Lamps, Reflective Devices and Associated Equipment*, 109 *New Pneumatic Tires*, 110 *Tire Selection and Rims*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

The petitioner also states that a vehicle identification number plate affixed to the vehicle meets the requirements of 49 CFR Part 565, that the anti-theft device meets the requirements of 49 CFR Part 541, and that the bumpers and bumper support structure satisfy the Bumper Standard found at 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) replacement of the speedometer/odometer assembly unit with the U.S.-model component.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's seating position or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints which adjust by means of an automatic retractor and release by means of a single push button in both front designated seating positions, with combination lap and shoulder restraints which release by means of a single push button in both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 28, 2001.

Marilynne Jacobs,

Director Office of Vehicle Safety Compliance.

[FR Doc. 01–16730 Filed 7–3–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–98–4470]

Pipeline Safety: Meeting Notification—Technical Hazardous Liquid Pipeline Safety Standards Advisory Committee

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of technical hazardous liquid pipeline safety standards advisory committee meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) notice is given of a public meeting of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) to be conducted by the Research and Special Programs Administration's (RSPA), Office of Pipeline Safety (OPS). The meeting will be held on Monday, August 13, 2001 from 10:00 a.m. to 12:00 p.m.

The THLPSSC is a statutorily mandated advisory committee that advises RSPA's OPS on proposed safety standards and other safety policies for hazardous liquid pipelines. The committee consists of 15 members—five each representing government, industry, and the public.

RSPA issued a final rule, "Pipeline Integrity Management in High Consequence Areas (Hazardous Liquid Operators With 500 or More Miles of Pipeline)," which was published on December 1, 2000(65 FR 75378). In the final rule, RSPA sought comment on 49 CFR Section 195.452(h) because it varied considerably from the proposed rule. A copy of the final rule can be found on the Internet—OPS Docket Management System *http://dms.dot.gov* (Docket Number 6355). The THLPSSC will discuss comments received and vote on Section 195.452(h) as published on December 1, 2000.

The THLPSSC will also discuss and vote on the proposed rule "Pipeline Integrity in High Consequence Areas (Hazardous Liquid Pipelines With 500 Miles or Less of Pipeline)," which was published on March 25, 2001 (66 FR 15821). A copy of the proposed rule can be found on the Internet—OPS Docket Management System *http://dms.dot.gov* (Docket Number 7408).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Juan Carlos Martinez at (202) 366–1933.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, OPS, (202) 366–4431 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: Members of the public may attend the meeting in person at the Department of Transportation, Nassif Building, Room 7128, 400 Seventh Street, SW, Washington, DC 20590. Due to limited space, anyone wishing to attend or participate should notify Juan Carlos Martinez, at (202) 366–1933, not later than July 30, 2001.

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC on June 28, 2001.

Stacey L. Gerard,

Associate Administrator.

[FR Doc. 01–16729 Filed 7–3–01; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–01–8972; Notice 1]

Pipeline Safety: Intent to Consider Waiver and Environmental Assessment of Waiver for Transwestern Pipeline Company

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of intent to consider waiver and environmental assessment of waiver.

SUMMARY: The Office of Pipeline Safety (OPS) is conducting a Risk Management Demonstration Program with pipeline operators to determine how risk management might be used to complement and improve the existing Federal pipeline safety regulatory process. OPS selected Enron Transportation Services Company/Transwestern Pipeline Company (ETS/TW) as a candidate for participation in the Demonstration Program; subsequently, OPS and ETS/TW held discussions as part of an approval process. OPS has not yet approved ETS/TW's application. ETS/TW identified a portion of its system where it believed performing alternative risk control activities in lieu of compliance with current regulations would result in a comparable margin of safety and environmental protection. At an intermediate stage in the project approval process, ETS/TW requested OPS waive certain regulatory requirements relating to class location changes for three pipeline segments. ETS/TW indicated that it would carry out the proposed alternative risk control activities in lieu of compliance with these regulations.

This Notice announces OPS's intent to consider granting a waiver from 49 CFR 192.611 to allow ETS/TW to perform the proposed alternative risk control activities. Among the factors that are crucial to OPS's decision to consider granting the waiver are ETS/TW's selection as a candidate for the Risk Management Demonstration Program and ETS/TW's subsequent participation in a consultation process with OPS. In addition, OPS has found that the overall effect of the proposed waiver is consistent with pipeline safety, because ETS/TW's proposed activities achieve a margin of safety and environmental protection comparable to that achieved by compliance with 49 CFR 192.611. Within 90 days of OPS's adoption of new rules related to integrity management of natural gas pipelines [1], ETS/TW will be required to re-evaluate the effects of its proposed alternative risk control activities so that OPS can determine whether the terms of the waiver continue to be appropriate and whether the overall effect of the waiver remains consistent with pipeline safety. This Notice also provides an environmental assessment of ETS/TW's proposed alternative activities. Based on this environmental assessment, OPS has preliminarily concluded that this waiver will have no significant environmental impacts. OPS seeks public comment on the proposed waiver and the environmental assessment, so that it may consider and address these comments before making a final decision on this matter.

ADDRESSES: OPS requests that comments to this Notice or about this environmental assessment be submitted on or before August 6, 2001 so they can be considered before a final determination is made whether to grant the waiver to ETS/TW. Written comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the docket number RSPA–01–8972. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of

[1] OPS is considering additional regulations to enhance pipeline integrity in high consequence areas for natural gas transmission pipelines. Additional information on integrity management rule-related activities is available on the OPS web site at http://ops.dot.gov.

receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW., Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. You may also submit comments to the docket electronically. To do so, log on to the DMS Web at http://dms.dot.gov. Click on Help & Information to obtain instructions for filing a document electronically.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this Notice. Contact the Dockets Unit, (202) 366–5046, for docket material. Comments may also be reviewed online at the DOT Docket Management System website at http://dms.dot.gov/.

SUPPLEMENTAL INFORMATION:

1. Background

In 1996, the Secretary of Transportation was authorized to establish risk management demonstration projects in partnership with operators of gas and liquid pipeline facilities, pursuant to U.S.C. § 60126. In 1997, OPS announced that Enron Transportation Services Company affiliate Florida Gas Transmission Company (FGTC) and eleven other pipeline companies would be candidates for participation in the Risk Management Demonstration Program.[2,3] Subsequently, Enron Transportation Services Company (ETS) informed OPS that Transwestern Pipeline Company (TW) would replace FGTC as its candidate for the program.[4] Following the selection of candidate companies, a consultation process commenced, in which an OPS Project Review Team (PRT) and ETS/TW held discussions regarding ETS/TW's participation in the Demonstration Program. The consultation process involved OPS's technical scrutiny of ETS/TW's safety practices and pipeline integrity.

During the course of the consultation process, ETS/TW identified three pipeline segments in its system where it proposed to conduct risk control alternative activities (the "Activities") in lieu of the class location change requirements in 49 CFR 192.611. ETS/TW provided documents describing its proposed Activities for the three segments (the "waiver segments"). The PRT and ETS/TW agreed that it would be appropriate to address the proposed substitution of the Activities for compliance with 49 CFR 192.611 via waiver.[5] This document summarizes OPS's review of the proposed Activities and evaluates whether the terms of the waiver would be consistent with pipeline safety pursuant to 49 U.S.C. 60118(c).

2. OPS Evaluation of ETS/TW's Proposed Alternative Risk Control Activities

Representatives from OPS Headquarters and Southwestern Region evaluated ETS/TW's proposed Activities. OPS met with ETS/TW to discuss the current risk assessment and risk control processes ETS/TW uses, how these processes were used to identify and define the Activities, and the analysis of the protection achieved by the Activities compared to the protection 49 CFR 192.611 provides. The evaluation also included an environmental assessment, which is described in Appendix A of this Notice.

The ETS/TW System transports pressurized natural gas, which is lighter than air and flammable. If released as a result of a pipeline leak or rupture, natural gas can potentially ignite causing fires or explosions. Protection of the public and environment by the prevention of pipeline leaks and ruptures is the highest priority for OPS and ETS/TW. A major review criterion for this evaluation is whether the Activities ETS/TW has proposed will achieve a margin of safety and environmental protection comparable to that achieved through compliance with 49 CFR 192.611. It is the preliminary opinion of OPS that implementing the proposed Activities will result in a comparable margin of safety and environmental protection.

Once OPS has considered comments it receives in response to this Notice, OPS will make a final determination regarding whether to grant a waiver to ETS/TW to allow implementation of the Activities in lieu of compliance with 49 CFR 192.611.

3. Alternative Risk Control Activity Locations

The proposed Activities focus on controlling the risks in three pipeline segments located near Church Rock, NM, in the northwest corner of the state not far from the Arizona border. These waiver segments are located on the main transmission line in segment L–154 and on a parallel loop line in segment L–254. The waiver segments lie in McKinley County, New Mexico. The stationing and lengths of the three segments are:

Main line L–154: From M.P. 1173+06 to M.P. 1195+94 (2,288 feet)
Main line L–154: From M.P. 1226+92 to M.P. 1232+–5 (513 feet)
Loop line L–254: From M.P. 1247+47 to M.P. 1261+12 (1365 feet)

4. Description of Waiver: Alternative Risk Control Activities Designed To Provide Comparable Margin of Safety

4.1 Current Regulatory Requirements

This section describes the current regulatory requirements in 49 CFR § 192.611 governing actions that must be taken by a pipeline operator when population density increases along a pipeline.

OPS categorizes all locations along natural gas pipelines according to the population densities near the pipelines (see 49 CFR 192.5). Locations with the lowest population density (10 or fewer buildings intended for human occupancy within an area that extends 220 yards on either side of the centerline of any continuous one mile length pipeline) are designated as Class 1. As the population along a pipeline increases, the class location increases. For example, Class 2 locations have more than 10 but fewer than 46 buildings intended for human occupancy. Class 3 locations have 46 or more buildings intended for human occupancy, or are areas where a pipeline lies within 100 yards of either a building or small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12 month period. Class 4 locations are any class location unit where buildings with four or more stories above ground are prevalent (e.g. large office buildings).

All three of the ETS/TW waiver segments (identified in Section 3) have changed from Class 1 to Class 3 due to the addition and clustering of mobile homes in the area.

Pipeline safety regulations impose more stringent design and operational requirements as the class location increases. When a class location changes to a higher class (e.g., from class 2 to class 3), the operator must reduce the operating pressure on the pipeline to provide an additional margin of safety. The operator may be

[2] Candidates for the Pipeline Risk Management Demonstration Program [62 Federal Register 143, July 25, 1997].

[3] Pipeline Safety: Remaining Candidates for the Pipeline Risk Management Demonstration Program [62 Federal Register 197, October 10, 1997].

[4] Letter from William R. Cordes and Stanley C. Horton, Transwestern Pipeline Company to R.B. Felder, OPS, December 18, 1998.

[5] ETS/Transwestern Risk Management Demonstration Project, PRT Meeting Summary, March 9, 2000.

able to avoid reducing pressure, in some cases, if a pressure test on the pipe has confirmed that a prescribed safety margin exists. In these cases, if a previous pressure test has not confirmed the prescribed safety margin, then the operator must test the pipe to confirm the margin. In other cases, the operator must reduce the pressure or replace the pipe with new pipe.

ETS/TW has stated that in order to provide reliable natural gas service to its customers, it cannot permanently reduce the operating pressure along the waiver segments. Consequently, in order to meet pipeline safety regulations, ETS/TW would be required to replace the pipe in the three waiver segments. By replacing the existing pipe with new pipe that has the prescribed design factor, ETS/TW could eliminate the possibility that defects in the original materials and construction, as well as corrosion that may have occurred since installation, would result in a failure.

4.2 ETS/TW's Proposed Alternative Risk Control Activities

For each waiver segment, ETS/TW proposes to perform the following alternative risk control activities, with the objective of providing a margin of safety and environmental protection comparable to pipe replacement:

1. Internally inspect the waiver segments using geometry and magnetic flux leakage in-line inspection tools. (Current regulations do not require internal inspection). These tools reliably identify most indications of wall loss (e.g. corrosion), as well as dents and gouges from initial construction damage or third party excavators working along the pipeline right-of-way. ETS/TW has performed these internal inspections and the OPS Southwestern region has reviewed the inspection results.

2. Internally inspect an extended length of pipe (the "extended segments") bordering each waiver segment to further extend the benefits of the integrity analysis. The extended segments cover the distance between Compressor Stations 5 and 4 on both the main line and the loop line, a distance of approximately 129.5 miles.

3. Repair indications of corrosion, existing construction damage, and existing outside force damage identified by the internal inspection. ETS/TW used more conservative investigation and repair criteria in the waiver segments than is currently required by the regulations. The criteria call for investigation and repairs of small dents and anomalies that are well below the size at which a challenge to pipeline integrity might be expected.

4. Implement improved measures to prevent third-party damage to the pipelines in the waiver segments. These measures include installation of a new style of right-of-way marker at closer intervals, increasing vehicular and aerial surveillance from monthly to semi-monthly, and increased interaction with local contractors who would be most likely to dig in the area of the pipeline.

5. Perform monitoring of the waiver segments using portable waveform monitoring instrumentation that supplements and enhances the monitoring now required by regulation. These surveys will be compared with the results of the internal inspection of the lines.

In addition, ETS/TW proposes to conduct the following risk control activities on portions of its pipeline outside the waiver segments to supplement protection provided by the pipeline safety regulations:

6. Conduct a corrosion technology evaluation project comparing various corrosion monitoring technologies. This project will provide information to ETS/TW, and to OPS, regarding the relative effectiveness of different monitoring techniques on conditions endemic to line pipe in the Southwest. ETS/TW will survey additional portions of its pipeline using techniques shown by the corrosion technology evaluation project to be most effective.

7. Internally inspect an additional length of pipe on the main line between compressor stations 6 and 8, a distance of approximately 143.5 miles. These segments contain pipe known to have lower toughness. Current regulations do not require inspection of these segments, pipe replacement, or pressure reduction. These internal inspections are to be conducted by Fall 2001.

8. Repair indications of corrosion, existing construction damage, and existing outside force damage identified by the internal inspection based upon ETS/TW procedures. The criteria call for investigation and repairs of small dents and anomalies that are well below the size at which a challenge to pipeline integrity might be expected.

9. Install subsidence monitoring equipment at each main line valve and pigtrap assembly from Compressor station #6 to Compressor station #8, an area where possible subsidence contributes to the risk from the pipeline. Subsidence will be monitored in these locations for a minimum of two years.

Many of these Activities have been completed. OPS will condition any waiver to require completion of Activities that have not been completed at the time the waiver is issued.

OPS has compared the expected risk reduction produced by the Activities to that which would be achieved by compliance with 49 CFR 192.611 and has concluded that in the waiver segments the Activities will likely achieve a margin of safety and environmental protection comparable to that which would be achieved through compliance with 49 CFR 192.611. Furthermore, because of the resources saved by not having to replace pipe in the waiver segments, ETS/TW will be able to assess the integrity of additional portions of its system, which reduces the overall risks along the ETS/TW pipeline system. This will result in superior safety performance overall.

5. OPS's Proposed Action

Based on OPS's evaluation of ETS/TW's proposed Activities, OPS is considering granting ETS/TW a waiver from the pressure confirmation and pipe replacement requirements of 49 CFR 192.611. A waiver would require ETS/TW to implement the proposed Activities in lieu of compliance with this requirement. In addition, ETS/TW along with OPS, would monitor the Activities' effectiveness.

No more than 90 days after OPS adopts new rules related to integrity management of natural gas pipelines, ETS/TW will be required to re-evaluate the rule's effect on this waiver so that OPS can determine whether the terms of the waiver continue to be appropriate and the overall effect of the waiver remains consistent with pipeline safety. If OPS determines that the terms of the waiver are no longer appropriate or that the overall effect of the waiver is inconsistent with pipeline safety, OPS will revoke the waiver and require ETS/TW to comply with 49 CFR 192.611.

6. Regulatory Perspective

Why Is OPS Considering This Waiver?

OPS has determined that the terms of the waiver are appropriate and that the overall effect of the waiver is consistent with pipeline safety. The following factors were considered when making this determination:

1. The proposed Activities will provide a comparable margin of safety and protection for the environment and the communities in the vicinity of ETS/TW's pipelines;

2. The three waiver segments have a good integrity history, with no leaks recorded during operation or hydrostatic testing.

3. ETS/TW has internally inspected a total of 129.5 miles of pipe, including the waiver segments. ETS/TW will additionally inspect a total of 143.5

miles. These activities add protection against pipeline failures from corrosion, manufacturing and construction defects, and outside third-party damage along this full 273 mile length. Compliance with 49 CFR 192.611 would require replacement of pipe or requalification tests within the waiver segments only (less than 1 mile of pipe), with no added protection for the additional segments. The ETS/TW Activities provide added protection by including the additional segments.

4. ETS/TW was selected as a candidate for the Risk Management Demonstration Program and has participated in a consultation process with OPS, which included an enhanced sharing with OPS of information related to the integrity of ETS/TW's pipeline.

How Will OPS Oversee the Activities?

OPS retains its authority to enforce ETS/TW's compliance with the pipeline safety regulations. OPS is only considering whether to grant a waiver from compliance with 49 CFR 192.611 at those three segments where ETS/TW has demonstrated that its proposed Activities achieve a comparable margin of safety and environmental protection. Should any information subsequently indicate that the terms of the waiver are no longer appropriate or that the overall effect of the waiver is inconsistent with pipeline safety, then OPS retains its authority to revoke the waiver and require ETS/TW to again comply with 49 CFR 192.611.

This Notice is OPS's final request for public comment before OPS makes a final decision on whether to grant the waiver to ETS/TW.

Issued in Washington, DC, on June 20, 2001.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 01–16782 Filed 7–3–01; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–32 (Sub–No. 90)]

Boston and Maine Corporation—Abandonment—In Essex County, MA, and Rockingham County, NH

On June 15, 2001, the Boston and Maine Corporation (B&M) filed with the Surface Transportation Board (Board) an application for permission to abandon and discontinue service on a line of railroad known as the Manchester and Lawrence Branch extending from milepost 1.4 in Lawrence, MA, to milepost 4.4 in Salem, NH, a distance of 3 miles, in Essex County, MA, and Rockingham County, NH. The line traverses U.S. Postal Service ZIP Codes 01840, 01841, 01843, 01844 and 03079. Applicant has indicated that there are no agency stations located on the line.

The line does not contain federally granted rights-of-way. Any documentation in B&M's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment (case-in-chief) was filed with the application.

The line of railroad has appeared on B&M's system diagram map or has been included in its narrative in category 1 since December 27, 2000.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), by July 30, 2001. All interested persons should be aware that, following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.[1] Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) or for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by July 30, 2001. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27). Applicant's reply to any opposition statements and its response to trail use requests must be filed by August 14, 2001. *See* 49 CFR 1152.26(a).

Persons opposing the abandonment who wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25. Persons interested only in seeking public use or trail use conditions should also file comments.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance (OFA) for continued rail service under 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

All filings in response to this notice must refer to STB Docket No. AB–32 (Sub-No. 90) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Robert B. Culliford, Iron Horse Park, North Billerica, MA 10862. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will

[1] Applicant notes that a portion of the line from milepost 1.4 to approximately milepost 3.72 is owned by the Massachusetts Bay Transportation Authority, an agency of the Commonwealth of Massachusetts, and that B&M provides service over this portion pursuant to an exclusive freight easement.

be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 27, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–16695 Filed 7–3–01; 8:45 am]

BILLING CODE 4910–00–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Docket No. 921; ATF 0 1130.10]

Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 25, Beer

To: All Bureau Supervisors

1. *Purpose.* This order delegates certain authorities of the Director to subordinate ATF officials and prescribes the subordinate ATF officials with whom persons file documents which are not ATF forms.

2. *Background.* Under current regulations, the Director has authority to take final action on matters relating to beer. The Bureau has determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

3. *Cancellation.* ATF O 1100.99B, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 25, Beer, is cancelled.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–01 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR Part 25 to subordinate officials. Also, this ATF order prescribes the subordinate officials with whom applications, notices, and reports required by 27 CFR Part 25, which are not ATF forms, are filed. The attached table identifies the regulatory sections, authorities and documents to be filed, and the authorized ATF officials. The authorities in the table may not be redelegated. An ATF organization chart showing the directorates involved in this delegation order has been attached.

5. *Questions.* If you have questions about this ATF order, contact the Regulations Division (202–927–8210).

Bradley A. Buckles,

Director.

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED OFFICIALS

Regulatory section	Officers authorized to act or to receive document
§ 25.3(a)	Chief, Regulations Division.
§ 25.22	Director of Industry Operations.
§ 25.23(b)	Chief, Regulations Division.
§ 25.23(c)	Section Chief, National Revenue Center (NRC), upon recommendation of Area Supervisor.
§ 25.24(a)(7)	Area Supervisor.
§ 25.25(a)	Section Chief, NRC, upon recommendation of Area Supervisor.
§ 25.31	Inspector, Specialist or Special Agent.
§ 25.42(a)	Inspector, Specialist or Special Agent.
§ 25.42(c)	Area Supervisor.
§ 25.51	Inspector, Specialist and Special Agent to inspect. Area Supervisor to assign officers.
§ 25.52(a)(1), (3), (4) and (5)	Chief, Regulations Division. If alternate method or procedure does not affect an ATF approved formula, or import or export recordkeeping, Chief, NRC, may act upon the same method or procedure that has been approved by the Chief, Regulations Division.
§ 25.52(a)(2)	Chief, Regulations Division.
§ 25.52(b)(1)	Area Supervisor.
§ 25.52(b)(2) and (3)	Director of Industry Operations.
§ 25.52(d)	For alternate method or procedure, Chief, Regulations Division. If alternate method or procedure does not affect an ATF approved formula, or import or export recordkeeping, Chief, NRC, may act upon the same method or procedure that has been approved by the Chief, Regulations Division. For emergency variation, Director of Industry Operations.
§ 25.61(a)	Section Chief, NRC, upon recommendation of Area Supervisor.
§ 25.61(c)(1)	Area Supervisor or Unit Supervisor, NRC.
§ 25.63	Section Chief, NRC, upon recommendation of Area Supervisor, to affix the signature of the Director.
§ 25.64	Inspector, Specialist or Special Agent.
§ 25.66(c)	Area Supervisor, Unit Supervisor, NRC, or Technical Section Supervisor.
§ 25.66(d)	Inspector, Specialist or Special Agent.
§ 25.68(b)	Inspector, Specialist or Special Agent.
§ 25.71(a)(2) and (b)(1)	Area Supervisor or Section Chief, NRC.
§ 25.72(b)(2)	Section Chief, NRC.
§ 25.74	Section Chief, NRC.
§ 25.75	Section Chief, NRC, upon recommendation of Area Supervisor.
§ 25.77	For notice (ATF F 5130.10), Section Chief, NRC, upon recommendation of Area Supervisor, to affix the signature of the Director. For bond and consent of surety, Section Chief, NRC.
§ 25.81(c)	Area Supervisor.
§ 25.81(e)	Area Supervisor.
§ 25.85	Section Chief, NRC, upon recommendation of the Area Supervisor, to affix the signature of the Director.
§ 25.91(c) and (d)	Section Chief, NRC.
§ 25.95	Section Chief, NRC.
§ 25.96	Section Chief, NRC.

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED OFFICIALS—Continued

Regulatory section	Officers authorized to act or to receive document
§ 25.101(a)	Section Chief, NRC.
§ 25.101(b)	Assistant Director (Alcohol and Tobacco).
§ 25.103	Section Chief, NRC.
§ 25.104	Section Chief, NRC.
§ 25.105	Section Chief, NRC.
§ 25.114(a)	Section Chief, NRC.
§ 25.127	Inspector, Specialist or Special Agent.
§ 25.141(b)(2)	Inspector, Specialist or Special Agent to make determination. Chief, Alcohol Labeling and Formulation Branch to receive notice.
§ 25.142(b)(2)	Inspector, Specialist or Special Agent to make determination. Chief, Alcohol Labeling and Formulation Branch to receive notice.
§ 25.142(c)	Specialist, Alcohol Labeling and Formulation Division.
§ 25.144(b)	Area Supervisor.
§ 25.152(a)	Section Chief, NRC.
§ 25.155	Specialist, Alcohol Labeling and Formulation Division.
§ 25.158(c)	Section Chief, NRC.
§ 25.165(b)(1) and (3), and (e)	Section Chief, NRC.
§ 25.167(a)	Section Chief, NRC.
§ 25.173(a)	Section Chief, NRC.
§ 25.182	Area Supervisor.
§ 25.184(d)	Area Supervisor.
§ 25.196(b)	Area Supervisor.
§ 25.213(b)	Area Supervisor.
§ 25.213(c)	Inspector, Specialist or Special Agent.
§ 25.222(a) and (b)	Area Supervisor.
§ 25.223(a)	Area Supervisor.
§ 25.223(b)	Area Supervisor to require ATF officer to verify, to delay destruction and to impose conditions. Inspector, Specialist and Special Agent to verify.
§ 25.225(b)(2)	Area Supervisor.
§ 25.251(c)	Inspector, Specialist or Special Agent.
§ 25.252(c)	Inspector, Specialist or Special Agent.
§ 25.272(a)	Section Chief, NRC.
§ 25.272(b)	Area Supervisor or Unit Supervisor, NRC.
§ 25.272(c), (d) and (e)	Section Chief, NRC, upon recommendation of Area Supervisor.
§ 25.273	Section Chief, NRC, upon recommendation of Area Supervisor, to approve application. Inspector, Specialist or Special Agent to inspect.
§ 25.274(a)	Section Chief, NRC.
§ 25.276(c)	Area Supervisor to prescribe records. Inspector, Specialist or Special Agent to inspect.
§ 25.277	Section Chief, NRC.
§ 25.281(c)	Unit Supervisor, NRC.
§ 25.282(b)	Unit Supervisor, NRC.
§ 25.282(c)	Area Supervisor or Unit Supervisor, NRC.
§ 25.282(d)	Unit Supervisor, NRC.
§ 25.282(e)	Area Supervisor.
§ 25.282(f)	Area Supervisor or Unit Supervisor, NRC.
§ 25.283(d)	Area Supervisor or Unit Supervisor, NRC.
§ 25.284(b)	Area Supervisor.
§ 25.284(d)	Unit Supervisor, NRC.
§ 25.291(c)(2)(ii)	Inspector, Specialist or Special Agent.
§ 25.291(d)(3)	Area Supervisor.
§ 25.294(c)	Inspector, Specialist or Special Agent.
§ 25.297(b)(4)	Area Supervisor or Unit Supervisor, NRC.
§ 25.300(a)	Inspector, Specialist or Special Agent.
§ 25.300(c)	Director of Industry Operations.
§ 25.300(d)(3)	Inspector, Specialist or Special Agent 2.

BILLING CODE 5810-31-P

ATF O 1130.10

Table of Authorities, Documents to Be Filed, and Authorized Officials

ATF Organization

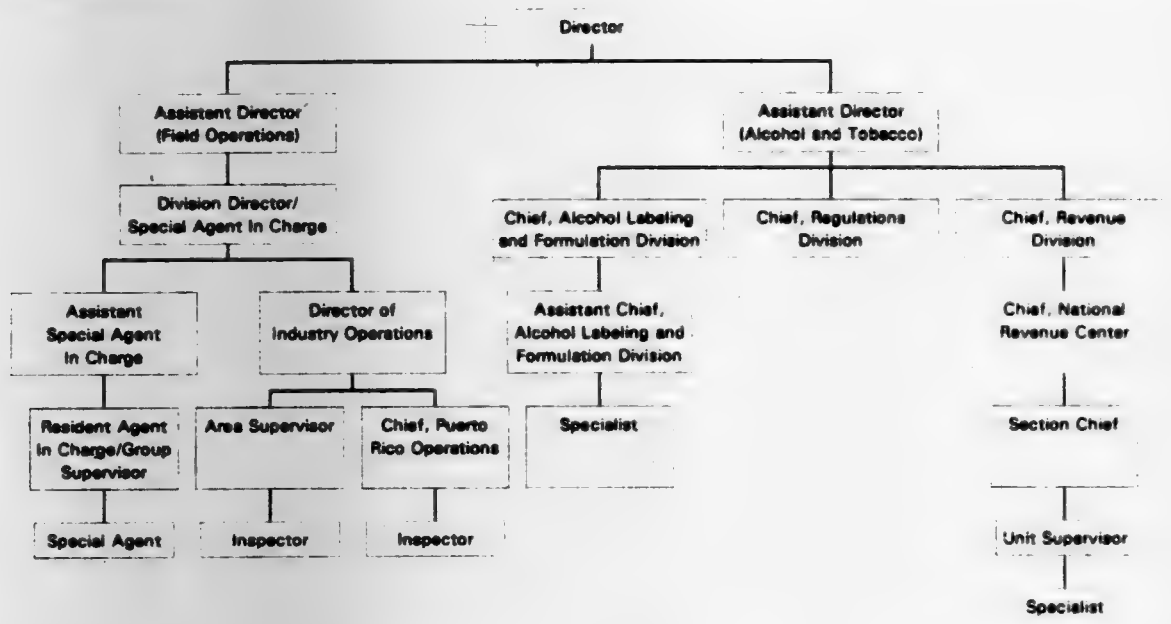

This is not a complete organizational chart of ATF

[FR Doc. 01–16815 Filed 7–3–01; 8:45 am]
BILLING CODE 5810–31–C

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Docket No. 922; ATF 0 1130.9]

Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 20, 21 and 22

To: All Bureau Supervisors.

1. *Purpose.* This order delegates certain authorities of the Director to subordinate ATF officials and prescribes the subordinate ATF officials with whom persons file documents which are not ATF forms.

2. *Background.* Under current regulations, the Director has authority to take final action on matters relating to distilled spirits plants. The Bureau has determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

3. *Cancellation.* ATF O 1100.67D, Delegation Order—Delegation to the Comptroller of Authorities of the Director in 27 CFR Part 20, Distribution and Use of Denatured Alcohol and Rum, ATF O 1100.91C, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 20, Distribution and Use of Denatured Alcohol and Rum, ATF O 1100.90A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 21, Formulas for Denatured Alcohol and Rum, and ATF O 1100.87B, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 22, Distribution and Use of Tax-Free Alcohol, are canceled.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–01 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR Parts 20, 21 and 22 to subordinate officials. Also, this ATF order prescribes the subordinate officials with whom applications, notices, and reports required by 27 CFR Parts 20, 21 and 22, which are not ATF forms, are filed. The attached table identifies the regulatory sections, authorities and documents to be filed, and the authorized ATF officials. The authorities in the table may not be redelegated. An ATF organization chart showing the directorates involved in this delegation order has been attached.

5. *Questions.* If you have questions about this ATF order, contact the Regulations Division (202–927–8210).

Bradley A. Buckles,
Director.

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED OFFICIALS

Regulatory section	Officer(s) authorized to act or receive document
20.11—Bulk Conveyance	Chief, National Revenue Center (NRC), to approve othercontainers for bulk quantities upon recommendation of Area Supervisor or Chief, Puerto Rico Operations.
20.21(a)	Chief, Regulations Division.

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TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED OFFICIALS—Continued

Regulatory section	Officer(s) authorized to act or receive document
20.22(a)	Chief, Regulations Division. If the alternate method does not affect an ATF approved formula, or import or export recordkeeping, Chief, NRC, may act upon the same alternate method that has been approved by the Chief,Regulations Division.
20.22(b)	Director of Industry Operations.
20.22(c)	Chief, Regulations Division, to withdraw an alternate procedure or method or Director of Industry Operations to withdraw an emergency variation.
20.23	Chief, Nonbeverage Products Sections.
20.24	Section Chief, NRC, to act on claims of more than $5,000 of tax.
20.24	Unit Supervisor, NRC, to notify claimant of $5,000 or less of tax.
20.25	Unit Supervisor, NRC, (by affixing the signature of the Director) upon the recommendation of the Area Supervisor for a permit other than in Puerto Rico.
20.25	Chief, Puerto Rico Operations (by affixing the signature of the Director) for a permit in Puerto Rico.
20.26	Chief, Puerto Rico Operations, or Unit Supervisor, NRC.
20.27	Inspector, Specialist or Special Agent.
20.28(a)	Inspector, Specialist or Special Agent.
20.28(b)	Director of Industry Operations.
20.37	Inspector, Specialist or Special Agent.
20.40(c)	Inspector, Specialist or Special Agent.
20.41(c)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.42 (a)(11)	Chief, Puerto Rico Operations, Area Supervisor, or UnitSupervisor, NRC.
20.42(b)	Chief, Puerto Rico Operations, or Unit Supervisor, NRC.
20.43(a)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.44	Director of Industry Operations.
20.45(c)(1)	Area Supervisor, Chief, Puerto Rico Operations, or UnitSupervisor, NRC.
20.47(c)	Inspector, Specialist or Special Agent.
20.48(b) and (c)	Chief, Nonbeverage Products Section, to approve formulas and statements of process.
20.48(b)	Unit Supervisor, NRC, (by affixing the signature of the Director) upon the recommendation of the Area Supervisor for a permit other than in Puerto Rico, or Chief, PuertoRico Operations.
20.48(b)	Chief, Puerto Rico Operations (by affixing the signature of the Director) for a permit in Puerto Rico.
20.50	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.51	Director of Industry Operations.
20.56(a)(1)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.56(b) and (c)(1)	Unit Supervisor, NRC, Area Supervisor or Chief, Puerto Rico Operations.
20.56(c)(3)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.57(b)(1) and (2)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.60	Unit Supervisor, NRC, (by affixing the signature of the Director) upon the recommendation of the Area Supervisor for a permit other than in Puerto Rico, or Chief, Puerto Rico Operations.
20.60	Chief, Puerto Rico Operations (by affixing the signature of the Director) for a permit in Puerto Rico.
20.61	Unit Supervisor, NRC, (by affixing the signature of the Director) upon the recommendation of the Area Supervisor for a permit other than in Puerto Rico, or Chief, Puerto Rico Operations.
20.61	Chief, Puerto Rico Operations (by affixing the signature of the Director) for a permit in Puerto Rico.
20.62(a)	Unit Supervisor, NRC, (by affixing the signature of the Director) upon the recommendation of the Area Supervisor for a permit other than in Puerto Rico, or Chief, Puerto Rico Operations.
20.62(a)	Chief, Puerto Rico Operations (by affixing the signature of the Director) for a permit in Puerto Rico.
20.63(a)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.64	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.68(a)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.72(b)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.74	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.79	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.80	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.82	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.91(a)	Chief, Regulations Division.
20.91(c)	Chief, Nonbeverage Products Section.
20.92 (a) & (b)	Chief, Nonbeverage Products Section.
20.92(c)	Chief, Nonbeverage Products Section, Chief, Puerto Rico Operations, and Area Supervisor.
20.100	Chief, Nonbeverage Products Section.
20.103	Chief, Nonbeverage Products Section.
20.111	Chief, Regulations Division.
20.117(d)(2)(iv)	Inspector, Specialist or Special Agent.
20.117(d)(2)(v)	Chief, Puerto Rico Operations, and Area Supervisor.
20.132(c)	Director of Industry Operations.
20.133	Director of Industry Operations.
20.134(b)(1)(ii)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.134(c)	Area Supervisor or Chief, Puerto Rico Operations.
20.134(c)	Chief, Puerto Rico Operations.
20.144	Chief, Regulations Division.
20.147(b)	Chief, Nonbeverage Products Section.
20.161(c)(3)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.163(c)(2)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.164(e)	Area Supervisor or Chief, Puerto Rico Operations.
20.166	Inspector, Specialist or Special Agent.

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TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED OFFICIALS—Continued

Regulatory section	Officer(s) authorized to act or receive document
20.170	Inspector, Specialist or Special Agent.
20.178(c)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.181(a)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.190	Area Supervisor or Chief, Puerto Rico Operations.
20.202(a)	Area Supervisor or Chief, Puerto Rico Operations.
20.204(b)	Area Supervisor or Chief, Puerto Rico Operations.
20.205(f)	Area Supervisor, Chief, Puerto Rico Operations, or Unit Supervisor, NRC.
20.211(b)	Chief, Nonbeverage Products Section.
20.213(a)	Area Supervisor or Chief, Puerto Rico Operations.
20.213(b)	Director of Industry Operations to require supervision.
20.213(b)	Inspector, Specialist or Special Agent to supervise redenaturation.
20.234(b)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.235(c)	Area Supervisor or Chief, Puerto Rico Operations.
20.244	Area Supervisor or Chief, Puerto Rico Operations.
20.245	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.246	Area Supervisor or Chief, Puerto Rico Operations.
20.252(a)	Unit Supervisor, NRC, or Chief, Puerto Rico Operations.
20.252(b)	Chief, Puerto Rico Operations, or Unit Supervisor, NRC.
20.261	Area Supervisor or Chief, Puerto Rico Operations to request records.
20.261	Inspector, Specialist or Special Agent to verify and trace records and to determine compliance.
20.262(c)	Inspector, Specialist or Special Agent.
20.262(d)	Area Supervisor, Chief, Puerto Rico Operations or Unit Supervisor, NRC.
20.263(c)	Inspector, Specialist or Special Agent.
20.263(d)	Area Supervisor, Chief, Puerto Rico Operations or Unit Supervisor, NRC.
20.265(a)	Inspector, Specialist or Special Agent.
20.265(b)	Area Supervisor upon recommendation of Unit Supervisor,NRC.
20.265(b)	Chief, Puerto Rico Operations.
20.267(a)	Inspector, Specialist or Special Agent to inspect records and reports.
20.267(a)	Director of Industry Operations to require additional 3 years for records and reports.
20.267(c)	Inspector, Specialist or Special Agent.
21.2(a)	Chief, Regulations Division.
21.3(b)	Chief, Nonbeverage Products Section.
21.3(c)	Area Supervisor or Chief, Puerto Rico Operations.
21.3(d)	Chief, Regulations Division.
21.5	Chief, Regulations Division.
21.21(b) and (c)	Chief, Nonbeverage Products Section.
21.31(b)	Chief, Regulations Division.
21.31(c)	Chief, Nonbeverage Products Section.
21.33(c)	Chief, Nonbeverage Products Section.
21.34(c)	Chief, Nonbeverage Products Section.
21.56(a)	Chief, Nonbeverage Products Section.
21.65(a)	Chief, Nonbeverage Products Section.
21.91	Chief, Nonbeverage Products Section.
21.141 footnote 1	Chief, Nonbeverage Products Section.
22.21(a)	Chief, Regulations Division.
22.22(a)	Chief, Regulations Division. If the alternate method does not affect an ATF approved formula, or import or export recordkeeping, Chief, NRC, may act upon the same alternate method that has been approved by the Chief, Regulations Division.
22.22(b)	Director of Industry Operations.
22.22(c)	Chief, Regulations Division, to withdraw alternate method or procedure or Director of Industry Operations to withdraw emergency variation.
22.23	Section Chief, NRC, to act on claims of more than $5,000 of tax by affixing the signature of the Director.
22.23	Unit Supervisor, NRC, to notify claimant of $5,000 or less of tax by affixing the signature of the Director.
22.24	Unit Supervisor, NRC, (by affixing the signature of the Director) upon the recommendations of the Area Supervisor for a permit other than in Puerto Rico.
22.24	Chief, Puerto Rico Operations (by affixing the signature of the Director) for a permit in Puerto Rico.
22.25	Unit Supervisor, NRC.
22.26	Inspector, Special Agent or Specialist.
22.27(a)	Inspector, Special Agent or Specialist.
22.27(b)	Director of Industry Operations.
22.36	Inspector, Special Agent or Specialist.
22.39(c)	Inspector, Special Agent or Specialist.
22.41(b)	Unit Supervisor, NRC.
22.42(a)(11)	Area Supervisor or Unit Supervisor, NRC.
22.42(b)	Unit Supervisor, NRC.
22.43	Unit Supervisor, NRC.
22.44	Director of Industry Operations.
22.45(c)(1)	Area Supervisor or Unit Supervisor, NRC.
22.50	Unit Supervisor, NRC.
22.51	Director of Industry Operations.
22.57(a)	Unit Supervisor, NRC.
22.57(b) and (c)(1)	Area Supervisor or Unit Supervisor, NRC.

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED OFFICIALS—Continued

Regulatory section	Officer(s) authorized to act or receive document
22.57(c)(3)	Unit Supervisor, NRC.
22.58(b)(1) and (b)(2)	Unit Supervisor, NRC.
22.61	Unit Supervisor, NRC upon the recommendation of the Area Supervisor.
22.62	Unit Supervisor, NRC upon the recommendation of the Area Supervisor.
22.63(a)	Unit Supervisor, NRC upon the recommendation of the Area Supervisor.
22.64	Unit Supervisor, NRC.
22.68(a)	Unit Supervisor, NRC.
22.72(b)	Area Supervisor or Unit Supervisor, NRC.
22.74	Area Supervisor or Unit Supervisor, NRC.
22.79	Area Supervisor or Unit Supervisor, NRC.
22.80	Unit Supervisor, NRC.
22.82	Unit Supervisor, NRC.
22.102(c)	Unit Supervisor, NRC upon the recommendation of the Area Supervisor.
22.103	Unit Supervisor, NRC upon the recommendation of the Area Supervisor.
20.111(c)(3)	Unit Supervisor, NRC upon the recommendation of the Area Supervisor.
22.113(a)(1)	Area Supervisor.
22.113(c)	Inspector, Special Agent or Specialist.
22.122(a)	Area Supervisor.
22.124(b)	Area Supervisor.
22.125(c)	Area Supervisor or Unit Supervisor, NRC.
22.142(a)(1)	Area Supervisor to receive notice.
22.142(a)(2)	Inspector, Special agent or Specialist on premises to supervise or to transmit notice to Area Supervisor.
22.142(c)	Inspector, Special Agent or Specialist to supervise or Area Supervisor to advise permittee.
22.142(d)	Inspector, Special Agent or Specialist.
22.152(a)	Area Supervisor.
22.154(b)(3)	Unit Supervisor, NRC.
22.155(a)	Area Supervisor.
22.161(a) and (d)	Inspector, Special Agent or Specialist.
22.162	Unit Supervisor, NRC.
22.164(a)	Director of Industry Operations.
22.171(a)	Unit Supervisor, NRC.
22.174	Area Supervisor.
22.175	Unit Supervisor, NRC.
22.176	Chief, Regulations Division.

BILLING CODE 4810–31–P

ATF Organization ATF O 1130.9

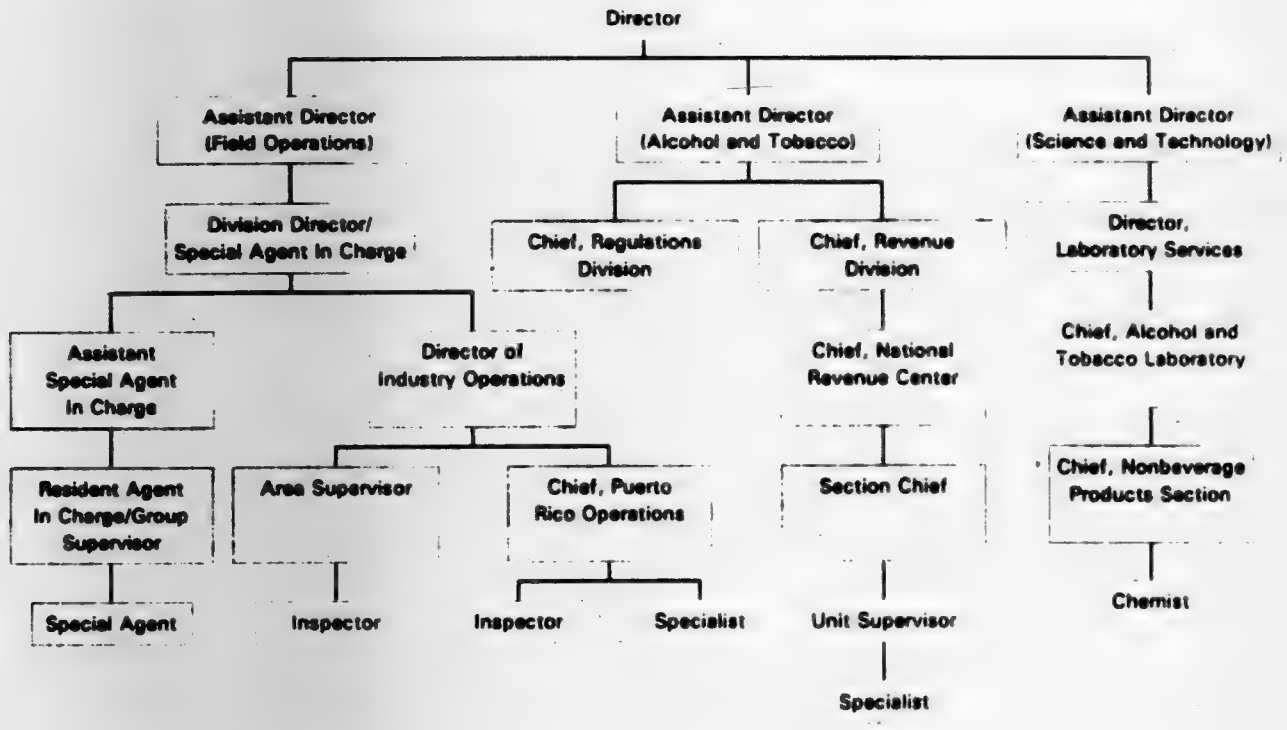

This is not a complete organizational chart of ATF.

[FR Doc. 01–16816 Filed 7–3–01; 8:45 am]
BILLING CODE 4810–31–C

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0255]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the applicant's eligibility to apply for VA benefits in conjunction with Social Security benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 4, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0255" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Dependency and Indemnity Compensation or Death Pension (Including Accrued Benefits and Death Compensation Where Applicable) From the Department of Veterans Affairs, (Supplement to Social Security Application Forms SSA–4, 5, 7 and 10), VA Form 21–4182.

OMB Control Number: 2900–0255.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to determine the applicant's eligibility for accrued, dependency and indemnity compensation, death compensation and/or death pension benefits when applying for Social Security benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Number of Respondents: 14,000.

Dated: June 18, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–16827 Filed 7–3–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0118]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 6, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8015, FAX (202) 273–5981 or *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0118."

SUPPLEMENTARY INFORMATION: *Title:* Transfer of Scholastic Credit (Schools), VA Form Letter 22–315.

OMB Control Number: 2900–0118.

Type of Review: Extension of a currently approved collection.

Abstract: When a student receiving VA education benefits is enrolled at two training institutions, the institution at which the student pursues his or her approved program of education must verify that courses pursued at a second or supplemental institution will be accepted at full credit toward the student's course objective. Educational payment for courses pursued at the second institution are not payable unless evidence is received to verify that the student is pursuing his or her approved program while enrolled in these courses. VA Form Letter 22–315 serves as this certification of acceptance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 8, 2001, at pages 13999—14000.

Affected Public: State, Local or Tribal Government and Not-for-profit institutions.

Estimated Annual Burden: 3,433 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,600.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0118" in any correspondence.

Dated: June 18, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–16828 Filed 7–3–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0162]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 6, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0162."

SUPPLEMENTARY INFORMATION: *Title:* Monthly Certification of Flight Training, VA Form 22–6553c.

OMB Control Number: 2900–0162.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 22–6553c is used by veterans and individuals on active duty training and reservists to receive benefits for enrolling in and pursuing approved vocational flight training. Benefits are limited to 60 percent of the approved cost of the courses, including solo flight training. Payments are based on the number of hours of flight training completed during each month. Benefits are not payable if the veterans and individuals on active duty or reservists terminate the training.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 16, 2001, at page 19605.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Annual Burden: 6,050 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,200.

Estimated Annual Responses: 12,100.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0162" in any correspondence.

Dated: June 18, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–16829 Filed 7–3–01; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
July 5, 2001

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 57
Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners; Final Rule and Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB11

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; partial delay of effective date; clarification of effective dates; and correction amendments.

SUMMARY: This document gives notice of a delay of the effective date of 30 CFR 57.5066(b) of the final rule addressing "Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners," published in the **Federal Register** on January 19, 2001 (66 FR 5706). The delayed provision concerns tagging equipment for maintenance purposes. This document also clarifies the applicability dates of other final rule provisions and makes corrections to the preamble and regulatory text.

DATES: The final rule as published on January 19, 2001 (66 FR 5706), and delayed on March 15, 2001 (66 FR 15033) and on May 21, 2001 (66 FR 27863), will become effective July 5, 2001 except for § 57.5066(b) which is delayed pending disposition of current litigation challenging the rule.

The corrections in this document are effective July 5, 2001.

MSHA also clarifies that, under the terms of the rule,§ 57.5061, § 57.5062, and § 57.5071, do not apply until § 57.5060 applies. As stated in the final rule published on January 19, 2001, § 57.5060(a) will not apply until after July 19, 2002; and § 57.5060(b) will not apply until after January 19, 2006. Sections 57.5067, 57.5070, and 57.5075 apply insofar as they relate to requirements of the rule that are in effect.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Director; Office of Standards, Regulations, and Variances; MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203–1984. Mr. Meyer can be reached at *meyer-david@msha.gov* (E-mail), 703–235–1910 (Voice), or 703–235–5551 (fax).

SUPPLEMENTARY INFORMATION: On January 19, 2001, MSHA published a final rule addressing the exposure of underground metal and nonmetal miners to diesel particulate matter (66 FR 5706). The rule establishes new health standards for underground metal and nonmetal miners working at mines that use equipment powered by diesel engines. The rule is designed to reduce the risk to these miners of serious health hazards that are associated with exposure to high concentrations of dpm.

The effective date of the rule was listed as March 20, 2001 (66 FR 5706). Section 57.5060 of the rule establishes an interim concentration limit of 400 micrograms of dpm per cubic meter of air to become applicable after July 19, 2002, and a final concentration limit of 160 micrograms of dpm per cubic meter of air to become applicable after January 19, 2006 (66 FR 5706, 5708, 5907). The rule also includes provisions on how the Secretary of Labor determines compliance with the concentration limits (§ 57.5061), what operators must do when they exceed the applicable concentration limit (§ 57.5062), and what operators must do to determine the concentration of dpm in their mines (§ 57.5071). The summary section of the preamble of the rule did not clearly specify the applicable date of these provisions on concentration limits, or of the associated recordkeeping requirements (§ 57.5075).

On January 29, 2001, Anglogold (Jerritt Canyon) Corp. and Kennecott Greens Creek Mining Company filed a petition for review of the rule in the District of Columbia Circuit. On February 7, 2001, the Georgia Mining Association, the National Mining Association, the Salt Institute, and MARG Diesel Coalition filed a similar petition in the Eleventh Circuit. On March 14, 2001, Getchell Gold Corporation petitioned for review of the rule in the District of Columbia Circuit. The three petitions have been consolidated and are pending in the District of Columbia Circuit. The United Steelworkers of America (USWA) has intervened in the Anglogold case.

While these challenges were pending, the Anglogold petitioners filed with MSHA an application for reconsideration and amendment of the final rule and to postpone the effective date of the final rule pending judicial review. The Georgia Mining petitioners similarly filed with MSHA a request for an administrative stay or postponement of the effective date of the rule. On March 15, 2001, MSHA delayed the effective date of the rule until May 21, 2001, in accordance with a January 20, 2001 memorandum from the President's Chief of Staff (66 FR 15032). This delay was necessary to give Department of Labor officials the opportunity for further review and consideration of these new regulations. *Ibid.* On May 21, 2001 (66 FR 27863), MSHA published a notice in the **Federal Register** delaying the effective date of the final rule until July 5, 2001.

After review of the rule, consideration of the applications filed with MSHA, and discussions with the affected parties, MSHA has determined to take the following actions:

I. Delay of Effective Date of 30 CFR 57.5066(b)

MSHA grants the applications insofar as they request a delay of the effective date of 30 CFR 57.5066(b), Maintenance standards, relating to "tagging" requirements. See 5 U.S.C. 705 ("When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review"). MSHA has determined that § 57.5066(b) as written, may give rise to confusion and thereby may prove costly to mine operators without effectively furthering the rule's goal of protecting miners from dpm exposure. MSHA believes that a delay of this provision may assist the parties in negotiating an acceptable disposition of the current pending litigation. For these reasons, MSHA hereby delays the effective date of § 57.5066(b). By separate notice published in today's **Federal Register**, MSHA will be initiating rulemaking on this delayed provision.

II. Clarification to the Final Rule Preamble

In the preamble to the final rule, MSHA specified under the "dates" caption that § 57.5060(a), addressing the interim concentration limit of diesel particulate matter, will not apply until after July 19, 2002, and that § 57.5060(b), addressing the final concentration limit of diesel particulate matter, will not apply until after January 19, 2006. MSHA clarifies that the applicable date of § 57.5061, Compliance determinations, § 57.5062, Diesel particulate matter control plan, and § 57.5071, Environmental monitoring, will also apply after July 19, 2002, because these provisions are directly related to § 57.5060(a). Section 57.5067, Engines; § 57.5070, Miner training; and § 57.5075, Diesel particulate records, apply insofar as they relate to the requirements of the rule that are in effect.

III. Corrections to Final Rule Preamble and Regulatory Text of 66 FR 5706

As discussed in the preamble to the final rule (66 FR 5706), proposed paragraph (c) of § 57.5065 would have prohibited idling of mobile diesel powered equipment, except as required for normal mining operations. Although commenters generally agreed with MSHA's statement in the proposed rule,

that this requirement will aid in the reduction of dpm concentrations at the mine, they noted that the total amount of dpm emitted from this single source might have little effect on the levels of dpm in the overall mining environment. They also questioned the need for an idling restriction in light of the proposed concentration limits established in the regulation. Also, a commenter indicated that the provision was not necessary because mine operators, in an effort to comply with the applicable concentration limits, would be forced to institute work rules to this effect anyway. Moreover, as pointed out by commenters, nothing in the regulatory language prohibits operators from voluntarily restricting idling at the mine, eliminating the need to include this provision. The preamble further indicates that although MSHA is deleting this requirement from the final regulation, MSHA recommends as a best practice that mine operators do not allow miners to idle diesel-powered equipment unnecessarily.

After consideration of comments received during the comment period, as well as testimony presented at the public hearings, MSHA decided to delete the idling requirement from the final rule. However, MSHA inadvertently included this requirement in the final regulation. This document corrects this error, as well as other errors made in the preamble at the time of publication. These corrections are effective on July 5, 2001.

Procedural Requirements

MSHA is of the view that these corrections to an inadvertent error in the final rule are not a rule to which the procedural requirements of 5 U.S.C. 553 apply, or the various statutes and executive orders relating to rules apply. If these corrections are a rule, however, notice and comment is not required based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). MSHA finds good cause not to provide further notice and comment in that additional notice and comment is unnecessary and contrary to the public interest because the public was advised in the preamble to the final rule of MSHA's intention to delete the idling requirement from the regulation. Consequently, unnecessary confusion may result if this correction is not made immediately. This document corrects this error, as well as other errors made in the preamble at the time of publication. These corrections are effective on July 5, 2001, the effective date of the final rule.

These corrections contain no paperwork requirements to which the Paperwork Reduction Act applies. In addition, this action, if a rule, is not a "significant regulatory action" within the meaning of Executive Order 12866. Furthermore, this action is not a "major rule" within the meaning of the Small Business Regulatory Enforcement Fairness Act, or an "unfunded mandate" within the meaning of Title II of the Unfunded Mandates Reform Act of 1995. The action also will not have federalism implications within the meaning of Executive Order 13132, and a regulatory flexibility analysis is not required by the Regulatory Flexibility Act. Additionally, in accordance with Executive Order 13211 regarding the energy effects of Federal regulations, MSHA has determined that this action does not have any adverse effects on energy supply, distribution, or use.

Accordingly, MSHA makes the following corrections to the final rule published on January 19, 2001:

I. Printing Errors in the Preamble

The following corrections to the preamble in the **Federal Register** issue of January 19, 2001 (66 FR 5706), are made:

1. On page 5776, columns 7–8, line 7, change "SMR = 0.86 for taxi drivers (*)" to "SMR = 0.86 for taxi drivers".

2. On page 5776, columns 7–8, line 11, change "SMR = 1.59 for truck drivers" to "SMR = 1.59 for truck drivers (*)".

3. On page 5776, columns 7–8, line 16, change "SMR = 1.59 for (*)" to "SMR = 1.59 for".

4. On page 5776, columns 7–8, line 17, change "railroad work- (*)" to "railroad work-".

5. On page 5776, columns 7–8, line 19, change "RR = 2.60 for" to "RR = 2.60 for (*)".

6. On page 5776, columns 7–8, line 21, change "RR = 2.67 for" to "RR = 2.67 for (*)".

7. On page 5776, columns 7–8, line 39, change "RR = 1.40 for 15" to "RR = 1.40 for 15 (*)".

8. On page 5778, columns 7–8, line 1, change "SMR = 1.01 for (*)" to "SMR = 1.01 for".

9. On page 5779, columns 9–10, line 22, change "any occupa- (*)" to "any occupa-".

10. On page 5779, columns 9–10, line 23, change "tional diesel (*)" to "tonal diesel".

11. On page 5779, columns 9–10, line 24, change "exposure dur- (*)" to "exposure dur-".

12. On page 5779, columns 9–10, line 25, change "ing lifetime. (*)" to "ing lifetime."

13. On page 5779, columns 9–10, line 26, change "OR = 1.56 for" to "OR = 1.56 for (*)".

14. On page 5779, columns 9–10, line 31, change "OR = 2.88 for >" to "OR = 2.88 for > (*)".

15. On page 5779, columns 9–10, line 36, change "OR = 6.81 for >" to "OR = 6.81 for > (*)".

16. On page 5779, columns 9–10, line 40, change "OR = 4.30 for >" to "OR = 4.30 for > (*)".

17. On page 5779, columns 9–10, line 52, change "RR = 1.9 for non- (*)" to "RR = 1.9 for non-".

18. On page 5779, columns 9–10, line 56, change "RR = 4.5 for non-" to "RR = 4.5 for non- (*)".

19. On page 5781, columns 9–10, line 1, change "OR = 3.5 for (*) to "OR = 3.5 for".

20. On page 5781, columns 9–10, line 3, change "OR = 1.6 for" to "OR = 1.6 for (*)".

21. On page 5781, columns 9–10, line 19, change "OR = 1.27 for (*)" to OR = 1.27 for".

22. On page 5781, columns 9–10, line 29, change "OR = 1.89 for" to "OR = 1.89 (*)".

23. On page 5804, in the second table, "Main Results from Saverin, et al.," column 1, line 4, change "≃ 6.1" to "≈6.1".

24. On page 5806, column 1, first paragraph, line 4, change "≃6.1" to "≈6.1".

II. Additional Corrections to the Preamble

The following additional corrections to the preamble in the final rule published on January 19, 2001 (66 FR 5706), are made:

1. On page 5718, column 1, second paragraph, line 8, insert a quotation mark after the word "engines".

2. On page 5729, column 2, second paragraph, line 14, change "0.45 mg/^{3}" to "0.45 μg/m^{3}"

3. On page 5747, column 2, first paragraph, line 12, delete sentence, "To further reduce miners' exposure to diesel exhaust, the final rule prohibits operators from unnecessary idling diesel-powered equipment."

4. On page 5755, change the title of the figure from "Figure 1" to "Figure III–1".

5. On page 5757, change the title of the figure from "Figure 2" to "Figure III–2".

6. On page 5760, change the title from "Figure 3" to "Figure III–3".

7. On page 5778, Footnote (a), change "[a] RR = Relative Risk; SMR =

Standardized Mortality Ratio. Values greater than 1.0 indicate excess prevalence of lung cancer associated with diesel exposure." to "[a] RR = Relative Risk; SMR = Standardized Mortality Ratio; SMOR = Standardized Mortality Odds Ratio. Values greater than 1.0 indicate excess prevalence of lung cancer associated with diesel exposure."

8. On page 5827, change the title of the figure from "Figure" to "Figure III–5".

9. On page 5827, at the end of the figure caption insert "(Cohen and Higgins, 1995)".

10. On page 5828, change title of the figure from "Figure" to "Figure III–6".

11. On page 5860, column 1, third paragraph, line 10, delete the phrase, "limits on unnecessary idling of diesel engines,"

12. On page 5871, column 1, first paragraph, delete the following sentence: "As noted in Part II, the necessary sampling equipment is commercially available."

13. On page 5874, column 3, second paragraph, change "§ 57.5021" to read "§ 57.5065".

14. On page 5886, column 1, lines 6 and 7, remove "3/4".

15. On page 5887, column 3, second paragraph, line 7, change "$17.8 billion" to "$10.5 billion".

16. On page 5887, column 3, second paragraph, line 9, change "22.2 billion" to "29.5 billion".

17. On page, 5887, column 3, second paragraph, line 11, change "$8 billion" to "$15.3 billion".

18. On page 5887, column 3, Footnote 7, replace "U.S. Department of Energy, Energy Information Administration, Annual Energy Review 1998, July 1999, pp. 3, 6, 142, 158, and 160," with "U.S. Department of the Interior, U.S. Geological Survey, Mineral Commodity Summaries 1999, pp. 6, 146, 148, 162, and 164."

19. On page 5890, column 1, fifth paragraph, line 9, delete the word "proposed".

20. On page 5890, column 2, fourth paragraph, line 4, change "number 7)." to "number 2(C))."

21. On page 5890, column 2, fifth paragraph, line 5, change "1219–AA74" to "1219–AB11".

22. On page 5890, column 3, fourth paragraph, line 4, change "employees 3/4 those" to "employees—those".

23. On page 5899, column 2, fourth paragraph, line 2, change "3,571" to "6,047."

24. On page 5899, column 2, fourth paragraph, line 3, change "$171,926" to "$223,982."

25. On page 5899, column 2, fourth paragraph, line 5, change "526" to "2,929."

26. On page 5899, column 2, fourth paragraph, line 6, change "$21,871" to "$87,569."

PART 57—[CORRECTED]

III. Corrections to the Regulatory Text

The following corrections to the regulatory text of 30 CFR Part 57, the final rule published on January 19, 2001, (66 FR 5706), are made:

1. On page 5907, column 1, Table of Contents, correct the entry "57.5065 Fueling and idling practices." to "57.5065 Fueling practices."

2. On page 5908, column 3, § 57.5065, correct the section title to read, "Fueling practices;" and remove paragraph (c).

Signed at Arlington, VA, this 29th day of June 2001.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 01–16837 Filed 7–3–01; 8:45 am]

BILLING CODE 4510–42–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB28

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; notice of public hearing; close of record.

SUMMARY: This proposed rule addresses two provisions of the Mine Safety and Health Administration's final rule pertaining to "Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners," published in the **Federal Register** on January 19, 2001 (66 FR 5706, RIN 1219–AB11).[1] The two provisions are § 57.5066(b)(regarding the tagging provision of the Maintenance standard) and § 57.5067(b) (regarding the definition of "introduced" in the Engine standard). This proposal gives notice of MSHA's intent to revise these two provisions and requests comments from the mining community.

By this document, the Agency is also announcing its intent to hold a public hearing pursuant to section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act).

DATES: Comments on the proposed rule must be received on or before August 6, 2001.

The public hearing will be held on August 16, 2001 in Arlington, Virginia.

If individuals or organizations wish to make an oral presentation for the record, submit your request at least 5 days prior to the hearing date. However, you do not have to make a written request to speak. Any unalloted time will be made available for persons making same-day requests.

The rulemaking record will close August 20, 2001.

ADDRESSES: Comments on the proposed rule may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: *comments@msha.gov*. Comments by fax must be clearly identified as such and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Send comments by mail to: MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203–1984.

You may use mail, fax or electronic mail to send us your request to make an oral presentation at the public hearing.

The hearing will begin at 9:00 a.m. and will be held at:The U.S. Department of Labor,Mine Safety and Health Administration,7th Floor Conference Room,4015 Wilson Boulevard,Arlington, Va 22203.

This proposed rule is available on MSHA's webpage at *http://www.msha.gov*, under Statutory and Regulatory Information.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Director; Office of Standards, Regulations, and Variances; MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203–1984. Mr. Meyer can be reached at *Meyer-David@msha.gov* (E-mail), 703–235–1910 (Voice), or 703–235–5551 (Fax).

SUPPLEMENTARY INFORMATION:

I. Background

On January 19, 2001 (66 FR 5706), MSHA published a final rule addressing the exposure of underground metal and nonmetal miners to diesel particulate matter (dpm). The final rule establishes new health standards for underground metal and nonmetal miners working at mines that use equipment powered by diesel engines. The rule is designed to reduce the risk to these miners of serious health hazards that are associated with exposure to high concentrations of dpm. The final rule was to become effective on March 20, 2001.

On January 29, 2001, Anglogold (Jerritt Canyon) Corp. and Kennecott Greens Creek Mining Company filed a petition for review of the rule in the District of Columbia Circuit. On February 7, 2001, the Georgia Mining Association, the National Mining Association, the Salt Institute, and MARG Diesel Coalition filed a similar petition in the Eleventh Circuit. On March 14, 2001, Getchell Gold Corporation petitioned for review of the rule in the District of Columbia Circuit. The three petitions have been consolidated and are pending in the District of Columbia Circuit. The United Steelworkers of America (USWA) has intervened in the Anglogold case.

While these challenges were pending, the Anglogold petitioners filed with MSHA an application for reconsideration and amendment of the final rule and to postpone the effective date of the final rule pending judicial review. The Georgia Mining petitioners similarly filed with MSHA a request for an administrative stay or postponement of the effective date of the rule. On March 15, 2001 (66 FR 15033), MSHA delayed the effective date of the final rule until May 21, 2001, in accordance with a January 20, 2001 memorandum from the President's Chief of Staff (66 FR 7702). This delay was necessary to give Department of Labor officials the opportunity for further review and consideration of these new regulations. On May 21, 2001 (66 FR 27863), MSHA published a document in the **Federal Register** delaying the effective date of the final rule until July 5, 2001.

Elsewhere in this issue of the **Federal Register**, MSHA is publishing a final rule addressing the exposure of underground metal and nonmetal miners to diesel particulate matter. In the same **Federal Register** document, MSHA also delayed the effective date of one provision of the final rule, § 57.5066(b) (regarding the tagging provision of the Maintenance standard) because MSHA believes it needs further clarification, and that the affected mining public could benefit from further dialogue. MSHA believes that this dialogue will both clarify the delayed provision and help ensure that it is effectively implemented, thus providing improved health protection for miners. MSHA also believes that the delay of the effective date of this provision will assist the parties in negotiating an acceptable disposition of the current pending litigation.

This proposed rule also has been developed to revise the language of § 57.5066(b) (regarding the tagging provision of the Maintenance standard) and to add a new paragraph (b)(3) to § 57.5067(b) (regarding the definition of the term "introduced" in the Engine standard) of MSHA's final rule addressing the exposure of underground metal and nonmetal miners to diesel particulate matter.

MSHA believes that the issues surrounding the two provisions need further input from the public. MSHA will consider all comments on the delayed provision and on the issue of "introduced" currently within the rulemaking record to the January 2001 final rule, as well as any other comments received on this proposed rule. Commenters are encouraged to submit their comments on or before August 6, 2001. Your comments will become a part of the official rulemaking record. Interested persons are encouraged to supplement written comments with computer files or disks; please contact MSHA with any questions about format.

[1] On March 15, 2001, the effective date of the final rule was extended to May 21, 2001 (66 FR 15033). On May 21, 2001, the effective date was further extended until July 5, 2001 (66 FR 27863). On July 5, 2001, MSHA delayed the effective date of § 57.5066(b) (66 FR (to be added by the FR)).

II. Proposed Rule

A. Section 57.5066(b) (Tagging Provision of Maintenance Standards)

Paragraph (b)(1) of § 57.5066(b) as published on January 19, 2001, requires the operators of underground metal and nonmetal mines to authorize and require miners who operate diesel-powered equipment to affix a visible and dated tag to the equipment at any time the equipment operator notes any evidence that the equipment may require maintenance. Paragraph (b)(2) requires the mine operator to make certain that the tagged equipment be "promptly" examined by a person authorized by the mine operator to maintain diesel equipment, and prohibits removal of the tag until after the examination is completed. Paragraph (b)(3) requires that a log be retained of all equipment tagged. This provision specifically lists the information that mine operators must include in the log.

MSHA proposes to revise § 57.5066(b)(1) of the final rule to require that a mine operator authorize each miner who operates diesel-powered equipment underground to affix a visible and dated tag to the equipment when the miner notes evidence that the equipment may require maintenance.

MSHA is proposing to clarify the term "evidence" to mean "visible smoke or odor that is unusual for that piece of equipment under normal operating procedures, or obvious or visible defects in the exhaust emissions control system or in the engine affecting emissions".

Proposed paragraph (b)(2) would require that a mine operator ensure that any equipment tagged pursuant to this section is promptly examined by a person authorized by the mine operator to maintain diesel equipment, and that the affixed tag not be removed until after the examination has been completed. MSHA is proposing that the term "promptly" means before the end of the next shift during which a qualified mechanic is scheduled to work.

No change is proposed to the language in paragraph(b)(3).

B. Section 57.5067(b)(3) (Definition of "Introduced" in the Engine Provision)

Paragraph (a) of § 57.5067 of the final rule requires that any diesel engines added to the fleet of an underground metal or nonmetal mine in the future be either engines approved by MSHA under 30 CFR Part 7 or 30 CFR Part 36 or engines that meet or exceed the applicable dpm emission requirements of the EPA. Diesel engines used in ambulances and firefighting equipment are specifically exempted in the final rule from this provision. Only engines approved by MSHA as permissible can be used in areas of the mine where permissible diesel equipment is required. The composition of the existing fleet in an underground metal and nonmetal mine is not impacted by the final rule. However, after the final rule's effective date, any engine introduced into the underground areas of the mine must be either MSHA approved or meet the applicable EPA requirements.

Paragraph (b)(1) of § 57.5067 of the final rule defines the term "introduced" to mean any engine added to the underground inventory of engines of the mine in question, including an engine in newly purchased equipment; an engine in used equipment brought into the mine; and a replacement engine that has a different serial number than the engine it is replacing. MSHA did not intend, however, for this provision to require a mine operator who moves diesel-powered equipment from one underground mine to another underground mine operated by the same mine operator to obtain MSHA approval for the diesel engine pursuant to 30 CFR part 7 or 30 CFR part 36, or meet or exceed the applicable dpm emission requirements of the EPA that are incorporated in paragraph (a) of § 57.5067.

MSHA proposes no change to paragraph (b)(2).

Accordingly, MSHA proposes to add paragraph (b)(3) to § 57.5067 to clarify that a mine operator operating more than one underground mine may move a piece of diesel-powered equipment from one underground mine to another underground mine even though each underground mine operated by that same operator has a different mine identification number.

III. Impact Analyses

A. Cost and Benefits: Executive Order 12866

There are no costs associated with this proposed rule. The costs shown in the Preliminary Regulatory Economic Analysis (PREA) were taken directly from the Regulatory Economic Analysis (REA) that supported the dpm final rule. These costs are repeated in the PREA in order to give a detailed account of the provisions as they were discussed in the REA that supported the dpm final rule. Because the costs in the PREA have already been accounted for in the REA that supported the dpm final rule, the PREA introduces no new or additional costs.

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA determined that the DPM final rule (including the two provisions in the PREA) was not economically significant but was a significant regulatory action under Executive Order 12866.

B. Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, MSHA must use the Small Business Administration's (SBA's) criterion for a small entity in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, MSHA establishes an alternative definition for a small mine and publishes that definition in the **Federal Register** for notice and comment. For the mining industry, SBA defines "small" as a mine with 500 or fewer workers. MSHA traditionally has considered small mines to be those with fewer than 20 workers. To ensure that the final rule conforms with the RFA, MSHA has analyzed the economic impact of the final rule on mines with 500 or fewer workers (as well as on those with fewer than 20 workers). MSHA has concluded that the proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, the proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector of more than $100 million.

D. Paperwork Reduction Act of 1995 (PRA)

The proposed rule would impose no new or additional burden hours or related costs. Burden hours and related costs shown in the PREA were taken from the REA that supported the dpm final rule. These burden hours and costs were presented in the PREA in order to give a detailed account of the two provisions.

E. National Environmental Policy Act

The National Environmental Policy Act (NEPA) of 1969 requires each Federal agency to consider the environmental effects of proposed actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the environment. MSHA has

reviewed the proposed rule in accordance with NEPA requirements (42 U.S.C. 4321 *et seq.*), the regulations of the Council of Environmental Quality (40 CFR part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). As a result of this review, MSHA has determined that this rule will have no significant environmental impact.

F. Executive Order 12630

This proposed rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

G. Executive Order 13045 Protection of Children From Environmental Health Risks

In accordance with Executive Order 13045, MSHA has evaluated the environmental health and safety effects of the proposed rule on children. MSHA has determined that the rule will not have an adverse impact on children.

H. Executive Order 12988 (Civil Justice)

MSHA has reviewed Executive Order 12988, Civil Justice Reform, and determined that the proposed rule will not unduly burden the Federal court system. The rule has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

I. Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

MSHA certifies that the proposed rule will not impose substantial direct compliance costs on Indian tribal governments.

J. Executive Order 13132 (Federalism)

MSHA has reviewed the proposed rule in accordance withExecutive Order 13132 regarding federalism and has determined that it does not have "federalism implications." The proposed rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

K. Executive Order 13211 (Energy)

MSHA has reviewed this proposed rule in accordance with Executive Order 13211 regarding the energy effects of Federal regulations and has determined that this proposed rule does not have any adverse effects on energy supply, distribution, or use. Therefore, no reasonable alternatives to this action are necessary.

IV. Conduct of Public Hearing

The hearing will be conducted in an informal manner. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

The hearing will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel may ask questions of speakers. At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited.

A verbatim transcript of the proceeding will be prepared and made a part of the rulemaking record. Copies of the transcript will be available to the public. The transcript will also be available on MSHA's webpage at *http://www.msha.gov*, under Statutory and Regulatory Information.

MSHA will accept additional written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments will be included in the rulemaking record.

V. Close of Record

To allow for the submission of post-hearing comments, the rulemaking record will close on August 20, 2001.

List of Subjects in 30 CFR Part 57

Diesel particulate matter, Metal and Nonmetal, Mine Safety and Health, Underground mines.

It is proposed to amend Chapter I of Title 30 as follows:

PART 57—[AMENDED]

1. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Paragraphs (b)(1) and (b)(2) of § 57.5066 are revised to read as follows:

§ 57.5066 Maintenance standards.

* * * * *

(b)(1) A mine operator must authorize each miner operating diesel-powered equipment underground to affix a visible and dated tag to the equipment when the miner notes evidence that the equipment may require maintenance in order to comply with the maintenance standards of paragraph (a) of this section. The term "evidence" means visible smoke or odor that is unusual for that piece of equipment under normal operating procedures, or obvious or visible defects in the exhaust emissions control system or in the engine affecting emissions.

(2) A mine operator must ensure that any equipment tagged pursuant to this section is promptly examined by a person authorized to maintain diesel equipment, and that the affixed tag not be removed until the examination has been completed. The term "promptly" means before the end of the next shift during which a qualified mechanic is scheduled to work.

* * * * *

3. Section 57.5067 is amended by adding paragraph (b)(3) to read as follows:

§ 57.5067 Engines.

* * * * *

(b) * * *

(3) The term "introduced" does not include the transfer of engines or equipment from the inventory of one underground mine to another underground mine operated by the same mine operator.

Signed at Arlington, VA, this 29th day of June, 2001.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 01–16838 Filed 7–3–01; 8:45 am]

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The President

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The President

Executive Order 13220 of July 2, 2001

Waiver Under the Trade Act of 1974 With Respect to the Republic of Belarus

By the authority vested in me as President by the Constitution and the laws of the United States of America, including subsection 402(c)(2) of the Trade Act of 1974, as amended (the "Act")(19 U.S.C. 2432(c)(2)), which continues to apply to the Republic of Belarus pursuant to subsection 402(d) of the Act (19 U.S.C. 2432(d)), and having made the report to the Congress required by subsection 402(c)(2), I hereby waive the application of subsections 402(a) and 402(b) of the Act with respect to the Republic of Belarus.

THE WHITE HOUSE,
July 2, 2001.

[FR Doc. 01–17041
Filed 7–3–01; 11:05 am]
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H.R. 1914/P.L. 107–17

To extend for 4 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted. (June 26, 2001; 115 Stat. 151)

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Rules and Regulations

Federal Register
Vol. 66, No. 130
Friday, July 6, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 150, 170 and 171

RIN: 3150–AG73

Revision of Fee Schedules; Fee Recovery for FY 2001; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on June 14, 2001 (66 FR 32452), concerning the licensing, inspection, and annual fees charged to NRC applicants and licensees in compliance with the Omnibus Budget Reconciliation Act of 1990, as amended. This action is necessary to correct typographical and printing errors.

EFFECTIVE DATE: August 13, 2001.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–6057.

SUPPLEMENTARY INFORMATION:

1. On page 32459, in the second column, under *Response,* in the first sentence, the word "rule" is added after the word "proposed".

2. On page 32461, in the second column, in the first sentence of the second full paragraph, the word "proposed" is removed.

3. On page 32463, in the first column, in the last sentence of the fourth full paragraph, after the words "Section III., Final Action", add "1.(a)".

4. On page 32465, Table VI is corrected to read as follows:

TABLE VI.—EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (33.5%)	76 (55.1%)
Enrichment	2	70 (25.7%)	34 (24.6%)
Low Enriched Uranium Fuel	4	85 (31.3%)	23 (16.7%)
UF_6 Conversion	1	12 (4.4%)	0 (0%)
Limited Operations Facility	1	8 (2.9%)	3 (2.2%)
Others	1	6 (2.2%)	2 (1.4%)

5. On page 32468, in the second column, in paragraph (1), the amount "$487.4" is replaced with "$487.3."

§ 170.21 [Corrected]

6. In § 170.21, on page 32470, paragraphs (a), (b), and (c) should appear as listed text as part of footnote 4.

7. On page 32480, in the first column, the third sentence is corrected to read as follows:

* * * * *

The revised fees were based on the 25 percent increase in average total fees assessed to other materials licensees since the small entity fees were first established and changes that had occurred in the fee structure for materials licensees over time.* * *

8. On page 32480, in the second column, the heading for Attachment 1 to Appendix A is corrected to read: "Attachment 1 to Appendix A—Nuclear Regulatory Commission Small Entity Compliance Guide, Fiscal Year 2001".

Dated at Rockville, Maryland, this 29th day of June, 2001.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

[FR Doc. 01–16915 Filed 7–5–01; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, Extensions of Credit by Federal Reserve Banks to reflect its approval of a decrease in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

DATES: The amendments to part 201 (Regulation A) were effective June 27, 2001. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board, at (202) 452–3259, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they

borrow from their district Reserve Banks.

The "basic discount rate" is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit for up to 30 days. In decreasing the basic discount rate from 3.5 percent to 3.25 percent, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The 25-basis-point decrease in the discount rate was associated with a similar decrease in the federal funds rate approved by the Federal Open Market Committee (FOMC) and announced at the same time.

In a joint press release announcing these actions, the FOMC and the Board of Governors noted that the patterns evident in recent months—declining profitability and business capital spending, weak expansion of consumption, and slowing growth abroad—continue to weigh on the economy. The associated easing of pressures on labor and product markets is expected to keep inflation contained.

Although continuing favorable trends bolster long-term prospects for productivity growth and the economy, the FOMC continues to believe that against the background of its long-run goals of price stability and sustainable economic growth and of the information currently available, the risks are weighted mainly toward conditions that may generate economic weakness in the foreseeable future.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering price stability and sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	3.25	June 27, 2001
New York	3.25	June 27, 2001
Philadelphia	3.25	June 27, 2001
Cleveland	3.25	June 28, 2001
Richmond	3.25	June 28, 2001
Atlanta	3.25	June 27, 2001
Chicago	3.25	June 27, 2001
St. Louis	3.25	June 29, 2001
Minneapolis	3.25	June 28, 2001
Kansas City	3.25	June 28, 2001
Dallas	3.25	June 27, 2001
San Francisco	3.25	June 27, 2001

By order of the Board of Governors of the Federal Reserve System, June 29, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–16869 Filed 7–5–01; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–25–AD; Amendment 39–12307; AD 2001–13–25]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–200 and –300 series airplanes, that currently requires repetitive inspections to detect chafing or arcing damage to the cable/wire and fuel tube assemblies on the right-hand side of each engine, and replacement with new components, if necessary. That AD also provides for an optional terminating action for the repetitive inspections required by that AD. This amendment requires accomplishment of the previously optional terminating action. The actions specified by this AD are intended to prevent chafing of the cable/wire bundles against the fuel line, which could result in arcing and a consequent fire or explosion. This action is intended to address the identified unsafe condition.

DATES: Effective August 10, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington DC.

FOR FURTHER INFORMATION CONTACT: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York

11581; telephone (516) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–02–02, amendment 39–12086 (66 FR 6454, January 22, 2001), which is applicable to certain Bombardier Model DHC–8–200 and –300 series airplanes, was published in the **Federal Register** on March 29, 2001 (66 FR 17097). The action proposed to continue to require repetitive inspections to detect chafing or arcing damage to the cable/wire and fuel tube assemblies on the right-hand side of each engine, and replacement with new components, if necessary. The action also proposed to require accomplishment of the previously optional terminating action for the repetitive inspections required by AD 2001–02–02.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 150 Model DHC–8–200 and –300 series airplanes of U.S. registry that will be affected by this AD.

The repetitive inspections that are currently required by AD 2001–02–02, and retained in this AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $18,000, or $120 per airplane.

The new action, incorporation of the modification, that is required by this new AD, will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $350 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $88,500, or $590 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12086 (66 FR 6454, January 22, 2001), and by adding a new airworthiness directive (AD), amendment 39–12307, to read as follows:

2001–13–25 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–12307. Docket 2001–NM–25–AD. Supersedes AD 2001–02–02, Amendment 39–12086.

Applicability: Model DHC–8–201, –202, –301, –311, and –315 series airplanes having serial numbers from 100 through 552 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible arcing between the electrical wiring and the fuel tube, which could result in a fire or explosion, accomplish the following:

Inspection Requirements of AD 2000–02–02

(a) Within 50 flight hours or 10 days after February 6, 2001 (the effective date of AD 2001–02–02), whichever occurs first: Do a general visual inspection to detect chafing or arcing damage to the cable and the fuel tube assemblies on the right hand side of each engine, per Bombardier Alert Service Bulletin A8–73–23, Revision A, dated December 12, 2000; or Revision B, dated January 30, 2001. Repeat the inspection every 500 flight hours or 3 months, whichever occurs first.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Repair

(b) If any damage to the fuel tube or cable assembly is detected, before further flight, replace the damaged component per Bombardier Alert Service Bulletin A8–73–23, Revision A, dated December 12, 2000, or Revision B, dated January 30, 2001. Thereafter, repeat the inspection required by paragraph (a) of this AD every 500 flight hours or 3 months, whichever occurs first.

Note 3: Accomplishment of the replacement actions specified in paragraph (b) of this AD or terminating action required by paragraph (c) of this AD, per Bombardier Alert Service Bulletin A8–73–23 (original version), dated November 30, 2000, before the effective date of this AD, is acceptable for compliance with paragraphs (b) or (c) of this AD, as applicable.

Terminating Action

(c) Within 1,000 flight hours or 6 months after the effective date of this AD, whichever occurs first: Accomplish the modification instructions described in Bombardier Alert Service Bulletin A8–73–23, Revision A, dated December 12, 2000, or Revision B, dated January 30, 2001, that specify, among other actions, rerouting the existing wire harness to the opposite side of the oil cooler. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Bombardier Alert Service Bulletin A8–73–23, Revision A, dated December 12, 2000; or Bombardier Alert Service Bulletin A8–73–23, Revision B, dated January 30, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–33, dated November 14, 2000.

Effective Date

(g) This amendment becomes effective on August 10, 2001.

Issued in Renton, Washington, on June 27, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–16742 Filed 7–5–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–04–AD; Amendment 39–12306; AD 2001–13–24]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes and Airbus Model A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 series airplanes and Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes, that requires revising the Airplane Flight Manual to prohibit the airplane from being moved during inertial reference unit alignment. The actions specified by this AD are intended to prevent a loss of positioning data and a display of incorrect attitude data to the flight crew, which could result in severe consequences to the airworthiness of the airplane if operated under flight conditions with no visual reference. This action is intended to address the identified unsafe condition.

DATES: Effective August 10, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 series airplanes and Airbus Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes was published in the **Federal Register** on April 26, 2001 (66 FR 20948). That action proposed to require revising the Airplane Flight Manual (AFM) to prohibit the airplane from being moved during inertial reference unit alignment.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Change to the Final Rule

Paragraph (b) of the proposal has been changed to a "note" in this final rule, since the material contained in that paragraph is informational only.

Cost Impact

The FAA estimates that 157 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required AFM revision, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $9,420, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–13–24 Airbus Industrie: Amendment 39–12306. Docket 2001–NM–04–AD.

Applicability: Model A310 series airplanes and Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes, certificated in any category; with installed Inertial Reference Units (IRU) Honeywell 10 MCU part number (P/N) HG1050BD02 or HG1050BD05.

Compliance: Required as indicated, unless accomplished previously.

To prevent a loss of positioning data and a display of incorrect attitude data to the flight crew, accomplish the following:

Revision to Airplane Flight Manual (AFM)

(a) Within 10 days after the effective date of this AD, revise the Normal Procedures section of the FAA-approved AFM to include the following information. This may be accomplished by inserting either a copy of this AD or Temporary Revision (TR) 4.03.00/22, dated September 18, 2000, into the A310 AFM or the A300–600 AFM, as applicable, facing 4.03.00 page 1.

"COCKPIT PREPARATION

Do not move the aircraft during IRS alignment.

PRIOR TO TAKEOFF

Scan PFD/ND to check correct display of all primary attitude and heading information."

Note 1: When the information in TR 4.03.00/22 has been incorporated into FAA-approved general revisions of the AFM, the general revisions may be incorporated in the AFM, and this TR or this AD may be removed from the AFM.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with Temporary Revision 4.03.00/22, dated September 18, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–480–325(B), dated November 29, 2000.

Effective Date

(e) This amendment becomes effective on August 10, 2001.

Issued in Renton, Washington, on June 27, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–16741 Filed 7–5–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–403–AD; Amendment 39–12305; AD 2001–13–23]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–700 and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–700 and –800 series airplanes, that requires inspections of certain tension bolts at the attachment of the aft pressure bulkhead to the fuselage at body station 1016 to determine if the correct parts are installed, and corrective action, if necessary. The actions specified by this AD are intended to prevent fatigue cracking along the bulkhead-to-fuselage attachment, which could result in structural failure of the aft pressure bulkhead and consequent rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 13, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 13, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1221; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–700 and –800 series airplanes was published in the **Federal**

Register on April 12, 2001 (66 FR 18880). That action proposed to require inspections of certain tension bolts at the attachment of the aft pressure bulkhead to the fuselage at body station 1016 to determine if the correct parts are installed, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The Air Transport Association (ATA) of America, on behalf of one of its members, states that its member supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 31 airplanes of the affected design in the worldwide fleet. The FAA estimates that 14 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,680, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–13–23 Boeing: Amendment 39–12305. Docket 2000–NM–403–AD.

Applicability: Model 737–700 and –800 series airplanes; line numbers 4, 6, 9 through 20 inclusive, 29, and 31 through 46 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking along the bulkhead-to-fuselage attachment, which could result in structural failure of the aft pressure bulkhead and consequent rapid decompression of the airplane, accomplish the following:

Inspections and Corrective Actions

(a) Prior to the accumulation of 3,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, do one-time special detailed inspections of tension bolts at the attachment of the aft pressure bulkhead to the fuselage at body station 1016 to determine whether the correct parts are installed, per the Accomplishment Instructions of Boeing Service Bulletin 737–53–1212, including Appendix A, dated August 13, 1998.

(1) If any long bolt is found above the main deck floor, do paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Before further flight, do a torque test of the nut on the long bolt to determine whether the bolt is properly clamped.

(ii) Replace the bolt and nut, as applicable, with new parts, per the service bulletin, except as provided by paragraph (c) of this AD. The correct replacement parts are listed in Figure 4 of the service bulletin. Do the replacement no later than the compliance time specified in the compliance table in Section 1.D. ("Compliance") of the service bulletin. For the purposes of this AD, compliance times stated in flight cycles and years are to be counted from the time of the inspection per paragraph (a) of this AD.

(2) For any long or short bolt other than those identified in paragraph (a)(1) of this AD, replace the bolt and nut, as applicable, with new parts, per the service bulletin, except as provided by paragraph (c) of this AD. The correct replacement parts are listed in Figure 4 of the service bulletin. Do the replacement no later than the compliance time specified in the compliance table in Section 1.D. ("Compliance") of the service bulletin. For the purposes of this AD, compliance times stated in flight cycles and years are to be counted from the time of the inspection per paragraph (a) of this AD.

Note 2: For the purposes of this AD, a special detailed inspection is defined as: "An intensive examination of a specific item(s), installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedures may be required."

Repetitive Inspections

(b) Where short bolts are installed between two adjacent stringer end fittings or at stringer end fittings, doing repetitive inspections of the nuts to determine if bolts are properly clamped, per Boeing Service Bulletin 737–53–1212, including Appendix A, dated August 13, 1998, extends the compliance time for the replacement of bolts, per the compliance table in Section 1.D. ("Compliance") of the service bulletin.

Exception for Certain Repair Conditions

(c) Where Boeing Service Bulletin 737–53–1212, including Appendix A, dated August 13, 1998, specifies to contact Boeing for replacement instructions: Before further flight, replace per a method approved by the Manager, Seattle Aircraft Certification Office

(ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 737–53–1212, including Appendix A, dated August 13, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on August 13, 2001.

Issued in Renton, Washington, on June 27, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–16740 Filed 7–5–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–328–AD; Amendment 39–12303; AD 2001–13–21]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, and –301 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, and –301 series airplanes, that requires repair of the flight deck angle. The actions specified by this AD are intended to prevent the flight deck angle from interfering with the clevis of the roll control disconnect cable, which could lead to an uncommanded disconnection of the roll control, resulting in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 10, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–170, FAA, New York Aircraft Certification Office, 10 Fifth Street, Valley Stream, New York 11581–1200; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–102, –103, and –301 series airplanes was published in the **Federal Register** on April 12, 2001 (66 FR 18877). That action proposed to require repair of the flight deck angle.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 42 Bombardier Model DHC–8–102, –103, and –301 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required repair, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,080, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has

been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–13–21 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–12303. Docket 2000–NM–328–AD.

Applicability: Model DHC–8–102, –103, and –301 series airplanes, certificated in any category, serial numbers 003 through 146, excluding serial numbers 064 and 137.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the flight deck angle from interfering with the clevis of the roll control disconnect cable, which could lead to an uncommanded disconnection of the roll control, resulting in reduced controllability of the airplane, accomplish the following:

Repair

(a) Within 18 months after the effective date of this AD: Repair the flight deck angle having part number (P/N) 85310497–101/103, by accomplishing all applicable actions specified in the Accomplishment Instructions of Bombardier Service Bulletin 8–53–75, dated December 6, 1999, in accordance with the service bulletin.

Note 2: The service bulletin references Bombardier Repair Drawing RD8–53–3620, dated June 15, 1999, as an additional source of service information for accomplishment of the repair of the flight deck angle.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The repair shall be done in accordance with Bombardier Service Bulletin 8–53–75, dated December 6, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–21, dated August 4, 2000.

Effective Date

(e) This amendment becomes effective on August 10, 2001.

Issued in Renton, Washington, on June 26, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–16738 Filed 7–5–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–160–AD; Amendment 39–12302; AD 2001–13–20]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310, and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that currently requires a detailed visual inspection to detect damage to the terminal lugs on the 12XC and 15XE contactors and the mounting lugs on the 15XE contactor; corrective actions, if necessary; and certain conditional repetitive inspections. This action adds requirements for installation of a new mounting bracket for the 15XE contactor, modification of the cable attachment adjacent to the contactor, and replacement of certain terminal lugs on the 15XE contactor by terminal lugs with a thicker contact area. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent excessive vibrations generated by the mounting configuration of the 15XE contactor, which could cause breakage of the terminal and mounting lugs on the 15XE contactors in the 101VU panel in the avionics compartment, resulting in loss of electrical power from the standby generator.

DATES: Effective August 10, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 2001.

The incorporation by reference of Airbus All Operators Telex 24–09, Revision 01, dated August 13, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 27, 1999 (64 FR 51190, September 22, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex,

France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–19–40, amendment 39–11327 (64 FR 51190, September 22, 1999), which is applicable to certain Airbus Model A310 and A300–600 series airplanes, was published in the **Federal Register** on February 15, 2001 (66 FR 10382).

The action proposed to supersede AD 99–19–40 to continue to require a detailed visual inspection to detect damage to the terminal lugs on the 12XC and 15XE contactors and the mounting lugs on the 15XE contactor; and corrective action, if necessary. The action proposed to add requirements for installation of a new mounting bracket for the 15XE contactor, modification of the cable attachment adjacent to the contactor, and replacement of certain terminal lugs on the 15XE contactor with lugs having a thicker contact area.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter points out a typographical error that occurs throughout the proposed rule. The proposed rule incorrectly calls the 12XC and 15XE "connectors" instead of "contactors." This final rule has been changed to correctly reference these parts as "contactors."

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 109 airplanes of U.S. registry that will be affected by this AD. The following information describes the estimated cost impact on U.S. operators of this AD action:

Action	Work hours	Hourly labor rate	Parts cost	Per-airplane cost	Fleet cost
Inspection	2	$60	$0	$120	$13,080
Modification	5	60	490	790	86,110

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11327 (64 FR 51190, September 22, 1999), and by adding a new airworthiness directive (AD), amendment 39–12302, to read as follows:

2001–13–20 Airbus Industrie: Amendment 39–12302. Docket 2000–NM–160–AD. Supersedes AD 99–19–40, Amendment 39–11327.

Applicability: The following airplanes, certificated in any category, and equipped with a standby generator (FIN 25XE); excluding airplanes on which Airbus Modification 12135 has been accomplished:

Model A300 B4–600, A300 B4–600R and Model A300 F4–600R (collectively called A300–600) series airplanes on which Airbus Modification 06213 has been installed; and

Model A310 series airplanes on which Airbus Modification 05910 has been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive vibrations generated by the mounting configuration of the 15XE

contactor, which could cause breakage of the terminal and mounting lugs on the 15XE contactor in the 101VU panel in the avionics compartment, resulting in loss of electrical power from the standby generator, accomplish the following:

Restatement of Certain Actions Required by AD 99–19–40

Inspection and Corrective Actions

(a) Prior to the accumulation of 5,000 total flight hours, or within 600 flight hours after the effective date of this AD, whichever occurs later: Accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD in accordance with Airbus All Operators Telex (AOT) 24–09, Revision 01, dated August 13, 1998.

(1) Perform a detailed visual inspection of the terminal lugs on the 12XC and 15XE contactors to detect damage (i.e., overheat, cracking, twisting, or total rupture). If any damage is detected, prior to further flight, replace the terminal lugs with new terminal lugs, part number (P/N) NSA936501TA1004.

(2) Perform a detailed visual inspection of the mounting lugs on the 15XE contactor to detect damage (i.e., cracking or breaking). If any damage is detected, prior to further flight, accomplish the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(i) Replace contactor 15XE with a new contactor, P/N 25811BOSHUNTKL, vendor code F0214 ECE. Or,

(ii) Repair contactor 15XE in accordance with Airbus AOT 24–09, Section 4.2.2.3. Repeat the detailed visual inspection required by paragraph (a)(2) of this AD of the repaired contactor thereafter at intervals not to exceed 1 week, and repeat the repair with new cable ties thereafter at intervals not to exceed 3 months, until the replacement required by paragraph (a)(2)(i) of this AD is accomplished.

New Actions Required by This AD

Installation

(b) Within 20 months after the effective date of this AD, install a new mounting bracket for the 15XE contactor, modify the cable attachment adjacent to the contactor, and replace certain terminal lugs with lugs having a thicker contact area, in accordance with Airbus Service Bulletin A310–24–2080 (for Model A310 series airplanes) or A300–24–6070 (for Model A300–600 series airplanes), both dated December 15, 1999, as applicable.

Replacement

(c) Continue the detailed visual inspection of a repaired 15XE contactor which is required by paragraph (a)(2)(ii) of this AD at intervals not to exceed 1 week, and continue the repair with new cable ties at intervals not to exceed 3 months, until the repaired 15XE contactor is replaced by a new 15XE contactor.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus All Operators Telex 24–09, Revision 01, dated August 13, 1998; Airbus Service Bulletin A300–24–6070, dated December 15, 1999; and Airbus Service Bulletin A310–24–2080, dated December 15, 1999.

(1) The incorporation by reference of Airbus Service Bulletin A300–24–6070, dated December 15, 1999; and Airbus Service Bulletin A310–24–2080, dated December 15, 1999; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus All Operators Telex 24–09, Revision 01, dated August 13, 1998, was approved previously by the Director of the Federal Register as of October 27, 1999 (64 FR 51190, September 22, 1999).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–145–306(B), dated April 5, 2000.

Effective Date

(g) This amendment becomes effective on August 10, 2001.

Issued in Renton, Washington, on June 26, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–16737 Filed 7–5–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–45–AD; Amendment 39–12301; AD 2001–13–19]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 series airplanes, that requires revising the Bombardier maintenance program to incorporate repetitive inspections to detect fatigue cracking in certain structures; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information issued by a foreign airworthiness authority. The actions specified by this AD are intended to ensure that fatigue cracking of certain principal structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: Effective August 10, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 series airplanes was published in the **Federal Register** on February 14, 2001 (66 FR 10238). That action proposed to require revising the Bombardier maintenance program to incorporate repetitive inspections to detect fatigue cracking in certain structures; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Editorial Change

The language in paragraph (a)(2)(iii) has been slightly revised to clarify the intervals for certain repetitive inspections.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the clarification described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 195 Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to revise the Bombardier maintenance program, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the revision on U.S. operators is estimated to be $11,700, or $60 per airplane.

It will take approximately 5 work hours per airplane to accomplish the required structural inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections on U.S. operators is estimated to be $58,500, or $300 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–13–19 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–12301. Docket 2000–NM–45–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the actions required by either paragraph (a)(1) or (a)(2) of this AD, as applicable.

Maintenance Program Revisions

(1) Revise the Bombardier maintenance program by incorporating the threshold and repetitive inspection intervals specified in the Temporary Revisions (TR's) to the DHC–8 Maintenance Program Manuals, Airworthiness Limitations List (AWL), Structural Inspection Program Task No. 5310/31A, into the Bombardier maintenance program. The TR's for specific airplane models are listed in Table 1, as follows:

TABLE 1.—LIST OF TEMPORARY REVISIONS

Bombardier models	TR No.	Date
DHC–8–102, –103, and –106 series airplanes	TR AWL–71	September 3, 1999.
DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 series airplanes	TR AWL 2–15	September 3, 1999.
DHC–8–301, –311, –314, and –315 series airplanes	TR AWL 3–78	November 19, 1999.

Note 2: When the TR documents listed in Table 1 in paragraph (a)(1) of this AD are incorporated into the general revisions of the DHC–8 Maintenance Program Manual, you may insert the general revisions into the Bombardier maintenance program, provided that the information contained in the general revisions is identical to that specified in the TR documents.

Structural Inspections

(2) For airplanes having closing angles that are identified as principal structural elements: Do the inspections specified by the applicable TR listed in Table 1 of paragraph (a) of this AD. Thereafter, repeat the inspection at intervals not to exceed 10,000 flight cycles at the time specified in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this AD, as applicable.

(i) For airplanes that have accumulated less than 8,000 flight cycles as of the effective date of this AD: Do the threshold inspection prior to the accomplishment of 10,000 flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For airplanes that have accumulated 8,000 flight cycles or more as of the effective date of this AD: Do the threshold inspection within 2,000 flight cycles after the effective date of this AD.

(iii) For airplanes on which a 40,000 flight cycle inspection specified by the applicable TR listed in Table 1 of paragraph (a) of this AD has been done: Start the 10,000 flight cycle repetitive inspection at the time specified by paragraph (a)(2)(iii)(A) or (a)(2)(iii)(B) of this AD, as applicable.

(A) If no cracks were found, start the cycle from the date of the 40,000 flight cycle inspection.

(B) If cracks have been found and the closing angles have been replaced as provided in paragraph (b) of this AD, start the cycle from the date of the replacement.

Corrective Actions

(b) If any crack is detected during any structural inspection required by paragraph (a)(2) of this AD, before further flight, repair any such cracking or replace the closing angles per a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA; or the Transport Canada Civil Aviation (or its delegated agent). For a repair or replacement method to be approved by the Manager, New York ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(c) Except as provided by paragraph (d) of this AD: After the actions specified in paragraphs (a) and (b) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified by the documents listed in Table 1 of paragraph (a)(1) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided in paragraph (b) of this AD, the actions shall be done in accordance with de Havilland Temporary Revision TR AWL–71, dated September 3, 1999; de Havilland Temporary Revision TR AWL 2–15, dated September 3, 1999; and de Havilland Temporary Revision TR AWL 3–78, dated November 19, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York ACO, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–07, dated March 3, 2000.

Effective Date

(g) This amendment becomes effective on August 10, 2001.

Issued in Renton, Washington, on June 26, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–16736 Filed 7–5–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–17]

Revision of Class E airspace, Roosevelt, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Roosevelt, UT, Class E airspace to accommodate airspace required for the establishment of a new Standard Instrument Approach Procedures (SIAP) to the Roosevelt Municipal Airport, Roosevelt, UT.

EFFECTIVE DATE: 0901 UTC, September 6, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–17, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On October 16, 2000, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E airspace at Roosevelt, UT, in order to accommodate a new Area Navigation (RNAV) SIAP to Runway (RWY) 25 at Roosevelt Municipal Airport, Roosevelt, UT (65 FR 61126). This amendment provides Class E5 airspace at Roosevelt, UT, to meet current criteria standards associated with the SIAPs. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) revises Class E airspace at Roosevelt, UT, in order to accommodate a new SIAP to the Roosevelt Municipal Airport, Roosevelt, UT. This amendment revises Class E5 airspace at Roosevelt, UT, to meet current criteria standards associated with the RNAV RWY 25 SIAP. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Roosevelt Municipal Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Roosevelt, UT [Revised

Roosevelt Municipal Airport, UT
lat. 40°16′42″N., long 110°03′05″W.)
Mytton, VORTAC
(lat. 40°08′42″N., long 110°07′40″W

That airspace extending from 700 fee about the surface within a 7.5-mile radius of the Roosevelt Municipal Airport and within 5 milies east 5 miles west of the Myton VORTAC 024° and 204° radials extending from the 7.5-mile radius of the airport to 1.7 miles south of the VORTAC; that airspace extending upward from 1,200 feet about the surface bounded by a line begining at lat. 39°44′34″N., long. 110°29′40″W. to lat. 40°27′47″N., long. 110°29′40″W. to lat. 40°27′47″N., long. 109°28′18″W. to lat. 40°04′04″N., long. 109°28′18″W. to lat. 40°04′04″N., long. 110°44′52″ lat. 39°44′34″N., long. 109°44′52″W. to the point of beginning; exclusing Federal Aiways; Duchesne, UT, and Vernal, UT, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on June 27, 2001.

Lee Daniel,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–16966 Filed 7–5–01; 8:45 am]

BILLING CODE 4010–13–M

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802 and 803

Premerger Notification; Antitrust Improvements Act Notification and Report Form

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This final rule amends the Antitrust Improvements Act Notification and Report Form ("Form") which must be completed and submitted by persons required to report mergers and acquisitions pursuant to section 7A of the Clayton Act, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"). The telephone number for the Bureau of the Census appearing on the Instructions in the Interim Rules will be deleted as this telephone number is no longer referenced on the Bureau of the Census web page. Persons requiring information on NAICS should refer to the Census web page at *www.census.gov*. Otherwise, this final rule implements the Interim Rules as published on May 9, 2001.

DATE: This final rule is effective July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director, or Alice M. Villavicencio, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone (202) 326–3100.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

On May 9, 2001, the Commission published Interim Rules amending the Form, and Insurance Appendix contained in 16 CFR Part 803, and amending the Rules, 16 CFR Parts 801 and 802 (66 FR 23561). The Interim Rules solicited public comments regarding the effective date of July 1, 2001.

The Commission received three public comments. The first comment, dated May 25, 2001, was submitted by Nortel Networks, Inc. (Mary M. Cross and Monica L. Lester). This comment asserts that the July 1, 2001, effective date causes a burden for larger "calendar year" companies, such as Nortel, to comply with a midyear effective date and that a January 1, 2002 effective date is more efficient. The comment explains that the company will have difficulty in compiling data on the revenues generated by its products and in classifying its 1997 and 2000 revenues to the NAICS because Nortel operates various lines of businesses and reports revenue information on a calendar-year basis. It anticipates that other larger companies may have similar experiences during the transition. The second comment, dated June 7, 2001, was submitted by Emerson Electric Company (Richard J. Schlueter). This comment suggests that the Commission postpone the effective date, or in the alternative, that the Commission allow an unspecified grace period, permitting larger companies to submit revenue data using either the SIC or the NAICS while making the transition.

The third comment, dated May 16, 2001, was submitted by Taft, Stettinius, & Hollister LLP (Thomas C. Hill) and did not address the effective date of these amendments. Comment three recommends that the dollar threshold in Item 8 be raised. This comment will remain under consideration and may be addressed by future rulemaking.

The sparse number of comments leads the Commission to conclude that the vast majority of persons filing notification are able and ready to report revenue data using the NAICS. The Commission concludes that an effective date of July 1, 2001, remains appropriate.

Regulatory Flexibility Act

The information required by the amended Form is substantially the same as the information elicited on the current Form. The only difference is that filing persons will be required to report revenue data using the NAICS instead of the SIC in Items 5, 7, and 8. The change in base year simply requires that filing persons use data from the "1997 Economic Census" rather than data from the "1992 Economic Census."

The ministerial changes clarify or simplify existing practices.

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small businesses, except where the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. Because of the size of the transactions necessary to invoke a Hart-Scott-Rodino filing,[1] the premerger notification rules rarely, if ever, affect small businesses. The recent amendments to Section 7A of the Clayton Act and the Commission's implementing rule amendments were intended to reduce the burden of the premerger notification program by exempting all transactions valued at $50 million or less.

Furthermore, most federal statistical agencies have adopted the NAICS since 1997. Accordingly, many companies that currently file HSR notifications have submitted economic information to the Bureau of the Census using the NAICS codes since 1997. For these filing persons, reporting base year revenue data classified under the NAICS should present little difficulty. For persons that do not have base year revenue data coded under the NAICS, the delayed effective date of the amendments to the Form should have provided sufficient time to convert their SIC data to the NAICS format with minimal burden. Finally, potential filers have always been required to provide base year data from the most recent Economic Census since the inception of the Form in 1978.

In light of the foregoing, the Commission certifies that the amendments to the Form will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Thus, neither an initial nor a final regulatory flexibility analysis of this revision is required. 5 U.S.C. 605. This document serves as the required notice of this certification to the Small Business Administration.

[1] As noted in the Commission's recent publication of interim rules amending the premerger notification rules, the increase in reporting threshold from $15 million to $50 million has significantly reduced the number of acquisitions affected by the premerger notification program. *See* 66 FR 8680, 8687 (February 2, 2001).

Paperwork Reduction Act

The Commission's revisions to the Form do not "substantive[ly] or material[ly] modify" the existing terms of the currently approved collection information (OMB Control Number 3084–0005) to necessitate OMB's further review and approval. *See* 44 U.S.C. 3507(h)(3); 5 CFR 1320.5(g).

List of Subjects in 16 CFR Parts 801, 802, and 803

Antitrust, Business and industry, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the Commission adopts as final the Interim Rule amending 16 CFR Parts 801, 802, and 803, which was published at 66 FR 23561, on May 9, 2001, with the following change:

PART 803—TRANSMITTAL RULES

1. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

2. Amend the Appendix to Part 803 by revising page I of the Instructions to the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions to read as follows:

Appendix to Part 803

BILLING CODE 6750–01–M

ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM for Certain Mergers and Acquisitions

INSTRUCTIONS

GENERAL

The Answer Sheets (pp. 1-15) constitute the Notification and Report Form ("the Form") required to be submitted pursuant to § 803.1(a) of the premerger notification rules ("the rules"). Filing persons need not, however, record their responses on the Form.

These instructions specify the information which must be provided in response to the items on the Answer Sheets. Only the completed Answer Sheets, together with all documentary attachments, are to be filed with the Federal Trade Commission and the Department of Justice.

Persons providing responses on attachment pages rather than on answer sheets must submit a complete set of attachment pages with each copy of the Form.

The term "documentary attachments" refers to materials supplied in responses to Item 3(d), Item 4 and to submissions pursuant to §§ 803.1(b) and 803.11 of the rules.

Information-The central office for information and assistance concerning the rules, 16 CFR Parts 801-803, and the Form is Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, phone (202) 326-3100.

Definitions-The definitions and other provisions governing this Form are set forth in the rules, 16 CFR Parts 801-803. The governing statute, the rules, and the Statement of Basis and Purpose for the rules are set forth at 43 FR 33450 (July 31, 1978), 44 FR 66781 (November 22, 1979) 48 FR 34427 (July 29, 1983) and Pub. L. No. 106-533, 114 Stat. 2762.

Affidavit-Attach the affidavit required by § 803.5 to page 1 of the Form. Affidavits are not required if the person filing notification is an acquired person in a transaction covered by § 801.30. (See § 803.5(a)).

Responses-*Each answer* should identify the item to which it is addressed. Use the reverse side of the corresponding answer sheet or attach separate additional sheets as necessary in answering each item. Each additional sheet should identify at the top of the page the item to which it is addressed. Voluntary submissions pursuant to § 803.1(b) should also be identified.

Enter the name of the person filing notification appearing in Item 1(a) on page 1 of the Form and the date on which the Form is completed at the top of each page of the Form, at the top of any sheets attached to complete the response to any item, and at the top of the first or cover page of each documentary attachment.

If unable to answer any item fully, give such information as is available and provide a statement of reasons for non-compliance as required by § 803.3. If exact answers to any item cannot be given, enter best estimates and indicate the sources or bases of such estimates. Estimated data should be followed by the notation, "est." All information should be rounded to the nearest thousand dollars.

Year-All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

North American Industry Classification System (NAICS) Data-This Notification and Report Form requests information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 6-digit NAICS national industry code level. To the extent that dollar revenues are derived from *manufacturing operations* (NAICS Sectors 31-33), data must also be submitted at the *7-digit NAICS product class and 10-digit NAICS product code levels*. The term "dollar revenues" is defined in § 803.2(d).

References-In reporting information by 6-digit NAICS industry code refer to the *North American Industry Classification System - United States, 1997* (*1997 NAICS Manual*) published by the Executive Office of the President, Office of Management and Budget. In reporting information by 7-digit NAICS product class and 10-digit NAICS product code refer to the *1997 Numerical List of Manufactured and Mineral Products* (EC97M31R-NL) published by the Bureau of the Census. Information regarding NAICS also is available at www.census.gov.

Privacy Act Statement-Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. The primary use of this information is to determine whether the merger or acquisition reported in the Notification and Report Form may violate the antitrust laws.

Furnishing the information on the Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to $11,000 per day.

* * * * *

Dated: Approved by the Commission on June 28, 2001.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–16932 Filed 7–5–01; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 556

Tolerances for Residues of New Animal Drugs in Food; Clorsulon

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merial Ltd. The supplemental NADA provides for establishing a tolerance for residues of clorsulon in the muscle tissue of cattle.

DATES: This rule is effective July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Merial Ltd., 2100 Ronson Rd., Iselin, NJ 08830–3077, filed a supplement to NADA 136–742 that provides for the use of Curatrem® (clorsulon) Drench in cattle for the treatment of liver fluke infestations. The supplement provides for establishing a tolerance for residues of clorsulon in the muscle tissue of cattle. The supplement is approved as of May 16, 2001, and § 556.163 (21 CFR 556.163) is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Section 556.163 is further amended by deleting references to safe concentrations and by adding the previously established acceptable daily intake of total residues of clorsulon.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 556 is amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.163 is revised to read as follows:

§ 556.163 Clorsulon.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of clorsulon is 8 micrograms per kilogram of body weight per day.

(b) *Tolerances*—(1) *Cattle*—(i) *Kidney (the target tissue).* The tolerance for parent clorsulon (the marker residue) is 1.0 part per million.

(ii) *Muscle.* The tolerance for parent clorsulon (the marker residue) is 0.1 part per million.

(2) [Reserved]

Dated: June 25, 2001.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 01–16990 Filed 7–5–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–054]

RIN 2115–AA97

Safety Zone; Menominee Waterfront Festival 2001, Menominee, Michigan

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone by the Menominee municipal marina for the Menominee Waterfront Festival 2001 fireworks display. This safety zone is necessary to protect spectators and vessels from the hazards associated with the storage, preparation, and launching of fireworks. This safety zone is intended to restrict vessel traffic from a portion of the Menominee municipal marina, Menominee, Michigan.

DATES: This temporary rule is effective from 9:20 p.m. until 10:10 p.m. (CST) on August 4, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–054] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Timothy Sickler, Port Operations Chief, Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The phone number is (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application did not allow sufficient time for the publication of an NPRM followed by a temporary final rule effective 30 days after publication. Any delay of the effective date of this rule would be contrary to the public interest by exposing the public to the known dangers associated with fireworks displays and the possible loss of life, injury, and damage to property.

Background and Purpose

This safety zone is established to safeguard the public from the hazards associated with the launching of fireworks by the Menominee municipal marina, Menominee, Michigan. The size of the zone was determined by using previous experiences with fireworks displays in the Captain of the Port Milwaukee zone and local knowledge about wind, waves, and currents in this particular area.

The safety zone will be in effect on August 4, 2001, from 9:20 p.m. through 10:10 p.m. (CST). The safety zone encompasses all waters bounded by the arc of a circle with a 840-foot radius with its center in approximate position 45° 20.05′ N, 087° 36.49′ W, offshore of Menominee municipal marina, Menominee, Michigan. The size of the zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Captain of the Port Milwaukee or his designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on scene representative. The Captain of the Port Milwaukee may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in the vicinity of Menominee municipal marina from 9:20 p.m. until 10:10 p.m. (CST) on August 4, 2001.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only 50 minutes on one day and late in the day when vessel traffic is minimal. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative. Before the effective period, we will issue maritime advisories widely available to users of the Menominee municipal marina.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (See **ADDRESSES**.)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and

concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–916 is added to read as follows:

§ 165.T09–916 Safety Zone: Menominee Municipal Marina, Menominee, Michigan.

(a) Location. The safety zone encompasses all waters bounded by the arc of a circle with a 840-foot radius with its center in approximate position 45°20.05′ N, 087°36.49′ W, located approximately 840 feet offshore Menominee municipal marina, Menominee, Michigan.

(b) *Effective times and dates.* From 9:20 p.m. until 10:10 p.m. on August 4, 2001.

(c) *Regulations.* (1) The general regulations contained in § 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Milwaukee or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed. This safety zone should not adversely effect shipping. However, commercial vessels may request permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

Dated: June 26, 2001.

B.R. Emond,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, Milwaukee, Wisconsin.

[FR Doc. 01–16968 Filed 7–5–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD112–3066a; FRL–7008–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule to approve reasonable available control technology (RACT) to limit volatile organic compound (VOC) emissions from distilled spirits facilities. In the direct final rule published on May 22, 2001 (66 FR 28058), we stated that if we received adverse comment by June 21, 2001, the rule would be withdrawn and not take effect. EPA received adverse comments on June 21, 2001. EPA will address the comments received in a subsequent final action based upon the proposed action also published on May 22, 2001 (66 FR 28138). EPA will not institute a second comment period on this action.

DATES: The Direct final rule published at 66 FR 28058, May 22, 2001, is withdrawn as of July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, Air Quality Planning & Information Services Branch, Mailcode 3AP21, US. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Phone (215) 814–2182.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 27, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

Accordingly, the direct final rule adding 40 CFR 52.1070(c)(160) is withdrawn as of July 6, 2001.

[FR Doc. 01–16950 Filed 7–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[SC–038–200102(c); FRL–7008–8]

Withdrawal of Direct Final Rule for Approval and Promulgation of State Plans for Designated Facilities and Pollutants: South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is withdrawing the direct final rule approving the section 111(d)/129 Plan submitted by the South Carolina Department of Health and Environmental Control (DHEC). The direct final rule was published in the **Federal Register** on May 7, 2001 (66 FR 22927).

DATES: The direct final rule published at 66 FR 22927, May 7, 2001, is withdrawn as of July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Gregory Crawford at EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104, (404) 562–9046.

SUPPLEMENTARY INFORMATION: On May 7, 2001 (66 FR 22970), EPA proposed to approve the section 111(d)/129 Plan for the State of South Carolina submitted on September 19, 2000, for implementing and enforcing the Emission Guidelines applicable to existing Hospital /Medical/ Infectious Waste Incinerators. On the same day (66 FR 22927), EPA also published a direct final rule approving the State Plan. The action provided a 30-day public comment period and explained that if we received adverse comments, we would withdraw the relevant direct final action.

We received comments and are therefore withdrawing the direct final rule approving the State Plan. We are not opening an additional comment period. We intend to finalize action on these rules based on the May 7, 2001 proposed action.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 22, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–16954 Filed 7–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7007–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Warwick Landfill Superfund site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Warwick Landfill Superfund site (Site), located in the Town of Warwick, Orange County, New York, from the National Priorities List (NPL). The NPL constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New York have determined that all appropriate response actions pursuant to CERCLA have been implemented; and, aside from monitoring, operation and maintenance, no further response actions pursuant to CERCLA are appropriate.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Damian J. Duda, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4269.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the Warwick Landfill Superfund site, Town of Warwick, Orange County, New York.

A Notice of Proposed Deletion and a Notice of Direct Final Deletion for the Site were published on August 15, 2000 (65 FR 49776–49777 and 65 FR 49739–49741, respectively). In these notices, EPA requested public comment on the proposed NPL deletion of the Site until September 15, 2000. During the 30-day comment period, EPA received correspondence offering critical comments. As a result of the critical comments, EPA published a Notice of Withdrawal of Direct Final Deletion of the Site on October 16, 2000 (65 FR 61112). EPA evaluated the comments received and prepared a Responsiveness Summary and has concluded after a review of the comments that the Site does not pose a significant threat to public health or the environment. Copies of the Responsiveness Summary are available at the following repositories: Warwick Town Hall, 132 Kings Highway, Warwick, New York 10990, (914) 986–1120 and the Greenwood Lake Village Hall, Church Street, Greenwood Lake, New York 10925, (914) 477–9215. The Responsiveness Summary is also available in the Administrative Record File, located in the EPA Regional Office.

EPA identifies sites that appear to present a significant risk to public health or the environment, and it maintains the NPL as the active list of these sites. As described in 40 CFR 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for remedial action in the unlikely event that conditions at a site warrant such action. Deletion of a site from the NPL does not affect the liability of potentially responsible parties nor does it impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Superfund, Water pollution control, Water supply.

Dated: June 14, 2001.

William J. Muszynski,

Acting Regional Administrator, Region II.

Part 300, title 40 of Chapter I of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the site for "Warwick Landfill, Warwick, New York."

[FR Doc. 01–16809 Filed 7–5–01; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AG38

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Spruce-fir Moss Spider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), designate critical habitat for the spruce-fir moss spider (*Microhexura montivaga*), under the Endangered Species Act of 1973, as amended (Act). The areas designated as critical habitat include portions of Avery, Caldwell, Mitchell, Swain, and Watauga Counties, in North Carolina and Sevier and Carter County in Tennessee. The areas designated as critical habitat for the spider are within the boundaries of the Great Smoky Mountains National Park (GSMNP); the Pisgah National Forest, and the Cherokee National Forest; and an area privately owned but is being managed by The Nature Conservancy through an agreement with the landowner.

We have revised the proposal to incorporate or address all relevant comments and other information received during the comment periods. This action comes as a result of a lawsuit filed against us by the Southern Appalachian Biodiversity Project and the Foundation for Global Sustainability. Section 7(a)(2) of the Act requires that Federal agencies must ensure that actions they fund, permit, or carry out are not likely to result in the destruction or adverse modification of critical habitat. State or private actions, with no Federal involvement, would not be affected by this rulemaking action.

DATES: This rule becomes effective on August 6, 2001.

ADDRESSES: Comments and materials received, as well as supporting documentation used in preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: John Fridell, Fish and Wildlife Biologist, at the address above (telephone 828/258–3939, extension 225; facsimile 828/258–5330).

SUPPLEMENTARY INFORMATION:

Background

Taxonomy and Description

The spruce-fir moss spider (*Microhexura montivaga*), was originally described by Crosby and Bishop (1925) based on collections made in 1923 from Mount Mitchell in western North Carolina, the highest point in eastern North America. Only a few specimens were taken, and little was known about the species until its "rediscovery" on Mount Mitchell, approximately 50 years later by Dr. Frederick Coyle (Western Carolina University) and Dr. William Shear (Hampden-Sydney College) (Coyle 1981). The subsequent work (Coyle 1981, 1985, 1997, 1999; Harp 1991, 1992) represents the bulk of what is presently known of the biology, habitat, behavior, range of, and threats to, the spider.

The spruce-fir moss spider belongs to the genus *Microhexura* in the family Dipluridae. Diplurids are in the primitive spider suborder Mygalomorphae, which are often referred to as "tarantulas" due to the inclusion of the large, hairy spiders of the family Theraphosidae. Only two genera of Dipluridae, *Euagrus* and *Microhexura*, are found in the United States. Species in the genus *Euagrus* are medium to large spiders that build their silk sheets and funnels in rocky situations in the arid Southwest. The genus *Microhexura* is the northernmost representative of the family Dipluridae and contains only two species—the spruce-fir moss spider (*M. montivaga*) and one with no common name (*M. idahoana*) (Chamberlin and Ivie). The two are distinguished by geographic distribution and by features of the male genitalia (Coyle 1981). Otherwise, they appear to be similar in both appearance and habits (Service 1998). *Microhexura idahoana* is found in conifer forests in the Pacific Northwest (Coyle 1981). The spruce-fir moss spider (*M. montivaga*) is known only from conifer forests in the mountains of North Carolina and Tennessee (Coyle 1981, 1997, 1999; Harp 1991, 1992; Service 1995, 1998).

The spruce-fir moss spider is the smallest of the mygalomorph spiders, with adults measuring only 2.5 to 3.8 millimeters (0.10 to 0.15 inch (in)) in length (Coyle 1981, Service 1995). The species' coloration ranges from light brown to a darker reddish brown, and there are no markings on the abdomen (Harp 1992). The carapace (hard covering over the front part of the body) is generally yellowish brown (Harp 1992). The most reliable field identification characteristics for the species are chelicerae (fangs) that project forward well beyond the anterior (front) edge of the carapace, a pair of very long posterior spinnerets (organ for producing threads of silk), and the presence of a second pair of book lungs that appear as light patches posterior to the genital furrow (Harp 1992; Coyle, *in litt.* 1994; Service 1995).

Distribution, Habitat, and Life History

Microhexura montivaga is known from only the highest mountain peaks (at and above 1,646 m (5,400 ft) in elevation) in the Southern Appalachian Mountains of North Carolina and Tennessee. It has been recorded from Mount Mitchell, Yancey County, North Carolina; Grandfather Mountain, Watauga, Avery, and Caldwell Counties, North Carolina; Mount Collins, Swain County, North Carolina; Clingmans Dome, Swain County, North Carolina; Roan Mountain, Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee; Mount Buckley, Sevier County, Tennessee; and Mount LeConte, Sevier County, Tennessee.

Recent and ongoing surveys funded by the National Park Service (NPS), US Forest Service (USFS), and us indicate that reproducing populations of the spruce-fir moss spider still survive on Grandfather Mountain in North Carolina (Harp 1992; pers. observation 1995; Jane Thompson, The Nature Conservancy, pers. comm. 1997); Mount LeConte in Tennessee (Coyle 1997); and Mount Buckley (Coyle, pers. comm. 2000) and Roan Mountain in North Carolina and Tennessee (Coyle 1999). The Mount Mitchell population is believed to be extirpated (Harp 1992), and both the Mount Collins and Clingmans Dome populations, if still present, are extremely small, with only one spruce-fir moss spider having been found at each of these two sites in recent years (Harp 1991, 1992). The occurrences of the species on Mount LeConte, Mount Collins, Clingmans Dome, and Mount Buckley are all within the boundaries of the GSMNP, administered by the NPS. The sites supporting the species on Roan Mountain are within the boundaries of the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee and are managed by the USFS. The area on Grandfather Mountain that still supports the spruce-fir moss spider is privately owned and is managed by The Nature Conservancy through an agreement with the landowner.

Recent work by Coyle (1997) indicates that Mount LeConte currently supports the healthiest of the surviving populations of the spruce-fir moss spider. In his study of the species on Mount LeConte, Coyle (1997) recorded the species from four small, separate areas of rock outcrop (approximately 0.10 hectare (0.25 acre), 0.15 hectare (0.38 acre), 0.25 hectare (0.63 acre), and 0.50 hectare (1.25 acres) in size) and estimated that the largest three of these areas support a population of approximately 5,000 individuals. He estimated that the 0.25-hectare site provided a total of approximately 12 square meters (m^2) (roughly 133 square feet (sq ft)) of suitable microhabitat, and the 0.15-hectare site provided approximately 7 m^2 (78 sq ft) of suitable microhabitat for the spruce-fir moss spider. Measurements of likely suitable microhabitat have not yet been made at the other two sites on Mount LeConte.

The typical microhabitat of the spruce-fir moss spider appears to be associated with moderately thick and humid, but well-drained, moss and liverwort mats growing in sheltered spots on surfaces of rock outcrops and boulders in mature high-elevation forests dominated by the Fraser fir (*Abies fraseri*) (Coyle 1981, 1997, 1999; Harp 1991, 1992; Service 1998). The portions of the moss mats supporting the spruce-fir moss spider are generally from 1 to 4 centimeters (cm) thick (roughly 0.5 to 1.25 in) and are well-shaded (Coyle 1981, 1997, 1999; Harp 1991, 1992; Service 1998). They cannot be too dry, because the spider is quite sensitive to desiccation (drying out), nor can they be too wet (Coyle 1997, 1998; Harp 1991, 1992). The humidity levels required by the spruce-fir moss spider have yet to be determined. In a study of the spruce-fir moss spider on Roan Mountain, Coyle (1999) reported that the moss/liverwort mats in which spruce-fir moss spiders were found were—(1) sheltered from the sun and the rain, (2) typically not far above either the ground or a horizontal ledge with accumulated soil, (3) included a thin layer of humid soil and/or humus (decayed vegetation and other organic material) between the moss and rock surface, (4) moderately thick (1 to 3 cm (0.5 to 1 in), and (5) humid but not wet. He reported that, clearly, most rock outcrop surfaces, even those covered by bryophytes (mosses, liverworts, etc.), do not meet these microhabitat requirements and do not support the spruce-fir moss spider.

Population and microhabitat estimates are not available for the Grandfather Mountain, Mount Buckley, or Roan Mountain populations of the spruce-fir moss spider. However, existing data indicate that the Grandfather Mountain population is restricted to small patches of suitable microhabitat occurring on a single rock outcrop and a nearby boulder (Harp

1992; pers. observation 1995). The Mount Buckley population is restricted to scattered patches of suitable microhabitat on separate rock outcrop sites within an area roughly 0.20 hectare (0.5 acre) in size. On Roan Mountain, Coyle (1999) recorded scattered occurrences of the spruce-fir moss spider at 12 small, separate rock outcrop sites but found more than two spiders living in the same discrete patch of moss/liverwort on only three occasions. He found four spiders in an 800-square-centimeter (sq cm) (approximately 1.0-sq-ft) patch of liverwort at one site, five spiders in a 900-sq-cm (1.2-sq-ft) patch of moss at another site, and four spiders in a 900-sq-cm (1.2-sq-ft) patch of moss at the third site. He reported that at none of these three sites, nor at any other sites on Roan Mountain where he found the spider, were they able to find additional spiders with ease and that the spruce-fir moss spider population densities on Roan Mountain were clearly not as high as those observed at some of the sites on Mount LeConte. As stated above, individual spruce-fir moss spiders (one each) have been observed in recent years on Mount Collins and on Clingmans Dome, indicating extremely low population levels. Coyle (*in litt.*, 1991) reported that the spruce-fir moss spider was common at a site on Clingmans Dome as late as 1983 but was extremely rare by 1988, which he suspected was largely due to deterioration of the forest canopy at the site.

The moss species associated with occurrences of the spruce-fir moss spider have been identified by David K. Smith, Botany Department, University of Tennessee at Knoxville, as *Polytrichum pallidesetum* Funck (Harp 1991, 1992), *Dicranodontium* denudatum (Brid.) E. G. Britt ex Williams (Harp 1992; Coyle 1997, 1999), and *D. asperulum* (Mitt.) Broth. (Coyle 1997, 1999). In addition, Coyle (1999) reported finding the spruce-fir moss spider on two occasions in liverwort mats (species was not identified) on rock outcrops. However, on both Mount LeConte and Roan Mountain, Coyle (1997, 1999, respectively) found the spruce-fir moss spider most often in association with mosses in the genus *Dicranodontium*. Though Harp (1991, 1992) reported finding the spruce-fir moss spider on Mount LeConte in mosses identified as *Polytrichum pallidesetum*, Coyle was unable to find the spider on either Mount LeConte or Roan Mountain in mosses in this genus. The association between the spruce-fir moss spider and mosses in the genus *Dicranodontium* is noteworthy because mosses in this genus are much less common than many other rock surface mosses (Coyle 1999).

While humid, well-drained moss/liverwort mats on inclined, well-shaded surfaces of rock outcrops and boulders appear to be the optimal microhabitat for the spruce-fir moss spider, it has also, on occasion, been found—(1) under moss and litter mats at the base of rock outcrops (Coyle 1981); (2) under moss on loose rock at the base of rock outcrops; (3) in litter/humus under flat rocks lying on the ground in well-shaded situations in the vicinity of rock outcrops; and (4) on well-drained, well-shaded ground in or under needle and/or heath litter and moss in the vicinity of rock outcrops (Coyle 1997). The species has also rarely been found in moss mats on tree trunks (Coyle 1981) and moss mats on logs (Harp 1992), though Coyle has been unable to find the species in either of these habitat types in his recent surveys for the species (Coyle 1997, 1999, pers. comm. 2000).

An ongoing study of spiders of the GSMNP by Coyle and recent surveys of the spruce-fir moss spider on Mount LeConte (Coyle 1997) and Roan Mountain (Coyle 1999) support earlier findings (Coyle 1981; Harp 1991, 1992) that the microhabitat of the spruce-fir moss spider is virtually restricted to certain areas of rock outcrops and boulders in Fraser fir and/or fir-dominated spruce-fir forests. The Fraser fir is the only species of fir native to the Southeastern United States (Burns and Honkala 1990). In his study of the population of the spruce-fir moss spider on Mount LeConte, Coyle (1997) reported finding the species "only in stands containing many old (well over 25 years of age) fir trees and in areas where patches of fir containing old fir trees interface with heath communities." In both situations he found the species only on, or in the vicinity of, rock outcrops. In his work on Roan Mountain, Coyle (1999) found the species only on rock outcrops in fir forests or fir-dominated areas of spruce-fir forests. Searches for the spruce-fir moss spider in other habitat types have failed to locate occurrences of the species (Coyle, *in litt.* 1991; Coyle 1997, 1999).

Coyle (1981, 1997) describes the webs of the spruce-fir moss spider as silk tubes sandwiched between the interface of the moss mat and boulder surface. The tubes are thin-walled and are typically broad and flattened, with short side branches. Some of the tubes occasionally extend into crevices in the rock or litter (Coyle 1997) or the vegetative interior of the moss mat (Harp 1991, 1992).

The spruce-fir moss spider has not been observed taking prey in the wild, nor is there any record of prey having been found in spruce-fir moss spider webs. The abundant springtails (small wingless insects in the order Collembola) found in moss mats with the spiders provide the most likely source of food. The spiders have been observed to take springtails in captivity (David Hodge, Louisville Zoological Park, pers. comm. 1992).

Mating behavior has been described in detail (Coyle 1985). Females of the spruce-fir moss spider are known to lay eggs in June (Coyle 1981). The egg sac of the species is thin-walled, nearly transparent, and generally contains only 7 to 9 eggs (Coyle 1981). The female remains with the egg sac and, when disturbed, will carry the sac with her fangs. Coyle (1997) hypothesized that the ability of the female to move the egg sac may be useful not only in protecting the eggs from predators but also in repositioning the egg sac to protect it from microhabitat changes within the web. Development and evaporative water loss by early instar (a stage between molts) spiderlings within the egg sac are likely dependent on temperature and humidity levels. The spiderlings emerge during September (Coyle 1981). It has been estimated that it may take at least 2 to 3 years for spruce-fir moss spiders to reach maturity (Coyle 1985). The life span of the spruce-fir moss spider is currently unknown. Many species of spiders live for only one season. But, like other "tarantulas," spruce-fir moss spiders molt (shed their skin) continuously through life, which means they can keep growing and live for several years.

Modes of dispersal of spiderlings from the parental moss mats are unknown. Ballooning is a possibility since males of *Microhexura idahoana* have been collected as "windblown fallout" on snow fields on Mt. Rainier (Coyle 1981). Ballooning spiders use a sheet of silk played out into a wind current as a kite to carry them into the air. Ballooning spruce-fir moss spiders have not been collected. If they do balloon, they would be capable of an effective mode of dispersal over long distances. Even short-range dispersal between moss mats has not been documented for this species. Pitfall trap and Berlese funnel sampling done in the area of the Mount LeConte population did not yield any specimens of the spruce-fir moss spider (Lambden *et al.* 1994).

Possible predators and competitors of the spruce-fir moss spider include pseudoscorpions, centipedes, carabid

beetles, and other spiders. A number of other species of spiders are commonly found in the same moss as the spruce-fir moss spider (Service 1998).

Threats

The majority of the high-elevation spruce-fir forests of the Southeast have suffered extensive changes and declines in size and/or vigor during the past century, likely as a result of a number of factors, including storm damage, site deterioration due to the logging and burning practices of the early 1900s (Peart *et al.* 1992), atmospheric pollution (Johnson *et al.* 1992), exposure shock (Nicholas *et al.* 1992), climate changes, and other factors not yet fully understood. However, the primary threat to, and reason for the recent decline of, the spruce-fir moss spider at all of the sites from which it has been recorded appears to be associated with the loss of suitable moss habitat, due primarily to the loss of mature Fraser firs (Coyle, *in litt.* 1991, 1999; Harp 1991, 1992; Service 1998). The spruce-fir moss spider appears to be very sensitive to desiccation and requires situations of high and constant humidity. The loss of mature Fraser firs, the dominant canopy species in the forest stands where the spider has been found, leading to increased light and temperature and decreased moisture on the forest floor (resulting in drying out of the moss mats), appears to be the major cause for the loss of the spruce-fir moss spider on Mount Mitchell and the recent decline of the Mount Collins, Clingmans Dome, and a portion of the Mount LeConte populations (Harp 1991, 1992). It is also likely the major factor limiting the species' distribution on Roan Mountain, Grandfather Mountain, and Mount Buckley. Mature Fraser firs on all of these mountains have suffered extensive mortality in the last few decades.

The most obvious reason for the loss of the fir appears to be the associated infestation by the balsam wooly adelgid (*Adelges picea* (Ratzeburg) (Homoptera, Adelgidae)). The balsam wooly adelgid is a nonnative insect pest believed to have been introduced into the Northeastern United States from Europe around 1900 (Kotinsky 1916, Eagar 1984). The adelgid was first detected in North Carolina on Mount Mitchell (the type locality for the spruce-fir moss spider) in 1957 (Speers 1958), though it was likely established at that site as early as 1940. From Mount Mitchell, the adelgid spread to the Fraser fir stands throughout the Southern Appalachians (Eagar 1984). All ages of fir trees are attacked by the adelgid, but damage is generally minimal until the trees reach maturity at around 30 years of age (Hoffard *et al.* 1990). Most mature Fraser firs are easily killed by the adelgid (Amman and Speers 1965), with death occurring within 2 to 7 years of the initial infestation (Eagar 1984). The death of the fir trees and the resultant opening of the forest canopy causes the remaining trees to be more susceptible to wind and other storm damage. The adelgid is transported and spread primarily by the wind but may also be spread by contaminated nursery stock; on the fur or feathers of animals; or by humans on contaminated clothes, equipment, or vehicles (Eagar 1984). All efforts to control the spread of the adelgid have failed thus far.

All existing data (Coyle 1981, 1997, 1999; Harp 1991, 1992) indicate that suitable habitat for the spruce-fir moss spider is extremely limited and restricted to small areas of rock outcrops occurring in forest stands dominated by fir trees, providing the shelter and organic substrata required by the spider. This restricted range of each of the surviving populations of the spruce-fir moss spider also makes it extremely vulnerable to extirpation from a single event or activity, such as a severe storm, wildfire, land-clearing or timber operation, pesticide/herbicide application, etc. In addition, the spider and the moss mats it inhabits are very fragile and easily destroyed by human trampling or other disturbance. Many of the high-elevation areas where the spider occurs are frequented by tens of thousands of visitors each year. Coyle (1999) suggested that boulder climbing by visitors may have been one of the factors contributing to the scarcity of suitable moss habitat for the spider in areas on Roan Mountain. Because of their small size, disturbance of the moss mats or damage to the surrounding vegetation shading the mats could result in the extirpation of entire spruce-fir moss spider populations and/or population fragments.

Previous Federal Actions

On December 31, 1992, we notified (in writing) appropriate Federal, State, and local government agencies, landowners, and individuals knowledgeable about this or similar species that a status review was being conducted and that the species might be proposed for Federal listing. We received ten written comments. The NPS, the North Carolina Division of Parks and Recreation, and three private individuals (including the owner of the site containing the Avery/Caldwell County, North Carolina, population) expressed strong support for the potential listing of the spruce-fir moss spider as an endangered species. The U.S. Soil Conservation Service, Tennessee Wildlife Resources Agency, Tennessee Department of Environment and Conservation, Tennessee Valley Authority, and the North Carolina Department of Agriculture stated that they had no new or additional information on the species or threats to its continued existence. We received no comments opposing the potential listing of the spruce-fir moss spider.

On August 30, 1993, we classified the spruce-fir moss spider as a category 1 candidate based on the results of status surveys, funded by the NPS and us, documenting significant habitat loss and increased threats to the species throughout its range (Harp 1991, 1992). At that time, category 1 represented those species for which we had substantial information on biological vulnerability and threats to support proposals to list them as endangered or threatened species.

On January 27, 1994, we published in the **Federal Register** (59 FR 3825) a proposal to list the spruce-fir moss spider as an endangered species without designating critical habitat. The proposal provided information on the species' range, biology, status, and threats to its continued existence and a proposed determination that designation of critical habitat was not prudent for the species because such designation would not be beneficial and could further threaten the spruce-fir moss spider. Through associated notifications, we invited comments on the proposal and factual reports or information that might contribute to the development of a final rule. We contacted and requested comments from appropriate Federal and State agencies, county governments, scientific organizations, individuals knowledgeable about the species or its habitat, and other interested parties. We published a legal notice, which invited general public comment, in the following newspapers: the *Avery Journal*, Newland, North Carolina, February 10, 1994; the *News-Topic*, Lenoir, North Carolina, February 10, 1994; the *Watauga Democrat*, Boone, North Carolina, February 16, 1994; the *Smoky Mountain Times*, Bryson City, North Carolina, February 10, 1994; and the Mountain Press, Sevierville, Tennessee, February 11, 1994. We received ten written comments. Six of them expressed strong support for the findings presented in the proposed rule and listing of the species as proposed; three either expressed concurrence with the data presented in the proposed rule and/or provided additional information but expressed neither support for, nor

opposition to, the listing; and one comment opposed the listing, stating that the "scientific community, and the Service in particular, needs to recognize that extinction has always been a continuing process and will continue to be so."

Following our review of all the comments and information received throughout the listing process, by final rule (60 FR 6968) dated February 6, 1995, we listed the spruce-fir moss spider as endangered. We addressed all the comments received throughout the listing process and/or incorporated changes into the final rule as appropriate. That decision included a determination that the designation of critical habitat was not prudent for the spruce-fir moss spider because, after a review of all the available information, we determined that such designation would not be beneficial to the species and that designation of critical habitat could further threaten the spider.

On June 30, 1999, the Southern Appalachian Biodiversity Project and the Foundation for Global Sustainability filed a lawsuit in United States District Court for the District of Columbia against the Service, the Director of the Service, and the Secretary of the Department of the Interior, challenging the Service's not prudent critical habitat determinations for four species in North Carolina—the spruce-fir moss spider, Appalachian elktoe (*Alasmidonta raveneliana*), Carolina heelsplitter (*Lasmigona decorata*), and rock gnome lichen (*Gymnoderma lineare*). On February 29, 2000, we entered into a settlement agreement with the plaintiffs in which we agreed to reexamine our prudency determination and submit to the **Federal Register**, by October 1, 2000, a withdrawal of the existing not prudent determination, together with a new proposed critical habitat determination, if prudent. We further agreed that if, upon consideration of all available information and comments, we determined that designation of critical habitat is prudent for the spruce-fir moss spider, we would send a final rule of this finding to the **Federal Register** by July 1, 2001.

On October 6, 2000, we published a prudency determination and a proposed designation of critical habitat for the spruce-fir moss spider (65 FR 59798). The proposed rule included maps and a description of all areas under consideration for designation as critical habitat for the species. On October 10, 2000, we notified appropriate Federal and State agencies, local governments, scientific organizations, individuals knowledgeable about the species, and other interested parties and requested their comments on the proposal. A legal notice that announced the availability of the proposed rule and invited public comment was published in the following newspapers—*News-Topic*, Lenoir, North Carolina; *Watauga Democrat*, Boone, North Carolina; *Smoky Mountain Times*, Bryson City, North Carolina; *Avery Journal*, Newland North Carolina; *Mitchell News Journal*, Spruce Pine, North Carolina; *Yancey Common Times Journal*, Burnsville, North Carolina; *Mountain Press*, Sevierville, Tennessee; and, *Elizabethton Star*, Elizabethton, Tennessee.

In the proposed rule and associated notifications, all interested parties were requested to submit factual reports or information, by December 5, 2000, that might contribute to our determination and the development of a final rule. On February 12, 2001, we published a notice in the **Federal Register** (66 FR 9806) reopening the comment period on the proposed rule and announcing the availability of a draft economic analysis for the proposed designation of critical habitat for the spider. That notice provided an incorrect date for the closing of the reopened comment period, and on February 27, 2001, we published a notice (66 FR 12450) correcting the closing date for comments to March 14, 2001. We notified appropriate agencies, government officials, institutions, and other interested parties, by letters dated February 12, 2001, of the reopening of the comment period and availability of the draft economic analysis, and published legal notices in the newspapers listed above inviting comments from the public.

Summary of Comments and Recommendations

We received a total of 22 written comments during the 2 comment periods—16 during the initial comment period and 6 during the reopened comment period. Written comments were received from 1 Federal agency, 1 State agency, 2 private organizations, and 17 private individuals. One of the respondents provided comments during the initial comment period on the proposed rule and additional comments on the draft economic analysis during the reopened comment period. Of the 21 respondents, 16 expressed support for the designation of critical habitat for the spruce-fir moss spider, and 5 opposed the designation.

Following is a summary of the comments received (referred to as "issues" for the purpose of this summary) during the two comment periods. Issues of a similar nature have been grouped together. These issues and our response to each are presented below.

Issue 1: Several respondents provided comments supporting the designation of critical habitat for the spruce-fir moss spider but requested that the Service designate and consider all spruce-fir forests (in western North Carolina and eastern Tennessee) above the 5,400-foot elevation as critical habitat for the species.

Response: The Act and associated regulations for designating critical habitat require us to base our designations on the best scientific and commercial information available. When considering areas for designation as critical habitat, we are required to focus on the principal biological and physical constituent elements (primary constituent elements) within the defined area that are essential to the conservation of the species (50 CFR 424.12(b)). Based on information provided by experts on this species and a review of all of the published and unpublished data that we are aware of concerning the historic and present distribution, biology, life history, and habitat requirements of the spruce-fir moss spider (see "Background" section), the species is restricted to those areas of fir and fir-dominated spruce-fir forests containing the primary constituent elements as described in this rule. The species has never been recorded from other habitat types, including spruce-fir forests without rock outcrops, spruce-dominated spruce-fir forests with or without rock outcrops, or rock outcrops in spruce-fir forests that do not provide suitable moss or liverwort mats. In accordance with the definition of critical habitat (see "Critical Habitat" section), we can only designate unoccupied habitat of the species if, based on the best available information, it is determined that such areas are essential to the conservation of the species. Because we do not currently have any data documenting that these other habitat types are used by the spruce-fir moss spider and are essential to the conservation of the species, we cannot consider them as critical habitat.

As we stated in the proposed rule, all of the areas we are designating as critical habitat are within what we believe to be the occupied range of the spruce-fir moss spider and include all known surviving occurrences of the species. Despite extensive surveys and ongoing research, we currently are not aware of any areas outside the geographical area occupied by the spruce-fir moss spider that provide the primary constituent elements essential to the life cycle needs of the species (see

"Primary Constituent Elements" section) and are essential for the conservation of the spider. To the extent feasible, we will continue, with the assistance of other Federal, State, and private researchers, to conduct surveys and research on the species and its habitat. Should additional information become available that indicates that other areas within the spruce-fir moss spider's historic range are essential to the conservation of the species, we may revise the designated critical habitat accordingly. Similarly, if new information indicates any of these areas should not be included in the critical habitat designation because they no longer meet the definition of critical habitat, we may revise this final critical habitat designation. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

Issue 2: Several respondents suggested that the designation of all spruce-fir forests above 5,400 ft in elevation as critical habitat would protect the spruce-fir moss spider's habitat from the effects of air pollution and acid rain.

Response: Evaluating and addressing the potential effects of atmospheric pollution and acid rain, or any other threats, on the spruce-fir moss spider and its habitat does not require the designation of all spruce-fir forests above 5,400 ft in elevation as critical habitat. Since before the listing of the spruce-fir moss spider as an endangered species, we have been monitoring the results of studies conducted by Federal, State, and private researchers and have been recommending additional studies to determine the effects that atmospheric pollution may have on the health of high-elevation forests and associated species. Regardless of whether critical habitat has been designated, Federal agencies are required by the Act to evaluate the direct and indirect effects of their actions on listed species and ensure that their actions are not likely to jeopardize the continued existence of listed species. Therefore, any Federal activity that has the potential to adversely affect the spruce-fir moss spider is already subject to the provisions of the Act.

As we stated in the proposed and final rules listing the spruce-fir moss spider as endangered and in the proposed rule to designate critical habitat, we believe that, because of the limited amount of suitable habitat available to the spruce-fir moss spider, any activity that would significantly affect the habitat of the species would also jeopardize the species' continued existence. If data exists, or becomes available in the future, that documents that there is a relationship, direct or indirect, between atmospheric pollution resulting from the operations of, or the issuance of permits by, a Federal agency and the decline in spruce-fir moss spider habitat, those actions would be subject to the provisions of section 7 of the Act. There is no need to designate unoccupied, unsuitable habitat as critical habitat of the spruce-fir moss spider to address threats from air pollution and acid rain.

Issue 3: Two respondents indicated that they believe the designation of all spruce-fir forest habitat above 5,400 ft in elevation in western North Carolina and eastern Tennessee, including that on Mount Mitchell (which historically supported the spruce-fir moss spider), is necessary for the conservation of the spruce-fir moss spider.

Response: We do not believe that such an area would meet the definition of critical habitat (see the Critical Habitat section for detailed discussion of how we determine what meets the definition of critical habitat). Because we do not currently have any data documenting that all spruce-fir forest habitat types above 5,400 ft in elevation in western North Carolina and eastern Tennessee provide suitable habitat for the spruce-fir moss spider or are essential to the conservation of the species, we cannot consider all spruce-fir forests as critical habitat of the species. The Mount Mitchell population of the spruce-fir moss spider is, based on the best available information, believed to be extirpated (see "Background" section) due to the loss of suitable habitat for the species on Mount Mitchell (Harp 1992). Mount Mitchell does not provide the primary constituent elements necessary to support the species. Further, the recovery plan for the spruce-fir moss spider (Service 1998) states that the species will be considered for delisting (recovered) when there exists a total of six distinct, viable populations of the species that meet the criteria outlined in the recovery plan. Surveys by Harp (1991 and 1992) and Coyle (1997 and 1999) indicate that there are currently six surviving populations of the spruce-fir moss spider—the Mount LeConte, Clingmans Dome, Mount Buckley, Mount Collins, Roan Mountain, and Grandfather Mountain populations (see "Background" section). The areas that we are designating as critical habitat in this rule include habitat for each of these populations. Because, based on the most recent data, the species and suitable habitat for the species are still present, albeit limited, in each of these areas, we considered these areas as the most likely sites for focusing conservation efforts for maintaining and recovering the species. However, as we previously stated, should additional information become available that indicates that other areas within the spruce-fir moss spider's historic range are essential to the conservation of the species, we may revise the designated critical habitat accordingly. Similarly, if new information indicates any of these areas should not be included in the critical habitat designation because they no longer meet the definition of critical habitat, we may revise this final critical habitat designation. If, consistent with available funding and program priorities, we elect to revisit designations, we will do so through a subsequent rulemaking.

Issue 4: One respondent stated that they believed the area listed to be included under the critical habitat designation is overly broad and that the Service failed to show that each area to be designated has the primary constituent elements essential for the conservation of the spruce-fir moss spider. As evidence of this, they quoted the following statements from the proposed rule:

> We [the Service] did not map critical habitat in sufficient detail to exclude lands unlikely to contain all of the primary constituent elements essential for the conservation of the spruce-fir moss spider. Consequently, the areas we are proposing as critical habitat include areas of unsuitable habitat * * * do not provide the habitat or microhabitat required by the spider.

Response: Based on the best information currently available to us concerning the distribution and habitat requirements of the spruce-fir moss spider (see "Background" section), all of the areas that we are designating as critical habitat for the spruce-fir moss spider currently support occurrences of the species and, based on survey reports and other information provided by species experts and as evidenced by the species' presence in these areas, contain the primary constituent elements, as described in this and the proposed rule, necessary to fulfill the life cycle needs of spruce-fir moss spider and essential to the conservation of the species. However, we did, and do, acknowledge that there are also habitat types within the mapped critical habitat boundaries that do not contain the primary constituent elements. Our regulations (50 CFR 424.12(c)) require that we define the specific limits of critical habitat by using reference points and lines as found on standard topographic maps of the area(s). These regulations also state that when several habitat areas are located in proximity to one another,

an inclusive area may be designated as critical habitat. Because of the patchiness and small size (see "Background" section) of the areas providing suitable habitat for the spruce-fir moss spider (those areas containing the primary constituent elements), their proximity to one another, and the requirement that we use reference points and lines as found on standard topographic maps, we elected to designate an inclusive area. As a result, there are also areas (habitat types) within the mapped critical habitat boundaries that do not, based on the best available information, provide habitat for the spruce-fir moss spider. Finally, existing human-constructed features and structures within the critical habitat boundary, such as buildings, powerlines, roads, and others not currently containing one or more of the primary constituent elements, are not considered critical habitat: Therefore, Federal activities in these areas would not trigger a section 7 consultation.

Issue 5: One respondent stated that the Service places the blame for the spider's decline exclusively on the balsam woolly adelgid, rather than acknowledging the fact that air pollution and acid rain are devastating spruce-fir forests and the spruce-fir moss spider. The respondent stated that the Service is ignoring the problems associated with air pollution and indicated that the Service should require consultation on the effects of air pollution on the spruce-fir moss spider.

Response: We identified the loss of the high-elevation Fraser fir, the dominant canopy species in the forest stands sheltering rock outcrops supporting known occurrences, present and historic, of the spruce-fir moss spider, as the most likely cause of the recent decline of the species (see "Background" section above). We further identified the balsam woolly adelgid (a nonnative insect) as a primary factor contributing to the massive die-off of the Fraser fir during the last few decades on the mountain peaks known to support, or to have historically supported, occurrences of the spruce-fir moss spider (we have changed this statement in this rule to say that balsam woolly adelgid infestations are the most obvious cause of the fir mortality). The extensive mortality of the Fraser fir throughout the Southern Appalachian Mountains due to infestations of the balsam woolly adelgid is well documented. However, we also listed numerous other factors that are not as easily understood, including atmospheric pollution, which may also have contributed to the decline in the size and vigor of spruce-fir forest stands in the Southeast and/or may pose a threat to surviving occurrences of the spruce-fir moss spider.

While we agree that there is evidence that implicates atmospheric pollution as a possible factor contributing to the decline of high-elevation forest health, we are not currently aware of any data that have yet firmly established a cause-and-effect mechanism between atmospheric pollution and the decline in spruce-fir forests in the Southern Appalachian Mountains and, more specifically, the loss of spruce-fir moss spider habitat. However, we are concerned about the possible effect that atmospheric pollution may be having on the health of the high-elevation forests and the recovery of the spruce-fir moss spider. We welcome any supporting data and strongly encourage, and to the maximum extent feasible will continue to contribute to, studies that help to identify factors threatening the spruce-fir moss spider and measures for alleviating these threats. We will also continue to work with other Federal agencies to help ensure that their actions are in compliance with section 7 of the Act, to encourage them to evaluate their activities and consult with us on those that are likely to adversely affect the spruce-fir moss spider and its designated critical habitat, and to identify and implement actions to further the conservation of this and other federally listed species.

Issue 6: One respondent stated that the benefits to public health, recreation, tourism, the local economy, commercial and recreational fisheries, global climate change, and the preservation of biological and genetic resources that will result from improvements in air quality due to the designation of critical habitat of the spruce-fir moss spider need to be addressed in the economic analysis for the designation of critical habitat for the spider.

Response: When evaluating the economic costs and benefits of designating critical habitat, we consider the incremental economic impacts of critical habitat designation above the impacts resulting from listing and other laws. As discussed in our response to Issue 2, above, if data exist, or become available in the future, that indicate that any Federal action or activity has the potential to adversely affect, directly or indirectly, habitat of the spruce-fir moss spider, that action is/would be subject to the provisions of section 7 of the Act regardless of whether critical habitat has been designated. Because of the status of the spruce-fir moss spider and its habitat, any Federal activity that is likely to significantly affect the habitat of the species would also jeopardize the species' continued existence and would therefore already be prohibited. Accordingly, we do not believe that the designation of critical habitat will provide any additional benefit for addressing the effects of air pollution, or any other Federal activity, that does not already exist as a result of listing the spruce-fir moss spider as an endangered species. Hence, as discussed in the economic analysis, designation of critical habitat for the spruce-fir moss spider does not increase or change the existing regulatory burden posed by the listing of the species, and we do not anticipate that there will be any significant economic impact, beneficial or negative, likely to occur from the designation of critical habitat for this species.

Issue 7: One respondent stated that the Service has no business declaring private property as critical habitat and implied that the designation would affect private property rights. This same respondent asked if we planned to compensate landowners for the loss of the use of their land. Another respondent asked how many people will be put out of work, how many peoples' private property rights will be violated, and how many people will be denied access to recreation areas.

Response: The Act requires us to designate critical habitat to the extent prudent and determinable, based on the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The definition of critical habitat (see "Critical Habitat" section) does not differentiate between areas that are privately owned and those that are publically owned. We may exclude areas essential to the conservation of the species from critical habitat designation only when the benefits of excluding those areas outweigh the benefits of including the areas within the critical habitat designation, provided the exclusion will not result in the extinction of the species. We cannot exclude areas based on landownership alone. All of the areas being designated as critical habitat for the spider occur on public land (national park and national forest land), with the exception of the areas in Unit 4, which are on Grandfather Mountain. Grandfather Mountain is privately owned, and the areas in this unit that are designated as critical habitat are managed by The Nature Conservancy through conservation easements donated by the landowner (see "Summary" section and "Distribution, Habitat, and Life History"

portion of the "Background" section). We have determined that conservation of the areas on Grandfather Mountain that support occurrences of the spruce-fir moss spider provide the primary constituent elements and are essential to the conservation of the species. As discussed in the draft economic analysis, the primary activities within this unit are recreational activities (e.g., hiking, sightseeing, primitive camping). None of the existing or reasonably foreseeable activities within this unit require a Federal permit or involve Federal funding, so no regulations associated with the designation of critical habitat will affect existing or likely future planned activities within this unit.

The only regulatory consequence of this designation of critical habitat is that Federal agencies must consult with us before undertaking actions, issuing permits, or providing funding for activities that might destroy or adversely modify critical habitat (see "Effects of Critical Habitat Designation" section). This regulation has no regulatory impact on private landowners taking actions on their land that do not involve Federal funding or authorization. Because the spruce-fir moss spider is already listed as endangered, Federal agencies are already required to consult with us on any of their actions that may affect the spider and to ensure that their actions do not jeopardize the species' continued existence, regardless of whether critical habitat has been designated. In addition, since the spider was listed as endangered in 1995, it is has been protected from "take" throughout its range, without critical habitat having been designated. "Take" is defined to include harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these. We believe that the designation of critical habitat for the spruce-fir moss spider will not result in any significant additional regulatory burden on landowners or affect the use of property, private or Federal.

Issue 8: One respondent stated that the government should have to prove that the value of the spider is greater than the use of the land.

Response: In the Act, Congress declared that species of fish, wildlife, and plants in the United States in danger of, or threatened with, extinction are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people. As discussed in our response to Issue 6, above, and in the economic analysis assessing the economic effects of critical habitat designation for the spruce-fir moss spider, the designation of critical habitat for this species will not result in any additional regulatory burden on landowners or affect the use of their property.

Issue 9: One commenter claimed that the evidence we provided for our proposed designation of critical habitat for the spruce-fir moss spider was insufficient. Specifically, the commenter claimed that we failed to provide new data to justify a reversal in position from the 1995 determination that designation of critical habitat was not prudent, relying instead on case law.

Response: Our 1995 decision not to designate critical habitat was based on a determination that, despite sufficient scientific information from which to demonstrate the existence of suitable habitat, designation would not be prudent. Our current proposal identifying suitable habitat for designation relied on the same scientific and commercial information that was available in 1995, augmented by at least three additional studies (Coyle 1997, 1999; Service 1998). Taken together, they represent the best scientific and commercial information available. Our change in position between 1995 and now is not based on any new evidence that emerged since the original determination, but rather on a change in the legal standards for evaluating the existing evidence.

Specifically, we have determined that under the *Conservation Council of Hawaii* and *Natural Resources Defense Council* decisions cited above, the information available to us in 1995 did not support a "not prudent" finding. First, the "increased threat" rationale, based on the possibility of collection or other disturbance, was not supported by evidence specific to this or similarly situated species as required by *Conservation Council of Hawaii* v. *Babbitt*, 2 F. Supp.2d 1280, 1284 (D. Hawaii 1998). Second, we have determined that the possible educational or informational benefits of designating critical habitat do not allow us to state, in the absence of evidence to the contrary, that designation would not benefit the species. *Natural Resources Defense Council* v. *U.S. Department of the Interior*, 113 F.3d 1121, 1125 (9th Cir. 1997).

Issue 10: One commenter claimed that we lack the authority under the Commerce Clause of the United States Constitution to designate critical habitat for, or even list, the spruce-fir moss spider, because the species is located only in a few counties and there is no evidence that it has ever constituted an article of commerce or attracted interstate visitors.

Response: We believe that, contrary to the commenter's opinion, we have the authority under the Commerce Clause to designate critical habitat for the spruce-fir moss spider. In *Gibbs* v. *Babbitt*, 214 F. 3d 483 (4th Cir. 2000), the Fourth Circuit held that we had the authority under the Commerce Clause to issue a regulation under the Act limiting taking of the endangered red wolf, because (1) the taking of red wolves implicated a variety of commercial activities and was closely connected to several interstate markets, and (2) the regulation in question was an integral part of the overall Federal scheme to protect endangered species, thereby conserving valuable wildlife resources important to the welfare of our country.

Our authority to designate critical habitat for the spruce-fir moss spider is consistent with the *Gibbs* decision. First, even though the spider may not have the same commercial importance as the red wolf at issue in *Gibbs*, there is ample evidence that the spider is important to interstate commerce—it is located in numerous counties in two different States (North Carolina and Tennessee) and scientists from universities in both States, as well as from the NPS and the American Museum of Natural History, have come to the region to research the species. Second, as with the regulation that limits taking of the red wolf that was upheld in *Gibbs*, the designation of critical habitat for the spruce-fir moss spider is "an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated." *Gibbs*, 214 F. 3d at 497, citing *United States* v. *Lopez*, 514 U.S. 549 (1995). As the court further stated in *Gibbs*, the designation of critical habitat for the spruce-fir moss spider "may be insubstantial by some measures, but that does not invalidate a regulation * * * that seeks conservation not only of any single animal, but recovery of the species as a whole." *Id.* at 497–98. The regulation must be "evaluated against the overall congressional goal of restoring * * * endangered species generally." *Id.* at 498. Measured against this goal, the listing and designation of critical habitat for the spruce-fir moss spider are consistent with the Commerce Clause.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by the species on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special

management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Areas outside the geographical area currently occupied by the species shall be designated as critical habitat only when a designation limited to its present range would be inadequate to ensure the conservation of the species. "Conservation" is defined in section 3(3) of the Act as the use of all methods and procedures necessary to bring endangered or threatened species to the point at which listing under the Act is no longer necessary. Regulations under 50 CFR 424.02 (j) define "special management considerations or protection" to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographical area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information should become available or what areas may become essential over time. If the information available at the time of designation does not show that an area provides the essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographical area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), necessary to provide the essential life cycle needs of the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require the designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographical area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by us represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that the designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it should be understood that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of the designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Section 4(b)(2) of the Act requires that we base critical habitat designations on the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of excluding those areas outweigh the benefits of including the areas within the critical habitat, provided the exclusion will not result in the extinction of the species.

Methods

The areas of critical habitat described below constitute our best assessment of the areas needed for the conservation and recovery of the spruce-fir moss spider in accordance with the goals outlined in our recovery plan for the species (Service 1998) and are based on the best scientific and commercial information currently available to us concerning the species' known present and historic range, habitat, biology, and threats. All of the areas we are designating as critical habitat are within what we believe to be the geographical area occupied by the spruce-fir moss spider and include all known surviving occurrences of the species. Despite extensive surveys and ongoing research, we currently are not aware of any areas outside the geographical area occupied by the spruce-fir moss spider that provide the primary constituent elements essential to the life cycle needs of the species (see "Primary Constituent Elements" section) and that are essential for the conservation of the spider. To the extent feasible, we will continue, with the assistance of other Federal, State, and private researchers, to conduct surveys and research on the species and its habitat. If new information becomes available that indicates that other areas or habitat types within the spruce-fir moss spider's historic range are essential to the conservation of the species, we will revise the designated critical habitat for the spruce-fir moss spider accordingly.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and the

regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations and protection. Such requirements include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

When considering areas for designation as critical habitat, we are required to focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species (50 CFR 424.12(b)). Although additional information is needed to better define the habitat requirements of the species, particularly the microhabitat requirements, based on the best available information, the primary constituent elements essential for the conservation of the spruce-fir moss spider are:

1. Fraser fir or fir-dominated spruce-fir forests at and above 1,646 m (5,400 ft) in elevation.

2. Moderately thick and humid, but not wet, moss (species in the genus *Dicranodontium*, and possibly *Polytrichum*) and/or liverwort mats on rock surfaces that are adequately sheltered from the sun and rain (by overhang and aspect) and include a thin layer of humid soil and/or humus between the moss and rock surface.

As a result of the massive Fraser fir die-offs and associated loss of moss habitat for the spruce-fir moss spider, the remaining areas of suitable habitat for the spider exist only in scattered patches, ranging from a single rock outcrop to scattered rock outcrop sites (see "Background" section). Due to the patchiness and small size of the areas providing suitable habitat for the spruce-fir moss spider, we have elected to designate an inclusive area on each of the mountain peaks that still provide habitat for the species as critical habitat rather than attempt to identify each individual site separately.

Regulations at 50 CFR 424.12(c) require that we define the specific limits of critical habitat by using reference points and lines as found on standard topographic maps of the area(s). Because of the small size and limited number of suitable habitat patches and for ease of reference, we did not map critical habitat in sufficient detail to exclude land that is not likely to contain all of the primary constituent elements essential for the conservation of the spruce-fir moss spider. Consequently, the areas we are designating as critical habitat also include areas of unsuitable habitat; for example, fir or fir-dominated forests without rock outcrops, rock outcrops without suitable moss or liverwort mats, spruce or hardwood forests with or without rock outcrops, areas dominated by early herbaceous vegetation, and other habitat types that do not provide the habitat or microhabitat required by the spider. Federal actions with effects limited to these other habitat types, therefore, would not trigger a section 7 consultation. Please note, however, that any activity authorized, funded, or carried out by a Federal agency that has a potential to affect the constituent elements of designated critical habitat, regardless of the activity's location in relation to designated critical habitat, will require a consultation with us, as required under the provisions of section 7 of the Act (see "Effects of Critical Habitat Designation" section).

Critical Habitat Designation

Designated critical habitat includes spruce-fir moss spider habitat throughout the species' existing range in the United States. Lands designated as critical habitat have been divided into four critical habitat units. Areas designated as critical habitat and their ownership are described below.

Unit 1: Swain County, North Carolina, and Sevier County, Tennessee

Unit 1 encompasses all portions of the GSMNP bounded to the north and to the south of the North Carolina/Tennessee State line (State line) by the 1,646-m (5,400-ft) contour, from the intersection of the 1,646-m (5,400-ft) contour with the State line, south of Mingus Lead, Tennessee, southwest and then west to the intersection of the 1,646-m (5,400-ft) contour with the State line, east of The Narrows and west of Jenkins Knob, North Carolina, and Tennessee.

Unit 2: Sevier County, Tennessee

Unit 2 encompasses all portions of the GSMNP at and above the 1,646-m (5,400-ft) contour, bounded on the southwest side by the North Carolina/Tennessee State line from the intersection of the State line with the 1,646-m (5,400-ft) contour near Dry Sluice Gap, southeast to the intersection of the State line with the 1,646-m (5,400-ft) contour at the head of Minnie Ball Branch, North Carolina, northwest of Newfound Gap, North Carolina, and Tennessee.

Unit 3: Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee

Unit 3 encompasses all portions of the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee, bounded to the north and to the south of the North Carolina/Tennessee State line by the 1,646-m (5,400-ft) contour, from the intersection of the 1,646-m (5,400-ft) contour with the State line north of Elk Hollow Branch, Avery County, North Carolina, and southwest of Yellow Mountain, Carter County, Tennessee, west to the 1,646-m (5,400-ft) contour at Eagle Cliff, Mitchell County, North Carolina.

Unit 4: Avery, Caldwell, and Watauga Counties, North Carolina

Unit 4 encompasses all areas of privately owned Grandfather Mountain at and above the 1,646-m (5,400-ft) contour.

Effects of Critical Habitat Designation

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans and through section 7 consultation and section 10 permits.

Critical habitat receives regulatory protection only under section 7 of the Act through the prohibition against destruction or adverse modification of designated critical habitat by actions carried out, funded, or authorized by a Federal agency. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to land designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal land that do not involve a Federal action, critical habitat designation would not afford any protection under the Act against such activities. Accordingly, the designation of critical habitat on Grandfather Mountain will not have any regulatory effect on private or State activities in these areas unless those activities

require a Federal permit, authorization, or funding.

Section 7(a)(2) of the Act and regulations at 50 CFR 402.10 require Federal agencies to consult with us on any action that is likely to result in the destruction or adverse modification of designated critical habitat. "Destruction or adverse modification" is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of the listed species for which critical habitat was designated.

Activities on Federal land, activities on private or State land carried out by a Federal agency, or activities receiving funding or requiring a permit from a Federal agency that may affect designated critical habitat of the spruce-fir moss spider will require consultation under section 7 of the Act. However, section 7 of the Act also requires Federal agencies to consult with us on any action that may affect a listed species and to ensure that actions they authorize, fund, or carry out do not jeopardize the continued existence of listed species. Activities that jeopardize listed species are defined as actions that "directly or indirectly, reduce appreciably the likelihood of both the survival and recovery of a listed species' (50 CFR 402.02). Federal agencies are prohibited from jeopardizing listed species through their actions, regardless of whether critical habitat has been designated for the species.

Where critical habitat is designated, section 7 requires Federal agencies also to ensure that activities they authorize, fund, or carry out do not result in the destruction or adverse modification of designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery of the species' (50 CFR 402.02). Common to the definitions of both "jeopardy" and "destruction or adverse modification of critical habitat" is the concept that the likelihood of both survival and recovery of the species are appreciably reduced by the action. Because of the small size of surviving populations of the spruce-fir moss spider, the species' restricted range, and the limited amount of suitable habitat available to the species, actions that are likely to destroy or adversely modify critical habitat are also likely to jeopardize the species. Accordingly, even though Federal agencies will be required to evaluate the potential effects of their actions on any habitat that is designated as critical habitat for the spruce-fir moss spider, this designation would not be likely to change the outcome of section 7 consultations.

Section 4(b)(8) of the Act requires us to briefly evaluate, in any proposed or final regulation that designates critical habitat, those activities that may adversely modify such habitat or may be affected by such designation. Activities that may destroy or adversely modify critical habitat are, as discussed above, those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the spruce-fir moss spider is appreciably diminished. We note that such activities may also jeopardize the continued existence of the species. Such activities may include, but are not limited to, the carrying out or issuance of permits for construction, recreation, and development; pesticide/herbicide applications for the control of noxious insects or weeds; controlled burns; timber activities; and other activities that could result in the removal or damage of high-elevation fir or fir-dominated forest canopy that is sheltering moss mats or that could cause damage to the moss mats themselves.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits, or questions regarding whether specific activities will constitute adverse modification of critical habitat, may be addressed to the U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, North Carolina 28801.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas as critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. However, we cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species.

Economic effects caused by listing the spruce-fir moss spider as a federally protected endangered species, and by other statutes, are the baseline against which the effects of a critical habitat designation are evaluated. The economic analysis must then examine the incremental economic and conservation benefits and effects of the critical habitat designation. Economic effects are measured as changes in national income, regional jobs, and household income. An analysis of the economic effects of the proposed designation of critical habitat for the spruce-fir moss spider was prepared (Industrial Economics, Incorporated, 2001) and made available for public review and comment (February 12, 2001, through March 14, 2001; 66 FR 9806 and 66 FR 12450). The final analysis, which reviewed and incorporated public comments, concluded that no significant economic impacts, negative or beneficial, are expected from the designation of critical habitat for the spruce-fir moss spider above and beyond those already imposed by the listing of the species.

The most likely economic effect of the designation of critical habitat for the spruce-fir moss spider is associated with potential confusion and uncertainty of the implications of the critical habitat designation resulting in additional time spent on consultations between other Federal agencies and us. However, this effect is expected to be insignificant and for a short term, ranging from a total incremental impact of $300 to $1,000 for the first few section 7 consultations following the designation.

A copy of the final economic analysis is included in our administrative record and may be obtained by contacting the U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, North Carolina 28801.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB).

(a) This rule will not have an annual economic effect of $100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The spruce-fir moss spider was listed as an endangered species in 1995. Since that time, we have conducted, and will continue to conduct, formal and informal section 7 consultations with other Federal agencies to ensure that their actions would/will not jeopardize the continued existence of the spruce-fir moss spider.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 1 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we believe that any Federal

action or authorized action that could potentially cause an adverse modification of the critical habitat would currently be considered as "jeopardy" to the species under the Act.

Accordingly, we do not expect the designation of areas as critical habitat within the geographical range occupied by the species to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons who do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

(b) This rule will not create inconsistencies with other agencies' actions. Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the spruce-fir moss spider since its listing in 1995. As shown in Table 1 (below), no additional effects on agency actions are anticipated to result from this critical habitat designation. We will continue to review this action for any inconsistencies with other Federal agency actions.

TABLE 1.—IMPACTS OF SPRUCE-FIR MOSS SPIDER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only[1]	Additional activities potentially affected by critical habitat designation[2]
Federal Activities Potentially Affected[3].	Activities such as carrying out, or issuing permits, authorization, or funding for, utility construction; construction of recreational facilities; development activities; pesticide/herbicide applications; logging activities; or other activities that could result in damage to the moss mats or removal or damage to the high-elevation fir forest canopy that is sheltering moss mats providing habitat for the species..	None.
Private and other non-Federal Activities Potentially Affected[4].	Activities occurring on Federal land or that require a Federal action (permit, authorization, or funding) and that involve such activities as damaging or destroying spruce-fir spider habitat, whether by mechanical or other means (scientific or other collecting, timber harvest, right-of-way access across Federal land, etc.).	None.

[1] This column represents the activities potentially affected by listing the spruce-fir moss spider as an endangered species (February 6, 1995; 60 FR 6968) under the Endangered Species Act.
[2] This column represents the effects on activities resulting from critical habitat designation beyond the effects attributable to the listing of the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(c) This rule will not significantly impact entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies currently are required to ensure that their activities do not jeopardize the continued existence of the species, and we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of designated critical habitat.

(d) OMB has determined that this rule will raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (required under section 4 of the Act), we determined that the designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed in the "Regulatory Planning and Review" section above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of designated critical habitat. Therefore, we certify that the designation of critical habitat for the spruce-fir moss spider will not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis is required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined that the designation of critical habitat will not cause (a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat within the geographical range occupied by the species.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

b. This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This rule will not "take" private property. The designation of critical habitat affects only Federal agency actions. Federal actions on private land could be affected by critical habitat designation; however, we expect no regulatory effect from this designation since all areas are considered to be within the geographical range occupied by the species and would be reviewed under both the jeopardy and adverse modification standards under section 7 of the Act.

The rule will not increase or decrease the current restrictions on private property concerning taking of the spruce-fir moss spider as defined in section 9 of the Act and its implementing regulations (50 FR 17.31). Additionally, critical habitat designation does not preclude the development of habitat conservation plans and the issuance of incidental take permits. Any landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the spruce-fir moss spider.

Federalism

In accordance with Executive Order 13132, this rule does not have significant federalism effects. A Federalism Assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat proposal with, appropriate State resources agencies in North Carolina and Tennessee. We will continue to coordinate any future designation of critical habitat for the spruce-fir moss spider with the appropriate State agencies. The designation of critical habitat for the spruce-fir moss spider imposes few, if any, additional restrictions to those currently in place and therefore has little or no incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and, to the extent currently feasible, the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor has reviewed this final determination. We have made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we understand that federally recognized Tribes must be related to on a Government-to-Government basis. We are not aware of any Tribal lands essential for the conservation of the spruce-fir moss spider. Therefore, we are not designating critical habitat for the spruce-fir moss spider on Tribal lands.

References Cited

A complete list of all references cited in this rule is available upon request from the Asheville Field Office (see **ADDRESSES** section).

Author

The primary author of this document is John Fridell (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for the "Spider, spruce-fir moss" under "ARACHNIDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

UMI

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Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
ARACHNIDS							
*	*	*	*	*	*	*	
Spider, spruce-fir moss.	*Microhexura montivaga.*	U.S.A. (NC, TN)	NA	E	576	17.95 (g)	NA
*	*	*	*	*	*	*	

3. Amend § 17.95 by adding paragraph (g) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(g) *Arachnids.*

Spruce-Fir Moss Spider (*Microhexura montivaga*)

1. Critical habitat units and their ownership are described below and depicted in the following maps.

BILLING CODE 4310–55–P

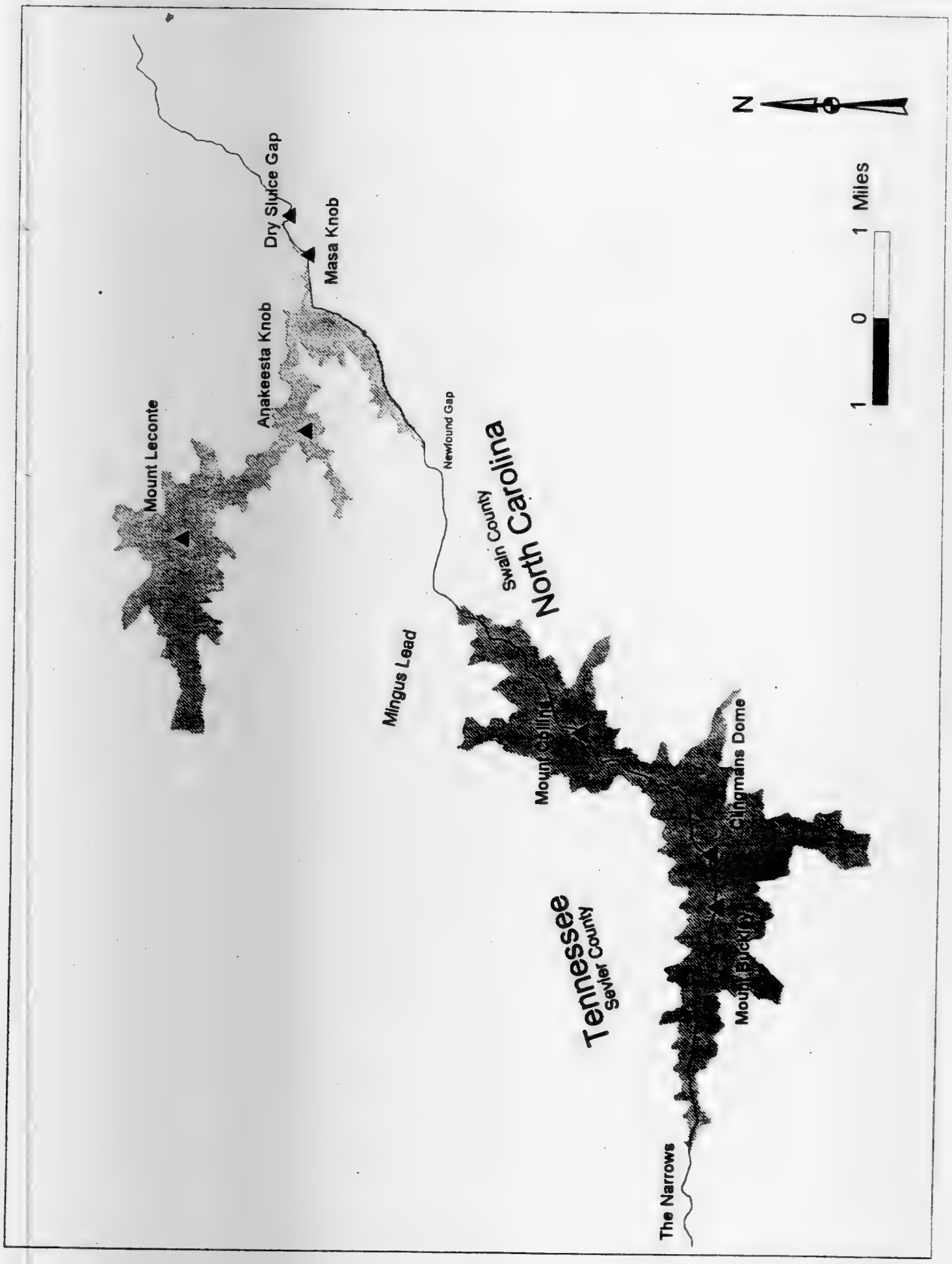

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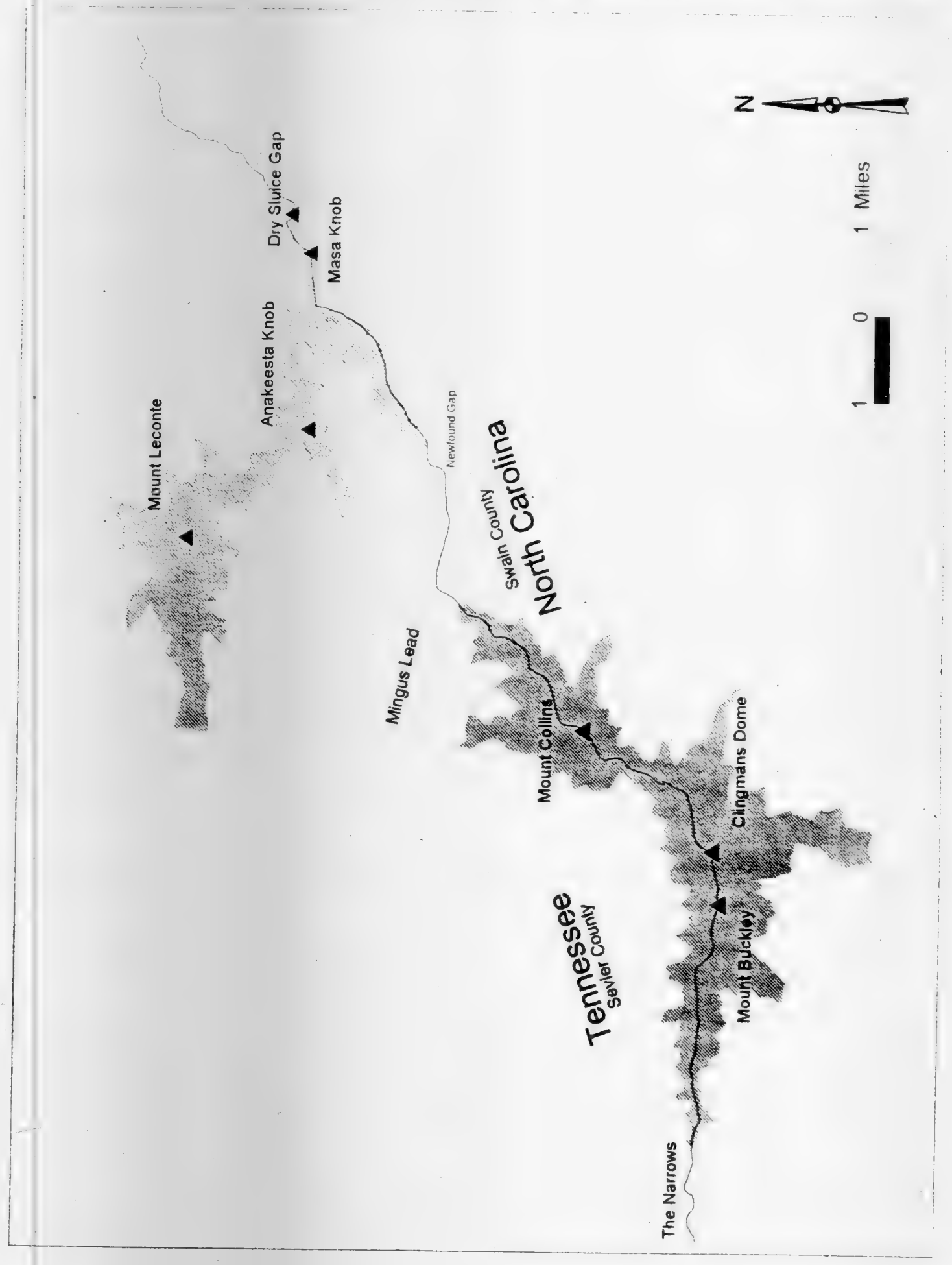

BILLING CODE 4310–55–C

Unit 1: Swain County, North Carolina, and Sevier County, Tennessee—all portions of the GSMNP bounded to the north and to the south of the North Carolina/Tennessee State line (State line) by the 1,646-m (5,400-ft) contour, from the intersection of the 1,646-m (5,400-ft) contour with the State line, south of Mingus Lead, Tennessee, southwest and then west to the intersection of the 1,646-m (5,400-ft) contour with the State line, east of The Narrows and west of Jenkins Knob, North Carolina, and Tennessee.

Unit 2: Sevier County, Tennessee—all portions of the GSMNP at and above the 1,646-m (5,400-ft) contour, bounded on the southwest side by the North Carolina/Tennessee State line from the intersection of the State line with the 1,646-m (5,400-ft) contour near Dry Sluice Gap, southeast to the intersection of the State line with the 1,646-m (5,400-ft) contour at the head of Minnie Ball Branch, North Carolina, northwest of Newfound Gap, North Carolina, and Tennessee.

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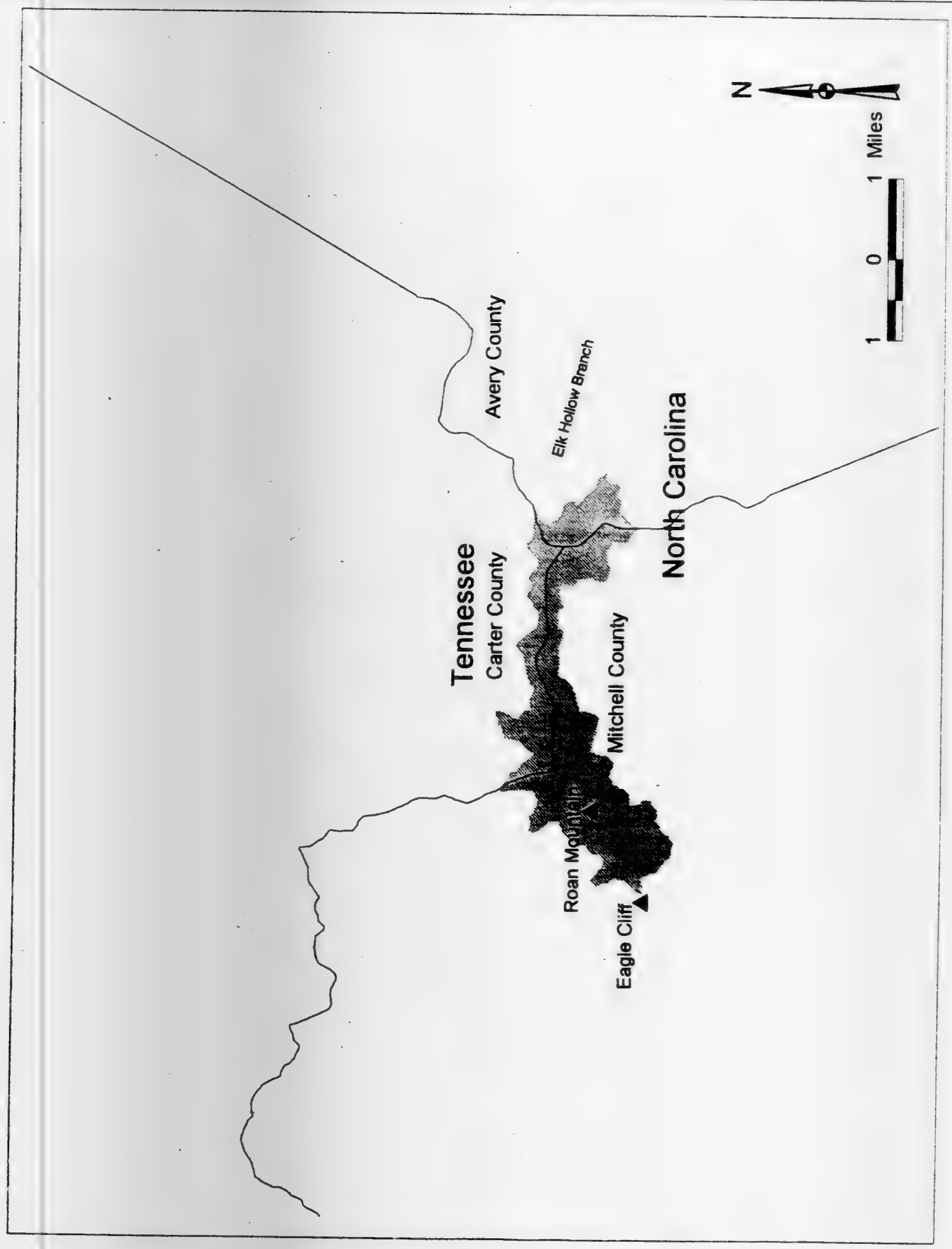

BILLING CODE 4310-55-C

Unit 3: Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee—all portions of the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee, bounded to the north and to the south of the North Carolina/Tennessee State line by the 1,646-m (5,400-ft) contour, from the intersection of the 1,646-m (5,400-ft) contour with the State line north of Elk Hollow Branch, Avery County, North Carolina, and southwest of Yellow Mountain, Carter County, Tennessee, west to the 1,646-m (5,400-ft) contour at Eagle Cliff, Mitchell County, North Carolina.

BILLING CODE 4310–55–P

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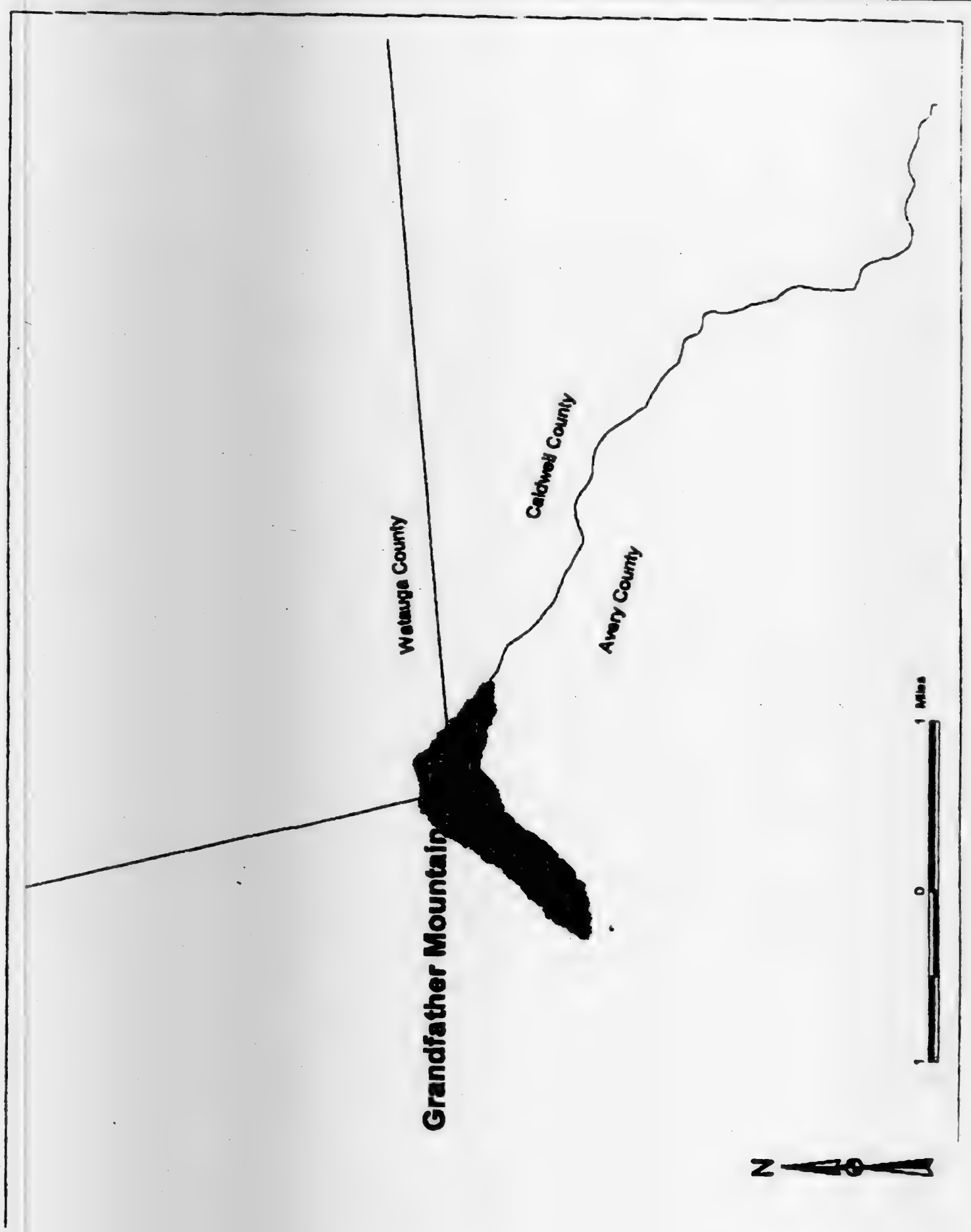

BILLING CODE 4310–55–C

Unit 4: Avery, Caldwell, and Watauga Counties, North Carolina—all areas of Grandfather Mountain at and above the 1,646-m (5,400-ft) contour.

2. Within these areas, the primary constituent elements include:

(i) Fraser fir or fir-dominated spruce-fir forests at and above 1,646 m (5,400 ft) in elevation; and

(ii) Moderately thick and humid, but not wet, moss (species in the genus *Dicranodontium*, and possibly *Polytrichum*) and/or liverwort mats on rock surfaces that are adequately sheltered from the sun and rain (by overhang and aspect) and include a thin layer of humid soil and/or humus between the moss and rock surface.

3. Existing human structures and other features not containing all of the primary constituent elements are not considered critical habitat.

Dated: June 28, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–16866 Filed 7–5–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 001127331–1044–02; I.D. 102600B]

RIN 0648–AN69

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2001 Specifications and Foreign Fishing Restrictions; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: The final rule to implement the 2001 specifications for the Atlantic mackerel, squid, and butterfish fisheries, published on Friday, March 2, 2001, contained an error in the designation of a paragraph related to distribution of *Loligo* squid commercial quotas. This document corrects the error.

DATES: Effective March 2, 2001.

FOR FURTHER INFORMATION CONTACT: William D. Chappell, Fishery Management Specialist, 301–713–2341 or e-mail at William.Chappell@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The final rule to implement the 2001 specifications for the Atlantic mackerel, squid, and butterfish fisheries was published on March 2, 2001 (66 FR 13024). In that rule, amendatory instruction 2 incorrectly stated that § 648.21(e) was revised. This amendatory instruction should have indicated that § 648.21 (f) was revised. This document corrects the error contained in the March 2, 2001, final rule by moving the text of the current § 648.21 (e) to § 648.21 (f) and reinstating the original language in § 648.21 (e). For the convenience of the user, amendatory instruction 2 and the related regulatory text are reprinted in their entirety.

Correction

Accordingly, the publication on March 2, 2001, of the 2001 specifications for the Atlantic mackerel, squid, and butterfish fisheries (I.D. 102600B), which appeared in the final regulations, was the subject of document FR Doc. 01–5133, is corrected as follows:

PART 648—[CORRECTED]

On page 13028, first and second columns, amendatory instruction 2 and the regulatory text following it are corrected to read as follows:

2. In § 648.21, paragraph (f) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(f) *Distribution of annual Loligo squid commercial quota.* (1) Beginning January 1, 2001, a commercial quota will be allocated annually for *Loligo* squid into quarterly periods, based on the following percentages:

Quarter	Percent
I—January-March	33.23
II—April-June	17.61
III—July-September	17.30
IV—October-December	31.86

(2) Beginning January 1, 2001, any overages of commercial quota landed from Quarter I will be subtracted from Quarter III and any overages of commercial quota landed from Quarter II will be subtracted from Quarter IV.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 29, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–16980 Filed 7–5–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 130
Friday, July 6, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

28 CFR Part 25

[FBI 108P; AG Order No. 2466–2001]

RIN 1110–AA07

National Instant Criminal Background Check System

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department promulgated regulations to govern the National Instant Criminal Background Check System (NICS) in 1998 when the NICS became operational. Earlier this year, the Department published amendments to those regulations, which will take effect on July 3, 2001. In this notice, the Department is publishing, for public comment and further consideration, five proposals to make additional changes in the NICS regulations. The proposed changes balance the legitimate privacy interests of law-abiding firearms purchasers and the Department's obligation to enforce the Brady Act and the Gun Control Act to prevent prohibited persons from purchasing firearms.

DATES: Written comments must be submitted on or before September 4, 2001.

ADDRESSES: All comments concerning this proposed rule should be sent to: Mr. Timothy Munson, Section Chief, Federal Bureau of Investigation, Module A–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0147.

FOR FURTHER INFORMATION CONTACT: Fanny Haslebacher, Attorney-Advisor, Federal Bureau of Investigation, Module A–3, 1000 Custer Hollow Road, Clarksburg, WV 26306–0147, (304) 625–2000.

SUPPLEMENTARY INFORMATION:

I. Background

On January 22, 2001, the Department published a Final Rule to make two changes to 28 CFR 25.9(b):

- To reduce from six months to 90 days the maximum retention period for information relating to allowed firearm transfers in the system's chronological log of background check transactions ("NICS Audit Log"); and
- To permit the FBI to extract and provide information from the NICS Audit Log to the Bureau of Alcohol, Tobacco and Firearms ("ATF") for use in ATF's inspections of Federal Firearms Licencee ("FFL") records.

These revisions originally were scheduled to take effect on March 5, 2001. 66 FR 6470. On March 1, 2001, the Department postponed the effective date of the NICS rule from March 5 to May 4, 2001. 66 FR 12854 (March 1, 2001). On May 4, 2001, the Department further postponed the effective date for another 60 days to July 3, 2001. 66 FR 22898.

These postponements were prompted by the Department's need to conduct a review of the rule and record in light of the Department's original commitment that it would "work toward reducing the retention period to the shortest practicable period of time less than six months that will allow basic security audits of the NICS." 63 FR 58304 (1998). The Department made findings of good cause for forgoing notice and comment and for making these postponements effective immediately, in satisfaction of the legal requirements for rulemaking under the Administrative Procedure Act, 5 U.S.C. 553(b)(B), (d)(3), and on the assumption that section 553 might otherwise have been applicable. See 66 FR at 22898, 12855.

Based on the review occasioned by the 120-day postponement, the Department is taking two related steps at this time. First, the January 22, 2001, Final Rule will take effect on July 3, 2001, without further delay. Second, the Department is publishing this new Notice of Proposed Rulemaking ("NPRM") to propose further changes in the NICS regulations, as discussed in Part II below.

The January 22, 2001, Final Rule amended 28 CFR 25.9(b)(1) to provide that, in the case of allowed transfers, all information in the NICS relating to the transfer—except for the date of the request and the NICS Transaction Number ("NTN") assigned to that request—will be destroyed within 90 days. The FBI will implement this regulatory requirement as soon as it takes effect on July 3, 2001.

Section 25.9(b)(2) authorizes only the FBI to access directly information in the NICS Audit Log pertaining to allowed transfers, and permits such access only for the purpose of conducting audits of the use and performance of the NICS. The January 22, 2001, Final Rule, however, permits the FBI to extract information from the NICS Audit Log and provide it to ATF in connection with ATF's inspections of FFL records:

> Permissible uses include extracting and providing information from the NICS Audit Log to ATF in connection with ATF's inspections of FFL records, provided that ATF destroys the information about allowed transfers within the retention period for such information set forth in paragraph (b)(1) of this section and maintains a written record certifying the destruction.

This grant of permissive authority will also take effect on July 3, 2001. It does not, however, mandate any particular action. Rather, the provision states that "extracting and providing" information to ATF is among the "(p)ermissible uses" of the information in the NICS Audit Log.

Because the Department today proposes new changes to the maintenance and use of the NICS Audit Log, the FBI will not exercise this discretionary authority to "extract and provide" NICS Audit Log information to ATF except as specifically authorized by the Attorney General. Such restraint will maintain the status quo while the public provides comments on today's proposals and the Department considers those comments. This approach in no way alters or limits the FBI's legal authority under the NICS regulations as amended; it is instead a prudent and permissible exercise of discretion, during the pendency of this rulemaking, to preserve the current practices relating to the use of information in the NICS Audit Log.

II. New NPRM on the National Instant Criminal Background Check System

In this new rulemaking, the Department is publishing, for public comment and further consideration, several proposed changes in the NICS regulations. The proposed changes balance the legitimate privacy interests of law-abiding firearms purchasers and the Department's obligation to enforce the Brady Act and the Gun Control Act to prevent prohibited persons from

purchasing firearms. The Department welcomes comments from all interested persons regarding both the legal and practical effects of these proposals.

1. Proposal #1: Prompt Destruction of Records of Allowed Transactions (§ 25.9(b)(1), (2) and (3))

The first proposal would amend § 25.9(b)(1) to provide for a general rule requiring prompt destruction of information in the NICS Audit Log pertaining to allowed transfers, coupled with specific authority to retain information in two respects in order to ensure the security and integrity of the system. This proposal also revises and reorganizes the existing provisions of § 25.9(b) for greater clarity.

The basis for this change lies in three provisions of the Brady Act. Section 103(h) requires the Attorney General to "prescribe regulations to ensure the privacy and security of the information of the system." Section 103(i) prohibits the establishment of a registration system with respect to firearms, and section 102(b) requires the FBI to "destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer," when the receipt of a firearm would not violate state or federal law.

This proposal would require the destruction of all information in the Audit Log relating to the lawful purchaser or the transfer (other than the NTN, and date of inquiry) on all allowed transactions prior to the start of the next business day following the date on which the "proceed" message was received by the initiator of the NICS check. Under this proposal, the FBI would retain only that information on allowed transfers specified in 18 U.S.C. 922(t)(2)(C)—namely, the NTN and the date the NTN was assigned. In addition, as discussed more fully below, this proposal would authorize the FBI to retain the ORI (Originating Agency Identifier), as defined in 28 CFR 25.2, and/or the FFL identifier issued by the Bureau of Alcohol, Tobacco and Firearms, when requested to do so, in writing, by ATF for inspection purposes.

This proposal makes no change in the existing provisions of the NICS rules pertaining to the retention of records of transactions where the transfer was *denied* because the putative purchaser is prohibited by state or federal law from purchasing a firearm.

This proposal balances the privacy interests of law-abiding citizens and the law enforcement interests of the Department in ensuring that the Brady Act and Gun Control Act are enforced to prevent prohibited persons from purchasing firearms. The FBI and ATF need to enforce the law to prevent misuse of the NICS system by FFLs and POCs (as defined in 28 CFR 25.2). There is no change in the provision authorizing the FBI to retain and use information pertaining to allowed transfers as long as needed to pursue cases of identified misuse of the system. By retaining only that information specified by statute, this proposal reduces the impact on the privacy rights of individual purchasers while still meeting the law enforcement requirements of the Department and ensuring the security of the NICS system as a whole.

By keeping all records until the start of the next business day, the NICS Operations Center would be able to compile statistics on the operation of the system, such as the number of calls per state per day, the percentage of checks run on long guns versus handguns, and other statistical information that does not include personally identifiable information on lawful purchasers. The NICS operates every day of the year except Thanksgiving and Christmas Day. By destroying personally identifiable information on allowed transfers before the start of the next business day, the NICS Operations Center would have the hours between the close of one business day and the start of the next business day to run internal audits, amass statistical data, accomplish destruction of the necessary records, and carry out other system maintenance with minimal disturbance to the system. The Department welcomes comments as to whether this proposal will accommodate the needs of the NICS Operations Center regarding statistical compilations and internal operating procedures.

In addition, the Department seeks comments as to the ability of the NICS system to ensure the privacy and security of the information of the system in the absence of retaining all records of allowed transactions, specifically, the costs and increased efficiency available by conducting the quality control and system performance evaluations using control data and real time performance reviews.

2. Proposal #2: Individual FFL Audit Logs (§ 25.9(b)(4))

Under 18 U.S.C. 922(t), FFLs are required, prior to transferring a firearm to an unlicenced individual, to examine a valid identification document of the potential purchaser, contact the NICS system, receive and record from the NICS a unique NTN, and either receive an indication that the transaction may proceed or wait until three business days have passed without receiving a determination from the NICS system that the transfer is denied. In addition, 18 U.S.C. 923(g)(1) outlines the FFL record keeping requirements and the authority for ATF to review records of the FFL. Specifically, subsection 923(g)(1)(B)(ii)(I) provides for ATF inspection or examination, not more than once in any 12-month period, of the inventory and records of a licensed dealer to ensure compliance with the record keeping requirements of the Gun Control Act and the Brady Act.

In order to ensure that ATF and the FBI have sufficient information to enforce the requirements of federal firearms laws, this proposal would allow the FBI to extract information from the NICS system to create, upon prior written request from ATF in connection with its inspections of FFL records, Individual FFL Audit Logs that contain not more than 30 days worth of allowed transactions from an identified FFL. Such Individual FFL Audit Logs would contain, with respect to allowed transfers, the NTN and the date of inquiry. All information on denied transactions or unresolved transactions will also be included in the Individual FFL Audit Log.

The proposal seeks to meet the law enforcement needs of ATF and the FBI by providing to ATF, prior to an inspection of an identified FFL, information necessary to ensure that the licensee is complying with the Brady Act's requirements to conduct a NICS check prior to transferring a firearm to an unlicenced person. By receiving an Individual Audit Log before inspecting an FFL, ATF will also have the tools necessary to determine if an FFL has run a NICS check on an individual who is not a potential firearm purchaser, which would be a misuse of the NICS system and therefore a violation of the Brady Act.

Example: Before June 1, ATF notifies the NICS Operations Center that it intends to audit Joe's Gun Shop on or after July 1. On June 1, the NICS Operations Center begins compilation of an Individual Audit Log for Joe's Gun Shop that contains the following information on those NICS checks originating at Joe's during the month of June: The NTN and date of inquiry for allowed transactions, and all information on transactions determined to be denied or unresolved. On July 1, the NICS Operations Center transfers this information to ATF. The ATF agent inspector, now equipped with a list of the last 30 days worth of transactions, visits Joe's Gun Shop to ensure that for every transaction on the Audit Log, there is a corresponding Form 4473, and that for every Form 4473,

there is a corresponding Audit Log record, indicating that a potential purchase is linked to each check and that each potential purchase received the NICS check required by federal law. If the inspector determines that the number of NICS transactions on the Audit Log does not correspond with the number of Form 4473s in Joe's Shop, further investigation is warranted.

Under this proposal, pursuant to the requirements of the Brady Act section 102(b) (destruction of all records of allowed transactions other than the NTN and date of inquiry) and section 103(i)(prohibition against establishing any registration system for firearms), ATF would be required to destroy all information on allowed transfers within a set period of time (90 days) after the date of creation of the Individual FFL Audit Log. The NICS would also be required to delete the ORI and/or FFL identifier from its system within 90 days of the date of the transaction.

As stated above, the provision authorizing the FBI and ATF to retain and use information pertaining to allowed transfers as long as needed to pursue cases of identified misuse of the system is maintained. By retaining only that information specified by statute, this proposal reduces the impact on the privacy rights of individual purchasers while still meeting the law enforcement requirements of both the Department and ATF.

3. Proposal #3: New Definition of "Unresolved" Transaction (§ 25.2)

This proposal would provide a new definition in § 25.2 pertaining to unresolved transactions, for two reasons.

First, in those states in which the NICS performs background checks for FFLs, if the NICS examiner cannot determine within three business days whether the proposed firearm transfer would violate state or Federal law, the transaction is designated informally as a "default proceed." Under the Brady Act, the FFL is not prohibited from transferring the firearm if the NICS has not responded with a denial notification within three business days. (18 U.S.C. 922(t)(1)(B)(ii)). Despite the fact that three business days have elapsed, it is the practice of NICS examiners to continue research on such transactions for 21 days to determine whether the transaction is an actual "proceed" (allowed) or "denied". Under Proposal #1 above, it is possible the system may be required to purge information concerning "default proceeds" after three business days. The Department does not intend this result. The NICS system should retain information on transactions that have not been definitively resolved after three business days.

This proposal would create a new internal classification system for transactions that are "unresolved," meaning the NICS examiner could not verify that a "hit" in the database is or is not a disqualifier under state or federal law. This classification will allow the NICS system to maintain such unresolved transactions until either (1) a final determination on the transaction is reached resulting in the transaction being changed to a "proceed" (prompt destruction) or a "denied" (permanent retention) status, or (2) the expiration of the retention period for unresolved transactions. The Department proposes a retention period of no more than 90 days, consistent with the retention period under the final rule that takes effect on July 3, 2001. Statistics compiled by the FBI show that as a result of initially unresolved transactions that were later determined to be denied, over 5,400 firearms retrievals have been referred within 30 days of the default proceed, and that more than 9,700 have been determined to be denials by retention of such records for up to 90 days.

In cases of "unresolved" transactions, the NICS examiner would continue to respond to an FFL in the same manner as is current practice for "default proceeds". This change does not affect the manner or form in which response information is relayed by the NICS examiner to the FFL.

Second, in the POC (Point of Contact) states, a state agency is responsible for performing background checks for potential gun purchasers, including contacting the NICS system as part of that background check. When a state agency contacts the NICS as part of a POC-initiated background check, the NICS system presently records that transaction as an "implied proceed" unless and until the state transmits to the NICS system the ultimate determination for that transaction: either "proceed" or "denied". Once again, under a prompt destruction alternative, these transactions records could be removed from the NICS system before a final determination is made.

In order to have the most accurate record of denials in the system, this proposal would classify all state POC transactions as "unresolved" until the POC transmits the final determination to NICS. In cases of "proceed" or allowed transfers, the NICS system would be required to destroy such records within the time frame discussed in Proposal #1, above. Again, records of unresolved transactions would be deleted from the system within 90 days.

The new category of "unresolved" would not affect an FFL's ability to transfer or not transfer a firearm after three business days, but would allow the NICS system to keep accurate records of the precise status of NICS transactions.

4. Proposal #4: Require POC States To Transmit State Determinations to the NICS System (§ 25.6(h))

Under current § 25.6(h), POC states are encouraged, but not required, to transmit to the NICS system determinations that a background check indicates a firearm transfer is denied. Unfortunately, most POC states currently do not transmit this information to the NICS system. This means that a potential purchaser could be prohibited under state or federal law (based upon information available to a state from records available to that state only), yet the NICS system would not have access to that determination. If the prohibited purchaser then traveled to another state and again attempted to purchase a firearm, the NICS system would be unable to stop the prohibited purchase.

This proposal would condition participation as a POC state on transmission of state determination information to the NICS system as soon as it is available, so that the NICS system will have accurate records of all prohibited persons. Because state laws vary on how quickly the background check must be completed, the proposed rule does not specify a particular length of time for transmittal, but instead requires the transmittal "upon communication of the determination to the FFL or the expiration of any applicable state waiting period". Until the NICS system receives the determination information, it will identify the transaction as unresolved.

Determination information from POC states would still be subject to the rules governing record retention. The NICS system may not retain information on allowed transfers that originate in a POC state for a longer period of time than it may keep information about a NICS-originated allowed transaction.

5. Proposal #5: Voluntary Appeals File (§ 25.10(g))

This proposal addresses those situations in which a lawful firearms purchaser might desire to have personal information retained in the NICS system to avoid confusion or delays in future purchases. Because the NICS system must destroy all identifying information on allowed transactions after not more than 90 days (or before the start of the next business day under Proposal #1

above), if a potential purchaser is delayed or denied a firearm and then successfully appeals the decision, the NICS system would not be able to retain a record of the appeal and supporting documents.

This means that if a lawful purchaser has a similar name and date of birth as a convicted felon, he or she may be delayed, or denied a purchase, until the NICS system can determine that the lawful purchaser is not the felon. Often this is done through submission of fingerprints.

However, under the existing retention rules, once that purchase is determined to be allowed, the NICS system cannot retain the information identifying the person as a lawful purchaser for more than 90 days and must destroy all identifying information relating to the person and the transfer—even if retention is requested by the lawful purchaser. Both the NICS Operations Center and individual purchasers have requested creation of a mechanism by which NICS can keep, upon request of the purchaser, such clarifying information in a separate computer file within the NICS system.

This proposal would allow the creation of a Voluntary Appeals File for the purpose of allowing lawful purchasers to request that the NICS system retain such information to facilitate future NICS transactions. Under this proposal, potential firearms transferees experiencing erroneous delays or denials by the system will have the option to supply the FBI with information such as name, date of birth, social security number, any other identifying numbers, and any documents that may clarify their records or prove their identity. The NICS system would be required to destroy any records submitted to the Voluntary Appeals File upon written request from the individual. Of course, such information could be retained and used by the FBI as long as needed to pursue cases of identified misuse of the system.

Applicable Administrative Procedures and Executive Orders

Regulatory Flexibility Analysis

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Although many FFLs are small businesses, they are not subject to any additional burdens under the plan adopted to audit their use of the NICS. In addition, the rule will not have any impact on an FFL's ability to contact the NICS, nor will it result in any delay in receiving responses from the NICS.

Executive Order 12866

The Department of Justice has drafted this notice of proposed rulemaking in light of Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, and accordingly it has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This proposed rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This proposed rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The collection of information contained in this notice of proposed rulemaking has been submitted to OMB for emergency review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of Justice, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue NW., Washington, DC 20530. Comments are specifically requested concerning:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Justice and the FBI, including whether the information will have practical utility;

(2) The accuracy of the estimated burden associated with the proposed collection of information (see below);

(3) How the quality, utility, and clarity of the information to be collected may be enhanced; and

(4) How the burden of complying with proposed collection of information may be minimized, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The proposed rule adds as a condition for a state to participate in the system as a POC the requirement that POCs transmit determination information to the NICS as soon as it is available to the state, including determinations that a firearm transfer may proceed, is denied, or the check is unresolved. Some POCs already provide such information to the NICS. This collection of information is for the purpose of enhancing the performance of the NICS, by giving the system the same information about determinations on the checks processed by POCs that the system has about determinations made on the checks processed by the FBI.

The number of respondents that will be affected by this information collection will be 21, which is the number of states that act as POCs for the NICS (states that do NICS checks in connection with the issuance of firearm permits only are not considered POCs). The notifications will be made by electronic message to the NICS immediately upon the acknowledgment of the receipt of the determination by the FFL or the expiration of any applicable state waiting period. It is estimated that it will take 6 months for each POC state to make the programming changes necessary to provide this information to the NICS. It is estimated it will take one (1) minute for each POC state to send the information relating to each check to the NICS. Collectively, the POCs conduct approximately 4.4 million NICS checks

per year. Thus, it is estimated that the total public burden (in hours) associated with the collection from the estimated 21 respondents is 73,333 hours in the first year.

List of Subjects in 28 CFR Part 25

Administrative practice and procedure, Computer technology, Courts, Firearms, Law enforcement officers, Penalties, Privacy, Reporting and recordkeeping requirements, Security measures, Telecommunications.

Accordingly, part 25 of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

1. The authority citation for Part 25 continues to read as follows:

Authority: Pub. L. 103–159, 107 Stat. 1536.

Subpart A—The National Instant Criminal Background Check System

§ 25.2 [Amended] [Proposal #3]

2. In § 25.2, the following definition is added:

* * * * *

Unresolved means that information available to the system required further inquiry that could not be resolved before the end of three business days and resulted in no determination by the system that the receipt of a firearm by the prospective transferee would not violate Federal or state law. In cases of "unresolved" responses, the NICS continues research to discover definitive information regarding the transferee and, if definitive information is obtained, communicates to the FFL the final determination that the check resulted in a proceed or a denied. An "unresolved" response does not prohibit an FFL from transferring a firearm after three business days have elapsed since the FFL provided to the system the identifying information about the prospective transferee.

* * * * *

§ 25.6 [Amended] [Proposal #4]

4. In § 25.6, paragraph (h) is revised to read as follows:

* * * * *

(*h*) *POC Determination Notification.* POCs shall provide notification to the NICS of their determinations that a firearm transfer may proceed, is denied, or that the check is unresolved. These notifications will include all information relating to the transaction, including the identifying information provided for the background check, the FFL number, the records that were returned by the check, the NTN, the date of the determination, and, in the case of denials, the category of denial. The information provided in the POC determination notification will be maintained in the NICS Audit Log described in § 25.9(b). These notifications shall be provided by electronic message to the NICS immediately upon communication of the determination to the FFL or the expiration of any applicable state waiting period. Until the POC determination notification is received by the NICS, the NICS will assume that the check is unresolved.

* * * * *

§ 25.9 [Amended] [Proposal #1]

5. In § 25.9, paragraph (b) is revised to read as follows:

* * * * *

(b) The FBI will maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through the system.

(1) *Contents.* The NICS Audit Log will record the following information: Type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, ORI or FFL identifier, and inquiry/response data (including the name and other identifying information about the prospective transferee and the NTN).

(i) The NICS Audit Log will contain all records of denied transfers, and unresolved transfers. NICS Audit Log records relating to denials will be retained for 10 years, after which time they will be transferred to a Federal Records Center for storage. NICS Audit Log records relating to NICS checks where an "Unresolved" response is indicated will be destroyed after not more than 90 days from the date of inquiry.

(ii) Except as provided in § 25.10(g), in cases of allowed transfers, all information in the NICS Audit Log related to the person or the transfer, other than the NTN assigned to the transfer and the date the number was assigned, will be destroyed prior to the beginning of the next NICS business day following the date on which an FFL receives communication of the determination that the transfer may proceed.

(2) *Use of information in the NICS Audit Log.* The NICS Audit Log will be used to analyze system performance, assist users in resolving operational problems, support the appeals process, or support audits of the use of the system. Searches may be conducted on the Audit Log by time frame, i.e., by day or month, or by a particular state or agency. Information in the NICS Audit Log pertaining to allowed transfers may be accessed directly only by the FBI for the purpose of conducting audits of the use and performance of the NICS. Such information, however, may be retained and used by the FBI as long as needed to pursue cases of identified misuse of the system, and as provided in § 25.9(b)(4).

(3) *Limitation on use.* The NICS, including the NICS Audit Log, will not be used by any Department, agency, officer, or employee of the United States to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm by 18 U.S.C. 922(g) or (n) or by state law. The NICS Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of the NICS data.

* * * * *

§ 25.9 [Amended] [Proposal #2]

6. Section 25.9 is amended by revising paragraph (b), to read as follows:

* * * * *

(b) The FBI will maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through the system.

(1) *Contents.* The NICS Audit Log will record the following information: Type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, ORI or FFL identifier, and inquiry/response data (including the name and other identifying information about the prospective transferee and the NTN).

(i) The NICS Audit Log will contain all records of denied transfers, and unresolved transfers. NICS Audit Log records relating to denials will be retained for 10 years, after which time they will be transferred to a Federal Records Center for storage. NICS Audit Log records relating to NICS checks where an "Unresolved" response is indicated will be destroyed after not more than 90 days from the date of inquiry.

(ii) Except as provided in § 25.10(g), in cases of allowed transfers, all information in the NICS Audit Log related to the person or the transfer, other than the NTN assigned to the transfer and, the date the number was assigned, will be destroyed prior to the beginning of the next NICS business day following the date on which an FFL receives communication of the determination that the transfer may proceed.

(2) *Use of information in the NICS Audit Log.* The NICS Audit Log will be

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used to analyze system performance, assist users in resolving operational problems, support the appeals process, or support audits of the use of the system. Searches may be conducted on the Audit Log by time frame, i.e., by day or month, or by a particular state or agency. Information in the NICS Audit Log pertaining to allowed transfers may be accessed directly only by the FBI for the purpose of conducting audits of the use and performance of the NICS. Such information, however, may be retained and used by the FBI as long as needed to pursue cases of identified misuse of the system, and as provided in § 25.9(b)(4).

(3) *Limitation on use:* The NICS, including the NICS Audit Log, will not be used by any Department, agency, officer, or employee of the United States to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm by 18 U.S.C. 922(g) or (n) or by state law. The NICS Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of the NICS data.

(4) *Creation and Use of Individual FFL Audit Logs:* Upon written request from ATF containing the name and license number of the FFL, the proposed date of inspection of the named FFL by ATF, and the requested start date for record retention, the FBI may extract information from the NICS Audit Log and create an Individual FFL Audit Log for transactions originating at the named FFL for a limited period of time. An Individual FFL Audit Log shall contain all information on unresolved transactions and denied transactions, and, with respect to allowed transfers, only the NTN and date of inquiry. In no instance shall an Individual FFL Audit Log contain more than 30 days worth of allowed transfer records originating at the FFL. The ATF shall destroy all records of allowed transfers within 90 days of the date on which the Individual Audit Log was created. The ATF shall maintain a written record certifying the destruction. Such information, however, may be retained as long as needed to pursue cases of identified misuse of the system.

* * * * *

§ 25.10 [Amended] [Proposal #5]

6. In § 25.10, a new paragraph (g) is added to read as follows:

* * * * *

(g) An individual may provide written consent to the FBI to maintain information about himself or herself in a voluntary appeal file checked by the NICS for the purpose of preventing the future erroneous delay or denial of a firearm transfer. Such file shall only be used by the NICS for this purpose. The FBI shall remove all information in the voluntary appeal file upon receipt of a written request by the individual. However, the FBI shall not be prohibited from retaining such information contained in the Voluntary Audit Log as long as needed to pursue cases of identified misuse of the system.

* * * * *

Dated: June 28, 2001.

John Ashcroft,

Attorney General.

[FR Doc. 01–16766 Filed 7–5–01; 8:45 am]

BILLING CODE 4410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 124, and 125

[FRL–7009–2]

Reopening of Comment Period for Certain Documents Referenced in the Notice of Data Availability; National Pollutant Discharge Elimination System—Regulations Addressing Cooling Water Intake Structures for New Facilities

AGENCY: Environmental Protection Agency.

ACTION: Reopening of comment period.

SUMMARY: On August 10, 2000, EPA published proposed regulations addressing cooling water intake structures at new facilities in the **Federal Register** for public review and comment (65 FR 49060). On May 25, 2001, EPA published a Notice of Data Availability in the **Federal Register** (66 FR 28853) regarding the proposed regulations. The comment period closed on June 25, 2001. This action reopens the comment period for certain documents for an additional 30 days, to August 6, 2001.

DATES: Comments on certain documents and issues related to those documents listed below under **SUPPLEMENTARY INFORMATION** will be accepted through August 6, 2001.

ADDRESSES: Send written comments to: Cooling Water Intake Structure (New Facilities) Proposed Rule Comment Clerk-W–00–03R, Water Docket, Mail Code 4101, EPA, Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, DC 20460. Comments delivered in person and/or any overnight delivery should be submitted to the Cooling Water Intake Structure (New Facilities) Proposed Rule Comment Clerk-W–00–03R, Water Docket, Room EB 57, 401 M Street, S.W., Washington, D.C. 20460. You may also submit comments electronically to ow-docket@epa.gov. Please submit any references cited in your comments. Please submit an original and three copies of your written comments and enclosures. No facsimiles (faxes) will be accepted. For additional information on how to submit comments, see the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Deborah G. Nagle at (202) 260–2656, or Claudio H. Ternieden at (202) 260–6026. The e-mail address for the above contacts is rule.316b@epa.gov.

SUPPLEMENTARY INFORMATION: The Notice of Data Availability presented a summary of the data EPA had received or collected since proposal, an assessment of the relevance of the data to EPA's analysis, some modified technology options suggested by commenters, and an alternative approach suggested by a trade group representing the utility industry.

EPA received a request to extend the comment period for all documents and issues discussed in the Notice of Data Availability. After considering this request and a similar but narrower request, EPA is reopening the comment period for six documents and the issues associated with these documents because certain pages of these documents or their references and attachments were not available for public review at the time the Notice of Data Availability was published in the **Federal Register**. EPA is also reopening the comment period for two lengthy documents that were available in the docket in an electronic format at the start of the public comment period but were not copied and made available for off-site review until June 1, 2001. The comment period for these documents is 30 days, through August 6, 2001.

If you already submitted comments to EPA in response to the Notice of Data Availability published on May 25, 2001, and wish to submit additional comments per today's reopening, EPA requests that the later set of comments clearly specify whether they supplement or supersede the earlier-filed comments.

In addition to accepting hard-copy written comments, please note that EPA will also accept comments submitted electronically. Electronic comments must be submitted as a Word Perfect 5/

6/7/8 or ASCII file and must be submitted to: ow-docket@epa.gov.

EPA is reopening the comment period for the following documents:

- DCN# 2–007 Energy Information Agency, Department of Energy Forms 860A and 860B–1998
- DCN# 2–010 Energy Information Agency, Department of Energy; Utility Data Institute; Form EIA–767 1994, 1997; Selected Tables from UDI Power Statistics
- DCN# 2–017A & All References Memo Re: Ecological Reasons Why Freshwater River and Reservoir Ecosystems Do Not Normally Experience Substantive Impact As a Result of Impingement and Entrainment (April 27, 2001)
- DCN# 2–018B R2 Computation and Interpretation of Biological Statistics of Fish Populations (1975)
- DCN# 2–019A & All References Memo Re: Scientific Literature On Population Modeling (April 27, 2001)
- DCN# 2–025E Fact Sheet for Draft NJPDES Permit Renewal Including Section 316(a) Variance Determination and Section 316(b) "BTA" Decision (June 24,1993)
- DCN# 2–036C Draft Steam Plant Energy Penalty Evaluation (April 20, 2001)
- DCN# 2–041A Methods for Sampling Fish Communities as Part of the National Water Quality Assessment Program (1993)

Dated: June 29, 2001.

Diane C. Regas,

Acting Assistant Administrator for Water.

[FR Doc. 01–16949 Filed 7–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA245–0242; FRL–7008–4]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from the miscellaneous metal parts source category. We are proposing action on a local rule regulating these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by August 6, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and,

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the SJVUAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
SJVUAPCD	4603	Surface Coating of Metal Parts and Products	09/21/00	12/11/00

On February 8, 2001, EPA found this rule submittal met the completeness criteria in 40 CFR part 51, appendix V. These criteria must be met before formal EPA review can begin.

B. Are there other versions of this rule?

We approved a version of Rule 4603 into the SIP on December 1, 1994. There are no extant submittals of Rule 4603 beyond the submittal in today's action.

C. What is the purpose of the submitted rule revisions?

SJVUAPCD Rule 4603 is a rule designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in metal coating operations. VOCs are emitted during the preparation and coating of the metal parts, as well as the drying phase of the coating process. Rule 4603 establishes general emission limits of VOC per liter of coating less water and exempt compounds as applied and allows for the use of add-on emission controls with a combined capture/control efficiency of 90 percent.

SJVUAPCD's September 21, 2000 amendments to Rule 4603 included these significant changes to its 1994 SIP-approved version (adopted May 20, 1993):

—a definition for solid film lubricant was added (section 3.35);

—VOC content and viscosity requirements for dip coating and air drying of steel joists was added (sections 5.1.3.1 & 5.1.3.2);

—a specialty coating limit of 880 grams/liter for solid film lubricant was added (section 5.2); and,

—a recordkeeping requirement for viscosity was added (section 6.2.3.2).

The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating this rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available

Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SJVAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 4603 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. "Control of Volatile Organic Emissions from Existing Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products," USEPA, June 1978, EPA–450/2–78–015.

B. Does the rule meet the evaluation criteria?

This rule improves the SIP by establishing emission and viscosity limits for structural steel dip coating and recordkeeping provisions. This rule is largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the rule's deficiencies?

These provisions conflict with section 110 and part D of the Act and prevent full approval of the SIP revision.

1. The language in Section 4.1 allows at least two competing interpretations of the rule. This section should be revised to allow only one interpretation consistent with EPA guidance and policy concerning rule applicability, size cut-offs, and allowable non-compliant coating use. District practice of exempting fifteen pounds per day of non-compliant VOC emissions from all sources contradicts the intent of the size cutoff requirements of EPA's RACT Guidance. Furthermore, this practice is inconsistent with EPA policy providing for no more than 55 gallons of non-compliant coating use per rolling 12 month period.

2. Rule 4603 sets a viscosity limit for dip coating of structural steel components. However, SJVUAPCD did not provide a test method for determining compliance with this viscosity limit.

3. Rule 4603 incorporates a solid film lubricant specialty category emissions limit of 880 gr/l. This limit exceeds the CTG limit of 420 gr/l.

D. EPA recommendations to further improve the rule

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rule.

E. Proposed action and public comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of Rule 4603 to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. Also, a final disapproval would trigger the federal implementation plan (FIP) requirement under section 110(c). Unless EPA approves subsequent SIP revisions correcting the rule's deficiencies within 24 months, EPA must produce a FIP. Note that the submitted Rule 4603 has been adopted by the SJVUAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Background Information

Why was this rule submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2–OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875,

Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

D. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 15, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–16947 Filed 7–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 450

[FRL–7008–7]

RIN 2040–AD42

Effluent Limitations Guidelines and New Source Performance Standards for the Construction and Development Point Source Category; Announcement of Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice, announcement of meetings.

SUMMARY: EPA will conduct informational meetings on the upcoming Construction and Development (C&D) Effluent Guidelines proposed rulemaking. The Agency will provide an overview of the C&D project. EPA intends to propose effluent guidelines and standards for the C&D category in March 2002. The meetings are open to the public, and limited seating is available on a first-come, first-served basis.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting locations.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, Engineering and Analysis Division (4303), EPA Office of Water, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 260–7150; e-mail: *strassler.eric@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA is developing proposed effluent limitations guidelines and standards for the C&D Point Source Category under authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The C&D effluent guidelines will establish technology-based standards for discharges from construction sites regulated by the National Pollutant Discharge Elimination System (NPDES). The C&D rule will cover construction activities associated with new development and re-development. The regulations will address stormwater runoff from construction sites during the active phase of construction, as well as post-construction runoff. The industrial sectors which are being examined during the rulemaking include residential buildings, non-residential buildings, heavy construction, and land development. Additional information is available on the C&D website at *http://www.epa.gov/ost/guide/construction/*.

The meetings will provide an update on the development of the proposed rule. EPA will discuss the data collection efforts, the potential technology options, and the schedule for the C&D rulemaking. The meetings are not a mechanism for submitting formal comments. The meetings will not be recorded by a reporter nor transcribed for inclusion in the administrative record for the C&D rulemaking. Limited seating is available on a first-come, first-served basis.

A more detailed agenda and other documents related to the C&D project will be available at the meetings. For those unable to attend a meeting, EPA will make documents available at the EPA website listed above, and they can be obtained by an e-mail or telephone request to Eric Strassler at the above address.

Meeting Times and Locations

1. Tuesday, July 24, 2001, 9:00 am to 12:00 noon. EPA Education Center Auditorium, Waterside Mall, 401 M Street, SW., Washington, DC. Directions: The Auditorium is located on the ground floor at the rear of the Waterside Mall complex. Limited parking is available in the vicinity of the mall. EPA recommends that attendees travel by Metro subway to the Waterfront station (Green line). Upon exiting the Metro station, enter Waterside Mall, proceed to the rear exit (I Street), and turn left to reach the EPA Education Center.

2. Wednesday, August 1, 2001, 9:00 am to 12:00 noon. Executive Tower Hotel, 1405 Curtis Street, Denver, CO. For information on accommodations and directions to the hotel, please telephone 800–525–6651 or see the hotel website at *http://www.exectowerhotel.com*.

Dated: June 28, 2001.

Louise P. Wise,

Acting Director, Office of Science and Technology.

[FR Doc. 01–16953 Filed 7–5–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

RIN 0940–AA03

Protection of Human Research Subjects

AGENCY: Department of Health and Human Services (DHHS).

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Department of Health and Human Services (DHHS) is proposing to amend Subpart B of its human subjects protection regulations published on January 17, 2001. These regulations provide additional protections for pregnant women and human fetuses involved in research and pertain to human in vitro fertilization. The rule continues the special protections for pregnant women and human fetuses that have existed since 1975. The Department proposes to amend the regulations by making limited changes in terminology referring to neonates, clarifying provisions for paternal consent when research is conducted on fetuses, and clarifying language that applies to research on newborns of uncertain viability.

DATES: Comments on the proposed regulation must be received on or before September 4, 2001.

ADDRESSES: Comments must be sent to: Irene Stith-Coleman, Ph.D., Office of Human Research Protections (OHRP) 200 Independence Avenue, SW., Room 733–E, Washington, DC, 20201. Telephone 202–260–1587. Email *istithco@osophs.dhhs.gov*. The Department invites written comments on the proposed regulations and requests that comments identify the specific regulatory provisions to which they relate.

FOR FURTHER INFORMATION CONTACT: Irene Stith-Coleman, Ph.D., Office of Human Research Protections (OHRP) 200 Independence Avenue, SW., Room 733–E, Washington, DC, 20201. Telephone 202–260–1587. Interested persons may obtain a copy of the current regulations for the protection of human subjects, including Subpart B, at *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/45cfr46.htm*.

SUPPLEMENTARY INFORMATION:

Background

The Department of Health and Human Services (DHHS) regulates research involving human subjects conducted or supported by the agency through regulations codified at Title 45, part 46,

of the Code of Federal Regulations. Subpart B of 45 CFR part 46, promulgated on August 8, 1975, pertains to research involving fetuses, pregnant women, and human in vitro fertilization. The 1975 regulations were jointly published in the **Federal Register** with the report and recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, Research on the Fetus (40 FR 33526). Subsequent changes were incorporated January 11, 1978 (43 FR 1758), November 3, 1978 (43 FR 51559), and June 1, 1994 (59 FR 28276).

On January 17, 2001, the Department published in the **Federal Register** a Final Rule, with an effective date of March 19, 2001 (66 FR 3878), intended to amend Subpart B of 45 CFR Part 46. This preamble refers to that rule as "the January rule." The January rule's effective date was delayed by 60 days on March 19, 2001, in accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled A Regulatory Review Plan, published in the **Federal Register** on January 24, 2001. (66 FR 15352). The effective date of the January rule was further delayed by 180 days on May 18, 2001 to give the Department an opportunity to obtain comment on three modifications to the rule. (66 FR 27559).

The Department determined that there was a need to delay the January rule's effective date to seek public comment on three limited aspects: (1) Whether paternal consent (when the father is readily available) should be obtained for participation in federally funded research that is directed solely at a fetus; (2) whether the definition of "fetus" should be modified so that it describes only the stage prior to delivery; and (3) whether the rule should be modified to make clear that fetuses of uncertain viability may be subjected to added risk only if the research is intended to enhance the probability of survival of the particular fetus to the point of viability.

First, the Department proposes to require a father's consent (when the father is readily available) for participating in research that is directed solely at a fetus and that does not affect a mother's health. We believe that this approach is the most respectful of the parents' joint interests in their fetus's health. In this narrow situation, the January rule allowed the mother alone to consent for the research on the fetus. The preamble to the January rule explained that consent requirements for research involving pregnant women were modified to address cases in which a requirement for the father's consent had been a barrier to participation in research which held potential benefit for both pregnant women and their fetuses. We believe that this problem is addressed by the clarification in this rule that only the mother's consent is required for participation in research that may benefit both the pregnant woman and the fetus. In keeping with the January rule, a father's consent would not be needed for a woman to participate in a research activity that would benefit her health.

Second, the Department proposes to add to the regulations the term "neonate" to describe an infant that has been delivered but for which a viability determination has not yet been made. The January rule uses the term "fetus" to describe not only infants at the stage prior to delivery, but also just-delivered newborns. We believe that using the term "fetus" only for those infants that have not been delivered is preferable because it is more consistent with the ordinary understanding of that word and because using the term neonate for a fetus that has been delivered is more appropriate. We propose to use the term "neonate" to describe a newborn for which a viability determination has not yet been made. This modification will not change the strong protections the rule gives to pregnant women and fetuses, or change the regulatory framework that has been established to guide decisions regarding conduct of federally-supported research.

Third, the Department proposes to clarify the language that governs decisions regarding conduct of federally-supported research on neonates of uncertain viability. Some changes in wording were introduced in the January rule that may have created confusion on this issue. We wish to make clear that these neonates may be subjected to added risk only if the research is intended to enhance the particular neonate's probability of survival to the point of viability.

The Department proposes other minor clarifying and technical changes that are consistent with these proposed amendments.

Proposed Changes to Subpart B

Title Subpart B—Additional Protections for Pregnant Women and Human Fetuses Involved in Research, and Pertaining to Human In Vitro Fertilization

The title is changed to add the word "neonate."

Section 46.201 To what do these regulations apply?

Paragraph (a)—There is no substantive change to this paragraph. The word "neonate" is added to reflect that the rule covers neonates.

Paragraphs (b)–(d)—No change.

Section 46.202—Definitions

Paragraph (a)—The definition of "dead fetus" is modified by changing the word "fetus" to "neonate." The words "after delivery" are deleted to avoid redundancy.

Paragraph (b)—The definition of "fetus" is modified to clarify that the term refers only to the stage prior to delivery.

Paragraph (c)—No change.

Paragraph (d)—A new paragraph (d) and new definition of "neonate" is added.

Paragraph (d)—Paragraph (d) is relabeled paragraph (e). The definition of "nonviable fetus" in new paragraph (e) is modified by changing the word "fetus" to "neonate."

Paragraphs (e) and (f) are relabeled paragraphs (f) and (g).

Paragraph (g)—Paragraph (g) is relabeled paragraph (h). The definition of "viable" in new paragraph (h) is modified by changing the word "fetus" to "neonate" and deleting the language "after delivery." Language regarding the application of Subpart D of the human subjects regulations is clarified.

Section 46.203 Duties of IRBs in connection with research involving pregnant women, fetuses, and human in vitro fertilization

The title of this section is changed to add the term "neonate."

Section 46.204 Research involving pregnant women or fetuses prior to delivery

The words "prior to delivery" are deleted from the title and introductory text. This description is not needed in light of the change in the definition of the term "fetus" in Section 46.202(b).

Paragraph (b)—The paragraph is clarified to explain that research involving fetuses may only be conducted when risk is caused solely by interventions or procedures that hold out the prospect of direct benefit for the woman or the fetus, or, if there is no such prospect of benefit, the risk is not greater than minimal and the purpose of the research is the development of important biomedical knowledge which cannot be obtained by any other means. This change is consistent with language in the January rule regarding research involving neonates that is not greater than minimal risk.

Paragraph (c)—No change.

Paragraph (d)—The paragraph is modified to clarify that if the research holds out the prospect of direct benefit to the pregnant woman, only her consent must be obtained, consistent with provisions of Subpart A of the human subjects protection regulations. The phrases "or the consent of her legally authorized representative" and "unless altered or waived in accord with § 46.101(i) or § 46.116(c) or (d)" are deleted to avoid redundancy, as these provisions are incorporated by the reference to subpart A.

A new paragraph (e) is added to clarify that if the research holds out the prospect of direct benefit solely to the fetus, the consent of the father (when the father is readily available) is required, consistent with provisions of Subpart A of the human subjects protection regulations. The father's consent is not required if he is unable to consent because of unavailability, incompetence, or temporary incapacity. Consent of the father's legally authorized representative thus would not be required under this provision. This revision changes the January rule, which allowed the mother alone to consent to research involving the fetus. We believe that this revision better recognizes the joint interests of a mother and father in a fetus's participation in research in the situation in which the research holds out the prospect of direct benefit solely to the fetus.

Paragraph (e) is relabeled paragraph (f) and new paragraph (f) is modified by replacing the language "the woman or her legally authorized representative" with "the individual(s) providing consent under paragraph (d) or (e) under this section" to take into account new Section 46.204(e).

Paragraphs (f)–(i) are relabeled paragraphs (g)–(j), and in new paragraph (j) the term "fetus" is changed to "neonate."

Section 46.205 Research involving fetuses after delivery

The title is modified by changing "fetus" to "neonate" and by deleting the words "after delivery" which are not needed due to the new definition of "neonate" provided under Section 46.202(d).

Paragraph (a)—The term "fetus" is changed to "neonate" throughout the paragraph. The words "after delivery" are deleted, as they are not needed due to the new definition of "neonate" provided under Section 46.202(d). The words "or resultant child" are deleted from subparagraph (2) as they are not needed due to clarifications to Section 46.202(g) described above.

Paragraph (b)—The term "fetus" is changed to "neonate" and the words "after delivery" are deleted throughout the paragraph. In subparagraph (1), the word "that" replaces "the," and the words "of the research" are deleted to clarify that research involving risk is permitted on fetuses of uncertain viability only when it is intended to increase the probability of their survival to the point of viability. This modification is consistent with the January rule, but clarifies any ambiguity that may have been raised by minor changes to this section in that rule. In subparagraph (2), the phrase "unless altered or waived in accord with § 46.101(i) or § 46.116(c) or (d)" is deleted to avoid redundancy, as these provisions are incorporated by the reference to subpart A.

Paragraph (c)—The term "fetus" is changed to "neonate" throughout the paragraph.

Paragraph (d)—The term "fetus" is changed to "neonate" throughout the paragraph. Language regarding the application of Subpart D of the human subjects regulations is clarified.

Section 46.206 Research involving, after delivery, the placenta, the dead fetus, or fetal material

The term "fetus" is changed to "neonate" and the term "fetal" is changed to "neonatal" in the title.

Paragraph (a)—The term "fetus" is changed to "neonate" throughout the paragraph, and the term "fetal is changed to "neonatal."

Paragraph (b)—No change.

Section 46.207 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of pregnant women, or fetuses

The term "neonates" is added to the title and throughout the section and in subparagraph (2)(iii), the phrase "unless altered or waived in accord with § 46.101(i) or § 46.116(c) or (d)" is deleted to avoid redundancy, as these provisions are included in the reference to subpart A.

Executive Order 12866

Executive Order 12866 requires that all regulatory actions reflect consideration of the costs and benefits they generate and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If an action is deemed to fall within the scope of the definition of the term "significant regulatory action" contained in Sec. 3(f) of the Order, a pre-publication review by the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) is necessary. OMB deemed this rule a "significant regulatory action," as defined by Executive Order 12866. Therefore, the rule was submitted to OIRA for review prior to its publication in the **Federal Register**.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. Chapter 6) requires that regulatory actions be analyzed to determine whether they create a significant impact on a substantial number of small entities. This rule primarily affects individual research subjects and institutions that receive funding from DHHS for research involving human subjects. It will not have the effect of imposing significant additional costs on small research institutions that are within the definition of small entities. Therefore, the Secretary certifies that this rule will not have significant impact on a substantial number of small entities and that preparation of an initial regulatory flexibility analysis is not required.

Paperwork Reduction Act

This rule does not contain any new information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

List of Subjects in 45 CFR Part 46

Civil rights, Health—clinical research, Human research subjects, Infants and children, Medical research, Reporting and recordkeeping requirements.

Dated: June 13, 2001.

Arthur J. Lawrence,

Acting Principal Deputy Assistant Secretary for Health.

Dated: June 14, 2001.

Tommy G. Thompson,

Secretary of Health and Human Services.

For the reasons presented in the preamble, it is proposed to amend part 46 of title 45 of the Code of Federal Regulations as set forth below.

PART 46—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for part 46 is revised to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 289(a).

2. Subpart B of part 46 is revised to read as follows:

Subpart B—Additional Protections for Pregnant Women, Human Fetuses and Neonates Involved in Research, and Pertaining to Human In Vitro Fertilization

Sec.

46.201 To what do these regulations apply?
46.202 Definitions.
46.203 Duties of IRBs in connection with research involving pregnant women, fetuses, neonates, and human in vitro fertilization.
46.204 Research involving pregnant women or fetuses.
46.205 Research involving neonates.
46.206 Research involving, after delivery, the placenta, the dead neonate, or neonatal material.
46.207 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of pregnant women, fetuses, or neonates.

Subpart B—Additional Protections for Pregnant Women, Human Fetuses and Neonates Involved in Research, and Pertaining to Human In Vitro Fertilization

§ 46.201 To what do these regulations apply?

(a) Except as provided in paragraph (b) of this section, this subpart applies to all research involving pregnant women or human fetuses or neonates, and to all research involving the in vitro fertilization of human ova, conducted or supported by the Department of Health and Human Services (DHHS). This includes all research conducted in DHHS facilities by any person and all research conducted in any facility by DHHS employees.

(b) The exemptions at § 46.101(b)(1) through (6) are applicable to this subpart.

(c) The provisions of § 46.101(c) through (i) are applicable to this subpart. Reference to State or local laws in this subpart and in § 46.101(f) is intended to include the laws of federally recognized American Indian and Alaska Native Tribal Governments.

(d) The requirements of this subpart are in addition to those imposed under the other subparts of this part.

§ 46.202 Definitions.

The definitions in § 46.102 shall be applicable to this subpart as well. In addition, as used in this subpart:

(a) *Dead neonate* means a neonate that exhibits neither heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles, nor pulsation of the umbilical cord.

(b) *Delivery* means complete separation of the fetus from the woman by expulsion or extraction or any other means.

(c) *Fetus* means the product of conception from implantation until delivery.

(d) *In vitro fertilization* means any fertilization of human ova which occurs outside the body of a female, either through admixture of donor human sperm and ova or by any other means.

(e) *Neonate* means a newborn.

(f) *Nonviable neonate* means a neonate after delivery that, although living, is not viable.

(g) *Pregnancy* encompasses the period of time from implantation until delivery. A woman shall be assumed to be pregnant if she exhibits any of the pertinent presumptive signs of pregnancy, such as missed menses, until the results of a pregnancy test are negative or until delivery.

(h) *Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom authority has been delegated.

(i) *Viable*, as it pertains to the neonate, means being able, after delivery, to survive (given the benefit of available medical therapy) to the point of independently maintaining heartbeat and respiration. The Secretary may from time to time, taking into account medical advances, publish in the **Federal Register** guidelines to assist in determining whether a neonate is viable for purposes of this subpart. If a neonate is viable then it may be included in research only to the extent permitted and in accordance with the requirements of Subparts A and D of this part.

§ 46.203 Duties of IRBs in connection with research involving pregnant women, fetuses, neonates, and human in vitro fertilization.

In addition to other responsibilities assigned to IRBs under this part, each IRB shall review research covered by this subpart and approve only research which satisfies the conditions of all applicable sections of this subpart and the other subparts of this part.

§ 46.204 Research involving pregnant women or fetuses.

Pregnant women or fetuses may be involved in research if all of the following conditions are met:

(a) Where scientifically appropriate, preclinical studies, including studies on pregnant animals, and clinical studies, including studies on nonpregnant women, have been conducted and provide data for assessing potential risks to pregnant women and fetuses;

(b) The risk to the fetus is caused solely by interventions or procedures that hold out the prospect of direct benefit for the woman or the fetus; or, if there is no such prospect of benefit, the risk to the fetus is not greater than minimal and the purpose of the research is the development of important biomedical knowledge which cannot be obtained by any other means;

(c) Any risk is the least possible for achieving the objectives of the research;

(d) If the research holds out the prospect of direct benefit to the pregnant woman or a direct benefit both to the pregnant woman and the fetus, her consent is obtained in accord with the informed consent provisions of subpart A of this part;

(e) If the research holds out the prospect of direct benefit solely to the fetus, then the consent of the pregnant woman and the father is obtained in accord with the informed consent provisions of subpart A of this part, except that the father's consent need not be obtained if he is unable to consent because of unavailability, incompetence, or temporary incapacity;

(f) The individual(s) providing consent under paragraph (d) or (e) of this section is fully informed regarding the reasonably foreseeable impact of the research on the fetus or neonate;

(g) For children as defined in § 46.402(a) who are pregnant, assent and permission are obtained in accord with the provisions of subpart D of this part;

(h) No inducements, monetary or otherwise, will be offered to terminate a pregnancy;

(i) Individuals engaged in the research will have no part in any decisions as to the timing, method, or procedures used to terminate a pregnancy; and

(j) Individuals engaged in the research will have no part in determining the viability of a neonate.

§ 46.205 Research involving neonates.

(a) Neonates may be involved in research if all of the following conditions are met:

(1) Where scientifically appropriate, preclinical and clinical studies have been conducted and provide data for assessing potential risks to neonates.

(2) The individual(s) providing consent under paragraph (b)(2) or (c)(5) of this section is fully informed regarding the reasonably foreseeable impact of the research on the neonate.

(3) No inducements, monetary or otherwise, will be offered to terminate a pregnancy.

(4) Individuals engaged in the research will have no part in any decisions as to the timing, method, or procedures used to terminate a pregnancy.

(5) Individuals engaged in the research will have no part in determining the viability of a neonate.

(6) The requirements of paragraph (b) or (c) of this section have been met as applicable.

(b) Neonates of uncertain viability. Until it has been ascertained whether or not a neonate is viable, a neonate may not be involved in research covered by this subpart unless the following additional conditions are met:

(1) The IRB determines that:

(i) The research holds out the prospect of enhancing the probability of survival of the neonate to the point of viability, and any risk is the least possible for achieving that objective, or

(ii) The purpose of the research is the development of important biomedical knowledge which cannot be obtained by other means and there will be no risk to the neonate resulting from the research; and

(2) The legally effective informed consent of either parent of the neonate or, if neither parent is able to consent because of unavailability, incompetence, or temporary incapacity, the legally effective informed consent of either parent's legally authorized representative is obtained in accord with subpart A of this part.

(c) Nonviable neonates. After delivery, a nonviable neonate may not be involved in research covered by this subpart unless all of the following additional conditions are met:

(1) Vital functions of the neonate will not be artificially maintained;

(2) The research will not terminate the heartbeat or respiration of the neonate;

(3) There will be no risk to the neonate resulting from the research;

(4) The purpose of the research is the development of important biomedical knowledge that cannot be obtained by other means; and

(5) The legally effective informed consent of both parents of the neonate is obtained in accord with subpart A of this part, except that the waiver and alteration provisions of § 46.116(c) and (d) do not apply. However, if either parent is unable to consent because of unavailability, incompetence, or temporary incapacity, the informed consent of one parent of a nonviable neonate will suffice to meet the requirements of this paragraph (c)(5). The consent of a legally authorized representative of either or both of the parents of a nonviable neonate will not suffice to meet the requirements of this paragraph (c)(5).

(d) Viable neonates. A neonate, after delivery, that has been determined to be viable may be included in research only to the extent permitted by and in accord with the requirements of subparts A and D of this part.

§ 46.206 Research involving, after delivery, the placenta, the dead neonate, or neonatal material.

(a) Research involving, after delivery, the placenta; the dead neonate; macerated neonatal material; or cells, tissue, or organs excised from a dead neonate, shall be conducted only in accord with any applicable Federal, State, or local laws and regulations regarding such activities.

(b) If information associated with material described in paragraph (a) of this section is recorded for research purposes in a manner that living individuals can be identified, directly or through identifiers linked to those individuals, those individuals are research subjects and all pertinent subparts of this part are applicable.

§ 46.207 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of pregnant women, fetuses, or neonates.

The Secretary will conduct or fund research that the IRB does not believe meets the requirements of § 46.204 only if:

(a) The IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of pregnant women, fetuses or neonates; and

(b) The Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, ethics, law) and following opportunity for public review and comment, including a public meeting announced in the Federal Register, has determined either:

(1) That the research in fact satisfies the conditions of § 46.204, as applicable; or

(2) The following:

(i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of pregnant women, fetuses or neonates;

(ii) The research will be conducted in accord with sound ethical principles; and

(iii) Informed consent will be obtained in accord with the informed consent provisions of subpart A and other applicable subparts of this part.

[FR Doc. 01–16841 Filed 7–5–01; 8:45 am]
BILLING CODE 4510–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH96

Endangered and Threatened Wildlife and Plants; Availability of Draft Environmental Assessment on Proposed Designation of Critical Habitat for the Northern Great Plains Breeding Population of the Piping Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service announce the availability of the draft Environmental Assessment for the proposal to designate critical habitat for the northern Great Plains breeding population of the piping plover (*Charadrius melodus*), under the Endangered Species Act of 1973, as amended. We invite all interested parties to comment on the draft Environmental Assessment and any other aspect of the proposed designation.

DATES: The comment period for the draft Environmental Assessment will close on August 13, 2001. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: You may submit written comments and information to Piping Plover Comments, South Dakota Ecological Services Field Office, U.S. Fish and Wildlife Service, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501 or by facsimile to 605–224–9974.

You may hand-deliver written comments to our South Dakota Field Office at the address given above.

You may send comments by electronic mail (e-mail) to FW6_PipingPlover@fws.gov. See the Public Comments Solicited section below for file format and other information on electronic filing.

Copies of the draft Environmental Assessment for the northern Great Plains breeding population of the piping plover are available from the aforementioned address or on the Internet at http://mountain-prairie.fws.gov/pipingplover/ch.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment,

during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Nell McPhillips, Fish and Wildlife Biologist, at the above address or at (605) 224–8693, extension 32.

SUPPLEMENTARY INFORMATION:

Background

We published a proposed rule to designate critical habitat for the northern Great Plains breeding population of the piping plover in the **Federal Register** (66 FR 31760). Section 4(b)(2) of the Endangered Species Act (Act) requires that we designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impacts, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

The proposed designation includes 11 areas of prairie alkali wetlands and reservoir lakes in 5 counties in Montana, 18 counties in North Dakota, and 1 county at Lake-of-the-Woods, Minnesota, totaling approximately 196,576.5 acres (ac) [79,553.1 hectares (ha)]. It also includes five areas of portions of four rivers in the States of Montana, North Dakota, South Dakota, and Nebraska, totaling approximately 1,338 miles (mi) [2,152.9 kilometers (km)] of river. If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency.

Public Comments Solicited

We will accept written comments and information during this comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). If you would like to submit comments by electronic format, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include your name and return e-mail address in your e-mail message. Please note that the e-mail address will be closed out at the termination of the public comment period. If you do not receive confirmation from the system that we have received your message, contact us directly by calling our South Dakota Field Office at (605) 224–8693.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment, during normal business hours at the above address. Copies of the draft Environmental Assessment are available on the Internet at http://mountain-prairie.fws.gov/pipingplover/ch or by writing to Pete Gober, Field Supervisor (see **ADDRESSES**).

Public Meetings

We have scheduled five informal public meetings at the following addresses on the dates indicated. Public meetings will run from 6–9 p.m., except for Yankton which will run from 5:30–8:30 p.m.

1. Cottonwood Inn Convention Center, U.S. Highway 2E, Glasgow, Montana, July 10, 2000
2. Doublewood Inn, I–94 and Exit 159, Bismarck, North Dakota, July 12, 2001
3. Pierre Chamber of Commerce, Community Room, 800 W. Dakota Avenue, Pierre, South Dakota, July 16, 2001
4. Summit Activities Center, 1801 Summit Street, Yankton, South Dakota, July 17, 2000
5. Central Community College, Main Building, Room 210, 3134 W. Highway 34, Grand Island, Nebraska, July 18, 2001

Author

The primary authors of this notice are the South Dakota Field Office staff (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 29, 2001.

John A. Blankenship,

Acting Regional Director, Denver, Colorado.

[FR Doc. 01–16924 Filed 7–5–01; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 66, No. 130
Friday, July 6, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Oak Decline and Forest Health Project, Crawford, Dent, Iron, Reynolds, Shannon, and Washington Counties, MO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a Draft Environmental Impact Statement (DEIS) to disclose the environmental consequences of the proposed Oak Decline and Forest Health Project. The main purpose for this project proposal is to examine opportunities to minimize adverse impacts from insects and disease on forest vegetation. Extensive growth loss and tree mortality are occurring as a result of extended drought (1998–2001) and extensive insect infestation (1999–2001). The large accumulation of dead or dying trees is contributing to the rapidly increasing population of the red oak borer on lands with oak forests. Excessive build-up of dead woody vegetation poses an increased risk of high-intensity wildlife fire that may result in a threat to public safety. In an effort to limit the potential adverse effects on forest health, the Forest Service is proposing a range of management activities on approximately 25,000 acres of National Forest land distributed over a 175,000-acre area located on the Salem and Potosi Ranger Districts of the Mark Twain National Forest. Implementation would occur within the next 5 years.

Management activities would include reforestation treatments, commercial timber harvests, fuels reduction, and wildlife habitat enhancement. All treatment acreages listed are approximate.

• Proposed harvest treatments would consist of over-story removals or final harvest (500 acres); two-age shelter wood harvest (6,200 acres); seed tree harvests (5,400 acres); thinnings, sanitation, and improvement cuts (6,000 acres); as well as uneven-aged management (UAM) with group selections (4,000 acres).

• Reforestation activities would consist of mechanical treatment of vegetation (16,000 acres) or prescribed burning (700 acres) for slash treatment and natural regeneration.

• The proposed action would include wildlife habitat improvement, wildlife habitat restoration, and hazardous fuel reduction activities on 4,000 acres. These activities include use of prescribed fire, mechanical treatment of vegetation, and designation of old growth habitat to accomplish the forest health objectives.

DATES: Initial comments and suggestions concerning the scope of the analysis should be submitted in writing and postmarked within 30 days of the publication of this notice to ensure timely consideration in the preparation of the draft environmental impact statement. On July 14th, 2001 an open house will be held at the Salem District Office between the hours of 9:00 and 12:00 in the morning. There will be an optional field trip that afternoon on the Salem District. The District office is located on Highway 19 South at 1401 Main Street in Salem, Missouri.

ADDRESSES: Send written comments on this proposed action to Oak Decline and Forest Health Project, Salem Ranger District, PO Box 460, Salem, Missouri 65560. Comments will be accepted by electronic mail: mailroom_r9_mark_twain@fs.fed.us In the subject line please note: Oak Decline and Forest Health Project also includes a US Postal Service address, so that you can receive future information for this project.

FOR FURTHER INFORMATION CONTACT: Karen Mobley (573–729–6656) Team Leader or the Salem Ranger District.

SUPPLEMENTARY INFORMATION: Management of forest resources is provided for in the Mark Twain National Forest Land and Resource Management Plan (Forest Plan), approved in 1986. Specific management objectives and practices are defined for each Management Prescription in Chapter IV of the Forest Plan. This project proposal is located within Management Prescriptions 3.2, 4.1, 6.1 and 6.2.

Areas of decline and mortality of scarlet and black oak have been occurring on the Mark Twain National Forest for several years. Scarlet and black oaks are relatively short-lived species, particularly on upper slopes and broad ridge tops, due in part to the drought susceptibility of the soils. Precipitation deficit exceeded 12 inches in each of the past two years, consequently, decline and mortality has accelerated in many areas. This stress, coupled with aging stands, renders scarlet and black oaks susceptible to insects and diseases.

More than 16,000 acres of mortality were mapped on the Salem and Potosi Districts by aerial survey in September of 2000. Subsequent ground verification showed red oak borer was associated with the damage, along with secondary agents, including Armillari root disease, Hypoxylon canker, and two-lined chestnut borer.

Increasing numbers of dead and dying trees invigorates populations of Armillari root rot, placing residual trees at increased risk of attack. Trees attacked by red oak borer serve as broad trees, increasing their numbers, and putting even more pressure on the remaining susceptible host trees.

Mark Twain National Forest, Forest Health Protection (USDA FS, State and Private Forestry), North Central Forest Experiment Station, Missouri Department of Conservation, Ozark National Forest, and Arkansas Forestry Commission have been collecting information about the decline in forest health in the Ozark Highlands. These agencies are interested in quantifying the severity of the decline and mortality in affected stands, monitoring the progression of the red oak borer and implementing long-term strategies to limit the impacts of these insects and disease.

Four environmental analyses are currently underway within the analysis area for this proposal. They are Johnson Mountain, Buick, Fletcher Salvage and 4.1–3 Management Area. The Forest has decided to incorporate these four analyses into this proposal due to the declining forest health in these ares.

Several preliminary issues have been identified. They include: (1) Commercial harvests and the role of public forests in supplying goods and

services; (2) the application of even-aged and uneven-aged timber harvest; (3) improving forest health; (4) economic effects of the widespread oak decline and mortality in the oak ecosystems found across Missouri and Arkansas; (5) effects of alternatives considered in the ongoing analysis of the Area of Influence for the Indiana Bat; (6) visual impacts of proposed management activities; (7) fuel build-up and greater risks for catastrophic wildland fire; and (8) the environmental effects of management activities and decline to threatened and endangered species.

A range of alternatives that address the decline in forest health will be considered. A No Action alternative will be analyzed. Other alternatives will be developed that may consider the use of various commercial vegetation management activities, non-commercial activities to achieve management objectives, or different combinations of activities. Issues generated through this public involvement process will be considered in the development of the alternatives.

Decision To Be Made

The decision to be made will be what combination of management activities, if any, should be selected to improve the health of the forest, reduce the adverse ecological, social, and economic impacts of the insect infestation, while providing for public health and safety.

Estimated Dates for Filing

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by October 1, 2001. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the draft will be 45 days from the date the EPA notice appears in the **Federal Register**.

The Reviewers Obligation To Comment

It is very important that those interested in the management of the Mark Twain National Forest participate during the DEIS comment period. To be useful, comments on the DEIS should be as specific as possible, and address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations (CEQ) for implementing the procedural provisions of NEPA at 40 CFR 1503.0).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposals so that it is meaningful and alerts an agency to the reviewer's position and contentions.

Vermont Yankee Nuclear Power Cor. v. *NRDC, 435 U.S. 519, 533 (1978).* Also, environmental objections that could be raised at the draft EIS stage may be waived if not raised until after completion of the final EIS, *City of Arnoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1988),* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

Comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement (Reviewers may wish to refer to CEQ Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points). After the comment period ends on the draft environmental impact statement, the comments received will be analyzed and considered by the Forest Service in preparing the final EIS.

The final EIS is scheduled for completion in January of 2002. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision.

The decision will be subject to appeal under 36 CFR part 215.

Responsible Official: The responsible official is Randy Moore, Forest Supervisor, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, MO 65401.

Dated: June 29, 2001.

Randy Moore,

Forest Supervisor.

[FR Doc. 01–16921 Filed 7–5–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Licking Creek Timber Sale Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to provide timber for the Tongass National Forest timber sale program. The Record of Decision will disclose how the Forest Service decides to provide harvest units, roads, and associated timber harvesting facilities. The proposed action is to harvest up to an estimated 20 million board feet (mmbf) of timber on an estimated 960 acres in one timber sale. A range of alternatives responsive to significant issues will be developed and will include a no-action alternative. The proposed timber harvest is located within Tongass Forest Plan Value Comparison Unit 7460 on Revillagigedo Island, Alaska, on the Ketchikan-Misty Fiords Ranger District of the Tongass National Forest.

DATES: Opportunities for comment will be made available throughout the process and are identified below. In order to take full advantage of scheduled comment periods, individuals interested in receiving a scoping package should contact us by July 20, 2001. Further opportunities for comment will be provided following development of a specific agency proposed action, during alternative development and following release of the Draft EIS.

ADDRESSES: Please send written comments to District/Monument Ranger, Ketchikan-Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, AK 99901.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to Jerry Ingersoll, District/Monument Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, 3031 Tongass Ave. Ketchikan, AK 99901 telephone (907) 228–4100 or Kathy O'Connor, NEPA Coordinator, Ketchikan-Misty Fiords Ranger District, 3031 Tongass Ave, Ketchikan, AK 99901 telephone (907) 228–4124.

SUPPLEMENTARY INFORMATION: Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest

Service will be seeking information, comments, and assistance from Federal, State, local and tribal agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process includes: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; (3) elimination of insignificant issues or those which have been covered by a previous environmental review, and (4) suggestions for possible alternatives.

Opportunities to provide both written and verbal comment and to provide feedback on the process will be made available. A public meeting will be scheduled after the Draft EIS is published. This active scoping will begin with the publication of this Notice of Intent (NOI) and continue through preparation of the Draft EIS.

Based on results of scoping and the resource capabilities within the project area, alternatives including a "no action" alternative will be developed for the Draft EIS. The Draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in early December 2001. Subsistence hearings, as provided for in Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), if needed, will be held during the comment period on the Draft EIS. The Final EIS is anticipated by March 2002.

The comment period on the draft environmental impact statement will be a minimum of 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, (1978). Environmental objections that could have been raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits: Permits required for implementation may include the following:

1. U.S. Army Corp of Engineers
   —Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
   —Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;
2. Environmental Protection Agency
   —National Pollutant Discharge Elimination System (402) Permit;
   —Review Spill Prevention Control and Countermeasure Plan;
3. State of Alaska, Department of Natural Resources
   —Tideland Permit and Lease or Easement;
4. State of Alaska, Department of Environmental Conservation
   —Solid Waste Disposal Permit;
   —Certification of Compliance with Alaska Water Quality Standards (401 Certification)

Responsible Official: Thomas Puchlerz, Forest Supervisor, Tongas National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, response, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: June 26, 2001.

Thomas Puchlerz,

Forest Supervisor.

[FR Doc. 01–16959 Filed 7–5–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Grants for State Revolving Loan Funds for Fuel Purchases

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability (NOFA).

SUMMARY: The Rural Utilities Service (RUS) of the United States Department of Agriculture (USDA) announces the availability of up to $5,000,000 for fiscal year (FY) 2001 in a new program of grants to state entities to establish and support revolving loan funds to provide a more cost-effective means of purchasing fuel for communities where the fuel cannot be shipped by means of surface transportation. This notice describes the grant eligibility and application requirements, and the criteria that will be used by RUS to award grants. The intended effect of this NOFA is to make grant funds available as expeditiously as possible to enable grantees to assist persons, particularly those in isolated rural areas, in meeting their critical fuel needs during a period of growing demand and high energy prices.

DATES: Applications for grants must be postmarked no later than August 6, 2001, to be considered. Grant applications will be accepted on publication of this notice.

ADDRESSES: Applications are to be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1560, Room 4037 South Building, Washington, DC 20250–1522. The applicant should submit an original and two copies of the proposal, with all required forms and documentation in one package. The package should be marked "Attention: State Fuel Purchase Revolving Loan Fund Grants."

FOR FURTHER INFORMATION CONTACT: Karen Larsen, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, 1400 Independence Avenue, SW., STOP 1560, Room 4037 South Building, Washington, DC 20250–1560. Telephone 202–720–9545, Fax 202–690–0717, email klarsen@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Programs Affected

The Catalog of Federal Domestic Assistance Program number assigned to this program is 10.857.

Information Collection and Recordkeeping Requirements

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (the "Act"), OMB must approve all "collections of information" by RUS. The Act defines "collection of information" as a requirement for "answer to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." (44 U.S.C. 3502(3)(A).) RUS has concluded that the reporting requirements contained in this NOFA will involve less than 10 persons and do not require approval under the provisions of the Act.

Background

For FY 2001, RUS will make available up to $5,000,000 under a new grant program authorized by section 19 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*). Section 19(a)(3) authorizes the Secretary, acting through RUS, to make grants to State entities that were in existence as of November 30, 2000, the date of the enactment of section 19, "to establish and support a revolving fund to provide a more cost-effective means of purchasing fuel where the fuel cannot be shipped by means of surface transportation." Fuel purchases typically would include, but are not limited to purchases of fuel oil, diesel, gasoline, and other petroleum products, coal, or other energy fuels. Section 19(b)(2) provides that not more than 4 percent of the amounts made available under these grants may be used for planning and administrative expenses.

RUS is interested in gaining experience in the use of State revolving loan funds designed to help persons, particularly those in the more isolated rural areas, to manage their energy needs. RUS believes that such partnerships with State entities may serve to create new approaches to meeting the energy needs of rural residents. In considering applications for financial assistance under this grant program, RUS has determined to give particular consideration to projects that meet the needs of the persons in the most isolated rural areas.

Definitions

As used in this NOFA:

"Eligible area" means any area where fuel cannot be shipped routinely by means of surface transportation and must be delivered by water or air for a significant part of the year. Eligible areas include areas where fuel delivery by means of surface transportation is not practical or is prohibitively expensive and the area is primarily dependent on delivery of fuel by water or air.

"Fuel" means coal, oil, gasoline, and other petroleum products, and any other material that can be burned to make energy.

"State entity" means an agency, department, or instrumentality, or political subdivision of any of the several States of the United States or the District of Columbia, exclusive of local governments.

"Surface transportation" means transportation by road, rail, or pipeline.

Use of Grant Funds

Grantees must use grant funds to establish and support a revolving loan fund. The grantee must demonstrate that projects and activities that receive loans or other assistance under this grant will improve the cost-effectiveness of fuel purchases for persons in eligible areas. No more than 4 percent of grant funds may be used for planning and administrative expenses of the revolving fund.

Available Funds and Award Limitations

The amount of funds available for grants in FY 2001 is $5,000,000. The number of grant awards depends on the amount, quality, and competitiveness of applications submitted. RUS reserves the right to make one award in the full amount of $5,000,000. If, as a result of the evaluation of applications as provided in this NOFA, one or more applications are scored within 10 points of the application with the highest rank order, the RUS Administrator shall limit individual grant awards to $3,000,000 and fund such grant applications in rank order, except that the Administrator may exceed the $3,000,000 individual grant limit to ensure that grants are made in the aggregate amount of $5,000,000. RUS will advise applicants if it can not fully fund a grant request.

Eligible Applicants

Section 19 of the RE Act restricts eligible applicants to State entities, as defined above, in existence as of November 9, 2000. State grant recipients may partner with other entities, including other government agencies in carrying out the programs funded under these grants.

How To Apply For Assistance

Grant applications should be prepared in conformance with the provisions of this NOFA and applicable USDA regulations including 7 CFR parts 3015 and 3016. Applicants must submit a completed Standard Form (SF) 424, "Application for Federal Assistance," a narrative grant proposal that establishes eligibility and addresses the selection criteria, and all required supporting information and documents. The applicant should submit an original and two copies of the proposal, with all required forms and documentation in one package as provided in the Addresses section of this NOFA.

Copies of required forms are available by request from the Agency contact or online through the RUS website at http://www.usda.gov/rus/electric/index.htm. Because of the short time period allowed for preparation and submittal of applications in this new grant program, RUS encourages applicants to consult with the agency contact person to resolve any questions or uncertainties about what is required to prepare and submit a grant application.

What To Include in the Application

Applicants should follow the guidelines of this notice in preparing their applications. The completed application should be assembled in the order specified with all pages numbered sequentially. The applicant must submit the following information for the application to be complete and considered for funding:

Part A. SF 424, "Application for Federal Assistance"

A completed SF 424 must be signed by an official authorized to submit the proposal on behalf of the State entity.

Part B. Grant Proposal

The grant proposal is a narrative description prepared by the applicant that establishes the applicant's eligibility and includes an assessment of the need for grant funds, a description of plans for use of grant funds, the potential benefits to be derived, and a proposed budget. Summary descriptions are adequate. Lengthy submissions are discouraged. The proposal should contain the following sections in the order indicated.

1. Executive Summary. The Executive Summary is a one page narrative summary that: (a) Identifies the State entity applying for the grant and the key agency contact with telephone and fax numbers, mailing address and email address; (b) states the amount of grant funds requested; and (c) provides a brief description of the proposed program including the estimated number of potential beneficiaries, i.e., persons or communities in eligible areas, their estimated fuel needs, the projects and activities to be financed through the revolving fund, and how financed projects and activities will improve the cost effectiveness of fuel procurement. The Executive Summary should also indicate whether the applicant is claiming additional scoring credits.

2. Applicant Eligibility. A brief narrative statement and supporting evidence establishing that the applicant is a State entity as defined in this notice, was in existence as of November 9, 2000, and has the legal authority to enter into a financial assistance relationship with the federal government. Examples of supporting evidence of eligibility include a reference to or copy of the relevant state statute, regulation, executive order, or legal opinion.

3. Assessment of Needs and Estimates of Potential Beneficiaries. In concise narrative form, estimates of the number, location, and population of potentially eligible areas in the State, and their estimated fuel needs and costs. The applicant should describe the criteria it uses to identify eligible areas, including the characteristics that make fuel deliveries by surface transport impossible or impractical and contribute to high energy costs. The population estimates should be based on U.S. Bureau of Census publications, where available. The applicant may support its assessment with exhibits such as maps, summary tables, and references to statistical information from the Bureau of the Census, the Energy Information Administration, state agencies, or private sources. Inclusion of information identifying the population in eligible areas may qualify the applicant for additional scoring credits based on the rurality of the area to be served.

The applicant should provide any appropriate information on the economic challenges facing potential beneficiaries including whether the eligible areas include a Federally-identified Empowerment Zone or Enterprise Community (EC/EZ) or a USDA designated Champion Community. The list of currently approved EC/EZ may be found at the EZ/EC website at: *http://www.ezec.gov* or may be requested from the agency contact. The list of currently designated Champion Communities may be found on the EZ/EC website at *http://www.ezec.gov/Communit/champions.html* or requested from the agency contact.

4. Program Overview. The applicant should describe the applicant's existing or proposed State revolving loan fund program, its proposed criteria for establishing eligibility of projects and activities to be financed through the program, how the program will improve the cost-effectiveness of fuel supply acquisition for eligible areas, and its proposed methods for evaluating program performance. The description should address the following:

a. Revolving fund program structure and management including its organizational structure, method of funding, legal authority, loan management experience, staff resources, the goals and objectives of the program, and any related services provided to program participants. If the revolving fund program is not yet operational, a proposed implementation schedule and milestones should be included. The applicant may, but is not required to, supplement its brief description with attachments to its application, such as, for example, annual reports, brochures, and loan agreements.

b. Beneficiary eligibility and selection. A brief description of any requirements to qualify for funding and the criteria to be used in establishing eligibility of projects and activities to be financed through the program. The applicant should describe how the potential beneficiaries will be informed of the revolving fund availability.

c. Cost effectiveness of funded projects and activities. The applicant should explain how the proposed revolving loan fund program will help provide cost-effective means of meeting fuel supply needs in eligible areas. The applicant should identify aspects of its program that encourage adoption of financially sustainable energy practices, adequate planning and investment in bulk fuel facility operations and maintenance, and cost-effective investments in energy efficiency taking into account resources available and characteristics of energy use within the eligible areas. For example, the revolving fund could support loans to upgrade fuel handling and storage capability, to fund the advance purchase, delivery and storage of fuel, and to secure volume and other purchase discounts. Where possible, the applicant should estimate the amount of cost savings to be realized and provide some documentation or references to support its statements on savings and improved services. The applicant should also describe how it plans to evaluate program success in conformance with its goals and objectives.

5. Proposed budget for use of grant funds. A proposed budget should be submitted on SF 424A, "Budget Information—Non-Construction Programs." The budget identifies how the grant funds will be used. No more than 4 percent of the grant funds can be used for planning and administrative expenses of the revolving loan fund. The applicant should also identify the source and amount of any other funds that will be used to support and sustain the revolving fund activities. There is no requirement for supplemental or matching funds under this grant program; however, RUS will award additional selection points to applicants based on the ability to support and sustain the revolving fund, including through access to additional funding.

6. Any additional information that addresses the selection criteria or that the applicant believes relevant.

Part C. Additional Required Forms and Certifications

The Applicant shall execute and submit with the initial application the following forms and certifications establishing compliance with other federal requirements:

SF 424B, "Assurances—Non-Construction Programs"

SF LLL, "Disclosure of Lobbying Activities"

Form AD–1052, "Certification Regarding Drug-Free Workplace Requirements, States and State Agencies"

"Certification Regarding Debarment, Suspension and Other Responsibility Matter—Primary Covered Transactions" as required under 7 CFR part 3017, Appendix A.

These forms may be obtained from the Agency contact listed above or through the RUS website at *http://www.usda.gov/rus/electric/index.htm.*

Review of Applications

All applications for grants must be delivered to RUS at the address listed above or postmarked no later than August 6, 2001 to be eligible for FY 2001 grant funding. RUS will review each application for conformance with the provisions of this NOFA. RUS may contact the applicant for additional information or clarification. Incomplete applications will not be considered. Applications conforming with this NOFA will then be evaluated competitively by a panel of RUS employees selected by the Administrator and points awarded as described in the Evaluation Criteria and Weights Section below. After assigning points based on those criteria, the applications will be listed in rank order to the Administrator of RUS who will award the grants. The Administrator reserves the right to add 10 points to any proposal to ensure geographic distribution. Applications will then be funded in rank order until all available funds have been expended. If one or more applications are scored within 10 points of the application with the highest rank order, the RUS Administrator shall limit individual grant awards to $3,000,000 and fund such grant applications in rank order, except that the Administrator may exceed the $3,000,000 individual grant limit to ensure that grants are made in the aggregate amount of $5,000,000. RUS will advise applicants if it can not fully fund a grant request.

Selection Criteria and Weights

RUS will evaluate each application according to the selection criteria described in this NOFA and award points up to the maximum number indicated under each criteria.

1. Proposed Program Design (Maximum 20 Points)

Reviewers will consider the approach and viability of the applicant's program design, including the goals and objectives of the program, the proposed criteria for establishing eligibility of projects and activities for loans and financial assistance, and how the program will improve the cost-effectiveness of bulk fuel purchases. Reviewers will also consider the extent to which the proposal will promote the adoption of financially sustainable energy practices, adequate planning and investment in bulk fuel facility operations and maintenance, and cost-effective investments in energy efficiency taking into account the resources available and the characteristics of energy use within eligible areas. The reviewers will consider the applicant's proposed budget, the adequacy of resources, and the evidence of sound loan and financial management practices.

2. Assessment of Needs and Identification of Potential Beneficiaries (Maximum 20 Points)

Reviewers will consider the applicant's identification of potential beneficiaries, i.e. persons in eligible areas, the applicant's assessment of bulk fuel needs, the costs, including delivery costs of fuel for the beneficiaries, and the challenges to be addressed by the program. Information on the severity of physical and economic challenges affecting eligible areas will be considered.

3. Evaluation Methods (Maximum 10 Points)

Reviewers will consider the applicant's proposed measures to evaluate and report on the success and cost-effectiveness of projects and activities financed by the revolving loan fund and whether the results obtained will contribute to program improvements for the applicant or for other States seeking to implement similar programs.

4. Demonstrated Experience (Maximum 5 Points)

Reviewers will consider the past accomplishments and experience of the applicant, including whether the applicant has demonstrated experience in administering a revolving fund providing financing for bulk fuel purchases or facilities.

5. Comparative Rurality (Maximum 20 Points)

Reviewers will consider the rurality of the eligible areas proposed to be served with grant funds to assure that the needs of less densely populated rural areas are considered. For purposes of determining the rurality of the eligible area, applicants shall use the latest publications of the Bureau of the Census. If the majority of persons in eligible areas live outside of communities of 2,500 persons or more, the applicant will receive 15 points. If the majority of persons in eligible areas live outside of communities of 5,000 persons or more, the applicant will receive 10 points. If the majority of persons in eligible areas live outside of communities of 20,000 persons or more, the applicant will receive 5 points. If the majority of persons in eligible areas live in communities of more than 20,000 persons, the applicant will receive no points. Any proposal, however, that gives priority in assistance to projects that benefit persons living outside of communities of 2,500 or more will receive 5 additional points.

The following examples, each of which assumes a total population of 12,000 within eligible areas, illustrate how points will be awarded for comparative rurality under this criterion:

Case 1: There is one community of 4,000 within the eligible areas. The majority of persons (i.e. 8,000 of 12,000) live outside of communities of 2,500 or more. Award: 15 points.

Case 2: There are two communities. One has a population of 2,600; the other has 5,100. The majority of persons (i.e. 12,000 − 5,100=6,900) live outside of communities of 5,000 or more, but not outside of communities of 2,500 or more. Award: 10 points.

Case 3: There are two communities. One has a population of 2,000; the other has 7,000. The majority of persons (i.e. 7,000) live outside of communities of 20,000, but not outside of communities of 5,000. Award: 5 points.

6. Program Support (Maximum 5 Points)

Reviewers will consider the ability of the applicant to support and sustain the revolving fund, including access to additional funding sources. If the proposal includes additional funding from state or other sources to support the revolving fund, the maximum 5 points will be awarded.

7. Participation by EZ/EC (Maximum 10 Points)

Reviewers will consider whether the eligible areas include a Federally-identified Empowerment Zone and Enterprise Community (EC/EZ). If the eligible area includes at least one EC/EZ area, 10 points will be awarded. The list of currently approved EC/EZ areas may be found at the EZ/EC website at: *http://www.ezec.gov* or may be requested from the agency contact.

8. Participation by Champion Community (Maximum 8 Points)

Reviewers will consider whether the eligible areas include at least one community that is a USDA identified "Champion Community." If a Champion Community is included in the eligible areas, 8 points will be awarded. The list of currently approved USDA champion communities may be found at the EZ/EC website at http://www.ezec.gov/Communit/champions.html or may be requested from the agency contact.

Grantee Requirements

RUS will notify successful grantees of the awards. Successful applicants will

be required to execute a grant agreement satisfactory to RUS, complete additional forms, and otherwise comply with applicable federal statutes and regulations required by USDA. Among other matters, the grantee may be asked to provide information, documents, and agreements necessary to comply with applicable environmental regulations and will be required to provide periodic financial and performance reports and submit a final project performance report.

Other Federal Statutes and Regulations

Several other federal statutes and regulations apply to proposals considered for review and to the grant awarded. These include, but are not limited to:

7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3015—Uniform Federal Assistance Regulations.

7 CFR part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR part 3018—New Restrictions on Lobbying.

7 CFR part 3052—Audits of States, Local Governments, and Non-Profit Organizations.

Dated: July 2, 2001.

Blaine D. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 01–16971 Filed 7–5–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Treasury Rate Loan Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: On December 22, 2000, the Rural Utilities Service (RUS), United States Department of Agriculture (USDA), published a Notice of Funding Availability (NOFA) in the **Federal Register** at 65 FR 80830 announcing the availability of $500 million in direct Treasury rate electric loans for fiscal year (FY) 2001. RUS is distributing direct Treasury rate electric loans by offering those municipal rate electric loan applicants whose qualified applications were pending at the time of the enactment of Pub. L. 106–387 the option of selecting the direct Treasury rate in lieu of the municipal rate for their loans. RUS is contacting applicants in the order of priority that their applications for municipal rate loans would otherwise have been funded using the loan processing priorities published in 7 CFR 1710.119.

The NOFA stated that RUS expected the $500 million in available funding would be exhausted on or before July 1, 2001. As of June 15, 2001, RUS had approved $473 million of Treasury rate electric loans. Borrowers have committed to switch an additional $17 million of pending qualifying applications to the new program. It is anticipated that the remaining balance of funds available will come from the backlog of qualifying applications for loans from RUS under the Rural Electrification Act.

As of May 31, 2001, the backlog for municipal rate loans is approximately $ 426 million. With this fact in mind, RUS fully anticipates to obligate loans for the full amount of the Treasury rate program by September 1, 2001, as stated in the NOFA. Therefore publication of regulations to allocate the small balance currently outstanding will not be necessary.

FOR FURTHER INFORMATION CONTACT: Robert O. Ellinger, Chief, Policy Analysis and Loan Management Staff, U. S. Department of Agriculture, Rural Utilities Service, Electric Program, Room 4023 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560, Telephone: 202–720–0424, E-mail rellinge@rus.usda.gov.

Dated: June 28, 2001.

Blaine D. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 01–16972 Filed 7–5–01; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: Commission on Civil Rights.

DATE AND TIME: Friday, July 13, 2001, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda.

II. Approval of Minutes of June 8, 2001 Meeting.

III. Announcements.

IV. Staff Director's Report.

V. Recommendations to Congress for National Electoral Reform.

VI. "Federal Efforts to Eradicate Employment Discrimination in State and Local Governments" Report.

VII. Future Agenda Items.

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–17113 Filed 7–3–01; 3:20 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 001215359–0359–01]

RIN Number 0607–XX62

The Census 2000 Count Question Resolution Program

AGENCY: Bureau of the Census.

ACTION: Notice of Program.

SUMMARY: On January 22, 2001, the Bureau of the Census (Census Bureau) published in the **Federal Register** an initial notice relating to the Census 2000 Count Question Resolution (CQR) program (66 FR 6574). This notice provides information concerning the CQR program as well. The CQR program will address corrections for three types of challenges: (1) boundary corrections, (2) geocoding (geographic assignment) corrections, and (3) data processing corrections. (See the heading "Types of Corrections that will be Considered for the Census 2000 CQR Program" in the **SUPPLEMENTARY INFORMATION** section.) The CQR program is not a mechanism or process to challenge the March 6, 2001, decision of the Secretary of Commerce to release unadjusted numbers from Census 2000 for redistricting purposes; nor is it a mechanism or process to challenge or revise the numbers sent to the President on December 28, 2000, to be used to apportion the U.S. House of Representatives.

The CQR program procedures include researching challenges and, as appropriate, making corrections and issuing revised official population and housing unit counts, which also will be used for the Census Bureau's Postcensal Estimates program. Challenges will not be accepted to the overseas counts of persons in the military and federal civilian personnel stationed overseas and their dependents living with them.

Overseas counts are obtained using administrative records and will be used solely for reapportioning seats in the U.S. House of Representatives, and do not provide the sub-state geographic information required for the CQR program.

The Census Bureau will only accept challenges from officials of state, local, and tribal governments or those representing them or acting on their behalf. All challenges should be sent to the Census Bureau's headquarters. (The specific mailing address and a glossary of terms are provided in the section entitled "Exhibit—Additional Information" at the end of this notice's **SUPPLEMENTARY INFORMATION** section.)

Corrections made to the population and housing unit counts by this program will result in the issuance of new official Census 2000 counts to the officials of governmental entities affected by these corrections and may be used by the governmental entities for future programs requiring official Census 2000 data. These corrections also will be:

- used specifically to modify the decennial census file for use in yearly postcensal estimates beginning in December 2002, and
- included in the errata information to be made available via the Internet on the *American FactFinder* System.

We will NOT incorporate the CQR corrections into Census 2000 data products.

All corrections will be made on the basis of appropriate documentation provided by the challenging entities and a thorough research and review of the official Census 2000 records by the Census Bureau. No additional data will be collected as part of the CQR program. We will only use data already collected. The Census Bureau will respond to all questions and will notify all affected governmental entities of any corrections to their official counts as a result of a CQR program decision.

EFFECTIVE DATE: This program will become effective on June 30, 2001, and will end on September 30, 2003.

FOR FURTHER INFORMATION: Robert A. Rinaldi, Assistant Division Chief, Decennial Management Division, Count Question Resolution, U.S. Census Bureau, Room 2002/2, 4700 Silver Hill Road, Stop 7100, Washington, DC 20233–7100. Telephone: 1–866–546–0527 (toll free); Fax: 301–763–0260; or E-mail: *Count.Question.Resolution@census.gov*

SUPPLEMENTARY INFORMATION:

Background Information

The Census Bureau implemented the Local Update of Census Addresses (LUCA) program for Census 2000. Participating state, local, and tribal governments were given the opportunity to review and update the Census Bureau's address list in mail response areas before it was used for the actual census enumeration. In cases where the state, local, or tribal government and the Census Bureau could not agree on the housing unit address list, the governmental unit could use an appeal process administered by the Census Address List Appeals Office. The Census Bureau also used the LUCA Special Places program to involve state, local, and tribal governments in helping to identify special places, such as college dormitories, nursing homes, and other types of group living arrangements.

Governmental units in areas where the Census Bureau used city-style addresses to mail census questionnaires, in addition to the LUCA, had another opportunity to update their Census 2000 address lists via the New Construction Program. We also conducted the Boundary Validation Program in which we provided state, local, or tribal officials with maps that showed the January 1, 2000, boundaries of their jurisdiction and asked them to make corrections, if necessary.

The Census Bureau had a number of extensive operations that afforded opportunities for additions, corrections, and deletions of census addresses and corrections of population counts. Between May and August 2000, the Coverage Edit Follow-Up Operation resolved population count discrepancies and obtained additional information on households with more than six persons. The Coverage Improvement Follow-Up (CIFU) Operation (June–August 2000) was designed to improve coverage of housing units that may have been inaccurately classified as vacant or nonexistent in an earlier census operation. Additionally, housing unit additions discovered during the Update/Leave and Urban Update/Leave questionnaire delivery operations, during periodic Delivery Sequence File updates from the United States Postal Service, and through the LUCA appeals process are enumerated in CIFU. Addresses submitted via the New Construction Program by local and tribal governments were visited by enumerators for the first time during CIFU.

During July and August 2000, the Residual Nonresponse Follow-Up Operation completed questionnaires for housing units where identification numbers existed for forms that were checked out of the Local Census Office, were not included in the CIFU, and did not have census data captured. The Field Verification Operation (July–August 2000) verified specific addresses that did not match the Decennial Master Address File. Another operation was conducted from July through August 2000, to determine the number of people in housing units that the Nonresponse Follow-Up Operation (April–June 2000) had identified as occupied, but the number of occupants were unknown.

Data collection for Census 2000 ended in the Local Census Offices on or before August 30, 2000. This schedule allowed the Census Bureau time to produce the state level apportionment counts by December 31, 2000, as required by law.

Independent of Census 2000, the Census Bureau conducted the Accuracy and Coverage Evaluation (A.C.E.) operation that included a coverage measurement survey that was expected to determine and correct for the number of people and housing units missed or erroneously included in Census 2000. This was a nationwide sample survey of about 314,000 housing units. All enumeration activities, as well as personal interview follow-ups, were completed by late November 2000.

Although many state, local, and tribal governments participated in the LUCA and New Construction programs and the Census Bureau conducted an extensive quality improvement program, the Census Bureau still expects to receive challenges after it releases the official Census 2000 housing unit and group quarters population counts contained in the Demographic Profiles, which are scheduled for release between May and July 2001. The CQR start date of June 30, 2001, also is coordinated with the release of the Summary File 1 (SF1) on a state-by-state basis between June and September 2001. The SF1 will provide block-level data containing the number of housing units. It also will show group quarters population counts by block.

State, local, and tribal government officials must contact the Census Bureau directly to initiate the challenge process. (The specific mailing address is provided in the section entitled "Exhibit—Additional Information" at the end of this notice.) The Census Bureau will accept challenges from various officials including county clerks, city planners, local planning board representatives, tribal councils, and state legislative representatives with redistricting functions within each state and state equivalents who are acting on

the behalf of a state, local, or tribal entity.

Program Requirements:

Administrative Procedures Act and Regulatory Flexibility Act

This rule of agency procedure is not subject to the requirement to provide prior notice and opportunity for public comment (see 5 U.S.C. 553 (b)(A)). Because a notice of proposed rulemaking and an opportunity for public comment are not required by Title 5, United States Code (U.S.C.) 553 or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603 (a)).

Executive Orders

This notice has been determined to be not significant for purposes of Executive Order (E.O.) 12866. This program does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C., chapter 35, unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, OMB approved the survey under control number 0607–0879. The estimated burden hours are 15,600.

Types of Corrections that will be Considered for the Census 2000 CQR Program

Corrections for three types of challenges will be considered as a result of the Census 2000 CQR program. (For acceptable documentation to initiate such challenges, refer to the section "Criteria for Acceptable Documentation Necessary to Initiate the Census 2000 CQR Process.")

(1) *Boundary corrections*—Census 2000 respects the proper alignment of the boundaries of actively functioning governmental units and legal administrative areas within governments as legally in effect on January 1, 2000. Census 2000 also uses the boundaries of statistical entities that serve as the surrogates for a legal entity for selected entities as submitted and verified in statistical areas programs. The Census Bureau needs to ensure that the geographic assignment information provided does not, in fact, reflect legal boundary changes made after January 1, 2000 or statistical boundary changes after verification. Problems, such as the inaccurate reporting of legal or statistical area boundaries and the inaccurate recording of such boundaries by the Census Bureau, will be addressed by the CQR program. The boundaries of other geographic areas, such as most census designated places, census tracts, voting districts, school districts, and similar areas are not in the scope of the Census 2000 CQR program. See question "3" in the section entitled "Exhibit—Additional Information" for specific information concerning the geographic entities for which challenges will be processed.

(2) *Geocoding corrections*—These corrections affect the placement of living quarters and associated population within the correct boundaries or census block. Even if the CQR process does not result in a change to the total count for a state, local, or tribal jurisdiction, we will send a letter to the state, local, or tribal government official with a CQR submission when the Census Bureau moves group quarters or housing units to different blocks within the jurisdiction.

(3) *Data Processing corrections*—This category includes data on specific living quarters and persons residing therein that were identified and collected during the Census 2000 process but erroneously included or excluded due to processing errors.

Corrected CQR counts issued will be based on the housing unit and population counts as of April 1, 2000, and may be used by governmental entities for all programs requiring official Census 2000 data. The CQR program is not a mechanism or process to challenge the March 6, 2001, decision of the Secretary of Commerce to release unadjusted numbers from Census 2000 for redistricting purposes; nor is it a mechanism or process to challenge or revise the numbers sent to the President on December 28, 2000, to be used to apportion the U.S. House of Representatives. The Census Bureau will not make corrections to the data concerning the characteristics of the population and housing inventory. The corrected counts will be reflected in the Census Bureau's decennial file modified for use in making postcensal estimates that will be released on a flow basis beginning in December 2002. An inventory of corrections also will be available on the *American FactFinder* Internet Data Access System (errata) and updated periodically. Base files for the Census 2000 will remain unrevised so that none of the standard Census 2000 data products will reflect the corrections.

Challenges that do not Result in Corrections

When a state, local, or tribal government provides evidence that the Census Bureau missed housing units or group quarters that existed on April 1, 2000, but the CQR research and Census 2000 records show that all of the Census Bureau's boundary information, geocoding, and processing were correctly implemented, the Census Bureau will respond by sending a letter to the official or his/her representative stating that the Census Bureau will maintain the documentation for consideration in the context of address list updating activities over the decade.

Internal Census Bureau Review

Changes to the boundaries or counts for a legal entity or statistical equivalent also may result from Census Bureau initiated research and review of census files. The Census Bureau reviews Census 2000 data by checking for data reasonableness, internal and intra-product consistency, and consistency with historical and external data sources. This review process begins with an analysis by Census Bureau staff, the federal-State Cooperative Program for Population Estimates, and others. Reviewers identify, address, and/or explain issues or problems related to coverage, content, processing, and geocoding. Unresolved potential problems will be forwarded to the CQR staff for additional analysis. Changes made as result of this internal review and/or research will be incorporated into the CQR process and documented the same as changes based on jurisdictional CQR challenges. For those cases where changes to the housing unit and/or population counts are made, new official counts will be issued to the affected jurisdictions.

Criteria for Acceptable Documentation Necessary to Initiate the Census 2000 CQR Process

The Census Bureau will require documentation before committing resources to investigate concerns raised by state, local, and tribal officials or their representatives about boundary and geographic assignment errors or the accuracy of the census housing unit or group quarters population counts. In general, when submitting a challenge, governmental entities must:

- Specify whether the challenge disputes the location of a boundary or the number of housing units and/or group quarters population counts in one or more tabulation blocks or both the boundaries and housing/unit group quarters population counts.

• For boundary disputes, indicate on a map the location of the boundary in dispute; that is, it must be shown where the Census Bureau incorrectly depicts the boundary and show the correct boundary legally in effect as of January 1, 2000, or delineated for a statistical entity for Census 2000. For those boundary disputes that also will affect housing units or group quarters population counts, the governmental unit also needs to follow the rules for those types of challenges where the new boundary splits a Census 2000 tabulation block. (For types of maps that can be used, refer to the section "Types of Acceptable Paper Maps.")

• For housing unit challenges, identify the specific county, census tract, and Census 2000 tabulation block(s) that is being contested and provide a list of addresses of all housing units in that block on April 1, 2000. (See the section "Challenge Criteria: Housing Unit Count.")

• For group quarters (see Census Bureau group quarters definition listed under "Definition of Key Terms") challenges, provide the name of the group quarters and evidence, e.g., a listing of patients residing in the XYZ Nursing Home as of April 1, 2000, that supports the number of persons residing there on April 1, 2000.

Show the specific county, census tract, and Census 2000 tabulation block in which the group quarters population is being contested.

• Provide electronic or paper versions of documentation to support the challenge.

Boundary Challenge Criteria

All boundary challenges must be based on boundaries that were legally in effect on January 1, 2000, or submitted and verified as the correct boundaries of statistical areas for use in Census 2000. The Census Bureau will compare the maps and appropriate supporting documentation submitted by the challenging entity with information used by the Census Bureau to depict the boundaries for Census 2000.

Maps submitted by state, local, and tribal governments must show the correct location of the boundary and the portion of the boundary that the Census Bureau depicted incorrectly, including the county, census tract number, and Census 2000 tabulation block numbers associated with the boundary correction area. The state, local, or tribal government also should provide the Census Bureau with a list of addresses in affected tabulation blocks, indicating their location in relationship to the boundary requiring correction.

For boundary changes effected by legal actions not recorded by the Census Bureau, state and local governments must submit the effective date and ordinance number or law that resulted in the boundary change, provide evidence that the state certifying official has approved the boundary change (if a municipal boundary), and provide a statement that the boundary is not under litigation. The change also must be certified in writing, on each map, by an official of the state, local, or tribal government. Tribal governments must submit documentation of the federal law, executive order, deed of trust, or other type of legal action that effected a legal change in reservation or off-reservation trust land boundaries, and a statement that the boundary is not under litigation. Regardless of whether the Census Bureau changes boundaries or does not change boundaries as a result of the CQR evidence and the Census Bureau's research, the Census Bureau will notify the complainant and any affected adjacent governmental entity(es) of the results.

Types of Acceptable Paper Maps

• Paper Census 2000 Public Law 94–171 County Block Maps—These maps are based on a county or statistically equivalent entity and accompany the Redistricting Data Summary Files.

• Paper Census 2000 Redistricting Municipio Block Maps for Puerto Rico—These maps are municipio-based and accompany the Puerto Rico Redistricting Data File.

• Paper Census 2000 Block Maps—These are entity based maps provided to state, local, and tribal jurisdictions and show tabulation block numbers. They are a companion map for the Demographic Profiles that will contain information on population totals, including group quarters and selected population and housing characteristics.

• Paper Maps based on the 2000 TIGER/Line® File—These user-defined maps are generated by state, local, or tribal governments based on information from the Census Bureau's 2000 TIGER/Line® files using commercial geographic information systems. These maps must identify the state, county and/or statistical equivalent, census tract, tabulation block, and any other legal or statistical entity boundary or code involved in a challenge. If a challenge involves an American Indian reservation or off-reservation trust lands, the maps must identify the American Indian area, census tract, and tabulation block boundary.

• Other Paper Maps Showing Census Bureau 2000 Tabulation Block Numbers and Boundaries—These maps must identify the state, county and/or statistical equivalent, census tract, tabulation block, and any other legal or statistical entity boundary or code involved in a challenge. If a challenge involves an American Indian reservation or off-reservation trust lands, the maps must identify the American Indian area, census tract, and tabulation block boundary. In general, local-or-tribal-created paper maps should be comparable to Census 2000 maps.

Challenge Criteria

Housing Unit Count

Supporting evidence that specifically reflects the validity of any address list source must reflect residential addresses that existed as viable living quarters on April 1, 2000. Challenges to housing unit counts must specify the county or statistically equivalent entity, census tract(s), and tabulation block(s) for which the counts are being challenged.

SF1 can be used to obtain tabulation block housing unit counts. Complainants must provide a complete address list for all units that should be included in each contested block. (Refer to the section "Types of Address Lists.")

State, local, or tribal officials must certify that the addresses on their lists existed and could be lived in on April 1, 2000. See the Census Bureau's "housing unit" definition listed under the section, "Definitions of Key Terms."

Group Quarters Population Count

Supporting evidence should reflect the validity of any address list source dated no later than April 1, 2000. Challenges to group quarters population counts must identify the county or statistically equivalent entity, the census tract, and the tabulation block(s) for which the counts are being challenged. A group quarters is defined as a place where people live or stay other than the usual house, apartment, or mobile home. Two general types of group quarters are recognized: institutional (for example, nursing homes, mental hospitals/wards, hospital/wards for chronically ill patients, hospices, and State prisons) and noninstitutional (for example, college or university dormitories, military quarters, military barracks, group homes, and halfway houses). Special places and group quarters may have housing units on the premises for staff and/or guests.

SF1 can be used to obtain tabulation block group quarters population counts. Jurisdictions must provide a complete address list (refer to the section "Types of Address Lists") for all group quarters

units that should be included in each contested block. (For the definition of group quarters, see the section "Definitions of Key Terms.")

The state, local, or tribal official should certify that the addresses for group quarters on their lists were viable living quarters on April 1, 2000.

Types of Address Lists

- City-Style Address Lists—These lists must contain city-style addresses (house number, street name, Post Office name, state, and ZIP Code) identifying the county or statistically equivalent entity and organized by Census 2000 tabulation block within census tract. Housing unit identifiers in multiunit buildings (such as apartment numbers) must be included, if applicable.
- Non-City-Style Address Lists—Non-city-style addresses must be keyed to the state, local, or tribal government's map-spotted maps, that is, maps that show the exact location of the housing unit. The list should be focused on the specific area and/or addresses where the problem exists. All housing units in the disputed block must be map spotted, that is, the location of each housing unit must be marked on a map with a dot and given a corresponding number for identification purposes and a description of the housing unit and location must be supplied. The following is an example of a map-spotted address and housing unit description: Map Spot 4567–01, Derby Road, 2-story house on left with red brick chimney, ½ mile from the intersection of Highways 12 and 19, Anytown, Georgia 10020.

Group Quarters Information

Provide the name, address, and telephone number for the administrative office of the facility (special place and group quarters) as of April 1, 2000. In addition, provide the county or statistically equivalent entity, census tract, and tabulation block number for the location of the group quarters.

Census Bureau Actions

The Census Bureau will investigate challenges to determine whether information about the existence of a housing unit or occupied group quarters on April 1, 2000, was identified but does not appear in the final census files due to an error in processing the information. The Census Bureau will not collect new information.

Definitions of Key Terms

American FactFinder—The generalized electronic system for access and dissemination for much of the Census Bureau's data. The system is available through the Internet and offers prepackaged data products and the ability to build custom products. The system serves as the vehicle for accessing and disseminating data from Census 2000 (as well as the 1997 Economic Censuses and the American Community Survey).

Block (census block)—A geographic area bounded on all sides by visible features such as streets, roads, streams, and railroad tracks, and occasionally by non-visible boundaries such as city, town, or county limits. Blocks do not cross census tract or block numbering area boundaries. A block is the smallest geographic entity for which the Census Bureau tabulates decennial census information.

Census Tract—A small, relatively permanent statistical subdivision of a county in a metropolitan area or a selected non-metropolitan county, delineated by a local committee of census data users for the purpose of tabulating and presenting decennial census data. Census tract boundaries normally follow visible features, but may follow governmental unit boundaries and other non-visible features. Census tracts generally contain between 1,000 and 8,000 people, and average about 1,700 housing units and 4,000 people.

Census Designated Place—A geographically defined statistical entity delineated for each decennial census according to Census Bureau guidelines comprising a densely settled concentration of population that is not incorporated or established by law but is locally recognized and identified by a name.

County—A type of governmental unit that is the primary legal subdivision of every state except Alaska and Louisiana. Alaska has boroughs, census areas, city and boroughs, and municipalities. Louisiana has parishes.

Demographic Profile—A one-page table containing data for a geographic entity that provides information on total population, sex, age, race, Hispanic or Latino origin, household relationship, group quarters population, household type, housing occupancy, and housing tenure.

Group quarters—A place where people live or stay other than the usual house, apartment, or mobile home. The Census Bureau recognizes two general types of group quarters are recognized: institutional (for example, nursing homes, mental hospitals/wards, hospital/wards for chronically ill patients, hospices, and State prisons) and noninstitutional (for example, college or university dormitories, military quarters, military barracks, group homes, and halfway houses). Special places and group quarters may have housing units on the premises for staff and/or guests.

Housing unit—A house, an apartment, a mobile home or trailer, a group of rooms, or a single room that is occupied as a separate living quarters, or, if vacant, is intended for occupancy as a separate living quarters. A housing unit is defined as a living quarters that is closed to the elements and has all exterior windows and doors installed and final usable floors in place. For vacant units, the criteria of separateness and direct access are applied to the intended occupants, whenever possible. If that information cannot be obtained, the criteria are applied to the previous occupants.

Local Census Office—A temporary Census Bureau office established for Census 2000 data collection purposes. These offices managed address listing field work, conducted local recruiting, administered census taking, and created a local presence. They were called "district office" in previous censuses.

Municipio—A primary legal subdivision of Puerto Rico (synonymous to a county).

Overseas counts—Counts of military and federal civilian personnel stationed overseas and their dependents living with them.

Postcensal Estimates—Population estimates for the years following the last published decennial census. Existing data series, such as births, deaths, federal tax returns, medicare enrollment, and immigration and housing unit information are used to update the decennial census counts during the estimating process. These estimates are used in federal funding allocations, monitoring recent demographic trends, and benchmarking many federally funded survey totals.

Public Law 94–171—The federal law amending Section 141 of Title 13 directing the Secretary of Commerce (who delegates that responsibility to the Director of the Census Bureau) to provide selected decennial census data tabulations to the states by April 1 of the year following the census. These tabulations are used by the states to redefine the areas included in each congressional district and the areas used for state and local elections, a process called redistricting.

Special Place—A place containing one or more group quarters, including hotels and campgrounds. A special place also may include housing units occupied by staff or guests.

Summary File 1—A data file that presents counts and basic cross-tabulations of information collected

from all people and housing units. This information includes age, sex, race, Hispanic or Latino origin, household relationship, and whether the residence is owned or rented. Data will be available down to the block level for many tabulations, but limited to the census tract level in cases where there are concerns with disclosure. Summaries also will be included for most other geographic areas, such as places, county subdivisions, ZIP Code tabulation areas and 106th congressional districts.

Exhibit—Additional Information

This section provides additional information on how the Census 2000 CQR program will operate.

1. Where should a governmental unit submit a challenge for the Census 2000 CQR program?

Governmental units challenging the completeness or accuracy of the Census 2000 counts should submit their challenge in writing to: U.S. Census Bureau, Room 2002/2, Decennial Management Division, Count Question Resolution 4700 Silver Hill Road, Stop 7100, Washington, DC 20233–7100.

2. Will the Census Bureau make corrections to the census counts based on information submitted by governmental units?

The Census Bureau will make corrections if research indicates they are warranted. Our experience has shown that many of the questions received from the state, local, or tribal officials do not reflect errors in census counts. Questions may result from an incorrect or incomplete understanding of the procedures used to take the census. In other instances, questions about census counts reflect a state, local, or tribal official's reliance on different enumeration concepts, definitions, geographic assignments, and/or the currency of the information in comparison to the census. The Census Bureau's determination of whether a correction is necessary will be based on the quality and completeness of the information provided by state, local, and tribal governmental unit representatives and the results of the Census Bureau's review of the census records.

3. For what types of geographic entities can CQR challenge be submitted and which entities are eligible to submit a CQR challenge?

An executive official or other official acting on the behalf of a local or tribal government must submit the CQR challenge to the Census Bureau.

The Census Bureau will research and, if necessary, correct the counts for:

- Counties and statistically equivalent entities.
- Minor civil divisions.
- Incorporated places, including consolidated cities.
- Census designated places in Hawaii and Puerto Rico only.
- Federally recognized American Indian reservations and off-reservation trust lands.
- American Indian tribal subdivisions.
- State recognized American Indian reservations (submitted by a state official).
- Alaska Native Regional Corporations.
- Statistical areas defined for American Indian tribes:
  - Tribal designated statistical areas;
  - Alaska Native village statistical areas;
  - Oklahoma tribal statistical areas;
  - State designated American Indian statistical areas (submitted by a state official); and
  - Hawaiian home lands (submitted by a state official).

The Census Bureau will not process challenges for any other types of statistical or legally defined areas.

4. Will the Census Bureau incorporate corrections from the CQR process into the apportionment or redistricting data or subsequent data products?

The Census Bureau will not change the apportionment or redistricting counts to reflect corrections resulting from the CQR process. In accordance with the law, apportionment counts were delivered to the President on December 28, 2000, and the counts required for redistricting were delivered to the states by April 1, 2001.

CQR corrections also will not be incorporated in subsequent data products for Census 2000. This will allow the Census Bureau to maintain consistency between data products while maintaining the schedule for timely release of the data. However, the Census Bureau will issue a revised official Census 2000 population and housing unit counts for the affected governmental entity(es), maintain a list of CQR corrected areas on the *American Factfinder*, and will incorporate any corrections into its Postcensal Estimates program beginning in December 2002.

Dated: June 18, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 01–16868 Filed 7–5–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 28–2001]

Foreign-Trade Zone 110—Albuquerque, New Mexico Application for Expansion and Relocation

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the City of Albuquerque, New Mexico, grantee of Foreign-Trade Zone 110, requesting authority to expand and relocate its general-purpose zone in Albuquerque, New Mexico, within the Albuquerque Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 28, 2001.

FTZ 110 was approved on October 30, 1984 (Board Order 279, 49 FR 44516, 11/7/84), along with Subzone 110A at the SP Pharmaceuticals facilities (approved as Summa Medical Corporation). The general-purpose zone project currently consists of 2 acres with an existing 50,000 square foot warehouse at 1414—12th Street, NW., in Albuquerque.

The applicant is requesting authority to relocate its general-purpose zone (2 acres) from its current location at 1414—12th Street in Albuquerque to 62 acres adjacent to the 2,300-acre Albuquerque International Sunport airport complex, between University Boulevard and Spirit Drive in Albuquerque. The new location is designed to serve the region's international and related logistics and cargo activities. The site is owned by the City and will be operated by the City's Aviation Department. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 4, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 19, 2001).

A copy of the application and accompanying exhibits will be available

for public inspection at each of the following locations:
Albuquerque International Sunport Administrative Offices, Third Level, 2200 Sunport Boulevard SE, Albuquerque, NM 87106
Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: June 28, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–16977 Filed 7–5–01; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–805]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 8, 2001, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on aramid fiber from the Netherlands. The review covers one manufacturer/exporter. The period of review (POR) is June 1, 1999, through December 31, 1999.

We received no comments from interested parties on our preliminary results. We have made no changes to the margin calculation. Therefore, the final results do not differ from the preliminary results, where we found that sales of the subject merchandise were made below normal value. The final weighted-average dumping margin for Twaron is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: David Salkeld or Michael Grossman, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2000).

Background

On March 8, 2001, the Department published the preliminary results of the administrative review of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide (PPD-T aramid) from the Netherlands. *See Preliminary Results of Antidumping Duty Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands*, 66 FR 13879 (March 8, 2001) (*Preliminary Results*). The review covers one manufacturer/exporter, Teijin Twaron BV (formerly Twaron Products V.o.F.), and its U.S. affiliate, Teijin Twaron USA, Inc. (formerly Twaron Products, Inc.) (collectively Twaron).

On February 8, 2001, the U.S. International Trade Commission (ITC) determined in the five-year (sunset) review that revoking the existing antidumping order on imports of PPD-T aramid from the Netherlands would not likely lead to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of the ITC's negative determination, the existing antidumping duty order on imports of this product was revoked retroactive to January 1, 2000. *See Revocation of Antidumping Duty Order on Aramid Fiber Formed of Poly Para-Phenylene Terepthalamide from the Netherlands*, 66 FR 14540 (March 13, 2001) (*Revocation Notice*). Therefore, our review covers sales of this merchandise to the United States during the period June 1, 1999, through December 31, 1999.

Interested parties did not submit case briefs nor did they request a hearing. There have been no changes since the *Preliminary Results*.

Scope of Review

The products covered by this review are all forms of PPD-T aramid from the Netherlands. These consist of PPD-T aramid in the form of filament yarn (including single and corded), staple fiber, pulp (wet or dry), spun-laced and spun-bonded nonwovens, chopped fiber, and floc. Tire cord is excluded from the class or kind of merchandise subject to this order. This merchandise is currently classifiable under the *Harmonized Tariff Schedule of the United States* (*HTSUS*) item numbers 5402.10.3020, 5402.10.3040, 5402.10.6000, 5503.10.1000, 5503.10.9000, 5601.30.0000, and 5603.00.9000. The *HTSUS* item numbers are provided for convenience and Customs purposes. Our written description of the scope remains dispositive.

Final Results of Review

We received no comments from interested parties on our preliminary results. In addition, we have determined that no changes to our analysis are warranted for purposes of these final results. The final weighted-average percentage margin for Twaron for the period June 1, 1999, through December 31, 1999 is as follows:

Manufacturer/exporter	Margin (percent)
Twaron	1.03

Assessment

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an importer-specific assessment rate by dividing the total amount of antidumping duties calculated for the importer-specific sales by the total entered value of those same sales. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise.

Furthermore, as a result of the ITC's negative sunset review determination with regard to PPD-T aramid from the Netherlands, the Department has revoked the antidumping duty order for this case, effective January 1, 2000, and we instructed the Customs Service to terminate suspension of liquidation for all entries of subject merchandise made on or after January 1, 2000. *See Revocation Notice*, 64 FR 14540. Therefore, we will not issue cash deposit instructions to Customs based on the results of this review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's

presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: June 28, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–16976 Filed 7–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–812]

Notice of Postponement of Final Antidumping Determination and Extension of Provisional Measures: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Postponement of final antidumping determination and extension of provisional measures.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Ronald Trentham at (202) 482–3936 or (202) 482–6320, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act), as amended, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all citations to the Department of Commerce (the Department) regulations are to 19 CFR Part 351 (April 2000).

Background

On May 3, 2001, the Department issued its affirmative preliminary determination in the antidumping duty investigation of certain hot-rolled carbon steel flat products (HRS) from Indonesia. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia*, 66 FR 22163 (May 3, 2001). This notice stated that we would issue our final determination in this investigation not later than 75 days after the date of the preliminary determination.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months. On May 25, 2001, PT Krakatau Steel (Krakatau), the respondent in this investigation, requested that the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and requested that the Department extend provisional measures to a period not to exceed six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the respondent requesting the postponement accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting Krakatau's request and are postponing the final determination until not later than 135 days after the publication of the preliminary determination in the **Federal Register**. Suspension of liquidation will be extended accordingly. *See* Memorandum from Holly A. Kuga to Bernard T. Carreau, "Postponement of Final Antidumping Determination and Extension of Provisional Measures," dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce building.

This notice is published in accordance with section 735(a)(2) of the Act and 19 CFR 351.210(g).

Dated: June 28, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–16975 Filed 7–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Amended Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Katherine Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Amendment to Final Results

In accordance with section 751(a) of the Act, on June 11, 2001, the Department published the final results of the 1998–2000 administrative and new shipper reviews of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC), in which we determined that certain U.S. sales of the subject merchandise were made at less than normal value (66 FR 31204). On June 11, 2001, we received an allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from the petitioner, the Coalition for

Fair Preserved Mushroom Trade,[1] that the Department made ministerial errors in its final results. The respondents did not comment on the alleged ministerial errors.

After analyzing the petitioner's submission, we have determined, in accordance with 19 CFR 351.224, that ministerial errors were made in our final margin calculations for the administrative review respondents China Processed Food Import & Export Co. (China Processed) and Gerber Food (Yunnan) Co. (Gerber), and the new shipper review respondent Raoping Xingyu Foods, Ltd. (Raoping). Specifically: (a) We did not include some of China Processed's revised data in our final results calculations; (b) we incorrectly calculated the brokerage expense in calculating the U.S. price for Gerber; and (c) we did not apply the correct surrogate value ratios for selling, general, and administrative expenses and profit in our calculation of normal value for Raoping. For a detailed discussion of the ministerial errors, as well as the Department's analysis, see the memorandum to Louis Apple from the Team, dated June 22, 2001.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final results of the 1998–2000 antidumping duty administrative and new shipper reviews of the order on certain preserved mushrooms from the PRC. The revised dumping margins are as follows:

Exporter/manufacturer	Original final margin percentage	Revised final margin percentage
China Processed Food Import & Export Co.	0.00	[1] 0.00
Gerber Food (Yunnan) Co.	111.04	121.33
Raoping Xingyu Foods Co., Ltd.	47.61	47.80

[1] We will notify the Customs Service of the revised cash deposit rates for these companies.

Scope of the Order

The products covered by the order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under the order are the species Agaricus bisporus and Agaricus bitorquis. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of the order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms'; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[2]

The merchandise subject to the order is currently classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

These amended final results of administrative and new shipper reviews and notice are in accordance with section 751(h) of the Act and 19 CFR 351.224(e).

Dated: June 28, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–16974 Filed 7–5–01; 8:45 am]

BILLING CODE 3510–DS–P

[1] The Coalition for Fair Preserved Mushroom Trade includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Toughkenamon, PA; Monterey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

[2] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. See "Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Survey of Advanced Technology Program Joint Venture Participants

ACTION: Proposed collect; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 4, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 1401 Constitution Avenue, NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Barbara Lambis, National Institute of Standards and Technology, 100 Bureau Drive, Stop 4700, Administration Building, Room A333, Gaithersburg, MD, 20899–4700. (Tel: 301–975–4447; E-mail: barbara.lambis@nist.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is for program evaluation of the Advanced Technology Program (ATP). Encouraging R&D collaboration to address technology challenges that have far-reaching industry-wide benefits is a key mission of the ATP. In ATP Joint Ventures, large companies, small companies, universities, and other organizations join together to carry out R&D projects that require the complementary expertise and capabilities of a wide range of firms and organizations. This information collection from ATP Joint Venture participants will address important issues relating to the characteristics and success of ATP Joint Ventures.

II. Method of Collection

Telephone interviews.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Businesses, non-profit organizations, and educational institutions.
Estimated Number of Respondents: 400.
Estimated Time Per Response: 30 minutes per response.
Estimated Total Annual Burden Hours: 200.
Estimated Total Annual Cost: 0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 2, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–16979 Filed 7–5–01; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Performance Reporting System (PRS) for the Technology Opportunities Program (TOP)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 4, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 1401 Constitution Avenue NW, Washington, DC 20230 (or via the Internet mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Clifton Beck, NTIA, Room H–4888, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230 (or via the Internet cbeck@ntia.doc.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the Technology Opportunities Program (TOP), formerly the Telecommunications and Information Infrastructure Assistance Program (TIIAP), is to promote the widespread and efficient use of advanced telecommunications services in the public and non-profit sectors to serve America's communities.

The program has the following objectives:

- To promote the widespread availability and use of digital network technologies;
- To increase the awareness in public and non-profit sectors of digital networking technologies and their benefits;
- To stimulate public and non-profit sector organizations to examine potential benefits of, and plan for, investments in digital network technologies;
- To provide a wide variety of model digital network technology projects for public and non-profit sector organizations to follow;
- To educate the public and non-profit sectors about best practices in implementing a wide variety of digital network projects; and,
- To help reduce disparities in access to, and use of, digital network technologies.

The National Telecommunications and Information Administration (NTIA), in administering TOP, has awarded 456 grants, in all 50 states, the District of Columbia, and the U.S. Virgin Islands. In order to ensure that grant recipients are effectively promoting the efficient and widespread use of advanced telecommunications services to serve American communities and to comply with the Government Performance and Results Act, NTIA will collect and analyze quantitative and qualitative data relating to start-up documentation, quarterly and annual progress reports, and close-out documentation on TOP-funded projects.

NTIA seeks a mechanism whereby it can evaluate the impacts of its projects on an ongoing basis, monitor grants more efficiently and effectively, and provide timely technical assistance to grant recipients. To enable the Program to monitor and to analyze the impacts of the funded projects, TOP seeks to incorporate standardized quantitative and qualitative data elements into an online structured reporting system. The reporting system will include a set of core data elements that apply to all projects.

II. Method of Collection

Data will be collected through the use of automated collection techniques. The information collection instrument to be used for this study will include a web-based structured reporting system for both quantitative and qualitative project information.

III. Data

OMB Number: 0660–0015.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: State, Local, and Tribal Government and Non-Profit Institutions.
Estimated Number of Respondents: 50.
Estimated Time Per Response: Start-Up Documentation, 20 hours; Progress Reports, 4 hours; Annual Report, 0.5 hours; Final Closeout Report, 20 hours.
Estimated Total Annual Burden Hours: 2,807.
Estimated Total Annual Cost to the Public: 0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents.

Comments submitted in response to this notice will be summarized and/or included in the request of OMB approval of the information collection; they also become a matter of public record.

Dated: July 2, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–16978 Filed 7–5–01; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Bangladesh

June 29, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 341 and 363 are being increased for the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69910, published on November 21, 2000.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 29, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on July 6, 2001, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
341	3,306,791 dozen.
363	34,632,734 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–16930 Filed 7–5–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit and Sublimit for Certain Cotton Textile Products Produced or Manufactured in the United Arab Emirates

June 29, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit and sublimit.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 338/339 and the sublimit for Categories 338–S/339–S are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66974, published on November 8, 2000.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 29, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 2, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man–made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on July 6, 2001, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
338/339	829,915 dozen of which not more than 553,276 dozen shall be in Categories 338–S/339–S [2].

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–16929 Filed 7–5–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board (DSB) Task Force Precision Targeting will meet in closed session July 30, 2001, at the Air Combat Command, Langley AFB, VA. The Task Force will examine the full range of the precision weapons targeting in tactical military operations, from target execution, location, and identification through mission execution and damage assessment. Target types will include fixed installations and both transportable and mobile military force elements.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. The Task Force will review: all planned precision weapons programs and procurements to determine the degree to which these weapons are compatible with targeting requirements for different target classes; the degree to which existing and planned reconnaissance and surveillance assets are used to effectively develop target sets, real time targeting data and perform battle damage assessment under varied degrees of cover, concealment and deception; our ability to identify and precisely locate targets while minimizing false alarms using automatic target recognition techniques and precision location technologies; and our ability to attack moving targets.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board meetings concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: June 26, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–16878 Filed 7–5–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Outfall Replacement for Wastewater Treatment Plant at Fort Kamehameha, Navy Public Works Center, Pearl Harbor, HI

AGENCY: Department of the Navy, DoD.

ACTION: Notice of record of decision.

SUMMARY: The Department of the Navy, after weighing the operational, environmental, and cost implications of alternatives to the existing outfall for the Wastewater Treatment Plant (WWTP) at Fort Kamehameha, Pearl Harbor, Hawaii, announces its decision to construct a deep ocean outfall replacement that will discharge effluent into the open coastal waters of Mamala Bay to the south of the island of Oahu.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Kaku, Pacific Division Naval Facilities Engineering Command (PLN23), 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134, telephone (808) 471–9338, facsimile (808) 474–5909.

SUPPLEMENTARY INFORMATION: The Record of Decision (ROD) in its entirety is provided as follows:

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4332(2)(c), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR Parts 1500–1508, the Department of the Navy (DON) announces its decision to replace a physically deteriorating effluent outfall that discharges wastewater into the entrance channel of the Pearl Harbor Estuary with a deep ocean outfall into the open coastal waters of Mamala Bay where the effluent loading is less likely to adversely impact the environment.

The existing outfall has been operating under an administrative extension to a National Pollutant Discharge Elimination System (NPDES) monitoring permit that expired on February 28, 1993. The Navy was advised by U.S. Environmental Protection Agency (EPA) Region 9 on January 24, 1997, that a new NPDES permit will limit the discharge of nutrients and metals to levels below those presently permitted. Replacement of the existing outfall will reduce pollutant loadings and water quality deterioration in the Pearl Harbor Estuary, and enable DON to be in compliance. As described in the Final Environmental Impact Statement (FEIS), the DON will construct and operate a new deep ocean outfall. The new outfall will provide an effluent disposal system that meets environmental and other regulatory constraints. All practicable means to avoid or minimize environmental harm from the alternative selected have been adopted.

Process

On September 11, 1996, the DON published in the **Federal Register** (61 FR 47898) a Notice of Intent to prepare an Environmental Impact Statement (EIS). On September 23, 1996, an EIS Preparation Notice was published in The Environmental Notice, a semi-monthly bulletin of the Hawaii State Department of Health (DOH). DON held two public scoping meetings on October 1 and October 2, 1996, in Honolulu, HI at Washington Intermediate School and Makalapa Elementary School, respectively. The EPA published a Notice of Availability (NOA) for the Draft EIS (DEIS) in the **Federal Register** on November 21, 1997 (62 FR 62303). An announcement was also placed in the December 8, 1997, issue of The Environmental Notice. DON held a public hearing to receive comments on the DEIS at Radford High School, Honolulu, HI, on December 17, 1997. In addition, DON distributed the DEIS to 124 government agencies, groups, and individuals. DON considered all oral and written comments in preparation of the FEIS. The EPA published a NOA for the FEIS in the Federal Register on May 4, 2001 (66 FR 22551). A NOA was also published in two local newspapers on May 4, May 5, and May 6, 2001. An announcement was also placed in the May 8, 2001, issue of The Environmental Notice.

Alternatives Considered

DON initially considered six alternative methods for reducing the discharge of pollutant loadings from the effluent discharge into the Pearl Harbor Estuary. DON developed conceptual designs for the six alternative methods and conducted a preliminary analysis based on the following: (1) Purpose and need of the project; (2) 30-year life-cycle costs; and (3) feasibility of implementation including construction, operation, and maintenance. DON determined that of the six alternative methods, only the deep ocean outfall and the underground injection alternatives were reasonable. These two

alternatives and the "no action" alternative were carried forward for further analysis, with the deep ocean outfall alternative being identified as the preferred alternative. The analysis of the deep ocean outfall alternative included an evaluation of the environmental impacts of various alignments and construction methods that included trenching, microtunneling, and pile-supported pipe above the ocean floor.

Based upon this analysis, DON has chosen to construct a deep ocean outfall that will discharge the wastewater into the open coastal waters of Mamala Bay. The "no action" alternative was rejected as it would not enable the Navy to satisfy reasonably foreseeable regulatory requirements. The underground injection alternative was ultimately rejected in favor of the deep ocean outfall alternative because of its higher 30-year life cycle cost, the fair to poor reliability of the technology involved, and uncertain impacts on adjacent water bodies. The deep ocean outfall alternative is the environmentally preferred alternative.

Environmental Impacts

DON analyzed the direct, indirect, and cumulative impacts of each alternative on environmental resources involving land use and airspace; visual resources; socioeconomics; cultural resources; traffic and circulation; air quality; noise; biological resources; hydrological resources; utilities and services; public health and safety; and hazardous materials and waste. The only significant impacts that could result from the construction of the new WWTP outfall are discussed below.

Aquatic Environment

There is potential for significant impacts on the aquatic environment from normal construction activities. DON and its contractor(s) will employ standard Best Management Practices for construction in coastal waters, such as daily inspection of equipment for conditions that could cause spills or leaks; cleaning of equipment prior to deployment in the water; proper location of storage, refueling, and servicing sites; and implementation of adequate spill response, storm weather preparation plans, and the use of silt curtains to minimize the potential impact.

There is potential for impacts on the marine environment from the expected increase in turbidity and suspended solids in the water during the construction phase. Turbidity from construction in shallow waters, which tend to be relatively calm, will be contained by the use of silt curtains. Strong wave and current actions in the deep water portions of the project area will act to minimize increased turbidity in those areas. Water quality monitoring will be conducted during the construction period to ensure that water quality standards are not exceeded. Pursuant to section 401 of the Clean Water Act, DON will obtain and comply with the conditions of a Water Quality Certification from the DOH. The proposed action is expected to meet the conditions of the NPDES permit required by the Hawaii DOH.

There is potential for minor impacts on corals from construction activities associated with the replacement outfall. Construction impacts to areas supporting coral growth have been minimized by careful selection of the preferred outfall alignment and construction methodologies. The aggregate coral coverage impacted by the replacement outfall along its entire length is expected to be less than one-fifth of one percent (i.e., <0.2 percent) of the total coral on the reef flat within the construction area. The corals that would be affected are not unique and are readily found off the southern shore of Oahu at similar depths.

Protected Species and Habitat

There is potential danger from construction activities to marine species listed as endangered or threatened under the Endangered Species Act. Construction activities will cease if listed marine species are observed entering the active project construction site, and work will be allowed to resume only after the listed species departs the construction site on its own volition. The Pacific Islands Area Office of National Marine Fisheries Service (NMFS) will be notified of each such occurrence. Both the U.S. Fish and Wildlife Service and NMFS have concurred that neither listed species nor their habitat would be adversely impacted by normal construction activities associated with the deep ocean outfall. In the unlikely event that ordnance material is encountered that DON cannot safely remove or avoid, DON will, as appropriate, confer with NMFS before proceeding with construction in the area of the discovered ordnance material.

Public Health and Safety

There is potential for impacts on public health and safety from encountering ordnance items in the construction corridor. Approximately two hundred dives were performed between November 1999 and December 2000 along the proposed construction corridor and along the Pearl Harbor Entrance Channel (PHEC). These dives identified six projectiles within the proposed construction corridor. These six projectiles were subsequently removed safely without in-water detonation. Based on information collected from these dives, it is likely that ordnance can be safely removed or avoided if it is encountered. The construction contractor will perform an independent survey for ordnance items by visual and/or remote metallic detection methods prior to construction. All workers will be informed of the ordnance hazards before construction activities begin. Public access to construction areas will be restricted. If an ordnance item is encountered during construction, work will stop in the affected area pending DON clearance.

Response to Comments Received Regarding the Feis

EPA and a commercial entity provided comment letters. EPA's comments focused on construction related impacts to living coral and suitability of dredged material for ocean disposal.

EPA requested that DON include the following mitigation: take "appropriate and practicable steps" to minimize adverse impacts to corals; transplant living corals away from project area; and remove marine debris from the vicinity of the PHEC to generally enhance marine habitat. No exceptional, unusual, or large coral colonies are within the project area and, as discussed in the FEIS, potential impacts to the coral that is present have been minimized by careful selection of the outfall alignment and construction methodology (e.g., microtunneling and the use of silt curtains). Transplanting the small number of corals in the construction corridor that cannot be avoided is considered impracticable. The removal of marine debris from the vicinity of the PHEC would eliminate and degrade fish and threatened green sea turtle (Chelonia mydas) habitat because it is heavily utilized by these species.

EPA also requested additional discussions on the suitability of the dredged material for ocean disposal. Pursuant to Section 103 of the Marine Protection Research Sanctuaries Act, DON has provided this information as part of the permitting process regulated by the U.S. Army Corps of Engineers (COE) and the EPA. The COE permit application included data indicating that the material proposed for disposal will be substantially the same as the existing substrate at the EPA designated South Oahu Ocean Dredged Material Disposal Site and that the proposed

dredged material site is located far from known pollution sources, therefore providing reasonable assurance that the material has not been contaminated. The COE permit will address concernns regarding ocean disposal.

The F.O.G. Corporation recommended use of its liquid bio-polymer to meet EPA discharge requirements and avoid construction of the outfall. The recommended bio-polymer product does not include removal of dissolved nutrients and therefore is not a viable alternative to the proposed action.

Conclusion

In determining how to dispose of wastewater effluent from the WWTP at Fort Kamehameha, I considered the following: present ability of the WWTP to comply with more stringent anticipated discharge wastewater effluent limits; technical feasibility; operational reliability; environmental impacts; costs associated with construction, operation, and maintenance of facilities; and comments received during the DEIS and FEIS public involvement periods.

After carefully weighing all of these factors and analyzing the data presented in the FEIS, I have determined that the preferred alternative, constructing a deep ocean outfall to replace the existing outfall, best meets the requirements for the disposal of wastewater effluent from the WWTP at Fort Kamehameha. Therefore, on behalf of the DON, I have decided to implement the proposed action by constructing a deep ocean replacement outfall and to retain the existing outfall for emergency bypass purposes. In addition to the specific mitigation measures identified in this ROD, the DON will continue to review its operational procedures and coordinate with other federal, state, and local entities as necessary to determine if any additional mitigation measure are feasible and practicable.

Dated: June 22, 2001.

Duncan Holady,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 01–16960 Filed 7–5–01; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Ohio State University

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Ohio State University, a revocable, nonassignable, exclusive license to practice worldwide the Government-owned inventions described in U.S. Patent Application Serial No. 09/747,521, entitled "Methods for Protection Against Lethal Infection with Bacillus Anthracis," filed December 21, 2000, in the field of injectable and noninjectable protective DNA vaccines against Bacillus anthracis intoxication.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than July 23, 2001.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428.

Dated: June 25, 2001.

Saundra K. Melancon,

Paralegal Specialist, Office of Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 01–16886 Filed 7–5–01; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 6, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 29, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New Collection.

Title: Evaluation of Title I Accountability Systems and School Improvement Efforts (TASSIE)—Data Collection Instrument (JM).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary), Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 10300.

Burden Hours: 6990.

Abstract: The purpose of the Evaluation of Title I Accountability Systems and School Improvement Efforts is to examine and evaluate Title I accountability systems and school improvement efforts in a nationally representative sample of districts and schools. This project addresses both the implementation and effectiveness of accountability practices in 2,200 districts and 740 schools. The TASSIE will provide data on the extent of alignment between Title I accountability systems and states' and districts' own accountability systems, the assistance and incentives provided to schools identified as in need of improvement, and will assess the impact of these

policies and practices on schools, teachers, and students.

Requests for copies of the proposed information collection request may be accessed from http://edicsweb.ed.gov/owa-cgi/owa/browsecoll?psn=01750, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jackie Montague at (202) 708–5359. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–16906 Filed 7–5–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by July 10, 2001. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before September 4, 2001.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: June 28, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: New Collection.

Title: The Leveraging Educational Assistance Program (LEAP) and Special Leveraging Educational Assistance Program (SLEAP) Programs.

Abstract: The LEAP and SLEAP programs use matching Federal and State Funds to provide a nationwide system of grants to assist postsecondary educational students with substantial financial need. On this performance report the states provide information the Department requires about the state's use of program funds in order to demonstrate compliance with the program's statutory and regulatory requirements. Federal program officials use the performance report data for monitoring program funds distribution. With the clearance of this collection, the Department is seeking to automate the performance reporting process for both the LEAP Program and the subprogram, SLEAP. There are no significant changes to the current LEAP form data elements, there are however, additional items pertaining to the SLEAP program.

Additional Information: Because of the changes to the law and new program requirements, the short time schedule for development of forms, and obtaining state involvement in the process, we are requesting emergency approval of this new performance report form by July 10, 2001. This would allow for the needed time by states to plan and begin reporting under the programs as soon as possible.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 560.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO_RIMG@ed.gov, or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Joe Schubart at 202–708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–16907 Filed 7–5–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

AGENCY: Department of Education.

ACTION: Correction.

SUMMARY: On May 18, 2001, a notice inviting applications for new awards under the Office of Special Education and Rehabilitative Services; Grant

Applications under the Special Education—Training and Information for Parents of Children With Disabilities Program was published in the **Federal Register** (66 FR 27814). Under the Parent Training and Information Centers (84.328M) priority on page 27816, in column 1, "Project Period" section, and the table also included on page 27816, we inadvertently omitted the project period for the Native American Families and the Military Families awards and the interim projects. The second sentence in the "Project Period" section is corrected to read "Interim projects will be funded for a period up to 12 months and the Native American Families and Military Families projects will be funded for a period up to 36 months". In the table, the "Project period" column is corrected to indicate a project period of up to 36 months for the Native American Families and Military Families projects and 12 months for interim projects.

FOR FURTHER INFORMATION CONTACT: For further information on this notice contact Debra Sturdivant, U.S. Department of Education, 400 Maryland Avenue, SW, room 3317, Switzer Building, Washington, DC 20202–2641. FAX: (202) 205–8717 (FAX is the preferred method for requesting information). Telephone: (202) 205–8038. Internet: Debra_Sturdivant@ed.gov.

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

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To use PDF you must have Adobe Acrobat Reader, which is available free at the previous site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo/nara/index.html

Program Authority: 20 U.S.C. 1482.

Dated: July 2, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitative Research.

[FR Doc. 01–16981 Filed 7–5–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation; Meeting

AGENCY: National Committee on Foreign Medical Education and Accreditation, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to announce the upcoming meeting of the National Committee on Foreign Medical Education and Accreditation. Parts of this meeting will be open to the public, and the public is invited to attend those portions.

When and Where Will the Meeting Take Place?

We will hold the meeting on September 6, 2001 beginning at 8:45 a.m. in the Montpelier Room at The Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, DC 20001. You may call the Hotel on (202) 628–2100 to inquire about room accommodations.

What Access Does the Hotel Provide for Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format) notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

What Are the Functions of the Committee?

The National Committee on Foreign Medical Education and Accreditation was established by the Secretary of Education under section 102 of the Higher Education Act of 1965, as amended. The Committee's responsibilities are to: (1) Evaluate the standards of accreditation applied to applicant foreign medical schools; and (2) determine the comparability of those standards to standards for accreditation applied to United States medical schools.

What Are the Issues To Be Considered At This Meeting?

The National Committee on Foreign Medical Education and Accreditation will review the standards of accreditation applied to medical schools by several foreign countries to determine whether those standards are comparable to the standards of accreditation applied to medical schools in the United States. Discussions of the standards of accreditation will be held in sessions open to the public. Discussions that focus on specific determinations of comparability are closed to the public in order that each country may be properly notified of the decision.

The countries tentatively scheduled to be discussed at the meeting include Belize, the Dominican Republic, Israel, Mexico, New Zealand, Poland, St. Lucia, St. Maarten, Sweden, and the United Kingdom. Beginning August 17, you may call the contact person below to obtain the final listing of the countries whose standards will be discussed during this meeting. The listing of countries will also be posted on the Department of Education's web site at the following address: *http://www.ed.gov/offices/OPE/accreditation/ncfmeetings.html*

Who Is the Contact Person for the Meeting?

Please contact Bonnie LeBold, the Executive Director of the National Committee on Foreign Medical Education and Accreditation, if you have questions about the meeting. You may contact her at the U.S. Department of Education, 7th Floor—Rm. 7007, 1990 K St., NW., Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: Bonnie.LeBold@ed.gov. Individuals who use telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

Dated: June 27, 2001.

Maureen A. McLaughlin,

Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 01–16861 Filed 7–5–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–70–002]

Columbia Gas Transmission Corporation; Notice of Filing

June 29, 2001.

Take notice that on June 15, 2001, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing in Docket No. CP01–70. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance).

On May 16, 2001, the Federal Energy Regulatory Commission issued its "Order Issuing Certificate and Authorizing Abandonment" in the above referenced docket ("May 16 Order"). In Ordering Paragraph (H) of the May 16 Order, the Commission required Columbia "to explain under what conditions it has been allowing shippers to contract for multi-year seasonal service and to have different primary delivery points on a seasonal basis." In Ordering Paragraph (I) of the May 16 Order, the Commission directed Columbia "to file within 30 days of the issuance of this order all currently effective contracts in which Columbia has included, through footnotes or insertion of other language, conditions that would constitute material deviations from the *pro forma* service agreement that affect the service provided under its rate schedules." Columbia is submitting the instant filing in compliance with these directives.

Columbia states that copies of its filing are available for inspection at its offices at 12801 Fair Lakes Parkway, Fairfax, Virginia; and 10 G Street NE., Suite 580, Washington, DC; and have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc. gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

David P. Boergers,

Secretary.

[FR Doc. 01–16895 Filed 7–5–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–395–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

June 29, 2001.

Take notice that on June 21, 2001, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP01–395–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a delivery point in Loudoun County, Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" from the RIMS Menu and follow the instructions (please call (202)208–2222 for assistance).

Columbia states that Washington Gas Light (WGL) notified Columbia by letter dated January 17, 2001 of its intent to abandon its point of delivery from Columbia designated as Preferred Plastics. Columbia also states that the point of delivery proposed for abandonment has not been utilized since 1997, but is listed on WGL's Storage Service Transportation (SST) agreement with Columbia. Columbia further states that the abandonment activities will consist of removing the station in its entirety and capping the tap.

Any questions regarding the application may be directed to Fredric J. George, Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273, or telephone (304)357–2359 or FAX (304)357–3206.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

David P. Boergers,

Secretary.

[FR Doc. 01–16896 Filed 7–5–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[CP01–394–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

June 29, 2001.

Take notice that on June 19, 2001, Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP01–394–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new delivery point to Knox Energy Cooperation Association Inc., located in Knox County, Ohio, under Columbia

Gas' blanket certificate issued in Docket CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance).

Columbia Gas states that the new point of delivery will consist of installing a tap and a valve and that the estimated quantity of natural gas to be delivered at the new delivery point is 3,600 dekatherms per day. Columbia Gas declares that the estimated cost of construction if $20,890. Columbia Gas states that service is currently being provided by Ohio Cumberland Gas Company (Ohio Cumberland). Columbia Gas asserts that Ohio Cumberland has waived its rights to continue providing the service.

Columbia Gas states that the quantities of natural gas to be provided through the new point of delivery will be within Columbia Gas's authorized level of services. Columbia Gas asserts there is no impact on their existing design day and annual obligations to the customers as a result of the construction and operation of the new delivery point for firm transportation service.

Any questions regarding the application should be directed to Fredric J. George, Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273, at (304) 357–2359, Telecopier: (304) 357–3206.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 285.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no request is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

David P. Boergers,

Secretary.

[FR Doc. 01–16897 Filed 7–5–01; 8:45 am]

BILLING CODE 6710–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2091–000; Docket No. NJ01–7–000]

El Paso Electric Company, Public Service Company of New Mexico, Arizona Public Service Company; Salt River Project Agricultural Improvement and Power District; Notice of Filing

June 29, 2001.

Take notice that on June 28, 2001, Salt River Project Agricultural Improvement and Power District (SRP), El Paso Electric Company (EPE), Public Service Company of New Mexico (PNM), Arizona Public Service Company (APS), (collectively, Palo Verde Participants), Pinnacle West Energy Corporation (PWE), Harquahala Generating Company, LLC (HGC), Duke Energy Maricopa, LLC (DEM) and Mesquite Power, LLC (Mesquite) (all entities collectively, the Parties), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Joint Stipulation Concerning the Common Bus Arrangement at the Palo Verde and Hassayampa Switchyards, pursuant to the Commission's Rule 212 (18 CFR 385.212).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 10, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). Comments, protest and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

David P. Boergers,

Secretary.

[FR Doc. 01–16931 Filed 7–5–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC01–43–000, et al.]

Bangor Hydro-Electric Company, et al.; Electric Rate and Corporate Regulation Filings

June 28, 2001.

Take notice that the following filings have been made with the Commission:

1. Bangor Hydro-Electric Company, Central Maine Power Company, Vermont Electric Power Company

[Docket No. AC01–43–000]

Take notice that Bangor Hydro-Electric Company, Central Maine Power Company, and Vermont Electric Power Company, on May 11, 2001, tendered a request for approval of proposed accounting treatment for costs incurred by these companies associated with their involvement in the establishment of the Northeast Independent Transmission Company, LLC.

Copies of this filing have been served upon the Commission, the Maine Public Utilities Commission, and the Vermont Department of Public Service.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Exelon Generation Company, LLC Exelon Power Holdings, LP

[Docket No. EC01–120–000]

Take notice that on June 15, 2001, Exelon Generation Company, LLC (Exelon Generation) and Exelon Power Holdings, LP (EPH) tendered for filing a joint application for authorization pursuant to section 203 of the Federal Power Act to transfer indirect control of jurisdictional facilities, which is being done pursuant to an internal corporate reorganization. The transaction involves the transfer of 100 percent of Exelon Fossil's stock to EPH, which is being formed solely for the purpose of owning

Exelon Fossil in order to obtain state tax benefits related to the repayment of an intercompany obligation.

Comment date: July 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Indian River Power, LLC

[Docket No. EG01–209–000]

Take notice that on June 22, 2001, Indian River Power, LLC (Indian River) submitted an order issued on June 21, 2001, by the New Jersey Board of Public Utilities under section 32(c) of the Public Utility Holding Company Act of 1935 (PUHCA) finding that allowing the Indian River facility to be an eligible facility is in the public interest. The submission of the New Jersey order completes the application of Indian River.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Vienna Power LLC

[Docket No. EG01–210–000]

Take notice that on June 22, 2001, Vienna Power LLC (Vienna Power) submitted an order issued on June 21, 2001, by the New Jersey Board of Public Utilities under section 32(c) of the Public Utility Holding Company Act of 1935 (PUHCA) finding that allowing the Vienna Power facility to be an eligible facility is in the public interest. The submission of the New Jersey order completes the application of Vienna Power.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Keystone Power, LLC

[Docket No. EG01–227–000]

Take notice that on June 22, 2001, Keystone Power, LLC (Keystone) submitted an order issued on June 21, 2001, by the New Jersey Board of Public Utilities under section 32(c) of the Public Utility Holding Company Act of 1935 (PUHCA) finding that allowing the Keystone facility to be an eligible facility is in the public interest. The submission of the New Jersey order completes the application of Keystone.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Conemaugh Power, LLC

[Docket No. EG01–228–000]

Take notice that on June 22, 2001, Conemaugh Power, LLC (Conemaugh) submitted an order issued on June 21, 2001, by the New Jersey Board of Public Utilities under section 32(c) of the Public Utility Holding Company Act of 1935 (PUHCA) finding that allowing the Conemaugh facility to be an eligible facility is in the public interest. The submission of the New Jersey order completes the application of Conemaugh.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Encogen One Partners, Limited

[Docket No. EG01–243–000]

Take notice that on June 25, 2001, Encogen One Partners, Limited (Encogen One) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. 79z–5a(a)(1) (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 365 (2000).

Encogen One is a Texas limited partnership that owns and operates a 257 megawatt gas-fired cogeneration facility located near Sweetwater, Texas. Encogen One states that it will be engaged directly or indirectly through one or more affiliates as defined in Section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning or operating or both owning and operating an eligible facility, and selling electric energy at wholesale.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. Brazos Valley Energy LP

[Docket No. EG01–245–000]

On June 25, 2001, Brazos Valley Energy LP (Brazos Valley), a Delaware limited partnership with its principal place of business in Minneapolis, Minnesota, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant intends to construct an approximate 600 MW natural gas-fired combined cycle independent power production facility near the City of Thompsons, Texas (the Facility). The Facility is currently under development and will be owned by Applicant. Electric energy produced by the Facility will be sold by Applicant to the wholesale power market in ERCOT.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. Huntington Beach Development, L.L.C.

[Docket No. EG01–246–000]

Take notice that on June 22, 2001, Huntington Beach Development, L.L.C. (Huntington Beach), a Delaware limited liability company with its principal office located at 21730 Newland Street, Huntington Beach, California 92646, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations.

Huntington Beach states that it plans to repower two electric generation units located in Huntington Beach, California. Huntington Beach will be engaged directly and exclusively in owning the facility, with a capacity of approximately 450 MW, and in selling the output of the facility for resale.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

10. Washington Parish Energy Center, LLC

[Docket No. EG01–247–000]

Take notice that on June 25, 2001, Washington Parish Energy Center, LLC (Washington Parish) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Washington Parish, a Delaware limited liability company, proposes to own and operate an electric generating facility and sell the output at wholesale to electric utilities, an affiliated power marketer and other purchasers. The facility is a 600 MW natural gas-fired, combined cycle generating facility, which is under development in Bogalusa, Louisiana.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

11. PJM Interconnection, L.L.C.

[Docket No. EL01–63–002]

Take notice that on June 25, 2001, PJM Interconnection, L.L.C. (PJM), supplemented its May 21, 2001 compliance filing in order to replace

Sheet No. 54 and submit a "Third Revised Sheet No. 54" to the Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area in order to eliminate the limit on the "Alternate Value" calculation, consistent with the Commission's order in PJM Interconnection, L.L.C., 95 FERC ¶ 61,175 (2001).

Comment date: July 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Mirant Chalk Point, LLC, Mirant Mid-Atlantic, LLC, Mirant Peaker, LLC, and Mirant Potomac River, LLC

[Docket No. EL01–97–000]

Take notice that on June 21, 2001, Mirant Chalk Point, LLC, Mirant Mid-Atlantic, LLC, Mirant Peaker, LLC, and Mirant Potomac River, LLC (together, the Mirant Generators) filed an application, pursuant to Schedule 2 of the PJM Interconnection, L.L.C. (PJM) FERC Electric Tariff, Fourth Revised Volume No. 1, for an order establishing the appropriate allocation by PJM of monthly Reactive Supply and Voltage Control (Reactive Power) payments following transfer of ownership of the electric generation facilities located in the Potomac Electric Power Company (PEPCO) zone from PEPCO to the Mirant Generators and to an affiliate of PEPCO. Under PJM's Schedule 2 procedure, if the parties have failed to reach agreement with respect to a reallocation following ownership transfer, the Commission, upon application, is to establish the allocation. As there has been a failure to reach such agreement, the Mirant Generators hereby apply for a Commission order that Reactive Power payments be allocated among the new owners based upon historical energy production at each of the electric generation facilities in the PEPCO zone.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Energy Moss Landing, LLC, Duke Energy Morro Bay, LLC, Duke Energy Oakland, LLC, Duke Energy South Bay, LLC

[Docket Nos. ER98–2680–002, ER98–2681–002, ER98–2682–002, ER99–1785–001]

Take notice that on June 25, 2001, Duke Energy Morro Bay, LLC, Duke Energy Moss Landing, LLC, Duke Energy Oakland, LLC and Duke Energy South Bay, LLC (South Bay), filed an updated market power analysis in compliance with the June 25, 1998 and March 31, 1999, orders of the Commission.

Comment date: July 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Bridgeport Energy LLC

[Docket Nos. ER98–2783–003]

Take notice that on June 25, 2001, Bridgeport Energy LLC tendered for filing an updated market analysis and report of changes in status in compliance with the Commission's order, issued June 24, 1998.

Comment date: July 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Company

[Docket No. ER01–818–001]

Take notice that on June 25, 2001, in compliance with the Commission's letter order dated January 26, 2001 and Order No. 614, New England Power Company (NEP), as successor to Montaup Electric Company, submitted for filing a complete revised Service Agreement No. 12 (Eastern Edison Company) under Montaup Electric Company, FERC Electric Tariff, First Revised Volume No. 1.

NEP states that a copy of this filing has been served upon each of the parties that was served by NEP in Docket No. ER01–818–000.

Comment date: July 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Cleco Power LLC

[Docket No. ER01–1099–004]

Take notice that Cleco Power LLC, on June 25, 2001, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation pursuant to the Commission Order dated March 28, 2001.

Comment date: July 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Oklahoma Gas & Electric Company

[Docket No. ER01–1567–000 and ER01–1568–000 (Not Consolidated)]

Take notice that on June 26, 2001, the Oklahoma Gas and Electric Company and the Municipal Energy Agency of Mississippi filed a motion requesting that the Commission defer until September 1, 2001 the effective date of the "Power Supply Agreement with the Municipal Energy Agency of Mississippi" filed by OG&E with the Commission on March 21, 2001 in Docket No. ER01–1567–000. In addition, the parties request that the Commission granted them an extension of time—also to September 1, 2001—to comply with the filing designation requirements set forth in the Commission's Order dated April 11, 2001 in Docket No. ER01–1567–000.

Comment date: July 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Mill Run Windpower LLC

[Docket No. ER01–1710–001]

Take notice that on June 13, 2001, Mill Run Windpower LLC (Mill Run) petitioned the Federal Energy Regulatory Commission (Commission) on May 7, 2001, tendered for filing an Amendment to Attachment A to Mill Run's application for an order authorizing market-based rates for granting of certain blanket approvals and for the waiver of certain Commission regulations.

Comment date: July 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Boston Edison Company

[Docket No. ER01–2393–000]

Take notice that on June 21, 2001, Boston Edison Company (Boston Edison) tendered for filing a non-firm point-to-point transmission service agreement between Boston Edison and Axia Energy, L.P. (Axia). Boston Edison sates that the service agreement set out the transmission arrangements under which Boston Edison will provide local non-firm point-to-point transmission service to Axia under Boson Edison's open access transmission tariff accepted for filing in Docket No. ER00–2065–000. Boston Edison requests an effective date of August 21, 2001.

Comment date: July 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Commonwealth Electric Company

[Docket No. ER01–2392–000]

Take notice that on June 21, 2001, Commonwealth Electric Company (Commonwealth) tendered for filing a firm point-to-point transmission service agreement between Commonwealth and Entergy Nuclear Generating Company (Entergy). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide firm point-to-point transmission service to Entergy under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341–000, subject to refund and issuance of further orders. Commonwealth requests waiver of the Commission's thirty (30) day notice requirement in order to allow the service agreement to become effective on July 1, 2001.

Comment date: July 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC

[Docket No. ER01–2394–000]

Take notice that on June 21, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed First Revised Service Agreement No. 102 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Allegheny Energy Supply maintains the effective date of Service Agreement No. 102 of October 26, 2000 for service to NRG Power Marketing, Inc.

Comment date: July 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. IDACORP Energy, LP

[Docket No. ER01–2395–000]

Take notice that on June 21, 2001, IDACORP Energy, LP has filed a Notice of Succession to adopt the rate schedules of IDACORP Energy Solutions, LP.

Comment date: July 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Western Resources, Inc.

[Docket No. ER01–2396–000]

Notice is hereby given that effective June 21, 2001, Western Resources, Inc."s (WR's) Market Based Rate Tariff Agreement with the Cargill Alliant LLC (Cargill) is to be terminated.

Notice of the proposed termination has been served upon Cargill and the Kansas Corporation Commission.

Comment date: July 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Electric City Energy Producers, LLC

[Docket No. ER01–2397–000]

Take notice that on June 22, 2001, Electric City Energy Producers, LLC (ECEP), a Montana limited liability company, 1900 10th St. N.E., Great Falls, MT, 59404, petitioned the Commission for acceptance of Electric City Energy Producers' Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; waiver of certain Commission regulations; and waiver of notice requirement.

ECEP intends to engage in wholesale electric energy and capacity sales. ECEP is owned by the Montana Refining Company and the Warren Administration Company.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Liberty Electric Power, LLC

[Docket No. ER01–2398–000]

Take notice that on June 22, 2001, Liberty Electric Power, LLC (Liberty Electric), with an office located at c/o Orion Power Holdings, Inc., 7 E. Redwood Street, 10th Floor, Baltimore, Maryland 21202, which will own and operate a natural gas-fired electric generating facility to be constructed in the Borough of Eddystone, Pennsylvania submitted for filing with the Federal Energy Regulatory Commission (Commission) its initial FERC Electric Rate Schedule No. 1 which will enable Liberty Electric to engage in the sale of electric energy and capacity and ancillary services at market-based rates.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. Louisville Gas And Electric Company/Kentucky Utilities Company

[Docket No. ER01–2399–000]

Take notice that on June 22, 2001, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral Service Sales Agreement between Companies and Engage Energy America, LLC under the Companies' Rate Schedule Market-Based Sales Service (MBSS).

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

27. AES Red Oak, L.L.C.

[Docket No. ER01–2401–000]

Take notice that on June 22, 2001, AES Red Oak, L.L.C. petitioned the Commission for acceptance of AES Red Oak, L.L.C. Rate Schedule FERC No. 1, the granting of certain blanket approvals, including authority to sell capacity, energy and ancillary services at wholesale at market-based rates, and the waiver of certain Commission regulations.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

28. Southern California Edison Company

[Docket No. ER01–2402–000]

Take notice that on June 22, 2001, Southern California Edison Company (SCE) tendered for filing an unexecuted Service Agreement for Wholesale Distribution Service between E.F. Oxnard, Inc. (Oxnard) and SCE. This Agreement specifies the terms and conditions pursuant to which SCE will provide Distribution Service for up to 47.7 MW of power produced by Oxnard's generating facility. The facilities necessary to accommodate Oxnard are provided for in the California Public Utilities Commission's (CPUC) jurisdictional Interconnection Facilities Agreement.

SCE respectfully requests that the agreement become effective on May 25, 2001.

Copies of this filing have been served on the State of California Public Utilities Commission and Oxnard.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

29. Virginia Electric and Power Company

[Docket No. ER01–2403–000]

Take notice that on June 22, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with Tractebel North America Services, Inc. for the Tractebel Phase I Project. The Interconnection Agreement sets forth the terms and conditions under which Dominion Virginia Power will provide interconnection service for the project.

Dominion Virginia Power requests an effective date of August 22, 2001 for the Interconnection Agreement.

Copies of the filing were served upon Tractebel North America Services, Inc. and the Virginia State Corporation Commission.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

30. Automated Power Exchange, Inc.

[Docket No. ER01–2404–000]

Take notice that on June 22, 2001, Automated Power Exchange, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) a revision to the rate schedule under which APX offers power exchange services in the APX California Market.

APX requests that the revision to the rate schedule become effective on June 22, 2001.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

31. Southern Company Services, Inc.

[Docket No. ER01–2406–000]

Take notice that on June 22, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Company), filed five (5) service agreements for long-term firm point-to-point transmission service agreements with PECO Power Team (regarding OASIS Request 132540); PECO Power Team (regarding OASIS Request 256883); Dynegy Power Marketing, Inc. (regarding OASIS Requests 250005); Southern Wholesale Energy (regarding OASIS Requests 214515 and 214516); and Southern Wholesale Energy (regarding OASIS Requests 214517 and 214518) under the Open Access Transmission Tariff (Tariff) of Southern Company (FERC Electric Tariff, Fourth Revised Volume No. 5). Additionally, SCS, acting on behalf of Southern Company, filed one (1) non-firm point-to-point transmission service agreement with Calpine Energy Services, LP under the Tariff.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

32. New England Power Company

[Docket No. ER01–2407–000]

Take notice that on June 22, 2001, New England Power Company (NEP), as successor in interest to Montaup Electric Company (Montaup) submits for filing notices of cancellation of four service agreements under Montaup's FERC Electric Tariff, First Revised Volume No. 1. NEP is canceling these service agreements because service is no longer provided under them.

The four service agreements are:

Service Agreement No. 1 (Fall River Electric Light Company)

Service Agreement No. 13 (Blackstone Valley Electric Company)

Service Agreement No. 14 (Newport Electric Corporation)

Service Agreement No. 15 (Eastern Edison Company)

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

33. Carolina Power & Light Company

[Docket No. ER01–2408–000]

Take notice that on June 22, 2001, Carolina Power & Light Company (CP&L) amended the Service Agreement originally filed in this docket with Washington Gas Energy Services, Inc. to reflect the correct Service Agreement number. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates.

CP&L requests an effective date of March 28, 2001 for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

34. Florida Power Corporation

[Docket No. ER01–2409–000]

Take notice that on June 22, 2001, Florida Power Corporation (FPC) filed a Service Agreement with Dynegy Power Marketing, Inc. under FPC's Market-Based Wholesale Power Sales Tariff (SM–1), FERC Electric Tariff No. 10.

FPC is requesting an effective date of June 22, 2001 for this Agreement.

A copy of this filing was served upon the Florida Public Service Commission.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

35. UtiliCorp United Inc.

[Docket No. ER01–2410–000]

Take notice that on June 22, 2001, UtiliCorp United Inc. (UtiliCorp) tendered for filing Service Agreement No. 93 under UtiliCorp's FERC Electric Tariff, Third Revised Volume No. 25, a non-firm point-to-point transmission service agreement between UtiliCorp's WestPlains Energy-Colorado division and El Paso Merchant Energy, L.P.

UtiliCorp requests an effective date for the service agreement of June 5, 2001.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

36. UtiliCorp United Inc.

[Docket No. ER01–2411–000]

Take notice that on June 22, 2001, UtiliCorp United Inc. (UtiliCorp) tendered for filing Service Agreement No. 92 under UtiliCorp's FERC Electric Tariff, Third Revised Volume No. 25, a short-term firm point-to-point transmission service agreement between UtiliCorp's WestPlains Energy-Colorado division and El Paso Merchant Energy, L.P.

UtiliCorp requests an effective date for the service agreement of June 5, 2001.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

37. Southern Company Services, Inc.

[Docket No. RT01–77–000]

Take notice that on June 20, 2001, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies) tendered for filing with the Federal Energy Regulatory Commission (Commission), a supplement to its Status Report filed on May 14, 2001, informing the Commission that additional participants had executed memoranda of understanding to participate in the development of an RTO.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–16892 Filed 7–5–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–388–000]

Transcontinental Gas Pipe Line Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Momentum Expansion Project and Request for Comments on Environmental Issues

June 29, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Momentum Expansion Project (Momentum Project) involving construction and operation of facilities by Transcontinental Gas Pipe Line Corporation (Transco) in several counties in North Carolina, South Carolina, Georgia, Alabama, and Mississippi.[1] These facilities would consist of about 99.9 miles of 42- and 48-inch diameter pipeline, 78,525 horsepower (hp) of additional compression, and installation of gas coolers at another compressor station. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Transco provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.gov*).

[1] Transco's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

Summary of the Proposed Project

Transco wants to expand the capacity of its mainline pipeline system in Mississippi, Alabama, Georgia, South Carolina and North Carolina to transport an additional 525,896 dekatherms per day of new firm transportation capacity. Transco seeks authority to construct and operate the following facilities:

- 9.22 miles of 42-inch-diameter pipeline loop from milepost (MP) 632.89 on Transco's mainline in Amite County, Mississippi to MP 642.11 in Pike County, Mississippi (Magnolia Loop).
- 7.90 miles of 42-inch-diameter pipeline loop from MP 732.65 on Transco's mainline in Jones County, Mississippi to MP 740.55 in Jones County (Seminary Loop).
- 16.06 miles of 42-inch-diameter pipeline loop from MP 756.94 on Transco's mainline in Clarke County, Mississippi to MP 773.00 in Clarke County, Mississippi (Hale Loop).
- 30.00 miles of 48-inch-diameter pipeline loop from MP 860.78 on Transco's mainline in Perry County, Alabama to MP 890.78 in Chilton County, Alabama (Jones Loop).
- 3.49 miles of 42-inch-diameter pipeline loop from MP 905.74 on Transco's mainline in Chilton County, Alabama to MP 909.23 in Chilton County, Alabama (Richville Loop).
- 21.54 miles of 42-inch-diameter pipeline loop from MP 926.87 on Transco's mainline in Coosa County, Alabama to MP 948.41 in Tallapoosa County, Alabama (Kellyton Loop).
- 7.51 miles of 42-inch-diameter pipeline loop from MP 1,124.74 on Transco's mainline in Madison County, Georgia to MP 1,132.25 in Elbert County, Georgia (Bowman Loop).
- 4.18 miles of 42-inch-diameter pipeline loop from MP 1,201.71 on Transco's mainline in Spartanburg County, South Carolina to MP 1,205.89 in Spartanburg County, South Carolina (Greenville Loop).
- The installation of one new 15,00 horsepower compressor at Transco's existing Compressor Station No. 90 in Marengo County, Alabama.
- The installation of one new 15,000 horsepower compressor at Transco's existing Compressor Station No. 105 in Coosa County, Alabama.
- The installation of one new 15,000 horsepower compressor at Transco's existing Compressor Station No. 110 in Randolph County, Alabama.
- The uprating of an existing 18,975 horsepower compressor (Unit No. 3) to 22,500 horsepower at Transco's existing Compressor Station No. 115 in Coweta County, Georgia.
- The installation of one new 15,000 horsepower compressor at Transco's existing Compressor Station No. 125 in Walton County, Georgia.
- The installation of gas coolers for existing compressor No. 18 at Transco's existing Compressor Station No. 130 in Madison County, Georgia.
- The installation of one new 15,000 horsepower compressor with gas coolers and the installation of high-pressure fuel injection on existing compressor No. 10 at Transco's existing Compressor Station No. 160 in Rockingham County, North Carolina.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed loops would require about 1,110 acres of land. Following construction, about 430 acres would be maintained as new pipeline right-of-way. The remaining 680 acres of land would be restored and allowed to revert to its former use.

Installation of new facilities at the eight existing compressor stations would require a total of about 29 acres within the existing facility sites.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspaper, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Transco. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils
  - — Erosion control and right-of-way restoration.
  - —Potential for mixing of topsoil and subsoil.
- Water Resources and Wetlands
  - —A total of 52 perennial waterbodies would be crossed.
  - —A total of 249 wetlands, including 20.6 acres of forested and 35.5 acres of non-forested wetlands along the construction right-of-way, would be crossed.
- Biological Resources
  - —Impacts on 34 federally threatened and/or endangered species that may be present in the project area.
  - —Impacts on about 484 acres of upland forest and scrub-shrub habitat.
- Cultural Resources
  - —Impacts on prehistoric and historic sites
  - —Native American concerns
- Land Use
  - —Impacts on about 504 acres of rangeland.
  - —Impact on residential areas.
  - —Visual effects of the aboveground facilities on surrounding areas.
  - —Impacts on 12 residents within 50 feet of the proposed construction area.
- Air and Noise Quality
  - —Impacts on local air and noise environment as a result of operation of the new compressors.
- Alternatives
  - —Evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.
- Nonjurisdictional Facilities
  - —We have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas/Hydro Group.
- Reference Docket No. CP01–388–000.
- Mail your comments so that they will be received in Washington, DC on or before July 30, 2001.

Comments, protests and interventions may also be filed electronically via the Internet in lieu of paper. See18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filing by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this preceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.gov) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet webite provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 01–16894 Filed 7–5–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

June 29, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12026–000.

c. *Date filed:* May 24, 2001, supplemented June 25, 2001.

d. *Applicant:* Pine Creek Development, LLC.

e. *Name and Location of Project:* The Pine Creek Mine Hydroelectric Project would be located on Morgan and Pine Creeks in Inyo County, California.

f. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

g. *Applicant Contact:* Mr. Lynn Goodfellow, Pine Creek Development LLC, P.O. Box 1538, Bishop, CA 93515, (760) 387–2501.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(ii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

Please include the project number (P–12026–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) A proposed diversion structure at approximate elevation 9,000 feet on Pine Creek; (2) a proposed diversion structure at elevation 8,400 feet, at the entrance to the Brownstone Mine, to capture water discharging from the Mine; (3) a proposed 2,500-foot-long, 3-foot-diameter steel penstock; (4) a proposed powerhouse containing a 4-megawatt generating unit; (5) a proposed tailrace discharging water into Morgan Creek at elevation 7,840 feet; (6) a proposed 200-foot-long transmission line; and (7) appurtenant facilities.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance).

A copy is also available for inspection and reproduction at the address in item g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rule of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE TO INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file

comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–16898 Filed 7–5–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM99–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

June 29, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. CP01–375–000, 6–1–01, Elizabeth Kontz
2. CP98–150–000, 6–6–01, Nita M. Lowey
3. Project No. 2835–005, 06–26–01, Jack Hannula
5. Project No. 2030–035, 06–21–01, Nan Allen
6. Project No. 2042, 06–25–01, Timothy B. Bachelder
7. Project No. 2042, 06–25–01, Patricia Weslowski
8. CP01–361–000, 06–22–01, Mike Kain
9. CP01–260–000, 06–22–01, Kent Murphy
10. CP00–141–000, 06–22–01, Juan Polit
11. Project No. 11897–000, 06–14–01, The Honorable Wally Herger

David P. Boergers,

Secretary.

[FR Doc. 01–16893 Filed 7–5–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7007–6]

Agency Information Collection Activities Under OMB Review; Recordkeeping Requirements for Producers of Pesticides Under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act as Amended (FIFRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507 (a)(1)(D)), this notice announces that the Information Collection Request (ICR) for recordkeeping requirements for producers of pesticides under section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (FIFRA) as described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument, *i.e.*, forms.

DATES: Comments must be submitted on or before August 6, 2001.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer, 202–260–2740, and refer to EPA ICR No. 0143.07

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping Requirements for Producers of Pesticides under section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (FIFRA); (OMB Control No. 2070–0028; EPA ICR No. 0143.07). This is a request for an extension of a currently approved collection.

Abstract: Producers of pesticides must maintain certain records with respect to their operations and make such records available for inspection and copying as specified in section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and in regulations at 40 CFR part 169. This information collection is mandatory under FIFRA section 8. It is used by the Agency to determine compliance with the Act. The information is used by EPA Regional pesticide enforcement and compliance staffs, OECA, and the Office of Pesticide Programs (OPP) within the Office of Prevention, Pesticides and Toxic Substances (OPPTS), as well as the U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), other Federal agencies, States under Cooperative Enforcement Agreements, and the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 13, 2001 (66 FR 10019), and no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to be an average of 120 minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able

to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Pesticide Producers.

Estimated Number of Respondents: 12,336.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 24,672 hours.

Estimated Total Annualized Non-Labor Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0143.07 and OMB Control No. 2070–0028 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OEI Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: June 25, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–16943 Filed 7–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7007–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978 and Prior to July 23, 1984

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978 and Prior to July 23, 1984, EPA ICR Number 1050.07 and OMB Control Number 2060–0121 expiring on June 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 6, 2001.

ADDRESSES: Send comments, referencing EPA ICR Number 1050.07 and OMB Control Number 2060–0121, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at *farmer.sandy@epamail.epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR Number 1050.07. For technical questions about the ICR contact Everett Bishop, phone: (202) 564–7032; fax: (202) 564–0050 or email: *bishop.everett@epa.gov*.

SUPPLEMENTARY INFORMATION

Title: Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978 and Prior to July 23, 1984, EPA ICR Number 1050.07 and OMB Control Number 2060–0121 expiring on June 30, 2001. This is a request for extension of a currently approved collection.

Abstract: Volatile Organic Compounds (VOCs) from storage vessels cause or contribute to air pollution that may reasonably be anticipated to endanger public health. VOC emissions are the result of evaporation of volatile organic liquids contained in the storage vessels. The control of VOCs requires not only the installation of properly designed equipment, but also the maintenance and operation of that equipment. Information generated by the recordkeeping and reporting requirements is used by the Agency to ensure that facilities affected by this New Source Performance Standards (NSPS) continue to operate the control equipment properly, thereby minimizing VOCs emissions into the atmosphere. Responses to the collection of information are required to assure the control equipment is operated and maintained properly. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 22, 2000, 65 FR 80854; no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 75 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Predominately Petroleum Synthetic Organic Manufacturing.

Estimated Number of Respondents: 157.

Frequency of Response: Annually and varies.

Estimated Total Annual Hour Burden: 39,139.

Estimated Total Annualized Capital, O&M Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Number 1050.07 and OMB Control Number 2060–0121 in any correspondence.

Dated: June 28, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–16944 Filed 7–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7007–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; State Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBTCP) Under the Clean Air Act as Amended in 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: State Small Business Stationary Source Technical and Environmental Compliance Assistance Program Annual Reporting Form, OMB Control Number 2060–0337, expiration date September 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 6, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1748.03 and OMB Control No. 2060–0337, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at Farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1748.03. For technical questions about the ICR contact Angela Suber at 202–260–7205.

SUPPLEMENTARY INFORMATION

Title: State Small Business Stationary Source Technical and Environmental Compliance Assistance Program Annual Reporting Form, OMB Control Number 2060–0337, EPA ICR Number 1748.03, expiration date September 30, 2001. This is an extension of a currently approved collection.

Abstract: As part of the Clean Air Act Amendments of 1990, the U.S. Congress included, as part of Section 507, the requirement that each state establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBTCAP) to assist small businesses in complying with the Act. EPA must provide the Congress with periodic reports from the EPA Small Business Ombudsman (SBO) on these programs, including their effectiveness, difficulties encountered, and other relevant information. Each state assistance program will submit requested information to EPA for compilation and summarization.

This collection of information is mandatory under Section 507(a), (d), and (e) of the Clean Air Act as amended in 1990, Public Law 101–549, November 15, 1990. This Act directs EPA to monitor the SBTCPs and to provide a report to Congress. This responsibility has been delegated to the EPA SBO. Response to the collection is not required to obtain or retain a benefit. Information in the annual Report to Congress is aggregated and is not of a confidential nature. None of the information collected by this action results in or requests sensitive information of any nature from the states.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 27, 2001, (66 FR16671); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 80 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: state, local, or tribal government.

Estimated Number of Respondents: 53.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 2120 hours.

Estimated Total Annualized Capital, O&M Cost Burden: 0

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No 1748.03 and OMB Control No. 2060–0337 in any correspondence.

Dated: June 25, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–16945 Filed 7–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7007–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; New Source Performance Standards (NSPS) for Sewage Treatment Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: New Source Performance Standards (NSPS) for Sewage Treatment Plants, Subpart O; OMB Control No. 2060–0035; EPA ICR No. 1063.08; expiration date June 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 6, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1063.08 and OMB Control No. 2060–0035, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue,

NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at *Farmer.Sandy@epamail.epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1063.08. For technical questions about the ICR contact Kelli A. Smith at (202) 564–2257.

SUPPLEMENTARY INFORMATION

Title: New Source Performance Standards (NSPS) for Sewage Treatment Plants, Subpart O (OMB Control No. 2060–0035; EPA ICR No. 1063.08) expiring June 30, 2001. This is a request for extension of a currently approved collection.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR part 60.150, *et. seq.*, Subpart O, New Source Performance Standards for sewage sludge treatment plant incinerators.

The control of emissions of particulate matter from sewage treatment plant incinerators requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Particulate matter emissions from sewage treatment plant incinerators are the result of the physical and chemical characteristics of the sludge feed and fuel use, the excess air rate, the temperature profile within the incinerator, the pressure drop across the control device, and operating procedures. These standards rely on the reduction of particulate matter emissions by wet scrubbers.

In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards, that are protective of public health, are being met on a continuous basis, as required by the Clean Air Act.

These standards require initial notification reports with respect to construction, modification, reconstruction, startups, shutdowns, and malfunctions. The standards also require reports on initial performance tests and semiannual reports of noncompliance.

Under the standard, the data collected by the affected industry is retained at the facility for a minimum of two (2) years and made available for inspection by the Administrator.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 15, 2000 (65 FR 55955); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 31 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators Sewage Sludge Treatment Plants.

Estimated Number of Respondents: 154.

Frequency of Response: semi-annually

Estimated Total Annual Hour Burden: 9,089.

Estimated Total Annualized Capital, O &M Cost Burden: $5,845,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1063.08 and OMB Control No. 2060–0035 in any correspondence.

Dated: June 27, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–16946 Filed 7–5–01; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7007–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123, EPA ICR # 1425.05, OMB Control #2050–0077, expiring June 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 6, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1425.05 and OMB Control No. #2050–0077, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION: For a copy of the ICR, call Sandy Farmer at EPA, (202) 260–2740, or download off the Internet at *http://www.epa.gov/icr/icr.htm* and refer to EPA ICR No. 1425.05. For technical questions about the ICR contact Lisa Boynton on (703) 603–9052.

SUPPLEMENTARY INFORMATION

Title: Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123, OMB Control #2050–0077, EPA ICR #1425.05, expiring June 30, 2001. This is a request for extension of a currently approved ICR.

Abstract: The Agency requires applicants for reimbursement under this

program authorized under Section 123 of CERCLA to submit an application that demonstrates consistency with program eligibility requirements. This is necessary to ensure proper use of the Superfund. EPA reviews the information to ensure compliance with all statutory and program requirements. The applicants are local governments who have incurred expenses, above and beyond their budgets, for hazardous substance response. Submission of this information is voluntary and to the applicant's benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on November 11, 2000, (65 FR 69510) and the comment period was extended on March 19, 2001, (66 FR 15427). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State, Local, or Tribal Government.

Estimated Number of Respondents: 200.

Frequency of Response: When costs are incurred.

Estimated Total Annual Hour Burden: 1800 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1425.05 and OMB Control No. #2050–0077 in any correspondence.

Dated: June 20, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–16948 Filed 7–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6619–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

DRAFT EISs

ERP No. D–AFS–J08025–CO Rating EC2, Nucla-Telluride Transmission Line Project, Permit Approval and Funding for Construction and Operation of a 115 kV Transmission Line between the Nucla Substation in Montrose County and either the Telluride or Sunshine Substations in San Miguel County, CO.

Summary: EPA expressed environmental concern regarding impacts to wetlands and waters of the United States.

ERP No. D–AFS–J65336–MT Rating EC2, Lolo National Forest, Big Game Winter Range and Burned Area Management, Restoration, Prevention and Cooperation, Implementation, Missoula, Lake, Mineral, Sanders, Granite, Powell, Lewis and Clark, Flathead and Ravalli Counties, MT.

Summary: EPA expressed environmental concerns regarding potential herbicide transport to surface and ground waters. EPA recommended a monitoring plan for herbicides in sensitive waters to assess effectiveness of mitigation measures and that the FEIS include information regarding ground water depths in areas to be treated.

ERP No. D–AFS–J65341–MT Rating EC2, Little Bear-Wilson Timber Sale and Road Decommission Project, Implementation, Gallatin Range, Gallatin National Forest, Bozeman Ranger District, Gallatin County, MT.

Summary: EPA expressed environmental concerns regarding the inclusion of timber harvest units in the degraded Wilson Creek Drainage, and recommended that additional mitigation be provided for reduction in sediment production or that these harvest units be dropped. EPA also believes additional information should be presented regarding aquatic monitoring, and impacts to the threatened lynx to fully assess and mitigate all potential impacts of the management actions.

ERP No. D–COE–G39033–LA Rating EC2, West Bay Sediment Diversion Channel Project, Construction, Funding, Plaquemines Parish, LA.

Summary: EPA has expressed environmental concerns and has requested additional information on project site selection, water quality, CWA Section 404b1 assessment, cost, comparative impact analysis, cumulative benefits, and cost sharing requirements.

ERP No. D–EDA–B99003–CT Rating EC2, Adriaen's Landing Project, Development from Columbus Boulevard south of the Founders Bridge and Riverfront Plaza, City of Hartford, CT.

Summary: EPA expressed concerns about the air quality analysis, and suggested measures to control construction vehicle emissions, traffic, odor, and requested a more comprehensive analysis of neighborhood noise impacts.

ERP No. D–FHW–F40391–IL Rating EC2, Illinois Route 3 (FAP–14) Relocation, Improved Transportation from Sauget to Venice, Funding, NPDES Permit and COE Section 404 Permit, Madison and St. Clair Counties, IL.

Summary: EPA agreed with the project's purpose and need, range of alternatives, and selection of a preferred alternative. EPA expressed concerns that the existing wetlands compensation site falls approximately 20 acres short of providing the full amount of compensatory wetlands needed to account for the project's anticipated wetland impacts.

ERP No. D–TVA–E65057–00 Rating EC2, Guntersville Reservoir Land Management Plan, Implementation, Proposal to Update a 1983 Land Allocation Plan, Jackson and Marshall Counties, AL and Marion County, TN.

Summary: EPA expressed concerns regarding the potential use and effects of timber harvesting on TVA reservoir lands and the potential for TVA's selection of Alternative B1 as their preferred alternative. EPA environmentally prefers B2 since it proposes less reservoir development.

Overall, we believe that TVA's economic stimulation and public benefits goals should still be contained within the context of environmental protection.

ERP No. D–UAF–D11048–VA Rating EC2, Initial F–22 Operational Wing Beddown Replacing the Existing F–15C at Langley (AFB) or one of the Four Alternative Locations, VA.

Summary: EPA expressed concern due to issues relating to noise, environmental justice, transportation, floodplains, and pollution prevention. EPA also recommended that the Air Force incorporate pollution prevention practices into the design of the proposed plan.

ERP No. DS–SFW–B82009–00 Rating EC2, Lake Champlain Sea Lamprey Control Long-Term Program, Proposal is to Achieve Fish Population, Recreational Fishery and Economic Benefits Associated with Reduced Sea Lamprey Predation Implementation, Clinton, Essex and Washington Counties, NY and Addison and Chittenden Counties, Counties, VT.

Summary: EPA expressed concerns about impacts to non-target species, requested information to describe how new waterbodies would be analyzed under NEPA, requested information to further explain the project purpose and need, suggested that the program include provisions for periodic re-evaluation, and highlighted the possibility that a NPDES permit may be required for lampricide applications.

Final EISs

ERP No. F–AFS–J65300–CO

Upper Blue Stewardship Project, Implementation of Vegetation Management, Travel Management, Designation of Dispersed Camping Sites, White River National Forest, Dillon Ranger District, Summit County, CO.

Summary: EPA's remaining concern is with development of three permanent clearings for ski runs in a lynz movement corridor.

ERP No. F–AFS–J65328–SD

Jasper Fires Value Recovery Area Project, Implementation, Revised Forest Plan for the Black Hills National Forest, Hell Canyon and Mystic Ranger District, Custer and Pennington Counties, SD.

Summary: EPA has remaining concerns about potential impacts to groundwater from activities in fractured limestone landscapes.

ERP No. F–AFS–J65329–MT

Maudlow—Toston Post-Fire Salvage Sale, Harvesting Burnt Timber, Implementation, Helena National Forest, Townsend Ranger District, Broadway County, MT.

Summary: EPA expressed concerns about the dropping of road decommissioning from the selected alternative and loss of the associated beneficial watershed effects, and the lack of Hydrologic/aquatics monitoring for measurement to post-fire and post-salvage harvest aquatic conditions. EPA requested additional information to fully assess and mitigate potential impacts.

ERP No. F–USA–A10073–00

Programmatic EIS—Transportable Treatment Systems for Non-Stockpile Chemical Warfare Material (CWM), To Destroy Non-Stockpile in order to Protect Human, Health, Safety and the Environment, To Comply with the International Treaty, Nationwide.

Summary: EPA expressed environmental concerns regarding the risks and monitoring during the treatment of CWM. EPA recommended that DOD should address these issues at the site-specific level.

Dated: July 2, 2001.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 01–16940 Filed 7–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6619–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 www.epa.gov/oeca/ofa

Weekly receipt of Environmental Impact Statements

Filed June 25, 2001 Through June 29, 2001

Pursuant to 40 CFR 1506.9.

EIS No. 010238, Final EIS, AFS, OR, Tower Fire Recovery Project, Restoration and Salvage, Implementation, Umatilla National Forest, North Fork John Day Ranger District, Umatilla and Grant Counties, OR, Due: August 06, 2001, Contact: Janel Lacey (541) 427–5394.

EIS No. 010237, Final Supplement, JUS, TX, AZ, NM, CA, Programmatic—Final Supplemental EIS US Naturalization Service (INS) and US Joint Task Force-Six (JTF–6) Activities Along the US/Mexico Border from Brownsville Texas to San Diego, California, Due: August 06, 2001, Contact: Eric Verwers (817) 978–0202.

EIS No. 010239, Draft EIS, FHW, AL, Memphis to Atlanta Corridor, To Construct from I65 in North Central Alabama Eastward to the Georgia State Line, COE Section 404, US Coast Guard and NPDES Permits, Limestone, Morgan, Madison, Jackson, Marshall, Dekalb and Cherokee Counties, AL, Due: August 20, 2001, Contact: Joe D. Wilkerson (334) 223–7370.

EIS No. 010240, *Draft EIS, SFW, WA,* Icicle Creek Restoration Creek Project, To Protect and Aid in the Recovery of Threatened and Endangered Fish, Leavenworth National Fish Hatchery (LNFH), COE Section 404 and NPDES Permits, Leavenworth, WA, Due: August 20, 2001, Contact: Anne Badgley (509) 548–7641.

Dated: July 2, 2001.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 01–16941 Filed 7–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00727; FRL–6790–6]

Pesticide Program Dialogue Committee (PPDC); Inert Disclosure Stakeholder Workgroup; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a conference call meeting of the Inert Disclosure Stakeholder Workgroup. The workgroup was established to advise the Pesticide Program Dialogue Committee on ways of making information on inert ingredients more available to the public while working within the mandates of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and related Confidential Business Information concerns.

DATES: The meeting will be held by conference call on Wednesday, July 25, 2001, from 11 a.m. to 2 p.m. EST.

ADDRESSES: Members of the public may listen to the meeting discussions on site at: Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA; conference room 1123. Seating is limited and will be available on a first come first serve basis.

FOR FURTHER INFORMATION CONTACT: By mail: Cameo Smoot, Office of Pesticide Programs (7506C), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460,

telephone: (703) 305–5454. Office locations: 11th floor, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA; e-mail smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general and to persons interested in the availability of public information regarding inert or "other" ingredients in pesticide products regulated under FIFRA.

The Inert Disclosure Stakeholder Workgroup was established to advise the U. S. Environmental Protection Agency, through the Pesticide Program Dialogue Committee (PPDC), on potential measures to increase the availability to the public of information about inert ingredients (also called "other ingredients") under FIFRA. Among the factors the workgroup has been asked to consider in preparing its recommendations are: Existing law regarding inert ingredients and Confidential Business Information (CBI); current Agency processes and policies for disseminating inert ingredient information to the public, including procedures for the protection of CBI; informational needs for a variety of stakeholders; and business reasons for limiting the disclosure of inert ingredient information.

The Inert Disclosure Stakeholder Workgroup is composed of participants from the following sectors: environmental/public interest and consumer groups; industry and pesticide users; Federal, State and local governments; the general public; academia and public health organizations.

The Inert Disclosure Stakeholder Workgroup meeting is open to the public. Written public statements are also welcome and should be submitted to the Office of Pesticide Programs' administrative docket OPP–00727. Any person who wishes to file a written statement can do so before or after the conference call. These statements will become part of the permanent file and will be provided to the workgroup members for their information. If you have any questions about the workgroup, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**"—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

For general background information about the Inert Disclosure Stakeholder Workgroup, its mission and a list of its members, go to http://www.epa.gov/pesticides/ppdc/inert/.

2. *In person.* The Agency has established an administrative record for this workgroup under docket control number OPP–00727. The administrative record consists of the workgroup documents including discussion papers, meeting agenda, as well as comments submitted to the workgroup by members of the public. This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents.

The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00727 in the subject line on the first page of your correspondence.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in Units III. 1. and 2. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00727. Electronic comments may also be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Pesticides, Inerts, PPDC.

Dated: June 26, 2001.

Anne E. Lindsay,

Acting Director, Office of Pesticide Programs.

[FR Doc. 01–16958 Filed 7–5–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1027; FRL–6784–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1027, must be received on or before August 6, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1027 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1027. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1027 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1027. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under FOR FURTHER INFORMATION CONTACT.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 20, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Reseach Project Number 4 (IR-4)

1E6224 and 1E6233

EPA has received pesticide petitions 1E6224 from the Interregional Research Project Number 4 (IR-4), 681 US Highway #1 South, North Brunswick, NJ 08902–3390 and 1E6233 from the Taipai Economic and Cultural Representative Office, 4301 Connecticut Ave., NW., Suite 420, Washington, DC 20008 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.503 by establishing tolerances for residues of the fungicide, cymoxanil, 2-cyano-N-(ethylamino)carbonyl-2-(methoxyimino)acetamide in or on the following raw agricultural commodities (RACs): PP 1E6224 proposes to establish a tolerance on hops at 1.0 part per million (ppm). PP 1E6233 proposes to establish a tolerance on imported lychee at 1.0 ppm. This notice includes a summary of the petitions prepared by DuPont Agricultural Products, PO Box 80038, Wilmington, DE 19880-003. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* The plant metabolism of cymoxanil is adequately understood in the crops of potatoes, tomatoes, and lettuce.

2. *Analytical method.* An analytical enforcement method is available for determining cymoxanil in plant residues using HPLC with UV detection.

3. *Magnitude of residues.* The magnitude of residues are adequately understood for lychee and hops.

B. Toxicological Profile

1. *Acute toxicity.* A battery of acute toxicity tests on technical cymoxanil and its Toxicity Categories are as follows:

Study Type	Species	Results	Toxicity Category
Oral LD_{50}	Rat	960 mg/kg	Category III
Dermal LD_{50}	Rabbit	≤2000 mg/kg	Category III
Inhalation LC_{50}	Rat	5.06 mg/L	Category IV
Eye irritation	Rabbit	Slight Irritant	Category IV
Dermal irritation	Rabbit	Not an Irritant	Category IV
Dermal sensitization	Guinea pig	Not a sensitizer	

An acute neurotoxicity study was not required with cymoxanil; no short term or subchronic studies have been observed.

2. *Genotoxicity.* Cymoxanil was tested in a battery of assays to evaluate genotoxicity and chromosome aberrations; the results are as follows:

Study	Test Organisms	Results
Bacterial gene mutation	*Salmonella typhimurium*	Negative
Mammalian gene mutation *in vitro*	CHO/ HGPRT	Negative
Mammalian chromosome aberrations *in vitro*	CHO	Positive
Mammalian chromosome aberrations *in vivo*	Mouse micronucleus	Negative
Unscheduled DNA synthesis *in vitro*	Primary rat hepatocytes	Negative
Unscheduled DNA synthesis *in vivo* and Spermatocytes	Primary rat hepatocytes	Negative

Based on the weight-of-evidence, cymoxanil is not considered to be genotoxic or clastogenic.

3. *Reproductive and developmental toxicity.* The results of a series of studies showed no indication of reproductive or developmental hazards associated with cymoxanil.

In a 2–generation cymoxanil rat reproduction study, the NOAEL for both parents and offspring was approximately 7 milligrams/kilogram/day, based on decreased body weight, weight gain and food consumption in adults and decreased pup weight in offspring at 32 mg/kg/day. There were no reproductive or fertility effects. Since offspring effects occurred only in the presence of maternal toxicity, it is considered a secondary effect to the health effects on the dam.

The developmental studies conducted in rats demonstrated a NOAEL of 10 mg/kg/day, and a LOAEL of 25 mg/kg/day for both adult and developmental effects. Maternal effects in rats included decreased weight, weight gain, and food consumption. Developmental effects were increases in fetal variations, which were the result of generalized delays in ossification, and overall malformations, although malformations detected were not dose related.

In rabbits, several developmental toxicity studies were conducted. Based on the weight-of-evidence of all three studies, there was no unique sensitivity of perinatal animals to the effects of cymoxanil, nor any anomalies of the fetal nervous system at maternally toxic doses up to and including 32 mg/kg/day.

4. *Subchronic toxicity.* Subchronic (90–day) feeding studies were conducted with rats, mice, and dogs. In addition, the following subchronic feeding studies were conducted: a 90–day in rats to evaluate neurotoxicity and 28–day rats and mice to evaluate immunotoxicity. A 28–day dermal study was also conducted in rats.

In a subchronic toxicity/neurotoxicity study in rats with cymoxanil, the NOAEL of 47.6 mg/kg/day in males was based on decreased body weights, and minimal to mild testicular and epididymal effects at higher concentrations. In females, the NOAEL of 59.9 mg/kg/day was based on effects on body weight, weight gain, and food efficiency at higher levels.

The subchronic NOAEL for male mice administered cymoxanil was 8.25 mg/kg/day based on body weight and weight gain effects at 82.4 mg/kg/day and above. The NOAEL for females was 121 mg/kg/day based on increases in spleen and liver weights at 433 mg/kg/day and above.

For cymoxanil, dogs were the most sensitive species in subchronic studies. Reduced body weight gain and/or food consumption was observed at 3 mg/kg/day or greater in females and 5 mg/kg/day and above in males. Both sexes had RBC changes (decreased RBC counts, Hb, and/or Hct), increased incidence of ketonuria at the intermediate and high concentration, and changes in serum chemistry (decreases in various electrolytes and proteins) at the high dose. Males had testicular and epididymal effects at the highest concentration, 11 mg/kg/day (raised from 5 mg/kg/day at week 3); this was considered to be retardation of development due to markedly reduced body weight in this group. The NOAEL for males was 3 mg/kg/day. There was no NOAEL in female dogs in the 90–day study. Although a NOAEL was not established in the dog subchronic study, 3 mg/kg/day was found to be a NOAEL in a subsequent chronic study in dogs.

Subchronic (28–day) studies were conducted in rats and mice to evaluate the immunotoxicity potential of cymoxanil. Cymoxanil was not immunotoxic up to and including the highest dose tested (HDT) which was 1,600 ppm in rats (108 and 117 mg/kg/day in males and females, respectively), 1,200 ppm (218 mg/kg/day) in male mice, and 2,400 ppm (552 mg/kg/day) in female mice.

Cymoxanil was applied to the skin of rats 6–hours/day for 28 days at doses of 0, 50, 500, and 1,000 mg/kg/day. There were no effects at any dose tested. The 28–day dermal NOAEL was 1,000 mg/kg/day, the HDT.

5. *Chronic toxicity.* Chronic studies with cymoxanil were conducted on rats, mice, and dogs to determine carcinogenic potential and/or chronic toxicity of the compound. Effects generally similar to those observed in the 90–day studies were seen in the chronic studies; cymoxanil was not found to be carcinogenic.

The chronic NOAEL for cymoxanil in male rats was 4.08 mg/kg/day based on decreased body weight, weight gain, food efficiency, and non–neoplastic lesions in several organs including lung inflammation, spermatid degeneration, and retinal atrophy at 30.3 mg/kg/day or higher. In addition, male rats in the two highest groups displayed increased aggressiveness and hyperreactivity consistent with the compromised general health status (i.e. systemic toxicity) of those groups. In females, the NOAEL of 5.36 mg/kg/day was based on decreased body weight, weight gain, food efficiency, and non-neoplastic lesions in several organs including lungs, liver, intestines, mesenteric lymph nodes, sciatic nerve, and retina at 38.4 mg/kg/day or higher. Retinal atrophy and sciatic lesions are common spontaneous lesions associated with aging. These effects observed in cymoxanil test animals were considered aging-related effects. Spermatid degeneration occurs spontaneously in rats. While the incidence was increased in cymoxanil-treated rats, most were mild or minimal, and none were more than moderate. Thus, the effects are considered a mild exacerbation of a spontaneously occurring lesion.

In mice, the chronic NOAELs for cymoxanil were 4.19 and 5.83 mg/kg/day for males and females, respectively, based on changes in organ weights, gastrointestinal effects in females, and liver, testes and epididymal effects in males at the LOAEL. Similar to the rat, the testicular effects were considered an exacerbation of a spontaneous lesion that occurred in one-quarter of the control mice. The LOAELs were 42.0 and 58.1 mg/kg/day for males and females, respectively.

The chronic cymoxanil NOAEL for male dogs was 3.0 mg/kg/day based on a temporary decrease in body weight and food consumption, and lower RBC count, hemoglobin, and hematocrit at 5.7 mg/kg/day. In female dogs the only finding was a transient effect on body weight, food consumption, and food efficiency at the HDT, 3.1 mg/kg/day, only during the first week of the study.

6. *Animal metabolism.* When administered by gavage to rats, cymoxanil was readily absorbed and eliminated. Absorption reached maximum concentrations in whole blood within 4 hours post–dosing. A rapid and almost complete elimination was observed in the urine and feces. The majority of radioactivity was recovered within 96 hours, mainly in urine but also in feces. Radioactivity in the tissues and carcass was less than 1%. In the urine and feces, the majority of the radioactivity was free and/or conjugated glycine. 2-Cyano-2-methoxyimino-acetic acid was also found in low levels in the urine and trace levels in the feces. Intact cymoxanil was less than 1% in feces and not detected urine. The metabolite profile in urine and feces was similar between sexes, among dose groups, and between dosing regimens.

7. *Metabolite toxicology.* There are no metabolites of toxicological significance to mammals.

8. *Endocrine disruption.* The probability of an endocrine effect due to agricultural uses of cymoxanil is negligible.

C. Aggregate Exposure

1. *Dietary exposure.* Cymoxanil is a fungicide currently registered in the United States for use on potatoes. In addition, tolerances have been approved for cymoxanil on imported tomatoes and grapes.

i. *Food.* The acute and chronic analysis conservatively assumed that 30% of cucurbits, fruiting vegetables, head lettuce, potatoes and imported grapes would be treated with cymoxanil and field trial residue data was used. As reflected in the 1994-1996 USDA CSFII data, neither hops nor lychee are consumed as part of the diet. Therefore, any increased exposure from the use of cymoxanil on hops and lychee would be negligible and would not significantly alter the acute and chronic dietary risk estimates provided. The analysis' show that adequate margins of safety exist for all population subgroups, and no effects would result from dietary exposure to cymoxanil.

a. *Acute dietary exposure assessment.* The acute dietary exposure assessment was estimated using Tier 3. The results of the acute dietary exposure analysis for cymoxanil are given in table below. The percentages of the acute population adjusted dose (aPAD) for cymoxanil were calculated based on an acute NOAEL of 4 mg/kg/day from the rabbit

developmental study based on maternal clinical signs and weight effects at the higher levels and an uncertainty factor of 100. The results of the acute dietary exposure analysis are below the EPA's level of concern.

RESULTS OF ACUTE DIETARY EXPOSURE ESTIMATES FOR CYMOXANIL

Population Group	99.9th Percentile of Exposure (mg/kg/day)	% aPAD
U.S. Population	0.001789	4.47
Non-Nursing (< 1 yr.)	0.000599	1.50
Children (1–6 yr.)	0.002096	5.24
Children (7– 12 yr.)	0.001936	4.84
Females (13+ nursing)	0.002287	5.72

b. *Chronic dietary exposure assessment.* The chronic dietary exposure assessment was estimated using the Dietary Exposure Evaluation Model (DEEM, Novigen Sciences, Inc., 1999 Version 6.74). The following table presents the results of an analysis for chronic exposure to cymoxanil in either TanosR 50DF or CurzateR 60DF. The chronic population adjusted dose (cPAD) of 0.041 mg/kg/day is based on a NOAEL of 4.08 mg/kg/day from the one-year rat feeding study and an uncertainty factor of 100. No sensitive subpopulations were identified. The results of the chronic dietary exposure analysis are below the EPA's level of concern.

RESULTS OF CHRONIC DIETARY ANALYSIS WITH CYMOXANIL

Population Group	Maximum Dietary Exposure (mg/kg/day)	% cPAD
U.S. Population	0.000063	0.2
Non-Nursing Infants (<1 yr.)	0.000016	0.1
Children (1–6 yr.)	0.000074	0.2
Children (7–12 yr.)	0.000068	0.2
Females (13+)	0.000074	0.2

ii. *Drinking water.* Surface water exposure was estimated using the Generic Expected Environmental Concentration (GENEEC) model. This screening level model is used for determining upper bound concentrations of pesticides in surface water.

The acute drinking water level of concern(s) (DWLOCs) are 1.3 ppm for the U.S. population, and 0.38 ppm for children (1–6 years old), the most exposed population subgroup. The estimated environmental concentration (EECs) of cymoxanil in surface water is 8.15 parts per billion (ppb) derived from GENEEC does not exceed the acute DWLOC.

The chronic DWLOCs are 1.4 ppm for the U.S. population and 0.4 ppm for children (1–6 years old), the most sensitive subgroup. The GENEEC 56-day EECs of 0.37 ppb does not exceed the chronic DWLOC for cymoxanil in surface water.

Therefore, based on the above findings, the registrants conclude with reasonable certainty that residues of cymoxanil in drinking water do not contribute significantly to the aggregate chronic human health risk.

2. *Non-dietary exposure.* Cymoxanil products are not labeled for residential non-food uses, thereby eliminating the potential for residential exposure.

D. Cumulative Effects

EPA's consideration of a common mechanism of toxicity is not necessary at this time because there is no indication that toxic effects of cymoxanil should be cumulative with those of any other chemical compounds or with each other.

E. Safety Determination

1. *U.S. population.* For acute dietary exposure of cymoxanil, the estimated exposure is 0.000475 and 0.001789 at the 99th and 99.9th percentiles, which will utilize 1.19 and 4.47%, respectively, of the acute population adjusted dose (aPAD) for the overall U.S. population. The chronic dietary exposure for the overall U.S. population is estimated to be 0.000063 mg/kg/day, using 0.2% of the chronic population adjusted dose (cPAD). Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is reasonable certainty that no harm will result from the aggregate exposure of residues of cymoxanil including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children.* For acute dietary exposure of cymoxanil, the aPAD for children 1-6 years old is 1.44 at the 99th percentile and 5.24 at the 99.9th percentile. For non-nursing infants (<1 yr.), the % aPAD is 0.46 at the 99th percentile and 1.50 at the 99.9th percentile. Chronic dietary exposure of cymoxanil for the most highly exposed children's subpopulations are: 0.000074 mg/kg/day for children 1-6 years old, and 0.000068 mg/kg/day for children 7–12 years old, representing 0.2% of the cPAD for each subpopulation. Exposure for all infant subpopulations was negligible.

In addition, there are no residential uses of cymoxanil; therefore, it is extremely unlikely that drinking water will be contaminated.

Based on the completeness and reliability of the toxicity database, the lack of toxicological endpoints of special concern, the lack of any indication that children are more sensitive than adults to cymoxanil, and the conservative exposure assessment, the registrants believe there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure of residues of cymoxanil, including all anticipated dietary exposure and all other non-occupational exposures. Accordingly, there is no need to apply an additional safety factor for infants and children.

F. International Tolerances

No international tolerances currently exist for cymoxanil.

[FR Doc.01–16957 Filed 7–5–01; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1031; FRL–6790–1]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1031, must be received on or before September 4, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1031 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" "Regulation and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1031. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1031 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1031. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set

forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 20, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Uniroyal Chemical Company

PP 1F6297, 0F6077, and 8F4938

EPA has received pesticide petitions (1F6297, 0F6077, and 8F4938) from Uniroyal Chemical Company, 74 Amity Rd., Bethany, CT 06525 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of [[1-1-((4-chloro-2-(trifluoromethyl) phenyl)imino)-2-propoxyethyl -1H-Imidazole]] in or on the raw agricultural commodities strawberries at 2.0 parts per million (ppm) [1F6297], the cucurbit crop group at 0.5 ppm [0F6077] and cherries at 2.0 ppm [8F4938]. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* In crops, the metabolism of [^{14}C-Phenyl] triflumizole was investigated in cucumber, pears, grapes and apples. The major metabolites were: N-(4-chloro-2-trifluoromethylphenyl)-n-propoxyacetamidine (FM-6–1), N-(4-chloro-2-trifluoromethyphenyl)-n-propoxyacetanilide (FD-1–1) and the free or conjugated products of N-(4-chloro-2-trifluoromethylphenyl)-hydroxyacetamidine (the O-dealkylation product of FM-6–1), N-(4-chloro-2-trifluoromethylphenyl)-hydroxyacetanilide (FD-2–1) and the triflumizole aniline (FA-1–1).

2. *Analytical method.* The analytical method is suitable for analyzing crops for residues of triflumizole and its aniline containing metabolites at the proposed tolerance levels. The analytical method has been independently validated. Residue levels of triflumizole are converted to FA-1–1 by acidic and alkaline reflux, followed by distillation. Residues are then extracted and subjected to SPE purification. Detection and quantitation are conducted by a gas chromatography equipped with nitrogen phosphorus detector, electron capture detector or mass spectrometry detection. The limit of quantitation of the method has been determined at 0.05 parts per million (ppm) for cucurbits and cherries, and 0.02 ppm for strawberries. The enforcement methodology has been submitted to the Food & Drug Administration (FDA) for publication in the Pesticide Analytical Manual, Vol. II (PAM II).

3. *Magnitude of residues.* Eight field trials in strawberries were conducted in commercial growing areas of the United States. The analytical data show that the mean measured residue in/on strawberries was 0.859 ppm. The highest residue data was 2.0 ppm. Crop field trial residue data from 0 –day pre-harvest interval studies were conducted on cucumbers, muskmelon, and squash (cucurbits). In these trials, residues ranged from 0.06 to 0.39 ppm. Field trials were carried out on cherries in five states. In these trials the residues of triflumizole and it's aniline containing metabolites ranged from 0.4 to 1.5 ppm. These data support the proposed tolerances for triflumizole. There are no processed commodities or feed commodities associated with these crops.

B. Toxicological Profile

1. *Acute toxicity.* The database includes the following studies: a rat acute oral study with a LD_{50} of 1.42 g/kg; a rabbit acute dermal study with a LD_{50} >5 g/kg; a rat acute inhalation study with a LC_{50} >3.2 mg/l; a rabbit primary ocular irritation study which showed mild irritation; a rabbit primary dermal irritation study which showed no irritation; a guinea pig dermal sensitization study which showed slight dermal sensitization potential.

2. *Genotoxicity.* Triflumizole was negative in all genotoxicity assays including: Ames assay in *S. typhimurium*, gene conversion assay in yeast strain D4, REC assay in *B. subtilis*, unscheduled DNA synthesis (UDS) assay in cultured rat hepatocytes, chromosome aberration assay in cultured Chinese hampster ovary (CHO) cells and a mouse micronucleus assay.

3. *Reproductive and developmental toxicity.* In a developmental toxicity study, triflumizole was administered by oral gavage to pregnant female Sprague Dawley rats at dosage levels of 0, 10, 35 or 120 mg/kg/day. Maternal toxicity, as evidenced by a substantial reduction in body weight (bwt) gain, was seen at 35 and 120 mg/kg/day. At these dosage levels there was a decrease in fetal viability in the form of late resorptions. There were no teratogenic effects. The no observed adverse effect level (NOAEL) for maternal and developmental toxicity was 10 mg/kg/day. Triflumizole was also administered by oral gavage to pregnant female New Zealand White rabbits at dosage levels of 0, 5, 25, or 50 mg/kg/day. At a dose level of 50 mg/kg/day there was a reduction in bwt gain in kits. There were no developmental or teratogenic effects. The NOAEL for maternal toxicity was 25 mg/kg/day and the NOAEL for developmental toxicity was greater than 50 mg/kg/day.

The reproduction toxicity of triflumizole was evaluated in a rat reproduction study, conducted on three generations, at dietary concentrations of 0, 30, 70 and 170 ppm. Fertility was not affected by treatment. There was an increase in placental weight in the F1b, F2b and F3b litters and a statistically significant increase in gestation length in the high dose group at the F1a and F3a mating intervals. The NOAEL for systemic parental toxicity was greater than 170 ppm and the NOAEL for developmental effects was 70 ppm based upon effects seen in litters of both studies at the high dose level, including increased incidences of hydroureter and space between the body wall and organs. The NOAEL for reproductive effects was 70 ppm (3.5 mg/kg/day) based on increased gestation length observed at the high dose level at 2 of 6 mating intervals.

4. *Subchronic toxicity.* To assess sub-acute dermal toxicity, triflumizole was applied to the backs of male and female Sprague Dawley rats for three weeks. High dose female rats exposed to 1,000 mg/kg/day exhibited mild fatty vacuolation in the liver, which was

within the range of normal biological variation. Therefore, the NOAEL for sub-acute dermal toxicity in rats was greater than 1,000 mg/kg/day.

Triflumizole was fed to male and female Sprague Dawley rats for thirteen weeks at dietary concentrations of 0, 20, 200 and 2,000 ppm to assess sub-chronic toxicity. At a dosage level of 2,000 ppm there was a reduction in body weight gain, an increase in liver and kidney weights, lipid droplets in liver and a decrease in serum alkaline phosphatase in males and females. High dose females exhibited a reduction in red blood cell (RBC) and hemoglobin in blood. The NOAEL for sub-chronic toxicity in rats was 200 ppm (10 mg/kg/day).

5. *Chronic toxicity*. Triflumizole was fed to male and female Beagle dogs for one year at dietary concentrations of 0, 100, 300 and 1,000 ppm to assess chronic toxicity. At a dosage level of 1,000 ppm there was an increase in serum liver enzymes and a decrease in RBC concentration. The NOAEL for chronic toxicity in dogs was 300 ppm (7.5mg/kg/day).

Triflumizole was fed to male and female Sprague Dawley rats for two years at dietary concentrations of 0, 100, 400 and 1,600 ppm to assess chronic toxicity At the high dose level there was a substantial reduction in body weight gain in males and females. At the mid and high dose levels there was an increase in liver weight. Ovary weight was increased in high dose female rats, and kidney weights were elevated in high dose animals. Alanine amino-transferase and lactose dehydrogenase was elevated in high dose males and females, respectively. High dose females had an increased incidence of ovarian follicular cysts, while high dose males exhibited pancreatic acinar cell atrophy. Fatty vacuolization of the liver was seen at all dose levels and hepatocytic hypertrophy was seen in high and mid-dose males and females. Female rats given 400 or 1,600 ppm had an increased incidence of basophilic foci/areas of hepatocytic alteration. Effects at 100 ppm were confined to hepatocytic fatty vacuolation and hypertrophy in females. These changes were less severe than those seen in rats given 400 or 1,600 ppm and were considered by the laboratory to be indicative of adaptive metabolic change. The dietary level of 100 ppm (5 mg/kg/day) is considered to be a NOAEL.

6. *Animal metabolism*. Triflumizole, [14C-Phenyl] 1-(1-((4-chloro-2-trifluoromethylphenyl)imino)-2-propoxyethyl)-1H-imidazole, was found to be rapidly absorbed and excreted in rats. Two days after oral dosing, 78% was found to be excreted in the urine and 20% in the feces. No sex difference was noted. It appears that the loss of the imidazole ring was the basic step in the metabolic pathway of this fungicide in mammals. The elimination of the imidazole ring yielded initially N-(4-chloro-2-trifluoromethylphenyl)-n-propoxyacetamidine (FM-6–1 and N-(4-chloro-2-trifluoromethylphenyl)-n-propoxyacetanilide (FD-1–1). Other hydroxylated metabolites identified (free, or as sulfate/glucuronide conjugates) included, among others, N-(4-chloro-2-trifluoromethylphenyl)-hydroxyacetamidine (FM-8–1); 4-chloro-2-trifluoromethyl-hydroxyacetanilide (FD-2–1); and 4-chloro-2-trifluoromethyl-6-hydroxyaniline (FA-1–5).

7. *Metabolite toxicology*. Both plant and animals produce the same metabolites that were identified in the metabolism studies; therefore, the toxicity of the metabolites has essentially been evaluated in the rat toxicology studies.

8. *Endocrine disruption*. In the rat reproduction study there was an increase in placental weight in females at the high dose level of 170 ppm. There was also a biologically significant increase in gestation length in high dose F0 and F2 females (F1a and F3a intervals). The NOAEL for endocrine effects is 70 ppm (3.5 mg/kg/day).

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food*. Tolerances have been established (40 CFR 180.476) for the combined residues of triflumizole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on apples, pears and grapes. Tolerances have also been established for the combined residues of triflumizole and the metabolite 4-chloro-2-hydroxy-6-trifluoromethylaniline sulfate and other metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound in or on eggs, milk, meat, fat, and meat by-products of cattle, goats, hogs, horses, poultry and sheep.

Field trial residue values from the currently labeled raw agricultural commodities (apples, pears, grapes) and from the proposed cucurbit, cherry, filbert and strawberry uses were used to estimate dietary exposure (Dietary Exposure Evaluation Model (DEEM)™, Novigen Sciences, Inc.). Tissue to feed ratios were used to calculate secondary residues for meat, milk, and egg products. Processing factors and percent of crop treated were also factored into the estimates.

ii. *Drinking water*. Exposure to triflumizole or its degradates in drinking water is not anticipated, and is unlikely to occur. Triflumizole is not expected to contaminate ground water. Laboratory and field data have demonstrated that it degrades rapidly and that triflumizole and its metabolites do not leach, even in sandy soil. A Maximum Contaminant Level (MCL) for triflumizole has not been established by EPA. Ornamental and proposed residential uses are not expected to result in drinking water concerns. Most commercial uses on outdoor-grown plants would typically be only a spot treatment or on very limited acreage. Containerized ornamentals would mimic greenhouse production, as these plants are generally elevated off the ground, with some type of ground covering underneath. For residential areas, triflumizole would be used only by commercial applicators, and only as a spot treatment.

Tier I screen models generic expected environmental concentration (GENEEC) (surface water) and screening concentration in ground water (SCI-GRO) (ground water) were used to predict the estimated environmental concentration (EEC) of triflumizole from current and proposed food uses. For surface water, the theoretical acute EEC was 18 parts per billion (ppb) (peak concentration) and the chronic EEC (divided by 3 to account for the large overestimates inherent in the model) was 3 ppb. Theoretical acute and chronic ground water concentrations from the SCI-GRO modeling were <0.1 ppb.

2. *Non-dietary exposure*. The only source of non-dietary exposure to triflumizole for consideration under FQPA is in the proposed use of Terraguard 50W on institutional, recreational, and homeowner landscapes and other outdoor ornamentals. This registration could result in intermittent, low-level residential post-application exposures. Terraguard 50W is not available for application by homeowners and is not registered for use on turf. Only professional handlers would apply Terraguard 50W to any existing or proposed use sites. Treatment would be made to individual plants or specific sub-sections within labeled use sites, and only as needed for disease. The above use sites amount to minimal acreage in comparison with turf and other sources of residential exposure, and activities therein are of low duration and intensity.

Dislodgeable foliar residues (DFRs) can be estimated from existing data. A

recent study on Terraguard 50W DFRs on *Spathiphyllum* foliage showed significantly lower levels of triflumizole than would be predicted by current Agency SOP defaults, and an approximately complete dissipation within the minimum treatment interval of 30 days. From that study, potential residue levels were calculated based on the geometric means of regressed values that were adjusted to represent the maximum application rate of 1.0 lb ai/acre, and averaged over the duration of potential post-application exposure.

The DFR transfer coefficients, representing reentry into treated gardens, are EPA default assumptions (draft OPP/HED SOP for Residential Exposure Assessment). Such defaults are considered by EPA to be very conservative and are considered to be screening-level assumptions. In addition, work by the Agricultural Reentry Task Force and others has shown far lower transfer coefficients for many relatively high-exposure activities, such as pruning, that may occur on residential landscapes. Contact with residential landscape foliage is assumed to occur incidentally or for short durations since typical Terraguard applications will be spot-treatments within small areas.

The toxicological assumptions in this assessment are also conservative, including (a) a default value of 100% dermal absorption; (b) the acute endpoint of 3.5 mg/kg/day (see above) for short-term assessment; and (c) the sub-chronic endpoint of 3.5 mg/kg/day (see above) for intermediate-term assessment. Chronic assessment is not required since a yearly maximum of 3 applications, from which triflumizole is expected to dissipate within 30–days, should result in less than 90–days of potential exposure per year. The factors used in the assessment and resulting estimates of absorbed daily dose and margins of exposure (MOEs) are provided in the following table:

	Short-Term Assessment:		Intermediate Term Assessment:	
	Females 13–50	Infants/Children	Females 13–50	Infants/Children
Duration of Assessment (days)	7 days	7 days	90–days	90–days
DFR (~g/cm_2)	0.345	0.345	0.0092	0.0092
Transfer Coefficient (cm_2/hr)	1,0000	5,000	1,0000	5,000
Duration (hr/day)	0.083	0.033	0.083	0.033
bwt (kg)	60	10	60	10
Absorbed Daily Dose (mg/kg/day)	0.00477	0.00569	0.00013	0.00015
NOAEL (mg/kg/day)	3.5	3.5	3.5	3.5
Margin of Exposure (MOE):	733	615	27501	23057

The above calculations are based on appropriate DFR data from an ornamental crop, a complete toxicological profile, transfer coefficients understood to be conservative, and a very conservative assumption of 100% dermal absorption. The resulting MOEs, which are still well over 100, therefore indicate clearly that residential exposure following Terraguard 50W use on institutional, recreational, and homeowner landscapes, and other outdoor ornamentals, would pose a low potential risk and a reasonable certainty of no harm.

D. Cumulative Effects

The potential for cumulative effects of triflumizole, an imidazole, and other substances that have a common mechanism of toxicity was considered. The mammalian toxicity of triflumizole is well defined. No reliable information exists to indicate that toxic effects produced by triflumizole would be cumulative with those of any other chemical compounds. Therefore, consideration of a common mechanism of toxicity with other compounds is not appropriate. Thus, only the potential risks of triflumizole are considered in the aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*— i. *Short-term risk*. Based on the toxicology database, the NOAEL of 3.5 mg/kg/day from the reproduction toxicity study, and available information on anticipated residues and percent crop treated, the acute dietary exposure was determined to be within the acceptable MOE of 100. Exposure to potential triflumizole residues in drinking water is not expected to significantly contribute to the overall exposure of females 13–50 years old and infants and children, as DWLOC's are substantially higher than modeled EEC's. Residential post application exposure would occur within an acceptable margin of safety. Based on these assessments, Uniroyal concludes that there is reasonable certainty of no harm to females (13–50 years old), infants, and children from short-term aggregate exposure to triflumizole residues.

ii. *Intermediate-term risk*. Based on the toxicology database, the RfD of 0.035 mg/kg/day from the reproduction study, and available information on anticipated residues and percent crop treated, the chronic dietary exposure was determined as 0.1% of the RfD for females (13–50 years old), and 0.4% for infants and children. These exposures do not exceed EPA's level of concern of >100% of the RfD. Exposure to potential triflumizole residues in drinking water is not expected to significantly contribute to the overall exposure of females 13–50 years old and infants and children, as DWLOC's are substantially higher than modeled EEC's. Residential post application exposure would occur within an acceptable margin of safety. Based on these assessments, Uniroyal concludes that there is reasonable certainty of no harm to females (13–50 years old), infants, and children from intermediate-term aggregate exposure to triflumizole residues.

iii. *Chronic risk*. Based on the toxicology database, the reference dose (RfD) of 0.035 mg/kg/day from the reproduction study, and available information on anticipated residues and percent crop treated, the chronic dietary exposure was determined as 0.1% of the RfD for the U.S. population, and 0.4% for infants and children. These exposures do not exceed EPA's level of concern of >100% of the RfD. Exposure to potential triflumizole residues in drinking water is not expected to significantly contribute to the overall exposure of the U.S. population, infants, and children, as DWLOC's are substantially higher than modeled EEC's. Based on these assessments, Uniroyal concludes that there is reasonable certainty of no harm to the U.S. population, infants, and children from chronic aggregate exposure to triflumizole residues.

2. *Infants and children*. Triflumizole was evaluated in rat and rabbit developmental toxicity studies and a three generation rat reproduction study to assess the potential for additional

sensitivity to infants and children. No developmental toxicity was seen in the rabbit teratology study at doses up to 50 mg/kg/day. Maternal toxicity was seen at this dosage level. In the rat teratology study, there was an increase in late resorptions at doses of 35 and 120 mg/kg/day which was accompanied by maternal toxicity in the form of a substantial reduction in bwt. The NOAEL for maternal and developmental toxicity was 10 mg/kg/day. In the rat reproduction study, there was an increase in gestation length and an increased incidence of hydroureter and space between the body wall and organs at the high dose level of 170 ppm. The NOAEL for reproductive and developmental effects was 3.5 mg/kg/day. No additional safety factor is necessary as the data package is complete and the sensitivity to infants and children is adequately characterized.

F. International Tolerances

There are no Codex, Canadian or Mexican maximum residue limits established for triflumizole on strawberries, cucurbits or cherries.

[FR Doc. 01–16956 Filed 7–5–01; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7006–9]

Massachusetts Marine Sanitation Device Standard; Notice of Determination

On May 23, 2001, notice was published that the State of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Three Bay/Centerville Harbor Area in the Town of Barnstable, County of Barnstable, State of Massachusetts. The petition was filed pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4, for the purpose of declaring these waters a "No Discharge Area" (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of Massachusetts certified that there are two public pump-out facilities located within the proposed area to service vessels in Three Bay/Centerville Harbor Area.

There is a self service pumpout trailer unit located at the Oyster Harbor Marina, with a holding capacity of 250 gallons, and provides access for vessels up to 50 feet in length and a draft of 4 feet at mean low water. This facility is available daily from June 15 through September 15 from approximately 0800 to 1700 (8am to 5pm). The second pumpout facility is a pumpout boat operated by the Harbormasters Office, and docked at the Oyster Harbor Marina when not in use. The boat has a holding capacity of 300 gallons. The pumpout boat is available Wednesday through Sunday from 0930 to 1630 (9:30am–4:30pm) from Memorial Day to Thanksgiving. The pump-out boat is accessible by VHF marine radio via Channel 9 and by calling the Oyster Harbor Marine and Environmental Affairs Division (MEAD) in Barnstable at (508) 790–6273.

The waste from the pump-out boat is off loaded to the trailer unit then transported to the Barnstable Water Pollution Control Facility. The Barnstable Board of Health issues a waste permit for this disposal.

The town of Barnstable maintains public facilities at four locations, Loop Beach, Craigville Beach, Covells Beach and Dowse's Beach and are seasonal. In addition, the three marinas in the area provide on-shore toilet facilities for marina patrons and their guests.

The number of mooring permits indicate that 1,667 vessels reside within the Three Bay/Centerville Harbor Area and 1584 are identified as recreational and 83 are commercial vessels. The Three Bay/Centerville Harbor Area is primarily a "parking lot" harbor and 70% of the vessel population is under 25 feet in length, and therefore do not have any type of Marine Sanitation Device (MSD). There are a number of locations in the Three Bay/Centerville Harbor Area with public launching ramps, however, the size and condition of the ramps and the depth of the water limit use to vessels 25 feet and under. In addition to the vessels that reside in the Complex, there is a transient population estimated at 110 vessels which have MSD's.

The resources of the Three Bay/Centerville Harbor Area are recreational and commercial. There are four public beaches, the Dead Neck Audubon Bird/Wildlife Refuge, and town conservation lands located within the area. The Three Bay/Centerville Harbor Area is also used by both recreational and commercial shell fishermen for the harvest of quahogs, soft-shell clams.

Therefore, based on an examination of the petition and its supporting information, which included a site visit by EPA New England staff, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the areas covered under this petition. The area includes Cotuit Bay, West Bay, East Bay, and Squaw Island Marsh, north of a line drawn 500 feet south of their mouths at Nantucket Sound. The area also includes the following sub-embayments: North Bay, Prince Cove, Marstons Mills River South of Route 28, Scudder Bay South of Bumps River Road, Bumps River East of Bumps River Road, Centerville River West of Craigville Beach Road, and Halls Creek South of Craigville Beach Road. The proposed NDA encompasses approximately 2,150 surface acres in the Southwest corner in the Town of Barnstable. The area is roughly bounded by: 41° 36′ 40.0″ N by 70° 26′ 41.1″ W, 41° 37′ 26.9″ N by 70° 19′ 05.4″ W, 41° 38′ 19.8″ N by 70° 19′ 21.9″ W, and 41° 39′ 03.2″N–70° 24′ 53.8″ W.

This determination is made pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4.

Dated: June 22, 2001.

Ira Leighton,

Acting Regional Administrator.

[FR Doc. 01–16942 Filed 7–5–01; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2490]

Petitions for Reconsideration Clarification of Action in Rulemaking Proceedings

June 29, 2001.

Petitions for Reconsideration Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and

copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by July 23, 2001. See Section 1.4 (b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Access Charge Reform (CC Docket No. 96–262).

Number of Petitions Filed: 7.

Subject: Amendment of Digital TV Table of Allotments (MM Docket No. 01–17).

Number of Petitions Filed: 1.

Subject: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96–98).

Intercarrier Compensation for ISP–Bound Traffic (CC Docket No. 99–68.

Number of Petitions Filed: 5.

Subject: In the Matter of Amendment of Parts of the Commission's Rules to accommodate Advanced Digital Communications in the 117.975–137 MHZ Band and to Implement Flight Information Services in the 136–137 MHZ Band (WT Docket No. 00–77).

Number of Petitions Filed: 1.

Subject: In the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Services (WT Docket No. 97–207).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–16862 Filed 7–5–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2492]

Petition for Reconsideration of Action in Rulemaking Proceeding

June 29, 2001.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by July 23, 2001. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of LPTV Digital Data Service Pilot Project (FCC 01–137).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–16863 Filed 7–5–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE & TIME: Tuesday, July 10, 2001 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, July 12, 2001 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 2001–09: Kerrey for U.S. Senate by counsel, Robert F. Bauer and Brian G. Svoboda.

Advisory Opinion 2001–10: The Honorable Jesse L. Jackson, Sr. and the Jesse L. Jackson, Jr. for Congress Committee.

Procedures Followed by Administrative Law Team.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–17043 Filed 7–3–01; 11:10 am]

BILLING CODE 6715–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions

July 2, 2001.

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice of final interagency policy statement.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC), on behalf of the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) (collectively referred to as the "banking agencies"), is adopting an interagency Policy Statement on Allowance for Loan and Lease Losses (ALLL) Methodologies and Documentation for Banks and Savings Institutions (Policy Statement). The National Credit Union Administration (NCUA), also a member of the FFIEC, is currently reviewing this policy and may issue similar guidance specifically directed toward credit unions. This Policy Statement is intended to provide guidance on the design and implementation of ALLL methodologies and supporting documentation practices.

EFFECTIVE DATE: The Policy Statement is effective immediately.

FOR FURTHER INFORMATION CONTACT:

FRB: Linda V. Griffith, Supervisory Financial Analyst, (202) 452–3506, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Doris L. Marsh, Examination Specialist, Division of Supervision, (202) 898–8905, FDIC, 550 17th Street, NW., Washington, DC 20429.

OCC: Richard Shack, Senior Accountant, Chief Accountant's Office, Core Policy Division, (202) 874–5411, or Louise A. Francis, National Bank Examiner, Chief Accountant's Office, Core Policy Division, (202) 874–1306, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OTS: William Magrini, Senior Project Manager, Policy Division, (202) 906–5744, or Harrison E. Greene, Jr., Securities Accountant, Accounting Policy Division, (202) 906–7933, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On March 10, 1999, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Securities and Exchange Commission (together, the Agencies) issued a joint letter to financial institutions on the allowance for loan and lease losses (the Joint Letter). In the Joint Letter, the Agencies agreed to establish a Joint Working Group to study ALLL issues and to assist financial institutions by providing them with improved guidance on this topic. The Agencies agreed that the Joint Working Group would develop and issue parallel guidance for two key areas regarding the ALLL:

- Appropriate methodologies and supporting documentation, and
- Enhanced disclosures.

This Policy Statement represents the banking agencies' guidance to banks and savings institutions relating to methodologies and supporting documentation for the ALLL. The Securities and Exchange Commission staff has issued parallel guidance on this topic for public companies in Staff Accounting Bulletin No. 102.[1]

This Policy Statement clarifies the banking agencies' expectations regarding methodologies and documentation support for the ALLL. For financial reporting purposes, including regulatory reporting, the provision for loan and lease losses and the ALLL must be determined in accordance with generally accepted accounting principles (GAAP). GAAP requires that an institution maintain written documentation to support the amounts of the ALLL and the provision for loan and lease losses reported in the financial statements.

The Policy Statement does not change existing accounting guidance in, or modify the documentation requirements of, GAAP or guidance provided in the relevant joint interagency statements issued by the Agencies. It is intended to supplement, not replace, the guidance the banking agencies provided in their Interagency Policy Statement on the Allowance for Loan and Lease Losses, which was issued in December 1993. It is also intended to supplement guidance the banking agencies provided in their interagency guidelines establishing standards for safety and soundness that were issued in 1995 and 1996 pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act).[2] Under the guidelines for asset quality, each institution should estimate and establish a sufficient ALLL supported by adequate documentation. This Policy Statement does not address or change current guidance regarding loan charge-offs; therefore, institutions should continue to follow existing regulatory guidance that addresses the timing of charge-offs.

The guidance in this Policy Statement recognizes that institutions should adopt methodologies and documentation practices that are appropriate for their size and complexity. For institutions with fewer and less complex loan products, the amount of supporting documentation for the ALLL may be less exhaustive than for institutions with more complex loan products or portfolios.

Recognizing that a primary mission of the banking agencies is to support a safe and sound banking system, examiners will continue to evaluate the overall adequacy of the ALLL, including the adequacy of supporting documentation, to ensure that it is appropriate. While the Policy Statement generally does not provide guidance to examiners in conducting safety and soundness examinations, examiners may criticize institutions that fail to document and maintain an adequate ALLL in accordance with this Policy Statement and other banking agency guidance. In such cases, institution management may be cited for engaging in unsafe and unsound banking practices and may be subject to further supervisory action.

II. The Proposed Policy Statement

The FFIEC sought public comment on a proposed policy statement on ALLL methodologies and documentation practices for banks and savings institutions on September 7, 2000 (65 FR 54268). The proposal indicated that the purpose of the policy statement was to provide financial institutions with enhanced guidance on appropriate ALLL methodologies and documentation practices.

The proposed Policy Statement explained that the board of directors of each institution is responsible for ensuring that controls are in place to determine the appropriate level of the ALLL. It also emphasized the banking agencies' long-standing position that institutions should maintain and support the ALLL with documentation that is consistent with their stated policies and procedures, GAAP, and applicable supervisory guidance.

The proposal described significant aspects of ALLL methodologies and documentation practices. Specifically, the proposal provided guidance on maintaining and documenting policies and procedures that are appropriately tailored to the size and complexity of the institution and its loan portfolio. The proposal stated that an institution's ALLL methodology must be a thorough, disciplined, and consistently applied process that incorporates management's current judgments about the credit quality of the loan portfolio.

The proposal also discussed the methodology and documentation needed to support ALLL estimates prepared in accordance with GAAP, which requires loss estimates based upon reviews of individual loans and groups of loans. The proposal stated that after determining the allowance on individually reviewed loans and groups of loans, management should consolidate those loss estimates and summarize the amount to be reported in the financial statements for the ALLL. To verify that the ALLL methodology is appropriate and conforms to GAAP and supervisory guidance, a party who is independent from the ALLL estimation process should review the methodology and its application in a manner appropriate to the size and complexity of the institution.

The proposal included illustrations of implementation practices that institutions may find useful for enhancing their own ALLL practices; an appendix that provided examples of certain key aspects of ALLL guidance; a summary of applicable GAAP guidance; and a bibliographical list of relevant GAAP guidance, joint interagency statements, and other literature on ALLL issues.

III. Discussion of Public Comments

A. General Comments

The FFIEC received 31 letters commenting on the proposed policy statement. Twenty financial organizations submitted comments, whose size (based upon total assets) ranged from $18 million to $450 billion. The other letters were primarily submitted by industry trade groups and the accounting profession.

Two of the commenters fully supported the guidance in the proposed policy statement. Thirteen commenters opposed issuance of the policy statement. The commenters who oppose

[1] In addition, the American Institute of Certified Public Accountants (AICPA) is developing guidance on the accounting for loan losses and the techniques for measuring probable incurred losses in a loan portfolio.

[2] Institutions should refer to the guidelines adopted by their primary federal regulator as follows: For national banks, Appendix A to Part 30; for state member banks, Appendix D to Part 208; for state nonmember banks, Appendix A to Part 364; for savings associations, Appendix A to Part 570.

the guidance expressed two primary concerns. First, they believe institutions, particularly smaller institutions, will need to unnecessarily increase resources dedicated to ensure compliance with the guidance. Second, they thought that issuance of the policy statement may be premature given the ALLL guidance expected to be developed by the AICPA. The other commenters generally supported the guidance with certain modifications.

The two commenters who supported the proposed policy statement in the form it was issued believe that they are already in compliance with the proposal's requirements. They understood that the guidance did not attempt to expand current GAAP requirements and allowed institutions to continue to use judgment in implementing loan loss estimation methodologies that are appropriate to individual institutions.

The banking agencies believe that institutions currently complying with GAAP should not need to dedicate additional resources to create or support the ALLL included in their regulatory reports. The banking agencies have expected institutions to follow GAAP, as it applies to the ALLL, for regulatory reporting purposes for a number of years. The proposal is consistent with existing GAAP, which requires that allowances be well documented, with clear explanations of the supporting analysis and rationale. The banking agencies encourage institutions to carefully evaluate their current ALLL methodologies and supporting documentation practices as well as other credit risk management practices and reports before making significant changes to their current practices or creating new processes, reports, or other supporting documents in order to follow this guidance.

Some commenters suggested the Policy Statement should include the banking agencies' views on the ALLL guidance being developed by the AICPA. While the attached Policy Statement mentions that the AICPA is developing guidance on the ALLL, a description of that project's scope or a summary of its anticipated guidance is outside the scope of this Policy Statement. Furthermore, the AICPA continues to develop its guidance, and the Agencies are closely monitoring and actively contributing to that process.

Several commenting financial institutions indicated that following the guidance may prompt a reduction in the ALLL level at their institutions. However, as noted above, institutions are already required to follow GAAP when determining the ALLL and the guidance does not change existing GAAP; therefore, following this Policy Statement should not result in adjustments to the ALLL by institutions following GAAP.

Several commenters suggested that documentation requirements for small or noncomplex institutions should be substantially different than the guidance for larger or more complex institutions. The guidance in the policy statement includes a broad description of the steps taken during the ALLL estimation process that must be documented. The types of documentation described in the examples illustrate that management has considerable flexibility in determining the appropriate level and type of supporting documentation given the type of loans and associated credit risks being evaluated. Additionally, the guidance specifically states that institutions with less complex products or portfolios may consider combining some of the procedures outlined in the proposed guidance. Furthermore, when appropriate, these institutions may utilize documentation that is already being generated for other purposes to support their ALLLs. The banking agencies believe these suggestions will assist these institutions in supporting their ALLLs without any unnecessary burden.

A number of the commenters suggested that the guidance in the policy statement should clarify the banking agencies' position on the term "unallocated" ALLLs. The guidance recognizes that, regardless of the terminology that an institution uses to label portions of its ALLL, the entire ALLL should be determined in accordance with GAAP and supported with adequate documentation.

B. Changes to the Proposal in Response to Comments

One issue that was raised by some commenters was concern that the Policy Statement would confuse the distinction between current GAAP requirements and what would be considered best practices in corporate governance. They believe that some of the documentation requirements contained in the proposed policy statement are not requirements of GAAP. In response to these comments, a footnote was added to the Policy Statement to clarify how the Policy Statement describes, but does not increase, the documentation requirements already existing within GAAP. The footnote states that the documentation guidance in the Policy Statement is predominantly based upon certain specifically identified pronouncements that have been issued by the Financial Accounting Standards Board, the Emerging Issues Task Force, the American Institute of Certified Public Accountants, and the SEC. Such pronouncements represent established accounting principles or are widely recognized as being generally accepted.

A few commenters were concerned that the discussion in the proposed policy statement regarding the estimation of loan losses for groups of loans based upon historical loss data meant that institutions were prohibited from using loss estimation methods other than those based upon historical loss data. The application of historical loss rates to segmented portions of the loan portfolio, adjusted for environmental factors, is one way to estimate ALLLs for pools of loans. However, other methods are acceptable if they estimate losses in accordance with GAAP. The Policy Statement has been revised to refer to other types of loss estimation techniques.

A few commenters questioned the banking agencies' intent in including examples of documentation in the Q&A portion of the proposed policy statement. They interpreted the examples to be a list of requirements or a "safe harbor" of supporting documentation. The banking agencies included these examples to assist institutions in generating ideas on how to implement the guidance and did not intend to create a list of required documents. So that the purpose of the examples is better understood, the banking agencies have clarified the language in the examples and have added an introductory paragraph to the Q&A section in Appendix A.

Lastly, some commenters suggested the guidance in the proposed policy statement placed undue burden upon financial institutions' boards of directors. The banking agencies did not intend to expand directors' responsibilities beyond those that currently exist. At present, directors are responsible for approving ALLL policies and attesting to the validity of the regulatory reports, which includes the ALLL. While the board of directors has ultimate responsibility for these functions, daily administration of policies and recordkeeping may be delegated to operating management. The banking agencies have clarified the guidance to state that the scope of board of directors' responsibilities is not changed or expanded with the issuance of this Policy Statement.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the banking agencies have reviewed the Policy Statement and

determined that it does not add any collections of information pursuant to the Act.

V. Policy Statement

The text of the Policy Statement follows:

Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions

July 2, 2001.

Boards of directors of banks and savings institutions are responsible for ensuring that their institutions have controls in place to consistently determine the allowance for loan and lease losses (ALLL) in accordance with the institutions' stated policies and procedures, generally accepted accounting principles (GAAP), and ALLL supervisory guidance.[1] To fulfill this responsibility, boards of directors instruct management to develop and maintain an appropriate, systematic, and consistently applied process to determine the amounts of the ALLL and provisions for loan losses. Management should create and implement suitable policies and procedures to communicate the ALLL process internally to all applicable personnel. Regardless of who develops and implements these policies, procedures, and underlying controls, the board of directors should assure themselves that the policies specifically address the institution's unique goals, systems, risk profile, personnel, and other resources before approving them. Additionally, by creating an environment that encourages personnel to follow these policies and procedures, management improves procedural discipline and compliance.

The determination of the amounts of the ALLL and provisions for loan and lease losses should be based on management's current judgments about the credit quality of the loan portfolio, and should consider all known relevant internal and external factors that affect loan collectibility as of the reporting date. The amounts reported each period for the provision for loan and lease losses and the ALLL should be reviewed and approved by the board of directors. To ensure the methodology remains appropriate for the institution, the board of directors should have the methodology periodically validated and, if appropriate, revised. Further, the audit committee[2] should oversee and monitor the internal controls over the ALLL determination process.[3]

The banking agencies'[4] have long-standing examination policies that call for examiners to review an institution's lending and loan review functions and recommend improvements, if needed. Additionally, in 1995 and 1996, the banking agencies adopted interagency guidelines establishing standards for safety and soundness, pursuant to Section 39 of the Federal Deposit Insurance Act (FDI Act).[5] The interagency asset quality guidelines and the guidance in this paper assist an institution in estimating and establishing a sufficient ALLL supported by adequate documentation, as required under the FDI Act. Additionally, the guidelines require operational and managerial standards that are appropriate for an institution's size and the nature and scope of its activities.

For financial reporting purposes, including regulatory reporting, the provision for loan and lease losses and the ALLL must be determined in accordance with GAAP. GAAP requires that allowances be well documented, with clear explanations of the supporting analyses and rationale.[6] This Policy Statement describes but does not increase the documentation requirements already existing within GAAP. Failure to maintain, analyze, or support an adequate ALLL in accordance with GAAP and supervisory guidance is generally an unsafe and unsound banking practice.[7]

This guidance applies equally to all institutions, regardless of the size. However, institutions with less complex lending activities and products may find it more efficient to combine a number of procedures (*e.g.*, information gathering, documentation, and internal approval processes) while continuing to ensure the institution has a consistent and appropriate methodology. Thus, much of the supporting documentation required for an institution with more complex products or portfolios may be combined into fewer supporting documents in an institution with less complex products or portfolios. For example, simplified documentation can include spreadsheets, check lists, and other summary documents that many institutions currently use. Illustrations A and C provide specific examples of how less complex institutions may determine and document portions of their loan loss allowance.

Documentation Standards

Appropriate written supporting documentation for the loan loss provision and allowance facilitates review of the ALLL process and reported amounts, builds discipline and consistency into the ALLL determination process, and improves the process for estimating loan and lease losses by helping to ensure that all relevant factors are appropriately considered in the ALLL analysis. An institution should document the relationship between the findings of its detailed review of the loan portfolio and the amount of the ALLL and the provision for loan and lease losses reported in each period.[8]

At a minimum, institutions should maintain written supporting documentation for the following decisions, strategies, and processes:

(1) Policies and procedures:

(a) Over the systems and controls that maintain an appropriate ALLL and

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[1] A bibliography is attached that lists applicable ALLL GAAP guidance, interagency statements, and other reference materials that may assist in understanding and implementing an ALLL in accordance with GAAP. See Appendix B for additional information on applying GAAP to determine the ALLL.

[2] All institutions are encouraged to establish audit committees; however, at small institutions without audit committees, the board of directors retains this responsibility.

[3] Institutions and their auditors should refer to Statement on Auditing Standards No. 61, Communication With Audit Committees (as amended by Statement on Auditing Standards No. 90, Audit Committee Communications), which requires certain discussions between the auditor and the audit committee. These discussions should include items, such as accounting policies and estimates, judgments, and uncertainties that have a significant impact on the accounting information included in the financial statements.

[4] The banking agencies are the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

[5] Institutions should refer to the guidelines adopted by their primary federal regulator as follows: For national banks, Appendix A to Part 30; for state member banks, Appendix D to Part 208; for state nonmember banks, Appendix A to Part 364; for savings associations, Appendix A to Part 570.

[6] The documentation guidance within this Policy Statement is predominantly based upon the GAAP guidance from Financial Accounting Standards Board (FASB) Statement Numbers 5 and 114 (FAS 5 and FAS 114, respectively); Emerging Issues Task Force Topic No. D–80 (EITF Topic D–80 and attachments), Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio (which includes the Viewpoints Article—an article issued in 1999 by FASB staff providing guidance on certain issues regarding the ALLL, particularly on the application of FAS 5 and FAS 114 and how these statements interrelate), Chapter 7—Credit Losses, the American Institute of Certified Public Accountants' (AICPA) Audit and Accounting Guide, Banks and Savings Institutions—2000 edition (AICPA Audit Guide); and the Securities and Exchange Commission's (SEC) Financial Reporting Release No. 28 (FRR 28).

[7] Failure to maintain adequate supporting documentation does not relieve an institution of its obligation to record an appropriate ALLL.

[8] This position is fully described in the SEC's FRR 28, in which the SEC indicates that the books and records of public companies engaged in lending activities should include documentation of the rationale supporting each period's determination that the ALLL and provision amounts reported were adequate.

(b) Over the ALLL methodology,
(2) Loan grading system or process,
(3) Summary or consolidation of the ALLL balance,
(4) Validation of the ALLL methodology, and
(5) Periodic adjustments to the ALLL process.

The following sections of this Policy Statement provide guidance on significant aspects of ALLL methodologies and documentation practices. Specifically, the paper provides documentation guidance on:
(1) Policies and Procedures,
(2) Methodology,
(3) ALLL Under FASB Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of a Loan (FAS 114),
(4) ALLL Under FASB Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (FAS 5),
(5) Consolidating the Loss Estimates, and
(6) Validating the ALLL Methodology.

Policies and Procedures

Financial institutions utilize a wide range of policies, procedures, and control systems in their ALLL process. Sound policies should be appropriately tailored to the size and complexity of the institution and its loan portfolio.

In order for an institution's ALLL methodology to be effective, the institution's written policies and procedures for the systems and controls that maintain an appropriate ALLL should address but not be limited to:

(1) The roles and responsibilities of the institution's departments and personnel (including the lending function, credit review, financial reporting, internal audit, senior management, audit committee, board of directors, and others, as applicable) who determine, or review, as applicable, the ALLL to be reported in the financial statements;

(2) The institution's accounting policies for loans and loan losses, including the policies for charge-offs and recoveries and for estimating the fair value of collateral, where applicable;

(3) The description of the institution's systematic methodology, which should be consistent with the institution's accounting policies for determining its ALLL;[9] and

(4) The system of internal controls used to ensure that the ALLL process is maintained in accordance with GAAP and supervisory guidance.

An internal control system for the ALLL estimation process should:

(1) Include measures to provide assurance regarding the reliability and integrity of information and compliance with laws, regulations, and internal policies and procedures;

(2) Reasonably assure that the institution's financial statements (including regulatory reports) are prepared in accordance with GAAP and ALLL supervisory guidance;[10] and

(3) Include a well-defined loan review process containing:

(a) An effective loan grading system that is consistently applied, identifies differing risk characteristics and loan quality problems accurately and in a timely manner, and prompts appropriate administrative actions;

(b) Sufficient internal controls to ensure that all relevant loan review information is appropriately considered in estimating losses. This includes maintaining appropriate reports, details of reviews performed, and identification of personnel involved; and

(c) Clear formal communication and coordination between an institution's credit administration function, financial reporting group, management, board of directors, and others who are involved in the ALLL determination or review process, as applicable (e.g., written policies and procedures, management reports, audit programs, and committee minutes).

Methodology

An ALLL methodology is a system that an institution designs and implements to reasonably estimate loan and lease losses as of the financial statement date. It is critical that ALLL methodologies incorporate management's current judgments about the credit quality of the loan portfolio through a disciplined and consistently applied process.

An institution's ALLL methodology is influenced by institution-specific factors, such as an institution's size, organizational structure, business environment and strategy, management style, loan portfolio characteristics, loan administration procedures, and management information systems. However, there are certain common elements an institution should incorporate in its ALLL methodology. A summary of common elements is provided in Appendix B.[11]

Documentation of ALLL Methodology in Written Policies and Procedures

An institution's written policies and procedures should describe the primary elements of the institution's ALLL methodology, including portfolio segmentation and impairment measurement. In order for an institution's ALLL methodology to be effective, the institution's written policies and procedures should describe the methodology:

(1) For segmenting the portfolio:
(a) How the segmentation process is performed (i.e., by loan type, industry, risk rates, etc.),
(b) When a loan grading system is used to segment the portfolio:
(i) The definitions of each loan grade,
(ii) A reconciliation of the internal loan grades to supervisory loan grades, and
(iii) The delineation of responsibilities for the loan grading system.

(2) For determining and measuring impairment under FAS 114:
(a) The methods used to identify loans to be analyzed individually;
(b) For individually reviewed loans that are impaired, how the amount of any impairment is determined and measured, including:
(i) Procedures describing the impairment measurement techniques available and
(ii) Steps performed to determine which technique is most appropriate in a given situation.
(c) The methods used to determine whether and how loans individually evaluated under FAS 114, but not considered to be individually impaired, should be grouped with other loans that share common characteristics for impairment evaluation under FAS 5.

(3) For determining and measuring impairment under FAS 5:
(a) How loans with similar characteristics are grouped to be evaluated for loan collectibility (such as loan type, past-due status, and risk);
(b) How loss rates are determined (e.g., historical loss rates adjusted for environmental factors or migration analysis) and what factors are considered when establishing appropriate time frames over which to evaluate loss experience; and

[9] Further explanation is presented in the Methodology section that appears below.

[10] In addition to the supporting documentation requirements for financial institutions, as described in interagency asset quality guidelines, public companies are required to comply with the books and records provisions of the Securities Exchange Act of 1934 (Exchange Act). Under Sections 13(b)(2)-(7) of the Exchange Act, registrants must make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the registrant. Registrants also must maintain internal accounting controls that are sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP. See also SEC Staff Accounting Bulletin No. 99, Materiality.

[11] Also, refer to paragraph 7.05 of the AICPA Audit Guide.

(c) Descriptions of qualitative factors (e.g., industry, geographical, economic, and political factors) that may affect loss rates or other loss measurements.

The supporting documents for the ALLL may be integrated in an institution's credit files, loan review reports or worksheets, board of directors' and committee meeting minutes, computer reports, or other appropriate documents and files.

ALLL Under FAS 114

An institution's ALLL methodology related to FAS 114 loans begins with the use of its normal loan review procedures to identify whether a loan is impaired as defined by the accounting standard. Institutions should document:

(1) The method and process for identifying loans to be evaluated under FAS 114 and

(2) The analysis that resulted in an impairment decision for each loan and the determination of the impairment measurement method to be used (i.e., present value of expected future cash flows, fair value of collateral less costs to sell, or the loan's observable market price).

Once an institution has determined which of the three available measurement methods to use for an impaired loan under FAS 114, it should maintain supporting documentation as follows:

(1) When using the present value of expected future cash flows method:

(a) The amount and timing of cash flows,

(b) The effective interest rate used to discount the cash flows, and

(c) The basis for the determination of cash flows, including consideration of current environmental factors and other information reflecting past events and current conditions.

(2) When using the fair value of collateral method:

(a) How fair value was determined, including the use of appraisals, valuation assumptions, and calculations,

(b) The supporting rationale for adjustments to appraised values, if any,

(c) The determination of costs to sell, if applicable, and

(d) Appraisal quality, and the expertise and independence of the appraiser.

(3) When using the observable market price of a loan method:

(a) The amount, source, and date of the observable market price.

Illustration A describes a practice used by a small financial institution to document its FAS 114 measurement of impairment using a comprehensive worksheet.[12] Q&A #1 and #2 in Appendix A provide examples of applying and documenting impairment measurement methods under FAS 114.

Begin Text Box—Illustration A (Documenting an ALLL Under FAS 114, Comprehensive worksheet for the impairment measurement process): A small institution utilizes a comprehensive worksheet for each loan being reviewed individually under FAS 114. Each worksheet includes a description of why the loan was selected for individual review, the impairment measurement technique used, the measurement calculation, a comparison to the current loan balance, and the amount of the ALLL for that loan. The rationale for the impairment measurement technique used (e.g., present value of expected future cash flows, observable market price of the loan, fair value of the collateral) is also described on the worksheet. *End Text Box*

Some loans that are evaluated individually for impairment under FAS 114 may be fully collateralized and therefore require no ALLL. Q&A #3 in Appendix A presents an example of an institution whose loan portfolio includes fully collateralized loans and describes the documentation maintained by that institution to support its conclusion that no ALLL was needed for those loans.

ALLL Under FAS 5

Segmenting the Portfolio

For loans evaluated on a group basis under FAS 5, management should segment the loan portfolio by identifying risk characteristics that are common to groups of loans. Institutions typically decide how to segment their loan portfolios based on many factors, which vary with their business strategies as well as their information system capabilities. Smaller institutions that are involved in less complex activities often segment the portfolio into broad loan categories. This method of segmenting the portfolio is likely to be appropriate in only small institutions offering a narrow range of loan products. Larger institutions typically offer a more diverse and complex mix of loan products. Such institutions may start by segmenting the portfolio into major loan types but typically have more detailed information available that allows them to further segregate the portfolio into product line segments based on the risk characteristics of each portfolio segment. Regardless of the segmentation method used, an institution should maintain documentation to support its conclusion that the loans in each segment have similar attributes or characteristics.

As economic and other business conditions change, institutions often modify their business strategies, which may result in adjustments to the way in which they segment their loan portfolio for purposes of estimating loan losses. Illustration B presents an example in which an institution refined its segmentation method to more effectively consider risk factors and maintains documentation to support this change.

Begin Text Box—Illustration B (Documenting Segmenting Practices, Documenting a refinement in a segmentation method): An institution with a significant portfolio of consumer loans performed a review of its ALLL methodology. The institution had determined its ALLL based upon historical loss rates in the overall consumer portfolio. The ALLL methodology was validated by comparing actual loss rates (charge-offs) for the past two years to the estimated loss rates. During this process, the institution decided to evaluate loss rates on an individual product basis (e.g., auto loans, unsecured loans, or home equity loans). This analysis disclosed significant differences in the loss rates on different products. With this additional information, the methodology was amended in the current period to segment the portfolio by product, resulting in a better estimation of the loan losses associated with the portfolio. To support this change in segmentation practice, the credit review committee records contain the analysis that was used as a basis for the change and the written report describing the need for the change *End Text Box*.

Institutions use a variety of documents to support the segmentation of their portfolios. Some of these documents include:

(1) Loan trial balances by categories and types of loans,

(2) Management reports about the mix of loans in the portfolio,

(3) Delinquency and nonaccrual reports, and

(4) A summary presentation of the results of an internal or external loan grading review.

Reports generated to assess the profitability of a loan product line may be useful in identifying areas in which to further segment the portfolio.

Estimating Loss on Groups of Loans

Based on the segmentation of the loan portfolio, an institution should estimate the FAS 5 portion of its ALLL. For those segments that require an ALLL,[13] the

[12] The referenced "gray box" illustrations are presented to assist institutions in evaluating how to implement the guidance provided in this document. The methods described in the illustrations may not be suitable for all institutions and are not considered required processes or actions. For additional descriptions of key aspects of ALLL guidance, a series of ALLL Questions and Answers (Q&As) are included in Appendix A of this paper.

[13] An example of a loan segment that does not generally require an ALLL is loans that are fully

institution should estimate the loan and lease losses, on at least a quarterly basis, based upon its ongoing loan review process and analysis of loan performance. The institution should follow a systematic and consistently applied approach to select the most appropriate loss measurement methods and support its conclusions and rationale with written documentation. Regardless of the methods used to measure losses, an institution should demonstrate and document that the loss measurement methods used to estimate the ALLL for each segment are determined in accordance with GAAP as of the financial statement date.[14]

One method of estimating loan losses for groups of loans is through the application of loss rates to the groups' aggregate loan balances. Such loss rates typically reflect the institution's historical loan loss experience for each group of loans, adjusted for relevant environmental factors (e.g., industry, geographical, economic, and political factors) over a defined period of time. If an institution does not have loss experience of its own, it may be appropriate to reference the loss experience of other institutions, provided that the institution demonstrates that the attributes of the loans in its portfolio segment are similar to those of the loans included in the portfolio of the institution providing the loss experience.[15] Institutions should maintain supporting documentation for the technique used to develop their loss rates, including the period of time over which the losses were incurred. If a range of loss is determined, institutions should maintain documentation to support the identified range and the rationale used for determining which estimate is the best estimate within the range of loan losses. An example of how a small institution performs a comprehensive historical loss analysis is provided as the first item in Illustration C.

Before employing a loss estimation model, an institution should evaluate and modify, as needed, the model's assumptions to ensure that the resulting loss estimate is consistent with GAAP. In order to demonstrate consistency with GAAP, institutions that use loss estimation models typically document the evaluation, the conclusions regarding the appropriateness of estimating loan losses with a model or other loss estimation tool, and the support for adjustments to the model or its results.

Begin Text Box—Illustration C (Documenting the Setting of Loss Rates, First Illustration, Comprehensive loss analysis in a small institution): A small institution determines its loss rates based on loss rates over a three-year historical period. The analysis is conducted by type of loan and is further segmented by originating branch office. The analysis considers charge-offs and recoveries in determining the loss rate. The institution also considers the loss rates for each loan grade and compares them to historical losses on similarly rated loans in arriving at the historical loss factor. The institution maintains supporting documentation for its loss factor analysis, including historical losses by type of loan, originating branch office, and loan grade for the three-year period.

(Second Illustration, Adjustment of loss rates for changes in local economic conditions): An institution develops a factor to adjust loss rates for its assessment of the impact of changes in the local economy. For example, when analyzing the loss rate on commercial real estate loans, the assessment identifies changes in recent commercial building occupancy rates. The institution generally finds the occupancy statistics to be a good indicator of probable losses on these types of loans. The institution maintains documentation that summarizes the relationship between current occupancy rates and its loss experience. *End Text Box*

In developing loss measurements, institutions should consider the impact of current environmental factors and then document which factors were used in the analysis and how those factors affected the loss measurements. Factors that should be considered in developing loss measurements include the following:[16]

(1) Levels of and trends in delinquencies and impaired loans;

(2) Levels of and trends in charge-offs and recoveries;

(3) Trends in volume and terms of loans;

(4) Effects of any changes in risk selection and underwriting standards, and other changes in lending policies, procedures, and practices;

(5) Experience, ability, and depth of lending management and other relevant staff;

(6) National and local economic trends and conditions;

(7) Industry conditions; and

(8) Effects of changes in credit concentrations.

For any adjustment of loss measurements for environmental factors, the institution should maintain sufficient, objective evidence to support the amount of the adjustment and to explain why the adjustment is necessary to reflect current information, events, circumstances, and conditions in the loss measurements.

The second item in Illustration C provides an example of how an institution adjusts its commercial real estate historical loss rates for changes in local economic conditions. Q&A #4 in Appendix A provides an example of maintaining supporting documentation for adjustments to portfolio segment loss rates for an environmental factor related to an economic downturn in the borrower's primary industry. Q&A #5 in Appendix A describes one institution's process for determining and documenting an ALLL for loans that are not individually impaired but have characteristics indicating there are loan losses on a group basis.

Consolidating the Loss Estimates

To verify that ALLL balances are presented fairly in accordance with GAAP and are auditable, management should prepare a document that summarizes the amount to be reported in the financial statements for the ALLL. The board of directors should review and approve this summary.

Common elements in such summaries include:

(1) The estimate of the probable loss or range of loss incurred for each category evaluated (e.g., individually evaluated impaired loans, homogeneous pools, and other groups of loans that are collectively evaluated for impairment);

(2) The aggregate probable loss estimated using the institution's methodology;

(3) A summary of the current ALLL balance;

(4) The amount, if any, by which the ALLL is to be adjusted;[17] and

(5) Depending on the level of detail that supports the ALLL analysis, detailed subschedules of loss estimates that reconcile to the summary schedule.

Illustration D describes how an institution documents its estimated ALLL by adding comprehensive explanations to its summary schedule.

Begin Text Box—Illustration D (Summarizing Loss Estimates, Descriptive comments added to the consolidated ALLL summary schedule): To simplify the supporting documentation process and to eliminate redundancy, an institution adds detailed supporting information to its summary schedule. For example, this institution's board of directors receives, within the body of the ALLL summary

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secured by deposits maintained at the lending institution.

[14] Refer to paragraph 8(b) of FAS 5. Also, the AICPA is currently developing a Statement of Position that will provide more specific guidance on accounting for loan losses.

[15] Refer to paragraph 23 of FAS 5.

[16] Refer to paragraph 7.13 in the AICPA Audit Guide.

[17] Subsequent to adjustments, there should be no material differences between the consolidated loss estimate, as determined by the methodology, and the final ALLL balance reported in the financial statements.

schedule, a brief description of the institution's policy for selecting loans for evaluation under FAS 114. Additionally, the institution identifies which FAS 114 impairment measurement method was used for each individually reviewed impaired loan. Other items on the schedule include a brief description of the loss factors for each segment of the loan portfolio, the basis for adjustments to loss rates, and explanations of changes in ALLL amounts from period to period, including cross-references to more detailed supporting documents. *End Text Box*

Generally, an institution's review and approval process for the ALLL relies upon the data provided in these consolidated summaries. There may be instances in which individuals or committees that review the ALLL methodology and resulting allowance balance identify adjustments that need to be made to the loss estimates to provide a better estimate of loan losses. These changes may be due to information not known at the time of the initial loss estimate (e.g., information that surfaces after determining and adjusting, as necessary, historical loss rates, or a recent decline in the marketability of property after conducting a FAS 114 valuation based upon the fair value of collateral). It is important that these adjustments are consistent with GAAP and are reviewed and approved by appropriate personnel. Additionally, the summary should provide each subsequent reviewer with an understanding of the support behind these adjustments. Therefore, management should document the nature of any adjustments and the underlying rationale for making the changes. This documentation should be provided to those making the final determination of the ALLL amount. Q&A #6 in Appendix A addresses the documentation of the final amount of the ALLL.

Validating the ALLL Methodology

An institution's ALLL methodology is considered valid when it accurately estimates the amount of loss contained in the portfolio. Thus, the institution's methodology should include procedures that adjust loss estimation methods to reduce differences between estimated losses and actual subsequent charge-offs, as necessary.

To verify that the ALLL methodology is valid and conforms to GAAP and supervisory guidance, an institution's directors should establish internal control policies, appropriate for the size of the institution and the type and complexity of its loan products. These policies should include procedures for a review, by a party who is independent of the ALLL estimation process, of the ALLL methodology and its application in order to confirm its effectiveness.

In practice, financial institutions employ numerous procedures when validating the reasonableness of their ALLL methodology and determining whether there may be deficiencies in their overall methodology or loan grading process. Examples are:

(1) A review of trends in loan volume, delinquencies, restructurings, and concentrations.

(2) A review of previous charge-off and recovery history, including an evaluation of the timeliness of the entries to record both the charge-offs and the recoveries.

(3) A review by a party that is independent of the ALLL estimation process. This often involves the independent party reviewing, on a test basis, source documents and underlying assumptions to determine that the established methodology develops reasonable loss estimates.

(4) An evaluation of the appraisal process of the underlying collateral. This may be accomplished by periodically comparing the appraised value to the actual sales price on selected properties sold.

Supporting Documentation for the Validation Process

Management usually supports the validation process with the workpapers from the ALLL review function. Additional documentation often includes the summary findings of the independent reviewer. The institution's board of directors, or its designee, reviews the findings and acknowledges its review in its meeting minutes. If the methodology is changed based upon the findings of the validation process, documentation that describes and supports the changes should be maintained.

Appendix A—ALLL Questions and Answers

Introduction

The Questions and Answers (Q&As) presented in this appendix serve several purposes, including (1) To illustrate the banking agencies' views, as set forth in this Policy Statement, about the types of decisions, determinations, and processes an institution should document with respect to its ALLL methodology and amounts; and (2) to illustrate the types of ALLL documentation and processes an institution might prepare, retain, or use in a particular set of circumstances. The level and types of documentation described in the Q&As should be considered neither the minimum acceptable level of documentation nor an all-inclusive list. Institutions are expected to apply the guidance in this Policy Statement to their individual facts, circumstances, and situations. If an institution's fact pattern differs from the fact patterns incorporated in the following Q&As, the institution may decide to prepare and maintain different types of documentation than did the institutions depicted in these Q&As.

Q&A #1—ALLL Under FAS 114—Measuring and Documenting Impairment

Facts: Approximately one-third of Institution A's commercial loan portfolio consists of large balance, non-homogeneous loans. Due to their large individual balances, these loans meet the criteria under Institution A's policies and procedures for individual review for impairment under FAS 114. Upon review of the large balance loans, Institution A determines that certain of the loans are impaired as defined by FAS 114.

Question: For the commercial loans reviewed under FAS 114 that are individually impaired, how should Institution A measure and document the impairment on those loans? Can it use an impairment measurement method other than the methods allowed by FAS 114?

Interpretive Response: For those loans that are reviewed individually under FAS 114 and considered individually impaired, Institution A must use one of the methods for measuring impairment that is specified by FAS 114 (that is, the present value of expected future cash flows, the loan's observable market price, or the fair value of collateral). Accordingly, in the circumstances described above, for the loans considered individually impaired under FAS 114, it would not be appropriate for Institution A to choose a measurement method not prescribed by FAS 114. For example, it would not be appropriate to measure loan impairment by applying a loss rate to each loan based on the average historical loss percentage for all of its commercial loans for the past five years.

Institution A should maintain, as sufficient, objective evidence, written documentation to support its measurement of loan impairment under FAS 114. If Institution A uses the present value of expected future cash flows to measure impairment of a loan, it should document the amount and timing of cash flows, the effective interest rate used to discount the cash flows, and the basis for the determination of cash flows, including consideration of current environmental factor [1] and other information reflecting past events and current conditions. If Institution A uses the fair value of collateral to measure impairment, it should document how it determined the fair value, including the use of appraisals, valuation assumptions and calculations, the supporting rationale for adjustments to appraised values, if any, and the determination of costs to sell, if applicable, appraisal quality, and the expertise and independence of the appraiser. Similarly, Institution A should document the amount, source, and date of the observable

[1] Question #16 in Exhibit D–80A of EITF Topic D–80 and attachments indicates that environmental factors include existing industry, geographical, economic, and political factors.

market price of a loan, if that method of measuring loan impairment is used.

Q&A #2—ALLL Under FAS 114—Measuring Impairment for a Collateral Dependent Loan

Facts: Institution B has a $10 million loan outstanding to Company X that is secured by real estate, which Institution B individually evaluates under FAS 114 due to the loan's size. Company X is delinquent in its loan payments under the terms of the loan agreement. Accordingly, Institution B determines that its loan to Company X is impaired, as defined by FAS 114. Because the loan is collateral dependent, Institution B measures impairment of the loan based on the fair value of the collateral. Institution B determines that the most recent valuation of the collateral was performed by an appraiser eighteen months ago and, at that time, the estimated value of the collateral (fair value less costs to sell) was $12 million.

Institution B believes that certain of the assumptions that were used to value the collateral eighteen months ago do not reflect current market conditions and, therefore, the appraiser's valuation does not approximate current fair value of the collateral. Several buildings, which are comparable to the real estate collateral, were recently completed in the area, increasing vacancy rates, decreasing lease rates, and attracting several tenants away from the borrower. Accordingly, credit review personnel at Institution B adjust certain of the valuation assumptions to better reflect the current market conditions as they relate to the loan's collateral.[2] After adjusting the collateral valuation assumptions, the credit review department determines that the current estimated fair value of the collateral, less costs to sell, is $8 million. Given that the recorded investment in the loan is $10 million, Institution B concludes that the loan is impaired by $2 million and records an allowance for loan losses of $2 million.

Question: What type of documentation should Institution B maintain to support its determination of the allowance for loan losses of $2 million for the loan to Company X?

Interpretive Response: Institution B should document that it measured impairment of the loan to Company X by using the fair value of the loan's collateral, less costs to sell, which it estimated to be $8 million. This documentation should include the institution's rationale and basis for the $8 million valuation, including the revised valuation assumptions it used, the valuation calculation, and the determination of costs to sell, if applicable. Because Institution B arrived at the valuation of $8 million by modifying an earlier appraisal, it should document its rationale and basis for the changes it made to the valuation assumptions that resulted in the collateral value declining from $12 million eighteen months ago to $8 million in the current period.[3]

Q&A #3—ALLL Under FAS 114—Fully Collateralized Loans

Facts: Institution C has $10 million in loans that are fully collateralized by highly rated debt securities with readily determinable market values. The loan agreement for each of these loans requires the borrower to provide qualifying collateral sufficient to maintain a loan-to-value ratio with sufficient margin to absorb volatility in the securities' market prices. Institution C's collateral department has physical control of the debt securities through safekeeping arrangements. In addition, Institution C perfected its security interest in the collateral when the funds were originally distributed. On a quarterly basis, Institution C's credit administration function determines the market value of the collateral for each loan using two independent market quotes and compares the collateral value to the loan carrying value. If there are any collateral deficiencies, Institution C notifies the borrower and requests that the borrower immediately remedy the deficiency. Due in part to its efficient operation, Institution C has historically not incurred any material losses on these loans. Institution C believes these loans are fully-collateralized and therefore does not maintain any ALLL balance for these loans.

Question: What documentation does Institution C maintain to adequately support its determination that no allowance is needed for this group of loans?

Interpretive Response: Institution C's management summary of the ALLL includes documentation indicating that, in accordance with the institution's ALLL policy, the collateral protection on these loans has been verified by the institution, no probable loss has been incurred, and no ALLL is necessary. Documentation in Institution C's loan files includes the two independent market quotes obtained each quarter for each loan's collateral amount, the documents evidencing the perfection of the security interest in the collateral, and other relevant supporting documents. Additionally, Institution C's ALLL policy includes a discussion of how to determine when a loan is considered "fully collateralized" and does not require an ALLL. Institution C's policy requires the following factors to be considered and the institution's findings concerning these factors to be fully documented:

(1) Volatility of the market value of the collateral;

(2) Recency and reliability of the appraisal or other valuation

(3) Recency of the institution's or third party's inspection of the collateral

(4) Historical losses on similar loans;

(5) Confidence in the institution's lien or security position including appropriate:

(a) Type of security perfection (*e.g.*, physical possession of collateral or secured filing);

(b) Filing of security perfection (*i.e.*, correct documents and with the appropriate officials); and

(c) Relationship to other liens; and

(6) Other factors as appropriate for the loan type.

Q&A #4—ALLL Under FAS 5—Adjusting Loss Rates

Facts: Institution D's lending area includes a metropolitan area that is financially dependent upon the profitability of a number of manufacturing businesses. These businesses use highly specialized equipment and significant quantities of rare metals in the manufacturing process. Due to increased low-cost foreign competition, several of the parts suppliers servicing these manufacturing firms declared bankruptcy. The foreign suppliers have subsequently increased prices and the manufacturing firms have suffered from increased equipment maintenance costs and smaller profit margins. Additionally, the cost of the rare metals used in the manufacturing process increased and has now stabilized at double last year's price. Due to these events, the manufacturing businesses are experiencing financial difficulties and have recently announced downsizing plans.

Although Institution D has yet to confirm an increase in its loss experience as a result of these events, management knows that it lends to a significant number of businesses and individuals whose repayment ability depends upon the long-term viability of the manufacturing businesses. Institution D's management has identified particular segments of its commercial and consumer customer bases that include borrowers highly dependent upon sales or salary from the manufacturing businesses. Institution D's management performs an analysis of the affected portfolio segments to adjust its historical loss rates used to determine the ALLL. In this particular case, Institution D has experienced similar business and lending conditions in the past that it can compare to current conditions.

Question: How should Institution D document its support for the loss rate adjustments that result from considering these manufacturing firms' financial downturns?

Interpretive Response: Institution D should document its identification of the particular segments of its commercial and consumer loan portfolio for which it is probable that the manufacturing business' financial downturn has resulted in loan losses. In addition, Institution D should document its analysis that resulted in the adjustments to the loss rates for the affected portfolio segments. As part of its documentation, Institution D maintains copies of the documents supporting the analysis, including relevant newspaper articles, economic reports, economic data, and notes from discussions with individual borrowers.

Because in this case Institution D has had similar situations in the past, its supporting documentation also includes an analysis of how the current conditions compare to its previous loss experiences in similar circumstances. As part of its effective ALLL methodology, Institution D creates a

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[2] When reviewing collateral dependent loans, Institution B may often find it more appropriate to obtain an updated appraisal to estimate the effect of current market conditions on the appraised value instead of internally estimating an adjustment.

[3] In accordance with the FFIEC's **Federal Register** Notice, Implementation Issues Arising from FASB No. 114, "Accounting by Creditors for Impairment of a Loan," published February 10, 1995 (60 FR 7966, February 10, 1995), impaired, collateral-dependent loans must be reported at the fair value of collateral, less costs to sell, in regulatory reports. This treatment is to be applied to all collateral-dependent loans, regardless of type of collateral.

summary of the amount and rationale for the adjustment factor, which management presents to the audit committee and board for their review and approval prior to the issuance of the financial statements.

Q&A #5—ALLL Under FAS 5—Estimating Losses on Loans Individually Reviewed for Impairment But Not Considered Individually Impaired

Facts: Institution E has outstanding loans of $2 million to Company Y and $1 million to Company Z, both of which are paying as agreed upon in the loan documents. The institution's ALLL policy specifies that all loans greater than $750,000 must be individually reviewed for impairment under FAS 114. Company Y's financial statements reflect a strong net worth, good profits, and ongoing ability to meet debt service requirements. In contrast, recent information indicates Company Z's profitability is declining and its cash flow is tight. Accordingly, this loan is rated substandard under the institution's loan grading system. Despite its concern, management believes Company Z will resolve its problems and determines that neither loan is individually impaired as defined by FAS 114.

Institution E segments its loan portfolio to estimate loan losses under FAS 5. Two of its loan portfolio segments are Segment 1 and Segment 2. The loan to Company Y has risk characteristics similar to the loans included in Segment 1 and the loan to Company Z has risk characteristics similar to the loans included in Segment 2.[4]

In its determination of the ALLL under FAS 5, Institution E includes its loans to Company Y and Company Z in the groups of loans with similar characteristics (i.e., Segment 1 for Company Y's loan and Segment 2 for Company Z's loan). Management's analyses of Segment 1 and Segment 2 indicate that it is probable that each segment includes some losses, even though the losses cannot be identified to one or more specific loans. Management estimates that the use of its historical loss rates for these two segments, with adjustments for changes in environmental factors provides a reasonable estimate of the institution's probable loan losses in these segments.

Question: How does Institution E adequately document an ALLL under FAS 5 for these loans that were individually reviewed for impairment but are not considered individually impaired?

Interpretive Response: As part of Institution E's effective ALLL methodology, it documents the decision to include its loans to Company Y and Company Z in its determination of its ALLL under FAS 5. It also documents the specific characteristics of the loans that were the basis for grouping these loans with other loans in Segment 1 and Segment 2, respectively. Institution E maintains documentation to support its method of estimating loan losses for Segment 1 and Segment 2, including the average loss rate used, the analysis of historical losses by loan type and by internal risk rating, and support for any adjustments to its historical loss rates. The institution also maintains copies of the economic and other reports that provided source data.

Q&A #6—Consolidating the Loss Estimates—Documenting the Reported ALLL

Facts: Institution F determines its ALLL using an established systematic process. At the end of each period, the accounting department prepares a summary schedule that includes the amount of each of the components of the ALLL, as well as the total ALLL amount, for review by senior management, the Credit Committee, and, ultimately, the board of directors. Members of senior management and the Credit Committee meet to discuss the ALLL. During these discussions, they identify changes that are required by GAAP to be made to certain of the ALLL estimates. As a result of the adjustments made by senior management, the total amount of the ALLL changes. However, senior management (or its designee) does not update the ALLL summary schedule to reflect the adjustments or reasons for the adjustments. When performing their audit of the financial statements, the independent accountants are provided with the original ALLL summary schedule that was reviewed by senior management and the Credit Committee, as well as a verbal explanation of the changes made by senior management and the Credit Committee when they met to discuss the loan loss allowance.

Question: Are Institution F's documentation practices related to the balance of its loan loss allowance in compliance with existing documentation guidance in this area?

Interpretive Response: No. An institution must maintain supporting documentation for the loan loss allowance amount reported in its financial statements. As illustrated above, there may be instances in which ALLL reviewers identify adjustments that need to be made to the loan loss estimates. The nature of the adjustments, how they were measured or determined, and the underlying rationale for making the changes to the ALLL balance should be documented. Appropriate documentation of the adjustments should be provided to the board of directors (or its designee) for review of the final ALLL amount to be reported in the financial statements. For institutions subject to external audit, this documentation should also be made available to the independent accountants. If changes frequently occur during management or credit committee reviews of the ALLL, management may find it appropriate to analyze the reasons for the frequent changes and to reassess the methodology the institution uses.

Appendix B—Application of GAAP

An ALLL recorded pursuant to GAAP is an institution's best estimate of the probable amount of loans and lease-financing receivables that it will be unable to collect based on current information and events.[1] A creditor should record an ALLL when the criteria for accrual of a loss contingency as set forth in GAAP have been met. Estimating the amount of an ALLL involves a high degree of management judgment and is inevitably imprecise. Accordingly, an institution may determine that the amount of loss falls within a range. An institution should record its best estimate within the range of loan losses.[2]

Under GAAP, Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (FAS 5), provides the basic guidance for recognition of a loss contingency, such as the collectibility of loans (receivables), when it is probable that a loss has been incurred and the amount can be reasonably estimated. Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of a Loan (FAS 114) provides more specific guidance about the measurement and disclosure of impairment for certain types of loans.[3] Specifically, FAS 114 applies to loans that are identified for evaluation on an individual basis. Loans are considered impaired when, based on current information and events, it is probable that the creditor will be unable to collect all interest and principal payments due according to the contractual terms of the loan agreement.

For individually impaired loans, FAS 114 provides guidance on the acceptable methods to measure impairment. Specifically, FAS 114 states that when a loan is impaired, a creditor should measure impairment based on the present value of expected future principal and interest cash flows discounted at the loan's effective interest rate, except that as a practical expedient, a creditor may measure impairment based on a loan's observable market price or the fair value of collateral, if the loan is collateral dependent. When developing the estimate of expected future cash flows for a loan, an institution should consider all available information reflecting past events and current conditions, including the effect of existing environmental factors. The following Illustration provides an example of an institution estimating a loan's impairment when the loan has been partially charged-off.

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[4] These groups of loans do not include any loans that have been individually reviewed for impairment under FAS 114 and determined to be impaired as defined by FAS 114.

[1] This Appendix provides guidance on the ALLL and does not address allowances for credit losses for off-balance sheet instruments (e.g., loan commitments, guarantees, and standby letters of credit). Institutions should record liabilities for these exposures in accordance with GAAP. Further guidance on this topic is presented in the American Institute of Certified Public Accountants' Audit and Accounting Guide, Banks and Savings Institutions, 2000 edition (AICPA Audit Guide). Additionally, this Appendix does not address allowances or accounting for assets or portions of assets sold with recourse, which is described in Statement of Financial Accounting Standards No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities—a Replacement of FASB Statement No. 125 (FAS 140).

[2] Refer to FASB Interpretation No. 14, Reasonable Estimation of the Amount of a Loss, and Emerging Issues Task Force Topic No. D–80, Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio (EITF Topic D–80).

[3] EITF Topic D–80 includes additional guidance on the requirements of FAS 5 and FAS 114 and how they relate to each other. The AICPA is currently developing a Statement of Position (SOP) that will provide more specific guidance on accounting for loan losses.

Begin Text Box—Illustration (Interaction of FAS 114 With an Adversely Classified Loan, Partial Charge-off, and the Overall ALLL): An institution determined that a collateral dependent loan, which it identified for evaluation, was impaired. In accordance with FAS 114, the institution established an ALLL for the amount that the recorded investment in the loan exceeded the fair value of the underlying collateral, less costs to sell. Consistent with relevant regulatory guidance, the institution classified as "Loss," the portion of the recorded investment deemed to be the confirmed loss and classified the remaining recorded investment as "Substandard." For this loan, the amount classified "Loss" was less than the impairment amount (as determined under FAS 114). The institution charged off the "Loss" portion of the loan. After the charge-off, the portion of the ALLL related to this "Substandard" loan (1) reflects an appropriate measure of impairment under FAS 114, and (2) is included in the aggregate FAS 114 ALLL for all loans that were identified for evaluation and individually considered impaired. The aggregate FAS 114 ALLL is included in the institution's overall ALLL. *End Text Box*

Large groups of smaller-balance homogeneous loans that are collectively evaluated for impairment are not included in the scope of FAS 114.[4] Such groups of loans may include, but are not limited to, credit card, residential mortgage, and consumer installment loans. FAS 5 addresses the accounting for impairment of these loans. Also, FAS 5 provides the accounting guidance for impairment of loans that are not identified for evaluation on an individual basis and loans that are individually evaluated but are not individually considered impaired.

Institutions should ensure that they do not layer their loan loss allowances. Layering is the inappropriate practice of recording in the ALLL more than one amount for the same probable loan loss. Layering can happen when an institution includes a loan in one segment, determines its best estimate of loss for that loan either individually or on a group basis (after taking into account all appropriate environmental factors, conditions, and events), and then includes the loan in another group, which receives an additional ALLL amount.[5]

While different institutions may use different methods, there are certain common elements that should be included in any loan loss allowance methodology. Generally, an institution's methodology should:[6]

(1) Include a detailed analysis of the loan portfolio, performed on a regular basis;

(2) Consider all loans (whether on an individual or group basis);

(3) Identify loans to be evaluated for impairment on an individual basis under FAS 114 and segment the remainder of the portfolio into groups of loans with similar risk characteristics for evaluation and analysis under FAS 5;

(4) Consider all known relevant internal and external factors that may affect loan collectibility;

(5) Be applied consistently but, when appropriate, be modified for new factors affecting collectibility;

(6) Consider the particular risks inherent in different kinds of lending;

(7) Consider current collateral values (less costs to sell), where applicable;

(8) Require that analyses, estimates, reviews and other ALLL methodology functions be performed by competent and well-trained personnel;

(9) Be based on current and reliable data;

(10) Be well documented, in writing, with clear explanations of the supporting analyses and rationale; and

(11) Include a systematic and logical method to consolidate the loss estimates and ensure the ALLL balance is recorded in accordance with GAAP.

A systematic methodology that is properly designed and implemented should result in an institution's best estimate of the ALLL. Accordingly, institutions should adjust their ALLL balance, either upward or downward, in each period for differences between the results of the systematic determination process and the unadjusted ALLL balance in the general ledger.[7]

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Dated: July 2, 2001.

Keith J. Todd,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 01–16973 Filed 7–5–01; 8:45 am]

BILLING CODES 6710–01–P; 6714–01–P; 6720–01–P; 4810–33–P

[4] In addition, FAS 114 does not apply to loans measured at fair value or at the lower of cost or fair value, leases, or debt securities.

[5] According to the Federal Financial Institutions Examination Council's **Federal Register** Notice, Implementation Issues Arising from FASB Statement No. 114, Accounting by Creditors for Impairment of a Loan, published February 10, 1995, institution-specific issues should be reviewed when estimating loan losses under FAS 114. This analysis should be conducted as part of the evaluation of each individual loan reviewed under FAS 114 to avoid potential ALLL layering.

[6] Refer to paragraph 7.05 of the AICPA Audit Guide.

[7] Institutions should refer to the guidance on materiality in SEC Staff Accounting Bulletin No. 99, Materiality.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the

assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 2001.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. North Fork Bancorporation, Inc., Melville, New York; to acquire 100 percent of the voting shares of North Fork Bank, Melville, New York, and thereby indirectly acquire Commercial Bank of New York, New York, New York.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Piper Holdings, Inc., Covington, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Fountain Trust Company, Covington, Indiana.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Live Oak Financial Corp., Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Live Oak Delaware Financial Corp., Wilmington, Delaware, and thereby indirectly acquire Live Oak State Bank, Dallas, Texas (in organization).

2. Live Oak Delaware Financial Corp., Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Live Oak State Bank, Dallas, Texas (in organization).

Board of Governors of the Federal Reserve System, June 29, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–16870 Filed 7–5–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

Agency Holding the Meeting: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, July 11, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 3, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–17071 Filed 7–03–01; 1:43 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—05/29/2001			
20011793	Cambrex Corporation	BioScience Contact Production Corp	BioScience Contact Production Corp.
20011809	General Dynamics Corporation	Israel Aircraft Industries Ltd	Israel Aircraft Industries Ltd.
20011817	Suez	Suez	Nalco/Exxon Energy Chemicals L.P.
20011831	Armor Holdings, Inc	The Kroll-O'Gara Company	O'Gara Security Associates, Inc.
			O'Gara-Hess & Eisenhardt Armoring Company
			The O'Gara Company
20011832	L–3 Communications Holdings, Inc	Jai N. and Shashi A. Gupta	EER Systems, Inc.
20011834	RCBA Strategic Partners, L.P	CBRE Holdings, Inc	CBRE Holding, Inc.
20011841	RCBA Strategic Partners, L.P	CB Richard Ellis Services, Inc	CB Richard Ellis Services, Inc.
20011846	Jones Apparel Group, Inc	McNaugton Apparel Group Inc	McNaugton Apparel Group Inc.
20011847	General Electric Company	ORIX Corporation	ORIX Corporation

Trans #	Acquiring	Acquired	Entities
20011850	Wells Fargo & Company	Guy Benhamou	OroAmerica, Inc.
20011862	Carl C. Icahn	Vector Group Ltd	Vector Group Ltd.
TRANSACTIONS GRANTED EARLY TERMINATION—05/30/2001			
20011849	General Electric Company	Mellon Financial Corporation	Mellon Financial Corporation
20011852	IHC Caland, N.V	Joseph W. & Patricia R. Blanford	Atlantia Corporation
20011855	William Laule	Smiths Group plc	TI Group Automotive Systems (North America) LLC
20011856	Vereniging AEGON	S. Hubert Humphrey, Jr	World Marketing Alliance, Inc. (a Georgia Corporation)
20011857	Vesta Insurance Group, Inc	Florida Select Insurance Holdings, Inc	Florida Select Insurance Holdings, Inc.
20011858	The Williams Companies, Inc	Barrett Resources Corporation	Barrett Resources Corporation
20011867	Swiss Reinsurance Company	MetLife, Inc	Coning Corporation
20011869	Cable and Wireless plc	Digital Island, Inc	Digital Island, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—05/31/2001			
20011789	International Business Machines Corporation.	Informix Corporation	Informix Corporation
20011797	General Dynamics Corporation	H Group Holdings, Inc.	Galaxy Aerospace Co. L.P.
20011833	FS Equity Partners III, L.P	CBRE Holding, Inc.	CBRE Holding, Inc.
20011842	Gyrus Group plc	Smith & Nephew, plc	ENT, LLC
TRANSACTIONS GRANTED EARLY TERMINATION—06/01/2001			
20011860	John C. Malone	AT&T Corp.	Liberty Media Corporation
20011866	Ducommun Incorporated	Composite Structures, LLC	Composite Structures, LLC
20011881	Heartland Industrial Partners, L.P	Springs Industries, Inc	Springs Industries, Inc
TRANSACTIONS GRANTED EARLY TERMINATION—06/04/2001			
20011802	Domtar, Inc	Georgia-Pacific Corporation	Nekoosa Papers Inc
20011848	Xcel Energy Inc	Conectiv	Atlantic City Electric Company Delmarva Power & Light Company
20011874	Brian L. Roberts	AT&T Corp	AT&T Corp.
20011883	Stichting Administratiekantoor Vanenburg Capital Management.	WebEx Communications, Inc	WebEx Communications, Inc.
20011900	Manpower Inc	Jefferson Wells International, Inc	Jefferson Wells International, Inc.
20011909	AMVESCAP PLC	Old Mutual PLC	Pell Rudman & Co., Inc. Pell Rudman Trust Company, N.A. Rothschild/Pell Rudman, Inc. Sovereign Financial Services, Inc.
TRANSACTION GRANTED EARLY TERMINATION—06/05/2001			
20011836	General Maritime Ship Holdings Ltd	Boss, L.P	Boss, L.P
20011838	Peter C. Georgiopoulos	General Maritime Ship Holdings Ltd	General Martime Ship Holdings Ltd.
20011839	General Maritime Ship Holdings Ltd	OCM Principal Opportunities Fund, L.P	Ajax II, L.P.
20011840	OCM Principal Opportunities Fund, L.P	General Maritime Ship Holdings Ltd	General Maritime Ship Holdings Ltd.
20011865	General Electric Company	NBC Internet, Inc	NBC Internet, Inc.
20011873	Xcel Energy Inc	Gerald R. Forsythe	Indeck-Bourbonnais, L.L.C. Indeck-Equipment Company, L.L.C. Indeck-Ilion Limited Partnership Indeck-Rockford Equipment II, L.L.C. Indeck-Rockford Equipment, L.L.C. Indeck-Rockford II, L.L.C. Indeck-Rockford, L.L.C.
20011875	El Paso Corporation	A. Ahlstrom Corporation	Ahlstrom Development Corporation
20011879	General Electric Company	General Electric Company	GE-Harris Railway Electronic LLC
20011880	State Street Corporation	DST Systems, Inc	DST Portfolio Systems, Inc.
20011882	Ingenico S.A	IVI Checkmate Corp	IVI Checkmate Corp
20011884	Aon Corporation	Carl Westcott	First Extended, Inc.
20011887	Dimension Data Holdings plc	Proxicom, Inc	Proxicom, Inc.
20011888	Alimentation Couche-Tard Inc	Richard L. Johnson & Ruth W. Johnson, Trustees.	Johnson Oil Company, Inc. Smith Oil Company of Kankakee
20011889	Illinois Tool Works Inc	The Texwipe LLC	Texwipe International LLC Texwipe/Synatx LLX The Texwipe Company LLC
20011899	Donna Karan & Stephen Weiss	Bernard Arnault	New Donna Karan International, Inc.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—06/06/2001			
20011790	The Bank of New York Company, Inc	The Charles Schwab Corporation	U.S. Trust Company of Florida Savings Bank U.S. Trust Company, National Association United States Trust Company of New York
20011868	SIG Holding AG	CIR-Compagnie Industriali Riunite S.p.A	Sasib S.p.A.
20011891	Parker Hannifin Corporation	Dana Corporation	Dana Corporation
20011896	Kerr-McGee Corporation	HS Resources, Inc	HS Resources, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—06/07/2001			
20011859	Tyco International, Ltd	Novartis AG	Novartis Corporation
20011907	Mizuho Holdings, Inc	Fifth Third Bancorp	Fifth Third Bancorp

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, contact representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary

[FR Doc. 01–16933 Filed 7–5–01: 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0266]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Registration and Listing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for medical device registration and listing.

DATES: Submit written or electronic comments on the collection of information by September 4, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.fda.gov/dockets/ecomments. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Device Registration and Listing—21 CFR 807.22 and 807.31 (OMB Control No. 0910–0387)—Extension

Section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) requires that manufacturers and initial importers engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of medical devices intended for human use and in commercial distribution register their establishments and list the devices they manufacture with FDA. This is accomplished by completing FDA Form 2891 entitled "Initial Registration of Device Establishment" and FDA Form 2892 entitled "Medical Device Listing." In addition, each year active, registered establishments must notify FDA of changes to the current registration and device listing for the establishment. Annual changes to current registration information are preprinted on FDA Form 2891a and sent to registered establishments. The form must be sent back to FDA's Center for Devices and Radiological Health, even if no changes have occurred. Changes to listing information are submitted on Form 2892. On August 14, 2001, all hospitals who reprocess single-use devices will be required to register and list their activities. Under the Food and Drug Administration Modernization Act of 1997, foreign manufacturers are now required to register their establishments

and list their devices, but foreign registration and listing will be covered under a separate information requirement. FDA will also accept voluntary registration and listings from firms not covered above that wish to be registered with FDA.

In addition, under § 807.31 (21 CFR 807.31), each owner or operator is required to maintain a historical file containing the labeling and advertisements in use on the date of initial listing, and in use after October 10, 1978, but before the date of initial listing. The owner or operator must maintain in the historical file any labeling or advertisements in which a material change has been made anytime after initial listing, but may discard labeling and advertisements from the file 3 years after the date of the last shipment of a discontinued device by an owner or operator. Along with the recordkeeping requirements above, the owner or operator must be prepared to submit to FDA all labeling and advertising mentioned above (§ 807.31(e)).

The information collected through these provisions is used by FDA to identify firms subject to FDA's regulations and is used to identify geographic distribution in order to effectively allocate FDA's field resources for these inspections and to identify the class of the device that determines the inspection frequency. When complications occur with a particular device or component, manufacturers of similar or related devices can be easily identified.

The likely respondents to this information collection will be domestic establishments engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of medical devices intended for human use and commercial distribution.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED YEAR 1 ANNUAL REPORTING BURDEN[1]

21 CFR Section	FDA Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
807.22(a)	Form 2891 Initial Establishment Registration	2,045	1	2,045	0.25	511
807.22(a) (hospital reuse manufacturers)	Form 2891 Initial Establishment Registration	2,000	1	2,000	0.25	500
807.22(b)	Form 2892 Device Listing—initial and updates	3,450	1	3,450	0.50	1,725
807.22(b) (hospital reuse manufacturers)	Form 2892 Device Listing—initial and updates	2,000	10	20,000	0.50	10,000
807.22(a)	Form 2891(a)—Registration Update	16,500	1	16,500	0.25	4,125
807.31(e)		200	1	200	0.50	100
Total year 1 burden hours						16,961

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED SUBSEQUENT YEARS ANNUAL REPORTING BURDEN[1]

21 CFR Section	FDA Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
807.22(a)	Form 2891 Initial Establishment Registration	2,245	1	2,245	0.25	561
807.22(b)	Form 2892 Device Listing—initial and updates	3,650	1	3,650	0.50	1,825
807.22(a)	Form 2891(a)—Registration Update	18,500	1	18,500	0.25	4,625
807.31(e)		200	1	200	0.50	100
Total year 2 and year 3 burden hours						7,111

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
807.31	9,900	10	99,000	0.50	49,500
Total burden hours					49,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This year's submission has broken out annual costs into two distinct phases, and the tables above summarized the estimated annual reporting burden hours for medical device establishments to report in compliance with the provisions imposed by this regulation.

Hospital Reprocessing of Single-Use Medical Devices

On August 14, 2001, hospitals who reprocess single-use devices will be

required to register their establishments and list those devices they reprocess. FDA has estimated that there will be approximately 2,000 such establishments that will fall into this category. The first year of the requirement will cause a one-time bolus of information to be submitted. FDA has separated the burden estimates into two tables to indicate year 1 (table 1 of this document) and subsequent year's estimates (table 2 of this document). Year 1 will include burden hours based on this bolus of submissions during the first year and subsequent year's estimates will indicate an adjustment for the new registrants for year 2 and beyond.

Burden Hour Explanation

The annual reporting burden hours to respondents for registering establishments and listing devices is estimated to be 16,961 hours, and recordkeeping burden hours for respondents is estimated to be 49,500 hours. The estimates cited in the tables above are based primarily upon the annual FDA accomplishment report, which includes actual FDA registration and listing figures from fiscal year (FY) 2000. These estimates are also based on FDA estimates of FY 00 data from current systems, conversations with industry and trade association representatives, and from internal review of the documents referred to in the previous tables.

According to 21 CFR part 807, all owners/operators are required to list, and establishments are required to register. Each owner/operator has an average of two establishments, according to statistics gathered from FDA's registration and listing database. The database has 16,500 active establishments listed in it. Based on past experience, the agency anticipates that approximately 4,045 registrations will be processed during the first year (because of hospitals who reprocess single-use), and 2,045 registrations thereafter. The agency also anticipates that approximately 5,450 initial and update device listings will be submitted the first year (due to hospitals who reprocess single-use devices), and 3,450 thereafter. FDA anticipates reviewing 200 historical files annually. Finally, because initial importers (currently estimated at 6,200) do not have to maintain historical files and because of the addition of 2,000 hospitals who reprocess single-use medical devices, FDA estimates that the number of recordkeepers required to maintain the initial historical information will be 9,900.

Dated: June 29, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–16987 Filed 7–5–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0277]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reports of Corrections and Removals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for reports of corrections and removals.

DATES: Submit written or electronic comments on the collection of information by September 4, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.fda.gov/dockets/ecomments. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reports of Corrections and Removals—21 CFR Part 806 (OMB Control No. 0910–0359)—Extension

Section 519(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(f)) directs FDA to issue regulations to require device manufacturers and importers to report promptly to FDA, any correction or removal of a device undertaken by such manufacturers and importers, if the correction or removal was undertaken to reduce a risk to health posed by the device or to remedy a violation of the act caused by the device which may present a risk to health. Under 21 CFR 806.10 and 806.20(a), FDA requires that each device manufacturer and importer shall submit a written report to FDA of any action initiated to correct or remove a device to reduce a risk to health posed by the device or to remedy a violation of the act caused by the device which may present a risk to health within 10-working days of initiating such correction or removal. In addition, each manufacturer and importer of a device who initiates a correction or removal of a device that is not required to be reported to FDA, shall keep a record of such correction or removal.

The information collected in the reports of corrections and removals will be used by FDA to identify marketed

devices that have serious problems and to ensure that dangerous and defective devices are removed from the market, assuring that FDA has current and complete information regarding these corrections and removals and whether recall action is adequate. Failure to collect this information prevents FDA from receiving timely information about devices that may have a serious effect on the health of the users of the devices.

Respondents to this information collection are businesses or other for-profit manufacturers or importers of medical devices who must remove or correct medical devices that cause public health risk to the general public.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
806.10	880	1	880	10	8,800

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
806.20(a)	440	1	440	10	4,400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The following is an explanation of the burden estimate:

Reporting Burden

FDA estimates that it would take 10 staff hours to prepare and assemble a written report. For the estimated 880 reports, FDA estimates that respondents will spend 8,800 hours to prepare, assemble, and send the reports.

Recordkeeping Burden

FDA estimates that it would take 10 staff hours to prepare a written record. For the estimated 440 records, the total recordkeeping burden is estimated at 4,400 hours per recordkeeper.

Dated: June 29, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–16989 Filed 7–5–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 00M–1592, 01M–0072, 01M–0043, 00M–0014, 00M–0012, 00M–0011, 01M–0042, 00M–0055, 01M–0039, 00M–0015, 01M–0041, 00M–1683, 00M–0013, 00M–1684, 01M–0038, 01M–0062, 01M–0149, 01M–0201]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summary of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Instead, revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's Intranet home page at http://www.fda.gov; by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch; and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMAs and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure explained previously from January 1, 2001, through March 31, 2001. There were no denial actions during this period. The list provides the

manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE JANUARY 1, 2001, THROUGH MARCH 31, 2001

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P970043/00M–1592	Autonomous Technologies Corp.	LADARVision® Excimer Laser System	November 2, 1998
P970025/01M–0072	DiaSorin, Inc.	PRO–TRAC II™ Tacrolimus ELISA Kit	April 27, 1999
P970049/01M–0043	Laser Institute of the Rockies	Dishler Excimer Laser System	December 16, 1999
P970053(S2)/00M–0014	Nidek Technologies, Inc.	EC 5000 Excimer Laser System	April 14, 2000
P990074/00M–0012	McGhan Medical Corp.	RTV Saline-Filled Breast Implants	May 10, 2000
P990075/00M–0011	Mentor Corp.	Saline-Filled and Spectrum® Mammary Prostheses.	May 10, 2000
P000009/01M–0042	Biotronik, Inc.	Phylax AV Implantable Cardioveter Defibrillator with Program Software.	September 29, 2000
P000011/00M–0055	Biocompatibilities Cardiovascular, Inc.	Biodiv Ysio™ AS PC Coated Stent and Delivery System.	September 29, 2000
P000022/01M–0039	Medtronic AVE, Inc.	AVE BeStent™ 2 with Discrete Technology™ Coronary Stent Delivery System.	October 16, 2000
P930016(S10)/00M–0015	VISX, Inc.	STAR S2 and S3 Excimer Laser System.	October 18, 2000
P910023(S47)/01M–0041	St. Jude Medical, Inc.	Photon™ DR Implantable Cardioverter Defibrillator (ICD).	October 27, 2000
P000027/00M–1683	Roche Diagnostics Corp.	Elecsys Free Immunoassay Calset/ Calcheck.	December 12, 2000
P970013/00M–0013	St. Jude Medical, Inc.	Microny™ SR+ Model 2425T	December 21, 2000
P980020/00M–1684	Q Care International, LLC	Q 103 Needle Management Systems	December 21, 2000
P950021(S2)/01M–0038	Bayer Corp.	ACS: 180 and Advia Centaur PSA Assays.	December 22, 2000
H000001/01M–0062	JOMED AB	JOMED JOSTENT® Coronary Stent Graft.	January 10, 2001
P990085/01M–0149	VISTAKON (Division of Johnson & Johnson Vision Care, Inc.).	VISTAKON Soft Contact Lenses for Extended Wear.	February 16, 2001
H990013/01M–0201	Ortec International, Inc.	Composite Cultured Skin (CCS)	February 21, 2001

II. Electronic Access

Persons with access to the Internet may obtain the documents at http://www.fda.gov/cdrh/pmapage.html.

Dated: June 21, 2001.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 01–16918 Filed 7–5–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–00–4001]

Memorandum of Understanding Between the Maryland Department of Health and Mental Hygiene and the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Maryland Department of Health and Mental Hygiene and the Food and Drug Administration. The purpose is to set forth conditions for the utilization of Maryland Medicaid data for the study entitled "Compliance with Liver Testing Labeling Guidelines by Health Care Providers."

DATES: The agreement became effective December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Katrina S. Garry, Center for Drug Evaluation and Research (HFD–400), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3192.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: June 29, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

BILLING CODE 4160–01–C

225-00-4001

MEMORANDUM OF UNDERSTANDING BETWEEN THE MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE AND FOOD AND DRUG ADMINISTRATION

This Memorandum of Understanding ("MOU") is made by and between the Maryland Department of Health and Mental Hygiene, Office of the Deputy Secretary for Health Care Policy Financing (hereinafter called "the Department") and Food and Drug Administration, a federal governmental entity, (hereinafter called "FDA"). The term of this Memorandum of Understanding will commence August 15, 2000 and shall terminate December 31, 2001.

SECTION ONE: PURPOSE

This agreement sets forth conditions for the utilization of Maryland Medicaid data for the study entitled "Compliance with Liver Testing Labeling Guidelines by Heath Care Providers".

SECTION TWO: NATURE AND USE OF THE DATA

The data subject to this MOU will be derived from the Maryland Medicaid claims database and eligibility files. The identifying information (e.g., all Medicaid identification numbers) necessary to link one person's medical information across claims databases and over time will be removed from the file prior to the data's release from the Department, and where necessary replaced with non-identifiable data (e.g., change birth date to age in years, dummy identification numbers). Data collected for each eligible patient would include the data and type of each liver function test (determined from service claims), basic demographic characteristics, type of eligibility, whether or not they are in a skilled nursing facility, and the type of health care provider treating the patient. A profile for liver testing practices among different medical specialties stratified by patient age, sex, underlying medical conditions, and practice setting will be described.

SECTION THREE: BUDGET AND BILLING

There is no cost to the Department and the FDA associated with this Memorandum of Understanding. If there are any costs, each party will be responsible for their own costs.

SECTION FOUR: CONDITIONS FOR UTILIZATION OF MARYLAND MEDICAID DATA

The specific conditions for utilization of Maryland Medicaid data agreed to under this MOU are set forth as follows:

The FDA agrees:

1. Not to utilize Maryland Medicaid data without prior written approval from the Department and, where applicable, from the Department Institutional Review Board, and will not use the data to pursue new hypotheses generated during the course of the study, without prior review and approval from the Department and the Department Institutional Review Board;

2. To provide to the Department an updated listing of employees with data access with a statement certifying that only those individuals will have access to the data.

3. To establish appropriate administrative, technical, procedural, and physical safeguards to protect the data and to prevent unauthorized access to it;

4. To use the data for the stated purpose only, and not for any other purpose without prior written approval of the Department;

5. That it may not give Maryland Medicaid data to any other party without prior written approval from the Department, except as required by federal law (e.g., Freedom of Information Act, Federal court order, or request of Congress);

6. Absent express written authorization from the Department, to make no attempt to link records included in the file(s) to any other individual-specific source of information;

7. To treat any non-confidential data with small cell sizes that could reasonably be expected to permit deduction of a beneficiary's identity like confidential data and not publish or release such data, except as required by Federal law (e.g., Freedom of Information Act, Federal court order, or request of Congress);

8. To provide the Department with a copy of any report, written or oral presentation, written analysis, study, article or similar document which makes reference to the data, at least fourteen days prior to release to any other parties, unless otherwise required by Federal law (e.g., congressional subpoena or Federal court order).

9. To acknowledge the contribution of the Department in presentations and publications;

10. To submit quarterly reports to the Department which shall include:
    - the status of the study project;
    - a description of any significant change in the study protocol;
    - a listing of any changes in the staff utilizing the data;
    - a description of any known or anticipated changes in the study design or procedures that may affect the interests and rights of Medicaid recipients;
    - a copy of the IRB approval of the modification, or proposed change in the study design or procedures;
    - copies of any new analyses, reports or presentations; and
    - a statement of any significant new finding.

11. To present periodic updates of the findings and the status of the study to the Medicaid Directors; and

12. Upon completion of the study or termination of this agreement, to destroy all files containing Maryland Medicaid data (including but not limited to systems files, personal computer files and mainframe storage files), unless prior written approval for data retention has been obtained from the Department or otherwise required by Federal law.

SECTION FIVE: DUTIES OF THE DEPARTMENT

1. The Department will remove all personal identifiers from the Medicaid data prior to the data's release from the Department; and

2. The Department will assist the FDA in completing annual review by the Department Institutional Review Board, as necessary.

SECTION SIX: TERMINATION

Either party may terminate this MOU upon thirty (30) days written notice to the other party. Upon termination by either party, the FDA will destroy all Maryland Medicaid data files (in accordance with Section Four, paragraph 12, above) and all utilization of the Maryland Medicaid information will cease.

The Department may immediately suspend or terminate approval of utilization of Medicaid data for research that is not being conducted in accordance with the IRB's of Medicaid's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reason for the action and shall be reported promptly to the investigator and appropriate institutional officials.

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SECTION SEVEN: MONITORS

The MOU Monitor for the Department shall be:

Ms. Frances Cipriotti
Research Data Coordinator
Planning, Development and Finance Administration
201 West Preston Street, Room 225
Baltimore, Maryland 21201
410-767-5945: 410-333-7505 fax

The Department MOU Monitor is the primary point of contact within the Department for matters relating to this MOU. The FDA Monitor shall contact this person if the FDA is unable to fulfill any of the requirements of, or has any questions regarding, the interpretation of the provisions of this MOU.

The MOU Monitor for the FDA shall be:

Ms. Janet Woodcock, M.D.
Director
FDA/CDER
1451 Rockville Pike, Room 6027, HFD-1
Rockville, Maryland 20852
301-594-5400: 301-594-6197 fax

The FDA MOU Monitor is the primary point of contact for matters relating to this MOU. The Department MOU Monitor shall contact this person immediately if the Department is unable to fulfill any of the requirements of, or has questions regarding, the interpretation of the provisions of this MOU.

SECTION EIGHT: MISCELLANEOUS

This MOU and any documents incorporated into the MOU may be amended only by a written modification signed by the authorized officials of both parties.

The remainder of this page is blank.

In acknowledgement of the foregoing description of the terms and conditions for the utilization of Maryland Medicaid and the requirements of this MOU these authorized signatories of the Department and the FDA do hereby attest to their acceptance of the terms and conditions of this Memorandum of Understanding.

FOR THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE

GEORGES C. BENJAMIN, M.D.
SECRETARY

OR

ALICE BURTON
(signature)

Alice Burton,
Director, Office of the Deputy Secretary for Health Care Policy Financing
12/4/00
Date of Signing

APPROVED AS TO THE FORM AND LEGAL SUFFICIENCY

This 12th Day of December 2000

L. Chris Cashiola
Assistant Attorney General
Office of the Attorney General

FOR THE FOOD AND DRUG ADMINISTRATION

Janet Woodcock, MD
Director
Center for Drug Evaluation and Research
Food and Drug Administration, Rockville

11/21/00
Date

Acknowledged and Agreed:

Evelyn M. Rodriguez, M.D., M.P.H.
Division Director, DDREII
Office of Postmarketing Drug Risk Assessment
Food and Drug Administration

11/16/00
Date

[FR Doc. 01–16988 Filed 7–5–01; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Training and Technical Assistance Cooperative Agreement Limited Competition Announcement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of limited competition cooperative agreement.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that it will award limited competition cooperative agreements for four Training and Technical Assistance Cooperative Agreements to the following four national AIDS organizations: AIDS Action Foundation (AAF), National Association of People Living with AIDS (NAPWA), National Association of State and Territorial AIDS Directors (NASTAD), and the National Minority AIDS Council (NMAC).

The purpose of these cooperative agreements is to assist people who work with Ryan White Comprehensive AIDS Resources Emergency (CARE) Act funded programs and other programs with an interest in HIV/AIDS, to understand and put into action the requirements of the CARE Act as reauthorized in October, 2000.

The new requirements of the CARE Act can be summarized into the following primary goals:

(1) Improving access to HIV services and addressing the unmet HIV-related needs of people who are living with HIV, but are not in care.

(2) Improving health outcomes for people living with HIV through quality management.

(3) Increasing the service capacity of organizations in underserved areas to address the HIV health and support needs communities living with and affected by HIV.

(4) Increasing the availability of needed resources in communities facing new and emerging HIV epidemics.

(5) Increasing coordination and linkages among federally funded programs in communities to improve health outcomes and better use resources for people living with HIV.

These goals will be achieved through the provision of targeted training and technical assistance to health professionals working in and with CARE Act funded programs and other programs providing services to people infected and affected by HIV/AIDS. Health professionals will include administrative and direct service staff of State/local AIDS programs, State/local health departments, CARE Act grantees and their subcontractors, other AIDS service organizations (ASO) and community based organizations (CBO); members of CARE Act planning bodies; and consumers.

HRSA will provide consultation, including administrative and technical assistance as needed, for the execution and evaluation of all aspects of these cooperative agreements. HRSA may also participate and/or collaborate with the organizations in any workshops or meetings to exchange current information, opinions and best practice findings during these cooperative agreements.

Authorizing Legislation: These cooperative agreements are authorized under Title XXVI, Part F of the Public Health Service Act, (Title 42, U.S.C.) as amended by Public Law 106–345, the Ryan White CARE Act Amendments of 2000, dated October 20, 2000.

Background: Assistance will be provided to: AIDS Action Foundation, National Association of People Living with AIDS, National Association of State and Territorial AIDS Directors, and the National Minority AIDS Council. No other applications are solicited. These four organizations are uniquely qualified to develop and provide TA in several priority areas identified by Congress, HRSA and HAB staff, grantees and other constituents.

These organizations have significant experience in responding to the HIV/AIDS epidemic. In particular, their three to five years of experience working closely with HAB has made them intimately familiar with the Ryan White CARE Act funded programs and their most recent challenges.

(1) The AIDS Action Foundation, founded in 1984, is the only organization solely dedicated to supporting the development of policies that improve HIV/AIDS care and services, vigorous medical research and effective prevention. The Foundation is a highly respected source for news and updates on the latest developments in AIDS related policies. It represents a network of 3,200 national AIDS service organizations whom they assist, through educational activities, in working with a variety of populations.

(2) NAPWA has an extensive history responding to the diverse needs of those infected. They do so through national campaigns, publication development, provider and consumer education and training, and community strengthening. It has the ability to reach 40,000 people to forward the most up-to-date HIV/AIDS related news and information of the field.

(3) NASTAD is the only officially established organization that represents and convenes the State and Territorial AIDS Directors of all 50 States and U.S. Territories. For the past nine years, the organization's constituents have included all the program administrators responsible for managing federally and state-funded HIV/AIDS programs, including HIV/AIDS care and treatment programs funded by Title II of the Ryan White CARE Act, and the HIV prevention programs funded by the CDC.

(4) Finally, NMAC is the only national organization founded specifically to develop leadership within communities of color to fight AIDS. NMAC has a thirteen-year history working with minority-controlled organizations and other representatives from communities of color to foster new leadership and address the unique challenges HIV/AIDS presents for racial/ethnic minorities. NMAC has taken a lead on helping minority CBOs to increase their comfort with, knowledge of, and proficiency in the rapid technological advancements of recent years.

Approximately $800,000 is available in Fiscal Year 2001 for the first year of a 3-year project period. It is expected that awards will be made on or before September 30, 2001. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

FOR FURTHER INFORMATION CONTACT: Additional technical information may be obtained from Rene Sterling, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–36, Rockville, MD 20857. The telephone number is (301) 443–7778, the fax number is (301) 594–2835, and the e-mail address is *Rsterling@hrsa.gov*.

Dated: June 29, 2001.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 01–16919 Filed 7–5–01; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Intent To Fund International Social Service, United States of America Branch, Inc., Baltimore, Maryland

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: This is a Notice of Intent to Fund a Sole Source Cooperative Agreement to International Social Service, United States of America Branch, Inc. (ISS-USA), Baltimore, Maryland, to provide services to U.S. citizens returned from abroad through the U.S. Repatriate Program.

SUMMARY: The purpose of the technical assistance agreement is to ensure the provision of direct assistance to repatriates to aid in their return to the U.S. from abroad. Repatriates are referred from officials of the U.S. Consular offices, Department of State, and are provided services upon arrival in the U.S. through U.S. human service organizations, public and private.

FOR FURTHER INFORMATION CONTACT: Sue Benjamin at (202) 401–4851.

Legislative Authority

Title XI, Section 1113 of the Social Security Act (Assistance for United States Citizens Returned from Foreign Countries) [42 U.S.C. 1313 (a) (1)]; Public Law 86–571 (Hospitalization for Mentally Ill Repatriates and Other Services) [24 U.S.C. parts 321–329]; and Executive Order 12656 which assigns DHHS the responsibility for planning for the reception, temporary care, and onward transportation for U.S. citizens and dependents returned to the U.S. in a national emergency.

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this announcement is 93.579.

Funding Availability—ORR intends to award one cooperative agreement to ISS-USA, Baltimore, Maryland, for up to $850,000.

Project Period and Budget Period—The project period is for five years, from September 30, 2001—September 29, 2006. Each award will be for a one-year budget period, with the first budget period from September 30, 2001—September 29, 2002.

Part I: Background

The Office of Refugee Resettlement (ORR), an agency of the U.S. Department of Health and Human Services, is responsible for administering the U.S. Repatriate Program. In 1996, ORR awarded a five-year technical assistance cooperative agreement to ISS-USA, Baltimore, Maryland, to ensure that direct assistance would be provided to repatriates to aid in their return to the U.S. from abroad.

ISS–USA is a member of a consortium entitled the Refugee Council USA, whose members are private organizations that provide assistance in almost all communities in the U.S. ISS–USA also has established links with state and county public human service organizations. Additionally, as a member of an international consortium of international social services organizations, ISS–USA is able to respond to a U.S. repatriate who requires services prior to returning to the U.S. Finally, ISS–USA staff have the required social work credentials and have experience working with the mentally ill, with criminal cases, and with child welfare cases.

ISS–USA has capably provided technical assistance and coordination of services in all counties in the U.S., assisting repatriates returning from abroad, for the past five years under the current agreement. This sole source cooperative agreement will permit ACF to continue funding ISS–USA, which has proven abilities to be responsive to repatriated persons anywhere within the U.S.

The ISS–USA performed the following types of activities under this technical assistance cooperative agreement.

Client Services

- Casework
- Data and financial services
- Maintenance of the State Contact List
- Group or emergency repatriation

Archive Maintenance

- Maintaining case files prior to archiving according to DHHS policies and procedures.

Since ISS–USA has successfully performed under the current cooperative agreement, ACF intends to fund them for another five–year project period, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government. Organizations who believe they have the capacity to provide the required services and are interested in competing for the award must contact Sue Benjamin, within 30 days from date of publication in the **Federal Register**, at the following address: Office of Refugee Resettlement, 37 L'Enfant Promenade, Washington, DC 20447, Tel: (202) 401–4851, Fax: (202) 401–0981, Email: *sbenjamin@acf.dhhs.gov*.

Dated: July 2, 2001.

Carmel Clay-Thompson.

Acting Director, Office of Refugee Resettlement.

[FR Doc. 01–16939 Filed 7–5–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Refugee Resettlement Program: Final Notice of Allocations to States of FY 2001 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of allocations to States of FY 2001 funds for refugee social services.

SUMMARY: This notice establishes the allocations to States of FY 2001 funds for social services under the Refugee Resettlement Program (RRP).

This notice includes $20.5 million in two set-aside funding allocations to: (1) Provide outreach and referral services to ensure that eligible refugees access the State Children's Health Insurance Program (SCHIP)and other programs for low income working populations and provide specialized interpreter training and the hiring of interpreters to enable refugees to have equal access to medical and legal services; and (2) provide outreach, referral, and social services to ensure that persons granted asylum access programs to help them attain economic self-sufficiency, as needed.

DATES: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Barbara R. Chesnik, Division of Refugee Self-Sufficiency, (202) 401–4558.

SUPPLEMENTARY INFORMATION: A notice of proposed allocations to States of FY 2001 funds for refugee social services was published in the **Federal Register** on April 27, 2001 (66 FR 21224).

I. Amounts for Allocation

The Office of Refugee Resettlement (ORR) has available $143,621,000 in FY 2001 refugee social service funds as part of the FY 2001 appropriation for the Department of Health and Human Services (Consolidated Appropriations Act, 2001, as enacted into law by Section 1(a)(1) of Pub. L. No. 106–554).

The FY 2001 House Appropriations Committee Report (H.R. Rept. No. 106–645) reads as follows with respect to social services funds:

> The bill provides $143,621,000 for social services, the same as the fiscal year 2000 appropriation and $305,000 above the budget request. Funds are distributed by formula as well as through the discretionary grant making process for special projects. The Committee agrees that $19,000,000 is available for assistance to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased. The Committee has set aside

$26,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. Finally, the Committee has set aside $14,000,000 to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. The Committee urges ORR to assist refugees at risk of losing, or who have lost benefits including SSI, TANF and Medicaid, in obtaining citizenship.

The FY 2001 Conference Report on Appropriations (H.R. Conf. 106–1033) reads as follows concerning social services:

> The agreement includes $20,000,000 from carryover funds that are to be used under social services to increase educational support to schools with a significant proportion of refugee children and for the development of alternative cash assistance programs that involve case management approaches to improve resettlement outcomes. Such support should include intensive English language training and cultural assimilation programs.
>
> The agreement also includes $26,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance.

The Conference report provided $143,621,000 in social services funds.

ORR will use the $143,621,000 appropriated for FY 2001 social services as follows:

- $71,927,850 will be allocated under the 3-year population formula, as set forth in this notice for the purpose of providing employment services and other needed services to refugees.
- $12,693,150 will be awarded as continuation social service discretionary grants under prior year competitive grant announcements issued separately from this notice.
- $19,000,000 will be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. These funds will be awarded through continuation awards under a separate prior year announcement.
- $26,000,000 will be awarded through discretionary grants for communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. Continuation awards will be made through separate prior year announcements.
- $14,000,000 will be awarded to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. Awards will be made through a separate announcement.
- $20,000,000 will be awarded in prior year funds to increase educational support to schools with a significant proportion of refugee children and for the development of alternative cash assistance programs that involve case management approaches to improve resettlement outcomes. This support will include intensive English language training and cultural assimilation programs. Continuation awards will be made through a separate prior year announcement.

In addition, we are adding $20,500,000 in prior year funds to the FY 2001 formula social services allocation as two set-aside allocations as follows: (1) For outreach and assistance for low-income refugees and interpreter capacity-building services, and (2) as a set-aside for outreach, referral, and services for asylees, increasing the total amount available for the formula social services program in FY 2001 to $92,427,850.

Congress provided ORR with broad carry-over authority in the FY 2000 HHS appropriations law (as enacted into law by section 1000(a)(4) of Public Law 106–113) to use unexpended FY 1998 and FY 1999 CMA funds for assistance and other activities in the refugee program provided through September 30, 2001. The appropriations law states:

> That funds appropriated pursuant to section 414(a) of the Immigration and Nationality Act under Public Law 105–78 for fiscal year 1998 and under Public Law 105–277 for fiscal year 1999 shall be available for the costs of assistance provided and other activities through September 30, 2001.

Refugee Social Service Funds

The population figures for the formula social services allocation include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees.)

The Director is allocating $71,927,850 to States on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 2000 (including a floor amount for States which have small refugee populations).

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the "funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FY 1991 social services notice published in the **Federal Register** of August 29, 1991, section I, "Allocation Amounts" (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) a base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) for a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) a floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

The Director is also allocating an additional total of $20.5 million from prior year carry-over funds as two set-aside allocations as follow:

(1) $10.5 million to (a) provide referral services, including outreach, to ensure that refugees are able to access the State Children's Health Insurance Program (SCHIP) and other programs for low income populations; and (b) expand the capacity of communities to provide interpretation services for refugees through special training and hiring of interpreters to enable refugees to have equal access to medical, social, and certain legal services.

(2) $10 million to provide outreach, referrals, and social services to individuals granted asylum. Services for asylees may be provided only during the 5-year period following the date that asylum was granted.

Outreach, referral and interpretation services are not subject to the 5-year limitation and may be provided to refugees and asylees regardless of their length of time in the U.S. See 45 CFR 400.152(b). However, the need for outreach to asylees is greatest immediately after asylum is granted.

Regarding the first set-aside allocation, eligible refugee families often are not aware of, or do not know how

to access, other Federal support programs available to low income working families in the community. We believe that these programs, including SCHIP, Food Stamps, Low Income Home Energy Assistance Program (LIHEAP), Medicaid, Head Start, low-income housing, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), child care assistance, adult day care for aged dependents, and other support programs for low-income families, are important for the well-being of working refugees, particularly refugee families, and are necessary to help these refugees maintain employment and move toward full self-sufficiency.

The organizations funded by the first set-aside amount are expected to conduct outreach into the community to identify low-income refugees and to help these refugees enroll in and to be familiar with the services available and the participation requirements of these programs. We expect States to fund community-based organizations, to the maximum extent possible, to provide hands-on assistance, which means having the application forms available and helping refugees to fill out the application, accompanying the refugee to the eligibility office, assisting in the communication between the family and the eligibility worker, closely following the application process until the family has been found eligible, and then helping the family effectively use the service or support program in which they have been enrolled. For example, there may be different levels of medical coverage available to a family, depending on the ages of the children and the income level of the family, each with different requirements. It is important for the caseworkers/advocates funded through this initiative to understand the program requirements (such as a co-payment structure) in order to help the family make decisions and fully participate.

The organizations funded under this set-aside should develop effective ways to provide an on-going link between these services, the population they serve, and the targeted low income programs. Methods might include: partnering with schools to identify refugee children who may be eligible for SCHIP by virtue of their eligibility for the school lunch program; connecting with local Head Start programs to help identify refugee children who are eligible for SCHIP and other health care programs; arranging to have Medicaid eligibility workers visit the Mutual Assistance Association (MAA) or other participating organization on a scheduled basis; and working with other groups serving low income families, such as hospitals, WIC programs, low-income housing programs, and food assistance programs to make these services widely known to the refugee community being served.

It is also important that States provide as high a standard as possible in language interpretation to non-English speaking and to Limited-English-Proficient (LEP) refugees, particularly with regard to medical and legal issues. We are therefore including funding in the first set-aside for States to improve the availability and quality of interpreter services for refugees in their communities. The set-aside funds are to be used by States: (1) To fund specialized interpreter training for medical, legal, and social services; and (2) to pay for the hiring and employment of these trained interpreters by MAAs, voluntary agencies, and other community-based organizations serving refugees, to the maximum extent possible, in order to increase the number of skilled interpreters in the community.

Interpretation requires a great deal of skill—interpreters need to be fluent in English and the language spoken by the refugee. They must have the ability to quickly understand the message and terminology, if technical, in one language and to express it as quickly and correctly in another language. In addition to fluency in two languages, interpreters must have the skills to handle confidential client information and to deal with a variety of professionals in the medical, legal, law enforcement, social services, and other fields. All interpreters should be working under a recognized code of ethics.

States should use qualified training programs or trainers to provide the interpreter training. Several strategies may be employed, e.g., the direct training of interpreters in a group setting, paying the course tuition and associated expenses for individuals at a community college or university, and the training of trainers in order to establish and maintain an efficient training capacity in the community. To the extent possible, we would expect States to use an established curriculum rather than incurring costs to develop a new one. Funding of interpreter services should be directed to areas of greatest need and to the most linguistically isolated communities.

States must determine a community's capacity to ensure refugee access to medical and other services, and then examine how best to fund and maintain interpreter services for refugees based upon the need and size of refugee population. For example, an interpreter bank with dedicated interpreters may be a preferred option if the needs of the community can justify full-time interpreters. However, because the provision of interpreter services may not fully occupy funded staff in some locations or in certain languages, States may choose to train bilingual caseworkers at voluntary resettlement agencies, MAAs and refugee service providers. These workers are frequently called upon to interpret and should receive interpreter training. States may also consider cross-training of interpreters so that they may also assist, for example, in enrolling clients in SCHIP, Medicaid, or other services for low-income clients, and/or serve as case managers or in other staff positions. Staff with both bilingual interpreter skills and knowledge of the family services network, such as child protective services and the domestic violence system, are also highly desirable.

We also encourage States to set up creative ways to maintain and expand the availability of interpreter services in the community, such as seeking reimbursement for services from the courts, hospitals, and agencies which may be able to pay for interpreter services but have been otherwise hindered in providing these services by the lack of available and appropriately trained individuals. Fees from low-income refugee clients, however, may not be sought.

Regarding the second set-aside allocation, individuals granted asylum do not have voluntary agency caseworkers to bring them into the network of refugee program and benefits. They often are unaware of the benefits to which they are entitled. Outreach activities under the second set-aside allocation should be conducted with the goal of providing information to asylees or of providing information to the agencies and organizations that traditionally have contact with asylees and may be able to assist them in accessing needed services and benefits. For example, outreach through organizations and agencies may include training seminars on benefits-eligibility conducted for attorneys that represent asylum seekers, monthly liaison meetings with the District Office of the Immigration and Naturalization Service to establish effective contacts, or provision of benefits and eligibility materials to local English as a Second Language (ESL) programs for distribution to students. This set-aside amount may also be used to provide social services to asylees. Although the formula social services funds are

available to serve asylees, States may augment this funding using these set-aside funds for those agencies who are already serving, or expect to serve, refugees and asylees. Or, States may elect to hold a separate competition for the funds, depending upon State administrative procedures and programmatic need. As for refugees, services to asylees are those covered in 400.154 and 155.

A State that can demonstrate that the total amount of set-aside funds awarded is not needed to provide the services described above may submit a written request to the Director to use a portion of the funds for another non-employment service. This request must fully describe how the need for the specified set-aside services is already being met in the State, as well as a description of the additional service proposed, why it is needed, and how it will be provided.

In using the set-aside amount, funds should be directed to refugee specific organizations, where possible, such as refugee MAAs, qualified community based organizations with refugee experience, voluntary resettlement agencies, or refugee service providers.

Population To Be Served and Allowable Services

Eligibility for refugee social services includes persons who meet all requirements of 45 CFR 400.43 (as amended by 65 FR 15409 (March 22,2000)).

Note: ORR State Letter No. 00–12 clarifies that effective June 15, 2000, persons granted asylum are eligible for refugee benefits and services from the date that asylum was granted.

Services to refugees must be provided in accordance with the rules of 45 CFR Part 400 Subpart I—Refugee Social Services. Although the allocation formula is based on the 3-year refugee population, States are not required to limit social service programs to refugees who have been in the U.S. only 3 years. However, under 45 CFR 400.152, States may not provide services funded by this notice, except for referral and interpreter services and citizenship and naturalization preparation services, to refugees who have been in the United States for more than 60 months (5 years).

Allowable social services are those indicated in 45 CFR 400.154 and 400.155. Additional services not included in these sections which the State may wish to provide must be submitted to and approved by the Director of ORR (§ 400.155(h)).

Service Priorities

In the past, a number of States have focused primarily on serving refugee cash assistance (RCA) recipients because of the need to help these refugees become employed and self-sufficient within the 8-month RCA eligibility period. Now, with the passage of welfare reform, refugee recipients of Temporary Assistance for Needy Families (TANF) also face a time limit for cash assistance and need appropriate services as quickly as possible to become employed and self-sufficient. In order for refugees to move quickly off TANF, we believe it is crucial for these refugees to receive refugee-specific services that are designed to address the employment barriers that refugees typically face.

Some States are doing remarkably well in helping refugees achieve self-sufficiency. For this reason, this may be a good time for these States to re-examine the range of services they currently offer to refugees and expand beyond employment services to address the broader needs that refugees have in order to successfully integrate into the community.

States should also expect that these funds will be made available to pay for social services which are provided to refugees who participate in Wilson/Fish projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (64 FR 19793 (April 22, 1999)).

II. Discussion of Comments Received

No comments were received.

III. Allocation Formulas

Of the funds available for FY 2001 for social services, $71,927,850 is allocated to States in accordance with the formula specified in A. below. In addition, $20.5 million in set-aside funds are allocated in accordance with the formulas specified in B. and C. below.

A. A State's allowable formula allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees, Cuban/Haitian entrants, and Amerasians from Vietnam who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capita amount is multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 2000, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

B. A State's allowable first set-aside allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees, Cuban/Haitian entrants, and Amerasians from Vietnam who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capita amount is multiplied by—

3. The number of persons in item 2 above, in the State as of October 1, 2000, adjusted for estimated secondary migration.

C. A State's allowable second set-aside allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of asylees who were granted asylum in FY 2000 by the INS asylum corps (22,809), the asylum judges of the Executive Office of Immigration Review (12,763), and the Bureau of Immigration Appeals (1,402).

The calculations in B. and C. above yield the set-aside formula allocations for each State.

Adding the results for A., B., and C. above yields the total formula allocation for each State.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 2001 for the formula social service allocation and the first set-aside are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 2000, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, Cuban and Haitian entrants.

For fiscal year 2001, ORR's formula social service allocations for the States are based on the numbers of refugees, Amerasians, and entrants in the ORR data base. The numbers are based upon the arrivals during the preceding three fiscal years: 1998, 1999, and 2000.

The estimates of secondary migration are based on data submitted by all participating States on Form ORR–11 on secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 2000. The total migration reported by each State is summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure is applied to the State's total arrival figure, resulting in a revised population estimate.

Estimates are developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures. Havana parolees (HP's) are enumerated in a separate column in Table 1, below because they are tabulated separately from other entrants. For FY 2000 and FY 1999, Havana parolee arrivals for all States are based on actual data. For FY 1998, Florida's HP's (10,183) are based on actual data, while HP's in other States (3,258) are prorated according to the State's proportion of the three-year entrant populations.

The second set-aside is based on the number of asylees granted asylum in FY 2000, according to data received from the Department of Justice for cases approved by the Asylum Corps, the immigration judges of the Executive Office of Immigration Review, and the Bureau of Immigration Appeals. These data show the asylee's zip code of record. Because we are asking States to set up systems to identify and serve those asylees in need of services, we have added this second set-aside amount to the total allocation for States. During the next year, ORR intends to revise the ORR–11 and seek OMB approval to capture the number of asylees and secondary migrants accessing services at the county level. ORR will adjust the social services formula 3-year population based on these data.

Table 1, below, shows the estimated 3-year populations, as of October 1, 2000, of refugees (col. 1), entrants (col. 2), Havana parolees (col. 3); total refugee/entrant population, (col. 4); the formula amounts which the population estimates yield, (col. 5); the allocation amounts after allowing for the minimum amounts (col. 6); first set-aside allocation, (col. 7); the 1 year asylee population (col. 8); the second set-aside amount, (col. 9); and the total allocation (col. 10).

V. Allocation Amounts

Funding subsequent to the publication of this notice will be contingent upon the submittal and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by 45 CFR 400.11(b)(2) in the ORR regulations.

The following amounts are for allocation for refugee social services in FY 2001:

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT/ASYLEE/PAROLEE POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND FINAL SOCIAL SERVICE FORMULA AMOUNT AND ALLOCATION FOR FY 2001

State	Refugees [1]	Entrants	Havana parolees [2]	Total population	Final formula amount	Final allocation	Final set-aside ($10.5 million)	Asylees [3]	Asylee set-aside ($10 million)	Total final allocation
Alabama	460	5	59	524	$127,579	$127,579	$18,721	33	$8,931	$155,231
Alaska	0	0	0	0				0		
Arizona	7,486	433	190	8,089	1,969,438	1,969,438	288,999	306	82,810	2,341,247
Arkansas	46	9	8	63	15,339	75,000	2,251	21	5,683	82,934
California	29,576	53	379	30,008	7,306,081	7,306,081	1,072,108	13,525	3,660,155	12,038,344
Colorado	3,349	3	5	3,357	817,332	817,332	119,937	268	72,527	1,009,796
Connecticut	3,428	28	102	3,558	866,270	866,270	127,118	194	52,501	1,045,889
Delaware	124	11	1	136	33,112	75,000	4,859	50	13,531	93,390
Dist. of Columbia	964	1	9	974	237,141	237,141	34,798	298	80,645	352,584
Florida	13,324	12,004	34,839	60,167	14,648,926	14,648,926	2,149,611	5,295	1,432,940	18,231,477
Georgia	11,230	33	118	11,381	2,770,945	2,770,945	406,614	567	153,442	3,331,001
Hawaii	97	0	0	97	23,617	75,000	3,466	24	6,495	84,961
Idaho [5]	2,077	0	3	2,080	506,420	506,420	74,313	4	1,082	581,815
Illinois	10,868	14	190	11,072	2,695,712	2,695,712	395,574	524	141,806	3,233,092
Indiana	1,830	4	13	1,847	449,691	449,691	65,989	103	27,874	543,554
Iowa	5,298	0	3	5,301	1,290,640	1,290,640	189,391	41	11,095	1,491,126
Kansas	727	1	8	736	179,195	179,195	26,295	46	12,449	217,939
Kentucky [6]	3,586	1,171	396	5,153	1,254,607	1,254,607	184,103	35	9,472	1,448,182
Louisiana	1,491	104	78	1,673	407,327	407,327	59,772	41	11,095	478,194
Maine	872	0	0	872	212,307	212,307	31,154	14	3,789	247,250
Maryland	3,086	10	34	3,130	762,065	762,065	111,827	1,579	427,311	1,301,203
Massachusetts	6,393	102	78	6,573	1,600,336	1,600,366	234,836	686	185,646	2,020,818
Michigan	8,067	713	191	8,971	2,184,179	2,184,179	320,511	411	111,225	2,615,915
Minnesota	10,266	2	7	10,275	2,501,666	2,501,666	367,099	566	153,172	3,021,937
Mississippi	126	5	8	139	33,842	75,000	4,966	38	10,284	90,250
Missouri	8,316	6	22	8,344	2,031,523	2,031,523	298,109	27	7,307	2,336,939
Montana	12	0	2	14	3,409	75,000	500	1	271	75,771
Nebraska	2,433	3	22	2,458	598,452	598,452	87,818	38	10,284	696,554
Nevada [6]	1,498	735	341	2,574	626,695	626,695	91,962	181	48,982	767,639
New Hampshire	1,715	0	0	1,715	417,553	417,553	61,272	25	6,766	485,591
New Jersey	4,446	265	818	5,529	1,346,152	1,346,152	197,537	770	208,378	1,752,067
New Mexico	421	330	229	980	238,602	238,602	35,013	10	2,706	276,321
New York	22,833	1,113	526	24,472	5,958,225	5,958,225	874,321	6,847	1,852,944	8,685,490
North Carolina	4,375	15	57	4,447	1,082,716	1,082,716	158,880	235	63,596	1,305,192
North Dakota	1,603	0	0	1,603	390,284	390,284	57,271	0		447,555
Ohio	4,639	5	28	4,672	1,137,497	1,137,497	166,918	208	56,289	1,360,704
Oklahoma	412	0	8	420	102,258	102,258	15,006	63	17,049	134,313
Oregon	4,858	460	170	5,488	1,336,169	1,336,169	196,072	129	34,910	1,567,151
Pennsylvania	7,700	166	158	8,024	1,953,612	1,953,612	286,677	657	177,798	2,418,087
Rhode Island	603	1	8	612	149,004	149,004	21,865	87	23,544	194,413
South Carolina	199	1	21	221	53,807	91,634	7,896	37	10,013	109,543
South Dakota [6]	1,265	0	0	1,265	307,991	307,991	45,195	10	2,706	355,892

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT/ASYLEE/PAROLEE POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND FINAL SOCIAL SERVICE FORMULA AMOUNT AND ALLOCATION FOR FY 2001—Continued

State	Refugees [1]	Entrants	Havana parolees [2]	Total population	Final formula amount	Final allocation	Final set-aside ($10.5 million)	Asylees [3]	Asylee set-aside ($10 million)	Total final allocation
Tennessee	3,226	7	118	3,351	815,872	815,872	119,723	263	71,173	1,006,768
Texas	13,282	831	459	14,572	3,547,861	3,547,861	520,620	798	215,956	4,284,437
Utah	3,433	0	2	3,435	836,323	836,323	122,724	48	12,990	972,037
Vermont	981	0	0	981	238,845	238,845	35,049	9	2,436	276,330
Virginia	4,867	111	72	5,050	1,229,529	1,229,529	180,423	1,330	359,926	1,769,878
Washington	15,760	0	36	15,796	3,845,869	3,845,869	564,350	387	104,730	4,514,949
West Virginia	20	0	0	20	4,869	75,000	715	4	1,082	76,797
Wisconsin	1,667	2	4	1,673	407,327	407,327	59,772	119	32,204	499,303
Wyoming [4]										
Total	235,315	18,757	39,820	293,892	71,554,211	71,927,850	10,500,000	36,952	10,000,000	92,427,850

[1] Includes: refugees and Amerasian immigrants from Vietnam adjusted for secondary migration.
[2] For FY 1999 and FY 2000, Havana Parolee arrivals for all States are based on actual data. For FY 1998, Florida's HP's based on actual data, while Havana Parolees in other States are prorated according to the State's proportion of the three-year entrant population.
[3] Includes individuals granted asylum in FY 2000 by the INS asylum corps (22,787), the immigration judges of the Executive Office of Immigration Review (12,763), and the Bureau of Immigration Appeals (1,402). These numbers were not used for the social services allocation. See narrative for their use in the set-aside.
[4] Alaska and Wyoming no longer participate in the Refugee Program.
[5] The allocation for Idaho is expected to be awarded to the State replacement designee.
[6] The allocations for South Dakota, Kentucky, and Nevada are expected to be awarded to Wilson/Fish projects.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: June 26, 2001.

Carmel Clay-Thompson,

Acting Director, Office of Refugee Resettlement

[FR Doc. 01–16938 Filed 7–5–01; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

The Status of PASRR and Mental Health Services for Persons in Nursing Facilities: Case Studies of Four States—New—SAMHSA's Center for Mental Health Services is sponsoring an assessment of the effectiveness of the Preadmission Screening and Resident Review (PASRR) program, which is a required component of every State's Medicaid plan. Data will be collected from administrators and staff in 24 nursing facilities in four states (six facilities per state). In addition, data will be collected from a total of 100 residents of nursing facilities in two of the states. Data collection for this project will be conducted over a 4-month period.

Nursing facility variables of interest include the following: availability of mental health services; change in condition procedures; alternative placement procedures; and experience with PASRR.

Variables of interest for the nursing facility residents include: mental health symptomotology, functioning, and mental health service access. Data will be entered and managed electronically. The total estimated respondent burden is summarized in the table below.

Respondent	Number of respondents	Responses/respondents	Average burden/response (hrs.)	Total burden (hrs.)
Nursing Facility Administrators	24	1	1.0	24
Nursing Facility Staff	48	1	1.0	48
Nursing Facility Residents	100	1	.5	50
Total	172			122

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 28, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–16922 Filed 7–5–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Service Administration

Community Mental Health Services and Substance Abuse Prevention and Treatment Block Grant Maintenance of Effort Requirements: Exclusion From Future Year Calculations

In keeping with SAMHSA's delegation of authority from the Secretary for Health and Human Services (HHS) and in compliance with section 1915(b)(2) and section 1930(b) of the Public Health Service (PHS) Act as amended by Public Law 106–310, the Substance Abuse and Mental Health Services Administration is issuing the following guidance that will be used in determining whether to approve an exclusion from aggregate expenditures by the State used in the calculation of maintenance of effort requirements under both the Community Mental Health Services (CMHS) Block Grant program and the Substance Abuse Prevention and Treatment (SAPT) Block Grant program.

Summary: Under the CMHS Block Grant program, States are required as a condition of receipt of funds to maintain State expenditures for community based mental health services for adults with serious mental illness and children with serious emotional disturbance at a level that was equal to the average expenditures for such purposes over the previous two years. Under the SAPT Block Grant program, the States are required to maintain State expenditures for the single State agency responsible for substance abuse services at a level that is equal to the average expenditures for such purposes over the previous two years. Under both block grants, the States are required to materially comply with the maintenance of effort requirements.

Public Law 106–310 added sections 1915(b)(2) and 1930(b) to the PHS Act which explicitly authorize the Secretary, as a matter within his discretion, to exclude from the calculation of the maintenance of effort "funds appropriated to the principal agency for authorized activities which are of a non-recurring nature and for a specific purpose." This exclusion from the maintenance of effort will, among other things, offer States some latitude to try new programs without having to commit themselves to outyear expenditures.

This notice provides guidance to States eligible to request such an exclusion from the maintenance of effort requirements. The State must request the exclusion separate from the yearly application that it submits for funding under both programs and the request must be signed by the State's Chief Executive Officer or by an individual authorized on behalf of the Chief Executive Officer. The State must also submit documentation sufficient to support its request for an exclusion under section 1915(b)(2) or section 1930(b). The documentation must support its position that the funds were appropriated by the State legislature for authorized activities that are of a non-recurring nature and for a specific purpose, indicate the length of time the project is expected to last in years and months, and affirm that these expenditures would be in addition to funds otherwise needed to meet the State's maintenance of effort requirement for the year that it is applying for exclusion. With regard to the last point, if the State is otherwise required to expend $1,000,000 to satisfy its maintenance of effort requirement, an expenditure of $100,000 eligible for exclusion under this new authority must be expended in addition to the $1,000,000. It simply will not be used to calculate future maintenance of effort requirements.

With respect to documentation to support the State's position that the funds were appropriated for authorized activities that are of a non-recurring nature and for a specific purpose, the governor's budget justification would be sufficient unless the appropriation for the principal agency responsible for community based mental health services or substance abuse services is below the budget request, in which case the State should show that the legislature intended to provide funding for the activity at issue. If the State legislature explicitly rejected that activity of the governor's budget, it may not be claimed as an eligible exclusion as funds have not been appropriated for the specific purpose in question.

The length of time of the activity may be for more than one year. The longer the length of the activity, however, the more difficult it will be to determine that the expenditure is non-recurring.

In addition, a State may apply for more that one exclusion in any one year or apply for additional exclusions in other years while other excluded activities are ongoing.

In summary, in order for SAMHSA to approve a request from a State to have excluded from the aggregate State expenditures funds appropriated by the State legislature to the principal agency for authorized activities which are of a non-recurring nature and for a specific purpose, the following is necessary:

1. The State shall request the exclusion separately from the application;

2. The request shall be signed by the State's Chief Executive Officer or by an individual authorized to apply for the SAPT or CMHS Block Grant on behalf of the Chief Executive Officer. SAMHSA will consider such requests for funds appropriated after the date of enactment of Public Law 106–310, October 17, 2000, in the first year for which additional funds are being added to the budget for such activities;

3. The State shall provide documentation that supports its position that the funds were appropriated by the State legislature for authorized activities which are of a non-recurring nature and for a specific purpose, indicates the length of time the project is expected to last in years and months, and affirms that these expenditures would be in addition to funds needed to otherwise meet the State's maintenance of effort requirement for the year for which it is applying for exclusion; and

4. The Administrator of SAMHSA agrees that the criteria for exclusion have been met.

Nothing in this guidance limits a State from requesting more than one exclusion in any one year. If during a particular year the State wishes to submit more than one project for exclusion, it should do so in a single request.

Dated: June 28, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–16923 Filed 7–5–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–27]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234: TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 28, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 01–16733 Filed 7–5–01; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of a Draft Environmental Impact Statement Evaluating the Environmental Effects of Providing Fish Passage Through the Leavenworth National Fish Hatchery and Providing Riverine Habitat Within the Hatchery Grounds

AGENCY: Fish and Wildlife Service, Interior (Lead Agency); Forest Service, Agriculture (Cooperating Agency).

ACTION: Notice of availability.

SUMMARY: When the Bureau of Reclamation (Interior) built the Leavenworth National Fish Hatchery along the west bank of the Icicle Creek, a tributary to the Wenatchee and Columbia Rivers, in 1939, it modified the original Icicle Creek channel into a series of adult salmon and steelhead holding and juvenile rearing ponds. The main flow of Icicle Creek was diverted into a dammed manmade canal. Fish passage to creek areas above the hatchery was deliberately blocked. Holding and rearing fish in the modified channel worked poorly and was abandoned in 1979 when the U.S. Fish and Wildlife Service (Service) built a conventional fish ladder and two holding ponds immediately downstream of the dam at the tail end of the manmade canal. Use of the ponds in the original creek bed was abandoned.

The Service, in cooperation with the U.S. Forest Service, has completed the preparation of a draft Environmental Impact Statement addressing the potential effects on the human environment that may result from removing the obstacles in Icicle Creek to provide fish passage to areas above the hatchery and to provide riverine habitat within the hatchery grounds.

The draft Environmental Impact Statement is available for public review and comment. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: The comment period will end on August 20, 2001.

ADDRESSES: Comments should be addressed to Ms. Corky Broaddus, Supervisory Information and Education Specialist, U.S. Fish and Wildlife Service, Leavenworth National Fish Hatchery Complex, 12790 Hatchery Road, Leavenworth, Washington 98826. Written comments may also be sent via facsimile to (509) 548–6263.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Pratschner, Project Leader, U.S. Fish and Wildlife Service, Leavenworth National Fish Hatchery Complex, Leavenworth, Washington 98826, at (509)548–7641.

SUPPLEMENTARY INFORMATION:

Document Availability

Copies of the draft Environmental Impact Statement are available for review at the following government offices and libraries:

Government Offices: U.S. Fish and Wildlife Service, Leavenworth National Fish Hatchery, 12790 Hatchery Road, Leavenworth, Washington 98826, (509) 548–7641; U.S. Fish and Wildlife Service, Mid-Columbia River Fisheries Resource Office, 12790 Hatchery Road, Leavenworth, Washington 98826, (509) 548–7573; U.S. Forest Service, Leavenworth Ranger District, 600 Sherbourne, Leavenworth, Washington 98826, (509) 548–6977; U.S. Forest Service, Okanogan-Wenatchee National Forest, Supervisor's Office, 215 Melody Lane, Wenatchee, Washington 98801, (509) 662–4335.

Libraries: Leavenworth Public Library, 700 Highway 2, Leavenworth, Washington 98826, (509) 548–7923; Wenatchee Public Library, 310 Douglas, Wenatchee, Washington 98801, (509) 662–5021; East Wenatchee Public Library, 271 Ninth Street Northeast, East Wenatchee, Washington 98802, (509) 886–7404; Cashmere Public Library, 101 Woodring, Cashmere, Washington 98815, (509) 782–3314.

Background

Pursuant to the National Environmental Policy Act, the Service prepared a draft Environmental Impact Statement evaluating the consequences of a proposed action to remove instream structures in Icicle Creek, a tributary of the Wenatchee River, near Leavenworth, Washington. When the Leavenworth National Fish Hatchery (Hatchery) was built in 1939, the original Icicle Creek channel was modified into a series of salmon and steelhead holding ponds with the instream placement of weirs, dams, and a headgate which controlled flow through the ponds. Fish passage to areas above the Hatchery was deliberately blocked. Flow in Icicle Creek was diverted downstream via a manmade canal bounded on the downstream end by a velocity barrier dam and spillway. The use of the instream ponds to hold returning salmon and steelhead was abandoned in 1979 due to recurrent water temperature

and water quality problems. Instead, the Hatchery constructed a conventional fish ladder and holding ponds adjacent to the spillway dam. The ladder and holding ponds are currently in use.

On March 10, 1999, the Service published in the **Federal Register** a Notice of Intent to prepare an Environmental Impact Statement. The stated Purpose and Need was: to provide long term, year-round, sustainable passage of native fish to habitat above the Leavenworth National Fish Hatchery; to provide riverine fish habitat through the Hatchery grounds.

The Service invites the public to comment on the draft Environmental Impact Statement. All comments received will become part of the public record and may be released. The public will have 45 days to review and comment on the draft Environmental Impact Statement. This notice is provided pursuant to the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Date: June 27, 2001.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 01–16658 Filed 7–5–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA670–1150DK]

Closure of Lands to Vehicular Camping, Imperial County, CA

AGENCY: Bureau of Land Management, California Desert District, Interior.

ACTION: Temporary camping closure order for a portion of lands within and adjacent to the East Mesa area of critical environmental concern (California Desert Conservation Area ACEC #70), Imperial County, CA.

SUMMARY: The Bureau of Land Management will implement a Temporary Camping Closure in accordance with 43 CFR 8364.1. This closure to camping will include the following portion of land known as "East Mesa," west of the Old Coachella Canal: *T16S., R. 20 E.*, SBM Sec. 31 (portion west of canal and north of old Interstate 80). These lands are located on BLM managed lands west of the old Coachella Canal and extending north of old Highway 80 just west of the Imperial Sand Dunes Recreation Area. This closure will be in effect for a period of 1 year. Posting of closure boundaries and approved routes of travel will be accomplished in this area. Vehicular traffic in this area is restricted to approved routes of travel.

SUPPLEMENTARY INFORMATION: The purpose of this closure is to implement the conference opinion (U.S. Fish & Wildlife Service #1–6–97–F–8), for the use of Herman Schneider Memorial Bridge, also known as Gray's Well Bridge, located on the All American Canal just west of the Imperial Sand Dunes Recreation Area.

The purpose for constructing Herman Schneider Memorial Bridge was to connect the Imperial Sand Dunes Recreation Area south of Interstate 8 to the Recreation Area north of Interstate 8. In consultation with the U.S. Fish and Wildlife Service, BLM is implementing reasonable and prudent measure number 2, which requires this area be identified as closed to vehicular camping.

Since 1989, the area north of Interstate 8 and west of the old Coachella Canal has sustained an increase in vehicular camping due to overflow from the Imperial Sand Dunes Recreation Area. Closure of the lands to camping will eliminate intensive riding activities normally found in and around campsites, which adversely impacts Flat Tailed Horned Lizard habitat. Flat Tailed Horned Lizard habitat which is closed to camping is expected to recover from impacts resulting from intensive use.

EFFECTIVE DATE: This closure will be effective on April 06, 2001 and will remain in effect for a period of one year.

FOR FURTHER INFORMATION CONTACT: Roxie C. Trost, BLM Resources Branch Chief, Bureau of Land Management, El Centro Resource Area, 1661 4th St, El Centro California 92243, (760) 337–4420.

Dated: March 30, 2001.

Roxie C. Trost,

Acting Field Manager.

[FR Doc. 01–16874 Filed 7–5–01; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–074–1220–PA–241A]

Final Notice of Closure of Certain Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final notice of closure of certain lands to off-highway vehicle use to implement the Medicine Lodge Resource Management Plan, and Big Desert Management Framework Plan, Upper Snake River District, Idaho.

SUMMARY: With the publication of this Notice, the Bureau of Land Management announces the closure of seasonal restriction of certain BLM-administered lands within the Idaho Falls Field Office. A complete description of these lands and the off-highway vehicle restrictions was previously published in the **Federal Register** [66 FR 6653–6655].

SUPPLEMENTARY INFORMATION: No public comments were received within the 30 day deadline following publication, which ended February 21, 2001. The closures include small parcels of land in the following areas: Tex Creek/Willow Creek, Stinking Springs, Big Bend Ridge, and lands adjacent to the South Fork of the Snake and Main Snake Rivers. More information on these closures is available in the **Federal Register** Notice cited above, or at the BLM office listed below.

FOR FURTHER INFORMATION CONTACT: Jeff Gardetto, Wildlife Management Biologist, BLM Idaho Falls Field Office, 1405 Hollipark Dr., Idaho Falls, Idaho 83401. Telephone (208) 524–7500.

Dated: April 6, 2001.

Joe Kraayenbrink,

Idaho Falls Field Manager.

[FR Doc. 01–16872 Filed 7–5–01; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–090–01–9922–EK]

Proposal of a Supplemental Rule Restricting Recreational and Sport Shooting To Protect Human Health and Safety in the Vicinity of the BLM Lands in Potter County, Texas

AGENCY: Bureau of Land Management, Department of the Interior, Amarillo Field Office, Amarillo, Texas.

ACTION: This notice proposes that on those public lands administered by the BLM in Potter County, Texas, (Sections 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, and 48 in Block 5 of G.M. Survey; Sections 1, 3 and 4 in Block 4 of G.M. Survey; Sections 19, 21, 27, 29 and 35 of Block 21–W of G.C.&S.F.R.R. Survey) firing any handgun, shotgun or rifle is prohibited. Archery hunting with bow and arrow would be allowed pursuant to State of Texas, Parks and Wildlife regulations.

SUMMARY: In accordance with Title 43, Code of Federal Regulations § 8365.1–6, the State Director may establish

supplementary rules in order to provide for the protection of persons, property and public lands and resources. Failure to comply with this proposed supplementary rule would be punishable by a fine not to exceed $100,000 and/or imprisonment not exceed 12 months. The environmental effects of the proposed rule will be analyzed separately by Environmental Assessment 090–2001–002.

DATES: Comments must be received in writing to the BLM on or before August 6, 2001.

ADDRESSES: Written comments shall be mailed to the following address: Mr. Paul Tanner, Natural Resource Specialist, Bureau of Land Management, 801 S. Fillmore, Suite 500, Amarillo, Texas 79101–3545.

SUPPLEMENTARY INFORMATION: Uncontrolled shooting on the subject public lands in Potter County, Texas, creates a public health and safety hazard by firing solid projectile firearms, that have a long range, into and about a populated rural area. Portions of the area of concern receive heavy use by ranchers, oil and gas development personnel and BLM employees. This proposed supplemental rule would prohibit the firing of any firearm. By prohibiting all gunfire a safer environment on both public and private lands will be created. This proposed rule only affects public lands administered by BLM. This special rule is in addition to existing rules and regulations previously established under Title 43 Code of Federal Regulations as well as other Federal laws applicable to the use of public lands.

FOR ADDITIONAL INFORMATION CONTACT: BLM Amarillo Field Office, 801 S. Fillmore Street, Suite 500, Amarillo, Texas 79101–3545, telephone (806) 324–2602.

Dated: May 8, 2001.

M.J. Chavez,

State Director.

[FR Doc. 01–16877 Filed 7–5–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1210–PA–241E]

Extension of Restrictions, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of restrictions adjacent to and within the Sand Mountain WSA, Idaho.

SUMMARY: In accordance with Title 43 Group 8000-Recreation Programs, and in accordance with the principles established by the Federal Land Policy and Management Act of 1976 and the National Environmental Policy Act of 1969, Notice is hereby given that temporary restrictions previously published in the **Federal Register** are hereby extended. These actions are under the authority of 43 CFR 8364.

The restrictions extended include the following Notices:

- Notice of restricted motor vehicle use [57 FR 36405]
- Notice of Recreation Use Restrictions and Regulations for Egin Lakes Access and Red Road Recreation Sites Adjacent and Within the Sand Mountain Wilderness Study Area (WSA), Idaho [64 FR 27804]
- Notice of Recreation Use Restrictions and Regulations for Egin Lakes Access and Red Road Recreation Sites Adjacent and Within the Sand Mountain Wilderness Study Area (WSA), Idaho [64 FR 46935]

DATES: The restrictions will be extended for the period on or before July 8, 2002.

ADDRESSES: Bureau of Land Management, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401. Telephone (208) 524–7500.

SUPPLEMENTARY INFORMATION: The Sand Mountain WSA includes 21,000 acres of public land that is part of the larger St. Anthony Sand Dunes Special Recreation Management Area (SRMA) in Fremont and Jefferson Counties. The aforementioned **Federal Register** Notices established various restrictions within the WSA and SRMA. These include:

Within the WSA

1. Lands within the WSA are restricted to unlicenced off-road vehicles, including ATVs (3 and 4-wheelers), dual purpose off-road motorcycles and dune buggies or dune rails. All licensed vehicles (with the exception of dual purpose motorcycles) are prohibited, including passenger automobiles, pick-up campers, camp trailers, self-contained campers and similar vehicles.

2. All permitted use must occur on the open sand areas or on designated roads or trails.

3. Glass containers for food and beverages are prohibited within the WSA boundaries.

4. Safety equipment such as helmets, boots, and protective clothing, are strongly recommended.

5. Each vehicle is required to have a "whip flag" not less than 6 feet in length with brightly colored material on the end of the flag.

6. Open campfires are prohibited within the WSA, except in the designated Red Road Open Sand Campfire Area. Within the Red Road Open Sand Campfire Area, burning any foreign material other than wood in all campfires is prohibited. This includes, but is not limited to pallets, treated lumber, tires, glass, aluminum, etc.

7. Use of personal water cr ıft or other motorized vehicle or craft is ɟ rohibited on any body of water within the WSA.

Within the SRMA

1. Quiet hours will be observed within the Egin Lakes Access Site and Red Road Recreation Area from 11 p.m. to 7 a.m. nightly.

2. Burning any foreign material other than wood in all campfires is prohibited. This includes, but is not limited to pallets, treated lumber, tires, glass, aluminum, etc.

3. Engaging in fighting is prohibited.

4. Addressing any offensive, derisive, or annoying communication that has a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed, is prohibited.

5. No person under the age of twenty-one (21) shall possess or consume any alcoholic beverage, as defined by Idaho Code Title 23–105.

These restrictions are intended to reduce the possibility of injury to individuals, or damage to the natural resources within the WSA and the SRMA. Recreational use on the St. Anthony Sand Dunes has increased more than 1000% since 1984, with an estimated 150,000 visitors last season.

Maps of the areas where the restrictions and regulations apply will be available at the Idaho Falls Field Office. Signs with the rules and regulations will be posted at all entrances into the WSA as well as at the recreation sites and areas. For more complete information on these restrictions, please refer to the previously mentioned **Federal Register** Notices.

FOR FURTHER INFORMATION CONTACT: Bill Boggs, Bureau of Land Management, Upper Snake River District, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 524–7527.

Dated: April 3, 2001.

Joe Kraayenbrink,

Idaho Falls Field Manager.

[FR Doc. 01–16873 Filed 7–5–01; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CA–180–1630/PD]

Camping and Firearms Restrictions

ACTION: Final supplementary rules and written orders.

SUMMARY: In previous **Federal Register** Notices, the Bureau of Land Management (BLM) has enacted numerous Supplementary Rules and Orders to provide management and protection of Public Lands and resources. The BLM has republished those existing Supplementary Rules and Orders to correct typographical errors, correct administrative errors, to review the need for the Rule, and to provide for additional public comment. The proposed Supplementary Rules and Written Orders were published in the **Federal Register** September 5, 2000 (Volume 65, Number 172, page 53746).

No comments were received to the proposed Supplementary Rules and Written Orders. Two changes were to the proposed Supplementary Rules and Written Orders. A change was made to correct an error in the legal description for the Supplementary Rules for the Red Hills. The second change was deleting "and persons visiting registered campers" from section (g) of the Merced River Written Orders. No other changes were made from the proposed Supplementary Rules and Written Orders.

Supplementary Rules: South Yuba River

Action: Establishment of camping, day use, and firearms Supplementary Rules on Public Lands within the South Yuba Recreation Area of the Folsom Field Office, California. These rules shall apply to all public lands within sections 1 and 2, Township 16 north, Range 7 east; sections 25, 26, 27, 34, 35, 36, Township 17 north, Range 7 east; sections 13, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, Township 17 north, Range 8 east; sections 7, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 29, 30, Township 17 north, Range 9 east; all of the Mt. Diablo meridian.

Supplementary Rules

(a) No person shall camp within area described as one quarter mile downstream and one-half mile upstream from Edward's Crossing bridge and within one quarter mile on each side of the South Yuba River.

(b) No person shall occupy a campsite in the South Yuba Campground with more than two motor vehicles or more than eight adults.

(c) No person shall discharge a firearm within one half mile of the South Yuba Campground and within the day use area described in (a).

(d) No person shall use, build, attend, or maintain a campfire within the day use area described in (a).

(e) No person shall operate a motor vehicle on the South Yuba Trail.

(f) No person shall operate a motor vehicle within one quarter mile of each side of the South Yuba River except on roads and trails designated for motorized use. The following Supplementary Rules shall apply only to the Hoyt's Crossing Area, specifically to all public land within sections 28 and 34, Township 17 north, Range 8 east of the Mt. Diablo meridian. This action was necessary to limit adverse impacts to public lands while long term planning is underway. The California State Parks and the County of Nevada urged BLM to enact restrictions in the Hoyt's Crossing area to reduce ongoing problems. These Supplementary Rules will protect the resources and the recreational experience until planning is completed.

(g) No person shall camp.

(h) No person shall build, maintain, attend, or use a campfire.

(i) No person shall possess or consume any alcoholic beverage.

(j) No person shall possess any bottle or container made of glass.

A firearm is defined under Title 18, United States Code, section 921(a)(3). Camping is defined as the use, construction, or taking possession of public lands using tents, shacks, leantos, tarps, vehicles, huts, blankets, or sleeping bags. Campfire is defined as a controlled fire occuring out of doors used for cooking, branding, personal warmth, lighting, ceremonial, or esthetic purposes. The term alcoholic beverage includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

SUPPLEMENTARY INFORMATION: The purpose of these Rules is to protect resources of the public lands, persons, and property. Authority for these Rules is contained in the Code of Federal Regulations, Title 43, § 8365.1–6. Any person who fails to comply with these Rules may be subject to a fine not to exceed 100,000 dollars and/or 12 months imprisonment. These penalties are specified in United States Code, Title 43, section 303, and United States Code, Title 18, section 3623. Federal, state, and local law enforcement personnel and emergency service personnel, while performing official duties, are exempt from these Rules.

Written Orders: North Fork American River

Action: Closure of all public lands administered by the Bureau of Land Management within the boundaries of the North Fork of the American River Wild and Scenic corridor to the operation or possession of motorized vehicles or equipment and other restrictions. These Written Orders shall apply on public lands described from the BLM boundary upstream from the Iowa Hill Road bridge (approximately one eighth mile upstream from the bridge) east to the National Forest boundary and within one quarter mile of each side of the river. These public lands are contained in section 36, Township 15 north, Range 9 east; and sections 1, 2, 9, 10, 11, 14, 15, 16, 20, 21, 22, 28, 29, 30, 31 and 32, Township 15 north, Range 10 east; of the Mt. Diablo meridian. Summary: The BLM section of the North Fork of the American River was classified "wild" by the Wild and Scenic River Act as amended (Pub. L. 95–625, November 10, 1978). These Written Orders are necessary to insure public use is consistent with the Act.

Written Order:

(a) No person shall use or posses a motorized vehicle or motorized equipment.

(b) No person shall operate a motorized vehicle on the Steven's Trail.

(c) No person shall operate a motor vehicle except on roads and trails designated for motorized use.

(d) No person shall camp more than fourteen (14) days in any ninety (90) day period.

SUPPLEMENTARY INFORMATION: Camping is defined as the use, construction, or taking possession of public lands using tents, shacks, leantos, tarps vehicles, huts, blankets, or sleeping bag. The authority for this Written Order is contained in the Code of Federal Regulations, Title 43, § 8351.2–1. Any person who fails to comply with this Written Order may be subject to a fine not to exceed 500 dollars and/or imprisonment not to exceed 6 months. These penalties are specified in the Code of Federal Regulations, Title 43, section 8351.2–1(f). The following persons are exempt from this Written Order: 1. Any Federal, state, local government officer or member of an

organized rescue or fire suppression force in the performance of an official duty, 2. Persons with written permission authorizing the otherwise prohibited act or omission.

Supplementary Rules; Red Hills Area of Critical Environmental Concern

Action: Establishment of firearms and vehicle use restrictions in the Red Hills Area of Environmental Concern. These Supplementary Rules apply within the Red Hills Area of Environmental Concern as described in **Federal Register**, volume 50, number 46, March 8, 1985; specifically on all public lands within sections 1, 2, 11, 12, and 13, Township 1 south, Range 13 east; and sections 6, 7, 8, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 34, 35, Township 1 south Range 14 east in the Mt. Diablo meridian.

Supplementary Rules

(a) No person shall discharge any firearm. For the purposes of this Rule, a firearm is defined as under United States Code, Title 18, section 921(a)(3). Licensed sport hunters in the legitimate and legal pursuit of game with an appropriate firearm and during the proper season as defined by the California fish and Game shall be exempt from this Supplementary Rule.

(b) No person shall operate a motor vehicle off designated routes of travel.

(c) No person shall operate a motor vehicle unless the vehicle is registered for street use in accordance with the California Vehicle Code, section 4000a.

SUPPLEMENTARY INFORMATION: Authority for these Supplementary Rules is contained in the Code of Federal Regulations, Title 43, section 8364.1. Any person who fails to comply with these Supplementary Rules may be subject to fines not to exceed 100,000 dollars and/or not to exceed imprisonment of 12 months. These penalties are specified by United States Code, Title 43, section 303; and United States Code, Title 18, section 3623. Federal state, and local law enforcement personnel and emergency service personnel, while performing official duties, are exempt from these Rules.

Written Orders: Merced River Wild and Scenic River

Action: Establishment of Written Orders for the management of public lands along the Merced River.

Summary: The Merced River was classified "wild" and "scenic" in accordance with the Wild and Scenic Rivers Act as amended (Pub. L. 95–625, November 10, 1978). These Written Orders shall insure management of the public lands consistent with these classifications. These Written Orders apply to public lands within one quarter mile of the river; from the National Forest boundary west to Lake McClure. These public lands are contained within sections 1, 2, 4, 5, 6, 9, 10, 11, 15, Township 4 south, Range 17 east; and sections 2, 3, 5, 6, 8, 9, 10, 11, 16, 17, 25, 35, 36, Township 3 south, Range 18 east; Mt. Diablo meridian.

Written Orders

(a) No person shall discharge a firearm within one quarter mile of each side of the Merced River. A firearm is defined as under United States Code, Title 43, section 921(a)(3).

(b) No person shall occupy a campsite in a developed campground with more than two motor vehicles or more than eight adults.

(c) No person shall camp outside of designated campgrounds along the Merced River within the area described as one quarter mile upriver from Briceburg to one quarter mile below Railroad Flat Campground; and between the river and one quarter mile north of the Merced River. Camping is defined in Supplementary Rules for the South Yuba River.

(d) No person shall operate a motor vehicle on the old railroad bed between the high water mark of Lake McClure and the Railroad Flat Campground; or between Briceburg and the National Forest boundary.

(e) No person shall operate a motor vehicle on the Briceburg Road unless it is registered for street use as defined in the California Vehicle Code, section 4000a.

(f) No person shall operate a motor vehicle off the Briceburg Road or the developed campground roads.

(g) No person shall enter a developed campground between 10 p.m. and 6 a.m. unless that person is a registered camper.

(h) No person shall operate or possess a motor vehicle or motorized equipment in the classified "wild" section of the Merced River; which is described as the section between the high water mark of Lake McClure and the Railroad Flat Campground.

(i) No person shall possess any glass beverage container within one quarter mile of each side of the Merced River.

(j) No person shall occupy a campsite for longer than 30 minutes without placing the required camping fee in the envelopes provided for that purpose, providing the written information on the envelope, and depositing the envelope with the required fee into the fee collection receptacle.

(k) No person shall camp more than fourteen (14) days in any ninety (90) day period.

(l) No person shall leave any property unattended for more than twenty four (24) hours.

SUPPLEMENTARY INFORMATION: The authority for this Written Order is contained in the Code of Federal Regulations, Title 43, § 8351.2–1. Any person who fails to comply with these Written Orders may be subject to a fine not to exceed 500 dollars and/or imprisonment not to exceed 6 months. These penalties are specified in the Code of Federal Regulations, Title 43, § 8351.2–1(f). The following persons are exempt from this Written Order: 1. Any Federal, state, local government officer or member of an organized rescue or fire suppression force in the performance of an official duty, 2. Persons with written permission authorizing the otherwise prohibited act or omission.

FOR ADDITIONAL INFORMATION CONTACT: Deane Swickard, Field Manager, 63 Natoma Street, Folsom, CA 95630. Information can also be obtained via e-mail to *Deane Swickard@ca.blm.gov*.

Mike Pool,

State Director, California.

[FR Doc. 01–16875 Filed 7–5–01; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0086).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR), titled "30 CFR 250, Subpart P, Sulphur Operations." We are also soliciting comments from the public on this ICR.

DATES: Submit written comments by August 6, 2001.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0086), 725 17th Street, NW., Washington, DC 20503. Mail or hand carry a copy of your comments to

the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the e-mail address is: rules.comments@mms.gov. Reference "Information Collection 1010–0086" in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain at no cost a copy of our submission to OMB, which includes the regulations that require this information to be collected.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart P, Sulphur Operations.

OMB Control Number: 1010–0086.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*), as amended, requires the Secretary of the Interior (Secretary) to preserve, protect, and develop sulphur resources on the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition. Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations "to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein" and to include provisions "for the prompt and efficient exploration and development of a lease area." These authorities and responsibilities are among those delegated to MMS under which we issue regulations to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases. This information collection request addresses the regulations at 30 CFR 250, subpart P, Sulphur Operations, and the associated supplementary notices to lessees and operators intended to provide clarification, description, or explanation of these regulations.

MMS uses the information collected to ascertain the condition of drilling sites for the purpose of preventing hazards inherent in drilling and production operations and to evaluate the adequacy of equipment and/or procedures to be used during the conduct of drilling, well-completion, well-workover, and production operations. For example, MMS uses the information to:

- Ascertain that a discovered sulphur deposit can be classified as capable of production in paying quantities.
- Ensure accurate and complete measurement of production to determine the amount of sulphur royalty payments due the United States; and that the sale locations are secure, production has been measured accurately, and appropriate follow-up actions are initiated.
- Ensure that the drilling unit is fit for the intended purpose.
- Review expected oceanographic and meteorological conditions to ensure the integrity of the drilling unit (this information is submitted only if it is not otherwise available).
- Review hazard survey data to ensure that the lessee will not encounter geological conditions that present a hazard to operations.
- Ensure the adequacy and safety of firefighting plans.
- Ensure the adequacy of casing for anticipated conditions.
- Review log entries of crew meetings to verify that crew members are properly trained.
- Review drilling, well-completion, and well-workover diagrams and procedures to ensure the safety of the proposed drilling, well-completion, and well-workover operations.
- Review production operation procedures to ensure the safety of the proposed production operations.
- Monitor environmental data during operations in offshore areas where such data are not already available to provide a valuable source of information to evaluate the performance of drilling rigs under various weather and ocean conditions. This information is necessary to make reasonable determinations regarding safety of operations and environmental protection.

Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), 30 CFR 250.196 (Data and information to be made available to the public), and 30 CFR part 252 (OCS Oil and Gas Information Program).

Frequency: The frequency varies by section, but is generally "on occasion".

Estimated Number and Description of Respondents: Approximately 1 Federal OCS sulphur lessee.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The following chart details the components of the hour burden for the information collection requirements in subpart P—an estimated total of 903 burden hours. In estimating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart P	Reporting or recordkeeping requirement	Hour burden per requirement
	Reporting Requirements	
1600	Submit exploration or development and production plan according to 30 CFR 250, subpart B.	Burden included in 1010–0049.
1603(a)	Request determination whether sulphur deposit can produce in paying quantities.	1 hour.
1605(b)(3)	Submit data and information on fitness of drilling unit	4 hours.

Citation 30 CFR 250 subpart P	Reporting or recordkeeping requirement	Hour burden per requirement
1605(c)	Report oceanographic, meteorological, and drilling unit performance data upon request.	1 hour.
1605(d)	Submit results of additional surveys and soil borings upon request	1 hour.
1605(e)(5)	Request copy of directional survey (by holder of adjoining lease)	1 hour.
1605(f)	Submit application for installation of fixed drilling platforms or structures according to 30 CFR subpart I.	Burden included in 1010–0058.
1607	Request establishment, amendment, or cancellation of field rules for drilling, well-completion, or well-workover.	8 hours
1608	Submit well casing and cementing plan or modification	5 hours.
16010(d)(8)	Request exception to ram-type blowout preventer (BOP) system components rated working pressure.	1 hour.
1611(b); 1625(b)	Request exception to water-rated working pressure to test ram-type and annular BOPs and choke manifold.	1 hour.
1611(f); 1625(f)	Request exception to recording pressure conditions during BOP tests on pressure charts *.	1 hour.
1612	Request exception to § 250.408 requirements for well-control drills *	1 hour.
1615	Request exception to blind-shear ram or pipe rams and inside BOP to secure wells.	1 hour.
1610(d)(8); 1611(b), (f); 1615; 1617; 1618; 1619(b); 1622; 1625(b), (f);.	Submit forms MMS–123 (Application for Permit to Drill), MMS–124 (Sundry Notices and Reports on Wells), Form MMS–125 (Well Summary Report). Submissions include various exceptions and approvals required in subpart P.	Burden included in 1010–0044, 1010–0045, and 1010–0046.
1612	Request exception to § 250.408 requirements for well-control drills	1 hour.
1619(c), (d), (e)	Submit copies of records, logs, reports, charts, etc., upon request	1 hour.
1628(b), (d)	Submit application for design and installation features of sulphur production facilities and fuel gas safety system; certify new installation conforms to approved design.	4 hours.
1629(b)(3)	Request approval of firefighting systems	4 hours.
1630(a)(5)	Notify MMS of pre-production test and inspection of safety system and commencement of production.	½ hour.
1633(b)	Submit application for method of production measurement	2 hours.
1634(b)	Report evidence of mishandling of produced sulphur or tampering or falsifying any measurement of production.	1 hour.
1600 thru 1634	General departure and alternative compliance requests not specifically covered elsewhere in subpart P regulations.	2 hours.
	Recordkeeping Requirements	
1604(f)	Check traveling-block safety device for proper operation weekly and after each drill-line slipping; enter results in log.	¼ hour.
1609(a)	Pressure test casing; record time, conditions of testing, and test results in log	2 hours.
1611(d)(3); 1625(c)(3).	Record in driller's report the date, time, and reason for postponing pressure testings.	10 minutes
1611(f), (g); 1625(f), (g).	Conduct tests, actuations, inspections, maintenance, and crew drills of BOP systems at least weekly; record results in driller's report; retain records for 2 years following completion of drilling activity.	6 hours.
1613(e)	Pressure test diverter sealing element/valves weekly; actuate diverter sealing element/valves/control system every 24 hours; test diverter line for flow every 24 hours; record test times and results in driller's report.	2 hours.
1616(c)	Retain training records for lessee and drilling contractor personnel according to 30 CFR 250, included subpart O.	Burden in 1010–0128.
1619(a)	Retain records for 2 years for each well and all well operations	12 hours.
1621	Conduct safety meetings prior to well-completion or well-workover operations; record date/time.	1 hour.
1628(d)	Maintain information on approved design and installation features for the life of the facility.	1 hour.
1629(b)(1)(ii) and (iii).	Retain for 2 years pressure-recording charts used to determine operating pressure ranges; post firefighting system diagram.	12 hours.
1630(b)	Retain records for 2 years for each safety device installed	1 hour.
1631	Conduct safety device training prior to production operations and periodically thereafter; record date/time.	1 hour.

Estimated Annual Reporting and Recordkeeping "Non-H Cost" Burden: We have identified no "non-hour cost" burdens.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C.q 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the

information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 8, 2001, we published a **Federal Register** notice (66 FR 13956) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 displays the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms; specifies that the public may comment at anytime on these collections of information; and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 6, 2001. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: May 24, 2001.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 01–16969 Filed 7–5–01; 8:45 am]

BILLING CODE 4310–MR–P]

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0043).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR), titled "30 CFR 250, Subpart F, Oil and Gas Well-Workover Operations." We are also soliciting comments from the public on this ICR.

DATE: Submit written comments by August 6, 2001.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0043), 725 17th Street, NW., Washington, DC 20503. Mail or hand carry a copy of your comments to the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the e-mail address is: rules.comments@mms.gov. Reference "Information Collection 1010–0043" in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain at no cost a copy of our submission to OMB, which includes the regulations that require this information to be collected.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart F, Oil and Gas Well-Workover Operations.

OMB Control Number: 1010–0043.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*), as amended, requires the Secretary of the Interior (Secretary) to preserve, protect, and develop sulphur resources on the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition. Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations "to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein" and to include provisions "for the prompt and efficient exploration and development of a lease area." These authorities and responsibilities are among those delegated to MMS under which we issue regulations to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases. This information collection request addresses the regulations at 30 CFR 250, subpart F, Oil and Gas Well-Workover Operations and the associated supplementary notices to lessees and operators intended to provide clarification, description, or explanation of these regulations.

MMS District Supervisors use the information collected to analyze and evaluate planned well-workover operations to ensure that operations result in personnel safety and protection of the environment. They use this evaluation in making decisions to approve, disapprove, or to require modification to the proposed well-workover operations. For example, MMS uses the information to:

- Review log entries of crew meetings to verify that safety procedures have been properly reviewed.

Review well-workover procedures relating to hydrogen sulfide (H_2S) to ensure the safety of the crew in the event of encountering H_2S.

- Review well-workover diagrams and procedures to ensure the safety of well-workover operations.
- Verify that the crown block safety device is operating and can be expected to function and avoid accidents.
- Verify that the proposed operation of the annular preventer is technically correct and will provide adequate protection for personnel, property, and natural resources.
- Verify the reasons for postponing blowout preventer (BOP) tests, verify the state of readiness of the equipment and to ascertain that the equipment meets safety standards and requirements, ensure that BOP tests have been conducted in the manner and frequency to promote personnel safety and protect natural resources. Specific

testing information must be recorded to verify that the proper test procedures were followed.

• Assure that the well-workover operations are conducted on well casing that is structurally competent.

Responses are mandatory. No questions of a sensitive nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public) and 30 CFR part 252 (OCS Oil and Gas Information Program).

Frequency: The frequency varies by section, but is primarily monthly or "on occasion."

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees and operators.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The following chart details the components of the estimated hour burden for the information collection requirements in subpart F—19,205 total burden hours. In estimating the burden, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 Subpart F	Reporting or Recordkeeping Requirement	Requirement Hour Burden
	Reporting Requirements	
602	Request exceptions prior to moving well-workover equipment	1 hour
605; 613; 615(a)	Request approval to begin subsea well-workover operations; submit forms MMS–124 and/or MMS- 125.	Burden included in 1010–0045 and 1010–0046
614	Post number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and equivalent well-control fluid volume.	.25 hour
616(a)	Request exception to rated working pressure of the BOP equipment; request exception to annular-type BOP testing.	2 hours
617(b)	Pressure test, caliper, or otherwise evaluate tubing & wellhead equipment casing; submit results (every 30 days during prolonged operations).	6 hours
617(c)	Notify MMS if sustained casing pressure is observed on a well	.25 hour
600 thru 618	General departure and alternative compliance requests not specifically covered elsewhere in subpart F regulations.	2 hours
	Recordkeeping Requirements	
606	Instruct crew members in safety requirements of operations to be performed; document meeting (weekly for 2 crews x 2 weeks per workover = 4).	1 hour
611	Perform operational check of traveling-block safety device; document results (weekly x 2 weeks per workover = 2).	1 hour
616(a), (b), (d), (e)	Perform BOP pressure tests, actuations & inspections; record results; retain records 2 years following completion of workover activities (when installed; at a minimum every 7 days x 2 weeks per workover = 2).	8 hours
616(b)(2)	Test blind or blind-shear rams; document results (every 30 days during operations). (Note: this is part of BOP test when BOP test is conducted.).	1 hour
616(b)(2)	Record reason for postponing BOP system tests	.5 hour
616(c)	Perform crew drills; record results (weekly for 2 crews x 2 weeks per workover = 4)	1 hour

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no "non-hour cost" burdens.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . ." Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 8, 2001, we published a **Federal Register** notice (66 FR 13951) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 displays the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms; specifies that the public may comment at anytime on these collections of information; and provides the address to which they should send comments. We have received no comments in response to these efforts. We also consulted with several respondents and the foregoing chart reflects adjustments for some of the requirement hour burdens as a result of those consultations.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 6, 2001. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: May 17, 2001.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 01–16970 Filed 7–5–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Environmental Water Account, San Francisco Bay/Sacramento-San Joaquin Delta, CA

AGENCY: Bureau of Reclamation/ California Department of Water Resources, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/ environmental impact report (EIS/EIR).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) intend to prepare an EIS/EIR for implementing the Environmental Water Account (EWA) as described in the Programmatic Record of Decision for the CALFED Bay-Delta Program.

The EWA has been established to provide water for the protection and recovery of fish beyond water available through existing regulatory actions related to State Water Project/Central Valley Project operations. The EWA is a cooperative management program whose purpose is to provide protection to the fish of the Bay-Delta estuary through environmentally beneficial changes in project operations at no uncompensated water cost to the projects' water users. This approach to fish protection requires the acquisition of alternative sources of project water supply, called the "EWA assets," which will be used to augment streamflows, Delta outflows, to modify exports to provide fishery benefits, and to replace the regular project water supply interrupted by the changes to project operations. The replacement water will compensate for reductions in deliveries relative to existing facilities, project operations and the regulatory baseline that result from EWA actions.

Reclamation will be the lead federal agency; the U.S. Fish and Wildlife Service and National Marine Fisheries Service will be cooperating agencies for the EIS/EIR in accordance with NEPA. DWR will be the lead state agency; the Department of Fish and Game will be a responsible agency for the EIS/EIR in accordance with CEQA. A draft EIS/EIR is expected to be available in December 2001.

DATES: A series of public scoping meetings will be held to solicit public input on alternatives, concerns, and issues to be addressed in the EIS/EIR as follows:

- Thursday, July 19, 10–12 noon, Sacramento, CA.
- Thursday, July 19, 7–9 p.m., Chico, CA.
- Monday, July 23, 7–9 p.m., Oakland, CA.
- Tuesday, July 24, 7–9 p.m., Tracy, CA.
- Wednesday, July 25, 7–9 p.m., Bakersfield, CA.
- Thursday, July 26, 7–9 p.m., Los Angeles, CA.

Written comments on the scope of the EIS/EIR may be mailed to Reclamation at the address below by August 20, 2001.

ADDRESSES: The meeting locations are:

- Sacramento at Best Western Expo Inn, 1413 Howe Avenue.
- Chico at Chico Area Recreation District Community Center, 545 Vallambrosa.
- Oakland at the Federal Building, Room H, 5th Floor, North Tower.
- Tracy at the VFW Hall, 430 West Grant Line Road.
- Bakersfield at the Double Tree Inn, 3100 Camino Del Rio Court, Sierra Room.
- Los Angeles at the Los Angeles Convention Center, 1201 South Figueroa Street, Room 513.

Written comments on the scope of the EIS/EIR should be sent to Ms. Michelle Light, Bureau of Reclamation, 2800 Cottage Way, MP–700, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Ms. Light at the above address or by telephone at 916–978–5060 or TDD 1–800–735–2922; or Ms. Delores Brown, Department of Water Resources, 3251 S Street, Sacramento, CA 95816 or by telephone at 916–227–2407.

SUPPLEMENTARY INFORMATION:

Background

The CALFED Bay Delta Program is a long-term comprehensive plan to restore ecological health and improve water management for beneficial uses in the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta) estuary system. The agencies that signed the Record of Decision/Notice of Determination (ROD) for the Final Programmatic Environmental Impact Statement/Environmental Impact Report on August 28, 2000, committed to implement the CALFED Bay Delta Program. The Environmental Water Account (EWA) is one component of the long-term comprehensive plan adopted in the CALFED Bay-Delta Program ROD.

To achieve the program purpose, the long-term plan addresses problems of the Bay-Delta system within each of four resource categories: ecosystem quality, water quality, water supply reliability, and levee system integrity. CALFED agencies identified a need in the ROD for additional fisheries protection measures above and beyond the existing baseline regulatory measures to speed recovery of listed fish species. The establishment of the EWA was a key component of this additional protection.

The EWA is a cooperative management program involving five CALFED agencies that have responsibility for implementing the EWA. The three management agencies, the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), and the California Department of Fish and Game (DFG), have primary responsibility for determining how to manage the EWA assets to benefit long-term survival of fish species, including those listed under the State and Federal Endangered Species Acts. The two Project Agencies are Reclamation and the Department. The Project Agencies will cooperate with the Management Agencies in administering the EWA, including banking, borrowing, transferring, selling, making operational changes, and arranging for the conveyance of EWA assets.

Current Activities

Following the signing of the ROD in August of 2000, the California Department of Water Resources undertook the initial required acquisitions and one-year transfers. As of June 2001, 294,000 acre-feet had been acquired, of which 281,000 acre-feet was used to protect threatened and endangered fish species. A critique and scientific review of the first year of EWA implementation will be conducted this summer, and the results will be used to help formulate strategies for managing the EWA in subsequent years.

Alternative Measures

The ROD for the CALFED Bay Delta Program described broad actions to be taken as part of a long-term plan to fix the problems in the Delta: ecosystem, water quality, water supply reliability and levee stability. As described above, the EWA is one element of the long-term plan to which the signatory agencies have committed. This EIS/EIR will focus on a project specific evaluation of the EWA including alternative strategies for banking, borrowing, transferring, and using water assets to achieve the EWA.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which

we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: June 22, 2001.

Laura Allen,

Acting Regional Environmental Officer.

[FR Doc. 01–16928 Filed 7–5–01; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–951 and 952 (Preliminary)]

Blast Furnace Coke From China and Japan

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–951 and 952 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Japan of blast furnace coke provided for in statistical reporting numbers 2704.00.0025 and 2704.00.0050 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by August 13, 2001. The Commission's views are due at Commerce within five business days thereafter, or by August 20, 2001.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 29, 2001.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (phone: 202–205–3179; e-mail: *ffischer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on June 29, 2001, by (1) the Committee for Fair Coke Trade and its member producers: Acme Steel Co., Chicago, IL; DTE Energy Services Inc., Ann Arbor, MI; Koppers Industries, Inc., Pittsburgh, PA; and Shenango Inc., Pittsburgh, PA; and (2) the United Steelworkers of America, AFL–CIO, Pittsburgh, PA.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 20, 2001, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (phone: 202–205–3179; e-mail: *ffischer@usitc.gov*) not later than July 16, 2001, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 25, 2001, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: July 2, 2001.
By order of the Commission.
Donna R. Koehnke,
Secretary.
[FR Doc. 01–17038 Filed 7–5–01; 8:45 am]
BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled "General Wage determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 28th day of June 2001.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–16812 Filed 7–5–01; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting to Solicit Stakeholder Input on the Use of Risk Information in the Nuclear Materials and Waste Regulatory Process: Case Study on the Paducah Gaseous Diffusion Plant Seismic Upgrades

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission's (NRC's) Office of Nuclear Materials Safety and Safeguards is developing criteria for determining when risk information should be used in the regulation of nuclear materials and waste. As part of this effort, the NRC staff is conducting case studies on a spectrum of activities in the nuclear materials and waste arenas, including gaseous diffusion plants (GDPs). The purpose of the case studies is (1) to illustrate what has been done and what could be done in the materials and waste arenas to alter the regulatory approach in a risk-informed manner and (2) to establish a framework for using a risk-informed approach in the materials and waste arenas by testing a set of draft screening criteria, and determining the feasibility of safety goals.

NRC staff is in the initial phase of its case study on GDPs. Specifically, this case study is focusing on NRC and licensee activities associated with seismic upgrades for the Paducah GDP. The purpose of this meeting is to: (1) communicate to stakeholders the status of this case study, and (2) to solicit recommendations and comments on how NRC should proceed with the case study, apply or revise the draft screening criteria, develop safety goals, and incorporate risk information into its regulatory program. The tentative agenda for the meeting is as follows:

1. Opening remarks.
2. Provide background information on the case study effort.
3. Present status of case study.
4. Receive comments, feedback, and recommendations.
5. Closing remarks.

The meeting is open to the public; all interested parties may attend and provide comments. Persons who wish to attend the meeting should contact Marissa Bailey no later than July 26, 2001.

DATES: The meeting will be held on July 31, 2001, from 1:30 p.m. to 4:30 p.m., in the U.S. Nuclear Regulatory Commission Auditorium, 11545 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Marissa Bailey, Mail Stop T–8–A–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–7648; Internet: MGB@NRC.GOV.

SUPPLEMENTARY INFORMATION: The NRC staff's case study approach, the draft screening criteria, and the case study areas under consideration are described in the "Plan for Using Risk Information in the Materials and Waste Arenas: Case Studies" which has been published in the **Federal Register** (65 FR 66782, November 7, 2000). Copies of this plan are also available on the Internet at http://www.nrc.gov/NMSS/IMNS/riskassessment.html. Written requests for single copies of this plan may also be submitted to the U.S. Nuclear Regulatory Commission, Office of Nuclear Materials Safety and Safeguards, Risk Task Group, Mail Stop T–8–A–23, Washington, DC 20555–0001.

Dated at Rockville, MD, this 29th day of June, 2001.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Section Chief, Risk Task Group, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–16913 Filed 7–5–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting to Solicit Stakeholder Input on the Use of Risk Information in the Nuclear Materials and Waste Regulatory Process: Case Study on the TMI–2 Independent Spent Fuel Storage Installation Seismic Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission's (NRC's) Office of Nuclear Materials Safety and Safeguards is developing criteria for determining when risk information should be used in the regulation of nuclear materials and waste. As part of this effort, the NRC staff is conducting case studies on a spectrum of activities in the nuclear materials and waste arenas, including independent spent fuel storage installations (ISFSIs). The purpose of the case studies is (1) to illustrate what has been done and what could be done in the materials and waste arenas to alter the regulatory approach in a risk-informed manner and (2) to establish a framework for using a risk-informed approach in the materials and waste arenas by testing a set of draft screening criteria, and determining the feasibility of safety goals.

NRC staff is in the initial phase of its case study on ISFSIs. Specifically, this case study is focusing on the exemption to the seismological requirements in 10 CFR 72.102(f)(1) for the Three Mile Island Unit 2 (TMI–2) ISFSI, which is located at the Idaho National Engineering and Environmental Laboratory in Eastern Idaho. The purpose of this meeting is to: (1) communicate to stakeholders the status of this case study, and (2) to solicit recommendations and comments on how NRC should proceed with the case study, apply or revise the draft screening criteria, develop safety goals, and incorporate risk information into its regulatory program. The tentative agenda for the meeting is as follows:

1. Opening remarks.
2. Provide background information on the case study effort.
3. Present status of case study.
4. Receive comments, feedback, and recommendations.
5. Closing remarks.

The meeting is open to the public; all interested parties may attend and provide comments. Persons who wish to attend the meeting should contact Marissa Bailey no later than July 26, 2001.

DATES: The meeting will be held on July 31, 2001, from 9 a.m. to 12 noon, in the U.S. Nuclear Regulatory Commission Auditorium, 11545 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION, CONTACT: Marissa Bailey, Mail Stop T–8–A–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–7648; Internet: MGB@NRC.GOV.

SUPPLEMENTARY INFORMATION: The NRC staff's case study approach, the draft screening criteria, and the case study areas under consideration are described in the "Plan for Using Risk Information in the Materials and Waste Arenas: Case Studies" which has been published in the **Federal Register** (65 FR 66782, November 7, 2000). Copies of this plan are also available on the Internet at http://www.nrc.gov/NMSS/IMNS/riskassessment.html. Written requests for single copies of this plan may also be submitted to the U. S. Nuclear Regulatory Commission, Office of Nuclear Materials Safety and Safeguards, Risk Task Group, Mail Stop T–8–A–23, Washington, DC 20555–0001.

Dated at Rockville, MD, this 29th day of June 2001.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Section Chief, Risk Task Group, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–16914 Filed 7–5–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 128th meeting on July 17–19, 2001, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, July 17, 2001

A. *8:30–8:40 A.M.: Opening Statement* (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate several items of interest.

B. *8:40–10:15 A.M.: ACNW Planning and Procedures* (Open)—The Committee will review items under consideration at this meeting and consider topics proposed for future ACNW meetings.

C. *10:30–12:00 Noon: Update on Igneous Activity Issue Resolution* (Open)—The Committee members will receive a presentation from the NRC staff on progress in resolving the igneous activity issue.

D. *1:00–3:00 P.M.: DOE's Supplemental Science and Performance Analysis (SSPA)* (Open)—The Committee members will receive a status report from DOE on its SSPA to be issued this summer.

E. *3:15–4:15 P.M.: Research Plan for Radionuclide Transport Program* (Open)—The Committee members will receive an information briefing by the NRC RES staff on the current status of the radionuclide transport program, and will discuss its plans to review the research program.

F. *4:15–4:45 P.M.: Meeting Reports* (Open)—The Committee will hear reports from the members and staff on meetings attended since the 127th ACNW meeting.

G. *4:45–6:00 P.M.: Preparation of ACNW Reports* (Open)—The Committee will discuss the following proposed reports: Igneous Activity Issue Resolution and Research Plan for Radionuclide Transport.

Wednesday, July 18, 2001

H. *8:30–8:40 A.M.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

I. *8:40–12:00 Noon.: Key Technical Issues (KTIs)—Vertical Slice Report* (Open)—The Committee members will discuss their progress and then commence drafting a report on assigned KTIs.

J. *1:00–2:30 P.M.: Greater-than-Class C (GTCC) Wastes* (Open)—The Committee will hear a presentation by DOE representatives on their handling of GTCC.

K. *2:45–7:00 P.M.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics: Igneous Activity Issues Resolution; Research Plan for Radionuclide Transport; GTCC Disposal Options; and KTI-Vertical Slice Report.

Thursday, July 19, 2001

L. *8:30–8:35 A.M.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

M. *8:35–9:30 A.M.: Preparations for October Visit to Nevada* (Open)—The Committee will discuss potential topics, including public outreach sessions and a visit the Envirocare facility.

N. *9:30–12:45 P.M..: Discussion of Proposed ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

O. *12:45–1:00 P.M.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2000 (65 FR 60475). In accordance with these procedures, oral or written statements may be presented

by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Howard J. Larson, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8 A.M. and 5 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: June 29, 2001.

Annette Vietti-Cook,

Acting Advisory Committee Management Officer.

[FR Doc. 01–16916 Filed 7–5–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on July 17–18, 2001, at Oregon State University, Richardson Hall, Room 313, Jefferson Way, Corvallis, Oregon.

The agenda for the subject meeting shall be as follows:

Tuesday, July 17–18, 2001—8:30 a.m. until the conclusion of business

The Subcommittee will discuss (1) the NRC Office of Nuclear Regulatory Research (RES) experimental program at the APEX–CE facility pertaining to thermal-hydraulic phenomena associated with Pressurized Thermal Shock (PTS) in support of the NRC PTS Rule Reevaluation Program; and, (2) the RES program investigating phase separation phenomena in support of model upgrades for the RES TRAC–M and RELAP5 codes. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 5:00 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: June 28, 2001.

Sam Duraiswamy,

Acting Associate Director for Technical Support.

[FR Doc. 01–16917 Filed 7–5–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25056]

Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940

June 29, 2001.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June, 2001. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 24, 2001, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, N.W., Washington, DC 20549–0506.

Kentucky Daily Municipal Income Fund, Inc. [File No. 811–8423]

Tennessee Daily Municipal Income Fund, Inc. [File No. 811–8427]

Texas Daily Municipal Income Fund, Inc. [File No. 811–8429]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Each applicant has never made a public offering of its securities and does not propose to make

a public offering or engage in business of any kind.

Filing Dates: The applications were filed on May 14, 2001, and amended on June 22, 2001.

Applicants' Address: 600 Fifth Avenue, New York, NY 10020.

Calvert New World Fund, Inc. [File No. 811–8924]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 29, 2001, applicant transferred its assets to Calvert South Africa Fund, a series of Calvert Impact Fund, Inc., based on net asset value. Expenses of $4,139 incurred in connection with the reorganization were paid by Calvert South Africa Fund.

Filing Dates: The application was filed on May 17, 2001, and amended on June 14, 2001.

Applicant's Address: 4550 Montgomery Avenue, Suite 1000N. Bethesda, MD 20814.

Leland Funds, Inc. [File No. 811–9573]
Leland Real Estate Collective Investment Trust [File No. 811–9775]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Neither applicant has ever made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The applications were filed on May 17, 2001, and amended on June 1, 2001, and June 18, 2001.

Applicants' Address: c/o ASB Capital Management, Inc., 1101 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20004.

Putnam Dividend Income Fund [File No. 811–5852]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 25, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant has retained $405,094 to pay accrued and unpaid liabilities. Expenses of approximately $274,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on May 30, 2001.

Applicant's Address: One Post Office Sq., Boston, MA 02109.

WCT Funds [File No. 811–8335]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2000, applicant transferred its assets to Federated Stock Trust based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Date: The application was filed on June 5, 2001.

Applicant's Address: Federated Investors Tower, 1001 Liberty Ave., Pittsburgh, PA 15222–3779.

1–800 MUTUALS Fund Group, Inc. [File No. 811–9099]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on April 19, 2001, and amended on June 5, 2001.

Applicant's Address: Plaza of the Americas, 600 North Pearl St., Suite 2150 Dallas, TX 75201.

Gen-Net Realty Unit Investment Trust, Corporate-Government Series [File No. 811–9949]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on April 25, 2001, and amended on June 20, 2001.

Applicant's Address: One Oakland Towne Square, 14th Floor, Southfield, MI 48076.

The Emerging Markets Telecommunications Fund, Inc. [File No. 811–6562]
The Latin America Equity Fund, Inc. [File No. 811–6413]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be investment companies. On November 3, 2000, The Emerging Markets Telecommunications Fund, Inc. transferred its assets to The Emerging Markets Infrastructure Fund, Inc. based on net asset value. On November 10, 2000, The Latin America Equity Fund, Inc. transferred its assets to The Latin America Investment Fund, Inc. based on net asset value. Expenses of $543,730 and $490,605, respectively, incurred in connection with the reorganizations were shared equally between each applicant and its acquiring fund.

Filing Dates: The applications were filed on November 9, 2000, and November 14, 2000, respectively, and amended on May 23, 2001.

Applicants' Address: 466 Lexington Avenue, 16th Floor, New York, New York 10017.

Group Variable Annuity Account [File No. 811–8538]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 1, 2000, applicant made a liquidating distribution to its remaining shareholder based on net asset value. Expenses of $2,625 incurred in connection with the liquidation were paid by Minnesota Life Insurance Company.

Filing Dates: The application was filed on December 6, 2000, and amended on June 1, 2001.

Applicant's Address: 400 Robert Street North, St. Paul, Minnesota 55101–2098.

Advisor's Fund [File No. 811–8843]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 18, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Dates: The application was filed on November 30, 2000, and amended on June 26, 2001.

Applicant's Address: 700 SW Harrison Street, Topeka, Kansas 66636–0001.

SBL Variable Annuity Account X [File No. 811–8779]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 18, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Dates: The application was filed on December 22, 2000, and amended on June 26, 2001.

Applicant's Address: 700 SW Harrison Street, Topeka, Kansas 66636–0001.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–16927 Filed 7–5–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act of 1940, Release No. 25055/June 29, 2001]

Hillview Investment Trust II, Hillview Capital Advisors, LLC, 1055 Washington Boulevard, Stamford, Connecticut 06901, (812–12062); Order Pursuant to Section 6(c) of the Investment Company Act of 1940 Granting an Exemption From Section 15(a) of the Act and Rule 18f–2 Under the Act and Denying a Request for a Hearing

Hillview Investment Trust II ("Hillview Trust") and Hillview Capital Advisors, LLC filed an application on April 14, 2000, and an amendment to the application on November 15, 2000, requesting an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act. The requested order would permit Hillview Trust, an open-end investment company registered under the Act ("fund") that would operate under an adviser/subadviser(s) structure described in the application, to enter into and materially amend subadvisory agreements without shareholder approval ("manager of managers exemptive relief").

On February 6, 2001, a notice of the filing of the application was issued (Investment Company Act Release No. 24853). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued unless a hearing was ordered.

On March 5, 2001, Fund Democracy, LLC ("Fund Democracy") submitted a hearing request on the application ("Hearing Request"). Also on March 5, 2001, Institutional Shareholder Services ("ISS") submitted a letter supporting the Hearing Request.

Rule 0–5(c) under the Act states that the Commission will order a hearing on a matter, upon the request of an "interested person" or upon its own motion, if it appears that a hearing is "necessary or appropriate in the public interest or for the protection of investors."

The Commission has reviewed the issues raised in the Hearing Request, which are summarized below.

Fund Democracy asserts that a fund that has only one subadviser should not be entitled to the manager of managers exemptive relief (*i.e.*, should not be able, among other things, to hire a new subadviser or reallocate fees between the adviser and the subadviser without shareholder approval). Fund Democracy also asserts that the conditions governing the manager of managers exemptive relief are insufficient to assure that funds relying on the relief hold themselves out to the public as operating pursuant to the manager of managers structure. The Hearing Request includes several examples of disclosures made by funds that have received the manager of managers exemptive relief that fund Democracy views as inadequate.

The Commission finds that these issues were considered and decided when the Commission granted manager of managers exemptive relief in *Frank Russell Investment Company, et al.*, Investment Company Act Release Nos. 21108 (June 2, 1995) (notice) ("Frank Russell Notice") and 21169 (June 28, 1995) (order) ("Frank Russell Order"). Nearly 70 other orders granting manager of managers exemptive relief under the conditions established in the Frank Russell Order have been issued since 1995 ("Other Orders"). The Frank Russell Order and the Other Orders allow funds that utilize the manager of managers structure to avoid the costs and burdens associated with seeking shareholder approval of subadvisory agreements. The order requested by the Hillview Trust would be subject to conditions substantially identical to those in the Frank Russell Order and the Other Orders.

When we first granted manager of managers exemptive relief in the Frank Russell Order, we recognized that certain funds may employ subadvisers in a capacity similar to that of individual portfolio managers. The application for the Frank Russell Order stated that "primary responsibility for management of the [f]unds, in particular, the selection and supervision of the [subadvisers], will be vested in the [advisers], subject to oversight and approval by the [f]unds' directors." [1] Under the terms and conditions of the Frank Russell Order and the Other Orders, the adviser was required to provide general management and administrative services to the fund and, subject to review and approval of the fund's board of directors, set the fund's overall investment strategies, select subadvisers, allocate the fund's assets among subadvisers, monitor and evaluate the performance of the subadvisers, and ensure that the subadvisers, comply with the fund's investment objectives, policies and restrictions.[2] In such an arrangement, irrespective of the number of subadvisers employed or the frequency with which subadvisers are changed, we determined that relief from the shareholder approval requirements in section 15(a) of the Act and rule 18f–2 under the Act for subadvisory agreements was appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.[3]

In the Frank Russell Order, we also specifically considered the advisory fee arrangement of a fund operating pursuant to a manager of managers structure. The Frank Russell Order and the Other Orders permit the adviser to allocate and reallocate advisory fees between itself and the subadviser(s), and among subadvisers, without a shareholder vote, provided that the aggregate advisory fee paid by the fund remains subject to approval by the shareholders, and subject to the other conditions in the Frank Russell Order and the Other Orders.

Finally, the Commission finds that the conditions set forth in the Frank Russell Order and the Other Orders are appropriate to assure that funds relying on the manager of managers exemptive relief adequately disclose to the public the manner in which these funds operate.

The Commission therefore finds that it has previously considered and decided the issues raised in the Hearing Request. Therefore, it appears that a hearing is not necessary or appropriate in the public interest or for the protection of investors.[4] Accordingly,

It is ordered that the request for a hearing is denied.

The matter having been considered, it is found, on the basis of the information set forth in the application, as amended, that granting the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

It is further ordered that the requested exemption under section 6(c) of the Act

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[1] Frank Russell Notice, applicants' legal analysis at paragraph 2.

[2] *Id.*, applicants' condition #8.

[3] Neither the terms nor the conditions of the Frank Russell order required the funds to use multiple subadvisers; instead, the applicants represented specifically that the adviser to the funds "has engaged, or will engage, one or more subadvisers." Frank Russell Notice, applicants' representations at paragraph 3. The Frank Russell Order and the Other Orders similarly imposed no requirement that the subadvisers be changed with any frequency.

[4] The Commission does not deem it necessary to make a formal determination with respect to the status of Fund Democracy or ISS as an "interested person" within the meaning of section 40(a) of the Act and rule 0–5(c) under the Act inasmuch as the Commission has determined that the issues raised in the Hearing Request do not warrant a hearing.

from section 15(a) of the Act and rule 18f–2 under the Act is granted, effective immediately, subject to the conditions contained in the application, as amended.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–16879 Filed 7–5–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44483; File No. SR–Amex–2001–40]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange LLC Relating to the Listing and Trading of Institutional Index Notes

June 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Annex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving this proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to approve for listing and trading notes, the return on which is based upon an equal-dollar weighted portfolio of twenty securities chosen from the Amex Institutional Index pursuant to the methodology set forth below (the "Institutional Holdings Index").[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[4] The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Institutional Holdings Index (the "Institutional Holding Notes" or "Notes"). The Institutional Holdings Index will be determined, calculated and maintained solely by the Amex.[5]

The Institutional Holdings notes will conform to the initial listing guidelines under Section 107A[6] and continued listing guidelines under Sections 1001–1003[7] of the Company Guide. The Institutional Holdings Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc. ("Merrill Lynch"). The Notes will have a term of not less than one, nor more than ten years. The Institutional Holdings Notes will entitle the owner at maturity to receive an amount based upon the percentage change between the "Starting Index Value" and the "Ending Index Value" (the "Redemption Amount"). The "Starting Index Value" is the value of the Institutional Holdings Index on the date the issuer prices the Institutional Holdings Notes for the initial sale to the public. The "Ending Index Value" is the value of the Institutional Holdings Index over a period shortly prior to the expiration of the Notes. The Ending Index Value will be used in calculating the amount owners will receive upon maturity. The Institutional Holdings Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Institutional Holdings Notes prior to or at the maturity may be less than the original issue price of the Notes. During a two week period in the designated month each year, investors will have the right to require the issuer to repurchase the Institutional Holdings Notes at a redemption amount based on the value of the Institutional Holdings Index at such repurchase date. The Institutional Holdings Notes are not callable by the issuer.

The Institutional Holdings Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio of securities comprising the Institutional Holdings Index.

The Institutional Holdings Index will consist of twenty qualifying stocks ("Qualifying Stocks") selected using the methodology presented below from the Amex Institutional Index (excluding utilities, if any, and the common stock of Merrill Lynch) which is a capitalization-weighted index of seventy-five (75) widely held stocks

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[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As of May 31, 2001, the portfolio of securities comprising the Institutional Holdings Index would be: Abbott Laboratories; American Home Products Corporation; Anheuser–Busch Companies, Inc.; Bank of America Corporation; The Bank of New York Company, Inc.; Bank One Corporation; The Boeing Company; Citigroup, Inc.: Colgate–Palmolive Company; Eli Lilly and Company; Emerson Electric Co.; Exxon Mobil Corporation; Federal Home Loan Mortgage Corporation; Federal National Mortgage Association; Microsoft Corporation; Minnesota Mining and Manufacturing Company; PepsiCo, Inc.; Philip Morris Companies Inc.; Tyco International Ltd.; United Technologies Corporation. The actual initial securities will be selected based on this methodology on a date specified in the prospectus supplement.

[4] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29) ("Hybrid Approval Order").

[5] Subject to the criteria in the prospectus regarding the construction of the Institutional Holdings Index, the Exchange has sole discretion regarding changes to the Institutional Holdings Index due to annual reconstitutions and adjustments to the Institutional Holdings Index and the multipliers of the individual components.

[6] The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

among institutional equity portfolios with market values in excess of $100,000,000. "Qualifying Stocks" include those stocks that pass the following screening tests:

• *Price Momentum Screen*. First, the thirty-eight (38) stocks with the greatest 1-year price return are selected from the Amex Institutional Index. From this narrowed universe, the stocks are then ranked in descending order based on 1-year price return improvement.

• *Recovery Screen*. Second, the thirty-eight (38) stocks with the worst 3-year price return are selected from the Amex Institutional Index. These stocks are then ranked in descending order based on 1-year price return.

• *Dividend Yield Screen*. Third, the thirty-eight (38) stocks with the greatest dividend yield are selected from the Amex Institutional Index. These stocks are then ranked in descending order by 1-year price return.

• *Price to Earnings Ratios Screen*. Fourth, the thirty-eight (38) stocks with the lowest price-to-earnings ratio are selected from the Amex Institutional Index. These stocks are then ranked in descending order based on 1-year price return.

The twenty Qualifying Stocks selected to make up the Institutional Holdings Index at the time of initial composition or any reconstitution are chosen in the following order: (1) Price Momentum Screen; (2) Recovery Screen; (3) Dividend Yield Screen; and (4) Price-to-Earnings Ratio Screen. The selection process includes one stock from each screen added to the Institutional Holdings Index in the order set forth above until there are twenty unique stocks. If a stock in a particular screen has already been included in the Institutional Holdings Index, the screen in which the duplicate appears is skipped and a stock from the next screen is then chosen.

Components of the Institutional Holdings Index approved pursuant to this filing will also meet the following criteria: (1) A minimum market value of at least $75 million, except that up to 10% of the component securities in the Institutional Holdings Index may have a minimum market value of $50 million; (2) average monthly trading volume in the last six months of not less than 1,000,000 shares, except that up to 10% of the component securities in the Institutional Holdings Index may have an average monthly trading volume of 500,000 shares or more in the last six months; (3) 90% of the Institutional Holdings Index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; and (4) all component stocks will either be listed on the Amex, the New York Stock Exchange, Inc. ("NYSE") or traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("NASDAQ") and reported National Market System securities.

As of May 31, 2001, the market capitalization of the securities that would represent the Institutional Holdings Index would range from a high of $37.2 billion to a low of $2.9 billion. The average monthly trading volume for those same securities for the last six months, as of the same date, ranged from a high of 964.2 million shares to a low of 41.4 million shares. Moreover, as of May 31, 2001, all of the securities that would comprise the Institutional Holdings Index were eligible for standardized options trading pursuant to Amex Rule 915.

At the outset, each of the securities in the Institutional Holdings Index will represent approximately an equal percentage of the Starting Index Value. Specifically, each security included in the portfolio will be assigned a multiplier on the date of issuance so that the security represents approximately an equal percentage of the value of the entire portfolio underlying the Institutional Holdings Index on the date of the Institutional Holdings Notes are priced for initial sale to the public. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price on an exchange or through NASDAQ, to be included in the calculation of the Institutional Holdings Index. Accordingly, each of the twenty companies initially included in the Index will represent approximately 5% of the total portfolio at the time of business. The Institutional Holdings Index will initially be set to provide a benchmark value of $100 at the close of trading on the day the Institutional Holdings Notes are priced for initial sale to the public.

The value of the Institutional Holdings Index at any time will equal: (1) The sum of the products of the current market price for each stock underlying the Institutional Holdings Index and the applicable share multiplier, plus (2) an amount reflecting current calendar quarter dividends, and less (3) a pro rata portion of the annual index adjustment factor.[8] Current quarter dividends for any day will be determined by the Amex and will equal the sum of each dividend paid by the issuer on one share of stock underlying the Institutional Holdings Index during the current calendar quarter multiplied by the share multiplier applicable to such stock on the ex-dividend date.

As of the first day of the start of each calendar quarter, the Amex will allocate the current quarter dividends as of the end of the immediately preceding calendar quarter to each then outstanding component of the Institutional Holdings Index. The amount of the current quarter dividends allocated to each stock will equal the percentage of the value of such stock contained in the portfolio of securities comprising the Institutional Holdings Index relative to the value of the entire portfolio based on the closing market price of such stock on the last day in the immediately preceding calendar quarter. The share multiplier of each stock will be increased to reflect the number of shares, or portion of a share, that can be purchased of each outstanding component based on the amount of the current quarter dividend allocated to each stock and the closing market price on the last day in the immediately preceding calendar quarter.

As of the close of business on each anniversary date (anniversary of the day the Institutional Holdings Notes are priced for initial sale to the public) through the applicable anniversary date in the year preceding the maturity of the Notes, the portfolio of securities comprising the Institutional Holdings Index will be reconstituted by the Amex using the same methodology applied at the initial composition of the Institutional Holdings Index. The Exchange will announce such changes to investors at least one day prior to the anniversary date.[9]

The portfolio will be reconstituted and rebalanced on the anniversary date so that each stock in the Institutional Holdings Index will represent approximately 5% of the value of the Institutional Holdings Index. To effectuate this, the share multiplier for each new stock will be determined by the Amex and will indicate the number of shares or fractional portion thereof of each new stock, given the closing

[8] At the end of each day, the Institutional Holdings Index will be reduced by a pro rata portion of the annual index adjustment factor, expected to approximately be 1.5% (*i.e.* 1.5%/365 days=0.0041% daily). This reduction to the value of the Institutional Holdings Index will reduce the total return to investors upon exchange or at maturity. The Amex represents that an explanation of this deduction will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of this product.

[9] The Exchange will publish a notice to advise investors of changes to the securities underlying the index if any such changes are made following an annual reconstitution.

market price of such new stock on the anniversary date, so that each new stock represents an equal percentage of the Institutional Holdings Index value at the close of business on such anniversary date. For example, if the Institutional Holdings Index value at the close of business on an anniversary date was 200, then each of the twenty new stocks comprising the Institutional Holdings Index would be allocated a portion of the value of the Index equal to 10, and if the closing market price of one such new stock on the anniversary date was 20, the applicable share multiplier would be 0.5. Conversely, if the Institutional Holdings Index value was 80, then each of the twenty new stocks comprising the Institutional Holdings Index would be allocated a portion of the value of the Institutional Holdings Index equal to 4 and if the closing market price of one such new stock on the anniversary date was 20, the applicable share multiplier would be 0.2. The last anniversary date on which such reconstitution will occur will be the anniversary date in the year preceding the maturity of the Notes. As noted above, investors will receive information on the new portfolio of securities comprising the Institutional Holdings Index at least one day prior to each anniversary date.

The multiplier of each component stock in the Institutional Holdings Index will remain fixed until adjusted for quarterly dividend adjustments, annual reconstitutions or certain corporate events, such as payment of a dividend other than an ordinary cash dividend, a distribution of stock of another issuer to its shareholders,[10] stock split, reverse stock split, and reorganization.

The multiplier of each component stock may be adjusted, if necessary, in the event of a merger, consolidation dissolution or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders. If the issuer of a stock included in the institutional Holdings Index were to no longer exist, whether by reason of a merger, acquisition or similar type of corporate transaction, a value equal to the stock's final value will be assigned to the stock for the purpose of calculating the Institutional Holdings Index value prior to the subsequent anniversary date. For example, if a company included in the Institutional Holdings Index were acquired by another company, a value would be assigned to the company's stock equal to the value per share at the time the acquisition occurred. If the issuer of stock included in the Institutional Holdings Index is in the prices of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Institutional Holdings Index so long as a market price for such security is available or until the subsequent anniversary date. If a market price is no longer available for an Institutional Holdings Index stock due to circumstances including but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the security will be assigned a value of zero when calculating the Institutional Holdings Index for so long as no market price exists for that security or until the subsequent anniversary date. If the stock remains in the Institutional Holdings Index, the multiplier of that security may be adjusted to maintain the component's relative weight in the Institutional Holdings Index at the level immediately prior to the corporate action. In all cases, the multiplier will be adjusted, if necessary, to ensure Institutional Holdings Index continuity.

The Exchange will calculate the Institutional Holdings Index and, similar to other stock index values published by the Exchange, the value of the Institutional Holdings Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B. The Index value will equal the sum of the products of the most recently available market prices and the applicable multipliers for the component securities.

Because the Institutional Holdings Notes are linked to a portfolio of equity securities, the Amex's existing equity floor trading rules will apply to the trading of the Institutional Holdings Notes. First, pursuant to AmexRule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the notes.[11] Second, the Institutional Holdings Notes will be subject to the equity margin rules of the Exchange.[12] Third, in conjunction with the Hybrid Approval Order, the Exchange will, prior to trading the Institutional Holdings Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5),[14] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0069. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR–Amex–

[10] If the issuer of a component security in the Institutional Holdings Index issues to all of its shareholders publicly traded stock of another issuer, such new securities will be added to the portfolio comprising the Institutional Holdings Index until the subsequent anniversary date. The multiplies for the new component will equal the product of the original issuer's multiplier and the number of shares of the new component issued with respect to one share of the original issuer.

[11] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[12] *See* Amex Rule 462 and Section 107B of the Company Guide.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

2001–40 and should be submitted by July 27, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[15] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex and the NYSE.[16] Accordingly, the Commission finds that the listing and trading of Industrial Holdings Notes is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[17]

Industrial Holdings Notes are not leveraged instruments; however, their price will still be derived and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of Industrial Holdings Notes is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, because the final rate or return of Industrial Holdings Notes is derivatively priced, based on the performance of a portfolio of securities, and the components of the Industrial Holdings Index are more likely to change each year, over the term of the Industrial Holdings Notes, than products previously issued, there are several issues regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that addresses the special concerns attendant to the trading of hybrid securities will be applicable to Industrial Holdings Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of Industrial Holdings Notes. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Industrial Holdings Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedures governing equities, which have been deemed adequate under the Act.[18]

In approving the product, the Commission recognizes that the components are likely to change each year over the life of the product. Nevertheless, the Commission believes that this is acceptable because the Amex has clearly stated its guidelines and formula for replacing components from a specific group of well-known and highly capitalized securities. Each year, as noted above, the portfolio of securities comprising the Industrial Holdings Index will represent twenty qualifying stocks selected using four separate screens: (1) Price Momentum Screen; (2) Recovery Screen; (3) Dividend Yield Screen; and (4) Price-to-Earnings Ratio Screen. Amex will do the calculation for replacements based on a set formula to determine which of the Industrial Holdings Index securities will be in the Index for the following year. The Commission believes that within these confines the potential frequent changes in the components of the Industrial Holdings Index are reasonable and will meet the expectation of investors.

In addition, the Commission notes that the Industrial Holdings Notes are non-principal protected. The Notes may not have a minimum principal amount that will be repaid and that payments on the Notes prior to or at maturity may be less than the original issue price of the Industrial Holdings Notes. The Commission also recognizes that annually, during a two-week period of the designated month, investors may have the right to require the issuer to repurchase the Industrial Holdings Notes at a redemption amount based on the value of the Industrial Holdings Index at such repurchase date.

The Commission notes that Industrial Holdings Notes are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as Industrial Holdings Notes. In addition, the Exchange's hybrid listing standards further require that Industrial Holdings Notes have at least $4 million in market value.[19] In any event, financial information regarding Merrill Lynch, in addition to the information on the issuers of the underlying securities comprising the Industrial Holdings Index, will be publicly available.[20]

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the prior approval orders for similar instruments (*e.g.*, the Select Ten Notes), the Commission believes this concern is minimal given the size of Industrial Holdings Notes issuance in relation to the next worth of Merrill Lynch.

The Commission also believes that the listing and trading of Industrial Holdings Notes should not unduly impact the market for the underlying securities comprising the Industrial Holdings Index. First, the underlying securities comprising the Industrial Holdings Index, from which the Industrial Holdings Notes components are selected, are well-capitalized, highly liquid stocks. Second, because all of the components of the Industrial Holdings Index will be equally weighted, initially

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[15] *Id.*

[16] *See* Securities Exchange Act Release Nos. 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (accelerated approval order for the listing and trading of Industrial 15 Notes); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (accelerated approval order for the listing and trading of Select Ten Notes); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (accelerated approval order for the listing and trading of notes linked to a basket of no more than twenty equity securities) (File No. SR–Amex–99–42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow based index with a non-principal protected put option) (File No. SR–Amex–99–15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR–Amex–97–47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approval order for the listing and trading of the Top Ten Yield Market Index Target Term Securities ("MITTS")) (File No. SR–Amex–96–28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR–Amex–93–40); 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993) (accelerated approval order for the listing and trading of MITTS on the NYSE) (File No. SR–NYSE–93–31); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading of non-principal protected notes linked to a single equity security) (File No. SR–Amex–92–42).

[17] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiently, competition, and capital formation. 15 U.S.C. 78c(f).

[18] The Commission also notes that Amex has a general policy which prohibits the distribution of material, non-public information by its employees. Telephone conversation between Jeffrey Burns, Senior Counsel, AMEX and Mare McKayle, Special Counsel, Division of Market Regulation, Commission on June 26, 2001.

[19] *See* Company Guide Section 107A.

[20] The companies that comprise the Industrial Holdings Index are reporting companies under the Act.

and immediately following each annual reconstitution of the Industrial Holdings Index, no single stock or group of stocks will likely dominate the Industrial Holdings Index. Finally, the issuers of the underlying securities comprising the Industrial Holdings Index, are subject to reporting requirements under the Act, and all of the portfolio securities are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Industrial Holdings Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Industrial Holdings Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publications of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex and NYSE. In determining to grant the accelerated approval for good cause, the Commission notes that the Industrial Holdings Index is a portfolio of highly capitalized and actively traded securities similar to hybird securities products that have been approved by the Commission for U.S. exchange trading. Additionally, Industrial Holdings Notes will be listed pursuant to existing hybird security listing standards as described above. Moreover, the Index's applicable equal-dollar weighting methodology is a commonly applied index calculation need. Based on the above, the Commission finds, consistent the Section 6(b) of the Act,[21] that there is good casue for accelerated approval of the product.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–Amex–2001–40), is hereby approved on an accelerated basis.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–16885 Filed 7–5–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44490; File No. SR–CBOE–2001–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Automatic Step-up Based on Order Size Parameters

June 28, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 11, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The proposed rule change has been filed by the CBOE as a "non-controversial" rule change under rule 19–4(f)(6).[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to allow the appropriate floor procedure committee ("FPC") to establish the size of the automatic step-up amount applicable to orders entered through the Exchange's Retail Automatic Execution System ("RAES") based upon order size parameters. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basic for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Interpretation .02 to CBOE Rule 6.8 establishes the process for the automatic execution of orders through RAES when the Exchange's best bid or offer is inferior to that of another market. Under this provision, the Exchange automatically fills any equity option order submitted through RAES at any better price being quoted in another market, so long as the price on the away market is better by no more than one tick ("automatic step-up").[4] If the price on the away market is better by more than the automatic step-up amount (*i.e.*, more than one-tick), the order is rerouted to the DPM for non-automated handling.[5] The purpose of this rule filing is to provide for the step-up parameters to be based upon order size ("order size parameters").

Under the proposal, the appropriate FPC shall have the authority to establish the size of the step-up amount based upon order size parameters. This enhancement will allow automatic execution on RAES at the NBBO when the price displayed on a competing market is within a designated number of ticks of the price displayed by CBOE, provided the size of the order falls within the specified order size parameters. For example, the order size parameters might be established such that orders of 1–3 contracts receive 3-tick step-up, orders of 4–6 contracts receive 2-tick step-up, orders of 7–10 contracts receive 1-tick step-up, and orders of 11 or more contracts receive no step-up.[6] If the CBOE price is not within the designated step-up amount to

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] CBOE Rule 6.42 establishes the minimum trading increments for bids and offers.

[5] The Commission approved the CBOE automatic step-up plan in Securities Exchange Act Release No. 40096 (June 16, 1998), 63 FR 34209 (June 23, 1998) (order approving SR–CBOE–98–13)("automatic step-up Approval Order"). Pursuant to CBOE Rule 6.42, the trading increment for option series quoted at or below $3 per contract is 5 cents. For option series quoted above $3, the trading increment shall be 10 cents.

[6] In this instance, orders of 1–3 contracts would be executed within RAES at the NBBO provided the price displayed on CBOE is within 3-ticks of the price displayed by the competing market.

the away market price, the order shall be routed for manual handling.

As discussed above, the appropriate FPC shall have the authority to establish the size of the step-up amount based upon order size parameters. The FPC shall determine which classes or series are eligible for step-up and, correspondingly, may establish the amount of the step-up. In considering which classes or series are eligible for step-up, the FPC may consider such factors as the open interest in the requested option, the average daily volume, customer requests, and any other factors the FPC deems appropriate. While the FPC will have the ability to vary the order size parameters by class or series, it also will have the authority to mandate that a minimum step-up amount be applicable either on a floor-wide or class-by-class basis. Consistent with current Interpretation .02 to CBOE Rule 6.8, the appropriate FPC shall also have the authority to designate or remove classes or series from the list of those eligible for step-up enhancement. Finally, the Exchange will publish a list of all option classes eligible for step-up enhancement in an Informational Circular distributed to members.

The Exchange believes that allowing the FPC to increase the amount of the automatic step-up amount will promote competition. As the Commission noted in the automatic step-up Approval Order:

> By automating the execution of eligible retail orders for equity options through the RAES Auto-Step-Up, the amended Interpretation and Policy. 02 should help to insure that investors receive prompt, automatic execution of RAES orders at the best available prices, even if those prices are being quoted in a market other than the Exchange, when the better prices in other markets of not improve on the CBOE's market by more than one tick. This proposal should minimize the delay inherent in manually handling orders in this circumstance, and there by reduce the risk to investors that, as a result of an adverse move in the market while their orders are being manually handled, they may receive an inferior execution.[7]

This proposal will authorize the appropriate FPC to increase the step-up amount by more than 1-tick for public customer orders within established order size parameters. As such, investors not only will have the opportunity to receive better-priced executions, but they also will have the opportunity to receive more expedient executions.

[7] *See* note 5, *supra*.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5),[9] which provides that the rules of an exchange must be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder [11] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of the filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date of the proposal. The Commission finds good cause for accelerating the operative date of the proposed rule change. The Commission notes that it approved a similar proposal filed by the American Stock Exchange ("Amex").[13] Approval of this proposal on an accelerated basis will enable the CBOE to compete on an equal basis with other exchanges and thus is consistent with Section 6(b)(8) of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2001–32 and should be submitted by July 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–16881 Filed 7–5–01; 8:45 am]

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[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78(f)(b)(5).

[10] 15 U.S.C. 78f(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] The Commission has determined to waive the requirement the CBOE provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[13] *See* Securities Exchange Act Release No. 44013 (February 28, 2001), 66 FR 13816 (March 7, 2001) (approving SR–Amex–01–05).

[14] 15 U.S.C. 78f(b)(8).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44489; File No. SR–CBOE–2001–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Fees

June 28, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 11, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to establish a new fee on clearing firms for each contract the firm sends to the Exchange's Public Automated Routing ("PAR") system in a given month, if the total number of contracts cancelled by the firm on PAR that month exceeds 40% of the total number of contracts that the firm sent to PAR in that same month. The fee does not apply to any clearing firm that sends fewer than 4,000 contracts to PAR in a given month. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to establish a fee to deal with various operational problems and costs resulting from the practice of immediately following orders routed through the Exchange's PAR system with a cancel request. Since these orders frequently come in large bunches, the PAR system can quickly become backlogged, which increases Exchange costs and adversely impacts public customers, their clearing firms, and Exchange DPMs by making the execution of customer orders less timely, and requiring the Exchange to spend increased amounts on systems and other hardware to process increased order traffic flow.

Under the proposed fee, a clearing firm would be charged 30 cents per contract for every option contract that it sends to the PAR system in any month where the total contracts canceled by the firm through PAR exceeded 40% of the total contracts that the firm sent to PAR in that same month. This fee will not apply to firms that send fewer than 4,000 contracts to PAR in a given month. Firms may avoid this fee, if they wish, by choosing not to route certain of their orders through PAR. In this way, the Exchange believes that the fee will help ease backlogs on PAR, and fairly allocate the related costs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)A) of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[3]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2001–31 and should be submitted by July 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(C).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44488; File No. SR–CHX–2001–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Extend Pilot Rules for Decimals

June 28, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 26, 2001, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange) filed with the Securities and Exchange Commission ("Commission) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Term of Substance of the Proposal

The Exchange proposes to extend through November 5, 2001 the pilot rule changes amending certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment. the pilot currently is due to expire on July 9, 2001. The CHX does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through November 5, 2001.[6] The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set for in Section A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 24, 2000, the Commission approved, on a pilot basis through February 28, 2001, changes proposed by the Exchange to amend certain CHX rules that would be impacted by the securities industry transition to a decimal pricing environment.[7] Following one extension of the pilot through July 9, 2001,[8] the Exchange now requests an extension of the same pilot through November 5, 2001.[9]

The pilot for which the Exchange seeks an extension amended certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment. Specifically, the exchange proposed continued pilot approval of these groups of changes to CHX Article II, rule 37, which would (1) allow specialists to elect, on an issue by issue basis, to either manually or automatically execute limit orders when a trade-through occurs in the primary market; (2) remove the "pending auto-stop" functionality in the Exchange's systems; and (3) allow a specialist, on an issue by issue basis, to establish an auto execution guarantee that is not dependent on the ITS Best Bid or Offer ("ITS BBO") or National Best bid or Offer ("NBBO") size, The Exchange believes that decimal pricing is likely to continue to affect the CHX trading environment, and the interaction between the CHX and the national market system, in a manner that necessitates extension of these pilot rule amendments, that are designed to minimize the adverse impact of decimalization on trading operations.[10]

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[11] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act[12] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6)

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)

[5] The Exchange provided the Commission with written notice of its intent to file the proposal on June 15, 2001, pursuant to Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

[6] Telephone conservation between Kathleen M. Boege, Associate General Counsel, CHX, and Joseph P. Morra, Special Counsel, Division of Market Regulation, SEC, June 28, 2001.

[7] *See* Securities Exchange Act Release No. 43204 (August 24, 2000), 65 FR 53065 (August 31, 2000)(SR–CHX–00–22).

[8] *See* Securities Exchange Act Release No. 43874 (February 16, 2001), 66 FR 11621 (February 26, 2001)(SR–CHX–2001)(SR–CHX–03).

[9] As noted above, in February, 2001, the CHX extended the effective date of its decimal-related pilot rules through July 9, 2001, the date by which national securities exchanges and the National Association of Securities Dealers, Inc. were required to submit their rule filings to establish minimum price variations for the quoting of equity securities or options. *See* Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000). These rule filings were scheduled to follow the submission of studies by each market that describe the impact of decimalization on trading behavior, capacity and liquidity and that likely would offer insights into any other rule changes that would be necessary to maintain fair and orderly markets. The Commission subsequently extended the dates by which both these studies and related rule filings must be submitted. *See* Securities Exchange Act Release No. 44336 (May 22, 2001), 66 FR 29368 (May 30, 2001). The Exchange is now requesting that its decimalization-related pilot rules be extended through November 5, 2001, the new date for filing of exchange rule changes.

[10] This submission does not concern "typographical" amendments to CHX rules, where the sole change that was proposed by the Exchange was the substitution of a decimal price increment for the fractional price increment set forth in certain CHX rules. The proposed "typographical" amendments were the subject of a separate submission previously approved by the Commission on a permanent basis. *See* Securities Exchange Act Release No. 43256 (September 6, 2000), 65 FR 55659 (September 14, 2000).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furthermore of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through November 5, 2001, the deadline for which self-regulatory organizations must file proposed rule changes to set the minimum price variation for quoting in a decimals environment. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Security and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–2001–13 and should be submitted by July 27, 2001.

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–16884 Filed 7–5–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44485; File No. SR–NSCC–2001–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding the Discontinuance of Trade Comparison Services for Transactions Matched at or by the Relevant Market

June 28, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 14, 2001, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on June 22, 2001, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies NSCC's Rules and Procedures to provide that as the various securities markets move to assume the full responsibility for trade comparison, NSCC will discontinue providing trade comparison services for trades executed in those markets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Having the trade comparison function and locking-in trades at the marketplace where the trades occur is necessary step as the securities industry moves towards straight-through-processing and shortening the clearance and settlement cycle. Over the years, the stock exchanges and marketplaces have increasingly assumed this responsibility because it is faster and more efficient for comparison to be done by the marketplace at the time of execution. Comparison at the exchanges and marketplaces allows discrepancies to be identified and resolved more quickly and thus reduces the risk of failed trades. As a result, today close to 99 percent of all streetside equity trades are compared at the time of execution on a real-time basis and are submitted to NSCC as locked-in for trade recording. NSCC's Rules and Procedures currently recognize and provide for trades to be submitted on a locked-in basis from self-regulatory organizations, service providers, and special representatives.[3] The remaining transactions are sent to NSCC for trade comparison.

In preparation for the move towards shortened settlement cycles, NSCC has been working with the securities exchanges and markets as they move to assume the entire responsibility for comparing their respective trades. The first entity that will assume full repsonsibility for comparing or locking-in all its equity trades is the New York Stock Exchange ("NYSE"). The NYSE will take on this responsibility effective June 28, 2001. As a result, from and after June 28, 2001, NSCC will cease providing comparison services for equity transactions executed on the NYSE.

Subsequently, it is anticipated that the Amex and Nasdaq marketplace will assume full responsibility for comparison of equity trades executed on their marketplaces by year-end 2001 and by the end of the first quarter 2002, respectively. As each entity fully assumes the responsibility for comparing such trades, NSCC will

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] NSCC's Rule 7 (Comparison Operation) and Rule 39 (Special Representative/Index Receipt Agent).

discontinue the trade comparison process for all such trades.[4]

Accordingly, NSCC is modifying its Rules and Procedures to reflect this development. Rules 5 (General Provisions) and 7 (Comparison Operation), and Procedure II (Trade Comparison Service) will be amended to provide that as the various marketplaces and exchanges assume the responsibility for comparing trades executed in their respective markets, NSCC will cease providing comparison services with respect to the trades executed in those markets. NSCC will notify its members by Important Notice prior to the occurrence of each such "discontinuance."

This rule change provides for trades to be compared at the time of execution at the markets when the market provides comparison services and thereby permits discrepancies to be identified and corrected more quickly and reduces the risk of failed trades. Accordingly, NSCC believes that this change should facilitate the prompt and accurate clearance and settlement of securities transactions. NSCC states that the proposed rule change is therefore consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[5] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Having the trade comparison function occur at the marketplace where the trades occur should help reduce the risk of failed trades and thus should promote prompt and accurate clearance and settlement of securities transactions.

NSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the thirtieth day after publication because such approval will allow NSCC to cease providing comparison services for the NYSE when the NYSE assumes full responsibility for comparing all its equity trades on June 28, 2001.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–2001–12 and should be submitted by July 27, 2001.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–NSCC–2001–12) be and hereby is approved.[7]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–16880 Filed 7–5–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44484; File No. SR–NYSE–2001–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Original Listing Standard for Cash Flow Revenue and Requiring Press Release Announcement from Companies Below Continued Listing Criteria By Reason of Share Price

June 28, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend Sections 102 and 103 of the Exchange's *Listed Company Manual* to align the cash flow revenue original listing standard with that in the global market capitalization standard. The proposed rule change also would amend Section 802 and NYSE Rule 499 to require a press release announcement when a company is notified it is below the $1.00 price standard. The text of the proposed rule change is as follows: Proposed additions are *italicized* and proposed deletions are in brackets.[3]

* * * * *

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[4] The Nasdaq Stock Market, Inc. has filed an application for exchange registration. Before NSCC ceases providing comparison services for the Nasdaq marketplace, it will make sure that market participants at both the National Association of Securities Dealers, Inc. and The Nasdaq Stock Market, Inc. have access to comparison services. Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (Notice of The Nasdaq Stock Market, Inc.'s application for exchange registration).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule language has been marked against Sections 102, 103, 802, and NYSE Rule 499 as amended by SR–NYSE–2001–02 in Securities Exchange Act Release No. 44481 (June 27, 2001). Telephone conversation between James F. Duffy, Senior Vice President and Associate General Counsel, NYSE; Florence Harmon, Senior Special

102.00 Domestic Companies

102.01 Minimum Numerical Standards—Domestic Companies—Equity Listings

* * * * *

102.01C A company must meet one of the following financial standards.

* * * * *

(II) A Company with not less than $500,000,000 market capitalization and [$200,000,000] *$100,000,000* in revenues during the most recent 12 month period must demonstrate from the operating activity section of its cash flow statement that its cash flow, which represents net income adjusted to (a) reconcile such amounts to cash provided by operating activities, and (b) exclude changes in operating assets and liabilities, is at least $25,000,000 in the aggregate for the last three fiscal years, and each year is reported as a positive amount as adjusted (E)(F) pursuant to Para. 102.10C(I)(2)(a) and (b) as applicable. With respect to reconciling amounts pursuant to this Paragraph, all such amounts are limited to the amount included in the company's income statement.

* * * * *

103.00 Non-U.S. Companies

103.01 Minimum Numerical Standards Non-U.S. Companies Equity Listings Distribution

* * * * *

103.01B. A company must meet one of the following financial standards:

* * * * *

(II) *A company* [Companies] with not less than $500,000,000 market capitalization and [$200,000,000] *$100,000,000* in revenues in the most recent 12 month period must demonstrate from the operating activity section of its cash flow statement that its operating cash flow excluding changes in operating assets and liabilities is at least $100,000,000 in the aggregate for the last three fiscal years, where each of the two most recent years is reported at a minimum of $25,000,000 as adjusted (C)(D) for Para. 102.01C(I)(2)(a) and (b). Reconciliation to U.S. GAP of the third year back would only be required if the Exchange determines that reconciliation is necessary to demonstrate that the aggregate $100,000,000 threshold is satisfied.

* * * * *

Counsel, Division of Market Regulation ("Division"), Commission; and Susie Cho. Special Counsel, Division, Commission, June 26, 2001.

802.00 Continued Listing

802.01 Continued Listing Criteria

The exchange would normally give consideration to delisting a security either a domestic or non-U.S. issuer when;

* * * * *

802.01C Price Criteria

Average closing price of a security is less than $1.00 over a consecutive 30-trading-day period (E)

(E) Once notified, the company must bring its share price and average share price back above $1.00 by six months following receipt of the notification. If this is the only criteria that makes the company below the Exchange's continued listing standards, the procedures outlined in Paras. 802.02 and 802.03 do not apply. The company must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency or be subject to suspension and delisting procedures. *In addition, the company has 45 days (90 days in the case of a non-U.S. company) from receipt of the notification to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the company fails to issue this press release during the allotted 45 or 90 days, the Exchange will issue the requisite press release.* In the event that at the expiration of the six-month cure period, both a $1.00 share price and a $1.00 average share price over the preceding 30 trading days are not attained, the Exchange will commence suspension and delisting procedures. Notwithstanding the foregoing, if a company determines that, if necessary, it will cure the price condition by implementing a reverse stock split, it must so inform the Exchange in the above referenced notification, must obtain shareholder approval for the reverse by no later than its next annual meeting, and must implement the reverse promptly thereafter. The price condition will be deemed cured if price promptly exceeds $1.00 per share, and the price remains above that level for at least the following 30 trading days. Notwithstanding the foregoing, if the subject security is not the primary trading common stock of the company (e.g., a tracking stock or a preferred class) or is a stock listed under the Affiliated Company standard where the parent remains in "control" as that term is used in that standard, the Exchange may determine whether to apply the Price Criteria to such security after evaluating the financial status of the company and/or the parent/affiliated company, as the case may be.

* * * * *

Delisting of Securities

Suspension from Dealings or removal from List by Action of the Exchange

* * * * *

Rule 499. Securities admitted to the list may be suspended from dealings or removed from the list at any time.

* * * Supplementary Material:

* * * * *

.20 NUMERICAL AND OTHER CRITERIA

The Exchange would normally give consideration to suspending or removing from the list a security of a company, whether it be a domestic or non-U.S. issuer, when:

* * * * *

8. Average closing price of a security is less than $1.00 over a consecutive 30 trading-day period. Once notified, the company must bring its share price and average share price back above $1.00 by six months following receipt of the notification. If this is the only criteria that makes the company below the Exchange's continued listing standards, the procedures outlined in Paras. .50 and .60 of this Rule 499 do not apply. The company must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency *or be subject to suspension and delisting procedures. In addition, the company has 45 days (90 days in the case of a non-U.S. company) from receipt of the notification to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the company fails to issue this press release during the allotted 45 or 90 days, the Exchange will issue the requisite press release.* In the event that at the expiration of the cure period, both a $1.00 share price and a $1.00 average share price over the preceding 30 trading days are not attained, the Exchange will commence suspension and delisting procedures. Notwithstanding the foregoing, if a company determines that, if necessary, it will cure the price condition by taking an action that will require approval of its shareholders, it must so inform the Exchange in the above referenced notification, must obtain the shareholder approval by no later than its next annual meeting, and must implement the action promptly thereafter. The price condition will be deemed cured if the price promptly exceeds $1.00 per share, and the price

remains above that level for at least the following 30 trading days.

Notwithstanding the foregoing, if the subject security is not the primary trading common stock of the company (e.g., a tracking stock or a preferred class) or is a stock listed under the Affiliated Company standard where the parent remains in "control" as that term is used in that standard, the Exchange may determine whether to apply the Price Criteria to such security after evaluating the financial status of the company and/or the parent/affiliated company, as the case may be.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed my comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Sections 102 and 103 of the Exchange's *Listed Company Manual* to align the cash flow revenue original listing standard with that in the global market capitalization standard. The proposed rule change also would amend Section 802 and NYSE Rule 499 to require a press release announcement when a company is notified it is below the $1.00 price standard.

Amendments to Sections 102 and 103 (Original Listing)

Sections 102 and 103 set forth the criteria for original listing of, respectively, domestic and foreign issuers. Last year, the Exchange reduced the per annum revenue required under the $1 billion global market capitalization standard from $200 million to $100 million.[4] The Exchange represents that its experience with that amended standard suggests that a similar change would be appropriate in the cash flow standard,[5] which otherwise requires a company to have a market capitalization of not less than $500 million and aggregate cash flow over its these most recent fiscal years of a least $25 million ($100 million for non-U.S. companies). Accordingly, the Exchange purposes to reduce the 12-month revenue required under the cash flow standard from $200 million to $100 million.

Amendments to Section 802 (Continued Listing)[6]

Section 802.01C provides that a company will be below criteria ("BC") if its average closing share price over a connective 30 trading-day period is less than $1.00. Such a company is required to bring its 30 trading-day average closing price above $1.00 by the later of its next annual meeting date or six months after receipt of notification from the Exchange of the price condition. While companies falling below the Exchange's other financial continued listing criteria related to market capitalization and shareholders' equity are required to put out a press release announcement after they are notified of their BC status by the Exchange,[7] the same is not required of companies that become BC for the reason of their share price. The Exchange represents that its experience with the existing press release requirement suggests that a similar press release requirement would be appropriate for companies that become BC for share price. The same time frame for issuance of the press release would also seem appropriate. Accordingly, the Exchange proposes to require a U.S. company ot put out a press release announcing its BC status no later than 45 days, and a non-U.S. company to put out a press release no later than 90 days, after being notified by the Exchange of the price condition. The Exchange believes that, as is that case with the press release requirement relating to the other BC standards, the time period for issuance of the press release would allow companies some time to formulate an action plan for dealing with the situation. Thus, any public announcement would include information about the actions the company proposes to alter its BC status.

2. Statutory Basis

The Exchange believes the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[8] that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[4] *See Listed Company Manual* Sections 102.01C(III) (domestic companies) and 103.01B(III) (non-U.S. companies). *See* Securities Exchange Act Release No. 43027 (July 12, 2000), 65 FR 44556 (July 18, 2000) (approving SR–NYSE–00–27).

[5] *See Listed Company Manual* Sections 102.01C(II) (domestic companies) and 103.01B(II) (non-U.S. companies).

[6] Parallel amendments would also be made to Exchange Rule 499. In addition, a phrase that appears in Section 802.01C of the *Listed Company Manual* but not at the parallel spot in Exchange Rule 499 would be added to Exchange Rule 499 herein.

[7] *See Listed Company Manual* Sections 802.02 (domestic companies) and 802.03 (non-U.S. companies).

[8] 15 U.S.C. 78f(b)(5).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2001–12 and should be submitted by July 27, 2001.

For the Commission, by Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–16883 Filed 7–5–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3341]

State of Minnesota; Amendment #6

In accordance with a notice received from the Federal Emergency Management Agency, dated June 28, 2001, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to July 31, 2001.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 31, 2001 and for economic injury the deadline is February 15, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 28, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–16860 Filed 7–5–01; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–100a]

Termination of Action and Monitoring: European Communities' Regime for the Importation, Sale and Distribution of Bananas

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of action, monitoring, and request for public comments.

SUMMARY: Pursuant to authority under section 301 of the Trade Act of 1974, as amended, on April 19, 1999, the United States Trade Representative (Trade Representative) imposed 100 percent *ad valorem* duties on a list of products of certain member States of the European Communities (EC) as a result of the EC's failure to implement the recommendations and rulings of the World Trade Organization (WTO) Dispute Settlement Body concerning the EC's regime for the importation, sale and distribution of bananas. On April 11, 2001, the United States and the EC announced an understanding in the *Bananas* dispute. Pursuant to that understanding, the EC is taking steps to provide greater market access to U.S. banana distributors, and the Trade Representative is terminating the 100 percent *ad valorem* duties on the list of EC products. The Trade Representative will monitor the EC's compliance with the understanding, and in particular, whether the EC modifies certain tariff rate quotas by January 1, 2002. Should the EC fail to do so, the Trade Representative may again take action under Section 301.

DATES: Comments should be submitted by 5 p.m. on August 7, 2001. The termination of increased duties is effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after July 1, 2001, except that the termination of increased duties on HTS subheading 4911.91.20 is effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after March 3, 1999.

ADDRESSES: Comments should be submitted to Sybia Harrison, Staff Assistant to the Section 301 Committee, ATTN: Docket 301–100a, Office of the United States Trade Representative, 1724 F Street, NW., Room 217, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395–3419, for questions concerning procedures for filing comments in response to this notice; Ralph Ives, Assistant U.S. Trade Representative, (202) 395–3430, for questions concerning the *Bananas* case; William Busis, Associate General Counsel, (202) 395–3150, for questions concerning procedures under Section 301; or Yvonne Tomenga, Program Officer, Office of Trade Programs, U.S. Customs Service, (202) 927–0133, for questions concerning entries.

SUPPLEMENTARY INFORMATION: In 1993, the EC adopted a regime governing the importation, sale, and distribution of bananas that was discriminatory and harmed the economic interests of the United States by denying to U.S. companies a major portion of their banana distribution business. WTO dispute settlement panels have confirmed that the EC's banana regime was inconsistent with the EC's obligations under the WTO Agreement. WTO arbitrators have determined that the EC's banana regime has nullified or impaired U.S. benefits under the WTO Agreement in the amount of $191.4 million per year. As a result, the WTO Dispute Settlement Body authorized the United States to suspend the application to the EC, and member States thereof, of WTO tariff concessions and related obligations covering trade in an amount of $191.4 million per year.

Pursuant to the authorization of the WTO Dispute Settlement Body and under the authority of Sections 301 to 309 of the Trade Act of 1974, as amended ("Section 301"), the USTR announced a list of nine EC products that would be subject to a 100 percent rate of duty, effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after March 3, 1999. See 64 FR 19,209 (April 19, 1999). Since that time, the United States and the EC have consulted in an effort to resolve the dispute, and the increased duties have remained in place. The procedural and substantive background of the U.S. investigation under Section 301 and the associated WTO proceedings concerning the EC's banana regime is set forth in prior notices. See 64 FR 19,209 (April 19, 1999); 63 FR 71,665 (Dec. 29, 1998); 63 FR 63,099 (Nov. 10, 1998); 63 FR 56,687 (Oct. 22, 1998); and 63 FR 8248 (Feb. 18, 1998).

On April 11, 2001, the United States and the EC announced an understanding in the dispute. The understanding provides for phased implementation steps. By July 1, 2001, the EC is to adopt a new system of banana licenses based on historic reference periods. By January 1, 2002, the EC will shift an additional 100,000 tons of bananas into a tariff rate quota accessible to bananas of Latin American origin (with respect to which U.S. distributors have a substantial historic share). By January 1, 2006, the EC will introduce a tariff-only regime for banana imports.

Pursuant to the understanding, the United States is to remove increased duties on EC products by July 1, 2001 if the EC completes the first phase of implementation (adoption of historic reference periods). The understanding also provides that the United States may reimpose increased duties if the EC does not complete the second phase of

[9] 17 CFR 200.30–3(a)(12).

implementation (modifying its tariff rate quotas) by January 1, 2002.

The Office of the United States Trade Representative (USTR) has been monitoring the EC's compliance with the understanding. USTR confirms that the EC has adopted a new system of banana licenses based on historic reference periods and has issued licenses in accordance with that system. As a result, U.S. banana distributors have obtained additional access to the EC market.

Under Section 307 of the Trade Act of 1974, the Trade Representative, subject to the specific direction, if any, of the President, may modify or terminate action taken under Section 301 if, among other things, the foreign country "is taking satisfactory measures to grant the rights of the United States under a trade agreement" or "has agreed to eliminate or phase out the act, policy, or practice" that is the subject of the Section 301 investigation. Section 301(a)(2)(B)(i) and (ii) of the 1974 Trade Act; Section 307(a)(1)(A) of the 1974 Trade Act. The EC's entry into the understanding, combined with its completion of the first phase of implementation, indicates that the EC is taking satisfactory measures to grant the rights of the United States under the WTO Agreement and has agreed to eliminate or phase out its discriminatory banana regime. Accordingly, the Trade Representative has decided to terminate the action previously taken under Section 301 to increase duties on a list of nine products of certain EC member States.

As set out in the Annex to this notice, the termination of increased duties is effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after July 1, 2001, with the exception of the increased duties imposed on *Pictures, designs, and photographs, * * * Lithographs* (HTS subheading 4911.91.20). As illustrated by notices published in the Customs Bulletin, there was widespread confusion in the importing community prior to the imposition of the increased duties with regard to whether certain pictures, designs, and photographs should be classified as *Pictures, designs, and photographs, * * * Lithographs* (HTS subheading 4911.91.20) or as *Pictures, designs, and photographs, * * * Other (HTS subheading 4911.91.40). See Revocation of Treatment or Ruling Relating to the Classification of Offset Printing Posters,* 34 Customs Bulletins and Decisions 41 & 42, page 141 (Oct. 15, 2000). As a result, importers who had been for years entering goods under subheading 4911.91.40 found that their goods instead fell within the scope of subheading 4911.91.20 and were subject to 100 percent duties. To address this situation, the Trade Representative has determined that the increased duties imposed on *Pictures, designs, and photographs, * * * Lithographs* (HTS subheading 4911.91.20) should be terminated with respect to articles entered, or withdrawn from warehouse, for consumption on or after March 3, 1999—the initial effective date of the increased duties.

Under Section 306 of the Trade Act, USTR will continue to monitor the EC's implementation of the understanding. As noted, by January 1, 2002 the EC is scheduled to shift an additional 100,000 tons into a tariff rate quota accessible to bananas of Latin American origin. Should the EC fail to complete this implementation step, the Trade Representative may again take action under Section 301.

Prior to terminating the Section 301 action, USTR consulted with the domestic industry concerned and at this time is providing an opportunity for public comment on this action under Section 307 of the Trade Act.

Public Comments

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and must be filed on or before 5:00 p.m. on August 7, 2001. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, ATTN: Docket 301–100a, Office of the United States Trade Representative, 1724 F Street, NW., Room 217, Washington, DC 20508. Comments will be placed in a file (Docket 301–100a) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of the twenty copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket may be made by calling Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 3, First Floor, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508.

William Busis,

Chairman, Section 301 Committee.

Annex

I. Effective with respect to merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 2001, the imposition of 100 percent *ad valorem* tariffs as provided in subheadings 9903.08.04 (affecting articles in subheading 3307.30.50), 9903.08.07 (affecting articles in subheading 4202.22.15), 9903.08.08 (affecting articles in subheading 4202.32.10), 9903.08.09 (affecting articles in subheading 4805.50), 9903.08.10 (affecting articles in subheading 4819.20), 9903.08.13 (affecting articles in subheading 6302.21.90), 9903.08.14 (affecting articles in subheading 8507.20.80), and 9903.08.15 (affecting articles in subheading 8516.71) of the Harmonized Tariff Schedule of the United States (HTS) is terminated.

II. Effective with respect to merchandise entered, or withdrawn from warehouse, for consumption on or after March 3, 1999, the imposition of 100 percent *ad valorem* tariffs as provided in subheading 9903.08.11 (affecting articles in subheading 4911.91.20 (lithographs)) of the HTS is terminated. This termination shall apply to all merchandise classifiable under subheading 9903.08.11 of the HTS entered, or withdrawn from warehouse, for consumption on or after March 3, 1999 for which unliquidated entries or entries subject to timely protest are pending before the United States Customs Service.

III. Effective July 1, 2001, the instruction in the notice of April 19, 1999, 64 FR 19,209, that "Any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after April 19, 1999 must be admitted as "privileged foreign status" as defined in 19 CFR 146.41" is terminated.

[FR Doc. 01–16936 Filed 7–5–01; 8:45 am]
BILLING CODE 3190–01–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During Week Ending June 22, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. sections

412 and 414. Answers may be filed within 21 days after the filing of the applications.
Docket Number: OST–2001–9957.
Date Filed: June 19, 2001.
Parties: Members of the International Air Transport Association.
Subject:
PTC31 SOUTH 0108 dated 25 May 2001
South Pacific (except New Zealand-USA) Resolution r1–r31
Minutes—PTC31 SOUTH 0109 dated 8 June 2001
Tables—PTC31 SOUTH 0026 Fares dated 15 June 2001
Intended effective date: 1 October 2001.
Docket Number: OST–2001–9990.
Date Filed: June 22, 2001.
Parties: Members of the International Air Transport Association.
Mail Vote 130 Resolution 010e Special Passenger Amending Resolution e-mail te418
Intended effective date: 1 July 2001.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 01–16859 Filed 7–5–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Application for Certificates

Notice of Applications for Certificates of Public Convenience and necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the week ending June 22, 2001. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–9984.
Date Filed: June 21, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 12, 2001.
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102 and 41108, and subpart B, requesting a new or amended Certificate of Public Convenience and Necessity, authorizing Delta to provide scheduled foreign air transportation of persons, property and mail between New York's Kennedy International Airport (JFK) and Buenos Aires, Argentina, and for allocation of seven (7) U.S.-Argentina Frequencies that become available on December 1, 2001.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 01–16858 Filed 7–5–01; 8:45 am]
BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Rockland County, New York

AGENCY: The Federal Highway Administration (FHWA), the New York State Thruway Authority/Canal Corporation (NYSTA), and the New York Department of Transportation (DOT)

ACTION: Revised notice of intent.

SUMMARY: The FHWA, NYSTA and DOT announce the termination of the preparation of an environmental impact statement for the proposed Rockland County to Manhattan Ferry Project.

FOR FURTHER INFORMATION CONTACT: Robert Arnold, Division Administrator, FHWA, Leo W. O'Brien Federal Building, Room 719, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone (518) 431–4127; Philip J. Clark, Director, Design Division, NYSDOT, Main Office, 1220 Washington Avenue, Albany, New York 12232, Telephone (518) 457–6452; John T. Brizzell, Deputy Executive Director/Chief Engineer, NYS Thruway Authority/Canal Corporation, 200 Southern Boulevard, Albany, New York 12209, Telephone (518) 436–2811.

SUPPLEMENTARY INFORMATION: In 1996, FHWA, NYSTA and DOT initiated an environmental review of the construction of landside facilities in Rockland County to support a high-speed ferry service between Rockland County and Manhattan.

A public scoping meeting was held on September 30, 1996 at Hyack High School, 360 Christian Herald Road, Upper Nyack, NY from 7:30 p.m. to 10:30 p.m. The scoping meeting provided information about the proposed project and allowed the public the opportunity to identify issues and concerns they believed should be addressed in the Environmental Impact Statement (EIS). Comments and suggestions were invited from all interested parties.

At present, FHWA, NYSTA and DOT will not exercise the option to prepare the draft EIS and are terminating the environmental review of the proposed action. This decision assumes that landside facilities to support a high speed ferry service between Rockland County and Manhattan would not be constructed by the project sponsors.

Authority: 23 U.S.C. 315; 23 CFR 771.123

Issued on: June 27, 2001.

David W. Nardone,
Senior Operations Engineer, New York Division.
[FR Doc. 01–16961 Filed 7–5–01; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34065]

Ellis & Eastern Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant limited local trackage rights[1] to Ellis & Eastern Company (EE) over BNSF's rail line from approximately milepost 141.7 near Sioux Falls, SD, to approximately milepost 134.0 near Corson, SD, a distance of approximately 7.7 miles.[2]

The transaction is scheduled to be consummated on or shortly after July 2, 2001.[3]

The purpose of the trackage rights is to enable EE to provide rail service to a new facility of its parent company, Sweetman Construction Company.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and*

[1] The trackage rights agreement is a supplemental agreement to the Basic Agreement, dated November 10, 1989, between BNSF's predecessor, the Burlington Northern Railroad Company, and EE. *See Ellis & Eastern Company—Acquisition, Operation, Joint Relocation Project, and Trackage Rights Exemption—Brandon-Ellis, SD*, Finance Docket No. 32506 (STB served Mar. 11, 1996).

[2] A redacted version of the Supplemental Trackage Rights Agreement between BNSF and EE was filed with the notice of exemption. An unredacted version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for a protective order. That motion has been granted in a separate decision and a protective order in this proceeding is being served on July 3, 2001.

[3] EE states that it anticipates that it will exercise the above-described trackage rights in the Spring of 2002, but will in no event exercise the trackage rights prior to July 2, 2001.

Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34065, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rose-Michele Weinryb, Weiner Brodsky Sidman Kider PC, 1300 19th Street, NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 29, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–16934 Filed 7–5–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Grant Program for Research and Development in the Field of Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Announcement of grant program.

SUMMARY: The Bureau of Transportation Statistics supports its goal of advancing the field of transportation statistics through the Transportation Statistics Research Grants program. This notice solicits applications for projects that (1) support the development of the field of transportation statistics; and/or (2) involve research or development in transportation statistics. It outlines the purpose, goals, and general procedures for application and award. For this cycle, BTS will make available up to approximately $200,000 in grant funds to eligible organizations.

DATES: For BTS to consider your application, we must receive it by August 31, 2001, at 5:00 p.m. Eastern Standard Time. Applications received after August 31, 2001, will be held for the next cycle, which is anticipated to be every six to twelve months, unless you request in writing that your application be returned.

ADDRESSES: You must send six copies of the application package to the BTS Grants Program, Room 3430, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Promod Chandhok, Office of Statistical Programs and Services, Bureau of Transportation Statistics, Room 3430, 400 Seventh Street, SW., Washington, DC 20590; phone (202) 366–2158; fax: (202) 366–3640; e-mail: promod.chandhok@bts.gov.

SUPPLEMENTARY INFORMATION:

I. Background—Advancing the Discipline of Transportation Statistics

The purpose of this grant program is to provide financial assistance to eligible organizations to help advance the discipline of transportation statistics. These grants are authorized by section 5109 of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178 (1998), codified at 49 U.S.C. 111(g)). BTS anticipates awarding up to $500,000 per year in grants for projects that (1) support development of the field of transportation statistics; and/or (2) advance research or development in transportation statistics.

BTS is a separate operating organization within the U.S. Department of Transportation (DOT). Its mission is to lead in developing transportation data and information of high quality, and to advance their effective use in public and private transportation decision-making. In accomplishing this mission, BTS works to improve six key attributes of transportation data and analysis—quality, comparability, completeness, timeliness, relevance, and utility.

Our ultimate goal is to make transportation better—to enhance safety, mobility, economic growth, the human and natural environment, and national security (the five strategic goals of the Department of Transportation). BTS's role in this goal is to put together data and information that others need to make decisions concerning transportation. We collect data and compile, analyze, and publish statistics. Many others, both within and outside DOT, are involved in building this knowledge base and BTS could not do it alone.

While there are many excellent transportation data programs and many excellent statistics programs, few are devoted to the intersection of these two disciplines. Bringing a better understanding of statistics to transportation data will improve data quality, increase utility (e.g., by improving measures of travel), and reduce costs (e.g., by using techniques to make data collection, analysis, and dissemination more efficient). BTS wants to foster the transportation statistics discipline and increase its quality and usefulness to the transportation community. This grants program is one way BTS is working toward this goal.

II. Eligibility Requirements

What Organizations May Apply?

BTS invites applications from public and private non-profit institutions of higher education. We strongly encourage Minority Serving Institutions, which have been traditionally under-represented in transportation statistics, to submit applications. If organizations partner on a project, the participants should submit a single application. You may submit more than one application as long as the applications are for separate and distinct projects.

What Projects Are Eligible for Funding?

For this cycle we are particularly interested in proposals on:

1. The development of techniques and pattern analyses that apply modern methods of biostatistical risk assessment to data on transportation injuries or fatalities;
2. The exploration of fresh ideas for the measurement of VMT (vehicle miles traveled) or AADT (average annual daily traffic)—new technology can be a component of this proposal, but it should also incorporate innovative statistical ideas for sampling and/or estimation; and
3. The application of small area estimation techniques to transportation.

What Are the Cost Sharing Requirements?

For awards of $100,000 or more, the recipient shall fund at least 50 percent of the project's costs. The nonfederal match must come from sources other than the project sponsor, and must be cash contributions rather than in-kind contributions. In reviewing all applications, even those requesting less than $100,000, the degree of cost-sharing will be considered, with more weight given to cash contributions than in-kind services.

III. Application Contents

For more information about sending your application, please refer to the

ADDRESSES and **DATES** sections listed above. In order to be considered for funding under this program, your application package must include the following:

(1) *A Project Narrative.* This must not exceed seven letter-size pages, single-sided and double-spaced. Use at least 12-point type and one inch margins. In general, the information you provide should be in sufficient detail so BTS understands the proposed work and its anticipated benefits. It should also demonstrate that you have the necessary experience and resources to accomplish it. The narrative must identify the organization; how it meets the eligibility criteria; its experience and accomplishments in collecting, analyzing, and/or disseminating transportation data; and the qualifications of the principals proposed to conduct the activities. The narrative must also describe the proposed activity, including how you would accomplish it, a timeline listing major milestones associated with the project, and a list of specific products and/or services with the dates they will be delivered.

(2) *An Application for Federal Assistance.* Submit OMB SF–424 (Application for Federal Assistance), which is the official form required for all federal grants. It requests basic information about the grantee and the proposed project. Under Part 10 of this form, use 20.920 and Transportation Statistics Research Grants for the Catalog of Federal Domestic Assistance Number and Title. Also submit OMB SF–424A (Budget Information—Nonconstruction Programs). You can download these forms from the OMB Internet site at http://www.whitehouse.gov/omb/grants.

(3) *An Evaluation Plan.* Include a brief description of how you will evaluate and measure the success of the project, including the anticipated benefits and challenges in completing it. This can be part of the Project Narrative.

(4) *Resumes.* Include resumes from up to three key personnel who would be significantly involved in the project.

(5) *Letters of Commitment.* If your proposal includes the significant involvement of other eligible organizations, your application must include letters of commitment from them.

IV. Application Review Process and Selection Criteria

The Transportation Statistics Research Grants program uses a competitive process and applications will be evaluated based on the merit and relevance of the proposed project in relation to the other applications received. BTS anticipates making multiple awards based on this solicitation. While BTS will select the most meritorious proposals, we may choose to not award all available funds.

Upon receiving an application, BTS will conduct an initial review to determine if it meets the eligibility criteria and contains all of the items specified under the Application Contents section of this announcement. A BTS evaluation committee will then review each complete application from an eligible recipient using the evaluation criteria listed below (the order of criteria does not designate priority) and the BTS Director will select the final grants. The evaluation criteria are:

(1) How well does the proposal support BTS's strategic goals of improving the quality, comparability, completeness, timeliness, relevance, and utility of transportation data? How well does the proposal serve the broad transportation interests of the United States?

(2) How innovative is the proposed activity? To what extent is the work being accomplished elsewhere?

(3) How much experience has the applicant demonstrated in one or more of the following areas—collecting, analyzing, storing, or disseminating transportation data, particularly data collected or disseminated by BTS, and working with theoretical statistical issues concerning transportation data?

(4) Does the applicant have the professional qualifications and team members necessary for satisfactory performance of the proposed activity?

(5) How well does the technical approach and proposed costs reflect an understanding of the procedures necessary to complete the required tasks?

(6) To what degree does the proposal include cost-sharing? More weight will be given to proposals with cash contributions than in-kind services. For awards of $100,000 or more, BTS requires cash contributions of 50 percent toward the total project's cost.

V. Amount of Funds Available and Period of Support

We anticipate that approximately $500,000 per year will be designated to support grants over the next five years, subject to the availability of appropriated funds. This estimate does not bind BTS to a specific number of offers or awards, nor to a specific amount of funding support for particular awards or awards in aggregate. It is anticipated that individual award amounts, based upon demonstrated needs, will likely range from $50,000 to $200,000, though BTS has not established minimum or maximum funding levels.

Given the amount of funds available, applicants are strongly encouraged to seek other funding opportunities to supplement the federal funds. Preference will be given to applicants with cost sharing proposals from within or outside their organizations.

The period of time of awards will vary with the complexity of the project and it is possible that grants will be awarded for periods greater than one year.

VI. BTS Involvement

BTS involvement, if any, will vary by award. If you anticipate BTS involvement, you must note this in your project narrative and any support BTS provides will be specified in the award agreement. BTS will assign a liaison to serve as the primary contact regarding the grant.

VII. Terms and Conditions of Award

(1) Prior to award, each grantee will be required to complete additional government application forms, such as OMB SF–424B (Assurances—Nonconstruction Programs) and with the certification requirements of 49 CFR Part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR Part 29, Department of Transportation Government-Wide Debarment and Suspension (Non-Procurement) and Government-Wide Requirements for Drug Free Workplace (Grants).

(2) Each grantee shall submit a program implementation plan no more than one month after award. The BTS liaison will review and comment, if necessary.

(3) Each grantee shall submit quarterly progress reports, a draft final report, and a final report that reflects the BTS liaison's comments.

Dated: July 1, 2001.

Ashish Sen,

Director, Bureau of Transportation Statistics.

[FR Doc. 01–16967 Filed 7–5–01; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of Changes to the Eligibility Requirements for Participation in Remote Location Filing Prototype Two

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces a new eligibility requirement for participation in the second prototype of Customs Remote Location Filing program (RLF). Specifically, customs brokers who are RLF applicants or current RLF participants must hold a national broker permit to participate in RLF. This notice also announces that the provisions of part 111 of the Customs Regulations now apply to the prototype.

DATES: The changes to Customs second prototype of the Remote Location Filing program will go into effect July 6, 2001. Customs brokers who are current participants in RLF must submit their national permit numbers to Customs on or before November 6, 2001. Comments concerning these changes, or any other aspect of RLF, may be submitted to Customs at any time.

ADDRESSES: Written comments (preferably in triplicate) regarding this notice, and submissions of national permit numbers, should be addressed to the Remote Filing Team, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Room 5.2–B, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: For systems or automation issues: Steve Linnemann (202) 927–0436, Jackie Jegels (301) 893–6717, or Patricia Welter (305) 869–2782. For operational or policy issues: Vikki Lazaro (202) 927–4342 or via email at Vikki.Lazaro@customs.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

RLF Authorized by the National Customs Automation Program (NCAP)

Title VI of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subpart B of title VI of the Act concerns the National Customs Automation Program (NCAP), an electronic system for the processing of commercial imports. Within subpart B, section 631 of the Act adds section 414 (19 U.S.C. 1414), which provides for Remote Location Filing (RLF), to the Tariff Act of 1930, as amended. RLF permits an eligible NCAP participant to elect to electronically file a formal or informal consumption entry with Customs from a remote location within the Customs territory of the United States other than the port of arrival, or from within the port of arrival with a requested designated examination site outside the port of arrival.

RLF Test Prototypes

In accordance with section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), Customs has developed and tested two RLF prototypes.

RLF Prototype Two commenced on January 1, 1997. See document published in the **Federal Register** (61 FR 60749) on November 29, 1996. On December 7, 1998, Customs announced in the **Federal Register** (63 FR 67511) that Prototype Two would remain in effect until Customs concluded the prototype by notice in the **Federal Register**. Accordingly, the RLF Prototype Two terms and conditions set forth in the December 7, 1998, document remain in effect, except for those explicitly changed by this notice and described below.

Change to RLF Prototype Two Eligibility Criteria

This notice adds a new eligibility requirement for participation in RLF. The new requirement is in addition to those eligibility criteria applicable to RLF Prototype Two, as described in the December 7, 1998, **Federal Register** document, which remain in effect. The new eligibility requirement mandates that a licensed customs broker who applies to participate in RLF must hold a national permit. The procedures for obtaining a national permit are set forth in § 111.19(f) of the Customs Regulations (19 CFR 111.19(f)). Licensed customs brokers who are current participants in RLF may continue to participate in the prototype without reapplying; however, they must submit proof to Customs that they hold a national permit (*i.e.*, submission of the broker's national permit number) within 120 days from the date of this notice to retain eligibility to participate in RLF. National permit numbers must be submitted to the Remote Filing Team, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Room 5.2–B, Washington, DC 20229. Failure to timely submit such proof to Customs will result in the automatic suspension of the broker's eligibility to participate in RLF, effective 121 days from the date of this notice. The suspension will remain in effect, during which time the broker will be precluded from electronically filing new entries from a remote location, until Customs receives and verifies the broker's national permit number. Upon receipt and verification, Customs will notify the broker of the reinstatement date of the broker's right to participate in RLF, and the broker will not need to reapply to participate in RLF. It should be noted that individuals who are otherwise eligible to participate in RLF, who are not customs brokers, are not required to hold a national broker permit.

This change to the RLF eligibility criteria reflects the terms of part 111 of the Customs Regulations, which sets forth the regulations providing for the licensing of and granting of permits to customs brokers. Section 111.2 of the Customs Regulations (19 CFR 111.2) provides for the license and district permit requirements applicable to customs brokers. Section 111.2(b)(2)(i)(C) provides that a national permit issued to a broker under § 111.19(f) constitutes sufficient permit authority for a broker who is a NCAP participant. As RLF is a component of the NCAP, this notice amends the RLF eligibility criteria to conform to the terms of § 111.2.

Part 111 of the Customs Regulations Applies to RLF Prototype Two

In the December 7, 1998, **Federal Register** document, in the section entitled "Regulatory Provisions Suspended", Customs stated that certain provisions in part 111 of the Customs Regulations were suspended for the duration of the second prototype test. This notice announces that the provisions of part 111 are now applicable to customs brokers participating in the RLF prototype.

Dated: June 29, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–16920 Filed 7–5–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–48]

Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Cancellation of licenses.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following Customs broker licenses have been cancelled due to death of the broker. Because previous publication of some records cannot be readily verified, the records are now being published to ensure Customs compliance with administrative requirements.

Last name	First name	License	Port name
Acosta	Joseph	05054	New Orleans
Alvarez	Leopold	05642	New York
Ambrosino	Louis	02384	New York
Angel	Roland	04325	New York
Aniades	Kathie	06024	New York
Arnold	Edward	02231	New York
Auger	Willard C.	01161	San Francisco
Baco	George	03920	New York
Balog	Ranko	04223	Los Angeles
Barnhart	James A.	03605	Los Angeles
Barreca	Frank Guy	02271	New York
Barry	Francis J.	01689	New York
Barton	Russell A.	05548	New York
Bauer	Frederick M.	00798	New York
Bellingall	R.R.	00015	San Francisco
Bernstein	Mortimer B.	02133	New York
Bonelli	John C.	03853	New York
Brady	Bernard F.	02030	New York
Braeuner	Curt A. H.	01277	New York
Brandt	Charles P.	02372	New York
Brickmeier	Charles Arthur	02806	New York
Brisco	Willem D.	06074	New York
Brtka	Paul B.	06100	Los Angeles
Burghart	Anton	02953	New York
Burin	Alfred	[1]	New York
Campbell	Vincent J.	02226	New York
Capaldo	Pasqual Francis	01615	New York
Carr	Harold J.	02068	New York
Cary	William S.	[2]	New York
Chierchio	Vincent J.	03741	New York
Chin	Edward Q.	12351	New York
Christophides	George D.	00828	New York
Cohen	Seymour J.	03561	New York
Colligan	John Thomas	02526	New York
Comer	Edward D.	02118	New York
Conroy, Jr.	Patrick J.	02530	New York
Conte	Vincent Anthony	03438	New York
Conte	Adrian N.	02417	New York
Coogan	Joseph Herbert	03488	New York
Coscette	Thomas G.	06489	New York
Cox	Henry R.	01284	New York
Crowley	Thomas J.	03331	San Francisco
Dalldorf	Charles H.	01121	New York
Dante	Emil J.	01648	New York
Davis	Walter S.	02203	New York
DiSalvio	William	01693	New York
Dworkin	Hyman	01164	New York
Farrell	James J.	01537	New York
Farrell	Francis J.	02190	New York
Farrell	James F.	01465	New York
Fazio	Virginia	10722	New York
Feig	Frederick Jack	03528	New York
Ferlazzo	Chester	03428	New York
Ferraioli	Antonio	02194	New York
Fettkether	Michael Kenneth	09391	Los Angeles
Figueira	Anna V.	02509	New York
Fischer	Alvin L.	04370	New York
Fleisig	Jacob P.	01673	New York
Floyd	Raymond H.	01619	New York
Ford	Robert E.	02746	San Francisco
Frater	George Z.	00903	New York
Galaviz	Armando	02427	San Francisco
Gamburg	Joseph	02089	New York
Ganley	Bernard J.	02917	New York
Garcia	Joseph M.	03393	New York
Gelb	Morris	02186	New York
Gelber	Paul E.	05911	New York
Gladish	Stephen	03533	Seattle
Gloss	Frederick W.	01649	New York
Grieve	David E.	02910	New York
Grose	John N. D.	01769	New York
Guerringue	Milton C.	01598	New York
Haag	Harlan Nelson	02904	New York
Halperin	Louis	01061	New York

Last name	First name	License	Port name
Hand	Dolores	06320	Los Angeles
Hauser	William	02208	New York
Hauser	David	01155	New York
Hayes	John J.	01521	New York
Hechtman	Harry E.	01458	New York
Heidl	Francis X.	01157	New York
Helstrom	George	03783	New York
Henry	Joseph M.	02290	New York
Hinchey	Linda M.	09075	Seattle
Hoban	James A.	02111	New York
Hornkohl	William H.	02058	New York
Hult	Frank A.	01631	New York
Ippolito	Gary F.	06807	New York
James	John S.	05260	Tampa
Jasper	John R.	02166	New York
Jensen	A.C.	07619	New York
Johnson	Rudolph E.	04567	Minneapolis
Jordan	Salvatore	01705	New York
Juede	Herbert A.	01523	New York
Juliano	Nicholas R.	02507	New York
Kaplan	Stanley	02551	New York
Kenny	William A.	00717	New York
Kerner	Richard M.	12301	New York
Kerner	Martin A.	01638	New York
Kerner	Martin E.	02493	New York
Kilbane	Sherry A.	10963	Charleston
Klingman	John	04255	New York
Klopsis	Nicholas	03240	New York
Knight	Frank J.	03663	Tampa
Krieger	Norman	02606	New York
Kunz	Francis L.	04115	New York
Lam	Michael T.S.	05691	Honolulu
Lam	Sun Jing	02088	Honolulu
Lawler	Daniel A.	05357	New York
Lee	Thomas J.	01219	New York
Leitch	John G.	10757	Los Angeles
Lingen	Fred W.	01853	New York
Lisa	Thomas G.	02164	New York
Lockwood	Harold R.	04738	El Paso
LoCurto	Melchior	04477	New York
Lombardi	Joseph F.	04252	New York
Manly	Winslow	01334	New York
Marshall	Louis	01551	New York
Marzolf	Alfred H.	00179	Seattle
Mauriello	Louis	03702	New York
May	Donald	02311	Seattle
McCarty	John	01506	New York
McClary	Donald	02708	Seattle
McCormack	Frank J.	04184	New York
McGriffin, III	John Girvin	04104	Tampa
McGill, Jr.	William M.	02549	New York
McGrath	Gerald L.	02440	New York
McGuire	Peter T.	02506	New York
McTernan	James B.	04700	New York
Merrill	Coralie S	06542	Seattle
Moran	Harry M.	02143	New York
Murray	Edward S.	01715	New York
Natiello	Nicholas J.	03482	New York
Nelson	Arthur B.	05217	New York
Niethamer	Robert O.	04381	New York
Noens	Louis Jean	12662	New York
Orihuela	Hope	03552	Tampa
Palmer	Drew Ivan	05183	New York
Pancaldo	Jack F.	01283	New York
Parker	Darienne	12755	Charlotte
Parker	Arthur Blasdell	04327	Chicago
Penson	Jack A.	01525	New York
Perroncino	John S.	05504	New York
Phelps	William Arthur	03626	New York
Phillips	Arthur L.	07330	San Francisco
Pitre	Joseph A.	00847	New York
Poll	Otto P.	03499	New York
Potts	William T.	14681	Houston
Pullis	Alexander F.	02362	New York

Last name	First name	License	Port name
Randazzo	Michael	03093	New York
Rex	Charles L.	[3]	New York
Ricci	Mario	00788	New York
Riviello	Dominic	01934	New York
Rizzo	Joseph	02532	New York
Roberts	Harry Owen	03372	Los Angeles
Roche	Mary	10769	New York
Rose	Philip B.	03115	New York
Royals	Percy S.	01371	New York
Salomone	Salvatore	02545	New York
Scatamacchia	Ralph	03236	New York
Scher	Isador	02334	New York
Schneider	Richard H	05952	Los Angeles
Sergi	Nicholas	03247	New York
Serra	John	04107	New York
Setariano	Joseph	02462	New York
Sheil	Joseph F.	05040	New York
Shenk	David Wesley	04045	Los Angeles
Sherriff	Charles H.	00190	Seattle
Shimabukuro	Sam T	06776	Seattle
Silvey	Max	02852	New York
Slavin	Myron B.	03367	New York
Smith	Albert W.	04812	Charlotte
Smith	Robert W.	03356	New Orleans
Snedeker	Lloyd	02942	New York
Sobel	Hyman	02179	New York
Spring	Gerald	03146	New York
Steiker	Lloyd S.	02691	New York
Stern	Harry	01459	New York
Swenson	John A.	02280	New York
Syage	George J.	03879	New York
Tabino	Robert	03406	New York
Thomas	Barbara	07997	New York
Tolonen	Clarence E.	03593	Seattle
VanSant	Richard M	02671	Seattle
Virgilio	Pasquale	04404	New York
Wahlstrom	Dale S.	11121	New York
Wegner	Donald F.	02895	New York
Wehman	Anthony G.	02531	New York
Werfelman	George H.	00723	New York
Wesnofske	Theodore P.	09248	New York
Wiltshire	Richard C.	04385	New York
Wohlrab	George Adam	02421	New York
Wood	Joseph B.	01198	New York
Wunner	John J.	02385	New York
Zimmer, III	Walter	11727	New York

[1] 00242A
[2] 00233A
[3] 00191A

Dated: July 2, 2001.

John H. Heinrich,

Acting for Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–16963 Filed 7–5–01; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–47]

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license numbers were erroneously included in a list of revoked Customs broker licenses.

Last name	First name	License	Port name
Apke	Kristina B	16557	Cleveland
Badias	Joaquin Felipe	10894	Great Falls
Castilla	Judy	06912	New York
Connor, Sr	Paul F	02856	Baltimore
Grady	Kathleen M	10368	Philadelphia
Kala	Gulshan	10188	Houston
Malone	Helen	10404	Baltimore
Mayer	Susan Lee	11108	Miami

Last name	First name	License	Port name
Stanley	James A	10193	Laredo

Customs broker licenses numbered 16557, 10894, 06912, 02856, 10368, 10188, 10404, 11108, and 10193 remain valid.

Dated: July 2, 2001.

John H. Heinrich,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–16962 Filed 7–5–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0404]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to file a claim for increased VA disability compensation based on unemployability.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 4, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0404" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veteran's Application for Increased Compensation Based on Individual Unemployability, VA Form 21–8940.

OMB Control Number: 2900–0404.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8940 is used by veterans to file a claim for increased VA disability compensation based unemployability. VA uses the information to determine a veteran's entitlement to unemployability benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 18,000 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 24,000.

Dated: June 20, 2001.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–16890 Filed 7–5–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0138]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the amounts of any deductible expenses paid by a claimant and/or commercial life insurance received to calculate the appropriate rate of pension benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 4, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0138" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed

collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Details of Expenses, VA Form 21–8049.

OMB Control Number: 2900–0138.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8049 is used to gather the necessary information to determine the amounts of any deductible expenses paid by the claimant and /or commercial life insurance received to adjust the annual income, which determines the payable rate of pension.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,700 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 22,800.

Dated: June 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–16891 Filed 7–5–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0249]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 6, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0249."

SUPPLEMENTARY INFORMATION:

Title: Loan Service Report, VA Form 26–6808.

OMB Control Number: 2900–0249.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 26–6808 is completed by Loan Service Representatives during the course of personal contacts with delinquent obligors. The information documented on the form is necessary for VA to determine whether loan default is insoluble or whether the obligor has reasonable prospects for curing the default and maintaining the mortgage obligation in the future.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on April 20, 2001, at pages 20351—20352.

Affected Public: Individuals or households.

Estimated Annual Burden: 27,083 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 65,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0249" in any correspondence.

Dated: June 27, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–16900 Filed 7–5–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0038]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a child's pension eligibility and benefit rates.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 4, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov.* Please refer to "OMB Control No. 2900–0038" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Information From Remarried Widow/er, VA Form 21–4103.

OMB Control Number: 2900–0038.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to determine if a child's income and net worth are within the limits imposed by law. This information is necessary to determine a child's pension eligibility and benefit rates once a surviving spouse remarries.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

Dated: June 21, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–16901 Filed 7–5–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0094]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine an applicant's eligibility for VA benefits based on service in the Commonwealth Army of the Philippines or in recognized guerrilla organizations.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 4, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0094" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the propose for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Supplement to VA Forms 21–526, 21–534, and 21–535 (For Philippine Claims), VA Form 21–4169.

OMB Control Number: 2900–0094.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38, U.S.C., sections 101 and 6104 require VA to ascertain from certain applicants service information, place of residence, evidence held by the applicant to prove service, and whether the applicant was a member of pro-Japanese, pro-German, or anti-American Filipino organizations. The information collected is used in determining eligibility for benefits based on Commonwealth Army or recognized guerrilla service.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: June 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–16902 Filed 7–5–01; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0103]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine whether a child under or over 18 is entitled to dependency and indemnity compensation benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 4, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0103" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is

being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Dependency and Indemnity Compensation by Child, VA Form 21–4183.

OMB Control Number: 2900–0103.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4183 is used by a child under age 18 to apply for dependency and indemnity compensation where the surviving spouse was not entitled or is no longer entitled to receive benefits or by a child age 18 or over regardless of the surviving spouse's entitlement. The form is used in lieu of VA Form 21–534, Application for Dependency and Indemnity Compensation or Death Pension by Widow(er) or Child, in order to help reduce the reporting burden of a child under 18 when information about the deceased veteran's spouse is not required.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,975 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,900.

Dated: June 21, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–16903 Filed 7–5–01; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0252]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to authorize nonsupervised lenders to close loans on an automatic basis.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 4, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0252" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders, VA Form 26–8736.

OMB Control Number: 2900–0252.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8736 is used by nonsupervised lenders requesting approval to close loans on an automatic basis. Automatic lending privileges eliminate the requirement for submission of loans to VA for prior approval. Lending institutions with automatic loan privileges may process and disburse such loans and subsequently report the loan to VA for issuance of guaranty. The form requests information considered crucial for VA to make acceptability determinations as to lenders who shall be approved for this privilege.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 50 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 120.

Dated: June 21, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–16904 Filed 7–5–01; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0342]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the

nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 6, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0342."

SUPPLEMENTARY INFORMATION:

Titles

a. Other On-the-Job Training and Apprenticeship Training Agreement and Standards, VA Form 22–8864 (Training Programs Offered Under Title 38 U.S. Code Section 3677 and 3678).

b. Employer's Application to Provide Training, VA Form 22–8865 (Under Title 38 U.S. Code Section 3677 or 3678).

OMB Control Number: 2900–0342.

Type of Review: Extension of a currently approved collection.

Abstract: VA uses the information on VA Form 22–8864 to ensure that a trainee is entering an approved training program. VA Form 22–8865 is used to ensure training programs and agreements meet statutory requirements for approval of an employer's job training program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 8, 2001, at pages 14000 and 14001.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms, and State, Local or Tribal Government.

Estimated Annual Burden: 450 hours.

a. VA Form 22–8864—225 hours.

b. VA Form 22–8865—225 hours.

Estimated Average Burden Per Respondent: 120 minutes.

a. VA Form 22–8864—30 minutes.

b. VA Form 22–8865—90 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 600.

a. VA Form 22–8864—450.

b. VA Form 22–8865—150.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0342" in any correspondence.

Dated: June 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–16888 Filed 7–5–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW–IRIS]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before August 6, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–NEW–IRIS" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Inquiry Routing and Information System (IRIS).

OMB Control Number: 2900–NEW–IRIS.

Type of Review: New collection.

Abstract: The World Wide Web is a powerful medium for the delivery of information and services to veterans, dependents, and active duty personnel worldwide. The proposed Inquiry Routing and Information System (IRIS) would allow a VA customer to be able to submit his or her questions at any time and receive answers more quickly than through standard mail. Because the system is automated, inquires would be directed to the appropriate individual/office automatically. The contact information being solicited will be used to identify the particular veteran. VA personnel will use the contact information to determine the location of a specific veteran's file, and to accomplish the action requested by the correspondent such as processing a benefit claim or filing material in the individual's claims folder.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 15, 2001, at page 10564.

Affected Public: Individuals or Households.

Estimated Annual Burden: 2,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 12,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–NEW–IRIS" in any correspondence.

Dated: June 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–16889 Filed 7–5–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Illnesses Not Associated With Service in the Gulf During the Gulf War

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) hereby gives notice that the Secretary of Veterans Affairs, under the authority granted by the Persian Gulf War Veterans Act of 1998, Pub. L. 105–277, 112 Stat. 2681–742 through 2681–749 (codified at 38 U.S.C. 1118), and the Veterans Programs Enhancement Act of 1998, Pub. L. 105–368, 112 Stat. 3315, has determined that there is no basis to establish a presumption of service connection for any disease based on service in the Persian Gulf during the Persian Gulf War.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant or Bill Russo, Attorney-Advisor, Compensation and

Pension Service, Regulations Staff, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7213 and (202) 273–7211, respectively.

SUPPLEMENTARY INFORMATION:

I. Statutory Requirements

Title 16 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, entitled the Persian Gulf War Veterans Act of 1998, Pub. L. 105–277, 112 Stat. 2681–742 through 2681–749 (codified at 38 U.S.C. 1118), and the Veterans Programs Enhancement Act of 1998, Pub. L. 105–368, 112 Stat. 3315, directed the Secretary to seek to enter into an agreement with the National Academy of Sciences (NAS) to review and evaluate the available scientific evidence regarding associations between illnesses and exposure to toxic agents, environmental or wartime hazards, or preventive medicines or vaccines associated with Gulf War service. Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between exposure to the agent, hazard, or medicine or vaccine and the illness, taking into account the strength of the scientific evidence and the appropriateness of the scientific methodology used to detect the association; (2) the increased risk of illness among individuals exposed to the agent, hazard, or medicine or vaccine; and (3) whether a plausible biological mechanism or other evidence of a causal relationship exists between exposure to the agent, hazard, or medicine or vaccine and the illness. These laws also required that NAS submit reports on its activities every two years (as measured from the date of the first report) for a ten-year period.

Section 1602 of Pub. L. 105–277 provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (i.e., the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans or animals to a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine known or presumed to be associated with service in the Southwest Asia theater of operations during the Persian Gulf War and the occurrence of a diagnosed or undiagnosed illness in humans or animals, the Secretary will publish regulations establishing presumptive service connection for that illness. If the Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. The Secretary's determination must be based on consideration of the NAS reports and all other sound medical and scientific information and analysis available to the Secretary.

Although Pub. L. 105–277 does not define "credible evidence," it does instruct the Secretary to "take into consideration whether the results (of any study) are statistically significant, are capable of replication, and withstand peer review." Simply comparing the number of studies which report a significantly increased relative risk to the number of studies which report a relative risk that is not significantly increased is not a valid method for determining whether the weight of evidence overall supports a finding that there is or is not a positive association between exposure to an agent, hazard, or medicine or vaccine and the subsequent development of the particular illness. Because of differences in statistical significance, confidence levels, control for confounding factors, and other pertinent characteristics, some studies are clearly more credible than others, and the Secretary has given the more credible studies more weight in evaluating the overall weight of the evidence concerning specific illnesses.

II. The National Academy of Sciences Report

Public Law 105–277 and 105–368 directed the Secretary of Veterans Affairs to obtain from the NAS an independent scientific review of the evidence regarding associations between diseases and exposure in military service to selected risk factors encountered or experienced during the Gulf War. Following acceptance of a contract with the Department for this purpose, the Institute of Medicine of the NAS made a determination to limit its initial review to an analysis of the health effects of depleted uranium (DU), the chemical warfare agent sarin, vaccinations against botulinum toxin and anthrax, and pyridostigmine bromide (PB), which was used in the Gulf War as a pretreatment for possible exposure to nerve agents. NAS issued its initial report, entitled "Gulf War and Health, Volume 1. Depleted Uranium, Sarin, Pyridostigmine Bromide, Vaccines," on September 7, 2000.

In reporting its findings, NAS included one exposure in the category "Sufficient Evidence of a Causal Relationship': Exposure to sarin and dose-dependent acute cholinergic syndrome that is evident promptly (seconds to hours) after sarin exposure and resolves in days to months. This category means:

> Evidence is sufficient to conclude that a causal relationship exists between the exposure to a specific agent and a health outcome in humans. The evidence fulfills the criteria for sufficient evidence of an association (below) and satisfies several of the criteria used to assess causality: strength of association, dose-dependent relationship, consistency of association, temporal relationship, specificity of association, and biological plausibility.

The NAS included three entries in the category "Sufficient Evidence of an Association": (1) PB and transient acute (that is, short-lasting, and immediately after exposure) cholinergic effects in doses normally used in treatment and for diagnostic purposes; (2) Anthrax vaccination and transient acute local and systemic effects; and (3) Botulinum toxoid vaccination and transient acute local and systemic effects. This category means:

> Evidence is sufficient to conclude that there is a positive association. That is, a positive association has been observed between an exposure to a specific agent and a health outcome in human studies in which chance, bias, and confounding could be ruled out with reasonable confidence.

The NAS placed one item in the category "Limited/Suggestive Evidence of an Association": exposure to sarin at doses sufficient to cause acute cholinergic signs and symptoms and subsequent long-term effects. This category means:

> Evidence is suggestive of an association between an exposure to a specific agent and a health outcome in humans, but is limited because chance, bias, and confounding could not be ruled out with confidence.

Roughly half of the NAS conclusions were in the category "Inadequate/ Insufficient Evidence to Determine Whether an Association Does or Does Not Exist." This category means:

> The available studies are of insufficient quality, consistency, or statistical power to permit a conclusion regarding the presence or absence of an association between an exposure to a specific agent and a health outcome in humans.

The health effects in this category included: (1) Exposure to uranium and lung cancer at higher levels of cumulative exposure (greater than 200 mSv or 25 cGy); (2) Exposure to uranium and lymphatic cancer; bone cancer; nervous system disease; nonmalignant respiratory disease; or other health outcomes (gastrointestinal disease, immune-mediated disease, effects on hematological parameters,

reproductive or development dysfunction, genotoxic effects, cardiovascular effects, hepatic disease, dermal effects, ocular effects, or musculoskeletal effects); (3) PB and long-term adverse health effects; (4) Exposure to sarin at low doses insufficient to cause acute cholinergic signs and symptoms and subsequent long-term adverse health effects; (5) Anthrax vaccination and long-term adverse health effects; (6) Botulinum toxoid vaccination and long-term adverse health effects; and (7) Multiple vaccinations and long-term adverse health effects.

The NAS included two items in the final category "Limited/Suggestive Evidence of *No* Association": (1) Exposure to uranium and lung cancer at cumulative internal dose levels lower than 200 mSv or 25 cGy; and (2) Exposure to uranium and clinically significant renal dysfunction. This category means:

> There are several adequate studies, covering the full range of levels of exposure that humans are known to encounter, that are mutually consistent in not showing a positive association between exposure to a specific agent and a health outcome at any level of exposure. A conclusion of no association is inevitably limited to the conditions, levels of exposure, and length of observation covered by the available studies. In addition, the possibility of a very small elevation in risk at the levels of exposure studied can never be excluded.

NAS noted that detecting adverse health effects as the result of a specific vaccination is a complex task due to a number of factors, including lack of long-term follow-up, small sample sizes, multiple vaccinations, multiple end points, lack of symptoms specific to that vaccination, passive reporting systems, high vaccination rates, restricted population, and progress in vaccine technology.

III. VA Response to the National Academy of Sciences Report

Following receipt of the NAS report, the VA formed a task force to review the report and pertinent studies and make recommendations to the Secretary to assist him in determining whether a positive association exists between exposure to an agent, hazard, or medicine or vaccine and any illness. This review involved a collaborative effort between representatives from the Veterans Health Administration, the Veterans Benefits Administration, the Office of General Counsel, and the Office of Policy and Planning. Reviewers included VA scientists, attorneys, medical care providers, and policy planners. That review was completed, and the task force's recommendations were submitted to the Secretary. The review provided the scientific and medical basis for the Secretary's determination regarding medical consequences of service in the Gulf War.

This notice, pursuant to Pub. L. 105–277, conveys the Secretary's determination that there is no positive association between: Lung cancer and exposure to uranium at higher levels of cumulative exposure (greater than 200 mSv or 25 cGy); lymphatic cancer, bone cancer, nervous system disease, nonmalignant respiratory disease, gastrointestinal disease, immune-mediated disease, effects on hematological parameters, reproductive or development dysfunction, genotoxic effects, cardiovascular effects, hepatic disease, dermal effects, ocular effects, or musculoskeletal effects and uranium exposure; long-term adverse health effects and pyridostigmine bromide (PB) treatment; long-term adverse health effects and exposure to sarin at doses insufficient to cause cholinergic signs and symptoms; long-term adverse health effects and anthrax vaccination; long-term adverse health effects and botulinum toxoid vaccination; long-term adverse health effects and multiple vaccinations; lung cancer and exposure to uranium at cumulative internal dose levels lower than 200 mSv or 25 cGy; and clinically significant renal dysfunction and uranium exposure. The Secretary's determination on these health outcomes is based on NAS' findings that there is inadequate/insufficient evidence to determine whether an association does or does not exist, regarding all but the last two of these health outcomes, and limited/suggestive evidence of no association as to the last two. Accordingly, regarding all the health outcomes listed above, the Secretary found that the credible evidence for association is not equal to or greater than the credible evidence against the association or that there is insufficient credible evidence of a positive association, and he determined that a positive association does not exist.

IV. Depleted Uranium

Although depleted uranium is the form of uranium that was present in the Gulf War, there are few studies of the health effects of this form of uranium. Consequently, NAS studied the health effects of natural and processed uranium in workers at plants that processed uranium for use in weapons and nuclear reactors. The NAS noted that the chemical toxicity of DU is virtually identical to that of natural uranium. NAS also noted that natural uranium is a low-level radioactive element, and DU emits radioactivity that is 40% lower than natural uranium. Lung cancer mortality has been the focus of many studies of workers employed in the uranium processing industry. In a large study of employees at Oak Ridge, Tennessee uranium processing and research facilities NAS found that the employees experienced a small increase in lung cancer mortality. NAS stated that analysis showed that uranium exposure was not associated with lung cancer mortality, and that other factors related to socioeconomic status could account for the lung cancer deaths. (Frome EL, Cragle DL, McLain RW. 1990. Poisson regression analysis of the mortality among a cohort of World War II nuclear industry workers. Radiat Res 123(2):138–152).

Another study combined data from four separate studies. (Dupree EA, Watkins JP, Ingle JN, Wallace PW, West CM, Tankersley WG. 1995. Uranium dust exposure and lung cancer risk in four uranium processing operations, Epidemiology 6(4):370–375). NAS stated that this study found that the dose-response did not suggest any lung cancer risk up to 25 cGy exposure. Above that level, there were too few cases to draw any conclusions. A dose-response relationship refers to the finding of a greater health effect (response) with higher exposure to an agent. The gray (Gy), formerly the rad, is the unit that describes the amount or exposure to absorbed radiation in terms of energy deposited on a tissue.

NAS found that a significant association with lung cancer appeared in a recent study in which significant increases in lung cancer mortality occurred in the small group of workers with a cumulative internal dose of 200 mSv or more. (Ritz B. 1999. Radiation exposure and cancer mortality in uranium processing workers. Epidemiology 10(5):531–538). The sievert (Sv) is the International System unit of radiation absorbed equivalent, defined as that producing the same biologic effect in a specific tissue as 1Gy of high-energy x-rays. NAS viewed this finding with caution, however, because the subgroup with the elevated risk had only three cases of lung cancer and because the study did not consider the confounding factor of cigarette smoking. NAS also noted that after controlling for external dose in this study, internal doses up to 200 mSv are not associated with excess risk of lung cancer. Accordingly, the Secretary has determined that the credible evidence against an association between lung cancer and uranium exposure outweighs

the credible evidence for such an association, and he determined that a positive association does not exist.

NAS found that the number of cases was too small and the confidence intervals for standardized mortality ratios (SMRs) too wide to draw any conclusions about an association between uranium and lymphatic cancer. NAS noted that the largest study included the period early in the nuclear industry in which workers were exposed to relatively high amounts of inhaled uranium. (Polednak AP, Frome EL. 1981. Mortality among men employed between 1943 and 1947 at a uranium processing plant. J Occup Med 23(3):169–178). In that study, NAS stated that there were fewer deaths (37) from lymphatic cancer than the expected (SMR=61). Accordingly, the Secretary has determined that the credible evidence against an association between lymphatic cancer and uranium exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS noted that bone cancer is rare; thus, the number of cases in all studies is small. NAS concluded that studies to date have not found an increase in bone cancers due to uranium exposure. As one example, NAS noted that the large size of the Oak Ridge cohort provides some evidence that exposure to uranium is not associated with a large excess risk of bone cancer (i.e., a relative risk of 3.0 or greater) (Polednak and Frome, 1981). Accordingly, the Secretary has determined that the credible evidence against an association between bone cancer and uranium exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS noted that the preponderance of evidence indicates little or no clinically important renal effects from exposure to uranium. The strongest evidence is the absence of kidney damage in workers exposed to high levels of soluble uranium compounds (Kathren RL, Moore RH. 1986. Acute accidental inhalation of U: A 28 year follow-up. Health Phys 51(5):609–619) and in veterans exposed to depleted uranium from embedded shrapnel. Kidney function was normal in Gulf War veterans with embedded depleted uranium fragments years after exposure, despite high urinary uranium concentrations in some of the subjects (McDiarmid MA, Keogh JP, Hooper FJ, McPhaul K, Squibb K, Kane R, DiPino R, Kabat M, Kaup B, Anderson L, Hoover D, Brown L, Hamilton M, Jacobson-Kram D, Burrows B, Walsh M. 2000. Health effects of depleted uranium on exposed Gulf War veterans. Environ Res 82(2):168–180). Accordingly, the Secretary has determined that the credible evidence against an association between clinically significant renal dysfunction and uranium exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS found that the evidence regarding exposure to uranium and diseases of the nervous system is not strong enough to form a firm conclusion. In a study of Gulf War veterans, results from a battery of computer-based neurocognitive tests suggest a statistical relationship between elevated urinary uranium levels and "problematic performance on automated tests assessing performance efficiency and accuracy" (McDiarmid et al., 2000). NAS found that the authors of this study did not adequately define their testing methods or the method for deciding the expected level of performance. Traditional tests of neurocognitive function did not show any statistical differences in performance between the veteran cohort and a control group. Accordingly, the Secretary has determined that the credible evidence against an association between diseases of the nervous system and uranium exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Several studies found a significant excess risk of nonmalignant respiratory disease. (Dupre EA, Cragle DL, McLain RW, Crawford-Brown DJ, Teta MJ. 1987. Mortality among workers at a uranium processing facility, the Linde Air Products Company Ceramics Plant, 1943–1949. Scand J Work Environ Health 13(2):100–107; Frome et al., 1990). NAS noted, however, other, larger studies which showed SMRs insufficient credible evidence to conclude that there is a positive association of less than or close to 100 (unity), do not confirm those findings. (Checkoway H, Pearce N, Crawford-Brown DJ, Cragle DL. 1988. Radiation doses and cause-specific mortality among workers at a nuclear materials fabrication plant. Am J Epidemiol 127(2):255–266; Polednak and Frome, 1981; Ritz, 1999). NAS noted that none of the above studies was able to control for smoking. Accordingly, the Secretary has determined that the credible evidence against an association between nonmalignant respiratory disease and uranium exposure outweighs the credible evidence for an association, and he has determined that a positive association does not exist.

In one study, after the accidental inhalation exposure to high levels of uranium, one individual experienced transient gastrointestinal distress. (Lu S, Zhao F–Y, 1990. Nephrotoxic limit and annual limit of intake for natural uranium. Health Phys 58(5):619–623). In that same study, however, NAS found that a case of accidental dermal exposure to uranium produced no reported gastrointestinal effects. Accordingly, the Secretary has determined that the credible evidence against an association between gastrointestinal disease and uranium exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS noted that the available scientific literature lacks documentation on adverse immunological effects of uranium. Two studies found that quartz dust-exposed uranium miners had a higher risk for the development of systemic autoimmune disease (Conrad K, Mehlhorn J, Luthke K, Dorner T, Frank K–H. 1996. Systemic lupus erythematosus after heavy exposure to quartz dust in uranium mines: Clinical and serological characteristics. Lupus 5(1):62–69; Conrad K, Levy Y, Blank M, Mehlhorn J, Frank K–H, Roch B, Shoenfeld Y. 1998. The pathogenic 16/6 idiotype in patients with silica associated systemic lupus erythematosus (SLE) and uranium miners with increased risk for development of SLE. JRheumatol 25(4):660–666). Another study reported that uranium miners were more likely to develop scleroderma. NAS stated that it is important to note that exposure to silica in quartz dust may be associated with both SLE and scleroderma. (Baur X, Rihs HP, Altmeyer P, Degens P, Conrad K, Mehlhorn J, Weber K, Wiebe V. 1996. Systemic sclerosis in German uranium miners under special consideration of autoantibody subsets and HLA class II alleles. Respiration 63:368–375). Accordingly, the Secretary has determined that there is insufficient credible evidence to conclude that there is a positive association between adverse immunological effects and uranium exposure.

NAS found that only a few studies have examined the effects of uranium on human reproduction and development. In a subgroup of Gulf War veterans with embedded depleted uranium fragments in soft tissues and muscles, semen contained uranium (McDiarmid et al., 2000). However, the semen characteristics were the same in Gulf War veterans with high urinary uranium excretion as in veterans with low excretion. Accordingly, the

Secretary has determined that the credible evidence against an association between human reproduction abnormalities and uranium exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS found that, in the study of Gulf War veterans with retained fragments of depleted uranium, changes in peripheral blood lymphocytes were identical to those of nonexposed Gulf War veterans (McDiarmid et al., 2000). Accordingly, the Secretary has determined that the credible evidence against an association between changes in peripheral blood lymphocytes and uranium exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS noted that there was no elevated risk for cardiovascular disease in a study of uranium workers (Lu and Zhao, 1990). Accordingly, the Secretary has determined that the credible evidence against an association between cardiovascular disease and uranium exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS found that, in a three-year follow up of an individual accidentally exposed to uranium tetrafluoride (Lu and Zhao, 1990), serum hepatic enzyme levels and liver function tests were within normal limits. Accordingly, the Secretary has determined that the credible evidence against an association between hepatic disease and uranium exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS found that dermal, ocular, and musculoskeletal effects of uranium have not been reported in the literature. Accordingly, the Secretary has determined that there is insufficient credible evidence to conclude that there is a positive association between adverse effects on these body systems and uranium exposure.

V. Sarin

Sarin is a highly toxic nerve agent produced for chemical warfare. In its report, NAS noted that exposure to sarin can be fatal within minutes to hours. In vapor or liquid form, sarin can be inhaled or absorbed, respectively, through the skin, eyes, or mucous membranes.

Possible Sarin Exposure During the Gulf War

According to Department of Defense (DoD) investigators, during the Gulf War no U.S. service members were exposed to chemical warfare nerve agents, including sarin, at levels sufficient to cause acute cholinergic poisoning signs and symptoms. In November 1996 DoD established the Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses (OSAGWI) to coordinate DoD's investigations into incidents that may have involved exposure to chemical warfare agents. OSAGWI's activities have been overseen by external independent groups, initially by the Presidential Advisory Committee on Gulf War Veterans Illnesses, and since February 1998 by the Presidential Special Oversight Board.

Khamisiyah was the site of a large ammunition storage area located in southern Iraq. In March 1991, shortly after the cease-fire, U.S. forces used explosives to destroy unmarked chemical warfare munitions at this site. The September 4, 1997, OSAGWI report "Modeling the Chemical Warfare Agent Release at the Khamisiyah Pit," describes joint efforts by DoD and the Central Intelligence Agency to model the release of chemical warfare nerve agents, including sarin, from demolition of chemical warfare munitions at Khamisiyah. This effort involved interviews with U.S. servicemembers present at the demolitions, investigations of amounts and purity of chemical munitions and the agent they contained, meteorological reconstruction studies to evaluate wind directions and atmospheric movement of chemical agents following release, and experimental demolitions of similar chemical warfare munitions.

These results were put together to model an exposure plume showing a geographical area in which any U.S. servicemember present would be exposed to chemical warfare nerve agents, including sarin, at a level sufficient to cause first noticeable effects, i.e., minimum acute cholinergic signs and symptoms. DoD also mailed nearly 20,000 surveys to U.S. servicemembers who had been within 50 km of Khamisiyah at the time of the demolition. Of 7,400 responses received, "* * * over 99 percent show[ed] no physical effects that could be correlated with exposure to the chemical warfare agent sarin." The report concluded, "No military units were located under the first-effects portion of the plume, which is consistent with the lack of reported effects and with DoD's survey results, which had over 99 percent of the respondents showing no signs of physical effects that could be correlated with exposure to sarin. The troops that performed the demolition had evacuated the area."

On December 5, 2000, OSAGWI announced the results of its revised modeling of possible sarin exposure from the Khamisiyah demolition. Based on this modeling, OSAGWI revised its estimate of the numbers of U.S. troops who may have been exposed to very low levels of chemical agent for a brief period of time (less than 3 days) after the demolition. As part of that announcement, OSAGWI stated that medical personnel and others who were near Khamisiyah in March 1991 have been interviewed and reported no evidence of health problems related to chemical agent exposure at the time of the demolitions. In addition, OSAGWI stated that its analysis continued to show that the exposure levels would have been too low to activate chemical alarms or to cause any acute or long-term health effects among U.S. troops.

In summary, OSAGWI's investigations of possible exposure or injury of U.S. servicemembers by chemical warfare nerve agents during the Gulf War have found only a single incident—demolition activities at Khamisiyah, Iraq—where exposure was found to be likely. In all other incidents investigated, OSAGWI found that exposure was unlikely, indeterminate or had definitely not occurred. OSAGWI includes a notice in all reports that additional information could change their conclusions. OSAGWI found no other instance where exposure to sarin or other chemical warfare agents was likely.

Acute Effects of Sarin

NAS reported that, in humans, exposure to high doses of sarin produces a well-characterized acute (i.e., immediate) cholinergic syndrome featuring a variety of signs and symptoms affecting the peripheral and central nervous systems (Gunderson CH, Lehmann CR, Sidell FR, Jabbari B. 1992. Nerve agents: A review. Neurology 42(5):946–950). This syndrome, as well as cholinergic signs and symptoms, is evident seconds to hours after exposure and usually resolves in days to months. At high doses, convulsions and death can occur. The peripheral effects are categorized as either muscarinic or nicotinic, in reference to the type of receptor stimulated by acetylcholine. The muscarinic signs and symptoms usually appear first (Lotti M. 2000. Organophosphorous compounds. In:

Spencer P, Schaumburg H, Ludolph A, eds. Experimental and Clinical Neurotoxicology. 2nd edition. New York: Oxford University Press. Pp. 897–925), although the sequence of effects may vary according to the route of sarin's absorption (Stewart CE, Sullivan J Jr. 1992. Military munitions and antipersonnel agents. In: Sullivan JB Jr, Krieger G, eds. Hazardous Materials Toxicology: Clinical Principles of Environmental Health. Baltimore: Williams & Wilkins. Pp. 986–1014). If the dose of sarin is sufficiently high, death results after convulsions and respiratory failure (Lotti, 2000).

NAS reported that the acute health effects of sarin are highly dependent on dose. Because the actual doses to humans under battlefield or terrorist circumstances cannot be measured, and may be difficult to reconstruct, they can be inferred on the basis of their acute clinical effects. A high level of sarin exposure of humans (after single or multiple exposures) is presumed to have occurred when the acute cholinergic syndrome is manifest. An intermediate-level exposure is presumed to have occurred when the acute cholinergic effect is limited to miosis (contraction of the pupil), rhinorrhea (an extreme type of runny nose), and depressed cholinesterase levels in the blood. Finally, low-level exposure may have occurred even though there are no immediately detectable cholinergic signs and symptoms (Brown MA, Brix KA. 1998. Review of health consequences from high-, intermediate- and low-level exposure to organophosphorous nerve agents. J Appl Toxicol 18(6): 393–408). NAS reported that U.S. troops did not report acute cholinergic symptoms at the time, but the possibility of low-level, asymptomatic exposures cannot be discounted. In a series of studies on members of a naval battalion (n = 249) called to active duty for the Gulf War, Haley and Kurt (1997) found that veterans who believed themselves to have been exposed to chemical weapons [1] were more likely to be classified as having one of six postulated syndromes (Haley RW, Kurt TL. 1997. Self-reported exposure to neurotoxic chemical combinations in the Gulf War. A cross-sectional epidemiologic study. JAMA 277(3):231–237). Specifically, this syndrome—labeled by the investigators as "confusion—ataxia" or "syndrome 2" features problems with thinking, disorientation, balance disturbances, vertigo, and impotence. This was the only syndrome of the six to have been associated with self-reported chemical weapons exposure. There is no evidence of sarin exposure among the veterans in the two studies summarized above.

A follow-up study of vestibular function (sense of balance) was performed on a subset of those veterans (n = 23) who had the highest factor scores on three of the syndromes postulated in 1997 by Haley and Kurt (Roland et al., 2000). The study was designed to probe the nature of veterans' vestibular symptoms, rather than to examine the relationship between vestibular performance and exposure in the Gulf War. Of the 23 veterans in this study, 13 exhibited syndrome 2, whereas the others exhibited syndromes 1 (impaired cognition) and 3 (arthromyoneuropathy). Based on a new questionnaire, veterans with syndrome 2 reported dizzy spells with greater frequency and longer duration than veterans with the other two syndromes. Veterans with syndrome 3, but not syndrome 2, performed significantly differently from controls on dynamic platform posturography (a test similar to that used by Japanese researchers to identify impairment in sarin-exposed females). (Yokoyama K, Araki S, Murata K, Nishikitani M, Okumura T, Ishimatsu S, Takasu N. 1998a. A preliminary study on vestibulo-cerebellar effects of Tokyo subway sarin poisoning in relation to gender difference: Frequency analysis of postural sway. J Occup Med 40(1):17–21). Veterans with other syndromes also had performance decrements on some of the measures of vestibular function. The study concluded that there was both subjective and objective evidence of injury to the vestibular system in this group of Gulf War veterans with newly postulated syndromes. Haley and Kurt (1997) hypothesized that these newfound chronic syndromes represent variants of organophosphorous induced delayed neuropathy (OPIDN) caused by exposure to various combinations of organophosphates (pesticides and nerve agents) and carbamate pesticides that inhibit certain enzymes.

According to NAS, four human populations have been studied following exposure to sarin: military volunteers who were exposed several decades ago to nonlethal doses of sarin and other chemical warfare agents (National Research Council. 1982. Possible Long-Term Health Effects of Short-Term Exposure to Chemical Agents, Vol. 1: Anticholinesterases and Anticholinergics. Washington, DC: National Academy Press. National Research Council. 1985; Possible Long-Term Health Effects of Short-Term Exposure to Chemical Agents, Vol. 3. Final Report. Current Health Status of Test Subjects. Washington, DC: National Academy Press); industrial workers with documented accidental acute exposure to sarin (Duffy FH, Burchfiel JL, Bartels PH, Gaon M, Sim VM. 1979. Long-term effects of an organophosphate upon the human electroencephalogram. Toxicol Appl Pharmacol 47(1):161–176); and victims of the sarin terrorist attacks in Matsumoto City in 1994 and Tokyo in 1995 (Morita H, Yanagisawa N, Nakajima T, Shimizu M, Hirabayashi H, Okudera H, Nohara M, Midorikawa Y, Mimura S. 1995. Sarin poisoning in Matsumoto, Japan. Lancet 346(8970):290–293).

NAS noted that major limitation of most human studies of either long- or short-term health effects is the inability to document actual exposure levels. Most studies of sarin were undertaken in the aftermath of occupational accidents or terrorist attacks. In such cases, the exposure levels were inferred from clinical effects. NAS further noted that high-level exposure is inferred from the acute cholinergic syndrome with outcomes including miosis, rhinorrhea, apnea, convulsions, and possibly death. NAS noted that high-level exposure requires hospitalization or emergency treatment. Intermediate-level exposure is inferred from minimal or threshold cholinergic effects such as miosis or rhinorrhea and limited decline in cholinesterase activity measured in the blood (<20 percent). Low-level exposure can be inferred from proximity to a documented exposure with no clinically detectable cholinergic signs or symptoms or detectable change in blood cholinesterase activity (Brown and Brix, 1998).

Long-Term Health Effects of Sarin

According to NAS, there have been relatively few human studies of sarin's long-term health effects. NAS noted that, in the literature on the survivors of the Japanese terrorist attacks, many health effects were reported to persist after sarin exposure: Fatigue, headache, visual disturbances (asthenopia, blurred vision, and narrowing of the visual field), asthenia, shoulder stiffness, and symptoms of post-traumatic stress disorder; fear of subways; and abnormal test results of unknown clinical significance on the digit symbol test of psychomotor performance, EEG records of sleep, event-related potential, visual evoked potential, and computerized posturography. However, given the mixed exposure not only to sarin, but

[1] Based on self-reports about their perceptions of CW exposure, rather than any evidence of symptomatology. Their geographical and temporal location in relation to the Khamisiyah demolition site was not reported. The questionnaire was sent to participants in 1994, before DoD reported that chemical weapons exposure could have occurred.

also to the trauma of the terrorist attack, it is unclear which of these effects are specifically associated with sarin exposure.

NAS' conclusions were based on retrospective studies of three different exposed populations in which the acute cholinergic signs and symptoms were documented as an acute effect of exposure. The findings from those studies are based on comparisons with control populations. One population consisted of industrial workers accidentally exposed to sarin in the United States; the other two populations were civilians exposed during terrorism episodes in Japan. The health effects listed above were documented at least 6 months after sarin exposure, and some persisted up to a maximum of 3 years, depending on the study. Whether the health effects noted above persist beyond the 3 years has not been studied. There are no well-controlled human studies expressly of sarin's long-term health effects at doses that do not produce acute signs and symptoms.

VA Determination on Sarin

The NAS report concluded that there is "sufficient evidence of a causal relationship between exposure to sarin and a dose-dependent acute cholinergic syndrome that is evident seconds to hours subsequent to sarin exposure and resolves in days to months." The NAS report also found "limited/suggestive evidence of an association" between "exposure to sarin at doses sufficient to cause acute cholinergic signs and symptoms and subsequent long-term health effects." Finally, the NAS found "inadequate/insufficient evidence to determine whether an association does or does not exist" between "exposure to sarin at low doses insufficient to cause acute cholinergic signs and symptoms and subsequent long-term adverse health effects."

The Secretary determined that the decision whether to establish presumptions of service-connection based on sarin exposure properly should be based on certain factual determinations and policy considerations. The Secretary determined, as a factual matter, that (1) no U.S. Armed Forces personnel were exposed to sarin in the Gulf War theatre in amounts sufficient to cause severe, acute effects; and, (2) even if personnel were so exposed, their symptoms would have been such that VA would undoubtedly compensate them anyway for chronic effects under existing law. Given the high level of confidence of the DoD, as evinced by its reports and studies, that no service-members were exposed to sarin at a level producing any acute symptoms or signs of exposure, the Secretary has concluded that it is extremely unlikely that any United States military personnel were exposed to sarin to a degree that would trigger such a presumption during the Gulf War. Based on these factual findings, the Secretary has concluded that such presumptions would be very unlikely to benefit any veterans. Under these circumstances, creation of presumptions of service connection could lead to confusion among potential claimants and have a negative impact on the claims adjudication process. In addition, the Secretary has concluded that the law does not require creation of a presumption in this situation.

Furthermore, the Secretary has concluded that if any veteran had experienced severe, acute sarin-exposure symptoms (such as the cholinergic reactions discussed in the NAS report), those symptoms would have been observed and reported and any disability resulting therefrom could be compensated on a direct-service-connection basis, without the need of a presumption. Also, it is very likely that the existing presumption of service-connection codified at 38 CFR 3.317 regarding undiagnosed illnesses suffered by Gulf War veterans would provide a basis for service connection in the case of veterans suffering from long-term effects suspected of being residuals of sarin exposure. Under section 3.317, if a veteran suffers from a chronic disability resulting from an undiagnosed illness (or combination of undiagnosed illnesses) that became manifest during service or that becomes manifest to a degree of 10 percent or more before December 31, 2001, the disability shall be presumed to be service connected.

For the foregoing reasons, the Secretary has concluded that neither the acute and transient symptoms resulting from possible sarin exposure, nor any long-term health consequences associated with possible sarin exposure, warrant a presumption of service-connection.

VI. Pyridostigmine Bromide

Pyridostigmine bromide (PB) is a drug used during the Gulf War as a pretreatment to protect troops from the harmful effects of chemical warfare nerve agents. NAS noted that a large number of clinical studies have reported that PB causes acute transient cholinergic effects in normal volunteers, patients given PB as a diagnostic test of hypothalamic pituitary function, and myasthenia gravis patients treated with the drug for extended periods.

NAS found that the epidemiologic data do not provide evidence of a link between PB and chronic illness in Gulf War veterans, noting that there is a paucity of epidemiologic studies on PB and long-term adverse health effects in the peer-reviewed literature. Only two epidemiologic studies investigated the possible association of PB and chronic symptoms among Gulf War veterans. (Haley RW, Kurt TL. 1997. Self-reported exposure to neurotoxic chemical combinations in the Gulf War. A cross-sectional epidemiologic study. JAMA 277(3):231–237; Unwin C, Blatchley N, Coker W, Ferry S, Hotopf M, Hull L, Ismail K, Palmer I, David A, Wessely S. 1999. Health of UK servicemen who served in Persian Gulf War. Lancet 353(9148):169–178). NAS noted that the study by Haley and Kurt, 1997, is limited by the small, selected population studied. NAS also found that this study suffers from reporting bias for adverse health syndromes, and provides an inadequate basis for concluding that an association exists. NAS noted that the other epidemiologic study (Unwin et al., 1999) showed a similar association with adverse symptoms; however, NAS felt that recall and reporting bias may also explain this finding. NAS concluded that neither of these studies provides a basis for holding that a specific association between PB and chronic adverse health effects exists.

VA Determination on PB

Although the NAS report provided evidence of an association between PB and transient, acute cholinergic effects, the report indicated that such effects resolved in a matter of hours following exposure. For this reason, the Secretary has concluded that these acute effects were not in the nature of an illness within the contemplation of the governing statute. Accordingly, the Secretary has concluded that such effects failed to meet the standards for establishment of presumptive service connection based on exposure to PB.

NAS indicated that there are no reliable reports of chronic toxicity related to human PB exposure in clinical or military populations. NAS concluded that there was inadequate/insufficient evidence to determine whether an association does or does not exist between PB and long-term adverse health effects. We are not aware of any other reports of chronic toxicity related to human pyridostigmine bromide exposure in clinical or military populations. For these reasons, the Secretary has determined that the credible evidence against an association between long-term adverse health effects and PB outweighs the credible evidence for such an association, and he

has determined that a positive association does not exist.

VII. Vaccinations

Anthrax Vaccination

Concerns prior to the Gulf War regarding Iraq's offensive biological warfare capabilities led to decisions that available vaccines should be utilized as preventive measures against biological warfare agents. NAS used only the peer-reviewed literature to form its conclusions on the weight of the evidence for associations of the anthrax vaccine with adverse health effects. Only a few published peer-reviewed studies have examined potential adverse effects of the anthrax vaccine when administered to humans.

NAS located only one peer-reviewed study of the type of anthrax vaccine used in the United States (Brachman PS, Gold H, Plotkin S, Fekety FR, Werrin M, Ingraham NR. 1962. Field evaluation of a human anthrax vaccine. Am J Public Health 52:632–645). The Brachman study (and other early experimental studies) found transient local and systemic effects (primarily erythema, edema, induration) from the anthrax vaccine. However, this study did not assess adverse effects beyond 48 hours after vaccination. (NAS found that other published studies (limited to a few short-term studies) reported no significant long-term adverse effects of the vaccine.)

During the development of the anthrax vaccine, several early studies examined adverse reactions in humans but did not provide detailed information on the nature of the monitoring for adverse effects. These studies used early versions of the culture filtrate (protective antigen) vaccine. Wright and colleagues (Wright GG, Green TW, Kanode RG Jr. 1954. Studies on Immunity in Anthrax. V. Immunizing activity of alum-precipitated protective antigen. J. Immunol 73:387–391) described the reactions of 660 persons at Camp Detrick who received a total of 1,936 injections. They found that 0.7 percent of vaccinated subjects reported systemic reactions—typically consisting of mild muscle aches, headaches, and mild-to-moderate malaise lasting 1 to 2 days. Significant local reactions—typically swelling (5–10 cm in diameter) and local pruritus (itching)—occurred in 2.4 percent of the subjects. The incidence of local reactions increased with the number of injections.

In another study at Fort Detrick (Puziss M, Wright GC, 1963. Studies on immunity in anthrax. X. Gel absorbed protective antigen for immunization of man. J Bacteriology 85:230–236), 0.5-ml injections of protective antigen led to similar results. The study reported low rates of erythema, edema, or pruritus at the site of injection (no details were provided) and no systemic reactions. Darlow and colleagues (Darlow, HM, Belton FC, Camb BA. 1956. The use of anthrax antigen to immunize man and monkey. Lancet. 2:476–479) reported on the administration of 1,057 injections of the anthrax vaccine to 373 individuals (369 persons received two or more injections) over a period of 4 years. Most of the reactions were mild and brief (local tenderness and swelling). There was an increase in the number of persons experiencing pain after the second dose, and local reactions increased with successive booster injections. The study reported that three people had brief and mild fever.

Botulinum Toxoid Vaccination

NAS found only a few published peer-reviewed studies that examined the potential adverse health effects of the botulinum toxoid vaccine when administered to humans. One study (Fiock MA, Devine LF, Gearinger NF, Duff JT, Wright GG, Kadull PJ. 1962. Studies on immunity to toxins of Clostridium botulinum. VIII. Immunological response of man to purified bivalent AB botulinum toxoid. J Immunol 88:277–283) reported on tests of bivalent toxoid preparations by Parke, Davis, and Company. NAS noted that the study reported that after 800 injections, no systemic or severe local reactions occurred. NAS also noted that the report did not discuss the surveillance methods for monitoring adverse health effects. A subsequent study (Fiock MA, Cardella MA, Gearinger NF. 1963. Studies on immunity to toxins of Clostridium botulinum. X. Immunologic response of man to purified pentavalent ABCDE botulinum toxoid. J Immunol 90:697–702) examined four different pentavalent toxoid lots prepared by Parke, Davis, and Company. NAS noted that the only statement about adverse reactions made by the investigators in their report was that 400 individuals received the pentavalent toxoid with "no marked local or marked systemic reactions." NAS stated that the studies have noted transient local and systemic effects of the botulinum toxoid vaccine; however, these studies have not used active surveillance to systematically evaluate long-term health outcomes.

Multiple Vaccinations

Military personnel often receive several vaccinations as they prepare for service in an environment with many endemic diseases. Several studies of Gulf War veterans have tried to discover an association between health outcomes and exposure to vaccinations. Unwin et al., 1999, reported the results of a large cross-sectional postal survey on a random sample of U.K. Gulf War, Gulf War era, and Bosnia conflict veterans. The Gulf War and Bosnia troops were vaccinated against hepatitis A and B, yellow fever, typhoid, poliomyelitis, cholera, and tetanus, as well as against biological warfare agents. NAS found that this study provided some limited evidence of an association between multiple vaccinations and long-term multisymptom outcomes. NAS also noted that this study was conducted through questionnaire and relied primarily on self-reports.

A recently released study (Hotopf M, David A, Hull L, Ismail K, Unwin C, Wessely S. 2000. Role of vaccinations as risk factors for ill health in veterans of the Gulf War: Cross sectional study. BMJ 320:1363–1367) reported on a further analysis of the United Kingdom data. This study focused on U.K. Gulf War veterans who reported that they had copies of their vaccine records. The study examined the vaccines received, the timing of vaccinations, and six health outcomes (multisymptom outcome, psychological distress, post-traumatic stress reaction, fatigue, health perception, and physical functioning). NAS found that this study is consistent with the hypothesis that receiving multiple vaccinations within a narrow window of time, during a period of presumed stress, could be associated with the development of multiple symptoms and impaired functional status. NAS noted, however, that this study was limited by its cross-sectional nature and the fact that it relied on vaccine records that had been retained by only 28 percent of the study respondents. NAS noted that there were limiting and confounding factors in both studies (Unwin et al., 1999; Hotopf et al., 2000) and NAS pointed out the need for further research. NAS found that certain multiple vaccination programs can lead to antibody responses, but there is little evidence of other adverse consequences beyond transient local and systemic effects seen frequently with any vaccination.

VA Determinations on Anthrax Vaccination, Botulinum Toxoid Vaccination and Multiple Vaccination

Although the NAS report provided evidence of an association between anthrax vaccination, botulinum toxoid vaccination and multiple vaccinations and transient acute local and systemic effects as are typically associated with vaccinations, these effects represent the

body's normal, short-term reaction to introduction of the beneficial vaccines. For this reason, the Secretary has concluded that these acute effects were not in the nature of an illness within the contemplation of the governing statute. Accordingly, the Secretary has concluded that such effects failed to meet the standards for establishment of presumptive service-connection based on anthrax vaccination, botulinum toxoid vaccination or multiple vaccinations.

NAS indicated that there are no reliable reports of chronic toxicity related to anthrax vaccination, botulinum toxoid vaccination or multiple vaccinations in clinical or military populations. NAS concluded that there was inadequate/insufficient evidence to determine whether an association does or does not exist between these vaccinations and long-term adverse health effects. We are not aware of any other reports of chronic toxicity related to these vaccinations in clinical or military populations. For these reasons, the Secretary has determined that the credible evidence against an association between long-term adverse health effects and these vaccinations outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

VIII. Conclusion

NAS reviewed published scientific and medical articles published, and issued the report entitled "Gulf War and Health, Volume 1. Depleted Uranium, Sarin, Pyridostigmine Bromide, Vaccines." In the judgment of the Secretary, the comprehensive review and evaluation of the available literature which NAS conducted in conjunction with its report permitted VA to determine whether a presumption of service connection should be established for any illness suffered by Gulf War veterans based on exposure to depleted uranium, sarin, PB, and certain vaccines. For the foregoing reasons, the Secretary has concluded that the establishment of a presumption of service connection is not warranted.

Approved: June 12, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 01–16899 Filed 7–5–01; 8:45 am]

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Federal Register

Friday,
July 6, 2001

Part II

Department of Education

National Institute on Disability and Rehabilitation Research

Final Funding Priorities for Fiscal Years (FY) 2001–2002 for Two Rehabilitation Research Training Centers; Grant Application Invitation and Pre-Application Meeting; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of Final Funding Priorities for Fiscal Years (FY) 2001–2002 for two Rehabilitation Research Training Centers.

SUMMARY: We announce final funding priorities for FY 2001–2002 for two Rehabilitation Research Training Centers (RRTC) under the National Institute on Disability and Rehabilitation Research (NIDRR): Improving Vocational Rehabilitation (VR) Services for Individuals Who Are Blind or Have Severe Visual Impairments and Improving Vocational Rehabilitation (VR) Services for Individuals Who Are Deaf or Hard of Hearing. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: These priorities take effect on August 6, 2001.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Donna.Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The final priorities refer to NIDRR's Long-Range Plan (the Plan). The Plan can be accessed on the World Wide Web at: *http://www.ed.gov/offices/OSERS/NIDRR/#LRP*.

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

This notice addresses the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Authority

The authority for the program to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764(b)). Regulations governing this program are found in 34 CFR part 350.

Note: This notice does not solicit applications. A notice inviting applications is published in this issue of the **Federal Register**.

Analysis of Comments and Changes

On April 25, 2001, we published a notice of proposed priorities in the **Federal Register** (66 FR 20866). The Department of Education received nine letters commenting on the notice of proposed priorities by the deadline date. Technical and other minor changes—and suggested changes that we are not legally authorized to make under statutory authority—are not addressed.

RRTC on Improving Vocational Rehabilitation Services for Individuals Who Are Blind or Have Severe Visual Impairments

Comment: One commenter suggested that language in the priority requiring the development of a national information and resource referral base be expanded to include a comprehensive on-line information and resource referral data base with a special emphasis on the training needs of State Business Enterprise program facilities.

Discussion: NIDRR believes that an applicant should be allowed discretion in its development of the required database. The current language allows for such discretion, and does not preclude an applicant from developing a national information and resource referral database whose scope of activities extends beyond but is not limited to the training needs of State Business Enterprise program facilities. An applicant could propose a more comprehensive information and resource referral database as part of its specified project plan. The merits of an expanded plan would be subject to evaluation through the application panel review process.

Changes: None.

Comment: One commenter suggested that the title of the priority be changed from the "RRTC on Rehabilitation of Persons Who Are Blind or Visually Impaired" to "Improving Vocational Rehabilitation Services for Individuals Who Are Blind or Have Severe Visual Impairments" to reflect better the stated emphasis of the RRTC on the conduct of vocational rehabilitation focused research and training activities.

Discussion: NIDRR agrees with the commenter that the priority emphasizes the conduct of activities that have a clear focus on improving vocational rehabilitation services for individuals who are blind or have severe visual impairments.

Change: The title of the priority has been changed to "Improving Vocational Rehabilitation Services for Individuals Who Are Blind or Have Severe Visual Impairments".

Comment: A commenter recommended that an applicant be encouraged to work with the current NIDRR-funded RRTCs that have an employment focus in its conduct of the related research required in the priority.

Discussion: The priority requires the RRTC, in consultation with the NIDRR project officer, to coordinate with appropriate Federally funded projects and to identify other relevant NIDRR-funded projects for collaborative activities.

Change: None.

RRTC on Improving Vocational Rehabilitation (VR) Services for Individuals Who Are Deaf or Hard of Hearing

Comment: One commenter noted that there is a continuing need for research on tinnitus, which frequently accompanies hearing loss, and expressed an interest in seeing an RRTC program specific to the needs of this population.

Discussion: NIDRR is sensitive to the research needs of this population and will consider the research needs of persons with tinnitus in future NIDRR planning.

Changes: None.

Comment: One commenter felt that the population parameters proposed for this RRTC are too broad and include, actually, two different populations. The commenter also suggested focusing the proposed RRTC on the substantial needs of persons who are prelingually or culturally deaf or both, including those who are referred to as low-functioning. The respondent further noted that the employment and personal adjustment issues of persons who are hard of hearing or late deafened has been and should continue to be the focus of a different NIDRR–RRTC with that specific focus. Finally, the commenter suggested that the overlap in the two distinctly different target populations is unnecessary, and helps to "muddy the waters" on the very different characteristics and needs of and services to the two different populations. Two other respondents also felt that the needs of the hard of hearing differ significantly from those of persons who are deaf and that the service needs of the two populations should not be mingled.

Discussion: NIDRR appreciates the range of different needs within the diverse population referred to as "deaf or hard of hearing." It is noted, however, that this priority deals primarily with the Vocational Rehabilitation (VR) and employment aspects of rehabilitation for these populations and, while other aspects are expected to be weighted in determining the client's VR needs, the primary issue addressed is entry or reentry into the labor market.

Changes: None.

Comment: Internal Department of Education review noted that the title of the other RRTC in this notice has been changed to read "Improving Vocational Rehabilitation Services for Individuals Who Are Blind or Have Severe Visual Impairments" and raised the question if this RRTC title should also be changed.

Discussion: NIDRR agrees with the commenter that the priority emphasizes the conduct of activities that have a clear focus on improving vocational rehabilitation services for individuals who are deaf or hard of hearing.

Change: The title of the priority has been changed to "Improving Vocational Rehabilitation Services for Individuals Who Are Deaf or Hard of Hearing".

Authority for Rehabilitation Research and Training Centers

The authority for the RRTC program is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(b)(2)). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations, for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training. The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is to support planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and as national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates, or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternative formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring accountability for the expenditure of public funds, will monitor the execution of intended activities and the advancement of knowledge and, has built this accountability into the selection criteria. To assist in program compliance with the Government Performance Results Act (GPRA), not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Priority 1: Improving Vocational Rehabilitation Services for Individuals Who Are Blind or Have Severe Visual Impairments

Background

Based on 1996 worldwide population estimates, approximately 45 million persons are blind and 135 million have low vision (World Health Organization Programs for the Prevention of Blindness and Deafness, 1997). One in six Americans (17 percent) age 45 years or older, or 13.5 million middle-aged and older adults, reports some form of vision impairment even when wearing glasses or contact lenses (The Lighthouse Inc., 1995). Nationally, only 43.7 percent of persons age 21 to 64 who are visually impaired, defined as difficulty or inability to see words and letters, are employed. Among individuals unable to see words and letters, the figure decreases to 30.6 percent. This proportion is significantly lower than the estimated 80 percent of persons without disabilities in this age group who are employed (based on 1994–1995 estimates: McNeil, 1997; personal communication, November 16, 1996).

NIDRR published a Long-Range Plan (The Plan) which is based on a paradigm for rehabilitation that identifies disability in terms of its relationship between the individual and the natural, built, cultural, and social environment (63 FR 57189–57219). The Plan focuses on both individual and systemic factors that have an impact on the ability of individuals with disabilities to function.

In accord with this Plan, the Department will establish an RRTC whose mission is to conduct research and training activities designed to improve employment and career outcomes for individuals who are blind or have visual impairments through vocational rehabilitation, community rehabilitation, post-secondary education, and independent living services. Research and training activities under this RRTC must clearly focus on the vocational rehabilitation needs of adults, who, by definition, are the primary recipients of vocational rehabilitation services. Likewise, the RRTC should focus on individuals who are blind or have severe visual impairment, as opposed to those who have minimal vision loss.

With the passage of the Workforce Investment Act of 1998 (WIA) and the Work Incentive Improvement Act of 1998, vocational rehabilitation agencies were ensured a role in developing community partnerships and establishing vocational rehabilitation as

a major part of the workforce development system and one-stop centers. As a result, vocational rehabilitation agencies are now collaborating with welfare to work programs, independent living centers, and colleges and technical schools. The influence of such collaboration upon vocational outcomes for individuals who are blind or have visual impairments remains unknown. Thus, there is a need to investigate and document the impact of changes in disability and employment legislation on the extent to which the vocational rehabilitation agencies address the unique employment needs of individuals who are blind and have visual impairments. Research should identify barriers that hinder the participation of individuals who are blind or have visual impairments in these evolving systems and develop and document effective strategies to eliminate such barriers.

Understanding the ongoing employment problems of individuals who are blind or have visual impairments has been hampered by the virtual absence of salient data such as work history, use of assistive techniques, transportation, and other environmental features. A subtle constraint is the tendency to "over attribute" problems to individuals' vision status without seriously examining the dynamics of vision loss in relation to other characteristics of the work they do or seek to do, and characteristics of their work settings. Thus, there is a serious need to identify and document salient demographic and employment-related characteristics associated with working-age adults who are blind or have visual impairments, including but not limited to highlighting differences among this group, as well as general differences between working-age adults with disabilities and working-age adults without disabilities. Research that results in contemporary and accurate data on employment status and an improved understanding of employment issues is critically important to the development of a national agenda and strategies to achieve full employment for individuals who are blind or have visual impairments.

New computer technologies and the growing trend toward home-based work appear to enhance the employment outcomes and earning potential of individuals with disabilities. New computer and information technologies place a premium on intellectual and interpersonal skills and offer solid employment opportunities for individuals with disabilities who remain current with the changing work environment. Efforts to support individuals who are blind or have visual impairments can be enhanced by using emerging technologies to improve access to services (particularly for individuals in remote areas), reduce information dissemination barriers, improve employment training and job opportunities, and facilitate improved training options for service providers. Research should be focused on determining how computer technology can be effectively used to improve the independence of individuals who are blind or visually impaired, identifying barriers that prevent access and expanded use of technology, and, increasing service provider knowledge of and experience with using technology to support rehabilitation service efforts.

Computer and information technology is changing rapidly. Rehabilitation professionals must have state-of-the-art knowledge of accessible computer and information technology for individuals who are blind or visually impaired. To address such a need, this RRTC will facilitate collaboration between the Rehabilitation Services Administration (RSA) and NIDRR to support the training of State vocational rehabilitation agency staff through use of a train the trainer model.

Since 1936 the Randolph-Sheppard Act has been a source of employment for individuals who are blind. This program enables individuals who are blind to become licensed facility managers and operate vending facilities on Federal and State property. According to RSA, in fiscal year 1999, 2,809 blind vendors operated 3,352 vending facilities under the Randolph-Sheppard Act Program. The program generated $448.1 million in gross earnings, with individual vendors averaging an annual income of $32,544. The RRTC should undertake an assessment to identify areas of the program that may be improved by training Business Enterprise Program counselors and licensed managers. The training is intended to foster the acquisition of improved skills by counselors and licensed managers and increase the capacity of the Business Enterprise Program to be competitive with other vending facilities.

Priority

We will establish a RRTC on improving vocational services for individuals who are blind or have visual impairments that will conduct research and training activities and develop and evaluate model approaches to improve the employment outcomes for such individuals. In carrying out this purpose, the center must:

(a) Investigate and document the impact of changes in disability and employment legislation on the ability to address the unique employment-related needs of individuals who are blind or have visual impairments (e.g., Workforce Investment Act of 1998, Rehabilitation Act Amendments of 1998) and service delivery options and policy (e.g., State and Federal VR, Community Rehabilitation Programs, One-Stop Centers, presumptive eligibility, order of selection, informed choice, CSPD) using formal research protocols on workforce participation and employment outcomes achieved by persons who are blind or have visual impairments and considering such factors as age, gender, race or ethnic background, education, severity of impairment, and secondary disability;

(b) Investigate, document, and analyze existent State and Federal data sets (e.g., RSA 911 data, NCHS data sets on population health conditions, the national Independent Living Center survey and the annual State-by-State VR agency data sets detailing performance outcomes), to determine different employment outcomes for persons who are blind or have visual impairments and the relationship of the outcomes to client and service provider characteristics (e.g., age of onset of blindness or visual impairment relative to successful employment outcomes);

(c) Investigate and document how State vocational rehabilitation agencies, other public agencies, and private service providers overcome environmental barriers (e.g., using assistive technology and jobsite modifications) in order to improve employment outcomes for individuals who are blind or have visual impairments; and

(d) Develop a national information and resource referral data base for the training needs of State business enterprise program facilities; develop and deliver training programs to meet the identified training needs; and develop measures that can be used to evaluate the efficacy of the training.

The RRTC must conduct at least three conferences to train vocational rehabilitation staff on state-of-the-art information and computer technology for individuals who are blind or have visual impairments.

In addition, the RRTC must:

• Involve individuals who are blind or have visual impairments and, if appropriate, their representatives, in planning, developing, and implementing the research, training,

dissemination and evaluation activities of the RRTC;

• Coordinate with appropriate Federally funded projects; and

• Identify coordination responsibilities through consultation with the assigned NIDRR Project Officer. These responsibilities may include outreach to specific NIDRR Disability and Rehabilitation Research Projects, Rehabilitation Engineering and Research Centers, RRTCs, Disability Business and Technical Assistance Centers, Assistive Technology projects, Office of Special Education programs, and RSA projects.

Priority 2: Vocational Rehabilitation Services for Individuals Who Are Deaf or Hard of Hearing

Background

According to the National Center for Health Statistics (NCHS), approximately 8.6 percent of the national population experience hearing loss (Ries, 1994, *Vital and Health Statistics, 10*(188)). Using population projections for the year 2000 (U.S. Bureau of the Census, 1999, *Statistical Abstract of the United States*) and adjusting for the increase in prevalence of hearing loss due to aging, NCHS estimates that approximately 26.5 million persons experience hearing loss. Of these persons, 80 percent experience permanent, irreversible hearing damage (National Strategic Research Plan for Hearing and Hearing Impairment and Voice and Voice Disorders, National Institute on Deafness and Communicative Disorders, 1992). Furthermore, this population is quite heterogeneous, varying with respect to degree and type of hearing loss, age at onset, individual communication mode, level of personal or employment functionality and race or ethnic background. As a result, the population needs diverse vocational rehabilitation (VR) services.

Degree of hearing loss functionally distinguishes persons who are hard of hearing and persons who are deaf. Persons identified as hard of hearing may understand conversational speech with or without amplification and are not primarily dependent on visual communication (Rehabilitation Services Administration, 1995). Estimates indicate there are more than 10.5 million hard of hearing individuals of working age. Persons who are deaf are primarily dependent upon visual communication such as writing, text reading (also known as CART or computer-aided real-time translation), speech reading, sign language, and sign language interpreting. This population includes persons who are born deaf as well as those who become deaf later in life.

The age at which one becomes deaf strongly influences their language, academic and vocational development, and therefore figures prominently in that person's VR needs. Persons born deaf or who become deaf during early childhood are likely to need specialized services such as access to service providers who can communicate using American Sign Language or other visual-gesture languages and vocational assistance to enhance their employment prospects (Easterbrooks & Baker-Hawkins, Deaf and Hard of Hearing Students Educational Service Guidelines, National Association of State Directors of Special Education). Estimates indicate that there are approximately 479,000 deaf individuals of working age (18–64) who became deaf during early childhood.

Yet another category of individuals is those persons who become deaf after having experienced hearing as well as speech and language development. Members of this group may include people who have already completed substantial formal education, maintained a career, and generally functioned as a hearing person before being deafened. While these individuals already possess speech and language, they will be dependent primarily on visual receptive communication. Estimates indicate that there are approximately 2.8 million such individuals in the United States.

The population of persons who are deaf also includes a subgroup identified largely on the basis of functional needs in addition to hearing loss. This group of deaf persons has been described as "low functioning." (Serving Individuals Who Are Low Functioning Deaf, 25th Institute on Rehabilitation Issues, Rehabilitation Services Administration, 1999). Persons who are deaf and low functioning vary with respect to rehabilitation needs due to a diagnosed secondary disability or related academic, language, or behavioral factors. Those individuals may require rehabilitation assistance in areas such as communication, education, independent living skills, and a full continuum of employment preparation, entry, and ongoing supports. Estimates of the population indicate that there are approximately 144,000 individuals of working age who are deaf and low functioning (25th Institute on Rehabilitation Issues, 1999).

When provided appropriate and effective VR services, deaf individuals whose level of social and vocational function is severely limited can obtain and maintain employment (Conway, Work Place Issues, Career Opportunities, Advancement and Deafness, Volta Review, 1995). Often, however, a broad range of services are needed, and these services must be provided in an accessible manner that recognizes individual communication needs and preferences (Conway, 1995). Among the cases closed by State VR agencies were 17,863, or 72.9 percent, closed as rehabilitated and 6,627, or 27.1 percent, closed as non-rehabilitated. Of the "rehabilitated" group closures, 77.4 percent were in competitive employment, 1.9 percent in extended employment, 2.6 percent in self-employment, and the balance in other employment sectors (RSA, Caseload Services data, 1996). Interestingly, close examination of closure rates for specific target groups indicate that deaf persons achieve employment at significantly lower percentages than their hard of hearing counterparts. Research is needed to address different services in order to obtain optimal outcomes. Despite this disparity in outcome, these data clearly document the role and contributions of the State and Federal VR system in providing services that lead to employment outcomes for significant numbers of individuals who are deaf.

Currently, the State and Federal VR system is undergoing significant change in response to conditions occurring in the labor market and the resulting need for workers. The labor force is characterized by economic growth, a low rate of unemployment, technological advances, and demand for jobs that require higher education and training. Plans to meet the State and local workforce needs of persons with disabilities, including persons who are deaf or hard of hearing, must be responsive to current thrusts in service delivery policy such as presumptive eligibility, continuing emphasis on order of selection, informed choice, one-stop service delivery, and increased demands for new approaches in training and personnel preparation (25th Institute on Rehabilitation Issues, 1999). It is clear that agencies will require significant technical assistance and resources in developing service models and approaches for serving special populations such as deaf and hard of hearing persons in response to these changes (Hopkins & Walter, 1999; PEPNet Needs Assessment: Summary of Findings, In Kolvitz, (Ed.), Empowerment through partnerships: PEPNet 1998; Boone & Watson, Identifying the Technical Assistance Needs of Community Based Rehabilitation Centers Serving Persons

who are Deaf or Hard of Hearing, 1999). Research is needed to identify service delivery needs of persons who are deaf or hard of hearing and to develop interventions that result in satisfactory employment outcomes.

There is a clear need for ongoing research to maintain and improve successful employment and career outcomes resulting from VR, community rehabilitation, postsecondary education, and independent living services for persons who are deaf (NIDRR Long-Range Plan, 63 FR 57189–57219). Research under this competition must clearly focus on the VR needs of deaf individuals, including subgroups within this population with prevocational and post-vocational hearing loss, and those individuals identified as low functioning. There is need to examine decisionmaking processes as they impact upon deaf individuals and relevant others such as service providers, advocates, advisors, and family members, in relation to issues of access and participation by deaf and hard of hearing individuals in appropriate VR, postsecondary training, and independent living services. When such research analysis or mapping of decision processes and information sharing reveals problems, then appropriate resource development activities must be pursued, such as development of curriculum materials, training, evaluation, and technical assistance. In particular, strategies will be needed to involve new partners such as "one-stops" and centers for independent living, and underserved subgroups within the deaf and hard of hearing populations, such as those individuals described as low functioning and others with special needs. Research must investigate variables related to specific deafness and hard of hearing subgroups, services settings, measures of program participation, and measures of success within the changing policy, labor market, and service delivery environments.

Priority

We will establish an RRTC on VR services for individuals who are deaf or hard of hearing that will conduct research and training activities and develop and evaluate model approaches to improve the employment outcomes for such individuals. In carrying out this purpose, the center must:

(a) Investigate and document the impact of changes in disability and employment legislation (e.g., Workforce Investment Act of 1998, Rehabilitation Act Amendments of 1998) and service delivery options and policy (e.g., State and Federal VR, Community Rehabilitation Programs, One-Stop Centers, presumptive eligibility, order of selection, informed choice, CSPD) using formal research protocols on workforce participation and employment outcomes achieved by persons who are deaf or hard of hearing (including those identified as low functioning) and considering such factors as age, gender, race or ethnic background, education, severity of impairment, and secondary disability;

(b) Identify, evaluate, and document contemporary business policies and practices that contribute to accessible work, workplace supports, and environments to enhance the employment of persons who are deaf or hard of hearing;

(c) Identify, develop, and measure the impact of innovative rehabilitation practices, resource materials, post-secondary training, and technology (for State and Federal VR, Independent Living, and Community-based Rehabilitation Programs) that will enhance the workforce participation, employment, and community living outcomes achieved by persons who are deaf or hard of hearing; and

(d) Develop and disseminate resources through a national technical assistance, information, and referral network for consumers who are deaf or hard of hearing (including those referred to as low functioning deaf), their employers, advocates, family members, and rehabilitation service providers.

The RRTC must conduct at least three conferences to train vocational rehabilitation staff on state-of-the-art information and computer technology for individuals who are deaf or hard of hearing.

In addition, the RRTC must:

- Coordinate the activities of this Center with the efforts of other grantees from NIDRR, the Office of Special Education (OSEP), or RSA who are involved in postsecondary training, transition, job-related or vocational and career studies, independent living needs, and aspects of rehabilitation technology addressing the needs of persons who are deaf, particularly those referred to as low functioning deaf.
- Solicit and incorporate direct input from persons who are deaf, their service providers, and their employers as part of the ongoing planning, development, and implementation of the Center's research activities.
- Construct scientific and measurable techniques for each research project.
- Provide dissemination to rehabilitation professionals, through training and technical assistance of new and effective rehabilitation techniques and practices that may enhance service delivery, quality employment, and community integration findings.
- Develop sources for supplementary funding that will permit the Center more latitude in exploring additional related studies, in addition to the Federal monies available from this RRTC grant.

Applicable Program Regulations: 34 CFR part 350.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

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(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research Training Center)

Dated: July 2, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

[FR Doc. 01–16984 Filed 7–5–01; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Notice Inviting Applications and Announcing a Pre-Application Meeting for New Rehabilitation Research and Training Centers for Fiscal Years (FY) 2001–2002

AGENCY: Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research; Department of Education.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

The notice of final funding priorities for Improving Vocational Rehabilitation Services for Individuals Who Are Blind or Have Severe Visual Impairments and Improving Vocational Rehabilitation Services for Individuals Who Are Deaf or Hard of Hearing are published elsewhere in this issue of the **Federal Register**.

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

This notice addresses the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants

Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Application Available: July 6, 2001.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, and 97, and the program regulations 34 CFR part 350.

Pre-Application Meeting

Interested parties are invited to participate in a pre-application meeting to discuss the funding priorities. In the meeting you will receive technical assistance and information about the funding priority. The meeting will be held on July 26, 2001. You may attend the meeting either in person or by conference call at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St. SW., Washington, DC between 10:00 a.m. and 12 noon. NIDRR staff will also be available at this location from 1:30 p.m. to 4:00 p.m. on that same day to provide technical assistance through individual consultation about the funding priority. For further information or to make arrangements to participate in the July 26, 2001, meeting contact Donna Nangle, Switzer Building, room 3414, 400 Maryland Avenue, SW., Washington, DC 20202. Internet: Donna.Nangle@ed.gov Telephone (202) 205–5880. If you use a telecommunication device for the deaf (TDD), you may call (202) 205–4475.

Assistance to Individuals With Disabilities at the Public Meetings

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (e.g., other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternative format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

APPLICATION NOTICE FOR FISCAL YEAR 2001—REHABILITATION RESEARCH TRAINING CENTERS, CFDA NO. 84–133B

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year) *	Project period (months)
84.133B–1 Improving Vocational Rehabilitation Services for Individuals Who Are Blind or Visually Impaired.	August 17, 2001	1	$600,000	60
84.133B–5 Improving Vocational Rehabilitation Services for Individuals Who Are Deaf or Hard of Hearing.	August 17, 2001	1	600,000	60

*The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount in any year (See 34 CFR 75.104(b)).

Note: The estimates of funding level and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3414, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. *Internet:* Donna.Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue SW., Switzer Building, 3317, Washington, DC 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the GCST. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Selection Criteria

Criteria

The Secretary uses the following selection criteria to evaluate applications for the priorities. The total maximum score for the criteria is 100 points.

(a) Importance of the Problem (9 Points Total)

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

Responsiveness to an Absolute or Competitive Priority (4 Points Total)

(1) The Secretary considers the responsiveness of the application to an absolute or competitive priority published in the **Federal Register**.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers the extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (4 points).

(c) Design of Research Activities (35 Points Total)

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) Design of Training Activities (11 Points Total)

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (2 points); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (2 points).

(iv) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (1 point).

(v) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) Design of Dissemination Activities (8 Points Total)

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) Design of Technical Assistance Activities (5 Points Total)

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (2 points).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) Plan of Operation (5 Points Total)

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (3 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(h) Collaboration (3 Points Total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (2 points).

(i) Adequacy and Reasonableness of the Budget (3 Points Total)

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(j) Plan of Evaluation (7 Points Total)

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) Project Staff (7 Points Total)

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors: (i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(l) Adequacy and Accessibility of Resources (3 Points Total)

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Additional Selection Criterion

The maximum score for all the selection criteria is 100 points; however, we will also use the following criterion so that up to an additional 10 points may be earned by an applicant for a total possible score of 110 points.

Up to 10 points are awarded based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under these absolute priorities. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities. Thus, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for these priorities. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Instructions for Application Narrative

We will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount for any year (See 34 CFR 75.104(b)).

We strongly recommend the following:

(1) a one-page abstract;

(2) an Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more *125 pages for Project applications*, double-spaced (no more than 3 lines per vertical inch) 8′ x 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) a font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmittal of Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) If You Send Your Application by Mail

You must mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.133B [Applicant must insert priority name], Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) If You Deliver Your Application by Hand

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.133B [Applicant must insert priority name], Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal

holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Notes:

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt with 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) You must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Assistance (ED Form 424; revised November 12, 1999) the CFDA number—and letter, if any—of the competition under which you are submitting your application.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (ED 424 (Rev. 11/12/99)) and instructions.

Part II: Budget Form—Non-Construction Programs (ED 524) and instructions.

Part III: Application Narrative.

Additional Materials

- Assurances—Non-Construction Programs (Standard Form 424B).
- Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)
- Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).
- Estimated Public Reporting Burden.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Numbers: 84.133B, Rehabilitation Research Training Centers)

Dated: July 2, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications To More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. An applicant for an RRTC is limited to an indirect rate of 15%. An applicant for a Disability and Rehabilitation Research Project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for grants under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest To NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred To the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct

competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out if it Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out if My Application is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
_____ _____ _____ - _____
City State County ZIP Code + 4

Organizational Unit

2. Applicant's D-U-N-S Number ☐☐☐☐☐☐☐☐☐

3. Applicant's T-I-N ☐☐ - ☐☐☐☐☐☐☐

4. Catalog of Federal Domestic Assistance #: 8 4 ☐☐☐☐ → Title: _____

5. Project Director: _____
Address: _____
_____ _____ _____ - _____
City State ZIP Code + 4
Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____
E-Mail Address: _____

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____
☐ No *(If "No," check appropriate box below.)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates:

Start Date:	End Date:
___/___/_____	___/___/_____

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____
c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

d. E-Mail Address:

e. Signature of Authorized Representative — Date: ___/___/_____

REV. 11/1999 ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructionsin **"Protectionof Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106.** The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
[illegible]						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public Burden Statement

Public burden reporting for this collection of information is estimated to average 30 hours per response, including time for reviewing instructions, searching existing data sources, gathering and

Public Reporting Burden

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

Rehabilitation Research Training Centers (CFDA No. 84.133B) 34 CFR part 350, subpart B.

BILLING CODE 4000–01–U

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

_____

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $	
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)

[FR Doc.
BILLING C

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

[FR Doc. 01–16985 Filed 7–5–01; 8:45 am]
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Federal Register

Friday,
July 6, 2001

Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of Final Funding Priorities for Fiscal Years (FY) 2001–2003 for three Disability and Rehabilitation Research Projects.

SUMMARY: We are announcing three final funding priorities under the Disability and Rehabilitation Research Projects and Centers Program (DRRP) of the National Institute on Disability and Rehabilitation Research (NIDRR) for FY 2001–2003. Strategies for Promoting Information Technology (IT)-based Educational Opportunities for Individuals with Disabilities, Strategies for Promoting Information Technology (IT)-based Employment and Training Opportunities for Individuals with Disabilities, and Wayfinding Technologies for Individuals Who Are Blind. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: These priorities take effect on August 6, 2001.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Donna.Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains final priorities under the National Institute on Disability and Rehabilitation Research (NIDRR) Disability and Rehabilitation Research Projects and Centers Program (DRRP) for Strategies for Promoting Information Technology (IT)-based Educational Opportunities for Individuals with Disabilities, Strategies for Promoting Information Technology (IT)-based Employment and Training Opportunities for Individuals with Disabilities, and Wayfinding Technologies for Individuals Who Are Blind.

The final priorities refer to NIDRR's Long-Range Plan (the Plan). The Plan can be accessed on the World Wide Web at: *http://www.ed.gov/offices/OSERS/NIDRR/#LRP.*

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

This notice addresses the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Authority

The authority for the program to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764(b)). Regulations governing this program are found in 34 CFR part 350.

Note: This notice does *not* solicit applications. A notice inviting applications is published in this issue of the **Federal Register**.

Analysis of Comments and Changes

On April 27, 2001, we published a notice of proposed priorities in the **Federal Register** (66 FR 21125). The Department of Education received three letters commenting on the notice of proposed priorities by the deadline date. Most of the comments concerned all three priorities, had multiple issues and suggestions, and overlapped with other comments. NIDRR is responding to the comments on priority one and priority two jointly. Technical and other minor changes—and suggested changes that we are not legally authorized to make under statutory authority—are not addressed.

Priority 1: Strategies for Promoting Information Technology (IT)-Based Educational Opportunities for Individuals With Disabilities

Priority 2: Strategies for Promoting Information Technology (IT)-Based Employment and Training Opportunities for Individuals With Disabilities

General

Comment: The priorities should require applicants to disseminate research results to State vocational rehabilitation agencies.

Discussion: NIDRR agrees that vocational rehabilitation agencies would benefit from the research results disseminated by the projects.

Changes: The dissemination activities for both IT-based priorities have been expanded to include public vocational rehabilitation agencies as appropriate audiences for disseminating each project's research results.

Priority 3: Wayfinding Technologies for Individuals Who Are Blind

Comment: One commenter suggested that the Rehabilitation Engineering Research Center (RERC) be required to conduct a comparative study looking at successful and less successful travel techniques used by both sighted and blind travelers.

Discussion: An applicant may propose a comparative study under the first activity and the peer review process will evaluate the merits of the proposal.

Changes: None.

Comment: One commenter stated that including the word "safely" in the first activity implies a level of assurance that can never exist in any public travel environment and should therefore be eliminated from the activity.

Discussion: NIDRR believes that including the word "safely" within the general purpose statement and subsequent activities of this priority is appropriate even though it may never be 100 percent achieved.

Changes: None.

Comment: One commenter feels that evidence gathered for this priority does not support the requirement that applicants must investigate "electronic travel aids" in the second activity and suggested the word "electronic" be eliminated altogether and the words "and techniques" be added after "travel aids."

Discussion: NIDRR believes that the background statement adequately supports each activity, including the need to investigate, evaluate, and develop electronic travel aids. However, NIDRR does agree with the commenter's suggestion to add "and techniques" after "travel aids."

Changes: The second activity has been revised by adding the words "and techniques" after the word "aids."

Comment: One commenter suggested that the third activity would be strengthened by adding "and State and local government agencies concerned with traffic control, design of public transit and transit information and vending systems' after "industry."

Discussion: NIDRR agrees that State and local government agencies play an important role in the design, development, and maintenance of systems concerned with traffic control and public transportation. An applicant could propose to explore strategies for strengthening partnerships with State and local government agencies regarding these issues and the peer

review process will evaluate the merits of the proposal.

Changes: None.

Comment: One commenter suggested that the word "project" in the general purpose statement implies a transitional nature to the funded entity and recommended replacing it with "program."

Discussion: The use of the word "project" in this priority is correct and is not meant to imply anything beyond what is published in the **Federal Register**.

Changes: None.

Comment: One commenter emphasized the importance of including experienced and novice blind and partially sighted travelers that are representative of a demographically older and geographically diverse population in all facets of this project and recommended that NIDRR reorder the bulleted section of the priority to put consumers first on the list of required collaborators. The commenter went on to recommend rewording the last bulleted item in the proposed priority so that it reads "Projects must demonstrate success in recruiting and employing qualified individuals who are blind and partially sighted at every level of the program."

Discussion: NIDRR does not rank activities identified in its priorities. All applicants are expected to address every activity, including those that are bulleted, and have the discretion to propose the amount of resources they expect to allocate for each activity. The peer review process will determine the merits of each proposal. NIDRR does not agree with the proposed rewording of the last bulleted item. The commenter's concerns about recruiting and employing qualified individuals who are blind and partially sighted at every level of the program are addressed in the selection criteria used to evaluate applications.

Changes: None.

Disability and Rehabilitation Research Projects and Centers Program

The authority for Disability and Rehabilitation Research Projects (DRRP) is contained in section 204 of the Rehabilitation of 1973, as amended (29 U.S.C. 762(g) and 764(b)). The purpose of the DRRP program is to plan and conduct research, demonstration projects, training and related activities to—

(a) Develop methods, procedures, and rehabilitation technology that maximizes the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities; and

(b) Improve the effectiveness of services authorized under the Act.

Priorities for IT-Based Employment and Education Initiatives Background

The mission of NIDRR is to "generate, disseminate, and promote the full use of new knowledge that improves substantially the options for disabled individuals to perform regular activities in the community, and the capacity of society to provide full opportunities and appropriate supports for its disabled citizens" (NIDRR Long-Range Plan, 64 FR 68575–68614, *http://www.ed.gov/offices/OSERS/NIDRR*). Consistent with NIDRR's mission, the NIDRR long-range plan introduced an expanded research agenda focused on elucidating the "New Paradigm of Disability." The new paradigm of disability presents a framework for conceptualizing and understanding the interaction between individuals and the environment and how it impacts the lives of persons with disabilities. The dynamic person-environment relationship is complex, encompassing both influences and consequences in a variety of domains at the individual, institutional, and community levels. These complex person-environment relationships are not clearly understood although they have the potential to either facilitate community integration and independence for individuals with disabilities or, conversely, to serve as barriers to full participation in society, including education and employment.

Employment is a critical factor in providing individuals with disabilities opportunities to function independently in society. Employment frequently engenders empowerment, inclusion, and independence to the fullest extent possible. The National Organization on Disability Harris Survey of Americans with Disabilities (2000) found that only 32% of working age (18–64) individuals with disabilities work full or part time compared to 81% of the non-disabled population, a difference of 49 percent. In addition, more than two-thirds of those individuals with disabilities who are not employed say they would prefer to be working.

The Bureau of Labor Statistics has projected that four of the top ten fastest growing occupations over the next eight years will be in the information technology industry ("The 10 fastest growing occupations, 1998–2008", Bureau of Labor Statistics, U.S. Department of Labor, 2000, *http://stats.bls.gov/news.release/ecopro.t06.htm*). Information technology (IT) is also projected to be the number one industry with the fastest wage and salary employment growth through 2008 ("Career Guide to Industries 2001–01 Edition, Bureau of Labor Statistics", U.S. Department of Labor, pg. 4, 2000, *http://stats.bls.gov/cghome.htm*). Given the increase in IT employment opportunities along with the flexibility these careers provide, the IT field offers tremendous opportunities for individuals with disabilities. One needs only to scan the daily newspapers to see the abundance of openings for skilled IT professionals. Therefore, research examining opportunities and barriers for individuals with disabilities in IT-based employment is crucial in this IT driven society.

For purposes of this discussion, IT-based education and training may occur in secondary, post-secondary, and vocational environments. IT-based employment careers encompass the use of, but are not limited to, high speed computers, modems, sophisticated telecommunications networks, cable networks, intranets, the Internet, the World Wide Web, and satellites.

In general, people with disabilities are less likely to have access to technology. For example, 11 percent of people with disabilities aged 15 and above have access to the Internet at home, compared to 31 percent of individuals without disabilities (Kay, S.H. (2000), *Computer and Internet use among people with disabilities*, Disability Statistics Report (13, pg. 5), Washington DC: U.S. Department of Education, National Institute on Disability and Rehabilitation Research. *http://dsc.ucsf.edu/UCSF/pdf/REPORT13.pdf*).

Consequently, many individuals with disabilities have not experienced the benefits of using information technology to advance their education or employment careers. Students of all ages with disabilities encounter barriers that limit their participation in IT-based education and training.

Environmental, attitudinal, technical, social, and financial barriers that limit access to IT-based education and training in IT are often referred to as the "digital divide" (U.S. Department of Commerce Report, "Falling through the Net II: New Data on the Digital Divide", pg. 2, 1998, *http://www.ntia.doc.gov/ntiahome/net2/falling.html*). Studies have found that students with disabilities in grades K–12 receive the poorest exposure to science and math of any category of students. Data compiled by the National Center for Education Statistics compared college students with and without disabilities and indicates that students with disabilities are underrepresented in life sciences, physical sciences, and math (National

Center for Education Statistics, "Students with disabilities in post-secondary education: A profile of preparation, participation, and outcomes", NCES 1999–187, Washington, DC: U.S. Department of Education, 1999, *http://nces.ed.gov/spider/webspider/1999187.shtml*). Therefore, an under-exposure to the disciplines of science, engineering and technology increases the likelihood that students with disabilities who seek higher education will arrive poorly prepared to pursue educational opportunities in these disciplines, further limiting their chances to compete for employment in these and related areas.

Strategies to expand access to IT careers vary immensely. Private and public partnerships may provide one mechanism for promoting skill and knowledge acquisition and employment in the field of information and communication technology. For instance, the DO-IT Scholars program at the University of Washington is an example of collaboration between educational and business partners to help students with disabilities explore technology careers and encourage the acquisition of knowledge and skills necessary to pursue technology careers. The National High School and High Tech Program allows students with disabilities to participate in "hands on" enrichment activities including site visits to laboratories and manufacturing plants, mentoring with professionals in high tech fields, and paid summer employment and internship opportunities in high tech environments (U.S. Department of Labor, "High School and High Tech—Chapter I—Introduction," Office of Disability Employment Policy—U.S. Department of Labor, 2001, pg. 1, *http://www.dol.gov/dol/odep/public/media/reports/hsht00/toc.htm*).

Increased knowledge and understanding of different disabilities as well as reasonable accommodations, including assistive technologies and access to IT, are critical to the recruitment and ongoing support of individuals with disabilities in IT-based employment. In addition, expanded knowledge of employee rights and responsibilities, cost factors, legal issues, healthcare liabilities, and disability culture will have an impact on the development of strategies used by employers to successfully train and employ individuals with disabilities.

While individuals with disabilities are faced with barriers that limit access to technology and related education and training, the Internet and other information and communications technologies are changing the way our society operates. For example, these technologies have increased entrepreneurial and self-employment opportunities for individuals with and without disabilities ("Career Guide to Industries 2001–01 Edition", Bureau of Labor Statistics, U.S. Department of Labor, pg. 42, 1999, *http://stats.bls.gov/cghome.htm*). To encourage growth in this sector, an examination of the factors involved in IT-related self-employment is needed to ensure that individuals with disabilities have access to a full-range of employment options. It is vital that more individuals with disabilities possess the skills necessary for employment in IT-related fields as this will greatly facilitate their full participation in America's economic, political, and social life.

Priority 1: Strategies for Promoting IT-Based Educational Opportunities for Individuals With Disabilities

We will establish multiple research projects to develop and evaluate IT-based education and training strategies that increase the employment of individuals with disabilities in IT related jobs. These projects must:

(1) Identify, develop, and evaluate strategies that assist with overcoming barriers that limit or preclude access to IT education and training in secondary, postsecondary, and vocational education programs;

(2) Identify and evaluate private and public partnerships between educational entities and businesses to provide education or skill-based training that assist individuals with disabilities in preparing for and securing employment in the IT industry or employment in jobs requiring expertise and training in IT; and

(3) Develop and implement in the first year of the grant, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate the project's research results to the appropriate audiences including, but not limited to, educators, employers, manufacturers, persons with disabilities, disability organizations, technology service providers, businesses, public vocational rehabilitation agencies, and journals.

In addition to activities proposed by the applicants to carry out these purposes, the projects must:

• Coordinate with appropriate private and federally funded programs, such as the NIDRR-funded Community Based Rehabilitation Research Projects on Technology for Independence and the National Center on Accessible Education-Based Information Technology, as identified through consultation with the NIDRR project officer; and

• Involve individuals with disabilities and underserved populations in all aspects of this project.

Priority 2: Strategies for Promoting IT-Based Employment and Training Opportunities for Individuals With Disabilities

We will establish multiple research projects that will conduct research on IT-based employment and training strategies to identify barriers at the systems and individual level and to identify and evaluate effective strategies for promoting increased employment opportunities for individuals with disabilities. These projects must:

(1) Identify and evaluate IT-based training and employment recruitment, hiring, and placement strategies, including entrepreneurial opportunities, that promote successful employment for persons with disabilities in the IT industry;

(2) Identify, develop, and evaluate strategies to assist with overcoming barriers that limit opportunities for advanced skill development and promotions in jobs requiring significant IT knowledge and skills (including training for individuals currently working in IT industry and those in jobs requiring significant expertise with IT);

(3) Develop and evaluate training programs to inform employers, educators, and individuals with disabilities about effective strategies that will assist with overcoming barriers for IT-based training and improve IT-based employment opportunities; and

(4) Develop and implement in the first year of the grant, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate the project's research results to the appropriate audiences including, but not limited to, educators, employers, manufacturers, persons with disabilities, disability organizations, technology service providers, businesses, public vocational rehabilitation agencies, and journals.

In addition to activities proposed by the applicant to carry out these purposes, the project must:

• Coordinate with appropriate private and federally funded programs, such as the NIDRR-funded Community Based Rehabilitation Research Projects on Technology for Independence and Projects with Industry (PWI), as identified through consultation with the NIDRR project officer; and

• Involve individuals with disabilities and underserved populations in all aspects of this project.

Priority 3: Wayfinding Technologies for Individuals Who Are Blind

Background

Traveling independently without the use of sight presents certain challenges for some individuals and significant limitations for others. Typical approaches used to reduce problems associated with independent travel include environmental features that provide audible or tactile equivalents of information available visually to sighted pedestrians, training for individuals who are blind or visually impaired, and the provision of devices to aid in wayfinding.

Wayfinding refers to techniques used by people who are blind or visually impaired as they move from place to place independently and safely. Wayfinding is typically divided into two categories: orientation and mobility. Orientation concerns the ability for one to monitor his or her position in relationship to the environment; and mobility refers to one's ability to travel safely, detecting and avoiding obstacles and other potential hazards. In general terms, wayfinding is the ability to: know where you are, where you are headed, and how best to get there; recognize when you have reached your destination; and find your way out—all accomplished in a safe and independent manner.

On September 28, 1999, the Interagency Committee on Disability Research (ICDR), Subcommittee on Technology, sponsored a workshop to explore the state-of-the-art of wayfinding technology and to identify research and development activities that could improve the wayfinding capabilities of individuals who are blind or visually impaired. A panel of researchers, supported by the National Institute on Disability and Rehabilitation Research, the Department of Veterans Affairs, the National Science Foundation, and the Architectural and Transportation Barriers Compliance Board, described the state of current technology as well as ongoing research in the field. A panel of individuals who are blind or visually impaired provided consumer perspectives. A common theme expressed by the consumer panel was that newly developed wayfinding technologies should supplement, and not supplant, already accepted mobility aids such as white canes and guide dogs. Some expressed concern that individuals could become too dependent on electronic travel aids and lose their ability (or readiness) to travel elsewhere. However, the panel also expressed the need for better technical and environmental solutions that provide location and mobility orientation for blind individuals at critical points in their daily activities. (http://www.ncddr.org/icdr/icdr_wayfinding.html).

People who are blind or visually impaired rely heavily on their senses to gather information about their surroundings, then use their cognitive abilities, especially reasoning and memory, to determine what the sensory information "means" for spatial orientation. Typically individuals use auditory, tactile, olfactory and kinesthetic feedback as they move about and associate certain sensory and perceptual experiences with locations along a route. The quality and usefulness of sensory information depends in part on how the individual who is blind or visually impaired perceives the information and the specificity of the information provided (Blasch, B., "An Overview of Wayfinding Issues and Technology," presented at the Interagency Committee on Disability Research, Subcommittee on Technology Wayfinding Technology Workshop, September 28, 1999).

Blind pedestrians often experience difficulty navigating where there is free flowing traffic such as in parking lots, malls and office complexes, campuses, and roads constructed to keep traffic flowing. They frequently find it difficult and dangerous to obtain information needed to cross at traffic intersections because of noise, intermittent traffic flow, veering due to little or no acoustic guidelines or the street being too wide, and intersections that offset from one another. Conventional traffic signals often complicate the situation. In contrast, intersections equipped with accessible pedestrian signal (APS) technologies (e.g., audible or vibrotactile information sources) have been shown to be helpful to blind and visually impaired pedestrians.

Another problem stems from a growing trend of using free-flowing roundabout intersections to move traffic quickly and safely. Roundabouts, also referred to as traffic circles, are defined as circular intersections typically with a center island and no traffic signals. Many traffic engineers feel that roundabouts increase safety because vehicles: (1) Must yield on entry to a roundabout; (2) rarely travel perpendicular to one another; and (3) travel at relatively low rates of speed while in roundabouts (Guth, D., "Wayfinding at Modern Roundabouts," presented at the Interagency Committee on Disability Research, Subcommittee on Technology Wayfinding Technology Workshop, September 28, 1999). However, much of the planning efforts for roundabouts have neglected the wayfinding requirements and, as a result, blind or visually impaired pedestrians have reported difficulty with perceiving gaps in traffic that are sufficient to cross safely at high-volume roundabouts (National Safety Council, "Pedestrian Accidents," National Safety Council Accident Facts (Injury Statistics), 1998). (See http://www.nsc.org/lrs/stainfo/af80.htm1)

Due to tremendous advances in electronic and computer technologies, there is great potential for development of new electronic travel aids (ETAs). Ubiquitous computing, Global Positioning Systems, wearable computers, wireless connectivity, microelectronic mechanical systems, and new interface technologies are all examples of technological advances that could be incorporated into a new generation of ETAs and ultimately improve the wayfinding skills of individuals who are blind or visually impaired. For example: traffic control buttons could be programmed to be interactive with a wearable device; digital compasses could aid users with alignment and veering; accessible digital maps could provide blind pedestrians with information regarding street names, addresses, and businesses; and sensor technology could help blind pedestrians navigate hallways in large buildings and correct veering in open spaces (i.e., malls, parks, transit plazas, etc.) (Ross, D., "Integrating Current Wayfinding Technology," presented at the Interagency Committee on Disability Research, Subcommittee on Technology Wayfinding Technology Workshop, September 28, 1999). However, there is little evidence that advances in electronic and computer technologies have been incorporated into new ETAs.

Priority 3

We will establish a project to investigate wayfinding strategies, designs, environmental features, and electronic information and travel aids that will enable blind and visually impaired pedestrians to safely and independently navigate their surroundings, including traffic intersections and roundabouts. The project must:

(a) Identify, assess, and evaluate current and emerging needs, and barriers to meeting those needs, that affect the wayfinding abilities of blind and visually impaired pedestrians to safely and independently navigate their

surroundings, including traffic intersections and roundabouts;

(b) Based upon the activities described in paragraph (a), investigate, evaluate, and develop new planning strategies, environmental features, and electronic travel aids and techniques that can be used by blind and visually impaired pedestrians to safely and independently navigate their surroundings, including traffic intersections and roundabouts; and

(c) Develop and explore various strategies for strengthening partnerships with industry to facilitate the development and implementation of new designs, technologies, and applications that are appropriate for blind and visually impaired pedestrians to use for wayfinding.

In addition to activities proposed by the applicant to carry out these purposes, the project must:

- Collaborate on research projects of mutual interest with relevant projects such as the NIDRR-funded RERCs on Low Vision and Blindness and Information Technology Access as identified through consultation with the NIDRR project officer;
- Collaborate with relevant Federal agencies responsible for the administration of public laws that address access to and usability of traffic intersections for individuals with disabilities such as the Architectural and Transportation Barriers Compliance Board, the U.S. Department of Transportation's Federal Highway Administration, Federal Transit Administration and National Highway Traffic Safety Administration, and other relevant Federal agencies identified by NIDRR; and
- Involve individuals who are blind and visually impaired in all aspects of this project.

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(Catalog of Federal Domestic Assistance Numbers 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: July 2, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

[FR Doc. 01–16982 Filed 7–5–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research

ACTION: Notice inviting applications for fiscal year (FY) 2001 for new awards and announcing pre-application meetings.

SUMMARY: We invite applications for new grant awards for FY 2001 for three Disability and Rehabilitation Research Projects and Centers Program (DRRP) funding priorities on Strategies for Promoting Information Technology (IT)-based Educational Opportunities for Individuals with Disabilities, Strategies for Promoting Information Technology (IT)-based Employment and Training Opportunities for Individuals with Disabilities, and Wayfinding Technologies for Individuals Who Are Blind.

Purpose of the Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973. We take this action to focus research attention on areas of national need. The priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

This notice addresses the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 81, 82, 85, 86 and 97; and the following program regulations: Disability Rehabilitation Research Projects and Centers—34 CFR part 350, and the Notice of Final Priority published elsewhere in this issue of the **Federal Register**.

Pre-Application Meeting: Interested parties are invited to participate in pre-application meetings to discuss the funding priorities. In each meeting you will receive technical assistance and information about the funding priority. You may attend the meetings either in person or by conference call at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St. SW., Washington, DC between 10:00 a.m. and 12 noon. NIDRR staff will also be available at this location from 1:30 p.m. to 4:00 p.m. on that same day to provide technical assistance through individual consultation about the funding priority.

Pre-Application Meeting Dates: The pre-application meeting for both the Resource Center for Strategies for Promoting IT-based Educational Opportunities for Individuals with Disabilities and the Strategies for Promoting IT-based Employment and Training Opportunities for Individuals with Disabilities will be held on July 24, 2001. For further information or to make arrangements to participate in the July 24, 2001, meeting contact Richard Wilson, Switzer Building, room 3033C, 400 Maryland Avenue, SW., Washington, DC 20202. Internet: Richard.Wilson@ed.gov Telephone (202) 205–9088.

The pre-application meeting for the Wayfinding Technologies for Individuals Who Are Blind will be held on July 25, 2001. For further information or to make arrangements to participate in the July 25, 2001, meeting contact William Peterson, Switzer Building, room 3425, 400 Maryland Avenue, SW., Washington, DC 20202. Internet: William.Peterson@ed.gov Telephone (202) 205–9192. If you use a telecommunication device for the deaf (TDD), you may call (202) 205–4475.

Assistance to Individuals With Disabilities at the Public Meetings

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (e.g. other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternative format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet

a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

APPLICATION NOTICE FOR FISCAL YEAR 2001—DISABILITY AND REHABILITATION RESEARCH PROJECTS, CFDA NO. 84–133A

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
84.133A–1 Strategies for Promoting IT-based Educational Opportunities for Individuals with Disabilities.	August 17, 2001	2	$300,000	60
84.133A–18 Strategies for Promoting IT-based Employment and Training Opportunities for Individuals with Disabilities.	August 17, 2001	2	300,000	60
84.133A–19 Wayfinding Technologies for Individuals Who are Blind.	August 17, 2001	1	450,000	60

*We will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount in any year (See 34 CFR 75.104(b)).

Note: The estimate of funding level and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Selection Criteria: The selection criteria to be used for these competitions will be provided in the application package for each competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs via its Web site: http://www.ed.gov/pubs/edpubs.html or its E-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133A.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3414, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Donna.Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: July 2, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

[FR Doc. 01–16983 Filed 7–5–01; 8:45 am]

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Federal Register

Friday,
July 6, 2001

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities Program; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities Program.

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2001.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for two FY 2001 competitions under one program authorized by the Individuals with Disabilities Education Act (IDEA), as amended: Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities.

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

This priority addresses the National Education Goals by helping to improve results for children with disabilities.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

General Requirements

(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) In a single application, an applicant must address only one absolute priority in this notice.

(e) Part III of each application submitted under a priority in this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed in the table at the end of this notice for each applicable priority, using the following standards:

- A "page" is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters per inch.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject without consideration or evaluation any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Research and Innovation to Improve Services and Results for Children With Disabilities [CFDA 84.324]

Purpose of Program: To produce, and advance the use of, knowledge to: (a) improve services provided under IDEA, including the practices of professionals and others involved in providing those services to children with disabilities; and (b) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Eligible Applicants: For absolute priority 1, eligible applicants are: Institutions of higher education (IHEs), and private nonprofit organizations. For absolute priority 2, eligible applicants are: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for each priority are included in the funding application packet for the applicable competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

Under 34 CFR 75.105(c)(3), we consider only applications that meet one of the following priorities: *Absolute Priority 1—Center on Learning Disabilities* (CFDA 84.324U)

Background

OSEP has realized for some time that there is concern over the current identification and assessment procedures for children with learning disabilities. In the preamble to the final regulations for Part B of IDEA, OSEP stated; "While there is merit to many of the proposed changes to definitions and terms, modifications to the substance of existing definitions should be subject to further review and discussion before changes are proposed. For example, as indicated in the preamble to the Notice of Proposed Rulemaking (NPRM) (10/22/97), the Department plans to carefully review research findings, expert opinion, and practical knowledge over the next several years to determine whether changes should be proposed to the procedures for evaluating children suspected of having a specific learning disability" (Final Regulations for Assistance to States for the Education of Children with Disabilities (64 FR 12418—March 12, 1999)).

Early in 2000, OSEP began to discuss developing a process to open a discussion on the identification of children with learning disabilities. The disability category "learning disabilities" is heterogeneous and multifaceted and we needed to develop a process for discussing learning disabilities that reflected this diversity. Two important decisions were made early on in our discussions on how the process should be structured. First, our primary goal was to synthesize and organize the most current and reliable research that we have on key issues in learning disabilities and second, we wanted to make sure that this process fully involved a broad variety of perspectives from other research agencies, national organizations, and stakeholders.

In May of 2000, OSEP brought together a diverse workgroup of 21 stakeholders in the area of learning disabilities representing parents, State and local level practitioners, representatives from policy organizations, and researchers. This workgroup has worked with OSEP since the initial meeting to: (1) Commission a

set of papers on critical issues and organize formal responses to each of the papers; (2) hold an issues conference to present and facilitate discussion of the issues; (3) after the conference hold a round table discussion of the issues with key organizations and stakeholders: (4) disseminate the conference proceedings and results of the process; and (5) facilitate another round table with key stakeholders and organizations following the conference and prior to publication of proceedings.

Nine topics were identified for research review papers: Early identification, Classification Approach, Historical Perspective, Decision-Making, Discrepancy, Alternative Responses to Intervention, Processing Deficit, Clinical Judgement, and Is LD Real?. These papers will provide the substantive framework for the LD Issues conference in August of 2001. The workgroup will provide a report on the results of the initiative to OSEP following the conference.

Absolute Priority

The purpose of this priority is to fund a center to conduct follow up research, provide training, disseminate synthesized research validated information, and provide national technical assistance on issues in the area of identification and assessment of children with learning disabilities.

A project funded under this priority must:

(a) Review and identify gaps of current knowledge in learning disabilities looking across the areas addressed in the nine white papers mentioned in the Background Statement. Additional research will also be conducted exploring alternative approaches to identification of children with learning disabilities. In the initial meeting with OSEP, within the first month of award, OSEP will clarify with the project a priority list of these issues and the level of effort for each issue;

(b) In consultation with OSEP and the technical workgroup, design and conduct a strategic program of research to address identified gaps and additional research needs based on the LD initiative. The plan must be submitted within twelve (12) weeks of the award;

(c) Conduct a review of current State practices in identification and assessment of children with learning disabilities and analyze the variance in these State policies and practices;

(d) Conduct an analysis of the variation in identification and assessment of children with learning disabilities at the State and local level. Determine factors contributing to this variance and examine these factors across the 3 through 21 age range;

(e) Design, implement, and evaluate a dissemination and technical assistance approach that links research to practice and promotes the use of current knowledge and ongoing research findings. This approach must establish linkages with the Department of Education technical assistance providers to communicate research findings and distribute products; and prepare the research findings and products from the project in formats that are useful for specific audiences, including general education researchers, local, State, and national policymakers, as well as education practitioners;

(f) Fund as research assistants at least three graduate students per year who have concentrations in either policy or disability issues;

(g) Propose members for a project technical workgroup. (Do not obtain letters of agreement prior to award). The final selection of members will be determined in consultation with OSEP at the initial meeting. The Center will work with the technical workgroup throughout the length of the project to provide expertise throughout the project and on all project activities. The technical workgroup will meet within eight (8) weeks of award for an initial planning meeting. This workgroup will also meet at least once a year in Washington, DC each year of the project;

(h) Schedule three trips to Washington, DC the first year and two trips to Washington, DC each subsequent year: (1) one trip to meet with the Office of Special Education Programs (OSEP) project officer during this second month of the project award to clarify priority issues, review the program of research and technical assistance and dissemination approaches; (2) one trip annually (as specified in the "General Requirements" section of this notice); and (3) another annual meeting to meet and collaborate with the OSEP project officer.

Applicants for this priority are encouraged to attend the OSEP Learning Disabilities Summit August 27–28, 2001. For additional information please contact the competition manager.

In deciding whether to continue this project for the fourth and fifth years, we will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary, which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

Competitive Preference

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the "General Requirements" section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Under this priority, we will make one award for a cooperative agreement with a project period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards.

Maximum Award: The maximum award amount is $700,000 for any single budget period of 12 months. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a budget funding level for any year that exceeds the stated maximum award amount for that year.

Page Limits: The maximum page limits for this focus are 70 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Absolute Priority 2—Center for Evidence-Based Practice: Young Children With Challenging Behavior (84.324Z)

Increasing numbers of infants, toddlers, and preschool children experience, or are at risk for, behavioral problems that affect their participation, performance, and development in natural environments and inclusive educational and community settings. Families seek assistance from diverse,

and often multiple sources including child welfare, public health, and mental health services; pediatricians; preschools; and early care and intervention programs. There have been limited opportunities for these agencies and providers to collaborate across agencies and disciplines to identify effective practices for young children with, or at risk for, behavioral problems and their families. For purposes of this priority, young children are those under the age of six years.

Absolute Priority

The purpose of this priority is to support a Center to: (a) identify effective practices to meet the needs of young children with, or at risk for, behavioral problems and their families; (b) foster the exchange of information between parents, family members, and practitioners, as well as Federal, State, and community-based programs that provide services; and (c) conduct a program of research to improve services and interventions. In carrying out its activities, the Center must collaborate with education, early care and intervention, medical, and mental health providers, as well as others that identify and serve children with, or at risk for, behavioral problems and their families. The Center must use existing technical assistance agencies to assure that training and dissemination activities are carried out.

A project funded under this priority must:

(a) During the first six months of project year one, review and synthesize current knowledge base and gaps in knowledge related to the referral, diagnosis, intervention, transition, and outcomes of young children with, or at risk for, behavioral problems that affect their participation and performance in natural environments and inclusive educational and community settings. The synthesis must include:

(1) A review of the systems of services for young children and their families and ways in which the systems support or discourage access to effective interventions to address behavioral problems;

(2) A review of effective practices for the full range of challenging behavior in young children; and

(3) Data from educational, early care and intervention, mental health, medical, and other providers that identify and serve young children with, or at risk for, behavioral problems and their families.

(b) Use the knowledge synthesized to finalize the research agenda to evaluate the effects of the behavioral, environmental, and medical interventions provided to young children with, or at risk for, behavior problems and their families by the end of the sixth month of project year one. The research agenda will examine the relative and interactive effects of the interventions. The synthesis and research agenda must be submitted to the Department of Education for review at the end of the sixth month of project year one (with annual updates in subsequent years).

(c) In the first year of the project, establish working relationships with Federal, State, and local education, early care and intervention, mental health, medical, and other agencies, organizations, and providers to identify and foster the exchange of information between:

(1) Federal, State, and community-based programs, practitioners, and projects to assist them in their efforts; and

(2) Broader audiences of individuals and organizations including parents and family members of children with, or at risk for, behavioral problems.

(d) In the first year of the project, and in subsequent project years, convene an Advisory Group to support, guide, and define Center activities. The Advisory Group must meet at least once a year in Washington, DC and include members representing educational service agencies, early care and intervention agencies, mental health agencies, the medical community, and other agencies that identify and serve young children with, or at risk for, behavioral problems and their families. Applicants should provide evidence of agency support for their proposal, but refrain from securing commitments from specific individuals to serve on the Advisory Group until after the award has been made.

(e) Complete an externally reviewed document that provides authoritative guidance in the areas of referral, identification, intervention, transition, and outcomes for young children with, or at risk for, behavioral problems and their families. The document must provide guidance for recommended practices and standards of care that reflect the contributions of families, communities, educational agencies, early care and intervention agencies, mental health agencies, medical providers, and others providing services to young children with, or at risk for, behavioral problems and their families.

(f) Based on the synthesis and the findings from ongoing research and other Center activities: (1) Identify effective early intervention and prevention strategies across agencies and disciplines; and (2) identify the partners with whom the Department of Education might collaborate.

(g) Develop training materials that emphasize cross-agency and cross-discipline collaboration. Research findings and products must be in formats that are useful and accessible for specific audiences including trainers and other professional development personnel; parents and family members; local, State, and national policymakers; education, early care and intervention, medical, mental health, and other providers serving young children with, or at risk for, behavioral problems and their families.

(h) Design and implement a dissemination plan that links research to practice and promotes the exchange of information and use of current knowledge and research findings. This approach must develop linkages with OSEP and other Department of Education technical assistance providers to communicate research findings and distribute products.

(i) Collaborate with partners from Federal, State, and local agencies to assure that training and technical assistance reaches children and their families, as well as education, early care and intervention, mental health, medical providers, and other providers serving young children with, or at risk for, behavioral problems and their families.

(j) Budget three trips to Washington, DC the first year and two trips to Washington, DC each subsequent year: (1) One trip to meet with the Office of Special Education Programs (OSEP) project officer during the first month of the project award to review the design of the project; (2) one trip annually (as specified in the "General Requirements" section of this notice); and (3) another trip annually to meet and collaborate with the OSEP project officer.

In deciding whether to continue this project for the fourth and fifth years, we will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary, which review will be conducted during the last half of the project's second year in Washington, D.C. Projects must budget for the travel associated with this review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

Competitive Preference

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority: Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the "General Requirements" section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Under this priority, we will make one award for a cooperative agreement with a project period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards.

Maximum Award: The maximum award amount is $750,000 during the first year of the project and up to $1.5 million for each of the four subsequent years of the project. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a budget funding level for any year that exceeds the stated maximum award amount for that year.

Page Limits: The maximum page limit for this priority is 70 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs via its Web site (*http://www.ed.gov/pubs/edpubs.html*) or its E-mail address (edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify these competitions as follows: CFDA 84.324U and CFDA 84.324Z.

FOR FURTHER INFORMATION CONTACT: Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 260–9182.

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Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

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INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2001

CFDA No. and name	Applications available	Application deadline date	Maximum award (per year) [1]	Project period	Page limit [2]	Estimated number of awards
84.324U Center on Learning Disabilities	07/13/01	08/24/01	$700,000	60 mos	70	1
84.324Z Center for Evidence-based Practice: Young Children with Challenging Behavior	07/13/01	08/24/01		60 mos	70	1
First Year of Project			$750,000			
Each of the Subsequent Four Years of Project			$1,500,000			

[1] Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

[2] Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted. Please refer to the "Page Limit" requirements included under each priority description and the page limit standards described in the "General Requirements" section. We will reject and will not consider an application that does not adhere to this requirement.

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Program Authority: 20 U.S.C. 1472.

Dated: July 2, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

[FR Doc. 01–16986 Filed 7–5–01; 8:45 am]

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H.R. 1914/P.L. 107–17

To extend for 4 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted. (June 26, 2001; 115 Stat. 151)

Last List June 11, 2001

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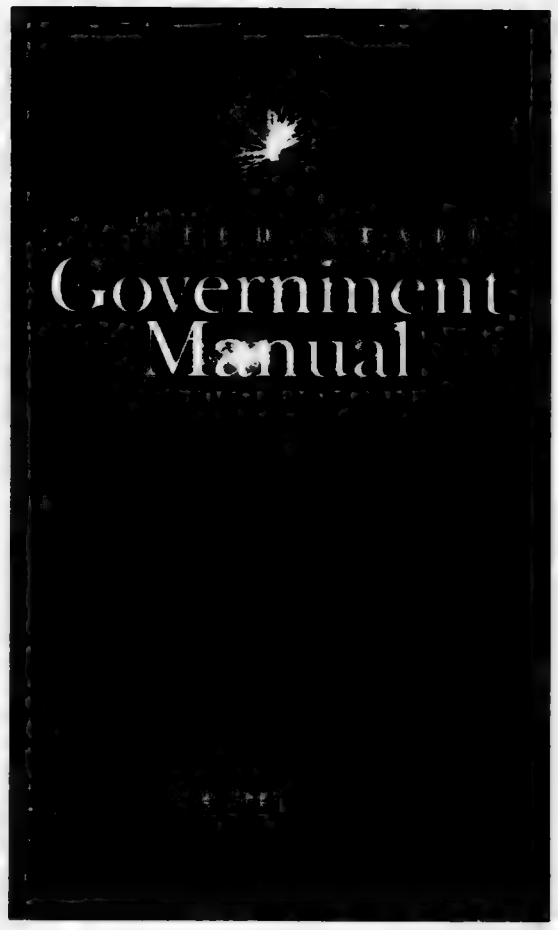

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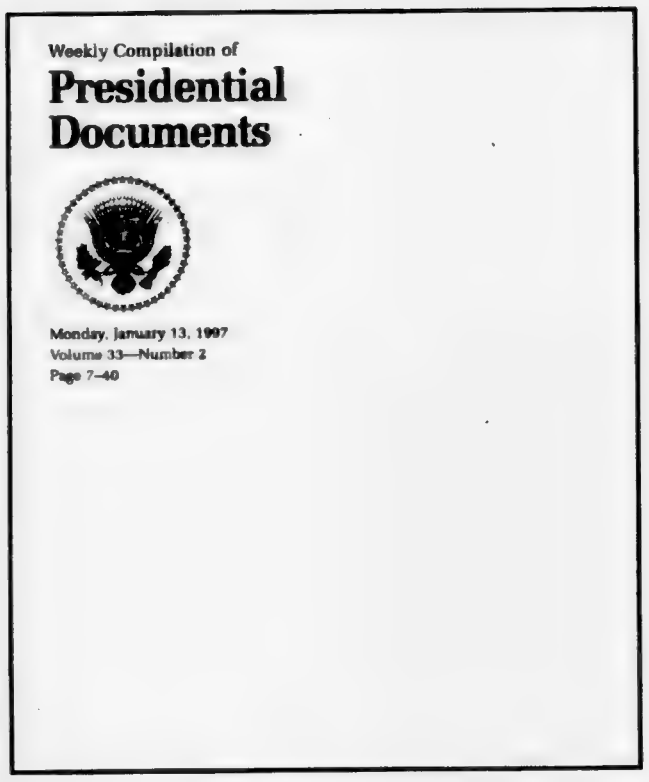

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Rules and Regulations

Federal Register
Vol. 66, No. 131
Monday, July 9, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

[Docket No. FGIS–2001–001b]

RIN: 0580–AA75

Fees for Official Inspection and Official Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is increasing fees by approximately 6.1 percent. Contract and noncontract hourly rates, certain unit rates, and the administrative tonnage fee are increased. These fees apply only to official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. This fee increase of approximately 6.1 percent is based on the cost-of-living increases utilizing an average of the locality pay adjustments and actual cost of performing official inspection services of 2.4 percent and 3.7 percent in fiscal year (FY) 2000 and FY 2001, respectively. GIPSA anticipates the increase in the user fees will generate approximately $575,000 in additional revenue.

EFFECTIVE DATE: August 8, 2001.

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his E-mail address: *Dorr@gipsadc.usda.gov*, or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, it has been determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. In FY 1999, GIPSA's operating costs were $23,176,643 with revenue of $22,971,204, resulting in a negative margin of $205,440. In FY 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. Using the most recent data available as of April 30, 2001, GIPSA's FY 2001 operating costs were $14,988,809 with revenue of $14,348,665 that resulted in a negative margin of $640,144. The current reserve negative balance of $954,547 continues to remain well below the desired 3-month reserve of approximately $3 million. In addition, GIPSA has revised its tonnage workload projection from 82 million metric tons to 79 million metric tons for FY 2001. This decrease in tonnage will adversely affect revenues. Notwithstanding GIPSA's efforts to contain and reduce costs, it anticipates that operating costs will continue to outpace revenues during FY 2001 and, therefore, additional fee increases are likely in the future.

Employee salaries and benefits are major program costs that account for approximately 84 percent of FGIS's total operating budget. Effective May 1, 2000, GIPSA increased fees as published March 30, 2000, in the **Federal Register** (65 FR 16783), by 2.4 percent. The average Federal salary increase effective January 2000 was 4.8 percent. GIPSA had anticipated that savings could offset the remaining 2.4 percent of the Federal salary increase. GIPSA had anticipated an increase in metric tons inspected and/or weighed which in conjunction with a projected decrease in the number of paid hours could have offset the remaining half of the Federal salary increase. However, there was a 7 percent decrease in metric tons FGIS inspected in FY 2000. This decrease caused a reduction in hours billed. FGIS also experienced a shift from noncontracted service hours to contracted service hours, which caused an increase in nonrevenue productive hours in some locations. These factors were not enough to offset the remaining 2.4 percent Federal salary increases. The salary increase that became effective January 2001 averages 3.7 percent for FGIS employees. This final rule will increase overall program revenues by approximately $575,000.

The fee increase primarily applies to entities engaged in the export of grain. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA on a fee basis at 37 export facilities. All of these facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the Small Business Administration.

Some entities that request nonmandatory official inspection and weighing services at other than export locations could be considered small entities. The impact on these small businesses would be to incur an approximate 6.1 percent increase in the cost of official inspection and weighing services. This increase should not significantly affect any business requesting official inspection and weighing services. Furthermore, any of these small businesses that wish to avoid the fee increase may elect to do so by using an alternative source for inspection and weighing services. Such a decision should not prevent the business from marketing its products.

There would be no additional reporting or recordkeeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of

1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this final rule.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this final rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Background

On April 4, 2001, GIPSA proposed in the **Federal Register** (66 FR 17817) to increase fees for official inspection and weighing services performed under the USGSA (7 U.S.C. 71 *et seq.*) by approximately 6.1 percent. The USGSA authorizes GIPSA to provide official grain inspection and weighing services and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs. The current USGSA fees were published in the **Federal Register** on March 30, 2000 (65 FR 16783), and became effective on May 1, 2000.

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. In FY 1999, GIPSA's operating costs were $23,176,643 with revenue of $22,971,204, resulting in a negative margin of $205,440. In FY 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. As of April 30, 2001, GIPSA's FY 2001 operating costs were $14,988,809 with revenue of $14,348,665 that resulted in a negative margin of $640,114. The current reserve negative balance of $954,547 continues to be well below the desired 3-month reserve of approximately $3 million.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. Effective May 1, 2000, GIPSA increased fees as published March 30, 2000, in the **Federal Register** (65 FR 16783), by 2.4 percent. The average Federal salary increase that became effective January 2000 was 4.8 percent. GIPSA had anticipated that savings could offset the remaining 2.4 percent of the Federal salary increase. GIPSA had anticipated an increase in metric tons inspected and/or weighed which in conjunction with a projected decrease in the number of paid hours could have offset the remaining half of the Federal salary increase. However, there was a 7 percent decrease in metric tons FGIS inspected in FY 2000. This decrease caused a reduction in hours billed. FGIS also experienced a shift from noncontracted service hours to contracted service hours, which caused an increase in nonrevenue productive hours in some locations. These factors were not enough to offset the remaining 2.4 percent Federal salary increases. The salary increase that became effective January 2001 averages 3.7 percent for FGIS employees.

We have reviewed the financial position of our inspection and weighing program based on the increased salary and benefit costs, along with the projected FY 2001 workload of 82 million metric tons. Based on the review, we have concluded that an approximate 6.1 percent increase will have to be recovered at this time through increases in fees.

The current hourly fees are:

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime	Holidays
1-year contract	$25.80	$28.00	$36.40	$43.60
6-month contract	28.40	30.20	38.60	50.60
3-month contract	32.40	33.40	42.00	52.20
Noncontract	37.60	39.60	48.00	59.00

GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs and would require a fee increase. Further, GIPSA has identified those costs associated with salaries and benefits that are covered by the administrative metric tonnage fee. The 6.1 percent cost-of-living increase to salaries and benefits covered by the administrative tonnage fee results in an overall increase of an average of 6.1 percent to the administrative tonnage fee. Accordingly, GIPSA is increasing certain hourly rates, certain unit rates, and the administrative tonnage fee in 7 CFR 800.71, Table 1-Fees for Official Services Performed at an Applicant's Facility in an Onsite FGIS Laboratory; Table 2-Services Performed at Other Than an Applicant's Facility in an FGIS Laboratory; and Table 3, Miscellaneous Services.

Comment Review

GIPSA received one comment during the 30-day comment period from a grain trade association. The trade association stated that it consists of 1,000 grain, feed, processing and grain-related companies, 70 percent of which are small entities. The commenter did not support the proposed rule. A summary of the comment and GIPSA's response is as follows:

The commenter stated that the proposed fee increase was excessive and suggested GIPSA offset anticipated increases in costs for this fiscal year through improved operating efficiencies and additional reductions in overhead. In addition, the commenter suggested GIPSA aggressively seek ways to reduce direct employee expenses through increased automation and contracting for official services so future mandated Federal pay increases will have less

impact on the cost of providing official services.

GIPSA disagrees that the approximate 6.1 percent fee increase is excessive. GIPSA is constantly exploring actions to reduce official inspection and weighing costs. However, as previously discussed in this final rule, unexpected export market developments and actions during the past year have reduced projected revenue. During the past 2 years, there has been a 12.7 percent shift from non-contract to contract services. This shift from non-contract to contract services generates less revenue for GIPSA. Furthermore, the use of more efficient export facilities has resulted in more metric tons loaded per hour while using fewer GIPSA official inspection and weighing personnel to provide that service. Consequently, there has been a 10.8 percent decrease in non-contract-billed hours and a 14 percent reduction in paid hours.

The USGSA requires GIPSA to maintain a workforce of sufficient size and experience to meet the inspection and weighing needs of its applicants. GIPSA views its skilled and well-trained employees as valuable resources which facilitate the marketing of grain. Whenever possible, GIPSA has replaced vacant full time permanent positions with part time and intermittent employees to reduce administrative overhead costs related to employee salaries and benefits. Further, GIPSA is constantly reviewing the inspection and weighing programs to assess service delivery and service demand. Whenever possible, available employees are used for temporary duty assignments within other Federal programs to further reduce administrative overhead costs. This action allows GIPSA the ability to temporarily downsize while maintaining a skilled and well-trained workforce available for duty when service demands increase. GIPSA is also reviewing the issue of contracting for official services when appropriate. Efforts to contain and reduce costs have and will continue to be a high priority issue with GIPSA. GIPSA has and will continue to take action to reduce inspection and weighing costs whenever possible.

Final Action

In the April 4, 2001, proposal there were four errors. The first error occurred on page 17817, column 2. The revenue figure for FY 2001 should have read $6,326,583. The second error occurred in Table 1(1) Inspection and Weighing Services Hourly Rates (for service personnel). The hourly rates for the 3- and 6-month contract rates were transposed. The correct rates are that the 3-month contract hourly rates are higher than the 6-month contract hourly rates. The third error occurred in Table 2(3) Stowage examination. The minimum fee for a ship should have read $255, not $252.50; the minimum fee for a ship reinspection should have read $153, not $151.50. The fourth error was corrected in a **Federal Register** document published on April 16, 2001 (66 FR 19608). The document corrected the E-mail address for comments and the Table 1 heading on page 17819.

Accordingly, GIPSA is applying an approximate 6.1 percent increase to hourly rates, certain unit rates, and the administrative tonnage fee, as proposed, in 7 CFR 800.71. Table 1—Fees for Official Services Performed at an Applicant's Facility in an Onsite GIPSA Laboratory; Table 2—Services Performed at Other Than an Applicant's Facility in a GIPSA Laboratory; and Table 3—Miscellaneous Services.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grain.

For the reasons set out in the preamble, 7 CFR Part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.71 is amended by revising Schedule A in paragraph (a) to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime [2]	Holidays
1-year contract	$27.40	$29.80	$38.60	$46.40
6-month contract	30.20	32.00	41.00	53.60
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
3-month contract	34.40	35.60	44.60	55.40
Noncontract	40.00	42.00	51.00	62.60

(2) Additional Tests (cost per test, assessed in addition to the hourly rate) [3]	
(i) Aflatoxin (other than Thin Layer Chromatography)	$8.50
(ii) Aflatoxin (Thin Layer Chromatography method)	20.00
(iii) Corn oil, protein, and starch (one or any combination)	1.50
(iv) Soybean protein and oil (one or both)	1.50
(v) Wheat protein (per test)	1.50
(vi) Sunflower oil (per test)	1.50
(vii) Vomitoxin (qualitative)	12.50
(viii) Vomitoxin (quantitative)	18.50
(ix) Waxy corn (per test)	1.50
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.	
(xi) Other services	
(a) Class Y Weighing (per carrier)	
(1) Truck/container	.30
(2) Railcar	1.25
(3) Barge	2.50
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier).	
(i) All outbound carriers (per-metric-ton) [4]	

(a) 1–1,000,000	$0.1101
(b) 1,000,001–1,500,000	0.1005
(c) 1,500,001–2,000,000	0.0543
(d) 2,000,001–5,000,000	0.0402
(e) 5,000,001–7,000,000	0.022
(f) 7,000,001 +	0.0100

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

[4] The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading)	$19.00
(a) Truck/trailer/container (per carrier)	28.60
(b) Railcar (per carrier)	181.00
(c) Barge (per carrier)	0.02
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	9.85
(a) Truck/trailer container (per carrier)	19.10
(b) Railcar (per carrier)	108.10
(c) Barge (per carrier)	0.02
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	
(iv) Other services	11.20
(a) Submitted sample (per sample—grade and factor)	19.00
(b) Warehouseman inspection (per sample)	5.00
(c) Factor only (per factor—maximum 2 factors)	
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	12.40
(f) Class X Weighing (per hour per service representative)	52.50
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	28.00
(b) Aflatoxin (per test—TLC method)	106.00
(c) Corn oil, protein, and starch (one or any combination)	8.60
(d) Soybean protein and oil (one or both)	8.60
(e) Wheat protein (per test)	8.60
(f) Sunflower oil (per test)	8.60
(g) Vomitoxin (qualitative)	29.50
(h) Vomitoxin (quantitative)	36.50
(i) Waxy corn (per test)	9.85
(j) Canola (per test—00 dip test)	9.85
(k) Pesticide Residue Testing [3].	
(1) Routine Compounds (per sample)	207.00
(2) Special Compounds (per service representative)	106.00
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) Appeal inspection and review of weighing service. [4]	79.00
(i) Board Appeals and Appeals (grade and factor)	41.50
(a) Factor only (per factor—max 2 factors)	
(b) Sampling service for Appeals additional (hourly rates from Table 1).	
(ii) Additional tests (assessed in addition to all other applicable fees)	27.50
(a) Aflatoxin (per test, other than TLC)	115.00
(b) Aflatoxin (TLC)	16.50
(c) Corn oil, protein, and starch (one or any combination)	16.50
(d) Soybean protein and oil (one or both)	16.50
(e) Wheat protein (per test)	16.50
(f) Sunflower oil (per test)	39.00
(g) Vomitoxin (per test—qualitative)	44.00
(h) Vomitoxin (per test—quantitative)	134.00
(i) Vomitoxin (per test—HPLC Board Appeal)	
(j) Pesticide Residue Testing [3].	207.00
(1) Routine Compounds (per sample)	106.00
(2) Special Compounds (per service representative)	
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	75.80
(iii) Review of weighing (per hour per service representative)	
(3) Stowage examination (service-on-request) [3]	51.00
(i) Ship (per stowage space) (minimum $255.00 per ship)	
(ii) Subsequent ship examinations (same as original) (minimum $153.00 per ship).	41.00
(iii) Barge (per examination)	

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]—Continued

(iv) All other carriers (per examination)	16.00

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72 (b).

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES [1]

(1) Grain grading seminars (per hour per service representative) [2]	$52.50
(2) Certification of diverter-type mechanical samplers (per hour per service representative) [2]	52.50
(3) Special weighing services (per hour per service representative) [2]	
(i) Scale testing and certification	52.50
(ii) Evaluation of weighing and material handling systems	52.50
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	52.50
(iv) NTEP Prototype evaluation of Railroad Track Scales	52.50
(Plus usage fee per day for test car)	110.00
(v) Mass standards calibration and reverification	52.50
(vi) Special projects	52.50
(4) Foreign travel (per day per service representative)	475.00
(5) Online customized data EGIS service	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.60
(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost)	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1)	

[1] Any requested service that is not listed will be performed at $52.50 per hour.

[2] Regular business hours-Monday through Friday-service provided at other than regular hours charged at the applicable overtime hourly rate.

Dated: July 2, 2001.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 01–17005 Filed 7–6–01; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Ivermectin and Pyrantel Pamoate Chewable Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Blue Ridge Pharmaceuticals, Inc. The ANADA provides for use of chewable tablets containing ivermectin and pyrantel pamoate for prevention of heartworm disease and for treatment and control of certain gastrointestinal parasites in dogs.

DATES: This rule is effective July 9, 2001.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Blue Ridge Pharmaceuticals, Inc., 4249–105 Piedmont Pkwy., Greensboro, NC 27410, filed ANADA 200–302 that provides for veterinary prescription use of Iverhart™ Plus (ivermectin and pyrantel pamoate) Flavored Chewables for Dogs for prevention of canine heartworm disease caused by *Dirofilaria immitis* and for treatment and control of ascarids (*Toxocara canis*, *T. leonina*) and hookworms (*Ancylostoma caninum*, *A. braziliense*, and *Uncinaria stenocephala*) in dogs. Blue Ridge's Iverhart™ Plus Flavored Chewables for Dogs is approved as a generic copy of Merial's Heartgart ™ Plus Chewables, approved under NADA 140–971. ANADA 200–302 is approved as of May 30, 2001, and 21 CFR 520.1196 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1196 [Amended]

2. Section 520.1196 *Ivermectin and pyrantel pamoate chewable tablet* is amended in paragraph (b) by removing "*Sponsor.* See 050604" and by adding in its place "*Sponsors.* See Nos. 050604 and 065274".

Dated: June 20, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–17051 Filed 7–6–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Moxidectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fort Dodge Animal Health. The NADA provides for veterinary prescription use of a sustained-release injectable moxidectin formulation for prevention of heartworm disease and treatment of existing hookworm infections in dogs.

DATES: This rule is effective July 9, 2001.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Div. of American Home Products Corp., 800 Fifth St. NW., Fort Dodge, IA 50501, filed NADA 141–189 that provides for veterinary prescription use of ProHeart® 6 (moxidectin) Sustained Release Injectable for Dogs for prevention of heartworm disease caused by *Dirofilaria immitis* and treatment of existing larval and adult hookworm (*Ancylostoma caninum*) infections. The NADA is approved as of June 6, 2001, and the regulations are amended in 21 CFR part 522 by adding new § 522.1451 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for nonfood-producing animals qualifies for 3 years of marketing exclusivity beginning June 6, 2001, because the application contains substantial evidence of effectiveness of the drug involved or any studies of animal safety required for approval of the application and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.1451 is added to read as follows:

§ 522.1451 Moxidectin.

(a) *Specifications.* The drug product consists of two separate vials. One contains 10 percent moxidectin microspheres, and the other contains a vehicle for constitution of the moxidectin microspheres. Each milliliter of constituted, sustained-release suspension contains 3.4 milligrams (mg) of moxidectin.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use; dogs*—(1) *Amount.* 0.17 mg per kilogram body weight (0.0773 mg per pound) as a single subcutaneous injection.

(2) *Indications for use.* For prevention of heartworm disease caused by *Dirofilaria immitis*; for treatment of existing larval and adult hookworm (*Ancylostoma caninum*) infections.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 25, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–17049 Filed 7–6–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–035]

RIN 2115–AA97

Safety Zone; Cleveland Harbor, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone encompassing the navigable waters adjacent to the Cleveland Port Authority, on Cleveland Harbor, Lake Erie. The safety zone is necessary to ensure the safety of spectator vessels during a fireworks display launched from a barge in Cleveland Harbor on July 28, 2001. This regulation is intended to restrict vessel traffic from a portion of Lake Erie and Cleveland Harbor.

DATES: This temporary final rule is effective 9 p.m. until 10 p.m. (local time), July 28, 2001.

ADDRESSES: Comments and material received from the public are part of docket CGD09–01–035, and are available for inspection and copying at Coast Guard Marine Safety Office Cleveland, Ohio, 1055 East Ninth Street, Cleveland, Ohio, 44114, between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant John Natale, U.S. Coast Guard Marine Safety Office Cleveland,

1055 East Ninth Street, Cleveland, Ohio 44114. The telephone number is (216) 937–0111.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property.

Background and Purpose

On July 28, 2001 at approximately 9:30 p.m. a fireworks and pyrotechnic display will be launched from a barge in Cleveland Harbor, approximately 1500 feet north of Voinavich Park at coordinates 41°30′53″ N, 081°42′00″ W. Spectators are expected to view the display from various spots along the Lake Erie waterfront, and private and commercial spectator vessels are also expected in Cleveland Harbor. A safety zone will be in effect on July 28, 2001 from 9 p.m. until 10 pm. The safety zone will include the navigable waters of Cleveland Harbor and Lake Erie beginning at coordinates 41°30′50″ N, 081°41′33″ W (the northwest corner of Burke Lakefront Airport); continuing northwest to coordinates 41°31″11″ N, 081°41′55″ W; then southwest to 41° 30′48″ N, 081° 42′34″ W; then southeast to 41°30′27″ N, 081°42′13″ W (the northwest corner of dock 28 at the Cleveland Port Authority). All coordinates are based upon North American Datum 1983 (NAD 83).

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. The Coast Guard certifies under section 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities for the following reason: this rule will be in effect for one hour. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effectiveness and participate in the rulemaking process. If your small business or organization is affected by this rule, and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C.1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–958 is added to read as follows:

§ 165.T09–958 Safety Zone; Lake Erie, Cleveland Harbor, Ohio.

(a) *Location.* The Safety Zone encompasses the navigable waters of Cleveland Harbor and Lake Erie beginning at coordinates 41°30′50″ N, 081°41′33″ W (the northwest corner of Burke Lakefront Airport); continuing northwest to coordinates 41°31″11″ N, 081°41′55″ W; thence southwest to 41°30′48″ N, 081°42′34″ W; then southeast to 41°30′27″ N, 081°42′13″ W (the northwest corner of dock 28 at the Cleveland Port Authority). All coordinates are based on North American Datum 1983 (NAD83).

(b) *Effective dates.* This section is effective from 9 p.m. until 10 p.m. on July 28, 2001.

(c) *Regulations.* In accordance with the general regulations in § 165.23, entry into, transit through, or anchoring within this Safety Zone is prohibited unless authorized by the Captain of the Port, Cleveland or his representative on the Coast Guard vessel on scene. The Coast Guard Patrol Commander may be contacted on VHF Channel 16.

Dated: June 26, 2001.

R.J. Perry,

Commander, U.S. Coast Guard, Captain of the Port, Cleveland, Ohio.

[FR Doc. 01–16997 Filed 7–6–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–01–015]

RIN 2115–AA97

Security Zones; Naval Submarine Base Bangor and Naval Submarines, Puget Sound and Strait of Juan De Fuca, WA

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The Coast Guard is establishing a fixed security zone around Naval Submarine Base Bangor, and moving security zones around Naval submarines while underway on Puget Sound, and the Strait of Juan De Fuca, Washington, and adjoining waters. These zones would safeguard U.S. Naval Submarine Base Bangor, and U.S. Naval submarines from sabotage, other subversive acts, or accidents, and otherwise protect Naval assets vital to national security.

DATES: This rule becomes effective at 6 p.m. PDT, June 20, 2001. Comments and related material must reach the Coast Guard on or before September 7, 2001.

ADDRESSES: Coast Guard Marine Safety Office Puget Sound maintains the public docket for this rulemaking. You may mail comments and related material to the address below. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT P. M. Stocklin, Jr., c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to safeguard U.S. Naval bases and submarines from sabotage, other subversive acts, or accidents, and otherwise protect Naval assets vital to national security. The attack on USS COLE precipitated U.S. Navy security reviews, which have determined that immediate threats exist to Naval bases and submarines in Puget Sound. If normal notice and comment procedures were followed, this rule would not become effective soon enough to provide immediate protection to Naval assets from the threats posed by hostile entities. The security zones in this regulation have been carefully designed to minimally impact the public while providing a reasonable level of protection for Naval assets. For these reasons, following normal rulemaking procedures in this case would be impracticable, unnecessary, and contrary to the public interest.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD 13–01–015), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this interim final rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to the person identified in the **FOR FURTHER INFORMATION CONTACT** section, or to the address under **ADDRESSES** explaining why a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a fixed security zone around Naval Submarine Base Bangor, and moving security zones around Naval submarines while underway on Puget Sound, and the Strait of Juan De Fuca, WA, and adjoining waters. The Coast Guard has determined it is necessary to prevent access in order to safeguard this U.S. Naval base and submarines from sabotage, other subversive acts, or accidents, and otherwise protect Naval assets vital to national security. Recent events such as the bombing of the USS COLE highlight the fact that there are hostile entities operating with the intent to harm U.S. National Security by attacking or sabotaging Naval assets including those in Puget Sound. It would be contrary to the public interest to disclose the exact nature of the current threats to U.S. Naval assets, as this information is highly classified, and if divulged would greatly damage U.S. intelligence sources and security postures. However, the threat to the security of U.S. Naval assets is real,

credible, and immediate. The Coast Guard, through this action, intends to assist the U.S. Navy in protecting vital national security assets by establishing security zones to exclude persons and vessels from the immediate vicinity of U.S. Naval bases and submarines. Entry into these zones will be prohibited unless authorized by the Captain of the Port or his designee. These security zones will be patrolled and enforced by Coast Guard and Navy personnel. The Captain of the Port may be assisted by other federal, state, or local agencies.

Regulatory Evaluation

This interim final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this interim final rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the regulated areas established by this rule would encompass limited areas around a Naval base and submarines in the Puget Sound area. The fixed zone around the base have been carefully crafted to have either minimal or no impact on commercial users. Recreational users may have to modify their travel to stay further away from Naval Submarine Base Bangor than they presently do, but in most cases this will be only a few hundred yards. The moving security zones around Naval submarines underway will often impinge on commercial traffic lanes, but will be of a short duration and small area. The Coast Guard will mitigate this impact on commercial traffic using Coast Guard Vessel Traffic Service traffic management procedures, and the Naval submarines themselves will use reasonable measures to decrease the inconvenience of commercial users. Recreational vessels may find themselves unable to maneuver as close to Naval submarines as they would desire, however the distances established by these zones will still permit adequate freedom of movement on the waterways. Those few vessels or persons who may be impacted by this rule may request permission to enter the zones. The Captain of the Port, in conjunction with the cognizant Naval Commander, may consider these requests on a case-by-case basis. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this interim final rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This interim final rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit in or near the security zones promulgated in this rulemaking. These zones will not have a significant economic impact due to their small size, location away from heavily traveled commercial routes, and in the case of moving zones, their short duration and small area. Because the impacts of this interim final rule are expected to be minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this interim rule will not have a significant economic impact on a substantial number of small entities.

If you believe that your business, organization, or governmental jurisdiction qualifies as a small entity and that this interim final rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you believe it qualifies and how and to what degree this interim final rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this interim final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this interim final rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This interim final rule would not impose an unfunded mandate.

Taking of Private Property

This interim final rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This interim final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this interim final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This interim final rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This interim final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Environment

We considered the environmental impact of this interim finalrule and concluded that, under figure 2–1, paragraph(34)(g) of Commandant Instruction M16475.1C, this interim final rule is categorically excluded from

further environmental documentation. A Categorical Exclusion is provided for security zones. A Categorical Exclusion Determination and an Environmental Analysis Checklist are available in the docket at the location specified under the **ADDRESSES** portion of this rulemaking.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Interim Final Rule

For the reasons set out in the preamble, the Coast Guard amends part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.1311 to read as follows:

§ 165.1311 Security Zones; Naval Submarine Base Bangor and Naval submarines, Puget Sound and Strait of Juan de Fuca, Washington.

(a) *Naval Submarine Base, Bangor, WA.* The following area is a security zone: All waters of Puget Sound, Washington State, enclosed by the following: A line beginning at 47° 46′ 18″ N, 122° 42′ 18″ W; thence to 47° 46′ 32″ N, 122° 42′ 20″ W; thence to 47° 46′ 38″ N, 122° 42′ 52″ W; thence to 47° 44′ 15″ N, 122° 44′ 50″ W; thence to 47° 43′ 53″ N, 122° 44′ 58″ W; thence to 47° 43′ 17″ N, 122° 44′ 49″ W, and thence along the shoreline to the point of origin. [Datum: NAD 1983]

(b) *Location of Moving Security Zones.* The following are moving security zones: All United States navigable waters in Puget Sound and the Straits of Juan De Fuca, extending East from Traffic Lane Separation Lighted buoy J (LLNR 16135–755) to the point of moorage, and surrounding all United States Naval Submarines to a radius of 300 yards while in transit on the surface.

(c) *Exemptions.* Vessels that desire access to these zones and are not otherwise exempted as listed in paragraphs (c)(1) through (c)(3) of this section, shall secure permission from Captain of the Port on-scene designated representative(s). Section 165.33 paragraphs, (a), (e), and (f) do not apply to the following vessels or individuals on board those vessels:

(1) Public vessels of the United States, other than United States Naval vessels.

(2) Vessels that are performing work pursuant to a contract with the United States Navy that requires their presence in the security zone(s).

(3) Any other vessels or class of vessels mutually agreed upon in advance by the Captain of the Port and the cognizant Naval Commander. Vessels operating in the security zone(s) under this exemption must have previously obtained a copy of a certificate of exemption permitting their operation in the security zone from the Security Offices established by the respective Naval Base Commander. This written exemption shall state the date(s) on which it is effective and may contain further restrictions on vessel operations within the security zone as have been previously agreed upon by the Captain of the Port and the cognizant Naval Commander. The certificate of exemption shall be maintained on board the exempted vessel so long as such vessel is operating in the security zone.

(d) *Regulations.* In accordance with the general regulations in §§ 165.30 and 165.33 of this part, no person or vessel may enter the above security zones unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the security zones shall obey all lawful orders or directions of the Captain of the Port or his designated representatives. The U.S. Navy and other federal, state, or local agencies may assist the Captain of the Port in the patrol and enforcement of these zones.

Dated: June 20, 2001.

M. R. Moore,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 01–16996 Filed 7–6–01; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1481; MM Docket No. 01–67; RM–10084]

Radio Broadcasting Services; Abingdon and Canton, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 252A to Abingdon, Illinois, in response to a petition filed by Abingdon Broadcasters. *See* 66 FR 16900, March 28, 2001. The coordinates for Channel 252A at Abingdon are 40–42–28 NL and 90–19–47 WL. To accommodate the allotment at Abingdon we shall also substitute Channel 277A for vacant Channel 252A at Canton, Illinois. The coordinates for Channel 277A at Canton are 40–28–27 NL and 90–03–01 WL. A filing window for Channel 252A at Canton will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective August 6, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–67, adopted June 13, 2001, and released June 22, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended

by adding Abingdon, Channel 252A and by removing Channel 252A and adding Channel 277A at Canton.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17034 Filed 7–6–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 062901C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Texas Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment of the ending date of the Texas closure.

SUMMARY: NMFS announces an adjustment to the ending date of the annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The Texas closure is intended to prohibit the harvest of brown shrimp during their major emigration from Texas estuaries to the Gulf of Mexico so the shrimp may reach a larger, more valuable size and to prevent the waste of brown shrimp that would be discarded in fishing operations because of their small size.

DATES: The EEZ off Texas is open to trawl fishing from 30 minutes after sunset, July 8, 2001, until 30 minutes after sunset, May 15, 2002, or until NMFS publishes further notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727–570–5305; fax: 727–570–5583; e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The EEZ off Texas is normally closed to all trawling each year from 30 minutes after sunset on May 15 to 30 minutes after sunset on July 15. The regulations at 50 CFR 622.34(h) describe the area of the Texas closure and provide for adjustments to the beginning and ending dates by the Regional Administrator, Southeast Region, NMFS, under procedures and restrictions specified in the FMP.

The beginning and ending dates of the Texas closure are based on biological sampling by Texas Parks and Wildlife Department (TPWD). The closure date is established based on projected times that brown shrimp in Texas bays and estuaries will reach a mean size of 90 mm, and begin strong emigrations out of the bays and estuaries during maximum duration ebb tides. The waters off of Texas are re-opened to shrimping when projections indicate that brown shrimp will reach a mean size of 112 mm, in concurrence with maximum duration ebb tides. Biological data collected by TPDW indicate that the criteria to end the Texas closure will be met on July 8, 2001. Accordingly, the time and date for ending the Texas closure is changed from 30 minutes after sunset on July 15, 2001, to 30 minutes after sunset on July 8, 2001.

Classification

This action is authorized by 50 CFR 622.34(h)(2) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Services.

[FR Doc. 01–17075 Filed 7–3–01; 2:28 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 01012013–1013–01; I.D. 070301A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This is action is necessary to prevent exceeding the 2001 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 4, 2001, through 2400 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2001 TAC of Pacific ocean perch for the Western Regulatory Area was established as 1,280 metric tons (mt) by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2001 TAC for Pacific ocean perch in the Western Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,180 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the 2001 TAC of Pacific ocean perch for the Western Regulatory Area of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures

would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the 2001 TAC of Pacific ocean perch for the Western Regulatory Area of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17074 Filed 7–3–01; 2:28 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 131
Monday, July 9, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: 010606145–1145–01]

RIN 0651–AB37

Elimination of Continued Prosecution Application Practice as to Utility and Plant Patent Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The American Inventors Protection Act of 1999 (AIPA) enacted provisions for the continued examination of a utility or plant application at the request of the applicant (request for continued examination or RCE practice). Therefore, there no longer appears to be a need for continued prosecution application (CPA) practice as to utility and plant applications. Thus, the Office is proposing to eliminate CPA practice as to utility and plant applications. An applicant for a utility or plant patent may also continue to effectively obtain further examination of the application by filing a continuing application under section 1.53(b). Since RCE practice does not apply to design applications, CPA practice will remain in place for design applications.

DATES: To be ensured of consideration, written comments must be received on or before September 7, 2001. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to ab37.comments@uspto.gov. Comments may also be submitted by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872–9411, marked to the attention of Eugenia A. Jones. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Crystal Park 2, Suite 910, 2121 Crystal Drive, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: http://www.uspto.gov). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Eugenia A. Jones, by telephone at (703) 306–5586, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872–9411, marked to the attention of Eugenia A. Jones.

SUPPLEMENTARY INFORMATION: The AIPA was enacted into law on November 29, 1999. *See* Pub. L. 106–113, 113 Stat. 1501, 1501A–552 through 1501A–591 (1999). Among other things, the AIPA amended Title 35 of the United States Code to provide for a request for continued examination (RCE) practice. *See* 35 U.S.C. 132(b). RCE practice is applicable to any utility or plant application filed on or after June 8, 1995. *See* 113 Stat. at 1501A–560 through 1501A–561. The Office amended the rules of practice in Title 37 of the Code of Federal Regulations to implement the RCE provisions of the AIPA via an interim rule published in March 2000 and a final rule published in August 2000. *See Changes to Application Examination and Provisional Application Practice*, 65 FR 14865 (Mar. 20, 2000), 1233 *Off. Gaz. Pat. Office* 47 (Apr. 11, 2000) (interim rule), and *Request for Continued Examination Practice and Changes to Provisional Application Practice*, 65 FR 50091 (Aug. 16, 2000), 1238 *Off. Gaz. Pat. Office* 13 (Sept. 5, 2000) (final rule).

The AIPA also amended Title 35 of the United States Code to provide, with certain exceptions, for the publication of pending patent applications (other than design applications) eighteen months after the earliest claimed priority date. *See* 35 U.S.C. 122(b) (applies to utility and plant applications filed on or after November 29, 2000, including any CPA filed on or after November 29, 2000). The Office amended the rules of practice in Title 37 of the Code of Federal Regulations to implement the eighteen-month publication provisions of the AIPA by a final rule published in September of 2000. *See Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR 57023 (Sept. 20, 2000), 1239 *Off. Gaz. Pat. Office* 63 (Oct. 10, 2000) (final rule). That notice indicated that the publication of a CPA is both costly and inefficient. *See Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR at 57047, 1239 *Off. Gaz. Pat. Office* at 84 (comment 58 and response).

The Office created CPA practice under § 1.53(d) in 1997 to permit applicants to effectively obtain continued examination of an application using a streamlined continuing application practice (*i.e.*, CPA practice). CPA practice was a substitute for a continued examination practice. *See Changes to Patent Practice and Procedures*, 62 FR 53131, 53142 (Oct. 10, 1997), 1203 *Off. Gaz. Pat. Office* 63, 72 (Oct. 21, 1997) (final rule) (comment 17 and response). While the Office did not completely eliminate CPA practice for utility and plant applications (as a convenience to applicants) when it implemented RCE practice, it has now determined that CPA practice for utility or plant applications is redundant (in view of RCE practice), costly, and inefficient. Thus, the Office is now proposing to eliminate CPA practice as to utility and plant applications.

Discussion of Specific Rule

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.53(d)(1)(i) is proposed to be amended to provide that an application may be filed as a CPA under § 1.53(d) only for a design patent (either an original or reissue design patent) and the prior nonprovisional application (of which the CPA is a continuation or divisional) is a design application that is complete as defined by § 1.51(b).

In the event that an applicant files a request for a CPA of a utility or plant application (to which CPA practice no longer applies) and the utility or plant application was filed on or after June 8, 1995, the Office will automatically treat the improper request for a CPA as an

RCE under § 1.114 of the utility or plant application identified in the request for CPA. Experience, however, has shown that such requests for a CPA may not satisfy the requirements of § 1.114 to be a proper RCE (*e.g.*, the request may lack a submission under § 1.114(b), or may not be accompanied by the fee set forth in § 1.17(e)). In such situations, the Office will treat the improper request for a CPA as an RCE (albeit an improper RCE), and the time period set in the last Office action (or notice of allowance) will continue to run. If the time period (considering any available extension under § 1.136(a)) has expired, the applicant must file a petition under § 1.137 (with the lacking submission under § 1.114(b) and/or fee set forth in § 1.17(e)) to revive the abandoned application.

In the event that an applicant files a request for a CPA of a utility or plant application and the utility or plant application was filed before June 8, 1995, the Office will treat the improper request for a CPA as an improper application under the provisions set forth in § 1.53(e).

Section 1.53(d)(3) is proposed to be amended to provide that the filing fee for a CPA filed under § 1.53(d) is the basic filing fee as set forth in § 1.16(f) if the application is for an original design patent or § 1.16(h) if the application is for a reissue design patent. Since § 1.53(d) as proposed would no longer apply to utility or plant applications and a design application may contain only a single claim (§ 1.154(b)(6)), there is no need for § 1.53(d)(3) to provide for additional claims fees.

Classification

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes proposed in this notice, if adopted, would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The changes proposed in this notice (if adopted) would eliminate CPA practice as to utility and plant applications. The changes proposed in this notice (if adopted) would not have a significant economic impact on any business because: (1) Any applicant (including small entities) in a utility or plant application filed before June 8, 1995, can obtain further examination of the application by filing either a continuing application under § 1.53(b) or a submission under § 1.129(a) (if the application is eligible for § 1.129(a) practice); (2) any applicant (including small entities) in a utility or plant application filed on or after June 8, 1995, can obtain further examination of the application by filing either an RCE under 35 U.S.C. 132(b) and § 1.114 or a continuing application under § 1.53(b); and (3) any applicant (including small entities) in a design application can continue to obtain further examination of the application by filing either a CPA under § 1.53(d) or a continuing application under § 1.53(b).

Executive Order 13132

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This notice of proposed rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Office has submitted an information collection package to OMB for its review and approval of the proposed information collections under OMB control numbers 0651–0031 and 0651–0032. The Office is submitting these information collections to OMB for its review and approval because this notice of proposed rulemaking will increase the number of RCEs. The principal impact of the changes in this notice of proposed rulemaking is to eliminate CPA practice with respect to utility and plant applications.

The title, description and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. Included in each estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08/21–27/30/31/35/36/42/43/61/62/63/64/67/68/91/92/ 96/97.

Type of Review: Approved through October of 2002.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 2,247,389.

Estimated Time Per Response: 0.45 hours.

Estimated Total Annual Burden Hours: 1,021,941 hours.

Needs and Uses: During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments; Petitions and their Transmittal Letters; and Deposit Account Order Forms.

OMB Number: 0651–0032.

Title: Initial Patent Application.

Form Number: PTO/SB/01–07/13PCT/17–19/29/101–110.

Type of Review: Approved through October of 2002.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 319,350.

Estimated Time Per Response: 9.35 hours.

Estimated Total Annual Burden Hours: 2,984,360 hours.

Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in the processing and examination of the application.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these

information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, DC 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and record keeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.53 is proposed to be amended by revising paragraphs (d)(1) and (d)(3) to read as follows:

* * * * *

(d) * * *

(1) A continuation or divisional application (but not a continuation-in-part) of a prior nonprovisional application may be filed as a continued prosecution application under this paragraph, provided that:

(i) The application is for a design patent;

(ii) The prior nonprovisional application is a design application that is complete as defined by § 1.51(b); and

(iii) The application under this paragraph is filed before the earliest of:

(A) Payment of the issue fee on the prior application, unless a petition under § 1.313(c) is granted in the prior application;

(B) Abandonment of the prior application; or

(C) Termination of proceedings on the prior application.

* * * * *

(3) The filing fee for a continued prosecution application filed under this paragraph is the basic filing fee as set forth in § 1.16(f) or § 1.16(h).

* * * * *

Dated: June 22, 2001.

Nicholas P. Godici,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 01–17100 Filed 7–6–01; 8:45 am]

BILLING CODE 3510–16–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 64

[CC Docket No. 98–67; DA 00–2739]

Interstate Telecommunication Relay Service (TRS) Fund Advisory Council and TRS Fund Administrator's Recommended TRS Cost Recovery Guidelines

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On December 6, 2000, the Commission released a document seeking comment on the cost recovery guidelines recommended by the Interstate Telecommunications Relay Service (TRS) Fund Advisory Council and the TRS Fund Administrator (Advisory Council and Fund Administrator, respectively).

DATES: Comments due July 30, 2001. Reply comments due August 6, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Slipakoff at (202) 418–7705 or *pslipako@fcc.gov* of the Common Carrier Bureau, Network Services Division. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 6A207, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: In the March 6, 2000 *Improved TRS Order*, 65 FR 38432 (June 21, 2000), the Commission amended the TRS rules to expand the kinds of relay services available to consumers and to improve the quality of TRS. The Commission also required the Advisory Council and the Fund Administrator to recommend a cost methodology to cover the additional requirements. In their recommendations, the Advisory Council and the Fund Administrator propose, among other things, applying the traditional TRS cost recovery model to each service, but capturing minutes of use and costs separately and establishing separate reimbursement rates.

On November 9, 2000 the Advisory Council and the Fund Administrator filed their recommended TRS cost recovery guidelines as required by the *Improved TRS Order*. Those recommendations propose methodologies for recovering costs associated with the provision of traditional Telecommunications Relay Service (TRS), Speech-to-Speech (STS) Service, and Video Relay Service (VRS). These recommendations were placed on public notice on December 6, 2000. Comments were initially due on January 5, 2001 and reply comments were due on January 19, 2001. We now seek additional comment on these recommendations.

The Advisory Council and Fund Administrator's Recommended TRS Cost Recovery Guidelines will be available for review and copying during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554, (202) 418–0270. It may also be viewed at *https://haifoss.fcc.gov/cgibin.ws.exe/prod/ecfs/comsrch_v2.hts*, by typing 98–67 in the proceeding box and 11/09/2000 in the date box. The recommended guidelines may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW., Washington, DC 20036, telephone 202–857–3800, facsimile 202–857–3805, TTY 202–293–8810.

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in this document. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the document. The Commission will send a copy of the document including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the document and IRFA (or summaries thereof) will be published in the **Federal Register**. *See* id.

A. Need for, and Objective of, the Proposed Rules

2. The Commission is issuing this document to seek comment on the recommended TRS cost recovery guidelines filed by the Advisory Council and the Fund Administrator on

November 9, 2000. For traditional TRS cost recovery, the Advisory Council and the Fund Administrator recommended that the Commission: (1) Continue to use the current national average costing and pricing methodology for the annual development of the interstate cost recovery reimbursement rate; (2) review the TRS Center Data Request to ensure that various sections and categories continue to be appropriate and up to date; (3) use the same allocation methodology in place today for allocating toll-free and 900 call minutes between interstate and intrastate demand; and (4) direct that Spanish relay costs be collected separately to test whether they are significantly different from English relay costs, and continue to reimburse providers on completed conversation minutes at a single national average reimbursement rate if there is no difference between the Spanish and English relay per-minute costs.

3. The Advisory Council and the Fund Administrator make the following recommendations for STS cost recovery: (1) The same cost recovery methodology used for computing the reimbursement rate in place today for traditional TRS interstate cost recovery could be used to develop the STS reimbursement rate; (2) due to its unique characteristics, a separate reimbursement rate based on STS costs and minutes should be calculated; (3) the TRS Center Data Request should be expanded to include specific STS sections to capture the costs and minutes separately from traditional TRS or VRS; and (4) providers should be reimbursed for completed conversation minutes at the national average reimbursement rate for STS.

4. The Advisory Council and the Fund Administrator make the following four recommendations with respect to VRS cost recovery: (1) The same methodology for rate development in place today for traditional TRS interstate cost recovery could be used to develop the VRS reimbursement rate; (2) providers should be reimbursed based on completed conversation minutes at a national average reimbursement rate; (3) the TRS Center Data Request should be expanded to include specific VRS sections to capture VRS costs and demand separately; and (4) due to its unique characteristics, a separate reimbursement rate based on VRS costs and demand should be calculated.

B. Legal Basis

5. The authority for actions proposed in this document may be found in §§ 64.603, and 64.604 of the Commission's Rules, 47 CFR 64.603, 64.604, and in sections 1, 2, 4, 225, 255, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 225, 255, 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. *See* 5 U.S.C. 603(b)(3). The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." *See* 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. *See* 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). *See* Small Business Act, 15 U.S.C. 632 (1996). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." *See* 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. *See* 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration). "Small governmental jurisdiction" *See* 47 CFR 1.1162 generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." *See* 5 U.S.C. 601(5). As of 1992, there were approximately 85,006 governmental entities in the United States. *See* U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments." This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000. *See* id. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules.

7. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding TRS.

8. *TRS Providers.* Neither the Commission nor the SBA has developed a definition of "small entity" specifically applicable to providers of telecommunications relay services (TRS). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The SBA defines such establishments to be small businesses when they have no more than 1,500 employees. According to the FCC's most recent data, there are 11 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. The FCC does not have data specifying the number of these providers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and the FCC is thus unable at this time to estimate with greater precision the number of TRS providers that would qualify as small business concerns under the SBA's definition. The FCC notes, however, that these providers include several large interexchange carriers and incumbent local exchange carriers. Consequently, the FCC estimates that there are fewer than 11 small TRS providers that may be affected by the proposed rules, if adopted. The FCC seeks comment generally on its analysis identifying TRS providers, and specifically on whether the FCC should conclude that, for Regulatory Flexibility Act purposes, any of the TRS providers are in fact small entities.

9. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more

than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent local exchange carriers (LECs). The FCC does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the FCC estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small incumbent LECs.

10. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." *See* 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996). We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

11. The recommended guidelines may require TRS providers to track Spanish and English relay costs separately to see if there are significant differences between the two services. There may also be additional recordkeeping requirements imposed for STS and VRS cost recovery because these are relatively new services. These costs, however, should be minimal because the tracking procedures are similar to those already in place for traditional TRS. The FCC tentatively concludes that the proposals in the document would impose minimum burdens on small entities. In addition, these recordkeeping measures will promote more efficient service and allow the TRS providers to be reimbursed more accurately for their costs, thus negating any minimal costs imposed by these requirements. Furthermore, we do not expect these costs to burden small entities any more than large entities because the costs are part of the reimbursement process and will allow all providers to be accurately reimbursed. The FCC seeks comment on these tentative conclusions.

E. Steps Take To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c). The Commission has tentatively concluded that the proposed rules will have minimal economic impact on small entities because these rules are designed to allow all providers to be accurately reimbursed. Furthermore, the Advisory Council consists of members of state regulatory bodies, relay users, members of the disabilities community, large and small TRS providers, and large and small TRS contributors. As a result, the proposed guidelines are the result of input from the industry, including small business entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Report to Congress

13. The Commission will send a copy of this document, including a copy of this IRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the document and this IRFA will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

Ordering Clauses

16. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration.

14. The Initial Regulatory Flexibility Analysis for this document, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604, is contained herein.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–17032 Filed 7–6–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1483, MM Docket No. 01–134, RM–10137]

Radio Broadcasting Services; Elk City, OK and Borger, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by TV 31, L.L.C. requesting the reallotment of NTSC Channel 31 from Elk City, Oklahoma, to Borger, Texas, and modification of the construction permit for Station KBCA to specify Borger, Texas, as the community of license. The coordinates for Channel 31 at Borger are 35–41–56 and 100–53–34. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 31 at Borger.

DATES: Comments must be filed on or before August 13, 2001, and reply comments on or before August 28, 2001.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, Scott C. Cinnamon, Shook, Hardy & Bacon, 600 14th Street, NW. Suite 800, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–134, adopted June 13, 2001, and released June 22, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments under Oklahoma, is amended by removing Channel 31 at Elk City.

3. Section 73.606(b), the Television Table of Allotments under Texas, is amended by adding Borger, Channel 31.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17036 Filed 7–6–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1484, MM Docket No. 01–133, RM–10143 and RM–10150]

Radio Broadcasting Services; Mason, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separate petitions for Mason, Texas. Charles Crawford has proposed the allotment of Channel 249C3 at Mason, Texas, while Katherine Pyeatt has requested the allotment of Channel 269C3 to Mason, Texas. The coordinates for Channel 249C3 at Mason are 30–43–39 and 99–11–49. There is a site restriction 4.3 kilometers (2.7 miles) southeast of the community. The coordinates for Channel 269C3 at Mason are 30–45–00 and 99–10–14. There is a site restriction 5.7 kilometers (3.6 miles) east of the community. Mexican concurrence will be requested for the allotment of Channels 249C3 and 269C3 at Mason.

DATES: Comments must be filed on or before August 13, 2001, and reply comments on or before August 28, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205; Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–133, adopted June 13, 2001, and released June 22, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CRF part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channels 249C3 and 269C3 at Mason.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17035 Filed 7–6–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1488; MM Docket No. 01–135, RM–10154; MM Docket No. 01–136; RM–10155; and MM Docket No. 01–137; RM–10156]

Radio Broadcasting Services; Caliente, NV; Boswell, OK; and Altus, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes three allotments. The Commission requests comments on a petition filed by Schleicher County Radio proposing the allotment of Channel 291C2 at Caliente,

Nevada, as the community's second local FM transmission service. Channel 291C2 can be allotted to Caliente in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 291C2 at Caliente are 37–36–54 North Latitude and 114–30–40 West Longitude. *See* **SUPPLEMENTARY INFORMATION,** *infra.*

DATES: Comments must be filed on or before August 13, 2001, and reply comments on or before August 28, 2001.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Randy Parker, 25415 Gleen Lock, The Woodlands, Texas 77380 (Consultant for Schleicher County Radio); Ann Bavender, Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th Street, 11th Floor, Arlington, Virginia 22209 (Counsel for Boswell Broadcasting Company); and Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas (Petitioner for Atlus, Oklahoma).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–135; MM Docket No. 01–136, and MM Docket No. 01–137, adopted June 13, 2001, and released June 22, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

The Commission requests comments on a petition filed by Boswell Broadcasting Company proposing the allotment of Channel 282C3 at Boswell, Oklahoma, as the community's first local aural transmission service. Channel 282C3 can be allotted to Boswell in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 282C3 at Boswell, Oklahoma are 34–01–38 North Latitude and 95–52–08 West Longitude.

The Commission requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 295C2 at Altus, Oklahoma, as the community's third local FM transmission service. Channel 295C2 can be allotted to Altus1 in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.8 kilometers (2.3 miles) northeast to avoid a short-spacing to the proposed allotment of Channel 296C3 at Paducah, Texas. The coordinates for Channel 295C2 at Altus are 34–39–30 North Latitude and 99–18–03 West Longitude.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposed to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the table of FM Allotments under Oklahoma, is amended by adding Channel 295C2 at Altus and Boswell, Channel 282C3.

3. Section 73.202(b), the table of FM Allotments under Nevada, is amended by adding Channel 291C2 at Caliente.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17033 Filed 7–6–01; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 66, No. 131
Monday, July 9, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Agricultural Research Service's (ARS) intention to request an extension of a currently approved information collection, Form AD–761, USDA Patent License Application for Government Invention that expires November 30, 2001.

DATES: Comments must be received by September 12, 2001 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact June Blalock, USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131; Telephone Number 301–504–5257.

SUPPLEMENTARY INFORMATION:

Title: USDA Patent License Application for Government Invention.

OMB Number: 0518–0003.

Expiration Date of Approval: November 30, 2001.

Type of Request: To extend a currently approved information collection.

Abstract: The USDA patent licensing program grants patent licenses to qualified businesses and individuals who wish to commercialize inventions arising from federally supported research. The objective of the program is to use the patent system to promote the utilization of inventions arising from such research. The licensing of federally owned inventions must be done in accordance with the terms, conditions and procedures prescribed under 37 CFR Part 404. Application for a license must be addressed to the Federal agency having custody of the invention. Licenses may be granted only if the license applicant has supplied the Federal agency with a satisfactory plan for the development and marketing of the invention and with information about the applicant's capability to fulfill the plan. 37 CFR 404.8 sets forth the information which must be provided by a license applicant. For the convenience of the applicant, USDA has itemized the information needed on Form AD–761, and instructions for completing the form are provided to the applicant. The information submitted is used to determine whether the applicant has both a complete and sufficient plan for developing and marketing the invention and the necessary manufacturing, marketing, technical and financial resources to carry out the submitted plan.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Description of Respondents: Businesses or other for profit individuals.

Estimated Number of Respondents: 75.

Frequency of Responses: One time per invention.

Estimated Total Annual Burden on Respondents: 225 hours.

Copies of this information collection and related instructions can be obtained without charge from June Blalock, USDA, ARS, Office of Technology Transfer by calling 301–504–5257.

COMMENTS: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Comments may be sent to USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 01–17083 Filed 7–6–01; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet at the Siuslaw National Forest Supervisor's Office, Siuslaw River Room, 4077 SW Research Way, Corvallis, OR 97333, on July 19, 2001. The meeting will begin at 9 a.m. The agenda will include: County Payments Update; Report on Grassy Knoll Ecosystems; Upland Restoration on the Green Peak Density Management Project; Update on the Umpqua Land Exchange Proposal; Round Robin Information Sharing; and Recreation Use Issues & LSR Management in the Marys Peak Area (this will include a field trip to Marys Peak in the afternoon, for which transportation will be provided). Participants are asked to please bring their lunch. The meeting should end around 4 p.m. Interested citizens are encouraged to attend. A fifteen-minute public comment period is scheduled at 11:15 a.m. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541/750–7075 or write to Forest Supervisor, Siuslaw National Forest, PO Box 1148, Corvallis, OR 97339.

Dated: June 18, 2001.
Gloria D. Brown,
Forest Supervisor.
[FR Doc. 01–17085 Filed 7–6–01; 8:45 am]
BILLING CODE 3410–110–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.
Title: Current Industrial Reports (Wave II Voluntary).
Form Number(s): M327G, M331J, MQ311A, MQ325A, MQ325C, MQ325F, MQ335C, MA311D, MA333N, and MA335L.
Agency Approval Number: 0607–0206.
Type of Request: Revision of a currently approved collection.
Burden: 3,779 hours.
Number of Respondents: 2,723.
Avg Hours Per Response: 1.39.
Needs and Uses: The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR program focuses primarily on the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions.

Due to the large number of surveys conducted in the CIR program, for clearance purposes, the CIR surveys are divided into "waves." There are three waves and each wave contains a voluntary and mandatory clearance package, making 6 separate clearances. Each year, one wave (2 clearance packages) is submitted for review. Counterpart forms were added to supplement some monthly and quarterly surveys to collect annual information on a mandatory basis from respondents not participating in the more frequent voluntary collections. In this request, we are discontinuing MQ316A, "Footwear," due to budgetary reductions.

Affected Public: Business or other for-profit organizations.

Frequency: Quarterly, Monthly, and Annually.
Respondent's Obligation: Voluntary—monthly, quarterly, and annually; Mandatory (Annual Counterpart).
Legal Authority: Title 13, United States Code, Sections 182, 224, and 225.
OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 3, 2001.
Madeleine Clayton,
Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.
[FR Doc. 01–17030 Filed 7–6–01; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 4 of the 2001 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 7, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on taxes, the ownership and contributions made to an Individual Retirement Account, Keogh, and 401K plans, examining patterns in respondent work schedules, and child care arrangements. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2001 Panel is currently scheduled for three years and will include nine waves of interviewing beginning February 2001. Approximately 50,000 households will be selected for the 2001 Panel, of which 37,500 are expected to be interviewed. We estimate that each household will contain 2.1 people, yielding 78,750 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves of interviewing will occur in the 2001 SIPP Panel during FY 2002. The total annual burden for 2001 Panel SIPP interviews would be 118,125 hours in FY 2002.

The topical modules for the 2001 Panel Wave 4 collect information about:

- Annual Income and Retirement Accounts
- Taxes
- Work Schedule
- Child Care

Wave 4 interviews will be conducted from February 2002 through May 2002.

A 10-minute reinterview of 2,500 persons is conducted at each wave to ensure accuracy of responses. Reinterviews would require an additional 1,253 burden hours in FY 2002.

An additional 2,100 burden hours is requested in order to continue the SIPP Methods Panel testing. The test targets SIPP items and sections that require thorough and rigorous testing in order to improve the quality of core data.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of one to four years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2001 Panel, respondents are interviewed a total of nine times (nine waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0875.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 78,750 persons per wave.

Estimated Time Per Response: 30 minutes per person on average.

Estimated Total Annual Burden Hours: 121,478.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: July 3, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17029 Filed 7–6–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 010628164–1164–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Increases in Stockpile Disposals of Mica Splittings and Titanium Sponge

AGENCY: Department of Commerce.

ACTION: Notice of request for public comments on the potential market impact of proposed increases in the disposal quantities of Mica Splittings and Titanium Sponge from the National Defense Stockpile under the proposed Fiscal Year (FY) 2002 Annual Materials Plan (AMP).

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comments on the potential market impact of proposed increases in the disposal quantities of Mica Splittings and Titanium Sponge National Defense Stockpile under the proposed Fiscal Year (FY) 2002 Annual Materials Plan (AMP).

DATES: Comments must be received by August 8, 2001.

ADDRESSES: Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; FAX (202) 482–5650; E–Mail; rmeyers@bxa.doc.gov

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce, (202) 482–3634; or Terri L. Robl, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (DOD), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–1) formally established a Market Impact Committee (the Committee) to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *." The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and the Federal Emergency Management Agency, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to "consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile."

The National Defense Stockpile Administrator ("the Administrator") has proposed revising the proposed FY 2002 Annual Materials Plan (AMP) (previously approved by the Committee) to increase the disposal quantities of Mica Splittings from 4 million pounds to 8.5 million pounds, and Titanium Sponge from 5,000 short tons to 7,000 short tons.

The proposed increase for Mica Splittings will allow the Administrator to consider the possibility of an offer to sell most of the remaining Stockpile inventory of Mica Splittings in one transaction. The proposed increase for

Titanium Sponge will allow the Administrator to sell additional quantities of the material to meet increased industry demand. The Committee is seeking public comments on the potential market impact of these proposed increases.

The quantities of Mica Splittings and Titanium Sponge listed in the proposed FY 2002 AMP are not sales target disposal quantities. They are only a statement of the proposed maximum quantities of these materials that may be disposed of in a particular fiscal year. The quantities of these two materials that will actually be offered for sale will depend on the market for the materials at the time of their offering as well as on the quantities of the materials approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the proposed increased disposal quantities of Mica Splittings and Titanium Sponge. Although comments in response to this Notice must be received by August 8, 2001 to ensure full consideration by the Committee, interested parties are encouraged to submit comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sales of these materials. Public comment is an important element of the Committee's market impact review process.

Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. The Committee will seek to protect such information to the extent permitted by law.

The records related to this Notice will be made accessible in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 C.F.R. 4.1 et seq.). Specifically, the Bureau of Export Administration's FOIA reading room is located on its web page, which can be found at *http://www.bxa.doc.gov*, and copies of the public comments received will be maintained at that location (see Freedom of Information Act (FOIA) heading). If requesters cannot access the web site, they may call (202) 482–2165 for assistance.

Dated: June 28, 2001.

Matthew S. Borman,

Deputy Assistant Secretary, Bureau of Export Administration.

[FR Doc. 01–17101 Filed 7–6–01; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 85–9A018.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to The U.S. Shipper's Association ("USSA") on July 2, 2001. Notice of issuance of the original Certificate was published in the **Federal Register** on June 9, 1986, (51 FR 20873).

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, by E-mail at *oetca@ita.doc.gov*, or by phone at (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001 et seq.) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2000).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 85–00018, was issued to USSA on June 3, 1986 (51 FR 20873, June 9, 1986), and was last amended on May 28, 1999 (64 FR 29994, June 4, 1999).

USSA's Export Trade Certificate of Review has been amended to:

(1) Add the following as "Members" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Basell USA Inc., Wilmington, DE (Controlling Entity: Basell NV., Hoofddorp, The Netherlands); Resolution Performance Products LLC, Houston, TX; (Controlling Entity: Apollo Management LP, New York, NY); KRATON Polymers U.S. LLC (Controlling Entity: R.K. Polymers LLC, New York, NY); Aventis Crop Science, USA LP (Controlling Entity: Aventis Crop Science Holding SA, Lyon, France); George Avery, Westport, CT; J.W.C. & Company, LLC, Macungie, PA" and

(2) Change the listing of current member Rhodia, Inc., Cranberry, New Jersey (Controlling Entity: Rhone-Poulenc, S.A., Courbevoie, France) to Rhodia, Inc., Cranberry, New Jersey (Controlling Entity: Rhodia, S.A., Boulonge-Billancourt, France) and

(3) Delete the following members: ANGUS Chemical Company, Buffalo Grove, IL (Controlling Entity: Alberta Natural Gas, Alberta, Canada); Nova Chemicals Inc., Monaca, PA; Rhone-Poulenc AG Company, Research Triangle Park, NC (Controlling Entity: Rhone-Poulenc, S.A., Courbevoie, France); and Rhone-Poulenc Animal Nutrition, Atlanta, GA (Controlling Entity: Rhone-Poulenc, S.A., Courbevoie, France).

The effective date of the amended certificate is April 3, 2001. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: July 2, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs,

[FR Doc. 01–17054 Filed 7–6–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070301B]

Proposed Information Collection; Comment Request; Billfish Tagging Report

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before September 7, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to David Holts, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, P.O. Box 271, La Jolla, CA 92038–0271 (phone 858–546–7186).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administrations's Southwest Fishery Science Center operates a billfish tagging program. Tagging supplies are provided to volunteers. When they catch and tag fish they submit a brief report on the fish tagged and the location of the tagging. The information obtained is used in conjunction with tag returns to determine billfish migration patterns, mortality rates, and similar information useful in the management of the fishery.

II. Method of Collection

A paper form the size of a postcard is used.

III. Data

OMB Number: 0648–0009.
Form Number: NOAA Form 88–162.
Type of Review: Regular submission.
Affected Public: Individuals or households.
Estimated Number of Respondents: 1,250.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 104.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 2, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17092 Filed 7–6–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070301C]

Proposed Information Collection; Comment Request; Alaska Marine Sport Fishing Economic Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before September 7, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Tod Lee, Alaska Fisheries Science Center, F/AKC3, 7600 Sand Point Way, NE, Bldg. 4, Seattle, WA 98115 (phone 206–526–4252).

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the survey is to collect information that will be used to conduct economic analyses of marine sport fisheries off Alaska. The Federal Government is responsible for the management of the Pacific halibut fishery, while the State of Alaska manages the salmon fisheries. The scope of the project includes both the Pacific halibut and the primary salmon fisheries (Chinook, Coho and Sockeye). The survey data will be used to estimate the economic value of a fishing day to anglers, and how catch rates and fishery regulations affects that value. The survey data will also be used to estimate how catch rates and fishery regulation affect the participation decisions of anglers. This type of economic data is currently not available for many areas and fisheries in Alaska. The information derived from the survey will be of use to fishery managers in their effort to evaluate the economic status of the marine sport fisheries off Alaska and the consequences of proposed regulations.

II. Method of Collection

The data will be collected through a mail survey with a telephone contact of non-respondents. Each respondent will receive an initial questionnaire. A second questionnaire will be mailed to those who have not responded within 3 weeks. Those who do not respond to the second mailing will be contacted by telephone to ask them to complete the questionnaire and return it by mail. The survey instrument will be developed using focus groups to test questions and survey format.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households.
Estimated Number of Respondents: 3,800.
Estimated Time Per Response: 20 minutes.
Estimated Total Annual Burden Hours: 1,267 hours.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 2, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17093 Filed 7–6–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070201E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Enforcement Oversight Committee and Advisory Panel and its Mid-Atlantic Plans Committee in July, 2001 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on Tuesday, July 24, 2001, from 9 a.m. to 12 noon. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Portland, ME. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, July 24, 2001, 9 a.m.- 12 noon.—Enforcement Oversight Committee and Advisory Panel.

Location: Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311.

The Committee will consider issues concerning: (1) the applicability of Vessel Monitoring Systems (VMS) regulations for vessels voluntarily participating in the VMS program; (2) vessel operators who have had their permits revoked but who continue to operate vessels without an operator permit; (3) possible modification to scallop gear stowage provisions in order to improve safety at sea.

Tuesday, July 24, 2001, 9 a.m. - 12 noon.—Mid-Atlantic Plans Committee Meeting.

Location: Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311.

The committee will review and provide guidance to the Council on proposed changes to the Mid-Atlantic Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) and the Summer Flounder, Scup, and Black Sea Bass FMP. They will discuss other Mid-Atlantic issues of concern.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 3 , 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17098 Filed 7–6–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070201C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a work session, which is open to the public.

DATES: The HMSPDT will meet on Monday, July 23, 2001; Tuesday, July 24, 2001; Wednesday, July 25, 2001; Thursday, July 26, 2001; and Friday, July 27, 2001. The HMSPDT will meet each day from 8 a.m. until 5 p.m., except for Friday, July 27, 2001 when the HMSPDT will meet from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held in the large conference room at the NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, Room D–203, La Jolla, CA 92038–0271; (858) 546–7100.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council; (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to continue revising the draft fishery management plan (FMP) for highly migratory species (HMS) per Council guidance stemming from the June 2001 Council meeting.

Although non-emergency issues not contained in the HMSPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be the subject of formal HMSPDT action during this meeting. HMSPDT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 3, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17096 Filed 7–6–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070201D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: A subcommittee of the Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Strategic Plan Implementation Oversight Committee will hold a telephone conference, which is open to the public.

DATES: The telephone conference will be held Tuesday, July 31, 2001, from 2 p.m. to 4 p.m.

ADDRESSES: Four listening stations will be available at the following locations:

1. National Marine Fisheries Service, Northwest Region Director's Conference Room 7600 Sand Point Way NE, Building 1 Seattle, WA 98115
   Contact: Mr. Bill Robinson, (206) 526–6267
2. Pacific Fishery Management Council 7700 NE Ambassador Place, Suite 200 Portland, OR 97220–1384
   Contact: Mr. John DeVore, (503) 326–6352
3. California Department of Fish and Game Conference Room, Room 1320 1416 Ninth Street Sacramento, CA 95814
   Contact: Mr. LB Boydstun, (916) 653–6281
4. Washington Department of Fish and Wildlife Natural Resource Building, Room 677 1111 Washington Street SE Olympia, WA 98501
   Contact: (360) 902–2819

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the telephone conference is to continue development of an analysis of the measures needed for the conversion of the open access fishery to limited entry.

Although non-emergency issues not contained in the meeting agenda may come before the subcommittee for discussion, those issues may not be the subject of formal subcommittee action during this meeting. Subcommittee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the subcommittee's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 3, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17097 Filed 7–6–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

July 2, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new textile export license/commercial invoice printed on light blue paper.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Governments of the United States and the People's Republic of China have agreed to amend the existing export visa requirements to provide for the use of a new textile export license/commercial invoice, issued by the Government of the People's Republic of China, for shipments of goods produced or manufactured in China and exported from China on and after January 1, 2002. The new license/invoice shall be printed on light blue background paper. The light blue form replaces the light green background form currently in use. The visa stamp is not being changed.

Shipments of textile and apparel products which are produced or manufactured in China and exported from China during the period January 1, 2002 through January 31, 2002 may be accompanied by a visa printed on either the light green background paper or the light blue background paper as described above. Products exported on and after February 1, 2002 must be accompanied by an export visa issued by the Government of the People's Republic of China on the light blue license/invoice form.

See 62 FR 15465, published on April 1, 1997.

D. Michael Hutchinson

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 2, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 27, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export visa requirement for certain cotton, wool, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on January 1, 2002, for products exported from China on or after January 1, 2002, you are directed to amend the March 27, 1997 directive to provide for the use of export licenses/commercial invoices issued by the Government of the People's Republic of China which are printed on light blue background paper. The light blue form will replace the light green background form currently being used.

To facilitate implementation of this amendment to the export licensing system, you are directed to permit entry of textile products, produced or manufactured in China and exported from China during the period January 1, 2002 through January 31, 2002, for which the Government of the People's Republic of China has issued an export license/commercial invoice printed on either the light green background paper or the light blue background paper as described above.

Products exported on and after February 1, 2002 must be accompanied by an export visa issued by the Government of the People's Republic of China on the light blue license/invoice form.

The requirements for ELVIS (Electronic Visa Information System) remain unchanged.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate

export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–17055 Filed 7–6–01; 8:45 am]
BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Short Supply Request under the African Growth and Opportunity Act (AGOA) and the United States - Caribbean Basin Trade Partnership Act (CBTPA)

July 5, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that micro-denier 30 singles and 36 singles solution dyed staple spun viscose yarns, produced on open-ended spindles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and CBTPA.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen or Lori Mennitt, International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the CBTPA, as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001.

SUMMARY:

On June 29, 2001 the Chairman of CITA received a petition on behalf of Fabrictex alleging that micro-denier 30 singles and 36 singles solution dyed staple spun viscose yarn produced on open-ended spindles, for use in knit fabric, classified in subheading 5510.11.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that apparel articles of U.S. formed knit fabrics of such yarns be eligible for preferential treatment under the AGOA and the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether this yarn can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by July 24, 2001 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, N.W., Washington, D.C. 20230.

BACKGROUND: The AGOA and the CBTPA provide for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The AGOA and the CBTPA also provide for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more AGOA or CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On June 29, 2001 the Chairman of CITA received a petition on behalf of Fabrictex alleging that micro-denier 30 singles and 36 singles solution dyed staple spun viscose yarn, produced on open-ended spindles, for use in knit fabric, classified in HTSUS subheading 5510.11.0000, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the AGOA and the CBTPA for apparel articles that are cut and sewn in one or more AGOA or CBTPA beneficiary countries from U.S. formed knit fabric from such yarn. This is the second petition submitted by Fabrictex on solution dyed staple spun viscose yarn.

CITA is soliciting public comments regarding this request, particularly with respect to whether this yarn can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other yarns that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the yarn for purposes of the intended use. Comments must be received no later than July 24, 2001. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that this yarn can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–17208 Filed 7–5–01; 2:16 pm]
BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB) Analysis Panel.

Date of Meeting: 12–13 July 2001.

Time of Meeting: 0900–1700.

Places: RAND (Los Angeles, CA).

Agenda: The Analysis Panel of the Army Science Board's (ASB) Summer Study will visit RAND and meet from 0900–1700 each day with the following agenda items:

Demonstration of scenarios

Discussion of emerging findings (will be available in documented briefing form)
Insights from other studies
Discussion of modeling requirements (Janus, JCATS, OneSAF, other)
MOUT implications
Panel discussions/directions

These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Karen Williams at (407) 384–3937.

Wayne Joyner,

Executive Assistant, Army Science Board.

[FR Doc. 01–17006 Filed 7–6–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 8, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren—Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: July 2, 2001.

John Tressler,

Leader, Regulatory Information Management,, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Field Test Activities and the 2003–2004 Full-Scale Schools and Staffing Survey (SASS): local educational agencies (LEA), Principal, School, Teacher, Library.
Frequency: Two series of field tests and the full-scale SASS.
Affected Public: Individuals or households; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 2,764
Burden Hours: 2,232.
Abstract: The National Center for Education Statistics (NCES) will use the field test to assess data collection procedures that are planned for the next full-scale SASS in 2003–2004. Policymakers, researchers and practitioners at the national, state and local levels use SASS data which are representative at the national and state levels. Respondents include public and private school principals, teachers and school and LEA staff persons.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–17008 Filed 7–6–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 8, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: July 2, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.
Title: Annual Progress Reporting Form for Assistive Technology Grantees.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 56;
Burden Hours: 896.
Abstract: This data collection will be conducted annually to obtain program and performance information from National Institute on Disability and Rehabilitation Research (NIDRR) state assistive technology grantees on their project activities. The information collected will assist federal NIDRR staff in responding to the Government Performance and Results Act (GPRA). Data will primarily be collected through an internet form.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–17009 Filed 7–6–01; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Notice of Wetland and Floodplain Involvement

AGENCY: Chicago Operations Office, DOE.

ACTION: Notice.

SUMMARY: DOE proposes to implement a wetland management program at Argonne National Laboratory-East (ANL–E) to maintain and enhance wetland resources and improve wetland function. In accordance with DOE regulations for Compliance with Floodplains/Wetlands Environmental Review Requirements (10 CFR part 1022), DOE will prepare a wetland and floodplain assessment for this proposed action. This assessment will be incorporated into the Environmental Assessment (EA) being prepared for this project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that is issued following the completion of the EA or may be issued separately.

DATES: Comments are due to the address below no later than July 24, 2001.

ADDRESSES: Comments should be addressed to Michael J. Flannigan, Director, Safety and Technical Services Division, U.S. Department of Energy, Chicago Operations Office, 9800 S. Cass Avenue, Argonne, IL 60439. (630) 252–2219.

FOR FURTHER INFORMATION CONTACT: Further information on this proposed action and wetlands and floodplain assessment can be obtained from Donna Green, U.S. Department of Energy, Argonne Area Office, 9800 S. Cass Avenue, Argonne, IL 60439. (630) 252–2264.

SUPPLEMENTARY INFORMATION: DOE's wetland management program would include: removal of invasive plant species in wetlands and near wetlands by application of herbicide or by cutting or pulling; planting seeds and live plants to increase coverage and diversity of native plants; and prescribed burns to increase native species populations and reduce non-native species. Wetland communities would be monitored regularly to assess wetland conditions; wetland boundaries would be delineated on the ANL-E site map; and DOE would return wetland hydrology to a drained wetland to provide compensatory wetland mitigation for impacts. The wetland that DOE would restore and many of the other wetlands that DOE would manage are located in floodplains.

Issued in Argonne, IL on June 26, 2001.

Michael J. Flannigan,

Director, Safety and Technical Services, Chicago Operations Office, Department of Energy.

[FR Doc. 01–17068 Filed 7–6–01; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Temporary Small Resource Policy

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to establish a Temporary Small Resource Policy (Policy) as an incentive to utility customers to use small resources to serve a portion of their electricity needs, reducing firm load on BPA. This ROD is based on input from the public process and information in the BPA Business Plan Environmental Impact Statement (DOE/EIS–0183, June 1995) and the Business Plan Record of Decision (August 15, 1995).

ADDRESSES: Copies of the Temporary Small Resource Policy ROD, Business Plan, Business Plan EIS, and Business Plan ROD may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Katherine S. Pierce, KEC–4, Bonneville Power Administration, PO Box 3621, Portland, Oregon, 97208–3621, telephone number 503–230–3962; fax number 503–230–5699; e-mail *kspierce@bpa.gov.*

SUPPLEMENTARY INFORMATION: The West Coast is in the midst of a power emergency caused by a demand for electricity that is often greater than its supply and record high wholesale market prices. This Policy is a one-time, short-term response to the West Coast power emergency and is one of many measures BPA is undertaking to address power supplies. BPA and the Pacific Northwest are facing severe conditions during the next 12 to 15 months:

- new Subscription contracts have increased customers' load requirements on BPA, so BPA needs to buy more power;
- the Northwest drought means BPA faces low water conditions and has less hydropower, so BPA and its customers must plan to buy even more power; and
- California's market conditions have driven up the purchase price of market power to unprecedented levels.

This Policy would allow the temporary use of short-term resources by BPA customers to help meet their loads and to relieve immediate supply needs. It is intended to be an interim measure that helps bridge the gap until new long-term resources are available. Implementation of this Policy would

conform to BPA's market-driven approach for participation in the increasingly competitive electric power market.

Issued in Portland, Oregon, on June 22, 2001.

Stephen J. Wright,

Acting Administrator and Chief Executive Officer.

[FR Doc. 01–17069 Filed 7–6–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–460–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

July 2, 2001.

Take notice that on June 22, 2001, Canyon Creek Compression Company (Canyon) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets listed on Appendix A to the filing, to be effective July 23, 2001.

Canyon states that the purpose of this filing is to implement a negotiated rate provision in its tariff consistent with the Federal Energy Regulatory Commission's (Commission) "Statement of Policy and Request for Comments" issued January 31, 1996 in Docket Nos. RM95–6 and RM96–7.

Canyon states that copies of the filing are been mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

David P. Boergers,

Secretary.

[FR Doc. 01–17064 Filed 7–6–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–391–000]

Clear Creek Storage Company, L.L.C.; Notice of Application

July 2, 2001.

Take notice that on June 22, 2001, Clear Creek Storage, L.L.C. (Clear Creek), 180 East 100 South, Salt Lake City, Utah 84111, filed an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations, for authorization to convert two existing observation wells to withdrawal wells and construct the piping necessary to connect the two wells to the existing injection/withdrawal lateral, in order to increase the withdrawal capability of its storage reservoir within existing certificated volumes, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance).

Specifically, Clear Creek seeks to obtain authorization to convert Well Nos. 35–4B and 22–9B, located in its Clear Creek Field in Uinta County, Wyoming, from observation wells to withdrawal wells and construct and operate 336 feet of 4-inch diameter pipeline to connect Well No. 35–4B to the existing injection/withdrawal lateral and 1,000 feet of 4-inch diameter pipeline to connect Well No. 22–9B to the existing injection/withdrawal lateral.

Clear Creek states that the purpose of the proposed construction is to benefit existing customers by providing necessary redundancy in reservoir withdrawal facilities, thereby enhancing the reliability of Clear Creek's storage-transportation system during normal withdrawal activities and in the event of pipeline failure or route system maintenance.

Any questions regarding the application should be directed to Michael B. McGinley, Vice President, Clear Creek Storage Company, L.L.C., 180 East 100 South Street, P.O. Box 45601, Salt Lake City, Utah 84111, at (801) 324–2527.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 23, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters

will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to file" and then "New User Account."

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–17058 Filed 7–6–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–430–001]

Florida Gas Transmission Company; Notice of Compliance Filing

July 2, 2001.

Take notice that on June 27, 2001, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to become effective June 25, 2001:

Substitute Second Revised Sheet No. 135A

FGT states that on May 25, 2001, FGT filed the referenced tariff sheet which would permit adjustments to the rate components of discount agreements to achieve the agreed upon overall rate as long as all rate components remain within the applicable minimum and maximum rates. Subsequently, on June 22, 2001, the Federal Energy Regulatory Commission issued an order requiring FGT to change the word may to must on the referenced tariff sheet. FGT states that it is making the tariff revision as required.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

David P. Boergers,

Secretary.

[FR Doc. 01–17063 Filed 7–6–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2405–000]

GNA Energy, LLC; Notice of filing

July 2, 2001.

Take notice that on June 22, 2001, GNA Energy, LLC (GNA Energy) tendered for filing with the Federal Regulatory Commission (Commission), a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 13, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

David P. Boergers,

Secretary.

[FR Doc. 01–17061 Filed 7–6–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–410–000 and RP01–8–000]

Mississippi River Transmission Corporation; Notice of Technical Conference

July 2, 2001.

On July 17, 2000, Mississippi River Transmission Corporation (MRT) submitted a filing to comply with Order No. 637. Several parties filed comments or protests addressing various aspects of MRT's filing. In addition, on October 2, 2000, MRT submitted a filing to comply with section 284.12(c)(2)(ii) of the Commission's regulations.[1] No party protested the filing.

[1] 18 CFR 284.12(c)(2)(ii).

Take notice that a technical conference to discuss the various issues raised by MRT's filings will be held on Wednesday, July 25, 2001, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Parties protesting aspects of MRT's filing in compliance with Order No. 637 should be prepared to discuss alternatives.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 01–17067 Filed 7–6–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–40–028]

Panhandle Eastern Pipe Line Company; Notice of Offer of Settlement

July 2, 2001.

Take notice that on June 22, 2001, Panhandle Eastern Pipe Line Company (Panhandle), on behalf of itself and Sponsoring Parties,[1] filed a Stipulation and Agreement (Settlement) under Rule 602 of the Commission's Rules of Practice and Procedure in the captioned docket. The Settlement is designed to resolve all matters associated with the payment of Kansas ad valorem tax refunds on Panhandle's system for the period before June 28, 1988 due to the Commission's implementation of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Public Service Company of Colorado*.[2] A copy of the Settlement is on file with the Commission and is available for public inspection in the Public Reference Room. The Settlement may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Participation in the Settlement by the first sellers listed on the exhibits to the Settlement is voluntary. Likewise, customers of Panhandle, state regulatory commissions and related entities may elect to opt-out of the settlement. If a state regulatory commission opts out of the settlement, certain Settlement Amounts related to local distribution companies subject to that commission's jurisdiction will be adjusted in accordance with the terms of the settlement.

Any First Seller with a maximum refund obligation of less than $50,000 as of January 31, 2001 will be exempt from any obligation to pay that amount. Large First Sellers (i.e., those with a refund obligation in excess of $400,000) will receive a credit of 25% of their refund obligation. Small First Sellers with a refund obligation between $300,000 and $400,000 will receive a $100,000 credit while Small First Sellers with a refund obligation between $50,00 and $300,000 will receive a $50,000 credit and pay 80% of the remaining amount.

In accordance with Section 385.602(f), initial comments are due by July 12, 2001, and any reply comments are due by July 23, 2001.

David P. Boergers,

Secretary.

[FR Doc. 01–17066 Filed 7–6–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–419–001]

TransColorado Gas Transmission Company; Notice of Compliance Filing

July 2, 2001.

Take notice that on June 28, 2001, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Second Revised Sheet No. 206B, to be effective June 18, 2001.

TransColorado states that the filing is being made in compliance with the Commission's June 14, 2001, order in Docket No. RP01–419–000.

On May 15, 2001, TransColorado filed revised tariff sheets (the May 15 filing) to change the tariff references from its Direct Access Request and Tracking System (DART) to a more standardized name of "Interactive Website." The Commission accepted and suspended the tariff sheets to December 1, 2001, or earlier, subject to refund and subject to TransColorado providing clarification and making a correction to a tariff sheet that still contained a reference to the DART system, which was removed and submitted in this filing.

In addition to the corrected tariff sheet, TransColorado provided an explanation for the deletion of Sections 2.1(b) (vii) and (viii), Discount Request Processing and Regulatory Reporting, respectively, proposed in the May 15, filing. TransColorado stated that both of these provisions and reporting formerly conducted on the DART system are now handled on its web site and that no changes are being made to TransColorado's conduct of business and procedures.

TransColorado states that a copy of this filing has been served upon TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a request with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on

[1] Other than Panhandle, Sponsoring Parties include Anadarko Petroleum Corporation, OXY USA Inc., Amoco Production Company, Pioneer Natural Resources USA, Inc., Duke Energy Services, Inc., Dorchester Hugoton, Ltd., RME Corporation (formerly Union Pacific Resources Company), Biedenharn Petroleum, Inc., Midgard Energy Company, Barrett Energy, Inc. Helen C. Dyer/Saturn Trust, Barbara J. Wilson, Inc., Marcus Barrett III, William O. Barrett, Helmerich & Payne, Inc., Kaiser—Francies Oil Company, Mobil Oil Corporation, Barbara J. Wilson Estate, Joyce A. Mims, Texaco Inc., Anna B. Chamberlain Trust, Credo Exploration Program Ltd. 1979, Carle W. Hoffman, Hoffman Oil Company, First National Oil, Inc., Cabot Oil & Gas Corp., Lee Banks d/b/a Banks Oil Company, Robert Greenberg, BJW Irrevocable Trust No. 1, W.B. Osborn III, CLX Energy Inc., Reserve Pipeline, Inc., Ethel Huffman McKee, et al., Beren Corporation, Central Illinois Public Service Co., ProLiance Energy, Inc., Indiana Office of Utility Consumer Counsel, SEMCO Energy Gas Company, Northern Indiana Public Service Company, Northern Indiana Fuel & Light Company, Kokomo Gas and Fuel Company, Michigan Gas Storage Company, MCN Energy, East Ohio Gas Company, Kansas Gas Service Company, and the Kansas Corporation Commission.

[2] *Public Service Co. of Colorado, et al.* 80 FERC ¶61,264 (1997), *reh'g denied*, 82 FERC ¶61,058 (1998). Appeal pending. *Anadarko Petroleum Corporation v. FERC*, Case No. 98–1227 et al.

"Login to File" and then "New User Account."

David P. Boergers,

Secretary.

[FR Doc. 01–17065 Filed 7–06–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2412–000, et al.]

Xcel Energy Operating Companies, et al.; Electric Rate and Corporate Regulation Filings

June 29, 2001.

Take notice that the following filings have been made with the Commission:

1. Xcel Energy Operating Companies, Northern States Power Company, Northern States Power Company (Wisconsin)

[Docket No. ER01–2412–000]

Take notice that on June 22, 2001, Northern States Power Company and Northern States Power Company (Wisconsin) (jointly NSP), wholly-owned utility operating company subsidiaries of Xcel Energy Inc., tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Missouri River Energy Services. NSP proposes the Agreements be included in the Xcel Energy Operating Companies FERC Joint Open Access Transmission Tariff, Original Volume No. 1, as Service Agreements 191-NSP and 192–NSP, pursuant to Order No. 614.

NSP requests that the Commission accept the agreement effective June 4, 2001, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. American Electric Power Service Corporation

[Docket No. ER01–2413–000]

Take notice that on June 25, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing executed Interconnection and Operation Agreement between Indiana Michigan Power Company and Sugar Creek Energy, L.L.C. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of August 24, 2001. A copy of the filing was served upon the Indiana Utility Regulatory Commission and Michigan Public Service Commission.

Comment date: July 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Public Service Corporation

[Docket No. ER01–2414–000]

Take notice that, on June 25, 2001, Wisconsin Public Service Corporation (WPSC) filed an executed long-term service agreement with Allegheny Energy Supply Company, LLC (Allegheny) under WPSC's market-based rate tariff, FERC Electric Tariff, Third Revised Volume No. 10 (Tariff). A copy of the filing was served upon Allegheny.

WPSC requests that the Commission waive its notice of filing requirements to allow the service agreement to become effective on May 26, 2001.

Comment date: July 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Ohio Valley Electric Corporation

[Docket No. ER01–2415–000]

Take notice that on June 25, 2001, Ohio Valley Electric Corporation (OVEC) tendered for filing an Amended and Restated Interconnection and Operation Agreement, dated June 19, 2001, between Jackson County Power, LLC (JCP) and OVEC. Copies of this filing were served upon JCP and the Public Utilities Commission of Ohio.

Comment date: July 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. PPL Montana, LLC

[Docket No. ER01–2416–000]

Take notice that on June 25, 2001, PPL Montana, LLC (PPL Montana) filed with the Commission a Service Agreement between PPL Montana and The Montana Power Company. PPL Montana requests that the Commission grant a waiver so as to permit the Service Agreement to become effective on June 20, 2001. PPL Montana states that it has served a copy of this filing on The Montana Power Company.

Comment date: July 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Consumers Energy Company

[Docket No. ER01–2417–000]

Take notice that on June 25, 2001 Consumers Energy Company (Consumers) tendered for filing a Service Agreement with Duke Energy Trading and Marketing, L.L.C., (Customer) under Consumers FERC Electric Tariff No. 9 for Market Based Sales. Consumers requested that the Agreement be allowed to become effective as of the date of its filing. Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment date: July 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Northern Indiana Public Service Company

[Docket No. ER01–2418–000]

Take notice that on June 25, 2001, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Calpine Energy Services, L.P. (Calpine). Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Non-Firm Point-to-Point Transmission Service to Calpine pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Copies of this filing have been sent to Calpine Energy Services, L.P. the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of June 26, 2001.

Comment date: July 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER01–2420–000]

Take notice that on June 26, 2001, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with The Detroit Edison Company. Copies of the filing have been served on The Detroit Edison Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Wisconsin Electric respectfully requests an effective date of June 25, 2001 to allow for economic transactions.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER01–1820–002]

Take notice that on June 26, 2001, Cinergy Services, Inc. on behalf of The Cincinnati Gas & Electric Co. and PSI Energy tendered a compliance filing regarding its proposed short-form market-based rate tariff. Copies of this filing have been served on the Indiana Regulatory Commission, Kentucky Public Service Commission and the Public Utilities Commission of Ohio.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Gauley River Power Partners, L.P.

[Docket No. ER01–1964–001]

Take notice that on June 26, 2001, Gauley River Power Partners, L.P. filed revised tariff sheets in compliance with the Commission's June 22, 2001 order in this proceeding.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Pennsylvania Electric Company

[Docket No. ER01–2072–001]

Take notice that on June 26, 2001, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy) submitted an amendment to its filing made on May 17, 2001 in this docket.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company

[Docket No. ER01–2291–001]

Take notice that on June 26, 2001, Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company (The NSTAR Companies) tendered for filing revised tariff sheets to their Open Access Transmission Tariffs in this proceeding to reflect corrections to typographical errors contained in the original filing made on June 12, 2001, which expand their offered services over the NSTAR Companies' entitlements to the Phase I/Phase II HVDC facilities.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER01–2387–001]

Take notice that on June 26, 2001, Commonwealth Edison Company (ComEd) filed an amendment and restated Interconnection Agreement between ComEd and LSP-Nelson Energy LLC to replace and supersede the Interconnection Agreement filed by ComEd in Docket No. ER00–3509–000 on August 24, 2000.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. EOPT Power Group Nevada, Inc.

[Docket No. ER01–1897–001]

Take notice that on June 26, 2001, EOPT Power Group Nevada, Inc. (EOPT) filed an Amendment of its Petition filed with the Federal Energy Regulatory Commission for acceptance of its FERC Electric Tariff No. 1.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. CinCap IX, LLC.

[Docket No. ER01–2054–001]

Take notice that on June 26, 2001, CinCap IX, LLC tendered for filing an amendment to its May 15, 2001 application for authorization to sell power and ancillary services at market-based rates, and to reassign transmission capacity.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER01–2419–000]

Take notice that on June 26, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), filed an agreement for network integration transmission service between Southern Companies and Energy Marketing, a department of SCS, as agent for APC, under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5).

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–17057 Filed 7–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–9–013]

Open Access Same-Time Information System and Standards of Conduct

Issued June 29, 2001.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Denying Request for Experimental Business Practice Standard.

SUMMARY: The Federal Energy Regulatory Commission is denying a request to authorize a 6-month experiment implementing a business practice standard that would allow transmission providers, at the time of reservation request deadlines, to retract their prior acceptances of unconfirmed customer requests for daily firm transmission service and substitute pending pre-confirmed requests for such service, in order of queue time, up to the amount of daily firm available transmission capability remaining.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission 888 First Street, NE., Washington, DC 20426, (202) 208–1283.

Paul Robb (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission 888 First Street, NE., Washington, DC 20426, (202) 219–2702.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal

Energy Regulatory Commission 888 First Street, NE.,Washington, DC 20426,(202) 208–0321.

SUPPLEMENTARY INFORMATION:

Order Denying Request for Experimental Business Practice Standard

We will deny the request from the Market Interface Committee of the North American Electric Reliability Council (MIC) for expedited approval of its proposed experiment on the treatment of unconfirmed requests for daily, firm transmission service, for the reasons stated below.

Background

On May 29, 2001, the MIC filed a request to modify the Commission's OASIS Business Practice Standards adopted in Order No. 638,[1] to add a new business practice standard dealing with accepted daily, firm point-to-point transmission service that has not been confirmed and to modify a related footnote to Table 4–2 on Reservation Timing Limits. The MIC requests that the Commission implement this proposal on a mandatory, experimental basis for six months beginning no later than June 30, 2001. The MIC further states that, within four months of the effective date, it will provide the Commission with an assessment of the experiment and whether it should be revised, discontinued, or made permanent.

On June 5, 2001, the Commission issued a notice of filing and request for comments regarding the MIC filing (66 FR 31234, June 11, 2001). The notice gave a brief description of the MIC proposal and invited comments on or before June 11, 2001.[2] Comments were invited on the MIC proposal generally and specifically on whether Commission action is needed by June 30, 2001, as requested by the MIC.

On June 11, 2001, Dynegy Power Marketing, Inc. and Coral Power, LLC (collectively "Dynegy/Coral") jointly filed a protest opposing the MIC request. Dynegy/Coral argue that the MIC proposal should not be granted on an expedited basis and that it should be rejected outright. Dynegy/Coral's protest was the sole comment filed in response to the June 5, 2001 notice and request for comments.

[1] Open Access Same-Time Information System and Standards of Conduct, Order No. 638, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,092 (2000).

[2] This shortened comment period was used to accommodate the MIC's request for action on or before June 30, 2001.

Discussion

We will deny the MIC's request for expedited approval of its proposed experiment on the treatment of unconfirmed requests for daily, firm transmission service for three reasons. First, although the MIC requests expedited approval of its proposed experiment, the MIC's proposal presents no reason why expedited treatment is needed. Moreover, although our June 5, 2001 notice specifically invited comment on this issue, no comments were filed in support of expedited treatment or giving reasons why prompt action is needed. In fact, Dynegy/Coral's protest, the sole comment filed, argued against expedited approval of the proposed experiment both because it opposed approval of the experiment outright, and because Dynegy/Coral argues that implementation during the summer peak period would cause problems for customers denied service under the MIC's proposal. Given the absence of a showing of need for expedited treatment, we will reject MIC's request for expedited approval of its proposed experiment.

The MIC proposal would allow transmission providers, at reservation request deadlines, to retract their prior acceptance of unconfirmed customer requests for daily, firm transmission service and substitute pending pre-confirmed requests for such service, in order of queue time, up to the amount of daily, firm available transmission capability remaining. The proposal includes phrases such as, "the transmission provider has the right to move to a retracted status" and "after which time that request may be retracted." These phrases do not provide a standard for the transmission provider to use in deciding whether to retract customers' unconfirmed accepted requests for daily, firm point-to-point transmission service. Careful monitoring would be necessary to insure that the proposal is not implemented in a discriminatory manner. A customer whose request for transmission service had been accepted would have no way to predict whether a transmission provider might choose to retract its acceptance, which would make it difficult for the customer to make alternative arrangements.

Dynegy/Coral argues that the proposed standard addresses the problem of unused transmission capacity caused by some customers not confirming accepted transmission requests, but does not address the underlying problem caused by the practice of some transmission providers of delaying their acceptance of requests for daily, firm transmission service, even when customers submit their requests early. Dynegy/Coral contends this practice puts customers in a bind that forces them to make alternative arrangements as a protective mechanism. Dynegy/Coral argues that customers should not be punished for taking such precautions, even if they result in some unused transmission capacity. Dynegy/Coral argues that a better solution to avoid unused capacity would be for transmission providers to more uniformly respond to requests for daily, firm transmission service on a timely basis, rather than by taking the unwarranted step of giving greater priority to pre-confirmed service requests. Further, Dynegy/Coral argues that the MIC proposal would force customers to purchase transmission services they will be unable to use.

We agree with Dynegy/Coral that the MIC proposal does not address whether the time period for transmission providers to evaluate requests for daily, firm transmission service needs to be clarified or shortened and that this is a relevant issue. If transmission providers would all respond to requests for daily, firm transmission service on a timely basis, then customers would have adequate time to confirm before reservations are scheduled, and the MIC's proposed business practice might not be needed. We request that the MIC reconsider its motion in light of the concerns raised by Dynegy/Coral. After considering these issues, the MIC may, at its option, make a revised request for an experimental business practice standard.

The Commission orders

The request by MIC for expedited approval of a proposed experiment on the treatment of unconfirmed requests for daily, firm transmission service is hereby denied without prejudice, as discussed in the body of this order.

By the Commission.
(SEAL)

David P. Boergers,

Secretary.

[FR Doc. 01–17007 Filed 7–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft License Application and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

July 2, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major Unconstructed Project.

b. *Project No.:* 11656–000.

c. *Date Filed:* June 15, 2001.

d. *Applicant:* Lake Dorothy Hydro, Inc.

e. *Name of Project:* Lake Dorothy Hydroelectric.

f. *Location:* In the Tongas National Forest, at Lake Dorothy on Dorothy Creek, near Juneau, Alaska. Township 42S, Range 69E and 70E, Copper River Meridian.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.A. 791(a)–825(r):

h. *Applicant Contact:* Mr. Corry V. Hildenbrand, Lake Dorothy Hydro, Inc., 5601 Tonsgard Court, Juneau, AK 99801–7201, (907) 463–6315.

Send Comments to: Mr. Corry V. Hildenbrand, Lake Dorothy Hydro, Inc., 5601 Tonsgard Court, Juneau, AK 99801–7201. AND Ms. Susan Tinney, S. Tinney Associates, Inc., Licensing Coordinator, P.O. Box 985, Lake City, CO 81235.

i. *FERC Contact:* Mike Henry (503) 944–6762 or e-mail at *mike.henry@ferc.fed.us.*

j. *Status of Project:* With this notice the Commission is soliciting (1) preliminary terms, conditions, and recommendations on the Preliminary Draft Environmental Assessment (DEA), and (2) comments on the Draft License Application.

k. *Deadline for filing:* 90 days from the issuance of this notice.

All comments on the Preliminary DEA and Draft License Application should be sent to the addresses noted above in Item (h), with one copy filed with FERC at the following address: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must include the project name and number and bear the heading Preliminary Comments, Preliminary Recommendations, Preliminary Terms and Conditions, or Preliminary Prescriptions.

Comments, protests and interventions and preliminary recommendations, terms and conditions and prescriptions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy of the application may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance).

Lake Dorothy Hydro, Inc. has mailed a copy of the Preliminary DEA and Draft License Application to interested entities and parties. Copies of these documents are available for review at Lake Dorothy's Public Reference File established in Lake Dorothy Hydro, Inc.'s office in Juneau, Alaska, or by calling Susan Tinney, S. Tinney Associates, Inc. (970) 944–1020 or by e-mailing tinney@rmi.net.

m. With this notice, we are initiating consultation with the Alaska STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

David P. Boergers,

Secretary.

[FR Doc. 01–17059 Filed 7–6–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 2, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12038–000.

c. *Date Filed:* June 4, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Lake Sherburne Dam Hydroelectric Project.

f. *Location:* The proposed project would be located at the Bureau of Reclamation's Lake Sherburne Dam, on Swiftcurrent Creek in Glacier County, Montana. Part of the project would be on lands administered by the U.S. Forest Service (Glacier National Park).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, (fax) (208) 745–7909, or e-mail address: *npsihydro@aol.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, recommendations, interventions, and protests, may be electronically filed via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) The existing 94-feet-high 1086-feet-long Lake Sherburne Dam, (2) the existing Sherburne Reservoir with a surface area of 1,344 acres and a storage capacity of 67,604 acre-feet at a normal elevation of 4,788 feet, (3) a proposed 60 inch-diameter 450 foot-long steel penstock, (4) a proposed powerhouse containing one generating unit with an installed capacity of 1 MW, (5) a proposed 15 kv transmission line approximately 5 miles long, and (6) appurtenant facilities.

The project would have an annual generation of 2.4 GWh.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on

http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Any desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17060 Filed 7–6–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 2, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No.:* P–1494–233.

c. *Date Filed:* June 27, 2001.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola Project.

f. *Location:* The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. This project does not utilize Federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bob Sullivan, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC Contact:* James Martin at *james.martin@ferc.fed.us,* or telephone (202) 208–1046.

j. *Deadline for filing comments, motions, or protests:* August 10, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

Please include the project number (P–1494–233) on any comments or motions filed.

k. *Description of Project:* Grand River Dam Authority, licensee for the Pensacola Project, requests approval to grant permission to Anchors End Marina to dredge approximately 4,500 cubic yards of material to clear the shoreline for future housing additions. The proposed project is on Grand Lake in Section 2, Township 23 North, Range 21 East, Mayes County.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17062 Filed 7–6–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

July 3, 2001.

The following Notice of Meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 11, 2001, 10:00 A.M.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

771st—Meeting July 11, 2001, Regular Meeting, 10:00 a.m.

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
Docket# ER01–2032, 000, Central Maine Power Company
Other#s ER01–2130, 000, Central Maine Power Company

CAE–2.
Docket# ER01–2055, 000, Arizona Public Service Company

CAE–3.
Docket# ER01–2081, 000, Allegheny Energy Supply Company, LLC
Other#s ER00–2998, 001, Southern Company Services, Inc.; ER00–2999, 001, Southern Company Services, Inc.; ER00–3000, 001, Southern Company Services, Inc.; ER00–3001, 001, Southern Company Services, Inc.

CAE–4.
Docket# ER01–1676, 000, FPL Energy MH 50, L.P.
Other#s ER01–1676, 001, FPL Energy MH 50, L.P.

CAE–5.
Docket# ER01–2086, 000, San Manuel Power Company, LLC

CAE–6.
Docket# ER01–2092, 000, Allegheny Energy Supply Lincoln Generating Facility, LLC
Other#s ER00–2998, 001, Southern Company Services, Inc.; ER00–2999, 001, Southern Company Services, Inc.; ER00–3001, 001, Southern Company Services, Inc.

CAE–7.
Docket# ER01–2141, 000, Riverside Canal Power Company
Other#s ER01–2100, 000, Delano Energy Company, Inc.; ER01–2112, 000, Mountainview Power Company

CAE–8.
Docket# ER01–2097, 000, Portland General Electric Company
Other#s ER01–2103, 000, Enron Power Marketing, Inc.

CAE–9.
Omitted

CAE–10.
Docket# ER01–2195, 000, Mid-Continent Area Power Pool

CAE–11.
Omitted

CAE–12.
Omitted

CAE–13.
Docket# RT01–74, 002, Carolina Power & Light Company
Other#s RT01–74, 003, Carolina Power & Light Company

CAE–14.
Docket # RT01–88, 000, Alliance Companies, Ameren Corporation on behalf of: Union Electric Company and Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, Consumers Energy and Michigan Electric Transmission Company, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., FirstEnergy Corp. on behalf of: American Transmission Systems, Inc., the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, the Detroit Edison Company, International Transmission Company and Virginia Electric and Power Company
Other#s EC99–80, 009, Alliance Companies, Ameren Corporation on behalf of: Union Electric Company and Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, Consumers Energy and Michigan Electric Transmission Company, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., FirstEnergy Corp. on behalf of: American Transmission Systems, Inc., the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company, the Detroit Edison Company, International Transmission Company and Virginia Electric and Power Company;
EC99–80, 011, Alliance Companies, Ameren Corporation on behalf of: Union Electric Company and Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, Consumers Energy and Michigan Electric Transmission Company, Exelon Corporation on behalf of:

Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., FirstEnergy Corp. on behalf of: American Transmission Systems, Inc., the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, the Detroit Edison Company, International Transmission Company and Virginia Electric and Power Company;

ER99–3144, 009, Alliance Companies, Ameren Corporation on behalf of: Union Electric Company and Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, Consumers Energy and Michigan Electric Transmission Company, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., FirstEnergy Corp. on behalf of: American Transmission Systems, Inc., the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, the Detroit Edison Company, International Transmission Company and Virginia Electric and Power Company;

ER99–3144, 011, Alliance Companies, Ameren Corporation on behalf of: Union Electric Company and Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, Consumers Energy and Michigan Electric Transmission Company, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., FirstEnergy Corp. on behalf of: American Transmission Systems, Inc., the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, the Detroit Edison Company, International Transmission Company and Virginia Electric and Power Company;

RT01–88, 001, Alliance Companies, Ameren Corporation on behalf of: Union Electric Company and Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, Consumers Energy and Michigan Electric Transmission Company, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., FirstEnergy Corp. on behalf of: American Transmission Systems, Inc., the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, the Detroit Edison Company, International Transmission Company and Virginia Electric and Power Company;

RT01–88, 003, Alliance Companies, Ameren Corporation on behalf of: Union Electric Company and Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, Consumers Energy and Michigan Electric Transmission Company, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., FirstEnergy Corp. on behalf of: American Transmission Systems, Inc., the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, the Detroit Edison Company, International Transmission Company and Virginia Electric and Power Company

RT01–84, 000, Illinois Power Company;

RT01–26, 000, Northern Indiana Public Service Company;

RT01–37, 000, The Dayton Power and Light Company

CAE–15.
Docket# ER01–2090, 000, American Electric Power

CAE–16.
Docket# ER01–2122, 000, Ameren Services Company
Other#s ER01–2123, 000, Ameren Services Company

CAE–17.
Docket# RT01–34, 000, Southwest Power Pool, Inc.
Other#s RT01–34, 002, Southwest Power Pool, Inc.; RT01–75, 000, Entergy Services, Inc.; RT01–75, 003, Entergy Services, Inc.; EC01–94, 000, American Electric Power Service Corporation; EC01–100, 000, Oklahoma Gas and Electric Company; EC01–103, 000, Western Resources, Inc.; and Kansas Gas; and Electric Company; EC01–106, 000, Midwest Energy, Inc.; EC01–108, 000, Kansas City Power & Light Company; EC01–109, 000, The Empire District Electric Company; EC01–111, 000, Southwestern Public Service Company; EC01–113, 000, Cleco Power LLC

CAE–18.
Docket# ER00–3591, 007, New York Independent System Operator, Inc.
Other#s EL00–70, 005, New York State Electric and Gas Corporation v. New York Independent System Operator, Inc.; ER00–1969, 003, New York Independent System Operator, Inc.; ER00–3038, 004, New York Independent System Operator, Inc.

≤CAE–19.
Docket# ER97–1523, 040, New York Independent System Operator, Inc.
Other#s OA97–470, 038, New York Independent System Operator, Inc.; ER97–4234, 036, New York Independent System Operator, Inc.

CAE–20.
Docket# QF90–176, 003, Vineland Cogeneration Limited Partnership

CAE–21.
Docket# EF00–5092, 000, United States Department of Energy—Western Area Power Administration

CAE–22.
Docket# ER01–1527, 003, Sierra Pacific Power Company
Other#s ER01–1529, 003, Nevada Power Company

CAE–23.
Docket# EL01–47, 005, Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States

CAE–24.
Omitted

CAE–25.
Docket# EL01–45, 001, Consolidated Edison Company of New York
Other#s ER01–1385, 001, Consolidated Edison Company of New York

CAE–26.
Omitted

CAE–27.
Docket# ER99–230, 001, Alliant Services Company

CAE–28.
Docket# EF98–3011, 001, United States Department of Energy—Southestern Power Administration

CAE–29.
Docket# EL98–52, 004, North American Electric Reliability Council
Other#s ER99–1986, 002, North American Electric Reliability Council; ER99–2000, 002, North American Electric Reliability Council

CAE–30.
Docket# ER99–3084, 001, Energy Services, Inc.
Other#s ER99–3093, 001, Energy Services, Inc.; ER99–3133, 001, Energy Services, Inc.; ER99–3175, 001, Energy Services, Inc.; ER99–3176, 001, Energy Services, Inc.; ER99–3188, 001, Energy Services, Inc.; ER99–3252, 001, Energy Services, Inc.; ER99–3302, 001, Energy Services, Inc.; ER99–3315, 001, Energy Services, Inc.

CAE–31.
Docket# ER00–3577, 002, New England Power Pool
Other#s ER00–3577, 003, New England Power Pool

CAE–32.
Docket# EC00–63, 001, Sierra Pacific Power Company, Nevada Power Company and Portland General Electric Company
Other#s ER00–1801, 001, Sierra Pacific Power Company, Nevada Power Company and Portland General Electric Company

CAE–33.
Docket# EL00–95, 038, San Diego Gas & Electric Company v. Sellers of Energy

and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
Other#s EL00–98, 036, Investigation of Practices of California Independent System Operator and the California Power Exchange

CAE–34.
Docket# RT01–35, 001, Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, Pacificorp, Portland General Electric Company, Puget Sound Energy, Inc.; and Sierra Pacific Power Company
Other#s RT01–15, 001, Avista Corporation, Montana Power Company, Nevada Power Company, Portland General Electric Company, Puget Sound Energy, Inc.; and Sierra Pacific Power Company

CAE–35.
Omitted

CAE–36.
Docket# ER00–565, 002, Pacific Gas & Electric Company

CAE–37.
Docket# EL01–60, 001, Public Utility District of Texas

CAE–38.
Docket# EL01–19, 000, H.Q. Energy Services (U.S.) Inc. v. New York Independent System Operator, Inc.

CAE–39.
Docket# EL01–46, 000, Axia Energy, L.P. v. Southwest Power Pool, Inc.

CAE–40.
Docket# EL01–78, 000, LG&E Energy Marketing, Inc. v. Southern Company Services, Inc.; and Georgia Transmission Corporation

CAE–41.
Docket# EL01–42, 000, Universal Studios, Inc. v. Southern California Edison

CAE–42.
Docket# EL01–12, 000, Gregory 7 Beverly Swecker v. Midland Power Cooperative

CAE–43.
Omitted

CAE–44.
Omitted

CAE–45.
Docket# ER00–1387, 000, Ameren Services Company
Other#s ER00–2364, 000, Ameren Services Company

CAE–46.
Docket# EL00–99, 000, Maine Public Utilities Commission, United Illuminating Company and Bangor Hydro-Electric Company v. Iso New England, Inc.
Other#s EL00–100, 000, Maine Public Utilities Commission, United Illuminating Company and Bangor Hydro-Electric Company v. Iso New England, Inc.; EL00–112, 000, Maine Public Utilities Commission, United Illuminating Company and Bangor Hydro-Electric Company v. Iso New England, Inc.

CAE–47.
Docket# ER01–2144, 000, New England Power Pool

CAE–48.
Docket# ER01–2074, 000, Calhoun Power Company I, LLC

CAE–49.
Docket# RT01–2, 000, PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Peco Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities Inc.

CAE–50.
Docket# RT01–98, 000, PJM Interconnection, L.L.C. and Allegheny Power
Other#s RT01–10, 000, Allegheny Power

CAE–51.
Docket# RT01–95, 000, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc.; and Rochester Gas & Electric Corporation

CAE–52.
Docket# RT01–86, 000, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company, Vermont Electric Power Company and Iso New England Inc.
Other#s RT01–94, 000, Nstar Services Company

CAE–53.
Docket# RT01–77, 000, Southern Companies Services, Inc.

CAE–54.
Docket# EL01–93, 000, Mirant Americas Energy Marketing, L.P., Mirant New England, LLC, Mirant Kendall, LLC and Mirant Canal, LLC v. Iso New England Inc.

CAE–55.
Docket# RT01–99, 000, Regional Transmission Organizations

CAE–56.
Docket# RT01–100, 000, Regional Transmission Organizations

Consent Agenda—Markets, Tariffs and Rates—Gas

CAG–1.
Docket# RP01–457, 000, Northern Border Pipeline Company

CAG–2.
Docket# PR01–9, 000, Cranberry Pipeline Corporation

CAG–3.
Docket# RP00–340, 000, Gulf South Pipeline Company, LP
Other#s RP00–340, 001, Gulf South Pipeline Company, LP; RP01–7, 000, Gulf South Pipeline Company, LP

CAG–4.
Docket# RP00–458, 000, Clear Creek Storage Company, L.L.C.

CAG–5.
Docket# RP00–405, 000, Gulf States Transmission Corporation
Other#s RP00–617, 000, Gulf States Transmission Corporation; RP00–617, 001, Gulf States Transmission Corporation

CAG–6.
Docket# RP00–342, 000, Migc, Inc.
Other#s RP01–57, 000, Migc, Inc.

CAG–7.
Docket# RP95–409, 009, Northwest Pipeline Corporation
Others RP95–409, 010, Northwest Pipeline Corporation

CAG–8.
Omitted

CAG–9.
Omitted

CAG–10.
Omitted

CAG–11.
Docket# PR00–9, 000, Epgt Texas Pipeline, L.P.

CAG–12.
Docket# PR00–18, 000, Great Lakes Energy Partners, L.L.C.

CAG–13.
Docket# RP01–400, 001, PG&E Gas Transmission, Northwest Corporation

CAG–14.
Docket# OR99–15, 000, Wolverine Pipe Line Company

CAG–15.
Docket# RP96–389, 025, Columbia Gulf Transmission Company

CAG–16.
Docket# RP01–456, 000, Tennessee Gas Pipeline Company

Consent Agenda—Miscellaneous

CAM–1.
Omitted

Consent Agenda—Energy Projects—Hydro

CAH–1.
Omitted

CAH–2.
Omitted

CAH–3.
Docket# P–7481, 068, NYSD LTD. Partnership

CAH–4.
Docket# P–739, 012, Appalachian Power Company
Other#s P–77, 114, Pacific Gas and Electric Company; P–96, 029, Pacific Gas and Electric Company; P–175, 016, Pacific Gas and Electric Company; P–178, 013, Pacific Gas and Electric Company; P–233, 077, Pacific Gas and Electric Company; P–401, 025, Indiana Michigan Power Company; P–487, 029, PP&L, Inc.; P–606, 018, Pacific Gas and Electric Company; P–619, 091, Pacific Gas and Electric Company; P–803, 052, Pacific Gas and Electric Company; P–1025, 045, Safe Harbor Water Power Corporation; P–1061, 053, Pacific Gas and Electric Company; P–1121, 055, Pacific Gas and Electric Company; P–1175, 009, Appalachian Power Company; P–1267, 045, Greenwood County, South Carolina; P–1290, 008, Appalachian Power Company; P–1333, 035, Pacific Gas and Electric Company; P–1354, 027, Pacific Gas and Electric Company; P–1403, 040, Pacific Gas and Electric Company; P–1835, 211, Nebraska Public Power District; P–1855, 024, Usgen New England, Inc.; P–1881, 035, PP&L, Inc.;

P–1892, 014, Usgen New England, Inc.; P–1904, 033, Usgen New England, Inc.; P–1962, 036, Pacific Gas and Electric Company; P–1982, 023, Northern States Power Company; P–1988, 026, Pacific Gas and Electric Company; P–2047, 013, Erie Boulevard Hydropower, L.P.; P–2056, 023, Northern States Power Company; P–2058, 017, Avista Corporation; P–2075, 015, Avista Corporation; P–2077, 018, Usgen New England, Inc.; P–2084, 028, Erie Boulevard Hydropower, L.P.; P–2105, 085, Pacific Gas and Electric Company; P–2106, 036, Pacific Gas and Electric Company; P–2107, 008, Pacific Gas and Electric Company; P–2114, 092, Public Utility District No. 2 of Grant County, Washington P–2130, 027, Pacific Gas and Electric Company; P–2155, 018, Pacific Gas and Electric Company; P–2181, 011, Northern States Power Company; P–2210, 067, Appalachian Power Company; P–2232, 426, Duke Power Company; P–2310, 115, Pacific Gas and Electric Company; P–2318, 013, Erie Boulevard Hydropower, L.P.; P–2320, 026, Erie Boulevard Hydropower, L.P.; P–2323, 092, Usgen New England, Inc.; P–2330, 044, Erie Boulevard Hydropower, L.P.; P–2331, 018, Duke Power Company; P–2332, 027, Duke Power Company; P–2376, 031, Appalachian Power Company; P–2440, 042, Northern States Power Company; P–2466, 023, Appalachian Power Company; P–2467, 014, Pacific Gas and Electric Company; P–2474, 014, Erie Boulevard Hydropower, L.P.; P–2482, 032, Erie Boulevard Hydropower, L.P.; P–2491, 027, Northern States Power Company; P–2503, 060, Duke Power Company; P–2514, 063, Appalachian Power Company; P–2538, 056, Erie Boulevard Hydropower, L.P.; P–2539, 017, Erie Boulevard Hydropower, L.P.; P–2545, 071, Avista Corporation; P–2551, 034, Indiana Michigan Power Company; P–2554, 014, Erie Boulevard Hydropower, L.P.; P–2567, 011, Northern States Power Company; P–2569, 080, Erie Boulevard Hydropower, L.P.; P–2570, 027, Ohio Power Company; P–2579, 041, Indiana Michigan Power Company; P–2616, 020, Erie Boulevard Hydropower, L.P.; P–2619, 007, Nantahala Power & Light Company; P–2639, 010, Wisconsin Electric Power Company; P–2645, 101, Erie Boulevard Hydropower, L.P.; P–2651, 014, Indiana Michigan Power Company; P–2661, 013, Pacific Gas and Electric Company; P–2669, 025, Usgen New England, Inc.; P–2670, 016, Northern States Power Company; P–2686, 025, Nantahala Power & Light Company; P–2687, 019, Pacific Gas and Electric Company; P–2692, 026, Nantahala Power & Light Company; P–2696, 015, Erie Boulevard Hydropower, L.P.; P–2697, 011, Northern States Power Company; P–2698, 026, Nantahala Power & Light Company; P–2701, 039, Erie Boulevard Hydropower, L.P.; P–2713, 057, Erie Boulevard Hydropower, L.P.; P–2735, 068, Pacific Gas and Electric Company; P–2740, 044, Duke Power Company; P–2837, 016, Erie Boulevard Hydropower, L.P.; P–4472, 021, Erie Boulevard Hydropower, L.P.; P–5984, 037, Erie Boulevard Hydropower, L.P.; P–7320, 020, Erie Boulevard Hydropower, L.P.; P–7387, 014, Erie Boulevard Hydropower, L.P.; P–11408, 032, Erie Boulevard Hydropower, L.P.

Consent Agenda—Energy Projects—Certificates

CAC–1.
Docket# CP00–129, 000, Horizon Pipeline Company, L.L.C.
Others CP00–130, 000, Horizon Pipeline Company, L.L.C.; CP00–131, 000, Horizon Pipeline Company, L.L.C.; CP00–132, 000, Natural Gas Pipeline Company of America

CAC–2.
Docket# CP01–92, 000, East Tennessee Natural Gas Company

CAC–3.
Docket# CP01–115, 000, Transwestern Pipeline Company

CAC–4.
Docket# CP01–154, 000, Maritimes & Northeast Pipeline, L.L.C.

CAC–5.
Omitted

CAC–6.
Docket# CP01–60, 000, Williams Gas Pipelines Central, Inc.

CAC–7.
Docket# CP99–580, 002, Southern LNG Inc.
Others CP99–579, 002, Southern LNG Inc.; CP99–582, 003, Southern LNG Inc.

CAC–8.
Docket# CP01–2, 000, Columbia Gas Transmission Corporation

CAC–9.
Omitted

Energy Projects—Hydro Agenda

H–1.
Reserved

Energy Projects—Certificates Agenda

C–1.
Reserved

Markets, Tariffs and Rates—Electric Agenda

E–1.
Reserved

Markets, Tariffs and Rates—Gas Agenda

G–1.
Reserved

David P. Boergers,
Secretary.
[FR Doc. 01–17167 Filed 7–5–01; 11:51 am]
BILLING CODE 6717–01–U

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by P.L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for the trade with Sub-Saharan Africa.

Time and Place: Wednesday, July 18, 2001, at 9:30 a.m. to 12:00 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: This meeting will focus on strategic partnerships with funds, banks and U.S. Government Agencies.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as sign language interpreter) or other special accommodations, please contact, prior to July 13, 2001, Teri Stumpf, Room 1215, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1215, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3502.

Peter B. Saba,
General Counsel.
[FR Doc. 01–16999 Filed 7–6–01; 8:45 am]
BILLING CODE 6650–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission, Comments Requested

June 29, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 7, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0667.

Title: Section 76.1621 Equipment compatibility offer.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10,480.

Estimated Time Per Response: 1–3 hours.

Total Annual Burden: 10,515 hours.

Total Annual Costs: $5,300.

Needs and Uses: Section 76.1621 of the Commission's rules prohibits cable system operators from scrambling or otherwise encrypting signals carried on the basic service tier. However, cable system operators may file a waiver of this prohibition with the Commission. In addition, section 76.1621 requires cable system operators that use scrambling or encryption equipment to provide subscribers special equipment that will enable the reception of multiple signals. Section 76.1622 requires cable system operators to provide in writing a consumer education program concerning equipment compatibility. The Commission has set forth these disclosure requirements for consumer protection purposes to inform subscribers of compatibility matters, and notify subscribers of cable operator's requests to waive the prohibition on signal encryption.

OMB Control No.: 3060–0986.

Title: Federal-State Joint Board on Universal Service—Plan for Reforming the Rural Universal Service Support Mechanism, CC Docket No. 90–45.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit; State, Local or Tribal Government.

Number of Respondents: 7099.

Estimated Time Per Response: .81 hours per response (avg).

Total Annual Burden: 5770.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Quarterly; Annually; One-Time Requirement; Third Party Disclosure.

Needs and Uses: In CC Docket 96–45, released May 23, 2001 (FCC 01–157), the Commission modified its rules for providing high cost universal service support to rural telephone companies for the next five years based upon the proposals made by the Rural Task Force. Carriers are required to elect one of three paths implementing rural high cost reform. Carriers electing Path One must certify that it will not disaggregate and target support. Carriers selecting Path Two must file a disaggregation plan. Carriers selecting Path Three must self-certify and provide a description of the rationale used to disaggregate support, including the methods and data and a discussion of how the plan complies with the self-certification guidelines, among other things. Rural carriers that elect to disaggregate and target per-line support under either Path Two or Three are required to report loops at the cost-zone level. States are required to file annual certifications to ensure that carriers use universal service support only for the provision, maintenance and upgrading of facilities and services for which the support is intended consistent with Section 254(e). The Commission requires the filing of line count data on a regular quarterly basis upon competitive entry into rural carrier study areas. Carriers must provide written notice in conjunction with their annual or quarterly submissions to NECA indicating that a study area meets the 14% TPIS trigger. Rural carriers must provide written notice when their index year has been established for the purposes of calculating eligibility for safety value support.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–17031 Filed 7–6–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–1549]

Consumer/Disability Telecommunications Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date, time, and agenda for the next meeting of the Consumer/Disability Telecommunications Advisory Committee (hereinafter "the Committee"), whose purpose is to make recommendations to the Commission regarding consumer and disability issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations) in proceedings before the Commission.

DATES: The meeting of the Committee will take place on August 6, 2001, from 9 a.m. to 5 p.m.

ADDRESSES: The Committee will meet at the Federal Communications Commission, Room TW–C305, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Designated Federal Officer, Consumer/Disability Telecommunications Advisory Committee, Consumer Information Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Telephone 202–418–2809 (voice) or 202–418–0179 (TTY); Email: cdtac@fcc.gov.

SUPPLEMENTARY INFORMATION: By Public Notice dated and released July 2, 2001, the Federal Communications Commission announced the next meeting of its Consumer/Disability Telecommunications Advisory Committee. The establishment of the Committee had been announced by Public Notice dated November 30, 2000, 15 FCC Rcd 23798, as published in the **Federal Register** (65 FR 76265, December 6, 2000).

During the Committee's August 6th meeting, highlights of the Committee's agenda will include:

- Discussion and Committee recommendations concerning recent

Commission proposals to reform the Universal Service Fund contribution system [CC Docket Nos.: 96–45, 98–171, 90–571, 92–237, 99–200, and 95–116];

- Further definition and prioritization of issues to be addressed by the Committee's three subcommittee working groups; and
- Consideration of a request for membership by the U.S. Telecom Association.

Availability of Copies and Electronic Accessibility

A copy of the July 2, 2001 Public Notice is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's website at www.fcc.gov/cib/cdtac. The Committee meeting will be broadcast on the Internet in Real Audio/Real Video format with captioning at www.fcc.gov/cib/cdtac. The meeting will be sign language interpreted and realtime transcription and assistive listening devices will also be available. The meeting site is fully accessible to people with disabilities. Copies of meeting agendas and handout material will also be provided in accessible formats. Meeting minutes will be available for public inspection at the FCC headquarters building and will be posted on the Commission's website at www.fcc.gov/cib/cdtac.

Committee meetings will be open to the public and interested persons may attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Members of groups or individuals who are not members of the Committee will also have the opportunity to participate in work conducted by subcommittees of the Committee. Written comments for the Committee may also be sent to the Committee's Designated Federal Officer, Scott Marshall. Notices of future meetings of the Committee will be published in the **Federal Register**.

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Bureau Chief, Consumer Information Bureau.

[FR Doc. 01–16998 Filed 7–6–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 01–145; DA 01–1582]

MDS Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Mass Media Bureau, Video Services Division seeks comment on a request for declaratory ruling to remove minimum sub-carrier requirement for Orthogonal Frequency Division Multiplexing ("OFDM") Modulation in the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS").

DATES: Comments due on or before July 19, 2001. Reply comments are due on or before July 26, 2001.

FOR FURTHER INFORMATION CONTACT: Brad Lerner (202) 418–7066, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Mass Media Bureau, Video Service Division's Public Notice entitled, *Pleading Cycle Established for Comments on Request for Declaratory Ruling to Remove Minimum Sub-Carrier Requirement for Orthogonal Frequency Division Multiplexing Modulation in Multipoint Distribution Service and Instructional Television Fixed Service*, DA 01–1582, MM Docket No. 01–145, released July 5, 2001. The full text of this Public Notice is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS"), Portals II, 445 12th Street, S.W. Room CY–B402, Washington, D.C. 20554.

Synopsis of Public Notice

On March 13, 2001, Cisco Systems, Inc. ("Cisco") filed a request that the Commission remove a restriction on permitted OFDM modulation in the MDS and ITFS. Specifically, Cisco requests the Commission declare that a minimum of 256 QAM-modulated carriers (or tones) is not necessary in order to use OFDM modulation in the MDS and ITFS. On July 9, 1996, the Commission adopted a declaratory ruling which permits stations operating in the MDS and ITFS to utilize certain digital emissions on a regular basis, so long as those emissions meet certain requirements for power spectral uniformity and out-of-band emissions. The Commission amended its channel utilization policy to permit the routine authorization of digital transmissions using Vestigial Sideband Modulation ("VSB") and Quadrature Amplitude Modulation ("QAM"), and indicated that the Commission would consider authorizing the use of other digital modulation schemes based upon demonstrations of noninterference. In a subsequent proceeding, the Commission adopted technical rule changes to provide MDS and ITFS licensees flexibility to fully employ digital technology in delivering two-way communication services and expanded the list of permissible modulation techniques to include Code Division Multiple Access ("CDMA") and Quadrature Phase Shift Keying ("QPSK") modulation.

On August 31, 1998, Clarity Wireless, Inc. ("Clarity") filed a Petition for Declaratory Ruling requesting that the Commission authorize the use of OFDM digital modulation to provide MDS and ITFS networking. Based on a study commissioned by Clarity, the Commission declared that OFDM could be used in the MDS and ITFS and required that a minimum of 256 QAM-modulated carriers (or "tones") be utilized.

In support of its request that the Commission remove the 256 QAM-modulation requirement, Cisco states the Commission has encouraged the use of new digital modulation techniques and established a flexible technology policy whereby advanced digital technologies would be authorized on a case-by-case basis. Cisco notes that the Commission has previously indicated that it would approve certain digital modulation types without test data if it were determined to be a subset of an already approved modulation type. Cisco asserts that the 256-tone limit adopted in the OFDM Order needlessly constrains the OFDM modulations, thereby preventing greater efficiencies in MDS/ITFS operations. Cisco states that removal of the 256 QAM-modulation requirement will allow designers to optimize their systems based on various channels and allow operators to provide a wider range of services to consumers.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–17169 Filed 7–6–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will

meet in open session at 10:00 a.m. on Tuesday, July 10, 2001, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Request for Comment on Study of Banking Regulations Regarding the Online Delivery of Banking Services.

Discussion Agenda: Memorandum and resolution re: Joint Advance Notice of Proposed Rulemaking: Community Reinvestment Act Regulations.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: July 3, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–17144 Filed 7–5–01; 10:11 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: FEMA Contract Clause—Accessibility of Meetings, Conferences and Seminars to Persons with Disabilities.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0213.

Abstract: Contractors who plan meetings, conferences or seminars for FEMA must submit a plan to the Contracting Officer detailing how the minimum accessibility standards for the disabled set forth in the contract clause will be met.

Affected Public: Business or Other For-Profit.

Number of Respondents: 10.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 30 hours.

Frequency of Response: On Occasion.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or email *muriel.anderson@fema.gov.*

Thomas F. Behm,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 01–17026 Filed 7–6–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: CSEPP Program Evaluation and Customer Satisfaction Baseline Survey.

Type of Information Collection: New Collection.

OMB Number: New.

Abstract: Consistent with a performance-based management approach required by GPRA, CSEPP will collect data from federal, state, and local governments to measure program effectiveness and establish a quantitative baseline for customer satisfaction with existing products and services. Findings from the data will be used to set performance goals and customer service standards, while providing benchmarks for program monitoring and evaluation.

Affected Public: Federal, State, and Local Governments.

Number of Respondents: 555.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 420 hours.

Frequency of Response: Annually.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or email *muriel.anderson@fema.gov.*

Thomas F. Behm,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 01–17027 Filed 7–6–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 23, 2001.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Fred A. Bon, Steele, North Dakota; Paul D. Bakkum, Steel, North Dakota; and Thomas W. Capouch, Portland, North Dakota; to acquire voting shares of The First and Farmers Bank Holding Company, Portland, North Dakota, and thereby indirectly acquire voting shares of The First and Farmers Bank, Portland, North Dakota.

Board of Governors of the Federal Reserve System, July 2, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–17025 Filed 7–6–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 2001.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Team Financial, Inc., ESOP, Team Financial, Inc., and Team Financial Acquisition Subsidiary, Inc., all of Paola, Kansas; to merge with Post Bancorp, Inc., Colorado Springs, Colorado, and thereby indirectly acquire Colorado Springs National Bank, Colorado Springs, Colorado.

Board of Governors of the Federal Reserve System, July 2, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–17023 Filed 7–6–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 2001.

A.Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Hasten Bancshares, Indianapolis, Indiana; to acquire Harrington Financial Group, Inc., Overland Park, Kansas, and thereby indirectly acquire Harrington Bank, FSB, Richmond, Indiana, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 2, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–17024 Filed 7–6–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 4:00 p.m., Thursday, July 12, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 5, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–17250 Filed 7–5–01; 3:48 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Meeting of the National Human Research Protections Advisory Committee

AGENCY: Office of Public Health and Science, Office for Human Research Protections.

ACTION: Notice of July 30–31, 2001 Meeting.

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Human Research Protections Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below. Individuals planning on attending the meeting and who want to ask questions must submit their requests in writing in advance of the meeting to the contact person listed below.

DATES: The Committee will hold its next meeting on July 30–31, 2001. The meeting will convene from 8:30 a.m. to its recess at approximately 5:30 p.m. on July 30 and resume at 8:30 a.m. to 5:00 p.m. EST on July 31.

ADDRESSES: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD, (301)468–4972.

FOR FURTHER INFORMATION CONTACT: Ms. Kate-Louise Gottfried, Executive Director, National Human Research Protections Advisory Committee, Office for Human Research Protections, 6100 Executive Boulevard, Room 310B (MSC 7507), Rockville, Maryland 20892–7507, (301)496–7005. The electronic mail address is kg123a@nih.gov.

SUPPLEMENTARY INFORMATION: The National Human Research Protections Advisory Committee was established on June 6, 2000 to provide expert advice and recommendations to the Secretary of HHS, Assistant Secretary for Health, the Director, Office for Human Research Protections, and other departmental officials on a broad range of issues and topics pertaining to or associated with the protection of human research subjects.

The draft agenda for the Committee's July meeting is below. Updates to this agenda will be posted on the NHRPAC website at http://ohrp.osophs.dhhs.gov/nhrpac/nhrpac.htm.

Draft Agenda

Monday July 30, 2001

8:30–8:45am HHS&Human Subject Protection, Arthur Lawrence, Ph.D., Acting Principal Deputy Assistant, Secretary for Health [15 minutes]
8:45am–9:15am The Perilous Intersection of Protection, Human Research Subjects and Conflicts, of Interest, Michael Wood, M.D., President and CEO The Mayo Foundation [30 minutes]
9:15am–9:30 Welcome: Overview of Meeting Mary Faith marshall, Ph.D. Chairperson NHRPAC [15 minutes]
9:30am–10:00am Final Review & Approval of NHRPAC Response to Financial Relationships Interim Guidance Mark Barnes, J.D. Chair, Working Group [30 minutes]
10:00am–12:30pm Update: Children's Workgroup Alan Fleischman, M.D. Chair, Working Group [2 hours, 30 minutes]
[10:30am–10:45am] BREAK [15 minutes]
12:30–1:30pm LUNCH—On your own
1:30pm–3:30pm The Office for Human Research Protectiosn (OHRP) [2 hours]
Introduction Greg Koski, Ph.D., M.D. Director, OHRP [10 minutes]
Education Jeffrey Cohen, Ph.D. Director, Division of Education [15 minutes]
Assuance George Gasparis, Acting Director, Division of Assurances and Quality Improvement [15 minutes]
Compliance Kristina Borror, Ph.D. Division of Compliance [15 minutes]
International Melody Lin, Ph.D., Deputy Director and Director, Office for International Activities [10 minutes]
Policy, Irene Stith-Coleman, Ph.D., Director, Office of Policy, Planning, and Special Projects [10 minutes]
3:30pm–3:45 BREAK [15 minutes]
3:45–5:30 Update and Discussion: Third Parties: Research Subjects? Mary Kay Pelias, J.D., Ph.D. Chair, Working Group [1 hour, 45 minutes]
5:30pm–5:pm Closing Comments/ ADJOURN [15 minutes]

Tuesday, July 31, 2001

8:30 am–8:45 am The Honorable Diane DeGette, Congresswoman, Colorado [15 minutes]
8:45 am–9:15 am Human Subject Protections, General Accounting Office (GAO), Marcia G. Crosse, Ph.D., Assistant Director, Health Care—Public Health Issues [30 minutes]
9:15 am–9:45 am National Bioethics Advisory Committee (NBAC), Marjorie Speers, Ph.D., Acting Executive Director, NBAC [30 minutes]
9:45 am–10:45 am HIPAA and the Privacy Regulation: The Implications for Research, Julie Kaneshiro, M.P.P., Policy Analyst, OSP, National Institutes of Health [1 hour]
10:45 am–11:00 am BREAK [15 minutes]
11:00 am–12:30 pm Informed Consent & Decisional Capacity Overview, Mary Faith Marshall, Jeremy Sugarman, MD, MPH, MA, Director, Center for the Study of Medical Ethics and Humanities, Professor of Medicine and Philosophy, Duke University Medical Center, Don Rosenstein, M.D., Chief Psychiatry Consultation-Liaison Service, National Institute of Mental Health, Adil Shamoo, Ph.D., Department of Biochemistry and Molecular Biology, University of Maryland School of Medicine, Jim McNulty, President, Depressive/Manic Depressive Association of Rhode Island [1 hour, 30 minutes]
12:30 pm–1:30 pm LUNCH—on your own [1 hour]
1:30 pm–2:30 pm Informed Consent (Continued) [1 hour]
2:30 pm–4:30 pm Update: Social Science, Felice Levine, Ph.D., Executive Officer, American Sociological Association; Jeffrey Cohen, Ph.D., Director, Education, OHRP [2 hours]
[3:00 pm–3:15 pm] BREAK
4:30 pm–5:00 pm Recap of Meeting & Action Items, Mary Faith Marshall, Ph.D., Chairperson, NHRPAC
5:00 pm ADJOURN

Kate-Louise Gottfried,

Executive Director, National Human Research Protections Advisory Committee.

[FR Doc. 01–17070 Filed 7–6–01; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Community Coalition Development Projects for African American Communities, Program Announcement 01033

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease

Control and Prevention (CDC) announces the following meeting.

NAME: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Community Coalition Development Projects for African American Communities, PA#01033, meeting.

TIMES AND DATE: 9 a.m.–1 p.m., July 23, 2001 (Open); 1 p.m.–2 p.m., July 23, 2001 (Closed); 8:30 a.m.–4:30 p.m., July 24, 2001 (Closed); 8:30 a.m.–8:45 a.m., July 25, 2001 (Open); 8:45 a.m.–4:30 p.m., July 25, 2001 (Closed)

PLACE: The Westin Atlanta North at Perimeter, 7 Concourse Parkway, Atlanta, GA 30328.

STATUS: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

MATTERS TO BE DISCUSSED: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 01033.

CONTACT PERSON FOR MORE INFORMATION: Elizabeth A. Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 8 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2001.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 01–17042 Filed 7–6–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0269]

Draft Guidance for Industry on the Clinical Studies Section of Labeling for Prescription Drugs and Biologics—Content and Format; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Clinical Studies Section of Labeling for Prescription Drugs and Biologics—Content and Format." The agency has initiated a comprehensive effort to improve the format and content of prescription drug labeling. FDA intends to carefully coordinate development and implementation of these labeling initiatives to minimize the potential burden for manufacturers and other affected parties.

DATES: Submit written comments on the draft guidance by October 9, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 1–888–CBERFAX, or Voice Information System at 800–835–4709 or 301–827–1800. Send one self-addressed, adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Janet M. Jones, Center for Drug Evaluation and Research (HFD–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758, or

Toni Stifano, Center for Biologics Evaluation and Research (HFM–602), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3028, or e-mail: stifano@cber.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Clinical Studies Section of Labeling for Prescription Drugs and Biologics—Content and Format." As part of a comprehensive effort to make prescription drugs safer to use, FDA is engaged in several initiatives to make prescription drug labeling a better information source for health care practitioners—clearer, more informative, more accessible, and more consistent from drug to drug. Recently the agency published a proposed rule to revise the overall format of prescription drug labeling (65 FR 81082, December 22, 2000). Among other things, the agency proposed reordering the sections of the labeling based on the importance of the information to practitioners and the frequency with which practitioners refer to a section. Also, the agency proposed creating a "highlights" section and an index.

FDA is working on a proposed rule to revise the current requirements for the pregnancy subsection of labeling (see the notice (62 FR 41061, July 31, 1997) announcing a 21 CFR part 15 hearing to discuss the category requirements, and the notice (64 FR 23340, April 30, 1999) announcing a meeting of a public advisory committee to discuss possible changes to pregnancy labeling).

The agency also is developing guidance documents that focus on the content of certain labeling sections. The first draft guidance, "Content and Format of the Adverse Reactions Section of Labeling for Human Prescription Drugs and Biologics," was made available for public comment on June 21, 2000 (65 FR 38563). This draft guidance, "Clinical Studies Section of Labeling for Prescription Drugs and Biologics—Content and Format," is the second guidance document on the content and format of individual labeling sections. Among other things, this draft guidance discusses what studies to include in the Clinical Studies section, how to describe those studies, and how to present clinical study data in graphs and tables. The agency also is trying to raise awareness, with this draft guidance, of the implications for product promotion of information contained in the Clinical Studies section. This section exists in the current labeling and is expected to continue to exist when the proposed rule to revise the format for prescription drug labeling is made final.

At this time, FDA is also developing guidances for the Adverse Reactions, Clinical Pharmacology, and Warnings/Precautions sections of the labeling. The draft guidance for the Adverse Reactions section was made available for public comment on June 21, 2000 (65 FR 38563). The agency expects to publish draft guidances for the Clinical Pharmacology and Warnings/Precautions sections for comment in the

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coming months. The agency has focused its efforts on these sections of the labeling because they typically contain large amounts of important and complex information, and there have been significant differences in their format and content across product classes and individual medical products. Guidances for other labeling sections may be developed later.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). The draft guidance represents the agency's current thinking on the content and format of the Clinical Studies section of labeling for human prescription drugs and biologics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach can be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/ohrms/dockets/default.htm, http://www.fda.gov/cder/guidance/index.htm, or at http://www.fda.gov/cber/guidelines.htm.

Dated: June 27, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17048 Filed 7–6–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1033]

Draft Guidance for Industry on Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Implementation Plan; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Implementation Plan." The draft guidance discusses procedures for submission of protocol information to the Clinical Trials Data Bank established under section 113 of the Food and Drug Administration Modernization Act (Modernization Act), which required the establishment of this data bank and specified what information was to be submitted for it. Procedural issues discussed in this guidance document were not included in an earlier draft guidance document on the scope of the Data Bank, which published in the **Federal Register** on March 29, 2000 (65 FR 16620).

DATES: Submit written comments on the draft guidance by September 7, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBER–FAX. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Theresa Toigo, Center for Drug Evaluation and Research (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4460.

SUPPLEMENTARY INFORMATION:

I. Description of Guidance

FDA is announcing the availability of a draft guidance for industry entitled "Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Implementation Plan." The draft guidance is intended to provide recommendations for sponsors of investigational new drug applications (INDs) on how to submit information about clinical trials for serious or life-threatening diseases to a clinical trials data bank developed by the National Library of Medicine (NLM), National Institutes of Health (NIH).

The Modernization Act (Pub. L. 105–115), enacted on November 21, 1997, amends section 402 of the Public Health Service Act (42 U.S.C. 282) and directs the Secretary of Health and Human Services (the Secretary), acting through the Director, NIH, to establish, maintain, and operate a data bank of information on clinical trials for drugs for serious or life-threatening diseases and conditions (hereafter referred to as the Clinical Trials Data Bank).

The Clinical Trials Data Bank is intended to be a central resource, providing current information on clinical trials to individuals with serious or life-threatening diseases, to other members of the public, and to health care providers and researchers. Specifically, the Clinical Trials Data Bank will contain information about both federally and privately funded studies of experimental treatments for patients with serious or life-threatening diseases conducted under FDA's IND regulations (21 CFR part 312).

The NIH, through NLM and with input from FDA and others, developed the Clinical Trials Data Bank and is implementing it in a phased approach. The first version of the Clinical Trials Data Bank was made available to the public on February 29, 2000, on the Internet at http://clinicaltrials.gov. It included primarily NIH-sponsored trials.

In the **Federal Register** of March 29, 2000, FDA published a draft guidance entitled "Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank." The March 29, 2000, draft guidance provided recommendations for industry on the submission of protocol information to the Clinical Trials Data

Bank. It included information on the types of clinical trials for which submissions will be required under section 113 of the Modernization Act, as well as the types of information to be submitted. The draft guidance stated that an implementation plan, addressing procedural issues, would be available later. The draft guidance stated that the implementation plan would include: (1) Information on how to submit protocols to the Clinical Trials Data Bank, (2) information about providing certification to the Secretary that disclosure of information for a particular protocol would substantially interfere with the timely enrollment of subjects in the clinical investigation, (3) discussion about issues related to the voluntary submission of information not required by section 113 of the Modernization Act (e.g., study results, trials for non-serious or non-life-threatening diseases), and (4) a timeframe for submitting the information.

In developing a plan for making publicly available information from the Clinical Trials Data Bank, FDA and NIH considered comments submitted to Docket Nos. 98D–0293 and 00D–1033, "Section 113 NIH Data Bank—Clinical Trials for Serious Diseases." A phased approach was used for developing guidance. A first draft guidance (the March 29, 2000, draft guidance) addressed general information on the scope of the data bank. The draft guidance being made available by this notice discusses procedures that were not included in the first guidance. This draft guidance was developed based on the initial data bank experience using NIH-sponsored trials. A final guidance will be developed that combines the informational and procedural draft guidances and considers comments received on both of the draft guidances.

Section 113(a) of the Modernization Act requires that sponsors of INDs submit to the Clinical Trials Data Bank a description of the purpose of each experimental drug, eligibility criteria for participation in the trial, the location of clinical trial sites, and a point of contact for those wanting to enroll in the trial. The statute requires that the information be provided in a form that can be readily understood by members of the public. This draft guidance provides information on how IND sponsors can fulfill the requirements of section 113(a) of the Modernization Act by submitting information in the following four areas: (1) Descriptive information, (2) recruitment information, (3) location and contact information, and (4) administrative information. FDA and NIH developed these data elements based on the legislative requirements and comments submitted to Docket No. 98D–0293. Information will be submitted to the Clinical Trials Data Bank through a Web-based Protocol Registration System (PRS). For a preview of the PRS system see http://prsinfo.clinicaltrials.gov/.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). The draft guidance represents the agency's current thinking on submitting information on clinical trials for serious or life-threatening diseases to a Clinical Trials Data Bank developed by the NLM. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA published notice of a proposed collection of information, along with the first draft guidance, in the **Federal Register** on March 29, 2000. On November 9, 2000 (65 FR 67385), FDA published a notice that the proposed collection of information was submitted to OMB for review. The report considered comments received on the proposed collection of information. On March 23, 2001 (66 FR 16251), as corrected on April 17, 2001 (66 FR 19788), FDA announced OMB's approval of the agency's information collection activities for the program (OMB Control No. 0910–0459).

IV. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm, http://www.fda.gov/cber/guidelines.htm, or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: June 27, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17050 Filed 7–6–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Health Service Corps (NHSC) Loan Repayment Program (OMB No. 0915–0127)—Extension

The NHSC LRP was established to assure an adequate supply of trained primary care health professionals to the neediest communities in the Health Professional Shortage Areas (HPSAs) of the United States. Under this program, the Department of Health and Human Services agrees to repay the educational loans of the primary care health professionals. In return, the health professionals agree to serve for a specified period of time in a federally-designated HPSA approved by the Secretary for LRP participants.

This request for extension of OMB approval will include the NHSC LRP Application, Loan Verification Form, Site Information Form and Request for Method of Advanced Loan Repayment Form.

The estimate of burden is as follows:

Type of respondents	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Applicants	800	1	800	1.5	1200
Lenders	45	1	45	.25	11
Total	845		845		1211

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 2, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–17053 Filed 7–6–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission; Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The ACCV was established by Title XXI of the Public Health Service Act (the Act), as enacted by Public Law (P.L.) 99–660 and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl A. Lee, Principal Staff Liaison, Policy Analysis Branch, Division of Vaccine Injury Compensation, at (301) 443–2124.

DATES: Nominations are to be submitted by August 8, 2001.

ADDRESSES: All nominations are to be submitted to the Director, Division of Vaccine Injury Compensation, Bureau of Health Professions, HRSA, Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACCV, via the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463) and section 2119 of the Act, 42 U.S.C. 300aa–19, as added by Pub. L. 99–660 and amended, HRSA is requesting nominations for three voting members of the ACCV.

The ACCV advises the Secretary on the implementation of the VICP. The activities of the ACCV include: Recommending changes in the Vaccine Injury Table at its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying Federal, State, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b); advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; and recommending to the Director, National Vaccine Program Office that vaccine safety research be conducted on various vaccine injuries.

The ACCV consists of nine voting members appointed by the Secretary as follows: three health professionals, who are not employees of the United States government and have expertise in the health care of children, the epidemiology, etiology and prevention of childhood diseases, and the adverse reactions associated with vaccines, at least two shall be pediatricians; three members from the general public, at least two are legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and three attorneys, at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting *ex officio* members.

Specifically, HRSA is requesting nominations for three voting members of the ACCV representing: (1) A pediatrician with special experience in childhood diseases; (2) an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death; and (3) a member from the general public who is a legal representative (parent or legal guardian) of a child who has suffered a vaccine-related injury or death. Nominees will be invited to serve 3-year terms beginning January 1, 2002, and ending December 31, 2004.

Interested persons may nominate one or more qualified persons for membership on the ACCV. Nominations shall state that the nominee is willing to serve as a member of the ACCV and appears to have no conflict of interest that would preclude the ACCV membership. Potential candidates will be asked to provide detailed information concerning consultancies, research grants, or contracts to permit evaluation of possible sources of conflicts of interest. A curriculum vitae or resume

should be submitted with the nomination.

The Department of Health and Human Services has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on advisory committees; and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or physically disabled candidates.

Dated: June 29, 2001.

Elizabeth M. Duke,

Acting Administrator, HRSA.

[FR Doc. 01–17052 Filed 7–6–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

Date: July 12, 2001.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Charles G. Hollingsworth, Director, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Drive, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, 301–435–0806, charlesh@ncrr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

Date: July 18, 2001.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Camille M. King, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7965, 301–435–0815, kingc@ncrr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: June 28, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17018 Filed 7–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: July 10, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David T George, Scientific Review Administrator, Review Branch, Room 7188, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, national Center for Sleep Disorders Research; 93.837, Hearth and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 28, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17016 Filed 7–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: August 16, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John L. Lymangrover, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 28, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17013 Filed 7–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: August 13, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

Contact Person: Tracy A. Shahan, Scientific Review Administrator, National Institutes of Health/NIAMS, Natcher Bldg., Room 5AS25H, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 28, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17014 Filed 7–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: August 15, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Tommy L. Broadwater, Chief, Grants Review Branch, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25U, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 28, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17015 Filed 7–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 25, 2001.

Time: 1 p.m to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter J. Sheridan, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, psherida@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 7, 2001.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, Associate Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 28, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17017 Filed 7–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Alcohol Abuse and Alcoholism Special Emphasis Panel, July 17, 2001, 9 a.m. to July 18, 2001, 5 p.m., The Hyatt Regency Hotel, 100 Bethesda, Metro Center, Bethesda, MD 20814 which was published in the **Federal Register** on May 23, 2001, FR 66 29339.

The meeting has been changed to August 16–17, 2001, at the Radisson Barcelo Hotel, 2121 P Street, NW., Washington, DC. The meeting is closed to the public.

Dated: June 28, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17019 Filed 7–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: July 18, 2001.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Dr., Bethesda, MD 20892–7616, (Telephone Conference Call).

Contact Person: Paula S. Strickland, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C02, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–402–0643.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17020 Filed 7–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 18, 2001.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 18–19, 2001.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 18, 2001.

Time: 9:30 a.m. to 11 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rocklege 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence N. Yager, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, (301) 435–0903, yagerl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 18, 2001.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victoria S. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 18, 2001.

Time: 1 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: N. Krish Krishnan, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 18, 2001.

Time: 1 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC, Bethesda, MD 20892, (301) 435–0912, mkrause@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 18, 2001.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Julian L. Azorlosa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19, 2001.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Club Quarters DC, 839 17th Street, NW., Washington, DC 20006.

Contact Person: Anne E Schaffner, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7850, Bethesda, MD 20892, (301) 435–1239, schaffna@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19–20, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Jean Hickman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Cell Development and Function Integrated Review Group, International and Cooperative Projects Study Section.

Date: July 19–20, 2001.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.

Contact Person: Sandy Warren, DMD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19, 2001.

Time: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19–20, 2001.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Contact Person: Julian L. Azorlosa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19, 2001.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19, 2001.

Time: 1 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19, 2001.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard Panniers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19, 2001.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul K. Strudler, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 2001.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Chhanda L. Ganguly, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 2001.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815.

Contact Person: Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 2001.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 2001.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael H. Sayre, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 2001.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Stephen M. Nigida, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 28, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17021 Filed 7–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Survey of Organized Consumer Self-Help Entities—(OMB No. 0930–0214, extension)—The mutual support and self-help movement in the United States has mushroomed, and significant numbers of mental health consumer-operated businesses and services are emerging. Increasingly, these groups, organizations, and business are providing support and services to mental health consumers and family members as a complement to, or substitution for, traditional mental health services. The purposes of this project of SAMHSA's Center for Mental Health Services are to estimate the number of these mental health groups, organizations, and businesses nationwide and to describe their characteristics—structure, types of activities engaged in, approaches to well-being and recovery, resources, and linkages to other community groups, organizations, and businesses and services, such as the mental health service delivery system. The survey will gather information from a sample of approximately 3,900 mutual support groups and self-help organizations run by and for recipients of mental health services and/or their family members and consumer-operated businesses and services. Computer Assisted Telephone Interviewing (CATI) will be used to

conduct interviews with in-scope groups, organizations and businesses. This extension will allow for completion of the survey. The total response burden estimate is shown below.

Instrument	Number of respondents	Responses/respondent	Average burden/response (hrs.)	Total burden (hrs.)
Universe Development Contacts	2,736	1	.17	465
Screener	3,933	1	.17	668
Questionnaire	3,933	1	.42	1,652
Total				2,785

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 2, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–17044 Filed 7–6–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

The Treatment Improvement Protocol (TIP) #35 Prospective Study—New—Since 1993, SAMHSA's Center for Substance Abuse Treatment has published 37 Treatment Improvement Protocols, which provide administrative and clinical practice guidance to the substance abuse treatment field. This is the third of three studies and is designed to assess readers' use of TIPs and the impact of TIPs on changing substance abuse treatment practices.

The TIP #35 Prospective Study seeks to determine the most cost effective level of support needed by substance abuse treatment providers to implement in practice the information contained in TIPs. Specifically, this study will examine the use of TIP #35, "Enhancing Motivation for Change in Substance Abuse Treatment," by treatment professionals in four different areas of the country. The study will use a pretest/post-test experimental design in which treatment facilities will be randomly assigned to one of four conditions: (1) The control group (which will receive the TIP and no additional support); (2) a TIP-plus curriculum group; (3) a TIP-plus curriculum and training group; and (4) a TIP-plus curriculum, training, and ongoing support group.

Data will be collected at baseline and follow-up. Measures will include providers' awareness of TIP #35, their knowledge of the content contained in this TIP, their attitudes toward the TIP and its content, and their use of this TIP and its impact on practices within their facilities. Burden for State substance abuse (SSA) agency directors in the four areas of the country chosen will consist of information gathering by telephone. Burden for other respondents will consist of completing the pretest and post-test questionnaires. The total estimated burden for this project is summarized below.

Respondent	Number of respondents	Responses/respondent	Average hours/response	Total burden (hrs.)
SSA Directors	6	1	1.0	6
Pretest	577	1	.14	81
Facility Directors				
Clinical Supervisors	577	1	.14	81
Program Counselors	2,350	1	.14	329
Post-test	577	1	.19	110
Facility Directors				
Clinical Supervisors	577	1	.19	110
Program Counselors	2,350	1	.19	447
Total	3,510			1,164

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 2, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–17045 Filed 7–6–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4560–FA–22]

Announcement of Funding Award—FY 2000 Lead Hazard Control

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department as a result of the Lead Hazard Control Super Notice of Funding Availability (SuperNOFA). This announcement contains the names and addresses of the awardees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Ellis Goldman, Department of Housing and Urban Development, 451, Seventh Street, SW., Washington, DC, 20410, telephone (202) 755–1785, ext. 120. Hearing-or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Lead Hazard Control Program was issued pursuant to section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992).

This notice announces the award of $60,000,000.00 to Lead Hazard Control grantees, and will be used to assist States, Indian Tribes and local governments in undertaking comprehensive programs to identify and control lead-based paint hazards in eligible privately-owned housing for rental or owner-occupants in partnership with community-based organizations. On February 24, 2000 (65 FR 9539), HUD published a SuperNOFA announcing the availability of approximately $59,000,000.00 in Fiscal Year 2000 funds for the Lead Hazard Control Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the SuperNOFA. As a result, HUD has funded twenty-five grantees for the Lead Hazard Control Program.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the awards as follows:

Awardee	Address	Amount of grant
City of Birmingham	Community Development Department, 710 North 20th Street—Room 1000, Birmingham, AL 35203.	$1,155,840.00
City of Los Angeles	Housing Department, 111 North Hope Street—Room 709, Los Angeles, CA 90012.	3,000,000.00
City of Hartford	Department of Housing, 550 Main Street, Hartford, CT 06103	2,944,932.00
City of New Britain	27 West Main Street, New Britain, CT 06051	2,392,783.00
City of New Haven	Department of Health, 54 Meadow Street, New Haven, CT 06519	2,750,000.00
City of Stamford	Community Development Office, 888 Washington Boulevard, Stamford, CT 06904.	2,106,089.00
City of Kankakee	385 East Oak, Kankakee, IL 60901	2,999,981.00
City of Boston	Department of Neighborhood Development, Lead Safe Boston, 38 Winthrop Street, Hyde Park, MA 02136.	3,000,000.00
City of Lawrence	Office of Planning & Development, 225 Essex Street—3rd Floor, Lawrence, MA 01840.	3,000,000.00
City of Somerville	Office of Housing & Community Development, 50 Evergreen Avenue, Somerville, MA 02145.	1,488,638.00
State of Michigan	Department of Community Health, Division of Community Services, Lead Hazard Remediation Program, 3423 North Martin Luther King Blvd., Lansing, MI 48909.	3,000,000.00
City of Minneapolis	Environmental Health Services, 250 South 4th Street—Room 401, Minneapolis, MN 55415.	3,000,000.00
Saint Paul—Ramsey County	Department of Public Health, 555 Cedar Street, Saint Paul, MN 55101.	1,600,000.00
City of Kansas City	Health Department, 2400 Troost Avenue—Suite 4000, Kansas City, MO 64108.	1,000,000.00
St. Louis County	Office of Community Development, 121 South Meramec—Suite 444, Clayton, MO 63105.	1,000,000.00
Butte-Silver Bow	Health Department, Environmental Health Division, 25 West Front Street, Butte, MT 59701.	545,483.00
City of Newark	Department of Health & Human Services, 110 William Street, Newark, NJ 07102.	3,000,000.00
City of New York	Department of Housing, Preservation & Development 100 Gold Street—Room 9–08, New York, NY 10038.	3,000,000.00
City of Utica	Department of Urban & Economic Development, 1 Kennedy Plaza, Utica, NY 13502.	1,155,841.00
City of Akron	Health Department, 177 South Broadway Street, Akron, OH 44308	3,000,000.00
City of Cleveland	Department of Public Health, 1925 St. Clair Avenue, Cleveland, OH 44114.	2,999,562.00
City of Pawtucket	137 Roosevelt Avenue, Pawtucket, RI 02860	2,861,968.00
City of Charleston	Department of Housing & Community Development, 75 Calhoun Street, Charleston, SC 29401.	2,999,998.00
City of Memphis	Division of Housing & Community Development, 701 North Main, Street—Suite 150, Memphis, TN 38107.	2,998,885.00
City of Milwaukee	Health Department, Childhood Lead Poisoning Prevention Program, Johnston Community Health Center, 1230 West Grant Street, Milwaukee, WI 53215–2798.	3,000,000.00

Dated: June 27, 2001.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 01–17012 Filed 7–6–01; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Establishment of the Vieques National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Navy transferred, without reimbursement, approximately 3,100 acres on the Island of Vieques, Puerto Rico to the Secretary of the Interior. This land was a portion of the facility known as the Naval Ammunition Support Detachment property and is now administered as a national wildlife refuge by the U.S. Fish and Wildlife Service.

DATES: This action was effective on May 1, 2001.

FOR FURTHER INFORMATION CONTACT: Joseph J. Schwagerl, Acting Refuge Manager for the Caribbean Islands Refuges Complex with the Fish and Wildlife Service in Boqueron, Puerto Rico, 787–851–7258.

SUPPLEMENTARY INFORMATION: Pursuant to section 1508 of Title XV of Public Law 106–398, the U.S. Navy transferred approximately 3,100 acres (1254.52 hectares) on the Island of Vieques, Puerto Rico to the Department of the Interior to be administered as a wildlife refuge under the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd–668ee).

The Vieques National Wildlife Refuge contains several ecologically distinct habitats including beaches, coastal lagoons, mangroves wetlands, and upland forested areas. The marine environment surrounding the refuge contains coral reefs and sea grass beds. The refuge and its surrounding waters are home to at least four plants and 10 animals on the Federal endangered species list including the West Indian manatee, the brown pelican, and four species of sea turtles.

A Cooperative Management Agreement made among the U.S. Fish and Wildlife Service, the Commonwealth of Puerto Rico, and the Puerto Rico Conservation Trust provides the general management principles for the protection of the refuge lands and other lands on the Islands of Vieques. A Conceptual Management Plan will serve as an interim management plan for the refuge until we develop a Comprehensive Conservation Plan.

Dated: June 27, 2001.

Marshall P. Jones, Jr.,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 01–17056 Filed 7–6–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–090–1990EX–01]

Notice of Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has extended the public comment period on the Draft Supplemental Environmental Impact Statement (EIS) for Reclamation of the Zortman and Landusky Mines in Phillips County, Montana. The comment period will end on August 9, 2001. The extension was granted in response to several requests for additional time to review the Draft Supplemental EIS.

DATES: The comment period on the Draft Supplemental EIS will end on August 9, 2001.

ADDRESSES: Address all written comments to Zortman/Landusky Mine Reclamation Plan SEIS, c/o Bureau of Land Management, Lewistown Field Office, P.O. Box 1160, Lewistown, MT 59457–1160. Comments may also be sent electronically to: ZLReclamation__EIS@blm.gov. Please include your name and complete mailing address on all comments.

FOR FURTHER INFORMATION CONTACT: Scott Haight, 406–538–1930.

SUPPLEMENTARY INFORMATION: This EIS is a draft supplement to the March 1996 Final EIS Zortman and Landusky Mines Reclamation Plan Modifications and Mine Life Extensions. With the bankruptcy of the mines' operator, Zortman Mining, Inc., the BLM and DEQ are overseeing reclamation at the mines. The Draft Supplemental EIS has been prepared to analyze additional reclamation alternatives developed by the agencies that may constitute a substantial change from those presented in the 1996 Final EIS. The Draft Supplemental EIS presents 12 reclamation plans, six for reclamation of the Zortman Mine and six for reclamation of the Landusky Mine. The reclamation plans were developed based upon public scoping comments and through consultation with the Fort Belknap government and the Environmental Protection Agency. The Draft Supplemental EIS discloses the environmental consequences of each alternative. Alternative Z6 is identified in the Draft Supplemental EIS as the DEQ and BLM preferred reclamation alternative for the Zortman Mine, and Alternative L4 is identified as the preferred reclamation alternative for the Landusky Mine. The identification of the preferred alternatives does not constitute an agency decision but is intended to help focus public comment on the alternatives more likely to be selected.

Authority: Sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332).

Dated: June 21, 2001.

Bruce W. Reed,

Field Manager, Bureau of Land Management.

[FR Doc. 01–17130 Filed 7–6–01; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[2200–ULEP; OR930–7122–DS–9033: GP1–0228]

Notice of Intent To Prepare an Environmental Impact Statement

1. Description of the proposed planning action: The Bureau of Land Management (BLM) proposes to work with the Foundation for Voluntary Land Exchanges (Foundation) to develop a land ownership adjustment plan (plan) and environmental impact statement for approximately 675,000 acres in the Coast Range area of the Umpqua River Basin in western Oregon. The plan will identify the following: non-federal lands or interests in land within the planning area (with concurrence of willing non-federal landowners) that are recommended for acquisition through exchange by the United States; federal lands or interests in land within the planning area that are recommended for disposal in exchange for acquired lands of equal value; and specific land exchanges. This effort is intended to consolidate land ownership to reduce costs of administration and achieve management efficiency. In addition, this consolidation should improve federal and non-federal land management and planning, enhance protection and restoration of listed species' habitats, wetlands, riparian areas, and other environmentally sensitive areas, and improve public access and recreational

use, while allowing for sustainable timber production. Although the selected alternative will be consistent with the intent of the Northwest Forest Plan, some of the current allocations or management direction may be modified. The selected alternative will amend the BLM's Coos Bay, Eugene, and Roseburg districts' Resource Management Plans, and the Siuslaw National Forest Land and Resource Management Plan, unless the no-action alternative is adopted.

2. Identification of the geographic area: The planning area covers approximately 675,000 acres in the Coast Range portion of the lower Umpqua River Basin in western Oregon. The area is primarily (98 percent) within Douglas County, Oregon (approximately 3,000 acres are in Coos County and 12,400 acres in Lane County). Approximately 225,000 acres are BLM-administered lands, 59,000 acres are National Forest lands, 34,300 acres are state lands, 8,300 acres are county or city, and 348,400 acres are privately owned.

3. General types of issues anticipated: In general, the issues anticipated include the following: improved efficiency of land and resource management; management of vegetation communities; minimizing effects on listed and proposed species and their habitats; watershed protection and function; timber sustainability on federal lands; timber supply to small businesses; revenues to state and local governments; consideration of continued public access and recreation; and protection of wetlands, riparian reserves, water quality, and cultural and historic resources.

4. Disciplines to be represented to prepare the plan will include, but not be limited to: wildlife biology, fish biology, forest ecology, silviculture, archaeology, economics, geology, soils, hydrology, lands and minerals, recreation, and land use planning.

5. Kind and extent of public participation: This project will be conducted with an open, public process. Public meetings/open houses will be held in July, during the comment period on the Draft Environmental Impact Statement, and at other times based on need. In addition, meetings will be initiated with city, county, state, and tribal governments, other federal agencies, the Southwest Oregon and Oregon Coast Provincial Advisory committees, and with other groups or agencies upon request. A website for the project, found at http://www.or.blm.gov/umpqua, will include flyers, mailers, and other documents, project updates, contacts, time lines, background, and other pertinent information. The BLM project manager, Patrick Geehan, and the Foundation managers, Marc Kelley and Robert Gill, will be available to discuss public concerns and suggestions. Access to designers of the Multi-Resource Land Allocation Model (Model) and EIS interdisciplinary team members will be through the project managers. Comments concerning the scope of the analysis should be received in writing by August 8, 2001. Anonymous comments will be accepted and analyzed; however, the author(s) will not be ensured protest rights during the protest period. Written comments concerning this proposal may be sent to ULEP, c/o BLM, P.O. Box 2965, Portland, OR 97208. Comments may also be sent via e-mail to *ULEP@or.blm.gov*.

6. Times, dates, locations of public meetings: Preliminary scoping meetings are scheduled as follows: July 16, 2001: Reedsport, Oregon, 3:00–5:00 p.m. and 7:00–9:00 p.m. at the Reedsport High School, Pacific Auditorium, 2260 Longwood Drive. July 17: Roseburg, Oregon, 7:00–9:00 p.m. at the Douglas County Courthouse, 1036 SE Douglas Ave, #216. July 18: Drain, Oregon, 6:00–9:00 p.m. at the Drain Branch Library, 205 West A Ave. July 19: Eugene, Oregon, 6:00–8:00 p.m. at the Eugene City Council Chambers, 777 Pearl Street #105. Public meetings also will be held in Reedsport, Roseburg, Drain, and Eugene during the comment period on the Draft EIS, anticipated to be May through July 2002.

7. Name, title, address, and telephone number of BLM official: For further information contact either the BLM project manager or the Foundation operations manager. The BLM project manager for the Umpqua Land Exchange Project is Patrick Geehan, BLM, P.O. Box 2965, Portland, OR 97208, phone 503–952–6445. The Foundation Project Coordinator is Robert Gill, Foundation for Voluntary Land Exchange, 4033 SW Canyon Road, Portland, OR 97221, phone 503–274–2855.

8. Location and availability of documents relevant to the planning process: Final published documents relevant to the planning process will be available at the BLM Oregon State Office in Portland, Oregon, at the address stated above. These documents will also be available in PDF format on the project website: *http://www.or.blm.gov/umpqua*.

9. Privacy Act disclaimer for individuals who may wish to have their address withheld: Comments, including names and street addresses of respondents, will be available for public review at the Oregon State Office in Portland, Oregon during regular business hours (8:00 a.m. to 4:30 p.m.). Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to protest the proposed decision under 43 CFR 1610.5–2.

Dated: June 28, 2001.

Patrick H. Geehan,

Project Manager.

[FR Doc. 01–17128 Filed 7–6–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council (RAC). The meeting will be held on July 23–24, in Payson, Arizona. The business meeting will be held from 1:00–4:00 p.m. on Monday, July 23, and 8:00 a.m.–12:00 p.m. on Tuesday, July 24. The first session will be held at Mario's Restaurant, located at 600 E. Highway 260, and the second session will be held across the street at the Inn of Payson, 801 N. B-Line Highway. The agenda items to be covered include the review of the May 16, 2001 meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Summary of the Administration's Energy Policy, Update on the Draft Las Cienegas Resource Management Plan and Environmental Impact Statement; Presentation by a Mining Representative on the Impacts of the 3809 Surface Management Regulations for Locatable Mineral Operations; RAC Discussion on the

Arizona National Landscape Conservation System Strategy, and the State Director's 2002 Priorities; Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on July 24, 2001, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Michael Fisher,

Acting Arizona State Director.

[FR Doc. 01–17129 Filed 7–6–01; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Notice of Postponement of Public Hearings and Extension of the Public Comment Period for the Draft Environmental Impact Statement (EIS) for Delineation Drilling Activities in Federal Waters Offshore Santa Barbara County, California

AGENCY: Minerals Management Service, Interior.

ACTION: Announcing a postponement in scheduled public hearings and an extension of the public comment period.

SUMMARY: The Minerals Management Service is postponing the previously scheduled July 10 and 12 public hearings on the draft Environmental Impact Statement on Delineation Drilling Activities in Federal Waters Offshore Santa Barbara County, California (FR Vol. 66, No. 120/June 21, 2001/Doc. 0115639/Page No. 33268). We will announce the dates, times, and locations of the re-scheduled public hearings in the **Federal Register** and local media when that information is available. We will also extend the public comment period (as announced in the Notice of Availability published in the June 21, 2001, **Federal Register**), and that date will be provided when the public hearings are rescheduled.

FOR FURTHER INFORMATION CONTACT: Questions concerning the draft EIS, public hearings, or commenting on the EIS should be directed to Mr. Maurice Hill, Minerals Management Service, Office of Environmental Evaluation, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, California 93010–6064. He may be reached by telephone at (805) 389–7815; or you may contact Mr. John Lane at (805) 389–7820.

SUPPLEMENTARY INFORMATION: The June 20, 2001, decision by the U.S. District Court for the Northern District of California requires MMS and the California Coastal Commission to review lease suspensions for the 36 undeveloped OCS oil and gas leases under provisions of the Coastal Zone Management Act. Although the court decision did not address the EIS, the MMS will postpone public hearings on the EIS until we complete action implementing the court's order.

Dated: July 5, 2001.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 01–17209 Filed 7–5–01; 2:16 pm]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–440]

In the Matter of Certain 4-Androstenediol; Request for Written Submissions on the Public Interest and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission is requesting briefing on the public interest and the appropriate bond during the period of Presidential review, if a limited exclusion order is issued in the above-captioned investigation. The Commission previously found the only named respondent in the investigation to be in default.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3104. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol.public. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain 4-androstenediol (a nutritional supplement used by body-builders) on December 19, 2000. 65 FR 79424. On April 19, 2001, complainant LPJ, Inc. of Seymour, Illinois (LPJ) moved pursuant to 19 U.S.C. 1337(a)(1) and 19 CFR 210.16 for an order directing the only respondent, Changzhou Huabang Pharmaceutical Group, Ltd. (Changzhou), to show cause why it should not be found in default for failure to respond to LPJ's complaint. The Commission investigative attorney (IA) supported LPJ's motion. The presiding administrative law judge (ALJ) (Judge Luckern) issued Order No. 8 on April 30, 2001, directing Changzhou to show cause why it should not be found in default. Changzhou did not respond to that order.

On May 24, 2001, the ALJ issued an ID finding Changzhou in default pursuant to 19 CFR 210.16, and ruling that it had waived its rights to appear, to be served with documents, and to contest the allegations at issue in the investigation. No petitions for review of the ID were filed. The Commission decided not to review the ID on June 8, 2001, 66 FR 32374 (June 14, 2001), thereby allowing it to become the Commission's final determination under 19 CFR 210.42. On June 25, 2001, pursuant to 19 U.S.C. 1337(g)(1) and 19 CFR 210.16(c)(1), complainant LPJ filed a declaration seeking limited relief against the defaulting respondent. In its declaration, LPJ requested that the Commission issue a limited exclusion order against Changzhou.

Section 337(g)(1), 19 U.S.C. (g)(1), authorizes the Commission to order limited relief against a respondent found in default unless, after consideration of public interest factors, it finds that such relief should not issue. In this investigation, Changzhou has been found in default and LPJ has requested issuance of a limited exclusion order that would deny entry to certain 4-androstenediol manufactured by Changzhou. If the Commission decides to issue a limited exclusion order against Changzhou, it must consider what the amount of the

bond should be during the Presidential review period.

In connection with the final disposition of this investigation, the only potential remedy is an order that could result in the exclusion of 4-androstenediol manufactured by Changzhou from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address whether such an order should be issued. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, it should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates a remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider in this investigation include the effect that a limited exclusion order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission issues a limited exclusion order, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed limited exclusion orders for the Commission's consideration. The written submissions and proposed limited exclusion orders must be filed no later than close of business on July 16, 2001. Reply submissions, if any, must be filed no later than the close of business on July 23, 2001. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.16 of the Commission's Rules of Practice and Procedure, 19 CFR 210.16.

By order of the Commission.

Issued: July 2, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–16991 Filed 7–6–01; 8:45 am]

BILLING CODE 7020–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–395]

In the Matter of Certain EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices, and Products Containing Same; Notice of Decision To Deny Complainant Atmel's Petition for Modification of the Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny complainant Atmel's petition to modify the limited exclusion order issued in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 18, 1997, based upon a complaint filed by Atmel Corporation alleging that Sanyo Electric Co., Ltd. ("Sanyo"), Winbond Electronics Corporation of Taiwan and Winbond Electronics North America Corporation of California (collectively "Winbond"), and Macronix International Co., Ltd. and Macronix America, Inc. (collectively "Macronix") had violated section 337 in the sale for importation, the importation, and the sale within the United States after importation of certain erasable programmable read only memory ("EPROM"), electrically erasable programmable read only memory ("EEPROM"), flash memory, and flash microcontroller semiconductor devices thereof, by reason of infringement of one or more claims of U.S. Letters Patent 4,511,811 ("the '811 patent"), U.S. Letters Patent 4,673,829 ("the '829 patent"), and U.S. Letters Patent 4,451,903 ("the '903 patent") assigned to Atmel. 62 FR 13706 (March 21, 1997). Silicon Storage Technology, Inc. ("SST") intervened in the investigation.

On October 27, 2000, the Commission determined that there was a violation of section 337. The Commission found that the claims in issue of the '903 patent are valid, enforceable, and infringed by the imports of respondents Sanyo and Winbond (but not respondent Macronix), and found a violation of section 337 with regard to the '903 patent as to Sanyo and Winbond. As to the '811 and '829 patents, the Commission found that the claims in issue of those patents are valid and enforceable, but not infringed by the imports of respondents Sanyo, Winbond, or Macronix, and found no violation of section 337 with regard to the '811 and '829 patents.

The Commission determined that the appropriate form of relief was a limited exclusion order prohibiting the importation of EPROMs, EEPROMs, flash memories, and flash microcontroller semiconductor devices, and circuit boards containing those semiconductor memory devices, that infringe claims 1 or 9 of the '903 patent and that are manufactured and/or imported by or on behalf of Sanyo and Winbond. The Commission also determined that the public interest factors enumerated in section 337(d) do not preclude the issuance of the limited exclusion order and that the bond during the Presidential review period should be set at $0.78 per device.

On April 16, 2001, complainant Atmel filed a petition with the Commission to modify the limited exclusion order to cover all semiconductor memory devices manufactured at all other foundries related to or licensed by intervenor SST, i.e., to cover imports from foundries in addition to Sanyo and Winbond. On April 26, 2001, Sanyo, Winbond, and the Commission's Office of Unfair Import Investigations responded to Atmel's petition. On May 7, 2001, Atmel moved for leave to reply to SST's response and attached a reply to SST's response.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.76 of the Commission's Rules of Practice and Procedure, 19 CFR 210.76.

Copies of the Commission Order and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

By order of the Commission.

Issued: July 2, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–16992 Filed 7–6–01; 8:45 am]

BILLING CODE 7020–01–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–919–920 (Final)]

Certain Welded Large Diameter Line Pipe from Japan and Mexico

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–919–920 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value (LTFV) imports from Japan and alleged LTFV imports from Mexico of certain welded large diameter line pipe.[1,2]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 27, 2001.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain welded large diameter line pipe from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations (including the antidumping investigation relating to Mexico) were requested in a petition filed on January 10, 2001, by Berg Steel Pipe Corp., Panama City, FL; American Steel Pipe Division of American Cast Iron Pipe Co., Birmingham, AL; and Stupp Corp., Baton Rouge, LA.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties

[1] For purposes of these investigations the Department of Commerce has defined the subject merchandise as certain welded carbon and alloy line pipe, of circular cross section and with an outside diameter greater than 16 inches (406.4 mm), but less than 64 inches (162.56 cm), whether or not stenciled. This product is normally produced according to American Petroleum Institute (API) specifications, including grades A25, A, B, and X grades ranging from X42 to X80, but can also be produced to other specifications. The products are imported under statistical reporting numbers 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, and 7305.19.5000 of the Harmonized Tariff Schedule of the United States. Excluded from the scope of Commerce's investigation are American Water Works Association (AWWA) specification water and sewage pipe and certain other size and grade combinations of line pipe (see Notice of Preliminary Determination of Sales at Less Than Fair Value: Welded Large Diameter Line Pipe from Japan, 66 FR 34151, June 27, 2001).

[2] Commerce has postponed its preliminary determination of sales at LTFV regarding Mexico (66 FR 31211, June 11, 2001). The Commission, for administrative convenience, will apply the current schedule for the final phase of its investigation concerning Mexico. When notified of Commerce's preliminary determination regarding Mexico, if affirmative, the Commission will issue a revised schedule accordingly.

authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on August 28, 2001, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on September 11, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 4, 2001. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 6, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is September 5, 2001. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is September 18, 2001; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before September 18, 2001. On October 9, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 11, 2001, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: June 29, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17022 Filed 7–6–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–01–027]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 13, 2001 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–873–874 and 877–879 (Final) (Certain Steel Concrete Reinforcing Bars from Belarus, China, Korea, Latvia, and Moldova)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on July 23, 2001.)
5. Inv. Nos. 701–TA–416 and 731–TA–948 (Preliminary) (Individually Quick-Frozen Red Raspberries from Chile)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on July 16, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on July 23, 2001.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 5, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17247 Filed 7–5–01; 3:14 pm]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–083)]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

DATES: Thursday, July 26, 2001, 12 p.m.–1 p.m. Eastern Daylight Time.

ADDRESS: NASA Headquarters, 300 E Street, SW., Room 7W31, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

To assess the operational readiness of the International Space Station to support the new crew and the American and Russian flight team's preparedness to accomplish the Expedition Three mission.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: July 2, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–16993 Filed 7–6–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–084)]

Privacy Act: Report of New System

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of New System of Records.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974 to publish a description of the systems of records it maintains containing personal information when a system is substantially revised, deleted, or created. In this notice, NASA provides the required information for a new system of records used to collect information provided by users of Marshall Space Flight Center (MSFC) public Internet Web sites.

DATES: The effective date of this notice is July 9, 2001. Comments must be received in writing on or before August 8, 2001.

ADDRESSES: Office of the Chief Information Officer, Code AO, NASA Headquarters, 300 E Street SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Roland Ridgeway, 202–358–4485.

Roland M. Ridgeway, Jr.,

Acting NASA Privacy Act Officer.

NASA 61IWSR

SYSTEM NAME:

MSFC Internet Web Site Record System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Marshall Space Flight Center, AL 35812

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of MSFC public internet Web sites who submit information to MSFC over the internet or otherwise, and parents/guardians and teachers who provide information pursuant to MSFC's implementation of the Children's Online Privacy Protection Act (COPPA) or other child protection measures.

CATEGORIES OF RECORDS IN THE SYSTEM:

All information provided by users of MSFC public Internet Web sites such as name, e-mail address, date of birth, mailing address, school, grade level, employment, artwork, written submissions, and information provided by the parents/guardians and teachers of users pursuant to COPPA or other child protection measures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473(c)(8); 44 USC 3101; 15 U.S.C. 6502(b); 16 CFR 312.3–312.8

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The following are routine uses (1) Provide information to MSFC contractors who will administer the MSFC Web sites; (2) Communicate with teachers of children who use the sites; (3) Disclosure to members of the public of student-generated material; (4) generate statistics regarding the demographics of users, (5) Law Enforcement, (6) disclose as a 'routine use' to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, (7) disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter, and (8) Court or other formal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored as electronic media.

RETRIEVABILITY:

Records may be searched by name, e-mail address, or birthdate.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NASA and NASA contractor personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and secured doors.

RETENTION AND DISPOSAL:

Records are maintained in Agency files for varying periods of time depending on the need for use of the records. Records collected pursuant to COPPA Section 1303(b)(2)(A), (B), (C), and (D) will be destroyed as soon as possible, but no later than 90 days after the collection of the data. Records collected pursuant to other provisions of COPPA will be destroyed upon the request of the user or the parent/guardian of children who use the site, or not later than 5 years after date of last entry on the record. All other records will be destroyed 5 years after date of last entry on the record per the National Archives and Records Administration's General Records Schedule 14, Item 24(a).

SYSTEM MANAGER AND ADDRESS:

AD03/Chief Information Officer, George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Marshall Space Flight Center, AL 35812

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the System Manager at the address given above.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the System Manager at the address given above.

CONTESTING RECORD PROCEDURES:

The NASA regulations governing access to records, procedures for contesting the contents and for appealing initial determinations are set forth in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

The information is submitted by users of MSFC public Internet Web sites.

[FR Doc. 01–17028 Filed 7–6–01; 8:45 am]

BILLING CODE 7510–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27424]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 29, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the

Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 24, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 24, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ameren Corp. (70–9877)

Ameren Corporation ("Ameren"), a registered holding company, 1901 Chouteau Avenue, St. Louis, Missouri 63103, has filed a declaration under sections 6(a), 7, and 12(b) of the Act and rules 45(a) and 54 under the Act, requesting approval for a new program of external financing and credit support arrangements. This new program would replace certain authorizations that the Commission has previously granted.

Ameren requests authority to issue and sell through September 30, 2004 ("Authorization Period") up to $2.5 billion at any time outstanding ("Securities Limit") of the following types of securities: common stock ("Common Stock"); [1] options, warrants and other stock purchase rights exercisable for Common Stock (collectively, "Purchase Rights"); unsecured, long-term debt securities ("Long-Term Debt"); and preferred stock ("Preferred Stock") and other preferred or equity-linked securities ("Equity-Linked Securities"). These securities, further described below, would be sold at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

Common Stock would be sold through underwriters,[2] dealers,[3] agents, or to a limited number of purchasers directly. Ameren might also issue Common Stock in publicly or privately negotiated transactions, as consideration for the equity securities or assets of other companies.[4]

Purchase Rights may be issued in one or more series and, like Common Stock, may be issued to acquire equity securities or assets in transactions that have been authorized by the Commission or are exempt under the Act. Ameren may issue Purchase Rights directly.

Ameren would issue Long-Term Debt directly, or indirectly through one or more subsidiaries organized to facilitate the issuance and sale of long-term debt or equity securities ("Financing Subsidiaries").[5] Long-Term Debt would have maturities ranging from one to fifty years,[6] and would bear interest at a rate not to exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the average life of the Long-Term Debt or, if no such Treasury security is outstanding, the yield to maturity of a thirty-year U.S. Treasury Bond.

Ameren would issue Preferred Stock directly. Ameren states that Equity-Linked Securities typically combine a security with a fixed obligation (such as preferred stock or debt) with a feature that requires or allows conversion into shares of Common Stock within a relatively short period. These instruments may be tax advantaged. Equity-Linked Securities include trust preferred securities, and debt or preferred securities that are converted or convertible (at the holder's option) into Common Stock and forward purchase contracts for Common Stock. Equity-Linked Securities would be issued either directly by Ameren or one or more Financing Subsidiaries. Both Preferred Stock and Equity Linked Securities would be issued in one or more series. The rights, preferences, and priorities of each series will be designated in the instrument creating each series of securities. These instruments would be redeemed no later than fifty years after the date of issuance unless it is converted into Common Stock, as is possible with Equity-Linked Securities. The dividend rates on Preferred Stock and Equity-Linked Securities would not, at the time of issuance, exceed 700 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of such securities or, if no such Treasury security is outstanding, the yield to maturity of a thirty-year U.S. Treasury Bond.

Ameren also requests authority to issue through the Authorization Period up to 25 million shares of Common Stock through stock-based plans that it maintains or will maintain, directly or indirectly, for shareholders, investors, employees, and non-employee directors (collectively, "Ameren Plans").[7] These proposed shares of Common Stock would not count against the Securities Limit. Shares of Common Stock issued through the Ameren Plans would either be newly issued shares, treasury shares, or shares purchased in the open market.[8]

In addition, Ameren requests authority to issue and sell, through the Authorization Period, directly or indirectly through one or more Financing Subsidiaries, up to an

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[1] Ameren is currently authorized to issue up to an aggregate amount of $25 million of Common Stock for general corporate purposes (other than for use under Ameren's dividend reinvestment and employee benefit plans, further described below). *See Ameren Corp.*, HCAR No. 26841 (March 13, 1998), *as modified by Ameren Corp.*, HCAR No. 27011 (April 26, 1999) (collectively, "Current Financing Order").

[2] Common Stock may be sold to underwriters for their own account and resold in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the times of resale. If Common Stock is sold in an underwritten offering, Ameren may grant the underwriters a "green shoe" option, permitting the purchase from Ameren at the same price of additional shares solely for the purpose of covering over-allotments.

[3] Ameren may sell Common Stock to dealers, as principals. Those dealers may then resell that Common Stock to the public at varying prices they determine at the times of resale.

[4] Ameren states that these acquisitions would be either expressly authorized in a separate proceeding or exempt under the Act or the rules under the Act.

[5] The Commission authorized Ameren to acquire Financing Subsidiaries through December 31, 2003. *See Ameren Corp.*, HCAR No. 27053 (July 23, 1999) ("Restructuring Order").

[6] Currently, Ameren is authorized to issue and sell up to an aggregate principal amount of $300 million at any one time outstanding of unsecured notes having maturities of more than one year and up to forty years ("Debentures"), subject to an overall limit of $1.5 billion in short-term debt and Debentures. *See* Current Financing Order.

[7] At present, Ameren maintains the following stock-based plans: (1) Ameren's dividend reinvestment and stock purchase plan ("DRPlus"); (2) Ameren's long-term incentive plan ("1998 Incentive Plan"); (3) Ameren's employee savings investment plan ("SIP"); (4) Ameren's two investment savings plans that permit employees of Central Illinois Public Service Company ("AmerenCIPS"), its direct public-utility company subsidiary, and Ameren Energy Generating Company, an "energy-related company as that term is defined by rule 58 under the Act, who are members of certain collective bargaining units to defer federal income taxes on contributions to the plans and the earnings on those contributions (collectively, "Union Investment Plans"). Ameren is authorized to issue up to 15 million shares of Common Stock through December 30, 2002 under the DRPlus, SIP, and Union Investment Plans, *see Ameren Corp.*, HCAR No. 26809 (December 30, 1997), and up to 4 million shares of Common Stock through March 31, 2003 under the 1998 Incentive Plan. *See Ameren Corp.*, HCAR No. 26862 (April 24, 1998).

[8] Ameren open-market purchases of Common stock would be made in accordance with the terms of, or in connection with, the operation of the Ameren Plans under rule 42.

aggregate principal amount at any time outstanding of $1.5 billion in commercial paper and other short-term debt securities (collectively, "Short-Term Debt").[9] Short-Term Debt would have maturities of less than one year. The effective cost of money on all Short-Term Debt would not exceed 300 basis points over the London Interbank Offered Rate. Commercial paper would be sold in established domestic or European commercial paper markets. Typically, commercial paper would be sold to dealers at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the acquiring dealers would re-offer it at a discount to corporate, institutional and, with respect to European commercial paper, individual investors.[10] Short-Term Debt may also include back-up credit lines with banks or other institutional lenders established and maintained to support its commercial paper program(s) and other credit arrangements and/or borrowing facilities.[11]

Ameren requests authority to provide guaranties and other forms of credit support ("Guaranties") on behalf or for the benefit of its direct and indirect nonutility subsidiaries ("Nonutility Subsidiaries"), in an aggregate principal or nominal amount that would not exceed $1.5 billion at any one time outstanding ("Guaranty Limit").[12] Securities issued by Financing Subsidiaries of Ameren that are guaranteed or supported by other forms of credit enhancement provided by Ameren would not count against the Guaranty Limit. Guaranties would be provided to cover the debt or contractual obligations of any Nonutility Subsidiary as may be appropriate in the ordinary course of the subsidiary's business. Guaranties may be in the form of formal credit enhancement agreements, including "keep well" agreements and reimbursement undertakings under letters of credit. Ameren may charge a fee for each Guaranty it provides. Those fees would not exceed the cost, if any, of obtaining the liquidity necessary to perform the Guaranty for the period of time the Guaranty remains outstanding.

Ameren requests authority directly, or indirectly through any Financing Subsidiary, to enter into hedging transactions with respect to existing indebtedness ("Interest Rate Hedges") using financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury Securities. Interest Rate Hedges would be used to reduce or manage the effective interest rate cost. These transactions would be for fixed periods and stated notional amounts, and would be entered into only with counterparties ("Approved Counterparties") whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors Service or Fitch, Inc. Fees, commissions, and other amounts payable to an Approved Counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge would not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Ameren also requests authority directly, or indirectly through any Financing Subsidiary, to enter into hedging transactions with respect to anticipatory debt issuances ("Anticipatory Hedges"). Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix the interest rate and/or limit the interest rate risk associated with any new issuance through: A forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury Securities and/or a forward swap (each, "Forward Sale"); the purchase of put options on U.S. Treasury Securities ("Put Options Purchase"); a Put Options Purchase in combination with the sale of call options on U.S. Treasury Securities ("Zero Cost Collar"); transactions involving the purchase or sale, including short sales, of U.S. Treasury Securities; or some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges. Each Interest Rate Hedge and Anticipatory Hedge would, at the time it is entered into, qualify for hedge accounting treatment under Generally Accepted Accounting Principles. Ameren would comply with all applicable financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions.

Ameren states that the proposed securities will not be issued if issuance would result in its common equity as a percentage of its consolidated capitalization (including Short-term Debt) falling below thirty percent. Ameren also states that it would maintain the common stock equity ratios of Union Electric Company ("AmerenUE") and AmerenCIPS, its direct public-utility company subsidiaries, at or above thirty percent during the Authorization Period.

It is further requested that the Commission release jurisdiction reserved under the Restructuring Order over Ameren's request to allow the Financing Subsidiaries to dividend to Ameren any financing proceeds of a Financing Subsidiary.[13]

Wisconsin Energy Corporation, et al. (70–9881)

Wisconsin Energy Corporation ("WEC"), a public utility holding company exempt from registration under section 3(a)(1) of the Act,[14] and Wisconsin Electric Power Company ("WEPCo"), a wholly owned subsidiary holding company of WEC claiming exemption under section 3(a)(1) of the Act by rule 2, both at 31 West Michigan Street, Milwaukee, Wisconsin 53201 (together, "Applicants"), have filed an application under sections 3(a)(1), 9(a)(2) and 10 of the Act.

WEC is a public utility holding company incorporated in the state of Wisconsin. WEC owns directly all of the common stock of two public utility companies: WEPCo, a combination electric and gas utility company and Edison Sault Electric Company ("Edison Sault"), an electric utility company incorporated in Michigan. WEPCo generates, distributes, and sells electric energy in southeastern, east central and northern Wisconsin and in the Upper Peninsula of Michigan. As of December 31, 2000, WEPCo had approximately

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[9] Ameren is currently authorized to issue up to $1.5 billion in Short-Term Debt through February 27, 2003. *See* Current Financing Order.

[10] Ameren expects that this commercial paper would be re-offered to investors such as commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, finance companies and non-financial corporations.

[11] Only the amounts drawn and outstanding under these agreements and facilities would be counted against the proposed limit on Short-Term Debt.

[12] Currently, Ameren is authorized to provide up to an aggregate amount of $1 billion in Guaranties on behalf or for the benefit of the Nonutility Subsidiaries through February 27, 2003. *See* Current Financing Order.

[13] In the Restructuring Order, the Commission reserved jurisdiction over this proposal, pending completion of the record.

[14] WEC is exempt from registration by order of the Commission. Its exemption was most recently reaffirmed in HCAR No. 27329 (December 28, 2000).

one million electric customers. WEPCo also purchases, distributes and sells natural gas to retail customers and transports customer owned gas in four distinct service areas encompassing approximately 3,800 square miles in Wisconsin with an estimated population of approximately 1,200,000: west and south of the City of Milwaukee, the Appleton area, the Prairie du Chien area, and areas within Iron and Vilas Counties. During 2000, WEPCo had gas operating revenues of $400 million and at December 31, 2000, WEPCo's gas distribution system included approximately 8,200 miles of mains connected at twenty-two gate stations to four different pipeline transmission systems and its gas service territory has an estimated population of approximately 1,200,000. Edison Sault provides retail electric service in certain territories in Michigan.[15]

WEC also owns all of the common stock of WICOR, a public utility holding company incorporated in Wisconsin and exempt from registration under the Act under section 3(a)(1) by order of the Commission.[16] WICOR has one wholly owned public utility subsidiary, Wisconsin Gas, which is a gas utility company organized in Wisconsin. Wisconsin Gas distributed gas to approximately 544,000 customers in 531 communities throughout Wisconsin as of December 31, 2000.

WEPCo seeks to transfer its gas utility assets ("Transferred Assets") to Wisconsin Gas. The Transferred Assets are expected to have a book value of $479 million and have associated liabilities ("Liabilities") of $115 million for an aggregate value of approximately $364 million ("Aggregate Value"). Wisconsin Gas will acquire the Transferred Assets along with the Liabilities associated and will provide, as consideration, shares of a newly created Class B common stock ("Class B Common Stock") with a fair market value of approximately $364 million. Applicants seek authority for WEPCo to acquire the Class B Common Stock from Wisconsin Gas in an amount equal to the Aggregate Value. According to the agreement ("Asset Transfer Agreement"), the Transferred Assets will consist of:

1. All of WEPCo's rights, title and interest in and to all contracts and agreements with customers, suppliers, employees and other persons exclusively related to WEPCo's gas utility business ("Business"), including but not limited to gas supply agreements ("Contracts");

2. WEPCo's accounts receivable related to the Business;

3. All of WEPCo's rights, title and interest in and to the real property interests used in the distribution of gas and for other purposes in the Business;

4. WEPCo's equipment, computer software, construction in progress, and other items of tangible personal property related to the Business;

5. WEPCo's inventory of gas, fuel, materials and supplies related to the Business;

6. All of the intangible assets owned or used by WEPCo relating primarily to the operation of the Business;

7. All books, documents and records owned or used by WEPCo relating primarily to the operation of the Business;

8. All assets related to the Business and existing at the closing date which are included within the financial books and records of WEPCo related to the Business and described as "Prepayments and Other Current Assets," "Regulatory Assets," "Accumulated Deferred Income Taxes" and "Other Assets"; and

9. All rights to recoveries from third parties and causes of action against third parties relating to any of the Transferred Assets or any of the Assumed Liabilities (as defined below).

Under the Asset Transfer Agreement, Wisconsin Gas will assume the following obligations of WEPCo ("Assumed Liabilities"):

1. All obligations of WEPCo under the Contracts arising from and after the closing date;

2. All obligations of WEPCo related to the Business existing on the closing date or arising after the closing date which are included within the financial books and records of WEPCo related to the Business and described as "Accounts Payable," "Accrued Liabilities and Other," "Accumulated Deferred Income Taxes," "Regulatory Liabilities" and "Other, including Post-Retirement Benefit Obligation;" and

3. Any and all claims, demands, liabilities, debts, obligations, damages and causes of action for any environmental liability arising out of or related to the operation of the Business prior to the closing date, excluding punitive or exemplary damages.

Wisconsin Gas will pay its own newly issued Class B Common Stock to WEPCo for the Transferred Assets under the Asset Transfer Agreement. Wisconsin Gas will issue to WEPCo the number of shares which reflect the percentage of equity in Wisconsin Gas represented by the Transferred Assets as compared to Wisconsin Gas' total assets after the transaction takes place.[17] The approximate worth of the Class B Common Stock will also be calculated to equal the Aggregate Value, as stated above. Additionally, in order for the transaction to qualify as a tax-free exchange under section 351 of the Internal Revenue Code, Wisconsin Electric must end up controlling at least eighty percent of the total combined voting power of all Wisconsin Gas stock entitled to vote. This will be accomplished by assigning the class A common stock ("Class A Common Stock") one vote per share and the Class B Common Stock ten votes per share or such other number of votes per share as the Board of Directors of Wisconsin Gas shall determine so that Wisconsin Electric shall have a number of votes representing at least eighty percent of the total combined voting power of all classes of Wisconsin Gas stock entitled to vote immediately after consummation of the transaction.

Currently, the authorized capital stock of Wisconsin Gas consists of: (i) 5,000,000 shares of common stock, $8.00 par value, of which 1,125 shares are issued and outstanding and owned by WICOR, and (ii) 1,500,000 shares of cumulative preferred stock without par value, none of which are issued and outstanding.

The Asset Transfer Agreement requires that, as of the closing date, the entire authorized capital stock of Wisconsin Gas shall consist of: (i) 5,000,000 shares of Class A common stock, $8.00 par value, of which 1,125 shares will be issued and outstanding and owned by WICOR; (ii) 5,000,000 shares of Class B Common Stock, $8.00 par value, none of which shall be issued and outstanding prior to the issuance of shares to WEPCo contemplated by the Asset Transfer Agreement, and (iii) 1,500,000 shares of cumulative preferred stock without par value, none of which will be issued and outstanding.

In addition to Applicants' request for WEPCo to acquire Wisconsin Gas' securities, Applicants request that the Commission approve exemptions for

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[15] WEPCo and Edison Sault own membership interests in American Transmission Company LLC, ("ATC"), a limited liability transmission utility company organized in Wisconsin. WEPCo owns approximately forty-two percent and Edison Sault owns approximately six percent of the interests in ATC. In addition, WEPCo owns a forty-eight percent interest in ATC Management Inc., a limited liability company organized to manage the operations of ATC.

[16] *See* Wisconsin Energy Corporation, HCAR No. 27163 (April 10, 2000).

[17] Thus, for illustration purposes only, if sixty percent of Wisconsin Gas' net assets after the transaction will consist of the Transferred Assets, then Wisconsin Gas will issue enough Class B Stock to WEPCo so that WEPCo will own sixty percent of Wisconsin Gas' outstanding common stock.

both WEC and WEPCo under section 3(a)(1) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17001 Filed 7–6–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44497; File No. SR–NASD–98–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 10 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Extension of Short Sale Rule and Continued Suspension of Primary Market Maker Standards

June 29, 2001.

On June 15, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule to change to: (1) Continue to suspend the current Primary Market Maker ("PMM") standards until March 1, 2002, and (2) extend the NASD's Short Sale Rule pilot until March 1, 2002 ("Amendment No. 10").[3] Amendment No. 10 to the proposed rule change, SR–NASD–96–28, is described in Items I and II below, which Items have been prepared by the Nasdaq. The Commission is publishing this notice and order to solicit comments on amendment No. 10 from interested persons and to approve the amendment on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division of Market Regulation ("Division"), Commission, dated June 14, 2001; and Mary Dunbar, Vice President, Nasdaq, to Anitra Cassas, Special Counsel, Division, dated June 29, 2001. The current suspension and extension would expire on June 30, 2001. *See* Securities Exchange Act Release No. 43368 (September 27, 2000), 65 FR 59478 (October 5, 2000)."

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In the current amendment, Nasdaq is proposing to extend the Short Sale Rule pilot and the suspension of the existing PMM standards from June 30, 2001 until March 1, 2002. The proposed rule language, as amended, follows. Additions are italicized; deletions are bracketed.

NASD Rule 3350

(a)–(k) No Changes.

(l) This Rule shall be in effect until [June 30, 2001] *March 1, 2002.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Background on the NASD's Short Sale Rule

Section 10(a) of the Exchange Act[4] gives the Commission plenary authority to regulate short sales of securities registered on a national securities exchange, as needed to protect investors. Although the Commission has regulated short sales since 1938, that regulation has been limited to short sales of exchange-listed securities. In 1992, Nasdaq, believing that short-sale regulation is important to the orderly operation of securities markets, proposed a short sale rule for trading of its National Market securities that incorporates the protections provided by Rule 10a–1 of the Exchange Act.[5] On June 29, 1994, the Commission approved the NASD's short sale rule, Rule 3350 ("Short Sale Rule"), applicable to short sales[6] in Nasdaq National Market ("NNM") securities on an eighteen-month pilot basis through March 5, 1996.[7] The NASD and the Commission have extended NASD Rule 3350 numerous times, most recently, until June 30, 2001.[8]

Nasdaq's short-sale rule employs a "bid" test rather than a tick test because Nasdaq trades are not necessarily reported to the tape in chronological order. Nasdaq's short sale rule prohibits short sales at or below the inside bid when the current inside bid is below the previous inside bid. Nasdaq calculates the inside bid from all market makers in the security (including bids on exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an "up-bid" or a "down-bid." To effect a "legal" short-sale on a down-bid, the short-sale must be executed at a price at least .01 above the current inside bid.[9] The rule is in effect from 9:30 a.m. E.T. until 4 p.m. E.T. each trading day.

To reduce the compliance burdens on its members, Nasdaq's short sale rule also incorporates seven exemptions contained in Rule 10a–1 under the Exchange Act that are relevant to trading on Nasdaq.[10] In addition, in an effort to not constrain the legitimate hedging needs of options market makers, the NASD's short sale rule contains a limited exception for standardized options market makers. The Rule also contains an exemption for warrant market makers similar to the one available for options market makers.

[4] 15 U.S.C. 78j(a).

[5] 17 CFR 240.10a–1.

[6] A short sale is a sale of a security the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale, members must adhere to the definition of a "short sale" contained in Rule 3b–3 of the Exchange Act, which is incorporated into Nasdaq's short sale rule by NASD Rule 3350(k)(1).

[7] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) ("Short Sale Rule Approval Order").

[8] *See supra*, note 3.

[9] In light of the industry conversion to decimal pricing, Nasdaq recently amended the increment standard for legal short sales from 1/16th to $0.01. The Commission approved the amendment to IM–3350 on a pilot basis, ending March 1, 2002. Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

[10] *See* NASD Rule 3350(c)(2)–(8). The Rule also provides that a member not currently registered as a Nasdaq market maker in a security, and that has acquired the security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of the Short Sale Rule, notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is subject to one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities. In addition, the NASD has recognized that SEC staff interpretations to Rule 10a–1 under the Exchange Act dealing with the liquidation of index arbitrage positions and an "international equalizing exemption" are equally applicable to the NASD's short sale rule. *See* NASD Rule 3350(f).

(2) Background on the NASD's Primary Market Maker Standards

To ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is invoked, NASD Rule 3350(c)(1) provides an exemption for "qualified" Nasdaq market makers (*i.e.*, market makers that meet the PMM standards). Presently, NASD Rule 4612 provides that a member registered as a Nasdaq market maker pursuant to NASD Rule 4611 may be deemed a PMM if that member meets certain threshold standards.

Since NASD Rule 3350 has been in effect, there have been two methods used to determine whether a market maker is eligible for the PMM exemption. Specifically, from September 4, 1994 through February 1, 1996, Nasdaq market makers that maintained a quotation in a particular NNM security for 20 consecutive business days without interruption were exempt from Rule 3350 for short sales in that security, provided the short sales were made in connection with bona fide market making activity ("the 20-day" test).[11] From February 1, 1996 until February 14, 1997, the "20-day" test was replaced with a four-part quantitative test known as the PMM standards.[12]

Beginning on February 14, 1997, the PMM standards were suspended for all NNM securities due to the impact of the SEC's Order Handling Rules, and corresponding NASD rule change and system modifications on the operation of the four quantitative standards.[13] For example, the requirement that market makers display customer limit orders adversely affected the ability of market makers to satisfy the "102% Average Spread Standard." Since that time all market makers have been designated as PMMs.

In March 1998, Nasdaq proposed PMM standards that received substantially negative comments.[14] In light of those comments, Nasdaq staff convened an advisory subcommittee to develop PMM standards ("Subcommittee") in August 1998. The Subcommittee met nine times and formulated new PMM standards. On December 9, 1998, the NASD/Nasdaq staff met with the Commission staff and the Subcommittee to receive informal feedback on the new PMM standards. At the conclusion of the meeting, Commission staff noted the progress made by the Subcommittee and requested time to digest and more carefully analyze the proposed new PMM standards.

On July 29, 1999, members of the Nasdaq staff conducted a conference call with members of the Commission staff to receive feedback on the PMM standards that Nasdaq presented at the December 9, 1998 meeting. During the meeting, the Commission staff suggested that Nasdaq modify several of the proposed standards and analyze the impact of those modifications on the primary market maker determination. On September 27, 1999, Nasdaq reported that the NASD Economic Research staff had analyzed data based on the Commission's suggested revisions, and concluded that the Commission's modified standards produced unfavorable results.[15]

The Commission notes that it intends to propose amendments to Rule 10a–1 under the Exchange Act, which applies to exchanges. The Commission recently noticed for public comment Nasdaq's application for registration as a national securities exchange under Section 6 of the Exchange Act.[16]

(3) Current Amendment

Nasdaq believes that it is in the best interest of investors to extend the short sale regulation pilot program. In the Short Sale Approval Order, the Commission stated that "recognizing the potential for problems associated with short selling, the changing expectations of Nasdaq market participants and the competitive disparity between the exchange markets and the OTC market, the Commission believes that regulation of short selling of Nasdaq National Market securities is consistent with the Act."[17] In addition, the Commission stated that it "believes that the NASD's short sale bid-test, including the market maker exemptions, is a reasonable approach to short sale regulation of Nasdaq National Market securities and reflects the realities of its market structure."[18] Nasdaq believes the benefits that the Commission recognized when it first approved NASD Rule 3350 apply with equal force today.

Similarly, Nasdaq believes the concerns that caused the Commission to waive the PMM standards in February 1997 continue to exist today. Nasdaq and the Commission agreed to waive the PMM standards to avoid frustrating operation of the Commission's Order Handling Rules, in light of market factors that were not apparent at the time the Order Handling Rules were implemented.[19] Nasdaq has worked to

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[11] *See* Short Sale Rule Approval Order, *supra* note 7.

[12] *Id.* Under the PMM standards, a market maker was required to satisfy at least two of the following four criteria each month to be eligible for an exemption from the short sale rule: (1) The market maker must be at the best bid or best offer as shown on Nasdaq no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its "proportionate" volume in the stock. If a PMM did not satisfy the threshold standards after a particular review period, the market maker lost its designation as a PMM (*i.e.*, the "P" next to its market maker identification was removed). Market makers could re-qualify for designation as a PMM by satisfying the threshold standards in the next review period.

[13] *See* Securities Exchange Act Release Nos. 38294 (February 14, 1997), 62 FR 8289 (February 24, 1997) (order granting temporary accelerated approval of suspension of PMM standards until October 1, 1997; File No. SR–NASD–97–07); 39198 (October 3, 1997), 62 FR 53365 (October 14, 1997) (order granting temporary accelerated approval of continuing suspension until April 1, 1998; File No. SR–NASD–97–73); 39819 (March 30, 1998), 63 FR 16841 (April 6, 1998) (order granting temporary accelerated approval of continuing suspension until May 1, 1998; File No. SR–NASD–98–26); 39936 (April 30, 1998), 63 FR 25253 (May 7, 1998) (order granting temporary accelerated approval of continuing suspension until July 1, 1998; Amendment No. 3 to File No. SR–NASD–98–26); 40140 (June 26, 1998), 63 FR 36464 (July 6, 1998) (order granting temporary accelerated approval of continuing suspension until October 1, 1998; Amendment No. 4 to File No. SR–NASD–98–26); 40485 (September 25, 1998), 63 FR 52780 (October 1, 1998) (order granting temporary accelerated approval of continuing suspension until March 31, 1999; Amendment No. 5 to File No. SR–NASD–98–26); 41195 (March 19, 1999), 64 FR 14778 (March 26, 1999) (order granting temporary accelerated approval of continuing suspension until June 30, 1999; Amendment No. 6 to File No. SR–NASD–98–26); 41568 (June 28, 1999), 64 FR 36416 (July 6, 1999) (order granting temporary accelerated approval of continuing suspension until December 31, 1999; Amendment No. 7 to File No. SR–NASD–98–26); 42219 (December 9, 1999), 64 FR 70753 (December 17, 1999) (granting temporary accelerated approval of continuing suspension until September 30, 2000; Amendment No. 8 to File No. SR–NASD–98–26).

[14] *See* Securities Exchange Act Release 39819 (March 30, 1998), 63 FR 16841 (April 6, 1998).

[15] *See* letter from John F. Malitzis, Assistant General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division, Commission, dated September 27, 1999.

[16] *See* Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001).

[17] *See* Short Sale Rule Approval Order, *supra* note 8.

[18] *Id.*

[19] Nasdaq stated at the time that it believed the implementation of the Order Handling Rules created the following three issues: (1) many market makers voluntarily chose to display customer limit orders in their quotes although the Limit Order Display Rule does not yet require it; (2) SOES decrementation for all Nasdaq stocks significantly affected market makers' ability to meet several of the primary market maker standards; and (3) with the inability to meet the existing criteria for a larger number of securities, a market maker may be prevented from registering as a primary market maker in an initial public offering because it fails to meet the 80% primary market maker test contained in Rule 4612(g)(2)(B). *See* Securities Exchange Act Release No. 38294 (February 14, 1997), 62 FR 8289 (February 24, 1997).

address those concerns to the Commission's satisfaction, including convening a special subcommittee on PMM issues, proposing two different sets of PMM standards, and being continuously available and responsive to Commission staff to discuss this issue. Despite these efforts, the Commission and Nasdaq have been unable to establish satisfactory PMM standards. Nasdaq believes that re-instating the PMM standards set forth in NASD Rule 4612 would be extremely disruptive to the market and harmful to investors.

Nasdaq also notes that the Commission has signaled to the securities industry that it is considering fundamental changes to Rule 10a–1 of the Exchange Act that could impact the manner in which Nasdaq and the other markets regulate short sales. On October 20, 1999, the Commission issued a Concept Release on Short Sales in which it sought comment on, among other things, revising the definition of short sale, extending short sale regulation to non-exchange listed securities, and eliminating short sale regulation altogether.[20] Nasdaq believes it would be inappropriate for Nasdaq to alter its regulation of short sales while the Commission is considering changing Rule 10a–1.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 10, including whether the proposed Amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–26 and should be submitted by July 30, 2001.

[20] *See* Securities Exchange Act Release No. 42037 (October 20, 1999), 64 FR 57996 (October 28, 1999).

IV. Commission's Findings and Order Granting Accelerated Approval of the Amendment

After careful consideration, the Commission finds, for the reasons set forth below, that the extension of the Short Sale Rule pilot and the suspension of the existing PMM standards until March 1, 2002 is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the extension is consistent with section 15A(b)(6)[21] of the Act, which requires that the NASD's rules be designed, among other things, to remove impediments to and perfect the mechanism of a free and open market and a national market system and to promote just and equitable principles of trade.

The Commission finds that continuation of the Short Sale Rule pilot and the continued suspension of the current PMM standards will maintain the status quo while the Commission is considering amending Rule 10a–1 under the Exchange Act. However, this extension of the pilot and continued suspension of the current PMM standards is subject to modification or revocation should the Commission amend Rule 10a–1 in such a manner as to deem the extension or suspension unnecessary or in conflict with any adopted amendments.[22]

The Commission finds good cause for approving the extension of the Short Sale Rule pilot and the suspension of existing PMM standards prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It could be disruptive to the Nasdaq market and confusing to market participants to reintroduce the previous PMM standards while new PMM standards are being developed, and while the Commission is considering amending Rule 10a–1 under the Exchange Act.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[23] that Amendment No. 10 to the proposed rule change, SR–NASD–98–26, which extends the NASD Short Sale Rule pilot and the suspension of the current PMM standards to March 1, 2002, is approved on an accelerated basis.[24]

[21] 15 U.S.C. 78o–3(b)(6).

[22] Absent an exemption, Rule 10a–1 of the Exchange Act would apply to Nasdaq upon Commission approval of their exchange registration.

[23] 15 U.S.C. 78s(b)(2).

[24] In approving Amendment No. 10, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17003 Filed 7–6–01; 8:45 am]

BILLING CODE 8010–01–M

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44499; File No. SR–NASD–2001–14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Modify Certain Initial and Continued Listing Standards on Nasdaq

June 29, 2001.

I. Introduction

On March 8, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposal to modify certain initial and continued listing standards on Nasdaq. Nasdaq also requested that the Commission grant accelerated approval for a pilot program that would give certain of the proposed new listing standards immediate effectiveness. On April 26, 2001, Nasdaq submitted Amendment No. 1 to the proposal.[3] On May 1, 2001, the Commission published notice of the proposal in the **Federal Register** and approved the proposed pilot program on an accelerated basis.[4] The Commission received one comment on the proposal. This order approves the proposed rule change and Amendment No. 1.

II. Description of the Proposal

Nasdaq proposed to amend NASD Rules 4200, 4310, 4320, 4420, and 4450 and thereby to modify certain quantitative initial and continued listing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (April 25, 2001). In Amendment No. 1, Nasdaq provided a chart that clarifies the proposed schedule for implementing the new listing standards and made certain technical corrections to the proposal.

[4] *See* Securities Exchange Act Release No. 44243 (May 1, 2001), 66 FR 23285 (May 8, 2001).

standards on Nasdaq. These amendments would: (1) Replace the net tangible assets standard with an equity standard; (2) require that currently trading issuers applying for initial listing under the market capitalization alternative demonstrate 90 days of sustained compliance with the bid price and market capitalization requirements before they are eligible to apply to become listed; (3) clarify that Nasdaq will exclude extraordinary or non-recurring items for purposes of determining compliance with the income standard; and (4) adjust the bid price requirement associated with continued listing on the Nasdaq National Market under the market capitalization standard from $5 to $3. Nasdaq stated that these changes were designed to have minimal impact on issuers in the marketplace while providing greater transparency and consistency.

The Equity Standard

Companies may qualify for initial or continued inclusion on the Nasdaq National Market or the Nasdaq SmallCap Market based, in part, on their net tangible assets. Net tangible assets are defined as total assets less total liabilities less goodwill. Nasdaq proposed to replace the net tangible assets standard with an equity standard for several reasons. First, Nasdaq stated that the equity standard is more transparent to investors, as it is reflected in issuer financial statements, as opposed to the net tangible assets standard which must be manually calculated. Nasdaq concluded that, for this reason, the equity standard would also provide a better framework for complimentary standards in Nasdaq's developing international markets. Second, Nasdaq asserted that the change would respond to recent accounting developments which may tend to require an increase in the booking of goodwill. Finally, Nasdaq stated that the use of an equity standard is consistent with listing standards on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex").[5]

With respect to the Nasdaq National Market, the $6 million net tangible assets requirement for initial listing under Entry Standard 1 (for companies with pre-tax income of at least $1 million in the latest fiscal year or two of the last three years) would be changed to a $15 million stockholders' equity requirement, and the $18 million net tangible assets requirement under Entry Standard 2 (for companies without the above-referenced pre-tax income) would be changed to $30 million in stockholders' equity. In addition, the $4 million net tangible assets continued listing requirement would be changed to $10 million in stockholders' equity. With respect to the SmallCap Market, the $4 million net tangible assets initial inclusion requirement would be changed to $5 million in stockholders' equity, and the $2 million net tangible assets continued inclusion requirement would be changed to $2.5 million in stockholders' equity.

Seasoning Period for Applicants Relying on the Market Capitalization Standard

Companies may qualify for listing on Nasdaq based, in part, on their market capitalization. The market capitalization listing standards were originally adopted in 1997 to permit the inclusion of certain financially sound issuers that could not qualify under the net tangible assets requirement as a result of accounting conventions such as the booking of goodwill associated with various merger and acquisition activities or significant depreciation charges.[6] These standards permit an issuer to list with a bid price of $5 and a market capitalization of $75 million (in the case of the Nasdaq National Market) or a bid price of $4 and a market capitalization of $50 million (in the case of the Nasdaq SmallCap Market).

Since the adoption of the rule, Nasdaq has noted certain instances where publicly traded companies (including companies quoted on the OTC Bulletin Board) have applied to list on Nasdaq based on the market capitalization listing standards. In these circumstances, companies may be able to evidence compliance based on short-term price reaction to favorable news, which price increase may not be sustainable over the long term. Accordingly, Nasdaq proposed a "seasoning" period of 90 days for currently traded issuers, such that an issuer must maintain the required bid price and market capitalization for that period prior to applying for listing. Nasdaq believes that this seasoning period, especially when coupled with the time necessary to review and process any such application, would provide assurances that a company would be unable to secure a Nasdaq listing based on an unsustainable, short-term run-up in its stock price.

Extraordinary and Non-Recurring Income Items

The income standards for the Nasdaq Stock Market currently make no provision for the exclusion of extraordinary or non-recurring items when assessing an issuer's compliance with the income requirements for listing on Nasdaq. However, Nasdaq believes that it is appropriate to exclude extraordinary and non-recurring income items because they do not provide a continuing benchmark of the issuer's financial performance. Accordingly, Nasdaq proposed that the National Market and SmallCap Market rules relating to the income standards be amended to indicate that the income determination will exclude extraordinary and non-recurring items.

Bid Price Standard for Issuers Qualifying Under the Market Capitalization Standard

Issuers that seek to qualify for the Nasdaq National Market pursuant to the market capitalization alternative[7] must demonstrate a $5 bid price for both initial and continued inclusion. Nasdaq proposed to adjust the continued inclusion standard, applicable to Nasdaq National Market companies qualifying under the market capitalization standard, from $5 to $3. This would harmonize this standard with other standards by providing a differential between the initial inclusion and continued inclusion requirements.

Implementation

To minimize disruption to existing issuers and to allow adequate time for necessary corporate action to comply with the stockholders' equity standard, Nasdaq proposed to provide its issuers with 18 months following Commission approval of the proposed pilot to come into compliance with the new standard. During this time, issuers that do not meet the new stockholders' equity standard could qualify for continued listing under the net tangible assets standard.

Similarly, for issuers that applied for listing prior to the effective date of the rule, Nasdaq proposed that they continue to be able to qualify for listing under the listing standards in force at the time of their application for a period of 90 days from the effective date of the proposed rule change, and thereafter receive the same grace periods provided to current issuers to come into compliance with the new equity test. Alternatively, such issuers may qualify for listing under the new stockholders' equity test for initial inclusion.

[5] *See* NYSE Rules 102 and 103 (initial listing standards), 802 (continued listing standards); Amex Listing Rules 102 (initial listing standards) and 1003 (continued listing standards).

[6] *See* Securities Exchange Act Release No. 38961 (August 22, 1997), 62 FR 45895 (August 29, 1997) (approving SR–NASD–97–16).

[7] *See* NASD Rules 4420(c) and 4450(j).

In addition, Nasdaq proposed a pilot program that would allow issuers that meet the new original listing and maintenance standards but not the old standards to remain listed on Nasdaq for a short period while the Commission considers the overall proposal. The pilot program was designed to ensure that issuers that meet the new standards but not the existing standards are not delisted before the Commission takes final action on the proposed rule change. The standards included in the pilot are: (1) The new bid price requirement found in NASD Rule 4450(b)(4); and (2) the new equity standard, which replaces the old net tangible assets standard, found in NASD Rules 4310(c)(2)(A)(i), 4310(c)(2)(B)(i), 4320(e)(2)(A)(i), 4320(e)(2)(B)(i), 4420(a)(5), 4420(b)(1), and 4450(a)(3). Nasdaq proposed that the pilot program would expire on July 1, 2001, or such earlier time as the Commission takes action on the overall proposal. The Commission approved the pilot program on an accelerated basis on May 1, 2001.[8]

III. Comment Received

The Commission received one comment on the proposal, from Princeton Video Image, Inc. ("PVI").[9] PVI agreed with Nasdaq that shifting from a net tangible assets standard to a stockholders' equity standard was an improvement, in that it would be more transparent to investors. PVI asserted, however, that Nasdaq had provided no justification for the simultaneous 150% increase in the dollar threshold for the test. PVI also noted that the proposed rule change would force many companies to raise capital that they do not otherwise need for operations or investment. PVI concluded that the rule would unfairly and unnecessarily dilute shareholders' interests, particularly in companies that have sufficient net tangible assets under the existing standard to meet operating requirements but do not yet generate positive earnings due to revenue recognition requirements or amortization of non-cash charges.

In response to PVI's comment, Nasdaq responded that, since the net tangible assets standard excludes certain intangible assets that are included in equity such as goodwill, it believes that a higher equity requirement is necessary in order to maintain its listing standard at the existing level.[10] An impact analysis conducted by Nasdaq at the end of April 2001 showed that less than 2% of the compliant National Market companies and approximately 3% of the compliant SmallCap companies would not be able to meet the new equity standard. To allow these issuers a sufficient opportunity to come into compliance with the new equity requirement, Nasdaq proposed that the new standard would not be implemented until 18 months after the pilot program is approved by the Commission.

IV. Discussion

After considering the comment submitted by PVI and Nasdaq's response thereto, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to the NASD.[11] In particular, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act.[12] Section 15A(b)(6) requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

With respect to Nasdaq's proposal to move from a net tangible assets standard to a stockholders' equity standard as part of its listing requirements, the Commission notes that it previously approved a proposal by the NYSE to institute market capitalization and stockholders' equity requirements.[13] In that case, the Commission stated that the amount of stockholders' equity is not an inappropriate measure of a company's suitability for listing on an exchange.[14] Accordingly, the Commission finds that it is reasonable and consistent with the Act to allow Nasdaq to implement a stockholders' equity standard, and that the required minimum thresholds selected by Nasdaq for this standard are reasonable. Relying on Nasdaq's response to the PVI comment, the Commission believes that only a small number of issuers might be adversely affected by the transition from a net tangible assets standard to a stockholders' equity standard, and that the 18-month transition period should provide such issuers with a reasonable amount of time to conform to the new standards.

With respect to Nasdaq's proposal to lower the bid price requirement in Maintenance Standard 2 of NASD Rule 4450 from $5 to $3, the Commission notes that the bid price requirement for initial listing will remain $5.[15] Nasdaq's listing rules generally establish a higher initial threshold for most criteria and a somewhat lower continued requirement to allow for market fluctuations.[16] Establishing a new bid price requirement of $3 for continued listing will make this standard similar to other existing standards that allow issuers to comply with maintenance requirements that are more flexible than the original listing requirements. Accordingly, the Commission finds that it is reasonable and consistent with the Act to approve this aspect of the proposal.

With respect to the proposed "seasoning period," the Commission notes that applicants for listing may be able to evidence compliance based on a short-term price increase that may not be sustainable over the long term. The seasoning period will assure potential investors that the issuer's compliance with the market capitalization standard was not based on an unsustainable, short-term run-up in its stock price. Therefore, the Commission finds that this aspect of the proposal will protect investors and promote just and equitable principles of trade.[17]

The Commission also finds that it is appropriate and consistent with the Act for Nasdaq to exclude extraordinary and non-recurring income items when assessing an issuer's compliance with the listing standards, because financial statements that include such items do not provide a continuing benchmark of an issuer's financial performance. The Commission believes that excluding such items will allow prospective investors to more accurately assess the

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[8] *See* Securities Exchange Act Release No. 44243 (May 1, 2001), 66 FR 23285 (May 8, 2001).

[9] *See* Letter from Lawrence L. Epstein, Vice President and Chief Financial Officer, PVI, to Secretary, Commission, dated June 15, 2001.

[10] *See* Email from John D. Nachmann, Senior Attorney, Nasdaq, to Michael Gaw, Special Counsel, Division of Market Regulation, Commission, dated June 29, 2001.

[11] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78o–3(b)(6).

[13] *See* Securities Exchange Act Release No. 42194 (December 1, 1999), 64 FR 69311 (December 10, 1999) (approving SR–NYSE–99–29).

[14] *See id.*, 64 FR 69314.

[15] *See* NASD Rules 4420(a)(5), 4420(b)(4), and 4420(c)(3).

[16] *Compare* NASD Rule 4420 (giving issuers of Nasdaq National Market securities the option of meeting one of three entry standards which include requirements that the market value of publicly held shares be at least $8 million, $18 million, or $20 million, respectively) *with* NASD Rule 4450 (giving issuers of Nasdaq National Market securities the option of meeting one of two maintenance standards which include requirements that the market value of public held shares be at least $5 million or $15 million, respectively).

[17] However, Nasdaq has stated that this requirement would not apply to an issuer listing as part of its initial public offering, because the same concerns do not exist.

financial health of companies listed on Nasdaq in which they might invest.

Finally, Nasdaq proposed a transition period following the Commission's final action on the overall proposal that would allow issuers to rely on certain of the old listing standards for a limited period of time, rather than require them to come into immediate compliance with the new standards.[18] The Commission notes that certain issuers who may reasonably have relied on Nasdaq's prior listing standards to obtain or maintain listing might not be able to obtain or maintain listing if immediate compliance with the new standards were required. Therefore, the Commission finds that it is reasonable and consistent with the Act to allow issuers a short period of time during which they may obtain or maintain listing on Nasdaq pursuant to either the old or the new listing standards.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NASD–2001–14) and Amendment No. 1 thereto are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17004 Filed 7–6–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44498; File No. SR–OCC–2001–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by The Options Clearing Corporation Relating to Clearing Member Qualifications

June 29, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on June 26, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II, below, which Items have been prepared by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will eliminate from Article V, Section 1 of OCC's by-laws the requirement that applicants for membership in OCC "propose to engage upon acceptance in the clearance of options transactions for the applicant's firm account or for the accounts of customers."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC wishes to delete from Article V, Section 1 of its by-laws the requirement that applicants for OCC membership "propose to engage upon acceptance in the clearance of options transactions for the applicant's firm account or for the accounts of customers." OCC's by-laws currently contain a membership category designated as "Hedge Clearing Member" for clearing members who want to participate in OCC's stock loan/hedge program.[3] OCC has always intended to allow this membership category to be available to firms wanting to participate in this program that do not plan to clear options transactions but meet all other OCC membership criteria. However, OCC overlooked the requirement in Article V, Section 1 when filing the stock loan/hedge program rule changes.[4]

OCC believes that deleting the requirement that members engage in the clearance of options transactions will allow broader participation in the stock loan/hedge program because many firms engaged in the stock loan business do not conduct an options business. Deleting this requirement will also allow OCC to admit firms that intend to clear security futures but not security options.[5]

OCC believes that the proposed rule change is consistent with Section 17A of the Act because it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

OCC did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that the proposed rule change is consistent with OCC's obligations under Section 17A of the Act. Under the proposal, OCC will continue to employ its monitoring and risk reduction procedures, which were subject to prior Commission review and approval, with respect to members that participate in the stock loan/hedge program but do not clear options transactions. Furthermore, the rule change will allow OCC to admit additional applicants to participate in its stock loan/hedge program. This should help to perfect the mechanism of a national system for the prompt and

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[18] *See* 66 FT at 23288 (table showing transition stages).

[19] *Id.*

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Under the stock/loan hedge program, OCC administers stock loan and borrow transactions between participating clearing members and allows certain stock loan and borrow positions resulting from such transactions to constitute hedges against stock option positions overlying the same stocks for purposes of OCC's margin calculation.

[4] *See* Securities Exchange Act Release No. 40083 (June 11, 1998), 63 FR 33424 (June 18, 1998); Securities Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39264 (July 22, 1993).

[5] OCC will not admit to membership any applicant that is seeking to clear only security futures until its rules for the clearance and settlement of security futures have been approved by the Commission.

[6] 15 U.S.C. 78q–1(b)(3)(F).

accurate clearance and settlement of securities transactions because it will bring more stock loan transactions currently conducted by industry participants outside registered clearing agencies into OCC. This should add efficiencies and safety to such transactions.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register** because by so approving it will be possible for more stock loan transactions to be immediately processed through OCC.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at OCC's principal office. All submissions should refer to File No. SR–OCC–2001–06 and should be submitted by July 30, 2001.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2001–06) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17002 Filed 7–6–01; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3339]

State of Wisconsin; (Amendment #5)

In accordance with notices received from the Federal Emergency Management Agency, dated June 28, 2001, the above-numbered Declaration is hereby amended to include Calumet and Rusk Counties as disaster areas caused by flooding, severe storms and tornadoes occurring between April 10, 2001 and continuing. In addition, the Declaration is also amended to extend the deadline for filing applications for physical damages as a result of this disaster to August 10, 2001.

In addition, applications for economic injury loans from small businesses located in Chippewa, Manitowoc, Price, Sheboygan and Taylor Counties in the State of Wisconsin may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 10, 2001 and for economic injury the deadline is February 11, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 2, 2001.

Herbert L. Mitchell,

Associate Administrator For Disaster Assistance.

[FR Doc. 01–17088 Filed 7–6–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5.250 (5¼) percent for the July–September quarter of FY 2001.

LeAnn M. Oliver,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 01–17046 Filed 7–6–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3717]

Culturally Significant Objects Imported for Exhibition Determinations: "Caspar David Friedrich: Moonwatchers"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibit "Caspar David Friedrich: Moonwatchers," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects will be imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the exhibit objects at The Metropolitan Museum of Art, in New York, NY, from on or about September 11, 2001, to on or about November 11, 2001 and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 29, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–17090 Filed 7–6–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3718]

Culturally Significant Objects Imported for Exhibition Determinations: "Virtue and Beauty: Leonardo's 'Genevra de' Benci' and Renaissance Portraits of Women"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Virtue and Beauty: Leonardo's 'Genevra de' Benci' and Renaissance Portraits of Women," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC from on or about September 30, 2001 to on or about January 6, 2002, and possible additional venues yet to be determined is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 29, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–17091 Filed 7–6–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Meeting

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice.

SUMMARY: This notice announces a meeting of the FAA Aircraft Repair and Maintenance Advisory Committee. The purpose of the meeting is to continue the Committee's work on its goals and objectives pursuant to its congressional mandate.

DATES: The meeting will be held July 17, 2001, 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave., SW., Bessie Coleman Conference Center, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ellen Bowie, Federal Aviation Administration (AFS–340), 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 267–9952; fax (202) 267–5115; e-mail: *Ellen.Bowie@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aircraft Repair and Maintenance Advisory Committee to be held on July 17, at the Federal Aviation Administration, 800 Independence Avenue, SW., Bessie Coleman Conference Center, Washington, DC 20591.

The agenda will include:

- Introduction of new Designated Federal Official
- Reading and Approval of the Previous Meeting Minutes
- Designated alternate members identified for all Committee members
- FAA briefing on earlier data collection process
- Status reports by ad hoc groups
  - —Balance of Trade—Sarah MacLeod
  - —Oversight/safety—Nelson DeWees
  - —International agreements—FAA Representative, Leo Weston
- Report on other action items
- Committee budget request—James Ballough
- Committee Extension—James Ballough/Thomas Gonzalez
- Clarification of AIR–21 language regarding "staffing" and data collection—James Ballough/Russell Unangst
  - —Data collection by DOT (AIR–21 sec. 734(d)
  - —Staffing definition (AIR–21) sec. 734(c)(2)
- Definition of the Committee workscope vs. mandate
- Statements by members of the public
- Plan/formalize future Committee and working group activities
- Timeline/events discussion
- Next steps
- Closing Remarks and Adjournment

Attendance is open to the public but will be limited to the availability of meeting room space. Persons desiring to present a verbal statement must provide a written summary of remarks. Please focus your remarks on the tasks, specific activities, projects or goals of the Advisory Committee, and benefits to the aviation public. Speakers will be limited to 5-minute presentations. Please contact Ms. Ellen Bowie at the number listed above if you plan to attend the meeting or to present a verbal statement.

Individuals making verbal presentations at the meeting should bring 25 copies to give to the Committee's Executive Director. Copies may be provided to the audience at the discretion of the submitter.

Issued in Washington, DC on July 2, 2001.

James J. Ballough,

Executive Director, Aircraft Repair and Maintenance Advisory Committee.

[FR Doc. 01–17078 Filed 7–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Delaware County, NY

AGENCY: The Federal Highway Administration (FHWA) and the New York State Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: The FHWA and DOT is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Delaware County, New York.

FOR FURTHER INFORMATION CONTACT: John Williams, Action Regional Director, 44 Hawley Street, Binghamton, New York,13901, Telephone (607) 721–8116;

or

Robert Arnold, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, Room 719, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone (518) 431–4127.

SUPPLEMENTARY INFORMATION:

The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on a proposal to improve NYS Route 17 in Delaware County, New York. The proposed improvement would involve the construction of a new controlled access highway in the Towns of Deposit and Hancock for a distance of about 11.3 kilometers. The project objectives are to eliminate all at-grade intersections and driveways on NYS Route 17 between Hale Eddy and Hancock and to upgrade NYS Route 17 to Interstate standards for the designation of NYS Route 17 to Interstate 86. The project will include at least one interchange and the construction of service roads so that the local community will be able to access the newly constructed controlled access highway.

Alternatives under consideration include: 1. Do Nothing and 2.

Controlled access freeway, built to Interstate standards, with at least one full interchange serving the community of Hale Eddy. Several alignment alternatives are being considered for further study under the controlled access freeway alternative. Alternatives A & A2 incorporate a new diamond interchange in Hale Eddy and reconstructs the freeway on existing alignment. Alternative B provides a new interchange east of Hale Eddy and new alignment north of existing Route 17. Alternative C provides two new diamond interchanges, one in Hale Eddy and one in the Roods Creek Road area and new alignment north of existing Route 17. Alternatives D and E incorporate a new interchange at Roods Creek Road and Hale Eddy, respectively, and new alignment south of Route 17 in the Town of Sanford between Hale Eddy and the Roods Creek Road area. Alternative F provides a new diamond interchange in the Lower Hale Eddy Road area and the freeway would be reconstructed on existing alignment. Alternative G provides two new diamond interchanges, one in the Hungry Hollow Road area and one in the Roods Creek Road area, and new alignment north of existing route 17. Within all of the alternatives noted above, various options for maintaining access to existing properties incorporating service roads are under study. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A Public Informational Meeting was held on March 13, 2001 in the Town of Hancock. After the March meeting a steering committee was formed to address and resolve community issues that could influence development of the project. The committee, which consists of 25 members, met on May 11, 2001. Additional public informational and steering committee meetings are planned and will continue as needed. In addition, a public hearing will be held. The draft EIS will be available for public and agency review and comment. No formal NEPA scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

(Catalog of Federal Domestic Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Issued on: June 28, 2001.

Douglas P. Conlan,

District Operations Engineer, New York Division.

[FR Doc. 01–17086 Filed 7–6–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9664]

Drug Test Results Study

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The Motor Carrier Safety Improvement Act of 1999 (MCSIA) directed the Federal Motor Carrier Safety Administration (FMCSA) to conduct a study and report to the Congress on the feasibility and merits of requiring Medical Review Officers and employers to report verified positive drug test results for CDL drivers to the State that issued the driver's license. The FMCSA is initiating a study on this issue and invites public comments on issues relating to the potential impact on all affected parties of implementing this potential requirement.

DATES: Please submit comments on or before August 8, 2001.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. Please specify the number you are commenting on before listing your comments. All comments received will be available for examination and copying at the above address between 9 a.m. and 5 p.m., et., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the status of this Notice, you may contact Ms. Kaye Kirby, Office of Bus and Truck Standards and Operations, (202) 366–3109; for information about legal issues related to this notice, Mr. Michael Falk, Office of the Chief Counsel, (202) 366–1384, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments on the Document Management System (DMS) website at: *http://dmses.dot.gov*.

Background

Section 226 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106–159, 113 Stat. 1748) requires the Secretary of Transportation to conduct a study of the feasibility and merits of requiring Medical Review Officers or employers to report all verified positive controlled substances test results on any driver subject to controlled substances testing in 49 CFR part 382 to the State where the driver is licensed. In addition to the reporting requirement, this potential provision would require prospective employers to query the State that issued the CDL to determine if the State had any record of a verified positive drug test on such driver before hiring any driver. The MCSIA further required the Secretary to report on the study, together with any recommendations the Secretary determines appropriate, to Congress no later than two years after enactment of the law.

In carrying out this study, Congress directed the Secretary to conduct an assessment to identify methods for safeguarding the confidentiality of verified drug test results. In addition, the Secretary was asked to examine the costs, benefits, and safety impacts of requiring States to maintain records of verified positive drug test results; and whether a process should be established to allow drivers to correct errors in their records and to expunge information from their records after a reasonable period of time.

Comments and suggestions are invited concerning the feasibility, and merits of employers and Medical Review Officers reporting positive drug test results to the State that issued the driver's CDL and the burden imposed by such a reporting requirement on the employers, State, and others. Of concern are operational, legal, confidentiality, and financial issues as well as the type of database,

database access, and database management that would be required.

Comments

Comments are requested specifically on the following questions:

(1) What impact would this requirement have on the motor carrier industry, drivers, Medical Review Officers, safety advocates, the States and other interested parties?

(2) What would be the benefits, costs, and safety impacts of requiring States to maintain records of verified positive drug test results?

(3) How would such a national record-keeping system safeguard the confidentiality of verified drug test results? What systems or methodology could do so?

(4) Should a process be established to allow drivers to correct errors in their records and to expunge information from their records after a reasonable period of time? What would be considered a reasonable period of time? What documentation would be adequate to justify expunging such a record?

(5) What are the potential costs involved in implementing this program for each State?

(6) What are the benefits of having verified positive drug test results housed in a database so that each prospective employer would be required before hiring any driver to query the State that issued the commercial drivers license (CDL)? What are the disadvantages?

(7) What type of database should be used? Under what conditions should the information be released? Who should have access to this information?

(8) Who should own and/or house the database?

(9) Should the database be centralized or distributed at the State level?

(10) How could we safeguard the confidentiality of verified drug test results?

(11) Are there States that currently have a program in place where verified positive drug test results are submitted to them? If so, what are their experiences and challenges?

Authority: 49 U.S.C. 31306; sec. 226, Pub. L. 106–159, 113 Stat. 1748; and 49 CFR 1.73.

Issued on: July 2, 2001

Brian M. McLaughlin,

Acting Deputy Administrator.

[FR Doc. 01–17099 Filed 7–6–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2001–10049]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before September 7, 2001.

FOR FURTHER INFORMATION CONTACT: Joe Strassburg, Chief, Division of Marine Insurance, Office of Insurance and Shipping Analysis, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–4156 or FAX 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: *Title of Collection:* War Risk Insurance.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0011.

Form Numbers: MA–355; MA–528; MA–742; MA–828; and MA–942.

Expiration Date of Approval: February 28, 2002.

Summary of Collection of Information: As authorized by Section 1202, Title XII, Merchant Marine Act, 1936, as amended, (46 App. U.S.C. 1282), the Secretary of the U.S. Department of Transportation may provide war risk insurance adequate for the needs of the waterborne commerce of the United States if such insurance cannot be obtained on reasonable terms from qualified insurance companies operating in the United States. This collection is required for the program. It consists of forms MA–355; MA–528; MA–742; MA–828; and MA–942.

Need and Use of the Information: The collected information is necessary to determine the eligibility of the applicant and the vessel(s) for participation in the war risk insurance program.

Description of Respondents: Vessel(s) owner or charterer interested in participation in MARAD's war risk insurance program.

Annual Responses: 1165.

Annual Burden: 626 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By Order of the Maritime Administrator.

Date: July 3, 2001.

Joel C. Richard,

Secretary.

[FR Doc. 01–17087 Filed 7–6–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 591X)]

CSX Transportation, Inc.—Abandonment Exemption—In Clark and Floyd Counties, IN

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 3.8-mile line of railroad between milepost B–50.5 near Clarksville and milepost B–54.3 near New Albany, in Clark and Floyd Counties, IN.[1] The line traverses United States Postal Service Zip Codes 47129 and 47150.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal

[1] CSXT states that it filed this notice in order to assist the State of Indiana with a road construction project and that it intends to use trackage rights over Louisville & Indiana Railroad Company. CSXT acquired trackage rights over the line in STB Finance Docket No. 33744, *CSX Transportation, Inc.—Trackage Rights Exemption—Louisville & Indiana Railroad Company* (STB served June 21, 2001).

The Town of Clarksville (Town) filed a request for issuance of a notice of interim trail use (NITU) for the entire line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address the Town's trail use request, and any others that may be filed, in a subsequent decision.

complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 8, 2001, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 19, 2001. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 30, 2001, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 13, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by CSXT's filing of a notice of consummation by July 9, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: June 28, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–16840 Filed 7–6–01; 8:45 am]

BILLING CODE 4915–00–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–57 (Sub-No. 52X)]

Soo Line Railroad Company—Abandonment Exemption—In Hennepin County, MN

On June 21, 2001, Soo Line Railroad Company, doing business as Canadian Pacific Railway (Soo Line) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 4.7+/− mile line of railroad, the 29th Street Corridor, also known as the "Depression Line", between milepost 428.3+/−(TC&W switch turnout west of France Avenue) and milepost 423.6+/−(near the eastern edge of Cedar Avenue), in Minneapolis, Hennepin County, MN. The line traverses U.S. Postal Service Zip Codes 55406, 55407, 55408, and 55416. There are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in Soo Line's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 9, 2001.[1]

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.27 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 31, 2001. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–57 (Sub-No. 52X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Diane P. Gerth, 150 South 5th Street, Suite 2300, Minneapolis, MN 55402. Replies to the petition are due on or before July 31, 2001.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

[1] Soo Line seeks expedited consideration of the petition because it is currently paying Hennepin County Regional Rail Authority (Authority), the owner of the majority of the underlying real estate, an easement fee annually of $44,000, or nearly $850.00 per week, which payments petitioner is obligated to make until abandonment authority has been obtained and the track has been removed from the corridor. Soo Line adds that it wants to reuse the line's rail on other parts of its system and asserts that the Authority is seeking to obtain possession of the corridor as soon as possible to begin work on a trail extension on a portion of the line. Petitioner asks that the Board grant abandonment authority by July 15, 2001. As petitioner is aware, the Board must comply with procedural and substantial requirements, including environmental and historic preservation requirements, that preclude honoring such a request. The Board will act in compliance with statutory and regulatory requirements as expeditiously as possible.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 29, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–17079 Filed 7–9–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: In order to comply with the requirements of the Paperwork Reduction Act of 1995, FinCEN intends to submit the information collections addressed in this notice for a three-year extension of approval by the Office of Management and Budget ("OMB"). Prior to submission of the extension request, FinCEN is soliciting comment on those information collections (31 CFR 103.22–103.29, 103.32–103.38, 103.64, 103.81–103.87, and Form TD F 90–22.1, Report of Foreign Bank and Financial Accounts).

DATES: Written comments should be received on or before September 7, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536, *Attention:* PRA Comments—31 CFR Part 103. Comments also may be submitted by electronic mail to the following Internet address: "regcomments@fincen.treas.gov" with the caption in the body of the text, "*Attention:* PRA Comments—Part 103."

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Stacie A. Larson (703) 905–3590, Office of Chief Counsel, FinCEN, or Cynthia L. Clark, Deputy Chief Counsel, FinCEN (703) 905–3590. A searchable guide to the Code of Federal Regulations can be found on the Internet at: http://www.access.gpo.gov/nara/cfr.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

The information collected and retained under the regulations addressed in this notice and the information collected on Form TD F 90–22.1 (as well as other Bank Secrecy Act reporting and recordkeeping requirements that are *not* the subject of this notice) assist federal, state and local law enforcement in the identification, investigation, and prosecution of individuals involved in money laundering, tax evasion, narcotics trafficking, organized crime, fraud, embezzlement and other crimes. The information also assists in tax collection and examination and other regulatory matters.

In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, the following information is presented concerning the information collections below.[1]

1. *Title:* Reports of transactions in currency (31 CFR 103.22(b)(1), 103.27(a), 103.27(d) and 103.28).

OMB Number: 1506–0009.

Abstract: Financial institutions must report transactions in currency that exceed $10,000 (31 CFR 103.22(b)(1)).[2] Before concluding any transaction with respect to which a report must be filed under section 103.22(b)(1), a financial institution must verify and record the name and address of the individual presenting the transaction and must record certain information about any person on whose behalf the transaction is conducted (31 CFR 103.28). Records of reports must be maintained for 5 years (31 CFR 103.27(a)).

Current Action: There is no change to the existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for IRS Form 4789. The estimated number of respondents is 229,200. The estimated annual number of responses is 13,000,000, with a reporting average of 19 minutes per response and a recordkeeping average of 5 minutes per response. The estimated total for the annual burden hours is 5,200,000.

2. *Title:* Reports of transactions in currency (31 CFR 103.22(b)(2)), 103.27(a), 102.27(d), and 103.28).

OMB Number: 1506–0009.

Abstract: Casinos (and card clubs) must report transactions in currency that exceed $10,000 in one business day (31 CFR 103.22(b)(2)). Before concluding any transaction with respect to which a report must be filed under section 103.22(b)(2), a casino must verify and record the name and address of the individual presenting the transaction and must record certain information about any person on whose behalf the transaction is conducted (31 CFR 103.28). Records of reports must be maintained for 5 years (31 CFR 103.27(a)).

Current Action: There is no change to the existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for IRS Form 8362. The estimated number of respondents is 480. The estimated number of responses is 216,500, with a reporting average of 19 minutes per response and a recordkeeping average of 5 minutes per response. The estimated total for the annual burden hours is 86,600.

3. *Title:* Transactions of exempt person (31 CFR 103.22(d), 103.27(a) and 103.27(d)).

OMB Number: 1506–0009.

[1] The information collections addressed in this notice are currently covered by one OMB Control Number—1506–0009. FinCEN intends to ask OMB to assign specific control numbers to the various information collections so that the administration of the information collections will be simpler in the future.

[2] As explained below, 31 CFR 103.22(b)(2) requires casinos (and card clubs) to report these transactions.

Abstract: Banks and other depository institutions ("banks") may exempt from reporting under 31 CFR 103.22(b)(1) currency transactions exceeding $10,000 by certain customers referred to as eligible persons (31 CFR 103.22(d)). Banks exempt these customers by filing a form designating them as exempt persons and maintaining certain records necessary to document the basis for the exemption and compliance with the exemption procedures of section 103.22(d). For two categories of eligible persons—non-listed businesses and payroll customers—the exemption must be renewed every two years by certifying the application of the bank's suspicious activity reporting program to those customers and recording any changes in control of those customers on a newly filed designation form. Records must be maintained for five years.

Current Action: There is no change to the existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for Form TD F 90–22.53. The estimated number of respondents is 22,900. The estimated number of responses is 152,000 with a combined reporting and recordkeeping average of 82 minutes per response. The estimated total for annual burden hours is 182,400.

4. *Title:* Reports of transportation of currency or monetary instruments (31 CFR 103.23 and 103.27).

OMB Number: 1506–0009.

Abstract: A person must file a report with Treasury if the person knowingly transports currency or monetary instruments of more than $10,000 at one time into or out of the United States, or receives currency or monetary instruments of more than $10,000 at one time transported into the United States from or through a place outside the United States (31 CFR 103.23 and 103.27).

Current Action: There is no change to the existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals, businesses or for-profit institutions, and non-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for Customs Service Form 4790. The estimated number of responses is 180,000, with a reporting average of 11 minutes per response. The estimated total for the annual burden hours is 33,000.

5. *Title:* Reports of foreign financial accounts (31 CFR 103.24, 103.27(d), 103.32) and Form TD F 90–22.1, Report of Foreign Bank and Financial Accounts.

OMB Number: 1506–0009.

Form Number: TD F 90–22.1.

Abstract: Every person having a financial interest in, or signature authority over, a foreign account over $10,000 must file a report of the account (31 CFR 103.24, 103.27(d)) and must maintain records that contain the name in which the account is maintained, the number of the account, the name and address of the foreign bank, and the type of account and maximum value of the account (31 CFR 103.32).

Current Action: There is no change to the existing regulations or the form.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals, businesses or other for-profit institutions, and non-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for Form TD F 90–22.1. The estimated number of respondents is 170,300. The estimated number of responses is 170,300, with a reporting average of 10 minutes per response and a recordkeeping average of 5 minutes per response. The estimated total for annual burden hours is 42,575.

6. *Title:* Reports of transactions with foreign financial agencies (31 CFR 103.25).

OMB Number: 1506–0009.

Abstract: Treasury may, by regulation, require specified financial institutions to report transactions by persons with designated foreign financial agencies.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of respondents per year is 1. The estimated number of responses is 1, with a reporting burden of 1 hours per respondent, for a total annual burden of 1 hour.[3]

7. *Title:* Reports of certain domestic coin and currency transactions (31 CFR 103.26 and 103.33(d)).

OMB Number: 1506–0009.

Abstract: Upon a finding that additional reporting or recordkeeping is necessary to carry out the purposes, or prevent the evasion, of the Bank Secrecy Act, Treasury may issue an order requiring financial institutions or groups of financial institutions in certain geographic locations to report certain transactions in prescribed amounts for a limited period of time (31 CFR 103.26). Financial institutions subject to a geographic targeting order must maintain records for such period of time as the order requires but not more than 5 years (31 CFR 103.33(d)).

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of respondents per year is 3,200. The estimated number of responses is 17,000, with a reporting burden of 19 minutes per response and a recordkeeping burden of 5 minutes per response. The total estimated annual burden is 6,800 hours.[4]

7. *Title:* Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks (31 CFR 103.29 and 31 CFR 103.38).

OMB Number: 1506–0009.

Abstract: Financial institutions must maintain records of certain information related to the sale of bank checks and drafts, cashiers checks, money orders, or traveler's checks when the sale involves currency between $3,000–$10,000. The records must be maintained for a period of five years and be made available to Treasury upon request.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of recordkeepers is 60,900. The average burden per recordkeeper is 7.5 hours, for a total estimated annual recordkeeping burden of 456,750 hours.

9. *Title:* Records to be made and retained by financial institutions (31 CFR 103.33 and 103.38).

OMB Number: 1506–0009.

Abstract: Each financial institution must retain an original or copy of

[3] Should FinCEN issue regulations under this authority, it will provide a burden estimate specific to those regulations.

[4] Although the burden is stated as an annual burden in accordance with the Paperwork Reduction Act, the estimated annual burden is not intended to indicate that there is a geographic targeting order in effect throughout a year or in each year.

records related to extensions of credit in excess of $10,000 (other than those secured by real property), and records related to transfers of funds, currency, other monetary instruments, checks, investment securities, or credit of more than $10,000 to or from the United States (31 CFR 103.33(a)–(c)). Banks and non-bank financial institutions must also maintain records related to, and include certain information as part of, funds transfers or transmittals of funds involving more than $3,000 (31 CFR 103.33(e)–(f), and 103.33(g)). The required records must be maintained for five years (31 CFR 103.38).

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden:

31 CFR 103.33(a)–(c). The estimated number of recordkeepers is 22,900. The estimated annual recordkeeping burden per recordkeeper is 50 hours, for a total estimated annual recordkeeping burden of 1,145,000 hours .

31 CFR 103.33(e)–(f). The estimated number of recordkeepers is 35,500. The estimated annual recordkeeping burden per recordkeeper is 16 hours, for a total estimated annual recordkeeping burden of 568,000.

31 CFR 103.33(g). The estimated number of recordkeepers is 35,500. The estimated annual recordkeeping burden per recordkeeper is 12 hours, for a total estimated annual recordkeeping burden of 426,000.

10. *Title:* Additional records to be made and retained by banks (31 CFR 103.34 and 103.38).

OMB Number: 1506–0009.

Abstract: A bank must make and retain a record of the taxpayer identification number (or other identifying information in the case of a non-resident alien) of certain customers buying or redeeming a certificate of deposit or opening a deposit or share account. A bank must maintain a list containing the names, addresses and account numbers of those persons from whom it has been unable to obtain the taxpayer identification number (and make the list available to the Secretary, upon request). A bank must retain an original or copy of certain documents, as specified in section 103.34. The required records must be maintained for five years (31 CFR 103.38).

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of recordkeepers is 22,900. The estimated annual recordkeeping burden per recordkeeper is 100 hours for a total annual recordkeeping burden of 2,290,000 hours.

11. *Title:* Additional records to be made and retained by brokers or dealers in securities (31 CFR 103.35 and 103.38).

OMB Number: 1506–0009.

Abstract: A broker or dealer in securities must make and retain a record of the taxpayer identification number (or other identifying information in the case of a non-resident alien) of customers maintaining an account with the broker or dealer and the social security number of each individual having a financial interest in the account. A broker or dealer must maintain a list containing the names, addresses and account numbers of those persons from whom it has been unable to obtain the taxpayer identification number (and make the list available to the Secretary, upon request). A broker or dealer in securities must retain an original or copy of certain documents, as specified in section 103.35. The required records must be maintained for five years (31 CFR 103.38).

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: The estimated number of recordkeepers is 8,300. The estimated annual recordkeeping burden per recordkeeper is 100 hours, for a total estimated annual recordkeeping burden of 83,000 hours.

12. *Title:* Additional records to be made and retained by casinos (31 CFR 103.36 and 103.38).

OMB Number: 1506–0009.

Abstract: Casinos (and card clubs) must make and retain a record of the name, permanent address, and taxpayer identification number each person who deposits funds with the casino, opens an account at the casino, or to whom the casino extends a line of credit (and maintain a list, available to the Secretary upon request, of the names and addresses of persons who do not furnish a taxpayer identification number), and must retain the original or a copy of certain documents, as specified in section 103.36 (31 CFR 103.36(a)&(b)(1)–(8)). Casinos must also maintain a list of transactions with customers involving certain instruments (31 CFR 103.36(b)(9)). Card clubs must maintain records of currency transactions by customers and records of activity at cages (31 CFR 103.36(b)(11)). Casinos that input, store, or retain required records on computer disk, tape or other machine readable media must maintain the records on such media (31 CFR 103.36(c)). Required records must be maintained for five years (31 CFR 103.38).

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden:

31 CFR 103.36(a)&(b)(1)–(8). The estimated number of recordkeepers is 480. The estimated annual recordkeeping burden per recordkeeper is 100 hours, for a total estimated annual recordkeeping burden of 48,000.

31 CFR 103.36(b)(9). The estimated number of recordkeepers is 480. The estimated annual recordkeeping burden per recordkeeper is 7.5 hours, for a total estimated annual recordkeeping burden of 3,600 hours.

31 CFR 103.36(b)(11). The estimated number of recordkeepers is 62. The estimated number of transactions is 215,000 annually and the total estimated annual recordkeeping burden is 686 hours.

31 CFR 103.36(c). The estimated number of respondents is 480. The estimated annual recordkeeping burden per recordkeeper is 4 hours, for a total estimated annual recordkeeping burden of 1,920 hours.

13. *Title:* Additional records to be made and retained by currency dealers or exchangers (31 CFR 103.37 and 103.38).

OMB Number: 1506–0009.

Abstract: A currency dealer or exchanger must make and maintain a record of the taxpayer identification number of certain persons for whom a transaction account is opened or a line of credit is extended, and must maintain a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such information. A currency dealer or exchanger must retain the original or a copy of certain documents, as specified in section 103.37. The required records must be maintained for five years (31 CFR 103.38).

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: The estimated number of recordkeepers is 2,300. The estimated annual recordkeeping burden per recordkeeper is 16 hours, for a total estimated annual recordkeeping burden of 368,000 hours.

14. *Title:* Nature of records and retention period (31 CFR 103.38).

OMB Number: 1506–0009.

Abstract: Records required to be retained by a financial institution under 31 CFR part 103 must be retained for 5 years, except for records or reports required under 103.26 which shall be retained for the period of time specified in the targeting order imposing the recordkeeping or reporting requirement to which the particular retention period relates.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The burden for this regulation is reflected in the reporting and recordkeeping provisions of 31 CFR part 103.

15. *Title:* Special rules for casinos (31 CFR 103.64, 103.36(b)(10), and 103.38).

OMB Number: 1506–0009.

Abstract: This section provides special rules for casinos, including the requirement that casinos maintain a written compliance program.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: The estimated number of recordkeepers is 480. The estimated annual recordkeeping burden per recordkeeper is 100, for a total estimated annual recordkeeping burden of 48,000 hours.

16. *Title:* Administrative rulings (31 CFR 103.81–87).

OMB Number: 1506–0009.

Abstract: These sections address administrative rulings under the Bank Secrecy Act. They explain how to submit a ruling request (103.81), how nonconforming requests are handled (103.82), how oral communications are treated (103.83), how rulings are issued (103.85), how rulings are modified or rescinded (103.86), and how information may be disclosed (103.87).

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals, businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of responses is 60 annually, with a burden of 1 hours per submission, for a total annual burden of 60 hours.

The following paragraph applies to all the collections of information addressed in this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: June 24, 2001.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 01–17089 Filed 7–6–01; 8:45 am]

BILLING CODE 4820–03–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 25, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 8, 2001 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0069.

Form Number: PD F 5178, 5179, 5179–1, 5180, 5181, 5182, 5188, 5189, 5191, 5201, 5235, 5236, 5261, 5365, and 5381.

Type of Review: Extension.

Title: Treasury Direct Forms.

Description: The forms are used to purchase and maintain Treasury Bills, Notes, and Bonds.

Respondents: Individuals or households.

Estimated Number of Respondents: 431,632.

Estimated Burden Hours Per Respondent:

Form	Response time (minutes)
PD F 5178	10
PD F 5179	10
PD F 5179–1	10
PD F 5180	10
PD F 5181	5
PD F 5182	10
PD F 5188	10
PD F 5189	10
PD F 5191	10
PD F 5201	10
PD F 5235	10
PD F 5236	30
PD F 5261	6
PD F 5365	10
PD F 5381	10

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 58,628 hours.

OMB Number: 1535–0122.

Form Number: None.

Type of Review: Extension.

Title: Voluntary Customer Satisfaction Survey to Implement Executive Order 12862.

Description: This voluntary customer service survey, as mandated by Executive Order 12862, measures customer satisfaction.

Respondents: Individuals or households.

Estimated Number of Respondents: 7,000.

Estimated Burden Hours Per Respondent: Varies.

Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 876 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 01–17080 Filed 7–6–01; 8:45 am]
BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 26, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 8, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0199.
Form Number: IRS Form 5306–A (formerly Form 5306–SEP).
Type of Review: Revision.
Title: Applications for Approval of Prototype Simplified Employee Pension or Savings Incentive Match Plan for Employees of Small Employers.
Description: This form is used by banks, credit unions, insurance companies, and trade or professional associations to apply for approval of a Simplified Employee Pension Plan or Savings Incentive Match Plan to be used by more than one employer. The data collected is used to determine if the prototype plan submitted is an approved plan.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 5,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 15 hr., 46 min.
Learning about the law or the form: 1 hr., 17 min.
Preparing, copying, assembling, and sending the form to the IRS: 1 hr., 36 min.
Frequency of Response: On occasion.
Estimated Total Reporting./Recordkeeping Burden: 93,400 hours.
OMB Number: 1545–0806.
Regulation Project Number: EE–12–78 Final.
Type of Review: Extension.
Title: Nonbank Trustees.
Description: Internal Revenue Code (IRC) section 408(a)(2) permits an institution other than a bank to be the trustee of an individual retirement account (IRA). To do so, an application needs to be filed and various qualifications need to be met. IRS uses the information to determine whether an institution qualifies to be a non-bank trustee.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 23.
Estimated Burden Hours Per Respondent/Recordkeeper: 34 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting./Recordkeeping Burden: 13 hours.
OMB Number: 1545–1155.
Regulation Project Number: PS–74–89 Final.
Type of Review: Extension.
Title: Election of Reduced Research Credit.
Description: These regulations prescribe the procedure for making the election described in section 280C(c)(3) of the Internal Revenue Code. Taxpayers making this election must reduce their section 41(a) research credit, but are not required to reduce their deductions for qualified research expenses, as required in paragraphs (1) and (2) of section 280C(c).
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 200.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 50 hours.
OMB Number: 1545–1597.
Revenue Procedure Number: Revenue Procedure 2000–12.
Type of Review: Extension.
Title: Application Procedures for a Qualified Intermediary Status Under Section 1441; Final Qualified Intermediary Withholding Agreement.
Description: Revenue Procedure 2000–12 describes application procedures for becoming a qualified intermediary (QI) and the requisite agreement that a qualified intermediary must execute with the IRS.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 88,504.
Estimated Burden Hours Per Respondent/Recordkeeper:
Estimated Time for QI Account Holder: 30 minutes.
Estimated Time for a QI: 2,093 hours.
Frequency of Response: On occasion.
Estimated Total Reporting./Recordkeeping Burden: 301,018 hours.
OMB Number: 1545–1616.
Regulation Project Number: REG–115393–98 Final.
Type of Review: Extension.
Title: Roth IRAs.
Description: The regulations provide guidance on establishing Roth IRAs, contributions to Roth IRAs, converting amounts to Roth IRAs, recharacterizing IRA contributions, Roth IRA distributions, and Roth IRA reporting requirements.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 3,150,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
For designating an IRA as a Roth IRA: 1 minute.
For recharacterizing and IRA contribution: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting./Recordkeeping Burden: 125,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 01–17081 Filed 7–6–01; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 29, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995,

Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 8, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0016.
Form Number: IRS Form 706.
Type of Review: Revision.
Title: United States Estate (and Generation-Skipping Transfer) Tax Return.

Description: Form 706 is used by executors to report and compute the Federal Estate Tax imposed by Internal Revenue Code (IRC) section 2601. IRS uses the information to enforce these taxes and to verify that the tax has been properly computed.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 117,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form/Schedule	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
706	2 hr., 10 min.	1 hr., 30 min.	3 hr., 40 min.	48 min.
Schedule A	19 min.	15 min.	9 min.	20 min.
Schedule A–1	45 min.	25 min.	58 min.	48 min.
Schedule B	19 min.	9 min.	15 min.	20 min.
Schedule C	13 min.	1 min.	8 min.	20 min.
Schedule D	6 min.	6 min.	8 min.	20 min.
Schedule E	39 min.	7 min.	24 min.	20 min.
Schedule F	33 min.	7 min.	21 min.	20 min.
Schedule G	26 min.	22 min.	11 min.	13 min.
Schedule H	26 min.	7 min.	9 min.	13 min.
Schedule I	26 min.	27 min.	11 min.	20 min.
Schedule J	26 min.	7 min.	15 min.	20 min.
Schedule K	26 min.	10 min.	9 min.	20 min.
Schedule L	13 min.	4 min.	9 min.	20 min.
Schedule M	13 min.	31 min.	24 min.	20 min.
Schedule O	19 min.	11 min.	18 min.	16 min.
Schedule P	6 min.	14 min.	18 min.	13 min.
Schedule Q	6 min.	9 min.	11 min.	13 min.
Schedule Q Worksheet	6 min.	9 min.	58 min.	20 min.
Schedule R	19 min.	34 min.	1 hr., 1 min.	48 min.
Schedule R–1	6 min.	29 min.	24 min.	20 min
Schedule T	1 hr., 12 min.	27 min.	1 hr., 14 min.	1 hr., 3 min.
Schedule U	19 min.	3 min.	28 min.	20 min.
Cont. Schedule	19 min.	2 min.	7 min.	20 min.

Frequency of Response: Other (once).
Estimated Total Reporting.
Recordkeeping Burden: 2,079,835 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer
[FR Doc. 01–17082 Filed 7–6–01; 8:45 am]
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Federal Register

Monday,
July 9, 2001

Part II

Securities and Exchange Commission

17 CFR Parts 200 and 240

Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers; Final Rule

VOL 66 ISS 131 JL 9 2001 UMI

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release No. 34–44494; File No. S7–12–00]

RIN 3235–AH69

Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting Rule 17a–25 under Section 17 of the Securities Exchange Act of 1934 ("Exchange Act"), to require brokers and dealers to submit electronically to the Commission, upon request, information on customer and firm securities trading. Rule 17a–25 is designed to improve the Commission's capacity to analyze electronic submissions of transaction information, thereby facilitating Commission enforcement investigations and other trading reconstructions.

EFFECTIVE DATE: August 8, 2001, except § 240.17a–25(b), which shall become effective on January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Alton Harvey, Office Chief, at (202) 942–4167; or Anitra Cassas, Special Counsel, at (202) 942–0089, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 2, 2000, the Commission proposed for comment Rule 17a–25 [1] under the Exchange Act to require brokers and dealers to submit electronically to the Commission, upon request, information on customer and firm securities trading.[2] The rule is designed to more fully account for evolving trading strategies used primarily by institutional and professional traders, thereby improving the Commission's ability to analyze trading in complex market-wide reconstructions and enforcement investigations. Based on the Commission's experience in analyzing securities transaction information, and after careful consideration of the comments submitted in response to the proposed rule, the Commission is adopting Rule 17a–25 with certain changes discussed below.

II. Background

The securities industry has witnessed tremendous change in the past two decades, both in the types of market participants and in the variety of trading strategies and products. In particular, increasing numbers of institutional and professional traders now conduct their securities trading through multiple accounts maintained at different broker-dealers. These market participants include institutional investors such as pension funds, insurance companies, foundations, endowments, mutual funds, and hedge funds.

To identify buyers and sellers of securities in enforcement or other regulatory inquiries, the Commission staff regularly sends requests for securities trading records to the most active clearing firms in the relevant security. Firms are requested to submit, within ten business days, information concerning transactions by all proprietary and customer accounts that bought or sold a security during a specified review period.

For several decades, the Commission requested this information by mailing questionnaire forms (known as "blue sheets" because of the color on which the forms were printed) to broker-dealers to be manually completed and mailed back to the Commission. In the late 1980s, as the volume of trading and securities transactions dramatically increased, the Commission and the securities self-regulatory organizations ("SROs") worked together to develop and implement a system with a universal electronic format, commonly known as the "electronic blue sheet" or "EBS" system, to replace the manual process.[3]

The universal EBS format permits the Commission and the SROs to conduct timely and thorough surveillance and enforcement inquiries. Firms generally use software to scan their account records and download the appropriate information into the standard EBS format, and then transmit the data to the Securities Industry Automation Corporation ("SIAC"). In turn, SIAC routes the file electronically to the Commission's mainframe computer.[4]

In general, the Commission uses the EBS system to obtain securities transaction information for one of two purposes: (1) To assist in the examination for and investigation of possible federal securities law violations, primarily involving insider trading or market manipulation; and (2) to conduct market reconstructions, primarily following significant market volatility. Since its inception, the EBS system has performed effectively as an enforcement tool for analyzing trading in one or two securities over a limited time period. When used for large-scale investigations or market reconstructions involving numerous stocks during peak trading volume periods, however, the information provided by the EBS system has been insufficient. Specifically, the Commission has found it difficult to effectively aggregate EBS transaction information by market participants.[5] To ensure the continued effectiveness of the Commission's enforcement and regulatory programs that rely on EBS information, the Commission proposed Rule 17a–25.

As proposed, Rule 17a–25 would require broker-dealers to electronically submit securities transaction information, including identifiers for prime brokerage arrangements, average price accounts, and depository institutions, in a standardized format, when requested by the Commission staff for enforcement and other regulatory

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[1] § 240.17a–25.

[2] *See* Securities Exchange Act Release No. 42741 (May 2, 2000), 65 FR 26534 (May 8, 2000) ("Proposing Release").

[3] For the last decade, the SROs have required their member firms to use the EBS system to submit customer and proprietary trading data for use in connection with market surveillance and enforcement inquiries, particularly investigations into insider trading and market manipulation. *See, e.g.*, Securities Exchange Act Release Nos. 25859 (June 27, 1988), 53 FR 25029 (July 1, 1988) (approving both the New York Stock Exchange (NYSE) and the American Stock Exchange's (Amex) rules for the electronic submission of transaction information); 26235 (November 1, 1988), 53 FR 44688 (November 4, 1988) (approving the Chicago Board Options Exchange's (CBOE) rule for the electronic submission of transaction information); 26539 (February 13, 1989), 54 FR 7318 (February 17, 1989) (approving the National Association of Securities Dealer's (NASD) rule for the electronic submission of transaction information); and 27170 (August 23, 1989), 54 FR 37066 (September 6, 1989) (approving the Philadelphia Stock Exchange's (Phlx) rule for the electronic submission of transaction information).

[4] If an SRO's surveillance or enforcement staff issues the request, SIAC routes the EBS data from the broker-dealer to the appropriate SRO.

[5] Aggregation of EBS transaction data is rarely a problem for trading reconstructions conducted by Enforcement and OCIE staff because most such inquiries or investigations involve trading in a limited number of stocks over a relatively short time frame. The EBS data transmissions under these circumstances are almost always small enough to permit the Commission staff to use standardized desk-top applications or even manual reviews to eliminate potential double-counting of some transactions. For massive market reconstructions performed by Market Regulation staff, however, the magnitude of the EBS data transmissions precludes the effective use of desk-top applications or manual reviews. As a result, market reconstructions normally require that mainframe computer applications be used for aggregation purposes. The new data elements set forth in Rule 17a–25 will permit the staff to develop mainframe computer applications to sort through massive EBS data transmissions to avoid double counting transactions for market reconstructions.

purposes. In addition, the rule would require broker-dealers to submit, and keep current, contact person information for EBS requests. Proposed Rule 17a–25 was largely patterned after existing SRO rules.[8]

III. Summary of Comments

The Commission received comments from the Securities Industry Association ("SIA") and the Pacific Exchange ("PCX") on the proposed rule.[7] The SIA generally stated that it understood the Commission's need for proposed Rule 17a–25, but noted that there would be difficulties in implementing certain aspects of the proposal. The PCX asked for clarification on the application of the proposed rule to NASD Regulation's new web-based EBS system.[8]

A. Transaction Information

The SIA had a concern with respect to the standard transaction information required under subsection (a)(2) of the proposed rule. One of the data elements required under subsection (a)(2)(ii) of proposed Rule 17a–25 and existing SRO rules[9] is the employer's name of a customer who bought or sold a security that is under review. The SIA indicated that many firms would not be able to readily access this information on their EBS-related systems.[10] As a result, these firms would either have to manually enter this information, or redesign their recordkeeping systems to automatically insert the customer's employer identification.

The SIA also expressed concern about the additional information required under subsection (b) of the proposed rule. The SIA noted that, although the Proposing Release made it clear that subsection (b)(1)(i) of proposed Rule 17a–25 is designed for prime broker arrangements, the generic language might cover other types of transactions that involve shifting a position from one firm to another. These transactions include "give-ups" (the executing broker-dealer provides the clearing number of another broker-dealer when reporting a transaction for the comparison process) and "step-outs" (the executing broker-dealer provides the clearing number of another broker-dealer after submission of a transaction for the comparison process). The SIA requested rule language tailored more closely to prime brokerage arrangements.[11]

Subsection (b)(1)(ii) of proposed Rule 17a–25 requires the prime broker to indicate the clearinghouse number or alpha symbol of each executing broker-dealer that forwarded part or all of the transaction. The SIA indicated that information concerning prime brokerage arrangements is typically easier for executing brokers to automatically pull up on their systems than for prime brokers. As a result, prime brokers would be required to implement more systems changes than executing brokers.[12]

The SIA also asked for clarification on the amount of information required by subsection (b)(2) of Rule 17a–25, which pertains to average price account identifiers. Citing formatting difficulties and programming costs, the SIA urged the Commission to allow a single identifier to denote that an account is part of an average price account arrangement, rather than requiring broker-dealers to generate separate identifiers for the master account and each sub-account.[13]

B. Other Information

In the Proposing Release, the Commission solicited comments on the feasibility of requiring EBS reports to include execution times or other indicators, such as "order sequence numbers" for transactions effected through an automated order routing system. In response, the SIA identified a number of practical problems in implementing these data elements, and suggested that the cost of reformatting broker-dealers' systems or building new systems would outweigh the regulatory need for this information.[14]

Finally, the SIA stressed that delays in implementing Rule 17a–25 may be required due to other systems challenges facing the securities industry over the coming months, such as preparations for the full implementation of decimal pricing.[15]

IV. Discussion and Basis for Adoption

Today, the Commission is adopting Rule 17a–25 substantially as proposed, with certain changes designed to reflect the comments. The rule applies to all exchange members, brokers and dealers subject to Rule 17a–3 of the Exchange Act.[16] Rule 17a–25 will not impose any additional recordkeeping requirements for broker-dealers; broker-dealers already maintain all of the information required for the EBS reports pursuant to Section 17(a)(1) and Rules 17a–3 and 17a–4 under the Exchange Act.[17]

Rule 17a–25 is intended to accomplish three objectives. First, the rule codifies the requirement that brokers and dealers must electronically submit to the Commission, upon request, information on customer and proprietary securities transaction information. Second, the rule should improve the effectiveness of the Commission's enforcement and regulatory programs by enhancing certain aspects of the EBS system to take into account evolving trading strategies used primarily by institutional and professional traders. Specifically, subsection (b) of Rule 17a–25 requires firms, upon request, to supply three additional data elements that will assist the Commission in aggregating securities transactions by entities trading through multiple accounts at more than one broker-dealer.[18] Finally, by requiring broker-dealers to provide current contact person information, the proposed rule should help ensure that the Commission can effectively direct its EBS requests to broker-dealers.

A. Standard Transaction Information

Subsection (a) of the proposed rule requires submission of the same standard customer and proprietary transaction information the SROs request in connection with their market surveillance or enforcement inquiries.[19] For a proprietary transaction, the broker-dealer must include the

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[6] *See, e.g.*, NYSE Rule 410A; Amex Rule 153A; CBOE Rule 15.7; NASD Rule 8211; and Phlx Rule 785.

[7] *See* Letter from Bernard L. Madoff, Chair, SIA Ad hoc Committee on Electronic Bluesheeting, SIA, to Jonathan G. Katz, Secretary, Commission, dated June 15, 2000; and E-mail from Sarah E. Althoff, PCX, dated May 4, 2000.

[8] The PCX indicated that certain clearing firms have opted out of the SIAC EBS system, and now exclusively use the NASDR's new web-based EBS system. The PCX asked if this change alters the scope and goals of proposed Rule 17a–25.

[9] *See supra* note 4.

[10] SIA Letter, at 5–6.

[11] SIA Letter, at 4–5.

[12] SIA Letter, at 5.

[13] *Id.*

[14] SIA Letter, at 6–7.

[15] SIA Letter, at 3.

[16] 17 CFR 240.17a–3.

[17] Section 17(a)(1) of the Exchange Act requires registered broker-dealers to make, keep, furnish, and disseminate records and reports prescribed by the Commission "as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of" the Exchange Act. 15 U.S.C. 78q(a)(1). Rules 17a–3 and 17a–4 under the Exchange Act specify minimum requirements with respect to the records that must be maintained by broker-dealers, as well as the periods during which these records and other documents relating to a broker-dealer's business must be preserved. 17 CFR 240.17a–3 and 240.17a–4.

[18] As noted in the Proposing Release, the Commission believes that an enhanced EBS system will provide a more efficient and cost-effective way to conduct timely and accurate reviews of the activities of large traders for regulatory or enforcement purposes, than would further efforts to design and implement the large trader reporting system authorized by the Market Reform Act of 1990, and incorporated into section 13(h) of the Exchange Act. 15 U.S.C. 78m(h). *See* Proposing Release, at 7.

[19] *See supra* note 2.

following information: (1) Clearing house number or alpha symbol used by the broker-dealer submitting the information; (2) clearing house number(s) or alpha symbol(s) of the broker-dealer(s) on the opposite side to the trade; (3) security identifier; (4) execution date; (5) quantity executed; (6) transaction price; (7) account number; and (8) identity of the exchange or market where each transaction was executed. Under the proposed rule, if a transaction was effected for a customer account (as opposed to a proprietary account), the broker-dealer would have been required to also include the customer's name, customer's address, name of the customer's employer, the customer's tax identification number, and other related account information. As noted below, the Commission has modified certain of these requirements in response to comments. Finally, if the transaction was effected for a customer of another firm or broker-dealer, the broker-dealer must state whether the other broker-dealer was acting as principal or agent on the transaction.

The SIA cited two concerns regarding submission of this standard transaction information. First, the SIA noted the practical difficulties faced by firms in readily obtaining the name of the customer's employer on their EBS-related systems. The Commission believes that the identity of a customer's employer, if accurate, would be extremely useful for many investigations, particularly those involving insider trading. However, the Commission, if necessary, can obtain this information from the specific broker-dealer and customer during follow-up inquiries. Accordingly, the Commission is deleting this requirement from subsection (a)(2)(ii) of Rule 17a–25, as adopted.

Second, the SIA asked for clarification as to whether the tax identification number is that of the customer or the customer's employer.[20] Subsection (a)(2)(ii) of Rule 17a–25, as adopted, makes it clear that it is intended to capture the customer's tax identification number, not that of the customer's employer.

B. Additional Transaction Information

Subsection (b) of proposed Rule 17a–25 requires broker-dealers, upon request by Commission staff, to provide prime brokerage identifiers, average price account identifiers, and depository institution identifiers. As described in detail below, these additional data elements are needed to aggregate trading by customers that use multiple accounts maintained at different broker-dealers. The Commission is adopting these additional data elements in Rule 17a–25(b) with certain modifications suggested by the SIA.

The SIA asked for additional information on how the Commission estimated that less than 100 broker-dealers would have to make modifications to their existing EBS software. The Commission estimates that EBS requests for prime-brokerage and average price account information will be made almost exclusively to active clearing broker-dealers. The Commission based its estimate of less than 100 clearing firms upon our experience with the EBS system—specifically, the Division of Market Regulation's requests for information for market reconstructions in 1994 and 1997, and the Division of Enforcement's daily use of the EBS system for the last decade. Accordingly, the Commission continues to believe that its estimates are reasonable.

1. Prime Brokerage Identifiers

It is common for an institutional or professional trader to route buy or sell orders through different broker-dealers, who, in turn, forward executed orders to a single broker-dealer—the "prime broker." The prime broker maintains a master account for the institution or professional trader, which simplifies recordkeeping and oversight of trading activity.

Because broker-dealers use different means to identify prime brokerage accounts in EBS submissions, the Commission has had difficulty identifying instances where a transaction was reported twice—by the executing broker-dealer and by the prime broker. As a result, when the Commission performed trading analyses, it may have inadvertently double-counted some trades.

To better analyze this increasingly frequent activity and to avoid inadvertently double-counting these transactions, the Commission proposed two new data elements to uniformly identify prime brokerage transactions. First, under subsection (b)(1)(i) of Rule 17a–25, if a reporting broker-dealer effects trades for a customer, and forwards the account's transactions to a prime broker, then the EBS submission will have to include an identifier for this type of transaction as specified by its designated SRO under Rule 17d–1 of the Exchange Act.[21] The SIA expressed concern that the language in subsection (b)(1)(i) of the proposed rule may cover other types of transactions that involve shifting a position from one firm to another, such as "give-ups" or "step-outs." The Commission reiterates that subsection (b)(1)(i) is intended to account for prime brokerage arrangements.[22]

Second, as proposed, subsection (b)(1)(ii) of Rule 17a–25 would have required a prime broker receiving transactions from multiple executing broker-dealers to include in its EBS submission the clearing house number or alpha symbol used by each of the executing brokers. Both the SIA and the SROs[23] raised concerns, however, that this reporting requirement would pose formatting problems.

The Commission believes that the reporting framework as proposed in subsection (b)(1)(ii) of Rule 17a–25 would have provided the Commission staff with the optimal crosschecking capabilities for transactions involving prime brokerage arrangements. Nevertheless, in response to the concerns raised by the SIA and the SROs, the Commission has modified the language in subsection (b)(1)(ii) of Rule 17a–25, as adopted, to require prime brokers to report using an identifier for this type of transaction as specified by their designated SRO under Rule 17d–1 of the Exchange Act.[24] The Commission will work with the SROs to develop a universal identifier that will help the Commission identify a prime brokerage arrangement.

2. Average Price Account Identifiers

Broker-dealers often use "average price accounts" as a mechanism to buy or sell large amounts of a given security for their customers. Under this arrangement, a broker-dealer's average price account may buy or sell a security in small increments throughout a trading session, and then transfer the accumulated long or short position to one or more accounts for an average price or volume-weighted average price after the market close.

Similar to transactions involving prime brokerage arrangements, there currently is no uniformity in how broker-dealers identify these transactions in EBS submissions. As a result, the Commission's trading analyses may have inadvertently

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[20] SIA Letter, at 6.

[21] 17 CFR 240.17d–1.

[22] If a broker-dealer has a question concerning whether a transaction should be reported under Rule 17a–25(b), as adopted, the broker-dealer can request interpretive guidance from the Commission staff.

[23] Commission staff discussed the feasibility of capturing the prime brokerage identifiers, average price account identifiers, and depository institution identifiers, including cost estimates, with the Intermarket Surveillance Group and the SIA on May 10, 2000 and May 16, 2000, respectively.

[24] 17 CFR 240.17d–1.

double-counted these transactions—once in the EBS submission for the firm's average price account, and again in the EBS submission for the accounts receiving positions from the average price account. Therefore, the Commission proposed two new data elements in subsection (b)(2) of Rule 17a–25 to uniformly identify average price account transactions.

As proposed, under subsection (b)(2)(i), an EBS report for a customer account receiving average price transactions would have had to include identifiers for each relevant average price account. Under subsection (b)(2)(ii), as proposed, an EBS report for a firm's average price account would need to include identifiers for each of the accounts receiving positions from the average price account.

Both the SIA and the SROs [25] cited formatting difficulties and programming costs if subsection (b)(2) was adopted as proposed. While the Commission believes that the reporting framework as proposed in subsection (b)(2) of Rule 17a–25 would have provided the optimal crosschecking capabilities for transactions involving average price accounts, the Commission has modified the language in subsections (b)(2)(i) and (b)(2)(ii) to require a firm to distinguish average price account arrangements with an identifier for this type of transaction as specified by the broker-dealer's designated SRO under Rule 17d–1 of the Exchange Act.[26] The Commission will work with the SROs to develop simple universal identifiers that will help the Commission identify an average price account arrangement.

3. Identifiers Used by Depository Institutions

The Commission did not receive any comments on subsection (b)(3) of proposed Rule 17a–25, which requires a broker-dealer that processes a trade for an account through a depository institution to report the account's depository identifier. The inclusion of a depository account identifier in EBS reports should greatly expedite efforts by the Commission staff to aggregate trading when conducting complex trading reconstructions.

C. Information To Facilitate EBS Requests

The Commission did not receive any comments on paragraph (c) of proposed Rule 17a–25. Paragraph (c) requires broker-dealers to submit to the Commission, upon request, certain information about their contact persons, and to keep this information current. The Commission proposed this portion of the rule because it has encountered a recurring problem, due to frequent staff turnover and reorganizations at broker-dealers, in directing EBS requests to the appropriate personnel at broker-dealers. The Commission contemplates initially asking only those broker-dealers that have recently received EBS requests from the Commission to supply current contact information.[27]

D. Other Information

In the Proposing Release, the Commission specifically requested comment on other types of information that could be useful in analyzing trading in more complex market-wide trading reconstructions and enforcement investigations. For example, the Commission noted that execution times would be useful in trading reconstructions, particularly those that focus on trading during sharp market swings. To date, however, execution times have not been included in EBS reports because this information generally has not been available through the broker-dealer account records systems that are used to prepare EBS reports (although execution time information may be available in other broker-dealer recordkeeping systems).

The Commission also noted in the Proposing Release that some representatives of the securities industry have previously indicated to the Commission staff that, at least for transactions effected through automated order-routing systems, "order sequence" identifiers might be used for EBS reports in lieu of actual execution times.[28] The inclusion of order sequence identifiers in EBS reports would enable the Commission staff to derive order entry times for particular trades. Once such trades are isolated, the transactions' order sequence numbers could be matched with timed order entry reports captured by either the broker-dealer's internal systems or with timed audit trails and related SRO reports.

The SIA identified a number of problems with expanding the EBS system to include execution times or order sequence identifiers. For example, the SIA noted that many clearing firms that handle proprietary accounts of an introducing broker do not typically keep this type of information about the introducing firm. Further, many broker-dealers do not have an automated link between the order file, where this type of information would be kept, to the trade file, which interfaces with the EBS system.[29]

The Commission continues to believe that, in view of the large number of trades that are routed and executed using automated systems, the capture of the appropriate order sequence identifiers in EBS reports could greatly expedite trading reconstructions in which precise timing of particular trading activity is critical. Nevertheless, due to the current configuration of broker-dealers' systems, broker-dealers would incur certain costs and practical difficulties in capturing execution times or order sequence identifiers. Accordingly, the Commission is not modifying Rule 17a–25 to require this type of information at this time.

E. Exemptions

The Commission notes that it has traditionally been flexible when working with small broker-dealers who need to supply transaction reports. In cases in which a small broker-dealer does not already have the capacity to submit the information over the EBS system, the Commission staff has accepted manual transmissions. Proposed Rule 17a–25 is neither intended to, nor will it, change this flexible approach in obtaining necessary transaction reports from small broker-dealers. In addition, the Commission may rely on its general exemptive authority under Section 36 of the Exchange Act [30] to exempt particular broker-dealers when the application of

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[25] *See supra* note.

[26] 17 CFR 240.17d–1.

[27] The Commission has determined that the most efficient means of obtaining EBS contact information from the appropriate broker-dealers is by request, rather than imposing a general reporting obligation on all broker-dealers. Thousands of broker-dealers who clear their trades through other firms never receive EBS data requests from the Commission. In addition, firms who do not trade with the public or are otherwise inactive traders are rarely asked to supply transaction information. Accordingly, the Commission believes it would be most cost-effective to maintain its list of EBS contacts based on the staff's experience with the types of broker-dealers that are likely to be recipients of future EBS requests.

[28] Firms use these identifiers to trace orders routed through automated systems. These identifiers are also routinely captured by some audit trail systems and other recordkeeping systems, such as the NYSE's daily program trading reports from member firms. The Commission further noted in the Proposing Release that other types of information captured by the SROs' audit trail systems, such as the NASD's Order Audit Trail System, may also be useful to the Commission in its trading analyses. For example, these systems generally capture the date and time of origination or receipt of the order, and information on when the order is transmitted to another department within the member firm, to another member firm, or to a non-member. The SIA noted, however, that connecting information maintained under OATS to the EBS system would raise difficulties and costs. SIA Letter, at 6–7.

[29] *Id.*

[30] 15 U.S.C. 78mm. Procedures for filing applications for orders for exemptive relief under Section 36 are found in the Commission's Rules of General Application, 17 CFR 240.0–12.

the reporting requirements of Rule 17a–25 would not be necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the rule.[31]

F. Format

Broker-dealers will submit the information required under Rule 17a–25 in the format specified by the broker-dealer's SRO that is designated under Rule 17d–1 of the Exchange Act, unless otherwise specified by Commission rule. At the current time, we understand that the SROs intend to have their technical specifications revised by 120 days before the effective date for Rule 17a–25(b). In the absence of the necessary SRO technical specifications to implement this paragraph by 120 days before the effective date, the Commission will promulgate rules specifying the technical filing format for EBS submissions.[32]

The PCX asked how the implementation of the NASDR's new web-based EBS system would alter the scope and goals of Rule 17a–25. The Commission believes that the framework for Rule 17a–25 provides sufficient flexibility to allow broker-dealers to report transactions in whatever EBS formats are established by their designated SROs. In particular, the Commission's computer systems are prepared to accommodate the new NASDR system.

V. Effective Date

The provisions of Rule 17a–25 will be effective on August 8, 2001, except for subsection (b) of Rule 17a–25, which shall become effective on January 7, 2002.

The SIA requested that, in adopting and implementing Rule 17a–25, the Commission be mindful of the ongoing systems challenges in the securities industry, including conversion of the trading cycle from a three-day to a one-day cycle and the full implementation of decimal pricing in stocks and options. The Commission is cognizant of the technological challenges that will be faced by the securities industry over the next few months. Thus, the Commission is delaying the effective date of subsection (b) of Rule 17a–25, and is committed to working with the SROs and the securities industry in developing a strategy for reformatting the EBS system in a manner that does not disrupt other critical systems initiatives in the coming months.

VI. Paperwork Reduction Act

As described in the Proposing Release, Rule 17a–25 contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,[33] and the Commission submitted them to the Office of Management and Budget ("OMB") for review. OMB approved the collection of information, and assigned control number 3235–0540. The collection of information is in accordance with the clearance requirements of 44 U.S.C. 3507.

The title for the collection of information is: Rule 17a–25, Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers. The final rule does not contain substantive or material modifications to the collections of information originally set forth in the Proposing Release. The collection of information obligations imposed by Rule 17a–25 is mandatory. The retention periods for the collection of information are already specified in Rule 17a–4 of the Exchange Act.[34] The information filed pursuant to Rule 17a–25 will be kept confidential, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The Commission solicited public comment on the collection of information requirements contained in the Proposing Release. As discussed below, the SIA submitted one comment concerning the number of broker-dealers that will have to modify their EBS-related software to capture and report the new data elements pursuant to subsection (b) of Rule 17a–25.

A. Summary of Collection of Information Under Rule 17a–25

Rule 17a–25 requires broker-dealers to electronically submit securities transaction information, including identifiers for prime brokerage arrangements, average price accounts, and depository institutions, in a standardized format when requested by the Commission staff for enforcement and other regulatory purposes. In addition, the rule will also require broker-dealers to submit, and keep current, contact person information for EBS requests.

B. Use of Information

The Commission will use the information collected pursuant to proposed Rule 17a–25 for enforcement inquiries or investigations and trading reconstructions, as well as for inspections and examinations.

C. Respondents

As explained in the Proposing Release, although Rule 17a–25 will apply to all of the approximately 7,700 broker-dealers that are currently registered with the Commission, most provisions would apply only to the 5,500 broker-dealers who do business with the general public. The Commission further estimated in the Proposing Release that the requirement for submission of identifiers for prime brokerage arrangements, average price accounts, and depository institutions would affect a significantly smaller number of broker-dealers, estimated at less than 100 firms.

In its comment letter, the SIA asked for further explanation of the basis for the Commission's estimate that less than 100 firms would need to perform a one-time modification of their EBS-related software to capture and report the new data elements. As previously discussed, the Commission has used the EBS system for over a decade. For example, the Division of Market Regulation used the EBS reports for market reconstructions in 1994 and 1997, and the Division of Enforcement sends out EBS requests almost on a daily basis. Based on this experience, the Commission estimated the number of active clearing firms that regularly receive EBS requests. Accordingly, the Commission continues to believe that its estimate of less than 100 firms is reasonable.

D. Total Annual Reporting and Recordkeeping Burden

As stated in the Proposing Release, Rule 17a–25 should not impose additional burdens on the vast majority of broker-dealers. The Commission staff will work with the few broker-dealers who might not have EBS systems in place to develop cost-effective means of obtaining requested securities

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[31] The Commission is amending Rules 30–3, 30–4, and 30–18 of its Rules of Practice to add new paragraphs (a)(69), (a)(12), and (h), respectively. 17 CFR 200.30–3, 200.30–4, and 200.30–18. These paragraphs delegate the authority to the Directors of the Division of Market Regulation, the Division of Enforcement, and the Office of Compliance Inspections and Examinations to grant or deny, in whole or in part, exemptions from the requirements of Rule 17a–25. The Office of Compliance Inspections and Examinations uses the EBS system as part of its inspections and examinations.

[32] If the Commission sets the technical filing requirements for EBS submissions, we anticipate adopting these requirements using a similar approach to that used by the Commission in specifying the technical formatting requirements for electronic filings through the EDGAR system. Securities Act Release No. 7858 (May 16, 2000), 65 FR 34079 (May 26, 2000).

[33] 44 U.S.C. 3501 *et seq.*

[34] 17 CFR 240.17a–4.

transaction information, whether using the EBS system or other mechanisms. In addition, if electronic reporting of securities transaction information is not feasible or is unreasonably expensive for a particular small broker-dealer, the Commission may use its general exemptive authority under Section 36 of the Exchange Act.

1. Burden-Hours for Broker-Dealers [35]

As discussed in the Proposing Release, the annual hour burden of the proposed rule for individual broker-dealers varies widely because of differences in the levels of activities of the respondents and because of differences in the current recordkeeping systems of the respondents. However, it is estimated that electronic response firms would spend approximately 8 minutes and manual response firms would spend 1½ hours responding to an average blue sheet request. Based on its experience with the EBS system, the Commission estimates that it sends approximately 14,000 electronic blue sheet requests per year, of which approximately 350 are sent to manual response firms. Accordingly, the annual aggregate hour burden for electronic response firms is estimated to be 1,820 hours (13,650 × 8 ÷ 60). The annual aggregate hour burden for manual response firms is estimated to be 525 hours (350 × 90 ÷ 60).

In addition, the Commission estimates that it will request 1,400 broker-dealers to supply the contact information identified in proposed Rule 17a–25(c), and the submission should take each broker-dealer approximately 5 minutes to prepare. To be conservative, the Commission estimates that each of these broker-dealers will revise the contact information twice a year, and each revision will also take approximately 5 minutes to prepare (10 minutes total). The annual aggregate burden for supplying the information requested in proposed Rule 17a–25(c) is 350 hours (1400 × 15 ÷ 60).

Overall, the annual aggregate burden for all respondents to the collection of information requirements of Rule 17a–25 is estimated to be 2,695 hours (1,820 + 525 + 350).

2. Capital Cost to Broker-Dealers and SROs [36]

As stated in the Proposing Release, the Commission estimates that less than 100 broker-dealers will have to perform a one-time modification of their EBS-related software to capture and report new data elements. On average, each of these broker-dealers will incur capital or start-up costs of $150,000 to modify their EBS systems. The Commission also estimates that there will be no additional costs associated with the operation and maintenance of the modified EBS systems. Accordingly, the total cost burden for broker-dealers to modify their EBS systems is estimated to be $15 million (100 × $150,000).

In addition, based on its discussions with the SROs, the Commission estimates that three SROs will each incur approximately $29,500 in capital costs to make their systems compatible with the broker-dealers. The Commission also estimates that the SROs will not incur additional costs for the operation and maintenance of the modified EBS systems.

VII. Costs and Benefits of the Rule

The Commission identified several benefits and costs to investors and market participants in the Proposing Release. To assist the Commission in its evaluation of the costs and benefits that may result from Rule 17a–25, commenters were requested to provide analyses and data relating to the costs and benefits associated with the proposal. As previously noted, the SIA questioned the Commission's estimate of the number of broker-dealers that must modify their existing EBS software to capture prime brokerage identifiers, average price account identifiers, and depository institution identifiers. However, as explained above, the Commission continues to believe that its estimates, including its costs estimates, are reasonable.

The Commission is not making any changes to Rule 17a–25, as adopted, which will increase the cost estimates for broker-dealers or SROs. In particular, subsection (a) of Rule 17a–25 merely codifies existing SRO requirements for EBS. The estimated annual aggregate hour burden for all respondents to the collection of information requirements is 2,695 hours. The total annualized cost burden for those broker-dealers to modify their existing EBS software is estimated to be $15 million in capital or start-up costs. And the estimated total annualized cost burden for SROs is $88,500. The Commission believes that neither the broker-dealers nor the SROs will incur additional costs for the operation and maintenance of the modified EBS systems.

The Commission continues to believe that any costs to market participants are justified by the overall benefits of Rule 17a–25. The rule will significantly assist the Commission's ability to conduct timely and accurate trading analyses for market reconstructions and complex enforcement inquiries or investigations, as well as inspections and examinations. The current system severely limits the Commission's ability to aggregate transactions effected by entities that use multiple accounts at broker-dealers, and can produce trading compilations that double-count these transactions. Augmented trading analyses will improve the Commission's ability to monitor the securities markets, and, thereby, promote investor protection.

VIII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act [37] requires the Commission, when promulgating rules under the Exchange Act, to consider the impact any rule would have on competition, and not adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. Section 3(f) of the Exchange Act [38] requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In the Proposing Release, the Commission solicited comments on the effects of Rule 17a–25 on competition, efficiency, and capital formation. The Commission did not receive any comments regarding these specific issues.

The Commission has considered Rule 17a–25 in light of the standards cited in Sections 3(f) and 23(a)(2) of the Exchange Act, and believes that the rule will not impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. As discussed in the cost-benefit section, only some broker-dealers will incur capital or start-up costs to modify their EBS-related software. However, the Commission believes the modifications are necessary to promote efficiency in the blue-sheeting process, and promote investor protection.

IX. Summary of Final Regulatory Flexibility Act Analysis

A Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with section 4 of the Regulatory Flexibility Act ("RFA"), to

[35] The time burden was derived from information supplied by several broker-dealers.

[36] The costs estimates were derived using information supplied by the broker-dealers and the SROs.

[37] 15 U.S.C. 78w(a)(2).

[38] 15 U.S.C. 78c(f).

provide a description and estimate of the number of small entities that will be affected by Rule 17a–25. The following summarizes the FRFA.

The Commission estimates that approximately 12% of registered broker-dealers, or approximately 1,000 broker-dealers, qualify as small broker-dealers.[39] As discussed more fully in the FRFA, Rule 17a–25 will affect these small broker-dealers because all broker-dealers will be required to submit securities transaction information to the Commission, upon request. However, the Commission believes that only a relatively few EBS requests are sent to small broker-dealers. Generally, EBS requests are sent to large clearing firms or those broker-dealers that self-clear. These entities fall outside the definition of a small broker-dealer.

In addition, the Commission's experience with the EBS system over the last ten years indicates that entities that trade through multiple accounts at different firms generally do not effect their trades through "small" broker-dealers. Accordingly, the Commission does not believe that any small broker-dealer will be required to modify its EBS-related software to capture and report the new data elements in subsection (b) of Rule 17a–25.

The FRFA further states that proposed Rule 17a–25 would not impose any additional recordkeeping requirements for small broker-dealers. The elements of trade information required for EBS reports to the Commission are already maintained by broker-dealers pursuant to Rules 17a–3 and 17a–4 of the Exchange Act and SRO rules.

When small broker-dealers receive the occasional EBS request, they will incur some costs when they report transaction information pursuant to requests by the Commission staff for enforcement purposes. The Commission believes, however, that any new costs associated with Rule 17a–25 will be minimal because broker-dealers are already required to have in place adequate systems and procedures to submit transaction reports to the appropriate SRO. Moreover, the Commission staff has traditionally been flexible when working with small broker-dealers who need to supply transaction reports. In cases in which a small broker-dealer does not already have the capacity to submit information over the EBS system, the Commission staff has accepted manual transmissions. Proposed Rule 17a–25 is not intended to change this flexible approach in obtaining necessary transaction reports from small broker-dealers.

The FRFA also discusses the various alternatives considered by the Commission in connection with the proposed rule that might minimize the effect on small entities. These include, among others, creating differing compliance or reporting requirements or timetables that take into account the resources available to small entities, and whether such entities could be exempted from the proposed rule, or any part thereof. The Commission has drafted the proposal to be consistent with the concerns of small entities. For example, as discussed above, the Commission has often permitted small broker-dealers to submit the transaction information manually, rather than electronically. The Commission may also use its exemptive authority under section 36 of the Exchange Act. A wholesale exemption from the proposed rule for small broker-dealers, however, would prevent the Commission from fully protecting investors and maintaining the fair and orderly operation of the nation's securities markets.

The Commission received no comments on the Initial Regulatory Flexibility Analysis ("IRFA") prepared in connection with the Proposing Release. A copy of the FRFA may be obtained by contacting Anitra Cassas, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001; (202) 942–0089.

X. Statutory Authority

Rule 17a–25 under the Exchange Act is being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 17(a) and 23(a) of the Act, unless otherwise noted.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of the Final Rule and Amendments

In accordance with the foregoing, Title 17, Chapter II of the *Code of Federal Regulations* is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraph (a)(74) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(74) Pursuant to section 36 of the Act (15 U.S.C. 78mm) to review and, either unconditionally or on specified terms and conditions, grant, or deny exemptions from rule 17a–25 of the Act (§ 240.17a–25 of this chapter).

* * * * *

3. Section 200.30–4 is amended by adding paragraph (a)(12) to read as follows:

§ 200.30–4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(12) Pursuant to Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) to review and, either unconditionally or on specified terms and conditions, grant, or deny exemptions from rule 17a–25 of the Act (§ 240.17a–25 of this chapter), provided that the Division of Market Regulation is notified of any such granting or denial of an exemption.

* * * * *

4. Section 200.30–18 is amended by redesignating paragraphs (h) and (i) as paragraphs (i) and (j); and by adding new paragraph (h) to read as follows:

§ 200.30–18 Delegation of authority to Director of the Office of Compliance Inspections and Examinations.

* * * * *

(h) Pursuant to Section 36 of the Exchange Act (15 U.S.C. 78mm) to review and, either unconditionally or on specified terms and conditions, grant, or deny exemptions from rule 17a–25 of the Act (§ 240.17a–25 of this chapter), provided that the Division of Market Regulation is notified of any such granting or denial of an exemption.

* * * * *

[39] For purposes of the regulatory flexibility analysis, a broker-dealer is considered a small entity if its total capital is less than $500,000, and it is not affiliated with a broker-dealer that has $500,000 or more in total capital. 17 CFR 240.0–10.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll* (d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *.

6. Section 240.17a–25 is added to read as follows:

§ 240.17a–25 Electronic submission of securities transaction information by exchange members, brokers, and dealers.

(a) Every member, broker, or dealer subject to § 240.17a–3 shall, upon request, electronically submit to the Commission the securities transaction information as required in this section:

(1) If the transaction was a proprietary transaction effected or caused to be effected by the member, broker, or dealer for any account in which such member, broker, or dealer, or person associated with the member, broker, or dealer, is directly or indirectly interested, such member, broker or dealer shall submit the following information:

(i) Clearing house number, or alpha symbol of the member, broker, or dealer submitting the information;

(ii) Clearing house number(s), or alpha symbol(s) of the member(s), broker(s) or dealer(s) on the opposite side of the transaction;

(iii) Identifying symbol assigned to the security;

(iv) Date transaction was executed;

(v) Number of shares, or quantity of bonds or options contracts, for each specific transaction; whether each transaction was a purchase, sale, or short sale; and, if an options contract, whether open long or short or close long or short;

(vi) Transaction price;

(vii) Account number; and

(viii) The identity of the exchange or other market where the transaction was executed.

(2) If the transaction was effected or caused to be effected by the member, broker, or dealer for any customer account, such member, broker, or dealer shall submit the following information:

(i) Information contained in paragraphs (a)(1)(i) through (a)(1)(viii) of this section;

(ii) Customer name, address(es), branch office number, registered representative number, whether the order was solicited or unsolicited, date account opened, and the customer's tax identification number(s); and

(iii) If the transaction was effected for a customer of another member, broker, or dealer, whether the other member, broker, or dealer was acting as principal or agent on the transaction.

(b) In addition to the information in paragraph (a) of this section, a member, broker, or dealer shall, upon request, electronically submit to the Commission the following securities transaction information for transactions involving entities that trade using multiple accounts:

(1)(i) If part or all of an account's transactions at the reporting member, broker, or dealer have been transferred or otherwise forwarded to one or more accounts at another member, broker, or dealer, an identifier for this type of transaction; and

(ii) If part or all of an account's transactions at the reporting member, broker, or dealer have been transferred or otherwise received from one or more other members, brokers, or dealers, an identifier for this type of transaction.

(2)(i) If part or all of an account's transactions at the reporting member, broker, or dealer have been transferred or otherwise received from another account at the reporting member, broker, or dealer, an identifier for this type of transaction; and

(ii) If part or all of an account's transactions at the reporting member, broker, or dealer have been transferred or otherwise forwarded to one or more other accounts at the reporting member, broker, or dealer, an identifier for this type of transaction.

(3) If an account's transaction was processed by a depository institution, the identifier assigned to the account by the depository institution.

(c) Every member, broker, or dealer shall, upon request, submit to the Commission and, keep current, information containing the full name, title, address, telephone number(s), facsimile number(s), and electronic-mail address(es) for each person designated by the member, broker, or dealer as responsible for processing securities transaction information requests from the Commission.

(d) The member, broker, or dealer should comply with the format for the electronic submission of the securities transaction information described in paragraphs (a) and (b) of this section as specified by the member, broker, or dealer's designated self-regulatory organization under § 240.17d–1, unless otherwise specified by Commission rule.

Dated: June 29, 2001.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17000 Filed 7–6–01; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Parts 27 and 290

Prohibited Purchasers in Foreclosure Sales of Multifamily Projects With HUD-Held Mortgages and Sales of Multifamily HUD-Owned Projects; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 27 and 290

[Docket No. FR–4583–F–02]

RIN 2501–AC69

Prohibited Purchasers in Foreclosure Sales of Multifamily Projects With HUD-Held Mortgages and Sales of Multifamily HUD-Owned Projects

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule prohibits a mortgagor or any related party from bidding on or acquiring a multifamily property that was, itself, the subject of the mortgagor's default. The purpose of this rule is to prevent the mortgagor from benefiting from its default and failure to meet obligations under the term of its loan agreement. This rule follows a July 5, 2000 proposed rule and takes into consideration the public comments received on the proposed rule. After careful consideration of all the public comments received on the July 5, 2000 proposed rule, HUD has decided to adopt the proposed rule without change.

DATES: *Effective Date:* August 8, 2001.

FOR FURTHER INFORMATION CONTACT: Marc Harris, Director, Field Asset Management Division, Office of Asset Management, Department of Housing and Urban Development, Room 6164, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 708–2654. Hearing or speech-impaired individuals may call 1–800–877–8339 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. The July 5, 2000 Proposed Rule

On July 5, 2000 (65 FR 41538) HUD published for comment a proposed rule amending HUD's regulations contained at 24 CFR parts 27 and 290 governing disposition procedures applicable to (1) the foreclosure of multifamily properties subject to a HUD-held mortgage and (2) the sale of HUD-owned multifamily properties. The rule codifies current HUD policy by adding a new paragraph (f) to § 27.20 and a new § 290.18, respectively, to prohibit the defaulting mortgagor or a related party as defined at 24 CFR 24.105 from bidding on or acquiring the property that secured the defaulted mortgage.

The rule supports HUD's asset management responsibilities by preventing the defaulting party from benefiting from the re-purchase of a multifamily property that was either foreclosed or sold directly from HUD's real estate inventory. For example, there have been occasions where mortgagors intentionally allowed a property to go into foreclosure and subsequently re-purchased the property for less than the debt amount or at more lenient terms than contained in the original mortgage. Permitting a current or prior mortgagor who is or was in such serious default as to lead to foreclosure or HUD acquisition to make an "end-run" around its loan agreement is antithetical to HUD's objective of promoting efficient and equitable administration of housing resources. Furthermore, it permits borrowers that are unwilling to comply with mortgage requirements, including permissible loan modifications, to reap an unfair benefit at the expense of the public. The rule does, however, preserve the authority of the Assistant Secretary for Housing—Federal Housing Commissioner to waive bidding or purchase restrictions in cases where HUD's best interest is served by permitting the defaulting mortgagor or a related party to acquire the property.

II. Public Comments Generally

The public comment period for the proposed rule closed on September 5, 2000. HUD received three comments in response to the proposed rule. Two were from law firms representing multifamily housing groups and one was from an association of multifamily rental developers and operators.

All three commenters opposed the rule. The objections centered on the prohibitive tenor of the rule and its corresponding limitation on the ability of any defaulting mortgagor to participate in the disposition process.

III. This Final Rule

The following section of the preamble contains a summary of the significant issues raised by the public commenters and HUD's response to their comments. For the reasons noted below, HUD has decided to adopt the proposed rule without change.

IV. Discussion of Public Comments Received on the July 5, 2000 Proposed Rule

Comment: The rule unfairly limits the opportunity of a mortgagor to participate in the disposition process and, in doing so, deprives HUD of the benefit of increased competition. (#1,2,3)

HUD's Response: HUD agrees that the rule severely limits the opportunity of a defaulting mortgagor to participate in the disposition process. The rule is not, however, unfair. The underlying purpose of the rule is to prevent the mortgagor from benefiting from its default and failure to meet obligations under the term of its loan agreement with HUD. While this limitation may decrease competition by one, it supports HUD's asset management responsibilities by preventing a defaulting mortgagor from deriving an unfair benefit at the public expenses. HUD has therefore determined that prohibiting the mortgagor from bidding is more important than the minimal loss of competition that may result.

Comment: The rule makes a presumption of guilt, and by precluding participation by all defaulting mortgagors, eliminates the benefit of bidding by parties with specific project knowledge and the motivation to submit a fair offer. (#1,2)

HUD's Response: The purpose of the rule is to prevent the mortgagor from benefiting from its default and failure to meet obligations under the term of its loan agreement by purchasing the property at a foreclosure sale or from the HUD-owned inventory for less than the outstanding debt. The defaulting mortgagor can always pay off the outstanding debt in full prior to the foreclosure sale.

The failure of a project to meet its commitments to HUD is, in most cases, directly related to the mortgagor's failure to comply with one or more aspects of the agreements between HUD and the mortgagor/former mortgagor. In the rare event that the mortgagor can show that it should not be prohibited from bidding less than the debt, a waiver of this regulation by the Assistant Secretary for Housing—Federal Housing Commissioner, is permitted.

Comment: The rule should establish a detailed process for obtaining a waiver in cases where the mortgagor was not at fault. (#2)

HUD's Response: HUD will follow its usual process and consider a waiver request of this regulatory requirement for good cause shown on a case-by-case basis.

Comment: The rule should be redrafted in order to presume the eligibility of all parties to bid and allow the Assistant Secretary for Housing—Federal Housing Commissioner to exclude by waiver only upon a showing of sufficient cause. (#2)

HUD's Response: A waiver to the rule is contemplated only in narrowly-drawn circumstances where the defaulting mortgagor has demonstrated good cause to HUD's that it should be allowed the opportunity to participate in the disposition process. Thus, the burden rests with the defaulting mortgagor to

present the necessary level of justification for a waiver. Presuming the eligibility of all defaulting mortgagors to bid would be contrary to Departmental policy and would defeat the essential purpose of the rule.

Comment: The rule may deprive mortgagors of a constitutional property interest by denying their opportunity to bid and thus making them subject to a lower sales price that will diminish their equity. (#3)

HUD's Response: The rule does not deprive mortgagors of a constitutional property interest. A mortgagor is obligated for the amount of the debt and can pay off the outstanding debt prior to a foreclosure sale. The rule simply prevents a defaulting mortgagor from deriving an unfair benefit by acquiring the underlying property for less than the debt amount or with less restrictive loan conditions.

Comment: The rule is unnecessary because HUD has other, more effective remedies such as making a credit bid at foreclosure or appointing a receiver. (#3)

HUD's response: HUD has determined that this rule is needed for the reasons specified above. In addition, HUD generally seeks to be outbid at foreclosure sales because HUD minimizes its costs by selling projects at foreclosure sales rather than bidding the debt, taking properties into inventory, and then selling them from the owned inventory. Bidding the debt is not a cost effective remedy for HUD. Also, appointing a receiver has nothing to do with limiting what a mortgagor can bid at a foreclosure sale, and thus is not a remedy.

V. Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule only addresses circumstances in which a party may benefit at the public expense by defaulting on its obligations, and does not impose any additional costs or burdens.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. That Finding remains applicable to this rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Regulations Division, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year.

List of Subjects

24 CFR Part 27

Administrative practice and procedure, Loan programs—housing and community development, Mortgages.

24 CFR Part 290

Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance.

Accordingly, parts 27 and 290 of title 24 of the Code of Federal Regulations are amended as follows:

PART 27—NONJUDICIAL FORECLOSURE OF MULTIFAMILY AND SINGLE FAMILY MORTGAGES

1. The authority citation for 24 CFR part 27 continues to read as follows:

Authority: 12 U.S.C. 1715b, 3701–3717; 3751–3768; 42 U.S.C. 1452b, 3535(d).

2. In § 27.20, a new paragraph (f) is added to read as follows:

§ 27.20 Conditions of foreclosure sale.

* * * * *

(f) The defaulting mortgagor, or any principal, successor, affiliate, or assignee thereof, on the multifamily mortgage being foreclosed, shall not be eligible to bid on, or otherwise acquire, the property being foreclosed by the Department under this subpart or any other provision of law. A "principal" and an "affiliate" are defined as provided at 24 CFR 24.105.

PART 290—DISPOSITION OF MULTIFAMILY PROJECTS AND SALE OF HUD-HELD MULTIFAMILY MORTGAGES

3. The authority citation for 24 CFR part 290 continues to read as follows:

Authority: 12 U.S.C. 1701z–11, 1701z–12, 1713, 1715b, 1715z–1b, 1715z–11a; 42 U.S.C. 3535(d) and 3535(i).

4. In subpart A, a new § 290.18 is added, to read as follows:

§ 290.18 Restrictions on sale to former mortgagors.

The defaulting mortgagor, or any principal, successor, affiliate, or assignee thereof, on the mortgage on the property at the time of the default resulting in acquisition of the property by HUD shall not be eligible to purchase the property. A "principal" and an "affiliate" are defined as provided at 24 CFR 24.105.

Dated: June 28, 2001.

Mel Martinez,

Secretary.

[FR Doc. 01–17010 Filed 7–6–01; 8:45 am]

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Part IV

Department of Housing and Urban Development

24 CFR Parts 598 and 599
Designation of Round III Urban Empowerment Zones and Renewal Communities; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 598 and 599

[Docket No. FR–4663–I–01]

RIN 2506–AC09

Designation of Round III Urban Empowerment Zones and Renewal Communities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule governs the designation of Round III Urban Empowerment Zones (EZs) and Renewal Communities (RCs) nominated by States and local governments. The designation of an area as an EZ or an RC provides special Federal income tax treatment as an incentive for businesses to locate within the area. This rule lays the foundation for designations to be made on the basis of applications submitted in response to the Notice Inviting Applications published elsewhere in this issue of the **Federal Register**.

DATES: Effective Date: August 8, 2001.

Comment Due Date: September 7, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Regulations Division, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title of the rule. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address. (In addition, see the Paperwork Reduction Act heading under the Findings and Certifications section of this preamble regarding submission of comments on the information collection burden.)

FOR FURTHER INFORMATION CONTACT: For EZ/EC issues, Lisa Hill, and for RC issues, John Haines, at the Department of Housing and Urban Development, Room 7130, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–6339. (This telephone number is not toll-free.) For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION:

I. Community Renewal Tax Relief Act of 2000—Authorization for Round III Empowerment Zones and for Renewal Communities

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 2001 (Omnibus Act) (Pub. L. 106–554, 114 Stat. 2763, approved December 21, 2000) enacted into law the provisions of a number of bills of the 106th Congress. One of the bills enacted by the Omnibus Act is H.R. 5662, the Community Renewal Tax Relief Act of 2000 (CRTR Act).

The CRTR Act, among other things, authorizes the designation of nine Round III Empowerment Zones (EZs). Seven of the Round III EZs are to be designated in urban areas by the Secretary of HUD. The remaining two Round III EZs are to be designated in rural areas by the Secretary of Agriculture. The CRTR Act also conforms and enhances the tax incentives for Round I and Round II EZs, and makes the new Round III EZs eligible for these incentives. The availability of the tax incentives is extended to December 31, 2009 for all EZs.

The CRTR Act also authorizes HUD to designate up to 40 Renewal Communities (RCs) within which special tax incentives would be available. At least 12 of the designated RCs must be in rural communities. Unlike the EZ program, which splits the designation responsibility between HUD and the Department of Agriculture for urban and rural areas respectively, all RC designations are to be made by HUD.

This rule would implement the designation requirements for Round III EZs and for RCs as discussed in the following preamble sections.

II. Designation of Round III Empowerment Zones

Section 111 of the CRTR Act adds a new subsection (h), which authorizes the designation of nine additional EZs, to section 1391 of Subchapter U of Chapter 1 of the Internal Revenue Code of 1986. Subchapter U governs the designation and treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas, and provided authorization by separate legislative enactments for the designation of Round I EZs in 1993, and Round II EZs in 1997.

HUD promulgated Round I EZ regulations at 24 CFR part 597 in 1994, and Round II EZ regulations at 24 CFR part 598 in 1998. Separate Round I and Round II regulations were issued because although many of the Round I and II submission requirements, such as the strategic plan, were similar, there were some differences in the authorizing statutes for each Round. For example, the legislation authorizing the Round II designations changed the eligibility and selection criteria from the Round I requirements. Two specific changes in the Round II eligibility criteria were an increase in the size of zones and elimination of the requirement that at least half of the nominated area consist of census tracts with poverty rates of 35 percent. Round II designations were also permitted to except up to three "developable sites"—parcels that may be developed for commercial or industrial purposes—from satisfying the two poverty rate criteria that otherwise would be applicable, but the size of the area given this special poverty rate treatment was restricted to a total of 2,000 acres.

Unlike the differences in Round I and Round II, the eligibility and selection criteria for the Round III EZs are the same as the criteria that applied to the Round II EZs. HUD is therefore implementing Round III in a timely and efficient manner by making only conforming changes to include references to Round III in part 598. This approach will continue, and not disrupt, the EZ designation process with which interested parties have already become familiar. The regulation at 24 CFR part 598 will apply for Round III designations for urban areas as it did for Round II. The designation of rural areas as EZs will continue to be implemented separately by the Department of Agriculture.

III. The Renewal Communities Program

Section 101 of the CRTR Act adds a new Subchapter X, consisting of sections 1400E through 1400J, to Chapter 1 of the Internal Revenue Code of 1986. Subchapter X governs the designation of, and tax incentives for, Renewal Communities. This rule would implement, at 24 CFR part 599, sec. 1400E, which authorizes HUD to designate up to 40 Renewal Communities and provides the process by which these designations are to be made.

The Renewal Communities program represents a different approach from the EZ program to the economic revitalization of distressed communities and to help residents gain employment, succeed in their careers and become economically self-sufficient. Rather than providing grants of funds or guarantees to finance development projects in the distressed communities, the RC program seeks to achieve its goals through the

coordinated efforts of government at the Federal, State and local levels to attract and encourage business development in the designated areas. The government incentives provided in RCs are, generally, incentives of forbearance: the business activities in the RCs will not be subject to the same levels of taxation or regulatory restrictions that apply elsewhere. An additional significant component to the success of RCs is a commitment from State and local governments to improve the infrastructure and enhance and make more efficient a variety of services for businesses and residents in the designated areas. The increase in business activity that results from these actions will provide economic growth and benefits to the RCs and surrounding communities.

The Federal commitment to RCs is twofold. First, substantial Federal tax incentives, described immediately below, are made available for businesses located in RCs. Second, and perhaps more significant, is HUD's commitment to work with RCs in planning and organizing their development activities and in reaching out to the business community to promote the many attractive features of, and encourage investment in, RCs.

General description of tax benefits. The tax incentives available in Renewal Communities, administered by the Treasury Department, are authorized in secs. 1400F through 1400J of the Internal Revenue Code, and are generally available during the period beginning January 1, 2002 and ending December 31, 2009. A brief description of these incentives follows:

1. *Zero-percent capital gains rate.* A zero-percent capital gains rate applies with respect to gain from the sale of a qualified community asset acquired after December 31, 2001, and before January 1, 2010, and held for more than five years.

2. *Renewal community employment credit.* A 15-percent wage credit is available to employers for the first $10,000 of qualified wages paid to each employee who is a resident of the renewal community and also performs substantially all employment services within the renewal community in a trade or business for the employer.

3. *Commercial revitalization deduction.* Each State is permitted to allocate up to $12 million of "commercial revitalization expenditures" to each renewal community located within the State. A "commercial revitalization expenditure" means the cost of a new building or the cost of substantially rehabilitating an existing building. A taxpayer can elect either to deduct one-half of the commercial revitalization expenditures for the taxable year the building is placed in service or amortize all the expenditures ratably over the 120-month period beginning with the month the building is placed in service.

4. *Additional section 179 expensing.* A Renewal Community business is allowed an additional $35,000 of section 179 expensing for "qualified renewal property." The term "qualified renewal property" is similar to the definition of "qualified zone property" used in connection with Empowerment Zones.

5. *Extension of work opportunity tax credit (WOTC).* The high-risk youth and qualified summer youth categories in the WOTC are expanded to include qualified individuals who live in a Renewal Community.

Designation of Renewal Communities—General Overview. The process for designating RCs differs from the EZ selection process in that the RC process is more streamlined and objective. Section 1400E establishes a two step process in which basic eligibility for designation is based upon meeting a number of threshold qualifications, and selection for designation is based upon rating and ranking using objective data. The rule at 24 CFR part 599 that implements this process is divided into subparts that address general provisions, eligibility, rating, and selection of applications. An additional subpart addresses post-designation requirements, which are broadly designed to promote the intergovernmental efforts necessary to ensure the success of RCs. Each of these subparts is discussed below.

Subpart A—General Provisions. This subpart lays the groundwork for part 599 by defining basic terms and data sources used in the RC program. Many of these definitions and sources are familiar from the EZ program requirements; however, HUD calls attention to the definitions of "rural area" and "urban area" in subpart A. At least 12 of the 40 available RC designations will be made for rural areas. "Rural area" is specifically defined, with an "urban area" being any area that is not a rural area. In addition to the statutory parameters given to the definition of "rural area," including allowing determinations to be made on a case-by-case basis, the definition adds a specific example of an area that would otherwise qualify as a rural area "after consultation with the Secretary of Commerce" as permitted by 1400E(a)(2)(B)(iii). The intent is to expand the definition of "rural area" and ensure a sufficient number of rural applications by permitting a nominated area which crosses jurisdictional lines to qualify as a rural area even though the area taken as a whole would not satisfy the statutory requirements of being in jurisdictions with less than 50,000 population or being located entirely outside of a metropolitan area (MA). As long as the nominated area is within the overall RC population cap of 200,000, and each portion of the nominated area that is located within a separate jurisdiction meets the population or MA requirements, the area as a whole can qualify as a rural area. HUD has determined, in accordance with the flexibility provided by the statute, that at least in such circumstances, the essential rural characteristics of the nominated area should be recognized.

Subpart B—Eligibility Requirements for Nomination of Renewal Communities. Subpart B contains the requirements of the eligibility thresholds to nominate an area for RC designation. The more significant aspects of these threshold requirements are discussed below according to the sections of part 599 in which they appear.

Who must nominate (§ 599.101). This section includes the requirements of secs. 1400E(a)(1)(A) and (a)(5). A nomination must be submitted by one or more local governments and the State or States in which the nominated area is located. The governing body of an Indian reservation is treated as being both the State and local governments for RC purposes.

Geographic and population requirements (§ 599.103). Sections 1400E(c)(2)(B) and (C) form the basis for the eligibility requirements of this section. Section 509.103(a)(2)(ii) clarifies that although the outer boundary of a nominated area must be continuous, the nominated area may enclose areas that are not included in the nomination. The resulting map in such an instance would have a "swiss cheese" appearance.

A nominated area that is entirely within an Indian reservation is not subject to the population eligibility requirements.

Economic condition requirements (599.105). Section 1400E(c)(3) contains the four economic condition threshold requirements of (1) pervasive poverty, unemployment, and general distress; (2) unemployment rate; (3) poverty rate; and (4) income levels. The first three requirements apply to all nominated areas, rural and urban. The fourth threshold requirement only applies to urban areas. A nominated area must meet each of the applicable economic condition threshold requirements before

it can be rated and ranked for RC designation. For purposes of the RC application process, sec. 1400E(c)(3) only requires the State and local governments in which the nominated area is located to certify that the nominated area meets the threshold requirements, and HUD's acceptance of the certification is subject to "such review of supporting data" as HUD deems appropriate. These threshold requirements appropriately limit the pool of areas eligible for RC designation to areas with significant negative economic conditions.

The statute lays out specific percentages that must be present to meet the thresholds of requirements (2) through (4): The unemployment rate in the nominated area taken as a whole must be at least one and one-half times (150% of) the national unemployment rate; the poverty rate for each population census tract within the nominated area must be at least 20 percent; and in the case of a nominated urban area, at least 70 percent of the households living in the nominated area must have incomes below 80 percent of the median income of households within the jurisdiction of the local government or governments in which the nominated area is located.

In addition to serving as thresholds, the second and third requirements, unemployment and poverty rate, are used to rate and rank rural and urban area applications, and the fourth requirement, income levels, is also used to rate and rank urban areas. A description of the rating and ranking process appears below in this preamble in the discussion of subpart D of the rule.

HUD has deemed 1990 census data as the appropriate data to review in determining whether to accept a certification as to unemployment, poverty, and income. Section 1400E(f)(4) specifically requires the use of 1990 census data for determining population and poverty rate. Although sec. 1400E(c)(3)(B) requires that the unemployment rate in the nominated area be determined using "the most recent available data," the 1990 census data is still the most recent available data at a census tract level. More recent unemployment rate data for local areas are available, but the more recent data are not usable for the RC designations because they give the rates for larger areas, namely counties and incorporated jurisdictions of 25,000 or more, that would not generally correspond to the tract-based RC areas. Accordingly, the nominating State and local governments should make their certification for unemployment, poverty and income, as applicable, on the basis of 1990 census data for HUD to find it acceptable.

Whether HUD accepts the certification that the nominated area is one of pervasive poverty, unemployment and general distress, will follow § 598.110 of the EZ Round II and III rule, which addresses an identical demonstration required by the EZ authorizing statute. Accordingly, the provisions of § 598.110 appear at § 599.105(e)(2) of this rule.

State and local commitments (§ 599.107). Two very significant thresholds that must be met by the nominating State and local governments are (1) the submission of a "course of action," a plan showing how the governments and local organizations will reduce regulatory, infrastructure and service burdens on employers and employees in the nominated area, and (2) the submission of a certification from the nominating governments that they have repealed or reduced; will not enforce, or will reduce within the nominated area at least four of five governmental restrictions listed in the statute. These threshold requirements are included in sec. 1400E(d) of the statute.

It is important that the nominees involve all appropriate State and local government agencies when preparing the application because programs managed by various different agencies may be among those that could be made more efficient as part of the Renewal Community project. Similarly, the combined effect of requirements from multiple agencies sometimes produce negative burdens for businesses and residents. HUD does not require nominees to involve a defined list of State and local government agencies, but it does encourage nominees to seek the active participation of many such agencies including, but not limited to, ones responsible for: Community and economic development and business assistance; human services and human development such as the State and/or county agency that administers the Federal Temporary Assistance for Needy Families program and other agencies that administer job support programs including child care, employment training, welfare-to-work and school-to-work efforts.

Subpart C—Procedures for Nomination of Renewal Communities. This subpart provides that the application process for RCs is initiated by the publication of a notice inviting applications in the **Federal Register**, and that the notice will include specific information as to due dates and submission requirements. An application must include information demonstrating that all of the threshold eligibility requirements are met. An application must also include a certification, signed by a responsible official or employee of each State and local government in which the nominated area is located, that the public was provided notice of, and an opportunity to participate in, the application development process. Even though the threshold requirements and rating and ranking factors for Renewal Community designation are narrowly drawn by the authorizing statute, public support and involvement from the earliest stages of the development of a Renewal Community are necessary if the effort is to be successful. Notice and opportunity to participate may include procedures such as placing announcements in newspapers or other media, holding public meetings and soliciting comments.

An applicant may continue to submit information to meet the threshold requirements until the application due date that will be specified in the notice inviting applications. Once an application meets the threshold requirements, it is rated and ranked in accordance with the procedures in subpart D.

Subpart D—Evaluation of Applications Nominating Renewal Communities. Section 1400E(a)(3)(A) provides that, "the nominated areas designated as renewal communities under this subsection shall be those nominated areas with the highest average ranking with respect to the criteria described in subparagraphs (B), (C), and (D) of subsection (c)(3)." These criteria are the three economic condition threshold requirements described at § 599.105(b) through (d) of this rule. The following paragraph describes how HUD will implement the ranking process.

Each nominated area meeting the minimum thresholds will be ranked from highest to lowest according to the area poverty rate, area unemployment rate, and for urban areas, the percentage of families below 80 percent of area median income (the low-mod rate). Urban nominated areas will be ranked separately from rural nominated areas. The percentile rank will be determined by dividing these rankings by the total number of nominated areas ranked and multiplying the result by 100. The average ranking will be determined by computing the simple average of the percentile ranks for each nominated area. To create a 100 point scale, the average rankings will be subtracted from 100. The following table illustrates this process for urban nominated areas

under the assumption that there are 150 nominated areas being ranked.

ILLUSTRATIVE EXAMPLE OF RANKING PROCESS, 150 NOMINATED AREAS

App. No	Absolute Rankings: Poverty rate	Absolute Rankings: Unemployment rate	Absolute Rankings: Low-Mod rate	Percentile Rankings (100 × Absolute Rank ÷ Number of Areas): Poverty rate	Percentile Rankings (100 × Absolute Rank ÷ Number of Areas): Unemployment rate	Percentile Rankings (100 × Absolute Rank ÷ Number of Areas): Low-Mod rate	Average ranking	Score
1	6	3	1	4.0	2.0	0.7	2.2	97.8
2	1	8	3	0.7	5.3	2.0	2.7	97.3
3	2	6	6	1.3	4.0	4.0	3.1	96.9
4	3	5	7	2.0	3.3	4.7	3.3	96.7
5	4	12	5	2.7	8.0	3.3	4.7	95.3
6	9	1	14	6.0	0.7	9.3	5.3	94.7
. . .	.	.	.	.	.	.	.	.
150	140	150	145	93.3	100	96.7	96.7	3.3

Once a nominated area receives a score using the process described above, preference points are awarded based on two additional factors: The incidence of crime in the area, and whether census tracts in the area have been identified as distressed by the U.S. General Accounting Office.

First, section 1400E(c)(4)(A)(i) requires HUD to take into account the extent to which an area has a high incidence of crime. HUD has determined that, because of the nature of the RC program, the most appropriate way of taking the incidence of crime into account is to reward jurisdictions that have managed to control crime levels, even in their most distressed areas. The RC program is not a crime reduction program, but a business development program. The success of a Renewal Community will ultimately be measured by the extent to which it develops and expands business activities within its boundaries. A Renewal Community in an area that has already begun to address successfully the high incidence of crime starts out with a more inviting business environment, and is better poised to achieve success. There will be less concern on the part of business investors that their employees may be the victims of crime or that their facilities and property may be vandalized or subject to theft. Insurance rates for businesses in such areas are likely to be lower, further making such areas more attractive for investment and development.

A nominated area will receive 1 additional point if its 1999 Local Crime Index rate per 100,000 inhabitants (LCI), as determined on the basis of data from each State and local law enforcement authority with jurisdiction in the nominated area, does not exceed by more than 25% the 1999 Crime Index rate per 100,000 inhabitants (CI) prepared as part of the FBI's Uniform Crime Reporting (UCR) Program. The Crime Index is composed of selected offenses used to gauge fluctuations in the overall volume and rate of crime reported to law enforcement. The offenses included are the violent crimes of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault, and the property crimes of burglary, larceny-theft, motor vehicle theft, and arson. A preference of 2 points will be added to the score of a nominated area with an LCI that does not exceed the CI by more than 10 percent. A nominated area that has an LCI that is less than the CI will receive 4 preference points. To qualify for the preference points, the nominating governments must determine and then certify to the LCI determined for the nominated area.

Second, one preference point is awarded if any census tract in the nominated area is identified in GAO Report RCED–98–158R, dated May 12, 1998, cited in section 1400E(c)(4)(A)(ii).

Subpart E—Selection of Nominated Areas To Be Renewal Communities. Section 1400E(a)(3)(C) provides a selection preference for the first 20 of the 40 permitted RC designations to nominated areas that are EZs or ECs. Section 1400E(a)(2)(B) requires that at least 12 RC designations be made in rural nominated areas. To implement these statutory requirements, Subpart E establishes a selection process in which applications are separated into two categories after rating and initial ranking, and in which the priority of selection is given to EZs, ECs, and rural areas. Category 1 consists of applications for designation of nominated areas that are EZs or ECs. Applications for designation of nominated areas that are not placed into or selected from Category 1 will be placed into Category 2.

All or 20, whichever number is lower, of the Category 1 nominated areas will be designated RCs. HUD will select the six highest ranked rural areas in Category 1 for designation as Renewal Communities. The remaining number of Category 1 selections will be made in rank order from the combined rural and urban nominated areas. If there are fewer than six rural areas and additional urban Category 1 areas, urban areas will be selected until not more than 20 Category 1 designations are made.

Once the Category 1 nominated areas are selected, remaining urban and rural areas will be ranked in Category 2. The six highest ranked, or the number of highest ranked rural applications necessary to designate at least 12 if fewer than six rural areas were selected in Category 1, rural applications will be selected from Category 2. If HUD does not receive at least 12 eligible rural area applications for Renewal Community designation, the number of rural area designations will be the number of eligible rural area applications received by HUD. The remaining designations will be made from both rural and urban areas in rank order until a combined Category 1 and Category 2 total of not more than 40 designations is made.

The rule also provides, at § 599.405(c), that the effective date of designation as a Renewal Community is the date a nominated area is selected in accordance with this selection procedure.

HUD will make every effort to see that at least 12 rural areas are designated as Renewal Communities. For example, HUD in consultation with the Department of Commerce has

established, at § 599.3, a broader definition of areas that will qualify as rural areas, including allowing determinations to be made on a case-by-case basis as permitted by sec. 1400E(a)(2)(B)(iii). In addition, HUD intends to leave the application period for RC designations open for the longest feasible period to allow the most time for the preparation of applications. It will only be in the unlikely event that HUD does not receive at least 12 eligible RC applications from rural areas, including Indian reservations, that HUD will designate additional urban area applications so that the full number of 40 RC designations can be made.

Subpart F—Post-Designation Requirements. As noted above, Federal tax benefits are a part of the Federal commitment to the success of RCs. The rest of the Federal commitment consists of assisting State and local governments in their planning and outreach to the business community and residents to develop and expand activities in RCs. Subpart F requires the nominating State and local governments to identify, within 30 days of RC designation, a coordinating responsible authority (CoRA). The CoRA will be the entity, organization or persons with the responsibility and authority to achieve the State and local commitments made at the time of application. The CoRA will also undertake the development and administration of policies, procedures and activities to implement and maximize the Federal, State and local benefits made available in the Renewal Community. The CoRA will function as the central point of contact for the RC.

HUD will work with each CoRA to develop a tax incentives utilization plan to develop and expand businesses in the RCs through the Federal, State and local incentives made available. A preliminary plan must be developed within 6 months, and a final plan must be completed within one year of the designation. Because the RC designations have a 10-year term, it is important to undertake development activities as early as possible. Businesses should also note that they will garner the most benefit the earlier they take advantage of the available incentives, and HUD will assist in getting the word out to the business community.

HUD will also encourage other Federal agencies, in particular the Department of Health and Human Services, to provide technical assistance as appropriate to the CoRAs. The technical assistance would be designed to help CoRAs and the appropriate State and/or local agencies to develop and implement effective and innovative strategies, services and/or activities that assist residents and their families move successfully to work on to self-sufficiency.

The Renewal Communities program presents a great challenge and opportunity to HUD and it State and local government partners, and one that HUD looks forward to addressing with them.

IV. Findings and Certifications

Justification for Interim Rule. In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest". The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment. Prior public procedure is contrary to the public interest because of the practical necessity of preparing an application for designation as a Renewal Community within the timeframe set by the authorizing statute. The designations are required by the statute (section 1400E(a)(4)(B)) to be made before January 1, 2002. The governmental entities and other entities that may work with them in partnership to develop an application for designation need to know the requirements of the program in time to develop their plans and apply for designation. Delay in prescribing the criteria for designating new Renewal Communities would delay the development of these cooperative efforts and make it extremely difficult for applicants to develop their applications in a timely fashion.

Paperwork Reduction Act. The information collections contained in 24 CFR part 598 and implementing documents were approved for Round II EZs by the Office of Management and Budget (OMB) and assigned OMB control number 2506–0148. Since there are no additional Round II designations and the Round III requirements are the same as those for Round II, the same OMB control number continues to be applicable. HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The information collection requirements contained in 24 part 599 of this rule, as described in subparts C and F, and the implementing application forms, have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2506–0173. This approval has been granted on an emergency basis through July 31, 2001. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

In addition, HUD is seeking regular, non-emergency approval for these information collections. Therefore, HUD asks for comments regarding the information collections contained in the subparts of part 599 of this rule stated above. Comments regarding the information collections contained must be submitted by September 7, 2001. Comments on these information collections should refer to the proposal by name and/or OMB control number and must be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7230, Washington, DC 20410.

Specifically, comments are solicited from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The following table identifies the components of the information collection.

Type of Collection *First year **Subsequent years	Section of 24 CFR affected	Number of respondents	Frequency of response	Est. Ave. response time (Hrs.)	Annual burden hrs.
*Application	599.203	200	1	35	7,000
*Identification of Coordinating Responsible Authority	599.505	40	1	5	200
*Tax Incentives Utilization Plan	599.507	40	1	35	1,400
** Modifications	599.509	40	2	5	200
** Periodic Reporting	599.511	40	2	10	400
** Response to Warning Letter	599.513	40	2	4	160
Total Burden	.....	.....	.....	.....	9,360

Environmental Impact. A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

Regulatory Flexibility Act. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities as distinguished from large entities. The rule does not place any mandates on small entities. It merely authorizes them to seek designation as Renewal Communities as authorized by statute and the burdens placed on applicants derive from the statute.

HUD is sensitive to the fact, however, that the uniform application of requirements on entities of differing sizes may place a disproportionate burden on small entities. Therefore, HUD is soliciting recommendations for how these small entities might fulfill the purposes of the rule in a way less burdensome to them.

Executive Order 13132, Federalism. This rule does not impose substantial direct compliance costs on States or local governments or preempt State law within the meaning of the Executive Order. As a result, the rule is not subject to review under the order. The purpose of the rule is to provide a cooperative atmosphere between the Federal government and States, local, and Tribal governments, and to reduce any regulatory burden imposed by the Federal government that impedes the ability of States and local governments to solve pressing economic, social, and physical problems in their communities.

Unfunded Mandates. Executive Order 12875 calls for Federal agencies to refrain, to the extent feasible and permitted by law, from promulgating any regulation that is not required by statute that would create a mandate on a State, local, or Tribal government, unless the agency provides funds for complying with the mandate or the agency first consults with affected State, local, and Tribal governments. Title II of the Unfunded Mandates Reform Act of 1995 (12 U.S.C. 1501) established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

This rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995, because it does not mandate any particular action. The rule only authorizes States, localities, and tribes to apply for designation of areas within their jurisdiction as Empowerment Zones or Renewal Communities, which permits special tax treatment of business activities within the areas.

Regulatory Review. The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the interim rule after its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division of the Office of General Counsel, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance Program number assigned to these programs is 14.244.

List of Subjects

24 CFR Part 598

Community development, Economic development, Empowerment zones, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Urban areas.

24 CFR Part 599

Community development, Economic development, Housing, Indians, Intergovernmental relations, Renewal communities, Reporting and recordkeeping requirements, Urban areas.

Accordingly, for the reasons set forth in the preamble, in title 24 of the Code of Federal Regulations, chapter V is amended as follows:

PART 598—URBAN EMPOWERMENT ZONES: ROUND TWO AND THREE DESIGNATIONS

1. The heading for part 598 is revised to read as set forth above.

2. The authority citation for 24 CFR part 598 continues to read as follows:

Authority: 26 U.S.C. 1391; 42 U.S.C. 3535(d).

3. In § 598.1, paragraph (a) is revised to read as follows:

§ 598.1 Applicability and scope.

(a) This part establishes policies and procedures applicable to the second and third rounds of designations of urban Empowerment Zones, authorized under Subchapter U of the Internal Revenue Code of 1986 (26 U.S.C. 1391, et seq.), as amended. Any reference to, or requirement of, Round II in this part is also a reference to, or requirement of, Round III.

* * * * *

4. A new part 599 is added to read as follows:

PART 599—RENEWAL COMMUNITIES

Subpart A—General Provisions

Sec.
599.1 Applicability and scope.
599.3 Definitions.

599.5 Data used for eligibility determinations.

Subpart B—Eligibility Requirements for Nomination of Renewal Communities 599.101 Eligibility to submit nominations.

599.103 Geographic and population requirements for a nominated area.
599.105 Economic condition requirements for a nominated area.
599.107 Required State and local commitments.

Subpart C—Procedures for Nomination of Renewal Communities 599.201 Initiation of application process.

599.203 Basic application submission requirements.

Subpart D—Evaluation of Applications Nominating Renewal Communities 599.301 Initial determination of threshold requirements.

599.303 Rating of applications.

Subpart E—Selection of Nominated Areas To Be Renewal Communities

599.401 Ranking of applications.
599.403 Number of Renewal Communities to be designated.
599.405 Selection of Renewal Communities.
599.407 Notification of Renewal Community designations.

Subpart F—Post-Designation Requirements

599.501 Period for which Renewal Community designation is in effect.
599.503 Effect of Renewal Community designation on an EZ/EC.
599.505 Coordinating responsible authority (CoRA).
599.507 Tax incentives utilization plan.
599.509 Modification of commitments and plans.
599.511 Reports and other information.
599.513 Revocation of designation.

Authority: 26 U.S.C. 1400E; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 599.1 Applicability and scope.

(a) This part establishes requirements and procedures applicable to the designation of Renewal Communities (RCs) through December 31, 2001, authorized under Subchapter X of the Internal Revenue Code of 1986 (26 U.S.C. 1400E, et seq.). HUD may choose to use these requirements and procedures in whole or in part for any future Renewal Community designations that may be authorized.

(b) This part contains provisions relating to area requirements, the nomination process for Renewal Communities, and the evaluation and designation of nominated areas by HUD.

§ 599.3 Definitions.

In addition to the definitions of "HUD" and "Secretary" found in 24 CFR 5.100, the following definitions apply to this part:

Census tract means a census tract, as the term is used by the Bureau of the Census, or, if census tracts are not defined for the area, a block numbering area.

Designation means the process by which the Secretary designates areas as Renewal Communities eligible for tax incentives and credits established by Subchapter X of the Internal Revenue Code of 1986, as amended (26 U.S.C. 1400E, et seq.) and for any additional assistance that may be made available.

Empowerment Zone (EZ) means an area so designated by the Secretary in accordance with 24 CFR part 597 or 24 CFR part 598.

Enterprise Community (EC) means an area so designated by the Secretary in accordance with 24 CFR part 597.

Local government means any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and any combination of these political subdivisions that is recognized by the Secretary.

Metropolitan Area (MA) means an area as defined to be a Metropolitan Statistical Area or Primary Metropolitan Statistical Area by the Office of Management and Budget on June 30, 1999.

Nominated area means an area with a population of not more than 200,000 that is nominated by one or more local governments and the State or States in which it is located, or the governing body of the Indian reservation in which it is located, for designation in accordance with this part.

Renewal Community (RC) means an area so designated by HUD in accordance with this part.

Rural area means a nominated area:

(1) Which is within a local government jurisdiction or jurisdictions with a population of less than 50,000; or

(2) Which is outside of an MA; or

(3) Which is determined by HUD, after consultation with the Secretary of Commerce, to be a rural area. An area may qualify as a rural area under this paragraph (3) of this definition if:

(i) It is a nominated area that crosses jurisdictional boundaries;

(ii) The total population of the nominated area does not exceed 200,000;

(iii) The nominated area as a whole would not satisfy the requirements of either paragraph (1) or (2) of this definition;

(iv) Each portion of the nominated area that is located within a separate jurisdiction meets the requirements of either paragraph (1) or (2) of this definition; and

(v) The area is specifically nominated as a rural area; or

(4) Which does not meet the requirements of either paragraph (1), (2), or (3) of this definition but which is determined by HUD on a case-by-case basis, after consultation with the Secretary of Commerce, to be a rural area based on information submitted to demonstrate that the nominated area should be considered as a rural area.

State means any State of the United States.

Urban area means a nominated area that is not a rural area.

§ 599.5 Data used for eligibility determinations.

(a) *Source of data.* The data to be used in determining the population, poverty rate, unemployment rate and household income distribution information of an area is from the 1990 Decennial Census.

(b) *Geographic boundaries.* The boundary of an area that is nominated for designation as an Renewal Community must coincide with the boundaries of census tracts, as defined in § 599.3 except in the case of Indian reservation areas where the use of census tracts would tend to include areas outside the jurisdiction of the reservation governing body and such body is not making the nomination in concert with another jurisdiction.

Subpart B—Eligibility Requirements for Nomination of Renewal Communities

§ 599.101 Eligibility to submit nominations.

(a) *In general.* Except as provided in paragraph (b) of this section, a nomination for the designation of an area as a Renewal Community must be submitted by one or more local governments and the State or States in which the nominated area is located.

(b) *Nominated areas on Indian reservations.* In the case of a nominated area on an Indian reservation, the reservation governing body (as determined by the Secretary of the Interior) must submit the nomination and shall be treated as being both the State and local governments with respect to the area for purposes of this part.

(c) *Responsible official.* The submission of an application, and any other action required of a nominating government under this part, such as the submission of a certification, must be performed by an official or employee authorized to act on behalf of the government for that purpose.

§ 599.103 Geographic and population requirements for a nominated area.

(a) *Geographic requirements.* A nominated area must meet the following

geographic requirements to be eligible for designation as a Renewal Community:

(1) The area must be within the jurisdiction of one or more local governments.

(2) The boundary of the area must be continuous.

(i) The boundary line of the nominated area may be interrupted by jurisdictional boundaries, such as State or county lines, or natural boundaries, such as rivers, as long as the resulting area is entirely within the boundary line except for the interruptions.

(ii) The nominated area may enclose an area or areas that are excluded from the nominated area, as long as each enclosed area to be excluded is within a continuous boundary line.

(3) The nominated area may be any size, as long as it meets all of the requirements of this part.

(b) *Population requirements.*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, a nominated area must have a population of not more than 200,000 and at least:

(i) 4,000 if any portion of the area (other than a nominated rural area) is located within an MA which has a population of 50,000 or greater; or

(ii) 1,000 in any other case.

(2) *Nominated areas on Indian reservations.* A nominated area that is entirely within an Indian reservation (as determined by the Secretary of the Interior) is not subject to the population requirements of paragraph (b)(1) of this section.

§ 599.105 Economic condition requirements for a nominated area.

(a) *Certification for economic requirements.* An official or officials authorized to do so by the nominating State and local governments must certify in writing for HUD's acceptance that the nominated area is an area of pervasive poverty, unemployment, and general distress, and that the nominated area meets the requirements of paragraphs (b), (c) and, in the case of urban areas, paragraph (d) of this section. HUD's acceptance of the certification is subject to a review of data supporting the certification, as provided in paragraph (e) of this section.

(b) *Unemployment requirement.* A nominated area meets the unemployment requirement if the unemployment rate in the nominated area taken as a whole was at least one and one-half times (150% of) the national unemployment rate for the period to which such data relate.

(c) *Poverty requirement.* A nominated area meets the poverty requirement if the poverty rate for each population census tract within the nominated area is at least 20 percent. In the case of a nominated area that is within an Indian reservation, and cannot equivalently be described with census tracts, the poverty rate of the nominated area taken as a whole is considered for purposes of making this determination.

(d) *Income requirement for urban areas.* In the case of a nominated urban area, at least 70 percent of the households living in the nominated area must have incomes below 80 percent of the median income of households within the jurisdiction of the local government or governments in which the nominated area is located. The number of households below 80 percent of the median income in each census tract shall be the number of households with incomes below 80 percent of the Household Adjusted Median Family Income (HAMFI) in each census tract as determined by HUD.

(e) *HUD review of supporting data.*—(1) *Unemployment, poverty and income.* HUD will review 1990 census data to determine whether to accept a certification that a nominated area meets the requirements of paragraphs (b), (c) and (d) of this section.

(2) *Pervasive poverty, unemployment and general distress.*—(i) *Pervasive poverty.* Pervasive poverty is demonstrated by evidence that:

(A) Poverty, as indicated by the number of persons listed as being in poverty in the 1990 Decennial Census, is widespread throughout the nominated area; or

(B) Poverty, as described in paragraph (e)(2)(i)(A) of this section, has become entrenched or intractable over time (through comparison of 1980 and 1990 census data or other relevant evidence).

(ii) *Unemployment.* Unemployment is demonstrated by:

(A) The most recent data available indicating that the annual rate of unemployment for the nominated area is not less than the national annual average rate of unemployment; or

(B) Evidence of especially severe economic conditions, such as military base or plant closings or other conditions that have brought about significant job dislocation within the nominated area.

(iii) *General distress.* General distress is evidenced by describing adverse conditions within the nominated urban area other than those of pervasive poverty and unemployment. Below average or decline in per capita income, earnings per worker, number of persons on welfare, per capita property tax base, average years of school completed, substantial population decline, and a high or rising incidence of crime, narcotics use, homelessness, high incidence of AIDS, abandoned housing, deteriorated infrastructure, school dropouts, teen pregnancy, incidence of domestic violence, incidence of certain health conditions and illiteracy are examples of appropriate indicators of general distress.

§ 599.107 Required State and local commitments.

(a) *Commitment to a course of action.*—(1) *Agreement of State and local governments.* The nominating State and local governments must agree in writing that, for any period during which the area is a Renewal Community, the governments will follow a specified course of action which meets the requirements of paragraph (a)(2) of this section. If each nominating State and local government is a signatory to a course of action under paragraph (a)(2) of this section, a separate written agreement is not necessary to meet the requirements of this paragraph.

(2) *Course of action requirements.*—(i) *In general.* A course of action is a written document, signed by the nominated area's State and/or local governments and community-based organizations which commits each signatory to undertake and achieve measurable goals and actions within the nominated area upon its designation as a Renewal Community.

(ii) *Community-based organizations.* For purposes of the course of action, "community-based organizations" includes for-profit and non-profit private entities, businesses and business organizations, neighborhood organizations, and community groups. Community-based organizations are not required to be located in the nominated area as long as they commit to achieving the goals of the course of action in the Renewal Community.

(iii) *Timetable.* The course of action must include a timetable that identifies the significant steps and target dates for implementing the goals and actions.

(iv) *Performance measures.* The course of action must include a description of how the performance of the course of action will be measured and evaluated.

(v) *Required goals and actions.* The course of action must include at least four of the following:

(A) A reduction of tax rates or fees applying within the Renewal Community;

(B) An increase in the level of efficiency of local services within the Renewal Community, such as services for residents funded through the Federal

Temporary Assistance for Needy Families program and related Federal programs including, for example, job support services, child care and after school care for children of working residents, employment training, transportation services and other services that help residents become economically self-sufficient;

(C) Crime reduction strategies, such as crime prevention, including the provision of crime prevention services by nongovernmental entities;

(D) Actions to reduce, remove, simplify, or streamline governmental requirements applying within the Renewal Community, such as:

(*1*) *Density bonus.* Permission to develop or redevelop real property at a higher density level than otherwise permitted under the zoning ordinance, e.g., increased height or increased number of residential or business units;

(*2*) *Incentive zoning.* Providing a density bonus or other real property-related incentive for the development, redevelopment, or preservation of a parcel in the designated area;

(*3*) *Comprehensive or one-stop permit.* Streamlining construction or other development permitting processes, rather than requiring multiple applications for multiple permits, e.g., for demolition, site preparation, and construction, the developer or redeveloper submits a single application that is circulated for the necessary reviews by the various planning, engineering, and other departments in the county or municipality;

(*4*) *Variance and exception policies.* Counties or municipalities may pass ordinancesthat permit variances to or exceptions from certain zoning or other land use limitations. Examples include a reduced building set-back requirement or a reduced requirement for the provision of parking. Thepolicy may be limited to a particular geographic area;

(*5*) *Voluntary environmental compliance program.* A shared or limited environmental liability program, with limited liability from certain legal or administrative action in exchange for undertaking an approved program of environmental investigation, hazard control, and on-going risk reduction activities. Typically, the liability limitation is for future environmental cleanup (and not against lawsuit for damages). Risk of cleanup may be shared by the developer or property owner and the government;

(E) Involvement in economic development activities by private entities, organizations, neighborhood organizations, and community groups, particularly those in the Renewal Community, including a commitment from such private entities to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents from the Renewal Community;

(F) The gift or sale at below fair market value of surplus real property held by State or local governments, such as land, homes, and commercial or industrial structures in the Renewal Community to neighborhood organizations, community development corporations, or private companies.

(3) *Certification requirement for crime incidence.* If preference points are being sought for the nominated area because it qualifies for preference points in accordance with § 599.303(c)(1), the course of action must contain a certification by each nominating State and local government of the 1999 Local Crime Index rate per 100,000 inhabitants (LCI) determined for the nominated area. The offenses used in determining the LCI are the violent crimes of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault, and the property crimes of burglary, larceny-theft, motor vehicle theft, and arson.

(b) *Economic growth promotion requirements.*—(1) *Required certification.* The State and local governments in which a nominated area is located must certify in writing that they have repealed or reduced, will not enforce, or will reduce within the nominated area at least four of the following:

(i) Licensing requirements for occupations that do not ordinarily require a professional degree;

(ii) Zoning restrictions on home-based businesses which do not create a public nuisance;

(iii) Permit requirements for street vendors who do not create a public nuisance;

(iv) Zoning or other restrictions that impede the formation of schools or child care centers; and

(v) Franchises or other restrictions on competition for businesses providing public services, including taxicabs, jitneys, cable television, or trash hauling.

(2) *Exception.* The requirements of paragraph (b)(1) of this section do not apply to the extent that a regulation of businesses and occupations is necessary for and well-tailored to the protection of health and safety. The certifications required under paragraph (b)(1) of this section may be limited to exclude or include specific businesses and occupations.

(c) *Recognition of past efforts.* The course of action and economic growth requirements under paragraphs (a) and (b), respectively, of this section are not limited to future goals and actions. Past efforts within the previous eight years, either completed or on-going, of the nominating State or local governments to undertake any of the goals or actions listed in paragraph (a)(2)(v) or (b)(1) of this section qualify to meet these requirements. If past efforts are used, the nominating governments must identify which of the required goals and actions listed in paragraph (a)(2)(v) or (b)(1) of this section they address; the timetable for their continued implementation, if on-going; and the community-based organizations involved, if any.

Subpart C—Procedures for Nomination of Renewal Communities

§ 599.201 Initiation of application process.

(a) *Federal Register notice.* To initiate the nomination process for Renewal Communities, HUD will publish a notice inviting applications for the designation of Renewal Communities in the **Federal Register**.

(b) *Contents.* The notice inviting applications will include specific information as to due dates and submission requirements.

§ 599.203 Basic application submission requirements.

The basic application submission requirements for nominating an area as a Renewal Community are:

(a) *Identification of the nominated area.* An application must identify the census tracts that constitute the nominated area. The nominated area must meet all of the eligibility requirements of subpart B of this part.

(b) *State and local commitments.* An application must include the documents evidencing compliance with State and local commitments required by § 599.107.

(c) *Public notice certification.* An application must include a certification, signed by a responsible official or employee of each nominating State and local government, that the public was provided notice of, and an opportunity to participate in, the application development process. Notice and opportunity to participate may include procedures such as placing announcements in newspapers or other media, holding public meetings, and soliciting comments.

Subpart D—Evaluation of Applications Nominating Renewal Communities

§ 599.301 Initial determination of threshold requirements.

(a) *Two threshold requirements.* Before rating and ranking an

application, HUD will review it to determine if the application meets both of the following thresholds:

(1) *Eligibility of the nominated area.* This threshold is met if HUD determines that the nominated area as identified in the application meets all of the area eligibility requirements of subpart B of this part.

(2) *Adequacy of State and local commitments.* This threshold is met if HUD determines that the documents in the application evidencing compliance with the required State and local commitments meet all of the course of action and economic growth promotion requirements of § 599.107.

(b) *Failure to meet threshold requirements.*—(1) *No rating or ranking.* An application that does not meet both of the threshold requirements by the application due date specified in the published notice inviting applications will not be rated or ranked for further Renewal Community consideration.

(2) *Opportunity to correct failure.* HUD will notify an applicant of the threshold deficiencies in its application. An applicant may submit additional information and take any other action required to correct the deficiencies and meet the threshold requirements until the due date for applications specified in the published notice inviting applications.

§ 599.303 Rating of applications.

(a) *In general.* Each application that qualifies by meeting the threshold requirements will receive a score based on its ranking, as described in paragraph (b) of this section, plus any preference points, as described in paragraph (c) of this section.

(b) *Ranking score.* Each nominated area meeting the minimum thresholds will be ranked from highest to lowest according to the area poverty rate, area unemployment rate, and for urban areas, the percentage of families below 80 percent of area median income. Urban nominated areas will be ranked separately from rural nominated areas. The percentile rank will be determined by dividing these rankings by the total number of nominated areas ranked and multiplying the result by 100. The average ranking will be determined by computing the simple average of the percentile ranks for each nominated area. To create a 100 point scale, the average rankings will be subtracted from 100.

(c) *Preference points.*—(1) *Incidence of crime.* A nominated area may receive a maximum of 1, 2, or 4 crime incidence preference points as follows:

(i) *Number of points awarded.* A nominated area will receive 1 additional point if its 1999 Local Crime Index (LCI), as determined on the basis of data from each State and local law enforcement authority with jurisdiction in the nominated area, does not exceed by more than 25% the nation-wide 1999 Crime Index rate per 100,000 inhabitants (CI) prepared as part of the FBI's Uniform Crime Reporting (UCR) Program. A preference of 2 points will be added to the score of a nominated area with an LCI that does not exceed the CI by more than 10 percent. A nominated area that has an LCI that is less than the CI will receive 4 preference points.

(ii) *Qualifying for preference points.* To qualify for preference points based on the incidence of crime, the nominating governments must determine and then certify to the LCI determined for the nominated area, in accordance with § 599.107(a)(3)

(2) *Preference points for certain census tracts.* A nominated area will receive one preference point if any of its census tracts is a census tract identified in GAO Report RCED–98–158R, dated May 12, 1998. (The GAO Report is available from U.S. General Accounting Office, P.O. Box 37050, Washington, DC 20013 or http://www.gao.gov.)

Subpart E—Selection of Nominated Areas To Be Renewal Communities

§ 599.401 Ranking of applications.

(a) *Ranking order.* Rural and urban applications will be ranked according to their final scores as determined in accordance with § 599.303, with the highest scoring applications ranked first.

(b) *Separate ranking categories.* After initial ranking, both rural and urban applications will be separated into two ranking categories:

(1) *Category 1.* Applications for designation of nominated areas that are Enterprise Communities or Empowerment Zones will be placed into Category 1 in rank order.

(2) *Category 2.* Applications for designation of nominated areas that are not placed into or selected from Category 1 will be placed into Category 2 in rank order.

§ 599.403 Number of Renewal Communities to be designated.

(a) *In general.* Except as provided in paragraph (b) of this section, the total number of Renewal Communities to be designated and the distribution of designations between urban and rural areas are as follows:

(1) *Total number.* The total number of nominated areas to be selected for designation as Renewal Communities is 40.

(2) *Rural areas.* HUD will select at least 12 rural areas for designation as Renewal Communities. If HUD does not receive at least 12 eligible rural area applications for Renewal Community designation, the number of rural area designations will be the number of eligible rural area applications received by HUD.

(3) *Urban areas.* The number of urban areas selected for designation as Renewal Communities will be the number remaining after subtracting the number of rural areas selected from 40.

(b) *Less than 40 eligible applications.* If HUD receives fewer than 40 eligible applications nominating areas, the total number of nominated areas to be selected for designation as Renewal Communities will be the total number of eligible applications.

§ 599.405 Selection of Renewal Communities.

(a) *Selection of Category 1 applications.* (1) *Six or less rural nominations.* If there are six or fewer Category 1 rural area nominations, HUD will select all of the nominated rural areas in Category 1 for designation as Renewal Communities. HUD will then select the highest ranking Category 1 urban area nominations, but will not exceed a total of 20 Category 1 designations.

(2) *More than six rural nominations.* If there are more than six Category 1 rural area nominations, HUD will select the six highest ranked Category 1 rural applications, and will then select, in rank order, the highest ranking Category 1 area nominations, whether urban or rural, until not more than a total of 20 Category 1 designations is made.

(b) *Selection of Category 2 applications.* After not more than 20 Category 1 designations are made in accordance with paragraph (a) of this section, any remaining Category 1 applications will be placed back in rank order into Category 2, with selections for a combined Category 1 and Category 2 total of not more than 40 designations made as follows:

(1) *Less than six Category 1 rural applications.* If the number of rural area applications selected in Category 1 is less than six, HUD will select the highest ranking rural area applications in Category 2 until the total number of rural areas selected is 12. The remaining designations will be made from both rural and urban areas in rank order. If there are fewer than 12 eligible rural applications overall, counting both Category 1 and Category 2, all of the eligible rural applications will be selected.

(2) *Six or more Category 1 rural applications.* If the number of rural area applications selected in Category 1 is six or more, HUD will select the six highest Category 2 rural applications. The remaining designations will be made from both rural and urban areas in rank order.

(c) *Effective date of designation.* The effective date of designation as a Renewal Community is the date a nominated area is selected in accordance with this section.

§ 599.407 Notification of Renewal Community designations.

(a) *Notification of applicant.* HUD will notify each applicant of the designation of its nominated area as a Renewal Community.

(b) *Federal Register publication.* In addition to any other form of notification, HUD will publish a notice of the designation of Renewal Communities in the **Federal Register**.

Subpart F—Post-Designation Requirements

§ 599.501 Period for which Renewal Community designation is in effect.

Any designation of an area as a Renewal Community will remain in effect during the period beginning on January 1, 2002, and ending on the earliest of:

(a) December 31, 2009;

(b) The termination date designated by the State and local governments in their nomination application, if any; or

(c) The date HUD revokes the designation.

§ 599.503 Effect of Renewal Community designation on an EZ/EC.

The designation of any area as an Empowerment Zone or Enterprise Community shall cease to be in effect as of the date that the designation of any portion of such area as a Renewal Community takes effect.

§ 599.505 Coordinating responsible authority (CoRA).

Within 30 days of the Renewal Community designation, the State and local governments in which the area is located must submit to HUD information identifying the coordinating responsible authority (CoRA), which is the entity, organization or persons with the responsibility and authority to achieve the State and local government commitments made at the time of application as required by § 599.107 and to undertake the development and administration of policies, procedures and activities to implement and maximize the Federal, State and local benefits made available in the Renewal Community.

§ 599.507 Tax incentives utilization plan.

(a) *Preliminary plan.* Within six months of designation, the CoRA must prepare and submit to HUD a preliminary tax incentives utilization plan for achieving the State and local commitments made at the time of application as required by § 599.107 and implementing and maximizing the Federal, State and local benefits made available in the Renewal Community.

(b) *Final plan.* Within twelve months of designation, the CoRA must prepare and submit to HUD the final tax incentives utilization plan for achieving the State and local commitments made at the time of application as required by § 599.107 and implementing and maximizing the Federal, State and local benefits made available in the Renewal Community.

(c) *Community participation.* The CoRA must ensure that the preliminary and final tax incentives utilizations plans are developed with the participation of the residents and community organizations in the Renewal Community.

(d) *Coordination with Consolidated Plan and Indian Housing Plan.* The tax incentives utilization plan must include a certification that it is consistent with the Consolidated Plan prepared in accordance with 24 CFR part 91 or the Indian Housing Plan prepared in accordance with 24 CFR part 1000, as applicable.

(e) *HUD technical assistance.* HUD will provide technical assistance as authorized to assist the CoRA in preparing the required tax incentives utilization plans.

§ 599.509 Modification of commitments and plans.

The CoRA may submit requests to HUD to modify the State and local commitments made at the time of application as required by § 599.107 and the tax incentives utilization plans required by § 599.505. Requests must provide evidence to support the proposed modifications. HUD will review the proposed modification for consistency with regulatory and statutory requirements and approve, suggest additional or alternate modifications or deny the request within 30 days.

§ 599.511 Reports and other information.

The CoRA and the State or local governments in which the Renewal Community is located must submit such periodic reports and provide such additional information as HUD may require.

§ 599.513 Revocation of designation.

(a) *Basis for revocation.* HUD may revoke the Renewal Community designation of an area if HUD determines that the CoRA or the State or local governments in which the area is located:

(1) Have modified the boundaries of the area; or

(2) Are not complying substantially with, or fail to make progress in achieving the State and local commitments made at the time of application as required by § 599.107.

(b) *Letter of warning.* Before revoking the Renewal Community designation of an area, HUD will issue a letter of warning to the CoRa and the State and local governments in which the area is located, with a copy to all affected Federal agencies of which HUD is aware:

(1) Advising that HUD has determined that the CoRA and/or State and/or local governments in which the area is located have:

(i) Modified the boundaries of the area without written approval from HUD; or

(ii) Are not complying substantially with, or have failed to make progress in achieving the State and local commitments made at the time of application as required by § 599.107; and

(2) Requesting a reply from the CoRa and State and local governments in which the area is located within 90 days of the receipt of this letter of warning.

(c) *Notice of revocation.* To revoke the designation, HUD must issue a final notice of revocation of the designation of the area as a Renewal Community, after allowing 90 days from the date of receipt of the letter of warning for response, and after making a determination in accordance with paragraph (a) of this section.

(d) *Notice to affected Federal agencies.* HUD will notify all affected Federal agencies of which it is aware, of its determination to revoke any designation in accordance with this section.

(e) *Effect of revocation.* Upon revocation of a Renewal Community designation, the designation and applicable benefits cease to be available in the area.

(f) *Publication.* The final notice of revocation of designation will be published in the **Federal Register**, and the revocation will be effective on the date of publication.

Dated: June 14, 2001.

Mel Martinez,

Secretary.

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Federal Register

Monday,
July 9, 2001

Part V

Department of Education

Office of Vocational and Adult Education; Tech-Prep Demonstration Program (TPDP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001; Notice

DEPARTMENT OF EDUCATION

[CFDA No: 84.353]

Office of Vocational and Adult Education; Tech-Prep Demonstration Program (TPDP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Summary: The Secretary invites applications for new awards of FY 2001 funds under the Tech-Prep Demonstration Program (TPDP) authorized by section 207 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III) (20 U.S.C.A. 2301 *et seq.*), and announces deadline dates for the transmittal of applications for funding under that program authority.

Purpose of Program: TPDP provides grants to enable consortia described in section 204(a) of Perkins III to carry out tech-prep education projects that involve the location of a secondary school on the site of a community college, a business as a member of the consortium, and the voluntary participation of secondary school students.

Eligible Applicants: To be eligible for funding under the TPDP, a consortium must include at least one member in each of the following three categories:

(1) a local educational agency, an intermediate educational agency, an area vocational and technical education school serving secondary school students, or a secondary school funded by the Bureau of Indian Affairs;

(2) (a) a nonprofit institution of higher education that offers a 2-year associate degree, 2-year certificate, or 2-year postsecondary apprenticeship program, or (b) a proprietary institution of higher education that offers a 2-year associate degree program; and

(3) a business.

Under the provisions of section 204(a)(1) of Perkins III, to be eligible for consortium membership both nonprofit and proprietary institutions of higher education must be qualified as institutions of higher education pursuant to section 102 of the Higher Education Act of 1965 (HEA), including institutions receiving assistance under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) and tribally controlled postsecondary vocational and technical institutions.

In addition, nonprofit institutions of higher education are eligible only if they are not prohibited from receiving assistance under HEA, title IV, part B (20 U.S.C. 1071 *et seq.*), pursuant to the provisions of HEA section 435(a)(3) (20 U.S.C. 1083(a)). Proprietary institutions of higher education are eligible only if they are not subject to a default management plan required by the Secretary.

Applicants must submit a copy of the consortium agreement, as well as evidence that each of the required categories of membership has been satisfied and that each of the required members is eligible for membership under the provisions of Perkins III.

Under the provisions of section 204(a)(2), consortia also may include one or more: (1) institutions of higher education that award baccalaureate degrees; (2) employer organizations; or (3) labor organizations.

Note: Eligible consortia seeking to apply for funds should read and follow the regulations in 34 CFR 75.127–75.129, which apply to group applications.

Deadline for Transmittal of Applications: September 17, 2001.

Deadline for Intergovernmental Review: November 16, 2001.

Project Period: 36 months.

Applicants under this competition are required to provide detailed budget information for each year of the proposed project and for the total grant requested. The Department will negotiate funding levels for each 12-month period of the grant at the time of the initial award.

Note: The Secretary has concluded that entire, multi-year projects funded by three-year awards will be necessary for TPDP grantees to fully meet the statutory purposes of section 207 and the requirements of this notice.

By definition, tech-prep is designed to prepare students enrolled in career-technical education at the secondary level to graduate from high school and make a successful transition to postsecondary occupational-technical education and high skills, high wage employment.

As outlined in this notice, three-year funding will permit grantees to devote up to nine months to planning and program development, to enroll a cohort of voluntary student participants for a full two years at the secondary level, and then to follow and evaluate their transition to postsecondary education and employment for at least six months after graduation.

Available Funds: $5,000,000.

Note: The Secretary may reserve up to $50,000 from these funds for the peer review of applications.

Estimated Range of Awards: $400,000 to $600,000 for the 36-month project period.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Applicable Statute and Regulations

(a) The relevant provisions of Perkins III, including:

(1) Section 202 (Definitions of Articulation Agreement, Community College, and Tech-Prep Education Program).

(2) Section 207 (Demonstration Program).

(3) The relevant portions of sections 204 (Tech-Prep Education) and 205 (Consortium Applications).

(4) Section 3 (Definitions, except for terms defined in section 202).

(5) Section 311(a) (Supplement Not Supplant).

(6) Section 314 (Voluntary Selection and Participation).

(7) Section 315 (Limitation for Certain Students (prior to the seventh grade)).

(8) Section 316 (Federal Laws Guaranteeing Civil Rights).

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements to Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(9) 34 CFR part 97 (Protection of Human Subjects).

(10) 34 CFR part 98 (Student Rights in Research, Experimental Programs and Testing).

(11) 34 CFR part 99 (Family Education Rights and Privacy).

Description of the Program

Program Requirements

Title II of Perkins III authorizes a State-administered grant program to

support Tech-Prep Education: coherent, non-duplicative, vocational-technical programs of study that meet specific criteria set forth in sections 202(a)(3) and 204(c) of Perkins III. Spanning at least two years each at the secondary and postsecondary levels, and leading to an associate degree or certificate and a high skills, high wage career, tech-prep represents the most comprehensive educational strategy preparing students for entry into the non-baccalaureate sectors of the labor market, particularly the technician/technologist sector.

Section 207 authorizes TPDP projects demonstrating a particular form of tech-prep. Under the TPDP, the Secretary awards grants to eligible consortia to enable them to carry out tech-prep education projects that involve a secondary school located on the site of a community college, a business as a member of the consortium, and the voluntary participation of secondary school students in the program.

In addition, as required by sections 207(b) and 207(d), funded TPDP projects must meet all of the requirements of the Perkins III State-administered Tech-Prep Education Program in general (with the exception of articulation agreements with 4-year institutions of higher education), as set forth in sections 202(3) and 204(c) of Perkins III, and modified by section 207(d)(2).

See Appendix B for the key applicable legal requirements for Tech-Prep Education projects supported under section 207 of Perkins III.

Competition Requirements

The educational community has exhibited considerable interest in the growing number of pilot projects and other initiatives involving secondary schools located on the campuses of community colleges. The campus location enables these schools to improve the quality of teaching and learning by tapping into the resources of community colleges. Students are able to take advantage of the advanced technology, quality skill training facilities, rich curriculum, career guidance and academic counseling services, employer connections, and preparation for further education and lifelong learning that are the hallmarks of the U.S. community college system.

Projects that involve the "virtual" location of a secondary school on the site of a community college, as well as projects that involve satellite community college sites located on the premises of secondary schools, are not eligible for support under this competition. This is consistent with the existing literature about the "middle college" co-location program format, which suggests that the physical presence of secondary school students on the campus of a community college can have a positive impact on their morale, commitment to learning, and likelihood of successfully graduating from high school and transitioning to postsecondary education.

To ensure the high quality of TPDP projects assisted under this competition, and the achievement of the purposes of section 207 of Perkins III, the Secretary establishes the following additional program requirements. The requirements apply to all applicants seeking funding under this competition.

(1) *Planning and Implementation:* Each TPDP project must implement the full, two-year secondary component of a tech-prep program of study during the period of funding under this competition. Student participation in TPDP projects assisted under this competition must begin no later than the fall term of 2002. The Secretary expects to award grants in January of 2002.

Applicants may propose to devote up to nine months to planning, program development, and student recruitment and enrollment, depending on the actual dates that grants are awarded and fall terms begin.

(2) *Evaluation:* Each TPDP project assisted under this competition must follow participating secondary students for at least six months after graduation and evaluate their transition to the two-year postsecondary component of the tech-prep program, other postsecondary education programs, or to employment.

A central focus of the project evaluation must be an assessment of the academic and related outcomes of participating students, including student academic and technical skill achievement, high school graduation, enrollment, and, to the extent feasible, persistence, and success in postsecondary education, and labor market entry, in comparison with those of similar students who pursued other programs of study.

In addition to being consistent with the Perkins III requirement that recipients measure levels of performance of their vocational and technical programs, this notice is harmonious with the Department's promotion of accountability and performance measures under the Government Performance and Results Act (GPRA). (Applicants should read and follow the regulations in 34 CFR 75.590–75.592, which further describe grantee evaluation requirements.)

Note: The specific requirements of GPRA are discussed in Appendix A of this notice.

(3) *Reporting:* For each year of project activity and at the conclusion of Federal funding, grantees must submit to the Secretary an annual performance report that: summarizes project progress and significant accomplishments, both with respect to the process of implementation and the outcomes of student participation; identifies any barriers to continued progress and outlining solutions; reviews prospects for sustained operations after the cessation of Federal support; highlights opportunities for replication and specifies implications for future research and practice. TPDP projects are also subject to the State performance accountability system established under section 113 of Perkins III and will report separately to the State eligible agency for Perkins III, following the procedures and requirements established by that agency.

Allowable Activities and Expenditures

Section 207(b)(2) specifies that TPDP projects may provide summer internships at a business for students or teachers. Other allowable activities and expenditures for TPDP projects include, but are not limited to: staff recruitment, selection, and hiring; acquisition of tech-prep program equipment; negotiation, ratification, and updating of articulation agreements; curriculum design; professional development for secondary and postsecondary faculty, counselors, and administrators; development and maintenance of business and industry partnerships; and recruitment and enrollment of students.

Section 207 gives applicants broad latitude for innovation and experimentation in terms of both the institutional framework of the tech-prep demonstration program and the program model to be carried out.

For example, although tech-prep education by definition includes at least two years of education at the secondary level preceding high school graduation and two years of postsecondary education or apprenticeship training, section 204(c)(3)(B) authorizes tech-prep programs that allow students to concurrently complete both secondary and postsecondary courses, and simultaneously satisfy requirements for a high school diploma and an associate degree or other postsecondary credential.

The Secretary recommends that applicants consult with appropriate State agencies in developing their applications, including, particularly, the State eligible agency responsible for administering Perkins III.

Unallowable Costs

(1) *Supplanting.* In accordance with section 311(a) of Perkins III, funds under this program may not be used to supplant non-Federal funds used to carry out vocational and technical education activities and tech-prep activities. Further, the prohibition against supplanting also means that grantees are required to use their negotiated restricted indirect cost rate under this program. (34 CFR 75.563).

Because of the statutory prohibition against supplanting, the Secretary cautions applicants not to plan to use Federal funds awarded under section 207 to replace non-Federal funding already available for support of the TPDP projects to be assisted.

Further, the Secretary is concerned that TPDP funds may be used to replace Federal student financial aid. The Secretary wishes to highlight the fact that the statute does not authorize the Secretary to fund projects that serve primarily as entities through which students may apply for and receive tuition and other financial assistance.

(2) *Limitation on services.* Section 315 of Perkins III prohibits the use of funds received under the Act to provide vocational and technical education programs to students prior to the seventh grade.

(3) *Construction.* Under EDGAR (34 CFR 75.533), TPDP grants cannot be used for the acquisition of real property or construction.

(4) *Articulation Agreements with Four-Year Institutions.* Under the provisions of section 207(d), tech-prep articulation agreements with four-year institutions cannot be supported with funds awarded under section 207. However, articulation agreements with four-year institutions can be developed using other resources by applicants who wish to establish "open-ended" tech-prep career pathways. Also, the inclusion of institutions of higher education that award baccalaureate degrees in TPDP consortia is allowable under section 204(a)(2)(A).

Special Considerations

In addition to the points to be awarded to applicants based on the selection criteria, under section 207(d)(3) of Perkins III the Secretary awards 5 additional points to applications that:

(1) Provide for effective employment placement activities;

(2) Effectively address the issues of school dropout prevention and reentry, as well as the needs of special populations;

(3) Provide education and training in career areas or skills in which there are significant workforce shortages, including the information technology industry; and

(4) Demonstrate how tech-prep programs will help students meet high academic and employability competencies.

Invitational Priorities

The Secretary is particularly interested in applications that, within the program requirements for this competition, meet one or both of the following invitational priorities. Under 34 CFR 75.105(c)(1), the Secretary does not give an application that meets invitational priorities a competitive or absolute preference over other applications.

Invitational Priority 1: Applications that propose innovative methods for providing inservice training for teachers, counselors, and administrators at the secondary and postsecondary levels, particularly methods that both emphasize and exemplify best practices in contextual teaching and learning.

Invitational Priority 2: Applications that propose to offer high quality paid work-based learning opportunities to all participants, and to award portable, industry-validated skill certificates.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The Secretary awards a total possible score of 100 criteria points. The maximum possible score for each criterion is indicated in parentheses.

(a) *Quality of the project design.* (35 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project presents a comprehensive, detailed, and credible plan to implement all of the required elements of tech-prep education programs specified in sections 202(3) and 204(c)(1)–(3) of Perkins III (see Appendix B);

(ii) The extent to which that plan provides for all of the required services for tech-prep teachers, counselors, and participants, including members of special populations, specified in section 204(c)(4)–(7), including the academic and career counseling and employment placement training required by Section 204(c)(5).

(iii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project support the purposes of section 207—the demonstration of tech-prep education programs involving the location of a secondary school on the site of a community college, a business as a member of the consortium, and the voluntary participation of secondary school students—and are clearly specified and measurable.

(iv) The extent to which the required members of the consortium under sections 204(a) and 207 have been involved with the design of the proposed project and have made a formal commitment to its implementation.

(v) The extent to which the business member or members of the consortium or other employers have agreed to provide opportunities for structured work-based learning, combining both academic and vocational-technical knowledge and skills and integrated into the tech-prep curriculum, such as summer internships for students and/or teachers as authorized under section 207(b)(2).

(b) *Quality of the management plan.* (20 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the management plan describes the role of each consortium member in achieving the objectives of the proposed project.

(iii) The extent to which the time commitments of the project director and other key personnel are appropriate and adequate to meet the objectives of the proposed project.

(c) *Quality of project personnel.* (15 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director.

(ii) The qualifications, including relevant training and experience, of key project personnel, including faculty, counselors, administrators, project consultants, and subcontractors.

(d) *Adequacy of resources.* (10 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the participating institutions.

(ii) The extent to which the budget is adequate to support the proposed project.

(iii) The extent to which the costs are reasonable in relation to the objectives and design of the proposed project.

(iv) The level of demonstrated commitment of each consortium member to the implementation and success of the proposed project.

(v) The potential for continued and sustained support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(e) *Quality of the project evaluation.* (20 points)

(1) The Secretary considers the quality of the evaluation to be conducted by an independent evaluator of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the proposed evaluation will collect and analyze a comprehensive set of academic and related outcomes of participating students, including: academic and technical skill achievement; high school graduation; enrollment, and, to the extent feasible, persistence and success in postsecondary education; and labor market entry.

(ii) The extent to which the proposed evaluation will use rigorous, scientifically accepted methods to assess the effectiveness of the project, including experimental or quasi-experimental methods in which program participants are matched with non-participants that possess similar pre-program characteristics (e.g., attendance, academic and technical skill results, grade point average, socioeconomic status), and outcomes for both groups are documented and compared.

(iii) The extent to which the proposed evaluation will produce qualitative data that describes the implementation of the project and the experiences of the students.

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedures established in each State under the Executive order.

If you want to know the name and address of any State Single Point of Contact (SPOC), you may view the latest SPOC list on the OMB web site at the following address:

http://www.whitehouse.gov/omb/grants/spoc.html.

In States that have not established a process or chosen a program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, area-wide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA #84.353, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW, Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.

Waiver of Rulemaking

It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA) exempts from formal rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). The program authority for the TPDP was newly established on October 31, 1998, by Public Law 105–332, and this is the first grant competition under that authority. The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards. These requirements will apply only to the FY 2001 grant competition.

Instructions for Transmittal of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

The U.S. Department of Education is expanding its pilot project of electronic submission of applications to include certain formula grant programs, as well as additional discretionary grant competitions. The TPDP under section 207 Perkins III is one of the programs included in the pilot project. If you are an applicant for TPDP funding, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.

• You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.

• You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information-Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Fax a signed copy of the Application for Federal Assistance (ED 424) after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center within three working days of submitting your electronic application. We will indicate a fax number in e-APPLICATION at the time of your submission.

• We may request that you give us original signatures on all other forms at a later date.

• You may access the electronic grant application for the TPDP at: *http://e-grants.ed.gov*.

For additional information about the e-APPLICATION pilot project, see *Parity Guidelines between Paper and Electronic Applications*, below.

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(A) If You Send Your Application by Mail:

You must mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.353, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(B) If You Deliver Your Application by Hand:

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Eastern Time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.353, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Eastern Time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(C) If You Submit Your Application Electronically:

You must submit your grant application through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m. (Eastern Time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6:00 a.m. until 12:00 midnight (Eastern time) Monday—Friday and 6:00 a.m. until 7:00 p.m. Saturdays.

The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7:00 p.m. (Eastern Time).

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) You must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Education Assistance (ED 424; revised November 12, 1999) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(4) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

Parity Guidelines Between Paper and Electronic Applications

The Department of Education is expanding the pilot project, which began in FY 2000 and allows applicants to use an Internet-based electronic system for submitting applications. This competition is among those that have an electronic submission option available to all applicants. The system, called e-APPLICATION, formerly e-GAPS (Electronic Grant Application Package System), allows an applicant to submit a grant application to us electronically, using a current version of the applicant's Internet browser. To see e-APPLICATION visit the following address: *http://e-grants.ed.gov*.

In an effort to ensure parity and a similar look between applications transmitted electronically and applications submitted in conventional paper form, e-APPLICATION has an impact on all applicants under this competition.

Users of e-APPLICATION, a data driven system, will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

This pilot project is another step in the Department's transition to an electronic grant award process. In addition to e-APPLICATION, the Department is conducting a limited pilot of electronic peer review (e-READER) and electronic annual performance reporting (e-REPORTS).

To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere to the following guidelines:

• Submit your application on 8½″ by 11″ paper.

• Leave a 1-inch margin on all sides.

• Use consistent font throughout your document. You may also use boldface type, underlining, and italics. However, please do not use colored text.

• Please use black ink for illustrations, including charts, tables, graphs and pictures.

• For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page limitation.

• Place a page number at the bottom right of each page beginning with 1, and number your pages consecutively throughout your document.

Application Instructions and Forms

All forms and accompanying instructions are included as Appendix D of this notice. Questions and answers pertaining to this program are included, as Appendix C, to assist potential applicants.

To apply for an award under this program, your application must be organized in the following order and include the following five parts. The parts and additional materials are as follows:

Part I: Application for Federal Education Assistance (ED 424 (Rev. 1/12/99)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Budget Narrative (See instructions in Appendix A).

Part IV: Program Narrative (See instructions in Appendix A).

Part V: Additional Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certification regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014, 9/90) and instructions.

(**Note:** ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions.

No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Chris Lyons, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW (Room 4328, Mary E. Switzer Building), Washington, D.C. 20202–7100. Voice: 202–260–7744; Fax: 202–205–55522; E-mail: christopher.lyons@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed at the beginning of this paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the Internet at the following site:

http://www.ed.gov/legislation/FedRegister

To use PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Additionally, this notice, as well as other documents concerning the implementation of Perkins III, is available on the Internet at the following site:

http://www.ed.gov/offices/OVAE/VocEd/InfoBoard/legis.html.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 2328.

Dated: June 28, 2001.

Jon Weintraub,

Acting Deputy Assistant Secretary, Office of Vocational and Adult Education.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1830–0550. (Expiration date: June 30, 2004). The time required to complete this information collection is estimated to average 50 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

If you have any comments concerning the accuracy of the time estimate, or suggestions for improving this grant application, please write to: U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission under this grant application, write directly to: Christopher D. Lyons, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW (Mary E. Switzer Building, Room 4328), Washington, DC 20202–7100 (e-mail: christopher.lyons@ed.gov).

Appendix A—Instructions

Instructions for Budget Information

Sections A and B—Budget Summary by Categories

(1) Personnel: Show salaries to be paid to personnel for each budget year.

(2) Fringe Benefits: Indicate the rate and amount of fringe benefits for each budget year.

(3) Travel: Indicate the amount requested for both local and out of State ' -avel of Project Staff for each budget year. Include funds for at least one trip per year for two people to attend a Project Directors' Workshop.

(4) Equipment: Indicate the cost of non-expendable personal property that has a cost of $5,000 or more per unit for each budget year.

(5) Supplies: Include the cost of consumable supplies and materials to be used during the project period for each budget year.

(6) Contractual: Show the amount to be used for: (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) subcontracts for each budget year.

(7) Construction: Not Applicable.

(8) Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants and capital expenditures for each budget year.

(9) Total Direct Cost: Show the total for Lines 1 through 8 for each budget year.

(10) Indirect Costs: Indicate the rate and amount of indirect costs for each budget year. Applicants must use a restricted indirect cost rate.

(11) Training/stipend Cost: Not applicable. This item pertains only to student and institutional allowances.

(12) Total Costs: Show total for lines 9 through 11 for each budget year.

Instructions for Budget Narrative

The budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs. Please be sure that each page of the budget narrative is numbered consecutively.

Instructions for Program Narrative

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, why, and how, of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is based on the special consideration and selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection

criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and EDGAR regulations governing this program, and the eligibility requirements, priorities, special consideration criteria, and the selection process and criteria.

Your program narrative should be clear, concise, and to the point. The program narrative should be organized in this way:

(1) Begin the narrative with a one page abstract or summary of your project, including a short description of the project's objectives and activities. Provide a short description of the student populations to be served in the proposed project.

(2) Include a table of contents listing the parts of the narrative in the order of the selection criteria and the page numbers where the parts of the narrative are found. Be sure to number the pages.

(3) Describe the project in detail, addressing each selection criterion in order. Do not simply paraphrase the criteria.

(4) If appropriate, describe how the project meets the special considerations.

(5) Attach a consortium agreement delineating the contribution each member intends to make, signed by the appropriate official for each member, and documenting the fact that the three mandatory membership categories have been satisfied.

(6) Applicants may include supporting documentation as appendices to the narrative. This material should be concise and pertinent to the application.

The Secretary suggests that you limit the program narrative to no more than 50 double-spaced, typed pages (on one side only), although both shorter and longer applications will receive full consideration. Be sure to number consecutively ALL pages in your application.

You are advised that—

(a) The Secretary considers only information contained in the application in ranking applications for funding consideration.

(b) The technical review panel evaluates each application solely on the basis of the special consideration and selection criteria contained in this notice.

(c) Letters of support which are included as appendices to an application (and which are of direct relevance to, or contain commitments that pertain to, the established selection criteria) will be reviewed by the panel. Letters of support which are sent separately from the formal application package will not be considered in the panel review. (34 CFR 75.217)

GPRA Performance Measures

The Government Performance and Results Act of 1993 (GPRA) places new management expectations and requirements on Federal departments and agencies by creating a framework for more effective planning, budgeting, program evaluation, and fiscal accountability for Federal programs. The intent of GPRA is to improve public confidence by holding departments and agencies accountable for achieving program results. Under GPRA, Departments and agencies must clearly describe the goals and objectives of their programs, identify resources and actions needed to accomplish these goals and objectives, develop a means of measuring progress made, and regularly report on their achievement.

One important source of program information on successes and lessons learned is the project evaluation conducted under individual grants.

Factors that may be considered in evaluating the success of TPDP projects may include:

(1) Number of students who participate in TPDP projects;

(2) Number and percent of participating students who master high level academic and technical skills;

(3) Number and percent of participants who receive a high school diploma or GED;

(4) Number and percent of participants who enroll in postsecondary education;

As specified in Competition Requirement (2) and Selection Criterion (e), an evaluation plan must be included in each grant application. The application should describe the plan in detail, including such information as: (1) What types of data will be collected; (2) what instruments will be used; (3) when reports of results and outcomes will become available; and (4) how information will be used by the project to monitor progress and provide accountability information to stakeholders.

Appendix B—Key Tech-Prep Education Legal Requirements

This Appendix sets forth the requirements of sections 202, 204, and 207 of Perkins III. Additional requirements that apply to the TPDP or to this competition are discussed in the notice. This Appendix is provided for the applicant's convenience and is not meant to substitute for a careful reading of all the statutory provisions that are applicable as discussed in the notice. Amendments to section 204 made by section 207 are reflected below.

Title II—Tech-Prep Education

Sec. 202. DEFINITIONS

(a) In this title:

(1) ARTICULATION AGREEMENT—The term "articulation agreement" means a written commitment to a program designed to provide students with a nonduplicative sequence of progressive achievement leading to degrees or certificates in a tech-prep education program.

(2) COMMUNITY COLLEGE—The term "community college"—

(A) means an institution of higher education, as defined in section 101 of the Higher Education Act of 1965, that provides not less than a 2-year program that is acceptable for full credit toward a bachelor's degree; and

(B) includes tribally controlled colleges or universities.

(3) TECH-PREP PROGRAM.—The term "tech-prep program" means a program of study that—

(A) combines at a minimum 2 years of secondary education (as determined under State law) with a minimum of 2 years of postsecondary education in a nonduplicative, sequential course of study;

(B) integrates academic, and vocational and technical, instruction, and utilizes work-based and worksite learning where appropriate and available;

(C) provides technical preparation in a career field such as engineering technology, applied science, a mechanical, industrial, or practical art or trade, agriculture, health occupations, business, or applied economics;

(D) builds student competence in mathematics, science, reading, writing, communications, economics, and workplace skills through applied, contextual academics, and integrated instruction, in a coherent sequence of courses;

(E) leads to an associate or a baccalaureate degree or a postsecondary certificate in a specific career field; and

(F) leads to placement in appropriate employment or to further education.

* * *

Sec. 204. TECH-PREP EDUCATION

(a) GRANT PROGRAM AUTHORIZED—

(1) IN GENERAL— * * *

The grants shall be awarded to consortia between or among—

(A) a local educational agency, an intermediate educational agency or area vocational and technical education school serving secondary school students, or a secondary school funded by the Bureau of Indian Affairs; and

(B)(i) a nonprofit institution of higher education that offers—

(I) a 2-year associate degree program, or a 2-year certificate program, and is qualified as institutions of higher education pursuant to section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002), including an institution receiving assistance under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 et seq.) and a tribally controlled postsecondary vocational and technical institution; or

(II) a 2-year apprenticeship program that follows secondary instruction, if such nonprofit institution of higher education is not prohibited from receiving assistance under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.) pursuant to the provisions of section 435(a)(3) of such Act (20 U.S.C. 1085(a)(3)); or

(ii) a proprietary institution of higher education that offers a 2-year associate degree program and is qualified as an institution of higher education pursuant to section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002), if such proprietary institution of higher education is not subject to a default management plan required by the Secretary.

(2) SPECIAL RULE—In addition, a consortium described in paragraph (1) may include 1 or more—

(A) institutions of higher education that award a baccalaureate degree; and

(B) employer or labor organizations.

* * *

(c) CONTENTS OF TECH-PREP PROGRAM—Each tech-prep program shall—

(1) be carried out under an articulation agreement between the participants in the consortium;

(2) consist of at least 2 years of secondary school preceding graduation and 2 years or more of higher education, or an

apprenticeship program of at least 2 years following secondary instruction, with a common core of required proficiency in mathematics, science, reading, writing, communications, and technologies designed to lead to an associate's degree or a postsecondary certificate in a specific career field;

(3) include the development of tech-prep programs for both secondary and postsecondary, including consortium, participants in the consortium that—

(A) meets academic standards developed by the State;

(B) links secondary schools and 2-year postsecondary institutions . . ., including the investigation of opportunities for tech-prep secondary students to enroll concurrently in secondary and postsecondary coursework;

(C) uses, if appropriate and available, work-based or worksite learning in conjunction with business and all aspects of an industry; and

(D) uses educational technology and distance learning, as appropriate, to involve all the consortium partners more fully in the development and operation of programs;

(4) include in-service training for teachers that—

(A) is designed to train vocational and technical teachers to effectively implement tech-prep programs;

(B) provides for joint training for teachers in the tech-prep consortium;

(C) is designed to ensure that teachers and administrators stay current with the needs, expectations, and methods of business and all aspects of an industry;

(D) focuses on training postsecondary education faculty in the use of contextual and applied curricula and instruction; and

(E) provides training in the use and application of technology;

(5) include training programs for counselors designed to enable counselors to more effectively—

(A) provide information to students regarding tech-prep education programs;

(B) support student progress in completing tech-prep programs;

(C) provide information on related employment opportunities;

(D) ensure that such students are placed in appropriate employment; and

(E) stay current with the needs, expectations, and methods of business and all aspects of an industry;

(6) provide equal access, to the full range of technical preparation programs, to individuals who are members of special populations, including the development of tech-prep program services appropriate to the needs of special populations; and

(7) provide for preparatory services that assist participants in tech-prep programs.

* * *

Sec. 207. DEMONSTRATION PROGRAM.

(a) DEMONSTRATION PROGRAM AUTHORIZED—From funds appropriated under subsection (e) of this section for a fiscal year, the Secretary shall award grants to consortia described in section 204(a) of this title to enable the consortia to carry out tech-prep education programs.

(b) PROGRAM CONTENTS—Each tech-prep program referred to in subsection (a) of this section—

(1) shall—

(A) involve the location of a secondary school on the site of a community college;

(B) involve a business as a member of the consortium; and

(C) require the voluntary participation of secondary school students in the tech-prep education program; and

(2) may provide summer internships at a business for students or teachers.

* * *

Appendix C—Questions and Answers

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants, the Department has assembled the following most commonly asked questions followed by the Department's answers.

Q: Can we get an extension of the deadline?

A: No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and must apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q: If I submit a paper application instead of electronic, how many copies of the application should I submit and must they be bound?

A: Applicants who elect to prepare paper applications are required to submit one original and two copies of the grant application. To aid with the review of applications, the Department encourages paper applicants to submit three additional copies of the grant application. However, the Department will not penalize applicants who do not provide additional copies. Sending applications in notebooks, binders, folders, or other coverings is discouraged.

Q: We just missed the deadline for a particular competition. May we submit under another competition?

A: Yes, however, the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q: I'm not sure which competition is most appropriate for my project. What should I do?

A: We are happy to discuss any such questions with you and provide clarification on the unique elements of the various competitions.

Q: Will you help us prepare our application?

A: We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and priorities. Applicants should understand, however, that prior contact with the Department is not required, nor will it in any way influence the success of an application.

Q: When will I find out if I'm going to be funded?

A: You can expect to receive notification as soon as possible after the application closing date, depending on the number of applications received and the number of Department competitions with similar closing dates.

Q: Once my application has been reviewed by the review panel, can you tell me the outcome?

A: No. Every year we are called by a number of applicants who have a legitimate reason for needing to know the outcome of the panel review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the results of panel review with anyone.

Q: Will my application be returned if I am not funded?

A: No. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of their application.

Q: Can I obtain copies of reviewers' comments?

A: Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q: Is travel allowed under these projects?

A: Travel associated with carrying out the project is allowed. Because we may request the project director of funded projects to attend an annual project directors' meeting, you may also wish to include a trip or two to Washington, DC, in the travel budget. Travel to conferences is sometimes allowed when the purpose of the conference will be of benefit and relates to the project.

Q: If my application receives high scores from the reviewers, does that mean that I will receive funding?

A: Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications reviewed and other relevant factors, determines the applications that can be funded.

Q: What happens during pre-award clarification discussions?

A: During pre-award clarification discussions, technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because an application contains inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all issues under discussion have been resolved.

Q: How do I provide an assurance?

A: Except for SF–424B, "Assurances—Non-Construction Programs," you may provide an assurance simply by stating in writing that you are meeting a prescribed requirement.

Q: Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A: Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 708–8228. When requesting copies of regulations or statutes, it is helpful to use the specific name or public law, number of a statute, or part number of a regulation. A copy of the Code of Federal Regulations that contains the Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99, may be obtained from the Government Printing Office by writing to Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954, or by telephoning (202) 512–1800. It may also be obtained on the internet at: *http://www.access.gpo.gov/su—docs, or http://www.access.gpo.gov/nara/cfr.*

Federal Register notices can also be accessed on the internet at: *http://www.access.gpo.gov/nara/index.html.*

Q: Where in the notice does it explain how the required parts of the application should be ordered?

A: The ordering for the required parts of the application is specified in the section of the notice entitled "Application Instructions and Forms."

BILLING CODE: 4000–01–P

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Appendix D—Forms and Instructions 1

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____

Address: _____

_____

_____ _____ _____ _____ - _____

City State County ZIP Code + 4

Organizational Unit

2. Applicant's D-U-N-S Number ☐☐☐☐☐☐☐☐☐

3. Applicant's T-I-N ☐☐-☐☐☐☐☐☐☐

4. Catalog of Federal Domestic Assistance #: 8 4 3 5 3 ☐ → Title: Tech-Prep Demonstration Program (TPDP)

5. Project Director: _____

Address: _____

_____ _____ _____-_____

City State ZIP Code + 4

Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

E-Mail Address: _____

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School District
I Public College or University
J Private, Non-Profit College or University
K Indian Tribe
L Individual
M Private, Profit-Making Organization
N Other *(Specify)*: _____

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below:)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

11. Proposed Project Dates:

Start Date:	End Date:
___/___/_____	___/___/_____

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address:

e. Signature of Authorized Representative Date: ___/___/_____

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com/dbis/aboutdb/intlduns.htm.

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check "Yes" only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check "No."

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check "Yes" if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check "No."

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are not planned at any time during the proposed project period, check "No." The remaining parts of item 12 are then not applicable.

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check "Yes." If all the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in "Protection of Human Subjects in Research" attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in "Protection of Human Subjects in Research" attached to this form to prepare the six-point narrative about the nonexempt activities. Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter "Pending" in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. If the applicant organization does not have on file with GPOS or OPRR an approved Assurance of Compliance that covers the proposed research activity, enter "None" in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, (all research activities are exempt), provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations (**some or all of the research activities are nonexempt**), address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. *If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.* [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gow humansub.htm.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance *if the total* cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED *REPRESENTATIVE*	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but *are not limited* to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

[FR Doc. 01–17084 Filed 7–6–01; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Monday,
July 9, 2001

Part VI

Department of Labor

Pension and Welfare Administration

29 CFR Part 2560

Employee Retirement Income Security Act of 1974; Rules and Regulations for Administration and Enforcement; Claims Procedure; Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2560

RIN 1210–AA61

Employee Retirement Income Security Act of 1974; Rules and Regulations for Administration and Enforcement; Claims Procedure

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final Regulation; delay of applicability date.

SUMMARY: This action delays for at least six months and not more than one year the applicability date for the regulation governing minimum requirements for benefit claims procedures of group health plans covered by Title I of the Employee Retirement Income Security Act. As published on November 21, 2000, the benefit claims procedure would be applicable to claims filed on or after January 1, 2002. The current action amends the regulation so that it will apply to group health claims filed on or after the first day of the first plan year beginning on or after July 1, 2002, but in no event later than January 1, 2003. This action provides a limited additional period within which group health plan sponsors, administrators, and service providers can bring their claims processing systems into compliance with the new requirements. A postponement of the applicability date with respect to group health claims will allow a more orderly transition to the new standards and will avoid the confusion and additional expense that would be caused if certain pending Congressional bills are enacted before or soon after the original applicability date. This action does not apply to pension plans or plans providing disability or welfare benefits (other than group health). For these plans, the regulation will continue to be applicable to claims filed on or after January 1, 2002.

EFFECTIVE DATE: July 9, 2001.

FOR FURTHER INFORMATION CONTACT: Susan G. Lahne, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–7461. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

On November 21, 2000, the Department of Labor (the Department) published in the **Federal Register** (65 FR 70246) a final regulation, designated as § 2560.503–1 of Title 29 (the regulation), which revised the minimum requirements for benefit claims procedures of all employee benefit plans covered under Title I of the Employee Retirement Income Security Act of 1974 (ERISA). In particular, the regulation made substantial changes in the way in which employee benefit plans must process claims for group health benefits. These changes include shorter time frames for decisionmaking, new procedural standards for appeals of denied claims, and increased disclosure to claimants. The regulation also made changes to the procedural requirements for processing disability claims. With respect to other types of benefits, the regulation largely continued the standards applicable under the previous regulation, which has been in force since 1977.

Since the publication of the regulation, a number of issues have been raised by plan sponsors, service providers, state regulators, and others concerning the interpretation and application of the various provisions and requirements of the regulation that apply to group health plans. In this regard, the Department has been requested to provide additional guidance concerning the regulation in order to ensure efficient and effective implementation of the new rules. In addition, it has been argued that a delay of the regulation's applicability date is necessary for group health plans and service providers to better understand the requirements of the regulation, as well as to take into account clarifying guidance from the Department, and to efficiently implement the significant systems and other changes required by the new rules. It also has been argued that an extension of the regulation's applicability date is necessary to enable entities subject to state regulation (e.g., insurers, managed care organizations) to obtain state-level reviews and approvals of claims processes and other changes required by the regulation. In addition, concerns have been expressed about group health plans having to incur substantial costs to make the procedural, systems, and other changes necessary to accommodate the new rules while Congress is actively considering Patients' Bill of Rights legislation that, if enacted, would require new and additional changes to the same procedures and systems.

The Department is committed to ensuring that participants and beneficiaries are afforded fair and timely reviews of their benefit claims. At the same time, the Department recognizes that an orderly, efficient, and cost-effective implementation of the claims procedure rules by group health plans will ultimately benefit all affected parties, including plan participants and beneficiaries. In this regard, the Department is persuaded that plans, service providers, and state regulators would benefit from additional guidance from the Department concerning the application of the claims procedure rules to group health plans. The Department also is persuaded that the magnitude of the procedural, systems, and other changes required by the regulation, in conjunction with the need to obtain state-level approvals with respect to such changes, may necessitate more time than was originally thought necessary when the rules were adopted in November, 2000. The Department also believes that there is a significant likelihood that Patients' Bill of Rights legislation directly affecting the procedural requirements for group health plans addressed in the final rules will be enacted before, or shortly after, the January 1, 2002, applicability date of the regulation. For these reasons, the Department has determined that a limited and temporary deferral of the applicability date of the claims procedure regulation for group health plans is warranted. It should be noted, however, that this action does not apply to pension plans or plans providing disability or welfare benefits (other than group health). For these plans, the regulation will continue to be applicable to claims filed on or after January 1, 2002.[1]

Under the amendment, the regulation will apply to group health claims filed on or after the first day of the first plan year beginning on or after July 1, 2002, but in no event later than January 1, 2003. The effect of this amendment will be to provide plans an additional compliance period for group health claims of at least six months (from January 1, 2002, to July 1, 2002). For group health plans with plan years beginning on July 1, 2002, the regulation will begin to apply to new claims filed under those plans as of that date; group health plans with plan years beginning from July 2, 2002, through December 31, 2002, will need to begin processing new claims under the regulation as of the beginning of that plan year. Calendar year group health plans and all other

[1] As noted above, the rules applicable to pension plans (and welfare plans other than group health and disability) have remained essentially unchanged from the 1977 regulation. Further, issues raised with respect to group health plans, including the impact of Patients' Bill of Rights legislation, have not been raised with respect to plans providing disability or other welfare benefits.

group health plans will be required to comply with respect to all new claims filed on or after January 1, 2003.

During the period before the relevant applicability dates, the Department expects plans, at a minimum, to continue to comply with the procedural rules that were in effect before promulgation of the regulation. For those periods, compliance with either the claims procedure regulation published on November 21, 2000, or as in effect prior to January 20, 2001, will be considered by the Department to be in compliance with the requirements of section 503 of ERISA.

This amendment is published as a final rule, effective as of the date of publication in the **Federal Register**. The Department's implementation of this rule without opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(3)(B). The Department has determined, for the following reasons, that seeking public comment would be impracticable and contrary to the public interest.[2]

Absent the temporary postponement provided herein, the affected parties would have to be ready to comply with the regulation by January 1, 2002, a date that is less than six months distant from the date of publication. Therefore, for this action to serve its intended purpose, it must become effective as soon as possible. If the Department published this action in proposed form with a period for notice and comment, the affected parties would remain in doubt concerning whether compliance could be postponed. Given the imminence of the regulation's applicability date, the period for notice and comment would exhaust most of the remaining compliance period without providing certainty to the regulated public. Because the delay would exacerbate the pressures on employers, plan administrators, service providers, state regulators, and others affected by the rules and increase their confusion as to when compliance with the new procedural standards is mandatory, and because this action merely delays application of the standards for a limited period of time, the Department believes publication of the final action without notice and comment is justified under 5 U.S.C. 553(b).

[2] An agency may find that a comment period is impractical when it would impede the due and timely execution of the agency's function. A comment period is contrary to the public interest when the interest of the public would be defeated by any requirement of advance notice. *U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act* 30–31 (1947).

The Department has also determined that good cause exists to make this rule effective upon publication without providing the 30-day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. Because this action has precisely that effect—giving affected parties additional time within which to comply with the new standards—the delay contemplated by section 553(d) would not serve this purpose, the Department finds that good cause exists to make this amendment effective upon publication.

B. Economic Analysis

1. Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is "significant" as defined above, and accordingly was reviewed by the Office of Management and Budget. By delaying the applicability date of the claims procedure regulation for group health plans, this action will slightly alter the timing of the regulation's economic effects for such plans, but generally will not alter the magnitude or nature of those effects. In particular, this action will allow group health plans to spread the start-up cost of complying with the regulation for six to twelve months beyond January 1, 2002. Once the regulation is applicable, its ongoing costs and benefits are expected to be the same as originally estimated.

2. Regulatory Flexibility Act

Because this amendment is being published as a final rule without prior notice and a period for comment, the Regulatory Flexibility Act does not apply.

3. Paperwork Reduction Act

This action is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a "collection of information" as defined in 44 U.S.C. 3502(3). This final rule will not substantially or materially change the information collection provisions of 29 CFR § 2560.503–1 as currently approved by OMB control number 1210–0053.

4. Unfunded Mandates Reform Act

Because this amendment is a final rule, section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 (UMRA), does not apply. For purposes of Executive Order 12875, this rule does not include a Federal mandate that may result in expenditures by state, local or tribal governments.

5. Small Business Regulatory Enforcement Fairness Act

This final rule is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) (SBREFA). The rule is not a major rule, as that term is defined by 5 U.S.C. 804, and has been transmitted to Congress and the Comptroller General for review.

List of Subjects in 29 CFR Part 2560

Employee benefit plans, Employee retirement income security act, benefit claims procedures

For the reasons set out in the preamble, 29 CFR part 2560 is amended as follows:

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

1. The authority citation for part 2560 continues to read as follows:

Authority: Secs. 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560–502–1 also issued under sec. 502(b)(1), 29 U.S.C. 1132(b)(1).

Section 2560–502i-1 also issued under sec. 502(i), 29 U.S.C. 1132(i).

Section 2560–503–1 also issued under sec. 503, 29 U.S.C. 1133.

2. Revise paragraph (o) of § 2560.503–1 to read as follows:

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§ 2560.503–1 Claims Procedure.

* * * * *

(o) *Applicability dates.*

(1) Except as provided in paragraph (o)(2) of this section, this section shall apply to claims filed under a plan on or after January 1, 2002.

(2) This section shall apply to claims filed under a group health plan on or after the first day of the first plan year beginning on or after July 1, 2002, but in no event later than January 1, 2003.

Signed at Washington, DC, this 3rd day of July, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 01–17145 Filed 7–5–01; 11:26 am]

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S. 1029/P.L. 107–18

To clarify the authority of the Department of Housing and Urban Development with respect to the use of fees during fiscal year 2001 for the manufactured housing program. (July 5, 2001; 115 Stat. 152)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1999, through July 1, 2000. The CFR volume issued as of July 1, 1999 should be retained..

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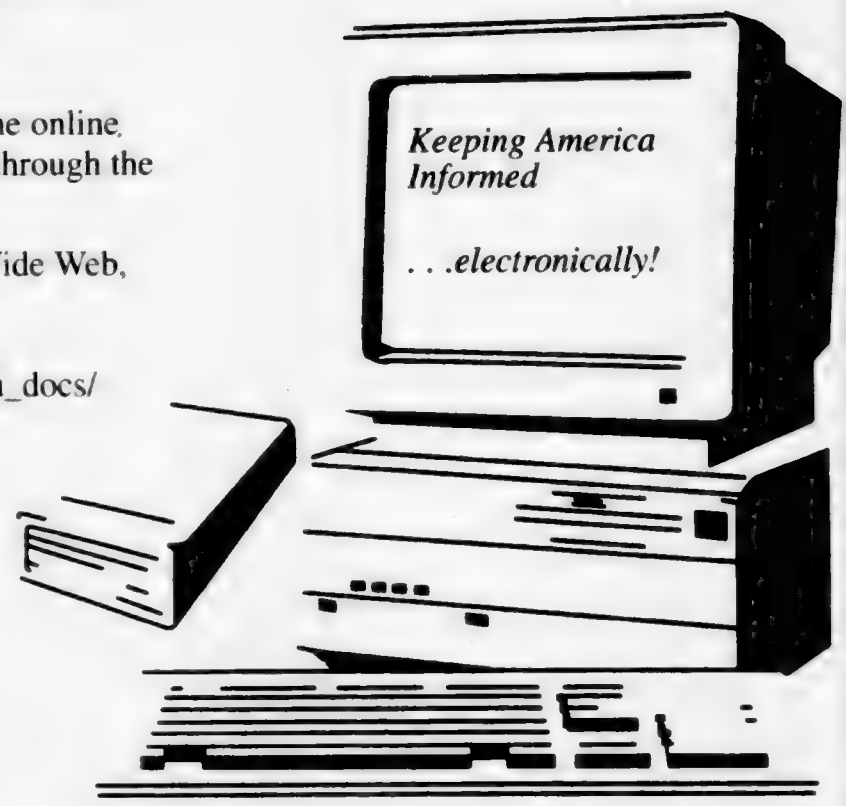

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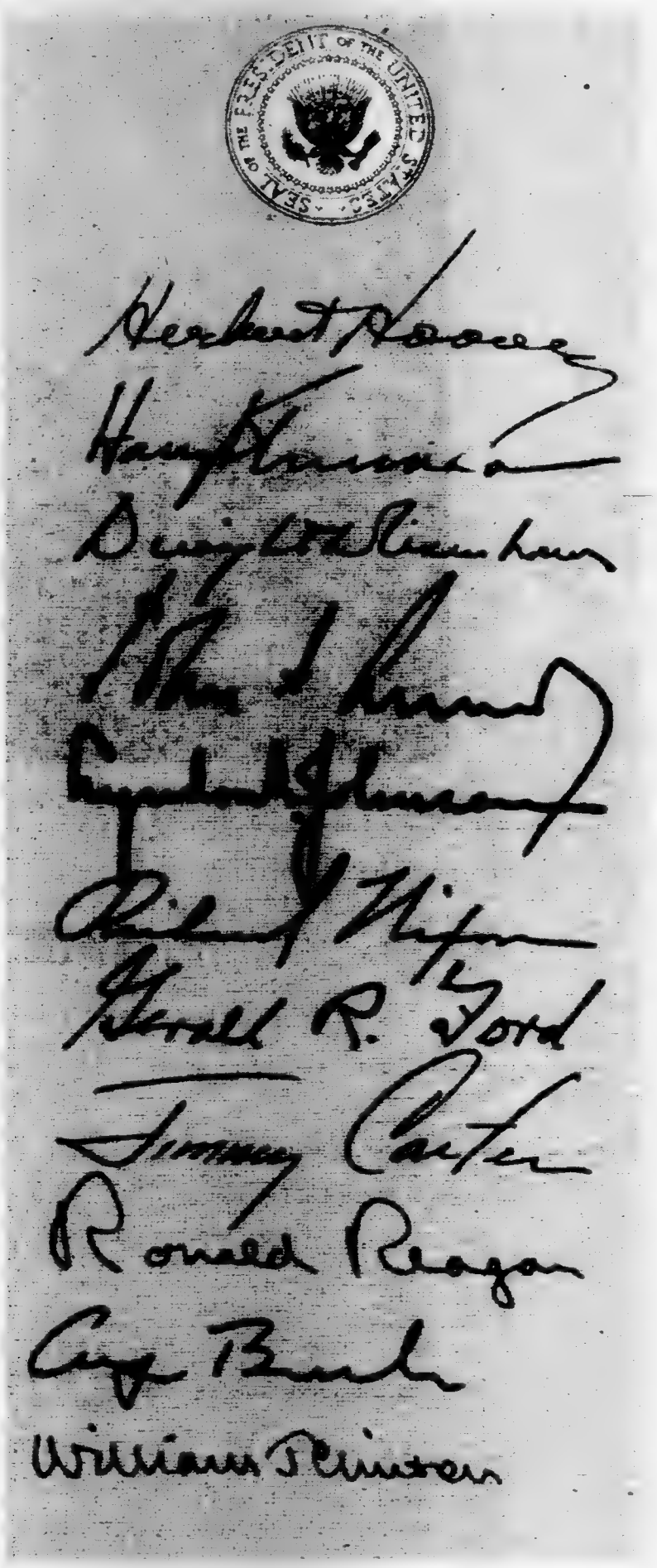

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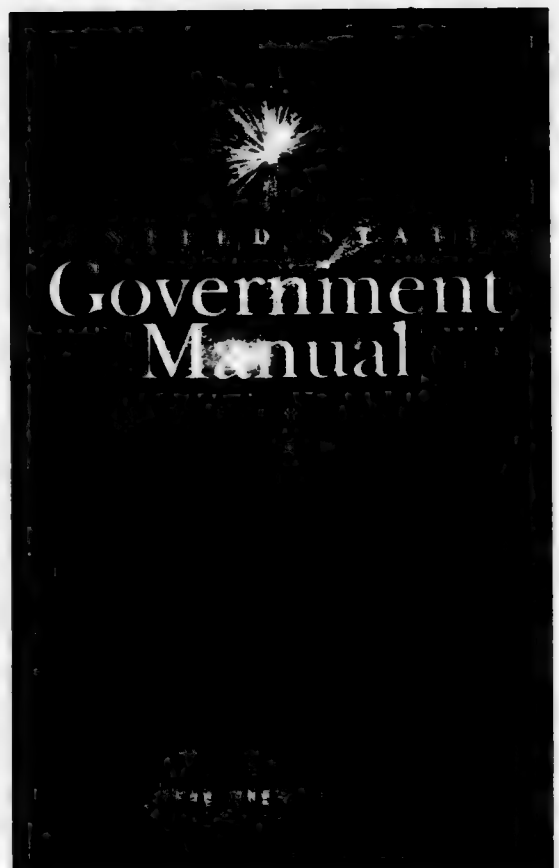

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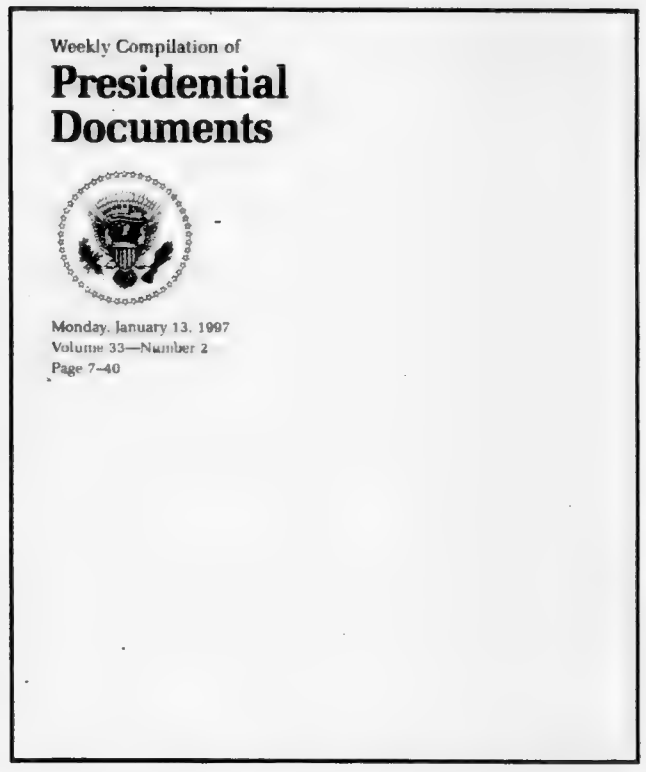

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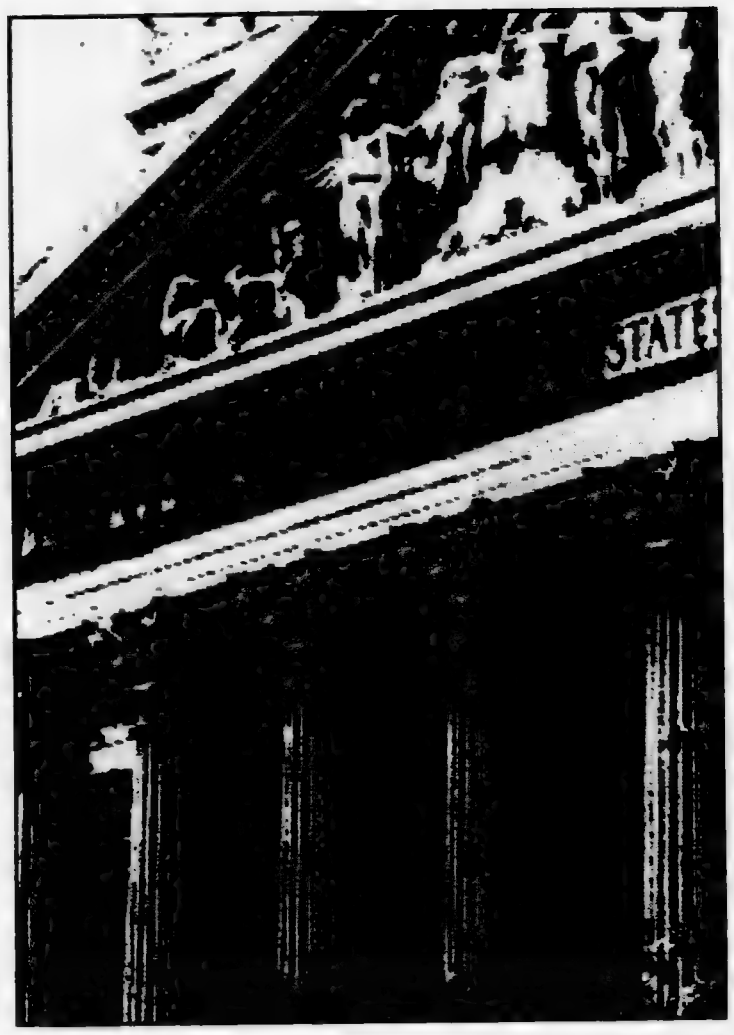

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Federal Register
Vol. 66, No. 132
Tuesday, July 10, 2001

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV01–930–3 IFR]

Tart Cherries Grown in the States of Michigan, et al.; Modifications to the Rules and Regulations Under the Tart Cherry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule increases the Cherry Industry Administrative Board (Board) membership, and establishes procedures under the rules and regulations of the Federal tart cherry marketing order (order) for handlers who want to post surety bonds to temporarily defer maintaining an inventory reserve for tart cherries. The Board recommended these actions to improve order administration, provide handlers more marketing flexibility, and change Board representation as required. The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin and is administered locally by the Board.

DATES: Effective July 11, 2001; comments received by September 10, 2001 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax (202) 720–8938 or E-mail: *moabdocket.clerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243, Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930) regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department or USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the Board's membership, and establishes procedures under the order's rules and regulations for handlers to post surety bonds to temporarily defer maintaining an inventory reserve for tart cherries.

The Board recommended that its membership be increased by one member for District 8, the State of Washington. Currently, § 930.20(e) provides that if Districts 5, 6, 8, or 9 become subject to volume regulation under § 930.52(a), the Board shall be reestablished by the Secretary to provide such District(s) with at least one grower and one handler seat on the Board. At the September 8, 2000, meeting it was determined that the State of Washington's annual average production of cherries over the prior three years has exceeded the 15 million pound threshold required for districts to become regulated. As such, if volume regulation is implemented for the 2001–2002 crop year, handlers handling tart cherries grown in Washington will be subject to volume regulation. Therefore, the Board should be increased from 18 to 19 members which would allow two members instead of one to represent District 8—Washington. The new member and alternate would be nominated and selected in the same manner as other Board members and alternates. With the change for District 8, Washington, District representation on the Board will be as follows:

District	Grower members	Handler members
1	2	2
2	1	2
3	1	1
4	1	1
5	1	or 1
6	1	or 1
7	1	1
8	1	1

District	Grower members	Handler members
9	1	or 1

The Board also recommended that procedures be established for handlers to post surety bonds to temporarily defer maintaining inventory reserves. Section 930.63 provides in part that handlers may, in order to comply with the requirements of §§ 930.50 and 930.51 and regulations issued thereunder, secure bonds on restricted percentage cherries to temporarily defer the date that inventory reserve cherries must be held to any date requested by a handler as long as it is not later than 60 days prior to the end of the crop year. Pursuant to the Board's recommendation, handlers would be required to post surety bonds at two times the market value of the quantity of cherries for which the holding obligation is being deferred. For example, if the inventory reserve product to be marketed is tart cherry juice concentrate and the market value for the concentrate is $20,000, the handler has to post a surety bond of $40,000 in order to temporarily defer his/her inventory reserve obligation.

The deferment would be conditioned on the execution and delivery by the handler to the Board of a written undertaking within 30 days after the Secretary announces the final restricted percentage under § 930.51. The written undertaking (required to be secured by a bond or bonds with a surety or sureties acceptable to the Board) must guarantee that on or prior to the acceptable deferred date that handler will have fully satisfied the restricted percentage amount required by § 930.51. If a handler fails to satisfy that obligation with cherries in reserve by the date requested by the handler, the bond will be forfeited to the Board. The Board will then buy cherries to fulfill the handler's obligation. Handlers not posting surety bonds to temporarily defer maintaining an inventory reserve shall keep inventory reserves in compliance with applicable order regulations.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers are small entities.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1995/96 through 1999/00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999/00, approximately 90 percent of domestic tart cherry acreage is located in four States: Michigan, New York, Utah and Wisconsin.

Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 from 28,400.

The impact of this rule would be beneficial to growers and handlers. The recommendation to add another member and alternate is consistent with the order requirements and will provide greater participation on the Board by the industry. Adding procedures for handlers to temporarily defer their inventory reserve holding obligations through written undertakings secured by surety bonds is also consistent with order provisions and will provide handlers with flexibility in their day-to-day processing, packing, and marketing operations.

One alternative to these actions would be to continue the status quo. However, the order requires a change in Board membership, following established nomination procedures, upon a district meeting the volume regulation threshold and becoming regulated. The order also provides handlers the authority to post surety bonds. Recommending procedures for handlers to implement this authority is another tool the Board hopes to use to facilitate the orderly marketing of tart cherries.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap, or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this action have been previously approved by OMB and assigned OMB Number 0581–0177. Handlers taking advantage of the bonding option would execute an application which would take about an hour to complete. The total burden hours approved, 4,649 hours, will be adequate to cover this added burden.

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were

invited to attend them and participate in Board deliberations. Like all Board meetings, the September 2000 meeting was a public meeting and all entities, both large and small, were able to express their views on these issues. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of these actions on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: *http//www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on increasing the Board membership and adding rules and regulations to implement the use of surety bonds to temporarily defer maintaining an inventory reserve for tart cherries. All comments received will be considered in finalizing this interim final rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The increase in Board membership is required by the order and needs to be implemented on a timely basis; (2) the Board needs this rule to be in place this season so handlers can take advantage of the bonding option; (3) the Board recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 930.120 is added to read as follows:

§ 930.120 Board membership.

Pursuant to § 930.20(e), membership of the Cherry Industry Administrative Board is increased from 18 to 19 members and alternates. There will be one grower and one handler member from District 8.

3. A new § 930.163 is added to read as follows:

§ 930.163 Deferment of restricted obligation.

A handler may obtain a surety bond on restricted percentage cherries to be posted to temporarily defer the date that inventory reserves must be held. The surety bond must be posted at two times the market value of the quantity of cherries for which the holding obligation is being deferred. The Board can temporarily defer the date inventory reserve cherries must be held to any date requested by the handler. However, this date shall not be later than 60 days prior to the end of the crop year. The deferment shall be conditioned on the execution and delivery by the handler to the Board of a written undertaking within 30 days after the Secretary announces the final restricted percentage under § 930.51. The written undertaking (required to be secured by a bond or bonds with a surety or sureties acceptable to the Board) must guarantee that on or prior to the deferment date requested by the handler the handler will have fully satisfied the restricted percentage obligation. On or prior to the deferment date requested by the handler, the handler will have to fully satisfy the restricted percentage obligation. In the event, a handler has posted the surety bond, reached the deferment date deadline and does not have cherries in the inventory reserve to cover his/her inventory reserve obligation, the bond will be forfeited to the Board. The Board will then buy cherries to fulfill that handler's obligation.

Dated: July 3, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–17126 Filed 7–9–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket Nos. AO–370–A6; FV98–930–2]

Tart Cherries Grown in the States of Michigan, et al.; Order Amending Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order (order) for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The amendments were submitted by the Cherry Industry Administrative Board (Board), the agency responsible for local administration of the order. One change clarifies the current limitation on the number of Board members that may be from, or affiliated with, a single "sales constituency" by amending the definition of that term. Another change simplifies the method used to establish volume regulations for tart cherries. These changes were favored by tart cherry growers in a mail referendum and will improve the operation and functioning of the tart cherry marketing order program.

EFFECTIVE DATE: August 9, 2001.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, Unit 155, Suit 2A04, Riverdale Maryland 20737; telephone (301) 734–5243, or Fax: (301) 734–5275; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, Washington, DC 20250–0200; telephone: (202) 720–2491; or Fax: (202) 720–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456;

telephone (202) 720–2491; Fax (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on November 12, 1998, and published in the November 17, 1998, issue of the **Federal Register** (63 FR 63803). Recommended Decision and Opportunity to File Written Exceptions issued on December 29, 1999, and published in the **Federal Register** on January 5, 2000 (65 FR 672). Secretary's Decision and Referendum Order issued December 5, 2000, and published in the **Federal Register** on December 11, 2000 (65 FR 77323).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held in Grand Rapids, Michigan, on December 1, 1998, and in Salt Lake City, Utah, on December 3, 1998, to consider the proposed amendment of Marketing Agreement and Order No. 930, regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained amendment proposals submitted by the Board and the U.S. Department of Agriculture.

The Board's proposals pertained to clarifying the current limitation on the number of Board members that may be from, or affiliated with, a single "sales constituency" by amending the definition of that term, and simplifying the method used to establish volume regulations for tart cherries.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture, proposed to allow such changes as may be necessary to the order, if any or all of the above amendments are adopted, so that all of its provisions conform with the proposed amendment. No conforming changes have been deemed necessary.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the AMS on December 29, 1999, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by February 4, 2000. Five exceptions were filed.

A Secretary's Decision and Referendum Order was issued on December 5, 2000, directing that a referendum be conducted during the period January 15 through January 26, 2001, among growers of tart cherries to determine whether they favored the proposed amendments to the order. In the referendum, both amendments were favored by more than two-thirds of the growers voting in the referendum by number and volume.

The amended marketing agreement was subsequently mailed to all sweet cherry handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of tart cherries handled by all handlers during the representative period of June 1, 1999, through May 31, 2000.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses.

The record indicates that during the 1998–99 crop year, approximately 41 handlers were regulated under Marketing Order No. 930. In addition, there were about 896 producers of tart cherries in the production area. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The 1998–99 tart cherry crop was about 340 million pounds. The record indicates that of the 41 tart cherry handlers, 12 had processed tonnage of more than 10 million pounds (or 29 percent of all handlers); 4 had between 5 and 10 million pounds (10 percent); 15 had between 1 and 5 million pounds (37 percent); and the remaining 10 had less than 1 million pounds of processed tonnage (24 percent). Handlers accounting for 10 million pounds or more would be classified as large businesses. Thus, a majority of tart cherry handlers could be classified as small entities. The majority of tart cherry processors are located in Michigan. Many handle cherries grown in more than one district. Michigan accounted for 76.4 percent of the production, followed by Utah with 9.6 percent, Wisconsin with 4.3 percent, Washington with 4.0 percent, New York with 3.9 percent, Pennsylvania with 1.2 percent, and Oregon with 0.6 percent. By State, about 72.5 percent of the growers are in Michigan, 9.9 percent in New York, 5.3 percent in Utah, 4.5 percent in Wisconsin, 3.6 percent in Pennsylvania, 2.5 percent in Oregon, and 1.7 percent in Washington.

Dividing total production by the number of growers, the average grower produces about 380,000 pounds of cherries annually. With grower returns of about 20 cents per pound, average revenues would be $76,000. Thus, it is reasonable to conclude that most tart cherry growers are small entities.

At 20 cents per pound, a grower would have to produce 2.5 million pounds of cherries to reach the $500,000 receipt threshold to qualify as a large producing entity under the SBA's definition. No record evidence was provided to indicate how many tart cherry growers produce 2.5 million pounds or more. One witness testified, however, that an estimated 150 growers (about 17 percent of the total number of growers) produce in excess of 1 million pounds, with the remainder producing less than that. With a majority of growers producing less than 1 million pounds, it follows that a majority of growers produce less than 2.5 million pounds. This supports the conclusion that the majority of tart cherry growers are small businesses. By State, however, average grower size varies considerably. The average grower in Washington accounts for roughly 910,000 pounds of cherries. Next in size is Utah with 680,000 pounds, followed by Michigan (400,000 pounds), Wisconsin (370,000 pounds), New York (150,000 pounds), Pennsylvania (130,000 pounds) and Oregon (100,000 pounds).

The two amendments to the tart cherry marketing order clarify the current limitation on the number of Board members that may represent a

single "sales constituency" and simplify the method used to establish volume regulations for tart cherries. Both amendments will be beneficial to business entities, both large and small.

Definition of Sales Constituency

Section 930.20 of the tart cherry marketing order provides for an 18-member Cherry Industry Administrative Board to assist the Department in administering the program. That section also divides the production area into nine districts for purposes of representation on the Board and allocates membership among those districts. Five of the nine current districts, including all districts subject to volume regulation, are allocated more than one member. Those five districts are Northern Michigan (four members), Central Michigan (three members), Southern Michigan (two members), New York (two members), and Utah (two members). The four districts with one member each are Oregon, Pennsylvania, Washington, and Wisconsin. (The eighteenth Board member is selected to represent the general public, and need not be from any specific area.)

Section 930.20 further provides that for those districts allocated more than one member, only one of those members can be affiliated with a single sales constituency. Section 930.16 currently defines a sales constituency to mean a common marketing organization or brokerage firm or individual representing a group of handlers or growers.

The amendment to § 930.16 provides that an organization that receives consignments of cherries but does not direct where those cherries are sold would not be considered a sales constituency. The growers and handlers affiliated with such an organization will not be limited in their representation on the Board.

The record shows that one of the Board's primary responsibilities is to recommend regulations to implement the marketing order's authorities relating to supply management, or volume regulation. Volume regulations benefit all industry members, both large and small, by matching demand in primary markets with available supplies of tart cherries. These regulations also serve to expand sales in secondary markets. The result is improved grower and processor returns.

The record shows that approximately 11 of the current 18 members of the Board are affiliated in some way with CherrCo, the organization which raised the question of the intended meaning of the term sales constituency. Applying the current order limitation on the number of members representing a single sales constituency to CherrCo would result in five of the current Board members being declared ineligible to serve on the Board. All of these members represent regulated districts—four in Michigan and one in New York.

The record shows that CherrCo is a federated grower cooperative. It is comprised of 24 member cooperatives. CherrCo's members account for 75–80 percent of Michigan's tart cherry production, and a significant portion of the production, and a significant portion of the production in New York, Utah, Washington, and Wisconsin. CherrCo currently has no members in Oregon or Pennsylvania. The record indicates that the primary function of CherrCo is to establish minimum prices for certain tart cherry products. The record indicates that CherrCo is not directly involved in the actual sales of its members' products. There is intense competition among its members (as well as between its members and non-members) to sell tart cherries. The competition for sales is on the basis of individual handlers' reputations, on the quality and mix of the products they offer, on any special services they provide to their customers, and on whether or not their processing plants are certified to conform with certain sanitation standards.

The purpose of the sales constituency limitation is explained in § 930.20(f) of the order where it is stated that in order to achieve a fair and balanced representation on the Board, and to prevent any one sales constituency from gaining control of the Board, not more than one Board member may be from, or affiliated with, a single sales constituency in those districts having more than one seat on the Board. The genesis of this limitation can be traced to the order promulgation record where it was stated that the limitation was designed to prevent the recurrence of a problem that existed under the previous tart cherry order which was in effect from 1971 through 1987. Under that order, there was no such limitation, and actions of the Board only required a simple majority vote, allowing representatives from a single sales organization to pass Board actions without support from other industry members. As was explained in the recommended decision published on January 5, 2000, concerning the amendments in this rulemaking, the tart cherry industry is comprised of many different organizations. Some were clearly meant be covered by the sales constituency limitation, while others were not. It was clearly intended that an organization such as Cherry Central, Inc. (a cooperative) be covered. Its main purpose is to sell its members' cherries and other products. The recommended decision further explains that an organization such as the Cherry Marketing Institute was not intended to be subject to the sales constituency limitation. The formation of CherrCo, a federated grower cooperative which was not in existence when the present order was promulgated, has caused the Department and the industry to reopen this question and to consider an amendment to the definition of sales constituency. This is because an organization such as CherrCo lies somewhere between Cherry Central, Inc. and the Cherry Marketing Institute which has a primary function of conducting generic promotion activities to expand overall sales of cherries and funding and conducting research in processing techniques and product development.

Some of the exceptions and briefs filed in connection with the Recommended Decision raised issues and concerns in connection with Material Issue No. 1, definition of a sales constituency, and small business considerations. The Board was of the view that this proposed amendment would not have any negative impact on small businesses and that it would in fact help small entities by allowing them to send a representative of their choice to the Board. The Board noted that the regulatory requirements of the proposed amendment were properly tailored to the size and nature of small businesses.

Two exceptions were filed that raised small business concerns. One exception from Terry Dorsing, President, Washington Tart Cherries Products, Inc., presented an overview of the functioning of the tart cherry marketing order since its inception. Mr. Dorsing stated that since the initial hearing to establish the order, it was his and his company's position that the Northwest and other small production areas would be dominated by the large production in Michigan and the impact of various provisions of the order would be detrimental to small entities. The exception also stated that a marketing order was not good for the small producer and for the tart cherry industry as a whole. While acknowledging the inclusion in the provisions of the order of a variety of safeguards to protect small producers and production areas, the exception concluded that the Board itself, in recommending further changes to the order (currently subject to a separate rulemaking action) was preparing to tear down the safeguards to the detriment of small entities.

Another exception from Lee Schrepel, Chair, Oregon Tart Cherry Association, raised concern about the size of CherrCo affiliates, noting that perhaps most of the large handlers in the industry were CherrCo affiliates. The exception argued that the proposal had the appearance of giving a greater proportion of Board control to larger handlers, as defined under the Regulatory Flexibility Act. The exception questioned whether the Department failed to make a thorough examination of all relevant small business considerations, as required by that Act. The exception also noted that there are several examples of how boards administering Federal marketing orders for other commodities have protected the small, the remote and the independent, with each of the orders limiting the degree of domination by a particular constituency in the governed industry. Finally, the exception stated the proposed amendment should be rejected, that the Department should refer the matter back to the Board for further study to craft a more suitable amendment, or that the Department should develop a compromise amendment itself taking into account the alternative proposals presented in the rulemaking proceedings. Alternatively, the exception stated that there should be an allowance for permanent exclusion of all producers and handlers in the Oregon district, an issue that has not been proposed in the proceeding.

Alternative proposals discussed at the hearing were considered and discussed in the Recommended Decision. It was determined that those proposals failed to properly address some of the fundamental issues faced by the tart cherry industry. One of these issues is that some districts are subject to volume control, while others are not. Another deals with the varying marketing and growing conditions. Probably the most important issue which alternative proposals failed to address was fair representation. Restrictions on an organization such as CherrCo could prevent growers in some of the highest volume producing areas from being adequately represented on the Board.

Material Issue Number 1 concerns an amendment that clarifies the current limitation on the number of Board members that may be from, or affiliated with, a single sales constituency. This amendment is intended to be inclusive rather than exclusive. The issue presented by the amendment is whether an organization or entity, such as CherrCo, should be limited in terms of membership on the Board. The Department has fully reviewed this amendment consistent with the provisions of the Regulatory Flexibility Act as well as the statutory authority for this program. In doing so, it has concluded that this amendment will be favorable to both large and small entities. The two exceptions received raising small business considerations are not in agreement with this conclusion.

The exceptions raised a variety of issues and concerns regarding the proposed amendment as well as the marketing order itself. The nature and structure of a board under a marketing order program reflects the industry that is regulated. Accordingly, a marketing order may provide for one or more provisions concerning board memberships. Such provisions would be tailored to reflect the attributes of a particular industry, as appropriate. In the case of the tart cherry marketing order, a provision was crafted to prevent any single sales constituency from having control of Board decision making. The proposed amendment would clarify the application of that provision, taking into account the current state of the industry as well as the present membership on the Board. As such, the original intent of the provisions would not be changed by the clarification. Looking at this amendment in terms of its impact, we continue to conclude that the proposed amendment should be favorable to both large and small entities.

With regard to the assertion that certain safeguards in the order could be eliminated to the detriment of smaller production areas, this cannot be done by Board action alone. Any such proposed changes would be subject to a formal rulemaking process, including public hearings and a referendum, as well as an analysis and review by the Department.

Revision of the Optimum Supply Formula

A principal feature of the tart cherry marketing order is supply management through the use of volume regulations. Authority for such regulations appears in § 930.51 of the marketing order.

Volume regulations are implemented through the establishment of free and restricted percentages. Such percentages are recommended by the Board in accordance with § 930.50 of the order, and, if deemed appropriate, implemented by the Department through the public rulemaking process. These percentages are then applied to each regulated handler's acquisitions in a given season. "Free market tonnage percentage" cherries may be marketed in any outlet. "Restricted percentage" cherries must be withheld from the primary market. They may be diverted in the orchard or at the processing plant; placed into a reserve pool; or sold in secondary markets. These secondary markets include exports (except to North America), and new products. Sales of restricted percentage cherries to these specified exempt markets receive diversion credits which handlers use to fulfill their restricted obligation.

The record indicates that the primary objective of tart cherry volume regulations is to balance supplies with market demand, thereby stabilizing the market and improving grower and processor returns. A second objective is to encourage market growth by allowing restricted cherries to be sold in secondary markets (for example, most export markets). Witnesses attributed much of the improvement in recent cherry market conditions to the use of regulation in the 1997/98 and 1998/99 seasons.

The order currently sets forth in § 930.50, an "Optimum Supply Formula" (OSF) which the Board must follow in its consideration of annual free and restricted percentages. The optimum supply is currently defined as 100 percent of the average sales of the prior 3 years, to which is added a desirable carryout inventory.

The record indicates that using 100 percent of prior years' sales results in an overstatement of the optimum supply. The record shows that including the sales of restricted cherries in the optimum supply understates the projected surplus and results in a higher free percentage than supply and market conditions warrant. This is because those total sales include not only sales to the primary market, but to secondary markets as well.

In the years that tart cherry volume regulations have been used, this issue has been addressed through use of an adjustment in order to achieve an optimum supply of cherries in the marketplace. Once a surplus has been computed (deducting the optimum from the available supply), the sales to secondary markets are added back to the surplus as an economic adjustment. The Board's recommended amendment would revise the procedures currently used in calculating the optimum supply. Under its proposal, the optimum supply would be equal to the 3-year average sales in primary markets (total sales less sales to markets eligible for diversion credit) plus the target carryout. This would simplify the method of arriving at an optimum supply figure and would be easier for tart cherry growers and processors to understand. Therefore, any regulatory impact on growers or handlers would be minimal or non-existent.

The record evidence supports the conclusion that this amendment will result in no extra costs to growers or processors in that any resulting level of volume regulation would be similar to what is currently in effect and its economic effect on the industry would be similarly analyzed in each instance. It would benefit industry members both large and small, however, because the process relating to the establishment of volume regulations would be less confusing and more readily understood by industry members. This process is used by growers and handlers in making seasonal decisions (including those relating to harvesting cherries). To the extent that this process is more readily understood, all in the industry should benefit.

Further, in its brief filed with regard to the Recommended Decision, the Board noted that the Department considered the impact of Material Issue Number 2 on small businesses and concluded that there will be no negative impact. The Board stated that it considered several other approaches concerning the optimum supply formula and was of the view that the amendment was the best alternative available.

The collection of information under the marketing order will not be affected by these amendments to the marketing order. Current information collection requirements for Part 930 are approved by OMB under OMB number 0581–0177.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Board meetings regarding these amendments as well as the hearing dates were widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Board deliberations on all issues. All Board meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Civil Justice Reform

The amendments contained in this rule have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The amendments will not preempt any State or local laws, regulations, or policies, unless they represent an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Order Amending the Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as hereby amended, regulate the handling of tart cherries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as hereby amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as hereby amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries grown in the production area; and

(5) All handling of tart cherries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping tart cherries covered by the order as hereby amended) who, during the period June 1, 1999, through May 31, 2000, handled 50 percent or more of the volume of such cherries covered by said order, as hereby amended, have signed an amended marketing agreement; and

(2) The issuance of this amendatory order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period June 1, 1999, through May 31, 2000 (which has been deemed to be a representative period), have been engaged within the production area in the production of such cherries, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin

It is therefore ordered, That on and after the effective date hereof, all handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing agreement and order amendments contained in the Secretary's Decision issued by the Administrator on December 5, 2000, and published in the **Federal Register** on December 11, 2000, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 930, § 930.16 is revised to read as follows:

§ 930.16 Sales constituency.

Sales constituency means a common marketing organization or brokerage firm or individual representing a group of handlers and growers. An organization which receives consignments of cherries and does not direct where the consigned cherries are sold is not a sales constituency.

3. In § 930.50, paragraph (a) is revised to read as follows:

§ 930.50 Marketing policy.

(a) *Optimum supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years reduced by average sales that represent dispositions of restricted percentage cherries qualifying for diversion credit for the same three years, unless the Board determines that it is necessary to recommend otherwise with respect to sales of restricted percentage cherries, to which shall be added a desirable carryout inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

* * * * *

Dated: July 3, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–17125 Filed 7–9–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–07–AD; Amendment 39–12310; AD 2001–13–28]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. Olympus 593 Mk. 610–14–28 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. (RR) Olympus 593 Mk. 610–14–28 turbofan engines. This action requires replacement of the low-oil pressure (LOP) switch. This amendment is prompted by a report of the failure of the low pressure (LP) and high pressure (HP) rotor thrust bearings due to oil starvation that was caused by the loss of the LOP switch function and resulted in a delayed engine shutdown. The actions specified in this AD are intended to prevent the failure of the LOP switch to indicate an LOP event, which could contribute to uncontained engine failure due to oil starvation in the thrust bearings.

DATES: Effective August 9, 2001. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 9, 2001.

Comments for inclusion in the Rules Docket must be received on or before September 10, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–07–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov." Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England; telephone 011 7979 6060; FAX 011 7979 7234. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7176; fax 781–238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on RR Olympus 593 Mk. 610–14–28 turbofan engines. The CAA advises that the failure of a low-oil pressure (LOP) switch cable at the LOP switch connector resulted in increased secondary damage after an LP compressor blade failure. The failed blade caused a rotor imbalance, which caused cracking of the oil tank and loss of engine oil. Because the LOP switch cable had failed, no LOP warning was received in the cockpit. Since no LOP warning was received, the engine was not immediately shut down and the LP and HP rotor thrust bearings failed from oil starvation. The failure of the LP and HP compressor rotor bearings caused an increase in secondary damage to the engine.

Manufacturer's Service Information

RR has issued Olympus 593 Service Bulletin (SB) No OL.593–71–9056–33, Revision 2, dated December 7, 2000, that specifies procedures for reworking the plug of existing electrical harness for the LOP switch. The CAA classified this service bulletin as mandatory and

issued AD 002–10–98 in order to ensure the airworthiness of these RR engines in the UK.

Bilateral Airworthiness Agreement

This engine model is manufactured in the UK, and is type certificated for operation in the United States under the provisions of § 21.29 of the Code of Federal Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Requirements of This AD

Although none of these affected engine models are used on any airplanes that are registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Because an unsafe condition has been identified that is likely to exist or develop on other Olympus 593 Mk.610–14–28 engines of the same type design, this AD requires reworking the plug of the existing electrical harness for the LOP switch. The actions must be done in accordance with the service bulletin described previously.

Immediate Adoption

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, and was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–07–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This final rule does not have federalism implications, as defined in Executive Order No. 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation may be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order No. 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Code of Federal Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–13–28 Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A.: Amendment 39–12310. Docket 2000–NE–07–AD.

Applicability

This airworthiness directive (AD) is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. (RR) Olympus 593 Mk. 610–14–28 turbofan engines. These engines are installed on, but not limited to, Concorde airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated below, unless already done.

To prevent the failure of the LOP switch to indicate an LOP event, which could contribute to uncontained engine failure due to oil starvation in the thrust bearings, do the following:

(a) Install a revised LOP switch incorporating an extended support bush in combination with an angled backshell and additional cable slack in accordance with the accomplishment instructions of RR Service Bulletin OL.593–71–9056–33, Revision 2, dated December 7, 2000.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Incorporation by Reference Material

(c) The actions specified in this AD must be done in accordance with the following Rolls-Royce Olympus service bulletin:

Document No.	Pages	Revision	Date
OL.593–71–9056–33	1	2	Dec. 7, 2000.
	2–3	Original	Oct. 5, 1998.
	4	2	Dec. 7, 2000.
	5	1	Feb. 19, 1999.
	6	Original	Oct. 5, 1998.
	7	2	Dec. 7, 2000.
	8	1	Feb. 19, 1999.
Total pages: 8			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England; telephone 011 44 7979 6060; FAX 011 44 7979 7234. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 002–10–98.

Effective Date of This AD

(d) This amendment becomes effective on August 9, 2001.

Issued in Burlington, Massachusetts, on June 28, 2001.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–16926 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Chlortetracycline Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Pennfield Oil Co. The ANADA provides for oral use of chlortetracycline soluble powder in solutions administered to cattle, swine, chickens, and turkeys for the control and treatment of various bacterial diseases. Technical amendments are also being made.

DATES: This rule is effective July 10, 2001.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68137, filed ANADA 200–295 for Pennchlor™ 64 (chlortetracycline) Soluble Powder. The application provides for oral use of chlortetracycline soluble powder administered in drinking water or in solutions dosed by mouth in cattle, swine, chickens, and turkeys for the control and treatment of various diseases caused by bacteria susceptible to chlortetracycline. Pennfield Oil Co.'s Pennchlor™ 64 is approved as a generic copy of American Cyanamid's Aureomycin® (chlortetracycline) Soluble Powder Concentrate, approved under NADA 65–440. The ANADA is approved as of April 27, 2001, and the regulations are amended in 21 CFR 520.445b to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Section 520.445b is further amended in paragraph (d)(4)(iii)(C) by removing the Pennfield Oil Co. drug labeler code (DLC #053389) which was added in error (59 FR 39438, August 3, 1994) and by correcting the drug labeler code for ADM Animal Health & Nutrition Division (DLC #017519) which in error was not changed in this paragraph when the drug labeler code was changed elsewhere in this section (62 FR 27691, May 21, 1997). Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.445b [Amended]

2. Section 520.445b *Chlortetracycline powder (chlortetracycline hydrochloride or chlortetracycline bisulfate)* is amended in paragraph (b) by removing "as in paragraphs (d)(1)(i)(A) and (d)(2)(i)(A)" and adding in its place "as in paragraph (d)"; and in paragraph (d)(4)(iii)(C) by removing ", 012286, and 053389" and adding in its place "and 017519".

Dated: June 27, 2001.
Stephen F. Sundlof,
Director, Center for Veterinary Medicine.
[FR Doc. 01–17104 Filed 7–9–01; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

22 CFR Parts 124, 125, and 126

[Public Notice 3710]

Amendment to the International Traffic in Arms Regulation: Sweden

AGENCY: Department of State.
ACTION: Final rule.

SUMMARY: This rule amends the International Traffic In ArmsRegulations to extend a recent reform of the U.S. defense trade export control system, originally intended to benefitNATO, Australia and Japan, to Sweden. The recent reforms were intended to streamline the U.S. defense export control licensing process and forge closer industrial linkage between the U.S. and allied defense suppliers. Part 124 of the International Traffic In Arms Regulations is now being amended to permit U.S. companies to perform, using an exemption, certain maintenance and maintenance training for US-origin defense articles in the inventory of Sweden. Part 125 is amended to provide authorization, without a license, to transfer certain technical data to support procurement of defense articles from defense firms in Sweden for use by the Department of Defense. In addition, under Part 126, the four comprehensive export authorizations for use in circumstances where the full parameters of a commercial export endeavor, including the needed defense exports, can be well anticipated and described in advance, is now available for Sweden.

EFFECTIVE DATE: July 10, 2001.

FOR FURTHER INFORMATION CONTACT: William J. Lowell,Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, ATTN: Regulatory Change Sweden at (202) 663–2861 or FAX (202) 261–8264.

SUPPLEMENTARY INFORMATION: On July 21, 2000, the Department published regulations to implement, effective September 1, 2000, the U.S. Defense Trade Security Initiative (DTSI) announced at the NATO Ministerial in Florence, Italy on May 24, 2000 (65 FR 45282). Those reforms of the U.S. defense trade export control system were made available to NATO Allies, Japan and Australia. Those initiatives were intended to improve the efficiency and competition in defense markets with NATO allies, Japan and Australia. This particular amendment to the International Traffic in Arms Regulations would make those reforms available with respect to Sweden. These reforms are intended to streamline the U.S. defense export control licensing process and forge closer industrial linkage between the U.S. and allied defense suppliers.

Section 124.2(c) is amended to add Sweden. Paragraph (c) permits U.S. companies to provide, without a license, defense services necessary to perform maintenance on and maintenance training for US-origin equipment in the inventory of NATO, NATO countries, Australia, Japan, and Sweden, provided the maintenance and maintenance training does not result in any modification, enhancement, upgrade or other form of alteration or improvement that enhances the performance or capability of the defense article. Also, the export must not include the transfer of certain technologies; such as, design methodology, engineering analysis, and manufacturing know-how. Section 125.4(c) is amended to add Sweden. Paragraph (c) permits the transfer to NATO countries, Australia, Japan, and Sweden, of technical data necessary to support offshore procurement of defense articles for use by the Department of Defense. In addition, section 126.14 is amended to include Sweden in the four comprehensive export authorizations developed to limit the number of individual export approvals necessary to authorize the export of defense articles to NATO countries, Australia, Japan, and Sweden, which will encourage government-to-government cooperative research and development, support joint ventures and teaming arrangements and facilitate a U.S. company's role in a cooperative project when covered by a government-to-government Memorandum of Understanding (MOU).

In implementing these initiatives, parts 124, 125, and 126 are being amended.

This amendment involves a foreign affairs function of the United States and therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Orders 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, Sweden, 13th Floor, H1304, 2401 E Street, NW., Washington, DC20037. Such persons must be so registered with the Department of State's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act.

List of Subjects

22 CFR Part 124

Arms and munitions, Exports, Technical assistance.

22 CFR Part 125

Arms and munitions, Classified information, Exports.

22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Parts 124, 125 and 126, are amended as follows:

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

1. The authority citation for part 124 continues to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311, 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658; Pub L. 105–261.

2. Section 124.2 is amended by revising paragraphs (c) introductory text, (c)(1), and (c)(6) to read as follows:

§ 124.2 Exemptions for training and military service.

* * * * *

(c) NATO countries, Australia, Japan, and Sweden, in addition to the basic maintenance training exemption provided in § 124.2(a) and basic maintenance information exemption in § 125.4(b)(5) of this subchapter, no technical assistance agreement is required for maintenance training or the performance of maintenance, including

the export of supporting technical data, when the following criteria can be met:

(1) Defense services are for unclassified U.S.-origin defense articles lawfully exported or authorized for export and owned or operated by and in the inventory of NATO or the Federal Governments of NATO countries, Australia, Japan or Sweden.

* * * * *

(6) *Eligibility criteria for foreign persons.* Foreign persons eligible to receive technical data or maintenance training under this exemption are limited to nationals of the NATO countries, Australia, Japan, or Sweden.

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

3. The authority citation for part 125 continues to read as follows:

Authority: Sections 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p.79; 22 U.S.C. 2658.

4. Section 125.4 is amended by revising paragraph (c) introductory text to read as follows:

§ 125.4 Exemptions of general applicability.

* * * * *

(c) Defense services and related unclassified technical data are exempt from the licensing requirements of this subchapter, to nationals of NATO countries, Australia, Japan, and Sweden, for the purposes of responding to a written request from the Department of Defense for a quote or bid proposal. Such exports must be pursuant to an official written request or directive from an authorized official of the U.S. Department of Defense. The defense services and technical data are limited to paragraphs (c)(1), (c)(2), and (c)(3) of this section and must not include paragraphs (c)(4), (c)(5), and (c)(6) of this section which follow:

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

5. The authority citation for part 126 continues to reads as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR 1994 Comp., p 899.

6. Section 126.14 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3)(i), and (a)(4) to read as follows:

§ 126.14 Special comprehensive export authorizations for NATO, Australia, Japan, and Sweden.

(a) With respect to NATO members, Australia, Japan, and Sweden, the Office of Defense Trade Controls may provide the comprehensive authorizations described in paragraphs (a) and (b) of this section for circumstances where the full parameters of a commercial export endeavor including the needed defense exports can be well anticipated and described in advance, thereby making use of such comprehensive authorizations appropriate.

(1) *Major Project Authorization.* With respect to NATO members, Australia, Japan, and Sweden, the Office of Defense Trade Controls may provide comprehensive authorizations for well circumscribed commercially developed "major projects", where a principal registered U.S. exporter/prime contractor identifies in advance the broad parameters of a commercial project including defense exports needed, other participants (e.g., exporters with whom they have "teamed up", subcontractors), and foreign government end users. Projects eligible for such authorization may include a commercial export of a major weapons system for a foreign government involving, for example, multiple U.S. suppliers under a commercial teaming agreement to design, develop and manufacture defense articles to meet a foreign government's requirements. U.S. exporters seeking such authorization must provide detailed information concerning the scope of the project, including other exporters, U.S. subcontractors, and planned exports (including re-exports) of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

(2) *Major Program Authorization.* With respect to NATO members, Australia, Japan, and Sweden, the Office of Defense Trade Controls may provide comprehensive authorizations for well circumscribed commercially developed "major program". This variant would be available where a single registered U.S. exporter defines in advance the parameters of a broad commercial program for which the registrant will be providing all phases of the necessary support (including the needed hardware, tech data, defense services, development, manufacturing, and logistic support). U.S. exporters seeking such authorization must provide detailed information concerning the scope of the program, including planned exports (including re-exports) of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

(3)(i) *Global Project Authorization.* With respect to NATO members, Australia, Japan, and Sweden, the Office of Defense Trade Controls may provide a comprehensive "Global Project Authorization" to registered U.S. exporters for exports of defense articles, technical data or defense services in support of government to government cooperative projects (covering research and development or production) with one of these countries undertaken pursuant to an agreement between the USG and the government of such country, or a memorandum of understanding between the Department of Defense and the country's Ministry of Defense.

* * * * *

(4) *Technical Data Supporting an Acquisition, Teaming Arrangement, Merger, Joint Venture Authorization.* With respect to NATO member countries, Australia, Japan, and Sweden, the Office of Defense Trade Controls may provide a registered U.S. defense company a comprehensive authorization to export technical data in support of the U.S. exporter's consideration of entering into a teaming arrangement, joint venture, merger, acquisition, or similar arrangement with prospective foreign partners. Specifically the authorization is designed to permit the export of a broadly defined set of technical data to qualifying well established foreign defense firms in NATO countries, Australia, Japan, or Sweden in order to better facilitate a sufficiently in depth assessment of the benefits, opportunities and other relevant considerations presented by such prospective arrangements. U.S exporters seeking such authorization must provide detailed information concerning the arrangement, joint venture, merger or acquisition, including any planned exports of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

* * * * *

Dated: June 12, 2001.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 01–16011 Filed 7–9–01; 8:45 am]

BILLING CODE 4710–25–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–01–001]

RIN 2115–AE47

Drawbridge Operations Regulations; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the operating regulations for the Ballard Bridge across the Lake Washington Ship Canal, mile 1.1, at Seattle, Washington. This change limits double-leaf opening of the bascule draw daily with notice requirements. These special operations are to accommodate a major refurbishment project to the operating and drive systems of the bridge by the City of Seattle.

DATES: This temporary final rule is effective from 5 a.m. on September 4, 2001, until 8 p.m. on September 30, 2002.

ADDRESSES: The public docket and all documents referred to in this document are available for inspection at the Thirteenth Coast Guard District, Aids to Navigation and Waterways Management Branch, 915 Second Avenue, Seattle, Washington 98174–1067, between 7:45 a.m. and 4:15 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Project Officer, Thirteenth Coast Guard District, (206) 220–7282.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 12, 2001, a notice of proposed rulemaking was published in the **Federal Register** entitled Drawbridge Operation Regulations; Lake Washington Ship Canal (66 FR 9779). Two objections to the proposed temporary rule were received. One objection concerned commercial vessels and the other objection pertained to a research vessel. Their concerns have been accommodated in this temporary final rule.

Background and Purpose

The City of Seattle proposed to replace the aged operating and drive systems of the bascule drawspan. To minimize interference with navigation, only one leaf will be temporarily disabled at a time. The disabled draw leaf will be powered by a winch system that will not perform at the usual speed for this drawbridge. In order to avoid lengthy inoperative periods, the bridge owner proposed three daily periods during which the draw will open fully for vessels unable to safely pass through one-half of the span. With five hours notice, both leaves of the draw would open at 5 a.m., 11 a.m., and 7 p.m. on any day of the week. The second and third periods are changed from 12:30 p.m. and 8 p.m. to better accommodate larger vessels. In addition a provision has been added for double-leaf openings at any time for vessels of at least 480 gross tons whenever at least one-week notice is provided. The established closed periods Monday through Friday of 7 a.m. to 9 p.m. and 4 p.m. to 6 p.m., except federal holidays, will remain in effect. The start time for the special operations is changed from June 4 to September 4, 2001. During the project, single-leaf openings are available according to the operating schedule currently in effect. These regulations provide that both draw leaves need not be opened for the passage of vessels, including vessels engaged in towing operations, from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays, for any vessel under 1000 gross tons.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that most vessels will be able to pass the bridge with little change from normal operations and that all vessels can be accommodated three times a day. The largest vessels affected will be able to provide the one-week notice whenever the scheduled full openings are not convenient.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. Some vessel owners might be temporarily inconvenienced by the change, if effected, but the delay should not be significant, especially after vessel operators learn of the change and can therefore plan their trips on the canal accordingly.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize

litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges, Regulations.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.1051(d) is amended by temporarily adding paragraph (4) as follows:

§ 117.1051 Lake Washington Ship Canal.

* * * * *

(d) * * *

(4) From 5 a.m. on September 4, 2001, to 8 p.m. September 30, 2002, the Ballard Bridge, mile 1.1, need not open both draw leaves for the passage of vessels, including those engaged in towing operations, except at 5 a.m., 11 a.m., and 7 p.m. if at least five hours notice is given or at any time for vessels of 480 gross tons or more if at least one-week notice is provided, other than 7 a.m. to 9 p.m. and 4 p.m. to 6 p.m. Monday through Friday, except federal holidays.

* * * * *

Dated: June 5, 2001.

Erroll Brown,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 01–17107 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AK74

Board of Veterans' Appeals: Rules of Practice—Effect of Procedural Defects in Motions for Revision of Decisions on the Grounds of Clear and Unmistakable Error

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for comments.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) to provide that, when a motion to revise a Board decision on the grounds of clear and unmistakable error (CUE) fails to provide specific allegations of error, the Board will dismiss the motion without prejudice to refiling. This amendment is made necessary by a decision of the United States Court of Appeals for the Federal Circuit.

DATES: *Effective Date:* This interim final rule is effective July 10, 2001. Comments must be received on or before September 10, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900-AK74." All comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Acting Vice Chairman, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board is an administrative body that decides appeals from denials of claims for veterans' benefits. The Board's 57 Members decide about 35,000 to 40,000 cases per year.

In 1999, the Department of Veterans Affairs (VA) published rules implementing the provisions of section 1(b) of Pub. L. No. 105–111 (Nov. 21, 1997), which permit challenges to Board decisions on the grounds of "clear and unmistakable error" (CUE). 64 FR 2134 (Jan. 13, 1999). Those regulations were challenged in the U.S. Court of Appeals for the Federal Circuit. On December 8, 2000, that court upheld all of the challenged regulations with the exception of Rule 1404(b) (38 CFR 20.1404(b)). To the extent that Rule 1404(b) provided that a CUE motion which failed to specifically allege error would be denied, rather than dismissed without prejudice to refiling, the court stated:

> We hold that CUE Rule 1404(b) (codified at 38 CFR 20.1404(b)) is invalid because, in conjunction with the CUE Rule 1409(c) (codified at 38 CFR 20.1409(c)), it operates to prevent Board review of any CUE claim that is the subject of a motion that is denied for failure to comply with the pleading requirements of Rule 1404(b). That is contrary to the requirement of 38 U.S.C. 7111(e) that a CUE claim "shall be decided by the Board on the merits."

Disabled American Veterans v. *Gober*, 234 F.3d 682, 704 (Fed. Cir. 2000). *See also id.* at 698–99 (discussion of Rule 1404(b)).

Based on that holding, this document amends Rule 1404(b) to provide that the Board will dismiss such motions without prejudice to refiling. The document also makes conforming changes to Rule 1409(b) (38 CFR 1409(b)) to provide that the dismissal without prejudice of a CUE motion is not a final decision of the Board.

This interim final rule concerns rules of agency procedure and practice. Accordingly, under the provisions of 5 U.S.C. 553, we are dispensing with prior notice and comment and a delayed effective date.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this interim final rule is exempt from

the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure; Claims; Lawyers; Legal services; Veterans; Authority delegations (government agencies).

Approved: June 29, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

2. In § 20.1404, paragraph (b) is revised amended to read as follows:

§ 20.1404. Rule 1404. Filing and pleading requirements; withdrawals.

* * * * *

(b) *Specific allegations required.* The motion must set forth clearly and specifically the alleged clear and unmistakable error, or errors, of fact or law in the Board decision, the legal or factual basis for such allegations, and why the result would have been manifestly different but for the alleged error. Non-specific allegations of failure to follow regulations or failure to give due process, or any other general, non-specific allegations of error, are insufficient to satisfy the requirement of the previous sentence. Motions which fail to comply with the requirements set forth in this paragraph shall be dismissed without prejudice to refiling under this subpart.

* * * * *

3. In § 20.1409, paragraph (b) is revised amended to read as follows:

§ 20.1409. Rule 1409. Finality and appeal.

* * * * *

(b) For purposes of this section, a dismissal without prejudice under Rule 1404(a) (§ 20.1404(a) of this part), Rule 1404(b) (§ 20.1404(b)), or Rule 1404(f) (§ 20.1404(f)), or a referral under Rule 1405(e) is not a final decision of the Board.

* * * * *

[FR Doc. 01–17137 Filed 7–9–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX 28–1–7382a; FRL–7008–3]

Approval and Promulgation of Implementation Plans; Texas; Houston/Galveston Ozone Nonattainment Area Vehicle Miles Traveled Offset Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this direct final action, the EPA is approving the Texas State Implementation Plan(SIP) for the Houston/Galveston Ozone Nonattainment Area (HGA) Vehicle Miles Traveled (VMT) Offset Plan as part of the State's effort to attain the National Ambient Air Quality Standard (NAAQS) for ozone. The State demonstrated that emissions from increases in VMT or numbers of vehicle trips within HGA will not rise above an established ceiling by 2007; thereby not requiring additional transportation control measure (TCM) offsets to prevent an increase in VMT above the ceiling. This action replaces the October 21, 1997 proposed disapproval of the HGA VMT Offset SIP revision previously submitted on August 16, 1994. This action is being taken under sections 110 and 182 of the Federal Clean Air Act, as amended (the Act).

DATES: This direct final rule is effective on September 10, 2001, without further notice, unless EPA receives adverse comment by August 9, 2001. If significant adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2377. Copies of the relevant material for this notice are available for inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2377.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Brooke M. Ivener, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7362.

SUPPLEMENTARY INFORMATION:

I. Table of Contents

1. Background
2. State Submittals
3. Analysis of 1997 VMT Plan
4. Comments on the Proposed Disapproval Action

Throughout this document "we," "us," and "our" means EPA.

1. Background

What Is a VMT SIP?

Section 182(d)(1)(A) of the Act requires states containing ozone nonattainment areas classified as severe, pursuant to section 181(a) of the Act, to adopt transportation control strategies and TCMs to offset increases in emissions resulting from growth in VMT or numbers of vehicle trips and to obtain reductions in motor vehicle emissions as necessary (in combination with other emission reduction requirements) to comply with the Act's Reasonable Further Progress milestones (section 182(b)(1) and (c)(2)(B)) and attainment demonstration requirements (section 182(c)(2)(A)). Our interpretation of section 182(d)(1)(A) is discussed in the April 16, 1992, General Preamble to Title I of the Act (57 FR 13498, the General Preamble). Section 182(d)(1)(A) of the Act requires that states submit the VMT Offset SIP by November 15, 1992, for any severe and above ozone nonattainment area. Texas has one severe ozone nonattainment area, the HGA area, with an attainment deadline of 2007.

2. State Submittals

Previous Submittals

On November 13, 1992, the State submitted a committal SIP to EPA for VMT Offset for the HGA nonattainment area. The submittal committed to submitting subsequent SIPs in 1993 and 1994 to parallel development of the 15 percent Rate of Progress (ROP) SIP revision, and to parallel the Post 1996 ROP SIP revision and the demonstration of attainment SIP revision, both due November 1994. On November 12, 1993, and November 6, 1994, the State of Texas submitted revisions to the SIP for the VMT Offset Plan to fulfill the committal SIP requirement. On October 21, 1997, EPA proposed disapproval of the 1993 and 1994 VMT Offset SIP submittals (62 FR 54598). These submittals were no longer accurate since the calculated vehicle emissions relied

upon programs no longer in effect; specifically, a centralized loaded mode vehicle inspection and maintenance (I/M) program and an Employer Trip Reduction (ETR) program. A complete discussion of the background surrounding program changes is included in the above referenced proposed disapproval action.

Current Submittal

The State subsequently submitted a SIP revision for VMT Offset on August 25, 1997. The submittal was determined complete on December 10, 1997. For information regarding our analysis of the State submittal, please refer to the Technical Support Document for this action. On May 17, 2000, the State submitted to the EPA a new SIP revision for VMT Offset. This submittal does not contain any substantive changes and does not affect any approval of the revision submitted on August 25, 1997. The State submitted the revision, which the State adopted on May 9, 2000, because the VMT Offset SIP references the TCM rules in 30 TAC § 114.270, which were reevaluated and renumbered. The discussion of the VMT Offset SIP in this rule is therefore still in reference to the August 25, 1997 submittal, as it is the substantive SIP revision document on which this proposed approval is based.

3. Analysis of 1997 VMT Plan

How Is the VMT Offset Requirement Satisfied?

The EPA General Preamble (57 FR 13498, 13521–13523, April 16, 1992) explains how to demonstrate that the VMT requirement is satisfied. Sufficient measures must be adopted so projected motor vehicle volatile organic compound (VOC) emissions will stay beneath a ceiling level established through modeling of mandated transportation-related controls. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented by TCMs. If projected total motor vehicle emissions during the ozone season in one year are not higher than during the previous ozone season due to the control measures in the SIP, the VMT Offset requirement is satisfied. In order to make these projections, two curves of vehicle emissions are modeled (please refer to Graph 1 in the Technical Support Document). The upper curve profiles the effects of required reductions from the following mandatory programs: a low-enhanced performance standard vehicle I/M program, Reid Vapor Pressure (RVP) controls, and reformulated gasoline. The lower curve depicts the control strategy program and includes the effects not only of the mandated controls, but also of the Motorist Choice I/M program and TCMs.

What Does Texas' Demonstration Show?

The August 25, 1997, VMT SIP submittal includes a projection of the mobile source emissions profile for HGA through 2007, the date by which the HGA area is to attain the NAAQS for ozone. It also contains an upper curve modeled scenario that includes the effects of required reductions from the following mandatory programs: a Low-Enhanced Performance Standard I/M program, Phase II RVP controls, reformulated gasoline, and the Federal Vehicle Control Program (FMVCP) for new vehicles, including the Tier I FMVCP standard. The lower curve, which depicts the control strategy program, includes the Motorist Choice I/M program, Phase II RVP controls, reformulated gasoline, the FMVCP, and certain TCMs.

What TCMs Are Part of the VMT Offset SIP?

The Transportation Policy Council for the HGA Transportation Management Area adopted, through resolution on September 29, 1995, TCM commitments in the 1996–1997 Transportation Implementation Project and the 2020 Metropolitan Transportation Plan. These TCMs were included in the 15% ROP Plan and the Post 1996 ROP Plan submitted on July 24, 1996, and have been included in the VMT Offset SIP as measurable emission reduction credits.

The TCM commitments for Fiscal Year (FY) 1996 include 14.7 miles of High Occupancy Vehicle (HOV) Lanes, 3,745 parking spaces in Park-and-Ride Lots, 41 miles of Arterial Traffic Management Systems, 22.2 miles of Computer Transportation Management Systems, and 2.9 miles of signalization.

Although not credited for the VMT Offset SIP demonstrations, as explained below, the TCMs for FY 1999 include 3.2 miles of Accident Investigation Sites, 65.8 miles of Arterial Traffic Management Systems, 262.3 miles of Bicycle Facilities, 70.3 miles of Computer Transportation Management Systems, 3.5 miles of HOV lanes, 1643 Park and Ride Lot spaces, 49.3 miles of signalization, and 225 Vanpool vans. The TCMs for FY 2007 include 30.0 miles of Accident Investigation Sites, 1.5 miles of Arterial Traffic Management Systems, and 59.5 miles of Computer Transportation Management Systems.

EPA stated in its comment letter dated June 5, 1997, that any TCMs for which Texas takes credit in the VMT SIP should be specifically documented on a project-by-project basis. At the time of comment in 1997, the HGA Metropolitan Planning Organization (MPO) commited to TCM reductions on a project category (e.g., HOV lanes) basis, not on a project specific basis. Therefore, to resolve the dilemma, no future credit is taken in the SIP for any TCMs committed for milestone years after November 15, 1996. Thus, the lower curve includes only TCMs through FY 1996. A detailed description of the FY 1996 TCM projects and the associated implementation, and completion schedules is included in an Appendix to the SIP. The EPA gave conditional interim approval of these FY 1996 TCMs as part of the 15 percent ROP Plan on November 10, 1998 (62 FR 62943). It is worth mentioning here that later SIPs have included additional TCMs which are not credited. This, in effect, means that the VMT Offsets are, in actuality, even greater than accounted for here.

Results of the Analysis

The modeled curves in Graph 1 satisfy the VMT Offset requirement as discussed in the General Preamble. Modeling of the lower curve, at no time, shows the emission estimates meeting or exceeding the lowest point in the upper curve, reached in 2007. The upper curve reaches its lowest point in 2007, so no upward turn is demonstrated in this instance. The low point establishes the ceiling, but no true ceiling is established in this demonstration because there is no upward turn of the curve to identify the lowest point. Since the curve does not turn upward (indicating the control programs are offsetting increases in emission from growth in VMT) no TCMs would be necessary to offset emissions from growth in VMT. The State, however, chose to include the five FY 1996 TCMs anyway, although they are not necessary.

The TCMs selected reduce emissions associated with mobile sources by relieving congestion, improving traffic flow, and decreasing idle time. As required by section 182(d)(1)(A) of the Act, they neither impede adequate access to downtown or other commercial and residential areas nor increase or relocate emissions and congestion.

The August 25, 1997 submittal includes all elements required by the Act to fulfill the requirements for a VMT Offset Plan in the HGA severe ozone nonattainment area. It is worth noting that subsequent to the submission of the VMT Offset plan, Texas has submitted additional mobile source control

measures as part of its attainment plan. These include a more extensive I/M program and a low emissions diesel requirement. Therefore, if these additional control measures were factored in to the analysis, the area would be able to demonstrate compliance by a wider margin.

4. Comments on the Proposed Disapproval Action

Three comments were received in response to the proposed disapproval (referenced above) of the 1993 and 1994 submittals which comprised the VMT Offset requirement. Two comments supported the proposed disapproval because the SIP relied upon the repealed I/M and ETR Programs. The SIP submittal being acted upon in this action does not rely on those two programs. A third comment supported approval of the August 1997 VMT Offset submittal. No other comments were received.

II. Final Action

The EPA has determined that Texas has adequately demonstrated that emissions from growth in VMT and number of vehicle trips will not rise above the ceiling. Therefore, we are approving the VMT Offset SIP, submitted by the State on August 25, 1997 and with minor revisions submitted on May 17, 2000, under sections 110 and 182 of the Act.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on September 10, 2001 without further notice unless we receive adverse comment by August 9, 2001. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16,1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 10, 2001 unless EPA receives adverse written comments by August 9, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 13, 2001.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. In § 52.2270, paragraph (e), in the table entitled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP," one entry is added to the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/effective date	EPA approval date	Comments
Vehicle Miles Traveled Offset Plan.	Houston/Galveston Ozone nonattainment area.	05/09/2000	July 10, 2001, 66 FR 35906 ..	Originally submitted 11/12/93 and revised 11/06/94, 8/25/97, and 05/17/00.

[FR Doc. 01–16806 Filed 7–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–47; GA–52; GA–55–200111; FRL–7009–3]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In a December 16, 1999, **Federal Register** document (see 64 FR 70478), EPA proposed to approve the 1-hour ozone attainment demonstration for the Atlanta nonattainment area (Atlanta attainment demonstration), as well as the underlying rule revisions, which were submitted by the Georgia Environmental Protection Division (GAEPD) on October 28, 1999. EPA's proposed approval was based on the condition that the GAEPD satisfy certain requirements established in the proposal. Subsequently, the GAEPD submitted revisions to the Atlanta attainment demonstration on January 31, 2000, and July 31, 2000. Those rule revisions were proposed for approval in the **Federal Register** on December 18, 2000, at 65 FR 79034. No adverse comments were received pertaining to any rule revisions. In today's action, EPA is granting final approval to the rule revisions contained in the December 16, 1999, and December 18, 2000, proposals. Action will be taken on the Atlanta attainment demonstration in a separate notice.

EFFECTIVE DATE: This rule will be effective August 9, 2001.

ADDRESSES: All comments should be addressed to: Scott M. Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin at (404) 562–9036. martin.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In a December 16, 1999, **Federal Register** document (see 64 FR 70478), EPA proposed to approve the 1-hour ozone attainment demonstration for the Atlanta nonattainment area (Atlanta attainment demonstration), as well as the underlying rule revisions, which were submitted by the Georgia Environmental Protection Division (GAEPD) on October 28, 1999. EPA's proposed approval was based on the condition that the GAEPD satisfy certain requirements established in the proposal. Subsequently, the GAEPD submitted revisions to the Atlanta attainment demonstration on January 31, 2000, and July 31, 2000. Those rule revisions were proposed for approval in the **Federal Register** on December 18, 2000, at 65 FR 79034. No adverse comments were received pertaining to any rule revisions. In today's action, EPA is granting final approval to the rule revisions contained in the December 16, 1999, and December 18, 2000, proposals. Action will be taken on the Atlanta attainment demonstration in a separate notice.

Description of Major Revisions to Rules for Air Quality Submitted on October 28, 1999

The October 28, 1999, attainment demonstration submittal included several regulations that will reduce emissions of NO_X and VOC in the Atlanta modeling domain. EPA is approving the revisions to Georgia's Rules for Air Quality Control Chapter 391–3–1 described below.

Rule 391–3–.02, subparagraph (2)(ii) relating to "VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products" is being amended. This rule is amended to exempt aerospace manufacturing and rework facilities from the rule. The rule is also being modified in order to keep Rule (ii) consistent with the most current Architectural Aluminum Manufacture's Association (AAMA) standard in place.

The current rule only exempts the surface coating of airplane exteriors. Rule (ii) is no longer applicable to aerospace sources because the State has previously submitted a new rule limiting VOC emissions from aerospace manufacturing and rework facilities that meets EPA requirements (i.e., AAMA standards). In order to keep Rule (ii) consistent with the current AAMA standard, subparagraph 5.(xiii) has been modified to state that the coatings must satisfy the requirements of the most recent AAMA publication (number AAMA 605.2). This will prevent the standard that is stated in Rule (ii) from becoming outdated.

Rule 391–3–1–.02 subsection (6) relating to "Specific Monitoring" is being amended by adding a new subsection (a)2.(xii) which requires affected sources to install and operate continuous emissions monitoring

systems for NO_X and for oxygen or an approved alternative. The affected sources are those subject to the new rules for boilers (rule 391–3–1.02(2)(lll)). A requirement to install and operate monitors in order to determine initial compliance and track ongoing compliance with the above rule for boilers with a maximum design heat input capacity equal to or greater than 100 million BTU has been added. The rule allows, as an alternative, the use of predictive emissions monitoring systems for certain fuels.

Rule 391–3–1–.03 subsection (6)(b)11 relating to "Stationary Engines" is being amended to narrow the group of stationary engines that are not required to obtain air quality permits. Stationary engines with a rated capacity of 300 kilowatts or greater that are used for emergency and/or peaking power and that are located in a 45 county area in and around Atlanta would no longer be exempt from air quality permitting.

Rule 391–3–1–.03, paragraph (8)(c)(9) relating to "Permit Requirements" is being amended to correct a typographical error. Federal regulation 40 CFR part 52, appendix S is referenced in this regulation. It was incorrectly listed as part 51.

Rule 391–3–1–.03 subsection (8)(e) relating to "Permit Requirements" is being amended to require those sources in the additional 32 counties outside the designated nonattainment area to comply with new source permitting requirements because the emissions from these counties have been determined to affect ozone formation in the metro-Atlanta area. This rule identifies the 32 counties in the modeling analysis but outside the 13 county nonattainment area where the rule will apply and requires new or modified stationary sources in the counties to comply with the requirements of section (c). This rule will apply to new or modified stationary sources emitting 100 tons per year or more of volatile organic compounds or nitrogen oxides.

Description of Major Revisions to the Inspection and Maintenance Rules

The EPA is approving the revisions to Georgia's Rules for Enhanced Inspection and Maintenance Chapter 391–3–20 described below.

Rule 391–3–20–.01 relating to "Definitions" is being amended to change or delete definitions related to biennial testing, to modify the definition of ASM to include a dual-mode ASM test for older vehicles, to update the reference to the Federal I/M regulations, to define the term "Waiver," and to renumber the definitions.

The ASM test requirement is modified to require a dual-mode ASM 2525/5015 test, effective January 1, 2002. The GAEPD also revised the I/M rule to require annual testing effective January 1, 2000. The definitions of "Off-Year Inspection" and "Regular Inspection" are deleted since they are not relevant after the change to an annual program. The term "Waiver" is defined. The Federal I/M regulations, as of July 1, 1999, are referenced. Other clarifications are made.

Rule 391–3–20–.03 paragraph (4) relating to "Covered Vehicles; Exemptions" is being amended to extend the exemption period for new vehicles. Effective January 1, 2001, new vehicles are exempt from testing until the test year three years following the model year of the vehicle.

Description of Major Revisions to Rules for Air Quality Submitted on January 31, 2000

The January 31, 2000, submittal included several regulations that will reduce emissions of NO_X and VOC in the Atlanta modeling domain. EPA is approving the revisions to Georgia's Rules for Air Quality Control Chapter 391–3–1 described below.

The October 28, 1999, submittal expanded the coverage of several rules outside the 13 county nonattainment area to an additional 32 counties for a total of 45 counties. After receiving adverse comment from many of the counties affected by the expansion, the EPD agreed to revise the rules to reduce the economic hardship imposed on the smaller and more rural counties. The following 26 counties shall no longer be subject to the requirements of the rules listed below: Banks, Barrow, Butts, Chattooga, Clarke, Dawson, Floyd, Gordon, Haralson, Heard, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Morgan, Oconee, Pickens, Pike, Polk, Putnam, Troup and Upson; these rules are 391–3–1–.02(2)(tt), (vv), (yy), (ccc), (ddd), (eee), (hhh) and 391–3–1–.03(8)(c)(14). In addition to the 13 counties in the Atlanta 1-hour ozone nonattainment area, Bartow, Carroll, Hall, Newton, Spalding, and Walton counties shall be subject to the rules listed above.

Rule 391–3–1–.02(2)(jjj) relating to "NO_X Emissions from Electric Utility Steam Generating Units" is being amended to expand the coverage of the rule to include affected coal-fired electric utility steam generating units in the counties of Monroe and Putnam and to include a lower average NO_X emissions limit for all affected units.

Effective May 1, 2003, the NO_X emissions from all affected units at Plants Bowen (Bartow County), Hammond (Floyd County), McDonough (Cobb County), Wansley (Heard County), and Yates (Coweta County) will be limited to the equivalent of 0.13 lb/million BTU five plant average. An overlapping requirement, also effective May 1, 2003, limits NO_X emissions from all the same units described above plus the units at Plants Branch (Putnam County) and Scherer (Monroe County) to the equivalent of 0.20 lb/million BTU seven plant average. Compliance will be determined potentially in two steps. First, each source will be assigned a specific alternative emission limit. If the actual emission rate from each source is less than its alternative limit, then all affected sources would be in compliance. If the actual emission rate from any source is greater than its alternative limit, then compliance would be demonstrated by showing that the actual BTU-weighted average emission rate for all affected sources is less than 0.13 lb/million BTU for the 5 plants and 0.20 lb/million BTU for the 7 plants listed above. Compliance with the alternative emission limits would be determined such that their BTU-weighted average does not exceed the 0.13 and 0.20 lb/million BTU limits. The compliance period will be based on a 30-day rolling average beginning May 1 and ending September 30 of each year.

Rule 391–3–1–.02(2)(kkk) relating to "VOC Emissions from Aerospace Manufacturing and Rework Facilities" is being amended by adding compliance dates. Compliance dates have been added which give affected sources located outside of the Atlanta 1-hour ozone nonattainment area until January 1, 2001, to comply with the rule.

Rule 391–3–1–.02(2)(mmm) relating to "NO_X Emissions from Stationary Gas Turbines and Stationary Engines used to Generate Electricity" is being amended to remove an exemption from the rule. The exemption, "Stationary engines used exclusively in the handling and distribution of natural gas," is being removed. Stationary engines used to pump, compress, or liquefy natural gas are still exempt under another exemption which exempts engines not connected to an electrical generator. Therefore, the removal of the exemption makes engines used to generate electricity at natural gas pumping, compression, or liquefaction plants subject to the rule consistent with other industries.

Rule 391–3–1–.03(8)(c)(15) relating to "Additional Provisions for Electrical Generating Units Located in Areas Contributing to the Ambient Air Level of Ozone in the Metropolitan Atlanta Ozone Nonattainment Area" is being

added. "Electrical generating unit" is defined as a fossil fuel fired stationary boiler, combustion turbine, or combined cycle system that serves a generator which produces electricity for sale. Any new electrical generating unit located at a "major source" (which is defined as any source which has the potential to emit at least 100 tons per year NO_X) or any physical change or change in the method of operation of an existing electrical generating unit located at an existing major source which results in a net increase of 40 tons or more NO_X is subject to additional permitting requirements. This rule is applicable to electrical generating units at major sources located in 26 counties surrounding the 13 county Atlanta nonattainment area and the six counties subject to Rule 391–3–1–.03(8)(c)(14). Sources subject to this rule are required to use best achievable control technology (BACT) to control emissions and are required to obtain emission offsets at a ratio of 1.1 to 1. Sources located in the counties of Banks, Barrow, Bartow, Butts, Carroll, Chattooga, Clarke, Dawson, Floyd, Gordon, Hall, Haralson, Heard, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Monroe, Morgan, Newton, Oconee, Pickens, Pike, Polk, Putnam, Spalding, Troup, Upson, and Walton (32 county area) shall be subject to this rule.

Rule 391–3–1–.03(13) relating to "Emission Reduction Credits" is being amended. The purpose of this rule is to facilitate construction permitting for sources undertaking major modifications or new constructions in federally designated ozone nonattainment areas and areas contributing to ambient concentrations of ozone in nonattainment areas in the state of Georgia. The proposed amendments to this rule revise the eligibility requirements for major sources to make them consistent with corresponding changes that are being proposed for Rule 391–3–1–.03, Section (8); respond to comments received from EPA concerning applicability of its recently issued Economic Incentives Program to the Emission Reductions Credit Program; clarify the provisions for discounting of credits based on time banked; consolidate and move all definitions to the end of the rule; and strike a section referring to provisions of Rule 391–3–1–.03, Section (8).

Description of Major Revisions to Rules for Air Quality Submitted on July 31, 2000

Rule 391–3–1–.01, Definitions, subsection (nnnn) "Procedure for Testing and Monitoring Sources of Air Pollutants" is amended to reference a revised version of the Procedures for Testing and Monitoring Sources of Air Pollutants ("PTM") effective April 1, 2000, which includes changes to specific test methods and procedures and to include a new section describing compliance procedures and monitoring requirements for a new emission standard for large combustion turbines. These revisions have been reviewed and meet applicable requirements.

Rule 391–3–1–.02(2)(lll) relating to "NO_X Emissions from Fuel-Burning Equipment" is being amended to exempt fuel burning equipment brought on site by May 1, 1999, but which had not been installed or obtained an air quality permit under 391–3–1–.03(1) by May 1, 1999 and to provide an exemption for duct burners associated with combined cycle gas turbine systems. The original rule exempted existing boilers in their current locations because the cost of retrofitting existing boilers to comply with this rule was determined to be prohibitive. The rule was amended in January 2000, with an effective date of February 16, 2000, to exempt fuel burning equipment which had been permitted by May 1, 1999, even if the equipment was not yet installed and operational by that date. The intent was to grandfather such units because the permittee was likely to have contracted for a new boiler that could have not complied with the emission limit and incurred unrecoverable expense. Likewise, the intent in proposing this second amendment is to grandfather fuel burning equipment which had been purchased and brought on site, but which had not been installed nor made application sufficiently in time to obtain a permit by May 1, 1999. Another exemption is being added for duct burners associated with combined cycle gas turbine systems. These emission units will be subject to more stringent NO_X limits under Georgia Rule 391–3–1–.02(2)(nnn) or Georgia Rule 391–3–1–.03(8)(c) as part of the overall combined cycle system.

Rule 391–3–1–.02(2)(nnn) relating to "NO_X Emissions from Large Stationary Gas Turbines" is being amended. This rule will regulate NO_X emissions from new and existing stationary gas turbines greater than 25MW that are located in a 45 county area in and around Atlanta (i.e. 13 county nonattainment area and the 32 county area adjacent to the nonattainment area) NO_X emissions from affected stationary gas turbines permitted before April 1, 2000 will be limited to not more than 30 parts per million (or 50 parts per million for the oil-fired unit) at 15 percent oxygen with a compliance date of May 1, 2003. NO_X emissions from affected stationary gas turbines permitted on or after April 1, 2000, will be limited to not more than 6 parts per million at 15 percent oxygen with a compliance requirement upon startup. The limits in this rule will apply during the period May 1 through September 30 of each year. New units subject to a NO_X limit under 391–3–1–.03(8)(c)14. or 15. would be exempt from this rule. For existing units, a provision was included in the rule allowing the owner/operator to petition the Director for a revision to the rule in case a source is unable to meet the 30 parts per million (or 50 parts per million for the oil-fired unit) through combustion modifications.

Rule 391–3–1–.02(5) relating to "Open Burning".is being amended. The coverage of the rule is being expanded beyond the existing 13 county Atlanta 1-hour ozone nonattainment area to include the additional 32 county area. Subparagraph (a) is amended to add a "prescribed burning" and a "slash burning" exemption to the rule. Subparagraph (b) is reorganized to add clarity to the rule and is amended to add county specific restrictions for the six counties of Bartow, Carroll, Hall, Newton, Spalding, and Walton as well as the remaining 26 counties of the 32 county area. The six counties listed above will have the same restrictions as those in the Atlanta nonattainment area. The 26 counties remaining of the 32 county area will have the same restrictions as those in the Atlanta nonattainment area with the exception that "prescribed burning" is allowed in the 26 counties. Subparagraph (f) is added to include the definitions for "Prescribed Burning" and "Slash Burning."

Rule 391–3–1–.03(6)(h)3 relating to "SIP Permit Exemptions for Industrial Operations" is being amended. A new exemption from permitting for small feed mill or grain mill ovens and for surface coating drying ovens is being added.

Rule 391–3–1–.03(8) is being amended. Provisions for internal offsets at a ratio of 1.3 to 1 to avoid New Source Review permitting requirements are being restored in paragraphs (c)(13)(iii) and (iv). These provisions will allow existing sources located within the Atlanta 1-hour ozone nonattainment area to avoid becoming subject to federal New Source Review permitting requirements by offsetting emission increases associated with modifications at a 1.3 to 1.0 ratio.

Rule 391–3–1–.03(11) relating to "Permit by Rule" is being amended. A typographical error in the citation of

federal operating permit regulations is being corrected. The reference to 40 CFR 70.5(6)(f) is being replaced with the correct reference to 40 CFR 70.6(f).

III. Final Action

EPA is granting final approval to the rule revisions to the Georgia SIP as discussed above because they are consistent with Clean Air Act and Agency requirements.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 12, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

2. a. In the table in § 52.570(c), the following entries are revised: 391–3–.01; 391–3–1–.02(2)(ii); 391–3–1–.02(2)(ccc); 391–3–1–.02(2)(eee); 391–3–1–.02(2)(hhh); 391–3–1–.02(2)(jjj); 391–3–1–.02(2)(5); 391–3–1–.02(2)(6); 391–3–1–.03; 391–3–20.

b. In the table in § 52.570(c), the following entries are added: 391–3–1–.02(2)(tt); 391–3–1–.02(2)(vv); 391–3–1–.02(2)(yy); 391–3–1–.02(2)(ddd); 391–3–1–.02(2)(kkk); 391–3–1–.02(2)(lll); 391–3–1–.02(2)(mmm); 391–3–1–.02(2)(nnn).

3. In § 52.570 paragraph (e), the table is amended by adding a new entry "14" and "15".

The additions and revisions read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
391–3–1–.01	Definitions	8/16/00	July 10, 2001	

EPA APPROVED GEORGIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *				
391–3–1–.02(2)(ii)	VOC Emissions from surface Coating of Miscellaneous Metal Parts and Products.	10/7/99	July 10, 2001	
* * * * *				
391–3–1–.02(2)(tt)	VOC Emissions from Major Sources ..	2/16/00	July 10, 2001	
* * * * *				
391–3–1–.02(2)(vv)	Volatile Organic Liquid Handling and Storage.	2/16/00	July 10, 2001	
* * * * *				
391–3–1–.02(2)(yy)	Emissions of Nitrogen Oxides from Major Sources.	2/16/00	July 10, 2001	
* * * * *				
391–3–1–.02(2)(ccc)	VOC Emissions from Bulk Mixing tanks.	2/16/00	July 10, 2001	
391–3–1–.02(2)(ddd)	VOC Emissions from Offset Lithography.	2/16/00	July 10, 2001	
391–3–1–.02(2)(eee)	VOC Emissions from Expanded Polystyrene Products Manufacturing.	2/16/00	July 10, 2001	
* * * * *				
391–3–1–.02(2)(hhh)	Wood Furniture Finishing and Cleaning Operations.	2/16/00	July 10, 2001	
* * * * *				
391–3–1–.02(2)(jjj)	NO_x Emissions from Electric Utility Steam Generating Units.	2/16/00	July 10, 2001	
391–3–1–.02(2)(kkk)	VOC Emissions from Aerospace Manufacturing and Rework Facilities.	2/16/00	July 10, 2001	
391–3–1–.02(2)(lll)	NO_x Emissions from Fuel-Burning Equipment.	8/16/00	July 10, 2001	
391–3–1–.02(2)(mmm)	NO_x Emissions from Stationary Gas Turbines and Stationary Engines used to Generate Electricity.	2/16/00	July 10, 2001	
391–3–1–.02(2)(nnn)	NO_x Emissions from Large Stationary Gas Turbines.	8/16/00	July 10, 2001	
* * * * *				
391–3–1–.02(2)(5)	Open Burning	8/16/00	July 10, 2001	
391–3–1–.02(2)(6)	Source Monitoring	10/7/99	July 10, 2001	
* * * * *				
391–3–1–.03	Permits	8/16/00	July 10, 2001	
* * * * *				
391–3–20	Enhanced Inspection and Maintenance.	10/7/99	July 10, 2001	

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(e) * * *

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date
* * * * * *			
14. Procedures for Testing and Monitoring Sources of Air Pollutants.	Atlanta Metropolitan Area ..	July 31, 2000	July 10, 2001.
15. Enhanced Inspection/Maintenance Test Equipment, Procedures and Specifications.	Atlanta Metropolitan Area ..	September 20, 2000	July 10, 2001.

[FR Doc. 01–17076 Filed 7–9–01; 8:45am]
BILLING CODE 6560–50–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010111009–1009–01; I.D. 122600A]

RIN 0648–AO72

Fisheries of the Exclusive Economic Zone Off Alaska; Emergency Interim Rule to Revise Certain Provisions of the American Fisheries Act; Extension of Expiration Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of an emergency interim rule; request for comments.

SUMMARY: On January 22, 2001, NMFS published an emergency interim rule, effective January 18, 2001, through July 17, 2001, which supersedes and revises certain provisions of the American Fisheries Act (AFA). On May 15, 2001, NMFS published a correction to the emergency interim rule. This action extends this emergency interim rule, as corrected for an additional 180 days, through January 14, 2002, to maintain requirements of the AFA for the 2001 fishing year. The intended effect of this action is to further the socioeconomic objectives of the AFA.

DATES: The expiration date of the emergency interim rule, published on January 22, 2001 (66 FR 7327), and corrected on May 15, 2001 (66 FR 26808), is extended from July 17, 2001, to January 14, 2002.

Comments on this emergency interim rule must be received by August 9, 2001.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to (907) 586–7465. Comments will not be accepted if sent by e-mail.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: On October 21, 1998, the President signed into law the AFA (Div. C, Title II, Subtitle II, Public Law No. 105–277, 112 Stat. 2681, 1998), which made profound changes to the Bering Sea and Aleutian Islands management area (BSAI) pollock fishery and, to a lesser extent, to the groundfish and crab fisheries within the exclusive economic zone off Alaska. The major provisions of the AFA were implemented on an interim basis by an emergency rule published January 28, 2000 (65 FR 4520, extended at 65 FR 39107, June 23, 2000). Detailed information on the AFA may be found in the January 2000 emergency interim rule and in the Environmental Assessment/Regulatory Impact Review developed for that emergency interim rule. The Council has recommended Federal fishery management plan amendments to implement the major provisions of the AFA. If approved by NMFS, implementing regulations are expected to be effective by early 2002.

On January 22, 2001, NMFS published an emergency interim rule that implemented management measures to supersede and revise certain provisions of the AFA prior to the start of the Bering Sea pollock fishery (66 FR 7327). The preamble to the emergency interim rule provides a detailed description of the purpose and need for that action and is not repeated here. NMFS received no public comments during the comment period, which expired on February 21, 2001. A correction notice for this emergency interim rule was published on May 15, 2001 (66 FR 26808), which added Prohibitions specific to the AFA that were inadvertently omitted in the emergency interim rule. Extending the emergency interim rule maintains the revisions necessary for the continuation of the pollock fisheries in 2001. This extension makes no changes to the emergency interim rule, as corrected.

The Assistant Administrator for Fisheries, NOAA (AA), has determined that the extension of this emergency interim rule, as corrected, is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, the AFA, and other applicable laws.

Dated: June 29, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17094 Filed 7–9–01; 8:45 am]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 132
Tuesday, July 10, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–215–AD]

Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 737–100 and –200 series airplanes, that would have superseded an existing AD that currently requires various inspections for cracks in the outboard chord of the frame at body station (BS) 727 and in the outboard chord of stringer 18A; and repair or replacement of cracked parts. The proposed AD also would have required additional inspections for certain airplanes, and would have revised certain compliance times for all airplanes. That proposed AD was prompted by reports of fatigue cracks in those outboard chords. This new action revises the proposed AD by reducing the proposed initial inspection compliance times; simplifying and clarifying the repetitive inspection compliance times; and adding airplanes to the applicability. The actions specified by this new proposed AD are intended to detect and correct fatigue cracking, which could result in reduced structural integrity of the outboard chords, and consequent rapid decompression of the airplane.

DATES: Comments must be received by August 24, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 95–NM–215–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 95–NM–215–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–1221; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–215–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 95–NM–215–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 737–100 and –200 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 7, 1997 (62 FR 945). That NPRM proposed to supersede AD 95–12–17, amendment 39–9268 (60 FR 36981, July 19, 1995), which is applicable to certain Boeing Model 737–100 and –200 series airplanes. That NPRM would have continued to require various inspections for cracks in the outboard chord of the frame at body station (BS) 727 and in the outboard chord of stringer 18A; and repair or replacement of cracked parts. That NPRM would have required additional inspections for certain airplanes, and would have revised certain compliance times for all airplanes. That NPRM was prompted by reports of fatigue cracks in the outboard chords. That condition, if not corrected, could result in reduced structural integrity of the outboard chords, and consequent rapid decompression of the airplane.

Comments

Due consideration has been given to the comments received in response to the NPRM.

No Objection to the Proposed Rule

Two commenters, both airline operators, advised that they did not have any objections to the proposed rule.

Request To Reduce the Threshold

One commenter, the manufacturer, requests that the initial threshold compliance time for the proposed rule be changed from "prior to 50,000 total flight cycles" to "prior to 35,000 total flight cycles." The commenter states that fleet data reviewed since the release of Boeing 737 Service Bulletin 737–53A1166 (the applicable service information specified in the proposed rule) shows that small cracks have been detected as early as 28,000 flight cycles. The commenter suggests that if there are no cracks found, the next inspection should be accomplished at 50,000 total flight cycles. The commenter states that the repetitive intervals of 4,500 flight cycles as specified in the proposed rule should be retained.

The FAA partially agrees. For the reason the commenter stated, we concur that the threshold compliance time of paragraph (a) of the proposed rule should be reduced. However, based on the new reports of cracks, we have determined that the compliance time should be reduced to "prior to the accumulation of 30,000 total flight cycles," and have revised this supplemental NPRM accordingly. This has the effect of retaining the initial compliance time specified in AD 95–12–17. We do not concur that, if no cracks are found, the next inspection should be accomplished only prior to 50,000 total flight cycles. Based on the new crack data that Boeing has provided, we find that, if there are no cracks found during an initial inspection that is performed prior to 30,000 total flight cycles, waiting to perform the next inspection until 50,000 total flight cycles are accumulated could allow sufficient and ample time for cracking to develop. Therefore, we have determined that the previously proposed repetitive inspection interval of 4,500 flight cycles should remain the same throughout this supplemental NPRM.

Additional Changes to the NPRM

Since the issuance of the original NPRM, the FAA has determined that a new group of airplanes (i.e., for airplanes that have accumulated less than 27,000 total flight cycles) were inadvertently excluded in the original NPRM. Therefore, that group of airplanes has been included and addressed in paragraph (c) of this supplemental NPRM.

Also, we have determined that the various repetitive inspection times specified in the original NPRM should be combined into a single repetitive interval not to exceed 4,500 flight cycles. That single repetitive compliance time will continue to provide an adequate level of safety and should make it simpler and easier for operators to schedule their fleets for required maintenance.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 999 Model 737–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 296 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 95–12–17 take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $71,040, or $240 per airplane, per inspection cycle.

This proposed AD specifies inspection requirements for airplanes that were omitted inadvertently from the existing AD. However, the costs associated with the inspections for those airplanes were included previously in the cost impact on U.S. operators for accomplishment of AD 95–12–17. Therefore, the FAA estimates that no additional costs would be required for accomplishment of the proposed requirements of this AD for those airplanes.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that would be provided by this proposed AD, it would take approximately 50 work hours to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,680 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $6,680 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9268 (60 FR 36981, July 19, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95–NM–215–AD. Supersedes AD 95–12–17, Amendment 39–9268.

Applicability: Model 737–100 and –200 series airplanes, line numbers 1 through 999 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For

airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking, which could result in reduced structural integrity of the outboard chords, and consequent rapid decompression of the airplane., accomplish the following:

Restatement of AD 95–12–17

Inspections of the Outboard Chord

(a) For airplanes on which the body station (BS) 727 frame upper outboard chord has been replaced in accordance with Boeing Service Bulletin 737–53–1088: Prior to the accumulation of 30,000 total flight cycles since replacement of the upper outboard chord, or within 4,500 flight cycles after August 18, 1995, the effective date of AD 95–12–17 (60 FR 36981, July 19, 1995), whichever occurs later, perform close visual, pulse echo shear wave (PESW), and high frequency eddy current (HFEC) inspections to detect cracks in the outboard chord of the frame at BS 727 and in the outboard chord of stringer 18A; in accordance with Part I of the Accomplishment Instructions of either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995.

Certain Other Inspections

(b) For airplanes on which the BS 727 frame outboard chord has not been replaced or on which only the lower outboard chord has been replaced in accordance with Boeing Service Bulletin 737–53–1088: Perform close visual, PESW, and HFEC inspections to detect cracks in the outboard chord of the frame at BS 727 and in the outboard chord of stringer 18A; in accordance with Part I of the Accomplishment Instructions of either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; at the times specified in paragraph (b)(1), (b)(2), (b)(3), (b)(4), or (b)(5) of this AD. Thereafter, repeat the inspections at intervals not to exceed 4,500 flight cycles.

(1) For airplanes that have accumulated 27,000 or more total flight cycles, but fewer than 50,000 total flight cycles, as of August 18, 1995: Perform the inspections within 4,500 flight cycles after August 18, 1995.

(2) For airplanes that have accumulated 50,000 or more total flight cycles, but fewer than 60,000 total flight cycles, as of August 18, 1995: Perform the inspections within 2,500 flight cycles after August 18, 1995.

(3) For airplanes that have accumulated 60,000 or more total flight cycles, as of August 18, 1995: Perform the inspections within 1,500 flight cycles after August 18, 1995.

(4) For airplanes that have accumulated 70,000 or more total flight cycles as of August 18, 1995: Perform the inspections within 500 flight cycles or within 90 days after August 18, 1995.

New Requirements of This AD

(c) For any airplane that had accumulated less than 27,000 total flight cycles as of August 18, 1995 (the effective dated of AD–95–12–17): Within 4,500 flight cycles after the effective date of this AD, perform close visual, pulse echo shear wave (PESW), and high frequency eddy current (HFEC) inspections to detect cracks in the outboard chord of the frame at BS 727 and in the outboard chord of stringer 18A; in accordance with Part I of the Accomplishment Instructions of either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995. Thereafter, repeat the inspections at intervals not to exceed 4,500 flight cycles.

(d) If any crack is found in the outboard chord of stringer 18A during any inspection required by this AD, prior to further flight, repair in accordance with either paragraph (d)(1) or (d)(2) of this AD.

(1) Repair in accordance with Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; or

(2) Repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(e) If any crack is found in the outboard chord of the frame at BS 727 during any inspection required by this AD: Accomplish paragraph (e)(1) or (e)(2) of this AD, as applicable, in accordance with either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995. Thereafter, repeat the inspections required by either paragraph (a) or (b) of this AD, as applicable, at intervals not to exceed 4,500 flight cycles.

(1) If any crack extends from the forward edge of the chord or from the forward fastener hole, but does not extend past the second fastener hole, accomplish either paragraph (e)(1)(i) or (e)(1)(ii) of this AD.

(i) Prior to further flight, install the time-limited repair. Prior to the accumulation of 4,500 flight cycles or within 18 months after accomplishment of the repair, whichever occurs first, replace the outboard chord. Or

(ii) Prior to further flight, replace the outboard chord.

Note 2: Boeing Alert Service Bulletin 737–53A1166 references Boeing Service Bulletin 737–53–1088 as an additional source of service information for procedures to replace the chord.

(2) If any crack extends from the forward edge of the chord, or from the forward fastener hole, and extends past the second fastener hole, prior to further flight, replace the outboard chord in accordance with either the original issue or Revision 1 of the service bulletin.

(f) Accomplishment of the actions specified in paragraph (f)(1) or (f)(2) of this AD in accordance with either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994, or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995, constitutes terminating action for the requirements of this AD.

(1) For airplanes on which no crack is found: Install the preventative modification.

(2) For airplanes on which any crack is found: Prior to further flight, replace the cracked chord and install the preventative modification.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 2, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17122 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ANM–12]

Proposed Establishment of Class D Airspace; Kalispell, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would establish the Kalispell, MT, Class D surface area airspace to accommodate the procedures associated with the operation of a new Airport Traffic Control Tower (ATCT) at Glacier Park International Airport, Kalispell, MT.

DATES: Comments must be received on or before August 24, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 01–ANM–12, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–12, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–ANM–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class D airspace at Kalispell, MT. This amendment would provide Class D airspace to be used with the establishment of a new operational ATCT at Glacier Park International Airport. This amendment would allow the proper type of airspace to be established to promote safety of flight while the ATCT is operational. The FAA establishes Class D airspace where necessary to protect aircraft transitioning between the terminal and en route environments, and to provide local Visual Flight Rules (VFR) sequencing by ATCT personnel. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) and VFR at Glacier Park International Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D surface airspace areas are published in Paragraph 5000, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 5000 General.

* * * * *

ANM MT D Kalispell, MT [New]

Glacier Park International Airport, Kalispell, MT

(Lat. 48°18′41″ N, long. 114°15′17″ W)

That airspace extending upwards from the surface to and including 5,500 feet MSL within a 4.3-mile radius of the Glacier Park International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on June 29, 2001.

Lee Daniel,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–17241 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ANM–09]

Proposed Modification of Class E Airspace, Pasco, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace at Pasco, WA. An area of uncontrolled airspace has been discovered in the Tri-Cities terminal area. This area impedes safe and efficient air traffic control operations to, from, and in the vicinity of Tri-Cities Airport. Additional Class E 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft conducting IFR operations at Pasco, Tri-Cities Airport, therefore making this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Pasco, Tri-Cities Airport, Pasco, WA.

DATES: Comments must be received on or before August 24, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 01–ANM–09, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–09, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–ANM–09." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Pasco, WA. Additional Class E 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft conducting IFR operations at Pasco, Tri-Cities Airport. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of th navigable airspace. This proposal would promote safe flight operations under IFR at the Pasco, Tri-Cities Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 740.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA E5 Pasco, WA [Revised]

Pasco, Tri-Cities Airport, WA
(Lat. 46°15′53″ N., long. 119°07′08″ W.)
Pasco VOR/DME
(Lat. 46°15′47″ N., long. 119°06′57″ W.)

Richland Airport
(Lat. 46°18'20" N., long 119°18'15" W.)

That airspace extending upward from 700 feet above the surface within 9.2 miles northwest and 5.3 miles southeast of the Pasco VOR/DME 046° and 226° radials extending from 20.1 miles northeast to 10.5 miles southeast of the VOR/DME, and within 8.3 miles northeast and 6.1 miles southwest of the Pasco VOR/DME 131° radial extending from the VOR/DME to 26.3 miles southeast of the VOR/DME, and within 4.3 miles north and 6.6 miles south of the Pasco VOR/DME 288° radial extending from 7 miles west of the VOR/DME to 23.1 miles west of the VOR/DME, and within 8.3 miles west and 4 miles east of the 166° bearing from the Richland Airport extending from the airport to 20.9 miles; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 45°49'00" N., long. 118°00'00" W.; thence to lat. 45°49'00" N., long. 119°45'00" W.; to lat. 47°00'00" N., long. 119°45'00" W.; to lat. 47°00'00" N., long. 118°00'00" W.; thence to the point of origin, excluding that airspace within Federal Airways; and the Hermiston, OR; Pendleton, OR; Walla Walla, WA, Moses Lake, WA, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on June 29, 2001.

Lee Daniel,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–17240 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ANM–08]

Proposed Amendment to Class E2 Airspace, Coppertown, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E2 airspace at Coppertown, MT and to change the designation of this airspace to Butte, MT. A recently installed weather reporting device qualifies the E2 airspace to be effective continuously. Class E2 controlled airspace, above the surface of the earth is required to contain aircraft executing the Instrument Flight Rules (IFR) operations at the Bert Mooney Airport, Butte, MT. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Bert Mooney Airport, Butte, MT. Additionally, this action proposes to change the designation of this airspace by removing the designation of Coppertown, MT, and designating it as Butte, MT to adequately reflect the proper name of the airspace.

DATES: Comments must be received on or before August 24, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 01–ANM–08, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–08, 1601 Lind Avenue SW., Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–ANM–08." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by amending the Class E airspace at Coppertown, MT. The effective times for Class E2 airspace at Bert Mooney Airport, Butte, MT was restricted by NOTAM due to the availability of weather reporting. Newly installed weather reporting equipment at the Bert Mooney Airport now qualifies the Class E2 airspace for continuous operations. This action would promote safe flight to Bert Mooney Airport by Class E2 controlled airspace above the surface of the earth is required to contain aircraft executing the instrument flight operations at Bert Mooney Airport. Class E2 airspace is required to contain aircraft executing the instrument flight operations at Bert Mooney Airport.

The legal designation of Coppertown, MT, does not adequately reflect the airspace and airport this legal description supports. Confusion has occurred by airspace researchers analyzing the Butte, MT, Class E2 airspace as it is listed as Coppertown. Therefore, this amendment also proposes to change the designation of this Class E2 airspace from Coppertown, MT, to Butte, MT. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Bert Mooney Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designated as surface area for an airport, are published in Paragraph 6002, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6002 Class E airspace designated as surface area for an airport.

* * * * *

ANM MT E2 Coppertown, MT [Remove]

* * * * *

ANM MT E2 Butte, MT [New]

Bert Mooney Airport, MT
(Lat. 45°57′17″ N., long. 112°29′57″ W.)
Coppertown VORTAC
(Lat. 46°01′58″ N., long. 112°44′50″ W.)

Within a 4.3-mile radius of the Bert Mooney Airport; and within 1.8 miles each side of the Coppertown VORTAC 115° radial extending from the 4.3-mile radius to the VORTAC, and within 2.7 miles each side of the 316° bearing from the airport extending from the 4.3-mile radius to 11.4 miles northwest of the airport.

* * * * *

Issued in Seattle, Washington, on June 29, 2001.

Lee Daniel,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–17242 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 219 and 294

RIN 0596–AB85

National Forest System Land and Resource Management Planning; Special Areas; Roadless Area Conservation

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: On May 4, the Secretary of Agriculture expressed the Administration's commitment to providing protection of roadless areas in the National Forest System. However, acknowledging concerns raised by local communities, tribes, and States impacted by the roadless area conservation rule published January 12, 2001, the Secretary also indicated that USDA would move forward with a responsible and balanced approach to re-examining the rule that fairly addressed those concerns.

This advance notice is intended to give the public the opportunity to comment on key issues that have been raised regarding the protection of roadless areas. These comments will help the Department determine the next steps in addressing the long-term protection and management of roadless values within the National Forest System.

DATES: Comments must be received in writing by September 10, 2001.

ADDRESSES: Send comments in writing by mail to USDA-Forest Service—CAT, Attention: Roadless ANPR Comments, P.O. Box 221090, Salt Lake City, Utah, 84122; via electronic mail to roadless_anpr@fs.fed.us; or via facsimile to 1–801–296–4090, Attention: Roadless ANPR Comments. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying at Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Jody Sutton at telephone number, 801–517–1023.

SUPPLEMENTARY INFORMATION: The Department is seeking public comment to help decide the next steps in providing long-term protection of roadless values.

On January 12, 2001, the Department issued a final rule accompanied by a final environmental impact statement (Forest Service Roadless Area Conservation, USDA Forest Service, November 2000) and Record of Decision (published as part of the final rule, 36 CFR Part 294, Special Areas; Roadless Area Conservation, on January 12, 2001 at 66 FR 3244). This rule changed the land management on 58.5 million acres of inventoried roadless areas in 120 national forests. Originally scheduled to take effect on March 12, the Secretary of Agriculture extended the effective date until May 12, 2001, to permit the new Administration to review the rule.

Previously, the long-standing process employed by the Forest Service for all resource management decisions relied on amendments and revisions to forest plans governed by the National Forest Management Act. This is a highly collaborative process involving local, regional, and national interests, using the best available forest-level information and maps.

Following publication of the final rule, a number of States, tribes, organizations, and citizens have raised a number of concerns. Many assert that the most appropriate process for evaluating and making long-term resource management direction—including inventoried roadless area protection and management—is through the local forest planning process, which is governed by the rules at 36 CFR 219. They also maintain that environmental analysis and resource management decisions affecting individual national forests should be based on local information and knowledge and the best available science rather than applying one standard uniformly to every inventoried roadless area, no matter the location.

The Department recognizes that inventoried roadless areas contain important environmental values that warrant protection. Appropriate protection and management should be crafted through an open and fair process and address the concerns of States, tribes, local communities, and others.

On May 4, 2001, the Secretary of Agriculture presented five principles on which the protection and management of roadless values should be based:

1. *Informed decisionmaking,* using reliable information and accurate

mapping, and drawing on local expertise and experience through the local forest planning process;

2. *Working together,* by collaborating with States, tribes, local governments, organizations, and individuals through a fair and open process that is responsive to local input and information;

3. *Protecting forests* from the negative effects of severe wildfire and insect and disease outbreaks;

4. *Protecting communities, homes, and property* from the risk of severe wildfire or other risks existing on adjacent federal lands; and

5. *Protecting access to property,* by ensuring that States, tribes, and citizens owning property within inventoried roadless areas have access to that property as required by existing laws.

Eight lawsuits, involving seven states in six judicial districts of four federal circuits have been filed against the January 12, 2001, rule. Among the various issues raised these lawsuits share a common allegation that there was inadequate opportunity for public review and comment on the roadless rule.

On May 10, 2001, the Idaho District Court granted the preliminary injunction requested in *Kootenai Tribe of Idaho* v. *Veneman* and *State of Idaho* v. *U.S. Forest Service,* enjoining the Forest Service from implementing "all aspects of the Roadless Area Conservation Rule" as well as a section of the November 2000, forest planning rule that addresses the inventory and evaluation of roadless areas during the forest plan revision. The Court based its decision, in part, on concerns noted in its April 5, 2001, order related to the public review and comment 3 process; namely that, "* * * the Court conclusively finds that the comment period was grossly inadequate and thus deprived the public of any meaningful dialogue or input in to the process * * *" The Idaho District Court's decision to grant a preliminary injunction has been appealed and is now pending before the Ninth Circuit Court of Appeals.

On June 7, 2001, the Chief of the Forest Service issued a letter concerning interim protection of inventoried roadless areas, stating that "the Forest Service is committed to protecting and managing roadless areas as an important component of the National Forest System. The best way to achieve this objective is to ensure that we protect and sustain roadless values until they can be appropriately considered through forest planning." As part of that letter, the Chief indicated he would be issuing interim direction regarding timber harvest and road construction in inventoried roadless areas until a forest plan amendment or revision considers the long-term protection and management of unroaded portions of inventoried roadless areas.

The Forest Service has been evaluating roadless areas for nearly 30 years. Decisions about how to manage inventoried roadless areas have been difficult and controversial. In 1972, the Forest Service began a review of National Forest System roadless areas (the Roadless Area Review and Evaluation, subsequently called RARE I) to determine their suitability for inclusion in the National Wilderness Preservation System. A second review for wilderness consideration of roadless areas at the national scale was initiated in 1978 (RARE II). Upon review of the RARE II process, the Ninth Circuit Court of Appeals ruled in *California* v. *Block 690 F. 2d. 753* (9th Cir. 1982) that the national evaluation of roadless area categorization was insufficiently site-specific and did not consider a sufficient range of alternatives.

Similarly, with respect to the January 12, 2001, rule, it is difficult, and perhaps infeasible to collect in a short timeframe, on a national scale, the local data needed to produce a sufficient EIS that analyzes all relevant information or that proposes an adequate range of alternatives. Moreover, within an extended timeframe, collecting and analyzing the information may unnecessarily duplicate the forest planning process.

The National Forest System is comprised of 192 million acres, which is 8.5 percent of the total land base of the United States. Within the National Forest System, there are currently 34.7 million acres of Wilderness, 58.5 million acres of inventoried roadless area, and 4.2 million acres of areas in Congressional designations other than Wilderness that are not included in the inventoried roadless areas, such as Wild and Scenic Rivers or National Recreation Areas. The remaining 94.9 million acres includes roaded and other non-inventoried unroaded areas. The January 12, 2001, roadless rule applies only to the inventoried roadless areas, as described in Volume 2 of the FEIS (maps). All of the 58.5 million acres of inventoried roadless areas were considered for their potential as wilderness during the RARE II process. For a variety of reasons, most were not recommended for designation as Wilderness. For instance, other areas in comparison had greater wilderness values or more public support, or other resource potentials were believed to outweigh the area's contribution to the national wilderness system. Most of these areas still retain their natural characteristics and vary in importance for primitive types of recreation, pristine scenic quality, important fish and wildlife habitats, contributions to biological diversity, watershed protection, other natural values, and, in some cases, resource development options.

Approximately 2.8 million acres (4.8 percent) of inventoried roadless areas have undergone resource development in the form of road construction, timber harvest, mining, or recreational development during the last 30 years. Of the total inventoried roadless area acreage, current forest plans assign 24.2 million acres to roadless or non-development management prescriptions and 34.3 million acres are in prescriptions that allow road construction. In the latter category, there are about 9 million acres of productive timberland, and about 25 million acres are not suitable for timber production.

The Forest Service Roadless Area Conservation Final Environmental Impact Statement (USDA Forest Service, November 2000, pages 2–25) estimated that less than two-tenths of one percent of the total of inventoried roadless areas (94,600 acres of 58.5 million acres) might be developed between 2000 and 2004.

How Should Roadless Areas Be Managed?

The Department is studying whether to amend the Roadless Area Conservation rule published January 12, 2001, or to provide further administrative protections. This is consistent with the Idaho Court finding that: "[b]y issuing the Preliminary Injunction the Court is not precluding or even proposing that the USDA not go forward with their study concerning the proposed amendments because the ultimate responsibility lies with the Government or its agencies and not with the Court."

All interested parties are encouraged to express their views on inventoried roadless area management. In providing input, reviewers are especially asked to include responses to the following questions, which are framed around the key principles established by the Secretary and the issues raised by States, tribes, organizations, and individuals.

1. *Informed Decisonmaking.* What is the appropriate role of local forest planning as required by NFMA in evaluating protection and management of inventoried roadless areas?

2. *Working Together.* What is the best way for the Forest Service to work with the variety of States, tribes, local

communities, other organizations, and individuals in a collaborative manner to ensure that concerns about roadless values are heard and addressed through a fair and open process?

3. *Protecting Forests.* How should inventoried roadless areas be managed to provide for healthy forests, including protection from severe wildfires and the buildup of hazardous fuels as well as to provide for the detection and prevention of insect and disease outbreaks?

4. *Protecting Communities, Homes, and Property.* How should communities and private property near inventoried roadless areas be protected from the risks associated with natural events, such as major wildfires that may occur on adjacent federal lands?

5. *Protecting Access to Property.* What is the best way to implement the laws that ensure States, tribes, organizations, and private citizens have reasonable access to property they own within inventoried roadless areas?

6. *Describing Values.* What are the characteristics, environmental values, social and economic considerations, and other factors the Forest Service should consider as it evaluates inventoried roadless areas?

7. *Describing Activities.* Are there specific activities that should be expressly prohibited or expressly allowed for inventoried roadless areas through Forest Plan revisions or amendments?

8. *Designating Areas.* Should inventoried roadless areas selected for future roadless protection through the local forest plan revision process be proposed to Congress for wilderness designation, or should they be maintained under a specific designation for roadless area management under the forest plan?

9. *Competing Values and Limited Resources.* How can the Forest Service work effectively with individuals and groups with strongly competing views, values, and beliefs in evaluating and managing public lands and resources, recognizing that the agency can not meet all of the desires of all of the parties?

10. *Other Concerns.* What other concerns, comments, or interests relating to the protection and management of inventoried roadless areas are important?

Regulatory Findings

This advance notice of proposed rulemaking is being issued to obtain public comment regarding the protection and management of inventoried roadless areas. Because the Department is not proposing any specific approach for managing inventoried roadless areas, there are no regulatory findings associated with this notice. Comments received will help the Department determine the extent and scope of any future rulemaking.

Conclusion

The Department of Agriculture is considering how to best proceed with long-term protection and management of inventoried roadless areas. Through this advance notice of proposed rulemaking, the Department is seeking public input as responses to a series of questions about inventoried roadless area protection and management. Public input and comment on management of inventoried roadless areas and their values will help inform the Department's consideration of how best to proceed with long-term protection and management of these areas. How the Department ultimately addresses protecting roadless values will depend on a number of factors. These include court decisions, public comments, and practical options for amending the current rule or EIS or both, using other administrative tools to implement inventoried roadless area protections.

Dated: July 3, 2001.

Dale N. Bosworth,

Chief.

[FR Doc. 01–17249 Filed 7–5–01; 3:53 pm]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX 28–1–7382b; FRL–7008–2]

Approval and Promulgation of Implementation Plans; Texas; Houston/Galveston Ozone Nonattainment Area Vehicle Miles Traveled Offset Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to approve the Houston/Galveston Ozone Nonattainment Area (HGA) Vehicle Miles Traveled (VMT) Offset State Implementation Plan (SIP) revision submitted by the Governor of Texas on August 25, 1997 and the revision submitted on May 17, 2000. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and it will not take effect, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing by August 9, 2001.

ADDRESSES: Written comments on this action should be addressed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 office listed below. Copies of documents relevant to this action are available for inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Brooke M. Ivener, Air Planning Section (6PD–L), EPA Region 6, telephone (214) 665–7362.

SUPPLEMENTARY INFORMATION: This document concerns the HGA VMT Offset SIP. For additional information, see the direct final rule which is published in the "Rules and Regulations" section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 13, 2001.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 01–16807 Filed 7–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301121; FRL–6779–7]

RIN 2070–AB78

Vinclozolin; Notice of Proposed Pesticide Tolerance Revocations and Channels of Trade Provision Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke the tolerances for the fungicide vinclozolin on strawberries, stonefruits, cucumbers, and bell peppers. Foods legally treated with vinclozolin may continue to be marketed under the provisions of the FFDCA. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. These tolerances were established under section 408 of the Federal Food, Drug, and Cosmetic Act ("FFDCA"), 21 U.S.C. 346a. EPA is proposing to revoke the strawberry and stonefruit tolerances because the Agency has canceled the pesticide registrations under Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. 136 et seq., associated with them. In addition, the registrant for vinclozolin, BASF, is no longer supporting the tolerances on cucumbers and bell peppers, which were established for importation purposes only.

The Food and Drug Administration (FDA) in a related document published elsewhere in this issue of the **Federal Register** is announcing the availability of a proposed guidance document presenting FDA's policy on its planned enforcement approach for foods containing vinclozolin residues. This guidance will assist firms in understanding the types of showing under 408(1)(5) of the FFDCA (hereinafter referred to as the "channels of trade provision") that FDA may find satisfactory in accordance with its planned enforcement approach for such section. EPA and FDA are cooperating on this effort. FDA will be asking for comment on this proposed guidance and EPA also encourages you to comment on this guidance.

DATES: Comments, identified by the docket control number must be received on or before September 10, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301121 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Deanna Scher, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: 703–308–7043; and e-mail address: Scher.Deanna@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you sell, distribute, manufacture, or use pesticides for agricultural applications, process food, distribute or sell food, or implement governmental pesticide regulations. Potentially affected categories and entities may include, but are not limited to the following:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations", and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301121. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301121 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through

Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301121. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

As discussed in Unit II, below, EPA does not believe that these tolerances can be maintained under FFDCA. Persons believing otherwise should submit comments to this proposed rule and any evidence as to why the tolerances are consistent with the FFDCA safety standard. In addition, any person may petition EPA to establish new tolerances. Petitioners should consult EPA regulations at 40 CFR part 180 on the necessary data and information to support tolerance petitions.

II. Background

A. What Action is the Agency Taking?

After consultation with FDA, USDA and stakeholders, EPA is proposing to revoke the tolerances for the fungicide vinclozolin on strawberries, stonefruits, cucumbers, and bell peppers. EPA intends to finalize this action after consideration of comments. The tolerance revocation is proposed to be effective on the date of publication of the final rule.

B. What is the Agency's Authority for Taking this Action?

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. (21 U.S.C. 342(a)). FFDCA section 301 prohibits, among other things, introduction or delivery for introduction into interstate commerce of any adulterated food. (21 U.S.C. 331(a)). For a pesticide to be sold and distributed, the pesticide must be registered under section 3, used in accordance with an experimental use permit under section 5, or exempted from section 3 requirements in accordance with section 18 of FIFRA (7 U.S.C. et seq.). Food-use pesticides not registered in the United States may have tolerances for residues of such pesticides in or on commodities imported into the United States, provided that EPA has determined that the tolerance is safe under section 408.

Monitoring and enforcement of pesticide tolerances and exemptions are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). This includes monitoring for pesticide residues in or on commodities imported into the United States.

Under FFDCA section 408(l)(2), if EPA cancels each FIFRA registration for the use of a pesticide on a food "due in whole or in part to dietary risks to humans posed by residues of that pesticide chemical on food," EPA is required to revoke any tolerance or exemption in connection with the canceled use that allows residues of the pesticide on food. This provision imposes a mandatory duty on EPA. Once EPA cancels a FIFRA use due in part to dietary risks, EPA must revoke the associated tolerances and exemptions. Under section 408(l)(5), foods lawfully treated prior to the last legal use date may in most cases continue to be marketed.

C. Why is this Action being Proposed?

1. *Strawberries and stonefruits.* During a 1998 review of the vinclozolin toxicology data base, it was determined that an additional tenfold margin of safety, as specified in the Food Quality Protection Act, was required to protect the safety of infants and children. Based on EPA's assessment of the acute dietary risk posed by vinclozolin, the use of the additional tenfold margin of safety rendered aggregate risk to vinclozolin under existing use patterns unacceptable. BASF Corporation, the sole registrant for vinclozolin, requested amendment of its registrations to terminate the use of vinclozolin on strawberries and stonefruits in June 1998 in response to potential Agency action to revoke tolerances and cancel registrations due to unacceptable dietary risk. On July 30, 1998, EPA published a notice in the **Federal Register** (63 FR 40710–40712) (FRL–6020–9) announcing the cancellation of the FIFRA registered uses for the pesticide vinclozolin on strawberries and stonefruits. That notice informed the public of how it could comment on the request for cancellation. One comment was received in response to the proposal, submitted on behalf of the California Strawberry Commission. This

comment was fully addressed in a subsequent FR Notice (63 FR 59557–59558) (FRL–6041–7) published on November 4, 1998 which announced the approval, with one minor change, of the proposed existing stocks provision for products containing vinclozolin. Under limitations on the use of existing stocks, the application of the pesticide vinclozolin on strawberries and stonefruit became unlawful after January 30, 2000.

Although the use cancellations on strawberries and stonefruits were requested by the vinclozolin registrant, the cancellations closely followed, and in EPA's view, were precipitated by, EPA's determination that aggregate exposure to vinclozolin exceeded the safety standard under the FQPA. Thus, the cancellation action was "due in whole or part to dietary risks to humans posed by residues of that pesticide chemical on food."

2. *Cucumbers and bell peppers.* Additional dietary and aggregate risk concerns were identified last year when vinclozolin was reevaluated for the purposes of reregistration. Acute dietary risk from vinclozolin in food was above the Agency's level of concern and potential exposure from surface and ground water sources exceeded the Agency's level of concern for cancer dietary risk from vinclozolin-derived 3,5-DCA (see vinclozolin RED, http://www.epa.gov/REDs/). On May 31, 2000, BASF submitted a risk mitigation proposal designed to address dietary and aggregate risk concerns identified during the reregistration process for vinclozolin. BASF requested a phase out of all domestic food uses of vinclozolin except for use on canola (65 FR 56894, September 20, 2000) (FRL–6744–2). The proposal also involved the cancellation of all import tolerances except for wine grapes; specifically, the import tolerances for cucumbers and bell peppers. Vinclozolin is not registered for use on bell peppers and cucumbers in the United States. BASF requested that EPA revoke the established import tolerances for bell peppers and cucumbers not before January 1, 2001. These mitigation measures allowed the Agency to determine that the use of vinclozolin, with the amendments proposed by the registrant, would meet the safety standard of the Food Quality Protection Act (FQPA).

D. When do These Actions Become Effective?

Under FFDCA section 408(l)(2), revocations required by that provision must take place no later than 180 days after the date such cancellation takes effect or the date on which the use of the canceled pesticide becomes unlawful under the terms of the cancellation, whichever is later. EPA approved BASF's label amendments deleting strawberries and stone fruits in September, 1998; however, use of vinclozolin on strawberries and stonefruits did not become unlawful until January 30, 2000, the last date for use of existing stocks.

Since vinclozolin is not registered for use on bell peppers and cucumbers in the United States, imported cucumbers and bell peppers are the only foods that will be affected by this proposal. FFDCA 408(l)(2) does not apply to these commodities because there are no associated FIFRA uses.

EPA intends to finalize this action as quickly as possible after consideration of comments. The tolerance revocation is proposed to be effective on the date of final publication.

E. Will Food Treated Prior to the Last Lawful Date of Application Be Permitted to Clear the Channels of Trade?

Any commodities listed in the regulatory text of this document that are treated with vinclozolin, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by the FQPA. Under this section, any residue of vinclozolin in or on such commodities shall not render the commodities adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. The channels of trade provision allows for the orderly marketing of foods that may currently contain legal residues resulting from lawful applications of vinclozolin.

Use of vinclozolin on strawberries and stonefruits became unlawful under FIFRA on January 30, 2000, the last date on which use of existing stocks was permitted. Because application of vinclozolin outside the United States after January 30, 2000 is essentially unregulated by FIFRA, EPA considers commodities with residues resulting from application outside the United States after that date to be outside the scope of the channels of trade provision in section 408(l)(5). Therefore, residues on both domestic and foreign commodities treated subsequent to January 30, 2000 would not be present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and thus, would not be covered or subject to the channels of trade provision.

FDA is announcing, elsewhere in this issue of **Federal Register**, the availability of a proposed guidance document on how it plans to administer FFDCA section 408(l)(5) for both domestic and imported commodities. FDA will invite comment on this draft guidance before issuing any final guidance. EPA encourages all interested parties to commnet on FDA's draft guidance.

Considering the perishable nature of cucumbers and bell peppers, FDA estimates that they will either be consumed as fresh produce or will be further processed within three months of the effective date of the tolerance revocations. FDA's guidance indicates its intent to exercise enforcement discretion following the effective date of the revocation of the associated tolerances in order to: (1) Allow fresh bell peppers and cucumbers which bear residues of vinclozolin and which were imported prior to the effective date of tolerance revocation, to reach the ultimate consumer or be sold for further processing and (2) permit bell peppers and cucumbers bearing residues of vinclozolin which were processed abroad no later than three months after the tolerance revocations, to be subsequently imported into the U.S., thus granting equal treatment to foreign and domestic processors. EPA believes that allowing bell peppers or cucumbers to remain in domestic commerce during this three month period, or permitting processed bell peppers or cucumbers processed abroad during that 3 month period to be imported into the U.S., will not significantly impact the dietary risk contribution to the general population or any population subgroup. Exposure to residues is expected to be very low due to the fact that the majority of cucumbers and bell peppers consumed in the U.S. are grown domestically and of the fraction which are imported into the United States, EPA estimates that 1% or less have been treated with vinclozolin.

F. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August, 2006. As of October 15, 2000, EPA has reassessed over 3,550 tolerances. This document proposes to revoke 4 vinclozolin tolerances; however, the reassessments were previously counted in 1997 when all vinclozolin tolerances

were reassessed in order to make a decision on a new tolerance petition. Consequently, no further vinclozolin reassessments, including these 4 revocations, count towards the August, 2002 review deadline of FFDCA section 408(q).

III. Are The Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

IV. Regulatory Assessment Requirements

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action; i.e., a tolerance revocation for which extraordinary circumstances do not exist, from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances for previously canceled uses might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule."

List of Subjects in 40 CFR Part 180

Environmental protection, pesticides and pest.

Dated: June 19, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.380 is amended by removing from the table in paragraph (a) the entries for "cucumbers", "peppers (bell)", "stonefruits, except plums/fresh prunes" and "strawberries", and by adding paragraph (e) to read as follows.

§180.380 Vinclozolin; tolerances for residues.

* * * * *

(e) *Revoked tolerances subject to the channel of trade provisions.* The following table lists commodities with residues of vinclozolin resulting from lawful use are subject to the channels of trade provisions of section 408(1)(5) of the FFDCA:

Commodity	Parts per million
Cucumbers	1.0
Peppers (bell)	3.0
Stonefruits, except plums/fresh prunes	25.0
Strawberries	10.0

[FR Doc. 01–16955 Filed 7–9–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1539; MM Docket No. 01–141; RM–10146]

Radio Broadcasting Services; Las Vegas and Pecos, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Meadows Media, LLC, permittee of Station KTRL, Channel 275C2, Las Vegas, New Mexico, requesting the substitution of Channel 275C3 for Channel 275C2, and reallotment of the channel from Las Vegas to Pecos, New Mexico, as that community's second local and first competitive FM service, and modification of the authorization issued to Station KTRL accordingly. Additionally, Meadows Media, LLC requests the allotment of Channel 283C2 to Las Vegas, New Mexico. Channel 275C3 can be allotted to Pecos at a site located 15.5 kilometers (9.6 miles) southwest at coordinates 35–40–15 NL and 105–33–06 WL, to accommodate petitioner's desired transmitter site. Channel 283C2 can be allotted to Las Vegas at coordinates 35–35–57 NL and 105–12–12 WL, representing the currently authorized site of Station KTRL.

DATES: Comments must be filed on or before August 20, 2001, and reply comments on or before September 4, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Barry D. Wood and Paul H. Brown, Esqs., Wood, Maines & Brown, Chartered, 1827 Jefferson Place, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–141, adopted June 20, 2001, and released June 29, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 275C2 and adding Channel 283C2 at Las Vegas, and adding Channel 275C3 at Pecos.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17197 Filed 7–9–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1540, MM Docket No. 01–142, RM–10144]

Radio Broadcasting Services; Comfort, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Charles Crawford requesting the allotment of Channel 291A at Comfort, Texas. The coordinates for Channel 291A at Comfort are 29–58–06 and 98–54–54. Mexican concurrence will be requested for the allotment of Channel 291A at Comfort.

DATES: Comments must be filed on or before August 20, 2001, and reply comments on or before September 4, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, S.W., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205; Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–142, adopted June 20, 2001, and released June 29, 2001. The full text of this Commission decision is available

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for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CRF part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 291A at Comfort.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17198 Filed 7–9–01; 8:45 am]

BILLING CODE 6712–01–U

Notices

Federal Register
Vol. 66, No. 132
Tuesday, July 10, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 010412092–1165–03]

Cancellation of Public Hearing on Section 232 National Security Investigation of Imports of Iron Ore and Semi-Finished Steel

AGENCY: Bureau of Export Administration, Office of Strategic Industries and Economic Security, Strategic Analysis Division, Department of Commerce.

ACTION: Cancellation of public hearing on section 232 national security investigation of imports of iron ore and semi-finished steel.

SUMMARY: In a June 14, 2001, **Federal Register** Notice (66 FR 32315), the Bureau of Export Administration (BXA) announced three public hearings on the investigation that the Department of Commerce initiated, on February 1, 2001, to determine the effects on the national security of imports of iron ore and semi-finished steel. This investigation is being conducted under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). This notice announces the cancellation of the public hearing scheduled for July 19, 2001, in Irvine, California, due to a low number of requests to speak at that location.

FOR FURTHER INFORMATION CONTACT: Brad Botwin, Director, Strategic Analysis Division, Bureau of Export Administration, U.S. Department of Commerce, (202) 482–4060, *bbotwin@bxa.doc.gov* or Michael Vaccaro, Trade and Industry Analyst, Bureau of Export Administration, U.S. Department of Commerce, (202) 482–8232, *mvaccaro@bxa.doc.gov*. For more information about the section 232 program, including the regulations and the text of previous investigations, see *www.doc-bxa.bmpcoe.org* under "Programs."

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2001, the Department of Commerce initiated an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of iron ore and semi-finished steel. The findings and recommendations of the investigation are to be reported by the Secretary of Commerce to the President no later than October 29, 2001. For further details on this investigation, see the **Federal Register** notices of February 6, 2001 (66 FR 9067) and April 18, 2001 (66 FR 19917).

The iron ore and semi-finished steel products subject to this investigation include:

1. Iron Ore
   —Briquettes
   —Pellets
   —Sinter
2. Semi-finished Steel
   —Ingots
   —Billets
   —Blooms
   —Slab

As announced in the June 14, 2001 **Federal Register** Notice (66 FR 32315), BXA is holding public hearings as part of the investigation. The hearings will assist the Department in determining whether imports of iron ore and semi-finished steel threaten to impair the national security and in recommending remedies if such a threat is found to exist. The Department has cancelled the public hearing scheduled for Thursday, July 19, 2001 at the Newport Gateway, in Irvine, California, due to a low number of requests to speak at that location. The June 14, 2001 **Federal Register** Notice provided that any person, whether presenting or not, may submit a written statement through August 17, 2001, 30 days after the last hearing date. Written submissions by persons not selected to make presentations at the Thursday, July 5, 2001 and Sunday, July 15, 2001 public hearings will be made part of the public record of the proceedings. Written statements should be submitted to Brad Botwin, Director, Strategic Analysis Division, Bureau of Export Administration, U.S. Department of Commerce, Room 3876, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 2, 2001.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 01–17151 Filed 7–9–01; 8:45 am]
BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of extension of time limit for preliminary results of administrative review.

EFFECTIVE DATE: July 10, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Strollo or Sean Carey, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5255 or (202) 482–3964, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351 (2001).

Background

On June 30, 2000, the Department of Commerce (the Department) received a request from Kawasaki Steel Corporation ("Kawasaki") for an administrative review of the antidumping duty order on hot-rolled flat-rolled carbon-quality steel products from Japan. On July 31, 2000, the Department published a notice of initiation of this administrative review, covering the period of February 19, 1999 through May 31, 2000 (65 FR 46687). On January 10, 2001, the Department

published a partial extension of the time limit for the preliminary results of this first administrative review. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review*, 66 FR 1952 (January 10, 2001).

Extension of Time Limit for Preliminary Results

This is the first administrative review of this order. There are several complex issues and, as such, it is not practicable to complete this review within the initial time limits mandated by section 751(a)(3)(A) of the Act. Therefore, we are fully extending the due date for the preliminary results until June 30, 2001. Because June 30, 2001, the date which is 365 days after the last day of the month in which the anniversary of the date of publication of the order, is a Saturday, the Department is extending the time limit for the preliminary results until the first business day thereafter, i.e., July 2, 2001. *See* 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: June 29, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 01–17233 Filed 7–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from Japan in response to a request by Kawasaki Steel Corporation (Kawasaki). This review covers shipments of this merchandise to the United States during the period of February 19, 1999 through May 31, 2000.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) and the NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 10, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Strollo or Sean Carey, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–5255 or (202) 482–3964, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (2001).

Background

The Department published in the **Federal Register** an antidumping duty order on hot-rolled steel from Japan on June 29, 1999 (64 FR 34778). On June 30, 2000, the Department received a timely request from Kawasaki to conduct an administrative review pursuant to section 351.213(b)(2) of the Department's regulations. We published a notice of initiation of this antidumping duty administrative review on hot-rolled steel on July 31, 2000 (64 FR 46687).

The Department subsequently determined it was impracticable to complete the review within the standard time frame, and extended the deadline for completion of this antidumping duty administrative review on January 10, 2001. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review*, 66 FR 1952 (January 10, 2001). On June 29, 2001, in accordance with section 751(a)(3)(A) of the Act, the Department fully extended the deadline for the completion of this antidumping duty administrative review.

Scope of the Antidumping Duty Order

The products covered by this antidumping duty order are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

• Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
• SAE/AISI grades of series 2300 and higher.
• Ball bearing steels, as defined in the HTSUS.
• Tool steels, as defined in the HTSUS.
• Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
• ASTM specifications A710 and A736.
• USS abrasion-resistant steels (USS AR 400, USS AR 500).
• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.16%	0.70–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.50–0.70%	0.25% Max	0.20% Max
Mo							
0.21% Max							

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	1.30–1.80%	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max
V (wt.)	Cb						
0.10 Max	0.08% Max						

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.15% Max	1.40% Max	0.025% Max	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max
Nb	Ca	Al					
0.005% Min	Treated	0.01–0.07%					

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30,

7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

Period of Review

This review covers the period February 19, 1999 through May 31, 2000.

Verification

As provided in section 782(i) of the Act, we verified information provided by Kawasaki using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records.

Date of Sale

Kawasaki reported the date of invoice as the date of sale for both U.S. and home market sales. Kawasaki stated that the invoice/shipment date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order confirmation date and invoice/shipment date. On February 13, 2001, the Department requested that Kawasaki provide additional information concerning the nature and frequency of price and quantity changes occurring after the date of order confirmation. On March 6, 2001, Kawasaki reiterated that invoice/shipment date is the most appropriate date of sale, stating that a significant percentage of both home market and export orders were changed in some way between order confirmation and invoice. The Department, therefore, is preliminarily using the dates of sale reported by Kawasaki.

Normal Value Comparisons

To determine whether Kawasaki's sales of the subject merchandise to the United States were made at less than NV, we compared its United States price to NV, as described in the "United States Price" and "Normal Value" sections of this notice.

United States Price

For United States price, we calculated an export price (EP) in accordance with section 772(a) of the Act. Because the subject merchandise was sold by Kawasaki directly to unaffiliated purchasers in Japan prior to importation into the United States, we have used the price paid by the unaffiliated purchaser in Japan. Constructed export price (CEP) was not otherwise warranted by facts on the record.

We calculated EP for Kawasaki based on packed prices to customers in the United States. We made deductions from the starting price for foreign inland freight, inland insurance, and brokerage and handling in accordance with section 772(c)(2) of the Act.

Normal Value

The Department determines the viability of the home market and the comparison market by comparing the aggregate quantity of home market and U.S. sales. We determined that the aggregate quantity of the foreign like product sold by Kawasaki in Japan is more than 5 percent of the aggregate quantity of its sales of the subject merchandise to the United States. We, therefore, have determined that the home market for Kawasaki is a viable market, pursuant to 19 CFR 351.404. Moreover, there is no evidence on the record supporting a particular market situation in the exporting company's country that would not permit a proper comparison of home market and U.S. prices. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the EP.

In the most recently completed segment of the proceeding involving Kawasaki, i.e., the investigation, the Department disregarded Kawasaki's sales that failed the cost test. *See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 24329 (May 6, 1999) (*Final Determination*). We therefore had reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that Kawasaki's sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Therefore, we initiated a COP investigation of sales in the home market for Kawasaki.

Calculation of COP

We compared sales of the foreign like product in the home market with model-specific cost of production figures for the period of review (POR). In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment.

We relied on the home market sales and cost of production information Kawasaki provided in their questionnaire responses, except for the following adjustments.

We adjusted the cost of manufacture for the recalculated variance rate. In accordance with section 773(f)(2) of the Act, we increased COM to reflect the market price of electricity obtained from an affiliated party. We revised Kawasaki's G&A expense rate calculation to exclude the favorable variance in consumption tax, profit on the sale of a vegetable factory, foreign exchange loss on accounts receivables, lease fees, and lease expense. We also included in the G&A rate calculation foreign exchange losses on other items, and loss on disposal of fixed assets. We revised Kawasaki's interest expense rate calculation to exclude profit on cancellation of interest rate swap. *See Memorandum to Neal Halper From Sheikh M. Hannan through Michael Martin: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results in the Antidumping Duty Administrative Review of Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, dated June 29, 2001 (*COP/CV Memo*).

We compared the weighted-average COPs to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a

product-specific basis, we compared the COP to home market prices, less any movement charges, discounts, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the-below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model were at prices less than COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2) (B) and (C) of the Act. Because we compared prices to POR-average costs, we also determined that the below-cost prices did not permit the recovery of costs within a reasonable period of time. Based on this test, we disregarded below-cost sales of the foreign like product under review for Kawasaki.

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when there were no above-cost contemporaneous sales of identical or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses. We relied on the submitted CV information for Kawasaki with the exception of the adjustments to COP noted above.

For those models for which there were sales at prices above COP, we based NV on home market prices to affiliated and unaffiliated parties. We used sales to affiliated customers only where we determined such sales were made at arms-length prices, i.e., at prices comparable to the prices at which the respondents sold identical merchandise to unaffiliated customers. We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6)(A) and (a)(6)(B) of the Act. We also made adjustments for differences in the costs of manufacture for subject merchandise and matching foreign like products, attributable to their differing physical characteristics, pursuant to section 773(a)(6)(C)(ii) of the Act. In accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, for comparison to EP, we made circumstance-of-sale (COS) adjustments to NV by deducting home market direct selling expenses (credit expenses minus short-term interest revenue, advertising, warranty expenses, technical service expenses, and other direct selling expenses minus short-term interest revenue and adding U.S. direct selling expenses (credit and advertising expenses).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as U.S. sales. The NV LOT is the level of the starting-price sale in the comparison market or, when NV is based on CV, the level of the sales from which we derive SG&A and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. (In this case, the starting-price sale is from the exporter to an unaffiliated trading company in Japan.)

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the comparison market sales on which NV is based and sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

Kawasaki stated that it sold subject merchandise through four channels of trade during the POR: three for sales in the home market and one for sales to the United States. Kawasaki's U.S. sales were made to unaffiliated trading companies in Japan and reported as EP sales. Its three claimed home market channels of trade involved sales to unaffiliated trading companies; sales to unaffiliated end-users; and sales through its affiliated reseller, Kawasho. Kawasaki claimed that its U.S. sales were made at the same LOT as its home market sales to unaffiliated trading companies.

After noting that sales by Kawasho pass through two companies before reaching the customer, whereas sales in the other chains of distribution pass directly to the customer, the Department then examined whether any differences existed with respect to the selling functions performed by Kawasaki in making sales to its three types of home market customers. For the sales through Kawasho, the Department conducted its LOT analysis based on Kawasho's sales to its customer. The information on the record indicates that the selling functions performed in connection with sales to end-users and sales through Kawasho are almost identical. The information on the record also indicates that, while there were some differences in selling functions performed in selling to end-users, directly or via affiliated trading companies, as compared to selling to unaffiliated trading companies, many selling functions were the same. Accordingly, we do not find the differences in selling functions so significant as to warrant finding a distinct LOT. In other words, the Department preliminarily finds that Kawasaki made home market sales at one level of trade during the POR. *See Memorandum for Barbara E. Tillman from Mike Strollo through Maureen Flannery: Level of Trade Analysis of Kawasaki Steel Corporation (Kawasaki) for the Preliminary Results of the First Administrative Review of Hot-Rolled Flat-Rolled Carbon-Qualtiy Steel Products from Japan*, dated June 29, 2001 (*Kawasaki Level-of-Trade Analysis Memo*). Thus, we matched Kawasaki's EP sales to its sales in the one home market and made no LOT adjustment.

Currency Conversion

We made currency conversions based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Kawasaki Steel Corporation	02/19/1999–05/31/2000	6.54%

We will disclose to any party to the proceeding calculations performed in connection with these preliminary results of review, within five days after the date of the publication of the preliminary results of review. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. The hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing the case briefs. 19 CFR 351.309(d). Unless extended under section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, not later than 120 days after the date of publication of this notice.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of hot-rolled steel from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Kawasaki, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the rate established in the LTFV investigation, which is 29.30 percent. See *Final Determination*.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of th relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. § 1675(a)(1) and 19 U.S.C. 1677(f)(i)(1)).

Dated: July 2, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17234 Filed 7–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–810]

Mechanical Transfer Presses From Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Order, and Preliminary Determination To Revoke the Order, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 351.216(b) of the Department's regulations, Sumitomo Heavy Industries, Ltd. (Sumitomo) filed a request for a changed circumstances review of the antidumping order on mechanical transfer presses from Japan with respect to large, hot-forging presses as described below. Domestic producers of the like product have expressed no interest in continuation of the order with respect to these particular mechanical transfer presses. In response to Sumitomo's request, the Department of Commerce (the Department) is initiating a changed circumstances review with respect to this request and issuing a notice of intent to revoke, in part, the antidumping duty order on mechanical transfer presses from Japan as it pertains to large, hot-forging presses. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 10, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0666.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351 (2000).

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2001, Sumitomo requested that the Department revoke, in part, the antidumping duty order on mechanical transfer presses from Japan as it pertains to large, hot-forging presses. Specifically, Sumitomo requested that the Department revoke the order with respect to imports meeting the following specifications: automatic forging presses within the current scope of the order, which operate at a forging temperature of 900 degrees centigrade or higher, and which have a capacity of 1600 metric tons or greater. Sumitomo is a foreign producer of the products in question.

Attached to its request, Sumitomo submitted two letters from the only two domestic parties claiming to be producers of subject merchandise, Enprotech Mechanical Services, Inc. (Enprotech) and IHI-Verson Press Technology, LLC. (Verson), stating that they did not oppose excluding large, hot-forging presses, as defined above, from the scope of the order.

On June 11, 2001, we sent letters to all three domestic interested parties who have expressed an interest in this proceeding, the two domestic producers noted above and the International Union, United Auto Workers, requesting comments either supporting or objecting to the revocation of the order, in part, with respect to large, hot-forging presses by June 15, 2001. As foreign producers participated in an earlier request for a changed circumstances review, we sent the same letter to Komatsu Ltd., Hitachi Zosen Corporation, and Hitachi Zosen Fukui Corporation, foreign producers of the subject merchandise. We received no comments in opposition to the changed circumstances review or the revocation, in part.

Scope of Review

Imports covered by this review include MTPs currently classifiable under Harmonized Tariff Schedule (HTSUS) item numbers 8462.99.0035 and 8466.94.5040. The HTSUS

subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive. The term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. This review does not cover certain parts and accessories, which were determined to be outside the scope of the order. (*See* "Final Scope Ruling on Spare and Replacement Parts," U.S. Department of Commerce, March 20, 1992; and "Final Scope Ruling on the Antidumping Duty Order on Mechanical Transfer Presses (MTPs) from Japan: Request by Komatsu, Ltd.," U.S. Department of Commerce, October 3, 1996.)

Initiation of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under section 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if other changed circumstances sufficient to warrant revocation exist. *See also* sections 751(b) and 782(h)(2) of the Act. In addition, in the event that the Department concludes that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results.

In the *Memorandum to Joseph A. Spetrini from Barbara E. Tillman, Request for Changed Circumstances Review* (April 13, 2001) (on file in the Central Records Unit of the Department of Commerce, Room B–099), the Department denied a previous request by Sumitomo to initiate a changed circumstances review and partially revoke the order as it pertains to large, hot-forging presses, as defined above, because of a lack of support from petitioners. We believe, however, that the necessary support has been demonstrated in this request and have determined to initiate a changed circumstances review. As stated above, two letters of support from the domestic producers have been placed on the record. We received no objections to the request.

Furthermore, because petitioners have expressed a lack of interest in large, hot-forging presses, we determine that expedited action is warranted and are combining the notice of initiation and preliminary results, in accordance with section 351.221(c)(3)(ii) of our regulations. Therefore, we are hereby notifying the public of our preliminary determination to revoke, in part, the antidumping duty order with respect to large, hot-forging presses from Japan meeting the above description.

If the final revocation, in part, occurs, we intend to instruct the U.S. Customs Service ("Customs") to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of large, hot-forging presses meeting the specifications indicated above, and not subject to final results of administrative review, as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with section 351.222 of the regulations. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on large, hot-forging presses meeting the above specifications will continue unless and until we publish a final determination to revoke, in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties to the proceeding may request a hearing within 14 days of publication of this notice. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with section 351.303 of the regulations and shall be served on all interested parties on the Department's service list in accordance with section 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is published in accordance with section 751(b)(1) of the Act and sections 351.216 and 351.222 of the regulations.

Dated: June 20, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17232 Filed 7–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film From Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke in part.

SUMMARY: In response to a request from two respondents and two U.S. producers, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea. The review covers three manufacturers/exporters of the subject merchandise to the United States and the period June 1, 1999 through May 31, 2000.

We preliminarily determine that there are sales at less than normal value for SKC Limited (SKC), and no or *de minimis* sales at less than normal value for H.S. Industries (HSI) and Hyosung Corporation (Hyosung) during the period June 1, 1999 through May 31, 2000. Based on three years of sales at not less than normal value (NV), we intend to revoke the order with respect to HSI if the preliminary results of this review are affirmed in our final results. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the United States Price (U.S.P.) and normal value (NV).

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) A statement of the issues and (2) a brief summary of the arguments (no longer than five pages, including footnotes).

EFFECTIVE DATE: July 10, 2001.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4475 and (202) 482–0649, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on PET film from the Republic of Korea on June 5, 1991. *See Antidumping Duty Order and Amendment to Final Determination of Less Than Fair Value: Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea*, 56 FR 25660 (June 5, 1991). On June 30, 2000, two domestic producers, E.I. DuPont Nemours & Co., Inc. and Mitsubishi Polyester Film L.L.C. requested reviews of HSI, Hyosung, and SKC for the period June 1, 1999 through May 31, 2000. On June 30, 1999, SKC and HSI requested administrative reviews of their sales for the same time period. We published a notice of initiation of the review on July 31, 2000. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 65 FR 46687 (July 31, 2000).

On February 21 2001, the Department published a notice extending the time limits for publication of its preliminary results by 120 days to June 29, 2001. *See Polyethylene Terephthalate Film, Sheet, and Strip from Korea: Postponement of Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 10988 (February 21, 2001).

Verification

As provided for in section 782(i)(2) of the Act, we verified the information submitted by HSI. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification findings are outlined in the verification report which is on file in Room B–099 of the main Department of Commerce Building. *See Verification of HSI Sales Questionnaire and Supplemental Questionnaire Responses* dated June 22, 2001.

Intent To Revoke

In its submission of June 30, 2000, HSI requested, pursuant to 19 CFR § 351.222(e)(1), partial revocation of the order with respect to its sales of PET film. HSI certified that (1) it sold the subject merchandise in commercial quantities at not less than NV for a period of at least three consecutive years, (2) in the future it will not sell the subject merchandise at less than NV; and (3) it agreed to its immediate reinstatement of the order if the Department determines that, subsequent to revocation, it sold the subject merchandise at less than NV.

Based upon the preliminary results in this review and the final results of the two proceeding reviews (*see Polyethylene Terephthalate, Film, Sheet and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 65 FR 55003 (September 12, 2000), and *Polyethylene Terephthalate, Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty New Shipper Review*, 64 FR 42670 (August 5, 1999)), HSI has preliminarily demonstrated three consecutive years of sales at not less than normal value. Furthermore, we have determined that HSI's aggregate sales to the United States have been made in commercial quantities during these three segments of this proceeding. The company also agreed in writing to immediate reinstatement of the antidumping order, as long as any exporter or producer is subject to the order, if the Department concludes that subsequent to the partial revocation, HSI sold the subject merchandise at less than normal value. Based on the above facts, and absent a determination that the continued application of the antidumping order is otherwise necessary to offset dumping, the Department preliminarily determines that partial revocation with respect to HSI is warranted. Therefore, if these preliminary results are affirmed in our final results, we intend to revoke the order in part with respect to merchandise produced and exported by HSI. In accordance with 19 CFR 351.222(b), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption after May 31, 2000. The Department is conducting this review in accordance with section 751 of the Act, as amended.

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage. The review covers the period June 1, 1999 through May 31, 2000.

Fair Value Comparisons

To determine whether sales of PET film in the United States were made at less than fair value, we compared USP to NV, as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

United States Price (USP)

In calculating USP, the Department treated HSI's, Hyosung's and SKC's sales as export price (EP) sales, as defined in section 772(a) of the Act, when the merchandise was first sold to unaffiliated U.S. purchasers prior to the date of importation, and use of the constructed export price (CEP) methodology was not otherwise indicated. The Department treated SKC's sales as CEP sales, as defined in section 772(b) of the Act, when the merchandise was first sold to unaffiliated U.S. purchasers after importation.

EP was based on the delivered or c.i.f. U.S. port, packed prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, Korean and U.S. inland freight, ocean freight, bank charges, U.S. duties, and discounts, in accordance with section 772(c) of the Act. We made additions to EP for duty drawback pursuant to section 772(c)(1)(B) of the Act.

CEP was based on the delivered, packed prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, Korean and U.S. inland freight, ocean freight, and U.S. duties, in accordance with section 772(c) of the Act. Pursuant to section 772(c)(1)(B) of the Act, we made an addition to CEP for duty drawback. We also made an addition to CEP for interest revenue. In accordance with section 772(d)(1) of the Act, we made deductions for selling expenses associated with economic activities in the United States, including warranties, credit expenses, bank charges, and indirect selling expenses.

With respect to subject merchandise to which value was added in the United States by SKC prior to sale to unaffiliated customers, we deducted the cost of further manufacturing in accordance with section 772(d)(2) of the Act.

Pursuant to section 772(d)(3) of the Act, for SKC the price was further reduced by an amount for profit to arrive at the CEP.

Normal Value

In order to determine whether there were sufficient sales of PET film in the home market (HM) to serve as a viable basis for calculating NV, for each respondent we compared the volume of HM sales of PET film to the volume of PET film sold in the United States, in accordance with section 773(a)(1)(C) of the Act. Each respondent's aggregate volume of HM sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on the price at which the foreign like product was sold for consumption in the home market in the usual commercial quantities, in the ordinary course of trade and, to the extent practicable, at the same level of trade.

The Department disregarded sales by SKC of the foreign like product in the June 1998—May 1999 administrative review because they failed the cost test (*see Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 64 FR 62648 (November 17, 1999) (*1998–1999 Administrative Review*)). Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department had reasonable grounds to believe or suspect that SKC made sales below cost of production (COP) during this POR. Accordingly, we initiated a sales-below-cost of production investigation for SKC in accordance with section 773(b) of the Act. The June 1998—May 1999 administrative review was the most recently completed review at the time that we issued our antidumping questionnaire.

We performed a model-specific COP test in which we examined whether each HM sale was priced below the merchandise's COP. We calculated the COP of the merchandise using SKC's cost of materials and fabrication for the foreign like product, plus amounts for home market general and administrative (G&A) expenses and packing costs, in accordance with section 773(b)(3) of the Act. We allocated yield losses equally between A-grade and B-grade film because these grades have identical production costs. This is consistent with the methodology employed in past reviews of this case. *See e.g., 1998–1999 Administrative Review*, 64 FR at 62649.

In calculating SKC's G&A expenses, we excluded non-operating income related to SKC's sale of certain production facilities in its Converted Film Division. We excluded this income because it is unrelated to the general operations of the company. We based our calculation of SKC's G&A expenses upon the remaining information reported in Appendix D–14 of SKC's October 27, 2000 questionnaire response.

In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of SKC's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of SKC's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were found to be made: (1) In substantial quantities within the POR (*i.e.*, within an extended period of time) in accordance with section 773(b)(2)(B) of the Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.*, the sales were made at prices below the weighted-average per-unit COP for the POR). We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Act.

In determining NV, we considered comparison market sales of identical or similar merchandise, or constructed value (CV).

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of SKC's cost of materials, fabrication, G&A expenses, and profit. We allocated yield losses equally between A-grade and B-grade film, and recalculated G&A expenses as described above. In accordance with section 773(e)(2)(A) of the Act, we based G&A expenses and profit on the amounts incurred and realized by SKC in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average HM selling expenses. Pursuant to section 773(e)(3) of the Act, we included U.S. packing expenses.

In accordance with section 773(a)(6) of the Act, we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. packing expenses. We also adjusted NV for credit expenses. When NV was based upon home market sales, we made an adjustment for inland freight. For SKC's local export sales, we also made an addition to home market price for duty drawback. For comparisons to EP, we made an addition to NV for U.S. credit expenses, and bank charges as circumstance-of-sale adjustments pursuant to section 773(a)(6)(C) of the Act.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See, e.g., Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we asked each respondent to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States. SKC identified two channels of distribution in the home market: (1) Wholesalers/distributors and (2) end-users. HSI also identified two channels of distribution: sales to end-users and sales to distributors. Hyosung identified one channel of distribution in the home market: sales to end-users, and we found that Hyosung performed the same type and level of selling functions for all of its sales to end-users. For both channels, SKC and HSI perform similar selling functions such as order processing, market research and after-sales warranty services. Because channels of distribution do not qualify *per se* as separate LOTs, when the selling functions performed for each customer class are sufficiently similar, as in the instant review, we determined that there exists one LOT for SKC's, HSI's, and Hyosung's home market sales.

For the U.S. market, SKC reported two LOTs: (1) EP sales made directly to its U.S. customers, and (2) CEP sales made through SKC America, Inc., SKC's wholly-owned U.S. subsidiary. HSI and Hyosung each identified one LOT: EP sales made directly to U.S. customers. The Department examined the selling functions performed by SKC for both EP and CEP sales. These selling functions included customer sales contacts (*i.e.*, visiting current or potential customers, receiving orders, promotion of new products, collection of unpaid invoices), technical services, inventory maintenance, and/or business system development. The Department also examined the selling functions performed by HSI and Hyosung on their home market and U.S. sales, and determined that Hyosung and HSI both performed substantially the same level of sales contact, inventory maintenance, and/or business system development on both their home market and U.S. sales.

For EP sales, SKC provided its US customers with the selling functions noted above. For CEP sales, SKC performed fewer customer sales contacts, technical services, inventory maintenance, and computer legal, audit and business system development. On CEP sales, these selling fuctions were generally performed by SKC America, Inc. We found that SKC performed significantly greater selling functions on its EP sales, and that the selling functions performed by SKC on its EP and CEP sales were sufficiently different to warrant two separate LOTs in the United States.

When we compared EP sales to home market sales, we determined that for each respondent both sales were made at the same LOT. For both EP and home market transactions, each respondent sold directly to the customer and provided similar levels of customer sales contacts, technical services, inventory maintenance and business system development. Because each respondent performed essentially equivalent services on its EP and home market sales, no LOT adjustment was warranted.

For CEP sales, SKC performed fewer customer sales contacts, technical services, inventory maintenance, and computer legal, audit and business system development then it did in the home market. As previously noted, SKC America, Inc. generally provided these selling functions to SKC's CEP customers. The differences in selling functions performed for home market and CEP transactions indicate that home market sales involved a more advanced stage of distribution than CEP sales since SKC provided a greater degree of services on its home market sales then it did on its CEP sales.

Because we compared these CEP sales to HM sales at a different LOT, we examined whether a LOT adjustment may be appropriate. In this case SKC sold at one LOT in the home market; therefore, there is no demonstrated pattern of consistent price differences between LOTs. Further, we do not have the information which would allow us to examine pricing patterns of SKC's sales of other similar products, and there is no other record evidence on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment but the LOT in Korea for SKC is at a more advanced stage than the LOT of its CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by SKC. We based the CEP offset amount on the amount of home market indirect selling expenses, and limited the deduction for home market indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Act. We applied the CEP offset to NV, whether based on home market prices or CV.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period June 1, 1999 through May 31, 2000:

Company	Margin (percent)
HSI	0
Hyosung	0
SKC	5.13

We will disclose calculations performed in connection with these preliminary results of review within 5 days of the day of publication of this notice. Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–099 of the main Commerce building. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all

appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an importer/customer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the entered value of those same sales. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21.5%, the "all others" rate established in the LTFV investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 29, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration

[FR Doc. 01–17231 Filed 7–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Notice of Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 1999–2000 administrative review, partial rescission of the review, and notice of intent not to revoke order in part.

SUMMARY: We preliminarily determine that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 1999 through May 31, 2000. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

Weihai Machinery Holding (Group) Co., China National Machinery Import & Export Corporation, Wanxiang Group Corporation, and Zhejiang Machinery Import & Export Corp. have requested revocation of the antidumping duty order in part. Based on record evidence, we preliminarily find that none of these companies qualifies for revocation. Accordingly, we preliminarily determine not to revoke the order with respect to the subject merchandise produced and exported by these four companies.

If these preliminary results are adopted in our final results of review, we will instruct the Customs Service to assess antidumping duties based on the differences between the export price or constructed export price and normal value on all appropriate entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 10, 2001.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder, Melani Miller, or Anthony Grasso, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0189, (202) 482–0116, or (202) 482–3853, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references to the Department of Commerce's ("the Department") regulations are to 19 CFR Part 351 (April 2000).

Background

On May 27, 1987, the Department published in the **Federal Register** (52 FR 19748) the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished ("TRBs"), from the People's Republic of China ("PRC"). The Department notified interested parties of the opportunity to request an administrative review of this order on June 20, 2000 (65 FR 38242). On June 26, 2000, Wanxiang Group Corporation ("Wanxiang"), China National Machinery Import & Export Corporation ("CMC"), Liaoning MEC Group Co. Ltd. ("Liaoning"), Premier Bearing & Equipment Ltd. ("Premier"), Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory ("Hailin"), and Weihai Machinery Holding (Group) Co., Ltd. ("Weihai") requested administrative reviews. On June 30, 2000, Wafangdian Bearing Group Corp. Import & Export Company ("Wafangdian"), Luoyang Bearing Corporation (Group) ("Luoyang"), Zhejiang Machinery Import & Export Corp. ("ZMC"), and Zhejiang Changshan Changhe Bearing Corp. ("ZCCBC") also requested administrative reviews. Weihai, Wafangdian, ZMC, Wanxiang, and CMC also requested that the Department revoke the antidumping duty order as it pertains to them. On June 30, 2000, the petitioner, The Timken Company, requested that the Department conduct an administrative review of the antidumping duty order on hundreds of PRC TRB exporters. In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on July 31, 2000 (65 FR 46687). We published a revision to this initiation notice on August 10, 2000 (65 FR 48968).

On August 16, 2000, we sent a questionnaire to the Secretary General of the Basic Machinery Division of the Chamber of Commerce for Import & Export of Machinery and Electronics Products and requested that the questionnaire be forwarded to all PRC companies identified in our initiation notice and to any subsidiary companies of the named companies that produce and/or export the subject merchandise. In this letter, we also requested

information relevant to the issue of whether the companies named in the initiation notice are independent from government control. *See* the Separate Rates Determination section, below. Courtesy copies of the questionnaire were also sent to companies with legal representation.

We received responses to the questionnaire in September and October 2000 from the following seven companies: CMC, ZMC, Wafangdian, Wanxiang, Hailin, Weihai, and Luoyang. We sent out supplemental questionnaires in January, February, and May 2001, and received responses to these supplemental questionnaires in February, March, and May 2001.

On September 22 and November 3, 2000, ZCCBC and Liaoning, respectively, requested that the Department rescind the review with respect to these companies. Pursuant to 19 CFR 351.213(d)(1), because ZCCBC and Liaoning withdrew their requests for reviews within 90 days of the date of publication of the notice of initiation of this review and no other party requested a review of these companies, we are rescinding the review with respect to ZCCBC and Liaoning.

In addition, on September 8 and 11, 2000, respectively, Premier and Chin Jun Industrial Ltd. ("Chin Jun") reported that they had no shipments of subject merchandise to the United States during the period of review ("POR"), June 1, 1999 through May 31, 2000. With respect to Chin Jun, in accordance with 19 CFR 351.213(d)(3), we preliminarily conclude that there were no shipments from Chin Jun to the United States during the POR and are preliminarily rescinding the review with respect to this company. However, prior to issuing the final results, we will confirm with the Customs Service that Chin Jun had no shipments during the POR. With respect to Premier, on January 17, 2001, Premier reported to the Department that it did, in fact, have sales of the subject merchandise to the United States during the POR, and it submitted a questionnaire response. Because Premier's deadline for submitting a response was in October 2000, and no further extensions were requested or granted on behalf of Premier, we rejected Premier's submission. See the Facts Available section, below, for a further discussion of Premier.

Finally, because the order with respect to Wafangdian was revoked in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1998–1999 Administrative Review and Determination to RevokeOrder in Part*, 66 FR 11562 (February 26, 2001) ("*TRBs XII Amended Final*"), we are terminating this review with respect to Wafangdian.

Scope of the Order

Merchandise covered by this order includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under *Harmonized Tariff Schedule* of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Separate Rates Determination

The Department has treated the PRC as a nonmarket economy ("NME") country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC TRB industry is a market-oriented industry.

Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act. We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. De facto absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management (*see Silicon Carbide*, 59 FR at 22587, and *Sparklers*, 56 FR at 20589).

In previous administrative reviews of the antidumping duty order on TRBs from the PRC, we determined that CMC, Luoyang, Hailin, Wanxiang, Weihai, and ZMC, should receive separate rates (*see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001) and *TRBs XII Amended Final* (collectively, *"TRBs XII"*)). We preliminarily determine that the evidence on the record of this review also demonstrates an absence of government control, both in law and in fact, with respect to these companies' exports according to the criteria identified in *Sparklers* and *Silicon Carbide*. The evidence in question consisted of, among other things, the companies' business licenses and copies of relevant PRC laws on trade and incorporation. Therefore, we have continued to assign each of these companies a separate rate.

Additionally, we have preliminarily determined that companies which did not respond to the questionnaire should not receive separate rates. See the Use of Facts Otherwise Available section, below.

Use of Facts Otherwise Available

We preliminarily determine that companies which did not respond to our requests for information did not cooperate to the best of their abilities. Thus, in accordance with sections 776(a) and (b) of the Act, the use of

adverse facts available is appropriate for such companies.

1. *Companies that did not respond to the questionnaire:* Where the Department must base its determination on facts available because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use an inference that is adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination in the investigation, a previous administrative review, or any other information placed on the record. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (see H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expenses resulting in an unusually high margin)).

We have preliminarily assigned a margin of 33.18 percent to those companies for which we initiated a review and which did not respond to the questionnaire. This margin, calculated for sales by Xiangfan Machinery Import & Export (Group) Corp. during the 1996–97 review (*Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996–1997 Antidumping Administrative Review and New Shipper Review and Determination Not to Revoke Order in Part*, 63 FR 63842 (November 17, 1998)), represents the highest overall margin for any firm during any segment of this proceeding. As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances or documentation indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find that the 33.18 percent rate is corroborated.

As noted in the Separate Rates Determination section above, we have also preliminarily determined that the non-responsive companies should not receive separate rates. Thus, they are viewed as part of the PRC-wide entity. Accordingly, the facts available for these companies form the basis for the PRC rate, which is 33.18 percent for this review.

2. *Premier:* As noted above, on August 16, 2000, the Department issued the antidumping duty questionnaire for this review to all PRC manufacturers of TRBs, including Premier. This questionnaire noted that responses to Section A of the questionnaire were due on September 25, 2000, and that all other sections were due on October 10, 2000. The due dates for several companies, including Premier, were extended by the Department to October 2, 2000, for the Section A response and to October 27, 2000, for the remaining sections. (*See* September 20, 2000 and October 23, 2000 memos to the file, both entitled "Request for Extension," which are on file in the Department's Central Records Unit in Room B–099 ("CRU").)

On September 8, 2000, Premier submitted a letter to the Department stating that it had made no shipments of the subject merchandise to the United States during the POR. Accordingly, Premier did not submit a questionnaire response by the deadlines noted above. However, on January 17, 2001, Premier submitted a letter stating that it did, in fact, make sales of TRBs to the United States during the POR. Enclosed with the letter was a questionnaire response for Premier.

Under 19 CFR 351.301(c)(2), the deadline for submitting information requested by the Department is the deadline specified by the Department. As noted above, Premier's extended deadline for submitting a Section A response was October 2, 2000; the extended deadline for submitting the remainder of Premier's response was October 27, 2000. No other extensions were requested or granted on behalf of Premier. Moreover, no further request for information was made to Premier by the Department. Finally, 19 CFR 351.301(b)(2) states that the deadline for submission of factual information in a review is 140 days after the last day of the anniversary month. In this case, that date was November 17, 2000, two months prior to the January 17, 2001 submission made by Premier. Based on these facts, pursuant to 19 CFR 351.302(d)(2), on January 19, 2001, the Department returned to Premier its January 17, 2001 submission.

Pursuant to section 776(a)(2) of the Act, we have determined that the use of facts available is warranted with respect to Premier. As noted above, and discussed in section 776(a)(2)(B) of the Act, Premier failed to provide information requested by the Department by the deadlines for submission of this information. Moreover, as Premier did not provide a response to the Department's questionnaire by the deadlines for submission of this information, we have determined that Premier failed to cooperate by not acting to the best of its ability to comply with a request for information. Thus, pursuant to section 776(b) of the Act, we have determined that the use of an adverse inference is appropriate in choosing from among the facts available for Premier. Additionally, as noted above, we have preliminarily determined that companies which did not respond to the questionnaire should not receive separate rates. Thus, consistent with our methodology noted in the Use of Facts Otherwise Available section above, we have preliminarily assigned a margin of 33.18 percent to Premier.

Export Price and Constructed Export Price

For certain sales made by CMC to the United States, we used constructed export price ("CEP") in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. For sales made by other respondents, as well as the remaining sales made by CMC, we used export price ("EP"), in accordance with section 772(a) of the

Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the CEP methodology was not indicated by other circumstances.

We calculated EP based on the FOB or CIF prices to unaffiliated purchasers, as appropriate. From these prices we deducted amounts, where appropriate, for foreign inland freight, foreign brokerage and handling, international freight, and marine insurance. We valued the deductions for foreign inland freight and brokerage and handling using surrogate data (Indian freight costs). (We selected India as the surrogate country for the reasons explained in the Normal Value section of this notice, below.) When marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using surrogate data (amounts charged by market-economy providers). However, when some or all of a specific company's ocean freight was provided directly by market economy companies and paid for in a market economy currency, we used the reported market economy ocean freight values for all U.S. sales made by that company.

We calculated CEP based on the packed, ex-warehouse prices from CMC's U.S. subsidiary to unaffiliated customers. We made deductions, where appropriate, from the starting price for CEP for foreign inland freight, foreign brokerage and handling, international freight, marine insurance, and customs duties. In accordance with section 772(d)(1) of the Act, we made further deductions for the following selling expenses that related to economic activity in the United States: credit expenses and indirect selling expenses (including inventory carrying costs). In accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors-of-production methodology if: (1) the subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no basis to determine that the available information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Under the factors-of-production methodology, we are required to value, to the extent possible, the NME producer's inputs in a market economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise. We chose India as the surrogate on the basis of the criteria set out in 19 CFR 351.408(b). *See* the November 14, 2000, Memorandum to John Brinkmann from Jeff May "Tapered Roller Bearings from the People's Republic of China: Nonmarket Economy Status and Surrogate Country Selection," and the June 29, 2001, Memorandum to Susan Kuhbach "Selection of a Surrogate Country and Steel Value Sources" ("Steel Values Memorandum") for a further discussion of our surrogate selection. (Both memoranda are on file in the Department's CRU.)

We used publicly available information from India to value the various factors. Because some of the Indian import data was not contemporaneous with the POR, unless otherwise noted, we inflated the data to the POR using the Indian wholesale price index ("WPI") published by the International Monetary Fund.

Pursuant to the Department's factors-of-production methodology, we valued the respondent's reported factors of production by multiplying them by the following values (for a complete description of the factor values used, see the Memorandum to Susan Kuhbach: "Factors of Production Values Used for the Preliminary Results," dated June 29, 2001, which is on file in the Department's CRU):

1. *Steel Inputs.* For hot-rolled alloy steel bars used in the production of cups and cones, consistent with *TRBs XII*, we used an adjusted weighted-average of Japanese export values to India from the Japanese Harmonized Schedule ("HS") category 7228.30.900 obtained from Official Japan Ministry of Finance statistics. For cold-rolled steel rods used in the production of rollers and for cold-rolled steel sheet used in the production of cages, we utilized Indian import data under Indian tariff subheadings 7228.5009 and 7209.1600, respectively, obtained from the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports.* (For further discussion of selection of steel value sources, *see* the Steel Values Memorandum.)As in previous administrative reviews, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. For steel used in the production of rollers, we also excluded imports from countries that do not produce bearing-quality steel (*see, e.g., TRBs XII*). We made adjustments to include freight costs incurred using the shorter of the reported distances from either the closest PRC port to the TRBs factory or the domestic supplier to the TRBs factory (*see Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997), and *Sigma Corporation* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997)).

Certain producers in this review purchased steel used to make TRBs or TRB parts from market economy suppliers and paid for the steel with market economy currency. In accordance with 19 CFR 351.408(c)(1), we generally valued these steel inputs using the actual price reported for directly imported inputs from a market economy. However, in *TRBs XII*, we found a reasonable basis to believe or suspect that certain market economy steel inputs purchased by PRC TRB manufacturers and used to manufacture TRBs were subsidized. Consistent with our treatment of subsidized inputs in *TRBs XII*, we have not used the actual prices paid by PRC producers of TRBs for steel which we have continuing reason to believe or suspect is subsidized. Instead, we relied on surrogate values. (*See* individual company calculation memoranda for a more detailed company-specific discussion of this issue.)

We valued scrap recovered from the production of cups, cones, and rollers using Indian import statistics from Indian HS category 7204.2909. Scrap recovered from the production of cages was valued using import data from Indian HS category 7204.4100.

2. *Labor.* 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. We have used the regression-based wage rate available on Import Administration's internet website at www.ia.ita.doc.gov/wages.

3. *Overhead, SG&A Expenses, and Profit.* For factory overhead, we used information obtained from the fiscal year 1999–2000 annual reports of five Indian bearing producers. We calculated factory overhead and selling, general and administrative ("SG&A") expenses (exclusive of labor—but, including employer provident funds and welfare expenses not reflected in the Department's regressed wage-rate—and electricity) as percentages of direct inputs (also exclusive of labor) and applied these ratios to each producer's direct input costs. This is consistent with the methodology we utilized in *TRBs XII*. For profit, we totaled the

reported profit before taxes for the five Indian bearing producers and divided it by the total calculated cost of production ("COP") of goods sold. This percentage was applied to each respondent's total COP to derive a company-specific profit value.

4. *Packing.* Consistent with our methodology in prior reviews (*see, e.g., TRBs XII*), we calculated packing costs as a percentage of COP for each respondent based on company-specific information submitted in previous reviews. This ratio was applied to the respondents' COPs for the current review.

5. *Electricity.* Consistent with *Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 66 FR 15076 (March 15, 2001), we calculated our surrogate value for electricity based on a simple average of the 1998/1999 rates for the "industrial" category listed for 19 Indian states or electricity boards. The source of this data was the *Energy Data Directory and Yearbook* published by Tata Energy Research Institute.

6. *Inland Freight.* We valued truck freight using an average of November 1999 truck freight rate quotes collected from Indian trucking companies by the Department and used in the *Notice of Preliminary Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 116 (January 3, 2000) ("*Bulk Aspirin from the PRC*"). We valued rail freight using two November 1999 rate quotes for domestic bearing quality steel shipments within India that were also used in *Bulk Aspirin from the PRC.* Because this information is contemporaneous with the current POR, no further calculations were necessary. For inland freight expenses incurred by boat, we used August 1993 shipping freight data used in *Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 65 FR 31143 (May 16, 2000). We inflated this inland shipping rate to the POR using the Indian WPI.

7. *Ocean Freight.* We calculated a value for ocean freight based on May 2000 rate quotes from Maersk Inc. Because this information is contemporaneous with the current POR, no further calculations were necessary.

8. *Marine Insurance.* We calculated a value for marine insurance based on the CIF value of shipped TRBs. This rate was obtained for *TRBs XII* through queries made directly to an international marine insurance provider. We adjusted the marine insurance rate to the POR using the U.S. purchase price index.

9. *Brokerage and Handling.* We used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering for *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000). Because this information is contemporaneous with the current POR, no adjustments were necessary.

Revocation

Pursuant to 19 CFR 351.222(e)(1), Weihai, CMC, Wanxiang, and ZMC requested revocation of the antidumping duty order, in part, based on an absence of dumping for each company for at least three consecutive years. Wafangdian also requested revocation of the antidumping duty order with respect to its sales. However, because the order with respect to Wafangdian was revoked in *TRBs XII*, we do not need to address Wafangdian's request for revocation in this review.

In accordance with 19 CFR 351.222(e), Weihai, CMC, Wanxiang, and ZMC's requests were accompanied by certifications that they had sold the subject merchandise at not less than normal value during the current period of review and would not sell the subject merchandise at less than normal value in the future. They further certified that they sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. The companies also agreed to the immediate reinstatement of the antidumping duty order if the Department concludes that, subsequent to the revocation, the companies sold the subject merchandise at less than normal value.

In *TRBs XII*, CMC and ZMC were found to have made sales below normal value. Because CMC and ZMC do not have three consecutive years of sales at not less than normal value, we preliminarily find that these two companies do not qualify for revocation of the order on TRBs pursuant to 19 CFR 351.222(b). Therefore, we intend not to revoke the order in part with respect to these companies in our final results.

Weihai first participated in this proceeding as a new shipper. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 45511 (August 20, 1999); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997–1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review*, 64 FR 61837 (November 15, 1999) ("*TRBs NSR*"). *TRBs NSR* covered the period June 1, 1998 through November 30, 1998. Subsequently, Weihai participated in *TRBs XII*, which covered the period June 1, 1998 through May 31, 1999. *See TRBs XII.* Finally, Weihai is participating in the instant review, which covers the period June 1, 1999 through May 31, 2000. Since the time period covered by *TRBs NSR* is included in the time period covered by *TRBs XII*, the Department has reviewed only two years of Weihai's shipments. Thus, we preliminarily find that Weihai has not sold the subject merchandise at not less than normal value for a period of at least three consecutive years and, accordingly, does not qualify for revocation in this review.

Finally, with respect to Wanxiang, in *TRBs XII* we determined that Wanxiang did not qualify for revocation because it did not sell the subject merchandise in the United States in commercial quantities in each of the three years underlying its request for revocation. Based on our determination that Wanxiang did not make sales in commercial quantities during the PORs of *TRBs XII* and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1997–1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review*, 64 FR 61837 (November 15, 1999), we do not need to examine whether Wanxiang made sales in commercial quantities during the instant review. Because Wanxiang did not make sales in commercial quantities in each of the three years cited by the company to support its revocation request, we preliminarily find that Wanxiang does not qualify for revocation of the order on TRBs (*see* 19 CFR 351.222(b)).

Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist for the period June 1, 1999, through May 31, 2000:

Exporter/manufacturer	Weighted-average margin percentage
Weihai Machinery Holding (Group) Co	0.00
China National Machinery Import & Export Corporation	4.79
Wanxiang Group Corporation	0.00

Exporter/manufacturer	Weighted-average margin percentage
Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory	0.00
Luoyang Bearing Corporation (Group)	0.12
Zhejiang Machinery Import & Export Corp	0.00
PRC-wide rate (including Premier Bearing & Equipment Ltd.)	33.18

Any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. To calculate the amount of duties to be assessed with respect to EP sales, we divided the total dumping margins (calculated as the difference between NV and EP) for each importer/customer by the total number of units sold to that importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the order during the review period.

For CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's/customer's entries during the review period.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with *de minimis* rates, i.e., less than 0.50 percent, no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.18 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 2, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17230 Filed 7–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070501A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Tuna Fisheries Logbook.

Form Number(s): None.

OMB Approval Number: 0648–0148.

Type of Request: Regular submission.

Burden Hours: 117.

Number of Respondents: 25.

Average Hours Per Response: 6 minutes per day.

Needs and Uses: Operators of U.S. purse seine vessels fishing for tuna in the eastern tropical Pacific Ocean are required (50 CFR 300.22) to maintain logbooks of catch and effort. Information requirements include the date, noon position, and tonnage of fish on board by species. The data collected is used to meet U.S. obligations to the Inter-American Tropical Tuna Commission (IATTC) and for the management of tuna stocks.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 2, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17226 Filed 7–9–01; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 01–C0009]

The Lane Company Inc., A Corporation Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with The Lane Company, Inc., a corporation containing a civil penalty of $900,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 25, 2001.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 01–C0009, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Leonard H. Goldstein, Trial Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0980, 2202.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 2, 2001.

Todd A. Stevenson,

Acting Secretary.

Settlement Agreement

1. The Lane Company, Inc. ("Lane"), a corporation, enters into this Settlement Agreement with the Consumer Product Safety Commission staff ("staff"), and agrees to entry of the Order incorporated herein, in accordance with 16 CFR 1118.20 of the procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051, *et seq.*

I. The Parties

2. The staff is the staff of the Consumer Product Safety Commission ("Commission"), an independent federal regulatory agency established by Congress pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

3. Lane is a corporation organized and existing under the laws of the Commonwealth of Virginia. Its principal offices are located at 701 Fifth St., Altavista, Virginia.

II. The Product

4. Lane manufacturers various sizes and styles of cedar chests for sale to, and the personal use, consumption or enjoyment of, a consumer in or around a permanent or temporary household or residence. The cedar chests are, therefore, "consumer products" within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

5. When the lid of the cedar chest is closed, the cedar chest provides airtight protection of stored household and personal items that may otherwise be susceptible to moth damage. Lane cedar chests are sold in furniture stores throughout the United States under the brand name "Lane" and previously, at times, under the brand name "Virginia Maid."

6. The cedar chests that are the subject of this Settlement Agreement were manufactured by Lane between 1912 and 1986. Lane manufactured approximately 12 million of the cedar chests during that period.

III. Staff Allegations

7. The design of the Lane cedar chests described in paragraph 6 of this Settlement Agreement incorporated a latching mechanism that caused the lid of the cedar chest to automatically latch when closed. Once latched, the lid could only be opened by depressing a release button on the outside of the cedar chest.

8. During the mid- to late 1970's, Lane discussed with representatives of The National Lock Company ("National") the development of a new lock (the "childproof lock") for use on Lane cedar chests. National delivered a prototype of the childproof lock to Lane in 1979. The childproof lock required a manual activation of the latching mechanism from outside the cedar chest in order to latch the lid. The childproof lock was incorporated in all Lane cedar chests by 1987.

9. An intra-company memorandum on June 8, 1988 from A.J. Ottinger, Lane's Vice President of Manufacturing, states that "National and Slaymaker were given the opportunity to design a 'childproof' lock because of liability concerns."

10. The airtight design of the pre-1987 cedar chests coupled with the automatic latching feature of the lock used in such cedar chests created a risk of asphyxiation in the event that a child at play became entrapped in one of these cedar chests. This risk of asphyxiation was recognized in the patent documents (Patent No. 4,306,431) filed with the U.S. Patent Office on December 22, 1981 by the inventor of the childproof lock. In describing the "current" lock and the need for the childproof lock, the patent documents state that, "A problem may result, however, in the event that a small child enters the chest and lowers the lid. The latch mechanism may catch thereby preventing egress from the chest."

11. Between April 1991 and February 1996, Lane received reports of suffocation deaths of 5 young children in 4 separate incidents involving a Lane cedar chest.

12. The staff sent Lane a case opening letter on March 26, 1996 stating that the staff had initiated an investigation regarding Lane's cedar chests and requesting information specified in the Commissions regulations on "Substantial Product Hazards," 16 CFR 1115.13(d). The company timely responded to the staff's letter with the requested information on April 12, 1996. Lane subsequently conducted a nationwide campaign to replace old style locks on its cedar chests with a childproof lock.

13. Lane cedar chests described in paragraph 6 of this Agreement presented the same type of risk of death or injury that prompted the 1956 enactment of the Refrigerator Safety Act ("RSA"), 15 U.S.C. 1211, *et seq.*, which makes it unlawful to manufacture refrigerators unless the doors can be opened easily from the inside. The impetus from the RSA was the suffocation deaths of young children in abandoned refrigerators.

14. Lane cedar chests described in paragraph 6 of this Agreement contain a defect which could create a substantial product hazard, as described in 15 U.S.C. 2064(a)(2), and create an unreasonable risk of serious injury or death. Lane's failure to immediately report such defect and unreasonable risk to the Commission, as required by 15 U.S.C. 2064(b), constituted a prohibited act under 15 U.S.C. 2068(a)(4). Lane "knowingly" failed to report and is, therefore, subject to civil penalties under 15 U.S.C. 2069.

IV. Lane's Response

15. Lane denies each and every allegation set forth in paragraph 7 through 14 of this Settlement Agreement, including allegations that Lane cedar chests described in paragraph 6 of this Settlement Agreement contained a defect that created a substantial product hazard or an unreasonable risk of serious injury or death, that Lane violated the reporting requirements of 15 U.S.C. 2064(b), and that it committed a prohibited act under 15 U.S.C. 2068(4).

16. Lane asserts that the cedar chests were properly designed and manufactured and contained adequate warnings and labeling.

17. In April 1996, Lane filed a report under section 15(b) of the CPSA and proposed a voluntary lock replacement program for its cedar chests. In addition, since 1996, Lane has worked cooperatively with the Commission staff in advertising and implementing its voluntary lock replacement program and has committed in excess of $1 million to the program to resolve this matter.

18. Prior to April 1996, Lane did not have reason to believe that the cedar chests posed a substantial product hazard or an unreasonable risk of serious injury of death. Lane believes the information available to it did not reasonably support the conclusion that the cedar chests were defective or created an unreasonable risk within the meaning of the CPSA, and, therefore, no report was required under section 15(b) of the Act. For these reasons, Lane was not required to, and did not, report to the Commission prior to April 1996. Furthermore, Lane believes that the information currently available to it does not reasonably support the conclusion that the cedar chests are defective, pose a substantial product hazard or create an unreasonable risk of serious injury or death.

19. By entering into this Settlement Agreement and Order, Lane does not admit any liability or wrongdoing, nor does Lane admit that its cedar chests contain a defect which could create a substantial product hazard or that its cedar chests create an unreasonable risk of serious injury or death. This Settlement Agreement and Order is agreed to by Lane for settlement purposes only, to avoid incurring additional legal costs and does not constitute, and is not evidence of, an admission of any liability or wrongdoing by Lane.

V. Agreement of the Parties

20. The Commission has jurisdiction over this matter under the CPSA.

21. Upon final acceptance by the Commission of this Settlement Agreement and issuance of the Final Order, Lane knowingly, voluntarily and completely waives any rights it may have to:

a. the issuance of a complaint in this matter;

b. an administrative or judicial hearing with respect to the staff allegations discussed in paragraphs 7 through 14 above;

c. judicial review or other challenge or contest of the validity of the Commission's Order;

d. a determination by the Commission as to whether a violation of 15 U.S.C. 2064(b) has occurred;

e. a statement of findings of fact and conclusions of law with regard to the staff allegations; and

f. any claims under The Equal Access to Justice Act.

22. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the Federal Register, in accordance with 16 CFR 1118.20(f).

23. The Settlement Agreement and Order becomes effective upon final acceptance of the Settlement Agreement by the Commission and service of the Final Order upon Lane.

24. Lane agrees to pay to the United States Treasury a civil penalty in the amount of Nine Hundred Thousand Dollars ($900,000) within thirty (30) calendar days after receipt of service of the Final Order in this matter. Upon payment of such civil penalty, all reporting claims under 15 U.S.C. 2064(b) against Lane, its current and former officers, directors, employees, agents, attorneys, parents and affiliates relating to the cedar chests that are described in paragraph 6 of this Settlement Agreement will be considered to be released.

25. Lane agrees to entry of the attached Order, which is incorporated herein by reference, and to be bound by its terms.

26. This Settlement Agreement and Order are entered into for settlement purposes only and shall not constitute a determination or admission of any fault, liability or statutory or regulatory violation. Nothing contained in this Settlement Agreement and Order precludes Lane from raising any defenses in any future litigation not arising out of the terms of this Settlement Agreement and Order.

27. The Commission's Order in this matter is issued under the provisions of the CPSA and 16 CFR 1118.20, and a violation of this Order may subject Lane to appropriate legal action.

28. This Settlement Agreement and Order is binding upon and shall inure to the benefit of Lane, its current and former officers, directors, employees, agents, attorneys, parents and affiliates.

29. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

30. For the purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had been issued, and upon provisional acceptance of this Settlement Agreement, the Commission may publicize the terms of the Settlement Agreement and Order.

The Lane Company, Inc.
Jerry Ruff,
Vice President
Dated: June 5, 2001.

Consumer Product Safety Commission Staff
Michael S. Solender,
General Counsel.

Alan C. Shakin,
Assistant General Counsel.
Dated: June 19, 2001.
Leonard H. Goldstein,
Attorney, Office of the General Counsel.

Order

Upon consideration of the Settlement Agreement entered into between The Lane Company, Inc. and the staff of the U.S. Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and The Lane Company, Inc., and it appearing that the Settlement Agreement and Order is in the public interest.

It Is Ordered, that the Settlement Agreement be, and Hereby is, provisionally accepted, and

It Is Further Ordered, that upon final acceptance of the Settlement Agreement and issuance of the Final Order, The Lane Company, Inc. shall pay the United States Treasury a civil penalty in the amount of Nine Hundred Thousand Dollars ($900,000) within 30 calendar days after service upon The Lane Company, Inc. of a copy of the Final Order.

By direction of the Commission, this Settlement Agreement is provisionally accepted pursuant to 16 CFR 1118.20(d) and shall be placed on the public record, and the Commission shall announce the provisional acceptance of the Settlement Agreement in the Commission's Public Calendar and in the **Federal Register**.

So Ordered by the Commission, this 2nd day of July, 2001.

Todd A. Stevenson,
Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 01–17112 Filed 7–9–01; 8:45 am]
BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 10, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Institutional Research & Analysis, Office of Policy, Planning & Analysis, United States Military Academy, West Point, New York 10966, (ATTN: Dr. William Burke). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title, Associated Form, and OMB Number: West Point Engineering Graduates Surveys.

Needs and Uses: Perceptions of graduates on the effectiveness of the U.S. Military Academy programs and curricular are needed for periodic accreditation by the Accreditation Board

for Engineering and Technology. The information collected will be used to evaluate programs/curricula and make changes deemed advisable.

Affected Public: Business or other for profit

Annual Burden Hours: 218.

Number of Respondents: 519.

Responses per Respondent: 1.

Average Burden per Response: 25 minutes.

Frequency: Other (Every three years).

SUPPLEMENTARY INFORMATION: The information will be collected via seven surveys, each with content appropriate to graduates of engineering and engineering-related courses of study at USMA. The surveys will go to graduates currently serving as officers in the U.S. Army (non-DA) civilians. Those graduates are distributed throughout the world. Since not all will have access to online computers, respondents will be allowed to choose between completing a mailout survey or an Internet survey.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–17115 Filed 7–9–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 9, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 3, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Revision.

Title: Income Contingent Repayment Program Consent to Disclosure of Tax Information Form.

Frequency: Once every 5 years.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 300,000

Burden Hours: 75,000.

Abstract: This form is the means by which a defaulted student loan borrower (and, if married, the borrower's spouse), choosing to repay under the Income Contingent Repayment Plan, provides written consent to the disclosure of certain tax return information by the Internal Revenue Service to the Department of Education and its agents for the purpose of calculating the borrower's monthly repayment amount.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–17127 Filed 7–9–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 9, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or

Recordkeeping burden. OMB invites public comment.

Dated: July 5, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.
Title: Distance Education Demonstration Program Annual Reporting Form.
Frequency: Annually.
Affected Public: Not-for-profit institutions; Individuals or household; Businesses or other for-profit.
Reporting and Recordkeeping Hour Burden: Responses: 30,544; Burden Hours: 6,340
Abstract: The information will be used by the Department of Education to conduct analyses and prepare reports required by the Congress in the authorization of the Distance Education Demonstration Program. These analyses may also become the basis of recommendations the Department may make to amend the governing statue as prescribed by the Congress in its program authorization. Respondents include participants in the Distance Education Demonstration Program (institutions and systems and consortia of institutions) and their students who are enrolled in distance education courses and programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address *OCIO—IMG—Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–17237 Filed 7–9–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 9, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Lauren__Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 5, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Extension.
Title: Consolidation Loan Rebate Fee Report.
Frequency: Monthly.
Affected Public: Business or other for-profit; State, Local, or Tribal Gov't SEAs or LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 9,804; Burden Hours: 10,621.
Abstract: The Consolidation Loan Regate Fee Report for payment by check or electronic Funds Transfer (EFT) will be used by approximately 400 lenders participating in the Title IV, Part B loans program. The information collected is used to transmit interest payment rebate fees to the Secretary of Education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO__IMG__Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–17238 Filed 7–9–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed revision, and three-year extension of the Office of Management and Budget (OMB) expiration date of the form RW–859, "Nuclear Fuel Data Survey".

DATES: Comments must be filed on or before September 10, 2001. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESS: Send comments to Jim Finucane, Office of Coal, Nuclear, Electric and Alternate Fuels, EI–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0650,

telephone: (202) 287–1966, e-mail: *jim.finucane@eia.doe.gov*, and fax (202)–287–1934.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Jim Finucane at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under section 3507(a) of the Paperwork Reduction Act of 1995.

This data collection will provide the Office of Civilian Radioactive Waste Management of DOE with detailed information concerning the spent nuclear fuel generated by the respondents (commercial utility generators of spent nuclear fuel within the U.S. are respondents to this survey). The DOE will take possession of this spent fuel and will need this data to properly design the spent fuel repository (spent fuel receiving systems, spent fuel handling systems, etc.) which will be the final disposal site for all of the spent fuel and high level radioactive waste materials.

II. Current Actions

The current proposed action is: a revision of and a three-year extension of an existing data collection, RW–859. As before, all data will be collected once. Only changes in the specific previously reported data element will require updating. Other changes to the Form RW–859 Nuclear Fuel Data survey are as follows:

—The requirement to enter each individual assembly identifier for all assemblies stored in a pool has been deleted from Section 4.3.1 "Storage Inventory". It has been replaced with a single number indicating the number of assemblies in that pool.
—A column to the table has been added to Section 3 "Permanently Discharged Fuel" to indicate the pool in which an assembly is stored. This column replaces the requirement to re-enter all assembly identifiers in Section 4.3.1.
—Respondents may now enter either cycle number or cycle date in Section 3 "Permanently Discharged Fuel". Only cycle date was previously accepted.
—Only data on permanently discharged fuel are collected in Section 3 "Permanently Discharged Fuel".
—Respondents may now designate between Operating License Date and Possession Only License Date in Section 2.1 "Reactor License Data".
—Burnup data may be submitted in gigawattdays thermal per metric ton of uranium instead of megawattdays thermal per metric ton of uranium.
—Section 4.6.4 "Canister Closure" has been simplified.
—Clarification has been provided on whether certain data should be entered in Section 4.6 "Canistered Material" or Section 4.7 "Uncanistered Fuel and Non-Fuel Components."
—The requirement to enter each individual assembly identifier for all assemblies stored in dry storage has been deleted from Section 5.3 "Assemblies in Dry Storage". It has been replaced with a single number indicating the number of assemblies in each module
—Footnotes have been modified to provide additional information.
—Instructions have been clarified and modified where appropriate. Specific changes have been made to the instructions regarding the transmittal of data to DOE, failed fuel status codes, reporting of midcycle fuel outages, license dates, required degrees of precision, and data on canistered fuel and non-fuel components.

The DOE will provide each respondent with a file which contains a copy of previously provided data with which to update. This revision will also facilitate the streamlining of data elements, which will be collected. Although this survey is planned for use in 2003, its extension at this time is being carried out to avoid its expiration at the end of 2001.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average 40 hours per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

D. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected:

A. Is the information useful at the levels of detail to be collected?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) and Section 3507(h)(i) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, July 2, 2001.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 01–17172 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–212–A and EA–213–A]

Application To Export Electric Energy; Coral Power, L.L.C.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: Under two separate applications, Coral Power, L.L.C. (Coral) has applied for renewal of its authority to transmit electric energy from the United States to Mexico and from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 9, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 9, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized Coral to transmit electric energy from the United States to Mexico using the international electric transmission facilities of San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national utility of Mexico. That two-year authorization (Order EA–212) will expire on August 13, 2001.

On August 13, 1999, FE authorized Coral to transmit electric energy from the United States to Canada using the international electric transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Authority, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, Vermont Electric Transmission Company. That two-year authorization (Order EA–213) will expire on August 13, 2001.

On June 27, 2001, Coral filed two applications with FE for renewal of both of the above export authorizations.

DOE notes that the circumstances described in these applications are virtually identical to those for which export authority had previously been granted in FE Order EA–212 and FE Order EA–213. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–212 and FE Docket EA–213 proceedings.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Coral application to export electric energy to Mexico should be clearly marked with Docket EA–212–A. Comments on the Coral application to export electric energy to Canada should be clearly marked with Docket EA–213–A. Additional copies are to be filed directly with Andrea M. Settanni, Bracewell & Patterson, L.L.P., 2000 K Street, NW., Suite 500, Washington, DC 20006–1872 AND Robert Reilley, Vice President, Regulatory Affairs, Coral Power, L.L.P., 909 Fannin, Suite 700, Houston, TX 77010.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Electricity", then "Pending Procedures" from the options menus.

Issued in Washington, DC, on July 3, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–17177 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–145–B]

Application To Export Electric Energy; Powerex Corp.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Powerex Corp. (Powerex), formerly the British Columbia Power Exchange Corporation, has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 9, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: On May 30, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued an Order (FE Order No. EA–145) authorizing Powerex to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities of San Diego Gas and Electric Company. That two-year authorization expired on May 30, 1999. On April 15, 1999, Powerex filed an application with FE for renewal of this export authority

and requested that the Order be issued for an additional two-year term. On June 18, 1999, DOE issued FE Order No. EA–145–A granting that request. That two-year authorization expired on June 18, 2001. On June 19, 2001, Powerex filed an application with FE for renewal of this export authority and requested that the Order be issued for an additional two-year term.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–145. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–145 proceeding.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Powerex request to export to Mexico should be clearly marked with Docket EA–145–B. Additional copies are to be filed directly with Mr. Douglas Little, Vice President, Trade Policy & Development, Powerex Corp., 666 Burrard Street, Suite 1400, Vancouver, British Columbia, Canada V6C 2X8, and Ms. Lisa Cherkas, Manager, Trade Policy, Powerex Corp., 666 Burrard Street, Suite 1400, Vancouver, British Columbia, Canada V6C 2X8.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on July 3, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–17173 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–243]

Application To Export Electric Energy; Tenaska Power Services Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Tenaska Power Services Co. (Tenaska Power) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 9, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 4, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Tenaska Power to transmit electric energy from the United States to Canada. Tenaska Power, a Nebraska Corporation with its principal place of business in Texas, is engaged in the marketing and trading of electricity at wholesale. Tenaska Power does not own or control any electric power generation or transmission facilities and does not have a franchised power service.

Tenaska Power proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Tenaska Power, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Tenaska Power application to export electric energy to Canada should be clearly marked with Docket EA–243. Additional copies are to be filed directly with Norma Rosner Iacovo, Assistant General Counsel, Tenaska Power Services Co., 1701 E. Lamar Boulevard, Suite 100, Arlington, TX 76006 and Neil L. Levy, Esq., Kirkland & Ellis, 655 Fifteenth Street, NW., Suite 1200, Washington, DC 20005.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on July 3, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–17178 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–216–A]

Application To Export Electric Energy; TransAlta Energy Marketing (U.S.) Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: TransAlta Energy Marketing (U.S.) Inc., (TEMUS) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 9, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 31, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–216 authorizing TEMUS to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, International Transmission Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Inc., Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Co., Inc., Minnkota Power, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, and Vermont Electric Transmission Company. That two-year authorization will expire on August 31, 2001.

On June 15, 2001, TEMUS filed an application with FE for renewal of this export authority and requested that the authorization be granted for a five-year term.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the TEMUS request to export to Canada should be clearly marked with Docket EA–216–A. Additional copies are to be filed directly with Sterling Koch, Counsel & Assistant Secretary, TransAlta Energy Marketing (U.S.) Inc., Box 1900, Station "M", 110–12th Avenue, S.W., Calgary, Alberta, Canada T2P 2M1 and Donna J. Bobbish, Counsel, Vinson & Elkins L.L.P., 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20004–1008.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order No. EA–216. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–216 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Electricity," from the Regulatory Info menu, and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on July 3, 2001.

Anthony Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–17174 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. PP–229]

Notice of Intent To Prepare an Environmental Impact Statement and to Conduct Public Scoping Meetings and Notice of Floodplain and Wetlands Involvement; Tucson Electric Power Company

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and to conduct public scoping meetings.

SUMMARY: Tucson Electric Power Company (TEP) has applied to DOE for a Presidential permit to construct a double-circuit 345,000-volt (345-kV) transmission line originating at TEP's South Substation in Sahuarita, Arizona, and extending approximately 60 miles to the south along one of three alternative routes, where it would cross the United States border with Mexico in the vicinity of Nogales, Arizona. South of the border, the line would extend approximately 60 miles into Mexico and terminate at an existing substation located in the City of Santa Ana, in the Mexican State of Sonora. DOE has determined that the issuance of the Presidential permit would constitute a major Federal action that may have a significant impact upon the environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). For this reason, DOE intends to prepare an EIS to address reasonably foreseeable impacts from the proposed action and alternatives.

The purpose of this Notice of Intent is to inform the public about the proposed action, announce plans for three public scoping meetings in the vicinity of the proposed transmission lines, invite public participation in the scoping process, and solicit public comments for consideration in establishing the scope and content of the EIS. Because the proposed project may involve an action in a floodplain or wetland, the EIS will include a floodplain and wetlands assessment and floodplain statement of findings in accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022).

DATES: DOE invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and in determining the appropriate scope of the EIS. The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until August 9, 2001. Written and oral comments will be given equal weight, and DOE will consider all comments received or postmarked by August 9, 2001 in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Dates for the public scoping meetings are:

1. July 30, 4 p.m. to 7 p.m., Sahuarita, Arizona
2. July 31, 4 p.m. to 7 p.m., Rio Rico, Arizona

Requests to speak at a public scoping meeting(s) should be received by Mrs. Ellen Russell at the address indicated below on or before July 26, 2001. Requests to speak may also be made at the time of registration for the scoping meeting(s). However, persons who submitted advance requests to speak will be given priority if time should be limited during the meeting.

ADDRESSES: Written comments or suggestions on the scope of the EIS and requests to speak at the scoping meeting(s) should be addressed to: Mrs. Ellen Russell, Office of Fossil Energy (FE–27), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585–0350; phone 202–586–9624, facsimile: 202–287–5736, or electronic mail at Ellen.Russell@hq.doe.gov.

The locations of the scoping meetings are:

1. Rancho Resort, 1300 W. Sahuarita Road, Sahuarita, Arizona.

2. Rio Rico Resort, 1069 Camino Caralampi, Rio Rico, Arizona.

FOR FURTHER INFORMATION CONTACT: For information on the proposed project or to receive a copy of the Draft EIS when it is issued, contact Mrs. Russell at the address listed in the **ADDRESSES** section of this notice. The TEP application, including associated maps and drawings, can be downloaded in its entirety from the Fossil Energy web site (www.FE.DOE.GOV; choose "Electricity Regulation," then Pending Procedures).

For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy 1000 Independence Avenue, SW., Washington, DC 20585–0119; Phone: 202–586–4600 or leave a message at 800–472–2756; Facsimile: 202–586–7031.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Executive Order 10485, as amended by Executive Order 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, maintained, operated, or connected at the U.S. international border. The Executive Order provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest. In determining consistency with the public interest, DOE considers the impacts of the project on the reliability of the U.S. electric power system and on the environment. The regulations implementing the Executive Order have been codified at 10 CFR 205.320–205.329. Issuance of the permit indicates that there is no Federal objection to the project, but does not mandate that the project be completed.

On August 17, 2000, TEP, a regulated public utility, filed an application for a Presidential permit with the Office of Fossil Energy of DOE, and on May 18, 2001, supplemented its application with its March 1, 2001, application to the Arizona Corporation Commission for a Certificate of Environmental Compatibility. TEP proposes to construct two 345-kV transmission circuits on a single set of support structures. Both circuits would originate at TEP's existing South Substation located approximately 15 miles south of Tucson in the vicinity of Sahuarita, Arizona, and 1.4 miles east of Interstate Highway 19 (I–19), south of Pima Mine Road, in Pima County, Arizona. South of the border, TEP would extend the line approximately 60 miles to the Santa Ana Substation, located in the City of Santa Ana, Sonora, Mexico, and owned by the Comision Federal de Electricidad (CFE), the national electric utility of Mexico.

The TEP application, including associated maps and drawings, can be downloaded in its entirety from the Fossil Energy web site (www.FE.DOE.GOV; choose "Electricity Regulation," then Pending Procedures).

TEP states that there are no firm contracts in place for the sale of power to Mexico using the proposed transmission lines. Prior to commencing electricity exports to Mexico using the proposed lines, TEP, or any other electricity exporter, must obtain an electricity export authorization from DOE pursuant to section 202(e) of the Federal Power Act.

TEP proposes three alternative corridors, each beginning at its South Substation. About one-half of each alternative corridor would be on privately-owned land, with the other half on Federally-owned land. The study corridors are about two miles wide, but, when constructed, the transmission line would actually use a right-of-way about 125 to 250 feet wide. One alternative corridor, the "Westerly Route" identified by TEP as its preferred route, would extend about 62 miles within the U.S. to the U.S.-Mexico border, primarily on the west side of I–19. The proposed route would exit the South Substation to the west, intersect the existing natural gas pipeline corridor owned by El Paso Natural Gas Company and located approximately six miles west of I–19, turn south, and parallel the natural gas pipeline for about seven miles. Southwest of Green Valley, the Westerly Route would turn southwest for three miles, and then continue south across private lands before crossing the Coronado National Forest on land not currently a Forest Service-designated utility corridor.

The second alternative corridor, the "Central Route" (identified by TEP as its preferred route if the Westerly Route could not be constructed), would extend about 56 miles within the U.S. to the U.S.-Mexico border. The Central Route would also be located primarily on the west side of I–19. The proposed Central Route would begin in the same way as the Westerly Route, but southwest of Green Valley it would continue parallel to the existing natural gas pipeline to a point in the vicinity of Tubac, where it would make a slight southwest turn. Then, for about three miles, this proposed route would be one mile west of the natural gas pipeline. The route then would turn southeast, rejoin the natural gas pipeline corridor and parallel it through the Coronado National Forest in a Forest Service-designated utility corridor that currently contains only the natural gas pipeline.

The third alternative corridor, identified by TEP as the "Easterly Route," would extend about 60 miles within the U.S. to the U.S.-Mexico border, and for about half this distance would run parallel to the existing 115-kV transmission line owned by Citizens Communications Company, located east of I–19. In the vicinity of Amado, the Easterly Route would cross to the west side of I–19, intersect the existing natural gas pipeline corridor south of Amado on private land, turn south paralleling the natural gas pipeline, and continue, paralleling the natural gas pipeline through the Coronado National Forest in the Forest Service-designated utility corridor.

Each of the three proposed alternative study corridors would cross 100-year floodplains and may cross wetlands. The Westerly Route would cross approximately 1,500 feet of 100-year floodplain; the Central Route, 2,100 feet; the Easterly Route, 6,600 feet. Project activities would include clearing rights-of-way and access roads, digging tower footings, setting transmission towers, hanging transmission wires, constructing a new substation on the west side of Nogales, Arizona, near Mariposa Road, and modifying TEP's existing South Substation.

In a separate but related proceeding, Public Service Company of New Mexico (PNM) has also applied for a Presidential permit to construct an electric transmission line across the U.S. border in the vicinity of Nogales, Arizona. A separate EIS is being prepared in that proceeding. The study corridor identified by TEP as the Central Route is very similar to the study corridor identified by PNM as its "Pipeline Corridor." TEP's Easterly Route and PNM's "East Valley Corridor" study corridors are similar in that a segment of each parallels the Citizens Communications Company's existing

115-kV transmission line. To assist the reader, maps available from the DOE web site (referenced above) reflect the applicants proposal and also the proposed corridors of the other applicant. Each of the EISs being prepared will consider the potential impacts of the other company's proposed transmission line as part of its cumulative impacts analysis.

Identification of Environmental Issues

A purpose of this notice is to solicit comments and suggestions for consideration in the preparation of the EIS. As background for public comment, this notice contains a list of potential environmental issues that DOE has tentatively identified for analysis. This list is not intended to be all-inclusive or to imply any predetermination of impacts. Following is a preliminary list of issues that may be analyzed in the EIS:

(1) Socioeconomic impacts of development of the land tracts and their subsequent uses;

(2) Impacts on protected, threatened, endangered, or sensitive species of animals or plants, or their critical habitats;

(3) Impacts on floodplains and wetlands;

(4) Impacts on cultural or historic resources;

(5) Impacts on human health and safety;

(6) Impacts on air, soil, and water;

(7) Visual impacts; and

(8) Disproportionately high and adverse impacts on minority and low-income populations.

The EIS will also consider alternatives to the proposed transmission lines, including, to the extent practicable:

(1) No Action Alternative: The EIS will analyze the impacts associated with "no action." Since the proposed action is the issuance of a Presidential permit for the construction of the proposed transmission lines, "no action" means that the permit would not be issued. However, not issuing the permit would not necessarily imply maintenance of the status quo. It is possible that the applicant and/or the Mexican government may take other actions if the proposed transmission lines are not built. The No Action Alternative will address the environmental impacts that are reasonably foreseeable to occur if the Presidential permit is not issued.

(2) Construction of a powerplant in the U.S. closer to the U.S.-Mexico border with a shorter transmission line extending to the border, an alternative concept for supplying electric power to the target region.

Scoping Process

Interested parties are invited to participate in the scoping process both to refine the preliminary alternatives and environmental issues to be analyzed in depth, and to eliminate from detailed study those alternatives and environmental issues that are not feasible or pertinent. The scoping process is intended to involve all interested agencies (Federal, state, county, and local), public interest groups, Native American tribes, businesses, and members of the public. Potential Federal cooperating agencies include the U.S. Department of the Interior (including the Bureau of Land Management, Bureau of Indian Affairs, Park Service, and the Fish and Wildlife Service), the U.S. Department of Agriculture's Forest Service, the International Boundary and Water Commission, and the Tohono O'odham Nation.

Public scoping meetings will be held at the locations, dates, and times indicated above under the **DATES** and **ADDRESSES** sections. These scoping meetings will be informal. The DOE presiding officer will establish only those procedures needed to ensure that everyone who wishes to speak has a chance to do so and that DOE understands all issues and comments. Speakers will be allocated approximately 5 minutes for their oral statements. Depending upon the number of persons wishing to speak, DOE may allow longer times for representatives of organizations. Consequently, persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting(s), but advance requests are encouraged. Should any speaker desire to provide for the record further information that cannot be presented within the designated time, such additional information may be submitted in writing by the date listed in the **DATES** section. Both oral and written comments will be considered and given equal weight by DOE. Meetings will begin at the times specified and will continue until all those present who wish to participate have had an opportunity to do so.

Draft EIS Schedule and Availability

The Draft EIS is scheduled to be issued in December 2001, at which time its availability will be announced in the **Federal Register** and local media and public comments again will be solicited.

People who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the Draft EIS for review and comment when it is issued should notify Mrs. Russell at the address above.

The Draft EIS will be made available for public inspection at several public libraries and reading rooms in Arizona. A notice of these locations will be provided in the **Federal Register** and local media at a later date.

Issued in Washington, DC, on July 5, 2001.

Steven V. Cary,

Acting Assistant Secretary, Office of Environment, Safety and Health.

[FR Doc. 01–17224 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket Nos. FE C&E 01–67, and C&E 01–76]

Certification Notice—201; Notice of Filings of Coal Capability of CPV Pierce, Ltd., GenPower EW Frankfort, LLC, Redbud Energy LP, Desert Power LP, WFEC GENCO, LLC, Duke Energy McClain, LLC, PacifiCorp Power Marketing, Inc., Bastrop Energy Partners, L.P., AES Medina Valley Cogen, L.L.C., and Entergy Power Ventures L.P. Powerplant and Industrial Fuel Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: CPV Pierce, Ltd., GenPower EW Frankfort LLC, Redbud Energy LP, Desert Power LP, WFEC GENCO, LLC, Duke Energy McClain, LLC, PacifiCorp Power Marketing, Inc, Bastrop Energy Partners, L.P., AES Medina Valley Cogen, L.L.C., and Entergy Power Ventures L.P. submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Imports/Exports, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the

capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed a self-certification in accordance with section 201(d).

Owner: CPV Pierce, Ltd (C&E 01–67).
Operator: CPV Pierce, Ltd.
Location: Polk County, FL.
Plant Configuration: Combined-cycle.
Capacity: 250 MW.
Fuel: Natural gas.
Purchasing Entities: Florida wholesale power market.
In-Service Date: First Quarter 2004.

Owner: GenPower EW Frankfort, LLC (C&E 01–68).
Operator: General Electric International, Inc.
Location: West Frankfort, IL.
Plant Configuration: Four combustion turbines.
Capacity: 320 MW.
Fuel: Natural gas.
Purchasing Entities: Wholesale power market.
In-Service Date: June, 2003.

Owner: Redbud Energy LP (C&E 01–69).
Operator: InterGen Operating Company (Redbud).
Location: Oklahoma County, OK.
Plant Configuration: Combined-cycle.
Capacity: 1200 MW.
Fuel: Natural gas.
Purchasing Entities: Wholesale power market.
In-Service Date: Spring 2003.

Owner: Desert Power, L.P. (C&E 01–70).
Operator: Desert Power, L.P.
Location: Tooele County, UT.
Plant Configuration: Two combustion turbines.
Capacity: 80 MW.
Fuel: Natural gas.
Purchasing Entities: Wholesale power market.
In-Service Date: July 1, 2001.

Owner: WFEC GENCO, LLC. (C&E 01–71).
Operator: WFEC GENCO, LLC.
Location: Caddo County, OK.
Plant Configuration: Simple-cycle.
Capacity: 90 MW.
Fuel: Natural gas.
Purchasing Entities: Coral Power, L.L.C.
In-Service Date: May 8, 2001.

Owner: Duke Energy McClain, LLC and Oklahoma Municipal Power Authority, (C&E 01–72).
Operator: Duke Energy McClain, LLC.
Location: McClain County, OK.
Plant Configuration: Combined-cycle.
Capacity: 520 MW.
Fuel: Natural gas.
Purchasing Entities: None.
In-Service Date: June 1, 2001.

Owner: PacifiCorp Power Marketing, Inc., (C&E 01–73).
Operator: PacifiCorp Power Marketing, Inc.
Location: Klamath Falls, OR.
Plant Configuration: Simple-cycle combustion turbine.
Capacity: 100 MW.
Fuel: Natural gas.
Purchasing Entities: Open Electricity Market.
In-Service Date: September 1, 2001.

Owner: Bastrop Energy Partners, L.P. (C&E 01–74).
Operator: Bastrop Energy Partners, L.P.
Location: Bastrop County, TX.
Plant Configuration: Combined-cycle.
Capacity: 550 MW.
Fuel: Natural gas.
Purchasing Entities: Unspecified customers.
In-Service Date: Summer 2002.

Owner: AES Medina Valley Cogen, L.L.C. (C&E 01–75).
Operator: AES Medina Valley Operations, L.L.C.
Location: Peoria County, IL.
Plant Configuration: Combined-cycle.
Capacity: 40 MW.
Fuel: Natural gas.
Purchasing Entities: Central Illinois Light Company.
In-Service Date: July 1, 2001.

Owner: Entergy Power Ventures, L.P. (C&E 01–76).
Operator: Entergy Power Ventures, L.P.
Location: Harrison County, TX.
Plant Configuration: Combined-cycle.
Capacity: 570 MW.
Fuel: Natural gas.
Purchasing Entities: Not yet determined.
In-Service Date: July 1, 2003.

Issued in Washington, DC, July 3, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–17176 Filed 7–9–01; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Dockets No. PP–240]

Applications for Presidential Permit, Enron Canada Corp.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Enron Canada Corp. (ECC) has applied for a Presidential permit to construct, operate, maintain, and connect a double-circuit 230,000-volt (230-kV) underground electric transmission facility across the U.S. border with Canada.

DATES: Comments, protests, or requests to intervene must be submitted on or before August 9, 2001.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350.

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael T. Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On April 23, 2001, ECC, an Alberta, Canada, power marketing corporation and wholly-owned subsidiary of Enron Corp. of Houston, Texas, filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for a Presidential permit. ECC proposes to construct a double-circuit 230-kV, underground electric transmission line across the U.S.-Canadian border in St. Claire County, Michigan. The proposed power line would connect to a proposed new electric generating facility (the Moore Power Plant) located in Moore Township, Lambton County, Ontario, Canada, extend under the St. Clair River and connect to the St. Clair Power Plant located in St. Clair County, Michigan, and owned by Detroit Edison. The total length of the transmission line would be approximately 7,052 feet. The underground sections would be approximately 3,640 feet in Ontario and 1,150 feet in Michigan. The section beneath the St. Clair River would be approximately 2,000 feet.

ECC asserts that the Moore Power Plant (MPP) is being built to participate in the newly deregulated Ontario electricity market and will be connected to Hydro One's Lambton Substation. The proposed cross-border power line will be a radial line connecting the MPP only to Detroit Edison's system. Accordingly, ECC requests a determination that open access obligations will not be imposed in connection with this Presidential permit.

Since restructuring of the electric power industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in Federal Energy Regulatory Commission Order No. 888 (Promotion Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public utilities; FERC Stats. & Regs. ¶ 31,036 (1996)), as amended. In furtherance of this policy, on July 27, 1999, (64 FR 40586) DOE initiated a proceeding in which it noticed its intention to condition existing and future Presidential permits, appropriate for third party transmission, on compliance with a requirement to provide non-discriminatory open access transmission service. That proceeding is not yet complete. However, in this docket DOE specifically requests comment on the appropriateness of or comment on whether the open access requirement should be applied to ECC's proposed power line.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: Eric Le Dain, Enron Canada Corp., 3500 Canterra Tower, 400–3rd Avenue SW., Calgary, Alberta T2P 4H2 and Debbie Chance, Enron Corp., 1400 Smith Street, Mail Stop EB2960E, Houston, TX 77002.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed actions pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded from the Fossil Energy Home Page at: *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Electricity" from the options menu, and then "Pending Proceedings."

Issued in Washington, DC, on July 3, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–17175 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2545–071 Washington]

Avista Corporation; Notice of Availability of Environmental Assessment

July 3, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Energy Projects has reviewed Avista Corporation's application to waive for 4.5 months the aesthetic flow requirements at the Monroe Street development of the Spokane River Hydroelectric Project, located on the Spokane River in Lincoln, Stevens, and Spokane Counties, Washington, and Kootenai County, Idaho. Staff in the Office of Energy Projects has prepared an Environmental Assessment (EA). The Monroe Street development does not occupy any federal or tribal lands.

The EA contains the staff's analysis of the potential environmental impacts of the proposed amendment and concludes that approval of the proposed amendment with staff's modifications would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA is attached to a Commission order issued on July 3, 2001, for the above application. Copies of the EA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The EA may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance).

For further information, contact Steve Hocking at (202) 219–2656.

David P. Boergers,

Secretary.

[FR Doc. 01–17179 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–375–000]

East Tennessee Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed TVA Project, Request for Comments on Environmental Issues, and Notice of Site Visit

July 3, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of the TVA Project. This project involves the construction and operation of facilities by East Tennessee Natural Gas Company (East Tennessee) in Moore, Lewis, Lawrence, Giles, Maury, Marshall, Hickman, and Franklin Counties, Tennessee.[1] These facilities would consist of about 26.5 miles of pipeline loop, a new 3,255-horsepower compressor station, additional compression at an existing compressor station, and other facilities. This EA will be used by the Commission in its decision-making process to determine

[1] East Tennessee's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice East Tennessee provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.gov*).

Summary of the Proposed Project

East Tennessee wants to expand the capacity of its facilities in Tennessee to render firm natural gas transportation service of 86,000 dekatherms per day (Dth/d) to the Tennessee Valley Authority (TVA). East Tennessee seeks authority to:

- construct approximately 8.74 miles of 20-inch-diameter pipeline loop and 9.63 miles of 16-inch-diameter pipeline loop on its existing pipeline right-of-way and construct approximately 8.09 miles of 20-inch-diameter pipeline loop adjacent to its existing pipeline right-of-way in Moore, Lewis, Lawrence, Giles, Maury, and Franklin Counties;
- hydrostatically test approximately 5.44 miles of 12-inch-diameter pipeline on its existing Line 3200 in Franklin County in order to increase the maximum allowable operating pressure;
- install a 6,270-horsepower (hp) compressor unit and a regulator at its existing Station 3206 in Marshall County; and a regulator at the Elk River Springs Meter Station in Franklin County;
- construct a new 3,255–hp compressor station (Station 3202) in Hickman County;
- replace aerodynamic assemblies for two existing compressor units at Station 3206 and for two existing compressor units at Station 3209, Franklin County; and
- install associated valves, piping, and appurtenant facilities.

The location of the project facilities is shown in appendix 1.[2]

The TVA would construct approximately 4 miles of 12-inch-diameter pipeline as well as a 510-megawatt combined cycle gas-fired generating plant in Franklin County.

Land Requirements for Construction

Construction of the proposed facilities would disturb about 400.9 acres. Of this total, approximately 27.9 acres would become new permanent right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- land use
- cultural resources
- air quality and noise
- public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by East Tennessee. This preliminary list of issues may be changed based on your comments and our analysis.

- The location of forty-four residences within 50-feet of the proposed construction right-of-way.
- One federally listed endangered or threatened species may occur in the proposed project area.
- Fifteen wetlands would be crossed by the proposed project.

Also we have made a preliminary decision not to address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1, PJ–11.1.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting the RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

• Reference Docket No. CP01–375–000.

• Mail your comments so that they will be received in Washington, DC on or before August 2, 2001.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link to the User's Guide. Before you can file comments or interventions you will need to create an account which can be created by clicking on "Login to File" and then "New User Account."

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 3). If you do not return the Information Request, your name will be taken off the mailing list.

Site Visit

On July 18 through 20, 2001, we will be conducting a site visit to the project area. This will be an on-the-ground inspection, conducted by automobile on public roads, or where access to private property has been granted (specific locations to be determined later). Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs (identified at the end of this notice) for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.gov) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 01–17180 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–384–000, and CP01–387–000]

Islander East Pipeline Company, L.L.C., Algonquin Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Islander East Pipeline Project and Request for Comments on Environmental Issues

July 3, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Islander East Pipeline Project involving construction and operation of facilities by Islander East Pipeline Company, L.L.C. (Islander East) and related facilities constructed and operated by Algonquin Gas Transmission Company (Algonquin) in New Haven County, Connecticut and Suffolk County, New York.[1] Islander East's facilities would consist of about 44.8 miles of 24-inch-diameter pipeline, including 22.6 miles offshore in Long Island Sound; 5.6 miles of new 24-inch-diameter lateral; and three new meter stations. In addition, Algonquin would retest and uprate about 27.4 miles of its C–1 and C–1L pipelines, and construct a new 10,310 horsepower (hp) compressor station in New Haven County, Connecticut. This begins a scoping process and the comments received in response to this notice will be used to identify significant environmental issues including whether there is a need to prepare an environmental impact statement (EIS) rather than an EA. The EA (or EIS) will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Islander East and Algonquin provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.gov).

Summary of the Proposed Project

Islander East wants to expand the capacity of its facilities in Connecticut and New York to transport an additional 285,000 dekatherms per day of natural gas to one local distribution company and two proposed power plants. Islander East seeks authority to construct and operate:

• 21.2 miles of 24-inch-diameter pipeline in New Haven County, Connecticut, including 11.0 miles offshore in Long Island Sound;

• 23.6 miles of 24-inch-diameter pipeline in Suffolk County, New York, including 11.6 miles offshore in Long Island Sound;

[4] Interventions may also be filed electronically via the internet in lieu of paper. See the previous discussion on filing comments electronically.

[1] Islander East and Algonquin's applications were filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

- 5.6 miles of 24-inch-diameter pipeline from Calverton Lateral to a proposed power plant in Suffolk County, New York;
- a new Islander East/North Haven meter station within or adjacent to Algonquin's existing North Haven meter station in New Haven County, Connecticut;
- a new KeySpan Energy Delivery & ANP Brookhaven meter station in Suffolk County, New York;
- a new AES Calverton meter station in Suffolk County, New York; and
- five new mainline valves in New Haven County, Connecticut and Suffolk County, New York.

In addition, Algonquin plans to:

- retest and uprate about 27.4 miles of the C–1 and C–1L pipeline systems (13.7 miles each) from their current maximum allowable operating pressures of 750 pounds per square inch (psig) to 814 psig;
- investigate, inspect, and repair as needed about 25 feet of anomalies identified on the 10-inch-diameter C–1 line at about milepost (MP) 3.8 in New Haven County, Connecticut;
- construct a new 10,310 hp gas turbine-powered Cheshire Compressor Station and associated aboveground piping, launchers, and buildings in New Haven County, Connecticut; and
- relocate two in-line tool launchers from an aboveground facility at about MP 0.6 in New Haven County, Connecticut to the new Cheshire Compressor Station.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Islander East proposes to use a 75-foot-wide right-of-way to construct its pipeline; 50 feet would be maintained as permanent right-of-way. About 86 percent of the 27.8 miles of onshore construction would be within or adjacent to existing rights-of-way.

Construction of the proposed facilities would disturb about 536.0 acres. Following construction, about 9.5 acres would be maintained as new aboveground facility sites. The remaining 208.9 acres would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- public safety
- land use
- cultural resources
- air quality and noise
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 5.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Islander East and Algonquin. This preliminary list of issues may be changed based on your comments and our analysis.

- A total of 22.6 miles of Long Island Sound would be crossed, including potential essential fish habitat (EFH).
- Forty-two residences would be located within 50 feet of the construction work area.
- A total of 133.8 acres of pine barrens would be disturbed, with 82.0 acres retained as permanent right-of-way.
- A total of 10 perennial and 4 intermittent waterbodies would be crossed, including two state scenic rivers.
- About 12.9 acres of wetlands would be disturbed during construction, with about 3.8 acres maintained as permanent right-of-way.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. These facilities include the proposed Brookhaven Energy Project power plant in Brookhaven, New York; the AES Long Island power plant located at the former Calverton Naval Reserve Facility on Long Island; and the local distribution company, KeySpan Energy Delivery Long Island. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA/EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes and sites), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 2.
- Reference Docket No. CP01–384–000.
- Mail your comments so that they will be received in Washington, DC on or before August 3, 2001.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintencance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on "Login to File" and then "New User Account."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.gov) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 01–17181 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12035–000.

c. *Date Filed:* June 4, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Greys River Hydroelectric Project.

f. *Location:* The proposed project would be located on a proposed dam owned by the applicant, on Greys River in Lincoln County, Wyoming. Part of the project would be on lands administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 USC § § 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, (fax) (208) 745–7909, or e-mail address: npsihydro@aol.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would consist of: (1) a proposed diversion dam 4-feet-high and 160-feet-long, (2) a resulting impoundment with a surface area of 1.5 acres and a storage capacity of 4.75 acre-feet at a normal elevation of 5,690 feet msl, (3) a 48-inch-diameter 3,460-foot-long steel penstock, (4) a powerhouse containing one generating unit with an installed capacity of 4.5 MW, (3) a 25 kv transmission line approximately 0.5 miles long, and (5) appurtenant facilities.

The project would have an annual generation of 28 GWh.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a

competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17182 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12024–000.

c. *Date Filed:* May 22, 2001.

d. *Applicants:* John D. Foggy and John S. Foggy.

e. *Name of Project:* Stewart Springs Hydroelectric Project.

f. *Location:* The proposed project would be located on Parks Creek near the City of Weed, in Siskiyou County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 USC § § 791(a)–825(r).

h. *Applicant Contacts:* Mr. John D. Foggy and John S. Foggy, 15 Tiptoe Lane, Burlingame, CA 94010, (408) 919–3049.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consists of: (1) a diversion structure approximately 20-feet-long, and 3-feet-high, (2) a 20-inch-diameter, 6,700 foot-long penstock; (3) a proposed powerhouse containing one generating unit having an installed capacity of 500 kW, (4) a proposed 400-foot-long 12 kv transmission line; and (5) appurtenant facilities.

The project would have an annual generation of 2.3 GWh.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17183 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12048–000.

c. *Date filed:* June 6, 2001.

d. *Applicant:* Arizona Independent Power, Inc.

e. *Name of Project:* Spring Canyon Pumped Storage Project.

f. *Location:* On land administered by the National Park Service in Spring Canyon in Mohave County, Arizona.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Frank L. Mazzone, Arizona Independent Power, Inc., 746 Fifth Street East, Sonoma, CA 95476, (707) 996–2573; Paul L. Brinkmann, Esq., Shorall Stevens & Brinkmann, 702 North Beaver Street, Flagstaff, AZ 86001–3103, (520) 779–1950.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

Please include the Project Number (12048–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project is a pumped storage project that would use Lake Mead, created by the Bureau of Reclamation's Hoover Dam, as the lower reservoir and would consist of: (1) A 210-foot-high, 2500-foot-long dam and 25,000-acre upper reservoir in Spring Canyon; (2) two 30-foot-diameter, 2300-foot-long underground penstocks; (3) an underground powerhouse containing generating units with a maximum installed capacity of 1500 MW; (4) twin circuit 500 kV transmission lines 75 miles long; and (5) appurtenant facilities. The Commission is not authorized to issue permits or licenses for non-federal development at Hoover Dam and Lake Mead. However, this permit is for studying the feasibility of constructing the upper reservoir and related project works.

The project would have an annual generation of 2,019 GWh.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202) 208–2222 for assistance). A copy is also available for

inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17184 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12023–000.

c. *Date filed:* May 22, 2001.

d. *Applicant:* Richard V. Williamson.

e. *Name of Project:* Stony Creek Project.

f. *Location:* On Stony Creek, in Colusa County, California. The project would use U.S. Forest Service land within the Mendocino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Richard V. Williamson, 1111 James Donlon Blvd, No. 2076, Antioch, CA 94509, (707) 745–7334.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

Please include the project number (P–12023–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed 240-foot-long, 80-foot-high reinforced cast-in-place concrete dam, (2) a proposed impoundment having a surface area of 36.7 acres and storage capacity of 750 acre-feet and a normal water surface elevation of 1520 feet msl, (3) a proposed 5200-foot-long, 42-inch diameter steel penstock, (4) a proposed powerhouse containing one generating unit having an installed capacity of 1600 kW, (5) a proposed 200-foot-long, 36-inch-diameter steel tailrace, (6) a proposed 5000-foot-long 12kV transmission line, and (7) appurtenant facilities.

The project would have an annual generation of 12.7 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17185 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12018–000.

c. *Date filed:* May 8, 2001.

d. *Applicant:* San Carlos Irrigation and Drainage District, Arizona.

e. *Name of Project:* Coolidge Dam Project.

f. *Location:* On an existing dam owned by the Bureau of Indian Affairs on the Gila River, in Pinal and Gila Counties, Arizona. The existing power facilities are owned by the U.S. Bureau of Indian Affairs and were operated by the U.S. Bureau of Reclamation until 1983, when a severe flood damaged the powerhouse. The applicant proposes to reconstruct this abandoned facility.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Douglas Mason, General Manager, San Carlos Irrigation and Drainage District, Arizona, P.O. Box 218, Coolidge, AZ 85228, (520) 723–5408.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

Please include the project number (P–12018–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list

for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the existing U.S. Bureau of Indian Affairs Coolidge Dam would consist of: (1) An existing intake, (2) an existing powerhouse containing two new generating units having a total installed capacity of 12.4 MW, (3) an existing line, and (4) appurtenant facilities.

The project would have an annual generation of 30 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17186 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12050–000.

c. *Date filed:* June 11, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Pine Creek Project.

f. *Location:* On Pine Creek, in Lincoln County, Wyoming. The project would be located on U.S. Forest Service Lands within the Bridger National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.gov under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

Please include the project number (P–12050–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed 30-foot-long, 10-foot-high earth filled dam, (2) a proposed impoundment having a surface area of 1 acre with negligible storage and normal water surface elevation of 7,400 feet msl, (3) a proposed intake structure, (4) a proposed 15,600-foot-long, 24-inch-diameter steel penstock; (5) a proposed powerhouse containing two generating units with a total installed capacity of 1.8 MW, (6) a proposed 5-mile-long 15 kV transmission line, and (7) appurtenant facilities.

The project would have an annual generation of 9.9 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17187 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12027–000.

c. *Date filed:* May 25, 2001.

d. *Applicant:* Richard V. Williamson.

e. *Name of Project:* Middle and South Forks, Sacramento River Project.

f. *Location:* On the Middle and South Forks, Sacramento River, in Siskiyou County, California. The project would use U.S. Forest Service land within the Shasta-Trinity National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Richard V. Williamson, 1111 James Donlon Blvd, No. 2076, Antioch, CA 94509, (707) 745–7334.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P.

Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

Please include the project number (P–12027–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project: (1) A proposed 90-foot-long, 25-foot-high reinforced cast-in-place concrete South Fork Dam, (2) a proposed impoundment having a surface area of 6000 square feet with negligible storage and a normal water surface elevation of 4080 feet msl, (3) a proposed 60-foot-long, 15-foot-high reinforced cast-in-place concrete Middle Fork Dam, (4) a proposed impoundment having a surface area of 3000 square feet with negligible storage and a normal water surface elevation of 4120 feet msl, (5)a proposed 6000-foot-long, 60-inch diameter South Fork steel penstock, (6) a proposed 4500-foot-long, 24-inch diameter Middle Fork steel penstock where it would join the South Fork penstock, (7) a proposed powerhouse containing one generating unit having an installed capacity of 6000 kW, (8) a proposed 90-foot-long, 36-inch-diameter steel tailrace, (9) a proposed 14,000-foot-long 12kV transmission line, and (10) appurtenant facilities.

The project would have an annual generation of 50.4 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17188 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12039–000.

c. *Date Filed:* June 4, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Alpine Hydroelectric Project.

f. *Location:* The proposed project would be located on the Snake River in Lincoln County, Wyoming. Part of the project would be on lands administered by the U.S. Forest Service (Targhee National Forest).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, (fax) (208) 745–7909, or e-mail address: npsihydro@aol.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed diversion dam 65-feet-high and 210-feet-long with negligible impoundment, (2) a screened intake structure, (3) a 900 foot power canal, (4) two 200-feet long 216 inch-diameter steel penstocks 200 feet-long, (5) a powerhouse containing two generating units with an installed capacity of 10 MW, (3) a 25 kv transmission line approximately 1 mile long; and (6) appurtenant facilities.

The project would have an annual generation of 44 GWh.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance).

A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application. to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17189 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12022–000.

c. *Date filed:* May 21, 2001.

d. *Applicant:* John M. Mosby.

e. *Name and Location of Project:* The Emigrant Creek Project would be located on Emigrant Creek in Jackson County, Oregon. The applicant states that the proposed project would be located on private lands, however, the project may affect the headworks of the Ashland Lateral Diversion Dam which are owned by the U.S. Bureau of Reclamation.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

g. *Applicant contacts:* Ms. Janet White, Duke Engineering & Services, 19125 North Creek Parkway, Suite 203, Bothell, WA 98011, (425) 485–5668; Mr. Steve Mosby, 2730 Lone Tree Way, Suite 2, Antioch, CA 94509 (925) 754–8907.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

Please include the project number (P–12022–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would use a proposed diversion/intake structure 6 feet high and 50 feet in length and include: (1) A proposed powerhouse with a total installed capacity of 935 kilowatts; (2) a proposed 5,013-foot-long, 4.5-foot-diameter penstock; (3) a proposed 400-foot-long, 12.5 kv transmission line; and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 3.5 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance).

A copy is also available for inspection and reproduction at the address in item g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application.

A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17190 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance).

a. *Type of Application:* New Major License.

b. *Project No.:* 2180–007.

c. *Date Filed:* June 26, 2001.

d. *Applicant:* PCA Hydro Inc.

e. *Name of Project:* Grandmother Falls Hydroelectric Project.

f. *Location:* On the Wisconsin River near the town of Bradley, Lincoln County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Kenneth Schultz, Packaging Company of America, N9090 County Road E, Tomahawk, Wisconsin 54481 (715) 453–2131 Ext. 499.

i. *FERC Contact:* Michael Spencer, michael.spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing additional study requests:* August 25, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, interventions and additional study requests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *The existing Grandmother Falls Project consists of:* (1) A 450-foot-long gravity dam; (2) a 758-acre reservoir; (3) a powerhouse with a total installed capacity of 3,000-kilowatts and (4) appurtenant facilities. The applicant estimates that the average annual generation is 17,897 megawatthours.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

n. With this notice, we are initiating consultation with the WISCONSIN STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

o. *Procedural schedule and final amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing.

Notice of NEPA Scoping (unless scoping has already occurred).

Notice of application is ready for environmental analysis.

Notice of the availability of the draft NEPA document.

Notice of the availability of the final NEPA document.

Order issuing the Commission's decision on the application.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

David P. Boergers,

Secretary.

[FR Doc. 01–17191 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12034–000.

c. *Date filed:* June 4, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Como Dam Project.

f. *Location:* On an existing dam owned by the Bitter Root Irrigation District, on Rock Creek, in Ravalli County, Montana. The project would not use any federal dam or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, Id 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener

files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 2,550-foot-long, 70-foot-high earth filled dam, (2) an existing reservoir having a surface area of 980 acres with a storage capacity of 35,100 acre-feet and normal water surface elevation of 4,243 feet msl, (3) a proposed intake structure, (4) a proposed 500-foot-long, 60-inch-diameter steel penstock; (5) a proposed powerhouse containing one generating unit with an installed capacity of 1.8 MW, (6) a proposed 4-mile-long 15 kV transmission line, and (7) appurtenant facilities.

The project would have an annual generation of 6.8 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17192 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12015–000.

c. *Date filed:* May 3, 2001.

d. *Applicant:* Troup County Board of Commissioners.

e. *Name of Project:* West Point Lake Project.

f. *Location:* On an existing dam owned by U.S. Army Corps of Engineers, on the Chattahoochee River, in Chambers County, Alabama and Troup County, Georgia. The project is for additional capacity to the U.S. Army Corps of Engineers' existing 73 MW powerplant. The applicant states it would not impact the current operation of this plant.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ben Thompson, Jr., Chairman, Troup County Board of Commissioners, 900 Dallas Street, LaGrange, GA 30240, (706) 883–1610.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy

Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

Please include the project number (P–12015–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the existing U.S. Army Corps of Engineers West Point Lake Dam and powerhouse would consist of following two developments:

A. *Development one would consist of:* (1) The installation of a 35 MW unit in the open bay of the existing Corps of Engineers powerhouse and (2) appurtenant facilities.

B. *Development two would consist of:* (1) A proposed powerhouse on the left (east) bank of the dam containing one generating unit having a total installed capacity of 15 MW, (2) a proposed 115 kV transmission line, and (3) appurtenant facilities.

The project would have an annual generation of 193 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17193 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12033–000.

c. *Date filed:* June 1, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Helena Valley Project.

f. *Location:* On Ten Mile Creek, in Lewis and Clark County, Montana. The project would use the U.S. Bureau of

Reclamation's existing Helena Valley Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P. O. Box 535, Rigby, Id 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

Please include the project number (P–12033–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the existing U.S. Bureau of Reclamation's Helena Valley Dam and would consist of: (1) a proposed intake structure, (2) a proposed 200-foot-long, 120-inch-diameter steel penstock; (3) a proposed powerhouse containing one generating unit with an installed capacity of 4.5 MW, (4) a proposed 15 kV transmission line, and (5) appurtenant facilities.

The project would have an annual generation of 13.4 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17194 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12037–000.

c. *Date filed:* June 4, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Swift Dam Project.

f. *Location:* On an existing dam owned by Pondera County Canal and Reservoir Company, on Birch Creek, in Pondera County, Montana. The project would not use any federal dam or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, Id 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

Please include the project number (P–12037–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) an existing 560-foot-long, 205-foot-high concrete dam, (2) an existing reservoir having a surface area of 540 acres with a storage capacity of 30,000 acre-feet and normal water surface elevation of 4,884 feet msl, (3) a proposed intake structure, (4) a proposed 500-foot-long, 48-inch-diameter steel penstock; (5) a proposed powerhouse containing one generating unit with an installed capacity of 1.4 MW, (6) a proposed 1-mile-long 15kV transmission line, and (7) appurtenant facilities.

The project would have an annual generation of 3.9 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17195 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12046–000.

c. *Date filed:* June 4, 2001.

d. *Applicant:* The Empire District Electric Company.

e. *Name of Project:* Spring River Hydroelectric Project.

f. *Location:* On Spring River, Shoal Creek and Empire Lake, in Cherokee County, Kansas. No federal facilities or lands would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Tom Snyder, Plant Manager, Ozark Beach Plant, The Empire District Electric Company, 602 Joplin Street, Joplin, MO 64801 (417) 625–5100 ext. 2580.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov.* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on "Login to File" and then "New User Account."

Please include the Project Number (12046–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) an existing concrete dam section (south abutment) approximately 25 feet high, 56 feet long; (2) an existing spillway section 267-feet long with five stop logs; (3) 2 existing water box sections each approximately 102-feet long, integral with 4 draft tubes; (4) an existing earth dam section (north abutment) approximately 10 feet high, 800 feet long, with 3-feet wide and 10-feet high concrete core; (5) an existing auxiliary dam approximately 1100-feet long, 25-feet high that acts as an overflow spillway; (6) an existing 69-foot-long, 40-foot-high powerhouse integral with the dam housing 3 new 600 kW generating units for a total installed capacity of 1.8 MW; (7) a new 12.47 kV transmission line approximately 150 feet long; and (8) appurtenant facilities.

The project would have an annual generation of 8 GWh.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov.* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to

intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17196 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

National Environmental Justice Advisory Council

[FRL–7009–8]

Indigenous Peoples Subcommittee; Notification of Meeting

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, we now give notice that the National Environmental Justice Advisory Council (NEJAC), Indigenous Peoples Subcommittee (IPS) will meet on the dates and times described below. All times noted are Mountain Time. All meetings are open to the public. Due to limited space, seating at the NEJAC/IPS meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are not available from the NEJAC. The IPS meetings will take place at the Hacienda de Placitas, 491 Highway 165, Placitas, New Mexico 87043. The meeting dates and times are as follows: July 26 (8:30 a.m.–5:00 p.m.) and July 27 (8:30 a.m.–12:00 p.m.), 2001. The IPS will be focusing on the development of its two year work plan, and will discuss fish consumption and subsistence issues. Any member of the public wishing additional information on the subcommittee meeting, or who plans on attending the meeting should contact Mr. Daniel Gogal, IPS Designated Federal Officer, EPA Office of Environmental Justice, (202) 564–2576.

Dated: July 3, 2001.

Linda K. Smith,

Acting Director, Office of Environmental Justice.

[FR Doc. 01–17204 Filed 7–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181081; FRL–6790–3]

1,3,7-Trimethylxanthine; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Hawaii Department of Agriculture to use the pesticide 1,3,7-trimethylxanthine (CAS No. 58–08–2) to treat up to 2,000 acres of floriculture and nursery crops, parks, hotels, resort areas, and forest habitats to control Coqui and Greenhouse frogs. The Applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket control number OPP–181081, must be received on or before July 25, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181081 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; fax number: (703) 308–5433; e-mail address: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of potentially affected entities
State government	9241	State agencies that petition EPA for section 18 pesticide exemption

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–181081. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of

the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181081 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–181081. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. Hawaii Department of Agriculture has requested the Administrator to issue a specific exemption for the use of 1,3,7-trimethylxanthine (caffeine) on floriculture and nursery crops, parks, hotels, resort areas, and forest habitats to control Coqui and Greenhouse frogs. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that the tropical frogs, *Eleutherodactylus coqui* and *E. planirostris* are two relatively new species introduced to Hawaii from infested nursery plants. These species are native to the Caribbean area. *E. coqui* is now firmly established on Maui and the Island of Hawaii and *E. planirostris* is on Kauai, Oahu, Maui, and the Island of Hawaii. The sites where they are established include commercial plant nurseries, residential areas, resorts, hotels, parks, and forest habitats. *Eleutherodactylus* are spread to additional sites primarily through transportation of infested plant material to uninfested areas.

There is great concern that these frogs pose a threat to both agriculture and the native Hawaiian forest ecosystem, including many endangered species. The majority of native birds are partially or completely insectivorous. In addition, the Hawaiian hoary bat and other arthropods depend upon insects and spiders as a food source. Because *E. coqui* tolerates a higher elevational range, it may invade native rainforest and mesic forests in Hawaii. They may exert a tremendous predation pressure on a wide variety of native arthropods, many of which are already stressed to the edge of extinction due to the establishment of other alien predators and parasitoids. According to Dr. Fred Kraus, Alien Species Coordinator with the Hawaii Department of Land and Natural Resources, Forestry and Wildlife Division, currently none of the sites infested with *Eleutherodactylus* are habitats for endangered species. However, there is a potential for the frogs to enter these habitats, particularly near the Hawaii Volcanoes National Park, where the nearest infested area is about two miles away.

The Applicant proposes to make up to twelve applications per acre per year of 100–200 pounds of product (99–198 pounds of caffeine) in 1,200 gallons of water per acre. However, a maximum of 1,200 pounds of product (1,188 pounds caffeine) will be applied per acre per year. The projected acreage for 2001–2002, is 2,000 acres on floriculture and nursery crops, parks, hotels, resort areas, and forest habitats in the entire state of Hawaii. Therefore, a maximum of 2,376,000 pounds of caffeine could be applied.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by the

EPA. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Hawaii Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 26, 2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 01–17205 Filed 7–9–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7009–1]

Internet Availability of Data on a Subset of Federal Facilities in the Sector Facility Indexing Project

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the Internet release of data on a subset of federal facilities in the Sector Facility Indexing Project (SFIP). Based upon the positive results of an Agency study that evaluated the progress of this project, the EPA announced on May 17, 2000 that the SFIP would be expanding to include a subset of federal facilities. (See 65 FR 34704, May 31, 2000). The new federal facility subset includes all federal facilities which are considered to be major facilities under at least two of the three following statutes: the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act. This new subset joins the approximately 625 facilities already profiled in SFIP. The existing facilities address five industry sectors: Automobile assembly; petroleum refining; pulp manufacturing; iron and steel manufacturing; and primary smelting and refining of aluminum, copper, lead, and zinc (nonferrous metals).

DATES: The SFIP was expanded to include data on a subset of federal facilities on June 25, 2001, and the data is currently available to the public.

ADDRESSES: Data may be accessed electronically via the Internet at the following address: http://www.epa.gov/oeca/sfi.

FOR FURTHER INFORMATION CONTACT: Robert Lischinsky, U.S. Environmental Protection Agency, Office of Compliance (2223–A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: (202)564–2628, fax: (202)564–0050; e-mail: lischinsky.robert@epa.gov

SUPPLEMENTARY INFORMATION: As a community right-to-know project, SFIP is a computerized database of environmental information that provides the public with facility-level compliance data in one location on the Internet. This database makes it possible for anyone to easily find and compare information on the environmental record of many industrial facilities. Government agencies can use the information as a planning tool, and facilities can benchmark their data against those of other facilities, or simply monitor their own regulatory performance. SFIP includes such information as a facility's compliance and enforcement history; information on pollutant releases and spills; and demographics of the surrounding community.

When EPA launched the SFIP website (*www.epa.gov/oeca/sfi*) in May 1998 (see 63 FR 27281, May 18, 1998), the Agency made a commitment to monitor and evaluate the progress of this project. User groups both inside and outside the Agency were consulted in our evaluation and the results were positive. SFIP has been extensively accessed by a variety of users. They have found the site easy to navigate and the information useful, resulting in numerous analyses. Users have commented that SFIP has met the challenge of summarizing complex compliance and pollutant release information from multiple statutory programs. They also have stated that the project serves as an incentive to achieve and maintain compliance while helping to improve data quality in the underlying databases.

During the evaluation of SFIP, EPA received feedback that the project should provide for additional sectors to make the project more useful to a broader audience. Prior to expanding the project, the Agency consulted with various groups, including environmental organizations, industry trade associations, several States, and The Environmental Council of the States. The expansion to federal facilities has been viewed as a positive step as it will provide the public with additional information on the U.S. government's own environmental performance. With this expansion, we have continued to ensure that we maintain the public's confidence in the integrity of the data. Regions, States and the affected facilities were given the opportunity to review the data and resolve any data quality issues through a coordinated EPA/State effort prior to release.

Dated: June 29, 2001.

Ken Gigliello,

Acting Chief, Air, Hazardous Waste, & Toxics Branch, Compliance Assessment & Media Programs Div., Office of Compliance.

[FR Doc. 01–17203 Filed 7–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7009–7]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, As Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, ("CERCLA"), 42 U.S.C. 9601–9675, notice is hereby given that a proposed prospective purchaser agreement ("Purchaser Agreement") associated with the North Penn Area 7 Superfund Site, Lansdale Borough and Upper Gwynedd Township, Montgomery County, Pennsylvania was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, against 1190 Church Road Associates, L.P. ("Purchaser"). The settlement would require the Purchaser to, among other things, reimburse the Environmental Protection Agency $90,000.00 for response costs incurred and to be incurred at the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating

to the Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before August 9, 2001.

Availability

The Purchaser Agreement and additional background information relating to the Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Purchaser Agreement may be obtained from Thomas A. Cinti (3RC42), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the "North Penn Area 7 Superfund Site, Prospective Purchaser Agreement" and "EPA Docket No. CERC–PPA–2001–0003," and should be forwarded to Thomas A. Cinti at the above address.

FOR FURTHER INFORMATION CONTACT: Thomas A. Cinti (3RC42), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2634.

Dated: June 25, 2001.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 01–17202 Filed 7–9–01; 8:45 am]

BILLING CODE 6560–50–U

OFFICE OF NATIONAL DRUG CONTROL POLICY

Meeting of the Drug Control Research, Data, and Evaluation Committee

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Drug Control Research, Data, and Evaluation Committee will be held on July 26–27, 2001 at the Office of National Drug Control Policy in the 5th Floor Conference Room, 750 17th Street NW., Washington, DC. The meeting will begin promptly each day at 9:00 a.m. and adjourn at 4:00 p.m. the agenda will include: review and discussion of the National Academy of Science's Report entitled "Informing American's Policy on Illegal Drugs, What We Don't Know Keeps Hurting Us." The agenda will also cover the following: Drug Free Communities Grant Program: Administration activities related to: prevention, families, schools, and workplaces; treatment initiatives: closing the treatment gap, keeping prisons drug free, faith-based programs related to prevention and treatment; Youth Anti-Drug Media Campaign; interagency activities related to public safety and public. There will be an opportunity for public comment from 11:30 to 12:00 on Thursday, July 26, 2001.

FOR FURTHER INFORMATION CONTACT: Linda V. Priebe, (202) 395–6622.

Dated: June 25, 2001.

Linda V. Priebe,

Assistant General Counsel.

[FR Doc. 01–17215 Filed 7–9–01; 8:45 am]

BILLING CODE 3180–02–M

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 12, 2001, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- June 21, 2001 (Open).

B. Reports

- Corporate Approvals.

C. New Business—Regulation

- Termination [12 CFR Parts 611 and 614] (Proposed).

Dated: July 5, 2001.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 01–17290 Filed 7–6–01; 10:49 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–102; DA 01–1520]

Petition for Reconsideration Regarding Allocation of Costs of E911 Implementation; Comments Invited

AGENCY: Federal Communications Commission.

ACTION: Solicitation of comments.

SUMMARY: This document invites comment on a Petition for Reconsideration (Petition) filed June 6, 2001, by four wireless carriers (Nextel Communications, Inc., Qwest Wireless, LLC, Verizon Wireless, and VoiceStream Wireless Corporation) operating in King County, Washington. The Petition challenges the Wireless Telecommunications Bureau's May 7, 2001 response to a letter from the E911 Program Manager for the King Country, Washington E–911 Program Office concerning the proper allocation of E911 implementation costs. In that letter, the Bureau clarifies that the proper demarcation point for allocating costs between wireless carriers and Public Safety Answering Points (PSAPs) is the input to the 911 Selective Router maintained by the Incumbent Local Exchange Carrier. The petitioners argue, among other things, that King County's request constituted an untimely request for reconsideration of the Second Memorandum Opinion and Order (64 FR 72951, December 29, 1999) in the ongoing E911 proceeding and an impermissible collateral attack on the Commission's decisions in that proceeding; that the Bureau's decision exceeds its delegated authority; and that the scope of the inquiry and conclusion reached require a notice-and-comment rulemaking proceeding. The full text of the petition is available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. Pursuant to 47 CFR 1.1200(a), this proceeding is designated as a "permit but disclose" proceeding and subject to § 1.1206 of the Commission's rules. Presentations to or from Commission decision making personnel are permissible, provided that *ex parte* presentations are disclosed pursuant 47 CFR 1.1206(b).

Interested parties may file comments or oppositions responding to the

Petition on or beforeJuly 30, 2001, and reply comments on or before August 14, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.hmtl*. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number of this proceeding. Parties may also submit an electronic comment by Interest e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form [your e-mail address]." A sample form and directions will be send in reply. Parties who choose to file by paper must file an original and four copies of each filing.

DATES: Comments are due on or before July 30, 2001, and reply comments are due on or before August 14, 2001.

ADDRESSES: All paper filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW A–325, Washington, DC 20554. A copy should also be sent to Jane Phillips,Room 3 A–200.

FOR FURTHER INFORMATION CONTACT: Jane Phillips, 202–418–1310.

Federal Communications Commission.

James D. Schlichting,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 01–17248 Filed 7–9–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

July 5, 2001.

Open Commission Meeting, Thursday, July 12, 2001

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 12, 2001, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier—Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147). Summary: The Commission will consider a Fourth Report and Order concerning the collocation obligations of incumbent LECs.

2—Common Carrier—Title: Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations. Summary: The Commission will consider a Declaratory Ruling and Notice of Proposed Rulemaking concerning streamlining the process for common carriers to gain authorization pursuant to Section 214 of the Communications Act of 1934, as amended, to transfer domestic interstate transmission lines through an acquisition of corporate control.

3—International—Title: Presentation on the Status of the U.S. International Services Market. Summary: The International Bureau will make a presentation detailing changes in the international services market over the past several years, and resulting decreases in consumer prices and increases in volume of calls and capacity.

Additional information concerning this meeting may be obtained from Maureen Pertino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netco.com. Their Internet address is http://www.itsdocs.com/.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–17346 Filed 7–6–01; 2:16 pm]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

[Notice 2001–9]

Voluntary Standards for Computerized Voting Systems

AGENCY: Federal Election Commission.

ACTION: Notice with request for comments.

SUMMARY: The Federal Election Commission (the "FEC") requests comments on proposed revisions to the 1990 national voluntary performance standards for computerized voting systems. Please note that the draft revised Standards do not represent a final decision by the Commission, nor do they include proposed revised test standards. The FEC will publish a notice when the proposed revised test standards are available for comment, and another notice when the final revised performance and test standards are issued. Note also that the text of the final documents will not become part of the Code of Federal Regulations because they are intended only as guidelines for States and voting system vendors. States may mandate the specifications and procedures through their own statutes, regulations, or administrative rules. Voting system vendors may voluntarily adhere to the Standards to ensure the reliability, accuracy, and integrity of their products. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

DATES: Comments must be received on or before September 10, 2001.

ADDRESSES: Copies of the draft revised performance standards may be found on the Federal Election Commission's web site at *www.fec.gov/elections.html*, or may be requested by contacting the Office of Election Administration, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. They may also be picked up at the Office of Election Administration, 800 N. Capital St. NW., Washington, DC, Suite 600. All comments should be addressed to Ms. Penelope Bonsall, Director, Office of Election Administration, and must be submitted in either written or electronic form. Written comments should be sent to the Office of Election Administration, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–8500, with printed copy follow-up to ensure legibility. Electronic mail comments should be sent to VSS@fec.gov. See the Supplementary Information that follows for file formats and other information about filing comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Penelope Bonsall, Director, Office of Election Administration, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1095; Toll Free (800) 424–9530, extension 1095.

SUPPLEMENTARY INFORMATION: The FEC issued the first national voluntary voting system standards in response to various States' requests for assistance, after a number of voting system failures in the field. The FEC's Office of Election Administration undertook this activity pursuant to its responsibilities under 2 U.S.C. 438(a)(10), which requires the FEC to "serve as a national clearinghouse for the compilation of information and review of procedures with respect to the administration of Federal elections."

The FEC began developing the first performance standards and test criteria for computer based voting systems in 1984, subsequent to two studies. The first study was the 1975 publication entitled "Effective Use of Computing Technology in Vote Tallying", which was prepared jointly by the National Bureau of Standards (now the National Institute of Standards and Technology) and the FEC's predecessor at the General Accounting Office. This report concluded that one of the primary causes for computer-related election problems was a lack of appropriate technical skills at the State and local level for developing or implementing complex written standards, against which voting system hardware and software could be tested. The second report was a Congressionally mandated feasibility study published in 1982 and entitled "Voting System Standards: A Report to the Congress on the Development of Voluntary Engineering and Procedural Performance Standards for Voting Systems". This document, produced by the FEC in cooperation with the National Bureau of Standards, cited a substantial number of technical and management problems that affected the integrity of the vote counting process. It also detailed the need and desirability of having a federal agency develop voluntary national technical standards and test criteria for voting systems other than mechanical lever or hand-counted paper ballot systems.

The original Standards took six years to develop. A series of public meetings were held. State and local election officials, representatives of voting system vendors, technical consultants, and others reviewed drafts of the proposed criteria. A notice soliciting comments from the public was published in the **Federal Register** on August 8, 1989. 54 FR 32479. The FEC reviewed all responses to the notice and incorporated corrections and suitable suggestions. Notice of the final Standards was published in the **Federal Register** on February 5, 1990. 55 FR 3764.

Thirty-seven States now report that they have implemented, or intend soon to adopt, the Standards. While most States apply the Standards only to newly acquired voting systems, States may also consider using the Standards to test existing voting systems. The National Association of State Election Directors ("NASED") oversees the national testing of voting systems by independent test authorities using the Standards. The Election Center, a private membership association of election officials, serves as Secretariat for the NASED testing program.

Today, election officials are better assured that the voting systems they procure will work accurately and reliably. Voting system failures are on the decline, and now tend to involve pre-standard equipment, untested equipment configurations, or the mismanagement of tested equipment.

Nevertheless, after ten years of use, the Standards need revision. The technologies used to develop voting systems and way the voting process is administered had evolved and continue to evolve. The needs of the disabled community have been widely recognized. In addition, voting system vendors, NASED independent test authorities, States, and local jurisdictions have gained much experience in using the Standards and have identified areas for refinement.

The FEC initiated this particular revision process in the fall of 1999, after conducting an analysis to pinpoint where revisions were needed and to estimate associated costs. The production of draft revised Standards involved technical consultants, representatives of the two NASED certified independent test authorities, State and local election officials who are members of the NASED committee that oversees the testing process, and the Executive Director of The Election Center. Voting system vendors were also given the opportunity to comment on problems with the current Standards, the focus of and framework for the revised Standards, and an early draft of the functional requirements for the revised Standards.

The proposed revised Standards separate the original performance standards and test criteria, which had been presented together as one large volume, into two volumes to better suit the needs of different user groups. "Volume I: Voting System Performance Standards" provides an introduction to the Standards, describes the functional and technical requirements for voting systems, and includes a summary of the testing process. "Volume II: Voting System Test Standards" will provide details of the test process in terms of information to be submitted by the vendor, testing conducted by the independent test authorities, and criteria for passing the individual tests of the test process.

To improve readability, the revised performance standards also have been reorganized to clearly identify individual elements as either mandatory requirements or recommended guidelines or practices. They focus on voting system functionality, identifying requirements common to all types of voting systems and those that apply only to subclasses of voting systems (e.g.; paper based versus all electronic, central count versus precinct count).

The proposed performance standards provide expanded coverage of certain automated election management functions that interface with vote recording and tabulating systems; both on the front end during the preparation of ballots and the election-specific coding of software and on the back end during vote consolidation and reporting. They augment coverage of system requirements for feedback to the voter, audit trails, telecommunications, security, and the documentation of vendor quality assurance practices. They also provide new coverage for Internet voting, accessibility for disabled voters, and documentation of the vendor's process for managing voting system development and changes. The Commission encourages detailed comments on these new and expanded areas.

The proposed performance standards no longer describe fundamental professional systems development processes. They do not address election practices and procedures that are not under the control of the vendor, although vendors will be required to document actions, materials, and environmental considerations necessary to properly secure, use, transport, and maintain their specific voting systems. This version of the performance standards also does not address many specific human interface considerations, except for the accessibility of information technology components to the disabled and some general provisions for ballot presentation, feedback to the voter, and warning signals. The FEC has requested funds to enhance existing documents and develop new ones to address these matters.

The proposed performance standards also do not cover election administration databases and information technology that are not involved in ballot preparation, election coding of software, vote recording and tabulation, or vote consolidation and reporting (e.g.; databases used to manage voter registration, absentee balloting requests, precinct boundaries, poll worker remuneration, etc.). Further discussion of the reasons for these exclusions is contained in the Overview document that accompanies the proposed Standards.

The FEC is now making the draft "Volume I: Voting System Performance Standards" available for comment. This fall, the Commission plans to publish a notice in the **Federal Register** to announce when the draft "Volume II: Voting System Test Standards" is available for comment. The Commission will evaluate comments received on both volumes to determine what additional refinements are warranted. Following this process, a notice will be published in the **Federal Register** announcing the availability of the final documents. Assuming a continuous funding stream, the Commission anticipates a final issuance date no later than April 2002 and will recommend to the States, voting system vendors, and independent test authorities an effective date of July 1, 2002.

Electronic Access and Filing Addresses

Comments may be submitted by sending electronic messages to *VSS@fec.gov*. The FEC also accepts comments in electronic mail attachments and on disk that are in Word 5.0, or earlier version, file format. Commenters should avoid the use of special characters or encryption. When possible, commenters should reference the section to which a particular comment relates. Comments on the need to address issues not covered by this draft should identify the scope of what needs to be addressed as specifically as possible.

Persons sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

Dated: July 3, 2001.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 01–17110 Filed 7–9–01; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Fire Academy Executive Fire Officer Program Application Form.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0194.

Abstract: FEMA Form 95–22, National Fire Academy Executive Fire Officer Program Application for Admission is used by respondents who are senior-level (executive) fire officers to apply into the National Fire Academy's Executive Fire Officer Program. FEMA uses the application form for effective screening/selection of applicants/students.

Affected Public: State, Local or Tribal Government and individuals or households.

Number of Respondents: 300.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 300.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resources Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or email *muriel.anderson@fema.gov*.

Dated: July 2, 2001.

Muriel B. Anderson,

Acting Director, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resources Planning Directorate.

[FR Doc. 01–17123 Filed 7–9–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL LABOR RELATIONS AUTHORITY

Membership of the Federal Labor Relations Authority's Senior Executive Service Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

DATE: July 10, 2001.

FOR FURTHER INFORMATION CONTACT: Michele Pilipovich, Human Resources Director, Federal Labor Relations Authority (FLRA), 607 Fourteenth Street, NW., Washington, DC 20424–0001; (202) 482–6690, extension 423.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires that each agency establish, in accordance with the regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The Boards shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the FLRA's Performance Review Board:

Solly Thomas, Office of the Executive Director, FLRA

James Petrucci, Office of the General Counsel, FLRA

Gloria Joseph, National Labor Relations Board

Stephen Crable, National Mediation Board

Brian Flores, Federal Mediation and Conciliation Service.

Dated: July 5, 2001.

Michele Pilipovich,

Human Resources Director.

[FR Doc. 01–17225 Filed 7–9–01; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 24, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Charles Weldon Morrison, Dallas City, Illinois; to acquire additional voting shares of Lamoine Bancorp, Inc., La Harpe, Illinois, and thereby indirectly acquire voting shares of First State Bank of Western Illinois, La Harpe, Illinois.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Mr. Arthur D. Hagan, Stillwater, Oklahoma; to retain voting shares of Ameribanc Holdings, Durango, Colorado, and thereby indirectly retain voting shares of The Bank of Durango, Durango, Colorado.

Board of Governors of the Federal Reserve System, July 3, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–17142 Filed 7–9–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 2001.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Western Bancorporation, Inc., Duluth, Minnesota; to acquire 100 percent of the voting shares of Cass Lake Company, Cass Lake, Minnesota, and thereby indirectly acquire First National Bank of Cass Lake, Cass Lake, Minnesota.

In connection with this proposal, Western Bancorporation, Inc., has applied to acquire indirectly voting shares of Cass Lake Company, Cass Lake, Minnesota, and thereby engage in general insurance agency activities in a place with a population not exceeding 5,000 as set forth in section 225.28(b)(11)(iii) of Regulation Y.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Centennial Bank Holdings, Inc., Eaton, Colorado; to acquire 100 percent of the voting shares of Farmers Bank, Ault, Colorado (in organization).

Board of Governors of the Federal Reserve System, July 3, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–17141 Filed 7–9–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 15, 2001.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 15, 2001.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with reducing the federal funds rate to an average of around 4 percent.

By order of the Federal Open Market Committee, July 2, 2001.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 01–17143 Filed 7–9–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Program Support Center; Statement of Organization, Functions and Delegations of Authority

Part P, Program Support Center (PSC) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (HHS), as last amended at 60 FR 51480 dated October 2, 1995, and 66 FR 31240–41 dated June 11, 2001; and Part R, Health Resources and Services Administration (HRSA), Bureau of Primary Health Care (RC), Division of Federal Occupational Health (RCB) of the Statement of Organization, Functions, and Delegations of Authority of HHS as last amended at 60 FR 56605 dated November 6, 1995, are being amended to reflect the transfer of the Division of Federal Occupational Health from HRSA to the PSC as the Federal Occupational Health Service (FOHS). The FOHS will be headed by a Director who will report to the Director, Program Support Center.

[1] Copies of the Minutes of the Federal Open Market Committee meeting of May 15, 2001, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

The changes are as follows:

I. Under Part R, Health Resources and Services Administration make the following changes:

A. Delete the Bureau of Primary Health Care (RC) in its entirety and replace with the following:

Bureau of Primary Health Care (RC): Serves as a national focus for efforts to assure the availability and delivery of health care services in medically underserved areas and to special service populations. To this end, the Bureau, through its Field staffs: (1) Assists States through program and clinical efforts to provide health care to underserved populations; (2) administers the Community Health Centers Program; (3) provides through project grants to State, local, voluntary, public and private entities, funds to help them meet the health needs of special populations such as migrants, the homeless, substance abuse problems, and victims of black lung disease; (4) provides leadership and direction for the Bureau of Prisons Medical Program, the National Hansen's Disease Program, the Coast Guard Medical Program CHAMPUS Program, and the Cuban and Haitian Refugee Program; and (5) administers the *National or Health Service Corps Program* which assures accessibility of health care in underserved areas.

B. Delete the Division of Federal Occupational Health (RCB) in its entirety.

II. Under Part B, Program Support Center, make the following changes:

1. Under Section P–10 Organization, add the following line: "6. Federal Occupational Health service."

II. Under Chapter P–20 Functions, add the following new clause: "(7) provides occupational and environmental health services."

III. Under Section P–20 Functions, add Chapter "PG" to establish the "Federal Occupational Health Service (PG)," to read as follows:

Federal Occupational Health Service (PG): (1) Provides consultation on, and stimulates the development of, improved occupational health and safety programs throughout the Federal Government; (2) provides evaluation, consultation, and direction to Federal managers concerning the management and delivery of the full scope of agency occupational health programs in relation to established standards; (3) provides nationwide assistance in planning, implementing and monitoring health programs for Federal agencies on a reimbursable basis including improved environmental, education, promotional, clinical and managerial services and the development and incorporation of automated information management systems; (4) conducts research studies, science and engineering ventures, training, and demonstration projects; (5) develops occupational health standards and criteria for occupational health programs; (6) conducts activities designed to promote productivity and reduce absenteeism, lost time and related liability within the Federal work force; (7) provides mechanisms for the development and operation of shared services that promote joint contracting, cost comparison, analysis and program formulation; (8) plans, develops, implements, and operates occupational health programs, including Employee Assistance Programs (EAPs), fitness and wellness, environmental surveillance, medical monitoring, and disability management components; and (9) maintains relationships with health officials in other Federal and occupational health related policy and program development and implementation.

IV. *Continuation of Policy:* Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the Health Resources and Services Administration and the Program Support Center that relate to this reorganization heretofore issued and in effect prior to this reorganization continue in full force and effect.

V. *Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organization components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

VI. *Funds, Personnel, and Equipment:* Transfer of organizations and functions affected by this reorganization shall be accompanied by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

This reorganization is effective upon date of signature.

Dated: July 3, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–17213 Filed 7–9–01; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

David R. Jacoby, M.D., Ph.D., Harvard Medical School (HMS) and Massachusetts General Hospital (MGH): Based on the report of an investigation conducted by HMS and MGH and additional analysis carried out by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Dr. Jacoby, former Instructor, Department of Neurology, MGH, engaged in 15 acts of scientific misconduct by plagiarizing and falsifying research data taken from another scientist's different experiment in a published journal article for use in a program project grant application submitted to, and funded by, the National Institutes of Health (NIH).

Specifically, Dr. Jacoby plagiarized an image of a Southern blot analysis of genomic DNA that appeared as Figure 3A in Balagué, C., Kalla, M., & Zhang, W.–W. "Adeno-Associated Virus Rep78 Protein and Terminal Repeats Enhance Integration of DNA Sequences into the CellularGenome." J. Virology 71:3299–3306, 1997. Dr. Jacoby first falsified the image by adding molecular weight markers and lane labels that misrepresented the image as his own experimental data. He further falsified the image using computer software to intensify a band he claimed was a site-specific integration and to remove identifiable background spots present in the original image. The effect of Dr. Jacoby's falsifications was to misrepresent the image as data from his own experimental analysis of clonal cell lines derived from the infection of a human cell line with a recombinant hybrid virus incorporating two transgenes and adeno-associated virus genes into a herpes simplex virus amplicon. Dr. Jacoby's falsified image was material to his research because it supported his claim that the transgene DNA had integrated into the cell genome at a specific site. These plagiarized and falsified results were reported in:

1. Appendix material supporting an application for a Program Project Grant, Molecular Etiology of Early Onset Torsion Dystonia, 1 P01 NS37409–01A1, submitted by Dr. Jacoby's supervisor; Dr. Jacoby's supervisor relied upon falsified written and oral information provided to her by Dr. Jacoby in her description of his recent research progress;

2. Three presentations by Dr. Jacoby's supervisor to colleagues at MGH in May 1998 regarding the status of the research in her laboratory; Dr. Jacoby's supervisor relied upon falsified written and oral information provided to her by Dr. Jacoby in her description of his recent research progress; and

3. A grant application to NIH for continuation of Dr. Jacoby's Clinical Investigator Award grant, 5 K08 NS01887–03, signed by Dr. Jacoby on May 29, 1998.

In addition, Dr. Jacoby subsequently altered the falsified image described above further by changing the location

of the molecular weight markers to make it appear more consistent with the expected experimental results. Dr. Jacoby then submitted the plagiarized and falsified results to a MGH colleague who included them in a presentation at the First Annual Meeting of the American Society of Gene Therapy, held in Seattle, Washington, on May 30, 1998.

During the institutional investigation in 1998, Dr. Jacoby presented another falsified image as data from his own experiment. Specifically, he used computer software to scan Figure 3A in Balagué et al. and then alter the locations of three major bands in an effort to conceal the origin of the falsified image (i.e., Figure 3A) and to deceive investigating officials into believing that the results were from an independent experiment. Dr. Jacoby then used the different band locations as "evidence" of the differences between Figure 3A by Balagué et al. and the data purportedly from his own experiment by presenting the falsified image: (1) To the Chief of MGH's Neurology Service; (2) to a scientist assisting the Inquiry Committee by attempting to reproduce Dr. Jacoby's experiment; and (3) to the Inquiry Committee as data from his own independent experiment.

After the institution concluded that Dr. Jacoby had engaged in scientific misconduct, Dr. Jacoby forged the signature of the institutional official for the MGH Grants and Contracts Office and knowingly included false and material information on his NIH non-competing renewal application for a Clinical Investigator Award, 5 K08 NS01887–05. Specifically, after ceasing to work in his supervisor's laboratory and after being told by his supervisor that she would no longer serve as his mentor on the Clinical Investigator Award, Dr. Jacoby (1) listed his former supervisor as his mentor on his 5 K08 NS01887–05 application; (2) claimed that he was continuing to conduct grant-funded research in her laboratory; (3) forged the signature of the MGH institutional official to avoid detection by MGH; and then (4) submitted the completed application directly to NIH on or about August 1, 2000.

Dr. Jacoby's actions amount to significant and serious falsifications in the proposing and reporting of research. His falsifications gave NIH reviewers inaccurate information for their evaluation of the progress made by the research group at MGH in its PHS-supported research. His falsifications also substantially hindered the progress of the PHS-funded research project. Finally, his falsifications induced NIH to conditionally approve Dr. Jacoby's 5 K08 NS01887–05 grant at a time when he was no longer conducting research.

Accordingly, PHS further finds that Dr. Jacoby engaged in a pattern of dishonest conduct through the commission of 15 acts of data falsification and plagiarism, including additional steps taken to conceal the true nature and origin of the research data, that further demonstrates a lack of present responsibility to be a steward of Federal funds.

Dr. Jacoby has entered into a Voluntary Exclusion Agreement with PHS in which he has voluntarily agreed for a period of five (5) years, beginning on June 12, 2001:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F.R. Part 76 (Debarment Regulations);

(2) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 01–17150 Filed 7–9–01; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities: Proposed Submission to the Office of Management and Budget (OMB) for Clearance; Comment Request; Reinstatement of a Previously Approved Information Collection

AGENCY: Administration on Aging, HHS.

The Administration on Aging (AoA), Department of Health and Human Services, provides an opportunity for comment on the following proposal for the collection of information in compliance with the Paperwork Reduction Act (PRA; Public Law 96–511):

Title of Information Collection: Grantee Data Collection for the Evaluation of the Alzheimer's Disease Demonstration Grants to States Program.

Type of Request: Reinstatement of a previously approved collection for which approval has expired. This request significantly streamlines and reduces the amount of data collected as compared to previously approved requirements.

Use: Data is collected on client demographic and health characteristics, client service use, and program characteristics to adequately evaluate the implementation, progress and process of the Alzheimer's Disease Demonstration Grants to States Program (Section 398 of the Public Health Service Act, Pub. L. 78–410 as amended). Data is used by the grantee states to manage and evaluate their own programs. The data is also used by the AoA to evaluate and describe all projects funded by this initiative and address the program's statutory evaluation and Government Performance and Results Act (GPRA) requirements. Findings are used to manage the program and better target future activities, as well as to provide a final evaluation of each set of grants to Congress as set forth by statute.

Frequency: Client Intake Form—only once per client, data submitted quarterly, Service Use Form—quarterly, Agency Service Profile Form—annually.

Respondents: Agencies of State Governments and Territories that have been designated by the Governor as the sole applicant for the State and who have applied for a grant under this program.

Estimated Number of Responses: Client Intake Form—5000/year, Service Use Form—2500/year, Agency Service Profile Form—125/year.

Total Estimated Burden Hours: Client Intake Form—100 hours/state/year, Service Use Form—420 hours/state/year, Agency Service Profile Form—1.25 hours/state/year.

Additional Information or Comments: The Administration on Aging plans to submit to the Office of Management and Budget for reinstatement of a previously approved collection for which approval has expired, for the Alzheimer's Disease Demonstration Grants to States Program, pursuant to requirements set forth by statute. Written comments and recommendations for the proposed information collection should be sent within 60 days of the publication of this notice directly to the following address: Office of Program Development, Administration on Aging, Attention: Melanie Starns, 330 Independence Avenue, SW., Rm. 4270, Washington, DC 20201.

Dated: July 3, 2001.

Norman L. Thompson,

Acting Principal Deputy Assistant Secretary for Aging.

[FR Doc. 01–17116 Filed 7–9–01; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Embargo on Importation of *Dracaena* Shipments in Standing Water

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice of embargo on importation of *Dracaena* shipments in standing water.

SUMMARY: Shipments of *Dracaena* ("lucky bamboo") in standing water and infested with mosquitoes are currently being imported into the United States. Because of potential public health threats posed by exotic species of mosquitoes, CDC is implementing an immediate embargo on the importation of *Dracaena* that has been shipped in standing water. This embargo only affects importation of *Dracaena* shipments in standing water.

FOR FURTHER INFORMATION CONTACT: Dr. David Kim, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., National Center for Infectious Diseases, Division of Global Migration and Quarantine, Mailstop E–03, Atlanta, Georgia, 30333; (404) 498–1600; E-mail *ddk5@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 2001, the Centers for Disease Control and Prevention (CDC), was notified by the Los Angeles district office of the U.S. Department of Agriculture (USDA) that it had identified maritime cargo containers of "lucky bamboo" (*Dracaena* species), an ornamental plant, that were infested with mosquitoes. CDC subsequently identified the Asian tiger mosquito, *Aedes albopictus*, a species previously not seen in California, and other species of mosquitoes associated with these cargo containers. The *Dracaena* in the infested cargo containers was shipped in small boxes with two to three inches of standing water. Shipments of *Dracaena* with no standing water or associated mosquito infestation have been arriving in the United States from China, Taiwan, Thailand, Indonesia, Malaysia, Costa Rica and other countries as air and maritime cargo for at least 3 years.

Public Health Risks

Dracaena shipments in standing water appears to pose a considerable risk of importing exotic mosquitoes into the United States. Although previously introduced and widely established in the eastern half of the United States, *Aedes albopictus* has not established a population in California. *Aedes albopictus* is capable of transmitting serious human diseases such as western equine encephalitis, St. Louis encephalitis, and dengue viruses. Introduction of new *Aedes albopictus* populations from China, Taiwan, Indonesia, and other countries might include genotypes that are more efficient vectors of human diseases than the genotypes that are currently present in the United States. There have been precedents of accidental introduction of mosquito species of public health importance into the United States by a similar mechanism, i.e., by importation of materials containing standing water.

Immediate Action

Introductions of exotic species of mosquitoes, such as *Aedes albopictus* in California and other species in different parts of the United States, through the importation of *Dracaena* shipments in standing water, pose potentially serious public health threats. Accordingly, pursuant to 42 CFR 71.32(c), CDC is implementing an embargo on the importation of *Dracaena* shipments in standing water, effective immediately. This embargo only affects importation of *Dracaena* shipments in standing water.

Dated: July 3, 2001.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 01–17152 Filed 7–9–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01098]

Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN). This program addresses the "Healthy People 2010" focus areas of Nutrition and Overweight, Physical Activity and Fitness, Tobacco Use, Heart Disease and Stroke, Diabetes, and Access to Quality Health Services.

The purpose of this program is to use scientifically rigorous methods to test the effectiveness of a behavioral or lifestyle intervention aimed at preventing cardiovascular disease (CVD) and other chronic diseases. The target population consists of women participating in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP). The major long-term goal is to demonstrate a successful behavioral or lifestyle intervention for the population targeted by the NBCCEDP. Recipients are also expected to work with existing health care systems to identify free or discounted medication for women who require such therapy.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. NBCCEDP grantees who are currently receiving grants under Program Announcements 99135 and 00115 are not eligible.

C. Availability of Funds

Approximately $2,000,000 is available in FY 2001 to fund two awards. It is expected that the average amount per award is between $750,000 to $1,250,000. It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

1. Use of Funds

In accordance with Public Law 101–354, an award may not be made unless the State/Territory/Tribe involved agrees that:

a. At least 60 percent of cooperative agreement funds will be expended for screening, lifestyle intervention, public

health case management, appropriate referral for medical treatment, and to ensure, to the extent practicable, the provision of appropriate follow-up services and support services such as medical case management for women with extremely high values. The remaining 40 percent or less will be expended for public education programs, for training of health professionals, for mechanisms to monitor screening procedures, and to evaluate activities conducted under this cooperative agreement through appropriate program surveillance or program-monitoring activities (Sections 1501(a) and 1503(a) (42 U.S.C. 300k(a) and 300m(a)) of the Public Health Service Act (PHS Act), as amended).

b. Use of federal funds for medical care case management of women without alert values is strongly discouraged (see VI. below for definition of alert values). As stated above funds should be expended for screening, appropriate referral for medical treatment, and, to ensure, to the extent practicable, the provision of appropriate follow-up services and support services such as case management (see definitions below). Therefore, it is not required that funds be used to provide follow-up services and support services such as case management. However, programs are encouraged to use funds for screening and intervention case management. When funds must be used for medical care case management, priority is to be given to women with extremely high values (i.e. those with alert values which are defined in Section E.4.e). Because 60–80% of women will have abnormal screening values, the cost of providing medical care case management to women with non-alert screening values is not practicable or cost-efficient.

Case Management: A term for all activities that a physician or other health care professional normally performs to insure the coordination of the public health services or medical services required by a patient.

WISEWOMAN Screening and Intervention Case Management: A term for all activities that a public health professional performs to ensure the coordination of the public health screening, intervention, and referral services required by a client.

WISEWOMAN Medical Care Case Management: A term for all activities that a physician, health care professional, or public health professional performs to ensure the coordination of the medical services required by a patient.

c. All blood pressure, cholesterol, and other preventive health screenings, intervention, referral, follow-up, case management, and evaluation should be initiated by the end of any second fiscal year of payments pursuant to the grant (i.e, by the end of the second year in the budget period). (Section 1503 (a)(3) (42 U.S.C. 300m(a)(3)) of the PHS Act, as amended.)

d. Cooperative agreement funds will not be expended to provide inpatient hospital or treatment services. (Section 1504(g) (42 U.S.C. 300n(g)) of the PHS Act, as amended.) Treatment is defined as any medical, pharmaceutical, or surgical service prescribed by a clinician in the management of a diagnosed condition. Lifestyle and behavioral interventions are included in the definition of case-management but are not considered treatment.

e. Not more than 10 percent of funds will be expended annually for administrative expenses (Section 1504(f) (42 U.S.C. 300n(f)) of the PHS Act, as amended.)

f. The amount paid by a State/Territory/Tribe for a screening procedure may not exceed the amount that would be paid under part B of title XVIII of the Social Security Act (Medicare) (section 1501(b)(3) (42 U.S.C. 300k(b)(3))) of the PHS Act, as amended. These may vary by location and grantee should determine appropriate reimbursement rates.

In accordance with section 1504 (c)(2) (42 U.S.C. 300n(c)(2)) of the PHS Act, as amended, CDC may waive the requirements for specific services/activities if it is determined that compliance by the State/Territory/Tribe would result in an inefficient allocation of resources with respect to carrying out an early detection program (as described in Section 1501(a)). A request from the recipient outlining appropriate and detailed justification would be required before the waiver is approved.

2. Recipient Financial Participation

Recipient financial participation is required for this program in accordance with the authorizing legislation. Section 1502 (42 U.S.C. 300) of the PHS Act states that matching funds are required from non-Federal sources in an amount not less than $1 for each $3 of Federal funds awarded under this program. The non-Federal contributions may be made directly in cash or equivalent in-kind or donated services, including equipment, fairly evaluated, through donations from public or private entities. Matching funds may not include: 1. The payment for treatment services or the donation of treatment services (see note below); 2. services assisted or subsidized by the Federal government; or 3. the indirect or overhead costs of an organization. In some States/Territories/Tribes, non-Federal funds from a variety of sources may presently be used to support one or more of the WISEWOMAN early detection activities described in this program announcement.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for conducting activities under 2. (CDC Activities).

1. Recipient Activities

a. Build a chronic disease screening and intervention program with priority on preventing cardiovascular disease (i.e. WISEWOMAN program that includes hypertension and cholesterol screening). This program should target populations that have not been previously well-studied.

b. Work collaboratively with other WISEWOMAN programs and partners to develop methods which have the potential to be implemented in other WISEWOMAN programs.

c. Develop program and research protocols (see Attachment I in the application kit).

d. Implement screening, referral, and follow-up according to the recommendations of the NationalCholesterol Education Program (NCEP)of the National Heart, Lung, and Blood Institute (NHLBI) for cholesterol screening; and the recommendations set forth for hypertension screening by the sixthJoint National Report on the Detection, Evaluation and Treatment of High Blood Pressure. Laboratories that perform the screening for cholesterol must be accredited and meet all applicable Federal and State quality assurance standards in the provision of any test performed.

e. Establish cardiovascular disease prevention as the primary focus of interventions, with interventions addressing one or more risk factors for cardiovascular disease: overweight, physical inactivity, inadequate intake of fruit and vegetables and excessive calories and dietary fat. Cigarette smoking, and undiagnosed diabetes may also be addressed as secondary priorities. Some interventions available to the grantee are: strength training programs, culturally-appropriate modifications of the five-day diet, or combined physical activity and nutrition counseling tools. To obtain the statistical power to evaluate the intervention, the program should add cholesterol and blood pressure screenings to a sufficiently large number of NBCCEDP sites. After demonstration

of an effective lifestyle intervention to reduce the risk of cardiovascular disease, recipients may develop a number of other preventive services to be delivered.

f. Implement program/research protocols as developed.

g. Develop abstracts and publications in collaboration with other partners that inform the public, scientific community, and Congress as to the progress and program results.

h. Grantees are expected to use a public health approach in designing an efficient intervention delivery system.

i. If the intervention will be assigned at the level of the site, it is extremely important to provide power calculations justifying the number of sites selected. A method of collecting information for the purpose of program evaluation should be developed and implemented.

2. CDC Activities

a. Assist as needed in the development demonstration project protocols and forms.

b. Participate in workshops and/or teleconferences of the recipients for information-sharing and problem-solving.

c. Provide ongoing consultation and technical assistance to plan, implement, and evaluate program activities.

d. Assist recipients as requested with the analysis of their data and in the development of their abstracts and publications.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the evaluation criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 35 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

Provide a realistic time-phased work plan that addresses the points below. If the first year of the program will be used for planning, the application should detail how each of the preliminary plans will be finalized by detailing the process used and the time line to a final plan.

1. Background and Need

Provide a brief description of the extent of the disease burden. Also describe the background of the health care system to include:

a. The current health care system in whichBCCEDP sites operate and the appropriateness of the health care system for implementing standardized effective interventions, adhering to program protocols, tracking difficult to reach women, and providing timely information on women who have high values of cholesterol and blood pressure;

b. Explanation of all non-cancer-related services currently being provided within the context of the BCCEDP (i.e., are heights and weights measured, is blood pressure routinely taken, is a smoking history obtained, etc.? Are the results of these services recorded so that they are accessible to the BCCEDP?)

c. Describe the current medical care safety network for uninsured persons and how it will be utilized to provide discounted medical care and discounted medications.

2. Infrastructure

Document the current BCCEDP infrastructure including:

a. The number of BCCEDP sites in operation as of January, 2001;

b. The total number of political subdivisions(e.g., counties) and the percentage of these subdivisions that had a BCCEDP site in January, 2001; and

c. During the most recent program year: (1) The average number of women served in the State/Territory/Tribal Service Area each month during the past BCCEDP project year;

(2) The racial/ethnic characteristics of the population served;

(3) The percentage of women with a positive mammogram or pap test who did not go on for further diagnostics and reasons why women did not go on; and

(4) The average length of time between a positive mammogram or pap test and the receipt of a diagnostic test.

3. Collaborative Efforts

Provide a concise collaboration plan, which addresses program methods and analyzing and publishing data. The following areas should be addressed:

a. Meeting and teleconference attendance for the purpose of developing, to the degree possible, scientifically sound protocols, forms, tracking systems, measurements, etc.;

b. Analyzing data and developing abstracts and publications; and

c. Extent of collaboration with university personnel including public or community health experts.

4. Program Planning

Describe how the program will decide the following:

a. Site selection, approximate number, characteristics of and the proportion that will receive WISEWOMAN services and an annual estimate of women served;

b. Public health screening and intervention services to be provided along with a time line for determining and implementing screening and intervention services (allowable screening and diagnostic procedures for the demonstration programs include resting pulse, blood pressure, serum total cholesterol (nonfasting), HDL-cholesterol (nonfasting), height and weight measurements, automated blood chemistry (to assess blood glucose, potassium, calcium, creatinine, uric acid, triglyceride, or micronutrient levels), urine analysis(including urine cotinine), and paper and pencil tests, interviews, or computerized methods that measure level of physical activity, dietary intake, smoking, osteoporosis risk status, immunization status, or other chronic disease risk factors or preventable health problems). Tests that require the participant to fast should be considered diagnostic tests and not public health screening tests. One fasting LDL–C test or fasting lipoprotein profile will be allowed when ordered as a diagnostic test. The use of program funds for other diagnostic tests will require substantial justification by the program;

c. Letters of support for WISEWOMAN from a number of State/Territorial/Tribal BCCEDP site directors, medical staff involved in diagnostic testing and provision of discounted medications, and university personnel;

d. A staffing plan that appoints at least two professional staff members to work full-time on WISEWOMAN, or a plan for hiring such staff members and describe the WISEWOMAN evaluation team with information on their experience and academic degrees;

e. A method for tracking women through the system and after they leave the system (for the purpose of bringing them back for further screening, intervention, and behavioral follow-up), for case management that includes assurances that women will have access to medical care facilities, for flagging women who need immediate referral (i.e. those with alert values) because of extremely high blood pressure (180 systolic blood pressure or 110 diastolic blood pressure), cholesterol (>400 mg/dL), or glucose levels (>375 mg/dL); and

f. How the program will track women, the number and types of standardized lifestyle interventions received, and the costs of the intervention.

5. Screening and Intervention

Document the ability of the program to screen and intervene upon women enrolled in the WISEWOMAN program including implementation of WISEWOMAN screening activities, the rationale and guidelines for implementing WISEWOMAN

intervention activities, methods for reaching women for this and the use of staff such as outreach workers to address differing barriers.

6. Evaluation

Submit a preliminary evaluation design to examine the impact of chronic disease risk factors intervention(s) on lowering blood pressure and improving cholesterol profiles at six and 12 months after intervention. The plan should include:

a. The extent to which a university or prevention research center at a university will be involved in the evaluation design;

b. The preliminary evaluation questions to be answered;

c. The type of evaluation design (e.g. randomized controlled design) and rationale for using this type of design;

d. Length of follow-up and measurement intervals;

e. Protocol used to ensure that the maximum number of women will return for each evaluation;

f. Statistical techniques that will be used to analyze the data with preliminary estimates of the sample size needed to achieve adequate statistical power; and

g. A plan for pilot testing the methods outlined in the initial research protocols, including methods of screening, proposed lifestyle interventions, delivery system for lifestyle interventions, availability of discounted care and medications, and program evaluation.

One type of evaluation might from a number of sites, compare blood pressure and cholesterol, and risk behaviors for CVD in those assigned to a "usual care" (e.g., hypertension and cholesterol screening, referral, and follow-up with minimal intervention) group with those assigned to "special intervention" (e.g., added screening for overweight, poor dietary habits, physical inactivity, cigarette smoking, or undiagnosed diabetes followed up by interventions such as special classes, support groups, physician prescriptions, extra follow-up efforts, and/or community programs such as food co-ops, walking clubs, or smoking cessation programs) group. In this case, a discussion of the method that will be used to keep the usual care group from knowing and adopting the interventions that are being implemented in other areas of the clinic is extremely important. Other designs may be proposed given sufficient justification of the scientific method. Special interventions should assure more intensive and frequent behavioral follow-up consistent with counseling recommendations. Assignments to "usual care" or "special intervention" groups could be at the clinic or individual level. Random assignment to level of intervention is preferred.

7. Budget and Justification

Provide a detailed budget and line-item justification that is consistent with the stated objectives, purpose, and planned activities of the project. Identify the required 60/40 cost distribution of program funds in the requested itemized budget by using separate columns for each. CDC WISEWOMAN requires use of funds in accordance with Pub. L. 101–354.

Budget for the following travel:

a. Up to two persons to attend one training session during the year (two to three days). Topic and place to be determined.

b. Up to two persons to Atlanta, GA to participate in the 2002 NCCDPHP Annual Chronic Disease Conference(four days).

c. One person to attend the Physical Activity and Public Health Course that is held at Sea Pines, South Carolina in September 2002 [Cost for seven to eight day package is $1150 for the registration, lodging, and meals. Airfare is not included] or one person to participate in a non-CDC sponsored professional meeting directly relevant to the program.

Budget for collecting and reporting cost data and minimum data elements. Section 1505 (42 U.S.C. 300n–1) requires that applicants provide assurances that the grant funds be used in the most cost-effective manner.

8. Human Subjects

State whether or not Human subjects are involved in this proposal. CDC Institutional Review Board approval is required.

9. Women, Ethnic, and Racial Groups

Describe how the CDC/ATSDR policy requirements will be met regarding the inclusion of women, ethnic, and racial groups in the proposed research. (See Women, Racial, and Ethnic Minorities in the Evaluation Criteria and Other Requirements sections.)

F. Submission and Deadline

Submit the original and two copies of CDC form 0.1246. Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm.

On or before August 20, 2001, submit the application to the Grants Management Specialist identified in Section J., "Where to Obtain Additional Information".

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in 1. or 2. above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria (100 Points)

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Background and Need; Women, Racial, and Ethnic Groups (15 Points)

The extent of the disease burden and the need among the priority populations, including a description of gaps in the scientific knowledge with regard to preventing cardiovascular disease or other chronic diseases in the selected priority populations. (10 points); The extent to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (5 points).

2. Infrastructure (10 Points)

The strength of the State/Territorial/Tribal BCCEDP program as evidenced by the number of BCCEDP sites and the percentage of subdivisions (e.g., counties) within the State/Territory/Tribal Service Area that had a BCCEDP site in January, 2000; the average number of women served each month during the past BCCEDP project year; the racial/ethnic characteristics of the population served; the percentage of women with a positive mammogram or pap test who did not go on for further diagnostics and reasons why they didn't; and the average length of time between a positive test and the receipt of a diagnostic test.

3. Collaborative Efforts (5 Points)

Ability to collaborate and extent of proposed collaboration with other WISEWOMAN projects to develop joint program methods and analyze data.

4. Program Plan (30 Points)

The adequacy and appropriateness of the preliminary program plan as indicated by:

a. The likelihood that program plans and protocols will be finalized within the first year;

b. Proposed site selection, the approximate number of sites to receive WISEWOMAN services, the characteristics of the sites, the proportion of State/Territorial/Tribal BCCEDP sites that will receive WISEWOMAN services, and estimated number of women who are expected to receive such services in the first, second, and subsequent years;

c. Letters of support for WISEWOMAN from the State/Territorial/Tribal BCCEDP site directors and medical staff;

d. A staffing plan;

e. A proposed tracking system for women for referral and follow up and the number and types of interventions provided; and

5. Screening and Interventions (15 Points)

Proposed public health screening and intervention services to be provided along with a time line for determining and implementing screening and intervention services. The adequacy and quality of the proposed rationale and guidelines for implementing eachWISEWOMAN screening and intervention activity; the methods for reaching women from the State/Territorial/Tribal BCCEDP for the purpose of WISEWOMAN screening and intervention; the extent and use of outreach workers to address barriers to program involvement, behavioral change, and maintaining contact for future health screenings and interventions.

6. Evaluation Plan (25 Points)

The extent to which the preliminary evaluation plan provides an appropriate design to examine the impact of chronic disease risk factor intervention(s) on lowering blood pressure and improving cholesterol profiles; collaboration with partners including university partners; evaluation; and data analysis.

7. Budget and Justification (Not Scored)

The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement.

8. Human Subjects (Not Weighted)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements:

Provide CDC with original plus two copies of—

1. Progress reports on a quarterly basis;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in Section J., "Where to Obtain Additional Information". The following additional requirements are applicable to this program. For a complete description of each, see Attachment II in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized by sections 1501–1509 (42 U.S.C. 300k–300n–4a) of the Public Health Service Act, as amended. This program is also authorized by the Consolidated Appropriations Act, 2000, Pub. L. 106–113. The Catalogue of Federal Domestic Assistance (CFDA) number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page on the Internet: http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements".

Should you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Glynnis Taylor, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Announcement 01098, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2752, E-mail address: gld1@cdc.gov.

For program technical assistance, contact: Julie C. Will, Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Hwy, NE., Atlanta, Georgia 30341–4146, Telephone: (770) 488 6024, E-mail address: jxw6@cdc.gov.

Dated: July 2, 2001.

John L. Williams,

Director, Procurement and Grants Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–17039 Filed 7–9–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1254]

Determination of Regulatory Review Period for Purposes of Patent Extension; Gabitril

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Gabitril and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical

investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Gabitril (tiagabine hydrochloride). Gabitril is indicated as adjunctive therapy in adults and children 12 years and older in the treatment of partial seizures. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Gabitril (U.S. Patent No. 5,010,090) from Novo Nordisk A/S, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 26, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Gabitril represented the first permitted commercial marketing or use of the product. Subsequently, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Gabitril is 2,346 days. Of this time, 1,651 days occurred during the testing phase of the regulatory review period, while 695 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 1, 1991. The applicant claims May 8, 1991, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 1, 1991, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: November 6, 1995. The applicant claims November 3, 1995, as the date the new drug application (NDA) for Gabitril (NDA 20–646) was initially submitted. However, FDA records indicate that NDA 20–646 was submitted on November 6, 1995.

3. *The date the application was approved*: September 30, 1997. FDA has verified the applicant's claim that NDA 20–646 was approved on September 30, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,255 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by September 10, 2001. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 7, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 11, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 01–17103 Filed 7–9–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0838]

Determination of Regulatory Review Period for Purposes of Patent Extension; Detrol

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Detrol and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Detrol (tolterodine tartrate). Detrol is indicated

for overactive bladder with symptoms of urge urinary incontinence, urgency, and frequency. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Detrol (U.S. Patent No. 5,382,600) from Pharmacia & Upjohn Atiebolag, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 11, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Detrol represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Detrol is 1,267 days. Of this time, 901 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 7, 1994. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 7, 1994.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* March 25, 1997. The applicant claims March 24, 1997, as the date the new drug application (NDA) for Detrol (NDA 20–771) was initially submitted. However, FDA records indicate that NDA 20–771 was submitted on March 25, 1997.

3. *The date the application was approved*: March 25, 1998. FDA has verified the applicant's claim that NDA 20–771 was approved on March 25, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 64 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by September 10, 2001. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 7, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 11, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 01–17105 Filed 7–9–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0276]

Draft Guidance for Industry: Channels of Trade Policy for Commodities With Vinclozolin Residues; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Guidance for Industry: Channels of Trade Policy for Commodities With Vinclozolin Residues" (the draft guidance). The draft guidance presents FDA's policy for implementing the channels of trade provision for the pesticide chemical vinclozolin in the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act (FQPA) of 1996. The draft guidance is intended to assist firms in understanding FDA's planned approach to the enforcement of this provision of the FQPA with regard to residues of vinclozolin in food.

DATES: Submit written comments concerning on the draft guidance by September 10, 2001, to ensure their adequate consideration of the comments in the preparation of a revised guidance, if warranted. However, you may submit comments at any time.

ADDRESSES: Submit written comments concerning the draft guidance and the collection of information provisions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the draft guidance entitled "Guidance for Industry: Channels of Trade Policy for Commodities With Vinclozolin Residues" to Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5321. Send one self-adhesive address label to assist that office in processing your request, or include a fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4681, FAX 202–205–4422, e-mail: mkashtoc@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 3, 1996, the FQPA was signed into law. This law, which amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the FFDCA, established a new safety standard for pesticide residues in food, with an emphasis on protecting the health of infants and children. In accordance with the FQPA, the Environmental Protection Agency (EPA), is responsible for regulating the use of pesticides (under the FIFRA) and establishing tolerances or exemptions from the requirement for tolerances for residues of pesticide chemicals in food commodities (under the FFDCA). EPA, in accordance with the FQPA, is in the process of reassessing the pesticide tolerances and exemptions that were in effect when the FQPA was signed into law. When EPA determines that a pesticide's tolerance level does not meet the safety standard under section 408 of the act (21 U.S.C. 346a), the registration for the pesticide may be canceled under the FIFRA for all or certain uses. In addition, the tolerances for that pesticide may be lowered or revoked for the corresponding food commodities. Under section 408(l)(2) of the FFDCA (21 U.S.C. 346a(l)(2)), when the registration for a pesticide is canceled or

modified due in whole or in part to dietary risks to humans posed by residues of that pesticide chemical on food, the effective date for the revocation of such tolerance (or exemption in some cases) must be no later than 180 days after the date such cancellation becomes effective or 180 days after the date on which the use of the canceled pesticide becomes unlawful under the terms of the cancellation, whichever is later.

When EPA takes such actions, food derived from a commodity that was lawfully treated with the pesticide may not have cleared the channels of trade by the time the revocation or new tolerance level takes effect. The food could be found by FDA, the agency that is responsible for monitoring pesticide residue levels and enforcing the pesticide tolerances in most foods (the U.S. Department of Agriculture (USDA) has responsibility for monitoring residue levels and enforcing pesticide tolerances in egg products and most meat and poultry products), to contain a residue of that pesticide that does not comply with the revoked or lowered tolerance. FDA would normally deem such food to be in violation of the law by virtue of it bearing an illegal pesticide residue. The food would be subject to FDA enforcement action as an "adulterated" food. However, the channels of trade provision of the FQPA address the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical for which the tolerance has been revoked, suspended, or modified by EPA. The channels of trade provision (section 408(l)(5) of the FFDCA) states the following:

PESTICIDE RESIDUES RESULTING FROM LAWFUL APPLICATION OF PESTICIDE.—Notwithstanding any other provision of this Act, if a tolerance or exemption for a pesticide chemical residue in or on a food has been revoked, suspended, or modified under this section, an article of that food shall not be deemed unsafe solely because of the presence of such pesticide chemical residue in or on such food if it is shown to the satisfaction of the Secretary that-

(A) the residue is present as the result of an application or use of a pesticide at a time and in a manner that was lawful under the Federal Insecticide, Fungicide, and Rodenticide Act; and

(B) the residue does not exceed a level that was authorized at the time of that application or use to be present on the food under the tolerance, exemption, food additive regulation, or other sanction then in effect under this Act; unless, in the case of any tolerance or exemption revoked, suspended, or modified under this subsection or subsection (d) or (e), the Administrator has issued a determination that consumption of the legally treated food during the period of its likely availability in commerce will pose an unreasonable dietary risk.

For reasons explained by EPA in its proposed rule on pesticide tolerance revocations published elsewhere in this issue of the **Federal Register**, EPA is proposing to revoke the pesticide tolerances for vinclozolin on bell peppers andcucumbers[1], and also is proposing to revoke the pesticide tolerances for vinclozolin on strawberries and stonefruit as quickly as possible after consideration of comments.

FDA anticipates that some processed strawberries and stonefruit bearing vinclozolin residues resulting from lawful domestic application of this pesticide will remain in the channels of trade after the revocation of the applicable tolerance. In addition, FDA anticipates that some bell peppers and cucumbers, both fresh and processed, that were legally imported bearing residues of vinclozolin will be in the channels of trade after the revocation of the applicable tolerance. If FDA encounters processed strawberries, processed stonefruit, fresh or processed bell peppers, or fresh or processed cucumbers bearing a residue of vinclozolin, it intends to address the situation in accordance with this draft guidance. FDA has developed this draft guidance to set forth its policy for how FDA plans to approach its enforcement of the channels of trade provision with respect to the pesticide chemical vinclozolin.

With this document, FDA is announcing the availability of the draft guidance. The draft guidance represents FDA's current thinking on its planned enforcement approach to the channels of trade provision and how such provision relates to FDA-regulated products with vinclozolin residues. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. The draft guidance is being distributed for comment purposes, in accordance with the FDA's final rule on administrative practices and procedures for good guidance practices (21 CFR 10.115; 65 FR 56468, September 19, 2000).

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision for Foods With Vinclozolin Residues

Description: Under the pesticide tolerance reassessment process that EPA wasmandated to carry out under the FQPA, EPA has proposed to revoke the tolerances for the pesticide chemical vinclozolin on several food commodities. The FQPA includes a provision in section 408(l)(5) of the FFDCA, referred to as the "channels of trade provision," that addresses the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical whose tolerance has been revoked, suspended, or modified by EPA.

In general, FDA anticipates that the party responsible for food found to contain vinclozolin residues (within the former tolerance) after the tolerance for the pesticide chemical has been revoked, will be able to demonstrate that such food was packed or processed during the acceptable timeframes cited in the draft guidance, by providing appropriate documentation to the agency as discussed in the draft guidance. FDA is not suggesting that firms maintain a certain set list of documents where anything less or different would likely be considered

[1]Vinclozolin is not registered for use on bell peppers and cucumbers in the United States. The tolerances for vinclozolin on bell peppers and cucumbers provide the importation of these commodities with vinclozolin residues.

unacceptable. Rather, the agency is leaving it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so packed or processed.

Examples of documentation which FDA anticipates will serve this purpose consists of documentation associated with packing codes, batch records, and inventory records. These are types of documents that many food processors routinely generate as part of their basic food-production operations.

Description of Respondents: The likely respondents to this collection of information are firms in the produce and food-processing industries that handle food products that may contain residues of vinclozolin after the tolerances for this pesticide chemical have been revoked.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
307	1	307	3	921

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

No. of Recordkeepers	Annual Frequency per Response	Total Annual Records	Hours per Recordkeeper	Total Hours
31	1	31	16	496

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimates for the annual reporting burden were determined by using the maximum number of samples collected throughout a year that FDA believes might be found to contain vinclozolin residues. The estimated annual reporting burden was determined using the total number of samples historically tested for vinclozolin and the number of samples that historically contained vinclozolin residues. These numbers established a rate of samples expected to contain vinclozolin residues. This rate, when applied to the number of potentially affected establishments, was used to calculate the number of expected respondents.

When determining the estimated annual recordkeeping burden, FDA estimated that most firms (at least 90 percent) maintain (or maintain access to) documentation such as packing codes, batch records, and inventory records as part of their basic food production and/or import operations. Therefore, the recordkeeping burden was calculated as the time required for the 10 percent of firms which may not currently be maintaining this documentation to develop and maintain (or maintain access to) documentation such as batch records, inventory records, sales records, and distribution records.

III. Comments

Interested persons should submit to the Dockets Management Branch (address above) written comments regarding the draft guidance by September 10, 2001, to ensure adequate consideration of the comments of the comments in the preparation of a revised guidance, if warranted. However, interested persons may submit written comments at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Submit to the Dockets Management Branch written comments concerning this collection of information by September 10, 2001. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

An electronic version of the draft guidance is available on the Internet at http://www.fda.gov.

Dated: June 29, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17047 Filed 7–9–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–372]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Annual Report on Home and Community Based Services Waivers and Supporting Regulations in 42 CFR 440.181 and 441.300–.305; *Form No.:* HCFA–372 (OMB# 0938–0272); *Use:* States request waivers in order for beneficiaries to have the option of receiving hospital services in their homes. States with an approved waiver under section 1915(c) of the Act are required to submit the HCFA–372 or HCFA–372(S) annually in order for HCFA to: (1) Verify that State assurances regarding waiver cost-neutrality are met, and (2) determine the waiver's impact on the type, amount and cost of services provided under the State plan and health and welfare of recipients; *Frequency:* Annually; *Affected Public:* State, local or tribal government; *Number of Respondents:* 50; *Total Annual Responses:* 243; *Total Annual Hours:* 18,225.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer:

OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 11, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–17214 Filed 7–9–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Technical/Agency Draft Florida Manatee Recovery Plan, Third Revision for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: We, the Fish and Wildlife Service, announce the availability for second public review of the updated Technical/Agency Draft of the Florida Manatee Recovery Plan, Third Revision. We solicit review and written comments from the public on this draft plan.

DATES: We must receive comments on the draft recovery plan on or before August 9, 2001 to receive consideration by us.

ADDRESSES: You may obtain a copy of the draft recovery plan by contacting Bill Brooks by electronic mail (e-mail) at fw4_es_jacksonville@fws.gov or by calling (904) 232–2580, extension 104 or at Jacksonville Field Office, U.S. Fish- and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida, 32216. If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, at the above address.

2. You may hand-deliver written comments to our Jacksonville Field Office, at the above address, or fax your comments to (904) 232–2404.

3. You may send comments by e-mail to the Field Supervisor at fw4_es_jacksonville@fws.gov. For directions on how to submit electronic filing of comments see the "Public Comments Solicited" section.

Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Bill Brooks (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The West Indian manatee, *Trichechus manatus,* is currently listed as endangered throughout its range for both the Florida and Antillean subspecies (U. S. Fish and Wildlife Service 1967). The Florida manatee lives in freshwater, brackish, and marine habitats. Submerged, emergent, and floating vegetation are their preferred food. During the winter, cold temperatures keep the population concentrated in peninsular Florida and many manatees rely on the warm water from natural springs and power plant outfalls. During the late spring and summer, they expand their range and are seen on infrequent occasions as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

The most significant threat presently facing manatees in Florida is death and serious injury from boat strikes. In the long term, the greatest challenge to manatee recovery is maintaining adequate sources of warm water so the species can survive the cold in winter. The availability of warm-water refuges for manatees is uncertain due to deregulation of the power industry in Florida, and the lack of secure minimum flows at the natural springs on which many manatees depend. Long term survival also depends on maintaining the integrity of ecosystems and habitat sufficient to support a recovered manatee population.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the endangered species program. To help guide the recovery effort, we are preparing recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

We developed the initial recovery plan for West Indian manatee in 1980. This plan focused primarily on manatees in Florida, but included Antillean manatees in Puerto Rico and the U.S. Virgin Islands. In 1986, we adopted a separate recovery plan for manatees in Puerto Rico. To reflect new information and planning needs for manatees in Florida, we revised the original plan in 1989 and focused exclusively on the Florida manatee. This first revision covered a 5-year planning period ending in 1994. We revised and updated the plan again in 1996, which again covered a 5-year planning period ending in 2000. In 1999, we initiated the process to revise the plan for a third time. We established an 18-member recovery team made up of the public, agencies, and groups that have an interest in manatee recovery and/or could be affected by proposed recovery actions, to draft this revision. Extensive public comments on the November 30, 2000 Technical/Agency Draft resulted in significant changes to the recovery criteria. We felt these changes were significant enough to warrant another public review of the Technical/Agency Draft as set forth in this Notice.

In the 20 years since approval of the original recovery plan, a tremendous amount of knowledge of manatee biology and ecology has been achieved and significant protection programs have been implemented, through the guidance provided by the recovery planning process. This Technical/Agency Draft of the Florida Manatee Recovery Plan, Third Revision reflects many of those accomplishments, addresses new threats and needs, and specifically addresses the planning requirements of the Act through 2006. The Florida Manatee Recovery Team

provided assistance during the development of this draft plan.

Public Comments Solicited

We solicit written comments on the recovery plan described. We will consider all comments received by the date specified above prior to approval of the plan.

Please submit electronic comments as an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: [RIN number]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Jacksonville Field Office (see **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 6, 2001.

David L. Hankla,

Field Supervisor.

[FR Doc. 01–17153 Filed 7–9–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–1220DH–01]

Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) is proposing to amend the West HiLine Resource Management Plan (RMP) for public lands in an area known as Loma/Vimy Ridge located in Chouteau County, Montana. The BLM is proposing to amend the off-road vehicle (ORV) designation for the public lands that are currently open seasonally or yearlong to motorized cross-country travel and designate the area as limited yearlong and also designate the roads and trails open to motorized vehicles. An environmental assessment will be prepared by the Havre Field Station to analyze the impacts of this proposal and any alternatives.

DATES: Comments and recommendations on this notice should be received on or before August 9, 2001.

ADDRESSES: Address all comments concerning this notice to: Bureau of Land Management, Attention: Jody Peters, Havre Field Station, 1704 2nd Street West, Drawer 911, Havre, MT 59501.

FOR FURTHER INFORMATION CONTACT: Jody Peters, 406–262–2832.

SUPPLEMENTARY INFORMATION: The Loma/Vimy Ridge Watershed planning effort would implement decisions of the West HiLine RMP, the Upper Missouri National Wild and Scenic River Plan, the Wood River Ranch Habitat Management Plan, and the Standards for Rangeland Health and Guidelines for Livestock Grazing Management. The Loma/Vimy Ridge Watershed consists of two large blocks of public land located on or adjacent to Rowe Bench and Vimy Ridge, in Chouteau County, Montana. These lands are the high grounds between the Missouri, Teton, and Marias Rivers, where they converge. The land is in north central Montana about ½ mile west of Loma and 11 miles northeast of Fort Benton. Surface ownership consists of approximately 11,450 acres of public land.

About 850 acres of public land are currently designated as open to ORV use, 7,950 acres are designated as limited seasonally, and 2,650 acres are within the Upper Missouri River Breaks National Monument where all motorized vehicle use off road is prohibited except for emergency or authorized purposes. Through the watershed planning for this area the BLM is proposing to change the open and limited seasonally designations to limited yearlong. The watershed plan will include a map showing the transportation network of roads and trails available for use under the terms and conditions set forth in the plan amendment.

(Authority: Sec. 202, Pub. L. 94–579, 90 Stat. 2747 (43 U.S.C. 1712)).

Dated: April 23, 2001.

Owen Billingsley,

Bureau of Land Management.

[FR Doc. 01–17135 Filed 7–9–01; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Dakotas Advisory Council Meeting

AGENCY: Bureau of Land Management, North Dakota Field Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dakotas Resource Advisory Council will be held August 20 & 21, 2001, at the Travel Lodge, Dickinson, North Dakota. The session will convene at 8 a.m. on August 20th. A field trip to the Coteau Mine is scheduled for the 21st. Agenda items will include off highway vehicles, energy activities on public lands, Homestake exchange, discussion on Payment-In-Lieu of Taxes, and Fire and Fuel Reductions.

The meeting is open to the public and a public comment period is set for 4 pm on August 20, 2001. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying.

The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the Dakotas.

FOR FURTHER INFORMATION CONTACT: Douglas Burger, Field Office Manager, North Dakota Field Office, 2933 3rd Ave. W., Dickinson, North Dakota. Telephone (701) 227–7700.

Dated: June 21, 2001.

Douglas Burger,

Field Office Manager.

[FR Doc. 01–17136 Filed 7–9–01; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–090–1430–ES; MTM–90869]

Notice of Realty Action: Recreation and Public Purposes Act Classification; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Phillips County, Montana, have been examined and classified for lease to Phillips County under the provisions of the Recreation and Public Purposes Act, as amended (43 U. S. C. 869 *et seq.*). The lands were examined and classified in response to a Recreation and Public Purposes Act application, MTM–90869, filed on April 9, 2001, by Phillips County, who is proposing to use the lands to construct and maintain an amphitheater to be known as the Lewis and Clark Amphitheater.

Principal Montana Meridian

T. 25 N., R. 25 E.,
Sec. 17, block 8, lot 10.
Containing 2.62 acres more or less.

The lands are located within the townsite of Zortman, Montana, which is currently segregated from all forms of mineral entry. Issuance of a Recreation & Public Purposes lease is consistent with the Phillips Resource Area Resource Management Plan, dated September 1994, and is in the public interest.

The lease, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease issuance.

3. The rights-of-way for telephone and electrical power purposes granted to Triangle Telephone Cooperative Inc., MTM–00999, and Big Flat Electric Cooperative Inc., MTM–00997.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Malta Field Office, 501 South 2nd Street East, HC 65, Box 5000, Malta, Montana 59538–0047.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, except for lease under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed classification and lease of the lands to the Field Office Manager, Malta Field Office 501 South 2nd Street East, HC 65, Box 5000, Malta, Montana 59538–0047.

Classification Comments: Interested parties may submit comments involving the suitability of the land for use as an amphitheater. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning or if the use is consistent with State and Federal programs.

Public comments submitted for this notice of realty action, including names and street addresses of respondents, will be available for public review at the Malta Field Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holiday. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision or any other factor not directly related to the suitability of the land for amphitheater.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Bruce W. Reed,

Malta Field Office Manager.

[FR Doc. 01–17210 Filed 7–9–01; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Final Environmental Impact Statement (EIS) for Outer Continental Shelf (OCS), Eastern Gulf of Mexico Region (GOM), Proposed Sale 181

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the final EIS on proposed eastern GOM Sale 181.

SUMMARY: The MMS has prepared a final EIS on a proposed OCS oil and gas lease sale in the Eastern GOM. This proposed sale is the only Eastern GOM sale scheduled during the current 5-Year Oil and Gas Leasing Program and the first proposed sale in the Eastern GOM since 1988.

FOR FURTHER INFORMATION CONTACT: Questions concerning the final EIS should be directed to Mr. Archie Melancon, Minerals Management Service, Branch of Environmental Assessment, 381 Elden Street, MS–4042, Herndon, Virginia 20170–4817. He may be reached by telephone at (703) 787–1547.

SUPPLEMENTARY INFORMATION: This EIS addresses a proposed Federal action that offers for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources. Proposed 2001 Eastern Gulf Sale 181 includes lease blocks in the Eastern Planning Area (EPA). The proposed sale is scheduled for December 2001 and would offer for lease 256 blocks in the EPA. At present, 23 blocks within this area are under lease. This area includes about 1.475 million acres located 100 to 200 miles offshore in water depths ranging from 1,600 to 2,926 meters (5,075 to 9,600 feet). The blocks in the EPA outside of the proposed Lease Sale 181 area are excluded from consideration. It is estimated that the proposed action could result in the production of 15 to 115 million barrels of oil and 225 to 750 billion cubic feet of gas. The MMS does not expect all offered blocks to be leased. Of the blocks that will be leased, only a portion would be expected to be drilled and result in subsequent production.

EIS Availability

You may obtain single copies of the final EIS from the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office MS–5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 or by calling 1–800–200–GULF.

You may look at copies of the final EIS in the following libraries:

Alabama

Auburn University at Montgomery Library, 7300 University Drive, Montgomery;
Dauphin Island Sea Lab, Marine Environmental Science Consortium, Library, Bienville Boulevard, Dauphin Island;
Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores;
Mobile Public Library, 701 Government Street, Mobile;
Montgomery Public Library, 445 South Lawrence Street, Montgomery;

Thomas B. Norton Public Library, 221 West 19th Avenue, Gulf Shores;
University of South Alabama, 307 University Boulevard, Mobile;

Florida

Bay County Public Library, 25 West Government Street, Panama City;
Charlotte-Glades Regional Library System, 18400 Murdock Circle, Port Charlotte;
Collier County Public Library, 650 Central Avenue, Naples;
Environmental Library, Sarasota County, 7112 Curtis Avenue, Sarasota;
Florida A & M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee;
Florida Northwest Regional Library System, 25 West Government Street, Panama City;
Florida State University, Strozier Library, Call Street and Copeland Avenue, Tallahassee;
Fort Walton Beach Public Library, 105 Miracle Strip Parkway, Fort Walton Beach;
Leon County Public Library, 200 West Park Avenue, Tallahassee;
Marathon Public Library, 3152 Overseas Highway, Marathon;
Monroe County Public Library, 700 Fleming Street, Key West;
Selby Public Library, 1001 Boulevard of the Arts, Sarasota;
St. Petersburg Public Library, 3745 Avenue North, St. Petersburg;
Tampa-Hillsborough County Library, Documents Division, 800 North Ashley, Tampa;
University of Florida Library, University Avenue, Gainesville;
University of Florida, Holland Law Library, Southwest 25th Street, and 2nd Avenue, Gainesville;
University of West Florida Library, 1100 University Parkway, Pensacola;
West Florida Regional Library, 200 West Gregory Street, Pensacola;

Louisiana

Calcasieu Parish Library, 327 Broad Street, Lake Charles;
Cameron Parish Library, Marshall Street, Cameron;
Grand Isle Branch Library, Highway 1, Grand Isle;
Iberville Parish Library, 24605 J. Gerald Berret Boulevard, Plaquemine;
Jefferson Parish Eastbank Regional Library, 4747 West Napoleon Avenue, Metairie;
Jefferson Parish Westbank Regional Library, 2751 Manhattan Boulevard, Harvey;
Lafayette Public Library, 301 W. Congress Street, Lafayette;
Lafitte Branch Library, 2607 Jean Lafitte Blvd. (Hwy. 45), Lafitte;
Lafourche Parish Library, 303 West 5th Street, Thibodaux;
Louisiana State University Library, 760 Riverside Road, Baton Rouge;
Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston;
Loyola University, Government Documents Library, 6363 St. Charles Avenue, New Orleans;
LUMCON Library, 8124 Highway 56, Chauvin;
McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles;
New Orleans Public Library, 219 Loyola Avenue, New Orleans;
Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux;
Plaquemines Parish Library, 203 Highway 11, South, Buras;
St. Bernard Parish Library, 1125 East St. Bernard Highway, Chalmette;
St. Charles Parish Library, 105 Lakewood Drive, Luling;
St. John the Baptist Parish Library, 1334 West Airline Highway, LaPlace;
St. Mary Parish Library, 206 Iberia Street, Franklin;
St. Tammany Parish Library, Covington Branch, 310 West 21st Street, Covington;
St. Tammany Parish Library, Slidell Branch, 555 Robert Boulevard, Slidell;
Terrebonne Parish Library, 424 Roussell Street, Houma;
Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans;
University of New Orleans Library, Lakeshore Drive, New Orleans;
University of Southwestern Louisiana, Dupre Library, 302 East Street, Mary Boulevard, Lafayette;
Vermilion Parish Library, Abbeville Branch, 200 North Street, Abbeville;

Mississippi

Eudora Welty Library, 1400 Lynch, Jackson;
Gulf Coast Research Laboratory, Gunter Library, 703 East Beach Drive, Ocean Springs;
Hancock County Library System, 312 Highway 90, Bay St. Louis;
Harrison County Library, 14th and 21st Avenues, Gulfport;
Jackson George Regional Library System, 3214 Pascagoula Street, Pascagoula.

Dated: July 3, 2001.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 01–17235 Filed 7–9–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA) of 1992 and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria). Contra Costa Water District has developed a Water Management Plan (Plan), which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice to allow the public to comment on the preliminary determinations. Public comment on Reclamation's preliminary (i.e., draft) determination of Contra Costa Water District's Plan is invited at this time.

DATES: All public comments must be received by August 9, 2001.

ADDRESSES: Please e-mail comments to Lucille Billingsley, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California, or lbillingsley@mp.usbr.gov.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Lucille Billingsley at the e-mail address above, or by telephone at (916) 978–5215 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (i.e., draft) determination of the adequacy of Contra Costa Water District's Plan. Section 3405(e) of the CVPIA (Title 34 Public Law 102–575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982. "Also, according to section 3405 (e)(1), these criteria will be developed * * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices."

These Criteria states that all parties (Contractors) that contract with

Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District
2. Inventory of Water Resources
3. Best Management Practices (BMPs) for Agricultural Contractors
4. BMP's for Urban Contractors
5. Plan Implementation
6. Exemption Process
7. Regional Criteria
8. Five Year Revisions

Reclamation will evaluate Contra Costa Water District's Plan based on these Criteria. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowably by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

A copy of the Plan will be available for review at Reclamation's Mid-Pacific (MP) Regional Office located in Sacramento, California, and MP's South-Central California Area Office located in Fresno, California. If you wish to review a copy of the plan, please contact Ms. Billingsley to find the office nearest you.

Dated: May 30, 2001.

John F. Davis,

Regional Resources Manager.

[FR Doc. 01–16925 Filed 7–9–01; 8:45 am]

BILLING CODE 4210–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–364 (Review) and 731–TA–711 and 713–716 (Review)]

Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the countervailing duty order on oil country tubular goods other than drill pipe from Italy, and the antidumping duty orders on oil country tubular goods other than drill pipe from Argentina, Italy, Japan, Korea, and Mexico would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines [2] that revocation of the antidumping duty order on drill pipe from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission also determines [3] that revocation of the antidumping duty orders on drill pipe from Argentina and Mexico would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on July 3, 2000 (65 FR 41088) and determined on October 5, 2000, that it would conduct full reviews (65 FR 63889, October 25, 2000). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 26, 2001 (66 FR 7941). The hearing was held in Washington, DC, on May 8, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on June 28, 2001. The views of the Commission are contained in USITC Publication 3434 (June 2001), entitled Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico: Investigations Nos. 701–TA–364 (Review) and 731–TA–711 and 713–716 (Review).

Issued: July 3, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17111 Filed 7–9–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 25, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Stuart Shapiro, OMB Desk Officer for MSHA, Office of Management and Budget, Room, 10235, Washington, DC 20503 ((202) 395–7316) within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration (MSHA).

Title: Program to Prevent Smoking in Hazardous Areas.

OMB Number: 1219–0041.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Vice Chairman Deanna Tanner Okun dissenting.

[3] Commissioners Lynn M. Bragg and Dennis M. Devaney dissenting.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Number of Respondents: 188.

Number of Annual Responses: 188.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 94.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 30 CFR 75.1702 requires operators of underground coal mines to develop programs to ensure that any person entering a mine does not carry smoking materials, matches or lighters.

Ira Mills,

Department Clearance Officer.

[FR Doc. 01–17211 Filed 7–9–01; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0115(2001)]

Cranes and Derricks Standard for Construction: Notification of Operational Specifications and Hand Signals; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits public comment concerning its request to increase the total burden-hour estimate for, and to extend OMB approval of, the collection-of-information requirements specified by paragraphs (a)(1), (a)(2), (a)(4), and (a)(16) of the Cranes and Derricks Standard for Construction (29 CFR 1926.550). These paragraphs require employers to provide notification of specified operating characteristics pertaining to cranes and derricks using documentation, posting, or revised maintenance-instruction plates, tags, or decals, and to notify employees of hand signals used to communicate with equipment operators by posting an illustration of applicable signals at the worksite.

DATES: Submit written comments on or before September 10, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0115(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by paragraphs (a)(1), (a)(2), (a)(4), and (a)(16) of § 1926.550 is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at http://www.osha.gov/comp-links.html and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

Several paragraphs of the Cranes and Derricks Standard for Construction (§ 1926.550) contain notification requirements, including paragraphs (a)(1), (a)(2), (a)(4), and (a)(16). If an equipment manufacturer's specifications are not available, paragraph (a)(1) requires employers to operate a crane or derrick using specifications determined and recorded by a qualified engineer who is competent to make such determinations. Under paragraph (a)(2), employers must post on each crane and derrick its rated load capacities, and recommended operating speeds, special hazard warnings, or instruction. Paragraph (a)(4) requires employers to post at the worksite an illustration of the hand signals prescribed by the applicable ANSI standard for that type of crane or derrick. According to paragraph (a)(16), employers must revise as appropriate the capacity, operation, and maintenance-instruction plates, tags, or decals if they make alterations that involve the capacity or safe operation of a crane or derrick.

In summary, these provisions require employers to provide notification of specified operating characteristics through documentation, posting, or revising maintenance-instruction plates, tags, or decals, and to notify employees of hand signals used to communicate with equipment operators by posting an illustration of applicable signals at the worksite. These paperwork requirements ensure that employers operate a crane or derrick according to the limitations and specifications developed for that equipment, and that hand signals used to communicate with equipment operators are clear and correct. Therefore, these requirements prevent employers from exceeding the operating specifications and limitations of cranes and derricks, and ensure that they use accurate hand signals regarding equipment operation. By operating the equipment safely and within specified parameters, and communicating effectively with equipment operators, employers will prevent serious injury and death to the equipment operators and other employees who use or work near the equipment.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is requesting OMB to increase the total burden hours estimated for, and to extend its approval of, the collection-of-information requirements specified by paragraphs (a)(1), (a)(2), (a)(4), and (a)(16) of § 1926.550. Specifically, the Agency is requesting to increase the estimated total burden hours from 4,996 to 5,644 hours, an increase of 648 hours. These additional burden hours resulted from an increase in the estimated number of cranes and derricks covered by the paperwork requirements.

The Agency will summarize the comments submitted in response to this notice. OSHA will then include this summary in its request to OMB to increase the existing burden-hour estimates for, and to extend approval of, these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Cranes and Derricks Standard for Construction: Notification of Operational Specifications and Hand Signals.

OMB Number: 1218–0115.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 67,715.[1]

Frequency of Response: On occasion.

Average Time per Response: 5 minutes (.08 hour) to post specifications or hand-signal illustrations.

Estimated Total Burden Hours: 5,644.

Estimated Cost (Operation and Maintenance): $398,353.

[1] In estimating the number of establishments covered by these paperwork requirements, the Agency assumes a ratio of 1 crane or derrick per establishment. The determinations made by OSHA in the accompanying ICR indicate that paragraphs (a)(2), (a)(4), and (a)(16) cover 67,715 cranes and derricks, resulting in an equal number of establishments (i.e., 67,715). In addition, the Agency finds that engineers under contract to employers provide the documentation specified by paragraph (a)(1); therefore, OSHA treats this paperwork requirement as a capital cost under Item 13 of the ICR, and did not include it in calculating values for the categories entitled "Number of Respondents" and "Estimated Total Burden Hours."

IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–17219 Filed 7–9–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0093–(2001)]

Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits; Extension of the Office of Management of Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits public comment concerning its request to increase the existing burden-hour estimates for, and to extend OMB approval of, the collection-of-information requirements specified by the Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits (paragraph (f) of § 1926.50 and paragraph (a)(2) of § 1926.250, respectively). Under § 1926.50(f), employers must post emergency telephone numbers at the worksite if the 911 emergency telephone service is not available, while § 1926.250(a)(2) requires employers to post the maximum safe load limits of floors located in storage areas inside buildings or other structures, unless the floors are on grade.

DATES: Submit written comments on or before September 10, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0093(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by these standards are available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at http://www.osha.gov/comp-links.html and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

Two Construction standards, "Medical Services and First Aid" (§ 1926.50) and "General Requirements for Storage" (§ 1926.250), contain posting provisions. Paragraph (f) of § 1926.50 requires employers to post emergency telephone numbers for physicians, hospitals, or ambulances at the worksite if the 911 emergency telephone service is not available; in the event an employee has a serious injury at the worksite, this posting requirement expedites emergency medical treatment of the employee. Paragraph (a)(2) of § 1926.250 specifies that employers must post the maximum safe load limits of floors located in storage areas inside buildings or other structures, unless the floors are on grade. This provision prohibits employers from overloading floors in areas used to store material and equipment in multi-story units that are under construction, thereby preventing the floors from collapsing and seriously injuring employees.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is requesting a net increase in the total burden-hour estimate for, as well as an extension of OMB approval of, the collection-of-information requirements specified by paragraph (f) of § 1926.50 and paragraph (a)(2) of § 1926.250. Specifically, the Agency is requesting to increase the current total burden-hour estimate from 5,555 hours to 6,194 hours, a total increase of 639 hours. The following table provides a description of this increase.

Information collection requirement	Current burden hours	Requested burden hours	Adjustment (hours)	Explanation of adjustment
§ 1926.50(f)	2,667	3,667	1,000	Previously underestimated the number of residential-unit sites covered by this provision (i.e., the correct number is 900,000 units instead of 600,000 units).
§ 1926.250(a)(2)	2,888	2,527	(361)	Based on information regarding new construction of multi-story units contained in the most recent edition of the F.W. Dodge Construction Report
Totals	5,555	6,194	639	

The Agency will summarize the comments submitted in response to this notice. OSHA will then include this summary in its request to OMB to decrease the existing burden-hour estimates for, and to extend approval of, these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Construction Standards on the Posting of Emergency Telephone Numbers and Floor Load Limits.

OMB Number: 1218–0093.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 140,325.[1]

Frequency of Response: On occasion.

Average Time per Response: Varies from 2 minutes (.03 hour) to post emergency telephone numbers to 5 minutes (.08 hour) to post load limits for floors.

Estimated Total Burden Hours: 6,194.

Estimated Cost (Operation and Maintenance): $112,762.

IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor of Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–17220 Filed 7–9–01; 8:45 am]

BILLING CODE 4510–26–M

[1] This figure includes the 110,000 sites covered by § 1926.50(f) and the 30,325 multi-story units covered by § 1926.250(a)(2). Although some overlap may occur between these sites and units, OSHA cannot readily differentiate between employers covered by these two provisions.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0151(2001)]

Cranes and Derricks Standard for Construction: Posting Weight and Load Capacity of Personnel Platforms; Extension of the Office of Management of Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits public comment concerning its request to extend OMB approval of the information-collection requirements specified by paragraph (g)(4)(ii)(I) of the Cranes and Derricks Standard for Construction (29 CFR 1926.550). This paragraph requires employers to post a plate or other permanent marking that indicates the weight of a personnel-

hoisting platform and its rated-load capacity or maximum intended load.

DATES: Submit written comments on or before September 10, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0151(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by paragraph (g)(4)(ii)(I) of the Cranes and Derricks Standard for Construction (§ 1926.550) is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at http://www.osha.gov/comp-links.html and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95)(44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

Paragraph (g)(4)(ii)(I) of the Cranes and Derricks Standard for Construction (§ 1926.550) requires employers to post conspicuously with a plate or other permanent marking the weight and rated load capacity or maximum intended load of each platform used to raise and lower employees to a worksite using a crane or derrick. This requirement helps employers to avoid exceeding the lifting capacity of such platforms and the cranes or derrick being used to lift the platforms. Therefore, this requirement can prevent the platform, crane, or derrick from collapsing and causing serious injury or death to employees on or below the platform.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is requesting to extend OMB's previous approval of the recordkeeping (paperwork) requirement specified in paragraph (g)(4)(ii)(I) of the Cranes and Derricks Standard for Construction (§ 1926.550). the Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirement.

Type of Review: Extension of currently approved information-collection requirements.

Title: Cranes and Derricks Standard for Construction: Posting Weight and Load Capacity of Personnel Platforms.

OMB Number: 1218–0151.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 2,750 (platforms).

Frequency of Response: On occasion.

Average Time per Response: 5 minutes (.08 hour) to post or mark a platform.

Estimated Total Burden Hours: 229.

Estimated Cost (Operation and Maintenance): $0.

IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Dated: Signed at Washington, DC on July 3, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–17221 Filed 7–9–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0054(2001)]

Cranes and Derricks Standard for Construction: Recording Tests for Toxic Gases and Oxygen-Deficient Atmospheres in Enclosed Spaces; Extension of the Office of Management of Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits public comment concerning its request to decrease the existing burden-hour estimates for, and to extend OMB approval of, the collection-of-information requirements specified by paragraph (a)(11) of the Cranes and Derricks Standard for Construction (29 CFR 1926.550). If a crane or derrick powered by an internal-combustion engine is exhausting into an enclosed space that employees occupy or will occupy, this paragraph requires employers to record tests made of the breathing air in the space to ensure that adequate oxygen is available and that concentrations of toxic gases are at safe levels.

DATE: Submit written comments on or before September 10, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0054(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by paragraph (a)(11) of OSHA's Cranes and Derricks

Standard for Construction (§ 1926.550) is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at http://www.osha.gov/comp-links.html and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

Paragraph (a)(11) of OSHA's Cranes and Derricks Standard for Construction (§ 1926.550) addresses conditions in which a crane or derrick powered by an internal-combustion engine is exhausting into an enclosed space that employees occupy or will occupy. Under these conditions, employers must record tests made of the breathing air in the space to ensure that adequate oxygen is available and that concentrations of toxic gases are at safe levels.

Establishing a test record allows employers to document oxygen levels and specific atmospheric contaminants, ascertain the effectiveness of controls, implement additional controls if necessary, and readily provide this information to other crews and shifts who may work in the enclosed space. Accordingly, employers will prevent serious injury and death to equipment operators and other employees who use or work near this equipment in an enclosed space. In addition, these records provide the most efficient means for an OSHA compliance officer to determine that an employer performed the required tests and implemented appropriate controls.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is requesting a decrease in the existing burden-hour estimate for, as well as an extension of OMB approval of, the collection-of-information requirements specified by paragraph (a)(11) of § 1926.550. Accordingly, the Agency is requesting to decrease the current burden-hour estimate from 99 hours to 97 hours, a total reduction of 2 hours. This reduction occurred because OSHA decreased the burden hours previously required for employers to inform OSHA compliance officers, during an inspection, of the location of the test records; the Agency now accounts for these burden hours under § 1910.1020 (OMB Control No. 1218–0065).

The Agency will summarize the comments submitted in response to this notice. OSHA will then include this summary in its request to OMB to decrease the existing burden-hour estimates for, and to extend approval of, this information-collection requirement.

Type of Review: Extension of currently approved information-collection requirement.

Title: Cranes and Derricks Standard for Construction: Recording Tests for Toxic Gases and Oxygen-Deficient Atmospheres in Enclosed Spaces.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 50 (enclosed spaces).

Frequency of Response: On occasion.

Average Time per Response: 2 minutes (.03 hour) to perform atmospheric testing and record the results.

Estimated Total Burden Hours: 97 hours.

Estimated Cost (Operation and Maintenance): $9,000.

IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on July 3, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–17222 Filed 7–9–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10911, et al.]

Proposed Exemptions; Deferred Profit Sharing Plan of the Penske Corporation (the Plan) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638,

200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deferred Profit Sharing Plan of the Penske Corporation (the Plan) Located in Charlotte, North Carolina

[Application No. D–10911]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, (1) effective June 15, 2000, to the acquisition and holding by the Plan of interests (the Interests) in the Penske Company, LLC (the LLC), a wholly owned subsidiary of the Plan sponsor, the Penske Corporation (Penske), which were distributed (the Distribution) as dividends to the Plan as a shareholder of Penske common stock (Penske Stock); and (2) the proposed redemption, by the LLC, of the Interests held by the Plan for the greater of $3.37 per-unit or their fair market value at the date of the redemption, provided that the following conditions were or will be met:

(a) The Interests were acquired by the Plan pursuant to Plan provisions for individually-directed investment of participant accounts;

(b) The Plan's receipt and holding of the Interests occurred in connection with the Distribution;

(c) The Plan's acquisition of the Interests resulted from an independent act of Penske as a corporate entity, such that all holders of the Penske Stock, including the Plan, were treated in the same manner;

(d) Within 15 business days after the date the notice granting the final exemption is published in the **Federal Register**, the LLC will redeem the Interests held by the Plan for not less than $3.37 per unit;

(e) The price received by the Plan for the Interests is not less than the fair market value of the Interests on the date that the redemption occurs; and

(f) The Plan paid no fees or commissions in connection with the acquisition and holding of the Interests nor will it pay any fees or commissions in connection with the redemption of the Interests.

Effective Date: If granted, this proposed exemption will be effective as of June 15, 2000, with respect to the acquisition and holding by the Plan of the Interests. In addition, this exemption will be effective as of the date the final exemption is granted with respect to the LLC's redemption of the Interests held by the Plan.

Summary of Facts and Representations

1. Penske, the sponsor of the Plan, is a Delaware corporation engaged in the transportation services industry. Penske maintains its principal place of business in Detroit, Michigan and is more than 50% owned by RSP (RSP). The Plan is a qualified retirement plan described under section 401(a) of the Code and features a qualified cash or deferred compensation arrangement described in section 401(k) of the Code.

As of December 31, 2000, the Plan had a total of 1,174 participants and assets with an approximate aggregate fair market value of $35,477,000. Also as of December 31, 2000, 47.9% (or $16,997,073) of the fair market value of the total assets of the Plan was invested in Penske Stock. The shares of Penske Stock are held by 401 Plan Participants. Before June 15, 2000, the Plan held 5,601 shares of Penske Corporation Class B Voting Common Stock and 106,166 shares of Penske Corporation Class C Non-Voting Common Stock. In total, the Plan owns 111,767 shares (5,601 shares + 106,166 shares) of Penske. This represented 3.33 percent of the total 3,355,685 shares of Penske Stock outstanding at that time (treating the convertible preferred stock as fully converted) (111,767 shares ÷ 3,355,685 shares).

2. First Union National Bank (First Union), of Charlotte, North Carolina, serves as a directed trustee of the Plan. As such, First Union has no investment discretion over the Plan's assets.

3. A variety of funds have been established under the Plan for the investment of the Plan assets, including Fund E, the Penske Corporation Stock Fund. These funds are mutual funds, with the exception of Fund E and the two subfunds that have been established with Fund E—the Penske Subfund and the LLC Subfund. Fund E is invested principally in Penske Stock, and is available for investment only with respect to amounts attributable to profit-sharing contributions (the Contributions) that were made under the Plan by participants prior to January 1, 1996. Participants may periodically reallocate amounts attributable to the Contributions (including amounts invested in Fund E) among any of the other funds, but they may not reallocate any amounts to Fund E. Furthermore, under Section 6.1 of the Plan, as currently drafted, any income derived or net proceeds received from the sales of assets in Fund E is invested among the other funds established in accordance with the participant's investment direction.

4. The LLC is in the business of the management, operation, acquisition, and disposition of companies engaged in transportation-related services, such as manufacturers and suppliers to the heavy-duty truck and automotive industries and on-line electronic commerce enterprises. The LLC was formed by Penske on April 13, 2000 as a Delaware limited liability company. Penske contributed $9,900 in cash and a trust maintained for the benefit of RSP contributed $100 in cash to the LLC on, in exchange for all of the LLC Interests. On May 1, 2000, Penske purchased the trust's Interests in the LLC for $100 in cash, so that Penske owned all of the Interests. This resulted in the LLC being a wholly owned subsidiary of Penske. On June 15, 2000, Penske made a *pro rata* distribution of the Interests, which are not publicly-traded, to all of Penske's shareholders of record as of June 14, 2000. The Plan, as a

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shareholder of Penske Stock, also received a distribution of the Interests from Penske in proportion to its ownership interest in Penske Stock. As a result of the *pro rata* distribution of the Interests, the Plan received 5,601 Class B Voting Common Units in the LLC and 106,166 Class C Non-Voting Common Units in the LLC out of the total number of units issued—3,355,685 (treating the convertible preferred units as fully converted). Similarly, RSP received Interests in the LLC which corresponded with those received by the Plan. The Plan paid no fees or commissions to Penske in connection with the Distribution.

The Interests have been held on behalf of the Plan within Fund E in the LLC Subfund. Participants with accounts invested in Fund E have received information from Penske about the nature, risks and potential rewards of holding the Interests as an investment. This information was given in the form of an information statement (the Statement) provided by the employee benefits department of Penske. The Statement was sent only to participants in the Plan with accounts invested in Fund E.

5. Section 406(a)(1)(A) of the Act prohibits a fiduciary from causing a plan to engage in a transaction which the fiduciary knows (or should know) constitutes a sale or exchange of any property between the plan and a party in interest. Penske, as an employer any of whose employees are covered by the Plan, is a party in interest with respect to the Plan under section 3(14)(C) of the Act. The LLC is also a party in interest with respect to the Plan under section 3(14)(G) of the Act. Since 100% of this entity was owned directly by Penske and more than 50% of the LLC is currently owned indirectly by RSP, the LLC is a party in interest under section 3(14)(G) of the Code with respect to the Plan.

Because Penske believes that the LLC is an affiliate of Penske for purposes of section 407(d)(7) of the Act,[1] Penske represents that the Interests held by the Plan would constitute an "employer security" within the meaning of 407(d)(1) of the Act[2] but not a "qualifying employer security" under section 407(d)(5) of the Act[3] inasmuch as the Interests do not fall within any of the covered categories.

Therefore, Penske states that exemptive relief is needed with respect to the acquisition and continued holding of the Interests by the Plan to the extent there have been violations of sections 406(a), 406(b)(1) and (b)(2), and section 407(a) of the Act. In addition, Penske represents that the redemption of the Plan's Interests by the LLC violates section 406(a)(1)(A) and section 406(b)(1) and (b)(2) of the Act. Accordingly, Penske requests an administrative exemption from the Department.

If granted, the exemption will be effective as of June 15, 2000 with respect to the acquisition and holding by the Plan of the Interests. In addition, this exemption will be effective as of the date the notice granting the exemption is published in the **Federal Register** with respect to the redemption of the Plan's Interests by the LLC.

6. McDonald Investments Inc. (McDonald), a company which is customarily engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for estate, corporate and other purposes, valued all of the Interests as of June 15, 2000. McDonald represents that it is independent of Penske, the LLC and RSP.

In connection with rendering this valuation, McDonald reviewed and analyzed, among other things, the following: (i) The historical financial information concerning the LLC's investments; (ii) certain other internal information, primarily financial in nature including projections concerning the business and operation of the LLC's investments furnished to it by the LLC's management for the purposes of the analysis; (iii) certain publicly-available information with respect to other companies that McDonald believed to be comparable to the LLC's investments and the trading markets for other comparable companies' securities; and (iv) certain publicly-available information concerning the nature and terms of other transactions that McDonald considered relevant to its inquiry. McDonald also met with certain officers and employees of Penske and the LLC to discuss the respective businesses and prospects of the LLC's investments, as well as other matters McDonald believed relevant to the valuation. McDonald concluded that the fair market value of the LLC, on an equity basis, was in a range of $7.3 million to $15.3 million, with a mid-point of $11.3 million. For purposes of determining the redemption price for the Interests, McDonald represented that the midpoint price of $11.3 million was acceptable as the fair market value of the LLC as of June 15, 2000. As a result of the appraisal the per-unit of the Interest was valued at $3.37 ($11.3 million ÷ 3,355,685 units). Based upon this valuation, the Plan will receive a minimum of $376,654.79 (111,767 units × $3.37) as a result of the redemption.

7. The LLC was also valued by McDonald as of October 31, 2000. The second appraisal was based on the same criteria utilized in the first appraisal. McDonald concluded that the fair market value of the LLC, on an equity basis, was in a range of $2.9 million to $6.4 million, with a mid-point of $4.7 million.Therefore, for purposes of determining the redemption price for the Interests, McDonald represented that the midpoint price of $4.7 million was acceptable as the fair market value of the LLC as of October 31, 2000. As a result of the appraisal the per-unit of the Interest was valued at $1.40 ($4.7 million ÷ 3,355,685 units).

8. The LLC was valued for a third time by McDonald as of December 31, 2000. This appraisal was based on the same criteria utilized in the two prior appraisals. McDonald concluded that the fair market value of the LLC, on an equity basis, was in a range of $5.8 million to $10.1 million, with a mid-point of $8 million. Therefore, for purposes of determining the redemption price for the Interests, McDonald represented that the midpoint price of $8 million was acceptable as the fair market value of the LLC as of December 31, 2000. As a result of the appraisal the per-unit of the Interest was valued at $2.38 ($8 million ÷ 3,355,685 units).

10. On the basis of the foregoing, within 15 business days after the date the notice granting the final exemption is published in the **Federal Register**, the LLC will redeem the Interests held by the Plan for the greater of $3.37 per-unit (which represents the highest of the independent appraisals of the LLC) or the fair market value of the Interests on the date that the redemption occurs. The proceeds of the redemption will be reallocated among the other funds

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[1] Section 407(d)(7) of the Act defines a corporation as an affiliate of an employer if it is a member of any controlled group of corporations (as defined in sectin 1563(a) of the Code, except that "applicable percentage" shall be substituted for "80 percent" wherever the latter percentage appears in such section) of which the employer maintains the plan is a member. For purposes of the preceding sentence, the term "applicable percentage" means 50 percent, or such lower percentage as the Secretary of Labora may prescribe by regulation.

[2] Section 407(d)(1) of the Act defines a "qualifying employer security" as a security issued by an employer of employees covered by the plan, or by an affiliate of such employer.

[3] Section 407(d)(5) of the Act defines a "qualifying employer security" as an employer security which is (a) stock; (b) a marketable obligation; or (c) an interest in a publicly-traded partnership, but only if such partnership is an existing partnership.

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available for investment under the Plan pursuant to the participants' current investment elections for new Plan contributions. Penske states that the proposed redemption is in the interests of the Plan and its participants and beneficiaries because the redemption will be a one-time cash transaction allowing the Plan to divest itself of the Interests and reinvest the proceeds of the redemption in assets that will be diversified and generate higher rates of return.

11. In summary, the applicant represents that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Interests were acquired by the Plan pursuant to Plan provisions for individually-directed investment of participant accounts;

(b) The Plan's receipt and holding of the Interests occurred in connection with the Distribution;

(c) The Plan's acquisition of the Interests resulted from an independent act of Penske as a corporate entity, such that all holders of the Penske Stock, including the Plan, were treated in the same manner;

(d) Within 15 business days after the date the notice granting the final exemption is published in the **Federal Register**, the LLC will redeem the Interests held by the Plan for not less than $3.37 per-unit;

(e) The price received by the Plan for the Interests will not be less than the fair market value of the Interests on the date that the redemption occurs; and

(f) The Plan paid no fees or commission in connection with the acquisition and holding of the Interests nor will the Plan pay any fees or commissions in connection with the redemption of the Interests.

For Further Information Contact: Khalif Ford of the Department, telephone (202) 219–8883. (This is not a toll-free number).

Development Company Funding Corporation Located in the District of Columbia

[Application No. D–10926]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Transactions

A. If the proposed exemption is granted, effective August 25, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving Trusts and Certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Certificates in the initial issuance of Certificates between the Underwriter of the Certificates and an employee benefit plan when the SBA, the Fiscal Agent, the Selling Agent, the Central Servicing Agent, the Trustee, the Underwriter, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Certificates by a plan in the secondary market for such Certificates; and

(3) The continued holding of Certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Certificate on behalf of an Excluded Plan, by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[4]

B. If the proposed exemption is granted, effective August 25, 2000, the restrictions of section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Certificates in the initial issuance of Certificates between the Underwriter and a plan, when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Certificates is (a) an Obligor with respect to 5 percent or less of the fair market value of the 504 Program Loans underlying the Debentures related to that Series of Certificates, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Certificates in connection with the initial issuance of the Certificates, at least 50 percent of each Series of Certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, and at least 50 percent of the aggregate interest in the Series is acquired by persons independent of the Restricted Group.

(iii) A plan's investment in each Series of Certificates does not exceed 25 percent of all of the Certificates of that Series outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Certificates representing an interest in a Trust containing assets sold or serviced by the same entity.[5] For purposes of this subparagraph (iv) only, an entity will not be considered to service assets contained in a Trust if it is merely a subservicer of that Trust.

(2) The direct or indirect acquisition or disposition of Certificates by a plan described in paragraph B.(1) in the secondary market for such Certificates, provided that conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of Certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. If the proposed exemption is granted, effective August 25, 2000, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a Trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Trust Agreement; and

(2) The Trust Agreement is provided to, or described in all material respects in the offering circular or other disclosure document provided to the investing plans before they purchase Certificates issued by the Trust.[6]

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[4] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act and regulation 29 CFR section 2510.3–21(c).

[5] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[6] The offering circular or other disclosure document must contain substantially the same information that would be disclosed in a prospectus if the offering of the Certificates were made in a registered public offering under the Securities Act

Continued

D. If the proposed exemption is granted, effective August 25, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction to which those restrictions or sanctions would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H), or (I) of the Act or section 4975(e)(2)(F), (G), (H), (I) of the Code), solely because of the plan's ownership of Certificates.

Section II. Conditions

The relief provided under Section I is available only if the following conditions are met:

A. The acquisition of Certificates by a plan is on terms (including the Certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

B. The rights and interests evidenced by the Certificates are not subordinated to the rights and interests evidenced by other Certificates in the same Series;

C. The Certificates and Debentures are guaranteed as to the timely payment of principal and interest by the SBA, and are therefore backed by the full faith and credit of the United States;

D. The Trustee is not an affiliate of any other member of the Restricted Group.

Section III. Definitions

For purposes of this exemption:

A. "Certificate" means a certificate:

(1) That represents a beneficial ownership interest in a discrete pool of Debentures and all payments thereon, held in Trust by the Trustee pursuant to the Trust Agreement;

(2) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the discrete pool of Debentures held as part of such Trust; and

(3) That is issued by the Trustee as agent for the SBA and guaranteed by the SBA as to timely payment of principal and interest pursuant to section 505 of the Small Business Investment Act of 1958, as amended (the Small Business Investment Act).

B. "Trust" means the trust created pursuant to the Trust Agreement, under which, with respect to each Series of Certificates, the Trustee holds in Trust for the benefit of the certificate holders of the Series the following property:

(1) The discrete pool of Debentures related to the Series;

(2) A debenture guarantee agreement executed by the SBA pursuant to section 503 of the Small Business Investment Act pursuant to which the SBA guarantees timely payment of principal and interest on the Debentures related to the Series; and

(3) The certificate account maintained by the Central Servicing Agent for such Series into which the Central Servicing Agent deposits payments due in respect of the Debentures on each semiannual debenture payment date.

C. "Debentures" means debentures issued by a certified development company and guaranteed as to timely payment of principal and interest by the SBA pursuant to section 503 of the Small Business Investment Act.

D. "504 Program Loans" means loans made by a certified development company to a small business concern and funded with the proceeds of a Debenture pursuant to section 503 of the Small Business Investment Act.

E. "SBA" refers to the U.S. Small Business Administration.

F. "Underwriter" means an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue "asset-backed" pass-through securities to plans, that is similar in format and structure to this exemption (the Underwriter Exemptions);[7] any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the Certificates.

G. "Fiscal Agent" means the entity that has contracted with the SBA to assess the financial markets, arrange for the production of required documents, and monitor the performance of the Trustee and the Underwriter.

H. "Selling Agent" means the entity appointed by a certified development company to select Underwriters, negotiate the terms and conditions of Debenture offerings with the Underwriters, and direct and coordinate Debenture sales.

I. "Central Servicing Agent" means the entity that has entered into a master servicing agreement with the SBA to support the orderly flow of funds among borrowers, certified development companies and the SBA.

J. "Trustee" means an entity that is the trustee of the Trust.

K. "Obligor" means any person that is obligated to make payments under a Section 504 Loan related to a Debenture contained in the Trust.

L. "Excluded Plan" means any employee benefit plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

M. "Restricted Group" with respect to a class of Certificates means:

(1) Each Underwriter;

(2) The Fiscal Agent;

(3) The Selling Agent;

(4) The Trustee;

(5) The Central Servicing Agent;

(6) Any Obligor with respect to loans relating to Debentures included in the Trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Trust, determined on the date of the initial issuance of Certificates by the Trust;

(7) The SBA; or

(8) Any affiliate of a person described in (1)–(7) above.

N. "Affiliate" of another person includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), brother, sister, or spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary that has investment management authority or renders investment advice with respect to assets of such person.

Q. "Sale" includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to

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of 1933. In the Department's view, the offering circular or other disclosure document must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

[7] For a listing of the Underwriter Exemptions, see the description provided in footnote 1 of Prohibited Transaction Exemption 2000–58 (65 FR 67765, November 13, 2000).

the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The offering circular or other disclosure document is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to Sales are met.

R. "Forward Delivery Commitment" means a contract for the purchase or sale of one or more Certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Certificates) and optional contracts (which give one party the right but not the obligation to deliver Certificates to, or demand delivery of Certificates from, the other party).

S. "Trust Agreement" means that trust agreement by and among the SBA, the Fiscal Agent and the Trustee, as amended, establishing the Trust and, with respect to each Series of Certificates, the supplement to the trust agreement pertaining to such Series.

T. "Series" means any particular series of Certificates issued pursuant to the Trust Agreement that, in the aggregate, represent the entire beneficial interest in a discrete pool of Debentures held by the Trustee pursuant to the Trust Agreement.

Summary of Facts and Representations

1. The Small Business Administration (the SBA) is an agency established on July 30, 1953, pursuant to the Small Business Act. It is under the general direction and supervision of the President of the United States, and is not within or affiliated with any other agency or department of the federal government. The SBA was created to further Congressional policy that the government should aid, counsel, assist and protect the interests of small businesses to preserve free competitive enterprise and strengthen the country's economy.

The SBA was authorized by the Small Business Investment Act to establish a program (the 504 program) to provide financing to small businesses for projects that further one or more economic development objectives and meet certain eligibility criteria specified in the 504 program regulations. The 504 program is intended to foster economic development, create or preserve job opportunities, and stimulate growth of small businesses.

2. Under the 504 program, financing is provided to small businesses by certified development companies (CDCs). A CDC is generally a not-for-profit corporation or limited liability company that has been certified by the SBA, although a CDC certified by the SBA before January 1, 1987 may be a for-profit corporation. Each CDC must serve a designated area of operations identified by the CDC and approved by the SBA; there also may be one statewide CDC in a state, responsible for fostering economic development throughout the state and for providing loans under the 504 program in areas not adequately served by other CDCs. SBA regulations prescribe the number of members and the interests that must be represented by the members, the composition and activities of the board of directors and the staffing requirements of the CDC. They also impose an application process for certification as a CDC, including a public notice and comment period, and a probationary period.

In addition to marketing the 504 program, a CDC may furnish other financial and technical assistance to small businesses, or may assist them in obtaining such assistance. A CDC must generate at least two 504 program loan approvals every fiscal year, and its loan portfolio must meet certain standards of job creation or job preservation prescribed in regulations. CDCs submit annual and interim reports, as well as other information, to the SBA.

3. A small business applies for 504 program assistance to the CDC serving the area in which the project is located. If the SBA approves the project, permanent financing is arranged generally consisting of at least a 10% contribution from the small business; a loan from the CDC for up to 40% of the project costs and certain administrative costs, collateralized by a second lien on the project property; and a private sector loan for the balance, collateralized by a first lien on the project property. The minimum contribution from the small business is 15% if the borrower has operated for two years or less or if the project involves a limited or single purpose building or structure and is 20% if both conditions are met. Interim financing for everything except the borrower's contribution is often obtained from the private sector lender that will participate in the permanent financing.

The CDC's contribution to the project financing is raised by the CDC's issuance of a debenture. Under authority granted in 15 U.S.C. 697(a), the SBA guarantees the timely payment of all principal and interest as scheduled on this debenture; the full faith and credit of the United States is pledged to the payment of these guaranteed amounts.[8]

4. The term of both the underlying loan and the debenture is either 10 or 20 years. The interest rate of the loan and of the debenture are set by the SBA and approved by the Secretary of the Treasury. The loan underlying the debenture is generally for a minimum of $50,000, although it may, for good cause shown, be as small as $25,000. The total 504 program assistance to a borrower and its affiliates may not exceed $750,000 (or $1,000,000 in the case of projects meeting certain public policy goals). The amount of the underlying note and of the debenture equals the amount of the underlying loan plus administrative costs, including the SBA guarantee fee, a funding fee to cover the cost of the public issuance of securities and the trustee, the CDC processing fee, closing costs, and the underwriter's fee.

The underlying loan is secured by a junior lien on project property, which is comprised of one or more long term fixed assets, such as land, buildings, machinery, and equipment, acquired or improved with 504 program financing for use in business operations. The debentures are not secured. In its discretion, the SBA may permit a debenture to be subordinated to other obligations of the CDC, but not to debt incurred by the CDC to obtain funds to loan to the borrower to be used as the borrower's contribution to the project financing.

An event of default under the 504 program note may require automatic acceleration or may permit forbearance of acceleration while a cure is attempted, depending upon the terms of the note. Automatic acceleration may be required upon the appointment of a receiver or liquidator for the borrower, the filing of a petition by or against the borrower under federal or state bankruptcy or insolvency law, the making of an assignment for the benefit of the borrower's creditors, or the failure by the borrower to comply with certain SBA regulations; however, the SBA may postpone acceleration if the SBA determines that timely payment is likely in the future. In the case of discretionary defaults, the SBA's policy is to seek to resolve the default, while making scheduled payments on the related debenture pursuant to its guarantee. If

[8] A small percentage of debentures are issued to fund the acquisition of property by a CDC that the CDC then leases to a small business concern. The lease payments are structured so as to be sufficient to service and retire the debenture. In the event of an automatic event of default on a lease, the lease may be terminated, but the SBA is not required to accelerate the related debenture so long as the CDC or the SBA continues to pay principal and interest when due on the debenture.

the note is accelerated, the debenture that funded it is automatically accelerated, and the SBA pays 100% of the principal balance, plus interest to the payment date, pursuant to its guarantee. The SBA generally recovers its guarantee payments from the CDC, although, except in the case of fraud, negligence, or misrepresentation by the CDC, its recovery is limited to the amount the CDC has received on the loan and to the collateral.

If the 504 program loan is prepaid, the corresponding debenture is prepaid with interest and any applicable premium. If the debenture is in a pool, as discussed below, the investors in the pool are paid pro rata, and the SBA's guarantee of the pool is proportionately reduced. If the entire pool is prepaid, the SBA may redeem the certificates backed by the pool. The payment of any prepayment premium to the trustee is not subject to the SBA guarantee, although the distribution of any prepayment premium is guaranteed. Recovery of any acquisition premium paid by an investor to acquire a participation certificate in the secondary market also is not guaranteed.

5. The debentures are issued under section 503 of the Small Business Investment Act, added in 1980 by P.L. 96–302. Until June 1989, the debentures were usually sold to the Federal Financing Bank, an instrumentality of the United States under the general supervision of the Secretary of the Treasury. However, in 1986, section 505, authorizing the creation of trusts that consist solely of guaranteed debentures and that issue certificates guaranteed by the SBA as to timely payment of principal and interest, was added to the Small Business Investment Act by Public Law 99–272.

Each debenture bears interest at a stated fixed rate per annum, and is a self-amortizing debt instrument calling for level payments of principal and interest at semiannual intervals over its term to maturity. A debenture may be prepaid in whole, but not in part, on any semiannual payment date for a specified prepayment price. The prepayment price may include a premium over the outstanding principal amount of the debenture. The premium declines with the passage of time and is eliminated after one-half of the stated term to maturity for the debenture has elapsed.

A selling agent for the CDCs agrees to sell a specified amount of SBA-guaranteed debentures (the debenture pool) to the underwriters under a Debenture Purchase, Pooling and Exchange Agreement. All debentures within a debenture pool have identical stated interest rates, payment dates, and terms to maturity. The underwriters assign the debenture pool to the trustee in exchange for participation certificates.

The trustee issues the participation certificates as a series of the trust established by the 1986 trust agreement, as amended, pursuant to a supplement to the trust agreement. The supplement sets out the payment terms for the debentures and certificates. Each series of certificates relates to a discrete debenture pool and is issued pursuant to a discrete supplement to the trust agreement.

Each certificate represents an undivided beneficial ownership interest in each debenture in the related debenture pool and is entitled to a ratable share of all payments made on each debenture in that debenture pool. Thus, the interest rate, payment terms, and maturity date of a certificate will correspond to those of the debentures in the related pool.

With respect to each series of certificates, the certificates and the debentures in the related debenture pool are issued simultaneously. Each debenture pool is closed upon the simultaneous issuance of the series of certificates and the related debentures. The trust does not hold any assets that are not associated with a particular series.

Certificates issued under this program have a term of 10 or 20 years, must have a face value of at least $25,000, and are issued in registered form and transferred only by entry on the central registry maintained by the trustee. The statute and regulations governing the 504 program do not provide for issuance of subordinated certificates.

The SBA agrees to issue its guarantee on the certificates. The Department of the Treasury approves the negotiated sale price and coupon on the certificates. The underwriters sell the certificates to investors and the proceeds, less an underwriting commission, are distributed to the CDC's selling agent, acting through a servicing agent, which transfers the funds to the CDC to fund the 504 program loans.

The certificates are not rated by a rating agency because of the SBA guarantee, which applies to both the certificates and the debentures that serve as collateral for the certificates, and which is backed by the full faith and credit of the United States. Because of this guarantee, the Applicant represents that the only risks to an investor in the participation certificates are the risk that prepayment of the certificate may affect its yield, and the de minimis risk that the United States, acting through the SBA, may default on its obligation.

Participation certificates issued under the 504 program will prepay if any debenture included in the related pool (1) is accelerated or terminated in connection with an event of default under the related 504 program note or notes or (2) is prepaid at the option of the related CDC, usually in connection with the prepayment of the related 504 program note or notes. Each offering circular for the participation certificates contains tables which disclose prepayment experience for the debentures in connection with accelerations and prepayments since the second half of 1986.

The acquisition of certificates by employee benefit plans will be on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party.

7. As of February 16, 2000, there had been 161 issues of 20-year certificates and 65 issues of 10-year certificates. Offerings of 20-year certificates have been made monthly since November 1986, and the aggregate amount of such certificates sold as of February 16, 2000 was $10,453,821,000. Ten-year certificates were first offered in December 1986; they were offered quarterly from January 1987 until January 1995, and have been offered bi-monthly since January 1995; the aggregate amount of such certificates sold as of February 16, 2000 was $558,669,000.

8. Regulations issued under the Small Business Investment Act require the SBA and CDC to appoint a selling agent to select underwriters, negotiate the terms of debenture offerings with the underwriters, and direct and coordinate debenture sales; regulations likewise require the appointment of a fiscal agent to assess the financial markets, arrange for the production of documents required for offering certificates, and monitor the performance of the trustee and the underwriters. Development Company Funding Corporation (DCFC) has been appointed as fiscal agent for the SBA under a Fiscal Agency Agreement with the SBA dated as of August 12, 1999 (superseding agreements dated as of December 1, 1986 and September 30, 1988) and as selling agent for CDCs that issue debentures which DCFC sells to underwriters pursuant to a Selling Agency Agreement with the SBA dated as of August 12, 1999 (superseding agreements dated as of December 1, 1986 and September 30, 1988). DCFC is a District of Columbia not-for-profit

corporation that was created to facilitate 504 program transactions. DCFC shares some of its facilities and staff with the National Association of Development Companies, a not-for-profit trade organization. It is paid by the SBA for its services as fiscal agent, and is paid its necessary expenses for staff and overhead, net of other income, by the SBA for its services as selling agent. Payments to DCFC of its fees as fiscal agent and selling agent are made from the master reserve account, described below.

9. The regulations provide for the designation by the SBA of a central servicing agent to support the orderly flow of funds among the borrowers, CDCs and SBA. SBA has engaged Colson Services Corp. (Colson) to act as central servicing agent, receiving and disbursing funds wired by the underwriters, and servicing payments on the debentures. Colson collects a monthly servicing fee from the borrower of each 504 program loan.

Colson was awarded the contract to act as central servicing agent through a competitive bidding process. Colson is required by regulation to provide a fidelity bond or insurance in an amount that fully protects the government, and the master servicing agreement between Colson and the SBA requires that Colson carry a fidelity bond or similar insurance in an amount commensurate with the level of funds in its possession, but not less than $10 million. In addition, the master servicing agreement requires Colson to maintain a standard Banker's Blanket Bond insurance policy in an amount "customary and sufficient" to protect against loss caused by actions of Colson, its employees or agents.

10. The master servicing agreement requires Colson to maintain certain accounts to hold funds that are in Colson's custody in connection with the 504 program. The master servicing agreement specifies the accounts to be maintained and the payments to be made, and imposes timing and other performance requirements. Colson maintains accounts required under the master servicing agreement at J.P. Morgan Chase & Co., which recently purchased Colson. The master servicing agreement limits the investment of funds in these accounts to debt obligations issued or guaranteed by the U.S. government and money market funds that hold these types of investments. Investment earnings are sufficient to pay the trustee and investment management fees charged in connection with the account, and a fee to Colson for record-keeping services that Colson provides for the accounts. Investment earnings in excess of these fees are disbursed semiannually to the CDCs.

Colson maintains a master reserve account through which all funds related to the 504 program loans and the debentures flow. The master reserve account is funded by the guarantee fee and a funding fee collected from the borrower of a 504 program loan, and by principal and interest payments on 504 program loans. Interest on loan payments that accrues in the account between the date of receipt of each monthly payment and its disbursement by the trustee to certificateholders must be paid by Colson to the CDC servicing the loan, at the direction of the SBA.

The master servicing agreement requires Colson to deliver periodic status reports to the SBA, and requires independent audits of Colson's financial statements and operations each year. It also provides for a contracting officer to administer the contract on behalf of SBA and for a contracting officer's technical representative to monitor all technical aspects of and to assist in administering the contract. SBA and its authorized representatives have the right of access and inspection of Colson's facilities and records relating to the operations of the 504 program. Colson may forfeit its right to its fees if, in the determination of the SBA, it has not submitted required reports or performed required services, unless the failure is beyond its control and without its fault. In addition, SBA may terminate the contract for default by Colson, including Colson's failure to perform its obligations in a timely manner, as well as Colson's insolvency or the filing of a petition in bankruptcy by or against Colson if the petition is not dismissed or withdrawn within 90 days.

11. The regulations also require appointment of a trustee to issue and transfer the certificates, maintain registries of the debentures and the certificates, hold the debentures for the benefit of the SBA and the certificateholders, receive payments on the debentures and disburse payments on the certificates. None of the administrative fees paid by the borrower (including the SBA guarantee fee, funding fee, the CDC processing fee, closing costs and the underwriter's fee) are paid out of the trust. The trustee, as holder of a debenture guarantee agreement with the SBA with respect to any pool of debentures, has the right to enforce the SBA's guarantee for the benefit of the holders of the certificates in the related series. Harris Trust Company of New York (Harris Trust) was appointed as trustee and entered into a trust agreement dated as of December 1, 1986 with the SBA and with DCFC as fiscal agent. Effective May 8, 2000, The Bank of New York succeeded Harris Trust as trustee. Under the trust agreement, as amended, the trustee is compensated by the SBA from time to time as shall be agreed.

As a condition of the exemption, the trustee may not be an affiliate of the underwriter, fiscal agent, selling agent, central servicing agent, any obligor with respect to loans relating to debentures included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust (determined on the date of the initial issuance of certificates by the trust), the SBA, or any of their affiliates.

12. Each agent must provide a fidelity bond or insurance sufficient to fully protect the interest of the government, and must furnish the SBA with access to all books, records and other documents relating to SBA-guaranteed debentures.

13. In connection with the original issuance of participation certificates, an offering circular is furnished to all investors, including investing plans. The participation certificates are exempt from the requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934. However, the SBA, like most other government agencies that issue certificates or debt securities, seeks to conform to market convention, and therefore complies, to the extent possible, with the disclosure requirements generally applicable to offerings of participation certificates. Therefore, the participation certificates are issued pursuant to offering circulars that, in general, contain:

(a) Information concerning the payment terms of the participation certificates, and any material risk factors with respect to the participation certificates;

(b) a description of the SBA guarantee;

(c) identification of the trustee;

(d) a description of the SBA 504 program and the debentures held by the trust;

(e) a description of the servicing arrangements set forth in the trust agreement, including a description of periodic statements that are provided to or made available to investors by the trustee;

(f) a description of the events that constitute events of default under the governing agreements and a description of the trustee's and the investors' remedies incident thereto;

(g) a general discussion of the principal Federal income tax consequences of the purchase,

ownership and disposition of the participation certificates by a typical investor;

(h) a description of the underwriters' or placement agents' plan for distributing the participation certificates to investors; and

(i) information about the scope and nature of the secondary market, if any, for the participation certificates. Reports indicating the amount of payments of principal and interest are provided to investors as frequently as distributions are made to investors.

No information about the characteristics of the borrowers of the underlying collateral is included; investors generally evaluate the credit quality of the collateral solely on the basis of the SBA's full faith and credit guarantee.

Under the authorizing legislation, the SBA must require disclosure by a seller, prior to any sale, of "information on the terms, conditions, and yield" of the participation certificates; regulations add the requirement to provide information on the premium and any other characteristics not guaranteed by the SBA. (15 U.S.C. 697b(f)(1)(C), 13 CFR 120.941.) Thus, each seller, whether in the initial offering or the secondary market, must inform its purchaser of the economic terms and risks of the investment, as modified by the price at which each sale is made.

14. The underwriters are permitted, but not required, to engage in certain transactions that may stabilize the price of the participation certificates. In general, it is the policy of many underwriters to attempt to make a market for securities for which they are the lead or co-managing underwriter.

15. The participation certificates are generally priced at a spread above the interest rate on Treasury notes of comparable maturity. The spread reflects the risk of prepayment. Historically, the spread has been similar to that of certain comparable guaranteed governmental mortgage-backed securities.

16. The Applicant represents that the participation certificates are an extremely high-quality investment, benefitting from an SBA guarantee, backed by the full faith and credit of the United States, on both the certificates and on the debentures that constitute the collateral for the certificates. The certificates are acceptable as security for the deposit of public moneys subject to the control of the United States, and as collateral for Treasury Tax and Loan Accounts. National banks, and, if permitted by state law, state banks that are members of the Federal Reserve System may deal in, underwrite and purchase the certificates for their own account without limitation. The certificates are legal investments for federal savings and loan associations, federal savings banks, and federal credit unions. They are legal investments for surplus and reserve funds of Federal Home Loan Banks to the same extent as they are legal investments for fiduciary and trust funds under the laws of the state in which the Federal Home Loan Bank is located. In the discretion of each Federal Reserve Bank, they may be used as security for advances to depositary institutions by Federal Reserve Banks. Under the laws of many states, they are legal for investment by savings banks, savings and loan associations, credit unions, insurance companies, trustees and other fiduciaries.

17. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because:

(a) The decision to acquire certificates will be made by a plan fiduciary after receipt of full and detailed disclosure of all material features of the trust and the certificates, including all applicable fees and charges.

(b) The transactions may easily be audited by a plan fiduciary and all the records necessary to review the transactions will be kept for six years. No further review by the Department is required.

(c) The debentures and the certificates are guaranteed as to principal and interest by the United States of America.

(d) Each series of certificates relates to a discrete debenture pool, which pool is closed upon the simultaneous issuance of the series of certificates and the related debentures. The trust does not hold any assets that are not associated with a particular series.

(e) All actions by the SBA, the fiscal agent and the trustee with respect to the trust, the assets of the trust, the certificates and certificateholders will be governed by the trust agreement, which will be available to plan fiduciaries for their review prior the plan's investment in certificates.

Notice to Interested Persons

The Applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karen Lloyd of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

J.P. Morgan Chase & Co. (Morgan Chase) and its Affiliates (Collectively, the Applicants) Located in New York, New York

[Application Number D–10998]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[9]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The proposed purchase or sale by employee benefit plans (the Plans), other than Plans sponsored and maintained by the Applicants, of publicly-traded debt securities (the Debt Securities) issued by the Applicants; and (2) the extension of credit by the Plans to the Applicants in connection with the holding of the Debt Securities.

This proposed exemption is subject to the general conditions that are set forth below in Section II.

Section II. General Conditions

(a) The Debt Securities are made available by the Applicants in the ordinary course of their business to Plans as well as to customers which are not Plans.

(b) The decision to invest in the Debt Securities is made by a Plan fiduciary (the Independent Plan Fiduciary) or a participant in a Plan that provides for participant-directed investments (the Plan Participant), which is independent of the Applicants.

(c) The Applicants do not have any discretionary authority or control or provide any investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to the Plan assets involved in the transactions.

(d) The Plans pay no fees or commissions to the Applicants in

[9] For purposes of this exemption, references to Title I of the Act, unless otherwise noted herein, refer also to corresponding provisions of the Code.

connection with the transactions covered by the requested exemption, other than the mark-up for a principal transaction permissible under Part II of Prohibited Transaction Class Exemption (PTCE) 75–1 (40 FR 50845, October 31, 1975).[10]

(e) The Applicants agree to notify Plan investors in the prospectus (the Prospectus) for the Debt Securities that, at the time of acquisition, no more than 15 percent of a Plan's assets should be invested in any of the Debt Securities.

(f) The Debt Securities do not have a duration which exceeds 9 years from the date of issuance.

(g) Prior to a Plan's acquisition of any of the Debt Securities, the Applicants fully disclose, in the Prospectus, to the Independent Plan Fiduciary or Plan Participant, all of the terms and conditions of such Debt Securities, including, but not limited to, the following:

(1) A statement to the effect that the return calculated for the Debt Securities will be denominated in U.S. dollars;

(2) The specified index (the Index) or Indexes on which the rate of return on the Debt Securities is based;

(3) A numerical example, designed to be understood by the average investor, which explains the calculation of the return on the Debt Securities at maturity and reflects, among other things, (i) a hypothetical initial value and closing value of the applicable Index, and (ii) the effect of any adjustment factor on the percentage change in the applicable Index;

(4) The date on which the Debt Securities are issued;

(5) The date on which the Debt Securities will mature and the conditions of such maturity;

(6) The initial date on which the value of the Index is calculated;

(7) Any adjustment factor or other numerical methodology that would affect the rate of return, if applicable;

(8) The ending date on which interest is determined, calculated and paid;

(9) Information relating to the calculation of payments of principal and interest, including a representation to the effect that, at maturity, the beneficial owner of the Debt Securities is entitled to receive the entire principal amount, plus an amount derived directly from the growth in the Index (but in no event less than zero);

(10) All details regarding the methodology for measuring performance;

(11) The terms under which the Debt Securities may be redeemed;

(12) The exchange or market where the Debt Securities are traded or maintained; and

(13) Copies of the proposed and final exemptions relating to the exemptive relief provided herein, upon request.

(h) The terms of a Plan's investment in the Debt Securities are at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction at the time of such acquisition.

(i) In the event the Debt Securities are delisted from any nationally-recognized securities exchange, the Applicants will apply for trading through the National Association of Securities Dealers Automated Quotations System (NASDAQ), which requires that there be independent market-makers establishing a market for such securities in addition to the Applicants. If there are no independent market-makers, the exemption will no longer be considered effective.

(j) The Debt Securities are rated in one of the three highest generic rating categories by at least one nationally-recognized statistical rating service at the time of their acquisition.

(k) The rate of return for the Debt Securities is objectively determined and, following issuance, the Applicants retain no authority to affect the determination of the return for such security, other than in connection with a "market disruption event" (the Market Disruption Event) that is described in the Prospectus for the Debt Securities.

(l) The Debt Securities are based on an Index that is—

(1) Created and maintained [11] by an entity that is unrelated to the Applicants and is a standardized and generally-accepted Index of securities; or

(2) Created by the Applicants, but maintained by an entity that is unrelated to the Applicants,

(i) Consists either of standardized and generally-accepted Indexes or an Index comprised of publicly-traded securities that are not issued by the Applicants, are designated in advance and listed in the Prospectus for the Debt Securities (Under either circumstance, the Applicants may not unilaterally modify the composition of the Index, including the methodology comprising the rate of return.),

(ii) Meets the requirements for an Index in Rule 19b-4 (Rule 19b-4) under the Securities Exchange Act of 1934 (the 1934 Securities Act), and

(iii) The index value (the Index Value) for the Index is publicly-disseminated through an independent pricing service, such as Reuters Group, PLC (Reuters) or Bloomberg L.P. (Bloomberg), or through a national securities exchange.

(m) The Applicants do not trade in any way intended to affect the value of the Debt Securities through holding or trading in the securities which comprise an Index.

(n) The Applicants maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this section to determine whether the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Applicants, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Applicants shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (o) below.

(o)(1) Except as provided in section (o)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (n) are unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any Plan Participant or beneficiary of any participating Plan, or any duly authorized representative of such Plan Participant or beneficiary.

(o)(2) None of the persons described above in subparagraphs(B)–(D) of paragraph (o)(1) are authorized to examine the trade secrets of the Applicants or commercial or financial information which is privileged or confidential.

[10] The Department is providing no opinion herein as to whether any principal transactions involving debt securities would be covered by PTCE 75–1, or whether any particular mark-up by a broker-dealer for such transaction would be permissible under Part II of PTCE 75–1.

[11] For purposes of this exemption, the term "maintain" means that all calculations relating to the securities in the Index, as well as the rate of return of the Index, are made by an entity that is unrelated to the Applicants.

Summary of Facts and Representations

1. Morgan Chase is a financial holding company incorporated under Delaware law in 1968 and headquartered in New York City. As of December 31, 2000, after giving effect to the merger described below, Morgan Chase was the second largest banking institution in the United States, with approximately $715 billion in assets and approximately $42 billion in stockholders' equity. On December 31, 2000, J.P. Morgan & Co. Incorporated merged with and into The Chase Manhattan Corporation. Upon completion of the merger, its name was changed to "J.P. Morgan Chase & Co." (i.e., Morgan Chase). The merger was accounted for as a pooling of interests. Morgan Chase is a global financial services firm with operations in over 60 countries, and has as its principal bank subsidiaries: The Chase Manhattan Bank (Chase Bank) and Morgan Guaranty Trust Company of New York (Morgan Guaranty), each of which is a New York banking corporation headquartered in New York City; and Chase Manhattan Bank USA, National Association, headquartered in Delaware. The principal non-bank subsidiary of Morgan Chase is its investment bank subsidiary, J.P. Morgan Securities Inc. (J.P. Morgan Securities). Chase Bank is expected to merge with Morgan Guaranty in late 2001.

2. The activities of Morgan Chase will be internally organized, for management reporting purposes, into five major businesses:

- Investment Banking, which includes securities underwriting financial advisory, trading, mergers and acquisitions advisory, and corporate lending and syndication businesses;
- Investment Management and Private Banking, which includes an asset management business, including mutual funds; institutional money management and cash management businesses; and a private bank, which provides wealth management solutions for a global client base of high net worth individuals and families;
- Treasury and Securities Services, which provides information and transaction processing services, and moves trillions of dollars daily in securities and cash for its wholesale clients. Treasury and Securities Services includes custody, cash management, trust and other fiduciary service businesses;
- J.P. Morgan Partners, which is one of the world's largest and most diversified private equity investment firms, with total funds under management in excess of $20 billion; and
- Retail and Middle Market Banking, which serves over 30 million consumers, small business and middle-market customers nationwide. Retail and Middle Market Banking offers a wide variety of financial products and services, including customer banking, credit cards, mortgage services and consumer finance services, through a diverse array of distribution channels, including the internet and branch and ATM networks.

3. The Plans will consist of employee benefit plans that are covered under the provisions of Title I of the Act, as amended, and/or subject to section 4975 of the Code. For purposes of this proposed exemption, the Plans will not consist of plans that are sponsored and maintained by the Applicants for their own employees. In the case of the Applicants' in-house plans, Morgan Chase represents that the acquisition and holding of the Debt Securities by such plans would be covered under the statutory exemption that is provided under section 408(e) of the Act.[12]

4. The Applicants represent that broker-dealers routinely need additional capital in order to maintain inventories of securities for their market-making and other business activities. As a result, the Applicants maintain a continuous need to borrow funds from various institutional and individual investors for use in their business operations. In response to this need, certain of the Applicants may from time to time issue (the Issuers) various high-quality, publicly-offered debt securities (i.e., the Debt Securities), rated in one of the three highest generic rating categories by nationally recognized rating firms, offering varying levels of risk and potential return. Among the debt securities offered by the Applicants are publicly-offered, unsecured, SEC-registered Debt Securities, with terms that are no longer in duration than nine (9) years. The Debt Securities will be U.S. dollar-denominated so that no foreign currency conversions will be required in the calculation of the rate of return. Further, the Debt Securities will offer varying levels of risk and rates of return. The Debt Securities would be listed on at least one major stock exchange, and they would be issued in denominations of $10 per principal unit, with the minimum purchase being one unit.

The Debt Securities may be offered on a variety of terms and formulas under which rates of return are objectively determined in accordance with certain Indexes by the calculation agent. A registered broker-dealer Applicant would act as calculation agent. The Applicants represent that since small Plans will likely invest in the Debt Securities, the formulas used to calculate the rates of return will be designed to be understood by the average investor and clearly described in the "plain English" summary of the Debt Securities in the Applicants' prospectus.

5. The Applicants represent that their activities are subject to various levels of oversight and regulation by the Securities and Exchange Commission (SEC), the Commodities Futures Trading Commission, and other federal and state regulatory agencies. The Applicants also represent that their activities are subject to the oversight of self-regulatory organizations such as the NYSE and the AMEX. The Applicants further represen' that J.P. Morgan Securities, as a registered broker-dealer and member of the NYSE, is subject to the Net CapitalRule 15c3–1 of the 1934 Act, which specifies the minimum net capital requirement of a broker-dealer.

6. Due to the affiliation between an Issuer and J.P. Morgan Securities or its Affiliates, as a service provider to the Plans, the Applicants represent that they are likely to be parties in interest, as defined in section 3(14)(B) or (H) of the Act, with respect to a high percentage of Plans that purchase, sell, or hold these Debt Securities regardless of whether the Debt Securities are purchased directly from the Applicants.[13] Thus, the Applicants represent that an Issuer may be a party in interest to a Plan solely because of its affiliation with a service provider to the Plan, and as the counterparty to the Plan in a transaction where the Plan holds a Debt Security issued by an Affiliate. Further, other Affiliates may be service providers to Plans on account of their roles as trustees, custodians, investment advisors, or broker-dealers for such Plans. These relationships would make an Issuer a party in interest to those Plans and would create potential prohibited transactions in the event

[12] The Department expresses no opinion herein on whether the acquisition and holding of the Debt Securities by the Applicants' in-house plans are covered under the provisions of section 408(e) of the Act. In this regard, interested persons should refer to the conditions contained in section 408(e), as well as the definitions of the terms "qualifying employer security" (see section 407(d)(5) of the Act) and "marketable obligations" (see section 407(e) of the Act).

[13] In this regard, the Applicants represent that PTCE 75–1 does not directly address transactions where, as here, there is a continuing extension of credit as a result of a sale to a plan by a broker-dealer of debt securities issued by the broker-dealer's affiliates.

such Plans acquire and hold the Debt Securities.[14]

The Applicants are requesting an administrative exemption to enable Plans to invest in the Debt Securities, under the terms and conditions described herein, and to avoid liability for prohibited transactions resulting from investment by Plans in the Debt Securities.

7. The Applicants believe that while Part II of PTCE 75–1 provides relief for principal transactions between a broker-dealer and a Plan, and would cover a purchase of the broker-dealer affiliates' securities by such Plans (if the conditions required therein were met), it is questionable whether that class exemption would cover the continuing extension of credit related to the holding of any Debt Securities by a Plan.[15]

The Applicants note that some independent Plan fiduciaries have expressed concern regarding the application of PTCE 75–1 to broker-dealer sales of broker-affiliated debt to Plans either as a part of an original issue of the securities or in the secondary market. Moreover, the Applicants represent that PTCE 96–23 (61 FR 15975, April 10, 1996)[16] is unavailable to participant-directed, defined contribution Plans and other small Plans because these Plans, due to their size, are unlikely to have INHAMs responsible for making investment decisions relating to the acquisition, holding and disposition of securities in which the Plans invest.

Similarly, the Applicants note that while PTCE 84–14[17] minimizes the risk of inadvertent prohibited transactions for Plans whose assets are managed by a QPAM, they believe it is unlikely that participant-directed, defined contribution Plans or small Plans would incur the expense of a QPAM for the purchase and continued holding of the Debt Securities. The Applicants also believe that the additional cost of a QPAM for a small Plan with a small investment would not be cost-effective. The Applicants further explain that this cost would be uneconomical here because the QPAM would be required to continue its services for the entire period during which the Debt Securities are held by the Plan since the potential prohibited transaction is not just a sale or exchange under section 406(a)(1)(A) of the Act, but is also an extension of credit under section 406(a)(1)(B) of the Act. Accordingly, the Applicants state that the absence of a QPAM would preclude small Plans from being able to purchase the Debt Securities without creating the risk of a prohibited transaction.

8. The Applicants propose to continue offering the Debt Securities to non-Plan investors and maintain that these investors will continue to constitute a substantial market for such securities. However, for each Plan investor, the Applicants represent that the terms of the Plan's investment in the Debt Securities will be at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's-length transaction at the time the Debt Securities are acquired by the Plan. Additionally, the Applicants represent that no Plan will pay the Applicants any fees or commissions in connection with transactions involving the Debt Securities, except for the mark-up for a principal transaction permitted under PTCE 75–1.

In addition to the aforementioned requirements, the Applicants represent that a Plan's investment in the Debt Securities will be restricted to those Plans for which the Applicants have no discretionary authority and do not provide investment advice with respect to the investment in the Debt Securities. In this regard, the decision to invest in the Debt Securities will be made by an Independent Plan Fiduciary or a Plan Participant, which is independent of the Applicants. Moreover, the Applicants represent that the Prospectus for each of the Debt Securities that are offered to the Plans will contain a recommendation that no more than 15 percent of a Plan's assets should be invested in the Debt Securities at the time such security is acquired by a Plan.[18]

9. The Debt Securities will be rated in one of the three highest generic rating categories by a nationally-recognized rating firm at the time of acquisition by a Plan. There will be no triggering events or early amortization events if the Applicants' credit rating drops below a certain level established by a rating agency. Throughout the term of any of the Debt Securities, the Plans will be able to access the latest bid and asked price quotations for all of the Applicants' Debt Securities by calling a broker or any electronic service with a recognized price quotation delivery system. If a Plan wishes to terminate any Debt Securities investment prior to maturity, such investor may do so by selling the Debt Security on the open market at the prevailing market price. However, the Issuer may not unilaterally terminate the Debt Securities prior to maturity unless the

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[14] In ERISA Advisory Opinion 88–09A (April 15, 1988), a bank that sponsored self-directed master and prototype IRAs requested an opinion from the Department as to whether purchases of stock issued by the parent corporation of the bank directly from such parent by the self-directed IRAs would violate section 4975 of the Code.

Section 4975 of the Code prohibits, in part, the sale or exchange of property between a plan and a disqualified person (4975(c)(1)(A)) and the use by or for the benefit of a disqualified person of the income or assets of a plan (4975(c)(1)(D)). Section 4975(e)(2) of the Code defines the term "disqualified person" to include a plan fiduciary and a person providing services to a plan.

ERISA Advisory Opinion 88–09A concluded that, although the bank is a disqualified person with respect to the IRAs by reason of the provision of services, the corporate parent of the bank is not a disqualified person with respect to the IRAs solely by reason of its ownership of the bank. In this regard, interested persons should contrast section 3(14)(H) of the Act with section 4975(e)(2)(H) of the Code. The question of whether the corporate parent is a disqualified person under any other provision of section 4975(e)(2) of the Code would require an examination of the particular facts and circumstances. The Advisory Opinion further concluded that, to the extent that the corporate parent is not a disqualified person with respect to the IRAs, purchases of stock from the parent by the bank on behalf of the IRAs, at the direction of the IRA participant, would not involve transactions described in section 4975(c)(1)(A) of the Code. However, while the corporate parent of such bank may not be a disqualified person with respect to the IRAs, purchases of parent stock by the IRAs would raise issues under section 4975(c)(1)(D) of the Code if a transaction was part of a broader overall agreement, arrangement or understanding designed to benefit disqualified persons.

[15] The Department is providing no opinion herein as to whether any principal transaction involving Debt Securities would be covered by PTCE 75–1, or whether any particular mark-up by a broker-dealer for such transaction would be permissible under Part II of PTCE 75–1.

[16] PTCE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an in-house asset manager (the INHAM). An INHAM is an entity which is generally a subsidiary of an employer sponsoring the plan. It is also a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

[17] PTCE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a qualified professional asset manager (the QPAM), provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under the Act.

[18] In this regard, the Applicants propose to include substantially the following statement in the Prospectus for each of the Debt Securities, under a heading entitled "Employer-Sponsored Plan Considerations":

These [Debt Securities] Securities are being sold to Plans pursuant to an exemption issued by the Department of Labor. In accordance with the terms of that exemption, the Issuer is required to inform such Plans that no more than 15 percent of plan (or individual participant) assets, at the time of acquisition, should be invested in the Debt Securities. Please note, however, that it is the responsibility of the person making the investment decision to determine whether the purchase is a prudent investment for the plan (or participant-directed account).

Debt Securities are callable at a specific price which will be disclosed in the Prospectus. Assuming the Debt Securities are callable, the Applicants represent that there will be no loss of principal.

10. The rate of return for the Debt Securities may be fixed or variable. The prospectus or prospectus supplement covering the Debt Securities would set forth the annual interest rate for fixed rate Securities, and, for variable rate Securities, the formula to be applied to determine the interest payable at maturity. The formula will include identification of the specified Index for the Debt Securities. Such Index may be either (a) created and maintained by an entity that is unrelated to the Applicants or (b) created by the Applicants, but maintained by an unrelated entity.

(a) *Index Created and Maintained by an Entity Unrelated to the Applicants.* This Index, which will be created by an entity that is unrelated to the Applicants, will consist of a standardized and generally-accepted index of securities, such as the Nikkei 225 Index Tokyo Stock Exchange or the Standard & Poor's 500 Index. In addition, this Index will be maintained by such unrelated entity. In other words, all calculations relating to the securities in the Index, as well as the rate of return of the Index, will be made by an entity other than the Applicants.

(b) *Index Created by the Applicants, but Maintained by an Unrelated Entity.* This Index will be created by the Applicants. However, it must be maintained by an entity that is unrelated to the Applicants, such as the stock exchange on which the Debt Security is listed. In addition, the Index will consist either of standardized and generally-accepted Indexes or it will be an Index comprised of publicly-traded securities that are not issued by the Applicants, are designated in advance and listed in the Prospectus for the Debt Securities. Under either circumstance, the Applicants will not be permitted to make any modifications to the composition of the Index, including the methodology comprising the rate of return, unilaterally.

Further, the Index will meet the requirements for an Index in accordance with Rule 19b–4 of the 1934 Securities Act, which imposes regulatory standards on the entity maintaining the Index. Under Rule 19b–4, a self-regulatory organization, such as a securities exchange, is required to adopt trading rules, procedures and listing standards for the product classes relating to any security that the exchange proposes to list. In addition, the self-regulatory organization must maintain a surveillance program for a class of securities. If the SEC has not approved the self-regulatory organization's rules, procedures and standards, the self-regulatory organization must make a filing with the SEC prior to listing the security. According to the Applicants, this procedure provides adequate safeguards so that any Debt Securities that are created by the Applicants will meet the listing and trading standards approved by the self-regulatory organization.

Finally, the Index Value of the Index will be publicly-disseminated through an independent pricing service, such as Reuters or Bloomberg, or through a national securities exchange.

11. Price quotations with respect to the Debt Securities will be available on a daily basis from market reporting services, such as Bloomberg or Reuters, and the daily financial press, such as The Wall Street Journal. In the event the Debt Securities are delisted, the Issuer(s) will apply for trading through the NASDAQ, which requires that there be independent market-makers establishing a market for the securities in addition to the Issuer(s). In the event there are no independent market-makers, the Applicants represent that the exemption will no longer be considered effective.

12. The terms of each of the Debt Securities will be set forth with specificity. Therefore, in addition to the description of the formula for computing the rate of return, the Prospectus will include, but will not be limited to, the following information:

- A statement to the effect that the return calculated for the Debt Securities will be denominated in U.S. dollars;
- The specified Index or Indexes on which the rate of return on the Debt Securities is based;
- A numerical example, designed to be understood by the average investor, which explains the calculation of the return on the Debt Securities at maturity and reflects, among other things, (i) a hypothetical initial value and closing value of the applicable Index, and (ii) the effect of any adjustment factor on the percentage change in the applicable Index;
- The date on which the Debt Securities will be issued;
- The date on which the Debt Securities will mature and the conditions of such maturity;
- The initial date on which the value of the Index is calculated;
- Any adjustment factor or other numerical methodology that would affect the rate of return, if applicable;
- The ending date on which interest will be determined, calculated and paid;
- Information relating to the calculation of payments of principal and interest, including a representation to the effect that, at maturity, the beneficial owner of the Debt Securities will be entitled to receive the entire principal amount, plus an amount derived directly from the growth in the Index (but in no event less than zero);
- All details regarding the methodology for measuring performance;
- The terms under which the Debt Securities may be redeemed;
- The exchange or market where the Debt Securities are traded or maintained; and
- Copies of the proposed and final exemptions relating to the exemptive relief provided herein, upon request.

Aside from the Prospectus, the Applicants do not contemplate making any ongoing communications to the investors in the Debt Securities except to the extent required under applicable securities laws.

13. With respect to variable rate Debt Securities, the Applicants represent that the interest rate will be objectively determined. Where any of the Applicants acts as "Calculation Agent" for determining applicable rates of return, such calculation will be made using a formula fully disclosed in the prospectus or prospectus supplement relating to the Debt Security. Following the issuance of such Debt Security, the Applicants will retain no authority to affect the determination of such interest rate absent a Market Disruption Event. The determination that a Market Disruption Event may have occurred can have the effect of eliminating the affected trading day from calculation of the value of the underlying Index. The Calculation Agent is responsible for determining whether such Event has, in fact, occurred. Where the variable rate of a Debt Security is tied to a basket of equity securities, for example, a "Market Disruption Event" is typically defined as any of the following events, with certain exceptions: [19]

(a) the suspension or material limitation of trading in 20% or more of the underlying stocks which then comprise the Index, in each case, for more than two hours of trading or during the one-half hour period preceding the close of trading on the NYSE or any other applicable organized U.S. exchange. For purposes of this definition, limitations on trading during

[19] For purposes of determining whether a Market Disruption Event has occurred, a limitation on the hours in a trading day and/or number of days of trading will not constitute a Market Disruption Event if it results from an announced change in the regular business hours of the relevant exchange.

significant market fluctuations imposed pursuant to NYSE Rule 80B (or any applicable successor or similar rule or regulation promulgated by any self-regulatory organization or the SEC) shall be considered "material."

(b) the suspension or material limitation, in each case, for more than two hours of trading or during the one-half hour period preceding the close of trading (whether by reason of movements in price otherwise exceeding levels permitted by the relevant exchange or otherwise) in (A) futures contracts related to the Index which are traded on the Chicago Mercantile Exchange or any other major U.S. exchange, or (B) options contracts related to the Index which are traded on any major U.S. exchange.

(c) the unavailability, through a recognized system of public dissemination of transaction information, for more than two hours of trading or during the one-half hour period preceding the close of trading, of accurate price, volume or related information in respect of 20% or more of the underlying stocks which then comprise the Index or in respect of futures contracts related to the Index, options on such futures contracts or options contracts related to the Index, in each case traded on any major U.S. exchange.

14. The Applicants represent that the principal amount of the Debt Securities that are the subject of this exemption, if granted, will be protected regardless of the performance of the applicable Index. Although the return on a Debt Security may go up or down in the same direction as the performance of the applicable Index, the interest rate floor is set at zero. Thus, even where the value of the applicable Index decreases, there will be no invasion of principal if the Debt Securities are held until maturity.[20] However, if a Plan must sell the Debt Securities on the open market prior to their maturity, the market price will reflect the market's perception of the potential yield on such securities based on the current yield and interest rates for other debt securities of the same duration. This market price may result in a loss of principal value of the investment in the Debt Securities in the same fashion as would occur for other debt securities.

15. The Applicants represent that they will exercise no discretion with respect to the Indexes. Further, the Applicants represent that they will not trade in any way intended to affect the value of the Debt Securities through holding or trading in the securities which comprise these Indexes. The securities of the Applicants may comprise part of the Index (e.g., Morgan Chase's common stock is included in the S&P 500 Index, which is one of the Indexes that may be used in the Applicants' variable rate Debt Securities). In addition, the Applicants may reserve the right to purchase or sell positions in the Index, or in all or certain of the assets by reference to which the Index is calculated (Underlying Assets), or derivatives relating to the Index. The Applicants do not believe, however, that their hedging activity will have a material impact on the value of the Index, the Underlying Assets, or any derivative or synthetic instrument relating to the Index. The Applicants will maintain written records of all of the Debt Securities transactions for a period of six years.

16. The Applicants represent that the Debt Securities may be included among assets acquired by a Plan to comprise the underlying portfolio of a "synthetic" guaranteed investment contract (Synthetic GIC), whereby the Plan's beneficial interest in one or more debt instruments is combined with a guarantee of future value. In this regard, the Applicants represent that they will not be the issuer, guarantor, or "wrapper" provider in connection with a Synthetic GIC. The Applicants represent that they are not requesting any relief for extensions of credit to such Plans and the Plan Participants, other than extensions of credit resulting from such Plan's holding of the Debt Securities. Accordingly, the Applicants are not requesting specific exemptive relief with respect to any additional prohibited transactions that may relate to any Synthetic GICs.

17. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) The Debt Securities will be made available by the Applicants in the ordinary course of their business to customers which are not Plans.

(b) The Applicants will not have any discretionary authority or control, or provide any "investment advice," within the meaning of 29 CFR 2510.3–21(c), with respect to the assets of Plans which are invested in the Debt Securities.

(c) The Plans will pay no fees or commissions to the Applicants in connection with the transactions covered by the requested exemption, other than the mark-up for a principal transaction permissible under PTCE 75–1.

(d) The decision to invest in the Debt Securities will be made by an Independent Plan Fiduciary or a Plan Participant, which is independent of the Applicants.

(e) In connection with a Plan's acquisition of any of the Debt Securities, the Applicants will disclose to the Independent Plan Fiduciary, or, if applicable, the Plan Participant, in the Prospectus, all of the material terms and conditions concerning the Debt Securities.

(f) A Plan will acquire the Debt Securities on terms that are at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction.

(g) The Debt Securities will be rated in one of the three highest generic rating categories by at least one nationally-recognized statistical rating service at the time of such security's acquisition by the Plan.

(h) The rate of return for the Debt Securities will be objectively determined and the Applicants will retain no authority to affect the determination of such return, other than in connection with a Market Disruption Event that is described in the Prospectus for the Debt Securities.

(i) The Index will be: (1) Created and maintained by an entity that is unrelated to the Applicants and consist of a standardized and generally-accepted Index; or (2) created by the Applicants, but maintained by an entity that is unrelated to the Applicants, and (i) will consist either of standardized and generally-accepted Indexes or will be an Index comprised of publicly-

[20] The Applicants have provided the following example to illustrate this principle by describing the return at maturity on each $10 principal investment in the Debt Securities that are the subject of this proposed exemption:

- Where the value of the applicable Index increases by 50 percent, the Plan is entitled to receive $15 at maturity ($10 principal plus $5 interest) because the rate of return moves in the same direction as the growth in the applicable Index;
- Where the value of the applicable Index remains unchanged during the applicable period, the Plan is entitled to receive $10 at maturity ($10 principal plus $0 interest) because the rate of return moves in the same direction as the growth in the applicable Index; and
- Where the value of the applicable Index decrease by 50 percent, the Plan is entitled to receive $10 at maturity ($10 principal and $0 interest) because the rate of return moves in the same direction as the growth in the applicable Index but in no event drops below zero.

While the foregoing examples are simplistic, it should be noted that for some of the Debt Securities, such as those tied to the Standard & Poor's 500 Index, the interest payments shown above may be reduced on a daily basis by an adjustment factor (the Adjustment Factor), equal to a stated percent per year. On the maturity date of the Debt Securities, the annual application of the Adjustment Factor will reduce the Plan investor's overall interest payments. This information will be disclosed prominently in the Prospectus.

traded securities that are not issued by the Applicants, are designated in advance, and listed in the Prospectus for the Debt Securities,(ii) will meet the requirements for an Index as set forth in SEC Rule 19b–4, and (iii) the Index Value for such Index will be publicly-disseminated through an independent pricing service or a national securities exchange.

Notice to Interested Persons

The Applicants represent that because those potentially interested Plans proposing to engage in the covered transactions cannot all be identified, the only practical means of notifying Independent Plan Fiduciaries or Plan Participants of such affected Plans is by publication of the proposed exemption in the **Federal Register**. Therefore, any comments from interested persons must be received by the Department no later than 30 days from the publication of this notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Wagner, Doxey and Company Money Purchase Plan (the Plan) Located in San Francisco, California

[Application No. D–11003]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain improved real property (the Property) by the individual account of Warren L. Wagner (the Account) in the Plan, to Mr. Wagner, who is a disqualified person with respect to the Plan,[21] provided that the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) the Account pays no commissions nor other expenses relating to the sale; (c) the Account receives an amount that is the greater of $750,000, or the fair market value of the Property as of the date of the sale, as determined by a qualified, independent appraiser; (d) within 30 days of publication in the **Federal Register** of the notice granting this proposed exemption, Mr. Wagner reimburses the Account for the fair market rental value of the Property with respect to his past and present use of such Property, including a reasonable rate of interest for the period from the date such amounts were due to the Account to the date of payment; and (e) within 30 days of publication in the **Federal Register** of the notice granting this proposed exemption, Mr. Wagner files Form 5330 with the Internal Revenue Service (the Service) and pays all applicable excise taxes due by reason of the above prohibited transactions.

Summary of Facts and Representations

1. The Plan, which is a defined contribution money purchase pension plan sponsored by Wagner, Doxey and Company (the Company), provides for mandatory employer contributions only. The Company is a partnership that originally was a registered broker-dealer in the business of trading government securities. However, in November 1999, the Company ceased its broker-dealer activities, and Mr. Wagner and his partner Robert J. Doxey, who are the only Plan participants, limited their activities to managing their own investments. Mr. Wagner is a trustee of the Plan. The Plan provides for individually directed accounts. As of December 31, 2000, the fair market value of all the assets of the Plan was $1,966,977. As of that date, Mr. Wagner's Account had assets equal to $1,062,939.03.

2. The Property consists of a three-bedroom condominium located at 30 West Lake Blvd., #112, Tahoe City, California. It is in a suburban condominium development known as Tahoe Tavern. The Property has 1,552 square feet. The applicant represents that the Property is not adjacent to, nor close to, any other real property owned by Mr. Wagner.

3. The Property was acquired by the Account on June 22, 1998 from McClain Johnston and Annabelle D. Johnston, who are unrelated parties, for investment purposes. The Account paid cash in the amount of $377,230.72 (including fees and commissions) for the Property. The applicant represents that all expenses relating to the Property since its acquisition have been paid by the Account, including taxes, insurance, association, and property management fees, totalling $74,056.40. The Property has also been rented out to unrelated parties for vacations through the property management services of Tahoe Tavern and has produced income totalling $28,980.00 for the Account.

4. The applicant states that Mr. Wagner made personal use of the Property in 1998, 1999, and 2000, and that he currently occupies the Property.[22] On June 15, 2001, Mr. Wagner made a lump sum payment in the amount of $46,790.00 to the Account for the fair market rental value of the Property with respect to his past use of such Property, through June, 2001. This amount was determined based on the rental value of similar condominiums in Tahoe Tavern during the relevant time periods, provided by the property manager. Assuming that rent was to be paid to the Account in advance on a quarterly basis, Mr. Wagner will pay an additional $3345.69 in interest, based on the average Federal Funds Rate, for the period from the date rent was due to the date of payment, i.e., June 15, 2001. Further, concurrently with filing an exemption application with the Department, Mr. Wagner also filed Form 5330 with the Service for Plan years 1998, 1999, and 2000 and paid all applicable excise taxes that were due, a total of $5,404.50, by reason of the past prohibited transactions. Finally, within 30 days of publication in the **Federal Register** of the notice granting this proposed exemption, Mr. Wagner will reimburse the Account, with interest, using the same methodology described above, with respect to his present use of the Property until the date of the proposed sale, as well as filing Form 5330 with the Service and paying any additional excise taxes that are due for Plan year 2001.

5. The Property has been appraised by Ossi Korkeila of Korkeila & Associates, located in Truckee, California, a qualified, independent appraiser certified in the State of California. Relying on the market data approach, Mr. Korkeila concluded that the fair market value of the Property was approximately $750,000, as of

[21] Because Warren L. Wagner and Robert J. Doxey, who are partners, are the only participants in the Plan, the Plan is not within the jurisdiction of Title I of the Act, pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

[22] Mr. Wagner used the Property during the following periods and paid the following rental amounts.

1998: 9/27 to 9/29—three days @ $160.00 per day = $480.00; 10/2 to 10/4—three days @ $160.00 per day = $480.00; 11/5 to 11/7—three days @ $160.00 per day = $480.00; Total; $1440.00 (as corrected upon recomputation).

1999: 5/14 to 5/16—three days @ $185.00 per day = $555.00; 5/21 to 5/23—three days @ $185.00 per day = $555.00; 5/27 to 5/28—two days @ $185.00 per day = $370; 6/12 to 6/26—two weeks @ $2065.00 per week = $4130.00; 8/29 to 12/31—four months and three days @ $7380; Total: $12,990.00.

2000: 1/1 to 12/31 @ $1800.00 per month; Total: $21,600.00.

2001: Mr. Wagner currently uses the Property and has paid rent for the period from 1/1 to 6/30 @ $1800.00 per month = $10,800.00.

September 26, 2000. Mr. Korkeila examined three recent sales of comparable properties in the local real estate area in making his determination.

6. Mr. Wagner proposes to purchase the Property for cash from his own Account for an amount that is the greater of $750,000, or the fair market value of the Property as of the date of the sale, based on an updated independent appraisal. The Account will pay no commissions nor other expenses relating to the sale.

The applicant represents that the Property was originally purchased by the Account solely for investment purposes, in light of the Property's significant appreciation and income-generating potential. However, due to an abrupt change in both his career plans and personal life, namely, the cessation of his broker-dealer securities business and the need to move from San Francisco to Tahoe City for family reasons, Mr. Wagner now desires to purchase the Property himself for use as a personal residence in retirement.

In addition, the applicant represents that the exemption will be in the best interests of the Account because it will enable the Account to quickly sell the Property without paying any brokerage commissions or other transaction costs and to reinvest the sale proceeds in other investments that will achieve greater diversification.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 4975(c)(2) of the Code for the following reasons: (a) The sale will be a one-time transaction for cash; (b) the Account will pay no commissions nor other expenses relating to the sale; (c) the Account will receive an amount that is the greater of $750,000, or the fair market value of the Property as of the date of the sale, as determined by a qualified, independent appraiser; (d) within 30 days of publication in the **Federal Register** of the notice granting this proposed exemption, Mr. Wagner will reimburse the Account for the fair market rental value of the Property with respect to his past and present use of such Property, including a reasonable rate of interest for the period from the date such amounts were due to the Account to the date of payment; (e) within 30 days of publication in the **Federal Register** of the notice granting this proposed exemption, Mr. Wagner will file Form 5330 with the Service and pay all applicable excise taxes due by reason of the above prohibited transactions; and (f) the Account will be divested of an illiquid asset and achieve greater diversification of assets.

Notice to Interested Persons

Because the only Plan assets involved in the proposed transaction are those in Mr. Wagner's Account, and he is the only participant to be affected, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing with respect to the proposed exemption are due within 30 days of the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 5th day of July, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 01–17146 Filed 7–9–01; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–312]

Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of 10 CFR 50.54 and 10 CFR 73.55 and an associated amendment to Facility Operating License No. DPR–54, issued to the Sacramento Municipal Utility District (the licensee), for the Rancho Seco Nuclear Generating Station, a permanently shutdown nuclear reactor facility located in Sacramento County, California.

Environmental Assessment

Identification of the Proposed Action

The proposed action would eliminate the security plan requirements from the 10 CFR part 50 licensed site after the spent nuclear fuel has been transferred to the 10 CFR part 72 licensed Independent Spent Fuel Storage Installation (ISFSI).

The proposed action is in accordance with the licensee's application for a license amendment and exemption dated February 20, 2001.

The Need for the Proposed Action

Sections 50.54 and 73.55 of Title 10 of the Code of Federal Regulations require that licensees establish and maintain physical protection and security for activities involving nuclear fuel within the 10 CFR part 50 licensed area of a facility. The proposed action is needed because there will no longer be any nuclear fuel in the 10 CFR part 50 licensed facility to protect against radiological sabotage or diversion after the transfer of the spent nuclear fuel to the Rancho Seco ISFSI. Subpart H of 10 CFR part 72 establishes physical protection and relies on 10 CFR 73.51 to

define the requirements for physical protection of spent nuclear fuel stored in an ISFSI under a specific license issued pursuant to 10 CFR part 72. The Rancho Seco ISFSI, which is located adjacent to the 10 CFR part 50 licensed site, has a separate NRC approved security plan to protect the spent nuclear fuel stored there from radiological sabotage and diversion as promulgated under 10 CFR part 72, subpart H. The proposed action will allow the licensee to conserve resources for decommissioning activities.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that exempting the facility from security requirements will not have any adverse environmental impacts. There will be minor savings of energy and vehicular use associated with the security force no longer performing patrols, checks, and normal security functions.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Rancho Seco Generating Station.

Agencies and Persons Consulted

In accordance with its stated policy, on June 18, 2001, the staff consulted with the California State official, Frank Hauck of the Radiological Preparedness Unit, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 20, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 2nd day of July 2001.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Chief, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–17037 Filed 7–9–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request; Review of a Reinstated Information Collection: OF–311

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for clearance of an information collection, voluntary commercial garnishment application form (OF–311). The application is intended to be completed by the creditors of Federal employees. The application will facilitate the processing of a wide variety of commercial garnishment orders issued by various State and local jurisdictions. The application will provide information about commercial garnishment orders and will facilitate the processing of commercial garnishments by Federal agencies in a uniform manner that otherwise would not be possible.

OPM anticipates that approximately 100 Forms OF–311 will be completed annually for OPM employees. OPM estimates that each form takes approximately 10 minutes to complete. The annual estimated burden is 17 hours, OPM anticipates, however, that many other Federal agencies will also be suggesting that creditors complete the Form OF–311.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have a practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, e-mail to mbtoomey@opm.gov, or by FAX at 202–418–3251. Please include your mailing address with your request.

DATES: Comments on this proposal should be received on or before September 10, 2001.

ADDRESSES: Send or deliver comments to:James S. Green, Associate General Counsel, Office of General Counsel, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7553, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jill Gerstenfield, Attorney, Office of the General Counsel, (202) 606–1700.

U.S. Office of Personnel Management.

Steven R. Cohen,

Acting Director.

[FR Doc. 01–17148 Filed 7–9–01; 8:45 am]

BILLING CODE 6325–48–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: OPM 1530

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. OPM 1530, Report of Medical Examination of Person Electing Survivor Benefit Under the Civil Service Retirement System, is used to collect sufficient information from the required medical examination regarding an annuitant's health. This information is used to determine whether the insurable interest survivor benefits election can be allowed.

Approximately 500 OPM Forms 1530 will be completed annually. We estimate it takes approximately 90 minutes to complete the form. The annual burden is 750 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before August 9, 2001.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415–3540, and Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Steven R. Cohen,

Acting Director.

[FR Doc. 01–17147 Filed 7–9–01; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 25–51

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 25–51, Civil Service Retirement System (CSRS) Survivor Annuitant Express Pay Application for Death Benefits, will be used by the Civil Service Retirement System solely to pay benefits to the widow(er) of an annuitant. This application is intended for use in immediately authorizing payments to an annuitant's widow or widower, based on the report of death, when our records show the decedent elected to provide benefits for the applicant.

Approximately 34,800 RI 25–51 forms are completed annually. We estimate it takes approximately 30 minutes to complete the form. The annual estimated burden is 17,400 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before August 9, 2001.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540, and Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Steven R. Cohen,

Acting Director.

[FR Doc. 01–17149 Filed 7–9–01; 8:45 am]

BILLING CODE 6325–50–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish period summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Report of Medicaid State Office on Beneficiary's Buy-In Status; OMB 3220–0185. Under Section 7(d) of the Railroad Retirement Act, the RRB administers the Medicare program for persons covered by the railroad retirement system. Under Section 1843 of the Social Security Act, states may enter into "buy-in agreements" with the Secretary of Health and Human Services for the purpose of enrolling certain groups of needy people under the Medicare medical insurance (Part B) program and paying the premiums for their insurance coverage. Generally, these individuals are categorically needy under Medicaid and meet the eligibility requirements for Medicare Part B. States can also include in their buy-in agreements, individuals who are eligible for medical assistance only. The RRB uses Form RL–380–F, Report to State Medicaid Office, to obtain information needed to determine if certain railroad beneficiaries are entitled to receive Supplementary Medical Insurance program coverage under a state buy-in agreement in states in which they reside. Completion of Form RL–380–F is voluntary. One response is received from each respondent.

Minor editorial changes are proposed to RRB Form RL–380–F. The completion time for Form RL–380–F is estimated at 10 minutes per response. The RRB estimates that approximately 600 responses are received annually.

Additional Information or Comments: To request more information or to obtain a copy of the information

collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 01–17216 Filed 7–9–01; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–28498]

Application and Opportunity for Hearing; Allied Waste North America, Inc.

July 2, 2001.

The Securities and Exchange Commission gives notice hereby that Allied Waste North America, Inc. has filed an application pursuant to section 304(d) of the Trust Indenture Act of 1939 requesting that the Commission exempt from the requirements of section 314(d) of the 1939 Act the 8⅞% Senior Notes due 2008 under an indenture dated December 23, 1998, and supplemented by an indenture dated January 30, 2001, between Allied Waste North America, Inc. and U.S. Bank Trust National Association. The 8⅞% Senior Notes due 2008 under the indenture will be issued as part of an exchange offer registered on Allied Waste North America's registration statement on Form S–4, File No. 333–61744. The exchange offer will be made to institutional purchasers of similar securities in unregistered transactions relying on Rule 144A of the Securities Act of 1933.

Section 304(d) of the 1939 Act, in part, authorizes the Commission to exempt conditionally or unconditionally any indenture from one or more provisions of the 1939 Act. The Commission may provide an exemption under section 304(d) if it finds that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the 1939 Act.

Section 314(d) requires the obligor to furnish to the indenture trustee certificates or opinions of fair value upon any release of collateral from the lien of the indenture. The application requests that the indenture be exempted from the provisions of section 314(d) because section 314(d) is not intended to apply to indentures that do not contain the provisions creating the security interest.

In its application, Allied Waste North America, Inc. alleges:

(1) The notes to be issued under the indenture are secured by agreements that are external to the indenture;

(2) Decisions regarding whether collateral is maintained or released are made by a party other than the indenture trustee;

(3) Neither the indenture trustee nor the holders of the indenture securities have any control over these decisions; and

(4) The collateral securing the indenture securities also secures other debt.

Allied Waste North America, Inc., has waived notice of a hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter. Any interested persons should look to the application for a more detailed statement of the matters of fact and law. The application is on file in the Commission's Public Reference Section, File Number 22–28498, 450 Fifth Street, NW., Washington, DC 20549.

The Commission also gives notice that any interested persons may request in writing that a hearing be held on this matter. Interested persons must submit those request to the Commission no later than August 7, 2001. Interested persons must include the following in their request for a hearing on this matter:

- The nature of that person's interest;
- The reasons for the request; and
- The issues of law or fact raised by the application that the interested person desires to refute or request a hearing on.

The interested person should address this request for a hearing to: Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. At any time after August 7, 2001, the Commission may issue an order granting the application, unless the Commission orders a hearing.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17132 Filed 7–9–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44506; File No. SR–NASD–2001–40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Non-Liability SelectNet Messages in the Nasdaq National Market System

July 3, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"),[3] filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(5) thereunder.[5] Nasdaq has designated the proposal as a change to an existing order entry or trading system of a self-regulatory organization that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. This designation renders the proposed rule change, as amended, immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 4720(c), "Prohibition Regarding the Entry of Certain Preferenced Orders to Nasdaq National Market Execution System Market Makers," to allow

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On June 21, 2001, Nasdaq amended its proposal to indicate that the NASD, through its subsidiary, Nasdaq, filed the proposed rule change. *See* letter from Thomas P. Moran, Associate General Counsel, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated June 20, 2001 ("Amendment No. 1").

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(5).

members to send a SelectNet preferenced (*i.e.*, directed) order to a Nasdaq National Market Execution System ("NNMS" or "SuperSOES")[6] market maker if the order is designated as a non-liability order that is entered at a price that is inferior to the displayed quote to which the preferenced order is directed. Nasdaq plans to implement the proposed change upon the commencement of SuperSOES trading, which currently is scheduled to begin on July 9, 2001. The text of the proposed rule change appears below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4720. SelectNet Service

(a) No Change

(b) No Change

(c) Prohibition Regarding the Entry of Certain Preferenced Orders to Nasdaq National Market Execution System Market Makers

No member may direct a SelectNet preferenced order to a Nasdaq National Market Execution System ("NNMS") market maker (as defined in NASD Rule 4701) including that market maker's Agency Quote (as defined in NASD rule 4613) unless that order is designated as:

(i) *a non-liability order that is entered as* an "All-or-None" order ("AON") and is at least one normal unit of trading (i.e., 100 shares) in excess of the displayed quote to which the referenced order is directed; or

(ii) *a non-liability order that is entered* as a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of the displayed quote to which the preferenced order is directed[.] *; or*

(iii) *a non-liability order that is entered at a price that is inferior to the displayed quote to which the preferenced order is directed.*

The prohibitions of this paragraph shall not apply to preferenced orders sent by a UTP Specialist to an NNMS market maker or to preferenced orders sent by an NNMS market maker to a UTP Specialist. For purposes of this rule a "UTP Specialist" shall mean a broker/dealer registered as a specialist in Nasdaq securities pursuant to the rules of an exchange that is a signatory to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq/NMS/UTP Plan").

* * * * *

[6] The Commission approved the NNMS, a new platform for trading Nasdaq National Market ("NNM") securities, on January 14, 2000. *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3897 (January 25, 2000) (order approving File No. SR–NASD–99–11) ("SuperSOES Order").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, NASD Rule 4720(c) prohibits the entry of preferenced SelectNet orders to NNMS market makers unless those orders are designated by the sending party as either an "All-or-None" or "Minimum Acceptable Quantity" order that is at least one normal unit of trading (*i.e.*, 100 shares) in excess of the displayed quote to which the preferenced order is directed. In response to input from market participants that desire greater flexibility in sending non-liability SelectNet orders in a SuperSOES environment, Nasdaq has determined to amend NASD Rule 4720(c) to provide an additional alternative method for sending non-liability messages to NNMS market makers. Specifically, Nasdaq proposes to adopt NASD Rule 4720(c)(iii), which will allow NNMS participants to enter preferenced SelectNet orders to NNMS market makers if the preferenced orders contain prices that are inferior to the quoted bids and/or offers to which they are directed. For example, if a SuperSOES market maker is quoting 20.00 bid and 20.03 offer, the proposed rule change would allow a market participant to preference that market maker with either an order to sell at 20.01 or more, or an order to buy at 20.02 or less. Because these orders are not priced at levels that would obligate the receiving market maker to execute them under current firm quote standards, the NNMS market maker could choose to either ignore the orders or negotiate with the sending party to reach an agreement that would allow a trade to take place.

Nasdaq notes that the proposed alternative method of sending non-liability SelectNet messages is consistent with the Nasdaq rules approved previously by the Commission[7] that generally limit SelectNet to a negotiation function when accessing market maker quotes.[8] Nasdaq adopted the limitation to reduce potential dual liability for market makers who under Nasdaq's current system may be forced to provide share amounts in excess of their displayed quote when they contemporaneously receive a liability SelectNet message and an execution through Nasdaq's Small Order Execution System.

Based on the above, Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[9] in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Nasdaq represents that the proposed rule change would effect a change in an existing order entry or trading system that: (1) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any

[7] *See* SuperSOES Order, *Supra* note 6.

[8] Market makers and electronic communication networks ("ECNs") will continue to be allowed to send liability SelectNet messages at the displayed price and size of the quotes of those ECNs that do not agree to become full participants in NNMS and provide automatic executions for orders received from NNMS participants. *See* SuperSOES Order, *supra* note 6. In addition, unlisted trading privilege ("UTP") exchange specialists will continue to send SelectNet preferenced liability orders to NNMS market makers and NNMS market makers will continue to send SelectNet preferenced liability orders to UTP exchange specialists. *See* NASD Rule 4720(c).

[9] 15 U.S.C. 78o–3(b)(6).

significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. Accordingly, the proposal, as amended, has become effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(5) thereunder. At any time within 60 days of the filing of a such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–40 and should be submitted by July 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17133 Filed 7–9–01; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44504; File No. SR–NASD–2001–35]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposal Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to the Elimination of the Interval Delay Between Executions in the Nasdaq National Market Execution System

July 2, 2001.

On May 10, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 4710, "Participant Obligations in NNMS," to: (i) Eliminate the interval delay between executions against the same market maker at the same price level in the Nasdaq National Market Execution System ("NNMS" or "SuperSOES");[3] and (ii) decrement a market maker's displayed quotation when the sum of the number of shares executed against a displayed quotation as a result of odd lot orders and the portion of mixed lot orders in excess of a round lot equals one normal unit of trading. On May 24, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on June 5, 2001.[5] No comments were received regarding the proposal, as amended.

On June 5, 2001, Nasdaq filed Amendment No. 2 to the proposed rule change.[6] This order approves the proposed rule change, as amended, on an accelerated basis.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[7] and, in particular, the requirements of section 15A of the Act[8] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal to eliminate the interval delay between executions against a market maker's quotation at the same price level for all transactions in SuperSOES is consistent with section 15A(b)(6) of the Act[9] because it may minimize the risk of orders queuing within SuperSOES, thereby helping to ensure the efficient and orderly operation of SuperSOES.[10] In addition, the Commission believes that the prompt execution of orders in SuperSOES should facilitate the price discovery process, to the benefit of all market participants. The Commission expects Nasdaq to carefully monitor the effect on the Nasdaq market and on market participants of eliminating the interval delay between executions in SuperSOES.

The Commission also finds that the proposed change in the decrementation feature of SuperSOES will facilitate the maintenance of a fair and orderly market by providing more accurate information about the size of market maker's displayed quotations, and by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved the NNMS, a new platform for trading Nasdaq National Market ("NNM") securities, on January 14, 2000. *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3897 (January 25, 2000) (order approving File No. SR–NASD–99–11). Nasdaq plans to implement SuperSOES on July 9, 2001.

[4] *See* Letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated May 22, 2001 ("Amendment No. 1"). In Amendment No. 1, Nasdaq revised the text of NASD Rule 4710(b)(1) to replace a reference to an "NNMS security" with a reference to "NNM security."

[5] *See* Securities Exchange Act Release No. 44365 (May 29, 2001), 66 FR 30252.

[6] *See* Letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated June 4, 2001 ("Amendment No. 2"). In Amendment No. 2, the Nasdaq added "the sum of" to the proposed rule text of NASD Rule 4710(b)(1)(C)(ii) to clarify the operation of the revised decrementation feature of SuperSOES. This is a technical amendment and is not subject to notice and comment.

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–3(b)(6).

[10] In response to market participants' concerns that significant order flow could potentially produce queuing within the system, Nasdaq previously filed proposals with the Commission that revised the interval delay parameter in SuperSOES to: (i) Reduce the interval delay between executions against a market maker's quotation in Nasdaq 100 Index securities from five seconds to two seconds; and (ii) eliminate the interval delay between executions against a market maker's quotation during the first day of trading of securities of initial public offerings and secondary offerings. *See* Securities Exchange Act Release Nos. 43720 (December 13, 2000), 65 FR 79909 (December 20, 2000) (notice of filing and immediate effectiveness of File No. SR–NASD–00–67); and 44142 (April 2, 2001), 66 FR 18331 (April 6, 2001) (order approving File No. SR–NASD–01–03). According to Nasdaq, market participants support the current proposal to eliminate the interval delay for all transactions in SuperSOES to further minimize the risk of queuing within the system.

helping market makers to manage their quotations.

Nasdaq seeks to implement the proposed changed with the planned implementation of SuperSOES on July 9, 2001. To provide market participants with adequate notice of the changes and to allow sufficient time for broker-dealers and service bureaus to modify their electronic systems to conform to the proposed changes, Nasdaq has requested that the Commission find good cause for approving the proposal, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

The Commission notes that the proposal and Amendment No. 1 were noticed for the full 21-day comment period and the Commission received no comments regarding the proposal, as amended. As discussed more fully above, the Commission believes that the proposed changes are designed to facilitate the efficient and orderly operation of the Nasdaq market. The Commission also believes that it is important to provide market participants with adequate time to modify their electronic systems to conform to the proposed changes. Accordingly, the Commission finds good cause pursuant to section 19(b)(2) of the Act [11] to approve the proposed rule change, as amended, on an accelerated basis, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NASD–2001–35), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17134 Filed 7–9–01; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

AGENCY: U.S. Small Business Administration.

ACTION: Notice of action subject to intergovernmental review.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 36 existing Small Business Development Centers (SBDCs) for refunding on January 1, 2002, subject to the availability of funds. Eleven states do not participate in the EO 12372 process, therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 120 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the address section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding on or before August 9, 2001 to the SBDC.

ADDRESSES:

Addresses of Relevant SBDC State Directors

Mr. Michael Finnerty, State Director, Salt Lake Community College, 1623 South State Street, Salt Lake City, UT 84115, (801) 957–3481.

Ms. Patricia Murphy, Acting State Director, California Trade & Comm. Agency, 801 K Street, Suite 1700, Sacramento, CA 95814, (916) 322–1502.

Mr. Malcolm Barnes, Executive Director, Howard University.

Dr. Bruce Whitaker, Director, American Samoa Community College, P.O. Box 2609, Pago Pago, American Samoa 96799, 011–684–699–9155.

Ms. Kelly Manning, State Director, Office of Business Development, 1625 Broadway, Suite 1710, Denver, CO 80202, (303) 892–3840.

Mr. Jerry Cartwright, State Director, University of West Florida, 2600 6th St., NW., Room 125, Washington, DC 20059, (202) 806–1550.

Mr. Hank Logan, State Director, University of Georgia, Chicopee Complex, Athens, GA 30602, (706) 542–6762.

Mr. Sam Males, State Director, University of Nevada/Reno, College of Business Administration, Room 411, Reno, NV 89557–0100, (775) 784–1717.

Ms. Debbie Bishop, State Director, Economic Development Council, One North Capitol, Suite 420, Indianapolis, IN 46204 and, 19 West Garden Street, Pensacola, FL 32501, (850) 595–6060.

Mr. Darryl Mleynek, State Director, University of Hawaii/Hilo, 200 West Kawili Street, Hilo, HI 96720, (808) 974–7515.

Mr. Mark Petrilli, State Director, Department of Commerce and, Community Affairs, 620 East Adams Street, Springfield, IL 62701, (217) 524–5856.

Ms. Mary Collins, State Director, University of New Hampshire, 108 McConnell Hall, Durham, NH 03824, (317) 264–2820 x17.

Mr. John Massaua, State Director, University of Southern Maine, 96 Falmouth Street, Portland, ME 04103 (207) 780–4420.

Mr. Scott Daugherty, State Director, University of North Carolina, 5 West Hargett Street, Suite 600, Raleigh, NC 27601–1348, (919) 715–7272.

Dr. Grady Pennington, State Director, SE Oklahoma State University, 517 West University, Durant, OK 74701, (580) 745–7577, (603) 862–4879.

Ms. Carol Lopucki, State Director, Small Business Development Center, Grand Valley State University, 401 West Fulton Avenue, Third Floor, Grand Rapids, MI 49504, (616) 336–6310.

Mr. Wally Kearns, State Director, University of North Dakota, P.O. Box 7308, Grand Forks, ND 58202, (701) 777–3700.

Ms. Erica Kauten, State Director, University of Wisconsin, 432 North Lake Street, Room 423, Madison, WI 53706, (608) 263–7794.

Mr. Greg Higgins, State Director, University of Pennsylvania, The Wharton School, 444 Vance Hall, Philadelphia, PA 19104, (215) 898–1219.

Mr. John Lenti, State Director, University of South Carolina, College of Business Administration, 1710 College Street, Columbia, SC 29208, (803) 777–4907.

Mr. Albert Laabs, State Director, Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 324, Nashville, TN 37217–2833, (615) 366–3931.

Mr. Robert Hamlin, State Director, Bryant College, 1150 Douglas Pike, Smithfield, RI 02917, (401) 232–6111.

Mr. Wade Druin, State Director, University of South Dakota, School of Business, 414 East Clark, Vermillion, SD 57069, (605) 677–5287.
Ms. Carolyn Clark, State Director, Washington State University, 601 West First Avenue, Spokane, WA 99202–3899, (509) 358–7765.
Dr. Anita Williams, Acting Director, University of Guam, P.O. Box 5061, UOG Station, Mangilao, GU 96923, (671) 735–2553.

FOR FURTHER INFORMATION CONTACT: Johnnie L. Albertson, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW, Suite 4600, Washington, D.C. 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with SBA, the general management and oversight of SBA, and a state plan initially approved by the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;
(b) Increase economic growth;
(c) Assist more small businesses; and
(d) Broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) locate service centers so that they are as accessible as possible to small businesses;
(b) open all service centers at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;
(c) develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and
(d) maintain lists of private consultants at each service center.

Dated: July 2, 2001.

Johnnie L. Albertson,

Associate Administrator for Small Business Development Centers.

[FR Doc. 01–17170 Filed 7–9–01; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP); Notice of the Results of the 2001 GSP Reviews and Designation of Georgia

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of GSP changes.

SUMMARY: This notice announces recent changes in the GSP program, including the disposition of the 2001 De Minimis Waiver and Redesignation Reviews, termination of GSP eligibility for products that exceeded the GSP competitive need limitations (CNLs). and the designation of Georgia as beneficiary developing country.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: The GSP program is provided for in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461–2465). Each year, the Trade Policy Staff Committee conducts a review to consider changes in the GSP program. In the 2001 De Minimis Waiver and Redesignation Reviews, the appraised import values during 2000 of each GSP-eligible article were reviewed to determine whether particular articles from particular GSP beneficiary developing countries exceeded the 2000 GSP CNLs.

The President's decisions concerning the GSP changes summarized in this notice are reflected in a proclamation issued on June 29, 2001. Unless otherwise specified, the changes in the GSP program summarized in this notice are effective with respect to goods entered on or after July 1, 2001.

The President granted waivers of the CNLs to India for several articles. These articles are listed in Annex I to this notice. The effective date of these waivers will be determined by the USTR.

The President redesignated certain countries' GSP eligibility for certain articles that had previously exceeded the applicable GSP CNLs, but which fell below the CNLs in 2000 ($95 million or 50 percent of total U.S. imports of the article). These countries and articles are listed in Annex II to this notice.

The President granted de minimis waivers to certain countries for certain articles that exceeded the 50 percent import share CNL, but for which the aggregate appraised value of the imports of that article was below the 2000 de minimis level of $15 million. These countries and articles are listed in Annex III to this notice.

The President terminated certain countries' GSP eligibility for certain articles that exceeded the GSP CNLs in 2000. These countries and articles are listed in Annex IV to this notice.

The President designated Georgia as beneficiary developing country.

Jon Rosenbaum,

Chairman, GSP Subcommittee, Trade Policy Staff Committee.

BILLING CODE 3190–01–M

ANNEX I: COMPETITIVE NEED LIMIT (CNL) WAIVERS GRANTED FOR GSP ITEMS AND 2000 TRADE

HTSUS	Partner	Imports	Share	Description
7113.19.25	India.....	33,226,340	47.2%	Gold mixed link necklaces and neck chains
7113.19.29	India.....	25,957,265	2.8%	Gold necklaces and neck chains (o/than of rope or mixed links)
7113.19.50	India.....	559,536,155	15.1%	Precious metal (o/than silver) articles of jewelry and parts ther
7418.19.10	India.....	7,777,771	50.4%	Copper, table, kitchen or other household articles and parts ther
9405.50.30	India.....	31,859,579	67.9%	Non-electrical lamps and lighting fixtures nesoi, of brass

ANNEX II: GSP ITEMS GRANTED REDESIGNATION AND 2000 TRADE

HTSUS	Partner	Imports	Share	Description
0708.90.15	India [1/]	24,573	21.6%	Lentils, fresh or chilled, shelled or unshelled
0713.90.60	India [1/]	25,073	15.3%	Dried leguminous vegetables nesi, shelled, if entered for consump
0713.90.80	India [1/]	65,786	27.3%	Dried leguminous vegetables nesi, shelled, if entered Sept. 1 thr
0802.31.00	India [1/]	0	0.0%	Walnuts, fresh or dried, in shell
0910.10.40	India [1/]	175,370	28.0%	Ginger, ground
1006.30.10	India [1/]	31,921	4.5%	Rice semi-milled or wholly milled, whether or not polished or gla
1403.90.40	India [1/]	1,093,773	45.4%	Piassava, couch-grass and other vegetable materials nesi, of a ki
1701.11.05	India [1/]	0	0.0%	Cane sugar, raw, in solid form, w/o added flavoring or coloring,
1701.91.05	India [1/]	0	0.0%	Cane/beet sugar & pure sucrose, refined, solid, w/added coloring
1806.10.65	India [1/]	0	0.0%	Cocoa powder, o/90% by dry wt of sugar, nesoi, subject to add US
2001.90.45	India [1/]	324,753	37.4%	Mangoes, prepared or preserved by vinegar or acetic acid
2101.20.32	India [1/]	0	0.0%	Preparations with a basis of extract, essences or concentrates or
2516.22.00	India [1/]	46,176	20.7%	Sandstone, merely cut into blocks or slabs of a rectangular (incl
2516.90.00	Rep. of South Africa..	3,172,105	40.1%	Porphyry, basalt and other monument. or build. stone (except gran
3920.63.20	India [1/]	0	0.0%	Nonadhesive plates, sheets, film, foil and strip, noncellular, no
3920.93.00	India [1/]	0	0.0%	Nonadhesive plates, sheets, film, foil and strip, noncellular, no
4104.39.20	India [1/]	18,862	1.2%	Buffalo leather, without hair on, parchment-dressed or prepared a
4104.39.50	India [1/]	0	0.0%	Upper & sole leather of bovine (ex. buffalo) or equine animals, p
4106.12.00	India [1/]	35,297	23.6%	Goat or kidskin leather, w/o hair on, not incl. chamois, patent,
4106.19.20	India [1/]	0	0.0%	Wet blues of goat or kidskin leather, without hair on, not incl.
4106.19.30	India [1/]	26,245	3.2%	Goat or kidskin leather, without hair on, not incl. chamois, pate
4106.20.30	India [1/]	263,696	10.8%	Goat or kidskin leather, w/o hair on, excluding leather of headin
5007.90.30	India [1/]	4,368,983	47.9%	Woven silk fabrics, containing 85 percent or more by weight of si
5209.51.30	India [1/]	70,754	22.6%	Printed plain weave certified hand-loomed fabrics of cotton, cont
5307.20.00	India [1/]	1,394,318	26.0%	Yarn of jute or other textile bast fibers (including flax, true h
5702.49.15	India [1/]	1,592,902	49.9%	Carpets and other textile floor coverings of pile construction, w
5904.91.00	India [1/]	0	0.0%	Floor coverings consisting of a coating applied on a textile back
6302.99.10	India [1/]	3,766	7.8%	Toilet and kitchen linen of textile materials nesoi, containing 8
6814.90.00	India [1/]	885,237	48.6%	Worked mica and articles of mica, nesoi, whether or not on a supp
7113.20.21	India [1/]	0	0.0%	Base metal clad w/gold rope necklaces and neck chains
7113.20.29	India [1/]	150,756	12.7%	Base metal clad w/gold necklaces and neck chains, nesoi
7904.00.00	Rep. of South Africa..	868,484	28.0%	Zinc, bars, rods, profiles and wire
8540.12.10	India [1/]	375,318	38.1%	Cathode-ray television picture tubes incl. video monitor, monochr
8606.30.00	India [1/]	0	0.0%	Railway or tramway self-discharging freight cars (o/than tank car

[1/] The implementation of the redesignation of India for eligibility under the GSP for this HTSUS is a date to be determined and announced by the United States Trade Representative (USTR) in the Federal Register.

ANNEX III: GSP COUNTRIES GRANTED A de MINIMIS WAIVER AND 2000 TRADE

HTSUS	Partner	Imports	Share	Description
0305.20.20	Russia	226,800	75.0%	Sturgeon roe, dried, smoked, salted or in brine
0410.00.00	Indonesia	4,895,199	52.7%	Edible products of animal origin, nesi
0712.90.70	Egypt	360,994	57.6%	Dried fennel, marjoram, savory and tarragon nesi, whole, cut, s
0802.50.20	Turkey	828,890	97.3%	Pistachios, fresh or dried, in shell
0802.50.40	Turkey	296,059	88.9%	Pistachios, fresh or dried, shelled
0813.30.00	Chile	4,881,255	52.5%	Apples, dried
0813.40.10	Thailand	1,309,050	97.8%	Papayas, dried
0904.20.76	India [1/]	5,853,232	51.9%	Fruits of the genus capsicum, ground, nesoi
1102.30.00	Thailand	2,670,409	68.7%	Rice flour
1301.90.40	Brazil	104,000	69.3%	Turpentine gum (oleoresinous exudate from living trees)
1604.15.00	Chile	7,088,679	51.8%	Prepared or preserved mackerel, whole or in pieces, but not min
1605.90.10	Thailand	4,211,543	57.8%	Boiled clams in immediate airtight containers, the contents of
1702.90.35	Brazil	1,546,825	55.7%	Invert molasses
1901.20.02	Turkey	3,942	100.0%	Mixes for bakers wares, o/25% butterfat, not retail, subject to
2002.90.40	Morocco	534,737	67.3%	Tomatoes in powder, prepared or preserved otherwise than by vin
2008.99.28	Turkey	550,800	60.6%	Figs, otherwise prepared or preserved, nesi
2008.99.35	Thailand	3,370,340	88.4%	Lychees and longans, otherwise prepared or preserved, nesi
2008.99.45	Philippines	65,922	55.9%	Papaya pulp, otherwise prepared or preserved, nesi
2103.90.74	Croatia	797,645	66.5%	Mixed condiments and mixed seasonings (described in add US note
2603.00.00	Philippines	5,380	51.7%	Copper ores and concentrate.
2811.29.50	Brazil	8,389,920	57.2%	Other inorganic oxygen compounds of nonmetals, nesoi
2819.10.00	Kazakhstan	9,178,773	67.1%	Chromium trioxide
2840.11.00	Turkey	668,048	93.2%	Anhydrous disodium tetraborate (refined borax)
2840.19.00	Turkey	183,849	98.8%	Disodium tetraborate (refined borax) except anhydrous
2841.61.00	Czech Republic	1,585,467	53.7%	Potassium permanganate
2841.90.20	Kazakhstan	2,080,522	70.7%	Ammonium perrhenate
2909.50.40	Indonesia	3,332,881	61.0%	Odoriferous or flavoring compounds of ether-phenols, ether-alco
2912.13.00	Czech Republic	2,500	100.0%	Butanal (Butyraldehyde, normal isomer)
2917.19.10	Hungary	1,645,506	79.2%	Ferrous fumarate
2918.21.10	Brazil	6,532,700	56.7%	Salicylic acid and its salts, suitable for medicinal use
2918.90.35	Romania	914,229	52.2%	Odoriferous or flavoring compounds of carboxylic acids with add
2929.10.30	Poland	27,496	100.0%	3,4-Dichlorophenylisocyanate
2931.00.25	Brazil	2,414,205	55.4%	Pesticides of aromatic organo-inorganic (except organo-sulfur)
2933.40.08	Hungary	198,520	91.0%	4,7-Dichloroquinoline
2933.59.10	Hungary	12,000	100.0%	Aromatic or modified aromatic herbicides of heterocyclic compou
2938.10.00	Brazil	1,048,822	54.0%	Rutoside (Rutin) and its derivatives
3801.10.10	Brazil	5,675,060	61.4%	Artificial graphite plates, rods, powder and other forms, for m
4106.20.60	India [1/]	1,979,524	54.5%	Goat or kidskin leather, w/o hair on, excluding leather of head
4202.22.35	Philippines	159,548	74.9%	Handbags with or without shoulder strap or without handle, with
4202.29.20	Philippines	336,320	70.4%	Handbags w. or w/o shld. strap or w/o handle of mat. (o/t leath
4302.20.60	Brazil	317,090	65.8%	Heads, tails, paws and other pieces or cuttings of dressed or t
4412.13.25	Brazil	4,810,764	98.2%	Plywood sheet n/o 6 mm thick,tropical hard wood outer ply, face
4412.14.25	Brazil	4,041,968	88.9%	Plywood sheet n/o 6 mm thick,outer ply of nontropical hardwood,
4412.99.45	Brazil	1,485,479	53.4%	Plywood nesoi, softwood outer plies, no trop. hard wood ply, no
4602.10.23	Philippines	7,769	73.9%	Articles of a kind normally carried in the pocket or in the han
5208.31.20	India	313,687	94.6%	Dyed plain weave certified hand-loomed fabrics of cotton, conta
5208.32.10	India	506,597	95.6%	Dyed plain weave certified hand-loomed fabrics of cotton, cont.
5208.41.20	India	759,756	90.1%	Plain weave certified hand-loomed fabrics of cotton, 85% or mor
5208.42.10	India	1,149,255	93.3%	Plain weave certified hand-loomed fabrics of cotton, 85% or mor
5209.31.30	India	1,967,434	88.8%	Dyed, plain weave certified hand-loomed fabrics of cotton, cont
5209.41.30	India	1,495,199	96.1%	Plain weave certified hand-loomed fabrics of cotton, cont. 85
5607.30.20	Philippines	4,012,600	87.7%	Twine, cordage, rope and cables of abaca or other hard (leaf) f
5702.39.10	India [1/]	406,817	57.9%	Carpets and other textile floor coverings of pile construction,
5702.99.20	India [1/]	7,845,575	60.8%	Carpets & other textile floor coverings, not of pile constructi

7113.20.25	India [1]	402,464	62.3%	Base metal clad w/gold mixed link necklaces and neck chains
7202.21.10	Macedonia (Skopje)..	3,047,746	79.3%	Ferrosilicon containing by weight more than 55% but not more th
7202.99.10	Brazil.....	545,549	99.5%	Ferrozirconium
7403.12.00	Russia.....	8,159,622	99.8%	Refined copper, wire bars
8112.91.50	Chile.....	10,070,966	86.2%	Rhenium, unwrought; rhenium, powders
8112.99.00	Chile.....	6,020,784	61.1%	Gallium, hafnium, indium, niobium, rhenium, and thallium, artic
8528.12.80	Thailand.....	2,006,115	96.8%	Color television reception apparatus nesoi, video display diago
9303.30.40	Czech Republic.....	140,000	88.6%	Rifles (o/than muzzle-loading), for sport, hunting or target-sh
9614.20.60	Turkey.....	158,445	91.1%	Smoking pipes and bowls, wholly of clay, and other smoking pipe

ANNEX IV : GSP COUNTRIES EXCEEDING COMPETITIVE NEED LIMITS (NEW EXCLUSIONS) AND 2000 TRADE

HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
2909.19.14	Brazil.....	127,503,264	9.0%	Methyl tertiay-butyl ether. (MTBE)
2924.21.16	Brazil.....	11,126,131	68.3%	Aromatic ureines and their derivatives pesticides, nesoi
4012.90.45	Sri Lanka (Ceylon)..	14,589,001	64.7%	Interchangeable tire treads and tire flaps, of natural rubber, ne
7113.19.29	Turkey.....	105,474,631	11.6%	Gold necklaces and neck chains (o/than of rope or mixed links)
7403.11.00	Russia.....	104,891,985	5.8%	Refined copper cathodes and sections of cathodes
7403.11.00	Kazakhstan.....	97,957,700	5.4%	Refined copper cathodes and sections of cathodes
7604.10.50	Russia.....	51,051,201	75.0%	Aluminum (o/than alloy), bar and rods, other than with a round cr
8414.51.00	Thailand.....	132,578,033	17.2%	Table, floor, wall, window, ceiling or roof fans, with a self-con

[1] The implementation of the redesignation of India for eligibility under the GSP for this HTSUS is a date to be determined and announced by the United States Trade Representative (USTR) in the Federal Register.

[FR Doc. 01–17236 Filed 7–9–01; 8:45 am]
BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending June 29, 2001

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2001–9997.
Date Filed: June 25, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC12 USA–EUR 0119 dated 22 June 2001. Expedited TC12 North Atlantic USA-Europe Resolutions 002e, 015h, 054s (except between USA and Austria, Belgium, Germany, Italy, Netherlands, Scandinavia, Switzerland). Intended effective date: 1 August 2001.

Docket Number: OST–2001–10000.
Date Filed: June 25, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0503 dated 22 June 2001. Mail Vote 132—Resolution 010g. TC3 Special Passenger Amending Resolution between Japan and Russia (in Asia) R1–R7. Intended effective date: 1 July 2001.

Docket Number: OST–2001–10021.
Date Filed: June 27, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0504 dated 26 June 2001. Mail Vote 129—Resolution 010d. TC3 Special Passenger Amending Resolution between China and Japan R1–R8. Intended effective date: 1 August 2001.

Docket Number: OST–2001–10029.
Date Filed: June 28, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC12 USA–EUR 0123 dated 29 June 2001. Mail Vote 134—Resolution 072cc. TC12 North Atlantic Excursion Fares from USA to Austria, Belgium, Germany, Italy, Netherlands, Scandinavia, Switzerland. Intended effective date: 1 August 2001.

Docket Number: OST–2001–10030.
Date Filed: June 28, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0828 dated 26 June 2001. Mail Vote 128—Resolution 010c. TC2/12/23 Special Passenger Amending Resolution from Mozambique. Intended effective date: 1 July 2001.

Docket Number: OST–2001–10038.
Date Filed: June 29, 2001.
Parties: Members of the International Air Transport Association.
Subject: CTC COMP 0359 dated 29 June 2001. Mail Vote 133—Resolution 033k (amending). Special Cargo Currency Conversion Resolution—euro. Intended effective date: 15 July 2001.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 01–17228 Filed 7–9–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending June 29, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–10010.
Date Filed: June 26, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 17, 2001.
Description: Application of MEDjet International, Inc. pursuant to 49 U.S.C. 41102 and Subpart B, requesting a certificate of public convenience and necessity to engage in foreign air transportation of persons, property and mail on a worldwide basis.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 01–17227 Filed 7–9–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–10031]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0043 and 2115–0076

AGENCY: Coast Guard, DOT.
ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) Plan Approval and Records for Load Lines, and (2) Security Zones, Regulated Navigation Areas, and Safety Zones. Before submitting the ICRs to OMB, the Coast Guard is requesting comments on the items described below.

DATES: Comments must reach the Coast Guard on or before September 10, 2001.

ADDRESSES: You may mail comments to the Docket Management System (DMS) [USCG 2001–10031], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The DMS maintains the public docket for these requests. Comments will become part of this docket and will be available for inspection or copying in room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2001–10031], and give the reason for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Request

1. *Title:* Plan Approval and Records for Load Lines.

OMB Control Number: 2115–0043.

Summary: Collecting this information helps the Coast Guard ensure that certain vessels are not loaded deeper than appropriate for safety. Vessels over 150 gross tons or 79 feet in length engaged in commerce on international or coastwise voyages by sea must obtain Load Line Certificates.

Need: Sections 5501 to 5516 of Title 46, U.S.C., provide the Coast Guard with the authority to enforce provisions of the International Load Line Convention, 1966. 46 CFR Part E—Load Lines—contains the relevant rules.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,916 hours a year.

2. Title: Security Zones, Regulated Navigation Areas, and Safety Zones.

OMB Control Number: 2115–0076.

Summary: The Coast Guard collects this information only when someone seeks a security zone, regulated navigation area, or safety zone. It uses the information to assess the need to establish one of these areas.

Need: Parts 6 and 165 of Title 33, CFR, give the Coast Guard Captain of the Port (COTP) the authority to designate security zones in the U.S. for as long as he or she deems necessary to prevent damage or injury. 33 U.S.C. 1223 authorizes the Coast Guard to prescribe rules to control vessel traffic in areas he or she deems hazardous because of reduced visibility, adverse weather, or vessel congestion. 33 U.S.C. 1225 authorizes the Coast Guard to establish rules to allow the designation of safety zones where access is limited to authorized persons, vehicles, or vessels to protect the public from hazardous situations.

Respondents: Federal, State, and local government agencies, vessels, and facilities.

Frequency: On occasion.

Burden Estimate: The estimated burden is 417 hours a year.

Dated: July 2, 2001.

V.S. Crea,

Director of Information and Technology.

[FR Doc. 01–17109 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–50]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and deposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief for specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 31, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Dated: Issued in Washington, DC, on July 5, 2001.

Gary A. Michel,

Acting, Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–9266.

Petitioner: Evergreen Air Venture Museum.

Section of 14 CFR Affected: 14 CFR 91.315, 91.319(a), 119.5(g), and 119.21(a).

Description of Relief Sought: To allow Evergreen to operate North American P–51 Mustang, North American T–28 Trojan, North American SNJ–5, Chance Vought (Goodyear Company) FG–1 Corsair, and Grumman TBM–1C Avenger Torpedo Bomber aircraft with limited, experimental, or standard category airworthiness certificates for the purpose of carrying passengers on local flights in return for donations. The FAA notes that these aircraft differ significantly from the Boeing B–17G, for which Evergreen already holds an exemption.

[FR Doc. 01–17243 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–51]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor

the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 5, 2001.

Gary A. Michel,

Acting, Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–9812.
Petitioner: Red Baron Flyers, Inc.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit RBFI to conduct local sightseeing flights at Houston County Airport for the Houston County Airport's Annual Fly-In during June 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 06/19/2001, Exemption No. 7547.

Docket No.: FAA–2001–9627.
Petitioner: Plainwell Pilots' Association.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit PPA to conduct local sightseeing flights in the vicinity of Plainwell, Michigan, in July 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 06/18/2001, Exemption No. 7546.

Docket No.: FAA–2001–8742 (previously Docket No. 15078).
Petitioner: U.S. Department of Justice, Drug Enforcement Administration.
Section of 14 CFR Affected: 14 CFR 91.117(a), (b) , and (c), 91.159(a), and 91.209(a)(1) and (b).
Description of Relief Sought/ Disposition: To permit DEA to conduct air operations in support of drug law enforcement and drug traffic interdiction.
Grant, 06/15/2001, Exemption No. 5506C.

Docket No.: 29661.
Petitioner: Experimental Aircraft Association, Small Aircraft Manufacturers Association and National Association of Flight Instructors.
Section of 14 CFR Affected: 14 CFR 91.319(a)(1) and (2).
Description of Relief Sought/ Disposition: To amend Exemption 7162 by (1) revising Condition No. 1 to include experimental aircraft certificated under § 21.191(c) and (d), and to clarify the maintenance requirements for these aircraft; (2) revising Condition No. 4 to include ground transition training in the required training syllabus; and (3) adding a condition requiring EAA, SAMA, and NAFI members to receive permission from their association before conducting flight training under Exemption No. 7162.
Partial Grant, 06/18/2001, Exemption No. 7162A.

Docket No.: FAA–2001–9364.
Petitioner: Ms. Jacqueline A. Julio.
Section of 14 CFR Affected: 14 CFR 121.311(b).
Description of Relief Sought/ Disposition: To permit Ms. Jacqueline A. Julio to be secured by a personal safety belt and held on her caregiver's lap while on board an aircraft although she has reached her second birthday.
Grant, 06/18/2001, Exemption No. 5195E.

Docket No.: FAA–2001–9864.
Petitioner: Crescent City Airport Day Committee.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit CCADC to conduct local sightseeing flights at the Crescent City, California, airport for the annual Airport Day Scholarship Fundraising airlifts during July 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 06/21/2001, Exemption No. 7551.

Docket No.: FAA–2001–9438.
Petitioner: Aberdeen Flying Service.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Aberdeen to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 06/21/2001, Exemption No. 7550.

Docket No.: FAA–2001–8937 (previously Docket No. 27130).
Petitioner: Era Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Era to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 06/21/2001, Exemption No. 5718D.

Docket No.: FAA–2001–8870 (previously Docket no. 26160).
Petitioner: Massachusetts Institute of Technology.
Section of 14 CFR Affected: 14 CFR 91.319(c).
Description of Relief Sought/ Disposition: To permit MIT to operate certain single-engine and multiengine aircraft certificated in the experimental category, over densely populated areas or in congested airways.
Grant, 06/18/2001, Exemption No. 5210F.

Docket No.: FAA–2001–9923.
Petitioner: EAA Chapter 597.
Section of 14 CFR Affected: 14 CFR 135.251, 235,255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit EAA Chapter 597 to conduct local sightseeing flights at Howard Nixon Memorial Airport, Chesaning, Michigan, in support of Chesaning Sportplane Association and the Young Eagles program during July 2001 and September 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 06/27/2001, Exemption No. 7553.

Docket No.: FAA–2001–8753 (previously Docket No. 28891).
Petitioner: Eagle Helicopters, Inc., dba Kachina Aviation.
Section of 14 CFR Affected: 14 CFR 133.19(a)(3) and 133.51.
Description of Relief Sought/ Disposition: To permit Kachina to conduct external-load operations in the United States using its Canadian-registered rotorcraft.
Grant, 06/27/2001, Exemption No. 6638B.

Docket No.: FAA–2001–9976 (previously Docket No. 24427).
Petitioner: United States Ultralight Association, Inc.
Section of 14 CFR Affected: 14 CFR 103.1(a) and (e)(1) through (e)(4).
Description of Relief Sought/ Disposition: To permit individuals authorized by USUA to give instruction in powered ultralights that have a maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power

in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed.

Grant, 06/27/2001, Exemption No. 4274I.

[FR Doc. 01–17244 Filed 7–9–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than September 10, 2001.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–0524. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations,5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. (c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Radio Communications.

OMB Control Number: 2130–0524.

Abstract: The Federal Railroad Administration (FRA) amended its radio standards and procedures to promote compliance by making the regulations more flexible; to require wireless communications devices, including radios, for specified classifications of railroad operations and roadway workers; and to re-title this part to reflect its coverage of other means of wireless communications such as cellular telephones, data radio terminals, and other forms of wireless communications to convey emergency and need-to-know information. The new rule establishes safe, uniform procedures covering the use of radio and other wireless communications within the railroad industry.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion; annually.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
220.8—Waivers	685	2 letters	60 minutes	2	$78
220.25—Instruction of Employees	685	70,000 sessions	30 minutes	35,000	1,120,000
—Sub. Yrs.-Instr.	685	12,540 sessions	30 minutes	6,270	200,640
—Operational Testing of Empl.	685	100,000 tests	15 minutes	25,000	800,000
220.35—Testing Radio/Wireless Communication Eq.	685	780,000 tests	30 seconds	6,500	208,000
220.61—Transmission of Mandatory Dir.	685	7,200,000 directives	1.5 minutes	180,000	5,760,000

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Marking Man. Dir.	685	624,000 marks	15 seconds	2,600	83,200

Total Responses: 8,786,542.

Estimated Total Annual Burden: 255,372 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on July 5, 2001.

Kathy A. Weiner

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 01–17245 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–10044; Notice 1]

Reliance Trailer Co., LLC; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

We are asking for comments on the application by Reliance Trailer Co., LLC, of Spokane, Washington ("Reliance"), for an exemption of two years from Motor Vehicle Safety Standard No. 224 *Rear Impact Protection*. Reliance asserts that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with our regulations on the subject. This action does not mean that we have made a judgment yet about the merits of the application.

Why Reliance Says That It Needs an Exemption.

In February 2001, Reliance acquired the assets of SturdyWeld, another Washington company, in order to commence manufacture of "trailers built to mate with asphalt paving equipment." This appears to be a horizontal discharge trailer that is used in the road construction industry to deliver asphalt and other road building materials to the construction site.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including Reliance's trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards*. Reliance argued that installation of the rear impact guard will prevent its trailers from connecting to the paver and performing their mission. Thus, its trailers will no longer be functional.

Reliance's Reasons Why It Believes That Compliance Would Cause It Substantial Economic Hardship and That It Has Tried in Good Faith to Comply with Standard No. 224

Reliance is a small volume manufacturer whose total production in the 12-month period preceding its petition was 268 trailers. In the absence of an exemption, Reliance says that "considering the over $2 million paid for the [SturdyWeld] Division and if we are able to sell the over $1 million inventory, but have to shut this operation down, we would probably lose over $1 million." Its cumulative net income after taxes for the fiscal years 1998, 1999, and 2000 was $150,793.

Reliance apparently learned of its compliance problem after producing 26 of the trailers in question. It has determined that these trailers fail to comply with Standard No. 224, and has notified NHTSA pursuant to 49 CFR Part 573. It has also filed a petition for a determination that the noncompliance is inconsequential to safety. Reliance has also discovered that "this is a nationwide, yet unsolved, problem," citing three manufacturers of similar trailers who have received temporary exemptions from Standard No. 224, Beall Trailers, Red River Manufacturing, and Dan Hill Associates.

The petition discusses "possible alternative means of compliance" which "will include the analysis of moveable, replaceable or retractable under-rides. To date these concepts are very difficult to maintain due to the nature of the paving material." After discussion with its customers, Reliance "will proceed to design, build and test prototype designs to meet the regulations and allow dumping asphalt into paving equipment." It believes that it will comply by the end of a two-year exemption period.

Reliance's Reasons Why It Believes That a Temporary Exemption Would Be in the Public Interest and Consistent with Objectives of Motor Vehicle Safety

Reliance argues that an exemption would be in the public interest and consistent with traffic safety objectives because the trailers "represent about 80% of the output of the 38 employees" of the SturdyWeld division, and, "if this petition is denied, the operation will be closed and those people will be out of jobs." An exemption would allow it "to continue to provide equipment needed by road building industries to expand and develop" the national transportation system.

The trailers will be built in small quantities. "Typical hauls are short" with a minimal amount of time traveling on highways compared with most freight trailers," which "diminishes the exposure for these vehicles." Reliance knows of no rear end collisions and consequent injuries with its type of trailer.

How You May Comment on Reliance's Application

If you would like to comment on Reliance's application, please do so in writing, in duplicate, referring to the docket and notice number, and mail to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

We shall consider all comments received before the close of business on the date indicated below. Comments are available for examination in the docket in room PL–401 both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, we also consider comments filed after the closing date. We will publish our decision on the application, pursuant to the authority indicated below.

Comment closing date: August 9, 2001.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on July 5, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–17229 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on July 31, 2001, of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Bond Market Association.

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9 a.m. Eastern time and will be opened to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: July 5, 2001.

Donald V. Hammond,

Acting Under Secretary.

[FR Doc. 01–17218 Filed 7–9–01; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0546]

Agency Information Collection Activities Under OMB Review

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the National Cemetery Administration (NCA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 9, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0546" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Gravesite Reservation Survey (2-year), VA Form Letter 40–40.

OMB Control Number: 2900–0546.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: In the past, the survey was conducted annually. VA Form Letter 40–40 will be sent biennially (once every two years on a 24-month rotating basis) to individuals holding gravesite set-asides in national cemeteries to ascertain their wish to retain their set-aside, or wish to relinquish it. The collection of information is necessary to assure that gravesite set-asides are not wasted. Some holders become ineligible, are buried elsewhere, or simply wish to cancel a gravesite set-aside for them. Without this information, unused set-asides would exist which could be used by other veterans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 11, 2001, at pages 18852–18853.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Recordkeeping only.

Estimated Number of Respondents: 18,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7613. Please refer to "OMB Control No. 2900–0546" in any correspondence.

By direction of the Secretary.

Dated: June 27, 2001.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–17138 Filed 7–9–01; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0587]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 9, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0587" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–70, Service Data Manual (previously 852.210–70).

OMB Control Number: 2900–0587.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VAAR clause 852.211–70, Service Data Manual, is used when VA purchases technical medical equipment and devices or mechanical equipment. The clause requires the contractor to furnish both operator's manual and maintenance/repair manuals with the equipment provided to the Government. This clause sets forth requirements and minimum standards those manuals must meet to be acceptable. Generally, this is the same operator's manual furnished with each piece of equipment sold to the general public and same repair manual used by company technicians in repairing the company's equipment. The cost of the manuals is included in the contractor price or listed as separately priced line items on the purchase order. The operator's manual will be used by the individual actually operating the equipment to ensure proper operating and cleaning. The repair manual will be used by VA equipment repair staff to repair equipment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on April 11, 2001, at pages 18853–18854.

Affected Public: Business or other for profit, individuals or households, and not-for-profit institutions.

Estimated Annual Burden: 2,500 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 15,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0587" in any correspondence.

By direction of the Secretary.

Dated: June 27, 2001.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–17139 Filed 7–9–01; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0589]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 9, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0589" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.270–3, Shellfish.

OMB Control Number: 2900–0589.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VAAR Provision 852.270–3, Shellfish, requires that a firm furnishing shellfish to VA must ensure that the shellfish is packaged in a container that is marked with the packer's State certificate number and State abbreviation. In addition, the firm must ensure that the container is tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin and the certificate number of the approved producer or shipper. This information normally accompanies the shellfish from the packer and is not information that must be separately obtained by the seller. The information is needed to ensure that shellfish purchased by VA comes from a State- and Federal-approved and inspected source. The information is used to help ensure that VA purchases healthful shellfish.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 27, 2001, at page 16704.

Affected Public: Business or other for profit, individuals or households, and not-for-profit institutions.

Estimated Annual Burden: 17 hours.

Estimated Average Burden Per Respondent: 1 minute.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0589" in any correspondence.

Dated: June 28, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–17140 Filed 7–9–01; 8:45 am]

BILLING CODE 8320–01–U

Corrections

Federal Register
Vol. 66, No. 132
Tuesday, July 10, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously pubiished Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0024, MT–001–0025, MT–001–0026; FRL–6986–1]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan; Montana; East Helena Lead State Implementation Plan

Correction

In rule document 01–15142 beginning on page 32760, in the issue of Monday, June 18, 2001, make the following correction:

On page 32762, in Table 1, under the heading "Description", in the second line, "it" should read "if".

[FR Doc. C1–15142 Filed 7–9–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–9993]

Requested Adminstrative Waiver of the Coastwise Trade Laws

Correction

In notice document 01–16308, beginning on page 34516, in the issue of Thursday, June 28, 2001 make the following correction:

On page 34516, in the second column, under the heading **DATES:**, in the second line "June 30, 2001" should read "July 30, 2001".

[FR Doc. C1–16308 Filed 7–9–01; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Tuesday,
July 10, 2001

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Determinations of Critical Habitat for Wintering Piping Plovers; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG13

Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for Wintering Piping Plovers

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), designate 137 areas along the coasts of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas as critical habitat for the wintering population of the piping plover (*Charadrius melodus*). This includes approximately 2,891.7 kilometers (km) (1,798.3 miles (mi)) of mapped shoreline and approximately 66,881 hectares (ha) (165,211 acres (ac)) of mapped area along the Gulf and Atlantic coasts and along margins of interior bays, inlets, and lagoons.

The population of piping plovers that breeds in the Great Lakes States is listed as endangered, while all other piping plovers are threatened species under the Endangered Species Act of 1973, as amended (Act). All piping plovers are considered threatened species under the Act when on their wintering grounds. Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. The primary constituent elements for the piping plover wintering habitat are those habitat components that are essential for the primary biological needs of foraging, sheltering, and roosting, and only those areas containing these primary constituent elements within the designated boundaries are considered critical habitat. The primary constituent elements are found in coastal areas that support intertidal beaches and flats (between annual low tide and annual high tide) and associated dune systems and flats above annual high tide. Section 7 of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to adversely modify designated critical habitat. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat.

DATES: This final rule is effective August 9, 2001..

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Ecological Services Field Office, TAMUCC, Box 338, 6300 Ocean Drive, Corpus Christi, Texas, 78412. You may view the complete file for this rule, by appointment, during normal business hours at the above address. Copies of the final economic analysis and information regarding this critical habitat designation are available on the Internet at http://plover.fws.gov.

FOR FURTHER INFORMATION CONTACT: Allan Strand, Acting Field Supervisor, at the above address (telephone 361/994–9005; facsimile 361/994–8262; email winterplovercomments@fws.gov).

SUPPLEMENTARY INFORMATION:

Background

Description

The piping plover (*Charadrius melodus*), named for its melodic mating call, is a small, pale-colored North American shorebird. It weighs 43–63 grams (1.5–2.25 ounces) and is 17–18 centimeters (cm) (about 8 inches) long (Haig 1992). Its light sand-colored plumage blends in well with beaches and sand flats, part of its primary habitat. During the breeding season, the legs are bright orange, and the short stout bill is orange with a black tip. There are two single dark bands, one around the neck and one across the forehead between the eyes. Plumage and leg color help distinguish this bird from other plovers. In winter, the bill turns black, the legs remain orange but pale, and the black plumage bands on the head and neck are lost. Chicks have speckled gray, buff, and brown down, a black beak, orange legs, and a white collar around the neck. Juveniles resemble wintering adults and obtain their adult plumage the spring after they fledge (Prater *et al.* 1977).

Range and Biology

Piping plovers breed in three discrete areas of North America: The Northern Great Plains, the Great Lakes, and the Atlantic Coast. The Northern Great Plains population historically bred from Alberta to Ontario, Canada, south to Kansas and Colorado. While Great Lakes breeding sites once ranged throughout the Great Lakes region, recent nesting records are limited to Michigan and Wisconsin. Atlantic Coast breeding sites are found from Newfoundland, Canada, south to North Carolina. Generally, piping plovers favor open sand, gravel, or cobble beaches for breeding. Breeding sites are generally found on islands, lake shores, coastal shorelines, and river margins.

Piping plovers winter in coastal areas of the United States from North Carolina to Texas. They also winter along the coast of eastern Mexico and on Caribbean islands from Barbados to Cuba and the Bahamas (Haig 1992). The international piping plover winter censuses of 1991 and 1996 located only 63 percent and 42 percent of the estimated number of breeding birds, respectively (Haig and Plissner 1993, Plissner and Haig 1997). Of the birds located on the United States wintering grounds during these two censuses, 89 percent were found on the Gulf Coast and 8 percent were found on the Atlantic Coast. Information from observation of color-banded piping plovers indicates that the winter ranges of the breeding populations overlap to a significant degree. Therefore, the source breeding population of a given wintering individual cannot be determined in the field unless it has been banded or otherwise marked.

Piping plovers begin arriving on the wintering grounds in July, with some late-nesting birds arriving in September. A few individuals can be found on the wintering grounds throughout the year, but sightings are rare in late May, June, and early July. Migration is poorly understood, but most piping plovers probably migrate non-stop from interior breeding areas to wintering grounds (Haig 1992). However, concentrations of spring and fall migrants have been observed along the Atlantic Coast (USFWS 1996).

Behavioral observations of piping plovers on the wintering grounds suggest that they spend the majority of their time foraging (Nicholls and Baldassarre 1990b; Drake 1999a, 1999b). Primary prey for wintering plovers includes polychaete marine worms, various crustaceans, insects, and occasionally bivalve mollusks (Nicholls 1989; Zonick and Ryan 1995), that they peck from on top or just beneath the surface. Foraging usually takes place on moist or wet sand, mud, or fine shell. In some cases, this substrate may be covered by a mat of blue-green algae. When not foraging, plovers can be found roosting, preening, bathing, in aggressive encounters (with other piping plovers and other species), and moving among available habitat locations (Zonick and Ryan 1996).

The habitats used by wintering birds include beaches, mud flats, sand flats, algal flats, and washover passes (areas where breaks in the sand dunes result in an inlet). Individual plovers tend to return to the same wintering sites year after year (Nicholls and Baldassarre 1990b, Drake 1999a). Wintering plovers are dependent on a mosaic of habitat

patches, and move among these patches depending on local weather and tidal conditions. One study by Drake (1999a) monitored the movement of 48 piping plovers in south Texas, for one season. She found, using 95% of the documented locations, that these birds had a mean home range of 1,262 ha (3,117 ac). Drake (1999) also noted that the mean linear distance moved per individual bird was 3,294 m (2 mi) for the fall through the spring of 1997–1998.

In late February, piping plovers begin leaving the wintering grounds to migrate back to breeding sites. Northward migration peaks in late March, and by late May most birds have left the wintering grounds (Eubanks 1994).

Population Status

In recent decades, piping plover populations have declined drastically, especially in the Great Lakes area. In the early 1900s, uncontrolled hunting drove them nearly to extinction. Protective legislation helped them to recover by 1925, and populations reached a high in the 1930s (USFWS 1994). These numbers soon plummeted, and numbers continued to decline in the 1940s and 1950s as shoreline development expanded, resulting in the loss of plover breeding habitat. River flow alteration, channelization, and reservoir construction have also led to loss of breeding habitat.

In 1973, the piping plover was placed on the National Audubon Society's Blue List of threatened species. By that time, the Great Lakes population of piping plovers had been extirpated from shoreline beaches in Illinois, Indiana, Ohio, New York, Pennsylvania, Minnesota, and Ontario, Canada, and only a few birds continued to nest in Wisconsin (Russell 1983) and Michigan. The Canadian Committee on the Status of Endangered Wildlife in Canada designated the piping plover as "Threatened" in 1978 and elevated the species" status to "Endangered" in 1985 (Canadian Wildlife Service 1989). At the time the species was listed under the Act in 1985, the Great Lakes population numbered only 17 known breeding pairs, and the breeding areas had been reduced from sites in eight States to only northern Michigan (Stucker and Cuthbert, unpublished data). In recent years, the Great Lakes population has gradually increased and expanded to the south and west as a result of intensive conservation measures. Recent increases in the Atlantic Coast breeding population have also been attributed to intensive management of nesting beaches. While overall the Atlantic Coast population is increasing, increases are regionally variable with some areas experiencing declining populations. Breeding census results show a marked decline of the population breeding in the Northern Great Plains of the United States (Plissner and Haig 1997).

Overall winter habitat loss is difficult to document; however, a variety of human-caused disturbance factors have been noted that may affect plover survival or utilization of wintering habitat (Nicholls and Baldassarre 1990a, Haig and Plissner 1993). These factors include recreational activities (motorized and pedestrian), inlet and shoreline stabilization, dredging of inlets that can affect spit (a small point of land, especially sand, running into water) formation, beach maintenance and renourishment (renourishing the beach with sand that has been lost to erosion), and pollution (e.g., oil spills) (USFWS 1996). The peer-reviewed, revised recovery plan for the Atlantic piping plover population recognizes the need to protect wintering habitat from direct and indirect impacts of shoreline stabilization, navigation projects, and development. Adult survivorship over the wintering period plays a significant role in maintaining current populations and in accomplishing increases in population levels required to achieve recovery.

Previous Federal Actions

On December 30, 1982, we published a Notice of Review in the **Federal Register** (47 FR 58454) that identified vertebrate animal taxa being considered for addition to the List of Threatened and Endangered Wildlife. The notice included the piping plover as a Category 2 Candidate species, indicating that we believed the species might warrant listing as threatened or endangered, but that we had insufficient data to support a listing at that time. Subsequent review of additional data indicated that the piping plover warranted listing, and in November 1984, we published a proposal to list the piping plover as endangered (Great Lakes breeding population) and threatened (all other piping plovers, including all birds on non-breeding areas) in the **Federal Register** (49 FR 44712).

The proposed listing was based on the decline of the species and the magnitude of existing threats, including habitat destruction, disturbance by humans and pets, high levels of predation, and contaminants. On December 11, 1985, we published the final rule (50 FR 50720), listing the piping plover as endangered in the Great Lakes watershed (Illinois, Indiana, Michigan, northeastern Minnesota, New York, Ohio, Pennsylvania, Wisconsin, and Ontario, Canada) and as threatened elsewhere within its range. The listing includes piping plovers breeding in Canada, with their status under the Act determined by whether they breed in the watershed of the Great Lakes (endangered) or elsewhere (threatened). All piping plovers on migratory routes outside of the Great Lakes watershed or on their wintering grounds are considered threatened. We did not designate critical habitat for the species at that time.

In 1986, two U.S. recovery teams were appointed to develop recovery plans for the piping plovers breeding in the Atlantic Coast States and those breeding in the Great Lakes/Northern Great Plains region. We published those plans in 1988 (USFWS 1988a, 1988b). In 1994, we began to revise the plan for the Great Lakes/Northern Great Plains plovers by developing and distributing for public comment a draft that included updated information on the species. More recently, we decided that the recovery of these two regional populations would benefit from separate recovery plans that would direct separate recovery programs. Separate recovery plans for the Great Lakes and Northern Great Plains piping plovers are presently under development. The recovery plan for the Atlantic Coast-breeding plovers was revised in 1996 (USFWS 1996). We exchange observers and coordinate recovery activities with two Canadian recovery teams, with a strong focus on protection of the wintering habitat shared by piping plovers breeding in both countries.

In December 1996, Defenders of Wildlife (Defenders) filed a lawsuit against the Department of the Interior and the Service for failing to designate critical habitat for the Great Lakes population of the piping plover. Defenders filed a second, similar lawsuit for the Northern Great Plains piping plover population in 1997. These lawsuits were subsequently combined (*Defenders of Wildlife et al.* v. *Bruce Babbitt et al.*, Consolidated Cases Civil No. 1:96–CV–02695AER and Civil No. 1:97–CV00777AER). In February 2000, the court issued an order directing us to publish a proposed critical habitat designation for the Great Lakes population of the piping plover by June 30, 2000. Publication of a proposal for nesting areas of the Northern Great Plains population of piping plover by May 31, 2001, was also ordered. Since we cannot distinguish the Great Lakes and Great Plains birds on their wintering grounds, we felt it was appropriate to propose critical habitat for all U.S.-wintering piping plovers collectively. Further, we determined

that the appropriate course of action would be to propose critical habitat for all U.S.-wintering piping plovers on the same schedule required, under court order, for the Great Lakes breeding population. A subsequent order, after requesting the court to reconsider its original order relating to final critical habitat designation, directed us to finalize the critical habitat designations for the Great Lakes population by April 30, 2001, and for the Northern Great Plains population by March 15, 2002. On May 7, 2001, we published a notice in the **Federal Register** (66 FR 22983) announcing a 60-day delay, until June 29, 2001, in making our final determination of critical habitat for the wintering piping plover. The notice explained that we needed additional time to complete our analyses required under section 4(b)(2) of the Act.

We published our proposed designation of critical habitat for wintering piping plovers in the **Federal Register** on July 6, 2000 (65 FR 41782), and requested comments on the proposal by September 5, 2000. We held 10 public hearings and 10 public meetings on the proposed rule in Wilmington, North Carolina, on July 17, 2000; Savannah, Georgia, on July 19, 2000; Tallahassee, Florida, on July 21, 2000; Fort Myers, Florida, on July 24, 2000; Mobile, Alabama, on July 26, 2000; Baton Rouge, Louisiana, on July 27, 2000; Galveston, Texas, on July 31, 2000; Corpus Christi, Texas, on August 2, 2000; McAllen, Texas, on August 4, 2000; and South Padre Island, Texas, on November 14, 2000. We held additional public meetings in Morehead City, North Carolina, on August 16, 2000; in Manteo, North Carolina, on August 17, 2000; Marco Island, Florida, on October 10, 2000; and Rio Hondo, Texas, on August 23, 2000.

On August 30, 2000 (65 FR 52691), we published a notice in the **Federal Register** extending the public comment period to October 30, 2000, and announced the availability of the draft economic analysis. On October 27, 2000 (65 FR 64414), we again published a notice in the **Federal Register** extending the public comment period until (November 24), 2000, and provided notice of a tenth public hearing on the proposed rule. On February 22, 2001 (66 FR 11134), we reopened the comment period until March 1, 2001, to allow for additional comments to be incorporated into the record and allow for us to base our final decision on the best scientific and commercial information available.

Summary of Comments and Recommendations

As mentioned above, we requested all interested parties to submit comments or information that might bear on the designation of critical habitat for wintering piping plovers (65 FR 41782). We contacted all appropriate State and Federal agencies, Tribes, county governments, scientific organizations, and other interested parties and invited them to comment. In addition, we published newspaper notices inviting public comment and announcing the public hearings in the following newspapers—Wilmington *Morning Star* in North Carolina; Charleston *Post and Courier* in South Carolina; Savannah *Morning News* in Georgia; Florida *Times Union*, Tallahassee *Democrat*, Fort Myers *News Press*, Key West *Free Press*, *St. Petersburg Times*, Panama City *News Herald*, and Pensacola *News Journal* in Florida; *Mobile Register*, Alabama; Biloxi *The Sun Herald*, Mississippi; New Orleans *Times Picayune* and Baton Rouge *The Advocate* in Louisiana; and the Houston *Chronicle*, Galveston *Daily News*, *Port Arthur News*, *Texas City Sun*, *Brownsville Herald*, Corpus Christi *Caller-Times*, *The Monitor* (distributed from Rio Grande City to South Padre Island), and the *Facts* (Brazosport) in Texas.

We held 10 public hearings on the proposed rule (see "Previous Federal Action" section above for dates and locations). Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

We received a total of 6,013 comments (counting both written and oral comments) from individuals, agencies, and organizations, plus one petition containing 537 signatures. Of these comments, 5,800 commenters and the petition were specific to the designation proposed for Marco Island, Florida. Of the Marco Island comments, 44 commenters and 537 signatories to the petition favored the designation as proposed, 5,736 opposed designation on Marco Island, and 20 supported a revised designation or only provided information relative to the proposal. There were 213 commenters who were not specific to Marco Island. Of those, 85 favored the designation, 94 opposed it, and 34 did not state a position but provided information.

We reviewed all comments received for substantive issues and new data regarding critical habitat and wintering piping plovers. Some comments resulted in changes between the proposed and final designations, and those comments are discussed in the "Summary of Changes From the Proposed Rule" section of this document. We address the rest of the substantive comments in the following summary. For readers' convenience we have assigned comments to major issue categories. Repeated or very similar comments are combined into single comments and responses.

Issue A: General Biological Comments

A number of commenters touched on biological issues surrounding the piping plover.

Comment 1: The Service's Southeast Region Home Page cites habitat loss due to navigation, dredging, and shoreline stabilization and replenishment projects as major contributors to the species' decline. That statement is unsupported in the literature. Piping plovers are extremely mobile and thrive in a changing environment. The cited activities do not adversely impact wintering piping plovers.

Our Response: We disagree with the statement made by the commenter. The commenter is referring to our website at http://plover.fws.gov, that describes the life history and threats of the piping plover throughout its range. Dredging projects and shoreline manipulations in wintering areas can have an effect on the bird's food base, and result in permanent habitat loss and direct disturbance of individual birds. We already consult with Federal agencies that fund or carry out projects involving dredging, beach nourishment, and other shoreline stabilization activities, most notably with the Army Corps of Engineers, because of the effect of such projects on piping plover habitat. The purpose of many shoreline stabilization projects is the prevention of overwash processes (the method by which sediment (sand) is transported across a barrier island) that form inlets and perpetuate sand and mud flats. As sand and mud flats are identified as critical habitat for the plover, there is a connection between these activities and the formation and maintenance of habitat for the plover. Zonick's (2000) dissertation similarly highlights the importance of preserving "washover pass" habitat in Texas. Zonick (2000) found that washover passes are used by piping plovers both as feeding and roosting areas. Washover areas are created by the flow of water through the primary dune line with deposition of sand on the barrier flats, marsh, or into the lagoon, depending on the storm magnitude and the width of the beach. Additionally, the peer-reviewed revised recovery plan for the Atlantic piping plover population recognizes the need to protect wintering habitat from direct and indirect impacts of shoreline stabilization, navigation projects, and

development. In general, through our consultations with other Federal agencies, we have found that these activities can be timed and designed to minimize effects on piping plovers.

Comment 2: Army Corps of Engineers projects are designed to avoid and minimize impacts to listed species and, where feasible, features to promote species conservation are included in projects. Corps of Engineers dredged material disposal benefits plovers by providing foraging habitat. These benefits should have been discussed in the proposal.

Our Response: We stated in the proposed rule that "Several of these components (sparse vegetation, little or no topographic relief) are mimicked in artificial habitat types used less commonly by piping plovers (e.g., dredge spoil sites)." Nicholls (1989) documented that piping plovers were observed on spoil areas 6 percent of the time and on sandflats 27 percent of the time. Her survey coverage included 2,705 km (1,680 mi) of coastline along portions of nine states from Virginia to Texas. Spoil sites do not seem to be the preferred habitat for the piping plover, although when more suitable habitat is lacking, spoil sites do create some habitat for these birds. We appreciate the Corps' efforts to promote species conservation through design feature modification of projects.

Comment 3: Project delays related to the critical habitat designation for wintering piping plovers, when added to already-narrow windows imposed by protection of other threatened and endangered species such as sea turtles, seabeach amaranth, and beach mice, may affect the Corps of Engineers' ability to conduct mission-related activities.

Our Response: Since the species was listed in 1986, the Corps of Engineers has been subject to the consultation requirements of the Act, including analyzing the potential effects on the species habitat. Timing of projects has been considered in consultations conducted under the jeopardy standard since listing, and, in general, we have found that projects can be timed and designed to minimize effects on piping plovers.

Comment 4: The causes for piping plover declines are unclear, but it is likely any declines are a result of threats to breeding areas rather than wintering habitat. Threats to wintering habitat are not discussed, nor are any declines in habitat acreage documented. Accordingly, how can the designation possibly benefit wintering piping plovers?

Our Response: Historically, plovers were decimated by unregulated hunting. The major present-day threats are largely on breeding areas, but wintering habitats are also essential to the conservation of this species. Adult survivorship over the wintering period plays a significant role in maintaining current populations and in accomplishing increases in population levels required to achieve recovery. In the face of current and foreseeable continued coastal development and increased recreational use, less suitable habitat may be available each year for piping plover recovery. Therefore, we have designated the areas that have consistent plover use and best meet the biological needs of the species. The amount of wintering habitat included in this designation appears sufficient to support future recovered populations, and the existence of this habitat is essential to the conservation of this species. In addition, the designation benefits species conservation by alerting public and private entities to the importance of wintering habitat.

Comment 5: Comments were received that questioned the relative use of a specific area compared to the overall population abundance. Of the 50 percent of piping plovers accounted for in the 1996 census, only 8 percent were documented on the Atlantic Coast. How can the Atlantic Coast be considered essential to the species' conservation?

Our Response: We have determined that most sites with consistent occurrence of piping plovers should be designated as critical habitat in order to provide for the recovery of the species. There are an estimated 32 pairs remaining of the endangered Great Lakes breeding population of piping plovers. Current data shows that Atlantic Coast sites are even more important to the Great Lakes piping plovers than those on the Gulf Coast. Of the 39 individuals from the Great Lakes population sighted on the wintering ground between 1993 and spring of 2000, 26 (67%) were in South Carolina, Georgia, or the Atlantic Coast of Florida (Wemmer 2000). Thus, we consider the Atlantic Coast to be essential to the recovery of the piping plover.

Comment 6: In basing the critical habitat designation on observational data, the proposal is biased toward areas most frequently visited by bird watchers and other beach users. Meanwhile, many areas with restricted access but likely containing excellent habitat were not proposed. Given that situation and the fact that 50 percent of wintering plovers are unaccounted for, how can the Service say the proposed areas are essential for this species?

Our Response: We believe the effect of observational bias is minimal because ornithologists and birders are persistent about seeking out birds. Data we received from state biologists documented surveys of the entire coastlines in many states. Some geographic data provided from the 1991 and 1996 International Censuses show that a large area of the coastline is not used by the birds. Only sites where plovers have been observed were included in the critical habitat designation.

Comment 7: One-hundred-forty-seven areas are proposed as critical habitat. How could failure to designate any one of these areas lead to extinction of the piping plover?

Our Response: The criterion for critical habitat designations is not whether the sites are essential to prevent extinction; it is whether the sites are essential to the conservation of the species and may require special management consideration or protection. Conservation means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary (i.e., recovered). Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

There are an estimated 32 pairs remaining of the endangered Great Lakes breeding population of piping plovers and data show that this population uses both the Atlantic and Gulf Coasts (USFWS 1999; Wemmer 2000). Therefore, identification of essential habitat should not rule out any sites where piping plovers consistently over-winter, since these sites may be used by the highly endangered Great Lakes population. We have determined that most sites with consistent occurrence of piping plovers should be designated as critical habitat in order to provide for the recovery of the species.

Comment 8: The Service should define "wintering." Does the designation include migrating piping plovers?

Our Response: We define "wintering" as areas used by birds during the non-breeding season. Piping plovers begin arriving on the wintering grounds in July, with some late-nesting birds arriving in September. A few individuals can be found on the wintering grounds throughout the year, but sightings are rare in late May, June, and early July.

This designation did not distinguish migrating birds; however, some areas designated as wintering habitat are also used by migrating and breeding birds in North Carolina and South Carolina. Migration is poorly understood, but it appears that inland birds may fly non-stop to Gulf coast sites (Haig 1992). It is believed that the Atlantic population follows a narrow strip along the Atlantic coast during spring and fall migration with some crossover to Gulf Coast wintering areas (USFWS 1996).

Comment 9: The international censuses provide only a snapshot of mid-winter distribution and abundance, but tell little about seasonal variation in habitat use and plover movements. While many plovers appear relatively sedentary, observations at certain sites in North Carolina (McConnaughy *et al.* 1990) and Texas (Eubanks 1994) have reported large numbers during or prior to migration. These staging and migratory stopover areas may be particularly critical for migratory shorebirds (Myers 1983; Skagen and Knopf 1993) and should be included as critical habitat.

Our Response: As stated above, migration is poorly understood, but it appears that inland birds may fly non-stop to Gulf Coast sites (Haig 1992). Based on McConnaughy's study, some areas are used as staging or stopover areas, and we have included those areas in the designation when we have survey data to support consistent piping plover use. It is believed that the Atlantic population follows a narrow strip along the Atlantic coast during spring and fall migration from the Gulf coast (USFWS 1996). The sites that McConnaughey *et al.* (1990) documented in North Carolina as having relatively high numbers of plovers observed during migration are within the designated critical habitat units. The sites identified by Eubanks (1994) in Texas are not consistently used and were not included in the designation.

Comment 10: The Louisiana coast is remote and not subject to extensive human presence. Further, there is no documentation that Louisiana supports a significant portion of the wintering plover population. Designation of over 1 million acres can only be considered excessive.

Our Response: We agree that human development is not as great a threat along Louisiana's coasts as it is in other areas within the plover's wintering range. We disagree however, that there is no documentation that Louisiana supports a significant portion of the wintering plover population. The International Piping Plover Surveys have consistently identified Louisiana as having the second highest numbers of wintering piping plovers after Texas. Since publication of the proposed rule we were able to conduct surveys in the remote deltas of Louisiana, where access is difficult. Based on the results of these surveys, we refined our critical habitat designation to the maximum extent possible to include only those areas having documented use by piping plovers. This has resulted in less acreage being designated in Louisiana.

Comment 11: No data were presented to show that piping plovers exhibit site fidelity and cannot simply move to other areas if an area is destroyed.

Our Response: Johnson and Baldassarre (1988) found relatively high site fidelity for plovers wintering in the Mobile Bay area in Alabama. The revised recovery plan for the piping plover Atlantic coast population noted several reports of banded birds returning year after year to the same wintering sites on both the Atlantic and Gulf coasts (S. Bogert, pers. comm. 1988; T. Below, National Audubon Society, pers. comm. 1988; T. Eubanks, pers. comm. 1989; Zonick and Ryan 1993; J. Fussell, pers. comm. 1995). Wemmer (2000) presents information on intra- and inter-year site fidelity for Great Lakes plovers, which documents one bird that has been observed during 9 of 11 winters since 1988 at Marco Island, Florida.

Comment 12: Comments have been received expressing concerns with the size of designated areas. Most think that the designated areas are too large; a few think that the units are not large enough, thereby not allowing for changes that occur during known dynamic coastal processes.

Our Response: As described in the "Methods" section of this rule, in the proposed rule, a single buffer distance was set for all units in all states (500 m (1,640 ft)). This buffering methodology resulted in areas of water (deeper than mean lower low water (MLLW)) and areas of dense vegetation being included in the designation, which are not utilized by piping plovers. MLLW is defined as the average of the lower low water height of each tidal day observed over the National Tidal Datum Epoch. In the final rule, we abandoned this methodology for a more precise means of defining the areas that contain the physical and biological features essential to the wintering piping plover. This change in methodology results in smaller units of designated critical habitat than that of the proposed rule. We also removed developed areas from mapped units where possible. (See our response to comments under "Issue G: Mapping and Primary Constituent Elements.").

In order to capture the dynamic nature of the coastal habitat and the intertidal areas used by the piping plover, we have textually described each unit as including the area extending out from the landward boundaries to the MLLW. Designating specific locations for critical habitat for the piping plovers is difficult because the coastal areas they use are constantly changing due to storm surges, flood events, and other natural geo-physical alterations of beaches and shorelines. Thus, to best insure that areas considered essential to the piping plover will remain in the designation over time, our textual unit descriptions will constitute the definitive determination as to whether an area is within the critical habitat boundary. Our textual unit descriptions describe the geography of the area using reference points, include the areas from the landward boundaries to the MLLW, which encompasses intertidal areas that are essential foraging areas for piping plovers, and may describe other areas within the unit that are utilized by the piping plover and contain the primary constituent elements (e.g., upland areas used for roosting and wind tidal flats used for foraging).

Comment 13: Requests have been made to modify specific units in order to avoid areas where existing and future projects are planned or may occur.

Our Response: Critical habitat is designated on the basis of scientific data, but areas may be excluded on the basis of economic impact or any other relevant impact if the Secretary determines that the benefits of exclusion outweigh the benefits of specifying such areas as critical habitat. We may not exclude areas if such exclusion will result in the extinction of the species. While the final Economic Analysis identifies some impacts following this critical habitat designation, this consultation activity is largely attributable to the listing. This is based on the fact that all the designated critical habitat units have documented use by piping plovers and planned projects are currently subject to the regulatory provisions of section 7(a)(2) and section 9 of the Act due to the listing of the piping plover. See the "Economic Analysis" and the "Exclusions Under 4(b)(2) of the Act" sections of this rule.

Comment 14: Many commenters have asked why we do not designate areas that are not heavily used and inaccessible by man, therefore more ideal for piping plovers.

Our Response: We have designated areas with consistent documentation of piping plover use. This includes both areas heavily used and inaccessible by man. Many inaccessible areas do not have the primary constituent elements needed by plovers. Piping plovers choose areas that meet their physical and biological needs. Plovers exhibit a certain amount of site fidelity and were using many of these places before they became developed.

Comment 15: Commenter states that literature (Nicholls Baldassarre 1990b) seems to suggest that people and off-road vehicles preclude piping plovers from occupying wintering sites. There are beaches where piping plovers and beach users successfully cohabit. Studies cited in the recovery plan do not provide conclusive scientific data on whether or not human-caused impacts influence wintering piping plovers.

Our Response: Section 4 of the Act requires us to base our critical habitat designations on the best available scientific information. We note that there are several studies documenting the effects of human presence on the behavior of birds. Bird species vary in their response to human disturbances (pedestrian and vehicular) (Rodgers and Smith 1997). On the breeding grounds piping plovers elicit a significantly higher response to humans than to potential predators or non-predator species (Flemming *et al.* 1988). Rodgers and Smith (1997) documented that shorebirds are more easily flushed than other species of coastal birds. This may be because shorebirds on the wintering grounds are migrant species that rarely interact with humans. Elliott and Teas (1996) evaluated direct and indirect measures of the effects of human disturbance on piping plovers in Texas. Piping plovers (breeding and wintering) not encountered by humans spend more time foraging and less time in active nonforaging behavior (Elliott and Teas 1996; Burger 1991). Zonick and Ryan (1996) documented in Texas that beach vehicular density and piping plover abundance were negatively associated. On the breeding grounds, the effects of people have caused increased shifts in habitat use and decreased foraging time with more time devoted to alertness (Burger 1991; Staine and Burger 1994).

Increased human disturbance increases energy expenditure by birds and reduces their food intake (Belanger and Bedard 1990). Whether this is enough to affect their maintenance of fat reserves for long-range migration or to maintain adequate body temperatures under cooler winter conditions is unknown. If the level of disturbance is high enough, piping plovers may be forced to move to less optimal habitat (Elliott and Teas 1996). We do not know what effect foraging in marginal areas has on the piping plover's ability to survive the winter, and successfully reach the breeding grounds, or on reproductive success once on the breeding grounds. Studies on the breeding grounds that may apply on the wintering grounds show that piping plovers that have diverse habitats available for foraging can more easily cope with space competition and human disturbances than those with fewer habitats (Burger 1994).

Since the piping plover was listed in 1986, no beach closures have occurred due to the presence of piping plovers in their wintering range, although in the breeding range (e.g., Plymouth, Massachusetts), partial beach closures have occurred to protect chicks and adult piping plovers prior to the chicks fledging. Additionally, as stated in our response to B.18, we believe that the effect of normal human presence on piping plovers in their wintering habitat does not have serious consequences at the population level, and we do not expect this designation to affect recreational beach use.

Comment 16: Several commenters suggested that certain units (Yent Bayou, Marco Island, Unit TX–34 (San Luis Pass), and Rollover Bay and surrounding areas) are not essential to the conservation of the species and should not be designated as critical habitat.

Our Response: As required under the Act, we designated critical habitat essential for the conservation of the species based on the best scientific data available. We identified areas throughout a broad geographic coverage along the coast that contained the primary constituent elements and where occurrence data indicated a consistent use by piping plovers. The essential features found on the designated areas may require special management consideration or protection to ensure their contribution to the species' recovery. We believe that the designated areas are sufficient, and are needed to support piping plovers when recovered. We have addressed these areas specifically in "Issue B: Site-specific Biological Comments."

Comment 17: One commenter questioned the need to designate critical habitat in areas where the piping plover does not breed.

Our Response: This designation is for wintering habitat only. Piping plovers spend up to 10 months (83 percent of their lifetime) of each year on the wintering grounds. It is, therefore, important to insure their biological and physical needs are met on the wintering grounds. See also response to A.4.

Comment 18: Several commenters requested that vast areas of open sandy beaches, open water, and heavily vegetated dunes not be designated critical habitat and questioned why the designation includes areas up to 100 meters offshore.

Our Response: We disagree with the statement that "vast" areas of open sandy beaches have been designated as critical habitat. Areas with documented piping plover use have been designated. These areas are used by piping plovers because they contain the primary constituent elements and are essential to the conservation of the species. The primary constituent elements are found in geologically dynamic coastal areas that support intertidal beaches and flats and associated dune systems and flats above annual high tide (i.e., sandy beaches). Because areas used by piping plovers are ephemeral habitats, we must consider their changing nature over time. As explained in the "Methods" section, we abandoned the buffering methodology used in the proposed rule and the revised textual unit descriptions are now the definitive source of determining unit boundaries. This change has resulted in critical habitat units that are significantly scaled down in size from what was presented in the proposed rule. We also believe that we have captured the ephemeral nature of the habitat within these unit descriptions, by including areas to MLLW.

Comment 19: While there may be some sites within the piping plover's range that are very remote or logistically difficult to survey, only sites with documented occurrence of the species should be designated as critical habitat.

Our Response: Since the initial proposal, we obtained data on piping plover occurrences in critical habitat areas where the primary constituent elements were present but where we had no piping plover occurrence data because the areas were logistically difficult to survey. We have subsequently refined our designation to include only those areas that contain the primary constituent elements essential for the conservation of the species and for that we have known piping plover occurrences. See the "Summary of Changes From the Proposed Rule" section and our response to A.10.

Issue B: Site-specific Biological Comments

A number of commenters spoke to specific geographical areas of the designation.

Comment 1: Several commenters have recommended the inclusion of

additional areas in the critical habitat designation and have submitted data supporting consistent use of these areas by piping plovers. The areas that fall under these criteria in South Carolina include Port Royal Mud Flats, Beaufort County. Areas in Florida include Dog Island, Franklin County; Big Hickory Island, Lee County; north tip of Anna Maria Island, Manatee County; high marsh and salt pans inland of Bunche Beach, Lee County (adjacent to Unit FL–25); Cape Haze/Gasparilla Sound State Buffer Preserve, Charlotte County; and northeast end of Spanish Harbor Keys "Horseshoe Pit," Monroe County. In Alabama, Gulf State Park was recommended for inclusion.

Our Response: We appreciate receiving the additional information. We will continue to monitor and collect new information and may revise the critical habitat designation in the future if sufficient new information supports a change. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition (see response to E.5). Should new information become available to support the need to designate critical habitat in other areas, we will consider amending this designation.

Comment 2: Other areas have been recommended for inclusion, based on presence of primary constituent elements; however, no significant data on plover occurrence was presented by commenters. Such areas recommended in North Carolina include expansion of units 6 and 7 to include all of the northern and southern Core Banks area. South Carolina areas are Fripp Island (habitat has been riprapped), Morse Creek, and St. Phillips Island, Beaufort. The areas in Florida include the South tip of Amelia Island, Nassau County; high marsh and salt pans of Charlotte Harbor State Buffer Preserve, Charlotte County; Passage Key National Wildlife Refuge, Manatee County; north end of Longboat Key, Sarasota County; Ft. Pickens, Santa Rosa County; Little Sabine, Santa Rosa County; Choctawhatchee Bay, Okaloosa County; Cape St. George, Franklin County; St. Marks National Wildlife Refuge, Piney Island, Wakulla County; Aucilla Wildlife Management Area, Steinhatchee Area, Taylor County; Cedar Key and area, Levy and Dixie Counties; Chassahowitzka National Wildlife Refuge, Homosassa Island, Citrus County; Siesta and Casey Keys, Sarasota County; Mouth of Peace River, Charlotte County; Pine Island and Pine Island National Wildlife Refuge, Mound Key, Carl Johnson Park, Lovers Key State Recreation Area, and Delnor Wiggins Pass, Lee County; Rookery Bay National Estuarine Sanctuary and Kice Island, Collier County; north end of Key Largo and other Keys in general, Monroe and Dade Counties; Hobe Sound National Wildlife Refuge and Blowing Rocks Preserve, near Jupiter Inlet, Martin County; Hutchinson Island, south of Ft. Pierce, St. Lucie County; Sebastian Inlet State Park, Pelican Island National Wildlife Refuge, Indian River County; Spessard Holland County Park, Brevard County; Canaveral National Seashore, Brevard and Volusia Counties; Anastasia State Recreation Area, St Augustine Beach to Ft. Matanzas Inlet, St. Johns County; Midnight Pass, Sarasota County; Sand Key, Pinellas County; St. Andrews State Recreation Area, Bay County; and Port Charlotte Beach State Recreation Area, Charlotte County. One area, Sand Island, was requested for inclusion in Mississippi. In Alabama, the area known as Alabama (also known as Florida) Point and Bon Secour National Wildlife Refuge were suggested for inclusion.

Our Response: No data were provided to support the designation of the above areas as critical habitat. Many of these sites have been monitored as part of piping plover and other shorebird surveys. No consistent use by piping plovers was recorded.

Comment 3: One commenter noted that observations of piping plovers occurred in the following areas during the international censuses, but that the areas were not included in the designated units in Texas—Rachel Site, east of Whites Point, Nueces Bay, Nueces County, 1991; Tule Lake, Nueces County, 1996; Redfish Bay area, Nueces County, 1991, 1996; Aransas Pass/Port Aransas causeway, Nueces County, 1991, 1996; Aransas National Wildlife Refuge, Calhoun and Aransas Counties, 1991; Aransas Bay/St Charles Bay reefs, Aransas County, 1991; Copano Bay bridge, Aransas County, 1991; Texas Point to McFaddin National Wildlife Refuge, Jefferson County, 1996 and Christmas Bird Counts.

Our Response: We appreciate receiving the additional information. For the following reasons we did not include these areas in the designation. The Rachel Site, east of Whites Pt. in Nueces County was not surveyed in 1996, nor is there indication of any surveys taken that show piping plovers have been seen at this site. The area has the potential habitat for piping plovers, but there has been no data reported to support designation of critical habitat. Six piping plovers were found in St. Charles Bay in 1991, but the site was not visited in 1996, and we did not include the area in the designation based upon a lack of documentation of consistent use. Although piping plovers were present on the margins of spoil islands at the Aransas National Wildlife Refuge in Calhoun and Aransas Counties in 1991, none were found at either site during the 1996 census, therefore we did not include this area in the designation because we lacked documentation of consistent use. Only one bird was found in both the 1991 and 1996 censuses on the Port Aransas causeway. This area was not included due to these low numbers, plus the fact that much of the area is made up of emergent marsh or mangroves and the primary constituent elements are not present for the piping plover. There are no data to support the presence of piping plover at the Copano Bay bridge site, and there is not much habitat available for the bird except in extreme low tide events. The Texas Pt. to McFaddin National Wildlife Refuge in Jefferson County is a very highly erosive narrow stretch of beach, and it is likely that very few birds would be present. The area of Tule Lake in Nueces County was not censussed in 1991, but 8 birds were found in 1996. This site is highly developed all around, and we determined that the characteristics of this area do not provide for the long-term essential needs of the piping plover. Redfish Bay in Nueces County supported 83 birds in 1991 and 20 birds were seen in 1996. Thus, this site could have been proposed for critical habitat designation. However, in order to include areas in this final rule, we would have to include them in our proposed designation and allow the public an opportunity to comment on their inclusion. As we stated in our response to Comment B.1 above, we may revise the critical habitat designation in the future if sufficient new information supports a change. Furthermore, areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition.

Comment 4: One commenter requested to see the data upon which Yent Bayou (unit FL–10) was chosen as critical habitat for piping plover because their data do not support such a designation. Yent Bayou is a good site

for many shorebirds, but not for piping plover.

Our Response: We do not agree with the commenter. The 1996 International Census documented 11 birds; Sprandel *et al.* (1997) documented 12 during the winter of 1993–94; Climo (1998) visited Yent Bayou 21 times between 1993 and 1996 and saw an average of 5.1 piping plovers per visit.

Comment 5: At a public workshop, the Service failed to present scientific data supporting the inclusion of any portion of Marco Island in a critical habitat designation. There is no peer-reviewed published scientific literature to indicate that Florida or Marco Island beaches are essential to plover recovery.

Our Response: Although we did not present data at the workshop, designation of unit FL–27 at Marco Island was based on ample documentation that shoals at the north end of the island are regularly used by piping plovers. Individuals with expertise in plover biology wrote the piping plover recovery plans. The revised Atlantic Coast and Great Lakes populations recovery plans were peer-reviewed and they specifically mention Marco Island as essential for conservation of the plover. We have also reviewed available information from the 1991 and 1996 International Censuses (including field reports and notes) and the often-substantial data from local birders and ornithologists. Other publications used to evaluate Florida habitat included a "Winter Shorebird Survey" published by the Florida Game and Fresh Water Fish Commission (Sprandel *et al.* 1997), a thesis titled "A landscape-level analysis of piping plover (Charadrius melodus) winter habitat" by Lisa Climo (1998), and a thesis titled "Distribution and other ecological aspects of piping plovers (*Charadrius melodus*) wintering along the Atlantic and Gulf Coasts' by Janice Nicholls (1989). While it would always be desirable to have more data, the critical habitat designations are based on the best scientific data available.

Comment 6: Marco Island is unlike other beaches proposed to be designated as critical habitat in that it is completely developed.

Our Response: With the reduction of the FL–27 (Marco Island) unit's size from the proposed rule, much of the highly developed areas are no longer included in the designation. We believe the new boundaries fully cover the areas regularly used by piping plovers and allow for the movement of sand bars and tidal flats. In general, if the primary constituent elements are present and we make a determination that the area is essential for the conservation of the species, the degree of development is irrelevant to critical habitat designations, except to the extent that there might be economic or other impacts that could outweigh the benefits of designating critical habitat. The final Economic Analysis did not identify economic impacts at Marco Island that suggested that this area should be excluded.

Comment 7: Marco Island is the northernmost of the Ten Thousand Islands. Virtually all of the other islands cannot be developed, so they would make ideal plover habitat without interfering with human use of beaches on Marco Island. Why was Marco Island (unit FL–27) proposed for designation as critical habitat, while other populated areas, such as Naples, Florida, were not nor were isolated beaches, such as at Keewaydin Island or the 50 miles of the Gulf coast south of Marco Island?

Our Response: The entire coastline of Lee and Collier Counties, including Marco Island and the Ten Thousand Islands, has been surveyed for shorebirds for many years. Naples lacks an inlet like Big Marco Pass, and the Ten Thousand Islands generally lack beaches or mud flats suitable for these birds. We have been provided reports of piping plovers using several sites near Marco Island, but do not have evidence of regular, repeated use that would indicate that they are essential to the conservation of the species. There is ample evidence that the critical habitat units designated in this rule are regularly used by piping plovers, and that other areas, including the coast south of Marco Island, are not.

Comment 8: Designating Marco Island beachfront as critical habitat will encourage the Service to create conditions favorable to the plover. This will encourage the plover to become established in an artificially created area in contrast to its long-term interest of using areas of lesser human presence.

Our Response: While the proposed rule included Marco Island's developed beachfront, nearly all of that developed beachfront has been excluded from the final rule based on data received during the comment period showing that piping plovers do not use that part of the beach. With regard to artificially created habitat, designation will not automatically require creation of wintering habitat for piping plovers. However, if it is possible to improve wintering habitat constituent elements as part of a Federal project, we will likely recommend such an action.

Comment 9: Piping plover habitat at Marco Island consisting of the intertidal area is ephemeral, has undergone significant changes over the last decade as a result of coastal processes and will, consistent with prior history, eventually degrade to the point where foraging habitat for the plover may no longer exist.

Our Response: Almost all piping plover wintering habitats are dynamic, consisting of beaches and flats that erode, accrete, or change position over time. We have included in our textual unit descriptions, the definitive legal source on unit boundaries, areas to the MLLW to insure that this critical habitat designation adequately captures the shifting primary constituent elements of critical habitat.

Comment 10: The scientific literature has shown that, on the wintering grounds, piping plovers generally are restricted to sand flats and intertidal areas, not beaches such as on the majority of Marco Island. The proposed critical habitat unit FL–27 at Marco Island includes large areas, mostly beaches, that are not used by wintering piping plovers. The unit should be reduced in size to cover only the sand flats and intertidal areas at Sand Dollar Island and Tigertail Beach at the north end of the island.

Our Response: The comment refers to the heavily developed portion of Marco Island's beach south of Tigertail Beach, that we now know is used little, if at all, by piping plovers. This area was removed from the FL–27 critical habitat unit.

Comment 11: One commenter noted that the boundaries of unit FL–27 at Marco Island extend far beyond the boundaries of a Critical Wildlife Area designated by the Florida Fish and Wildlife Conservation Commission to conserve shorebirds, especially breeding ones. Two other commenters provided data on piping plover use of the Marco Island area and aerial photographs.

Our Response: We used the survey information and aerial photographs in adjusting the boundaries of the FL–27 critical habitat map unit. The southern boundary is now at the southern limit of sandbar formation since 1952. This southern boundary coincides with the southern boundary of the Critical Wildlife Area. The revised northern border of the critical habitat map unit includes isolated sand bars that are forming from just north of Sand Dollar Island to Coconut Island, but excludes Hideway Beach. The landward boundary does not extend inland from the vegetation line because this part of the island appears to be accreting. The seaward boundary extends only far enough to cover areas with sandbars. We believe the new boundaries fully cover the areas regularly used by piping

plovers and for the expected movement of sand bars and tidal flats.

Comment 12: A few commenters stated that the NC–10 unit needs to reflect the continuity of habitat at this site. The narrative does a good job of describing the site, which includes the sandy shoal islands within the inlet. But the designated areas on the map leave out the sandy shoal islands within the inlet. The map should be drawn as one contiguous unit.

Our Response: The sandy shoal islands referred to are northeast of the inlet. Trying to include all sandy shoals visible would have made NC–10 extremely large. We believe that NC–10 as described in the unit description is sufficient for conservation of the species in this area. Piping plovers still have protection under the Act whether they are within critical habitat or not.

Comment 13: What effect will the final designation have on vehicular access to areas that already allow beach driving within critical habitat units?

Our Response: Only actions involving a Federal agency are regulated by critical habitat. On non-Federal lands, beach driving is not regulated under the Act unless take of a listed animal is involved. Take of a listed animal could be authorized by an incidental take permit (ITP) from the Service. An ITP would be required regardless of critical habitat if take is involved. The issuance of the ITP is a Federal action and the decision to issue the ITP will include an evaluation of the effects to critical habitat. In most cases, measures to avoid and minimize harm would be incorporated in a habitat conservation plan that includes driving.

For lands under Federal control (National Park Service, Air Force, etc.) the managing agency is responsible for ensuring that their actions do not jeopardize the continued existence of, or destroy or adversely modify critical habitat, of listed species. Often times, the managing agency is able to control impacts to listed species from beach driving by redesigning routes and beach access points, and by temporarily closing off specific areas during critical seasons.

Comment 14: The critical habitat designations for North Carolina, South Carolina, Georgia, and Florida are conservative overall, as fairly discrete sites were selected. However, it seems a more comprehensive approach was taken for the selection of sites along a majority of the Gulf Coast from Alabama to Texas.

Our Response: Based on comments received, we have refined our critical habitat designation to the maximum extent possible to include only those areas that have documented consistent use by piping plovers and removed all areas that do not have consistent use documentation. This was done in order to ensure consistency in the designation of critical habitat units for all States. The configuration of habitat units differs across the wintering range as a result of basic differences in beach morphology throughout the South Atlantic and Gulf of Mexico.

Comment 15: It would be more cost-effective for the Service to designate all critical habitat for the Perdido Key and Choctawhatchee beach mice as critical habitat for the piping plover, since those species are already being monitored.

Our Response: Designating critical habitat for piping plovers based on the existence of critical habitat and monitoring for another listed species does not meet our requirements under 50 CFR 424.12(b). In this case, critical habitat must be based upon a consideration of the physical and biological features essential to the conservation of the piping plover.

Comment 16: One landowner in Louisiana voiced concern that his/her property was within proposed critical habitat boundaries even though it does not contain piping plover habitat.

Our Response: We recognize that not all parcels of land within the initially proposed critical habitat designation contain the habitat components essential to piping plover conservation. Since the initial proposal, we have refined our critical habitat maps to exclude, to the maximum extent possible, those specific areas that are not currently believed to contain the constituent elements of piping plover habitat. Areas that do not contain the primary constituent elements, but are included in the textual unit descriptions, are not, by definition, considered critical habitat.

Comment 17: Coastal land loss in Louisiana is more important than development in affecting critical habitat; the Service should shift its focus to fighting coastal land loss.

Our Response: We agree that coastal land loss is a major factor affecting piping plover wintering habitat. We represent the Department of the Interior on the Louisiana Coastal Wetlands Conservation and Restoration Task Force. That Task Force oversees planning, evaluation, funding, and implementation of projects funded under the Coastal Wetlands Planning, Protection and Restoration Act. The projects approved to date by the Task Force are expected to protect and restore nearly 95,000 net acres of coastal wetlands in Louisiana. That, however, does not relieve us of our obligation to designate critical habitat for the piping plover.

Comment 18: The designation of piping plover critical habitat on Grand Isle, Louisiana, could adversely impact the economy by curtailing recreational uses and limiting development of homes and businesses on the island.

Our Response: We have refined our critical habitat unit description since the initial proposal to include only those areas of Grand Isle that contain the primary constituent elements. On Grand Isle, that habitat is found seaward of the hurricane protection levees. We do not anticipate the development of homes or business in that area. We believe that the effect of normal human presence on piping plovers in their wintering habitat does not have serious consequences at the population level, and we do not expect this designation to affect recreational beach use.

Comment 19: Uninhabited barrier islands near Grand Isle, Louisiana, provide ideal habitat for piping plovers. The Service should work with local agencies to restore those islands rather than designate critical habitat on Grand Isle.

Our Response: We agree that some of those islands contain piping plover habitat; however, we are required to designate critical habitat based on the biological or physical constituent elements essential to the conservation of the species. The portions of those islands (including Grand Isle) that met those criteria and where survey data indicated consistent use by piping plovers were included in critical habitat.

Comment 20: Beach maintenance activities conducted by the Harrison County Development Commission (HCDC), Mississippi, are important in the overall protection of the seawall and U.S. Highway 90, and in maintaining sufficient habitat for piping plovers. HCDC supports the critical habitat designation provided it would not prohibit them from carrying out their mandate to maintain the beach in Harrison County, Mississippi.

Our Response: We agree that beach maintenance activities are important for the protection of seawalls, highways, and piping plovers. In general, we have found that beach nourishment activities can be timed and designed to minimize effects on piping plovers. We do not expect this designation to affect those beach maintenance activities.

Comment 21: At TX–12 (adjacent to Naval Air Station), the polygon provided by the Service for the critical habitat area appears to include a small part of the airfield.

Our Response: It was impossible to map all sites exactly within the time constraints directed by the court to publish the proposed designation. Only those areas within the textual unit descriptions that contain the essential elements necessary to support the piping plover are considered critical habitat.

Comment 22: We recommend that only land portions of South Bay be included in Texas Unit 1 and that the interior of the Boca Chica peninsula be excluded. Designation of the entire bay area as critical habitat seems excessive.

Our Response: Only those land portions in South Bay that have the piping plover primary constituent elements are considered critical habitat. If portions of the land masses that have been designated change, either due to natural events such as gradual accretion or erosion or storm events, or man-made causes such as the placement of dredge material, then these changing areas will be considered critical habitat when the primary constituent elements are present. The Boca Chica peninsula is an ever-changing land mass with accretion and erosion rates that cannot be fixed on a map. Therefore, only those areas on the peninsula that contain the primary constituent elements (i.e., support the piping plover for roosting and feeding) will be considered critical habitat.

Comment 23: We recommend including less of the interior area of South Padre Island (TX unit 3). Known use of these islands by piping plovers appears to be concentrated on the beach areas and exposed flats of both islands. The inclusion of interior areas appears to be inconsistent with the shore areas designated elsewhere along the coast.

Our Response: There are areas of the interior of South Padre Island where piping plovers have been sighted. We included interior areas that are not sand, mud, or algal flats, because piping plovers use flats for foraging and sparsely vegetated areas for roosting purposes, and these areas are also needed for roosting during storms and strong winds.

Comment 24: We recommend including less of the interior area of San Jose Island (TX Unit 18). Known use of these islands by piping plovers appears to be concentrated on the beach areas and exposed flats of both islands. The inclusion of interior areas appears to be inconsistent with the shore areas designated elsewhere along the coast.

Our Response: San Jose Island is composed of a variety of habitats that support the piping plover. Although there are portions that do not contain all of the primary constituent elements needed by the plover, aerial photographs indicate that piping plover habitat is present on San Jose Island. Most of the designated inland areas on San Jose Island (TX 15 and TX18) are relict hurricane washover passes, known to be preferred piping plover habitat. Thus, it is suitable bayside habitat that is somewhat lacking in this portion of the Texas Coast, and we have included it in the designation. See our response to B. 23 above for a discussion on the importance of interior habitat.

Comment 25: It appears that potential habitat in south and east sides of Galveston Bay has not been included, and should be.

Our Response: No specific sites were suggested. However, potential piping plover habitat exists on the south and east sides of Galveston Bay, as well as along the shorelines, flats, beaches, and disposal areas throughout Galveston and other Texas bays. Although piping plovers are occasionally seen at many of these sites, we have not designated areas unless they have consistent piping plover use. Five sites on the upper Texas Coast (TX–36, TX–35, TX–34, TX–31, and TX–27) have accounted for well over 90 percent of sightings during the previous three International Piping Plover Winter Censuses and these areas are included in the final designation.

Comment 26: The piping plovers that occur on the Sunset Lake Park area and other natural resources and public use values are already protected by an existing conservation easement. The Sunset Lake Park is already uniquely protected and preserved as a park under this easement and the park use designation by the City. The Act and Migratory Bird Treaty Act (MBTA) and the Sunset Lake Conservation Easement already provide adequate protection while enabling other compatible park recreational uses. Critical habitat designation will not help focus conservation activities for the species at Sunset Lake anymore than is already available for this public park operated under the existing easement.

Our Response: The conservation easement for Sunset Lake protects the body of the lake and the improvements to the natural wildlife habitat and sightseeing amendments. The area outside of the lake proper where piping plovers have recently been sighted is in the highway right-of-way adjacent to the lake. Highway reconstruction or improvements may cause direct or indirect impacts to this important habitat. The highway right-of-way is outside of the conservation easement. In addition, the easement does not provide adequate special management for the piping plover which can only be adequately provided by a legally operative plan that addresses the maintenance and improvement of the primary constituent elements important to the species, and manages for the long-term conservation of the species (i.e., implements conservation management strategies and provides for periodic monitoring). Therefore, the existing special management is insufficient to satisfy the requirements of the definition of critical habitat. Additionally, the publicity and heightened awareness of a rare bird's presence should help to support Sunset Lake's Conservation Plan by bringing additional bird-watchers and wildlife enthusiasts to the area, potentially creating an increase in economic value of the Sunset Lake.

It is also important to note that a critical habitat designation has no effect on situations where a Federal agency is not involved. For example, only private actions that involve Federal funding or a Federal permit, and where the Federal agency determines that the proposed action may affect a listed species or its critical habitat require consultation.

The protection of the piping plover under the MBTA does not in any way obviate our duties under the Act with respect to designating critical habitat.

Comment 27: Nothing in the data indicates that piping plovers were recorded from the vegetated portions of Unit TX–34. Data supporting the designation of vegetated areas within the critical habitat proposal does not exist. We request the Service to reconsider its proposed designation of Unit TX–34.

Our Response: TX–34 (San Luis Pass flats and contiguous beach) is considered one of five important piping plover aggregation sites on the upper Texas Coast. Past winter surveys have found upwards of 20 wintering birds there. Curt Zonick's (1993) study entitled "Ecology and Conservation of Wintering Piping Plovers and Snowy Plovers," ranked San Luis Pass second of eight important Texas sites in density and fourth in population (average of 33.7 piping plovers). Sparsely vegetated areas as described in the "Primary Constituent Elements" section of this rule are used by the piping plover as roosting habitat in this unit.

Comment 28: Based on the habitat assessment performed on October 12, 2000, a review of 1995 and 1997 color aerial photographs, and U.S. Geological Survey (USGS) 7.5 minute quadrangle maps, most of Unit TX–34 does not contain the primary constituent elements essential for the conservation of wintering piping plovers. At least 17 percent (250 ac) of the unit is vegetated and does not provide foraging, roosting,

or resting habitat. Additionally, the majority of the beach within the proposed unit is very narrow and does not provide optimum habitat. The majority of the unit north of Highway 3005 consists of open water and should not be considered a primary constituent element of critical habitat.

Our Response: See our response to Comment B.27 above. Only those areas within the unit boundary, as described in the regulatory section of this rule, that provide the primary constituent elements for the piping plover are considered critical habitat. The critical habitat boundaries, as described in the regulatory section of this rule, stop landward where densely vegetated habitat, not used by the piping plover, begins and where constituent elements no longer occur.

Comment 29: The biological information obtained for Unit TX–34 does not provide sufficient information supporting the designation of critical habitat for piping plover. Only 2 percent of the piping plover sightings during the 1991 and 1996 Texas mid-winter surveys were recorded from the San Luis Pass area.

Our Response: While piping plover counts during winter survey periods have indeed been low, it should be noted that winter censuses have occurred for the most part during extreme low tidal events when both beach and tidal pass counts along the entire upper Texas Coast were very low. Other informal counts at this site, including a 1992 Service field study on file at our Clear Lake Field Office, and Curt Zonick's definitive 1991–93 study (see our response to Comment B.27 above) show clearly that this site is consistently used.

Comment 30: Since the northern Gulf beaches of Unit TX–34 are very narrow, and since Zonick and Ryan (1996) demonstrated a positive correlation between beach width and piping plover densities, these areas should not be included in the critical habitat proposal.

Our Response: Only those beaches shown to be consistently used by piping plovers, according to previous wintering bird censuses, are included in the designation.

Comment 31: A very commendable job has been done in setting aside critical habitat areas along the long coast of Texas, but we note what appears to be the significant omission of any area near the mouth of the Sabine River at the Texas-Louisiana State Line. There should be some appropriate beach and dune area between the Bolivar Peninsula and the Sabine River. While the west bank of the Sabine is marshland, we understand that there is a good area for plovers at or near Sea Rim State Park where, for example, plovers were found in both 1997 and 1998.

Our Response: While potential habitat exists along this extensive beach area, and while piping plovers are occasionally seen along this stretch of beach, winter counts and other studies have failed to show consistent use here.

Comment 32: Several commenters requested that Rollover Bay and the surrounding area not be designated as critical habitat for the piping plover. They feel that Rollover Bay is inconsistent with the Service's criteria for critical habitat. Rollover Bay and Pass is a major recreational area for the citizens of Texas and other States to enjoy fishing, boating, crabbing, and wading. Thousands of visitors come to Rollover Bay and Pass annually. The Intracoastal Waterway also crosses Rollover Bay. From time to time, the Army Corps of Engineers dredges sand from the waterway to renourish the beaches of Bolivar Peninsula, in order to keep the waterway open. This is done normally during the winter months. At this time the Texas General Lands Office (TGLO) and Galveston County are planning to dredge sand from Rollover Bay to renourish the beaches at Gilchrist and Caplin. This project will be one of the first major nourishment projects in Texas history. This project is vital to the above two communities. The Bolivar Peninsula Beaches are used during the winter months for citizens to drive and walk along hunting sea shells. This is also vital to the economy of their communities. Eight miles west of Rollover Bay there are 37 miles of beaches, and between High Island and Sabine Pass, thousands of acres of wetlands, and wildlife refuges that can be designated as critical habitat for the piping plover. They would not be disturbed by the public there because there is no highway for the public to get there. Highway 87 has been closed off and on for the past 18 years and completely for the last 11. We urge the Service to designate that area as critical habitat for the wintering piping plovers.

Our Response: We acknowledge that the Rollover Bay and surrounding area are heavily used recreation areas and currently the site of important beach habitat restoration activities. The 1991 coast wide survey by Texas Parks and Wildlife (Performance Report, Project No. 9.1 Piping Plover and Snowy Plover Winter Habitat Status Survey (Mitchell, Zonick, and Withers)) identified the Rollover Bay flats as holding a moderate winter population of piping plovers, an average of 12 birds (11, 14, and 12) for 3 survey trips. The average of 1990 through 1996 Audubon Christmas Bird Count circles that included the Rollover Bay area was 13 birds. The 1991, 1996, and 2001 International Piping Plover Censuses found very low numbers of birds along the beaches between Bolivar Flats and High Island, but these surveys were done by driving and did not cover the Rollover Bay area. In summary, the Rollover Bay site (TX–37) holds a moderate but consistent wintering piping plover population. It is the only site shown to consistently hold wintering birds along the Texas coast east of Bolivar Flats (TX–36), and should be rated probably the sixth most important upper Texas coast wintering site. It should be noted that past section 7 consultations involving beach restoration in general, and this site in particular, have supported beach restoration activities as improving the quality of piping plover habitat in the long term by preserving and protecting eroding beach habitat. We have not previously found that normal beach recreation activities would significantly affect piping plovers or their habitat in these types of areas, and we do not anticipate that normal recreation would be restricted as a result of this designation.

Comment 33: Commenters note that some areas of the Gulf coast were not proposed despite the fact that they are not developed and that they have all of the primary constituent elements of critical habitat. For example, the area between Rollover Pass, Texas, and the Louisiana/Texas state line appears to meet the requirements for piping plover wintering habitat. Similarly, the Gulf of Mexico shoreline on the last few miles of the western end of the Ft. Morgan peninsula, the shoreline of the Bon Secour National Wildlife Refuge's Perdue Unit, and other stretches of shoreline along the peninsula appear to meet the requirements for critical habitat. They question why these and similar shoreline areas have not been included in the proposed critical habitat designation. They assert that where census data are inadequate to prove consistent use by the wintering piping plover, the habitat in question contains the physical and biological features essential to the species, and the Service should include the area in the designation of critical habitat.

Our Response: We, and most ornithologists, assume that areas consistently holding aggregations of this species are essential to the conservation of the piping plovers. Therefore, this designation was primarily based on areas of consistent use that contain one or more of the primary constituent elements. We did not consider it in the

best long-term conservation interests of the piping plover to designate critical habitat where it is only infrequently known to occur. However, should new information become available to support the need to designate critical habitat in other areas, we will consider amending this designation.

Comment 34: Commenters request that the Service take under consideration the designation of portions of Long Island, Texas, located in Cameron County, Texas, as critical habitat for the piping plover. They feel that their close proximity to the current designated area and the physical and biological features of their island warrant serious consideration.

Our Response: While potential habitat exists along this extensive area, and while piping plovers are occasionally seen, survey counts and other studies have failed to show consistent populations here and we have not been able to conclude that these areas are essential to the conservation of the species.

Comment 35: The burden should be placed on the Service to prove to the land owners that their property is piping plover habitat and then negotiate with them the protection of the area. Almost the entire island from Gulf to Bay, including upland areas in the middle of South Padre Island, was designated as critical habitat. That is not fair or correct.

Our Response: The South Padre Island community encourages protection of wildlife areas. We do not expect any additional burdens placed on landowners, or the need for negotiation for protection of the area. Only private activities with Federal sponsorship that may affect the piping plover or its critical habitat require the Federal agency to consult with us. Although the piping plover's feeding habitat is located on mud, sand, and algal flats, upland areas with sparse vegetation offer the birds roosting habitat which is also important for its survival.

Comment 36: The spoil island area in Ingleside Cove was not included for consideration. It meets the criteria listed in the **Federal Register** for wintering piping plovers: intertidal beaches and flats, sand and/or mud flats with no or very sparse emergent vegetation. Piping plovers have been sighted in the spoil island area in Ingleside Cove Wildlife Sanctuary for many years, and it is possible that they may winter on the uninhabited spoil islands that border the Cove. Is the area around Ingleside Cove considered designated critical habitat for wintering piping plovers? These plovers have been sighted in Ingleside Cove Wildlife Sanctuary for many years, and commenters have felt that they may winter on the uninhabited spoil islands that abut the Cove.

Our Response: We have not collected any data that indicate piping plovers use this area, and since the proposed designation was based on known scientific surveys for consistent usage by the birds, we did not propose that area as critical habitat. We will, however, attempt to survey this site in the future.

Comment 37: The Cayo del Grullo arm of Baffin Bay and the tidal flats along Highway 48 from Highway 100 to where it intersects at Highway 48 were left out of the critical habitat designation. Plovers can be seen feeding near Vattman Creek near Kaufer-Hubert Memorial Park.

Our Response: Based on surveys performed in these areas, piping plovers do not use the areas consistently, and since the proposed designation was based on consistent use from known scientific surveys, we did not propose these areas for designation.

Comment 38: One commenter asked if the flats in Alazan Bay are used by piping plovers.

Our Response: We have not located any data to indicate that piping plovers use this area, and because the proposed designation was based on known scientific surveys for consistent use by the birds, we did not designate this area as critical habitat.

Comment 39: One commenter asked about Powderhorn Lake in Calhoun County. The Service owns the Whitmire Unit of Aransas National Wildlife Refuge. Those flats are used by lots of shorebirds.

Our Response: We have not located any data to indicate that piping plovers use this area, and because the proposed designation was based on known scientific surveys for consistent use by the birds, we did not designate this area as critical habitat.

Comment 40: Many residents of Padre Island oppose making the area of Pt. Aransas down to Pt. Mansfield nesting grounds for this or any bird species.

Our Response: This rule is issued to designate critical habitat for the wintering population of piping plovers, not nesting piping plovers, as these birds nest in the northern parts of the United States and Canada.

Issue C: National Environmental Policy Act (NEPA) Compliance

Some commenters expressed concern about our alleged failure to comply with NEPA.

Comment.1: The Service did not adequately comply with the requirements of the National Environmental Policy Act (NEPA). The decision to forego preparation of an Environmental Assessment (EA) and an Environmental Impact Statement (EIS) is based on reasons published in the **Federal Register** in 1983. Much has happened since 1983, and an EIS is required to properly analyze the full range of impacts of the designation, including social and economic effects. Contrary to species listings, where only the status of the species can be considered, critical habitat designation requires consideration of the economic and other relevant impacts of the designation. The commenters believe such considerations should be subject to a formal public process such as NEPA.

Our Response: The commenter is correct that we determined, for the reasons stated in a **Federal Register** notice published on October 25, 1983 (48 FR 49244), that neither an EA nor an EIS is required for actions taken under section 4(a) of the Act, including designation of critical habitat. We believe that the reasons for this determination remain valid despite the passing of nearly 18 years since our original determination. In addition, the economic impacts of the designation were analyzed in the Final Economic Analysis and considered in making this final determination. Finally, the public involvement and notification requirements under both the Endangered Species Act and Administrative Procedure Act provide ample opportunity for public involvement in the process.

Comment 2: Council on Environmental Quality Regulations (50 CFR 1502.21) state that no material may be incorporated by reference unless it is reasonably available for inspection by potentially interested parties within the time allowed for comment. The **Federal Register** document (48 FR 49244) referenced in the Service's determination that an EA or EIS is not necessary is not reasonably available.

Our Response: That document, as well as any other information supporting this designation, is available by following the instructions provided under the **FOR FURTHER INFORMATION CONTACT** section in both the proposed and final rules. We believe this easily-reachable source meets the requirements on the availability of supporting information.

Comment 3: According to a decision in *Catron County Board of Commissioners* v. *United States Fish and Wildlife Service*, 75 F3d 1429 (10th Cir. 1996) and *Oregon Natural Resources Council* v. *Lyns*, 882 F2d 1417 (9th Cir. 1989), the Service must prepare an EA on critical habitat

designation. In *Catron County*, the court noted that the Acts' procedures do not displace the NEPA requirements when critical habitat is proposed. The Service should follow *Catron County*, rather than *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), because the piping plover wintering critical habitat includes state and private lands, not just Federal land.

Our Response: The Service acknowledges that the Tenth Circuit Court of Appeals determined in *Catron County* that NEPA requirements apply to designation of critical habitat. However the Ninth Circuit Court of Appeals held in *Douglas County* v. *Babbitt* that NEPA does not apply to the Service's designation of critical habitat because Congress intended that the Act's critical habitat procedures displace the NEPA procedures, NEPA is inapplicable to actions that do not change the physical environment, and the application of both NEPA and the Act's requirements would frustrate both statutes. The Ninth Circuit did not limit its decision to cases involving only Federal lands, holding instead that the public notice provisions and opportunities for comment under the Act's provisions were adequate to serve the NEPA function. Our current practice is to require NEPA compliance for designation of critical habitat only where the critical habitat designation is located within the Tenth Circuit (the states of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, Utah, and Wyoming). That is not the case here. The decision in *Oregon Natural Resources Council* v. *Lyng* dealt with a U.S. Forest Service timber sale and is not applicable to the critical habitat designation issue.

Comment 4: While there may be some overlap between the requirements of the ESA and NEPA, NEPA requires Federal agencies to look at the short- and long-term effects of their actions, as well as cumulative effects, which the ESA does not. The public and other Federal agencies have raised legitimate concerns that can only be properly analyzed through the NEPA process.

Our Response: We disagree that NEPA is required for this action. We believe we have fully considered the relevant impacts of designation, as required by the ESA, and have found that these impacts are too insignificant to warrant a detailed analysis under NEPA.

Issue D: Legal Issues

Numerous commenters raised issues pertaining to compliance with the Act or with other laws and regulations (excluding NEPA issues).

Comment 1: Critical habitat may conflict with the public policy of the State of Texas, that stresses the need for open access to beaches for use by the public. Is this proposal subject to review by the Texas Coastal Management Program? There is potential for conflict between the designation and the Texas Open Beaches Act.

Our Response: The designation of critical habitat is not a listed activity in the Coastal Management Plan for Texas, and therefore is not subject to consistency review. The Coastal Coordination Council does have the opportunity to look at impacts to federally listed species and their critical habitat when reviewing permit applications and other projects.

Comment 2: In Texas, a mineral owner has unquestioned right to use as much of the surface as may be necessary to explore for oil, gas, and other minerals. The Federal Government should not pass laws that usurp State laws without providing just compensation to those affected.

Our Response: As stated in the proposed and final rules, we do not expect critical habitat designation to result in restrictions beyond those that resulted from the species' listing. We, therefore, see no conflict with existing State laws governing mineral exploration.

Comment 3: The court order does not require the Service to designate wintering habitat for the piping plover, only that critical habitat be designated for the Great Lakes and Great Plains populations.

Our Response: The commenter is correct in that the court ordered us to designate critical habitat for the Great Lakes and Great Plains populations of piping plover. As discussed throughout this rule, critical habitat includes those areas essential to a species' conservation. Piping plovers spend up to 10 months a year on the wintering grounds. Wintering grounds provide for an essential part of the species' life cycle. Without adequate conservation of wintering habitat, recovery of the species would be limited.

Comment 4: For the proposed rule, the Service drew broad boundaries and then excluded areas (e.g., buildings) within those areas. The only way to exclude areas from critical habitat is through 4(b)(2) of the Act, that requires an affirmative determination that the benefits of excluding an area outweigh the benefits of including it as critical habitat. No such cost-benefit analysis was provided in the proposal.

Our Response: Areas designated as critical habitat must meet the legal definition of critical habitat provided in this final rule. One prong of the definition is that an area must contain the physical or biological features essential to the conservation of the species concerned. Human-made structures do not contain such features and therefore do not meet the definition of critical habitat.

Comment 5: Critical habitat designation will provide opportunities for third parties to sue in order to stop activities like recreational use of the beach. In *Palila* v. *Hawaii Department of Land and Natural Resources*, 639 F. 2d. 495 (9th Cir. 1981), the court issued a mandatory injunction to eliminate the State's use of critical habitat in a way that was preventing the use of the habitat by the palila.

Our Response: The primary authority for third parties to sue to enjoin activities that harm endangered and threatened species is found in the citizen suit provision of the Act, 16 U.S.C. 1540(g)(1), that authorizes anyone to file suit to enjoin violations of the Act. Section 9 of the Act, 16 U.S.C. 1538(a)(1)(B) makes it unlawful for any person to "take" an endangered or threatened species. The Service's regulations define "take" as including actions that are likely to lead to the death or injury of threatened or endangered wildlife. *Palila* v. *Hawaii Department of Land and Natural Resources* was a citizen suit brought to enjoin the State of Hawaii from "taking" an endangered species by allowing goats to destroy the species' habitat. Neither section 7 consultation nor the designation of critical habitat were the basis of the suit. We do not expect that the designation of critical habitat for the wintering population of piping plover will increase the possibility of third party suits to enjoin use of beaches for recreational purposes.

Comment 6: In *Bennett* v. *Spear*, 520 U.S. 154, 169, 117 S.Ct. 1154 (1997), the Supreme Court cautioned that the requirement that the Service use the best scientific information available serves to "ensure that the Act is not implemented haphazardly, on the basis of speculation or surmise." Although the cited case involved section 7 consultation, the same caution should be exercised in actions under section 4, such as designating over 1,600 miles of shoreline based on inconclusive or unavailable data.

Our Response: We disagree that the critical habitat designation is based on inconclusive or unavailable data. The Act requires that our decisions be based on the best scientific and commercial information available. All areas chosen have documented consistent use by piping plovers and are limited to areas within the designated units that currently contain the principal

biological and physical features essential to the piping plover. In addition, an estimated 32 pairs remain of the endangered Great Lakes breeding population of piping plovers. Data show that this population uses both the Atlantic and Gulf Coasts (USFWS 1999; Wemmer 2000). Additional areas are likely used by Great Lakes piping plovers, as most birds have not been accounted for in winter. Therefore, identification of essential habitat should not rule out any sites where piping plovers consistently over-winter until the wintering distribution of the Great Lakes population can be more accurately defined (USFWS 1999). Based on these numbers, as well as other supporting site data, we have concluded that most sites with consistent occurrence of piping plovers should be designated as critical habitat in order to provide for the recovery of the species.

Comment 7: Commenters called into question our conclusion that the designation will not have significant takings implications under the Fifth Amendment to the U.S. Constitution. They claim the Service needs to address takings implications as per the Supreme Court's rulings in such cases as *Lucas* v. *South Carolina Coastal Commission*, 505 U.S. 1003 (1992); *Penn Central Transportation Company* v. *City of New York*, 438 U.S. 104 (1978);. *Pennsylvania Coal Company* v. *Mahon* 260 U.S. 393 (1922); and *Dolan* v. *City of Tigard*, 512 U.S. 374 (1994); *Nollan* v. *California Coastal Commission*, 483 U.S. 825 (1987).

Our Response: As discussed in our responses to economic comments, the economic analysis found that designation of critical habitat would have no significant economic effect above that already imposed by listing. The primary effect of critical habitat designation on private property is to identify areas important for the conservation of the species. In addition, if a Federal action occurs on those private lands, such as issuance of a Clean Water Act section 404 permit, the Federal action agency would be required to consult with us pursuant to section 7 of the Act if that action may affect the piping plover, regardless of whether that habitat is officially designated critical habitat. If such a Federal nexus exists, we will work with the landowner and the appropriate Federal agency to ensure that the landowner's project can be completed without jeopardizing the species or adversely modifying critical habitat. Therefore, we do not believe that designation of critical habitat will cause a property owner to be deprived of such a substantial use of the property as to amount to a Fifth Amendment taking.

Comment 8: Failure to properly consider the effects of the designation through a Takings Implication Assessment violates Executive Order 12630.

Our Response: Executive Order 12630 requires that Federal actions that may affect the value or use of private property be accompanied by a takings implication assessment. For the reasons discussed above, we have complied with the requirements of the Executive Order.

Comment 9: The Regulatory Flexibility Act requires that agencies consider the effects of their actions on small businesses, small non-profit enterprises, and small local governments. If the action is expected to be significant, an initial regulatory flexibility analysis must be published with the proposed rule. If, as the Service did here, the agency certifies that the proposed rulemaking is not expected to be significant, it must publish with the certification a statement providing a factual basis for such a conclusion.

Our Response: The Regulatory Planning and Review section of the proposed rule (65 FR 41794) discussed our reasons for determining that this action will not have significant economic effects on the small entities listed by the commenter. We believe this constitutes a statement providing the factual basis for our determination.

Issue E: Section 7 Consultation Issues

A number of commenters, particularly Federal agencies, expressed concerns or had questions regarding the effects of designation on the section 7 consultation process.

Comment 1: An unclear and ambiguous definition of what constitutes adverse modification of critical habitat will result in varying interpretations under section 7. The Service needs to more clearly define adverse modification and allow review by Federal agencies in order to assess the impact of designation on agency programs.

Our Response: Section 4(b)(8) of the Act requires that we provide, in any proposed or final rule to designate critical habitat, a "* * * brief description and evaluation of those activities * * * which * * * may adversely modify [critical] habitat, or may be modified by such designation." In the proposed rule, in the section titled "Effects of Critical Habitat Designation" (65 FR 41792), we provided a relatively detailed discussion of the types of programs that have typically undergone section 7 consultation since the species was listed under the Act. We identified the action agencies and programs conducting such actions, and stated our belief that actions likely to adversely modify critical habitat would likely also jeopardize the continued existence of the species. We then provided a discussion of the types of activities that we foresee may adversely modify critical habitat.

We acknowledge the commenter's implication that specific standards should be given to properly advise citizens and Federal agencies as to what programs may be affected by critical habitat designation, but find such specificity impossible given the wide variety of projects and ecological conditions occurring throughout the designation area. In addition, the fact that we expect few or no restrictions to be imposed through the consultation process beyond those that have existed since the species was listed reinforces our belief that our discussion was adequate to meet the requirements of section 4(b)(8) of the Act.

Comment 2: The Service has represented that no additional impacts will result from critical habitat designation beyond those already in place through the listing of the species and required consultation under section 7 of the Act. This is premised on the argument that the prohibition of jeopardy for listed species is nearly identical to the prohibition against adverse modification of critical habitat. In addition, the commenter cites 64 FR 31871–31872 as an example where the Service has previously acknowledged that the adverse modification standard (for projects affecting critical habitat) is not identical to the jeopardy standard (for projects affecting listed species). Finally, the Service requires that an analysis for a critical habitat consultation be conducted independently from an analysis under the jeopardy standard.

Our Response: With regard to the commenters' contention that we have previously acknowledged the difference between jeopardy and adverse modification, the citation provided by the commenter is from our *Notice of Intent To Clarify the Role of Habitat in Species Conservation* (June 14, 1999; 64 FR 31871–31874). On cited page 31872, we stated "According to our interpretation of the regulations, by definition, the adverse modification of critical habitat consultation standard is nearly identical to the jeopardy consultation standard." We also stated "For almost all species, the adverse modification and jeopardy standards are the same * * * It should be noted that while the jeopardy and adverse

modification standards achieve similar results, the context of the analyses differ i.e., jeopardy analyses examine effects to the species while the adverse modification analyses examine effects to the habitat that supports the species. When addressing impacts to occupied habitat, effects to the habitat supporting the species will result in parallel effects to the species. If these effects rise to the level of adversely modifying designated critical habitat, then it is anticipated that these effects would also be sufficient to result in a jeopardy determination. We did acknowledge that in cases where unoccupied habitat is involved there may be additional consultation requirements because of critical habitat designation. However, we consider all designated wintering piping plover critical habitat units to be "occupied" in the sense that, when the primary constituent elements are present during the appropriate season, those features will be used by piping plovers at least occasionally.

Finally, the commenter is correct that our analysis of a project's effects on critical habitat and the analysis for the project's effects on the species are conducted independently (50 CFR 402). However, this has no bearing on our position that the results of the two analyses will essentially be the same under the jeopardy and adverse modification standards. This has been borne out as, after many years of conducting section 7 consultation, there have been no instances in recent times where a project was determined unlikely to jeopardize the continued existence of a species while at the same time deemed likely to destroy or adversely modify its critical habitat.

Comment 3: The final rule should include a clause that excludes previously authorized Federal project areas from the definition of primary constituent elements. Federal agencies are legally obligated to conduct these actions when an agreement between the agency and non-Federal sponsors exists. These types of projects should be "grandfathered" from the critical habitat designation.

Our Response: Federal actions that have already undergone section 7 consultation on the effects of the action on piping plovers, and that were determined unlikely to jeopardize the continued existence of the species, must undergo further consultation on the projects' effects to critical habitat only in instances—(1) where the project has not already been completed, and (2) where the Federal agency still has the discretion within its legal authority to modify the project should it be determined likely to adversely modify critical habitat. Where a project has been completed, or where the action agency has no discretion to modify the project, no further consultation would be necessary.

In cases where a previously consulted-upon action could still be modified within the agency's legal authority, and where that project may affect critical habitat, reinitiation of consultation is required (50 CFR 402.16). However, given that such a project would have already received a non-jeopardy biological opinion from us, and since actions unlikely to jeopardize the continued existence of the species would also usually be unlikely to adversely modify critical habitat, the project would likely proceed without additional constraints.

The Service has only had one jeopardy opinion issued for the piping plover wintering population since its listing in 1986. The proposed project was in Texas and was not undertaken for various reasons.

Comment 4: The Service should work with affected Federal agencies and others whose programs depend upon Federal funding or permits to develop general guidelines that can be used to expedite the consultation process. In this way the effects of designation will be minimized, especially if and when these guidelines are incorporated into project designs.

Our Response: We agree with this recommendation and are prepared to work with local interests in developing guidelines to guide and expedite the section 7 consultation process. We invite interested agencies and individuals to contact their local Service offices to begin this programmatic consultation approach.

Comment 5: Commenters have asked how the final designation will affect Federal and non-Federal projects currently under consideration for authorization within critical habitat units.

Our Response: All landowners, public and private, are responsible for making sure their actions do not result in the unauthorized taking of a listed species, regardless of whether or not the activity occurs within designated critical habitat. Take is defined as "harass, harm, pursue, hunt, shoot, wound, capture, collect, or attempt to engage in any such conduct." Take is further defined by regulation to include "significant habitat modification or degradation that actually kills or injures wildlife," which was upheld by the U.S. Supreme Court in *Sweet Home Chapter of Communities for a Great Oregon et al.* v. *Babbitt*, 515 U.S. 687 (1995).

All Federal agencies are responsible to ensure that the actions they fund, permit, or carry out do not result in jeopardizing the continued existence of a listed species, regardless of critical habitat designation. "Jeopardize the continued existence of" means to engage in an action that would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). Because we designated only areas within the geographic range occupied by the piping plover, any activity that would result in an adverse modification of the plover's critical habitat would virtually always also jeopardize the continued existence of the species. Federal agencies must consult pursuant to section 7 of the Act on all activities that will adversely affect the plover both within and outside designated critical habitat.

The consultation process will change only to the extent that Biological Assessments must consider the effect of the project on critical habitat. However, we already need to consider the effect of the project on habitat (in the absence of critical habitat designation) based on the listing of the piping plover. Therefore, we anticipate that the additional workload burden created by critical habitat will not result in different outcomes of the jeopardy and adverse modification standards.

Issue F: Public Involvement/ Coordination

Several commenters expressed concerns about the adequacy of the opportunity for public input and other coordination issues.

Comment 1: All landowners within the area affected by the designation should have been notified.

Our Response: Given the wide-ranging nature of this designation, the thousands of landowners involved, and the amount of time available to complete the designation due to court order, contacting each individual landowner within the proposed area was not possible. However, we went well beyond the general notification requirements of the Act and the Administrative Procedure Act. This included notification of all State and local governments; mailings to over 898 interested parties; publication of notices in 23 newspapers; issuance of press releases for each public hearing and comment period reopening; and other informational materials. Given that we received over 6,000 letters of comment on the proposal, we believe that we adequately publicized the proposed action. We regret any instances where

interested parties may have been unaware of the proposed designation, but believe these instances are few.

Comment 2: The Service is attempting to implement critical habitat without giving landowners adequate time to review the information.

Our Response: The initial public comment period on this action was open from July 6, 2000, through September 5, 2000 (60 days). When the draft economic analysis of the proposal was completed, we extended the comment period until October 30, 2000 (65 FR 52691), and again until November 24, 2000 (65 FR 64414), for a total extension of 80 days. Finally, we reopened the comment period for 7 additional days (66 FR 11134) to accept further public comment on any and all aspects of the proposal and associated economic analysis. The public therefore had 147 days of open comment period on the proposed rule, and 87 days of open comment period on the draft economic analysis. The Act requires that a minimum of 60 days be allowed for comment on a critical habitat proposal. Thus, we exceeded the statutory requirement.

Comment 3: Some commenters felt that there were too few public hearings held, some questioned the geographic distribution of the hearing sites, and some were concerned that the hearings were poorly publicized or that too short a notice was given.

Our Response: The Act requires that at least one public hearing be held on a proposed designation of critical habitat if requested within 45 days of publication of a proposed rule. As described previously, in anticipation of the public's interest in the proposed designation we announced in the proposal that we would hold 9 public hearings. We added a tenth public hearing, that we announced in the **Federal Register** and local newspapers (for a complete discussion on the public hearings and our efforts at publicizing them please see the beginning of this "Summary of Comments and Recommendations" section). While we would have preferred to conduct more public hearings, budgetary, workforce, and time constraints prohibited us from doing so. Nonetheless, we far exceeded the requirement that one public hearing be held if requested. Further, given the large geographic distribution of wintering piping plovers and the resulting large area proposed as critical habitat, we chose our hearing locations to spread the sites as evenly as possible throughout the eight affected States. Once requested, four additional public meetings were held after the initial public meetings and hearings.

We disagree that the public hearings were poorly publicized, as we conducted extensive outreach prior to the hearing (see the discussion in F.1). We acknowledge, however, that notification of the Wilmington, North Carolina, and Savannah, Georgia, hearings was less than desired. Regulations (50 CFR 424.16(c)(3)) require 15 days notification prior to public hearings being held, but the Wilmington and Savannah hearings were publicized only 11 and 13 days, respectively, before they were held. While we regret this short notification, since only one hearing is required to meet our statutory obligations under the Act, we did not violate our regulatory requirements.

Finally, it is important to note that a public hearing is one part of the public participation opportunities provided under the Act and Administrative Procedure Act. Written comments receive equal consideration as oral comments, and we far exceeded the public comment period requirements in allowing ample time for submission of written comments. In addition, we were ordered by the court to complete the proposed and final designation in a 10-month period. Thus we could not have extended the comment period any longer and met the court deadline of April 30, 2001.

Comment 4: The proposed rule does not describe the type and level of coordination that has occurred with State wildlife agencies; their views should have been included in the proposal.

Our Response: We have long recognized the roles of States in management of listed species and their habitats, and coordinate with States to the extent practicable. The Act at (4)(b)(5)(A)(ii)) requires that States be given notification of, and opportunity to comment on, proposed listing actions. However, we generally coordinate with States during the proposal development process, as we did here.

Our biologists coordinated with the appropriate State agencies from all eight affected States in developing piping plover distribution information along the coast by meeting with them personally and soliciting their input prior to the proposed rule and/or during the comment periods. We incorporated their input and expertise into the proposed and final rules.

Comment 5: Why were persons with known experience in piping plovers not contacted for information prior to publication of the proposed rule? As a result of the Service's failure to seek local expertise, important areas were left out of the designation.

Our Response: It is our judgement that information collected pre-proposal was sufficient for a thorough and comprehensive designation to support all three populations of piping plovers when recovered. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibitions, as determined on the basis of the best available information at the time of the action. In developing the proposed and final rules, we coordinated with biologists in the appropriate State agencies from the eight affected States (see response to F.4).

Issue G: Mapping and Primary Constituent Elements

A number of commenters expressed concerns about map quality, the broad extent of the designation, the definition of the primary constituent elements, and other issues surrounding spatial aspects of the designation.

Comment 1: The critical habitat units are non-specific in that they include lands that do not contain the primary constituent elements. This will result in unnecessary section 7 consultations and add an unnecessary administrative burden to government agencies and private entities included within the mapped boundaries.

Our Response: While it would be ideal if we could map only areas that currently contain the primary constituent elements, there are three primary reasons why we were unable to do so. First, we are unaware of the existence of sufficient data with which to conduct the precise mapping requested by the commenters. Second, even if the data were available, the large extent of the species' range would render such fine-scale mapping impractical, especially given workforce and time limitations. Most importantly, the coastal areas inhabited by the piping plover are so highly dynamic that any map of currently suitable habitat would rapidly become obsolete.

For the reasons cited above, we mapped the critical habitat boundaries on a relatively coarse scale, and identified the areas within those boundaries that are essential to the species by describing those habitat features (primary constituent elements) essential to the plover's life-history requirements. In this way, critical habitat designation will accommodate the dynamic nature of the habitat, changing through time as the primary constituent elements form in one area while disappearing in another. We

believe that this approach is the only scientifically credible way to ensure that the critical habitat designation is compatible with the species' habitats' naturally ephemeral character. As suggested by one commenter, to ensure that interested persons understand that critical habitat is found only in areas where the primary constituent elements are present, our final critical habitat maps are footnoted to that effect. This is consistent with our regulations at 50 CFR 17.94(c), that indicate the management of critical habitat focuses only on the biological or physical constituent elements within the defined area of critical habitat.

Finally, as stated in both the proposed and final rules, section 7 consultation on piping plover critical habitat will only be required when a proposed Federal action may affect the primary constituent elements. Thus, no consultation will be necessary if those habitat features are not present, since consultation is triggered by a determination on the part of the Federal action agency that their proposed activity may affect piping plovers or their critical habitat. Our Ecological Services Field Offices (see contact information under "Effects of Critical Habitat Designation" section) will gladly work with Federal agencies and landowners to help determine whether piping plover habitat occurs on their property.

Comment 2: Including an area as critical habitat because it may support the primary constituent elements in the future violates the criteria specified in regulations at 50 CFR 424.12(b). This approach also circumvents the rulemaking requirements under the Act and the Administrative Procedure Act.

Our Response: The referenced regulation speaks to the definition of the primary constituent elements and lists the types of life-history requirements that may be included in critical habitat. One of those life-history requirements is "(1) Space for individual and population growth, and for normal behavior." We believe the designation reflects this life-history requirement, in that critical habitat units were developed to take into account the shifting nature of primary constituent elements in coastal systems. That is compatible with piping plovers' normal behavior of shifting use areas based on tide, weather, food supply, etc. (Drake 1999a). Thus, we believe the designation accurately reflects the intent of 50 CFR 424.12(b).

We also dispute the contention that this approach violates the rulemaking requirements of the Act or Administrative Procedure Act. The proposed rule and this final rule notify the affected public of the boundaries of the critical habitat designation and of the fact that the essential physical and biological features important to the piping plover are dependent upon a dynamic coastal system that changes through time. As explained above and throughout the proposed and final rules, we can think of no other approach consistent with the dynamic nature of the species' habitat.

Comment 3: Regulations at 50 CFR 17.94(c) state that the Service must focus on the biological or physical elements within the critical habitat area that are essential to the conservation of the species and that are known to require special management considerations or protection. Designation of such broad geographical areas expands the "best available information" requirement to render moot the fact that the data must be "available" and the presence of constituent elements "known".

Our Response: Regulations at 50 CFR 17.94(c) require that those constituent elements "known to require special management considerations or protection" be listed with the description of critical habitat. As stated in our response to G.2, critical habitat units were developed to take into account the shifting nature of primary constituent elements. We believe we have used the best information available and made a biologically sound designation based on the ephemeral nature of piping plover habitat.

Comment 4: Additional explanation of what constitutes the primary constituent elements would aid the general public in recognizing the species' critical habitat.

Our Response: We believe the primary constituent elements were well-described in the proposed rule. Further, we received information from state and county biologists who have documented the use of salterns (also called salinas, salt flats, salt barrens, and salt pans) by piping plovers in southwest Florida. They are bare sand flats in the center of mangrove ecosystems that are found above mean high water and are only irregularly flushed with sea water (Myers and Ewel 1990). We have added the term "salterns" to the description of primary constituent elements.

Comment 5: Critical habitat units should be mapped in sufficient detail to exclude developed areas. Merely excluding these areas verbally is inadequate.

Our Response: In the final rule we excluded a number of larger developed areas from the mapped units. We did this to the extent practicable given the available information and time to complete the mapping effort. We could not exclude every structure, road, or other feature from the critical habitat boundaries. However, these areas are not included by definition.

Comment 6: The designation should be revised to exclude developed and other areas that do not currently contain the primary constituent elements. By including non-habitat areas within the designation, the Service will not be able to distinguish which areas are habitat, and merit protection, and those areas that do not support plovers. This may result in adverse activities proceeding because the Service will not be able to distinguish between those areas adversely affected before the designation from those occurring after the designation.

Our Response: We believe we can assess whether an action area is habitat for piping plovers, much as we have done over the 15 years that the species has been listed. We will use aerial photographs and local records to determine the extent of development at the time of this critical habitat designation. When an action agency is contemplating an action, it is up to that agency to determine whether or not that action may affect a listed species or its critical habitat. If the agency determines its action may affect a listed species' habitat, it then initiates section 7 consultation. We then evaluate the effects of the action on the species or its critical habitat.

Comment 7: The Service should clarify that not all human-made structures are excluded from critical habitat. Some areas, such as renourished beaches, may benefit plovers if done correctly.

Our Response: We agree that not all human-made structures are excluded from critical habitat. Only those areas (whether human-made or natural) containing the primary constituent elements are considered critical habitat. We agree that beach renourishment is an example of human-made habitat that may benefit piping plovers. Habitat restoration and creation projects including beach nourishment, barrier island restoration, and islands created using dredged material may benefit plovers and such sites have been included in the critical habitat designation.

Comment 8: Areas should not be excluded from critical habitat merely because they are "developed sites." Just because an area is already degraded does not preclude its designation if it is essential to the species' recovery.

Our Response: The proposed designation constitutes our assessment

of the wintering habitat needed to support a recovered piping plover population. In arriving at this designation we included areas that have documented consistent use. We mapped around developments adjacent to or directly on the beaches and only excluded developments that do not contain any primary constituent elements. For example, Grand Isle is a barrier island in Louisiana that is highly developed. Christmas bird count data indicate consistent use by plovers. We only mapped from the hurricane protection levee gulfward. The developed areas are currently from the levee landward.

Comment 9: One commenter suggested we add such terms as "bridges, piers, and aids to navigation" to the list of "developed sites."

Our Response: We elected not to list every conceivable type of "developed site" because such a list would be extensive and we would risk leaving out some type of development. Thus we believe that the appropriate course is to remain fairly general on this issue and allow the Federal action agencies the flexibility to determine which areas do or do not contain the primary constituent elements.

Comment 10: In the text of the rule, the Service excludes areas from critical habitat that do not contain the primary constituent elements, but fails to do so in the language amending 50 CFR 17.95.

Our Response: This assertion is incorrect, as the discussion on non-inclusion of non-suitable areas is given at the end of the regulatory section of the proposed rule (see 65 FR 41812), after the legal descriptions for the Texas units. However, in order to make this language more obvious and so that it clearly pertains to the entire designation, we have moved this discussion to the beginning of the regulatory portion of this final rule.

Comment 11: Verbally excluding areas from critical habitat is counter to regulations at 50 CFR 17.94(a), that require that critical habitat areas be defined by surveyable landmarks found on standard topographic maps of the area.

Our Response: This commenter is likely referring to 50 CFR 17.94(b), which states that critical habitats are described by reference to surveyable landmarks found on standard topographic maps of the area. As stated above and elsewhere in this final rule, piping plover habitat is composed of highly dynamic areas that can change quite rapidly, and are thus by their nature ephemeral. Thus, we defined the critical habitat boundaries textually using visual references found on Digital Orthophoto Quarter Quads (DOQQs) (i.e., digital aerial photography) and reference locations found on published maps. For the piping plover designation, we believe that textual unit descriptions, as described in the "Methods" section of this rule, will provide for a more precise means of defining the areas that contain the physical and biological features essential to the wintering piping plover and will allow the public to better determine the critical habitat boundaries. The textual unit descriptions allow us to capture the dynamic nature of the coastal habitat by describing each unit as including the area extending out from the landward boundaries to the MLLW. In this way we can include in the designation intertidal areas that are essential foraging areas for piping plovers. Our textual unit descriptions may also describe important areas within the unit that are utilized by the piping plover, such as wind-tidal flats, and areas that contain the primary constituent elements.

Comment 12: One commenter suggested that the critical habitat boundaries not be fixed, but rather be flexible so as to take into account the ever-changing nature of the coastal areas and account for shifts in the locations of important piping plover habitat features.

Our Response: As stated and described in the "Methods" section of this final rule, we believe the needed flexibility is provided in the textual unit by unit descriptions that account for the dynamic nature of plover habitat. These unit descriptions are being published in the regulatory section of this rule as the definitive source for determining the critical habitat boundaries. We recognize that important plover habitat may form over time in areas outside the designated boundaries and if it is determined to be warranted, the critical habitat designation could be revised through the rulemaking process in the future.

Comment 13: Some commenters expressed concern that the Universal Transverse Mercator System (UTM) coordinates published in the proposed rule resulted in boundaries that were in error. The final rule should be written to ensure that the UTM coordinates are consistent with the written descriptions of the critical habitat units.

Our Response: The coordinates we reported were generated by the Geographic Information System (GIS) software that was used to create the units. A GIS is a mapping software that links information about where things are with information about the area. Unlike a paper map, a GIS map can combine many layers of information and tools to analyze that information. The coordinates printed in the **Federal Register** were created from the text files that were generated from the GIS. During this process potential errors may have occurred due to the interpretive process of the coordinates. One known error was the reporting of Florida coordinates. We reported Florida coordinates to be UTM coordinates, when in actuality they were the map projection coordinates used within the State of Florida (Albers projection).

Another error was identified after the unit coordinates were published. This error occurred in the North Carolina data. The datum of the source imagery DOQQs (i.e., digital aerial photography) we obtained was reported inaccurately. The imagery was reported as North American Datum 1927 (NAD27), when it was actually North American Datum 1983 (NAD83). By utilizing the on-the-fly projection capability of the GIS software, the data was projected to NAD27 and all line work was digitized. This introduced an error in the data that shifted the features up to 500 meters. We have resolved this problem in this final rule. As noted within this rule, our textual unit descriptions are the definitive source for determining the legal boundaries of the critical habitat designation. Thus, we will not be publishing UTMs or Latitude Longitude coordinates as part of this final rule.

Comment 14: Some commenters pointed out that there were various errors in the legal descriptions. For example, the legal description for unit FL–27, when plotted, did not match the **Federal Register** maps. As such, landowners within erroneously described units were not properly notified of the designation, and critical habitat should therefore be re-proposed.

Our Response: See response to G.13. Due to an inadvertent error, the detailed maps we made were not published in the proposed rule; only the index maps were published. However, verbal unit descriptions were published, as well as who to contact for more information. Detailed maps were available to the public on the web at *http://southeast.fws.gov*. Legal notices were published in major newspapers announcing the public hearings and included contact information and the website address. In addition, site-specific maps were available at the public hearings. Thus, we believe that the public had ample opportunity to determine whether an area was included in the designation, based on the verbal unit descriptions, and to comment on the proposal.

Comment 15: The maps in the proposed rule were of insufficient detail for landowners to determine whether their property is within the critical habitat boundaries. The final maps should correct this.

Our Response: We acknowledge that there was a problem with the maps as published in the proposed rule. Through an inadvertent error, the more detailed maps provided for publication were not included in the proposed rule. However, due to **Federal Register** constraints of page size, even more detailed maps may not provide enough resolution to allow some individual landowners the ability to determine whether their property is in or out of a critical habitat unit. Thus, the maps published in the **Federal Register** are intended for general guidance only, while the textual unit descriptions should be used for definitive determinations.

Comment 16: It is difficult to determine from the maps published with the proposed rule the exact boundaries of the critical habitat units. In some areas it appears that highways were used as boundaries, and it is difficult to tell whether highway rights-of-way are within the critical habitat units. The final rule should explicitly exclude highway rights-of-way.

Our Response: We did not explicitly exclude highway rights-of-way in this final designation, because some rights-of-way containing the primary constituent elements may be essential to piping plover conservation. Unit map boundary lines as printed in the **Federal Register** cannot be used to determine whether a project would be affecting the species or adversely modifying its critical habitat. The textual unit descriptions should be used for definitive determinations as to whether an area is within the designated critical habitat boundary. Federal agencies will need to determine whether actions they fund, authorize, or carry out may affect wintering piping plovers or their critical habitat.

Comment 17: Only the 86 percent of the proposal that is public land should be designated.

Our Response: In selecting areas to propose as critical habitat, we did not consider land ownership per se, but rather selected areas based on whether or not they were essential as indicated by recorded consistent plover use or areas where the habitat conditions indicated probable use by plovers. Areas for which habitat conditions indicated probable plover use in Louisiana, were confirmed for occupancy this winter.

The Act does not allow exclusion of areas based on land ownership unless we determine under section 4(b)(2) of the Act that the benefits of excluding an area from the designation outweigh the benefits of including the area as critical habitat. See the Exclusions Under 4(b)(2) of the Act" section of this rule for a further discussion of this issue.

Comment 18: The proposed rule incorrectly characterized Unit TX–34 as comprising almost entirely State-owned lands. In fact, the gulf beach is privately owned to the mean high-tide line, and the proposed area includes upland areas that are privately owned. Further, the area on the southernmost end of Galveston Island includes 300 acres of privately owned land, that were inaccurately portrayed on the map. The map of Unit TX–34 is woefully outdated.

Our Response: As described in the proposed rule, Unit TX–34 includes gulf beach and sand flats that belong to the State of Texas, and of which 57% is in the floodtide delta. The area is described as only including the delta to the northwest of the causeway, and the beach to the northeast of the causeway. Both sides of the San Luis Pass experience extremely high levels of erosion averaging 10.2 m (33.8 ft) per year on the Galveston Island side, and 18 m (60.1 ft) per year on the Follet's Island side (Morton 1989). As a result, maps of this dynamic area are out of date before they are published. We have described the area in narrative form, and mapped the area using aerial photography dated 1995.

Comment 19: Latitude and longitude information should be given to facilitate inclusion in the GIS of Federal, State, and local agencies.

Our Response: Because the source data DOQQs imagery used to map critical habitat were projected, we chose to report the legal descriptions in the proposed rule in projected values and not latitude and longitude. We believed that this methodology will facilitate overlaying the data in any GIS with the source imagery. However, in this final rule the definitive source for determining the precise legal boundaries of the designation are the textual unit descriptions.

Issue H: Best Information/Science

A number of commenters questioned the accuracy of the information on which the proposal was based and whether or not we used the best scientific and commercial information available.

Comment 1: The Service should follow the scientific decision-making process used for all Federal water and related land resource studies. This requires six significant steps-(1) identify and inventory problems and opportunities; (2) inventory and forecast conditions; (3) formulate alternative plans; (4) evaluate alternative plans; (5) compare alternative plans; (6) select a plan. The proposal does not explain how the Service went through this process.

Our Response: Please see our "Methods" discussions in the proposed and final rules, that explain the process we went through in arriving at this final designation. Although the process does not precisely mirror the one suggested by the commenter, we believe that our approach was a logical and rational approach to meeting the mandates of the Act. The Act requires that our decisions be based on the best scientific and commercial information available, and does not require "reasonable scientific certainty."

Comment 2: The proposal provides very limited information on the criteria and data used to determine the areas proposed as critical habitat. For example, there was no discussion of the data upon which the Service relied in concluding that the proposed areas contain the primary constituent elements, particularly in areas where plovers have not been recorded. More supporting data should be provided.

Our Response: We refer you to the "Methods" sections of the proposed and final rules. In those discussions, we provide information on the data considered throughout this process. While those discussions only summarize the data used, we welcome interested individuals to contact us if they wish to review the detailed supporting information in our files. Additional survey data this winter confirmed that all units are occupied.

The only areas included in the proposed rule that did not have survey data showing that they are used by plovers were the Mississippi River and the Wax Lake Outlet Deltas. We included those areas because of the high probability of use by plovers due to the broad expanse of mudflats known to exist in the river deltas. Those areas are remote and difficult to access and thus had not been surveyed. We have surveyed these areas since the proposed rule (Mississippi River Delta in December 2000, and the Wax Lake Outlet Delta during the February International Piping Plover Survey). Forty plovers were found on a few small dredged material islands in the Mississippi River Delta, none were found in the Wax Lake Outlet Delta. Those areas of the Mississippi Delta where no plovers were observed were not included and the entire Wax Lake Outlet Delta was likewise not included in the final rule. Additionally, during the International Census in February

2001, 40 piping plovers were observed on the same dredged material islands in the Mississippi River Delta. Although we do not have data to document use of these areas from previous wintering seasons, based on studies indicating that plovers exhibit a certain amount of site fidelity (see our response to Comment A.11 above), and the large numbers of plovers observed at these sites, we have included these areas in the designation because of the virtual certainty that they are consistently used. As we have stated, this designation is based on the best scientific and commercial information available, as required by the Act. We welcome any additional data on the piping plover and its habitat.

Comment 3: Critical habitat should be designated only in areas where the species is present. Some areas have been proposed where there are no data to show that the piping plover occurs there.

Our Response: In the proposed rule, we acknowledged that "In some areas, adequate census data are not available to provide reliable presence or absence information for the plover. These areas are in remote locations where censuses are logistically difficult. However, the physical and biological features essential to piping plovers are known to be at least sporadically present in these dynamic areas, and our belief that these areas support piping plovers when essential habitat features are present is biologically sound" (65 FR 41785).

The only areas included in the proposed rule that did not have data on piping plover presence were the Mississippi River and the Wax Lake Outlet Deltas. These areas were surveyed twice since the proposed rule. For the final rule, we have included those areas that contain piping plover habitat and for which we had documented use by piping plovers. See response to H.2.

Comment 4: The Service should provide the population data upon which this proposal is based. The Service should also census each proposed area and designate only those areas with high plover concentrations as critical habitat.

Our Response: As stated in the proposed rule, the data upon which the designation is based are available by contacting our Corpus Christi, Texas, Ecological Services Field Office (see **ADDRESSES** section). Inclusion of all the survey data in the proposed or final rules would be impracticable.

We agree that areas of high plover concentrations indicate that the areas are important to wintering piping plovers. But areas with low, yet consistent numbers are also important. This is true particularly for the endangered Great Lakes population. This population has approximately 32 pairs remaining, which winter in locations throughout the southeast, thereby making each critical habitat unit important to the survival and recovery of that endangered population. Plover use patterns may shift through time, both within and among seasons and years.

Comment 5: The designation should be delayed until plover activity is studied in detail.

Our Response: In this case, the court determined that we had failed to abide by the requirements of the Act for designating critical habitat when prudent and determinable and ordered us to complete the critical habitat determination. We did so using the best scientific and commercial information available, as required by the Act (4(b)(2)). While it is always preferable to have more information on virtually every listed species, the Act does not allow for indefinite delays until such information is acquired. Nonetheless, we will continue to use the best information available as we continue the species' recovery process, and may revise the critical habitat designation in the future if appropriate and necessary.

Comment 6: Has the Service considered less drastic alternatives such as designating only preserved areas or less developed areas, and regulating only those activities that are troublesome to the plover?

Our Response: As described in both the proposed and final rules, the intent of the critical habitat designation is to include all areas believed essential for the species' conservation, which includes its recovery. It is our biological conclusion that merely designating "preserved" areas or areas not subject to habitat threats would not be sufficient to provide for the species' eventual recovery. We did, however, avoid a number of developed areas within the range of the plover, designating only those areas we believe necessary for the species' conservation.

As to the regulatory effects of the designation, we will only formally review actions under section 7 consultation when Federal actions are likely to adversely affect the species or its habitat. In these cases we recommend that consultation be conducted regardless of whether the habitat is officially designated as critical. As indicated in the Final Economic Analysis, we believe that little if any incremental regulatory or economic effects above the listing will result from this designation.

Comment 7: Based on population numbers and the proposed acreage, the Service has allotted 600 acres per bird. Why does a 6-inch tall, 2-ounce bird need so much habitat?

Our Response: The actual area of critical habitat, as defined by the primary constituent elements, is considerably less than the coarse acreage included within the proposed boundaries. Critical habitat is designated to identify areas essential to the conservation of the species, including identifying sufficient habitat to achieve recovery. Further, wintering piping plovers do not simply "occupy" a certain static location, but rather move throughout an area as its needs (e.g., foraging, roosting, refuge from high winds or severe storms) change from day to day and over time as a result of the tides, weather, and other factors.

Issue I: Definition of Critical Habitat

Numerous commenters expressed concerns that the areas designated were either not essential to the conservation of the species, not in need of special management considerations or protection, or otherwise inconsistent with the statutory requirements for selecting areas to designate as critical habitat.

Comment 1: Why is critical habitat being designated in otherwise protected areas, such as State lands, national seashores, refuges, or parks? Managers should have the opportunity to implement management actions that would avoid the additional regulatory burden of critical habitat designation.

Our Response: As implied by this commenter, areas not in need of special management do not meet the definition of critical habitat and are therefore not included in a critical habitat designation. We use the following three criteria to determine if a management plan provides adequate special management or protection: (1) A current plan/agreement must be complete and provide sufficient conservation benefit specific to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, i.e., provide for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would no longer meet the definition of critical habitat.

Given the amount of time allowed to prepare the proposed designation, the wide distribution of wintering piping plovers, and the myriad of landowners and land managers within the species' range, we were unable to do a

comprehensive evaluation of all management plans that could potentially meet the criteria listed above. Although we did identify areas that have the potential for having a management plan, primarily Federal lands, and evaluated those plans if one was completed for the area. In the proposed rule we also solicited information on reasons why any area should or should not be considered critical habitat (65 FR 41793). The ensuing public comments included several instances where commenters believed certain areas are currently managed compatibly with the species and should therefore be excluded from the final designation. Those suggestions are addressed under the "Site-specific Comments" portion of this "Summary of Comments and Recommendations" section. We received no information that indicated that any of the public land management plans met our three criteria; therefore, no lands were excluded based on "not [being] in need of special management protection." We did, however, exclude the Padre Island National Seashore based on section 4(b)(2) of the Act. Please refer to the "Exclusions Under 4(b)(2) of the Act" section of this rule.

We also note that we encourage management plans compatible with the conservation of threatened and endangered species, and that critical habitat designation neither discourages such voluntary actions nor adds significant regulatory burden. Management that does not adversely affect listed species or their critical habitat is not required to undergo formal section 7 consultation.

Comment 2: The piping plover already receives substantial protections, such as under sections 7 and 9 of the Act. Why is additional protection necessary? The Service has repeatedly claimed that they expect no adverse economic impacts beyond those attributable to listing. If this is so, why not abandon this designation? Why subject landowners to uncertainty and additional bureaucracy?

Our Response: We agree that protections afforded listed species under sections 7 and 9 are substantial, and that critical habitat designation usually adds only marginal protections above those already afforded listed species. Under section 7, Federal agencies are required to utilize their authorities to further the conservation of species and the ecosystems upon which they depend. Federal agencies are prohibited from implementing actions likely to jeopardize the continued existence of a species or to destroy or adversely modify a listed species' designated critical habitat. Regulations implementing the requirements of section 7 (50 CFR 402.02) define "jeopardize the continued existence" (of a species) and "destruction or adverse modification" (of critical habitat) so similarly that the two prohibitions are nearly identical, thus resulting in little additional protection through critical habitat designation.

Section 9 of the Act also provides substantial protection to listed species by prohibiting any person (as opposed to section 7 that involves only Federal agencies) from such activities as taking listed species without proper permits, as well as controlling transportation, selling, and importing or exporting listed species. Critical habitat is not protected under section 9, so no effect on strictly non-Federal activities are added through critical habitat designation.

Despite the little additional regulatory benefit critical habitat may provide listed species, section 4(a)(3) of the Act requires that critical habitat be designated for species listed as threatened or endangered unless such designation would not be prudent. Further, we believe designation of critical habitat for wintering piping plovers may be of some benefit. A critical habitat designation benefits species conservation by identifying important areas and by describing the features within those areas that are essential to conservation of the species, and alerting public and private entities to the areas' importance. Although the designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery actions, it does help focus Federal, State, and private conservation and management efforts in such areas. Designating critical habitat may also provide some educational or informational benefits.

Comment 3: When the Service listed the piping plover in the 1980's it did not designate critical habitat because it was believed unnecessary. Some commenters questioned why we now believe critical habitat designation is prudent.

Our Response: Section 4(a)(3) of the Act states that when a species is added to the endangered species list, we must designate critical habitat to the maximum extent prudent and determinable. The 1985 final listing rule for the piping plover did not include a critical habitat designation, not because it was unnecessary, but because it was not determinable and so it was deferred for one year. We did not make a prudency determination or designate critical habitat by the end of that year. Because of this omission, in December 1996, Defenders of Wildlife (Defenders) filed a lawsuit against the Department of the Interior and the Service for failing to designate critical habitat for the piping plover. As a result of the lawsuit, the court ordered us to publish a proposed critical habitat designation for the piping plover in the breeding area in the Great Lakes by June 30, 2000, with a final rule by April 30, 2001. We were also ordered to designate critical habitat for the Great Plains population by May 31, 2001, with a final rule by March 15, 2002. We have no evidence of vandalism or other threats that may occur based on disclosing the location of this species. Thus, we determined that the appropriate course of action would be to propose critical habitat for all US wintering piping plovers on the same schedule required, under court order, for the Great Lakes breeding population.

Comment 4: The Service has disregarded the prohibitions in section 3(5)(C) of the Act against designating the entire geographical area that could be occupied by the piping plover.

Our Response: We did not designate the entire geographical area that can be occupied by wintering piping plovers. In fact, the censuses upon which we based our initial identification of potential critical habitat areas have detected less than half the piping plover numbers known from their breeding areas. One may infer that at least some piping plovers winter in areas other than those designated as critical habitat. Areas that were not included in critical habitat include many sites where plovers have been documented at least once, but records do not indicate a consistent use. For example, in Florida we did not include the South tip of Amelia Island, Nassau County; high marsh and salt pans of Charlotte Harbor State Buffer Preserve, Charlotte County; and Passage Key National Wildlife Refuge, Manatee County. Additional sites are listed in Comments B.2 and B.3. A piping plover may be observed at any given time at any location along the Gulf and Atlantic coasts. We included in this designation only the areas essential for the conservation and recovery of the species as supported by consistent use by piping plovers.

Comment 5: Critical habitat for wintering piping plovers is not determinable because their biological needs are not sufficiently well known. Recovery plans for the species recommend significant research on wintering plovers; without such information it cannot be determined with reasonable scientific certainty which areas are essential to the species.

Our Response: We are required to designate critical habitat for species at the time they are listed under the Act to the extent prudent and determinable under section 4(a)(3). Regulations implementing the listing provisions of the Act state that critical habitat is not determinable when the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)(ii)). In cases where critical habitat is not determinable the regulations allow only a one-year extension. At the end of the extension critical habitat must be designated based on such data available at that time (50 CFR 424.17(b)(2)).

It has been over 15 years since the piping plover was listed under the Act, and a great deal of information has become available since the listing occurred. While we agree that more information would be preferable, we do not believe further delays in making this designation would be legally defensible under the statute and its regulations. In addition, the Act requires that our decisions be based on the best scientific and commercial information available, and does not require "reasonable scientific certainty."

Comment 6: A conclusion that areas identified during population surveys are essential to the plover population is speculative. Because a plover was sighted in an area does not make the area essential to the species' conservation.

Our Response: We agree that the mere sighting of one or more individuals of a species does not necessarily mean the area of the sighting is essential to the species' conservation. In fact, for most species it is difficult to know with certainty that a particular area is essential to its conservation. However, the Act clearly requires that we make such judgements based on the best scientific and commercial information available. The census data tell us that plovers occur in an area, from which we can infer that the animal derives some useful life-history benefit. We believe these occurrence data constitute the best available information upon which to base this designation. We also note that the commenter did not suggest an alternative approach to arriving at a biologically sound critical habitat designation. Other research has shown what type of habitat features are necessary to provide for the life-cycle needs of the species. Together, this information suggests to us which areas are essential for the conservation of the species.

Comment 7: Critical habitat should include only the minimum amount of habitat needed to avoid short-term jeopardy or habitat in need of immediate intervention.

Our Response: We disagree. The Act requires that areas designated as critical habitat be essential to the conservation of the species. The term "conservation" is defined as "* * * the use of all methods and procedures necessary to bring any [listed] species to the point at which measures provided pursuant to this Act are no longer necessary * * *" (i.e., the species is recovered and eligible for removal from the list of threatened and endangered species). Since the stated purpose of the Act includes "* * * to provide a program for the conservation of such endangered species and threatened species * * *", it is clear that Congress intended the provisions of the Act to be used for such conservation purposes rather than as stop-gap measures to prevent extinction.

Comment 8: The proposal contains 686 miles of privately owned shoreline. The Service justifies this by stating that shoreline development poses the biggest threat to plover habitat, especially along the Texas Coast. However, the regulatory basis for designation should be the evaluation of the habitat rather than the potential for development.

Our Response: As discussed above, the critical habitat designation is based on an evaluation of habitat and the survey data on piping plovers. This critical habitat designation for the wintering population of the piping plover includes areas that we know currently support the species. Areas described in the approved recovery plans (USFWS 1988, 1996) as essential to the conservation of the wintering population of the piping plover are being designated as critical habitat, if recent data support consistent use and the habitat remains suitable.

Comment 9: The Service designated areas that are inhabited by people and where plovers and people co-exist. Therefore critical habitat is unnecessary.

Our Response: We agree that piping plovers and people can co-exist in wintering areas. However, as explained in this final rule, critical habitat is not considered to be an optional process, and the fact that people use areas used by plovers does not provide sufficient justification for not designating critical habitat. We believe that the effect on plovers of normal human presence in their wintering habitat does not have serious consequences to the plover at the population level. See our response to Issue A.15 above.

Issue J: Effects of Designation

These comments involve issues related to the effects of designation on land management and habitat-modifying activities within the designated areas.

Comment 1: How will the proposed designation impact the future of Packery Channel? Will it have a minimal effect as discussed, or will it cause the Packery Channel opening to be shut down completely?

Our Response: We completed a Biological Opinion (BO) on August 1, 1994, for U.S. Army Corps of Engineers Permit Number 18344(01) Fish Trackers/Reopen Packery Channel Association. The BO included a "finding of not likely to jeopardize the continued existence of the threatened and endangered populations of the piping plover" based on the project design included in Permit 18344(01). Refer to Comment E.3 for the circumstances requiring Federal actions that have already undergone section 7 consultation to reinitiate that consultation.

Comment 2: Is it necessary to obtain a permit and contract an environmental consultant at the private landowner's expense, because the property that he/she wishes to build a house on is on the beachfront, upland area, or sand dune?

Our Response: Prior to procuring a consultant, we suggest that you contact the Service representative in your particular State (see the contact list in the "Effects of Critical Habitat Designation" section of this rule for the name and phone number of the person to contact). As discussed in comment E.5, all landowners, public and private, are responsible for making sure their actions do not result in the unauthorized taking of a listed species, regardless of whether or not the activity occurs within designated critical habitat. Take is defined as "harass, harm, pursue, hunt, shoot, wound, capture, collect, or attempt to engage in any such conduct." Take is further defined by regulation to include "significant habitat modification or degradation that actually kills or injures wildlife." This definition was upheld by the U.S. Supreme Court in *Sweet Home Chapter of Communities for a Great Oregon et al.* v. *Babbitt*, 515 U.S. 687 (1995).

All Federal agencies are responsible to ensure that the actions they fund, permit, or carry out do not result in jeopardizing the continued existence of a listed species, regardless of critical habitat designation. "Jeopardize the continued existence of" means to engage in an action that would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or

distribution of that species (50 CFR 402.02). Because we designated only areas within the geographic range occupied by the piping plover, any activity that would result in an adverse modification of the plover's critical habitat would virtually always also jeopardize the continued existence of the species. Federal agencies must consult pursuant to section 7 of the Act on all activities that will adversely affect the plover both within and outside designated critical habitat.

Issue K: Economic Comments

Numerous persons commented on the expected economic effects of the designation and on the draft economic analysis.

Comment 1: The designation of critical habitat on Padre Island National Seashore would restrict the ability to explore and develop mineral operations and cause a sizable economic impact if indeed these restrictions are upheld.

Our Response: As discussed in the "Exclusions Under 4(b)(2) of the Act" section of this rule, we considered the effects on exploration and development of mineral operations that would result from including Padre Island National Seashore in the final designation. Based on our analysis under section 4(b)(2), we concluded that the benefits of excluding Padre Island National Seashore were greater than the benefits of including, and therefore, we have excluded that area from the final designation.

Comment 2: Some commenters stated that the DEA was inadequate because it is based on the faulty assumption that the designation will not result in any greater burden than under the "baseline" of the listing of the plover. Relatedly, some commenters believed that we should have quantified the cost of designating the plover as an endangered species in our baseline calculations.

Our Response: The economic analysis does determine that there is a slight additional burden due to the designation of critical habitat for wintering piping plover and the economists attempted to quantify these costs in their analysis. See the "Economics Analysis" section of this rule.

While listing effects can be significant in some cases due to the prohibition on "taking" a listed species, Congress specifically directed the Service to base its listing decisions strictly on biological considerations. Economic effects caused by listing the wintering population of the piping plover as a federally protected threatened species, and by other statutes, are the baseline against which we evaluated, under section 4(b)(2) of the Act, the effects of the critical habitat designation.

Comment 3: Some commenters stated that they believed that the economic analysis should be completed before the rule is formally proposed.

Our Response: Given the nature of this rulemaking, we were unable to complete the economic analysis at the time we formally proposed this rule to the public. Both the proposed rule date and final rule date were established as a result of court rulings, that allowed less time than generally preferred by us to conduct a rulemaking. As a result, although we began the economic analysis before the rule was formally proposed, we were not able to complete it until later. Once we completed the economic analysis, we published in the **Federal Register** a Notice of Availability (65 FR 52691, August 30, 2000) and gave the public 90 days to comment on the analysis, along with other aspects of the rule. We have considered these comments and have produced a revised economic analysis, that we have submitted to OMB for review as part of this rulemaking package.

Comment 4: Some commenters believed that our economic analysis focused too narrowly on either current or near-term planned activities at the expense of longer-term planned activities.

Our Response: The revised analysis used a ten-year time horizon to identify likely current and planned activities that may be affected by critical habitat designation. We limited our analysis to a ten-year horizon because the estimation of future impacts becomes extremely speculative beyond that point. As stated in the analysis, our approach for estimating the potential effects of critical habitat designation followed four basic steps. First, the analysis identified land uses and activities likely to be affected by critical habitat designation. Second, the analysis looked at Federal nexuses that may allow certain land uses and activities conducted on critical habitat to be consulted on under section 7 of the Act. Third, out of the activities likely to occur on critical habitat having a Federal nexus, the analysis considered the likelihood that the Service would consult with the Federal agency under section 7 of the Act because such activities have the potential to adversely affect the plover or its critical habitat. Under this consideration, the analysis considered the likelihood that critical habitat designation would impose additional effects beyond listing, including effects on section 7 consultations and potential mitigation. Finally, the analysis also considered the potential for any further indirect effects resulting from the designation. While we believe the analysis did a credible job in identifying both current and planned future land use activities within proposed critical habitat, we also believe that to speculate about long-term, future activities on particular units, that are different than those currently being conducted or envisioned, adds little information of value to the decision-making process.

Comment 5: We received many comments concerning the impact that dredging and the disposal of dredged materials, along with beach nourishment, would have on critical habitat.

Our Response: Our revised economic analysis addresses this issue in greater specificity. In summary, we do not believe that beach nourishment activities, along with dredging and disposal activities, are likely to be impacted by this critical habitat designation. In the vast majority of cases we support beach nourishment activities as they benefit the wintering plover by providing them increased foraging habitat. Dredging and disposal activities have also not been significantly impacted by the presence of the plover, and we see no reason why critical habitat designation would alter this scenario.

Comment 6: We received several comments from citizens concerned specifically about the impact that critical habitat designation would have on Texas Gulf Coast activities including: (1) The exploration, development, and production of oil and gas reserves; (2) recreational use of coastal areas; (3) real-estate development projects for residential and commercial use; and (4) transportation of commodities on the Gulf Intracoastal Waterway. One economic study submitted by a commenter suggested that critical habitat designation could result in a total net present value cost over 30 years of $261 to $979 million to the Laguna Madre Environs economy.

Our Response: We believe that the above mentioned economic study submitted by BNP Petroleum Corporation overstates the effects that may result from this designation. The economic costs developed by the study's authors depend on two main assumptions. First, the authors assume that the critical habitat being designated for the wintering plover, contrary to our descriptions, consists of large areas of unoccupied territory lacking the necessary primary constituent elements needed to support the plover. As a result, the authors believe that delays will occur to future activities as project

proponents will need to enter into consultations with the Service, that will enviably lead to delays causing economic effects.

Regarding the first assumption, critical habitat, by definition, only includes those areas containing the primary constituent elements identified in the rule. We believe that all of these areas are currently occupied by the wintering plover and that Federal agencies are already required to ensure that the activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the plover. Federal agencies already must notify us of activities that may adversely affect the plover. Because we are only designating areas occupied by the plover and because any activities that may adversely modify critical habitat would also likely jeopardize the continued existence of the species, we do not believe that critical habitat designation will have any appreciable economic effect above current effects resulting from the listing of the plover in 1985.

The BNP study estimates impacts to the natural gas industry, which constitutes the majority of their study's effects, based on the key assumption that critical habitat designation could result in project delays between six months and two years arising from section 7 consultations. In a review of piping plover section 7 consultations in the Gulf Coast Sates where critical habitat is being designated, very few involved oil and gas exploration and production activities. Mostly this is because existing oil and gas production activity takes place offshore and is not on the beaches or flats occupied by plover and as a result these activities were not likely to adversely affect the species. Also, in many instances where oil and gas production activities affect the areas occupied by the plover, such as pipeline crossings and gathering stations for near shore production, either the environmental impacts to the plover were not significant enough to warrant a formal consultation or the activity lacked a Federal nexus. Although the permitting process for oil and gas exploration and production activities is complex and involves a myriad of Federal, State, and local requirements, a formal consultation is normally completed within 135 days. We therefore disagree with the study's authors that section 7 consultations can lead to significant project delays for the industry.

Also, as noted in the BNP study, future production in the Gulf Coast is likely to occur in very deep water (14,000 to 18,000 feet), well away from critical habitat areas. This makes it highly unlikely critical habitat would have any effect. Due to the distance future production areas are from the shoreline, products will most likely be barged into existing ports with offloading facilities because it will be uneconomical or technologically infeasible to connect deepwater platforms to the existing infrastructure of near-shore pipelines. As a result, critical habitat areas are highly unlikely to be affected by future industry activities. In addition, we do not believe that the oil and gas industry will be affected by any significant increase in section 7 consultations because of this rulemaking, and we disagree with the findings in their study.

That being said, the economic analysis prepared for the Service finds that the designation of critical habitat for the piping plover may result in additional section 7 consultation costs because future consultations would need to address critical habitat issues, in addition to the effects on the species, and would therefore require more time. Additionally, we acknowledge that some Federal agencies may initiate consultation more often than before, because critical habitat has increased their awareness of the species. Even though consideration of critical habitat is not likely to impose further project modifications beyond those required by the listing of the plover, project proponents may nonetheless incur costs above and beyond those attributable to the listing of the plover as a threatened species. These costs might include the value of time spent in conducting section 7 consultations beyond those associated with the listing, and/or delays in implementing oil and gas activities. Refer to the "Exclusions Under 4(b)(2) of the Act" section of this rule for our analysis under section 4(b)(2) of the Act.

Similarly, we do not believe that this rule will have a significant effect on the other three factors: (1) Recreational use of coastal areas; (2) real-estate development projects for residential and commercial use; and (3) transportation of commodities on the Gulf Intracoastal Waterway. First, we do not believe that recreational use of coastal areas will be affected because no such effects have been experienced since the plover was listed in 1985, combined with the fact that we are only designating occupied critical habitat. Furthermore, the plovers spend the wintering season foraging and roosting and then migrate north in the summer where they breed. Breeding areas in the north may experience partial or temporary closures during the breeding season to protect ground level nests but such effects are not expected to occur in the wintering areas affected by this rule because of the fact that the birds are mobile and not nesting during the wintering season. Furthermore, in a recent study that looked at the effect of beach closures in breeding areas, no significant economic effects were identified due to the availability of nearby beaches (Unsworth, et al., An Economic Analysis of Piping Plover Recovery Activities in the Atlantic Coast, 1998).

Our revised economic analysis also considered in greater detail the effect the rule could have on real-estate development projects. Using a conservative assumption that critical habitat designation could result in one to two and one-half percent of forgone future lot development due to project modifications resulting from critical habitat designation, the analysis found that total costs to developers over a ten-year time frame could range from about $1.5 million to $4.5 million. This represents less than one percent of the total estimated value of future planned housing in southern Texas. Furthermore, the revised analysis found no evidence to support the claim that the section 7 consultation process has resulted in significant time delay estimates as argued by the commenter.

Finally, the revised economic analysis also further considered the effect the rule could have on commodity transportation within the Gulf Intracoastal Waterway. The commenter was specifically concerned that the designation of critical habitat could result in the closure of the waterway because the Service could require disposal of dredged materials to be disposed further from the beach areas, which could become cost prohibitive. This scenario, however, is highly unlikely as dredging and disposal operations in the area have taken place continually since the plover was originally listed as an endangered species in 1985. Because this area is occupied by the plover, any effects on dredging and disposal activities in the future would occur regardless of critical habitat designation. However, with a single, unique exception that is addressed in the revised analysis, dredging and disposal activities have not been negatively impacted by the presence of the plover and consequently are not expected to be further impacted by critical habitat.

Comment 7: We received many comments from citizens of Marco Island, Florida concerned over the impact that critical habitat would have on their recreational beach-use activities

as well as spillover effects to their local housing values.

Our Response: As mentioned previously, we do not believe that recreational use of coastal areas will be significantly affected because recreational impacts since listing have been minimal and only habitat that is currently occupied by the wintering plover is being designated. Again, while beach closures, or more commonly beach restrictions, have occurred to protect the piping plover, these closures occur during breeding season in the summer. Plovers typically migrate north in the spring and summer seasons to breed and occupy areas outside of wintering habitat, which this rule addresses. Furthermore, in a recent study that looked at the possible effects of beach closures in breeding areas, no significant economic effects were identified due to the availability of nearby beaches (Unsworth, *et al.*, An Economic Analysis of Piping Plover Recovery Activities in the Atlantic Coast, 1998).

Comment 8: Many commenters expressed concern that the designation includes unoccupied habitat that does not contain the primary constituent elements necessary to support the plovers and that the DEA overlooked this effect.

Our Response: The determination of whether or not proposed critical habitat is within the geographic range occupied by the plovers is part of the biological decision-making process and lies beyond the scope of an economic analysis. For a discussion of the biological justification of why we believe the area being designated is within the geographical area occupied by the plover, see our responses to Issue A.

Comment 9: The Environmental Protection Agency (EPA) indicated that our economic analysis should evaluate Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Our Response: Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. We do not believe that the designation of critical habitat for endangered and threatened species results in any changes to human health or environmental effects on surrounding human populations, regardless of their socioeconomic characterization. As such, we do not believe that Executive Order 12898 applies to critical habitat designations.

Issue L: Critical Habitat and Habitat Conservation Plans (HCPs)

In the proposed rule we requested input on alternative approaches to issuing any future incidental take permits under section 10(a)(1)(B) of the Act, and how that process may be influenced by critical habitat designation. Five alternatives were provided:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the piping plover, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of HCPs when the plans are approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

Comment 1: All who commented on this issue favor alternative 1, to retain critical habitat within any future HCP boundaries and use the section 7 consultation process to evaluate the effects of the HCP on critical habitat. Most commenters believed that alternatives 3 through 5 are illegal under the Act, and that alternative 2 would likely be illegal as well.

Our Response: We recognize that critical habitat is only one of many conservation tools for federally listed species. HCPs are one of the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. Section 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding HCPs from crifical habitat designations will outweigh the benefits of including them. A detailed rationale for this determination can be found in the "Exclusions Under 4(b)(2) of the Act" section of this final rule.

We anticipate that any future HCPs in the range of wintering piping plovers will include it as a covered species and provide for its long-term conservation. We expect that HCPs undertaken by local jurisdictions (e.g., counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. Section 10(a)(1)(B) of the Act states that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed species covered by the permit to the extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. We fully expect that our future

analyses of HCPs and section 10(a)(1)(B) permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCP and section 10(a)(1)(B) permits will not result in the destruction or adverse modification of critical habitat designated for the piping plover.

In the event that future HCPs covering wintering piping plovers are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the piping plover by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the piping plover. We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the species and appropriate management of those lands. If the piping plover is a covered species under future HCPs, the plans should provide for the long term conservation of the species. The take minimization and mitigation measures provided under these HCPs are expected to adequately protect the essential habitat lands designated as critical habitat in this rule, such that the value of these lands for the survival and recovery of the piping plover is not appreciably diminished through direct or indirect alterations. If an HCP that addresses the piping plover as a covered species is ultimately approved, we may reassess the relevant critical habitat boundaries in light of the protection and management provided by the HCP. We may seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review. However, an HCP can proceed without a concurrent amendment to the critical habitat designation should all involved parties agree.

Issue M: Other Comments

Comment 1: The Service was ordered to designate critical habitat for piping plovers breeding in the Great Lakes and Great Plains states. How is the Service addressing the Atlantic Coast breeding population that might breed or winter in Great Lakes/Great Plains wintering locations?

Our Response: The wintering range of piping plovers from all three breeding populations overlaps the documented breeding range of the Atlantic Coast population in North Carolina and at one site in northern South Carolina. The designation of critical habitat for wintering and migrating piping plovers in this final rule, however, reflects the known distribution and habitat requirements of piping plovers during the non-breeding portion of their life-cycle, but provides the protection offered by critical habitat year-round. Outside of their breeding range, piping plovers are protected as a threatened species regardless of their originating breeding population, and this critical habitat designation encompasses wintering habitat essential to the conservation of piping plovers from all three breeding populations.

Comment 2: In order to comply with the Act the Service must designate critical habitat for breeding and migratory piping plovers on the Atlantic Coast.

Our Response: We are currently required to complete a significant number of listing-related actions, pursuant to court orders and judicially approved settlement agreements. Complying with these court orders and settlement agreements will require the Service to spend nearly all of its listing and critical habitat funding for fiscal year 2001, and a substantial amount in fiscal year 2002. We are currently working to prioritize our critical habitat workload within the Act's listing budget allocated by Congress. The priority for designating critical habitat for the Atlantic Coast breeding population of piping plovers relative to other species and pending litigation has not yet been determined. The other two peer reviewers did not respond.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent expert opinions from five persons who are familiar with this species to peer-review the proposed critical habitat designation. Three of these experts provided us with a written response generally supporting the designation and providing additional information, that we have incorporated into the rule as appropriate.

One of the reviewers stated her view that only sites with recorded plover use should be designated, and that the designation could be subsequently revised as new sites become known. However, she also stated her support for designating larger areas when at least some of these larger units have records of plover use. This is generally the approach we took. We sincerely appreciate the responses of these peer reviewers, and believe their input has provided a great deal of support for this designation.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary. Thus, critical habitat areas should provide sufficient habitat to support the species at the population level and geographic distribution that are necessary for recovery.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of excluding those areas outweigh the benefits of including the areas within the critical habitat, providing the exclusion will not result in the extinction of the species.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life-cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. We are required to base our designations on what, at the time of designation, we believe to be essential to the species and in need of special management considerations or protection.

Our regulations state that, "The Secretary shall designate as critical

habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." (50 CFR 424.12(e)). Accordingly, we will not designate critical habitat in areas outside the geographic area occupied by the species, unless the best available scientific and commercial data demonstrate that the conservation needs of the species can not be met by a designation that is limited to areas occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (Vol. 59, p. 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

This critical habitat designation for the wintering population of the piping plover includes areas that we know currently support the species. Areas described in the approved recovery plans (USFWS 1988, 1996) as essential to the conservation of the wintering population of the piping plover are being designated as critical habitat, if recent data support consistent use and the habitat remains suitable. However, the recovery plans did not include the most recent comprehensive winter survey data and, therefore, the plans did not identify all possible areas essential to the survival and recovery of the species. Thus, we identified additional areas essential to the species' conservation, based upon unpublished data collected by state agencies, Christmas bird counts, individual birders, master's theses (Nicholls 1989, Climo 1998) and published data (Sprandel *et al.* 1997).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat by actions carried out, funded, or authorized by a Federal agency. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal land that do not involve a Federal action, critical habitat designation would not afford any protection under the Act from such activities on these lands.

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans, and through section 7 consultation.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Behavioral observations of piping plovers on the wintering grounds suggest that they spend the majority of their time foraging (Nicholls and Baldassarre 1990b; Drake 1999a, 1999b). Primary prey for wintering plovers includes polychaete marine worms, various crustaceans, insects, and occasionally bivalve mollusks (Nicholls 1989; Zonick and Ryan 1995), which they peck from on top or just beneath the surface of moist or wet sand, mud, or fine shell. In some cases, this substrate may be covered by a mat of blue-green algae. When not foraging, plovers undertake various maintenance activities including roosting, preening, bathing, aggressive encounters (with other piping plovers and other species), and moving among available habitat locations (Zonick and Ryan 1996). The habitats used by wintering birds include beaches, mud flats, sand flats, algal flats, and washover passes (areas where breaks in the sand dunes result in an inlet). Individual plovers tend to return to the same wintering sites year after year (Nicholls and Baldassarre 1990b, Drake 1999a). Wintering plovers are dependent on a mosaic of habitat patches, and move among these patches depending on local weather and tidal conditions (Drake 1999b).

Based upon the behavioral characteristics of wintering piping plovers, we have determined that the primary constituent elements essential for the conservation of wintering piping plovers are those habitat components that support foraging, roosting, and sheltering and the physical features

necessary for maintaining the natural processes that support these habitat components. The primary constituent elements are found in geologically dynamic coastal areas that support intertidal beaches and flats (between annual low tide and annual high tide) and associated dune systems and flats above annual high tide.

Important components (primary constituent elements) of intertidal flats include sand and/or mud flats with no or very sparse emergent vegetation. In some cases, these flats may be covered or partially covered by a mat of blue-green algae. Adjacent unvegetated or sparsely vegetated sand, mud, or algal flats above high tide are also important, especially for roosting piping plovers. Such sites may have debris, detritus (decaying organic matter), or micro-topographic relief (less than 50 cm above substrate surface) offering refuge from high winds and cold weather. Important components of the beach/dune ecosystem include surf-cast algae for feeding of prey, sparsely vegetated backbeach (beach area above mean high tide seaward of the dune line, or in cases where no dunes exist, seaward of a delineating feature such as a vegetation line, structure, or road) for roosting and refuge during storms, spits (a small point of land, especially sand, running into water) for feeding and roosting, salterns (bare sand flats in the center of mangrove ecosystems that are found above mean high water and are only irregularly flushed with sea water (Myers and Ewel 1990)) (biologists have documented use of salterns by piping plovers in southwest Florida) and washover areas for feeding and roosting. Washover areas are broad, unvegetated zones with little or no topographic relief, that are formed and maintained by the action of hurricanes, storm surge, or other extreme wave action. Several of these components (sparse vegetation, little or no topographic relief) are mimicked in artificial habitat types used less commonly by piping plovers, but that are considered critical habitat (e.g., dredge spoil sites).

These habitat components are a result of the dynamic geological processes that dominate coastal landforms throughout the wintering range of piping plovers. These geologically dynamic coastal regions are controlled by processes of erosion, accretion, succession, and sea-level change. The integrity of the habitat components depends upon daily tidal events and regular sediment transport processes, as well as episodic, high-magnitude storm events; these processes are associated with the formation and movement of barrier islands, inlets, and other coastal landforms. By their nature, these features are in a constant state of change; they may disappear, only to be replaced nearby as coastal processes act on these habitats. Given that piping plovers evolved in this dynamic system, and that they are dependent upon these ever-changing features for their continued survival and eventual recovery, our critical habitat boundaries incorporate sites that experience these natural processes and include sites that may lose and later develop appropriate habitat components.

In most areas, wintering piping plovers are dependent on a mosaic of sites distributed throughout the landscape. The annual, daily, and even hourly availability of the habitat patches is dependent on local weather and tidal conditions. For example, a single piping plover may leave a site if it becomes inundated by a high tide or storm event, or if high winds or cold temperatures make the site unsuitable for foraging or roosting. This bird will move to other patches within the landscape mosaic that might provide refuge from inclement weather conditions, or that simply provide a roosting site until conditions become favorable to resume foraging.

Methods

In determining areas that are essential to conserve the wintering population of piping plover, we solicited information from knowledgeable biologists and reviewed the available information pertaining to habitat requirements of the species. We used areas identified in approved recovery plans and current draft recovery plans to initially suggest important areas essential for the recovery of the species. These areas were then further evaluated using site-specific data, such as documented bird observations. To map areas essential to the conservation of the species, we used GIS (described in our response to comment G.3) and data on known piping plover wintering locations, digital aerial photographs and regional shoreline-defining electronic files. Sources of data providing these locations include two international piping plover censuses (conducted by State and Federal biologists and local birders) carried out in January of 1991 and 1996, published reports (a complete list of all references cited in this final rule are available upon request from the Corpus Christi Ecological Services Field Office, see **ADDRESSES** section), Christmas bird counts, and other data from surveys focusing on shorebird distribution and abundance.

We have included those areas along the coast for which occurrence data indicate a consistent use (observations over more than one wintering season) by piping plovers within this designation. The only areas included in the proposed rule that did not have survey data showing that they are used by plovers were the Mississippi River and the Wax Lake Outlet Deltas. We included those areas in the proposed rule because of the high probability of use by plovers due to the broad expanse of mudflats known to exist in the river deltas. However, adequate census data were not available to provide reliable presence or absence information for the plover until recently (U.S. Fish and Wildlife Service and Louisiana Department of Wildlife and Fisheries unpublished data, 2001), because these areas are remote and difficult to access and thus had not been surveyed. Since the proposed rule, we have surveyed these areas (Mississippi River Delta in December 2000; and the Wax Lake Outlet Delta during the February International Piping Plover Survey). Forty plovers were found on a few small dredged material islands in the Mississippi River Delta, none were found in the Wax Lake Outlet Delta. Those areas of the Mississippi Delta where no plovers were observed were not included (portions of LA–6) and the entire Wax Lake Outlet Delta (portions of Unit LA–2) was also not included in the final rule. This has resulted in less acreage being designated in Louisiana. Additionally, during the International Census in February 2001, 40 piping plovers were observed on the same dredged material islands in the Mississippi River Delta. Although we do not have data to document use of these areas over more than one wintering season, based on studies indicating that plovers exhibit a certain amount of site fidelity (see our response to Comment A.11 above.), and the large numbers of plovers observed at these sites, we consider it virtually certain that these areas are consistently used and have included them in the designation and consider these areas essential to the conservation of the species.

For the proposed rule, units and shorelines were mapped at variable scales (zoom factors) and with less detail. For the final rule, all units and shoreline were mapped at 1:5000 or larger (greater zoom) scale. In addition to the standardized mapping scale, the units and shoreline were mapped more precisely. This change in mapping technique and detail resulted in an increase in reported total mapped shoreline kilometers and miles for some states. This also resulted in increases in reported mapped shoreline distances by ownership for some states. It also affected the reported total and

ownership acreages, in some cases resulting in an apparent increased area while in others the result was an apparent decrease in area. However, the areas included in the critical habitat designation are the same areas that we verbally described in the unit-by-unit descriptions in the proposed rule, except for areas which we omitted in the final designation (as described below in the "Summary of Changes From the Proposed Rule" section).

In the proposed rule, a single buffer distance was set for all units in all states (500 m (1,640 ft)). Since this methodology resulted in areas of water (deeper than MLLW) and areas of dense vegetation being included in the designation, which are not utilized by piping plovers, we abandoned this methodology for a more precise means of defining the areas that contain the physical and biological features essential to the wintering piping plover. This change in methodology results in smaller units of designated critical habitat than that of the proposed rule. In order to capture the dynamic nature of the coastal habitat, and the intertidal areas used by the piping plover, we have textually described each unit as including the area extending out from the landward boundaries to the MLLW. MLLW, as defined in our response to comment A.12, is the mean of the lower low water height of each tidal day observed over the National Tidal Datum Epoch. While, MLLW is published information that can be determined through nautical charts, it is not currently available in a GIS version.

Designating specific locations for critical habitat for the piping plovers is difficult because the coastal areas they use are constantly changing due to storm surges, flood events, and other natural geo-physical alterations of beaches and shorelines. Thus, to best insure that areas considered essential to the piping plover are included in this designation, our textual unit descriptions will constitute the definitive determination as to whether an area is within the critical habitat boundary. Our textual unit descriptions describe the geography of the area using reference points, including the areas from the landward boundaries to the MLLW (which encompasses intertidal areas that are essential foraging areas for piping plovers) and describes areas within the unit that are utilized by the piping plover and contain the primary constituent elements (e.g., upland areas used for roosting and wind tidal flats used for foraging).

For the proposed rule, ownership was assigned to three classes within a unit (Federal, State, and private). Federal lands were those federally owned; State lands and waters were those State owned; and private were all non-Federal or non-State owned lands. For this final rule, we have 3 classes (Federal, State, and other) for mapped shoreline and 3 classes (Federal, State, and other) for mapped unit area. Assignment is as follows: Federal—federally owned lands, State—State owned lands, and Other—non-Federal or non-State owned lands. In the proposed rule, there were errors in the values reported in Table 2 for Alabama and Texas, which we have corrected.

In the final rule, to the maximum extent practicable, we mapped critical habitat in sufficient detail to exclude currently developed sites. However, we were unable to exclude all buildings, marinas, paved areas, boat ramps, exposed oil and gas pipelines, and similar structures. These areas do not contain primary constituent elements essential for piping plover conservation and are not considered critical habitat even though they are within the mapped critical habitat unit boundaries. The Service will continue to explore ways in which to identify areas within mapped critical habitat boundaries that are not considered critical habitat because they do not contain the primary constituent elements essential for piping plover conservation.

Critical Habitat Designation/Land Ownership

The critical habitat areas contained within the conservation units described below constitute our best evaluation of areas needed for the conservation of the wintering piping plover. We may revise critical habitat through a rulemaking process if new information becomes available in the future.

We calculated linear distances of critical habitat shoreline (in kilometers and miles) by ownership for each State (Table 1). In addition, State-level values of area in hectares and acres were calculated for the critical habitat units by ownership (Table 2). Ownership for both the shoreline and units were broken into three classes (Federal—Federally owned lands, State—State owned lands, and Other—non-Federal or non-State mapped lands). Assignment of ownership was based on existing digital State-level managed/protected lands geodataset (GIS data set) where possible. If no existing digital data were available, ownership was assigned based on other data sources.

TABLE 1.—APPROXIMATE SHORELINE DISTANCES OF DESIGNATED CRITICAL HABITAT FOR WINTERING PIPING PLOVER BY STATE (ROWS) AND OWNERSHIP (COLUMNS) IN KILOMETERS (MILES)

	Federal	State	Other	Total
NC	1,24.9(77.4)	44.9(27.8)	33.5(20.8)	203.3(126.0)
SC	25.2(15.6)	31.6(19.6)	43.9(27.2)	100.7(62.4)
GA	52.3(32.4)	42.7(26.5)	39.7(24.6)	134.7(83.5)
FL	109.0(67.6)	193.2(119.8)	38.6(23.9)	340.8(211.3)
AL	16.1(10.1)	21.8(13.6)	38.5(24.0)	76.4(47.7)
MS	98.2(61.4)	0.0(0.0)	105.9(66.2)	204.1(127.6)
LA	143.2(89.5)	236.1(147.6)	168.6(105.4)	547.9(342.5)
TX	88.2(54.7)	38.8(24.1)	1,156.8(718.5)	1,283.8(797.3)
Total	657.1(408.7)	609.1(379.0)	1,625.5(1,010.6)	2,891.7(1,798.3)

TABLE 2.—APPROXIMATE LAND AREA OF DESIGNATED CRITICAL HABITAT UNITS FOR WINTERING PIPING PLOVER BY STATE (ROWS) AND OWNERSHIP (COLUMNS) IN HECTARES (ACRES)

	Federal [1]	State [1]	Other [1]	Total
NC	5,614(13,866)	2,062(5,093)	938(2,318)	8,614(21,277)
SC	388(958)	663(1,639)	1,222(3,018)	2,273(5,615)
GA	1,734(4,285)	1,437(3,551)	1,333(3,294)	4,504(11,130)

TABLE 2.—APPROXIMATE LAND AREA OF DESIGNATED CRITICAL HABITAT UNITS FOR WINTERING PIPING PLOVER BY STATE (ROWS) AND OWNERSHIP (COLUMNS) IN HECTARES (ACRES)—Continued

	Federal [1]	State [1]	Other [1]	Total
FL	5,135(12,683)	5,070(12,524)	858(2,121)	11,063(27,328)
AL	294(726)	292(722)	600(1,481)	1,186(2,929)
MS	2,376(5,870)	0.0(0.0)	1,479(3,655)	3,855(9,525)
LA	3,042(7,515)	3,246(8,019)	3,812(9,416)	10,100(24,950)
TX	1,934(4,777)	2,604(6,432)	20,748(51,248)	25,285(62,454)
Total	20,517(50,680)	15,374(37,980)	30,990(76,551)	66,881(165,211)

[1] Approximate land mass values that do not include intertidal areas.

We have divided the lands designated as critical habitat into 142 critical habitat conservation units that contain areas with the primary constituent elements for the piping plover in the wintering range of the species. These units are found in all eight States where piping plovers winter. Below, we describe each unit in terms of its location, approximate size, and ownership. Due to data limitations (resolution & availability) intertidal zone (area between high and low tide) could not be mapped; therefore, the size of each unit is considered approximate. These unit descriptions can be found in the regulatory section at the end of this rule, and are the definitive source for determining the critical habitat boundaries.

North Carolina (Maps Were Digitized Using 1993 DOQQs, Except NC–3 (1993 DRG)

Unit NC–1: Oregon Inlet. 404 ha (997 ac) in Dare County. This unit extends from the southern portion of Bodie Island to the northern portion of Pea Island. It includes all land south of the Oregon Inlet Marina and Fishing Center to 0.50 km (0.31 mile) south of the junction of Highway 12 and SR 1257. This unit includes lands from MLLW on the Pamlico Sound across (and including all land) to MLLW on Atlantic Ocean shoreline. Any emergent sandbars south and west of Oregon Inlet are included.

Unit NC–2: Cape Hatteras Point. 465 ha (1149 ac) in Dare County. The majority of the unit is within Cape Hatteras National Seashore. This unit extends south from the Cape Hatteras Lighthouse to the point of Cape Hatteras and then extends west 6.4 km (4.0 mi) along Hatteras Cove shoreline. The unit includes lands from the MLLW on the Atlantic Ocean and stops landward where densely vegetated habitat, not used by the piping plover, begins and where constituent elements no longer occur.

Unit NC–3: Clam Shoals. 28 ha (70 ac) in Dare County. The entire unit is owned by the State. This unit includes several islands in Pamlico Sound known as Bird Islands. This unit includes lands on all islands to the MLLW.

Unit NC–4: Hatteras Inlet. 516 ha (1273 ac) in Dare and Hyde Counties. The majority of the unit is surrounded by Cape Hatteras National Seashore, but is privately owned. This unit extends west from the end of Highway 12 on the western portion of Hatteras Island to 1.25 km (0.78 mi) southwest of the ferry terminal at the end of Highway 12 on Ocracoke Island. It includes all lands where constituent elements occur from MLLW on the Atlantic Ocean across to MLLW on Pamlico Sound. All emergent sandbars within Hatteras Inlet between Hatteras Island and Ocracoke Island are also included.

Unit NC–5: Ocracoke Island. 80 ha (197 ac) in Hyde County. The majority of this unit is within Cape Hatteras National Seashore. It includes the western portion of Ocracoke Island beginning 3.5 km (2.2 mi) west of the junction of Highway 12 and the local road (no name) extending west to Ocracoke Inlet. It includes all land from MLLW on the Atlantic Ocean across to MLLW on Pamlico Sound. All emergent sandbars within Ocracoke Inlet are also included.

Unit NC–6: Portsmouth Island-Cape Lookout. 3187 ha (7873 ac) in Carteret County. The entire unit is within Cape Lookout National Seashore. This unit includes all land to MLLW on Atlantic Ocean to MLLW on Pamlico Sound, from Ocracoke Inlet extending west to the western end of Pilontary Islands. This unit includes the islands of Casey, Sheep, Evergreen, Portsmouth, Whalebone, Kathryne Jane, and Merkle Hammock. This unit also extends west from the eastern side of Old Drum Inlet to 1.6 km (1.0 mi) west of New Drum Inlet and includes all lands from MLLW on Atlantic Ocean to MLLW on Core Sound.

Unit NC–7: South Core Banks. 552 ha (1364 ac) in Carteret County. The entire unit is within Cape Lookout National Seashore. This unit extends south from Cape Lookout Lighthouse, along Cape Lookout, to Cape Point and northwest to the northwestern peninsula. All lands from MLLW on the Atlantic Ocean, Onslow Bay, and Lookout Bight up to where densely vegetated habitat, not used by the piping plover, begins and the constituent elements no longer occur are included.

Unit NC–8: Shackleford Banks. 716 ha (1769 ac) in Carteret County. The entire unit is within Cape Lookout National Seashore. This unit is in two parts: (1) The eastern end of Shackleford Banks from MLLW of Barden Inlet extending west 2.4 km (1.5 mi), including Diamond City Hills, Great Marsh Island, and Blinds Hammock; and, (2) The western end of Shackleford Banks from MLLW extending east 3.2 km (2.0 mi) from Beaufort Inlet. The unit includes all land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and any emergent sandbars within Beaufort Inlet. This unit is bordered by Onslow Bay, Shackleford Slue, and Back Sound.

Unit NC–9: Rachel Carson. 445 ha (1100 ac) in Carteret County. The entire unit is within the Rachel Carson National Estuarine Research Reserve. This unit includes islands south of Beaufort including Horse Island, Carrot Island, and Lennox Point. This unit includes entire islands to MLLW.

Unit NC–10: Bogue Inlet. 143 ha (354 ac) in Carteret and Onslow Counties. The majority of the unit is privately owned, with the remainder falling within Hammocks Beach State Park. This unit includes contiguous land south, west, and north of Bogue Court to MLLW line of Bogue Inlet on the western end of Bogue Banks. It includes the sandy shoals north and adjacent to Bogue Banks and the land on Atlantic Ocean side to MLLW. This unit also extends 1.3 km (0.8 mi) west from MLLW of Bogue Inlet on the eastern portion of Bear Island.

Unit NC–11: Topsail. 451 ha (1114 ac) in Pender County and Hanover County. The entire area is privately owned. This unit extends southwest from 1.0 km (0.65 mi) northeast of MLLW of New Topsail Inlet on Topsail Island to 0.53 km (0.33 mi) southwest of MLLW of Rich Inlet on Figure Eight Island. It includes both Rich Inlet and New Topsail Inlet and the former Old Topsail Inlet. All land, including emergent sandbars, from MLLW on Atlantic Ocean and sound side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. In Topsail Sound, the unit stops as the entrance to tidal creeks become narrow and channelized.

Unit NC–12: Figure Eight Island. 134 ha (331 ac) in New Hanover County. The majority of the unit is privately owned. This unit extends south from the western end of Beach Road on Figure Eight Island to the northern end of Highway 74 on Wrightsville Beach. The unit includes Mason Inlet and the sand and mudflats northwest of the inlet from MLLW on Atlantic Ocean to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit NC–13: Masonboro. 61 ha (150 ac) in New Hanover County. The entire unit is within the North Carolina National Estuarine Research Reserve. This unit extends 1.1 km (0.70 mi) south from the MLLW of Masonboro Inlet on Masonboro Island. This unit includes all lands along the Atlantic Ocean, Masonboro Inlet, and Masonboro Sound from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit NC–14: Carolina Beach Inlet. 374 ha (924 ac) in New Hanover County. The majority of the unit is within Myrtle Grove Sound on Masonboro Island and is owned by the North Carolina National Estuarine Research Reserve. It extends 1.80 km (1.12 mi) west along the south shoreline of Wolf Island from the mouth of the Altamaja sound. This unit extends south from 3.2 km (2.0 mi) north of MLLW at Carolina Beach Inlet on Masonboro Island to 1.1 km (0.70 mi) south of MLLW at Carolina Beach Inlet on Carolina Beach. It includes land from MLLW on Atlantic Ocean across and including lands to MLLW on the western side of Masonboro Island, excluding existing dredge spoil piles. Emergent sand bars within Carolina Beach Inlet are also included.

Unit NC–15: Ft. Fisher. 790 ha (1951 ac) in New Hanover and Brunswick Counties. This unit is within Ft. Fisher State Recreation Area and Zeke's Island Estuarine Reserve. This unit extends south from Ft. Fisher Islands (from the rocks), south of the ferry terminal, to approximately 0.8 km (0.5 mi) south of MLLW at Corn Cake Inlet on Smith Island. It includes all land (including Zeke's Island) from MLLW on Atlantic Ocean across to MLLW on the eastern side of the Cape Fear River.

Unit NC–16: Lockwood Folly Inlet. 36 ha (90 ac) in Brunswick County. The entire unit is on Oak Island (formerly known as the Town of Long Beach) and is privately owned. This unit extends from the end of West Beach Drive, west to MLLW at Lockwood Folly Inlet, including emergent sandbars south and adjacent to the island. This unit includes land from MLLW on Atlantic Ocean across to MLLW adjacent to the Eastern Channel and the Intracoastal Waterway.

Unit NC–17: Shallotte Inlet. 120 ha (296 ac) in Brunswick County.The entire unit is privately owned. This unit begins just west of Skimmer Court on the western end of Holden Beach. It includes land south of SR 1116, to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur to the MLLW along the Atlantic Ocean. It includes the contiguous shoreline from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur along the Atlantic Ocean, Shallotte Inlet, and Intracoastal Waterway stopping north of Skimmer Court Road. The unnamed island and emergent sandbars to MLLW within Shallotte Inlet are also included.

Unit NC–18: Mad Inlet. 112 ha (278 ac) in Brunswick County. The entire unit is privately owned. This unit extends west 1.2 km (0.75 mi) from the end of Main Street (SR 1177) on western Sunset Beach to the eastern portion of Bird Island and includes the marsh areas north of western Sunset Beach shoreline. The shoreline area begins at MLLW on the Atlantic Ocean and continues landward to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

South Carolina (Maps Were Digitized Using 1994 DOQQs)

Unit SC–1: Waites Island-North. 75 ha (186 ac) in Horry County. This unit includes the northern tip of Waites Island from the MLLW at Little River Inlet and runs west along the Atlantic Ocean shoreline 2.0 km (1.25 mi) and includes land from the MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The unit continues north and west of Little River Inlet stopping at Sheephead Creek, including land from MLLW to dense vegetation line. The majority of the unit is privately owned.

Unit SC–2: Waites Island-South. 58 ha (142 ac) in Horry County.This unit includes the southern tip of Waites Island from the MLLW at Hog Inlet and runs east along the Atlantic Ocean shoreline 0.80 km (0.50 mi) and includes MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. It continues north and west of the Hog inlet, stopping at the first major tributary. Critical habitat includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. Emerging sandbars within Hog Inlet and adjacent to the tip if eastern Cherry Grove Beach are also included from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begins and where the constituent elements no longer occur. The majority of this unit is privately owned.

Unit SC–3: Murrells Inlet/Huntington Beach. 135 ha (334 ac) in Georgetown County. The majority of the unit is within Huntington Beach State Park. This unit extends from the southern tip of Garden City Beach, just south of the groins (a rigid structure or structures built out from a shore to protect the shore from erosion or to trap sand) north of Murrells Inlet from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begins and where the constituent elements no longer occur stopping perpendicular with the southern end of Inlet Point Drive. It includes from MLLW south of Murrells Inlet to the northern edge of North Litchfield Beach approximately 4.5 km (3.0 mi). The unit includes the MLLW from the Atlantic Ocean up to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The lagoon at the north end of Huntington Beach State Park is also included.

Unit SC–4: Litchfield. 11 ha (28 ac) in Georgetown County. This unit includes the southern tip of Litchfield Beach beginning 0.50 km (0.30 mi) north of Midway Inlet and stopping at the MLLW at Midway Inlet. It includes from the MLLW on the Atlantic Ocean shoreline across and including land to the MLLW on the back bayside. This unit is mostly privately owned.

Unit SC–5: North Inlet. 99 ha (245 ac) in Georgetown County. The majority of the unit is within Tom Yawley Wildlife Center Heritage Preserve. This unit extends from MLLW to 1.0 km (.62 mi) north of North Inlet on Debidue Beach. It includes shoreline on the Atlantic Ocean from MLLW to the MLLW on the western side of the peninsula. This unit also includes from the MLLW south of North Inlet 1.6 km (1.0 mi). It includes the shoreline on the Atlantic Ocean from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. It includes shoreline running south and west of the inlet from the MLLW stopping at the MLLW at the first large tributary (no name).

Unit SC–6: North Santee Bay Inlet. 305 ha (753 ac) in Georgetown County. The majority of the unit is within the Tom Yawley Wildlife Center Heritage Preserve and the Santee-Delta Wildlife Management Area. This unit is at the North Santee Bay inlet and includes lands of South Island, Santee Point, Cedar Island, and all of North Santee Sandbar. This unit includes from MLLW at North Santee Bay Inlet running north along the Atlantic Ocean side of South Island 7.2 km (4.5 mi), stopping 0.60 km (0.4 mi) north of an unnamed inlet. It includes areas from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. This unit includes the eastern side of Cedar Island adjacent to the North Santee Bay Inlet from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of North Santee Sandbar to MLLW is included.

Unit SC–7: Cape Romain. 315 ha (777 ac) in Charleston County.The majority of the unit is within Cape Romain National Wildlife Refuge. This unit includes the MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur on the southern and southeastern most 1.9 km (1.2 mi) portion of Cape Island, the southernmost portion of Lighthouse Island from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, all of Lighthouse Island South to MLLW, and the southern side of the far eastern tip of Raccoon Key from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit SC–8: Bull Island. 134 ha (332 ac) in Charleston County. The majority of the unit is within Cape Romain National Wildlife Refuge and land owned by the South Carolina Department of Natural Resources. This unit includes from Schooner Creek on north and south of the river to north of Price's Inlet on the southern portion of Bull Island along the Atlantic Ocean 1.6 km (1.0 mi) and south of Price's Inlet on the northeast tip of Capers Island Heritage Preserve 1.4 km (.86 mi) along the Atlantic Ocean. All areas begin at MLLW and extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit SC–9: Stono Inlet. 495 ha (1223 ac) in Charleston County.Most of this unit is privately owned. It includes the eastern end of Kiawah Island (approximately 4.0 km (2.5 mi)) from MLLW on Atlantic Ocean running north to MLLW on first large tributary connecting east of Bass Creek running northeast into Stono River. It includes MLLW up to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur along Stono Inlet and River. All of Bird Key-Stono Heritage Preserve and all of Skimmer Flats to MLLW are included. The Golf course and densely vegetated areas are not included.

Unit SC–10: Seabrook Island. 117 ha (290 ac) in Charleston County.This unit runs from just 0.16 km (0.10 mi) north of Captain Sams Inlet to the southwest approximately 3.4 km (2.1 mi) along the Atlantic Ocean shoreline. It includes land areas from the MLLW on the Atlantic Ocean to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. Most of this unit is privately owned.

Unit SC–11: Deveaux Bank. 130 ha (322 ac) in Charleston County. The entire unit is within Deveaux Bank Heritage Preserve. This unit includes all of Deveaux Island to the MLLW and is State-owned.

Unit SC–12: Otter Island. 68 ha (169 ac) in Colleton County.The majority of the unit is within St. Helena Sound Heritage Preserve. This unit includes the southern portion of Otter Island to the eastern mouth of Otter Creek. It includes the MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The entire unit is State-owned.

Unit SC–13: Harbor Island. 50 ha (122 ac) in Beaufort County. The majority of the unit is State-owned. This unit extends from the northeastern tip of Harbor Island and includes all of Harbor Spit. It begins at the shoreline east of Cedar Reef Drive running south, stopping at the mouth of Johnson Creek. It includes the MLLW on the Atlantic Ocean and St. Helena Sound to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of Harber Spit to MLLW is included.

Unit SC–14: Caper's Island. 238 ha (589 ac) in Beaufort County. Most of this unit is privately owned. This unit includes the southern-most 4.5 km (2.8 mi) along the Atlantic Coast shoreline of Little Caper's Island beginning at MLLW on south side of the inlet (un-named). It includes the MLLW on the Atlantic Ocean shoreline to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit SC–15: Hilton Head. 43 ha (106 ac) in Beaufort County. The majority of this unit is State-owned. This unit includes the northeastern tip (Atlantic Ocean side) of Hilton Head Island and all of Joiner Bank. It begins at the shoreline east of northern Planters Row and ends at the shoreline east of Donax Road. It includes the MLLW of Port Royal Sound and the Atlantic Ocean to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of Joiner Bank to MLLW is included.

Georgia (Maps Were Digitized Using 1993–94 DOQQs)

Unit GA–1: Tybee Island. 37 ha (91 ac) in Chatham County. The majority of the unit is privately owned. This unit extends along the northern tip of Tybee Island starting from 0.8 km (0.5 mi) northeast from the intersection of Crab Creek and Highway 80 to 0.7 km (0.41 mi) northeast from the intersection of Highway 80 and Horse Pen Creek. The unit includes MLLW on Savannah River and Atlantic Ocean to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit GA–2: Little Tybee Island. 719 ha (1776 ac) in Chatham County. The majority of the unit is within Little Tybee Island State Heritage Preserve. This unit extends just south of the first inlet to Wassaw Sound along the Atlantic Ocean coastline, extending north along the sound 1.7 km (1.1 mi). It includes habitat from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–3: North Wassaw Island. 108 ha (267 ac) in Chatham County. The

entire unit is within Wassaw National Wildlife Refuge. This unit includes the north-east tip of Wassaw Sound, 1.6 km (1.0 mi) along the inlet side and extending south along the Atlantic Ocean shoreline for 1.6 km (1.0 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–4: South Wassaw Island. 61 ha (151 ac) in Chatham County. The entire unit is within Wassaw National Wildlife Refuge. This unit extends from the last southern 1.6 km (1.0 mi.) on Atlantic Ocean side, around the southern tip of Wassaw Island, up to mouth of Odingsell River. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–5: Ossabaw Island. 434 ha (1072 ac) in Chatham County. entire unit is within Ossabaw Island State Heritage Preserve. This unit includes the northeastern tip from the mouth of the Bradley River east and 12 km (7.5 mi) south along the Atlantic Ocean shoreline to a point 0.4 km (0.25 mi) past the south-center inlet. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–6: St. Catherine's Island Bar. 54 ha (135 ac) in Liberty County. The entire unit is State owned and located east-northeast of St. Catherine's Island. This unit includes the entire St. Catherine's Island Bar to MLLW.

Unit GA–7: McQueen's Inlet. 215 ha (532 ac) in Liberty County. The majority of the unit is private land along the eastern-central coastline on St. Catherine's Island. This unit extends from McQueen's Inlet north approximately 3.5 km (2.2 mi) and south approximately 1.8 km (1.1 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–8: St. Catherine's Island. 60 ha (147 ac) in Liberty County. The majority of the unit is private land on the southern tip of St. Catherine's Island. This unit starts 1.2 km (0.75 mi) north of Sapelo Sound (along Atlantic Ocean shoreline) and stops inland at Brunsen Creek. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–9: Blackbeard Island. 129 ha (319 ac) in McIntosh County. The entire unit is within the Blackbeard Island National Wildlife Refuge. This unit includes the northeastern portion of the island beginning just east of the mouth of the confluence of McCloy Creek and Blackbeard Creek and continuing east and running south along the Atlantic Ocean shoreline for 1.4 km (.90 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–10: Sapelo Island. 85 ha (210 ac) in McIntosh County. The entire unit is State-owned and within Sapelo Island. The unit extends south of Cabretta Tip approximately 0.2 km (0.13 mi) and north of Cabretta Tip 1.6 km (1.0 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–11: Wolf Island. 238 ha (590 ac) in McIntosh County. The majority of the unit is within Wolf Island National Wildlife Refuge and private lands just north of the Refuge. This unit includes the southeastern tip of Queen's island adjacent to the Doboy Sound and includes the eastern shoreline of Wolf Island. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–12: Egg Island Bar. 61 ha (151 ac) in McIntosh County. This unit is State owned and includes all of Egg Island Bar to the MLLW.

Unit GA–13: Little St. Simon's Island. 609 ha (1505 ac) in Glynn County. The majority of the unit is private land on Little St. Simon's Island. This unit includes the entire eastern coastline along Little St. Simon's Island. It begins 1.1 km (.70 mi) west of the northeast tip of Little St. Simon's Island and runs east and then south along the Atlantic Ocean shoreline stopping at the minor tributary (no name) on the southeast tip of Little St. Simon's Island north of Hampton Creek. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of Pelican Spit to MLLW is included when this sand bar is emergent.

Unit GA–14: Sea/St. Simon's Island. 191 ha (471 ac) in Glynn County. The majority of the unit is private land on the south tip of Sea Island and on the east beach of St. Simons Island. This unit extends north of Gould's Inlet (Sea Island) 2.5 km (1.54 mi) starting just south of the groin and extends south of Gould's Inlet (St. Simons Island) 1.6 km (1.0 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–15: Jekyll Island. 49 ha (121 ac) in Glynn County. The majority of the unit is within State lands on Jekyll Island. This unit includes the southern region of Jekyll Island beginning at the mouth of Beach Creek, running towards the tip of Jekyll Island and includes the shoreline running north along the Atlantic Ocean shoreline 1.9 km (1.20 mi) from the southern tip of Jekyll Island. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–16: Cumberland Island. 1454 ha (3591 ac) in Camden County. The majority of the unit is along Cumberland Island Wilderness Area and Cumberland Island National Seashore. This unit includes the majority of the eastern Atlantic Ocean shoreline of Cumberland Island. It begins .50 km (.31 mi) north of the inlet at Long Point, continues south along the Atlantic Ocean shoreline stopping 1.8 km (1.1 mi) west of the southern tip of Cumberland Island National Seashore. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Florida (Maps Were Digitized Using 1994–95 DOQQs)

Unit FL–1: Big Lagoon. 8 ha (19 ac) in Escambia County. The majority of the unit is within Big Lagoon State Recreation Area. This unit includes the peninsula and emerging sand and mudflats between 0.33 km (0.21 mi) west of the lookout tower along the shoreline and 0.24 km (0.15 mi) east of the lookout tower along the shoreline. Land along the shoreline from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All emerging sandbars to MLLW are included.

Unit FL–2: Big Sabine. 182 ha (450 ac) in Escambia County. The majority of the unit is owned by the University of West Florida. This unit includes areas adjacent to Santa Rosa Sound of Big Sabine Point and adjacent embayment between 8.0 km (5.0 mi) and 11.6 (7.2 mi) east of the Bob Sike's Bridge. It begins 0.10 km (.06 mi) north of SR 399 to MLLW on the Santa Rosa Sound.

Unit FL–3: Navarre Beach. 48 ha (118 ac) in Escambia and Santa Rosa Counties. The majority of the unit is owned by Eglin Air Force Base and Santa Rosa Island Authority. This unit includes lands on Santa Rosa Island Sound side, between 0.09 and 0.76 mi

east of the eastern end of SR 399 to MLLW on Santa Rosa Sound side.

Unit FL–4: Marifarms in Bay County. Excluded. The proposed rule included this unit, but it was deleted for lack of evidence of regular use by piping plovers.

Unit FL–5: Shell/Crooked Islands. 1789 ha (4419 ac) in Bay County.The majority of the unit is within Tyndall Air Force Base and St. Andrews State Recreation Area. This unit includes all of Shell Island, Crooked Island West, and Crooked Island East from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–6: Upper St. Joe Peninsula. 182 ha (449 ac) in Gulf County.The majority of the unit is within St. Joseph State Park. This unit includes the northern portion of the peninsula from the tip to 8.0 km (5.0 mi) south along the Gulf of Mexico from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–7: Cape San Blas. 158 ha (390 ac) in Gulf County.The entire unit is within Eglin Air Force Base. This unit includes the area known as the Cape between the eastern boundary of Eglin and mile marker 2.1, including the peninsula and all emerging sandbars. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–8: St. Vincent Island. 146 ha (361 ac) in Franklin County.The majority of the unit is within St. Vincent National Wildlife Refuge. This unit includes the western tip of St. Vincent Island that is adjacent to Indian Pass (0.80 km (0.50 mi) east of tip along Indian Pass, and 1.9 km (1.2 mi) from tip southeast along Gulf of Mexico). The unit also includes St. Vincent Point from the inlet at Sheepshead Bayou east 1.6 km (1.0 mi) to include emerging oysters shoals and sand bars and extends south 0.21 km (0.13 mi) of St. Vincent Point. The unit includes the southeastern tip of St. Vincent Island extending north 1.4 km (0.90 mi) and south and west 2.1 km (1.3 mi). The western tip of Little St. George Island 0.80 km (0.50 mi) from West Pass is included (state owned lands). All sections of this unit include land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–9: East St. George Island. 1433 ha (3540 ac) in Franklin County. The majority of the unit is within St. George State Park. This unit begins 5.3 km (3.3 mi) east of the bridge and extends to East Pass. Shell Point, Rattlesnake Cove, Goose Island, East Cove, Gap Point, and Marsh Island are included. This unit includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur on the Gulf of Mexico, East Pass and St. George Sound.

Unit FL–10: Yent Bayou. 153 ha (378 ac) in Franklin County. The majority of the unit is State owned. This unit is adjacent to the area known as Royal Bluff. It includes the St. George Sound shoreline between 5.9 km (3.7 mi) and 9.5 km (5.9mi) east of SR 65. It includes from MLLW to where densely vegetated habitat or developed structures such as SR 65, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–11: Carabelle Beach. 56 ha (139 ac) in Franklin County. The area within this unit is privately owned. This unit is the peninsula created by Boggy Jordan Bayou. It includes St. George Sound shoreline (south of US 98) 1.6 km (1.0 mi) southwest along US 98 from the Carrabelle River Bridge and extends 1.9 km (1.2 mi) east along the St. George Sound shoreline. It includes from MLLW to where densely vegetated habitat or developed structures such as US 98, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–12: Lanark Reef. 260 ha (643 ac) in Franklin County. The entire unit is State owned. This unit includes the entire island and emerging sandbars to MLLW.

Unit FL–13: Phipps Preserve. 42 ha (104 ac) in Franklin County. This unit includes all of Phipps Preserve (owned by The Nature Conservancy) and any emerging sandbars from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–14: Hagens Cove. 486 ha (1200 ac) in Taylor County. The majority of the unit is within Big Bend Wildlife Management Area. This unit includes all of Hagens Cove and extends from MLLW on north side of Sponge Point to MLLW on south side of Piney Point. The eastern boundary of this unit ends (0.20 mi) west of SR 361. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–15: Anclote Key and North Anclote Bar. 146 ha (360 ac) in Pasco and Pinellas Counties. The majority of the unit is within Anclote Key State Preserve. This unit includes all of North Anclote Bar to the MLLW and the north, south and western sides of Anclote Key from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–16: Three Rooker Bar Island. 76 ha (188 ac) in Pinellas County. The majority of the unit is within Pinellas County Aquatic Preserve. This unit includes all the islands and emerging sandbars of this complex to MLLW.

Unit FL–17: North Honeymoon Island. 45 ha (112 ac) in Pinellas County. The majority of the unit is within Honeymoon Island State Recreation Area. This unit includes from Pelican Cove north to the far northern tip of Honeymoon Island. It includes the western shoreline from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur or the MLLW on the eastern shoreline.

Unit FL–18: South Honeymoon Island. 28 ha (70 ac) in Pinellas County.The majority of the unit is private land. This unit includes the southern end (southern-most 0.32 km (0.20 mi) on western side) of Honeymoon Island and encompasses the far southeastern tip and includes any emerging islands or sandbars to Hurricane Pass. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–19: Caladesi Island. 120 ha (296 ac) in Pinellas County.The majority of the unit is within Caladesi Island State Park. This unit extends from Hurricane Pass to Dunedin Pass on the Gulf of Mexico side. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–20: Shell Key and Mullet Key. 190 ha (470 ac) in Pinellas County. The majority of the unit is within Fort Desoto Park. This unit includes the Shell Key island complex. It also includes the northwest portion of Mullet Key including the western shorelines from Bunces Pass extending south, stopping 1.4 km (.86 mi) north of Ft. Desoto County Park pier. It includes from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover. begin and where the constituent elements no longer occur.

Unit FL–21: Egmont Key. 153 ha (377 ac) Hillsborough County. The majority of the unit is within Egmont Key

National Wildlife Refuge. This unit includes the entire island to MLLW.

Unit FL–22: Cayo Costa. 175 ha (432 ac) in Lee County. The majority of the unit, including its northern and southern boundaries, is within Cayo Costa State Park, and nearly all of the remaining area is in the Cayo Costa Florida Conservation and Recreation Lands (CARL) acquisition project. This unit begins at the northern limit of sandy beaches at the northern end of the island, extends through Murdock Point, which at present has a sandbar and lagoon system, and ends at the former entrance to Murdock Bayou. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–23: North Captiva Island. 36 ha (88 ac) in Lee County.The unit is within the Cayo Costa CARL land purchase project. This unit includes the western shoreline extending from 0.80 km (0.50 mi) south of Captiva Pass to approximately Foster Bay. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–24: Captiva Island and Sanibel Island in Lee County. Excluded. The proposed rule included this unit, but it was deleted for lack of evidence of regular use by piping plovers.

Unit FL–25: Bunche Beach. 187 ha (461 ac) in Lee County. This unit is mostly within a CARL Estero Bay acquisition project. Bunche Beach (also spelled Bunch) lies along San Carlos Bay, on the mainland between Sanibel Island and Estero Island (Fort Myers Beach), extending east from the Sanibel Causeway past the end of John Morris Road to a canal serving a residential subdivision. The unit also includes the western tip of Estero Island (Bodwitch Point, also spelled Bowditch Point), including Bowditch Regional Park, operated by Lee County and, on the southwest side of the island facing the Gulf, the beach south nearly to the northwesterly intersection of Estero Boulevard and Carlos Circle. It includes land from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur or, along the developed portion of Estero Island.

Unit FL–26: Estero Island. 86 ha (211 ac) in Lee County. The majority of the unit is privately owned. The unit consists of approximately the southern third of the island's Gulf-facing shoreline starting near Avenida Pescadora to near Redfish Road. The unit excludes south-facing shoreline at the south end of the island that faces Big Carlos Pass rather than the Gulf. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–27: Marco Island. 245 ha (606 ac) in Collier County. Most of the unit is at the Tigertail Beach County Park. The unit's northern border is on the north side of Big Marco Pass, including Coconut Island and all emerging sand bars. On the south side of Big Marco Pass, the boundary starts at the north boundary of Tigertail Beach County Park and extends to just south of the fourth condominium tower south of the County Park. The placement of the southern boundary assures that the unit includes all of Sand Dollar Island, the changeable sandbar off Tigertail Beach. The western boundary includes all the sand bars in Big Marco Pass but excludes Hideaway Beach. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–28: Marquesas Keys. 2,937 ha (7,256 ac) in Monroe County. The unit comprises the roughly circular atoll that encloses Mooney Harbor, including Gull Keys and Mooney Harbor Key. The entire unit is within Key West National Wildlife Refuge. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–29: Boca Grande/Woman/Ballast Keys. 56 ha (138 ac) in Monroe County. These Keys are east of the Marquesas Keys and west of Key West. Boca Grande and Woman Keys are within Key West National Wildlife Refuge. Ballast Key is privately owned. This unit consists only of sandy beaches and flats between the MLLW and to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–30: Bahia Honda/Ohio Keys. 372 ha (918 ac) in Monroe County. This unit comprises Bahia Honda Key (including a small island off its southwest shore), which is almost entirely owned by Bahia Honda State Park, plus Ohio Key, which is privately owned. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–31: Lower Matecumbe Key. 19 ha (48 ac) in Monroe County. Part of the unit is at Anne's Beach park, an Islamorada village park. The remaining parts are at Sunset Drive (Lower Matecumbe Beach) and at Costa Bravo Drive (Port Antiqua Homeowners Beach) on the Florida Bay side of the island. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–32: Sandy Key/Carl Ross Key. 67 ha (165 ac) in Monroe County. This unit consists of two adjoining islands in Florida Bay, roughly south of Flamingo in Everglades National Park. The entire area is owned and managed by the National Park Service. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–33: St. Lucie Inlet. 114 ha (282 ac) in Martin County. The unit includes a small area south of the jetty on the north shore of St. Lucie Inlet, from the jetty west 0.42 km (0.26 mi). While the two sides of the inlet are privately owned, the great majority of the unit is on public land in the Saint Lucie Inlet State Preserve, administered by Jonathan Dickinson State Park. It begins on the sandy shoreline south of Saint Lucie Inlet and extends along the Atlantic Ocean shoreline 2.6 km (1.6 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur. The unit does not include sandbars within the inlet.

Unit FL–34: Ponce de Leon Inlet. 68 ha (168 ac) in Volusia County. The majority of the unit is within Smyrna Dunes Park and Lighthouse Point Park. This unit includes shoreline extending from the jetty north of Ponce de Leon Inlet west to the Halifax River and Inlet junction. It includes shoreline south of Ponce de Leon Inlet from the inlet and Halifax River junction, extending east and south along the Atlantic Ocean shoreline 1.2 km (.70 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–35: Nassau Sound-Huguenot. 950 ha (2347 ac) in Duval County. The majority of the unit is within Big Talbot Island State Park, Little Talbot Island

State Park, and the Timucuan Ecological and Historical Preserve. This unit includes all emergent shoals and shoreline east of Nassau River bridge and extends to the inlet of the St. John's River. Amelia Island and the northern 2.7 km (1.7 mi) shoreline along Talbot Island are not included. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–36: Tiger Islands. 53 ha (130 ac) in Nassau County. This unit is privately owned. This unit extends from the mouth of Tiger Creek and runs north along Tiger Island 0.8 km (0.5 mi) and south along Little Tiger Island 1.4 km (0.9 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur. Emerging sandbars to MLLW are also included.

Alabama (Maps Were Digitized Using 1992 DOQQs)

Unit AL–1: Isle Aux Herbes. 227 ha (561 ac) in Mobile County. This unit includes the entire Isle Aux Herbes island where primary constituent elements occur to MLLW and is State-owned.

Unit AL–2: Dauphin, Little Dauphin, and Pelican Islands. 880 ha (2,174 ac) in Mobile County. This unit includes all of Dauphin Island where primary constituent elements occur from St. Stephens Street approximately 17.6 km (10.9 mi) west to the western tip of the island to MLLW and all of Little Dauphin and Pelican Islands to MLLW. The area is mostly privately owned but includes State and Federal lands.

Unit AL–3: Fort Morgan. 67 ha (166 ac) in Baldwin County. This area includes Mobile Bay and Gulf of Mexico shorelines within Bon Secour National Wildlife Refuge, Fort Morgan Unit. This unit extends from the west side of the pier on the northwest point of the peninsula, following the shoreline approximately 2.8 km (1.74 mi) southwest around the tip of the peninsula, then east to the terminus of the beach access road and is bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The area is State-owned but is leased by the Federal Government.

Mississippi (Maps Were Digitized Using 1992 and 1997 DOQQs)

Unit MS–1: Lakeshore through Bay St. Louis. 41 ha (101 ac) in Hancock County. This unit extends from the north side of Bryan Bayou outlet and includes the shore of the Mississippi Sound following the shoreline northeast approximately 15.0 km (9.3 mi) and ending at the southeast side of the Bay Waveland Yacht Club. The landward boundary of this unit follows the Gulf side of South and North Beach Boulevard and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–2: Henderson Point. 34 ha (84 ac) in Harrison County. This unit extends from 0.2 km (0.12 mi) west of the intersection of 3rd Avenue and Front Street and includes the shore of the Mississippi Sound following the shoreline northeast approximately 4.4 km (2.7 mi) to the west side of Pass Christian Harbor. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–3: Pass Christian. 77 ha (190 ac) in Harrison County. This unit extends from the east side of Pass Christian Harbor and includes the shore of the Mississippi Sound following the shoreline northeast approximately 10.5 km (6.5 mi) to the west side of Long Beach Pier and Harbor. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–4: Long Beach. 38 ha (94 ac) in Harrison County. This unit extends from the east side of Long Beach Pier and Harbor and includes the shore of the Mississippi Sound following the shoreline northeast approximately 4.4 km (2.7 mi) to the west side of Gulfport Harbor. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–5: Gulfport. 39 ha (96 ac) in Harrison County. This unit extends from the east side of Gulfport Harbor and includes the shore of the Mississippi Sound following the shoreline northeast approximately 4.8 km (3.0 mi) to the west side of the groin at the southern terminus of Courthouse Road, Mississippi City, MS. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–6: Mississippi City. 62 ha (153 ac) in Harrison County. This unit extends from the east side of the groin at the southern terminus of Courthouse Road, Mississippi City, MS, and includes the shore of the Mississippi Sound following the shoreline northeast approximately 7.9 km (4.9 mi) to the west side of President Casino. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–7: Beauvoir in Harrison County. Excluded. The proposed rule included this unit, but it was deleted for lack of evidence of regular use by piping plovers.

Unit MS–8: Biloxi West in Harrison County. Excluded. The proposed rule included this unit, but it was deleted for lack of evidence of regular use by piping plovers.

Unit MS–9: Biloxi East in Harrison County. Excluded. The proposed rule included this unit, but it was deleted for lack of evidence of regular use by piping plovers.

Unit MS–10: Ocean Springs West. 11 ha (27 ac) in Jackson County. This unit extends from U.S. 90 and includes the shore of Biloxi Bay following the shoreline southeast approximately 1.9 km (1.2 mi) to the Ocean Springs Harbor inlet. The landward boundary of this unit follows the Bay side of Front Beach Drive and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–11: Ocean Springs East. 7 ha (17 ac) in Jackson County. This unit extends from the east side of Weeks Bayou and includes the shore of Biloxi Bay following the shoreline southeast approximately 1.8 km (1.1 mi) to Halstead Bayou. The landward boundary of this unit follows the Bay side of East Beach Drive and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–12: Deer Island. 194 ha (479 ac) in Harrison County. This unit includes all of Deer Island, where primary constituent elements occur to the MLWW . Deer Island is privately owned.

Unit MS–13: Round Island. 27 ha (67 ac) in Jackson County. This unit includes all of Round Island to the MLWW and is privately owned

Unit MS–14: Mississippi Barrier Islands. 3,168 ha (7,828 ac) in Harrison and Jackson Counties. This unit includes all of Cat, East and West Ship, Horn, Spoil, and Petit Bois Islands

where primary constituent elements occur to MLLW. Cat Island is privately owned, and the remaining islands are part of the Gulf Islands National Seashore.

Unit MS–15: North and South Rigolets. 159 ha (393 ac) in Jackson County, MS, and 12 ha (30 ac) in Mobile County, AL. This unit extends from the southwestern tip of South Rigolets Island and includes the shore of Point Aux Chenes Bay, the Mississippi Sound, and Grand Bay following the shoreline east around the western tip, then north to the south side of South Rigolets Bayou; then from the north side of South Rigolets Bayou (the southeastern corner of North Rigolets Island) north to the northeastern most point of North Rigolets Island. This shoreline is bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. Approximately 4.4 km (2.7 mi) are in Mississippi and 2.9 km (1.8 mi) are in Alabama. Almost half the Mississippi shoreline length is in the Grand Bay National Wildlife Refuge.

Louisiana (Maps Were Digitized Using 1998 DOQQs)

Unit LA–1: Texas/Louisiana border to Cheniere au Tigre. 2,650 ha (6,548 ac) in Cameron and Vermilion Parishes. This unit extends from the east side of Sabine Pass (Texas/Louisiana border) and includes the shore of the Gulf of Mexico from the MLLW following the shoreline east 25.7 km (16.0 mi) to the west end of Constance Beach [approximately 2 km (1.2 mi) east of the intersection of Parish Road 528 and the beach]; it extends from the east end of the town of Holly Beach [0.25 km (0.16 mi) east of the intersection of Baritarick Boulevard and the beach] following the shoreline approximately 97 km (60.3 mi) east to the eastern boundary line of Rockefeller Wildlife Refuge [3.4 km (2.1 mi) east of Rollover Bayou]; and it extends from the east side of Freshwater Bayou Canal following the shoreline east for approximately 15 km (9.3 mi) to 1.3 km (0.81 mi) east of where the boundary of Paul J. Rainey Wildlife Sanctuary (National Audubon Society) meets the shoreline. All three sections of this unit include the land from the seaward boundary of MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The shoreline in this unit is both state and privately owned.

Unit LA–2: Atchafalaya River Delta. 921 ha (2,276 ac) in St. Mary Parish, LA. This unit is located in the eastern portion of the State-owned Atchafalaya Delta Wildlife Management Area (WMA) and includes all exposed land and islands where primary constituent elements occur east and southeast of the main navigation channel of the Atchafalaya River to the MLLW. The islands located south and southeast of the deltaic splay, Donna, T-Pat, and Skimmer Islands and the un-named bird island, are also included in this unit. This unit includes the entire islands where primary constituent elements occur to the MLLW.

Unit LA–3: Point Au Fer Island. 195 ha (482 ac) in Terrebonne Parish. This unit includes the entire small island at the northwest tip of Point Au Fer Island to MLLW, then extends from the northwest tip of Point Au Fer Island following the shoreline southeast approximately 7.7 km (4.8 mi) to the point where the un-named oil and gas canal extending southeast from Locust Bayou meets the shoreline [0.8 km (0.5 mi) southeast from Locust Bayou]. This shoreline is bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. This entire unit is privately owned.

Unit LA–4: Isles Dernieres. 795 ha (1,964 ac) in Terrebonne Parish. This unit includes the State-owned Isles Dernieres chain, including Raccoon, Whiskey, Trinity and East Islands. This unit includes the entire islands where primary constituent elements occur to the MLLW.

Unit LA–5: Timbalier Island to East Grand Terre Island. 2,321 ha (5,735 ac) in Terrebonne, Lafourche, Jefferson, and Plaquemines Parishes. This unit includes: all of Timbalier Island where primary constituent elements occur to the MLLW, all of Belle Pass West [the "peninsula" extending north/northwest approximately 4.8 km (3.0 mi) from the west side of Belle Pass] where primary constituent elements occur to MLLW; the Gulf shoreline extending approximately 11 km (6.8 mi) east from the east side of Belle Pass bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur; the Gulf shoreline of Grand Isle from the Gulf side of the hurricane protection levee to MLLW; and all of East Grand Terre Island where primary constituent elements occur to the MLLW.

Unit LA–6: Mississippi River Delta. 105 ha (259 ac) in Plaquemines Parish, LA. This unit is part of the State-owned Pass a Loutre Wildlife Management Area and includes un-named sand (spoil) islands off South Pass of the Mississippi River near Port Eads. The entire islands to MLLW are included in this unit.

Unit LA–7: Breton Islands and Chandeleur Island Chain. 3,116 ha (7,700 ac) in Plaquemines and St. Bernard Parishes, LA. This unit includes Breton, Grand Gosier, and Curlew Islands and the Chandeleur Island chain. Those islands are part of the Breton National Wildlife Refuge or are state owned. The entire islands where primary constituent elements occur to MLLW are included in this unit.

Texas (Maps Were Digitized Using 1995 and 1996 DOQQs and National Oceanic and Atmospheric Administration's (NOAA) Medium Resolution Digital Vector Shoreline)

Unit TX–1: South Bay and Boca Chica. 2,920 ha (7,217 ac) in Cameron County. The boundaries of the unit are: starting at the Loma Ochoa, following the Brownsville Ship Channel to the northeast out into the Gulf of Mexico to MLLW, then south along a line describing MLLW to the mouth of the Rio Grande, proceeding up the Rio Grande to Loma de Las Vacas, then from that point along a straight line north to Loma Ochoa. The unit does not include densely vegetated habitat within those boundaries. It includes wind tidal flats that are infrequently inundated by seasonal winds, and includes the tidal flats area known as South Bay. Beaches within the unit reach from the mouth of the Rio Grande northward to Brazos Santiago Pass, south of South Padre Island. The southern and western boundaries follow the change in habitat from wind tidal flat, preferred by the piping plover, to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include areas used for roosting by the piping plover. Portions of this unit are owned and managed by the Lower Rio Grande Valley National Wildlife

Refuge, the South Bay Coastal Preserve, Boca Chica State Park, and private citizens.

Unit TX–2: Queen Isabella Causeway. 2 ha (6 ac) in Cameron County. The area extends along the Laguna Madre west of the city of South Padre Island. The southern boundary is the Queen Isabella State Fishing Pier, and the northern boundary is at the shoreline due west of the end of Sunny Isles Street. The Queen Isabella causeway bisects this shore but is not included within critical habitat. The eastern boundary is the where developed areas and/or dense vegetation begins, and the western boundary is MLLW. This unit contains lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–3: Padre Island. 10,924 ha (26,983 ac) in Cameron, Willacy, Kenedy, and Kleberg Counties. This unit consists of four subunits:

(1) The southern boundary of this subunit is at Andy Bowie County Park in South Padre Island, and the northern boundary is the south boundary of PAIS. The eastern boundary is MLLW in the Gulf of Mexico, and the western boundary is MLLW in the Laguna Madre. Areas of dense vegetation are not included in critical habitat. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

(2) The boundaries of this subunit extend from Rincon de la Soledad to the southeast point of Mesquite Rincon, continue from that point west to the Laguna Madre shoreline at its intersection with the King Ranch boundary, and from that point to Rincon de la Soledad. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

(3) This subunit is within the Laguna Madre and extends from the western boundary of PAIS to the Gulf Intercoastal Waterway. Its northern boundary is a line extending westward from the northwest corner of PAIS, and its southern boundary is a line extending westward from the southern boundary of PAIS. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

(4) This subunit extends along the gulf shore of Padre Island from the northern boundary of PIAS at the shore, north to the Nueces-Kleberg county line. The inland boundary is where dense vegetation begins, and the seaward boundary is MLLW. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Portions of this unit are owned and managed by TGLO, and private citizens with a significant portion being owned and managed by The Nature Conservancy on South Padre Island.

Unit TX–4: Lower Laguna Madre Mainland. 4,980 ha (12,307 ac) in Cameron and Willacy Counties. The southern boundary is an east-west line at the northern tip of Barclay Island, and the southern boundary is an east-west line 0.9 km (0.5 mi) south of the boundary of the City of Port Mansfield; the western boundary is the line where dense vegetation begins, and the eastern boundary is the Gulf Intercoastal Waterway. The unit includes bayside flats that are exposed during low tide regimes and wind tidal flats that are infrequently inundated by seasonal winds. Portions of this unit are within the Laguna Atascosa National Wildlife Refuge, are TGLO-owned, or are privately owned. Beaches and interior wetlands may or may not be used each year because of varying water levels, storm events, or changes in beach characteristics and tidal regime. Water stages vary in this area with meteorological conditions. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover.

Unit TX–5: Upper Laguna Madre. 436 ha (1,076 ac) in Kleberg County. The southern boundary is the northern boundary of PAIS, and the northern boundary is the Kleberg/Nueces County line. The eastern boundary is the line where dense vegetation begins, and the western boundary is MLLW. This unit includes a series of small flats along the bayside of Padre Island in the Upper Laguna Madre. It includes wind tidal flats and sparsely-vegtated upland areas used for roosting by the piping plover. These boundaries receive heavy use by large numbers of shorebirds, including piping plovers. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, and include upland areas used for roosting by the piping plover.

Unit TX–6: Mollie Beattie Coastal Habitat. 241 ha (596 ac) in Nueces County. This unit will be described as two subunits:

(1) Subunit is bounded on the north by Beach Access Road 3, on the east by the inland boundary of critical habitat Unit TX–7, on the south by Zahn road, and on the west by Zahn Road.

(2) The subunit is bounded on the north by Corpus Christi Pass, on the east by US 361, on the south by the north side of Packery Channel, and on the west by the Gulf Intercoastal Watersay.

Some of the uplands are privately owned and the remaining are owned and managed by the TGLO. This unit includes two hurricane washover passes known as Newport and Corpus Christi Passes, and wind tidal flats that are infrequently inundated by seasonal winds. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover.

Unit TX–7: Newport Pass/Corpus Christi Pass Beach. 42 ha (104 ac) in Nueces County. This unit is along a stretch of Gulf beach 8.5 km (5.3 mi) long. It is bounded on the north by Fish Pass, on the east by MLLW, on the south by St. Bartholomew Avenue, and on the west by a line marking the beginning of dense vegetation. Portions of the unit are managed by the Texas Parks and Wildlife Department as part of Mustang Island State Park. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–8: Mustang Island Beach. 97 ha (239 ac) in Nueces County. This is a stretch of Gulf beach extending from Fish Pass to the Horace Caldwell Pier on Holiday Beach within the City of Port Aransas, TX. The landward boundary is beginning of dense vegetation, and the gulf-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–9: Fish Pass Lagoons. 130 ha (323 ac) in Nueces County. This unit encompasses flats facing Corpus Christi Bay that extend 1.0 km (0.6 mi) on either side of Fish Pass. The inland boundary is the line indicating beginning of dense vegetation, and the bayside boundary is MLLW. It includes interior lagoons and wind tidal flats that are infrequently inundated by seasonal winds. This unit includes upland areas used for roosting by the piping plover.

Unit TX–10: Shamrock Island and Adjacent Mustang Island Flats. 87 ha (216 ac) in Nueces County. This unit encompasses Shamrock Island, an unnamed small sand flat to the north of Wilson's Cut, and a lagoon complex that extends 3.5 km (2.2 mi) to the southwest of Wilson's Cut. Critical habitat includes land to the line marking the beginning of dense vegetation down to MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–11: Blind Oso. 2 ha (5 ac) in Nueces County. This unit is the flats of the Blind Oso, part of Oso Bay, from

Hans and Pat Suter Wildlife Refuge (owned and managed by the City of Corpus Christi) northeast to Corpus Christi Bay and then southeast along the edge of Texas A&M University—Corpus Christi. The landward boundaries extend to where densely vegetated habitat, not used by the piping plover, begins, and extends out from the landward boundaries to MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–12: Adjacent to Naval Air Station-Corpus Christi. 2 ha (6 ac) in Nueces County. This unit is along the shore of Oso Bay on flats bordered by Naval Air Station-Corpus Christi and Texas Spur 3 to a point 2.5 km (1.5 mi) south of the bridge between Ward Island and the Naval Air Station. The landward boundary is the line where dense vegetation begins, and the boundary in the Bay is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–13: Sunset Lake. 176 ha (435 ac) in San Patricio County. This unit is triangle shaped, with State Highway 181 as the northwest boundary, and the limits of the City of Portland as the northeast boundary. The shore on Corpus Christi Bay is the third side of the triangle, with the actual boundary being MLLW off this shore. This unit is a large basin with a series of tidal ponds, sand spits and wind tidal flats. This unit is owned and managed by the City of Portland within a system of city parks. Some of the described area falls within the jurisdiction of the TGLO. It includes two city park units referred to as Indian Point and Sunset Lake. Much of the unit is a recent acquisition by the city, and management considerations for the park include the area's importance as a site for wintering and resident shorebirds. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–14: East Flats. 194 ha (481 ac) in Nueces County. This unit is bordered on the north by dredge placement areas bordering the Corpus Christi Ship Channel, on the west by MLLW in Corpus Christi Bay, on the east by the limits of the City of Port Aransas, and on the south by an east-west line at the sourthern-most point of Pelone Island. It is also bisected by a navigation channel, which is not included in the critical habitat. A portion of this unit at the west end falls within State-owned (TGLO) intertidal lands. The remainder of the unit is privately owned. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, including upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–15: North Pass. 447 ha (1,106 ac) in Aransas County. The unit is bounded on north by North Pass, on the northwest by the line indicating MLLW, on the southwest by the northeast side of Lydia Ann Island, on the south by a line running due east from the northeast side of Lydia Ann Island, and on the southeast by the landward boundary of Unit. This unit is a remnant of a hurricane washover on the privately owned San Jose Island. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, including upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–16: San Jose Beach. 187 ha (463 ac) in Aransas County. This unit occupies a 33 km (20 mi) stretch of beach from the North Jetty of Aransas Pass at the south, to the confluence of Vinson Slough and Cedar Bayou at the north end of San Jose Island. The inland boundary is the line indicating the beginning of densely vegetated habitat, and the gulf-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–17: Allyn's Bight. 5 ha (14 ac) in Aransas County. This unit includes shoreline of San Jose Island on Aransas Bay from Allyn's Bight to Blind Pass, the channel between San Jose Island and Mud Island. The inland boundary is where the line of dense vegetation begins, and the bay-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–18: Cedar Bayou/Vinson Slough. 3,051 ha (7,539 ac) in Aransas County. Beginning at the confluence of Vinson Slough and Cedar Bayou, this unit's boundary follows the shore of Spalding Cove to Long Reef, then continues along a line extending (2.5 mi) southwest of Long Reef to the shore of San Jose Island, then along the shore of the island to the landward boundary of Unit TX–16. The unit boundaries extend landward to the line indicating the beginning of dense vegetation. This unit is a remnant of a hurricane washover area, and includes the highly dynamic area of Cedar Bayou, the pass that separates San Jose Island and Matagorda Island. This area includes a small section of Matagorda Island National Wildlife Refuge with much of the remaining areas occurring on the privately owned island of San Jose. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–19: Matagorda Island Beach. 395 ha (976 ac) in Calhoun County. This stretch of beach along the Gulf of Mexico on Matagorda Island extends a distance of 60 km (36 mi) from Cedar Bayou on the southwest (where it abuts TX–18), to Pass Cavallo on the northeast. The inland boundary is the line indicating the beginning of dense vegetation, and the gulf-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds. The unit falls entirely within the boundary of the Matagorda Island National Wildlife Refuge.

Unit TX–20: Ayers Point. 397 ha (982 ac) in Calhoun County. This unit is an unnamed lake on Matagorda Island between Shell Reef Bayou and Big Brundrett Lake, with San Antonio Bay to the north. The unit boundary extends landward from the lake to the line where dense vegetation begins and where the constituent elements no longer occur and includes upland areas used for roosting by the piping plover. This unit includes marsh and flats at Ayers Point on Matagorda Island National Wildlife Refuge. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–21: Panther Point to Pringle Lake. 863 ha (2,133 ac) in Calhoun County. This unit represents a narrow band of bayside habitats on Matagorda Island from Panther Point to the northeast end of Pringle Lake. The landward boundary is the line indicating where dense vegetation begins, and the bayward boundary is MLLW. The unit is entirely within Matagorda Island National Wildlife Refuge. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–22: Decros Point. 450 ha (1,114 ac) at the Matagorda/Calhoun County line. This unit includes about 7.0 km (4.3 mi) of beach habitat around the island at the western tip of Matagorda Peninsula between the

natural opening to Matagorda Bay and the Matagorda Ship Channel. The upland boundary is the line where dense vegetation begins, and the seaward boundary is MLLW. The adjacent upland is privately owned. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–23: West Matagorda Peninsula Beach. 311 ha (769 ac) of shoreline in Matagorda County. This unit extends 40 km (24 mi) along the Gulf of Mexico from the jetties at the Matagorda Ship Channel to the old Colorado River channel. The inland boundary is the line indicating where dense vegetation begins, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–24: West Matagorda Bay/ Western Peninsula Flats. 756 ha (1,868 ac) in Matagorda County. This unit extends along the bayside of Matagorda Peninsula from 7.5 southwest of Greens Bayou to 2.5 km (1.6 mi) northwest of Greens Bayou. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–25: West Matagorda Bay/ Eastern Peninsula Flats. 232 ha (575 ac) in Matagorda County. This unit follows the bayside of Matagorda Peninsula from Maverick Slough southwest for 5 km (3 mi). The unit begins at Maverick Slough to the northeast and extends 5 km (3 mi) to the southwest, enclosing a series of flats along Matagorda Bay. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–26: Colorado River Diversion Delta. 5 ha (13 ac) in Matagorda County. This unit consists follows the shore of the extreme eastern northeast corner of West Matagorda Bay from Culver Cut to Dog Island Reef. The southeastern tidally emergent portion of Dog Island Reef is included within the unit. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. The upland areas includes upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–27: East Matagorda Bay/ Matagorda Peninsula Beach West. 295 (728 ac) of shoreline in Matagorda County. This unit extends along Gulf beach on the Matagorda Peninsula from the mouth of the Colorado River northeast along the peninsula 23 km (14 mi) to a point on the beach opposite Eidelbach Flats. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–28: East Matagorda Bay/ Matagorda Peninsula Beach East. 129 ha (321 ac) in Matagorda County. This unit extends along the Gulf beach on the northeast end of Matagorda Peninsula from a point 0.8 km (0.5mi) southwest of FM 457 southwest 10 km (6 mi.) to the southwest side of Brown Cedar Cut. This unit abuts with Unit TX–29 to the north. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–29: Brown Cedar Cut. 119 ha (294 ac) in Matagorda County. This unit extends 2 km (1.2 m.) both southwest and northeast of the main channel of Brown Cedar Cut along the bayside of Matagorda Peninsula in East Matagorda Bay, and abuts unit TX–28 to the southeast. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. The eastern boundary of TX–29 follows the change in habitat from mud flats preferred by the piping plover, to slightly vegetated dune system adjacent to TX–28. This unit includes upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–30: Northeast Corner East Matagorda Bay. 120 ha (297 ac) in Matagorda County. This is a unit bounded on the north by the Gulf Intercoastal Waterway, on the east by the northeast limit of Matagorda bay up the line where dense vegetation begins, on the south by the boundary of Unit TX–28, and on the west by MLLW. It is a system of flats associated with tidal channels. This unit includes upland areas used for roosting by the piping plover and lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–31: San Bernard NWR Beach. 166 ha (410 ac) in Matagorda and Brazoria Counties. This is a unit composed of Gulf beach, 8.0 km (5.0 mi), and extends from the mouth of the San Bernard River to a point along the beach 14.0 km (8.7 mi) to the southwest. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–32: Gulf Beach Between Brazos and San Bernard Rivers. 108 ha (269 ac) of shoreline in Brazoria County. This unit is a segment of Gulf beach between the Brazos River and the San Bernard River. This unit borders an area known as Wolf Island. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–33: Bryan Beach and Adjacent Beach. 157 ha (388 ac) in Brazoria County. The boundaries enclose a length of Gulf beach between the mouth of the Brazos River and FM 1495. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. A portion of this area is owned and managed by the Texas Parks and Wildlife Department. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–34: San Luis Pass. 110 ha (272 ac) near the Brazoria/Galveston County line. This unit extends along the Gulf side of Galveston Island from San Luis Pass to the cite of the former town of Red Fish Cove (USGS 1:24,000 map, San Luis Pass, Texas; 1963, photorevision 1974). The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. Approximately 57 percent of the unit includes flats in the floodtide delta that are State-owned and managed by the TGLO. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–35: Big Reef. 47 ha (117 ac) in Galveston County. This unit consists of beach and sand flats on the north, west, and east shore of Big Reef, down to MLLW. South Jetty is not included. The area is currently managed by the City of Galveston. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–36: Bolivar Flats. 160 ha (395 ac) in Galveston County. This unit extends from the jetties on the southwest end of the Bolivar Peninsula

to a point on the Gulf beach 1 km (0.6 mi) north of Beacon Bayou. It includes 5.0 km (3 mi) of Gulf shoreline. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. The area is leased from TGLO by Houston Audubon Society and managed for its important avian resources. The upland areas are used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–37: Rollover Pass. 6 ha (16 ac) in Galveston County. This unit consists of Rollover Bay on the bayside of Bolivar Peninsula. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. It includes flats on State-owned land managed by the TGLO. This unit captures the intertidal complex of the bay, and is bounded by the towns of Gilchrist to the east and the Gulf beach of the Bolivar Peninsula to the south. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Effects of Critical Habitat Designation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. For wintering piping plovers, we will conduct our destruction and adverse modification analyses over the entire critical habitat designation and on a unit basis, where appropriate. A consultation focuses on the entire critical habitat area designated unless the critical habitat rule identifies another basis for analysis, such as discrete units and/or groups of units necessary for different life-cycle phases, units representing distinctive habitat characteristics or gene pools, or units fulfilling essential geographic distribution requirements. In the case of the piping plover, we cannot always currently identify the breeding population origin of birds on the winter range. As we continue to collect information on banded birds, future additional information may allow us to analyze jeopardy and adverse modification on the basis of the identified population origin and individual units or groups of units. That is, some designated critical habitat units may fulfill essential geographic distribution requirements for the endangered Great Lakes breeding population of piping plover and therefore the adverse modification analysis may be appropriate at the unit or groups of units level. To be considered "destruction or adverse modification," a modification of critical habitat must be of such magnitude that the effect appreciably reduces the value of the critical habitat for the survival and recovery of the listed species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would advise the agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service believes would avoid the likelihood of jeopardizing the continued existence of listed species or the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat.

Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (COE) under section 404 of the Clean Water Act or a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., from the Federal Highway Administration (FHA), Environmental Protection Agency (EPA), or Federal Emergency Management Agency (FEMA)), will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Critical habitat does not include existing developed sites consisting of buildings, marinas, paved areas, boat ramps, exposed oil and gas pipelines and similar structures. Since existing developed sites, such as those described above, do not contain the primary constituent elements, they are not included in the definition of critical habitat for the piping plover.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the wintering piping plover is appreciably reduced. We note that such activities would also likely jeopardize the continued existence of the species, and that any reasonable and prudent alternatives to remove jeopardy would be similar to those removing adverse modification. Thus, critical habitat designation is unlikely to appreciably affect the outcomes of section 7 consultations. However, we note that some Federal agencies may initiate consultation more

often than before because critical habitat has increased their awareness of the species.

Federal activities that have undergone previous section 7 consultation on the effects of the action on wintering piping plover habitat are listed below. The action agencies involved in these consultations have included the COE, U.S. Coast Guard, and other Department of Defense agencies, National Park Service, FHA, Minerals Management Service, Bureau of Land Management, and Federal Energy Regulatory Commission.

(1) Dredging and dredge spoil placement;

(2) Seismic exploration;

(3) Construction and installation of facilities, pipelines, and roads associated with oil and gas development;

(4) Oil and other hazardous material spills and cleanup;

(5) Construction of dwellings, roads, marinas, and other structures, and associated activities including staging of equipment and materials;

(6) Beach nourishment, cleaning, and stabilization (e.g., construction and maintenance of jetties and groins, planting of vegetation, and placement of dune fences);

(7) Certain types and levels of recreational activities, such as vehicular activity that impact the substrate, resulting in reduced prey or disturbance to the species;

(8) Stormwater and wastewater discharge from communities;

(9) Sale, exchange, or lease of Federal land that contains suitable habitat and that may result in the habitat being altered or degraded;

(10) Marsh and coastal restoration, particularly restoration of barrier islands and other barrier shorelines;

(11) Military missions; and

(12) Bridge or culvert construction, reconstruction, and stabilization.

With this designation of critical habitat for wintering piping plovers, we notify the COE, other permitting agencies, and the public that Clean Water Act section 404 nationwide permits and other authorizations for activities within these designated critical habitat areas must comply with section 7 consultation requirements for critical habitat. For each section 7 consultation, we already review the direct and indirect effects of the proposed projects on piping plovers, and will continue to do so for the designated critical habitat.

Activities that may destroy or adversely modify critical habitat are those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of the piping plover is appreciably reduced. These activities may destroy or adversely modify critical habitat by:

(1) Significantly and detrimentally altering the hydrology of tidal flats;

(2) Significantly and detrimentally altering inputs of sediment and nutrients necessary for the maintenance of geomorphic and biologic processes that insure appropriately configured and productive systems;

(3) Introducing significant amounts of emergent vegetation (either through actions such as marsh restoration on naturally unvegetated sites, or through changes in hydrology such as severe rutting or changes in storm or wastewater discharges);

(4) Significantly and detrimentally altering the topography of a site (such alteration may affect the hydrology of an area or may render an area unsuitable for roosting);

(5) Reducing the value of a site by significantly disturbing plovers from activities such as foraging and roosting (including levels of human presence significantly greater than those currently experienced);

(6) Significantly and detrimentally altering water quality, that may lead to decreased diversity or productivity of prey organisms or may have direct detrimental effects on piping plovers (as in the case of an oil spill); and

(7) Impeding natural processes that create and maintain washover passes and sparsely vegetated intertidal feeding habitats.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103–1306 for Texas, and to the U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 for all other States. If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, the following Fish and Wildlife Service personnel may be contacted:

Alabama: Darren LeBlanc (334/441–5181)

Florida: Northwest FL: Patty Kelly (850/769–0552, extension 228), North FL: Candace Martino (904/232–2580, extension 129), South FL: Dave Martin (561/562–3909 extension 230)

Georgia: Robert Brooks (912/265–9336, extension 25)

Louisiana: Debbie Fuller (337/291–3124)

Mississippi: Linda LaClaire (601/321–1126)

North Carolina: David Rabon (919/856–4520 extension 16)

South Carolina: Paula Sisson (843/727–4707, extension 18)

Texas: Loretta Pressly (361/994–9005, extension 228)

Summary of Changes From the Proposed Rule

For the proposed rule, shoreline was mapped at variable scales (zoom factors) and with less detail. For the final rule, all shoreline was mapped at 1:5000 or larger (greater zoom) scale. In addition to the standardized mapping scale, the shoreline was mapped more precisely. This change in mapping technique and detail resulted in an increase in reported total mapped shoreline kilometers and miles for some States. This also resulted in increases in reported mapped shoreline distances by ownership for some States.

In the proposed rule, a single buffer distance was set for all units in all States. For the final rule, this methodology was not used (see "Methods" section).

We have excluded Padre Island National Seashore from the proposed critical habitat designation, based upon a determination under section 4(b)(2) of the Act that the benefits of excluding the Seashore outweigh the benefits of its inclusion. Please refer to the "Exclusions Under 4(b)(2) of the Act" section of this rule for further explanation of this analysis.

Unit-Specific Changes

Below are descriptions of unit-specific changes. The changes stated below do not include those attributed to our more fine-scale mapping from the proposed rule. Based on the verbal unit descriptions provided in the proposed rule, we feel that the public had ample opportunity to comment on the unit areas below as we have finalized them in this rule.

North Carolina

NC–3 Clam Shoals

For the proposed rule, the Digital Orthophoto Quarter Quad (DOQQ) image for this unit was not available, so we estimated its location using a NC Atlas and Gazetteer. For the final rule we used a 1:100K Digital Raster Graphic (DRG) image. The correct version is located slightly outside of the bounds of the proposed map. This unit is entirely State-owned and its inclusion is supported by State biologists. This unit consists of small uninhabited islands that are relatively inaccessible by humans and used primarily by birds.

NC–5 Ocracoke Island

We removed the eastern 3.7 km (2.3 mi) of this unit when information was received orally during the comment period from Service biologists familiar with the area. Their observations and knowledge attest that piping plovers concentrate within one mile of the Ocracoke Inlet.

Georgia

GA–14 Sea/St. Simon's Island

We reduced this unit by approximately 360 m (1,200 ft) on the northern shoreline to exclude an existing seawall and groin.

Florida

FL–4 Marifarms

We deleted this unit based upon a lack of evidence of regular use by piping plovers.

FL–7 Cape San Blas

We removed 1 mile of shoreline due to specific site data provided by Eglin Air Force Base that documents no use of the western (mile markers 2.1–3.0) shoreline by piping plovers, yet consistent use on their remaining 2 miles of shoreline between 1 mile markers 0.0 and 2.0.

FL–12 Lanark Reef

Due to a mapping error, we inadvertently omitted the constituent elements on the eastern end of Lanark Reef. This unit extends outside of the area designated in the proposed rule by 0.45 km (0.28 mi) to capture emerging sandbars adjacent to Lanark Reef. This unit is entirely State-owned, and its inclusion is supported by State biologists. This unit consists of small uninhabited islands that are relatively inaccessible by humans and used primarily by birds.

FL–24 Captiva Island and Sanibel Island

We deleted this unit based on lack of evidence of regular use by piping plovers.

FL–26 Estero Island

We reduced this unit by 2.0 km (1.25 mi) after a meeting during the open comment period with State biologists who confirmed that piping plovers use the areas from the lagoon east to the inlet and not further to the west. We removed the area west of the lagoon located on Estero Island based on a lack of use by piping plovers.

FL–27 Marco Island

This area was reduced significantly. We received sufficient information during the comment period to document and confirm consistent piping plover use of Tigertail Beach County Park and Sand Dollar Island and its associated sand bars within Big Marco Pass. No data were supplied that documented the use of Hideaway beach or the private beach south of Tigertail Beach County Park. Thus these areas were removed from the designation based on a lack of use by piping plovers.

FL–35 Nassau Sound-Huguenot

Third Bird Island and the shoreline of Big Talbot Island were inadvertently omitted in the proposed rule map of FL–35. Data received prior to the proposed rule documented consistent use at these sites. The unit description in the proposed rule appropriately described this unit to include these areas.

FL–36 Tiger Islands

This unit was reduced by 2.6 km (1.6 mi) after we received data during the comment period that better defined the location used by piping plovers.

Alabama

Unit AL–2: Dauphin, Little Dauphin, and Pelican Islands

We removed the eastern end of Dauphin Island, from St. Stephens Street to the eastern tip, due to lack of evidence of consistent use of this portion of the island by piping plovers.

Mississippi

Unit MS–7: Beauvoir

We deleted this unit based on a lack of evidence of regular use by piping plovers.

Unit MS–8: Biloxi West

We deleted this unit based on a lack of evidence of regular use by piping plovers.

Unit MS–9: Biloxi East

We deleted this unit based on a lack of evidence of regular use by piping plovers.

Louisiana

Unit LA–1: Texas/Louisiana border to Cheniere au Tigre

We excluded three areas along the shoreline in the proposed unit based on a lack of evidence of regular use by piping plovers. Those areas included the shoreline between the west side of Constance Beach to the east side of Holly Beach, the shoreline from the eastern boundary of the Rockefeller Wildlife Refuge to the Freshwater Bayou Canal, and the shoreline from the west border of the Paul J. Rainey Wildlife Sanctuary east to the Vermilion parish line.

Unit LA–2: Atchafalaya River Delta

We excluded the Wax Lake Outlet Deltas lobe and the western portion of the Atchafalaya River Delta based on a lack of evidence of use by piping plovers.

Unit LA–3: Point Au Fer Island

We excluded the shoreline from the point where the un-named oil and gas canal extending southeast from Locust Bayou meets the shoreline to the western side of East Bay Junop based on a lack of evidence of use by piping plovers.

Unit LA–5: Timbalier Island to East Grand Terre Island

The shoreline of East Timbalier Island, the shoreline from Bay Champagne to the west side of Elmers Island, the area between the hurricane protection levee and the bayside shoreline of Grand Isle, and the shoreline of Grand Terre Island were excluded due to lack of evidence of use by piping plovers.

Unit LA–6: Mississippi River Delta

We reduced this unit by 261,247 ha (645,280 ac) after the Service and the Louisiana Department of Wildlife and Fisheries surveyed for piping plovers in this area during December 2000. Piping plovers were located only on the sand islands off the South Pass of the Mississippi River during that survey effort. Plovers were documented using the same islands during the February 2001 International Piping Plover Survey. Thus, this unit consists only of those islands.

Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. The economic impacts to be considered in a critical habitat designation are the incremental effects of the designation over and above the economic impacts attributable to listing of the species.

We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying those areas as critical habitat; however, we cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We utilized the economic analysis, and took into consideration all comments and information submitted during the public hearings and comment period, to determine whether areas should be

excluded from the final critical habitat designation.

An analysis of the economic effects of the proposed wintering plover critical habitat designation was prepared (Industrial Economics, Incorporated, 2001) and made available for public review (65 FR 52691; August 30, 2000). The economic analysis reflected the assumption that some additional impacts may be experienced as a result of critical habitat designation. The analysis uses a sampling of case studies provided by commenters as well as interviews with stakeholders with projects that had the requisite Federal nexus for our analysis. Estimates of the cost of an individual consultation were developed from a review and analysis of historical section 7 files from a number of Service field offices around the country. These files addressed consultations conducted for both listings and critical habitat designations. Cost figures were based on an average level of effort for consultations of low, medium, or high complexity, multiplied by the appropriate labor rates for staff from the Service and other Federal agencies. Thus, the cost estimates included the potential impact from all expected future consultations in the area proposed to be designated as critical habitat.

Economic effects caused by listing the wintering population of the piping plover as a federally protected threatened species, and by other statutes, are the baseline against which we evaluated the effects of the critical habitat designation. The final analysis, which reviewed and incorporated public comments, concluded that there would be some impacts as discussed below in the "Exclusions Under 4(b)(2) of the Act" section of the rule, but that they would not be significant beyond those already imposed by listing the wintering plover population as a threatened species.

The economic analysis revealed six activities that may be affected by the designation of wintering critical habitat for the piping plover because they occur within or near critical habitat areas. These activities are: (1) housing and commercial shoreline development; (2) dredging and disposal of dredged materials; (3) beach nourishment; (4) oil and gas exploration, (5) recreational visitation of shoreline, and (6) waterway operations. Additionally highway construction and disaster relief were also identified as activities that could be potentially affected due to the designation of some units.

Economic effects of critical habitat designation are only those effects that result from the designation. Since the listing of the wintering population of the piping plover as threatened in 1985, we have consulted on the above mentioned activities at one time or another. While the economic analysis considered the effect that critical habitat designation could have on these activities, any costs associated with these activities within critical habitat would most likely occur as a result of the listing, due to the occupied status of critical habitat. However, the analysis recognizes that, even in cases where consultations would be expected in the absence of critical habitat, there are scenarios that could involve additional consultation costs. For example, (1) some consultations that have already been "completed" may need to be reinitiated to address critical habitat if the project is not completed; and (2) consultations taking place after critical habitat designation may take longer because critical habitat issues will need to be addressed.

Exclusions Under 4(b)(2) of the Act

A draft analysis of the economic effects of the proposed wintering piping plover critical habitat designation was prepared and made available for public review (August 30, 2000; 65 FR 52691). We concluded in the final analysis, that included review and incorporation of public comments, that no significant economic impacts are expected from critical habitat designation above and beyond those already imposed by the listing of wintering piping plovers. A copy of the final economic analysis is included in our administrative record and may be obtained by contacting the Corpus Christi Ecological Services Field Office (see **ADDRESSES** section).

Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. For the following reasons, we believe that in most instances the benefits of excluding Habitat Conservation Plans (HCPs) from critical habitat designations will outweigh the benefits of including them.

(1) Benefits of Inclusion

The benefits of including HCP lands in critical habitat are normally small. The principal benefit of any designated critical habitat is that Federal activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are already designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, lands that we ordinarily would define as critical habitat for the covered species will normally be protected in reserves and other conservation lands by the terms of the HCP and its implementation agreements. The HCP and implementation agreements include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, a section 10(a)(1)(B) permit issued by us as a result of an HCP application must itself undergo consultation. While this consultation may not look specifically at the issue of adverse modification of critical habitat, it will look at the very similar concept of jeopardy to the listed species in the plan area. Since HCPs, particularly large regional HCPs, address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and the consultation on the HCP. Our experience is also that, under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Implementing regulations (50 CFR Part 402) define "jeopardize the continued existence of" and "destruction or adverse modification of" in very similar terms. Jeopardize the continued existence of means to engage in an action "that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Thus, actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. Additional measures to protect the habitat from adverse modification are not likely to be required.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information

to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe that designation of critical habitat has little benefit in areas covered by HCPs.

(2) Benefits of Exclusion

The benefits of excluding HCPs from being designated as critical habitat may be more significant. During two public comment periods on our critical habitat policy, we received several comments about the additional regulatory and economic burden that may result from critical habitat designation. These include the need for additional consultation with us and the need for additional surveys and information gathering to complete these consultations. HCP applicants have also stated that they are concerned that third parties may challenge HCPs on the basis that they result in adverse modification or destruction of critical habitat, should critical habitat be designated within the HCP boundaries.

The benefits of excluding HCPs include relieving landowners, communities, and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the conservation of covered species. Many of these regional plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

A related benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

In general, we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under section 4(b)(2) of the Act.

Not all HCPs are alike with regard to species coverage and design. Within this general analytical framework, we need to individually evaluate completed and legally operative HCPs in the range of wintering piping plovers to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

In the event that future HCPs covering the wintering piping plover are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the piping plover by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the piping plover. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the piping plover and appropriate management for those lands. The take minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule. If an HCP that addresses the piping plover as a covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. We will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

During the comment period for the proposed designation of critical habitat for the piping plover, BNP Petroleum Corporation submitted a detailed economic analysis, prepared by Milton L. Holloway, Ph.D., Resource Economics, Inc., Austin, Texas. Their analysis concluded that the designation will cause significant economic impacts because of large unoccupied areas being included in the designation, resulting in additional consultations with the Service and delays in proposed projects causing economic effects. They note as an example of such delays, oil and gas operators within critical habitat and the Plan of Operations permit process coordinated by the National Park Service, Padre Island National Seashore. The activities identified as being affected include (1) the exploration, development and production of oil and gas reserves, (2) recreational use of coastal areas, (3) real-estate development projects for residential and commercial use, and (4) transportation of commodities on the Gulf Intracoastal Waterway. They conclude that all landowners having potential habitat (upon initiation of a project) will need to go through the section 7 consultation process with the Service, thus, incurring additional costs to determine if plover habitat is present. Due to the uncertainty of the outcome of such consultations, they conclude that all property will be devalued as a result of the designation. They cite the citizen suit provisions of section 11 of the Act as a means by which property owners may be the target of potential violations of the Act, by opponents asserting that any activity in the area will lead to "take" of the species. They state that this potential for litigation will also result in the devaluation of property.

In the final Economic Analysis prepared for the Service by Industrial Economics, Inc., Cambridge, Massachusetts, there is recognition that the designation of critical habitat for the piping plover may result in additional section 7 consultation costs because future consultations would need to address critical habitat issues, in addition to the effects on the species, and would therefore require more time. Additionally, in the analysis and noted in this rule, we acknowledge that some Federal agencies may initiate consultation more often than before, because critical habitat has increased their awareness of the species. Even though consideration of critical habitat is not likely to impose further project modifications beyond those required by

the listing of the plover, project proponents may nonetheless incur costs above and beyond those attributable to the listing of the plover as a threatened species. These costs might include the value of time spent in conducting section 7 consultations beyond those associated with the listing, and/or delays in implementing oil and gas activities.

The Padre Island National Seashore (Seashore) has in place a General Management Plan/Development Concept Plan (USDI 1983) and a Final Oil and Gas Management Plan/ Environmental Impact Statement (USDI 2000), collectively referred to as the Plans. These Plans provide as general management direction that "[n]atural process will be allowed to shape the barrier island with as little interference as possible." We feel that achieving these results will provide for the perpetuation of the primary constituent elements of the plover, since the piping plovers habitat is dependent upon natural processes that shape the coastal environment. Thus, we feel that the National Park Service has in place Plans that provide for adequate management and conservation of the piping plover on lands within the Seashore.

The operating standards in the Oil and Gas Management Plan/ Environmental Impact Statement for the Seashore include:

> All proposed Plans of Operation will be evaluated for potential impacts to special-status species. If the evaluation indicates a "may affect" situation (includes both beneficial and adverse impacts) on a federally-listed or proposed species, and the adverse impacts cannot be eliminated, consultation or conference with the U.S. Fish and Wildlife Service (FWS) and/or National Marine Fisheries Service must be conducted.

Because Plans of Operation will be evaluated whether or not the activities occur within critical habitat, and piping plovers are present on the Seashore, we find that including the Seashore in critical habitat would provide no additional benefit to the species. In addition, we do not feel that a designation of critical habitat would result in any benefits from an increased awareness of the species presence on the part of Federal agencies and possibly an increased number of consultations. This is due to the fact that the Seashore has Plans in place requiring consultation with the Service when any activities that may affect a federally listed species are proposed within the boundaries of the Seashore.

We also find that exclusion of the Seashore from critical habitat would avoid the additional costs that may result from time delays in addressing critical habitat issues, in addition to the effects on the species. These costs might include the value of time spent in conducting section 7 consultations beyond those associated with the listing, and/or delays in implementing oil and gas activities.

Thus, based on the BNP Petroleum Economic Analysis and the one prepared for the Service, we find that the benefits of excluding the Padre Island National Seashore outweigh the benefits of its inclusion.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, or requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits, contact the U.S. Fish and Wildlife Service (see contact information under the "Effects of Critical Habitat Designation" section of this final rule).

American Indian Tribal Rights, Federal—Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Government" (59 FR 22951), Executive Order 13175, and the Department of the Interior's requirement at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. No tribal lands were proposed for designation as critical habitat, and no effects on tribal trust resources are anticipated from this designation.

Required Determinations

Regulatory Planning and Review

Under E.O. 12866 (58 FR 51735, October 4, 1993), we must determine whether this proposed regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the E.O. The E.O. defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

(a) While this rule is not expected to have an annual effect on the economy of $100 million or more, OMB has determined that this final rule is a "significant regulatory action" under E.O. 12866 because it may raise novel legal or policy issues.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; the Act does not impose any restrictions through critical habitat designation on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency. Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species in addition to avoiding adversely modifying critical habitat. In some instances, the designation of critical habitat could result in an increase in section 7 consultations concerning Federal actions that may adversely modify critical habitat, and that may, in some instances, affect third party actions that rely on or are related to the Federal action subject to the consultation (i.e., Federal nexus). However, we do not believe this effect will result from this rulemaking because we are only designating areas that are currently occupied by the wintering population of the piping plover and, based upon our experience with the plover and its needs, we believe that any Federal action or authorized action that could potentially cause adverse modification of designated critical habitat would also be considered as "jeopardy" under the Act, that would result in a section 7 consultation regardless of critical habitat designation.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of plover since the listing in 1985. The prohibition against adverse modification of critical habitat is not expected to impose any substantial additional restrictions to those that currently exist. Because of the potential for impacts on other Federal agencies activities, we will continue to review this action for any inconsistencies with other Federal agencies actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are

currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any significant incremental effects.

(d) OMB has determined that his rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal activities potentially affected [3].	Activities such as removing or destroying piping plover wintering habitat, whether by mechanical, chemical, or other means (e.g., construction, road building, dredging and other navigation projects, boat launch and marina construction or maintenance, beach nourishment, erosion control); recreational activities that significantly deter the use of suitable habitat areas by piping plovers or alter habitat through associated maintenance activities; sale, exchange, or lease of Federal land that contains suitable habitat that may result in the habitat being destroyed or appreciably degraded.	None.
Private and other non-federal activities potentially affected [4].	Activities such as removing or destroying piping plover habitat, whether by mechanical, chemical, or other means (e.g., construction, road building, dredging and other navigation projects, boat launch and marina construction or maintenance, beach nourishment, erosion control) and appreciably decreasing habitat value or quality (e.g., increased vehicular activity on sensitive habitats, increased predators, reduced water quality, modified hydrology) that require a Federal action (permit, authorization, or funding).	None.

[1] This column represents the activities potentially affected by listing the piping plover as a threatened species (December 11, 1985; 50 FR 50720) under the Endangered Species Act.
[2] This column represents the effects on activities resulting from critical habitat designation beyond the effects attributable to the listing of the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) an agency must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions).

However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. In the economic analysis, we determined that designation of critical habitat will not have a significant economic effect on a substantial number of small entities. Although small entities may carry out activities within designated critical habitat, many of these activities lack a Federal nexus and therefore their impacts on critical habitat do not need to be considered. For those actions requiring Federal funding or authority, we believe that the incremental impacts attributable to this rule are not significant for reasons explained above and in the revised economic analysis. Therefore, we are certifying that the designation of critical habitat for the wintering population of the piping plover will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

Our economic analysis demonstrated that designation of critical habitat will not cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs involving Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat.

b. This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This final rule will not "take" private property. The designation of critical habitat affects only Federal agency actions. Federal actions on private lands could be affected by critical habitat designation. However, we expect no regulatory effect from this designation since all designated areas are considered occupied by the species and would be reviewed under both the jeopardy and adverse modification standards under section 7 of the Act.

The rule will not increase or decrease the current restrictions on private property concerning taking of the piping plover as defined in section 9 of the Act and its implementing regulations (50 CFR 17.31). Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are

included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the piping plover.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas. We will continue to coordinate any future designation of critical habitat for wintering piping plovers with the appropriate State agencies. The designation of critical habitat for the piping plover is not expected to result in any additional restrictions to those currently in place and, therefore, no incremental impact on State and local governments and their activities are expected. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Energy Supply, Distribution or Use (Executive Order 13211)

In accordance with Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," the Service asserts that this rule is not likely to have a significant adverse effect on the supply, distribution or use of energy. While this rule is not expected to have an annual effect on the economy or $100 million or more, OMB has determined that this final rule is a "significant regulatory action" under Executive Order 12866 because it may raise novel legal or policy issues. This rulemaking designates critical habitat for the piping plover and such designation does not impact the Nation's energy resources. This rulemaking does not designate any areas that have been identified as having oil or gas reserves, whether in production or otherwise identified for future use.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this final rule are available upon request from the Corpus Christi Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary authors of this final rule include Ecological Services staff from both the Service's Southwestern and Southeastern Regional and Field Offices.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "Plover, piping" under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Plover, piping	*Charadrius melodus*	U.S.A. (Great Lakes, northern Great Plains, Atlantic and Gulf coasts, PR, VI), Canada, Mexico, Bahamas, West Indies.	Great Lakes, watershed in States of IL, IN, MI, NM, NY, OH, PA, and WI and Canada (Ont.).	E	211	17.95(b)	NA.
Do.....	do.....	do	Entire, except those areas where listed as endangered above.	T	211	17.95(b)	NA.

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*

3. Amend § 17.95(b) by adding critical habitat for the piping plover (*Charadrius melodus*) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Piping Plover (*Charadrius melodus*)
Wintering Habitat

1. The primary constituent elements essential for the conservation of wintering piping plovers are those habitat components that support foraging, roosting, and sheltering and the physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements include intertidal beaches and flats (between annual low tide and annual high tide) and associated dune systems and flats above annual high tide. Important components of intertidal flats include sand and/or mud flats with no or very sparse emergent vegetation. In some cases, these flats may be covered or partially covered by a mat of blue-green algae. Adjacent non-or sparsely vegetated sand, mud, or algal flats above high tide are also important, especially for roosting piping plovers, and are primary constituent elements of piping plover wintering habitat. Such sites may have debris, detritus (decaying organic matter), or micro-topographic relief (less than 50 cm above substrate surface) offering refuge from high winds and cold weather. Important components of the beach/dune ecosystem include surf-cast algae, sparsely vegetated backbeach and salterns (beach area above mean high tide seaward of the permanent dune line, or in cases where no dunes exist, seaward of a delineating feature such as a vegetation line, structure, or road), spits, and washover areas. Washover areas are broad, unvegetated zones, with little or no topographic relief, that are formed and maintained by the action of hurricanes, storm surge, or other extreme wave action.

2. Critical habitat does not include existing developed sites consisting of buildings, marinas, paved areas, boat ramps, exposed oil and gas pipelines and similar structures. Only those areas containing these primary constituent elements within the designated boundaries are considered critical habitat.

3. Below, we describe each unit in terms of its location, size, and ownership. These textual unit descriptions are the definitive source for determining the critical habitat boundaries. All distances and areas provided here are approximated. General location maps by State are provided at the end of each State's unit descriptions and are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

North Carolina (Maps were digitized using 1993 DOQQs, except NC–3 (1993 DRG)

Unit NC–1: Oregon Inlet. 404 ha (997 ac) in Dare County

This unit extends from the southern portion of Bodie Island to the northern portion of Pea Island. It includes all land south of the Oregon Inlet Marina and Fishing Center to 0.50 km (0.31 mile) south of the junction of Highway 12 and SR 1257. This unit includes lands from MLLW on the Pamlico Sound across (and including all land) to MLLW on Atlantic Ocean shoreline. Any emergent sandbars south and west of Oregon Inlet are included.

Unit NC–2: Cape Hatteras Point. 465 ha (1149 ac) in Dare County

The majority of the unit is within Cape Hatteras National Seashore. This unit extends south from the Cape Hatteras Lighthouse to the point of Cape Hatteras and then extends west 6.4 km (4.0 mi) along Hatteras Cove shoreline. The unit includes lands from the MLLW on the Atlantic Ocean and stops landward where densely vegetated habitat, not used by the piping plover, begins and where constituent elements no longer occur.

Unit NC–3: Clam Shoals. 28 ha (70 ac) in Dare County

The entire unit is owned by the State. This unit includes several islands in Pamlico Sound known as Bird Islands. This unit includes lands on all islands to the MLLW.

Unit NC–4: Hatteras Inlet. 516 ha (1273 ac) in Dare and Hyde Counties

The majority of the unit is surrounded by Cape Hatteras National Seashore, but is privately owned. This unit extends west from the end of Highway 12 on the western portion of Hatteras Island to 1.25 km (0.78 mi) southwest of the ferry terminal at the end of Highway 12 on Ocracoke Island. It includes all lands where constituent elements occur from MLLW on the Atlantic Ocean across to MLLW on Pamlico Sound. All emergent sandbars within Hatteras Inlet between Hatteras Island and Ocracoke Island are also included.

Unit NC–5: Ocracoke Island. 80 ha (197 ac) in Hyde County

The majority of this unit is within Cape Hatteras National Seashore. It includes the western portion of Ocracoke Island beginning 3.5 km (2.2 mi) west of the junction of Highway 12 and the local road (no name) extending west to Ocracoke Inlet. It includes all land from MLLW on the Atlantic Ocean across to MLLW on Pamlico Sound. All emergent sandbars within Ocracoke Inlet are also included.

Unit NC–6: Portsmouth Island-Cape Lookout. 3187 ha (7873 ac) in Carteret County

The entire unit is within Cape Lookout National Seashore. This unit includes all land to MLLW on Atlantic Ocean to MLLW on Pamlico Sound, from Ocracoke Inlet extending west to the western end of Pilontary Islands. This unit includes the islands of Casey, Sheep, Evergreen, Portsmouth, Whalebone, Kathryne Jane, and Merkle Hammock. This unit also extends west from the eastern side of Old Drum Inlet to 1.6 km (1.0 mi) west of New Drum Inlet and includes all lands from MLLW on Atlantic Ocean to MLLW on Core Sound.

Unit NC–7: South Core Banks. 552 ha (1364 ac) in Carteret County

The entire unit is within Cape Lookout National Seashore. This unit extends south from Cape Lookout Lighthouse, along Cape Lookout, to Cape Point and northwest to the northwestern peninsula. All lands from MLLW on the Atlantic Ocean, Onslow Bay, and Lookout Bight up to where densely vegetated habitat, not used by

the piping plover, begins and the constituent elements no longer occur are included.

Unit NC–8: Shackleford Banks. 716 ha (1769 ac) in Carteret County

The entire unit is within Cape Lookout National Seashore. This unit is in two parts: (1) The eastern end of Shackleford Banks from MLLW of Barden Inlet extending west 2.4 km (1.5 mi), including Diamond City Hills, Great Marsh Island, and Blinds Hammock; and, (2) The western end of Shackleford Banks from MLLW extending east 3.2 km (2.0 mi) from Beaufort Inlet. The unit includes all land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and any emergent sandbars within Beaufort Inlet. This unit is bordered by Onslow Bay, Shackleford Slue, and Back Sound.

Unit NC–9: Rachel Carson. 445 ha (1100 ac) in Carteret County

The entire unit is within the Rachel Carson National Estuarine Research Reserve. This unit includes islands south of Beaufort including Horse Island, Carrot Island, and Lennox Point. This unit includes entire islands to MLLW.

Unit NC–10: Bogue Inlet. 143 ha (354 ac) in Carteret and Onslow Counties

The majority of the unit is privately owned, with the remainder falling within Hammocks Beach State Park. This unit includes contiguous land south, west, and north of Bogue Court to MLLW line of Bogue Inlet on the western end of Bogue Banks. It includes the sandy shoals north and adjacent to Bogue Banks and the land on Atlantic Ocean side to MLLW. This unit also extends 1.3 km (0.8 mi) west from MLLW of Bogue Inlet on the eastern portion of Bear Island.

Unit NC–11: Topsail. 451 ha (1114 ac) in Pender County and Hanover County

The entire area is privately owned. This unit extends southwest from 1.0 km (0.65 mi) northeast of MLLW of New Topsail Inlet on Topsail Island to 0.53 km (0.33 mi) southwest of MLLW of Rich Inlet on Figure Eight Island. It includes both Rich Inlet and New Topsail Inlet and the former Old Topsail Inlet. All land, including emergent sandbars, from MLLW on Atlantic Ocean and sound side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. In Topsail Sound, the unit stops as the entrance to tidal creeks become narrow and channelized.

Unit NC–12: Figure Eight Island. 134 ha (331 ac) in New Hanover County

The majority of the unit is privately owned. This unit extends south from the western end of Beach Road on Figure Eight Island to the northern end of Highway 74 on Wrightsville Beach. The unit includes Mason Inlet and the sand and mudflats northwest of the inlet from MLLW on Atlantic Ocean to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit NC–13: Masonboro. 61 ha (150 ac) in New Hanover County

The entire unit is within the North Carolina National Estuarine Research Reserve. This unit extends 1.1 km (0.70 mi) south from the MLLW of Masonboro Inlet on Masonboro Island. This unit includes all lands along the Atlantic Ocean, Masonboro Inlet, and Masonboro Sound from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit NC–14: Carolina Beach Inlet. 374 ha (924 ac) in New Hanover County

The majority of the unit is within Myrtle Grove Sound on Masonboro Island and is owned by the North Carolina National Estuarine Research Reserve. It extends 1.80 km (1.12 mi) west along the south shoreline of Wolf Island from the mouth of the Altamaja sound. This unit extends south from 3.2 km (2.0 mi) north of MLLW at Carolina Beach Inlet on Masonboro Island to 1.1 km (0.70 mi) south of MLLW at Carolina Beach Inlet on Carolina Beach. It includes land from MLLW on Atlantic Ocean across and including lands to MLLW on the western side of Masonboro Island, excluding existing dredge spoil piles. Emergent sand bars within Carolina Beach Inlet are also included.

Unit NC–15: Ft. Fisher. 790 ha (1951 ac) in New Hanover and Brunswick Counties

This unit is within Ft. Fisher State Recreation Area and Zeke's Island Estuarine Reserve. This unit extends south from Ft. Fisher Islands (from the rocks), south of the ferry terminal to approximately 0.8 km (0.5 mi) south of MLLW at Corn Cake Inlet on Smith Island. It includes all land (including Zeke's Island) from MLLW on Atlantic Ocean across to MLLW on the eastern side of the Cape Fear River.

Unit NC–16: Lockwood Folly Inlet. 36 ha (90 ac) in Brunswick County

The entire unit is on Oak Island (formerly known as the Town of Long Beach) and is privately owned. This unit extends from the end of West Beach Drive, west to MLLW at Lockwood Folly Inlet, including emergent sandbars south and adjacent to the island. This unit is includes land from MLLW on Atlantic Ocean across to MLLW adjacent to the Eastern Channel and the Intracoastal Waterway.

Unit NC–17: Shallotte Inlet. 120 ha (296 ac) in Brunswick County

The entire unit is privately owned. This unit begins just west of Skimmer Court on the western end of Holden Beach. It includes land south of SR 1116, to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur to the MLLW along the Atlantic Ocean. It includes the contiguous shoreline from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur along the Atlantic Ocean, Shallotte Inlet, and Intracoastal Waterway stopping north of Skimmer Court Road. The unnamed island and emergent sandbars to MLLW within Shallotte Inlet are also included.

Unit NC–18: Mad Inlet. 112 ha (278 ac) in Brunswick County

The entire unit is privately owned. This unit extends west 1.2 km (0.75 mi) from the end of Main Street (SR 1177) on western Sunset Beach to the eastern portion of Bird Island and includes the marsh areas north of western Sunset Beach shoreline. The shoreline area begins at MLLW on the Atlantic Ocean and continues landward to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

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General locations of the designated critical habitat for the Wintering Piping Plover.

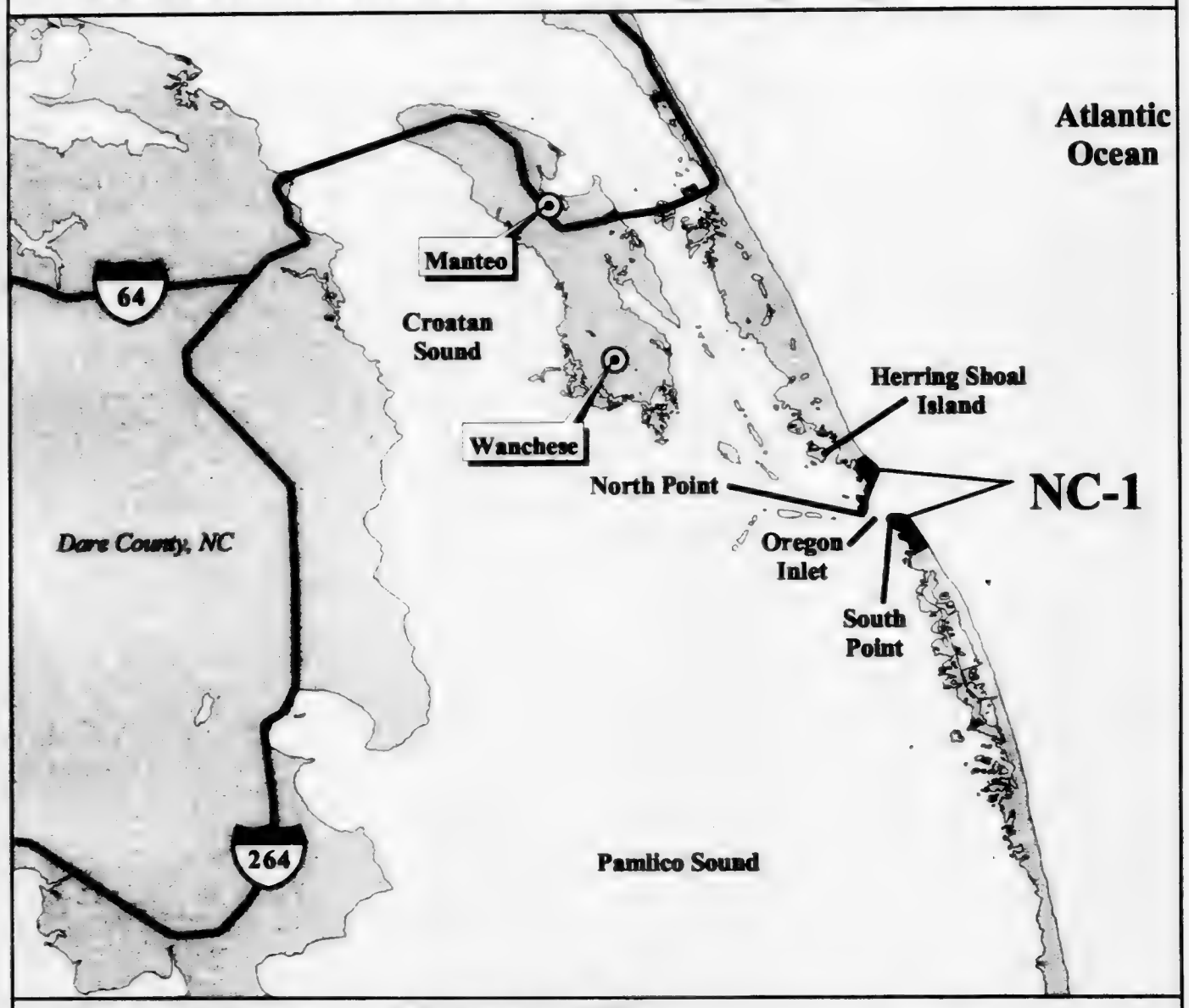

General Area

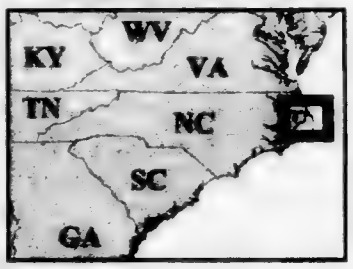

Distance: Miles

0 4 8

N

Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

North Carolina Unit: 1

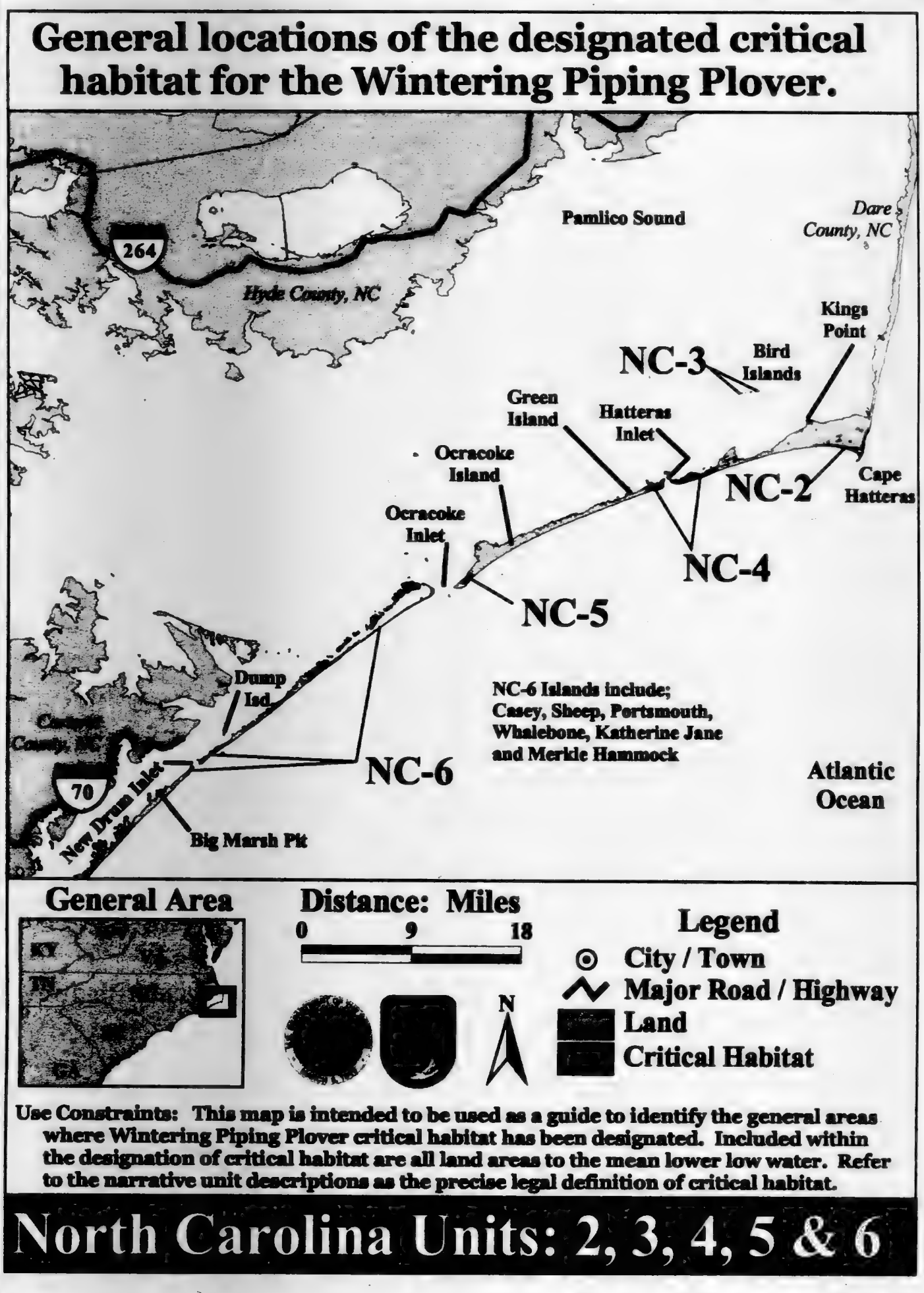
General locations of the designated critical habitat for the Wintering Piping Plover.
Pamlico Sound
Dare County, NC
264
Hyde County, NC
Kings Point
NC-3
Bird Islands
Green Island
Hatteras Inlet
Ocracoke Island
NC-2
Cape Hatteras
Ocracoke Inlet
NC-4
NC-5
Dump Isd.
NC-6 Islands include; Casey, Sheep, Portsmouth, Whalebone, Katherine Jane and Merkle Hammock
NC-6
Atlantic Ocean
70
New Drum Inlet
Big Marsh Pit
General Area
Distance: Miles
0 9 18
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
North Carolina Units: 2, 3, 4, 5 & 6

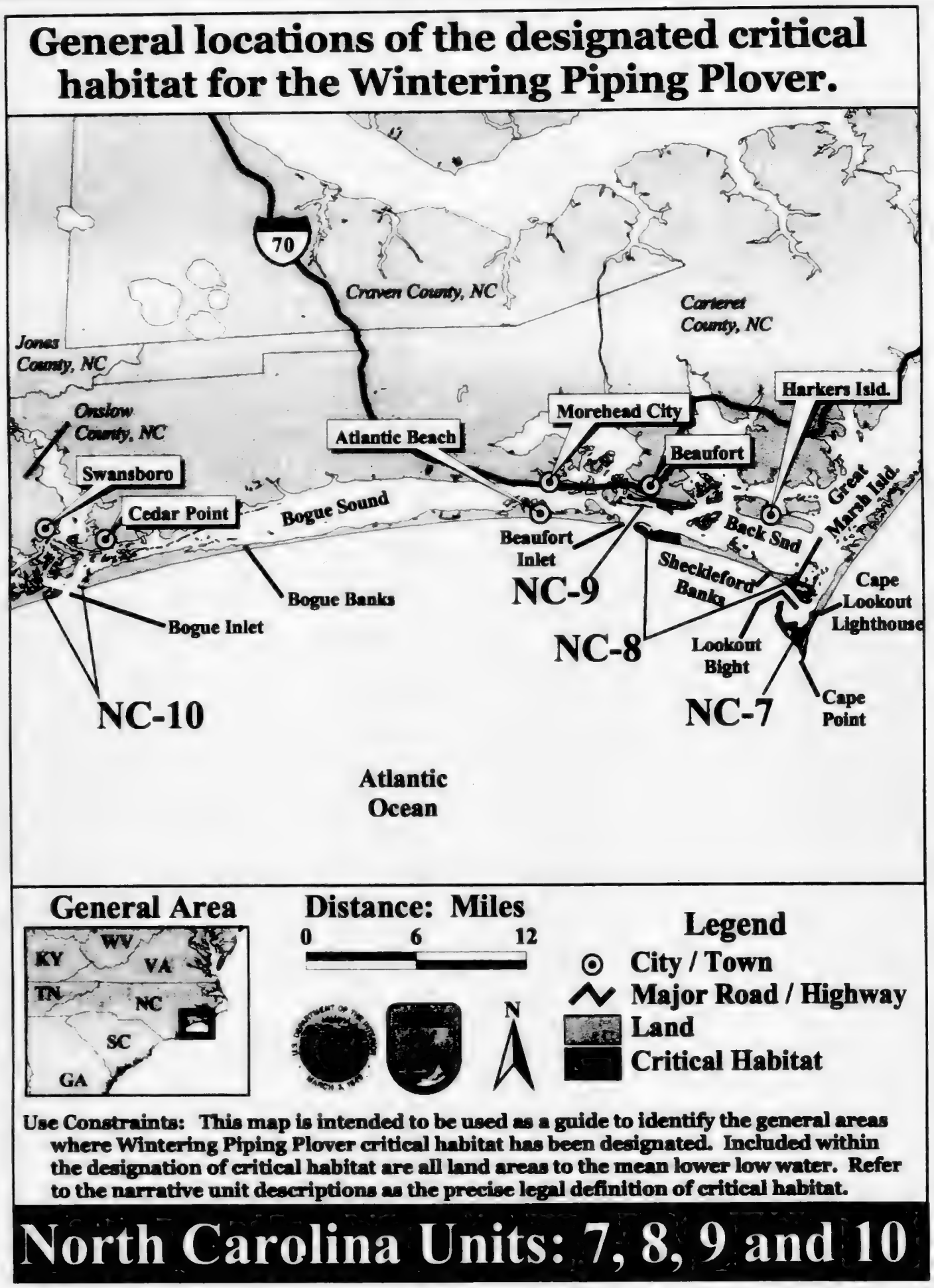
General locations of the designated critical habitat for the Wintering Piping Plover.
70
Craven County, NC
Carteret County, NC
Jones County, NC
Onslow County, NC
Swansboro
Cedar Point
Bogue Sound
Atlantic Beach
Morehead City
Beaufort
Harkers Isld.
Great Marsh Isld.
Back Snd
Beaufort Inlet
Bogue Banks
Bogue Inlet
NC-9
NC-8
NC-10
NC-7
Sheckleford Banks
Cape Lookout Lighthouse
Lookout Bight
Cape Point
Atlantic Ocean
General Area
WV
KY
VA
TN
NC
SC
GA
Distance: Miles
0 6 12
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
North Carolina Units: 7, 8, 9 and 10

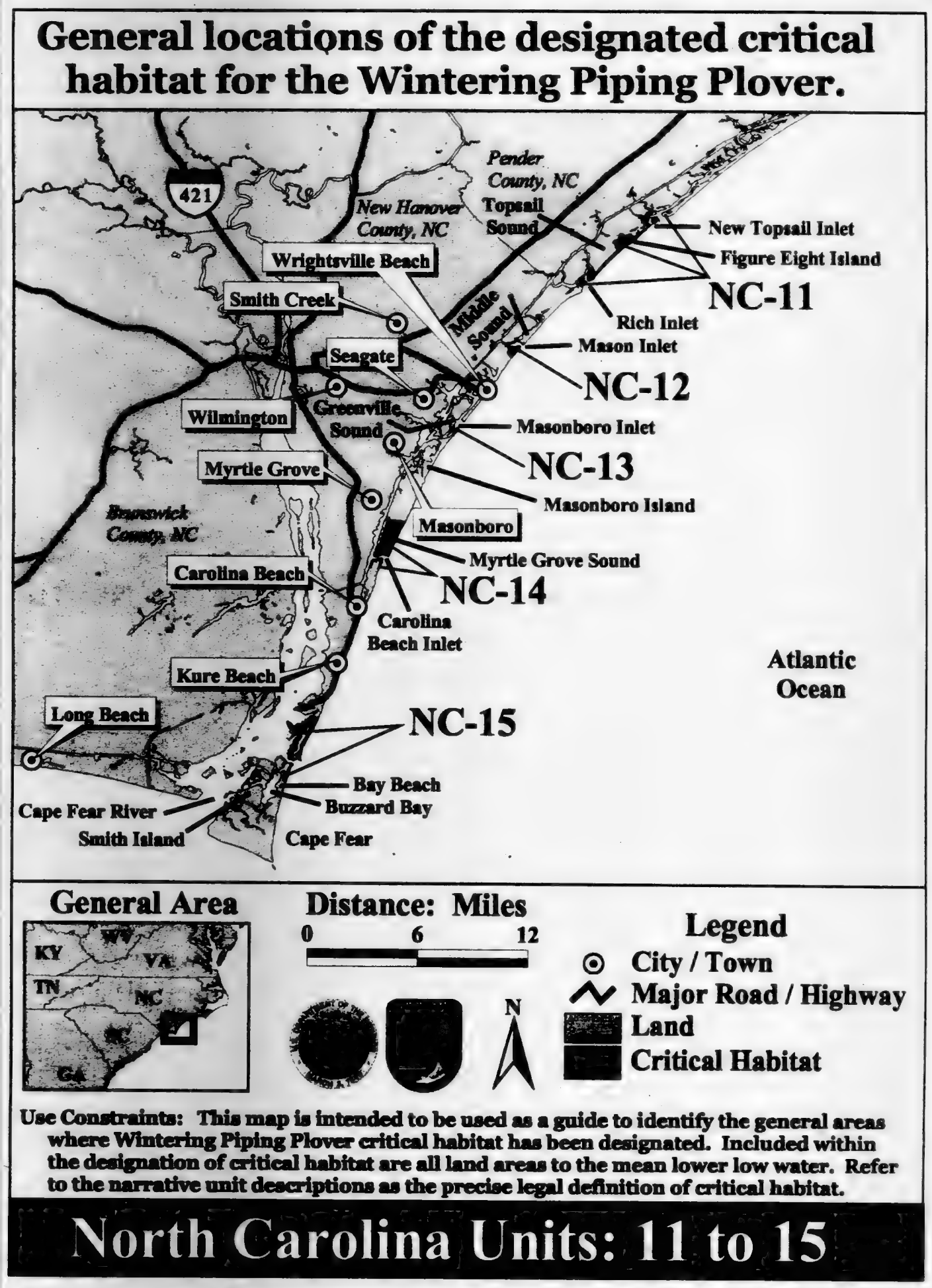

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North Carolina Units: 11 to 15

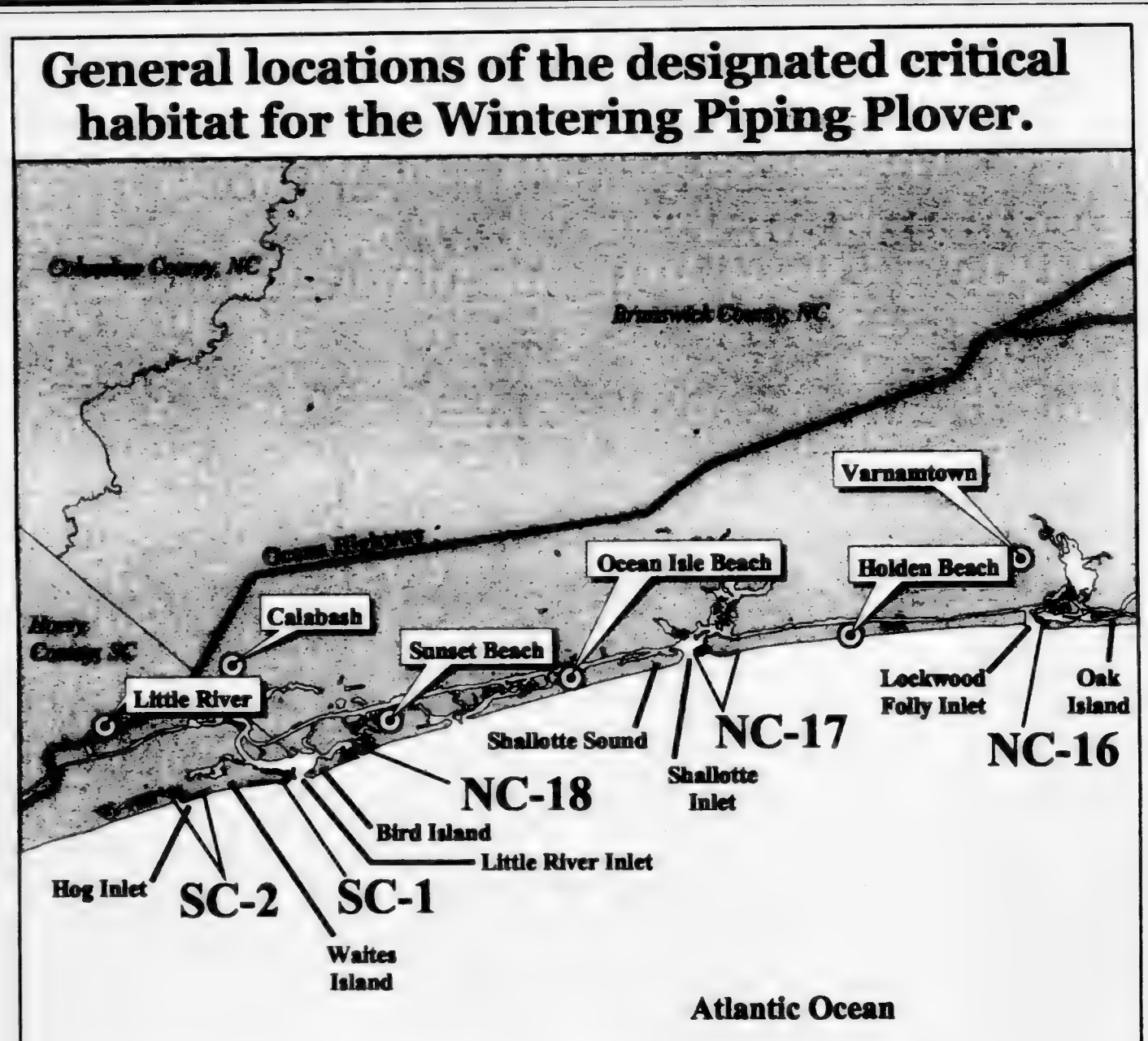

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NC Units: 16 to 18, SC Units: 1 & 2

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South Carolina (Maps were digitized using 1994 DOQQs)

Unit SC–1: Waites Island-North. 75 ha (186 ac) in Horry County

This unit includes the northern tip of Waites Island from the MLLW at Little River Inlet and runs west along the Atlantic Ocean shoreline 2.0 km (1.25 mi) and includes land from the MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The unit continues north and west of Little River Inlet stopping at Sheephead Creek, including land from MLLW to dense vegetation line. The majority of the unit is privately owned.

Unit SC–2: Waites Island-South. 58 ha (142 ac) in Horry County

This unit includes the southern tip of Waites Island from the MLLW at Hog Inlet and runs east along the Atlantic Ocean shoreline 0.80 km (0.50 mi) and includes MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. It continues north and west of the Hog Inlet, stopping at the first major tributary. Critical habitat includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. Emerging sandbars within Hog Inlet and adjacent to the tip if eastern Cherry Grove Beach are also included from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begins and where the constituent elements no longer occur. The majority of this unit is privately owned.

Unit SC–3: Murrells Inlet/Huntington Beach. 135 ha (334 ac) in Georgetown County

The majority of the unit is within Huntington Beach State Park. This unit extends from the southern tip of Garden City Beach, just south of the groins (a rigid structure or structures built out from a shore to protect the shore from erosion or to trap sand) north of Murrells Inlet from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begins and where the constituent elements no longer occur stopping perpendicular with the southern end of Inlet Point Drive. It includes from MLLW south of Murrells Inlet to the northern edge of North Litchfield Beach approximately 4.5 km (3.0 mi). The unit includes the MLLW from the Atlantic Ocean up to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The lagoon at the north end of Huntington Beach State Park is also included.

Unit SC–4: Litchfield. 11 ha (28 ac) in Georgetown County

This unit includes the southern tip of Litchfield Beach beginning 0.50 km (0.30 mi) north of Midway Inlet and stopping at the MLLW at Midway Inlet. It includes from the MLLW on the Atlantic Ocean shoreline across and including land to the MLLW on the back bayside. This unit is mostly privately owned.

Unit SC–5: North Inlet. 99 ha (245 ac) in Georgetown County

The majority of the unit is within Tom Yawley Wildlife Center Heritage Preserve. This unit extends from MLLW to 1.0 km (.62 mi) north of North Inlet on Debidue Beach. It includes shoreline on the Atlantic Ocean from MLLW to the MLLW on the western side of the peninsula. This unit also includes from the MLLW south of North Inlet 1.6 km (1.0 mi). It includes the shoreline on the Atlantic Ocean from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. It includes shoreline running south and west of the inlet from the MLLW stopping at the MLLW at the first large tributary (no name).

Unit SC–6: North Santee Bay Inlet. 305 ha (753 ac) in Georgetown County

The majority of the unit is within the Tom Yawley Wildlife Center Heritage Preserve and the Santee-Delta Wildlife Management Area. This unit is at the North Santee Bay inlet and includes lands of South Island, Santee Point, Cedar Island, and all of North Santee Sandbar. This unit includes from MLLW at North Santee Bay Inlet running north along the Atlantic Ocean side of South Island 7.2 km (4.5 mi), stopping 0.60 km (0.4 mi) north of an unnamed inlet. It includes areas from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. This unit includes the eastern side of Cedar Island adjacent to the North Santee Bay Inlet from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of North Santee Sandbar to MLLW is included.

Unit SC–7: Cape Romain. 315 ha (777 ac) in Charleston County

The majority of the unit is within Cape Romain National Wildlife Refuge. This unit includes the MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur on the southern and southeastern most 1.9 km (1.2 mi) portion of Cape Island, the southernmost portion of Lighthouse Island from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, all of Lighthouse Island South to MLLW, and the southern side of the far eastern tip of Raccoon Key from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit SC–8: Bull Island. 134 ha (332 ac) in Charleston County

The majority of the unit is within Cape Romain National Wildlife Refuge and land owned by the South Carolina Department of Natural Resources. This unit includes from Schooner Creek on north and south of the river to north of Price's Inlet on the southern portion of Bull Island along the Atlantic Ocean 1.6 km (1.0 mi) and south of Price's Inlet on the northeast tip of Capers Island Heritage Preserve 1.4 km (.86 mi) along the Atlantic Ocean. All areas begin at MLLW and extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit SC–9: Stono Inlet. 495 ha (1223 ac) in Charleston County

Most of this unit is privately owned. It includes the eastern end of Kiawah Island (approximately 4.0 km (2.5 mi)) from MLLW on Atlantic Ocean running north to MLLW on first large tributary connecting east of Bass Creek running northeast into Stono River. It includes MLLW up to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur along Stono Inlet and River. All of Bird Key-Stono Heritage Preserve and all of Skimmer Flats to MLLW are included. The Golf course and densely vegetated areas are not included.

Unit SC–10: Seabrook Island. 117 ha (290 ac) in Charleston County

This unit runs from just 0.16 km (0.10 mi) north of Captain Sams Inlet to the southwest approximately 3.4 km (2.1 mi) along the Atlantic Ocean shoreline. It includes land areas from the MLLW on the Atlantic Ocean to where densely

vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. Most of this unit is privately owned.

Unit SC–11: Deveaux Bank. 130 ha (322 ac) in Charleston County

The entire unit is within Deveaux Bank Heritage Preserve. This unit includes all of Deveaux Island to the MLLW and is State-owned.

Unit SC–12: Otter Island. 68 ha (169 ac) in Colleton County

The majority of the unit is within St. Helena Sound Heritage Preserve. This unit includes the southern portion of Otter Island to the eastern mouth of Otter Creek. It includes the MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The entire unit is State-owned.

Unit SC–13: Harbor Island. 50 ha (122 ac) in Beaufort County

The majority of the unit is State-owned. This unit extends from the northeastern tip of Harbor Island and includes all of Harbor Spit. It begins at the shoreline east of Cedar Reef Drive running south, stopping at the mouth of Johnson Creek. It includes the MLLW on the Atlantic Ocean and St. Helena Sound to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of Harber Spit to MLLW is included.

Unit SC–14: Caper's Island. 238 ha (589 ac) in Beaufort County

Most of this unit is privately owned. This unit includes the southern-most 4.5 km (2.8 mi) along the Atlantic Coast shoreline of Little Caper's Island beginning at MLLW on south side of the inlet (un-named). It includes the MLLW on the Atlantic Ocean shoreline to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit SC–15: Hilton Head. 43 ha (106 ac) in Beaufort County

The majority of this unit is State-owned. This unit includes the northeastern tip (Atlantic Ocean side) of Hilton Head Island and all of Joiner Bank. It begins at the shoreline east of northern Planters Row and ends at the shoreline east of Donax Road. It includes the MLLW of Port Royal Sound and the Atlantic Ocean to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of Joiner Bank to MLLW is included.

BILLING CODE 4310–55–P

General locations of the designated critical habitat for the Wintering Piping Plover.

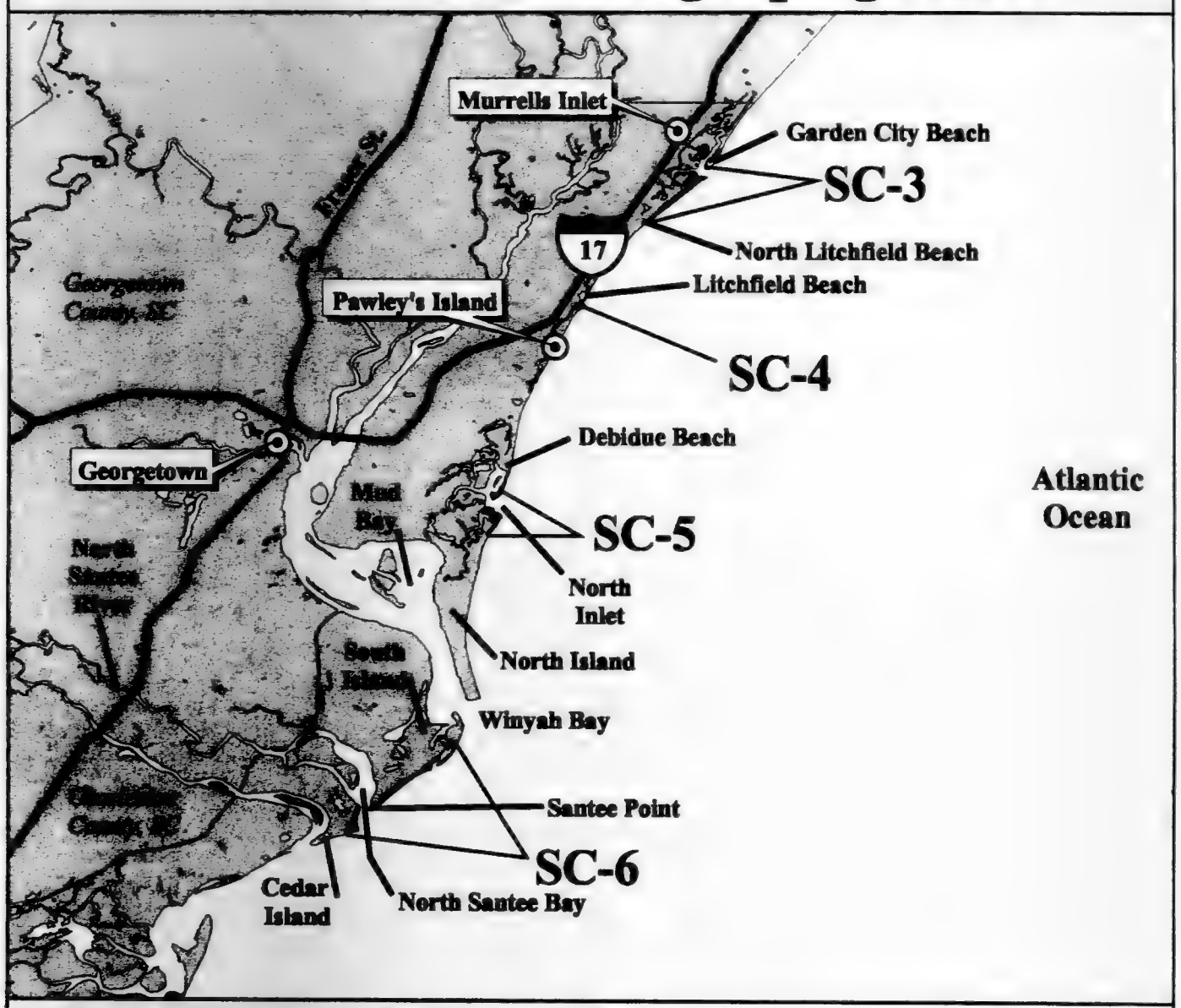

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

South Carolina Units: 3, 4, 5 and 6

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General locations of the designated critical habitat for the Wintering Piping Plover.

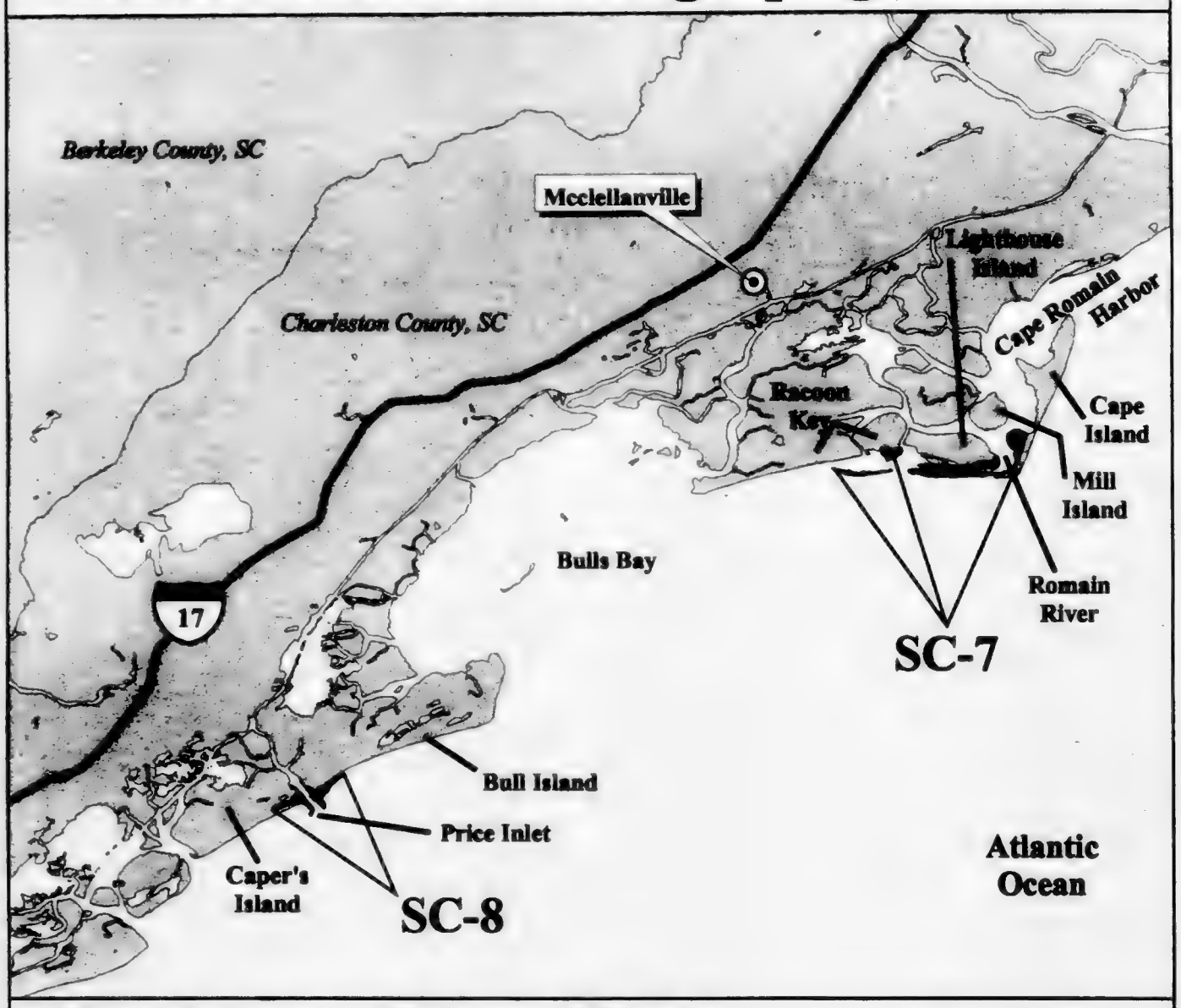

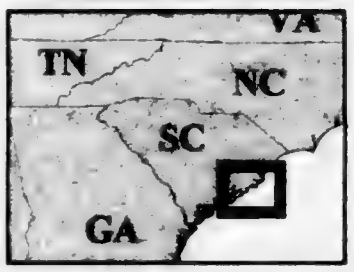

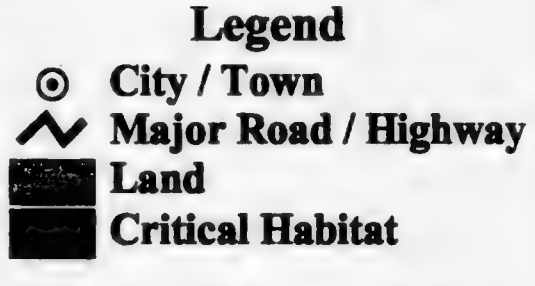

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

South Carolina Units: 7 and 8

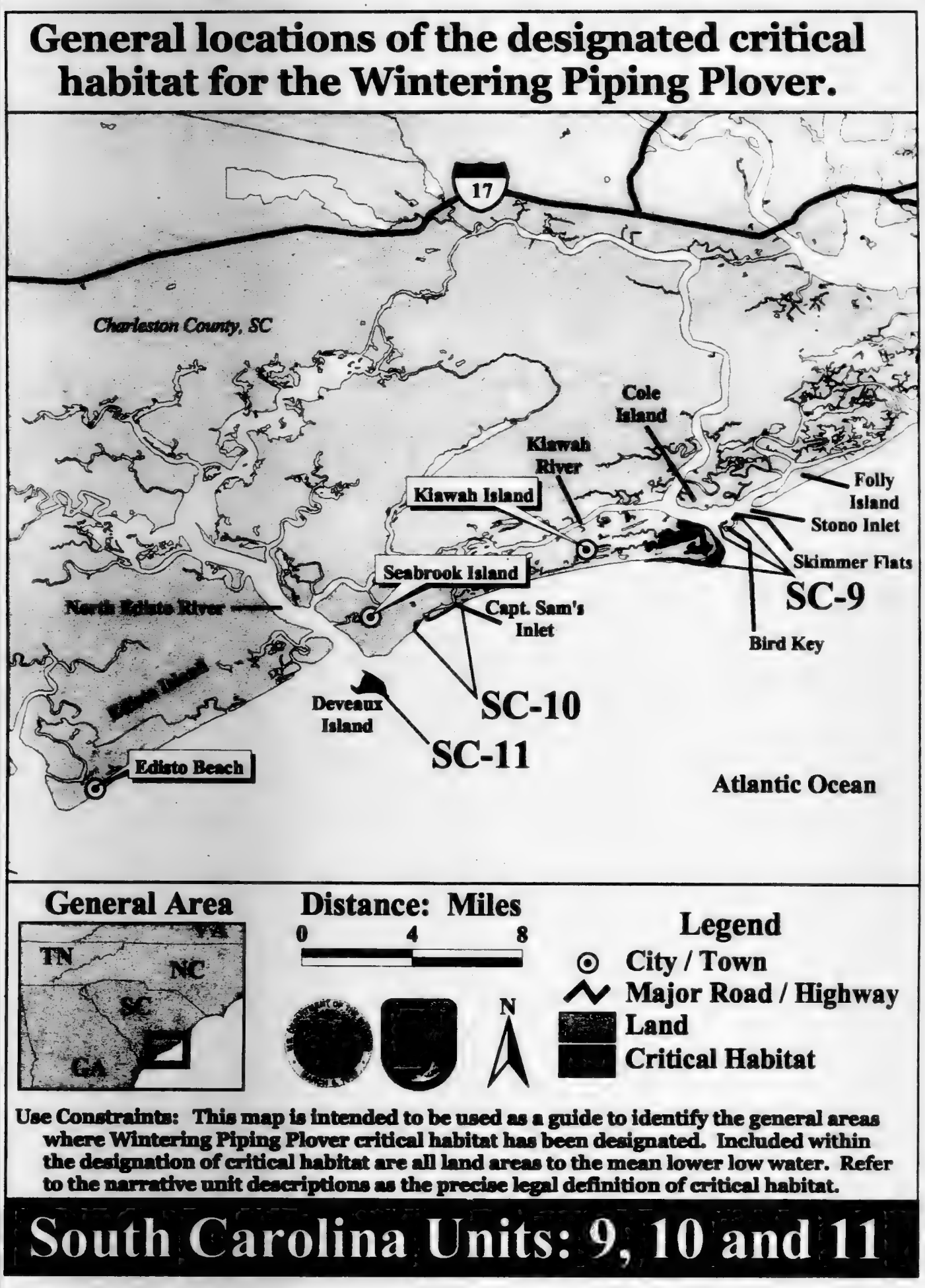
General locations of the designated critical habitat for the Wintering Piping Plover.
17
Charleston County, SC
Cole Island
Kiawah River
Kiawah Island
Folly Island
Stono Inlet
Skimmer Flats
Seabrook Island
SC-9
North Edisto River
Capt. Sam's Inlet
Bird Key
Deveaux Island
SC-10
SC-11
Edisto Beach
Atlantic Ocean
General Area
VA
TN
NC
SC
GA
Distance: Miles
0 4 8
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
South Carolina Units: 9, 10 and 11

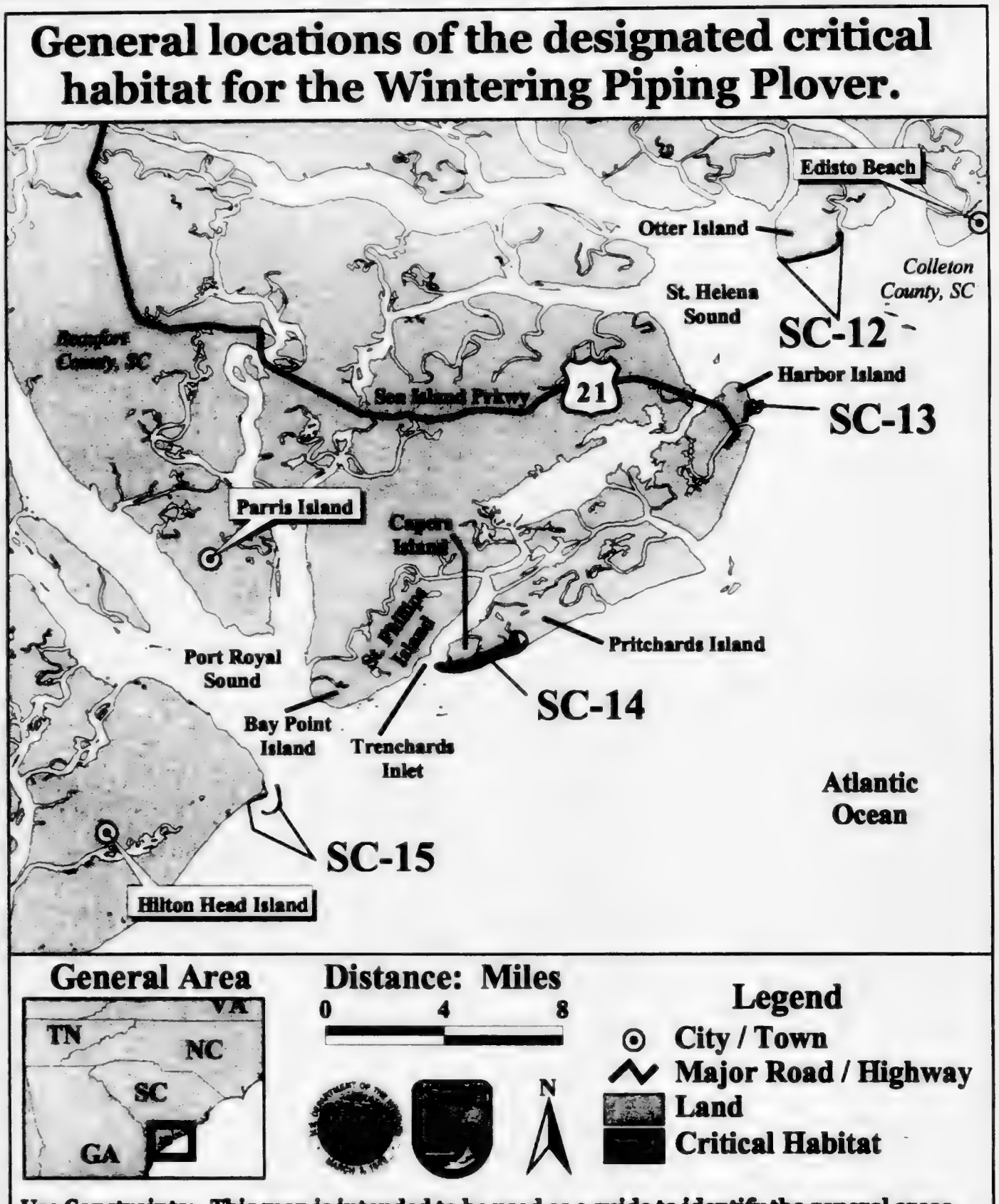

BILLING CODE 4310-55-C

Georgia (Maps were digitized using 1993–94 DOQQs)

Unit GA–1: Tybee Island. 37 ha (91 ac) in Chatham County

The majority of the unit is privately owned. This unit extends along the northern tip of Tybee Island starting from 0.8 km (0.5 mi) northeast from the intersection of Crab Creek and Highway 80 to 0.7 km (0.41 mi) northeast from the intersection of Highway 80 and Horse Pen Creek. The unit includes MLLW on Savannah River and Atlantic Ocean to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit GA–2: Little Tybee Island. 719 ha (1776 ac) in Chatham County

The majority of the unit is within Little Tybee Island State Heritage Preserve. This unit extends just south of the first inlet to Wassaw Sound along the Atlantic Ocean coastline, extending north along the sound 1.7 km (1.1 mi). It includes habitat from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–3: North Wassaw Island. 108 ha (267 ac) in Chatham County

The entire unit is within Wassaw National Wildlife Refuge. This unit includes the north-east tip of Wassaw Sound, 1.6 km (1.0 mi) along the inlet side and extending south along the Atlantic Ocean shoreline for 1.6 km (1.0 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–4: South Wassaw Island. 61 ha (151 ac) in Chatham County

The entire unit is within Wassaw National Wildlife Refuge. This unit extends from the last southern 1.6 km (1.0 mi.) on Atlantic Ocean side, around the southern tip of Wassaw Island, up to mouth of Odingsell River. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–5: Ossabaw Island. 434 ha (1072 ac) in Chatham County

The entire unit is within Ossabaw Island State Heritage Preserve. This unit includes the northeastern tip from the mouth of the Bradley River east and 12 km (7.5 mi) south along the Atlantic Ocean shoreline to a point 0.4 km (0.25 mi) past the south-center inlet. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–6: St. Catherine's Island Bar. 54 ha (135 ac) in Liberty County

The entire unit is State owned and located east-northeast of St. Catherine's Island. This unit includes the entire St. Catherine's Island Bar to MLLW.

Unit GA–7: McQueen's Inlet. 215 ha (532 ac) in Liberty County

The majority of the unit is private land along the eastern-central coastline on St. Catherine's Island. This unit extends from McQueen's Inlet north approximately 3.5 km (2.2 mi) and south approximately 1.8 km (1.1 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–8: St. Catherine's Island. 60 ha (147 ac) in Liberty County

The majority of the unit is private land on the southern tip of St. Catherine's Island. This unit starts 1.2 km (0.75 mi) north of Sapelo Sound (along Atlantic Ocean shoreline) and stops inland at Brunsen Creek. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–9: Blackbeard Island. 129 ha (319 ac) in McIntosh County

The entire unit is within the Blackbeard Island National Wildlife Refuge. This unit includes the northeastern portion of the island beginning just east of the mouth of the confluence of McCloy Creek and Blackbeard Creek and continuing east and running south along the Atlantic Ocean shoreline for 1.4 km (.90 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–10: Sapelo Island. 85 ha (210 ac) in McIntosh County

The entire unit is State-owned and within Sapelo Island. The unit extends south of Cabretta Tip approximately 0.2 km (0.13 mi) and north of Cabretta Tip 1.6 km (1.0 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–11: Wolf Island. 238 ha (590 ac) in McIntosh County

The majority of the unit is within Wolf Island National Wildlife Refuge and private lands just north of the Refuge. This unit includes the southeastern tip of Queen's island adjacent to the Doboy Sound and includes the eastern shoreline of Wolf Island. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–12: Egg Island Bar. 61 ha (151 ac) in McIntosh County

This unit is State owned and includes all of Egg Island Bar to the MLLW.

Unit GA–13: Little St. Simon's Island. 609 ha (1505 ac) in Glynn County

The majority of the unit is private land on Little St. Simon's Island. This unit includes the entire eastern coastline along Little St. Simon's Island. It begins 1.1 km (.70 mi) west of the northeast tip of Little St. Simon's Island and runs east and then south along the Atlantic Ocean shoreline stopping at the minor tributary (no name) on the southeast tip of Little St. Simon's Island north of Hampton Creek. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of Pelican Spit to MLLW is included when this sand bar is emergent.

Unit GA–14: Sea/St. Simon's Island. 191 ha (471 ac) in Glynn County

The majority of the unit is private land on the south tip of Sea Island and on the east beach of St. Simons Island. This unit extends north of Gould's Inlet (Sea Island) 2.5 km (1.54 mi) starting just south of the groin and extends south of Gould's Inlet (St. Simons Island) 1.6 km (1.0 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–15: Jekyll Island. 49 ha (121 ac) in Glynn County

The majority of the unit is within State lands on Jekyll Island. This unit includes the southern region of Jekyll Island beginning at the mouth of Beach Creek, running towards the tip of Jekyll Island and includes the shoreline running north along the Atlantic Ocean shoreline 1.9 km (1.20 mi) from the southern tip of Jekyll Island. It includes land from MLLW to where densely vegetated habitat, not used by the piping

plover, begins and where the constituent elements no longer occur.

Unit GA–16: Cumberland Island. 1454 ha (3591 ac) in Camden County

The majority of the unit is along Cumberland Island Wilderness Area and Cumberland Island National Seashore. This unit includes the majority of the eastern Atlantic Ocean shoreline of Cumberland Island. It begins .50 km (.31 mi) north of the inlet at Long Point, continues south along the Atlantic Ocean shoreline stopping 1.8 km (1.1 mi) west of the southern tip of Cumberland Island National Seashore. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

BILLING CODE 4310–55–P

General locations of the designated critical habitat for the Wintering Piping Plover.

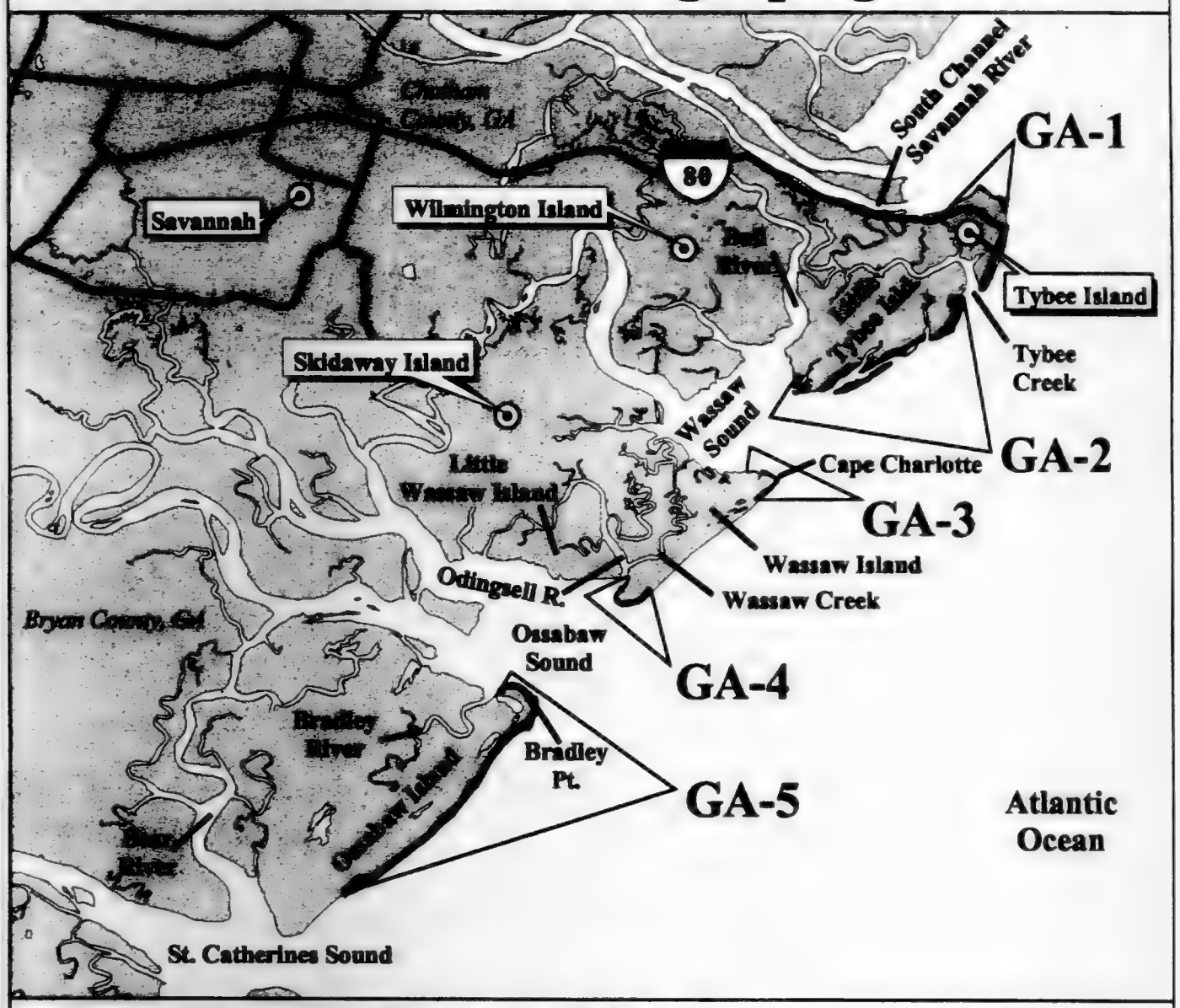

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Georgia Units: 1, 2, 3, 4 and 5

General locations of the designated critical habitat for the Wintering Piping Plover.

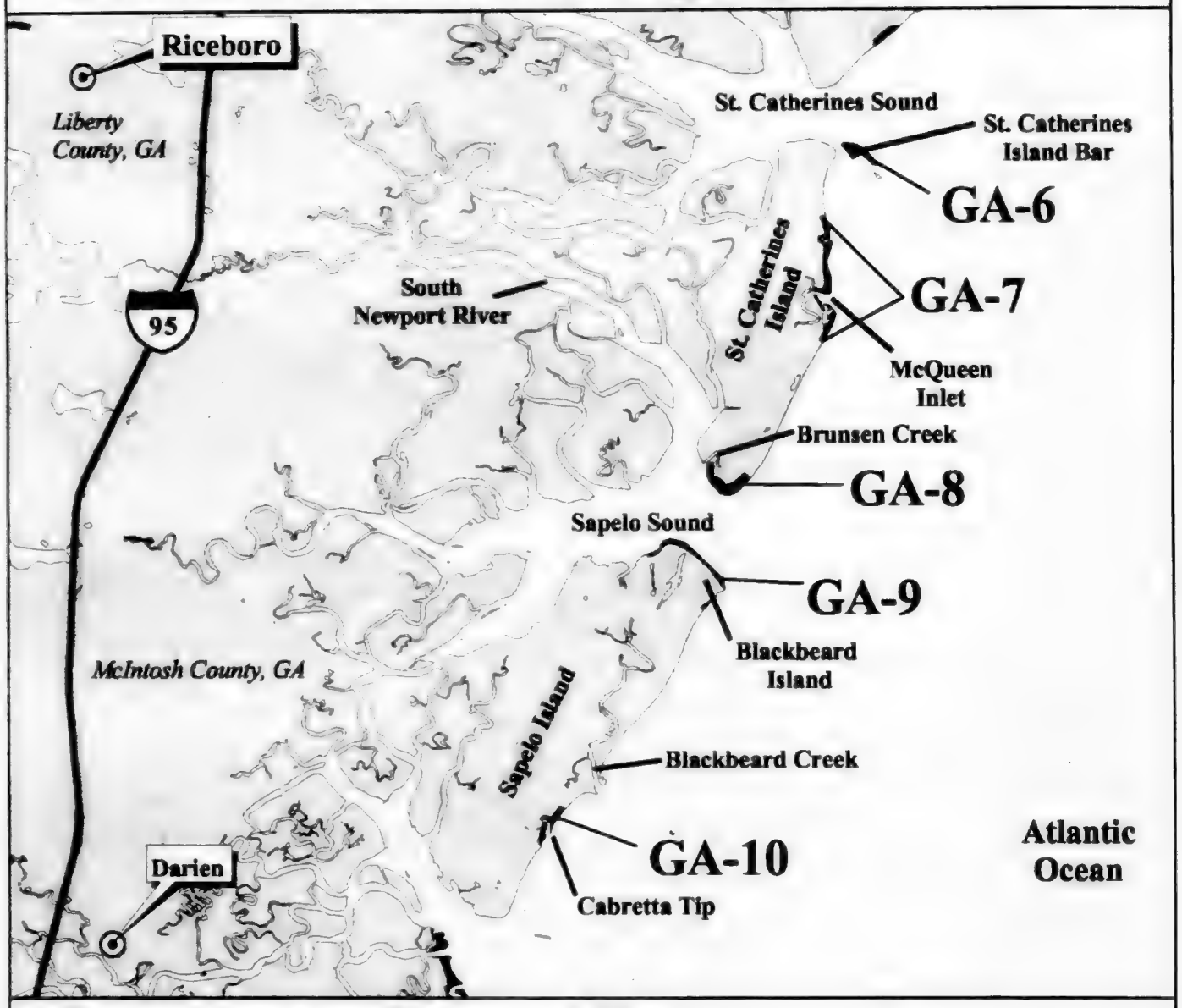

General Area

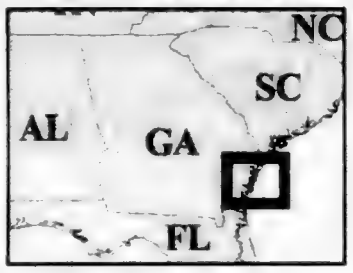

Distance: Miles

0 4 8

N

Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Georgia Units: 6, 7, 8, 9 and 10

General locations of the designated critical habitat for the Wintering Piping Plover.

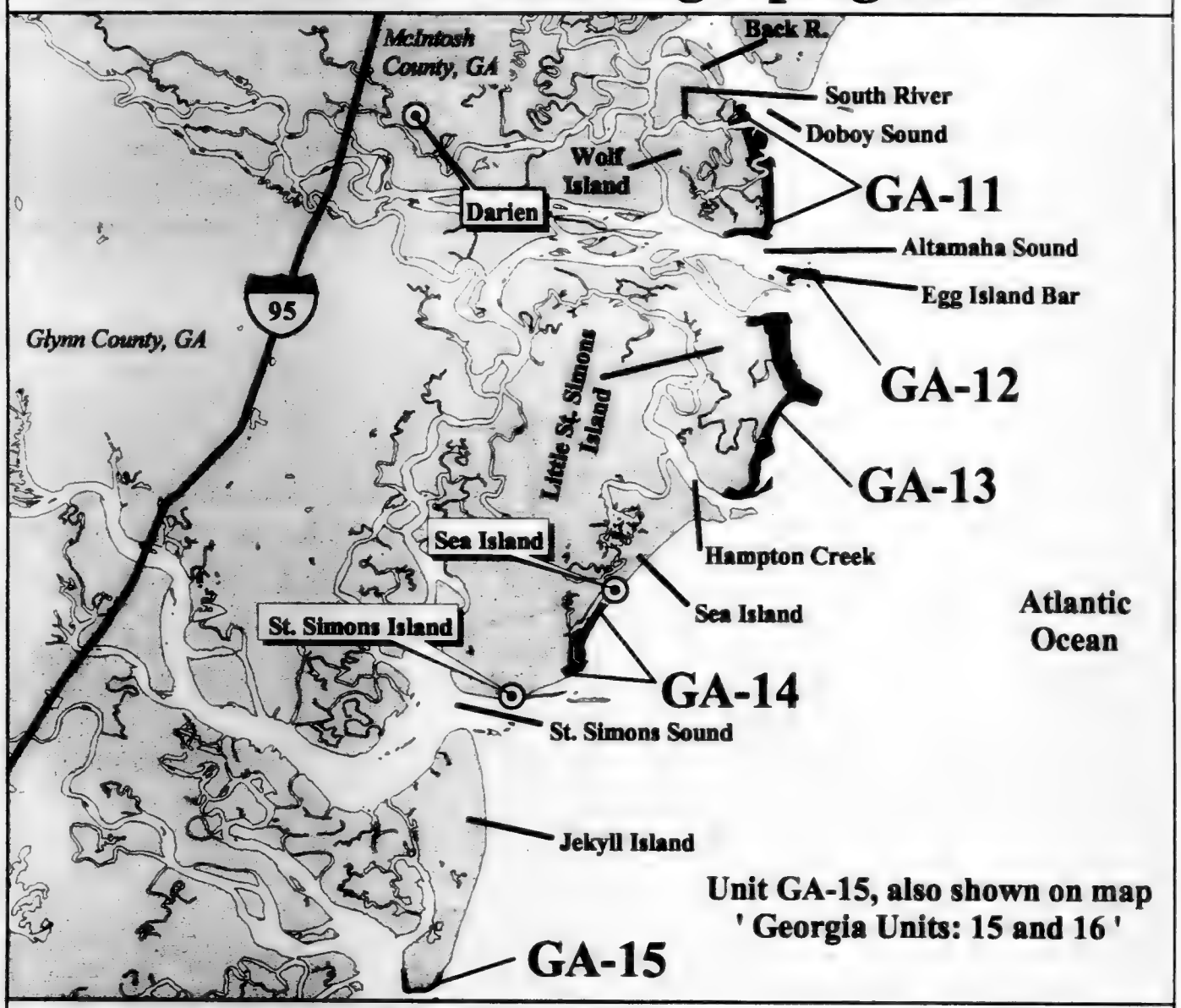

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Georgia Units: 11, 12, 13 and 14

General locations of the designated critical habitat for the Wintering Piping Plover.

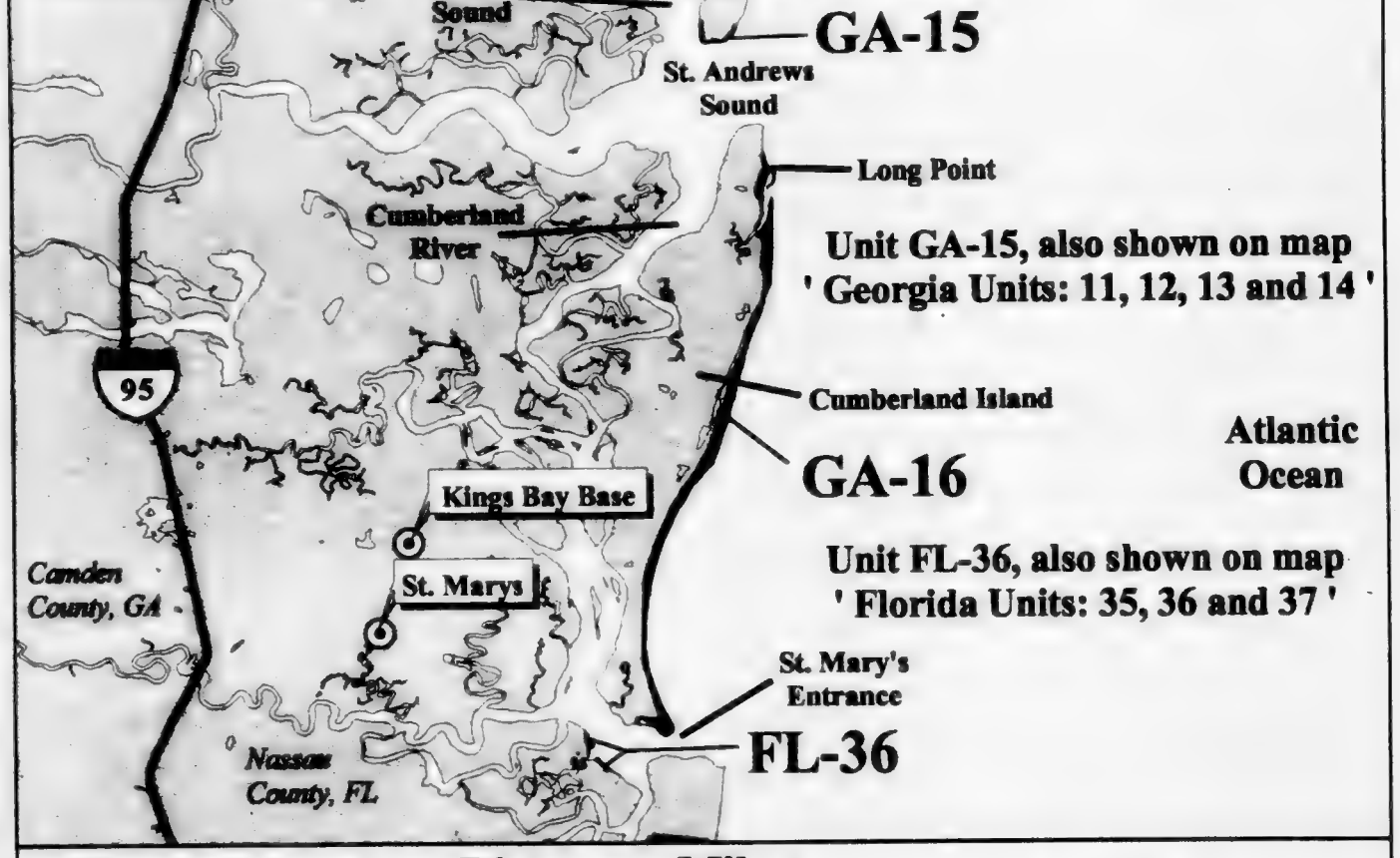

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Georgia Units: 15 and 16

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Florida (Maps were digitized using 1994–95 DOQQs)

Unit FL–1: Big Lagoon. 8 ha (19 ac) in Escambia County

The majority of the unit is within Big Lagoon State Recreation Area. This unit includes the peninsula and emerging sand and mudflats between 0.33 km (0.21 mi) west of the lookout tower along the shoreline and 0.24 km (0.15 mi) east of the lookout tower along the shoreline. Land along the shoreline from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All emerging sandbars to MLLW are included.

Unit FL–2: Big Sabine. 182 ha (450 ac) in Escambia County

The majority of the unit is owned by the University of West Florida. This unit includes areas adjacent to Santa Rosa Sound of Big Sabine Point and adjacent embayment between 8.0 km (5.0 mi) and 11.6 (7.2 mi) east of the Bob Sike's Bridge. It begins 0.10 km (.06 mi) north of SR 399 to MLLW on the Santa Rosa Sound.

Unit FL–3: Navarre Beach. 48 ha (118 ac) in Escambia and Santa Rosa Counties

The majority of the unit is owned by Eglin Air Force Base and Santa Rosa Island Authority. This unit includes lands on Santa Rosa Island Sound side, between 0.09 and 0.76 mi east of the eastern end of SR 399 to MLLW on Santa Rosa Sound side.

Unit FL–5: Shell/Crooked Islands. 1789 ha (4419 ac) in Bay County

The majority of the unit is within Tyndall Air Force Base and St. Andrews State Recreation Area. This unit includes all of Shell Island, Crooked Island West, and Crooked Island East from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–6: Upper St. Joe Peninsula. 182 ha (449 ac) in Gulf County

The majority of the unit is within St. Joseph State Park. This unit includes the northern portion of the peninsula from the tip to 8.0 km (5.0 mi) south along the Gulf of Mexico from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–7: Cape San Blas. 158 ha (390 ac) in Gulf County

The entire unit is within Eglin Air Force Base. This unit includes the area known as the Cape between the eastern boundary of Eglin and mile marker 2.1, including the peninsula and all emerging sandbars. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–8: St. Vincent Island. 146 ha (361 ac) in Franklin County

The majority of the unit is within St. Vincent National Wildlife Refuge. This unit includes the western tip of St. Vincent Island that is adjacent to Indian Pass (0.80 km (0.50 mi) east of tip along Indian Pass, and 1.9 km (1.2 mi) from tip southeast along Gulf of Mexico). The unit also includes St. Vincent Point from the inlet at Sheepshead Bayou east 1.6 km (1.0 mi) to include emerging oysters shoals and sand bars and extends south 0.21 km (0.13 mi) of St. Vincent Point. The unit includes the southeastern tip of St. Vincent Island extending north 1.4 km (0.90 mi) and south and west 2.1 km (1.3 mi). The western tip of Little St. George Island 0.80 km (0.50 mi) from West Pass is included (state owned lands). All sections of this unit include land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–9: East St. George Island. 1433 ha (3540 ac) in Franklin County

The majority of the unit is within St. George State Park. This unit begins 5.3 km (3.3 mi) east of the bridge and extends to East Pass. Shell Point, Rattlesnake Cove, Goose Island, East Cove, Gap Point, and Marsh Island are included. This unit includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur on the Gulf of Mexico, East Pass and St. George Sound.

Unit FL–10: Yent Bayou. 153 ha (378 ac) in Franklin County

The majority of the unit is State owned. This unit is adjacent to the area known as Royal Bluff. It includes the St. George Sound shoreline between 5.9 km (3.7 mi) and 9.5 km (5.9mi) east of SR 65. It includes from MLLW to where densely vegetated habitat or developed structures such as SR 65, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–11: Carabelle Beach. 56 ha (139 ac) in Franklin County

The area within this unit is privately owned. This unit is the peninsula created by Boggy Jordan Bayou. It includes St. George Sound shoreline (south of US 98) 1.6 km (1.0 mi) southwest along US 98 from the Carrabelle River Bridge and extends 1.9 km (1.2 mi) east along the St. George Sound shoreline. It includes from MLLW to where densely vegetated habitat or developed structures such as US 98, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–12: Lanark Reef. 260 ha (643 ac) in Franklin County

The entire unit is State owned. This unit includes the entire island and emerging sandbars to MLLW.

Unit FL–13: Phipps Preserve. 42 ha (104 ac) in Franklin County

This unit includes all of Phipps Preserve (owned by The Nature Conservancy) and any emerging sandbars from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–14: Hagens Cove. 486 ha (1200 ac) in Taylor County

The majority of the unit is within Big Bend Wildlife Management Area. This unit includes all of Hagens Cove and extends from MLLW on north side of Sponge Point to MLLW on south side of Piney Point. The eastern boundary of this unit ends (0.20 mi) west of SR 361. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–15: Anclote Key and North Anclote Bar. 146 ha (360 ac) in Pasco and Pinellas Counties

The majority of the unit is within Anclote Key State Preserve. This unit includes all of North Anclote Bar to the MLLW and the north, south and western sides of Anclote Key from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–16: Three Rooker Bar Island. 76 ha (188 ac) in Pinellas County

The majority of the unit is within Pinellas County Aquatic Preserve. This unit includes all the islands and emerging sandbars of this complex to MLLW.

Unit FL–17: North Honeymoon Island. 45 ha (112 ac) in Pinellas County

The majority of the unit is within Honeymoon Island State Recreation Area. This unit includes from Pelican Cove north to the far northern tip of Honeymoon Island. It includes the western shoreline from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur or the MLLW on the eastern shoreline.

Unit FL–18: South Honeymoon Island. 28 ha (70 ac) in Pinellas County

The majority of the unit is private land. This unit includes the southern end (southern-most 0.32 km (0.20 mi) on western side) of Honeymoon Island and encompasses the far southeastern tip and includes any emerging islands or sandbars to Hurricane Pass. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–19: Caladesi Island. 120 ha (296 ac) in Pinellas County

The majority of the unit is within Caladesi Island State Park. This unit extends from Hurricane Pass to Dunedin Pass on the Gulf of Mexico side. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–20: Shell Key and Mullet Key. 190 ha (470 ac) in Pinellas County

The majority of the unit is within Fort Desoto Park. This unit includes the Shell Key island complex. It also includes the northwest portion of Mullet Key including the western shorelines from Bunces Pass extending south, stopping 1.4 km (.86 mi) north of Ft. Desoto County Park pier. It includes from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–21: Egmont Key. 153 ha (377 ac) Hillsborough County

The majority of the unit is within Egmont Key National Wildlife Refuge. This unit includes the entire island to MLLW.

Unit FL–22: Cayo Costa. 175 ha (432 ac) in Lee County

The majority of the unit, including its northern and southern boundaries, is within Cayo Costa State Park, and nearly all of the remaining area is in the Cayo Costa Florida Conservation and Recreation Lands (CARL) acquisition project. This unit begins at the northern limit of sandy beaches at the northern end of the island, extends through Murdock Point, which at present has a sandbar and lagoon system, and ends at the former entrance to Murdock Bayou. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–23: North Captiva Island. 36 ha (88 ac) in Lee County

The unit is within the Cayo Costa CARL land purchase project. This unit includes the western shoreline extending from 0.80 km (0.50 mi) south of Captiva Pass to approximately Foster Bay. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–25: Bunche Beach. 187 ha (461 ac) in Lee County

This unit is mostly within a CARL Estero Bay acquisition project. Bunche Beach (also spelled Bunch) lies along San Carlos Bay, on the mainland between Sanibel Island and Estero Island (Fort Myers Beach), extending east from the Sanibel Causeway past the end of John Morris Road to a canal serving a residential subdivision. The unit also includes the western tip of Estero Island (Bodwitch Point, also spelled Bowditch Point), including Bowditch Regional Park, operated by Lee County and, on the southwest side of the island facing the Gulf, the beach south nearly to the northwesterly intersection of Estero Boulevard and Carlos Circle. It includes land from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur or, along the developed portion of Estero Island.

Unit FL–26: Estero Island. 86 ha (211 ac) in Lee County

The majority of the unit is privately owned. The unit consists of approximately the southern third of the island's Gulf-facing shoreline starting near Avenida Pescadora to near Redfish Road. The unit excludes south-facing shoreline at the south end of the island that faces Big Carlos Pass rather than the Gulf. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–27: Marco Island. 245 ha (606 ac) in Collier County

Most of the unit is at the Tigertail Beach County Park. The unit's northern border is on the north side of Big Marco Pass, including Coconut Island and all emerging sand bars. On the south side of Big Marco Pass, the boundary starts at the north boundary of Tigertail Beach County Park and extends to just south of the fourth condominium tower south of the County Park. The placement of the southern boundary assures that the unit includes all of Sand Dollar Island, the changeable sandbar off Tigertail Beach. The western boundary includes all the sand bars in Big Marco Pass but excludes Hideaway Beach. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–28: Marquesas Keys. 2937 ha (7256 ac) in Monroe County

The unit comprises the roughly circular atoll that encloses Mooney Harbor, including Gull Keys and Mooney Harbor Key. The entire unit is within Key West National Wildlife Refuge. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–29: Boca Grande/Woman/Ballast Keys. 56 ha (138 ac) in Monroe County

These Keys are east of the Marquesas Keys and west of Key West. Boca Grande and Woman Keys are within Key West National Wildlife Refuge. Ballast Key is privately owned. This unit consists only of sandy beaches and flats between the MLLW and to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–30: Bahia Honda/Ohio Keys. 372 ha (918 ac) in Monroe County

This unit comprises Bahia Honda Key (including a small island off its southwest shore), which is almost entirely owned by Bahia Honda State Park, plus Ohio Key, which is privately owned. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–31: Lower Matecumbe Key. 19 ha (48 ac) in Monroe County

Part of the unit is at Anne's Beach park, an Islamorada village park. The remaining parts are at Sunset Drive (Lower Matecumbe Beach) and at Costa Bravo Drive (Port Antiqua Homeowners Beach) on the Florida Bay side of the island. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–32: Sandy Key/Carl Ross Key. 67 ha (165 ac) in Monroe County

This unit consists of two adjoining islands in Florida Bay, roughly south of Flamingo in Everglades National Park. The entire area is owned and managed by the National Park Service. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–33: St. Lucie Inlet. 114 ha (282 ac) in Martin County

The unit includes a small area south of the jetty on the north shore of St. Lucie Inlet, from the jetty west 0.42 km (0.26 mi). While the two sides of the inlet are privately owned, the great majority of the unit is on public land in the Saint Lucie Inlet State Preserve, administered by Jonathan Dickinson State Park. It begins on the sandy shoreline south of Saint Lucie Inlet and extends along the Atlantic Ocean shoreline 2.6 km (1.6 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur. The unit does not include sandbars within the inlet.

Unit FL–34: Ponce de Leon Inlet. 68 ha (168 ac) in Volusia County

The majority of the unit is within Smyrna Dunes Park and Lighthouse Point Park. This unit includes shoreline extending from the jetty north of Ponce de Leon Inlet west to the Halifax River and Inlet junction. It includes shoreline south of Ponce de Leon Inlet from the inlet and Halifax River junction, extending east and south along the Atlantic Ocean shoreline 1.2 km (.70 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–35: Nassau Sound-Huguenot. 950 ha (2347 ac) in Duval County

The majority of the unit is within Big Talbot Island State Park, Little Talbot Island State Park, and the Timucuan Ecological and Historical Preserve. This unit includes all emergent shoals and shoreline east of Nassau River bridge and extends to the inlet of the St. John's River. Amelia Island and the northern 2.7 km (1.7 mi) shoreline along Talbot Island are not included. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–36: Tiger Islands. 53 ha (130 ac) in Nassau County

This unit is privately owned. This unit extends from the mouth of Tiger Creek and runs north along Tiger Island 0.8 km (0.5 mi) and south along Little Tiger Island 1.4 km (0.9 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur. Emerging sandbars to MLLW are also included.

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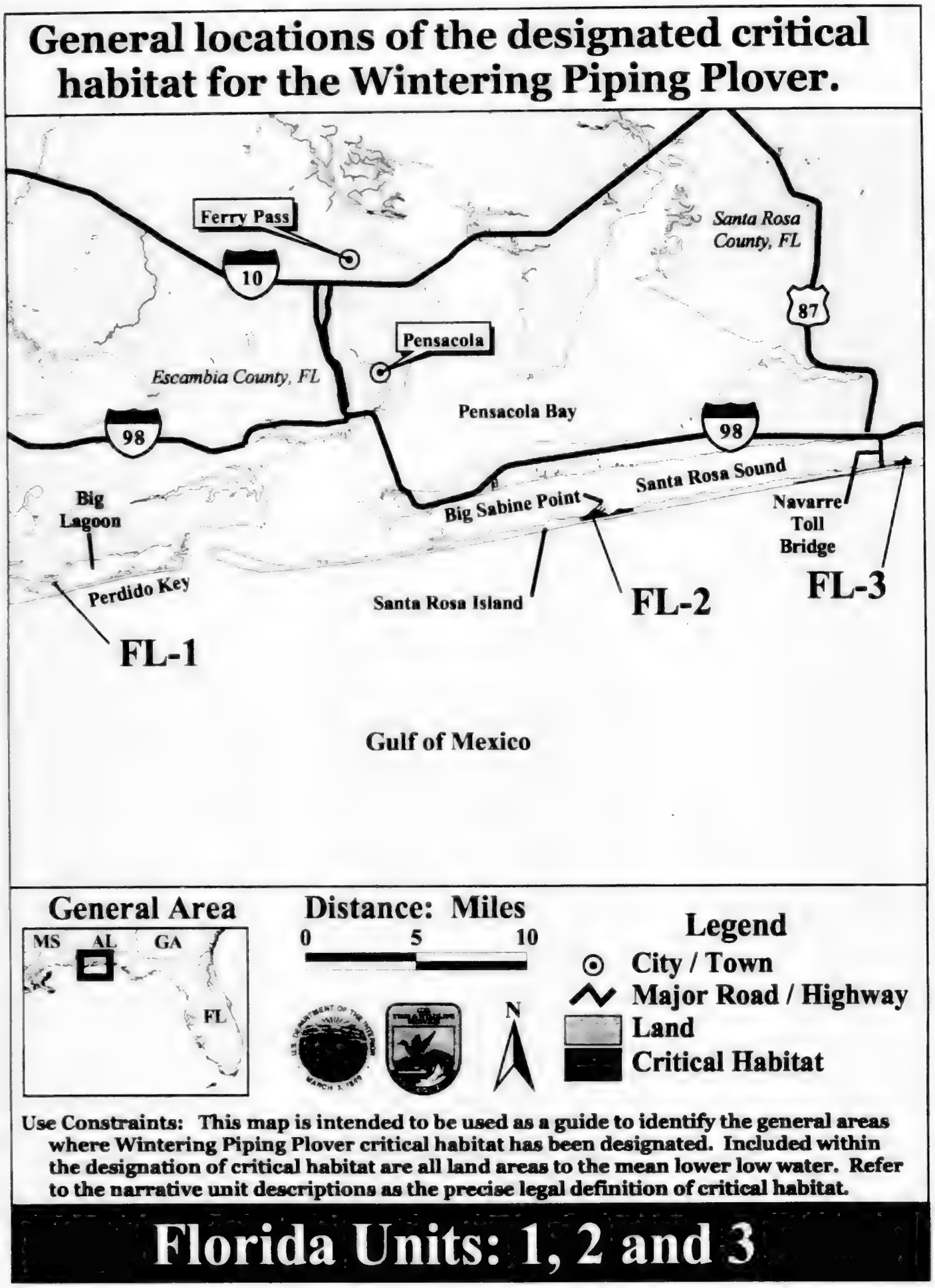
General locations of the designated critical habitat for the Wintering Piping Plover.
Ferry Pass
10
Santa Rosa County, FL
87
Pensacola
Escambia County, FL
Pensacola Bay
98
98
Santa Rosa Sound
Big Lagoon
Big Sabine Point
Navarre Toll Bridge
Perdido Key
Santa Rosa Island
FL-1
FL-2
FL-3
Gulf of Mexico
General Area
MS
AL
GA
FL
Distance: Miles
0
5
10
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
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Florida Units: 1, 2 and 3

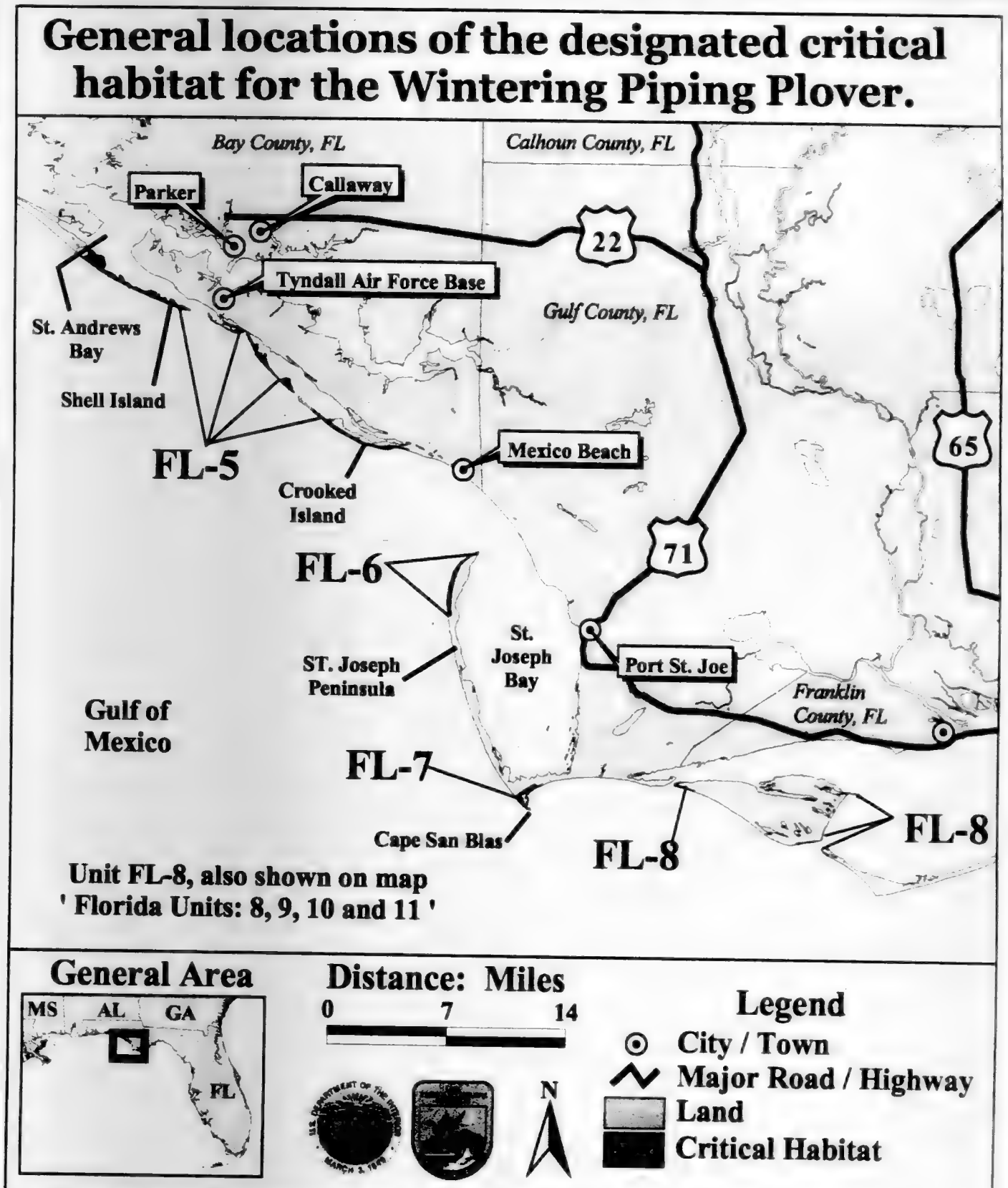
General locations of the designated critical habitat for the Wintering Piping Plover.
Bay County, FL
Calhoun County, FL
Parker
Callaway
Tyndall Air Force Base
22
Gulf County, FL
St. Andrews Bay
Shell Island
FL-5
Crooked Island
Mexico Beach
65
71
FL-6
St. Joseph Bay
ST. Joseph Peninsula
Port St. Joe
Franklin County, FL
Gulf of Mexico
FL-7
Cape San Blas
FL-8
FL-8
Unit FL-8, also shown on map
' Florida Units: 8, 9, 10 and 11 '
General Area
MS
AL
GA
FL
Distance: Miles
0
7
14
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
Florida Units: 5, 6 and 7

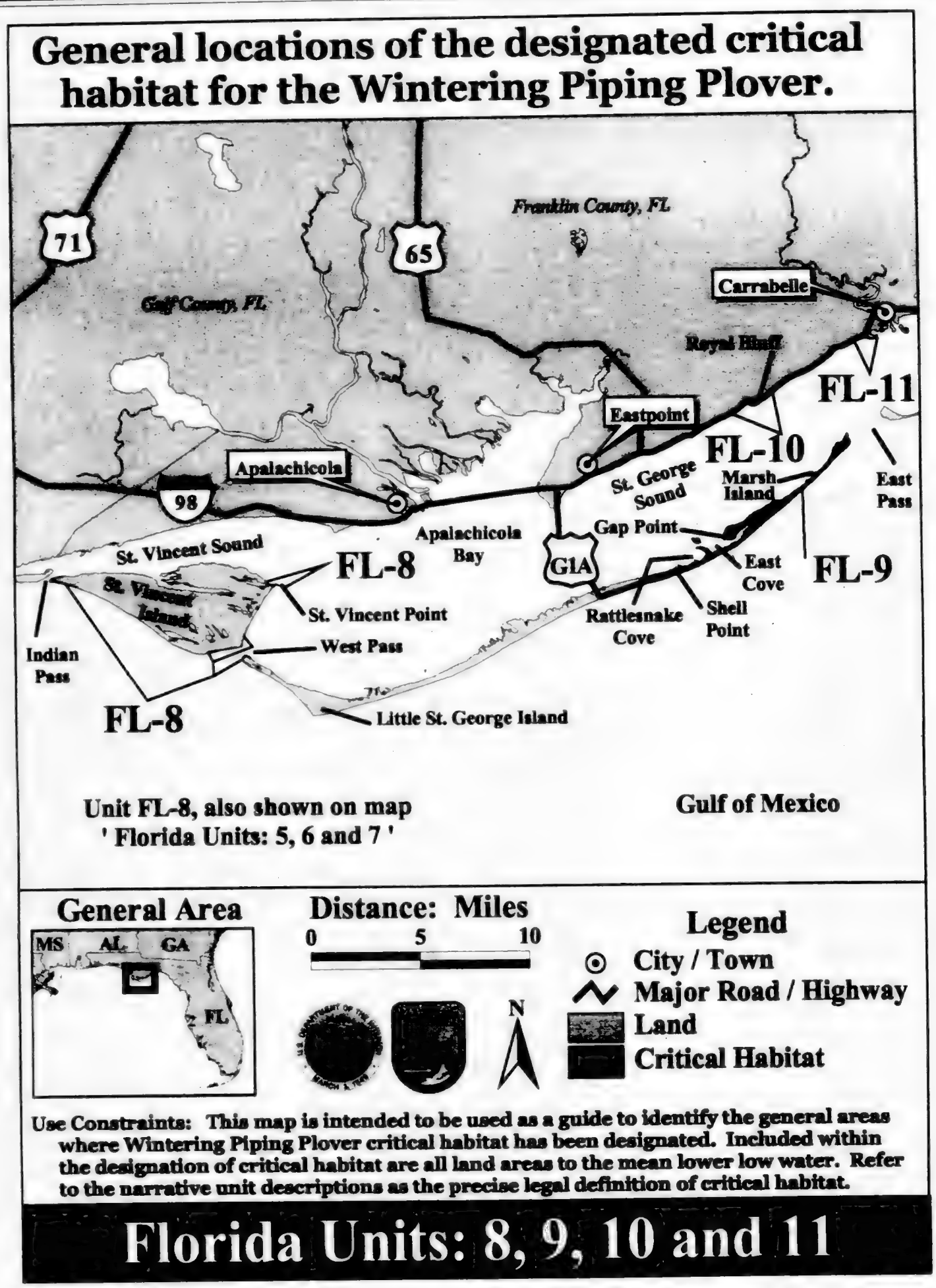
General locations of the designated critical habitat for the Wintering Piping Plover.
71
65
Franklin County, FL
Gulf County, FL
Carrabelle
Royal Bluff
FL-11
Eastpoint
FL-10
Apalachicola
98
St. George Sound
Marsh Island
East Pass
Gap Point
Apalachicola Bay
St. Vincent Sound
FL-8
G1A
East Cove
FL-9
St. Vincent Island
St. Vincent Point
Rattlesnake Cove
Shell Point
West Pass
Indian Pass
FL-8
Little St. George Island
Unit FL-8, also shown on map
' Florida Units: 5, 6 and 7 '
Gulf of Mexico
General Area
MS
AL
GA
FL
Distance: Miles
0
5
10
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
Florida Units: 8, 9, 10 and 11

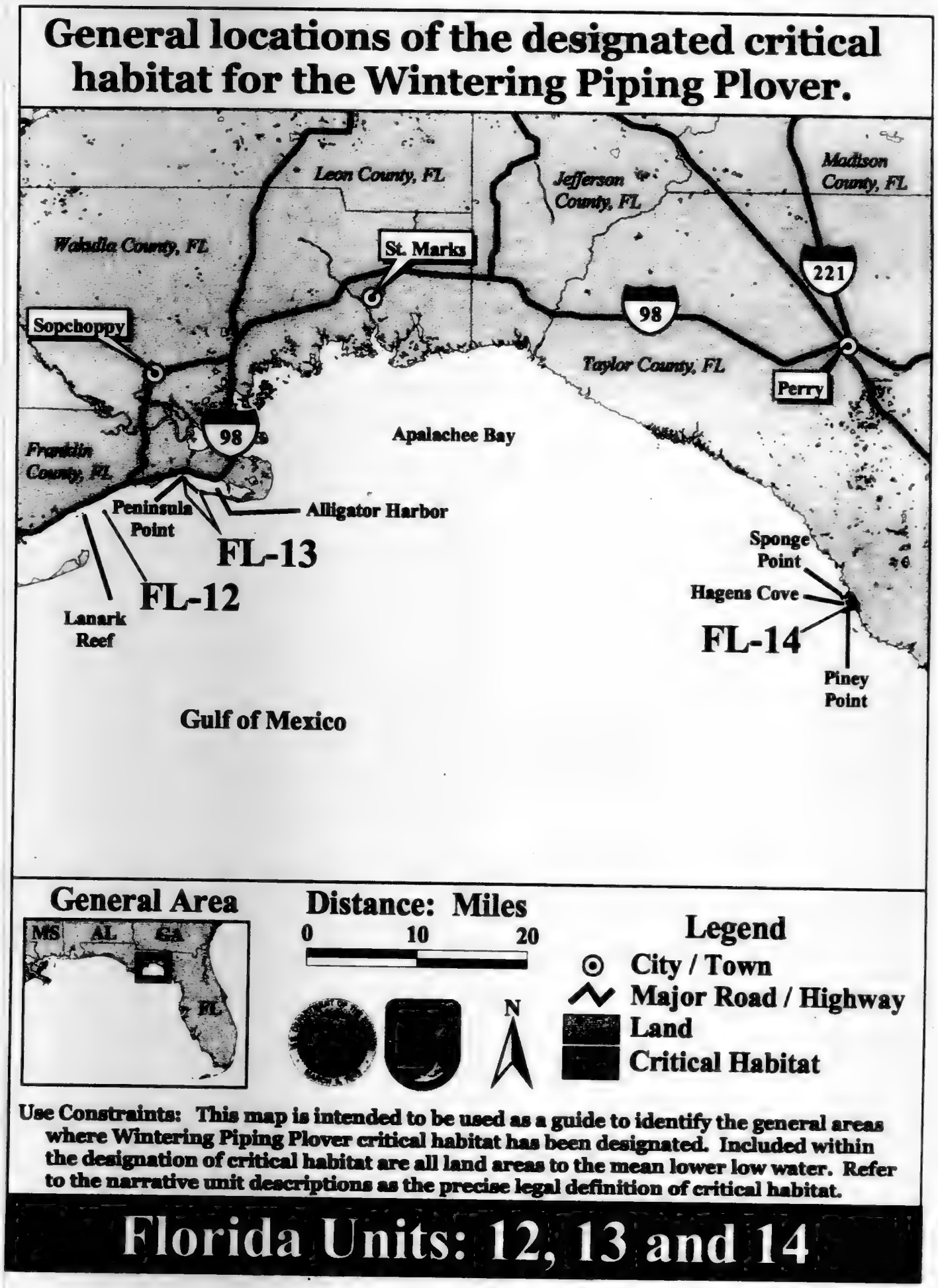
General locations of the designated critical habitat for the Wintering Piping Plover.
Leon County, FL
Jefferson County, FL
Madison County, FL
Wakulla County, FL
St. Marks
221
98
Sopchoppy
Taylor County, FL
Perry
98
Apalachee Bay
Franklin County, FL
Peninsula Point
Alligator Harbor
FL-13
FL-12
Lanark Reef
Sponge Point
Hagens Cove
FL-14
Piney Point
Gulf of Mexico
General Area
MS
AL
GA
FL
Distance: Miles
0
10
20
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
Florida Units: 12, 13 and 14

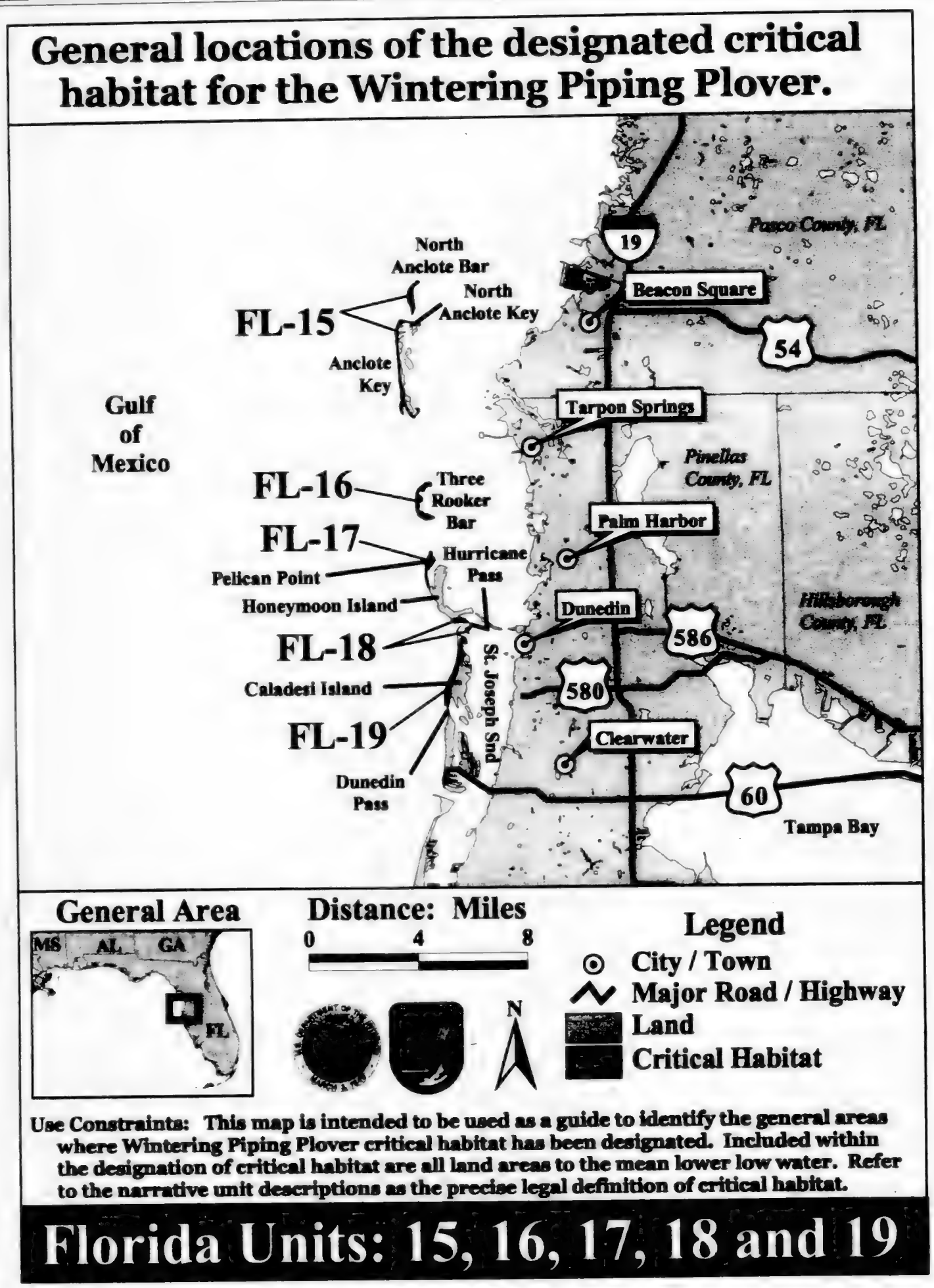
General locations of the designated critical habitat for the Wintering Piping Plover.
North Anclote Bar
North Anclote Key
FL-15
Anclote Key
Gulf of Mexico
FL-16
Three Rooker Bar
FL-17
Pelican Point
Hurricane Pass
Honeymoon Island
FL-18
Caladesi Island
FL-19
Dunedin Pass
St. Joseph Snd
Pasco County, FL
19
Beacon Square
54
Tarpon Springs
Pinellas County, FL
Palm Harbor
Dunedin
586
Hillsborough County, FL
580
Clearwater
60
Tampa Bay
General Area
MS
AL
GA
FL
Distance: Miles
0
4
8
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
Florida Units: 15, 16, 17, 18 and 19

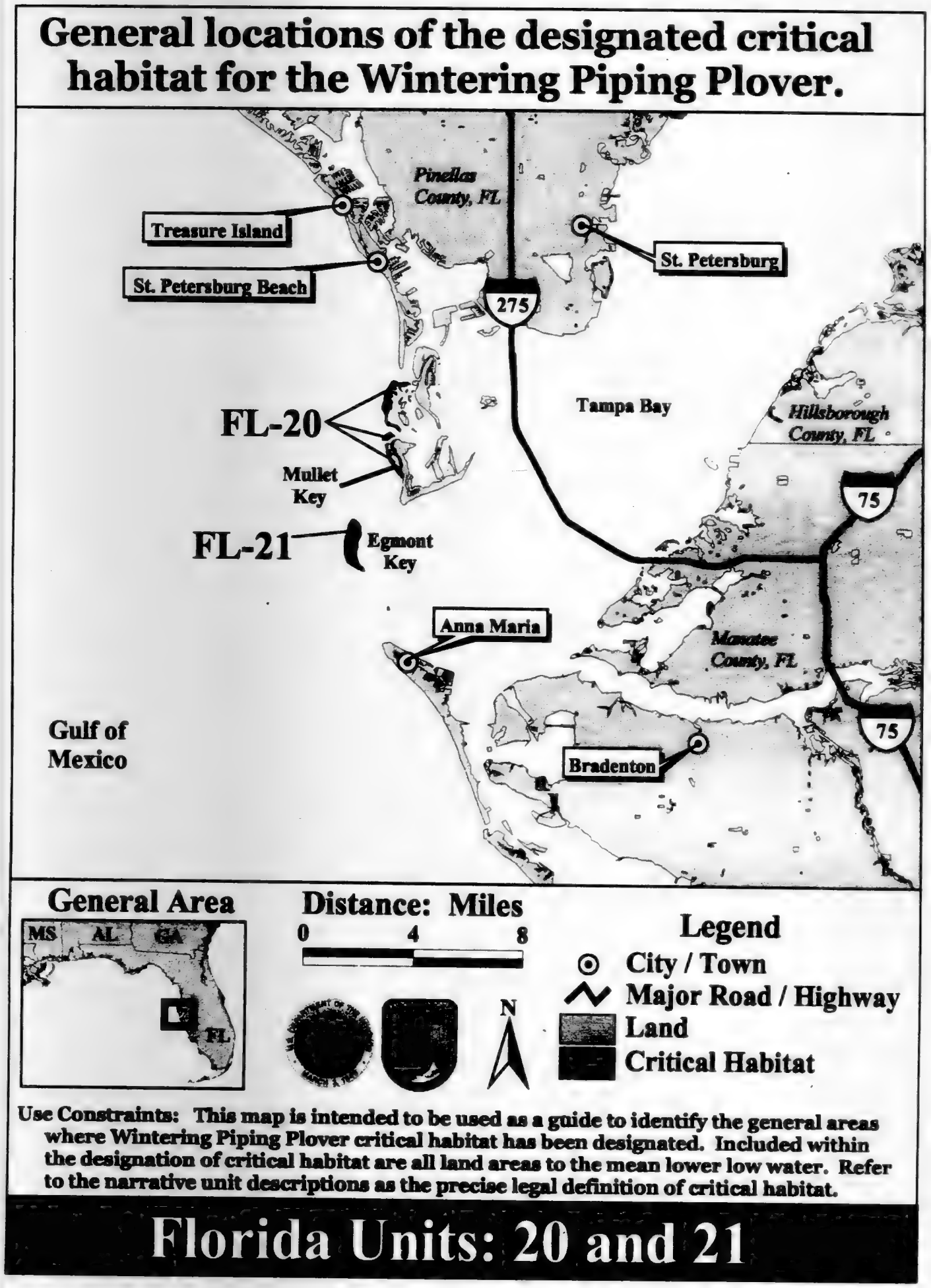
General locations of the designated critical habitat for the Wintering Piping Plover.
Pinellas County, FL
Treasure Island
St. Petersburg Beach
St. Petersburg
275
Tampa Bay
Hillsborough County, FL
FL-20
Mullet Key
FL-21
Egmont Key
75
Anna Maria
Manatee County, FL
Gulf of Mexico
Bradenton
General Area
MS
AL
GA
FL
Distance: Miles
0
4
8
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
Florida Units: 20 and 21

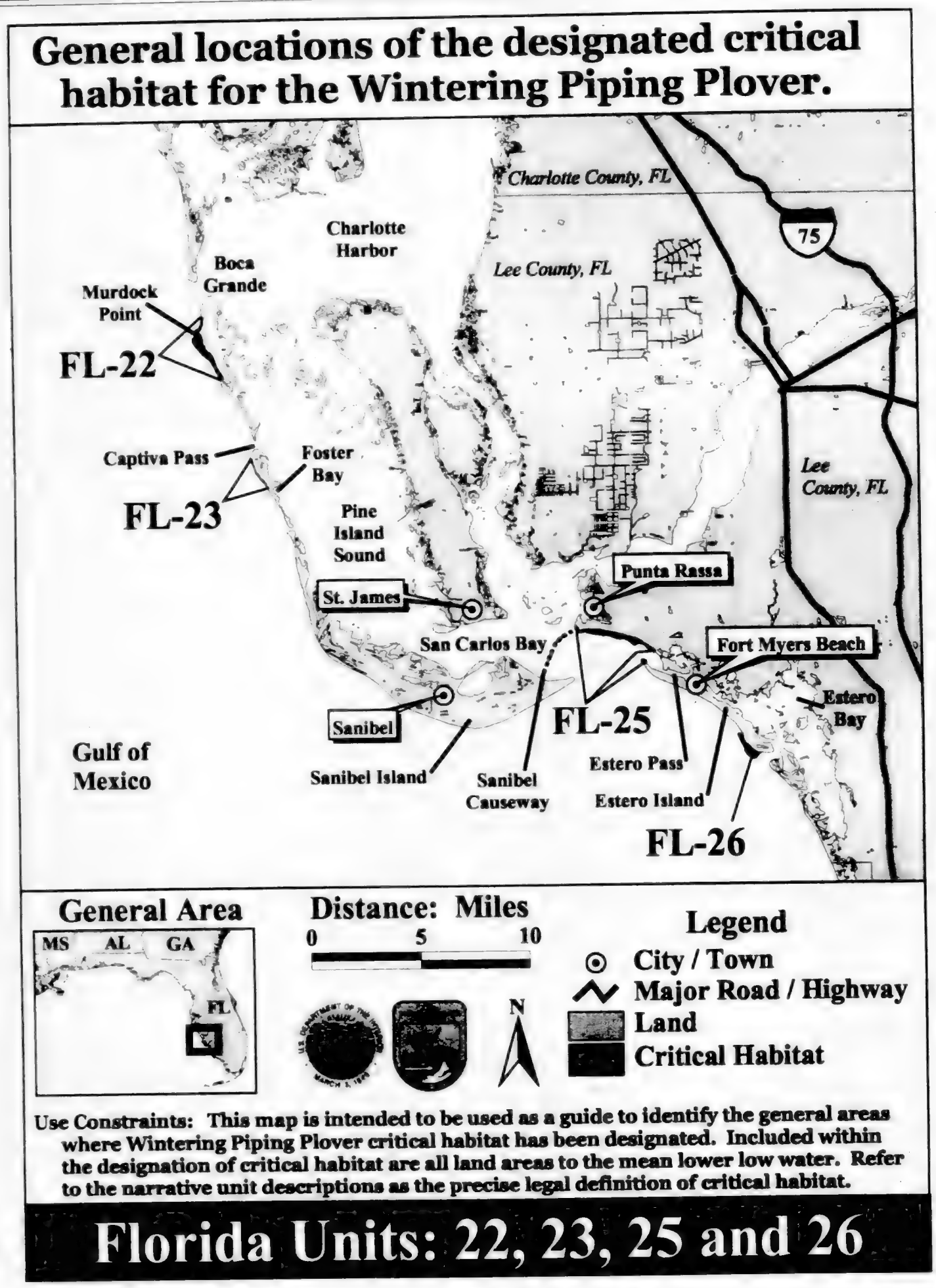
General locations of the designated critical habitat for the Wintering Piping Plover.
Charlotte County, FL
Charlotte Harbor
Boca Grande
Murdock Point
FL-22
Lee County, FL
75
Captiva Pass
Foster Bay
FL-23
Pine Island Sound
Lee County, FL
Punta Rassa
St. James
San Carlos Bay
Fort Myers Beach
Estero Bay
Sanibel
FL-25
Gulf of Mexico
Sanibel Island
Sanibel Causeway
Estero Pass
Estero Island
FL-26
General Area
MS
AL
GA
FL
Distance: Miles
0
5
10
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
Florida Units: 22, 23, 25 and 26

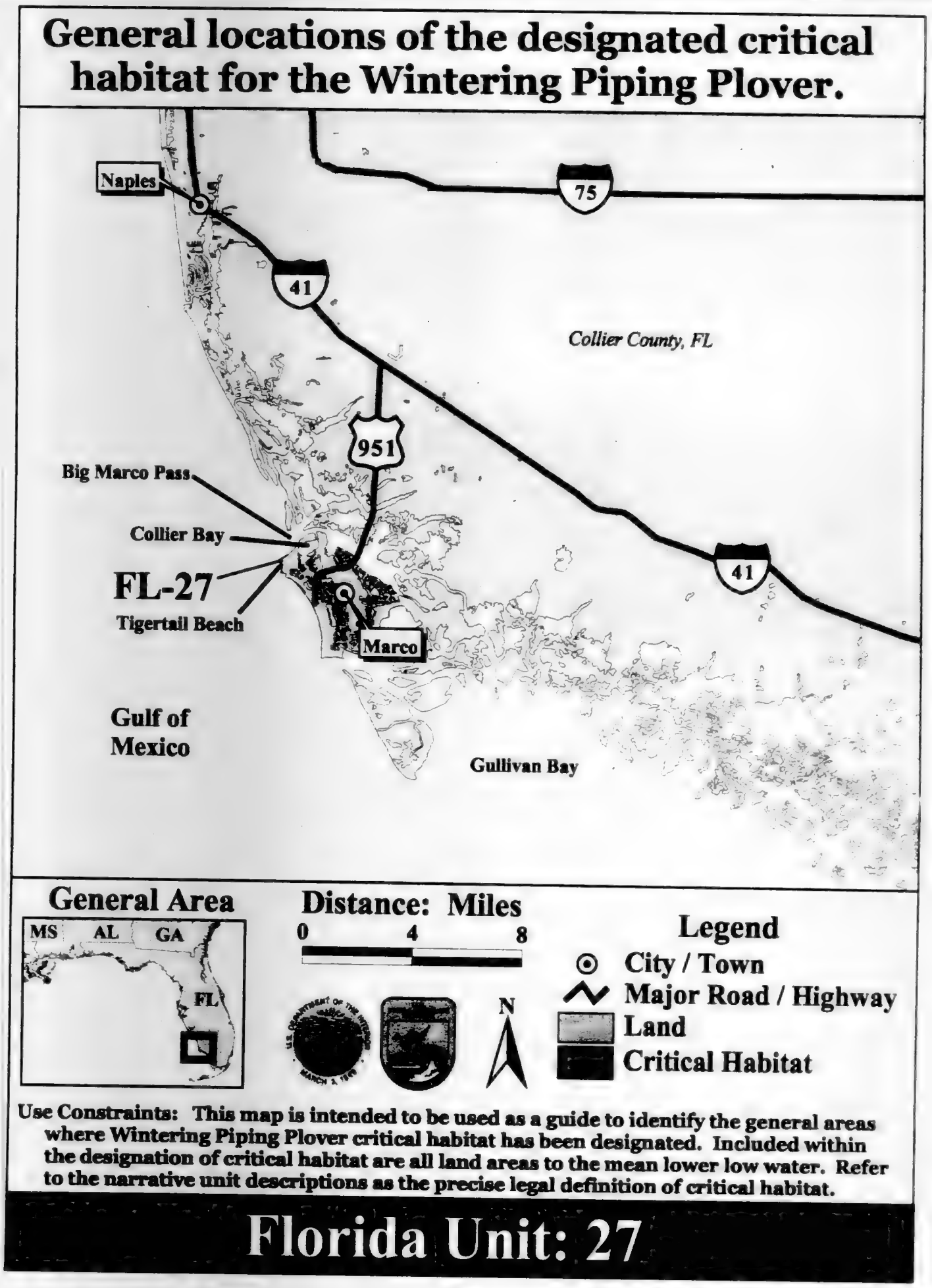
General locations of the designated critical habitat for the Wintering Piping Plover.
Naples
75
41
Collier County, FL
951
Big Marco Pass
Collier Bay
FL-27
Tigertail Beach
Marco
41
Gulf of Mexico
Gullivan Bay
General Area
MS
AL
GA
FL
Distance: Miles
0
4
8
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
Florida Unit: 27

General locations of the designated critical habitat for the Wintering Piping Plover.

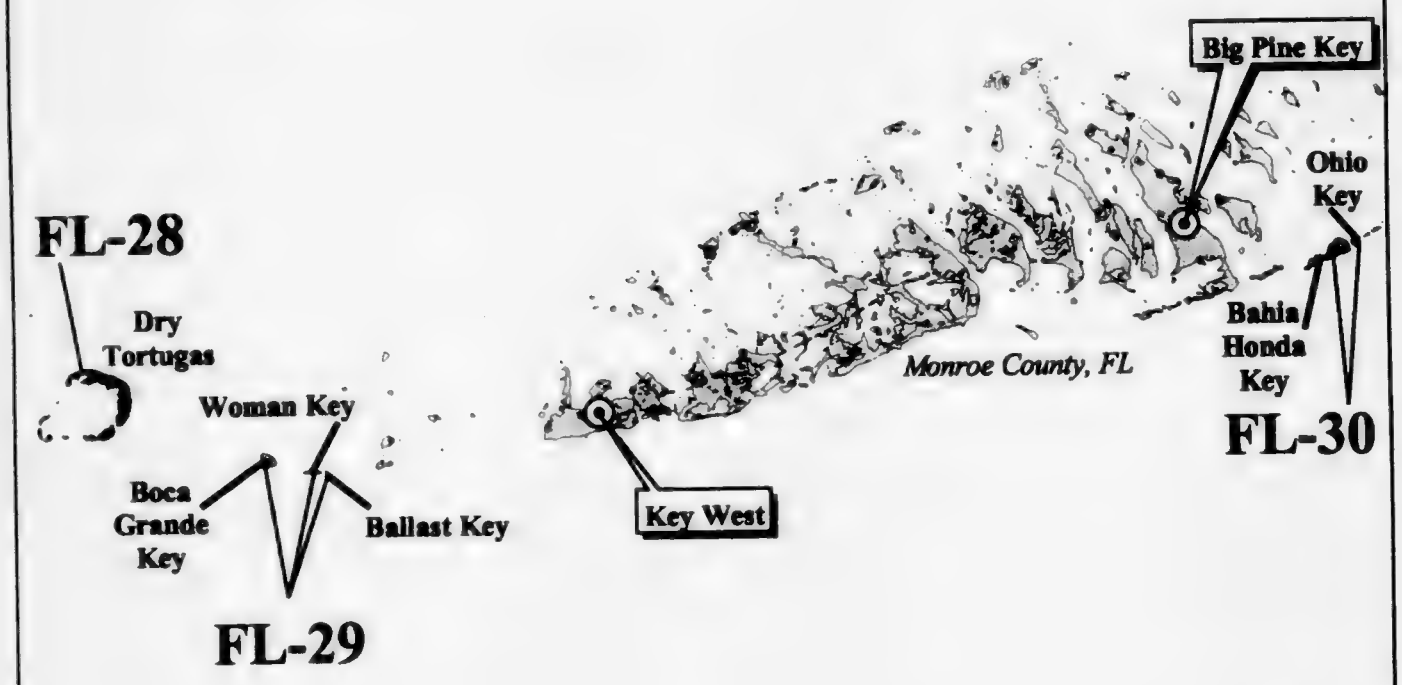

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Florida Units: 28, 29 and 30

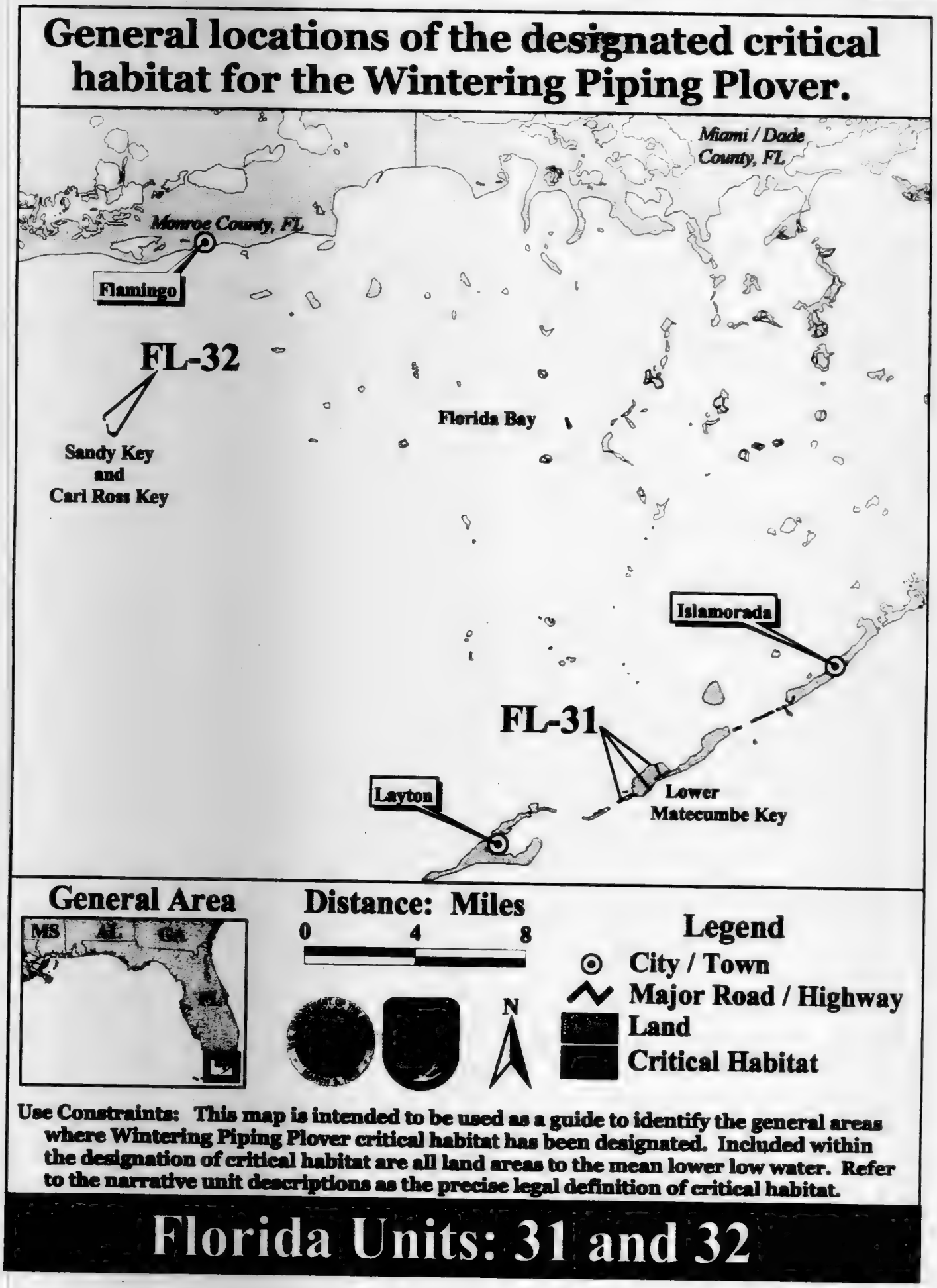
General locations of the designated critical habitat for the Wintering Piping Plover.
Miami / Dade County, FL
Monroe County, FL
Flamingo
FL-32
Sandy Key and Carl Ross Key
Florida Bay
Islamorada
FL-31
Layton
Lower Matecumbe Key
General Area
MS
AL
GA
FL
Distance: Miles
0
4
8
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
Florida Units: 31 and 32

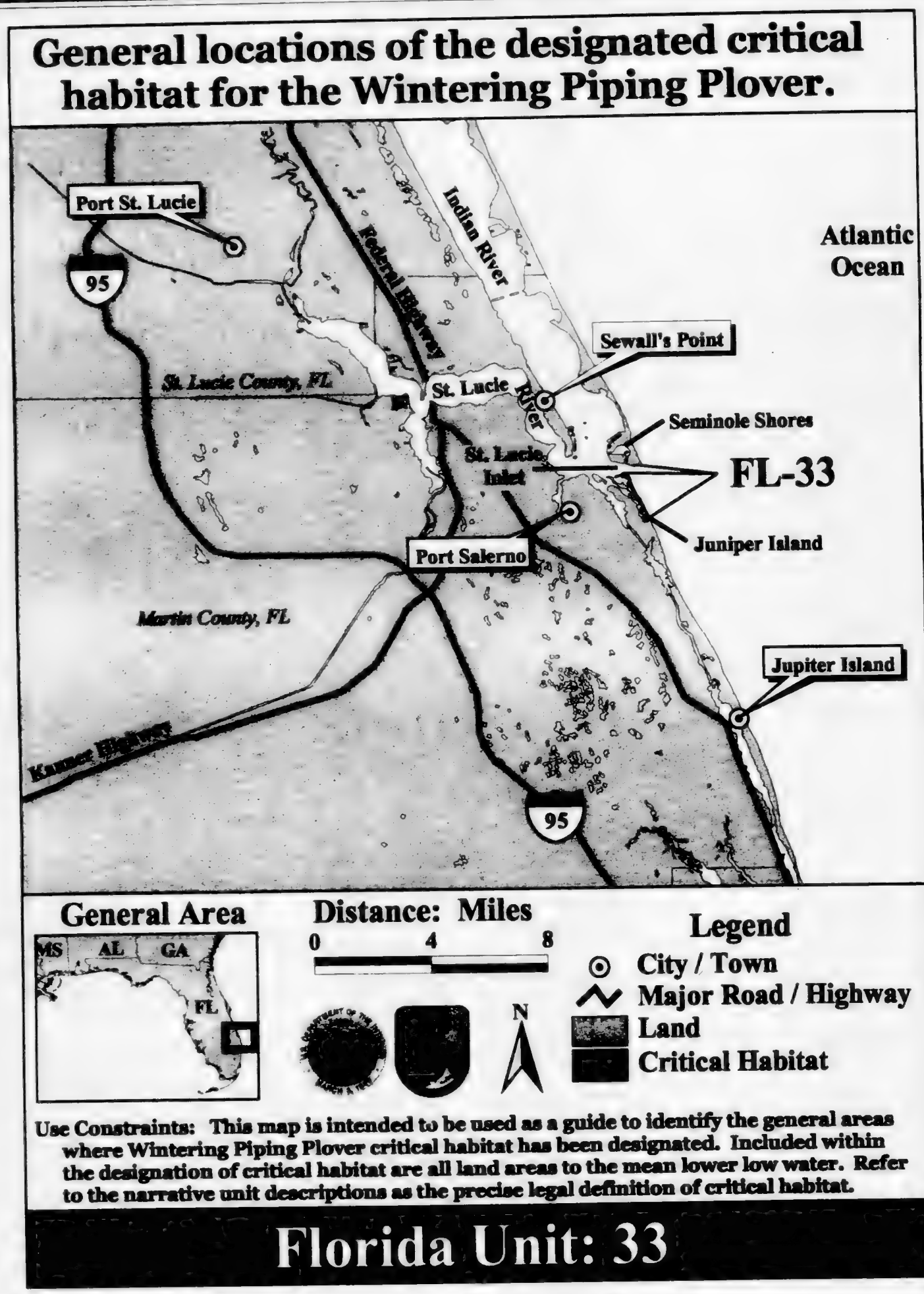
General locations of the designated critical habitat for the Wintering Piping Plover.
Port St. Lucie
95
St. Lucie County, FL
Martin County, FL
Kanner Highway
Indian River
Federal Highway
St. Lucie River
St. Lucie Inlet
Port Salerno
Sewall's Point
Seminole Shores
FL-33
Juniper Island
Jupiter Island
95
Atlantic Ocean
General Area
MS
AL
GA
FL
Distance: Miles
0
4
8
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
Florida Unit: 33

General locations of the designated critical habitat for the Wintering Piping Plover.

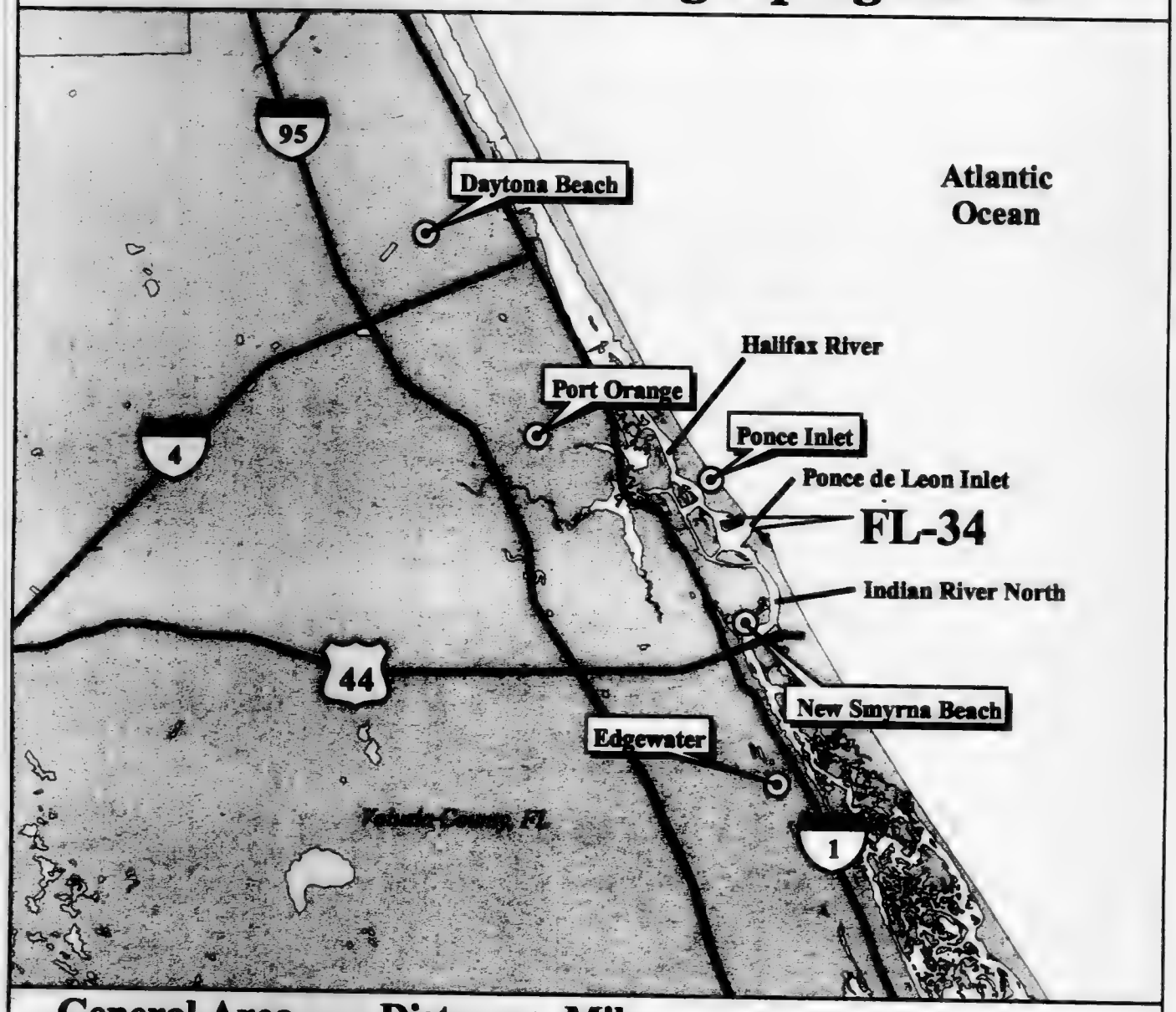

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Florida Unit: 34

General locations of the designated critical habitat for the Wintering Piping Plover.

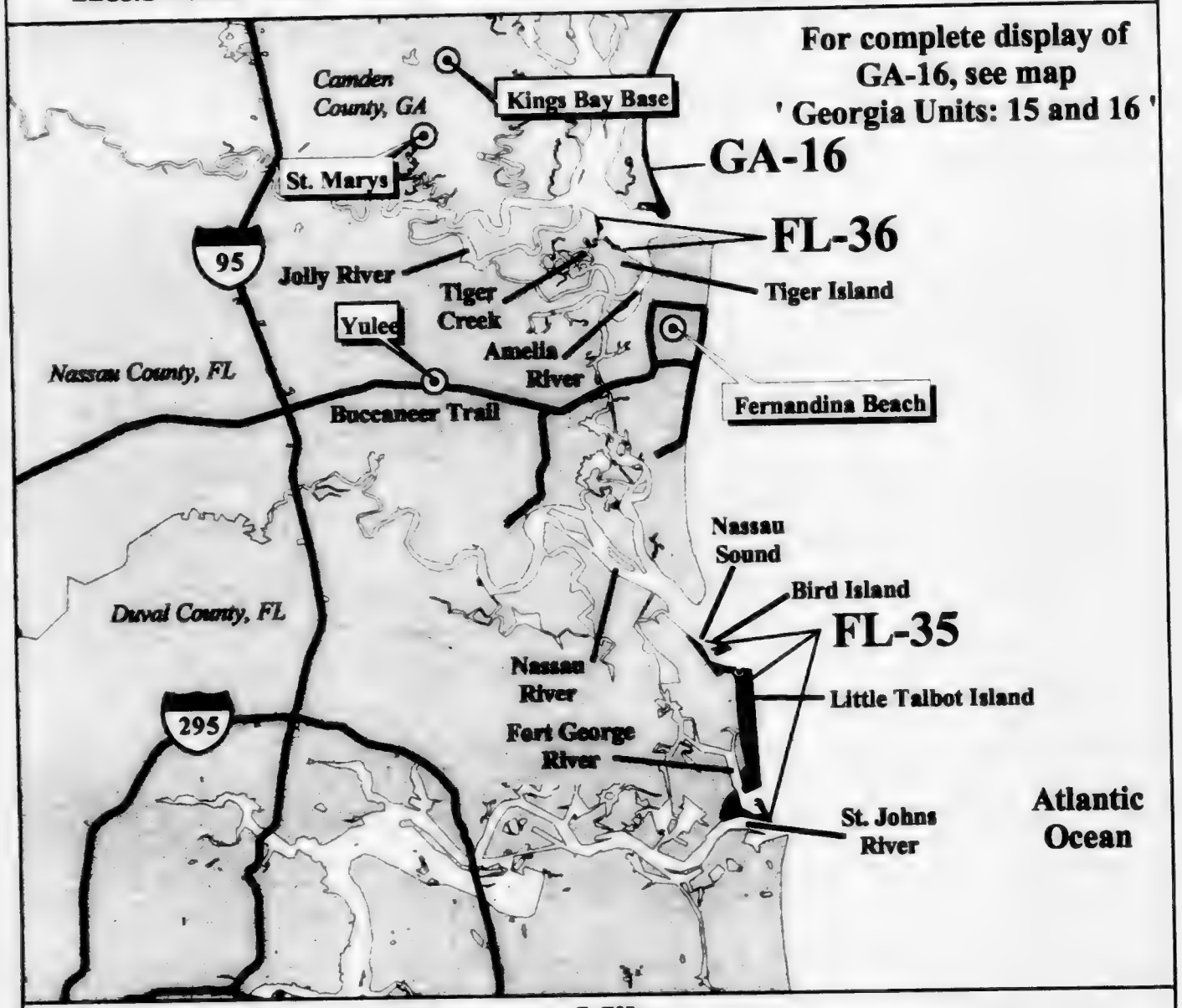

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Florida Units: 35 and 36

Alabama (Maps were digitized using 1992 DOQQs)

Unit AL–1: Isle Aux Herbes. 227 ha (561 ac) in Mobile County

This unit includes the entire Isle Aux Herbes island where primary constituent elements occur to MLLW and is State-owned.

Unit AL–2: Dauphin, Little Dauphin, and Pelican Islands. 880 ha (2,174 ac) in Mobile County

This unit includes all of Dauphin Island where primary constituent elements occur from St. Stephens Street approximately 17.6 km (10.9 mi) west to the western tip of the island to MLLW and all of Little Dauphin and Pelican Islands to MLLW. The area is mostly privately owned but includes State and Federal lands.

Unit AL–3: Fort Morgan. 67 ha (166 ac) in Baldwin County

This area includes Mobile Bay and Gulf of Mexico shorelines within Bon Secour National Wildlife Refuge, Fort Morgan Unit. This unit extends from the west side of the pier on the northwest point of the peninsula, following the shoreline approximately 2.8 km (1.74 mi) southwest around the tip of the peninsula, then east to the terminus of the beach access road and is bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The area is State-owned but is leased by the Federal Government.

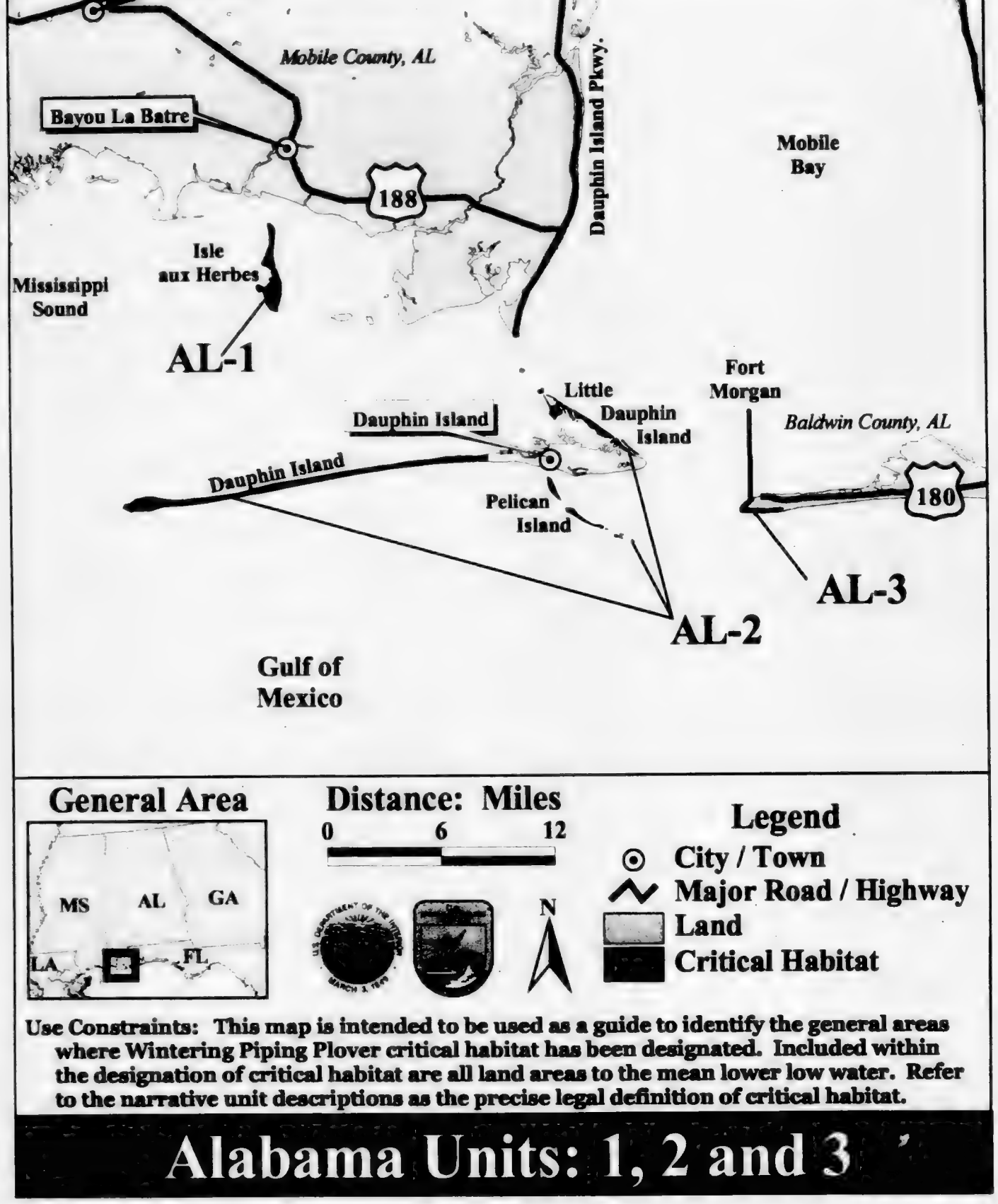

BILLING CODE 4310-55-C

Mississippi (Maps were digitized using 1992 and 1997 DOQQs)

Unit MS–1: Lakeshore through Bay St. Louis. 41 ha (101 ac) in Hancock County

This unit extends from the north side of Bryan Bayou outlet and includes the shore of the Mississippi Sound following the shoreline northeast approximately 15.0 km (9.3 mi) and ending at the southeast side of the Bay Waveland Yacht Club. The landward boundary of this unit follows the Gulf side of South and North Beach Boulevard and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–2: Henderson Point. 34 ha (84 ac) in Harrison County

This unit extends from 0.2 km (0.12 mi) west of the intersection of 3rd Avenue and Front Street and includes the shore of the Mississippi Sound following the shoreline northeast approximately 4.4 km (2.7 mi) to the west side of Pass Christian Harbor. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–3: Pass Christian. 77 ha (190 ac) in Harrison County

This unit extends from the east side of Pass Christian Harbor and includes the shore of the Mississippi Sound following the shoreline northeast approximately 10.5 km (6.5 mi) to the west side of Long Beach Pier and Harbor. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–4: Long Beach. 38 ha (94 ac) in Harrison County

This unit extends from the east side of Long Beach Pier and Harbor and includes the shore of the Mississippi Sound following the shoreline northeast approximately 4.4 km (2.7 mi) to the west side of Gulfport Harbor. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–5: Gulfport. 39 ha (96 ac) in Harrison County

This unit extends from the east side of Gulfport Harbor and includes the shore of the Mississippi Sound following the shoreline northeast approximately 4.8 km (3.0 mi) to the west side of the groin at the southern terminus of Courthouse Road, Mississippi City, MS. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–6: Mississippi City. 62 ha (153 ac) in Harrison County

This unit extends from the east side of the groin at the southern terminus of Courthouse Road, Mississippi City, MS, and includes the shore of the Mississippi Sound following the shoreline northeast approximately 7.9 km (4.9 mi) to the west side of President Casino. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–10: Ocean Springs West. 11 ha (27 ac) in Jackson County

This unit extends from U.S. 90 and includes the shore of Biloxi Bay following the shoreline southeast approximately 1.9 km (1.2 mi) to the Ocean Springs Harbor inlet. The landward boundary of this unit follows the Bay side of Front Beach Drive and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–11: Ocean Springs East. 7 ha (17 ac) in Jackson County

This unit extends from the east side of Weeks Bayou and includes the shore of Biloxi Bay following the shoreline southeast approximately 1.8 km (1.1 mi) to Halstead Bayou. The landward boundary of this unit follows the Bay side of East Beach Drive and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–12: Deer Island. 194 ha (479 ac) in Harrison County

This unit includes all of Deer Island, where primary constituent elements occur to the MLWW. Deer Island is privately owned.

Unit MS–13: Round Island. 27 ha (67 ac) in Jackson County

This unit includes all of Round Island to the MLWW and is privately owned

Unit MS–14: Mississippi Barrier Islands. 3,168 ha (7,828 ac) in Harrison and Jackson Counties.

This unit includes all of Cat, East and West Ship, Horn, Spoil, and Petit Bois Islands where primary constituent elements occur to MLLW. Cat Island is privately owned, and the remaining islands are part of the Gulf Islands National Seashore.

Unit MS–15: North and South Rigolets. 159 ha (393 ac) in Jackson County, MS, and 12 ha (30 ac) in Mobile County, AL

This unit extends from the southwestern tip of South Rigolets Island and includes the shore of Point Aux Chenes Bay, the Mississippi Sound, and Grand Bay following the shoreline east around the western tip, then north to the south side of South Rigolets Bayou; then from the north side of South Rigolets Bayou (the southeastern corner of North Rigolets Island) north to the northeastern most point of North Rigolets Island. This shoreline is bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. Approximately 4.4 km (2.7 mi) are in Mississippi and 2.9 km (1.8 mi) are in Alabama. Almost half the Mississippi shoreline length is in the Grand Bay National Wildlife Refuge.

BILLING CODE 4310–55–P

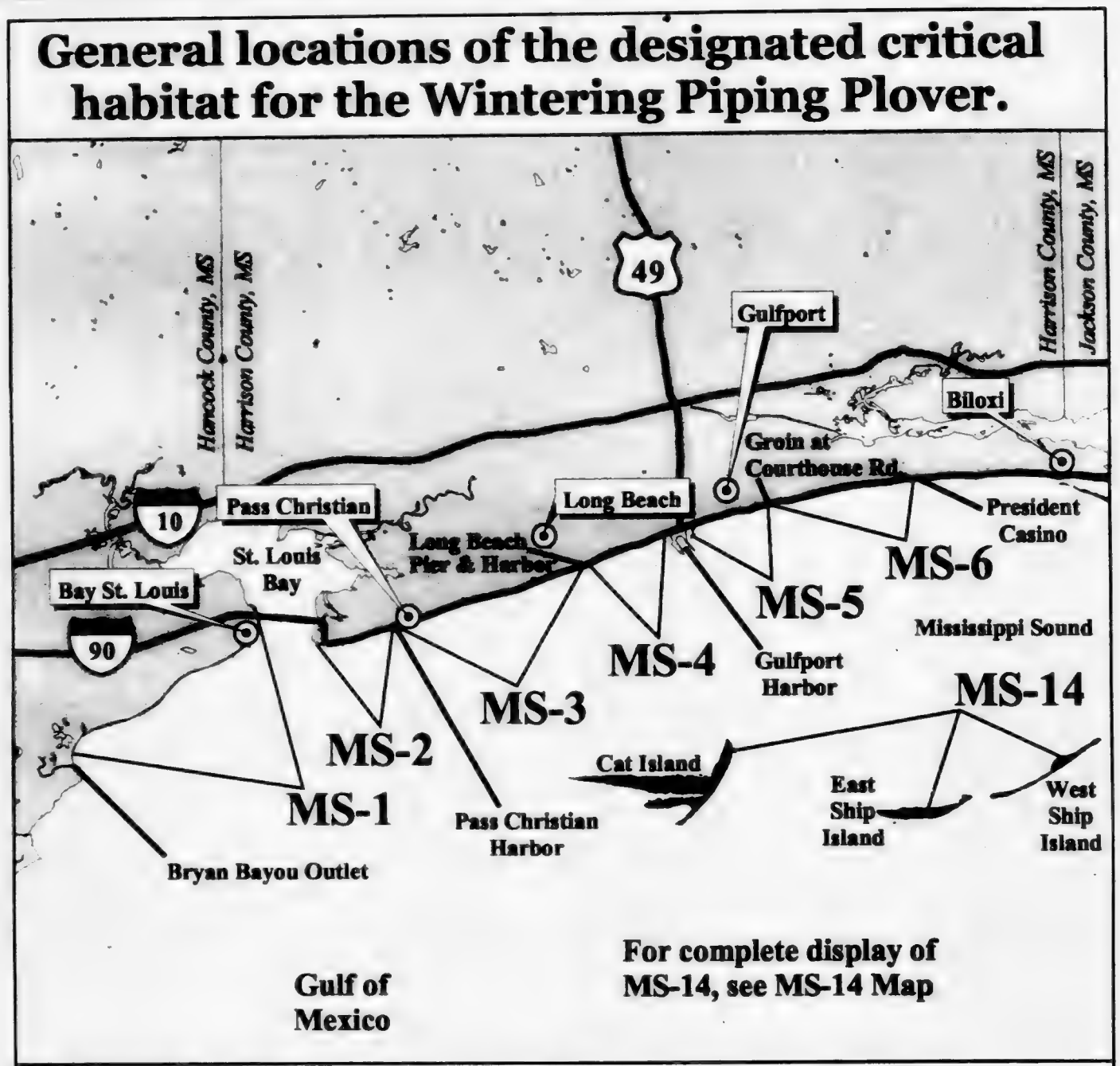

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Mississippi Units: 1, 2, 3, 4, 5 and 6

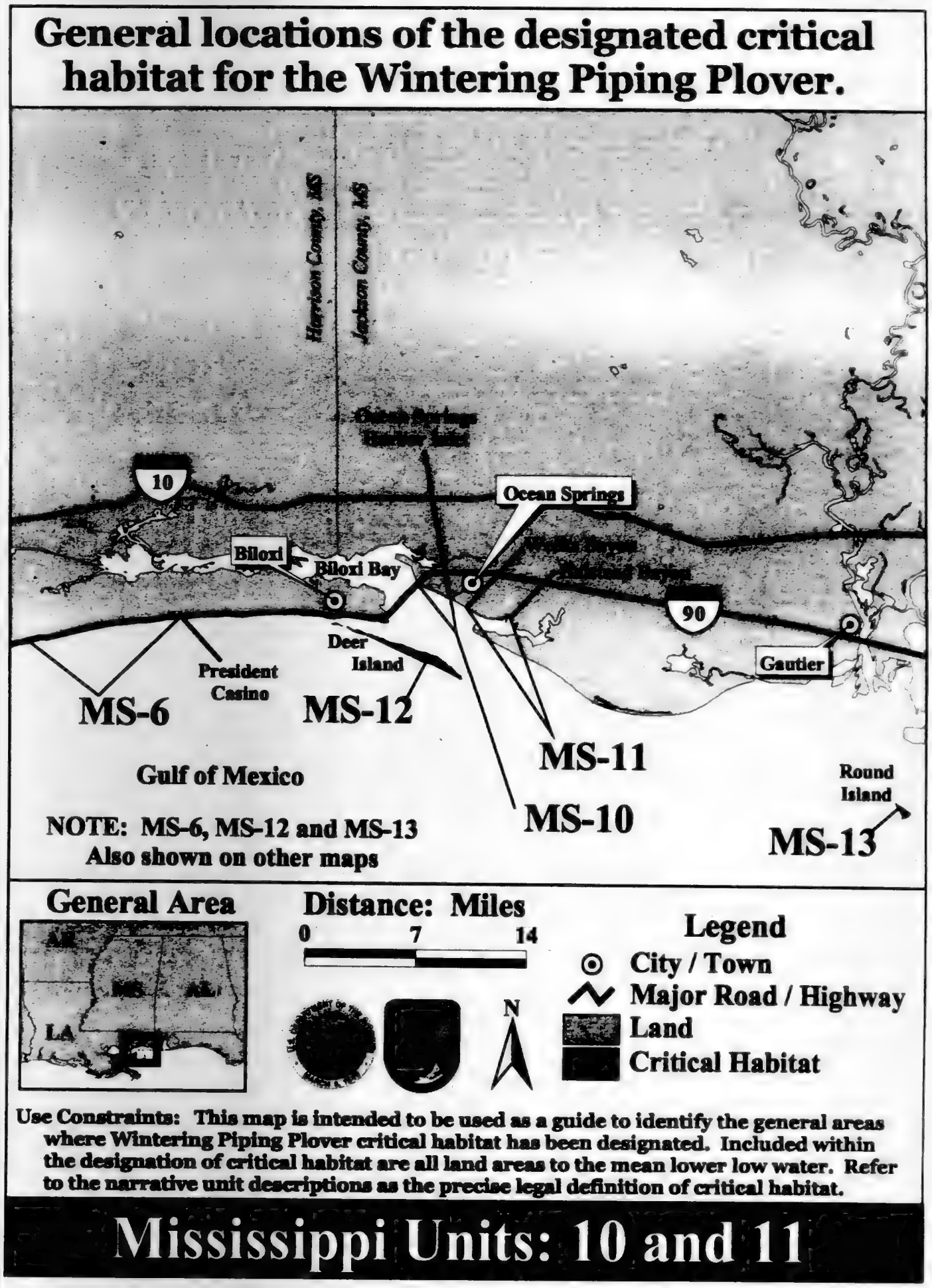
General locations of the designated critical habitat for the Wintering Piping Plover.
Harrison County, MS
Jackson County, MS
10
Biloxi
Biloxi Bay
Ocean Springs
90
Gautier
President Casino
Deer Island
MS-6
MS-12
MS-11
MS-10
MS-13
Round Island
Gulf of Mexico
NOTE: MS-6, MS-12 and MS-13 Also shown on other maps
General Area
AR
MS
AL
LA
Distance: Miles
0
7
14
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
Mississippi Units: 10 and 11

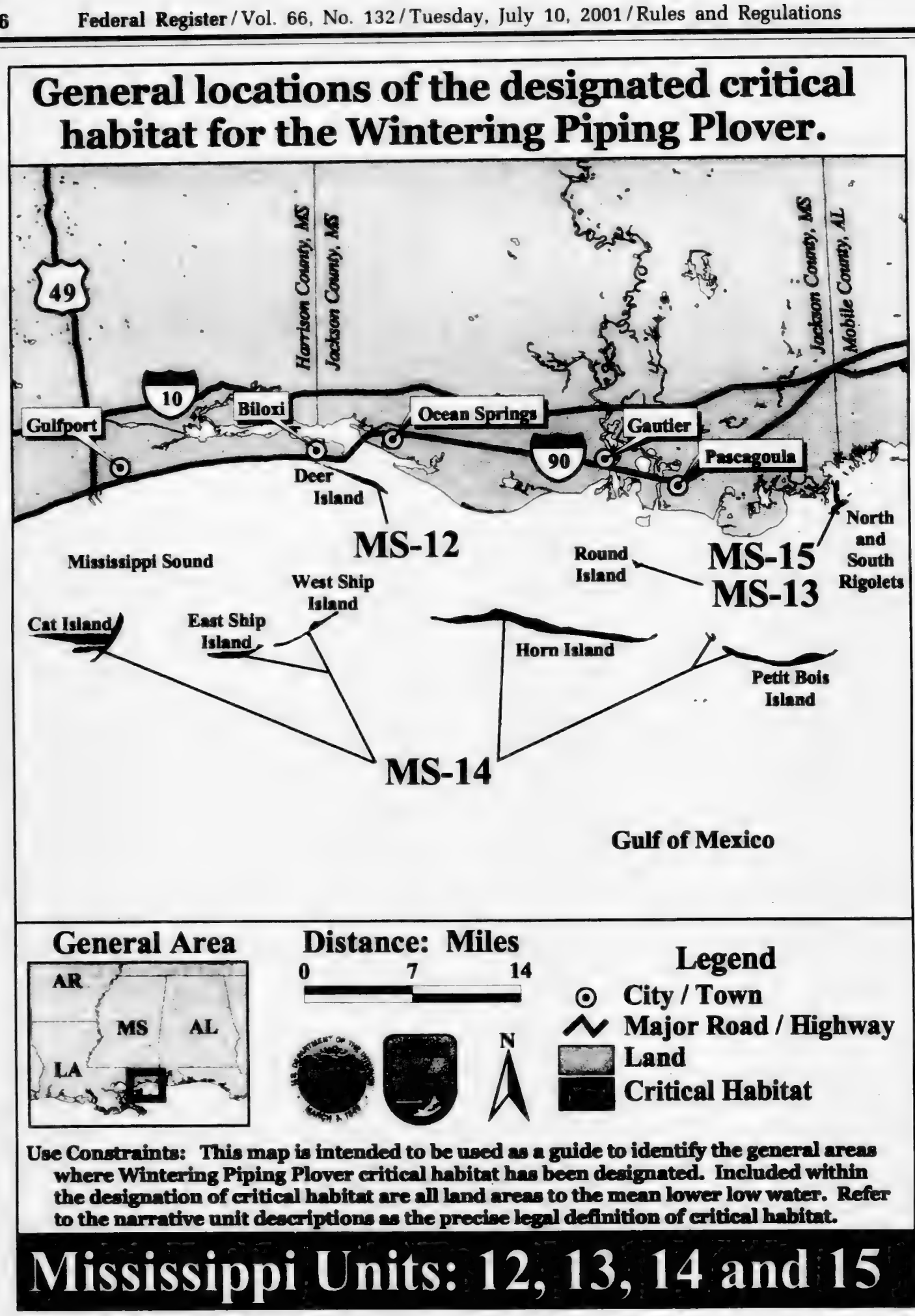

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Mississippi Units: 12, 13, 14 and 15

BILLING CODE 4310–55–C

Louisiana (Maps were digitized using 1998 DOQQs)

Unit LA–1: Texas/Louisiana border to Cheniere au Tigre. 2,650 ha (6,548 ac) in Cameron and Vermilion Parishes

This unit extends from the east side of Sabine Pass (Texas/Louisiana border) and includes the shore of the Gulf of Mexico from the MLLW following the shoreline east 25.7 km (16.0 mi) to the west end of Constance Beach [approximately 2 km (1.2 mi) east of the intersection of Parish Road 528 and the beach]; it extends from the east end of the town of Holly Beach [0.25 km (0.16 mi) east of the intersection of Baritarick Boulevard and the beach] following the shoreline approximately 97 km (60.3 mi) east to the eastern boundary line of Rockefeller Wildlife Refuge [3.4 km (2.1 mi) east of Rollover Bayou]; and it extends from the east side of Freshwater Bayou Canal following the shoreline east for approximately 15 km (9.3 mi) to 1.3 km (0.81 mi) east of where the boundary of Paul J. Rainey Wildlife Sanctuary (National Audubon Society) meets the shoreline. All three sections of this unit include the land from the seaward boundary of MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The shoreline in this unit is both state and privately owned.

Unit LA–2: Atchafalaya River Delta. 921 ha (2,276 ac) in St. Mary Parish, LA

This unit is located in the eastern portion of the State-owned Atchafalaya Delta Wildlife Management Area (WMA) and includes all exposed land and islands where primary constituent elements occur east and southeast of the main navigation channel of the Atchafalaya River to the MLLW. The islands located south and southeast of the deltaic splay, Donna, T–Pat, and Skimmer Islands and the un-named bird island, are also included in this unit. This unit includes the entire islands where primary constituent elements occur to the MLLW.

Unit LA–3: Point Au Fer Island. 195 ha (482 ac) in Terrebonne Parish.

This unit includes the entire small island at the northwest tip of Point Au Fer Island to MLLW, then extends from the northwest tip of Point Au Fer Island following the shoreline southeast approximately 7.7 km (4.8 mi) to the point where the un-named oil and gas canal extending southeast from Locust Bayou meets the shoreline [0.8 km (0.5 mi) southeast from Locust Bayou]. This shoreline is bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. This entire unit is privately owned.

Unit LA–4: Isles Dernieres. 795 ha (1,964 ac) in Terrebonne Parish

This unit includes the State-owned Isles Dernieres chain, including Raccoon, Whiskey, Trinity and East Islands. This unit includes the entire islands where primary constituent elements occur to the MLLW.

Unit LA–5: Timbalier Island to East Grand Terre Island. 2,321 ha (5,735 ac) in Terrebonne, Lafourche, Jefferson, and Plaquemines Parishes

This unit includes: all of Timbalier Island where primary constituent elements occur to the MLLW, all of Belle Pass West [the "peninsula" extending north/northwest approximately 4.8 km (3.0 mi) from the west side of Belle Pass] where primary constituent elements occur to MLLW; the Gulf shoreline extending approximately 11 km (6.8 mi) east from the east side of Belle Pass bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur; all of Elmers Island peninsula where primary constituent elements occur to MLLW and the Gulf shoreline from Elmers Island to approximately 0.9 km (0.56 mi) west of Bayou Thunder Von Tranc bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur; the Gulf shoreline of Grand Isle from the Gulf side of the hurricane protection levee to MLLW; and all of East Grand Terre Island where primary constituent elements occur to the MLLW.

Unit LA–6: Mississippi River Delta. 105 ha (259 ac) in Plaquemines Parish, LA

This unit is part of the State-owned Pass a Loutre Wildlife Management Area and includes un-named sand (spoil) islands off South Pass of the Mississippi River near Port Eads. The entire islands to MLLW are included in this unit.

Unit LA–7: Breton Islands and Chandeleur Island Chain. 3,116 ha (7,700 ac) in Plaquemines and St. Bernard Parishes, LA

This unit includes Breton, Grand Gosier, and Curlew Islands and the Chandeleur Island chain. Those islands are part of the Breton National Wildlife Refuge or are state owned. The entire islands where primary constituent elements occur to MLLW are included in this unit.

BILLING CODE 4310–55–P

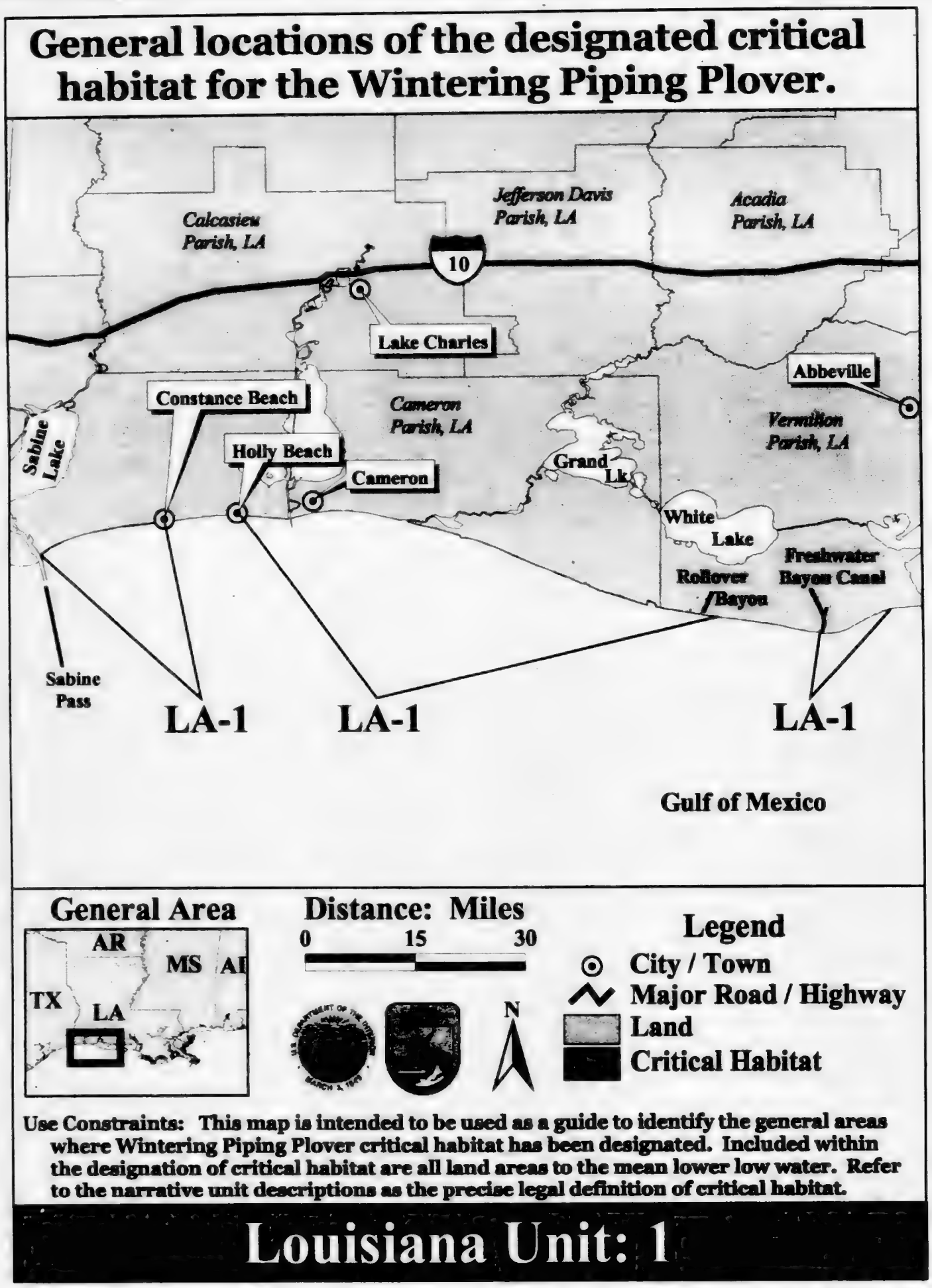

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Louisiana Unit: 1

General locations of the designated critical habitat for the Wintering Piping Plover.

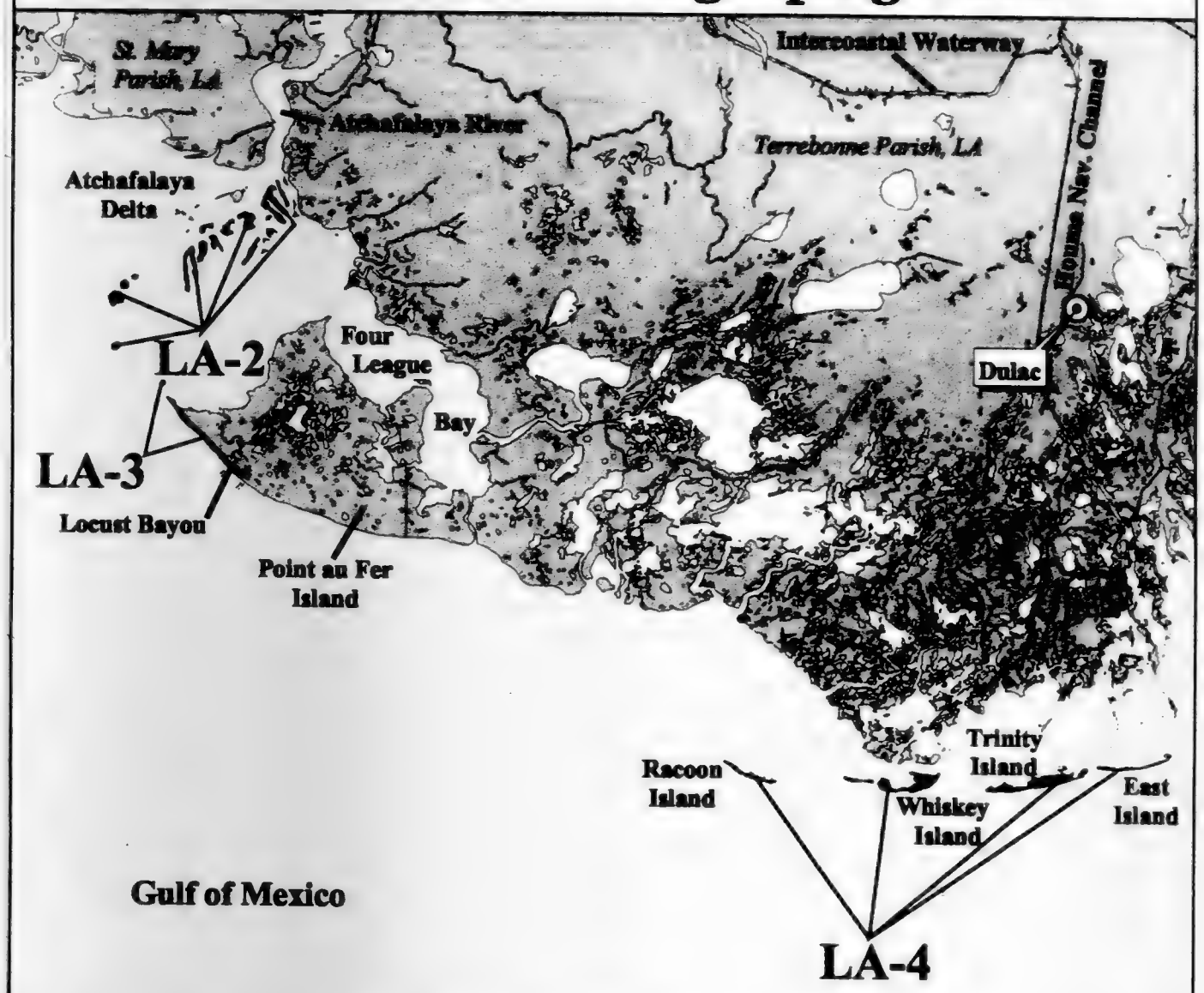

General Area

Distance: Miles

0 7 14

N

Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Louisiana Units: 2, 3, and 4

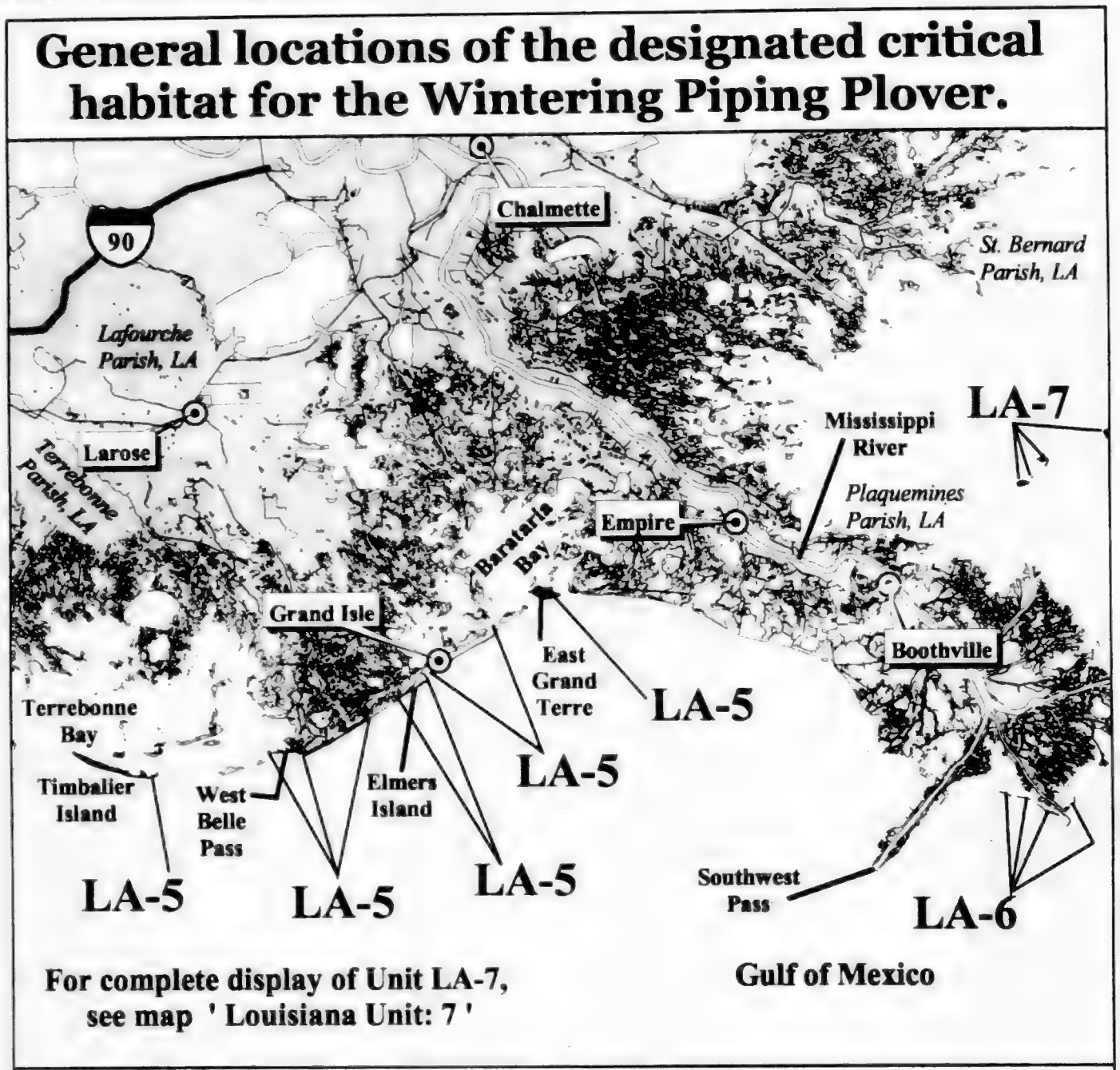
General locations of the designated critical habitat for the Wintering Piping Plover.
Chalmette
90
St. Bernard Parish, LA
Lafourche Parish, LA
LA-7
Mississippi River
Larose
Terrebonne Parish, LA
Plaquemines Parish, LA
Empire
Barataria Bay
Grand Isle
Boothville
East Grand Terre
LA-5
Terrebonne Bay
Timbalier Island
West Belle Pass
Elmers Island
LA-5
LA-5
LA-5
LA-5
Southwest Pass
LA-6
For complete display of Unit LA-7, see map ' Louisiana Unit: 7 '
Gulf of Mexico
General Area
AR
MS
AL
TX
LA
Distance: Miles
0
10
20
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
Louisiana Units: 5 and 6

General locations of the designated critical habitat for the Wintering Piping Plover.

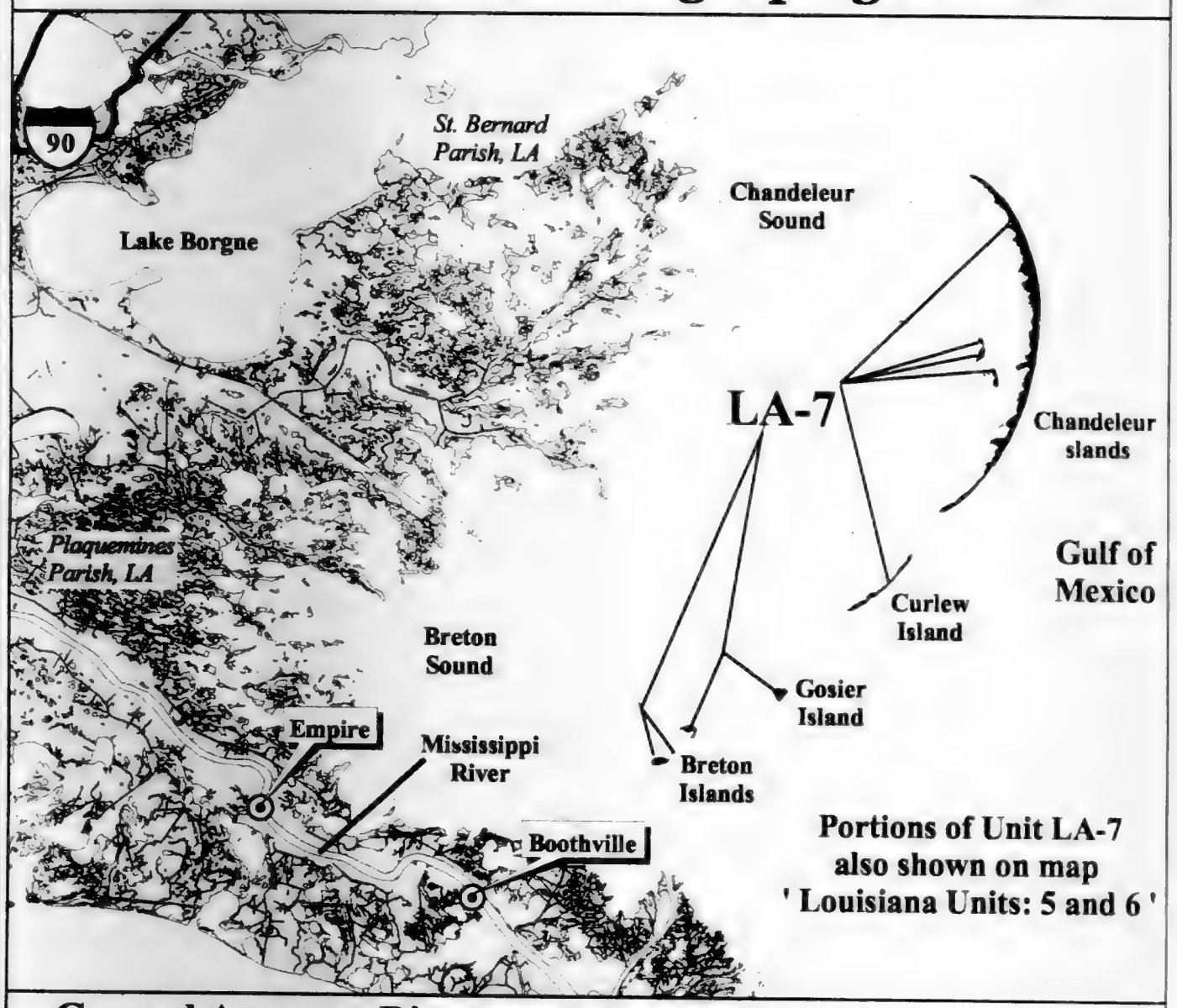

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Louisiana Unit: 7

BILLING CODE 4310–55–C

Texas (Maps were digitized using 1995 and 1996 DOQQs and National Oceanic and Atmospheric Administration's (NOAA) Medium Resolution Digital Vector Shoreline)

Unit TX–1: South Bay and Boca Chica. 2,920 ha (7,217 ac) in Cameron County

The boundaries of the unit are: starting at the Loma Ochoa, following the Brownsville Ship Channel to the northeast out into the Gulf of Mexico to MLLW, then south along a line describing MLLW to the mouth of the Rio Grande, proceeding up the Rio Grande to Loma de Las Vacas, then from that point along a straight line north to Loma Ochoa. The unit does not include densely vegetated habitat within those boundaries. It includes wind tidal flats that are infrequently inundated by seasonal winds, and includes the tidal flats area known as South Bay. Beaches within the unit reach from the mouth of the Rio Grande northward to Brazos Santiago Pass, south of South Padre Island. The southern and western boundaries follow the change in habitat from wind tidal flat, preferred by the piping plover, to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include areas used for roosting by the piping plover. Portions of this unit are owned and managed by the Lower Rio Grande Valley National Wildlife Refuge, the South Bay Coastal Preserve, Boca Chica State Park, and private citizens.

Unit TX–2: Queen Isabella Causeway. 2 ha (6 ac) in Cameron County

The area extends along the Laguna Madre west of the city of South Padre Island. The southern boundary is the Queen Isabella State Fishing Pier, and the northern boundary is at the shoreline due west of the end of Sunny Isles Street. The Queen Isabella causeway bisects this shore but is not included within critical habitat. The eastern boundary is where developed areas and/or dense vegetation begins, and the western boundary is MLLW. This unit contains lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–3: Padre Island. 10,924 ha (26,983 ac) in Cameron, Willacy, Kenedy, and Kleberg Counties

This unit consists of four subunits:

(1) The southern boundary of this subunit is at Andy Bowie County Park in South Padre Island, and the northern boundary is the south boundary of PAIS. The eastern boundary is MLLW in the Gulf of Mexico, and the western boundary is MLLW in the Laguna Madre. Areas of dense vegetation are not included in critical habitat. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

(2) The boundaries of this subunit extend from Rincon de la Soledad to the southeast point of Mesquite Rincon, continue from that point west to the Laguna Madre shoreline at its intersection with the King Ranch boundary, and from that point to Rincon de la Soledad. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

(3) This subunit is within the Laguna Madre and extends from the western boundary of PAIS to the Gulf Intercoastal Waterway. Its northern boundary is a line extending westward from the northwest corner of PAIS, and its southern boundary is a line extending westward from the southern boundary of PAIS. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

(4) This subunit extends along the gulf shore of Padre Island from the northern boundary of PIAS at the shore, north to the Nueces-Kleberg county line. The inland boundary is where dense vegetation begins, and the seaward boundary is MLLW. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Portions of this unit are owned and managed by TGLO, and private citizens with a significant portion being owned and managed by The Nature Conservancy on South Padre Island.

Unit TX–4: Lower Laguna Madre Mainland. 4,980 ha (12,307 ac) in Cameron and Willacy Counties

The southern boundary is an east-west line at the northern tip of Barclay Island, and the southern boundary is an east-west line 0.9 km (0.5 mi) south of the boundary of the City of Port Mansfield; the western boundary is the line where dense vegetation begins, and the eastern boundary is the Gulf Intercoastal Waterway. The unit includes bayside flats that are exposed during low tide regimes and wind tidal flats that are infrequently inundated by seasonal winds. Portions of this unit are within the Laguna Atascosa National Wildlife Refuge, are TGLO-owned, or are privately owned. Beaches and interior wetlands may or may not be used each year because of varying water levels, storm events, or changes in beach characteristics and tidal regime. Water stages vary in this area with meteorological conditions. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover.

Unit TX–5: Upper Laguna Madre. 436 ha (1,076 ac) in Kleberg County

The southern boundary is the northern boundary of PAIS, and the northern boundary is the Kleberg/Nueces County line. The eastern boundary is the line where dense vegetation begins, and the western boundary is MLLW. This unit includes a series of small flats along the bayside of Padre Island in the Upper Laguna Madre. It includes wind tidal flats and sparsely-vegtated upland areas used for roosting by the piping plover. These boundaries receive heavy use by large numbers of shorebirds, including piping plovers. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, and include upland areas used for roosting by the piping plover.

Unit TX–6: Mollie Beattie Coastal Habitat. 241 ha (596 ac) in Nueces County

This unit will be described as two subunits:

(1) Subunit is bounded on the north by Beach Access Road 3, on the east by the inland boundary of critical habitat Unit TX–7, on the south by Zahn road, and on the west by Zahn Road.

(2) The subunit is bounded on the north by Corpus Christi Pass, on the east by US 361, on the south by the north side of Packery Channel, and on the west by the Gulf Intercoastal Watersay.

Some of the uplands are privately owned and the remaining are owned and managed by the TGLO. This unit includes two hurricane washover passes known as Newport and Corpus Christi Passes, and wind tidal flats that are infrequently inundated by seasonal winds. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover.

Unit TX–7: Newport Pass/Corpus Christi Pass Beach. 42 ha (104 ac) in Nueces County

This unit is along a stretch of Gulf beach 8.5 km (5.3 mi) long. It is

bounded on the north by Fish Pass, on the east by MLLW, on the south by St. Bartholomew Avenue, and on the west by a line marking the beginning of dense vegetation. Portions of the unit are managed by the Texas Parks and Wildlife Department as part of Mustang Island State Park. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–8: Mustang Island Beach. 97 ha (239 ac) in Nueces County

This is a stretch of Gulf beach extending from Fish Pass to the Horace Caldwell Pier on Holiday Beach within the City of Port Aransas, TX. The landward boundary is beginning of dense vegetation, and the gulf-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–9: Fish Pass Lagoons. 130 ha (323 ac) in Nueces County

This unit encompasses flats facing Corpus Christi Bay that extend 1.0 km (0.6 mi) on either side of Fish Pass. The inland boundary is the line indicating beginning of dense vegetation, and the bayside boundary is MLLW. It includes interior lagoons and wind tidal flats that are infrequently inundated by seasonal winds. This unit includes upland areas used for roosting by the piping plover.

Unit TX–10: Shamrock Island and Adjacent Mustang Island Flats. 87 ha (216 ac) in Nueces County

This unit encompasses Shamrock Island, an unnamed small sand flat to the north of Wilson's Cut, and a lagoon complex that extends 3.5 km (2.2 mi) to the southwest of Wilson's Cut. Critical habitat includes land to the line marking the beginning of dense vegetation down to MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–11: Blind Oso. 2 ha (5 ac) in Nueces County

This unit is the flats of the Blind Oso, part of Oso Bay, from Hans and Pat Suter Wildlife Refuge (owned and managed by the City of Corpus Christi) northeast to Corpus Christi Bay and then southeast along the edge of Texas A&M University—Corpus Christi. The landward boundaries extend to where densely vegetated habitat, not used by the piping plover, begins, and extends out from the landward boundaries to MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–12: Adjacent to Naval Air Station-Corpus Christi. 2 ha (6 ac) in Nueces County

This unit is along the shore of Oso Bay on flats bordered by Naval Air Station-Corpus Christi and Texas Spur 3 to a point 2.5 km (1.5 mi) south of the bridge between Ward Island and the Naval Air Station. The landward boundary is the line where dense vegetation begins, and the boundary in the Bay is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–13: Sunset Lake. 176 ha (435 ac) in San Patricio County

This unit is triangle shaped, with State Highway 181 as the northwest boundary, and the limits of the City of Portland as the northeast boundary. The shore on Corpus Christi Bay is the third side of the triangle, with the actual boundary being MLLW off this shore. This unit is a large basin with a series of tidal ponds, sand spits and wind tidal flats. This unit is owned and managed by the City of Portland within a system of city parks. Some of the described area falls within the jurisdiction of the TGLO. It includes two city park units referred to as Indian Point and Sunset Lake. Much of the unit is a recent acquisition by the city, and management considerations for the park include the area's importance as a site for wintering and resident shorebirds. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–14: East Flats. 194 ha (481 ac) in Nueces County

This unit is bordered on the north by dredge placement areas bordering the Corpus Christi Ship Channel, on the west by MLLW in Corpus Christi Bay, on the east by the limits of the City of Port Aransas, and on the south by an east-west line at the sourthern-most point of Pelone Island. It is also bisected by a navigation channel, which is not included in the critical habitat. A portion of this unit at the west end falls within State-owned (TGLO) intertidal lands. The remainder of the unit is privately owned. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, including upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–15: North Pass. 447 ha (1,106 ac) in Aransas County

The unit is bounded on north by North Pass, on the northwest by the line indicating MLLW, on the southwest by the northeast side of Lydia Ann Island, on the south by a line running due east from the northeast side of Lydia Ann Island, and on the southeast by the landward boundary of Unit. This unit is a remnant of a hurricane washover on the privately owned San Jose Island. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, including upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–16: San Jose Beach. 187 ha (463 ac) in Aransas County

This unit occupies a 33 km (20 mi) stretch of beach from the North Jetty of Aransas Pass at the south, to the confluence of Vinson Slough and Cedar Bayou at the north end of San Jose Island. The inland boundary is the line indicating the beginning of densely vegetated habitat, and the gulf-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–17: Allyn's Bight. 5 ha (14 ac) in Aransas County

This unit includes shoreline of San Jose Island on Aransas Bay from Allyn's Bight to Blind Pass, the channel between San Jose Island and Mud Island. The inland boundary is where the line of dense vegetation begins, and the bay-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–18: Cedar Bayou/Vinson Slough. 3,051 ha (7,539 ac) in Aransas County

Beginning at the confluence of Vinson Slough and Cedar Bayou, this unit's boundary follows the shore of Spalding Cove to Long Reef, then continues along a line extending (2.5 mi) southwest of Long Reef to the shore of San Jose Island, then along the shore of the island to the landward boundary of Unit TX–16. The unit boundaries extend landward to the line indicating the beginning of dense vegetation. This unit is a remnant of a hurricane washover area, and includes the highly dynamic area of Cedar Bayou, the pass that separates San Jose Island and Matagorda Island. This area includes a small

section of Matagorda Island National Wildlife Refuge with much of the remaining areas occurring on the privately owned island of San Jose. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–19: Matagorda Island Beach. 395 ha (976 ac) in Calhoun County

This stretch of beach along the Gulf of Mexico on Matagorda Island extends a distance of 60 km (36 mi) from Cedar Bayou on the southwest (where it abuts TX–18), to Pass Cavallo on the northeast. The inland boundary is the line indicating the beginning of dense vegetation, and the gulf-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds. The unit falls entirely within the boundary of the Matagorda Island National Wildlife Refuge.

Unit TX–20: Ayers Point. 397 ha (982 ac) in Calhoun County

This unit is an unnamed lake on Matagorda Island between Shell Reef Bayou and Big Brundrett Lake, with San Antonio Bay to the north. The unit boundary extends landward from the lake to the line where dense vegetation begins and where the constituent elements no longer occur and includes upland areas used for roosting by the piping plover. This unit includes marsh and flats at Ayers Point on Matagorda Island National Wildlife Refuge. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–21: Panther Point to Pringle Lake. 863 ha (2,133 ac) in Calhoun County

This unit represents a narrow band of bayside habitats on Matagorda Island from Panther Point to the northeast end of Pringle Lake. The landward boundary is the line indicating where dense vegetation begins, and the bayward boundary is MLLW. The unit is entirely within Matagorda Island National Wildlife Refuge. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–22: Decros Point. 450 ha (1,114 ac) at the Matagorda/Calhoun County Line

This unit includes about 7.0 km (4.3 mi) of beach habitat around the island at the western tip of Matagorda Peninsula between the natural opening to Matagorda Bay and the Matagorda Ship Channel. The upland boundary is the line where dense vegetation begins, and the seaward boundary is MLLW. The adjacent upland is privately owned. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–23: West Matagorda Peninsula Beach. 311 ha (769 ac) of Shoreline in Matagorda County

This unit extends 40 km (24 mi) along the Gulf of Mexico from the jetties at the Matagorda Ship Channel to the old Colorado River channel. The inland boundary is the line indicating where dense vegetation begins, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–24: West Matagorda Bay/ Western Peninsula Flats. 756 ha (1,868 ac) in Matagorda County

This unit extends along the bayside of Matagorda Peninsula from 7.5 southwest of Greens Bayou to 2.5 km (1.6 mi) northwest of Greens Bayou. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–25: West Matagorda Bay/ Eastern Peninsula Flats. 232 ha (575 ac) in Matagorda County

This unit follows the bayside of Matagorda Peninsula from Maverick Slough southwest for 5 km (3 mi). The unit begins at Maverick Slough to the northeast and extends 5 km (3 mi) to the southwest, enclosing a series of flats along Matagorda Bay. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–26: Colorado River Diversion Delta. 5 ha (13 ac) in Matagorda County

This unit follows the shore of the extreme eastern northeast corner of West Matagorda Bay from Culver Cut to Dog Island Reef. The southeastern tidally emergent portion of Dog Island Reef is included within the unit. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. The upland areas includes upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–27: East Matagorda Bay/ Matagorda Peninsula Beach West. 295 (728 ac) of shoreline in Matagorda County

This unit extends along Gulf beach on the Matagorda Peninsula from the mouth of the Colorado River northeast along the peninsula 23 km (14 mi) to a point on the beach opposite Eidelbach Flats. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–28: East Matagorda Bay/ Matagorda Peninsula Beach East. 129 ha (321 ac) in Matagorda County

This unit extends along the Gulf beach on the northeast end of Matagorda Peninsula from a point 0.8 km (0.5 mi) southwest of FM 457 southwest 10 km (6 mi.) to the southwest side of Brown Cedar Cut. This unit abuts with Unit TX–29 to the north. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–29: Brown Cedar Cut. 119 ha (294 ac) in Matagorda County

This unit extends 2 km (1.2 mi.) both southwest and northeast of the main channel of Brown Cedar Cut along the bayside of Matagorda Peninsula in East Matagorda Bay, and abuts unit TX–28 to the southeast. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. The eastern boundary of TX–29 follows the change in habitat from mud flats preferred by the piping plover, to slightly vegetated dune system adjacent to TX–28. This unit includes upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–30: Northeast Corner East Matagorda Bay. 120 ha (297 ac) in Matagorda County

This unit is bounded on the north by the Gulf Intercoastal Waterway, on the east by the northeast limit of Matagorda bay up the line where dense vegetation begins, on the south by the boundary of Unit TX–28, and on the west by MLLW. It is a system of flats associated with tidal channels. This unit includes upland areas used for roosting by the piping plover and lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–31: San Bernard NWR Beach. 166 ha (410 ac) in Matagorda and Brazoria Counties

This is a unit composed of Gulf beach, 8.0 km (5.0 mi), and extends from the mouth of the San Bernard River to a point along the beach 14.0 km (8.7 mi) to the southwest. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–32: Gulf Beach Between Brazos and San Bernard Rivers. 108 ha (269 ac) of shoreline in Brazoria County

This unit is a segment of Gulf beach between the Brazos River and the San Bernard River. This unit borders an area known as Wolf Island. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–33: Bryan Beach and Adjacent Beach. 157 ha (388 ac) in Brazoria County

The boundaries enclose a length of Gulf beach between the mouth of the Brazos River and FM 1495. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. A portion of this area is owned and managed by the Texas Parks and Wildlife Department. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–34: San Luis Pass. 110 ha (272 ac) near the Brazoria/Galveston County line

This unit extends along the Gulf side of Galveston Island from San Luis Pass to the site of the former town of Red Fish Cove (USGS 1:24,000 map, San Luis Pass, Texas; 1963, photorevision 1974). The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. Approximately 57 percent of the unit includes flats in the floodtide delta that are State-owned and managed by the TGLO. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–35: Big Reef. 47 ha (117 ac) in Galveston County

This unit consists of beach and sand flats on the north, west, and east shore of Big Reef, down to MLLW. South Jetty is not included. The area is currently managed by the City of Galveston. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–36: Bolivar Flats. 160 ha (395 ac) in Galveston County

This unit extends from the jetties on the southwest end of the Bolivar Peninsula to a point on the Gulf beach 1 km (0.6 mi) north of Beacon Bayou. It includes 5.0 km (3 mi) of Gulf shoreline. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. The area is leased from TGLO by Houston Audubon Society and managed for its important avian resources. The upland areas are used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–37: Rollover Pass. 6 ha (16 ac) in Galveston County

This unit consists of Rollover Bay on the bayside of Bolivar Peninsula. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. It includes flats on State-owned land managed by the TGLO. This unit captures the intertidal complex of the bay, and is bounded by the towns of Gilchrist to the east and the Gulf beach of the Bolivar Peninsula to the south. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

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General locations of the designated critical habitat for the Wintering Piping Plover.

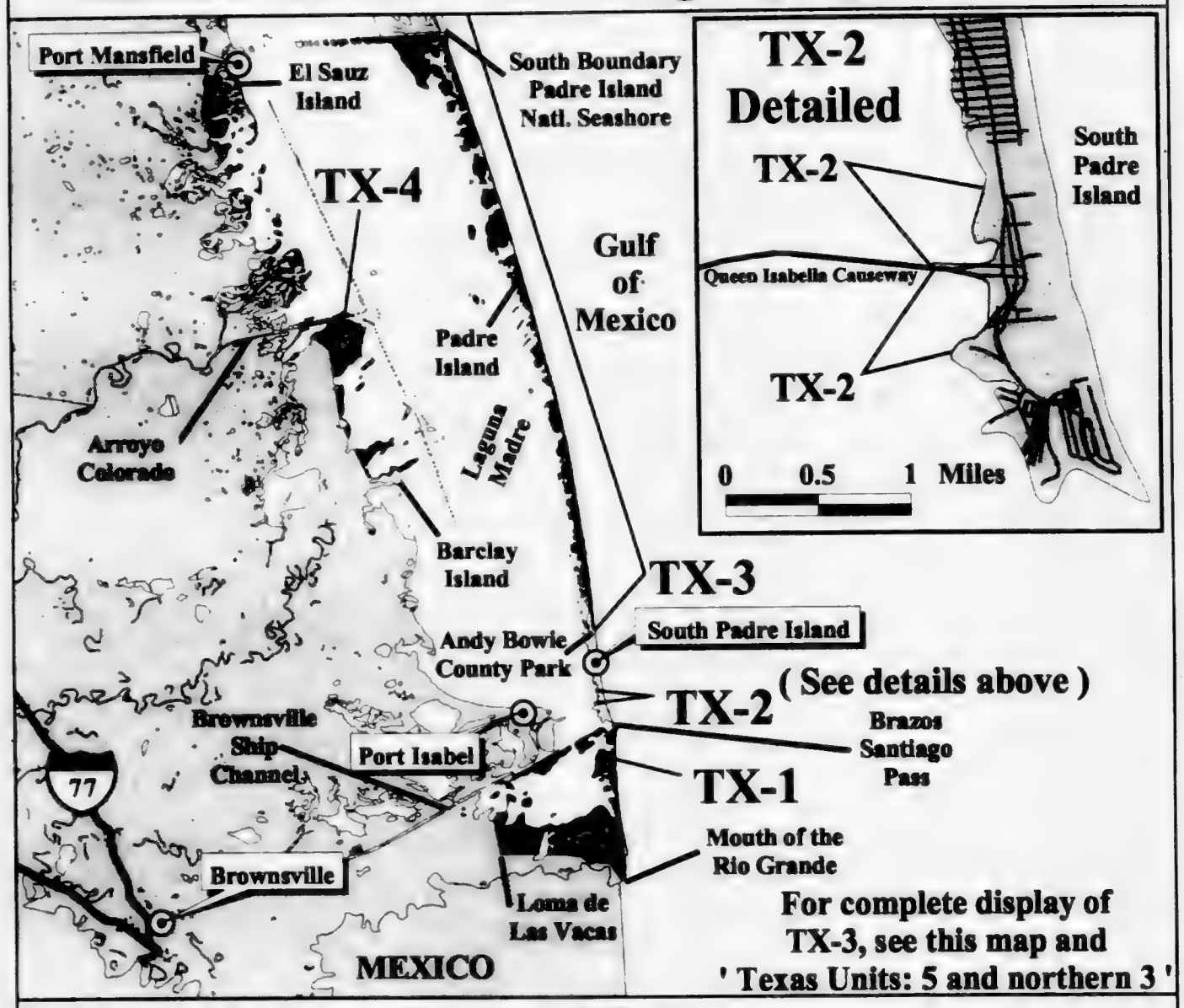

General Area

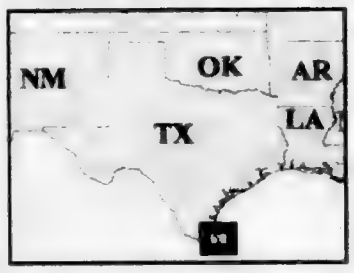

Distance: Miles

0 6 12 Miles

N

Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Texas Units: 1, 2, 4 and southern 3

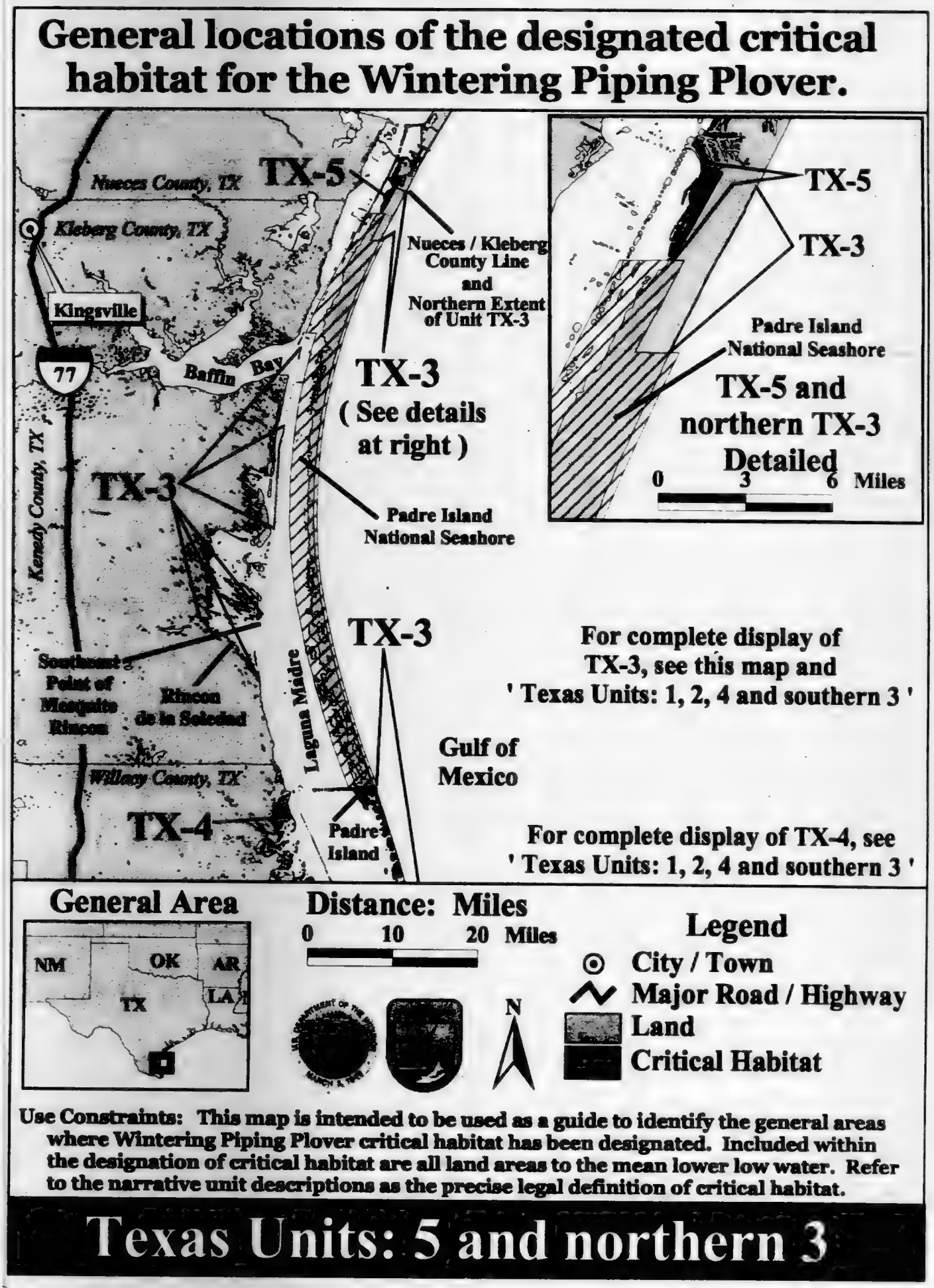
General locations of the designated critical habitat for the Wintering Piping Plover.
Nueces County, TX
TX-5
Kleberg County, TX
Kingsville
77
Baffin Bay
Kenedy County, TX
TX-3
Nueces / Kleberg County Line and Northern Extent of Unit TX-3
TX-3 (See details at right)
Padre Island National Seashore
TX-3
Southmost Point of Mesquite Rincon
Rincon de la Soledad
Laguna Madre
Willacy County, TX
TX-4
Padre Island
Gulf of Mexico
For complete display of TX-3, see this map and ' Texas Units: 1, 2, 4 and southern 3 '
For complete display of TX-4, see ' Texas Units: 1, 2, 4 and southern 3 '
TX-5
TX-3
Padre Island National Seashore
TX-5 and northern TX-3 Detailed
0 3 6 Miles
General Area
NM
OK
AR
TX
LA
Distance: Miles
0 10 20 Miles
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
Texas Units: 5 and northern 3

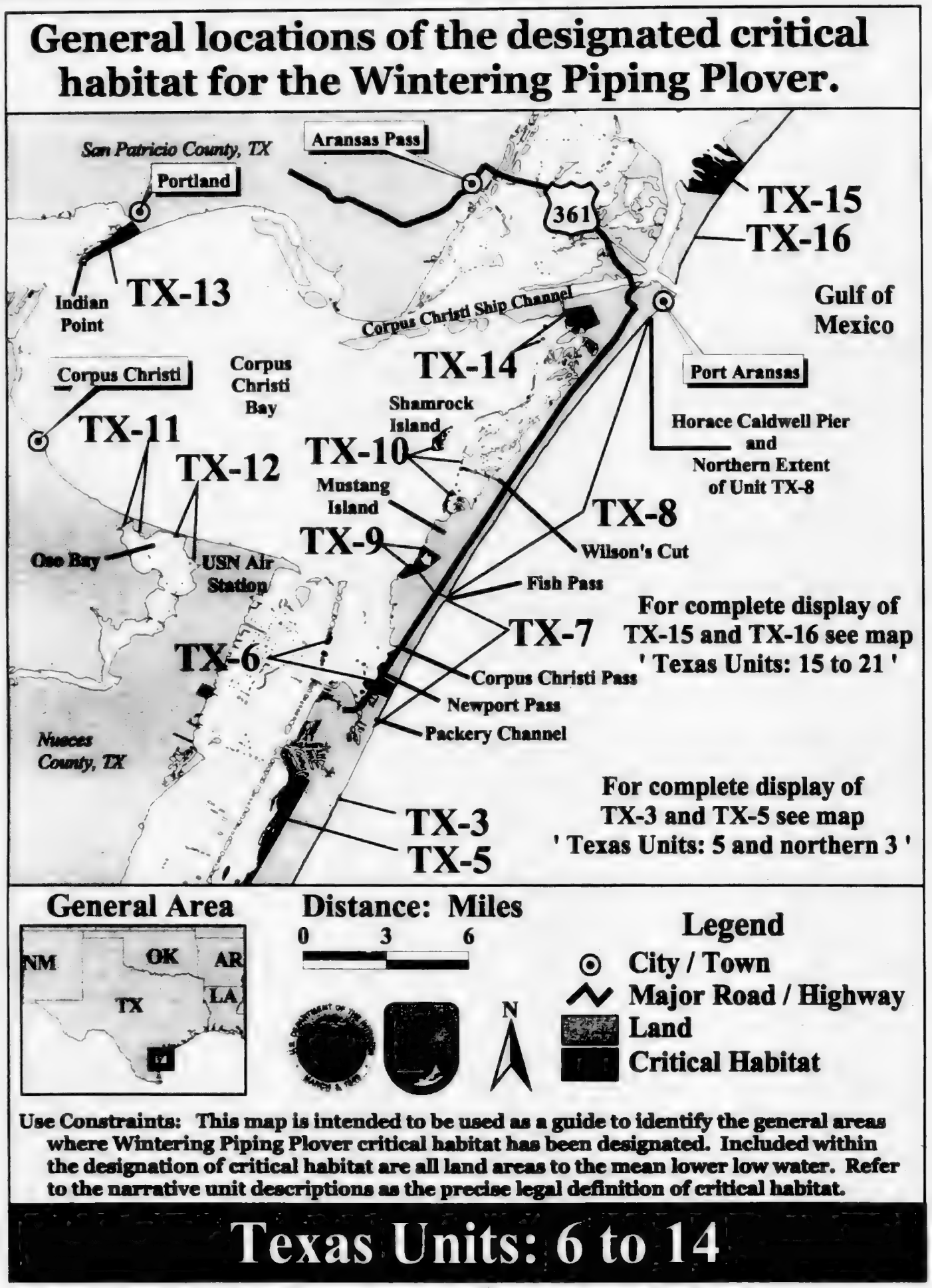

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Texas Units: 6 to 14

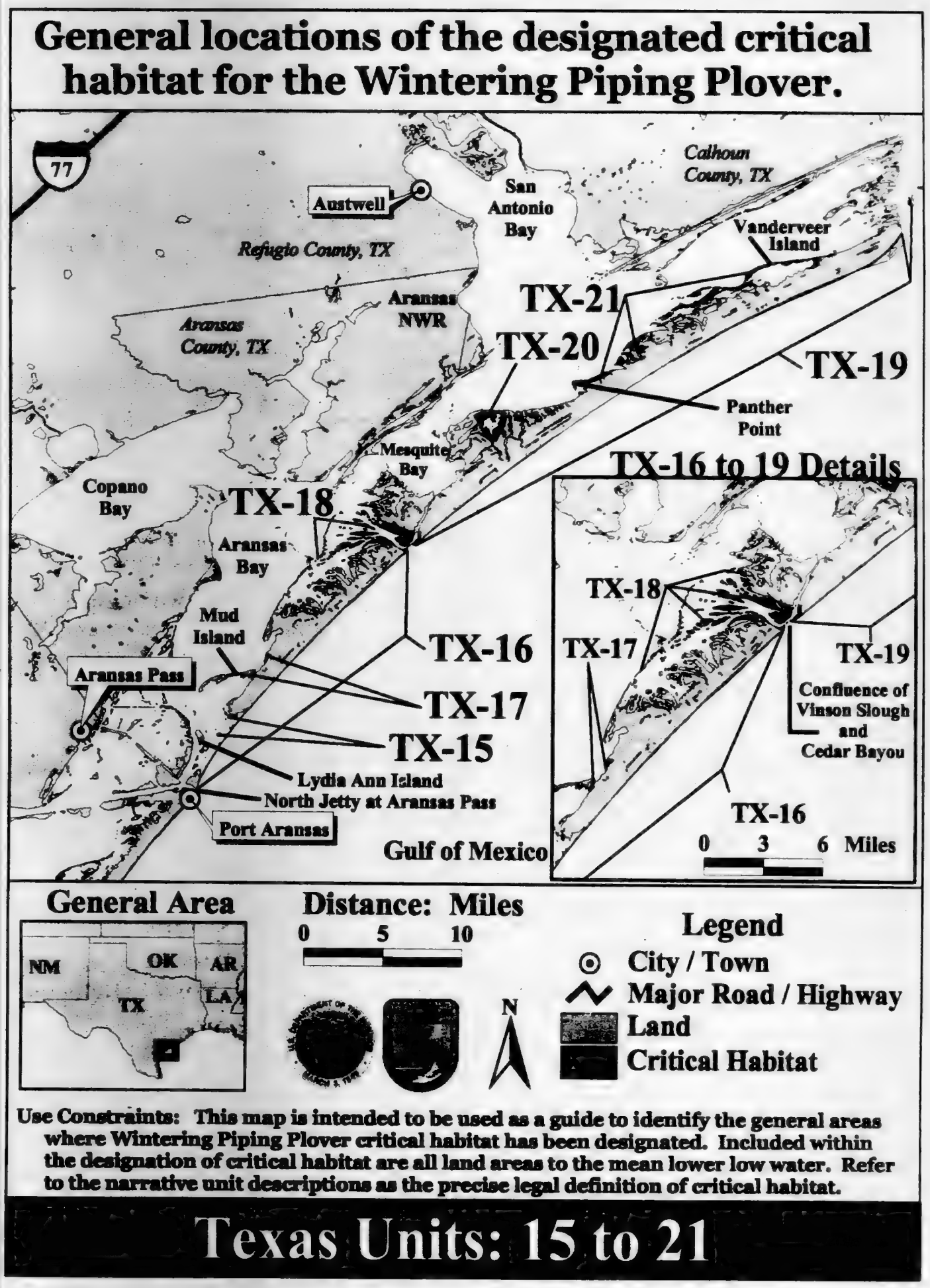
General locations of the designated critical habitat for the Wintering Piping Plover.
77
Austwell
San Antonio Bay
Calhoun County, TX
Vanderveer Island
Refugio County, TX
Aransas NWR
Aransas County, TX
TX-21
TX-20
TX-19
Panther Point
Mesquite Bay
TX-16 to 19 Details
Copano Bay
TX-18
Aransas Bay
Mud Island
TX-16
TX-17
TX-15
Aransas Pass
Lydia Ann Island
North Jetty at Aransas Pass
Port Aransas
Gulf of Mexico
Confluence of Vinson Slough and Cedar Bayou
0 3 6 Miles
General Area
NM
OK
AR
TX
LA
Distance: Miles
0 5 10
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
Texas Units: 15 to 21

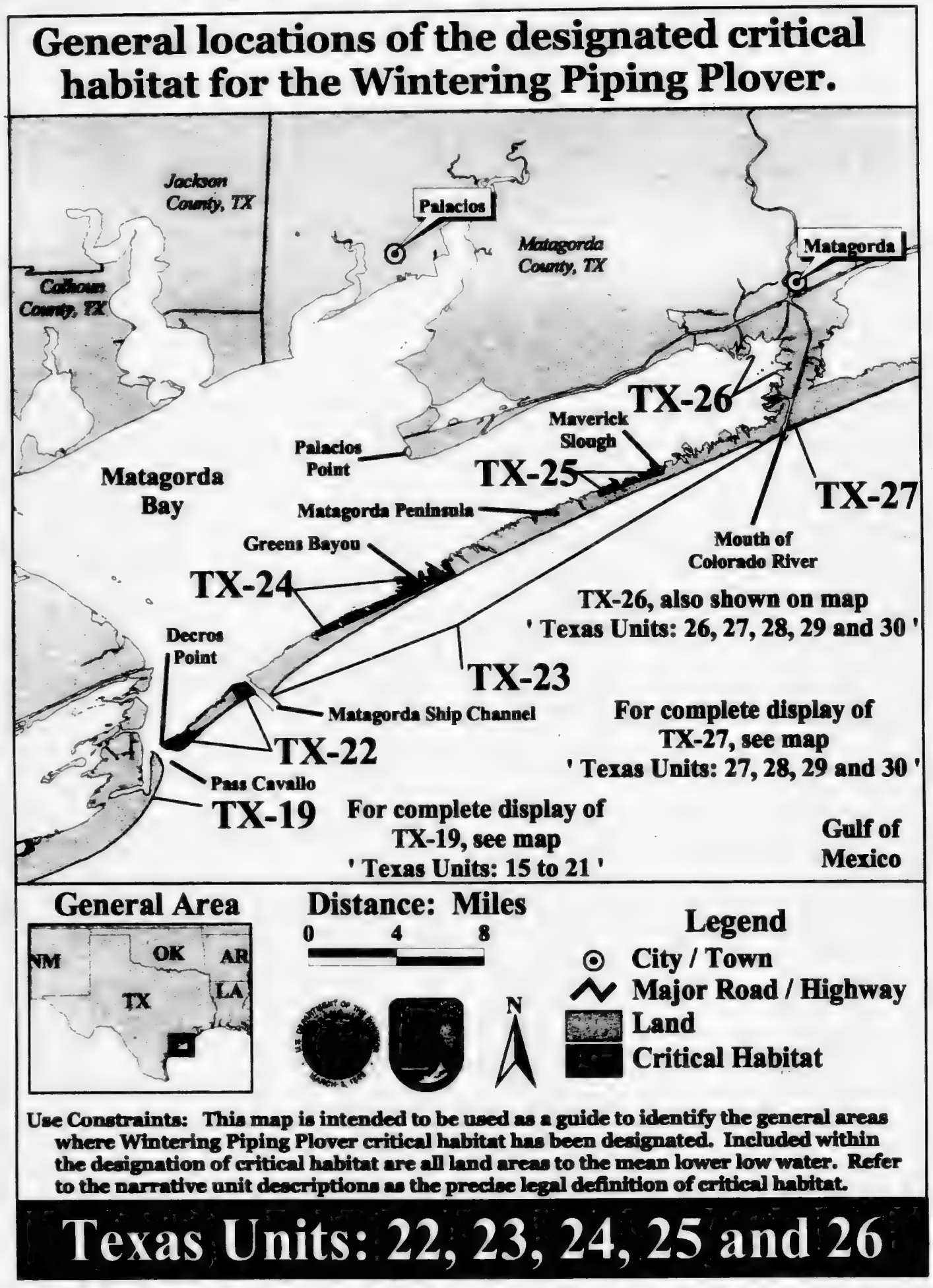
General locations of the designated critical habitat for the Wintering Piping Plover.
Jackson County, TX
Calhoun County, TX
Palacios
Matagorda County, TX
Matagorda
TX-26
Maverick Slough
Palacios Point
TX-25
Matagorda Bay
TX-27
Matagorda Peninsula
Mouth of Colorado River
Greens Bayou
TX-24
TX-26, also shown on map ' Texas Units: 26, 27, 28, 29 and 30 '
Decros Point
TX-23
Matagorda Ship Channel
For complete display of TX-27, see map ' Texas Units: 27, 28, 29 and 30 '
TX-22
Pass Cavallo
TX-19
For complete display of TX-19, see map ' Texas Units: 15 to 21 '
Gulf of Mexico
General Area
NM
OK
AR
LA
TX
Distance: Miles
0 4 8
N
Legend
City / Town
Major Road / Highway
Land
Critical Habitat
Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.
Texas Units: 22, 23, 24, 25 and 26

General locations of the designated critical habitat for the Wintering Piping Plover.

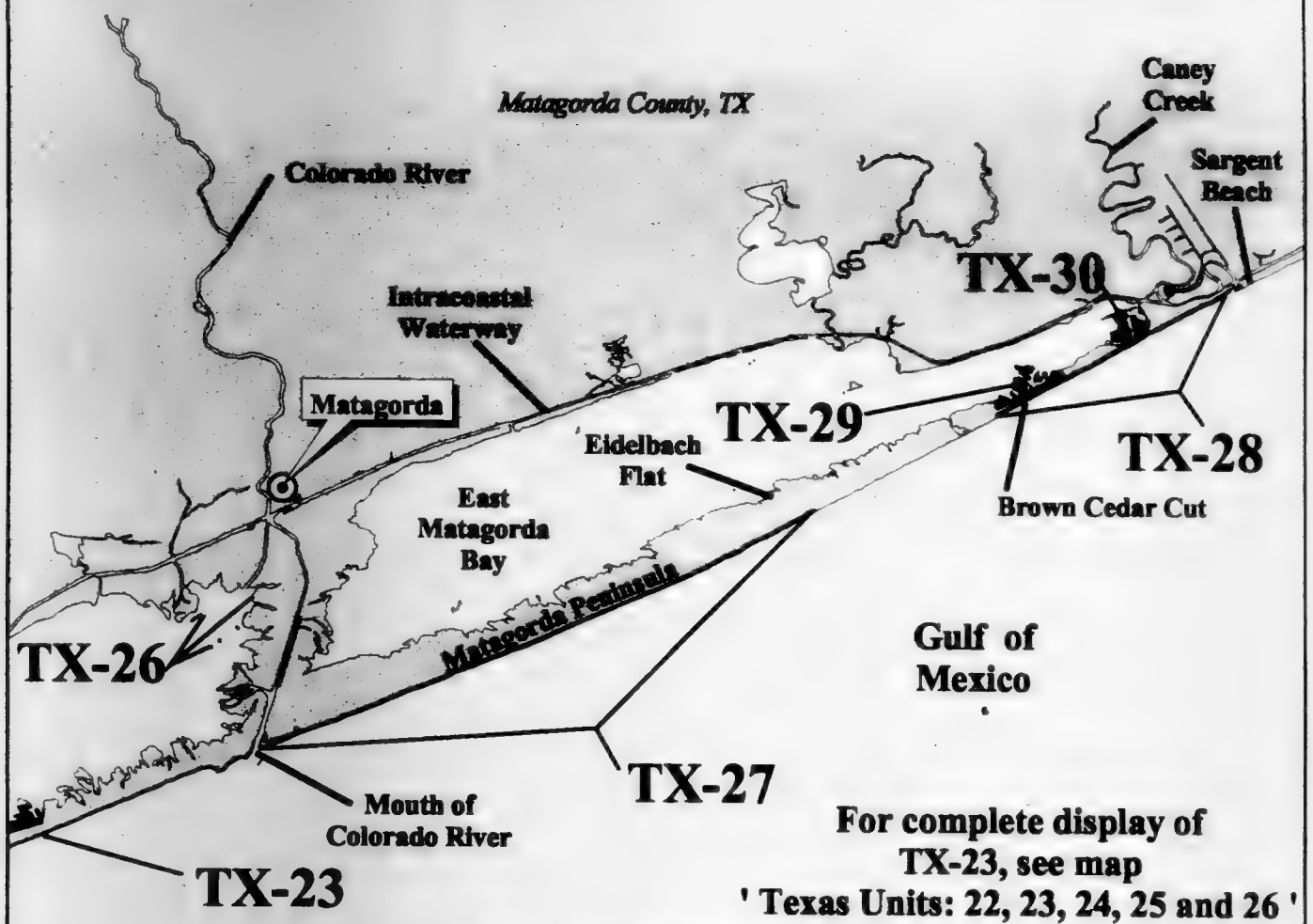

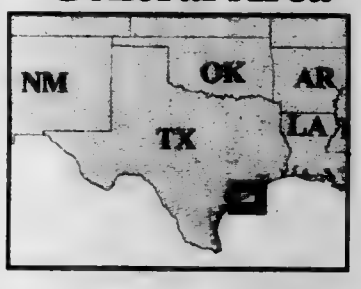

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Texas Units: 26, 27, 28, 29 and 30

General locations of the designated critical habitat for the Wintering Piping Plover.

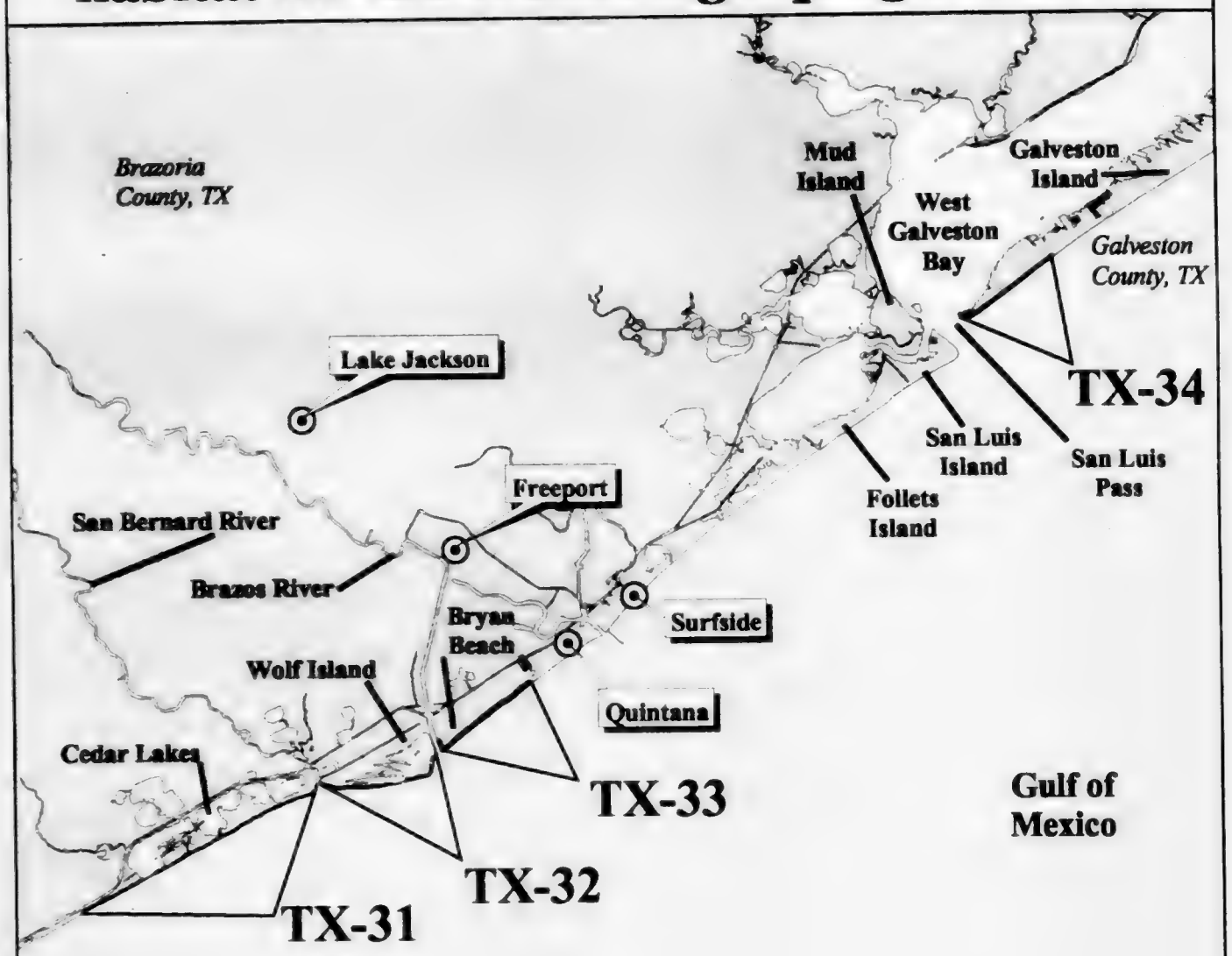

Use Constraints: This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

Texas Units: 31, 32, 33 and 34

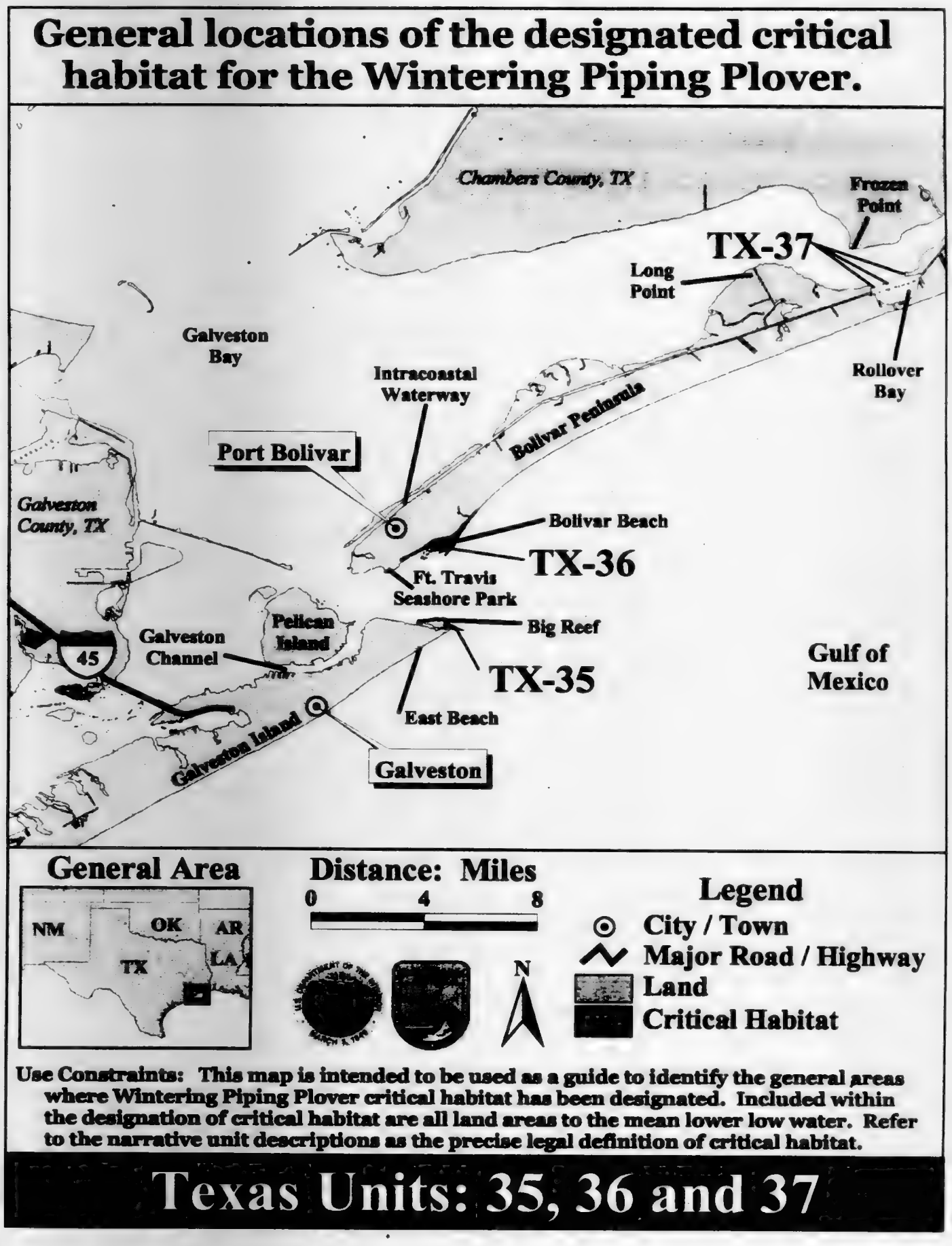

* * * * *

Dated: June 28, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–16905 Filed 7–9–01; 8:45 am]

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S. 1029/P.L. 107–18

To clarify the authority of the Department of Housing and Urban Development with respect to the use of fees during fiscal year 2001 for the manufactured housing program. (July 5, 2001; 115 Stat. 152)

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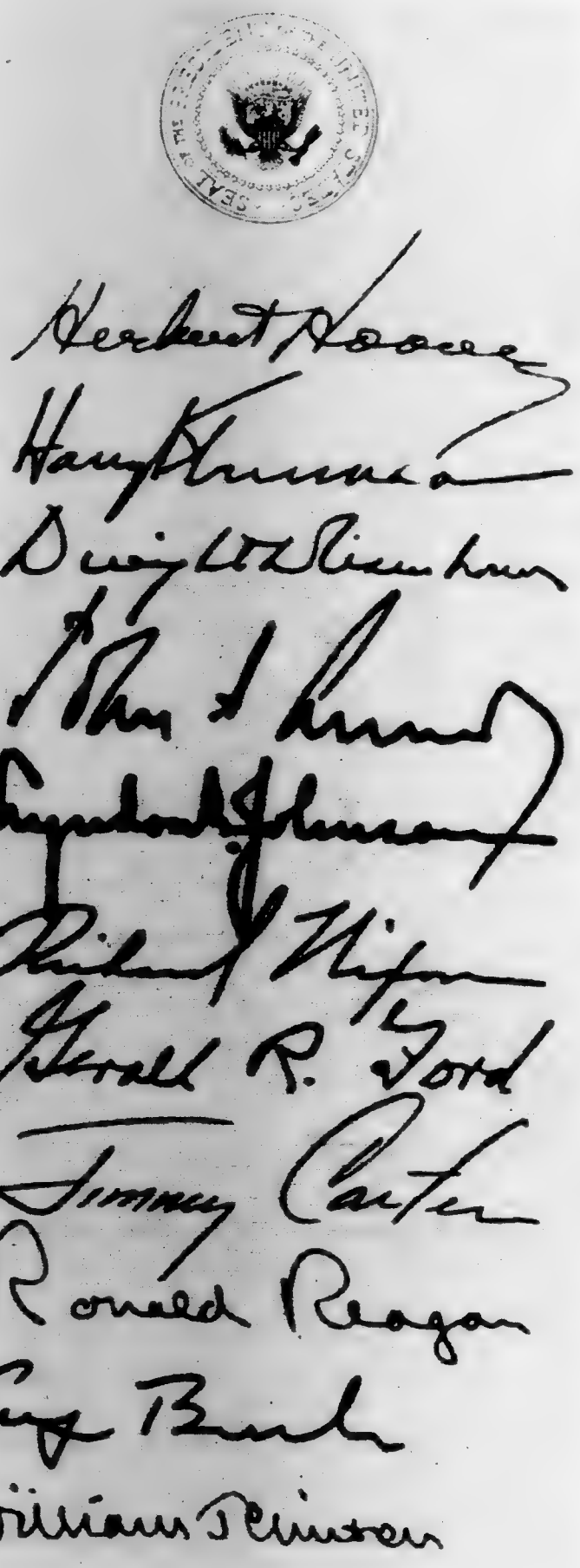

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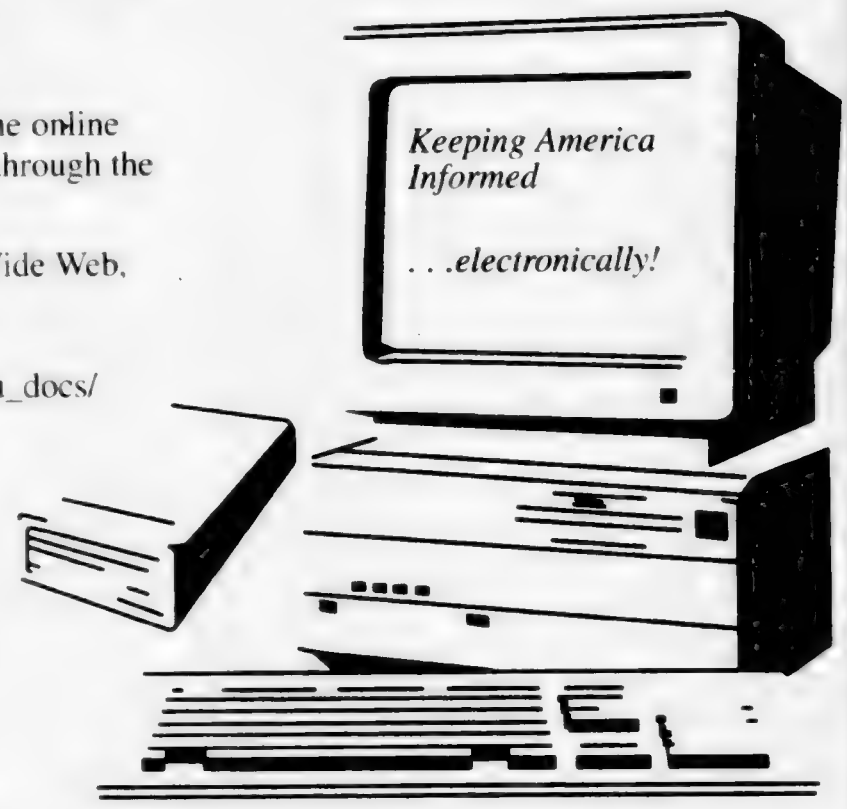

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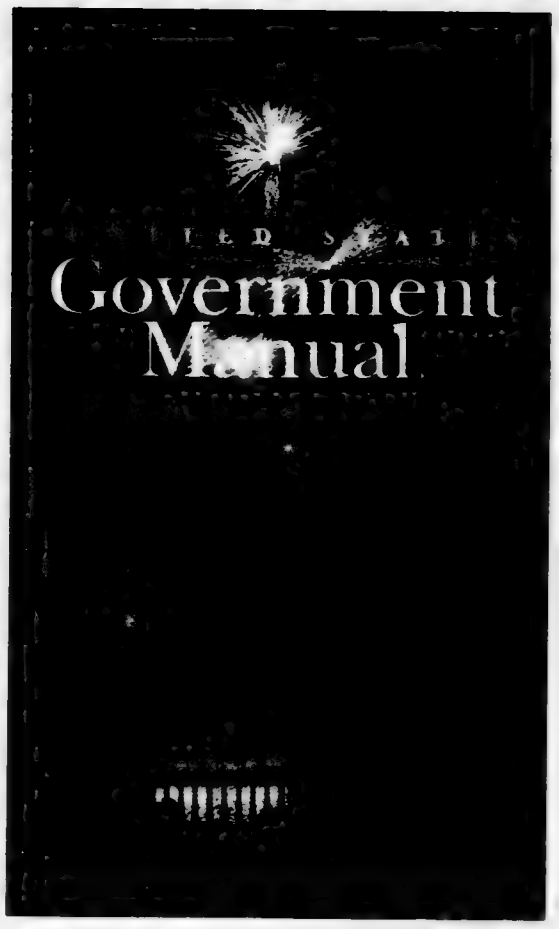

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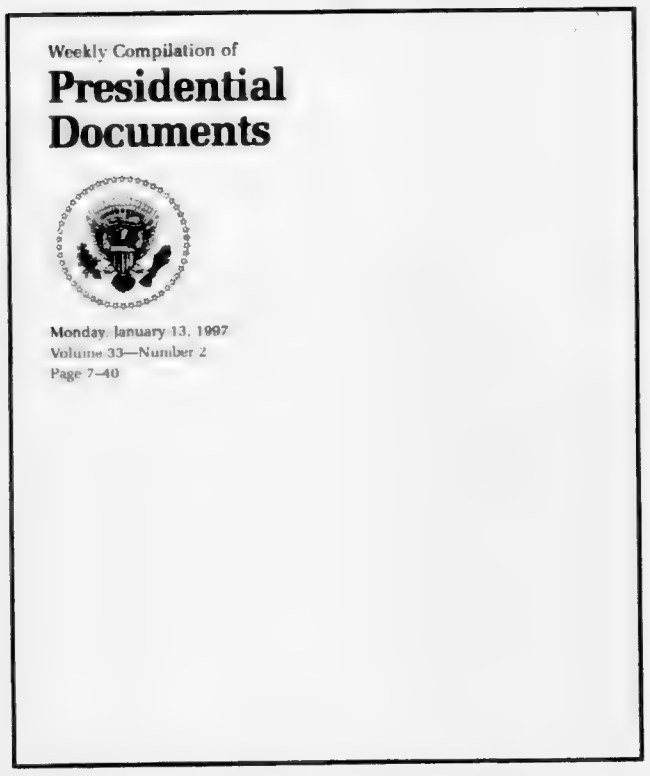

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–188–AD; Amendment 39–12315; AD 2001–14–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737–600, –700, –700C, and –800 series airplanes. This action prohibits installation of repairs of the elevator tab using previously approved repair procedures. This action is necessary to prevent installation of repairs of the elevator tab that are outside allowable limits, which could result in excessive in-flight vibrations of the elevator tab, and consequent loss of controllability of the airplane.

DATES: Effective July 26, 2001.

Comments for inclusion in the Rules Docket must be received on or before September 10, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–188–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–188–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received numerous reports of in-flight vibrations of the elevator tab on Model 737–600, –700, and –800 ("Next Generation") series airplanes. These vibrations have been attributed to loose or missing components of the elevator tab assemblies, excessive wear of the elevator tab, excessive tab freeplay, and/or tab weight and center of gravity changes.

In addition, we have determined that repairs of the elevator tab done using certain procedures approved before the effective date of this AD can adversely affect the weight and center of gravity of the elevator tab. Such changes in the tab weight and center of gravity can cause excessive in-flight vibration of the elevator tab. Therefore, updated limitations on repair procedures are necessary to ensure the reliability of the elevator tab in flight. Continued operation of these airplanes in such conditions could result in excessive in-flight vibrations of the elevator tab, and consequent loss of controllability of the airplane.

Explanation of Service Information

The FAA has reviewed Boeing All Operator Message M–7200–01–00756, Revision 1, dated May 29, 2001, which describes allowable repair limits for the elevator tab. Repair limits include, but are not limited to, the following:

- Repair can only be one facesheet (upper or lower skin) and honeycomb core in depth.
- Repair of damaged honeycomb core by potting is not permitted.
- Maximum size of damage (allowable damage) that may be sealed using aluminum foil tape is 1 inch in diameter.
- Maximum damage size that could be repaired using 150 degree or 200 degree wet layup is .5 inch across the largest dimension.
- No 250 degree prepreg repairs are permitted.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent installation of repairs that are outside allowable limits of the elevator tab, which could result in excessive in-flight vibrations of the elevator tab, consequent loss of the elevator tab, and loss of controllability of the airplane. This AD prohibits installation of certain repairs of the elevator tab.

Interim Action

This is interim action. The FAA is working with the manufacturer to identify proper action to ensure that unsafe conditions do not exist on airplanes that were repaired before the effective date of this AD. If a corrective action for the existing repairs is necessary, the FAA may consider further rulemaking in this regard.

The manufacturer also has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons

are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–188–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–05 Boeing: Amendment 39–12315. Docket 2001–NM–188–AD.

Applicability: All Model 737–600, –700, –700C, and –800 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent installation of repairs of the elevator tab that are outside allowable limits, which could result in excessive in-flight vibrations of the elevator tab, and consequent loss of controllability of the airplane, accomplish the following:

Elevator Tab Repairs

(a) As of the effective date of this AD, no person shall install on any airplane any elevator tab repairs that are NOT done in accordance with Boeing All Operator Message M–7200–01–00756, Revision 1, dated May 29, 2001.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(d) This amendment becomes effective on July 26, 2001.

Issued in Renton, Washington, on July 2, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17121 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–205–AD; Amendment 39–12317; AD 2000–06–13 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 737–200, –200C, –300, and –400 series airplanes, that currently requires repetitive visual and high frequency eddy current (HFEC) inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. That amendment also mandates accomplishment of a modification to the aft cargo door, which would terminate the repetitive inspection requirements. This amendment revises the compliance time for the terminating modification. The actions specified by this AD are intended to prevent fatigue cracking of the corners of the doorframe and the crossbeams of the aft cargo door, which could result in rapid depressurization of the airplane.

DATES: Effective August 15, 2001.

The incorporation by reference of Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 9, 2000 (65 FR 17583, April 4, 2000).

The incorporation by reference of Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 24, 1998 (63 FR 67769, December 9, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Blilie, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–2028; telephone (425) 227–2131; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 2000–06–13, amendment 39–11654 (65 FR 17583, April 4, 2000); which is applicable to certain Boeing Model 737–200, –200C, –300, and –400 series airplanes; was published in the **Federal Register** on October 5, 2000 (65 FR 59381). The action proposed to continue to require repetitive visual and high frequency eddy current (HFEC) inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. The action also proposed to continue to mandate accomplishment of a modification to the aft cargo door, which would terminate the repetitive inspection requirements. However, the action proposed to revise the compliance time of the terminating action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request for Clarification of Note 4

One commenter requests clarification of Note 4 of the proposed rule. That note states, "Modification of the corners of the door frame and the cross beams of the aft cargo door accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 737–52–1079, dated December 16, 1983; Revision 1, dated December 15, 1988; Revision 2, dated July 20, 1989; Revision 3, dated May 17, 1990; or Revision 4, dated February 21, 1991; is considered acceptable for compliance with paragraph (e) of this AD." The commenter states that certain repair angles installed per those service bulletins may have been installed with inadequate edge margin, and the commenter questions whether repair angles installed without cracks but with inadequate edge margin are acceptable for compliance with paragraph (e) of this AD. Furthermore, the commenter notes that Revision 6 of the service bulletin, dated November 18, 1999, requires that certain repair angles installed with a short edge margin be repetitively inspected, and questions whether these repetitive inspections would be required by the proposed AD.

The FAA does not concur that any change to Note 4 of this AD is necessary. To be acceptable for compliance with paragraph (e) of this AD, the modification of the corners of the door frame must have been properly installed according to the referenced service bulletins. To properly install any repair or modification, all fastener edge margins must meet normal rework requirements which are explicitly stated in the Boeing Structural Repair Manual and other service information. If the edge margins for an installation of the terminating modification are not adequate, as specified in the service bulletin, then the repetitive inspections identified in the service bulletin would be necessary for the modification to be considered to have been accomplished "in accordance with the service bulletin." No change to the final rule is necessary in this regard.

Explanation of Editorial Change

In paragraph (d) of the proposed rule, an editing error resulted in that paragraph including a compliance time of "Within 4,500 flight cycles or one year after the effective date of this AD." The paragraph should have referenced the effective date of AD 2000–06–13, which is May 9, 2000. Therefore, paragraph (d) of this final rule has been revised to correct this error and specify a compliance time of 4,500 flight cycles or 1 year after May 9, 2000.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,636 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 707 airplanes of U.S. registry are affected by this AD. This AD adds no new requirements, but only extends a compliance time for an action already required by AD 2000–06–13. Thus, this AD adds no new additional economic burden on affected operators, other than the cost of additional repetitive inspection cycles if operators elect to accomplish the modification at a later compliance time as allowed by this AD. The current costs associated with this amendment are reiterated in their entirety (as follows) for the convenience of affected operators:

The detailed visual inspections currently required by AD 2000–06–13 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these currently required inspections on U.S. operators is estimated to be $84,840, or $120 per airplane, per inspection cycle.

The HFEC inspections currently required by AD 2000–06–13 take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections on U.S. operators is estimated to be $169,680, or $240 per airplane, per inspection cycle.

The modification currently required by AD 2000–06–13 takes approximately 144 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $4,530 per airplane. Based on these figures, the estimated cost impact of this modification on U.S. operators is estimated to be $9,311,190, or $13,170 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is

determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11654 (65 FR 17583, April 4, 2000), and by adding a new airworthiness directive (AD), amendment 39–12317, to read as follows:

2000–06–13 R1 Boeing: Amendment 39–12317. Docket 2000–NM–205–AD. Revises AD 2000–06–13, Amendment 39–11654.

Applicability: The following airplane models, certificated in any category.

Model 737–200 and –200C series airplanes, line numbers 6 through 873 inclusive; Model 737–200, –200C, –300, and –400 series airplanes; line numbers 874 through 1642 inclusive; equipped with an aft cargo door having Boeing part number (P/N) 65–47952–1 or P/N 65–47952–524; excluding:

1. Those airplanes on which that door has been modified in accordance with Boeing Service Bulletin 737–52–1079; or

2. Those airplanes on which the door assembly having P/N 65–47952–524 includes four straps (P/N's 65–47952–139, 65–47952–140, 65–47952–141, and 65–47952–142) and a thicker lower cross beam web (P/N 65–47952–157).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the corners of the doorframe and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane, accomplish the following:

Restatement of the Requirements of AD 2000–06–13

Inspections and Corrective Actions

(a) Within 90 days or 700 flight cycles after December 24, 1998 (the effective date of AD 98–25–06, amendment 39–10931), whichever occurs later, perform an internal detailed visual inspection to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, in accordance with Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996; or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999.

(1) If no cracking is detected, accomplish the requirements of either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the internal visual inspection thereafter at intervals not to exceed 4,500 flight cycles. Or

(ii) Prior to further flight, modify the corners of the doorframe and the crossbeams of the aft cargo door in accordance with the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD.

(2) If any cracking is detected in the upper or lower cross beams, prior to further flight, modify the cracked beam in accordance with Part I of the Accomplishment Instructions of the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the repaired beam.

(3) If any cracking is detected in the forward or aft upper door frame, prior to further flight, repair the frame and modify the corners of the door frame of the aft cargo door, in accordance with Part I of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (b) of this AD. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the upper doorframe.

Note 2: Cracks of the forward or aft upper door frame, regardless of length, must be repaired prior to further flight in accordance with Part I of the Accomplishment Instructions of the service bulletin.

(4) If any cracking is detected in the forward or aft lower door frame, prior to further flight, replace the damaged frame with a new frame, and modify the corners of the door frame of the aft cargo door, in accordance with Part I of the Accomplishment Instructions of the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the lower doorframe.

(b) Where Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996; or Boeing Alert Service Bulletin, 737–52A1079, Revision 6, dated November 18, 1999; specifies that certain repairs are to be accomplished in accordance with instructions received from Boeing, this AD requires that, prior to further flight, such repairs be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Inspections and Corrective Actions

(c) If any cracking of the outer chord of the upper or lower cross beams of the aft cargo door is detected as a result of any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO; Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(d) Within 4,500 flight cycles or 1 year after May 9, 2000 (the effective date of AD 2000–06–13, amendment 39–11654), whichever occurs later: Perform a high frequency eddy current inspection (HFEC) to detect cracking of the four corners of the door frame of the aft cargo door, in accordance with the procedures specified in Boeing 737 Nondestructive Test Manual, Part 6, Chapter 51–00–00 (Figure 4 or Figure 23); or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999.

(1) If no cracking of the corners of the doorframe of the aft cargo door is detected, repeat the HFEC inspections thereafter at intervals not to exceed 4,500 flight cycles until accomplishment of the modification specified in paragraph (e) of this AD.

(2) If any cracking of the corners of the door frame of the aft cargo door is detected, prior to further flight, replace the damaged frame with a new frame, and modify the four corners of the door frame, in accordance with Parts II and III of the Accomplishment Instructions of Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996; or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD for that doorframe.

Requirement Revised by This AD

Terminating Action

(e) Within 4 years or 12,000 flight cycles after the effective date of this AD, whichever occurs later: Modify the four corners of the door frame and the cross beams of the aft cargo door, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996; or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999. Accomplishment of that modification constitutes terminating action for the repetitive inspection requirements of this AD.

Note 3: Accomplishment of the modification required by paragraph (a) of AD 90–06–02, amendment 39–6489, is considered acceptable for compliance with paragraph (e) of this AD.

Note 4: Modification of the corners of the door frame and the cross beams of the aft cargo door accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 737–52–1079, dated December 16, 1983; Revision 1, dated December 15, 1988; Revision 2, dated July 20, 1989; Revision 3, dated May 17, 1990; or Revision 4, dated February 21, 1991; is considered acceptable for compliance with paragraph (e) of this AD.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–25–06, amendment 39–10931, are approved as alternative methods of compliance with this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided in paragraphs (b), (c), and (d) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996; or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999.

(1) The incorporation by reference of Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999, was approved previously by the Director of the Federal Register as of May 9, 2000 (65 FR 17583, April 4, 2000).

(2) The incorporation by reference of Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, was approved previously by the Director of the Federal Register as of December 24, 1998 (63 FR 67769, December 9, 1998).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on August 15, 2001.

Issued in Renton, Washington, on July 2, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17118 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–228–AD; Amendment 39–12311; AD 2001–14–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes Modified by Supplemental Type Certificate SA1727GL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 757–200 series airplanes modified by Supplemental Type Certificate (STC) SA1727GL, that requires deactivation of the air-to-ground telephone system approved by that STC. This action is necessary to prevent the inability of the flight crew to remove power from the telephone system when necessary. Inability to remove power from the telephone system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 15, 2001.

ADDRESSES: The information referenced in this AD may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Chicago Aircraft Certification Office, 2300 East Devon, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Wess Rouse, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117C, Chicago Aircraft Certification Office, 2300 East Devon, Des Plaines, Illinois 60018; telephone (847) 294–8113; fax (847) 294–7380.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 757–200 series airplanes modified by Supplemental Type Certificate (STC) SA1727GL was published in the **Federal Register** on March 2, 2001 (66 FR 13183). That action proposed to require deactivation of the air-to-ground telephone system approved by that STC.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change to Final Rule

Paragraph (b) of the proposed rule states that "no person shall install an [in-flight entertainment system (IFE)] system in accordance with STC SA1727GL * * *" The FAA finds that, where we used the generic term "IFE system," we should have used the more specific term "air-to-ground telephone system." Therefore, we have revised paragraph (b) of this final rule for clarity.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

Because the STC holder is no longer in business, the FAA is unable to determine how many U.S.-registered Boeing Model 757–200 series airplanes modified by STC SA1727GL will be affected by this AD.

For an airplane subject to this AD, it will take approximately 3 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $35 per airplane. Based on these figures, the cost impact of this

AD is estimated to be $215 per affected airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–01 Boeing: Amendment 39–12311. Docket 2000–NM–228–AD.

Applicability: Model 757–200 series airplanes modified by Supplemental Type Certificate (STC) SA1727GL, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the flight crew to remove power from the telephone system when necessary, accomplish the following:

Deactivation

(a) Within 18 months after the effective date of this AD, deactivate the In-Flight Phone Corporation air-to-ground telephone system approved by STC SA1727GL. Accomplish the deactivation in accordance with the procedures in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) of this AD.

(1) Remove the circuit breakers listed in the following table:

Number	Label	Location
CB9012	ATG Phone Bus.	P11–2 Overhead Cockpit.
CB9013	CSU	P37 Right Miscellaneous Electrical Equipment Panel.
CB9014	RFU	P37 Right Miscellaneous Electrical Equipment Panel.
C340	C340	P70 Miscellaneous Electrical Equipment Panel.
C341	C341	P70 Miscellaneous Electrical Equipment Panel.

(2) Remove wire between circuit breaker C340 and C334 bus connection in P70 Miscellaneous Electrical Equipment Panel.

(3) Remove wire between circuit breaker C340 and C1292 bus connection in P70 Miscellaneous Electrical Equipment Panel.

(4) Remove wire between circuit breaker CB9012 and C560 in P11–2 Overhead Cockpit panel.

(5) Cap and stow any remaining wires associated with the circuit breakers listed in the table above.

Spares

(b) As of the effective date of this AD, no person shall install an air-to-ground telephone system in accordance with STC SA1727GL, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(e) This amendment becomes effective on August 15, 2001.

Issued in Renton, Washington on June 29, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17155 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–231–AD; Amendment 39–12313; AD 2001–13–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–30 Series Airplanes Modified by Supplemental Type Certificate ST00054SE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10–30 series airplanes modified by Supplemental Type Certificate (STC) ST00054SE, that requires removal of the in-flight entertainment (IFE) system installed by that STC. This action is necessary to prevent inability of the flight crew to remove power from the IFE system when necessary. Inability to remove

power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 15, 2001.

ADDRESSES: The information referenced in this AD may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–10–30 series airplanes modified by Supplemental Type Certificate (STC) ST00054SE was published in the **Federal Register** on March 2, 2001 (66 FR 13189). That action proposed to require removal of the in-flight entertainment (IFE) system installed by that STC.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

As explained in the proposed rule, the STC holder has informed the FAA that the subject IFE system has been removed from all affected McDonnell Douglas Model DC–10–30 series airplanes modified by STC ST00054SE. Therefore, the FAA expects that there will be no future cost impact on U.S. operators as a result of the adoption of this rule.

However, if an airplane subject to this AD is identified, the FAA estimates that removal of the IFE system will take approximately 12 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD on an affected airplane is estimated to be $720 per airplane.

The cost impact figure discussed above is based on information that the subject IFE system has been removed from all affected airplanes. The cost impact figures discussed in most AD actions are based on assumptions that no operator has yet accomplished any of the requirements, and that no operator would accomplish those actions in the future if the AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–03 McDonnell Douglas: Amendment 39–12313. Docket 2000–NM–231–AD.

Applicability: Model DC–10–30 series airplanes modified by Supplemental Type Certificate (STC) ST00054SE, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of flight crew to remove power from the in-flight entertainment (IFE) system when necessary; which, during a non-normal or emergency situation, could result in inability to control smoke or fumes in the airplane flight deck or cabin; accomplish the following:

Removal of IFE System

(a) Within 18 months after the effective date of this AD, remove the IFE system installed by STC ST00054SE by a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a removal method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Spares

(b) As of the effective date of this AD, no person may install an IFE system by STC ST00054SE on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a

location where the requirements of this AD can be accomplished.

Effective Date

(e) This amendment becomes effective on August 15, 2001.

Issued in Renton, Washington, on June 29, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17154 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–146–AD; Amendment 39–12320; AD 2001–14–09]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 560XL Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Cessna Model 560XL airplanes. This action requires inspection of certain electrical wiring of the landing light switch, associated components, and the aft J-box fairing light relay wire for chafing, discoloration, or damage; rerouting of certain wiring; and corrective follow-on actions, if necessary. This action is necessary to prevent shorting to the ground of the electrical power due to chafing of wiring, which could result in electrical fire in the wiring of the landing light switch, associated components, and the wiring of the aft J-box fairing light relays. This action is intended to address the identified unsafe condition.

DATES: Effective July 26, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 2001.

Comments for inclusion in the Rules Docket must be received on or before September 10, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–146, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–146–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond Johnston, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4151; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: The FAA has received a report of an electrical fire on the left landing light switch on the cockpit pedestal of a Cessna Model 560XL airplane. Investigation revealed that a wire bundle was burned approximately eight inches below the landing light switch and that the switch was overheated and damaged. The investigation also revealed that wires from KZ041 in the J-box (a terminal located below the mounting plate for power relays) had shorted to the battery bus. The findings of the investigation indicated that incorrect routing of certain wiring had resulted in chafing of certain wiring. Such chafing of wiring could cause shorting to the ground of the electrical power and result in electrical fire in the landing light switch, associated components, and the wiring of the aft J-box fairing light relays.

Explanation of Relevant Service Information

The FAA has reviewed and approved Cessna Alert Service Letter (ASL) ALS560XL–33–02, dated May 4, 2001, which describes procedures for a visual inspection to detect any chafing, discoloration, or damaged wiring of the right KZ032 and left KZ–41 light relays and any associated components, and procedures for routing the light relay wiring correctly. For any wiring or associated components that are chafed, discolored, or damaged, the ASL provides procedures for accomplishing additional follow-on inspections of certain switch assemblies and associated wiring, and replacement of any discrepant wiring or associated components. Accomplishment of the actions specified in the ASL is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent shorting to the ground of the electrical power due to chafing of wiring, which could result in electrical fire in the wiring of the landing light switch, associated components, and the wiring of the aft J-box fairing light relays. This AD requires accomplishment of the actions specified in the ASL described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the AD is being requested.

• Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–146–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–09 Cessna Aircraft Company: Amendment 39–12320. Docket 2001–NM–146–AD.

Applicability: Model 560XL airplanes, serial numbers –5002 through –5159 inclusive, –5161, and –5165; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent shorting to ground of the electrical power due to improper routing of certain wiring, which could result in electrical fire in the wiring of the landing light switch, associated components, and wiring of the aft J-box fairing light relays; accomplish the following:

Inspection for Chafing, Discoloration, or Damaged Wiring

(a) Within 20 flight hours or 20 days after the effective date of this AD, whichever occurs first, perform a general visual inspection for any chafed, discolored or damaged wiring of the right KZ032 and left KZ–41 light relays and any associated components, per Cessna Alert Service Letter 560XL–33–02, dated May 4, 2001. If no discrepancy to the wiring or associated components is detected, before further flight, reroute the wiring of the aft J-box relay, per the alert service letter.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

If any Discrepant Wiring is Detected

(b) If any chafing, discoloration, or damage is detected in the wiring or the associated components as a result of the inspection required by paragraph (a) of this AD, before further flight, accomplish the requirements of paragraphs (b)(1), (b)(2), and (b)(3) of this AD, per Cessna Alert Service Letter 560XL–33–02, dated May 4, 2001.

(1) Replace the aft J-box fairing light relay wiring with new wiring and reroute the wiring.

(2) Perform a general visual inspection for any discoloration or damage of the right SC054 and left SC055 switch assemblies A3–212–01 and associated wiring. Before further flight, replace any damaged or discolored wiring or switch assembly with new wiring or a new switch assembly.

(3) Perform a general visual inspection for damage or discoloration of wiring specified in paragraph 11 of the Accomplishment Instructions of the alert service letter. Before further flight, replace any damaged or discolored wiring with new wiring.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Cessna Alert Service Letter ASL560XL–33–02, dated May 4, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on July 26, 2001.

Issued in Renton, Washington, on July 3, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17164 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–214–AD; Amendment 39–12328; AD 2001–14–17]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Airbus Model A300 B2 and B4 series airplanes. This action requires a one-time inspection to detect and correct corrosion of the lower bulkhead attachment, and corrective action, if necessary. This action is necessary to detect and correct corrosion of the lower bulkhead attachment, which could result in reduced structural integrity of the rear pressure bulkhead and consequent damage to components of the flight control, hydraulic, and auxiliary power unit fuel systems. This action is intended to address the identified unsafe condition.

DATES: Effective July 26, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 2001.

Comments for inclusion in the Rules Docket must be received on or before August 10, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–214–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–214–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300 B2 and B4 series airplanes. The DGAC advises of the reported failure of the rear pressure bulkhead on an Airbus Model A300 series airplane during flight, which led to rapid cabin decompression. The rupture occurred at the junction between the pressure bulkhead and the fuselage/frame 80. The main damage was circumferential on the inner and outer rim attachment angles from stringers 48LH to 34RH. The airplane had accumulated approximately 50,000 total flight hours and 25,000 total flight cycles. The initial investigation revealed heavy corrosion on the inner and outer rim attachment angles, which extended underneath the sealant bead covering the junction. The exact cause and sequence of this bulkhead failure is under investigation. Undetected corrosion in this area of the lower bulkhead attachment could significantly affect the structural integrity of the rear pressure bulkhead. This condition, if not corrected, could result in damage to components of the flight control, hydraulic, and auxiliary power unit fuel systems.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) A300–53A0361, dated June 14, 2001. The AOT describes procedures for a one-time detailed visual inspection (including the removal of sealant from stringer 27LH to stringer 27RH) to detect corrosion in the area between the cleat profile and the inner rim attachment angle of the lower bulkhead attachment, and repair if necessary. The DGAC classified this AOT as mandatory and issued French telegraphic airworthiness directive 2001–245(B), dated June 16, 2001, to ensure the continued airworthiness of these airplanes in France.

The AOT refers to Airbus Service Bulletin A300–53–217, Revision 4, dated January 14, 1997, as an additional source of service information for accomplishment of the inspection. The AOT additionally specifies that the sealant be removed before the inspection, which is not specified in the service bulletin.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct corrosion of the lower bulkhead attachment, which could result in reduced structural integrity of the rear pressure bulkhead and consequent damage to components of the flight control, hydraulic, and auxiliary power unit fuel systems. This AD requires accomplishment of the actions specified in the AOT described previously, except as discussed below.

Differences Between AD and AOT

Operators should note that, although the AOT implies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD,

a repair approved by either the FAA or the DGAC is acceptable for compliance with this AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2001–NM–214–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–17 Airbus Industrie: Amendment 39–12328. Docket 2001–NM–214–AD.

Applicability: All Model A300 B2 and B4 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the lower bulkhead attachment, which could result in reduced structural integrity of the rear pressure bulkhead and consequent damage to components of the flight control, hydraulic, and auxiliary power unit fuel systems, accomplish the following:

Inspection

(a) At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD: Perform a detailed visual inspection (including the removal of sealant from stringer 27LH to stringer 27RH) to detect corrosion between the cleat profile and the inner rim attachment angle of the lower bulkhead attachment, in accordance with Airbus All Operators Telex (AOT) A300–53A0361, dated June 14, 2001. Perform applicable repair at the applicable time specified by and in accordance with the AOT, except as required by paragraph (b) of this AD.

(1) For airplanes inspected within a year before the effective date of this AD in accordance with Airbus Service Bulletin A300–53–217, Revision 4, dated January 14, 1997, and for which no corrosion was detected: Inspect within 4 weeks after the effective date of this AD.

(2) For airplanes not identified in paragraph (a)(1) of this AD: Inspect within 2 weeks after the effective date of this AD.

Note 2: The AOT refers to Airbus Service Bulletin A300–53–217, Revision 4, dated January 14, 1997, as an additional source of service information for accomplishment of the inspection required by paragraph (a) of this AD.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) If corrosion is found during the inspection required by this AD, and the AOT indicates that operators are to contact Airbus for appropriate action: Repair in accordance with a method approved by either the Manager, International Branch, ANM–116,

FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as required by paragraph (b) of this AD: The actions shall be done in accordance with Airbus All Operators Telex A300–53A0361, dated June 14, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French telegraphic airworthiness directive 2001–245(B), dated June 16, 2001.

Effective Date

(f) This amendment becomes effective on July 26, 2001.

Issued in Renton, Washington, on July 3, 2001.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release No. IC–25058; File No. S7–21–99]

RIN 3235–AH56

Treatment of Repurchase Agreements and Refunded Securities as an Acquisition of the Underlying Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting a new rule and related rule amendments under the Investment Company Act of 1940 that affect the ability of investment companies to invest in repurchase agreements and pre-refunded bonds under the Act. The final rule codifies and updates staff positions that have permitted investment companies to "look through" counterparties to certain repurchase agreements and issuers of municipal bonds that have been "refunded" with U.S. government securities and treat the securities comprising the collateral as investments for certain purposes under the Act.

EFFECTIVE DATE: August 15, 2001.

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SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is adopting new rule 5b–3 [17 CFR 270.5b–3] and conforming amendments to rules 2a–7 [17 CFR 270.2a–7] and 12d3–1 [17 CFR 270.12d3–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] ("Investment Company Act" or "Act").[1]

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Executive Summary

Repurchase agreements provide investment companies ("funds") with a convenient means to invest excess cash on a secured basis, generally for short periods of time. In a typical fund repurchase agreement, a fund enters into a contract with a broker, dealer, or bank (the "counterparty" to the transaction) for the purchase of securities. The counterparty agrees to repurchase the securities at a specified future date, or on demand, for a price that is sufficient to return to the fund its original purchase price, plus an additional amount representing the return on the fund's investment.

The Commission is adopting rule 5b–3, which permits a fund, subject to certain conditions, to treat a repurchase agreement as an acquisition of the underlying collateral in determining whether it is in compliance with (i) the investment criteria for diversified funds set forth in section 5(b)(1) of the Act[2] and (ii) the prohibition on fund acquisition of an interest in a broker-dealer in section 12(d)(3) of the Act.[3] Rule 5b–3 also provides for similar "look-through" treatment for purposes of section 5(b)(1) of the Act in the case of an investment in state or municipal bonds, the payment of which has been fully funded by escrowed U.S. government securities.

The new rule codifies and updates staff interpretive and no-action letters. It is intended to adapt the Act to economic realities of repurchase agreements and pre-refunded bonds and reflects recent developments in bankruptcy law protecting parties to repurchase agreements.

[1] Unless otherwise noted, all references to rule 2a–7 or rule 12d3–1, or to any paragraph of those rules, will be to 17 CFR 270.2a–7 and 17 CFR 270.12d3–1, respectively.

[2] 15 U.S.C. 80a–5(b)(1).

[3] 15 U.S.C. 80a–12(d)(3).

I. Background

Repurchase agreements provide funds with a means to invest idle cash at competitive rates for short periods. While a repurchase agreement has legal characteristics of both a sale and a secured transaction, economically it functions as a loan from the fund to the counterparty, in which the securities purchased by the fund serve as collateral for the loan and are placed in the possession or under the control of the fund's custodian during the term of the agreement.[4]

Two provisions of the Act may affect a fund's ability to invest in repurchase agreements. Section 12(d)(3) of the Act generally prohibits a fund from acquiring an interest in a broker, dealer, or underwriter. Because a repurchase agreement may be considered to be the acquisition of an interest in the counterparty, section 12(d)(3) may limit a fund's ability to enter into repurchase agreements with many of the firms that act as counterparties.[5] Section 5(b)(1) of the Act limits the amount that a fund that holds itself out as being a diversified investment company may invest in the securities of any one issuer (other than the U.S. Government). This provision may limit the amount of repurchase agreements that a diversified fund may enter into with any one counterparty.

A fund investing in a properly structured repurchase agreement looks primarily to the value and liquidity of the collateral rather than the credit of the counterparty for satisfaction of the repurchase agreement. In two separate no-action positions issued in 1979 and 1980, the staff stated that, for purposes of sections 12(d)(3) and 5(b)(1) of the Act, a fund may treat a repurchase agreement as an acquisition of the underlying collateral if the repurchase agreement is "collateralized fully."[6] Because most repurchase agreements are collateralized fully by highly liquid U.S. government securities, this "look-through" treatment allowed funds to treat repurchase agreements as investments in government securities. As a result, a fund could invest in repurchase agreements with the same counterparty without the limitations of section 12(d)(3) or 5(b)(1).[7]

On September 23, 1999, the Commission issued a release proposing to codify and update these staff no-action positions.[8] We proposed new rule 5b–3 that would permit a fund, under certain circumstances, to look through repurchase agreements to the underlying securities for purposes of sections 5(b)(1) and 12(d)(3) of the Act. The proposed rule included conditions for looking through a repurchase agreement that were substantially similar to the conditions governing "look-through" treatment for money market funds under rule 2a–7 for purposes of complying with the rule's diversification requirements.[9] We also proposed to codify a 1993 staff no-action position that permits funds, under certain conditions, to look through pre-refunded bonds to the escrowed government securities for purposes of the section 5(b)(1) diversification requirements.[10] Finally, we proposed to eliminate a note to rule 12d3–1, which makes the rule's limited exemption from section 12(d)(3) of the Act unavailable for repurchase agreements, including those that were not collateralized fully.

The Commission received letters from four commenters on the Proposing Release, including the Investment Company Institute, which supported adoption of the rule.[11] We are adopting rule 5b–3, amendments to rule 2a–7, and amendments to rule 12d3–1, with certain changes suggested by these commenters.

II. Discussion

A. Qualifying Repurchase Agreements

New rule 5b–3(a) allows funds to treat the acquisition of a repurchase agreement as an acquisition of the underlying securities for purposes of sections 5(b)(1) and 12(d)(3) of the Act if the obligation of the seller to repurchase the securities from the fund is "collateralized fully."[12] A repurchase agreement is "collateralized fully" if: (i) The value of the underlying securities (reduced by the costs that the fund reasonably could expect to incur if the counterparty defaults) is, and at all times remains, at least equal to the agreed resale price;[13] (ii) the fund has perfected its security interest in the collateral; (iii) the collateral is maintained in an account of the fund with its custodian or a third party that qualifies as a custodian under the Act;[14] (iv) the collateral for the repurchase agreement consists entirely of: (A) Cash items; (B) U.S. government securities; (C) securities that at the time the repurchase agreement is entered into are rated in the highest category by the

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[4] *See* Treatment of Repurchase Agreements and Refunded Securities as an Acquisition of the Underlying Securities, Investment Company Act Release No. 24050 (Sept. 23, 1999) [64 FR 52476 (Sept. 29, 1999)] ("Proposing Release"), at n.4 and accompanying text.

[5] With minor exceptions, section 12(d)(3) prohibits an investment company from purchasing or otherwise acquiring "any security issued by or any other interest in the business of any person who is a broker, a dealer, [or] is engaged in the business of underwriting." The staff has taken the position that fund repurchase agreements with banks that are engaged in a securities-related business, including dealing in government securities, may be subject to the prohibitions of section 12(d)(3). *See* Letter from Gerald Osheroff, Associate Director, Division of Investment Management, to Matthew Fink, General Counsel, Investment Company Institute (May 7, 1985).

[6] In 1979, the staff announced that it would not recommend enforcement action under section 12(d)(3) if the repurchase agreement was "structured in a manner reasonably designed to collateralize fully the investment company loan." Investment Company Act Release No. 10666 (Apr.18, 1979) [44 FR 25128 (Apr. 27, 1979)] ("Release 10666"). The following year, the staff applied this no-action position to a fund's compliance with the diversification requirements of section 5(b)(1) of the Act. MoneyMart Assets, Inc., SEC No-Action Letter (Sept. 3, 1980).

[7] Repurchase agreements with broker-dealers affiliated with the fund would, of course, continue to raise serious questions under sections 17(a) and 17(d) of the Act [15 U.S.C. 80a–17(a), 15 U.S.C. 80a–17(d)]. *See* Release 10666, *supra* note 6, at n.24.

[8] *See* Proposing Release, *supra* note 4.

[9] In 1996, when the Commission amended rule 2a–7, we tied the availability of "look-through" treatment to the preferred treatment given to repurchase agreements under the Bankruptcy Code and related insolvency statutes. *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 21837 (Mar. 21, 1996) [61 FR 13956 (Mar. 28, 1996)]. Proposed rule 5b–3 included similar requirements. In addition, we proposed conforming amendments to rule 2a–7 so that it would be consistent with rule 5b–3.

[10] T. Rowe Price Tax-Free Funds, SEC No-Action Letter (June 24, 1993). In the letter, the Division of Investment Management agreed not to recommend any enforcement action if a fund treated an investment in municipal bonds refunded with escrowed government securities as an investment in the government securities for purposes of section 5(b)(1). This no-action position was based on certain representations, including that (1) the deposit of the government securities was irrevocable and pledged only to the debt service on the original bonds, (2) payments from the escrow would not be subject to the preference provisions or automatic stay provisions of the Bankruptcy Code, and (3) no fund would invest more than 25 percent of its assets in the pre-refunded bonds of any single municipal issuer.

[11] The commenters included two trade associations, one investment adviser, and a bank. The comment letters are available in the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. (File No. S7–21–99).

[12] Rule 5b–3(a). A fund may only look through only that portion of the repurchase agreement that is collateralized fully. Any agreement or portion of an agreement that is not collateralized fully would be treated as a loan by the fund to the counterparty. Use of rule 5b–3(a) is optional: even if a fund can look through the repurchase agreement, it may choose to look to the counterparty rather than the underlying securities in meeting the diversification requirements of section 5(b)(1).

[13] The term "resale price" is defined in rule 5b–3(c)(7) as the acquisition price paid to the seller plus the accrued resale premium, *i.e.*, the return on investment specified in the agreement.

[14] We have revised this element of the rule to clarify that the collateral would have to be held by a custodian, or third party, in an account of the fund.

"Requisite NRSROs";[15] or (D) unrated securities that are of comparable quality to securities that are rated in the highest rating category by the Requisite NRSROs, as determined by the fund's board of directors or its delegate; and (v) the repurchase agreement qualifies for an exclusion from any automatic stay of creditors' rights against the counterparty under applicable insolvency law in the event of the counterparty's insolvency.

1. Acceptable Types of Collateral

New rule 5b–3 specifies the types of collateral that may be used to "collateralize fully" a repurchase agreement eligible for "look-through" treatment under the rule. We have expanded acceptable collateral to include unrated securities that are of comparable quality to securities that are rated in the highest rating category by the Requisite NRSROs, as determined by the investment company's board of directors or its delegate.[16] We are not, however, adopting a recommendation by two commenters that we altogether eliminate the rule's requirements regarding the credit quality of the collateral. A requirement that the underlying collateral be of highest quality limits a fund's exposure to the ability of the counterparty to maintain sufficient collateral. As we noted in the Proposing Release, securities of lower quality may be subject to greater price fluctuation. In the event of a steep drop in the market value of the collateral, the counterparty would have to deliver additional securities sufficient to ensure that the repurchase agreement remains fully collateralized. If the counterparty does not deliver sufficient additional securities and thus defaults, the fund may be unable to realize the full value of the repurchase agreement upon liquidation of the collateral. In addition, high quality securities are more readily liquidated than lower quality securities, in the event of a counterparty default.

2. Bankruptcy Treatment

Rule 5b–3 extends "look-through" treatment only to repurchase agreements that qualify for an exclusion from any automatic stay of creditors' rights under applicable bankruptcy laws.[17] Most comments supported this provision, which we are adopting as proposed. Failure of a repurchase agreement to qualify for an exclusion from an automatic stay would make "look-through" treatment inappropriate because the credit and liquidity risks assumed by the fund would be tied directly to the counterparty rather than the issuer of the underlying collateral.

3. Evaluating the Creditworthiness of Counterparties

We are eliminating the requirement, included in the staff no-action positions, and our proposal, that the fund's board of directors or its delegate evaluate the creditworthiness of the counterparty to a repurchase agreement. As one commenter observed, the creditworthiness assessment was required under the staff no-action letters because, at the time the letters were written, it was not clear whether a repurchase agreement would be subject to the automatic stay provision in the Bankruptcy Code, in the event that the counterparty became insolvent.[18] In light of subsequent amendments to the Code protecting the parties to repurchase agreements and our requirement that funds relying on the rule qualify for Bankruptcy Code protection,[19] we conclude that it is not necessary for the rule to contain a specific requirement that the fund's directors or their delegate assess the creditworthiness of the counterparty.[20]

B. Treatment of Pre-Refunded Bonds

We are adopting, as proposed, new rule 5b–3(b) which codifies, for purposes of section 5(b)(1), the conditions specified in the staff's no-action position permitting a fund to treat an investment in a "refunded security" as an investment in the escrowed U.S. government securities.[21] Under the rule, a "refunded security" is defined as a debt security the principal and interest payments of which are to be paid by U.S. government securities that have been irrevocably placed in an escrow account and are pledged only to the payment of the debt security.[22] The escrowed securities must not be redeemable prior to their final maturity, and the escrow agreement must prohibit the substitution of the escrowed securities unless the substituted securities are also U.S. government securities.[23] Finally, an independent certified public accountant must have certified to the escrow agent that the escrowed securities will satisfy all scheduled payments of principal, interest and applicable premiums on the refunded securities.[24] This treatment corresponds to the treatment that has been given to pre-refunded bonds in rule 2a–7.[25]

Commenters expressed support for the changes made by rule 5b–3(b), and we are adopting this provision as proposed.

C. Availability of Rule 12d3–1 for Repurchase Agreements

We are adopting, as proposed, an amendment to rule 12d3–1 that eliminates a note appended to the rule. Rule 12d3–1 provides limited exemptive relief from the prohibition in section 12(d)(3) of the Act against a fund acquiring an interest in a broker-dealer or a bank engaged in a securities-related business.[26] As discussed above, a fund

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[15] The term "Requisite NRSROs" is defined in rule 5b–3(c)(6) as any two NRSROs, or, if only one NRSRO has issued a rating at the time the fund acquires the security, that NRSRO. "NRSRO" is defined in rule 5b–3(c)(5) as any nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 [17 CFR 240.15c3–1] under the Securities Exchange Act of 1934 [15 U.S.C. 78a–mm], that is not an "affiliated person," as defined in section 2(a)(3)(C) of the Act [15 U.S.C. 80a–2(a)(3)(C)], of the issuer of, or any insurer or provider of credit support for, the security.

[16] Rule 5b–3(c)(1)(iv)(D).

[17] Rule 5b–3(c)(1)(v). *See* sections 101(47) of the Federal Bankruptcy Code ("Bankruptcy Code") (defining "repurchase agreement") and 559 (protecting repurchase agreement participants from the Bankruptcy Code's automatic stay provisions). The Bankruptcy Code currently defines a repurchase agreement as:

> An agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain no later than one year after such transfer or on demand, against the transfer of funds.

As a result, funds are limited in the collateral they can accept by both paragraph (c)(1)(iv)(D) of the rule and the provisions of the Bankruptcy Code (and other applicable insolvency laws) providing preferred treatment to qualifying repurchase agreements.

[18] *See* Proposing Release *supra* note 4 at nn.12–16 and accompanying text.

[19] Rule 5b–3(c)(1)(v).

[20] By omitting this requirement, we are not suggesting that it might not be prudent for an adviser to a fund to take precautions, including evaluating the creditworthiness of the counterparty, when entering into repurchase agreements on behalf of the fund.

[21] Rule 5b–3(b). Unlike the no-action position, the rule does not limit the amount of pre-refunded bonds of any one issuer that a fund can acquire. *See* T. Rowe Price Tax-Free Funds, *supra* note 10.

[22] Rule 5b–3(c)(4).

[23] Rule 5b–3(c)(4)(i), (ii).

[24] Rule 5b–3(c)(4)(iii). The rule makes an exception to the certification requirement if the refunded security has received the highest rating from an NRSRO. *Id.*

[25] *See* rule 2a–7(c)(4)(ii)(B). Technical amendments that we are adopting today will replace the definition of "refunded security" in rule 2a–7(a)(20) with a reference incorporating the definition that we are adopting in rule 5b–3(c)(4).

[26] Rule 12d3–1 provides an exemption for purchases of securities of any entity that derived fifteen percent or less of its gross revenues from securities related activities in its most recent fiscal year, unless the acquiring company would control the entity after the purchase. If the entity derived more than fifteen percent of its gross revenues from securities related activities, the rule provides a

that enters into a repurchase agreement with a broker-dealer or other counterparty that is engaged in securities related activities may be in violation of section 12(d)(3) of the Act, unless it is permitted to look through the agreement to the underlying collateral. The note appended to rule 12d3–1 has made the rule unavailable for repurchase agreements. With the elimination of this note, funds may rely on rule 12d3–1 even if the repurchase agreement does not meet the requirements for "look-through" treatment in rule 5b–3.[27]

D. Conforming Amendments to Rule 2a–7

We are also adopting conforming amendments to rule 2a–7. These amendments replace the definitions of "collateralized fully," "event of insolvency," and "refunded security," currently set forth in rule 2a–7, with cross-references to the corresponding definitions in rule 5b–3.[28]

III. Effective Date

The new rule and rule amendments will be effective August 15, 2001.[29]

IV. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. For the most part, rule 5b–3 codifies current staff positions, and therefore will result in few marginal costs or benefits.[30] By codifying a number of staff no-action positions issued over a nearly twenty year period, the rule will give greater transparency to the Commission's rules in this area. In addition, the rule uses standards that are similar to those currently specified in rule 2a–7 for the treatment of repurchase agreements and pre-refunded bonds by money market funds. With this similar treatment, fund complexes that include money market funds may be more efficient in monitoring compliance with the requirements of the rules for all types of funds.

The rule is more restrictive than current requirements in two respects. First, as discussed above, rule 5b–3 is limited to repurchase agreements in which the underlying collateral consists of cash items, U.S. government securities, securities that are rated in the highest rating category by the Requisite NRSROs and unrated securities that are of comparable quality to securities that are rated in the highest rating category by the Requisite NRSROs, as determined by an investment company's board of directors or its delegate. This requirement is intended to ensure that the market value of the collateral will remain fairly stable and that the fund will be able to liquidate the collateral quickly in the event of a default. This limitation on collateral is more restrictive than the staff's position with respect to the treatment of repurchase agreements for purposes of section 12(d)(3),[31] but less restrictive than the staff's position with respect to section 5(b)(1).[32] Since most repurchase agreements are collateralized by U.S. government securities, which clearly fall within the rule's limitations, it appears that the limitation will not have any significant impact on funds.

Second, the rule is limited to repurchase agreements that qualify for an exclusion from any automatic stay under applicable insolvency law. Although this requirement is included in rule 2a–7, it was not a feature of the staff positions, which generally pre-dated the relevant changes in the Bankruptcy Code. Again, because most repurchase agreements qualify for an exclusion, this limitation should not have any significant impact on funds. The limitation will, however, provide important protections for investors by ensuring that a fund can liquidate the collateral quickly in the event of the counterparty's bankruptcy.

The use of rule 5b–3 is optional: even if a fund can look through a repurchase agreement, it may choose to look to the counterparty rather than the underlying securities in meeting the diversification requirements in section 5(b)(1). Thus, a fund may choose not to use rule 5b–3 if it determines that the costs of complying with the rule's requirements outweigh the benefits of being able to look through the repurchase agreement to the underlying securities.

The amendment to rule 12d3–1 eliminates the "Note" to the rule that renders the rule unavailable for repurchase agreements. This amendment will provide additional flexibility for funds without impairing investor protection.

V. Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[33] Rule 5b–3 and the amendments to rules 2a–7 and 12d–3 are being adopted pursuant to the authority in section 6(c) and 38(a) of the Act.[34] Section 6(c) conditions rulemaking authority on the requirement that the rule be "necessary or appropriate in the public interest"; therefore, the requirements of section 2(c) apply to rule 5b–3 and the rule amendments.

The Commission has considered whether this rulemaking will promote efficiency, competition, and capital formation. The rule and rule amendments generally codify the requirements for looking through repurchase agreements and pre-refunded bonds to the underlying securities for purposes of complying with sections 5(b)(1) and 12(d)(3) of the Act. Consistent with staff no-action positions, funds have been looking through repurchase agreements and pre-refunded bonds for a number of years. The few changes made by the rule and rule amendments generally are intended to reflect recent developments in bankruptcy law protecting parties to repurchase agreements and to adapt the Act to economic realities of repurchase agreements and pre-refunded bonds. These changes should not have a significant impact on funds. In addition,

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limited exemption based on the amount and value of the securities purchased. The note to the rule stated: "NOTE: It is not intended that this rule should supersede the requirements prescribed in Investment Company Act Release No. 13005 (Feb. 2, 1983) with respect to repurchase agreements with brokers or dealers."

[27] By eliminating this note, we do not intend in any way to alter an adviser's duty of care with respect to the advice it provides a mutual fund, including the advice to enter into a repurchase agreement.

[28] Rule 2a–7(a)(5), (11), and (20) (cross-referencing rule 5b–3(c)(1), (2), and (4)). Rule 5b–3(c)(1) expands the types of collateral that may be used to collateralize fully a repurchase agreement to include certain high-quality, unrated securities. *See supra* note 16 and accompanying text. This expansion of acceptable collateral also applies to rule 2a–7.

[29] As we indicated in the Proposing Release, we are withdrawing all prior Commission and staff no-action and interpretive positions that are inconsistent with rule 5b–3. This withdrawal is effective [60 days after publication of the release in the **Federal Register**]. After this date, funds may "look through" repurchase agreements and pre-refunded bonds to the underlying collateral, for purposes of the Act, only if all of the requirements of rule 5b–3 are met.

[30] We received no response to the request for comment on the preliminary cost-benefit analysis that was included in the Proposing Release.

[31] Investment Company Act Release No. 13005 (Feb. 2, 1983) [48 FR 5894 (Feb. 9, 1983)] did not specify the type of collateral, merely noting that the "securities most frequently used in connection with repurchase agreements are Treasury bills and other United States Government securities."

[32] The staff's no-action position in MoneyMart Assets, *supra* note 6, was conditioned on the collateral consisting entirely of U.S. government securities.

[33] 15 U.S.C. 80a–2(c).

[34] 15 U.S.C. 80a–6(c) and 80a–38(a).

since the use of rule 5b–3 is optional, funds may choose to look to the repurchase agreement counterparty rather than the underlying securities in meeting the diversification requirements in section 5(b)(1). Given these factors, we believe that the rule and rule amendments will have no significant impact on efficiency, competition, and capital formation.

VI. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604 regarding rule 5b–3, and the amendments to rules 2a–7 and 12d3–1. A summary of the Initial Regulatory Flexibility Analysis ("IRFA"), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. The following is a summary of the FRFA.

A. Need for and Objectives of the Rule Amendments

Rule 5b–3 generally codifies the staff's position that a fund may look through a fully collateralized repurchase agreement to the underlying securities for purposes of sections 5(b)(1) and 12(d)(3) of the Act. The rule also permits a fund to treat the acquisition of certain pre-refunded bonds as an acquisition of the escrowed securities for purposes of section 5(b)(1) of the Act. In addition, the amendment to rule 12d3–1 eliminates the "Note" appended to the rule in order to allow funds to rely on rule 12d3–1 even if the repurchase agreement is not collateralized fully. Finally, the amendments to rule 2a–7 are intended to simplify and update the provisions of that rule that address repurchase agreements and refunded securities.

B. Significant Issues Raised by Public Comments

The Commission received no comments on the IRFA.

C. Small Entities Subject to the Rules

For purposes of the Investment Company Act and the Regulatory Flexibility Act, a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[35]

Rule 5b–3 and the amendment to rule 12d3–1 will affect any fund that invests in a repurchase agreement with a broker, dealer, underwriter, or bank that is engaged in a securities-related business, when the investment may otherwise be prohibited by section 12(d)(3) of the Act. In addition, rule 5b–3 will affect any fund that holds itself out as a diversified investment company under section 5(b)(1) of the Act and that invests in repurchase agreements or pre-refunded bonds.

As of December 31, 2000, there were approximately 4,145 registered funds that were not money market funds. The Commission staff estimates that 196 of these funds are small entities. We assume that all funds enter into repurchase agreements, and that many of these agreements are with broker-dealers or other counterparties that are engaged in a securities-related business. Therefore, we anticipate that all of the estimated 196 small entities will be affected by the rule's treatment of investments in repurchase agreements for purposes of section 5(b)(1) and 12(d)(3) of the Act, and the amendment to rule 12d3–1.

The FRFA explains that rule 5b–3 should not have a significant economic impact on these funds. The rule would not effect significant changes to the current treatment of repurchase agreements and pre-refunded bonds, but instead would generally codify and update a number of no-action positions that have been taken by the Commission staff. In addition, the amendment to rule 12d3–1 would benefit these funds by allowing them to rely on the rule even if the repurchase agreement does not meet the requirements for "look-through" treatment.

The amendments to rule 2a–7 affect money market funds. As of December 31, 2000, there were approximately 300 registered funds with one or more portfolios that are money market funds. The Commission staff estimates that approximately six of these funds are small entities. The amendments replace the definitions of "collateralized fully," "event of insolvency," and "refunded security" in rule 2a–7 with cross-references to the corresponding definitions in rule 5b–3. The cross-reference to the definition of "collateralized fully" in rule 5b–3 will allow money market funds to use unrated securities that are of comparable quality to securities that are rated in the highest rating category by the Requisite NRSROs to collateralize fully their repurchase agreements. This change will not have a significant impact on small entities because most repurchase agreements are collateralized fully by U.S. government securities. In addition, the cross-references to the definitions of "event of insolvency" and "refunded security" in rule 5b–3 will not have a significant impact on small entities because the cross-references do not involve any change in substantive requirements.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Rule 5b–3 and the amendments to rule 2a–7 and 12d–3 will not impose any new reporting or recordkeeping requirements. These provisions do not involve major changes in compliance requirements because they mainly codify existing Commission staff positions. There are no rules that duplicate, overlap or conflict with the rule and rule amendments.

E. Agency Action to Minimize Effects on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant economic impact on small entities. In connection with rule 5b–3 and the rule amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities. The FRFA notes that rule 5b–3 and the rule amendments are not intended to effect major substantive changes to the current treatment of repurchase agreements and pre-refunded bonds, but would essentially codify a number of no-action positions taken by the Commission staff. Because rule 5b–3 and the rule amendments are designed to clarify the appropriate treatment of investments by funds in repurchase agreements and pre-refunded bonds for various purposes of the Act, and to provide investment flexibility for funds of all sizes, it would be inconsistent with the purposes of the Regulatory Flexibility Act to propose to exempt small entities from their coverage. Further clarification, consolidation, or simplification of the rules, or specification of different compliance standards for small entities, would not be appropriate, because the rules set forth the minimum standards consistent with investor protection. For the same reasons, the use of performance standards would be inappropriate. Overall, rule 5b–3 and the rule amendments will not have an adverse effect on small entities.

The FRFA is available for public inspection in File No. S7–21–99, and a

[35] 17 CFR 270.0–10.

copy may be obtained by contacting Hugh Lutz, Attorney, at (202–942–0690), Office of Regulatory Policy, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

VII. Statutory Authority

The Commission is adopting new rule 5b–3, and amending rule 2a–7 and rule 12d3–1, pursuant to the authority set forth in sections 6(c) and 38(a) of the Act [15 U.S.C. 80a–6(c) and 80a–37(a)]. The Commission is amending Form N–SAR pursuant to authority set forth in sections 13, 15(d) and 23(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78m, 78o(d), and 78w(a)] and sections 8, 30 and 38 of the Investment Company Act of 1940 [15 U.S.C. 80a–8, 80a–29 and 80a–37].

List of Subjects in 17 CFR Parts 270 and Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.2a–7 is amended by revising paragraphs (a)(5), (a)(11), and (a)(20) to read as follows:

§ 270.2a–7 Money market funds.

(a) Definitions.

* * * * *

(5) *Collateralized Fully* means "Collateralized Fully" as defined in § 270.5b–3(c)(1).

* * * * *

(11) *Event of Insolvency* means "Event of Insolvency" as defined in § 270.5b–3(c)(2).

* * * * *

(20) *Refunded Security* means "Refunded Security" as defined in § 270.5b–3(c)(4).

* * * * *

3. Section 270.5b–3 is added to read as follows:

§ 270.5b–3 Acquisition of repurchase agreement or refunded security treated as acquisition of underlying securities.

(a) *Repurchase Agreements.* For purposes of sections 5 and 12(d)(3) of the Act (15 U.S.C. 80a–5 and 80a–12(d)(3)), the acquisition of a repurchase agreement may be deemed to be an acquisition of the underlying securities, provided the obligation of the seller to repurchase the securities from the investment company is Collateralized Fully.

(b) *Refunded Securities.* For purposes of section 5 of the Act (15 U.S.C. 80a–5), the acquisition of a Refunded Security is deemed to be an acquisition of the escrowed Government Securities.

(c) *Definitions.* As used in this section:

(1) *Collateralized Fully* in the case of a repurchase agreement means that:

(i) The value of the securities collateralizing the repurchase agreement (reduced by the transaction costs (including loss of interest) that the investment company reasonably could expect to incur if the seller defaults) is, and during the entire term of the repurchase agreement remains, at least equal to the Resale Price provided in the agreement;

(ii) The investment company has perfected its security interest in the collateral;

(iii) The collateral is maintained in an account of the investment company with its custodian or a third party that qualifies as a custodian under the Act;

(iv) The collateral consists entirely of:

(A) Cash items;

(B) Government Securities;

(C) Securities that at the time the repurchase agreement is entered into are rated in the highest rating category by the Requisite NRSROs; or

(D) Unrated Securities that are of comparable quality to securities that are rated in the highest rating category by the Requisite NRSROs, as determined by the investment company's board of directors or its delegate; and

(v) Upon an Event of Insolvency with respect to the seller, the repurchase agreement would qualify under a provision of applicable insolvency law providing an exclusion from any automatic stay of creditors' rights against the seller.

(2) *Event of Insolvency* means, with respect to a person:

(i) An admission of insolvency, the application by the person for the appointment of a trustee, receiver, rehabilitator, or similar officer for all or substantially all of its assets, a general assignment for the benefit of creditors, the filing by the person of a voluntary petition in bankruptcy or application for reorganization or an arrangement with creditors; or

(ii) The institution of similar proceedings by another person which proceedings are not contested by the person; or

(iii) The institution of similar proceedings by a government agency responsible for regulating the activities of the person, whether or not contested by the person.

(3) *Government Security* means any "Government Security" as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16)).

(4) *Refunded Security* means a debt security the principal and interest payments of which are to be paid by Government Securities ("deposited securities") that have been irrevocably placed in an escrow account pursuant to an agreement between the issuer of the debt security and an escrow agent that is not an "affiliated person," as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of the debt security, and, in accordance with such escrow agreement, are pledged only to the payment of the debt security and, to the extent that excess proceeds are available after all payments of principal, interest, and applicable premiums on the Refunded Securities, the expenses of the escrow agent and, thereafter, to the issuer or another party; *provided* that:

(i) The deposited securities are not redeemable prior to their final maturity;

(ii) The escrow agreement prohibits the substitution of the deposited securities unless the substituted securities are Government Securities; and

(iii) At the time the deposited securities are placed in the escrow account, or at the time a substitution of the deposited securities is made, an independent certified public accountant has certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on the Refunded Securities; *provided, however,* an independent public accountant need not have provided the certification described in this paragraph (c)(4)(iii) if the security, as a Refunded Security, has received a rating from an NRSRO in the highest category for debt obligations (within which there may be sub-categories or gradations indicating relative standing).

(5) *NRSRO* means any nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of § 240.15c3–1 of this chapter, that is not an "affiliated person," as defined in section 2(a)(3)(C) of the Act (15 U.S.C.

80a–2(a)(3)(C)), of the issuer of, or any insurer or provider of credit support for, the security.

(6) *Requisite NRSROs* means:

(i) Any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or

(ii) If only one NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the investment company acquires the security, that NRSRO.

(7) *Resale Price* means the acquisition price paid to the seller of the securities plus the accrued resale premium on such acquisition price. The accrued resale premium is the amount specified in the repurchase agreement or the daily amortization of the difference between the acquisition price and the resale price specified in the repurchase agreement.

(8) *Unrated Securities* means securities that have not received a rating from the Requisite NRSROs.

4. Section 270.12d3–1 is amended by removing the note following paragraph (d)(8).

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

5. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 781, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

Note: The text of Form N–SAR does not, and this amendment will not, appear in the *Code of Federal Regulations*.

6. Form N–SAR (referenced in 17 CFR 274.101) is amended by revising the second sentence in the first paragraph of the Instructions to Specific Items 24 and 25 to read as follows:

FORM N–SAR

* * * * *

Instructions to Specific Items

* * * * *

ITEMS 24 and 25: Acquisition of securities of registrant's regular brokers or dealers

* * * *See* Rule 12d3–1, Investment Company Act Release No. 14036, dated July 13, 1984, adopting Rule 12d3–1, and Investment Company Act Release No. 25058, dated July 5, 2001, amending Rule 12d3–1. * * *

* * * * *

Dated: July 5, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17302 Filed 7–10–01; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin; Withdrawal of Approval of NADAs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions that reflect approval of two new animal drug applications (NADAs) listed below. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADAs.

DATES: This rule is effective July 23, 2001.

FOR FURTHER INFORMATION CONTACT: Pamela K. Esposito, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5593.

SUPPLEMENTARY INFORMATION: Heinold Feeds, Inc., P.O. Box 377, Kouts, IN 46347, has requested that FDA withdraw approval of NADA 95–628 for Tylosin® Antibiotic Premix and NADA 127–506 for Tylan® Sulfa-G Premixes because the products are no longer manufactured or marketed.

Following the withdrawal of approval of these NADAs, Heinold Feeds, Inc., is no longer the sponsor of any approved applications. Therefore, 21 CFR 510.600(c) is amended to remove entries for this sponsor.

As provided below, the animal drug regulations are amended to reflect the withdrawal of approvals.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Heinold Feeds, Inc.," and in the table in paragraph (c)(2) by removing the entry for "043727".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.625 [Amended]

4. Section 558.625 *Tylosin* is amended by removing and reserving paragraph (b)(9).

§ 558.630 [Amended]

5. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by removing "043727,"; and by removing "and 051359, 053389" and by adding in its place "051359, and 053389".

Dated: July 2, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–17407 Filed 7–10–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–014]

Drawbridge Operating Regulation; Green River, Spottsville, Kentucky

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from drawbridge regulations.

SUMMARY: The Commander, Eighth Coast Guard District has authorized a temporary deviation from the regulation governing the Louisville & Nashville Railroad Drawbridge, Mile 8.3, Green River at Spottsville, Kentucky. This deviation allows the drawbridge to remain closed to navigation for 12 days from 7 a.m., August 13, 2001, until 5 p.m., August 24, 2001. This action is required to allow the bridge owner time for repair work that is essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 7 a.m., August 13, 2001, until 5 p.m., August 24, 2001.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: The Louisville & Nashville Drawbridge provides a vertical clearance of 46.4 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreation watercraft. During normal river stages most vessels are able to pass beneath the closed span. In order to repair the bent shaft and install new lift rails the bridge must be kept inoperative and in the closed-to-navigation position. This deviation has been coordinated with waterway users who do not object.

This deviation allows the bridge to remain closed to navigation from 7 a.m., August 13, 2001, to 5 p.m., August 24, 2001. The drawbridge normally opens on signal.

Dated: June 28, 2001.

Roy J. Casto,

RADM, USCG, Commander, 8th CG District.

[FR Doc. 01–17378 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–01–016]

Drawbridge Operating Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary deviation.

SUMMARY: The Commander, Eighth Coast Guard District, has authorized a temporary deviation from the regulation governing the Rock Island Railroad & Highway Drawbridge, across the Upper Mississippi River at Mile 482.9, at Rock Island, Illinois. This deviation allows for the drawbridge to remain closed-to-navigation for 8 hours from 6 a.m. to 2 p.m. on August 4, 2001. This action is required to allow the bridge owner time to perform structural repairs for concrete placement of the swing span.

DATES: This temporary deviation is effective from 6 a.m. to 2 p.m., August 4, 2001.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: The Rock Island Railroad & Highway Drawbridge provides a vertical clearance of 23.8 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users who do not object.

This deviation allows the bridge to remain closed-to-navigation from 6 a.m. to 2 p.m., August 4, 2001. The drawbridge normally opens on signal.

Dated: June 28, 2001.

Roy J. Casto, RADM, USCG,

Commander, 8th CG District.

[FR Doc. 01–17379 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–01–015]

Drawbridge Operating Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from drawbridge regulations.

SUMMARY: The Commander, Eighth Coast Guard District has authorized a temporary deviation from the regulation governing the Rock Island Railroad & Highway Drawbridge, across the Upper Mississippi River at Mile 482.9, at Rock Island, Illinois. This deviation allows for the drawbridge to remain closed-to-navigation for 12 hours from 6 a.m. to 6 p.m. on July 17, 2001. This action is required to allow the bridge owner time for dark removal and perform structural repairs.

DATES: This temporary deviation is effective from 6 a.m. to 6 p.m., July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: The Rock Island Railroad & Highway Drawbridge provides a vertical clearance of 23.8 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users who do not object.

This deviation allows the bridge to remain closed-to-navigation from 6 a.m. to 6 p.m., July 17, 2001. The drawbridge normally opens on signal and will open on signal at all other times.

Dated: June 21, 2001.

Roy J. Casto,

RADM, USCG Commander, 8th CG District.

[FR Doc. 01–17380 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–01–052]

Drawbridge Operation Regulations; Florida East Coast Railroad Bridge, St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Florida East Coast Railroad Bridge across the St. Johns River, mile 24.9, Jacksonville, Florida. This test deviation removes the automated tender and requires the bridge owner or operator to post a live bridge-tender (Control Operator) to control the bridge openings. This test period will begin at 8 a.m., on August 2, 2001 and terminate at 4 p.m., August 31, 2001. The test data will be compiled utilizing bridge logs.

DATES: This deviation is effective from 8 a.m., August 2, 2001 to 4 p.m., August 31, 2001. Comments must be received by September 30, 2001.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, FL 33131. Comments and material received from the public, as well as documents

indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Federal East Coast Railroad Bridge across the St. Johns River at Jacksonville, is a single leaf bridge with a vertical clearance of 9 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 195 feet. The current operating regulation in 33 CFR 117.325(c) allows the draw to operate as an automated railroad bridge.

On May 1, 2001, the drawbridge owner requested a deviation from the current operating regulations to allow the owner to conduct a study to determine if the removal of the automation of this bridge will improve navigational safety for vessels, and increase efficiency of rail traffic.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.325(c) for the purpose of conducting this study. Under this deviation, the Florida East Coast Railroad Bridge shall open on signal and a radiotelephone shall be maintained at the bridge for safety of navigation. The draw will close when a train approaches and remain closed for the passage of the train for a period of not more than sixteen minutes. The draw may be allowed to remain in the last used position until the next passage of a vessel or train. The deviation is effective from 8 a.m., August 2, 2001, to 4 p.m., August 31, 2001.

Request for Comments

We encourage you to participate in this rulemaking of the test schedule by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this deviation [CGD07–01–052], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. The comment period will end on September 30, 2001.

Dated: July 2, 2001.

Greg E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 01–17386 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–01–059]

Drawbridge Operation Regulations: State Road A1A (North Bridge) Drawbridge, Atlantic Intracoastal Waterway, Fort Pierce, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the State Road A1A (North Bridge) Drawbridge across the Atlantic Intracoastal Waterway, mile 964.8, Fort Pierce, Florida. This deviation allows the bridge owner to provide single leaf openings from 8:30 a.m. until 4:30 p.m., on July 23, 2001 through July 25, 2001. Double leaf openings shall be provided with a two-hour advance notice. This temporary deviation is required to allow the bridge owner to safely complete emergency repairs to the bridge decking.

DATES: This deviation is effective from 8:30 a.m., July 23, 2001, through 4:30 p.m., July 25, 2001.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The State Road A1A (North Bridge) Drawbridge across the Atlantic Intracoastal Waterway at Fort Pierce, Florida, is a double leaf bridge with a vertical clearance of 26 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 90 feet. The current operating regulation in 33 CFR 117.5 requires the draw to open on signal.

On June 27, 2001, the drawbridge owner requested a deviation from the current operating regulations to allow the owner to complete emergency repairs to the corroded decking.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 for the purpose of completing these repairs. Under this deviation, the State Road A1A (North Bridge) shall operate on single leaf from 8:30 a.m. to 4:30 p.m. from July 23, 2001 through July 25, 2001. Double leaf openings shall be provided with two hours advance notice.

Dated: June 28, 2001.

Greg E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 01–17388 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–096]

Drawbridge Operation Regulations: Newark Bay, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge regulations which govern the operation of the Lehigh Valley (Upper Bay) railroad bridge, at mile 4.3, across Newark Bay in New Jersey. This deviation from the regulations allows the bridge owner to keep the bridge in the closed position from 6 a.m., on July 23, 2001 through 6 p.m., on July 27, 2001. This action is necessary to facilitate maintenance at the bridge. Vessels that can pass under the bridge without an opening may do so at all times.

DATES: This deviation is effective from July 23, 2001 through July 27, 2001.

FOR FURTHER INFORMATION CONTACT: Judy Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Lehigh Valley (Upper Bay) railroad bridge, at mile 4.3, across Newark Bay has a vertical clearance of 35 feet at

mean high water, and 39 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.735.

The bridge owner, Conrail, requested a temporary deviation from the operating regulations to facilitate replacement of the main counterweight sheave assembly at the bridge.

This deviation to the operating regulations will allow the owner of the bridge to keep the bridge in the closed position from 6 a.m., on July 23, 2001 through 6 p.m., on July 27, 2001. Vessels that can pass under the bridge without an opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 28, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–17389 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–017]

Drawbridge Operating Regulation; Lower Grand River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the LA 77 bridge across the Lower Grand River, mile 47.0 (Alternate Route) at Grosse Tete, Iberville Parish, Louisiana. This deviation allows the Louisiana Department of Transportation and Development to maintain the bridge in the closed-to-navigation position from 7 a.m. until 5 p.m. on Tuesday, July 24, 2001. At all others times, the bridge will operate normally for the passage of vessels. This temporary deviation was issued to allow for the replacement of a hydraulic valve which controls the cylinders that open and close the bridge.

DATES: This deviation is effective from 7 a.m. until 5 p.m. on Monday, July 24, 2001.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (ob), 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The LA 77 bridge across the Lower Grand River, mile 47.0 (Alternate Route) at Grosse Tete, Iberville Parish, Louisiana, has a vertical clearance of 2 feet above high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists mainly of tows with barges and some recreational craft. The Louisiana Department of Transportation and Development requested a temporary deviation from the normal operation of the bridge in order to replace a defective part that controls the opening and closing of the bridge.

This deviation allows the draw of the LA 77 swing drawbridge across the Lower Grand River, mile 47.0 (Alternate Route), at Grosse Tete, Iberville Parish, Louisiana, (33 CFR 117.478(b)), to remain in the closed-to-navigation position from 7 a.m. until 5 p.m. on Tuesday July 24, 2001. Presently, the draw of the LA 77 bridge, mile 47.0 (Alternate Route) at Grosse Tete, shall open on signal; except that, from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 8 a.m. and from 2:30 p.m. to 4:30 p.m., Monday through Friday except Federal holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

Dated: June 28, 2001.

Roy J. Casto,

RADM, USCG, Commander, 8th CG District.

[FR Doc. 01–17391 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–047]

RIN 2115–AA97

Safety Zone; Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Venetian Night Fireworks in Chicago, Illinois. This safety zone is necessary to protect vessels and spectators from potential airborne hazards during a planned fireworks display over Lake Michigan. The safety zone is intended to restrict vessels from a portion of Lake Michigan off Chicago, Illinois.

DATES: This rule is effective from 9 p.m. (local) until 10 p.m. (local), July 28, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–047] and are available for inspection or copying at Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois 60521, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Mike Hogan, U.S. Coast Guard Marine Safety Office, 215 W. 83rd Street, Suite D, Burr Ridge, IL 60521. The telephone number is (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments with regard to this event.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Chicago has determined firework launches in close proximity to watercraft pose significant

risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risks.

Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Chicago or his designated on-scene representative. The designated on-scene representative may be contacted on VHF/FM Marine Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12966, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in a portion of Lake Michigan from 9 p.m. to 10 p.m., July 28, 2001. This regulation would not have a significant economic impact for the following reasons. The regulation is only in effect for only 1 hour on one day. The designated area is being established to allow for maximum use of the waterway for commercial vessels to enjoy the fireworks display in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary section 165.T09–919 is added to read as follows:

§ 165.T09–919 Safety Zone: Lake Michigan, Chicago, IL.

(a) *Location.* The following area is a safety zone: The waters of Lake Michigan within the arc of a circle with a 700-foot radius from the fireworks launch site at Monroe Harbor with its center in the approximate position 41°52′41″ N/087°36′37″ W. (NAD 1983).

(b) *Effective time and date.* This regulation is effective from 9 p.m. (local) until 10 p.m. (local), on July 28, 2001.

(c) *Regulations.* This safety zone is being established to protect the boating public during a planned fireworks display. In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated Patrol Commander.

Dated: June 21, 2001.

R.E. Seebald,

Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 01–17383 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–107]

RIN 2115–AA97

Safety Zone; McArdle Bridge Dredge Operations—Boston, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone closing all waters of Boston Inner Harbor one hundred (100) yards upstream and downstream from the McArdle Bridge for Bridge Dredge Operations. The safety zone prohibits entry into or movement within this portion of Boston Inner Harbor during the closure periods without Captain of the Port authorization and is needed to allow the Great Lakes Dredge Company to conduct dredging in the vicinity of the McArdle Bridge.

DATES: This rule is effective from June 27 through July 13, 2001.

ADDRESSES: Documents as indicated in this preamble are part of docket CGD01–01–107 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Dave Sherry, Marine Safety Office Boston, Waterways Management Division, at (617) 223–3006.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about this event was not provided to the Coast Guard until June 22, 2001, making it impossible to draft or publish a NPRM or a final rule 30 days in advance of its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to prevent traffic from transiting a portion of the Chelsea River, Boston, Massachusetts, and provide for the safety of life on navigable waters. Additionally, this temporary safety zone only closes the waterway for a 2-day and 3-day period and should have negligible impact on vessel transits due to the fact that vessels are not precluded from using any portion of the waterway upstream or downstream except the safety zone area itself, public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Background and Purpose

This regulation establishes a safety zone one hundred (100) yards upstream and downstream of the McArdle Bridge in Boston Harbor. The safety zone will be in effect for two closure periods: the first from 6 a.m. to 6 p.m. on June 27 until 29, 2001; and the second from sunrise on July 10 until sunrise on July 13, 2001.

The safety zone restricts movement within this portion of Boston Harbor and is needed to allow the Great Lakes Dredge Company to conduct dredging in the vicinity of the McArdle Bridge. The Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation will prevent traffic from transiting a portion of Boston Harbor during the effective periods, the effects of this regulation will not be significant due to the planning that took place between marine and cargo stakeholders and Coast Guard Marine Safety Office Boston representatives. To minimize impact on the port community it was decided that these new channel closures should overlap previously scheduled closures published in the **Federal Register** (66 FR 21284, April 30, 2001) under CGD01–01–021. Other elements reducing the impact of this regulation include: the minimal time that vessels will be restricted from the area and the advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in

a portion of Chelsea River between June 27, 2001 and July 13, 2001, during the designated closures. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the minimal time that vessels will be restricted from the area and the advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard coordinated a meeting to achieve this on June 21, 2001.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.

2. Add temporary § 165.T01–107 to read as follows:

§ 165.T01–107 Safety Zone: McArdle Bridge Dredge Operations—Boston, Massachusetts

(a) *Location.* The following area is a safety zone: All waters of Boston Inner Harbor one hundred (100) yards upstream and downstream of the McArdle Bridge, Boston, MA.

(b) *Effective date.* This section will be enforced from 6 a.m. to 6 p.m. on June 27 through June 29, 2001, and from sunrise on July 10 until sunrise on July 13, 2001.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: June 27, 2001.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 01–17382 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–01–048]

RIN 2115–AA97

Safety Zone; Ashley River, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the safety zone in front of Brittlebank

Park on the Ashley River, South Carolina. The zone was created for fireworks displays launched from a barge in the Ashley River. The zone is no longer needed because the fireworks are now launched from land.

DATES: This section becomes effective on August 10, 2001.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket [CGD07–01–048] and are available for inspection or copying at Marine Safety Office Charleston, 196 Tradd Street, Charleston, SC 29401–1899, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lt. Paul Dittman, Port Operations Officer, U.S. Coast Guard Marine Safety Office, Charleston, SC (843) 724–7684.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that publishing an NPRM is unnecessary because this rule removes a safety zone that is no longer needed because fireworks are no longer launched or exploded over the River.

Background and Purpose

The rule creating the safety zone was published in the **Federal Register** (56 FR 30508) on July 3, 1991. The rule established a safety zone around a barge that launched fireworks every year on the Fourth of July. The safety zone was needed to prevent damage or injury from falling fireworks debris and to prevent the accidental discharge of the fireworks prior to their launching. The regulation was in effect July 4 each year. Starting in 2000 the fireworks launch area was moved inland. The safety zone is no longer needed and the Coast Guard is removing the regulation.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because this rule removes an obsolete safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small business may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a

significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g); 6.04–1, 6.04–6. 160.5; 49 CFR 1.46.

§ 165.713 [Removed]

2. Remove § 165.713.

Dated: July 2, 2001.

G.W. Merrick,

Commander, U.S. Coast Guard, Captain of the Port, Charleston, South Carolina.

[FR Doc. 01–17405 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 071–0283; FRL–6997–6]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, Monterey Bay Unified Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion and Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on December 15, 2000 and concerns PM–10 emissions from livestock feed lots and from agricultural burning. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulate these emission sources and directs California to correct rule deficiencies.

EPA is also finalizing full approval of revisions to the ICAPCD portion of the California SIP concerning definitions, PM–10 emissions from orchard heaters, incinerators, open burning, and range improvement burning; to the South Coast Air Quality Management District (SCAQMD) portion concerning PM–10 emissions from restaurant operations; and to the MBUAPCD portion concerning exceptions to other rules.

EPA is deferring to a separate action revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California SIP concerning PM–10 emissions from industrial processes and from residential wood combustion.

EFFECTIVE DATE: This rule is effective on August 10, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted rule revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 744–1135.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On December 15, 2000 (65 FR 78434), EPA proposed a limited approval and limited disapproval of the rules in Table 1 that were submitted by CARB for incorporation into the California SIP.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	420	Livestock Feed Yards	9/14/99	5/26/00
ICAPCD	701	Agricultural Burning	9/14/99	5/26/00
MBUAPCD	403	Particulate Matter	3/22/00	5/26/00
SJVUAPCD	4201	Particulate Matter Concentration	12/17/92	11/18/93
SJVUAPCD	4901	Residential Wood Burning	7/15/93	12/10/93

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the CAA and have limited enforceability.

On December 15, 2000 (65 FR 78434), we also proposed a full approval of the adoption or recision of the rules in Table 2 that were submitted by CARB for incorporation into or removal from the California SIP.

TABLE 2.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted or rescinded	Submitted
ICAPCD	101	Definitions	9/14/99	5/26/00
ICAPCD	408	Frost Protection	9/14/99	5/26/00

TABLE 2.—SUBMITTED RULES—Continued

Local agency	Rule No.	Rule title	Adopted or rescinded	Submitted
ICAPCD	409	Incinerators	9/14/99	5/26/00
ICAPCD	421	Open Burning	9/14/99	5/26/00
ICAPCD	702	Range Improvement Burning	9/14/99	5/26/00
MBUAPCD	405	Exceptions	3/22/00 (Rescinded)	5/26/00
MBUAPCD	406	Additional Exception	3/22/00 (Rescinded)	5/26/00
SCAQMD	1138	Control of Emissions from Restaurant Operations	11/14/97	3/10/98

Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments on SJVUAPCD Rules 4201 and 4901. We will address these comments in a separate action.

III. EPA Action

We are not taking action on SJVUAPCD Rules 4201 and 4901 at this time. No comments were submitted that change our assessment of the other rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is finalizing a limited approval of submitted rule MBUAPCD Rule 403. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. No sanctions will be imposed for MBUAPCD Rule 403, because the area is PM–10 attainment and the rule is not required to maintain attainment.

EPA is also finalizing a limited approval of submitted rules ICAPCD Rules 420 and 701. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rules. As a result, sanctions will be imposed for ICAPCD Rules 420 and 701 unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act as described in 59 FR 39832 (August 4, 1994). In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rules have been adopted by the local agencies, and EPA's final limited disapproval does not prevent the local agency from enforcing them.

EPA is finalizing full approval of submitted rules ICAPCD Rule 101, ICAPCD Rule 408, ICAPCD Rule 409, ICAPCD Rule 421, ICAPCD Rule 702, and SCAQMD Rule 1138 for incorporation into the California SIP. EPA is finalizing full approval of the recision of submitted rules MBUAPCD Rule 405 and MBUAPCD Rule 406 from the California SIP.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. E.O. 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA

to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 18, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(159)(iii)(C), (c)(254)(i)(D)(*5*), (c)(279)(i)(A)(*2*), and (c)(279)(i)(B)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(159) * * *

(iii) * * *

(C) Previously approved on July 13, 1987 in (c)(159)(iii)(A) of this section

and now deleted without replacement Rules 405 and 406.

* * * * *

(254) * * *

(i) * * *

(D) * * *

(*5*) Rule 1138, adopted on November 14, 1997.

* * * * *

(279) * * *

(i) * * *

(A) * * *

(*2*) Rules 101, 408, 409, 420, 421, 701, and 702, adopted on September 14, 1999.

(B) * * *

(*2*) Rule 403, adopted on March 22, 2000.

* * * * *

[FR Doc. 01–17201 Filed 7–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7009–6]

Approval of Section 112(l) Program of Delegation; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, through a "direct final" procedure, a request for delegation of the Federal air toxics program. The State's mechanism of delegation involves the straight delegation of all existing and future section 112 standards unchanged from the Federal standards. The actual delegation of authority of individual standards, except standards addressed specifically in this action, will occur through a mechanism set forth in a memorandum of agreement (MOA) between the Ohio Environmental Protection Agency (OEPA) and EPA. This request for approval of a mechanism of delegation encompasses all part 70 and non-part 70 sources subject to a section 112 standard with the exception of the Coke Oven standard.

DATES: The "direct final" is effective on September 10, 2001, unless EPA receives adverse or critical written comments by August 10, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: Pamela Blakely, Chief, Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other supporting information used in developing the approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Please contact Genevieve Damico at (312) 353–4761 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353–4761, damico.genevieve@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why Are We Delegating This Program to OEPA?

Section 112(l) of the Act enables the EPA to delegate Federal air toxics programs or rules to be implemented by States in State air toxics programs. The Federal air toxics program implements the requirements found in section 112 of the Act pertaining to the regulation of hazardous air pollutants. Approval of an air toxics program is granted by the EPA if the Agency finds that the State program: (1) Is no less stringent than the corresponding Federal program or rule, (2) the State has adequate authority and resources to implement the program for all sources, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance. Once approval is granted, the air toxics program can be implemented and enforced by State or local agencies, as well as EPA. Implementation by local agencies is dependent upon appropriate subdelegation.

II. What Is the History of This Request for Delegation?

On March 31, 1995, Ohio submitted to EPA a request for delegation of authority to implement and enforce the air toxics program under section 112 of the Act. Additional letters supplementing this request were sent on June 27, 1995, August 23, 1996, June 1, 1999, and July 8, 1999. On July 22, 1999, EPA found the State's submittal complete. OEPA notified us through a letter dated December 13, 2000, that it is not requesting delegation of the Coke Oven standard (40 CFR part 63, subpart L). In this document EPA is taking final action to approve the program of delegation for Ohio for part 70 and non-part 70 sources with the exception of sources subject to the Coke Oven standard (40 CFR part 63, subpart L).

III. How Will OEPA Implement This Delegation?

Requirements for approval, specified in section 112(l)(5), require that a State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule. These requirements are also requirements for an adequate operating permits program under part 70 (40 CFR 70.4). In an August 15, 1995 rulemaking, EPA promulgated a final full approval under part 70 of the State of Ohio's Operating Permit Program. The document did not include the approval of a 112(l) mechanism for delegation of all section 112 standards for sources subject to the part 70 program. Sources subject to the part 70 program are those sources that are operating pursuant to a part 70 permit issued by the State, local agency or EPA. Sources not subject to the part 70 program are those sources that are not required to obtain a part 70 permit from either the State, local agency or EPA (see 40 CFR 70.3).

This Ohio program of delegation will not include delegation of section 112(r) authority. (The 112(r) program has been delegated to OEPA under a separate document.) The program will, however, include the delegation of the 40 CFR part 63 general provisions to the extent that they are not reserved to the EPA and are delegable to the State, as set forth at 65 FR 55810 (September 14, 2000).

As stated above, this document constitutes EPA's approval of Ohio's program of straight delegation of all existing and future air toxics standards, except for section 112(r) standards and the Coke Oven standard. Straight delegation means that the State will not promulgate individual State rules for each section 112 standard promulgated by EPA, but will implement and enforce without change the section 112 standards promulgated by EPA. The Ohio program of straight delegation is as follows: Upon promulgation of a section 112 standard, OEPA will issue or reopen the appropriate permit to include the section 112 standard for sources which are subject according to the permit issuance schedule in the MOA. OEPA will be able to implement and enforce the terms of the permit containing the section 112 standard requirement. OEPA must notify EPA within 45 days of the final promulgation of the standard if OEPA does not intend to take delegation of the standard. OEPA will incorporate section 112 standards into the Title V permits, new source review

permits and federally enforceable state operating permits according to the schedule of implementation in the MOA for each source in Ohio subject to the section 112 standard. The delegation will be implemented on a source by source basis upon the issuance of the applicable permit to that source. Ohio will assume responsibility for the timely implementation and enforcement required by each standard, as well as any further activities agreed to by OEPA and EPA. Some activities necessary for effective implementation of a standard include receipt of initial notifications, recordkeeping, reporting and generally assuring that sources subject to a standard are aware of its existence. When deemed appropriate, OEPA will utilize the resources of its Small Business Assistance Program to assist in general program implementation. The details of this delegation mechanism will be set forth in a memorandum of agreement between EPA and OEPA, copies of which will be placed in the docket associated with this rulemaking.

IV. What Requirements Did OEPA Meet To Receive Today's Approval?

On November 26, 1993, EPA promulgated regulations to provide guidance relating to the approval of State programs under section 112(l) of the Act. 40 FR 62262. These rules were revised on September 14, 2000. 40 FR 55809. That rulemaking outlined the requirements of approval with respect to various delegation options. The requirements for approval pursuant to section 112(l)(5) of the Act, for a program to implement and enforce Federal section 112 rules as promulgated without changes, are found at 40 CFR 63.91. Any request for approval must meet all section 112(l) approval criteria, as well as all approval criteria of § 63.91. A more detailed analysis of the State's submittal pursuant to § 63.91 is contained in the Technical Support Document included in the official file for this rulemaking.

Under section 112(l) of the Act, approval of a State program is granted by the EPA if the Agency finds that: (1) It is "no less stringent" than the corresponding Federal program, (2) the State has adequate authority and resources to implement the program for all sources, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance.

V. How Did OEPA Meet the Approval Criteria?

EPA is approving Ohio's mechanism of delegation because the State's submittal meets all requirements necessary for approval under section 112(l). The first requirement is that the program be no less stringent than the Federal program. The Ohio program is no less stringent than the corresponding Federal program or rule because the State has requested straight delegation of all standards unchanged from the Federal standards. Second, the State has shown that it has adequate authority and resources to implement the program. The Ohio Statutes authorize OEPA to require and issue Title V permits to part 70 sources and new source review permits and federally enforceable state operating permits to non-part 70 sources of regulated pollutants to assure compliance with all applicable requirements of the Act. The authority to issue permits includes the authority to incorporate permit conditions that implement Federal section 112 standards. Furthermore, Ohio has the authority to implement each section 112 regulation, emission standard or requirement, perform inspections, request compliance information, incorporate requirements into permits, and bring civil and criminal enforcement actions to recover penalties and fines. OEPA will enforce section 112 standards applicable to part 70 sources by including such section 112 standards in Title V operating permits according to the schedule in the MOA. For section 112 standards applicable to non-part 70 sources by including such section 112 standards in new source review and federally enforceable state operating permits according to the schedule in the MOA. Regardless of type of permit holding the requirements of the standard, the permit must be effective prior to the first substantial compliance date for all future standards. Adequate resources will be obtained through State matching funds, and through any monies from the State's Title V program that can be used to fund acceptable Title V activities.

Third, upon promulgation of a standard, Ohio will immediately begin activities necessary for timely implementation of the standard. These activities will involve identifying sources subject to the applicable requirements and notifying these sources of the applicable requirements. Such schedule is sufficiently expeditious for approval.

Fourth, nothing in the Ohio program for straight delegation is contrary to Federal guidance.

VI. How Are Sources Subject to the Coke Oven Standard (40 CFR Part 63, Subpart L) Going To Be Handled Since OEPA Did Not Accept Delegation of This Standard?

OEPA notified us through a letter dated December 13, 2000, that it is not requesting delegation of the Coke Oven standard (40 CFR part 63, subpart L). Since OEPA is not accepting delegation of the Coke Oven standard, EPA will be the primary enforcement authority. The Coke Oven standard remains an applicable requirement for the sources subject to this standard. Therefore, OEPA must include the standard as an applicable requirement in Title V permits for subject sources and sources subject to this standard must continue to comply with its requirements.

VII. How Will Applicability Determinations Under Section 112 Be Made?

In approving this delegation, the State will obtain concurrence from EPA on any matter involving the interpretation of section 112 of the Clean Air Act or 40 CFR part 63 to the extent that implementation, administration, or enforcement of these sections have not been covered by EPA determinations or guidance.

VIII. What Is Today's Final Action?

The EPA is promulgating final approval of the June 1, 1999, request by the State of Ohio of a mechanism for straight delegation of section 112 standards unchanged from Federal standards because the request meets all requirements of 40 CFR 63.91 and section 112(l) of the Act as it applies to part 70 and non-part 70 sources. After the effective date of this document, upon signing of the MOA and the issuance of the appropriate permit, the implementation and enforcement of all existing section 112 standards applicable to the part 70 or non-part 70 sources, excluding the Coke Oven standard (40 CFR part 63, subpart L) and section 112(r), which have been incorporated into the appropriate permits (Title V, New Source Review, or federally enforceable state operating permit), are delegated to the State of Ohio. As for the section 112 standards which have not yet been incorporated into permits, the implementation authority for these standards is delegated to the State of Ohio after the effective date of this action, upon signing of the MOA, and the issuance of the appropriate permit containing that standard. The enforcement authority and the future delegation of the section 112 standards to the State will occur

according to the procedures outlined in the MOA.

Effective immediately, all notifications, reports and other correspondence required under section 112 standards should be sent to the State of Ohio after the permit is issued. Affected sources should send this information to: Robert F. Hodanbosi, Division of Air Pollution Control, OEPA, 122 South Front Street, P.O. Box 1049, Columbus, Ohio 43266–7049

EPA is publishing this action without prior proposal because EPA views this action as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse or critical written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by August 10, 2001. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 10, 2001.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any State plan. Each request for revision to a State Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IX. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 10, 2001 unless EPA receives adverse written comments by August 10, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air Pollution control, Hazardous substances, Intergovernmental relations.

(**Authority:** 42 U.S.C. 7401, *et seq.*)

Dated: June 19, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01–17072 Filed 7–10–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

[Docket No. MARAD–2001–10056]

Service Obligation Reporting Requirements for United States Merchant Marine Academy and State Maritime School Graduates

AGENCY: Maritime Administration, Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is amending the employment reporting requirements for United States Merchant Marine Academy (USMMA) graduates and graduates receiving student incentive payments at state maritime schools. The

new rule will allow a USMMA or state maritime school graduate to submit his or her employment report 13 months following his or her graduation and each succeeding 12 months for a total of five consecutive years for USMMA graduates and three years for state maritime school graduates. The intended effect of this rulemaking is to provide all graduates (whether June or deferred) an equal amount of months to report employment under their service obligations rather than require a July 1 report date for all graduates including those having deferred graduation dates. This rule is noncontroversial and allows a timely as well as fair and efficient reporting criterion.

DATES: The effective date of this final rule is July 11, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Taylor E. Jones II, Office of Maritime Labor, Training, and Safety, (202) 366–5755. You may send mail to Mr. Jones at Maritime Administration, Office of Maritime Labor, Training, and Safety, MAR–250, Room 7302, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The USMMA and state maritime schools require a midshipman/cadet who is a U.S. citizen and who enters the USMMA or a state maritime school in the student incentive payment (SIP) program after April 1, 1982 to sign a service obligation contract which obligates the midshipman/cadet to certain post graduate employment. Prior regulations required an employment reporting date of July 1 for all USMMA and state maritime school SIP graduates irrespective of whether the graduation date was in June or deferred. This presented a situation in which some graduates were allowed less time to submit an employment report under their service obligations. This final rule will allow a USMMA or state maritime school SIP graduate to submit his or her employment report 13 months following his or her graduation and each succeeding 12 months for a total of five consecutive years for USMMA graduates and for a total of three years for state maritime school SIP graduates. This will afford all graduates (whether June or deferred) an equal amount of months to report employment under their service obligations rather than require a July 1 report date for all graduates including those having deferred graduation dates.

This rulemaking does not require notice and comment because it is a rule of agency organization, procedure, and practice (5 U.S.C. 553(b)). Additionally, we find good cause under 5 U.S.C. 553(d) to make this final rule effective upon publication because this rule is noncontroversial and allows a timely as well as fair and efficient reporting criterion. An immediate effective date of this final rule will provide USMMA and state maritime school (SIP) graduates with equal reporting time irrespective of graduation date.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not likely to result in an annual effect on the economy of $100 million or more. This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The economic impact, if any, should be so minimal that no further regulatory evaluation is necessary. This final rule is intended only to allow timely as well as fair and efficient employment reporting criterion.

Regulatory Flexibility Act

MARAD certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule only provides an equal reporting time for all USMMA and state maritime school graduates irrespective of graduation date.

Federalism

We analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Executive Order 13175

MARAD does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Environmental Impact Statement

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order ("MAO") 600–1, Procedures for Considering Environmental Impacts, 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment and an Environmental Impact Statement, or a Finding of No Significant Impact for this final rule is not required. This final rule involves administrative and procedural regulations that have no environmental impact.

Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of the rule.

Paperwork Reduction Act

This final rule contains information collection requirements covered by OMB approval number 2133–0509, under 5 CFR part 1320, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Part 310

Grant programs-education, Reporting and recordkeeping requirements, Schools, and Seamen

Accordingly, for the reasons discussed in the preamble, 46 CFR part 310, is amended as follows:

1. The authority citation for part 310 continues to read as follows:

Authority: 46 App. U.S.C. 1295; 49 CFR 1.66.

2. In § 310.7, paragraph (b)(6) is revised to read as follows:

§ 310.7 Federal student subsistence allowances and student incentive payments.

* * * * *

(b) * * *

(6) *Reporting requirement.* (i) The schools must promptly submit copies of all resignation forms (containing the name, reason, address and telephone number) of juniors and seniors to the Supervisor, to be used for monitoring and enforcement purposes. Each

graduate must submit an employment report form to the Maritime Administration (Supervisor) 13 months following his or her graduation and each succeeding 12 months for three years to: Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW., Washington, DC 20590. In case a deferment has been granted to engage in a graduate course of study, semi-annual reports must be submitted for any extension of the three (3) year obligation period resulting from such deferments. The examples follow:

Example 1: Midshipman graduates on June 30, 2001. His first reporting date is July 1, 2002 and thereafter for 3 consecutive years.

Example 2: Midshipman has a deferred graduation on November 30, 2001. His first reporting date is December 1, 2002 and thereafter for 3 consecutive years.

(ii) The Maritime Administration will provide reporting forms. However, non-receipt of such form will not exempt a graduate from submitting employment information as required by this paragraph. The reporting form has been approved by the Office of Management and Budget (2133–0509).

3. Section 310.58 is amended by revising paragraph (d) as follows:

* * * * *

(d) *Reporting requirements.* (1) Each graduate must submit an employment report form 13 months following his or her graduation and each succeeding 12 months for a total of five consecutive years to: Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW., Washington, DC 20590.

Example 1: Midshipman graduates on June 30, 2001. His first reporting date is July 1, 2002 and thereafter for 5 consecutive years.

Example 2: Midshipman has a deferred graduation on November 30, 2001. His first reporting date is December 1, 2002 and thereafter for 5 consecutive years.

(2) The Maritime Administration will provide reporting forms. However, non-receipt of such form will not exempt a graduate from submitting employment information as required by this paragraph. The reporting form has been approved by the Office of Management and Budget (2133–0509).

Dated: July 5, 2001.

By Order of the Acting Deputy Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–17217 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 01–76; FCC 01–196]

Assessment and Collection of Regulatory Fees for Fiscal Year 2001

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: The Commission will revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2001. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.

EFFECTIVE DATE: September 9, 2001.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director at (202) 418–0445 or Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION:

Adopted: June 28, 2001.

Released: July 2, 2001.

By the Commission:

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I. Introduction

1. By this *Report and Order*, the Commission concludes a proceeding to revise its Schedule of Regulatory Fees to collect the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required us to collect for Fiscal Year (FY) 2001.[1]

2. Congress has required that we collect $200,146,000 through regulatory fees to recover the costs of our competition, enforcement, spectrum management, and consumer information activities for FY 2001.[2] See Attachment G for a description of these activities. This amount is $14,392,000 or approximately 7.75% more than the amount that Congress designated for

[1] 47 U.S.C. 159(a).

[2] Public Law 106–553 and 47 U.S.C. 159(a)(2).

recovery through regulatory fees for FY 2000.[3] We are revising our fees in order to collect the amount that Congress has specified, as illustrated in a new fee schedule in Attachment D.

3. In revising our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with section 159(b)(2). The current Schedule of Regulatory Fees is set forth in §§ 1.1152 through 1.1156 of the Commission's rules.[4]

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities.[5] In our *FY 1994 Fee Order*,[6] we adopted the Schedule of Regulatory Fees that Congress established, and we prescribed rules to govern payment of the fees, as required by Congress.[7] Subsequently, we modified the fee schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. We are also amending the rules governing our regulatory fee program based upon our prior experience in administering the program.[8]

5. As noted, for FY 1994 (59 FR 30984, June 16, 1994) we adopted the Schedule of Regulatory Fees established in section 9(g) of the Act. For fiscal years after FY 1994, however, sections 9(b)(2) and 9(b)(3), respectively, provide for "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.[9] Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees to reflect the amount that Congress requires us to recover through regulatory fees.[10]

6. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are in the public interest, as well as issues that are reasonably related to the payer of the fee. These amendments permit us to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services * * *"[11]

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the cost of regulating various services that are subject to a fee, and for other purposes.[12] The Commission is in the process of planning a new cost accounting system, which we expect to be in place in FY 2002. For FY 1997 (62 FR 59822, November 5, 1997), we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, in FY 1997, we found that some fee categories received disproportionately high cost allocations. We adjusted for these high cost allocations by redistributing the costs, and maintained a 25% limit on the extent in which service fee categories can be increased. We believed that this 25% limit would enable cost-based service fees to be implemented more gradually over time. We thought that this methodology, which we continued to use for FY 1998 (63 FR 35847, July 1, 1998), would enable us to develop a regulatory fees schedule that reflected our cost of regulation. Over time, as the cost of regulation increases or decreases, this methodology would enable us to revise the fee schedule to reflect those services whose regulatory costs had changed.

8. However, we found that developing a regulatory fee structure based on available cost information sometimes did not permit us to recover the amount that Congress required us to collect. In some instances, the large increases in the cost of regulation did not normalize to an acceptable level. We concluded that it would be best to discontinue attempts to base the entire schedule on our available cost data. Instead, we chose to base the FY 1999 (64 FR 35831, July 1, 1999) and FY 2000 (65 FR 44575, July 18, 2000) fees on the basis of "Mandatory Adjustments" only. We have found no reason to deviate from this policy for FY 2001. However, we are applying the "Mandatory Adjustments" differently to better incorporate changes in payment units. As noted above, however, we expect to have a new cost accounting system in place in FY 2002. Finally, section 9(b)(4)(B) requires us to notify Congress of any permitted amendments 90 days before those amendments go into effect.[13]

III. Discussion

A. Summary of FY 2001 Fee Methodology

9. As noted above, Congress has required that the Commission recover $200,146,000 for FY 2001 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.[14]

10. In developing our FY 2001 fee schedule, we first estimated the number of payment units[15] for FY 2001. Then we compared the FY 2000 revenue estimate amount to the $200,146,000 that Congress has required us to collect in FY 2001 and pro-rated the difference among all the existing fee categories. Finally, we divided the FY 2001 payment unit estimates into the pro-rated FY 2001 revenue estimates to determine the new FY 2001 fees. See Attachment C.

11. Once we established our tentative FY 2001 fees, we evaluated proposals made by Commission staff concerning "Permitted Amendments" to the Fee Schedule and to our collection procedures. However, we are not making any "Permitted Amendments." Collection procedure matters are discussed in paragraphs 31–37.

12. Finally, we have incorporated, as Attachment F, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 2001. In the following paragraphs, we describe in greater detail our methodology for establishing our FY 2001 regulatory fees.

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[3] *Assessment and Collection of Regulatory Fees for Fiscal Year 2000*. 65 FR 44576 (2000).

[4] 47 CFR 1.1152 through 1.1156.

[5] 47 U.S.C. 159(a).

[6] 59 FR 30984, June 16, 1994.

[7] 47 U.S.C. 159(b), (f)(1).

[8] 47 CFR 1.1151 *et seq*.

[9] 47 U.S.C. 159(b)(2), (b)(3).

[10] 47 U.S.C. 159(b)(2).

[11] 47 U.S.C. 159(b)(3).

[12] 47 U.S.C. 159(i).

[13] 47 U.S.C. 159(b)(4)(B).

[14] 47 U.S.C. 159(a).

[15] Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

B. Development of FY 2001 Fees

i. Adjustment of Payment Units

13. In calculating FY 2001 regulatory fees for each service, we adjusted the estimated payment units for each service because of substantial changes in payment units for many services since adopting our FY 2000 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure accuracy of these estimates. Attachment B summarizes how revised payment units were determined for each fee category.[16]

ii. Calculation of Revenue Requirements

14. We compared the sum of all estimated revenue requirements for FY 2000 to the amount that Congress has required us to collect for FY 2001 ($200,146,000), which is approximately 7.75% more total revenue than in FY 2000. We increased each FY 2000 fee revenue category estimate by 7.75% to provide a total FY 2001 revenue estimate of $200,146,000. Attachment C provides detailed calculations showing how we determined the revised revenue amounts to be raised for each service.

iii. Recalculation of Fees

15. Once we determined the revenue requirement for each service and class of licensee, we divided the revenue requirement by the number of estimated payment units (and by the license term for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(2) of the Act. *See* Attachment C.

iv. Discussion of Issues and Changes to Fee Schedule

16. We examined the results of our calculations to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). Unless otherwise noted herein, nothing in this proceeding is intended to change any policies or procedures established or reaffirmed in the FY 2000 Order (65 FR 44575).

a. Amateur Vanity Call Signs

17. Amateur licensee Juddie D. Burgess supports the proposal to reduce the amateur vanity call sign regulatory fee for FY 2001, but questions why licensees must continue to pay a regulatory fee upon each renewal. Section 9 of the Communications Act, as amended, provides for recovery of the Commission's costs associated with its enforcement, policy and rulemaking, user information, and international activities.[17] Each day, the Commission's staff is engaged in activities protecting the assignment of vanity call signs from complaints of improper assignment, illegal use of call signs assigned to another, requests to be assigned a call sign already assigned to another, and so forth. We continue to believe that it is appropriate to assess a regulatory fee at the time of renewal upon holders of amateur vanity call signs.

b. Multipoint Distribution Service (MDS)

18. WorldCom, Inc. ("WorldCom") objects to the amount of increase proposed for MDS licensees, from $275 in FY 2000 to $450 in FY 2001, an increase of 64 percent. WorldCom argues that sections 9(i) and 9(b)(3) of the Communications Act, as amended, require regulatory fees to be based on the cost of regulating each industry, and contends that the Commission's methodology, which relies on a proportional increase in the fees allotted to each service, is contrary to these provisions. In any event, WorldCom asks the Commission to make a permitted amendment under section 9(b)(3) to reduce the MDS fee to eliminate the allegedly discriminatory treatment of MDS. WorldCom argues that the proposed 64 percent increase in the MDS fee does not reflect a 64 percent increase in regulatory costs, but rather reflects the fact that the Commission's estimate of the number of MDS licenses dropped from 3,036 to 2,000 following an update of the Commission's database. WorldCom asserts that there is no justification for raising the fee based on this factor and proposes that the fee be raised to no more than $295, reflecting the 7.75 percent proportional increase in revenues for FY 2001. Alternatively, WorldCom proposes that the increase in fees be limited to 25 percent, as was done in FY 1997, which would result in a fee of $345.

19. As to WorldCom's general disagreement with our "mandatory adjustment" methodology, we disagree that this methodology violates the statutory requirement of basing fees on costs. Our previous use, through FY 1998, of a cost-based accounting system represented our best efforts to take into account all of the statutory criteria for determining fees, and we are confident that we did so to the extent permitted by the accounting system available to us. As we learned in FY 1997 and FY 1998, however, the existing cost accounting system did not allow us to fully match costs with appropriations, resulting in a shortfall in the revenues we would collect through fees. This has required us to adopt a procedure to "normalize" the revenue required from each service to meet the statutory requirement of fully funding our appropriations through fees. Attempting to use the available inadequate cost accounting system to recalculate costs does not, in our view, provide a means to ameliorate the situation. We believe that the mandatory adjustment methodology we proposed for FY 2001 represents the most valid method of normalizing revenue requirements pending the development of an improved cost accounting system and thereby enables us to best comply with the statute.

20. We do not believe that WorldCom has justified making a "permitted" amendment although the 64 percent increase in fees to which it would be subject is substantial. The increase in fees merely represents the use of updated, more accurate figures for the number of payment units. The use of more accurate data does not necessitate any amendment in order to conform to the standards of the statute. We recognize, as WorldCom points out, that our methodology might result in some anomalies, such as in the case of the international public fixed service, where it is estimated that there is only one licensee. In such cases, we would consider granting a partial waiver. We do not, however, consider the MDS fee to fall within this category.

21. The Wireless Communications Association International, Inc. ("WCA") seeks clarification that the MDS fee applies only to the "master" call sign, and not to any separate response hub and booster call signs associated with the "master" call sign. Likewise, IPWireless, Inc. requests clarification for the MMDS stations referring to the "lead" call sign rather than response station hubs and booster stations. Sprint Corporation, in its reply comments, supports the positions of WCA and WorldCom. For FY 2001, the

[16] It is important to note also that Congress required a revenue increase in regulatory fee payments of approximately 7.75 percent in FY 2001, which will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increased from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

[17] 47 U.S.C. 159(a)(1).

Commission has not extended the MDS regulatory fee to response hubs and boosters. We reserve the right to reconsider this decision in the future.

22. Winstar Communications, Inc. ("Winstar") urges the Commission to reclassify Local Multipoint Distribution Service (LMDS) to place it into the microwave fee category with other part 101 services. We agree with Sprint, however, that, although LMDS and Microwave services may utilize the same equipment, LMDS is operationally similar to MDS and MMDS. This functional categorization has proven adequate for more than two years. Hence, we see no reason to change the classification.

c. Commercial Mobile Radio Services (CMRS)

23. The Cellular Telecommunications & Internet Association ("CTIA") and Verizon Wireless ("Verizon"), argue that the Commission's mandatory adjustment approach is inconsistent with the requirements of the statute. For the reasons set forth in paragraph 19, above, we reject this argument. CTIA and Verizon also argue that the application of the mandatory adjustment approach has discriminated against fast growing services such as CMRS. CTIA observes that the number of CMRS subscribers has increased by some 62 percent since FY 1999, when the fee was $0.32 per subscriber. CTIA suggests that the CMRS fee should have declined substantially from the FY 1999 level because the total revenue requirement is now divided among more subscribers. Instead, they point out that the proposed FY 2001 fee, $0.30, is only three percent less than it was in FY 2000 (and six percent less than in FY 1999). CTIA and Verizon assert that, as a result, CMRS" share of revenues has increased from eight percent to 16 percent since FY 1999, and CMRS is effectively subsidizing other services. Verizon proposes that the FY 2001 fee should be no more than $0.18 per subscriber.

24. The arguments of CTIA and Verizon in this regard are misplaced. The methodology we proposed for FY 2001 is intended to avoid the problem that CTIA and Verizon point out. To calculate the revenue requirement for FY 2001, we increased the total revenue for the various services proportionately without regard to the number of payment units in each service. We did not calculate the shortfall by taking last year's fees and applying them to the current number of payment units. CTIA correctly suggests that this rejected method would have resulted in fast growing services absorbing an increased share of revenues, since their growth would reduce the overall shortfall and the need to raise fees in other services. Although this may have been the result in the past, we do not believe it is appropriate to retroactively address past increases in revenues collected from CMRS. Therefore, because there are contrary positions on the impact of rapid growth on regulatory costs, we see no basis for a departure from our current approach until an improved cost accounting system is implemented.

25. CTIA also claims that the Commission has "wrongfully imposed a burden on CMRS licensees by increasing regulatory fees to compensate for a shortfall in part caused by the Commission's failure to properly enforce its fee schedule." The Commission, however, is committed to enforcement of the fee schedule and does not intend to use overpayments as a substitute for enforcement. In this regard, we anticipate that as licensees comply with the FCC Registration Number (FRN) requirements in the future, this will assist us in enforcement. Although our estimates of CMRS growth have taken into account the actual levels of revenue received, we have done this in order to ensure that our estimates are realistic, not to avoid enforcement.

26. Finally, CTIA maintains that "the Commission's FY 2001 subscriber unit estimate is wrong and thus it has overestimated the CMRS mobile service industry's regulatory fee liability." According to CTIA's figures, CMRS subscribership was approximately 109 million in December 2000, not 90 million, as we estimated. We will revise our fee computation for CMRS. The recent *Local Telephone Competition Report, Status as of December 31, 2000,* Industry Analysis Division, Common Carrier Bureau (May 21, 2001), has presented a revised figure for CMRS subscribership of 101,212,054. It is appropriate for us to take this new information into account and revise our fee computation accordingly. Our past experience, however, does not support CTIA's claim that use of its own data is necessary to avoid overpayment by CMRS operators. On the contrary, use of its data has resulted in a shortfall in the fees collected. See *Assessment and Collection of Regulatory Fees for Fiscal Year 1999,* FCC 00–352 (October 10, 2000) at paragraph 7. Accordingly, we modify our estimate of CMRS subscribership to 101 million, resulting in a recomputed fee of $0.27.

d. UHF Television

27. Paxson Communications Corporation ("Paxson") asserts that fees for UHF television are excessive. In particular, Paxson observes that the fee for UHF construction permits has increased 43 percent over FY 2000 and is now $1,000 higher than for a VHF construction permit (although Congress originally set lower fees for UHF). Paxson asserts that increases in UHF fees are inconsistent with the more favorable treatment of faster growing services, which presumably receive greater regulatory benefits and impose greater regulatory costs. In Paxson's view, UHF television fees should reflect the heavy burden that licensees bear during the digital transition period, UHF's competitive handicaps, and the impact on UHF of downturns in the economy. Paxson asks for interim relief pending the adoption of an adequate cost accounting system.

28. Although Paxson's arguments raise significant questions, they do not provide a reasonably definite basis to recompute fees for UHF television. We therefore decline to make a "permitted" amendment in FY 2001. We anticipate that development of a new cost accounting system will be in place for FY 2002 and, at that time, we can re-examine the UHF television fees, as well as other issues.

e. INTELSAT Satellites

29. On June 1, 2001, COMSAT Corporation (COMSAT) submitted an ex parte filing asking the Commission not to impose the geostationary satellite fee on satellites owned by INTELSAT. COMSAT notes that it has appealed the Commission's determination that COMSAT is liable for such fees, and urges that the fee not be collected pending the disposition of this appeal. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2000,* 15 FCC Rcd 14478, 14485–90, paragraphs 17–27 (2000), *appealed sub nom. COMSAT Corp.* v. *FCC,* No. 00–1458 (D.C. Cir. July 14, 2000). For the reasons set for in the FY 2000 fee order, we believe that the fee should be assessed against COMSAT. COMSAT has not sought a stay of the FY 2000 fee order, either before the Commission or the court, and has not demonstrated the prerequisites for a stay. Accordingly, we have included the INTELSAT satellites in our computation of the geostationary satellite fee, and we expect COMSAT to pay its share.

f. Mandatory Use of FCC Registration Number (FRN)

30. In our Notice of Proposed Rulemaking (NPRM), we proposed to require the use of an FRN by anyone subject to the regulatory fee program: We proposed that fee filers, those who

are exempt from regulatory fees, and entities paying on behalf of others, be required to obtain and use the FRNs assigned to them. Furthermore, we sought comment on how to treat submissions that did not contain an FRN at the time that regulatory fee payments are due. We proposed that in those situations, we would afford a 10-day grace period for the filer to obtain and provide the FRN. Finally, we invited comment on whether to impose a penalty on entities subject to these rules, but who did not provide an FRN within the grace period.

31. We did not receive any comments on these issues. We remain convinced that the use of the FRN should be made mandatory for those who are subject to the regulatory fee program, as proposed. Because of unrelated implementation issues, we have decided to resolve the FRN issues raised here, including the effective date of the new requirement, in the pending FRN proceeding.[18] Although the use of the FRN will not be mandatory for the FY 2001 regulatory fee cycle, we strongly encourage entities subject to the regulatory fee program to use the FRN assigned to them so that their payments (or exempt status) can be properly recorded and tracked. Entities not using an FRN may continue to experience delays in the proper recognition of their payments. As a result, these entities (or the entities on whose behalf the payment is being made) will be subject to billing notices and will need to provide information (e.g. cancelled check or other identifying information) showing that they did, in fact, pay their regulatory fees on a timely basis.

C. Procedures for Payment of Regulatory Fees

32. We are retaining the procedures that we have established for the payment of regulatory fees. *See* paragraphs 32–37. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer." *See* 47 U.S.C. 159(f)(1). Consistent with section 9(f), we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are: (1) "standard" fees, (2) "large" fees, and (3) "small" fees. With the exception of new payment due dates for FY 2001, the procedures outlined in this section are not new. Procedural text is provided for information and purposes of clarity.

i. Annual Payments of Standard Fees

33. As we have in the past, we are treating regulatory fee payments by certain licensees as "standard fees" which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will begin September 10, 2001 and end at close of business on September 21, 2001.

ii. Installment Payments for Large Fees

34. Time constraints will preclude an opportunity for installment payments. Therefore, regulatees in any category of service will be required to submit their required fees in a single payment by the last day that the regulatory fee payment is due. The payment dates for each regulatory fee category will begin September 10, 2001 and end at close of business on September 21, 2001.

iii. Advance Payments of Small Fees

35. As we have in the past, we are treating regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of section 9(f)(2). Advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 *Report and Order*, and to those additional payers noted.[19] Payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective beginning date for payment of small fees established in this proceeding is September 10, 2001, and it will remain in effect until the FY 2002 fee schedule is implemented.

iv. Minimum Fee Payment Liability

36. As we have in the past, we are establishing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 will be exempted from fee payment in FY 2001.

v. Standard Fee Calculations and Payment Dates

37. For licensees and permittees of Mass Media services, the responsibility for payment of regulatory fees normally rests with the holder of the permit or license on October 1, 2000. However, in instances where a Mass Media service license or authorization is transferred or assigned after October 1, 2000, and arrangements to make payment have not been made by the previous licensee, the fee is still due and must be paid by the licensee or holder of the authorization on the date that the fee payment is due. For licensees, permittees and holders of other authorizations in the Common Carrier and Cable Services whose fees are not based on a subscriber, unit, or circuit count, fees must be paid for any authorization issued on or before October 1, 2000. Regulatory fees are due and payable by the holder of record of the license or permit of the service as of October 1, 2000. A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after October 1, 2000, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due.

38. For regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatees' subscribers, units or circuits on *December 31, 2000*, will be used to calculate the fee payment.[20] Regulatory

[18] *Adoption of a Mandatory FCC Registration Number*, MD Docket No. 00–205, FCC 00–421 (released December 1, 2000).

[19] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS), 218–219 MHz Service (if any applications should be filed), Rural Radio Service, and Amateur Vanity Call signs.

[20] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. **Note:** Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical

Continued

fees are due and payable by the holder of record of the license or permit of the service as of December 31, 2000. A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after December 31, 2000, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due.

D. Schedule of Regulatory Fees

39. The Commission's Schedule of Regulatory Fees for FY 2001 is contained in Attachment D of this *Report and Order*.

E. Revised Rules for Waivers, Reductions, and Deferrals of Application and Regulatory Fees

40. We are also amending §§ 1.1117(c) and 1.1166(a) of the Rules regarding the filing of requests for waivers, reductions and deferrals of both application (Section 8) and regulatory fees (Section 9). We are amending the rules to clarify that all such filings must be filed as separate pleadings, and each pleading must be clearly marked for the attention of the Managing Director. We hope the revised rules will eliminate the confusion regarding the proper filing procedures to be followed for such requests, as well as to facilitate prompt disposition.

F. Enforcement

41. As required in 47 U.S.C. 159(c), an additional charge shall be assessed as a penalty for late payment of any regulatory fee. A late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay the regulatory fees and/or any late penalty will be subject to additional provisions as set forth in the Debt Collection Improvement Act of 1996, as well as 47 CFR 1.1112.

IV. Procedural Matters

A. Ordering Clause

42. Accordingly, it is ordered that the rule changes specified herein be adopted. It is further ordered that the rule changes made herein will become effective September 9, 2001, which is no less than 30 days from the date of publication in the **Federal Register**. A Final Regulatory Flexibility Analysis (FRFA) has been performed and is found in Attachment A, and it is ordered that the Federal Communications Commission's Consumer Information Bureau, Reference Information Center, send this to Small Business Administration (SBA). Finally, it is ordered that this proceeding is terminated.

B. Authority and Further Information

43. This action is taken pursuant to sections 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended.[21]

44. Further information about this proceeding may be obtained by contacting the FCC Consumer Center at (888) 225–5322.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Attachment A.—Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[22] an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2001.[23] The Commission sought written public comments on the proposals in its FY 2001 regulatory fees NPRM, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[24]

I. Need for, and Objectives of, the Proposed Rules

2. This rulemaking proceeding was initiated to collect regulatory fees in the amount of $200,146,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. None.

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[25] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[26] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[27] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[28] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[29] Nationwide, as of 1992, there were approximately 275,801 small organizations.[30] "Small governmental jurisdiction"[31] generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[32] As of 1992, there were approximately 85,006 governmental entities in the United States.[33] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.[34] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity

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day in the last full week" of December 2000, rather than on a count as of December 31, 2000.

[21] 47 U.S.C. 154(i)-(j), 159, & 303(r).

[22] 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et. seq.* has been amended by the Contract With America advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[23] 66 FR 19681 (April 16, 2001).

[24] 5 U.S.C. 604.

[25] 5 U.S.C. 603(b)(3).

[26] 5 U.S.C. 601(6).

[27] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[28] Small Business Act, 15 U.S.C. 632 (1996).

[29] U.S.C. 601(4).

[30] 1992 Economic Census, U.S. Bureau of the Census. Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[31] 47 CFR 1.1162.

[32] 5 U.S.C. 601(5).

[33] U.S. Dept. of Commerce, Bureau of Census, "1992 Census of Governments."

[34] *Id.*

licensees and regulatees that may be affected by these rules.

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[35] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[36]

6. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[37] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[38] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[39] The Commission has determined that there are 67,700,000 subscribers in the United States.[40] Therefore, we estimate that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[41] Based on available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals 1,450.[42] We do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[43] and therefore are unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. *Other Pay Services.* Other pay television services are also classified under the North American Industry Classification System (NAICS) codes 51321 and 51322, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[44] multipoint distribution systems (MDS),[45] satellite master antenna systems (SMATV), and subscription television services.

Common Carrier Services and Related Entities

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Carrier Locator* report, which encompasses data compiled from FCC Form 499–A Telecommunications Reporting Worksheets.[46] According to data in the most recent report, there are 4,822 interstate service providers.[47] These providers include, *inter alia*, incumbent local exchange carriers, competitive access providers (CAPS)/ competitive local exchange carriers (CLECs), local resellers and other local exchange carriers, interexchange carriers, operator service providers, prepaid calling card providers, toll resellers, and other toll carriers.

10. We have included small incumbent local exchange carriers (LECs)[48] in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[49] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[50] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

11. *Total Number of Telephone Companies Affected.* The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[51] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[52] It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small

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[35] 13 CFR 121.201, North American Industry Classification System (NAICS) codes 51321 and 51322.

[36] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 51321 and 51322 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[37] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

[38] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[39] 47 U.S.C. 543(m)(2).

[40] *Annual Assessment of the Status on Competition in the Market for the Delivery of Video Programming*, CS Docket No. 00–132, Seventh Annual Report, FCC 01–1 (released January 8, 2001), Table C–1.

[41] *Id.* 47 CFR 76.1403(b).

[42] *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, DA–01–0158 (released January 24, 2001).

[43] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.1403(b) of the Commission's rules. *See* 47 CFR 76.1403(d).

[44] Direct Broadcast Services (DBS) are discussed with the international services, *infra*.

[45] Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra*.

[46] FCC, Common Carrier Bureau, Industry Analysis Division, *Carrier Locator: Interstate Service Providers*, Table 1 (October 2000) (Carrier Locator).

[47] FCC, *Carrier Locator* at Table 1.

[48] See 47 U.S.C 251(h) (defining "incumbent local exchange carrier").

[49] 5 U.S.C. 601(3).

[50] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996).

[51] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) (*1992 Census*).

[52] *See generally* 15 U.S.C. 632(a)(1).

incumbent LECs that may be affected by these revised rules.

12. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[53] According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons.[54] All but 26 of the 2,321 non-radiotelephone (wireless) companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone (wireless) companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities or small incumbent LECs that may be affected by these revised rules.

13. *Local Exchange Carriers (LECS), Competitive Access Providers (CAPs), Interexchange Carriers (IXCs), Operator Service Providers (OSPs), Payphone Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition for small LECs, competitive access providers (CAPs), interexchange carriers (IXCs), operator service providers (OSPs), payphone providers, or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[55] The most reliable source of information that we know regarding the number of these carriers nationwide appears to be the data that we collect annually in connection with the TRS.[56] According to our most recent data, there are 1,395 incumbent and other LECs, 349 CAPs and competitive local exchange carriers (CLECs), 204 IXCs, 21 OSPs, 758 payphone providers, 21 prepaid calling card providers, 17 other toll carriers, and 541 local and toll resellers.[57] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Therefore, we estimate that there are fewer than 1,395 small entity incumbent and other LECs, 349 CAPs/CLECs, 204 IXCs, 21 OSPs, 758 payphone providers, and 541 local and toll resellers that may be affected by these revised rules.

International Services

14. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[58] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[59] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $10.0 million.[60] The Census report does not provide more precise data.

15. *International Broadcast Stations.* Commission records show that there are 17 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. However, the Commission estimates that only five international high frequency broadcast stations are subject to regulatory fee payments.

16. *International Public Fixed Radio (Public and Control Stations).* There is one licensee in this service subject to payment of regulatory fees, and the licensee does not constitute a small business under the SBA definition.

17. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 2,784 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

18. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are approximately 2,784 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

19. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 492 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

20. *Mobile Satellite Earth Stations.* There are 15 licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

21. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

22. *Space Stations (Geostationary).* There are presently 66 Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

23. *Space Stations (Non-Geostationary).* There are presently six Non-Geostationary Space Station authorizations, of which only three systems are operational. We do not request nor collect annual revenue information, and are unable to estimate the number of non-geostationary space

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[51] *1992 Census, supra,* at Firm Size 1–123.

[54] 13 CFR 121.201, NAICS codes 51331, 51333, and 51334.

[55] 13 CFR 121.201, NAICS codes 51331, 51333, and 51334.

[56] See *Carrier Locator* at Table 1.

[57] *Carrier Locator* at Table 1. The total for resellers includes both toll resellers and local resellers.

[58] An exception is the Direct Broadcast Satellite (DBS) Service, *infra.*

[59] 13 CFR 121.201, NAICS codes 48531, 513322, 51334, and 51339.

[60] *1992 Economic Census Industry and Enterprise Receipts Size Report,* Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

stations that would constitute a small business under the SBA definition.

24. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."[61] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[62] Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

Mass Media Services

25. *Commercial Radio and Television Services.* The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.[63] The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[64] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[65] Included in this industry are commercial, religious, educational, and other television stations.[66] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[67] Separate establishments primarily engaged in producing taped television program materials are classified under another NAICS number.[68] There were 1,509 television stations operating in the nation in 1992.[69] That number has remained fairly constant as indicated by the approximately 1,663 operating television broadcasting stations in the nation as of September 30, 2000.[70] For 1992,[71] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[72] Only commercial stations are subject to regulatory fees.

26. Additionally, the SBA defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[73] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[74] Included in this industry are commercial, religious, educational, and other radio stations.[75] Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included.[76] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.[77] The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992.[78] Official Commission records indicate that a total of 11,334 individual radio stations were operating in 1992.[79] As of September 30, 2000, Commission records indicate that a total of 12,717 radio stations were operating, of which 8,032 were FM stations.[80] Only commercial stations are subject to regulatory fees.

27. The rules may affect an estimated total of 1,663 television stations, approximately 1,281 of which are considered small businesses.[81] The revised rules will also affect an estimated total of 12,717 radio stations, approximately 12,209 of which are small businesses.[82] These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,366 low power television stations (LPTV).[83] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

28. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[84]

29. The Commission estimates that there are approximately 2,700 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does

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[61] 13 CFR 121.201, NAICS codes 51321 and 51322.

[62] 13 CFR 121.201, NAICS codes 51321 and 51322.

[63] While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *NPRM* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *NPRM*, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. *See Report and Order in MM Docket No. 93–48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (Aug. 27, 1996), *citing* 5 U.S.C. 601(3).

[64] 13 CFR 121.201, NAICS code 51312.

[65] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1*, Appendix A–9 (1995) (*1992 Census, Series UC92–S–1*).

[66] *Id. see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833, now NAICS code 51312) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[67] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[68] *Id.*, NAICS code 51211 (Motion Picture and Video Tape Production); NAICS 51229 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[69] FCC News Release No. 31327 (January 13, 1993); *1992 Census, Series UC92–S–1*, at Appendix A–9.

[70] FCC News Release, "Broadcast Station Totals as of September 30, 2000."

[71] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." See *1992 Census, Series UC92–S–1*, at III.

[72] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[73] 13 CFR 121.201, NAICS codes 513111 and 513112.

[74] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[79] FCC News Release, No. 31327 (Jan. 13, 1993).

[80] FCC News Release, "Broadcast Station Totals as of Septemoer 30, 2000."

[81] We use an estimated figure of 77 percent (from 1992) of TV stations operating at less than $10 million and apply it to the 2000 total of 1,663 TV stations to arrive at 1,281 stations categorized as small businesses.

[82] We use the 96% figure of radio station establishments with less than $5 million revenue from data presented in the year 2000 estimate (FCC News Release, September 30, 2000) and apply it to the 12,717 individual station count to arrive at 12,209 individual stations as small businesses.

[83] FCC News Release, "Broadcast Station Totals as of September 30, 2000."

[84] 13 CFR 121.201, NAICS codes 513111 and 513112.

not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[85]

30. *Multipoint Distribution Service (MDS).* This service has historically provided primarily point-to-multipoint, one-way video services to subscribers.[86] The Commission recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.[87] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[88] The Commission established this small business definition in the context of this particular service and with the approval of the SBA.[89] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[90] Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.[91] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by the proposals in this Order.

Wireless and Commercial Mobile Services

31. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.[92] According to the Census Bureau, only twelve radiotelephone (wireless) firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[93] Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent Telecommunications Reporting Worksheets data, 806 wireless telephony providers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS) services, and SMR telephony carriers, which are placed together in the data.[94] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 806 small wireless service providers that may be affected by these revised rules.

32. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone (wireless) Communications companies. This definition provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.[95] According to the Census Bureau, only 12 radiotelephone (wireless) firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[96] If this general ratio continues in 2001 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

33. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, 62 FR 16004, April 3, 1997, we adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[97] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[98] The SBA has approved these definitions.[99] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22,

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[85] 15 U.S.C. 632.

[86] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) includes Local Multipoint Distribution Service (LMDS), and the Multichannel Multipoint Distribution Service (MMDS).

[87] Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, 13 FCC Rcd 19112 (1998), recon., 14 FCC Rcd 12764 (1999), further recon., 15 FCC Rcd 14566 (2000).

[88] 47 CFR 21.961 and 1.2110.

[89] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 10 FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

[90] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. See id. At 9608.

[91] 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. Section 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of $11 million or less). See 13 CFR 121.201.

[92] 13 CFR 121.201, NAICS code 513322.

[93] *1992 Census, Series UC92–S–1*, at Table 5, NAICS code 513322.

[94] *Trends in Telephone Service*, Table 16.3 (December 2000).

[95] 13 CFR 121.201, NAICS code 513322.

[96] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, NAICS codes 513321, 513322, and 51333.

[97] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paragraphs 291–295 (1997).

[98] 220 MHz Third Report and Order, 12 FCC Rcd at 11068–69, paragraph 291.

[99] See Letter to D. Phython, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

1998.[100] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[101] Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[102]

34. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[103] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[104] Of the 104 licenses auctioned, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[105]

35. *Private and Common Carrier Paging.* In the Paging Third Report and Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[106] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[107] The SBA has approved these definitions.[108] An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[109] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent Telecommunications Industry Revenue data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[110] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by these revised rules. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

36. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequencies designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[111] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[112] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[113] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[114] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. An additional classification for "very small business" was added for C Block and is defined as "an entity that together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than forty million dollars for the proceding three years.[115] The SBA approved this definition."[116] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this

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[100] See generally Public Notice, "220 MHz Service Auction Closes," Public Notice, 14 FCC Rcd 605 (1998).

[101] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Public Notice, 14 FCC Rcd 1085 (1999).

[102] "Phase II 220 MHz Service Spectrum Auction Closes", Public Notice, 14 FCC Rcd 11218 (1999).

[103] See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99–168, Second Report and Order, 65 FR 17599 (April 4, 2000).

[104] See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98–36 (Wireless Telecommunications Bureau, October 23, 1998).

[105] "700 MHz Guard Bands Auction Closes," Public Notice, DA 01–478 (rel. February 22, 2001).

[106] 220 MHz Third Report and Order, 62 FR 16004 (April 3, 1997), at paragraphs 291–295.

[107] 700 MHz Guard Band Auction Closes," Public Notice, 15 FCC Rcd 18026 (2000).

[108] "Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems," Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98–107 (1999).

[109] "Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems," Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98 (1999).

[110] See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

[111] See generally "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (2000).

[112] See Amendment of Parts 20 and 24 of the Commission's Rules " Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96–278, WT Docket No. 96–59 Sections 60 (released June 24, 1996), 61 FR 33859 (July 1, 1996).

[113] See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84 (1994).

[114] FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released January 14, 1997).

[115] See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, Fourth Report and Order, 13 FCC Rcd 15743 at 15767–68, paragraphs 45–46 (1998).

[116] See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

auction, 29 qualified as small or very small businesses.

37. *Narrowband PCS.* To date, two auctions of narrowband PCs licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of $40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the Narrowband PCS Second Report and Order.[117] A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. These definitions have been approved by the SBA.[118] In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this FRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

38. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[119] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[120] We will use the SBA's definition applicable to radiotelephone (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons.[121] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

39. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[122] We will use the SBA's definition applicable to radiotelephone (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons.[123] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

40. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years.[124] The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions.[125] Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997.[126] Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[127] An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. Thus, 40 winning bidders for geographic licenses in the 800 MHz SMR band qualified as small businesses. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

41. These revised fees in the Report and Order apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

42. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

43. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMR[128] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could

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[117] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92–100, Docket No. PP 93–253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 65 FR 35875 (June 6, 2000).

[118] See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

[119] The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

[120] BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[121] 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

[122] The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

[123] 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

[124] 47 CFR 90.814(b)(1).

[125] See Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (August 10, 1999).

[126] See Letter to Daniel B. Phython, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (October 27, 1997).

[127] *Id.*

[128] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at paragraph 116.

potentially impact every small business in the United States.

44. *Amateur Radio Service.* We estimate that 8,000 applicants will apply for vanity call signs in FY 2001. These licensees are presumed to be individuals, and therefore not small entities. All other amateur licensees are exempt from payment of regulatory fees.

45. *Aviation and Marine Radio Service.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. The applicable definition of small entity is the definition under the SBA rules for radiotelephone (wireless) communications.[129]

46. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations and conclusions in this FRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate that only 16,800 will be subject to FY 2001 regulatory fees.

47. *Fixed Microwave Services.* Microwave services include common carrier,[130] private-operational fixed,[131] and broadcast auxiliary radio services.[132] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies—*i.e.*, an entity with no more than 1,500 persons.[133] We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies.

48. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[134] There are a total of approximately 127,540 licensees within these services. Governmental entities [135] as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this FRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.[136] All licensees in this category are exempt from the payment of regulatory fees.

49. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[137] Since the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

50. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal areas of states bordering the Gulf of Mexico.[138] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's definition for radiotelephone (wireless) communications.

51. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.[139] The FCC auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

52. *39 GHz Service.* The Commission defined "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[140] An additional classification for "very

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[129] 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

[130] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[131] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[132] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[133] 13 CFR 121.201, NAICS codes 513321, 513322, 51333.

[134] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33 through 90.55.

[135] 47 CFR 1.1162.

[136] 5 U.S.C. 601(5).

[137] Licensees in the Citizens Bank (CB) Radio Services, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Familly Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission Rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194

[138] This service is governed by subpart 1 of part 22 of the Commission's Rules. *See* 47 CFR 22.1001 through 22.1037.

[139] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

[140] *See* In the Matter of Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Band, Report and Order, 12 FCC Rcd 18600 (1997).

small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[141] These regulations defining "small entity" in the context of 39 GHz auctions have been approved by the SBA. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

53. *Local Multipoint Distribution Service.* The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[142] An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[143] These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA.[144] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

54. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 595 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[145] In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[146] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[147] We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the above discussion regarding the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this FRFA that in future auctions, all of the licenses may be awarded to small businesses, which would be affected by these revised rules.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

55. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.[148] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

56. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

57. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment fee of 25 percent in addition to the required fee.[149] Until payment is received, no new or pending applications will be processed, and existing authorizations may be subject to rescission.[150] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or

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[141] *Id*

[142] See Local Multipoint Distribution Service, Second Report and Order, 62 FR 23148, April 29, 1997.

[143] *Id.*

[144] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

[145] Implementation of Section 309(j) of the Communications Act—Competitive Bidding; PP WT Docket No. 93–253, Fourth Report and Order, 59 FR 24947 (May 13, 1994).

[146] In the Matter of Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket No. 98–169, Report and Order and Memorandum Opinion and Order, 64 FR 59656 (November 3, 1999).

[147] Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, Report and Order and Memorandum Opinion and Order, 64 FR 59656 (1999).

[148] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[149] 47 U.S.C. 1.1164(a).

[150] 47 U.S.C. 1.1164(c).

entity fails to pay a delinquent debt owed to any federal agency.[151] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996,* Public Law 194–134. Appropriate enforcement measures, *e.g.*, interest as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[152]

58. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.[153] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will accept a petition to defer payment along with a waiver or reduction request.

[151] Public Law 104–134, 110 Stat. 1321 (1996).

[152] 31 U.S.C. 7701(c)(2)(B).

[153] 47 U.S.C. 1.1166.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

59. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section IV of this FRFA, *supra,* we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have also created Attachment F, *infra,* which gives "Detailed Guidance on Who Must Pay Regulatory Fees." Because the collection of fees is statutory, our efforts at proposing alternatives are constrained and, throughout these annual fee proceedings, have been largely directed toward simplifying the instructions and necessary procedures for all filers. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

60. *The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 2000,* Public Law 106–553 requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2001.[154] As noted, we have also previously sought comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

61. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact on smaller entities. The methodology we are adopting in this *Report and Order* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

62. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 148, *supra*, and Attachment F of the *Report and Order, infra.*

Report to Small Business Administration: The Commission will send a copy of this *Report and Order,* including a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. The Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Report to Congress: The Commission will send a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order,* in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

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[154] 47 U.S.C.159(a).

SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 2001

In order to calculate individual service fees for FY 2001, we adjusted FY 2000 payment units for each service to more accurately reflect expected FY 2001 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 2001 estimates with actual FY 2000 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2001 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2001 payment units are based on FY 2000 actual payment units, it does not necessarily mean that our FY 2001 projection is exactly the same number as FY 2000. It means that we have either rounded the FY 2001 number or adjusted it slightly to account for these variables.

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, 218-219 MHz[155], Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee databases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau estimates.
AM/FM Radio Stations	Based on estimates from Data World, Inc.
UHF/VHF Television Stations	Based on Mass Media Bureau estimates and actual FY 2000 payment units.
AM/FM/TV Construction Permits	Based on actual FY 2000 payment units.
LPTV, Translators and Boosters	Based on actual FY 2000 payment units.
Auxiliaries	Based on Wireless Telecommunications Bureau estimates.
MDS/MMDS/LMDS	Based on Mass Media Bureau estimates.
Cable Television Relay Service (CARS)	Based on actual FY 2000 payment units.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
Interstate Telephone Service Providers	Based on actual FY 2000 interstate revenues associated with the Telecommunications Reporting Worksheet, adjusted to take into consideration FY 2001 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on International Bureau estimates.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on actual FY 2000 payment units.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on actual FY 2000 payment units.

[155] The Wireless Telecommunications Bureau's staff advises that they anticipate receiving only 25 applications for 218-219 MHz (formerly IVDS) in FY 2001.

Attachment C

CALCULATION OF FY 2001 REVENUE REQUIREMENTS AND PRO-RATA FEES

Fee Category	FY 2001 Payment Units	Payment Years	FY 2000 Revenue Estimate	Pro-Rated FY 2001 Revenue Requirement**	Computed New FY 2001 Regulatory Fee	Rounded New FY 2001 Regulatory Fee	Expected FY 2001 Revenue
PLMRS (Exclusive Use)	5,500	10	239,406	257,962	5	5	275,000
PLMRS (Shared use)	58,000	10	1,934,808	2,084,756	4	5	2,900,000
Microwave	23,900	10	787,525	848,558	4	5	1,195,000
218-219 MHz (Formerly IVDS)	25	10	0	0	0	10	1,250
Marine (Ship)	5,500	10	427,444	460,571	8	10	550,000
GMRS	2,000	5	66,718	71,889	7	5	50,000
Aviation (Aircraft)	3,500	10	223,889	241,240	7	5	175,000
Marine (Coast)	1,300	10	50,886	54,830	4	5	65,000
Aviation (Ground)	1,700	5	59,367	63,968	8	10	85,000
Amateur Vanity Call Signs	10,000	10	112,000	120,680	1.21	1.20	120,000
AM Class A	76	1	135,000	145,463	1,914	1,925	146,300
AM Class B	1,620	1	1,674,750	1,804,543	1,114	1,115	1,806,300
AM Class C	998	1	576,290	620,952	622	620	618,760
AM Class D	2,086	1	1,880,940	2,026,713	972	975	2,033,850
FM Classes A, B1 & C3	2,080	1	3,857,200	4,156,133	1,998	2,000	4,160,000
FM Classes B, C, C1 & C2	3,039	1	4,790,625	5,161,898	1,699	1,700	5,166,300
AM Construction Permits	58	1	15,000	16,163	279	280	16,240
FM Construction Permits	300	1	257,455	277,408	925	925	277,500
Satellite TV	127	1	87,500	94,281	742	740	93,980
Satellite TV Construction Permit	4	1	1,780	1,918	479	480	1,920
VHF Markets 1-10	42	1	1,757,800	1,894,030	45,096	45,100	1,894,200
VHF Markets 11-25	59	1	1,796,850	1,936,106	32,815	32,825	1,936,675
VHF Markets 26-50	77	1	1,524,250	1,642,379	21,330	21,325	1,642,025
VHF Markets 51-100	115	1	1,466,250	1,579,884	13,738	13,750	1,581,250
VHF Remaining Markets	211	1	643,500	693,371	3,286	3,275	691,025
VHF Construction Permits	18	1	51,300	55,276	3,071	3,075	55,350
UHF Markets 1-10	75	1	1,055,250	1,137,032	15,160	15,150	1,136,250
UHF Markets 11-25	75	1	856,875	923,283	12,310	12,300	922,500
UHF Markets 26-50	110	1	721,650	777,578	7,069	7,075	778,250
UHF Markets 51-100	165	1	625,300	673,761	4,083	4,075	672,375
UHF Remaining Markets	175	1	187,450	201,977	1,154	1,150	201,250
UHF Construction Permits	70	1	260,400	280,581	4,008	4,000	280,000
Auxiliaries	27,000	1	261,701	281,983	10	10	270,000
International HF Broadcast	4	1	2,525	2,721	680	680	2,720
LPTV/Translators/Boosters	2,700	1	758,800	817,607	303	305	823,500
CARS	1,700	1	89,933	96,903	57	55	93,500
Cable Systems	67,700,000	1	31,027,233	33,431,844	0.49	0.49	33,431,844
Interstate Telephone Service Providers	70,686,000,000	1	86,670,419	93,387,376	0.00132	0.00132	93,387,376
CMRS Mobile Services (Cellular/Public Mobile)	101,000,000	1	25,433,429	27,404,520	0.27	0.27	27,404,520
CMRS Messaging Services	30,000,000	1	1,508,171	1,625,054	0.05	0.05	1,625,054
MDS/MMDS/LMDS	2,000	1	834,900	899,605	450	450	900,000
International Bearer Circuits	840,451	1	4,041,141	4,354,329	5	5	4,202,255
International Public Fixed	1	1	1,185	1,277	1,277	1,275	1,275
Earth Stations	2,784	1	468,825	505,159	181	180	501,120
Space Stations (Geostationary)	66	1	6,010,275	6,476,071	98,122	98,125	6,476,250
Space Stations (Non-geostationary)	6	1	525,750	566,496	94,416	94,425	566,550
------ Total Estimated Revenue to be Collected			185,759,747	200,156,127			201,214,514
------ Total Revenue Requirement				200,146,000			200,146,000
Difference				10,127			1,068,514

** 1.0775 factor applied

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ATTACHMENT D.—FY 2001 SCHEDULE OF REGULATORY FEES

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	5
Microwave (per license) (47 CFR part 101)	5
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	10
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	5
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.20
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.27
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.05
Multipoint Distribution Services (Includes MMDS & LMDS) (per call sign) (47 CFR parts 21 and 101)	450
AM Radio Construction Permits	280
FM Radio Construction Permits	925
TV (47 CFR part 73) VHF Commercial	
Markets 1–10	45,100
Markets 11–25	32,825
Markets 26–50	21,325
Markets 51–100	13,750
Remaining Markets	3,275
Construction Permits	3,075
TV (47 CFR part 73) UHF Commercial	
Markets 1–10	15,150
Markets 11–25	12,300
Markets 26–50	7,075
Markets 51–100	4,075
Remaining Markets	1,150
Construction Permits	4,000
Satellite Television Stations (All Markets)	740
Construction Permits—Satellite Television Stations	480
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	305
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	55
Cable Television Systems (per subscriber) (47 CFR part 76)	.49
Interstate Telephone Service Providers (per revenue dollar)	.00132
Earth Stations (47 CFR part 25)	180
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	98,125
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	94,425
International Bearer Circuits (per active 64KB circuit)	5
International Public Fixed (per call sign) (47 CFR part 23)	1,275
International (HF) Broadcast (47 CFR part 73)	680

FY 2001 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
≤20,000	450	350	250	300	350	450
20,001–50,000	850	675	350	475	675	850
50,001–125,000	1,375	900	475	700	900	1,375
125,001–400,000	2,050	1,450	725	875	1,450	2,050
400,001–1,000,000	2,850	2,300	1,300	1,550	2,300	2,850
>1,000,000	4,550	3,750	1,900	2,400	3,750	4,550

ATTACHMENT E.—COMPARISON BETWEEN FY 2000 & FY 2001 PROPOSED AND FINAL REGULATORY FEES

Fee category	Annual regulatory fee FY 2000	NPRM Proposed fee FY 2001	Annual regulatory fee FY 2001
PLMRS (per license) (Exclusive (47 CFR part 90)	13	5	5
Microwave (per license) (47 CFR part 101)	13	5	5
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	13	10	10
Marine (Ship) (per station) (47 CFR part 80)	7	10	10

ATTACHMENT E.—COMPARISON BETWEEN FY 2000 & FY 2001 PROPOSED AND FINAL REGULATORY FEES—Continued

Fee category	Annual regulatory fee FY 2000	NPRM Proposed fee FY 2001	Annual regulatory fee FY 2001
Marine (Coast) (per license) (47 CFR part 80)	7	5	5
General Mobile Radio Service (per license) (47 CFR part 95)	7	5	5
Rural Radio (47 CFR part 22) (previously listed under Land Mobile)	7	5	5
PLMRS (Shared Use) (47 CFR part 90)	7	5	5
Aviation (Aircraft) (per station) (47 CFR part 87)	7	5	5
Aviation (Ground) (per license) (47 CFR part 87)	7	10	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.40	1.20	1.20
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.31	.30	.27
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.04	.05	.05
Multipoint Distribution Services (includes MMDS and LMDS) (per call sign) (47 CFR part 21 and 101)	275	450	450
AM Construction Permits	250	280	280
FM Construction Permits	755	925	925
TV (47 CFR part 73) VHF Commercial			
Markets 1–10	39,950	45,100	45,100
Markets 11–25	33,275	32,825	32,825
Markets 26–50	22,750	21,325	21,325
Markets 51–100	12,750	13,750	13,750
Remaining Markets	3,300	3,275	3,275
Construction Permits	2,700	3,075	3,075
TV (47 CFR part 73) UHF Commercial			
Markets 1–10	15,075	15,150	15,150
Markets 11–25	11,425	12,300	12,300
Markets 26–50	7,075	7,075	7,075
Markets 51–100	4,225	4,075	4,075
Remaining Markets	1,150	1,150	1,150
Construction Permits	2,800	4,000	4,000
Satellite Television Stations (All Markets)	1,250	740	740
Construction Permits—Satellite Television Stations	445	480	480
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	280	305	305
Broadcast Auxiliary (47 CFR part 74)	12	10	10
CARS (47 CFR part 78)	53	55	55
Earth Stations (47 CFR part 25)	175	180	180
Cable Television Systems (per subscriber) (47 CFR part 76)	.47	.49	.49
Interstate Telephone Service Providers (per revenue dollar)	.00117	.00132	.00132
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station (47 CFR part 100)	94,650	98,125	98,125
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	175,250	94,425	94,425
International Bearer Circuits (per active 64KB circuit)	7	5	5
International Public Fixed (per call sign) (47 CFR part 23)	395	1,275	1,275
International (HF) Broadcast (47 CFR part 73)	505	680	680

FY 2000 RADIO STATION REGULATORY FEES

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
≤20,000	400	300	200	250	300	400
20,001–50,000	800	625	300	425	625	800
50,001–125,000	1,325	850	425	650	850	1,325
125,001–400,000	1,950	1,350	625	775	1,350	1,950
400,001–1,000,000	2,725	2,200	1,200	1,450	2,200	2,725
>1,000,000	4,375	3,575	1,725	2,225	3,575	4,375

FY 2001 RADIO STATION REGULATORY FEES

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
≤20,000	450	350	250	300	350	450
20,001–50,000	850	675	350	475	675	850
50,001–125,000	1,375	900	475	700	900	1,375
125,001–400,000	2,050	1,450	725	875	1,450	2,050
400,001–1,000,000	2,850	2,300	1,300	1,550	2,300	2,850
>1,000,000	4,550	3,750	1,900	2,400	3,750	4,550

Attachment F.—Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9(g) of the Communications Act,[156] as modified in the present *Report and Order* (released July 2, 2001). Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994 through 2000, and the services subject to the fee schedule. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission.[157]

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity is required to have on file with the Commission an IRS Determination Letter documenting that it is exempt from taxes under section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. In instances where the IRS Determination Letter or the letter of certification from a governmental authority attesting to its nonprofit status is not sufficiently current, the nonprofit entity may be asked to submit more current documentation. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9, that the regulatory fees reflect the benefits provided to the licensees.[158] In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Private Land Mobile Radio Services (PLMRS) (Exclusive Use):* Regulatees in this category include those authorized under part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[159] For FY 2001, PLMRS licensees will pay a $5 annual regulatory fee per license, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license.[160] The total regulatory fee due is $50 for the ten-year term.

5. *Microwave Services:* These services include private and commercial microwave systems and private and commercial carrier systems authorized under part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 2001, Microwave licensees will pay a $5 annual regulatory fee per license, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 for the ten-year license term.

6. *218–219 MHz (Formerly Interactive Video Data Service (IVDS)):* The 218–219 MHz service is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's Rules. The 218–219 MHz service provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The 218–219 MHz service is offered on a private carrier basis. The Commission did not anticipate receiving any applications in the 218–219 MHz service during FY 2000. For FY 2001, we anticipate receiving 25 applications and propose that the annual regulatory fee for 218–219 MHz licensees be set at $10 per application. The total regulatory fee due would be $50 for the five-year license term.

b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. The Commission exercises that authority. Private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 2001, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $10 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $100 for the ten-year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and

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[156] 47 U.S.C. 159(g).

[157] U.S.C. 159(b)(2), (3).

[158] 47 U.S.C. 159(b)(1)(A).

[159] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

[160] Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 2001 is less than one-tenth of one percent and, therefore, is statistically insignificant.

inland waterways. For FY 2001, licensees of Marine (Coast) Stations will pay a $5 annual regulatory fee per call sign, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 per call sign for the ten-year license term.

9. *Private Land Mobile Radio Services (PLMRS)(Shared Use):* These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's Rules. Services in this category provide one-or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 2001, licensees of services in this category will pay a $5 annual regulatory fee per call sign, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 for the ten-year license term.

10. *Aviation (Aircraft) Service:* These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. The commission exercises that authority. Private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 2001, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $5 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 per station for the ten-year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 2001, licensees of Aviation (Ground) Stations will pay a $10 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is $50 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS):* These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's Rules. For FY 2001, GMRS licensees will pay a $5 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $25 per license for the five-year license term.

13. *Rural Radiotelephone Service:* Rural Radiotelephone is a fixed radio service where a wireless technology is used to provide telephone service to subscribers in remote areas. This service operates in the paired 152/158 and 454/459 MHz band, pursuant to Parts 1 and 22 of the Commission's rules. For FY 2001, Rural Radiotelephone licensees will pay a $5 annual regulatory fee per license, payable for an entire ten-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $50 per license for the ten-year license term.

c. Amateur Radio Vanity Call Signs

14. *Amateur Vanity Call Signs:* This category covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. Applicants for Amateur Vanity Call-Signs will continue to pay a $1.40 annual regulatory fee per call sign, as prescribed in the FY 2000 fee schedule, payable for an entire ten-year license term at the time of application for a vanity call sign until the FY 2001 fee schedule becomes effective. The total regulatory fee due would be $14 per license for the ten-year license term.[161] For FY 2001, Amateur Vanity Call Sign applicants will pay a $1.20 annual regulatory fee per call sign, payable for an entire ten-year term at the time of application for a new, renewal or reinstatement license; this total fee due is $12 per call sign for a ten-year license term.

d. Commercial Wireless Radio Services

15. *Commercial Mobile Radio Services (CMRS) Mobile Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 27, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90);[162] Broadband Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22); and Wireless Communications Service (part 27). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or telephone number), assigned to its customers, including resellers of its services. For FY 2001, the regulatory fee is $.27 per unit.

16. *Commercial Mobile Radio Services (CMRS) Messaging Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Private Paging and Radiotelephone Service), licensees formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile One-Way Paging), licensees of Narrowband Personal Communications Service (PCS) (e.g.,

[161] Section 9(h) exempts "amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)" from the requirement. However, section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

[162] This category does not include licenses of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment.

one-way and two-way paging), and 220–222 MHz Band and Interconnected Business Radio Service. This category also includes small SMR systems authorized for use of less than 10 MHz of bandwidth. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 2001, the regulatory fee is $.05 per unit.

17. Finally, we are reiterating our definition of CMRS payment units to say that fees are assessable on each PCS or cellular telephone and each one-way or two-way pager capable of receiving or transmitting information, whether or not the unit is "active" on the "as-of" date for payment of these fees. The unit becomes "feeable" if the unit end user or assignee has possession of the unit and the unit is capable of transmitting or receiving voice or non-voice messages or data, and the unit is either owned or operated by the licensee of the CMRS system or a reseller, or the end user of a unit has a contractual agreement for the provision of a CMRS service from a CMRS system licensee or a CMRS service reseller. The responsible payer of the regulatory fee is the CMRS licensee. For example, John Doe purchases a pager and obtains a paging services contract from Paging Licensee X. Paging Licensee X is responsible for paying the applicable regulatory fee for this unit. Likewise, Cellular Licensee Y donates cellular phones to a high school and the high school either pays for or obtains free cellular service from Cellular Licensee Y. In this situation, Cellular Licensee Y is responsible for paying the applicable regulatory fees for these units.

2. Mass Media Services

18. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial Radio

19. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission's Rules.[163] We have combined class of station and city grade contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 2001 are as follows:

FY 2001 RADIO STATION REGULATORY FEES

Population served	AM Class	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
≤20,000	450	350	250	300	350	450
20,001–50,000	850	675	350	475	675	850
50,001–125,000	1,375	900	475	700	900	1,375
125,001–400,000	2,050	1,450	725	875	1,450	2,050
400,001–1,000,000	2,850	2,300	1,300	1,550	2,300	2,850
>1,000,000	4,550	3,750	1,900	2,400	3,750	4,550

20. Licensees may determine the appropriate fee payment by referring to the FCC's Internet world wide web site (http://www.fcc.gov) or by calling the FCC's National Call Center (1–888–225–5322). The same information may be included in the Public Notices mailed to each licensee for which we have a current address on file

(Note: Non-receipt of a Public Notice does not relieve a licensee of its obligation to submit its regulatory fee payment.)

b. Construction Permits—Commercial AM Radio

21. This category includes holders of permits to construct new Commercial AM Stations. For FY 2001, permittees will pay a fee of $280 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated group within which the station appears.

c. Construction Permits—Commercial FM Radio

22. This category includes holders of permits to construct new Commercial FM Stations. For FY 2001, permittees will pay a fee of $925 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated group within which the station appears.

d. Commercial Television Stations

23. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook*, Stations Volume No. 69, 2001 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1–10	$45,100
VHF Markets 11–25	32,825
VHF Markets 26–50	21,325
VHF Markets 51–100	13,750
VHF Remaining Markets	3,275
UHF Markets 1–10	15,150
UHF Markets 11–25	12,300
UHF Markets 26–50	7,075
UHF Markets 51–100	4,075
UHF Remaining Markets	1,150

e. Commercial Television Satellite Stations

24. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of $740 annually. Those stations

[163] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

designated as Television Satellite Stations in the 2001 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

25. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 2001, VHF permittees will pay an annual regulatory fee of $3,075. This fee would no longer be applicable when an operating license is issued. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

26. This category includes holders of permits to construct new UHF Television Stations. For FY 2001, UHF Television permittees will pay an annual regulatory fee of $4,000. This fee would no longer be applicable when an operating license is issued. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

27. The fee for UHF and VHF Television Satellite Station construction permits for FY 2001 is $480. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

28. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order*. Community based Translators that meet certain requirements will have their fees waived.[164] For FY 2001, licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of $305 for each license held.

j. Broadcast Auxiliary Stations

29. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 28 *supra*). For FY 2001, licensees of Commercial Auxiliary Stations will pay an $10 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

30. This category includes Multipoint Distribution Service (MDS), Local Multipoint Distribution (LMDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under parts 21 and 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 2001, MDS, LMDS, and MMDS stations will pay an annual regulatory fee of $450 per call sign.

3. Cable Services

a. Cable Television Systems

31. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's Rules. For FY 2001, Cable Systems will pay a regulatory fee of $.49 per subscriber.[165] Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 2000. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 *Report and Order*, Appendix B at paragraph 31.

b. Cable Television Relay Service

32. This category includes Cable Television Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 2001, licensees will pay an annual regulatory fee of $55 per CARS license.

4. Common Carrier Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

33. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *supra*).

b. Interstate Telephone Service Providers

34. This category includes all providers of local and telephone services to end users. Covered services include the interstate and international portion of wireline local exchange service, local and long distance private line services for both voice and data, dedicated and network packet and packet-like services, long distance message telephone services, and other local and toll services. Providers of such services are referred to herein as "interstate telephone service providers".

Interstate service providers include CAPs/CLECs, incumbent local exchange carriers (local telephone operating companies), interexchange carriers (long distance telephone companies), local resellers, OSPs (operator service

[164] See 10 FCC Rcd 12759, 12762 (1995).

[165] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at paragraph 100.

providers that enable customers to make away from home calls and to place calls with alternative billing arrangements), payphone service providers, prepaid service providers, private service providers, satellite carriers that provide fixed local or message toll services, shared tenant service providers, toll resellers, and other local and other service providers.

To avoid imposing a double payment burden on resellers, we base the regulatory fee on end-user revenues. Interstate telephone service providers, including resellers, must submit fee payments based upon their proportionate share of interstate and international end-user revenues for local and toll services. We use the terms end-user revenues, local service and toll service, based on the methodology used for calculating contributions to the Universal Service support mechanisms.[166] Interstate telephone service providers do not pay regulatory fees on revenues from the provision of intrastate local and toll services, wireless monthly and local message services, satellite toll services, carrier's carrier telecommunications services, customer premises equipment, Internet service and non-telecommunications services. For FY 2001, carriers must multiply their interstate and international revenues from subject local and toll services by the factor 0.00132 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:[167]

CALENDAR 2000 REVENUE INFORMATION

[Show amounts in whole dollars]

1	Service provided by U.S. carriers that both originates and terminates in foreign points. Form 499–A Line 412(e)	.....
2	Interstate end-user revenues from all telecommunications services. Form 499–A Line 420(d)	.....
3	International end-user revenues from all telecommunications services except international-to-international. Form 499–A Line 420(e)	.....
4	Total end-user revenues (Sum of lines 1, 2 and 3) Note: also enter this number on Block (28A)—"FCC Code 1"	.....
5	End-user interstate mobile service monthly and activation charges. Form 499–A Line 409(d)	.....
6	End-user international mobile service monthly and activation charges. Form 499–A Line 409(e)	.....
7	End-user interstate mobile service message charges including roaming charges but excluding toll charges. Form 499–A Line 410(d)	.....
8	End-user international mobile service message charges including roaming charges but excluding toll charges. Form 499–A Line 410(e)	.....
9	End-user interstate satellite services. Form 499–A Line 416(d)	.....
10	End-user international satellite services. Form 499–A Line 416(e)	.....
11	Surcharges on mobile and satellite services identified as recovering universal service contributions and included in line 403(d) or 403(e) on your FCC Form 499–A. [Note: you may not include surcharges applied to local or toll services, nor any surcharges identified as intrastate surcharges.]	.....
12	Interstate and international revenues from resellers that do not contribute to USF. Form 499–A Line 511(b)	.....
13	Total excluded end-user revenues. (Sum lines 5 through 12.) Note: also enter this number on Block (29A)—"FCC Code 2"	.....
14	Total subject revenues. (Line 4 minus Line 13) Note: also enter this number on Block (25A)—"Quantity"	.....
15	Interstate telephone service provider fee factor	.00132
16	2001 Regulatory Fee (Line 14 times Line 15)* Note: also enter this number on Block (27A)—"Total Fee"	.....

*You are exempt from filing if the amount on line 16 is less than $10.

5. International Services

a. Earth Stations

35. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's Rules. *Mobile Satellite Earth Stations*, operating pursuant to part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.[168] *Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas*, authorized or registered under part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 2001, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit-Only Earth Stations will pay a fee of $180 per authorization or registration *as well as a separate fee of $180 for each associated Hub Station.*

36. *Receive-only earth stations.* For FY 2001, there is no regulatory fee for receive-only earth stations.

b. Space Stations (Geostationary Orbit)

37. Geostationary Orbit (also referred to as Geosynchronous) Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community

[166] *See* 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Report and Order, FCC 99–175, CC Docket No. 98–171 (rel. July 14, 1999), 64 FR 41320 (Jul. 30, 1999) (Contributor Reporting Requirements Order).

[167] Although use of the worksheet is voluntary, we encourage its use and recommend that a completed copy be attached to your fee filing.

[168] Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 2001.

reception. For FY 2001, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of $98,125 per operational station in orbit. Payment is required for any geostationary satellite that has been launched and tested and is authorized to provide service.

c. Space Stations (Non-Geostationary Orbit)

38. Non-Geostationary Orbit Systems (such as Low Earth Orbit (LEO) Systems) are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 2001, entities authorized to operate Non-Geostationary Orbit Systems (NGSOs) will be assessed an annual regulatory fee of $94,425 per operational system in orbit. Payment is required for any NGSO System that has one or more operational satellites operational. In our FY 1997 *Report and Order* at paragraph 75 we retained our requirement that licensees of LEOs pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to section 25.120(d). We require payment of this fee following commencement of operations of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because section 25.120(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in accordance with the terms and conditions of the license) we previously clarified our definition of an operational LEO satellite to prevent misinterpretation of our intent as follows:

Licensees of Non-Geostationary Satellite Systems (such as LEOs) are assessed a regulatory fee upon the commencement of operation of a system's first satellite as reported annually pursuant to §§ 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to § 25.120(d).

d. International Bearer Circuits

39. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See* FY 1994 *Report and Order* at 5367. Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. The fee is based upon active 64 kbps circuits, or equivalent circuits. Under this formulation, 64 kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 kbps circuit equivalent of larger bit stream circuits. For example, the 64 kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 kbps circuits. Analog circuits such as 3 and 4 kHz circuits used for international service are also included as 64 kbps circuits. However, circuits derived from 64 kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 kbps circuits. Such circuits are not subject to fees. Only the 64 kbps circuit from which they have been derived will be subject to payment of a fee. For FY 2001, the regulatory fee is $5 for each active 64 kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog television channel size in MHz	Number of equivalent 64 kbps circuits
36	630
24	288
18	240

e. International Public Fixed

40. This fee category includes common carriers authorized under part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 2001, International Public Fixed Radio Service licensees will pay a $1,275 annual regulatory fee per call sign.

f. International (HF) Broadcast

41. This category covers International Broadcast Stations licensed under part 73 of the Commission's Rules to operate on frequencies in the 5,950 kHz to 26,100 kHz range to provide service to the general public in foreign countries. For FY 2001, International HF Broadcast Stations will pay an annual regulatory fee of $680 per station license.

Attachment G.—Description of FCC Activities

Licensing: This activity includes the authorization or licensing of radio stations, telecommunications equipment and radio operators, as well as the authorization of common carrier and other services and facilities. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with licensing activities. (Cost of this activity is not included in determining regulatory fees.)

Competition: This activity includes formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses and allocation; and development of equipment standards. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with activities to promote competition.

Enforcement: This activity includes enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Consumer Information Services: This activity includes the publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public

inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with consumer information activities.

Spectrum Management: This activity includes management of the electromagnetic spectrum as mandated by the Communications Act of 1934, as amended. Spectrum management includes the structure and processes for allocating, allotting, assigning, and licensing this scarce resource to the private sector and state and local governments in a way that promotes competition while ensuring that the public interest is best served. In order to manage spectrum in both an efficient and equitable manner, the Commission prepares economic, technical and engineering studies, coordinates with federal agencies, and represents U.S. industry in international for a. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with spectrum management activities.

Attachment H.—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules.[169] Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in § 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.[170] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

Attachment I

Parties Filing Comments on the Notice of Proposed Rulemaking

Juddie D. Burgess
WorldCom, Inc. ("WorldCom")
Cellular Telecommunications & Internet Association ("CTIA")
Wireless Communications Association International, Inc. ("WCA")
Winstar Communications, Inc. ("Winstar")
Verizon Wireless ("Verizon")
IPWireless, Inc. ("IPWireless")
Paxson Communications Corporation ("Paxson")

Parties Filing Reply Comments

Sprint Corporation ("Sprint")

Attachment J.—AM and FM Radio Regulatory Fees

The List of regulatory fees is available from the FCC Public Reference Room, CY–A257, 445 12th St. SW., Washington, DC 20554.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325 (e).

2. Section 1.1117 paragraph (c) is revised to read as follows:

§ 1.1117 Petitions and applications for review.

* * * * *

(c) Petitions for waivers, deferrals, fee determinations, reconsiderations and applications for review will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

(1) Petitions and applications for review submitted with a fee must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1105.

(2) If no fee payment is submitted, the request should be filed with the Commission's Secretary.

* * * * *

3. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

	Fee amount [1]	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90)		
(a) New, Renew/Mod (FCC 601 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.

[169] 47 CFR 73.150 and 73.152.

[170] 47 CFR 73.313.

	Fee amount [1]	Address
(b) New, Renew/Mod (Electronic Riling) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5245.
220 MHz Nationwide		
(a) New, Renew/Mod (FCC 601 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
2. Microwave (47 CFR Pt. 101) (Private)		
(a) New, Renew/Mod (FCC 601 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
3. 218–219 MHz Service		
(a) New, Renew/Mod (FCC 601 & 159)	$10.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$10.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$10.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$10.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
4. Shared Use Services		
Land Mobile (Frequencies Below 470 MHz—except 220 MHz)		
(a) New, Renew/Mod (FCC 601 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
General Mobile Radio Service		
(a) New, Renew/Mod (FCC 605 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 605 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	$5.00	FCC P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Rural Radio (Part 22)		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159).	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Marine Coast		
(a) New Renewal/Mod (FCC 601 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Renewal Only (FCC 601 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(c) Renewal Only (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Aviation Ground		
(a) New, Renewal/Mod (FCC 601 & 159)	$10.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Renewal Only (FCC 601 & 159)	$10.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(c) Renewal Only (Electronic Filing) (FCC 601 & 159)	$10.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Marine Ship		
(a) New, Renewal/Mod (FCC 605 & 159)	$10.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	$10.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 605 & 159)	$10.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	$10.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Aviation Aircraft		
(a) New, Renew/Mod (FCC 605 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 605 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
5. Amateur Vanity Call Signs		
(a) Initial or Renew (FCC 605 & 159)	$1.20	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159)	$1.20	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
6. CMRS Mobile Services (per unit)		
(FCC 159)	$.27	FCC, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
7. CMRS Messaging Services (per unit)		

	Fee amount [1]	Address
(FCC 159)	$.05	FCC, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

[1] Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § 1.1102 of this chapter.

4. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

	Fee amount	Address
Radio [AM and FM] (47 CFR, Part 73)		
1. *AM Class A*		
≤20,000 population	$450	FCC, Radio, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
20,001–50,000 population	$850	
50,001–125,000 population	$1,375	
125,001–400,000 population	$2,050	
400,001–1,000,000 population	$2,850	
>1,000,000 population	$4,550	
2. *AM Class B*		
≤20,000 population	$350	
20,001–50,000 population	$675	
50,001–125,000 population	$900	
125,001–400,000 population	$1,450	
400,001–1,000,000 population	$2,300	
>1,000,000 population	$3,750	
3. *AM Class C*		
≤20,000 population	$250	
20,001–50,000 population	$350	
50,001–125,000 population	$475	
125,001–400,000 population	$725	
400,001–1,000,000 population	$1,300	
>1,000,000 population	$1,900	
4. *AM Class D*		
≤20,000 population	$300	
20,001–50,000 population	$475	
50,001–125,000 population	$700	
125,001–400,000 population	$875	
400,001–1,000,000 population	$1,550	
>1,000,000 population	$2,400	
5. AM Construction Permit	$280	
6. *FM Classes A, B1 and C3*		
≤20,000 population	$350	
20,001–50,000 population	$675	
50,001–125,000 population	$900	
125,001–400,000 population	$1,450	
400,001–1,000,000 population	$2,300	
>1,000,000 population	$3,750	
7. *FM Classes B, C, C1 and C2*		
≤20,000 population	$450	
20,001–50,000 population	$850	
50,001–125,000 population	$1,375	
125,001–400,000 population	$2,050	
400,001–1,000,000 population	$2,850	
>1,000,000 population	$4,550	
8. FM Construction Permits	$925	
TV (47 CFR, Part 73)		
VHF Commercial		
1. Markets 1 thru 10	$45,100	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Markets 11 thru 25	$32,825	
3. Markets 26 thru 50	$21,325	
4. Markets 51 thru 100	$13,750	
5. Remaining Markets	$3,275	
6. Construction Permits	$3,075	

	Fee amount	Address
UHF Commercial		
1. Markets 1 thru 10	$15,150	FCC, UHF Commercial, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Markets 11 thru 25	$12,300	
3. Markets 26 thru 50	$7,075	
4. Markets 51 thru 100	$4,075	
5. Remaining Markets	$1,150	
6. Construction Permits	$4,000	
Satellite UHF/VHF Commercial		
1. All Markets	$740	FCC Satellite TV, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Construction Permits	$480	
Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR Part 74).	$305	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA, 15251–5835;.
Broadcast Auxiliary	$10	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Multipoint Distribution	$450	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

5. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
Radio Facilities		
1. Microwave (Domestic Public Fixed)(Electronic Filing) (FCC Form 601 & 159).	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Carriers		
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A).	$ .00132	FCC, Carrier, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

6. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Television Relay Service	$55	FCC, Cable, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Cable TV System (per subscriber)	.49	

7. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

	Fee amount	Address
Radio Facilities		
1. International (HF) Broadcast	$680	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. International Public Fixed	1,275	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Space Stations (Geostationary Orbit)	98,125	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Space Stations (Non-Geostationary Orbit)	94,425	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Earth Stations		
Transmit/Receive & Transmit Only (per authorization or registration).	180	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Carriers		
1. International Bearer Circuits (per active 64KB circuit or equivalent).	5.00	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

8. Section 1.1166 paragraph (a) is revised to read as follows:

§ 1.1166 Waivers, reductions and deferrals of regulatory fees.

* * * * *

(a) Requests for waivers, reductions or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission.

(1) If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §§ 1.1152 through 1.1156 of this subpart.

(2) If no fee payment is submitted, the request should be filed with the Commission's Secretary.

* * * * *

[FR Doc. 01–17114 Filed 7–10–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 53

[CC Docket No. 96–149; FCC 01–140]

Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document summarized the Remand Order reaffirming the Commission's conclusion in the Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended (Non-Accounting Safeguards Order published January 21, 1997 at 62 FR 2927), that the term "interLATA service" used in section 271 encompasses interLATA information services as well as interLATA telecommunications services.

DATES: Effective July 11, 2001.

FOR FURTHER INFORMATION CONTACT: Brent Olson, Deputy Chief, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Remand, CC Docket No. 96–149, FCC 01–140, adopted April 23, 2001 and released April 27, 2001. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

Synopsis

1. Section 271 of the Communications Act of 1934, as amended (Communications Act or Act), states that neither a Bell operating company (BOC) nor its affiliate may provide "interLATA services" except as set forth in that section. In the Non-Accounting Safeguards Order, the Commission concluded that the term "interLATA services" as used in section 271 encompasses interLATA telecommunications services and interLATA information services. Following the Commission's reconsideration of other aspects of the Non-Accounting Safeguards Order, the Bell Atlantic telephone companies (now known as the Verizon telephone companies) and US WEST, Inc. (now known as Qwest Communications International Inc.) (collectively, Petitioners) petitioned for judicial review of the Commission's determination that interLATA information services fall within the scope of interLATA services. Because the arguments advanced by the Petitioners in their appellate brief had not been raised in the administrative proceeding, the Commission moved for a voluntary remand to consider further the issues raised by the Petitioners. The D.C. Circuit granted the Commission's motion.

2. In this Order on Remand, the Commission examines the scope of the term "interLATA services" and reaffirms the Commission's conclusion in the Non-Accounting Safeguards Order that the term "interLATA services" as used in section 271 encompasses interLATA information services as well as interLATA telecommunications services. As summarized, the Commission finds that conclusion the most reasonable given the statutory language, structure, and history. The Commission also finds that its 1998 Universal Service Report to Congress is not inconsistent with this conclusion. A BOC therefore may provide interLATA information services only in accordance with the provisions of section 271.

3. Our conclusion reaffirms the longstanding view of the federal courts and this Commission that limitations on BOC provision of interLATA extend to interLATA information services. The D.C. Circuit examined precisely this question within the contours of the MFJ and explicitly rejected claims by some BOCs that information service cannot also constitute the provision of interLATA telecommunications in the context of the MFJ's interLATA prohibition. The Commission also reached this same conclusion in the Non-Accounting Safeguards Order, finding that an information service that contains a bundled interLATA telecommunications component includes "telecommunications" between points located in different LATAs, and thereby satisfies the statutory definition of an "interLATA service."

4. Even though, under the Communications Act of 1934, as amended, the terms "information service" and "telecommunications service" are mutually exclusive, each is a subset of the broader term "interLATA services" insofar as each type of service involves telecommunications that cross LATA boundaries. Indeed, this matter apparently was so clear in 1996 that the BOCs themselves urged the same construction of the statutory language. In a reversal of their prior position, the Petitioners claimed that the statutory language "clearly" requires precisely the opposite of what they previously asserted was the "clear" meaning. We reject their latest position as contrary to the Act's text, structure, history, and purpose.

I. Statutory Language

5. Whether section 271's restriction on the BOC's provision of interLATA services includes interLATA information services depends on the statutory language.

A. Is the InterLATA Restriction in Section 271(a) Governed by a Plain Meaning Interpretation?

6. The BOCs contend that a straightforward reading of the Act's definitions shows that a BOC that provides an information service via telecommunications cannot also be deemed to be providing an "interLATA," which is defined as a form of telecommunications. We conclude that the relevant statutory definitions, either separately or in combination, do not clearly indicate whether "interLATA services" in section 271 includes or excludes information services. Rather, we find that including interLATA information

services within the scope of "interLATA services" in section 271 is the interpretation that most reasonably fits with the statutory language.

B. Do InterLATA Services as Used in Section 271(a) Encompass Only Separate Offerings of Telecommunications?

7. In the BOCs' view, the "telecommunications" referenced in the definition of "interLATA service" must comprise a separate offering to the customer and cannot be an input in the offering of an information or other service. Such an interpretation, however, is not supported in the statute because "interLATA service" does not require that the telecommunications aspect of such a service be provided directly to end-users rather than as a component in an unbundled offering. It suffices under the broad "interLATA services" definition that the information service is conveyed via telecommunications that is interLATA in nature.

C. What Impact Does the Commission's Previous Interpretation of the Term "Provide," as Used in Section 271(a), Have on the Scope of the Term "InterLATA Services?"

8. The term "provide" in section 271 must be construed in the context of the unique terms, structure, history, and purposes of that section. Use of the term "provide" in section 271(a) therefore must be considered in light of that section's dual purposes of preventing the BOCs from using bottleneck local facilities to discriminate in favor of their owned or leased interLATA facilities and giving the BOCs maximum incentive to open their local markets to competition. Thus, section 271's use of "provide" should be read to apply to information services that include interLATA transmission components.

II. Statutory Structure

9. Our conclusion that interLATA services encompass information services permits a uniform application of the terms and structure of sections 271 and 272. Section 271(g) explicitly exempts some information services from the interLATA services restriction in section 271(a). By exempting these services, the statute presupposes that "incidental interLATA services" are a subset of the broader category of interLATA services to which the restriction applies. If information services identified in section 271(g), when conveyed via interLATA telecommunications, were not also "interLATA services," it would have been unnecessary for Congress to exempt them from section 271(a)'s restriction.

10. The BOC's claim that Congress enacted certain provisions of section 271(g) as mere "extra, unnecessary assurance" that certain specified information services were not intended to be included within section 271(a)'s interLATA service restriction even though, under the BOC's rationale, such services should already be excluded from the section 271(a) restriction, under the plain meaning of section 271(a). This argument is flawed in multiple respects. First, it fails to interpret the statutory language in a manner that gives meaning to each word. Moreover, the BOC's argument conflicts with section 271(h), which states that the exceptions in section 271(g) are to be narrowly construed. Finally, the BOC's position would cause tension between section 271 and certain provisions of section 272, which requires the BOCs to provide both interLATA telecommunications services and interLATA information services through a separate affiliate.

III. Statutory Purpose and History

11. Allowing the BOCs immediately to provide information services across LATA boundaries would reduce the BOC's incentive to comply with the Section 271 market-opening requirements. We find no evidence that Congress intended to blunt the effectiveness of this incentive by excluding BOC provision of in-region, interLATA information services from the restrictions of section 271.

A. MFJ Precedent

12. Prior to the 1996 Act, the service offerings of the BOCs were governed by the consent decree, commonly known as the Modification of Final Judgment or MFJ, that settled the Department of Justice's antitrust suit against AT&T and required the divestiture of the BOCs. The MFJ prohibited the BOCs from entering certain lines of business, including interexchange (i.e., long distance) services and information services (provided on either an interLATA or intraLATA basis). Although the district court overseeing the decree eventually lifted the restriction on providing information services within a LATA, in the *Gateway Services Appeal* the court left intact the MFJ's "core" interLATA restrictions, which prevented the BOCs from providing information services on an interLATA basis.

B. Legislative History and Purpose

13. The 1996 Act enacted market-opening mechanisms to remove impediments to competition and give all carriers an opportunity to provide local services. Section 271 established a process for the BOCs to gain entry into the long distance market. However, Congress chose to maintain the MFJ's restriction on BOC provision of in-region, interLATA services until the BOC's local markets are open to competition.

14. In enacting the 1996 Act, Congress modified the interLATA restriction explicitly to allow the immediate provision of out-of-region interLATA services. The BOCs claim that this action somehow shows that Congress also intended to lift the MFJ's restriction on interLATA transmission of information services. However, nothing in the 1996 Act or its legislative history suggests that Congress intended to overrule the Gateway Services Appeal. We are not persuaded that Congress would preserve the in-region, interLATA restriction using language similar to that used in the decree yet intend a result sharply divergent from the D.C. Circuit's interpretation of that restriction. To the contrary, when Congress intended to modify the MFJ's restrictions, as in the case of out-of-region interLATA services, it did so explicitly.

15. We disagree with the BOCs that our construction of section 271 undermines Congress's goal of "opening all telecommunications markets to competition." Congress did not seek to achieve the market-opening aspects of the 1996 Act by permitting the BOCs to provide interLATA immediately. We also reject the BOC's argument that treating interLATA information services as interLATA services will somehow subject information service providers to regulation as common carriers. The BOC's argument ignores the Act's distinction between "telecommunications" and "telecommunications service." We also are not persuaded that the current state of the law results in a competitive disadvantage for the BOCs.

IV. Universal Service Report to Congress

16. Finally, the BOCs contend that our conclusion that the term "interLATA services" in section 271 includes interLATA information services is inconsistent with statements the Commission made in a 1998 Universal Service Report to Congress. The BOCs rely heavily on certain statements read in isolation and taken out of context to suggest that the terms "information services" and "telecommunications" are mutually exclusive. That language, however, is properly interpreted as

distinguishing between information services and telecommunications services, both of which include and use telecommunications.

17. In fact, the Report to Congress recognized that in cases in which an information service provider owns the underlying transmission facilities, and engages in data transport over those facilities in order to provide an information service, one could argue that the information service provider is "providing" telecommunications to itself by furnishing raw transmission capacity for its own use. Although the Commission does not currently require such information service providers to contribute to universal service mechanisms, the Commission indicated that it might be appropriate to reexamine that result. Moreover, the Commission examined the services provided by information service providers in general, leaving room for a different conclusion in specific situations.

List of Subjects in 47 CFR Part 53

Communications common carriers, Telecommunications, Bell operating companies.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–17168 Filed 7–10–01; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 990416100–9256–02; I.D. 031999C]

RIN 0648–AL18

Pacific Halibut Fisheries; Local Area Management Plan for the Halibut Fishery in Sitka Sound; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correcting amendment.

SUMMARY: This document amends the final regulations published in the **Federal Register** on September 29, 1999, containing the geographic coordinates of Cape Edgecumbe, which is one of the boundary points of the Local Area Management Plan (LAMP) for the halibut fishery in Sitka Sound in the Gulf of Alaska.

DATES: Effective July 11, 2001.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: The final regulations that are the subject of these corrections were published on September 29, 1999. Those regulations implemented the Sitka Sound LAMP, which is intended to address user conflicts resulting from decreased availability of Pacific halibut within Sitka Sound, an area defined in the implementing regulations at § 300.63(d)(1) of the Code of Federal Regulations. In a recent review of this regulation, NMFS discovered a typographical error in the geographic coordinates of Cape Edgecumbe, one of the points describing the boundary of Sitka Sound within which the LAMP management measures apply.

Need for Correction

As published, § 300.63(d)(1)(i) correctly identifies Cape Edgecumbe as the starting point for the southwestern boundary of Sitka Sound, but incorrectly states that Cape Edgecumbe is located at 57°59′54″ N. lat., 135°51′27″ W. long., a geographic position that is one full degree (60 nautical miles) north of the true location of Cape Edgecumbe. This action amends section 300.63(d)(1)(i) and its associated Figure 1 to Subpart E by correctly describing the geographic coordinates of Cape Edgecumbe at 56°59′54″ N. lat., 135°51′27″ W. long.

Classification

The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately correct the published coordinates of Cape Edgecumbe will eliminate a potential source of confusion as to its location and the boundary of the Sitka Sound LAMP area and constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, as this action does not change the designation of Cape Edgecumbe as one of the points describing the boundary of Sitka Sound and does not substantively alter the area within which the LAMP management measures apply, the Assistant Administrator for Fisheries, NOAA, waives the 30-day delay in effective date pursuant to 5 U.S.C. 553(d).

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Accordingly, 50 CFR part 300 is corrected by making the following correcting amendment:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 773-773k.

2. Remove "57°59′54″" and replace it with "56°59′54″" in the following places:

(a) In § 300.63(d)(1)(i) and

(b) In Figure 1 to Subpart E–Sitka Sound Local Area Management Plan Boundaries b. Coordinates, under heading Southern Boundaries, paragraph (1).

Dated: July 3, 2001.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 01–17369 Filed 7–10–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010618159–01; I.D. 051101A]

RIN 0648–AO92

Fisheries of the Northeastern United States; Summer Flounder Fishery; Framework Adjustment 2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 2 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan (FMP). This final rule modifies the mechanism for specifying the annual management measures for the summer flounder recreational fishery by implementing a management system that will either constrain the recreational summer flounder fishery to coastwide management measures or allow states to customize summer flounder recreational management measures. The intent of this action is to establish a management system that allows states to customize recreational management measures while still meeting overall FMP objectives.

DATES: Effective July 29, 2001.

ADDRESSES: Copies of Framework Adjustment 2 to the Summer Flounder, Scup and Black Sea Bass FMP, its

Environmental Assessment (EA), and Regulatory Impact Review (RIR) are available on request from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: David M. Gouveia, Fishery Policy Analyst, (978) 281–9280, fax (978) 281–9135, e-mail *david.gouveia@noaa.gov*.

SUPPLEMENTARY INFORMATION: The recreational summer flounder fishery is managed through an annual evaluation process, with annual measures established to achieve a coastwide recreational harvest limit. After the annual coastwide recreational harvest limit recommendation has been made by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), the Summer Flounder Monitoring Committee (Committee) meets in December to recommend measures necessary to achieve the recreational harvest limit (seasons, possession limits and/or minimum fish sizes). The Council reviews the Committee's recommendations and any public comment prior to submitting its recommendations to NMFS. NMFS then is responsible for reviewing the Council's recommendation and assuring the measures will have at least a 50–percent likelihood of achieving the harvest limit.

Because the recreational summer flounder fishery is currently managed on a coastwide basis, the FMP requires that the same management measures apply to each state. However, summer flounder migration patterns have created differences in the availability of summer flounder to the recreational fisheries of the states. While coastwide measures achieve the target overall, they have a differential impact on the states because the availability of summer flounder to the recreational sector is not uniform across the states.

On September 9, 1999, NMFS enacted interim measures to allow states to implement in state waters conservation measures that were equivalent to the annual Federal summer flounder measures. The temporary interim measures were in effect while the Council developed a more comprehensive mechanism to address this issue on a permanent basis. Under the interim rule, states could select either an individualized combination of minimum fish sizes, possession limits, and closed seasons, or the coastwide management measures to constrain recreational landings to the harvest limit. The state conservation equivalency provision was utilized in the summer flounder recreational fishery in 1999. However, a loophole was discovered during the implementation of the interim rule. By allowing states to choose between conservation equivalent measures and coastwide measures, states had the ability to select management measures that did not achieve the required percentage reduction in harvest. In 1999, a 41–percent reduction in recreational summer flounder landings was required coastwide. Each state had the option to select either the coastwide measures or state-specific measures to achieve the reduction. The coastwide measures achieved the 41–percent reduction overall, but resulted in reductions in individual states that ranged from 11 percent to 39 percent. Some states selected the coastwide measures because they actually impacted their fishery by less than 41 percent. Therefore, by allowing states to choose between coastwide and state specific measures, the overall required 41–percent reduction was not achieved.

On April 28, 1999, NMFS approved a framework adjustment process as part of Amendment 12 to the FMP, which allows the Council to use this process to change the annual specification quota setting process and recreational management measures. This framework adjustment specifies that the Council and Commission will decide on an annual basis whether to recommend a coastwide recreational harvest limit or require states to implement summer flounder recreational management measures that achieve equivalent conservation. To eliminate the loophole revealed during the implementation of the interim rule, states will not be authorized to choose between the coastwide and state equivalency measures but will all manage on either a coastwide basis or on a state equivalent basis. If coastwide measures are recommended, NMFS will publish proposed coastwide measures as currently specified in the FMP, solicit public comment and then publish final coastwide measures. If conservation equivalent measures are recommended, NMFS will publish a proposed rule that will include: (1) the overall percentage adjustment required in each state to achieve the recreational harvest limit; (2) a recommendation to implement state conservation equivalent measures and precautionary default measures; and (3) coastwide measures.

Precautionary default measures are measures that would achieve at least the overall required adjustment in landings for each state. For example, in 1999 a 41–percent reduction in landings was required. An appropriate 1999 precautionary default measure would have been a one-fish possession limit and a 15.5–inch minimum size limit. These measures would have achieved at least a 41–percent reduction in each state, assuming the regulations achieve 85–percent effectiveness. Precautionary default measures will be recommended at the joint Commission/Council meeting when conservation equivalency measures are chosen.

Under conservation equivalency, states will not be allowed to implement measures by method of fishing (mode) or area within a state unless the proportional standard error (PSE) derived from the Marine Recreational Statistical Survey landings, estimated by mode or area, is less than 30 percent for each respective state. PSE expresses the standard error of a landings estimate as a percentage of that estimate, and is a measure of the precision of the landings estimate. The 30–percent PSE threshold was specified by the Council and Commission.

Each state will use state-specific tables created by the Committee to develop and propose equivalent management measures to achieve the recreational harvest limit for the summer flounder fishery. Tables will be adjusted to account for effectiveness of the regulations based on review of prior years' data. Using these tables, each state will develop a suite of management measures composed of possession limits, minimum size restrictions, and seasonal restrictions to achieve landings consistent with the recreational harvest limit for the summer flounder fishery.

States will submit their proposed suite of recreational measures to the Commission for review. Any state that does not submit a proposal or submits a proposal that is determined to not achieve the adjustment target will be assigned the precautionary default measures. At the discretion of the Commission, states that have been assigned the precautionary default measures may be authorized to resubmit revised management measures, and if those are consistent with the adjustment target, the state could implement them in place of the precautionary default measures.

During the proposed rule comment period, the Commission will complete its review of state proposals and notify NMFS of its findings. Although the Council and Commission may recommend state conservation equivalency to NMFS, NMFS has the responsibility of ensuring that the measures will achieve the harvest limit.

Therefore, NMFS retains the final authority to approve either coastwide or state equivalency and will publish its determination in the final rule for recreational measures. Should NMFS approve state conservation equivalent measures, NMFS will publish in the final rule the state conservation equivalent and/or precautionary default measures for each respective state for the exclusive economic zone (EEZ). For states with approved conservation equivalent measures, NMFS will also announce as part of the final recreational measures that it is waiving the permit condition found at § 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. In the case of states that are initially assigned precautionary default measures, but subsequently receive Commission approval of customized state measures, NMFS will publish a notification in the **Federal Register** announcing the waiver of the permit condition at § 648.4(b).

Economic Impact Analysis

The potential impacts that may result from this action have been considered in the EA and RIR. This action proposes a management system that will provide the Council and Commission the flexibility to recommend cooperatively either coastwide management measures or customized state summer flounder recreational management to achieve the recreational summer flounder harvest limit, rather than relying solely on coastwide management measures. Should the Council and Commission choose to allow states to customize summer flounder recreational management measures, states will be able to set management measures that will maintain traditional fishing practices within each respective state. This action is not, therefore, expected to result in negative impacts to charter/party vessels participating in the recreational summer flounder fishery compared to the no-action alternative of solely relying on coastwide management measures. Other alternatives were considered, including conservation equivalency by sub-regions, conservation equivalency by state using sub-regional data, conservation equivalency as established through the interim action, and state by state allocations for recreational fishing. While several of these would also provide greater flexibility than the current measures in the FMP, none were identified as minimizing impacts in comparison to the adopted measures.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart G. This procedure requires the Council, when making specifically allowed adjustments to the regulations, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis, and with an opportunity to comment on them at the first meeting and prior to and at the second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Administrator, Northeast Region, NMFS, that the measures be published as a final rule if certain conditions are met. NMFS may publish the measures as a final rule, or as a proposed rule if additional public comment is necessary.

The public was provided the opportunity to comment on the management measures contained in Framework 2 at the Council's December 12–14, 2000, and February 6–8, 2001, meetings. Documents summarizing the Council's proposed action and the analysis of biological and economic impacts of this and alternative actions were available for public review at the December 12–14, 2000, meeting and prior to the final February 8, 2001, meeting, as is required under the framework adjustment procedures. Written comments could be submitted up to and during the final meeting. No comments were received.

Classification

The Regional Administrator determined that this framework adjustment to the FMP is necessary for the conservation and management of the summer flounder fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 *et seq.*, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Nevertheless, the impacts of this action on affected small entities were considered in the RIR contained in the supporting analyses for Framework 2. The impacts are described in the **SUPPLEMENTARY INFORMATION** section of the preamble to this final rule.

The Assistant Administrator for Fisheries, NOAA (AA), finds that, because public meetings held by the Council to discuss the management system implemented by this final rule provided adequate prior notice and opportunity for public comment, further notice and opportunity to comment on this final rule is unnecessary. Therefore, the AA, under 5 U.S.C. 553 (b)(B), finds good cause exists to waive prior notice and additional opportunity for public comment.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 29, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4, paragraph (a)(3)(iii) is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(3) * * *

(iii) *Exemption permits.* Owners of summer flounder vessels seeking an exemption from the minimum mesh requirement under the provisions of § 648.104 (b)(1) must apply to the Regional Administrator under paragraph (c) of this section at least 7 days prior to the date they wish the permit to become effective. The applicant must mark "Exemption Permit Request" on the permit application at the top. A permit issued under this paragraph (a)(3)(iii) does not meet the requirements of paragraph (a)(3)(i) of this section, but is subject to the other provisions of this section. Persons issued an exemption permit must surrender it to the Regional Administrator at least 1 day prior to the date they wish to fish not subject to the exemption. The Regional Administrator may impose temporary additional procedural requirements by publishing a notification in the **Federal Register**. If a summer flounder charter or party requirement of this part differs from a summer flounder charter or party management measure required by a state, any vessel owners or operators fishing under the terms of a summer flounder charter/party vessel permit in

the EEZ for summer flounder must comply with the more restrictive requirement while fishing in state waters, unless otherwise authorized under § 648.107.

* * * * *

3. Section 648.100 is revised to read as follows:

§ 648.100 Catch quotas and other restrictions.

(a) *Annual review.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve, with at least a 50–percent probability of success, a fishing mortality rate (F) that produces the maximum yield per recruit (Fmax): Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Summer Flounder Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the Commission the following measures to ensure, with at least a 50–percent probability of success, that the F specified in paragraph (a) of this section will not be exceeded:

(1) Commercial quota set from a range of 0 to the maximum allowed to achieve the specified F.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the specified F.

(5) Recreational minimum fish size.

(6) Recreational season.

(7) Recreational state conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons.

(8) Restrictions on gear other than otter trawls.

(9) Adjustments to the exempted area boundary and season specified in § 648.104 (b)(1) by 30–minute intervals of latitude and longitude and 2–week intervals, respectively, based on data specified in paragraph (a) of this section to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to ensure, with at least a 50–percent probability of success, that the applicable specified F will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures necessary to ensure, with at least a 50–percent probability of success, that the applicable specified F will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission.

(d) *Commercial measures.* After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** on or about October 15 to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial fishery. After considering public comment, the Regional Administrator will publish a final rule in the Federal Register to implement the measures necessary to ensure, with at least a 50–percent probability of success, that the applicable specified F will not be exceeded.

(1) *Distribution of annual quota.* (i) The annual commercial quota will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES

State	Share (percent)
Maine	0.04756
New Hampshire	0.00046
Massachusetts	6.82046
Rhode Island	15.68298
Connecticut	2.25708
New York	7.64699
New Jersey	16.72499
Delaware	0.01779
Maryland	2.03910
Virginia	21.31676
North Carolina	27.44584

(ii) All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year.

(2) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(3) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder FMP and Magnuson-Stevens Act.

(4) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made and will be effective upon the filing by NMFS of a notice of the approval of the transfer or combination with the Office of the Federal Register.

(5) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the Federal Register.

(6) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the

overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d)(1)(i) of this section.

(e) *Recreational measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC and Commission measures necessary to ensure, with at least a 50–percent probability of success, that the applicable specified F will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures necessary to ensure, with at least a 50–percent probability of success, that the applicable specified F will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Council and the Commission will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual coastwide management measures that constrain the recreational summer flounder fishery to the recreational harvest limit, or

(2) *Conservation equivalent measures.* States may implement different combinations of minimum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each state may implement measures by mode or area only if the proportional standard error of Marine Recreational Statistical Survey landings estimates by mode or area for that state are less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the **Federal Register** on or about March 1 to implement the overall percent adjustment in recreational landings required for the fishing year, the Council and Commission's recommendation concerning state conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) During the public comment period on the proposed rule, the Commission will review state conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The Commission will provide the Regional Administrator with the individual state conservation measures for the approved state proposals, and in the case of disapproved state proposals, the precautionary default measures.

(iii) The Commission may allow states assigned the precautionary default measures to resubmit revised management measures. The Commission will detail the procedures by which the state can develop alternate measures. The Commission will notify the Regional Administrator of any resubmitted state proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a notice in the **Federal Register** to notify the public.

(iv) After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement either the state specific conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

4. Section 648.102 is revised to read as follows:

§ 648.102 Time restrictions.

Unless otherwise specified in § 648.107, vessels that are not eligible for a moratorium permit under § 648.4 (a)(3) and fishermen subject to the possession limit may fish for summer flounder from January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 648.100.

5. In § 648.103, paragraph (b) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(b) Unless otherwise specified in § 648.107, the minimum size for summer flounder is 15 inches (38 cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with passengers for hire or carrying more than three crew members, or party boats holding a moratorium permit if fishing with more than five crew members.

* * * * *

6. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

§ 648.105 Possession restrictions.

(a) Unless otherwise specified in § 648.107, no person shall possess more than eight summer flounder in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit or is issued a summer flounder dealer permit. * * *

* * * * *

7. Section 648.107 is revised to read as follows:

§ 648.107 Conservation equivalent measures for the recreational summer flounder fishery.

No conservation equivalent measures are specified.

[FR Doc. 01–17095 Filed 7–10–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000501119–0119–01; I.D. 061201A]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Adjustment for the Commercial Fishery from U.S.-Canada Border to Cape Falcon, OR

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS announces modification of the landing requirements for the commercial salmon fishery (except coho) in the area from the U.S.-Canada Border to Cape Falcon, OR, to allow salmon caught in the area to be landed in Oregon. The modified provision requires that vessels land and deliver fish within the area (U.S.-Canada Border to Cape Falcon), or within Oregon ports south of Cape Falcon, and within 24 hours of any closure of this fishery. NMFS also describes the Oregon State reporting and landing requirements for salmon caught in the area. This action is necessary to provide flexibility to Oregon fishermen, while implementing the 2001 annual management measures for ocean salmon fisheries.

DATES: Inseason adjustment effective 2400 hours local time, May 4, 2001. Comments will be accepted through July 26, 2001.

ADDRESSES: Comments on this action may be mailed to Donna Darm, Acting Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; fax 206–526–6376; or Rebecca Lent, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; fax 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 660.409(b)(1)(v) state that the Regional Administrator, in consultation with the Chairman of the Pacific Fishery Management Council (Council) and the appropriate State Directors, may, under the flexible inseason management provisions, modify boundaries, including landing boundaries.

In the 2001 annual management measures for ocean salmon fisheries (66 FR 23185, May 8, 2001), NMFS announced that the area from the U.S.-Canada Border to Cape Falcon would open May 1 through the earlier of June 30 or a 17,000-chinook guideline. The 17,000-chinook guideline includes a subarea guideline of 12,000 chinook for the subarea between the U.S.-Canada border and the Queets River. Vessels were required to land and deliver their fish within the area (U.S.-Canada Border to Cape Falcon) or in adjacent areas that are closed to all commercial non-Indian salmon fishing, and within 24 hours of any closure of this fishery. In addition, Washington State regulations required that fishermen fishing within the U.S.-Canada Border to Queets River subarea, and intending to land their catch outside of this subarea, notify the Washington Department of Fish and Wildlife (WDFW) before they leave the subarea. However, by restricting fishermen fishing in the area (U.S.-Canada Border to Cape Falcon) to land and deliver their catch within the area, or in adjacent areas closed to all commercial non-Indian salmon fishing, the 2001 annual management measures for ocean salmon fisheries inadvertently prohibited salmon caught north of Cape Falcon from being landed in Oregon. There are no qualifying Oregon ports for fishermen fishing north of Cape Falcon. This situation came to light after the annual management measures were sent by the Council to NMFS for approval after the April 2001 meeting. Therefore, the State of Oregon requested an inseason modification to the 2001 annual management measures to modify the area landing requirements.

The Regional Administrator consulted with representatives of the Council, the Oregon Department of Fish and Wildlife (ODFW), and WDFW regarding this adjustment on May 3, 2001. Oregon recommended that the management measures for the north of Cape Falcon area be changed to allow fish to be landed in ports south of Cape Falcon. The State of Oregon has implemented landing notification requirements to ensure that proper catch accounting (accounting for the number of fish caught) is done for the area catch.

In certain quota fisheries, it is necessary to restrict landing to certain areas in order to ensure accurate and timely catch accounting. This was the reason for the initial landing restriction. However, NMFS and the states have realized that the existing language was particularly restrictive on fishermen who want to land south of Cape Falcon, and the catch accounting problem can be solved by the State of Oregon. Oregon has now implemented a reporting system for catch from north of Cape Falcon, which will allow accurate and timely catch accounting. Therefore, NMFS is implementing this modification of the annual management measures.

The adjusted regulatory language has been approved by NMFS and reads as follows:

U.S.-Canada Border to Cape Falcon

May 1 through earlier of June 30 or 17,000-chinook guideline (see C.7.a of the 2001 annual salmon management measures). All salmon except coho. No more than 4 spreads per line beginning June 1 (see gear restrictions in C.2 of the 2001 annual salmon management measures). Cape Flattery and Columbia Control Zones closed (C.4.a and C.4.b of the 2001 annual salmon management measures). The 17,000-chinook guideline includes a subarea guideline of 12,000 chinook for the area between the U.S.-Canada border and the Queets River. Vessels must land and deliver their fish within the area (U.S.-Canada Border to Cape Falcon), or in Oregon ports south of Cape Falcon, and within 24 hours of any closure of this fishery. Washington State regulations require that fishermen fishing within the U.S.-Canada Border to Queets River subarea and intending to land their catch outside of this subarea notify WDFW before they leave the subarea. Oregon State regulations require that vessels intending to land their catch in an Oregon port south of Cape Falcon must notify ODFW (541–867–0300 ext. 252) before leaving the area to report the name of the vessel, the intended port of landing, the estimated time of arrival, and the catch aboard. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts (see C.7.a of the 2001 annual salmon management measures).

As provided by the inseason notification procedures at 50 CFR 660.411, actual notice to fishermen of these actions was given by telephone hotline number 206–526–6667 or 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

Because of the need for immediate action in order to provide flexibility to the fishermen, NMFS has determined that good cause exists for this document to be issued without affording a prior opportunity for public comment. This document does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 5, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17365 Filed 7–10–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 070601A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to

prevent exceeding the 2001 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 8, 2001, through 2400 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2001 TAC of Pacific ocean perch for the Eastern Aleutian District was established as 2,683 metric tons (mt) by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2001 TAC for Pacific ocean perch in the Eastern Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,433 mt, and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the 2001 TAC of Pacific ocean perch for the Eastern Aleutian District of the BSAI constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the 2001 TAC of Pacific ocean perch for the Eastern Aleutian District of the BSAI constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 6, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17347 Filed 7–6–01; 4:35 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 133
Wednesday, July 11, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 1900, 1900C (C–12J), and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 95–02–18, which currently requires repetitive inspections of the engine truss assemblies for cracks on certain Raytheon Aircraft Company (Raytheon) Beech Models 1900, 1900C (C–12J), and 1900D airplanes, repair or replacement of any cracked engine truss assembly, and installation of reinforcement doublers. This proposed AD is the result of continued reports of fatigue cracks found on engine trusses on airplanes in compliance with AD 95–02–18. The proposed AD would require engine truss assembly replacement, periodic inspections and replacements, and the eventual incorporation of a cowling support installation kit as terminating action. The repetitive inspections of AD 95–02–18 would be retained until mandatory engine truss assembly replacement. The actions specified by the proposed AD are intended to detect and correct cracked engine truss assemblies, which could result in failure of the engine truss assembly and consequent loss of airplane control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before August 30, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–04–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. David L. Ostrodka, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4129; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on the Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clear, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2001–CE–04–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action on the Engine Truss Assemblies of Raytheon Beech Models 1900, 1900C (C–12J), and 1900D Airplanes To This Point?

Continued problems with fatigue cracking of the engine truss assemblies on Raytheon Beech Models 1900, 1900C (C–12J), and 1900D airplanes caused FAA to issue AD 95–02–18, Amendment 39–9136 (60 FR 6652, February 3, 1995). This AD currently requires the following:

—Repetitive inspections of the engine truss assemblies for cracks;

—Repair or replacement of any cracked engine truss assembly; and

—Installation of reinforcement doublers.

What Has Happened Since AD 95–02–18 To Initiate This Action?

The FAA continues to receive reports of engine truss fatigue cracks on Raytheon Beech Models 1900, 1900C (C–12J), and 1900D airplanes. The reports reference airplanes that are in compliance with AD 95–02–18.

The fatigue cracks are developing as a result of operational stresses in joints, welded bracketry, and linoil holes sealed by drive screws.

Relevant Service Information

Has the Manufacturer Issued Service Information and What Are the Provisions of This Information?

Raytheon has issued the following service bulletins to address this subject:

Service Bulletin	Provisions
Raytheon Aircraft Mandatory Service Bulletin SB 2255, Revision 10, Revised, June 1999.	Includes instructions for inspecting the part number (P/N) 114–910025–1, 118–910025–1, 118–910025–37, 118–910025–121, and 129–910032–79 engine truss assemblies for fatigue cracks. Also includes procedures for replacing the engine truss assembly with a P/N 129–910047 engine truss assembly.
Raytheon Aircraft Mandatory Service Bulletin SB 71–3144, Revision 1, Revised: April 1999.	Includes procedures for engine truss assembly inspection and rework, including: —inspection of the linoil holes and replacement of the drive screws; —incorporation of a cowling support installation kit as terminating action for the inspections.
Raytheon Aircraft Mandatory Service Bulletin SB 71–3024, Issued: September 1997.	Includes procedures for obtaining and installing a placard that specifies the part number of the engine truss assembly.

The FAA's Determination and Explanation of the Provisions of the Proposed AD What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the information described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon Beech Models 1900, 1900C (C–12J), and 1900D airplanes of the same type design;

—The inspections specified in the above-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to detect and correct cracked engine truss assemblies, which could result in failure of the engine truss assembly and consequent loss of airplane control.

What Would the Proposed AD Require?

This proposed AD would supersede AD 95–02–18 with a new AD that would require engine truss assembly replacement, periodic inspections and replacements, and the eventual incorporation of a cowling support installation kit as terminating action. The repetitive inspections of AD 95–02–18 would be retained until mandatory engine truss assembly replacement.

Accomplishment of the proposed actions would be required in accordance with the previously-referenced service information.

Cost Impact

How Many Airplanes Would the Proposed AD Impact?

We estimate that the proposed AD affects up to 236 airplanes in the U.S. registry.

What Would Be the Cost Impact of the Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed actions:

	Engine truss replacement	Drive screw inspection and replacement	Cowling support kit installation	Placard installation
Number of Airplanes Affected.	12	236	210	234
Cost Per Airplane: Workhours + Parts Cost.	34 workhours × $60 per hour + $6,000 (average) for parts = $8,040 per airplane.	4 workhours × $60 per hour + $12 for parts = $252 per airplane.	6 workhours × $60 per hour + $35 for parts = $395 per airplane.	1 workhour × $60 per hour + $5 for parts = $65 per airplane.
Fleet Cost: Cost Per Airplane × Number of airplanes.	$8,040 × 12 airplanes = $96,480.	$252 × 236 airplanes = $59,472.	$395 × 210 airplanes = $82,950.	$65 × 234 airplanes = $15,210.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) AD 95–02–18, Amendment 39–9136 (60 FR 6652, February 3, 1995), and by adding a new AD to read as follows:

Raytheon Aircraft Company (Beech Aircraft Corporation formerly held Type Certificate (TC) No. A–24CE): Docket No. 2001–CE–04–AD; Supersedes AD 95–02–18, Amendment 39–9136.

(a) *What airplanes are affected by this AD?* This AD affects the following model and serial number airplanes that are certificated in any category:

Model	Serial numbers
Beech Model 1900	UA–2 and UA–3
Beech Model 1900C	UB–1 through UB–74 and UC–1 through UC–174
Beech Model 1900C (C–12J).	UD–1 through UD–6
Beech Model 1900D	UE–1 through UE–302

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by the AD are intended to detect and correct cracked engine truss assemblies, which could result in failure of the engine truss assembly and consequent loss of airplane control.

(d) *What actions must I accomplish to address this problem on the affected airplanes?* To address this problem, accomplish the following:

Action	Compliance	Procedures
(1) If you do not have a part number (P/N) 129–910047–1, 129–910047–13, or 129–910047–17 engine truss assembly (or FAA-approved equivalent P/N) installed, accomplish the following: (i) Inspect the engine truss assembly for cracks and replace any cracked truss with a P/N truss specified in paragraph (d)(1)(ii) of this AD; and (ii) Replace the engine truss assembly with a P/N 129–910047–1, 129–910047–13, or 129–910047–17 assembly (or FAA-approved equivalent P/N).	Inspect in accordance with the schedule outlined in the Appendix to this AD (taken from AD 95–02–18, as specified in Raytheon Aircraft Mandatory Service Bulletin No. 2255, Revision 10, Revised, June, 1999). Replace within the next 100 hours time-in-service (TIS) after the effective date of this AD if the truss is not cracked and prior to further flight if the truss is cracked.	Inspect and replace in accordance with the instructions in Raytheon Aircraft Mandatory Service Bulletin No. 2255. Revision 10, Revised, June 1999. Accomplishing the inspection (only) using a previous revision to this service bulletin is acceptable.
(2) For airplanes equipped with a P/N 129–910047–1 or 129–910047–13 engine truss assembly (or FAA-approved equivalent P/N), inspect for linoil hole mislocation and cracks in Area A as depicted in the referenced service information and replace the engine truss assembly if any mislocated hole or crack is found during any inspection.	Inspect upon accumulating 100 hours TIS on the engine truss assembly or within 25 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 100 hours TIS. Accomplish any necessary engine truss assembly replacement prior to further flight where any mislocated hole or crack is found.	Accomplish inspections and replacements in accordance with Part I of the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Mandatory Service Bulletin SB 71–3144, Revision 1, Revised: April, 1999.
(3) For airplanes equipped with a P/N 129–910047–1 or 129–910047–13 engine truss assembly (or FAA-approved equivalent P/N), accomplish the following: (i) Inspect the engine cowling support bracket for cracks and rework any cracked engine cowling support bracket; and (ii) Install Kit No. 129–9017–1 reinforcements on the engine cowling support bracket. The inspections required by paragraph (d)(3)(i) of this AD are no longer necessary when Kit No. 129–9017–1 is incorporated.	Inspect upon accumulating 200 hours TIS on the engine truss assembly or within 25 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 200 hours TIS. Accomplish any necessary engine cowling support rework prior to further flight where any cracked bracket is found. Install the engine cowling support bracket reinforcements upon accumulating 1,200 hours TIS on the engine truss assembly or within the next 100 hours TIS after the effective date of this AD, whichever occurs later.	Accomplish inspections, repairs, and installations in accordance with Part III of the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Mandatory Service Bulletin SB 71–3144, Revision 1, Revised: April, 1999.
(4) For airplanes equipped with a P/N 129–910047–1 or 129–910047–13 engine truss assembly (or FAA-approved equivalent P/N), replace all remaining linoil drive screws (those not in Area A). The inspections required by paragraph (d)(2) of this AD are no longer required when these screws are replaced.	Upon accumulating 8,000 hours TIS on the engine truss assembly or at the next engine truss assembly removal, whichever occurs later.	Accomplish these replacements in accordance with Part II of the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Mandatory Service Bulletin SB 71–3144, Revision 1, Revised: April, 1999.
(5) For airplanes equipped with a P/N 129–910047–1 or 129–910047–13 engine truss assembly (or FAA-approved equivalent P/N), install a P/N 129–910047–15 truss identification placard on the engine truss assembly.	Within 12 months after the effective date of this AD or upon installation of a P/N 129–910047–1 or 129–910047–13 engine truss assembly, whichever occurs later.	Accomplish this installation in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB.71–3024, Issued: September, 1997.
(6) Do not install, on any affected airplane, an engine truss assembly that is not P/N 129–910047–1, 129–910047–13, or 129–910047–17 (or FAA-approved equivalent P/N).	As of the effective date of this AD	Not Applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 95–02–18, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. David L. Ostrodka, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4129; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 95–02–18, Amendment 39–9136.

Appendix to Docket No. 2001–CE–04–AD

The following is the compliance schedules for the inspections required in this AD. These are duplicated from AD 95–02–18, Amendment 39–9136:

1. For all affected airplanes having engine truss P/N 129–910032–79 installed, initially and repetitively inspect the engine truss for cracks at the weld joints in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB 2255, Revision VI, dated August 1994, at the times specified in the following chart:

Models	Area specified in figure 1 of beech SB No. 2255, Rev. VI	Initial inspection	Repetitive inspections
1900 and 1900C	A	Upon accumulating 1,400 hours TIS*.	every 100 hours TIS
1900 and 1900C	B and C	Upon accumulating 3,200 hours TIS*.	every 100 hours TIS
1900D	A	Upon accumulating 3,200 hours TIS*.	every 450 hours TIS
1900D	B and C	Upon accumulating 3,200 hours TIS*.	every 3,000 hours TIS

*or within the next 100 hours TIS after March 25, 1995 (the effective date of AD 95–02–18), whichever occurs later.

2. For all Models 1900 and 1900C airplanes having engine truss P/N 118–9100–25–37, P/N 118–910025–121, P/N 114–910025–1 or P/N 118–910025–1, initially and repetitively inspect the engine truss for cracks at the weld joints in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin (SB) 2255, Revision VI, dated August 1994, at the times specified in the following chart:

Area specified in figure 1 of beech SB N. 2255, Rev. VI	Initial inspection	Repetitive inspections
A	Upon accumulating 1,400 hours TIS*	every 100 hours TIS
B	Upon accumulating 1,400 hours TIS*	every 600 hours TIS
C	Upon accumulating 1,400 hours TIS*	every 3,000 hours TIS

*or within the next 100 hours TIS after March 25, 1995 (the effective date of AD 95–02–18), whichever occurs later.

Issued in Kansas City, Missouri, on July 3, 2001.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17166 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

RIN 3038–AB83

Proposed Regulation To Restrict Dual Trading in Security Futures Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed regulation.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing Regulation 41.27 that would restrict dual trading by floor brokers in security futures products. Under the proposed regulation, the dual trading restriction would affect floor brokers that trade security futures products through open outcry on the trading floor of a designated contract market ("DCM") or registered derivatives transaction execution facility ("DTF"). The regulation would provide for certain exceptions to the restriction, including provisions for the correction of errors, customer consent, spread transactions, market emergencies, and unique or special characteristics of an agreement, contract, or transaction, or of the DCM or DTF.

DATES: Comments must be received by August 10, 2001.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC

20581, Attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521 or, by e-mail to secretary@cftc.gov. Reference should be made to "Restriction of Dual Trading in Security Futures Products by Floor Brokers."

FOR FURTHER INFORMATION CONTACT: Alan L. Seifert, Deputy Director, Division of Trading and Markets, Rachel Berdansky, Special Counsel, or Amy Fiordalisi, Attorney, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5260. E-mail: *Aseifert@cftc.gov, Rberdansky@cftc.gov, Afiordalisi@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 2000, Congress approved the Commodity Futures Modernization Act of 2000 ("CFMA"), which was signed by the President and became effective on December 21, 2000. Among other things, the CFMA, which substantially amended the Commodity Exchange Act ("Act"), establishes two categories of markets subject to Commission regulatory oversight, DCMs and DTFs.[1] In addition, Title II of the CFMA repeals the longstanding ban on single stock futures and directs the Commission and the Securities and Exchange Commission ("SEC") to implement a joint regulatory framework for security futures products.

Section 251(c) of the CFMA amends Section 4j of the Act to require that the Commission issue regulations to restrict dual trading in security futures products on DCMs and DTFs. Section 4j(a), as amended, also provides the Commission with the discretion to permit exceptions to a dual trading restriction that are necessary to ensure fairness and orderly trading in security futures product markets.[2] Section 2(a)(D)(i) of the Act, as amended, sets forth listing standards for security futures products traded on a DCM or DTF. Section 2(a)(D)(i)(VI) requires that security futures products be subject to the dual trading restriction of Section 4j of the Act or Section 11(a) of the Securities Exchange Act of 1934 ("1934 Act") and the regulations promulgated thereunder, respectively.[3]

II. Discussion of Proposed Regulation 41.27

A. "Customer"

Proposed Regulation 41.27 would restrict dual trading of security futures products in accordance with the statutory mandate of Section 4j(a), as amended by Section 251(c) of the CFMA. Proposed Regulation 41.27(a)(4) would define "customer" to mean an account owner for which a trade is executed other than an account in which a floor broker's ownership interest or share of trading profits is ten percent or more; an account for which a floor broker has discretion; an account controlled by a person with whom a floor broker has a relationship through membership in a broker association; a house account for a floor broker's clearing member; or an account for another member present on the floor of a DCM or DTF or an account controlled by such other member.[4] The Commission requests comment as to whether the accounts of all clearing members and the accounts of members not present on the floor of a DCM or DTF should be considered non-customer accounts and included within proposed Regulation 41.27(a)(4). In this regard, commenters should consider whether clearing members other than the floor broker's own clearing member and members not present on the floor of a DCM or DTF are in a better position to protect themselves against potential abuse of their orders by floor brokers than other customers.[5]

B. "Dual Trading"

Proposed Regulation 41.27(a)(6) would define "dual trading" as the "execution of customer orders by a floor broker through open outcry during the same trading session in which the floor broker executes, directly or indirectly, either through open outcry or through a trading system that electronically matches bids and offers, a transaction for the same security futures product on the same designated contract market or registered derivatives transaction execution facility for an account" of a non-customer.[6] For this purpose, non-customer accounts would include those categories of accounts set forth in proposed Regulation 41.27(a)(4)(i)–(v).

The Commission's proposed dual trading definition refers to a floor broker executing "directly or indirectly" a transaction for a non-customer account. The reference to "indirectly" executing a transaction is intended to prevent a floor broker from executing a customer order and during the same trading session initiating and passing an order for a non-customer account identified in proposed Regulation 41.27(a)(4)(i)–(v) to another broker for execution.

Under the plain language of Section 4j of the Act, the dual trading restriction would not apply to a DCM or DTF that trades security futures products solely

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[1] Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000). Prior to its recent amendment, the Act referred to "designated contract markets" as Commission-approved products traded on a board of trade. The Act, as amended, however, uses the term "designated contract market" to refer to the approved or licensed market on which futures contracts and commodity options are traded. Proposed Regulation 41.27 refers to DCMs in this sense.

[2] Section 4j of the Act, as amended, is different in scope than its predecessor and the Commission Regulation promulgated thereunder, Commission Regulation 155.5, which restricted dual trading in any contract market that exceeded certain volume thresholds unless an exchange requested, and the Commission granted, a dual trading exemption. As part of this rulemaking, the Commission also is proposing to remove Commission Regulation 155.5.

[3] With certain enumerated exceptions, Section 11(a)(1) of the 1934 Act and SEC Rule 11a–1 make it unlawful for any member of a national securities exchange to effect any transaction for his or her own account, the account of an associated person, or an account with respect to which it or an associated person has discretion. Section 5f of the Act, as amended by Section 252(a) of the CFMA, provides that any board of trade that is registered with the SEC as a national securities exchange or a national securities association, or is an alternative trading system, shall be considered a DCM in security futures products, provided that certain enumerated requirements are satisfied, upon filing a notice with the Commission. Section 5f(b)(1)(B), however, specifically exempts such notice-registered entities from Section 4j of the Act. Similarly, Section 6(g) of the 1934 Act, as amended by Section 202(a) of the CFMA, provides that any board of trade that has been designated as a contract market by the Commission or has registered with the Commission as a DTF, may register with the SEC as a national securities exchange by filing notice with the SEC, solely for the purposes of trading security futures products, provided that certain enumerated requirements are satisfied. DCMs and DTFs that notice register with the SEC for the purpose of trading security futures products are exempt from Section 11(a)(1) of the 1934 Act.

[4] Under proposed Regulation 41.27(a)(2), the term "member" would have the meaning set forth in Section 1a(24) of the Act. Section 1a(24) defines "member" to mean "an individual, association, partnership, corporation, or trust * * * owning or holding membership in, or admitted to membership representation on, [a designated contract market] or derivatives transaction execution facility, or having trading privileges on [a designated contract market] or derivatives transaction execution facility."

[5] In order to enforce a dual trading restriction, DCMs and DTFs must be able to identify the source of each trade. Specifically, DCMs and DTFs must be able to determine whether a trade is for a customer. The Commission's proposed rulemaking "A New Regulatory Framework for Trading Facilities, Intermediaries and Clearing Organizations," 66 FR 14262 (March 9, 2001), did not reserve Commission Regulation 1.35 with respect to DCMs or DTFs. Thus, exchanges would no longer be required to identify account types using customer type indicator ("CTI") codes. Use of CTI codes, however, would be an effective way for DCMs or DTFs to monitor compliance with a dual trading restriction.

[6] As noted above, prior to the CFMA, the Act referred to contract markets as Commission-approved products traded on a board of trade. The CFMA changes the use of the term "contract market" to mean a board of trade, rather than a product traded on a board of trade. The statutory language of Section 4j(b) of the Act, in contrast to the language of Section 4j(a), inadvertently uses the term contract market as it was used prior to the CFMA. this results in an anomaly, which, if read literally, changes the definition of dual trading in a manner that would restrict activity never considered to be dual trading by the Congress or the Commission.

through a system that electronically matches bids and offers entered into the system.[7] Specifically, the dual trading definition found in Section 4j(b) refers to "floor brokers" who "execute" customer orders. Traditionally, floor brokers execute customer orders on the trading floor whereas various registrants as well as unregistered individuals enter orders into electronic trading systems that then match orders pursuant to a predetermined algorithm. In this connection, the definition of "floor broker" found in Section 1a(16) of the Act contemplates a person "in or surrounding * * * any pit, ring, or post * * *" on the floor of an exchange and not through a system that electronically matches bids and offers.[8]

This application of the dual trading restriction takes into account that floor brokers who execute customer orders through open outcry have more control over those orders than customer orders entered into a system that electronically matches bids and offers. Specifically, a floor broker holding a customer order for trading through open outcry not only controls when the bid or offer is exposed to the market, but also controls the price of execution and whom the order is executed against. A broker holding a customer order for entry into a system that electronically matches bids and offers only can control when an order is entered into the system. An algorithm determines at what price and against whom the order is executed.[9]

The Commission recognizes that a DCM or DTF may permit the simultaneous trading of security futures products through open outcry on a trading floor and the entry of bids and offers on a system that electronically matches bids and offers pursuant to a predetermined algorithm for the same product, "side-by-side trading." Under such circumstances, proposed Regulation 41.27 only would be implicated if a floor broker executes a customer order through open outcry on a trading floor during a trading session. Thus, a floor broker would be permitted to enter a bid or offer for a particular security futures product for customer accounts on an electronic trading system and trade the same product for non-customer accounts through open outcry during the same trading session. In contrast, a floor broker would be prohibited during the same trading session from executing a customer order for a particular security futures product through open outcry and entering a bid or offer for the same product for a non-customer account listed in 41.27(a)(4)(i)–(v) on an electronic trading system.[10]

C. Rules Implementing Dual Trading Prohibition

Prior to listing a security futures product for trading on a trading floor where bids and offers are executed through open outcry, a DCM or DTF must adopt a rule prohibiting dual trading. Under proposed Regulation 41.27(c)(1), a DCM must submit such a rule to the Commission in accordance with proposed Regulation 40.6, along with a written certification that the rule complies with the Act and the regulations promulgated thereunder, or must obtain Commission approval of such a rule pursuant to proposed Regulation 40.5. Under proposed Regulation 41.27(c)(2), a DTF must notify the Commission in accordance with proposed Regulation 37.7(b) that it has adopted a rule prohibiting dual trading or obtain Commission approval of such a rule pursuant to proposed Regulation 37.7(c).

D. Specific Permitted Exceptions to the Dual Trading Prohibition

In proposed Regulation 41.27(d), the Commission implements the directive of Section 4j(a)(2)(A) and (B) of the Act to permit certain exceptions to the dual trading prohibition. Proposed Regulation 41.27(d)(1)–(4) provides exceptions for the correction of errors resulting from the execution of a customer order, to permit a customer to designate in writing a floor broker to dual trade while executing orders for the customer's account, to permit a broker who unsuccessfully attempts to leg into a spread transaction to take the executed leg into his or her personal account and to offset such position, and to address market conditions that result in a temporary emergency. Prior to permitting such exceptions to a dual trading prohibition, a DCM or DTF would have to adopt a rule permitting the specific exceptions and submit the rule to the Commission or obtain Commission approval pursuant to the rule submission procedures of proposed Regulation 41.27(e)(1) or (2). These procedures are identical to the procedures under proposed Regulation 41.27(c)(1) and (2) for a DCM or DTF to submit a rule prohibiting dual trading.

E. Unique or Special Characteristics of an Agreement, Contract, or Transaction, or of the DCM or DTF

Pursuant to Section 4j(a)(2)(C) of the Act, proposed Regulation 41.27(f) would allow DCMs and DTFs to permit an exception to the dual trading prohibition to address an agreement, contract, or transaction that presents a unique or special characteristic, or to address a unique or special characteristic of the specific DCM or DTF. Any rule of either a DCM or a DTF permitting such an exception would be required to be submitted to the Commission for prior approval pursuant to the procedures set forth in proposed Regulation 40.5. Such a submission also should include an affirmative demonstration of why an exception is warranted.

A DCM or DTF rule permitting a dual trading exception based on a unique or special characteristic of an agreement, contract, or transaction, or of the DCM or DTF would require prior Commission approval because standards cannot be established in advance to articulate what would constitute a unique or special characteristic deserving of a dual trading exception. Thus, a DCM could not certify as required by proposed Regulation 40.6 that its rule complies with the Act and the regulations promulgated thereunder. Similarly,

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[7] In this connection, on February 24, 2000, the SEC approved the application of the International Securities Exchange LLC ("ISE"), a fully electronic options market, for registration as a national securities exchange. As part of the approval process, the SEC approved an ISE rule that permits an order for a member's personal account to be matched against a customer order entered by that member provided that: (1) The customer order is first exposed to the market for 30 seconds; (2) the member has been bidding or offering for at least 30-seconds prior to receiving a customer order that is executable against such bid or offer; or (3) the member utilized the facility mechanism described in ISE's block trading rule. The ISE's rules do not otherwise limit the ability of a member to trade for his or her personal account and for customers. *See* Exchange Act Release No. 34–42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

[8] Section 1a(16) of the Act defines a floor broker as "as any person who, in or surrounding any pit, ring, post, or other place provided by a contract market or derivatives transaction execution facility for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility."

[9] Notably, the Commission has repeatedly made clear that persons who are employed by registrants and handle non-discretionary orders on electronic trading systems need not be registered. Further, discretionary orders on such systems can be handled by registrants other than a floor broker, such as the associated persons of a futures commission merchant. See the Commission's rules for the registration of floor traders, 58 FR 19575, 19576 (April 15, 1993).

[10] The Chicago Mercantile Exchange lists several contracts that trade side-by-side through open outcry and on the electronic GLOBEX$_2$ trading system that differ only with respect to contract size. For example, the e-mini S&P 500 futures contract that trades on GLOBEX$_2$ is one-fifth the size of the S&P 500 futures contract that trades simultaneously through open outcry. If a DCM or DTF determines to trade side-by-side a particular security futures product that differs only with respect to contract size, the Commission would consider the two contracts to be the same contract for purposes of applying the dual trading restriction.

although a DTF is not required to provide a rule certification under the rule submission procedures of proposed Regulation 37.7(b), it is nevertheless required to comply with the Act and the Commission's regulations. Therefore, the Commission must evaluate each situation on its own merits to determine whether the DCM or DTF has demonstrated satisfactorily a unique or special characteristic of an individual agreement, contract, or transaction, or of the DCM or DTF warranting a dual trading exception.

III. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. The Commission's understanding is that Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to consider the costs and benefits of its action in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations.

Section 4j(a) of the Act, as amended by the CFMA, directs the Commission to "issue regulations to prohibit the privilege of dual trading in security futures products on each contract market and registered derivatives transaction execution facility." Section 4j(a) also provides the Commission with discretion to provide for limited exceptions to the dual trading prohibition that are necessary to "ensure fairness and orderly trading in security futures product markets." Proposed Regulation 41.27(c) would require DCMs and DTFs that list security futures products for trading through open outcry on a trading floor to implement and enforce rules prohibiting dual trading. In addition, DCMs and DTFs that elect to permit dual trading subject to any of the exceptions set forth in proposed Regulation 41.27(d) or (f) would be required to enact and enforce rules regarding the particular exceptions.

Proposed Regulation 41.27 would protect market participants and the general public while minimizing the impact on security futures product markets. Specifically, the dual trading restriction would not affect DCMs or DTFs that trade security futures products only through trading systems that electronically match bids and offers. As explained above, this is consistent with the plain language of Section 4j of the Act, and takes into account that floor brokers who execute customer orders through open outcry have more control over those orders than customer orders entered into a system that electronically matches bids and offers.

Compliance with proposed Regulation 41.27 would impose costs on DCMs and DTFs with respect to enacting and enforcing rules restricting dual trading of security futures products traded through open outcry on a trading floor. The costs of enacting and enforcing rules associated with proposed Regulation 41.27 are either balanced or outweighed by the increased protection of market participants and the public. The Commission's exercise of its discretion in implementing the Congressional directive to restrict dual trading, as set forth in Section 4j of the Act, would not increase costs related to efficiency, competitiveness, and financial integrity of financial markets; price discovery; or sound risk management practices. After considering these factors, the Commission has determined to propose Regulation 41.27. Commenters are invited to submit any data that they might have quantifying the costs and benefits of the proposed regulation with their comments.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating regulations, to consider the impact of those regulations on small entities. The regulation adopted herein would affect DCMs, DTFs, and floor brokers. The Commission previously has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[11] In its previous determinations, the Commission has concluded that contract markets are not small entities for the purpose of the RFA.[12] The Commission has recently proposed that DTFs, for reasons similar to those applicable to contract markets, are not small entities for purposes of the RFA.[13] Certain floor brokers would be affected by proposed Regulation 41.27. Although, the Commission believes that proposed Regulation 41.27 would not have a significant economic impact on a substantial number of small entities, the Commission invites comments on this issue.

B. Paperwork Reduction Act of 1995

This proposed Rulemaking contains information collection requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Commission has submitted a copy of this section to the Office of Management and Budget (OMB) for its review in accordance with 44 U.S.C. 3507 (d) and 5 CFR 1320.11, and has requested a new number for this collection. Collection of Information: Part 41 Relating to Security Indexes and Security Futures Products, OMB Control Number 3038–XXXX.

Proposed Regulation 41.27 contains some reporting requirements. Pursuant to proposed Regulation 41.27(c)(1), prior to listing a security futures product for trading through open outcry, a DCM would be required to submit to the Commission a rule prohibiting dual trading, together with a written certification that the rule complies with the Act, or obtain Commission approval of such a rule. Pursuant to proposed Regulation 41.27(c)(2), prior to listing a security futures product for trading through open outcry, a DTF would be required to notify the Commission that it had adopted a rule prohibiting dual trading or obtain Commission approval of such rule. DCMs and DTFs would have to comply with the same respective procedures prior to adopting a rule permitting any of the dual trading exceptions set forth in proposed Regulation 41.27(d)(1)–(4). Under proposed Regulation 41.27(f), a DCM or DTF seeking to permit a dual trading exception based on a unique or special characteristic of an agreement, contract or transaction, or of the DCM or DTF, would be required to obtain Commission approval of any such rule. With respect to recordkeeping requirements, proposed Regulation 41.27(d)(3) would permit a broker who unsuccessfully attempts to leg into a spread transaction for a customer, to take the executed leg into his or her personal account, and to offset such position, provided that a record is prepared and maintained to demonstrate that the customer order was for a spread transaction.

The estimated burden of proposed Regulation 41.27 was calculated as follows:

Estimated number of respondents: 2,446.

Total annual responses: 14,229.

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[11] *See* 47 FR 18618–21 (Apr. 30, 1982).

[12] *See* 47 FR 18618 at 18619 (discussing contract markets).

[13] *See* 66 FR 14261, 14268 (Mar. 9, 2001).

Estimated average hours per response: .07.

Annual reporting burden: 993 hours.

The Commission has submitted the proposed collection of information to OMB for approval. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed Regulation 41.27.

Copies of the information collection submission to OMB are available from the Commission Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 41

Security indexes and security futures products.

Accordingly, for the reasons discussed in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR as follows:

PART 41—SECURITY FUTURES PRODUCTS

1. The authority citation for Part 41 reads as follows:

Authority: Pub. L. 106–554, 114 Stat. 2763, §§ 251 and 252.

2. Section 41.27 is be added as follows:

§ 41.27 Prohibition of dual trading in security futures products by floor brokers.

(a) *Definitions.* For purposes of this section:

(1) *Trading session* means hours during which a designated contract market or registered derivatives transaction execution facility is scheduled to trade continuously during a trading day, as set forth in its rules, including any related post settlement trading session. A designated contract market or registered derivatives transaction execution facility may have more than one trading session during a trading day.

(2) *Member* shall have the meaning set forth in Section 1a(24) of the Act.

(3) *Broker association* includes two or more designated contract market or registered derivatives transaction execution facility members with floor trading privileges of whom at least one is acting as a floor broker who:

(i) Engage in floor brokerage activity on behalf of the same employer;

(ii) Have an employer and employee relationship which relates to floor brokerage activity;

(iii) Share profits and losses associated with their brokerage or trading activity; or

(iv) Regularly share a deck of orders.

(4) *Customer* means an account owner for which a trade is executed other than:

(i) An account in which a floor broker's ownership interest or share of trading profits is ten percent or more;

(ii) An account for which a floor broker has discretion;

(iii) An account controlled by a person with whom a floor broker has a relationship through membership in a broker association;

(iv) A house account of the floor broker's clearing member; or

(v) An account for another member present on the floor of a designated contract market or registered derivatives transaction execution facility or an account controlled by such other member.

(5) *Security futures product* shall have the meaning set forth in Section 1a(32) of the Act.

(6) *Dual trading* means the execution of customer orders by a floor broker through open outcry during the same trading session in which the floor broker executes directly or indirectly, either through open outcry or through a trading system that electronically matches bids and offers, a transaction for the same security futures product on the same designated contract market or registered derivatives transaction execution facility for an account described in paragraph (a)(4)(i)–(v) of this section.

(b) *Dual Trading Prohibition.* No floor broker shall engage in dual trading in a security futures product on a designated contract market or registered derivatives transaction execution facility, except as otherwise provided under paragraphs (d) and (f) of this section.

(c) *Rules Prohibiting Dual Trading.*—(1) *Designated contract markets.* Prior to listing a security futures product for trading on a trading floor where bids and offers are executed through open outcry, a designated contract market:

(i) Must submit to the Commission in accordance with Commission Regulation 40.6, a rule prohibiting dual trading, together with a written certification that the rule complies with the Act and the regulations thereunder, including this section; or

(ii) Must obtain Commission approval of such rule pursuant to Commission Regulation 40.5.

(2) *Registered derivatives transaction execution facilities.* Prior to listing a security futures product for trading on a trading floor where bids and offers are executed through open outcry, a registered derivative transaction execution facility:

(i) Must notify the Commission in accordance with Commission Regulation 37.7(b) that it has adopted a rule prohibiting dual trading; or

(ii) Must obtain Commission approval of such rule pursuant to Commission Regulation 37.7(c).

(d) *Specific Permitted Exceptions.* Notwithstanding the applicability of a dual trading prohibition under paragraph (b) of this section, dual trading may be permitted on a designated contract market or a registered derivatives transaction execution facility pursuant to one or more of the following specific exceptions:

(1) *Correction of errors.* To offset trading errors resulting from the execution of customer orders, provided, that the floor broker must liquidate the position in his or her personal error account resulting from that error through open outcry or through a trading system that electronically matches bids and offers as soon as practicable, but, except as provided herein, not later than the close of business on the business day following

the discovery of error. In the event that a floor broker is unable to offset the error trade because the daily price fluctuation limit is reached, a trading halt is imposed by the designated contract market or registered derivatives transaction execution facility, or an emergency is declared pursuant to the rules of the designated contract market or registered derivatives transaction execution facility, the floor broker must liquidate the position in his or her personal error account resulting from that error as soon as practicable thereafter.

(2) *Customer consent.* To permit a customer to designate in writing not less than once annually a specifically identified floor broker to dual trade while executing orders for such customer's account. An account controller acting pursuant to a power of attorney may designate a dual trading broker on behalf of its customer, provided, that the customer explicitly grants in writing to the individual account controller the authority to select a dual trading broker.

(3) *Spread transactions.* To permit a broker who unsuccessfully attempts to leg into a spread transaction for a customer to take the executed leg into his or her personal account and to offset such position, provided, that a record is prepared and maintained to demonstrate that the customer order was for a spread.

(4) *Market emergencies.* To address emergency market conditions resulting in a temporary emergency action as determined by a designated contract market or registered derivatives transaction execution facility.

(e) *Rules Permitting Specific Exceptions.*—(1) *Designated contract markets.* Prior to permitting dual trading under any of the exceptions provided in paragraph (d)(1)–(4), a designated contract market:

(i) Must submit to the Commission in accordance with Commission Regulation 40.6, a rule permitting the exception(s), together with a written certification that the rule complies with the Act and the regulations thereunder, including this section; or

(ii) Must obtain Commission approval of such rule pursuant to Commission Regulation 40.5.

(2) *Registered derivatives transaction execution facilities.* Prior to permitting dual trading under any of the exceptions provided in paragraph (d)(1)–(4), a registered derivatives transaction execution facility:

(i) Must notify the Commission in accordance with Commission Regulation 37.7(b) that it has adopted a rule permitting the exception(s); or

(ii) Must obtain Commission approval of such rule pursuant to Commission Regulation 37.7(c).

(f) *Unique or Special Characteristics of Agreements, Contracts, or Transactions, or of Designated Contract Markets or Registered Derivatives Transaction Execution Facilities.*

Notwithstanding the applicability of a dual trading prohibition under paragraph (b) of this section, dual trading may be permitted on a designated contract market or registered derivatives transaction execution facility to address unique or special characteristics of agreements, contracts, or transactions, or of the designated contract market or registered derivatives transaction execution facility as provided herein. Any rule of a designated contract market or registered derivatives transaction execution facility that would permit dual trading when it would otherwise be prohibited, based on a unique or special characteristic of agreements, contracts, or transactions, or of the designated contract market or registered derivatives transaction execution facility must be submitted to the Commission for approval under the procedures set forth in Commission Regulation 40.5. The rule submission must include a detailed demonstration of why an exception is warranted.

PART 155—TRADING STANDARDS

3. Section 155.5 is proposed to be removed and reserved.

Issued in Washington, DC on July 5, 2001, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–17171 Filed 7–10–01; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164; 46 CFR Parts 25 and 27

[USCG–2000–6931]

RIN 2115–AF53

Fire-Suppression Systems and Voyage Planning for Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking; Notice of meeting and reopening of comment period.

SUMMARY: The Coast Guard will hold a public meeting to let members of the public present oral comments on proposed rules for improving the safety of towing vessels. A supplemental notice of proposed rulemaking (SNPRM) published on November 8, 2000, would require the installation of fixed fire-extinguishing systems in towing vessels' engine rooms, and it would require owners or operators, and masters, to ensure that voyage plans are complete before their towing vessels commence trips with any barges in tow. These rules would reduce the number of uncontrolled fires in engine rooms, and other fire-related or operational mishaps on towing vessels; they would thereby save lives, diminish property damage, and reduce the associated threats to the environment and maritime commerce.

DATES: The Coast Guard will hold this public meeting on August 15, 2001, from 1 p.m. to 5 p.m., except that the meeting may close early if all business is finished. Other comments must reach the Docket Management Facility on or before September 15, 2001.

ADDRESSES: The Coast Guard will hold this public meeting at the Radisson Hotel, 1001 3rd Avenue, Huntington, West Virginia. The telephone number is 304–525–1001.

You may submit your comments directly to the Docket Management Facility. To make sure that your comments and related material are not entered more than once in the docket [USCG–2000–6931], please submit them by only one of the following means:

(1) By mail to the Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Facility maintains the public docket for this notice. Comments, and documents as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401, on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call Randall Eberly, P. E., Project Manager, Lifesaving and Fire Safety Division of

the Office of Design and Engineering Standards (G–MSE–4), Coast Guard, telephone 202–267–1861. For questions on viewing, or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages you to submit comments and related material on the proposed rules concerning fire-suppression systems and voyage planning for towing vessels. If you do so, please include your name and address, identify the docket number [USCG–2000–6931] and give the reasons for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to seek special assistance at the meeting, contact Mr. Eberly at the address or phone number under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Background Information

The SNPRM on "Fire-Suppression Systems and Voyage Planning for Towing Vessels" [USCG–2000–6931] was published in the **Federal Register** November 8, 2000 [65 FR 66941]. It proposes the installation of fixed fire-extinguishing systems in the engine rooms of towing vessels, and it proposes that owners or operators, and masters, ensure that voyage planning is conducted before vessels towing barges get under way on trips or voyages of at least 12 hours. Towing vessels that engage only in assistance towing, pollution response, or fleeting duties in limited geographical areas would be exempt from the measures in this SNPRM. The SNPRM stems from the incident on January 19, 1996, when the tugboat SCANDIA, with the tank barge NORTH CAPE in tow, caught fire five miles off the coast of Rhode Island. Crewmembers could not control the fire and, without power, they were unable to prevent the barge carrying 4 million gallons of oil from grounding and spilling about a quarter of its contents into the coastal waters. The spill led Congress to amend the law to permit the Secretary of Transportation—"in consultation with the Towing Safety Advisory Committee" (TSAC)—to require fire-suppression and other measures on all towing vessels. The measures outlined in the SNPRM would likely decrease the number and severity of injuries to crews, prevent damage to vessels, structures, and other property, and protect the environment.

On February 8, 2001, a public meeting concerning the SNPRM was held in Washington, DC (as announced in the **Federal Register** on December 28, 2000 [65 FR 82303]). On February 23, 2001, we announced in the **Federal Register** that we were extending the comment period for the SNPRM to May 8, 2001 [66 FR 11241]. Several comments to the docket sought another public meeting, in Huntington, West Virginia. The Coast Guard agrees with those comments, so we are planning to hold the meeting announced by this notice.

Public Meeting

The Coast Guard encourages interested persons to attend the meeting and present oral comments during the meeting. The meeting is open to members of the public. Please note that the meeting may close early if all business is finished. If you would like to present an oral comment during the meeting, please notify Mr. Eberly at the address given under **FOR FURTHER INFORMATION CONTACT** no later than August 8, 2001. If you are unable to attend the meeting, you may submit comments as indicated under **SUPPLEMENTARY INFORMATION**.

Dated: July 2, 2001.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–17108 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

Delivery of Mail To a Commercial Mail Receiving Agency

AGENCY: Postal Service.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule revises the Postal Service's regulations that govern procedures for delivery of an addressee's mail to a commercial mail receiving agency (CMRA). Under this proposed rule, procedures are provided to identify when a corporate executive center (CEC) or a part of its operation is considered a commercial mail receiving agency for purposes of these standards. This proposal revises a proposed rule published on February 2, 2000 (65 FR 4918). As a result of public comment to that rulemaking, discussed later, that proposal is rescinded and revised procedures are proposed to change the terminology from "corporate executive center" (CEC) to "office business center" (OBC). The Postal Service is also proposing revisions to the original proposed rule concerning the dollar test that was proposed, as well as proposing several other changes. The proposed rule will identify when an OBC or a part of its operations is considered a commercial mail receiving agency.

DATES: Comments must be received on or before August 10, 2001.

ADDRESSES: Written comments should be mailed to Manager, Delivery Operations, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 7142, Washington, DC 20260–2802. Comments by email or fax will not be accepted. Copies of all written comments will be available for inspection and copying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Roy E. Gamble, 202–268–3197.

SUPPLEMENTARY INFORMATION: On March 25, 1999, the Postal Service published a final rule in the **Federal Register** (64 FR 14385) amending sections D042.2.5 through D042.2.7 of the Domestic Mail Manual (DMM) to update and clarify procedures for delivery of an addressee's mail to a commercial mail receiving agency. The final rule provided procedures for registration to act as a CMRA; an addressee to request mail delivery to a CMRA; and delivery of the mail to a CMRA. This rule was applicable to all businesses that provide agent-mailing services to their customers; that is, the business receives delivery of mail for others from the Postal Service at a CMRA address.

As explained in the February 2000 notice of proposed rulemaking (NPRM), a "corporate executive center" (CEC) is a business that operates primarily to provide private office facilities and business support services to individuals or firms (CEC customers). These CEC customers also may receive mail at the CEC address. CECs also may have customers that do not occupy a private office and use the CEC address

primarily to receive mail and other business support services. These CEC customers receive services similar to those a CMRA provides to its customers. For this reason, a number of parties have asserted that these customers and the CECs serving them should follow the same procedures as CMRAs and their customers. The Postal Service agrees with these suggestions.

A CEC and industry representatives requested that the Postal Service provide guidelines to determine when a CEC is considered a CMRA for postal purposes; that is, when a CEC and its customers must follow the DMM rules governing the operation of CMRAs. Before publishing the February 2000 proposal, the Postal Service met with the parties to seek a consensus. There was general agreement that CEC customers who occupy a private office on a full-time basis at the CEC should not be considered CMRA customers for postal purposes. There was also general agreement that CEC customers who receive mail service (or mail and business support services) without the right to occupy private office space at the CEC should be considered CMRA customers for postal purposes. The difficult question arises when the CEC customer is entitled, in addition to mail and business support services, to private office space on a less-than-full-time basis. After discussions with the industry representatives, the Postal Service proposed an objective test based upon at least a $125 fee paid per month for occupancy and related support services by the CEC customer.

Comments on the proposed rule were due on or before March 3, 2000. The Postal Service received a total of 118 comments. Of the total, 55 comments were from CEC customers, 29 comments were from CEC owners or franchisers, 10 comments were from CMRA owners, and one comment was from a special interest group. These comments were largely identical in content, and all supported the rules with reservations or proposed changes. The other 23 comments were received from CEC owners or franchisers, CMRA owners, and CEC and CMRA customers. A joint comment was submitted by 33 states and the District of Columbia, represented by their respective Attorneys General, with the exception of one state represented by its Secretary of State. These comments all opposed the proposed rules.

Several comments received that supported the February 2 NPRM rule expressed concern that because the CECs primarily operate a fundamentally different kind of business than do CMRAs, the CECs should be totally exempt from the CMRA standards. These comments were based on an assertion that the CECs provide all the attributes of residency to customers who use their services. Some commenters supported the rule but did not feel it appropriate to give a CMRA designation to any part of a CEC; these commenters argued that the proposed CEC rule should be rescinded immediately. Some commenters supported a test based on a fee paid by the CEC customer, but argued that the fee should be indexed by market area or provide a range with $125 as the upper limit. Some commenters stated that the fee should be lowered to $100 because "business address" customers use CEC mail services and, on a flexible basis, their conference rooms. One CEC owner asserted the lower limit ($125) for the services they offer is unrealistic because CEC customers have access to a "corporate" image.

Commenters opposing the rule expressed concern that the distinguishing difference appears to be the minimum $125 fee. The extent of these comments expressed a wide range of concerns with the fee. One CMRA owner asserted the rule would exempt CEC "business address" customers from the CMRA rules and that both the CEC customer and the CMRA customer are buying the same image and, to set the cost of avoiding the CMRA rules at $125 is discrimination. One CEC owner promised to take the Postal Service to court because "the USPS has no proper role in setting the terms of CEC service packages or the price they charge." Another CEC owner asserted that the rule as written would essentially govern how the industry describes and prices its services, thereby condoning and encouraging price fixing. One commenter expressed concern that the proposed definition will open a major loophole in the regulations for those who wish to avoid address and informational requirements associated with receiving CMRA services. One CMRA owner stated, "The CEC is also an industry that provides an avenue for receipt of mail without the individual being physically located and conducting business at the address. Apparently the post office believes that anyone willing and able to pay $125 per month to receive mail at an address wouldn't be the kind of person who would perpetrate fraud. The USPS does not intend to reduce mail fraud but to regulate their closest competition out of business." Another commenter stated, "The standards should require that a CEC customer actually conduct business at the address."

The Postal Service does not believe it unreasonable to require CEC customers who receive mail and business support services similar to those provided by CMRAs to be considered CMRA customers for postal purposes. Indeed, were that not the case, CMRAs could argue that they were treated unfairly. The Postal Service only seeks to ensure that parties receiving similar services are treated in the same manner by the Postal Service. CEC customers that do not receive CMRA-type services are not considered CMRA customers for postal purposes under the proposal, and CECs that do not provide CMRA-type services to any customers will not be subject to the DMM rules governing CMRAs.

Some of the objections to the proposed $125 fee standard appear to have been based on a misunderstanding of the proposal. The fee standard did not apply to situations where customers received only mail or related business support services other than private office occupancy. These parties were to be considered CMRA customers for postal purposes regardless of the fee paid to the CEC. Although the Postal Service understands that some CECs may have told customers that price increases were required by the Postal Service, there was no basis for that assertion or that the proposal would have constituted "price fixing." The proposal did not require CECs to charge customers any specific amount. Instead, it merely sought to base the determination on whether customers should be treated as CMRA customers for postal purposes on an objective combination of the services provided and the fees charged.

Based in part on the concerns expressed by commenters, the Postal Service has withdrawn the test proposed in the February 2000 rulemaking. The Postal Service met again with industry representatives to seek agreement on a different set of guidelines. This time, the discussion centered on the number of hours of occupancy of the private office to which the CEC customer was entitled in its agreement with the CEC. There was a wide range of opinions, even among CEC representatives, as to the appropriate test. For instance, one CEC representative suggested that a right to full-time occupancy be required, while another suggested that one hour per week on average would be appropriate. No consensus was reached.

After reviewing the points raised by the parties, the proposed guidelines in this NPRM are based on 16 hours of private office occupancy per month. That is, if the agreement between the CEC and its customer provides the right

to at least 16 hours of private office space per month (in addition to certain support services and other requirements), then that customer will not be considered a CMRA customer for postal purposes. We understand that the fees charged by CECs for services that include the right to at least 16 hours per month of private office occupancy will generally significantly exceed the fees charged by CMRAs and will ensure a meaningful distinction between CMRA and CEC customers. However, we were also mindful that the standard not be set too high. We believe that some customers use CECs because they are primarily interested in private office space, rather than CMRA-type services, but only need such space on a limited basis due to the nature of their businesses. We also note that this proposed test is based on private office space being set aside for 16 hours for a specific individual or firm, regardless of the actual hours that the individual or firm occupies the space. A test based on actual occupancy would be difficult to administer and would create a burden on CECs to maintain occupancy records. We have also proposed several other changes to the procedures of the original proposal and made other changes that are not substantive in nature.

During recent discussions, CEC representatives also proposed a change in terminology. They explained that the preferred terminology for their businesses is "office business center" or OBC. The Postal Service is incorporating the request in this NPRM.

Although exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. of 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001 3011, 3201–3219, 3403–3406, 3621, 5001.

2. Section D042.2.0 of the Domestic Mail Manual is amended by adding subsection D042.2.8 to read as follows:

D Deposit, Collection, and Delivery

D000 Basic Information

* * * * *

D040 Delivery of Mail

* * * * *

D042 Conditions of Delivery

* * * * *

2.0 DELIVERY TO ADDRESSEE'S AGENT

* * * * *

[Add new 2.8 to read as follows:]

2.8 OBC Acting as a CMRA

The procedures for an office business center (OBC) or part of its operation acting as a commercial mail receiving agency (CMRA) for postal purposes are as follows:

a. An OBC is a business that operates primarily to provide private office facilities and business support services to individuals or firms (customers). OBCs receive single point delivery. OBC customers that receive mail at the OBC address will be considered CMRA customers for postal purposes under the standards set forth in b. Parties considered CMRA customers under this provision must comply with the standards set forth in 2.5 through 2.7. An OBC must register as a CMRA and comply with all other CMRA standards if one or more customers receiving mail through its address is considered a CMRA customer.

b. An OBC customer is considered to be a CMRA customer for postal purposes if its written agreement with the OBC provides for mail service only or mail and other business services (without regard for occupancy or other services that the OBC might provide and bill separately). Additionally, an OBC customer receiving mail at the OBC address is considered to be a CMRA customer for postal purposes if each of the following is true:

(1) The customer's written agreement with the OBC does not provide for the full-time use of one or more of the private offices within the OBC facility; and

(2) The customer's written agreement with the OBC does not provide all of the following:

(A) The use of one or more of the private offices within the OBC facility for at least 16 hours per month;

(B) Full-time receptionists service and live personal telephone answering service during normal business hours and voice mail service after hours;

(C) A listing in the office directory, if available, in the building in which the OBC is located; and

(D) Use of conference rooms and other business services on demand, such as secretarial services, word processing, administrative services, meeting planning, travel arrangements, and videoconferencing.

c. Notwithstanding any other standards, a customer whose written agreement provides for mail services only or mail and other business support services will not be considered an OBC customer (without regard for occupancy or other services that an OBC may provide and bill for on demand).

d. The Postal Service may request from the OBC copies of written agreements or any other documents or information needed to determine compliance with these standards. Failure to provide requested documents or information may be a basis for suspending delivery service to the OBC under the procedures set forth in 2.6f through h.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect this change will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–17239 Filed 7–10–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–134–4–7503; FRL–7010–8]

Proposed Approval and Promulgation of Implementation Plans; Texas; Non-Road Large Spark-Ignition Engines; Agreements With Airport Operators and Airlines Regarding Control of Pollution From Ground Support Equipment for the Houston/Galveston Ozone Nonattainment Area (HGA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the Texas State Implementation Plan. This rule making covers two separate actions. We are proposing approval of:

A rule requiring that non-road large spark-ignition engines of 25 horsepower (hp) or larger in all counties of the State of Texas conform to requirements identical to Title 13 of the California Code of Regulations, Chapter 9; and

Agreements requiring owners and operators at major airports in the HGA to bring about oxides of nitrogen (NO_X) emission reductions for sources under their control.

This new rule and the agreements will contribute to attainment of the ozone standard in the HGA. The EPA is

approving these revisions to the Texas SIP to regulate emissions of oxides of nitrogen (NO_X) in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: Written comments must be received on or before August 10, 2001.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Diana Hinds, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7561.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refers to EPA.

This document concerns control of air pollution of NO_X for non-road equipment sources in the HGA area and the control measures for attainment demonstration purposes. For further information, please see the Technical Support Document (TSD) prepared for this action.

What Action Are We Taking?

On December 22, 2000, the Governor of Texas submitted to EPA revisions to the 30 TAC, Chapter 114, "Control of Air Pollution From Motor Vehicles," as a revision to the SIP. That submission included requirements that non-road large spark-ignition engines of 25 horsepower (hp) or larger conform to Title 13 of the California Code of Regulations, Chapter 9; and NO_X reductions from airport Ground Support Equipment (GSE).

Also on December 22, 2000, the Texas Natural Resource Conservation Commission (TNRCC) withdrew its adopted rule revising 30 TAC Chapter 114, Subchapter I, Division 7 (Houston/Galveston GSE), and substituted agreements with airlines and airport operators in the HGA for equivalent NO_X reductions.

These new rules will contribute to attainment of the ozone standard in the HGA area. The EPA is proposing to approve these revisions to the Texas SIP to regulate emissions of NO_X in accordance with the requirements of the Federal Clean Air Act (the Act).

For more information on the SIP revision, please refer to our TSD.

What Are the Requirements of the December 22, 2000, Texas SIP for non-Road Large Spark-Ignition (LSI) Engines?

Non-road, LSI engines are primarily used to power industrial equipment such as forklifts, generators, pumps, compressors, aerial lifts, sweepers, and large lawn tractors. The engines are similar to automotive engines and can use similar automotive technology, such as closed-loop engine control and three-way catalysts, to reduce emissions.

Texas developed a non-road LSI engine strategy which establishes emission requirements for non-road, LSI engines 25 hp and larger for model year 2004 and subsequent model-year engines, and all equipment and vehicles that use such engines, by requiring non-road LSI engines in all counties in the state to meet emission limits equivalent to, and certified in, a manner identical to 13 California Code of Regulations, Chapter 9.

Although emissions from non-road, LSI engines have not yet been regulated by EPA under section 209(e)(2) of the Act, the California Air Resources Board (CARB) has adopted exhaust emission standards for these engines (EPA proposed rules at 65 FR 76797 on December 7, 2000). Section 209(e)(2)(A) of the Act authorizes EPA to approve California regulation of non-road engines other than those used in locomotives, construction and farm equipment. Section 209(e)(2)(B) of the Act allows another state to adopt requirements for non-road engines if such regulations are identical to California's requirements. EPA has promulgated regulations, codified at 40 CFR section 85.1606, setting forth the criteria for adoption of California regulations regarding non-road vehicles and non-road engines. We are proposing that Texas has met the statutory and regulatory requirements for adoption of the California LSI program. All counties in the State are affected by this rule.

What Are the Requirements of the December 22, 2000, Texas SIP for Reduction of Oxides of Nitrogen From Airport Ground-Support Equipment?

On August 25, 2000, Texas proposed rules that required reductions of NO_X emissions of up to 90% of the 1996 contributions attributable to airport GSE from the airports which have the most air carrier operations in the eight county ozone nonattainment area. Texas withdrew the rule (see 25 TexReg 12639; December 22, 2000), after entering into enforceable agreements with airport owners and operators that brought about equivalent emission reductions. The state signed an Agreed Order with Continental Airlines for its operations at Houston's George Bush Intercontinental Airport on October 18, 2000, and signed a similar Agreed Order with Southwest Airlines for its operations at William Hobby Airport on December 6, 2000. The Agreements made enforceable specific local emission reductions of NO_X from sources under the airlines' control. On October 18, 2000, Texas approved a Memorandum of Agreement with the City of Houston to bring about additional reductions from operations in the Houston Airport System. The sum of these agreed reductions is equal to those reductions imposed in the withdrawn Texas rulemaking package.

The Agreements with Southwest and Continental airlines require that NO_X emissions from mobile or stationary sources under the airlines' control be reduced by an amount equal to 25% of the NO_X emitted from its 1996 GSE fleet by December 31, 2003; 50% by December 31, 2004; and 75% by December 31, 2005. Further, Reasonably Available Control Considering Costs (RACCC), or alternative-fuel and/or electric-powered equipment, will be installed on GSE equipment added to the fleet after 1996; best available technology (BAT) will be utilized for GSE added to the fleet after 2004; and the airlines will assist the State in demonstrating that 75% NO_X reductions, based on emission levels of the 1996 GSE fleet, have been achieved. Plans for the implementation of the NO_X reduction measures are due to the state by May 1, 2002.

The City of Houston's Memorandum of Agreement states that the Houston Airport System will provide 15% NO_X reductions in addition to the 75% NO_X reductions (based on 1996 GSE emission levels) agreed to by Southwest and Continental airlines. The Houston Airport System includes George Bush Intercontinental Airport/Houston, William P. Hobby Airport, Ellington Field, and any other future facility acquired by Houston. By December 31, 2004, Houston agrees to have implemented strategies and achieved agreed reductions. Strategies include consolidation of rental car facilities and common bussing, consolidation of employee parking lot and busses, cleaner busses for the City economy lot, a pilot program for fuel cell technology, and infrastructure support for voluntary

reductions of GSE emissions by various operators in the Houston Airport System. Alternative strategies may be implemented to bring about, or count for, the agreed reductions. A plan to achieve the agreed reductions is due to the state by May 1, 2002.

Texas believes that the NO_X reductions claimed in the HGA Post-99 Rate-of-Progress/Attainment SIP will be achieved through these Agreements as alternate but equally enforceable mechanisms. These measures will contribute to the attainment and maintenance of the one-hour ozone standard in the HGA.

For additional information concerning these rule revisions, please refer to our TSD.

What Areas in Texas Will These Actions Affect?

The Non-Road LSI rule affects all Texas counties. The agreements concerning NO_X reductions from GSE affect airports in the HGA area.

Proposed Action

We are proposing approval of two rules: Requirements for Non-Road Large Spark-Ignition Engines, and specified NO_X reduction agreements with airlines and airport operators in the Houston-Galveston ozone nonattainment area.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Motor vehicle pollution, Nitrogen oxides, Ozone, Reporting and record keeping.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 26, 2001.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

[FR Doc. 01–17336 Filed 7–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7009–5]

Approval of Section 112(l) Program of Delegation; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a request for delegation of the Federal air toxics program. The State's mechanism of delegation involves the straight delegation of all existing and future section 112 standards unchanged from the Federal standards. The actual delegation of authority of individual standards, except standards addressed specifically in this action, will occur through a mechanism set forth in a memorandum of agreement (MOA) between the Ohio Environmental Protection Agency (OEPA) and EPA. This request for approval of a mechanism of delegation encompasses all Part 70 and non-Part 70 sources subject to a section 112 standard with the exception of the Coke Oven standard.

In the final rules section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received on or before August 10, 2001.

ADDRESSES: Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section, Air Programs Branch (AR–18J), U.S.

Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other supporting information used in developing the approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Genevieve Damico at (312) 353–4761 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4761, damico.genevieve@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: June 19, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01–17073 Filed 7–10–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH31

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Carolina Heelsplitter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to designate critical habitat for the Carolina heelsplitter (*Lasmigona decorata*), a freshwater mussel, under the Endangered Species Act of 1973, as amended (Act). The areas proposed for critical habitat designation include portions of a river and nine creeks in North Carolina and/or South Carolina. This action comes as a result of a lawsuit filed against us by the Southern Appalachian Biodiversity Project and the Foundation for Global Sustainability. If this proposal is made final, Federal agencies must ensure that actions they fund, permit, or carry out are not likely to result in the destruction or adverse modification of critical habitat. State or private actions, with no Federal involvement, would not be affected by this rulemaking action.

DATES: We will consider comments received by September 10, 2001. Requests for public hearings must be received, in writing, at the address shown in the **ADDRESSES** section by August 27, 2001.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

2. You may hand-deliver written comments to our Asheville Field Office, at the above address, or fax your comments to 828/258–5330.

3. You may send comments by electronic mail (e-mail) to *john_fridell@fws.gov*. For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John A. Fridell, Fish and Wildlife Biologist (telephone 828/258–3939).

SUPPLEMENTARY INFORMATION:

Background

Lea (1852) originally described the Carolina heelsplitter, a freshwater mussel, as *Unio decoratus*. Johnson (1970) synonymized this species with *Lasmigona subviridis* (Conrad 1835). Clarke (1985) recognized the Carolina heelsplitter as a distinct species, *Lasmigona decorata*, and synonymized *Unio charlottensis* (Lea 1863) and *Unio insolidus* (Lea 1872) with *Lasmigona decorata*. A genetic comparison of a specimen of *L. decorata* with specimens of *L. subviridis* (Tim King, U.S. Geological Survey, Leetown, West Virginia, pers. comm. 2001) supports Clarke's (1985) position on the taxonomy (scientific classification) of this species.

The Carolina heelsplitter has an ovate, trapezoid-shaped, unsculptured (smooth with no noticeable bumps or protrusions) shell. The shell of the largest known specimen measures 11.5 centimeters (cm) (4.5 inches (in)) in length, 3.9 cm (1.5 in) in width, and 6.8 cm (2.7 inches) in height. The shell's outer surface varies from greenish brown to dark brown in color, and shells from younger specimens have faint greenish brown or black rays. The nacre (inside surface) is often pearly white to bluish white, grading to orange in the area of the umbo (bulge or beak, protrudes near the hinge of a mussel). However, in older specimens the entire nacre may be a mottled pale orange. The hinge teeth (pseudocardinal teeth and lateral teeth) of the species are well developed but thin and rather delicate. The left valve (half of a mussel shell) has two blade-like pseudocardinal teeth and two lateral teeth, and the right valve has one of each. The left valve may also have an interdental projection, a slight projection located between the lateral and pseudocardinal teeth (adapted from Keferl 1991). Clarke (1985) contains a detailed description of the species' shell, with illustrations.

Distribution, Habitat, and Life History

The Carolina heelsplitter currently has a very fragmented, relict distribution but historically was known from several locations within the Catawba and Pee Dee River systems in North Carolina and the Pee Dee and Savannah River systems, and possibly the Saluda River system, in South Carolina. Historically, the species was collected from the Catawba River, Mecklenburg County, North Carolina; several streams and "ponds" in the Catawba River system around the Charlotte area of Mecklenburg County, North Carolina; one small stream in the Pee Dee River system in Cabarrus County, North Carolina; one "pond" in the Pee Dee River system in Union County, North Carolina; and an area in South Carolina referred to only as the "Abbeville District," a terminology no longer employed (Clarke 1985, Keferl and Shelly 1988, Keferl 1991). The records from the Abbeville District, South Carolina, were previously believed to have been from the Saluda River system (Clarke 1985, Keferl and Shelly 1988, Keferl 1991, Service 1993). However, biologists discovered a population of the Carolina heelsplitter in the spring of 1995 in the Savannah River system (Stevens Creek watershed) (Alderman 1995, 1998a, and 1998b). Therefore, the historic records from the Abbeville District may have been from either the Saluda River system or the Savannah River system or both. An additional historic record of the Carolina heelsplitter from the main stem of the Pee Dee River in Richmond County, North Carolina, was recently discovered (Art Bogan, North Carolina Museum of Science and Natural History, pers. comm. 2001); however, surveys by biologists with the North Carolina Wildlife Resources Commission (NCWRC) and North Carolina Department of Transportation have failed to turn up any evidence of a surviving population of the species at,

or in the vicinity of, the site of this record (John Alderman, NCWRC, personal communication 2001).

Recent collection records (Keferl and Shelly 1988; Keferl 1991; Alderman 1995, 1998a, and 1998b; North Carolina Wildlife Resources Commission 1999 and 2000) indicate that the Carolina heelsplitter has been eliminated from the majority of its historical range, and only six populations of the species are presently known to exist. In Union County, North Carolina, one small remnant population occurs in the Catawba River system in Waxhaw Creek, a tributary to the Catawba River, and another small population occurs in both Duck Creek (a tributary to Goose Creek) and Goose Creek, a tributary in the Pee Dee River system. In South Carolina, there are four small surviving populations—one each in the Pee Dee and Catawba River systems and two in the Savannah River system. The population in the Pee Dee River system occurs in a relatively short reach of the Lynches River in Chesterfield, Lancaster, and Kershaw Counties and extends into Flat Creek, a tributary to the Lynches River in Lancaster County. In the Catawba River system, the species survives only in a short reach of Gills Creek in Lancaster County. In the Savannah River system, one population is found in Turkey Creek and two of its tributaries, Mountain Creek and Beaverdam Creek in Edgefield County, and another smaller population survives in Cuffytown Creek, in Greenwood and McCormick Counties. No evidence of a surviving population has been found in recent years in the Saluda River system.

Historically, the Carolina heelsplitter was reported from small to large, moderate-gradient streams and rivers as well as ponds. The "ponds" referred to in historic records are believed to have been mill ponds on some of the smaller streams within the species' historic range (Keferl 1991). Presently, the species is known to occur in only ten small streams and one small river. It has been recorded from a variety of substrata including mud, clay, sand, gravel, cobble/boulder/bedrock without significant silt accumulations, along stable, well-shaded stream banks (Keferl and Shelly 1988, Keferl 1991). However, in Mountain Creek in Edgefield County, South Carolina, two young, live individuals were found near the center of the stream channel in a stable, relatively silt-free substrate comprised primarily of a mixture of coarse sand, gravel, and cobble, with scattered areas of exposed boulders/bedrock (J.A. Fridell, personal observation, 1995). It is conceivable that this is the preferred habitat type for the species and that in other areas scouring and degradation of the gravelly substrata has restricted the species to softer substrata found along the portions of the stream banks that receive less scouring. In either case, the stability of the stream banks and stream-bottom substrata appear to be critical to the species. Keferl (1991) noted that in his surveys of Goose, Waxhaw, and Flat Creeks and the Lynches River, he found the highest concentrations of the species in (bank) undercuts and along shaded banks stabilized with extensive tree roots, a buried log, and/or rocks.

Like other freshwater mussels, the Carolina heelsplitter feeds by filtering food particles from the water column. The specific food habits of the species are unknown, but other freshwater mussels have been documented to feed on detritus (decaying organic matter), diatoms (various minute algae), phytoplankton (microscopic floating aquatic plants), and zooplankton (microscopic floating aquatic animals). The reproductive cycle of the Carolina heelsplitter is likely similar to that of other native freshwater mussels. Males release sperm into the water column; the sperm are then taken in by the females through their siphons during feeding and respiration. The females retain the fertilized eggs in their gills until the larvae (glochidia) fully develop. The mussel glochidia are released into the water, and within a few days they must attach to the appropriate species of fish, which are then parasitized for a short time while the glochidia develop into juvenile mussels. They then detach from their "fish host" and sink to the stream bottom where they continue to develop, provided they land in a suitable substrate with the correct water conditions. The Carolina heelsplitter's life span, the fish host species, and many other aspects of its life history are unknown.

Reasons for Decline and Threats to Surviving Populations

Available information indicates that several factors adversely affect the water and habitat quality of our creeks and rivers and have contributed to the decline and loss of populations of the Carolina heelsplitter and threaten the remaining populations. These factors include pollutants in wastewater discharges (sewage treatment plants and industrial discharges); habitat loss and alteration associated with impoundments, channelization, and dredging operations; increased storm-water run-off; and the run-off of silt, fertilizers, pesticides, and other pollutants from poorly implemented land-use activities (Service 1993 and 1997). Many of the streams in the area of Charlotte, North Carolina, that are known to have historically supported the Carolina heelsplitter, but which no longer do, have been degraded by a combination of the factors listed above and appear to no longer support, or be capable of supporting, any species of native mussels. Additionally, large reaches of the main stems of the Pee Dee, Catawba, Saluda, and upper Savannah Rivers, that likely once supported the Carolina heelspitter, have been affected by impoundments, as well as the other factors listed above, and have lost much of their historic freshwater mussel abundance and diversity.

Freshwater mussels, especially in their early life stages, are extremely sensitive to many pollutants (chlorine, ammonia, heavy metals, high concentrations of nutrients, etc.) commonly found in municipal and industrial wastewater effluents (Havlik and Marking 1987, Goudreau *et al.* 1988, Keller and Zam 1991). In the early 1900s, Ortmann (1909) noted that the disappearance of mussels is one of the first and most reliable indicators of stream pollution.

Activities such as impoundments, channelization projects, and in-stream dredging operations eliminate mussel habitat. These activities can also alter the quality and stability of the remaining stream reaches by affecting the flow regimes, water velocities, and water temperature and chemistry.

Agriculture (both crop and livestock) and forestry operations, highway and road construction, residential and industrial developments, and other construction and land-use activities that do not adequately control soil erosion and storm-water run-off contribute excessive amounts of silt, pesticides, fertilizers, heavy metals, and other pollutants. These pollutants suffocate and poison freshwater mussels. The run-off of storm water from cleared areas, roads, rooftops, parking lots, and other developed areas, that is often ditched or piped directly into streams, not only results in stream pollution but also results in increased water volume and velocity during heavy rains. This change in water volume and velocity causes channel and stream-bank scouring that leads to the degradation and elimination of mussel habitat. Construction and land-clearing operations are particularly detrimental when they result in the alteration of flood plains or the removal of forested stream buffers that ordinarily would help maintain water quality and the stability of stream banks and channels by absorbing, filtering, and slowly

releasing rainwater. Also, when storm water run-off increases from land-clearing activities, less water is absorbed to recharge ground water levels. Therefore, flows during dry months can decrease and adversely affect mussels and other aquatic organisms.

Previous Federal Actions

We recognized the Carolina heelsplitter in the Animal Notice of Review published in the January 6, 1989, **Federal Register** (54 FR 579) as a species under review for potential addition to the Federal List of Endangered and Threatened Wildlife and Plants. In that document, we designated the Carolina heelsplitter as a category 2 candidate for Federal listing. We no longer maintain a list of category 2 candidate species. At that time, category 2 represented those species for which we had some information indicating that the taxa may be under threat, but sufficient information was lacking to determine if they warranted Federal listing and to prepare a proposed rule. Subsequently, surveys of historical and potential Carolina heelsplitter habitat were conducted and revealed that the species had undergone a significant decline throughout its historical range and that the remaining known occurrences were threatened by many of the same factors that are believed to have resulted in this decline.

On May 26, 1992, we published in the **Federal Register** (57 FR 21925) a proposed rule to list the Carolina heelsplitter as an endangered species. The proposed rule provided information on the species' biology, status, and threats to its continued existence and included our proposed determination that the designation of critical habitat was not prudent for the Carolina heelsplitter. We solicited comments and suggestions concerning the proposed rule from the public, concerned governmental agencies, the scientific community, industry, and other interested parties.

Following our review of all the comments and information received throughout the listing process, by final rule (58 FR 34926) dated June 30, 1993, we listed the Carolina heelsplitter as endangered. We addressed the comments received throughout the listing process and incorporated appropriate changes into the final rule. That decision included our determination that the designation of critical habitat was not prudent for the Carolina heelsplitter because, after a review of all the available information, we determined that the Carolina heelsplitter was threatened by taking and that the designation of critical habitat could be expected to increase the degree of such threat to the species and would not be beneficial to the species (see "Prudency Determination" section below).

On June 30, 1999, the Southern Appalachian Biodiversity Project and the Foundation for Global Sustainability filed a lawsuit in United States District Court for the District of Columbia against the Service, the Director of the Service, and the Secretary of the Department of the Interior, challenging the Service's "not prudent" critical habitat determinations for four species in North Carolina—the Carolina heelsplitter (*Lasmigona decorata*), spruce-fir moss spider (*Microhexura montivaga*), Appalachian elktoe (*Alasmidonta raveneliana*), and rock gnome lichen (*Gymnoderma lineare*). On February 29, 2000, the U.S. Department of Justice entered into a settlement agreement with the plaintiffs in which we agreed to reexamine our prudency determination and submit to the **Federal Register**, by July 1, 2001, a withdrawal of the existing not prudent determination for the Carolina heelsplitter, together with a new proposed critical habitat determination if appropriate. We agreed further that if, upon consideration of all the available information and comments, we determine that designating critical habitat is not prudent for the Carolina heelsplitter, we will submit a final rule of that finding to the **Federal Register** by January 1, 2002. On the other hand, if we determine that the designation of critical habitat is prudent for the Carolina heelsplitter, we will send a final rule of this finding to the **Federal Register** by April 1, 2002.

This proposal is the product of our reexamination of our prudency determination for the Carolina heelsplitter and reflects our interpretation of the recent judicial opinions on critical habitat designation and the standards placed on us for making a not prudent determination. If additional information becomes available on the species' biology and distribution and threats to the species, we may reevaluate this proposal to designate critical habitat, including proposing additional critical habitat, proposing the deletion or boundary refinement of existing proposed critical habitat, or withdrawing our proposal to designate critical habitat.

Prudency Determination

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Regulations under 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. In our June 30, 1993, final rule, we determined that the designation of critical habitat was not prudent for the Carolina heelsplitter for both of these reasons.

A critical habitat designation has no effect on actions on private or State land unless these actions require Federal funds or a Federal permit. Section 7 of the Act, and the implementing regulations, provide for the protection of designated critical habitat as they require Federal agencies to ensure, in consultation with us, that activities they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of designated critical habitat. Section 7 also requires Federal agencies to ensure, in consultation with us, that activities they fund, authorize, or carry out are not likely to jeopardize the continued existence of listed species. Regulations for the implementation of section 7 of the Act (50 CFR 402.2) provide for both a "jeopardy" standard and an "adverse modification or destruction of critical habitat" standard. The regulations at 50 CFR 402.2 define "jeopardize the continued existence of" as meaning to engage in an action that would reasonably be expected, directly or indirectly, to appreciably reduce the likelihood of both the "survival and recovery" of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. "Destruction or adverse modification" is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the "survival and recovery" of a listed species. These regulations require that the analysis of adverse modification or destruction of critical habitat, like the jeopardy analysis, consider the detrimental effects of a proposed Federal action to both the survival and recovery of the listed species. Because of the restricted range and limited amount of suitable habitat available to the Carolina heelsplitter, we determined in the June 30, 1993, final rule that any action that would likely result in the destruction or adverse modification of the species' habitat would also likely jeopardize the species' continued existence. Because

Federal actions resulting in jeopardy are also prohibited by section 7, we determined that the designation of critical habitat would not provide any additional protection benefitting the species beyond that provided by the jeopardy standard.

In addition, we were concerned that the rarity and uniqueness of the Carolina heelsplitter could generate interest in the species and that the publicity associated with the designation of critical habitat, together with the publication of maps and descriptions of critical habitat, could increase the vulnerability of the species. The majority of the streams that support surviving populations of the species are small creeks, and the species is basically immobile and cannot escape collectors or vandals. Because all of the surviving populations are small, collection of the Carolina heelsplitter or other take would have a severe adverse effect on the species.

However, in the past few years, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For example, in *Conservation Council for Hawaii* v. *Babbitt*, the United States District Court for the District of Hawaii ruled that the Service could not rely on the "increased threat" rationale for a "not prudent" determination without specific evidence of the threat to the species at issue (2 F. Supp. 2d 1280 [D. Hawaii 1998]). Additionally, in *Natural Resources Defense Council* v. *U.S. Department of the Interior*, the United States Court of Appeals for the Ninth Circuit ruled that the Service must balance, in order to invoke the "increased threat rationale," the threat against the benefit to the species of designating critical habitat 113 F. 3d 1121, 1125 (9th Cir. 1997).

We continue to be concerned that the Carolina heelsplitter is vulnerable to unrestricted collection, vandalism, or disturbance of its habitat and that these threats might be increased by the designation of critical habitat, publication of critical habitat maps, and further dissemination of location and habitat information. The low numbers and restricted range of the Carolina heelsplitter make it unlikely that its populations could withstand even moderate collecting pressure, habitat disturbance, or other take. However, at this time we do not have specific evidence for the taking, collection, trade, vandalism, or other unauthorized human disturbance specific to the Carolina heelsplitter. Consequently, we propose to withdraw our previous determination that the identification of critical habitat can be expected to increase the degree of threat to the species.

The courts also have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection, even if it offers potentially greater protection to the species, does not justify a "not prudent" finding (*Conservation Council for Hawaii* v. *Babbitt* 2 F. Supp. 2d 1280). We are already working with Federal and State agencies, private individuals, and organizations in carrying out conservation activities for the Carolina heelsplitter and in conducting surveys for additional occurrences of the species and to assess habitat conditions. These entities are fully aware of the distribution, status, and habitat requirements for the Carolina heelsplitter, as currently known. However, the designation may provide some benefit to individuals, local and state governments, and others that join conservation efforts for the species, in that the designation may provide additional information to assist these entities in long-range planning since areas essential to the conservation of the species are more clearly defined and, to the extent currently feasible, the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. Accordingly, we withdraw our previous determination that the designation of critical habitat will not benefit the Carolina heelsplitter. Therefore, we propose that the designation of critical habitat is prudent for the Carolina heelsplitter.

Proposed Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by the species on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Areas outside the geographic area currently occupied by the species shall be designated as critical habitat only when a designation limited to its present range would be inadequate to ensure the conservation of the species. "Conservation" is defined in section 3(3) of the Act as the use of all methods and procedures necessary to bring endangered or threatened species to the point where listing under the Act is no longer necessary. Regulations under 50 CFR 424.02(j) define "special management considerations or protection" to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs for the species, then the area should not be included in the critical habitat designation. Within the geographical area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), and that do not now provide essential life cycle needs for the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data demonstrate that the conservation needs of the species require the designation of critical habitat outside of occupied areas, we will designate critical habitat in areas outside the geographical area occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that the designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it should be understood that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Section 4(b)(2) of the Act requires us to base critical habitat proposals on the best scientific and commercial data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of excluding those areas outweigh the benefits of including the areas within the critical habitat, provided the exclusion will not result in the extinction of the species.

Methods

The proposed areas of critical habitat described below constitute our best assessment of the areas needed for the conservation and recovery of the Carolina heelsplitter in accordance with the goals outlined in our recovery plan for the species (Service 1997) and are based on the best scientific and commercial information currently available to us concerning the species' known present and historical range, habitat, biology, and threats. All of the areas we propose to designate as critical habitat are within what we believe to be the geographical area occupied by the Carolina heelsplitter, include all known surviving occurrences of the species, and are essential for the conservation of the species. These proposed areas are distributed throughout the species' range with at least one occurring in the Catawba, Pee Dee, and Savannah river systems. To the extent feasible, we will continue, with the assistance of other Federal, State, and private researchers, to conduct surveys and research on the species and its habitat. If new information becomes available indicating that other areas within the Carolina heelsplitter's historical range are essential to the conservation of the species, we will revise the proposed critical habitat or designated critical habitat for the Carolina heelsplitter accordingly.

Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

When considering areas for designation as critical habitat, we are required to focus on the principal biological and physical constituent elements within the defined area that are essential to the conservation of the species (50 CFR 424.12 (b)). Although additional information is needed to better define the habitat requirements of the species, particularly the microhabitat requirements, all of the stream reaches that support occurrences of the Carolina heelsplitter are free flowing (no major impoundments) and natural (have not been channelized or otherwise significantly altered), and are not associated with (located a substantial distance from) significant point (discharges) and non-point (runoff) sources of pollutants. Although the species has been observed in a variety of substrata (see "Background" section), it has only been recorded from stable pockets of substrata in stream reaches with stable, well-vegetated stream bank and riparian areas, and in substrata without heavy accumulations of silt. Based on the best available information, the primary constituent elements essential for the conservation of the Carolina heelsplitter are:

1. Permanent, flowing, cool, clean water;
2. Geomorphically stable stream and river channels and banks;
3. Pool, riffle, and run sequences within the channel;
4. Stable substrata with no more than low amounts of fine sediment;
5. Moderate stream gradient;
6. Periodic natural flooding; and
7. Fish hosts, with adequate living, foraging, and spawning areas for them.

Areas Proposed for Designation as Critical Habitat

The Service's recovery plan (1997) for the Carolina heelsplitter states that the species will be considered for delisting (recovered) when there exists a total of six distinct, viable populations of the species that meet the criteria outlined in the recovery plan. Based on the most recent survey data for the Carolina heelsplitter (Keferl and Shelly 1988; Keferl 1991: Alderman 1995, 1998a, and 1998b; North Carolina Wildlife Resources Commission 1999 and 2000), there are currently six surviving populations: the Goose Creek/Duck Creek population, Waxhaw Creek population, Gills Creek population, Flat Creek/Lynches River population, Turkey Creek/Mountain Creek/ Beaverdam Creek population, and Cuffeytown Creek population (see "Background" section). The areas that

we are proposing for designation as critical habitat for the Carolina heelsplitter include habitat for each of these populations. The lateral extent of proposed critical habitat is up to the ordinary high-water line on each bank. In addition, given the threats to the species' habitat discussed in the final listing rule (58 FR 34926) and summarized in the "Background" section, we believe these areas may need special management considerations or protection. We are proposing the following areas for designation as critical habitat for the Carolina heelsplitter (see Table 1 below for approximate stream lengths):

Unit 1. Goose Creek and Duck Creek (Pee Dee River System), Union County, North Carolina

Unit 1 encompasses the main stem of Goose Creek, Union County, North Carolina, from the N.C. Highway 218 Bridge, downstream to its confluence with the Rocky River, and the main stem of Duck Creek, Union County, North Carolina, from the Mecklenburg/Union County line downstream to its confluence with Goose Creek. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. In accordance with the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 2. Waxhaw Creek (Catawba River System), Union County, North Carolina

Unit 2 encompasses the main stem of Waxhaw Creek, Union County, North Carolina, from the N.C. Highway 200 Bridge, downstream to the North Carolina/South Carolina State line. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. In accordance with the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 3. Gills Creek (Catawba River System), Lancaster County, South Carolina

Unit 3 encompasses the main stem of Gills Creek, Lancaster County, South Carolina, from the County Route S–29–875, downstream to the S.C. Route 51 Bridge, east of the city of Lancaster. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. In accordance with the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 4. Flat Creek (Pee Dee River System), Lancaster County, South Carolina, and the Lynches River (Pee Dee River System), Lancaster, Chesterfield, and Kershaw Counties, South Carolina

Unit 4 encompasses the main stem of Flat Creek, Lancaster County, South Carolina, from the S.C. Route 204 Bridge, downstream to its confluence with the Lynches River, and the main stem of the Lynches River, Lancaster and Chesterfield Counties, South Carolina, from the confluence of Belk Branch, Lancaster County, northeast (upstream) of the U.S. Highway 601 Bridge, downstream to the S.C. Highway 903 Bridge in Kershaw County, South Carolina. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. In accordance with the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 5. Mountain and Beaverdam Creeks (Savannah River System), Edgefield County, South Carolina, and Turkey Creek (Savannah River System), Edgefield and McCormick Counties, South Carolina

Unit 5 encompasses the main stem of Mountain Creek, Edgefield County, South Carolina, from the S.C. Route 36 Bridge, downstream to its confluence with Turkey Creek; Beaverdam Creek, Edgefield County, from the S.C. Route 51 Bridge, downstream to its confluence with Turkey Creek; and Turkey Creek, from the S.C. Route 36 Bridge, Edgefield County, downstream to the S.C. Route 68 Bridge, Edgefield and McCormick Counties, South Carolina. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. In accordance with the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 6. Cuffytown Creek (Savannah River System), Greenwood and McCormick Counties, South Carolina

Unit 6 encompasses the main stem of Cuffytown Creek, from the confluence of Horsepen Creek, northeast (upstream) of the S.C. Route 62 Bridge in Greenwood County, South Carolina, downstream to the U.S. Highway 378 Bridge in McCormick County. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. In accordance with the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

TABLE 1.—APPROXIMATE LENGTHS OF STREAM PROPOSED AS CRITICAL HABITAT FOR THE CAROLINA HEELSPLITTER

State	County	Stream	Length in kilometers (miles)
North Carolina	Union	Goose Creek	7.2 (4.5)
		Duck Creek	8.8 (5.5)
		Waxhaw Creek	19.6 (12.2)
South Carolina	Lancaster	Flat Creek	18.4 (11.4)
		Gills Creek	9.6 (6.0)
	Lancaster, Chesterfield, and Kershaw	Lynches River	23.6 (14.6)
	Edgefield	Mountain Creek	11.2 (7.0)
		Beaverdam Creek	10.8 (6.7)
	Edgefield and McCormick	Turkey Creek	18.4 (11.4)

TABLE 1.—APPROXIMATE LENGTHS OF STREAM PROPOSED AS CRITICAL HABITAT FOR THE CAROLINA HEELSPLITTER—Continued

State	County	Stream	Length in kilometers (miles)
	Greenwood and McCormick	Cuffytown Creek	20.8 (12.9)

Land Ownership

Approximately 6.0 km (3.7 mi) of Beaverdam Creek and 13.6 km (8.5 mi) of Turkey Creek that we are proposing for designation as critical habitat, are bordered by the Sumter National Forest in South Carolina, and 2.4 km (1.5 mi) of Flat Creek that we are proposing for designation as critical habitat, are bordered by the Flat Creek Heritage Preserve, which is managed by the State of South Carolina. The remainder of the areas that we are proposing for designation as critical habitat for the Carolina heelsplitter, with the exception of State road and highway rights-of-way, are under private ownership.

Effects of Critical Habitat Designation

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans and through section 7 consultation and section 10 permits.

Critical habitat receives regulatory protection only under section 7 of the Act through the prohibition against destruction or adverse modification of designated critical habitat by actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to land designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal land that do not involve a Federal action, the critical habitat designation would not afford any protection under the Act against such activities. Accordingly, the designation of critical habitat on private land will not have any regulatory effect on private or State activities in these areas unless those activities require a Federal permit, authorization, or funding.

Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to result in the destruction or adverse modification of proposed critical habitat. "Destruction or adverse modification" is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. These conferences, which consist of informal discussions, are intended to assist responsible agencies and the applicant, if applicable, in identifying and resolving potential conflicts. Conference reports resulting from these discussions provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference opinion if requested by a Federal agency. Formal conference opinions on proposed critical habitat are prepared according to 50 CFR 402.14 as if critical habitat were designated. We may adopt the formal conference opinion as the biological opinion when the critical habitat is designated if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If this proposal is finalized, activities on Federal land, activities on private or State land carried out by a Federal agency, or activities receiving funding or requiring a permit from a Federal agency that may affect the designated critical habitat of the Carolina heelsplitter will require consultation under section 7 of the Act. However, section 7 of the Act also requires Federal agencies to ensure that actions they authorize, fund, or carry out do not jeopardize the continued existence of listed species and to consult with us on any action that may affect a listed species. Activities that jeopardize listed species are defined as actions that "directly or indirectly, reduce appreciably the likelihood of both the survival and recovery of a listed species' (50 CFR 402.02). Federal agencies are prohibited from jeopardizing listed species through their actions, regardless of whether critical habitat has been designated for the species. Where critical habitat is designated, section 7 also requires Federal agencies to ensure that activities they authorize, fund, or carry out do not result in the destruction or adverse modification of designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as an action that "appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species" (50 CFR 402.02). Common to the definitions of both "jeopardy" and "destruction or adverse modification of critical habitat" is the concept that the likelihood of both the survival and recovery of the species are appreciably reduced by the action. Because of the small size of the majority of the surviving populations of the Carolina heelsplitter, the species' restricted range, and the limited amount of suitable habitat available to the species, actions that are likely to destroy or adversely modify critical habitat are also likely to jeopardize the species. Accordingly, even though Federal agencies will be required to evaluate the potential effects of their actions on any habitat that is designated as critical habitat for the Carolina heelsplitter, this designation would not be likely to change the outcome of section 7 consultations.

Section 4(b)(8) of the Act requires us to briefly evaluate, in any proposed or final regulation that designates critical habitat, those activities that may adversely modify such habitat or may be affected by such designation. Activities that may destroy or adversely modify critical habitat are, as discussed above, those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the Carolina heelsplitter is appreciably diminished. This may include any activity, regardless of the activity's location in relation to designated or proposed critical habitat, that would significantly alter the natural flow regime, channel morphology or geometry, or water chemistry or temperature of any of the six proposed critical habitat units, as described by the constituent elements, or any activity that could result in the significant discharge or deposition of sediment, excessive nutrients, or other organic or

chemical pollutants into any of the six proposed critical habitat units. Such activities include (but are not limited to) carrying out or issuing permits, authorization, or funding for reservoir construction; stream alterations; wastewater facility development; hydroelectric facility construction and operation; pesticide/herbicide applications; forestry operations; and road, bridge, and utility construction. These same activities also have the potential to jeopardize the continued existence of the Carolina heelsplitter, and Federal agencies are already required to consult with us on these types of activities, or any other activity, that may affect the species.

Send your requests for copies of the regulations on listed wildlife, inquiries about prohibitions and permits, or questions regarding whether specific activities will constitute adverse modification of critical habitat, to the U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, North Carolina 28801.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas as critical habitat upon reaching a determination that the benefits of such exclusion outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating the areas identified above as critical habitat prior to a final determination. When a draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register** and will open a 30-day comment period at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

2. Specific information on the numbers and distribution of the Carolina heelsplitter and what habitat is essential to the conservation of the species and why;

3. Information on specific characteristics of habitat essential to the conservation of the Carolina heelsplitter;

4. Land-use practices and current or planned activities in the subject areas and their possible effects on proposed critical habitat;

5. Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

6. Economic and other values associated with designating critical habitat for the Carolina heelsplitter, such as those derived from nonconsumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, "existence values," and reductions in administrative costs); and

7. Potential adverse effects to the Carolina heelsplitter and/or its habitat associated with designating critical habitat for the species; e.g., increased risk to the species from collecting, vandalism, or the destruction of its habitat.

Please submit electronic comments in ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: [RIN 1018–AH31]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Asheville Field Office (see **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of this review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. If you wish to request a hearing, you must file your request in writing within 45 days of the date of this proposal. Send your request to the State Supervisor, Asheville Field Office (see "Addresses" section). We will give written comments submitted during the comment period equal consideration with those comments presented at a public hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand, including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? (5) What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to the Asheville Field Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a

significant regulatory action and has been reviewed by the Office of Management and Budget (OMB).

(a) In the economic analysis, we will determine whether this rule will have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Carolina heelsplitter was listed as an endangered species in 1993. Since that time we have conducted, and will continue to conduct, formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of the Carolina heelsplitter.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 1 below). Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" to the species under the Act.

Accordingly, we do not expect the designation of areas as critical habitat within the geographical range occupied by the species to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons who do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat. (However, they continue to be bound by the provisions of the Act concerning "take" of the species, which came into play in 1993 when the species was listed as endangered.)

(b) This rule will not create inconsistencies with other agencies' actions. Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Carolina heelsplitter since the listing in 1993. As shown in Table 2 (below), no additional effects on agency actions are anticipated to result from the critical habitat designation. However, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

TABLE 2.—IMPACTS OF CAROLINA HEELSPLITTER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected.[3]	Activities such as carrying out or issuing permits, authorization, or funding for reservoir construction; stream alterations; wastewater facility development; hydroelectric facility construction and operation; pesticide/herbicide applications; forestry operations; road, bridge, and utility construction; or other activities that could result in direct or indirect impacts to the Carolina heelsplitter and/or its habitat.	None.
Private and other non-Federal Activities Potentially Affected.[4]	Activities occurring on Federal land or that require a Federal action (permit, authorization, or funding) and that involve activities such as those listed above that could result in "take" of the Carolina heelsplitter or damage or destruction of its habitat.	None.

[1] This column represents the activities potentially affected by listing the Carolina heelsplitter as an endangered species (June 30, 1993; 58 FR 34926) under the Endangered Species Act.
[2] This column represents the effects on activities resulting from critical habitat designation beyond the effects attributable to the listing of the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(c) The proposed rule, if made final, will not significantly impact entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies currently are required to ensure that their activities do not jeopardize the continued existence of the species, and we do not anticipate that the adverse modification prohibition (resulting from the critical habitat designation) will have any incremental effects in areas of proposed critical habitat.

(d) OMB has determined that this rule will raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the draft economic analysis (under section 4 of the Act), we will determine whether the designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under "Regulatory Planning and Review" above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of proposed critical habitat.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether the designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographical regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat that are within the geographical range occupied by the species.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

b. This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no new obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not "take" private property. The designation of critical habitat affects only Federal agency actions. Federal actions on private land could be affected by the critical habitat designation; however, we expect no regulatory effect from this designation because all proposed areas are considered to be within the geographical range occupied by the species and would be reviewed under both the jeopardy and adverse modification standards under section 7 of the Act.

This rule will not increase or decrease the current restrictions on private property concerning taking of the Carolina heelsplitter as defined in section 9 of the Act and its implementing regulations (50 CFR 17.31). Additionally, critical habitat designation does not preclude the development of habitat conservation plans and the issuance of incidental take permits. Any landowner in areas that are included in the designated critical habitat will continue to have opportunity to use his or her property in ways consistent with the survival of the Carolina heelsplitter.

Federalism

In accordance with Executive Order 13132, this rule does not have significant federalism effects. A Federalism Assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat proposal with, appropriate State natural resources agencies in North Carolina and South Carolina. We will continue to coordinate any future designation of critical habitat for the Carolina heelsplitter with the appropriate State agencies. The designation of critical habitat for the Carolina heelsplitter imposes few, if any, additional restrictions to those currently in place and therefore has little incremental impact on State and local governments and their activities. The designation may provide some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and, to the extent currently feasible, the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burdens, and is clearly written, such that the risk of litigation is minimized.

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we understand that federally recognized Tribes must be related to on a Government-to-Government basis. We are not aware of any Tribal lands essential for the conservation of the Carolina heelsplitter. Therefore, we are not proposing to designate critical habitat for the Carolina heelsplitter on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Asheville Field Office (see **ADDRESSES** section).

Author

The primary author of this document is John Fridell (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h), by revising the entry for the "Heelsplitter, Carolina" under "CLAMS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Cricital habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
CLAMS							
*	*	*	*	*	*	*	*
Heelsplitter, Carolina	*Lasmigona decorata*	U.S.A. (NC, SC)	Entire	E	505	17.95(f)	NA
*	*	*	*	*	*	*	*

3. Amend § 17.95(f) by adding critical habitat for the Carolina heelsplitter (*Lasmigona decorata*) in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and snails.*

* * * * *

Carolina Heelsplitter *(Lasmigona decorata)*

1. Critical habitat units are described below and depicted in the maps that follow, with the lateral extent of each designated unit bounded by the ordinary high-water line:

Unit 1: Union County, North Carolina—main stem of Goose Creek (Pee Dee River system) from the N.C. Highway 218 Bridge, downstream to its confluence with the Rocky River, and the main stem of Duck Creek, from the Mecklenburg/Union County line, downstream to its confluence with Goose Creek.

Unit 1. Goose Creek and Duck Creek (Pee Dee River System), Union County, North Carolina.

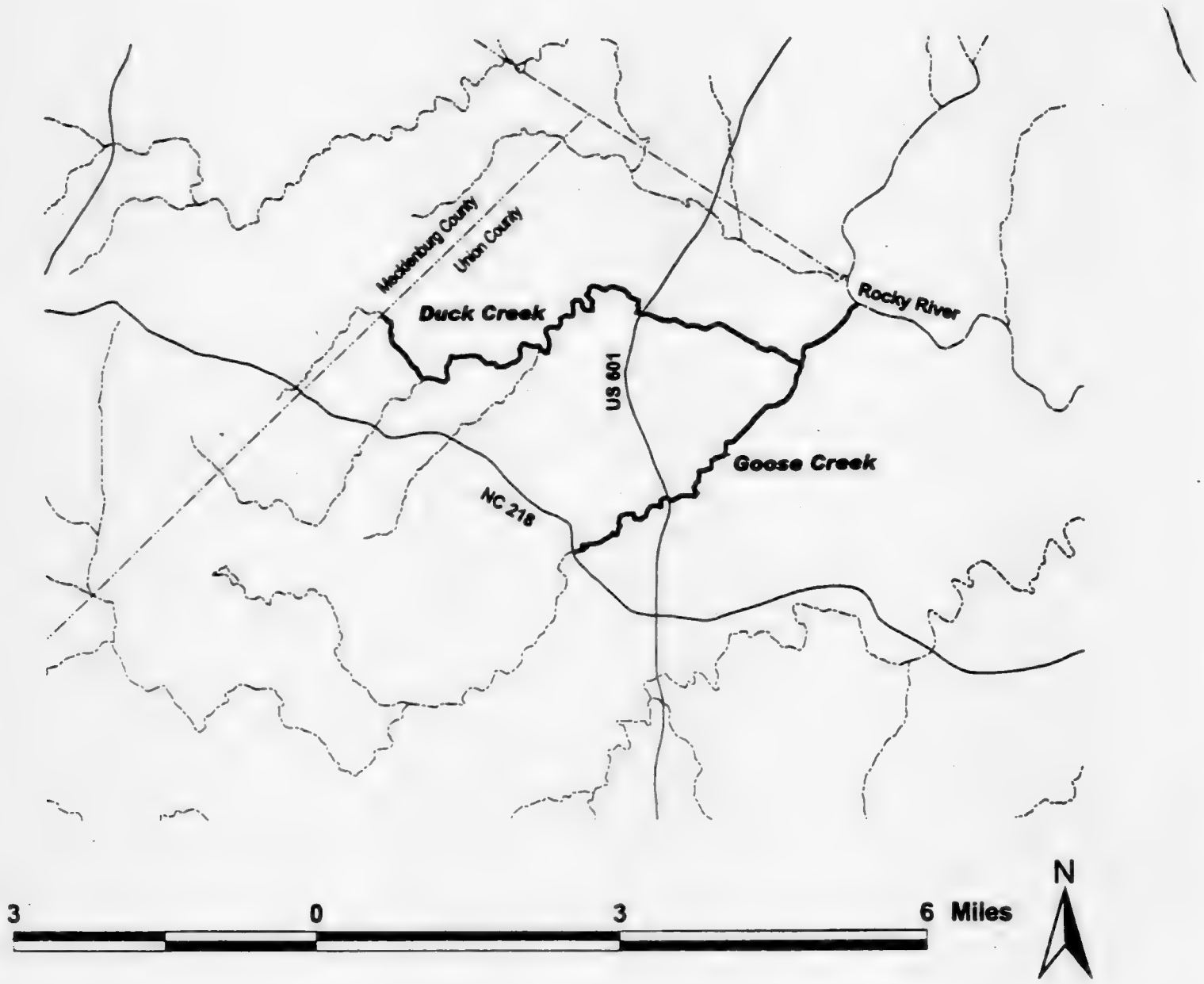

Unit 2. Union County, North Carolina—main stem of Waxhaw Creek (Catawba River system) from the N.C. Highway 200 Bridge, downstream to the North Carolina/South Carolina State line.

Unit 2. Waxhaw Creek (Catawba River System), Union County, North Carolina.

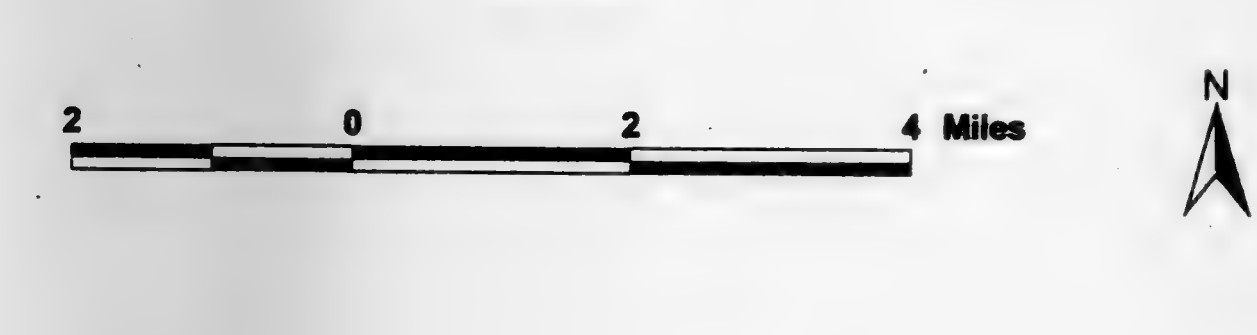

Unit 3. Lancaster County, South Carolina—main stem of Gills Creek (Catawba River system) from the County Route S–29–875, downstream to the S.C. Route 51 Bridge, east of the city of Lancaster.

Unit 3. Gills Creek (Catawba River System), Lancaster County, South Carolina.

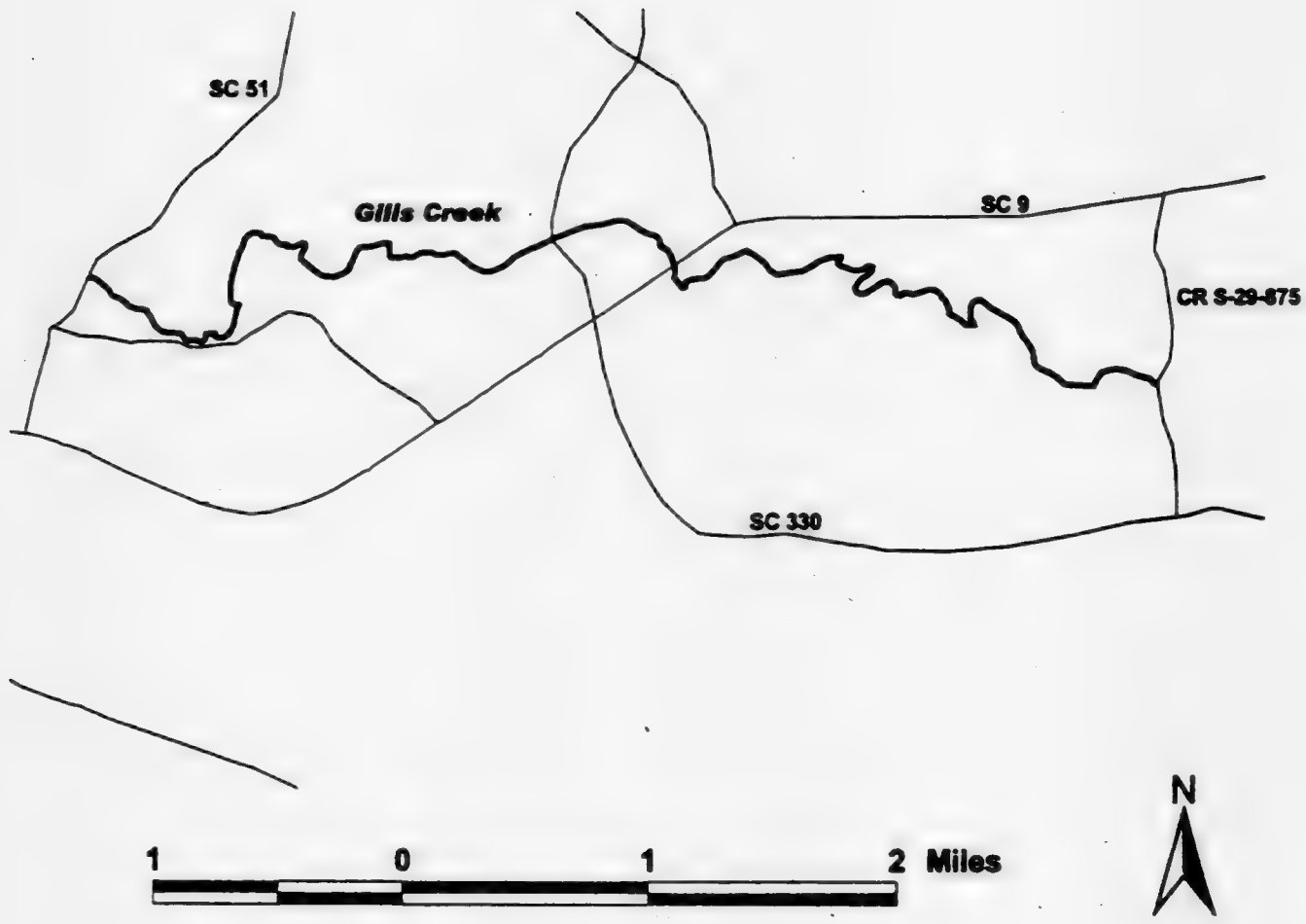

Unit 4. Lancaster, Chesterfield, and Kershaw Counties, South Carolina—main stem of Flat Creek (Pee Dee River system), Lancaster County, from the S.C. Route 204 Bridge, downstream to its confluence with Lynches River, and the main stem of the Lynches River, Lancaster and Chesterfield Counties, from the confluence of Belk Branch, Lancaster County, northeast (upstream) of the U.S. Highway 601 Bridge, downstream to the S.C. Highway 903 Bridge in Kershaw County.

Unit 4. Flat Creek and Lynches River (Pee Dee River System), Lancaster and Kershaw Counties, South Carolina.

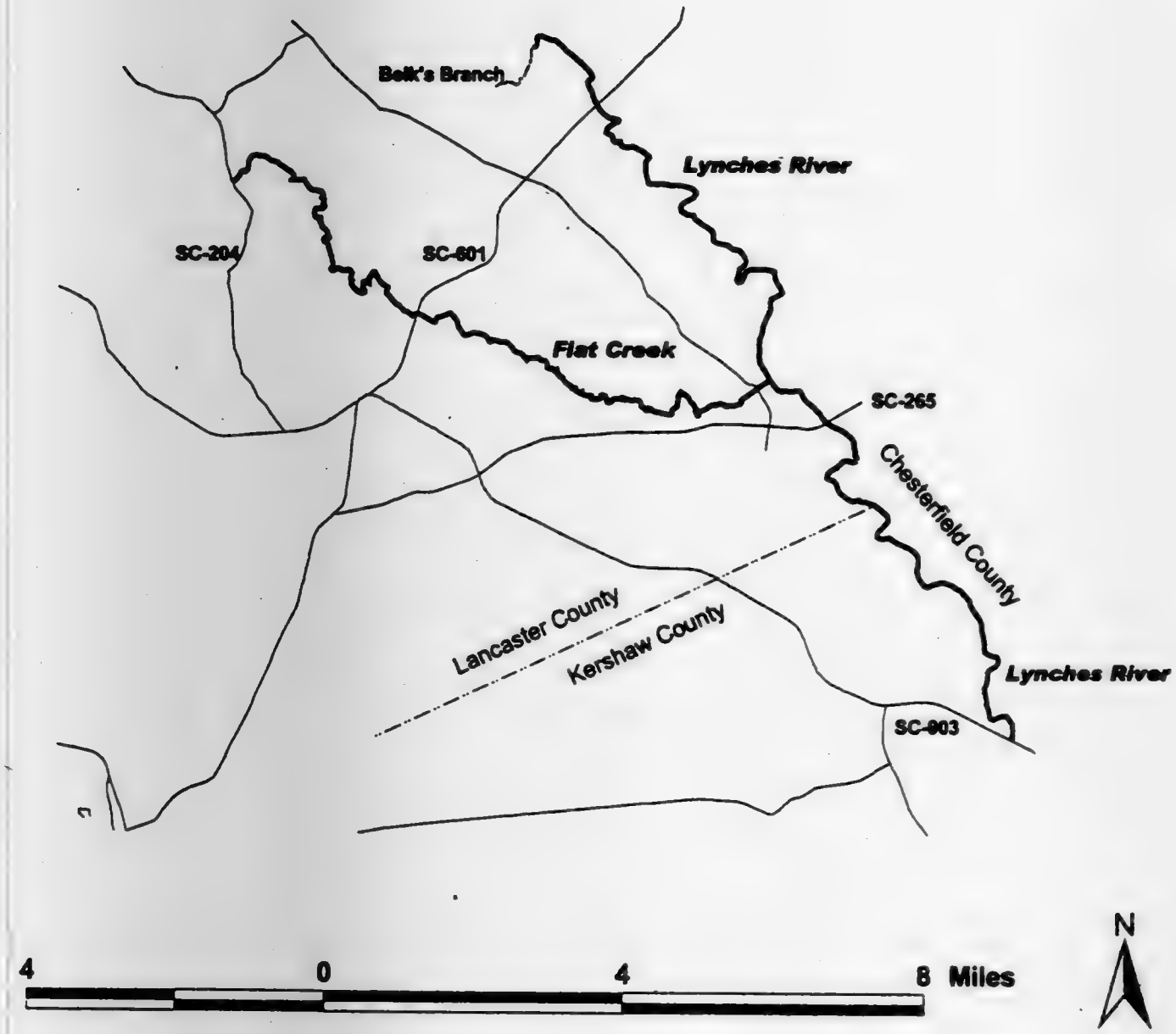

Unit 5. Edgefield and McCormick Counties, South Carolina, main stem of Mountain Creek (Savannah River system), Edgefield County, South Carolina, from the S.C. Route 36 Bridge, downstream to its confluence with Turkey Creek; Beaverdam Creek, Edgefield County, from the S.C. Route 51 Bridge, downstream to its confluence with Turkey Creek; and Turkey Creek, from the S.C. Route 36 Bridge, Edgefield County, downstream to the S.C. Route 68 Bridge, Edgefield and McCormick Counties.

Unit 5. Mountain and Beaverdam Creeks (Savannah River system), Edgefield County, South Carolina, and Turkey Creek (Savannah River system) , Edgefield and McCormick Counties, South Carolina.

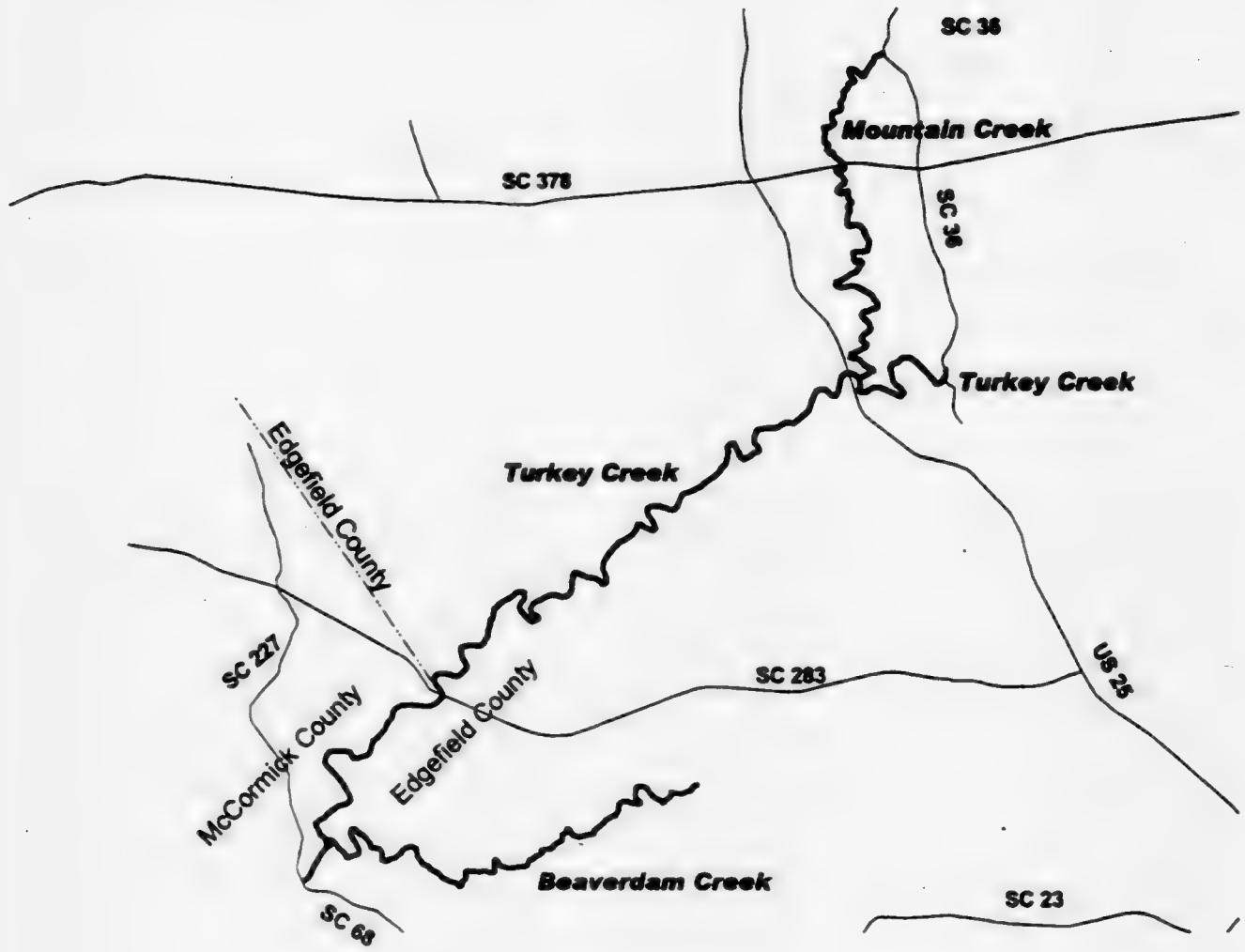

Unit 6. Greenwood and McCormick Counties, South Carolina—main stem of Cuffytown Creek (Savannah River system), from the confluence of Horsepen Creek, northeast (upstream) of the S.C. Route 62 Bridge in Greenwood County, downstream to the U.S. Highway 378 Bridge in McCormick County.

Unit 6. Cuffeytown Creek (Savannah River System), Greenwood and McCormick Counties, South Carolina.

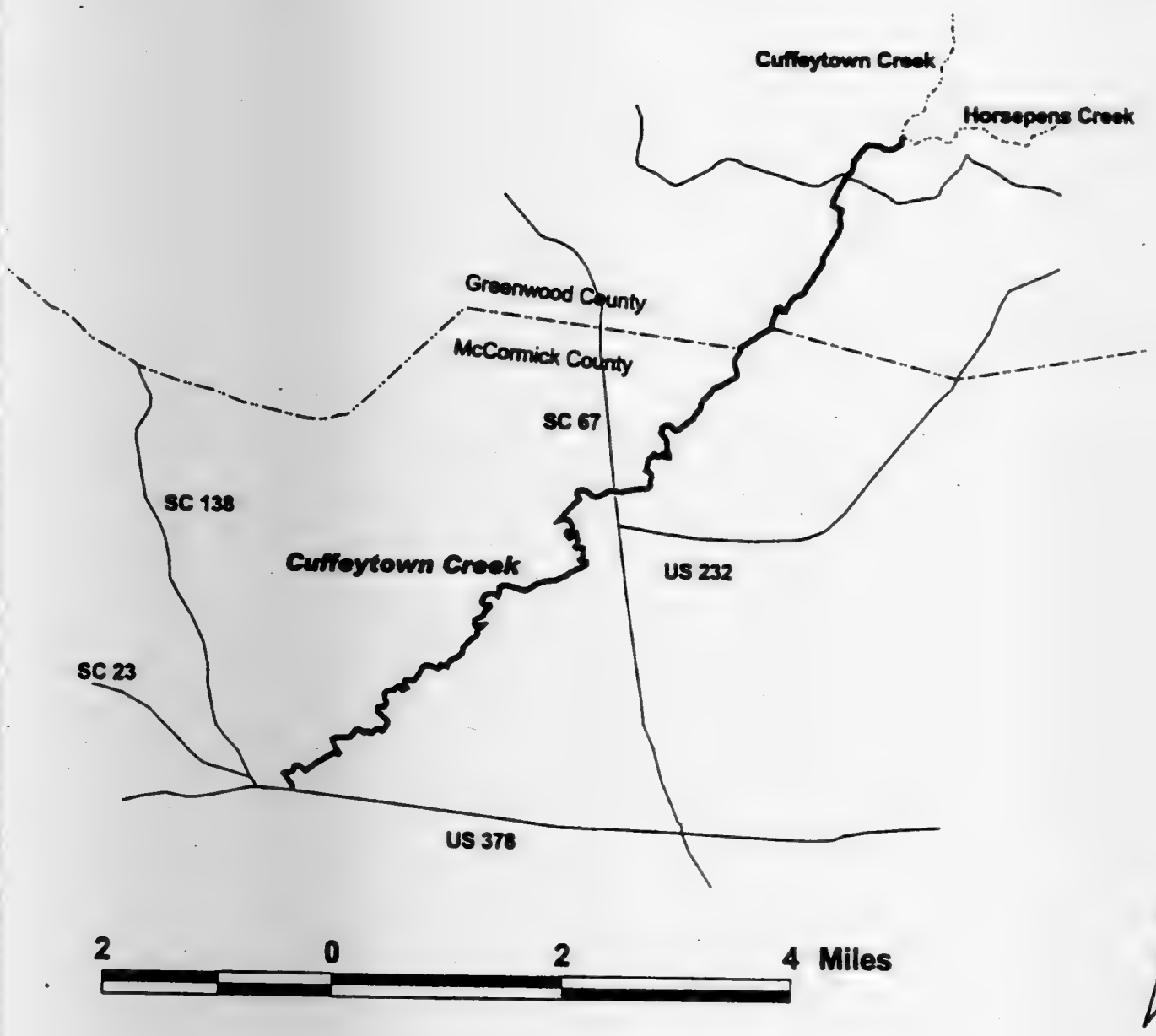

2. Within these areas, the primary constituent elements include:

(i) Permanent, flowing, cool, clean water;

(ii) Geomorphically stable stream and river channels and banks;

(iii) Pool, riffle, and run sequences within the channel;

(iv) Stable substrata with no more than low amounts of fine sediment;

(v) Moderate stream gradient;

(vi) Periodic natural flooding; and

(vii)Fish hosts, with adequate living, foraging, and spawning areas for them.

Dated: June 28, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–16867 Filed 7–10–01; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 062901B]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day Council meeting, on July 24 through July 26, 2001, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday, and Thursday, July 24, 25, and 26, 2001. The meeting will begin at 1:00 p.m. on Tuesday and 8:30 a.m. on Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone (207) 775–2311. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, July 24, 2001

After introductions, the Council meeting will begin with reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. A brief period will be held for public comment on any relevant subject related to Council business. The Herring Committee will discuss and ask the Council to approve initial action on Framework Adjustment 1 to the Atlantic Herring Fishery Management Plan (FMP). The primary measures under consideration would split the total allowable catch (TAC) for Management Area 1A into two periods: January through May (6,000 mt) and June through December (54,000 mt plus any unused portion from January to May). When 95 percent of the quota for either period is projected to be reached, directed fishing would cease in Area 1A and a 2,000-pound trip limit would take effect. A review of the discussions between U.S. and Canadian fisheries representatives serving on the Transboundary Management Guidance Committee will follow the Herring Committee Report.

Wednesday, July 25, 2001

The day will start with a presentation on bioeconomic modeling and its application to fisheries management, using the American lobster fishery as a case study. Northeast Fisheries Science Center staff will hold a public review workshop to present the advisory from the 33rd Stock Assessment Workshop concerning the status of Gulf of Maine cod, redfish, and white hake. In its report, the Groundfish Committee intends to ask the Council to approve final action on Framework Adjustment 36 to the Northeast Multispecies FMP. Measures under consideration would address Gulf of Maine cod discards and mortality, an extension of or adjustment to the Western Gulf of Maine Closed Area, tuna purse seine access to the groundfish closed areas, and an expansion of the area in which the northern shrimp fishery is allowed.

Thursday, July 26, 2001

During Thursday's session, the Sea Scallop Committee will ask the Council to approve draft management measures to be analyzed in the Draft Supplemental Environmental Impact Statement for Amendment 10 to the Sea Scallop FMP. The discussion will include review of Scallop Committee, Plan Development Team and Advisory Panel recommendations. Measures under consideration include options that would address scallop area rotation and management; managing scallop catch from re-opened and open fishing areas; gear modifications to reduce scallop and finfish bycatch; general category permit management proposals; framework adjustments and annual specifications; programs to fund and administer scallop research and on-board observers; data collection and monitoring; and other measures. The Council also will discuss and may approve a control date for scallop fishing by vessels not on a scallop day-at-sea. A control date may be necessary because the Council is considering whether to limit the access of vessels holding general category permits as part of Amendment 10 to the Scallop FMP. The control date could apply to any vessel with or without a general category permit and/or to vessels that have a limited access scallop permit and that fish for sea scallops while not on a day-at-sea. Prior to meeting adjournment, the Red Crab Committee will provide an update on progress concerning development a Red Crab FMP, including management alternatives, an overfishing definition, and the collection of social and economic information.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the National Marine Fisheries Service Regional Administrator on any framework adjustment to a fishery

management plan. If she concurs with the adjustment proposed by the Council, the Regional Administrator has the discretion to publish the action either as proposed or final regulations in the **Federal Register**. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 3, 2001

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17366 Filed 7–10–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
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Wednesday, July 11, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 8:00 p.m. Wednesday, on August 22, 2001, at the Sheraton Anchorage Hotel, 401 East 6th Avenue, Anchorage, Alaska 99501. The Advisory Committee will hold a briefing session in preparation for the two-day community forum.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 3, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–17341 Filed 7–10–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 9:00 a.m. and recess at 7:00 p.m. on Thursday, August 23, 2001, at the Sheraton Anchorage Hotel, 401 East 6th Avenue, Anchorage, Alaska 99501. The Committee will reconvene at 9:00 a.m. and adjourn at 7:00 p.m. on Friday, August 24, 2001, at the same location. The purpose of the community forum both days is to obtain information on discrimination faced by minority communities in Alaska.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 3, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–17342 Filed 7–10–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 8:45 a.m. and adjourn at 12:30 p.m. on Friday, July 27, 2001, at the U.S. Commission on Civil Rights, 5th Floor Conference Room, 624 9th Street NW, Washington, DC 20425. The Advisory Committee will discuss its March 15, 2001 forum on equal access to financial opportunities in the District of Columbia, review members' draft summaries of panelist presentations, and plan future activities. In preparation for the Committee's planned activity on police-community relations, the Committee will invite representatives from the District's newly formed Office of Citizen Complaint Review, the Metropolitan Police Department, and community advocacy groups.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Rev. Lewis Anthony, 202–483–3262, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 3, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–17343 Filed 7–10–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Wednesday, August 29, 2001, at the Fontainebleau Hilton, 4441 Collins Avenue, Miami, Florida 33140. The purpose of the meeting is to discuss the US Department of Housing and Urban Development's Hope VI program to determine the extent to which the program impacts public housing in Miami with the local housing authority officials, HUD representatives, civil rights leaders, and tenant officials.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 3, 2001.
Edward A. Hailes, Jr.,
General Counsel.
[FR Doc. 01–17344 Filed 7–10–01; 8:45 am]
BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.
Title: Current Industrial Reports (Wave II Mandatory).
Form Number(s): M311J, M311L, M313N, M313P, MQ314X, MQ315A, MQ333W, MA313F, MA313K, MA314Q, MA316A, MA321T, MA325G, MA333L, MA333P, MA334M, MA334Q, MA334S, MA335E, and MA335J.
Agency Approval Number: 0607–0395.
Type of Request: Revision of a currently approved collection.
Burden: 16,954 hours.
Number of Respondents: 11,887.
Avg Hours Per Response: 1.43 hours.
Needs and Uses: The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR program focuses primarily on the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions.

Due to the large number of surveys conducted in the CIR program, for clearance purposes, the CIR surveys are divided into "waves." There are three waves and each wave contains a voluntary and mandatory clearance package, making 6 separate clearances. Each year, one wave (2 clearance packages) is submitted for review. In this request, we are discontinuing MA325B, "Inorganic Fertilizer Materials and Related Products," and MA325C, "Industrial Gases" due to budgetary reductions.

Affected Public: Business or other for-profit organizations.
Frequency: Quarterly.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13, United States Code, Sections 61, 81, 182, 224, and 225.
OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202)482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 6, 2001.
Madeleine Clayton,
Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.
[FR Doc. 01–17339 Filed 7–10–01; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.
Title: 2002 Economic Census Ownership or Control Flier.
Form Number(s): NC–99510, NC–99520, NC–99521, NC–99530, NC–99542, NC–99550, NC–99553, NC–99554, NC–99557, NC–99562, NC–99563, NC–99572, NC–99581.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 48,846 hours in FY 2003.
Number of Respondents: 2,442,300.
Avg Hours Per Response: 1.2 minutes.
Needs and Uses: Accurate and reliable industry and geographic codes are critical to the Census Bureau's economic statistical programs. As single-establishment firms are acquired or begin operating at additional locations, it is necessary to update the Bureau's Business Register (Standard Statistical Establishment Listing (SSEL). During the 2002 Economic Census, the Ownership Or Control fliers will be used to link establishments that are not single-establishment firms to their parent companies or create new multi-establishment firms when they operate at more than one location. In prior censuses these questions were part of the economic census questionnaires and used to determine if single-establishment firms were either owned or controlled by another company or if they operate at more than one location. For the 2002 Economic Census we have removed these questions from economic census questionnaires and will include them on a separate flier that will only be inserted in economic census questionnaire mailout packages sent to single-establishment firms.

Affected Public: Businesses or other for-profit, individuals or households, not-for-profit institutions, State, local or Tribal government.
Frequency: Every five years.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13 U.S.C., Sections 131 and 224.
OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 6, 2001.
Madeleine Clayton,
Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.
[FR Doc. 01–17340 Filed 7–10–01; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 29–2001]

Foreign-Trade Zone 25—Broward County, Florida; Proposed Foreign-Trade Subzone, Motiva Enterprises LLC (Petroleum Product Storage), Broward County, Florida

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Broward County, Florida, grantee of FTZ 25, requesting special-purpose subzone status for the petroleum product storage facility of Motiva Enterprises, LLC (Motiva), located in the Fort Lauderdale, Florida, area. The application was submitted

pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 29, 2001.

The Motiva facility (34 acres) is located at 3 sites with connecting pipelines in Fort Lauderdale, Florida, (Broward County): *Site 1* (9 tanks, 550,000 barrel capacity, 18 acres)—South Terminal product storage facility is located at 1200 S.E. 28th Street; *Site 2* (15 tanks, 600,000 barrel capacity, 15 acres)—East Terminal product storage facility is located at 1500 S.E. 26th Street; *Site 3*—dock manifolds at berths 7, 9, and 13, Port Everglades, leased from Cliff Berry & Associates.

The storage facility is primarily used for the receipt, storage, blending and distribution of jet fuel by pipeline to the Miami and Fort Lauderdale International Airports. The company also uses the facility to store and distribute gasoline, diesel fuel, distillate fuels, and blending stocks. Some of the products are or will be sourced from abroad or from U.S. refineries under FTZ procedures.

The Motiva connecting pipelines are used for routing of petroleum products to the storage terminals from arriving vessels at the dock manifolds. The Motiva South and East Terminals have no direct connections with each other and product may be pumped between the two terminals through the Motiva pipeline connected through the dock manifolds.

Zone procedures would exempt Motiva from Customs duties and federal excise taxes on foreign status jet fuel used for international flights. On domestic sales, the company would be able to defer Customs duty payments until the products leave the facility. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

No specific manufacturing request is being made at this time. Such a request would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below.

The closing period for their receipt is September 10, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 24, 2001).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 200 E. las Olas Blvd. (Sun Sentinel Bldg.), Suite 1600, Ft. Lauderdale, Florida 33301–2284

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: June 29, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–17372 Filed 7–10–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 30–2001]

Foreign-Trade Zone 57—Charlotte, North Carolina; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the North Carolina Department of Commerce, grantee of FTZ 57, requesting authority to expand its general-purpose zone site to include additional sites in Alexander, Burke, Caldwell and Catawba Counties, North Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 3, 2001.

FTZ 57 was approved on April 28, 1980 (Board Order 156, 45 FR 30466, 5/8/80) and expanded on September 23, 1982 (Board Order 199, 47 FR 43103, 9/30/82). The zone project currently includes four general-purpose zone sites: *Site 1* (100,000 sq. ft.)—at 11425 Granite Street, Mecklenburg County; *Site 1A* (23 acres)—located at 1411 and 1701 Continental Boulevard, Mecklenburg County; *Site 2* (137,368 sq. ft.)—located at 14620 Carowinds Boulevard, Mecklenburg County; and, *Site 3* (26 acres)—located at International Airport Center, 3401 International Airport Drive, Charlotte.

The applicant is now requesting authority for a major change to its zone plan that would extend zone services on a regional basis. The proposal involves expanding its zone project to include eight sites (3,144 acres) in the Counties of Burke, Caldwell, Alexander and Catawba: *Proposed Site 4* (1,600 acres, 14 parcels)—proposed industrial park (Great Meadows), located at Interstate 40 in Burke County; *Proposed Site 5* (78 acres, 2 parcels): Parcel 1 (40 acres)—Lenoir Business Park and Parcel 2 (38 acres)—J&M Industrial Park, located on NC Highway 18 in Lenoir (Caldwell County); *Proposed Site 6* (160 acres)—Alexander County Rail Park, located on NC Highway 90, one mile east of Taylorsville (Alexander County); *Proposed Site 7* (655 acres)—Hickory Regional Airport/Lakepark, located on Clement Boulevard in the City of Hickory (Catawba/Burke Counties); *Proposed Site 8* (1 acre)—Conwareco Logistics, Inc., warehouse facility, 1070 Main Avenue NW in Hickory (Catawba County); *Proposed Site 9* (9 acres, 3 parcels): Parcel 1 (4 acres)—Diamante Group LLC warehouse/industrial facility at 406 20th Street SE; Parcel 2 (2 acres)—LT2 at 504 20th Street SE; and, Parcel 3 (3 acres)—Hickory Throwing Company at 520 20th Street SE in Hickory (Catawba County); *Proposed Site 10* (330 acres)—within the 700-acre Conover West Business Park in Hickory (Catawba County); and, *Proposed Site 11* (311 acres, 11 parcels)—City of Newton industrial park, Newton (Catawba County). No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 10, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 24, 2001).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 521 East Morehead Street, Suite 435, Charlotte, NC 28202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: July 3, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–17373 Filed 7–10–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 31–2001]

Foreign-Trade Zone 171—Liberty County, Texas; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Liberty County Economic Development Corporation, grantee of FTZ 171, requesting authority to expand its zone in Liberty County, Texas, adjacent to the Houston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended, (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 3, 2001.

FTZ 171 was approved on January 4, 1991 (Board Order 501, 56 FR 1166, 1/11/91) and expanded on August 9, 1999 (Board Order 1049, 64 FR 46181, 8/24/99). The zone project currently consists of 5 sites (834 acres) in Liberty County: *Site* 1 (150 acres)—City of Cleveland's International Industrial Park on Highway FM 2025 west of U.S. Highway 59; *Site* 2 (50 acres) located between West Bay Road and FM 1405 within the western portion of the 15,000-acre Cedar Crossing Industrial Park in the City of Baytown (Chambers County) (expires 7/15/02); *Site* 3 (27 acres)—industrial park on the Trinity River some 2 miles south of U.S. Highway 90, City of Liberty; *Site* 4 (24 acres)—within the Cleveland Municipal Airport facility, Highway FM 787, Liberty County; and, *Site* 5 (583 acres)—Sjolander Plastics Storage Railyard facility, adjacent to Highway 146, approximately 2 miles south of Dayton (Liberty County).

The applicant is now requesting authority to expand existing Site 2 to include an additional 150 acres at the Cedar Crossing Industrial Park in Baytown. A temporary boundary modification was approved on March 16, 2001 (A(27f)–11–2001), removing the original Site 2 at the Port of Liberty County Industrial Park (45 acres) from zone status. The applicant is also requesting that the original Site 2 be restored to zone status and that the Cedar Crossing site be redesignated as Site 6 on a permanent basis. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 10, 2001). Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 24, 2001).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 500 Dallas, #1160, Houston, TX 77002

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: July 3, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–17374 Filed 7–10–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: We preliminarily determine that sales of certain helical spring lock washers from the People's Republic of China were made below normal value during the period October 1, 1999 through September 30, 2000. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 11, 2001.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Craig Matney, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3464 or 482–1778, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act. Unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Background

On October 19, 1993, the Department published the antidumping duty order on certain helical spring lock washers (HSLWs) from the People's Republic of China (PRC) (58 FR 53914). The Department notified interested parties of the opportunity to request an administrative review of this order on October 20, 2000 (65 FR 63057). The petitioner, Shakeproof Assembly Components Division of Illinois Tool Works, Inc., requested that the Department conduct an administrative review of Zhejiang Wanxin Group Co. Ltd. (ZWG), the predecessor firm to Hang Zhou Spring Washer Co., Ltd. (collectively Hangzhou), on October 31, 2000. The notice of initiation of this administrative review was published on November 30, 2000 (65 FR 71299).

On February 20 and 26, 2001, Hangzhou responded to the Department's January 5, 2001 questionnaire. The Department, on March 27, 2001, provided parties with an opportunity to submit information regarding appropriate surrogate values. On April 20, 2001, both petitioner and Hangzhou submitted surrogate value comments. The Department issued a supplemental questionnaire to Hangzhou on May 17, 2001. Hangzhou submitted its supplemental questionnaire response on June 5, 2001.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Order

The products covered by the order are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and, (3) provide a hardened

bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to the order are currently classifiable under subheading 7318.21.0030 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Review

This review covers the period October 1, 1999, through September 30, 2000.

Separate Rates Determination

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market economy countries (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and, (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or the financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and, (4) whether each exporter has autonomy from the government regarding the selection of management. (*See Silicon Carbide*, 59 FR at 22587 and *Sparklers*, 56 FR at 20589.)

In each of the previous administrative reviews of the antidumping duty order on HSLWs from the PRC, covering successive review periods from October 1, 1993 through September 30, 1999, we determined that Hangzhou and its predecessor, ZWG, merited a separate rate. We have found that the evidence on the record in this review also demonstrates an absence of government control, both in law and in fact, with respect to Hangzhou's export activities according to the criteria identified in *Sparklers*, and an absence of government control with respect to the additional criteria identified in *Silicon Carbide*. Therefore, we have assigned Hangzhou a separate rate.

Export Price

Because Hangzhou sold the subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States and constructed export price methodology is not otherwise indicated, we have used export price in accordance with section 772(a) of the Act.

We calculated export price based on the FOB price to unaffiliated purchasers. From this price, we deducted amounts for foreign inland freight, and brokerage and handling pursuant to section 772(c)(2)(A) of the Act. We valued these deductions using surrogate values. We selected India as the surrogate country for the reasons explained in the "Normal Value" section of this notice.

Normal Value

The Department has determined the PRC to be an NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC HSLW industry is a market-oriented industry (MOI) and, consequently, we have no basis to determine that the information in this review would permit the calculation of normal value (NV) using PRC prices or costs. Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Therefore, we calculated NV based on factors of production in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Under the factors-of-production (FOP) methodology, we are required to value the NME producer's inputs in a comparable market economy country that is a significant producer of comparable merchandise. We determined that India is at a comparable level of economic development to that of the PRC. (*See* Memorandum to Susan Kuhbach from Jeff May, dated March 22, 2001, "Seventh Administrative Review for Certain Helical Spring Lock Washers from the People's Republic of China," which is on file in the Central Records Unit—Public File.) Also, India is a significant producer of comparable merchandise. Therefore, for this review, we have used Indian prices to value the FOP except where a meaningful amount of the factor was purchased from a market economy supplier and paid for in a market economy currency.

We selected, where possible, publicly available values from India which were: (1) Average non-export values; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and, (4) tax-exclusive. We valued the factors of production as follows:

- A meaningful amount of the input carbon steel wire rod was purchased from the United Kingdom, a market economy supplier, and paid for in a market economy currency. Pursuant to 19 CFR 351.408(c)(1), we valued this factor using the price paid to the market economy supplier. Thus, for carbon steel wire rod values, we used the average cost per metric ton of carbon steel wire rod imported from the United Kingdom by Hangzhou during the POR. We made adjustments to account for the freight costs incurred between the port and Hangzhou.
- To value the scrap steel sold by Hangzhou, we used per kilogram values obtained from the *Monthly Statistics of the Foreign Trade of India—Imports* (*MSFTI*) as a by-product offset.
- To value the chemicals used in the production and plating process of HSLWs, we used per kilogram import values obtained from *MSFTI* and the Indian publication *Chemical Weekly*. We adjusted these values, where appropriate, to reflect inflation using the Wholesale Price Index (WPI) as reported in the *International Financial Statistics* published by the International Monetary Fund (IMF). We also adjusted these values to account for freight costs incurred between the supplier and Hangzhou.

• To value coal, we used a per kilogram value obtained from the *MFSTI*. We adjusted this value to reflect inflation using the WPI published by the IMF. We also made adjustments to account for freight costs incurred between the supplier and Hangzhou.

• To value electricity, we used the electricity price data from *Energy Data Directory and Yearbook (1999/2000)* published by the Tata Energy Research Institute. We adjusted the value to reflect inflation using the electricity sector-specific inflation index published in the *Reserve Bank of India (RBI) Bulletin*.

• To value water, we used the *Second Water Utilities Data Book for the Asian and Pacific Region* published by the Asian Development Bank in 1997. We adjusted the value to reflect inflation using the WPI published by the IMF.

• For labor, we used the regression-based wage rate for the PRC in "Expected Wages of Selected NME Countries," located on the Internet at *http://ia.ita.doc.gov/wages/*. Because of the variability of wage rates in countries with similar per capita gross domestic products (GDP), 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. The source for the regression wage rates is "Expected Wages of Selected NME Countries—1998 Income Data," *Year Book of Labour Statistics 1999*, International Labour Office, (Geneva: 1999).

• For factory overhead, selling, general, and administrative expenses (SG&A), and profit values, we used information from the January, 1997 *RBI Bulletin* for the Indian industry group "Processing and Manufacturing: Metals, Chemicals, and Products Thereof." From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (ML&E) costs, SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture), and the profit rate as a percentage of the cost of manufacture plus SG&A.

• For packing materials, we used the per kilogram values obtained from the *MFSTI*. Where necessary, we adjusted these values to reflect inflation using the WPI published by the IMF. We also made adjustments to account for freight costs incurred between the PRC supplier and Hangzhou.

• To value foreign brokerage and handling, we used information reported in the *New Shipper Review for Stainless Steel Wire Rod from India*, 66 FR 27629 (May 18, 2001). *See* Meltroll Engineering Pvt. Ltd."s submission dated September 12, 1999. We adjusted this value to reflect inflation using the WPI published by the IMF.

• To value truck freight, we used November 1999 price quotes which were obtained by the Department in India and used in the *Final Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000) (*Bulk Aspirin from the PRC*).

• To value rail freight, we used November 1999 rail freight price quotes obtained by the Department and used in *Bulk Aspirin from the PRC*.

• To value shipping freight, we used a rate reported to the Department in the August, 1993 cable from the U.S. Embassy in India which was submitted for and used in the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China*, 58 FR 48833 (September 20, 1993). We adjusted the rate to reflect inflation using the WPI published by the IMF.

For a complete description of the factor values used, *see* "Memorandum to File: Factor Values Used for the Preliminary Results of the Seventh Administrative Review," dated July 3, 2001 (Factors Memorandum) a public version of which is available in the Public File of the Central Records Unit in the main Commerce building.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Hang Zhou Spring Washer Co. Ltd./Zhejiang Wanxin Group Co., Ltd	10/1/99–9/30/00	9.99

Public Comment

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (see below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f)(3).

The Department will issue the final results of this administrative review within 120 days from the publication of these preliminary results.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of HSLWs from the PRC entered, or withdrawn from warehouse for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Hangzhou, which has a separate rate, the cash deposit rate will be the company-specific rate established in the final results of this administrative review; (2) for all other PRC exporters, the cash deposit rate will be the PRC rate, 128.63 percent, which is the All Other PRC Manufacturers, Producers and Exporters rate from the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the PRC*, 58 FR 48833 (September 20, 1993); and, (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 3, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17371 Filed 7–10–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Request for Nominations

AGENCY: National institute of standards and technology, Commerce.

ACTION: Request for nominations of members to serve on the Computer System Security and Privacy Advisory Board.

SUMMARY: NIST invites and requests nominations of individuals for appointment to the Computer System Security and Privacy Advisory Board (CSSPAB). The terms of some of the members will soon expire. NIST will consider nominations received in response to this notice for appointment to the Board, in addition to nominations already received.

DATES: Please submit nominations on or before August 15, 2001.

ADDRESSES: Please submit nominations to Dr. Fran Nielsen, CSSPAB Secretary, NIST, 100 Bureau Drive, M.S. 8930, Gaithersburg, MD 20899–8930. Nominations may also be submitted via fax to 301–948–2733: CSSPAB Nominations.

Additional information regarding the Board, including its charter and current membership list, may be found on its electronic home page at: http://csrc.nist.gov/csspab/.

FOR FURTHER INFORMATION CONTACT: Dr. Fran Nielsen, CSSPAB Secretary and Designated Federal Official, NIST, 100 Bureau Drive, M.S. 8930, Gaithersburg, MD 20899–8930; telephone 301–975–3669; telefax: 301–926–2733; or via email at fran.nielsen@nist.gov.

SUPPLEMENTARY INFORMATION:

I. CSSPAB Information

Objectives and Duties

The CSSPAB was chartered by the Department of Commerce pursuant to the Computer Security Act of 1987 (Pub. L. 100–235). The objectives and duties of the CSSPAB are:

1. The Board shall identify emerging managerial, technical, administrative, and physical safeguard issues relative to computer systems security and privacy.

2. The Board shall advise the National Institute of Standards and Technology (NIST) and the Secretary of Commerce on security and privacy issues pertaining to Federal computer systems.

3. To report its findings to the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the National Security Agency, and the appropriate committees of the Congress.

4. The Board will function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

Membership

The CSSPAB is comprised of twelve members, in addition to the Chairperson. The membership of the Board includes:

(1) Four members from outside the Federal Government eminent in the computer or telecommunications industry, at least one of whom is representative of small or medium sized companies in such industries;

(2) Four members from outside the Federal Government who are eminent in the fields of computer or telecommunications technology, or related disciplines, but who are not employed by or representative of a producer of computer or telecommunications equipment; and

(3) Four members from the Federal Government who have computer systems management experience, including experience in computer systems security and privacy, at least one of whom shall be from the National Security Agency.

Miscellaneous

Members of the CSSPAB are not paid for their service, but will, upon request, be allowed travel expenses in accordance with Subchapter I of Chapter 57 of Title 5, United States Code, while otherwise performing duties at the request of the Board Chairperson, while away from their homes or a regular place of business.

Meetings of the Board are two to three days in duration and are held quarterly. The meetings primarily take place in the Washington, DC metropolitan area, usually at the NIST headquarters in Gaithersburg, MD.

Board meetings are open to the public and members of the press usually attend. Members do not have access to classified or proprietary information in connection with their Board duties.

II. Nomination Information

Nominations are sought in all three categories described above, including a small business representative in the first category.

Nominees should have specific experience related to computer security or electronic privacy issues, particularly as they pertain to federal information technology. The category of membership for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination. Also include (where applicable) current or former service on federal advisory boards and federal employment. Each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the CSSPAB, and will actively participate in good faith in the tasks of the CSSPAB. Besides participation at meetings, it is desired that members be able to devote the equivalent of two days between meetings to developing draft issue papers, researching topics of potential interest, and so forth in furtherance of their Board duties.

Selection of CSSPAB members will not be limited to individuals who are nominated. Nominees must be U.S. citizens.

The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse CSSPAB membership.

Dated: July 5, 2001.

Karen H. Brown,

Acting Director, NIST.

[FR Doc. 01–17296 Filed 7–10–01; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 981028268–1130–04]

RIN 0693–ZA23

Announcing Proposed Changes to Federal Information Processing Standard (FIPS) 186–2, Digital Signature Standard (DSS), and Request for Comments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: The Secretary of Commerce approved FIPS 186–2, Digital Signature Standard, in January 2000. NIST proposes two minor changes to this standard to enable federal agencies to make a smooth transition to the

acquisition of equipment implementing the algorithms specified in the standard. These adjustments do not change the technical cryptographic signature algorithm specifications.

Before recommending these minor changes to FIPS 186–2 to the Secretary of Commerce for approval, NIST invites review and comments by the public, private sector, and government organizations.

DATES: Comments on these proposed changes to FIPS 186–2, Digital Signature Standard, must be received on or before August 10, 2001.

SPECIFICATIONS: FIPS 186–2, Digital Signature Standard, is available through the NIST Computer Security Resource Center web page: http://csrc.nist.gov/publications/fips/index.html. Text for the proposed changes is available at http://csrc.nist.gov/publications/drafts.html.

ADDRESSES: Comments on the proposed changes to FIPS 186–2 may be sent either electronically to FIPS 186@nist.gov or by regular mail to: Chief, Computer Security Division, Information Technology Laboratory, ATTN: Comments on Changes to FIPS 186–2 Digital Signature Standard, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Barker, (301) 975–2911, National Institute of Standards and Technology, 100 Bureau Drive, STOP 8930, Gaithersburg, MD 20899–8930.

SUPPLEMENTARY INFORMATION: In January 2000, the Secretary of Commerce approved FIPS 186–2, Digital Signature Standard (DSS). The standard adopts three techniques for the generation and verification of digital signatures. These are the Digital Signature Algorithm (DSA) and two techniques specified in industry standards (ANSI X9.31–1998, Digital Signatures Using Reversible Public Key Cryptography for the Financial Services Industry and ANSI 9.62, 1998 Public Key Cryptography for the Financial Services Industry: Elliptical Curve Digital Signature Algorithm). When the standard was approved, it provided for a transition period from July 2000 to July 2001 to enable federal agencies to continue to use their existing digital signature systems and to acquire additional equipment that might be needed to interoperate with these legacy digital signature systems. Several agencies have notified NIST that commercial equipment implementing another data formatting approach (as input to a signature algorithm) are more readily available and that the original implementation schedule should be extended.

Therefore, NIST is proposing that the Implementation Schedule of FIPS 186–2 be modified to extend the transition period for the acquisition of equipment implementing FIPS 186–2 from July 2001 to December 2002. This will enable agencies to continue to acquire commercial products based on a private sector data formatting approach PKCS #1, which does not interoperate with the data formatting approach specified in FIPS 186–2. NIST believes that using the PKCS #1 is robust and sufficiently strong for use by federal agencies. Also NIST proposes that the Applications section of FIPS 186–2 be modified to clarify that implementations of PKCS #1 (version 1.5 or higher) may be used during the transition period. These proposed adjustments do not change the technical cryptographic digital signature specifications (other than data formatting) for the standard.

Authority: Under Section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987 (Public Law 100–235), the Secretary of Commerce is authorized to approve standards and guidelines for the cost effective security and privacy of sensitive information processed by federal computer systems.

Executive Order 12866: This notice has been determined not to be significant for purposes of E.O. 12866.

Dated: July 5, 2001.

Karen H. Brown,

Acting Director, NIST.

[FR Doc. 01–17297 Filed 7–10–01; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 00–018US.
Title: Inorganic Non-metallic, Wire Bondable Top Surface Coating For Use In wire Bonding To Copper Metallization On Semiconductor Chips.
Abstract: The invention addresses the problem of electrically interconnecting copper metallized semiconductor ships to their packages with wire bonding. A thin, inorganic film is deposited such that it will break-up during the wire bonding process and be pushed aside. Selected film materials are compatible with and normally used for other purposes in wafer fabrication processing.

NIST Docket Number: 97–017C.
Title: Domain Engineered Ferroelectric Optical Radiation.
Abstract: The invention comprises a pyroelectric detector with significantly reduced microphonic noise sensitivity comprising a pyroelectric detector element constructed from a z-cut LiNBO3 electret. Selective domain reversal is accomplished in the electret by applying an electric field. Electrodes are attached to either surface of the electret spanning the domain reversed region and a portion of the original domain region to create areas of equal and opposite sensitivity. The detector is mounted in an electrically grounded container or housing. The detector may also be constructed having multiple detector regions to accommodate resonant frequencies of the electret or to function as a position sensor.

NIST Docket Number: 9–026US–Transfer.
Title: Modular Suspended Manipulator.
Abstract: A Cable-driven manipulator can precisely manipulate tools and loads using position, velocity and force control modes. The manipulator includes a plurality of cables (2 or more) that are independently controlled by modular, winch drive mechanisms and is coordinated to achieve intuitive manipulator movement in all sex degrees of freedom. The manipulator, consisting of modular sub-assemblies and components (*i.e.*, winch, amplifier, servo interface and sensory feedback), can be rapidly reconfigured to adjust to new applications. The winches can be controlled manually by a multi-axis joystick, or can be automatically controlled by computer. the invention has applications in supporting and manipulating tools and equipment for welding, painting and stripping involving large structures.

NIST Docket Number: 99–035US.
Title: Normal Metal Boundary Conditions For Multi-layer TES Detectors.

Abstract: Described herein are multiplayer transition-edge sensor (TES) having improved performance, a method for preparing them and methods of using them. Specifically, the improvement lies in providing normal metal strips along the edges of the superconducting and normal metal layers parallel to the current flow in the TES during operation. These strips (hereinafter referred to as "banks") provide for both improved detector performance and improved detector robustness against corrosion. This improvement is an important advance particularly for the TES-based microcalorimeter detector. The improved TESs also have many other applications based on the very precise thermometer function achieved by the TES.

Dated: July 5, 2001.

Karen H. Brown

Acting Director.

[FR Doc. 01–17295 Filed 7–10–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Notice 2]

National Fire Codes: Request for Proposals for Revision of Codes and Standards

AGENCY: National Institute of Standards and technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NEPA) proposes to revise some of its fire safety codes and standards and requests proposals from the public to amend existing or begin the process of developing new NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, at above address, and by phone (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit proposals, supported by written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Codes and Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before 5:00 PM local time on the closing date indicated would be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the code or standards.

At a later date, each NFPA Technical Committee will issue a report, which will include a copy of written proposals that have been received, and an account of the disposition of each proposal by the NFPA Committee as the Report on Proposals. Each person who has submitted a written proposal will receive a copy of the report.

Dated: July 5, 2001.

Karen Brown,

Acting Director.

NFPA No.	Title	Proposal closing date
NFPA 14–2000	Standard for the Installation of Standpipe, Private Hydrants, and Hose Systems	7/6/2001
NFPA 16–1999	Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems.	7/6/2001
NFPA 20–1999	Standard for the Installation of Stationary Pumps for Fire Protection	12/28/2001
NFPA 22–1998	Standard for Water Tanks for Private Fire Protection	7/6/2001
NFPA 30A–2000	Code for Motor Fuel Dispensing Facilities and Repair Garages	12/28/2001
NFPA 50A–1999	Standard for Gaseous Hydrogen Systems at Consumer Sites	6/28/2002
NFPA 50B–1999	Standard for Liquefied Hydrogen Systems at Consumer Sites	6/28/2002
NFPA 51B–1999	Standard for Fire Prevention During Welding, Cutting, and Other Hot Work	12/28/2001
NFPA 55–1998	Standard for the Storage, Use, and Handling of Compressed and Liquefied Gases in Portable Cylinders.	7/6/2001
NFPA 80–1999	Standard for Fire Doors and Fire Windows	8/1/2001
NFPA 85–2001	Boiler and Combustion Systems Hazards Code	6/28/2002
NFPA 86–1999	Standard for Ovens and Furnaces	12/28/2001
NFPA 86C–1999	Standard for Industrial Furnaces Using a Special Processing Atmosphere	12/28/2001
NFPA 88B–1997	Standard for Repair Garages	7/6/2001
NFPA 97–2000	Standard Glossary of Terms Relating to Chimneys, Vents, and Heat-Producing Appliances.	7/6/2001
NFPA 105–1999	Recommended Practice for the Installation of Smoke-Control Door Assemblies	7/6/2001
NFPA 123–1999	Standard for Fire Prevention and Control in Underground Bituminous Coal Mines	7/6/2001
NFPA 130–2000	Standard for Fixed Guideway Transit and Passenger Rail Systems	7/6/2001
NFPA 140–1999	Standard for Motion Picture and Television Production Studio Soundstages and Approved Production Facilities.	7/6/2001
NFPA 211–2000	Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances	7/6/2001
NFPA 225–P[1]	Standard for Manufactured Home Sites, Communities, and Setups	7/6/2001
NFPA 230–1999	Standard for the Fire Protection of Storage	7/6/2001
NFPA 252–1999	Standard Methods of Fire Tests of Door Assemblies	12/28/2001
NFPA 256–1998	Standard Methods of Fire Tests of Roof Coverings	7/6/2001
NFPA 259–1998	Standard Test Method for Potential Heat of Building Materials	7/6/2001

NFPA No.	Title	Proposal closing date
NFPA 260–1998	Standard Methods of Tests and Classification System for Cigarette Ignition Resistance of Components of Upholstered Furniture.	12/28/2001
NFPA 261–1998	Standard Method of Test for Determining Resistance of Mock-Up Upholstered Furniture Material Assemblies to Ignition by Smoldering Cigarettes.	12/28/2001
NFPA 272–1999	Standard Method of Test for Heat and Visible Smoke Release Rates for Upholstered Furniture Components or Composites and Mattresses Using an Oxygen Consumption Calorimeter.	7/6/2001
NFPA 285–1998	Standard Method of Test for the Evaluation of Flammability Characteristics of Exterior Non-Load-Bearing Wall Assemblies Containing Combustible Components Using the Intermediate-Scale, Multistory Test Apparatus.	12/28/2001
NFPA 295–1998	Standard for Wildfire Control	12/28/2001
NFPA 302–1998	Fire Protection Standard for Pleasure and Commercial Motor Craft	12/28/2001
NFPA 497–1997	Recommended Practice for the Classification of Flammable Liquids, Gases, or Vapors and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	7/6/2001
NFPA 499–1997	Recommend Practice for the Classification of Combustible Dusts and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	7/6/2001
NFPA 501–2000	Standard on Manufactured Housing	7/6/2001
NFPA 501A–2000	Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities.	7/6/2001
NFPA 551–P [1]	Guide for the Evaluation of Fire Risk Assessments	6/28/2002
NFPA 720–1998	Recommended Practice for the Installation of Carbon Monoxide (CO) and Fuel Gas Alarm Systems and Equipment.	7/6/2001
NFPA 750–2000	Standard on Water Mist Fire Protection Systems	7/6/2001
NFPA 801–1998	Standard for Fire Protection for Facilities Handling Radioactive Materials	7/6/2001
NFPA 1006–2000	Standard for Rescue Technician Professional Qualifications	7/6/2001
NFPA 1141–1998	Standard for Fire Protection in Planned Building Groups	12/28/2001
NFPA 1670–1999	Standard on Operations and Training for Technical Rescue Incidents	6/28/2002
NFPA 1901–1999	Standard for Automotive Fire Apparatus	9/28/2001
NFPA 1965–P [1]	Standard for Hose Connected Appliances	12/28/2001
NFPA 1977–1998	Standard on Protective Clothing and Equipment for Wildland Fire Fighting	12/31/2001

[1] Proposed NEW drafts are available form NFPA's Website—www.nfpa.org or may be obtained form NFPA's Codes and Standards Administration, 1 Batterymarch Park, Quincy, MA 02269.

[FR Doc. 01–17299 Filed 7–10–01; 8:45 am]
BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Notice 1]

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At both its November Meeting and its May Meeting, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports that will be presented at NFPA's 2002 May Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: The Building Code is published in a separate "Report on Proposals" and will be available on July 27, 2001. Comments received on or before October 5, 2001, will be considered by the Building Code Project before NFPA takes final action on the proposals.

Fifty-four reports are being published in the "2002 May Meeting Report on Proposals" and will be available on July 27, 2001. Comments received on or before October 5, 2001 will be considered by the respective NFPA Committees before final action is taken on the proposal.

ADDRESSES: The "2002 May Meeting Report on Proposals" and the "2002 Building Code Report on Proposals" are available and downloadable from NFPA's Website—www.nfpa.org or by requesting a copy from the NFPA, Fulfillment Center, 11 Tracy Drive, Avon, MA 02322. Comments on the report should be submitted to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, MA 02269–9101, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the **Federal Register** approve the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's November Meeting or the May Meeting each year. The NFPA invites public comment on its Reports on Proposals.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy,

Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 5, 2001, for the "2002 May Meeting Report on Proposals" and the "2002 Building Code Report on Proposals" will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 2002 May Meeting Report on Comments and the 2002 Building Code Report on Proposals by March 29, 2002, prior to the May Meeting.

A copy of the Report on Comments will be sent automatically to each commentator. Action on the reports of the Technical Committees (adoption or rejection) will be taken by NFPA members at the May Meeting, May 19–23, 2002 in Minneapolis, Minnesota.

Karen Brown,

Acting Director.

2002 MAY MEETING; REPORT ON PROPOSALS

[P=Partial revision; W=withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

Doc. No.	Title	Action
NFPA 10	Standard for Portable Fire Extinguishers	P
NFPA 11	Standard for Low-Expansion Foam	P
NFPA 11A	Standard for Medium- and High-Expansion Foam Systems	W
NFPA 13	Standard for the Installation of Sprinkler Systems	P
NFPA 13D	Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.	P
NFPA 13R	Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height.	P
NFPA 17	Standard for Dry Chemical Extinguishing Systems	P
NFPA 17A	Standard for Wet Chemical Extinguishing Systems	P
NFPA 24	Standard for the Installation of Private Fire Service Mains and Their Appurtenances	C
NFPA 30B	Code for the Manufacture and Storage of Aerosol Products	P
NFPA 42	Code for the Storage of Pyroxylin Plastic	R
NFPA 52	Compressed Natural Gas (CNG) Vehicular Fuel Systems Code	P
NFPA 54/ANSI Z223.1	National Fuel Gas Code	P
NFPA 57	Liquefied Natural Gas (LNG) Vehicular Fuel Systems Code	P
NFPA 61	Standard for the Prevention of Fires and Dust Explosions in Agricultural and Food Products Facilities	C
NFPA 69	Standard on Explosion Prevention Systems	C
NFPA 70B	Recommended Practice for Electrical Equipment Maintenance	P
NFPA 72	National Fire Alarm Code	P
NFPA 79	Electrical Standard for Industrial Machinery	C
NFPA 88A	Standard for Parking Structures	P
NFPA 90A	Standard for the Installation of Air-Conditioning and Ventilating Systems	P
NFPA 90B	Standard for the Installation of Warm Air Heating and Air-Conditioning Systems	P
NFPA 101B	Code for Means of Egress for Buildings and Structures	P
NFPA 170	Standard for Fire Safety Symbols	P
NFPA 232	Standard for the Protection of Records	P
NFPA 262	Standard Method of Test for Flame Travel and Smoke of Wires and Cables for Use in Air-Handling Spaces.	C
NFPA 265	Standard Methods of Fire Tests for Evaluating Room Fire Growth Contribution of Textile Wall Coverings.	C
NFPA 291	Recommended Practice for Fire Flow Testing and Marking of Hydrants	P
NFPA 299	Standard for Protection of Life and Property from Wildfire	C
NFPA 318	Standard for the Protection of Clean rooms	P
NFPA 395	Standard for the Storage of Flammable and Combustible Liquids at Farms and Isolated Sites	P
NFPA 402	Guide for Aircraft Rescue and Fire Fighting Operations	P
NFPA 415	Standard on Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways	P
NFPA 424	Guide for Airport/Community Emergency Planning	P
NFPA 481	Standard for the Protection, Processing, Handling, and Storage of Titanium	W
NFPA 482	Standard for the Production, Processing, Handling and Storage of Zirconium	W
NFPA 484	Standard for Combustible Metals, Metal Powders, and Metal Dusts	C
NFPA 485	Standard for the Storage, Handling, Processing, and Use of Lithium Metal	W
NFPA 490	Code for the Storage of Ammonium Nitrate	P
NFPA 505	Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operation.	P
NFPA 550	Guide to the Fire Safety Concepts Tree	P
NFPA 651	Standard for the Machining and Finishing of Aluminum and the Production and Handling of Aluminum Powders.	W
NFPA 664	Standard for the Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities	C
NFPA 1001	Standard for Fire Fighter Professional Qualifications	P
NFPA 1122	Code for Model Rocketry	C
NFPA 1124	Code for the Manufacture, Transportation, and Storage of Fireworks and Pyrotechnic Articles	C
NFPA 1127	Code for High Power Rocketry	C
NFPA 1221	Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems	C
NFPA 1521	Standard for Fire Department Safety Officer	R
NFPA 1911	Standard for Service Tests of Fire Pump Systems on Fire Apparatus	C
NFPA 1914	Standard for Testing Fire Department Aerial Devices	C
*NFPA 5000	NFPA Building Code	N

2002 MAY MEETING; REPORT ON PROPOSALS—Continued

[P=Partial revision; W=withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

Doc. No.	Title	Action
*	Appears in the A2002 Building Code Report on Proposals.	

[FR Doc. 01–17298 Filed 7–10–01; 8:45 am]
BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Call for Applications for Native Hawaiian Representative to the Coral Reef Ecosystem Reserve Council for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: On December 4, 2000, Executive Order 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). The Executive Order requires the Secretary of Commerce or his or her designee (hereafter Secretary) to establish a Coral Reef Ecosystem Reserve Council (Reserve Council) to provide advice and recommendations on the development of the Reserve Operations Plan and the designation and management of a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary. The Secretary, through the Office of National Marine Sanctuaries (ONMS), established the Reserve Council and is now seeking applicants for one Native Hawaiian representative seat on the Reserve Council. Previous applicants and current Alternate Council Representatives interested in serving as a full Council member must reapply specifically for this seat in order to be considered in the competitive pool.

DATES: Completed applications must be received by August 10, 2001.

ADDRESSES: Application kits may be obtained from Robert Smith or 'Aulani Wilhelm, Northwest Hawaiian Islands Coral Reef Ecosystem Reserve, National Ocean Service, P.O. Box 43, Hawaii National Park, Hawaii 96718–0043, or online at: http://hawaiireef.noaa.gov.

Completed applications should be sent to the same address as above.

FOR FURTHER INFORMATION CONTACT: 'Aulani Wilhelm at (808) 295–1234, or aulani.wilhelm@noaa.gov, or visit the web site at: http://hawaiireef.noaa.gov.

SUPPLEMENTARY INFORMATION: On December 4, 2000, Executive Order 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to language contained in the National Marine Sanctuaries Amendments Act of 2000. The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the seaward boundary of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent it extends beyond Hawaii State waters and submerged lands. The Reserve will be managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and the Executive Order. The Secretary has also initiated the process to designate the Reserve as a National Marine Sanctuary. The management principles and implementation strategy and requirements for the Reserve are found in the Executive Order, which is part of the application kit and can be found on the web site listed above.

In designating the Reserve, the Secretary of Commerce was directed to establish a Coral Reef Ecosystem Reserve Council, pursuant to section 315 of the National Marine Sanctuaries Act, to provide advice and recommendations on the development of the Reserve Operations Plan and the designation and management of a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary. The ONMS has established the Reserve Council and is now accepting applications from interested individuals to fill one vacant Native Hawaiian representative position on the Council. The Council is comprised of:

1. Three Native Hawaiian representatives, including one Native Hawaiian elder, with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.

2. Three representatives from the non-Federal science community with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:

A. Marine mammal science.

B. Coral reef ecology.

C. Native marine flora and fauna of the Hawaiian Islands.

D. Oceanography.

E. Any other scientific discipline the Secretary determines to be appropriate.

3. Three representatives from non-governmental wildlife/marine life, environmental, and/or conservation organizations.

4. One representative from the commercial fishing industry that conducts activities in the Northwestern Hawaiian Islands.

5. One representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands.

6. One representative from the ocean-related tourism industry.

7. One representative from the non-Federal community with experience in education and outreach regarding marine conservation issues.

8. One citizen-at-large representative.

The Reserve Council also includes one representative from the State of Hawaii (and an alternate as appropriate) as appointed by the Governor; the manager of the Hawaiian Islands Humpback Whale National Marine Sanctuary as a non-voting member; and one representative each, as non-voting members, from the Department of the Interior, Department of State, National Marine Fisheries Service, Marine Mammal Commission, U.S. Coast Guard, Department of Defense, National Science Foundation, National Ocean Service, and the Western Pacific Regional Fishery Management Council. The non-voting representatives and their alternates are chosen by the agencies and other entities which they represent on the Council. The charter for the Council can be found in the application kit, or on the web site listed above.

Selections to the Council will be made based upon candidates' particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; and philosophy regarding the

conservation and management of marine resources. Persons who are interested in applying for membership on the Council may obtain an application from either the person or website identified above. Completed applications must be sent to the address listed above and must be received by August 10, 2001.

Authority: 16 U.S.C. Section 1431 et seq.; Pub. L. 106–513.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 6, 2001.

Ted I. Lillestolen,

Deputy Assistant Administrator for Oceans and Coastal Zone Management.

[FR Doc. 01–17370 Filed 7–10–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070301D]

Endangered Fish and Wildlife; Draft Recovery Plan for the Western North Atlantic Right Whale

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comments.

SUMMARY: The draft Recovery Plan (Plan) for the western North Atlantic right whale (*Eubalaena glacialis*) is available for review and comment by interested parties prior to preparing the final plan for approval and adoption by NMFS.

DATES: Comments on the draft Plan must be received on or before September 10, 2001.

ADDRESSES: Comments should be addressed to Coordinator of Large Whale Recovery Activities, Marine Mammal Division, Office of Protected Resources (F/PR), 1315 East-West Highway, Silver Spring, MD 20910. A copy of the draft plan for the North Atlantic right whale is available upon request from F/PR, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Gregory K. Silber, Ph.D., NMFS, F/PR, 301/713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

The draft plans are also available through the internet at: http://www.nmfs.noaa.gov/prot—res/PR3/recovery.html.

Background

The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that NMFS develop and implement recovery plans for the conservation and survival of threatened and endangered species under its jurisdiction unless it is determined that such plans will not promote the conservation of the species. In 1991, NMFS issued the first recovery plan for northern right whales. NMFS, in consultation with key constituent groups and organizations, has prepared an updated draft plan for right whales in the North Atlantic ocean. The plan discusses the natural history, current status, and the known and potential human impacts to right whales. Actions needed to promote the recovery of this species are identified and discussed. A Final Recovery Plan will be used to direct U.S. activities, and to encourage international cooperation to promote the recovery of these endangered species.

Dated: July 6, 2001.

Wanda L. Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–17367 Filed 7–10–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 010410087–1131–02; I.D. 032901A]

RIN 0648–AO07

New England Fishery Management Council; Notice and Request for Sea Scallop Research Proposals; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications; correction.

SUMMARY: On May 29, 2001, NMFS published a notice in the **Federal Register** that provided information on the research total allowable catch (TAC) set-aside program authorized under Framework 14 to the Atlantic Sea Scallop Fishery Management Plan. The notice provided information on the submission process, eligibility criteria, proposal requirements and priorities, project evaluation, application deadlines and other requirements related to the TAC set-aside research program. One of the project funding priorities was inadvertently omitted. In addition, the document contains numerous typographical errors. This document corrects these errors.

DATES: May 29, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia M. Fiorelli, New England Fishery Management Council, (978) 465–0492, or Peter Christopher, NMFS, (978) 281–9288.

SUPPLEMENTARY INFORMATION: On May 11, 2001 (66 FR 24052), NMFS published a final rule implementing Framework 14 to the Atlantic Sea Scallop Fishery Management Plan. This framework implemented a system for allowing controlled scallop fishing in the Hudson Canyon and Virginia Beach Sea Scallop Access Areas. Framework 14 also implemented a TAC set-aside program to support sea scallop research projects. Under the program, certain limited access sea scallop vessels would be allowed to land scallops in excess of the possession limit, or take additional trips above those provided for in the program, and use the proceeds of the excess catch or additional trips to offset the costs of the research proposals submitted in response to the May 29 **Federal Register** notice.

The notice published on May 29, 2001 (66 FR 29090), contains errors. A number of words and phrases were combined (run together) without the appropriate spacing between the words. In addition, in Section J, Project Funding Priorities, Item 8 was inadvertently omitted. This document corrects these errors.

Correction

Accordingly, the publication on May 29, 2001, the Notice of Solicitation for Applications (66 FR 29090), which was the subject of document FR Doc. 01–13416, is corrected as follows:

1. On page 29092, under Section J, in the third column:

a. Second line of Item 4, insert a space between "each" and "limited" to read "each limited".

b. Second line of Item 5, insert a space between "reduce" and "discard" to read "reduce discard".

c. After Item 7, insert Item 8 to read as follows:

"8. Experimental designs with control areas using alternative management strategies, such as area licensing and rotational closures (projects should include an analysis of yield improvement, habitat impacts and social impacts, including conflict resolution across fisheries);"

d. Second line of Item 12, insert a space between "life" and "history" to read "life history".

2. On page 29092, under Section K, third column, second line of Item 3,

insert a space between "likely" and "to" to read "likely to".

3. On page 29093, under Section M, second column, second line of Item 2, insert a space between "Project" and "goals" to read "Project goals".

4. On page 29093, under Section M, second column, second line of Item 5, insert a space between "research" and "agreements," to read "research agreements,"

5. On page 29093, under Section N, in the third column:

a. Second line of Item 3, insert a space between "collection" and "and" to read "collection and".

b. Second line of Item 4, insert a space between "conclusions" and "presented" to read "conclusions presented".

c. Second line of Item 6, insert a space between "to" and "conduct" to read "to conduct".

d. Eleventh line of Item 6, insert a space between "index.htm/" and "under" to read "index.htm/ under".

6. On page 29093, under Section P, third column, the last line of Item 2, "selected" is corrected to read "selected."

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17368 Filed 7–10–01; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, July 19, 2001, 2 p.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *CPSC Vice Chairman:* The Commission will elect a Vice Chairman.
2. *FY 2003 Budget Request:* The staff will brief the Commission on issues related to the Commission's budget for fiscal year 2003.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: July 9, 2001.

Todd A. Stevenson,

Acting Secretary.

[FR Doc. 01–17500 Filed 7–9–01; 3:59 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness)

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 10, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy) (Military Personnel Policy)/Accession Policy, ATTN: Major Brenda Leong, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 695–5529.

Title, Associated Form, and OMB Control Number: "Request for Verification of Birth," DD Form 372, OMB Control Number: 0704–0006.

Needs and Uses: Title 10, USC 505, 3253, 5013, and 8253, require applicants meet minimum and maximum age and citizenship requirements for enlistment into the Armed Forces (including the Coast Guard). If an applicant is unable to provide a birth certificate, the recruiter will forward a DD Form 372, "Request for Verification of Birth," to a state or local agency requesting verification of the applicant's birth date. This verification of the birth date ensures that the applicant does not fall outside the age limitations, and that the applicants place of birth supports the citizenship status claimed by the applicant.

Affected Public: State, Local or Tribal Government.

Annual Burden Hours: 8,300.

Number of Respondents: 100,000.

Responses Per Respondent: 1.

Average Burden Per Response: .083 hours per respondent.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information provides the Armed Services with the exact birth date of an applicant. The DD Form 372 is the method of collecting and verifying birth data on applicants who are unable to provide a birth certificate from their city, county or state. The DoD Form is considered the official request for obtaining the birth data on applicants.

Dated: July 2, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–17259 Filed 7–10–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collections; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received September 10, 2001.

ADDRESSES: Written comments and recommendations on the information collection should be sent to TRICARE Management Activity—Aurora, Office of Program Requirement, 16401 E. Centretech Parkway, ATTN: Graham Kolb, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call TRICARE Management Activity, Office of Program Requirements at (303) 676–3580.

Title Associated With Form, and OMB Number: Health Insurance Claim Form, UB92, OMB Number 0720–0013.

Needs and Uses: This information collection requirement is necessary for a medical institution to claim benefits under the Defense Health Program, TRICARE, which includes the Civilian Health and Medical Program for the Uniform Services (CHAMPUS). The information collected will be used by TRICARE/CHAMPUS to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary received the care, and that the provider is authorized to receive TRICARE/CHAMPUS payments. The form will be used by TRICARE/CHAMPUS and it's contractors to determine the amount of benefits to be paid to TRICARE/CHAMPUS institutional providers.

Affected Public: Business or other for-profit; not-for-profit institutions.

Annual Burden Hours: 525,000.

Numbers of Respondents: 2,100,000 annually.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection instrument is for use by medical institutions filing for reimbursement with the Defense Health Program, TRICARE, which includes the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS). TRICARE/CHAMPUS is a health benefits entitlement program for the dependents of active duty members of the Uniformed Service, and deceased sponsors, retirees and their dependents, dependents of Department of Transportation (Coast Guard) sponsors, and certain North Atlantic Treaty Organization, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. Use of the UB–92 (also known as the HCFA 1450) continues TRICARE/CHAMPUS commitments to use the national standard claim form for reimbursement of medical services/supplies provided by institutional providers.

Dated: June 28, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–17262 Filed 7–10–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 232, Contract Financing, and Related Clause at DFARS 252.232–7007, Limitation of Government's Obligation; OMB Number 0704–0359.

Type of Request: Extension.

Number of Respondents: 800.

Responses Per Respondent: 1.

Annual Responses: 800.

Average Burden Per Response: 1 Hour.

Annual Burden Hours: 800.

Needs and Uses: This information collection requires contractors that are awarded incrementally funded, fixed-price DoD contracts to notify the Government when the work under the contract will, within 90 days, reach the point at which the amount payable by the Government (including any termination costs) approximates 85 percent of the funds currently allotted to the contract. This information will be used to determine what course of action the Government will take (e.g., allot additional funds for continued performance, terminate the contract, or terminate certain contract line items).

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Lewis W. Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD (Acquisition), Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written request for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 2, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–17260 Filed 7–10–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 215.8, Price Negotiation, and Related Clauses at 252.215; OMB Number 0704–0232.

Type of Request: Extension.

Number of Respondents: 310.

Responses Per Respondent: 0.45.

Annual Responses: 141.

Average Burden Per Response: 37.94 Hours.

Annual Burden Hours: 5,350.

Needs and Uses: DoD contracting officers need this information to negotiate an equitable adjustment in the total amount paid or to be paid under a fixed-price redeterminable or fixed-price incentive contract to reflect final subcontract prices; and to determine if a contractor has an adequate system for generating cost estimates, and monitor correction of any deficiencies.

Affected Public: Business or other for-profit; not-for-profit Institutions.

Frequency: On occasion.

Respondents Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Lewis W. Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD (Acquisition), Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 2, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–17261 Filed 7–10–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:30 a.m. to 4:00 p.m., August 14, 2001.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:30 a.m. Meeting—Board of Regents

(1) Approval of Minutes—May 18, 2001
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: July 5, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–17493 Filed 7–9–01; 3:45 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Office of Science; Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 2, 2001, 8:00 a.m. to 5:00 p.m., and Friday, August 3, 2001, 8:00 a.m. to 12:00 p.m.

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Sharon Long; Office of Basic Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–5565.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, August 2, 2001

- Welcome and Introduction.
- Remarks from Acting Director, Office of Science.
- News from Basic Energy Sciences.
- Spallation Neutron Source Update.
- Interagency Working Group on Neutron Science.
- Update on the Nanoscale Science Research Centers.
- National Science Foundation Nanoscale Science, Engineering, and Technology.
- Linac Coherent Light Source Update.

Friday, August 3, 2001

- Other Department of Energy Briefings.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301–903–6594 (fax) or *sharon.long@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW., Washington, DC 20585; between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on July 5, 2001.

Rachel Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 01–17301 Filed 7–10–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, July 24, 2001, 1:00 p.m.–5:00 p.m.

ADDRESSES: The Radisson Inn of Amarillo at Interstate 40 and Lakeside, The East Ballroom, Amarillo, TX.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120; phone (806) 477–3125; fax (806) 477–5896 or e-mail *jjohnson@pantex.gov*.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

1:00 Agenda Review/Approval of Minutes.
1:15 Co-Chair Comments.
1:30 Task Force/Subcommittee Reports.
2:00 Ex-Officio Reports.
2:15 Break.
2:30 Updates—Occurrence Reports—DOE.
3:00 Presentation (To Be Announced)/24 hr. information line: (806) 372–1945.

4:00 Questions, Public Questions/ Comments.

5:00 Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10:00 p.m. Monday through Thursday; 7:45 a.m. to 5:00 p.m. on Friday; 8:30 a.m. to 12:00 noon on Saturday; and 2:00 p.m. to 6:00 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 a.m. to 7:00 p.m. on Monday; 9:00 a.m. to 5:00 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on July 5, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–17300 Filed 7–10–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–467–000]

ANR Pipeline Company; Notice Tariff Filing

July 5, 2001.

Take notice that on June 29, 2001, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2001:

First Revised Sheet No. 0
Eleventh Revised Sheet No. 2
Sixth Revised Sheet No. 69
Ninth Revised Sheet No. 70
Sixth Revised Sheet No. 71
Sixth Revised Sheet No. 72
First Revised Sheet No. 75D
Second Revised Sheet No. 76
Third Revised Sheet No. 93
Original Sheet No. 93A
First Revised Sheet No. 99
Second Revised Sheet No. 100
Fourth Revised Sheet No. 116
Second Revised Sheet No. 148
Seventh Revised Sheet No. 161
Fifth Revised Sheet No. 188
Sixth Revised Sheet No. 191
Sheet Nos. 192–197

ANR states that the tariff sheets revise three sections of the Form of Agreement in ANR's tariff. ANR proposes to include a provision allowing shippers to change their maximum daily quantity to correspond to changes in Fuel Use Percentage. ANR also proposes to eliminate a provision relating to operational flow orders from both the Form of Agreement and the General Terms and Conditions (GT&C) of the tariff and move provisions relating to discounted rates to a new section in the GT&C.

ANR also proposes to make the following revisions to its GT&C: (1) Revise Sections 2.1, 2.4 and 21.2 relating to the deposit requirement for requests for service; (2) revise Section 2.1 to include a provision deeming contracts to be executed upon ANR's approval and the customer's nomination; (3) revise Section 18.7 to change the choice of law from Michigan to Texas; (4) revise Section 18.8 relating to changes in rules, orders or regulations which invalidate a term of service; (5) revise Section 21.2 relating to contractual obligations arising from capacity releases; (6) revise Section 30.2 to clarify that ANR can file either a negotiated rate agreement or a tariff sheet; and (7) update several tariff sheets to reflect the company's new address and appropriate department for receiving various notices.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17316 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–462–000]

Egan Hub Partners, L.P. Notice of Proposed Changes in FERC Gas Tariff

July 5, 2001.

Take notice that on June 27, 2001, Egan Hub Partners, L.P. (Egan Hub) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on the attached Appendix A to the filing, to be effective on August 1, 2001.

Egan Hub states that the purpose of this filing is to make certain housekeeping changes necessary to reflect the acquisition of Egan Hub by Duke Energy Gas Transmission. Egan Hub states that updated address and contact information for Egan Hub representatives, updated addresses for the Egan Hub Internet Web site, and an updated telephone number for obtaining information on access to the Internet Web site is being incorporated into the appropriate sections of the tariff. Egan Hub also states that the contents of Sheet No. 127 (GT&C Section 24, Gas Industry Standards) are being deleted because the complete and updated text of this section is contained on Sheet No. 94 within the General Terms and Conditions.

Egan Hub states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17325 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–322–001]

El Paso Natural Gas Company; Notice of Compliance Filing

July 5, 2001.

Take notice that on June 14, 2001, El Paso Natural Gas Company (El Paso) tendered tariff sheets to comply with order paragraph (E) of the Commission's February 9, 2000 order in this proceeding and, when approved by the Commission, to place into effect the revised Willcox Lateral Facilities Charge(s). The tariff sheets are proposed to become effective on July 15, 2001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations, on or before July 15, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202)208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17309 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–463–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

July 5, 2001.

Take notice that on June 28, 2001, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on the filing, to become effective July 30, 2001.

Gulf South filed the tariff sheets listed above to correct minor inconsistencies and to update certain provisions to clarify the tariff language. Gulf South also requested a waiver of certain requirements to allow Gulf South to serve interested parties using e-mail communications.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17322 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–465–000]

MIGC, Inc.; Notice of Tariff Filing

July 5, 2001.

Take notice that on June 29, 2001 MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 6, with a proposed effective date of August 1, 2001.

MIGC states that the purpose of the filing is to revise and update the fuel retention and loss percentage factors (FL&U factors) set forth in its FERC Gas Tariff, First Revised Volume No. 1 in accordance with the requirements of Section 25 of said tariff.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17315 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–466–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

July 5, 2001.

Take notice that on June 29, 2001, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective July 1, 2001:

Thirty Seventh Revised Sheet No. 9

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of $0.47 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17327 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2459–000]

New York Independent System Operator, Inc.; Notice of Filing

July 5, 2001.

Take notice that on June 29, 2001, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Market Administration and Control Area Services Tariff ("Services Tariff") to permit Capacity Limited Resources and Energy Limited Resources to incorporate more precise information about their upper operating limits in their bids.

The NYISO has served a copy of this filing upon all parties that have executed Service Agreements under the NYISO's Open Access Transmission Tariff and Services Tariff, as well as the New York State Public Service Commission, and the electric utility regulatory agencies in New Jersey and Pennsylvania.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 13, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at http://www.ferc.gov using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17329 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–223–005]

Northern Natural Gas Company; Notice of Compliance Filing

July 5, 2001.

Take notice that on June 29, 2001, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective on May 1, 2001 in compliance with the Commission's Order dated June 15, 2001:

Sub 1 Revised 55 Revised Sheet No. 51
Substitute Second Revised Sheet No. 125A
Substitute First Revised Sheet No. 125B
Substitute First Revised Sheet No. 125C
Substitute First Revised Sheet No. 125D
Substitute First Revised Sheet No. 125E
Substitute First Revised Sheet No. 125F
Substitute Third Revised Sheet No. 415

In addition, Northern submitted for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, 1 Revised 57 Revised Sheet No. 51 to be effective June 1, 2001 and 1 Revised 56 Revised Sheet No. 51 to be effective October 19, 2001.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically

via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17319 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–272–033]

Northern Natural Gas Company; Notice of Tariff Filing and Negotiated Rate

July 5, 2001.

Take notice that on June 29, 2001, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to become effective on July 1, 2001:

21 Revised Sheet No. 66
12 Revised Sheet No. 66A

Northern states that the above sheets are being filed to amend the negotiated rate transaction with WPS Energy Services, Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines. In addition, the transaction that has expired has been deleted.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17321 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–073]

Reliant Energy Gas Transmission Company; Notice of Tariff Filing and Negotiated Rate

July 5, 2001.

Take notice that on June 29, 2001, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective July 1, 2001:

First Revised Sheet No. 8T
First Revised Sheet No. 8U
First Revised Sheet No. 8U.01
Original Sheet No. 8AO

REGT states that the purpose of this filing is to reflect the revision of two existing negotiated rate contracts and the addition a new negotiated rate contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17320 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–473–000]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 5, 2001.

Take notice that on July 2, 2001 Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Attachment A to the filing, to become effective date of August 1, 2001.

On January 29, 2001 Starfish Pipeline Company, LLC (Starfish) purchased Stingray from Deepwater Holdings, L.L.C. (Deepwater). Starfish is equally owned by Shell Gas Transmission, LLC (SGT) and Enterprise Products Operating, L.P. Pursuant to a transition services agreement between the parties, an affiliate of Deepwater agreed to operate Stingray through July 31. Effective August 1, 2001, the Deepwater affiliate will no longer operate Stingray. The revised tariff sheets in Attachment A reflect the necessary modifications to accomplish the change in operator as more fully explained in the application.

Stingray states that a copy of this filing has been served upon its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for

assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17324 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–472–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

July 5, 2001.

Take notice that on June 29, 2001, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, revised tariff sheets listed on Appendix A to the filing to become effective August 1, 2001.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1. Texas Eastern states that Section 15.1 provides that Texas Eastern shall file to be effective each August 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers.

Texas Eastern states that the rate changes proposed to the primary firm capacity reservation charges, usage rates and 100% load factor average costs for full Access Area Boundary service from the Access Area Zone, East Louisiana, to the three market area zones are as follows:

Zone	Reservation	Usage	100% LE
Market 1	$(0.003)/dth	$0.0003/dth	$0.0002/dth
Market 2	(0.009)/dth	0.0010/dth	0.0007/dth
Market 3	(0.013)/dth	0.0014/dth	0.0010/dth

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17323 Filed 7–10–01; 8:45 am]

BILLING CODE 5717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–461–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

July 5, 2001.

Take notice that on June 28, 2001 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Twenty-First Revised Sheet No. 28. The attached tariff sheet is proposed to be effective June 1, 2001.

Transco states that the purpose of the instant filing is track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2.

Transco states that the filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff.

Included in Appendix B attached to the filing is the explanation and details regarding the computation of the Rate Schedule S–2 rate changes.

Transco states that copies of the filing are being mailed to each of its S–2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17326 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–469–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

July 5, 2001.

Take notice that on June 29, 2001, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets, listed on Appendix A to the filing, with an effective date of August 1, 2001.

Transco states that the instant filing is submitted pursuant to Section 39 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file to adjust its Great Plains Volumetric Surcharge (GPS) 30 days prior to each GPS Annual Period beginning August 1. The GPS Surcharge is designed to recover (i) The cost of gas purchased from Great Plains Gasification Associates (or its successor) which exceeds the Spot Index (as defined in Section 39 of the General Terms) and (ii) the related cost of transporting such gas.

Transco states that the revised GPS Surcharge included therein consists of two components—the Current GPS Surcharge calculated for the period August 1, 2001 through July 31, 2002 plus the Great Plains Deferred Account Surcharge (Deferred Surcharge). The determination of the Deferred Surcharge is based on the balance in the current GPS subaccount plus accumulated interest at April 30, 2001.

Transco states that included in Appendix B attached to the filing are workpapers supporting the calculation of the revised GPS Surcharge of $0.0158 per dt reflected on the tariff sheets included therein.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17328 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–470–000]

Trunkline LNG Company; Notice of Proposed Changes in FERC Gas Tariff

July 5, 2001.

Take notice that on June 29, 2001, Trunkline LNG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A, the following tariff sheet to be effective August 1, 2001:

Fifth Revised Sheet No. 5

Trunkline states that this filing is made in accordance with Section 19 (Fuel Reimbursement Adjustment) and Section 20 (Electric Power Cost Adjustment) of the General Terms and Conditions (GT&C) of TLNG's FERC Gas Tariff, Original Volume No. 1–A. The revised tariff sheets reflect a (0.24%) decrease to the currently effective fuel reimbursement percentage and a $0.0144 per Dt. increase for the electric power cost adjustment under Rate Schedules FTS and ITS.

TLNG states that copies of this filing are being served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17318 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–468–000]

West Texas Gas, Inc.; Notice of Gas Cost Reconciliation Report

July 5, 2001.

Take notice that on June 28, 2001, West Texas Gas, Inc. (WTG) submitted for filing, pursuant to Section 19 of the General Terms and Conditions of its FERC Gas Tariff its annual purchased gas cost reconciliation for the period ending April 30, 2001. Under Section 19, any difference between WTG's actual purchased gas costs and its spot market-based pricing mechanism is refunded or surcharged to its two jurisdictional customers annually, with interest. The report indicates that WTG undercollected its actual costs by $418,862 during the reporting period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 11, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference

Room. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17317 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–464–000]

Williston Basin Interstate Pipeline Company, Notice of Fuel Reimbursement Charge Filing

July 5, 2001.

Take notice that on June 29, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective August 1, 2001.

Williston Basin states the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant transportation, gathering, and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision, contained in Section 38 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17314 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–122–000, et al.]

Allegheny Energy Supply Lincoln Generating Facility, LLC, et al.; Electric Rate and Corporate Regulation Filings

July 2, 2001.

Take notice that the following filings have been made with the Commission:

1. Allegheny Energy Supply Lincoln Generating Facility, LLC, Allegheny Energy Supply Company, LLC, and Allegheny Energy Global Markets, LLC

[Docket No. EC01–122–000]

Take notice that on June 26, 2001, Allegheny Energy Supply Lincoln Generating Facility, LLC (Lincoln), Allegheny Energy Supply Company, LLC (AE Supply), and Allegheny Energy Global Markets, LLC (Global Markets), filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of an intra-corporate reorganization whereby AE Supply will transfer membership interests in Lincoln to Global Markets, its affiliate.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Spencer Station Generating Company, L.P.

[Docket No. EG01–248–000]

Take notice that on June 27, 2001, Spencer Station Generating Company, L.P. (Spencer), located at 7500 Old Georgetown Road, Bethesda, Maryland 20814–6161, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Spencer will own and/or operate two hydroelectric generating projects, located on the Elm Fork of the Trinity River, near the City of Denton, Texas, with a maximum combined output of 3.2 MW and a natural gas-fired generating station with a maximum output of 176 MW located in the City of Denton, Texas.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Boston Edison Company

[Docket No. ER99–35–005]

Take notice that on June 27, 2001, Boston Edison Company filed certain substitute rate schedule sheets to correct typographical errors in its First Revised Rate Schedule FERC No. 169, filed on April 26, 2001 in compliance with the Commission's order issued March 27, 2001 in this proceeding.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Community Energy, Inc.

[Docket No. ER01–1836–001]

Take notice that on June 25, 2001, Community Energy, Inc. (CEI) petitioned the Commission for acceptance of the amendment of the CEI Rate Schedule FERC No. 1 submitted on April 10, 2001; the granting of certain blanket approvals, including the authority to sell electricity at market-rates; and the waiver of certain Commission regulations.

CEI requested the rate schedule be effective July 1, 2001.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2421–000]

Take notice that on June 26, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 135 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply requests a waiver of notice requirements for an effective date of May 25, 2001 for service to Wisconsin Public Service Corporation. Confidential treatment of information in the Service Agreement has been requested. Copies have been provided to the Public Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State

Corporation Commission, the West Virginia Public Service Commission and all parties of record.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Services, Inc.

[Docket No. ER01–2422–000]

Take notice that on June 26, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), filed a Purchase Power Agreement between Southern Companies and Alabama Electric Cooperative, Inc. (AEC) under Southern Companies' Market-Based Rate Tariff, (FERC Electric Tariff, Second Revised Volume No. 4). Under this agreement, power will be delivered to six (6) delivery points of AEC.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER01–2423–000]

Take notice that on June 26, 2001, Public Service Company of New Mexico (PNM) submitted for filing an executed service agreement with the PNM Wholesale Power Marketing, under the terms of PNM's Open Access Transmission Tariff. The agreement is for long-term firm point-to-point transmission service from the San Juan Generating Station 345kV Switchyard to the Coronado Generating Station 500kV Switchyard. The effective date for the agreements is May 1, 2001, the date of the service agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to PNM Wholesale Power Marketing, PNM Transmission Development and Contracts, and to the New Mexico Public Regulation Commission.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Alliance Energy Services Partnership

[Docket No. ER01–2424–000]

Take notice that on June 26, 2001, Alliance Energy Services Partnership filed its Rate Schedule FERC No. 2 for purchases of electric energy and capacity from eligible independent power producers as more fully described in the filing. Alliance Energy Services Partnership requests an effective date of June 25, 2001.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Indeck-Rockford, L.L.C.

[Docket Nos. ER01–2425–000 and ER00–2069–001]

Take notice that on June 27, 2001, Indeck-Rockford, L.L.C. (Indeck-Rockford) tendered for filing a Notification of Change in Status and Application for Acceptance of a Revised FERC electric tariff and related Code of Conduct.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER01–2426–000]

Take notice that on June 26, 2001, Entergy Services, Inc., (Entergy) on behalf of Entergy Gulf States, Inc., tendered for filing a Long-Term Market Rate Sales Agreement between Entergy Gulf States, Inc. and Vinton Public Power Authority under Entergy Services, Inc.'s Rate Schedule SP. Entergy requests an effective date of June 1, 2001.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER01–2427–000]

Take notice that on June 26, 2001, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Transmission Service Agreements for NRG Power Marketing Inc., and Long-Term Firm Point-to-Point Transmission Service Agreement Specifications for AEPSC's Merchant Organization Power Marketing and Trading Division, American Municipal Power—Ohio, Consumers Energy Company, Constellation Power Source, Inc., and The Detroit Edison Company. All of these agreements are pursuant to the AEPCompanies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service on and after June 1, 2001.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER01–2428–000]

Take notice that on June 26, 2001, Entergy Services, Inc., (Entergy) on behalf of Entergy Gulf States, Inc., tendered for filing a Long-Term Market Rate Sales Agreement between Entergy Gulf States and City of Jasper, Texas under Entergy Services, Inc.'s Rate Schedule SP. Entergy requests an effective date of June 1, 2001.

Comment date: July 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. QST Energy Trading, Inc.

[Docket No. ER01–2430–000]

Take notice that QST Energy Trading, Inc. (QST Trading), 300 Liberty Street, Peoria, Illinois 61602, on June 26, 2001, tendered for filing a Notice of Cancellation of its FERC Electric Rate Schedule.

Copies of the filing were served on the Illinois Commerce Commission.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Indeck-Ilion Limited Partnership

[Docket No. ER01–2431–000]

Take notice that Indeck-Ilion Limited Partnership (Indeck-Ilion) tendered for filing an initial rate schedule and request for certain waivers and authorizations pursuant to Section 35.12 of the regulations of the Federal Energy Regulatory Commission (the Commission). The initial rate schedule provides for market-based sales to wholesale purchasers of the output of a 58 MW natural gas and No. 2 oil fueled power generation facility located near Ilion, New York. Indeck-Ilion requests that the Commission set an effective date for the rate schedule coincident with the closing of the transaction which is the subject of the Docket No. EC01–91–000 proceeding.

A copy of the filing was served upon the New York State Public Service Commission .

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. California Independent System Operator Corporation

[Docket No. ER01–2432–000]

Take notice that on June 27, 2001, the California Independent System Operator Corporation (ISO) tendered for filing Second Revised Service Agreement No. 172 Under ISO Rate Schedule No. 1,

which is a Participating Generator Agreement (PGA) between the ISO and Sierra Pacific Industries (Sierra Pacific). The ISO has revised the PGA to update the list of generating units listed in Schedule 1 of the PGA. The ISO requests that the agreement be made effective as of June 28, 2001.

The ISO states that this filing has been served upon all parties in Docket No. ER98–4273.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. California Independent System Operator Corporation

[Docket No. ER01–2433–000]

Take notice that on June 27, 2001, the California Independent System Operator Corporation (ISO) tendered for filing Second Revised Service Agreement No. 32 Under ISO Rate Schedule No. 1, which is a Participating Generator Agreement (PGA) between the ISO and Pacific Gas and Electric Company (PG&E). The ISO has revised the PGA to update the list of generating units listed in Schedule 1 of the PGA. The ISO requests that the agreement be made effective as of June 28, 2001.

The ISO states that this filing has been served upon all parties in Docket No. ER98–1002.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. California Independent System Operator Corporation

[Docket No. ER01–2434–000]

Take notice that on June 27, 2001, the California Independent System Operator Corporation (ISO) tendered for filing Second Revised Service Agreement No. 201 Under ISO Rate Schedule No. 1, which is a Participating Generator Agreement (PGA) between the California Independent System Operator Corporation (ISO) and Harbor Cogeneration Company (Harbor Cogeneration). The ISO has revised the PGA to update the list of generating units listed in Schedule 1 of the PGA. The ISO requests that the agreement be made effective as of June 28, 2001.

The ISO states that this filing has been served upon all parties in Docket No. ER99–1880.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. American Transmission Company LLC

[Docket No. ER01–2435–000]

Take notice that on June 27, 2001, American Transmission Company LLC (ATCLLC) tendered for filing proposed changes to its Open Access Transmission Tariff to create a fifth rate zone encompassing the Upper Peninsula Power Company (UPPCO) service area and begin implementation of the phase-in of the UPPCO rate to the ATCLLC system average rate. ATCLLC requests an effective date of June 29, 2001.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Ameren Services Company

[Docket No. ER01–2436–000]

Take notice that on June 27, 2001, Ameren Services Company (ASC) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and Ameren Energy, Inc. (customer). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to customer pursuant to Ameren's Open Access Transmission Tariff.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Summersville Hydroelectric Project

[Docket No. ER01–2438–000]

Take notice that on June 27, 2001, Gauley River Power Partners, L.P. on behalf of itself, the City of Summersville, West Virginia, and Noah Corp. (Applicants) tendered for filing with the Federal Energy Regulatory Commission revisions to the Summersville Hydroelectric Project FERC Rate Schedule No. 1, an Agreement for the Sale and Purchase of Electric Energy between Applicants and Appalachian Power Company (APCo) and for certain blanket authorizations and waivers of the Commission regulations. The proposed revisions extend the deadline for commercial operation of the Project, provides for the payment of liquidated damages for delays in commercial operations, reduces the term of the Agreement, and modifies the energy charges during years 21 through 26 of the Agreement. The proposed revisions are necessary due to delays in Project construction.

Copies of this filing were served on the Appalachian Power Company and the Public Service Commission of West Virginia.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Equitec Power, LLC

[Docket No. ER01–2439–000]

Take notice that on June 27, 2001, Equitec Power, LLC, (Equitec Power) petitioned the Commission for acceptance of Equitec Power Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Xcel Energy Services, Inc.

[Docket No. ER01–2440–000]

Take notice that on June 27, 2001, Xcel Energy Services, Inc. (XES), on behalf of Southwestern Public Service Company (Southwestern), submitted for filing a Transaction Agreement between Southwestern and West Texas Municipal Power Agency. XES requests that this agreement become effective on June 5, 2001.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. AES Medina Valley Cogen, L.L.C.

[Docket No.ER01–2441–000]

Take notice that AES Medina Valley Cogen, L.L.C. (AES Medina), 300 Liberty Street, Peoria, Illinois 61602, on June 27, 2001 tendered for filing with the Commission one service agreement with one new customer, Morgan Stanley Capital Group, Inc. Copies of the filing were served on the affected customer and the Illinois Commere Commission.

CILCO requested an effective date of May 25, 2001.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2442–000]

Take notice that on June 27, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 136 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of June 12, 2001 for MidAmerican Energy Company.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of June 12, 2001 for MidAmerican Energy Company.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17307 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2437–000, et al.]

Ameren Services Company, et al.; Electric Rate and Corporate Regulation Filings

July 3, 2001.

Take notice that the following filings have been made with the Commission:

1. Ameren Services Company

[Docket No. ER01–2437–000]

Take notice that on June 27, 2001, Ameren Services Company (ASC) tendered for filing a Network Integration Transmission Service Agreement between ASC and EnerStar Power Corporation. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to unbundled Illinois retail customers of EnerStar Power Corporation pursuant to Ameren's Open Access Tariff.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Sempra Energy Resources

[Docket No. ER01–2443–000]

Take notice that on June 28, 2001, Sempra Energy Resources (SER), tendered for filing Service Agreement No. 1 to its FERC Electric Rate Schedule No. 1, which authorized SER to make sales at market-based rates.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Tri-State Power, LLC

[Docket No. ER01–2444–000]

Take notice that on June 27, 2001, Tri-State Power, LLC (TSP) petitioned the Commission for acceptance of TSP Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. TSP intends to engage in wholesale electric power and energy sales as a marketer.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Michigan Electric Transmission Company

[Docket No. ER01–2445–000]

Take notice that on June 28, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing a First Revised Michigan Transco Electric Rate Schedule FERC No. 6. The revision eliminates periodic facilities charges, effective May 1, 2001. Michigan Transco requests an effective date of May 1, 2001, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Northern, the Michigan Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. PJM Interconnection, L.L.C.

[Docket No. ER01–2446–000]

Take notice that on June 28, 2001, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed umbrella service agreement for network integration transmission service under state required retail access programs for BP Energy Company (BP Energy).

Copies of this filing were served upon BP Energy and the state commissions within the PJM control area.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER01–2447–000]

Take notice that on June 28, 2001, New England Power Company (NEP) submitted for filing a service agreement between NEP and ANP Bellingham Energy Company, LLC (ANP) for network integration transmission service under NEP's FERC Electric Tariff, Second Revised Volume No. 9, Original Service Agreement No. 203.

Copies of the filing were served upon ANP and the Department of Telecommunications and Energy of the Commonwealth of Massachusetts.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Equitec Power, LLC

[Docket No. ER01–2439–000]

Take notice that on June 27, 2001, Equitec Power, LLC, (Equitec Power) petitioned the Commission for acceptance of Equitec Power Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment date: July 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Southwest Power Pool, Inc.

[Docket No. ER01–2448–000]

Take notice that on June 28, 2001, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm point-to-Point Transmission Service with Southwestern Public Service Marketing (Transmission Customer). SPP seeks an effective date of August 1, 2001 for this service agreement.

Copies of this filing was served on the Transmission Customer.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Golden Spread Electric Cooperative, Inc.

[Docket No. ER01–2449–000]

Take notice that on June 28, 2001, Golden Spread Electric Cooperative, Inc. (Golden Spread) tendered for filing a long-term Service Agreement between Golden Spread and South Plains Electric Cooperative, Inc. Golden Spread requests that the Commission accept

this filing as a service agreement under the Golden Spread's FERC Electric Tariff, Original Volume No. 1. Golden Spread requests an effective date of June 1, 2001. A copy of this filing has been served on South Plains.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. TXU Electric Company

[Docket No. ER01–2450–000]

Take notice that on June 28, 2001, TXU Electric Company (TXU Electric) tendered for filing executed transmission service agreements (TSAs) with El Paso Merchant Energy, L.P. (El Paso Energy) and AXIA Energy, L.P. (AXIA Energy) for certain transmission service transactions under TXU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Emmett Power Company

[Docket No. ER01–2451–000]

Take notice that on June 28, 2001, Emmett Power Company (EPC) tendered for filing a petition for acceptance of an initial rate schedule authorizing EPC to make wholesale sales of power at market-based rates, requests for waivers and blanket authority typically granted to market-based rate authorized entities, and a request for an effective date for its market-based rate authorization as of July 1, 2001.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER01–2452–000]

Take notice that on June 28, 2001, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing the Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company. The Company request an effective date of June 28, 2001.

Copies of the filing were served upon Topaz Energy Associates, LLC, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp

[Docket No. ER01–2453–000]

Take notice that PacifiCorp on June 28, 2001, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations a proposed change to its open access transmission tariff, PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff). The revision proposes to eliminate the use of the California ISO prices in calculating hour-to-hour deviations for financial settlement of energy imbalance and real power losses.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Exelon Generation Company, LLC

[Docket No. ER01–2454–000]

Take notice that on June 28, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted an amendment to a service agreement between Exelon Generation and PECO Energy Company under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff First Revised Volume No. 1.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. EWO Marketing, L.P.

[Docket No. ER01–2456–000]

Take notice that on June 28, 2001, EWO Marketing, L.P. submitted for filing a request for a limited, temporary waiver of the information sharing restriction of its code of conduct. The waiver is requested for the narrow purpose of allowing EWOM to participate in a corporate unbundling mandated by Texas law. Copies of this filing have been served on the Arkansas Public Service Commission, Mississippi Public Service Commission, Louisiana Public Service Commission, Public Utility Commission of Texas, and the Council of the City of New Orleans.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. PSEG Lawrenceburg Energy Company LLC

[Docket No. ER01–2460–000]

Take notice that on June 28, 2001, PSEG Lawrenceburg Energy Company LLC tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an Order accepting its FERC Electric Tariff, Original Volume No. 1. PSEG Lawrenceburg proposes that its FERC Electric Tariff, Original Volume No. 1. 1 become effective upon commencement of service of its generation project potentially totaling 1150 MW located in Dearborn County, Indiana (the Lawrenceburg Facility). The Lawrenceburg Facility is expected to be commercially operational in the spring of 2003.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Energy, Inc.

[Docket Nos. OA96–161–000, ER96–697–001, ER96–1456–001, and ER97–4468–000 (Consolidated)]

Take notice that on June 29, 2001, Puget Sound Energy, Inc. (PSE) tendered for filing a revised Open Access Transmission Tariff (OATT). The revised OATT implements the settlement of issues in the above-referenced dockets, including, but not limited to, segmentation and annual peak issues. PSE requests an effective date of June 29, 2001 for the filing.

A copy of the filing was served upon all parties in the above-referenced dockets.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. PSEG Waterford Energy LLC

[Docket No. ER01–2482–000]

Take notice that on June 28, 2001, PSEG Waterford Energy LLC tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an Order accepting its FERC Electric Tariff, Volume No. 1. PSEG Waterford proposes that its FERC Electric Tariff, Original Volume No. 1 become effective upon commencement of service of its generation project potentially totaling 850MW located in Washington County, Ohio (the Waterford Facility). The Waterford Facility is expected to be commercially operable in phases with the facility operating in single-cycle mode during the summer of 2002, and then in combined-cycle mode beginning in 2003.

PSEG Waterford intends to sell energy and capacity from the PSEG Waterford Facility in the wholesale power market at market-based rates, and on such terms and conditions to be mutually agreed to with the purchasing party.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. The Detroit Edison Company

[Docket Nos. EL01–51–003 and ER01–1649–003]

Take notice that on June 29, 2001, The Detroit Edison Company (Detroit Edison) tendered for filing with the Federal Energy Regulatory Commission

(Commission) a compliance filing in accordance with the Commission's order in Detroit Edison Company, 95 FERC ¶ 61,415 (2001).

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. MPC Generating, LLC

[Docket No. EG01–250–000]

Take notice that on June 28, 2001, MPC Generating, LLC (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The applicant is a limited liability company that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale. The applicant proposed to own and operate an approximately 155 megawatt gas-fired combustion turbine located in Monroe, Georgia. The applicant seeks a determination of its exempt wholesale generator status. All electric energy sold by the applicant will be sold exclusively at wholesale.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

21. DeSoto County Generating Company, LLC

[Docket No. EG01–251–000]

Take notice that on June 29, 2001, DeSoto County Generating Company, LLC (Applicant), 410 South Wilmington Street, Raleigh, NC 27602, tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The applicant is a limited liability company that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale. The applicant proposed to own and operate an approximately 380 megawatt gas-fired combustion turbine to be located in DeSoto County, Florida. The applicant seeks a determination of its exempt wholesale generator status. All electric energy sold by the applicant will be sold exclusively at wholesale.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

22. Central Maine Power Company

[Docket No. ER01–1795–001]

Take notice that on June 28, 2001, Central Maine Power Company (CMP) resubmitted for filing the First Amendment to the Interconnection Agreement by and between CMP and Boralex Athens Energy, Inc., conformed to the requirements of Order 614, and designated rate schedule FERC Electric Tariff, Fifth Revised, Volume No. 3, Service Agreement No. 35.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Cogentrix Lawrence County, LLC

[Docket No. ER01–1819–001]

Take notice that on June 28, 2001, Cogentrix Lawrence County, LLC (Lawrence County), an electric power developer organized under the laws of Delaware, filed a letter amending its petition for order accepting market-based rate tariff filed on April 18, 2001 in this proceeding.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Mid-Continent Area Power Pool

[Docket No. ER01–2189–000]

Take notice that on June 28, 2001, the Mid-Continent Area Power Pool (MAPP) filed to amend its May 31, 2001, filing in the above-referenced proceeding to withdraw long-term firm service agreements with Ameren Energy Marketing, Black Hills Power and Conoco Gas and Power Marketing.

A copy of this filing has been served on each individual designated on the Commission's service list in the above-captioned proceeding. MAPP has also mailed a copy of this filing to Ameren Energy Marketing, Black Hills Power and Conoco Gas and Power Marketing.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Mid-Continent Area Power Pool

[Docket No. ER01–2195–001]

Take notice that on June 28, 2001, Mid-Continent Area Power Pool (MAPP) submitted for filing a substitute sheet to its Settlement Tariff, filed on June 1, 2001, in the above-referenced docket. The substitute sheet reflects the correction of a technical error contained in the original version.

Copies of this filing have been served on those parties listed on the official service list in this proceeding and the state commissions in the MAPP region.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. Elwood Energy LLC, Elwood Energy II, LLC, Elwood Energy III, LLC, Dominion Energy, Inc., DGI Holdings, Inc., Dominion Elwood, Inc., Dominion Elwood II, Inc., Dominion Elwood III, Inc., Peoples Elwood, LLC, Peoples Elwood II, LLC, Peoples Elwood III, LLC

[Docket No. EC01–121–000]

Take notice that on June 22, 2001, Elwood Energy LLC, Elwood Energy II, LLC, Elwood Energy III, LLC (Project Entities), Dominion Energy, Inc., DGI Holdings, Inc., Dominion Elwood, Inc., Dominion Elwood II, Inc. and Dominion Elwood III, Inc. (collectively, Dominion Applicants), and Peoples Elwood, LLC, Peoples Elwood II, LLC and Peoples Elwood III, LLC (collectively, PEC Applicants) (Project Entities, Dominion Applicants and Peoples Applicants collectively, the Applicants) filed with the Federal Energy Regulatory Commission (Commission) a joint application (Application) pursuant to Section 203 of the Federal Power Act for authorization of mergers among the Project Entities with Elwood Energy LLC as the surviving entity and related transfers of jurisdictional facilities, and certain related mergers among the Dominion Applicants and among the PEC Applicants, who are upstream entities that own, directly or indirectly, interests in the Project Entities. All of the Project Entities are exempt wholesale generators that own natural gas-fired peaking generation facilities, limited interconnection facilities and Commission jurisdictional contracts. Elwood Energy, LLC, Elwood Energy II, LLC and Elwood Energy III, LLC own 600 MW, 300 MW and 450 MW, respectively, of natural gas-fired peaking generation facilities located in Elwood, Illinois. All of the Project Entities are owned directly or indirectly, 50 percent by the Dominion Applicants and 50 percent by the PEC Applicants. The Dominion Applicants are wholly-owned, direct or indirect subsidiaries of Dominion Resources, Inc. The PEC Applicants are wholly-owned, direct or indirect subsidiaries of Peoples Energy Corporation.

Comment date: July 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17308 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 77–110; California]

Pacific Gas and Electric Company; Notice of Application Tendered for Filing with the Commission and Soliciting Comments

July 5, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment to License Amendment Application.

b. *Project No.:* 77–110.

c. *Date filed:* June 14, 2001.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Potter Valley Hydroelectric Project.

f. *Location:* Eel River and East Fork Russian River, in Mendocino and Lake counties, California. The project is partially located within the Mendocino National Forest, on federal lands administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Ms. Rhonda Shiffman, Project Manager, Pacific Gas and Electric Company, P.O. Box 770000, Mail Code N11C, San Francisco, CA 94177, (415) 973–5852.

i. *FERC Contact:* John Mudre, E-mail address *john.mudre@ferc.fed.us,* or telephone (202) 219–1208.

j. *Deadline Date:* August 6, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission 888, First Street, NE., Washington DC 20426.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description:* On March 31, 1998, Pacific Gas and Electric Company (PG&E) filed an application to amend its license for the Potter Valley Hydroelectric Project in order to increase minimum flow releases to the Eel River to benefit anadromous salmonids therein. Commission staff subsequently prepared an Environmental Impact Statement to analyze the impacts of the proposed alternative and five other alternatives. The EIS recommended a proposal proposed by PG&E and the Potter Valley Irrigation District (PVID; the PG&E/PVID proposal) as the preferred alternative. Pursuant to Section 7 of the Endangered Species Act, Commission staff entered into formal consultation with the National Marine Fisheries Service (NMFS) on the effects of the proposed agency action on listed salmonids in the Eel and Russian rivers. The proposed modification of the PG&E/PVID proposal that is the subject of this notice was developed as a result of discussions among PG&E, NMFS, the California Department of Fish and Game, the U.S. Fish and Wildlife Service and others during the pendency of the formal consultation. The modifications to the proposal are intended to address concerns raised by the NMFS in their November 21, 2000, draft biological opinion.

Our preliminary analysis suggests that the scope of environmental impacts associated with this modified proposal would be within the range of effects of the alternatives considered in our May 2000 FEIS, in particular, between the PG&E/PVID alternative and the DOI/NMFS alternative. Should further review of the modified proposal confirm that finding, Commission staff would conduct no further NEPA review, finish ESA formal consultation, and present the matter to the Commission for decision.

To assist us in our review of the modified proposal, we are soliciting comments from resource agencies and other interested parties on the modified proposal. These comments will be considered in conjunction with our technical review of the modified proposal as we decide whether further NEPA analysis is warranted, and whether we should adopt the modified proposal as our proposed agency action.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on *http://rimsweb1.ferc.gov/rims* (call (202)208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

David P. Boergers,

Secretary.

[FR Doc. 01–17310 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Temporary Variance Request and Soliciting Comments, Motions to Intervene, and Protests

July 5, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request For Temporary Variance of Article 401.

b. *Project No.:* 2514–065.

c. *Date filed:* June 22, 2001.

d. *Applicant:* American Electric Power.

e. *Name of Project:* Byllesby-Buck Project.

f. *Location:* On the New, Carroll County, Virginia. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR § 4.200.

h. *Applicant Contact:* Frank M. Simms, American Electric Power, 1 Riverside Plaza, Columbus, OH 43215–2373, (614) 223–2918.

i. *FERC Contact:* Hillary Berlin, hillary.berlin@ferc.fed.us, 202–219–0038.

j. *Deadline for filing comments, motions to intervene and protest:* (August 11, 2001).

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (2514–065) on any comments or motions filed.

k. *Description of Application:* Article 401 currently requires the licensee to operate both project developments, Byllesby and Buck, within certain reservoir surface elevations. The licensee is planning maintenance work for the Byllesby development that would require operating between elevations 2070.0 feet and 2071.0 feet NGVD, approximately eight feet below the reservoir surface elevations allowed under article 401, for 60 days. The proposed work is intended to begin July 9, 2001 and September 7, 2001. The licensee filed an Applicant Prepared Environmental Assessment with this filing, which concludes that the proposed temporary lowering of the reservoir should have no significant impacts on environmental resources.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202) 208–2222 for assistance).

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17311 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

July 5, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12049–000.

c. *Date filed:* June 8, 2001.

d. *Applicant:* Ameren Development Company.

e. *Name and Location of Project:* The Church Mountain Project would be located on Taum Sauk Creek in Reynolds County, Missouri.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

g. *Applicant contact:* Mr. Thomas P. Callahan, One Ameren Plaza, 1901 Chouteau Avenue, P.O. Box 66149, St. Louis, MO 63166–6149, (314) 554–2218, fax (314) 554–3260.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the project number (P–12049–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed pumped storage project would consist of: (1) a proposed 12,350-foot-long, 90-foot-high upper reservoir dam located on Church Mountain, (2) a proposed 1,900-foot-long, 100-foot-high lower reservoir dam constructed across Taum Sauk Creek, (3) a proposed upper reservoir having a surface area of 130 acres, with a storage capacity of 10,250 acre-feet and a normal water surface elevation of 1,640 feet msl, (4) a proposed lower reservoir having a surface area of 400 acres, with storage capacity of 16,130 acre-feet and normal water surface elevation of 900 feet msl, (5) a proposed powerhouse having a total installed capacity of 770 MW, (6) a proposed one-quarter-mile-long, 345 kV transmission line; and (10) appurtenant facilities. The project would have an average annual generation of 1,500 GWh.

k. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202) 208–2222 for assistance).

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the

competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17312 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

July 5, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12051–000.

c. *Date Filed:* June 11, 2001.

d. *Applicant:* JDJ Energy Company.

e. *Name of Project:* Riverton Water Power Project.

f. *Location:* On Spring River, Shoal Creek, and Empire Lake, in Cherokee County, Kansas. No federal facilities or lands would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § § 791(a)–825(r).

h. *Applicant Contact:* Mr. Stewart Noland, 1405 N. Pierce, Suite 301, Little Rock, AR 72207 (501) 664–1552.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the Project Number (12051–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12046–000, Date Filed: June 4, 2001, Due Date: September 3, 2001.

l. *Description of Project:* The proposed project would consist of: (1) an existing concrete dam section (south abutment) approximately 25-feet high, 56-feet long; (2) an existing spillway section 267-feet long with five stop logs; (3) 2 existing water box sections each approximately 102-feet long, integral with 4 draft tubes; (4) an existing earth dam section (north abutment) approximately 10 feet high, 800 feet long, with 3-feet wide core and 10-feet high concrete core; (5) an existing auxiliary dam approximately 1100-feet long, 25-feet high that acts as a overflow spillway; (6) an existing 69-foot-long, 40-foot-high powerhouse integral with the dam housing 2 new 1,125 kW generating units for a total installed capacity of 2250 kW; (7) a new 150-foot-long, 13.8-kV transmission line; and (8) appurtenant facilities.

The project would have an annual generation of 9 GWh.

m. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202) 208–2222 for assistance). A copy is also available for

inspection and reproduction at the address in item h above.

n. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17313 Filed 7–10–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100172; FRL–6791–2]

Vistronix, Inc. and Labat-Anderson, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Vistronix, Inc. and its subcontractor, Labat-Anderson, Inc. in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Vistronix, Inc. and its subcontractor, Labat-Anderson, Inc., have been awarded a contract to perform work for OPP, and access to this information will enable Vistronix, Inc. and its subcontractor, Labat-Anderson, Inc., to fulfill the obligations of the contract.

DATES: Vistronix, Inc. and its subcontractor, Labat-Anderson, Inc., will be given access to this information on or before July 16, 2001.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under Contract No. 68–W0–1002/000, Vistronix, Inc. and its subcontractor, Labat-Anderson, Inc., will perform the following based on the statement of work:

The Information Services Branch (ISB) of the Information Resources and Services Division (IRSD) is responsible for providing records management guidance and support throughout OPP. ISB works closely with OPP managers and staff to develop program wide policies and procedures for managing OPP records, and to ensure program practices are consistent with Agency and Federal record keeping requirements.

To assist in this effort, ISB shall use contractor services to perform records management support services for OPP. Specifically, contractor services will be used to assist the conversion of paper records to electronic records. This record conversion project will also entail electronic file conversion and electronic file renaming projects. Contractor shall also support OPP in the processing of a backlog of pesticide incident reports, and other general records management tasks as needed. The contractor shall perform all work on site using government furnished equipment including OPP, Agency and off the shelf software applications.

The OPP has determined that access by Vistronix, Inc. and its subcontractor, Labat-Anderson, Inc., to information on

all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Vistronix, Inc. and its subcontractor, Labat-Anderson, Inc., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Vistronix, Inc. and its subcontractor, Labat-Anderson, Inc., are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Vistronix, Inc. and its subcontractor, Labat-Anderson, Inc., until the requirements in this document have been fully satisfied. Records of information provided to Vistronix, Inc. and its subcontractor, Labat-Anderson, Inc., will be maintained by EPA Project Officers for this contract. All information supplied to Vistronix, Inc. and its subcontractor, Labat-Anderson, Inc., by EPA for use in connection with this contract will be returned to EPA when Vistronix, Inc. and its subcontractor, Labat-Anderson, Inc., have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: June 26, 2001.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 01–17206 Filed 7–10–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7010–5]

Notice of Open Meeting; Environmental Financial Advisory Board; August 6–8, 2001

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board in San Francisco, California on August 6–7, 2001. The meeting will be held at the Bankers Club, Bank of America World Headquarters Building, Pacific Room. The Monday, August 6 session will run from 9 a.m. 5 p.m. and the Tuesday, August 7 session will begin at 8:30 a.m. and end at approximately 12 noon. The purpose of the August 6–7 meeting is to discuss progress with work products under EFAB's current strategic action agenda and to develop an action agenda to direct the Board's future activities. Environmental financing topics expected to be discussed include: Cost-Effective Environmental Management; Brownfields Redevelopment; International Environmental Financing; Environmental Stewardship; and Financing Water and Wastewater Infrastructure.

On Wednesday, August 8, EFAB is hosting a roundtable on Environmental Stewardship. For some time, EFAB has been considering economic incentives and financial mechanisms that encourage the adoption of sound environmental stewardship practices on private property. The Board will collect information and insights from a group of informed panelists who will share their perspectives on environmental stewardship. The roundtable will begin at 9 a.m. and end at approximately 4:30 p.m. The roundtable is being held at the EPA Region 9 Office, 75 Hawthorne Street, Strategy Room R–1809, 18th Floor, San Francisco, CA.

Both meetings are open to the public, but seating is limited. For further information, please contact Vanessa Bowie, EFAB Coordinator, U.S. EPA on (202) 564–5186.

Dated: July 3, 2001.

Joseph Dillon,

Comptroller.

[FR Doc. 01–17335 Filed 7–10–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7010–7]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2001 Annual Meeting of the Ozone Transport Commission. This meeting is for the Ozone Transport Commission to deal with appropriate matters within the Ozone Transport Region in the Northeast and Mid-Atlantic States, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on July 24, 2001 starting at 8:45 a.m. (DST).

ADDRESSES: The Hyatt Regency Newport, One Goat Island, Newport, Rhode Island, 02840; (401) 851–1234.

FOR FURTHER INFORMATION CONTACT: Judith M. Katz, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2100.

For Documents and Press Inquiries Contact: Ozone Transport Commission, 444 North Capitol Street NW., Suite 638,Washington, DC 20001; (202) 508–3840; e-mail: ozone@sso.org; website: http://www.sso.org/otc.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an "Ozone Transport Region" (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Ozone Transport Commission is to deal with ground level ozone formation, transport, and control within the OTR.

The purpose of this notice is to announce that this Commission will meet on July 24, 2001. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of the Ozone Transport Commission are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840 (by e-mail: ozone@sso.org or via our website at http://www.sso.org/otc) on Tuesday, July 17, 2001. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, including reduction of motor vehicle and stationary source air pollution. The OTC is also expected to address issues related to the transport of ozone into its region, including actions by EPA under Sections 110 of the Clean Air Act, and to discuss potential regional emission control measures.

Thomas C. Voltaggio,

Acting Regional Administrator, EPA Region III.

[FR Doc. 01–17338 Filed 7–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–7009–9]

New Source Review—90-Day Review and Report to the President

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: On Wednesday, June 27, 2001, EPA published two notices in the **Federal Register** addressing the Report to the President on the impacts of the New Source Review (NSR) permitting program on utility and refinery capacity, energy efficiency, and environmental protection. The first notice, at 66 FR 34183, was a notice of public meetings. The second notice, at 66 FR 34191, was a notice of availability and opportunity to comment on a background paper. The EPA is issuing this notice to make several corrections to those two notices. The corrections address: (1) Times for additional evening sessions at each of four public meetings, (2) an incorrect fax number for the public docket, and (3) a clarification that the NEPD group recommended, but did not direct, the 90-day review of NSR.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Ling, Office of the Director, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number 919–542–4729.

Corrections

1. In the **Federal Register** of June 27, 2001, in the Notice of Public Meeting, FR Doc. No. 01–16268, the language in the sentence that begins on page 34183 col. 3 and continues on page 34184 col. 1, "The National Energy Policy Development Group, under the direction of Vice President Richard Cheney, has directed EPA in consultation with the Secretary of Energy and other relevant agencies, to review * * *." is corrected to:

At the direction of the EPA Administrator, EPA, in consultation with the Secretary of Energy and other relevant agencies, is reviewing * * *

2. In the **Federal Register** of June 27, 2001, in the Notice of Public Meeting, FR Doc. No. 01–16268, on page 34184, in the first column, correct the **DATES** caption to read:

DATES: The public meeting dates are:

1. July 10, 2001, 9:30 a.m. to 4 p.m., and 6:30 p.m. to 7:30 p.m., Cincinnati, OH
2. July 12, 2001, 9:30 a.m. to 4 p.m. and 6:30 p.m. to 7:30 p.m., Sacramento, CA
3. July 17, 2001, 9:30 a.m. to 4 p.m. and 6:30 p.m. to 7:30 p.m., Boston, MA
4. July 20, 2001, 9:30 a.m. to 4 p.m. and 6:30 p.m. to 7:30 p.m., Baton Rouge, LA and correct the **ADDRESSES** caption immediately following to read:

ADDRESSES: The public meeting locations are:

1. Cincinnati-Day Session: Hyatt Regency (Regency Ballroom, Sections E and F), 151 West Fifth Street, Cincinnati, OH 45202; Evening Session: Omni Netherland Plaza, 35 West Fifth Street, Cincinnati, OH 45202.
2. Sacramento-Day Session: Red Lion Hotel, Sacramento (Martinique Ballroom), 1401 Arden Way Sacramento, CA 95815; Evening Session: Same as Day Session.
3. Boston-Day Session: DoubleTree Guest Suites Boston (Charles River Ballroom), 400 Soldiers Field Road, Boston, MA 02134; Evening Session: Same as Day Session.
4. Baton Rouge-Day Session: Holiday Inn South (The Grand Ballroom), 9940 Airline Highway, Baton Rouge, LA 70816; Evening Session: Same as Day Session.

3. In the **Federal Register** of June 27, 2001, in the Notice of Availability and Opportunity to Comment, FR Doc. No. 01–16267, the language in the sentence on page 34192 col. 1, "The National Energy Policy Development Group, under the direction of Vice President Richard Cheney, has directed EPA, in consultation with the Secretary of Energy and other relevant agencies, to review * * *." is corrected to:

At the direction of the EPA Administrator, EPA, in consultation with the Secretary of Energy and other relevant agencies, is reviewing * * *."

4. In the **Federal Register** of June 27, 2001, in the Notice of Availability and Opportunity to Comment, FR Doc. No. 01–16267, on page 34192, in the first column, under the **ADDRESSES** caption, correct the fax number for the Air and Radiation Docket and Information Center to: fax: (202) 260–4400.

SUPPLEMENTARY INFORMATION: On June 27, 2001, the Environmental Protection Agency published two notices in the Federal Register that deal with the Agency's review of the New Source Review permitting program to assess its impact on new utility and refinery generation capacity, energy efficiency, and environmental protection. The "Summary" sections of each of the notices incorrectly state that "The National Energy Policy Development Group, under the direction of Vice President Richard Cheney, has directed EPA, in consultation with the Secretary of Energy and other relevant agencies, to review the Agency's New Source Review (NSR) program, including administrative interpretation and implementation, and report to the President within 90 days on the impact of the regulations on investment in new utility and refinery generation capacity, energy efficiency, and environmental protection." Because the National Energy Policy Development Group does not have authority to issue direction to EPA, this document corrects the notices to indicate that this review is being done under the direction of the EPA Administration. The first and third corrections in this notice address this issue.

The second correction in this notice identifies additional hours for the public meetings on the EPA's review of NSR. In addition to the day sessions identified in the June 27 notice, there will also be evening sessions from 6:30 to 7:30 each evening in each of the four cities for which public meetings are scheduled. Locations are also provided for the evening sessions. The most current information about the public meetings is available on the Internet at the following address: http://www.epa.gov/air/nsr-review.

Finally, the fourth correction in this notice corrects an improperly reported fax number for use submitting comments to the Air and Radiation

Docket and Information Center. When submitting comments in any form, please specific docket number A–2001–19.

Dated: July 6, 2001.

Linda J. Fisher,

Deputy Administrator.

[FR Doc. 01–17334 Filed 7–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7010–4]

Divex Superfund Site Notice to Rescind Previous Federal Register Notice

AGENCY: Environmental Protection Agency.

ACTION: Notice to Rescind Previous Federal Register Notice.

SUMMARY: On June 25, 2001, the Environmental Protection Agency (EPA) published a Notice of Proposed Settlement for response cost incurred by the EPA at the Divex Superfund Site (site) located in Columbia, South Carolina. The purpose of this notice is to rescind EPA's June 25, 2001 **Federal Register** Notice at (66 FR 33684) regarding the settlement of response costs at the Site. The Notice of Proposed Settlement for the Site may be republished in the future following final approval of the settlement.

Date June 28, 2001.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 01–17337 Filed 7–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7009–4]

Public Water System Supervision Program Revision for the State of Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Mississippi is revising its approved Public Water System Supervision Program. Mississippi has adopted drinking water regulations requiring consumer confidence reports from all community water systems, revised its administrative penalty (AP) authority, and revised its definition of a public water system. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends on approving this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by August 10, 2001 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by August 10, 2001, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on August 10, 2001. Any request for a public hearing shall include the following information: (1) the name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing, and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Mississippi State Department of Health, Office of Environmental Health, Division of Water Supply, 570 E. Woodrow Wilson Blvd., Underwood Building, Suite 232, Jackson, Mississippi 39215–1700 or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Shaun McMullen, EPA Region 4, Drinking Water Section at the Atlanta address given above or at telephone (404) 562–9294.

Authority: (Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations).

Dated: June 8, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–17200 Filed 7–10–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 3, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 10, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0662.

Title: Section 21.930 Five year build-out requirements.

Form No.: n/a.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 450.

Estimated Hours Per Response: 4 hours (1 hour respondent, 3 hours consulting engineer).

Frequency of Response: on occasion.

Cost to Respondents: $202,500.

Estimated Total Annual Burden: 450.

Needs and Uses: A BTA authorization holder has a five-year build-out period, beginning on the date of the grant of the BTA authorization and terminating on the 5th year anniversary of the grant of the authorization, within which it may develop and expand MDS station operations within its service area. Section 21.930(c) requires the BTA holder to file with the Commission a demonstration that the holder has met construction requirements. This demonstration must be filed sixty days prior to the end of the five year build-out period. On June 14, 2001, the Commission's Mass Media Bureau adopted a Memorandum Opinion and Order in MM Docket No. 01–109 which extended the five year build out requirement set forth in Section 21.930 by two years. Thus, the first filings will not occur until FY 2003. The certification of completion of construction (FCC 304-A) required by Section 21.930(a)(3) has separate OMB approval under control number 3060–0664.) The data is used by FCC staff to determine if the BTA holder has met its construction requirements and to ensure that service is promptly delivered to the public. The Commission will issue a declaration that the holder has met the construction requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–17398 Filed 7–10–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2493]

Petitions for Reconsideration Clarification of Action in Rulemaking Proceeding

July 2, 2001.

Petitions for Reconsideration Clarification have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by July 26, 2001. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of 2000 Biennial Regulatory Review—Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers (CC Docket No. 00–257).

Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers (CC Docket No. 94–129).

Number of Petitions Filed: 4.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–17256 Filed 7–10–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2494]

Petitions for Reconsideration of Action in Rulemaking Proceeding

July 5, 2001.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by July 26, 2001. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of FM Table of Allotments (MM Docket No. 98–159).

Number of Petitions Filed: 1.

Subject: Amendment of FM Table of Allotments (MM Docket No. 01–33).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–17257 Filed 7–10–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 25, 2001.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Mark George Mulloy, Humble, Texas, and Othello Oscar Hare, Jr., Houston, Teas; to acquire shares and voting shares of Crosby Bancshares, Inc., Crosby, Texas, and thereby indirectly acquire voting shares of Crosby State Bank, Crosby, Texas.

Board of Governors of the Federal Reserve System, July 5, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–17265 Filed 7–10–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the

nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 3, 2001.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Douglas County Bancshares, Inc., Alexandria, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Neighborhood National Bank, Alexandria, Minnesota.

Board of Governors of the Federal Reserve System, July 5, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–17263 Filed 7–10–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 01-15731) published on page 33543 of the issue for Friday, June 22, 2001.

Under the Federal Reserve Bank of Minneapolis heading, the entry for First Western Bancorp., Inc., Huron, South Dakota, is revised to read as follows:

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. First Western Bancorp, Inc.,Huron, South Dakota; to acquire 74.8 percent of the voting shares American Bank Shares, Inc., Rapid City, South Dakota, and thereby indirectly acquire American State Bank of Rapid City, Rapid City, South Dakota.

Comments on this application must be received by July 19, 2001.

Board of Governors of the Federal Reserve System, July 5, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–17264 Filed 7–10–01; 8:45 am]

BILLING CODE 6210–01–S

GENERAL ACCOUNTING OFFICE

Commercial Activities Panel Hearings

AGENCY: General Accounting Office.

ACTION: Notice of public hearings.

SUMMARY: Section 832 of the National Defense Authorization Act for Fiscal Year 2001 requires the Comptroller General of the United States to convene a panel of experts to study the transfer of commercial activities currently performed by government employees to federal contractors, a procedure commonly known as "contracting out" or "outsourcing." This notice announces two public hearings to be held by the Commercial Activities Panel ("the Panel").

DATES: The Commercial Activities Panel will hold a public hearing in Indianapolis, Indiana, on August 8, 2001, beginning at 8:30 a.m. in the University Place Conference Center and Hotel at Indiana University-Purdue University Indianapolis. Another hearing will be held on August 15 beginning at 8:30 a.m. in the Fiesta Ballroom of the Lackland Gateway Club at Lackland Air Force Base in San Antonio, Texas. Individuals or groups wishing to attend or participate in either of the hearings should notify the Panel and submit written summaries of their statements by July 25 for the Indianapolis hearing and by August 1 for the San Antonio hearing.

ADDRESSES: Submit requests to attend or participate in the hearings, written summaries of oral statements, and any other relevant materials via E-mail to *A76panel@gao.gov*.

FOR FURTHER INFORMATION CONTACT: Debra McKinney at (202) 512–8517 or *McKinneyD@gao.gov* regarding the Indianapolis, Indiana, hearing; and Marilyn Wasleski at (202) 512–8436 or *WasleskiM@gao.gov* regarding the San Antonio, Texas, hearing.

SUPPLEMENTARY INFORMATION: Section 832 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law 106–398, Oct. 30, 2000, directs the Comptroller General of the United States to convene a panel of experts to study the policies and procedures governing the transfer of commercial activities for the federal government from government personnel to a federal contractor. The Panel's study is to include a review of: (1) Procedures for determining whether functions should continue to be performed by government personnel; (2) procedures for comparing the costs of performing functions by government personnel with the costs of performing those functions by federal contractors; (3) implementation by the Department of Defense of the Federal Activities Inventory Reform (FAIR) Act of 1998 (Pub. L. 105–270, 112 Stat. 2382, 31 U.S.C. 501 note); and (4) procedures of the Department of Defense for public-private competitions under Office of Management and Budget (OMB) Circular A–76. Formation of the Panel was announced in the **Federal Register** on April 17, 2001 (66 FR 19786). By May 1, 2002, the Comptroller General must submit to Congress a report of the Panel on the results of the study, including recommended changes with regard to implementing policies and enactment of legislation.

During the course of its work, the Panel will hold several public hearings. Interested parties are invited to attend these hearings to provide their perspectives on sourcing issues. On June 11, 2001, the GAO held its first public hearing, which focused on the principles and policies underlying outsourcing. The second public hearing will be held on August 8, 2001, beginning at 8:30 a.m. in the University Place Conference Center and Hotel on the Indiana University-Purdue University Indianapolis Campus, 850 West Michigan Street, Indianapolis, Indiana. The focus of this hearing will be on alternatives to the current outsourcing processes. The third hearing will be held on August 15 beginning at 8:30 a.m. in the Fiesta Ballroom of the Lackland Gateway Club, Building 2490, on Kenly Avenue at Lackland Air Force Base, San Antonio, Texas. This hearing will address current processes, such as OMB Circular A–76, public-private competitions, and the FAIR Act.

Any party who would like to attend either of the August hearings or make a presentation should contact the following E-mail address: *A76panel@gao.gov*. Those who wish to make presentations at either hearing should submit written summaries of their oral statements via the same E-mail address. These summaries must be received in our Office by July 25, 2001, for the Indianapolis hearing and by August 1, 2001, for the San Antonio hearing. The Panel will attempt to accommodate all interested parties who respond before these deadlines. Presenters must be prepared to limit their oral statements to 3 to 5 minutes. Interested parties who would like to make electronic presentations during the hearings must indicate their desire to do so by the July 25 deadline for the Indianapolis hearing and by the August 1 deadline for the San Antonio hearing. If time permits, individuals with no

prepared statements will be given the opportunity to speak, but the Panel may not be able to accommodate all such requests. Any individual who would like to attend the hearing at Lackland Air Force Base must present at any of its gates on the hearing date: (1) A picture identification (such as a driver's license), and (2) proof of automobile insurance, if driving a vehicle. The gate located closest to the Lackland Gateway Club is the Luke East Gate on Military Drive, which intersects U.S. Highway 90. More detailed guidance on hearing procedures will be provided to presenters by E-mail in advance of the hearings. Any interested party may submit full statements for inclusion in the hearing records by 5:30 p.m. on August 22. The hearings will be transcribed.

Further information, including hearing transcripts and copies of statements by all presenters, will be available on the GAO website, *www.gao.gov*, by clicking on "Commercial Activities Panel."

Jack L. Brock, Jr.,

Managing Director, Acquisition and Sourcing Management, General Accounting Office.

[FR Doc. 01–17270 Filed 7–10–01; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0267]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on certain general medical device labeling provisions.

DATES: Submit written or electronic comments on the collection of information by September 10, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Device Labeling—21 CFR Parts 800, 801, and 809

Section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352), among other things, establishes requirements that the label or labeling of a medical device must meet so that it is not misbranded and subject to regulatory action. Certain of the provisions of section 502 of the act require that manufacturers, importers, and distributors of medical devices disclose information about themselves or their devices on the labels or labeling of the devices. Section 502(b) of the act requires that, if the device is in a package, the label must contain the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents. Section 502(f) of the act provides that the labeling of a device must contain adequate directions for use. FDA may grant an exemption from the adequate directions for use requirement, if FDA determines that adequate directions for use are not necessary for the protection of the public health.

FDA regulations in parts 800, 801, and 809 (21 CFR parts 800, 801, and 809) require manufacturers, importers, and distributors of medical devices to disclose to health professionals and consumers specific information about themselves or their devices on the label or labeling of their devices. FDA issued these regulations under the authority of sections 201, 301, 502, and 701 of the act (21 U.S.C. 321, 331, 352, and 371). Most of the regulations in parts 800, 801, and 809 derive from the requirements of section 502 of the act, which provides, in part, that a device shall be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the device, is false or misleading in any particular, or fails to contain adequate directions for use.

Sections 800.10(a)(3) and 800.12(c) require that the label of contact lens cleaning solutions contain a prominent statement alerting consumers to the tamper-resistant feature required by § 800.12.

Section 800.10(b)(2) requires that the labeling of liquid ophthalmic preparations packed in multiple-dose containers include information as to duration of use and necessary warnings to afford adequate protection from contamination during use.

Section 801.1 requires that the label of a device in package form contain the name and place of business of the manufacturer, packer, or distributor.

Section 801.5 requires that the labeling of devices include directions under which the layman can use a device safely and for the purposes for which it is intended. Section 801.4 defines intended use. Where necessary, the labeling should include: (1) Statements of all conditions, purposes, or uses for which the device is intended, unless the device is a prescription device subject to the requirements of

§ 801.109; (2) quantity of dose; (3) frequency of administration or application; (4) duration of administration or application; (5) time of administration, e.g., in relation to meals, onset of symptoms, etc.; (6) route of method or application; and (7) preparation for use.

Section 801.61 requires that the principal display panel of an over-the-counter device in package form must include a statement of the identity of the device. The statement of the identity of the device must include the common name of the device followed by an accurate statement of the principal intended actions of the device.

Section 801.62 requires that the label of an over-the-counter device in package form must include a declaration of the net quantity of contents. The label must express the net quantity in terms of weight, measure, numerical count, or a combination of numerical count and weight, measure, or size.

Section 801.109 establishes labeling requirements for prescription devices. A prescription device is defined as a device which, because of its potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to use the device and, therefore, for which adequate directions for use by a lay person cannot be developed.

Labeling must include information for use, including indications, effects, routes, methods, and frequency and duration of administration, and any relevant hazards, contraindications, side effects, and precautions under which practitioners licensed by law to administer the device can use the device safely and for the purpose which it is intended, including all purposes for which it is advertised or represented.

Section 801.110 establishes a labeling requirement for a prescription device delivered to the ultimate purchaser or user upon the prescription of a licensed practitioner. The device must be accompanied by labeling bearing the name and address of the licensed practitioner and the directions for use and cautionary statements, if any, contained in the order.

Section 801.405 establishes labeling requirements for articles intended for lay use in repairing and refitting dentures.

Section 809.10(a) and (b) provide labeling requirements for in vitro diagnostic products including the label and a package insert.

These estimates are based on FDA's registration and listing database for medical device establishments, agency communications with industry, and FDA's knowledge of and experience with device labeling. We have not estimated a burden for those requirements where the information to be disclosed is information that has been supplied by FDA. Also, we have not estimated a burden for that information that is disclosed to third parties as a usual and customary part of a medical device manufacturer, distributor, or importer's normal business activities. We do not include any burden for time that is spent designing labels to improve the format or presentation.

From its registration and listing databases, FDA has determined that there are approximately 20,000 registered device establishments. About 2,000 of these are distributing over-the-counter devices. About 18,000 are distributing prescription devices. About 1,700 establishments are distributing in vitro diagnostic products.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
800.10(a)(3) and 800.12(c)	4	10	40	1	40
800.10(b)(2)	4	10	40	40	1,600
801.1	20,000	3.5	70,000	0.1	7,000
801.5	2,000	3.5	7,000	22.35	156,450
801.61	1,000	3.5	3,500	1	3,500
801.62	200	5	1,000	1	1,000
801.109	18,000	3.5	63,000	17.77	1,119,510
801.110	10,000	50	500,000	0.25	125,000
801.405(b)	40	1	40	4	160
801.420(c)	40	5	200	40	8,000
801.421(b)	10,000	160	1,600,000	0.30	480,000
801.421(c)	10,000	5	49,500	0.17	8,500
801.435	45	1	45	96	4,320
809.10(a) and (b)	1,700	6	10,200	80	816,000
809.10(d)	300	2	600	40	24,000
809.10(e)	300	25	7,500	1	7,500
809.10(f)	20	1	20	100	2,000
809.30(d)	300	25	7,500	1	7,500
Total Hours					2,772,080

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
801.410(f)	30	769,000	23,070,000	0.0008	19,225
801.421(d)	10,000	160	1,600,000	0.25	400,000

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Total Hours					419,225

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 29, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17406 Filed 7–10–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1534]

Agency Information Collection Activities; Announcement of OMB Approval; Year 2001 Updates of a National Survey of Prescription Drug Information Provided to Patients

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Year 2001 Updates of a National Survey of Prescription Drug Information Provided to Patients" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 6, 2000 (65 FR 59849), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0279. The approval expires on June 30, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 3, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17253 Filed 7–10–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0263]

Heinold Feeds, Inc.; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADAs) listed below. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to remove portions reflecting approval of the NADAs because the products are no longer manufactured or marketed.

DATES: Withdrawal of approval is effective July 23, 2001.

FOR FURTHER INFORMATION CONTACT: Pamela K. Esposito, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5593.

SUPPLEMENTARY INFORMATION: Heinold Feeds, Inc., P.O. Box 377, Kouts, IN 46347, has requested that FDA withdraw approval of NADA 95–628 for Tylosin® Antibiotic Premix and NADA 127–506 for Tylan® Sulfa-G Premixes because the products are no longer manufactured or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADAs 95–628 and 127–506, and all supplements and amendments thereto, is hereby withdrawn, effective July 23, 2001.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of these NADAs.

Dated: July 2, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–17408 Filed 7–10–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1341]

"Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier" dated July 2001. The guidance document is intended to assist manufacturers of Source Plasma who wish to participate in the Center for Biologics Evaluation and Research (CBER) pilot program for Red Blood Cell immunization. The pilot program would allow a licensed manufacturer of Source Plasma to self-certify conformance to specific criteria and recommendations described by CBER in the guidance document in lieu of submission of a detailed biologics license application supplement filing. The guidance document announced in this notice finalizes the draft guidance document entitled "Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier" dated June 2000.

DATES: Submit written comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the

Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier" dated July 2001. The guidance document is intended to assist those applicants who qualify and wish to participate in CBER's Red Blood Cells Immunization Program (RBCIP) pilot. A manufacturer is qualified if it: (1) Holds an unsuspended and unrevoked biologics license for Source Plasma, (2) seeks to supplement the license to include an RBCIP, (3) plans to use already thawed and deglycerolized Immunogen Red Blood Cells (IRBC) from an outside supplier, and (4) has identified an outside supplier of IRBC who holds an unsuspended and unrevoked biologics license for Source Plasma that already includes CBER's authorization for an RBCIP.

In the **Federal Register** of July 18, 2000 (65 FR 44537), FDA announced the availability of a draft guidance document entitled "Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier" dated June 2000. FDA received no comments from the public on this draft guidance document. The guidance document announced in this notice finalizes the draft guidance document with minor editorial changes. The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). This guidance document represents the agency's current thinking on a pilot program specific to the immunization of Source Plasma donors using IRBC obtained from an outside supplier, either from an outside manufacturer, under a contractural agreement, or from an outside facility under the same managerial control as the applicant facility. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: June 27, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17254 Filed 7–10–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2213]

Guidance for Industry: Revised Recommendations Regarding Invalidation of Test Results of Licensed and 510(k) Cleared Bloodborne Pathogen Assays Used to Test Donors; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance for Industry: Revised Recommendations Regarding Invalidation of Test Results of Licensed and 510(k) Cleared Bloodborne Pathogen Assays Used to Test Donors" dated July 2001. The guidance document provides guidance to blood establishments on when to invalidate donor test results based on control reagents required by the Clinical Laboratory Improvement Act of 1988 (CLIA). The implementation of additional quality control procedures that involve the use of external control reagents should enhance overall testing accuracy and blood safety. The guidance document announced in this notice finalizes the draft guidance document entitled "Draft Guidance for Industry: Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors" dated September 1999.

DATES: Submit written comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Guidance for Industry: Revised Recommendations Regarding Invalidation of Test Results of Licensed and 510(k) Cleared Bloodborne Pathogen Assays Used to Test Donors" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled "Guidance for Industry: Revised

Recommendations Regarding Invalidation of Test Results of Licensed and 510(k) Cleared Bloodborne Pathogen Assays Used to Test Donors" dated July 2001. The guidance document provides recommendations for blood establishments in integrating current CLIA requirements for when to invalidate donor test results based on CLIA required control reagents. The guidance document announced in this notice finalizes the draft guidance document entitled "Guidance for Industry: Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors" announced in the **Federal Register** of September 1, 1999 (64 FR 47847). The guidance document also supersedes the January 3, 1994 guidance document entitled "Recommendations for the Invalidation of Test Results When Using Licensed Viral Marker Assays to Screen Donors."

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). This guidance document represents the agency's current thinking with regard to the invalidation of test results based on the CLIA required control reagents. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of this guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance document at http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm

Dated: June 27, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17255 Filed 7–10–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Practitioner Data Bank; Change in User Fee

The Health Resources and Services Administration (HRSA), Department of Health and Human Services (DHHS), is announcing a one dollar increase in the fee charged to entities authorized to request information from the National Practitioner Data Bank (NPDB) for all queries. The new fee will be $5.00 and there, will be no change to the $10.00 self-query fee.

The current fee structure ($4.00 per name) was announced in the **Federal Register** on January 29, 1998 (63 FR 4460). All entity queries are submitted and query responses received through the NPDB's Integrated Query and Reporting Service (IQRS) and paid via an electronic funds transfer or credit card.

The NPDB is authorized by the Health Care Quality Improvement Act of 1986 (the Act), Title IV of Public Law 99–660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information.

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the NPDB. Section 60.3 of these regulations defines the terms used in this announcement.

In determining any changes in the amount of the user fee, the Department uses the criteria set forth in § 60.12 (b) of the regulations, as well as allowable costs pursuant to Title II of the Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill for Fiscal Year 2001, P.L. 106–554, enacted Dec. 21, 2000. This Act requires that the Department recover the full costs of operating the Data Bank through user fees. Paragraph (b) of the regulations states:

"The amount of each fee will be determined based on the following criteria:

(1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees,

(2) Photocopying or other forms of reproduction, such as magnetic tapes—actual cost of the operator's time, plus the cost of the machine time and the materials used,

(3) Postage—actual cost, and

(4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer the actual cost of the special service."

Based on analysis of the comparative costs of the various methods for filing and paying for queries, the Department is raising all the entity query fees by $1.00 per name. The practitioner self-query fee remains at $10. This price increase is necessitated by increased technical labor costs, equipment upgrades, and improvements to the NPDB's computer system. Since the last fee increase, the system has been migrated from QPRAC, a dial-up client server system, to the web-based IQRS. The IQRS provides a secure mechanism for faster, more convenient, reporting and querying.

This change is effective October 1, 2001.

When a query is for information on one or more physicians, dentists, or other health care practitioners, the appropriate fee will be $5.00 multiplied by the number of individuals about whom information is being requested. For examples, see the table below.

The Department will continue to review the user fee periodically, and will revise it as necessary. Any changes in the fee and their effective date will be announced in the **Federal Register**.

Query method	Fee per name in query	Examples
Entity query (Via Internet with electronic payment).	$5.00	10 names in query. 10x$5=$50.00.
Practitioner self-query	10.00	One self-query=$10.00.

Dated: July 6, 2001.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 01–17409 Filed 7–10–01; 8:45 am]

BILLING CODE 4150–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Validation of Questionnaires Used for Occupational Exposure Assessment in Case-Control Studies: Occupational History Questionnaire With Foundry Worker and Textile Industry Job Modules

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 11, 2001, page 2433, Volume 66, No. 8, and allowed 60 days for public comment. No public comments were received. NCI fulfilled only one request for a copy of the study protocol and questionnaire.

The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, and information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Validation of Questionnaires Used for Occupational Exposure Assessment in Case-Control Studies: Occupational History Questionnaire with Foundry Worker and Textile Industry Job Modules. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This study will investigate the validity and reliability of exposure assessments based on occupational history questionnaires supplemented with industry specific job modules as compared to exposure assessments made based on actual measurement taken in the workplace environments. The results will be used to assess the potential magnitude of exposure misclassification in case-control studies using these types of exposure assessment methods. *Frequency of Response:* One time study. *Affected Public:* Large and small factories in Shanghai, China. *Type of Respondents:* Factory workers. The annual burden is as follows: *Estimated Number of Respondents:* 120; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Respondent:* 0.5 hours; and *Estimated Total Annual Burden Hours Requested:* 60. There are no annualized costs to respondents. There are no Capital Costs to report and no Operating or Maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Joseph Coble, Project Officer, National Cancer Institute, 6120 Executive Blvd, EPS 8110, Rockville, MD, 20892–7240, or call non-toll-free number (301) 435–4702, email your request to *jcoble@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before August 10, 2001.

Dated: July 2, 2001.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 01–17281 Filed 7–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing: Natural Killer Cells in Xenotransplantation and Establishment of a Target Cell Line Producing Porcine Endogenous Retrovirus

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention described below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development.

ADDRESSES: Licensing information for the technology described below may be obtained by contacting John Rambosek, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 270; fax: 301/402–0220; e-mail: rambosej@od.nih.gov.

SUPPLEMENTARY INFORMATION: The worldwide shortage of human organs and tissues for allotransplantation combined with recent advances in transplantation immunobiology, surgery and medicine, have sparked renewed interest in the clinical use of xenotransplantation, the use of living nonhuman animal materials for the treatment of human diseases. In addition to whole organ transplants, cellular implants and ex vivo use of living material from animal sources have been suggested for treatment of disease in human patients. For a variety of reasons, the pig is currently the source animal of choice for xenotransplantation in humans, but there are two major obstacles to successful pig to human xenotransplantation. These are the immune response, responsible for rejecting xenotransplants, and the risk of transmission of infection including porcine endogenous retrovirus, which, at least at the present time, cannot be removed from the xenotransplantation porcine source. Natural killer (NK) cells play an important role in the delayed rejection of xenotransplants, and have been shown to infiltrate rejecting grafts.

Current efforts in the Laboratory of Immunology and Virology, Division of Cellular and Gene Therapies, Center for Biologics Evaluation and Research,

FDA, are aimed at understanding the human NK cell response to porcine target cells. Findings suggest that NK cells have the capacity to participate in early stages (hyperacute or acute rejection) of xenograft rejection as well as later stages (delayed rejection). In addition, human NK cell activity against porcine cells as measured by lysis and proliferation, is regulated by certain cytokines such as interleukin (IL)–2, IL–12, and IL–15, but not by IL–18 and IL–8. Moreover, the human NK cell response to porcine endothelial cells is regulated by the combination of redox status and nitric oxide (NO) availability, such that under conditions of oxidative stress, lysis of porcine endothelial cells is inhibited by NO through a nuclear factor-kappa B-dependent pathway. Finally, in the process of carrying out these investigations, a new porcine cell line, MS–PBMC–J2 (J2), was established from the peripheral blood of a NIH miniswine. J2 constitutively produces infectious porcine endogenous retrovirus. J2 expresses porcine CD2, CD8, CD16, CD31, and MHC class I and class II but does not express CD3 or CD4. Phenotypically it resembles NK cells, but does not mediate NK-like activity. Further studies into the regulation of human NK cell anti-porcine cytotoxicity are underway, and other experiments using J2 as a model of PERV production are planned.

The cell line (our reference no. E–046–01/0) is available for licensing under a Biological Materials License Agreement. The scientists may also be interested in collaborative arrangements for the further research and development of this technology.

Dated: June 29, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–17289 Filed 7–10–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: July 31–August 1, 2001.

Time: 7 am to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW. Washington, DC 20007.

Contact Person: Mary C. Fletcher, PHD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, RM 8115, Bethesda, MD 20852, 301/496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 29, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17284 Filed 7–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee D—Clinical Studies.

Date: July 31–August 1, 2001.

Time: 7 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, room 8129, MSC 8328, Bethesda, MD 20892–8328, 301–496–9767.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 29, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17285 Filed 7–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee C—Basic & Preclinical.

Date: July 31–August 2, 2001.

Time: 4 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Michael B. Small, PhD, Scientific Review Administrator, Grants

Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 29, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17286 Filed 7–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Development and Manufacture of Pharmaceutical Products for Addiction Treatment".

Date: July 10, 2001.

Time: 10 am to 12 pm.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, office of Extramural Affairs, National institute on Drug Abuse, National Institutes of health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, national Institutes of Health, HHS)

Dated: July 5, 2001.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17277 Filed 7–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: July 17–18, 2001.

Time: 6 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: July 19, 2001.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Health Scientific Administrator, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: July 30–31, 2001.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Novato Oaks Inn, 215 Alameda Del Prado, Novato, CA 94949.

Contact Person: Ramesh Vemuri, PhD, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel Prevention and Treatment Intervention in middle-aged and older population.

Date: August 9–10, 2001.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: William A. Kachadorian, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel-Ad Hoc Site Visit Review Committee.

Date: August 14–15, 2001.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Madison Hotel, 706 John Nolen Drive, Madison, WI 53713.

Contact Person: Mary Ann Guadagno, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 3, 2001.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17278 Filed 7–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel ZDK1 GRB–C(02).

Date: July 23, 2001.

Time: 7 pm to 11 pm.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Carolyn Miles, PhD, Scientific Research Administrator, Review Branch, Dea, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel ZDK1 GRB–C(01).

Date: July 24, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Carolyn Miles, PhD, Scientific Research Administrator, Review Branch, Dea, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel ZDK1 GRB–D (01)S.

Date: August 1–2, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Dea, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 3, 2001.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17279 Filed 7–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals association with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of Clinical Investigator Development Awards (K08s).

Date: August 6, 2001.

Time: 1:30 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contract Person: Linda K. Bass, PHD, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of Clinical Investigator Development Awards (K08s).

Date: August 6, 2001.

Time: 2:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PHD, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS).

Dated: July 3, 2001.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17280 Filed 7–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: July 19, 2001.

Time: 10:00 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Executive Plaza South, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Melissa Stick, PhD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 29, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17282 Filed 7–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: August 6–7, 2001.

Time: 8 am to 12 pm.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: June 29, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17283 Filed 7–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to seciton 10(d) of the Federal Advisory Committee Act, as amended (4 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: July 12, 2001.

Time: 10 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, Rm 2155, Bethesda, MD 20892, 301–496–7966, rb169n@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 29, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17287 Filed 7–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel.

Date: July 5, 2001.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894, (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 29, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17276 Filed 7–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences (NIEHS); National Toxicology Program (NTP); Peer Review Panel for the Up-and-Down Procedure (UDP): Notice of Meeting

Summary

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a public teleconference meeting of the Up-and-Down Procedure (UDP) independent scientific peer review panel (Panel). The teleconference is scheduled for Tuesday, August 21, 2001, from 10:00 a.m.–12:00 p.m. EDT. The agenda for this meeting will focus on a discussion of the following: (1) The revised draft Up-and-Down Procedure (UDP), modified in response to recommendations from the July 2000 Panel meeting; (2) a proposed procedure for calculating the confidence interval for the estimated LD50; and (3) a software program to aid in dose selection, test-stopping decisions, calculation of an estimated LD50, and calculation of a confidence interval around the LD50.

Following the Panel meeting, a final report of the Panel's findings and recommendations will be published and made available to the public through the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM). In accordance with Public Law 106–545, the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) will develop and forward test recommendations on the UDP to Federal agencies for their consideration. The ICCVAM recommendations will also be made available to the public through the NICEATM.

Background, including the availability of review materials, can be found in previous **Federal Register** notices (see FR Volume 66, Number 121, pages 33550–33552; FR Volume 65, Number 34, pages 8385–8386; and FR Volume 65, Number 106, pages 35109–35110). The **Federal Register** notice (Volume 66, Number 121) invites written public comments on the materials being discussed at the Panel meeting. Comments received by the August 6, 2001 deadline will be made available to the Panel prior to the August 21 teleconference.

Meeting information

Panel members will participate in the meeting via teleconference. The teleconference will originate from Room 3162, 3rd Floor, NIEHS, 79 T.W. Alexander Drive, Bldg. 4401, Research Triangle Park, NC and NICEATM staff will be on hand to coordinate the teleconference. The public is invited to attend with attendance limited only by the space available in Room 3162. To attend this meeting, please contact Ms. Loretta Frye, NICEATM, NIEHS, 79 Alexander Drive, Bldg. 4401, P.O. Box 12233, EC–17, Research Triangle Park, NC 27709; telephone (919) 541–3138; fax (919) 541–0947; or email *frye@niehs.nih.gov*. Arrangements to attend the meeting, including the need for special accommodation, (e.g., wheelchair access), should be made with the NIEHS/NICEATM staff by 12:00 noon EDT on Tuesday, August 14, 2001.

Request for Public Comment

While written public comments are requested and preferred, there will be an opportunity for oral public comments. For this teleconference meeting, oral comments by individual speakers will usually be limited to no more than three minutes per speaker. Persons registering to make oral comments are asked to provide their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization. To facilitate planning for the meeting, persons interested in providing formal oral comments are asked to notify Ms. Loretta Frye (contact information provided above) in writing (email, fax, or mail) no later than 12:00 noon EDT on Tuesday, August 14, 2001. Persons registering to make oral comments are asked, if possible, to provide a copy of their statement to Ms. Loretta Frye by August 14, to enable review by the Panel and NICEATM staff prior to the meeting.

Dated: July 3, 2001.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 01–17288 Filed 7–10–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Applicant: Dale Lee Nunez, Portland, OR, PRT–044912

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Applicant: Edward W. Berkeley, Portland, OR, PRT–044913

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Applicant: Bowmanville Zoo, Ontario, Canada, PRT–044983

The applicant requests a permit to import and re-export a captive-born jaguar (*Panthera onca*) and progeny of the animals currently held by the applicant and any animals acquired in the United States to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Applicant: Dr. M. F. Marcone, Department of Food Science, University of Guelph, Ontario, Canada, PRT–044611

The applicant requests a permit to import and re-export specimens of the endangered plants, *Achyranthes splendens* var. *rotundata* and *Nototrichium humile*, to and from various research facilities in the United States for the purposes of scientific research. This notification covers the activities conducted by the applicant over a five-year period.

Marine Mammals and Endangered Species

The public is invited to comment on the following application for a permit to conduct certain activities with endangered marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and the regulations governing marine mammals (50 CFR 18) and endangered species (50 CFR 17).

Applicant: Harbor Branch Oceanographic Institution, Fort Pierce, FL PRT–038605.

Permit Type: Take for Scientific Research.

Name and Number of Animals: West Indian Manatee, *Trichechus manatus*, 8.

Summary of Activity to be Authorized: The applicant requests a permit to transfer 6 captive held, 2 captive born, as well as 1 Pre-Act, specimens, from Homosassa Springs Wildlife Park, Homosassa, FL, to their facility at Ft. Pierce, Florida, for the purpose of scientific research.

Source of Marine Mammals: Captive held and captive born.

Period of Activity: Up to 5 years if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was

submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Jack A. Wilkinson, Kalispell, MT, PRT–044833

The applicant requests a permit to import a polar bear (Ursus maritimus) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Written data, comments, or requests for copies of the above complete applications or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281. These requests must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

The U.S. Fish and Wildlife has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 29, 2001.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–17363 Filed 7–10–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On May 7, 2001, a notice was published in the **Federal Register**, Vol. 66, No. 88, Page 23044, that an application had been filed with the Fish and Wildlife Service by Dave Dillard for a permit (PRT–041031) to import one polar bear (*Ursus maritimus*) trophy taken from the Northern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on June 25, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Date: June 29, 2001.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–17364 Filed 7–10–01; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–415 and 731–TA–933–934 (Preliminary)]

Polyethylene Terephthalate Film, Sheet, and Strip From India and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671(a) and 19 U.S.C. 1673b(a)) (the Act), respectively, that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from India of polyethylene terephthalate film, sheet, and strip (PET film), provided for in subheading 3920.62.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India and by reason of imports from India and Taiwan of PET film that are alleged to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 703(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On May 17, 2001, a petition was filed with the Commission and Commerce by DuPont Teijin Films, Wilmington, DE, Mitsubishi Polyester Film of America, Greer, SC, and Toray Plastics (America), Inc., North Kensington, RI, alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of PET film from India and Taiwan that are alleged to be sold in the United States at LTFV and that are alleged to be subsidized by the Government of India. Accordingly, effective May 17, 2001, the Commission instituted countervailing duty investigation 701–TA–415 (Preliminary) and antidumping duty investigations Nos. 731–TA–933–934 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 29, 2001 (66 FR 29174). The conference was held in Washington, DC, on June 7, 2001, and all persons who requested the

opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on July 2, 2001. The views of the Commission are contained in USITC Publication 3437 (July 2001), entitled Polyethylene Terephthalate Film from India and Taiwan: Investigations Nos. 701–TA–415 and 731–TA–933–934 (Preliminary).

Issued: July 6, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17345 Filed 7–10–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection under Review: Application to Register Permanent Residence or Adjust Status, and Supplement A to Form I–485.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 30, 2000 at 66 FR 17440, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 10, 2001. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: DOJ Desk Officer, Department of Justice Desk Officer, Room 10235, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status, and Supplement A to Form I–485.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–485 and I–485 Supplement A. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This collection allows an applicant to determine whether he or she must file under section 245 of the Immigration and Nationality Act, and it allows the Service to collect information needed for reports to be made to different government committees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* I–485 Adult respondents is 314,793 at 5;25 hours per response; I–485 Children respondents is 247,289 at 4.5 hours per response; and I–485 Supplement A respondents is 73,418 at 13 minutes (.216) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection(s):* 2,781,321.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 5, 2001.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–17275 Filed 7–10–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 28, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail King-Darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Equal Employment Opportunity in Apprenticeship and Training—29 CFR Part 30.

OMB Number: 1205–0224.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals or households; Federal Government; and State, Local, or Tribal Government.

Section No.	Respondents	Frequency	Responses	Average time per response	Estimated burden hours
30.3	1,497	1-time/sponsor	1,497	.5 hours	749
30.4	112	1-time/sponsor	112	1 hours	112
30.5	5,889	1-time/applicant	5,889	.5 hours	2,945
30.6	50	1-time/sponsor	50	5 hours	250
30.8	37,425	1-time/applicant	37,425	.02 hours	624
30.8	30	1-time/program	18,713	.08 hours	1,559
ETA 9039	50	1-time/applicant	50	.5 hours	25
Total	*37,505		63,736		6,264

*Number of respondents equal 37,425 Sponsors, 30 State Agencies, and 40 Applicants/Apprentices.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Title 29 CFR Part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State Apprenticeship Agencies.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Petition for NAFTA Transitional Adjustment Assistance.

OMB Number: 1205–0342.

Affected Public: Individuals or households; business or other for-profit; and State, Local, or Tribal Government.

Activity	Number of respondents/ Responses	Frequency	Average time per response	Estimated burden hours
ETA–9042/ETA–9042–1	1,000	On occasion	.25 hours	250
State Reviews	1,000	On occasion	.08 hours	80
Total				330

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The forms ETA–9042 and ETA–9042–1 are used by American workers to submit a petition for adjustment assistance benefits in accordance with the provisions of Subchapter D, the North American Free Trade Agreement Implementation Act, amending Chapter 2 of Title II of the Trade Act of 1974.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Work Opportunity Tax Credit (WOTC) and Welfare-to-Work (W-t-W) Tax Credit.

OMB Number: 1205–0371.

Affected Public: State, Local, or Tribal Government; business or other for-profit; and Individuals or Households.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Estimated burden hours
Form 9057	52	Quarterly	208	8 hours	1,664
Form 9058	52	Quarterly	208	8 hours	1,664
Form 9059	52	Quarterly	208	8 hours	1,664
Form 9061	200	On occasion	200	8 hours	1,600
Form 9062	52	On occasion	150	8 hours	1,200
Form 9063	52	On occasion	1,000	8 hours	8,000
Form 9065	52	Quarterly	208	8 hours	1,664
Recordkeeping	52	Annually	52	997 hours	51,884
Total	252*		2,234		69,300

*Respondents equal 52 states and 200 Employers/Consultants and job seekers.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: This information collection project is used for program planning and evaluation and for oversight and verification activities as mandated by the Revenue Act of 1978, Tax Equity Act and Fiscal Responsibility Act of 1982, Omnibus Budget Reconcilation Act of 1992, Sections 51 and 51A of the Internal Revenue Code of 1986, as amended, Small Business Act of 1996, Taxpayer Relief Act of 1997, and the Ticket to Work and Work Incentives Improvement Act of 1999.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–17399 Filed 7–10–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; comment request

June 29, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail to King-Darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Stuart Shapiro, OMB Desk OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Respiratory Protection.

OMB Number: 1218–0099.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Total Burden Hours: 6,468,682.

Number of Respondents: 1,300,000.

Annual Responses: 18,112,941.

Estimated Time Per Respondent: Time per response varies from 8 hours for large facilities to develop a written respiratory program to 5 minutes for employers to maintain employee medical-evaluation records.

Total Annualized capital/startup costs: $0.

Total Annualized costs (operating/maintaining systems or purchasing services): $72,900,680.

Description: The Respiratory Protection Standard's information-collection requirements require employers to: Develop a written respiratory program; conduct employee medical evaluations and provide follow-up medical evaluations to determine the employee's ability to use a respirator; provide the physician or other licensed health care professional with information about the employee's respirator and the conditions under which the employee will use the respirator; and administer fit-tests for employees who will use negative or positive-pressure, tight-fitting facepieces. In addition, employers must ensure that employees store emergency-use respirators in compartments clearly marked as containing emergency-use respirators. For respirators maintained for emergency use, employers must label or tag the respirator with a certificate stating the date of inspection, the name of the individual who made the inspection, the findings of the inspection, required remedial action, and the identity of the respirator.

The Standard also requires employers to ensure that cylinders used to supply breathing air to respirators have a certificate of analysis from the supplier starting that the breathing air meets the requirements for Type 1—Grade D breathing air; such certification assures employers that the purchased breathing air is safe. Compressors used to supply breathing air to respirators must have a tag containing the most recent change date and the signature of the individual authorized by the employer to perform the change. Employers must maintain this tag at the compressor. These tags provide assurance that the compressors are functioning properly.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Ionizing Radiation.

OMB Number: 1218–0103.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Total Burden Hours: 27,642.

Number of Respondents: 12,113.

Annual Responses: 159,043.

Estimated Time Per Respondent: Time per response varies from 5 minutes (.08) to maintain radiation-exposure records to 15 minutes (.25) for employers to prepare a written report of employee overexposure for submission to OSHA.

Total Annualized capital/startup costs: $0.

Total Annualized costs (operating/maintaining systems or purchasing services): $1,719,720.

Description: The information-collection requirements mandated by the Ionizing Radiation Standard (§ 1910.1096); protect employees from the adverse health effects that may result from overexposure to ionizing radiation. These requirements specify that employers must telephone OSHA if they expose employees to radiation above the level defined by the Standard, send written reports of radiation overexposure to OSHA, maintain employee exposure records, and furnish these records to employees on request.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Construction Crane or Derrick Annual Inspection.

OMB Number: 1218–0113.

Frequency: Annually.

Affected Public: Business or other for-profit.

Total Burden Hours: 1 hour.

Number of Respondents: 132,737.

Annual Responses: 132,737.

Estimated Time Per Respondent: 0.

Total Annualized capital/startup costs: $0.

Total Annualized costs (operating/maintaining systems or purchasing services): $0.

Description: Paragraph (a)(6) of the Standard requires employers to perform annual inspections of cranes and derricks and to establish and maintain a written record of the dates and results of these inspections. The inspections identify problems such as deterioration caused by exposure to adverse weather conditions, worn components and other flaws and defects that develop during use, and accelerated wear resulting from misalignments of connecting systems and components.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Powered Platforms for Building Maintenance (29 CFR 1910.66).

OMB Number: 1218–0121.

Frequency: Annually; monthly; on occasion.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Total Burden Hours: 119,645.

Number of Respondents: 990.

Annual Responses: 167,569.

Estimate Time per Respondent: Varies from 1 minute (0.02 hour) (to maintain a training record) to 10 hours (to inspect/test building-support structures and the components of a power platform.

Total Annualized capital/startup costs: $0.

Total Annualized (operating/maintaining systems or purchasing services): $0.

Description: Paragraph 1910.66(e)(9) requires that employers develop and implement a written emergency action plan for each kind of working platform operation. The plan must explain the emergency procedures which are to be followed in the event of a power failure, equipment failure or other emergencies which may be encountered. Employees are expected to inform themselves about the building emergency escape routes, procedures and alarm systems before operating a platform. Before initial assignment and whenever the plan is changed, the employer shall review with each employee those parts of the plan which the employee must know to protect himself or herself in the event of an emergency.

Paragraphs (g)(2)(i) and (g)(2)(ii) require that building supporting structures and all parts of the equipment undergo periodic inspection and tests by a competent person at intervals not exceeding 12 months. Paragraph (g)(2)(iii) requires the building owner to maintain and disclose, upon request, a certification record of each inspection and test. Paragraph (g)(3)(i) requires a competent person to perform a maintenance inspection and, where necessary, a test of each platform installation every 30 days. If the work cycle is less than 30 days, the inspection and/or test shall be made prior to each work cycle.

Paragraph (g)(3)(ii) requires the building owner to maintain a certification record of each inspection and test, and to disclose the record upon request. Paragraph (g)(5)(iii) requires a thorough inspection of suspension wire ropes in service once a month. Paragraph (g)(5)(v) requires the building owner to maintain a certification record of each monthly inspection and to disclose the record upon request.

Paragraph 1910.66(i)(1)(iv) requires the employer to develop written work procedures to be used to train employees. The written work procedures shall address the operation, safe use, and inspection of powered platforms. The employer would then prepare a certification record (under 1910.66(i)(1)(v)) to verify that the training has been administered. The final group of information collection requirements in the standard pertains to a number of provisions requiring tags and labels. It has been general industry practice for the manufacturer or installer of powered platforms to provide these tags and labels. However, it is estimated that the manufacturers and installers will not provide these tags and labels 10 percent of the time. Paragraph 1910.66(f)(5)(i)(C) requires a load rating plate to be affixed to each suspended unit.

Paragraph 1910.66(f)(5)(ii)(N) requires the compartment for an emergency electric operating device to be labeled with instructions for use. Paragraphs 1910.66(f)(7)(vi), 1910.66(f)(7)(vii), and 1910.66(f)(7)(viii) require the attachment of a tag on a suspension wire rope when it is installed, renewed or resocketed.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Specifications for Accident Prevention Signs and Tags (29 CFR 1910.145).

OMB Number: 1218–0132.

Frequency: On occasion.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; State, Local or and Tribal Government.

Total Burden Hours: 5,600.

Number of Respondents: 112,000.

Annual Responses: 112,000.

Estimated Time per Respondent: 3 minutes (0.05 hours).

Total Annualized capital/startup costs: $0.

Total Annualized costs (operating/maintaining systems or purchasing services): $0.

Description: A number of OSHA general industry (i.e., 29 CFR part 1910) standards require employers to post signs and tags notifying employees of workplace safety and health hazards. To meet these requirements, paragraph (a)(2) of 29 CFR 1910.145 mandates that employers use signs and tags that conform to specific design and wording requirements. In addition, employers must be select signs and tags that are appropriate to the dangers and hazards identified in the workplace; paragraphs (c)(1)(i), (c)(2)(i), (c)(3), (e)(4), (f)(3), (f)(5) through (f)(7), and (f)(8)(i) of the Standard specify the signs and tags that employers must select for these dangers and hazards. In addition, paragraphs (d)(1) through (d)(10), (e)(2), (f)(4)(i) through (f)(4)(iv), (f)(7), and (f)(8)(ii) provide the design and wording requirements for these signs and tags.

In summary, employers must ensure that the signs and tags selected are appropriate for the identified dangers and hazards and meet the design and wording requirements 29 CFR 1910.145. These paperwork requirements properly alert employees to workplace dangers and hazards, thereby preventing workplace-related injury and death.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Logging Operations (29 CFR 1910.266).

OMB Number: 1218–0198.

Frequency: Annually; On occasion.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Total Burden Hours: 6,350.

Number of Respondents: 14,000.

Annual Responses: 110,880.

Estimated Time per Respondent: Varies from 2 minutes (0.03 hour) to 5 minutes (0.08 hour).

Total Annualized capital/startup costs: $0.

Total Annualized cost (operating/maintaining systems or purchasing services): $0

Description: Paragraph (i)(1) of 29 CFR 1910.266 requires employers to provide training for each employee, including supervisors.To meet this requirement, employers must conduct the training at the frequencies specified by paragraph (i)(2).

Paragraph (i)(3) specifies that an employee's training must consist of the following elements: Safe work practices;

including the use, operation, and maintenance of tools, machines, and vehicles the employee uses or operates, as well as procedures, practices, and requirements of the employer's worksite; recognition and control of health and safety hazards associated with the employee's specific work tasks and logging operations in general; and the requirements of the standard. Under paragraph (i)(7), employers must assure that every employee, including supervisors, receive first-aid and CPR training, this training must, at a minimum, conform to the requirements listed Appendix B of the standard.

Paragraph (i)(10)(i) specifies that employers must certify the training provided to employees.This certification must be in writing and provide the following information: The name/identifier of the employee; the date(s) of the training; and either the signature of the employer or the individual who conducted the training. Paragraph (i)(10)(ii) requires employers to maintain the most recent certification for training completed by an employee.

Training employees and supervisors in safe work practices and to recognize and control the safety and health hazards associated with their work tasks and overall logging operations enables them to prevent serious accidents by using specific procedures and equipment in a safe manner to avid or to control dangerous exposures to these hazards. In addition, the requirement to train every employee and supervisor in first-aid and CPR optimizes their availability to administer emergency treatment to employees injured during logging operations; universal training is critical because logging operations occur at isolated locations with employees and supervisors distributed over large work areas. This training requirement prevents serious injuries that occur in this highly-hazardous industry from becoming even more serious or fatal.

Establishing and maintaining written certification of the training provided to each employee assures the employer that every employee receives the training specified by the standard, and at the required frequencies. In addition, these records provide the most efficient means for an OSHA compliance officer to determine whether or not an employer performed the required training at the necessary and appropriate frequencies.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Storage and Handling of Anhydrous Ammonia (29 CFR 1910.111).

OMB Number: 1218–0208.

Frequency: On occasion.

Affected Public: Business or other for-profit; not-for-profit institutions; Farms; State, Local or Tribal Government.

Total Burden Hours: 56.

Number of Respondents: 330.

Annual Responses: 330.

Estimated Time per Respondent: 10 minutes (0.17 hour).

Total Annualized capital/startup costs: $0.

Total Annualized costs (operating/maintaining systems or purchasing services): $0.

Description: Paragraph (b)(3) of 29 CFR 1910.111 specifies that systems have nameplates if required, and that these nameplates "be permanently attached to the system so as to be readily accessible for inspection * * *." In addition, this paragraph requires that markings on containers and systems covered by paragraphs (c) ("Systems utilizing stationary, nonrefrigerated storage containers"), (f) ("Tank motor vehicles for the transportation of ammonia"), (g) ("Systems mounted on farm vehicles other than for the application of ammonia"), and (h) ("Systems mounted on farm vehicles for the application of ammonia") provide information regarding nine specific characteristics of the containers and systems. Similarly, paragraph (b)(4) states that information regarding eight specific characteristics of each container "shall be on the container itself or on a nameplate permanently attached to it."

The required markings ensure that employers use only properly designed and tested containers and systems to store anhydrous ammonia, thereby preventing accidental release of, and exposure of employees to, this highly toxic and corrosive substance. In addition, these requirements provide the most efficient means for an OSHA compliance officer to ensure that the containers and systems are safe.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 01–17400 Filed 7–10–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 25, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or Email *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission or responses.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics (BLS).

Title: General Inquiries to State Agency Contacts.

OMB Number: 1220–0168.

Affected Public: State, Local, or Tribal Government.

Frequency: As needed.

Number of Respondents: 55.

Number of Annual Responses: 23,890.

Estimated Time Per Response: 40 minutes (average).

Total Burden Hours: 15,762.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Bureau of Labor Statistics (BLS) awards funds to State agencies in the 50 States, the District of Columbia, Puerto Rico, Guam, American Samoa, and Virgin Islands (hereinafter referred to as the "States") of the operation of the Labor Market Information (LMI) and/or Occupational

Safety and Health Statistics (OSHS) Federal/State cooperative statistical programs.

To ensure the timely flow of information and to be able to evaluate and improve BLS/State cooperative programs, it is necessary to conduct ongoing communications between the BLS and its State partners. Whether information requests deal with program deliverables, program enhancements, or administrative issues, questions and dialogue are crucial.

In order to conduct these communications, the BLS is requesting OMB approval of general inquiries, allowing dialogue between the BLS and its State partners. Due to the day-to-day and sometimes urgent nature of these information requests, these inquiries are conducted on an ongoing basis.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–17401 Filed 7–10–01; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

[SGA 01–09]

High School/High Tech Realignment Grants

AGENCY: Office of Disability Employment Policy, Department of Labor.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The U.S. Department of Labor (DOL), Office on Disability Employment Policy (ODEP) announces the availability of $300,000 to award twenty competitive grants in the amount of $15,000 each. The purpose of this Solicitation for Grant Application (SGA) is to invite proposals from eligible candidates. Grants will be awarded for a one-year period.

The purpose of these grants is to fund the realignment of currently operating High School/High Tech (HS/HT) programs with the local areas' Workforce Investment Act (WIA) of 1998 youth programs (WIA Local Workforce Investment Boards and their Youth Councils, Job Corps Centers, Youth Opportunity Grant programs, WIA Formula-Funded Youth Programs, WIA Native American Programs or WIA Migrant Worker programs). The goal of these realignment grants is to develop strategies, relationships, joint funding and/or support through which HS/HT programs for youths with disabilities enter into a new or stronger partnerships with at least one of the WIA youth-focused programs mentioned above.

The HS/HT program is designed to provide young people with disabilities an opportunity to explore educational opportunities leading to technology-related careers. It serves either in-school or out-of-school youth with disabilities in a one-year long program of corporate site visits, mentoring, job shadowing, guest speakers, after school activities and paid summer internships. In addition, the HS/HT program responds to all four of WIA's youth programming themes: employment preparation; educational achievement; support; and leadership.

The purpose of this SGA is to help the existing HS/HT programs associated with ODEP to entered into a new or stronger partnership with local WIA operations or programs. This SGA is designed to demonstrate both the merits and techniques of bringing the High School/High Tech program into alignment and full partnership with WIA's youth-related programs.

DATES: One (1) ink-signed original, complete grant application plus three (3) copies of the Technical Proposal and three (2) copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Procurement Services Center, Attention Grant Officer, Reference SGA 01–09, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. EST, August 10, 2001. Hand-delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Grant applications must be hand delivered or mailed to U.S. Department of Labor, Procurement Services Center, Attention: Grant Officer, Reference SGA 01–09, Room N–5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Applicants must verify delivery to this office directly through their delivery service and as soon as possible.

FOR FURTHER INFORMATION CONTACT: Applications will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. Questions concerning this solicitation may be sent to Cassandra Willis, at the following Internet address: *willis-cassandra@dol.gov*.

Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Procurement Services Center after 4:45 p.m. ET, August 10, 2001, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar August 10, 2001;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to August 10, 2001.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise place impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will not be accepted.

SUPPLEMENTARY INFORMATION:

I. Authority

Consolidated Appropriations Act, 2001, Public Law 106–554,114 STAT 2763A–10, 29 U.S.C. 557(b).

II. Background

Often the challenges that young people with disabilities face when obtaining jobs and careers in technology-related occupations is overlooked. As a result, youths with disabilities are seldom afforded post-secondary preparation and educational opportunities leading to internships and placements in technology-related careers. This is a significant loss of potential when we realize that: (1) People with disabilities have already demonstrated that they can be successful in these occupations; (2) technology jobs represent an ever increasing segment of the workforce; and (3) many current school-to-careers initiatives do not always include students with disabilities.

WIA youth focused entities and programs (WIA Local Boards and their Youth Councils, Job Corps Centers, Youth Opportunity Grant programs, WIA Formula-Funded Youth Programs, WIA Native American Programs or WIA Migrant Worker programs), hold tremendous potential to support career development activities for young people with disabilities.

HS/HT programs are now in operation in 60 communities across the nation. HS/HT graduates are twice as likely as other youth with disabilities to pursue post-secondary education. In some HS/HT programs, as many as 70 percent of their HS/HT graduates move on to post-secondary education. HS/HT clearly enhances expectations, education achievement and eventual employment outcomes for a population who, without this intervention, is far more likely to move onto the Social Security rolls than to find competitive employment in technology-related occupations. As a community-based program, the HS/HT Program works within community systems to help coordinate the delivery of education and transition services to students with disabilities. Locally-based High School/High Tech programs represent community-based partnerships of local stakeholders that include employers, educators, consumers, family members, and workforce system agencies, especially rehabilitation professionals. The HS/HT program offers local WIA programs a proven technique for developing improved systems and employment outcomes for young people with disabilities.

The goals of HS/HT match WIA's youth programming themes of employment preparation, educational achievement, support, and leadership. The HS/HT model includes eight of the 10 WIA required youth programming elements:

1. Summer employment opportunities;
2. Work experience;
3. Occupational skills training;
4. Tutoring;
5. Support services;
6. Adult mentoring;
7. Comprehensive guidance; and
8. Leadership development (WIA, sec. 129(c)(2), 29 U.S.C. 2854(c)(2)).

Nonetheless, WIA and HS/HT programs have different areas of expertise. By linking these two programs, youth who are often under served and misunderstood will receive effective and appropriate services.

Thus, the purpose of this SGA is to begin to bring these two resources together in a demonstration on how they can be mutually supportive. Under a separate Solicitation for Grant Application, a proposed WIA Disability Technical Assistance Consortium for Youth is to be funded. Among its responsibilities will be to provide technical assistance to both new and existing HS/HT sites, as well as to support bringing them into alignment with WIA youth programs. Ultimately, it is envisioned that the HS/HT Program will become one more model program helping WIA youth initiatives better serve youth with disabilities.

III. Purpose

The U.S. Department of Labor's Office on Disability Employment Policy (ODEP), the sponsoring agency of this SGA, was formed under the authority of the DOL's FY '01 appropriations, and by a supporting Executive Order 13187 of January 10, 2001, transferring the assets of the former U.S. President's Committee on Employment of People with Disabilities (PCEPD) to the DOL. ODEP operates a number of programs that are designed to assist with the employment and training of persons with disabilities, including youth with disabilities.

One of ODEP's key youth programs is the High School/High Tech (HS/HT) program. The High School/High Tech programs work with community systems to coordinate the delivery of educational and transitional services to youths with disabilities. Local High School/High Tech programs represent partnerships of local, state and national stakeholders that include employers, educators, rehabilitation professionals, consumers, and parents.

As a community-based, work-based, and school-based program, High School/High Tech is designed to provide opportunities for students with disabilities to explore careers in technology-related occupations. HS/HT students across the nation learn first-hand what it's like to work in high tech environments. Site visits, mentoring, job/career shadowing, and paid summer internships all provide students with the opportunities to learn more about careers in science, engineering and technology-related fields. HS/HT students also work on developing career goals. In localities where a High School/High Tech program is in place, 20 percent to 70 percent of the program participants go on to post-secondary education. The national average for the population, without this intervention, is six percent to nine percent (9%) (American Council on Education, 1999).

To learn about the structure and operations of the High School/High Tech Program, consult the HS/HT Program Web site: *http://www.dol.gov/odep/public/programs/high.htm* and the High School/High Tech Program Guide at: *http://www.dol.gov/odep/public/programs/high.htm*.

IV. Statement of Work

These grants are to assist operating existing High School/High Tech programs to re-align and enhance their program to achieve the following objectives:

1. Develop model strategies, relationships, joint funding or support, and joint programming through which the HS/HT program for youths with disabilities enters into new or stronger partnerships with at least one WIA entity or program component (WIA Local Boards and their Youth Councils, Job Corps Centers, Youth Opportunity Grant programs, WIA Formula-Funded Youth Programs, WIA Native American Programs or WIA Migrant Worker programs);

2. Demonstrate how the HS/HT model can provide the WIA program with a program model to improve the continuing (post-secondary) education and employment of young people with disabilities;

3. Demonstrate how the HS/HT model can deliver WIA's youth program themes and meet the required elements for young people with disabilities;

4. Serve at least 10 young people with disabilities for one year with the core elements of a HS/HT program (corporate site visits, mentioning, job shadowing, relevant guest speakers, after school activities and paid summer internships) in alignment with a WIA program;

5. Cooperate with ODEP and its technical assistance consortium to provide information and advice to other WIA youth programs on how either the HS/HT model can be replicated in their communities or how existing HS/HT

programs can be brought into alignment with local WIA programs; and

6. Describe plans to report demographic characteristics of program participants, types of programming activities and program outcomes (post-secondary education and employment) of youth with disabilities served through HS/HT.

V. Funding Availability

The period of performance will be 12 months from the date of execution by the Government.

VI. Eligible Applicants

Eligible applicants are limited to the operators of existing High School/High Tech programs working in cooperation with the Office on Disability Employment Policy of the U.S. Department of Labor.

Please note that eligible grant/cooperative agreement applicants must not be classified under the Internal Revenue Code as a Section 501(c)(4) entity. See 26 U.S.C. 506(c)(4). According to Section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in Section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

VII. Application Contents

General Requirements—Two copies and an original of the proposal must be submitted, one of which must contain an original signature. Proposals may be submitted by the applicant only.

The proposal shall consist of a Project Narrative which must be no more than 10 double-spaced, single sided, numbered pages. The Project Narrative must meet the statement of work outlined in Section II above.

Applications must include a detailed financial plan which identifies by line item the budget plan designed to achieve the goals of this grant. The Financial Proposal must contain the SF–424, Application for Federal Assistance, (Appendix A) and Budget Information Sheet SF–424A (Appendix B).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent the responsible financial and administrative entity for a grant should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

VIII. Evaluation Criteria/Selection

A. Evaluation Criteria

The application should include appropriate information of the type described below:

1. Significance of the Proposed Project (15 Points)

In evaluation the significance of the proposed project, the Department will consider the following factors.

1. The current relationship, if any with your area's WIA program.

2. The numbers of young persons with disabilities served in your HS/HT program, their outcomes (post-secondary education and employment), and the program's potential for serving more students.

3. Related issues that affect the realignment of your HS/HT program with your local WIA program.

2. Quality of the Project Design (30 Points)

In evaluation the quality of the proposed project, the Department will consider the following factors.

a. The technical plan for creating a new or greater alignment between your HS/HT program and your area's WIA program through partnership formation, joint funding arrangements, and/or joint programming opportunities. This should include a plan for providing your WIA program with a presentation on how your HS/HT program can help them meet your shared objective of improving the continuing (post-secondary) education and employment of young people with disabilities in technology-related occupations. This discussion should also cover a review on how the HS/HT model can deliver WIA's youth program themes and elements to young people with disabilities; and how it will increase your program's capacity to serve more students with disabilities.

b. The plan for tracking the demographic characteristics of program participants, types of programming activities conducted as well as HS/HT participant outcomes. These include:

1. numbers of youths with disabilities placed in competitive employment, including paid internships;

2. numbers of youths with disabilities who continue with post secondary education; and,

3. comparative data on local youths with disabilities not served in the HS/HT program.

3. Collaboration and Coordination (20 Points)

In evaluating the collaboration and coordination of the proposed project, the Department will consider the following factors.

a. Statement(s) of support and leadership from one or more of your area's WIA system elements (WIA Local Board, including its Youth Council, a Job Corps Center, a Youth Opportunity Grant program, a WIA Formula Funded Youth Program, a WIA Native American or a WIA Migrant Worker program).

b. Support from key community organizations, especially special education and vocational rehabilitation.

c. Support from area employers, people with disabilities and family members.

4. Innovations and Model Services (20 Points)

In evaluation the innovations and model services of the proposed project, the Department will consider the following factors:

a. Recommendations for strategies to cooperate in a technical assistance effort providing information and advice to other HS/HT and WIA program operators.

d. Strategy for meeting the needs of youth with disabilities from diverse cultures and/or ethic groups. (Note: the NAACP, National Urban League, La Raza, and ASPIRA all operate at least one model HS/HT program dedicated to serving minority youths with disabilities).

5. Demonstrated Capability of the Organization(s) (15 Points)

In evaluation the capability of the organization(s) involved in the proposed project, the Department will consider the following factors:

a. The names and qualifications of staff and related technical experts to support the objectives of this SGA.

b. Examples of prior successes in serving youths with disabilities and already existing relationships with local WIA programs.

B. Selection Criteria

Except as specifically provided, acceptance of a proposal and an award of federal funds to sponsor any program(s) is not a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements and OMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require that all procurement transaction shall be conducted, as practical, to provide open

and free competition. If a proposal identifies a specific entity to provide the services, the award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

A panel will objectively rate each complete application against the criteria described in this SGA. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF 424 form (see Appendix A), which constitutes a binding offer. The Grant Officer may consider the availability of funds and any information that is available and will make final award decisions based on what is most advantageous to the government, considering factors such as:

A. Findings of the grant technical evaluation panel; and,

B. Geographic distribution of the competitive applications.

IX. Reporting

Grantees are required to provide typed reports to DOL/ODEP or its designee on the status of their program alignment on a quarterly basis by March 30, June 30, September 30, and December 31, for a one year period. It is estimated that the quarterly report will take two hours to complete.

X. Administration Provisions

A. Administrative Standards and Provisions

Grantees are strongly encouraged to read these regulations before submitting a proposal. The grant awarded under this SGA shall be subject to the following:

29 CFR Part 95—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, etc.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements.

29 CFR Part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

B. Allowable Cost

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and Local Government—OMB Circular A–87

Nonprofit Organizations—OMB Circular A–122

Profit-making Commercial Firms—48 CFR Part 31

C. Grant Assurances

The applicant must include the attached assurances and certifications.

Profit will not be considered an allowable cost in any case.

Signed at Washington, D.C. this 6th day of July, 2001.

Lawrence J. Kuss,

Grant Officer.

BILLING CODE 4510–23–P

Appendix A. Application for Federal Assistance, Form SF 424

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?** ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ 0.00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: – "New" means a new assistance award. – "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. – "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix B. Budget Information Sheet, Form SF 424A

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

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BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Appendix C. Assurances and Certifications Signature Page

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

[FR Doc. 01–17411 Filed 7–10–01; 8:45 am]
BILLING CODE 4510–23–C

DEPARTMENT OF LABOR

WIA Disability Technical Assistance Consortia for Adults and Youth

AGENCY: Office of Disability Employment Policy, Department of Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA 01–04).

SUMMARY: The U.S. Department of Labor (DOL)/or Department/, Office of Disability Employment Policy (ODEP), announces the availability of up to a total of $2.65 million to award two (2) competitive grants [1]. These grants are designed to fund two (2) related, but distinct, activities. The purpose of this Solicitation for Grant Applications (SGA) is to invite proposals from eligible candidates for each of the initiatives. Eligible candidates may bid on one of the two initiatives or may submit separate bids for each initiative. The Government reserves the right to award both grants to the same grantee, based on the best interests of the Government. Grants will be awarded for a one-year period and may be renewed (individually or in combination) with additional optional one-year grants for each of up to four (4) years.

Both grants are to provide assistance to states and local area programs under the Workforce Investment Act of 1998 (WIA) in order to enable them to better serve people with disabilities.

The first of these two WIA Disability Technical Assistance grants, which focuses on adults with disabilities, is designed to deliver technical assistance support to WIA One-Stop Career Centers, State and Local Workforce Investment Boards and other key leaders that oversee and operate these adult oriented programs, to enable them to increase employment outcomes for people with disabilities.

The second WIA Disability Technical Assistance grant is designed primarily to deliver technical assistance to build the capacity of emerging and existing WIA-assisted youth programs to provide comprehensive services to young people with disabilities. Target audiences for this technical assistance will be State and Local Boards, Youth Councils and WIA grant recipients. In addition, this youth technical assistance effort will help to bridge the gap remaining between the broader workforce development system and other disability specific programs and services. Another objective of this youth technical assistance effort will be to provide program support to ODEP's High School/High Tech (HS/HT) program.

In addition, these two technical assistance efforts are expected to provide technical assistance services to four other (DOL/ODEP) grant programs. Grants for these programs are planned for release during this fiscal year. These are:

1. Customized Employment Grants for One-Stop Career Centers designed to demonstrate enhanced services for adults with disabilities;

2. Innovative Grants to WIA Youth Programs that are designed to demonstrate enhanced services to youth with disabilities;

3. High School/High Tech Realignment Grants to assist existing programs in entering into WIA partnerships; and

4. High School/High Tech Start-up Grants to assist localities in starting programs at new locations, in partnership with WIA activities.

DATES: A bidder's conference will be held on July 18, 2001. The purpose of this conference is to provide interested parties the opportunity to ask questions concerning these grants. Transcripts of the conference will be made available. Requests may be sent to (see For Further Information Contact) or write to the address below.

One (1) ink-signed original, complete grant application plus three (3) copies of the Technical Proposal and three (3) copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Procurement Services Center, Attention Grant Officer, Reference SGA 01–04, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. ET, August 10, 2001. Hand-delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Grant applications must be hand delivered or mailed to U.S. Department of Labor, Procurement Services Center, Attention: Grant Officer, Reference SGA 01–04, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. Applicants must verify delivery to this office directly through their delivery service and as soon as possible.

FOR FURTHER INFORMATION, CONTACT: Applications will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. Questions concerning this solicitation may be sent to Cassandra Willis, at the following Internet address: *willis-cassandra@dol.gov*.

Late Proposals: The grant application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Procurement Services Center after 4:45 p.m. ET, August 10, 2001, will not be considered unless it is received before the award is made and:

3. It was sent by registered or certifed mail not later than the fifth calendar day before August 10, 2001.

4. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to August 10, 2001.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise place impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will *not* be accepted.

SUPPLEMENTARY INFORMATION:

[1] The term "grants" in this SGA refers to grants/cooperative agreements.

I. Authority

Consolidated Appropriations Act, 2001, Public Law 106–554, 114 STAT 2763A–10, 29 USC 557(b).

II. Background

This SGA supports the President's New Freedom Initiative which is designed to increase the number of people with disabilities, both youth and adults, who enter, re-enter, and remain in the workforce. The New Freedom Initiative [2] is dedicated to increasing investment in and access to assistive technologies, a quality education, and increasing the integration of Americans with disabilities into the workforce and into community life. This initiative heightens the importance of similar DOL initiatives designed to increase the employment rate of people with disabilities.

There are approximately 54 million Americans with disabilities, 30 million of whom are of working age. Only 26% of working age adults with disabilities have a job or a business compared to 82% of those without disabilities (U.S. Bureau of the Census, Survey of Income and Program Participation, 1997). The Department of Labor report, *Futureworks* (2000) points out that while educational attainment made some difference in the rate of unemployment for people with disabilities, the employment figures for workers with significant disabilities are in sharp contrast to those for workers without disabilities. Among workers with college degrees, only 52% of those with severe disabilities reported labor market activity, compared to 90% of those with no disability (a gap of 38 percentage points.)

Title IV of the Workforce Investment Act of 1998 (Public Law 105–220), which amends the Rehabilitation Act, included several findings relating to ethnic and racial minorities as traditionally under-served populations in the vocational rehabilitation system (29 U.S.C. 718). Ethnic and racial minorities tend to have disabling conditions at a disproportionately high rate. The rate of work-related disability for Native Americans is about one and one-half times that of the general population. African-Americans are also one and one-half times more likely to be disabled than whites and twice as likely to be significantly disabled. According to the U.S. Census Bureau's 1994–1995 data approximately 85.5% of African-Americans with severe disabilities and 75.4% of Hispanics with severe disabilities are not working. Individuals with disabilities who are members of other minority groups are also disproportionately represented among the unemployed. Among the reasons for the disproportionately high rate of unemployment are disparities in the rehabilitation services provided to minorities with disabilities, fewer educational opportunities, poor outreach to minority communities, and inadequate transportation and housing.

As the workforce investment system evolves to become a point of streamlined entry to employment, it is critical that this system have the capacity to provide meaningful and effective opportunity to people with disabilities to secure employment. The system must develop critical expertise and linkages with other essential programs in order to provide a competent array of programs and services that create choices for people with disabilities to successfully become employed.

In addition, a key to increasing the employment of people with disabilities is to ensure that young people with disabilities are provided resources and assistance to move from school to work, as opposed to becoming dependent on welfare or other benefits programs. One way of accomplishing this goal is to increase the participation of youths with disabilities in mainstream workforce investment activities under WIA.

Youths with disabilities spend a significant portion of their time in poverty, dependent upon public assistance programs and relegated to the margins of society. They may encounter unfriendly work preparation programs that are reluctant to serve them. The educational and employment achievements of youth with disabilities are too low. According to the U.S. Department of Education, the national high school graduation rates (e.g., diplomas, GED, alternative certificates) for students with disabilities are below that of youth without disabilities. According to the National Center on Education Statistics (2001) 88% of students without disabilities graduate; according to the Office of Special Education Programs (2000) 62% of youth with disabilities graduate.[3] Students with disabilities experience a school drop out rate of 31% compared to 11% of non-disabled youth. Youth with emotional disabilities experience an even higher drop out rate of 54%. It is estimated that only one-third of young people with disabilities who need job training receive it. Young people with disabilities also have significantly lower rates of participation in post-secondary education. Finally, the Social Security Administration has found that many young people with disabilities who enter the Supplementary Security Income (SSI)/ Social Security Disability Insurance (SSDI) rolls are likely to remain on the program rolls for their entire life.

One of the most significant reforms under WIA section 129 (c) [29 U.S.C. 2854(c)], is the consolidation of the year-round youth program and the summer youth program into a single formula-based funding stream. Under WIA, each local workforce investment area must have a year round youth services strategy that incorporates summer youth employment opportunities as one of ten required program elements [WIA section 129 (c) (2) (C.), 29 U.S.C. 2854 (c)(2). The ten program elements reflect successful youth development approaches and focus on the following four key themes:

1. Improving educational achievement (including elements such as tutoring, study skills training, and instruction leading to secondary school completion; drop out prevention strategies, and alternative secondary school offerings);
2. Preparing for and succeeding in employment (including summer employment opportunities, paid and unpaid work experience, and occupational skills training);
3. Supporting youth (including supportive services needs, providing adult mentoring, follow-up services, and comprehensive guidance and counseling); and
4. Offering services intended to develop the potential of young people as citizens and leaders (including leadership development opportunities).

WIA, therefore, provides a variety of workforce investment programs that can assist both youth and adults with disabilities in attaining their career ambitions. The potential for these programs to prepare eligible participants with disabilities for employment is great. Moreover, WIA-funded programs must take up their responsibilities as vital partners in the broad spectrum of preparing individuals for the workforce. These services need to be made available to people with disabilities. Traditionally, however, people with disabilities are not recruited to participate in these programs. WIA

[2] For more information about the New Freedom Initiative, go to the White House web page at www.whitehouse.gov/news/freedominitiatve.

[3] U.S. Department of Education, National Center on Education Statistics, The Condition of Education 2000 in Brief, Jeanne H. Nathanson NCES 2001–045, Washington, D.C.: U.S. Government Printing Office, 2001.

U.S. Department of Education, Office of Special Education and Rehabilitation Services, Twenty-second Annual Report to Congress on the Implementation of the Individuals with Disabilities Act, Washington, D.C.: U.S. Government Printing Office, 2000.

service providers may not be aware of the need to serve youth and adults with disabilities in their communities and may lack the resources to develop strong partnerships and equitable referral and assessment system.

The U.S. Department of Labor has determined that there is an appreciable need for a sustained and coordinated initiative to build the capacity of WIA-assisted programs and their workforce partners, including providers, employers, people with disabilities, family members, and others, to better serve youth and adults with disabilities. This need has been highlighted as a critical priority in the FY 2001 budget appropriation for the Department through the Consolidated Appropriations Act, 2001, Public Law 106–554, 114 STAT 2763A–10, 29 U.S.C. 557(b).

Recently, the Office on Disability Employment Policy (ODEP) was established within DOL (Public Law 106–554) to provide policy direction for serving all individuals with disabilities. Key among ODEP's responsibilities is to provide technical assistance and support designed to assist various DOL programs, and to thereby increase the capacity of those programs to serve people with disabilities.

In order to fulfill its mission, ODEP is implementing a multiple-prong approach.

This approach includes:

1. Under this SGA, the establishment of provider(s) of technical assistance service to support the workforce investment system in building capacity to increase employment for people with disabilities, and to provide critical implementation and analysis to ODEP to assist in its responsibilities for providing recommendations for policy direction;

2. Under a separate SGA, the award of Customized Employment Grants, designed to develop models and to demonstrate to all One-Stop Career Centers and their partners, strategies for maximizing their capacity for serving people with disabilities; and,

3. Under a separate SGA, the award of Innovative WIA Youth Demonstration Grants which are designed to demonstrate to all WIA Youth programs systems change strategies for maximizing their capacity to serve youths with disabilities.

In combination, these activities will substantially contribute to achieving the goals of the President's New Freedom Initiative.

There are other programs which relate to, but are not directly affected by, the technical assistance activities under this SGA. Some examples include DOL's Work Incentive Grants (WIG's) which are designed to enhance service delivery to people with disabilities accessing One-Stop Centers and their programs, by establishing linkages to and among existing state, local and private non-profit entities in order to facilitate seamless service access for these individuals.

In addition, DOL has entered into an interagency agreement with the National Institute on Disability Research and Rehabilitation (NIDRR) and the Rehabilitation Services Administration (RSA) to provide technical assistance to One-Stop Centers through their network of Disability Business Technical Assistance Centers (DBTAC's) and Rehabilitation Community Education Programs (RCEP's). The Ticket-to-Work and Work Incentives Improvement Act provides increased opportunities for people with disabilities who are SSI/SSDI beneficiaries by addressing some of the major barriers encountered by these individuals as they attempt to gain employment. The Department of Education's Office of Special Education Programs recently funded a new National Center on Secondary Education and Transition and the National Youth Leadership Network to increase opportunities for young people with disabilities. The Department of Health and Human Services, through the Health Resources Services Administration's Maternal and Child Health Bureau funds a program to promote the transition and employment of youths with special health care needs called Healthy and Ready to Work. While these efforts are distinct from the consortia supported by this SGA, they are complementary and should work in close cooperation with both the WIA Disability Technical Assistance Consortium for Adults and the Consortium for Youth.

III. Purpose

The purpose of this SGA is to implement two disability technical assistance efforts (adults and youth) in order to support the capacity building for WIA-funded programs and partners and provide policy analysis and information to ODEP about employment and disability. Technical assistance services must seek to form strong linkages with essential programs and experts, including but not limited to:

1. Disability programs and programs with a general audience which can serve adults and youth with disabilities, such as the workforce investment system, vocational rehabilitation, special education, general, adult and vocational education, postsecondary education, small business, health care, social security, housing, and transportation programs and services;

2. Disability and family organizations;

3. Employers in the workforce investment system; and

4. National program and policy experts.

These grantees will also develop partnerships with other researchers, technical assistance providers, dissemination centers, and other essential programs, to assist in organizing and providing technical assistance and disseminating information.

In addition, the project(s) funded under these grants must provide technical assistance to four categories of grantees planned for funding during this fiscal year. These are:

1. Customized Employment Grants for One-Stop Career Centers.

2. Innovative Grants to WIA Youth Programs.

3. High School/High Tech Realignment Grants.

4. High School/High Tech Start-up Grants.

These four other grant programs are required to participate in the technical assistance efforts sponsored under this SGA. These grants will also provide policy implementation research and analysis to the Office of Disability Employment Policy.

Finally, these technical assistance efforts will serve as a repository of the materials, approaches, and results of the other four grant programs and will be charged with including successful approaches in their overall technical assistance work with states and with local WIA-funded programs and partners.

IV. Statement of Work—Option 1; WIA Disability Technical Assistance Consortium for Adults

This initiative will fund a WIA Disability Technical Assistance Consortium for Adults. The overall purpose of this adult technical assistance consortium is to:

1. provide support to grantees awarded under the ODEP Customized Employment SGA, including coordinating strategic planning, technical assistance and capacity building efforts for increasing customized employment and wages of people with disabilities through One-Stop Centers;

2. Collect and analyze employment policy-related information for ongoing feedback to the Office of Disability Employment Policy (ODEP) and otherwise support ODEP as requested in its efforts to increase employment, choice and wages for persons with

disabilities through the workforce investment system, including conducting policy analysis and research on policies and practices used in states as they develop capacity in this area;

3. Coordinate and provide training and technical assistance to DOL regional staff, and State and Local Boards on employment for people with disabilities, including assistance in developing model policies and guidance; and

4. Act as a central locus of information and expertise on employment and disability for WIA partner systems and agencies and others involved in provision of employment and related supports for people with disabilities.

The adult technical assistance consortium must form strong linkages with:

1. Disability programs and generic programs and experts which can serve adults with disabilities, such as the workforce development system, vocational rehabilitation, special education, general, adult and vocational education, postsecondary education, small business, developmental disability, health care, social security, housing, and transportation programs and services;

2. Disability and family organizations;

3. Employers to the workforce development system; and

4. National program and policy experts.

This consortium shall develop partnerships with other researchers, national experts, technical assistance providers, and dissemination centers in organizing and providing technical assistance and disseminating information.

The WIA Technical Assistance Consortium for Adults must provide technical assistance services and materials which include the following:

1. Provide and coordinate strategic planning, technical assistance and capacity building efforts for increasing customized employment and wages of people with disabilities through One-Stops Centers, including information on policies and practices used in states as they develop capacity, including the following:

a. Provide technical assistance, training and information assistance to each of the grantees under the Customized Employment Grants funded by ODEP, including providing consultation, training, materials development, dissemination, linkages to experts and exemplary practices; and otherwise connect stakeholder groups with successful practices in their respective areas in order to increase their capabilities and performance in securing customized employment for people with disabilities.

b. Develop linkages and collaborate with other national federal initiatives providing services and supports for people with targeted disabilities (including but not limited to systems change efforts promoting enduring systems improvement and comprehensive coordination; health care; housing; transportation; education; supported employment; benefits planning and assistance; small business development; technology related assistance; etc.), and other national initiatives as appropriate.

c. Provide technical assistance, training, and information that integrates validated best practices and promising practices for improving choice in employment and increasing wages for people with disabilities into the workforce investment system, including implementation activities to ensure that people with disabilities have access to appropriate supports for employment, including transportation, personal assistance, assistive technology and housing.

2. Provide training and technical assistance to DOL regional staff, and State and Local Boards, and others at the request of ODEP, on employment for people with disabilities, in order to increase professional expertise and provide assistance in developing model policies and guidance, including the following:

a. Provide training and technical assistance to the national and regional staff of DOL's Wage and Hour Division, and others involved in implementation of section 14-(c) of the Fair Labor Standards Act (29 U.S.C. 214 (c.), including providers, to increase their knowledge and capacity about increasing wages for people with disabilities through customized employment.

b. Develop, implement and maintain an assessment of the needs of individual State Boards and ODEP grantees to determine the array, type, and intensity of technical assistance, training, and information to be provided.

c. Coordinate and conduct technical assistance and capacity building activities based on an assessment of needs as well as requests for assistance from DOL regional staff and State and Local Boards.

d. Provide technical assistance, training, and information to increase understanding by systems of disability related employment issues such as health care, transportation, work incentive provisions, benefits planning, housing, etc.

3. Act as a central locus of information and expertise on employment and disability for WIA partner systems and agencies and others involved in providing employment and related supports for people with disabilities, including the following:

a. Provide coordination and information sharing among multiple DOL grantees and initiatives of other agencies related to people with disabilities (such as projects of the Rehabilitation Services Administration (RSA), Office of Special Education Programs (OSEP), Department of Health and Human Services (HHS), Health Care Finance Administration (HCFA), Social Security Administration (SSA), Small Business Administration (SBA), National Institute on Disability and Rehabilitation Research (NIDRR), including coordinating with other national initiatives.)

b. Provide national linkages to information, experts and activities on exemplary and promising practices in a range of areas related to disability.

c. Provide information and conduct initiatives to educate employers, and the general public about the abilities of people with disabilities to work in a wide variety of occupations and contribute to the workforce.

d. Provide information to educate state and local policymakers, systems personnel, and people with disabilities and their families, providers, including educators, and other leaders as appropriate, about changes in policy and practice that facilitate an increase in employment and wages for people with disabilities.

e. Develop and disseminate materials to supplement technical assistance and training. All materials must be made available through an accessible internet web site.

f. Serve as a repository and dissemination center for the information and materials of ODEP grantees and include successful approaches from the grantees in the overall technical assistance, training, and information services approach.

4. Conduct policy studies and otherwise collect and analyze employment policy-related information for ongoing feedback to the Office of Disability Employment Policy (ODEP) and otherwise support ODEP, as requested, in its efforts to increase employment, choice and wages for persons with disabilities through the workforce investment system, including the following.

a. Research, collect and disseminate information from States about effective and meaningful participation of people with disabilities in One-Stop Centers

and the workforce investment system. Work with ODEP in identifying areas for policy research, and provide ongoing feedback using new research and research from aggregated experiences of Customized Employment grantees (funded by ODEP under separate solicitation.) Collaborate with other federal technical assistance projects that provide information and/or technical assistance about increasing employment and needed supports for people with disabilities in conducting policy studies, as appropriate.

b. Conduct studies and analysis about employment characteristics and conditions of people with disabilities currently in segregated settings such as institutions, nursing homes and facility-based settings, and collaborate with ODEP in developing a range of strategies to respond to identified needs.

c. Conduct studies and otherwise respond to requests for information, analysis and other assistance from ODEP on national employment policy as it impacts people with disabilities and the workforce investment system.

Other Requirements

All applicants for the WIA Disability Technical Assistance Consortium for Adults must submit a Management Plan. The Plan will identify the overall organizational design including its functional structure. The Plan must identify key staff members of the Technical Assistance Consortium (including subcontractors) and indicate time commitments for each. Consultants should be identified and resumes included in the Appendix. The Management Plan should also include a system that provides for evaluation and feedback. This system should include the methodology by which information will be gathered and continuous improvements achieved. The Management Plan should also document any "ramping-up" of project activities over the project implementation period and provide planned time lines for project activities.

DOL will arrange for an independent evaluation of outcomes, impacts, and benefits of the grants. Grantees must make records available to evaluation personnel, as specified by the Department. Grantees funded under this SGA must make positive efforts to employ and advance in employment qualified individuals with disabilities within project activities.

Applicants and grant recipients funded under this SGA must involve members of four specific groups in implementation of the grant(s):

1. Youth and adults with disabilities;
2. relevant experts in the field of disability (such as disability organizations, researchers, family members and organizations, independent living centers, or service providers and national experts in relevant areas);
3. employers; and,
4. experts in disability policy.

Throughout the course of the project, grantees must collaborate with other research institutes, centers, and studies and evaluations, that are supported by DOL and other relevant Federal agencies. Applicant (and all consortia partners) shall document their organization's commitment to the objectives of the project.

V. Statement of Work—Option 2; WIA Disability Technical Assistance Consortium for Youth

A. WIA-Assisted Youth Programs

This initiative will fund a WIA Disability Technical Assistance Consortium for Youth. The primary purpose of this grant is to enhance the capacity of WIA-assisted youth programs to increase participation and improve results for youth with disabilities. Under WIA, DOL has established a "Vision for Youth" that states that all youth, particularly out-of-school youth, will acquire the necessary skills and work experience to successfully transition into adulthood, careers and further education and training. There are four themes for the youth services delivery system developed under WIA:

1. Improvement in educational achievement;
2. Preparation for and success in employment;
3. Supports for youth; and
4. Services to help youth develop as citizens and leaders.

WIA also establishes requirements for the youth activities for providing year round services; follow-up services, summer employment activities, and services to out-of-school youth.

A significant aspect to the WIA-assisted youth programs is the establishment of Youth Councils, as a subgroup of the Local Board. With the approval of the Local Board each Council could develop a coordinated youth policy; strengthen linkages between existing local youth services; draw upon expertise of all related community/employer groups; and bring a youth perspective to the WIA programs. Eligible participants targeted for WIA youth programs include both in-and out-of-school youth, with a large share of resources going towards out-of-school youth; and youth ages 14 to 21. Currently, DOL is investing $2.5 billion across seven WIA and other youth programs: formula-funded youth programs; Job Corps; Apprenticeships; Indian Youth Programs; Migrant Youth Programs; School-to-Work; and the Youth Opportunity Grants Program.

WIA-assisted youth programs hold a tremendous potential to assist youths with disabilities in meeting their employment, postsecondary, and independent living goals. This technical assistance effort is designed to help establish acceptance within the WIA-funded youth programs that both during and after the mandatory secondary school years, WIA-assisted youth services can represent a key pathway to employment for youths with disabilities and should be considered a vital possibility alongside vocational rehabilitation, and postsecondary education. The goal of this technical assistance effort is to deliver the knowledge and understanding needed to enable State and Local Boards, Youth Councils, and WIA-assisted youth program operators to confidently and aggressively recruit, admit, and successfully serve young people with disabilities. The overall purposes of this grant are to:

1. Strategically leverage and build the capacity of WIA-funded youth programs and ensure increasing levels of participation by youths with disabilities;
2. Aid and assist the implementation of ODEP funded Innovative Demonstration Grants to Workforce Investment Act Youth Programs; and
3. Generally support the ODEP leadership in its efforts to advance employment policy for youths with disabilities.

The youth technical assistance consortium shall form strong linkages with:

1. Disability programs and programs with a general audience which can serve youth with disabilities, such as the workforce development system, vocational rehabilitation, special education, general, adult and vocational education, postsecondary education, developmental disability, health care, social security, housing, and transportation programs and services;
2. Disability and family organizations; and
3. Employers to the workforce development system.

This consortium shall develop partnerships and tap into the expertise of other researchers, technical assistance providers, and dissemination centers in organizing and providing technical assistance and disseminating information.

The Technical Assistance Consortium for Young People with Disabilities must perform all of the following:

1. Provide technical assistance, training, and information to assist State and Local Boards, Youth Councils, and WIA-assisted youth programs in the areas of governance, service delivery, performance assessment, technology accessibility, and reasonable accommodations that will result in an increase in the number of youths with disabilities who receive youth services.

2. Provide technical assistance, training, and information to increase understanding by WIA-assisted youth service providers about disability related employment issues such as health care, transportation, work incentive provisions, benefits planning, housing, etc.

3. Provide information to educate relevant stakeholders, including state and local policymakers and systems personnel, including educators, as well as families, and youth about needed changes in policy and practice in order to increase employment and wages for young people with disabilities.

4. Provide information to educate employers and the general public about the abilities of youths with disabilities to work in a wide variety of occupations.

5. Provide technical assistance, training, and information that integrates validated best practices for improving transition results for young people with disabilities into the WIA-assisted youth program elements, including:

a. Promote effective structures, policies, and practices to improve results for youths with disabilities in WIA-assisted programs in core youth program themes and elements;

b. Promote effective service interventions and approaches that help young people with disabilities to overcome barriers to positive education and employment outcomes;

c. Promote the link between academic and occupational skill standards; and on the integration of academic and applied learning in real work settings;

d. Promote youth-centered planning and development (e.g., assessment, choice, rights and responsibilities, life skills, etc.);

e. Promote physical and mental health resources and the link to positive educational and employment outcomes; and

f. Promote strategies for increased business, labor, family, and community involvement.

6. Develop and leverage linkages with other state and local initiatives providing services and supports for young people with disabilities (including but not limited to systems change efforts promoting enduring systems improvement and comprehensive coordination; health care; housing; transportation; education; supported employment; small business development; technology related assistance; private foundations; faith-based initiatives).

7. Provide technical assistance, training, and information (including program evaluation technical assistance) to the ODEP-assisted Innovative Demonstration Grants to Workforce Investment Act Youth Programs.

8. Serve as a repository and dissemination center for the materials developed by ODEP grantees and include successful approaches from the grantees in the overall technical assistance, training, and information services approach.

9. Collaborate with other Federal technical assistance projects that provide information about transition, postsecondary education, employment, and independent living issues for young people with disabilities.

10. Implement and maintain an assessment of the needs of individual State and Local Boards, Youth Councils, WIA-funded youth programs, and ODEP grantees of the overall needs of these audiences to determine the array, type, and intensity of technical assistance, training, and information to be provided.

11. Develop and disseminate materials to supplement technical assistance and training. All materials must be made available through an accessible Internet web site.

B. High School/High Tech/Program Support

Additionally, the WIA Disability Technical Assistance Consortium for Youth grant must provide technical assistance support to ODEP's High School/High Tech program. ODEP's High School/High Tech (HS/HT) program is designed to provide young people with disabilities with an opportunity to explore their interest in pursuing further education leading to a technology related career.[4] It serves either in-school or out-of-school youths with disabilities in a year long program of corporate site visits, mentoring, job shadowing, guest speakers, after school activities and paid summer internships. The HS/HT program responds to all four of WIA's youth programming themes (employment preparation, educational achievement, support, and leadership). It includes eight of the ten WIA required youth programming elements:

1. Summer employment opportunities;
2. Work experience;
3. Occupational skills training;
4. Tutoring;
5. Support services;
6. Adult mentoring;
7. Comprehensive guidance; and
8. Leadership development.

Currently, 60 High School/High Tech (HS/HT) programs are in operation in 18 states. These HS/HT programs began under the national leadership of the former President's Committee on Employment of People with Disabilities (PCEPD). With the beginning of the current federal fiscal year (FY '01), the PCEPD ceased to exist. All its assets, projects and staff were transferred into a newly created Office of Disability Employment Policy (ODEP) of the U.S. Department of Labor.

The High School/High Tech Program Support component of this grant will provide the following:

1. Conduct research for all manner of appropriate funding resources/possibilities (e.g., businesses, foundations, local, state, and federal government sources, especially WIA-assisted programs); maintain a data base on the results of this research; and disseminate information to current and prospective HS/HT program sites (e.g., periodic fact sheets, web based listings).

2. Review current HS/HT programs for successful funding strategies and document and disseminate them; work with a minimum of 25–30 HS/HT sites during the grant year to identify potential grant funding services that are appropriate to each programs circumstances, with an emphasis on WIA funding possibilities; and develop 10–12 profiles of successful HS/HT fund raising activities;

3. Deliver technical assistance support on the HS/HT program to current and prospective sites and sponsors, including information on the program's goals, core values, start-up strategies, program components, materials, etc. These sites will be identified to the grantee by the HS/HT program manager;

4. Deliver technical assistance which helps create a partnership between HS/HT program sites and with local WIA programs;

5. Prepare and maintain existing annual monitoring and reporting of the HS/HT programs nationwide; and,

6. Advise HS/HT grantees on the type of project data they need to collect in order to assess the effectiveness of their project.

[4] For more information on the High School/High Tech program visit: *http://www50.pcepd.gov/pcepd/pubs/hsht00/toc.htm.*

Other Requirements

All applicants for the WIA Disability Technical Assistance Consortium for Youth are required to submit a Management Plan. The Plan must identify the overall organizational design including its functional structure. The Plan must identify key staff members of the Technical Assistance Consortium (including subcontractors) and indicate time commitments for each. Consultants must be identified and resumes included in the Appendix. The Management Plan shall also include a system that provides for evaluation and feedback. This system shall include the methodology by which information will be gathered and continuous improvements achieved. The Management Plan must also document any "ramping-up" of project activities over the project implementation period and provide planned time lines for project activities.

DOL will arrange for an independent evaluation of outcomes, impacts, and benefits of the grants. Grantees must make records available to evaluation personnel, as specified by the Department. Grantees funded under this SGA must make positive efforts to employ and advance in employment qualified individuals with disabilities within project activities.

Applicants and grant recipients funded under this SGA shall involve members of four specific groups in implementation of the grant(s):

1. Youth and adults with disabilities;
2. Relevant experts in the field of disability (such as disability organizations, researchers, family members and organizations, independent living centers, or service providers);
3. Employers; and
4. Policymakers.

Throughout the course of the project, grantees must collaborate with other research institutes, centers, and studies and evaluations, that are supported by DOL and other relevant Federal agencies. Applicant (and all consortia partners) shall document their organization's commitment to the objectives of the project.

VI. Funding Availability

The initial period of performance will be 12 months from the date of execution by the Government. Based on availability of funds, project performance, and needs, the Department may elect to exercise its option to extend these grants for up to four additional option years for a total not to exceed 60 months. With the agreement of the grantee, the Department also may elect to change, modify and/or supplement these grants during this period based on Department's needs. The funding for these grants is as follows:

Technical Assistance Consortium for Adults with Disabilities: up to $1,200,000

Technical Assistance Consortium for Youth with Disabilities: up to $1,450,000

with $450,000 of the total Youth funding allocated for High School/High Tech Program Management Support outlined above.

VII. Eligible Applicants

Eligible applicants may be a public/private non-profit or for-profit organization or consortia, including faith-based organizations with demonstrated appropriate experience and expertise. If the proposal includes multiple consortia members, there must be a prime or lead member who is the responsible fiscal agent.

All applications must clearly identify the lead grant recipient and fiscal agent, as well as all other members of the Consortium applying for the grant. In addition, the application must identify the relationship between all of the members of the consortia. The application must identify who the grant/lead recipient (and/or fiscal agent) is and both identify and describe its capacity to administer this project.

PLEASE NOTE THAT ELIGIBLE GRANT/COOPERATIVE AGREEMENT APPLICANTS MUST NOT BE CLASSIFIED UNDER THE INTERNAL REVENUE CODE AS A 501(c)(4) ENTITY. See 26 U.S.C. 506(c)(4). According to Section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in Section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

VIII. Application Contents

There are four required sections of the application. Requirements for each section are provided in this application package. Applicants must submit a signed original and three copies of the application. Be sure to indicate on the title page whether your organization is applying for the WIA Disability Technical Assistance Consortium for Adults (Section IV, Option 1, above); or, the WIA Disability Technical Assistance Consortium for Youth (Section V, Option 2, above).

1. Project Narrative

Applicants shall include a narrative that addresses the evaluation criteria in Section IX that will be used by the Technical Evaluation Committee in evaluating individual proposals.

The Project Narrative must be double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs is limited to no more than 70 pages. A page is 8.5″ × 11″ (on one side only) with one-inch margins (top, bottom, and sides). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a non-proportional font or a typewriter, do not use more than 12 characters per inch.

2. Executive Summary

The Executive summary should be no more than 2 single spaced pages in length giving a clear summary of the project narrative.

3. Management Plan

The Management Plan should be no more than 10 double spaced pages in length and formatted as required in the Project Narrative.

4. Project Financial Plan

To be considered. applications must include a detailed financial plan which identifies by line item the budget plan designed to achieve the goals of this grant. The Financial Proposal must contain the SF–424, Application for Federal Assistance, (Appendix A) and Budget Information Sheet SF–424A (Appendix B).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent the responsible financial and administrative entity for a grant should that application result in an award.

IX. Evaluation Criteria/Selection

A. Evaluation Criteria

The Project Narrative and the Management Plan in Part VIII must address the following evaluation criteria.

1. Significance of the Proposed Project (15 Points)

In evaluating the significance of the proposed project, the Department will consider the following factors:

a. The national significance of the proposed project;

b. The proposed project's potential contribution of to increase knowledge or understanding of problems, issues, or effective strategies for WIA programs in serving the target population, including identification of various policy strategies for furthering employment of people with disabilities through the workforce investment system;

c. The extent to which the proposed project is likely to yield findings that may be used by other appropriate agencies and organizations;

d. The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies;

e. The likely utility of the information, materials, processes, or techniques that will result from the proposed project, including the potential for their effective use in a variety of other settings;

f. The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies; and

g. The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

2. Quality of the Project Design (25 Points)

In evaluating the quality of the proposed project design, the Department will consider the following factors:

a. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

b. The extent to which the design of the proposed project includes a high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives;

c. The extent to which the design of the proposed project reflects up-to-date policy and program knowledge from research and effective practice for technical assistance, training, policy analysis, and information;

d. The extent to which the proposed project will be coordinated with similar or related Federal technical assistance, research, training, and information efforts;

e. The extent to which the proposed project encourages involvement of people with disabilities, relevant experts, and organizations; and

f. The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

3. Quality of Project Personnel (20 Points)

In evaluating the quality of project personnel, the Department will consider the applicants plan to encourage applications for employment from persons who are members of groups that have traditionally been under represented based on race, color, national origin, gender, age, or disability.

In addition, the Department will consider the following factors:

a. The qualifications, including relevant training and experience, of key project personnel; and,

b. The qualifications, including relevant training and experience, of project consultants or subcontractors.

4. Quality of the Project Evaluation (20 Points)

In evaluating the quality of project evaluation, the Department considers the following factors:

a. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

b. The extent to which the methods of evaluation are appropriate to the context within which the project operates;

c. The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

d. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

e. The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings; and

f. Methods for measuring, in both quantitative and qualitative terms, program results and satisfaction of recipients of technical assistance, training, information, or program management support services.

5. Quality of the Management Plan (10 Points)

In determining the quality of the management plan for the proposed project, the Department will consider the following factors:

a. The adequacy of the management plan to achieve the objectives of the SGA, including clearly defined responsibilities for accomplishing project tasks and time lines;

b. The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project;

c. The adequacy of mechanisms for ensuring high-quality materials and services from the proposed project;

d. The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project; and

e. The method by which the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of adults and/or youths with disabilities, families, workforce development professionals, the business community, a variety of academic and professional fields, recipients or beneficiaries of services, or others, as appropriate.

6. Adequacy of Resources (10 Points)

In evaluating the adequacy of resources for the proposed project, the Department will consider the following factors:

a. The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization;

b. The relevance and demonstrated commitment of the lead applicant's organization (and all consortia partners) to the implementation and success of the project;

c. The extent to which the budget is adequate to support the proposed project; and,

d. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

B. Selection Criteria

Except as specifically provided, DOL/ODEP acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements and OMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require that all procurement transaction shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ODEP's award does

not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

A panel will objectively rate each complete application against the criteria described in this SGA. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF 424 form (see Appendix A), which constitutes a binding offer. The Grant Officer may consider the availability of funds and any information that is available and will make final award decisions based on what is most advantageous to the Government, considering factors such as:

1. Any efficiencies or economies of scale caused by awarding both the adult and the youth grants to one bidder or consortia;
2. Findings of the grant technical evaluation panel;
3. Geographic distribution of the competitive applications; and,
4. The Project's Financial Plan.

X. Reporting

The grantee must furnish a typed technical report to ODEP on a quarterly basis by March 30, June 30, September 30, and December 31. It is estimated that the quarterly technical report will take 24 hours to complete. The grantee must also furnish a separate financial report to ODEP on the quarterly basis mentioned above. The format for the technical progress report must contain the following information on program activities:

1. Technical assistance, training, and information efforts to One-Stop Centers and others including grant programs.
2. Policy studies and analysis.
3. Information/expertise gathered and documented.
4. Linkages developed, partnerships formed, with other organizations and groups.
5. Customer satisfaction feedback on services provided.
6. HS/HT support provided (youth grant only).

XI. Administration Provisions

A. Administrative Standards and Provisions

Grantees are strongly encouraged to read these regulations before submitting a proposal. The grant awarded under this SGA shall be subject to the following:

29 CFR Part 95—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, etc.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements.

29 CFR Part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

B. Allowable Cost

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and Local Government—OMB Circular A–87
Nonprofit Organizations—OMB Circular A–122
Profit-making Commercial Firms—48 CFR Part 31

Profit will not be considered an allowable cost in any case.

C. Grant Assurances

The applicant must include the attached assurances and certifications.

D. OMB Clearances

Offerers awarded a grant/cooperative agreement under this solicitation will be required to provide the supporting documentation needed to clear data collection instruments within the U.S. Department of Labor and the Office of Management and Budget under the Paperwork Reduction Act, as amended, if data collection activities under the grant/cooperative agreement require response from ten (10) or more members of the public. In this regard, the narrative for all projects should indicate the scope of planned data collection activity.

Signed at Washington, DC this 6th day of July, 2001.

Lawrence J. Kuss,

Grant Officer.

BILLING CODE 4510–23–P

Appendix A. Application for Federal Assistance, Form SF 424

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: – "New" means a new assistance award. – "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. – "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix B. Budget Information Sheet, Form SF 424A

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

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BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Appendix C. Assurances and Certifications Signature Page

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

[FR Doc. 01–17410 Filed 7–10–01; 8:45 am]
BILLING CODE 4510–23–C

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility

requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,502; Republic Technologies International, Baltimore, MD.
TA–W–39,068; Elizabeth Webbing, Inc., Central Falls, RI.
TA–W–39,348; A and A Logging, Inc., Mt. Hood, OR.
TA–W–39,121; Titan Tires of Natchez, Natchez, MS.

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,045; Longview Aluminum LLC, Longview, WA.
TA–W–38,462; Pangborn Corp., Hagerstown, MD.
TA–W–39,315; The Boeing Co., Ridley, PA.
TA–W–38,692; Isaacson and Kater Button Co., Cleveland, OH.
TA–W–38,973; Robinson Fiddler's Green Manufacturing Co., Inc., Springville, NY.
TA–W–38,753; Amphenol Corp., Amphenol Aerspace Operation, Sidney, NY.

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for

TA–W–39,294; Newmont Mining Corp., Carlin, NV.
TA–W–39,096; GMW Logging, Inc., Central Point, OR.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,078; Agilent Technologies, Inc., Electronic Products and Solutions Group, New Jersey Order Fulfillment, Including Leased Workers of Adecco, Rockaway, NJ; April 5, 2000.
TA–W–38,825; Thermal Corp., Selmer, TN: 2/21/2000.
TA–W–39,167; Maurice Silvera, Inc., Lumberton, NC: April 25, 2000.
TA–W–39,173; DJ Summers, New York, NY: April 23, 2000.
TA–W–39,393; UCAR Carbon Co., Inc., Columbia, TN: February 4, 2001.
TA–W–39,087; John Roberts, Inc., New York, NY: April 3, 2000.
TA–W–39,182 & A; The JPM Co., Lewisburg, PA and Beaver Springs, PA: April 12, 2000.
TA–W–38,963 & A; Ridgeview, Inc., Newton, NC and Tri-Star Hosiery Mills, Inc., Mebane, NC: March 21, 2000.
TA–W–39,041; Rawlings Sporting Goods Co., Inc., Ava, MO: April 2, 2000.
TA–W–39,228; Emerson Power Transmission, Bearing Div., Valparaiso, IN: April 26, 2000.
TA–W–39,286 & A, B; M. Fine and Sons Manufacturing Co., Inc., Middlesboro, KY, Loretto, TN and Greenhill, AL: May 3, 2000.
TA–W–39,339 & A, B; M. Fine and Sons Manufacturing Co., Inc., New York, NY, Louisville, KY and Dalton, GA: May 3, 2000.
TA–W–39,412 & A; M. Fine and Sons Manufacturing Co., Inc., New Albany, IN and Jeffersonville, IN: May 3, 2000.
TA–W–38,742; Munro and Co., Inc., Monett Footwear, Monett, MO: February 14, 2000.
TA–W–39,288; Heartland Wheat Growers LP, Russell, KS: May 4, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04816; Lady Hope Dress, Kulpmont, PA.
NAFTA–TAA–04614; Sandhills Printing and Finishing, Inc., Sanford, NC.
NAFTA–TAA–04583; Munro and Co., Inc., Monett Footwear, Monett, MO.
NAFTA–TAA–04812; Cemex Kosmos Cement Co., Pittsburgh Plant, Pittsburgh, PA.
NAFTA–TAA–04976; Eaton Corp., Heavy Duty Transmission Div., Shenandoah, IA.
NAFTA–TAA–04397; Ralph Daniel Stearns Family Farm, Siskiyou, CA.
NAFTA–TAA–04590; Thermal Corp., Selmer, TN.
NAFTA–TAA–04551; Westpoint Stevens, Inc., Rosemary Plants, Roanoke Rapids, NC.
NAFTA–TAA–04849; Thomas and Betts, LRC, Horseheads, NY.
NAFTA–TAA–04570; Amphenol Corp., Amphenol Aerospace Operations, Sidney, NY.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

NAFTA–TAA–04957; Nortel Networks, Simi Valley, CA:

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-04377; Editorial America, Virginia Gardens, FL: November 28, 1999.

NAFTA-TAA-04786; Rubber Urethanes, Inc., Gainesville, TX: April 6, 2000.

NAFTA-TAA-04865; Portable Energy Productions, Inc., Scotts Valley, CA: April 30, 2000.

NAFTA-TAA-04944; Santtony Wear, Knitting Department, Rockingham, NC: May 29, 2000.

NAFTA-TAA-04811; Emerson Power Transmission, Bearing Div., Valparaiso, IN: April 20, 2000.

NAFTA-TAA-04813; Tycom Corp., Owego, NY: April 5, 2000.

NAFTA-TAA-04950; UCAR Carbon Company, Inc., Columbia, TN: May 15, 2000.

NAFTA-TAA-04968; Thomson Multimedia, Inc., ATO Div., Dunmore, PA: May 31, 2000.

NAFTA-TAA-04556; Equistar Chemical LP, Port Arthur, TX: June 11, 2001.

NAFTA-TAA-04845 & A, B, C, D, E, F and G; M. Fine and Sons Manufacturing Co., Inc., Middlesboro, KY, Loretta, TN, Dalton, GA, New Albany, IN, Greenhill, AL, Jeffersonville, IN, Louisville, KY and New York, NY: May 2, 2000.

NAFTA-TAA-04703 & A; Lebanon Apparel Corp., Lebanon, VA and Three Creek Apparel, Castle Wood, VA: March 28, 2000.

NAFTA-TAA-04901; Carolina Mills, Inc., Plant #5, Lincolnton, NC: May 10, 2000.

NAFTA-TAA-04695 & A; Ridgeview, Inc., Leisure Sock Div., Newton, NC and Tri-Star Hosiery Mills, Inc., Mebane, NC: March 21, 2000.

NAFTA-TAA-04821 & A; Nokia, Inc., Nokia Mobile Phones, Alliance Gateway and Temporary Workers of Remedy Intelligent Staffing, Fort Worth, TX and Nokia, Inc. Nokia Mobile Phones, Trinity Boulevard and Temporary Workers of Remedy Intelligent Staffing, Fort Worth, TX: April 21, 2000.

I hereby certify that the aforementioned determinations were issued during the month of June, 2001. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who wrote to the above address.

Dated: June 29, 2001.

Curtis K. Kooser,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. 01-17360 Filed 7-10-01; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-39,074]

Chief Wenatchee, Inc.; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 23, 2001, in response to a worker petition filed by a company official on behalf of workers at Chief Wenatchee, Inc., Wenatchee, Washington.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of June, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01-17356 Filed 7-10-01; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-38,442; et al.]

CMI Industries, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 13, 2001, applicable to workers of CMI Industries, Inc., Clinton Fabric Division, Clinton, South Carolina. The notice was published in the **Federal Register** on May 2, 2001 (66 FR 22007).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of griege woven fabric. New information shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Defender Services, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of CMI Industries, Inc. who were adversely affected by increased imports of griege woven fabric.

The amended notice applicable to TA-W-38,442 is hereby issued as follows:

All workers of CMI Industries, Inc., Clinton Fabric Division, Defender Services, Inc., Clinton, South Carolina (TA-W-38,442), Bailey Plant, Clinton, South Carolina (TA-W-38,442A), Vance Complex, Clinton, South Carolina (TA-W-38,442B) and Administrative Office, Clinton, South Carolina (TA-W-38,442C) who became totally-or partially separated from employment on or after December 4, 1999 through April 13, 2003 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of June, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01-17361 Filed 7-10-01; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-37,987]

Hobman Corporation Jim Thorpe, Pennsylvania; Notice of Revised Determination on Reconsideration

On February 6, 2001, the Department accepted a request from petitioners for reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers of the subject firm. The notice was published in the **Federal Register** on February 20, 2001 (66 FR 10918).

The initial investigation resulted in a negative determination because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The workers at Hobman Corporation in Jim Thorpe, Pennsylvania, produced model train transformers and plastics. The denial notice was published in the **Federal Register** on November 16, 2000 (65 FR 69342).

On reconsideration, the Department obtained new information from the

company regarding the production at the subject firm plant. Although the subject firm sales consisted of model train transformers and plastics, workers at the plant produced power packs during the time relevant to the investigation. New findings of the investigation show that from 1998 to 1999, the subject firm increased imports of power packs and plastics. The Hobman Corporation, Jim Thorpe, Pennsylvania plant closed in September 2000, and the production was transferred to another U.S. facility.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with the articles produced by the subject firm contributed importantly to the decline in sales or production and to the total or partial separation of workers of Hobman Corporation, Jim Thorpe, Pennsylvania. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers at Hobman Corporation, Jim Thorpe, Pennsylvania, who became totally or partially separated from employment on or after August 10, 1999, through two years from the date of certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 25th day of June 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–17362 Filed 7–10–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,717; TA–W–38,717A]

International Paper (Castigan Mill; Passadumkeag Mill); Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of May 10, 2001, counsel on behalf of the company, requests administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm plants. The denial notice was signed on March 13, 2001, and was published in the **Federal Register** on April 16, 2001 (66 FR 19520).

The company presents new information regarding U.S. imports of stud trade lumber.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 25th day of June, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–17352 Filed 7–10–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,430]

Jacmel Jewelry; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 13, 2001, in response to a petition filed on behalf of workers at Jacmel Jewelry, New York, New York.

The petition was signed by one individual who was later found not to be an official in either the union or company. Therefore the petition is invalid and no further investigation is warranted. Therefore, the petition investigation is terminated.

Signed in Washington, DC this 29th day of June, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–17357 Filed 7–10–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,656]

The JPM Company; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 9, 2001, applicable to workers of The JPM Company, San Jose, California. The notice was published in the **Federal Register** on May 2, 2001 (66 FR 22006).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of various wire harnesses and cable assemblies. Information received from the State shows that The JPM Company merged with Denron, Inc. in 1996. Information also shows that some workers separated from employment at The JPM Company had their wages reported under a separate unemployment insurance (UI) tax account for Denron, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of The JPM Company, San Jose, California who were adversely affected by increased imports of wire harnesses and cable assemblies.

The amended notice applicable to TA–W–38,656 is hereby issued as follows:

All workers of The JPM Company, Denron, Inc., San Jose, California who became totally or partially separated from employment on or after January 28, 2000 through April 9, 2003 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of June, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–17358 Filed 7–10–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,342]

The Kelly Springfield Tire Co., Tyler, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 29, 2001, in response to a petition filed on behalf of workers at The Kelly Springfield Tire Company, Division of Goodyear Tire and Rubber Company, Tyler, Texas.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of June, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–17355 Filed 7–10–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,470]

Plum Creek Timber, Pablo, Montana; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of May 18, 2001, the company requests administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The denial notice was signed on March 13, 2001, and was published in the **Federal Register** on May 9, 2001 (66 FR 23733).

The company provides evidence that further survey is warranted regarding customer purchases of softwood lumber.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 25th day of June, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–17359 Filed 7–10–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,380]

Rexam Medical Packaging, Mt. Holly, New Jersey; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Rexam Medical Packaging, Mt. Holly, New Jersey. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–38,380; Rexam Medical Packaging, Mt. Holly, New Jersey (June 27, 2001)

Signed at Washington, DC this 28th day of June, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–17351 Filed 7–10–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04510]

The JPM Co.; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, chapter 2, title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a certification for NAFTA Transitional Adjustment Assistance on April 6, 2001, applicable to workers of The JPM Company, San Jose, California. The notice was published in the **Federal Register** on May 2, 2001 (66 FR 22008).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wire harnesses and cable assemblies. New information received from the company shows that The JPM Company merged with Denron, Inc. in 1996. Information also shows that workers separated from employment at The JPM Company had their wages reported under a separate unemployment insurance (UI) tax account for Denron, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of The JPM Company, San Jose, California who were adversely affected by a shift of production of wire harnesses and cable assemblies to Mexico. The amended notice applicable to NAFTA–04510 is hereby issued as follows:

All workers of The JPM Company, Denron, Inc., San Jose, California who became totally or partially separated from employment on or after January 23, 2000 through April 6, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of June, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–17354 Filed 7–10–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04335]

Mediacopy (Formerly West Coast Duplicating, Inc.); Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, chapter 2, title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 20, 2000, applicable to workers of Mediacopy located in San Leandro, California. The notice was published in the **Federal Register** on January 11, 2001 (66 FR 2451).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of duplication of movies on videocassettes. New information received from the company shows that workers separated from employment at Mediacopy had their wages reported under a separate unemployment insurance (UI) tax account for West Coast Duplicating, Inc., the subject firms' previous title name.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Mediacopy who were adversely affected by the shift of production to Mexico.

The amended notice applicable to NAFTA–04335 is hereby issued as follows:

All workers of Mediacopy, formerly West Coast Duplicating, Inc., San Leandro, California who became totally or partially separated from employment on or after November 21, 1999 through December 20, 2002 are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of June, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–17353 Filed 7–10–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–88]

MET Laboratories, Inc., Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of MET Laboratories, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of the application.

DATES: Comments submitted by interested parties, or any request for extension of the time to comment, must be received no later than July 26, 2001.

ADDRESSES: Submit written comments concerning this notice to: Docket Office, Docket NRTL1–88, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648. Submit request for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the above address, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that MET Laboratories, Inc. (MET), has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). MET's expansion request covers the use of additional test standards.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products "properly certified" by the NRTL.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope. MET's current scope of recognition may be found in OSHA's informational web page for the NRTL (*http://www.osha-slc.gov/dts/otpca/nrtl/met.html*).

The most recent notices published by OSHA for MET's recognition covered an expansion for additional standards, which OSHA announced on November 10, 1998 (63 FR 63085) and granted on March 9, 1999 (64 FR 11502).

The current address of the MET testing facility already recognized by OSHA is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

General Background on the Application

MET has submitted a request, dated January 16, 2001 (see Exhibit 24), to expand its recognition as an NRTL for additional test standards. The NRTL Program staff has determined that all the standards requested are "appropriate test standards," within the meaning of 29 CFR 1910.7(c). The staff makes such determinations in processing expansion requests from any NRTL.

OSHA recognition of any NRTL for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of the test standard for which OSHA has no testing and certification requirements. MET seeks recognition for testing and certification of products to demonstrate compliance with the following 32 standards.

UL 45 Portable Electric Tools
UL 506 Specialty Transformers
UL 745–1 Portable Electric Tools
UL 745–2–1 Particular Requirements of Drills
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
UL 745–2–4 Particular Requirements for Sanders
UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
UL 745–2–6 Particular Requirements for Hammers
UL 745–2–8 Particular Requirements for Shears and Nibblers
UL 745–2–9 Particular Requirements for Tappers
UL 745–2–11 Particular Requirements for Reciprocating Saws
UL 745–2–12 Particular Requirements for Concrete Vibrators
UL 745–2–14 Particular Requirements for Planers
UL 745–2–17 Particular Requirements for Routers and Trimmers
UL 745–2–30 Particular Requirements for Staplers
UL 745–2–31 Particular Requirements for Diamond Core Drills
UL 745–2–32 Particular Requirements for Magnetic Drill Presses
UL 745–2–33 Particular Requirements for Portable Bandsaws
UL 745–2–34 Particular Requirements for Strapping Tools
UL 745–2–35 Particular Requirements for Drain Cleaners
UL 745–2–36 Particular Requirements for Hand Motor Tools
UL 745–2–37 Particular Requirements for Plate Jointers
UL 935 Fluorescent-Lamp Ballasts
UL 1026 Electric Household Cooking and Food Serving Appliances
UL 1028 Hair Clipping and Shaving Appliances
UL 1083 Household Electric Skillets and Frying-Type Appliances
UL 1236 Battery Chargers for Charging Engine-Starter Batteries
UL 1431 Personal Hygiene and Health Care Appliances
UL 1585 Class 2 and Class 3 Transformers
UL 1786 Nightlights
UL 1993 Self-Ballasted Lamps and Lamp Adapters

The designations and titles of the above test standards were current at the time of the preparation of this notice.

Many of the Underwriters Laboratories (UL) test standards listed in this notice are also approved as American National Standards by the

American National Standards Institute (ANSI). However, for convenience in compiling the lists, we use the designation of the standard developing organization (e.g., UL 1028) for the standard, as opposed to the ANSI designation (e.g., ANSI/UL 1028). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or the ANSI web site (http://www.ansi.org) and click "NSSN" to find out whether or not a test standard is currently ANSI-approved.

Preliminary Finding on the Application

MET has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, OSHA did not perform an on-site review of MET's NRTL testing facilities. However, NRTL Program assessment staff reviewed information pertinent to the request and recommended that MET's recognition be expanded to include the additional test standards listed above (see Exhibit 25).

Following a review of the application file, the assessor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA should grant to MET the expansion of recognition as an NRTL to use the additional test standards listed above. The staff, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendations of the staff, the Agency has made a preliminary finding that the MET Laboratories, Inc., can meet the requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether MET has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESSES**) no later than the last date for comments (see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above (also see **ADDRESSES**) no later than the last date for comments (also see **DATES** above). You must include your reason(s) for any request for extension. OSHA will limit an extension to 15 days unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of MET's request, the recommendation on the expansion, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–1–88, the permanent record of public information on MET's recognition.

The NRTL Program staff will review all timely comments, and after resolution of issues raised by these comments, will recommend whether to grant MET's expansion request. The Agency will make the final decision on granting the expansion, and in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, D.C. this 25th day of June , 2001.

R. Davis Layne,

Acting Assistant Secretary.

[FR Doc. 01–17402 Filed 7–10–01; 8:45 am]

BILLING CODE 4510–26–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

July 5, 2001.

TIME AND DATE: 10:00 a.m., Thursday, July 19, 2001.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Alcoa Alumina & Chemical, LLC, Docket No. CENT 2000–101–M (Issues include whether a milling operation is a surface mine for purposes of 30 C.F.R. Part 48, subpart B).

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 01–17445 Filed 7–9–01; 1:02 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–086)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Bluebox Communications, Inc., of San Jose, CA has applied for an exclusive license to practice the invention disclosed in U.S. Patent No. 5,774,669, entitled "Scalable Hierarchical Network Management System for Displaying Network Information in Three Dimensions," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ames Research Center.

DATES: Responses to this notice must be received by September 10, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Padilla, Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Dated: July 2, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–17293 Filed 7–10–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–085)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license

SUMMARY: NASA hereby gives notice that Simplylook.com, Inc., of San Jose, CA has applied for an exclusive license to practice the invention disclosed in U.S. Patent No. 5,426,512, entitled "Optimized Image Compression (DCTune)," which is assigned to the

United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ames Research Center.

DATES: Responses to this notice must be received by September 10, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Padilla, Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Dated: July 2, 2001.

Edward A. Frankle,

General Counsel

[FR Doc. 01–17292 Filed 7–10–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–187]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Wessex, Inc., of Blacksburg, VA has applied for an exclusive license to practice the invention disclosed in U.S. Patent No. 5,269,288, entitled "Protective Coating for Ceramic Materials," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ames Research Center.

DATES: Responses to this notice must be received by September 10, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Padilla, Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–17294 Filed 7–10–01; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 9, 16, 23, 30, August 6, 13, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 9, 2001

There are no meetings scheduled for the Week of July 9, 2001.

Week of July 16, 2001—Tentative

Thursday, July 19, 2001

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on Results of Agency Action Review Meeting—Reactors (Public Meeting) (Contact: Ron Frahm, 301–415–2986)

1:30 p.m.—Briefing on Readiness for New Plant Applications and Construction (Public Meeting) (Contact: Nanette Gilles, 301–415–1180)

Friday, July 20, 2001

9:30 a.m.—Briefing on Results of Reactor Oversight Process Initial Implementation (Public Meeting) (Contact: Tim Frye, 301–415–1287)

1:00 p.m.—Briefing on Risk-Informing Special Treatment Requirements (Public Meeting) (Contact: John Nakoski, 301–415–1278)

Week of July 23, 2001—Tentative

There are no meetings scheduled for the Week of July 23, 2001.

Week of July 30, 2001—Tentative

Tuesday, July 31, 2001

1:25 p.m.—Affirmation Session (Public Meeting) (If needed)

Week of August 6, 2001—Tentative

There are no meetings scheduled for the Week of August 6, 2001.

Week of August 13, 2001—Tentative

Tuesday, August 14, 2001

9:30 a.m.—Briefing on NRC International Activities (Public Meeting) (Contact: Elizabeth Doroshuk, 301–415–2775)

Wednesday, August 15, 2001

9:30 a.m.—Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

1:25 p.m.—Affirmation Session (Public Meeting) (If needed)

1:30 p.m.—Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting (Contact: John Zabko, 301–415–1277)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an elecontric message to dkw@nrc.gov.

Dated: July 5, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–17446 Filed 7–9–01; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 18, 2001 through June 29, 2001. The last biweekly notice was published on June 27, 2001.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 10, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by email to pdr@nrc.gov.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: May 31, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications to incorporate Cycle 14 specific limits for the variable low reactor coolant system pressure-temperature core protection safety limits. The proposed limits are developed in accordance with the methods described in NRC (Nuclear Regulatory Commission)-approved Topical Report BAW–10179P–A, "Safety Criteria and Methodology for Acceptable Cycle Reload Analyses."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification limits (Figure 2.1–1) are developed in accordance with the methods and assumptions described in NRC-approved Framatome ANP Topical Report BAW–10179P–A, "Safety Criteria and Methodology for Acceptable Cycle Reload Analyses."

These limits remain bounded by the existing reactor protection system (RPS) trip setpoints. The TMI Unit 1 Cycle 14 core introduces the Framatome ANP Mark–B12 fuel design. The Mark–B12 fuel design is mechanically and hydraulically similar to fuel designs currently in use at TMI Unit 1. While the designs are hydraulically similar, the Mark–B12 contains a fine mesh debris filter that alters the flow characteristics at the core inlet relative to the resident fuel designs resulting in the identification of a transition core DNB [departure from nucleate boiling] penalty. The higher minimum RCS flow requirement (105.5%) applied to offset the transition core DNB penalty is bounded by the minimum RCS flow assumed in current Updated Final Safety Analyis Report (UFSAR) Chapter 14 accident analyses (102%).

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification limits (Figure 2.1–1) provide core protection safety limits developed in accordance with NRC-approved methods and assumptions. The revised Technical Specifications limits remain bounded by the existing reactor protection trip setpoints. The TMI Unit 1 Cycle 14 core introduces the Framatome ANP Mark–B12 fuel design. The Mark–B12 fuel design is mechanically and hydraulically similar to the fuel designs currently in use at TMI Unit 1. While the designs are hydraulically similar, the Mark–B12 contains a fine mesh debris filter that alters the flow characteristics at the core inlet relative to the resident fuel designs resulting in the identification of a transition core DNB penalty. The higher minimum reactor coolant system flow required for the transition cycles (105.5%) is within the current range of allowable operating flow rates since this value exceeds the minimum flow rate assumed for Chapter 14 accident analyses (102%) and is well below the maximum flow limit for fuel assembly lift which is typically approximately 115% of design flow (depending on fuel type and 4th reactor coolant pump startup temperature).

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The existing RPS reactor coolant pressure and temperature trip setpoints bound the proposed Technical Specification core protection safety limits. The proposed safety limits are developed in accordance with NRC-approved safety methods and assumptions. The higher minimum reactor coolant system flow requirement assures safe operation commensurate with the introduction of the Mark–B12 fuel design into the TMI Unit 1 core.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Jr., Esq., PECO Energy Company, 2301 Market Street, S23–1, Philadelphia, PA 19103.

NRC Section Chief: Richard P. Correia, Acting.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: March 2, 2001.

Description of amendment request: The proposed changes would modify Technical Specification (TS) 3.3.2, "Instrumentation—Engineered Safety Features Actuation System Instrumentation." The Bases of the affected TS will also be modified to reflect this change. The proposed changes will extend the required surveillance interval for Potter & Brumfield MDR Series slave relays, which are installed in the Millstone Unit No. 3 Engineered Safety Features Actuation System, from a quarterly surveillance interval to an 18-month frequency surveillance interval for those relays that meet the reliability assessment criteria established by Westinghouse Electric Corporation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This change to the Technical Specifications does not result in a condition

where the design, material, and construction standards that were applicable prior to the change are altered. The same ESFAS instrumentation is being used and the same ESFAS system reliability is expected. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade or prevent actions or alter assumptions previously made in evaluating the radiological consequences of an accident described in the SAR [Safety Analysis Report]. Therefore, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not alter the performance of the ESFAS [engineered safety features actuation system] mitigation systems assumed in the plant safety analysis. Changing the surveillance interval for periodically verifying ESFAS slave relays (assuring equipment operability) will not create any new accident initiators or scenarios. Implementation of the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

This change does not affect the total ESFAS system response assumed in the safety analysis. The periodic slave relay functional verification is relaxed because of the demonstrated high reliability of the relay and its insensitivity to any short term wear or aging effects. It is thus concluded that the proposed license amendment request does not result in a reduction in margin with respect to plant safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: April 23, 2001.

Description of amendment request: The proposed changes would modify Technical Specification (TS) 3.1.2.1, "Reactivity Control Systems—Boration Systems—Flow Path—Shutdown;" 3.1.2.2, "Reactivity Control Systems—Flow Paths—Operating;" 3.1.2.3, "Reactivity Control Systems—Charging Pump—Shutdown;" 3.1.2.4, "Reactivity Control Systems—Charging Pumps—Operating;" 3.1.2.5, "Reactivity Control Systems—Borated Water Source—Shutdown;" 3.1.2.6, "Reactivity Control Systems—Borated Water Sources—Operating;" 3.4.1.2, "Reactor Coolant System—Hot Standby;" 3.4.1.3, "Reactor Coolant System—Hot Shutdown;" 3.4.1.4.1, "Reactor Coolant System—Cold Shutdown—Loops Filled;" 3.4.1.4.2, "Reactor Coolant System—Cold Shutdown—Loops Not Filled;" 3.4.1.6, "Reactor Coolant System—Isolated Loop Startup;" 3.4.2.1, "Reactor Coolant System—Safety Valves—Shutdown;" 3.4.2.2, "Reactor Coolant System—Operating;" 3.4.9.1, "Reactor Coolant System—Pressure/Temperature Limits;" and 3.4.9.3, "Reactor Coolant System—Overpressure Protection Systems." The Index and the associated Bases for these Technical Specifications will be modified as a result of the proposed changes.

The above proposed TS changes will relocate the boration subsystem and Residual Heat Removal System over-pressurization protection requirements to a licensee-controlled document; modify the Reactor Coolant System (RCS) pressure/temperature limits; modify the Cold Overpressure Protection System (COPPS) set-point curves, COPPS enable temperatures and associated restrictions; modify the reactor vessel material surveillance withdrawal schedule; modify the pressurizer code safety valve requirements; modify the isolated RCS loop startup requirements; and provide numerous minor enhancements to the current requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis, which is based on the representations made by the licensee in the April 23, 2001, application, is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes associated with the relocation of the boration subsystem requirements to a licensee-controlled document and with the revised reactor vessel analyses will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The proposed TS changes associated with the relocation of the Mode 4 and Mode 5 plant restrictions associated with protection of the Residual Heat Removal System to a licensee-controlled document do not change the design-basis accidents of the same postulated events described in the Millstone Unit No. 3 Final Safety Analysis Report (FSAR). Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The proposed TS changes associated with the pressurizer code safety valves do not change the design-basis accidents described in the Millstone Unit No. 3 FSAR. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The proposed TS changes to the Modes 5 and 6 restrictions associated with restoration of an isolated RCS loop do not change the design-basis accidents of the same postulated events described in the Millstone Unit No. 3 FSAR. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The additional proposed changes to the TS that will standardize terminology, relocate information to the Bases, remove extraneous information, modify the requirements to prevent rod withdrawal for operational flexibility, and make minor format changes will not result in any technical changes to the current requirements. Therefore, these additional proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the TSs do not impact any system or component that could cause an accident, nor will it alter the plant configuration or require any unusual operator actions, nor will it alter the way any structure, system, or component functions. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The revised analyses are based on American Society of Mechanical Engineers (ASME) Section XI Code Case N–640, which provides an alternate reference fracture toughness curve (K_{Ic}) for establishment of the beltline P/T limits. The analyses restrictions are less restrictive than those associated with the current analyses. However, the reduction in the margin of safety is small relative to the conservatism provided by ASME Section XI margins. Therefore, the proposed changes will not result in a significant reduction in a margin of safety.

The proposed TS changes associated with the relocation of the boration subsystem and RHR System overpressure protection requirements to a licensee-controlled document, pressurizer code safety valve

requirements, and isolated RCS loop startup will not result in a significant reduction in a margin of safety.

The additional proposed changes to the TSs that will standardize terminology, relocate information to the Bases, remove extraneous information, modify requirements to prevent rod withdrawal for operational flexibility, and make minor format changes will not result in any technical changes to the current requirements. Therefore, these additional changes will not result in a significant reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: March 22, 2001.

Description of amendment request: The proposed amendments would revise the Catawba Nuclear Station (CNS) Unit 1 and Unit 2, and the McGuire Nuclear Station (MNS) Unit 1 and Unit 2 Technical Specifications (TS). The proposed TS revisions are presented in two parts. Part I affects the current MNS and CNS TS surveillance requirement (SR), and associated TS Bases for the methodology and frequency for the chemical analyses of the ice condenser ice bed (stored ice). The revision results in renumbering the SRs. Also, this proposed amendment adds a new TS SR to address sampling requirements for ice additions to the ice bed. Part II proposes revisions to the current MNS and CNS TS surveillance requirement (SR) acceptance criteria and surveillance frequency for the inspection of ice condenser ice basket flow channel areas. The proposed change also results in renumbering the SRs. Associated changes are also made to the TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The Proposed Change Does Not Involve A Significant Increase In The Probability Or Consequences Of An Accident Previously Evaluated.

The only analyzed accidents of possible consideration in regards to changes potentially affecting the ice condenser are a loss of coolant accident (LOCA) and a High Energy Line Break (HELB) inside containment. However, the ice condenser is not postulated as being the initiator of any LOCA or HELB. This is because it is designed to remain functional following a design basis earthquake, and the ice condenser does not interconnect or interact with any systems that interconnect or interact with the Reactor Coolant or Main Steam Systems. The proposed changes to the TSs and associated TS Bases are solely to revise and provide clarification of the ice sampling and chemical analysis requirements, and flow area verification requirements. Since these proposed changes do not result in, or require, any physical change to the ice condenser, then there can be no change in the probability of an accident previously evaluated in the SAR.

In order for the consequences of any previously evaluated event to be changed, there would have to be a change in the ice condenser's physical operation during a LOCA or HELB, or in the chemical composition of the stored ice.

The proposed changes add an upper limit on boron concentration, which is the bounding value for the boron precipitation analysis. The upper limit boron concentration is an existing DBA analysis input limit that is controlled by existing procedure. Therefore, the addition of a TS requirement for an upper limit on boron concentration does not affect the physical operation or condition of the ice condenser.

Though the frequency of the existing surveillance requirement for sampling the stored ice is changed from once every 18 months to once every 54 months, the sampling requirements are strengthened overall with the requirement to obtain one randomly selected sample from each ice condenser bay (24 total samples) rather than nine "representative" samples, and the addition of a new surveillance requirement to verify each addition of ice meets the existing requirements for boron concentration and pH value.

The proposed changes clarify that each sample of stored ice is individually analyzed for boron concentration and pH, and that the acceptance criteria for each parameter is based on the average values obtained for the 24 samples. This is consistent with the bases for the boron concentration of the ice, which is to ensure the accident analysis assumptions for containment sump pH and boron concentration are not altered following complete melting of the ice condenser. Historically, chemical analysis of the stored ice has had a very limited number of instances where an individual sample did not meet the boron or pH requirements, with all subsequent evaluations (follow up sampling) showing the ice condenser as a whole was well within these requirements. Requiring chemical analysis of each sample is provided to preclude the practice of melting all samples together before performing the analysis, and to ensure the licensee is alerted to any localized anomalies for investigation and resolution without the burden of entering a 24 hour ACTION Condition, provided the averaged results are acceptable.

The proposed changes revise and clarify the flow area verification requirements. Regarding the consequences of analyzed accidents, the ice condenser is an engineered safety feature designed, in part, to limit the containment subcompartment and steel vessel pressures immediately following the initiation of a LOCA or HELB. Conservative sub-compartment pressure analysis shows this criteria will be met if the reduction in the flow area per bay provided for ice condenser air/steam flow paths is ≤15 percent, or if the total flow area blocked within each lumped analysis section is ≤15 percent as assumed in the safety analysis. The present 0.38 inch frost/ice buildup surveillance criteria only addresses the acceptability of any given flow path, and has no existing correlation between flow paths exceeding this criteria and percent of total flow path blockage. In fact, it was never the intent of the current surveillance requirement (SR) to make such a correlation. If problems were encountered in meeting the 0.38 inch criteria, it was expected that additional inspection and analysis, such as provided in the proposed amendment, would be performed to make such a determination. Thus, the proposed amendment for flow blockage determination provides the necessary assurance that flow path requirements are met without additional evaluations.

The proposed amendment also revises the flow area verification surveillance frequency from every 9 months to every 18 months such that it will coincide with refueling outages. Management of ice condenser maintenance activities has successfully limited activities with the potential for significant flow channel degradation to the refueling outage. By verifying an ice bed condition of less than or equal to 15% flow channel blockage following completion of these maintenance activities, the surveillance assures the ice bed is in an acceptable condition for the duration of the operating cycle. During the operating cycle, an expected amount of ice sublimates and reforms as frost on the colder surfaces in the Ice Condenser. However, frost does not degrade flow channel flow area per the Westinghouse definition of frost. The surveillance will effectively demonstrate operability for an allowed 18 month cycle. Therefore, increasing the surveillance frequency does not affect the ice condenser operation or accident response. An ice bed condition of less than or equal to 15% flow channel blockage is assured to be maintained for the operating cycle to address the limiting design basis accident(s) (DBAs).

Thus, based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The Proposed Change Does Not Create The Possibility Of A New Or Different Kind Of Accident From Any Accident Previously Evaluated[.]

Because the TSs and TS Bases changes do not involve any physical changes to the ice condenser, any physical or chemical changes to the ice contained therein, or make any changes in the operational or maintenance aspects of the ice condenser as required by the TSs, there can be no new accidents created from those already identified and evaluated.

C. The Proposed Change Does Not Involve A Significant Reduction In A Margin Of Safety[.]

The ice condenser Technical Specifications ensure that during a LOCA or HELB the ice condenser will initially pass sufficient air and steam mass to preclude over pressurizing lower containment, that it will absorb sufficient heat energy initially and over a prescribed time period to assist in precluding containment vessel failure, and that it will not alter the bulk containment sump pH and boron concentration assumed in the accident analyses.

Since the proposed changes do not physically alter the ice condenser, but rather only serve to strengthen and clarify ice sampling and analysis requirements, the only area of potential concern is the effect these changes could have on bulk containment sump pH and boron concentration following ice melt. However, this is not affected because there is no change in the existing requirements for pH and boron concentration, except to add an upper limit on boron concentration. This upper limit is the bounding value for the boron precipitation analysis. The upper limit boron concentration is an existing design bases limit that is controlled by existing procedure. Therefore, the addition of a TS requirement for an upper limit on boron concentration does not affect the physical operation or condition of the ice condenser.

Averaging the pH and boron values obtained from analysis of the individual samples taken is not a new practice, just one that was not consistently used by all ice condenser plants. Using the averaged values provides an equivalent bulk value for the ice condenser, which is consistent with the accident analysis for the bulk pH and boron concentration of the containment sump following ice melt.

Changing the performance Frequency for sampling the stored ice does not reduce any margin of safety because (1) the newly proposed surveillance ensures ice additions meet the existing boron concentration and pH requirements, (2) there are no normal operating mechanisms, including sublimation, that reduce the ice condenser bulk pH and boron concentration, and (3) the number of required samples has been increased from 9 to 24 (one randomly selected ice basket per bay), which is approximately the same number of samples that would have been taken in the same time period under the existing requirements.

Design Basis Accident analyses have shown that with 85 percent of the total flow area available (uniformly distributed), the ice condenser will perform its intended function. Thus, the safety limit for ice condenser operability is a maximum 15 percent blockage of flow channels. The existing TS surveillance requirement currently uses a specific value of 0.38 inch buildup to determine if unacceptable frost/ice blockage exists in the ice condenser. However, this specific value does not have a direct correlation to the safety limit for blockage of ice condenser flow area. The proposed TS amendment requires more extensive visual inspection (33 percent of the flow area/bay) than is currently described (2 flow channels/bay) in the TS Bases, thus providing greater reliability and a direct relationship to the analytical safety limits. Changing the TS to implement a surveillance program that is more reliable and uses acceptance criteria of less than or equal to 15 percent flow blockage, as allowed by the TMD code analysis, will not reduce the margin of safety of any TS.

The proposed amendment also revises the surveillance frequency of flow area inspection from every 9 months to every 18 months such that it will coincide with refueling outages. Management of ice condenser maintenance activities has successfully limited activities with the potential for significant flow channel degradation to the refueling outage. By verifying an ice bed condition of less than or equal to 15% flow channel blockage following completion of these maintenance activities, the surveillance assures the ice bed is in an acceptable condition for the duration of the operating cycle. During the operating cycle, an expected amount of ice sublimates and reforms as frost on the colder surfaces in the Ice Condenser. However, frost has been determined to not degrade flow channel flow area. Thus, design limits for the continued safe function of containment sub-compartment walls and the steel containment vessel are not exceeded due to this change.

Thus, it can be concluded that the proposed TS and TS Bases changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard Emch.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: June 12, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.8.1.1.2.a and delete the table referenced in TS 4.8.1.1.2.a, to remove the requirement for an accelerated test frequency for the emergency diesel generators (EDGs); delete TS 4.8.1.1.2.c.1 to remove the requirement to subject the EDG to an inspection in accordance with the manufacturer's recommendations; revise TSs 4.8.1.1.2.c.9, 10 and 13 to allow that EDG surveillances regarding the 24-hour endurance run, the auto-connected loads not exceeding the 2-hour rating, and the fuel transfer pump transferring fuel via the cross-connect lines, are conducted during modes other than during shutdown; and delete TSs 4.8.1.1.3 and 6.9.1.5.d to remove the EDG special reporting requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

There are no previously evaluated accidents associated with these surveillance activities. The EDGs are not accident initiators. The EDGs provide assistance in accident mitigation. There are no technical changes related to the acceptance criteria of any of these surveillances nor are there any physical changes to plant design proposed in this amendment request. The proposed change, requesting that the frequency and scheduling aspects of the surveillance requirements be changed to accommodate improved planning capability for testing and maintenance activities, does not affect the accident analyses. Additionally, the allowance to perform testing and maintenance activities on line will improve EDG availability during periods of shutdown operations.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not include any physical changes to plant design or a change to any of the current SR [surveillance requirement] acceptance criteria. Performance of any of these surveillance activities while at power does not render the EDGs unavailable in that they can provide station power on demand. Performance of maintenance activities and surveillance requirements while on line, which could result in the equipment being out of service, was included in the development of the Limiting Conditions for Operation (LCO). Quantitative and qualitative evaluations relative to the credit allowed for redundant components and the time allowed for corrective actions were also considered in LCO development. Performance of these activities while on line does not create any new or different kinds of accident. The capability of the EDG to respond to an accident situation while tied to the grid

during testing activities is tested as required by existing surveillance requirements. These tests ensure that if tied to the gird [grid] the EDG output breaker will open and the EDG [will] remain running in standby until an under voltage condition is observed, at which time the EDG will automatically tie on to the 4160 V [volt] ESF [engineered safety features] bus.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed changes are associated with surveillance requirements for the EDGs. The deletion of accelerated testing requirements provides an enhancement to safety by eliminating unnecessary testing. The remaining proposed changes allow certain EDG surveillance requirements to be performed when the plant is at power rather than when shutdown. The operation of, and requirements for, the equipment covered by the affected TSs will remain essentially the same.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: June 12, 2001.

Description of amendment request: **The proposed amendment would revise Technical Specification (TS) 3.8.1.1 to provide a one-time extension of the allowed outage time (AOT) for an inoperable emergency diesel generator (EDG) from three days to ten days, provided the alternate alternating-current diesel generator (AACDG) is available. In addition, the proposed amendment would revise TS 3.4.4 to make the action associated with an inoperable emergency power supply to the pressurizer heaters consistent with the proposed EDG AOT.**

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Typically, only one EDG is OOS [out of service] for maintenance activities at any given time. The standby EDG is aligned as required by Technical Specifications (TS) and available for auto start upon demand. Additionally, the AACDG is verified available and capable of being aligned to the Engineered Safety Features (ESF) electrical buses associated with the OOS EDG. The AACDG is sized such that it can carry the loads equivalent to at least one train of Engineered Safety Features (ESF) equipment. In the event of a loss of offsite power while an EDG is OOS, the AACDG will be manually started and loaded. The time delay associated with the manual start of the AACDG will result in a minimal change in the overall risk associated with the ability to reestablish power to ESF equipment upon a loss of offsite power. However, assuming the standby EDG operates as designed, it will start upon receipt of the automatic start signal and sequence on loads as required.

The plant can be maintained in a safe configuration or mitigate any accident situations with only one train of ESF components. Reliance upon the AACDG to provide a backup function ensures a minimal change in risk associated with extending the EDG AOT. The EDG AOT of 72 hours under the existing technical specifications does not consider an additional backup power supply to be available to mitigate a loss of offsite power. The proposed change will ensure that an alternate onsite diesel generator will be available while the EDG is out of service. Therefore, this change is considered a more responsive action than that contained in the current TSs.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The duration of an AOT is determined considering that there is a minimal possibility that an accident will occur while a component is removed from service. Typically, only the single redundant train is available during the AOT with no backup components available to supply the function of the component. The proposed change allows the EDG AOT to be extended one time for each EDG to 10 days with reliance on the AACDG. If the AACDG is not available, the AOT is 72 hours. No new modifications are required to allow the AACDG to function.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The EDG AOT will be 10 days for each EDG if the AACDG is available. However, if the AACDG is not available, the EDG AOT will remain at 72 hours. The AACDG supplies backup power to the redundant train of ESF components. The standby EDG, which is typically not aligned in a test mode during the AOT, will be available to automatically start and sequence on loads upon demand. Two trains of ESF components powered from the onsite electrical sources, the standby EDG and the AACDG, will be available in the event of an accident. When the AACDG is not available, the current 72-hour AOT will begin. In conclusion, either the AACDG will be available, which will result in two ESF trains being available in the unlikely event of an accident, or the current AOT will apply.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, PSEG Nuclear LLC, and Atlantic City Electric Company, Docket No. 50–278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: May 30, 2001.

Description of amendment request: **The proposed amendment would allow an extension to the interval for integrated leak rate tests (ILRTs) of the reactor containment building. The change involves a one-time exception to the 10-year frequency of the performance-based leakage rate testing program for Type A tests as required by Nuclear Energy Institute 94–01, Revision 0, "Industry Guideline for Implementing Performance-Based Option of 10 CFR Part 50, Appendix J." The current 10-year containment building ILRT for Peach Bottom Atomic Power Station (PBAPS), Unit 3, is due in December 2001 and is currently scheduled to be performed during Refueling Outage 3R13 in October 2001. The proposed exception would allow the next ILRT for PBAPS, Unit 3, to be performed within 16 years (December 2007) from the last ILRT as opposed to the current 10-year frequency.**

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specification change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to Technical Specification 5.5.12 ("Primary Containment Leakage Rate Testing Program") involves a one-time extension to the current interval for Type A containment testing. The current test interval of ten (10) years would be extended on a one-time basis to no longer than sixteen (16) years from the last Type A test. The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The reactor containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such the reactor containment itself and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident. Therefore, the proposed Technical Specification change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change involves only the extension of the interval between Type A containment leakage tests. Type B and C containment leakage tests will continue to be performed at the frequency currently required by plant Technical Specifications. Industry experience has shown, as documented in NUREG–1493, that Type B and C containment leakage tests have identified a very large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is very small. PBAPS, Unit 3 ILRT test history supports this conclusion. NUREG–1493 concluded, in part, that reducing the frequency of Type A containment leak tests to once per twenty (20) years leads to an imperceptible increase in risk. The integrity of the reactor containment is subject to two types of failure mechanisms which can be categorized as (1) activity based and (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as design change control and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the reactor containment itself combined with the containment inspections performed in accordance with ASME Section XI, the Maintenance Rule and licensing commitments related to containment coatings serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing. Therefore, the proposed Technical Specification change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed Technical Specification change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision to the Technical Specifications involves a one-time extension to the current interval for Type A containment testing. The reactor containment and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve the prevention or identification of any precursors of an accident. The proposed Technical Specification change does not involve a physical change to the plant or the manner in which the plant is operated or controlled. Therefore, the proposed Technical Specification change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed Technical Specification change does not involve a significant reduction in a margin of safety.

The proposed revision to Technical Specifications involves a one-time extension to the current interval for Type A containment testing. The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The specific requirements and conditions of the Primary Containment Leakage Rate Testing Program, as defined in Technical Specifications, exist to ensure that the degree of reactor containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leakage rate limit specified by Technical Specifications is maintained. The proposed change involves only the extension of the interval between Type A containment leakage tests. Type B and C containment leakage tests will continue to be performed at the frequency currently required by plant Technical Specifications.

PBAPS, Unit 3 and industry experience strongly supports the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with ASME Section XI, the Maintenance Rule and the Coatings Program serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing. Additionally, the on-line containment monitoring capability that is inherent to inerted BWR containments allows for the detection of gross containment leakage that may develop during power operation. The combination of these factors ensures that the margin of safety that is inherent in plant safety analysis is maintained. Therefore, the proposed Technical Specification change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. Edward Cullen, Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 13, 2001.

Description of amendment request: The proposed amendment clarifies the Kewaunee Nuclear Power Plant Technical Specification 5.3 to permit lead-test-assemblies to be used, regardless of clad material, as long as the Nuclear Regulatory Commission has generically approved the fuel assembly design for use in pressurized water reactors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the technical specification within limits of the bounding accident analyses cannot change the probability of an accident previously evaluated, nor will it increase radiological consequence predicted by the analyses of record. Controlling the use of lead-test-assemblies, designs of which were approved by the NRC, according to limitations approved by the NRC constrains fuel performance within limits bounded by existing design basis accident and transient analyses. Thus, nothing in this proposal will cause an increase in the probability or consequence of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

Inclusion in the reactor core of lead-test-assemblies according to limitations set by the NRC and of a design approved by the NRC ensures that their effect on core performance remains within existing design limits. Use of NRC approved fuel assemblies as lead-test-assemblies is consistent with current plant design bases, does not adversely affect any fission product barrier, and does not alter the safety function of safety significant systems, structures and components or their roles in accident prevention or mitigation. Currently licensed design basis accident and transient analyses of record bound the effect of lead-test-assemblies. Thus, this proposal does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in the margin of safety.

The proposed change does not alter the manner in which Safety Limits, Limiting Safety System Setpoints, or Limiting Conditions for Operation are determined. This clarification of TS 5.3 is bounded by existing limits on reactor operation. It leaves current limitations for use of lead-test-assemblies in place, conforms to plant design bases, is consistent with current safety analyses, and limits actual plant operation within analyzed and licensed boundaries. Thus, changes proposed by this request do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: Claudia M. Craig.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: November 16, 2000.

Description of amendment request: The proposed change would delete a note to Technical Specification (TS) Surveillance Requirement (SR) 3.6.1.1.1, which permitted a temporary extension to the surveillance interval for testing spectacle flanges 2S299A and 2S299B.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change to Technical Specification SR 3.6.1.1.1 is administrative in nature. The note is no longer required as the condition has been corrected and the SR performed with acceptable results. Removal of the note restores the Technical Specification to its original condition and therefore, this proposed amendment does not involve any increase in the probability of occurrence or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The note is no longer required as the condition has been corrected and the SR performed with acceptable results. Removal of the note by this change restores the Technical Specification to its original condition and therefore does not create any possibility of a new or different kind of accident from those previously analyzed.

3. The proposed change does not involve a significant reduction in a margin of safety.

The note is no longer required as the condition has been corrected and the SR performed with acceptable results. Therefore, removal of the note by this change restores the Technical Specification to its original condition and does not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Acting Section Chief: Richard Correia.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 5, 2001.

Description of amendment request: The proposed amendment would: (1) change the Security Plan provision that a member of the security force escort all vehicles, other than designated licensee vehicles, and delete the related Security Training and Qualification Plan task; (2) change the requirement of the Security Plan that all areas of the protected area be illuminated to a minimum of 0.2 footcandle; and (3) change the frequency of protected area patrols in the Security Plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes involving security activities do not reduce the ability for the security organization to prevent radiological sabotage and therefore do not increase the probability or consequences of a radiological release previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes involve functions of the security organization concerning vehicle control, protected area illumination, and protected area patrol frequency. Analysis of the proposed changes has not indicated nor identified a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Analysis of the proposed changes show that they affect only the functions of the Security organization and have no impact upon nor cause a significant reduction in margin of safety for plant operation. The failure points of key safety parameters are not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: May 21, 2001.

Description of amendment request: The proposed amendment will delete the definitions, the limiting conditions for operation, and the surveillance requirements and revise the design features and administrative controls to reflect the transfer of all the spent nuclear fuel from the 10 CFR Part 50 licensed site to the 10 CFR Part 72 licensed Independent Spent Fuel Storage Installation (ISFSI) from the Rancho Seco Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes reflect removing the spent nuclear [fuel] from the 10 CFR Part 50 licensed facility and transferring the fuel to a 10 CFR Part 72 licensed facility. The design basis accidents analyzed in the Rancho Seco Defueled Safety Analysis Report (DSAR) include the fuel handling accident and a loss of offsite power (LOOP). The fuel handling accident is the worst-case design basis accident postulated to occur at Rancho Seco. Both of these accidents are based on spent nuclear fuel being stored in the spent fuel pool at the 10 CFR Part 50 licensed facility.

With the removal of the spent nuclear fuel from the 10 CFR Part 50 licensed facility,

there are no remaining important to safety systems required to be monitored and there are no remaining credible accidents that require the actions of a Certified Fuel Handler or Non-Certified Fuel Handler to prevent occurrence or mitigate the consequences.

DSAR Section 14.2 provides a discussion of accidents during decommissioning. The DSAR concludes that the consequences of the accidents evaluated in NUREG/CR–0130 "Technology, Safety, and Costs of Decommissioning a Reference Pressurized Water Reactor Power Station" bound the potential accidents that could occur during decommissioning at Rancho Seco. The proposed Technical Specification changes have no impact on decommissioning activities.

The proposed Technical Specification Section D5.2 precludes the storage of spent nuclear fuel at the 10 CFR Part 50 licensed facility. The probability or consequences of accidents at the ISFSI are evaluated in the ISFSI FSAR [Final Safety Analysis Report] and are independent of the 10 CFR Part 50 license.

Therefore, with all of the spent fuel stored at the Rancho Seco ISFSI, the accidents evaluated in the DSAR are no longer relevant, and the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes reflect the reduced operational risks within the 10 CFR Part 50 licensed facility after the fuel is transferred to the 10 CFR Part 72 licensed ISFSI. The proposed changes do not result in physical changes to the 10 CFR Part 50 facility and the plant conditions for which the design basis accidents have been evaluated are no longer applicable.

No new failure modes are introduced as the result of the proposed changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed license amendment involve a significant reduction in a margin of safety?

No. As described above, the proposed changes reflect the reduced operational risks within the 10 CFR Part 50 licensed facility after the fuel is transferred to the ISFSI. The design basis and the accident assumptions in the Defueled Safety Analysis Report (DSAR), and the Technical Specification Bases are no longer applicable after the fuel is permanently removed from the 10 CFR Part 50 licensed facility. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's significant hazards analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas A. Baxter, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N. Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: June 7, 2001.

Description of amendment request: The proposed amendment will delete certain administrative requirements from the Rancho Seco Technical Specifications and relocate other administrative requirements from the Rancho Seco Technical Specifications to the Rancho Seco Quality Manual following the transfer of all the spent nuclear fuel from the 10 CFR part 50 licensed site to the 10 CFR Part 72 licensed Independent Spent Fuel Storage Installation (ISFSI).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes are administrative and involve deleting certain administrative requirements from the Technical Specifications. Some administrative requirements are no longer applicable after permanently transferring the spent nuclear fuel from the 10 CFR 50 licensed facility to the 10 CFR 72 licensed ISFSI. Other administrative requirements are being relocated to the NRC-approved Rancho Seco Quality Manual (RSQM).

Relocating administrative requirements to the NRC-approved RSQM is consistent with the guidance in NRC Administrative Letter 95–06. Relocating these administrative requirements will not alter the configuration or operation of the facility, and therefore does not involve a significant increase in the probability or consequences of an accident previously evaluated.

In addition, deleting certain administrative requirements (i.e., PRC [Plant Review Committee] and MSRC [Management Safety Review Committee]) is based on permanently removing the spent nuclear fuel from the 10 CFR Part 50 licensed facility and transferring the fuel to a 10 CFR Part 72 licensed facility.

The design basis accidents analyzed in the Rancho Seco Defueled Safety Analysis Report (DSAR) include the fuel handling accident and a loss of offsite power. Both of these accidents are based on spent nuclear fuel being stored in the spent fuel pool at the 10 CFR Part 50 licensed facility.

With all of the spent fuel stored at the Rancho Seco ISFSI, the accidents evaluated in the DSAR are no longer relevant. Therefore, the proposed license amendment does not involve any increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes are administrative and reflect the reduced operational risks within the 10 CFR Part 50 licensed facility after the fuel is transferred to the 10 CFR Part 72 licensed ISFSI. The proposed changes do not result in physical changes to the 10 CFR Part 50 facility, and the plant conditions for which the design basis accidents have been evaluated are no longer applicable.

No new failure modes are introduced as the result of the proposed changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed license amendment involve a significant reduction in a margin of safety?

No. As described above, the proposed changes are administrative and reflect the reduced operational risks within the 10 CFR Part 50 licensed facility after the fuel is transferred to the ISFSI. The design basis and the accident assumptions in the DSAR and the Technical Specification Bases are no longer applicable after the fuel is permanently removed from the 10 CFR Part 50 licensed facility. Therefore, the proposed changes do not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's significant hazards analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas A. Baxter, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N. Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 24, 2001.

Description of amendment request: The proposed change would relocate Technical Specification 3/4.9.6, "Refueling Machine" to the Technical Requirements Manual consistent with NUREG–1431, "Standard (Improved) Technical Specifications—Westinghouse Plants."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, it has been determined that this proposed amendment involves no significant hazards consideration. This determination was made by applying the Nuclear Regulatory Commission established standards contained in 10 CFR 50.92. These standards assure that operation of South Texas Project in accordance with this request consider the following:

(1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This request involves an administrative change only. No actual plant equipment or accident analyses will be affected by the proposed changes. Operability of the refueling machine ensures that the equipment used to handle fuel within the reactor vessel has sufficient load capacity for handling fuel assemblies and/or control rods. Although the refueling machine is designed and has interlocks that can prevent damage to the fuel assemblies, the equipment is not assumed to function or actuate to mitigate the consequences of a design basis accident or transient in the safety analysis. Therefore, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated.

(2) Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request involves an administrative change only. The proposed change does not alter the performance of the refueling machine and auxiliary hoist or the manner in which the equipment will be operated. The refueling equipment will still be tested before placing the equipment into operational service. Changing the location of these requirements and surveillances from Technical Specifications to the Technical Requirements Manual [TRM] will not create any new accident initiators or scenarios. Since the proposed changes only allow activities that are presently approved and conducted, no possibility exists for a new or different kind of accident from those previously evaluated.

(3) Will the change involve a significant reduction in a margin of safety?

Response: No.

This request involves administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety systems settings, or will not relax the bases for any limiting conditions of operation. Therefore, the proposed changes will not impact the margin of safety.

Conclusion

Based on the above analysis, STPNOC concludes that the proposed amendment to relocate these requirements from Technical Specifications to the TRM involve no significant hazards consideration under the standards set forth in 10 CFR 50.92(c) and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 24, 2001.

Description of amendment request: Revise the Technical Specification definition for CORE ALTERATIONS so that moving the control rods with the integrated head package would not be a core alteration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

STPNOC [South Texas Project Nuclear Operating Company] has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10CFR50.92, "Issuance of amendment," as discussed below.

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change in the definition of CORE ALTERATIONS will not alter the way STPNOC handles the integrated head package. No new accident initiators will be introduced. Consequently, there is no significant increase in the probability of an accident previously evaluated.

The evaluation demonstrates that the RCCAs [rod cluster control assemblies] have no effect on reactivity when they are withdrawn into the integrated head package. The proposed change has no effect on assumptions made in any accident previously evaluated. Consequently, there are no significant increases in the consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any new processes, procedures, or significantly different plant configurations. No new reactivity configurations are presented. Consequently, the possibility of a new or different kind of accident is not created.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The evaluation shows the RCCAs have no effect on reactivity when they are withdrawn into the integrated head package. Moving the integrated head package with the RCCAs withdrawn provides the same degree of control on reactivity as the original definition. Consequently, the proposed change does not involve a significant reduction in the margin of safety.

Conclusion

Based upon the analysis provided herein, the proposed amendments will not increase the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a reduction in a margin of safety. Therefore, the proposed amendments meet the requirements of 10 CFR 50.92 and do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance

with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: October 20, 2000, as supplemented by letter dated March 12, 2001.

Brief description of amendments: The amendments revised the Technical Specifications (TS) 3.7.10, "Control Room Area Ventilation System (CRAVS)" by eliminating the requirement for the CRAVS high chlorine protection function. The amendments also eliminated the requirement for the safety related chlorine monitor and the capability for automatic isolation of the control room area ventilation system when prompted by a signal from the detectors. Revisions to the corresponding Bases for TS 3.7.10 have been incorporated.

Date of issuance: June 28, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance June 28, 2001.

Amendment Nos.: 191 and 183.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 10, 2001 (66 FR 2013). The supplement dated March 12, 2001, provided clarifying information that did not change the scope of the October 20, 2000, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 28, 2001.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 19, 2001.

Brief description of amendment: The amendment modifies Technical Specification 3.6.5, "Vacuum Relief Valves," Limiting Condition for Operation, and extends the allowed outage time from 4 hours to 72 hours to restore the vacuum relief line to OPERABLE status. In addition, Attachment 1 to the Waterford Steam Electric Station, Unit 3 Operating License has been deleted and paragraph 2.C.1 revised to reflect the deletion.

Date of issuance: June 18, 2001.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 171.

Facility Operating License No. NPF–38: The amendment revised the Operating License and Technical Specifications.

Date of initial notice in Federal Register: 66 FR 27176, dated May 16, 2001.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 18, 2001.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: November 28, 2000, as supplemented June 12, 2001.

Brief description of amendment: This amendment revises the design basis for the post-trip steam line break analysis to allow less than or equal to 2% fuel failure.

Date of Issuance: June 19, 2001.

Effective Date: June 19, 2001.

Amendment No.: 116.

Facility Operating License No. NPF–16: Amendment does not revise the operating license or its appendices.

Date of initial notice in Federal Register: February 7, 2001 (66 FR 9384). The June 12, 2001, supplement did not affect the original proposed no significant hazards determination, or expand the scope of the request as noticed in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: January 30, 2001.

Brief description of amendment: The amendment changes two requirements in the Operating License regarding the reporting of changes to the approved fire protection plan and exceeding the licensed steady-state power level.

Date of issuance: June 26, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 203

Facility Operating License No. DPR–20. Amendment revised the Operating License.

Date of initial notice in Federal Register: April 4, 2001 (66 FR 17965). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 2001.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: March 2, 2001.

Brief description of amendment: The proposed amendment revises Technical Specifications (TS) Section 5.6, "TS Bases Control Program," to delete the term "unreviewed safety question" consistent with the recent revision to 10 CFR 50.59. The TS, as amended, would continue to incorporate the criteria of 10 CFR 50.59 by reference.

Date of issuance: June 15, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 32.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 4, 2001 (66 FR 17971).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 2001.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland this 2nd day of July 2001.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–17223 Filed 7–10–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued revisions of two guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 3 of Regulatory Guide 1.52, "Design, Inspection, and Testing Criteria for Air Filtration and Adsorption Units of Post-Accident Engineered-Safety-Feature Atmosphere Cleanup Systems in Light-Water-Cooled Nuclear Power Plants," describes methods acceptable to the NRC staff for complying with the NRC's regulations with regard to the design, inspection, and testing criteria for air filtration and iodine adsorption units of engineered-safety-feature atmosphere cleanup systems in light-water-cooled nuclear power plants. This guide applies only to post-accident atmosphere cleanup systems that are designed to mitigate the consequences of postulated accidents.

Revision 2 of Regulatory Guide 1.140, "Design, Inspection, and Testing Criteria for Air Filtration and Adsorption Units of Normal Atmosphere Cleanup Systems in Light-Water-Cooled Nuclear Power Plants," describes methods acceptable to the NRC staff for complying with the NRC's regulations with regard to the criteria for air filtration and adsorption units installed in the normal ventilation exhaust systems of light-water-cooled nuclear power plants.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection or downloading at the NRC's web site at <*WWW.NRC.GOV*> under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site; Revision 3 of Regulatory Guide 1.52 is under ADAMS Accession Number ML011710176; Revision 2 of Regulatory Guide 1.140 is under ADAMS Accession Number ML011710150. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301)415–2289, or by email to <*DISTRIBUTION@NRC.GOV*>. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 25th day of June 2001.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 01–17349 Filed 7–10–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Service, Washington, DC 20549

Extension:

Rule 15Bc3–1 and Form MSDW, SEC File No. 270–93, OMB Control No. 3235–0087

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information discussed below.

Rule 15Bc3–1 under the Securities Exchange Act of 1934 provides that a notice of withdrawal from registration with the Commission as a bank municipal securities dealer must be filed on Form MSDW.

The Commission uses the information submitted on Form MSDW in determining whether it is in the public interest to permit a bank municipal securities dealer to withdraw its registration. This information is also important to the municipal securities dealer's customers and to the public, because it provides, among other things, the name and address of a person to contact regarding any of the municipal securities dealer's unfinished business.

The staff estimates that approximately 20 respondents will utilize this notice annually, with a total burden for all respondents of 10 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 15Bc3–1 is .5 hours. The average cost per hour is approximately $101. Therefore, the total cost of compliance for the respondents is $1,010 ($101 × 5 × 20 = $1,010).

Providing the information on the notice is mandatory in order to withdraw from registration with the Commission as a bank municipal securities dealer. The information contained in the notice will not be confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 3, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17266 Filed 7–10–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44507; File No. SR–AMEX–2001–31]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to the Pilot Program Eliminating Position and Exercise Limits for Certain Broad Based Index Options

July 3, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2001, the American Stock Exchange LLC ("Amex" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to re-establish a pilot program eliminating position and exercise limits for the Major Market ("XMI") and Institutional ("XII") broad-based index options, as well as FLEX Options on these indexes for a period of six months. The Commission previously approved the pilot program on a two-year basis that ended on February 1, 2001.[3] Unfortunately, the pilot program lapsed without the Exchange submitting a required rule filing for an extension of the program. As part of any extension, the Commission in the Pilot Program Release required the Exchange to submit a report detailing the size and different types of strategies employed with respect to positions in those classes not subject to position and exercise limits.[4] The experience at the Amex shows that the reporting threshold of over 100,000 contracts on the same side of the market for members and member organizations was never reached during the pilot program period.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999) ("Pilot Program Release").

[4] *Id.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to re-establish the two-year pilot program eliminating position and exercise limits for XMI and XII index options, as well as FLEX Options on these indexes for six months. The Exchange will continue to apply the requirements required by the Commission in the Pilot Program Release. Specifically, the Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 100,000 contracts in XMI, XII or FLEX Options on these indexes, for its own account or for the account of a customer, to report certain information.[5] In addition, the Amex will continue to require that member organizations report all index option positions exceeding 200 contracts, pursuant to Exchange Rule 906C.

Although the reporting thresholds in the lapsed pilot program were never met, the Exchange continues to believe that investors and member firms may require such flexibility in the future. In particular, the base limits for XMI and XII options may not be adequate for certain hedging needs for institutions that engage in trading strategies differing from those covered under the existing index hedge exemption policy (*e.g.*, delta hedges; OTC vs. listed hedges). Accordingly, the Amex believes that, with the elimination of position and exercise limits for these products, staff resources could be better utilized elsewhere.

Manipulation

Position and exercise limits were first imposed at the inception of options trading in 1973 in response to regulatory concerns over the potential for manipulation and market instability. The Amex believes that position and exercise limits in broad-based index options no longer serve their stated purpose largely due to increased trading in the underlying market and better surveillance procedures. The Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[6]

The Exchange believes that the size and breadth of the market underlying broad-based index options is so large and liquid as to dispel any concerns regarding market manipulation.[7] To date, there has not been a single disciplinary action involving manipulation in any broad-based index product listed on the Exchange. The Exchange believes that its eighteen years of experience conducting surveillance of index options and program trading activity is sufficient to identify improper activity. Routine oversight inspections of Amex's regulatory programs by the Commission have not uncovered any inconsistencies or shortcomings in the manner in which index option surveillance is conducted. These procedures entail a daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both the options and underlying stock basket components. In addition, to date, there have been no adverse effects on markets as a result of the elimination of position and exercise limits for FLEX equity options.[8]

The Exchange continues to believe that financial requirements imposed by

[5] This information includes the options positions, whether such position is hedged and if so a description of the hedge and if applicable the collateral used to carry the position. *See* Amex Rule 906C(b).

[6] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[7] The market capitalization as of May 21, 2001 for the underlying stocks of the XMI and XII are approximately $2.2 trillion and $7.7 trillion, respectively. In the Exchange's view, the large capitalizations and trading volumes of these underlying stocks renders unnecessary the need for position and exercise limits to protect against possible manipulative behavior.

[8] *See* Securities Exchange Act Release No. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997).

the Exchange and by the Commission adequately address concerns that a membe or its customer may try to maintain an inordinately large unhedged position in XMI and XII. As previously indicated in the Pilot Program Release, current margin, and risk-based haircut methoologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer.[9]

Reporting Requirements

As previously required under the Pilot Program Release, the Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 100,000 contracts in XMI or XII index options, for its own account or for the account of a customer, report certain information. This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market makers would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for broad-based index options.[10]

2. Basis

The proposed rule change is consistent with Section 6(b) of the Act[11] in general and furthers the objectives of Section 6(b)(5)[12] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordiantion with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

[9] It should also be noted that the Exchange has the authority under paragraph (d)(2)(K) of Rule 462 to impose a higher margin requirement upon the member or member organization when the Exchange determines a higher requirement is warranted.

[10] *See* Amex Rule 906C(a).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission has reviewed carefully the Amex's proposed rule change and believes, for the reasons set forth below, the proposal is consistent with the requirements of Section 6(b) of the Act[13] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act[14] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that an elimination of position and exercise limits for certain broad-based index options on a pilot basis is appropriate for the same reasons noted in the approval of the original pilot.[15] Overall, the Commission believes that the pilot will allow Amex to allocate certain of its surveillance resources differently, focusing on enhanced reporting and surveillance of trading to detect potential manipulation and risky positions that may unduly affect the cash market, rather than focusing on the strict enforcement of position limits. Although this regulatory approach deviates from the structure that has been in place since the beginning of index options trading, the Commission believes that the enhanced reporting and surveillance Amex is providing, as well as the fact that the pilot is limited to two of Amex's most highly capitalized and actively traded index options, provides a sound basis for approving a six-month pilot program eliminating position and exercise limits.

The Amex requests that the proposed rule change be given expedited review and accelerated effectiveness pursuant to Section 19(b)(2) of the Act because it is an extension of a lapsed pilot program previously approved y the Commission.[16] The Exchange believes that the arguments set forth by the Exchange, and the basis for the Commission's prior approval, are equally applicable to this filing.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register** as the proposal does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition. There is good cause for the Commission to accelerate effectiveness of this rule filing because the proposal raises no new or novel issues and is an extension of the XMI/XII Position Limit Pilot Program under the same terms and conditions previously approved by the Commission.[17] Accordingly, the Commission believes that it is consistent with Sections 6(b)(5)[18] and 19(b)(2)[19] of the Act to approve the proposal on an accelerated basis.[20]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[13] 15 U.S.C. 78f(b). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* note 3, *supra*. The Commission incorporates by reference the basis for approving the original pilot as set forth in the Pilot Program Release.

[16] 15 U.S.C. 78s(b)(2).

[17] *See* note 3, *supra*.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78s(b)(2).

[20] The Commission requests that the Amex update the Commission on any problems that have developed with the pilot since the last extension, including any compliance issues, and whether there have been any large unhedged positions that have raised concerns for the Amex. In addition, the Commission expects that the Amex will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–2001–31 and should be submitted by August 1, 2001.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change is hereby approved on an accelerated basis on a six-month pilot basis until January 3, 2002.

For the Commission by the Division of Market Regulation, Pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17304 Filed 7–10–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44509; File No. SR–DTC–2001–09]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Raise Maximum Net Debit Caps and Required Participants Fund Contributions

July 3, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 29, 2001, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of (i) an increase to $1.80 billion from $1.15 billion in the maximum net debit cap for any participant in the daily money settlement system of DTC, (ii) an increase of $200 million in the cash deposits to DTC's Participants Fund so that the aggregate amount of the required deposits to DTC's Participants Fund plus the required preferred stock investments of participants will increase to $600 million from $400 million and (iii) a decrease in the maximum net debit monitoring level in DTC's Mortgage-Backed Securities Division (the "MBS Division") to $1.75 billion from $2 billion.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proprosed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC employs several risk management controls in its daily money settlement system to protect DTC and its participants against the risk that a participant will fail to pay its net debit balance. One of those risk management controls is the net debit cap control, which imposes net debit caps on all participants. Each participant's net debit is limited throughout the processing day to a net debit cap that is the lesser of four amounts: (1) A net debit cap based on the average of the three largest net debits that the participant incurs over a rolling 70 business day period, (2) an amount, if any, determined by the participant's settling bank, (3) an amount, if any, determined by DTC or (4) the aggregate of the cash deposits in the Participants Fund plus DTC's committed lines of credit minus a cushion, which amount is currently $1.15 billion.

Similarly, in the MBS Division each participant's net debit is limited throughout the processing day to a net debit monitoring level. The maximum net debit monitoring level in the MBS Division is the lesser of two amounts: (1) 100% of the total committed lines of credit available to DTC for the MBS Division (such total currently being $2 billion) or (2) an amount, if any, determined by DTC.

As trading volumes, particularly money market instruments, have increased, and as associated settlement values have increased, participants increasingly have had to make settlement progress payments, which are funds wired to DTC intraday, in order to avoid having their receipts of securities blocked by their net debit caps. Participants have requested that DTC raise the maximum net debit cap, which would increase operational efficiency for participants.

In order to provide liquidity in the event of a participant's failure to settle with DTC after the proposed increase in the maximum net debit cap, DTC is increasing the amount of the required deposits to the DTC Participants Fund. The required deposits are presently an aggregate of $325 million in cash and an aggregate of $75 million in required preferred stock investments. The required cash deposits to the Participants Fund will be increased to $525 million so that the aggregate amount of the required cash deposits and preferred stock investments of participants will be $600 million.

DTC and the National Securities Clearing Corporation are also jointly obtaining a committed credit facility to replace their existing separate credit facilities. As part of the new credit facility, the amount of the credit facility supporting DTC's money settlement system will be increased to $1.75 billion from $1 billion. This will give DTC aggregate available liquidity resources of $2.35 billion (*i.e.*, $1.75 billion credit facility plus $600 million Participants Fund and preferred stock investments). The amount of the credit facility supporting the MBS Division will be decreased to $1.75 billion from $2 billion.[3]

As a result of increasing the aggregate liquidity resources to $2.35 billion, DTC will be able to increase the maximum net debit cap for any participant to $1.8 billion from $1.15 billion.

The proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder applicable to DTC because the proposed rule change will be implemented consistently with the safeguarding of securities and funds

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[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The decrease in the amount of the credit facility supporting the MBS Division corresponds with a decrease in the volume of transactions being processed through the division and with an effort to more efficiently allocate the amount of credit available to DTC, NSCC, and the MBS Division.

[4] 15 U.S.C. 78q–1.

in DTC's custody or control or for which it is responsible because all of DTC's risk management controls will continue in effect.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been discussed with several participants. Written comments from participants or others have not been solicited or received on the proposed rule change. In addition to informing participants through this notice and order, all participants will be informed of the proposed rule change by a DTC Important Notice.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[5] The Commission believes that the proposed rule change is consistent with DTC's obligations under the Act because an increase in DTC's liquidity resources will help DTC protect itself, its participants, and investors from the risks associated with the failure of one or more of its participants to settle their obligation with DTC at the end of a business day. Furthermore, Commission approval of the rule change is consistent with the Commission's past approvals of increases in DTC's liquidity resources and maximum net debit cap.[6] Therefore, the Commission finds that DTC's proposed rule change is consistent with its obligations under Section 17A(b)(3)(F) of the Act.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing because accelerated approval will permit DTC to immediately increase its liquidity resources.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–2001–09 and should be submitted by August 1, 2001.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2001–09) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17269 Filed 7–10–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44502; File No. SR–GSCC–2001–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding a Participant Rebate Program

July 2, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 14, 2001, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to initiate a participant rebate program that will distribute excess income pro rata back to members each calendar quarter based upon their gross fees paid to GSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, GSCC included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to initiate a participant rebate program that will distribute excess income pro rata back to members each calendar quarter based upon their gross fees paid to GSCC. The rebate program is immediately effective and the first rebate, if any, will be paid with respect to activity that took place during the second quarter of 2001.

GSCC states that there is no longer a need to continue to increase GSCC's level of shareholders' equity beyond a $30 million level since a sustained capital level of $30 million will be sufficient to provide for: (1) Adequate risk protection and (2) a cushion for temporary decreases in volumes and revenues. Moreover, GSCC expects that it will be able to fund all projects out of current revenues.

GSCC has structured the rebate program so that: (1) Rebates of excess net income will be made on a quarterly basis; (2) the amount of rebate provided to individual members will be based on

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[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] *See, e.g.*, Securities Exchange Act Release No. 40330 (August 17, 1998), 63 FR 45100.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

the amount of fees paid by the member to GSCC with respect to the calendar quarter (adjusted as appropriate for rebates, clearance charges, and other miscellaneous charges); (3) the amount of rebate for each of the first three calendar quarters of a year will be equal to 50 percent of accumulated net income; and (4) the rebate for the last calendar quarter of a year will be equal to 100 percent of the remaining excess net income for the year.

GSCC has the right to exclude or include, as applicable, anticipated expenses, losses, liabilities, and revenues from its calculation of excess net income. For example, GSCC has the discretion to reserve for development expenses and the costs of special projects.

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it fulfills GSCC's mission of operating in a not-for-profit manner consistent with maintaining the integrity of GSCC's capital base, financial structure, and risk management process.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulation Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Debate of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing change establishes or changes a due, fee, or other charge imposed by GSCC, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder.[4] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at GSCC. All submissions should refer to the File No. SR–GSCC–2001–05 and should be submitted by August 1, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17267 Filed 7–10–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44495; File No. SR–GSCC–00–02]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Enhancement of Risk Management Processes

June 29, 2001.

On April 17, 2000, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–00–02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on January 9, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

A GSCC's netting member's clearing fund requirement is based on a formula designed to take into account the three basic risks posed to GSCC by netting members. These risks include: (1) That a member might not pay a funds only settlement amount due to GSCC; (2) that a member may fail to settle a long-term repo; and (3) that a member might not deliver or take delivery of securities that comprise a net settlement position.

As a result, there are three components to each member's clearing fund deposit requirement with the sum of the three being a member's overall requirement. The three components are (1) the funds adjustment (FAD) component,[3] (2) the repo volatility component,[4] and (3) the receivo/deliver settlement component.[5] GSCC computes four receive/deliver settlement amounts each day. The four results are compared daily, and the largest amount is used in determining a member's clearing fund requirement. The four receive/deliver settlement computations are as follows: (1) Post-offset margin amount (POMA);[6] (2) average POMA;[7] (3) adjusted

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[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 43791 (January 2, 2001), 66 FR 1709.

[3] The funds adjustment component is based on each member's average funds only settlement amount. The relevant variable in this calculation is the size of the settlement amount. It does not matter whether the funds are to be collected from the member or paid to the member.

[4] The repo volatility component reflects the interest rate exposure incurred by GSCC in guaranteeing the contractual rate of interest on a repo transaction. The repo volatility factor essentially represents an estimate of the amount that repo market rates might change over the remaining course of the repo.

[5] The receive/deliver settlement component is based on the size and nature of net settlement positions. The margin collected on net settlement positions is determined by applying margin factors that are designed to estimate security price movements. The factors are expressed as percentages and are determined by historical daily price volatility. By multiplying security settlement values by their corresponding margin factors, GSCC estimates the amount of loss to which it is potentially exposed from price changes. Margin amounts on receive (long) and deliver (short) positions are allowed to offset each other. The extent to which an offset is allowed is determined by product and the degree of similarity in time remaining to maturity.

[6] The POMA computation offsets gains against losses in liquidating a member's positions that are anticipated based on historical experience. The POMA essentially is the total margin on the current day's positions and forward net settlement positions taking into account allowable offset percentages.

[7] The average POMA computation is based on the member's twenty highest POMA amounts occurring in the most recent 75 business days.

POMA;[8] and (4) liquidation amount. The liquidation computation, which is the subject of this rule filing, is a floor amount designed to ensure that if the margin offsets ordinarily allowed in calculating the receive/deliver settlement component do not reflect actual market conditions during a liquidation period, GSCC nonetheless will have a sufficient level of collateral protection. In other words, this minimum requirement protects against the risk that during a liquidation period the yield curve will be aberrational. In such a situation, collection of a minimum amount of margin based on gross calculation should ensure that GSCC will have sufficient collateral to cover liquidation losses.

The proposed rule change lowers the percentage calculated on the net long and net short positions in the liquidation amount calculation from 25 percent to 10 percent. GSCC believes that this more appropriately balances the level of margin it collects against the liquidity needs of its members.

GSCC believes that 25 percent was overly conservative for several reasons. First, GSCC's experience has demonstrated that its POMA and average POMA calculations provide adequate protection against potential settlement risks. By calculating an average POMA (based on a member's twenty highest POMA amounts occurring in the most recent 75 business days), GSCC ensures that it calculates a historically sufficient receive/deliver settlement component for a member even when current activity results in a relatively low requirement. Also, periodic studies conducted by GSCC assessing the risks presented to it from the potential default by a member on its obligations to GSCC have concluded that GSCC's methodologies for identifying and computings its risks provide it with a high level of protection on an individual and aggregate basis.

Second, the liquidation amount ignores and negates much of the protection afforded by a hedging strategy. The more a member engages in a hedging strategy with respect to its trading, the more it protects itself and in turn its clearing corporation from the risk of its failure. However, GSCC believes that the current 25 percent requirement effectively disregards the protection afforded to GSCC by a member that engages in trading activity on a fully hedged basis.

[8] The adjusted POMA computation is the same as the POMA with the exception that it excludes all trades that are scheduled to settle on the current day. This is done based on the assumption that those trades will in fact settle on the current day and that calculating POMA in this manner will more accurately reflect GSCC's settlement exposure during the current day.

II. Discussion

Section 17A(b)(3)(F)[9] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible. Because the Commission believes that even with the liquidation component of the clearing fund formula reduced from 25 percent to 10 percent, GSCC's clearing fund formula will give GSCC sufficient resources to protect it in a situation where a member is insolvent and fails to settle with GSCC. As such, the Commission believes GSCC's proposal is consistent with its obligation to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–00–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17268 Filed 7–10–01; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44508; File No. SR–ISE–2001–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Relating to Permanent Approval of its Allocation Algorithm Pilot

July 3, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2001, the International Securities Exchange LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Supplementary Material .01 to Rule 713 to adopt the Exchange's current allocation algorithm pilot program on a permanent basis. The Exchange's allocation algorithm pilot was approved by the Commission on May 22, 2000,[3] and recently was extended until August 1, 2001.[4] The text of the proposed rule change is available at the ISE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE Rule 713 provides that, at a given price, customer orders have priority, based on the time priority of such orders. ISE Rule 713(e) provides that if there are two or more non-customer orders or market maker quotations at the Exchange's inside market, after filling all customers at that price, executions will be allocated between the non-customer orders and market maker quotations "pursuant to an allocation procedure to be determined by the Exchange from time to time * * *." ISE Rule 713(e) also states that, if the primary market maker ("PMM") is quoting at the Exchange's inside market, it will have precedence over non-

[3] *See* Securities Exchange Act Release No. 42808 (May 22, 2000), 65 FR 34515 (May 30, 2000)("Release No. 42808").

[4] *See* Securities Exchange Act Release No. 44340 (May 22, 2001), 66 FR 29373 (May 30, 2001)("Release No. 44340").

customer orders and competitive market maker ("CMM") quotes for execution of orders that are up to a specified number of contracts. Supplementary Material .01 to ISE Rule 713 specifies the ISE's allocation procedure for non-customer orders and market maker quotations and defines the size of orders for which the PMM has priority to be those of five contracts or fewer.

The allocation procedure is a trading algorithm programmed in the ISE's electronic auction market system (the "System") that determines how to split the execution of incoming orders among professional trading interests at the same price. All public customer orders at a given price are always executed fully before the trading algorithm is applied. Moreover, because the algorithm is applied automatically by the System upon the receipt of an executable order, only those non-customer orders and market maker quotes that are in the System participate in the algorithm. Thus, there is no opportunity for a market participant to receive an allocation unless it had an order or quote in the System at the execution price at the time the incoming order was received by the System.

Subject to the PMM's participation rights discussed below, allocation of executions to non-customer orders and market maker quotes is based on the size associated with the order or quote relative to the total size available at the execution price. According to the Exchange, because PMMs have unique obligations to the ISE market,[5] they are provided with certain participation rights. If the PMM is one of the participants with a quote at the best price,[6] it has participation rights equal to the greater of (1) the proportion of the total size at the best price represented by the size of its quote, or (2) 60 percent of the contracts to be allocated if there is only one other non-customer order or market maker quotation at the best price, 40 percent if there are two other non-customer orders and/or market maker quotes at the best price, and 30 percent if there are more than two other non-customer orders and/or market maker quotes at the best price.[7] This allocation procedure has been approved by the Commission on a permanent basis, and the Exchange is not proposing any changes to the procedure at this time.[8]

In addition, to the above preference, the allocation procedure provides that the PMM has precedence to execute orders of five contracts or fewer. This means that such orders will be executed first by the primary market maker if it is quoting at the best price. This aspect of the allocation procedure was approved by the Commission on a one-year pilot basis.[9] In its temporary approval of this PMM preference, the Commission stated its intent to monitor the rule's impact on competition during the pilot period and the ISE agreed to provide four types of specific confidential data to the Commission on a quarterly basis. The Commission stated that these statistics would enable it to adequately assess the operation of the small-order preference and determine the merit of the competitive issues raised by commenters at the time the pilot was adopted. The ISE also committed to lowering the size of the orders to which the PMM is given a preference if the execution of orders for five contracts or fewer by PMMs exceeded 40 percent of total exchange volume (excluding volume from the execution facilitation orders).

During the pilot period, the Exchange has provided the statistics required under the pilot and has carefully monitored the percentage of total ISE volume resulting from execution of orders of five contracts or fewer by the PMMs. The Exchange notes that the 40% threshold was not reached during the pilot program, and in fact, that the total percentage was substantially lower than 40%. Moreover, the statistics indicated that the five contract precedence for PMMs did not result in reduced incentives for other market makers to quote aggressively. Large percentages of orders of five contracts or fewer were executed by participants other than the PMM, and large percentages of all the volume on the Exchange were executed by participants other than the PMM. Overall, the Exchange believes the confidential statistics showed that there is very active quote competition on the ISE for all orders, both large and small.

Going forward, the Exchange believes that the small order participation right for PMMs will not necessarily result in a significant portion of the Exchange's volume being executed by the PMM. As stated above, the PMM executed against such orders only if it is quoting at the best price, and only for the number of contracts associated with its quotation. Nevertheless, on a semi-annual basis, the Exchange will continue to evaluate what percentage of the volume executed on the Exchange is comprised of orders for five contracts or fewer executed by primary market makers, and will reduce the size of the orders included in this provision if such percentage is over 40 percent.

The small order participation rights for PMMs described above is part of the ISE's careful balancing of the rewards and obligations that pertain to each of the Exchange's classes of memberships. This balancing is part of the overall market structure that is designed to encourage vigorous price competition between market makers on the Exchange, as well as maximize the benefits of price competition resulting from the entry of customer and non-customer orders, while encouraging participants to provide market depth.[10]

The ISE is the first exchange in the United States to attempt to combine all of the elements of an auction market in an electronic environment. The Exchange believes the proposed trading algorithm, which includes participation rights for PMMs only when they are quoting at the best price, strikes the appropriate balance within its market and maximizes the benefits of an electronic auction market for all participants. The ISE's experience to

[5] For example, PMMs are responsible for ensuring that all ISE disseminated quotations are for at least 10 contracts, addressing customer orders that cannot be automatically executed when another market is disseminating a better quotation, and opening the market. *See* ISE Rule 803(c).

[6] The participation rights are programmed into the trading algorithm, so that they are applied automatically by the System when splitting executions among non-customer orders and market maker quotes after public customer orders at the same price are fully executed as described above. Consequently, like any other market participant, the PMM cannot receive any portion of an allocation, regardless of its participation rights, unless it is quoting at the best price at the time the executable order is received by the System. Moreover, the size associated with the PMMs quote must be sufficient to fill the portion of the order that would be allocated to it according to the participation rights, but the size of its quote is only 20 contracts, the PMM would receive an allocation of only 20 contracts. If the size associated with a PMM's quote is only three contracts when an executable order for five contracts is received (assuming there are no public customer orders), the PMM would execute only three contracts.

[7] According to the participation rights, a PMM quoting at the inside market generally is allocated the plurality of an order. For example, if both a PMM and CMM are quoting at the inside market for 50 contracts each, an incoming order for 10 contracts will be allocated between the two for six and four contracts respectively (a 60% allocation to the PMM). If the PMM is quoting for 50 contracts and there are two CMMs each quoting for 50 contracts, the PMM is allocated four contracts and the two CMMs are allocated three each (40 percent for the PMM, and the remaining 60 percent split equally between the CMMs because they are quoting an equal size). At a minimum, a PMM will be allocated 30 percent of an order, regardless of the number of other quotes or orders at that price.

[8] *See* Release No. 42808, *supra* note 3.

[9] *Id.* The pilot has been extended to August 1, 2001 while the Commission considers this proposed rule change requesting permanent approval. *See* Release No. 44340, *supra* note 4.

[10] The other options exchanges also have participation rights for their specialists, designated primary market makers and lead market makers. *See* Amex Rules 950(d) and 126(e); CBOE Rule 8.80(c)(7); PCX Rule 6.82(d)(2); and Phlx Rule 1014(g).

date has been consistent with this belief and the Exchange has provided the Commission with execution data to this effect. Accordingly, the Exchange requests that the Commission now approve the pilot on a permanent basis.

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[11] which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the ISE consents, the Commission will:

(A) By order approve the proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2001–17 and should be submitted by August 1, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17305 Filed 7–10–01; 8:45 am]

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[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44505; File No. SR–Phlx–2001–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Eliminate the Requirement That the Three Core Members of the Equity and Options Allocation, Evaluation, and Securities Committees Who Conduct a Public Securities Business Be the Same People for Both Committees

July 3, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx rule 500(a)(iii), Equity Allocation, Evaluation and Securities Committee and Options Allocation, Evaluation and Securities Committee (the "Committee" or "Committees"), which establishes the composition of the Committees, to eliminate the requirement that the three core members of the Committees who conduct a public securities business be the same people for both Committees.[3] The following is the text of the proposed rule change. Proposed additions are *italicized* and proposed deletions are in brackets.

* * * * *

Rule 500. Equity Allocation, Evaluation and Securities Committee and Options Allocation, Evaluation and Securities Committee.

The Equity Allocation, Evaluation and Securities Committee and the Options Allocation, Evaluation and Securities Committee, respectively, shall administer Rules 500 through 599, where applicable, and unless indicated otherwise, these rules shall apply to both option and equity specialist evaluations and allocations. For the purpose of Rules 500 through 599, the term "Committee" shall mean either the Equity Allocation, Evaluation and Securities Committee or the Options Allocation, Evaluation and Securities Committee, where applicable.

(a) Composition.

(i) The core members of the Equity Allocation, Evaluation and Securities Committee shall be three persons who conduct a public securities business, and two persons who are active on the equity trading floor as a specialist or floor broker. The annual members of the Equity Allocation, Evaluation and Securities Committee shall be two persons who are active on the equity trading floor as a specialist or floor broker, one public Governor and one non-industry Governor.

(ii) The core members of the Options Allocation, Evaluation and Securities Committee shall be three persons who conduct a public securities business, one person who is active on the options trading floor as a floor broker, and one person who is active on the options trading floor as a specialist, registered options trader, or floor broker. The

[3] On July 5, 2000, the Commission approved a proposed rule change, which divided the Phlx Allocation, Evaluation and Securities Committee into two separate committees, one for equities and one for options. *See* Securities Exchange Act Release No. 43011 (July 5, 2000), 65 FR 34521 (May 30, 2000).

annual members of the Options Allocation, Evaluation and Securities Committee shall be two persons who are active on the options trading floor as a specialist, registered options trader, or floor broker, one public Governor and one non-industry Governor.

(iii) [The three persons who conduct a public securities business and t]*The* public Governor and non-industry Governor, as set forth in Sections (i) and (ii) above shall be the same persons, and shall be members of both the Equity Allocation, Evaluation and Securities Committee and the Options Allocation, Evaluation and Securities Committee.

(b) Where circumstances warrant, the Committee may determine to consult with the Floor Procedure Committee, Options Committee or Foreign Currency Options Committee.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statement.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the requirement that the three core members of the Committees who conduct a public securities business be the same people for both Committees. Rule 500 requires that the three core members of both Committees who conduct a public securities business be the same people. The proposed amendment to Rule 500 would eliminate this requirement and thereby permit the Committees to have core members who conduct a public securities business in options or equities to serve only on the Committee in which they conduct their particular type of securities business.

Each Committee is responsible for appointment of specialist units on the floor;[4] for approving the transfer of equities or options among specialist units on each floor;[5] for allocating equities or options to applicant specialist units on each floor;[6] for evaluating the performance of specialist units on each floor;[7] for reallocating equities or options when warranted due to performance issues from one specialist unit to another;[8] and for supervising over questions pertaining to securities admitted to dealings on the Exchange.[9]

The Exchange believes that by permitting the three core members of both Committees who conduct public securities business to be different people, both Committees should benefit from the specific options or equities industry expertise and experience that those members possess and can bring to each committee. This would serve to provide added expertise on each committee in allocating securities to, and evaluating performance of, specialist units on the trading floor on which the Committee member works and has experience. Currently, the three core members who conduct a public securities business are the same on each Committee regardless of whether their particular experience is limited to either equities or options. Under the proposal, the three core members who conduct a public securities business on the Committees would consist of members with experience specific to the type of securities to be allocated, and in the type of specialists to be evaluated.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act[10] in general, and with Sections 6(b)(5)[11] of the Act in particular, because it is designed to perfect the mechanisms of a free and open market and a national market system, to promote just and equitable principles of trade, and to protect investors and the public interest, by organizing the Committees to have core members who conduct a public securities business in options or equities to serve only on the Committee in which they conduct their particular type of securities business, thereby, permitting members with specific industry expertise to be a member of only that particular Committee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Phlx has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will;

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–54 and should be submitted by August 1, 2001.

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[4] See Phlx Rule 510.

[5] See Phlx Rule 508.

[6] See Phlx Rule 511(b).

[7] See Phlx Rules 511(c)–(d) and 515.

[8] See Phlx Rules 511(b)–(e) and 515.

[9] See Phlx Rules 800–899.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17303 Filed 7–10–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44513; File No. SR–Phlx–2001–22]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Regarding Members' and Member Organizations' Duty To File Form U–5 With the Exchange

July 3, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 17, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization ("SRO"). On June 5, 2001, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Exchange Rule 604 ("Registration and Termination of Registered Persons"), paragraphs (b) and (d), to provide that members and member organizations whose Designated Examining Authority ("DEA") is the Phlx must file Form U–5 ("Uniform Termination Notice for Securities Industry Registration") with the Phlx. The following is the text of the proposal:

(Italics represents additions; brackets represent deletions.)

* * * * *

Rule 604. Registration and Termination of Registered Persons

(a) Unchanged.

(b) Members and member organizations *whose Designated Examining Authority ("DEA") is the Exchange* shall immediately file a Form U–5, Uniform Termination Notice for Securities Industry Representatives and/or Agents [to the CRD] *with the Exchange* upon termination of any associated person. *Members and member organizations whose DEA is not the Exchange shall file Form U–5 with the CRD.*

(c) Unchanged.

(d) Every person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the [Designated Examining Authority (''] DEA [")] for the solicitation or handling of business in securities, including trading securities for the account of the member or participant organization, whether such securities are those dealt in on the Exchange or those dealt in over-the-counter, who is not otherwise required to register with the Exchange by paragraph (a) of this rule or another rule shall file Form U–4, Uniform Application for Securities Industry Registration or Transfer, with the Exchange.

(e) Unchanged.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide that members and member organizations whose DEA is the Exchange must file Form U–5, regarding termination of securities industry representatives and/or agents, with the Exchange.[4]

Pursuant to section 17(d) of the Act,[5] the Commission may "allocate among self-regulatory organizations the authority to adopt rules with respect to matters as to which, in the absence of such allocations, such self-regulatory organizations share authority under this title."[6] A DEA is the SRO that is responsible for examining compliance with certain federal securities laws, as well as the SRO's rules.

Currently, Phlx acts as the DEA for approximately 150 of its members and member organizations. As the DEA, Phlx regularly reviews books and records regarding the financial condition of members and member organizations, as well as trading reports and trader registration information. Rule 604(a) requires that all qualified Registered Representatives of Phlx members or participant organizations (and persons conducting functions customarily performed by a Registered Representative) register with the Exchange. Paragraph (d) requires that Form U–4 ("Uniform Application for Securities Industry Registration or Transfer") be filed with the Exchange by every person who is compensated for certain securities-related business by a member or participant organization whose DEA is Phlx. Currently, the rule requires that Form U–5 be filed with the CRD, with most members and member organizations filing with the Exchange as well. Because the rule is silent on the filing with the Exchange, it is especially important to state expressly in Phlx rules that Form U–5 must be filed with the Exchange. The proposed amendment will state in the rules the requirement that Form U–5 be filed with the Exchange upon termination of the above business relationships. Although the Exchange is presently exploring the possibility to secure a Web CRD connection for its members, it is the Exchange's belief that the proposed rule change is still necessary until such connection becomes available, in order to reflect current practice and to aid in the enforcement of the Form U–5 filing requirements.[7]

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[8] in general, and furthers the objectives of section 6(b)(5)[9] in particular in that it should promote just and equitable principles of trade, by requiring direct Exchange notification of

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Diana Tenenbaum, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 31, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange deleted a representation regarding the ability of Phlx members to access Web CRD, and added a sentence explaining the Exchange's current efforts to secure a connection to Web CRD.

[4] The proposed amendment pertains only to members and member organizations whose DEA is the Exchange. The general requirement that termination documentation be filed with the Central Registration Depository ("DRD"), in accordance with the provisions of Rule 604(b), remains in effect for all other members and member organizations.

[5] 15 U.S.C. 78q(d).

[6] 15 U.S.C. 78q(d).

[7] *See* Amendment No. 1, *supra* note 3.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

termination from all members and member organizations for whom the Phlx is the DEA. In addition, the proposed amendment should protect investors and the public interest by providing an efficient and promptly updated source of information—the DEA—regarding representatives or agents of members and member organizations who are no longer empowered to act on the member's behalf. Furthermore, the proposed rule amendment is consistent with the provisions of section 6(b)(7) of the Act,[10] in that it helps provide a fair procedure for terminated persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–22 and should be submitted by August 1, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the Phlx's proposed rule change and finds, for the reasons set forth below, the proposal is consistent with the requirements of section 6 of the Act[11] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with section 6(b)(5)[12] because it should ensure that information regarding representatives or agents of members and member organizations for whom the Phlx is the DEA and who are no longer empowered to act on the member's behalf is provided to the Exchange. In this regard, the Commission believes that the proposed rule change will facilitate the Exchange's oversight of its members and member organizations in accordance with its self-regulatory obligations prescribed in the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that it is important to revise the current Exchange rule to require members to file Form U–5 with the Exchange to ensure that, until a link is established with the NASD to allow members for whom the Phlx is the DEA to access Web CRD, these forms continue to be routinely and promptly filed by members. The Commission believes that it is important for the protection of investors that until members can access Web CRD, this information is collected and maintained by the Exchange.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change, as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17306 Filed 7–10–01; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b)(7).

[11] 15 U.S.C. 78f. In approving this rule change, the Commission noted that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 4 of the Act. *Id.* at 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10062]

The National Ballast Water Management Program

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings; request for comments.

SUMMARY: As directed by the National Invasive Species Act of 1996 [NISA], the Coast Guard seeks consultation with all interested and affected parties before making recommendations to Congress on the future of the national Ballast Water Management program. To accomplish this, the Coast Guard will host four regional public meetings to expand the opportunity for public input into the national program. We seek comments from any interested or affected party and encourage all interested parties to attend the meetings.

DATES: The public meetings will be held on the following dates in the cities listed:

West Coast: Oakland, CA—August 28, 2001.

Gulf Coast: Houston, TX—September 6, 2001.

Great Lakes: Ann Arbor, MI—September 11, 2001.

East Coast: Washington, DC—September 18, 2001.

With the exception of the Houston meeting, which will begin at 9:00 a.m., all meetings will begin at 9:30 a.m. and will end when business has been completed. Other comments must reach the Docket Management Facility on or before September 30, 2001.

ADDRESSES: The Coast Guard will hold the meetings at the following locations:

Oakland, CA: Gresham Conference Center, Coast Guard Island, Alameda, CA 94501, 510–437–3573

Houston, TX: Hilton Houston Hobby Airport, 8181 Airport Blvd, Houston, TX 77061, 713–645–3000

Ann Arbor, MI: Holiday Inn, North Campus, 3600 Plymouth Rd, Ann Arbor, MI 48105, 734–769–9800

Washington, DC: Nassif Building, 400 7th Street SW, Rooms 8236—8240, Washington, DC 20590, 202–366–0135

You may submit your comments directly to the Docket Management Facility. To make sure that your comments and related material are not entered more than once in the docket [USCG–2001–10062], please submit them by only one of the following means:

(1) By mail to the Facility, U.S. Department of Transportation, room PL–

401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Facility maintains the public docket for this notice. Comments, and documents as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401, on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call Lieutenant Junior Grade JoAnne Hanson, Project Manager, Environmental Standards Division, in the Office of Operating & Environmental Standards (G–MSO–4), Coast Guard, telephone 202–267–2079. For questions on viewing, or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to submit comments and related material on the national ballast water management program. If you do so, please include your name and address, identify the docket number [USCG–2001–10062] and give the reasons for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under ADDRESSES; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Public Meetings

The Coast Guard encourages interested persons to attend the meetings and present oral comments during the meetings. The meetings are open to members of the public. Please note that the meetings may close early if all business is finished. If you would like to present an oral comment during a meeting, please notify Lieutenant Junior Grade Hanson at the address given under **FOR FURTHER INFORMATION CONTACT** no later than August 17, 2001. If you are unable to attend the meetings, we encourage you to submit comments to the Docket Management Facility as indicated under ADDRESSES, by September 30, 2001.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to seek special assistance at the meeting, contact Lieutenant Junior Grade Hanson at the address or phone number under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Background and Purpose

The NISA mandated the Coast Guard to establish a national voluntary ballast water management (BWM) program, which became effective in July 1999. Additionally, the NISA requires the Coast Guard to: report to Congress no later than January 1, 2002, on the level of compliance with the guidelines; assess the effectiveness of the guidelines and standards issued under the national voluntary BWM program in reducing the introduction and spread of aquatic nuisance species by vessels; and begin revising the guidelines and standards as necessary.

The precursor to the NISA, the Nonindigenous Aquatic Nuisance Prevention and Control Act (NANPCA) [Pub. L. 101–646], was enacted by Congress on November 29, 1990, as a means of preventing and controlling the spread of zebra mussels and other aquatic nuisance species (ANS) in coastal and inland waters of the United States, with a particular emphasis on regulating ships entering the Great Lakes ecosystem.

The Coast Guard published a final rule titled "Ballast Water Management for Vessels Entering the Great Lakes" in the **Federal Register** on April 8, 1993 [58 FR 18330]. This rule established mandatory BWM procedures for the Great Lakes as detailed in 33 CFR part 151, subpart C. On December 30, 1994, the Coast Guard expanded the mandatory BWM practices to include portions of the Hudson River and amended the regulations in 33 CFR part 151 [59 FR 67632].

The NISA [Pub. L. 104–332] was enacted by Congress on October 26, 1996. This act reauthorized and amended the NANPCA, reemphasizing the significant role that ships' ballast water plays in the introduction and spread of ANS. The Coast Guard published the interim rule, "Implementation of the National Invasive Species Act of 1996," on May 17, 1999 [64 FR 26672]. These regulations expanded BWM to all remaining U.S. waters as follows:

- Requiring operators of vessels entering U.S. waters from outside the Exclusive Economic Zone (EEZ) to submit a BWM report
- Providing recommended BWM practices for operators of vessels entering the waters of the U.S. from beyond the EEZ
- Promoting BWM for operators of all vessels in waters of the U.S.

While the NISA provides that inadequate reporting of BWM practices will lead to a mandatory BWM program, there are presently no federal penalties associated with failing to submit the required BWM reports. Data from the first year since the implementation of the reporting requirement indicates a nationwide compliance of approximately 25%, and preliminary reviews of subsequent months indicate little change. In the absence of federal requirements for BWM, several states have passed ANS legislation and implemented mandatory BWM programs, including mandatory ballast water reporting and associated penalties.

The data gathered through the ballast water reports is being compiled by the Coast Guard and the National Ballast Information Clearinghouse and, combined with comments from the public and the shipping industry, will form the basis of the recommendation by the Secretary of Transportation to Congress about the future of the BWM program. In order to better gather input from the public, the Coast Guard requests comments be submitted to the Docket Management Facility (see details under **ADDRESSES**) and invites interested parties to attend any of the four regional public meetings.

The absence of a quantitative ballast water treatment (BWT) standard is widely viewed as a major impediment to the development, testing and evaluation of BWT technologies that could supplement or replace mid-ocean exchange of ballast water. To address this, the Coast Guard recently published two notices in the **Federal Register**. "Potential Approaches to Setting Ballast Water Treatment Standards" requesting comments on approaches to setting, implementing, and enforcing ballast water standards, was published on May

1, 2001 [66 FR 21807]. The second notice, "Approval for Experimental Shipboard Installations of Ballast Water Treatment Systems" was published on May 22, 2001 [66 FR 28213] and requests comments on a possible means of providing incentives to further the development and testing of BWT technologies.

Sample Topics for Consideration

In order to focus the discussion about the future of the national BWM program, please consider the following when submitting comments: (NOTE—some of these questions contain redundancies and they are not posed in a sequential fashion.)

1. Should BWM (including mid-ocean exchange of ballast water) be mandatory?

2. Should an exemption be allowed for those situations where a ship's master believes that performing BWM, including exchange, would endanger his vessel, crew and/or passengers? If so, how should the validity of such exemptions be verified?

3. Should there be an exemption from ballast water exchange requirements for those voyages whose routes take them outside the U.S. EEZ but not into waters of at least 2000 meters in depth and 200 miles from land (the prescribed depth of water and distance from land for conducting a mid-ocean exchange)?

4. Should the depth of water required for mid-ocean exchange be reduced to 500 meters, as is contained in the International Maritime Organization's definition of mid-ocean exchange?

5. Should ballast water exchange be permitted in waters less than 200 miles from shore? If so, what parameters should be considered?

6. Should the Coast Guard wait for the development of a BWT standard (a means of measuring the effectiveness of and comparing various ballast water treatments) before implementing mandatory BWM regulations?

7. Should ship type (e. g. passenger, container, bulk) influence regulatory requirements on BWM, and if so, how?

8. If BWM becomes mandatory, should ships constructed before the establishment of a mandatory program be treated differently than those constructed after the program goes into effect? If so, what should the distinctions be?

9. If a mandatory BWM program is developed, should the mandatory reporting requirement still be in effect? If so, what is the most efficient means of obtaining BWM data from vessels? Should BWM information be part of the advance notice of arrivals currently required of vessels arriving in U.S. ports and submitted to the appropriate Coast Guard Captain of the Port, even if this meant providing significantly more information in the advance notice of arrival than is currently required? Or should separate reports continue to be sent to the National Ballast Water Information Clearinghouse, which acts as the Coast Guard's agent for the collection, storage and further processing of these reports?

10. Should ballast water management requirements (including reporting and treatment) be extended to cover coastwise shipping that operates well within the EEZ? What kinds of BWM should coastwise shipping be required to practice?

11. Should there be an exemption from ballast water exchange requirements for those voyages where the vessel is only outside the U.S. EEZ for a minimal length of time? What length of time should be considered minimal?

Dated: July 5, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 01–17404 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–15–u

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–9988]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The License Implementation Working Group of the Towing Safety Advisory Committee (TSAC) will meet to discuss and develop the performance criteria to be used with the Towing Officer Assessment Record (TOAR) required in Title 46 Code of Federal Regulation 10.304(h). These performance criteria, when developed, will be announced in the **Federal Register** and made available for review and comment. Sample TOARs were published on May 21, 2001, as part of the Navigation and Vessel Inspection Circular 4–01 (NVIC 4–01) entitled "Licensing and Manning for Officers of Towing Vessels." This NVIC provides guidance on the implementation of a recent interim rule with request for comments published in the **Federal Register** on April 26, 2001 (66 FR 20931; Licensing and Manning for Officers of Towing Vessels, Docket Number: USCG 1999–6224). The NVIC is available on the Internet at *http://www.uscg.mil/hq/g-m/nvic/4_01/n4-01.pdf*. The rulemaking history is also available on the Internet at *http://dms.dot.gov* under the same Docket Number. The meetings are open to the public.

DATES: The Working Group will meet on Wednesday, July 25, 2001, from 1 p.m. to 4 p.m., and on Thursday, July 26, 2001, from 8 a.m. to 3 p.m. These meetings may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before July 23, 2001.

ADDRESSES: The Working Group will meet in room 6103 at Coast Guard Headquarters; 2100 Second Street, SW; Washington, DC 20593–0001. Send written materials and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1); Room 1210, U.S. Coast Guard Headquarters; 2100 Second Street, SW; Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director, TSAC, telephone 202–267–0229, fax 202–267–4570, or e-mail at: gmiante@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the Working Group's review of the TOARs and the drafting of performance criteria proposals that will be presented to the full Committee for approval at a later date.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director on or before July 23, 2001.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant Executive Director as soon as possible.

Dated: July 2, 2001.

Joseph J. Angelo,

Acting Assistant Commandant for Marine, Safety and Environmental Protection.

[FR Doc. 01–17390 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–9989]

The Coast Guard's Policy of Consultation and Coordination With Indian Tribal Governments Under Executive Order 13175

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: The Coast Guard is requesting general information that will better allow us to implement Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. This Executive Order directs Federal agencies to consult with Indian and Alaska Native tribal governments in the development of regulations that have a substantial direct effect on one or more Indian or Alaska Native tribes, on the relationship between the Federal Government and those tribes, or on the distribution of power and responsibiilities between the Federal Government and those tribes. The Coast Guard has queried its internal database and determined its regulations may impact a total of 13 tribal governments. These tribal governments own fishing vessels and passenger vessels. We suspect that there may be more tribal governments impacted by Coast Guard regulations than our database revealed. In order to better carry out our responsibilities under this Executive Order, we need your help in identifying tribes that may be affected by Coast Guard rulemakings, the officials of those tribes, and the procedures needed to ensure meaningful and timely input by tribal officials. Depending on the information received, we may modify our approach and/or policy used to carry out the intent of the Executive Order when we promulgate future rulemakings.

DATES: Comments and related material must reach the Docket Management Facility on or before October 9, 2001.

ADDRESSES: To make sure your comments and related material are not entered in the docket more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2001–9989) U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) By electronic means through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call Karen Adams, Regulatory Coordinator, Office of Standards Development (G–MSR), Coast Guard, telephone 202–267–6819. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Discussion

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, is intended (1) To establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal regulations that have tribal implications, (2) to strengthen the United States government-to-government relationships with Indian and Alaska Native tribes, and (3) to reduce the imposition of unfunded mandates upon those tribes. A regulation has "tribal implications" if it has a substantial direct effect on one or more Indian or Alaska Native tribes, on the relationship between the Federal Government and those tribes, or on the distribution of power and responsibilities between the Federal Government and those tribes. In order to better carry out our responsibilities under this Executive Order, we need your help in identifying tribes that may be affected by Coast Guard rulemakings, the officials of those tribes, and the procedures needed to ensure meaningful and timely input by tribal officials. We invite comments on how Coast Guard rulemakings may impact tribes and tribal governments, even if those impacts may not constitute "tribal implications" under the Executive Order. For example, there may be tribal governments in Alaska that own petroleum facilities, which are impacted by Coast Guard regulations. Also, there may be more than the currently identified 13 tribal governments that own fishing vessels and passenger vessels. A copy of Executive Order 13175 is available in the docket on the Internet at *http://dms.dot.gov.*

Request for Comments

Please explain your views clearly and provide copies of any information used to support your views. If you submit comments and related material, please include your name and address, identify the docket number for this notice (USCG–2001–9989), and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility as indicated under **ADDRESSES.** Please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period.

Dated: July 5, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 01–17403 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 26, 2001, pages 21037–21038.

DATES: Comments must be submitted on or before August 10, 2001. A comment to OMB is most effective if OMB

receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Maintenance, Preventive Maintenance, Rebuilding, and Alteration.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0020.

Forms(s) FAA Form 337.

Affected Public: 52,621 certified mechanics, repair stations, and air carriers authorized to perform maintenance, and those pilots authorized to perform and record preventive maintenance.

Abstract: The information collection associated with 14 CFR part 43 is necessary to ensure that maintenance, rebuilding, or alteration of aircraft, aircraft components, etc., is performed by qualified individuals and at proper intervals. Further, maintenance records are essential to ensure that an aircraft is properly maintained and is mechanically safe for flight.

Estimated Annual Burden Hours: 1,432,784 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and always to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 5, 2001.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 01–17375 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

DATES: The meeting will be held on July 25 and 26, 2001. On July 25, the meeting time is scheduled from 8:00 a.m. to 5:00 p.m., and on July 26, it is scheduled from 8:00 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be held at the Boeing Customer Services Center, MIC Conference Room, Fifth Floor, Building 11–14 South Tower, 2925 South 112th Street, Seattle, Washignton, 98168.

FOR FURTHER INFORMATION CONTACT: Shirley Stroman, Office of Rulemaking ARM–208, FAA, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–7470; fax (202) 267–5075; or e-mail *shirley.stroman@faa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of the Aging Transport Systems Rulemaking Advisory Committee, which will be held at the Boeing Customer Services Center, MIC Conference Room, Fifth Floor, Building 11–14 South Tower, 2925 South 112th Street, Seattle, Washington, 98168.

The meeting agenda will include review of membership and status reports of task progress for the following ATSTRAC working groups:

- Wire System Certification Requirements.
- Standard Wire Practice Manual (SWPM/ESPM).
- Enhanced Training Program for Wire Systems.
- Enhanced Maintenance Criteria for Systems.

In addition, there will be an overview of the program for Enhanced Airworthiness for Airplane Systems.

Attendance is open to the public but will be limited to the availability of meeting room space. The FAA will arrange teleconferencing for individuals who make their request to participate via teleconference before July 17. Callers from outside the Washington, DC metropolitan area will be responsible for paying long distance charges. We can also provide sign and oral interpretation as well as a listening device if requests are made within 10 calendar days before the meeting. You may arrange for these services by contacting the person listed under the **FOR FURTHER INFORMATION CONTACT** heading of this notice.

The public may present written statements to the Committee at any time by providing 20 copies to the Committee's Executive Director or by bringing the copies to the meeting. Public statements will only be considered if time permits.

Issued in Washington, DC on July 5, 2001.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

[FR Doc. 01–17348 Filed 7–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Public Meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS America) will hold a meeting of its Board of Directors on Tuesday, July 31, 2001. The meeting begins at 1:00 p.m. The letter designations that follow each item mean the following: (I) Is an information item; (A) is an action item; (D) is a discussion item. The General Session includes the following items: (1) Welcome & Introductions (I); Consent Agenda: (2) Antitrust Statements (I); (3) Minutes from the June 7, 2001 meetings (I); (4) U.S. DOT Federal Report (I); (5) Coordinating Council Report—Program Advice Letter to U.S. DOT on E–9–1–1 (I); (6) State Chapters Council Report (I); (7) State Chapters Council Report (I); (8) International Affairs Council Report (I); (9) Finance Subcommittee Report (I); (10) Other (I); (11) Review and Approval of Resolution on Trade Association Transition (I/D); (12) Future Activities and Programs of ITS America Councils and Principal Committees (I); (13) 10-Year Program Plan and Research Agenda Presentation and Discussion (I); (14) Board & Executive Committee Meeting Schedules; (15) Other business; (16) Adjournment.

ITS America provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS America establishes this organization as an advisory committee under the

Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS America will meet on Tuesday, July 31, 2001 from 1 p.m.–5 p.m. Room TBA.

ADDRESSES: Resort Semiahmoo, 9565 Semiahmoo Parkway, Blaine, Washington 98230–9326. Phone: (800) 770–7992 or (360) 318–2000. Web address: *www.semiahmoo.com.*

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS America, 400 Virginia Avenue, SW, Suite 800, Washington, D.C. 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS America by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, D.C. 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: July 3, 2001.

Jeffrey Paniati,

Program Manager, ITS Joint Program Office, Department of Transportation.

[FR Doc. 01–17376 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Trinity Industries Incorporated (Docket Number FRA–2001–9486)

The Trinity Industries, Inc. (TII) has petitioned FRA for a permanent waiver of compliance for a new design 100 Ton Seven Unit Articulated Intermodal Ramp Car (Ramp Car) from the requirements provided in title 49 CFR, 231.18, Cars of Special Construction, which states: "Cars of construction not covered specifically in the foregoing sections in this part, relative to handholds, sill steps, ladders, hand brakes and running boards may be considered as of special construction, but shall have, as nearly as possible, the same complement of handholds, sill steps, ladders, hand brakes, and running boards as are required for cars of the nearest approximate type."

The nearest approximate type of car for this new design Ramp Car is a flat car, as described in 49 CFR, 231.6, Flat Cars. Specifically, TII is seeking relief of four (4) requirements described below:

Hand Brake Locations, 49 CFR 231.6 (a)(3)(ii) requires that "The Brake shaft shall be located on the end of car to the left of center, or on side of car not more than 36 inches from right-hand end thereof." TII stated that it cannot meet this requirement because two brakes are required to restrain the car, but because of the ramp location at the "A" end of the car, a handbrake cannot be located within the required 36 inches from the end of the car. Also, during operation of the ramp for loading and unloading of the car, it will be necessary to apply and release the handbrakes. Accordingly the handbrakes are located as close as possible to the ramp and on the "B" end of the "G" and "F" units;

Sill Step Location, 49 CFR, 231.1(d)(3)(i) requires that "One near each end of each side of car, so that there shall be not more than 18 inches from end of car to center of tread of sill step." TII stated that the sill step is located three (3) feet and four (4) inches, or 40 inches from the end of car. The sill step is essentially cut-out from the side sill. The sill step has a minimum of clearance of two (2) inches. TII stated that the "A" end sill steps cannot meet the requirement due to the integral ramp. The sill step is 12 inches wide with an anti-skid surface, and a clear depth of eight (8) inches. A toe guard is also provided.

Side Handholds, 49 CFR 231.6(c)(3)(i) requires that "Horizontal, one on face of each side sill near each end. Clearance of outer end of handhold shall be not more than 12 inches from end of car." TII stated that the handhold is vertical and is located three (3) feet and four (4) inches or 40 inches, from the "A" end of the car. The end sill steps cannot meet the requirement due to the integral ramp.

End Handholds, 49 CFR 231.6(d)(3)(i) requires that "Horizontal, one near each side of each end of car on face of end sill. Clearance of outer end of handhold shall be not more than 16 inches from side of car." TII stated that because the ramp is an integral part of the Ramp Car, there is no end sill. Hence a handhold cannot be positioned in a horizontal orientation. Instead, TII proposes four (4) vertical handholds located on both side guards of the two ramps and are used only when the ramps are in the up position.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Docket Number FRA–2001–9486) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, D.C., 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on July 5, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–17377 Filed 7–10–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 592X)]

CSX Transportation, Inc.—Abandonment Exemption—In Clark County, IN

On June 21, 2001, CSX Transportation Inc., (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a segment of its Midwest Region railroad line, known as the Louisville Division, Louisville Terminal/Hoosier Subdivision, extending between milepost B–1.3, near Watson, and milepost B–6.7, near Jeffersonville, a distance of approximately 5.4 miles, in Clark County, IN. The line traverses U.S. Postal Service Zip Code 47130 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 9, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 31, 2001. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 592X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before July 31, 2001.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 29, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–16935 Filed 7–10–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC is soliciting comment concerning its information collection titled, "Transfer Agent Registration and Amendment Form—Form TA–1." The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments to the OCC and the OMB Desk Officer by August 10, 2001.

ADDRESSES: You should direct your comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0124, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW, Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Alexander T. Hunt, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Transfer Agent Registration and Amendment Form—Form TA–1.

OMB Number: 1557–0124.

Description: Section 17A(c) of the Securities Exchange Act of 1934 (Act), as amended by the Securities Act Amendments of 1975, provides that all those authorized to transfer securities registered under Section 12 of the Act (transfer agents) shall register by filing with the appropriate regulatory agency an application for registration in such form and containing such information and documents as such appropriate regulatory agency may prescribe to be necessary or appropriate, in furtherance of the purposes of this section. Form TA–1 was developed by the OCC, Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve to satisfy this statutory requirement. National bank transfer agents use Form TA–1 to register or amend registration as transfer agents. The OCC uses the information to determine whether to allow, deny, accelerate, or postpone an application. An amendment to Form TA–1 must be filed with the OCC within sixty calendar days following the date on which any information reported on Form TA–1 becomes inaccurate, misleading or incomplete. The OCC also uses the data to more effectively schedule and plan transfer agent examinations. Amendments to Form TA–1 are used by the OCC to schedule and plan examinations. The Securities and Exchange Commission maintains complete files on the registration data of all transfer agents registered, pursuant to the Act. It utilizes the data to identify transfer agents and to facilitate development of rules and standards applicable to all registered transfer agents.

Type of Review: Extension, without change, of OMB approval.

Affected Public: Businesses or other for-profit (national banks).

Estimated Number of Respondents: 50.

Estimated Total Annual Responses: 50.

Frequency of Response: On occasion.

Estimated Time per Respondent: 1.5 hour (Form); 15 minutes (Amendment).

Estimated Total Annual Burden: 25 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Dated: July 3, 2001.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 01–17251 Filed 7–10–01; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC is soliciting comment concerning its information collection titled, "Examination Questionnaire." The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments to the OCC and the OMB Desk Officer by August 10, 2001.

ADDRESSES: You should direct your comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0199, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW, Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Alexander T. Hunt, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202)874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Examination Questionnaire.

OMB Number: 1557–0199.

Description: Completed Examination Questionnaires provide the OCC with information needed to properly evaluate the effectiveness of the examination process and agency communications. The OCC will use the information to identify problems or trends that may impair the effectiveness of the examination process, to identify ways to improve its service to the banking industry, and to analyze staff and training needs.

There are two versions of the questionnaire—one for community and mid-size banks and one for large banks. Community and mid-size banks will receive the questionnaire as part of each safety and soundness examination-related activity. Large banks will be invited to provide comments annually.

Type of Review: Extension, without change, of OMB approval.

Affected Public: Businesses or other for-profit (national banks).

Estimated Number of Respondents: 2,300.

Estimated Total Annual Responses: 2,300.

Frequency of Response: On occasion.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden: 575 burden hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Dated: July 3, 2001.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 01–17252 Filed 7–10–01; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0033]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to apply for reinstatement for Government Life Insurance and/or Total Disability Income provision.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 10, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0033" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Reinstatement, (Nonmedical—Comparative Health Statement), Government Life Insurance

and/or Total Disability Income Provision, VA Form 29–353.

OMB Control Number: 2900–0033.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–353 is use to determine an applicant's eligibility to reinstate his/her plan of insurance and/or Total Disability Income Provision.

Affected Public: Individuals or households.

Estimated Annual Burden: 375 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,500.

Dated: June 28, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–17396 Filed 7–10–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0355]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to pay benefits to veterans and other eligible persons pursuing approved programs of education.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 10, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *irmnkess@vba.va.gov.* Please refer to "OMB Control No. 2900–0355" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Verification of Pursuit of Course (Leading to a Standard College Degree Under Chapters 32, 34, and 35, Title 38, U.S.C., and Section 903 of Public Law 96–342), VA Form 22–6553.

OMB Control Number: 2900–0355.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–6553 is used to verify continued enrollment or report changes in enrollment status for any student receiving educational benefits for the pursuit of a college course. Schools are required to report, without delay to VA, when a student fails to enroll, has interrupted or terminated a program, or has unsatisfactory progress or conduct. VA uses the information from the current collection to ensure that schools promptly report changes in training and if a student's education benefits are to be continued unchanged, increased, decreased, or terminated. Without this information, VA might underpay or overpay benefits.

Affected Public: State, Local or Tribal Governments, not-for-profit Institutions.

Estimated Annual Burden: 9,333 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: The frequency of responses for each educational institution will vary according to the number of students who receive VA education benefits at that school. VA estimates an annual average of 10 responses per educational institution.

Estimated Number of Respondents: The number of respondents is arrived at based on the average number of educational institutions using VA Form 22–6553 which had veterans or eligible persons enrolled during the last 12 months, and a projected number of trainees. VA currently has an average of 5,600 active educational institutions (colleges, universities, or other institutions of higher learning).

Dated: June 28, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–17397 Filed 7–10–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0585]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management (OA&MM), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 10, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0585" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–77, Brand Name or Equal (was 852.210–77).

OMB Control Number: 2900–0585.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VAAR clause 852.211–77, Brand Name or Equal, advises bidders or offerors who are proposing to offer an item that is alleged to be equal to the brand name item stated in the bid, that it is the bidder's or offeror's responsibility to show that the item offered is in fact, equal to the brand name item. This evidence may be in the form of descriptive literature or material, such as cuts, illustrations, drawings, or other information. While submission of the information is voluntary, failure to provide the information may result in rejection of the firm's bid or offer if the Government cannot otherwise determine that the item offered is equal. The contracting officer will use the information to evaluate whether or not the item offered meets the specification requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 27, 2001, at pages 16703 and 16704.

Affected Public: Business or other for profit, individuals or households, and not-for-profit institutions.

Estimated Annual Burden: 833 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0585" in any correspondence.

Dated: June 28, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–17394 Filed 7–10–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0588]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 10, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0588" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.211–74, Special Notice (previously 852.210–74).

OMB Control Number: 2900–0588.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VAAR Provision 852.211–74, Special Notice, is used only in VA's telephone system acquisition solicitations and requires the contractor, after award of the contract, to submit descriptive literature on the equipment the contractor intends to furnish to show how that equipment meets specification requirements. The information is needed to ensure that equipment proposed by the contractor meets specification requirements. Failure to require the information could result in the installation of equipment that does not meet contract requirements, with significant loss to the contractor if the contractor subsequently had to remove the equipment and furnish equipment that meets specification requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 11, 2001, at pages 18854–18855.

Affected Public: Business or other for profit, individuals or households, and not-for-profit institutions.

Estimated Annual Burden: 150 hours.

Estimated Average Burden Per Respondent: 5 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0588" in any correspondence.

Dated: June 28, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–17395 Filed 7–10–01; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 66, No. 133
Wednesday, July 11, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTION OF TEXTILE AGREEMENTS

Announcement of Public Comment Period on the Elimination of Paper Visa Requirement with the Hong Kong Special Administrative Regime of the People's Republic of China (HKSAR)

Correction

In notice, document 01–16590, appearing on page 34914, in the issue of Monday, July 2, 2001, make the following correction:

On page 34914, in the first column, under the heading **SUPPLEMENTARY INFORMATION:** in the fourth paragraph, in the ninth line, "insert date 60 days from publication" should read "August 31, 2001".

[FR Doc. C1–16590 Filed 7–10–01; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

National Park Service

Benefits Sharing Environmental Assessment, National Park Service

Correction

In notice document 01–15559 beginning on page 33712 in the issue of Monday, June 25, 2001, make the following corrections:

1. On page 33713, in the first column, in the first paragraph, in the third line, "when it determined" should read "when it is determined".

2. On the same page, in the same column, in the same paragraph, in the 11th line, "will be adversely impacted" should read, "will not be adversely impacted".

3. On the same page, in the same column, in the same paragraph, in the third line from the bottom, "authorizes" should read "authorize".

4. On the same page, in the same column, in the second paragraph, in the fifth line, the internet web address should read "www.nature.nps.gov/benefitssharing".

5. On the same page, in the same column, in the same paragraph, in the 12th line, "National Park Service." should read "National Park Service,".

6. In the same location, "Benefit-Sharing" should read "Benefits-Sharing"

[FR Doc. C1–15559 Filed 7–10–01; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

RIN 1210–AA69; 1210–AA55

Amendments to Summary Plan Description Regulations

Correction

In the issue of Monday July 2, 2001, on page 34994, in the correction of rule document 00-29765, in the third column, in the correction numbered 1, in the third line, "e.g" should read "e.g. pension plans-".

In the same column, in the correction numbered 2, in the third and fifth lines, "cost sharing" should read "cost-sharing".

[FR Doc. C0–29765 Filed 7–10–01; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44467; File No. SR–NASD–2001–38]

Self–Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing of Additional Shares

June 22, 2001.

Correction

In notice, document 01–16559, beginning on page 34973, in the issue of Monday, July 2, 2001, make the following correction:

On page 34973, in the third column, the date is added as set forth above.

[FR Doc. C1–16559 Filed 7–10–01; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44470; File No. SR–DTC–2001–10]

Self–Regulatory Organizations: The Depository Trust Company; Notice of Filing and Order Granting Accelerated, Temporary Approval of a Proposed Rule Change to the Admission of Non–U.S. Entities as Direct Depository Participants

June 22, 2001.

Correction

In notice document 01–16558, beginning on page 34972, in the issue of Monday, July 2, 2001, make the following correction:

On page 34972, in the second column, the date is added to read as set forth above.

[FR Doc. C1–16558 Filed 7–10–01; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
July 11, 2001

Part II

Environmental Protection Agency

40 CFR Part 52
Approval and Promulgation of Implementation Plans; Illinois; Ozone; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL200–1; FRL–7008–9]

Approval and Promulgation of Implementation Plans; Illinois; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the following as revisions to the Illinois State Implementation Plan (SIP) for the Chicago-Gary-Lake County ozone nonattainment area, i.e., for the Illinois portion of this bi-state ozone nonattainment area: an ozone attainment demonstration; a post-1999 ozone Rate-Of-Progress (ROP) plan; a contingency measures plan for both the ozone attainment demonstration and post-1999 ROP plan; a commitment to conduct a mid-course review of the ozone attainment demonstration; mobile source conformity emission budgets for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) and the State's commitment to revise these emission budgets using the MOBILE6 emissions factor model; and, a Reasonably Available Control Measure (RACM) analysis. The EPA is also proposing to revise the existing NO_X emissions control waiver for the Illinois portion of the Chicago-Gary-Lake County ozone nonattainment area to the extent that the State has relied on NO_X emission controls from certain Electrical Generating Units (EGUs), major non-EGU boilers and turbines, and major cement kilns in the nonattainment area to attain the ozone standard. The existing NO_X emissions control waiver remains in place for Reasonably Available Control Technology (RACT), New Source Review (NSR), and certain requirements of vehicle Inspection and Maintenance (I/M) and transportation and general conformity. The EPA is proposing to deny a related citizen petition for the termination of the NSR portion of the NO_X waiver.

DATES: Written comments must be received on or before August 10, 2001.

ADDRESSES: Written comments should be sent to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittals addressed in this proposed rule and other relevant materials are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604 (please telephone Edward Doty at (312) 886–6057 before visiting the Region 5 office).

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77.West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886–6057, E-Mail Address: doty.edward@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. Whenever "you" or "me" is used, we mean you the reader of this proposed rule or the sources subject to the requirements of the State plan as discussed in the State's submittal or in this proposed rule.

This section provides additional information by addressing the following topics and questions:

I. What Action Is EPA Proposing Today?
II. Background Information
A. What is a State Implementation Plan (SIP)?
B. What is the Federal Approval Process for a SIP?
C. What Does Federal Approval of a State Regulation Mean to Me?
D. What are the Options for Action on a State SIP Submittal?
E. What Ozone Nonattainment Area is Addressed by the State Submittal Reviewed in This Proposed Rule?
F. What Prior EPA Rulemakings Relate to or Led to the State Submittal Reviewed in this Proposed Rule?
G. What is the Time Frame for EPA to Take Action on the State Submittal?
H. What are the Basic Components of the State Submittal and What are the Subjects Covered in this Proposed Rule?
III. Ozone Attainment Demonstration and Emissions Control Strategy
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2. What is the history of the State's ozone attainment demonstration and how is it related to EPA's NO_X SIP Call?
3. What are the modeling requirements for the ozone attainment demonstrations?
4. What additional analyses may be considered when the ozone modeling fails to show attainment of the ozone standard?
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6. What are the relevant EPA policy and guidance documents?
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8. What were the ozone modeling results for the base period and for the future attainment period with the selected emissions control strategy?
9. What additional analyses and emissions were modeled by the State of Illinois?
10. Do the modeling results demonstrate attainment of the ozone standard?
11. Does the attainment demonstration depend on future reductions of regional emissions?
12. Has the State adopted all of the regulations/rules needed to support the ozone attainment strategy and demonstration?
C. EPA's Evaluation of the Ozone Attainment Demonstration Portion of the State's Submittal
1. Did the State adequately document the techniques and data used to derive the modeling input data and modeling results of the analyses?
2. Did the modeling procedures and input data used comply with the Clean Air Act requirements and EPA guidelines?
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5. Is the emissions control strategy acceptable?
IV. Post-1999 Rate-of-Progress (ROP) Plan
A. What is a Post-1999 ROP Plan?
B. What is the ROP Contingency Measure Requirement?
C. What Illinois Counties are Covered by the Post-1999 ROP Plan?
D. Who is Affected by the Illinois Post-1999 ROP Plan?
E. What Criteria Must a Post-1999 ROP Plan Meet to be Approved?
F. What are the Special Requirements for Claiming NO_X Emission Reductions in Post-1996 ROP Plans?
G. How Did Illinois Calculate the Needed ROP and Contingency Emission Reduction Requirements?
1. VOC and NO_X fractions of the total emission reductions for a milestone period
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H. What are the Criteria for Acceptable ROP Emission Control Strategies?
I. What are the Emission Control Measures in Illinois' Post-1999 ROP Plan?
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A. What are the Requirements for RACM?
B. How Does This Submission Address the RACM Requirement?
C. Does the Chicago Attainment Demonstration Meet the RACM Requirement?
XI. Responses to Public Comments
XII. Administrative Requirements

I. What Action Is EPA Proposing Today?

Based on a review of all available information, Clean Air Act (CAA) requirements, and relevant EPA guidance, we are proposing to approve: (1) Illinois' 1-hour ozone attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area; (2) Illinois' post-1999 ROP plan (an ROP plan covering the time period of November 15, 1999 through November 15, 2007) for the Illinois portion of the Chicago-Gary-Lake County ozone nonattainment area; (3) Illinois' contingency measures plan for both the ozone attainment demonstration and the post-1999 ROP plan; (4) Illinois' commitment to conduct a mid-course review of the ozone attainment demonstration; (5) Illinois' mobile source conformity emission budgets for VOC and NO_X in the Illinois portion of the Chicago-Gary-Lake County ozone nonattainment area; and (6) Illinois' RACM analysis/demonstration for the Illinois portion of the Chicago-Gary-Lake County ozone nonattainment area (the term "Chicago area" is used to refer to the Illinois portion of this ozone nonattainment area).

We are proposing to modify an existing NO_X emissions control waiver (the NO_X emissions control waiver has been in place since January 1996) for the Chicago area. The existing NO_X emissions control waiver was based on ozone modeling data showing that NO_X emission reductions in the ozone nonattainment area would not contribute to attainment of the ozone standard in this nonattainment area. Ozone modeling supporting the ozone attainment demonstration addressed in this proposed rule shows that NO_X emission controls on EGUs, major non-EGU boilers and turbines, and major cement kilns in the ozone nonattainment area (and statewide) are beneficial and will contribute to attainment of the 1-hour ozone standard. The attainment demonstration further shows that the ozone standard will be attained by the applicable attainment date without the use of additional NO_X emission controls [1] (beyond other NO_X emission controls already implemented and/or modeled in the ozone attainment demonstration) in the nonattainment area. Consequently, such additional NO_X emission controls are in excess of what is needed to attain the ozone standard.

We are proposing to modify the existing NO_X waiver to remove from the emissions control waiver the EGUs, major non-EGU boilers and turbines, and major cement kilns for which the State included emission controls in the ozone attainment demonstration. Based on the "excess emissions" control provisions of section 182(f)(2) of the CAA, however, we are proposing to retain the NO_X waiver for RACT, NSR, and certain requirements of transportation and general conformity, and I/M. [2]

We are proposing to deny a related citizen petition to terminate the NSR portion of the NO_X emissions control waiver for the Chicago area. No data have been submitted or are available showing that the existence of the waiver for NO_X NSR in the Chicago area will prevent the attainment of the 1-hour ozone standard by the November 15, 2007 deadline or will delay attainment of the ozone standard by an earlier date.

II. Background Information

A. What Is a State Implementation Plan (SIP)?

Section 110 of the CAA requires states to develop air pollution control regulations (rules) and strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. Each state must submit the rules and emission control strategies to the EPA for approval and promulgation into a Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its points of origin. The SIPs can be and generally are extensive, containing many state rules or other enforceable documents and supporting information, such as emission inventories, monitoring documentation, and modeled attainment demonstrations.

B. What Is the Federal Approval Process for a SIP?

In order for state rules and emission control strategies to be incorporated into the Federally enforceable SIPs, states must formally adopt the rules and emission control strategies consistent with state and Federal requirements. This process generally includes public notice, public hearings, public comment periods, and formal adoption by state-authorized rulemaking bodies.

Once a state rule or emissions control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and must seek additional public comment regarding our proposed action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action (they are

[1] The additional NO_X emission controls not considered in the ozone attainment demonstration include NO_X RACT, NO_X NSR, and additional mobile source NO_X controls, including vehicle inspection/maintenance (I/M) emission cutpoints.

[2] States with NO_X waivers are still required to prepare motor vehicle emissions budgets consistent with the ozone attainment demonstrations and to use these emissions budgets in conformity analyses.

generally addressed in a final rulemaking action).

All state rules and supporting information approved by the EPA under section 110 of the Act are incorporated into Federally approved SIPs. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, titled "Approval and Promulgation of Implementation Plans." The actual state rules which are approved are not reproduced in their entirety in the CFR, but are "incorporated by reference," which means that EPA has approved the state rules with specific effective dates, has identified the rules in the CFR, and, thereby, has identified the full texts of the rules by reference.

C. What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of a state rule before and after it is incorporated into a Federally approved SIP is primarily a state responsibility. After a rule is Federally approved, however, EPA is authorized under section 113 of the CAA to conduct enforcement actions against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

D. What Are the Options for Action on a State SIP Submittal?

Depending on the circumstances unique to each of the SIP submissions, we may propose one or more of several types of approval, or disapproval in the alternative (or a combination if our rulemaking process involves separable portions of a SIP submission). In addition, these proposals may identify additional state actions that may be necessary by a state before EPA may fully approve the submissions.

The CAA provides for EPA to approve, disapprove, partially approve, or conditionally approve a state's submission. The EPA must fully approve a submission if it meets the requirements of the Act. If a submission is deficient in some way, EPA may disapprove the submission. In the alternative, if portions of the submission are approvable, EPA may partially approve and partially disapprove the submission, or may conditionally approve the submission based on a state's commitment to correct the deficiency by a date certain, not later than one year from the date of EPA's final conditional approval.

The EPA has recognized that, in some limited circumstances, it may be appropriate to issue a full approval for a submission that consists, in part, of an enforceable commitment by the state. Unlike the commitment for a submission correction under a conditional approval, such an enforceable commitment can be enforced in court by EPA or citizens. In addition, this type of commitment may extend beyond one year following EPA's final approval action. Thus, EPA may accept such an enforceable commitment where it is infeasible for the state to accomplish the necessary action(s) in the short term.

E. What Ozone Nonattainment Area Is Addressed by the State Submittal Reviewed in This Proposed Rule?

The December 26, 2000 submittal of the Illinois Environmental Protection Agency (IEPA) reviewed here primarily deals with the attainment of the 1-hour ozone standard in the Chicago area. The Illinois portion of the Chicago-Gary-Lake County ozone nonattainment area includes the counties of Cook, DuPage, Kane, Lake, McHenry, and Will, and the townships of Aux Sable and Goose Lake in Grundy County and Oswego in Kendall County. The Chicago-Gary-Lake County ozone nonattainment area also includes Lake and Porter Counties in Indiana, an Indiana submittal for which is the subject of a separate review and rulemaking.

For purposes of an ozone attainment demonstration, the Chicago-Gary-Lake County ozone nonattainment area is a sub-portion of a larger ozone modeling domain, referred to as Grid M. This ozone modeling domain is further discussed in a later portion of this proposed rule. The State's submission demonstrates that attainment of the 1-hour ozone standard will occur by November 15, 2007 throughout Grid M, including within the Chicago-Gary-Lake County ozone nonattainment area.

F. What Prior EPA Rulemakings Relate to or Led to the State Submittal Reviewed in This Proposed Rule?

On December 16, 1999 (64 FR 70496), we proposed to conditionally approve the 1-hour ozone attainment demonstration for the Chicago area submitted by the IEPA on April 30, 1998. The April 30, 1998 attainment demonstration submittal was based on a range of possible emission control measures (on a number of sets of emission control measures reflecting various emission control alternatives) and did not specify a single set of emission control measures as an adopted emissions control strategy. We based our December 16, 1999 proposed conditional approval on the State's commitment to adopt and submit, by December 31, 2000, a final ozone attainment demonstration SIP revision and a post-1999 ROP plan, including the necessary State-adopted air pollution control rules needed to support and complete the ozone attainment demonstration and post-1999 ROP plan. In the alternative, we proposed to disapprove the attainment demonstration if, by December 31, 1999, the State did not adopt an emissions control strategy as supported by its modeled ozone attainment demonstration and did not submit adequate motor vehicle emission budgets for VOC and NO_x for the Chicago area that comply with EPA's transportation conformity regulations. In addition, we conditioned our approval on the State of Illinois submitting, by December 31, 1999, an enforceable commitment to conduct a mid-course review of the ozone attainment plan in 2003.

The December 16, 1999 proposed rulemaking noted that, if the EPA issued a final conditional approval of the State's April 30, 1998 submission,[3] the conditional approval would revert to a disapproval if the State did not adopt and submit a complete SIP submission with the following elements by December 31, 2000: (1) A final adopted ozone modeling analysis that fully assesses the impacts of regional NO_x emissions reductions, models a specific local emissions reduction strategy, and reconsiders the effectiveness of the existing NO_x emissions control waiver (see the discussion relating to the NO_x emissions control waiver below); (2) adopted emission control measures needed to meet the post-1999 ROP requirements (an ROP plan covering the period of November 15, 1999 through the ozone attainment year); and (3) local VOC and regional NO_x emission control measures sufficient to support the final ozone attainment demonstration. If the State made this complete submission by December 31, 2000, we noted that we would propose action on the new submission for the purpose of determining whether to issue a final full approval of the ozone attainment demonstration.

As noted below, the December 26, 2000 submittal reviewed here, in part, addresses a post-1999 ROP plan for the Chicago area. The post-1999 ROP plan provides required emission reductions in addition to Illinois' 15 percent ROP plan (ROP emission reductions occurring prior to November 15, 1996) and 9 percent post-1996 ROP plan (ROP emission reductions occurring prior to November 15, 1999) for this ozone nonattainment area. On July 14, 1997

[3] To date, the EPA has not issued a final rule conditionally approving the State's April 30, 1998 submittal.

(62 FR 37494), we published a final rule to approve Illinois' 15 percent ROP plan. On December 18, 2000 (65 FR 78961), we published a final rule to approve Illinois' post-1996 ROP plan. These final rules address the emission control measures selected by the State to achieve required ROP emission reductions and address the State's calculation of the 1996 VOC emission target and the 1999 VOC and NO_X emission targets. The December 18, 2000 final rule also addresses the State's adopted contingency measure plan for the post-1996 ROP plan and approves the 1999 motor vehicle emissions budgets associated with the ROP plan for the Chicago area.

The December 26, 2000 submittal reviewed in this proposed rule includes, as part of the ozone attainment demonstration and the post-1999 ROP plan, regional NO_X emission reductions. These regional NO_X emission reductions must be reviewed in light of the fact that a NO_X emissions reduction waiver exists for the Chicago-Gary-Lake County ozone nonattainment area. On January 26, 1996 (61 FR 2428), we published a final rule approving the NO_X emissions control waiver based on a showing that NO_X reductions would not contribute to attainment of the 1-hour ozone NAAQS. Through the January 26, 1996 rulemaking, the EPA granted exemptions from the RACT and NSR requirements for major stationary sources of NO_X and from certain vehicle I/M and general conformity requirements for NO_X in the ozone nonattainment areas in the Lake Michigan Ozone Study modeling domain (the Lake Michigan Ozone Study modeling domain is a sub-portion of Grid M centered on lower Lake Michigan). On February 12, 1996 (61 FR 5291), we published a final rule granting exemption from certain transportation conformity [4] requirements for NO_X in the Chicago area. Consequently, since the NO_X requirements have been waived based on a demonstration that NO_X emission controls in the ozone nonattainment area are not beneficial toward attaining the ozone standard, the State may not receive credit for NO_X emission controls in the ozone nonattainment area toward ROP requirements unless the State can demonstrate the opposite, i.e., that such emission controls are beneficial for attainment of the ozone standard. The State, in its December 26, 2000 submittal, is now demonstrating that certain regional NO_X emission controls (including some controls on EGUs in the Chicago ozone nonattainment area) would contribute toward attainment of the ozone standard [5]. We are proposing, based on the information submitted, to revise the NO_X waiver for the Chicago nonattainment area, as further explained below.

[4] The NO_X waiver does not include an exemption from the need for the States to adopt mobile source NO_X emission budgets for the Chicago-Gary-Lake County ozone nonattainment area to support transportation and general confomity reviews. After the State has submitted and EPA has approved a motor vehicle NO_X emissions budget to be used for conformity purposes, the NO_X waiver is no longer applicable for transportation or general conformity as the State must consider the NO_X emissions budget when making conformity determinations.

[5] Statewide NO_X emission controls on major non-EGU boilers and turbines and major cement kilns were also considered in the ozone attainment demonstration, but specific controls on NO_X sources for these source categories were not identified for the Chicago area.

G. What Is the Time Frame for EPA To Take Action on the State Submittal?

As noted above, the EPA is providing a 30 day public comment period for this proposed rule. This comment period is typical for such proposed rules and is critical in this case given the relatively tight time constraints under which the EPA is operating. To meet the time constraints of an existing consent decree between the EPA and the Natural Resources Defense Council, the EPA must complete final rulemaking approving the December 26, 2000 submittal by October 15, 2001 or must publish a proposed Federal Implementation Plan (FIP) for the Chicago area by that date.

H. What Are the Basic Components of the State Submittal and What Are the Subjects Covered in This Proposed Rule?

The December 26, 2000 Illinois submittal reviewed in this proposed rule addresses the following required plan elements: (1) An ozone attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area and the Grid M modeling domain; (2) the post-1999 ROP plan for the Chicago area; (3) contingency measures for the post-1999 ROP plan and for the ozone attainment demonstration; and (4) motor vehicle transportation conformity emission budgets. Besides these plan elements, this proposed rule addresses the following additional issues: (1) Illinois' commitments for a mid-course review of the ozone attainment demonstration; (2) revisions to the existing NO_X control waiver for the Chicago-Gary-Lake County ozone nonattainment area and a public petition requesting a removal of the NSR portion of the NO_X control waiver; and (3) a RACM analysis for the Chicago area. In this notice we do not respond to the public comments submitted on our December 16, 1999 proposed rule on Illinois' April 30, 1998 ozone attainment demonstration submittal. We will address those comments when we take final action on Illinois' ozone attainment demonstration and other plan elements.

III. Ozone Attainment Demonstration and Emissions Control Strategy

A. Background Information and Requirements Placed on the Ozone Attainment Demonstration

1. What Clean Air Act Requirements Apply to the State's Ozone Attainment Demonstration?

The CAA requires the EPA to establish NAAQS for certain widespread air pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. Clean Air Act sections 108 and 109. In 1979, EPA promulgated the 1-hour ozone standard at a level of 0.12 parts per million (ppm) (120 parts per billion [ppb]). 44 FR 8202 (February 8, 1979). Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone and other secondary pollutants. NO_X and VOC are referred to as precursors of ozone. Control of VOC and NO_X emissions is addressed in ozone control strategies to reduce peak ozone levels.

An area exceeds the 1-hour ozone standard each day in which an ambient air quality monitor records an 1-hour average ozone concentration above 0.124 ppm. An area violates the ozone standard if, over a consecutive 3-year period, more than 3 daily exceedances are recorded or are expected to occur at any monitor in the area or in its immediate downwind environs. The highest of the fourth-high daily peak ozone concentrations over the 3-year period at any monitoring site in the area is called the ozone design value for the area. The CAA required the EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on the air quality monitoring data for the 3 year period from 1987 through 1989. Clean Air Act section 107(d)(4); 56 FR 56694 (November 6, 1991). The CAA further classified these areas, based on the areas' ozone design values, as marginal, moderate, serious, severe, or extreme. Clean Air Act section 181(a). Marginal nonattainment areas were suffering the least significant air quality problems and extreme nonattainment areas had the most significant air quality problems.

The control requirements and date by which attainment of the 1-hour ozone standard needs to be achieved vary with an area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest ozone attainment date. Moderate, serious, severe, and extreme ozone nonattainment areas are subject to more stringent planning and control requirements but are provided more time to attain the standard. Serious nonattainment areas were required to attain the 1-hour ozone standard by November 15, 1999, and severe ozone nonattainment areas are required to attain the ozone standard by November 15, 2005 or November 15, 2007 depending on the areas' ozone design values. The Chicago-Gary-Lake County ozone nonattainment area is classified as severe-17 and its attainment date is November 15, 2007.

Under sections 182(c)(2) and 182(d) of the CAA, states with serious or severe ozone nonattainment areas were required to submit, by November 15, 1994, demonstrations of how the nonattainment areas would attain the 1-hour ozone standard and how they would achieve ROP reductions in VOC emissions of 9 percent for each 3-year period until the attainment date. In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions to achieve ROP.

2. What Is the History of the State's Ozone Attainment Demonstration and How Is It Related to EPA's NO_X SIP Call?

Notwithstanding significant efforts by the states, in 1995 EPA recognized that many states in the eastern half of the United States could not meet the November 15, 1994 time frame for submitting attainment demonstration SIP revisions because emissions of NO_X and VOC in upwind states (and the ozone formed by these emissions) affected these nonattainment areas and the full impact of this effect had not yet been determined. This phenomenon is called ozone transport.

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by states but noting the remaining difficulties in making attainment demonstration SIP submittals.[6] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the states of the eastern half of the country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)[7] and provided for the states to submit the attainment demonstration SIPs based on the expected time frame for OTAG to complete its evaluation of ozone transport and to take into consideration the OTAG ozone modeling results.

In June 1997, OTAG completed its process. OTAG submitted to EPA the results of its technical air quality modeling efforts, which quantified the impact of the transport of ozone and its precursors. OTAG recommended consideration of a range of regional NO_X emission control measures.

In recognition of the length of the OTAG process, in a December 29, 1997 memorandum, Richard Wilson, EPA's then Acting Assistant Administrator for Air and Radiation, provided until April 1998 for states to submit the following elements of their attainment demonstration SIPs for serious and severe nonattainment areas: (a) Evidence that the applicable emission control measures in subpart 2 of part D of title I of the CAA were adopted and implemented or were on an expeditious course to being adopted and implemented; (b) lists of measures needed to meet the remaining ROP emissions reduction requirements and to reach attainment; (c) for severe areas only, a commitment to adopt and submit the emission control measures necessary for attainment and the ROP plans through the attainment year by the end of 2000;[8] (d) commitments to implement the SIP control programs in a timely manner to meet ROP emission reduction milestone targets and to achieve attainment of the ozone standard; and (e) evidence of a public hearing on each state's submittal.[9] This submission is sometimes referred to as the Phase II submission. Motor vehicle emission budgets can be established based on a commitment to adopt the measures needed for attainment and identification of the measures needed. Thus, state submissions due in April 1998, under the Wilson policy, should have also included motor vehicle emissions budgets.

Building upon the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, the EPA found that current SIPs in 22 states and the District of Columbia (23 jurisdictions) did not meet the requirements of section 110(a)(2)(D) of the CAA because they did not adequately regulate statewide NO_X emissions that significantly contribute to ozone nonattainment in downwind states. 62 FR 60318 (November 7, 1997). The EPA finalized that rule in September 1998, calling on the 23 jurisdictions to revise their SIPs to require NO_X emission reductions within each jurisdiction to a level consistent with a NO_X emission budget identified in the final rule. 63 FR 57356 (October 27, 1998). The final rule is commonly referred to as the NO_X SIP Call.

3. What Are the Modeling Requirements for the Ozone Attainment Demonstrations?

The EPA provides that states may rely on a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment of the ozone standard.[10] In order to have complete ozone modeling attainment demonstration submissions, states should have submitted the required modeling analyses and identified any additional evidence that EPA should consider in evaluating whether areas will attain the ozone standard.

For the purposes of demonstrating attainment of the ozone standard, the CAA (section 182(c)(2)(A)) requires states with serious and severe ozone nonattainment areas to use photochemical dispersion modeling or an analysis method EPA determines to be as effective to assess the adequacy of emission control strategies and to demonstrate attainment of the ozone standard. The photochemical dispersion modeling system is set up using

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[6] Memorandum, "Ozone Attainment Demonstrations," issued March 2, 1995. A copy of the memorandum may be found on EPA's web site at http://www.epa.gov/ttn/oarpg/t1pgm.html.

[7] Letter from Mary A. Gade, Director, State of Illinois Environmental Protection Agency, to the members of the Environmental Council of States (EOCS), dated April 13, 1995.

[8] In general, a commitment for severe areas to adopt by December 2000 the control measures necessary for attainment and ROP through the attainment year applies to any additional measures necessary for attainment that were not otherwise required to be submitted earlier. This memorandum was not intended to allow states to delay submission of measures required under the Clean Air Act.

[9] Memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM 10 NAAQS," issued December 29, 1997. A copy of this memorandum may be found on EPA's web site at http://www.epa.gov/ttn/oarpg/t1pgm.html.

[10] The EPA issued guidance on air quality modeling that is used to demonstrate attainment of the 1-hour ozone NAAQS. See U.S. EPA (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013 (July 1991). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: "UAMREG"). See also U.S. EPA (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007 (June 1996). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: "03TEST").

observed meteorological conditions conducive to the formation of ozone. The meteorological conditions are selected based on historical data for high ozone periods in the nonattainment area or in its associated modeling domain. Emissions for a base year and monitored ozone and ozone precursor concentrations are used to evaluate the modeling system's ability to reproduce actual monitored air quality values (ozone and other associated pollutants). Following validation of the modeling system for the base year, emissions are projected to an attainment year and modeled in the photochemical modeling system to predict air quality levels in the attainment year. Projected emission changes include source emissions growth up to the attainment year and emission controls implemented by the attainment year.

A modeling domain is chosen that encompasses the ozone nonattainment area and surrounding upwind and downwind areas. Attainment of the ozone standard is demonstrated when all predicted ozone concentrations in the attainment year in the modeling domain are at or below the ozone NAAQS or at an acceptable upper limit above the NAAQS permitted under certain conditions as explained in EPA's guidance. An optional Weight-Of-Evidence (WOE) determination may be used to address uncertainty inherent in the application of photochemical grid models. See the discussion of possible WOE determination tests and analyses below.

The EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the State must develop and implement a modeling protocol. The modeling protocol describes the methods and procedures to be used in conducting the modeling analyses and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (state and local agencies, EPA regional offices, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the state must select historical high ozone days (days with ozone concentrations exceeding the ozone standard) that are representative of the ozone pollution problem for the nonattainment area. Third, the state needs to identify the appropriate dimensions of the area to be modeled, i.e., the modeling domain size. The modeling domain should be larger than the designated ozone nonattainment area to reduce uncertainty in the nonattainment area boundary conditions and should include any large upwind sources just outside of the ozone nonattainment area. In general, the modeling domain is considered to be the area where control measures are most beneficial to bring the area into attainment of the ozone NAAQS. Fourth, the state needs to determine the modeling grid resolution (the modeling domain is divided into a three-dimensional grid). The horizontal and vertical resolutions in the modeling domain affect the modeled dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may artificially dilute pollutant concentrations and may not properly consider impacts of complex terrain, meteorology, and land/water interfaces. Fifth, the state needs to generate meteorological data and emissions that describe atmospheric conditions and inputs reflective of the selected high ozone days. Finally, the state needs to verify that the modeling system is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests (generally referred to as model validation). Once these steps are satisfactorily completed, the model is ready to be used to generate air quality estimates, to evaluate emission control strategies, and to support an ozone attainment demonstration.

The modeled attainment test compares model-predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year (2007 for the Chicago-Gary-Lake County ozone nonattainment area), with all selected emission control measures in place, to the level of the ozone NAAQS. A predicted peak ozone concentration above 0.124 ppm (124 ppb) indicates that the area may exceed the ozone standard in the attainment year under the tested base year conditions and that the tested emissions control strategy may be inadequate to attain the ozone standard. This type of test is referred to as an exceedance test. EPA's guidance recommends that states use either of two modeled attainment or exceedance tests for the ozone attainment demonstration, a deterministic test or a statistical test.

The deterministic test requires a state to compare predicted 1-hour daily maximum ozone concentrations for each modeled day [11] to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

[11] The initial, "ramp-up" day for each modeled high ozone episode is excluded from this determination.

The statistical test takes into account the fact that the 1-hour ozone NAAQS allows exceedances. If, over a 3-year period, an area has an average of 1 or fewer daily exceedances per year at any monitoring site, the area is not violating the ozone standard. Thus, if the state models an extreme day, considering meteorological conditions that are very conducive to high ozone levels, the statistical test provides that a prediction of an 1-hour ozone concentration above 0.124 ppm up to a certain upper limit may be consistent with attainment of the standard.

The acceptable upper limit for modeled peak ozone concentrations in the statistical test is determined by examining the levels of ozone standard exceedances at monitoring sites which meet the 1-hour ozone NAAQS. For example, a monitoring site for which the four highest 1-hour average ozone concentrations over a 3-year period are 0.136 ppm, 0.130 ppm, 0.128 ppm, and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the relative severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on a single day, and would be the only ozone reading above the standard that would be expected to occur no more than an average of once a year over a 3-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the ozone NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

4. What Additional Analyses May Be Considered When the Ozone Modeling Fails To Show Attainment of the Ozone Standard?

When the ozone modeling does not conclusively demonstrate attainment of the ozone standard through either a deterministic test or a statistical test, additional analyses may be presented to help determine whether the area nevertheless will attain the standard. As with other predictive tools, there are inherent uncertainties in some of the photochemical modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. EPA's guidance recognizes these

limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely. The process by which this is done is the WOE determination.[12]

Under a WOE determination, a state can rely on and EPA will consider factors such as: Other modeled attainment tests, e.g., a rollback analysis; other modeled outputs, e.g., changes in the predicted frequency and pervasiveness of ozone standard exceedances and predicted changes in an area's ozone design value; actual observed air quality trends; estimated emissions trends; analyses of air quality monitoring data; the responsiveness of the model predictions to further emission controls; and, whether there are additional emission control—measures that are or will be approved into the SIP but that were not included in the ozone modeling analysis. This list is not an exhaustive list of factors that may be considered, and the factors considered could vary from case to case. EPA's guidance contains no limit on how close a modeled attainment test (a deterministic test or a statistical test) must be to passing to conclude that other evidence besides an attainment test is sufficiently compelling to suggest attainment. The further a modeled attainment test is from being passed, however, the more compelling the WOE determination needs to be.

EPA's 1996 modeling guidance also recognizes a need to perform a mid-course review as a means for addressing uncertainty in the modeling results, particularly if a WOE determination is needed to support an ozone attainment demonstration. Because of the uncertainty in long-term projections, EPA believes a viable attainment demonstration that relies on a WOE determination needs to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. The mid-course review is further discussed below.

[12] States may choose to submit WOE determinations even when the ozone modeling results pass either the deterministic test or the statistical test. This may be done to support the attainment demonstration, recognizing that the ozone modeling results possess a certain degree of uncertainty. Nonetheless, the submittal of WOE determinations is only needed if the ozone modeling fails to demonstrate attainment of the ozone standard through either a deterministics test or a statistical test.

5. Besides the Modeled Attainment Demonstration and Adopted Emission Control Strategy, What Other Elements Must Be Addressed in the Attainment Demonstration SIP?

In addition to the modeling analysis and WOE determination supporting the attainment demonstration, the EPA has identified the following key elements which must also be adopted by the state and approved by the EPA in order for EPA to approve the 1-hour ozone attainment demonstration SIPs.

a. *Clean Air Act Measures, and Other Measures Relied on in the Modeled Attainment Demonstration.* This includes adopted and submitted rules for all Clean Air Act required measures for the specific area classification. This also includes measures that may not be required given the area's ozone classification but that the state relied on in its attainment demonstration or in its ROP plan.

The state should have adopted the emission control measures required under the CAA for the area's ozone nonattainment classification. In addition, states with severe ozone nonattainment areas had until December 2000 to adopt and submit additional emission control measures needed to achieve ROP through the attainment year and to attain the ozone standard. For purposes of fully approving a state's SIP, the state needs to adopt and submit rules for all VOC and NO_X controls within the ozone modeling domain and within the state that are relied on to support the modeled ozone attainment demonstration.

Table I presents a summary of the CAA requirements that need to be met for each severe ozone nonattainment area. These requirements are specified in section 182 of the CAA. Information on more measures that states may have adopted or relied on in their current SIP submissions is not shown in the table.

TABLE I.—CAA REQUIREMENTS FOR SEVERE OZONE NONATTAINMENT AREAS

- NSR Requirements for VOC and NO_X, Including an Offset Ratio of 1.3:1 and a Major Source VOC and NO_X Emissions Threshold of 25 Tons Per Year[13].
- RACT for VOC and NO_X[14].
- Enhanced Vehicle I/M.
- 15 percent VOC control plan for ROP through 1996.
- 3 percent VOC/ NO_X Reduction Per Year Through the Ozone Standard Attainment Year for ROP[15]
- RACM.
- Contingency Measures.
- Base Year Emissions Inventory.
- Emission Statement Rules Requiring Sources to Periodically Submit Summaries of Their VOC and NO_X Emissions.
- Ozone Attainment Demonstration.
- Clean Fuels Fleet Program.
- Enhanced Ambient Monitoring (Photochemical Assessment Monitoring System [PAMS]).
- Stage II Gasoline Vapor Recovery At Retail Service Stations.
- Reformulated Gasoline.
- Measures to Offset Growth in Vehicle Miles Tranvelled (VMT).

b. *NO_X Reductions Affecting Boundary Conditions.* EPA completed final rulemaking on the NO_X SIP Call on October 27, 1998, requiring states to address transport of NO_X and ozone to other states. To address transport, the NO_X SIP Call established state-specific emission budgets for NO_X that 23 jurisdictions were required to meet through enforceable SIP emission control measures adopted and submitted by September 30, 1999. The NO_X SIP Call is intended to reduce emissions in upwind states that significantly contribute to downwind ozone nonattainment problems. The EPA did not identify specific NO_X sources that the states must regulate nor did the EPA limit the states' choices regarding where within the states to achieve the emission reductions.

On May 25, 1999, the U.S. Court of Appeals for the District of Columbia issued an order staying the SIP submission requirement of the NO_X SIP Call. On March 3, 2000, the Court issued its decision, which largely upheld EPA's final NO_X SIP Call rule, with certain exceptions that do not affect this proposed rule. On June 23, 2000, the Court lifted the stay. On August 30, 2000, the Court issued an order providing that EPA could not require SIPs to include a source control implementation date earlier than May 31, 2004.

Emission reductions that will be achieved through EPA's NO_X SIP Call

[13] The NO_X NSR requirements do not currently apply in the Chicago area based on a NO_X waiver granted to Illinois on January 26, 1996 (61 FR 2428).

[14] The NO_X RACT requirements do not currently apply in the Chicago area based on a NO_X waiver granted to Illinois on January 26, 1996 (61 FR 2428).

[15] To provide interim progress, EPA accepted 9 percent VOC/ NO_X emission reduction plans to cover ROP requirements between 1996 and 1999. The States with severe nonattainment areas were required to meet the remainder (post-1999) of the ROP requirements through the submittal of a final ROP plan with adopted emission control regulations by December 2000. The Illinois post-1999 ROP plan is reviewed later in this proposed rule.

will reduce the levels of ozone and ozone precursors entering ozone nonattainment areas and ozone modeling domains at their boundaries and will reduce the NO_X emissions generated within the ozone modeling domains. The ozone levels at the boundary of the local modeling domain are reflected in modeled attainment demonstrations and are, along with the concentrations of pollutants entering the modeling domain, referred to as boundary conditions. The boundary conditions and the ozone generated and transported within the modeling domain will be impacted by the NO_X emission reductions resulting from the NO_X SIP Call in many areas. Therefore, EPA believes it is appropriate to allow states to continue to assume the NO_X emission reductions resulting from the NO_X SIP Call in areas outside of the local ozone modeling domains. If states assume emission reductions other than those of the NO_X SIP Call within their states but outside of the ozone modeling domains, the states must also adopt emission control regulations to achieve those additional emission reductions in order to have an approvable ozone attainment demonstration. States subject to the NO_X SIP Call, particularly those relying on the NO_X SIP Call-based emission reductions as part of their ozone attainment demonstrations, are expected to have adopted the NO_X emission control regulations needed to comply with the NO_X SIP Call. In these areas, approval of the ozone attainment demonstration is dependent on the approval of the NO_X emission control regulations.

As provided above, any emission controls assumed by a state within a local ozone modeling domain must be adopted by the state and approved by us to achieve our final approval of the state's 1-hour ozone attainment demonstration SIP.

c. *Motor Vehicle Emissions Budget.* The EPA believes that attainment demonstration and ROP SIPs must necessarily estimate the motor vehicle VOC and NO_X emissions that will be produced in the attainment and milestone years and must demonstrate that these emissions, when considered with emissions from all other sources, is consistent with attainment of the ozone standard and ROP. The estimate of motor vehicle emissions is used to determine the conformity of transportation plans and programs to the SIP, as described by section 176(c)(2)(A) of the Act. For transportation conformity purposes, the estimate of motor vehicle emissions is known as the motor vehicle emissions budget. EPA believes that appropriately identified motor vehicle emissions budgets are a necessary part of attainment demonstration and ROP SIPs, and that EPA must find these budgets to be adequate before we can give final approval to the attainment demonstration and ROP SIPs.

d. *Mid-Course Review.* An enforceable commitment to conduct a mid-course review (MCR) and evaluation of the attainment demonstration based on air quality and emissions trends at some time prior to the attainment year must be included in the attainment demonstration SIP before it can be approved by the EPA, particularly if the SIP depends on a WOE determination to demonstrate attainment of the ozone standard. The MCR shows whether the adopted emission control measures and emissions control strategy (all measures combined into a single plan) are sufficient in timing and extent to reach attainment of the ozone standard by the area's attainment deadline, or whether additional emission control measures may be necessary.

A MCR is a reassessment of the modeling analyses and more recent monitoring and emissions data to determine if a prescribed emissions control strategy is resulting in emission reductions and air quality improvements needed to attain the ozone standard as expeditiously as practicable but no later than the statutory attainment date. The EPA believes that an enforceable commitment to perform a MCR is a critical element of a WOE determination.

For severe areas, such as the Chicago-Gary-Lake County ozone nonattainment area, the state(s) must submit an enforceable commitment (Illinois has submitted such a commitment as discussed below). The commitment must provide the date by which the MCR will be completed. The EPA believes that the MCR process should be done immediately following the ozone season (April through October in Illinois) in which the states have implemented the NO_X regulations resulting from the NO_X SIP Call and that the states should submit the results to us by the end of that calendar year. Because the Court of Appeals ordered that EPA cannot require states to establish a NO_X source compliance date prior to May 31, 2004, EPA believes that the MCR should be performed following the 2004 ozone season and that the results should be submitted by the end of 2004.

Following submittal of MCR analysis results, we would review the results and determine whether the state(s) needs to adopt and submit additional emission control measures for purposes of attainment. We are not requesting that states commit now to adopt new emission control measures as a result of this process. It would be impractical for the states to make a commitment for such control measures that is specific enough to be considered enforceable. Moreover, the MCR could indicate that upwind states may need to adopt some or all of the additional emission controls needed to ensure that a downwind state/area attains the ozone standard. We would determine whether additional emission controls are needed in the state in which a nonattainment area is located or in upwind states, or in both. We would require the appropriate state(s) to adopt and submit new emission control measures within a period specified at that time. We anticipate that these findings would be made as SIP Calls under section 110(k)(5) of the Act and, therefore, the period for the submission of the measures would be no longer than 18 months after we make a finding. A guidance document regarding the MCR process is located on EPA's web site at *http://www.epa.gov/ttn/scram*. The EPA is working on additional guidance that it expects to issue and put on its website shortly.

6. What Are the Relevant EPA Policy and Guidance Documents?

The relevant policy documents for ozone attainment demonstrations and their locations on EPA's web site are listed below:

a. U.S. EPA, *Guideline for Regulatory Application of the Urban Airshed Model*, EPA–450/4–91–013, (July 1991), Web site: http://www.epa.gov/ttn/scram/ (file name: "UAMREG").

b. U.S. EPA, *Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, EPA–454/B–95–007, (June 1996), Web site: http://www.epa.gov/ttn/scram/ (file name: "O3TEST").

c. Memorandum, "Ozone Attainment Demonstrations," from Mary D. Nichols, issued March 2, 1995, Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

d. Memorandum, "Extension of Attainment Dates for Downwind Transport Areas," issued July 16, 1998, Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

e. Memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS," from Richard Wilson, issued December 29, 1997, Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

f. "Guidance for Improving Weight of Evidence Through Identification of

Additional Emission Reductions, Not Modeled," U.S. EPA, Office of Air Quality Planning and Standards, November 1999, Web site: *http://www.epa.gov/ttn/scram/* (file name: "ADDWOE1H").

g. "Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures," Draft Report, U.S. EPA, Ozone Policy and Strategies Group, November 3, 1999.

h. Memorandum, "Guidance on Motor Vehicle Emissions Budgets in 1-hour Attainment Demonstrations," from Merrylin Zaw-Mon, Office of Mobile Sources, November 3, 1999, Web site: http://www.epa.gov/oms/transp/traqconf.htm.

i. Memorandum, "1-Hour Ozone Attainment Demonstrations and Tier 2/ Sulfur Rulemaking," from Lydia Wegman and Merrylin Zaw-Mon, Office of Air Quality Planning and Standards and Office of Mobile Sources, November 8, 1999, Web site: http://www.epa.gov/oms/transp/traqconf.htm.

j. Draft Memorandum, "1-Hour Ozone NAAQS-Mid-Course Review Guidance," from John Seitz, Director, Office of Air Quality Planning and Standards, Web site: http://www.epa.gov/ttn/scram/.

B. Technical Review of the State's Submittal

1. When Was the Attainment Demonstration Addressed in Public Hearings, and When Was the Attainment Demonstration Submitted to the EPA?

The State of Illinois held a public hearing on the ozone attainment demonstration on November 8, 2000. The attainment demonstration was submitted by the Illinois Environmental Protection Agency (IEPA) on December 26, 2000.

2. What Are the Basic Components of the Submittal?

Since Illinois, along with Indiana, Michigan, and Wisconsin, jointly participates in the Lake Michigan Air Directors Consortium (LADCO) and since LADCO has conducted the ozone analyses used to develop the ozone attainment demonstration, technical support documents developed by LADCO form the main bases for Illinois' ozone attainment demonstration. Three documents from LADCO provide much of the technical support for the attainment demonstration. These documents are:

a. "Midwest Subregional Modeling: 1-Hour Attainment Demonstration for Lake Michigan Area—Summary," LADCO, September 18, 2000;

b. "Technical Support Document—Midwest Subregional Modeling: 1-Hour Attainment Demonstration for Lake Michigan Area," LADCO, September 18, 2000; and

c. "Technical Support Document—Midwest Subregional Modeling: Emissions Inventory," LADCO, September 27, 2000.

Illinois, like Indiana and Wisconsin, has included a state-specific cover letter and a state-specific synopsis of the ozone attainment demonstration. Illinois has also included additional modeling analysis results to address emissions changes not addressed in the earlier LADCO analyses. These emission changes include increased state-wide NO_X and VOC emissions due to the permitting and implementation of new combustion turbine generators (peakers or peaker plants and combined cycle facilities) designed to supplement electrical power generation on high demand days (many high electricity demand days are potentially high ozone days due to high ambient temperatures) and to replace the electrical generating capacity of electrical—generating facilities taken off-line. Additional VOC and NO_X emissions due to higher-than-planned vehicle miles of travel in the planning area are also considered.

A number of other related submittal components are discussed in later sections of this proposed rule. This section deals exclusively with the technical aspects of Illinois' 1-hour ozone attainment demonstration, focusing on the ozone modeling results and supporting air quality and emissions analyses.

3. What Modeling Approach Was Used in the Analyses To Develop and Validate the Ozone Modeling System?

The LADCO States, as participants in the Lake Michigan Ozone Study (designed to establish the modeling system and its base input data and to validate the modeling system) and in the Lake Michigan Ozone Control Program (designed to select and test possible emission control strategies), used the same modeling approach to develop the basis for each State's ozone attainment demonstration although each State selected a different emissions control strategy for their respective ozone attainment demonstration. The modeling approach is documented in LADCO's September 18, 2000 Technical Support Document (TSD) and is summarized in LADCO's September 18, 2000 modeling summary (see above).

The heart of the modeling system is the Urban Airshed Model–Version V (UAM–V) photochemical dispersion model developed originally for specific application in the Lake Michigan area. This is the same version of the model that was used during the OTAG analysis of ozone transport and ozone transport control measures.

For purposes of the local ozone attainment demonstration, UAM–V was applied to a local modeling domain and grid configuration that was established based on consideration of areas of high ozone concentrations (generally the ozone nonattainment areas) in the Lake Michigan States and of possible upwind source areas impacting these high concentration areas. The primary modeling domain is referred to as Grid M. This grid extends east to the most eastern portion of Michigan (and to central Ohio, eastern Kentucky, and eastern Tennessee); north to the northern end of Michigan's Lower Penninsula (and to the north of Green Bay, Wisconsin); west to include the eastern thirds of Iowa and Missouri; and south to the southern border of Tennessee. The horizontal grid is rectangular in shape (see Figure 1 of the September 18, 2000 LADCO TSD). The modeling has the following horizontal and vertical resolutions:

Horizontal Resolutions

Approximately 12 kilometers x 12 kilometers—all modeling runs.

Approximately 4 kilometers x 4 kilometers—for selected runs to give better resolution in the area along the western shore of Lake Michigan.

Vertical Resolution

7 vertical layers with the following height ranges (above terrain) in meters: 0–50; 50–100; 100–250; 250–500; 500–1500; 1500–2500; and 2500–4000.

A subregional portion of the grid, centered (east to west) on the lower portion of Lake Michigan, was also considered to allow a more detailed analysis of the high ozone areas of Grid M. The use of Grid M and the subregional portion of Grid M allowed the consideration of both urban scale analyses and ozone transport. It should be noted that the modeling results from the modeling runs with the tighter 4 kilometer resolution were generally consistent with the results for the 12 kilometer resolution.

Four high ozone episodes in the Lake Michigan area were modeled. These episodes were: June 22–28, 1991; July 14–21, 1991; June 13–25, 1995; and July 7–18, 1995. These episodes were selected because: (1) They were judged to be representative of typical high ozone episodes in the Lake Michigan area and because they respresent a variety of meteorological conditions that have been found to be conducive to high

ozone concentrations in this area; (2) there is an intensive data base available for the 1991 episodes; and (3) several of these episodes (the July episodes) were modeled as part of the OTAG analyses, providing ozone transport and modeling domain boundary data.

The following input data systems and analyses were used to develop input data for the ozone model:

a. *Emissions.* UAM–V requires a regional inventory of gridded, hourly estimates of speciated VOC, NO_x, and carbon monoxide (CO) emissions. The States provided emission inventories which were processed through the Emissions Modeling System-1995 version (EMS–95). Emissions were prepared for a 1996 base year (used to test model performance), a 2007 base year (considering growth and previously adopted emission control measures), and several 2007 emission control strategy/sensitivity scenarios. The emission inventories include 1996 state periodic inventory data for stationary point and area sources, updated state transportation data, excess NO_x emissions produced by heavy-duty vehicles as a result of built-in "defeat" devices, updated growth and emissions control data, and EPA's latest emission reduction estimates for the mobile source Tier II/Low Sulfur program. Ambient temperature data affecting mobile source and evaporative emissions and biogenic emissions were generated using the RAMS3a meteorological model. Biogenic emissions were based on EPA's BEIS2 model, with an adjustment of the isoprene emissions in the Ozarks.[16] Point source emissions for some sources were addressed through the use of Plume-in-Grid (PiG)[17] techniques incorporated within UAM–V. An additional discussion of the development of the modeled emission inventories is presented below.

b. *Meteorology.* UAM–V requires gridded 3-dimensional hourly values of wind speed, wind direction, temperatures, air pressure, water vapor content, vertical diffusivity, and, if applicable, clouds and precipitation. Most meteorological inputs were derived through prognostic modeling with the RAMS3a model. Cloud and precipitation data were developed based on observed National Weather Service data. Preliminary analyses of the modeled meteorological data results showed adequate representation of the observed airflow features and good agreement between modeled and measured wind speeds, temperatures, and water vapor levels. LADCO, has concluded, however, that errors or uncertainties in the meteorological data may have affected the UAM–V results (albeit not significantly enough to invalidate the modeling results based on EPA recommended validation criteria). The errors have been minimized to the extent possible and suppressed through "nudging" using observed National Weather Service data at 12-hour intervals.

c. *Boundary Conditions.* Boundary conditions were developed by applying UAM–V over the OTAG modeling domain (this modeling domain covered most of the eastern half of the United States) for the selected high ozone episodes at a 36 kilometer grid resolution. The modeling was conducted to be consistent with the modeling used in the OTAG analyses.

Basecase modeling was conducted to evaluate model performance by comparing observed and modeled ozone concentrations. The model performance evaluation consisted of comparisons of the spatial patterns, temporal profiles, and magnitudes of modeled and measured 1-hour (and 8-hour) ozone concentrations.

In making the comparison of modeled and observed ozone concentrations, 1996 emissions were assumed to be reasonably similar to 1995 emissions, but significantly lower than 1991 emissions. To account for the 1991–1996 differences, a set of simple "backcast" emission factors were derived by comparing the county-level emissions in the 1991 Lake Michigan Ozone Control Program emissions inventory with the 1996 base year emissions inventory.

Peak daily 1-hour modeled ozone concentrations for each episode were analyzed and compared to the observed peak ozone levels in the modeling domain. For each type of comparison, the following conclusions were developed.

- *Spatial Patterns.* This analysis showed that areas of high modeled ozone concentrations correspond acceptably with areas of high measured ozone concentrations in the Lake Michigan area. Rural (generally upwind of the Lake Michigan ozone nonattainment areas) measured and modeled ozone concentrations were found to compare favorably. Peak modeled ozone concentrations over Lake Michigan, however, appear to be underestimated on some days.
- *Temporal Patterns.* Time series plots of 1-hour modeled and measured ozone concentrations by monitoring site were compared. The hour-to-hour and day-to-day variations of modeled and measured ozone concentrations were found to compare favorably. The modeling system seems to over-predict nighttime ozone concentrations and to under-predict peak daytime ozone concentrations, but performs within acceptable limits (see a discussion of the modeling validation below). At the monitoring sites with high measured ozone concentrations, the mid-afternoon modeled ozone concentrations are low.
- *Magnitude Comparisons.* Ozone statistics, unpaired peak accuracy, average accuracy of peak ozone concentrations, normalized bias results, and normalized gross error results are provided in the modeling system documentation. The model performance statistics for the Lake Michigan modeling domain subregion comply with EPA's recommended acceptance ranges. The statistics of the modeling system performance, however, demonstrate the tendency of the modeling system to underestimate measured peak ozone concentrations (although the modeling system overestimated some of the peak ozone concentrations).
- *Other Factors.* The modeling system's response to changes in ozone precursor emissions has been assessed by conducting sensitivity analyses and by comparing the differences in modeled and measured ozone concentrations and changes in emissions between 1991 and 1996. This assessment indicates that the model is responsive to changes in ozone precursor emissions and is consistent with observed air quality data and emissions data.

To assess the effects of grid resolution, analyses were conducted comparing modeling results for resolutions of 4 kilometers and 12 kilometers. Plots of predicted peak concentrations were analyzed for these two grid resolutions. In general, it appears that model performance at a resolution of 4 kilometers is comparable to that at a resolution of 12 kilometers.

The LADCO States have concluded that the modeling system performance is acceptable for air quality planning purposes (for the purposes of assessing

[16] Analyses of initial ozone modeling results indicated that initial isoprene emission estimates for the Ozarks had unrealistic impacts on the ozone concentrations modeled for the Lake Michigan area. Background ozone monitoring data did not support the high background/transported ozone levels modeled to result from this upwind source area. A study, known as OZIE, was conducted to reanalyse the isoprene emissions for the Ozarks. Based on the preliminary results of the OZIE study, LADCO concluded that the isoprene emissions for the Ozarks should be reduced by a factor of 2 (halved).

[17] sources to be addressed through PiG techniques were selected based on their magnitudes of NO_x emissions (the top 100 ranked stacks) and locations (the next 34 topped ranked stacks in the Lake Michigan and St. Louis areas).

the impacts of emission control strategies).

To test ozone attainment strategies, the LADCO States have projected emissions from the base year to 2007, the attainment year. The future emissions have been modified to reflect the various tested emission control strategies.[18] All other inputs to the ozone modeling system have been fixed at the levels used in the validated base year modeling analyses.

The remainder of the questions in this section of this proposed rule address the States' efforts to demonstrate attainment using the validated ozone modeling system and focuses on evaluating the attainment strategy. For additional discussions of the efforts to validate the modeling system, you are referred to the discussions of these efforts in the December 16, 1999 proposed rule (64 FR 70496).

4. How Were the 1996 Base Year Emissions Developed?

Besides being used to develop and validate the ozone modeling system, base year emissions were also used to project the attainment year emissions and, through comparisons with the attainment year emissions and analyses of monitored and modeled ozone concentrations, to support the adequacy of the selected emissions control strategy. For the purposes of the attainment demonstration used here, 1996 was selected to be the base year of the analyses.

The September 27, 2000 LADCO emissions inventory TSD documents the development of the base year emissions as well as the projection and development of the attainment year emissions used in the attainment strategy modeling and attainment demonstration. The following summarizes the development of base year emissions as documented in LADCO's September 27, 2000 TSD.

For the 1996 base year, emission rates for point and area sources were either provided by the EPA (from the NO_x SIP Call documentation) or by the States based on 1996 periodic emission inventories. Where appropriate, EPA's NO_x data were supplemented or corrected using state-specific data, as noted in LADCO's September 27, 2000 TSD.

Emission rates for on-road mobile sources were calculated through the use of EMS–95 based on a mobile source activity level, e.g., vehicle miles traveled (VMT), and the MOBILE5b emission factor model. The sources of the VMT, vehicle speed, and vehicle mix data are summarized in LADCO's September 27, 2000 TSD. Relative to previous emissions modeling, vehicle speeds were increased and vehicle mix distributions were shifted to heavier vehicles based on more recent data (the increased use of sports utility vehicles has increased the relative vehicle mixes of light duty gasoline trucks, increasing per VMT emissions rates). Mobile source emissions of NO_x were also increased for heavy-duty diesel vehicles as the result of the use of built-in "defeat" devices. These increased NO_x emissions were estimated by applying a processor supplied by the EPA.

Day-specific biogenic emissions were calculated using EPA's BEIS2 model. As noted above, comparisons of emission estimates and measured isoprene concentrations in the Ozarks indicated that the BEIS 2 isoprene emission estimates for the Ozarks are overestimated by a factor of 2.

As noted above, a number of refinements of the emissions estimates must be made to support the ozone modeling system. These refinements include spatial, temporal, and species processing and resolution. This was accomplished through the use of EMS–95. County-level point source emissions were spatially distributed based on facility or stack coordinates. County-level area source emissions were spatially resolved based on surrogates, such as population distributions and land use data. Mobile source emissions were calculated for each modeling grid cell by EMS–95, not requiring further resolution.

Daily average point source emissions were temporally allocated based on using facility-specific reported operating schedule information. Daily average area source emissions were temporally allocated using category-specific hourly distribution profiles. Mobile source and biogenic source emissions are temporally resolved through the use of EMS–95, which includes temporal emission profiles for these source categories.

The speciation profiles in EMS–95 were obtained from the latest version of EPA's SPECIATE data base.

To quality assure the base year emissions data, a top-down evaluation of the emissions inventory was performed using ambient ozone precursor data collected from the Photochemical Assessment Monitoring Stations (PAMS) in the Lake Michigan area. The evaluation included comparisons of monitored and calculated VOC to NO_x emissions ratios, the relative amounts of individual VOC species, and the measured and calculated reactivity of VOC compounds.

5. What Procedures and Sources of Projection Data Were Used To Project the Emissions to the Attainment Year?

The future year emission inventories used in the Lake Michigan Ozone Control Program and in the ozone attainment demonstration were derived from the base year emissions inventory. The base year emissions inventory was projected to 2007 by applying scalar growth factors for most source categories. Each LADCO State provided estimates of source growth and control factors by source sector. Source growth and emission control factors used in EPA's NO_x SIP Call were also considered, particularly for EGUs. Table 1 of the LADCO September 27, 2000 TSD documents in detail the sources of 2007 emission estimates by source category along with the sources of 1996 emissions and emission control factors and is included by reference here.

6. How Were the 1996 and 2007 Emission Estimates Quality Assured?

To improve the reliability of the modeling source emission inventories, several quality assurance activities were performed by the State emission inventory personnel, the emission modelers (those people responsible for speciating and temporally and spatially resolving the emissions data for use in the ozone modeling system), and the photochemical modelers. These activities included:

Development and Implementation of an Emissions Quality Assurance Plan. A standardized set of data and file checks were documented in a LADCO draft emissions quality assurance (QA) plan. This plan identifies the emissions quality assurance procedures to be followed by the State emission inventory personnel. Each State was responsible for quality assurance of its own emissions inventory data before providing these data to the LADCO emission modelers. The quality assurance of the data by the States included reviewing many EMS–95 emissions reports for consistency with other State-specific emissions data.

Emission Reports. EMS–95 itself performs a number of emission checks and generates reports flagging possible emission errors and summarizing data

[18] For a listing of the emission control measures modeled in the various emission control strategies, see Table 6, "Control Measures," in LADCO's September 27, 2000 "Technical Support Document: Midwest Subregional Modeling: Emissions Inventory" or Section 5, "Strategy Modeling," and Table 4, "Control Measures," of LADCO's September 18, 2000 "Technical Support Document: Midwest Subregional Modeling: 1-Hour Attainment Demonstration for Lake Michigan Area," both of which were included in Illinois' December 26, 2000 attainment demonstration submittal.

that can be checked against alternative emission data sets/reports. Table 7 of LADCO's September 27, 2000 TSD lists the EMS–95 standardized QA reports and is included by reference here. These reports were generated in the preparation of the Grid M emissions data and were used for QA efforts.

Review by Photochemical Modelers. The photochemical modelers quality assured the emissions inventories by generating and reviewing spatial plots of emissions by source sector/type. The reviews were designed to detect spatial anomalies (misplaced or missing sources). The modelers also conducted emission total checks against EMS–95 summary reports.

Stack Parameter Checks. A contractor, Alpine Geophysics, was employed, in part, to QA the point source emissions data. Alpine Geophysics discovered errors in the stack parameters and other point source data, including potential errors in gas exit velocities, emission rates, and physical stack parameters, for many point sources in the previous versions of the modeling system emission inventories. This review was distributed to the LADCO States to get the States to correct their respective point source emissions data. Some stack data were shifted from the elevated point source data files to the ground-level data files based on adopted screening parameters. This resulted in a spatial shift in emissions from previous modeling emission inventory versions.

7. What Is the Adopted Emissions Control Strategy?

To select possible emission control strategies, the LADCO States have modeled the ozone impacts of a number of emission control strategies for VOC and NO_X. After modeling and reviewing the ozone impacts of various strategies and considering CAA and EPA emission control requirements, Illinois has adopted the emission control strategy known as SR 16 (LADCO Strategy Run 16) as the emission control strategy that will be pursued to attain the 1-hour ozone standard in the Chicago-Gary-Lake County ozone nonattainment area. Table II lists the emission controls included in SR 16.

TABLE II.—SR 16—EMISSION CONTROL STRATEGY

- Clean Air Act Title IV Acid Rain Controls for NO_X—Phase I
- Rate-Of-Progress Plans (15 Percent ROP Plan and 9 Percent Post-1996 ROP Plan)
- National Low Emission Vehicle Standards
- Reformulated Gasoline—Phase II (where required)

TABLE II.—SR 16—EMISSION CONTROL STRATEGY—Continued

- Federal Phase II Small Engine Standards
- Federal Marine Engine Standards
- Federal Heavy Duty Vehicle (≥ 50 horsepower) Standards—Phase I
- Federal Locomotive Standards—Including Rebuilds
- Federal High Compression Engine Standards
- Federal Tier I Light Duty Vehicle and Heavy Duty Vehicle Emission Standards
- Enhanced Vehicle Inspection and Maintenance (I/M) (where required)
- Basic Vehicle I/M (where required)
- Federal Clean Fuel Fleets Requirements (where required)
- Federal Tier II and Low Sulfur Gasoline Standards
- Utility 0.15 Pounds NO_X Per Million Btu of Heat Input Emission Limits (20 affected States, including Illinois)
- 60 Percent Reduction of NO_X Emissions From Large Non-Electric Generating Unit (Non-EGU) Boilers and Turbines (20 affected States, including Illinois)
- 30 Percent Reduction of NO_X Emissions From Large Cement Kilns (20 affected States, including Illinois)
- Wisconsin—0.28 Pounds NO_X Per Million Btu of Heat Input for Utilities (EGUs) in 8 Counties
- Missouri—0.25 Pounds NO_X Per Million Btu of Heat Input for EGUs in the Eastern One-Third of the State
- Missouri—0.35 Pounds NO_X Per Million Btu of Heat Input for EGUs in the Western Two-Thirds of the State

With regard to the NO_X emission controls listed in Table II, several aspects of the assumed NO_X emission reductions should be noted. First, the NO_X emission controls for utilities (EGUs), large non-EGU boilers and turbines, and large cement kilns in Grid M were assumed for all States (other than Wisconsin and Missouri) that are subject to EPA's NO_X SIP Call. In reality, the assumed NO_X emission reductions only reflect the expected NO_X emissions budgets for these States and not the actual NO_X emission controls that may actually occur in these States. Under the NO_X SIP Call, states are not restricted to specific NO_X emission controls, but are required to achieve assigned NO_X emission budgets. The UAM modeling system is designed to test emission reductions for specific source categories. Therefore, LADCO chose a specific emission control scenario expected to produce NO_X emissions that are compliant with the NO_X SIP Call.

Illinois has developed NO_X emission control regulations to control emissions from EGUs, non-EGU boilers and turbines, and cement kilns at or below the emission levels assumed for Illinois in control strategy SR 16. (The NO_X rules for EGUs, non-EGU boilers and turbines and cement kilns are undergoing separate review (see an EPA proposed rule addressing this State rule published on August 31, 2000, 65 FR 52967) and are expected to be approved before EPA completes final rulemaking on Illinois' ozone attainment demonstration.) Other states in Grid M have also submitted adopted or draft NO_X rules to comply with the NO_X SIP Call.

Second, with regard to the NO_X emission reductions assumed for Wisconsin and Missouri, these States have adopted and submitted NO_X rules to achieve the NO_X emission controls assumed in SR 16. The EPA has approved Missouri's NO_X rule (December 28, 2000, 65 FR 82285) and expects to take final action on Wisconsin's NO_X rule in the future and prior to final action on Illinois' ozone attainment demonstration.

In addition to the emission controls included in the above table, the following emission changes were also reflected in the modeling results for the control strategy: (a) Use of NO_X vehicle I/M cut-points in the Wisconsin ozone nonattainment areas; (b) revised traffic network vehicle miles traveled data provided by the Chicago Area Transportation Study (CATS); (c) updated MOBILE5b input data for Illinois and Wisconsin; and (d) corrected MOBILE5b input data for Ohio.

In the ozone modeling, the CAA-required emission controls were assumed for all states within Grid M and were assumed for all areas outside of Grid M in modeling used to determine the initial and boundary ozone and ozone precursor concentrations for Grid M. In the Chicago area, the CAA-required controls modeled include: Reasonably Available Control Technology (RACT) on stationary sources of VOC; enhanced vehicle I/M; Transportation Control Measures (TCM); and other emission controls included in the State's 15 percent ROP plan (for a discussion of the emission controls included in this plan see 62 FR 37494, July 14, 1997) and 9 percent post-1996 ROP plan (for a discussion of the emission controls included in this plan see 65 FR 78961, December 18, 2000).

Table III compares the VOC and NO_X emission rates for major source sectors in Grid M for the 1996 base year and for the adopted emission control strategy in 2007.

TABLE III.—COMPARISON OF 1996 AND SR 16 (2007) EMISSIONS IN GRID M

[Emissions in tons/day]

Pollutant	Point—EGU	Point—Non-EGU	Area—Offroad mobile	Area—Other	Onroad—Mobile	Biogenic sources	Total
VOC:							
1996 Base Year	32	2,335	1,716	4,780	3,633	30,816	43,312
SR 16	37	1,771	1,167	4,410	2,687	30,816	40,888
NO_x:							
1996 Base Year	5,844	1,876	2,138	602	5,681	2,000	18,141
SR 16	2,092	1,822	1,748	734	3,230	2,000	11,626

Source: Table 3, "Technical Support Document—Midwest Subregional Modeling: Emissions Inventory," September 27, 2000.

8. What Were the Ozone Modeling Results for the Base Period and for the Future Attainment Period With the Selected Emissions Control Strategy?

Table IV presents the Grid M peak observed and modeled ozone concentrations for the high episode days selected for the modeling analysis and attainment demonstration. The following modeled peak concentrations are presented: (a) The modeled validation peak ozone concentrations for Grid M; (b) the modeled Grid M peak ozone concentrations using the 1996 base year emissions; and (c) the 2007 predicted ozone concentrations for ozone control strategy SR 16. All modeled and monitored ozone concentrations are 1-hour averages and represent peak ozone concentrations anywhere within Grid M.

TABLE IV.—PEAK MONITORED AND MODELED OZONE CONCENTRATIONS FOR GRID M

[Ozone Concentrations in ppb]

Date	Peak ozone observed	Peak ozone modeled validation	Peak ozone modeled 1996 base year emissions	Peak ozone modeled SR 16
6–25–91	104	123	123	110
6–26–91	175	136	138	117
6–27–91	118	139	127	111
6–28–91	138	124	102	95
7–16–91	130	129	108	103
7–17–91	137	119	89	89
7–18–91	170	137	108	109
7–19–91	170	137	112	111
7–20–91	138	168	150	128
6–21–95	112	123	122	118
6–22–95	119	131	131	119
6–23–95	123	128	128	113
6–24–95	166	136	136	126
6–25–95	108	125	124	120
7–12–95	146	118	118	105
7–13–95	178	147	146	124
7–14–95	150	140	140	127
7–15–95	154	156	156	128

Sources: Table 1, "Midwest Subregional Modeling: 1-Hour Attainment Demonstration for Lake Michigan Area—Summary," September 18, 2000. Table 6, "Technical Support Document—Midwest Subregional Modeling: 1-Hour Attainment Demonstration for Lake Michigan Area," September 18, 2000.

From the above, you can see that the ozone modeling results for the selected emissions control strategy do show four peak ozone concentrations above the 1-hour ozone standard on the following dates: July 20, 1991; June 24, 1995; July 14, 1995; and July 15, 1995. As noted in LADCO's September 18, 2000 summary of the attainment demonstration, simple modeling and assessment of the potential future peak ozone concentrations (a deterministic test) does not demonstrate attainment of the ozone standard because of these modeled ozone standard exceedances. Additional analyses were conducted to support the attainment demonstration for this and other emission control strategies.

EPA's most relevant current ozone modeling/attainment demonstration guidance (*Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, EPA–454/B–95–007, [June 1996]) provides for a statistical test as an alternate to a deterministic test to demonstrate attainment of the ozone standard (passing a statistical test can be used to support an ozone attainment demonstration even if a deterministic test is not passed). Under a statistical test, three benchmarks must be passed.

Benchmark 1 of the statistical test requires that the number of days with modeled ozone standard exceedances in each modeling domain grid cell must be less than 3 and that any modeled ozone standard exceedances occur on a "severe" day (severe days are determined by ranking high ozone days over many years and considering the ranking of the days covered in the modeled ozone attainment demonstration). Ten of the days

modeled by LADCO were determined to be "severe," including July 20, 1991 and July 15, 1995.

Benchmark 2 of the statistical test requires that the maximum modeled ozone concentration on severe days shall not exceed 130 ppb to 160 ppb, depending on the "severity" of the meteorological conditions on the modeled days. For the ozone attainment demonstration addressed in this proposed rule, LADCO's analysis of the severity of the modeled days led LADCO to conclude that the peak ozone concentration limit should be 130 ppb.

Finally, benchmark 3 of the statistical test requires that the number of modeling domain grid cells with peak ozone concentrations above or equal to 125 ppb must be reduced (from the number in the modeled base period) by 80 percent on each "severe" day.

LADCO has determined that the SR 16 emissions control strategy (and other modeled emission control strategies not adopted by Illinois) leads to modeled peak ozone concentrations meeting all three benchmarks of the statistical test. See LADCO's September 18, 2000 "Technical Support Document—Midwest Subregional Modeling: 1-Hour Attainment Demonstration for Lake Michigan Area." Therefore, attainment of the ozone standard is demonstrated through modeling for the SR 16 emissions control strategy.

In light of the inherent uncertainties in the ozone modeling and to further evaluate the ozone attainment demonstration, LADCO has also chosen to conduct two additional analyses that are components of a WOE analysis. First, using the base period observed ozone design values for various ozone monitoring sites and the modeled 2007, post-control peak ozone concentrations for the domain grid cells in the vicinities of these monitors, LADCO predicted 2007 ozone design values for these monitoring sites (this procedure is referred to as the "relative reduction factor" test). For the SR 16 control strategy, the relative reduction factor test leads to predicted ozone design values below the ozone standard for all ozone monitoring sites and modeling receptor locations considered, with the highest projected ozone design values being 122 ppb at an unmonitored mid-Lake Michigan location (a synthetic base period ozone design value was used for this site) and 119 ppb for a Michigan City, Indiana ozone monitoring site.

Second, LADCO conducted an ozone trends analysis, which shows a considerable amount of progress toward attaining the ozone standard. Local ozone levels have significantly declined over time, while incoming ozone concentrations (transported ozone concentrations) remain relatively high.

The WOE analyses further support the conclusions of the attainment demonstration and counter any concerns that may be raised regarding the inherent uncertainties in the ozone modeling and the tendency of the modeling system to under-predict some peak ozone concentrations (the modeling system also over-predicts some peak ozone concentrations).

Based on all of the ozone modeling data available and related emissions analyses, LADCO concludes that the best ozone control strategy would be to control local VOC emissions (within the urban nonattainment areas) and to couple this with the control of domain-wide, regional NO_X emissions (the purpose of EPA's NO_X SIP Call and Illinois' adoption of NO_X emission control rules for EGUs, non-EGU boilers and turbines, and cement kilns). This recommended emission control strategy approach is compatible with the emission control strategy selected by Illinois.

9. What Additional Analyses and Emissions Were Modeled by the State of Illinois?

Although the December 26, 2000 submittal of the ozone attainment demonstration by the IEPA indicates that the State of Illinois has adopted SR 16 as the emissions control strategy for attaining the 1-hour ozone standard, the IEPA has also decided to test the potential impacts of several emission changes not considered by the LADCO States as a whole. The additional emissions changes include: (a) Addition of NO_X emissions from recently permitted combustion turbine EGUs; and (b) incorporation of transportation conformity emissions budgets that include a greater level of Vehicle Miles Travelled (VMT) than considered in the LADCO ozone modeling.

Illinois has recently issued emission permits for 33 new combustion turbine EGUs statewide (prior to the submittal of the ozone attainment demonstration and prior to the public hearing on this attainment demonstration). Ten of these units are located within the Illinois portion of the Chicago-Gary-Lake County ozone nonattainment area. These combustion turbine units include "combined-cycle" installations for providing base load and intermediate to peak load electricity production, as well as "simple-cycle" installations for providing peak load generating capacity (peaker-plants). Some of the installations have been built to replace existing units and others have been built to reduce boiler usage at existing facilities. The IEPA has determined the peak daily VOC and NO_X emissions to be added by all of these installations and has determined the existing VOC and NO_X emissions that would be replaced by the new installations. Modeled emission rates are based on the turbines operating at 100 percent loads.

The attainment demonstration analyses conducted by LADCO included the 2007 Chicago link-based transportation network VMT provided by CATS. Historically and in previous ozone rate-of-progress plans, the IEPA has used higher 2007 VMT estimates for 2007 provided by the Illinois Department of Transportation. To remain consistent with these prior plans and with the base data used to derive the 1990 base year emissions (used to calculate furture year emissions and ROP plan emission reduction targets), the IEPA concluded that it should consider the extra emissions resulting from the higher VMT estimates.

To test the impacts of the extra VOC and NO_X emissions resulting from the permitted turbines and the increased VMT estimates, the IEPA has re-conducted the Grid M ozone modeling for SR 16, adding the extra VOC and NO_X emissions for the July 1991 modeled ozone episode days (the IEPA notes that this episode is the most constraining episode, requiring the greatest amount of ozone precursor emission reduction amongst all tested high ozone episodes). The State has re-conducted the modeling analyses for the revised Grid M emissions, and concludes that the revised modeling results pass the statistical test benchmarks. The peak modeled ozone concentrations for SR 16 and the IEPA supplemental ozone modeling are given in Table V.

TABLE V.—COMPARISON OF PREDICTED PEAK 1-HOUR OZONE CONCENTRATIONS [19]

[Ozone Concentrations in ppb]

Episode day	LADCO SR 16 results	IEPA supplemental ozone results
7–16–91	103	104
7–17–91	89	90
7–18–91	109	109
7–19–91	111	113
7–20–91	128	130

[19] Data taken from Table 2, Chapter I, of the December 21, 2000 "Ozone Attainment Demonstration for the Chicago Nonattainment Area" included as part of Illinois' December 26, 2000 ozone attainment demonstration submittal.

The IEPA concludes that the added emissions do not overturn the

conclusion of LADCO that the SR 16 emission control strategy will lead to attainment of the 1-hour ozone standard. The IEPA further points out that this procedure is conservative because the increased NO_X emissions from the EGU turbine installations will not actually increase the total NO_X emissions in the State of Illinois. Since all of these new turbines will be subject to the State's EGU NO_X rule, their NO_X emissions will be included in the State's NO_X emissions total, which will be constrained through a statewide NO_X emissions cap under EPA's NO_X SIP Call. Therefore, not all of the estimated 1–2 ppb ozone increase will actually occur.

It should be noted that, although these modeling results do not affect the conclusions regarding the adopted emissions control strategy, they do potentially affect the existing NO_X emissions control waiver in the Illinois portion of the Chicago-Gary-Lake County ozone nonattainment area. See the section of this proposed rule addressing the NO_X emissions control waiver below.

10. Do the Modeling Results Demonstrate Attainment of the Ozone Standard?

Based on LADCO's ozone modeling results and Illinois' supplemental modeling results, EPA believes that LADCO and, in particular, the State of Illinois have demonstrated attainment of the 1-hour ozone standard for the Chicago area based on the adopted SR 16 emissions control strategy.

11. Does the Attainment Demonstration Depend on Future Reductions of Regional Emissions?

Yes. The adopted emissions control strategy includes regional NO_X emission reductions for the State of Illinois as well as for surrounding states in compliance with EPA's NO_X SIP Call. LADCO has concluded that regional NO_X emissions reductions are crucial to attainment of the 1-hour ozone standard in the Lake Michigan area.

12. Has the State Adopted All of the Regulations/Rules Needed to Support the Ozone Attainment Strategy and Demonstration?

The State of Illinois has adopted and is implementing all emission controls required under the CAA, including the emission controls included in Illinois' 15 percent and post-1996 ROP plans. The additional emission controls needed to support the adopted emissions control strategy are the NO_X rules needed to comply with EPA's NO_X SIP Call. The State has adopted NO_X emissions control rules for EGUs, major non-EGU boilers and turbines, and cement kilns, and EPA is in the process of reviewing these rules. The EPA expects to approve these NO_X rules in final before giving final approval to the ozone attainment demonstration.

C. EPA's Evaluation of the Ozone Attainment Demonstration Portion of the State's Submittal

1. Did the State Adequately Document the Techniques and Data Used To Derive the Modeling Input Data and Modeling Results of the Analyses?

The State's submittal thoroughly documents the techniques and data used to derive the modeling input data. The submittal adequately summarizes the modeling outputs and the conclusions drawn from these modeling outputs. This includes the State's modifications to LADCO's model inputs. Therefore, EPA concludes that the ozone modeling has been successfully documented and that the State's attainment demonstration is complete from a documentation standpoint. This includes documentation of an adopted emissions control strategy, which was lacking in the State's earlier April 1998 ozone attainment demonstration submittal.

2. Did the Modeling Procedures and Input Data Used Comply With the Clean Air Act Requirements and EPA Guidelines?

Yes. The State of Illinois, through LADCO, has used the UAM to model attainment of the 1-hour ozone standard. The State has documented the modeling results and the input data considered. The modeling procedures and input data comply with the requirements of the CAA as well as with EPA policy.

3. Did the State Adequately Demonstrate Attainment of the Ozone Standard?

Illinois, in accordance with the CAA, as further clarified in EPA's December 1997 guidance, has demonstrated that attainment of the 1-hour ozone standard is achievable by November 15, 2007 (the attainment deadline for the Chicago-Gary-Lake County ozone nonattainment area) provided projected reductions in background ozone and ozone precursor concentrations occur as the result of the implementation of EPA's NO_X SIP Call. The State has demonstrated that the adopted emission control strategy, including local VOC emission control measures and regional NO_X emission control measures (including statewide NO_X emission reductions in Illinois needed to comply with the NO_X SIP Call), is adequate for attainment of the 1-hour ozone standard.

4. Has the Adopted Emissions Control Strategy Been Adequately Documented?

Yes. The emission controls included in adopted strategy have been identified and their cumulative emission impacts have been documented.

5. Is the Emissions Control Strategy Acceptable?

Yes. It is noted that the adopted emissions control strategy relies significantly on the adoption of NO_X emission control regulations by Illinois to comply with the requirements of EPA's NO_X SIP Call. Illinois has adopted rules to reduce NO_X emissions from EGUs, major non-EGU boilers, and major cement kilns. The EPA has proposed rulemaking for the EGU NO_X rule (65 FR 52967, August 31, 2000), proposing to approve the rule, and proposing to disapprove it in the alternative, if the State does not correct noted deficiencies in the rule (the State corrected the most significant deficiency in this rule through State legislation on May 31, 2001 as documented in a June 11, 2001 letter from the IEPA). The EPA is preparing proposed rulemakings for the non-EGU boiler and cement kiln NO_X emissions control rules. We cannot approve the attainment demonstration until after (or at the same time) we approve all of the NO_X emission control rules relied on in the State's ozone attainment demonstration. Assuming that we will approve Illinois' NO_X rules prior to or by the time we promulgate final approval of the ozone attainment demonstration, we find the ozone attainment demonstration to be approvable.

IV. Post–1999 Rate-of-Progress (ROP) Plan

A. What Is a Post-1999 ROP Plan?

ROP plans are a requirement of section 182 of the CAA. Section 182(c)(2)(B) of the CAA requires states with ozone nonattainment areas classified as serious and above, including the Chicago area which is classified as severe nonattainment, to adopt and implement plans to achieve periodic reductions in ozone precursors (VOC and/or NO_X) after 1996. The requirement is intended to ensure that an area makes definite and reasonable progress toward attainment of the ozone NAAQS. Since Illinois has already adopted and implemented a post-1996 ROP plan to meet the requirements of section 182(c)(2)(B) through November 15, 1999 (EPA approved this plan on December 18, 2000, 65 FR 78961) and

since the ROP plan reviewed here addresses the ROP requirements for the period after November 15, 1999, we refer to the ROP plan reviewed in this proposed rule as the post-1999 ROP plan.

The post-1999 ROP emission reductions are to occur at a rate of 9 percent of baseline emissions,[20] net of emissions growth, averaged over each 3-year period through the attainment year (2007 for the Chicago-Gary-Lake County ozone nonattainment area). The State must achieve the first 3 year ROP milestone (i.e., 9 percent) by November 15, 2002, another 9 percent ROP milestone by November 15, 2005, and the remaining 6 percent ROP milestone by November 15, 2007.

The ROP plan contains: (1) Documentation showing how the State calculated the emission reductions needed to achieve the incremental ROP emission reductions for each milestone period; (2) a description of the emission control measures used to achieve the incremental emission reductions; and (3) a description of how the State has determined the emission reduction creditable to each emission control measure.

B. What Is the ROP Contingency Measure Requirement?

Section 172(c)(9) of the CAA requires states with ozone nonattainment areas classified as moderate and above to adopt contingency measures by November 15, 1993. Such measures must provide for the implementation of specific emission control measures if an ozone nonattainment area fails to achieve ROP or to attain the NAAQS within the time-frames specified under the CAA. Section 182(c)(9) of the CAA requires that, in addition to the contingency measures required under section 172(c)(9), the contingency measure portion of the SIP for serious and above ozone nonattainment areas must also provide for the implementation of specific measures if an area fails to meet any applicable milestones in the CAA. As provided in these sections of the CAA, the contingency measures must take effect without further action by the state or by EPA upon failure of the state to meet ROP emission reduction milestones or to achieve attainment of the ozone NAAQS by a required deadline.

Our policy, as provided in the April 16, 1992 "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498), states that the contingency measures, in total, must generally be able to provide for emission reductions equal to 3 percent of the 1990 baseline emissions.

While all contingency measures and rules must be fully adopted by the states, states can use the contingency measures in one of two different ways. A state can choose to implement contingency measures before a milestone deadline. Alternatively, a state may decide not to implement a contingency measure until an area has actually failed to achieve a ROP or attainment milestone. In the latter situation, the contingency measure emission reduction must be achieved within one year following identification of a milestone failure.

C. What Illinois Counties Are Covered by the Post-1999 ROP Plan?

The post-1999 ROP plan covers the emission reduction requirements for the Chicago area. As indicated above, this area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and the townships of Aux Sable and Goose Lake in Grundy County and Oswego in Kendall County. The VOC emission reduction requirements, as discussed below are determined relative to the VOC emissions in this area. Section 182(c)(2)(C) of the CAA provides for the substitution of NO_X emission controls to meet part of the VOC emission reduction requirements for ROP provided that the NO_X emission reduction produces an ozone reduction equivalent to that achieved from the required VOC emission reduction. As noted below, Illinois relies on the substitution of NO_X emission reductions in its post-1999 ROP plan. It should also be noted that EPA interprets the CAA to allow the substitution of VOC and NO_X emission reductions occurring outside of the ozone nonattainment area for nonattainment area VOC emission reductions needed to comply with ROP requirements, and Illinois' ROP plan incorporates such emission reduction substitution.

The Illinois ROP plan documentation refers to the term "Volatile Organic Material" (VOM) rather than to VOC. The State's definition of VOM is equivalent to EPA's definition of VOC. The two terms are interchangeable when discussing volatile organic emissions. For consistency with the CAA and EPA policy, we are using the term VOC in this proposed rulemaking.

D. Who Is Affected by the Illinois Post-1999 ROP Plan?

The post-1999 ROP plan does not itself create any new emission control requirements. Rather, it is a demonstration that existing regulations or regulations being developed to meet other emission reduction requirements are sufficient to achieve the required ROP emission reduction requirements.

The post-1999 ROP plan refers to various emission control regulations that have contributed to achieving the required ROP emission reductions for the 1999–2002, 2002–2005, and 2005–2007 periods for the Chicago area. These regulations, both Federal and State, affect a variety of industries, businesses, and, through the vehicle I/M program and other mobile source emission reduction requirements, motor vehicle owners. Most of these regulations, however, are already Federally enforceable through SIP revisions or through federally promulgated regulations.

E. What Criteria Must a Post-1999 ROP Plan Meet To Be Approved?

Section 182(c)(2)(B) establishes certain elements a post-1999 ROP plan must contain for approval. These elements are: (1) Emissions baseline; (2) emission target levels for each of the milestone years (2002, 2005, and 2007); (3) accounting for emission growth projections; and (4) emission reduction estimates from planned emission control measures.

The EPA has issued several guidance documents for states to use in developing approvable post-1996 ROP plans, which, as noted above, includes the post-1999 ROP plan. These documents address such topics as: (1) The relationship of ROP plans to other SIP elements required by the CAA; (2) calculation of the emission baseline and milestone year emission target levels; (3) procedures for projecting emission growth; and (4) methodology for determining emission reduction estimates for various emission control measures, including Federal emission control measures.

Our January 1994 guidance document, "Guidance on the Post-1996 Rate-Of-Progress Plan and the Attainment Demonstration," provides States with the appropriate methods to calculate the emission reductions needed to meet the ROP emission reduction requirements. A complete list of ROP guidance documents is provided in the Technical Support Document (TSD) for the proposed rulemaking on Illinois' 9

[20] "Baseline emissions" are defined in section 182(b)(1)(B) of the CAA as the total amount of actual VOC or NO_X emissions from all anthropogenic sources in the area during the calendar year of the Clean Air Act Amendments of 1990, excluding emissions that would be eliminated due to: (1) Any measure relating to motor vehicle exhaust or evaporative emissions promulgated by the EPA by January 1, 1990; (2) any regulations concerning Reid Vapor Pressure promulgated by the EPA by November 15, 1990 or required to be promulgated under section 211(h) of the CAA.

percent post-1996 ROP plan (referred to in a March 3, 2000 proposed rule, 65 FR 11528), which can be obtained from Region 5 at the address indicated in the **ADDRESS** section.

F. What Are the Special Requirements for Claiming NO_X Emission Reductions in Post-1996 ROP Plans?

If a post-1996 (or post-1999 in this case) ROP plan relies on NO_X emission reductions, it is subject to certain additional requirements. Under section 182(c)(2)(C) of the CAA, a plan can substitute NO_X reductions for VOC reductions if the resulting ozone reductions are at least equivalent to the ozone reductions that would occur under a plan that relies only on VOC emission reductions. As required by section 182(c)(2)(C), the EPA issued guidance concerning the conditions for demonstrating equivalency. Our guidance provides that the NO_X substitution strategy must show that the sum of VOC and NO_X emission reduction percentages for each analyzed period must equal the ROP emissions reduction percentage required for that period, e.g., a 9 percent reduction from the 1990 baseline emissions for a 3-year period. Moreover, the State must provide technical justification that the NO_X emission reductions will reduce ozone concentrations within the nonattainment area covered by the ROP plan.

On December 29, 1997, we issued a policy memorandum entitled "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS." Under this policy, both VOC emission controls outside of an ozone nonattainment area and NO_X emission controls may be substituted for VOC emission controls within the ozone nonattainment area to meet the ROP VOC emission reduction requirements. The geographic area for substitution of VOC emission reductions is within 100 kilometers of the ozone nonattainment area. The geographic area for substitution of NO_X emission reductions is within 200 kilometers of the ozone nonattainment area with the possibility for additional expansion of the NO_X substitution area as follows. Based on its review of public comments on this policy, EPA believes that the area for allowable NO_X substitutions should be expanded up to an entire state for those states in the core part of the OTAG modeling domain. For the purposes of this proposed rule, the core part of the OTAG modeling domain consists of the following states: Alabama; Connecticut; District of Columbia; Delaware; Georgia; Illinois; Indiana; Kentucky; Maine; Massachusetts; Maryland; Michigan; Missouri; North Carolina; New Hampshire; New Jersey; New York; Ohio; Pennsylvania; Rhode Island; South Carolina; Tennessee; Vermont; Virginia; Wisconsin; and West Virginia, i.e., the fine grid area of the OTAG modeling domain. The OTAG modeling results provide an adequate technical justification for statewide NO_X emission substitutions for ROP. All other states implementing a NO_X substitution strategy for ROP are restricted to a distance of 200 kilometers from an ozone nonattainment area, unless a substitution from a greater distance is accompanied by adequate technical justification.

The December 1997 policy states that a nonattainment area which has been granted a NO_X waiver can claim NO_X emission reductions occurring outside of the nonattainment area, but within the state's boundary, if such reductions will reduce ozone concentrations within the ozone nonattainment area. We granted a NO_X waiver for the Chicago-Gary-Lake County ozone nonattainment area in two final rules. On January 26, 1996 (61 FR 2428), we granted exemptions from the RACT and NSR requirements for major stationary sources of NO_X and from I/M and general conformity requirements for NO_X for ozone nonattainment areas within the Lake Michigan Ozone Study (LMOS) modeling domain. On February 12, 1996 (61 FR 5291), we approved Illinois' request to exempt the Chicago area (the Illinois portion of the Chicago-Gary-Lake County ozone nonattainment area) from the applicable NO_X transportation conformity requirements.[21] See the discussion of the NO_X waiver below. OTAG modeling has shown that several NO_X waiver areas actually benefit from NO_X reductions upwind. Therefore, under the December 1997 policy, a state can credit NO_X emission reductions occurring outside of a NO_X waiver area, but within the state's boundary, if the state provides a technical analysis showing that the NO_X emission reductions will lower ozone concentrations within the ozone nonattainment area (i.e., the NO_X waiver area). The ozone attainment demonstration submitted by Illinois provides such documentation.

G. How Did Illinois Calculate the Needed ROP and Contingency Emission Reduction Requirements?

Using EPA guidance, Illinois calculated the needed emission reductions by taking the following steps:

1. Determine what portion of the milestone period emission reduction is to be VOC and what portion is to be NO_X.
2. Establish the emission baselines for both VOC and NO_X.
3. Calculate the emission target levels to meet the ROP requirements for 2002, 2005, and 2007.
4. Estimate the projected emission growth that would occur if there were no ROP emission reductions.
5. Subtract the ROP-based emission targets from the projected emission levels to determine the VOC and NO_X emission reductions needed, net of growth.
6. Calculate the needed contingency measure emission reduction requirement.

These steps are further explained below.

1. VOC and NO_X Fractions of the Total Emission Reductions for a Milestone Period

As in Illinois' 9 percent post-1996 ROP plan, Illinois relies on both VOC and NO_X emission reductions in the post-1999 ROP plan to meet the 3 percent ROP emission reduction requirement for each year. For each 3 year period, Illinois has chosen to achieve a 2 percent portion of the emission reduction through VOC emission reductions and to achieve a 7 percent portion of the emission reduction through NO_X emission reductions.

2. Baseline Emissions

Under our post-1996 ROP policy, plans that rely on both VOC and NO_X emission reductions should have separate emission baselines for each pollutant. The CAA requires emission baselines to represent 1990 anthropogenic emissions on a typical peak ozone season weekday. Peak ozone season weekday emissions represent the average daily emissions of weekdays that occur during the peak 3-month ozone period of June through August.

Illinois used the Chicago area's 1990 base year emissions inventory as the

[21] The NO_X waiver approval for transportation conformity does waive the requirements for motor vehicle NO_X emission budgets as part of the ozone attainment demonstration and ROP plans. After these plans are approved, the associated NO_X emission budgets must be considered in conformity determinations and the NO_X waiver is no longer applicable to conformity determinations. The requirements for NO_X emission budgets can only be waived if the State has demonstrated that NO_X emissions in the ozone nonattainment area can be increased without limit without threatening delay of attainment of the ozone standard beyond the applicable attainment date or beyond an earlier achievable date. Prior to the EPA approval of the zone attainment demonstration and ROP plans, the approval of the NO_X waiver exempts the State from requirements for build/no-build and less-than-1990 emissions tests for NO_X.

basis for the VOC baseline emissions. We approved the Chicago area 1990 emissions inventory as a SIP revision on March 14, 1995 (60 FR 13631).

For the NO_X emissions baseline, Illinois used the 1990 statewide NO_X emissions inventory it submitted to EPA in response to the NO_X SIP Call (see 63 FR 57356, October 27, 1998). The NO_X emissions baseline consists of the 1990 emissions which occurred statewide, excluding NO_X emissions from the Chicago and Metro-East St. Louis ozone nonattainment areas. The State excluded the nonattainment area NO_X emissions from the baseline because the State is relying on NO_X emission reductions only from the State's ozone attainment areas and because Illinois has a NO_X waiver in the Chicago ozone nonattainment area. The ozone attainment demonstration submitted by Illinois, as reviewed above, shows that a NO_X emissions reduction in the ozone attainment areas reduces peak ozone concentrations in the Chicago-Gary-Lake County ozone nonattainment area. Therefore, Illinois' NO_X baseline is consistent with the technical analyses supporting attainment of the ozone standard in the Chicago area.

The CAA requires that the ROP emissions baseline be "adjusted" to exclude emissions eliminated by the Federal Motor Vehicle Emissions Control Program (FMVCP) and Federal gasoline Reid Vapor Pressure (RVP) regulations promulgated before November 15, 1990. The CAA prohibits states from claiming ROP emission reductions resulting from these regulations. To achieve an accurate ROP emissions target, the State must subtract the noncreditable emission reductions from the emissions baseline to reflect the impacts of these reductions on 2002, 2005, and 2007 emissions. The resulting emissions is called the "adjusted baseline emissions." The impacts of the FMVCP and RVP emission control regulations depend on the specific milestone year.

3. Milestone Emission Target Levels

After the State establishes the adjusted baseline emission estimates, the next step is to calculate the VOC and NO_X emission target levels for the milestone years. The January 1994 EPA policy document, "Guidance on the Post-1996 Rate-Of-Progress Plan and the Attainment Demonstration," provides the method for calculating emission target levels. To calculate the emission targets, the State identified the previous milestone year target emission levels. From these target levels, the State subtracted (a) the emission reduction needed to meet the ROP requirement, and (b) the vehicle fleet turnover correction factors.

4. Projected Emission Growth Levels

To account for source emission growth between 1990 and the milestone years, the State must develop projected emission inventories for VOC and NO_X. The projected emission inventories represent what emissions would be in 2002, 2005, and 2007 if no emission control measures claimed in the ROP plan had occurred.

The State of Illinois did not include this documentation in the ROP plan reviewed in this proposed rule, but notes that it has used the same procedures to calculate emission reductions and projections as used in the State's post-1996 ROP plan (approved by the EPA on December 18, 2000, 65 FR 78961). The State provides graphical emission projections (Figures II–2 and II–3 of Illinois' post-1999 ROP plan) and tabular emission projections (Table II–8 in Illinois' post-1999 ROP plan) in which emissions growth appears to have been considered. These graphs and tabular data appear to represent the combined impacts of emissions growth and emission reductions. It is concluded that the State has included estimates of emissions growth in its projected emission estimates.

5. Emission Reductions Needed To Achieve ROP

According to the State's calculations, the following VOC emission reductions are needed for each milestone year to meet ROP requirements: 152.42 tons per day (TPD) by 2002; 177.82 TPD by 2005; and 213.49 TPD by 2007 (taken from Table II–7 of Illinois' post-1999 ROP plan).

The ROP plan does not specify the NO_X emission reductions needed for the milestone years to meet ROP requirements. The plan, however, does compare projected NO_X emissions to calculated ROP emission target levels for each of the milestone years.

6. Calculation of the Required Contingency Measure Emission Reduction

Consistent with guidance provided in the General Preamble, Illinois determined the needed contingency measure emission reduction by multiplying the 1990 adjusted base year VOC emissions by 3 percent. Based on this calculation, the needed contingency emission reduction for the Chicago area is 31.11 TPD of VOC. The State has determined that the contingency emission reduction can be achieved through VOC emission reductions only: thus, no NO_X emission reduction is needed to meet the contingency measure requirements for a milestone failure in the Chicago area.

To assure that the contingency emission reduction is achieved, Illinois has decided to implement sufficient emission reductions to meet both the ROP requirements and the contingency measure requirement for each milestone period. Therefore, no future implementation trigger is needed based on a failure to meet a milestone. See the discussion below of the State's contingency measure plan.

The following tables summarize the State's post-1999 ROP calculations for determining the needed ROP emission reductions (VOC and NO_X). Note that Illinois has chosen to divide the emission reduction requirements into 2 percent of the VOC adjusted baseline emissions for the ozone nonattainment area and 7 percent of the NO_X emissions in the State's ozone attainment areas for each 3 year period.

TABLE VI.—CALCULATION OF VOC ROP TARGET EMISSION LEVELS

[Emission in tons per day]

Calculation parameter	Milestone year			
	1990	2002	2005	2007
1990 Base Year Emissions	1363.40	.....	.....	.....
1990 Adjusted Base Year Emissions (minus biogenic emissions)	1216.56	.....	.....	.....
Adjusted Baseline Emissions	.....	1019.67	1010.70	1009.00
ROP Emission Reduction Required at 0.667 percent per year of adjusted baseline emissions	.....	20.39	20.21	10.09
Fleet Turnover Correction	.....	17.32	8.97	1.70

TABLE VI.—CALCULATION OF VOC ROP TARGET EMISSION LEVELS—Continued

[Emission in tons per day]

Calculation parameter	Milestone year			
	1990	2002	2005	2007
Emission Target Level for Milestone Year	.....	770.11	740.92	729.13

TABLE VII.—CALCULATION OF NO_X ROP TARGET EMISSION LEVELS

[Emissions in tons per day]

Calculation parameter	Milestone year			
	1990	2002	2005	2006
1990 Base Year Emissions in Ozone Attainment Areas	2085.80	.....	.....	.....
Adjusted Baseline Emissions	.....	1929.31	1920.96	1925.08
ROP Emission Reduction Required at 2.33 percent per year of adjusted baseline emissions	.....	135.05	134.47	96.25
Fleet Turnover Correction	.....	28.23	8.35	5.39
Emission Target Level for Milestone Year	.....	1657.23	1514.41	1412.76

H. What Are the Criteria for Acceptable ROP Emission Control Strategies?

Under section 182(b)(1)(C) of the CAA, emission reductions claimed for ROP are creditable to the extent that the emission reductions have actually occurred before the applicable ROP milestone dates. In our policy, EPA has interpreted the CAA to mean that, to be creditable, emission reductions must be real, permanent, and enforceable. Our policy (see 57 FR 13567) provides that, at a minimum, the emission reduction calculation methods should follow the following four principles: (1) Emission reductions from control measures must be quantifiable; (2) control measures must be enforceable; (3) interpretation of the control measures must be replicable; and (4) control measures must be accountable. Post-1996 plans must also adequately document the methods used to calculate the emission reduction for each control measure.

Section 182(b)(1)(D) of the CAA places limits on what emission control measures states can include in ROP plans. All permanent and enforceable control measures occurring after 1990 are creditable with the following exceptions: (1) FMVCP reductions due to requirements promulgated by January 1, 1990; (2) RVP reductions due to RVP regulations promulgated by November 15, 1990; (3) emission reductions resulting from Reasonably Available Control Technology (RACT) "Fix-Up" regulations required under section 182(a)(2)(A) of the CAA; and (4) emission reductions resulting from vehicle I/M program "Fix-Ups" as required under section 182(a)(2)(B) of the CAA.

I. What Are the Emission Control Measures In Illinois' Post-1999 ROP Plan?

VOC Emission Control Measures

Table VIII specifies the VOC emission control measures relied on in the post-1999 ROP plan and their associated VOC emission reductions for each milestone year.

TABLE VIII.—CHICAGO NONATTAINMENT AREA VOC EMISSION REDUCTION MEASURES

[Emission reductions in tons per day]

VOC Control measure	Emission reduction level—TPD		
	2002	2005	2007
Mobile Source Measures:			
Post-1994 Tier I Vehicle Emission Rates	60.50	79.40	92.10
Federal Reformulated Gasoline—Phase I & II	111.80	109.70	109.20
Illinois 1992 I/M Improvements	12.30	12.40	12.60
Enhanced I/M Program[22]	16.60	17.80	18.10
1			
Conventional Transportation Control Measures	4.00	5.00	6.00
National Energy Policy Act of 1992	0.20	0.20	0.20
Federal Non-Road Small Engine Standards	35.81	61.07	78.97
National Low Emissions Vehicle Program	3.1	13.4	25.3
Federal Clean Fuel Fleet Vehicle Program	2.60	2.80	2.80
Tier II Vehicle Standards/Low Sulfur Fuel Standards	0	4.30	5.70
Point Source Measures:			
Emissions Reduction Market System (ERMS)	12.6	0	0
Area Source Measures:			
1999 Cold Cleaning Degreaser Limits	11.68	0	0
Total Creditable VOC Emission Reductions	271.19	306.07	350.97

[22] Emission reductions beyond those to be achieved through the 1992 I/M requirements, as improved.

It should be noted that, with the exception of the Tier II Vehicle Standards/Low Sulfur Fuel Standards, the emission controls relied on for the post-1999 ROP plan were addressed in Illinois' post-1996 ROP plan, including the procedures used to calculate the emission reductions. You are referred to EPA's final rule on that plan (65 FR 78961, December 18, 2000) for a more detailed discussion of these emission control measures and their associated emission reduction calculations.

The emission reductions for the Tier II Vehicle Standards and Low Sulfur Fuel Standards were incorporated into the ozone attainment demonstration based on default data supplied to the State by the EPA. These same default data were used to derive the emission reduction data for this control measure for the milestone years.

NO_X Emission Control Measures

Table IX specifies the NO_X emission control measures relied on in the post-1999 ROP plan and the associated NO_X emission reductions for each milestone year.

TABLE IX.—ILLINOIS OZONE ATTAINMENT AREA NO_X EMISSION REDUCTION MEASURES

[Emission reductions in tons per day]

NO_X Emission control measure	Emission reduction level—TPD		
	2002	2005	2007
CAA Tier I Vehicle Emission Standards	49.70	72.90	82.80
Tier II Vehicle Standards/Low Sulfur Fuel Standards	.....	23.00	35.00
National Low Emission Vehicle/Heavy Duty Gasoline Vehicle Standards	.....	16.10	37.30
Federal Off-Road Engine Standards	45.23	95.80	122.32
Title IV Acid Rain Controls on EGUs	36.20	.....	.....
NO_X SIP Call (EGUs, Non-EGU Boilers and Turbines, and Cement Kilns)	.....	430.18	
Total Creditable NO_X Emission Reductions	131.13	637.99	277.42

As with the VOC emission reduction for the Tier II Vehicle Standards/Low Sulfur Fuel Standards, Illinois used data supplied by the EPA to calculate the NO_X emission reduction for this source category. The other emission reduction estimates are supported by the emission reduction estimates provided by the State to the EPA in support of OTAG and the NO_X SIP Call.

J. Are the Emission Control Measures and Calculated Emission Reductions Acceptable to the EPA, and Is the Post-1999 ROP Plan Approvable?

With the exception of the VOC emission reduction calculated for the VOC ERMS program, we find the estimated emission reductions to be acceptable for all reduction categories. As previously noted in the proposed rulemaking on the Chicago area post-1996 ROP plan (65 FR 81799, December 27, 2000), we believe that the ERMS program will only reduce VOC emissions by 10.9 tons per day by 2002. It is noted, however, that even assuming a 10.9 tons per day emission reduction for the ERMS program, the ROP plan achieves a 9 percent emission reduction for the 3-year period of November 15, 1999 through November 15, 2002. The State's submission indicates that a 2 percent VOC emission reduction requirement for 2002 is approximately 157 tons per day, whereas, emission controls implemented prior to November 15, 2002 will achieve a total VOC emission reduction of approximately 271 tons per day.

The adequacy of the ROP plan may be assessed by comparing the VOC and NO_X target emission level with the projected, post-control emission levels for each of the milestone years. Table II–6 in Chapter II ("Rate-of-Progress and Contingency Measures") of Illinois" December 26, 2000 submittal provides the comparison of ROP-based target emission levels to projected, post-control emission levels. As indicated in the State's Table II–6 and in Table VI above, the VOC target emission levels for the milestone years are: 770.11 tons per day in 2002; 740.92 tons per day in 2005; and 729.13 tons per day in 2007. From Table II–6 in the State's submittal, the projected, post-control VOC emissions are: 647.64 tons per day in 2002; 614.47 tons per day in 2005; and 592.58 tons per day in 2007. As indicated in the State's Table II–6 and in Table VII above, the NO_X target emission levels for the milestone years are 1657.23 tons per day in 2002; 1514.41 tons per day in 2005; and 1412.76 tons per day in 2007. From Table II–6 in the State's submittal, the projected, post-control NO_X emissions are: 1538.77 tons per day in 2002; 1019.35 tons per day in 2005; and 965.51 tons per day in 2007. Clearly, the targeted emission levels are achieved through a combination of VOC and NO_X emission reductions. The excess VOC and NO_X emission reductions provide for a more robust ROP plan and will offset some shortfalls in the planned emission reductions should such occur in the future. We view the ROP plan as being very good and approvable.

It is noted that EPA has yet to give final approval to the VOC ERMS rule and the NO_X rules for EGUs, major non-EGU boilers and turbines, and cement kilns. EPA must approve these rules before EPA can give final approval to the State's ROP plan.

V. Contingency Measures Plan

A. What Are the Requirements for Contingency Measures Under Section 172(c)(9) of the CAA?

Section 172(c)(9) of the Act requires SIPs to contain additional measures that will take effect without further action by the State or EPA if an area fails to achieve ROP by applicable milestone dates or to attain the standard by the applicable attainment date. The CAA does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. However, EPA provided guidance interpreting the control measure requirements of 172(c)(1) in the April 16, 1992, General Preamble for Implementation of the Clean Air Act Amendments of 1990. See 57 FR 13498, 13510. In that guidance, EPA indicated that States with moderate and above ozone nonattainment areas should include sufficient contingency measures so that, upon implementation of such measures, additional emissions reductions of up to 3 percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been

identified. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative reviews. The additional 3 percent reduction would ensure that progress toward attainment occurs at a rate similar to that specified under the Reasonable Further Progress (RFP) (also called the Rate of Progress or ROP) requirements for severe areas (i.e., 3 percent per year) and that the State will achieve these reductions while conducting additional control measure development and implementation as necessary to correct the shortfall in emissions reductions or to adopt newly required measures necessary to reach attainment.

EPA has also determined that Federal measures can be used to analyze whether the contingency measure requirements of section 179(c)(9) have been met. While these measures are not SIP-approved contingency measures which would apply if an area fails to attain, EPA believes that existing, Federally-enforceable measures can be used to provide the necessary substantive relief. Therefore, Federal measures may be used in the analysis, to the extent that the ROP plan and the attainment demonstration do not rely on them or take credit for them. (See, e.g., 66 FR 586, 615 (January 3, 2001).)

B. How Does the Chicago Attainment Demonstration SIP Address the Contingency Measure Requirements?

Calculation of Illinois's total 1990 adjusted base year inventory for VOC emissions for the nonattainment area is detailed in EPA's December 18, 1997, (62 FR 66279) approval of the 15% plan and in the Illinois 15% plan submittal. Illinois' 1990 adjusted base year inventory of VOC emissions for the Chicago nonattainment area is 1,064.05 tons per day (TPD). Per EPA's guidance, Illinois has determined that contingency measures must achieve a VOC reduction of 31.11 TPD.

Illinois has identified surplus emissions reductions that occur thru the year 2009 that are available as contingency measure reductions in the post-2007 period. These contingency measure reductions are not the same reductions as were approved as contingency measures for the 15 percent ROP plan for Illinois (62 FR 37494) and the 9 percent ROP plan for Illinois (65 FR 78961). The contingency measure reductions approved at that time have been implemented and were included in the most recent attainment demonstration modeling for the Chicago area. Thus, these measures have already been "used" to demonstrate attainment. Contingency measures for the ozone attainment demonstration must be above and beyond (or surplus to) the measures that were modeled in the attainment demonstration or used to show attainment of the one-hour ozone standard. Thus the reductions listed here have been reviewed for their applicability as contingency measures surplus to any previous reductions or crediting, including emission reductions credited to the contingency requirements of the post-1999 ROP plan as discussed above.

The control measures and the calculated reduction are listed in the following table:

TABLE X.—ILLINOIS CONTINGENCY MEASURE REDUCTIONS

Control measure	Reduction (TPD)
Mobile Source Measures	10.8
Tier II/Low Sulfur Fuel Program [23]	1.4
On-Board Diagnostics	23.5
Non-Road Engine Standards	14.0
Total	49.7

[23] Emissions in excess of those claimed and tested in the ozone attainment demonstration.

Illinois is relying on future emission reductions from a number of federal rules to serve as contingency measures for the attainment demonstration. The mobile source measures consist of incremental reductions from the Federal Motor Vehicle Emissions Program and other Federal and State measures already in place. In addition, several other new Federal measures are relied upon, which include the On Board Diagnostics rule, the Non-Road Engine Standards rule, and the Tier II/Low Sulfur fuel rule. Illinois has documented the methodology for the calculation of the emission reductions and this material is available in the docket. The measures and the emission reduction calculations are summarized here.

The On Board Diagnostics (OBD) test standards have already been adopted by Illinois in Title 35 Subtitle B subpart H Part 240. These rules required Illinois to begin OBD testing in their I/M program on January 1, 2001. However, on March 28, 2001, the EPA Administrator signed a final rulemaking to amend the vehicle I/M program requirements to incorporate a check of the OBD system and to extend the date that states needed to comply until January 1, 2002. Implementation of this check during the already implemented I/M program in the Chicago area will begin in January 2002. Illinois has estimated the amount of reductions from OBD testing that will occur in 2008 and 2009. The resultant 23.5 TPD emissions reduction is listed in the table. This emission reduction is in excess of the mobile source emission reductions considered in the ozone attainment demonstration, and, therefore, can be credited towards the contingency requirements.

The Non-Road Engine Standards apply to all sizes of non-road diesel engines. These engines include lawn and garden equipment, larger industrial equipment, marine engines, recreational vehicles, locomotives and aircraft engines. The standards are phased in with Tier 2 standards from 2001 to 2006 and more stringent Tier 3 standards for larger engines from 2006 to 2008. The VOC emissions reduction for the contingency measure has been calculated to be 7.0 TPD for 2008 and 7.0 TPD for 2009. More detail on the emissions calculation is provided in the docket.

The Tier II/Low sulfur fuel rule promulgated by EPA begins to take effect in 2004. Illinois used EPA's MOBILE5 information sheet #8 to estimate reductions. The 2007 VMT estimate was used for the calculation. The reduction listed in the Table represents the difference between the 2007 estimate (5.65 TPD) and the 2009 estimate (7.08 TPD).

These reductions meet the criteria for reductions to be used as contingency measures. The measures are already adopted for implementation and will provide for specific emission control measures if the area fails to attain the ozone standard by 2007. The measures will take effect without any further action by the State or by EPA. The reductions are surplus to the attainment demonstration and the post-1999 ROP plan emission reductions.

The only remaining question or issue is the timing of the emission reductions. As noted above, the General Preamble indicates that the contingency measures emission reductions should be achieved in the year following the year in which the attainment failure has been identified. For the Chicago area, the attainment date is November 15, 2007. Therefore, the critical attainment ozone season is April through October of 2007 (the last ozone season prior to the attainment date). Following this ozone season, it will take the State of Illinois and other States in the Chicago downwind environs several months to review and quality assure the 2007 ozone data. EPA must then use these data to make the determination of attainment, which can take up to 6 months. This means the determination

will not occur until sometime in 2008. Therefore, 2009 is the "year following the year" in which EPA is expected to make the determination of attainment, and, therefore, Illinois can take credit for any emission controls implemented between 2007, the attainment year, and 2009.

C. Does the Chicago, Illinois Attainment Demonstration Meet the Contingency Measure Requirements?

EPA believes that Illinois has identified contingency measures which will provide for a 3 percent reduction in VOC emissions from the 1990 adjusted base year inventory, as required by section 172(c)(9) of the CAA. Illinois has identified VOC emission reductions totaling 49.7 tons per day from On-Board Diagnostics, Tier II, Non-Road Engine Standards and other Mobile Source measures which exceeds the required reductions of 31.11 TPD.

VI. Emission Control Rule Adoption and Implementation Status

Illinois has completed rule adoption for all of the rules needed to support the ozone attainment demonstration and the post-1999 ROP plan. The EPA is in the process of rulemaking on the State's NO_X rules and VOC ERMS rule. Final approval of the NO_X and VOC ERMS rules is required before we can give final approval to the ozone attainment demonstration and post-1999 ROP plan.

VII. Mid-Course Review Commitment

A. Why Is a Mid-Course Review Commitment Necessary?

The EPA's modeling and attainment demonstration guidance (Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, June 1996), provides that states must commit in their SIPs to perform mid-course reviews whenever they rely on "weight-of-evidence" to support an attainment demonstration. This guidance also requires a mid-course review for all severe and extreme ozone nonattainment areas because of the uncertainty inherent in emission projections that extend 10–15 years into the future. Also, EPA's proposed rulemaking on the 1-hour ozone SIPs (December 16, 1999, 64 FR 70318) set forth a framework for reviewing and processing the 1-hour ozone SIPs; one element of that framework was a commitment for a Mid-Course Review (MCR).

A MCR is a reassessment of modeling analyses and more recent monitored air quality data and emission estimates to determine if a prescribed control strategy has resulted in emission reductions and air quality improvements needed to attain the 1-hour standard for ozone by the attainment date established in the approved SIP. The EPA believes that a commitment to perform a MCR is a critical element in any attainment demonstration that employs a weight-of-evidence test. In proposing to approve the attainment demonstration of SIPs for ten serious and severe nonattainment areas for the 1 hour ozone NAAQS on December 16, 1999, EPA indicated that in order for EPA to approve the SIPs, the States would have to commit to perform a MCR, since they relied on a weight-of-evidence test. EPA also requested the States to work with EPA in a public consultative process to develop a methodology for performing the MCRs and developing the criteria by which an adequate progress would be judged.

In the December 16, 1999, notices of proposed rulemaking, EPA did not request that States commit in advance to adopt new control measures as a result of the MCR process. Based on the MCR, if EPA determines additional control measures are needed for attainment, EPA would determine whether additional emission reductions are necessary from a state or states in which the nonattainment area is located or from upwind states, or both. The EPA would then require the affected state or states to adopt and submit the new measures within a period specified at that time. The rulemaking proposals noted that EPA anticipated that these findings would be made as calls for SIP revisions under section 110(k)(5) and, therefore, the period for submission of the measures would be no longer than 18 months after the EPA finding.

B. Did Illinois Submit a Mid-Course Review Commitment?

Illinois has submitted a MCR commitment. Although Illinois does not rely on weight-of-evidence in the final 1-hour attainment demonstration,[24] Illinois has submitted a MCR commitment letter dated December 17, 1999 (this commitment was further refined in a followup letter dated May 24, 2001 as discussed below). In the December 16, 1999, proposed rulemaking, the EPA required Illinois to submit a MCR commitment letter because the 1-hour attainment demonstration submitted in 1998 had modeling which relied on weight-of-evidence. The modeling at that time assumed a 0.25 pounds of NO_X per million British thermal units of heat input emission rate for EGUs in Illinois and in other states expected to be covered in EPA's NO_X SIP Call. Since that time, the modeling has been revised to account for the NO_X SIP Call controls (Illinois will limit NO_X emissions from EGUs to 0.15 pounds per million British thermal units of heat input and will also limit the NO_X emissions from major non-EGU boilers and turbines and from major cement kilns). The most recent modeling submitted in the attainment demonstration SIP does not rely on weight-of-evidence to demonstrate attainment. Thus, under EPA policy, the State of Illinois would not be required to commit to the MCR for that reason. However, the June 1996 EPA guidance requires a mid-course review for severe and extreme areas due to the uncertainty of emissions projections that extend out 10–15 years in the future. EPA and the State of Illinois both believe that the MCR is a good check on the emissions reductions and progress toward attainment of the 1-hour ozone NAAQS. Illinois and the other Lake Michigan States have submitted letters of commitment to complete the MCR.

Illinois submitted a letter dated December 17, 1999, which contained a commitment to complete a mid-course review. The letter and other documents, including a supplement to the 9 percent ROP plan and motor vehicle emissions budgets, were discussed at public hearing on January 18, 2000. The commitment however, did not contain a date certain for the submittal of the mid-course review. To clarify it's commitment, Illinois has submitted a letter dated May 24, 2001 in which Illinois commits to submit the mid-course review by December 31, 2004. This commitment is acceptable.

VIII. NO_X Waiver

A. What Is the History of the NO_X Emissions Control Waiver in the Chicago-Gary-Lake County Ozone Nonattainment Area?

Part D of the CAA establishes the SIP requirements for nonattainment areas. Subpart 2, part D of the CAA establishes additional provisions for ozone nonattainment areas. Section 182(b)(2) of this subpart requires the application of RACT regulations for major stationary VOC sources located in moderate and above ozone nonattainment areas as well as in ozone transport regions. States with affected areas were required

[24] Illinois included weight-of-evidence data in the attainment demonstration to add support to the adequacy of the modeled attainment demonstration. Since the ozone modeling showed attainment of the ozone standard using the statistical test, the weight-of-evidence determination data were not inherently needed as a critical part of the ozone attainment demonstration, but do serve the purpose of compensating for the uncertainties inherent in the ozone modeling and do add support to the projected attainment of the 1-hour ozone standard.

to submit RACT regulations by November 15, 1992. Section 182(a)(2)(C) requires the application of NSR regulations for major new or modified VOC sources located in marginal and above ozone nonattainment areas as well as in ozone transport regions. States were required to adopt revised NSR regulations by November 15, 1992. Section 182(f) requires States to apply the same requirements to major stationary sources of NO_X as apply to major stationary sources of VOC. Therefore, the RACT and NSR requirements also apply to major stationary sources of NO_X in certain ozone nonattainment areas and in ozone transport regions.

The section 182(f) requirements are discussed in detail in EPA's "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 55628, November 25, 1992). For ozone nonattainment areas located outside of an ozone transport region, the NO_X emission control requirements do not apply to NO_X sources if: (1) The EPA determines that net air quality benefits are greater in the absence of NO_X emission reductions; or (2) the EPA determines that additional reductions of NO_X emissions would not contribute to attainment of the ozone standard in the area. Where any one of these tests is met (even if the other test is failed), the NO_X RACT and NSR requirements of section 182(f) would not apply and may be "waived." See section 182(f)(1). In addition, under section 182(f)(2) of the CAA, if the EPA determines that excess reductions in NO_X emissions would be achieved under section 182(f)(1) of the CAA, the EPA may limit the application of section 182(f)(1) to the extent necessary to avoid achieving such excess emission reductions.

In addition to determining the applicability of NO_X requirements for RACT and NSR, the section 182(f) waiver process may also determine the applicability of certain requirements applicable to NO_X under the CAA's transportation and general conformity requirements, which assure conformity of Federal programs and projects with approved SIPs. The general and transportation conformity requirements are found at section 176(c) of the CAA. The conformity requirements apply on an area-wide basis in ozone nonattainment and maintenance areas. The EPA's transportation conformity final rule[25] and general conformity final rule[26] reference the section 182(f) exemption process as a means for exempting an affected area from certain NO_X conformity requirements. The approval of a section 182(f) exemption petition granting a NO_X waiver results in the exemption of marginal and above ozone nonattainment areas from the emission reduction tests[27] with respect to NO_X under the transportation and general conformity requirements of the CAA. See EPA's May 27, 1994 memorandum entitled "Section 182(f) Nitrogen Oxides (NO_X) Exemptions-Revised Process and Criteria," from John Seitz, Director of the Office of Air Quality Planning and Standards. However, once NO_X emission budgets are established under attainment demonstrations and ROP plans, areas must meet the NO_X emission budgets for transportation conformity notwithstanding the existence of NO_X waivers.

Similarly, under the I/M program final rule (57 FR 52950), November 5, 1992, the section 182(f) petition is also referenced to determine applicability of I/M-based NO_X emission reductions (I/M NO_X emission cutpoints). The I/M requirements for serious and above ozone nonattainment areas are found at section 182(c)(3) of the CAA. Basic I/M testing programs must be designed such that no increase in NO_X emissions occur as a result of the programs. So long as this is done, if a NO_X waiver petition is granted to an area required to implement a basic I/M program, the basic I/M NO_X emission cutpoints may be omitted. Enhanced I/M testing programs must be designed to reduce NO_X emissions consistent with an enhanced I/M performance standard. If a NO_X waiver petition is granted to an area required to implement an enhanced I/M program, the NO_X emission reduction is not required, but the enhanced I/M program must be designed to offset NO_X emission increases resulting from the repair of vehicles due to hydrocarbon or carbon monoxide emission failures detected through the I/M program.

As part of a July 13, 1994 submittal from LADCO, the States of Illinois, Indiana, Michigan, and Wisconsin petitioned the EPA for a waiver of the NO_X emission reduction requirements of section 182(f) of the CAA and for a waiver of the above-described NO_X emission control requirements for conformity and basic and enhanced I/M in the ozone nonattainment areas in the Lake Michigan ozone modeling domain (this includes the Chicago-Gary-Lake County ozone nonattainment area). The EPA reviewed this petition in proposed rulemaking on March 6, 1995 (60 FR 12180) and in final rulemaking on January 26, 1996 (61 FR 2428). The final rulemaking approved the existing waiver of RACT, NSR, and certain I/M and general conformity NO_X requirements in the subject ozone nonattainment areas. The EPA also granted an exemption from certain transportation conformity NO_X requirements for ozone nonattainment areas classified as marginal or transitional within the Lake Michigan ozone modeling domain on February 12, 1996 (61 FR 5291). These exemptions were granted based on a data analysis/modeling demonstration showing that additional NO_X emission reductions either would not contribute to or would interfere with attainment of the 1-hour ozone standard for ozone nonattainment areas within the ozone modeling domain.

The continued approval of the exemption was made contingent on the results of the States' final ozone attainment demonstrations and emission control plans for the ozone modeling domain[28] (61 FR 2428, January 26, 1996). It was noted that the ozone modeling in the final ozone attainment demonstrations would supersede the ozone modeling information that provided the basis for the support of the NO_X emissions control waiver. To the extent that the final attainment plans include NO_X emission controls on major stationary

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[25] "Critical and Procedures for Determining conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. or the Federal Transit Act," November 24, 1993 (58 FR 62188).

[26] "Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule," November 30, 1993 (58 FR 63214).

[27] Prior to the approval of an ozone attainment demonstration or a ROP plan, an ozone nonattainment area granted a NO_X waiver may be exempted from the conformity rule's requirements for a build/no-build test and a less-than-1990 emissions test. After an atainment demonstration or a ROP plan containing motor vehicle emissions budgets is approved and the emissions budgets are found to be adequate by the EPA, conformity determinations must be conducted using the motor vehicle emissions budgets and the NO_X waiver no longer applies for transportation conformity purposes. Since the general conformity rules encourage, but do not require, specified emissions budgets, NO_X general conformity waivers may apply for the applicable life of the waiver.

[28] At the time the NO_X control exemption was granted, the States had not completed the final ozone attainment demonstrations for the Lake Michigan ozone modeling domain. The NO_X exemption/waiver petition was supported by ozone modeling data available at the time of the exemption approval. This ozone modeling data included sensitivity analyses investigating the potential impacts of NO_X emission changes on peak ozone concentrations within the ozone modeling domain. It was recognized that the final ozone attainment demonstrations could ultimately be based on different input data that would provide a different picture of the impacts of NO_X emission changes on peak ozone concentrations.

sources in the ozone nonattainment areas in the Lake Michigan ozone modeling domain, we noted that we would remove the NO_X emissions control waiver for those sources. We stated that the NO_X emissions control waiver would be continued for all sources and source categories not covered by new NO_X emission controls in the final attainment demonstrations. Consistent with those statements, EPA is reconsidering the existing NO_X waiver as part of the rulemaking on the final ozone attainment plans.

B. What Are the Conclusions of the State Regarding the Impact of the Ozone Attainment Demonstration on the NO_X Control Waiver?

Although the State of Illinois has included statewide NO_X emission reductions resulting from plans to meet EPA's NO_X SIP Call as critical components of the ozone attainment demonstration and the post-1999 ROP plan for the Chicago area, the State has concluded that these plans do not interfere with the NO_X emissions control waiver because the ozone attainment demonstration and ROP plans do not depend on NO_X emission controls exempted under the existing NO_X waiver.

C. What Are the Bases and Conclusions of a Petition Against the NO_X Waiver?

On August 22, 2000, an attorney representing a number of organizations filed a petition under section 182(f)(3) of the CAA, requesting that the EPA revoke the NSR exemption portion of the NO_X waiver granted to Illinois on January 26, 1996. In general, the petitioners believe that an increase in permitting of new facilities by the State for certain source categories effectively undermines the basis for the NSR portion of the existing NO_X waiver. The petitioners include the following organizations:

1. American Lung Association of Metropolitan Chicago
2. Citizens Against Power Plants in Residential Areas (Kane and DuPage Counties, Illinois)
3. Citizens Against Ruining The Environment (Will County, Illinois)
4. Citizens For A Better Environment—Illinois
5. Illinois Environmental Council
6. Illinois Citizen Action
7. Lake County Audubon Society
8. Lake County Conservation Alliance
9. Liberty Prairie Crossing (Lake County, Illinois)
10. Prairie Crossing Homeowners Association, Prairie Holdings Corporation (Lake County, Illinois).

The petition notes that section 182(f)(3) of the CAA allows "a person" to petition the Administrator (EPA) for a determination of whether it is appropriate for otherwise applicable NO_X requirements to be waived in ozone nonattainment areas. Although this petition was submitted separately from the ozone attainment demonstration plan that is the subject of this proposed rule, we believe it is appropriate to review this NO_X waiver petition concurrently with our rulemaking action on the State's attainment plan.

The petitioners include the following observations and arguments for petitioning the EPA to reconsider the NO_X waiver granted to Illinois.

The petitioners note that, when we granted the NO_X waiver in the January 26, 1996 final rulemaking, we stated that we would consider altering or revoking the existing NO_X waiver under one of the following circumstances:

1. The completion of ozone attainment demonstrations and plans arising from OTAG's findings;
2. The development of attainment plans that include NO_X controls on "certain" major stationary sources;
3. If the waiver causes or contributes to any new violations of the ambient air quality standards;
4. If the waiver increases the frequency or severity of existing [ozone standard] violations;
5. If the waiver contributes to delays in achieving attainment;
6. If the waiver inhibits progress toward complying with the SIP;
7. If the waiver contributes to non-attainment in, or interference with maintenance by any other State or in another nonattainment area within the same state; or
8. If subsequent modeling demonstrates that, as a general matter for ozone nonattainment areas across the country, NO_X emission reductions in addition to VOC emission reductions will be needed to achieve attainment.

The petitioners note that we explicitly characterized the granting of the existing NO_X waiver as contingent. Therefore, the petitioners believe we have provided a basis for reconsidering the NO_X waiver based on more current information.

The petitioners cite to the emergency powers granted EPA under section 303 of the CAA, and also note that both the State and the Federal governments retain authority under section 110 of the CAA to address developments that may threaten adequate SIP implementation. They further state that SIPs must regulate the construction of any stationary source within the areas covered by the plans to assure the NAAQS are being achieved. The petitioners assert that these CAA requirements, coupled with the reasons for revoking or revising the NO_X waiver, as specified above, provide the legal bases for us to reconsider the NO_X waiver granted to Illinois.

The petitioners list the following factual reasons for petitioning us to reconsider the NSR portion of the NO_X waiver.

1. The NO_X waiver is causing unforeseen consequences that are defeating the purpose of achieving air quality standards. The NO_X waiver is enabling the unchecked proliferation in Illinois of natural gas fired peakers and combined cycle plants (here collectively referred to as combustion turbine generators). Because of the NO_X waiver, mandates relating to Lowest Achievable Emission Rates (LAER) and emission offset requirements for new major NO_X sources in ozone nonattainment areas are not being required for the new combustion turbine generators. As a result of the NO_X waiver, the NO_X emissions cutoff for the definition of a "major NO_X source" has been adjusted from 25 tons per year (TPY) to 250 TPY in the Chicago-Gary-Lake County ozone nonattainment area. The new permitted combustion turbine generators have been designed to have peak potential NO_X emission rates below 250 TPY. The new combustion turbine generators have sought permits as minor sources of NO_X, avoiding the more stringent emission control requirements for major NO_X sources. In the view of the petitioners, because these sources are minor by definition, they are permitted under New Source Performance Standard (NSPS) requirements that, in combination with the sheer number of new facilities, offers few options for meaningful review by the State regulators despite the potentially severe cumulative impacts on air quality in Illinois and elsewhere.

As of July 7, 2000 and since 1998, more than 20 natural gas fired power plants have been proposed in the Chicago nonattainment area. Most of these units will operate when the energy demand is high and top prices for electricity will be paid; this coincides with the period when potentially high ozone concentrations will also occur, on the high temperature days of summer. In Illinois, there are approximately 50 new combustion turbine generators that have entered the siting or permitting process. Although the environmental performance of these new facilities contrast favorably with coal-burning power plants, there is no proposal to decommission any existing coal burning facility to accomodate the new combustion turbine generators.

2. The factual determinations leading to the NO_X waiver have been superceded, and invalidated by subsequent research completed through the OTAG process. The petitioners note that, in contrast to the information provided by the LADCO States to support the NO_X waiver petition, the OTAG analyses substantially discounted the concept of beneficial or benign NO_X emissions. The OTAG analyses underscore the significant local and regional benefits of NO_X emission reductions. These analyses form the support for EPA's NO_X SIP Call that mandates meeting strict NO_X emission budgets. Among the conclusions of OTAG noted by the petitioners are:

a. Regional NO_X emission reductions are effective in producing ozone benefits;

b. The greater the NO_X emission reductions, the greater the ozone benefits;

c. Ozone benefits are greatest in the subregions where NO_X emission reductions are made;

d. Although decreased with distance, there are ozone benefits outside of the subregions where emission reductions are made;

e. Both tall-stack and low-level NO_X emission reductions are effective;

f. Air quality data indicate that ozone is pervasive, is transported and, once aloft, is carried over long distances and transported from one day to the next;

g. The range of the ozone transport is generally longer in the North; and

h. NO_X controls on utilities are recommended for states in much of the OTAG region.

Both the NO_X SIP Call and the OTAG findings underscore the importance and cost-effectiveness of NO_X reductions as an ozone attainment strategy. Both the NO_X SIP Call and the OTAG findings were made without reference to the unchecked proliferation of the new combustion turbine generators. Consequently, the petitioners contend that, even if there was not a proliferation of new peaker plants, because of information generated by OTAG and EPA's NO_X SIP call, there is still a compelling basis for EPA to reconsider the NO_X waiver granted in 1996 in its entirety.

As further support, the petition includes a listing of the combustion turbine generators or similar NO_X emitting units that are currently holding adopted State of Illinois source permits or that currently (as of August 2000) are in the process of seeking State source permits. This information does not include the potential NO_X emissions for these generators (however, the information provided to EPA by the State in the ozone attainment demonstration does include such information for many of these generators). The petitioners have also included statements regarding these generators from the Director of the IEPA and a related news article from the Chicago Tribune.

D. What Are the Conclusions That Can Be Drawn Regarding the NO_X Control Waiver From Data Contained in the State's Ozone Attainment Demonstration?

As noted above, the IEPA has included in its ozone attainment demonstration an analysis of the potential ozone impacts of an increase in statewide NO_X emissions due to newly permitted (i.e., as of September 2000) combustion turbine generators in the State. Out of the 33 new permitted generators considered, 10 of these generators are located in the Chicago area, as indicated in Table XI.

TABLE XI.—NEW PERMITTED COMBUSTION TURBINE GENERATORS IN THE ILLINOIS PORTION OF THE CHICAGO-GARY-LAKE COUNTY OZONE NONATTAINMENT AREA

County	Facility owner-operator	Electrical output (megawatts)	NO_X emissions (T/day)	VOC emissions (T/day)	CO emissions (T/day)
Cook	People's Energy/Calumet Power LLC	276	1.677	0.124	0.554
Cook	Calumet Energy LLC	305	1.788	0.108	0.432
Cook	Commonwealth Edison/West Tech Turbines	110	1.572	0.048	0.69
DuPage	Reliant Energy	950	1.822	0.068	1.508
DuPage	ABB Energy Ventures/Grand Prairie Energy	508	0.51	0.031	0.266
Kane	Dynegy/Rocky Road	398	2.122	0.118	1.382
McHenry	Reliant Energy	510	0.657	0.031	0.315
Will	Peoples Energy Resources Corporation	3100	5.235	0.176	6.08
Will	Des Plaines Greenland/Enron	831	1.432	0.091	2.35
Will	University Park Energy LLC/Constellation Power.	300	1.684	0.129	1.022

Considering all of the potential NO_X emission increases estimated for permitted combustion turbine generators throughout the State and increases in the estimated 2007 VMT (resulting in higher estimated mobile source emissions), the State modeled a potential peak ozone increase of only 1 to 2 ppb (relative to the peak ozone concentrations modeled by LADCO) for the critical high ozone episode of July 16–20, 1991. However, the State did not determine the potential ozone impacts for only those sources located in the Chicago area, that is those sources listed in Table XI. Therefore, it is unclear how the NO_X emissions from the new generators in the Chicago area would actually impact peak ozone concentrations in the modeling domain or whether these new NO_X emissions would cause the peak ozone concentrations to potentially increase.[29]

The State does note that the NO_X emissions for all of the permitted combustion turbine generators will be covered by the statewide NO_X emission control rules adopted by Illinois to comply with EPA's NO_X SIP Call. The combustion turbine generators will be subject to these rules along with other EGUs and other NO_X sources. Therefore, the State concludes that total NO_X emissions in the State of Illinois will not increase (subsequent to the implementation of the NO_X rules) as a result of the addition of the new permitted generators. The new generators will be "EGUs" by definition and will be subject to the NO_X rule for EGUs adopted by the State and currently under review by the EPA. Nonetheless, the addition of new

[29] The addition of new NO_X emissions in urban ozone nonattainment areas can cause peak ozone concentrations in or near the nonattainment area to either increase or decrease (through a process known as ozone scavenging). Without local ozone modeling, it is impossible to predict the direction of the change in peak ozone levels or the magnitude of the change due to changes in local NO_X emissions.

generators in the local nonattainment area has the potential to result in an increase in the NO_X emissions in the local nonattainment area. As the IEPA notes in response to a public comment on its attainment demonstration (see the State's response to comment (4) in Attachment 7, "Hearing Responsiveness Summary," of the December 26, 2000 attainment demonstration submittal), the local NO_X emissions can increase with the addition of new generators in the area despite the fact that such generators will be subject to the NO_X rule for EGUs. New sources may be subject to NO_X emission reduction requirements, but may meet those emission reduction requirements through purchase of emission reduction credits from sources outside of the nonattainment area and possibly even in another state. We, however, cannot at this time predict that NO_X emissions will actually increase in the Chicago-Gary-Lake County ozone nonattainment area as the result of the startup and operation of the new combustion turbine generators. Because of the NO_X SIP Call, it is assumed that any potential increase in the NO_X emissions in the nonattainment area will be balanced by NO_X emission reductions elsewhere in the State.

It is noted that the State has taken credit for NO_X emission reductions in the Chicago area due to the new EGU NO_X control regulations. Table XII lists the ozone nonattainment area EGU facilities listed in the September 27, 2000 "Technical Support Document: Midwest Subregional Modeling: Emissions Inventory." Emissions from these facilities were included in the base period EGU emissions and were reduced in the modeled emissions control strategy SR 16 to test the impacts of EPA's NO_X SIP Call.

TABLE XII.—CHICAGO NONATTAINMENT EGU BASE PERIOD NO_X EMISSIONS

[Emissions in tons per day]

Facility name	Facility ID/stack ID	County	NO_X emissions TPD
Commonwealth Edison—Joliet Generating Facility	197809AAO/0017	Will	24.08
Commonwealth Edison—Joliet Generating Facility	197809AAO/0016	Will	18.54
Commonwealth Edison—Will County Generating Facility	197810AAK/0013	Will	14.28
Commonwealth Edison—Will County Generating Facility	197810AAK/0007	Will	13.14
Commonwealth Edison—Will County Generating Facility	197810AAK/0011	Will	10.65
Commonwealth Edison—Waukegan Generating Facility	097190AAC/0018	Lake	10.45
Commonwealth Edison—Will County Generating Facility	197810AAK/0009	Will	8.29
UNO–VEN Company	197090AAI/0167	Will	7.91
Commonwealth Edison—Fish Generating Facility	031600AMI/0007	Cook	7.70
Commonwealth Edison—Crawford Generating Facility	031600AIN/0012	Cook	7.70
Commonwealth Edison—Waukegan Generating Facility	097190AAC/0016	Lake	6.05
CPC International Incorporated	031012ABI	Cook	5.89
Commonwealth Edison—Waukegan Generating Facility	097190AAC/0021	Lake	4.71
Commonwealth Edison—Crawford Generating Facility	031600AIN/0010	Cook	4.45

E. What Are the EPA Conclusions Regarding the Existing NO_X Waiver Given the Petition and the Available Ozone Modeling Data?

The fact that the State and LADCO have modeled ozone reduction benefits through the implementation of certain NO_X emission controls, including NO_X emission controls on EGUs in the Chicago area, indicates that the NO_X waiver as initially granted should be revised. The existing NO_X waiver was based on a demonstration that NO_X controls in the ozone nonattainment areas within the Lake Michigan ozone modeling domain [30] would not lower peak ozone concentrations on all modeled high ozone days in the modeling domain or would actually increase peak ozone concentrations in the modeling domain on some modeled high ozone days. The final attainment demonstration supports the conclusion that regional, statewide NO_X controls on EGUs, large non-EGU boilers and turbines, and cement kilns, that are to be implemented in order to comply with EPA's NO_X SIP Call, will lower peak ozone concentrations in Grid M and in the modeling domain originally considered in the granting of the NO_X waiver. This includes the region-wide control of NO_X emissions from the new combustion turbine generators.

With respect to the citizen NO_X waiver petition discussed above, it is noted that the petitioners have raised a concern about the ozone impacts of the increased NO_X emissions expected from the new combustion turbine generators. The petitioners have not provided ozone modeling or other data to support the case that these emissions will in fact cause the ozone standard to be violated, particularly after the State has implemented the NO_X rules adopted to meet the NO_X SIP Call. The available data indicate that the ozone standard will be attained after the State has implemented its ozone control strategy as set forth in the State's ozone attainment demonstration. No data are available, either in the ozone attainment demonstration submittal or in the petitioner's submittal, to indicate that the NO_X emissions resulting from the new combustion turbine generators in the Chicago area (the subject area of the NO_X waiver petition) will interfere with attainment of the 1-hour ozone standard in that area or in its downwind environs.

Illinois has analyzed the impacts of increased NO_X emissions for new, permitted combustion turbine generators throughout the State, including in the Chicago area. The analysis indicates that attainment of the ozone standard is expected to occur by 2007 despite the addition of NO_X emissions from these sources. In addition, as noted by the State, since the new combustion turbine generators will be covered and controlled by the State's new EGU NO_X rule, which subjects EGUs to a cap-and-trade emissions control program, and since total NO_X emissions in the State are constrained by the NO_X emissions budget assigned to Illinois by EPA's NO_X SIP Call, the

[30] At the time of the granting of the existing NO_X waiver, the ozone modeling domain was substantially smaller than Grid M used in the final ozone attainment demonstration. The original ozone modeling domain used to support the States' NO_X waiver petition, as approved in 1996, covered the Northeast portion of Illinois, the Northwest portion of Indiana, the Southeast portion of Wisconsin, and the Southwest portion of Michigan. The ozone modeling domain was centered on the lower half of Lake Michigan.

new NO_X emissions from the combustion turbine generators will not cause the NO_X emissions in Illinois to climb above the NO_X emission totals modeled in the State's ozone attainment demonstration.

It is concluded that the petition to remove NSR from the NO_X waiver is not supportable and should be denied. The NO_X waiver is amended to the extent that the State has assumed that some NO_X emission reductions in response to the NO_X SIP Call will benefit and are needed to support the ozone attainment demonstration. Since additional NO_X emission controls, beyond those already planned in the ozone attainment demonstration, are not needed to attain the ozone standard in the ozone modeling domain by the 2007 attainment deadline, the NO_X waiver remains supportable for RACT, NSR, and certain transportation and general conformity [31] and I/M requirements. This conclusion is consistent with the excess NO_X emission reduction test provisions of section 182(f)(2) of the CAA. NO_X emission reductions for these waived emission control measures are not assumed in the State's ozone attainment demonstration. This conclusion is subject to revision through the final rulemaking on the State's ozone attainment demonstration. Commenters on this proposed rule are encouraged to comment on the merits of both EPA's proposed rule on the attainment demonstration and on the merits of EPA's conclusion regarding the NO_X waiver petition.

IX. Motor Vehicle Emissions Budgets for Conformity and Commitment To Re-Model Using MOBILE6

A. What Are the Requirements for Motor Vehicle Emissions Budgets for Conformity?

Section 176(c) of the CAA requires that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. This requirement applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act (transportation conformity) and to all other Federally supported or funded projects (general conformity). EPA's transportation conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

Attainment demonstrations and ROP Plans are required to contain adequate motor vehicle emissions budgets derived from the mobile source portion of the demonstrated attainment or ROP emission inventory. The motor vehicle emissions budgets establish caps on motor vehicle emissions. VOC and NO_X emissions associated with transportation improvement programs and long-range transportation plans cannot exceed these caps. The criteria for judging the adequacy of motor vehicle emissions budgets are detailed in the transportation conformity regulations in 40 CFR 93.118.

B. How Were the Illinois Attainment Demonstration and ROP Emissions Budgets Developed?

Illinois has submitted motor vehicle emissions budgets for VOC and NO_X for the 2007 attainment year based on the emissions analyses included in the attainment demonstration. Illinois has also submitted motor vehicle emissions budgets for VOC for the milestone years 2002 and 2005 based on the ROP emissions calculations (the 2007 ROP budget for VOCs is the same as the 2007 VOC attainment demonstration budget). Illinois is only required to submit VOC budgets for the milestone years because the NO_X waiver for the area waived the requirement for ROP NO_X reductions. However, a NO_X emissions budget is required for the 2007 attainment demonstration budget year and a NO_X budget has been submitted by the IEPA. The following outlines the techniques used by Illinois to derive the VOC budgets and the 2007 NO_X emissions budget.

Vehicle miles of travel (VMT) growth estimates were derived consistent with the 15 percent ROP plan and 9 percent ROP plan for the Chicago area. An interagency consultation process involving the Illinois Department of Transportation (IDOT), the IEPA, the Federal Highway Administration, the EPA, and the Chicago Area Transportation Study (CATS) took place. For the 2002, 2005, and 2007 budget years, VMT growth was applied to the actual 1990 VMT used in the 1990 base year Chicago ozone precursor emissions inventory. The VMT was then adjusted to reflect summer weekday conditions. Emission factors were generated for 2002, 2005 and 2007 using EPA's MOBILE5b emission factor model. The emission factors for 2005 and 2007 were then adjusted to reflect implementation of the Tier II/Low Sulfur gasoline program by using an EPA-supplied information sheet since this national program will be in place in 2004. The resulting motor vehicle emissions budgets for the 2007 attainment year are 154.91 tons per day of VOC and 293.92 tons per day of NO_X. In addition, Illinois submitted VOC budgets for the 2002 and 2005 milestone years. The VOC budget for 2002 is 183.4 tons per day and the VOC budget for 2005 is 163.4 tons per day. The 2002 and 2005 VOC budgets are based on the control measures identified in the ROP portion of the submittal. The 2007 VOC milestone year budget is the same as the 2007 attainment demonstration VOC budget. The 2007 level of VOC emissions were modeled in the attainment demonstration modeling, and the modeling met the criteria for attainment of the 1-hour ozone standard.

Illinois submitted UAM modeling in the attainment demonstration submittal to support the VMT estimate for 2007 provided by the Illinois Department of Transportation based on their analysis of traffic counts in the Chicago area. The mobile source control measures considered by Illinois in the development of the 2007 motor vehicle emissions budgets included: centralized, enhanced vehicle Inspection and Maintenance (I/M); Federal reformulated gasoline; National Low Emission Vehicle program; Tier II/Low Sulfur gasoline requirements; and planned transportation control measures. The attainment demonstration modeling conducted by Illinois, which used the 204 million miles per summer weekday of VMT and also included estimated emissions from a statewide inventory of recently permitted combustion turbine electrical generating units and ancillary emission sources, as was discussed earlier in this notice, demonstrated attainment of the one hour ozone standard. Illinois addressed these emissions budgets and their commitment to revise the budgets using MOBILE6 during the November 8, 2000, public hearing on the post 1999 ROP and attainment demonstration.

C. Did Illinois Commit To Revise the Budgets When MOBILE6 Is Released?

In order for EPA to approve attainment demonstrations, states whose attainment demonstrations include the effects of the Tier II/Low Sulfur gasoline program need to commit to revise and resubmit their attainment demonstration

[31] As noted elsewhere in this proposed rule, the motor vehicle NO_X emission budgets are required despite the existence of the NO_X waiver, and these emission budgets must be used in conformity determination after the ozone attainment demonstration and post-1999 ROP plan are approved and these motor vehicle emission budgets are found to be adequate.

motor vehicle emission budgets based on MOBILE6 after EPA officially releases the new emission factor model, because MOBILE6 provides a better estimate of Tier II reductions than the current version of the model (MOBILE5b). This policy was detailed in the supplemental notice of proposed rulemaking issued on July 28, 2000 (65 FR 46383). Illinois committed to revising the 2007 attainment demonstration budgets and its 2005 ROP motor vehicle budget within two years of the official release of MOBILE6. No conformity determinations will be made during the second year after the release of MOBILE6 unless adequate MOBILE6-derived budgets are in place. If the State fails to meet its commitment to submit revised budgets using MOBILE6, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under CAA Section 179.

EPA is also proposing to clarify what will occur if the EPA finalizes approval of these budgets based on the States's commitments to revise the budgets in the future. If this occurs, the approved SIP budgets will apply for conformity purposes only until the revised budgets have been submitted and the EPA has found the submitted budgets to be adequate for conformity purposes.

In other words, when the State fulfills its commitment to submit revised budgets, if the EPA finds those budgets to be adequate for conformity purposes, those revised budgets will apply for conformity purposes as soon as affirmative adequacy findings are effective. Provided these revised budgets are submitted as revisions for the same years as the budgets in the attainment demonstration and ROP plan respectively, they would also replace the budgets in those approved plans at the time that the affirmative adequacy findings are effective.

Since the EPA is proposing to approve the budgets that were submitted only because the State has committed to revise these budgets, EPA wants its approval of these budgets to last only until adequate revised budgets are submitted pursuant to the commitments. EPA believes the revised budgets should apply as soon as they are found adequate. EPA does not believe it is necessary to wait until they have been approved as revisions to the respective plan. This is because EPA knows now that if the revised budgets are found adequate, they will be more appropriate than the originally approved budgets for conformity purposes.

EPA also recognizes that an accurate estimate of the benefits of the Tier II/Low Sulfur program can not be made until the MOBILE6 model is officially released. EPA is proposing to approve budgets based on interim approximations of Tier II/Low Sulfur benefits only because the State is committing to recalculate the budgets using MOBILE6 in a timely fashion. According to this proposal, revised budgets could be used for conformity after the EPA has completed the adequacy review process, provided the submitted budgets are deemed adequate.

If revised budgets raise issues about the sufficiency of the attainment demonstration, EPA will work with the State on a case-by-case basis. If the revised attainment demonstration budgets show that the revised budgets are lower than EPA is proposing to approve today, a reassessment of the attainment demonstration would need to be done before the State could reallocate any of the emission reductions or assign them to a budget as a safety margin. In other words, the State must assess how its original attainment demonstration is impacted by using MOBILE6 vs. MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6.

This proposed rule does not propose any change to the existing transportation conformity rule or to the way it is normally implemented with respect to other submitted and approved SIPs, which do not contain commitments to revise the budgets.

D. Are the Illinois Emissions Budgets Adequate for Conformity Purposes?

Illinois motor vehicle emission budgets for both ROP and the attainment demonstration were posted on the EPA Web site for the 30-day public comment period http://www.epa.gov/otaq/traq). The comment period associated with the Web posting closed February 9, 2001. We received no comments on the adequacy of either the ROP or attainment budgets. The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

EPA reviewed the State's 2002, 2005 and 2007 motor vehicle emission budgets and found these budgets adequate in a letter dated May 31, 2001. Our review indicated that the budgets meet the adequacy criteria in 93.118 of the Transportation Conformity Regulations (a support document with the review is included in the docket). In light of the commitment to revise the 2007 attainment budgets for VOC and NO_X, EPA also found the 2007 attainment budgets adequate in the May 31, 2001, letter. The **Federal Register** notice announcing this adequacy finding was published on June 15, 2001. In today's proposed rule, EPA is proposing to approve the ROP and attainment demonstration budgets for conformity purposes and the State's commitment to revise these budgets using MOBILE6. This approval will only last until the State submits revised budgets derived using MOBILE6 and we find the revised budgets to be adequate as discussed in the previous section.

X. Reasonably Available Control Measure (RACM) Analysis

A. What Are the Requirements for RACM?

Section 172(c)(1) of the Act requires SIPs to contain RACM as necessary to provide for attainment. EPA has previously provided guidance interpreting the RACM requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA concluded that a measure would not be reasonably available if it would not advance attainment. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and, if measures are reasonably available, they must be adopted as RACM. Finally, EPA indicated that states could reject potential RACM measures either because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. The EPA also issued a recent memorandum on this topic, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30,

1999. Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

B. How Does This Submission Address the RACM Requirement?

The Chicago attainment demonstration addresses RACM through several aspects of the submittal. Mobile source measures are addressed with the ongoing and continuous evaluation and implementation of Transportation Control Measures (TCMs) in the Chicago area and by including reasonably available TCMs in the SIP. Stationary sources and area sources have been addressed by Illinois by first applying regulations to control emissions and more creatively through the Illinois trading program which caps emissions with a decreasing emissions cap and allows the market system to determine the most reasonably available control measures. Also, Illinois has adopted control measures which have gone beyond the federally mandated stationary and area source controls. Perhaps most importantly, the Chicago attainment demonstration contains UAM modeling which demonstrates that the Chicago area cannot attain solely through reductions in the Chicago nonattainment area. The Chicago area relies on background reductions of transported ozone to attain the 1-hour ozone standard. To demonstrate attainment of the 1-hour ozone standard, the LADCO ozone modeling tested emission reductions on the order of 50–60% for VOCs in the severe nonattainment areas. Any potential emission reductions from additional potential RACM measures are very small compared to the ROP emission reductions that will be reached by the 2007 attainment date. Also, every reasonably available measure has been used to reach the ROP reduction.

The Consideration and Implementation of Transportation Control Measures (TCMs)

The following paragraphs describe the process that has been used to evaluate and implement reasonably available TCMs in the Chicago area. The Illinois Environmental Protection Agency (IEPA) has worked extensively with the Chicago Area Transportation Study (CATS), which is the Metropolitan Planning Organization (MPO) for Chicago to evaluate and implement TCMs which are reasonably available. IEPA heads the TCM Taskforce which identified TCMs and works to promote and implement TCMs for SIP credit. IEPA has been an active participant in the evaluation of TCMs for funding with the Congestion Mitigation and Air Quality (CMAQ) Program. The CMAQ program funds are administered by the Federal Highway Administration, however selection of projects takes place at the local MPO level. Most if not all of the TCMs in the SIP have had partial funding from the CMAQ program. Projects are ranked based on the air quality benefits of each project.

The Illinois SIP has approved TCMs which are credited in both the 15% Rate of Progress plan (62 FR 66279) and the post 1996 ROP. The first TCMs to be approved into the Illinois SIP were approved in 1995 as part of the VMT offset SIP (60 FR 48896). The 127 TCMs which were approved included commuter parking, a rideshare program, new rapid transit service, signal coordination projects, an improved vanpool program, and new transportation centers and train station reconstruction. Since that time, additional TCMs have been implemented and added to the SIP. Additional TCMs were approved into the SIP when the 9 percent post-1996 ROP plan was approved in the December 18, 2000, **Federal Register** (65 FR 78961). These included improved public transit, such as fixed guideway transit and rail station improvements, traffic flow improvements, increased park and ride service, much needed parking at transit stations, and bicycle and pedestrian programs.

CATS has prepared a series of reports which evaluate emissions benefits from various TCMs and has reported on the implementation of TCMs in the Chicago area. These reports include:

"Transportation Control Measures Committal to the State Implementation Plan" dated November 5, 1992;

"Transportation Control Measures Contribution to the 15% Rate of Progress State Implementation Plan" dated December 9, 1993;

"Transportation Control Measures Contribution to the Control Strategy State Implementation Plan" dated March 9, 1995;

"Transportation Control Measures Contribution to the post 1996 Rate of Progress State Implementation Plan" dated March 22, 1996;

"Transportation Control Measures Contribution to the 9% Control Strategy State Implementation Plan" dated June 11, 1998; and

"1999 Transportation Control Measures Contribution to the 9% Rate of Progress Control Strategy State Implementation Plan" dated December 9, 1999.

These reports have been submitted by the IEPA as part of the documentation for the SIP and are contained in the docket for this action. The EPA has concluded that, through this process of TCM evaluation and selection, Illinois has considered and implemented all reasonably available TCMs. Any measures that have not been included would provide only marginal air quality improvements at significantly greater expense or with significant implementation barriers.

Stationary Source and Area Sources RACM Analysis

Illinois has examined all sources in the nonattainment area for possible reductions. Illinois, through the 15 percent ROP plan, 9 percent post-1996 ROP plan and the continuing 3 perent per year emission reductions, has required emission controls on a wide variety of sources and has gone beyond the Federally mandated requirements for a severe ozone nonattainment area. Illinois, in cooperation with the other Lake Michigan States of Indiana, Wisconsin and Michigan, worked to consider regional control measures and strategies to bring the four state Lake Michigan area into attainment of the ozone standard. The control measures considered were part of the Lake Michigan Ozone Control Program (LMOP). The purpose of the documents included, "to insure that no reasonable control measures were omitted from consideration and to establish a process to analyze and assess the potential impacts of each control measure in objective and equitable manner". Initially, a large number of control measures which reduced VOC and/or NO_x emissions were examined in white papers prepared and distributed for public comment. The measures were then evaluated and ranked for modeling as part of the attainment demonstration modeling.

The State considered an extensive list of potential control measures and chose measures which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. Illinois chose to tighten RACT standards beyond levels required by the CAA, as well as to adopt rule effectiveness improvement requirements, marine vessel loading controls, autobody refinishing emission limitations, and underground gasoline storage tank breathing controls. All of these regulations went beyond Federally mandated controls and are documented in the State's submittals.

These creditable measures amounted to 297 TPD of VOC emissions reductions in the Chicago ozone nonattainment area. The 15 percent ROP plan achieved 47 TPD of VOC reductions in excess of that needed to meet the 15 percent ROP requirements, which were then used toward the next

set of ROP reduction requirements. After implementing all the above mentioned reasonable regulations on stationary sources, Illinois developed and implemented a unique VOC emissions trading program called the Emission Reduction Market System (ERMS), designed to achieve a 12 percent VOC reduction in emissions from participating sources beyond the reductions already implemented. Illinois developed the ERMS program because all reasonably available control measures had been identified and implemented in the previous ROP and only measures achieving small reductions in VOCs, resulting in high cost effective values, were left. The few remaining point source measures that Illinois included in the 9 percent post-1996 ROP plan were municipal solid waste landfill controls, reductions from application of a batch process control rule for Synthetic Organic Chemical Manufacturing Industries for one specific source, and control of benzene at coke ovens. Illinois also included one area source rule, which was a two-phase control of cold cleaning degreaser solvents. The 9 percent post-1996 ROP plan for Chicago provided 157 TPD of VOC reductions in the nonattainment area and 262 TPD of NO_X reductions from outside the nonattainment area.

Illinois states that "LADCO and the four States evaluated all of these measures to determine if any reasonably available VOC measures had been overlooked, but none were found." Emission reductions from any other potential RACM measures are relatively small. Certainly far less than the ROP reductions and the reductions that were modeled by LADCO in the Lake Michigan area ozone attainment demonstration.

Based on reviews of the State's analysis of measures and lists of control measures which have been implemented in other nonattainment areas, EPA believes that there are no other measures that Illinois could have implemented that would have substantially accelerated attainment. EPA is not aware of other practicable measures which will result in comparable emissions reductions that can be implemented sooner than those contained in Illinois's ozone attainment demonstration and ROP plans.

Modeling Analysis

Furthermore, the State's air quality modeling results indicate that additional VOC and NO_X controls within the nonattainment area will not accelerate attainment of the ozone standard. Air quality modeling was conducted by the LADCO for the four Lake Michigan States. LADCO and the four States also conducted special monitoring of ozone and ozone precursors to support the attainment demonstration modeling efforts. A significant conclusion of the monitoring study is that there are high levels of ozone and ozone precursors entering the Lake Michigan region. The peak boundary ozone concentrations were measured to be on the order of 70–110 ppb on some hot summer days. This transported ozone significantly contributes to ozone exceedances in the region. Elevated ozone levels were found to extend well upwind of the Lake Michigan region, covering large areas of the eastern United States. These observations and those for other areas led to the OTAG effort.

The initial LADCO modeling and sensitivity tests found VOC emissions in the nonattainment area would need to be reduced as much as 90 percent to provide for attainment if the transported ozone was not reduced. However, if reductions in boundary conditions were considered, the VOC reduction target is still very high, on the order of 50–60 percent depending on the boundary conditions. Illinois has already explored all possible RACM to find reductions for the ROP, and any other possible VOC reductions from sources in the Chicago area would not be enough to reach attainment or advance the attainment date.

Illinois has submitted these modeling analyses in the Phase I and II attainment demonstration submittals. The results of modeled reductions in emissions within the nonattainment area did not demonstrate attainment of the ozone standard, and, therefore, these emission reductions alone could not advance the attainment date. It was only when the boundary conditions were changed that the modeling demonstrated attainment. The long range transport of ozone and precursor emissions from upwind of the area were the significant contributor to the nonattainment problem. Air quality modeling which EPA performed in association with the NO_X SIP Call, (63 FR 57356), confirmed the States' analyses. These modeling runs conclusively show that the Chicago area cannot attain the ozone standard without the NO_X SIP Call measures to reduce transported ozone. The final attainment demonstration supports the conclusion that regional, statewide NO_X controls on EGUs, large non-EGU boilers and turbines, and cement kilns, that are to be implemented in order to comply with EPA's NO_X SIP Call, will lower peak ozone concentrations in Grid M and in the modeling domain. The earlier modeling indicates that further reductions of NO_X in the nonattainment area would not be as productive, however, as VOC reductions in the nonattainment area which will be realized through the ROP reductions.

The LADCO Technical Support Documents for the subregional modeling analysis, as discussed above, contains a variety of control strategies modeled to evaluate their impact on ozone air quality. Of particular importance is the sensitivity/strategy run SR1a, which evaluated the impact of one of the more substantial VOC reduction measures, Tier II/Low sulfur gasoline. This measure was calculated to provide a VOC reduction of 5.7 TPD in 2007 for Illinois. The modeling results indicate that the improvement in ozone air quality from this measure only provides a 1–2 ppb ozone concentration improvement on some ozone days. Any of the VOC control measures that were not selected for implementation as part of Illinois' ROP plan or attainment plan are significantly smaller than the Tier II/Low sulfur control measure. Thus, their contribution to improving ozone air quality would be much less than 1 ppb and would not advance attainment of the ozone standard earlier than 2007.

As previously described, the modeling analyses submitted by Illinois and conducted by LADCO showed that it was only when the States tested the impacts of NO_X emission reductions beyond the boundaries of the nonattainment area that the modeling indicated improvements in air quality to the degree necessary to attain the standard. In other words, the transport of ozone and precursor emissions from upwind areas significantly contribute to the Chicago and Lake Michigan States nonattainment problem. Air quality modeling which EPA performed in association with the NO_X SIP Call, (63 FR 57356), confirmed the states' analyses.

Illinois held public hearings on these materials and took public comment on the modeling and conclusions. In the documentation materials, Illinois makes a case that all reasonable measures have been implemented and included in the attainment demonstration. Any measures that have not been included would provide only marginal air quality improvements, and at significantly greater expense. Additional control measures beyond the 3 percent per year post-1999 ROP emission controls in the Chicago area are, therefore, not considered RACM since the reasonable implementation of such measures will not significantly improve air quality and, to make a significant impact, such measures would be draconian in nature.

Thus, the Chicago area relies on emission reductions from outside the nonattainment area that will result from EPA's NO_X SIP Call or section 126 rule (65 FR 2674, January 18, 2000) to reach attainment. In the NO_X SIP Call, 63 FR 57356, EPA concluded that reductions from various upwind states were necessary to provide for timely attainment in various downwind states. The NO_X SIP Call therefore established requirements for control of sources of significant emissions in all upwind states. However, these reductions were not slated for full implementation until May 2003. Further, the United States Court of Appeals for the District of Columbia Circuit recently ordered that EPA could not require full implementation of the NO_X SIP Call prior to May 2004. *Michigan, et al.*, v. *EPA*, D. C. Cir. No. 98–1497, Order of Aug. 30, 2000. All of the necessary VOC reductions that are modeled in the attainment demonstration for the Chicago area will not be in place until 2007. Thus the attainment demonstration modeling indicates that the area will need until the 2007 attainment date to successfully complete the emissions reductions necessary to reach attainment.

C. Does the Chicago Attainment Demonstration Meet the RACM Requirement?

We have reviewed the submitted attainment demonstration documentation, the process used by the MPO and State to review and select TCMs, other possible reduction measures for point and area sources and the emissions inventory for the Chicago area. Although EPA encourages areas to implement available RACM measures as potentially cost effective methods to achieve emission reductions in the short term, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either needlessly require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow the area to achieve attainment in advance of full implementation of all other required measures.

The attainment demonstration for the Chicago area indicates that the ozone benefit expected to be achieved from regional NO_X reductions (such as the NO_X SIP Call) is substantial. In addition, many of the measures designed to achieve emissions reductions from within the nonattainment area will also not be fully implemented prior to the 2007 attainment date. Therefore, we conclude, based on the available documentation, that since the emission reductions from potential RACM measures do not nearly equate to the emission reductions needed to demonstrate attainment, none of these measures could advance the attainment date prior to full implementation of the NO_X SIP Call rules and full implementation of the ROP measures and, thus, there are no additional potential local measures that can be considered RACM for this area. Additionally, the area cannot advance the attainment date because all of the emission reductions (3 percent per year up to the 2007 attainment year) have been modeled in the attainment demonstration modeling and all the reductions are needed to reach attainment of the 1-hour ozone standard. All of the ROP measures will not be fully implemented until the 2007 attainment date and, thus, no additional potential RACM measures could advance the attainment date.

XI. Responses to Public Comments

A number of comments were submitted to the EPA with regard to the December 16, 1999 (64 FR 70496). Responses to those comments will be included in the final rulemaking discussed along with the comments on this proposed rule. The EPA is not reopening the comment period on the December 16, 1999 proposed rule.

XII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental

for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 27, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01–16937 Filed 7–10–01; 8:45 am]

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July 11, 2001

Part III

Department of Housing and Urban Development

Notice of Funding Availability Housing Search Assistance Program Fiscal Year 2001; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4627–N–01]

Notice of Funding Availability Housing Search Assistance Program Fiscal Year 2001

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: *Purpose of the Program.* The purpose of the Housing Search Assistance Program (HSAP) is to assist housing choice voucher families in expanding their housing opportunities and in accessing lower-poverty neighborhoods through their receipt of housing counseling and supportive services from public housing agencies (PHA) partnering with nonprofit organizations. The counseling services will provide eligible families with information about a wide range of housing options, including options in lower-poverty neighborhoods, so that the families may make informed decisions in selecting housing and move closer to job sites, public transportation, shopping, schools, training opportunities and family/friends support networks. The program will also provide supportive services to help recipients comply with private owner rental lease requirements, housing quality standards (HQS) and other family obligations under the voucher program, remain stably housed, and successfully adjust to their new communities.

Available Funds. The approximately $10 million in housing choice voucher program administrative fees available under this NOFA will support funding for up to 15 eligible applicants for three years for HSAP activities.

Eligible Applicants. Public Housing Agencies (PHAs) that submit an application with one or more nonprofit organizations as the co-applicant (including but not limited to faith-based and other community-based organizations) for the provision of housing counseling services and related supportive services. Indian Housing Authorities (IHA), Indian tribes and their tribally designated housing entities are not eligible. The Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new Section 8 (housing choice voucher) annual contributions contracts (ACC) with IHAs after September 30, 1997.

Application Deadline. October 9, 2001.

Match. None

Additional Information

If you are interested in applying for funding under the HSAP, please read this NOFA which will provide you with detailed information regarding the submission of an application, HSAP requirements, the application selection process to be used in selecting applications for funding, and other valuable information relative to participation in the HSAP.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application (an original and one copy) is due on or before October 9, 2001, at the address shown below. This application deadline date is firm. In the interest of fairness to all competing applicants, HUD will not consider any application that is received after the application deadline. Applicants should take this practice into account and submit their applications early to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

Address for Submitting Applications. Submit your original application and one copy to Michael E. Diggs, Director of the Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW., Suite 800, Washington, DC 20024. The Grants Management Center is the official place of receipt for all applications in response to this NOFA. A copy of your application is not required to be submitted to the local HUD Field Office. For ease of reference, the term "local HUD Field Office" will be used throughout this NOFA to mean the local HUD Field Office Hub and local HUD Field Office Program Center.

Hand Carried Applications. Hand carried applications must be delivered to the Grants Management Center by not later than 8:45 am to 5:15 pm, Eastern time, on the application deadline date. After 5:15 pm on the application deadline date, applications will be accepted in the South Lobby of HUD Headquarters, 451 Seventh Street, SW., Washington, DC 20410, until 12:00 midnight, Eastern time.

Mailed Applications. Applications sent by U.S. mail will be considered timely filed if postmarked on or before 12:00 midnight on the application due date and received on or within ten (10) days of that date at the Grants Management Center.

Applications Sent By Overnight/Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received by the Grants Management Center on or before the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

For Application Kit. An application kit is not available and is not necessary for submitting an application for funding under this NOFA. This NOFA contains all of the information necessary for the submission of an application in connection with this NOFA.

For Further Information and Technical Assistance. Prior to the application due date, you may contact George C. Hendrickson, Housing Program Specialist, Room 4216, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1872, ext. 4064. Subsequent to application submission, you may determine the status of your application by contacting the Grants Management Center at (202) 358–0273. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll free number).

II. Authority, Purpose, Amount Allocated, Voucher Funding, and Eligibility

(A) Authority

The authority for the funding available for the HSAP is found in the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998), referred to in this NOFA as the FY 1999 HUD Appropriations Act). The FY 1999 HUD Appropriations Act refers to the funding being made available as for "regional opportunity counseling." In lieu of this description, HUD is calling the program funded under this appropriation the Housing Search Assistance Program (HSAP), as this title better encompasses the housing counseling and related supportive services for which funding is being announced as available under this NOFA.

(B) Purpose

The HSAP is a program under which a PHA, with a co-applicant nonprofit organization(s), will be provided

funding for housing counseling and other supportive services to assist families in expanding their housing opportunities. Each funded PHA (as the lead applicant in the application) will be required to enter into a memorandum of understanding (MOU) with a nonprofit organization(s) to provide housing counseling and/or related supportive services to housing choice voucher families. There is no requirement that the PHA enter into a MOU with a nonprofit organization(s) for the nonprofit organization's provision of all housing counseling and supportive services, although this would be acceptable. The ideal application would build on the existing strengths of the PHA and nonprofit(s) and modestly expand the capacity of these organizations to provide housing counseling and related supportive services. To ensure the program runs smoothly, it is essential that the relative roles and responsibilities of the PHA and the nonprofit organization(s) be defined clearly in the application.

The housing counseling services provided through the program will give eligible families information about a wide range of housing options in neighborhoods throughout a metropolitan area, including lower-poverty neighborhoods, so that the families may make informed decisions about the selection of housing and move closer to job sites, job training, schools, child care, public transportation, shopping, and family/friends support networks. This will be accomplished through a combination of intensive counseling of families and outreach to landlords. In addition, the provision of (or provision of links to) supportive services to help participating families comply with private owner rental lease requirements, housing quality standards (HQS) and other family obligations under the voucher program, remain stably housed, and successfully adjust to their new communities are vitally important. In many cases, nonprofit organizations will be well-positioned to provide these services.

Each PHA must ensure that it, as well as the nonprofit(s) with which it enters into an MOU, uses the funding under this NOFA only for those families eligible under this NOFA and may not counsel families for which the PHA is funded from other sources; e.g., funds provided by HUD to assist and to counsel families benefiting from the settlement of litigation or involving desegregation.

(C) Amount Allocated

This NOFA announces the availability of $10 million in housing choice voucher administrative fees for the HSAP which will provide funding for up to 15 PHAs for a period of three years. Applicants will be limited to applying for no more than the maximum dollar amount indicated below based on the current size of the PHA's housing choice voucher and certificate program.

(1) PHA with 1250 or more vouchers/certificates: $1,000,000 maximum.

(2) PHA with 500 to 1249 vouchers/certificates: $600,000 maximum.

(3) PHA with less than 500 vouchers/certificates: $150,000 maximum.

(D) Eligible Applicants

A PHA established pursuant to State law, including regional (multicounty) or State PHAs, with an existing housing choice voucher or certificate program may apply for funding under this NOFA if it has a nonprofit organization(s) (including, but not limited to a faith-based or other community-based organization) with which it has entered into an MOU for housing counseling and related supportive services (contingent upon the PHA's receipt of funding under this NOFA), and falls into either of the following two categories under HUD's interim rule published in the **Federal Register** (FR–4606–I–01) on October 2, 2000, on "Increased Fair Market Rents and Higher Payment Standards for Certain Areas:"

(1) A PHA in any of the 39 metropolitan areas for which fair market rents (FMR) will now be based on the 50th percentile: i.e., those large metropolitan areas where voucher holders are concentrated in a relatively small number of census tracts and low-rent} housing is not well-distributed throughout the metropolitan area. The 39 metropolitan areas are listed in a notice published in the **Federal Register** (FR–4589–N–03) on October 6, 2000; i.e., those metropolitan areas where families have experienced difficulty in renting housing in low-poverty areas.

(2) A PHA eligible to use a Success Rate Payment Standard based on the 50th percentile rent; i.e., a PHA whose voucher holders have had less than a 75 percent success rate in locating a unit to rent, despite having increased the payment standards to 110 percent of the FMR. To be funded under this category, a PHA must be eligible for the Success Rate Payment Standard under the terms of the October 2, 2000 interim rule and Notice PIH 2001–1 (PHA). The PHA need not have applied to utilize the higher payment standards.

Indian Housing Authorities, Indian tribes and their tribally designated housing entities are not eligible to apply because the Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new Section 8 (housing choice voucher) annual contributions contracts (ACC) with IHAs after September 30, 1997.

Some PHAs currently administering housing choice vouchers and certificates have, at the time of publication of this NOFA, major program management findings from Inspector General audits, HUD management reviews, or Independent Public Accountant (IPA) audits that are open and unresolved or other significant program compliance problems. HUD will not accept applications for funding from these PHAs as contract administrators if, on the application deadline date, the findings are either not closed, or sufficient progress toward closing the findings has not been made to HUD's satisfaction. The PHA must also, to HUD's satisfaction, be making satisfactory progress in addressing any program compliance problems. If any of these PHAs want to apply for the HSAP, the PHA must submit an application that designates another housing agency, nonprofit agency, or contractor that is acceptable to HUD. The PHA application must include an agreement by the other housing agency or contractor to administer the program for the new funding on behalf of the PHA and a statement that outlines the steps the PHA is taking to resolve the program findings and program compliance problems. Immediately after the publication of this NOFA, the Office of Public Housing in the local HUD Office will notify, in writing, those PHAs that are not eligible to apply because of outstanding management or compliance problems. Concurrently, the local HUD Field Office will provide a copy of each such written notification to the GMC. The PHA may appeal the decision if HUD has mistakenly classified the PHA as having outstanding management or compliance problems. Any appeal must be accompanied by conclusive evidence of HUD's error (i.e., documentation showing that the finding has been cleared or satisfactory progress toward closing the findings or addressing compliance problems has been made) and must be received prior to the application deadline. The appeal should be submitted to the local HUD Field Office where a final determination shall be made. Concurrently, the local HUD Field Office shall provide the GMC with a copy of its written response to the appeal, along with a copy of the PHA's written appeal. Major program management findings are those that would cast doubt on the capacity of the

PHA to effectively administer the HSAP funding being made available under this NOFA.

III. General Requirements and Requirements Specific to the HSAP

(A) General Requirements

(1) *Compliance With Fair Housing and Civil Rights Laws.* All applicants, and co-applicants must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If an applicant/co-applicant: (a) Has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act, the applicant's/co-applicant's application will not be evaluated under this NOFA if, prior to the application deadline, the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken necessary to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(2) *Additional Nondiscrimination Requirements.* In addition to compliance with the civil rights requirements listed at 24 CFR 5.105(a), each successful applicant/co-applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*), Title IX of the Education Amendments Act of 1972, and Titles I and V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(3) *Affirmatively Furthering Fair Housing.* Applicants have a duty to affirmatively further fair housing. Applicants will be required to identify the specific steps that they will take to:

(a) Examine the PHA's own programs or proposed programs, including an identification of any impediments to fair housing (identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice in its Consolidated Plan); develop a plan to (i) address those impediments in a reasonable fashion in view of the resources available; and (ii) work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing; and maintain records reflecting these analyses and actions;

(b) Remedy discrimination in housing; or

(c) Promote fair housing rights and fair housing choice.

(4) *Certifications and Assurances.* All applicants are required to submit signed copies of Assurances and Certifications. The standard Assurances and Certifications are on Form HUD–52515, Funding Application, which includes the Equal Opportunity Certification, Certification Regarding Lobbying, and Certification Regarding Drug-Free Workplace Requirements.

(5) *Disabled Accessibility.* All applicants and co-applicants funded under this NOFA will make offices used for housing counseling or related supportive services accessible to persons with a wide range of disabilities.

(6) *Requirements Applicable to Faith-Based Organizations.* Where a PHA proposes to contract for HSAP services with a primarily religious organization, or a wholly secular organization established by a primarily religious organization, the co-applicant(s) must ensure that it will adhere to the following principles which state: (a) The Organization will not discriminate against any segment of the population in the provision of services or in outreach, including those of other religious affiliations; (b) The organization will not provide religious instruction or religious counseling, conduct religious services or worship, engage in religious proselytizing, and/or exert religious influence in the provision of assistance for this program.

(B) Requirements Specific to the Housing Search Assistance Program

(1) *Definitions.*

(a) Eligible Family. A family is eligible to receive housing counseling and related supportive services under the HSAP if the family is a current participant in the housing choice voucher or certificate program, or if the family has received a housing choice voucher from the PHA to search for a unit. Housing counseling and related supportive services must be provided to these eligible families in the following order:

(i) Families that currently receive income from work or are currently work-ready; i.e., enrolled in an education or job training program. (However, a family must also be given the benefit of this preference for housing counseling and related supportive services if the head or spouse, or sole member is age 62 or older, or is a person with disabilities.)

(ii) All other eligible families. The other eligible families may be ranked at the PHA's discretion to meet the PHA's goals for policies established in its administrative plan.

(b) Nonprofit Organization. An organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual that provides housing counseling and/or related supportive services and has received a federal tax-exempt designation from the U.S. Internal Revenue Service. The nonprofit organization must:

(i) Have a voluntary board;

(ii) Be authorized by its charter or State law to enter into a contract with an organization such as a PHA to provide housing counseling and/or related supportive services;

(iii) Have a functioning accounting system that is operated in accordance with generally accepted accounting practices, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(iv) Practice affirmative marketing and nondiscrimination in the provision of assistance.

(2) *PHA/Nonprofit Organization Partnership and MOU.* Any PHA wishing to submit an application under this NOFA must enter into a memorandum of understanding (MOU) with a nonprofit organization(s) (including, but not limited to faith-based and other community organizations) for the purpose of clearly delineating the roles and responsibilities of the parties in providing specific types of housing counseling and related supportive services (see section III(B)(3) and (4) of this NOFA) to eligible families with funds under this NOFA. The MOU must be dated and signed by authorized officials of the PHA and the non-profit(s).

Among the nonprofit organizations that PHAs consider partnering with, they may wish to contact one or more of the HUD-approved housing counseling agencies in their area. There are approximately 1250 such agencies throughout the United States. These agencies may already have some or all of the skills and expertise the PHA is looking for in a nonprofit partner to meet the housing counseling and/or supportive service requirements of this

NOFA. To determine which HUD-approved housing counseling agencies may be operating in a PHA's geographic area, it can view the State listings of such agencies on the internet at www.hudhcc.org. Click on "Housing Counseling Agency Directory."

The PHA shall submit the application to HUD on behalf of itself and the nonprofit organization(s).

(3) *Housing Counseling Services Responsibilities.* Either directly or indirectly through their nonprofit partners, PHAs funded under this NOFA must provide housing counseling services to assist housing choice voucher families in expanding their housing opportunities and in accessing lower-poverty neighborhoods. Funding provided under this NOFA must be used to augment, rather than supplant, the counseling services that PHAs are already required to provide under current housing choice voucher program rules and must seek to avoid unduly concentrating assisted families in high poverty neighborhoods. The following are examples of housing counseling services that may be funded under this NOFA:

(a) Outreach to private landlords in lower-poverty neighborhoods (those neighborhoods where the concentration of families at or below the poverty level is less than 20 percent) throughout the metropolitan area. Examples of the types of outreach efforts that could be funded under this NOFA include the following:

(i) Solicit the participation of owners and managers of housing in lower-poverty areas.

(ii) Network with real estate boards, property management associations, real estate brokers, human relations commissions, and/or other groups or agencies that can assist in locating owners and managers willing to participate in the HSAP.

(iii) Prepare materials to explain the voucher program and the HSAP to owners and managers.

(iv) Conduct seminars for owners and managers on the voucher program, fair housing and the HSAP.

(b) Provide counseling services to help families identify and apply for units in lower-poverty neighborhoods.

(c) Provide counseling services to help acquaint families with the benefits of living in particular lower-poverty neighborhoods in the metropolitan area.

(d) Review eligible families for credit reports, housekeeping skills and criminal backgrounds to ensure suitability for counseling services;

(e) Conduct home visits and escort families to potential units selected by the families;

(f) Assist families with transportation to facilitate their visiting potential units;

(g) Assist families in discussions with landlords regarding lease provisions and suitability of the unit during the housing search;

(h) Monitor activities for compliance with fair housing laws and the requirement that owners of tax credit developments not discriminate against families in the voucher program, and refer complaints of discrimination to the local HUD Field Office or to State and local agencies participating in the Fair Housing Assistance Program.

(i) Reduce any community tension that may exist, as regards the voucher program, by conducting sensitivity training with local police departments, schools, community groups, and businesses to educate them about the voucher program, assisted families and fair housing; establish a mentoring program where current voucher program participants provide support to new participants; and provide conflict resolution services, if needed.

(4) *Supportive Services Responsibilities.* Either directly or indirectly through their nonprofit partners, PHAs funded under this NOFA must provide supportive services to help the voucher program participants receiving housing counseling to comply with private owner rental lease requirements, housing quality standards (HQS) and other family obligations under the voucher program, remain stably housed, and successfully adjust to their new communities. Supportive services may be needed both before a family moves into a new neighborhood (such as to ensure a smooth transition and to educate the family about the services available in a community), and after the family has moved in. Families that move to new communities may need help finding child care, securing transportation and other services. The following are examples of supportive services that may be funded under this NOFA:

(a) Provide counseling and referrals to families on opportunities for education, training, child care, medical care, transportation and employment in lower-poverty neighborhoods.

(b) Refer families to organizations capable of assisting them with moving costs, security deposits, utility hookup fees, and utility deposits. (Note: Funds provided under this NOFA cannot be used to pay such costs, deposits or fees for families.)

(c) Counsel families on household cleaning/maintenance skills and knowledge sufficient for a family to remain in compliance with its responsibilities as relates to the housing choice voucher program's housing quality standards (HQS), and the family's responsibilities under its lease with a private owner for the care and use of the unit.

(d) Counsel families on budgeting skills directed at the most efficient use of limited resources in meeting family expenses, with an emphasis on the family's responsibility to pay its portion of the rent to the private owner in a timely manner.

(5) *Program Record Keeping/ Reporting Requirements.*

(a) Record Keeping. In addition to the normal record keeping required for the housing choice voucher program, separate records must be maintained by the PHA and the nonprofit organization for the HSAP. The separate records must demonstrate that funding provided under this NOFA was used to augment, rather than replace, the counseling the PHA is already required to provide under current rules, and that the supportive services funded under this NOFA are in addition to those services the PHA is already providing itself or through outside sources. These records must also be sufficient to capture the information necessary to produce the semiannual reports required under this NOFA's section III(B)(5)(b), Reporting to HUD.

(b) Reporting to HUD. An original and a copy of the following report shall be submitted on a semiannual basis to the Department of Housing and Urban Development, Funding and Financial Management Division, Room 4216, 451 Seventh Street, SW, Washington, DC 20410. Reporting shall commence with the period ending 12/31/01 and shall be submitted to HUD not later than 30 days thereafter. Subsequent reports shall cover a six month period and shall be submitted not later than 30 days following the end of each six month reporting period. Reporting shall reflect cumulative progress made to date since the beginning of the awardee's HSAP, as well as progress exclusive to the last six month period ended. The report must address the following in this regard pertinent to the PHA's and/or nonprofit's provision to eligible families of housing counseling and related supportive services funded under this NOFA:

(i) The number of families counseled/ provided supportive services.

(ii) The number of families counseled/ provided supportive services that were successful in leasing a unit.

(iii) The number of families counseled/provided supportive services that rented a unit in a lower-poverty neighborhood.

(iv) The number of families counseled/provided supportive services that leased a unit in a lower-poverty neighborhood and were still leasing a unit in a lower-poverty neighborhood 13 months later.

(v) The average cost per family (based upon total HSAP expenditures) of (1) providing housing counseling, (2) supportive services, and (3) cumulatively for housing counseling and supportive services.

(vi) The total number of owner outreach contacts by the PHA/nonprofit vs total number of families counseled/ receiving supportive services that leased units from these owners, with a separate subtotal for those families leasing units from these owners in lower-poverty areas.

IV. Application Selection Process for HSAP Funding

(A) Selection Criteria and Rating and Ranking

The Office of Public and Indian Housing's Grants Management Center is responsible for rating the applications under the selection criteria in this NOFA, and is responsible for the selection of FY 2001 applications that will receive consideration for assistance under the HSAP. The Grants Management Center, with assistance from the Office of Fair Housing and Equal Opportunity and the Center for Faith-Based and Community Initiatives, will initially screen all applications and determine any technical deficiencies based on the application submission requirements.

Each application submitted in response to this NOFA, in order to be eligible for funding, must receive at least 60 points of the 100 points available under the selection criteria in order to be approvable for funding. Each criterion with no sub-criteria, and sub-criteria under a criterion (some criteria have sub-criteria with individually assigned points) will be evaluated on a pass or fail basis, with either the applicant receiving the full number of points or no points; e.g., 15 or 0. The selection criteria are as follows:

(1) Selection Criterion 1: Capacity of the Applicant and Relevant Organizational Experience (30 points).

Selection Criterion 1 addresses the extent to which the applicant (*including the co-applicant nonprofit organization(s)*) has the organizational resources necessary to implement the applicant's proposed HSAP activities in a timely manner. In determining the rating under this criterion, HUD will consider the extent to which the application demonstrates:

(a) (15 points) The knowledge and experience of the PHA and nonprofit organization's staff in planning and organizing the type of housing counseling and supportive services (eligible to be funded under this NOFA) addressed in the applicant's Memorandum of Understanding (MOU). Experience will be assessed in terms of its relevance to undertake eligible HSAP activities (see section III(B)(3) and (4) of this NOFA). The applicant and co-applicant are expected to have sufficient personnel to deliver the proposed housing counseling and supportive services in a timely and effective manner. Included in the application must be an identification of the professional backgrounds and experience of specific individuals to be involved in providing the housing counseling services and related supportive services addressed in the applicant's MOU.

(b) (15 points) Demonstrated success in attaining measurable progress in the implementation of recent activities similar in scope and complexity to the housing counseling and related supportive services planned to be undertaken with funding under this NOFA as reflected in the applicant's MOU.

(2) Selection Criterion 2: Memorandum of Understanding (MOU) (50 points).

Selection Criterion 2 addresses the quality and effectiveness represented within the applicant's MOU for providing the housing counseling and supportive services eligible for funding under this NOFA. The application for funding under this NOFA must include an MOU executed by authorized officials of the PHA and the nonprofit organization(s) with which the PHA is partnering. The MOU must provide a detailed description of the housing counseling and supportive services (see section III(B)(3) and (4)) to be provided and the roles and responsibilities of the PHA and the nonprofit organization(s) (see section III(B)(2)) in providing the housing counseling and supportive services. The MOU must also include realistic but aggressive performance targets related to the provision of housing counseling and supportive services to families. This is addressed more fully under section IV(A)(2)(a) below of this NOFA.

The MOU must indicate that its provisions are contingent upon the PHA's being funded under this NOFA, and that the PHA will be responsible for monitoring the activities of the nonprofit(s) in connection with its satisfactory delivery of the housing counseling and/or supportive services agreed upon in the MOU. The MOU must also include a description of the priority order in which families will receive services (see section III(B)(1)(a)), as well as a management and staffing plan and budget.

(a) (15 points) Description of the housing counseling and supportive services to be provided (see section III(B)(3) and (4)). In addition, the MOU must also address performance targets related to its provision of housing counseling and supportive services. These performance targets must address anticipated outcomes that are realistic but aggressive for the following performance categories:

(i) The number of families to be counseled/provided supportive services.

(ii) The number of families counseled/ provided supportive services that lease a unit with their voucher.

(iii) The number of families counseled/provided supportive services under section (ii) immediately above that lease a unit in a lower-poverty neighborhood.

(iv) The number of families counseled/provided supportive services that lease in a lower-poverty neighborhood and are still leasing a unit in a lower-poverty neighborhood 13 months later.

(b) (15 points) Description of the roles and responsibilities of the PHA and nonprofit organization(s) in providing housing counseling and supportive services (see section III(B)(2)), and the specific activities to be performed in providing these services, including but not limited to:

(i) Screening interviews with families;

(ii) Setting up a family file with intake information and counseling plan;

(iii) Having the family sign an agreement accepting the counseling plan and making a commitment to attend the required counseling sessions.

(c) (5 points) Description of the priority order of families to receive housing counseling and supportive services consistent with section III(B)(1)(a) of this NOFA which establishes the first order of priorities and allows for the establishment of preferences within the order of priorities and to add to the list of priorities. This description must also include an estimate of the number of housing choice voucher holders, as well as current housing choice voucher and certificate participants (current renters), that are anticipated to be eligible for and receive housing counseling and supportive services over the course of the three year implementation period of HSAP.

(d) (15 points) Management and Staffing Plan and Budget. A

management and staffing plan and budget must be provided indicating the major activities to be performed in providing housing counseling and supportive services, the position titles and number of staff to be devoted to providing these services, the number of staff hours to be expended on each activity, and the budgeted costs associated with each of the major activities over the three year period to be covered by the MOU. Included within the major activities should be staff time and associated costs connected with the record keeping and reporting requirements of section III(B)(5) of this NOFA. The budget should also reflect the anticipated number of families who will receive housing counseling and supportive services and the average cost per family for same. HUD anticipates that the average cost per family will be in the range of $1,000 to $1,500. This average cost range is based upon HUD's past experience with housing counseling and supportive services costs, but should not be considered a mandatory minimum or maximum limitation on costs per family. The average cost range was derived by taking total program costs and dividing them by the number of families receiving housing counseling and supportive services.

It is anticipated that immediately following HUD's announcement of awards under this NOFA that some PHAs and nonprofit organizations will require as much as—but should not exceed—six months in which to hire any additional necessary staff, complete nonprofit familiarization with program requirements under the housing choice voucher program, enter into a formal contract with the nonprofit organization(s) for the provision of certain services covered by the MOU, and to otherwise prepare themselves to initiate HSAP services. The budget should reflect any such six month or shorter period of preparation, unless all parties are prepared to immediately begin the provision of HSAP services. Any such six month or shorter preparatory period will be considered to be part of the maximum three year implementation period commencing on the date of award of HSAP funding.

(3) Selection Criterion 3: Leveraging Resources (10 points).

Selection Criterion 3 addresses the applicant's ability to secure private and public resources which can be combined with funding received under the HSAP to support and enhance the housing counseling and supportive services to be funded through the HSAP. Evaluation of this criterion will consider the extent to which the applicant has obtained additional resources, or partnered with other entities (State, Federal or local government, nonprofit organizations, for-profit private organizations, etc.) to secure additional resources, to increase the effectiveness of the housing counseling and supportive services included within the applicant's MOU. Evidence of such partnerships must be supported by letters of firm commitment or other documentation of agreements. Such letters or agreements should include the organization's name, proposed level of commitment, responsibilities as relates to the HSAP, and be signed by an official of the organization legally authorized to make commitments on behalf of the organization.

(4) Selection Criterion 4: Sustainability (10 points).

Selection Criterion 4 requires the applicant to demonstrate how its HSAP will achieve an impact that will be sustained in whole or in part beyond the three year implementation period funded under this NOFA. Credit will be given to applications that demonstrate how the HSAP will achieve an impact that lasts beyond the three year effort funded under this NOFA. Among several ways to achieve a lasting impact include, but are not limited to: (a) The building of capacity to provide housing counseling and related supportive services among entities that commit to continuing this work after the funding is exhausted; (b) the development of a curriculum to educate housing choice voucher participants about the benefits of living in particular lower-poverty neighborhoods; (c) the recruitment of a substantial number of landlords in lower-poverty neighborhoods; (d) the establishment of a revolving fund for security deposits, utility deposits and moving expenses to help families move to lower-poverty neighborhoods, funded through sources other than this NOFA; and (e) the creation of a landlord outreach program to include materials on the housing choice voucher program, HSAP, how to be a responsible landlord, and fair housing.

(B) *Funding FY 2001 Applications.* After the Grants Management Center has screened PHA applications and disapproved any applications unacceptable for further processing (see section VI(A) and (B) of this NOFA), the Grants Management Center, with the assistance of the Office of Fair Housing and Equal Opportunity and the Center for Faith-Based and Community Initiatives, will review and rate all approvable applications, utilizing the Selection Criteria and the point assignments listed in this NOFA. Applications will be ranked for approval/funding based upon highest to lowest score in three PHA size categories. Only those applications scoring not less than 60 points under the Selection Criteria will be considered for funding. A minimal number of awards will be made (contingent upon a sufficient number of approvable applications in each PHA size category), as follows:

(1) Six awards—PHAs with 1250 or more vouchers/certificates. Maximum award of $1,000,000 for each PHA.

(2) Four awards—PHAs with 500 to 1249 vouchers/certificates. Maximum award of $600,000 for each PHA.

(3) Two awards—PHAs with less than 500 vouchers/certificates. Maximum award of $150,000 for each PHA.

Thereafter, remaining funding will be awarded to the next highest ranked application, regardless of the PHA's voucher/certificate program size, until all funding has been exhausted. In the event two or more applications have the same score at this point in the funding selection process and insufficient funds remain to fund all such applications, a lottery shall be held to select the application(s) to be funded.

V. Application Submission Requirements

(A) *Form HUD–52515.* Funding Application, form HUD–52515, must be filled out as indicated below and submitted. Complete the first third of page 1, but sections A, B, C and D and on this first page, and section E at the top of the second page of this four page form should be left blank, as the funding being requested is for housing choice voucher administrative fee funding only and not for housing choice vouchers. PHAs are requested to enter their housing authority code number (for example, CT002), their telephone number, electronic mailing address, and facsimile transmission telephone number in the same place at the top of the form where they are also to enter the PHA's name and mailing address. Section F should not be responded to as this section pertains only to PHAs that do not currently have a housing choice certificate or voucher program (in order to be eligible to apply for the funding available under this NOFA the applicant must already be operating a housing choice voucher or certificate program). This form includes all the necessary certifications for Fair Housing, Drug-Free Workplace and Lobbying Activities. PHAs may obtain a copy of form HUD–52515 from the local HUD Field Office or may download it from the HUD Home page on the internet's world wide web (http://www.hud.gov). On the HUD website click on

"handbooks/forms," click on "forms," click on "HUD–5" and then click on "HUD–52515." The form must be signed and dated.

(B) *Nonprofit Organization Documentation.* The PHA must submit a letter from the nonprofit organization(s) with which it is entering into an MOU to provide all or some of the housing counseling and supportive services funded under this NOFA. The letter must provide information on the nonprofit organization(s) documenting its legal status as a nonprofit and its legal authority to operate throughout the geographic area comprising the PHA's legally authorized area of operation. Documentation of legal status/authority may include paperwork verifying the U.S. Internal Revenue Service's recognition of the organization as a nonprofit, a legal opinion from an attorney attesting to the nonprofit organization's legal right to deliver housing counseling and supportive services throughout the area comprising the PHA's legally authorized area of operation, or other similar documentation.

(C) *Selection Criteria Information.* The application must include information addressing the four selection criteria in section IV(A) of this NOFA, sufficient for the applicant to receive at least 60 points out of the maximum of 100 points available, in order for the application to be deemed approvable. Applications scoring less than 60 points will be unapprovable and therefore ineligible for funding. Since applications will be selected for funding on the basis of highest to lowest score (see section IV(B) of this NOFA), applicants would be well-advised to thoroughly address all four rating criteria in order to potentially maximize the points their application may receive and thereby improve the chances of their application being funded.

(D) *Statement Regarding the Steps the PHA Will Take to Affirmatively Further Fair Housing.* The areas to be addressed in the PHA's statement should include, but not necessarily be limited to:

(a) An examination of the PHA's own programs or proposed programs, including an identification of any impediments to fair housing (identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice in its Consolidated Plan); and a description of a plan developed to (1) address those impediments in a reasonable fashion in view of the resources available; and (2) work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing; and the maintenance of records reflecting these analyses and actions;

(b) Remedy discrimination in housing; or

(c) Promote fair housing rights and fair housing choice.

(E) *Moving to Work (MTW) PHA Information and Certification.* See section VI(B)(2)(c) regarding the information to be submitted by an MTW PHA required to report under the Section 8 Management Assessment Program (SEMAP) but not meeting the 95 percent lease-up or budget authority utilization requirements, or the lease-up or budget authority utilization certification to be submitted by an MTW PHA not required to report under SEMAP.

VI. Corrections to Deficient Applications

(A) Acceptable Applications

An acceptable application is one which meets all of the application submission requirements in Section V of this NOFA and does not fall into any of the categories listed in Section VI (B) of this NOFA. The Grants Management Center, with assistance from the Office of Fair Housing and Equal Opportunity and the Center for Faith-Based and Community Initiatives, will initially screen all applications and notify applicants of technical deficiencies by letter, facsimile transmission, or electronic mail. (See section V(A) of this NOFA regarding the information to be provided by applicants regarding their electronic mail address, facsimile transmission telephone number, etc. at the top of form HUD–52515.)

With respect to correction of deficient applications, HUD may not, after the application due date and consistent with HUD's regulations at 24 CFR part 4, subpart B, consider any unsolicited information an applicant may want to provide. HUD may contact an applicant to clarify an item in the application or to correct technical deficiencies. Please note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of a response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case under this NOFA, the Grants Management Center will notify the applicant in writing by describing the clarification or technical deficiency. The applicant must submit clarifications or corrections of technical deficiencies in accordance with the information provided by the Grants Management Center within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete, and it will not be considered for funding.

(B) Unacceptable Applications

(1) After the 14-calendar day technical deficiency correction period, the Grants Management Center will disapprove applications that it determines are not acceptable for processing. The Grants Management Center's notification of rejection letter must state the basis for the decision.

(2) Applications that fall into any of the following categories will not be processed:

(a) Applications that do not meet the requirements of Section III(A)(1) of this NOFA, Compliance With Fair Housing and Civil Rights Laws.

(b) The PHA has major Inspector General audit findings, HUD management review findings, or independent public accountant (IPA) findings that are not closed or on which satisfactory progress in resolving the findings is not being made; or program compliance problems on which satisfactory progress is not being made. The only exception to this category is if the PHA has been identified under the policy established in Section II(D) of this NOFA and the PHA makes application with another agency or contractor that will administer the HSAP on behalf of the PHA. Major program management findings or program compliance problems are those that would cast doubt on the capacity of the PHA to effectively administer the HSAP funding being made available under this NOFA.

(c) The PHA has failed to achieve a lease-up rate of 95 percent for its combined certificate and voucher units under contract for its fiscal year ending in 1999. Category (c) may be passed, however, if the PHA achieved a combined certificate and voucher budget authority utilization rate of 95 percent or greater for its fiscal year ending in 1999. In the event the PHA is unable to meet either of these percentage requirements, it may still pass category (c) if it submits

information (following the format of Attachment 1 of this NOFA) to the Grants Management Center, as part of its application, demonstrating that it was able to either increase its combined certificate and voucher lease-up rate to 95 percent or greater for its fiscal year ending in 2000, or was able to increase combined certificate and voucher budget authority utilization to 95 percent or more for its fiscal year ending in 2000. PHAs that have been determined by HUD to have passed either the 95 percent lease-up, or 95 percent budget authority utilization requirement for their fiscal year ending in 1999 will be listed on the HUD Home Page site on the Internet's world wide web (http://www.hud.gov/cio/grants/fundsavail.html) under the Housing Search Assistance Program (HSAP) NOFA. Any eligible applicant not listed must either submit information (following the format of Attachment 1) in its application supportive of its 95 percent lease-up or 95 percent budget authority utilization performance for its fiscal year ending in 2000, or submit information (following the format of Attachment 1) as part of its application supportive of its contention that it should have been included among those PHAs HUD listed as having achieved either a 95 percent lease-up rate or 95 percent funding utilization rate for fiscal years ending in 1999.

Moving to Work (MTW) agencies that are required to report under the Section 8 Management Assessment Program (SEMAP) shall be held to the 95 percent lease-up and budget authority utilization requirements referenced above, except where such an MTW agency provides information in its application demonstrating to HUD that a lower percentage is the result of the implementation of specific aspects of its program under its MTW agreement with HUD. MTW agencies which are not required to report under SEMAP must submit a certification with their application certifying that they are not required to report under SEMAP, and that they meet the 95 percent lease-up or budget authority utilization requirements.

(d) The applicant is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA to provide the housing counseling/supportive services under this NOFA, or to otherwise work with the nonprofit in connection with the nonprofit's provision of the housing counseling and related supportive services.

(e) An application that does not comply with the requirements of 24 CFR 982.102 and this NOFA after the expiration of the 14-calendar day technical deficiency correction period will be rejected from processing.

(f) The application was submitted after the application due date.

(g) The application was not submitted to the official place of receipt as indicated in the paragraph entitled "Address for Submitting Applications" at the beginning of this NOFA.

(h) The applicant has been debarred or otherwise disqualified from providing assistance under the program.

(i) The applicant has failed to achieve a minimum 85 percent submission rate for housing choice voucher and certificate resident records to HUD's Multifamily Tenant Characteristics System (MTCS), as set forth by 24 CFR Part 908 and Notices PIH 98–30, 99–2 and 2000–13 for the period ending December 1999. In the event a PHA achieved less than an 85 percent rate of reporting under MTCS for this period, the PHA will still be considered to have passed the threshold if the PHA: (1) Subsequently achieved a minimum reporting rate of not less than 85 percent for its housing choice voucher and certificate resident records as of the December 2000 reporting period; or (2) has requested forbearance from HUD under the applicable procedures in Notice PIH 2000–13 for the semi-annual assessment period ending December 2000, contingent upon HUD approval of the forbearance request.

VII. Findings and Certifications

(A) Paperwork Reduction Act Statement

The Section 8 information collection requirements contained in this NOFA have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) Environmental Impact

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing (other than tenant-based rental assistance), rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. Section 4321). In accordance with 24 CFR 50.19(b)(12) of the HUD regulations, supportive services such as counseling services under this program are categorically excluded from environmental review under NEPA and are not subject to environmental review under the related laws and authorities.

(C) Catalog of Federal Domestic Assistance Numbers

The Federal Domestic Assistance number for this program is 14.857.

(D) Federalism Impact

Executive Order 13132 (captioned "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. None of the provisions in this NOFA will have federalism implications and they will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order. As a result, the notice is not subject to review under the Order.

(E) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the

Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(F) Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

(G) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF-LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

Dated: June 26, 2001.

Paula O. Blunt,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

Attachment 1.—Methodology for Determining Lease-Up and Budget Authority Utilization Percentage Rates

Using data from the HUDCAPS system, HUD determined which PHAs met the 95% budget authority utilization or 95% lease-up criteria. The data used in the determination was based on PHA fiscal years ending in 1999. The budget authority utilization and lease-up rates were determined based upon the methodology indicated below.

Budget Authority Utilization

Percentage of budget authority utilization was determined by comparing the total contributions required to the annual budget authority (ABA) available for the PHA 1999 year combining the certificate and voucher programs.

Total contributions required were determined based on the combined actual costs approved by HUD on the form HUD–52681, Year End Settlement Statement. The components which make up the total contributions required are the total of housing assistance payments, ongoing administrative fees earned, hard to house fees earned, and IPA audit costs. From this total any interest earned on administrative fees is subtracted. The net amount is the total contributions required.

ABA is the prorated portion applicable to the PHA 1999 year for each funding increment which had an active contract term during all or a portion of the PHA year.

Example

PHA ABC

Fiscal year 10/1/98 through 9/30/99

HUD 52681 Approved Data:	
HAP	$2,500,000
Administrative Fee	250,000
Hard to House Fee	1,000
Audit	2,000
Total	$2,753,000
Interest earned on administrative fee	(2,500)
Total contributions required	$2,750,500

CALCULATION OF ANNUAL BUDGET AUTHORITY

Increments	Contract Term	Total BA	ABA
001	11/01/98–10/31/99	$1,300,000	$1,191,667
002	01/01/99–12/31/99	1,200,000	900,000

CALCULATION OF ANNUAL BUDGET AUTHORITY—Continued

Increments	Contract Term	Total BA	ABA
003	04/01/99–03/31/00	950,000	475,000
004	07/01/99–06/30/00	1,500,000	375,000
Totals		4,950,000	2,941,667

BUDGET AUTHORITY UTILIZATION

Total contributions required divided by	$2,750,000
Annual budget authority equals	2,941,667
Budget Authority Utilization	93.5%

Lease-up Rate

The lease-up rate was determined by comparing the contract units (funding increments active as of the end of the PHA 1999 year) to the unit months leased (divided by 12) reported on the combined HUD 52681, Year End Settlement Statement(s) for 1999.

Active funding increments awarded by HUD, as recorded in HUDCAPS, for special purposes such as litigation, relocation/replacement, Welfare to Work, and new units awarded to the PHA during the last twelve months were excluded from the contract units as the Department recognizes that many of these unit allocations have special requirements which require extended periods of time to achieve lease-up.

Example

Increments	Contract term	Units
001	11/01/98–10/31/99	242
002	01/01/99–12/31/99	224
003	04/01/99–03/31/00	178
004	07/01/99–06/30/00	280
Totals		924
Increment 003 litigation		(178)
Adjusted contract units		746
Unit months leased reported by PHA		8,726
divided by 12		727
Units Leased		727
Lease-up Rate		
Units leased		727
divided by adjusted contract units equals		746
Lease-up Rate		97.4%

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Wednesday,
July 11, 2001

Part IV

Department of Housing and Urban Development

Notice of Regulatory Waiver: Requests Granted for the First Quarter of Calender Year 2001

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4682–N–01]

Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2001

AGENCY: Office of the Secretary, HUD.

ACTION: Public Notice of the Granting of Regulatory Waivers from January 1, 2001 through March 31, 2001.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice must cover the quarterly period since the most recent **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the quarter beginning on January 1, 2001 and ending on March 31, 2001.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10282, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD on April 22, 1991 (56 FR 16337). This notice covers HUD's waiver-grant activity from January 1, 2001 through March 31, 2001. Additionally, this notice contains two reports of regulatory waivers granted during the final quarter of calendar year 2000, which were inadvertently omitted in the final report for calendar year 2000. These two reports can be found in Section I of this notice.

For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the section of title 24 being waived. For example, a waiver-grant action involving the waiver of a provision in 24 CFR part 58 would come before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred between April 1, 2001 through June 30, 2001.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: June 28, 2001.

Alphonso Jackson,

Deputy Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development January 1, 2001 Through March 31, 2001

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Multifamily Housing Assistance Restructuring.

IV. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following waiver actions, please see the name of the contact person which immediately follows the description of the waiver granted.

• Regulation: 24 CFR 91.520(a).

Project/Activity: The Village of Oak Park, Illinois, requested a waiver of the submission deadline for the Village's 2000 program year CAPER.

Nature of Requirement: Section 91.502(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted By: Donna M. Abbenante, Acting General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 20, 2001.

Reasons Waived: The Village was unable to submit a complete and accurate expenditure report by the deadline due to the illness of the employee responsible for preparing the CAPER. The delay in getting the report prepared also delayed the citizen participation process. While HUD is desirous of timely report, the Department is also interested in ensuring that the report is complete and accurate and meets the statutory requirements for citizen participation. The documentation provided by the Village is sufficient for granting the waiver.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410; telephone (202) 708–2565.

• Regulation: Section 91.520(a).

Project/Activity: The State of Oregon requested a waiver of the submission deadline for the State's 2000 program year CAPER, Salem, Oregon.

Nature of Requirement: 24 CFR 91.502(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted By: Donna M. Abbenante, Acting General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 30, 2001.

Reasons Waived: Oregon's Economic and Community Development Department (OECDD) requested the 30-day extension due to reconciling delays in the State's fiscal program records which impacted their ability to comply with beneficiary reporting requirements. In addition, reconciling delays in IDIS data and OECDD's tracking system, has proven to be particularly burdensome on the staff. Based on this information and the fact that the State submitted the request in a timely manner, the Department found good cause for granting the waiver.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410; telephone (202) 708–2565.

• Regulation: 24 CFR 92.205(e).

Project/Activity: The City of Milwaukee, Wisconsin, requested a waiver of the HOME provisions regarding termination of a project prior to completion and the repayment requirement.

Nature of Requirement: Section 92.205(e) requires that a HOME assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and any HOME funds invested in the project must be repaid to the participating jurisdiction's HOME Investment Trust Funds.

Granted By: Donna M. Abbenante, Acting General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 26, 2001.

Reasons Waived: The Department found good cause for granting the waiver due to the extenuating circumstances. The owner of the property requested that all work on the home be stopped after a gunfight outside the home resulted in a relative being killed by a stray bullet. The owner moved out of the house and put the house on the market. From the total approved amount of $23,505.00, the owner had spent $3,305.98.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410; telephone (202) 708–2565.

• Regulation: 24 CFR 92.219(b)(2)(ii).

Project/Activity: The Alabama Housing Finance Authority, Montgomery, Alabama (AHFA), requested a waiver to count sweat equity contributions made to habitat for Humanity units in AHFA's loan portfolio as program match.

Nature of Requirement: Section 220(b)(1)(A) of the Cranston-Gonzalez National Affordable Housing Act of 1990 requires that for contributions to housing not assisted with HOME funds to be counted as match, they must be made to housing that qualifies as affordable pursuant to Section 215(b). This section defines affordable housing as housing that: has a purchase price that does not exceed 95 percent of the median purchase price for the area; is the principal residence of any family that qualifies as a low-income family; and is subject to resale restrictions that are established by the participating jurisdiction (PJ). These statutory requirements are established at 24 CFR 92.219(b)(2)(ii) of the HOME regulations. The HOME regulations also require that, in order for a contribution made to housing not assisted with HOME to count as match, the PJ must execute a written agreement with the project owner that imposes these statutory requirements and the regulatory property standard requirements of 24 CFR 92.251.

Granted By: Donna M. Abbenante, Acting General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: April 4, 2001.

Reasons Waived: The Department reviewed the loan portfolio and determined units eligible. While AHFA did not execute the required agreement and include the resale/recapture provisions in its Consolidated Plan, the Department waived these requirements since failure to do so would create a financial hardship for the State of Alabama. This waiver allows the State to count as match otherwise eligible BMIR loans and real property contributions toward 111 units and sweat equity contributed toward 75 units.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410; telephone (202) 708–2565.

• Regulation: 24 CFR 582.105(e).

Project/Activity: The City of Berkeley, California, requested a waiver of the eight percent administrative cost limitation relative to its 1993 Shelter Plus Care (SPC) grant.

Nature of Requirement: Section 582.105(e) provides for an eight percent cap on administrative fees.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: January 12, 2001.

Reasons Waived: The Department determined that because the City intends to serve the same number of households that was originally anticipated for an additional period of time with no increase in funds, an increase in the administrative costs allowed for the program is appropriate. The City may use up to 11.2% of the grant for administrative costs.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410; telephone (202) 708–2565.

II. Regulatory Waivers Granted by the Office of Housing

For further information about the following waiver actions, please see the name of the contact person which immediately follows the description of the waiver granted.

• Regulation: 24 CFR 203.357(c).

Project/Activity: Waiver of regulations to permit non-profit mortgagors that own multiple insured properties to execute deeds in lieu of foreclosure.

Nature of Requirement: Section 203.357(c) permits mortgagors that are individuals who own more than one insured property to execute deeds in lieu of foreclosure with HUD's prior written consent.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Dated Granted: January 19, 2001.

Reason Waived: In aggregate, these non-profit mortgagors own approximately 719 properties located in and around New York City. Fraudulent activities of some sellers, originating mortgagees, appraisers, title companies, and others, resulted in underfunding the rehabilitation, incomplete rehabilitation, insufficient rental income and mortgage default. Many of the non-profit mortgagors were misled by assurances that consultants would oversee the rehabilitation of the properties and that the rehabilitated properties would generate sufficient cash flow. Many of the non-profit mortgagors lacked the financial capacity and experience to rehabilitate the properties.

The regulation provides that to be eligible for a deed in lieu of foreclosure the mortgagor who owns multiple insured properties must be an individual. Non-profit mortgagors are entities, not individuals. Deeds in lieu of foreclosure reduce the losses incurred by the insurance funds because HUD does not have to include the expense of foreclosure proceedings in the payments for insurance claims.

Contact: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–1672.

• Regulation: 24 CFR 203.673(a) and (b), 203.674(b)(1), (2), (3), and (4), 203.675, 203.676, 203.677, and 203.678.

Project/Activity: Waiver of regulations to permit occupied conveyances for approximately 719 properties located in eight counties in and around New York City.

Nature of Requirement: Section 203.673(a) and (b) defines, for the purpose of an occupied conveyance, the habitability criteria that a property must satisfy in its present condition or with repair expenditures of not more than five percent of the fair market value of the property. The regulation requires that the property be free of lead-based paint hazards and each residential unit must contain adequate heating facilities, adequate electrical supplies, adequate cooking facilities and sanitary facilities, and a continuing supply of hot and cold water. Section 203.674(b)(1), (2), (3), and (4)

establishes the standards by which HUD evaluates requests for occupied conveyance. Section 203.675 requires mortgagees to give occupants a notice of pending acquisition between 60 and 90 days before acquisition. Section 203.676 gives occupants 20 days after their receipt of the mortgagee's notice of pending acquisition during which they must submit to HUD their request for occupied conveyance. Section 203.677 establishes the procedures that HUD uses to decide whether to approve or deny an occupant's request for occupied conveyance. Section 203.678 requires that property be conveyed vacant under certain circumstances, including when an occupant fails to request occupied conveyance or to appeal HUD's denial of the request within the specified time period.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Dated Granted: January 19, 2001.

Reason Waived: Due to defaults on FHA-insured mortgages, HUD anticipates acquiring up to 719 multi-unit properties in the New York City area that were purchased by non-profit organizations to provide low-income housing. Fraudulent activities of some sellers, originating mortgagees, appraisers, title companies, and others, resulted in underfunding the rehabilitation, incomplete rehabilitation, insufficient rental income and mortgage default. The originating mortgagees sold these mortgages to other mortgagees. HUD generally requires mortgagees to evict occupants prior to conveying title to HUD in exchange for mortgage insurance benefits. The regulations permit occupied conveyance when the occupants and the property involved satisfy certain standards.

Waiver of the cited regulations is necessary to allow for a shortened process for requesting and approving occupied conveyances. Waiver of the habitability standards is necessary as some units have deficiencies because the properties are in varying stages of rehabilitation, or, the property does not qualify as a one-to-four family dwelling as it is a shared facility, single room occupancy building. Local eviction laws in and around New York City may delay conveyances thereby increasing the costs included in insurance claims. In addition, the affordable housing supply is limited in these communities. The eviction of the thousands of occupants of these 719 properties over a short time period would severely overtax the limited resources in the effected communities and likely increase homelessness.

Contact: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–1672.

• Regulation: 24 CFR 291.100(a)(2).

Project/Activity: Sale of REO home in Chicago, Illinois, to former mortgagors in occupancy who defaulted on their mortgage.

Nature of Requirement: Section 291.100(a)(2) provides that neither HUD nor any transferor pursuant to § 291.90(a) or § 291.200 will offer former mortgagors in occupancy who have defaulted on the mortgage the right of first refusal to repurchase the same property.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 2, 2000.

Reason Waived: Approval of the waiver allowed the mortgagors to repurchase their former home from HUD for its fair market value so that they could remain located near the hospital where their seriously ill child receives regular treatment. Counseling agencies, HUD staff, and others familiar with the case believe that forcing the mortgagors' family to move by failing to grant this waiver would be detrimental to the health of the child.

The property suffered from significant structural defects and was grossly overvalued when it was first acquired by the mortgagor. Recurrent repair costs contributed to the default. The mortgagors' were counseled by a HUD-approved housing counseling agency (HCA) through the foreclosure and acquisition process. The HCA assisted them by obtaining financial commitments from local non-profits and government agencies to provide funds for repairs and affordable mortgage financing terms. The purchase price was not financed with an FHA insured mortgage.

Contact: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–1672.

• Regulation: 24 CFR 291.210(a).

Project/Activity: Waiver of the requirement of 24 CFR 291.210(a) to provide authority for the Teacher Next Door Initiative which allows governmental entities and private nonprofit organizations to purchase HUD-owned single family properties offered with mortgage insurance on a direct sales basis and to provide discounts of 50 percent off the list price for resale to teachers.

Nature of Requirement: Section 291.210(a) permits direct sales at a discount off the list prices of properties sold without mortgage insurance to governmental entities and private nonprofit organizations for use in HUD and local housing or homeless programs.

Granted by: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date granted: October 4, 2000.

Reasons waived: Based on HUD's experience with Real Estate Owned (REO) sales, it would not be detrimental to the insurance fund to permit governmental entities and private nonprofit organizations to purchase REO properties offered with mortgage insurance on a direct sales basis or to provide discounts of 50 percent on properties sold for use in the Teacher Next Door Initiative.

Contact: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–1672.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Three Gems, Lowell, Massachusetts, Project Number: 023–HD161/MA06–Q991–009.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 2, 2001.

Reason Waived: The Project secured secondary financing from The Commonwealth of Massachusetts; the sponsor contributed the required minimum capital investment; labor and material costs in the area were high; and the project was economically designed and comparable to other similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Riley House, Hyde Park, Massachusetts, Project Number: 023–EE111/MA06–S991–005.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 4, 2001.

Reason Waived: The sponsor/owner received secondary financing from the Federal Home Loan Bank, state home funds and city home funds; the cost of real estate development in the Boston area was greater than in other parts of the country; and the project was economically designed and comparable to other similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Cooperative Services, Jamaica Plain, Massachusetts, Project Number: 023–EE114/MA06–S991–008.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 5, 2001.

Reason Waived: The sponsor/owner received $1,250,000 in secondary financing from The Federal Home Loan Bank, Cedac and City Home Funds; the cost of real estate development in the Boston area was greater than in other parts of the country; and the project was economically designed and comparable to other similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and

Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).
Project/Activity: Gibb Thomasville Village II, Thomasville, Georgia, Project Number: 061–HD068/GA06–Q991–001.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: January 19, 2001.
Reason Waived: The sponsor/owner made concerted efforts to reduce the expenses for the project and to obtain funding from other sources, and the project was comparable in cost to Gibb Thomasville Village I.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).
Project/Activity: Transitional Learning Center, Galveston, Texas, Project Number: 114–HD013/TX24–Q971–001.
Nature of Requirement: Prohibition against amendment funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: January 19, 2001.
Reason Waived: The Project was economically designed and additional funds were needed to meet the new windstorm code requirements imposed by the Texas Department of Insurance.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).
Project/Activity: Ziegler Homes II, Toledo, Ohio, Project Number: 042–HD058/OH12–Q961–005.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: The Project was modestly designed and comparable to similar projects in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).
Project/Activity: Ottawa River Estates, Toledo, Ohio, Project Number: 042–HD072/OH12–Q971–004.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: The Project was modestly designed and comparable to similar projects in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; Telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).
Project/Activity: Madison Terrace, Madison Township, Ohio, Project Number: 042–HD085/OH12–Q991–006.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: The Project was modestly designed and comparable to similar projects in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).
Project/Activity: Ridgeview Terrace I, Ashtabula, Ohio, Project Number: 042–EE106/OH12–S981–009.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: The Project was modestly designed and comparable to similar projects in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).
Project/Activity: Friendship Plaza, Lincoln Heights, Ohio, Project Number: 046–EE047/OH10–S981–003.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: The Project was modestly designed and comparable to similar projects in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).
Project/Activity: Lytle Trace, Williamsburg, Oh, Project Number: 046–EE050/OH10–S991–003.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: The Project was modestly designed and comparable to similar projects in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).
Project/Activity: NCR of Aaron Drive, Middleton, Ohio, Project Number: 046–EE051/OH10–S991–004.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: The Project was modestly designed and comparable to similar projects in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).
Project/Activity: Central Park II, Philadelphia, Pennsylvania, Project Number: 034–EE095/PA26–S991–004.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: The Project was modest in design, comparable to other projects developed in the area and the sponsor had secured additional funds from outside sources but was unable to secure secondary financing from the Pennsylvania Housing Finance Agency.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).
Project/Activity: Guilford Homes, Baltimore City, Maryland, Project Number: 052–HD040/MD06–Q991–005.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: The Project was economically designed, comparable to other similar projects developed in the jurisdiction, there was an increase in the construction budget due to some necessary repairs needed at the project, and the sponsor had exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW,

Washington, DC 20410–7000, telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Cote Brilliante Senior Apartments, St. Louis, Missouri, Project Number: 085–EE046/MO36–S991–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: Construction cost in the area had escalated.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Unionville Senior Housing, Unionville, Connecticut, Project Number: 017–EE045/CT26–S981–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: The project was economically designed and comparable to other similar projects in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Tolland Senior Housing, Tolland, Connecticut, Project Number: 017–EE043/CT26–S981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: The Project was economically designed and comparable to other similar projects constructed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Peach Tree Acres, Harbeson, Delaware, Project Number: 032–HD021/DE26–Q981–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: The Sponsor had secured additional funds and the project was modest in design and consistent with other projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Woodbury Senior Housing, Woodbury, Connecticut, Project Number: 017–EE044/CT26–S981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Sean Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: March 21, 2001.

Reason Waived: The Project was economically designed, comparable to other similar projects developed in the jurisdiction and all efforts to lower the cost of the project had been exhausted.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: CLRC, IV, Loves Park, Illinois, Project Number: 071–EE144/IL06–S991–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: Sean Cassidy, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: March 22, 2001.

Reason Waived: The Project was modestly designed, the cost to develop the project was comparable to similar projects in the area, and the sponsor had exhausted all efforts to secure additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: ASI-Missoula, Missoula, Montana, Project Number: 093–HD013/MT99–Q961–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 19, 2001.

Reason Waived: The Field Office had not received the amendment money necessary for the project to go to initial closing. The previous waiver granted August 21, 2000, to permit the project to receive up to $145,138 in amendment funds was still in effect.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Viceroy Apartments, San Antonio, Texas, Project Number: 115–HD027/TX59–Q981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 19, 2001.

Reason Waived: The sponsor needed additional time for fund raising efforts. Also, the project was economically designed, comparable to other similar projects developed in the jurisdiction, and the owner exhausted all efforts in seeking funding from other resources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Biscay Road Residence, Damariscotta, Maine, Project Number: 024–HD027/ME26–Q981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 19, 2001.

Reason Waived: The firm commitment application had been processed except for receiving the appraisal. Also, the project was economically designed, comparable to other similar projects developed in the jurisdiction, and the owner exhausted all efforts in seeking funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: St. Anthony Homes, Baltimore, Maryland, Project Number: 052–HD029/MD06–Q971–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's

regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: The contractor increased his prices during the time the project experienced delays with initial endorsement. Also, the sponsor had to hire an appraiser to prepare an appraisal of the land designated for the project in order to obtain a partial release from the State of Maryland Department of Housing and Community Development.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.130(B)(1) and (B)(2), and 24 CFR 891.120(B).

Project/Activity: TWB Residential Opportunities, Selden, New York and Holbrook, New York, Project Number: 012–HD087/NY36–Q981–008.

Nature of Requirement: HUD's regulation prohibits identity of interest between the Sponsor or Owner or Borrower and any development team member or between development team members until two years after final closing.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: The project consisted of acquisition with rehabilitation of three group homes for persons with chronic mental illness. One of the sites was designed to be accessible for persons with mobility impairments. To make all units fully accessible for persons with mobility impairments would make the project financially unfeasible. The sponsor indicated that less than 4 percent of the individuals that were served under their programs require accessible housing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Mayfair Apartments, Rocky Mount, North Carolina, Project Number: 053–EE080/NC19–S981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary For Housing—Federal Housing Commissioner.

Date Granted: January 2, 2001.

Reason Waived: The initial site proposed for the project was denied a special use permit because of citizen opposition.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Main Street Apartments, Point Pleasant, West Virginia, Project Number: 045–HD029/WV15–Q981–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary For Housing—Federal Housing Commissioner.

Date Granted: January 2, 2001.

Reason Waived: Problems occurred with the independent cost analyst which had to be resolved.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Thomaston VOA Thomaston, Maine, Project Number: 024–EE038/ME36–S971–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary For Housing—Federal Housing Commissioner.

Date Granted January 2, 2001.

Reason Waived: The Project was delayed due to citizen opposition.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Belair Manor, Baltimore, Maryland, Project Number: 052–HD032/MD06–Q981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary For Housing—Federal Housing Commissioner.

Date Granted: January 5, 2001.

Reason Waived: The Project involved subordinate financing from the state of Maryland and the terms and conditions of the financing documents were being reviewed by HUD.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Homes With Hope, Westport, Connecticut, Project Number: 017–HD015/CT26–Q961–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary For Housing—Federal Housing Commissioner.

Date Granted: January 5, 2001.

Reason Waived: The Sponsor/Owner had difficulty obtaining a suitable site for rehabilitation, there were delays in assembling the documentation for the firm commitment application, and difficulty in securing a contractor for the job due to a tight housing market and very active period of new construction projects in the local area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: South Vance Drive Apartments, Beckley, West Virginia, Project Number: 045–HD028/WV15–Q981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 16, 2001.

Reason Waived: The Field Office needed additional time to accommodate the initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: International Hotel Senior Housing, San Francisco, California, Project Number: 121–EE059/CA39–S941–011.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 18, 2001.

Reason Waived: The privately-owned parking garage over which the project would be built experienced delays while waiting for approval by the San Francisco Fire Marshall.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW.

Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Cedarwood Apartments, Inc., Hayward, Wisconsin, Project Number: 075–EE073/WI39–S981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 19, 2001.

Reason Waived: Additional time was needed for the owner to prepare and HUD to process the firm commitment application in order for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: A.C. Ware Manor, Buffalo, New York, Project Number: 014–EE181/NY06–S981–015.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 19, 2001.

Reason Waived: There was a delay in obtaining clear title from the City of Buffalo.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Hancock Estates, Tiverton, Rhode Island, Project Number: 016–EE029/RI43–S981–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 19, 2001.

Reason Waived: The owner lost the original site and the zoning approval of the second site took an inordinate length of time.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Royale Gardens, Chicago, Illinois, Project Number: 071–EE125/IL06–S961–016 Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 19, 2001.

Reason Waived: The Sponsor/Owner was awaiting approval of sewer permits from the City of Chicago.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Mercy Gardens, San Diego, California, Project Number: 129–HD011/CA33–Q961–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 19, 2001.

Reason Waived: There were numerous delays in achieving a construction start that were beyond the control of the owner.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Fort Washington Adventist Apartments, Fort Washington, Maryland, Project Number: 000–EE045/MD39–S971–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 19, 2001.

Reason Waived: More time was needed to obtain building permits in Prince George's County.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Adda and Paul Safran Senior Housing, Venice, California, Project Number: 122–EE127/CA16–S971–012.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 19, 2001.

Reason Waived: The Project experienced delays in obtaining zoning approval from the City of Los Angeles; the original contractor's bid was approximately two million dollars over budget and the sponsor had to re-bid the job competitively with other contractors; and additional funds had to be requested by the sponsor from the Los Angeles Housing Department.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Sumac Trail Apartments, Rhinelander, Wisconsin, Project Number: 075–HD050/WI39–Q971–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 19, 2001.

Reason Waived: There were delays with the submission of the closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Belfast VOA, Inc., Belfast, Maine, Project Number: 024–EE042/ME36–S981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 19, 2001.

Reason Waived: The Project experienced delays due to local opposition.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Mt. Oliver Senior Apartments, Mt. Oliver Borough,

Pennsylvania, Project Number: 033–EE092/PA28–S981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 23, 2001.

Reason Waived: The owner experienced unanticipated delays in obtaining the necessary local approval to connect the project to the local sanitary sewage system.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Parc, Peoria, Illinois, Project Number: 072–HD106/IL06–Q981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 14, 2001.

Reason Waived: Additional time was needed to review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Olive Manor, Sylmar, California, Project Number: 122–EE138/CA16–S981–007.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: The Project experienced delays due to the lengthy process for the site to be properly zoned.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Shawmee Heights II, Sandwich, Massachusetts, Project Number: 023–EE102/MA06–S981–007.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: Zoning, historic and environmental issues had to be resolved; the sponsor had to seek secondary financing; and a partial mortgage release and evidence of a right of way for the complex had to be obtained from the Department of Agriculture—Rural Development.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Moorestown Consumer Home, Lumberton Township, New Jersey, Project Number: 035–HD038/NJ39–Q971–007.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: The Project was delayed when the local municipality required that lead be abated.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Eden Park/Cccso House, Huntington, West Virginia, Project Number: 045–EE0II/WV15–S981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: The Project was delayed while legal concerns with the site control documents were resolved.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Beacon Housing, Pasadena, California, Project Number: 122–EE137/CA16–S981–006.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: A zoning change amendment had to be obtained from the City of Los Angeles, the original architect had to be replaced, and site options secured at the time of fund reservation development expired and extensions had to be secured.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Ferriday Place, Ferriday, Louisiana, Project Number: 064–EE098/LA48–S981–012.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: It took the sponsor an inordinate amount of time to gather the closing documents and the Field office needed additional time to review the documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Joy Retreat Senior Housing, Inc., Petersburg, West Virginia, Project Number: 045–EE012/WV15–S981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: The Field office was seeking secondary financing to meet a construction shortfall.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Franklin Consumer Home, Franklin, New Jersey, Project Number: 031–HD095/NJ39–Q981–010.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: The Field Office needed additional time to process and issue the firm commitment and to review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Absecon Consumer Home, Absecon, New Jersey, Project Number: 031–HD084/NJ39–Q971–009.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: The owner experienced delays in the submission of the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Access House I, Parsippany-Troy Hills, New Jersey, Project Number: 031–HD078/Q971–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: The Project was delayed due to The Township Building Department's backlog with processing applications for building permits.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Sunshine Village, Slidell, Louisiana, Project Number: 064–HD043/LA48–Q981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: The current city ordinances' requirements resulted in the need to seek additional funding which caused a delay in processing the fund reservation.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Hudson Street Corporation, Syracuse, New York, Project Number: 014–HD080/NY06–Q981–013.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: Weather conditions hindered the owner from achieving a construction start.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: The Diocese of Buffalo, Buffalo, New York, Project Number: 014–HD066/NY06–Q971–013.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: Additional time was needed for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Alexander Apartment of Plant City, Inc., Plant City, Florida, Project Number: 067–HD065/FL29–Q981–012.

Nature of Requirement: HUDs regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: The Project experienced delays due to the city requiring modifications to the plans and specifications.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Inglis Gardens At Evesham, Eatontown, New Jersey, Project Number: 031–HD040/NJ39–Q981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: The lead sponsor withdrew in August 2000, and the existing sponsor had to wait for the Inglis Board of Director's Authority to continue with the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Atlantic County Independent Living Complex, Neptune City, New Jersey, Project Number: 031–HD042/NJ39–Q981–006.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: The Project was delayed due to the discovery of additional items requiring correction and repair which resulted in re-inspection, revision of drawings, re-bidding of the project and revision of the project budget to accommodate the changes.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Monmouth County Independent Living Complex, Scattered Sites-Monmouth County, New Jersey, Project Number: 031–HD091/NJ39–Q981–005.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: February 15, 2001.

Reason Waived: The Project was delayed due to the discovery of additional items requiring correction and repair which resulted in re-inspection, revision of drawings, re-bidding of the project and revision of the project budget to accommodate the changes.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: B'nai B'rith at Chesilhurst House, Boro of Chesilhurst, New Jersey, Project Number: 035–EE029/NJ39–S971–006.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: The owner needed additional time to complete the arrangements for secondary financing and correct certain deficiencies found in the initial closing documents.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: King Hill Apartments, St. Joseph, Missouri, Project Number: 084–EE031/MO16–S981–001.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: All parties involved with the project were unable to meet until January 2001, to fully complete initial closing documents.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: Central Park Senior Residence, Wichita, Kansas, Project Number: 102–EE022/KS16–S981–001.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: Existing restrictive covenants on the original site prohibited housing for the elderly under the Section 202 program and the owner had to locate another site.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: O'Brien Apartments, Springfield, Missouri, Project Number: 084—HD025/MO16–Q981–002.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: Delays were encountered in obtaining city variances and additional funding for the project.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: Carbondale Supportive Housing, Inc., Carbondale, Illinois, Project Number: 072–HD101/IL06–Q971–001.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: There was a change in site, the contractor withdrew from the project and a new contractor was hired which caused the cost of the project to go up.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: TWB Residential Opportunities, Suffolk County, New York, Project Number: 012–HD087/NY36–Q981–008.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: Considerable time was lost in finalizing site control and for the owner's development team to resolve discrepancies in the cost estimate.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: Fall River Residence, Fall River, Massachusetts, Project Number: 023–HD127/MA06–Q971–008.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: The Field Office needed additional time to process the firm commitment application and to prepare for initial closing.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: Volunteers of America, Belfast, Maine, Project Number: 024–EE042/ME36–S981–001.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: The owner had to locate another site due to opposition from the local housing authority and town manager.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: Stanton Accessible Apartments, Stanton, California, Project Number: 143–HD008/CA43–Q981–002.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: The Project was delayed due to a request for a zoning variance to reduce the city's parking requirements.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: Palms Manor, Los Angeles, California, Project Number: 122–HD113/CA16–Q981–005.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Mel Martinez, Secretary.
Date Granted: March 9, 2001.
Reason Waived: It took several months before the owner received their tax exemption number and due to the architectural drawings having to be revised.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: Lime House, Los Angeles, California, Project Number: 122–EE136/CA16–S981–005.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24

months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: The Project had been delayed due to the lengthy processing of a zoning change by the city.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Helms Manor, Los Angeles, California, Project Number: 122–HD115/CA16–Q981–007.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: It took several months before the owner received their tax exemption number and due to the architectural drawings having to be revised.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: McFarland Apartments, Las Vegas, Nevada, Project Number: 125–EE110/NV39–S981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: The sponsors of the proposed project had to identify and gain control of two replacement sites before they were able to proceed with the development.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Gibson Court, Ukiah, Mendocino County, California, Project Number: 121–HD068/CA39–Q981–005.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: Delays were caused by the division of the site to accommodate an additional project funded by the State of California home funds and deficiencies needed to be corrected in the sponsor's firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Ray Rawson Villa, Las Vegas, Nevada, Project Number: 125–HD064/NV25–Q971–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: Delays were caused by the difficulty in retaining qualified contractors due to the construction boom in the city.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Westminster Senior Housing, Los Angeles, California, Project Number: 122–EE143/CA16–Q981–012.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: The Project had been delayed due to the lengthy process to have the project site released from The Los Angeles Unified School District's Official list of sites to build several continuation schools in Los Angeles and several design changes requested by The City of Los Angeles Housing Department.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Allen House, Los Angeles, California, Project Number: 122–HD110/CA16–Q981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: The subject project experienced delays in achieving a construction start due to the lengthy process that was incurred in receiving IRS tax exemption, errors in the title report, and the process to obtain additional funding from the city of industry.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Casa De Paz Apartments, Los Angeles, California, Project Number: 122–HHD116/CA16–Q981–009.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: A new contractor had to be hired because the initial contractor withdrew, the plans had to be revised because the project was over budget, and lengthy county and city council procedures had to be followed in order to acquire additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Vista Alegre, Glendale, Arizona, Project Number: 123–EE065/AZ20–S981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: The Project had been delayed because it took the sponsor/owner over a year to obtain the abandonment of a dry well which was located on the site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Corbin House, Northridge, California, Project Number: 122–HD114/CA16–Q981–006.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Mel Martinez, Secretary.

Date Granted: March 9, 2001.

Reason Waived: Delays were caused by administrative changes in the project sponsor, the hiring of a new and more responsive architect, and the city required additional drawings from a structural engineer.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone: (202) 708–3000.

III. Regulatory Waivers Granted by the Office of Multifamily Housing Assistance Restructuring (OMHAR)

For further information about the following waiver actions, please see the name of the contact person which immediately follows the description of the waiver granted.

- Regulation: 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No. and project name		State
11435250	Bay Breeze Apartments ..	TX
06335180	Briarwood Apartments Phase II	FL
06335009	Cleveland Arms Apartments	FL
06135254	Columbus Villas	GA
06335151	Jacksonville Townhouse	FL
09135027	Lakota Community Homes, Inc	SD
12735282	Meridian Manor Apartments	WA
07535269	Metro Homes	WI
08335248	Royal Arms Apartments ..	KY
06535236	Ruleville Apartments	MS
04335191	Staunton Commons II	OH
04335168	Windsor Place	OH

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: February 16, 2001.

Reasons Waived: The attached list of projects were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

Regulation: 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No. and project name		State
08335242	Greater Corbin Manor	KY
08444138	Sunflower Park Apartments	KS

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: March 6, 2001.

Reasons Waived: The attached list of projects were not assigned to the participating agent entities in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

- Regulation: 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No. and project name		State
09335085	Broadview Manor	MT
01257038	Crotona VII	NY
02335131	Hotel Raymond Apartments	MA
01257031	Hunts Points Peninsula ...	NY
07535249	La Corona Apartments	WI
01257032	New West 111th Street Phase I	NY
05435347	Orangeburg Manor Apartments	SC
02335135	Sycamore House	MA
04635470	Tamarind Square	OH
01635015	Vulcan Apts.	RI
02344184	Walnut Street Apartments	MA

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: March 19, 2001.

Reasons Waived: The attached list of projects were not assigned to the participating agent entities in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

IV. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following waiver actions, please see the name of the contact person which immediately follows the description of the waiver granted.

- Regulation: 24 CFR 982.306(d).

Project/Activity: Lowell Housing Authority, Lowell, Massachusetts, housing choice voucher program.

Nature of Requirement: The regulation limits the circumstances under which a public housing agency PHA may approve the leasing of a unit if the owner of the unit is a close relative of the family.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: January 11, 2001.

Reason Waived: Approval of the waiver permitted a voucher holder to lease a unit from a relative because of the unavailability of suitable vacant rental housing in the PHA's jurisdiction.

Contact: Gerald Benoit, Director Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone (202) 708–0970.

- Regulation: 24 CFR 983.4(a)(2), 983.51, 983.55(a), (c) or (d), and 983.56.

Project/Activity: Dallas Housing Authority (DHA), Dallas, Texas, project based certificate program.

Nature of Requirement: The regulations address the competitive selection of owner proposals for the project based certificate program.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: January 9, 2001.

Reason Waived: Approval of the waiver allowed the DHA to comply with a court decree to develop 100 elderly only, project-based certificate units as a part of the Revitalization Plan of the Roseland Homes public housing development.

Contact: Gerald Benoit, Director Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone (202) 708–0970.

- Regulation: 24 CFR 983.51(b).

Project/Activity: Massachusetts Department of Housing and Community Development (DHCD), Boston, Massachusetts, project-based voucher program.

Nature of Requirement: The regulation provides that there be a 30-day advertising period.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: January 19, 2001.

Reason Waived: Approval of the waiver would assure that at least 100 units developed with tax credits and other State-supported private housing funds would be available to housing choice voucher holders.

Contact: Gerald Benoit, Director Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone (202) 708–0970.

- Regulation: 24 CFR 983.51 (a), (b), and (d), 983.55(a) and (d).

Project/Activity: New Haven Housing Authority (NHHA), New Haven, Connecticut, project-based voucher program. A request was made for a waiver of the competitive selection of owner proposals to allow The Community Builders, Inc. (TCB), in partnership with the City of New Haven, and NHHA to participate in a major revitalization in the Hill neighborhood of New Haven. TCB, in conjunction with the City, has agreed to acquire the 301-unit Church Street South project from HUD. TCB will demolish the project to develop replacement housing consisting of 120 units of multifamily housing and 100 duplex units.

Nature of Requirement: The regulations provide that a public housing agency provide for a competitive selection of owner proposals and that applications be in compliance with the PHA's written selection policy and procedures for new construction.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: January 19, 2001.

Reason Waived: Approval of the waivers will permit the development of 100 duplex units that will be sold to low and moderate income families who will occupy one unit in each duplex and the remaining unit will be leased to a family with assistance under the project-based voucher program. The approval also supports the revitalization efforts of the Hill neighborhood, that is located in the New Haven Empowerment Zone.

Contact: Gerald Benoit, Director Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone (202) 708–0970.

- Regulation: 24 CFR 983.7(b)(1) and 983.101(a).

Project/Activity: San Francisco Housing Authority (SFHA), San Francisco, California, project-based assistance.

Nature of Requirement: The regulations require that the agreement to enter into housing assistance payment contract, (AHAP) must be executed before the start of any new construction.

Granted By: Gloria J. Cousar, Acting General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 13, 2001.

Reason Waived: Approval of the waivers will provide 31 units of additional affordable housing for low income families in the tight San Francisco rental market.

Contact: Gerald Benoit, Director Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone (202) 708–0970.

- Regulation: 24 CFR 983.51(a), (b) and (c).

Project/Activity: District of Columbia Housing Authority (DCHA), Washington, D.C. project-based certificate (PBC) program.

Nature of Requirement: The regulations require a PHA to select units to be subsidized with PBC assistance in accordance with a written, HUD-approved unit selection policy and prescribe certain advertising procedures that must be followed. In addition, the regulation requires that the PHA's written selection policy identify the factors the PHA will use to rank and select applications, etc.

Granted By: Gloria J. Cousar, Acting General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 29, 2001.

Reason Waived: Approvals of these waivers will permit the DCHA to provide project-based subsidies for 38 one-bedroom units to be redeveloped at Edgewood Terrace III. Approval of these waivers will also help to preserve 200 units of subsidized housing for low income seniors in the District of Columbia at a time of rapidly rising housing costs and a critical shortage of affordable housing.

Contact: Gerald Benoit, Director Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone (202) 708–0970.

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Part V

Department of Housing and Urban Development

Notice of Funding Availability: Family Unification Program, Fiscal Year 2001

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Docket No. FR–4675–N–01]

Notice of Funding Availability; Family Unification Program, Fiscal Year 2001

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: Purpose of the Program: The purpose of the Family Unification Program (FUP) is to (1) promote family unification by providing housing choice vouchers to families for whom the lack of adequate housing is a primary factor in the separation, or the threat of imminent separation, of children from their families, and (2) provide housing choice vouchers to youths 18 to 21 years old who left foster care at age 16 or older and lack adequate housing. This second category of eligible participants for FUP vouchers has been added to this NOFA as a result of an amendment by Congress in FY 2001 to Section 8(x)(2) of the U.S. Housing Act of 1937.

Available Funds. The $11,466,000 in one-year budget authority available under this NOFA will support approximately 2,000 housing choice vouchers. Approximately $6.4 million of these funds have been used to fund the approvable Family Unification Program applications submitted by public housing agencies (PHAs) in response to HUD's FY 2000 Family Unification NOFA. That NOFA indicated in section II(C)(3) that "PHAs with approvable applications that are not funded, in whole or in part due to insufficient funds available under this FUP NOFA, shall be funded first in FY 2001 provided HUD receives additional appropriations for FUP for FY 2001." The 12 previously unfunded FY 2000 FUP applications that have been funded are: City of Fresno, California Housing Authority—$475,814 for 100 vouchers; Broward County, Florida Housing Authority—$667,841 for 100 vouchers; Orlando, Florida Housing Authority—$519,884 for 100 vouchers; Guam Housing and Urban Renewal Authority—$934,691 for 100 vouchers; Chicago, Illinois Housing Authority—$742,170 for 100 vouchers; Springfield, Massachusetts Housing Authority—$527,255 for 100 vouchers; New York State Division of Housing and Community Renewal—$155,503 for 40 vouchers; Housing Authority of Winston-Salem, North Carolina—$388,758 for 100 vouchers; Cuyahoga, Ohio Metropolitan Housing Authority—$513,273 for 100 vouchers; Central Oregon Regional Housing Authority—$364,503 for 75 vouchers; Housing Authority of the County of King, Washington—$716,572 for 100 vouchers; and Huntington, West Virginia Housing Authority—$386,126 for 100 vouchers.

After funding these previously unfunded approvable FUP applications from FY 2000, there remains approximately $5.1 million under this NOFA to fund approximately 900 vouchers for new applications in FY 2001. The $5.1 million will be used to fund applications for FUP vouchers which can be used for either FUP-eligible families or FUP-eligible youths. (See section II(C)(1) of this NOFA).

Funding under this NOFA may only be used to provide tenant-based housing assistance, as prescribed by section 8(x) of the U.S. Housing Act of 1937, so as to allow FUP-eligible families and FUP-eligible youths a choice in their selection of decent, safe, and affordable units on the private market.

Eligible Applicants. Public Housing Agencies (PHAs). Indian Housing Authorities, Indian tribes and their tribally designated housing entities are not eligible. The Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new housing choice voucher annual contributions contracts (ACC) with IHAs after September 30, 1997.

Application Deadline. August 10, 2001.

Match. None

SUPPLEMENTARY INFORMATION: If you are interested in applying for funding under the Family Unification Program, please read the balance of this NOFA which will provide you with detailed information regarding the submission of an application, Family Unification Program requirements, the process to be used in selecting applications for funding, and other valuable information relative to a PHA's participation in the Family Unification Program.

I. Application Due Date, Application Kits, Further Information and Technical Assistance

Application Due Date. Your completed application (an original and one copy) is due on or before August 10, 2001, at the address shown below. This application deadline is firm. In the interest of fairness to all competing PHAs, HUD will not consider any application that is received after the application deadline. Applicants should take this practice into account and submit their applications early to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

Address for Submitting Applications. Submit your original application and one copy, and a form HUD–2993, Acknowledgment of Application Receipt, to: Michael E. Diggs, Director of the Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW, Suite 800, Washington, D.C. 20024.

The Grants Management Center is the official place of receipt for all applications in response to this NOFA. A copy of your application is not required to be submitted to the local HUD Field Office. For ease of reference, the term "local HUD Field Office" will be used in this NOFA to mean the local HUD Field Office Hub and local HUD Field Office Program Center.

Hand Carried Applications. If you are hand delivering your application, your application is due no later than 8:45 am to 5 pm, Eastern time, on the application due date to the Office of Public and Indian Housing's Grants Management Center (GMC) in Washington, DC.

Mailed Applications. Applications sent by U.S. mail will be considered timely filed if postmarked on or before 12:00 midnight on the application due date and received on or within ten (10) days of that date at the GMC.

Applications Sent by Overnight/ Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received by the GMC before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

For Application Kit. An application kit is not necessary for submitting an application in response to this NOFA. This NOFA contains all the information necessary for the submission of your application for voucher funding under the FUP.

For Further Information and Technical Assistance. Prior to the application due date, you may contact George C. Hendrickson, Housing Program Specialist, Room 4216, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1872, ext. 4064. Subsequent to application submission, you may contact the GMC at (202) 358–0312, ext. 7675. (These are not toll-free numbers.) Persons with hearing or speech

impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

II. Authority, Purpose, Amount Allocated (Available Funds/Maximum Voucher Request/Lottery), Underfunding Corrections, Unfunded Approvable Applications, Voucher Funding and Eligible Applicants

(A) Authority

The Family Unification Program is authorized by section 8(x) of the United States Housing Act of 1937 (42 U.S.C. 1437(X)). The Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, FY 2001 (Pub. L. 106–377, approved October 27, 2000), referred to in this NOFA as the FY 2001 HUD Appropriations Act, provides funding for the Family Unification Program.

(B) Purpose

The Family Unification Program is a program under which housing choice vouchers are provided to:

(1) Families for whom the lack of adequate housing is a primary factor in:

(a) The imminent placement of the family's child, or children, in out-of-home care; or

(b) The delay in the discharge of the child, or children, to the family from out-of-home care.

(2) Youths at least 18 years old and not more than 21 years old (have not reached 22nd birthday) who left foster care at age 16 or older and who do not have adequate housing. A FUP voucher issued to such a youth may only be used to provide housing assistance for the youth for a maximum of 18 months.

Vouchers awarded under the Family Unification Program are administered by PHAs under HUD's regulations for the Housing Choice Voucher Program (24 CFR part 982).

(C) Amount Allocated

(1) *Available Funds.* This NOFA announces the availability of approximately $5.1 million for new FY 2001 applications for the Family Unification Program which will provide assistance for about 900 FUP-eligible families and FUP-eligible youths. The $5.1 million will be used to fund applications for vouchers which can be used by PHAs for families for whom the lack of adequate housing is a primary actor in the separation, or the threat of imminent separation, of children from their families; and/or youths 18 to 21 years old who left foster care at age 16 or older and who lack adequate housing.

(2) *Maximum Voucher Request.* The total number of vouchers a PHA may apply for will be based upon the size of the PHA. PHAs with a housing choice voucher and certificate program of 2000 or more units under an ACC may apply for funding for a maximum of 100 units. PHAs with a housing choice voucher and certificate program of 500 units to 1999 units may apply for 50 units. PHAs with a housing choice voucher or certificate program of less than 500 units under an ACC may apply for a maximum of 25 units. PHAs not currently administering either a housing choice voucher or certificate program may apply for a maximum of 25 units.

(3) *Lottery.* A national lottery will be conducted to select approvable applications for funding if approvable applications are submitted in FY 2001 for more funding than is available under this NOFA. (See section IV(C) of this NOFA regarding the lottery procedures to be followed in the funding of approvable applications.)

(D) Underfunding Corrections

If prior to the award of FY 2001 FUP funding, HUD determines that any awardees under the FY 2000 Family Unification Program NOFA have been underfunded due to an error attributable to HUD, HUD will increase funding to the amount the awardee should have received. Funding of any such FY 2000 awardees will be dependent upon the availability of FY 2001 FUP funds.

(E) Unfunded Approvable Applications

PHAs with approvable applications that are not funded, in whole or in part, due to insufficient funds available under this FUP NOFA, shall be funded first in FY 2002 provided HUD receives additional appropriations for FUP for FY 2002.

(F) Voucher Funding

(1) *Determination of Funding Amount for the PHA's Requested Number of Vouchers.* HUD will determine the amount of funding that a PHA will be awarded under this NOFA based upon an actual annual per unit cost (except that for Moving to Work (MTW) agencies the per unit cost will be calculated in accordance with the agency's MTW Agreement) using the following three step process:

(a) HUD will extract the total expenditures for all the PHA's housing choice voucher and certificate programs and the unit months leased information from the most recent approved year end statement (form HUD–52681) that the PHA has filed with HUD. HUD will divide the total expenditures for all of the PHA's housing choice voucher and certificate programs by the unit months leased to derive an average monthly per unit cost.

(b) HUD will multiply the average monthly per unit cost by 12 (months) to obtain an average annual per unit cost.

(c) HUD will multiply the average annual per unit cost derived under paragraph (b) above by the Contract Rent Annual Adjustment Factor (with the highest cost utility included) to generate an adjusted annual per unit cost. For a PHA whose jurisdiction spans multiple annual adjustment factor areas, HUD will use the highest applicable annual adjustment factor.

(Note: Applicants who do not currently administer a housing choice voucher or certificate program shall have their voucher funding based upon the actual annual per unit costs of the PHA in the most immediate area administering a housing choice voucher or certificate program, using the three step process described immediately above.)

(2) *Preliminary Fee.* A preliminary fee of up to $500 per unit for preliminary (start-up) expenses will be paid to PHAs that have not previously administered their own housing choice voucher or certificate program and that are selected for funding under this NOFA. The preliminary fee will be provided to such PHAs only in their first year of administration of the housing choice voucher program.

(G) Eligible Applicants

Any PHA established pursuant to State law, including regional (multi-county) or State PHAs, may apply for funding under this NOFA. A PHA may submit only one application under this NOFA. This one application per PHA limit applies regardless of whether the PHA is a State or regional PHA, except in those instances where such a PHA has more than one PHA code number due to its operating under the jurisdiction of more than one HUD Field Office. In such instance, a separate application under each code shall be considered for funding with the cumulative total of vouchers applied for under the applications not to exceed the maximum number of vouchers the PHA is eligible to apply for under section II(C)(1) of this NOFA; *i.e.*, no more than the number of vouchers the same PHA would be eligible to apply for if it had only one PHA code number.

Two or more divisions within State government comprising separate PHAs shall require the State to determine which division shall submit an application to HUD under this funding announcement. As with other PHAs, only one application per PHA shall be

considered (see sole exception referenced immediately above).

A contract administrator that does not have an annual contributions contract (ACC) with HUD for housing choice vouchers or certificates, but constitutes a PHA under 24 CFR 791.102 by reason of its administering housing choice vouchers or certificates on behalf of another PHA, shall not be eligible to submit an application under this NOFA.

Indian Housing Authorities (IHA), Indian tribes and their tribally designated housing entities are not eligible to apply because the Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new housing choice voucher annual contributions contracts (ACC) with IHAs after September 30, 1997.

Some PHAs currently administering the housing choice voucher and certificate programs have, at the time of publication of this NOFA, major program management findings from Inspector General audits, HUD management reviews, or Independent Public Accountant (IPA) audits that are open and unresolved or other significant program compliance problems. HUD will not accept applications for additional funding from these PHAs as contract administrators if, on the application deadline date, the findings are either not closed, or sufficient progress toward closing the findings has not been made to HUD's satisfaction. The PHA must also, to HUD's satisfaction, be making satisfactory progress in addressing any program compliance problems. If any of these PHAs want to apply for the Family Unification Program, the PHA must submit an application that designates another housing agency, nonprofit agency, or contractor that is acceptable to HUD. The PHA application must include an agreement by the other housing agency or contractor to administer the program for the new funding increment on behalf of the PHA and a statement that outlines the steps the PHA is taking to resolve the program findings and program compliance problems. Immediately after the publication of this NOFA, the Office of Public Housing in the local HUD Office will notify, in writing, those PHAs that are not eligible to apply because of outstanding management or compliance problems. Concurrently, the local HUD Field Office will provide a copy of each such written notification to the GMC. The PHA may appeal the decision if HUD has mistakenly classified the PHA as having outstanding management or compliance problems. Any appeal must be accompanied by conclusive evidence of HUD's error (i.e., documentation showing that the finding has been cleared or satisfactory progress toward closing the findings or addressing compliance problems has been made) and must be received prior to the application deadline. The appeal should be submitted to the local HUD Field Office where a final determination shall be made. Concurrently, the local HUD Field Office shall provide the GMC with a copy of its written response to the appeal, along with a copy of the PHA's written appeal. Major program management findings or program compliance problems are those that would cast doubt on the capacity of the PHA to effectively administer any new housing choice voucher funding in accordance with applicable regulatory and statutory requirements.

III. General Requirements and Requirements Specific To The Family Unification Program

(A) General Requirements

(1) Compliance With Fair Housing and Civil Rights Laws

All applicants must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If an applicant: (a) has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, the applicant's application will not be evaluated under this NOFA if, prior to the application deadline, the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether the appropriate actions have been taken necessary to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(2) Additional Nondiscrimination Requirements

In addition to compliance with the civil rights requirements listed at 24 CFR 5.105(a), each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), the Equal Pay Act (29 U.S.C. 206(d), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*), Title IX of the Education Amendments Act of 1972, and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(3) Affirmatively Furthering Fair Housing. Each successful applicant will have a duty to affirmatively further fair housing. Applicants will be required to identify the specific steps that they will take to:

(a) Examine the PHA's own programs or proposed programs, including an identification of any impediments to fair housing {identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice in its Consolidated Plan}; develop a plan to (i) address those impediments in a reasonable fashion in view of the resources available; and (ii) work with the local jurisdictions to implement any of the jurisdictions' initiatives to affirmatively further fair housing; and maintain records reflecting this analysis and actions.

(b) Remedy discrimination in housing; or

(c) Promote fair housing rights and fair housing choice.

Further, applicants have a duty to carry out the specific activities cited in their responses under this announcement to address affirmatively furthering fair housing.

(4) *Certifications and Assurances.* Each applicant is required to submit signed copies of Assurances and Certifications. The standard Assurances and Certifications are on Form HUD–52515, Funding Application, which includes the Equal Opportunity Certification, Certification Regarding Lobbying, and Certification Regarding Drug-Free Workplace Requirements.

(B) Requirements Specific to the Family Unification Program

(1) Eligibility

(a) *Family Unification Program eligible families and youths.* Each PHA must modify its selection preference system to permit the selection of those FUP-eligible families and/or FUP-eligible youths to which the PHA intends to issue FUP vouchers with available funding provided by HUD for this purpose. The terms "FUP-eligible family" and "FUP-eligible youth" are defined as follows:

(i) A FUP-eligible family is a family that the public child welfare agency has certified is a family for whom the lack of adequate housing is a primary factor in the imminent placement of the

family's child, or children, in out-of-home care, or in the delay of discharge of a child, or children, to the family from out-of-home care, and that the PHA has determined is eligible for a housing choice voucher.

(ii) A FUP-eligible youth is a youth that the public child welfare agency has certified is a youth at least 18 years old and not more than 21 years old (has not reached his/her 22nd birthday) who left foster care at age 16 or older and who does not have adequate housing, and that the PHA has determined is eligible for a housing choice voucher. (A FUP voucher issued to such a youth must not, by statute, be used to provide housing assistance for more than 18 months.)

(b) *Lack of Adequate Housing.* The lack of adequate housing means:

(i) A family or youth is living in substandard or dilapidated housing; or

(ii) A family or youth is homeless; or

(iii) A family or youth is displaced by domestic violence; or

(iv) A family or youth is living in an overcrowded unit; or

(v) A family or youth is living in housing not accessible to its disabled child or children due to the nature of the disability.

(c) *Substandard Housing.* A family or youth is living in substandard housing if the unit where the family or youth lives:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family or youth;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family or youth;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit or of government.

(d) *Dilapidated Housing.* A family or youth is living in a housing unit that is dilapidated if the unit where the family or youth lives does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family or youth, or the unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may result from original construction, from continued neglect or lack of repair or from serious damage to the structure.

(e) *Homeless.* A homeless family includes any person (including a youth) or family that:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

—A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

—An institution that provides a temporary residence for persons intended to be institutionalized; or

—A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(f) *Displaced by Domestic Violence.* A family or youth is displaced by domestic violence if:

(i) The applicant has vacated a housing unit because of domestic violence; or

(ii) The applicant lives in a housing unit with a person who engages in domestic violence.

(iii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant by a spouse or other member of the applicant's household.

(g) *Involuntarily Displaced.* For a family or youth to qualify as involuntarily displaced because of domestic violence:

(i) The PHA must determine that the domestic violence occurred recently or is of a continuing nature; and

(ii) The applicant must certify that the person who engaged in such violence will not reside with the family or youth unless the PHA has given advance written approval. If the family or youth is admitted, the PHA may terminate assistance to the family or youth for breach of this certification.

(h) *Living in Overcrowded Housing.* A family or youth is considered to be living in an overcrowded unit if it meets the following separate criteria for a family or youth as follows:

(i) The family is separated from its child (or children) and the parent(s) are living in an otherwise standard housing unit, but, after the family is re-united, the parents' housing unit would be overcrowded for the entire family and would be considered substandard; or

(ii) The family is living with its child (or children) in a unit that is overcrowded for the entire family and this overcrowded condition may result in the imminent placement of its child (or children) in out-of-home care.

(iii) The youth is living in a unit that is overcrowded.

For purposes of this paragraph (h), the PHA may determine whether the unit is "overcrowded" in accordance with PHA subsidy standards.

(i) *Detained Family Member.* A FUP-eligible family or FUP-eligible youth's family may not include any person imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(j) *Public child welfare agency (PCWA).* PCWA means the public agency that is responsible under applicable State law for determining that a child is at imminent risk of placement in out-of-home care or that a child in out-of-home care under the supervision of the public agency may be returned to his or her family, or that a youth left foster care at age 16 or older and is at least 18 years old and not more than 21 years old.

(2) PHA Responsibilities

PHAs must:

(a) Accept families and youths certified by the PCWA as eligible for the Family Unification Program. The PHA, upon receipt of the PCWA list of families and youths currently in the PCWA caseload, must compare the names with those of families and youths already on the PHA's housing choice voucher waiting list. Any family or youth on the PHA's housing choice voucher waiting list that matches with the PCWA's list must be assisted in order of their position on the waiting list in accordance with PHA admission policies. Any family or youth certified by the PCWA as eligible and not on the housing choice voucher waiting list must be placed on the waiting list. If the PHA has a closed housing choice voucher waiting list, it must reopen the waiting list to accept a Family Unification Program applicant family or youth who is not currently on the PHA's housing choice voucher waiting list;

(b) Determine if any families with children, or youths age 18 through 21 on its housing choice voucher waiting list are living in temporary shelters or on the street and may qualify for the Family Unification Program, and refer such applicants to the PCWA;

(c) Determine if families with children, or youths age 18 through 21 referred by the PCWA are eligible for housing choice voucher assistance and place eligible families/youths on the housing choice voucher waiting list;

(d) Amend the administrative plan in accordance with applicable program regulations and requirements;

(e) Administer the vouchers in accordance with applicable program regulations and requirements;

(f) Assure the quality of the evaluation that HUD intends to conduct on the Family Unification Program and cooperate with and provide requested data to the HUD office or HUD-approved contractor responsible for program evaluation; and

(g) Comply with the actions to be taken by the PHA as specified in the memorandum of understanding (MOU) executed by the PHA and the PCWA. {See paragraph IV (B)(3) regarding the MOU.}

(3) Public Child Welfare Agency (PCWA) Responsibilities

A public child welfare agency that has agreed to participate in the Family Unification Program must:

(a) Establish and implement a system to identify FUP-eligible families and FUP-eligible youths within the agency's caseload and to review referrals from the PHA;

(b) Provide written certification to the PHA that a family qualifies as a FUP-eligible family, or that a youth qualifies as a FUP-eligible youth, based upon the criteria established in section 8(x) of the United States Housing Act of 1937, and this notice;

(c) Commit sufficient staff resources to ensure that eligible families and youths are identified and determined eligible in a timely manner and to provide follow-up supportive services after these families and youths lease units;

(d) Cooperate with the evaluation that HUD intends to conduct on the Family Unification Program, and submit a certification with the PHA's application for Family Unification funding indicating that the PCWA will agree to cooperate with and provide requested data to the HUD office or HUD-approved contractor having responsibility for program evaluation; and

(e) Comply with the actions to be taken by the PCWA as specified in the memorandum of understanding (MOU) executed between the PCWA and the PHA. {See section IV(B)(3) regarding the MOU.}

(4) Housing Choice Voucher Assistance

The Family Unification Program provides funding for housing assistance under the Housing Choice Voucher Program. PHAs must administer this program in accordance with HUD's regulations governing the Housing Choice Voucher Program.

(5) Turnover

If a voucher issued to a FUP-eligible family or FUP-eligible youth under this program is terminated, the voucher must be reissued to either another FUP-eligible family or FUP-eligible youth. FUP vouchers must continue to be issued to such families and youths for 5 years from the initial date of execution of the Annual Contributions Contract subject to the availability of renewal funding. Since the vouchers funded under the FUP are for use by PHAs for either FUP-eligible families or FUP-eligible youths and are not designated by the PHA in its application (or HUD in the award of FUP funding), as being only for FUP-eligible families and/or FUP-eligible youths, FUP vouchers may be used by PHAs for such families and youths based upon local needs and as is consistent with the PHA's administrative plan.

A FUP voucher issued to a youth age 18 to 21 may not be used to provide housing assistance for that youth for a period of more than 18 months, as per the statutory requirements of Section 8(x)(2) of the U.S. Housing Act of 1937, as amended.

IV. Application Selection Process For Funding

(A) Rating and Ranking

HUD's Grants Management Center is responsible for rating the applications under the selection criteria in this NOFA, and is responsible for the selection of FY 2001 applications that will receive consideration for assistance under the Family Unification Program. The Grants Management Center will initially screen all applications and determine any technical deficiencies based on the application submission requirements.

Each application submitted in response to this NOFA, in order to be eligible for funding, must receive at least 20 points for Threshold Criterion 2, Efforts of PHA to Provide Area-Wide Housing Opportunities for Families. Each application must also meet the requirements for Threshold Criterion 1, Unmet Housing Needs; Threshold Criterion 3, Memorandum of Understanding (MOU)—Coordination between PHA and Public Child Welfare Agency to Identify and Assist FUP-Eligible Families and FUP-Eligible Youths; and Threshold Criterion 4, Public Child Welfare Agency Statement of Need for Family Unification Program.

(B) Threshold Criteria

(1) Threshold Criterion 1: Unmet Housing Needs

This criterion requires the PHA to demonstrate the need for an equal or greater number of housing choice vouchers than it is requesting under this NOFA. The PHA must assess and document the unmet housing need for its geographic jurisdiction of: (a) families for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child or children in out-of-home care, or in a delay of discharge of a child or children to the family from out-of-home care, and/or (b) youths at least 18 years old and not more than 21 years old (have not reached his/her 22nd birthday) who left foster care at age 16 or older and who do not have adequate housing. The results of the assessment must include a comparison of the estimated unmet housing needs of such families and youths to the Consolidated Plan covering the PHA's jurisdiction. The demonstration of need and comparison to the Consolidated plan should be based on those FUP-eligible families, and/or FUP-eligible youths that the PHA is basing its voucher request upon and to which it intends to issue FUP vouchers.

(2) Threshold Criterion 2: Efforts of PHA to Provide Area-Wide Housing Opportunities for Families (50 Points)

(a) *Description:* Many PHAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. The efforts described in response to this criterion must be beyond those required by federal law or regulation such as the portability provisions of the Housing Choice Voucher Program.

(b) *Rating and Assessment:* The Grants Management Center will assign 10 points for any of the following assessments for which the PHA qualifies and add the points for all the assessments (maximum of 50 points) to determine the total points for this criterion:

(i) 10 points—Assign 10 points if the PHA documents that it either absorbs all portable housing choice voucher families, or participates in an area-wide exchange program where all PHAs absorb portable housing choice voucher families.

(ii) 10 Points—Assign 10 points if the PHA documents that PHA staff will provide housing counseling for families that want to move to low-poverty or non-minority areas, or if the PHA has established a contractual relationship with a nonprofit agency or a local governmental entity to provide housing counseling for families that want to move to low-poverty or non-minority areas. The five PHAs approved for the FY 1993 Moving to Opportunity (MTO) for Fair Housing Demonstration and any other PHAs that receive counseling funds from HUD (e.g., in settlement of litigation involving desegregation or demolition of public housing, regional

opportunity counseling, or mixed population projects) may qualify for points under this assessment, but these PHAs must identify all activities undertaken, other than those funded by HUD, to expand housing opportunities.

(iii) 10 Points—Assign 10 points if the PHA documents that it participates with other PHAs in using a metropolitan wide or combined waiting list for selecting participants for the housing choice voucher program.

(iv) 10 Points—Assign 10 points if the PHA documents that it has implemented other initiatives that have resulted in expanding housing opportunities in areas that do not have undue concentrations of poverty or minority families.

(v) 10 Points—Assign 10 points if the PHA is using housing choice vouchers or certificates (not part of a previously HUD-approved FUP) to create a FUP or to expand upon its existing FUP.

(3) Threshold Criterion 3: Memorandum of Understanding (MOU)—Coordination Between PHA and Public Child Welfare Agency to Identify and Assist FUP-Eligible Families and FUP-Eligible Youths

The application must include an MOU, executed by the chief executive officer of the PHA and the PCWA, identifying the actions that the PHA and the PCWA will take to identify and assist FUP-eligible families and/or FUP-eligible youths, and the resources that each organization will commit to the FUP. *The MOU must clearly address, at a minimum, the following:*

(a) PHA responsibilities as outlined in paragraph III.(B)(2) of this NOFA.

(b) PCWA responsibilities as outlined in paragraph III.(B)(3) of this NOFA.

(c) The assistance the PCWA will provide to families and youths, as appropriate, in locating housing units.

(d) The PCWA's past experience in administering a similar program.

(e) Past PCWA and PHA cooperation in administering a similar program.

(f) If the PHA intends to issue FUP vouchers to FUP-eligible youths, the services to be provided to such youths by the PCWA, or by another agency/organization under agreement/contract to the PCWA to provide the services, which at a minimum must include the following for a period of not less than the 18 months a FUP-eligible youth is receiving rental assistance through the use of a FUP voucher:

(i) Basic life skills information/counseling on money management, use of credit, housekeeping, proper nutrition/meal preparation; and access to health care (e.g., doctors, medication, and mental and behavioral health services).

(ii) Counseling on compliance with rental lease requirements and with housing choice voucher program participant requirements, including assistance/referrals for assistance on security deposits, utility hook-up fees, and utility deposits.

(iii) Providing such assurances to owners of rental property as are reasonable and necessary to assist a FUP-eligible youth to rent a unit with a FUP voucher.

(iv) Job preparation and attainment counseling (where to look/how to apply, dress, grooming, relationships with supervisory personnel, etc.).

(v) Educational and career advancement counseling regarding attainment of general equivalency diploma (GED); attendance/financing of education at technical school, trade school or college; including successful work ethic and attitude models.

(vi) Participation of FUP-eligible youths in the assessment and implementation of actions to address their needs, including the development of an individual case plan on each youth for services to be received and the youth's commitment to the plan (youth required to sign a service plan agreeing to attend counseling/training sessions and to take other actions as deemed appropriate to the youth's successful transition from foster care). Note: A youth's failure to fulfill their obligations under the service plan is not grounds to terminate the youth from the housing choice voucher program.

The MOU shall be considered by HUD and the signatories (the PCWA and the PHA) as a binding agreement. As such, the document should be very specific. For instance, the PCWA must clearly indicate the amount of time and staff resources the PCWA will commit on a continuing basis to identifying the FUP-eligible families and/or FUP-eligible youths to which FUP vouchers are intended to be issued; the length of time it will provide follow-up support services to these FUP-eligible families and/or FUP-eligible youths after they receive their vouchers; etc. An MOU that does not contain the information required in this Threshold Criterion 3 will be deemed unacceptable and thereby the PHA's application for the Family Unification Program shall be determined to be unacceptable for funding.

(4) Threshold Criterion 4: Public Child Welfare Agency Statement of Need for Family Unification Program

The application must include a statement by the PCWA describing the need in the area to be served for a program providing assistance to (a) families for whom lack of adequate housing is a primary factor in the placement of the family's children in out-of-home care or in the delay of discharge of the children to the family from out-of-home care, and/or (b) youths age 18 to 21 who left foster care at age 16 or older and who lack adequate housing, as evidenced by the caseload of the public child welfare agency. The PCWA must adequately demonstrate that there is a need in the PHA's jurisdiction for the Family Unification Program that is not being met through existing programs by indicating the number of FUP-eligible families who currently have children in danger of being placed in out-of-home or who cannot be returned from out-of-home care due to inadequate housing, and/or the number of youths at least 18 years old but not more than 21 years old (have not yet reached their 22nd birthday) who left foster care at age 16 or older and who do not have adequate housing. The narrative must include specific information relevant to the area to be served, about homelessness, family violence resulting in involuntary displacement, number and characteristics of families who are experiencing the placement of children in out-of-home care or the delayed discharge of children from out-of-home care as the result of inadequate housing, and/or the number and characteristics of youths age 18 through 21 released from foster care at age 16 or older who do not have adequate housing, and the PCWA's past experience in obtaining housing through HUD assisted programs and other sources for families and youths lacking adequate housing.

The PCWA's statement of need should be based solely on those types of eligible FUP voucher participants; i.e., FUP-eligible families and/or FUP-eligible youths to which the PHA may issue FUP vouchers.

(C) Funding FY 2001 Applications

After the Grants Management Center has screened PHA applications and disapproved any applications unacceptable for further processing (see section VI(B) of this NOFA), the Grants Management Center will review and rate all approvable applications under section V, Application Submission Requirements, of this NOFA.

The Grants Management Center will select eligible PHAs to be funded based on a lottery in the event approvable applications submitted in FY 2001 are received for more funding than the approximately $5.1 million available under this NOFA. All FY 2001 PHA

applications identified by the Grants Management Center as meeting the requirements of this NOFA will be eligible for the lottery selection process.

If the cost of funding approvable applications exceeds available funds, HUD will limit the number of FY 2001 applications selected for any State to no more than 10 percent of the budget authority made available under this NOFA in order to achieve geographic diversity. If establishing this geographic limit results in unspent budget authority, however, HUD may modify this limit to assure that all available funds are used.

Applications will be funded in full for the number of vouchers requested by the PHA in accordance with the NOFA. If the remaining voucher funds are insufficient to fund the last PHA application in full, however, the Grants Management Center may recommend funding that application to the extent of the funding available and the applicant's willingness to accept a reduced number of vouchers. Applicants that do not wish to have the size of their programs reduced may indicate in their applications that they do not wish to be considered for a reduced award of funds. The Grants Management Center will skip over these applicants if assigning the remaining funding would result in a reduced funding level.

V. Application Submission Requirements

(A) Form HUD–52515

Funding Application, form HUD–52515, must be completed and submitted. This form includes all the necessary certifications for Fair Housing, Drug-Free Workplace and Lobbying Activities. PHAs are requested to enter their housing authority code number (for example, CT002) as well as their electronic mail address, telephone number, and facsimile telephone number in the same place at the top of the form where they are also to enter the PHA's name and mailing address. Section C of the form should be left blank. PHAs may obtain a copy of form HUD–52515 from the local HUD Field Office or may download it from the HUD Home page on the internet's world wide web (http://www.hud.gov). On the HUD website click on "handbooks and forms," then click on "forms," next click on "HUD–5" and then click on "HUD–52515." The form must be completed in its entirety, with the exception of Section C, signed and dated.

(B) Letter of Intent and Narrative

Funding is limited, and HUD may only have enough funds to approve a smaller amount than the number of vouchers requested. The PHA must state in its cover letter the number of vouchers it is requesting and whether it will accept a smaller number of vouchers and the minimum number of vouchers it will accept. The cover letter must also include a statement by the PHA certifying that the PHA has consulted with the agency or agencies in the State responsible for the administration of welfare reform to provide for the successful implementation of the State's welfare reform for families and youths receiving rental assistance under the family unification program. The application must include an explanation of how the application meets the requirements for Threshold Criteria 1 through 4 in sections IV (A) and (B) of this NOFA. The application must also include a MOU as described in paragraph IV.(B)(3) of this NOFA.

The PCWA serving the jurisdiction of the PHA is responsible for providing the information for Threshold Criterion 4, PCWA Statement of Need for Family Unification Program, to the PHA for submission with the PHA application. This should include a discussion (as appropriate to whether the PHA intends to issue FUP vouchers to FUP-eligible families and/or FUP-eligible youths) of the case-load of the PCWA and information about homelessness, family violence resulting in involuntary displacement, number and characteristics of families who are experiencing the placement of children in out-of-home care or the delayed discharge of children from out-of-home care as a result of inadequate housing, the number and characteristics of youths age 18 to 21 years old who left foster care at age 16 or older and who lack adequate housing, and the PCWA's experience in obtaining housing through HUD assisted housing programs and other sources for families and youths lacking adequate housing. A State-wide Public Child Welfare Agency must provide information on Threshold Criterion 4, PCWA Statement of Need for Family Unification Program, to all PHAs that request such information; otherwise, HUD will not consider applications from any PHAs with the State-wide PCWA as a participant in its program.

(C) Evaluation Certifications

The PHA and the PCWA, in separate certifications, must state that the PHA and Public Child Welfare Agency agree to cooperate with HUD and provide requested data to the HUD office or HUD-approved contractor delegated the responsibility for the program evaluation. No specific language for this certification is prescribed by HUD.

(D) Statement Regarding the Steps the PHA Will Take to Affirmatively Further Fair Housing

The areas to be addressed in the PHA's statement should include, but not necessarily be limited to:

(1) An examination of the PHA's own programs or proposed programs, including an identification of any impediments to fair housing [identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice—in its Consolidated Plan]; and a description of a plan developed to (a) address those impediments in a reasonable fashion in view of the resources available, and (b) work with local jurisdictions to implement any of the jurisdictions' initiatives to affirmatively further fair housing; and the maintenance of records reflecting this analysis and actions;

(2) remedy discrimination in housing; or

(3) promote fair housing rights and fair housing choice.

(E) Moving to Work (MTW) PHA Information and Certification

See section VI(B)(2)(c) of this NOFA regarding the information to be submitted by a MTW PHA required to report under the Section 8 Management Assessment Program (SEMAP) but not meeting the 95 percent lease-up or budget authority utilization requirements, or the lease-up or budget authority utilization certification to be submitted by an MTW PHA not required to report under SEMAP.

VI. Corrections To Deficient Family Unification Applications

(A) Acceptable Applications

An acceptable application is one which meets all of the application submission requirements in section V of this NOFA and does not fall into any of the categories listed in section VI (B) of this NOFA. The Grants Management Center will initially screen all applications and notify PHAs of technical deficiencies by letter.

With respect to correction of deficient applications, HUD may not, after the application due date and consistent with HUD's regulations in 24 CFR part 4, subpart B, consider any unsolicited information an applicant may want to provide. HUD may contact an applicant to clarify an item in the application or

to correct technical deficiencies. Please note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of a response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case under this NOFA, the GMC will notify the applicant in writing by describing the clarification or technical deficiency. The applicant must submit clarifications or corrections of technical deficiencies in accordance with the information provided by the GMC so as to be received by the GMC within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete, and it will not be considered for funding.

(B) Unacceptable Applications

(1) After the 14-calendar day technical deficiency correction period, the Grants Management Center will disapprove all PHA applications that the Grants Management Center determines are not acceptable for processing. The Grant Management Center's notification of rejection letter must state the basis for the decision.

(2) Applications from PHAs that fall into any of the following categories will not be processed:

(a) Applications that do not meet the fair housing and civil rights compliance threshold requirements of section III(A)(1) of this NOFA, Compliance With Fair Housing and Civil Rights Laws.

(b) The PHA has major program management findings in an Inspector General audit, HUD management review, or independent public accountant (IPA) audit for its voucher or certificate programs that are not closed or on which satisfactory progress in resolving the findings is not being made; or program compliance problems for its voucher or certificate programs on which satisfactory progress is not being made. The only exception to this category is if the PHA has been identified under the policy established in section II(E) of this announcement and the PHA makes application with a designated contract administrator. Major program management findings or program compliance problems are those that would cast doubt on the capacity of the PHA to effectively administer any new housing choice voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(c) The PHA has failed to achiéve a lease-up rate of 95 percent for its combined certificate and voucher units under contract for its fiscal year ending in 1999. Category (c) may be passed, however, if the PHA achieved a combined certificate and voucher budget authority utilization rate of 95 percent or greater for its fiscal year ending in 1999. In the event the PHA is unable to meet either of these percentage requirements, the PHA may still pass category (c) if the PHA submits information to the Grants Management Center, as part of its application, demonstrating that the PHA was able to either increase its combined certificate and voucher lease-up rate to 95 percent or greater for its fiscal year ending in 2000, or was able to increase combined certificate and voucher budget authority utilization to 95 percent or more for its fiscal year ending in 2000. PHAs determined by HUD to have passed either the 95 percent lease-up, or 95 percent budget authority utilization requirement for their fiscal year ending in 1999 will be listed on the following HUD website: http://www.hud.gov/cio/grants/fundsavail.html, along with this NOFA. A PHA not listed must either submit information (following the format of Appendix A of this NOFA) in its application supportive of its 95 percent lease-up or 95 percent budget authority utilization performance for its fiscal year ending in 2000, or submit information (following the format of Appendix A of this NOFA) as part of its application supportive of its contention that it should have been included among those PHAs listed by HUD as having achieved either a 95 percent lease-up rate or 95 percent budget authority utilization rate for fiscal years ending in 1999. Appendix A of this NOFA indicates the methodology and data sources used by HUD to calculate the lease-up and budget authority utilization percentage rates for PHAs with fiscal years ending in 1999. Any PHA wishing to submit information to the Grants Management Center in connection with its 1999 fiscal year or 2000 fiscal year for the purposes described immediately above (so as to be eligible under category (c) to submit an application) will be required to use the same methodology and data sources indicated in Appendix A.

Moving to Work (MTW) agencies that are required to report under the Section 8 Management Assessment Program (SEMAP) shall be held to the 95 percent lease-up and budget authority utilization requirements referenced above, except where such a MTW agency provides information in its application demonstrating to HUD that a lower percentage is the result of the implementation of specific aspects of its program under its MTW Agreement with HUD. MTW agencies which are not required to report under SEMAP must submit a certification with their application certifying that they are not required to report under SEMAP, and that they meet the 95 percent lease-up or budget authority utilization requirements.

PHAs not currently administering a certificate or voucher program, or who received voucher funding for the first time during the past 12 months will not be subject to the 95 percent lease-up or budget authority utilization requirements of this section (c).

(d) The PHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA to administer the vouchers.

(e) A PHA's application that does not comply with the requirements of 24 CFR 982.102 and the requirements of this NOFA after the expiration of the 14-calendar-day technical deficiency correction period.

(f) The PHA's application was submitted after the application due date.

(g) The application was not submitted to the official place of receipt as indicated in the paragraph entitled "Address for Submitting Applications" at the beginning of this NOFA.

(h) The applicant has been debarred or otherwise disqualified from providing assistance under the housing choice voucher program.

(i) The applicant has failed to achieve a minimum 85 percent submission rate for housing choice voucher and certificate resident records to HUD's Multifamily Tenant Characteristics System (MTCS), as set forth in 24 CFR part 908 and Notices PIH 98–3, 99–2, and 2000–13, for the period ending December 1999. In the event a PHA did not achieve an 85 percent rate of reporting under MTCS for this period, the PHA will still be considered to have passed the threshold if it (1) subsequently achieved a minimum reporting rate of not less than 85 percent for the period ended December 2000, or (2) requested forbearance from HUD under the applicable procedures in Notice PIH 2000–13 for the semi-annual

assessment period ending December 2000, contingent upon HUD approval of the forbearance request.

VII. Findings and Certifications

(A) Paperwork Reduction Act Statement

The Housing Choice Voucher Program information collection requirements contained in this NOFA have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) Environmental Impact

In accordance with 24 CFR 50.19(b)(11) and (15) (see also 24 CFR 58.35(b)(1) and (5)), tenant-based rental activities and activities to assist homeownership of existing units under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA) and are not subject to environmental review under most of the related laws and authorities. This NOFA provides funding for these activities under 24 CFR part 982, which contains limited environmental provisions concerning only homeownership activities in 24 CFR 982.305(b)(4) and 982.626(c), because of the categorical exclusion of the rental and homeownership activities from environmental review. This NOFA does not alter these environmental provisions. Accordingly, under 24 CFR 50.19(c)(5), issuance of this NOFA is also categorically excluded from environmental review under NEPA.

(C) Catalog of Federal Domestic Assistance Numbers

The Federal Domestic Assistance number for this program is 14.857.

(D) Federalism Impact

Executive Order 13132 (captioned "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. None of the provisions in this NOFA will have federalism implications and they will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order. As a result, the notice is not subject to review under the Order.

(E) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) Documentation and public access requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) Disclosures

HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(F) Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

(G) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of

Representatives and file reports concerning their lobbying activities.

Dated: June 15, 2001.

Paula O. Blunt,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A

Methodology for Determining Lease-up and Budget Authority Utilization Percentage Rates

Using data from the HUDCAPS system, HUD determined which PHAs met the 95% budget authority utilization or 95% lease-up criteria. The data used in the determination was based on PHA fiscal years ending in 1999. The budget authority utilization and lease-up rates were determined based upon the methodology indicated below.

Budget Authority Utilization

Percentage of budget authority utilization was determined by comparing the total contributions required to the annual budget authority (ABA) available for the PHA 1999 year combining the certificate and voucher programs.

Total contributions required were determined based on the combined actual costs approved by HUD on the form HUD–52681, Year End Settlement Statement. The components which make up the total contributions required are the total of housing assistance payments, ongoing administrative fees earned, hard to house fees earned, and IPA audit costs. From this total any interest earned on administrative fees is subtracted. The net amount is the total contributions required.

ABA is the prorated portion applicable to the PHA 1999 year for each funding increment which had an active contract term during all or a portion of the PHA year.

Example

PHA ABC

[Fiscal year 10/1/98 through 9/30/99]

HUD 52681 Approved Data:	
HAP	$2,500,000
Administrative fee	250,000
Hard to house fee	1,000
Audit	2,000
Total	2,753,000
Interest earned on administrative fee	($2,500)
Total contributions required	2,750,500

CALCULATION OF ANNUAL BUDGET AUTHORITY

Increments	Contract Term	Total BA	
ABA			
001	11/01/98–10/31/99	$1,300,000	$1,191,667
002	01/01/99–12/31/99	1,200,000	900,000
003	04/01/99–03/31/00	950,000	475,000
004	07/01/99–06/30/00	1,500,000	375,000
Totals		4,950,000	2,941,667

BUDGET AUTHORITY UTILIZATION

Total contributions required divided by	$2,750,000
Annual budget authority equals	2,941,667
Budget Authority Utilization	93.5%

Lease-up Rate

The lease-up rate was determined by comparing the reserved units (funding increments active as of the end of the PHA 1999 year) to the unit months leased (divided by 12) reported on the combined HUD 52681, Year End Settlement Statement(s) for 1999.

Active funding increments awarded by HUD for special purposes such as litigation, relocation/replacement, housing conversions, Welfare to Work, and new units awarded to the PHA during the last twelve months were excluded from the reserved units as the Department recognizes that many of these unit allocations have special requirements which require extended periods of time to achieve lease-up.

Example

Increments	Contract Term	Units
001	11/01/98–10/31/99	242
002	01/01/99–12/31/99	224
003	04/01/99–03/31/00	178
004	07/01/99–06/30/00	280
Totals		924
Increment 003 litigation		(178)
Adjusted contract units		746

Unit months leased reported by PHA	8,726
Divided by 12	727
Units leased	727
Lease-up rate:	
Units leased	727
Divided by adjusted contract units equals	746
Lease-up rate	97.5%

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S. 657/P.L. 107–19

To authorize funding for the National 4-H Program Centennial Initiative. (July 10, 2001; 115 Stat. 153)

Last List July 9, 2001

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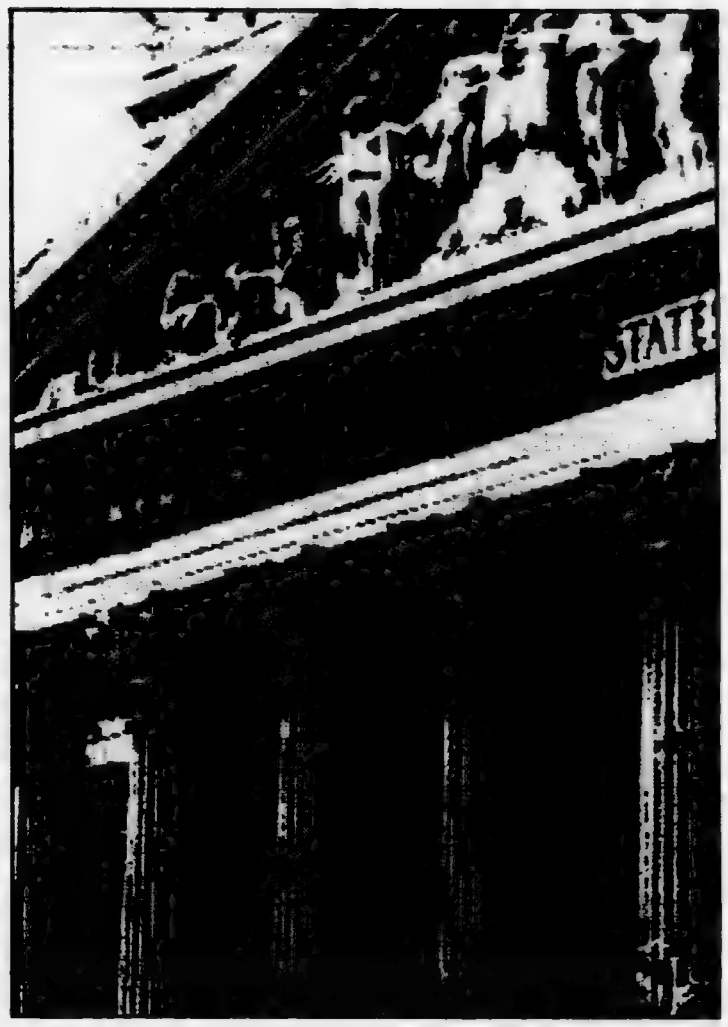

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106th Congress, 2nd Session, 2000

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–269–AD; Amendment 39–12319; AD 2001–14–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes, Model MD–10 Series Airplanes, and Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes, Model MD–10 series airplanes, and Model MD–11 series airplanes, that requires repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary. This amendment is necessary to prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes, Model MD–10 series airplanes, and Model MD–11 series airplanes was published in the **Federal Register** on November 27, 2000 (65 FR 70671). That action proposed to require repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests to Extend the Compliance Times

One commenter requests that the initial inspection be revised to within 18 months after the effective date of the AD, and the repetitive inspections to every 18 months thereafter. The commenter states that its "light check" (LCK) is accomplished every 18 months, and that such a multiple-day maintenance visit is more appropriate for the type of detailed inspection specified in the proposed rule. The commenter notes that such a revision to the compliance times would simplify its ability to perform the inspection during an appropriate maintenance visit. The commenter also states that experience indicates that a mean time of 12,192 flight hours occurs between unscheduled removal of the auxiliary hydraulic pump. Therefore, performing repetitive inspections in conjunction with the LCK would result in inspections occurring at approximately every 6,000 hours, which is less than half the current mean time between unit removals (MTBUR). Further, the commenter concludes that adjustment of the repetitive interval to every 18 months would provide an equivalent level of safety.

The FAA partially agrees with the commenter's request. In developing the proposed compliance times for this AD action, we considered not only the degree of urgency associated with the addressing the subject unsafe condition, but also the practical aspect of incorporating the required inspections into the affected operators' maintenance schedules in a timely manner. Based on the information submitted by the commenter, we have determined that exending the repetitive inspection interval to every 6,000 flight hours or 18 months, whichever occurs first, will provide an acceptable level of safety. The final rule has been revised accordingly. However, in consideration of the urgency of the unsafe condition in this case, we can find no basis to allow similar escalation for the initial inspection.

Another commenter requests that the initial compliance time be extended to 9 or 12 months. The commenter expresses a concern that there may not be enough spare auxiliary pumps to support the compliance times specified in the proposed rule.

The FAA does not concur with the commenter's request based on its concern for spare parts availability. We have had no confirmation from the manufacturer that a problem exists with the availability of the auxiliary pumps. However, under paragraph (e) of this AD, a request for an alternative method of compliance may be submitted to the FAA if availability of the pumps should become a concern in the future.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air

safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 604 Model DC–10, MD–10, and MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 396 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $23,760, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–08 McDonnell Douglas: Amendment 39–12319. Docket 2000–NM–269–AD.

Applicability: Model DC–10 and MD–10 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999; and Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure, accomplish the following:

Inspection

(a) Do a detailed inspection of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage, per McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999 (for Model DC–10 and MD–10 series airplanes); or McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 1999 (for Model MD–11 series airplanes); as applicable; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For Model DC–10 and MD–10 series airplanes: Inspect within 6 months after the effective date of this AD.

(2) For Model MD–11 series airplanes that have accumulated 3,000 flight hours or more as of the effective date of this AD: Inspect within 6 months after the effective date of this AD.

(3) For Model MD–11 series airplanes that have accumulated less than 3,000 flight hours as of the effective date of this AD: Inspect within 6 months after accumulating 3,000 flight hours.

Condition 1, No Failures: Repetitive Inspections

(b) If no failures are detected during the inspection required by paragraph (a) of this AD, repeat the inspection required by paragraph (a) of this AD every 6,000 flight hours or every 18 months, whichever occurs first.

Condition 2, Failure of Any Pump Motor: Replacement and Repetitive Inspections

(c) If any pump motor fails during any inspection required by paragraph (a) of this AD, before further flight, replace the auxiliary hydraulic pump with a serviceable pump, per McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999 (for Model DC–10 and MD–10 series airplanes); or McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 1999 (for Model MD–11 series airplanes); as applicable. Repeat the inspection required by paragraph (a) of this AD every 6,000 flight hours or every 18 months, whichever occurs first.

Condition 3, Failure of Any Wiring: Repair and Repetitive Inspections

(d) If any wiring fails during any inspection required by paragraph (a) of this AD, before further flight, troubleshoot and repair the wiring, per McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999 (for Model DC–10 and MD–10 series airplanes); or McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 1999 (for Model MD–11 series airplanes); as applicable. Repeat the inspection required by paragraph (a) of this AD every 6,000 flight hours or every 18 months, whichever occurs first.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add

comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999; or McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 2, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17120 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–251–AD; Amendment 39–12318; AD 2001–14–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive high frequency eddy current inspections to find cracking of the bulkhead frame support at body station 2598 under the hinge support fittings of the horizontal stabilizer, and repair if cracking is found. These actions are necessary to find and fix fatigue cracking in the frame support, which could result in inability of the structure to carry horizontal stabilizer flight loads and reduced controllability of the horizontal stabilizer. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 747 series airplanes was published in the **Federal Register** on February 21, 2001 (66 FR 10974). That action proposed to require repetitive high frequency eddy current inspections to find cracking of the bulkhead frame support at body station 2598 under the hinge support fittings of the horizontal stabilizer, and repair if cracking is found.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Revised Service Information

Two commenters ask that the FAA approve Boeing Service Bulletin 747–53A2449, Revision 1, dated May 24, 2001, as another source of service information for doing the actions specified in the proposed rule. The proposed rule cited Boeing Alert Service Bulletin 747–53A2449, dated June 8, 2000, as the proper source of service information for doing the specified actions.

One commenter, the manufacturer, states that the revised service bulletin changes the airplane effectivity by limiting the affected airplanes to line numbers (L/N) 1 through 1307, inclusive. Airplanes delivered after L/N 1307 have been redesigned to reduce the possibility of early cracking of the bulkhead in the subject area. The revised bulletin also corrects the bolt torque values specified in the original issue of the service bulletin. The commenter adds that using the torque values in the original issue could lead to over-torque of the bolts during installation.

Another commenter suggests that, when a revised service bulletin is released, it should specify the correct torque values for the shear bolts, or reference the Structural Repair Manual, Chapter 51–30–04 or 51–40–04. The commenter adds that the manufacturer informed the commenter by telex that, if the shear bolts are torqued per the service bulletin specified in the proposed rule, they will be over-torqued. The commenter does not intend to do the inspections until a revised service bulletin is issued, in order to minimize the risk of over-torquing the shear bolts and to avoid the need to rework and replace the bolts.

The FAA concurs with the commenters and has reviewed and approved Boeing Service Bulletin 747–53A2449, Revision 1, dated May 24, 2001; which is referenced in the final rule as the proper source of service information for doing the actions specified. Accordingly, the applicability section has been changed to specify Model 747 series airplanes, as listed in Revision 1 of the service bulletin; the number of airplanes, as well as the number of work hours, which were increased in Revision 1 of the service bulletin, have been changed in the cost impact section; and a new Note 2 has been added to specify that actions done before the effective date of this AD, per the original issue of the service bulletin, are acceptable for compliance with paragraph (a) of the final rule.

Although the torque values have been corrected in the revised service bulletin, operators who used the incorrect torque values during re-installation of the bolts can wait until the next repeat inspection to use the correct torque values. We have determined that over-torqued bolts will not compromise safety, as long as the bolts are properly torqued during the next repeat inspection.

Extend Compliance Time

One commenter asks that the compliance time for the proposed rule be extended from before the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; to before the accumulation of 10,000 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later. The commenter states that its recommendation will allow the accomplishment of the initial inspection during its regularly scheduled heavy maintenance checks, while still maintaining an equivalent level of safety.

The FAA does not concur with the commenter's request because the cracking of the bulkhead frame support is caused by fatigue, which is contingent on the number of accumulated flight cycles. In developing an appropriate compliance time for this action, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, and the practical aspect of accomplishing the required inspection within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. We have determined that before the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, represents an appropriate compliance time allowable for the initial inspection to be accomplished during scheduled maintenance intervals. However, under the provisions of paragraph (c) of the final rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Terminating Action

One commenter asks that a terminating action, such as oversizing the subject fastener holes, be provided by the manufacturer. The commenter states that this would alleviate potential structural damage caused by the repeated fastener and sealant removal, and installation at a critical joint. The FAA agrees with the intent of the comment, but until the manufacturer provides adequate service information giving procedures for a terminating action, such action cannot be added. If terminating action becomes available in the future, we may consider additional rulemaking. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,147 airplanes of the affected design in the worldwide fleet. The FAA estimates that 261 airplanes of U.S. registry will be affected by this AD, that it will take approximately 18 work hours (9 work hours per side) per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $281,880, or $1,080 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–07 Boeing: Amendment 39–12318. Docket 2000–NM–251–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Service Bulletin 747–53A2449, Revision 1, dated May 24, 2001, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking in the bulkhead frame support at body station (BS) 2598 under the hinge support fittings of the horizontal stabilizer, which could result in inability of the structure to carry horizontal stabilizer flight loads and reduced controllability of the horizontal stabilizer, accomplish the following:

Repetitive High Frequency Eddy Current (HFEC) Inspections

(a) Before the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later: Do an open-hole HFEC inspection to find cracking of the bulkhead frame support under the hinge support fittings of the horizontal stabilizer on the left and right sides at BS 2598, per Figure 2 of

the Accomplishment Instructions of Boeing Service Bulletin 747–53A2449, Revision 1, dated May 24, 2001. Repeat the inspection after that at intervals not to exceed 3,000 flight cycles.

Note 2: Inspections accomplished before the effective date of this AD per Boeing Alert Service Bulletin 747–53A2449, dated June 8, 2000, are considered acceptable for compliance with the applicable inspection specified in paragraph (a) of this AD.

Repair

(b) If any cracking is found during any inspection required by paragraph (a) of this AD, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD, the actions shall be done per Boeing Service Bulletin 747–53A2449, Revision 1, dated May 24, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 2, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17119 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–39–AD; Amendment 39–12316; AD 2001–14–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737–300, –400, and –500 series airplanes, that requires repetitive inspections of certain connectors located in the main wheel wells to detect discrepancies; and corrective action, if necessary. This amendment is prompted by reports indicating engine shutdown during flight due to uncommanded movement of the engine shutoff valve. These actions are necessary to detect and correct discrepancies of certain connectors located in the main wheel wells, which could result in electrical arcing of the connectors, uncommanded closure of the engine fuel shut-off valves, and consequent in-flight loss of thrust or engine shutdown from lack of fuel.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737–300, –400, and –500 series airplanes was published in the **Federal Register** on August 28, 2000 (65 FR 52049). That action proposed to require repetitive inspections of certain connectors located in the main wheel wells to detect discrepancies; and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Supportive Comment

One commenter states that it has done the initial inspection specified in the proposed rule, and is in agreement with the recommendation for continued repetitive inspections.

Typographical Errors

Two commenters note that there are two typographical errors in Boeing Service Letter 737–SL–24–138, dated May 24, 1999; which is specified in the proposed rule as the service information necessary to do the inspections and corrective action. The first error is on page 3 of the service letter. Action #4 identifies "connector D51641;" the correct number for the connector is D5164J. The FAA agrees that the identification of connector D51641 is in error and has revised paragraph (a) of the final rule to identify each affected connector. This action will eliminate any confusion as to which connectors require inspection, and will minimize the possibility of operators performing the inspections on the wrong connector.

The second error is in the "References," section on page 1 of the service letter and identifies "Dt–54446, Standard Wiring Practice Manual, Subject 20–60–08;" the correct reference is D6–54446. The FAA agrees that this is an incorrect reference and has advised the manufacturer accordingly. As this change is minor and not part of any procedures specified for doing the actions in the final rule, no change to the final rule is necessary in this regard.

Extend Compliance Time

Two commenters request an extension of the compliance time for the

inspections specified in paragraph (a) of the proposed rule.

One commenter asks that the compliance time for the initial inspection be extended from 12 months after the effective date of the AD, to the later of 12 months or 3,000 flight cycles after the effective date of the AD. The commenter also asks that the repetitive inspections be accomplished at the later of 18 months or 4,500 flight hours, instead of at intervals of 18 months. The commenter states that this extension is requested so it can do the inspections at a 'C'-check. The commenter adds that this would provide the opportunity for operators to accomplish the work at a scheduled maintenance visit, instead of scheduling special visits.

The FAA does not concur to extend the compliance time for doing the initial inspection to the later of 12 months or 3,000 flight cycles. Such an extension may allow airplanes with low utilization rates to go without being inspected for several years. The present condition of the electrical connectors on each airplane is unknown, and contaminated electrical connectors are subject to corrosion regardless of whether or not the airplane is accumulating flight cycles. After doing the initial inspection, and, if necessary, correcting any discrepancies, the electrical connectors will be in a known condition for safe operation of the airplane. In this case, we concur that the repetitive inspection interval can be extended somewhat, but the interval of 4,500 flight hours will not provide an adequate level of safety for airplanes with low utilization rates, as stated above.

Another commenter asks that the compliance time for the repetitive inspections be extended from 12 months to 24 months. The commenter states that this would allow it to accomplish the required actions during regularly scheduled maintenance intervals.

We concur with the commenter and have extended the 18-month repetitive inspection interval specified in paragraph (a) of this final rule to 24 months.

Optional Terminating Action

One commenter asks that optional terminating action be included for the repetitive inspections specified in paragraph (a) of the proposed rule. The commenter suggests two possible terminating actions, as follows:

- Inspect the connectors in accordance with the service letter and replace the spare pins and filler plugs with pins that have spare wires installed. (This action would provide the same level of sealing capability as the existing wires terminated within the connector.) Or
- Replace the existing connectors with new connectors having no spare pin positions. (This action would completely remove any potential of contaminants entering through a spare pin location.)

The FAA does not concur. Missing filler rods or spare contacts could not be verified in two of the three incidents that were reported to us. As a result, we have not been able to determine the path of the contamination that entered the connectors. It is possible that contaminants could enter the connectors despite the presence of filler rods and contacts with wires. Without verification of the cause of the path of contamination, repetitive inspections are required to ensure that electrical arcing and uncommanded closure of the engine fuel shut-off valves do not occur. Termination of the repetitive inspections will necessitate design changes that will decrease the effects of connector contamination. Should the manufacturer develop such design changes, we may consider additional rulemaking in the future. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,974 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 755 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. The cost of required parts will be negligible. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $45,300, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–06 Boeing: Amendment 39–12316. Docket 2000-NM–39–AD.

Applicability: All Model 737–300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct discrepancies of certain connectors located in the main wheel wells, which could result in electrical arcing of the connectors, uncommanded movement of the engine fuel shut-off valves to the closed position, and consequent in-flight loss of thrust or engine shutdown from lack of fuel, accomplish the following:

Repetitive Inspections/Corrective Action

(a) Within 12 months after the effective date of this AD: Perform a detailed visual inspection of connectors D5162P, D5162J, D5164P, and D5164J (connectors are linked to the fuel shut-off valves and outboard landing lights), located in the main wheel wells, to detect discrepancies (missing spare contacts and filler rods, improper plugs or filler rods, or contamination or corrosion), as specified in Boeing Service Letter 737–SL–24–138, dated May 24, 1999. Repair any discrepancies in accordance with the service letter, and repeat the inspection thereafter at intervals not to exceed 24 months.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Letter 737–SL–24–138, including attachment, dated May 24, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 2, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17117 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–245–AD; Amendment 39–12326; AD 2001–14–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Modified by Supplemental Type Certificate SA8843SW

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747–400 series airplanes modified by Supplemental Type Certificate (STC) SA8843SW, that requires modifying the passenger entertainment system (PES) installed by that STC and revising the Airplane Flight Manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the PES when necessary and is advised of appropriate procedures for such action. Inability to remove power from the PES during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ingrid Knox, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, ASW–150, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298; telephone (817) 222–5139; fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 747–400 series airplanes modified by Supplemental Type Certificate (STC) SA8843SW was published in the **Federal Register** on March 2, 2001 (66 FR 13219). That action proposed to require modifying the passenger entertainment system installed by that STC and revising the Airplane Flight Manual.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

None of the airplanes affected by this AD are on the U.S. Register. The single airplane included in the applicability of this rule currently is operated by a non-U.S. operator under foreign registry; therefore, it is not directly affected by this AD. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that the subject airplane is imported and placed on the U.S. Register in the future.

Should the affected airplane be imported and placed on the U.S.

Register in the future, it will take approximately 80 work hours to accomplish the modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $94,574 per airplane. Based on these figures, the cost impact of the required modification would be $99,374.

Should the affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 1 work hour to accomplish the manual revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required manual revision would be $60.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–15 Boeing: Amendment 39–12326. Docket 2000–NM–245–AD.

Applicability: Model 747–400 series airplanes modified by Supplemental Type Certificate (STC) SA8843SW, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the entire passenger entertainment system (PES) when necessary and is advised of appropriate procedures for such action, accomplish the following:

Modification and Airplane Flight Manual Revision

(a) Within 18 months after the effective date of this AD, do paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the PES to install load shed relays and associated cable assemblies for the PES, in accordance with Raytheon Service Bulletin 747(400)VIP–24–1, dated September 22, 2000.

(2) Revise the Non-Normal Procedures section of the FAA-approved Airplane Flight Manual (AFM) to advise the flight crew on using the "UTILITY BUS ON/OFF" power switches to control power to the PES, in accordance with Raytheon Airplane Flight Manual Supplement 747–430, dated October 17, 2000.

Spares

(b) As of the effective date of this AD, no person shall install a PES system in accordance with STC SA8843SW on any airplane, unless it is modified and the AFM is revised in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Fort Worth Airplane Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Raytheon Service Bulletin 747(400)VIP–24–1, dated September 22, 2000; and Raytheon Airplane Flight Manual Supplement 747–430, dated October 17, 2000. Raytheon Airplane Flight Manual Supplement 747–430 contains the following list of effective pages:

Page No.	Date shown on page
Log of Pages Page 1	October 17, 2000.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 3, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17163 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–244–AD; Amendment 39–12325; AD 2001–14–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747SP Series Airplanes Modified by Supplemental Type Certificate ST09097AC–D

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747SP series airplanes modified by Supplemental Type Certificate (STC) ST09097AC–D, that requires modifying the passenger entertainment system (PES) installed by that STC and revising the Airplane Flight Manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the PES when necessary and is advised of appropriate procedures for such action. Inability to remove power from the PES during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ingrid Knox, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, ASW–150, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298; telephone (817) 222–5139; fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 747SP series airplanes modified by Supplemental Type Certificate (STC) ST09097AC–D was published in the **Federal Register** on March 2, 2001 (66 FR 13216). That action proposed to require modifying the passenger entertainment system installed by that STC and revising the Airplane Flight Manual.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

None of the airplanes affected by this AD are on the U.S. Register. The single airplane included in the applicability of this rule currently is operated by a non-U.S. operator under foreign registry; therefore, it is not directly affected by this AD. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that the subject airplane is imported and placed on the U.S. Register in the future.

Should the affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 72 work hours to accomplish the modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $93,369 per airplane. Based on these figures, the cost impact of the required modification would be $97,689.

Should the affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 1 work hour to accomplish the manual revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required manual revision would be $60.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–14 Boeing: Amendment 39–12325. Docket 2000–NM–244–AD.

Applicability: Model 747SP series airplanes modified by Supplemental Type Certificate (STC) ST09097AC–D, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the passenger entertainment system (PES) when necessary and is advised of appropriate procedures for such action, accomplish the following:

Modification and Airplane Flight Manual Revision

(a) Within 18 months after the effective date of this AD, do paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the PES by installing a power switch and a load-shed circuit breaker as well as associated relays and wiring, in accordance with Raytheon Service Bulletin 747(SP)VIP–24–1, dated September 22, 2000.

(2) Revise the Normal Procedures and Emergency Procedures sections of the FAA-approved Airplane Flight Manual (AFM) to advise the flight crew on using the power switch installed by paragraph (a)(1) to remove power from the PES in the event of an emergency related to smoke or fire, in accordance with Raytheon Airplane Flight Manual Supplement 747SP–21, dated October 16, 2000, which is supplied with Raytheon Service Bulletin 747(SP)VIP–24–1, dated September 22, 2000.

Spares

(b) As of the effective date of this AD, no person shall install a PES in accordance with STC ST09097AC–D, on any airplane, unless it is modified and the AFM is revised in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Fort Worth Airplane Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Raytheon Service Bulletin 747(SP)VIP–24–1, dated September 22, 2000; and Raytheon Airplane Flight Manual Supplement 747SP–21, dated October 16, 2000. Raytheon Airplane Flight Manual Supplement 747SP–21 contains the following list of effective pages:

Page No.	Date shown on page
List of Effective Pages: LOEP Page 1	October 16, 2000

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 3, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17162 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–243–AD; Amendment 39–12324; AD 2001–14–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 Series Airplanes Modified by Supplemental Type Certificate ST09022AC–D

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767–200 series airplanes modified by Supplemental Type Certificate ST09022AC–D, that requires modifying the passenger entertainment system (PES) and revising the Airplane Operations Manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the entire PES when necessary and is advised of appropriate procedures for such action. Inability to remove power from the PES during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ingrid Knox, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, ASW–150, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298; telephone (817) 222–5139; fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 767–200 series airplanes modified by Supplemental Type Certificate ST09022AC–D was published in the **Federal Register** on March 2, 2001 (66 FR 13213). That action proposed to require modifying the passenger entertainment system and revising the Airplane Operations Manual.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. The single airplane included in the applicability of this AD currently is operated by a non-U.S. operator under foreign registry; therefore, it is not directly affected by this AD action. However, the FAA considers that this AD is necessary to ensure that the unsafe condition is addressed in the event that the subject airplane is imported and placed on the U.S. Register in the future.

Should the affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 80 work hours to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $165,673 per airplane. Based on these figures, the cost impact of this modification would be $170,473.

Should the affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 1 work hour to accomplish the required manual revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the manual revision would be $60.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–13 Boeing: Amendment 39–12324. Docket 2000–NM–243–AD.

Applicability: Model 767–200 series airplanes modified by Supplemental Type Certificate (STC) ST09022AC–D, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the entire passenger entertainment system (PES) when necessary and is advised of appropriate procedures for such action, accomplish the following:

Modification and Airplane Operations Manual Revision

(a) Within 18 months after the effective date of this AD, do paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the PES to install a load shed relay and associated wiring for the Airshow System portion of the PES, in accordance with Raytheon Service Bulletin 767VIP–24–1, dated August 28, 2000.

(2) Revise the Airplane Operations Manual to describe the function of the utility bus power switch located on the flight deck, including the use of this switch to remove power to the PES, in accordance with Raytheon Airplane Operations Manual Supplement 767–27G, dated October 18, 2000.

Spares

(b) As of the effective date of this AD, no person shall install a PES in accordance with STC ST09022AC-D on any airplane, unless it is modified and the Airplane Operations Manual is revised in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Fort Worth Airplane Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Raytheon Service Bulletin 767VIP–24–1, dated August 28, 2000; and Raytheon Airplane Operations Manual Supplement 767–27G, dated October 18, 2000. (Only the title page of Raytheon Airplane Operations Manual Supplement 767–27G is dated; no other page of the document contains this information.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. 1

Effective Date

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 3, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17161 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–242–AD; Amendment 39–12323; AD 2001–14–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–700IGW Series Airplanes Modified by Supplemental Type Certificate ST09100AC–D, ST09104AC–D, ST09105AC–D, or ST09106AC–D

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737–700IGW series airplanes modified by Supplemental Type Certificate (STC) ST09100AC–D, ST09104AC–D, ST09105AC–D, or ST09106AC–D. This AD requires modifying the passenger entertainment system (PES) installed by those STC's and revising the Airplane Flight Manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the PES when necessary and is advised of appropriate procedures for such action. Inability to remove power from the PES during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ingrid Knox, Aerospace Engineer, ASW–150, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298; telephone (817) 222–5139; fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737–700IGW series airplanes modified by Supplemental Type Certificate (STC) ST09100AC–D, ST09104AC–D, ST09105AC–D, or ST09106AC–D, was published in the **Federal Register** on March 2, 2001 (66 FR 13210). That action proposed to require modifying the passenger entertainment system installed by those STC's and revising the Airplane Flight Manual (AFM).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 4 Model 737–700IGW series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD.

It will take approximately 141 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $95,968 per airplane. Based on these figures, the cost impact of the modification in this AD on U.S. operators is estimated to be $208,856, or $104,428 per airplane.

It will take approximately 1 work hour per airplane to accomplish the required AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision in this AD on U.S. operators is estimated to be $120, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–12 Boeing: Amendment 39–12323. Docket 2000–NM–242–AD.

Applicability: Model 737–700IGW series airplanes modified by Supplemental Type Certificate (STC) ST09100AC–D, ST09104AC–D, ST09105AC–D, or ST09106AC–D; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the passenger entertainment system (PES) when necessary and is advised of appropriate procedures for such action, accomplish the following:

Modification and Airplane Flight Manual Revision

(a) Within 18 months after the effective date of this AD, do paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the PES by installing a power switch and a load-shed circuit breaker as well as associated relays and wiring, in accordance with Raytheon Service Bulletin 737IGW–24–1, dated August 11, 2000.

(2) Revise the Non-Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to advise the flight crew on using the power switch installed by paragraph (a)(1) to remove power from the PES in the event of an emergency related to smoke or fire, in accordance with Raytheon Airplane Flight Manual Supplement B737–700 IGW, dated October 16, 2000, which is supplied with Raytheon Service Bulletin 737IGW–24–1, dated August 11, 2000.

Spares

(b) As of the effective date of this AD, no person shall install a PES in accordance with STC ST09100AC–D, ST09104AC–D, ST09105AC–D, or ST09106AC–D on any airplane, unless it is modified and the AFM is revised in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Fort Worth Airplane Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Raytheon Service Bulletin 737IGW–24–1, dated August 11, 2000; and Raytheon Airplane Flight Manual Supplement B737–700 IGW, dated October 16, 2000. Raytheon Airplane Flight Manual Supplement B737–700 IGW contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
List of Effective Pages: Page 1	Original	October 16, 2000.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 3, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17160 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–240–AD; Amendment 39–12322; AD 2001–14–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100 and –200 Series Airplanes Modified by Supplemental Type Certificate SA8622SW

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747–100 and –200 series airplanes modified by Supplemental Type Certificate SA8622SW, that requires deactivation of the in-flight entertainment (IFE) system. This action is necessary to ensure that the flight crew is able to remove power from the IFE system when necessary. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Continental Airlines, Inc., 600 Jefferson Street HQJAV, Houston, Texas 77002. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ingrid Knox, Aerospace Engineer, ASW–150, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298; telephone (817) 222–5139; fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 747–100 and –200 series airplanes modified by Supplemental Type Certificate SA8622SW was published in the **Federal Register** on March 2, 2001 (66 FR 13204). That action proposed to require deactivation of the in-flight entertainment system.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 8 Model 747–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $480, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no opera or has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–11 Boeing: Amendment 39–12322. Docket 2000–NM–240–AD.

Applicability: Model 747–100 and –200 series airplanes modified by Supplemental Type Certificate (STC) SA8622SW, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove power from the in-flight entertainment (IFE) system when necessary; which, if not done during a non-normal or emergency situation, could result in inability to control smoke or fumes in the airplane flight deck or cabin; accomplish the following:

Deactivation

(a) Within 18 months after the effective date of this AD, deactivate the IFE system, in accordance with Continental Airlines Engineering Change/Repair Authorization 2330–02321, 2330–02322, 2330–02323, 2330–02324, 2330–02325, 2330–02326, 2330–02327, or 2330–02328; all dated August 29, 2000; as applicable.

Spares

(b) As of the effective date of this AD, no person shall install an IFE system in accordance with STC SA8622SW on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Fort Worth Airplane Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Continental Airlines Engineering Change/Repair Authorization 2330–02321, dated August 29, 2000; Continental Airlines Engineering Change/Repair Authorization 2330–02322, dated August 29, 2000; Continental Airlines Engineering Change/Repair Authorization 2330–02323, dated August 29, 2000; Continental Airlines Engineering Change/Repair Authorization 2330–02324, dated August 29, 2000; Continental Airlines Engineering Change/Repair Authorization 2330–02325, dated August 29, 2000; Continental Airlines Engineering Change/Repair Authorization 2330–02326, dated August 29, 2000; Continental Airlines Engineering Change/Repair Authorization 2330–02327, dated August 29, 2000; or Continental Airlines Engineering Change/Repair Authorization 2330–02328, dated August 29, 2000; as applicable. (Only the first page of these documents contains the document date; no other page contains this information.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Continental Airlines, Inc., 600 Jefferson Street HQJAV, Houston, Texas 77002. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort

Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 3, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17159 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–237–AD; Amendment 39–12321; AD 2001–14–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300 Series Airplanes Modified by Supplemental Type Certificate ST00171SE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737–300 series airplanes modified by Supplemental Type Certificate ST00171SE, that requires installation of a master switch to apply and remove power from the in-flight entertainment (IFE) system, and revision of the Airplane Flight Manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the IFE system when necessary and is advised of appropriate procedures for such action. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Flight Structures, Inc., 4407 172nd Street NE., Arlington, Washington 98223. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737–300 series airplanes modified by Supplemental Type Certificate (STC) ST00171SE was published in the **Federal Register** on March 2, 2001 (66 FR 13198). That action proposed to require installation of a master switch to apply and remove power from the in-flight entertainment (IFE) system, and revision of the Airplane Flight Manual.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

None of the Model 737–300 series airplanes modified by STC ST00171SE are on the U.S. Register. The single airplane included in the applicability of this rule currently is operated by a non-U.S. operator under foreign registry; therefore, it is not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that the subject airplane is imported and placed on the U.S. Register in the future.

Should the affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 24 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,500 per airplane. Based on these figures, the cost impact of this AD would be $2,940 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–10 Boeing: Amendment 39–12321. Docket 2000–NM–237–AD.

Applicability: Model 737–300 series airplanes modified by Supplemental Type Certificate (STC) ST00171SE, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the in-flight entertainment (IFE) system when necessary and is advised of appropriate procedures for such action, accomplish the following:

Installation of Power Switch and Revision of Airplane Flight Manual

(a) Within 18 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with Flight Structures Service Bulletin 94FS492–23–01, Revision 2, dated September 21, 2000.

(1) Install a master switch to apply and remove power from the IFE system.

(2) Insert the Temporary Revision included in the service bulletin into the Emergency Procedures section of the FAA-approved Airplane Flight Manual (AFM), to advise the flight crew on procedures for using the master switch installed in accordance with paragraph (a)(1) of this AD. Once the AFM has been formally revised to include the information in the Temporary Revision, the Temporary Revision may be removed from the AFM.

Spares

(b) As of the effective date of this AD, no person may install an IFE system in accordance with STC ST00171SE on any airplane, unless it is modified and the AFM is revised in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Flight Structures Service Bulletin 94FS492–23–01, Revision 2, dated September 21, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Flight Structures, Inc., 4407 172nd Street NE., Arlington, Washington 98223. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 3, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17158 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–229–AD; Amendment 39–12312; AD 2001–14–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas DC–9–51 and DC–9–83 Series Airplanes Modified by Supplemental Type Certificate SA8026NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9–51 and DC–9–83 series airplanes modified by Supplemental Type Certificate SA8026NM, that requires deactivation of the in-flight entertainment (IFE) system and removal of the system from the airplane. This action is necessary to prevent the inability of the flight crew to remove power from the IFE system when necessary. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Hollingsead International, Inc., 7416 Hollister Avenue, Goleta, California 93117. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–9–51 and DC–9–83 series airplanes modified by Supplemental Type Certificate SA8026NM was published in the **Federal Register** on March 2, 2001 (66 FR 13187). That action proposed to require deactivation of the in-flight entertainment (IFE) system and removal of the system from the airplane.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 6 airplanes of the affected design in the worldwide fleet. The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these

figures, the cost impact of this AD on U.S. operators is estimated to be $720, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–02 McDonnell Douglas: Amendment 39–12312. Docket 2000–NM–229–AD.

Applicability: Model DC–9–51 and DC–9–83 series airplanes modified by Supplemental Type Certificate (STC) SA8026NM, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the flight crew to remove power from the in-flight entertainment (IFE) system when necessary; which, during a non-normal or emergency situation, could result in inability to control smoke or fumes in the airplane flight deck or cabin; accomplish the following:

Deactivation and Removal

(a) Within 18 months after the effective date of this AD, deactivate the IFE system and remove the system from the airplane, in accordance with Hollingsead International Service Bulletin 2526–2332–001, dated July 19, 2000.

Spares

(b) As of the effective date of this AD, no person shall install an IFE system in accordance with STC SA8026NM on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Hollingsead International Service Bulletin 2526–2332–001, dated July 19, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hollingsead International, Inc., 7416 Hollister Avenue, Goleta, California 93117. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on June 29, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17156 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 102]

Staff Accounting Bulletin No. 102

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: This staff accounting bulletin expresses certain of the staff's views on the development, documentation, and application of a systematic methodology as required by Financial Reporting Release No. 28 for determining allowances for loan and lease losses in accordance with generally accepted accounting principles. In particular, the guidance focuses on the documentation the staff normally would expect registrants to prepare and maintain in support of their allowances for loan losses. The guidance in this staff accounting bulletin is being issued in light of the March 10, 1999 Joint Interagency Letter to Financial Institutions in which the staff agreed to provide, in parallel with guidance provided by the federal banking agencies, guidance on loan loss allowance methodologies and supporting documentation. On July 6, 2001, the federal banking agencies issued their guidance through the Federal Financial Institutions

Examination Council (FFIEC) as interagency guidance, "Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions."

DATES: Effective July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Jenifer Minke-Girard, Office of the Chief Accountant (202–942–4400), or Donald A.Walker, Jr., Division of Corporation Finance (202–942–1799), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549; electronic addresses: Minke-GirardJ@sec.gov; WalkerDo@sec.gov.

SUPPLEMENTARY INFORMATION:

Background

In December 1986, the Commission issued Financial Reporting Release No. 28, which added subsection (b), *Procedural Discipline in Determining the Allowance and Provision for Loan Losses to be Reported*, of Section 401.09, *Accounting for Loan Losses by Registrants Engaged in Lending Activities*, to the Codification of Financial Reporting Policies (hereafter referred to as FRR No. 28). In FRR No. 28, the Commission noted that certain registrants had appeared to lack adequate documentation of procedures for performing detailed reviews of loan portfolios and for determining amounts of allowances and provisions for loan losses. The Commission indicated that the staff normally would expect to find "that the books and records of registrants engaged in lending activities include documentation of: (a) Systematic methodology to be employed each period in determining the amount of loan losses to be reported, and (b) rationale supporting each period's determination that the amounts reported were adequate."

Since the issuance of FRR No. 28, the Commission's staff has continued to observe, in some cases, insufficient documentation of allowances for loan losses. In the ordinary course of its reviews of filings, the staff asked a number of registrants why significant favorable or unfavorable trends in the quality of the loan portfolio, as evidenced by statistical data presented in Management's Discussion and Analysis and/or in the notes to the financial statements, did not correspond with decreases or increases in the allowance for loan losses reported in the financial statements. Explanations offered by some registrants have indicated a lack of reasoned analysis or discipline in the establishment of the loss allowance. Some registrants assured the staff that they had assessed significant loans individually for impairment, but could not produce documentation demonstrating how the loans were evaluated or how any loan impairment was measured. In other cases, registrants' internal documentation indicating that a particular loan was impaired could not be reconciled with management's ultimate decision not to provide for any loss on that loan. Several registrants that recorded loan loss allowances for pools of loans did not maintain documentation indicating how the amounts of the loan loss allowances were determined or how the amounts related to the composition of the loan pool at any particular balance sheet date.

The staff's observations were similar to those of the General Accounting Office (GAO). In its October 1994 Report to Congressional Committees, *Depository Institutions: Divergent Loan Loss Methods Undermine Usefulness of Financial Reports* (GAO Report), the GAO reported its findings resulting from its review of the loan loss reserving practices of 12 depository institutions. One of the GAO's principal findings was that most of the reviewed institutions' loan loss allowances included large supplemental reserves that generally were not linked to an analysis of loss exposure or supported by evidence.[1] The GAO noted: "Such use of unjustified supplemental reserves can conceal critical changes in the quality of an institution's loan portfolio and undermine the credibility of financial reports."[2]

In recognition of these concerns, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Commission (together, the Agencies) issued a joint letter to financial institutions on the allowance for loan and lease losses (ALLL) on March 10, 1999 (the Joint Letter). In the Joint Letter, the Agencies announced the establishment of a Joint Working Group to study ALLL issues and to assist financial institutions by providing them with improved guidance on this topic.[3]

On September 7, 2000, the federal banking agencies, working through the FFIEC, sought public comment on a proposed policy statement on ALLL methodologies and documentation practices for banks and savings institutions. After considering the 31 comment letters received on the proposed guidance, the FFIEC issued its final interagency guidance, "Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions," on July 6, 2001. This Staff Accounting Bulletin represents the SEC staff's views relating to methodologies and supporting documentation for the ALLL that should be observed by all public companies in complying with the federal securities laws and the Commission's interpretations. It is also generally consistent with the guidance published by the FFIEC on July 6, 2001.

Loan loss estimates developed without a disciplined methodology or adequate documentation (of both a disciplined methodology and the resulting amounts of loan loss provisions and allowances) can undermine the credibility of an institution's financial statements. A critical function of the independent accountant's examination of the financial statements is to evaluate the reasonableness of accounting estimates made by management, including its estimates of loan impairments and the associated allowance for loan losses.[4] To perform that duty, an auditor must obtain an understanding of how management developed the estimate, and must apply that understanding to the review and testing of the estimation process or its results.[5] The auditor must obtain sufficient competent evidential matter supporting the financial statements, and must give adequate attention to the propriety and accuracy of the data underlying material assumptions and estimates. Chapter 7 of the AICPA Audit and Accounting Guide, *Banks and Savings Institutions* (Audit Guide), states that "[a]n institution's method of estimating credit losses * * * should * * * be well documented, with clear explanations of the supporting analyses and rationale."[6] Additionally, the Audit Guide states that "the institution's conclusions about the appropriate amount [of the loan loss allowance] should be well documented."[7] Chapter 7[8] provides details of audit procedures to be performed, including procedures that relate to documentary evidence supporting the loan loss allowance. The staff believes that the documentation

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[1] Page 5 of GAO Report.

[2] *Ibid.*

[3] The Accounting Standards Executive Committee (AcSEC) of the American Institute of Certified Public Accountants (AICPA) is in the process of developing guidance on the accounting for loan losses and the techniques for measuring probable incurred losses in a loan portfolio.

[4] See Auditing Accounting Estimates, AU Section 342.04.

[5] See AU Section 342.10.

[6] See paragraph 7.05, item j, in the Audit Guide.

[7] See paragraph 7.14 in the Audit Guide.

[8] See, in particular, the section on Auditing in paragraphs 7.34 to 7.74.

described in this Staff Accounting Bulletin regarding a registrant's loan loss allowance methodologies, policies, procedures, and decisions is likely to be necessary for most registrants with material loan portfolios in order to provide sufficient competent evidential matter that auditors must consider in accordance with GAAS.[9]

The statements in staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: July 6, 2001.

Margaret H. McFarland,

Deputy Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 102 to the table found in Subpart B.

Staff Accounting Bulletin No. 102

Note: The text of Staff Accounting Bulletin No. 102 will not appear in the Code of Federal Regulations.

The staff hereby revises the title of Topic 6 of the Staff Accounting Bulletin Series to be "Interpretations of Accounting Series Releases and Financial Reporting Releases" and adds Section L entitled "Financial Reporting Release No. 28—Accounting for Loan Losses by Registrants Engaged in Lending Activities" to Topic 6.

Topic 6: Interpretations of Accounting Series Releases and Financial Reporting Releases

* * * * *

L. Financial Reporting Release No. 28—Accounting for Loan Losses by Registrants Engaged in Lending Activities

1. Accounting for Loan Losses—General

Generally accepted accounting principles (GAAP) for recognition of loan losses is provided by Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* (SFAS No. 5) and No. 114, *Accounting by Creditors for Impairment of a Loan* (SFAS No. 114).[10] An estimated loss from a loss contingency, such as the collectibility of receivables, should be accrued when, based on information available prior to the issuance of the financial statements, it is probable that an asset has been impaired or a liability has been incurred at the date of the financial statements and the amount of the loss can be reasonably estimated.[11] SFAS No. 114 provides more specific guidance on measurement of loan impairment and related disclosures but does not change the fundamental recognition criteria for loan losses provided by SFAS No. 5. Additional guidance on the recognition, measurement, and disclosure of loan losses is provided by Emerging Issues Task Force (EITF) Topic No. D–80, *Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio* (EITF Topic D–80), FASB Interpretation No. 14, *Reasonable Estimation of the Amount of a Loss* (FIN 14), and the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide, *Banks and Savings Institutions*.

Further guidance for SEC registrants is provided by Financial Reporting Release No. 28, which added subsection (b), *Procedural Discipline in Determining the Allowance and Provision for Loan Losses to be Reported*, of Section 401.09, *Accounting for Loan Losses by Registrants Engaged in Lending Activities*, to the Codification of Financial Reporting Policies (hereafter referred to as FRR No. 28). Additionally, public companies are required to comply with the books and records provisions of the Securities Exchange Act of 1934 (Exchange Act). Under Sections 13(b)(2)–(7) of the Exchange Act, registrants must make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the registrant. Registrants also must maintain internal accounting controls that are sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP.

This staff interpretation applies to all registrants that are creditors in loan transactions that, individually or in the aggregate, have a material effect on the registrant's financial statements.[12]

2. Developing and Documenting a Systematic Methodology

2.A. Developing a Systematic Methodology. *Facts:* Registrant A, or one of its consolidated subsidiaries, engages in lending activities and is developing or performing a review of its loan loss allowance methodology.

Question 1: What are some of the factors or elements that the staff normally would expect Registrant A to consider when developing (or subsequently performing an assessment of) its methodology for determining its loan loss allowance under GAAP?

Interpretive Response: The staff normally would expect a registrant that engages in lending activities to develop and document a systematic methodology[13] to determine its provision for loan losses and allowance for loan losses as of each financial reporting date. It is critical that loan loss allowance methodologies incorporate management's current judgments about the credit quality of the loan portfolio through a disciplined and consistently applied process. A registrant's loan loss allowance methodology is influenced by entity-specific factors, such as an entity's size, organizational structure, business environment and strategy, management style, loan portfolio characteristics, loan administration procedures, and management information systems. However, as indicated in the AICPA Audit and Accounting Guide, *Banks and Savings Institutions* (Audit Guide), "[w]hile different institutions may use different methods, there are certain common elements that should be included in any [loan loss allowance] methodology for it to be effective."[14] A registrant's loan loss allowance methodology generally should:[15]

- Include a detailed analysis of the loan portfolio, performed on a regular basis;
- Consider all loans (whether on an individual or group basis);
- Identify loans to be evaluated for impairment on an individual basis under SFAS No. 114 and segment the remainder of the portfolio into groups of loans with similar risk characteristics for evaluation and analysis under SFAS No. 5;
- Consider all known relevant internal and external factors that may affect loan collectibility;
- Be applied consistently but, when appropriate, be modified for new factors affecting collectibility;

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[9] In responding to requests for comment on the interagency guidance published by the FFIEC, AcSEC stated:

"Although AcSEC agrees that documentation is needed to support loss recognition, AcSEC believes the Policy Statement should make clear that financial institutions may not avoid recognizing losses by deliberately failing to comply with the Policy Statement's documentation requirements." The Commission's staff agrees with the statement made by AcSEC and reiterates that the statements made herein represent interpretations and examples of documentation that are likely to be necessary for sufficient competent evidential matter in the course of an audit in accordance with GAAS. Failure to adequately document the loan loss allowance is not in accordance with GAAP (see paragraphs 7.05 and 7.14 in the Audit Guide) and can also demonstrate a lack of adequate internal accounting controls.

[10] As amended by Statement of Financial Accounting Standards No. 118, *Accounting by Creditors for Impairment of a Loan—Income Recognition and Disclosures*.

[11] Paragraph 8 of SFAS No. 5.

[12] For purposes of this interpretation, a loan is defined (consistent with paragraph 4 of SFAS No. 114) as a contractual right to receive money on demand or on fixed or determinable dates that is recognized as an asset in the creditor's statement of financial position. For purposes of this interpretation, loans do not include trade accounts receivable or notes receivable with terms less than one year or debt securities subject to the provisions of FASB Statement of Financial Accounting Standards No. 115, *Accounting for Certain Investments in Debt and Equity Securities*.

[13] FRR No. 28 states that "* * * the Commission's staff normally would expect to find that the books and records of registrants engaged in lending activities include documentation of [the]: (a) systematic methodology to be employed each period in determining the amount of the loan losses to be reported, and (b) rationale supporting each period's determination that the amounts reported were adequate."

[14] See paragraph 7.05 of the Audit Guide.

[15] *Ibid.*

• Consider the particular risks inherent in different kinds of lending;
• Consider current collateral values (less costs to sell), where applicable;
• Require that analyses, estimates, reviews and other loan loss allowance methodology functions be performed by competent and well-trained personnel;
• Be based on current and reliable data;
• Be well documented, in writing, with clear explanations of the supporting analyses and rationale (see *Question 2* below for staff views on documenting a loan loss allowance methodology); and
• Include a systematic and logical method to consolidate the loss estimates and ensure the loan loss allowance balance is recorded in accordance with GAAP.

For many entities engaged in lending activities, the allowance and provision for loan losses are significant elements of the financial statements. Therefore, the staff believes it is appropriate for an entity's management to review, on a periodic basis, its methodology for determining its allowance for loan losses.[16] Additionally, for registrants that have audit committees, the staff believes that oversight of the financial reporting and auditing of the loan loss allowance by the audit committee can strengthen the registrant's control system and process for determining its allowance for loan losses.[17]

A systematic methodology that is properly designed and implemented should result in a registrant's best estimate of its allowance for loan losses.[18] Accordingly, the staff normally would expect registrants to adjust their loan loss allowance balance, either upward or downward, in each period for differences between the results of the systematic determination process and the unadjusted loan loss allowance balance in the general ledger.[19]

2.B. Documenting a Systematic Methodology

Question 2: Assume the same facts as in Question 1. What would the staff normally expect Registrant A to include in its documentation of its loan loss allowance methodology?

Interpretive Response: In FRR No. 28, the Commission provided guidance for documentation of loan loss provisions and allowances for registrants engaged in lending activities. The staff believes that appropriate written supporting documentation for the loan loss provision and allowance facilitates review of the loan loss allowance process and reported amounts, builds discipline and consistency into the loan loss allowance determination process, and improves the process for estimating loan losses by helping to ensure that all relevant factors are appropriately considered in the allowance analysis. The staff, therefore, normally would expect a registrant to document the relationship between the findings of its detailed review of the loan portfolio and the amount of the loan loss allowance and the provision for loan losses reported in each period.[20]

The staff normally would expect to find that registrants maintain written supporting documentation for the following decisions, strategies, and processes:[21]

• Policies and procedures:
• Over the systems and controls that maintain an appropriate loan loss allowance, and
• Over the loan loss allowance methodology;
• Loan grading system or process;
• Summary or consolidation of the loan loss allowance balance;
• Validation of the loan loss allowance methodology; and
• Periodic adjustments to the loan loss allowance process.

Question 3: The *Interpretive Response* to Question 2 indicates that the staff normally would expect to find that registrants maintain written supporting documentation for their loan loss allowance policies and procedures. In the staff's view, what aspects of a registrant's loan loss allowance internal accounting control systems and processes would appropriately be addressed in its written policies and procedures?

Interpretive Response: The staff is aware that registrants utilize a wide range of policies, procedures, and control systems in their loan loss allowance processes, and these policies, procedures, and systems are tailored to the size and complexity of the registrant and its loan portfolio. However, the staff believes that, in order for a registrant's loan loss allowance methodology to be effective, the registrant's written policies and procedures for the systems and controls that maintain an appropriate loan loss allowance would likely address the following:

• The roles and responsibilities of the registrant's departments and personnel (including the lending function, credit review, financial reporting, internal audit, senior management, audit committee, board of directors, and others, as applicable) who determine or review, as applicable, the loan loss allowance to be reported in the financial statements;[22]
• The registrant's accounting policies for loans and loan losses, including the policies for charge-offs and recoveries and for estimating the fair value of collateral, where applicable;[23]
• The description of the registrant's systematic methodology, which should be consistent with the registrant's accounting policies for determining its loan loss allowance (see *Question 4* below for further discussion);[24] and

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[16] For federally insured depositry institutions, the December 21, 1993 "Interagency Policy Statement on the Allowance for Loan and Lease Losses (ALLL)" (the 1993 Interagency Policy Statement) indicates that boards of directors and management have certain responsibilities for the ALLL process and amounts reported. For example, as indicated on page 4 of that statement, "the board of directors and management are expected to: Ensure that the institution has an effective loan review system and control * * *[;] Ensure the prompt charge-off of loans, or portions of loans, that available information confirms to be uncollectible[; and] Ensure that the institution's process for determining an adequate level for the ALLL is based on a comprehensive, adequately documented, and consistently applied analysis of the institution's loan and lease portfolio." * * *"

[17] Statement on Auditing Standards No. 61, *Communication With Audit Committees* (as amended by Statement on Auditing Standards No. 90, *Audit Committee Communications*) (SAS No.61) states, in part:

"In connection with each SEC engagement * * * the auditor should discuss with the audit committee the auditor's judgments about the quality, not just the acceptability, of the entity's accounting principles as applied in its financial reporting * * * The discussion should * * * include items that have a significant impact on the representational faithfulness, verifiability, and neutrality of the accounting information included in the financial statements. [Footnote omitted.] Examples of items that may have such an impact are the following:

• Selection of new or changes to accounting policies
• Estimates, judgments, and uncertainties
• Unusual transactions
• Accounting policies relating to significant financial statement items, including the timing or transactions and the period in which they are recorded. * * *"

[18] Registrants should also refer to FIN 14, which provides accounting and disclosure guidance for situations in which a range of loss can be reasonably estimated but no single amount within the range appears to be a better estimate than any other amount within the range.

[19] Registrants should refer to the guidance on materiality in SEC Staff Accounting Bulletin No. 99, *Materiality* (SAB No. 99).

[20] FRR No. 28 states: "The specific rationale upon which the [loan loss allowance and provision] amount actually reported is based—*i.e.*, the bridge between the findings of the detailed review [of the loan portfolio] and the amount actually reported in each period—would be documented to help ensure the adequacy of the reported amount, to improve auditability, and to serve as a benchmark for exercise of prudent judgment in future periods."

[21] Paragraph 7.39 in the Audit Guide outlines specific aspects of effective internal control related to the allowance for loan losses. These specific aspects include the control environment ("management communication of the need for proper reporting of the allowance"); management reports that summarize loan activity and the institution's procedures and controls ("accumulation of relevant, sufficient, and reliable data on which to base management's estimate of the allowance"); "independent loan review;" review of information and assumptions ("adequate review and approval of the allowance estimates by the individuals specified in management's written policy"); assessment of the process ("comparison of prior estimates related to the allowance with subsequent results to assess the reliability of the process used to develop the allowance"); and "consideration by management of whether the allowance is conistent with the operational plans of the institution."

[22] Paragraph 7.39 of the Audit Guide discusses "management communication of the need for proper reporting of the allowance." As indicated in that paragraph, the "control environment strongly influences the effectiveness of the system of controls and * * * reflects the overall attitude, awareness, and action of the board of directors and management concerning the importance of control."

[23] Paragraph 7.33 of the Audit Guide refers to the documenation, for disclosure purposes, that an entity should include in the notes to the financial statements describing the accounting policies the entity used to estimate its allowance and related provision for loan losses.

[24] *Ibid.* As indicated in Paragraph 7.33, "[s]uch a description should identify the factors that influenced management's judgment (for example, historical losses and existing economic conditions) and may also include discussion of risk elements relevant to particular categories of financial instruments."

• The system of internal controls used to ensure that the loan loss allowance process is maintained in accordance with GAAP.[25]

The staff normally would expect an internal control system[26] for the loan loss allowance estimation process to:

• Include measures to provide assurance regarding the reliability[27] and integrity of information and compliance with laws, regulations, and internal policies and procedures;[28]

• Reasonably assure that the registrant's financial statements are prepared in accordance with GAAP; and

• Include a well-defined loan review process.[29]

A well-defined loan review process[30] typically contains:

• An effective loan grading system that is consistently applied, identifies differing risk characteristics and loan quality problems accurately and in a timely manner, and prompts appropriate administrative actions;[31]

• Sufficient internal controls to ensure that all relevant loan review information is appropriately considered in estimating losses. This includes maintaining appropriate reports, details of reviews performed, and identification of personnel involved;[32] and

• Clear formal communication and coordination between a registrant's credit administration function, financial reporting group, management, board of directors, and others who are involved in the loan loss allowance determination or review process, as applicable (*e.g.*, written policies and procedures, management reports, audit programs, and committee minutes).[33]

Question 4: The *Interpretive Response* to Question 3 indicates that the staff normally would expect a registrant's written loan loss allowance policies and procedures to include a description of the registrant's systematic allowance methodology, which should be consistent with its accounting policies for determining its loan loss allowance. What elements of a registrant's loan loss allowance methodology would the staff normally expect to be described in the registrant's written policies and procedures?

Interpretive Response: The staff normally would expect a registrant's written policies and procedures to describe the primary elements of its loan loss allowance methodology, including portfolio segmentation and impairment measurement. The staff normally would expect that, in order for a registrant's loan loss allowance methodology to be effective, the registrant's written policies and procedures would describe the methodology:

• For segmenting the portfolio:

■ How the segmentation process is performed (*i.e.*, by loan type, industry, risk rates, etc.);[34]

■ When a loan grading system is used to segment the portfolio:

• The definitions of each loan grade;

• A reconciliation of the internal loan grades to supervisory loan grades, if applicable; and

• The delineation of responsibilities for the loan grading system.

• For determining and measuring impairment under SFAS No. 114:[35]

■ The methods used to identify loans to be analyzed individually;

■ For individually reviewed loans that are impaired, how the amount of any impairment is determined and measured, including:

• Procedures describing the impairment measurement techniques available; and

• Steps performed to determine which technique is most appropriate in a given situation.

■ The methods used to determine whether and how loans individually evaluated under SFAS No. 114, but not considered to be individually impaired, should be grouped with other loans that share common characteristics for impairment evaluation under SFAS No. 5.[36]

• For determining and measuring impairment under SFAS No. 5:[37]

■ How loans with similar characteristics are grouped to be evaluated for loan collectibility (such as loan type, past-due status, and risk);

■ How loss rates are determined (*e.g.*, historical loss rates adjusted for environmental factors or migration analysis) and what factors are considered when establishing appropriate time frames over which to evaluate loss experience; and

■ Descriptions of qualitative factors (*e.g.*, industry, geographical, economic, and political factors) that may affect loss rates or other loss measurements.

3. Applying a Systematic Methodology—Measuring and Documenting Loan Losses Under SFAS No. 114

3.A. Measuring and Documenting Loan Losses under SFAS No. 114—General

Facts: Approximately one-third of Registrant B's commercial loan portfolio consists of large balance, non-homogeneous loans. Due to their large individual balances, these loans meet the criteria under Registrant B's policies and procedures for individual review for impairment under SFAS No. 114. Upon review of the large balance loans, Registrant B determines that certain of the loans are impaired as defined by SFAS No. 114.[38]

Question 5: For the commercial loans reviewed under SFAS No. 114 that are individually impaired, how would the staff normally expect Registrant B to measure and document the impairment on those loans? Can it use an impairment measurement method other than the methods allowed by SFAS No. 114?

Interpretive Response: For those loans that are reviewed individually under SFAS No. 114 and considered individually impaired, Registrant B must use one of the methods for measuring impairment that is specified by SFAS No. 114 (that is, the present value of expected future cash flows, the loan's observable market price, or the fair value of collateral).[39] Accordingly, in the circumstances described above, for the loans considered individually impaired under SFAS No. 114, it would not be appropriate for Registrant B to choose a measurement method not prescribed by SFAS No. 114. For example, it would not be appropriate to measure loan impairment by applying a loss rate to each loan based on the average historical loss percentage for all of its commercial loans for the past five years.

The staff normally would expect Registrant B to maintain as sufficient, objective evidence[40] written documentation to support

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[25] See also paragraph 7.39 in the Audit Guide which provides information about specific aspects of effective internal control related to the allowance for loan losses.

[26] *Ibid.* Public companies are required to comply with the books and records provisions of the Exchange Act. Under Sections 13(b)(2)–(7) of the Exchange Act, registrants must make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the registrant. Registrants also must maintain internal accounting controls that are sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP.

[27] FASB Statement of Concepts No. 2, *Qualitative Characteristics of Accounting Information*, provides guidance on "reliability" as a primary quality of accounting information.

[28] Section 13(b)(2)–(7) of the Exchange Act.

[29] As indicated in paragraph 7.05, item a, in the Audit Guide, a loan loss allowance methodology should "include a detailed and regular analysis of the loan portfolio * * *" Paragraphs 7.06 to 7.13 provide additional information on how creditors traditionally identify and review loans on an individual basis and review or analyze loans on a group or pool basis.

[30] *Ibid.* Additionally, paragraph 7.39 in the Audit Guide provides guidance on the loan review process. As stated in that paragraph, "[m]anagement reports summarizing loan activity, renewals, and delinquencies are vital to the timely identification of problem loans." The paragraph further states: "Loan reviews should be conducted by institution personnel who are independent of the underwriting, supervision, and collections functions. The specific lines of reporting depend on the complexity of the institution's organizational structure, but the loan reviewers should report to a high level of management that is independent from the lending process in the institution."

[31] *Ibid.*

[32] *Ibid.*

[33] *Ibid.*

[34] Paragraph 7.07 in the Audit Guide states that "creditors have traditionally identified loans that are to be evaluated for collectibility by dividing the loan portfolio into different segments. Each segment should contain loans with similar characteristics, such as risk classification, past-due status, and type of loan." Paragraph 7.08 provides additional guidance on classifying individual loans and paragraph 7.13 indicates considerations for groups or pools of loans.

[35] See SFAS No. 114, paragraphs 8 through 10 on recognition of impairment and paragraphs 11 through 16 on measurement of impairment. See also the guidance in EITF Topic D–80.

[36] See EITF Topic D–80, Exhibit D–80A, Question #10.

[37] See SFAS No. 5, paragraphs 8(a) and 8(b) on accrual of loss contingencies and paragraphs 22 and 23 on collectibility of receivables. See also the guidance in EITF Topic D–80.

[38] Paragraph 8 of SFAS No. 114 provides that a loan is impaired when, based on current information and events, it is probable that all amounts due will not be collected pursuant to the terms of the loan agreement.

[39] See paragraph 13 of SFAS No. 114.

[40] Under GAAS, auditors should obtain "sufficient competent evidential matter" to support

Continued

its measurement of loan impairment under SFAS No. 114.[41] If Registrant B uses the present value of expected future cash flows to measure impairment of a loan, it should document the amount and timing of cash flows, the effective interest rate used to discount the cash flows, and the basis for the determination of cash flows, including consideration of current environmental factors[42] and other information reflecting past events and current conditions. If Registrant B uses the fair value of collateral to measure impairment, the staff normally would expect to find that Registrant B had documented how it determined the fair value, including the use of appraisals, valuation assumptions and calculations, the supporting rationale for adjustments to appraised values, if any, and the determination of costs to sell, if applicable, appraisal quality, and the expertise and independence of the appraiser.[43] Similarly, the staff normally would expect to find that Registrant B had documented the amount, source, and date of the observable market price of a loan, if that method of measuring loan impairment is used.

3.B. Measuring and Documenting Loan Losses under SFAS No. 114 for a Collateral Dependent Loan

Facts: Registrant C has a $10 million loan outstanding to Company X that is secured by real estate, which Registrant C individually evaluates under SFAS No. 114 due to the loan's size. Company X is delinquent in its loan payments under the terms of the loan agreement. Accordingly, Registrant C determines that its loan to Company X is impaired, as defined by SFAS No. 114. Because the loan is collateral dependent, Registrant C measures impairment of the loan based on the fair value of the collateral. Registrant C determines that the most recent valuation of the collateral was performed by an appraiser eighteen months ago and, at that time, the estimated value of the collateral (fair value less costs to sell) was $12 million.

Registrant C believes that certain of the assumptions that were used to value the collateral eighteen months ago do not reflect current market conditions and, therefore, the appraiser's valuation does not approximate current fair value of the collateral. Several buildings, which are comparable to the real estate collateral, were recently completed in the area, increasing vacancy rates, decreasing lease rates, and attracting several tenants away from the borrower. Accordingly, credit review personnel at Registrant C adjust certain of the valuation assumptions to better reflect the current market conditions as they relate to the loan's collateral.[44] After adjusting the collateral valuation assumptions, the credit review department determines that the current estimated fair value of the collateral, less costs to sell, is $8 million.[45] Given that the recorded investment in the loan is $10 million, Registrant C concludes that the loan is impaired by $2 million and records an allowance for loan losses of $2 million.

Question 6: What documentation would the staff normally expect Registrant C to maintain to support its determination of the allowance for loan losses of $2 million for the loan to Company X?

Interpretive Response: The staff normally would expect Registrant C to document that it measured impairment of the loan to Company X by using the fair value of the loan's collateral, less costs to sell, which it estimated to be $8 million.[46] This documentation[47] should include the registrant's rationale and basis for the $8 million valuation, including the revised valuation assumptions it used, the valuation calculation, and the determination of costs to sell, if applicable. Because Registrant C arrived at the valuation of $8 million by modifying an earlier appraisal, it should document its rationale and basis for the changes it made to the valuation assumptions that resulted in the collateral value declining from $12 million eighteen months ago to $8 million in the current period.

3.C. Measuring and Documenting Loan Losses under SFAS No. 114—Fully Collateralized Loans

Question 7: In the staff's view, what is an example of an acceptable documentation practice for a registrant to adequately support its determination that no allowance for loan losses should be recorded for a group of loans because the loans are fully collateralized?

Interpretive Response: Consider the following fact pattern: Registrant D has $10 million in loans that are fully collateralized by highly rated debt securities with readily determinable market values. The loan agreement for each of these loans requires the borrower to provide qualifying collateral sufficient to maintain a loan-to-value ratio with sufficient margin to absorb volatility in the securities' market prices. Registrant D's collateral department has physical control of the debt securities through safekeeping arrangements. In addition, Registrant D perfected its security interest in the collateral when the funds were originally distributed. On a quarterly basis, Registrant D's credit administration function determines the market value of the collateral for each loan using two independent market quotes and compares the collateral value to the loan carrying value. If there are any collateral deficiencies, Registrant D notifies the borrower and requests that the borrower immediately remedy the deficiency. Due in part to its efficient operation, Registrant D has historically not incurred any material losses on these loans. Registrant D believes these loans are fully-collateralized and therefore does not maintain any loan loss allowance balance for these loans.

Registrant D's management summary of the loan loss allowance includes documentation indicating that, in accordance with its loan loss allowance policy, the collateral protection on these loans has been verified by the registrant, no probable loss has been incurred, and no loan loss allowance is necessary. Documentation in Registrant D's loan files includes the two independent market quotes obtained each quarter for each loan's collateral amount, the documents evidencing the perfection of the security interest in the collateral, and other relevant supporting documents. Additionally, Registrant D's loan loss allowance policy includes a discussion of how to determine when a loan is considered "fully collateralized" and does not require a loan loss allowance. Registrant D's policy requires the following factors to be considered and its findings concerning these factors to be fully documented:

- Volatility of the market value of the collateral;
- Recency and reliability of the appraisal or other valuation;
- Recency of the registrant's or third party's inspection of the collateral;
- Historical losses on similar loans;
- Confidence in the registrant's lien or security position including appropriate:
  - Type of security perfection (*e.g.*, physical possession of collateral or secured filing);
  - Filing of security perfection (*i.e.*, correct documents and with the appropriate officials); and
  - Relationship to other liens; and
- Other factors as appropriate for the loan type.

In the staff's view, Registrant D's documentation supporting its determination that certain of its loans are fully collateralized, and no loan loss allowance should be recorded for those loans, is acceptable under FRR No. 28.

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its audit opinion. See AU Section 326, *Evidential Matter*. The staff normally would expect registrants to maintain such evidential matter for its allowances for loan losses for use by the auditors in conducting their annual audit.

[41] Paragraph 7.45 in the Audit Guide outlines sources of information, available from management, that the independent accountant should consider in identifying loans that contain high credit risk or other significant exposures and concentrations. These sources of information would also likely include documentation of loan impairment under SFAS No. 114 or SFAS No. 5. Additionally, as indicated in paragraphs 7.56 to 7.68 of the Audit Guide, the independent accountant, in conducting an audit, may perform a detailed loan file review for selected loans. A registrant's loan files may contain documentation about borrowers' financial resources and cash flows (see paragraph 7.63) or about the collateral securing the loans, if applicable (see paragraphs 7.65 and 7.66).

[42] Question #16 in Exhibit D–80A of EITF Topic D–80 indicates that environmental factors include existing industry, geographical, economic, and political factors.

[43] See paragraphs 7.65 and 7.66 in the Audit Guide for additional information about documentation of loan collateral.

[44] When reviewing collateral dependent loans, Registrant C may often find it more appropriate to obtain an updated appraisal to estimate the effect of current market conditions on the appraised value instead of internally estimating an adjustment.

[45] An auditor who uses the work of a specialist, such as an appraiser, in performing an audit in accordance with generally accepted auditing standards (GAAS) should refer to the guidance in AU Section 336, *Using the Work of a Specialist*.

[46] See paragraphs 7.65 to 7.66 in the Audit Guide for further information about documentation of loan collateral and associated audit procedures that may be performed by the independent accountant.

[47] As stated in paragraph 7.14 of the Audit Guide, "[t]he institution's conclusions about the appropriate amount [of loan impairment and the allowance for loan losses] should be well documented."

4. Applying a Systematic Methodology—Measuring and Documenting Loan Losses under SFAS No. 5

4.A. Measuring and Documenting Loan Losses under SFAS No. 5—General

Question 8: In the staff's view, what are some general considerations for a registrant in applying its systematic methodology to measure and document loan losses under SFAS No. 5?

Interpretive Response: For loans evaluated on a group basis under SFAS No. 5, the staff believes that a registrant should segment the loan portfolio by identifying risk characteristics that are common to groups of loans.[48] Registrants typically decide how to segment their loan portfolios based on many factors, which vary with their business strategies as well as their information system capabilities. Regardless of the segmentation method used, the staff normally would expect a registrant to maintain documentation to support its conclusion that the loans in each segment have similar attributes or characteristics. As economic and other business conditions change, registrants often modify their business strategies, which may result in adjustments to the way in which they segment their loan portfolio for purposes of estimating loan losses. The staff normally would expect registrants to maintain documentation to support these segmentation adjustments.[49]

Based on the segmentation of the loan portfolio, a registrant should estimate the SFAS No. 5 portion of its loan loss allowance. For those segments that require an allowance for loan losses,[50] the registrant should estimate the loan losses, on at least a quarterly basis, based upon its ongoing loan review process and analysis of loan performance.[51] The registrant should follow a systematic and consistently applied approach to select the most appropriate loss measurement methods and support its conclusions and rationale with written documentation.[52]

Facts: After identifying certain loans for evaluation under SFAS No. 114, Registrant E segments its remaining loan portfolio into five pools of loans. For three of the pools, it measures loan impairment under SFAS No. 5 by applying historical loss rates, adjusted for relevant environmental factors, to the pools' aggregate loan balances. For the remaining two pools of loans, Registrant E uses a loss estimation model that is consistent with GAAP to measure loan impairment under SFAS No. 5.

Question 9: What documentation would the staff normally expect Registrant E to prepare to support its loan loss allowance for its pools of loans under SFAS No. 5?

Interpretive Response: Regardless of the method used to determine loan loss measurements under SFAS No. 5, Registrant E should demonstrate and document that the loss measurement methods used to estimate the loan loss allowance for each segment of its loan portfolio are determined in accordance with GAAP as of the financial statement date.[53]

As indicated for Registrant E, one method of estimating loan losses for groups of loans is through the application of loss rates to the groups' aggregate loan balances. Such loss rates typically reflect the registrant's historical loan loss experience for each group of loans, adjusted for relevant environmental factors (*e.g.*, industry, geographical, economic, and political factors) over a defined period of time. If a registrant does not have loss experience of its own, it may be appropriate to reference the loss experience of other companies in the same business, provided that the registrant demonstrates that the attributes of the loans in its portfolio segment are similar to those of the loans included in the portfolio of the registrant providing the loss experience.[54] Registrants should maintain supporting documentation for the technique used to develop their loss rates, including the period of time over which the losses were incurred. If a range of loss is determined, registrants should maintain documentation to support the identified range and the rationale used for determining which estimate is the best estimate within the range of loan losses.[55]

The staff normally would expect that, before employing a loss estimation model, a registrant would evaluate and modify, as needed, the model's assumptions to ensure that the resulting loss estimate is consistent with GAAP. In order to demonstrate consistency with GAAP, registrants that use loss estimation models should typically document the evaluation, the conclusions regarding the appropriateness of estimating loan losses with a model or other loss estimation tool, and the objective support for adjustments to the model or its results.[56]

In developing loss measurements, registrants should consider the impact of current environmental factors and then document which factors were used in the analysis and how those factors affected the loss measurements. Factors that should be considered in developing loss measurements include the following:[57]

- Levels of and trends in delinquencies and impaired loans;
- Levels of and trends in charge-offs and recoveries;
- Trends in volume and terms of loans;
- Effects of any changes in risk selection and underwriting standards, and other changes in lending policies, procedures, and practices;
- Experience, ability, and depth of lending management and other relevant staff;
- National and local economic trends and conditions;
- Industry conditions; and
- Effects of changes in credit concentrations.

For any adjustment of loss measurements for environmental factors, a registrant should maintain sufficient, objective evidence[58] (a) to support the amount of the adjustment and (b) to explain why the adjustment is necessary to reflect current information, events, circumstances, and conditions in the loss measurements.

4.B. Measuring and Documenting Loan Losses under SFAS No. 5—Adjusting Loss Rates

Facts: Registrant F's lending area includes a metropolitan area that is financially dependent upon the profitability of a number of manufacturing businesses. These businesses use highly specialized equipment and significant quantities of rare metals in the manufacturing process. Due to increased low-cost foreign competition, several of the parts suppliers servicing these manufacturing firms declared bankruptcy. The foreign suppliers have subsequently increased prices and the manufacturing firms have suffered from increased equipment maintenance costs and smaller profit margins. Additionally, the cost of the rare metals used in the manufacturing process increased and has now stabilized at double last year's price. Due to these events, the manufacturing businesses are experiencing financial

[48] Paragraph 7.07 of the Audit Guide indicates that "[e]ach segment [of the loan portfolio] should contain loans with similar characteristics, such as risk classification, past-due status, and type of loan."

[49] Segmentation of the loan portfolio is a standard element in a loan loss allowance methodology. As indicated in paragraph 7.05 of the Audit Guide, the loan loss allowance methodology "should be well documented, with clear explanations of the supporting analyses and rationale."

[50] An example of a loan segment that does not generally require an allowance for loan losses is a group of loans that are fully secured by deposits maintained at the lending institution.

[51] FRR No. 28 refers to a "systematic methodology to be employed each period" in determining provisions and allowances for loan losses. As indicated in FRR No. 28, the staff normally would expect that the systematic methodology would be documented "to help ensure that all matters affecting loan collectibility will consistently be identified in the detailed [loan] review process. * * *"

[52] *Ibid.* Also, as indicated in paragraph 7.05 of the Audit Guide, the loan loss allowance methodology "should be well documented, with clear explanations of the supporting analyses and rationale." Further, as indicated in paragraph 7.14 of the Audit Guide, "[t]he institution's conclusions about the appropriate amount [of the allowance] should be well documented."

[53] Refer to paragraph 8(b) of SFAS No. 5. Also, as indicated in Exhibit D–80A of EITF Topic D–80, "[t]he approach for determination of the allowance should be well documented and applied consistently from period to period." (See the overview section of Exhibit D–80A and Question #18.)

[54] Refer to paragraph 23 of SFAS No. 5.

[55] Registrants should also refer to FIN 14, which provides guidance for situations in which a range of loss can be reasonably estimated but no single amount within the range appears to be a better estimate than any other amount within the range. Also, paragraph 7.14 of the Audit Guide notes the use of "a method that results in a range of estimates for the allowance," except for impairment measurement under SFAS No. 114, which is based on "a single best estimate and not a range of estimates." Paragraph 7.14 also states that "[t]he institution's conclusions about the appropriate amount should be well documented."

[56] The systematic methodology (including, if applicable, loss estimation models) used to determine loan loss provisions and allowances should be documented in accordance with FRR No. 28, paragraph 7.05 of the Audit Guide, and EITF Topic D–80.

[57] Refer to paragraph 7.13 in the Audit Guide.

[58] AU Section 326 describes the "sufficient competent evidential matter" that auditors must consider in accordance with GAAS.

difficulties and have recently announced downsizing plans.

Although Registrant F has yet to confirm an increase in its loss experience as a result of these events, management knows that it lends to a significant number of businesses and individuals whose repayment ability depends upon the long-term viability of the manufacturing businesses. Registrant F's management has identified particular segments of its commercial and consumer customer bases that include borrowers highly dependent upon sales or salary from the manufacturing businesses. Registrant F's management performs an analysis of the affected portfolio segments to adjust its historical loss rates used to determine the loan loss allowance. In this particular case, Registrant F has experienced similar business and lending conditions in the past that it can compare to current conditions.

Question 10: How would the staff normally expect Registrant F to document its support for the loss rate adjustments that result from considering these manufacturing firms' financial downturns?[59]

Interpretive Response: The staff normally would expect Registrant F to document its identification of the particular segments of its commercial and consumer loan portfolio for which it is probable that the manufacturing business' financial downturn has resulted in loan losses. In addition, the staff normally would expect Registrant F to document its analysis that resulted in the adjustments to the loss rates for the affected portfolio segments.[60] The staff normally would expect that, as part of its documentation, Registrant F would maintain copies of the documents supporting the analysis, which may include relevant economic reports, economic data, and information from individual borrowers.

Because in this case Registrant F has experienced similar business and lending conditions in the past, it should consider including in its supporting documentation an analysis of how the current conditions compare to its previous loss experiences in similar circumstances. The staff normally would expect that, as part of Registrant F's effective loan loss allowance methodology, it would create a summary of the amount and rationale for the adjustment factor for review by management prior to the issuance of the financial statements.[61]

[59] This question and response would also apply to other registrant fact patterns in which the registrant adjusts loss rates for environmental factors.

[60] Paragraph 7 33 of the Audit Guide refers to the documentation, for disclosure purposes, that an entity should include in the notes to the financial statements describing the accounting policies and methodology the entity used to estimate its allowance and related provision for loan losses. As indicated in paragraph 7.33, "[s]uch a description should identify the factors that influenced management's judgment (for example, historical losses and existing economic conditions) and may also include discussion of risk elements relevant to particular categories of financial instruments."

[61] Paragraph 7.39 in the Audit Guide indicates that effective internal control related to the allowance for loan losses should include "accumulation of relevant, sufficient, and reliable data on which to base management's estimate of the allowance."

4.C. Measuring and Documenting Loan Losses under SFAS No. 5—Estimating Losses on Loans Individually Reviewed for Impairment but Not Considered Individually Impaired

Facts: Registrant G has outstanding loans of $2 million to Company Y and $1 million to Company Z, both of which are paying as agreed upon in the loan documents. The registrant's loan loss allowance policy specifies that all loans greater than $750,000 must be individually reviewed for impairment under SFAS No. 114. Company Y's financial statements reflect a strong net worth, good profits, and ongoing ability to meet debt service requirements. In contrast, recent information indicates Company Z's profitability is declining and its cash flow is tight. Accordingly, this loan is rated substandard under the registrant's loan grading system. Despite its concern, management believes Company Z will resolve its problems and determines that neither loan is individually impaired as defined by SFAS No. 114.

Registrant G segments its loan portfolio to estimate loan losses under SFAS No. 5. Two of its loan portfolio segments are Segment 1 and Segment 2. The loan to Company Y has risk characteristics similar to the loans included in Segment 1 and the loan to Company Z has risk characteristics similar to the loans included in Segment 2.[62]

In its determination of its loan loss allowance under SFAS No. 5, Registrant G includes its loans to Company Y and Company Z in the groups of loans with similar characteristics (*i.e.*, Segment 1 for Company Y's loan and Segment 2 for Company Z's loan).[63] Management's analyses of Segment 1 and Segment 2 indicate that it is probable that each segment includes some losses, even though the losses cannot be identified to one or more specific loans. Management estimates that the use of its historical loss rates for these two segments, with adjustments for changes in environmental factors, provides a reasonable estimate of the registrant's probable loan losses in these segments.

Question 11: How would the staff normally expect Registrant G to adequately document a loan loss allowance under SFAS No. 5 for these loans that were individually reviewed for impairment but are not considered individually impaired?

Interpretive Response: The staff normally would expect that, as part of Registrant G's effective loan loss allowance methodology, it would document its decision to include its loans to Company Y and Company Z in its determination of its loan loss allowance under SFAS No. 5.[64] The staff also normally would expect that Registrant G would document the specific characteristics of the loans that were the basis for grouping these loans with other loans in Segment 1 and Segment 2, respectively.[65] Additionally, the staff normally would expect Registrant G to maintain documentation to support its method of estimating loan losses for Segment 1 and Segment 2, which typically would include the average loss rate used, the analysis of historical losses by loan type and by internal risk rating, and support for any adjustments to its historical loss rates.[66] The registrant would typically maintain copies of the economic and other reports that provided source data.

When measuring and documenting loan losses, Registrant G should take steps to prevent layering loan loss allowances. Layering is the inappropriate practice of recording in the allowance more than one amount for the same probable loan loss. Layering can happen when a registrant includes a loan in one segment, determines its best estimate of loss for that loan either individually or on a group basis (after taking into account all appropriate environmental factors, conditions, and events), and then includes the loan in another group, which receives an additional loan loss allowance amount.

5. Documenting the Results of a Systematic Methodology

5.A. Documenting the Results of a Systematic Methodology—General

Facts: Registrant H has completed its estimation of its loan loss allowance for the current reporting period, in accordance with GAAP, using its established systematic methodology.

Question 12: What summary documentation would the staff normally expect Registrant H to prepare to support the amount of its loan loss allowance to be reported in its financial statements?

Interpretive Response: The staff normally would expect that, to verify that loan loss allowance balances are presented fairly in accordance with GAAP and are auditable, management would prepare a document that summarizes the amount to be reported in the financial statements for the loan loss allowance.[67] Common elements that the staff

[62] These groups of loans do not include any loans that have been individually reviewed for impairment under SFAS No. 114 and determined to be impaired as defined by SFAS No.114.

[63] Question #10 in Exhibit D–80A of EITF Topic D–80 states that if a creditor concludes that an individual loan specifically identified for evaluation is not impaired under SFAS No. 114, that loan may be included in the assessment of the allowance for loan losses under SFAS No. 5, but only if specific characteristics of the loan indicate that it is probable that there would be an incurred loss in a group of loans with those characteristics.

[64] Paragraph 7.05 in the Audit Guide indicates that an entity's method of estimating credit losses should "include a detailed and regular analysis of the loan portfolio," "consider all loans (whether on an individual or poll-of-loans basis)," "be based on current and reliable data," and "be well documented, with clear explanations of the supporting analysis and rationale." Question #10 in Exhibit D–80A of EITF Topic D–80 provides guidance as to the analysis to be performed when determining whether a loan that is not individually impaired under SFAS No. 114 should be included in the assessment of the loan loss allowance under SFAS No. 5.

[65] *Ibid.*

[66] *Ibid.*

[67] FFR No. 28 states: "The specific rationale upon which the [loan loss allowance and provision] amount actually reported is based—*i.e.*, the bridge between the findings of the detailed review [of the loan portfolio] and the amount actually reported in each period—would be documented to help ensure

normally would expect to find documented in loan loss allowance summaries include:[68]

- The estimate of the probable loss or range of loss incurred for each category evaluated (*e.g.*, individually evaluated impaired loans, homogeneous pools, and other groups of loans that are collectively evaluated for impairment);
- The aggregate probable loss estimated using the registrant's methodology;
- A summary of the current loan loss allowance balance;
- The amount, if any, by which the loan loss allowance balance is to be adjusted;[69] and
- Depending on the level of detail that supports the loan loss allowance analysis, detailed subschedules of loss estimates that reconcile to the summary schedule.

Generally, a registrant's review and approval process for the loan loss allowance relies upon the data provided in these consolidated summaries. There may be instances in which individuals or committees that review the loan loss allowance methodology and resulting allowance balance identify adjustments that need to be made to the loss estimates to provide a better estimate of loan losses. These changes may be due to information not known at the time of the initial loss estimate (*e.g.*, information that surfaces after determining and adjusting, as necessary, historical loss rates, or a recent decline in the marketability of property after conducting a SFAS No. 114 valuation based upon the fair value of collateral). It is important that these adjustments are consistent with GAAP and are reviewed and approved by appropriate personnel.[70] Additionally, it would typically be appropriate for the summary to provide each subsequent reviewer with an understanding of the support behind these adjustments. Therefore, the staff normally would expect management to document the nature of any adjustments and the underlying rationale for making the changes.[71] The staff also normally would expect this documentation to be provided to those among management making the final determination of the loan loss allowance amount.[72]

5.B. Documenting the Results of a Systematic Methodology—Allowance Adjustments

Facts: Registrant I determines its loan loss allowance using an established systematic process. At the end of each reporting period, the accounting department prepares a summary schedule that includes the amount of each of the components of the loan loss allowance, as well as the total loan loss allowance amount, for review by senior management, including the Credit Committee. Members of senior management meet to discuss the loan loss allowance. During these discussions, they identify changes that are required by GAAP to be made to certain of the loan loss allowance estimates. As a result of the adjustments made by senior management, the total amount of the loan loss allowance changes. However, senior management (or its designee) does not update the loan loss allowance summary schedule to reflect the adjustments or reasons for the adjustments. When performing their audit of the financial statements, the independent accountants are provided with the original loan loss allowance summary schedule reviewed by senior management, as well as a verbal explanation of the changes made by senior management when they met to discuss the loan loss allowance.

Question 13: In the staff's view, are Registrant I's documentation practices related to the balance of its loan loss allowance in compliance with existing documentation guidance in this area?

Interpretive Response: No. A registrant should maintain supporting documentation for the loan loss allowance amount reported in its financial statements.[73] As illustrated above, there may be instances in which loan loss allowance reviewers identify adjustments that need to be made to the loan loss estimates. The staff normally would expect the nature of the adjustments, how they were measured or determined, and the underlying rationale for making the changes to the loan loss allowance balance to be documented.[74] The staff also normally would expect appropriate documentation of the adjustments to be provided to management for review of the final loan loss allowance amount to be reported in the financial statements. This documentation should also be made available to the independent accountants. If changes frequently occur during management or credit committee reviews of the loan loss allowance, management may find it appropriate to analyze the reasons for the frequent changes and to reassess the methodology the registrant uses.[75]

6. Validating a Systematic Methodology

Question 14: What is the staff's guidance to a registrant on validating, and documenting the validation of, its systematic methodology used to estimate loan loss allowances?

Interpretive Response: The staff believes that a registrant's loan loss allowance methodology is considered valid when it accurately estimates the amount of loss contained in the portfolio. Thus, the staff normally would expect the registrant's methodology to include procedures that adjust loan loss estimation methods to reduce differences between estimated losses and actual subsequent charge-offs, as necessary. To verify that the loan loss allowance methodology is valid and conforms to GAAP, the staff believes it is appropriate for management to establish internal control policies,[76] appropriate for the size of the registrant and the type and complexity of its loan products. These policies may include procedures for a review, by a party who is independent of the allowance for loan losses estimation process, of the allowance for loan losses methodology and its application in order to confirm its effectiveness.

In practice, registrants employ numerous procedures when validating the reasonableness of their loan loss allowance methodology and determining whether there may be deficiencies in their overall methodology or loan grading process. Examples are:

- A review of trends in loan volume, delinquencies, restructurings, and concentrations.
- A review of previous charge-off and recovery history, including an evaluation of the timeliness of the entries to record both the charge-offs and the recoveries.
- A review by a party that is independent of the loan loss allowance estimation process. This often involves the independent party reviewing, on a test basis, source documents and underlying assumptions to determine that the established methodology develops reasonable loss estimates.
- An evaluation of the appraisal process of the underlying collateral. This may be accomplished by periodically comparing the appraised value to the actual sales price on selected properties sold.

It is the staff's understanding that, in practice, management usually supports the validation process with the workpapers from the loan loss allowance review function. Additional documentation often includes the summary findings of the independent reviewer. The staff normally would expect that, if the methodology is changed based upon the findings of the validation process, documentation that describes and supports the changes would be maintained.[77]

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the adequacy of the reported amount, to improve auditability, and to serve as a benchmark for exercise of prudent judgment in future periods."

[68] See also paragraph 7.14 of the Audit Guide.

[69] Subsequent to adjustments, the staff normally would expect that there would be no material differences between the consolidated loss estimate, as determined by the methodology, and the final loan loss allowance balance reported in the financial statements. Registrants should refer to SAB No. 99 and Statement on Auditing Standards No. 89, *Audit Adjustments*, and its amendments to AU Section 310.

[70] Paragraph 7.39 in the Audit Guide indicates that effective internal control related to the allowance for loan losses should include "adequate review and approval of the allowance estimates by the individuals specified in management's written policy."

[71] See the guidance in paragraph 7.14 of the Audit Guide ("The institution's conclusions about the appropriate amount should be well documented.") and in FRR No. 28 ("The specific rationale upon which the amount actually reported in each individual period is based* * * would be documented* * *").

[72] *Ibid.*

[73] *Ibid.*

[74] *Ibid.*

[75] As outlined in paragraph 7.39 of the Audit Guide, effective internal controls related to the allowance for loan losses should include adequate review and approval of allowance estimates, including review of sources of relevant information, review of development of assumptions, review of reasonableness of assumptions and resulting estimates, and consideration of changes in previously established methods to arrive at the allowance.

[76] *Ibid.*

[77] See paragraph 7.39 of the Audit Guide.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–009]

RIN 2115–AE47

Drawbridge Operation Regulation; Massalina Bayou, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the Tarpon Dock bascule span drawbridge across Massalina Bayou, mile 0.0, at Panama City, Bay County, Florida. The rule allows the draw of the bridge to remain closed to navigation from 9 p.m. until 11 p.m. on July 4 of each year. This rule will facilitate movement of vehicular traffic associated with a fireworks display which is conducted annually on July 4. Presently the draw opens on signal at all times.

DATES: This rule is effective on July 4, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD08–01–009 and are available for inspection or copying at the Bridge Administration Branch, Eighth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, Eighth Coast Guard District at the address given above, telephone 504–589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 9, 2001, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Massalina Bayou, Florida in **Federal Register** (66 FR 23640). The Coast Guard received no letters in response to the NPRM. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rule is required to be implemented in less than 30 days because the event will occur in less than 30 days.

Background and Purpose

The City of Panama City, Florida requested a change in the drawbridge operating regulation, governing the operation of the Tarpon Dock bascule span drawbridge. The rule is needed to accommodate the additional volume of vehicular traffic that the fireworks display normally generates. This bridge closure has become an annual event in conjunction with the 4th of July fireworks celebration. The closure is for two hours and does not significantly affect marine traffic. The Tarpon Dock bascule span drawbridge across Massalina Bayou has a vertical clearance of 7 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists primarily of commercial fishing vessels, sailing vessels and other recreational craft.

Discussion of Comments and Changes

No comments regarding the temporary deviation or the NPRM were received.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. The small entities concerned with this rule are the local commercial fishermen who transit the bridge. This rule will only delay transiting the bridge for two hours on one evening per year.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Eighth Coast Guard District at the address above.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This will change the existing drawbridge operating regulation promulgated by a Coast Guard Bridge Administration Program action. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.301 is added to read as follows:

§ 117.301 Massalina Bayou.

The draw of the Tarpon Dock bascule span bridge, Massalina Bayou, mile 0.0 at Panama City, shall open on signal; except that from 9 p.m. until 11 p.m. on July 4, each year, the draw need not open for the passage of vessels. The draw will open at any time for a vessel in distress.

Dated: June 28, 2001.

Roy J. Casto,

RADM, USCG, Commander, 8th CG District.

[FR Doc. 01–17413 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK08

Payment or Reimbursement for Emergency Treatment Furnished at Non-VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends VA's medical regulations by establishing provisions for payment or reimbursement for certain non-VA emergency services furnished to veterans for nonservice-connected conditions. This is necessary to implement provisions of "The Veterans Millennium Health Care and Benefits Act."

DATES: *Effective Date:* This interim final rule is effective on May 29, 2000; except for 38 CFR 17.1004 which is effective July 19, 2001.

Comments Dates: Comments on the rule, including comments on the information collection provisions, must be received on or before September 10, 2001; except that comments on the request for emergency approval of the collection of information provisions must be received on or before July 19, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to "RIN 2900–AK08." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). In addition, see the Paperwork Reduction Act heading under the **SUPPLEMENTARY INFORMATION** section of this preamble regarding submission of comments on the information collection provisions.

FOR FURTHER INFORMATION CONTACT: Roscoe Butler, Chief, Policy & Operations, Health Administration Service (10C3), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8302. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document amends VA's medical regulations at 38 CFR part 17. The amendments implement provisions of section 111 of Public Law 106–117, The Veterans Millennium Health Care and Benefits Act. These statutory provisions, which are set forth at 38 U.S.C. 1725, authorize VA to establish provisions regarding payment of or reimbursement for the reasonable value of non-VA emergency services provided for nonservice-connected conditions of certain veterans who have no medical insurance and no other recourse for payment.

Conditions for Reimbursement or Payment for Emergency Services

Sections 17.1002 and 17.1003 set forth substantive conditions that must be met for payment or reimbursement for emergency services under 38 U.S.C. 1725. In general, these conditions consist of restatements and interpretations of 38 U.S.C. 1725.

For emergency services other than emergency transportation, we will make payment or reimbursement only for emergency services provided in a hospital emergency department or a similar facility held out as providing emergency care to the public. These are the places that have the capabilities for providing emergency care.

48-Hour Notice

For informational purposes, we have added a note explaining that health care providers furnishing emergency treatment who believe they may have a basis for filing a claim with VA for payment under 38 U.S.C. 1725 should contact VA within 48 hours after the veteran begins receiving emergency treatment. Such contact is not a condition of VA payment. However, the contact will assist the provider in understanding the conditions for payment. The contact may also assist the provider in planning for transfer of the veteran after stabilization.

Claims

Section 17.1004 sets forth procedures for filing claims. To initiate a claim for emergency treatment a claimant would be required to submit to the VA medical facility of jurisdiction (defined as the nearest VA medical facility to where the emergency service was provided) a completed standard billing form (such as a UB92 or a HCFA 1500). The completed form must also be accompanied by a signed, written statement by the individual or entity claiming the benefit declaring that "I hereby certify that this claim meets all of the conditions for payment by VA for emergency medical services under 38 CFR 17.1002 and 17.1003. I am aware that 38 U.S.C. 6102(b) provides that one

who obtains payment without being entitled to it and with intent to defraud the United States shall be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both."

We believe that this (along with the right to obtain additional information under 17.1004(e)) will be sufficient to make determinations regarding whether the claimant meets the requirements for reimbursement or payment. Claims for payment or reimbursement for ambulance services, including air ambulance services, will not be required to be on a specific form but will be required to include the bill and contain information to establish entitlement to payment or reimbursement for such services.

Consistent with statutory authority in 38 U.S.C. 1725, a claimant must be the entity that furnished the treatment, the veteran who paid for the treatment, or the person or organization that paid for such treatment on behalf of the veteran.

The rule establishes time limits for filing claims and establishes procedures and time limits for the submission of additional information needed by VA to make determinations regarding the claim. This is designed to help ensure that claims are decided in reasonable periods of time.

Also, we note that a claim that is submitted to a VA entity other than the VA medical facility of jurisdiction will be forwarded by the receiving VA entity to the VA medical facility of jurisdiction.

Payment Limitations

The provisions of 38 U.S.C. 1725 state that VA may not pay more than the amount for which the veteran is personally liable. Within this framework, the rule establishes reimbursement or payment rates as the lesser of the amount for which the veteran is personally liable or 70 percent of the amount prescribed under Medicare fee schedules.

Under 38 U.S.C. 1725, VA is authorized for the first time to establish for non-VA providers of emergency treatment a mechanism for obtaining payment for care furnished to veterans who have no health care insurance or other source of payment in whole or in part. Prior to the enactment of this new law, these providers frequently were forced to absorb the costs of this care and pass those costs on to all other paying users of their facilities. With respect to the Congressional intent in authorizing VA to pay or reimburse for emergency treatment, House Report No. 106–237, at pages 39–40, states:

It is the Committee's view that in setting such payment regulations VA should avoid a policy which gives providers of emergency care a windfall. In that connection, the Committee takes notice of the frequency with which providers of emergency care "write off" such debts in cases where the debt is deemed uncollectible or the costs of collection exceed the likely recovery. VA serves a population which is substantially elderly, indigent, and chronically ill. Given that this bill covers a subset of this population which has no private or public medical insurance or coverage, it stands to reason that in most instances under current law providers would write off the debts arising from the provision of emergency care to these veterans. The Committee thus envisions that VA would establish regulations that are significantly below those paid under the Medicare or Medicaid system (or under 38 United States Code, section 1728). Such lower rates should also provide a significant incentive to the providers of care to actively try and obtain reimbursement from those other benefit programs before seeking reimbursement from VA. As a further incentive to the providers of care, the bill also provides that they must accept VA's payment as payment in full.

In accordance with the declared intent of Congress, we will pay or reimburse at a rate discounted from the amounts Medicare pays. Bearing in mind the words in the House report suggesting that VA establish rates "significantly below" Medicare or Medicaid rates, VA has established the rate at 70 percent.

Consistent with the provisions of 38 U.S.C. 1725, the rule also states that payment or reimbursement for medical treatment may be made only for the period from the beginning of the treatment until such time as the veteran has "stabilized" and could be transferred safely to a VA facility or other Federal facility.

The rule restates statutory provisions that a provider who accepts VA payment for emergency treatment agrees thereby to extinguish all liability on the part of the veteran for that treatment.

Delegations of Authority

Decisions under this rule regarding benefit determinations will be made by Chief of the Health Administration Service or an equivalent official at the VA medical facility of jurisdiction, except that the Fee Service Review Physician or equivalent officer at the VA medical facility of jurisdiction would make determinations regarding § 17.1002(b), (c), and (d). We believe that these are the appropriate individuals to make the determinations assigned. Further, under the rule any decision denying a benefit must be in writing and inform the claimant of VA reconsideration rights and rights of appeal to the Board of Veterans' Appeals.

Independent Right of Recovery

The rule also restates statutory provisions that give the Government an independent right of recovery when any payment is made for the same emergency treatment for which VA had already reimbursed or made payment (this includes statutory liens). The statutory provisions require the veteran or claimant to notify VA and submit documentation regarding the duplicate payment. The rule states that the notification and submission of documentation must be provided by the veteran or claimant to the VA medical facility of jurisdiction within three working days of receipt of notice of the duplicate payment. This will help VA take timely action to recover the amount owed the Government.

Consistent with statutory authority, the rule states that the Chief Financial Officer or equivalent official at the VA medical facility of jurisdiction may waive recovery of a VA payment made to a veteran upon determining that actions to recover the payment would not be cost-effective or would conflict with other litigative interests of the United States.

Retroactive Payments

Because May 29, 2000, is the effective date of 38 U.S.C. 1725, we would make retroactive payments or reimbursements, as appropriate, for qualifying emergency care furnished on or after that date.

Paperwork Reduction Act

The provisions of 38 CFR 17.1004 contain collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information. We have requested OMB to approve the collection of information on an emergency basis by July 19, 2001. If OMB does not approve the collections of information as requested, we will immediately remove § 17.1004 or take such other action as is directed by OMB.

The provisions of 38 CFR 17.1007 and 17.1008 contain collections of information concerning prompt notification of duplicate payments and rejection of VA payments. We expect that fewer than 10 collections of information will occur under any of these provisions in any given year. If VA expects to receive 10 or more collections under any of these provisions in any year, we will seek approval under the

Paperwork Reduction Act for such collections of information.

We are also seeking an approval of the information collection on a non-emergency basis. Accordingly, we are requesting comments on the collection of information provisions contained in § 17.1004. Comments must be submitted by September 10, 2001.

OMB assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collections of information in § 17.1004 should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AK08."

Title: Application for Reimbursement/ Payment for Emergency Treatment in Non-VA Facilities.

Summary of collection of information: Under the provisions of 38 CFR 17.1004, to obtain payment or reimbursement for emergency treatment under 38 U.S.C. 1725, a claimant must submit to the VA medical facility of jurisdiction a completed standard billing form (such as a UB92 or a HCFA 1500). The completed form must also be accompanied by a signed, written statement declaring that "I hereby certify that this claim meets all of the conditions for payment by VA for emergency medical services under 38 CFR 17.1002 and 17.1003. I am aware that 38 U.S.C. 6102(b) provides that one who obtains payment without being entitled to it and with intent to defraud the United States shall be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both."

In addition, § 17.1004 provides that aclaim for payment or reimbursement for emergency transportation does not have to be on a form. The claimant need only submit a signed and dated request for such payment or reimbursement to the VA medical facility of jurisdiction, together with a bill showing the services provided and charges for which the veteran is personally liable and a signed statement explaining who requested such transportation services and why they were necessary.

Description of the need for information and proposed use of information: This information would be needed for VA to decide claims for reimbursement or payment from a veteran, a hospital or other entity that furnished non-VA emergency treatment or transportation to the veteran, or a person or organization that paid for such treatment or transportation on behalf of the veteran. VA would use the information and certifications submitted to process claims for such reimbursement or payment.

Description of likely respondents: Hospital or other entities that furnished the treatment or transportation, the veteran who paid for the treatment or transportation, or the person or organization that paid for such treatment or transportation on behalf of the veteran.

Estimated number of respondents: 241,457.

Estimated frequency of responses: 1.

Estimated total annual reporting and recordkeeping burden: 120,729 hours.

Estimated annual burden per collection: 30 minutes.

The Department considers comments by the public on collections of information in—

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Administrative Procedure Act and Congressional Review Act

We have found good cause to dispense with the notice-and-comment and delayed effective date provisions of the Administrative Procedure Act (5 U.S.C. 553) and the notice and public procedure provisions of the Congressional Review Act (5 U.S.C. 801–808) because compliance with such provisions would be contrary to the public interest. Under the provisions of section 111 of Public Law 106–117, VA was mandated to establish regulations to provide a mechanism for payment or reimbursement for certain non-VA emergency services furnished to veterans for non-service connected conditions. These regulations were to be effective by May 29, 2000. We are aware that because implementing regulations have not become effective, in a number of instances bills for veterans' emergency care that would be covered by this rule have been turned over to collection agencies. This has unnecessarily placed veterans' possessions in jeopardy. Even though we are making § 17.1004 effective immediately, we are soliciting comments for 60 days after publication of the document. We will publish a final document after the comment period ends and we may modify this rule in response to comments.

Compliance With the Congressional Review Act and Executive Order 12866—Cost-Benefit Analysis

This rule is necessary to implement the provisions of section 111 of Public Law 106–117, The Veterans Millennium Health Care and Benefits Act. These provisions, which are set forth at 38 U.S.C. 1725, authorize VA to establish a mechanism for payment of or reimbursement for the reasonable value of non-VA emergency services provided for nonservice-connected conditions of certain veterans who have no medical insurance and no other recourse for payment. This rule would directly impact these veterans positively by avoiding full recourse or payment responsibility for medical care and resulting potential debt collection repercussions. This rule implements a detailed statutory mandate, and we found no potentially effective and reasonably feasible alternatives.

We estimate that the five-year cost of this rule from appropriated funds would be $2.1 billion in benefits costs and $21 million in government operating expenses. Since it is likely that the adoption of the rule may have an annual effect on the economy of $100 million or more, the Office of Management and Budget has designated this rule as a major rule under the Congressional Review Act, 5 U.S.C. 802, and a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. The following information is provided pursuant to the Congressional Review Act and Executive Order 12866.

I. Benefits Costs

The estimated cost for implementation of the emergency care

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provisions of the Millennium Act are based on enrollment projections developed by a private actuarial firm and contained in the FY 2001 Enrollment Level Decision Analysis. This baseline population was adjusted, using a survey of enrollees and existing enrollment databases, to calculate the projected number of veterans who had no private or public insurance and who had used VA care within the previous 24 months. These adjustments reflect the criteria contained in the Millennium Act.

Private sector ER-related health care utilization was adjusted to reflect veteran enrollee demographics and relative morbidity, as well as uninsured enrollee reliance on the VA health care system. These utilization estimates, along with Medicare allowable charge levels, were applied to the estimated 990,000 veteran enrollees affected by the emergency care provisions. This resulted in projected estimates for emergency room visits ($93,480,145), ambulance use ($34,108,803), and ER-related inpatient care ($468,221,072). The total of $595,810,019 was then multiplied by the 70 percent reimbursement rate VA will use to pay emergency care providers. This comes to $417,067,014.

This total, however, reflects full implementation of the emergency care provisions. VA believes that it will take time before both providers and eligible veterans are aware of these new benefits and begin to submit acceptable bills to VA for reimbursement. Current experience shows that without widespread dissemination of information, there is limited use of these benefits. VA believes that with the publication of final regulations the submission of claims will increase significantly and could reach 50 percent of the full implementation costs in the first full year after the rule is in effect. Only experience will demonstrate the real demand for this new benefit.

II. Administrative Costs

The administrative workload caused by this rule is expected to be 241,457 claims filed in 2001. Administrative workloads assume that not all claims would be granted; it is probable that non-VA related claims will be received from veterans who are not eligible. Medical Care costs are computed on the average cost of a GS4/5 @ $12/hour × 30 minutes × 241,457 claims/60 which equals $1,448,742.00. In addition, the clinical review costs are estimated at $46/hour × 15 minutes × 241,457 claims/60 which equals $2,776,755.00 for total Medical Care costs of $4,225,497.

OMB Review

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would apply only to an extremely small amount of the business of a hospital or health care provider. Otherwise, the rule would only apply to individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 64.005, 64.007.64.008, 64,009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: April 9, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. An undesignated center heading and §§ 17.1000 through 17.1008 are added to read as follows:

Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities

Sec.

17.1000 Payment or reimbursement for emergency services for nonservice-connected conditions in non-VA facilities.
17.1001 Definitions.
17.1002 Substantive conditions for payment or reimbursement.
17.1003 Emergency transportation.
17.1004 Filing claims.
17.1005 Payment limitations.
17.1006 Decisionmakers.
17.1007 Independent right of recovery.
17.1008 Balance billing prohibited.

Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities

§ 17.1000 Payment or reimbursement for emergency services for nonservice-connected conditions in non-VA facilities.

Sections 17.1000 through 17.1008 constitute the requirements under 38 U.S.C. 1725 that govern VA payment or reimbursement for non-VA emergency services furnished to a veteran for nonservice-connected conditions.

(Authority: 38 U.S.C. 1725)

Note to § 17.1000: Health care providers furnishing emergency treatment who believe they may have a basis for filing a claim with VA for payment under 38 U.S.C. 1725 should contact VA within 48-hours after the veteran begins receiving emergency treatment. Such contact is not a condition of VA payment. However, the contact will assist the provider in understanding the conditions for payment. The contact may also assist the provider in planning for transfer of the veteran after stabilization.

§ 17.1001 Definitions.

For purposes of §§ 17.1000 through 17.1008:

(a) The term *health-plan contract* means any of the following:

(1) An insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar arrangement under which health services for individuals are provided or the expenses of such services are paid;

(2) An insurance program described in section 1811 of the Social Security Act (42 U.S.C. 1395c) or established by section 1831 of that Act (42 U.S.C. 1395j);

(3) A State plan for medical assistance approved under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*);

(4) A workers' compensation law or plan described in section 38 U.S.C. 1729(a)(2)(A); or

(5) A law of a State or political subdivision described in 38 U.S.C. 1729(a)(2)(B) (concerning motor vehicle accidents).

(b) The term *third party* means any of the following:

(1) A Federal entity;

(2) A State or political subdivision of a State;

(3) An employer or an employer's insurance carrier;

(4) An automobile accident reparations insurance carrier; or

(5) A person or entity obligated to provide, or to pay the expenses of, health services under a health-plan contract.

(c) The term *duplicate payment* means payment made, in whole or in part, for the same emergency services for which VA reimbursed or made payment.

(d) The term *stabilized* means that no material deterioration of the emergency medical condition is likely, within reasonable medical probability, to occur if the veteran is discharged or transferred to a VA or other Federal facility.

(e) The term *VA medical facility of jurisdiction* means the nearest VA medical facility to where the emergency service was provided.

(Authority: 38 U.S.C. 1725)

§ 17.1002 Substantive conditions for payment or reimbursement.

Payment or reimbursement under 38 U.S.C. 1725 for emergency services may be made only if all of the following conditions are met:

(a) The emergency services were provided in a hospital emergency department or a similar facility held out as providing emergency care to the public;

(b) The claim for payment or reimbursement for the initial evaluation and treatment is for a condition of such a nature that a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health (this standard would be met if there were an emergency medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part);

(c) A VA or other Federal facility/provider was not feasibly available and an attempt to use them beforehand would not have been considered reasonable by a prudent layperson (as an example, these conditions would be met by evidence establishing that a veteran was brought to a hospital in an ambulance and the ambulance personnel determined that the nearest available appropriate level of care was at a non-VA medical center);

(d) The claim for payment or reimbursement for any medical care beyond the initial emergency evaluation and treatment is for a continued medical emergency of such a nature that the veteran could not have been safely transferred to a VA or other Federal facility (the medical emergency lasts only until the time the veteran becomes stabilized);

(e) At the time the emergency treatment was furnished, the veteran was enrolled in the VA health care system and had received medical services under authority of 38 U.S.C. chapter 17 within the 24-month period preceding the furnishing of such emergency treatment;

(f) The veteran is financially liable to the provider of emergency treatment for that treatment;

(g) The veteran has no coverage under a health-plan contract for payment or reimbursement, in whole or in part, for the emergency treatment (this condition cannot be met if the veteran has coverage under a health-plan contract but payment is barred because of a failure by the veteran or the provider to comply with the provisions of that health-plan contract, e.g., failure to submit a bill or medical records within specified time limits, or failure to exhaust appeals of the denial of payment);

(h) If the condition for which the emergency treatment was furnished was caused by an accident or work-related injury, the claimant has exhausted without success all claims and remedies reasonably available to the veteran or provider against a third party for payment of such treatment; and the veteran has no contractual or legal recourse against a third party that could reasonably be pursued for the purpose of extinguishing, in whole or in part, the veteran's liability to the provider; and

(i) The veteran is not eligible for reimbursement under 38 U.S.C. 1728 for the emergency treatment provided (38 U.S.C. 1728 authorizes VA payment or reimbursement for emergency treatment to a limited group of veterans, primarily those who receive emergency treatment for a service-connected disability).

(Authority: 38 U.S.C. 1725)

§ 17.1003 Emergency transportation.

Notwithstanding the provisions of § 17.1002, payment or reimbursement under 38 U.S.C. 1725 for ambulance services, including air ambulance services, may be made for transporting a veteran to a facility only if the following conditions are met:

(a) Payment or reimbursement is authorized under 38 U.S.C. 1725 for emergency treatment provided at such facility (or payment or reimbursement could have been authorized under 38 U.S.C. 1725 for emergency treatment if death had not occurred before emergency treatment could be provided);

(b) The veteran is financially liable to the provider of the emergency transportation;

(c) The veteran has no coverage under a health-plan contract for reimbursement or payment, in whole or in part, for the emergency transportation or any emergency treatment authorized under 38 U.S.C. 1728 (this condition is not met if the veteran has coverage under a health-plan contract but payment is barred because of a failure by the veteran or the provider to comply with the provisions of that health-plan contract); and

(d) If the condition for which the emergency transportation was furnished was caused by an accident or work-related injury, the claimant has exhausted without success all claims and remedies reasonably available to the veteran or provider against a third party for payment of such transportation; and the veteran has no contractual or legal recourse against a third party that could reasonably be pursued for the purpose of extinguishing, in whole or in part, the veteran's liability to the provider.

(Authority: 38 U.S.C. 1725)

§ 17.1004 Filing claims.

(a) A claimant for payment or reimbursement under 38 U.S.C. 1725 must be the entity that furnished the treatment, the veteran who paid for the treatment, or the person or organization that paid for such treatment on behalf of the veteran.

(b) To obtain payment or reimbursement for emergency treatment under 38 U.S.C. 1725, a claimant must submit to the VA medical facility of jurisdiction a completed standard billing form (such as a UB92 or a HCFA 1500). The completed form must also be accompanied by a signed, written statement declaring that "I hereby certify that this claim meets all of the conditions for payment by VA for emergency medical services under 38 CFR 17.1002 and 17.1003. I am aware

that 38 U.S.C. 6102(b) provides that one who obtains payment without being entitled to it and with intent to defraud the United States shall be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both."

Note to § 17.1004(b): These regulations regarding payment or reimbursement for emergency services for nonservice-connected conditions in non-VA facilities also can be found on the internet at *http://www.va.gov/health/elig.*

(c) Notwithstanding the provisions of paragraph (b) of this section, no specific form is required for a claimant (or duly authorized representative) to claim payment or reimbursement for emergency transportation charges under 38 U.S.C. 1725. The claimant need only submit a signed and dated request for such payment or reimbursement to the VA medical facility of jurisdiction, together with a bill showing the services provided and charges for which the veteran is personally liable and a signed statement explaining who requested such transportation services and why they were necessary.

(d) To receive payment or reimbursement for emergency services, a claimant must file a claim within 90 days after the latest of the following:

(1) July 19, 2001.

(2) The date that the veteran was discharged from the facility that furnished the emergency treatment;

(3) The date of death, but only if the death occurred during transportation to a facility for emergency treatment or if the death occurred during the stay in the facility that included the provision of the emergency treatment; or

(4) The date the veteran finally exhausted, without success, action to obtain payment or reimbursement for the treatment from a third party.

(e) If after reviewing a claim the decisionmaker determines that additional information is needed to make a determination regarding the claim, such official will contact the claimant in writing and request additional information. The additional information must be submitted to the decisionmaker within 30 days of receipt of the request or the claim will be treated as abandoned, except that if the claimant within the 30-day period requests in writing additional time, the time period for submission of the information may be extended as reasonably necessary for the requested information to be obtained.

(Authority: 38 U.S.C. 1725)

§ 17.1005 Payment limitations.

(a) Payment or reimbursement for emergency treatment under 38 U.S.C. 1725 shall be the lesser of the amount for which the veteran is personally liable or 70 percent of the amount under the applicable Medicare fee schedule for such treatment.

(b) Reimbursement or payment for emergency treatment may be made only for the period from the beginning of the treatment until such time as the veteran could be transferred safely to a VA facility or other Federal facility. For purposes of payment or reimbursement under 38 U.S.C. 1725, VA deems it safe for the veteran to be transferred once the veteran has become stabilized.

(Authority: 38 U.S.C. 1725)

§ 17.1006 Decisionmakers.

The Chief of the Health Administration Service or an equivalent official at the VA medical facility of jurisdiction will make all determinations regarding payment or reimbursement under 38 U.S.C. 1725, except that the Fee Service Review Physician or equivalent officer at the VA medical facility of jurisdiction will make determinations regarding § 17.1002(b), (c), and (d). Any decision denying a benefit must be in writing and inform the claimant of VA reconsideration and appeal rights.

(Authority: 38 U.S.C. 1725)

§ 17.1007 Independent right of recovery.

(a) VA has the right to recover its payment under this section when, and to the extent that, a third party makes payment for all or part of the same emergency treatment for which VA reimbursed or made payment under this section.

(1) Under 38 U.S.C. 1725(d)(4), the veteran (or the veteran's personal representative, successor, dependents, or survivors) or claimant shall ensure that the Secretary is promptly notified of any payment received from any third party for emergency treatment furnished to the veteran. The veteran (or the veteran's personal representative, successor, dependents, or survivors) or claimant shall immediately forward all documents relating to such payment, cooperate with the Secretary in the investigation of such payment and assist the Secretary in enforcing the United States' right to recover any payment made and accepted under this section. The required notification and submission of documentation must be provided by the veteran or claimant to the VA medical facility of jurisdiction within three working days of receipt of notice of the duplicate payment.

(2) If the Chief Financial Officer or equivalent official at the VA medical facility of jurisdiction concludes that payment from a third party was made for all or part of the same emergency treatment for which VA reimbursed or made payment under this section, such VA official shall, except as provided in paragraph (c) of this section, initiate action to collect or recover the amount of the duplicate payment in the same manner as for any other debt owed the United States.

(b)(1) Any amount paid by the United States to the veteran (or the veteran's personal representative, successor, dependents, or survivors) or to any other person or organization paying for such treatment shall constitute a lien in favor of the United States against any recovery the payee subsequently receives from a third party for the same treatment.

(2) Any amount paid by the United States, and accepted by the provider that furnished the veteran's emergency treatment, shall constitute a lien against any subsequent amount the provider receives from a third party for the same emergency treatment for which the United States made payment.

(c) If it is determined that a duplicate payment was made, the Chief Financial Officer or equivalent official at the VA medical facility of jurisdiction may waive recovery of a VA payment made under this section to a veteran upon determining that the veteran has substantially complied with the provisions of paragraph (a)(1) of this section and that actions to recover the payment would not be cost-effective or would conflict with other litigative interests of the United States.

(Authority: 38 U.S.C. 1725)

§ 17.1008 Balance billing prohibited.

Payment by VA under 38 U.S.C. 1725 on behalf of a veteran to a provider of emergency treatment shall, unless rejected and refunded by the provider within 30 days of receipt, extinguish all liability on the part of the veteran for that emergency treatment. Neither the absence of a contract or agreement between VA and the provider nor any provision of a contract, agreement, or assignment to the contrary shall operate to modify, limit, or negate this requirement.

(Authority: 38 U.S.C. 1725)

[FR Doc. 01–17102 Filed 7–11–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–7010–3]

RIN A2060–AJ51

Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996 and Emission Guidelines and Compliance Times for Large Municipal Waste Combustors That are Constructed On or Before September 20, 1994

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendment.

SUMMARY: We are amending the standards of performance for large municipal waste combustors by expanding the definition of mass burn rotary waterwall municipal waste combustors (MWC) to include mass burn tumbling-tile grate waterwall municipal waste combustors. This change ensures that the same emission limit is established for both types of MWC designs since they exhibit similar combustion characteristics. Since the emissions guidelines for large municipal waste combustors reference the definitions included in the standards of performance, this amendment to the standards has the effect of amending both the standards and the guidelines.

DATES: This direct final rule will be effective on September 10, 2001, without further notice, unless significant adverse comments are received by August 13, 2001.

If significant material adverse comments are received by August 13, 2001, this direct final rule will be withdrawn and the comments addressed in a subsequent final rule based on the proposal. If no significant material adverse comments are received, no further action will be taken on the proposal and this direct final rule will become effective on September 10, 2001.

ADDRESSES: By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–45, Subcategory IX–D, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–45, Subcategory IX–D, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5251, e-mail: porter.fred@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. We are publishing this direct final rule without prior proposal because we view this as a noncontroversial amendment and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

Docket. The docket is an organized and complete file of information compiled by EPA in development of this direct final rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket contains the record in the case of judicial review. The docket number for this rulemaking is A–90–45, Subcategory IX–D.

World Wide Web (WWW). In addition to being available in the docket, electronic copies of this action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page http://www.epa.gov/ttn/caaa. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated categories and entities that potentially will be affected by this amendment include the following:

Category	NAICS Codes	SIC Codes	Regulated entities
Industry, Federal government, and State/local/tribal governments.	562213 92411	4953 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in §§ 60.50b and 60.32b of the rules. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the action taken by this direct final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 10, 2001. Under section 307(b)(2) of the CAA, the requirements that are subject to today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under section 307(d)(7) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment or

public hearing may be raised during judicial review.

I. Background

On December 19, 1995, we promulgated standards of performance (60 FR 65382) and emissions guidelines (60 FR 65387) for large municipal waste combustors. These standards and guidelines establish maximum achievable control technology (MACT) emission limits for nine pollutants for all design types of municipal waste combustors. The emission control technology upon which these MACT emission limits are based varies somewhat, depending on the specific emission limit. For carbon monoxide (CO), the emission control technology upon which the MACT emission limits are based is good combustion. As outlined in the proposed and final standards and guidelines, good combustion consists of several elements: trained operators, waste feed control, combustion air control, combustion air preheat, and the use of auxiliary fuel burners.

The magnitude of CO emissions from a combustor are determined primarily by the combustion conditions which exist within the combustor. While good combustion minimizes CO emissions, it cannot achieve the same level of emission reductions for each type of combustor design since combustion conditions inherently vary from one type of combustor design to another. As a result, the MACT CO emission limits in the standards and guidelines vary by type of combustor design.

The MACT CO emission limits for mass burn rotary waterwall combustors, for example, are different (i.e., less stringent) than those for mass burn waterwall combustors. A mass burn rotary waterwall combustor is essentially an inclined rotating waterwall cylinder. Waste enters at the elevated end of the cylinder, ignites, and then slowly moves down the cylinder as it rotates. As the municipal waste burns, the rotation of the cylinder tends to carry the waste partially up the wall in the direction of rotation, until it tumbles and falls over on itself. When this happens, a large amount of fresh, unburned surface area is suddenly exposed to combustion, and this leads to substantial fluctuations in CO emission levels.

Most mass burn waterwall municipal waste combustors do not use an inclined rotating cylinder, but use an inclined reciprocating grate to burn the municipal waste. Viewed from the side, this inclined grate looks like a long set of stair steps. In most cases, every other grate step can move back and forth or reciprocate. The waste enters on the top step, ignites, and then is slowly pushed down the grate, from one step to another, by the reciprocating steps. While the action of moving from step to step serves to expose some fresh, unburned surface area to combustion, the transition is smoother and less abrupt than that in a rotary combustor. As a result, the fluctuations in CO emission levels are less extreme and, as mentioned above, the MACT emission limits in the standards and guidelines for CO are more stringent for mass burn waterwall combustors than for mass burn rotary waterwall combustors.

Recently, we have learned that there is one other type of mass burn waterwall municipal waste combustor design, which is referred to as a tumbling-tile grate combustor. Only one large municipal waste combustor of this type of design exists in the United States (i.e., Savannah Energy Systems located in Savannah, Georgia) and, until the owner/operator of this combustor brought this to our attention, we were not aware of it. This type of combustor design uses a grate to burn municipal waste but, because of the unique design of the grate, the combustion conditions within the combustor are similar to those within a mass burn rotary waterwall combustor.

When viewed from the side, the grate within this combustor looks like a long set of stair steps. However, every third step, which is referred to as a "tumbling-tile," is hinged at one end with the other end attached to a vertical ram beneath the step. As waste moves down the grate, the ram rises, rotating the step around the hinged end. This action causes the waste to tumble and fall over on itself exposing a large amount of fresh, unburned surface area to combustion.

The overall effect creates combustion conditions similar to those which exist within a rotating combustor. As the waste burns, periodically a large amount of fresh, unburned surface area is suddenly and abruptly exposed to combustion, and this leads to substantial fluctuations in CO emission levels. Good combustion reduces CO emission levels from a tumbling-tile grate waterwall combustor to the level achieved at rotary waterwall combustors, but cannot reduce CO emissions to the level achieved at mass burn waterwall combustors. Thus, the MACT emission limits for CO for mass burn tumbling-tile grate waterwall combustors and mass burn rotary waterwall combustors should be the same.

This direct final rule amendment, therefore, expands the definition of mass burn rotary waterwall municipal waste combustor to include mass burn tumbling-tile grate waterwall municipal waste combustor. This action ensures that the same MACT CO emission limit is established for both types of municipal waste combustor designs since they exhibit similar combustion conditions.

All terms used but not defined in the guidelines (Subpart Cb—Emission Guidelines and Compliance Times for Large Municipal Waste Combustors That are Constructed on or Before September 20, 1994) have the meaning given them in the standards (Subpart Eb—Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996). As a result, this action has the effect of amending both the standards and the guidelines by amending the definition of mass burn rotary waterwall municipal waste combustor in the standards.

II. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this direct final rule does not qualify as a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, is not subject to review by OMB.

B. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this direct final rule.

C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this direct final rule.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Also, this direct final rule is not "economically significant."

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this direct final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this direct final rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A small business in the regulated industry that has a gross annual revenue less than $6 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a

population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

G. Paperwork Reduction Act

The Office of Management and Budget had previously approved the information collection requirements contained in the standards and guidelines for large municipal waste combustors under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, at the time the rules were promulgated on December 19, 1995.

The amendment contained in this direct final rule results in no changes to the information collection requirements of the standards or guidelines and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB during the development of the standards and guidelines. Therefore, the information collection requests have not been revised.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 40 CFR chapter 15.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This direct final rule amendment does not involve technical standards. The EPA's compliance with the NTTAA has been addressed in the preamble of the standards of performance (60 FR 65382) and emissions guidelines (60 FR 65387) promulgated on December 19, 1995.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this direct final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 3, 2001.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended to read as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Eb—[Amended]

2. Section 60.51b is amended by revising the definition of *Mass burn rotary waterwall municipal waste combustor* and adding the definition of *Tumbling-tile* as follows:

§ 60.51b Definitions.

* * * * *

Mass burn rotary waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a cylindrical rotary waterwall furnace or on a tumbling-tile grate.

* * * * *

Tumbling-tile means a grate tile hinged at one end and attached to a ram at the other end. When the ram extends, the grate tile rotates around the hinged end.

* * * * *

[FR Doc. 01–17330 Filed 7–11–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket#: AK–01–002; FRL–7010–6]

Finding of Attainment for Carbon Monoxide (CO); Anchorage CO Nonattainment Area, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finding that the Anchorage CO nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for CO by the deadline required by the Clean Air Act (CAA), December 31, 2000.

EFFECTIVE DATE: August 13, 2001.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, Office of Air Quality Mail Code OAQ–107, EPA Region 10, 1200 Sixth Avenue, Seattle Washington, 98101, (206) 553–1086.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" is used we mean EPA.

I. Background

EPA has the responsibility for determining whether a nonattainment area has attained the CO NAAQS by the applicable attainment date. In this case the EPA was required to make determinations concerning whether serious CO nonattainment areas attained the NAAQS by their December 31, 2000, attainment date. Pursuant to the CAA, the EPA is required to make attainment determinations for these areas by June 30, 2001, no later than six months following the attainment date for the areas. This proposal was based on all available, quality-assured data collected from the CO monitoring sites, which has been entered into the Aerometric Information Retrieval System (AIRS). This data was reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR part 50.8, and in accordance with EPA policy and guidance as stated in a memorandum from William G. Laxton, Director Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations," dated June 18, 1990.

On May 25, 2001 (66 FR 28872), EPA proposed to find that the Anchorage CO nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for CO as of December 31. 2000. A detailed discussion of EPA's proposal is contained in the May 25, 2001, proposed rule and will not be restated here. The reader is referred to the proposed rule for more details.

II. Public Comments

We received no comments in response to EPA's proposed action to find that the Anchorage CO nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for carbon monoxide as of December 31, 2000.

III. Attainment Finding

EPA has determined that the Anchorage serious CO nonattainment area has attained the CO NAAQS by the attainment date of December 31, 2000. Consistent with CAA section 188, the area will remain a serious CO nonattainment area with the additional planning requirements that apply to serious CO nonattainment areas. This finding of attainment should not be confused with a redesignation to attainment under CAA section 107(d). Alaska has not submitted a maintenance plan as required under section 175A(a) of the CAA or met the other CAA requirements for redesignation to attainment. The designation status in 40 CFR part 81 will remain serious nonattainment for the Anchorage CO nonattainment area until such time as EPA finds that Alaska has met the CAA requirements for redesignation to attainment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely makes a determination based on air quality data and does not impose any requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves makes a determination based on air quality data, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective August 13, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, National parks, Reporting and record keeping requirements, Wilderness areas.

Dated: June 29, 2001.

Charles Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 01–17412 Filed 7–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301144; FRL–6788–7]

RIN 2070–AB78

Aminoethoxyvinylglycine; Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary tolerance of 0.170 part per million (ppm) for residues of aminoethoxyvinylglycine (AVG) in or on the stone fruit crop group when applied/used as a plant regulator. Valent BioSciences Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting the temporary tolerance. The temporary tolerance will expire on December 21, 2003.

DATES: This regulation is effective June 25, 2001. Objections and requests for hearings, identified by docket control number OPP–301144, must be received by EPA on or before September 10, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit V. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301144 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8263; and e-mail address: greenway.denise@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301144. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the**Federal Register** of March 28, 2001 (66 FR 16931) (FRL–6775–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition (PP 9G5048, transferred from Abbott Laboratories) by Valent BioSciences Corporation, 870 Technology Way, Suite 100, Libertyville, IL 60048. This notice included a summary of the petition prepared by the petitioner Valent BioSciences Corporation. There were no comments received in response to the notice of filing.

New data summarized by Valent BioSciences Corporation were from a rat 2-generation reproduction study. The study was a condition of registration of the subject active ingredient, and was submitted to the Agency by Abbott Laboratories on September 27, 1999.

The petition requested that 40 CFR 180.502 be amended by extending the temporary tolerance for residues of the biochemical pesticide aminoethoxyvinylglycine (AVG) in or on food commodities of the stone fruit crop group 12, including apricot, cherry (sweet and tart), nectarine, peach, plum, chickasaw plum, damson plum, Japanese plum, plumcot, and prune (fresh) at 0.170 part per million (ppm). Instead, the Agency is establishing a temporary tolerance for which the tolerance will expire on December 21, 2003.

Under section 408(g)(1) of the FFDCA, a regulation issued under subsection (d)(4) shall take effect upon publication unless the regulation specifies otherwise. In this case, the temporary tolerance will be effective on June 25, 2001.

This pesticide is only applied once during the growing season, and this must be done 7-14 days prior to the beginning of the harvest period. The harvest season for certain stone fruits is very early in the year. Many of the tests sites for these stone fruits are located in the Southern region of the United States. Thus, in order to provide for the sale and distribution of certain stone fruit produce with residues of this pesticide in 2001, and to optimize the benefits of the experimental use of the pesticide, approval of the use was necessary in the Spring of this year. Furthermore, the Agency has provided notice and comment for this rulemaking action and no comments were received. The Agency is also providing a 60-day period to file objections to this final rule as required by section 408(g)(2) of the FFDCA. See Unit V. of this preamble for further information. Thus, further notice and public procedure are unnecessary. The Agency finds that this constitutes good cause to provide for an immediate effective date pursuant to 5 U.S.C. 808(2).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable

certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." Additionally, section 408(b)(2)(D) requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues" and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In the **Federal Register** of June 10, 1999 (64 FR 31124) (FRL–6080–4), EPA issued a final rule pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) establishing a temporary tolerance level of 0.170 ppm for residues of aminoethoxyvinylglycine (AVG) in or on food commodities of the stone fruit crop group (40 CFR 180.502). This final rule included a summary of the Agency's assessment of the health effects data submitted in support of the establishment of the temporary numeric tolerance. This rule also announced that, in considering the sensitivity of infants and children, the thousand-fold safety factor includes an additional uncertainty factor of 10 for incompleteness of data until a rat 2-generation reproduction study was completed. The temporary tolerance expired on April 1, 2001.

Summaries of the toxicological profile and other relevant health effects data, to comply with the requirements of the FFDCA, as amended by the FQPA of 1996, were reported in the **Federal Register** of June 10, 1999, in a final rule document establishing the temporary tolerance. Although the Agency has not completed its assessment of the rat 2-generation reproduction study, based on the previously submitted data outlined in the June 10, 1999, **Federal Register** final rule, and based on the same rationale included therein, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to aminoethoxyvinylglycine from the current experimental use program. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

Therefore, the temporary tolerance, to expire December 21, 2003, is established for residues of aminoethoxyvinylglycine in or on food commodities of the stone fruit crop group at 0.170 ppm.

IV. Other Considerations

A. Analytical Method(s)

The submitted analytical method, High Performance Liquid Chromatography (HPLC)/Fluorescence detector, is acceptable; it is also verified and validated. Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

B. Codex Maximum Residue Level

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for residues of aminoethoxyvinylglycine.

V. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301144 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 10, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–

5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301144, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VI. Regulatory Assessment Requirements

This final rule establishes a temporary tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the temporary tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 25, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.502 is amended by revising the entry for "Stone fruit crop group" in the table to paragraph (a) to read as follows:

§ 180.502 Aminoethoxyvinylglycine; tolerances for residues.

(a) *General.* * * * *

Commodity	Parts per million	Expiration/Revocation Date
* *	* *	*
Stone fruit crop group	0.170	12/21/03

* * * * *

[FR Doc. 01–17473 Filed 7–11–01; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301147; FRL–6790–7]

RIN 2070–[AB78]

Aminoethoxyvinylglycine (AVG); Time-Limited Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances of 0.08 part per million (ppm) for residues of aminoethoxyvinylglycine (AVG), in or on apples and pears. Valent BioSciences Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire on December 21, 2003.

DATES: This regulation is effective July 12, 2001. Objections and requests for hearings, identified by docket control number OPP–301147, must be received by EPA on or before September 10, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301147 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8263; and e-mail address: greenway.denise@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations", "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301147. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall# 2, (CM #2) 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 28, 2001 (66 FR 16931) (FRL–6775–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 6F4632, transferred from Abbott Laboratories) for tolerances by Valent BioSciences Corporation, 870 Technology Way, Suite 100,

Libertyville, IL 60048. This notice included a summary of the petition prepared by Valent BioSciences Corporation, the registrant. There were no comments received in response to the notice of filing.

New data summarized by Valent BioSciences Corporation in that petition were a rat 2-generation reproduction study. The study was a condition of registration of the subject active ingredient, and was submitted to the Agency by Abbott Laboratories on September 27, 1999. Other new data also summarized in the March 28, 2001 notice were internationally-generated residue data in apples, submitted by Valent BioSciences Corporation on May 23, 2000.

Subsequent to the March 28, 2001 notice, the Agency received from Valent BioSciences Corporation a substantial number of supplementary data in support of aminoethoxyvinylglycine. These new data have been placed in the public docket. OPP–301147.

The petition requested that 40 CFR 180.502 be amended by establishing permanent tolerances for the biochemical pesticide aminoethoxyvinylglycine, in or on apples and pears at 0.08 part per million (ppm). Instead, because the Agency has not completed its assessment of the conditional rat 2–generation reproduction study, the Agency is establishing time-limited tolerances for which the tolerances will expire on December 21, 2003.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for apples and pears at 0.08 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

Toxicological Profile

EPA has previously evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In the **Federal Register** of May 7, 1997 (62 FR 24835) (FRL–5713–5), EPA established time-limited tolerances for residues of the plant regulator aminoethoxyvinylglycine (AVG) in or on the food commodities apples and pears at 0.08 ppm. This final rule included a summary of the Agency's assessment of the health effects data submitted in support of the establishment of the time-limited tolerances. This rule also announced that, in considering the sensitivity of infants and children, the thousand-fold safety factor includes an additional uncertainty factor of 10 for incompleteness of data until a rat 2–generation reproduction study was completed. A correction to this rule was published in the **Federal Register** of October 29, 1997 (62 FR 56089) (FRL–5751–5), which announced the correction of the reference dose (RfD) appearing on page 24836, column three, third full paragraph, line 11, from "0.0002" to "0.002." This correction did not affect the tolerance levels. The time limited tolerances expired on April 1, 2001.

Summaries of the toxicological profile and other relevant health effects data, to comply with the requirements of the FFDCA, as amended by the FQPA of 1996, were reported in the **Federal Register** publication of the final rule of May 7, 1997, establishing the time-limited tolerances. Although the Agency has not completed its assessment of the rat 2–generation reproduction study, based on the previously submitted data outlined in the May 7, 1997, **Federal Register** final rule, and based on the same rationale included therein, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to aminoethoxyvinylglycine. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

IV. Other Considerations

A. Analytical Enforcement Methodology

The submitted analytical method, High Performance Liquid Chromatography (HPLC)/Fluorescence detector, is acceptable; it is also verified and validated.

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

B. International Residue Limits

There are no Codex Alimentarius Commission (CODEX) Maximum Residue Levels (MRLs) for residues of aminoethoxyvinylglycine on apples or pears, or on any other crops.

V. Conclusion

A data gap currently exists for a rat 2–generation reproduction study, because the Agency has not concluded its assessment of the data, which were submitted by Abbott Laboratories on September 27, 1999. All tolerances are time-limited because of this data gap. The Agency also has not completed its assessment of the new internationally-generated apple residue data, which were submitted by Valent BioSciences Corporation on May 23, 2000, and, the supplementary data received after the publication of the March 28, 2001, notice. The time limitation allows for review of the data. Based on the available toxicological data, the thousandfold uncertainty factor, and the levels of exposure, the EPA has determined that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the pesticide (AVG) and its residues during the period of the time-limited tolerances.

Based on the information and rationale cited in the final rule of May 7, 1999, the Agency has determined that the establishment of the time-limited tolerances by amending 40 CFR 180.502 will be safe; therefore the time-limited tolerances are established for apples and pears at 0.08 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301147 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 10, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees"

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP–301147, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not

require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule."

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.502 is amended by revising the Expiration/revocation date for the commodities Apples and Pears in the table in paragraph (a) to read as follows:

§ 180.502 Aminoethoxyvinylglycine; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/revocation date
Apples	0.08	12/21/03
Pears	0.08	12/21/03
* * * *	*	

* * * * *

[FR Doc. 01–17472 Filed 7–11–01; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[USCG 1999–6098]

RIN 2115–AF91

Great Lakes Pilotage Rates

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the rates for pilotage on the Great Lakes. The new rates rest on an independent audit of expenses, results of the 1999 rate review, comments received in response to a Notice and a Supplemental Notice of Proposed Rulemaking, and a public meeting held in Coast Guard Headquarters on October 12, 2000. On these basis, the rates for such services increase an average of 3%, with consequent effects on the incomes of pilots.

DATES: This rule is effective August 13, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG 1999–6098 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call Tom Lawler, Chief Economist, Office of Great Lakes Pilotage, Commandant (G-MW–1), U.S. Coast Guard, at 202–267–1241, by facsimile 202–267–4700, or by email at *tlawler@comdt.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard is required by 46 CFR 404.1(b) to conduct an annual review of rates for pilotage in the Great Lakes. On the basis of this review the Director can adjust them or not.

Regulatory History

On May 9, 1996, the Department of Transportation published in the **Federal Register** [61 FR 21081] a final rule, explaining the methodology used to set the rates for pilotage on the Great Lakes.

On April 14, 2000, the Coast Guard published in the **Federal Register** [65 FR 20110] a Notice of Proposed Rulemaking (NPRM), announcing the results of the 1999 rate review and seeking comments. We received seven letters commenting on the proposed rule.

On September 13, 2000, in response to comments on the NPRM, the Coast Guard published in the **Federal Register** [65 FR 55206] a Supplemental Notice of Proposed Rulemaking (SNPRM), to allow all interested parties another 60 days for comment. On October 12, 2000, the Coast Guard conducted a public meeting at Coast Guard Headquarters, allowing interested parties an opportunity to directly present their views to the Director, Great Lakes Pilotage, and his staff.

This final rule implements the results of the 1999 rate review. It increases the rates for pilotage on the Great Lakes in Area 1 by 4%, in Area 2 by 17%, and in Area 4 by 3%; decreases them in Area 5 by 5%; increases them in Area 6 by 4% and in Area 7 by 9%; and leaves them unchanged in Area 8; and it increases average rates by 3%.

Discussion of Comments and Changes

We received, in response to the requests for comments contained in the SNPRM, 18 written comments. We received one comment from the Honorable David E. Bonior of Michigan. We also received one comment from American Great Lakes Ports, one from the United States Great Lakes Shipping Association, one from each of the three District Pilots' Associations, one from the accounting firm of the District 2 Pilots' Association, one from the lawyer for that Association, five from pilots in District 2, one from the chief dispatcher for District 2, one from the President of that Association, one from a pilot in District 1, one from the Grand Lodge, International Masters' Association, and one from the International Longshoremen's Association. All of the commenters address issues that pertained to the 1999 rate review, while some went beyond the scope of the solicitation and dealt with such issues as the methodology used to determine pilots' compensation, the 2000 rate review, and the status of pilots' continuing-education programs. The discussion of comments here can only address issues raised in the 1999 rate review.

The Honorable Mr. Bonior emphasizes that the rates of pay for all pilots providing services on the Great Lakes need to increase at the same level. The rates of pay for all those pilots will increase 11% under the updated rates contained in this final rule. This is because pilots' compensation on the Great Lakes, as stated in the rate-making methodology, 46 CFR part 404, Appendix A, results from a calculation directly linked to the compensation of certain licensed officers serving on U.S.-flag vessels on the Great Lakes. The compensation of pilots providing services on the open and deep "undesignated" waters of the Great Lakes is calculated on the current union contract, to include wages and benefits, for first mates serving on such vessels. That of pilots providing services on the confined and shallow "designated" waters, perhaps approximating the annual average compensation for masters serving on such vessels, is calculated at 150% of that of first mates. As their compensation is tied directly to the current union contract for first mates, pilots will receive the cumulative increases that the mates (and incidentally the masters) will receive.

Four commenters—the District 2 Pilots' Association, the District 3 Pilots' Association, the accounting firm for District 2, and a pilot in District 2—argue that the methodology, especially in regard to the projection of operating expenses, was flawed because it used 1997 audited data for expenses with 1998 revenues and bridge-hours. 46 CFR part 404, Appendix A, states in Step 1:

"The Director projects the amount of vessel traffic annually. [On the basis of] that projection, he forecasts the amount of fair and reasonable operating expenses that pilotage rates should recover. This consists of the following phases:

(a) Submission of financial [data] from each Association;

(b) Determination of recognizable expenses;

(c) Adjustment for inflation or deflation; and

(d) Final projection of operating expenses."

The use of 1997 audited data for expenses in conjunction with 1998 data supplied by the Pilots' Associations is consistent with the above guidelines. In 1998, the actual bridge-hour data and revenues for 1998 in each of the pilotage areas became available to the Coast Guard in May, through the submission of an unqualified opinion on audited financial statements for 1998 by each of the Pilots' Associations as required by 46 CFR 403.300. A review of the financial and bridge-hour data indicated that, on average, revenues and bridge-hours throughout the Great Lakes increased 30% from 1997 to 1998. We combined the actual observed increase for each District in 1998 with the projected 5% decrease in traffic for 1999 to establish an overall change in traffic from 1997 to 1999. For example, District 1 experienced an average increase of 36% in bridge-hours from 1997 to 1998. Considering the projected reduction of 5% from 1998 to 1999, combined with an overall projected increase of 36% from 1997 to 1999, yields a net increase of 31% for District 1. For the 1999 rulemaking, each District's approved 1997 expenses were adjusted for inflation [Approved 1997 Expenses x (1+Inflation Factor)], then multiplied by the aggregate percentage change in traffic projected for each District from 1997 to 1999, and then factored for the percentage of the Associations' expenses that change with traffic (pilotage hours). Analysis indicates that 57% of Associations' expenses are affected by a change in pilotage hours. For instance, in District 1 pilotage hours are projected to increase 31% from 1997 to 1999, which is multiplied by 57% (.31 × .57 = .18) to project that the District's operating expenses should increase 18%. Therefore, in this instance, we used the following formula to project 1999 expenses [(Approved 1997 Expenses x (1+Inflation Factor) x (1+(.31 x .57)]. In this instance, to incorporate approved costs of transportation and training into the rate, we added $86,000 to the District's expense base for the 1999 ratemaking.

The District 2 Pilots' Association, the accounting firm for District 2, and two pilots in District 2 disagree with the method used by our independent auditor to determine the cost per pilot-boat trip in District 2. They further insist that pilot-boat expenses in District 2 were not excessive, and disagree with our deduction of $45,602 from the District's expense base to offset the high cost of pilot-boat trips. Our auditor used the following method to calculate the average cost of these trips (two-way). Total pilot-boat expenses were divided by total pilot-boat trips to compute the average cost per trip. 46 CFR 404.5 establishes the guidelines for the Director, Great Lakes Pilotage, in

determining whether to recognize expenses. It specifies that he should evaluate each item to determine whether it is necessary for the provision of pilotage service and, if so, whether it is reasonable—that is, comparable or similar to the expense paid by others in the maritime industry for the same item. Pilot-boat expenses in District 2 average $176 per trip, whereas in District 1 they average $110 and in District 3 they average $83.

The treatment of leased goods and services matters greatly here because fees for leasing—if allowable—count in ratemaking. Fees are allowable if reasonable. District 3 contracts for all pilot-boat services while Districts 1 and 2 operate affiliated companies, owned wholly or partly by registered pilots, to provide these services. These affiliated companies reported net incomes for 1997 of $4,520 in District 1 and $70,506 in District 2. The latter figure represents a 19% return on total equipment and property, less land, at $372,270. In 1997, District 2 paid Erie Leasing $66,000 in fees for the rental of two pilot-boats. The Director considers these fees excessive. 46 CFR 404.5(a)(3) states:

> Lease costs for both operating and capital leases are recognized for ratemaking purposes to the extent that they conform to market rates. In the absence of a comparable market, lease costs are recognized * * * to the extent that they conform to depreciation plus an allowance for return on investment (computed as if the asset had been purchased with equity capital). The portion of lease costs that exceed these standards is not recognized for ratemaking purposes.

Using this methodology, with the reported cost of the pilot-boats at $315,000 and using a market return of 6.9% and a depreciation amount of $9,450, results in an allowable lease of $31,185 ($315,000 x 6.9% = $21,735 + $9,450 = $31,185). To bring pilot-boat expenses for District 2 into line with those for Districts 1 and 3, the Director is reducing the expense base for District 2 by $34,815 ($66,000 rental fee − $31,185 allowable fee = $34,815 excessive fees). He is deducting $34,815 instead of $45,602 from the expense base for District 2.

A pilot from District 1 asserts that the Coast Guard, in the 1999 rate review, did not include 892 bridge-hours performed by pilots on the St. Lawrence River when it determined the requirement of pilots for Lake Ontario. The assertion is accurate. That Review originally determined a requirement of four pilots for Lake Ontario. A recalculation of the bridge-hours for 1999 runs as follows: Lake pilots performed 6,355 bridge-hours in 1998, while river pilots performed 892 bridge-hours, for a total of 7,247 bridge-hours. We projected bridge-hours to decline 5% in 1999, so that the corrected projection for 1999 is 6,885 bridge-hours (7,247 x .95 = 6,885). In accordance with 46 CFR part 404, we then divided 6,885 by 1800 (6,885/1800 = 3.82 pilots) and determined a requirement of four pilots for Lake Ontario for 1999. In view of the significant increase in traffic experienced there during 2000, the Director is authorizing a total of five pilots for Area 2. This total is also consistent with the Memorandum of Arrangements (MOA) with Canada, which states that traffic on Lake Ontario will be evenly divided between American pilots and Canadian. In 1997, total bridge-hours for the two countries approximated 17,254 hours. Fifty percent comes to 8,627 hours; those are the hours that American pilots should expect under the MOA. The 1999 rate review projected a 5% reduction in traffic for the following navigational season, down to 8,196 (8,627 x .95 = 8,196). Dividing 8,196 by the bridge-hour standard of 1800 (8,196 / 1800 = 4.55), gives a figure of 4.55 pilots.

The District 2 Pilots' Association and its accounting firm disagree with the results of the calculation that determined the number of pilots required for their District. 46 CFR part 404 establishes the methodology in determining the number of pilots required for each area: "The basis for the number of pilots needed in each area of undesignated water is established by dividing the projected bridge-hours by 1800." The accounting firm disagreed with the standard of 1800 hours used to determine the number of pilots in undesignated waters; it combined delay, detention, and travel hours with bridge-hours to calculate the number of pilots required in District 2. Yet part 404 establishes 1800 bridge-hours (taking no account of detention, delay, and travel hours) as the standard, and it is the law.

The District 2 Pilots' Association and its accounting firm also disagree with the Director's reduction of $4,800 a year in total rental expenses for a six-bedroom house, rented to the Association by Erie Leasing, an affiliated company. The house serves as temporary accommodations in Port Colburn. The auditor recommended an adjustment, in that similar accommodations in the area rent on average for $400 a month less than the Association pays. However, District 2 pilots do save $52 a night by using this facility instead of a hotel. In 1999, this yielded a saving of about $15,000. In view of the above, the Director has put the $4,800 back into the expense base for District 2.

The District 2 Pilots' Association and its accounting firm also disagree with the Director's decision to disallow legal expenses not directly related to the provision of pilotage services. In September 1999, the Director requested each of the Pilots' Associations to justify its legal expenses under this standard. District 1 justified its, to the extent of $1,244. Districts 2 and 3 did not justify theirs, to any extent. The Director recognized that legal expenses are necessary in today's business environment. Therefore, he used the guidelines in 46 CFR 404.5(a)(2)(i), "Comparable or similar expenses paid by others in the maritime industry," and in 46 CFR 404.5(a)(2)(ii), "Comparable or similar expenses paid by other industries," to determine a fair and equitable allowance for legal expenses in each District. He compared the Association's legal expenses as a percentage of revenues with those of two firms that operate in relatively high-risk environments, an elevator company and an underwater-welding company. The elevator company had revenues between $12 and $18 million a year and legal expenses of $12,000 to $18,000 a year; the welding company had revenues in excess of $15 million a year with legal expenses of less than $10,000 a year. An analysis of the Association's legal expenses as a percentage of revenue since 1995 indicated that those expenses averaged $23,326 or .9% of revenue. In view of today's complex legal climate, the Director views those expenses over the past five years as fair for a Pilots' Association, which also operates in a relatively high-risk environment. Using the .9% of revenue for 1997 as a guideline, he has approved $22,815 in legal expenses for District 2, and $13,258 and $29,552 in legal expenses for Districts 1 and 3, respectively. He is returning these amounts to the Districts' expense bases for present purposes.

The District 2 Pilots' Association, its accounting firm, and one pilot in the District disagree on the disallowance of pilots' training expenses in the District. In summary, they indicate that, because the Director recognized these expenses in the past, he should recognize them now. They argue that until a temporarily registered pilot is permanently registered that person is, in fact, being trained and that during this time the Association has to compensate him. The approval of these expenses in the 1998 rate review was a mistake on the part of the Director. This is so because these expenses were not for instructional courses or material, which he should

have approved, but actually represented compensation or salary paid directly to temporarily registered pilots. Compensation for such pilots is fully accounted for in the ratemaking methodology, as explained in 46 CFR Part 404, Appendix A. Accounting for such pilots' compensation as a training expense inflates the District's expense base by double-counting: The base already accounts for it otherwise.

The District 2 Pilots' Association and its accounting firm also disagree with the independent auditor's deductions from the expense base of $947 for business promotion, $400 in contributions, and $1,988 as uniform expense. The deductions for the first two are justified in that those two are not directly related to the provision of pilotage, as they must be under 46 CFR 404.5. However the Director considers the $1,988 in uniform expense a necessary investment in equipment that actually enhances service and safety. Accordingly he has returned $1,988 to the District's expense base.

The District 2 and District 3 Pilots' Associations disagree with the Director's computation of investment base for calculating return on investment, urging that the Director take into account all assets employed in support of pilotage. 46 CFR part 404, Appendix A, Step 5(3), states that "Assets subject to return on investment * * * must be reasonable in purpose and amount. If an asset or other investment is not necessary for the provision of pilotage services, that portion of the return element is not allowed for ratemaking purposes." In calculating rate of return the Director considers property and equipment because cash assets held on deposit earn interest. A significant portion of the large cash balances that pilots' associations accumulate at the end of the calendar year they immediately distribute the next year as pilots' compensation during the months that the St. Lawrence Seaway is closed. The Director's including cash assets would encourage these associations to unnecessarily inflate their investment bases and provide a source of return available to few if any other private businesses. As we explained in the SNPRM, analysis of pilots' associations' investment bases indicates that, ever since the concept of return on investment was introduced into the ratemaking methodology, Districts 2 and 3 have greatly increased their bases. In District 2 the base went from $265,488 in 1995 to $413,998 in 1996, of which only $116,041 represented property and equipment. In District 3 it went from $119,823 in 1995 to $994,896 in 1996, of which only $25,583 represented property and equipment.

The President of the District 2 Pilots' Association observes that pilots' compensation for designated waters of the Great Lakes, under the NPRM, would have come to exactly 1.5 times that of their compensation for undesignated waters of the Lakes. The President indicates that this was not the case in past rulemakings. But target pilots' compensation for designated waters should at least approximate 1.5 times that for undesignated waters. This is so because the former should be 1.5 times first mates' salary plus first mates' benefits, as explained in a final rule published in the **Federal Register** on February 10, 1997 [62 FR 5217].

The daily contractual rate of wages for first mates is multiplied by 54 to determine the monthly rate for undesignated waters. This monthly rate is then multiplied by 1.5 to determine the monthly rate for designated waters (monthly rate for undesignated waters x 1.5 = monthly rate for designated waters). Only then is the cost of benefits (pensions, medical care, and clerical support) added to the monthly rates for both undesignated and designated waters. These figures are then multiplied by 9 to yield total yearly target pilots' compensation. A recalculation of this compensation for designated waters revealed that the figure of $155,466, used in the SNRPM for those waters was in error. The corrected figure is $147,540. The calculation goes as follows: The daily rate of wages specified in the first mates' union contract, effective August 1, 1999, was $179.42. As also specified there, the daily rate is then multiplied by 54 days (30.5 work days, 15 vacation days, 4 weekend days, 1.5 holidays, and 3 bonus days.) to determine the monthly rate, $9,689. Added to this figure are the monthly costs of first mates' pensions, of $1,246; their medical care, of $426, and their clerical support, of $126. The monthly total of wages and benefits comes to $11,487. This figure is then multiplied by 9 to yield total target pilots' compensation for undesignated waters, of $103,383.

For designated waters the monthly rate of wages, calculated above, is multiplied by 1.5, totaling $14,534. To this figure we add the monthly cost of a mates' pension benefits, $1,246; the monthly cost of health benefits, $426; and the monthly cost of clerical support, $188. The monthly total of wages and benefits now comes to $16,395. This figure is then multiplied by 9, to yield total target pilots' compensation for designated waters of $147,540.

Because this final rule may be effective for a portion of the 2001 navigational season on the Great Lakes, we have updated the rates in it to reflect the daily rate of wages in the current first mates' union contract, of $188.39, that became effective August 1, 2000. For those reasons the revised target pilots' compensation for undesignated waters and designated waters are $107,735, and $154,079, respectively.

One commenter, the District 1 Pilots' Association, states that the District's expense base should be adjusted for inflation to reflect the average change in the Consumer Price Index (CPI) until mid-year 2000, not December 1999. The Director agrees and has adjusted the base of each District to reflect the average change in the CPI from the close of the 1997 season to mid-year 2000. This equates to an inflation factor of 4.8%.

The District 2 Pilots' Association and its accounting firm disagree with the deduction of amounts for daily subsistence that did not conform to guidelines of the Internal Revenue Service. 46 CFR Part 404.5 establishes those guidelines as one of the tests used to determine the reasonableness of an expense. For 1997 those guidelines fix $36 a day as the maximum allowable amount of daily subsistence. Pilots in District 2 were paid $40, as stated in the Pilot Association's accounting handbook and confirmed by the District's chief dispatcher during the independent auditor's 1999 audit of the District. The amount in excess of $36, $2,484, we have deducted from the expense base of the District.

The District 2 Pilots' Association and its accounting firm indicate that they do not understand how pilots in District 2 exceeded their target pilots' compensation by 16% in 1998, as the SNPRM stated they did. The 16% is an error; the corrected figure is 5%. In 1998, District 2 was authorized 5 pilots in Area 4 and 9 pilots in Area 5. Target pilots' compensation in the undesignated waters of Area 4 was $97,524 for a subtotal of $487,620 (5 x $97,524), while in designated waters of Area 5 it was $138,762 for a subtotal of $1,248,858 (9 x $138,762). Target pilots' compensation for District 2, then, was a total of $1,736,478 ($487,620 + $1,248,858). The independent audit by the certified public accountant showed that the actual total compensation paid to pilots in District 2 during 1998 was $1,826,905. This means those pilots' compensation exceeded the total target pilots' compensation by 5%.

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Summary of Changes

The changes just discussed are summarized in Tables A, B, and C, which follow:

TABLE A.—DISTRICT 1

	Area 1—St. Lawrence River	Area 2—Lake Ontario	Total District 1
Step 1, Projection of operating expenses	$309,479	$263,630	$573,109
Step 2, Projection of target pilot compensation	$1,078,553	$538,675	$1,617,228
Step 3, Projection of revenue	$1,333,991	$687,207	$2,021,198
Step 4, Calculation of investment base	$0	$0	$0
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%
Step 6, Adjustment determination	$1,388,032	$802,305	$2,190,337
Step 7, Adjustment of pilotage rates	1.04	1.17	1.08

TABLE B.—DISTRICT 2

Methodology	Area 4—Lake Erie	Area 5—South East Shoal to Port Huron Michigan	Total District 2
Step 1, Projection of operating expenses	$647,029	$551,174	$1,198,203
Step 2, Projection of target pilot compensation	$538,675	$1,232,632	$1,771,307
Step 3, Projection of revenue	$1,156,057	$1,886,198	$3,042,255
Step 4, Calculation of investment base	$45,397	$71,006	$116,403
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%
Step 6, Adjustment determination	$1,188.901	$1,788,804	$2,975,455
Step 7, Adjustment of pilotage rates	1.03	.95	.98

TABLE C.—DISTRICT 3

Methodology	Area 6—Lakes Huron and Michigan	Area 7—St. Mary's River	Area 8—Lake Superior	Total District 3
Step 1, Projection of operating expenses	$692,430	$131,178	$476,862	$1,306,471
Step 2, Projection of target pilot compensation	$1,185,085	$616,316	$861,880	$2,591,100
Step 3, Projection of revenue	$1,797,967	$688,583	$1,338,912	$3,825,462
Step 4, Calculation of investment base	$11,997	$4,595	$8,934	$25,526
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%	7.04%
Step 6, Adjustment determination	$1,878,359	$753,819	$1,339,371	$3,971,549
Step 7, Adjustment of pilotage rate	1.04	1.09	1.00	1.04

As summarized in Tables A, B, and C, the Coast Guard amends the pilotage rates dictated by 46 CFR, §§ 401.405, 401.407, and 401.410, by increasing the rates for pilotage on the Great Lakes in Area 1 by 4%, in Area 2 by 17%, and in Area 4 by 3%; decreasing them in Area 5 by 5%; increasing them in Area 6 by 4% and in Area 7 by 9%; and leaving them unchanged in Area 8; and by increasing average rates by 3%.

Regulatory Evaluation

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040, (February 26, 1979)].

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule makes minimal adjustments to the pilotage rates for the Great Lakes' 2001 shipping season. The Coast Guard has used the ratemaking methodology found in 46 CFR Part 404, Appendix A, to identify adjustments necessary to achieve target pilots' compensation by establishing these new rates for pilotage. This methodology is designed to review pilotage rates every year so as to avoid large changes in them and ultimately avoid large fluctuations in pilots' compensation. This rule provides a step-by-step economic guide to show how the methodology works. This rulemaking will help accomplish the Coast Guard's desire for a safe, reliable, and efficient pilotage system.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the Great Lakes, small entities potentially affected by this rule include shippers, Great Lakes ports, carriers, and shipping agents. The overall

increase in pilotage rates on the lakes should not significantly affect small businesses. This is true because the overall average increase in rates, of 3%, is less than the approximate increase in the CPI, of 5%, since the rates were last changed, in 1997. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Tom Lawler, Chief Economist, Great Lakes Pilotage (G–MW–1), U.S. Coast Guard, at 202–267–1241, by facsimile 202–267–4700, or by email at *tlawler@comdt.uscg.mil.*

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria in Executive Order 13132 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

It is well settled that States are precluded from regulation in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703(a), 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels) are within the field foreclosed from regulation by States. [See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke*, 120 S. Ct. 1135, 2000 U.S. LEXIS 1895 (March 6, 2000).] Since this rule involves the numbers and compensation for pilots on vessels transiting the Great Lakes, it is a matter of manning, and so precludes States from regulation. Because States may not promulgate rules within this category, preemption is not an issue under Executive Order 13132.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this final rule both is required by law and will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or a risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We have considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(a), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule is procedural in nature because it deals exclusively with adjusting pilotage rates for the Great Lakes. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 401

46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR Part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

1. Revise the citation of authority for part 401 to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46 (mmm); 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507

2. In § 401.405, revise paragraphs (a) and (b) to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	$8 per kilometer or $14 per mile.[1]
Each Lock Transited	$178.[1]
Harbor Movage	$584.[1]

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $389, and the maximum basic rate for a through trip is $1709.

(b) *Area 2 (Undesignated Waters):*

Service	Lake Ontario
Six-Hour Period	$344
Docking or Undocking	328

3. In § 401.407, revise paragraphs (a) and (b) to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) *Area 4 (Undesignated Waters):*

Service	Lake Erie (east of South-east Shoal)	Buffalo
Six-Hour Period	$335	$335
Docking or Undocking	258	258
Any Point on the Niagara River below the Black Rock Lock	N/A	658

(b) *Area 5 (Designated Waters):*

Any point on or in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of South-East Shoal	$939	$554	$1,218	$939	N/A
Port Huron Change Point	[1] 1,634	[1] 1,893	1,228	955	$679
St. Clair River	[1] 1,634	N/A	1,228	1,228	554
Detroit or Windsor or the Detroit River	939	1,218	554	N/A	1,228
Detroit Pilot Boat	679	939	N/A	N/A	1,228

[1] When pilots are not changed at the Detroit Pilot Boat.

4. In § 401.410, revise paragraphs (a) and (b) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior and the St. Mary's River.

* * * * *

(a) *Area 6 (Undesignated Waters):*

Service	Lake Superior
Six-Hour Period	$280
Docking or Undocking	266

(b) *Area 7 (Designated Waters):*

Area	Detour	Gros cap	Any harbor
Gros Cap	$1,436	N/A	N/A
Wharf of Algoma Steel Corporation at Sault Ste. Marie, Ontario	1,436	$541	N/A
Any point in Sault Ste. Marie, Ontario, except the Wharf of Algoma Steel Corporation	1,204	541	N/A
Sault Ste. Marie, Michigan	1,204	541	N/A
Harbor Movage	N/A	N/A	$541

* * * * *

§ 401.420 [Amended]

5. Amend § 401.420 as follows: a. In paragraph (a), remove the number "$51" and add, in its place, the number "$53"; and remove the number "$807" and add, in its place, the number "$831".

b. In paragraph (b), remove the number "$51" and add, in its place, the number "$53"; and remove the number "$807" and add, in its place, the number "$831".

c. In paragraph (c)(1), remove the number "$305" and add, in its place, the number "$314"; and, in paragraph (c)(3), remove the number "$51" and add, in its place, the number "$53" and, also in paragraph (c)(3), remove the number "$807", and add, in its place, the number "$831".

§ 401.428 [Amended]

6. In § 401.428, remove the number "$312" and add, in its place, the number "$321".

Dated: May 25, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Safety and Environmental Protection.

[FR Doc. 01–17385 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–15–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

Security Requirements for Unclassified Information Technology Resources

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: This interim rule amends the NASA FAR Supplement (NFS) to clarify the information technology (IT) security requirements for sensitive information contained in unclassified automated information resources

DATES: *Effective Date:* This interim rule is effective July 12, 2001.

Applicability Date: This amendment applies to all contracts awarded on or after the effective date.

Comment Date: Comments should be submitted to NASA at the address below on or before September 10, 2001.

FOR FURTHER INFORMATION CONTACT: Karl Beisel, NASA Headquarters, Code HC, Washington, DC 20546, (202) 358–0416 kbeisel@mail.hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Computer Security Act of 1987 and Appendix III of the Office of Management and Budget (OMB) Circular No. A–130, Security of Federal Automated Information Resources, require that adequate security be provided for all Agency information collected, processed, transmitted, stored, or disseminated. NFS Part 1804 contains the requirement for all NASA contractors and subcontractors to comply with NASA policies in safeguarding unclassified NASA data held via information technology (IT). This interim rule clarifies NASA requirements by revising the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources, and amending Section 1804.470 to clarify the applicability and requirements of the clause.

B. Regulatory Flexibility Act

NASA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because this interim rule only clarifies existing requirements and does not impose any new requirements.

C. Paperwork Reduction Act

This interim rule clarifies existing requirements that were previously approved by the Office of Management and Budget (OMB) under OMB Control No. 2700–0098.

D. Determination To Issue an Interim Rule

In accordance with 41 U.S,C. 418(d), NASA has determined that urgent and compelling reasons exist to promulgate this interim rule. The basis for this determination is that the clarifications contained in this interim rule are needed to ensure consistent implementation of NASA's acquisition-related aspects of Federal policies for assuring the security of unclassified automated information resources. Public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 1804 and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1804 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1804 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Revise sections 1804.470–1, 1804.470–2, 1804.470–3, and 1804.470–4 to read as follows:

1804.470–1 Scope.

This section implements NASA's acquisition-related aspects of Federal policies for assuring the security of unclassified automated information resources.

1804.470–2 Policy.

(a) NASA policies and procedures on security for automated information technology are prescribed in NPD 2810.1, Security of Information Technology, and in NPG 2810.1, Security of Information Technology. The provision of information technology (IT) security in accordance with these policies and procedures, is required in all contracts that include IT resources or services in which a contractor must have physical or electronic access to NASA's sensitive information contained in unclassified systems that directly support the mission of the Agency. This includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include:

(1) Computer control of spacecraft, satellites, or aircraft or their payloads;

(2) Acquisition, transmission or analysis of data owned by NASA with significant replacement costs should the contractor's copy be corrupted; and

(3) Access to NASA networks or computers at a level beyond that granted the general public, e.g. bypassing a firewall.

(b) The contractor must not use or redistribute any NASA information processed, stored, or transmitted by the contractor except as specified in the contract.

1804.470–3 Security plan for unclassified Federal Information Technology systems.

(a) The requiring activity with the concurrence of the Center Chief Information Officer (CIO), and the Center Information Technology (IT) Security Manager, must determine whether an IT Security Plan for unclassified information is required.

(b) IT security plans must demonstrate a thorough understanding of NPG 2810.1 and NPD 2810.1 and must include, as a minimum, the security measures and program safeguards planned to ensure that the information technology resources acquired and used by contractor and subcontractor personnel—

(1) Are protected from unauthorized access, alteration, disclosure, or misuse of information processed, stored, or transmitted;

(2) Can maintain the continuity of automated information support for NASA missions, programs, and functions;

(3) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the systems' integrity and accuracy;

(4) Have appropriate technical, personnel, administrative, environmental, and access safeguards;

(5) Document and follow a virus protection program for all IT resources under its control; and

(6) Document and follow a network intrusion detection and prevention program for all IT resources under its control.

(c) The contractor must be required to develop and maintain an IT System Security Plan, in accordance with NPG 2810.1, for systems for which the contractor has primary operational responsibility on behalf of NASA.

(d) The contracting officer must obtain the concurrence of the Center Chief of Security before granting any contractor requests for waiver of the screening requirement contained in the clause at 1852.204–76.

1804.470–4 Contract clauses.

The contracting officer must insert a clause substantially the same as the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts which require submission of an IT Security Plan.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Revise section 1852.204–76 to read as follows:

1852.204–76 Security Requirements for Unclassified Information Technology Resources.

As prescribed in 1804.470–4, insert a clause substantially as follows:

Security Requirements for Unclassified Information Technology Resources, July 2001

(a) The Contractor shall be responsible for Information Technology security for all systems connected to a NASA network or operated by the Contractor for NASA, regardless of location. This clause is applicable to all or any part of the contract that includes information technology

resources or services in which the Contractor must have physical or electronic access to NASA's sensitive information contained in unclassified systems that directly support the mission of the Agency. This includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include:

(1) Computer control of spacecraft, satellites, or aircraft or their payloads;

(2) Acquisition, transmission or analysis of data owned by NASA with significant replacement cost should the contractor's copy be corrupted; and

(3) Access to NASA networks or computers at a level beyond that granted the general public, *e.g.* bypassing a firewall.

(b) The Contractor shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The Contractor's IT Security Plan shall be compliant with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 *et seq.*) and the Government Information Security Reform Act of 2000. The plan shall meet IT security requirements in accordance with Federal and NASA policies and procedures that include, but are not limited to:

(1) OMB Circular A–130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;

(2) NASA Procedures and Guidelines (NPG) 2810.1, Security of Information Technology; and

(3) Chapter 3 of NPG 1620.1, NASA Security Procedures and Guidelines.

(c) Within ____days after contract award, the contractor shall submit for NASA approval an IT Security Plan. This plan must be consistent with and further detail the approach contained in the offeror's proposal or sealed bid that resulted in the award of this contract and in compliance with the requirements stated in this clause. The plan, as approved by the Contracting Officer, shall be incorporated into the contract as a compliance document.

(d)(1) Contractor personnel requiring privileged access or limited privileged access to systems operated by the Contractor for NASA or interconnected to a NASA network shall be screened at an appropriate level in accordance with NPG 2810.1, Section 4.5; NPG 1620.1, Chapter 3; and paragraph (d)(2) of this clause. Those Contractor personnel with non-privileged access do not require personnel screening. NASA shall provide screening using standard personnel screening National Agency Check (NAC) forms listed in paragraph (d)(3) of this clause, unless contractor screening in accordance with paragraph (d)(4) is approved. The Contractor shall submit the required forms to the NASA Center Chief of Security (CCS) within fourteen (14) days after contract award or assignment of an individual to a position requiring screening. The forms may be obtained from the CCS. At the option of the government, interim access may be granted pending completion of the NAC.

(2) Guidance for selecting the appropriate level of screening is based on the risk of adverse impact to NASA missions. NASA defines three levels of risk for which screening is required (IT–1 has the highest level of risk):

(i) IT–1—Individuals having privileged access or limited privileged access to systems whose misuse can cause very serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of spacecraft, satellites or aircraft.

(ii) IT–2—Individuals having privileged access or limited privileged access to systems whose misuse can cause serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of payloads on spacecraft, satellites or aircraft; and those that contain the primary copy of "level 1" data whose cost to replace exceeds one million dollars.

(iii) IT–3—Individuals having privileged access or limited privileged access to systems whose misuse can cause significant adverse impact to NASA missions. These systems include, for example, those that interconnect with a NASA network in a way that exceeds access by the general public, such as bypassing firewalls; and systems operated by the contractor for NASA whose function or data has substantial cost to replace, even if these systems are not interconnected with a NASA network.

(3) Screening for individuals shall employ forms appropriate for the level of risk as follows:

(i) IT–1: Fingerprint Card (FC) 258 and Standard Form (SF) 85P, Questionnaire for Public Trust Positions (Information regarding financial record, question 22, and the Authorization for Release of Medical Information are not applicable);

(ii) IT–2: FC 258 and SF 85, Questionnaire for Non-Sensitive Positions; and

(iii) IT–3: NASA Form 531, Name Check, and FC 258.

(4) The Contracting Officer may allow the Contractor to conduct its own screening of individuals requiring privileged access or limited privileged access provided the Contractor can demonstrate that the procedures used by the Contractor are equivalent to NASA's personnel screening procedures. As used here, equivalent includes a check for criminal history, as would be conducted by NASA, and completion of a questionnaire covering the same information as would be required by NASA.

(5) Screening of contractor personnel may be waived by the Contracting Officer for those individuals who have proof of—

(1) Current or recent national security clearances (within last three years);

(ii) Screening conducted by NASA within last three years; or

(iii) Screening conducted by the Contractor, within last three years, that is equivalent to the NASA personnel screening procedures as approved by the Contracting Officer under paragraph (d)(4) of this clause.

(e) The Contractor shall ensure that its employees, in performance of the contract, receive annual IT security training in NASA IT Security policies, procedures, computer ethics, and best practices in accordance with NPG 2810.1, Section 4.3 requirements. The contractor may use web-based training available from NASA to meet this requirement.

(f) The Contractor shall afford NASA, including the Office of Inspector General, access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection, investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of NASA data or to the function of computer systems operated on behalf of NASA, and to preserve evidence of computer crime.

(g) The Contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(End of clause)

[FR Doc. 01–17131 Filed 7–11–01; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010122013–1013–01; I.D. 070901A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: MFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This is action is necessary to prevent exceeding the 2001 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 9, 2001, through 2400 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the

Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2001 TAC of Pacific ocean perch for the West Yakutat District was established as 870 metric tons (mt) by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

In accordance with § 679.20 (d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2001 TAC for Pacific ocean perch in the West Yakutat District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 820 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20 (d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20 (e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the 2001 TAC of Pacific ocean perch for the West Yakutat District of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the 2001 TAC of Pacific ocean perch for the West Yakutat District of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553 (d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 9, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 01–17481 Filed 7–9–01; 3:28 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 134
Thursday, July 12, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to amend the regulations on methods of withdrawing funds from the Thrift Savings Plan (TSP) to eliminate the option to transfer a financial hardship in-service withdrawal to an individual retirement account (IRA) or other eligible retirement plan. This is consistent with the Internal Revenue Code's rules for similar distributions from private sector plans. The proposed amendment also incorporates administrative changes in calculating the amount of a financial hardship withdrawal.

DATES: Comments must be received on or before August 13, 2001.

ADDRESSES: Comments may be sent to: Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Salomon Gomez on (202) 942–1661; Merritt A. Willing on (202) 942–1666; or Patrick J. Forrest on (202) 942–1659. FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, which has been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal employees, which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (I.R.C.) (26 U.S.C. 401(k)). The TSP is qualified under section 7701(j) of the I.R.C. (26 U.S.C. 7701(j)). Sums in the TSP are held in trust for the TSP participant.

Analysis

Part 1650 was published in final form in the **Federal Register** on September 18, 1997 (62 FR 49112), and was subsequently amended by a final rule published in the **Federal Register** on June 9, 1999 (64 FR 31052). This proposed rule further amends the final rule.

The Board proposes to revise § 1650.42(b) to provide that a financial hardship withdrawal may no longer be transferred to an IRA or other eligible retirement plan. The Board proposes to eliminate this option to transfer because transfer is available only for distributions which meet the Internal Revenue Service (IRS) requirements for an eligible rollover distribution. However, the IRS no longer considers a financial hardship withdrawal to be an eligible rollover distribution. *See* 26 U.S.C. 402(c)(4). Instead, a financial hardship withdrawal is treated as a nonperiodic payment.

Section 402(c)(4) applies to plans qualified under section 401(k) of the I.R.C. (26 U.S.C. 401(k)); this does not include the TSP, which is a plan qualified under section 7701(j) (26 U.S.C. 7701(j)). Nevertheless, the Board proposes to follow the IRC rule that applies to private sector plans. (An age-based in-service withdrawal continues to be eligible for transfer to an IRA or other qualified plan.)

As a consequence of this change, the Board also proposes to eliminate § 1650.31(b) which allows a participant to elect additional tax withholding from a financial hardship in-service withdrawal to ensure that he or she receives an amount adequate to cover the entire financial hardship, after withholding. However, unlike an eligible rollover distribution, a participant can avoid withholding (or can increase withholding) on a nonperiodic distribution by submitting an IRS Form W–4P, Withholding Certificate for Pension or Annuity Payments. Since the participant can obtain the full amount of the withdrawal by submitting this form to the TSP record keeper, the option to increase the amount of the withdrawal is no longer necessary.

Other changes to § 1650.31 include changes to (b)(2) to clarify that the documentation supporting a financial hardship withdrawal request based upon an extraordinary expense must be dated within 45 days of the request. Proposed § 1650.31 also includes a new paragraph (d). The new paragraph explains that a participant who has a pending Chapter 13 bankruptcy action is not eligible for a financial hardship withdrawal because the TSP presumes that the bankruptcy court is providing adequate funds for the participant's living expenses.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

List of Subjects in 5 CFR Part 1650

Alimony, Claims, Employment benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,
Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, the Board proposes to amend 5 CFR part 1650 as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

1. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

2. Section 1650.31 is revised to read as follows:

§ 1650.31 Financial hardship withdrawals.

(a) A participant who has not separated from Government employment and who can demonstrate financial hardship is eligible to withdraw all or a portion of his or her own contributions to the TSP (and their attributable earnings) in a single payment to meet certain specified financial obligations. The amount of a financial hardship withdrawal must be at least $1,000.

(b) A participant will demonstrate financial hardship if he or she meets one or both of the following tests:

(1) Based on TSP-calculations, the participant's monthly cash flow is negative (*i.e.*, net income is less than ordinary monthly household expenses).

(2) The participant has incurred, or will incur within the next six months, extraordinary expenses which the participant has not paid, for which he or she has not been and will not be reimbursed, and which cannot be met by his or her monthly cash flow over a period of six months. Documentation of the expenses must be dated within 45 days of the date of the withdrawal request. Extraordinary expenses are limited to the following four types:

(i) Medical expenses payable by the participant and related to the treatment of the participant, the participant's spouse, or the participant's dependents. Generally, eligible expenses are those that would be eligible for deduction as medical expenses for Federal income tax purposes, but without regard to the Internal Revenue Service's (IRS) income limitations on deductibility. However, the following expenses that are allowed by the IRS are not eligible TSP medical expenses: health insurance premiums and expenses associated with household improvements required as a result of a medical condition, illness, or injury to the participant, the participant's spouse, or the participant's dependents. These items are already taken into account elsewhere in the TSP financial hardship calculations.

(ii) The cost of household improvements required as a result of a medical condition, illness or injury to the participant, the participant's spouse, or the participant's dependents which is eligible for deduction as a medical expense for Federal income tax purposes, but without regard to the IRS income limitations on deductibility or the fair market value of the property. Household improvements are structural improvements to the participant's living quarters or the installation of special equipment that is necessary to accommodate the circumstances of the incapacitated person.

(iii) The cost of repair or replacement resulting from a personal casualty loss that would be eligible for deduction for Federal income tax purposes, but without regard to the IRS income limitations on deductibility, fair market value of the property, or number of events. Personal casualty loss includes damage, destruction, or loss of property resulting from a sudden, unexpected, or unusual event, such as an earthquake, hurricane, tornado, flood, storm, fire, or theft.

(iv) Legal expenses for attorney fees and court costs associated with separation or divorce. Court-ordered payments to a spouse or former spouse and child support payments are not allowed, nor are costs of obtaining prepaid legal services or other coverage for legal services.

(c) The amount of a participant's financial hardship withdrawal cannot exceed the smallest of the following:

(1) The amount requested;

(2) The amount in the participant's account that is equal to his or her own contributions and attributable earnings; or

(3)(i) The amount which would both:

(A) Make up the participant's negative cash flow, if any, for a period of six months; and

(B) Pay documented extraordinary expenses, if any.

(ii) If the TSP calculates that the participant has a negative cash flow and extraordinary expenses, the amount of the disbursement is equal to six times the amount of the negative monthly cash flow plus the amount of the extraordinary expenses. If the TSP calculates that the participant has a positive cash flow, the amount of the disbursement is equal to the amount of the documented extraordinary expenses minus six times the amount of the positive monthly cash flow.

(d) A participant is not eligible for an in-service hardship withdrawal during the time he or she has pending a petition in bankruptcy under Chapter 13 of the Bankruptcy Code.

3. Section 1650.42 is revised to read as follows:

§ 1650.42 Taxes related to in-service withdrawals.

(a) When an in-service withdrawal is paid directly to a participant from the TSP, the money is taxable income in the year in which the payment is made. However, a participant does not pay taxes on money that the TSP transfers directly to an IRA or other eligible retirement plan until the money is withdrawn from the IRA or plan.

(b) A financial hardship in-service withdrawal from the TSP is not an eligible rollover distribution, and a participant therefore may not request the TSP to transfer a financial hardship in-service withdrawal to an IRA or other eligible retirement plan. A financial hardship in-service withdrawal is subject to 10% withholding. The withholding is not mandatory; the participant may either avoid the withholding or increase the amount of withholding by submitting an IRS Form W–4P, Withholding Certificate for Pension or Annuity Payments, to the TSP record keeper.

(c) An age-based in-service withdrawal from the TSP is an eligible rollover distribution, and a participant may request the TSP to transfer all or a portion of an age-based in-service withdrawal to an IRA or other eligible retirement plan, consistent with paragraph (d) of this section. If the withdrawal is not transferred, it is subject to mandatory 20% withholding. (The participant may increase the amount of withholding by submitting an IRS Form W–4P to the TSP record keeper.)

(d) A transfer or rollover may be requested by filing with the TSP record keeper a TSP Form 75–T. An eligible retirement plan is a plan defined in the Internal Revenue Code, 26 U.S.C. 402(c)(8). There are four types of eligible retirement plans: an individual retirement account (IRA), an individual retirement annuity (other than an endowment contract), a qualified pension, profit-sharing, or stock bonus plan, and an annuity plan described in 26 U.S.C. 403(a). An eligible retirement plan must be maintained in the United States, which means one of the 50 states or the District of Columbia.

[FR Doc. 01–17482 Filed 7–11–01; 8:45 am]
BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 274

[Amendment No. 392]

RIN 0584–AC37

Food Stamp Program, Regulatory Review: Standards for Approval and Operation of Food Stamp Electronic Benefit Transfer (EBT) Systems

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action will revise Food Stamp Program rules affecting the standards for approval and operation of Food Stamp Electronic Benefit Transfer systems. The changes will increase State agency flexibility in administering the program and maximize the advantages afforded by the technology. We are proposing the revisions to streamline program administration and improve customer service.

DATES: Comments must be received on or before September 10, 2001 to be assured of consideration.

ADDRESSES: Comments should be submitted to Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Mr. Cohen at (703) 605–0232, or by e-mail to jeff.cohen@fns.usda.gov. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 718.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Mr. Cohen at the above address or by telephone at (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866. This rule, however, is not economically significant, since it is not expected to have an economic impact on the economy of $100 million or more in any one year.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 13132, Federalism

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments and consult with them as they develop and carry out those policy actions. The Food and Nutrition Service (FNS) has considered the impact of this rule which proposes numerous changes to the requirements for approval and operations of Electronic Benefit Transfer (EBT) systems to deliver food stamp benefits. All of the provisions in this rule are discretionary. FNS is not aware of any case where any of these provisions would in fact preempt State law. Prior to drafting this proposed rule, we received input from State agencies at various times. Several of the provisions are in direct response to State agency concerns and some, in fact, codify policies already implemented by State agencies operating EBT systems. Since the Food Stamp Program (FSP) is a State administered, federally funded program, our national headquarters staff and regional offices have informal and formal discussions with State and local officials on an ongoing basis regarding EBT implementation issues. This arrangement allows State agencies to provide feedback that forms the basis for many discretionary decisions in this and other FSP rules. In addition, we sent representatives to regional, national, and professional conferences to discuss our issues and receive feedback on EBT implementation.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Eric M. Bost, the Under Secretary for Food, Nutrition, and Consumer Services has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this proposed rule announces our intent to revise information collection 0584–0083 and reduce the amount of information collected as part of the Advanced Planning Documents (APD) required of State agencies requesting funding for an Electronic Benefit Transfer (EBT) system for food stamps.

Comments on this proposed rule must be received by September 10, 2001.

Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC, 20503. Please also send a copy of your comments to Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection, please contact Mr. Cohen at the above address.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

For Further Information Contact: Jeffrey N. Cohen, (703) 305–2522.

Title: Operating Guidelines, Forms and Waivers.

OMB Number: 0584–0083.

Type of Request: Revision of a currently approved collection.

Abstract: Under section 7(i) of the Food Stamp Act of 1977, as amended (FSA), (7 U.S.C. 2016(i)) the Secretary is authorized to permit State agencies to implement Electronic Benefit Transfer (EBT) systems. The Secretary is authorized to establish standards for the required testing prior to implementation of any EBT system and may require analysis of the implementation results in a limited pilot project area before expansion of the system. Any State requesting funding for an EBT system must submit a written plan of action called an Advance Planning Document (APD) to the Food and Nutrition Service (FNS).

In this proposed rulemaking, we are revising Food Stamp Program rules affecting the standards for approval and operation of Food Stamp EBT systems. Several of the provisions will reduce the amount of information required for a State agency to submit as part of the standard APD. We are proposing these revisions in response to the evolution of EBT over time, which has rendered some of the information we are currently collecting unnecessary.

With provisions in this regulation, we are proposing to eliminate or reduce the reporting requirements as described below.

- State agencies will no longer need to provide FNS with the written planning and implementation APD approvals from other participating Federal agencies, or indicate that approval is being sought simultaneously from other participating Federal agencies.
- State agencies will be required to submit a substantially abbreviated planning APD compared to what is currently required. The document will include a brief letter of intent, a budget, a cost allocation plan and a schedule of activities and deliverables.
- State agencies will no longer need to submit an acceptance test report unless FNS is not present at the testing or if serious problems are found during the test.
- State agencies will no longer have to submit quarterly pilot project reports, but rather, report problems or issues to FNS when they occur or are identified.
- State agencies will not be required to submit a pilot cost analysis.
- The State agency will not need to submit an APD update requesting FNS approval to expand EBT operations beyond the pilot area unless there are substantive changes to the implementation plan. State agencies may expand EBT simultaneously with pilot operations, unless significant problems arise.

As currently approved by OMB, the estimated time to gather information and complete an EBT APD is 45 hours per respondent. The recordkeeping burden includes maintaining a copy of the system design specifications, the APD submission, approvals and APD updates. A total of 39 States are operational with EBT systems and we expect 41 States to operate EBT systems within the next year. In addition to the remaining States, some EBT States will be entering new contracts as their current contracts expire. We estimate 10 State agencies will submit an APD each year, for a total of 450 hours.

Estimates of Burden: We estimate the provisions of this proposed rule, as listed above, will reduce the amount of time each State agency spends on an APD for EBT by 10 hours, for an overall decrease in burden hours of 100 hours annually, bringing the total time down to 35 hours per respondent.

Respondents: State agencies.

Estimated number of Respondents: 10 State agencies per year.

Estimated number of Responses per respondent: One.

Estimated annual number of responses: 10.

Estimated Total Annual Burden on Respondents: 350 hours.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program, the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) of the FSA and regulations at 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 of the FSA and regulations at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or 7 CFR Part 283 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to Section 14 of the FSA (7 U.S.C. 2023) and 7 CFR 278.8.

Public Law 104–4

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, the FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with the "Federal mandates" that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not economically significant, nor subject to the requirements of sections 202 and 205 of the UMRA.

Background

In this rule, FNS is proposing to revise food stamp regulations affecting the standards for approval and operation of Food Stamp Electronic Benefit Transfer Systems. The revisions will streamline administration of the program, offer greater flexibility to State agencies in enacting policy, and improve customer service. Other provisions have been clarified in order to facilitate implementation by State agencies.

Electronic Benefit Transfer Issuance System Approval Standards—7 CFR 274.12

On April 1, 1992, the Department issued a final rule establishing standards for operation of on-line Electronic Benefit Transfer (EBT) Systems as an alternative to coupons. Those regulations were promulgated in accordance with the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 (Leland Act), Pub. L. 101–624, as part of a package of items aimed at improving the efficiency and effectiveness of program operations.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) signed by the President August 22, 1996, further authorizes use of off-line EBT technology, which uses a self-contained benefit access device, commonly known as a smartcard, to access benefits. The provisions of this rulemaking pertain to both on-line and off-line systems, unless otherwise specified. Currently, no industry standards exist for off-line smartcard systems. We intend to propose standards for off-line EBT systems in the future once those industry standards are developed. However, we have learned a great deal about off-line EBT systems from those currently operating. State agencies interested in implementing off-line systems may submit proposals for approval which will be evaluated on a case by case basis, pending the publication of specific off-line standards.

When the EBT regulations were initially issued, EBT systems were still in their infancy and had only been implemented in a few pilot areas. However, as more and more State agencies went on-line with EBT, other State and federal agencies implementing EBT were able to learn and benefit from those early efforts. As a result, State agencies have been able to roll-out their systems more aggressively and with greater ease by replicating the system designs of operational State agencies, with some State-specific modifications. In order to keep pace with the strides

made in EBT implementation, the Department has reviewed the EBT regulations and is proposing modifications to the rules to reflect a more standardized and streamlined approach to EBT system approvals. Provisions which would improve program administration through greater State agency flexibility, automation and integrity have also been proposed in this rulemaking. Other provisions would be clarified by reorganizing or deleting paragraphs, in order to simplify implementation for State agencies. The major revisions are discussed below.

System Approvals

Current regulations at 7 CFR 274.12(b)(1) require that State agencies submit APDs for approval of EBT systems. We are clarifying in this proposed rule our expectation that State agencies continue to follow the APD process when procuring subsequent EBT systems after the initial system contract comes to an end.

Current regulations at 7 CFR 274.12(b)(4) require that the State agency provide written approval to FNS of the Planning and Implementation Advanced Planning Documents from other participating Federal agencies or indicate that approval is being sought simultaneously from participating Federal agencies. This requirement was intended to keep FNS informed on where other Federal agencies were in the EBT project approval process, including any issues that could potentially effect project approval by other agencies. However, in May 1994, FNS was designated the "lead program agency" for the Federal Government with regard to State EBT systems. In this role, FNS now coordinates document approvals and provides State agencies with a single point of contact in the Federal Government, when necessary. Since State agencies no longer need to coordinate document approvals from relevant Federal agencies, we propose eliminating this requirement.

The Department is also proposing to reduce the amount of State EBT planning documentation to be submitted for EBT systems approval, as required in 7 CFR 274.12(c)(1). The Department is confident that State agencies recognize the importance of careful and thorough project planning for EBT system implementation. There is no longer a need for FNS to receive the current level of detail on planning activities to provide sufficient agency oversight. Therefore, this rule proposes to modify regulations at 7 CFR 274.12(c)(1)(i) and 274.12(c)(1)(ii) to make Planning Advanced Planning Documents (PAPD) less burdensome and less prescriptive in terms of the information required, by:

(1) Eliminating the specifications contained in (i) and (ii) for pilot project site and expanded site descriptions and description of major contacts; and

(2) Indicating that only minimal information be contained in the PAPD, including a brief letter of intent, planning budget, cost allocation plan, and schedule of activities and deliverables.

System Testing

To further decrease the burden on State agencies to document all aspects of the EBT planning process, the proposed regulations at 7 CFR 274.12(c)(2)(i) would no longer require a functional demonstration test plan or report. This was operationalized in our streamlined procedures implemented in 1994. Although we no longer require the documentation, we continue to recommend that State agencies demand a functional demonstration test of their vendors, particularly if functions of the system are new for that vendor. Without such a test for the State agency's benefit, avoidable functional problems could arise later in the acceptance test and result in the project's delay.

In general, extensive acceptance testing must be successfully completed prior to system operation, as stipulated in section 274.12(c)(2)(iii)(B). Since experience has shown that EBT systems are often modified over the life of a State agency's contract with a particular vendor, it may be necessary to repeat any or all of these tests if significant changes are made to the system after the system is operational. Therefore, the Department is clarifying this provision by indicating that FNS reserves the right to require such re-testing, if warranted.

The Department is also proposing to revise the current provisions at 7 CFR 274.12(c)(2)(iv), which require the State agency to provide an acceptance test report. Under most circumstances, FNS will no longer require this report; however, a report will be necessary if FNS is not present at the testing or serious problems are uncovered during the test.

Pilot Operation and Reporting

Current requirements at 7 CFR 274.12(c)(4)(i) stipulate that pilot project reports contain standard information as prescribed in subparagraphs (A) through (R). Now that EBT is no longer in its infancy, this information has proven to be excessive, and is often irrelevant to the task of identifying issues that have surfaced during the pilot shakedown period. The general intent of pilot project reports is to identify any problems which need to be resolved prior to expansion. The Department is proposing to delete 7 CFR 274.12(c)(4)(i)(A) through (c)(4)(i)(R) and replace them with less rigid requirements and to allow State agencies latitude to discern which details are relevant for their particular pilot. Reporting would no longer be required on a quarterly basis, rather, it would occur as issues or problems arise.

Current regulations at 7 CFR 274.12(c)(5) require the State agency to conduct a cost analysis comparing the actual EBT pilot project costs to the costs of the EBT system operations projected in the Implementation APD and the costs of the coupon issuance system being replaced. This data was collected for information purposes only. However, it is a particularly cumbersome and costly requirement for State agencies and FNS has been waiving the requirement for some time. Therefore, the Department is proposing that this requirement be eliminated.

Current regulations at 7 CFR 274.12(d) require a minimum of three months of full pilot project operation prior to obtaining approval for expansion. State agencies complained that this requirement led to unnecessary delays in project expansion and additional costs while they wait for completion of analyses and FNS approval. FNS recognized that EBT systems have matured to the point where it is unusual to have significant problems. There remains, however, a statutory requirement for a pilot.

Consequently, FNS has been allowing State agencies to expand beyond the pilot area prior to the end of the three month period as long as they provide the required information on the pilot area. In keeping with this policy, we are now proposing that FNS negotiate a suitable pilot area with each State agency to be the basis of the three-month analysis and reporting. State agencies will not need to cease expansion activities as long as this pilot area operates without major difficulties. Expansion may continue as agreed in the implementation plan; however, FNS reserves the right to halt roll-out activities if problems arise during pilot or project expansion.

Retailer Management

Current regulations at 7 CFR 274.12(f)(4)(v) require State agencies to ensure that retailer equipment is replaced or repaired within 24 hours. We have found, however, that under certain circumstances, particularly in rural settings, it may be impossible for State agencies to guarantee this

standard. Therefore, we propose that this timeframe be extended to 48 hours.

Current regulations at 7 CFR 274.12(f)(4)(vi) require State agencies to ensure that retail store employees are trained in system operation prior to implementation. This requirement was originally established to facilitate EBT conversion and to ensure that retailers were provided with the training needed to effectively participate in the program. However, the infrastructure has matured, commercial POS deployment is more prevalent and more stores are using their own systems. Consequently, mandating that all retailers receive specialized training provided by the State agency is no longer necessary. We are, therefore, proposing that State agencies continue to ensure that training is offered to all retailers, but allow retailers to opt out of this instruction if they desire. For tracking purposes, State agencies shall direct retailers to confirm in writing that they are waiving their training option.

Current regulations at 7 CFR 274.12(f)(4)(vii) require that FNS compliance investigators be provided access to State EBT systems in order to conduct investigations of program abuse and alleged violations. We are expanding this requirement for "access" to include other FNS staff involved in compliance activity from FNS regional and field offices and as well as staff from the Department's Office of Inspector General, and specifying that they have on-line access to a State agency's EBT system. This may demand the deployment of administrative terminals to Compliance Branch Area offices, Regional offices and Field offices in order to achieve this requirement. Also, FNS compliance investigators, as well as investigators from the Department's Office of Inspector General, must have access to EBT cards with accounts that are updated as necessary for use in food stamp investigations.

Transaction Receipts

Current regulations at 7 CFR 274.12(g)(3)(ii) require that the information contained on transaction receipts comply with the requirements of 12 CFR part 205 (Regulation E). The provisions of 12 CFR part 205 allow card numbers to be truncated on the printed receipt. However, it does not require truncation. Regulations at 7 CFR 274.12(g)(3)(iii) require that the primary account number or a coded transaction number be included on the receipt. FNS recognized the vulnerability that results from printing the entire card number on a receipt in EBT systems due to the existence of manual and key-entered transactions and recommended to State agencies that a truncated card number be printed on the receipt. While this policy has been adopted in every operational project to date, we want to be sure it remains this way. Therefore, in the interest of consistently protecting client information, FNS proposes to require truncation of the card number in addition to requirements of 12 CFR part 205.

Benefit Issuance and Replacement

The Department is proposing a revision to the regulations at 7 CFR 274.12(g)(5)(i) which require Personal Identification Number (PIN) selection. The use of PIN assignment is becoming more widespread in the commercial world and is of interest to State agencies because of the potential cost savings it provides. Several States have requested waivers to allow this approach and it has already been implemented in many States. Therefore, we propose that this section be amended to allow PIN assignment in accordance with commercial industry standards, as long as clients have the ability to later select their PIN if they so desire and are informed of this alternative.

Current regulations at 7 CFR 274.12(g)(5)(ii) require a State agency to replace lost or stolen EBT cards within two days. At the same time, the preamble in our April 1, 1992 rule (57 FR 11230) invites the State agency to request a waiver to allow for a replacement time up to five days if the State agency is using centralized issuance. Several State agencies have received such a waiver and have not reported any significant inconvenience to clients.

In order to save costs, many State agencies now issue EBT cards centrally through the mail rather than over-the-counter at the local office. This approach also saves recipients from having to make a separate trip to have their cards issued. However, it is impossible for State agencies to meet a 24-hour time limit for card replacements when issuing cards centrally. Moreover, for security purposes, State agencies are required to send the EBT card and the PIN separately when cards are issued through the mail. Security expectations are generally that there should be at least 3 days between when the card arrives at a home and when the PIN arrives. For these reasons, we propose that this section be amended to permit up to five days for card replacement when a State is using centralized mail issuance.

At the same time, we are clarifying that the intent of "card replacement" requirements is to ensure that clients are given access to their benefits within the specified time frame. This means that regardless of what time frame the State agency has indicated for card replacement (e.g., 2 days, 5 days) the client must have in hand an active card and PIN, with available benefits on the card, within the time frame specified by the State agency.

Household Training

Current provisions at 7 CFR 274.12(g)(10) call for a "hands-on" approach to household training. This leads to considerable costs for State agencies and is not the only effective means to provide this service to clients. In EBT projects to date, several State agencies have sought waivers in this area to allow for mail training, videos, and kiosk approaches in lieu of a "hands-on" component. Since State agencies are in the best position to decide which approach is most viable for their particular environment and client population, the Department proposes amending this section to continue to require household training without specifying a particular method for the general population. However, hands-on training must be available as a back-up for those clients who request it, for special needs populations such as the elderly, or for those individuals identified as having problems with the EBT system.

Retailer Participation

FNS Authorization: Current regulations at 7 CFR 274.12(h)(1)(ii) include procedural directions for FNS field offices regarding authorizations of Food Stamp retailers. Since these requirements are not directed at State agencies, we are proposing to delete the provisions from this citation. This would not change current policy.

Fees: Current law at section 7(h)(2) of the Food Stamp Act (7 U.S.C. 2016(h)(2)) and regulations at 7 CFR 274.12(h)(2) state that authorized retailers shall not be required to pay costs essential to EBT system operations that are utilized solely for the Food Stamp Program. The Department wishes to reiterate that retailers cannot be required to pay for costs related to EBT for Food Stamps. This includes any fees associated with food stamp transactions. Note that while retailers cannot be charged fees for such transactions on government-provided terminals, they can be charged for commercial/third party processor food stamp transactions. This issue has also surfaced in operating projects with regard to potential bank charges. There have been some instances where banks have attempted to impose a fee on retailers for food

stamp EBT redemption services. This is contrary to regulations.

State agencies have argued and the Department agrees that this prohibition on charging retailers should not be extended to cover the following costs which result from abuses, breach of contract, or negligence on the part of the retailer:

(1) cost for the replacement of lost, stolen or damaged equipment;

(2) materials and supplies for POS terminals not provided by the State agency; and

(3) telecommunication costs for any non-EBT use by retailers when lines are provided by the State agency. This would also allow the State agency to remove phone lines that they have installed and maintained for food stamp transactions in instances where there is significant misuse of the lines.

Several State agencies have sought waivers to allow charges to retailers in these circumstances in the interest of avoiding abuses in these areas. Therefore, we propose to revise this section to allow State agencies to charge retailers reasonable fees only in the circumstances outlined above.

POS Deployment: Current regulations at 7 CFR 274.12(h)(4)(ii) prescribe a formula for minimum POS deployment "up to the number of lanes in each store." The Department believes that this provision has been interpreted by some to be unnecessarily restrictive. State agencies have the flexibility under current regulation to deploy terminals at customer service booths or other locations in the store for balance inquiry or other purposes, as many State agencies have done. However, because this policy has been often misinterpreted to prohibit such deployment, we are proposing to clarify that State agencies may deploy terminals beyond the number of lanes in a store at the State agency's discretion.

Minimum Card Requirements

Current regulations at 7 CFR 274.12(i)(6)(i)(B) require that FNS's statement of non-discrimination be printed on the card or card jacket. Several issues have arisen as a result of this requirement. Since many States are implementing multi-benefit programs on a single card, the inclusion of this statement, which is specific to FNS benefit programs, is no longer practical. In addition, many households are unclear about the circumstances under which they should contact the State, the State's contractor, or FNS about a particular problem. Consequently, the address provided to notify FNS of discrimination incidents has been misused and has been a source of client confusion and frustration.

Furthermore, since publication of the regulations, a Departmental non-discrimination statement has been issued in Departmental Regulation 4300 (DR 4300) and now replaces the FNS statement. The non-discrimination statement in DR 4300 differs from that in the EBT rules by directing recipients to report instances of discrimination to the USDA Office of Civil Rights rather than to FNS. The statement reads, "In accordance with Federal law and the U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, religion, political beliefs, or disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TDD). USDA is an equal opportunity provider and employer."

Since State Agencies are already expected to provide this non-discrimination statement on application forms, handbooks, manuals and other material distributed to the system users, the Department is proposing that this statement be removed from the card or card jacket. Recipients must be notified of their non-discrimination protections as part of household training. FNS regulations at 7 CFR 274.12(g)(10) would be revised to reflect this change.

Concentrator Bank Responsibilities

Current regulations at 7 CFR 274.12(j)(1)(iii) describe the reimbursement procedures for crediting retailers through the Payment Management System. This mechanism has been phased-out and replaced by the Automated Standard Application for Payment (ASAP) system developed for the U.S. Treasury Department by the Federal Reserve Bank of Richmond. Therefore, the Department is proposing revisions to this section which update the new crediting procedures. ASAP improves service to retailers in that it allows for a much later cut-off window than the previous system, and, at the same time, ensures next-day reimbursement even with the later cut-off time. State agencies will need to accommodate the new communication linkages and data flow requirements as prescribed by FNS.

In conjunction with the ASAP system, FNS has entered into a partnership with the Federal Reserve Bank of Richmond to develop the Account Management Agent (AMA) system. The AMA system supports the Department's efforts to improve accountability, oversight and management of State EBT systems. State agencies will need to provide data in a format established by FNS to the FNS Account Management Agent. This proposed requirement is specified in section 274.12(k)(2)(iii).

Management and Reporting

In order to take advantage of the extensive audit trail available in EBT systems, FNS has designed and implemented the Anti-fraud Locator for EBT Redemption Transaction (ALERT) system to collect and examine EBT transaction data for the purpose of detecting and investigating retailer fraud and abuse. In support of the system, State agencies will need to provide retailer transaction data to FNS on a monthly basis in accordance with the format specified by FNS. The standardized format was developed in consultation with EBT processors. This provision would replace the current requirement specified in 7 CFR 274.12(k)(2)(ii) for EBT exception reports.

Federal Financial Participation

Current regulations at 7 CFR 274.12(l)(2) indicate that State agencies can receive enhanced funding for development of EBT systems that are fully integrated components of the State's complete automated data processing (ADP) system. This enhanced funding has not been available for ADP development since the April 1, 1994 enactment of Public Law 103–66 amending the FSA. Therefore, this provision has been removed.

Back-up System

Current regulations at 7 CFR 274.12(m) require the State agency to ensure that a manual purchase system is available for use during times when the EBT system is inaccessible. Electronic store-and-forward transactions are available to retailers in commercial debit systems and are preferable to manual vouchers for some retailers who do not wish to spend time obtaining telephone authorization for the transaction when the system is down. This type of transaction is stored in the POS device with an encrypted PIN and sent to the host at a later point in time. Several operational EBT States obtained FNS approval to incorporate this into their system. In keeping with this policy, the Department is proposing to allow use of a store-and-forward alternative for those retailers who elect to assume liability for these transactions. In order to protect against applying the transaction to future

months' benefits, the retailer would be able to forward the transaction to the host one time within 24 hours of when the transaction occurred. If the system is inoperable for more than a 24 hour period, the retailer would have 24 hours from the point when the system resumes operation. In an instance where the store and forward transaction is denied due to insufficient funds, the retailer could re-present for the balance in the account. The balance of this transaction could not be re-presented in future months.

Implementation

The Department is proposing that the provisions of this rulemaking be implemented no later than 180 days after publication of the final rule.

List of Subjects in 7 CFR Part 274

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Reporting and recordkeeping requirements, State liabilities.

Accordingly, 7 CFR part 274 is proposed to be amended as follows:

PART 274—ISSUANCE AND USE OF COUPONS

1. The authority citation for 7 CFR part 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

2. In § 274.12,

a. the first sentence in paragraph (b)(1) is amended by adding the words "for development and implementation of initial and subsequent EBT systems" at the end;

b. paragraph (b)(4) is amended by removing the first sentence;

c. paragraphs (c)(1) and (c)(2)(i) are revised;

d. paragraph (c)(2)(ii) is removed, and paragraphs (c)(2)(iii) through (c)(2)(vii) are redesignated as paragraphs(c)(2)(ii) through (c)(2)(vi), respectively;

e. newly redesignated paragraph (c)(2)(ii)(B) is amended by removing the semicolon at the end of the second sentence and adding a period in its place and by adding a sentence to the end of the paragraph;

f. the first sentence of newly redesignated paragraph (c)(2)(iii) following the paragraph heading is revised;

g. paragraph (c)(4)(i) is revised and paragraph (c)(5) is removed;

h. paragraph (d) is revised;

i. paragraph (f)(4)(v) is amended by removing the words "24 hours" and adding in their place the words "48 hours";

j. paragraphs (f)(4)(vi) and (f)(4)(vii) are revised;

k. a new paragraph (f)(4)(viii) is added;

l. the first sentence in paragraph (g)(3)(iii) is revised;

m. paragraphs (g)(5)(i) and (g)(5)(ii) are revised;

n. the first sentence in paragraph (g)(6)(ii) is amended by removing the word "pilot" and adding in its place the word "project";

o. paragraph (g)(10)(ii) is removed, and paragraphs (g)(10)(iii) through (g)(10)(viii) are redesignated as paragraphs (g)(10)(ii) through (g)(10)(vii), respectively;

p. newly redesignated paragraph (g)(10)(v) is amended by adding a sentence after the first sentence;

q. the last two sentences of paragraph (h)(1)(ii) are removed;

r. paragraph (h)(2) is revised, and paragraph (h)(4)(ii)(D) is amended by adding a sentence to the end of the paragraph;

s. the second sentence of paragraph (i)(5)(i) is amended by removing the word "publish" and adding in its place the words "make available to third party processors";

t. paragraphs (i)(6)(i), (j)(1)(iii), and (k)(2)(ii) are revised, and paragraph (k)(2)(iii) is added;

u. paragraph (l)(2) is removed, and paragraphs (l)(3) through (l)(5) are redesignated as paragraphs (l)(2) through (l)(4), respectively;

v. paragraph (m) introductory text is revised.

The revisions and additions read as follows:

§ 274.12 Electronic Benefit Transfer issuance system approval standards.

* * * * *

(c) * * * (1) *EBT planning APD.* The State agency shall comply with the two-stage approval process for APDs in submitting an EBT system proposal to FNS for approval. The Planning APD shall contain the requirements specified under § 277.18(d)(1) of this chapter, including a brief letter of intent, planning budget, cost allocation plan, and schedule of activities and deliverables.

(2) * * *

(i) *Functional demonstration.* A functional demonstration of the functional requirements prescribed in paragraph (f) of this section in combination with the system components described by the approved System Design is recommended in order to identify and resolve any problems prior to acceptance testing. The Department reserves the right to participate in the Functional Demonstration if one is conducted.

(ii) * * *

(B) * * * FNS may require that any or all of these tests be repeated in instances where significant modifications are made to the system after these tests are initially completed or if problems that surfaced during initial testing warrant a retest;

* * * * *

(iii) * * * The State agency shall provide a separate report after the completion of the acceptance test only in instances where FNS is not present at the testing or when serious problems are uncovered during the testing that remain unresolved by the end of the test session. * * *

* * * * *

(4) *Pilot project reporting.* (i) The State agency is required to report to FNS all issues that arise during the pilot or shakedown period. Reports to FNS shall be provided as problems occur. In instances where the State agency must investigate the issue, FNS must receive the information no later than one month after completion of pilot operations.

* * * * *

(d) *Expansion requirements.* The pilot and expansion schedule must be delineated in the State agency's approved implementation plan. As part of the plan, the State agency must indicate a suitable pilot area to serve as the basis of the three-month analysis and reporting, however, expansion can occur simultaneously with pilot operation. Submission of an Advanced Planning Document Update to request FNS approval to implement and operate the EBT system in areas beyond the pilot area is only required in instances where there are substantial changes to the implementation plan. However, if significant problems arise during the pilot period or expansion, the Department can require that roll-out be suspended until such problems are resolved.

* * * * *

(f) * * *

(4) * * *

(vi) Ensure that retail store employees are trained in system operation prior to implementation. Retailer training shall be offered by the State agency and include the provision of appropriate written and program specific materials. Retailers have the option to waive instruction by the State agency if they desire. State agencies shall direct retailers to confirm in writing that they are waiving their option to training;

(vii) Provide on-line access to State EBT systems for compliance investigations. The State agency may be required to deploy administrative terminals to FNS Compliance Branch Area offices, Regional offices and Field

offices so that FNS compliance investigators, other appropriate FNS personnel and investigators from the Department's Office of Inspector General have access to the system in order to conduct investigations of program abuse and alleged violations;

(viii) Ensure that FNS compliance investigators and investigators from the Department's Office of Inspector General have access to EBT cards and accounts that are updated as necessary to conduct food stamp investigations.

(g) * * *

(3) * * *

(iii) Identify the food stamp household member's account number (the PAN) using a truncated number or a coded transaction number. * * *

* * * * *

(5) * * *

(i) The State agency shall permit food stamp households to select their Personal Identification Number (PIN). PIN assignment procedures shall be permitted in accordance with industry standards as long as PIN selection is available to clients if they so desire and clients are informed of this option.

(ii) In general, the State agency shall replace EBT cards within two business days following notice by the household to the State agency that the card has been lost or stolen. In cases where the State agency is using centralized card issuance, replacement can be extended to take place within up to five calendar days. In all instances, the State agency must ensure that clients have in hand an active card and PIN with benefits available on the card, within the time frame the State agency has identified for card replacement.

* * * * *

(10) * * *

(v) * * * This shall include the statement of non-discrimination found in Departmental Regulation 4300–3 (available from USDA, Office of Civil Rights, Room 326–W, Whitten Building, Washington, DC 20250). * * *

* * * * *

(h) * * *

(2) Authorized retailers shall not be required to pay costs essential to and directly attributable to EBT system operations as long as the equipment or services are provided by the State agency or its contractor and are utilized solely for the Food Stamp Program. In addition, if Food Stamp Program equipment is deployed under contract to the State agency, the State agency may, with USDA approval, share appropriate costs with retailers if the equipment is also utilized for commercial purposes. State agency may choose to charge retailers reasonable fees in the following circumstances:

(i) Cost for the replacement of lost, stolen or damaged equipment;

(ii) The cost of materials and supplies for POS terminals not provided by the State agency;

(iii) Telecommunication costs for all non-EBT use by retailers when lines are provided by the State agency. In addition, State agencies may remove phone lines from retailers in instances where there is significant misuse of the lines.

* * * * *

(4) * * *

(ii) * * *

(D) * * * State agencies may provide retailers with additional terminals beyond the number of lanes in a store at customer service booths or other locations if appropriate.

* * * * *

(i) * * *

(6) * * *

(i) The address of the office where a card can be returned if found or no longer in use should be printed on the card.

* * * * *

(j) * * *

(1) * * *

(iii) Initiating and accepting reimbursement from the appropriate U.S. Treasury account through the Automated Standard Application for Payment (ASAP) system or other payment process approved by FNS. At the option of FNS, the State agency may designate another entity as the initiator of reimbursement for food stamp redemptions provided the entity is acceptable to FNS and U.S. Treasury;

* * * * *

(k) * * *

(2) * * *

(ii) State agencies must provide retailer transaction data to FNS on a monthly basis. This data must be submitted in the specified format in accordance with the required schedule.

(iii) Data detailing by specified category the amount of food stamp benefits issued or returned through the EBT system shall be provided in a format and mechanism specified by FNS to the FNS Account Management Agent as the benefits become available to recipients. This data will be used to increase or decrease the food stamp EBT benefit funding authorization for the State's ASAP account.

* * * * *

(m) *Re-presentation.* The State agency shall ensure that a manual purchase system is available for use during times when the EBT system is inaccessible. As an alternative to manual transactions, State agencies may allow retailers, at the retailer's option and liability, to perform store-and-forward transactions when the system is down. The retailer would be able to forward the transaction to the host one time within 24 hours of when the transaction occurred. If the system is inoperable for more than a 24 hour period, the retailer would have 24 hours from when the system resumes operation. In instances where the store-and-forward transaction is denied due to insufficient funds, the retailer could re-present for the balance in the account. This transaction could not be re-presented in future months.

* * * * *

Dated: July 2, 2001.

Eric M. Bost,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 01–17212 Filed 7–11–01; 8:45 am]

BILLING CODE 3410–30–U

NUCLEAR REGULATORY COMMISSION

10 CFR PART 20

RIN 3150–AG25

Revision of the Skin Dose Limit

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to delete a reference to averaging over 1 square centimeter from its definition of shallow-dose equivalent (SDE). In addition, the proposed rule would change the method of calculating SDEs by specifying that the assigned SDE must be the dose averaged over the 10 square centimeters of skin receiving the highest exposure. A result of this rulemaking is to make the skin dose limit less restrictive when small areas of skin are irradiated and to address skin and extremity doses from all source geometries under a single limit. This change would permit measuring or calculating SDEs from discrete radioactive particles (DRPs) on or off the skin, from very small areas (< 1.0 square centimeters) of skin contamination, and from any other source of SDE by averaging the measured or calculated dose over the most highly exposed, contiguous 10 square centimeters for comparison to the skin dose limit of 50 rem (0.5 Sv).

DATES: Submit comments by September 25, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to

ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Website at *http://ruleforum.llnl.gov*. This site provides the capability to upload comments as files (any format) if your Web browser supports that function. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*).

Certain documents related to this rulemaking, including comments received, may be examined in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These same documents may be viewed and downloaded electronically via the rulemaking Website. The regulatory analysis and the environmental assessment may be accessed via the NRC's Agencywide Documents Access and Management System (ADAMS) on the internet at *http://www.nrc.gov/NRC/ADAMS/index.html*.

Obtain single copies of the environmental assessment and the regulatory analysis from Alan K. Roecklein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3883, e-mail: *AKR@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Alan K. Roecklein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3883, e-mail: *AKR@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

With the installation in the mid and late 1980s of very sensitive portal monitors, many nuclear power plants detected contamination of individuals and their clothing by small, usually microscopic, highly radioactive beta or beta-gamma emitting particles having relatively high specific activity. These particles, known as "discrete radioactive particles" (DRPs) and sometimes "hot particles," most commonly contain ^{60}Co or fission products. DRPs apparently become electrically charged as a result of radioactive decay and, therefore, tend to be fairly mobile. DRP movement in the workplace is unpredictable and thus worker contamination is difficult to control. A unique aspect of DRPs on or very near the skin is that very small amounts of tissue can be exposed to large, highly nonuniform doses. These intense localized irradiations may produce deterministic effects, such as reddening of the skin, transient breaks in the skin or necrosis of small areas of the skin.

In the late 1990s, reports of DRP exposures by a materials licensee were made when workers were exposed to DRPs while manufacturing radiographic sources. In addition to the DRP concern, several events have occurred involving very small areas (< 1. 0 square centimeters) of skin contamination, primarily in the handling of solutions of highly concentrated radiopharmaceuticals. These contamination events produce relatively large doses to very small areas of skin, resulting in an insignificant health detriment. Under existing provisions in NRC regulations, several of these contamination events have resulted in overexposures, as well as enforcement actions, with the result that workers could not be assigned work in radiation areas for the balance of the year. The consequences of these overexposures were not commensurate with the actual health detriment.

The principal stochastic risk associated with irradiation of the skin is non-melanoma skin cancer, that is, basal cell and squamous cell skin cancers. The risk of skin cancer following irradiation of the skin by DRPs, or from very small areas of contamination, is not comparable to irradiation of extended areas of the skin because of the very small number of cells involved and the greater potential for high local beta particle dose to kill cells rather than cause transformation to a precancerous stage. The Congressionally-chartered National Council on Radiation Protection and Measurements (NCRP) in Report No. 106, Limit for Exposure to "Hot Particles" on the Skin (1989), conservatively estimated the risk of skin cancer following a DRP dose of 50 rem (0.5 Sv) to an area of 2 mm^2 to be 7×10^{-7} Gy^{-1} (7×10^{-9} rad^{-1}), and the risk of skin cancer mortality to be about 1×10^{-9} Gy^{-1} (1×10^{-11} rad^{-1}). Because the risk of stochastic effects (i.e., cancer) from gamma and beta radiation from DRPs has been shown to be negligible for DRP exposures to the skin, induction of skin cancer is of less concern than the potential for deterministic effects.

In 1991, the NRC revised 10 CFR part 20 and its occupational dose limit for the skin of the whole body to 50 rem (0.5 Sv) SDE per year to prevent deterministic effects (56 FR 23360; May 21, 1991) that might result from a lifetime exposure at the dose limit. This dose limit for the skin is in 10 CFR 20.1201(a)(2)(ii) and is intended to prevent damage to areas of the skin that are large relative to areas exposed by DRPs, on the skin, and that could compromise skin function or appearance. The NRC noted in that rulemaking that certain issues "are being resolved in other rulemaking proceedings because of either their scope, complexity, or timing." One of the issues that was listed concerned limits and calculational procedures for dealing with the DRP issue. It was recognized that the current skin dose limit was overly conservative for DRP doses and SDE to very small areas of the skin. The final rule stated that there would be a rulemaking to set limits for skin irradiation by DRPs. This proposed amendment to Part 20 responds, in part, to that commitment.

The existing Part 20 skin dose limit of 50 rem (0.5 Sv) averaged over 1 cm^2 is intended to apply to a relatively uniform dose to a larger area of skin than that usually exposed by DRPs and was intended to prevent deterministic damage to the skin. Because this limit was considered by the NCRP to be overly conservative for DRPs on or very near the skin, the NRC announced an interim enforcement discretion policy in Information Notice (IN) 90–48, "Enforcement Policy for Hot Particle Exposures" (55 FR 31113, July 31, 1990), that addressed reporting and mitigation if a DRP dose exceeded the existing 50 rem over 1 cm^2 limit, and enforcement action for overexposures would be taken if the DRP beta emission exceeded 75 μCi-hrs (300–500 rads). To avoid DRP doses greater than 50 rem (0.5 Sv) and the resulting reporting requirement, licensees monitor workers frequently during the work shift for DRP contamination. This results in additional external dose either to the workers, who incur additional exposure time in exiting and reentering the restricted area, or to the radiation protection staff, who must enter the restricted area to perform the monitoring.

In 1988, the NRC contracted with Brookhaven National Laboratory (BNL) to study the health effects of DRPs on the skin and initiated a contract with the NCRP to develop guidance on controlling DRP doses. In NUREG/CR–6531, "Effects of Radioactive Hot Particles on Pig Skin," June 1997, BNL provided data on the probability of producing breaks in the skin from irradiation of the skin by DRPs in contact with or near the skin and

demonstrated that these effects would not pose any serious health problems to workers. On the basis of the BNL data, and many other reported studies and similar experiments performed by the Electric Power Research Institute (EPRI) and reported on in EPRI TR–104781, "Skin Injuries From Discrete Radioactive Particles," (1994) the NCRP recommended in Report No. 130, "Biological Effects and Exposure Limits for "Hot-Particles," (1999) a dose-limiting guideline for DRPs of 50 rads (0.5 Gy) averaged over the most highly exposed 10 square centimeters. The BNL work only examined the nonuniform, highly concentrated dose to 1 square centimeter from DRPs in contact with or near the skin and not the dose that would be delivered to the adjacent skin tissue.

In October 1998, the NRC staff submitted a rulemaking plan (SECY–98–245) entitled "Protection Against Discrete Radioactive Particle (DRP) Exposures (10 CFR part 20)." The NRC staff proposed establishing a constraint of 300 rads (3 Gy) over 1 cm^2 as a program design guideline or action level, and a limit of 1000 rads (10 Gy) per 1 cm^2 for DRPs on or near the skin. The existing skin dose limit would have been retained for all other skin doses. The intent of that proposed amendment was to reduce the additional external dose incurred by workers in monitoring for DRPs during work shifts and to reduce unnecessary regulatory burden by adopting more realistic thresholds for DRP dose control and reporting requirements. In a staff requirements memorandum (SRM) dated December 23, 1998, the Commission directed the NRC staff to proceed with rulemaking as proposed, but to use 500 rads (5 Gy) per 1 cm^2 as the dose limit to be consistent with the NCRP recommendations in NCRP Report No. 106.

In March 1999, several industry experts who had reviewed the publicly available rulemaking plan and SRM suggested that the planned action would not accomplish one of the intended objectives of the proposed rulemaking, that is, to reduce the frequency of worker monitoring. The following industry concerns were raised arguing against use of a DRP dose constraint with a 500-rem (5.0 Sv) limit and supporting use of the NCRP recommended skin dose limit that is proposed in this rule: Of all DRP events, fewer than 10 percent are on, or near enough to, the skin for the proposed constraint and limit to apply. Most DRP events (>90 percent) are DRPs on clothing, on hair, or are far enough away from the skin (and most likely moving) so that the dose to the skin is more uniform and is spread over a larger area. In that case the existing 50-rem (0.5 Sv) skin dose limit would be applicable. This information suggested that a reduction in DRP monitoring frequency, and the associated external dose, could not be realized for most DRP exposures, because of the need to prevent exceeding the existing skin dose limit. Because the licensee may not know in advance whether the DRP is on the skin or moving the licensee would need to assume that the existing skin dose limit was applicable.

The justification for proposing a constraint, or action level, of 300 rads (3.0 Gy) over 1 cm^2 was in large part to reduce the additional external dose incurred by plant staff from frequent monitoring to avoid having to report a DRP dose that exceeded the existing 50-rem (0.5 Sv) skin dose limit. If more than 90 percent of DRPs are off the skin and irradiating a relatively large area, the existing skin dose limit would be controlling and the constraint would only rarely be used. The NRC staff concluded that little relief from monitoring dose would result from implementing the constraint and the 500 rad (5 Gy) limit. In a memorandum to the Commission dated October 27, 1999 (COMSECY–00–0009) the staff explained why the constraint with a limit of 500 rads (5 Gy) would not accomplish this intended objective, and recommended further staff work to identify an effective regulatory approach. In an SRM dated March 16, 2000, the Commission directed the staff to contract with the NCRP to provide additional technical support on this issue.

In December 1999, the NCRP had published Report No. 130, "Biological Effects and Exposure Limits for "Hot Particles." The NCRP recommended that the dose to skin at a depth of 70 μ (7 mg/cm^2) from hot particles on skin (including the ear), hair, or clothing be limited to no more than 50 rads (0.5 Gy) averaged over the most highly exposed 10 cm^2 of skin.

The averaging area of 10 cm^2, recommended by the NCRP, would permit treating both the case when a DRP is on the skin or a very small area of skin is contaminated, and the case when a DRP is on clothing and moving about exposing an area on the order of 10 cm^2 or more. In the former case, averaging the very localized dose over 10 cm^2 results in a dose value that more appropriately reflects the risk associated with a small area exposure. In the latter case, averaging relatively uniform dose to the entire 10 cm^2, results in an dose limit that is equivalent to the current 50 rem over 1 cm^2. Thus the limit decreases as the exposed skin area increases to 10 cm^2, consistent with the expectation that the risk of an effect increases with increasing area of skin exposed to a given dose level. This averaging area is also consistent with the skin dose limiting system adopted by the Department of Energy in 10 CFR part 835.

In an effort to find the least burdensome regulatory requirement for controlling DRP doses, as well as other skin doses, while maintaining an adequate level of worker protection, the NRC staff requested the NCRP to consider the advisability of applying its proposed limit for DRP exposures to all skin dose geometries. In March 2001, the NCRP published Statement No. 9, "Extension of the Skin Exposure Limit for Hot Particles to Other Sources of Skin Irradiation." The statement can be found on the NCRP website at *www.ncrp.com/statemnt.html*. In this statement, the NCRP recommended that the absorbed radiation dose to skin at a depth of 70 μm (7 mg/cm^2) from any source of irradiation be limited to 50 rads (0.5 Gy) averaged over the most highly exposed 10 cm^2 of skin.

Dr. John Baum, Ph.D., an NRC consultant, reviewed the health effects implications of the NCRP recommendation. Dr. Baum wrote a technical paper that was published in the June 2001 issue (pp. 537–543) of the peer-reviewed journal, Health Physics, entitled "Analysis of Potential Radiobiological Effects Related to a Unified Skin Dose Limit." In this paper, the probabilities and severity of both stochastic and deterministic risks were estimated by Dr. Baum for a wide range of exposure scenarios based on the research done at Brookhaven National Laboratory, at other research facilities, and on additional information found in NCRP Reports Nos. 106 and 130. Published data from experimental and epidemiological studies, as well as calculations of radial-and depth-dose distributions, show that skin exposures at the dose limit of 50 rem (0.5 Sv) of SDE averaged over 10 cm^2 could result in stochastic risks of $<3.3 \times 10^{-7}$ fatal skin cancers and $<1.6 \times 10^{-4}$ nonfatal skin cancers, confirming that stochastic risks at the proposed limit are small.

Given exposures at the proposed skin dose limit, i.e., 50 rem (0.5 Sv) averaged over 10 square centimeters, the worst case deterministic effects were estimated by Dr. Baum to be a 5 percent probability of erythema if all of the dose (500 rem) were delivered to an area of 2.5 cm^2, and a 50 percent probability that measurable dermal thinning would be observable if all of the dose were delivered to an area <0.5 cm^2. At this

dose, no acute cell killing or skin ulceration was predicted for DRPs 3 or more mm off of the skin because the dose is distributed over too large an area. The worst case probability of producing a barely detectable scab due to acute cell killing was estimated at 10 percent for ^{60}Co or activated fuel DRPs located about 0.4 mm off the skin. A copy of this copyrighted article is available for viewing during the public comment period for this rulemaking at NRC's Public Document Room located in Rockville, MD.

Additional discussion of implications of the health effects associated with the proposed unified skin dose limit can be found in the regulatory analysis developed for this rulemaking.

II. Summary and Discussion of the Proposed Changes

The Commission is proposing to amend § 20.1003, § 20.1201(a)(2)(ii), and § 20.1201(c).

Section 20.1003—Definitions

In § 20.1003 Definitions, the definition of shallow-dose equivalent would be revised to delete the words "averaged over an area of 1 square centimeter." The purpose of these words was to specify the area over which the dose to the skin was to be measured or calculated for comparison to the limit. The proposed revision to permit averaging over 10 square centimeters for measuring and recording SDE would be found in § 20.1201(c), along with other procedural requirements.

Section 20.1201—Occupational Dose Limits for Adults

Section 20.1201, Occupational Dose Limits for Adults, would be changed in two places. Section 20.1201(a)(2)(ii) would be changed to make it clear that the SDE limit of 50 rem (0.5 Sv) is the dose limit to the skin of any extremity as well as the skin of the whole body. The Commission believes that this specification makes it clear that the only dose limit for the extremities is a SDE limit on the dose delivered at a depth of 0.007 cm (7 mg/cm^2), not a deep dose limit.

Section 20.1201(c) would be amended to specify that the assigned SDE must be the dose averaged over the 10 contiguous square centimeters of skin receiving the highest exposure. This is the significant change proposed in this rulemaking.

Note that the NCRP made recommendations regarding limiting dose from DRPs in the ear and on the eye. The NRC staff believes that these are special cases only with respect to measuring or calculating the dose, and that the proposed skin dose limit, and the existing limit for dose to the lens of the eye, are adequate to control DRP doses to these areas.

It is also important to note that it had been considered relevant to distinguish between doses from DRPs that were on or off the skin. With the proposed rule, this distinction is only relevant to dosimetric consideration, and the proposed limit is independent of source or exposure geometry.

The NRC staff has elected to retain the units rem and Sievert for the skin dose limit. According to data published in reports of the International Commission on Radiation Protection, the unit for dose equivalent, rem (Sv) is acceptable for deterministic effects, especially at lower doses. The highest Relative Biological Effectiveness (RBE) values for deterministic effects in the skin are all less than the Q values, or dose weighting factors that are used to convert dose in rads (Gy) to dose equivalent in rem (Sv). The use of dose equivalent in units of rem (Sv) would be conservative and would have the advantage that all of the dose limits would be in the same units. The Department of Energy, in its regulations, uses the rem and Sievert for SDE.

NCRP Statement No. 9 referred to NCRP Report No. 130 (NCRP 1999) for guidance on good practices, and recommended that in addition to numerical limits, observation of the exposed area of skin should be performed for four to six weeks whenever the DRP dose at a depth of 70 μm exceeds 10 rads (0.1 Gy) averaged over the most highly exposed 10 cm^2 of skin. The observational level of 0.1 Gy is well below the proposed limit of 0.5 Gy, and is essentially equivalent to the current skin dose limit, at which no clinically significant effects have ever been reported. For those reasons the NRC is not proposing to incorporate the NCRP recommendation into the proposed rule.

The objective of the rulemaking is to establish a uniform, risk-informed skin dose limit for all sources of SDE, including DRPs, and small area contamination that: trades a higher risk of occurrence of deterministic effects to the skin for a reduction in the risk of whole-body stochastic effects; allows licensees to reduce whole-body exposures and nonradiological health risks such as heat stress to workers subject to unnecessary DRP monitoring; and provides a common limit for SDE from all external sources of ionizing radiation. The proposed rule also reduces the unnecessary regulatory burden on licensees for reporting skin exposures that have insignificant health implications.

The current statement of the skin and extremity dose limit, along with the current definition of SDE, requires that skin doses be averaged over 1 square centimeter. The proposed rule would permit averaging the SDEs delivered to the 10 most highly exposed, and contiguous, square centimeters. It is important to discuss the consequences of this proposed change in the context of different source geometries.

In the case of large-area exposures of the skin from surface contamination or other external sources, areas on the order of 10 square centimeters or more would be likely to receive a relatively uniform dose. There is little difference to be expected in recorded doses from the current requirement that would attempt to identify the most highly exposed 1 square centimeter and the new approach that would sum the SDE to the 10 highest-exposed, adjacent square centimeters and divide by 10. The recorded doses would be identical for the large-area (10 square centimeters or more) exposures that form the great majority of skin dose events.

Under the proposed rule, exposed areas of the skin less than 10 square centimeters would be treated in a less restrictive manner. For example, a dose of 250 rem (2.5 Sv) to each of 2 square centimeters would result in a 50-rem (0.5 Sv) SDE when averaged over 10 square centimeters. A dose as high as 500 rem (5.0 Sv) would be permitted to 1 square centimeter and would be recorded as 50 rem (0.5 Sv) when averaged over 10 square centimeters. This change would effectively permit higher doses to small areas of skin than currently permitted by regulations.

Although, as previously noted, the Commission is proposing a skin dose limit that in some source geometries is likely to permit more frequent occurrence of observable though transient deterministic effects, it is expected that the less restrictive limit would permit a reduction in the conservative use of protective clothing and other devices intended to prevent contamination and skin doses. As a result, workers should experience reduced exposure to nonradiological health hazards such as heat stress, and be subject to fewer industrial accidents caused by impaired motion. By reducing the overly conservative use of protective equipment, work should be performed more efficiently. Reduced time in the restricted area is expected along with a concomitant reduction in whole-body dose and stochastic risks. The Commission intends this change to lead to a reduction in overly conservative

efforts to prevent skin contaminations, that will result in decreased stress and lower whole-body doses. Numerous studies of the impacts on worker efficiency and safety resulting from the use of protective clothing and equipment have been published in the journal, Health Physics, in Radiation Protection Management, and by the Electric Power Research Institute (EPRI). A recent discussion of this issue and specific references can be found in NUREG/CR–0041, "Manual of Respiratory Protection Against Airborne Radioactive Material," January 2001.

A final geometry of interest is the case of DRPs on or very near the skin, such that a relatively small volume of tissue receives a large dose, resulting in cell killing and possible observable breaks in the skin. Under the current dose limit a DRP could deliver 50 rem (0.5 Sv) to an area of 1 square centimeter that when averaged over 1 square centimeter would yield a recorded dose of 50 rem (0.5 Sv). Under the proposed rule, the NCRP recommended limit, a dose of 500 rem (5.0 Sv) delivered to 1 square centimeter, when averaged over 10 square centimeters, would yield a recorded dose of 50 rem (0.5 Sv). Thus, for DRPs on the skin, and other small area exposures, the proposed rule change is in effect a tenfold relaxation of the current limit and might permit some increased number of observable, transient deterministic effects to the skin. This new limit would be approximately equivalent to the emission criterion of 75 μCi-hr in the interim enforcement policy stated in IN 90–48. The 500 rem (5.0 Sv) to 1 square centimeter (worst) case is estimated to result in a 50 percent chance of an observable but transient effect. NRC records include only one DRP dose that was calculated to exceed 500 rem (5.0 Sv), and no effects were observed in that case.

On the basis of extensive research performed at BNL and elsewhere, the NCRP stated in Report No. 130 that "if exposures are maintained below the recommended limits, few, if any, deterministic biological effects are expected to be observed, and those effects would be transient in nature. If effects from a hot-particle exposure are observed, the result is an easily treated medical condition involving an extraordinarily small stochastic risk. Such occurrences would be indicative of the need for improvement in radiation protection practices, but should not be compared in seriousness to exceeding whole-body exposure limits."

Reactor licensees are currently monitoring workers frequently during each work shift to prevent exceeding the interim 50-rem (0.5 Sv) reporting threshold for doses from DRPs. Industry estimated that up to 5 person-rem (0.05 person-Sv) of whole-body dose per outage could be attributed to this monitoring. Workers are either brought out of the workplace to be monitored, incurring nonproductive exit-entry dose, or technicians enter the restricted area to monitor workers for DRPs. The proposed, less restrictive, skin dose limit would eliminate the need to perform this DRP monitoring during work shifts for all but the highest activity DRPs[1], especially those having a high gamma component. The possibility of some additional number of observable deterministic effects, such as a small break in the skin, is considered by the NRC to be justified by the reduction of the whole-body dose and associated stochastic risks from monitoring for DRPs.

The Radiation Exposure Information Reporting System (REIRS) database includes reports of nearly 15,000 individual DRP doses since 1990. Fewer than 10 have exceeded the current 50-rem (0.5 Sv) reporting limit. It is unlikely that this proposed revision of the skin dose limit will result in any large increase in the number of DRP doses. The as-low-as-is-reasonably-achievable (ALARA) principle will continue to apply to any occupational doses, so the revised skin dose limit should not permit a large number of high DRP doses. It would be unacceptable for a licensee to permit large numbers of high DRP exposures on a continuing basis without attempting some mitigating procedures or engineering controls.

The Commission believes that the less restrictive limit on skin dose to small areas that might permit more observable, transient, deterministic effects will also result in a less hazardous workplace and reduced whole-body occupational dose. The Commission considers this tradeoff to represent a substantial increase in worker protection. This represents a shift in emphasis toward a risk-informed approach that would possibly permit more frequent deterministic effects in order to avoid the physical stress and whole-body doses associated with monitoring workers and the use of protective measures. The NRC is specifically soliciting comments on the acceptability of this approach.

[1] For example, one recent event at a nuclear power plant involved a CO–60 DRP with an activity of about 75 mCi. The deep-dose equivalent estimated from this particle (had it been on the skin) was calculated to be about 10 rem/hr per mCi. For particles in this activity range, the deep-dose equivalent (DDE) limit of 5 rem per year can be exceeded in less than 1 minute. The proposed skin dose limit could be exceeded in even less time.

III. Issue of Compatibility for Agreement States

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs", which became effective on September 3, 1997 (62 FR 46517), NRC program elements, including regulations, are assigned compatibility categories. In addition, NRC program elements can also be identified as having particular health and safety significance or as being reserved solely to the NRC.

Compatibility Category A includes those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner in order to provide uniformity in the regulation of agreement material on a nationwide basis.

Compatibility Category B includes those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner.

Compatibility Category C includes those program elements that do not meet the criteria of Category A or B but represent essential objectives that an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Category C program elements.

Compatibility Category D includes those program elements that do not meet any of the criteria of Category A, B, or C above and, thus, do not need to be adopted by Agreement States for purposes of compatibility.

Health and Safety (H&S) includes program elements that are not required for compatibility (i.e., Category D) but that have been identified as having a particular health and safety role (i.e., adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in this category that embody the essential objectives of the NRC program elements because of particular health and safety considerations.

Compatibility Category NRC includes those program elements that address

areas of regulation that cannot be relinquished to Agreement States pursuant to the Atomic Energy Act (AEA) or provisions of Title 10 of the Code of Federal Regulations. These program elements should not be adopted by Agreement States.

The proposed modifications to §§ 20.1003 and 20.1201, which contain definitions and basic radiation protection standards that are necessary to understand radiation protection concepts, are designated as compatibility Category A. Therefore, the Agreement State program element should be essentially identical to NRC's in order to provide uniformity in skin dose determinations on a nationwide basis.

These proposed amendments were provided to the Agreement States via the NRC Technical Conferencing Forum. As of 5/24/01, only one comment had been received from the States.

IV. Plain Language

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** heading of the preamble.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is modifying its definition of Shallow-dose equivalent. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Environmental Assessment: Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51 that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

An environmental assessment has determined that the proposed amendment addresses technical and procedural improvements in the provisions for determining by measurement or by calculation the dose to the skin for comparison to the skin dose limit for the whole body or for the extremities. None of the impacts associated with this rulemaking have any effect on any places or entities outside of a licensed site. An effect of this proposed rulemaking is expected to be a decrease in the use of protective equipment used by nuclear power plant workers and others potentially exposed to skin contamination, to prevent the skin contaminations. No changes are expected in licensee programs and procedures designed to mitigate the production and spread of DRPs in the workplace and to prevent the unauthorized release of radioactive materials off site. It is expected that there would be no change in radiation dose to any member of the public as a result of the revised regulation. The proposed amendment is expected to result in a reduction in external occupational dose to workers onsite.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, the general public should note that the NRC is seeking public participation. The NRC has also committed to complying with Executive Order (E.O.) 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income populations," dated February 11, 1994. The NRC evaluated environmental justice for this environmental assessment and has determined that there are no disproportionate high and adverse impacts on minority and low-income populations. In the letter and spirit of E.O. 12898, the NRC is requesting public comment on any environmental justice considerations or questions that the public thinks may be related to this proposed rule but somehow were not addressed. E.O. 12898 describes environmental justice as "identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." Comments on any aspect of the environmental assessment, including environmental justice, may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the environmental assessment and this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

The draft environmental assessment is available for inspection at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Single copies of this document are available as indicated in the **ADDRESSES** heading.

VII. Paperwork Reduction Act Statement

This proposed rule would decrease the burden on licensees reporting under Section 20.2202(b)(iii) on DRP and other small area skin overexposures. The public burden for this information collection is estimated to average 40 hours per request. Fewer than 10 reports have been received by the NRC over the past 12 years. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the OMB, approval number 3150–0114.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

VIII. Regulatory Analysis

The NRC has prepared a regulatory analysis for the proposed amendment. The analysis examines the benefits and impacts considered by the NRC. The regulatory analysis is available for inspection in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Single copies of the analysis are available as indicated in the **ADDRESSES** heading.

The Commission requests public comment on the analysis. Comments on the analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

IX. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC certifies that, if adopted, this proposed rule would not have a significant economic impact on a substantial number of small entities. The anticipated impact of the proposed changes would not be significant because the revised regulation basically represents a continuation of current practice. The benefit of the proposed rule is that it would permit averaging doses to the skin over the most highly exposed 10 square centimeters, incorporate an NCRP recommendation

for a less restrictive skin dose limiting procedure, and permit reduced use of protective equipment known to expose workers to workplace stresses and unnecessary whole-body radiation dose.

The NRC is seeking public comment on the initial regulatory flexibility certification. The NRC is seeking comment particularly from small entities as defined under the NRC's size standards in 10 CFR 2.810 as to how the proposed regulations would affect them and how the regulations may be implemented or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Any small entity subject to this regulation that determines that because of its size it is likely to bear a disproportionate adverse economic impact should offer comments that specifically discuss the following items:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden or whether the resources necessary to implement this amendment could be more effectively used in other ways to optimize public health and safety, as compared to the economic burden on a larger licensee;

(b) How the proposed regulation could be modified to take into account the licensees' differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation were modified as suggested by the licensee;

(d) How the proposed regulation, as modified, could more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group; and

(e) How the proposed regulation, as modified, would still adequately protect the public health and safety.

The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemaking and Adjudications Staff. Hand-deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

X. Backfit Analysis

Although the NRC has concluded that the changes being proposed constitute a reduction in unnecessary regulatory burden, the implementation of these changes will require revisions to licensee procedures, thereby constituting a potential backfit under 10 CFR 50.109(a)(1). Under § 50.109(a)(2), a backfit analysis is required unless the proposed rule meets one of the exceptions listed in § 50.109(a)(4). This proposed rule meets the exception at § 50.109(a)(4)(iii) in that it is redefining the level of adequate protection embodied in the occupational dose limit for doses to the skin of the whole body and to the skin of the extremities. In addition, the implementation of this proposed rule is expected to result in a substantial increase in worker industrial safety.

Section II, Summary and Discussion of the Proposed Changes, discusses the proposed changes to the definition of shallow-dose equivalent (SDE) and the provision for averaging SDE over the most highly exposed 10 square centimeters. This change would, in effect, raise the skin dose limit for discrete radioactive particles (DRPs) on or near the skin and for small-area (<1.0 cm^2) contaminations. This revision makes it possible for licensees to measure or calculate skin doses for comparison to the 50-rem (0.5 Sv) limit that when divided by 10, result in dose values according to NCRP that more appropriately reflect the risk associated with small area exposures. The increased limit in the case of DRPs will remove the need to frequently monitor workers for DRP contamination during work shifts for all but the highest activity DRPs, especially those having a high gamma component. This reduced monitoring will eliminate most of the whole-body dose and stochastic risk associated with monitoring performed to avoid exceeding the current more restrictive skin dose limit. In addition, the relaxed skin dose limit, based on NCRP recommendations, should make it clear that the consequences of transient skin contamination are less significant than the radiological and nonradiological risks incurred by workers as a result of licensee efforts to avoid skin contaminations. The overly conservative use of multiple layers of protective clothing and other devices worn to prevent skin contamination cause exposure to nonradiological hazards such as heat stress, as well as a reduction in worker efficiency estimated by industry to be as much as 15–25 percent which, in turn, increases whole-body dose. Licensees will be able to choose to use less protective gear at the cost of more frequent skin contamination, but with the benefit of less physical stress and reduced whole-body dose to workers.

In conclusion, the Commission believes that the proposed changes constitute a reduction in unnecessary regulatory burden that redefines the level of adequate protection and that should result in a substantial increase in worker safety. The proposed changes are therefore the type of change for which a backfit analysis is not required under § 50.109(a)(4)(iii).

List of Subjects in 10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recording requirements, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, Sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), Secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 20.1003 the definition of *Shallow-dose equivalent (H_s)* is revised to read as follows:

§ 20.1003 Definitions.

* * * * *

Shallow-dose equivalent (H_s), which applies to the external exposure of the skin or an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm_2).

* * * * *

3. In § 20.1201 the introductory text of paragraph (a)(2), and paragraphs (a)(2)(ii) and (c) are revised to read as follows:

§ 20.1201 Occupational dose limits for adults.

(a) * * *

(2) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities, which are:

* * * * *

(ii) A shallow-dose equivalent of 50 rem (0.5 Sv) to the skin of the whole body or to the skin of any extremity.

* * * * *

(c) The assigned deep-dose equivalent must be for the part of the body receiving the highest exposure. The assigned shallow-dose equivalent must

be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. The deep-dose equivalent, lens-dose equivalent, and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

* * * * *

Dated at Rockville, Maryland, this 6th day of July, 2001.

For the Nuclear Regulatory Commission.

J. Samuel Walker,

Acting Secretary of the Commission.

[FR Doc. 01–17448 Filed 7–11–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–196–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that currently requires repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. That amendment also requires modification of the fuselage lap joints at certain locations, which constitutes terminating action for repetitive inspections of the modified areas. This proposed action would add repetitive inspections and would require replacement of the current preventive modification with an improved modification. This proposal is prompted by the FAA's determination that, in light of additional crack findings, certain modifications of the fuselage lap joints do not provide an adequate level of safety. The actions specified by the proposed AD are intended to find and fix cracking of the fuselage lap joints, which could result in sudden decompression of the airplane.

DATES: Comments must be received by August 27, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 98–NM–196–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–1221; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–196–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 21, 1997, the FAA issued AD 97–22–07, amendment 39–10179 (62 FR 55732, October 28, 1997), applicable to certain Boeing Model 737 series airplanes, to require repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. That action also adds a requirement for modification of the fuselage lap joints at certain locations, which constitutes terminating action for repetitive inspections of the modified areas. That action was prompted by reports of numerous fatigue cracks in the lower skin of the fuselage lap joints at the lower row of fasteners. The requirements of that AD are intended to prevent such fatigue cracking, which could result in sudden decompression of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 97–22–07, the FAA has received additional reports of fatigue cracking in the lower skin of the lap joints of the fuselage on Model 737 series airplanes that had accumulated between 57,000 and 84,400 flight cycles, and were previously inspected per that AD. Further investigation revealed additional cracking in various areas of the skin lap joints at the fastener locations that initiated away from the edge of the fastener hole in multiple locations. The majority of these cracks occurred at left and right stringers 4, 10, and 14. The

FAA finds that this damage can occur at those stringer locations between 40,000 and 50,000 flight cycles. These cracks are not always detectable using the open hole eddy current inspection procedures and can link up with adjacent cracks causing multiple site damage. In addition, cracking has been found in the window corners adjacent to the lap joints on certain airplanes.

Based on these findings, the FAA has determined that the current inspection procedures specified in AD 97–22–07 are not adequate for detection of cracks in these locations, and that the preventive change that was required by that AD does not guarantee crack removal. Therefore, the FAA finds that additional rulemaking is necessary to require additional inspections for cracking, removal of the preventive change, and accomplishment of a lap joint modification.

Public Meeting

A joint Federal Aviation Administration (FAA) and Boeing meeting was held on July 25–27, 2000, to inform industry of the activity on Boeing Model 727 and 737 fuselage lap joints. Others in attendance were representatives from air carriers and repair stations, as well as Principal Maintenance Inspectors (PMI) from FAA's Flight Standards Service. The objective of the meeting was to provide an overview of the FAA rulemaking process; discuss the recommendations of Boeing Service Bulletins 727–53A0222 and 737–53A1177, including background information; standardize the 727 and 737 service bulletins, where possible; and discuss the impact that the recommended service bulletin modifications would have on industry.

During the meetings, holders of certain supplemental type certificates presented information pertaining to service bulletin activity for those airplanes that have been modified from a passenger to an all-cargo configuration. The meeting accomplished the objective of exchanging information between the FAA, Boeing, and industry on various aspects of Boeing Models 727 and 737 fuselage lap joints, including compliance planning. As a result of the meeting, attendees recognized the importance of modifying certain lap joints before reaching the point of widespread fatigue damage. Suggestions to improve the service bulletins and clarify AD compliance issues were made by operators and PMIs, and have been incorporated into the service bulletins and the proposed ADs discussed below. In addition, minutes of the public meeting are retained in the docket.

Other Relevant Proposed Rulemaking

At this time, the FAA is considering two other separate rulemaking actions to address the remaining potential unsafe conditions relating to the cracking of the lap joints of the fuselage. Those two other actions would address:

- Replacement of certain repairs with improved repairs in certain fuselage lap joints done per the procedures described in the structural repair manual (SRM); and a high frequency eddy current inspection to find cracking of the SRM repairs of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found on Model 737 series airplanes, line numbers 292 through 2595 inclusive. And
- Repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and a lap joint modification of Model 737–200 and –200C series airplanes, line numbers 1 through 291 inclusive.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, which describes, among other things, procedures for the following:

- Removal of the existing preventive modification and the installation of an improved lap joint cutout repair, which eliminates the need for certain repetitive inspections;
- Repetitive low frequency eddy current (LFEC) inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking;
- Post-mod inspections, installation of a lap joint repair, and follow-on LFEC inspections;
- Modification of the tearstrap splice straps; and
- Repetitive high frequency eddy current inspections of the fastener holes of the window corner of the lap joint area, and repair of any cracking.

The service bulletin also specifies contacting the manufacturer for accomplishment of certain repairs. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 97–22–07 to continue to require repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. This proposed AD would add repetitive inspections, adjust inspection thresholds, and require an improved modification. Accomplishing the improved modification would terminate the inspections required by the existing AD. In addition, this proposed AD would require inspections of some airplanes on which the "Preventive Change" (NACA modification) specified in AD 97–22–07 already had been accomplished. This proposed AD also would require inspections following accomplishment of the improved modifications, and would require tear strap splice conditions for airplanes on which lap joints previously had been repaired per AD 97–22–07. This proposed AD also would require inspections on some airplanes in window corners in areas already being inspected per AD 91–07–04, amendment 39–6933 (56 FR 11355, March 18, 1991), on other airplanes. The actions would be required to be accomplished per the service bulletin described previously, except as discussed below.

Differences Between Service Bulletin and Proposed Rule

The FAA recognizes that the lap joint modification specified in this proposed AD would require jacking, shoring, removing interior components, and modifying certain lap joints, which would require taking the airplane out of service for as much as 22 days. This lengthy shop visit, as well as the relatively short compliance time required to accomplish this proposed AD, make it necessary for operators to engage in compliance planning to ensure that, when the deadline for compliance arrives, all of the required actions have been completed on all affected airplanes. Therefore, paragraph (f) of this proposed AD would require that operators submit to the FAA a compliance plan within 3 months after the effective date of this AD. This will enable the FAA to verify that all operators will be able to meet the deadlines imposed by this proposed AD.

Operators also should note that, in light of the complexity of the service bulletin, three separate rulemaking actions are being issued to address the potential unsafe conditions relating to the cracking of the lap joints of the fuselage. This proposed rule will address only Model 737 series airplanes having line numbers (L/N) 292 through 2565 inclusive.

Paragraph (m) of this AD addresses only Model 737 series airplanes having L/N 520 through 2565 inclusive for accomplishment of the HFEC inspection to find cracking of the window corner fastener holes. Model 737 series airplanes having L/N 1 through 519 inclusive were addressed in AD 91–07–04, amendment 39–6933. That AD requires ultrasonic and high frequency eddy current inspections for delamination of window belt skin doubler from fuselage skin.

In addition, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair/modification conditions, this proposed AD requires the repair/modification of those conditions to be done per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 2,203 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 905 airplanes of U.S. registry would be affected by this proposed AD.

Cost estimates for the actions required by this proposed AD for U.S. operators over the life of the AD are included in the following table:

Paragraph/AD action	Number affected	Work Hours	Parts ($)	Cost/airplane ($)	Total cost ($)
(a) Lap joint inspection	905	100	0	6,000	5,430,000
(f) Compliance planning	905	24	0	1,440	1,303,200
(g) Lap joint modification	905	4,200	12,000	264,000	238,920,000
(h) Lap joint inspection	905	100	0	6,000	5,430,000
(i) Post-NACA inspection	25	100	0	6,000	150,000
(j) Post-NACA inspection	10	100	0	6,000	60,000
(m) Window corner inspection	807	14	0	840	677,880

The cost estimates are based on the following criteria:

- Lap joint inspection cost estimates reflect costs for a single inspection cycle, and the work hours vary between groups of airplanes. Refer to paragraph 1.G. of Boeing Service Bulletin 737–53A1177 for more detailed information. An average of 100 work hours was used in determining the cost estimates.
- An average of 24 work hours was used in estimating the costs for compliance planning.
- Lap joint modification work hours vary between groups of airplanes. Refer to paragraph 1.G of Boeing Service Bulletin 737–53A1177 for more detailed information. An average of 4,200 work hours and $12,000 for parts were used in estimating these costs. Modification costs are spread over the estimated life of the AD, which is approximately 20 to 25 years.
- Window corner inspection work hours vary between groups of airplanes. Refer to paragraph 1.G of Boeing Service Bulletin 737–53A1177 for more detailed information. An average of 14 work hours was used in estimating the costs of the inspections only.

The FAA estimates that during the 10-year period after issuance of the proposed AD, worldwide operators would be required to modify 805 Model 737 series airplanes. The new modification required by the proposed AD would take an average of approximately 4,200 work hours to accomplish, at an average labor rate of $60 per work hour. The worldwide cost impact of the required modification is estimated to be $212,701,000 over 10 years, or an average of $21,270,000 per year. The highest impact year is the third year after issuance of the AD: an estimated 155 Model 737 series airplanes would require modification in that year. Therefore, the worldwide cost impact of the modification is estimated to be $40,955,000 in that year. The affected Model 737 airplanes operated by U.S. operators comprise approximately 41 percent of the total worldwide costs. Therefore, the highest cost impact in any given year for the modifications is estimated to be $16,791,000 for U.S. operators.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10179 (62 FR 55732, October 28, 1997), and by adding

a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98–NM–196–AD. Supersedes AD 97–22–07, amendment 39–10179.

Applicability: Model 737–200, –200C, –300, –400, and –500 series airplanes having line numbers 292 through 2565 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance per paragraph (n) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of certain fuselage lapjoints, which could result in sudden decompression of the airplane, accomplish the following:

Repetitive Low Frequency Eddy Current (LFEC) Inspections—Crown Areas

(a) Do an LFEC inspection to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, per PART I ("Inspection") of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; at the time specified in paragraph (b) or (c) of this AD, as applicable.

(b) For airplanes that have accumulated more than 65,000 total flight cycles but not more than 70,000 total flight cycles as of the effective date of this AD: Do the inspection at the earlier of the times specified in paragraphs (b)(1) and (b)(2) of this AD. Repeat the inspection after that at intervals not to exceed 1,200 flight cycles until accomplishment of the lap joint repair required by paragraph (g) of this AD.

(1) Within 1,200 flight cycles after the effective date of this AD.

(2) Within 1,200 flight cycles after the last inspection, if any, accomplished in accordance with AD 97–22–07, amendment 39–10179.

(c) For airplanes that have accumulated at least 45,000 total flight cycles but not more than 65,000 total flight cycles as of the effective date of this AD: Do the inspection at the earlier of the times specified in paragraphs (c)(1) and (c)(2) of this AD. Repeat the inspection after that at intervals not to exceed 1,200 flight cycles until accomplishment of the lap joint repair required by paragraph (g) of this AD.

(1) At the later of the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Before the accumulation of 50,000 total flight cycles.

(ii) Within 1,200 flight cycles after the effective date of this AD.

(2) Within 1,200 flight cycles after the last inspection, if any, accomplished in accordance with AD 97–22–07, amendment 39–10179.

Crack Repair

(d) Except as provided by paragraph (e) of this AD: If any cracking is found during any inspection required by this AD, before further flight, repair per PART II ("Crack Repair") of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

(e) If any cracking is found during any inspection required by this AD, and Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, specifies to contact Boeing for repair instructions: Repair any cracking, before further flight, per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Compliance Plan

(f) Within 3 months after the effective date of this AD, submit a plan to the FAA identifying a schedule for compliance with paragraph (g) of this AD. This schedule must include, for each of the operator's affected airplanes, the dates and maintenance events (e.g., letter checks) when the required actions will be accomplished. For the purposes of this paragraph, "FAA" means the Principal Maintenance Inspector (PMI) for operators that are assigned a PMI, or the cognizant Flight Standards District Office for other operators. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 2: Operators are not required to submit revisions to the compliance plan required by paragraph (f) of this AD to the FAA.

Lap Joint Modification (Repair)—Crown Areas

(g) Install the lap joint repair per PART III or IV ("Lap Joint Repair") of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, as applicable; at the time specified in paragraph (g)(1), (g)(2), (g)(3), (g)(4), or (g)(5) of this AD, as applicable. Accomplishment of this repair terminates the repetitive inspections required by paragraphs (b) and (c) of this AD.

(1) For airplanes that have accumulated 70,000 total flight cycles or more as of the effective date of this AD: Within 600 flight cycles after the effective date of this AD, do the lap joint repair.

(2) For airplanes that have accumulated 65,000 total flight cycles or more, but less than 70,000 total flight cycles as of the effective date of this AD: Do the repair at the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Before the accumulation of 70,000 total flight cycles.

(ii) Within 600 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 45,000 total flight cycles or more, but less than 65,000 total flight cycles as of the effective date of this AD: Within 5,000 flight cycles after the effective date of this AD.

(4) For airplanes that have accumulated less than 45,000 total flight cycles as of the effective date of this AD: Before the accumulation of 50,000 total flight cycles.

(5) Notwithstanding the times specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, for airplanes on which the "Preventive Change" has been accomplished per PART III of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1177, Revision 3, dated September 18, 1997; (NACA modification): Within 18,000 flight cycles after accomplishment of the NACA modification.

Repetitive LFEC Inspections—Outside Crown Areas

(h) Before the accumulation of 70,000 total flight cycles, or within 2,500 flight cycles after the effective date of this AD, whichever comes later: Perform an LFEC inspection to find cracking of the lap joints of the fuselage; as identified in Figures 2 through 7 of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001. Do the inspection per the service bulletin. Repeat the inspection after that at intervals not to exceed 5,000 flight cycles.

Post-NACA Modification Inspections—Crown Areas

(i) For airplanes that have the "Preventive Change" (NACA modification) of the crown lap joint stringers ("Crown Laps"): Within 12,000 flight cycles after accomplishment of the NACA modification, do either an external (Figure 8) or internal (Figure 9) LFEC inspection to find cracking and corrosion per PART I ("Inspection") of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

(1) If the external inspection is done: Repeat the inspection after that at intervals not to exceed 1,500 flight cycles until accomplishment of the lap joint repair required by paragraph (g) of this AD.

(2) If the internal inspection is done: Repeat the inspection after that at intervals not to exceed 4,500 flight cycles until accomplishment of the lap joint repair required by paragraph (g) of this AD.

Post-NACA Modification Inspection—Outside Crown Areas

(j) For airplanes that have the "Preventive Change" (NACA modification) outside the crown areas: Before the accumulation of 20,000 flight cycles after accomplishment of the NACA modification, do either an external (Figure 8) or internal (Figure 9) LFEC inspection to find cracking and corrosion per PART I ("Inspection") of the Accomplishment Instructions of Boeing

Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

(1) If the external inspection is done: Repeat the external inspection after that at intervals not to exceed 1,500 flight cycles.

(2) If the internal inspection is done: Repeat the internal inspection after that at intervals not to exceed 4,500 flight cycles.

Modification of Tear Strap Splice Straps

(k) For airplanes that have the "lap joint repair," as specified in Part IV of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 2, dated July 24, 1997, or Revision 3, dated September 18, 1997: Within 45,000 flight cycles after accomplishment of this lap joint repair, modify the splice straps per Figures 10, 11, and 12 of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

Follow-On LFEC Inspections

(l) Within 45,000 flight cycles after accomplishment of the lap joint repair required by paragraph (g) of this AD: Do either an external (Figure 8) or internal (Figure 9) LFEC inspection to find cracking of the lap joint repair, per PART I ("Inspection") of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001. Repeat the inspection after that at intervals not to exceed 2,800 flight cycles.

Repetitive High Frequency Eddy Current (HFEC) Inspections—Window Corners

(m) For airplanes having line numbers 520 through 2565 inclusive: Before the accumulation of 50,000 total flight cycles or within 1,200 flight cycles after the effective date of this AD, whichever comes later, do a HFEC inspection to find cracking, per PART V ("Window Corner Fastener Hole Cracking, Inspection and Repair") of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001. Repeat the inspection after that at intervals not to exceed 4,500 flight cycles. Accomplishment of the modification per Part V of the Accomplishment Instructions of the service bulletin constitutes terminating action for the inspections required by this paragraph.

Alternative Methods of Compliance

(n) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(o) Special flight permits may be issued per sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 6, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17431 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–73–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–200, –200C, –300, –400, and –500 series airplanes. This proposal would require the replacement of certain repairs in certain fuselage lap joints with improved repairs. This proposal also would require a high frequency eddy current inspection to find cracking of the repairs of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. This action is necessary to find and fix premature cracking of certain lap joint repairs, which could result in rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 27, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–73–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–73–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–1221; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–73–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–73–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 21, 1997, the FAA issued AD 97–22–07, amendment 39–10179 (62 FR 55732, October 28, 1997), applicable to certain Boeing Model 737 series airplanes, which requires repetitive inspections to detect cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking detected. That action also requires modification of the fuselage lap joints at certain locations.

Since issuance of that AD, the manufacturer has informed the FAA that during fatigue testing of the skin panels on certain airplanes repaired in accordance with the existing AD, premature cracking in certain lap joint repairs was detected. Multiple cracks were detected underneath the repairs on airplanes that had accumulated between 10,000 and 15,000 test cycles since repair per AD 97–22–07. These repairs were accomplished using the manufacturer's structural repair manual (SRM). Such repairs also may have been installed at times other than that required by AD 97–22–07. This condition, if not detected and corrected, could result in sudden decompression of the airplane.

Other Rulemaking

At this time, the FAA is considering two other separate rulemaking actions to address the remaining potential unsafe conditions relating to the cracking of the lap joints of the fuselage. Those two other actions would address:

- Additional repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and replacement of the preventive modification with an improved modification on Model 737 series airplanes, line numbers 292 through 2565 inclusive. And
- Repetitive inspections to find cracking of certain fuselage lap joint areas and modification of those areas, which would constitute terminating action for the repetitive inspections. The actions would be applicable to Model 737 series airplanes, line numbers 1 through 291 inclusive.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, which describes, among other things, procedures for replacement of certain SRM repairs in the fuselage lap joints with improved repairs. The service bulletin also describes a high frequency eddy current (HFEC) open-hole rotating probe inspection to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the replacement of certain repairs in certain fuselage lap joints with improved repairs. This proposed AD also would require a high frequency eddy current inspection to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. The actions would be required to be done per the service bulletin described previously, except as discussed below.

Differences Between Service Bulletin and Proposed Rule

In light of the complexity of the service bulletin, three separate rulemaking actions are being issued to address the potential unsafe conditions relating to the cracking of the lap joints of the fuselage. This proposed rule will address only the sections in the service bulletin that pertain to inadequate lap joint repairs done per the SRM.

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair/modification conditions, this proposed AD requires the repair/modification of those conditions to be done per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 2,359 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 958 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $804,720, or $840 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–73–AD.

Applicability: Model 737–200, –200C, –300, –400, and –500 series airplanes having line numbers 292 through 2565 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix premature cracking of certain fuselage lap joint repairs, which could result in rapid decompression of the airplane, accomplish the following:

Replacement of Structural Repair Manual (SRM) Lap Joint Repairs

(a) For Model 737–200, –200C, and –300 series airplanes: Within 5,000 flight cycles after the effective date of this AD, inspect all lap joints between body station (BS) 259.5 and BS 1016 to identify all repairs accomplished in accordance with 737–200 SRM, Subject 53–30–03, Figure 39 (for 737–200 series airplanes); or Boeing 737–300 SRM, Subject 53–00–01, Figure 227 (for 737–300 series airplanes).

(b) For Model 737–200, –200C, and –300 series airplanes that have a lap joint repair installed at stringers S–4L and S–4R, located between BS 259.5 and BS 1016; and installed at S–10L and S–10R, or at S–14L and S–14R, located between BS 259.5 and BS 540, and between BS 727 and BS 1016; that was previously done per the procedures specified in Boeing 737–200 SRM, Subject 53–30–3, Figure 39 repair (for 737–200 series airplanes); or Boeing 737–300 SRM, Subject 53–00–01, Figure 227 repair (for 737–300 series airplanes): Before the accumulation of 15,000 flight cycles since repair installation, or within 5,000 flight cycles after the effective date of this AD, whichever is later, do the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable, per Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001. If the area of damage that required the existing repair is outside the lap joint lower row, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

(1) If the lap joints are being cut out when replacing the SRM repair: Replace the Figure 39 repair of the lower skin at the lower row of fasteners in the lap joints of the fuselage per Figures 16, 17, and 18 of the Accomplishment Instructions of the service bulletin.

(2) If the lap joints are not being cut out when replacing the SRM repair: Do a high frequency eddy current (HFEC) open-hole rotating probe inspection to find cracking of the SRM repair of the lower skin at the lower row of fasteners in the lap joints of the fuselage, per the Figure 20 inspection procedures of the Accomplishment Instructions of the service bulletin. Before further flight after doing the inspection, replace a Boeing 737–200 SRM, Subject 53–30–3, Figure 39 repair with a Boeing 737–200 SRM, Subject 53–30–3, Figure 42 repair (for 737–200 series airplanes); or replace a Boeing 737–300 SRM, Subject 53–00–01, Figure 227 repair with a Boeing 737–300 SRM, Subject 53–00–01, Figure 228 repair (for 737–300 series airplanes); as applicable; per Part II.D. ("Crack Repair") of the Accomplishment Instructions of the service bulletin.

(c) For Model 737–200, –200C, and –300 series airplanes that have a lap joint repair installed in any area between BS 259.5 and BS 1016, other than those specified in paragraph (b) of this AD, that was previously done per the procedures specified in Boeing 737–200 SRM, Subject 53–30–3, Figure 39 repair (for 737–200 series airplanes); or Boeing 737–300 SRM Subject 53–00–01, Figure 227 repair (for 737–300 series airplanes): Before the accumulation of 20,000 flight cycles since repair installation, or within 5,000 flight cycles after the effective date of this AD, whichever is later, do the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable, per Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

(d) For Model 737–400 and –500 series airplanes: Within 5,000 flight cycles after the effective date of this AD, inspect all lap joints between BS 259.5 and BS 1016 to identify all repairs accomplished in accordance with 737–400 SRM, Subject 53–00–01, Figure 229 (for 737–400 series airplanes); or Boeing 737–500 SRM, Subject 53–00–01, Figure 227 (for 737–500 series airplanes).

(e) For Model 737–400 and –500 series airplanes that have a lap joint repair installed at S–4L and S–4R, located between BS 259.5 and BS 1016; and installed at S–10L and S–10R, or S–14L and S–14R, located between BS 259.5 and BS 540, and between BS 727 and BS 1016; that was previously done per the procedures specified in Boeing 737–400 SRM, Subject 53–00–01, Figure 229 repair (for 737–400 series airplanes); or Boeing 737–500 SRM, Figure 227 repair (for 737–500 series airplanes): Before the accumulation of 15,000 flight cycles since repair installation, or within 5,000 flight cycles after the effective date of this AD, whichever is later, cut out and replace the repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

(f) For Model 737–400, and –500 series airplanes that have a lap joint repair installed in any area between BS 259.5 and BS 1016, other than those specified in paragraph (d) of this AD, that was previously done per the procedures specified in Boeing 737–400 SRM, Subject 53–00–01, Figure 229 repair (for 737–400 series airplanes); or Boeing 737–500 SRM, Figure 227 repair (for 737–500 series airplanes): Before the accumulation of 20,000 flight cycles since repair installation, or within 5,000 flight cycles after the effective date of this AD, whichever is later, cut out and replace the repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(h) Special flight permits may be issued per sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 6, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17432 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–105–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, that currently requires repetitive inspections to find cracking of the lower skin panel at the lower row of fasteners in certain lap joints of the fuselage, and repair, if necessary. This action would limit the applicability of the existing AD; add certain repetitive inspections; revise certain compliance times; and add certain modifications. This proposal is prompted by the FAA's determination that, in light of additional crack findings, certain modifications of the fuselage lap joints are necessary. The actions specified by the proposed AD are intended to find and fix fatigue cracking of the fuselage lap joints, which could result in sudden fracture and failure of the lower skin lap joints, and rapid decompression of the airplane.

DATES: Comments must be received by August 27, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–105–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walt Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–105–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 10, 1999, the FAA issued AD 99–04–22, amendment 39–11047 (64 FR 7774, February 17, 1999), applicable to all Boeing Model 727, 727–100, 727–200, 727C, 727–100C, and 727–200F series airplanes, to require repetitive inspections to find cracking of the lower skin panel at the lower row of fasteners in certain lap joints of the fuselage, and repair, if necessary. That AD also provides for optional terminating action for certain repetitive inspections. That action was prompted by a report of fatigue cracking in the lower skin panel at the lower row of fasteners of the fuselage lap joints. The requirements of that AD are intended to find and fix such fatigue cracking, which could result in sudden fracture and failure of the lower skin lap joints, and rapid decompression of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 99–04–22, the FAA has received additional reports of fatigue cracking in the lower skin of the lap joints of the fuselage on Model 727 series airplanes that had accumulated as few as 36,781 total flight cycles, and several airplanes that had accumulated more than 50,000 flight cycles. The airplanes having more than 50,000 flight cycles were previously inspected per that AD. Further investigation revealed additional cracking and corrosion in various areas of the crown skin lap joints at the fastener locations. The majority of the cracks occurred at left and right stringers 4 and 26. The FAA finds that this damage can occur at those stringer locations between 30,000 and 50,000 flight cycles. These cracks are not always detectable using the external inspection procedures required by AD 99–04–22, and can link up with adjacent cracks causing multiple site damage, which can result in a rapid decompression of the fuselage.

Based on these findings, the FAA has determined that the current repetitive external detailed visual inspection procedures required by AD 99–04–22 are not adequate for finding cracks in these locations. Therefore, the FAA finds that additional rulemaking is necessary to require accomplishment of certain lap joint modifications and pre- and post-mod inspections, instead of the repetitive external detailed visual inspections.

Supplemental Type Certificate (STC) Holders

The FAA has determined that approximately half of the airplanes specified in the applicability of this proposed rule have been modified from a passenger configuration to an all-cargo configuration. The FAA has approved several service bulletins (listed below) that could be approved as alternative methods of compliance for the proposed modification requirements, but based on the number of affected airplanes, will instead be included in the proposed rule. The holders of STCs for these modified airplanes have developed these service bulletins to address modification/repair of the longitudinal lap joints in the area of the cargo door doubler only, but all other applicable areas also must be inspected and modified per Boeing Service Bulletin 727–53A0222, Revision 1, dated March 15, 2001.

Public Meeting

A joint FAA and Boeing meeting was held on July 25–27, 2000, to inform industry of the activity on Boeing Model 727 and 737 fuselage lap joints. Others in attendance were representatives from STC holders, air carriers, and repair stations, as well as Principal Maintenance Inspectors (PMI) from the FAA's Flight Standards Service. The objective of the meeting was to provide an overview of the FAA rulemaking process; discuss the recommendations of Boeing Service Bulletins 727–53A0222 and 737–53A1177, including background information; standardize the 727 and 737 service bulletins, where possible; and discuss the impact that the recommended service bulletin modifications would have on industry.

During the meetings, holders of certain STCs presented information pertaining to service bulletin activity for those airplanes that have been modified from a passenger to an all-cargo configuration. The meeting accomplished the objective of exchanging information between the FAA, Boeing, and industry on various aspects of Boeing Models 727 and 737 fuselage lap joints, including compliance planning. As a result of the meeting, attendees recognized the importance of modifying certain lap joints before reaching the point of widespread fatigue damage. Suggestions to improve the service bulletins and clarify AD compliance issues were made by operators and PMIs, and have been incorporated into the service bulletins and the proposed ADs discussed below. The minutes of the meeting have been placed in the public docket.

Explanation of Relevant Service Information

In addition to Boeing Service Bulletin 727–53A0222, Revision 1, the FAA has approved four service bulletins for STCs that modify affected airplanes from a passenger to an all-cargo configuration. These service bulletins address the areas of the lap joints that are physically externally covered by the addition of large doublers in the area of the cargo door. These doublers affect the loads in the lap joints, and for this reason the STC service bulletins provide inspections and modification instructions for those lap joint areas covered by the doublers.

The FAA has reviewed and approved the following service bulletins:

Service Bulletin	Date
Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A.	March 15, 2001.
Aeronautical Engineers Inc., Service Bulletin AEI 00–01, Revision A.	May 7, 2001.
PEMCO World Air Services Bulletin 727–53–0007, Revision 1.	June 6, 2001.
Aircraft Technical Service, Inc., Service Bulletin ATS 727–001.	May 7, 2001.
Federal Express Corporation Service Bulletin 00–029, Revision A.	May 16, 2001.

The Boeing Service Bulletin describes, but is not limited to, the following procedures:

- Either a Low Frequency Eddy Current (LFEC) or internal detailed visual and Medium Frequency Eddy Current (MFEC) inspection for cracking of the lower row of fasteners in the lower skin of fuselage sections 41, 43, and 46 of the lap joints.
- A High Frequency Eddy Current (HFEC) inspection of the fastener holes to verify crack indications if cracks are found during the LFEC inspection; or accessing the inboard side of the skin to do an MFEC inspection of the lower row of fasteners for verification of cracking in the lower skin.
- After crack indications are verified: An internal detailed visual inspection and an MFEC inspection for damage of the entire skin panel of the lap joint.
- Repair of the damage per the structural repair manual if the damage is within one bay. And
- Modification of the fuselage lap joints, and a post-modification inspection for cracking in the skin. The modification consists of cutting out the lap joint for the entire skin panel and installing an external doubler and tripler at stringers S–4L, S–4R, and S–26L.

The STC service bulletins listed above describe procedures for a one-time pre-modification inspection for cracking of the lower row of fasteners in the lower skin of the lap joint, modification of the surrounding structure of the main cargo door and doublers, and repetitive post-modification HFEC inspections for cracking in the cargo door area. This is to be done concurrent with the modification of the fuselage lap joints specified in the Boeing service bulletin described above.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–04–22 to continue to require certain repetitive inspections to find cracking of the lower skin panel at the lower row of fasteners in certain lap joints of the fuselage, and repair, if necessary. The proposed AD also would limit the applicability; add certain repetitive inspections; revise certain compliance times; and add certain modifications. The actions would be required to be accomplished per the service bulletins described previously, except as discussed below.

Differences Between the Boeing Service Bulletin and This Proposed AD

The FAA recognizes that the lap joint modification specified in this proposed AD would require jacking, shoring, removing interior components, and modifying certain lap joints, which would require taking the airplane out of service for as much as 22 days. This lengthy shop visit, as well as the relatively short compliance time required to accomplish this proposed AD, make it necessary for operators to engage in compliance planning to ensure that, when the deadline for compliance arrives, all of the required actions have been completed on all affected airplanes. Therefore, paragraph (c) of this proposed AD would require that operators submit to the FAA a compliance plan within 3 months after the effective date of this AD. This will enable the FAA to verify that all operators will be able to meet the deadlines imposed by this proposed AD.

While the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require

that the repair of those conditions be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Cost Impact

There are approximately 900 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 700 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 99–04–22 take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $480 per airplane.

The FAA estimates that the inspections proposed by this NPRM will impose the following costs, given an average labor rate of $60 per work hour:

Service information & inspection method	Work hours	Costs per inspection cycle
Boeing SB 727–53A0222—External LFEC	16	$960
Boeing SB 727–53A0222—Internal Detailed Visual and MFEC (Passenger Airplanes)	120	7,200
Boeing SB 727–53A0222—Internal Detailed Visual and MFEC (Cargo Airplanes)	40	2,400
AEI SB 00–01	12	720
PEMCO SB 727–53–0007	12	720
ATS SB 727–001	12	720
Federal Express SB 00–029	12	720

The FAA estimates that, during the 10-year period after issuance of the proposed AD, worldwide operators will be required to modify 360 Model 727 series airplanes. The modification required by the proposed AD would take approximately 1,200 work hours to accomplish, at an average labor rate of $60 per work hour. The worldwide cost impact of the required modification is estimated to be $37,413,000 over 10 years, or an average of $3,741,000 per year. The highest impact year is the first year after issuance of the AD; an estimated 56 Model 727 series airplanes would require modification in that year. The affected Model 727 airplanes operated by U.S. operators comprise approximately 78 percent of the total worldwide costs. Therefore, the highest cost impact of the modification in any given year is estimated to be $4,527,000 for U.S. operators.

The compliance plan that is proposed in this AD action would take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the compliance plan on U.S. operators is estimated to be $1,008,000, or $1,440 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11047 (64 FR 7774, February 17, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–105–AD. Supersedes AD 99–04–22, amendment 39–11047.

Applicability: Model 727 series airplanes, as listed in Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance per paragraph (l)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking in the lower skin panel at the lower row of fasteners of the fuselage lap joints, which could result in sudden fracture and failure of the lap joints, and rapid decompression of the airplane; accomplish the following:

Repetitive Inspections

(a) Do either an external low frequency eddy current (LFEC) inspection to find cracking, or both internal detailed visual and medium frequency eddy current (MFEC) inspections to find cracking or corrosion in the lower skin panels of the lower row of fasteners of the fuselage lap joints at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD on lap joints identified in Tables A through H and J through N; per Paragraph 1., Planning Information, of Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001. Except as provided by paragraph (b) of this AD, after doing the applicable initial inspection, repeat that inspection at the intervals specified in Tables A through G or J through N of the service bulletin, as applicable.

(1) At the latest of the times specified for the initial inspection in Tables A through H (for Groups 1, 2, 3, and 5 airplanes), or Tables J through N (for Groups 3 and 4 airplanes), as applicable, of Section 1.E. "Compliance," of the service bulletin, except where the compliance time in the service bulletin specifies a compliance time interval based on "the release of this service bulletin," this AD requires compliance within the interval specified in the service bulletin "after the effective date of this AD."

(2) Within 600 flight cycles after the last LFEC inspection or 7,000 flight cycles after the last HFEC inspection, if any, is accomplished in accordance with AD 99–04–22, amendment 39–11047.

Note 2: Groups 1–5 are defined in the effectivity section of the service bulletin.

(b) The repetitive inspection intervals for lap joints identified in Table H of Paragraph 1., Planning Information, of Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001, decrease with increasing flight cycles. Perform the repetitive inspections listed in Table H of the service bulletin at the following thresholds and intervals:

(1) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated fewer than 35,000 total flight cycles: Perform LFEC inspections at intervals not to exceed 600 flight cycles, or detailed internal visual and MFEC inspections at intervals not to exceed 7,000 flight cycles.

(2) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated 35,000 or more, but fewer than 45,000 flight cycles: Perform LFEC inspections at intervals not to exceed 600 flight cycles, or detailed internal visual and MFEC inspections at intervals not to exceed 7,000 flight cycles.

(3) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated 45,000 or more, but fewer than 54,999 flight cycles: Perform detailed internal visual and MFEC inspections at intervals not to exceed 2,000 flight cycles.

(4) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane accumulated 55,000 or more total flight cycles: Perform LFEC inspections at intervals not to exceed 300 flight cycle intervals.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to find damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Compliance Plan

(c) Within 3 months after the effective date of this AD, submit a plan to the FAA identifying a schedule for compliance with paragraph (d) of this AD. This schedule must include, for each of the operator's affected airplanes, the dates and maintenance events (e.g., letter checks) when the required actions will be accomplished. For the purposes of this paragraph, "FAA" means the Principal Maintenance Inspector (PMI) for operators that are assigned a PMI, or the cognizant Flight Standards District Office for other operators. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 4: Operators are not required to submit revisions to the compliance plan required by paragraph (c) of this AD to the FAA.

Modification/Inspections

(d) For Model 727–200 series airplanes: Accomplish the modification listed in Table H of Paragraph 1., Planning Information, of Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001, at the threshold in paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable. Within 35,000 flight cycles after doing the modification, do the post-modification inspection for cracking in the skin, per Part III of the Accomplishment Instructions of the service bulletin:

(1) For airplanes that have accumulated less than 35,000 total flight cycles on the effective date of the AD: Accomplish the modification prior to 48,000 total flight cycles.

(2) For airplanes that have accumulated between 35,000 and 54,999 total flight cycles on the effective date of the AD: Accomplish the modification prior to 55,000 total flight cycles, or within 2,000 total flight cycles of the effective date of this AD.

(3) For airplanes that have accumulated 55,000 or greater total flight cycles on the effective date of the AD: Accomplish the modification within 2,000 flight cycles after the effective date of this AD.

Repair

(e) If any cracking or corrosion is found during any inspection required by paragraph (a), (b), or (d) of this AD: Before further flight, repair per Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001. Where the service bulletin specifies to contact Boeing for repair instructions, repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Concurrent Modifications

(f) For Model 727–200 series airplanes modified per supplemental type certificate (STC) SA1368SO or SA1797SO: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in Aeronautical Engineers Inc., Service Bulletin AEI 00–01, Revision A, dated May 7, 2001, per the service bulletin.

(g) For Model 727–200 series airplanes modified per STC SA1444SO and SA1509SO: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in PEMCO World Air Services Bulletin 727–53–0007, Revision 1, dated June 6, 2001, per the service bulletin.

(h) For Model 727–200 series airplanes modified per STC SA00015AT: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in Aircraft Technical Service, Inc., Service Bulletin ATS 727–001, dated May 7, 2001, per the service bulletin.

(i) For Model 727–200 series airplanes modified per STC SA176SO: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in Federal Express Corporation Service Bulletin 00–029, Revision A, dated May 16, 2001, per the service bulletin.

(j) Within 2,200 flight cycles after doing the applicable modification specified in paragraph (f), (g), (h), or (i) of this AD, do the post-modification inspection for cracking in the skin per the applicable service bulletin specified in Table 1, below. Repeat the applicable inspection after that at intervals not to exceed 2,200 flight cycles. Table 1 follows:

TABLE 1

Service Bulletin	Date
(1) Aeronautical Engineers Inc., Service Bulletin AEI 00–01, Revision A.	May 7, 2001.
(2) PEMCO World Air Services Bulletin 727–53–0007, Revision 1.	June 6, 2001.

TABLE 1—Continued

Service Bulletin	Date
(3) Aircraft Technical Service, Inc., Service Bulletin ATS 727–001.	May 7, 2001.
(4) Federal Express Corporation Service Bulletin 00–029, Revision A.	May 16, 2001.

Repair

(k) If any cracking is found during any inspection required by paragraph (f), (g), (h), or (i) of this AD: Before further flight, repair per the applicable service bulletin as provided in Table 1 in paragraph (j) of this AD. Where cracks exceed the limits provided in the service bulletin, and the bulletin specifies to contact the provider of the service bulletin for repair instructions, prior to further flight, repair per a method approved by the Manager, Seattle ACO. If any cracking is found is during any inspection required by paragraph (j) of this AD: Before further flight, repair per a method approved by the Manager, Seattle ACO. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(l)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously per AD 99–04–22, amendment 39–11047, are approved as alternative methods of compliance with this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(m) Special flight permits may be issued per sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 6, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17433 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–74–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200 and –200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–200 and –200C series airplanes. This proposal would require repetitive inspections to find cracking of certain fuselage lap joint areas, and repair of any cracking found. This proposal also would require eventual modification of those areas, which would constitute terminating action for the repetitive inspections. This action is necessary to find and fix cracking of certain fuselage lap joint areas, which could result in rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 27, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–74–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–1221; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–74–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Structural Airworthiness of Aging Transport Category Airplanes

On April 28, 1988, a Boeing Model 737 series airplane was involved in an accident in which a 15-foot long section

of fuselage structure peeled open during flight. In light of this, the FAA initiated an Aging Fleet Program. The objective of that program is to identify and implement procedures to ensure the continuing structural airworthiness of aging transport category airplanes.

As part of the Aging Fleet Program, the airplane manufacturer conducted cyclic pressure (fatigue) tests to evaluate the performance of the various fuselage skin panel lap joint configurations. The fuselage skin panel joint consists of two adjacent panels that overlap each other longitudinally and are joined together by three rows of fasteners at the overlap (hence, lap joint). Cracks in the upper skin of the lap joint led to the structural failure that occurred in the 1988 accident discussed previously. These lap joints, installed on early Model 737 series airplanes having line numbers 1 through 291, were modified by replacing the countersunk fasteners in the upper fastener row of the lap joint with protruding head fasteners to correct and prevent cracking in the upper skin of the lap joint. To date, no cracking has been detected in the lower fastener row of these (modified) lap joints.

However, at some locations on these same airplanes, the lap joint has a different configuration that includes a doubler, and cracking has been found in the lower row of fasteners in the lower skin of these joints. This type of joint was used extensively on subsequent airplanes (line numbers 292 through 2565 inclusive) to improve the lap joint and to prevent cracks in the upper skin. In 1994, tests were conducted on lap joints that incorporate doublers; test results revealed cracks in the lower skin of this lap joint. The airplane manufacturer determined that these cracks were caused by increased stresses in this area due to the increased bending stresses associated with the installation of the doubler on the upper skin.

In light of these test results, the manufacturer inspected this type of lap joint on five aging airplanes and detected a total of 273 fatigue cracks. The use of eddy current inspection techniques was required as the cracks in the lower skin are not detectable visually due to the positioning of the lower skin between the upper skin and the circumferential tear strap. Many of these cracks were found to have occurred simultaneously at adjacent fastener hole locations in the lower skin of the fuselage lap joint.

This type of cracking of the lap joint is known as multiple site damage (MSD). MSD is characterized by the simultaneous presence of fatigue cracks in the same structural element (such as the lower skin panel of the lap joint). Coalescence of cracks at adjacent fastener holes in the lower skin can lead to sudden fracture and failure of the lap joint, which could result in rapid decompression of the airplane due to the reduction in the residual strength of a lap joint in the presence of MSD. This reduction of the structural integrity of the fuselage may occur at loads significantly below those that would be expected for structure having a single large crack. The accident discussed previously has demonstrated dramatically that small cracks acting together can have a significant effect on the residual strength of the aircraft structure.

Related Rulemaking

On October 21, 1997, the FAA issued AD 97–22–07, amendment 39–10179 (62 FR 55732, October 28, 1997), applicable to Boeing Model 737 series airplanes, line numbers 292 through 2565 inclusive, which requires repetitive inspections to detect cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage that have this doubler, and repair of any cracking detected. That action also requires modification of the fuselage lap joints at stringers S10 and S14, located between body stations (BS) 360 and BS 540, and located between BS 727 and BS 908.

Public Meeting

A joint Federal Aviation Administration (FAA) and Boeing meeting was held on July 25–27, 2000, to inform industry of the activity on Boeing Model 727 and 737 fuselage lap joints. Others in attendance were representatives from air carriers and repair stations, as well as Principal Maintenance Inspectors (PMI) from the FAA Flight Standards Service. The objective of the meeting was to provide an overview of the FAA rulemaking process; discuss the recommendations of Boeing Service Bulletins 727–53A0222 and 737–53A1177, including background information; standardize the 727 and 737 service bulletins, where possible; and discuss the impact that the recommended service bulletin modifications would have on industry.

During the meetings, holders of certain supplemental type certificates presented information pertaining to service bulletin activity for those airplanes that have been modified from a passenger to an all-cargo configuration. The meeting accomplished the objective of exchanging information between the FAA, Boeing, and industry on various aspects of Boeing Models 727 and 737 fuselage lap joints, including compliance planning. As a result of the meeting, attendees recognized the importance of modifying certain lap joints before reaching the point of widespread fatigue damage. Suggestions to improve the service bulletins and clarify AD compliance issues were made by operators and PMIs, and have been incorporated into the service bulletins and the proposed ADs discussed below. In addition, minutes of the public meeting are retained in the docket.

Other Relevant Rulemaking

At this time, the FAA is considering two other separate rulemaking actions to address the remaining potential unsafe conditions relating to the cracking of the lap joints of the fuselage. Those two other actions would address:

- Additional repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and replacement of the preventive modification with an improved modification on Model 737 series airplanes, line numbers 292 through 2565 inclusive. And
- Replacement of certain repairs with improved repairs in certain fuselage lap joints done per the procedures described in the structural repair manual (SRM); and a high frequency eddy current inspection to find cracking of the SRM repairs of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found on Model 737 series airplanes, line numbers 292 through 2565 inclusive.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, which describes, among other things, procedures for repetitive low frequency eddy current inspections to find cracking of the left and right stringer S–10 and S–14 lap joint areas, between BS 360 and BS 540, and BS 727 and BS 908, and repair, if necessary. The service bulletin also describes procedures for the installation of a lap joint modification, which, when accomplished, would eliminate the need for the repetitive inspections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would

require repetitive inspections to find cracking of certain fuselage lap joint areas, and repair of any cracking found. The proposed AD also would require eventual modification of those areas, which would constitute terminating action for the repetitive inspections. The actions would be required to be accomplished per the service bulletin described previously, except as discussed below.

Differences Between Service Bulletin and Proposed Rule

The FAA recognizes that the lap joint modification specified in this proposed AD would require jacking, shoring, removing interior components, and modifying certain lap joints, which would require taking the airplane out of service for as much as 22 days. This lengthy shop visit, as well as the relatively short compliance time required to accomplish this proposed AD, make it necessary for operators to engage in compliance planning to ensure that, when the deadline for compliance arrives, all of the required actions have been completed on all affected airplanes. Therefore, paragraph (d) of this proposed AD would require that operators submit to the FAA a compliance plan within 3 months after the effective date of this AD. This will enable the FAA to verify that all operators will be able to meet the deadlines imposed by this proposed AD.

Operators should note that, in light of the complexity of the service bulletin, three separate rulemaking actions are being issued to address the potential unsafe conditions relating to the cracking of the lap joints of the fuselage. This proposed rule will address only Model 737–200 and –200C series airplanes having line numbers 1 through 291 inclusive.

Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair/modification conditions, this proposed AD requires the repair/modification of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 159 Model 737–200 and –200C series airplanes of the affected design in the worldwide fleet. The FAA estimates that 55 airplanes of U.S. registry (over 10 years) would be affected by this proposed AD.

It would take approximately 16 work hours per airplane to accomplish the proposed inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $52,800, or $960 per airplane, per inspection cycle.

It would take approximately 75 work hours per airplane to accomplish the proposed modifications, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,500 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $330,000, or $6,000 per airplane.

The compliance plan that is proposed in this AD action would take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the compliance plan on U.S. operators is estimated to be $79,200, or $1,440 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–74–AD.

Applicability: Model 737–200 and –200C airplanes having line numbers 1 through 291 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of certain fuselage lap joint areas, which could result in rapid decompression of the airplane, accomplish the following:

Repetitive Low Frequency Eddy Current (LFEC) Inspections

(a) Do an LFEC inspection to find cracking of the left and right stringers S–10 and S–14 lap joints of the fuselage, located between body station (BS) 727 and BS 747, per Figures 7 and 8 of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Repeat the inspection after that at intervals not to exceed 1,200 flight cycles until accomplishment of the lap joint modification (repair) required by paragraph (e) of this AD.

(1) For airplanes that have accumulated 70,000 or more total flight cycles as of the

effective date of this AD: At the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Before the accumulation of 71,200 total flight cycles.

(ii) Within 300 flight cycles after the effective date of this AD.

(2) For airplanes that have accumulated 45,000 or more total flight cycles, but less than 70,000 total flight cycles as of the effective date of this AD: At the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Before the accumulation of 50,000 total flight cycles.

(ii) Within 1,200 flight cycles after the effective date of this AD.

Crack Repair

(b) Except as provided by paragraph (c) of this AD: If any cracking is found during any inspection required by this AD, before further flight, repair per Part II ("Crack Repair") of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

(c) If any cracking is found during any inspection required by this AD, and Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, specifies to contact Boeing for repair instructions: Repair before further flight, per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Compliance Plan

(d) Within 3 months after the effective date of this AD, submit a plan to the FAA identifying a schedule for compliance with paragraph (e) of this AD. This schedule must include, for each of the operator's affected airplanes, the dates and maintenance events (e.g., letter checks) when the required actions will be accomplished. For the purposes of this paragraph, "FAA" means the Principal Maintenance Inspector (PMI) for operators that are assigned a PMI, or the cognizant Flight Standards District Office for other operators. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 2: Operators are not required to submit revisions to the compliance plan required by paragraph (d) of this AD to the FAA.

Lap Joint Modification (Repair)

(e) Before the accumulation of 50,000 total flight cycles or within 5,000 flight cycles after the effective date of this AD, whichever comes later: Install the lap joint repair of the left and right stringer S–10 and S–14 lap joints of the fuselage, between BS 727 and BS 747, per Part III ("Lap Joint Repair"), of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001. Installation of this repair ends the repetitive inspections of the repaired areas required by paragraph (a) of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 6, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17434 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 808

RIN 0701–AA64

Installation Entry Policy, Civil Disturbance Intervention, and Disaster Assistance

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is revising our rules on Enforcement of Order at Air Force Installations, Control of Civilian Disturbances, Support of Disaster Relief Operations, and Special Consideration for Overseas Areas of the Code of Federal Regulations (CFRs) to reflect current policies. Part 808 (previously Part 809a), is the Air Force Instruction (AFI) 31–209 dealing with installation entry policy, barments, enforcing order within or near Air Force installations, civil disturbance, and disaster assistance. It adds expulsion and installation entry point check procedures.

DATES: Submit comments on or before September 10, 2001.

ADDRESSES: SMSgt Walter Filipiak, HQ AFSFC/SFOP, 1720 Patrick Street, Lackland AFB, TX 78236–5226, 210–671–0898.

FOR FURTHER INFORMATION CONTACT: SMSgt Walter Filipiak, 210–671–0898.

SUPPLEMENTARY INFORMATION: This proposed rule implements guidance from section 21 of the Internal Security Act of 1950 (50 U.S.C. 797 and DoD Directive 5200.8, Security of DoD Installations and Resources).

List of Subjects in 32 CFR Part 808

Civil defense, Civil disorders, Disaster assistance, Federal buildings and facilities, Foreign relations, Law enforcement and Military personnel.

For the reasons set forth in the preamble, the Department of the Air Force is proposing to amend 32 CFR, Chapter VII by redesignating Part 809a as 808 and revising it to read as follows:

PART 808—INSTALLATION ENTRY POLICY, CIVIL DISTURBANCE INTERVENTION AND DISASTER ASSISTANCE

Sec.

808.0 Purpose.

Subpart A—Installation Entry Policy

808.1 Random installation entry point checks.
808.2 Military responsibility and authority.
808.3 Unauthorized entry.
808.4 Use of Government facilities.
808.5 Barment procedures.

Subpart B—Civil Disturbance Intervention and Disaster Assistance

808.6 Authority.
808.7 Definitions.
808.8 Installation policies and laws.
808.9 Conditions for use of Air Force resources.
808.10 Military Commanders' responsibilities.
808.11 Procedures outside the United States.

§ 808.0 Purpose.

This part prescribes the commanders' authority for enforcing order within or near Air Force installations under their jurisdiction and controlling entry to those installations. It provides guidance for use of military personnel in controlling civil disturbances and in supporting disaster relief operations. This part applies to installations in the United States, its territories and possessions, and will be used to the maximum extent possible in the overseas commands. Instructions issued by the appropriate overseas commander, status of forces agreements, and other international agreements provide more

definitive guidance for the overseas commands. Nothing in this part should be construed as authorizing or requiring security forces units to collect and maintain information concerning persons or organizations having no affiliation with the Air Force other than a list of persons barred from the installation.

Subpart A—Installation Entry Policy

§ 808.1 Random installation entry point checks.

The installation commander determines when, where, and how to implement random checks of vehicles or pedestrians. The commander conducts random checks to protect the security of the command or to protect government property.

§ 808.2 Military responsibility and authority.

(a) Air Force installation commanders are responsible for protecting personnel and property under their jurisdiction and for maintaining order on installations, to ensure the uninterrupted and successful accomplishment of the Air Force mission.

(b) Each commander is authorized to grant or deny access to their installations, and to exclude or remove persons whose presence is unauthorized. In excluding or removing persons from the installation, the installation commander must not act in an arbitrary or capricious manner. Their action must be reasonable in relation to their responsibility to protect and to preserve order on the installation and to safeguard persons and property thereon. As far as practicable, they should prescribe by regulation the rules and conditions governing access to their installation.

§ 808.3 Unauthorized entry.

Under Section 21 of the Internal Security Act of 1950 (50 U.S.C. 797), any directive issued by the commander of a military installation or facility, which includes the parameters for authorized entry to or exit from a military installation, is legally enforceable against all persons whether or not those persons are subject to the Uniformed Code of Military Justice (UCMJ). Military personnel who reenter an installation after having been properly ordered not to do so may be apprehended. Civilian violators may be detained and either escorted off the installation or turned over to proper civilian authorities. Civilian violators may be prosecuted under 18 U.S.C. 1382.

§ 808.4 Use of Government facilities.

Commanders are prohibited from authorizing demonstrations for partisan political purposes. Demonstrations on any Air Force installation for other than political purposes may only occur with the prior approval of the installation commander. Demonstrations that could result in interference with, or prevention of, the orderly accomplishment of the mission of an installation or that present a clear danger to loyalty, discipline or morale of members of the Armed Forces will not be approved.

§ 808.5 Barment procedures.

Under the authority of 50 U.S.C. 797, installation commanders may deny access to the installation through the use of a barment order. Barment orders should be in writing but may also be oral. Security forces maintain a list of personnel barred from the installation.

Subpart B—Civil Disturbance Intervention and Disaster Assistance

§ 808.6 Authority.

The authority to intervene during civil disturbances and to provide disaster assistance is bound by directives issued by competent authorities. States must request federal military intervention or aid directly from the President of the United States by the state's legislature or executive. Installation commanders must immediately report these requests in accordance with AFI 10–802, Military Support to Civil Authorities.

§ 808.7 Definitions.

(a) *Emergencies.* These are conditions which affect public welfare and occur as a result of enemy attack, insurrection, civil disturbances, earthquake, fire, flood, or other public disasters which endanger life and property or disrupt the usual process of government. The term "emergency" includes any or all of the conditions explained in this section.

(b) *Civil defense emergency.* This is a disaster situation resulting from devastation created by an enemy attack and requiring emergency operations during and following attack. It may also be proclaimed by appropriate authority in anticipation of an attack.

(c) *Civil disturbances.* These are group acts of violence or disorder prejudicial to public law and order including those which follow a major disaster. They include riots, acts of violence, insurrections, unlawful obstructions or assemblages, or other disorders.

(d) *Major disaster.* Any flood, fire, hurricane, or other catastrophe which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of the State and local governments in alleviating the damage, hardship, or suffering caused thereby.

§ 808.8 Installation policies and laws.

This subpart contains policies on the use of Air Force military personnel in civil disturbances and disasters. The more important laws concerning military aid to civil authorities are also summarized.

(a) The Air Force gives military assistance to civil authorities in civil defense or civil disturbances and disasters only when such assistance is requested or directed. Commanders will not undertake such assistance without authority, unless the overruling demands of humanity compel immediate action to protect life and property and to restore order.

(b) The military service having available resources nearest the affected area is responsible for providing initial assistance to civil authorities in emergencies. Subsequent operations are to be according to the mutual agreement between the senior service commanders concerned.

(c) The protection of life and property and the maintenance of law and order within the territorial jurisdiction of any State is the primary responsibility of State and local authorities. It is well-established U.S. Government policy that intervention with military forces takes place only after State and local authorities have used their own forces and are unable to control the situation, or when they do not take appropriate action.

§ 808.9 Conditions for use of Air Force resources.

This part is not intended to extend Air Force responsibilities in emergencies to generate additional resources (manpower, materiel, facilities, etc.) requirements, or encourage participation in such operations at the expense of the Air Force primary mission. It is a guide for the employment of Air Force resources when:

(a) A disaster or disturbance occurs in areas in which the U.S. Air Force is the executive agent of the United States.

(b) A disaster or disturbance occurs in areas that are remote from an Army installation but near an Air Force installation, thereby necessitating Air Force assumption of responsibility pending arrival of Army personnel.

(c) The overriding demand of conditions resulting from a natural

disaster compels immediate action to protect life and property and to restore order.

§ 808.10 Military Commanders' responsibilities.

(a) Civilians in the affected area will be informed of the rules of conduct and other restrictive measures to be enforced by the military. These will be announced by local proclamation or order, and will be given the widest publicity by all available media.

(b) Persons not normally subject to military law, who are taken into custody by military forces incident to civil disturbances, will be turned over to the civil authorities as soon as possible.

(c) Military forces will ordinarily exercise police powers previously inoperative in an affected area; restore and maintain order; maintain essential transportation and communication; and provide necessary relief measures.

(d) U.S. Air Force civilian employees may be used, in any assignments in which they are capable and willing to serve. In planning for on-base contingencies of fires, floods, hurricanes, and other natural disasters, arrangements should be made for the identification and voluntary use of individual employees to the extent that the needs for their services are anticipated.

§ 808.11 Procedures outside the United States.

It is Air Force policy to make every reasonable effort to avoid any confrontation between United States military forces and host nation demonstrators or other dissidents posing a threat to Air Force resources. Intervention by United States military personnel outside the United States is governed by international law, bilateral and other international agreements to which the United States is a party, and host-nation laws. Local plans to counter such situations must include provisions to request and obtain host nation civil or military support as quickly as possible.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–17474 Filed 7–11–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–003]

RIN 2115–AE47

Drawbridge Operation Regulation; Terrebonne Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the operating schedules for the Howard Avenue bridge across Terrebonne Bayou, mile 35.0, at Houma, Terrebonne Parish, LA. The proposed rule would place this bridge on the same operating schedule as the Daigleville Bridge, mile 35.5, to facilitate the flow of vehicular traffic during rush hours while still meeting the reasonable needs of navigation. The new schedule will provide a safe, continuous vessel passage through the draws. This action is expected to relieve the bridge owner from the requirement to separately man each bridge by using roving drawtenders to operate the bridges when necessary.

DATES: Comments and related material must reach the Coast Guard on or before September 10, 2001.

ADDRESSES: You may mail comments to Commander (obc), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address above between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration Branch, Eighth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at the address given above, or telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD08–01–003), and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you would like confirmation of receipt of your comments, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of comments received.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a public meeting by writing to the Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why a public meeting would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place to be announced by notice in the **Federal Register**.

Background and Purpose

The Coast Guard published a notice of proposed rulemaking on March 19, 2001 (66 FR 15373). The proposed rule would have permitted the draws of the S3087 bridge, the Howard Avenue bridge, and the Daigleville bridge to open on signal if at least four hours notice is given, except that, the draw need not open for the passage of vessels Monday through Friday, except Federal holidays, from 6 a.m. to 8 a.m. and 4 p.m. to 6 p.m.

Comments received prompted the Coast Guard to reevaluate the proposal. Two letters were received in response to the public notice. The Louisiana Department of Agriculture offered no comments. Mr. Richard Block of the Gulf Coast Mariners Association stated that the changes requested were unacceptable as proposed. These letters were forwarded to the Louisiana Department of Transportation and Development (LDOTD) for their reevaluation.

LDOTD responded to the Coast Guard with a new proposal. They determined that the special operating regulations for the S3087 bridge and the Daigleville bridge would remain unchanged and they would only request a change to the operation of the Howard Avenue Bridge. They requested that the Howard Avenue bridge be operated on a similar schedule to the Daigleville bridge which is 0.5 miles upstream of the Howard Avenue bridge. As the Howard Avenue bridge is

located between the Daigleville bridge and the S3087 bridge, the requirement for opening the bridge on signal is not needed as the bridge is located between two bridges with special operating regulations.

Discussion of Proposed Rule

Currently, all three drawbridges, the S3087 Bridge (33 CFR 117.505(c)), the Howard Avenue Bridge, and the Daigleville Bridge (33 CFR 117.505(d)) across Terrebonne Bayou are required to open on signal during the day. However, both the S3087 Bridge and Daigleville Bridge have drawbridge operation regulations that require a four-hour advance notice be given. The S3087 Bridge will open on signal if at least four hours notice is given from 5 p.m. to 9 a.m. The Daigleville Bridge will open on signal if at least four hours notice is given from 10 p.m. to 6 a.m. The Daigleville Bridge is also allowed to remain closed-to-navigation Monday through Friday, except holidays, from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m.

The Coast Guard proposes to change the regulation in 33 CFR 117.505 to require the draw of the Howard Avenue bridge to open on signal; except that, the draw need not open for the passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m. From 10 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given.

The Howard Avenue bridge is located between the Daigleville bridge and the S3087 bridge. These bridges have existing special operating regulations that are more restrictive than the open on signal requirement imposed upon the Howard Avenue bridge. LDOTD now wishes to have the operating schedule of the Howard Avenue bridge conform to the requirement of the Daigleville bridge. The Coast Guard has determined that the request by the bridge owner, to have the Howard Avenue bridge operate on the same schedule as the Daigleville bridge is reasonable and meets the needs of navigation.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This proposed rule allows commercial fishing vessels ample opportunity to transit this waterway before and after the peak vehicular traffic period which occurs between 7 a.m. and 8:30 a.m. and 4:30 p.m. and 6 p.m. according to the vehicle traffic surveys.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule has considered the needs of the local commercial fishing vessels and it has been determined that, under 5 U.S.C. 605(b), it would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Eighth Coast Guard District at the address above.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this proposed rule would not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant

energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(e), of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.505, paragraph (d) is revised to read as follows:

§ 117.505 Terrebonne Bayou.

* * * * *

(d) The draws of the Howard Avenue bridge, mile 35.0, and the Daigleville bridge, mile 35.5, at Houma, shall open on signal; except that, the draws need not open for the passage of vessels Monday through Friday, except holidays from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m. From 10 p.m. to 6 a.m., the draws shall open on signal if at least four hours notice is given.

* * * * *

Dated: June 28, 2001.

Roy J. Casto,

RADM, USCG, Commander, 8th CG District.

[FR Doc. 01–17393 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–095]

RIN 2115–AE47

Drawbridge Operation Regulations; Shrewsbury River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the drawbridge operating regulations governing the operation of the Monmouth County highway bridge, at mile 4.0, across the Shrewsbury River at Sea Bright, New Jersey. This proposed temporary change to the drawbridge operation regulations would allow the bridge owner to open the bridge at 6 a.m., 10 a.m., 2 p.m., and 6 p.m., only, from November 1, 2001 through February 28, 2002. A twelve-hour advance notice would be required for all bridge openings. This action is necessary to facilitate structural repairs at the bridge.

DATES: Comments must reach the Coast Guard on or before September 10, 2001.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Judy Yee, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–01–0), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background

The Monmouth County highway bridge, at mile 4.0, across the Shrewsbury River has a vertical clearance of 15 feet at mean high water and 17 feet at mean low water. The existing regulations are listed at 33 CFR 117.755.

The bridge owner, Monmouth County, asked the Coast Guard to temporarily change the drawbridge operation regulations to facilitate structural repairs at the bridge. This proposed temporary rule would allow the bridge owner to open the bridge at 6 a.m., 10 a.m., 2 p.m., and 6 p.m., only, from November 1, 2001 through February 28, 2002. A twelve-hour advance notice would be required for all bridge openings.

Discussion of Proposal

This proposed temporary change to the drawbridge operation regulations would allow the bridge owner to open the bridge at 6 a.m., 10 a.m., 2 p.m., and 6 p.m., only, after a twelve-hour advance notice is given, while structural repairs are underway at the bridge.

The timed openings and the advance notice requirement are necessary to assist in scheduling repairs and to allow the contractor sufficient time to remove equipment and materials from the bridge in order to provide bridge openings.

The number of bridge openings from November through February in past years have been relatively low. The bridge opening log data for November through February for the past two years is as follows:

	1999–2000	2000–2001
November	68	85
December	31	38

	1999–2000	2000–2001
January	14	6
February	7	13

The Coast Guard believes this rulemaking is reasonable based upon the relatively low number of bridge opening requests during past years November through February and the fact that this work is necessary maintenance required to assure continued uninterrupted operation of the bridge.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, Feb. 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge will still continue to open daily for navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that the bridge will still continue to open daily for navigation.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this rule.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From November 1, 2001, through February 28, 2002, in § 117.755 temporarily suspend paragraph (b) and add a new paragraph (c) to read as follows:

§ 117.755 Shrewsbury River.

* * * * *

(c) The Monmouth County highway bridge, mile 4.0, at sea Bright shall open on signal at 6 a.m., 10 a.m., 2 p.m., and 6 p.m., after at least a twelve-hour advance notice is given. Advance notice may be given by calling the number posted at the bridge.

Dated: June 25, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–17387 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–01–006]

RIN 2115–AE47

Drawbridge Operation Regulations; Youngs Bay and Lewis and Clark River, OR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the periods during which advance notice is required for opening these drawbridges: New Youngs Bay, mile 0.7, across Youngs Bay; Old Youngs Bay, mile 2.4, across Youngs Bay and the Lewis and Clark River Bridge across the Lewis and Clark River, mile 1.0, at Astoria, Oregon. In this proposal the drawbridges would open for the passage of vessels with at least one half-hour notice from 6 a.m. to 6 p.m. Monday through Friday and from 8 a.m. to 4 p.m. on Saturday and Sunday. At all other times four hours notice would be required. This would reduce the currently designated daily hours at which only a half-hour notice is required for draw openings.

DATES: Comments and related material must reach the Coast Guard on or before September 10, 2001.

ADDRESSES: You may mail comments and related material to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067 or deliver them to room 3510 at the same address between 7:45 a.m. and 4:15 p.m., Monday through Friday, except Federal holidays. This office maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief, Bridge Section, Thirteenth Coast Guard District, (206) 220–7282.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CCGD13–01–006), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander Thirteenth Coast Guard District (oan) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The operating regulations currently in effect for these drawbridges at 33 Code of Federal Regulations 117.899 provide that the spans need not open for the passage of vessels from 5 a.m. to 9 p.m. daily unless at least a half hour notice is provided. During these daily hours notice may be given by marine radio, telephone, or other suitable means. At all other times a minimum of four hours notice is required by telephone only. The three drawbridges have operated according to this schedule since 1993 without complaint from vessel operators. The proposed rule would enable the Oregon Department of Transportation, owner of the bridges, to reduce staffing on half-hour standby during the hours when the bridges have been less frequently opened and to apply these savings to maintenance expenses.

Discussion of Proposed Rule

The proposed change would reduce the Monday through Friday periods that require only a half hour notice to open the bridge for the passage of vessels by one hour in the morning and three in the evening. On Saturdays and Sundays the same period would be reduced by three hours in the morning and five in the evening. In effect, this would likewise increase the daily periods when four hours notice is the minimum requirement for notice by the same number of hours. The change is based on the general reduction in the number of requests for opening by vessel operators and the reduction of requests specific to the hours that would be changed.

In the year 2000 the New Youngs Bay Bridge opened a total of 335 times for an average of less than once a day. The Old Youngs Bay Bridge opened only 47 times in the same year, while the Lewis and Clark River Bridge opened 325 times. Records indicate a significant reduction in openings for the three bridges since 1996. There is less demand for draw openings on the weekends and for the hours of the day that would be added to the period in which four hours notice is required. Based on the data from the year 2000, only four openings occurred during the proposed one-hour change in the morning, Monday through Friday. More openings would have been affected in the evening addition of three hours to the four-hour notice category. However, this number is 27, still a small fraction of the total. The records indicate a marked decrease in the demand for openings from 5 p.m. to 7 p.m.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridges are not frequently requested to open. The majority of vessels are clients of a boatyard upstream of the Lewis and Clark River Bridge. The advance notice requirement does not obstruct passage for any vessels. Currently, vessels have operated under similar notice requirements without complaint.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, or on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have

a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Some vessel owners might be temporarily inconvenienced by the change, if effected, but the greater advance notice required in part of the morning and evening should not be significant, especially after vessel operators learn of the change and can therefore plan their trips accordingly. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1–(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.899 is revised as follows:

§ 117.899 Youngs Bay and Lewis and Clark River.

(a) The draw of the US101 (New Youngs Bay) highway bridge, mile 0.7, across Youngs Bay at Smith Point, shall open on signal for the passage of vessels if at least one half-hour notice is given to the drawtender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 6 a.m. to 6 p.m. Monday through Friday and from 8 a.m. to 4 p.m. on Saturday and Sunday. At all other times at least a four-hour notice by telephone is required. The opening signal is two prolonged blasts followed by one short blast.

(b) The draw of the Oregon State (Old Youngs Bay) highway bridge, mile 2.4, across Youngs Bay at the foot of Fifth Street, shall open on signal for the passage of vessels if at least one half-hour notice is given to the drawtender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 6 a.m. to 6 p.m. Monday through Friday and from 8 a.m. to 4 p.m. Saturday and Sunday. At all other times at least a four-hour notice by telephone is required. The opening signal is two prolonged blasts followed by one short blast.

(c) The draw of the Oregon State (Lewis and Clark River) highway bridge, mile 1.0, across the Lewis and Clark River, shall open on signal for the passage of vessels if at least one half-hour notice is given by marine radio, telephone, or other suitable means from 6 a.m. to 6 p.m. Monday through Friday and from 8 a.m. to 4 p.m. on Saturday and Sunday. The opening signal is one prolonged blast followed by four short blasts.

Dated: May 7, 2001.

P.M. Sanders,

Captain, U.S. Coast Guard, Commander, Thirteenth Coast Guard District, Acting.

[FR Doc. 01–17381 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151 and 153

46 CFR Part 4

[USCG–2000–6927]

RIN 2115–AD98

Reporting Marine Casualties

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On November 2, 2000, the Coast Guard published a notice of proposed rulemaking to amend the marine casualty reporting requirements by adding "significant harm to the environment" as a reportable marine casualty. This supplemental notice of proposed rulemaking addresses only the comments received in response to the Federalism section of the preamble and only proposes a revised Federalism section.

DATES: Comments and related material must reach the Docket Management Facility on or before September 10, 2001.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, USCG–2000–6927, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions regarding this proposed rule, contact Lieutenant Junior Grade Edward Jackson, Project Manager, Office of Standards Evaluation and Development (G-MSR), Coast Guard, telephone 202–267–6884. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [USCG–2000–6927], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Regulatory History

At Coast Guard Headquarters in Washington, DC, we held a public meeting on this project on January 20, 1995 (59 FR 65522; December 20, 1994), regarding amendments contained in the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) that require certain U.S. and foreign-flag vessels to report marine casualties.

On November 2, 2000, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Reporting Marine Casualties in the **Federal Register** (65 FR 65808).

Background and Purpose

The Coast Guard received 24 letters commenting on the NPRM, nine of which related to the Federalism section. Several comments also requested a public meeting to discuss the Federalism section. This supplemental notice addresses only the comments regarding the Federalism section and the requests for a public meeting. The remaining comments will be considered as we develop the final rule.

November NPRM

Current marine casualty reporting requirements for U.S.-flag vessels worldwide and foreign-flag vessels in U.S. navigable waters are contained in 46 CFR part 4. The proposed amendments would add "significant harm to the environment" as a reportable marine casualty under 46 CFR 4.05–1 for these vessels.

This rulemaking will help the Coast Guard track and investigate marine casualties that may result in significant harm to the environment. In addition, it will lessen the effects of marine casualties by requiring timely notification needed to ensure a timely and appropriate pollution response clean-up. It would also require foreign-flag tank vessels in the U.S. Exclusive Economic Zone (EEZ) to report marine casualties that occur within the U.S. EEZ, involving material damage affecting the seaworthiness or efficiency of a vessel, or significant harm to the environment.

In accordance with § 4106 of OPA 90, the Coast Guard proposes to amend the marine casualty reporting requirements to require U.S. vessels anywhere, foreign vessels in the U.S. navigable waters and foreign tank vessels in the U.S. EEZ to report a discharge or a substantial threat of discharge involving oil, hazardous substances, marine pollutants, or Noxious Liquid Substances (NLS) to the Coast Guard.

We propose to adopt the MARPOL 73/78 standard for reporting discharges and probable discharges.

Discussion of Comments

Federalism

The Coast Guard received 10 comments on the Federalism section of the November 2, 2000 NPRM. These comments stated that the Federalism section appears to preempt states from regulating the reporting of discharges of oil or hazardous substances in U.S. waters as a casualty, and therefore, this section should be revised.

We have considered the comments submitted by the eight States, one regional group, and one corporation. We now recognize that the Federalism statement as published in the NPRM could be interpreted to mean that this rulemaking would preempt State regulations requiring reporting of discharges to State officials. The Coast Guard did not intend such an interpretation, and proposes to revise the Federalism statement accordingly.

In the case of *United States* v. *Locke*, 529 U.S. 89 (2000), the Supreme Court held the States may not regulate in categories reserved for regulation to the Coast Guard, including design, construction, alteration, repair, maintenance, operation, equipping, personnel certification and manning of vessels, among others. Included in the categories reserved to the Coast Guard are regulations requiring the reporting of marine casualties. The Supreme Court recognized that marine casualties resulting in significant harm to the marine environment would be included in the preempted category. The Federalism statement in the NPRM was drafted to reflect that aspect of the *Locke* decision. However, the Court also discussed Section 1018 of OPA 90 at length. Section 1018(a) states, in part, that "nothing in the Act shall affect, or be construed or interpreted as preempting the authority of any State or any political subdivision thereof from imposing any additional liability or requirements with respect to—(A) the discharge of oil or other pollution by oil within such State or (B) any removal activities in connection with such a discharge." Section 1018(c) allows for "additional liability or additional requirements" relating to "the discharge or substantial threat of a discharge of oil." While the Court held that Section 1018 did not affect the preemptive impact of the categories described above, State requirements regarding

reporting to it of the actual discharge or the substantial threat of a discharge of oil so that it could undertake its proper role in respect of the removal of such a discharge (and its rules in respect of liability and compensation for that discharge) were unaffected by the decision.

The Coast Guard believes that reporting of discharges or of the substantial threat of a discharge of oil is within the ambit of State regulation contemplated by Section 1018 of OPA, because without such reports, State removal, liability and penalty actions could not commence. Therefore, while State regulation requiring reports of marine casualties that ultimately cause discharges of oil are preempted, State regulations requiring reports of the discharge itself, or the substantial threat of such a discharge, are not preempted. The Coast Guard proposes to revise the Federalism Statement for this rulemaking as follows:

Revised Federalism Statement

A rule has implications for Federalism under Executive Order 13132 if the rule has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 6101, 7101 and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel certification, manning and the reporting of marine casualties on vessels), and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke*, 529 U.S. 89, 120 S.Ct. 1135 (2000)). This proposed rule concerns the reporting of marine casualties, including the reporting of casualties causing significant harm to the marine environment. Because States may not regulate within this category, preemption under Executive Order 13132 is not an issue.

However, the determination that States are precluded from regulating in the category of marine casualties does not impact the ability of a State to require reports of the discharge, or the substantial threat of a discharge of oil. Pursuant to Section 1018 of OPA 90, States retain their rights to impose additional requirements regarding reports of the discharge or substantial threat of a discharge of oil for the purpose of responding to the discharge or substantial threat of a discharge and instituting liability and compensation proceedings, providing those requirements do not touch on preempted categories described in the Locke decision. Therefore, present and future State discharge reporting requirements that do not touch on the preemptive marine casualty reporting category are unaffected by the Locke decision and this proposed rule, so in that regard, this proposed rule likewise has no implications for Federalism.

Requests for Public Meeting

We also received comments stating that the Coast Guard should hold a public meeting to address the Federalism section in the NPRM. The Coast Guard believes that this SNPRM addresses these comments and clarifies the Federalism section and that a public meeting will not be necessary.

Dated: May 24, 2001.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–17384 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–134–8–7507; FRL–7011–3]

Approval and Promulgation of Implementation Plans; Texas; Control of Emissions of Nitrogen Oxides From Stationary Sources in the Houston/Galveston Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: The EPA is proposing approval of rules into the Texas State Implementation Plan (SIP). This rulemaking covers six separate actions. First, we are proposing to approve revisions to the Texas Nitrogen Oxides (NO_X) rules for point sources of NO_X in the Houston/Galveston (H/GA) ozone nonattainment area of Texas as submitted to us by the State on December 22, 2000. These new limits for point sources of NO_X in the H/GA will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the H/GA 1-hour ozone nonattainment area. Second, we are proposing to exclude Carbon monoxide (CO) and ammonia emission limits ancillary to the NO_X standards for post combustion controls found in Title 30 of the Texas Administrative Code (TAC), Chapter 117. Third, we are proposing to approve, by parallel processing, revisions to the Texas NO_X rules for stationary diesel engines or stationary dual-fuel engines in the H/GA 1-hour ozone nonattainment area. Fourth, we are proposing to approve, through parallel processing, revisions made to the Texas SIP concerning compliance schedules for utility electric generation and Industrial, Commercial, and Institutional (ICI) sources in the H/GA area. Fifth, we are proposing to approve, through parallel processing, revisions made to the Texas SIP concerning lean-burn and rich-burn engines. Sixth, we are listing, not approving, the alternate NO_X emissions specifications and reductions that the May 30, 2001, revision to the Texas SIP contains.

The EPA is proposing approval of SIP revisions described as actions number one, two, three, four, and five to regulate emissions of NO_X as meeting the requirements of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before August 13, 2001.

ADDRESSES: Your comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents about this action including the Technical Support Document, are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691, and Shar.Alan@epa.gov.

SUPPLEMENTARY INFORMATION:

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1. What Actions Are We Taking in This Document?

On December 22, 2000, George W. Bush, then Governor of Texas, submitted rule revisions to 30 TAC, Chapter 117, "Control of Air Pollution From Nitrogen Compounds," as a revision to the SIP for point sources in the H/GA. The State of Texas submitted this revision to us as a part of the NO_X reductions needed for the H/GA area to attain the 1-hour ozone standard. These NO_X reductions will assist H/GA to attain the 1-hour ozone standard.

The December 22, 2000, submittal required an 89 percent reduction in emissions of NO_X from point sources in the H/GA area. In this document we are taking six separate actions:

(1) We are proposing to approve the December 22, 2000, rule revision to the Texas SIP.

(2) We are proposing to approve that the CO and ammonia emission limits found in 30 TAC Chapter 117 in conjunction with NO_X emission limits, not be a part of the federally approved Texas SIP. In our 65 FR 64148 document published on October 26, 2000, and 65 FR 64914 document published on October 31, 2000, we included CO and ammonia emission limits, in addition to the NO_X emission limits, as a part of the federally approved Texas SIP, by mistake. Texas did not originally request their inclusion and subsequently requested not to have these limits included as a part of the federally approved SIP. We are now correcting that error and are proposing that the limits on CO and ammonia emissions, resulting from use of post combustion controls, not be a part of the federally approved SIP for Texas.

(3) We are proposing to approve, through parallel processing, a procedure explained below, revisions made to sections of 30 TAC, Chapter 117 that Texas proposed on May 30, 2001, and submitted to us, concerning stationary diesel engines or stationary dual-fuel engines under Part D of the Act because Texas is relying on these NO_X reductions to demonstrate attainment of the 1-hour ozone standard in the H/GA 1-hr ozone nonattainment area.

(4) We are proposing to approve, through parallel processing, revisions made to sections of 30 TAC, Chapter 117 that Texas proposed on May 30, 2001, and submitted to us, concerning NO_X emissions specifications and compliance schedules for utility electric generation and ICI sources in the H/GA area. Section 9, Table VI, section 14, Table XII, and section 16, Table XIV of this document contain more information about action number four.

(5) We are proposing to approve, through parallel processing, revisions made to sections of 30 TAC, Chapter 117 that Texas proposed on May 30, 2001, and submitted to us, concerning both the lean-burn and rich-burn reciprocating internal combustion engines. Section 10, Table VIII of this document contains more information about action number five.

We will explain action number six in section 3 of this document. To better understand action number six in this document we strongly recommend you read section 2, first.

The public comment period for this proposed State rule revision closes on July 2, 2001. If the State makes significant changes between the version we are parallel processing and the final adopted version, other than those changes resulting from issues discussed in this proposed rulemaking, we will issue an additional notice of proposed rulemaking before taking final action. If there are no significant changes and the State submits the final rule revision to us for approval, then we will go ahead with a final rulemaking.

In this document we are not proposing to approve the alternate or less stringent NO_X emissions specifications and less stringent emissions reductions that are part of the proposed May 30, 2001, Texas SIP revision, at this time. Section 9, Table VII, section 11, Table IX, section 13, Table XI, section 15, Table XIII, and section 17, Table XV of this document contain more information about parts of the proposed May 31, 2001, Texas SIP revision that we are not proposing to approve in this rulemaking action.

Table I contains a summary list of the sections of 30 TAC, Chapter 117 that Texas proposed on May 30, 2001, for sources of NO_X in the H/GA.

TABLE I.—SECTION NUMBERS AND SECTION DESCRIPTIONS OF 30 TAC, CHAPTER 117 AFFECTED BY THE MAY 30, 2001, PROPOSED RULE REVISION

Section	Description
117.10	Definitions.

TABLE I.—SECTION NUMBERS AND SECTION DESCRIPTIONS OF 30 TAC, CHAPTER 117 AFFECTED BY THE MAY 30, 2001, PROPOSED RULE REVISION—Continued

Section	Description
117.101	Applicability.
117.103	Exemptions.
117.105	Emission Specifications for Reasonably Available Control Technology.
117.106	Emission Specifications for Attainment Demonstrations.
117.107	Alternative System-wide Emission Specifications.
117.108	System Cap.
117.110	System Cap.
117.111	Initial Demonstration of Compliance.
117.113	Continuous Demonstration of Compliance.
117.114	Emission Testing and Monitoring for the Houston/Galveston Attainment Demonstration.
117.116	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.
117.119	Notification, Recordkeeping, and Reporting Requirements.
117.121	Alternative Case Specific Specifications.
117.138	System Cap.
117.201	Applicability.
117.203	Exemptions.
117.205	Emission Specifications for Reasonably Available Control Technology (RACT).
117.206	Emission Specifications for Attainment Demonstrations.
117.207	Alternative Plant-wide Emission Specifications.
117.208	Operating Requirements.
117.210	System Cap.
117.211	Initial Demonstration of Compliance.
117.213	Continuous Demonstration of Compliance.
117.214	Emission Testing and Monitoring for the Houston/Galveston Attainment Demonstration.
117.216	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.
117.219	Notification, Recordkeeping, and Reporting Requirements.
117.221	Alternative Case Specific Specifications.
117.471	Applicability.
117.473	Exemptions.
117.475	Emission Specifications.
117.478	Operating Requirements.
117.479	Monitoring, Recordkeeping, and Reporting Requirements.
117.510	Compliance Schedule for Utility Electric Generation in Ozone Nonattainment Areas.
117.520	Compliance Schedule for Industrial, Commercial, and Institutional Combustion Sources in Ozone Nonattainment areas.
117.534	Compliance Schedule for Boilers, Process Heaters, Stationary Engines, and Gas Turbines at Minor Sources.
117.570	Use of Emissions Credits for Compliance.

2. What Happened to the Texas SIP Revision Between December 22, 2000, and May 30, 2001?

On January 19, 2001, a coalition of industries known as the BCCA Appeal Group, joined by Enterprise Products Operating, L.P., Equistar Chemicals, L.P., Lyondell Chemical Company, Lyondell-Citgo Refining, L.P., and Reliant Energy, Incorporated (collectively, Plaintiffs) filed a law suit against the TNRCC, TNRCC's Commissioners, and its Executive Director (Defendants) in the District Court of Travis County of Texas. Among other issues, the suit challenged the requirements of the December 22, 2000, submittal concerning revisions to 30 TAC, Chapter 117 for point sources of NO_X in the H/GA area. The Plaintiffs and Defendants arrived at a negotiated settlement on May 18, 2001. As a result of this settlement, the TNRCC proposed a revision to the 30 TAC, Chapter 117, "Control of Air Pollution From Nitrogen Compounds," for point sources in the H/GA area, on May 30, 2001.

On June 15, 2001, Texas Governor Rick Perry submitted a request letter to us asking to process the May 30, 2001, proposed rule revisions to 30 TAC, Chapter 117, as a revision to the SIP from point sources in the H/GA, through parallel processing. The State of Texas submitted this revision to us as a part of the NO_X reductions needed for the H/GA area to attain the 1-hour ozone standard.

Under the settlement agreement with BCCA, the TNRCC will conduct a scientific study (Study) examining the causes and possible solutions to the H/GA area's 1-hour ozone nonattainment problem. This Study will assess the impact of reducing emissions of the industrial based VOC due to episodic releases. If the Study shows that the area can reach attainment by 2007 with fewer NO_X emission reductions from point sources of NO_X concurrent with other emission reduction strategies and plans, then the alternate (less stringent when compared with Table II) NO_X emission specifications may take effect for attainment demonstration purposes in the H/GA area.

The TNRCC will have to make its determination and decision in the form of a rulemaking on the Study no later than June 1, 2002. The State will then need to submit any resulting rulemaking to EPA for evaluation and review as a SIP revision.

The Study may also show that reducing VOCs emissions from episodic releases or other emission reduction strategies may not result in the area reaching attainment. In that case, the alternate NO_X emission specifications and less stringent NO_X emission reductions will not be appropriate choices to bring the H/GA area into attainment.

We want to make it clear that regardless of the findings of this Study, or its potential follow up study, the 2007 deadline for compliance with the federal 1-hr ozone standard in the H/GA area will remain unchanged. Any new

control strategy will have to achieve attainment with the federal 1-hr ozone standard by 2007.

We want to make it clear that our listing of the alternate NO_X emissions specifications, alternate compliance schedules, and alternate overall point sources NO_X reductions (May 30, 2001, revision) in this document is by no means indicative of EPA's approval of these listings for point sources of NO_X in the H/GA area.

3. What Is the Sixth Action That We Are Taking in This Document?

(6) We are listing, not approving, the requirements of the May 30, 2001, revision to the Texas SIP, including its alternate (less stringent) NO_X emission specifications and reduction plans, in this document. By listing the requirements of the May 30, 2001, revision to the Texas SIP, including its alternate NO_X emission specifications and reduction plans, we are not approving these requirements. We will evaluate the alternate emission specifications and requirements proposed in the May 30, 2001, revision to the Texas SIP under the following conditions: (1) the area can reach attainment by 2007 with fewer NO_X emission reductions from point sources, and (2) the State renews the request to include the alternative specifications and requirements in the SIP, or (3) an evaluation is otherwise appropriate.

To find out more about the proposed May 30, 2001, revision to the Texas SIP, including its alternate NO_X emission specifications and plans, see sections 9 through 17 of this document.

4. What Does the Proposed December 22, 2000, SIP Revision for Point Sources of NO_X in the H/GA Area Say?

This rule revision requires reductions of NO_X emissions from point sources in the H/GA ozone nonattainment area. The following table contains a summary of the NO_X emission specifications for attainment demonstration purposes that the State adopted in the December 22, 2000, SIP revision for point sources in the H/GA.

TABLE II.—AFFECTED SOURCES AND NO_X EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION IN THE H/GA

Source	NO_X emission specification for attainment demonstration
Utility boilers	0.010–0.060 lb/MMBtu.
Turbines and Duct Burners	0.015–0.150 lb/MMBtu.
Heaters and Furnaces	0.010–0.036 lb/MMBtu.
Internal Combustion Engines	0.045–0.133 lb/MMBtu or 0.17–0.50 gram/hp-hr.
Industrial Boilers	0.010–0.089 lb/MMBtu.

The proposed rulemaking will control/reduce NO_X emissions in the H/GA area in two phases or Tiers. We will refer to these two emission reduction phases as Tier I and Tier II Reductions. The following Table contains a summary of the 1997 NO_X emissions and the proposed emission reductions for each point source category in the H/GA area.

We are proposing approval of the above-listed NO_X emissions specifications for point sources of NO_X in the H/GA as a part of the Texas 1-hour ozone SIP under Part D of the Act because Texas is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

TABLE III.—AFFECTED POINT SOURCES, 1997 EMISSIONS, AND PROPOSED EMISSION REDUCTIONS FOR THE H/GA

Sources	1997 NO_X emissions, tons per day (tpd)	Tier I + Tier II reductions, (tpd)
Utility Boilers	196.44	184
Turbines and Duct Burners	155.65	141
Process Heaters and Furnaces	110.12	97
Internal Combustion Engines	86.37	75
Industrial Boilers	85.98	79
Other	32.99	19
Overall Point Sources	667.55	595

The combined NO_X emission reductions of Tier I and Tier II in the proposed rulemaking will be 595 tpd or 89 percent, when compared to the 1997 emission levels. We are proposing approval of the overall NO_X point sources reductions in the H/GA as a part of the Texas 1-hour ozone SIP under part D of the Act because Texas is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

5. What Is the Proposed Compliance Schedule for Point Sources of NO_X in the H/GA Area Based Upon the December 22, 2000, SIP Revision?

As stated before, this rule revision offers a phased-in approach concerning the emission reductions and compliance schedule for point sources of NO_X in the H/GA. The following table contains a summary of the time-table/compliance schedule for the affected point sources of NO_X in the H/GA.

TABLE IV.—AFFECTED SOURCES OF NO_X IN THE H/GA AND COMPLIANCE SCHEDULES

Sources	Compliance schedule	Additional information
Utility Electric Generation	March 31, 2003	Investor-owned; first 46% of total required NO_X reductions.

TABLE IV.—AFFECTED SOURCES OF NO_X IN THE H/GA AND COMPLIANCE SCHEDULES—Continued

Sources	Compliance schedule	Additional information
Utility Electric Generation	March 31, 2004	Investor-owned; the next 46% required NO_X reductions.
Utility Electric Generation	March 31, 2007	Investor-owned; final required NO_X reductions.
Industrial, Commercial, and Institutional Combustion Sources.	March 31, 2004	First 44% of required NO_X reductions.
Industrial, Commercial, and Institutional Combustion Sources.	March 31, 2005	Next 45% of required NO_X reductions.
Industrial, Commercial, and Institutional Combustion Sources.	March 31, 2007	Final NO_X reductions.
Boilers, Process Heaters, and Stationary Engines at Minor Sources.	March 31, 2005	In cap and trade program.
Boilers, Process Heaters, and Stationary Engines at Minor Sources.	March 31, 2005	Not in cap and trade program.

We are of the opinion that the above listed compliance dates and time-table combined with the cap and trade provisions of the rule offer operational flexibility to the affected point sources in the H/GA. We are proposing approval of the above-listed compliance dates for point sources of NO_X in the H/GA as a part of the Texas 1-hour ozone SIP under Part D of the Act because Texas is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

6. What Are the Existing NO_X Emissions Specifications, for Stationary Diesel Engines or Stationary Dual-Fuel Engines, in the Approved Texas SIP?

None. Prior to May 30, 2001, the TNRCC had not proposed regulations in the Texas SIP limiting NO_X emissions from stationary diesel engines or stationary dual-fuel engines.

7. What Does the Proposed May 30, 2001, SIP Revision for Stationary Diesel Engines in the H/GA Area Say?

This proposed rule revision requires reductions of NO_X emissions from stationary diesel engines in the H/GA area. The following table contains a summary of the proposed May 30, 2001, SIP revision for stationary diesel engines in the H/GA area.

TABLE V.—AFFECTED SOURCES AND NO_X EMISSION SPECIFICATIONS FOR STATIONARY DIESEL ENGINES IN THE H/GA AREA

Source	NO_X Emission specification
Diesel engines in service after October 1, 2001: not modified, reconstructed, or relocated on or after October 1, 2001	11.0 gram/hp-hr.
Rated less than 11 hp: modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2004	7.0 gram/hp-hr.
Rated less than 11 hp: modified, reconstructed, or relocated on or after October 1, 2004	5.0 gram/hp-hr
11 hp ≤ rated < 25 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2004.	6.3 gram/hp-hr.
11 hp ≤ rated < 25 hp: installed, modified, reconstructed, or relocated on or after October 1, 2004	5.0 gram/hp-hr.
25 hp ≤ rated < 50 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2003.	6.3 gram/hp-hr.
25 hp ≤ rated < 50 hp: installed, modified, reconstructed, or relocated on or after October 1, 2003	5.0 gram/hp-hr.
50 hp ≤ rated < 100 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2003.	6.9 gram/hp-hr.
50 hp ≤ rated < 100 hp: installed, modified, reconstructed, or relocated on or after October 1, 2003	5.0 gram/hp-hr.
50 hp ≤ rated < 100 hp: installed, modified, reconstructed, or relocated on or after October 1, 2007	3.3 gram/hp-hr.
100 hp ≤ rated < 175 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2002.	6.9 gram/hp-hr.
100 hp ≤ rated < 175 hp: installed, modified, reconstructed, or relocated on or after October 1, 2002, but before October 1, 2006.	4.5 gram/hp-hr.
100 hp ≤ rated < 175 hp: installed, modified, reconstructed, or relocated on or after October 1, 2006	2.8 gram/hp-hr.
175 hp ≤ rated < 300 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2002.	6.9 gram/hp-hr.
175 hp ≤ rated < 300 hp: installed, modified, reconstructed, or relocated on or after October 1, 2002, but before October 1, 2005.	4.5 gram/hp-hr.
175 hp ≤ rated < 300 hp: installed, modified, reconstructed, or relocated on or after October 1, 2005	2.8 gram/hp-hr.
300 hp ≤ rated < 600 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2005.	4.5 gram/hp-hr.
300 hp ≤ rated < 600 hp: installed, modified, reconstructed, or relocated on or after October 1, 2005	2.8 gram/hp-hr.
600 hp ≤ rated < 750 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2005.	4.5 gram/hp-hr.
600 hp ≤ rated < 750 hp: installed, modified, reconstructed, or relocated on or after October 1, 2005	2.8 gram/hp-hr.
Rated ≥ 750 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2005	6.9 gram/hp-hr.
Rated ≥ 750 hp: installed, modified, reconstructed, or relocated on or after October 1, 2005	4.5 gram/hp-hr.

We are of the opinion that these emission specifications are in agreement with those found in Code of Federal Regulations (CFR), Title 40, § 89.112, and EPA's Document Number 420–R–98–016 dated August 1998, entitled

"Final Regulatory Impact Analysis: Control of Emissions from Nonroad Diesel Engines." We are also of the opinion that these NO_X emission specifications will contribute to the attainment of the 1-hr ozone standard in the H/GA area. The estimated NO_X emission reductions attributed to the stationary diesel engines or stationary dual-fuel engines provisions of this rule revision is 1.00 tpd.

We are proposing approval of these stationary diesel engines or stationary dual-fuel engines rule revisions under Part D of the Act because Texas is relying on these NO_X reductions to demonstrate attainment of the 1-hour ozone standard in the H/GA 1-hr ozone nonattainment area.

8. What Is the Proposed Compliance Schedule Date for Stationary Diesel Engines in the H/GA Area Based on the Proposed May 30, 2001, SIP Revision?

Under the May 30, 2001, Texas SIP revision, the proposed compliance date for stationary diesel engines and stationary dual-fuel engines in the H/GA area is April 1, 2002. *See* sections 117.520 and 117.534 of the proposed rule. We consider the April 1, 2002, compliance date for stationary diesel engines and dual-fuel engines, in the H/GA area, as expeditious as practicable.

We are proposing approval of these stationary diesel engines or stationary dual-fuel engines compliance schedules under Part D of the Act because Texas is relying on these NO_X reductions to demonstrate attainment of the 1-hour ozone standard in the H/GA 1-hr ozone nonattainment area.

9. What Does the Proposed May 30, 2001, SIP Revision for Point Sources of NO_X in the H/GA Area Say?

This rule revision requires reductions of NO_X emissions from point sources in the H/GA ozone nonattainment area. The following table contains a summary of the NO_X emission specifications for attainment demonstration purposes that the State has proposed to adopt in the SIP revision for point sources in the H/GA.

TABLE VI.—AFFECTED SOURCES AND NO_X EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION IN THE H/GA

Source	NO_X emission specification for attainment demonstration
Utility boilers, gas fired	0.020 lb/MMBtu
Utility boilers, coal-fired or oil-fired	0.040 lb/MMBtu
Auxiliary steam boilers	0.010–0.036 lb/MMBtu
Stationary gas turbines + duct burners in turbine exhaust	0.015–0.150 lb/MMBtu

We are of the opinion that NO_X emission specifications listed in Table VI will contribute to attainment of the 1-hr ozone standard in the H/GA area. We are proposing approval of the above-listed NO_X emissions specifications for affected point sources of NO_X in the H/GA as a part of the Texas 1-hour ozone SIP under part D of the Act because Texas is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

TABLE VII.—AFFECTED SOURCES AND NO_X EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION IN THE H/GA UNDER ALTERNATE SCENARIO

Source	NO_X emission specification for attainment demonstration
Utility boilers, gas fired	0.030 lb/MMBtu
Utility boilers, coal-fired or oil-fired: wall-fired	0.050 lb/MMBtu
Utility boilers, coal-fired or oil-fired: tangential-fired	0.045 lb/MMBtu
Auxiliary steam boilers	0.030 lb/MMBtu
Stationary gas turbines + duct burners in turbine exhaust	0.032 lb/MMBtu

We are not proposing to approve, through parallel processing, the alternate scenario listed in Table VII of this document.

Instead of adopting NO_X emission specifications listed in Tables II or VII of this document for affected sources with an annual capacity factor of 0.0383 or less, a source or operator can use an emission specification of 0.060 lb NO_X per million Btu. This option will allow for operational flexibility in the rule.

10. What Are the Proposed NO_X Emissions Specifications in ICI Source Category for Attainment Demonstration Within the H/GA Area, Based on the Proposed May 30, 2001, SIP Revision?

You can find proposed NO_X emissions specifications for the ICI source category within the H/GA for attainment demonstration purposes in the H/GA in the following table.

TABLE VIII.—AFFECTED INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL COMBUSTION SOURCES AND THEIR NO_X EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION IN THE H/GA

Source	NO_X emission specification for attainment demonstration
Stationary, reciprocating internal combustion engines: gas-fired rich-burn firing landfill gas	0.60 gram/hp-hr.
Stationary, reciprocating internal combustion engines: gas-fired rich-burn not firing on landfill gas	0.17 gram/hp-hr.

TABLE VIII.—AFFECTED INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL COMBUSTION SOURCES AND THEIR NO_X EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION IN THE H/GA—Continued

Source	NO_X emission specification for attainment demonstration
Stationary, reciprocating internal combustion engines: gas-fired lean-burn firing on landfill gas	0.60 gram/hp-hr.
Stationary, reciprocating internal combustion engines: gas-fired rich-burn not firing on landfill gas	0.50 gram/hp-hr.
Dual fuel engines with initial start of operation on or before December 31, 2000	5.83 gram/hp-hr.
Dual fuel engines with initial start of operation after December 31, 2000	0.50 gram/hp-hr.
Gas-fired boilers	0.010–0.036 lb/MMBtu.
Fluid catalytic cracking units. Includes CO boilers, CO furnaces, and catalyst regenerator vents	13 ppm @ zero percent O2, dry basis.
Boilers and industrial furnaces	0.015–0.030 lb/MMBtu.
Coke-fired boilers	0.057 lb/MMBtu.
Wood fuel-fired boilers	0.046 lb/MMBtu.
Rice hull-fired boilers	0.089 lb/MMBtu.
Oil-fired boilers	2.0 lb/1,000 gallons of oil burned.
Process heaters	0.010–0.036 lb/MMBtu.
Stationary gas turbines	0.015–0.15 lb/MMBtu.
Duct burners in turbine exhaust ducts	0.015 lb/MMBtu.
Pulping liquor recovery furnaces	0.050 lb/MMBtu or 1.08 lb/ADTP.
Lime kilns	0.66 lb/ton of CaO.
Lightweight aggregate kilns	0.76 lb/ton of product.
Metallurgical heat treat furnaces	0.087 lb/MMBtu.
Metallurgical reheat furnaces	0.062 lb/MMBtu.
Incinerators	0.030 lb/MMBtu.

We are proposing approval of the above-listed NO_X emissions specifications for point sources of NO_X in the H/GA as a part of the Texas 1-hour ozone SIP under part D of the Act because Texas is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

Instead of adopting NO_X emission specifications listed in Table VIII of this document for affected sources with an annual capacity factor of 0.0383 or less, a source or operator can use an emission specification of 0.060 lb NO_X per million Btu. This option will allow for operational flexibility in the rule.

11. What Are the Proposed Alternate NO_X Emissions specifications in the ICI Source Category for Attainment Demonstration Within the H/GA Area, Based on the Proposed May 30, 2001, SIP Revision?

You can find the proposed alternate NO_X emissions specifications in the ICI source category for attainment demonstration within the H/GA area in the following table:

TABLE IX.—AFFECTED ICI SOURCES AND THEIR ALTERNATE NO_X EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION WITHIN THE H/GA AREA

Source	NO_X Emission specification for attainment demonstration
Stationary, reciprocating internal combustion engines: gas-fired rich-burn firing landfill gas	0.60 gram/hp-hr.
Stationary, reciprocating internal combustion engines: gas-fired rich-burn not firing on landfill gas	0.50 gram/hp-hr.
Stationary, reciprocating internal combustion engines: gas-fired lean-burn firing on landfill gas	0.60 gram/hp-hr.
Stationary, reciprocating internal combustion engines: gas-fired rich-burn not firing on landfill gas	0.50 gram/hp-hr.
Dual fuel engines with initial start of operation on or before December 31, 2000	5.83 gram/hp-hr.
Dual fuel engines with initial start of operation after December 31, 2000	0.50 gram/hp-hr.
Gas-fired boilers	0.020–0.036 lb/MMBtu.
Fluid catalytic cracking units. Includes CO boilers, CO furnaces, and catalyst regenerator vents	40 ppmv @ zero percent O2, dry basis.
Boilers and industrial furnaces	0.015–0.030 lb/MMBtu.
Coke-fired boilers	0.057 lb/MMBtu.
Wood fuel-fired boilers	0.046 lb/MMBtu.
Rice hull-fired boilers	0.089 lb/MMBtu.
Oil-fired boilers	2.0 lb/1,000 gallons of oil burned.
Process heaters except pyrolysis reactors	0.025–0.036 lb/MMBtu.
Pyrolysis reactors	0.036 lb/MMBtu.
Stationary gas turbines	0.032–0.26 lb/MMBtu.
Duct burners in turbine exhaust ducts	0.032–0.26 lb/MMBtu.
Pulping liquor recovery furnaces	0.050 lb/MMBtu or 1.08 lb/ADTP.
Lime kilns	0.66 lb/ton of CaO.
Lightweight aggregate kilns	0.76 lb/ton of product.
Metallurgical heat treat furnaces	0.087 lb/MMBtu.
Metallurgical reheat furnaces	0.062 lb/MMBtu.
Incinerators	0.030 lb/MMBtu.

We are not proposing to approve, through parallel processing, the alternate scenario information listed in Table IX of this document.

Instead of adopting NO_X emission specifications listed in Table IX of this document for affected sources with an annual capacity factor of 0.0383 or less, a source or operator can use an emission specification of 0.060 lb NO_X per million Btu. This option will allow for operational flexibility in the rule.

12. What Are the NO_X Emissions Reductions Based on the Proposed May 30, 2001, SIP Revision?

The proposed rulemaking will control/reduce NO_X emissions in the H/GA area in two phases or Tiers. As stated before, we will refer to these two emission reduction phases as Tier I and Tier II Reductions. The following Table contains a summary of the 1997 NO_X emissions and the May 30, 2001, proposed emission reductions for each point source category in the H/GA area.

TABLE X.—AFFECTED POINT SOURCES, 1997 EMISSIONS, AND PROPOSED EMISSION REDUCTIONS FOR THE H/GA

Sources	1997 NO_X emissions, tons per day (tpd)	Tier I + Tier II reductions, (tpd)
Utility Boilers	196.44	176
Turbines and Duct Burners	155.65	141
Process Heaters and Furnaces	110.12	97
Internal Combustion Engines	86.37	77
Industrial Boilers	85.98	79
Other	32.99	19
Overall Point Sources	667.55	588

The combined NO_X emission reductions of Tier I and Tier II in this version of the proposed rulemaking will be 588 tpd or 88 percent, when compared to the 1997 emission levels. The change in overall point sources NO_X reductions in Table X, as compared with that of Table III, is due to revisions to the requirements of subsections 117.106(c)(1) and 117.206(c)(9)(D).

13. What Are the NO_X Emissions Reductions Based on the Future Adoption of the Alternate NO_X Emission Specifications in the Proposed May 30, 2001, SIP Revision?

If the State adopts the alternate NO_X emission specifications of Tables VII and IX in future, the expected emission reductions for each point source category in the H/GA area would be as follows:

TABLE XI.—AFFECTED POINT SOURCES, 1997 EMISSIONS, AND PROPOSED EMISSION REDUCTIONS FOR THE H/GA UNDER THE ALTERNATE SCENARIO

Sources	1997 NO_X emissions, tons per day (tpd)	Tier I + Tier II reductions, (tpd)
Utility Boilers	196.44	169
Turbines and Duct Burners	155.65	122
Process Heaters and Furnaces	110.12	63–86
Internal Combustion Engines	86.37	76
Industrial Boilers	85.98	76
Other	32.99	16
Overall Point Sources	667.55	522–545

The combined NO_X emission reductions of Tier I and Tier II under the alternate scenario of the proposed rulemaking would be 522–545 tpd or 78–82 percent, when compared to the 1997 emission levels. The change in overall point sources NO_X reductions in Table XI, as compared with that of Table III, is due to revisions to the requirements of subsections 117.106(c)(1) and 117.206(c)(9)(D).

We are not proposing to approve, through parallel processing, the alternate scenario listed in Table XI of this document.

14. What Is the Proposed Compliance Schedule for Utility Electric Generation Point Sources of NO_X in the H/GA Area Based on the Proposed May 30, 2001, SIP Revision?

As stated before, this rule revision introduces a phased-in approach concerning the emission reductions and compliance schedule for point sources of NO_X in the H/GA. The following table contains a summary of the time-table/compliance schedule for the affected utility electric generation point sources of NO_X in the H/GA.

TABLE XII.—AFFECTED SOURCES OF NO_X IN THE H/GA AND COMPLIANCE SCHEDULES

Sources	Compliance schedule	Additional information
Utility Electric Generation	March 31, 2003	At least 47% of total required NO_X reductions.
Utility Electric Generation	March 31, 2004	At least 95% of total required NO_X reductions.
Utility Electric Generation	March 31, 2007	Demonstrate compliance with system cap limits of 117.108.

We are of the opinion that the above-listed compliance dates and time-table for affected sources offer operational flexibility to the rule. We are proposing approval of the above-listed compliance dates for affected point sources of NO_X in the H/GA as a part of the Texas 1-hour ozone SIP under part D of the Act because Texas is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

15. What Is the Proposed Compliance Schedule for Utility Electric Generation Point Sources of NO_X in the H/GA Area Under the Alternate Scenario in the Proposed May 30, 2001, SIP Revision?

If the TNRCC adopts the alternate emissions specifications, the proposed compliance schedule for ICI sources of NO_X in the H/GA under the alternate scenario would be as follows:

TABLE XIII.—AFFECTED SOURCES OF NO_X IN THE H/GA AND ALTERNATE COMPLIANCE SCHEDULES

Sources	Compliance schedule	Additional information
Utility Electric Generation	March 31, 2003	At least 50% of total required NO_X reductions.
Utility Electric Generation	March 31, 2004	Demonstrate compliance with system cap limits of 117.108.

We are not proposing to approve, through parallel processing, the alternate scenario listed in Table XIII of this document.

16. What Is the Proposed Compliance Schedule for Affected ICI Sources of NO_X in the H/GA Area Based on the Proposed May 30, 2001, SIP Revision?

As stated in section 10, this rule revision offers a phased-in approach concerning the emission reductions and compliance schedule for point sources of NO_X in the H/GA area. The following table contains a summary of the time-table/compliance schedule for the affected ICI sources of NO_X in the H/GA area.

TABLE XIV.—AFFECTED ICI SOURCES OF NO_X IN THE H/GA AREA AND COMPLIANCE SCHEDULES

Sources	Compliance schedule	Additional information
ICI sources	March 31, 2004	At least 39% of total required NO_X reductions.
ICI sources	March 31, 2005	At least 67% of total required NO_X reductions.
ICI sources	March 31, 2006	At least 78% of total required NO_X reductions.
ICI sources	March 31, 2007	Demonstrate compliance with system cap limits of 117.210.

We are proposing approval of the above-listed compliance dates for affected ICI sources of NO_X in the H/GA as a part of the Texas 1-hour ozone SIP under part D of the Act because Texas is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

17. What Is the Proposed Compliance Schedule for ICI Sources of NO_X in the H/GA Area Under the Alternate Scenario Based on the Proposed May 30, 2001, SIP Revision?

If the TNRCC adopts the alternate emissions specifications, the proposed compliance schedule for ICI sources of NO_X in the H/GA area under the alternate scenario would be as follows:

TABLE XV.—AFFECTED SOURCES OF NO_X IN THE H/GA AREA AND ALTERNATE COMPLIANCE SCHEDULES

Sources	Compliance schedule	Additional information
ICI sources	March 31, 2004	At least 47% of total required NO_X reductions.
ICI sources	March 31, 2005	At least 80% of total required NO_X reductions.
ICI sources	March 31, 2006	At least 93% of total required NO_X reductions.
ICI sources	March 31, 2007	Demonstrate compliance with system cap limits of 117.210.

We are not proposing to approve, through parallel processing, the alternate scenario listed in Table XV of this document.

18. What Are NO_X?

Nitrogen oxides belong to the group of criteria air pollutants. The NO_X result from burning fuels, including gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain.

19. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time.

20. What Are Definitions of Major Sources for NO_X?

Section 302 of the Act generally defines "major stationary source" as a facility or source of air pollution which emits, when uncontrolled, 100 tons per year (tpy) or more of air pollution. This general definition applies unless another specific provision of the Act explicitly defines major source differently.

According to section 182(d) of the Act, a major source in a severe nonattainment area is a source that emits, when uncontrolled, 25 tpy or more of NO_X. The H/GA area is a severe ozone nonattainment area, so the major source size for the H/GA area is 25 tpy or more, when uncontrolled. This rulemaking will regulate NO_X emissions from major stationary sources in the H/GA area.

21. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

22. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

23. What Areas in Texas Will the Stationary Diesel Engines or Stationary Dual-Fuel Engines Rule Affect Based on the May 30, 2001, SIP Revision?

The following table contains a list of counties affected by the proposed rule revision of the stationary diesel engines or dual-fuel engines that we are parallel processing for approval.

TABLE XVI.—RULE LOG NUMBER AND AFFECTED AREAS FOR TEXAS NO_X SIP

Rule log No.	Affected areas
2001–007B–117–AI Stationary diesel engines and dual-fuel engines provisions.	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties.

If you are in one of these Texas counties, you should refer to the Texas NO_X rules to determine if and how today's action will affect you.

24. What Areas in Texas Will the May 30, 2001, SIP Revision for Point Sources of NO_X Affect?

The following table contains a list of counties affected by the proposed rule revision of the point sources of NO_X that we are parallel processing for approval.

TABLE XVII.—RULE LOG NUMBER AND AFFECTED AREAS FOR TEXAS NO_X SIP

Rule log No.	Affected areas
2001–007B–117–AI ICI and electric utility sources.	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Hydrocarbons, Nitrogen dioxide, Nitrogen oxides, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 3, 2001.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 01–17469 Filed 7–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–126–4–7475; FRL–7011–5]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas: Low Emission Diesel Fuel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to fully approve a State Implementation Plan (SIP) revision for the State of Texas establishing a Low Emission Diesel (LED) fuel for the eastern half of the State. A portion of this revision was recently proposed by the State. EPA's proposal to approve is taken under section 110 of the Clean Air Act (the Act). This approval is also being proposed under the "parallel processing" provision of 40 CFR part 51. If there are significant changes between the version of the LED rule which is being "parallel processed" and the version of the LED rule which Texas finally adopts, the EPA will propose a new rulemaking. If there are no significant changes to the "parallel-processed" version, the EPA will proceed with final rulemaking on the version finally adopted by Texas and submitted to the EPA. Beginning April 1, 2005, aromatic hydrocarbon content, cetane number and sulfur content will be regulated for diesel fuel sold in 110 counties in eastern Texas for use in both motor vehicles and nonroad engines. We propose that the Texas LED fuel program requirements are necessary to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the Houston-Galveston (HGA) ozone nonattainment area, and are therefore exempt from preemption under Section 211(c)(4)(C) of the Clean Air Act (the Act).

DATES: Comments should be received on or before August 13, 2001.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refers to EPA.

The Governor of Texas submitted an attainment demonstration SIP for the HGA 8-county nonattainment area on December 20, 2000. The SIP contained measures for reducing Nitrogen Oxides (NO_X), the pollutant identified as controlling the formation of ozone in this area. The LED fuel program was submitted as part of the attainment demonstration. This LED rule was codified in Chapter 114 of the Texas Administrative Code (TAC)(sections 114.6, 114.312–114.317 and 114.319, December 6, 2000).

Numerous changes to State air pollution control laws occurred during Texas' 77th legislative session. One of these changes relates to the LED program. House Bill 2912 limits the State's authority to regulate fuel content. Unless the Governor vetoes the Bill by June 17, 2001, it will become law. The Bill bans the establishment of fuel control measures more stringent than EPA's between September 1, 2000 and January 1, 2004. The Bill specifically authorizes the LED program, but mandates that implementation be delayed until February 1, 2005. Finally, this Bill allows refiners flexibility in complying with the LED requirements. In anticipation of this legislation, the Texas Natural Resource Conservation Commission (TNRCC) proposed amendments to the LED rule on May 10, 2001.

In a letter to EPA dated June 15, 2001, the Governor requested "parallel processing" of the LED regulations with the proposed amendments, which reduce the covered area, change the implementation date, and add a new section providing for an alternative means of compliance. See 30 TAC 114.314, 114.318, 114.319 (May 10, 2001). In today's action, we are proposing approval of the LED regulations with the proposed amendments as they apply to the HGA, Beaumont-Port Arthur, and Dallas Fort Worth nonattainment area counties as well as 95 attainment counties in east Texas.

What Does the State's LED Regulation Include?

The State's LED SIP submittal for the HGA non-attainment area requires that diesel fuel produced for delivery and ultimate sale within the affected counties have a maximum sulfur content of 500 ppm, have no more than 10% aromatic hydrocarbons by volume, and have a cetane number of 48 or greater. Alternative diesel fuel formulations that achieve equivalent emission reductions may also be used.

The regulations apply to diesel fuel sold in the HGA nonattainment counties of Harris, Galveston, Brazoria, Fort Bend, Montgomery, Liberty, Chambers, and Waller; Beaumont-Port Arthur nonattainment counties of Jefferson, Orange and Hardin; and Dallas-Fort Worth nonattainment counties of Dallas, Tarrant, Collin, and Denton; as well as 95 attainment counties in East Texas including Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties in the attainment area.

The State regulations require compliance with the cetane, aromatic hydrocarbon, and 500 ppm sulfur components by April 1, 2005. Starting June 1, 2006, the sulfur level shall be reduced to 15 ppm.

What Are the Requirements of the Clean Air Act?

Section 211(c)(4)(A) of the Act generally prohibits the State from prescribing or attempting to enforce controls respecting motor vehicle fuel characteristics or components that EPA has controlled under section 211(c)(1), unless the State control is identical to the Federal control. Under section 211(c)(4)(C), EPA may approve a non-identical state fuel control as a SIP provision, if the state demonstrates that the measure is necessary to achieve the NAAQS. We may approve a state fuel requirement as necessary if no other measures would bring about timely attainment, or if other measures exist and are technically possible to implement but are unreasonable or impracticable.

In this rulemaking, EPA does not need to determine whether the State requirements for LED fuel used in motor vehicles are preempted under section 211(c)(4)(A) before acting to approve the SIP submittal because EPA is finding the fuel requirements necessary under section 211(c)(4)(C) to achieve the ozone standard in the HGA nonattainment area.

What Did the State Submit?

The State submitted the LED rules as part of the HGA attainment demonstration SIP by letter from the Governor dated December 20, 2000. The SIP submittal contains 30 TAC Chapter 114 rules as adopted on December 6, 2000, a request for a waiver from Federal preemption pursuant to section 211(c)(4)(C) of the Act, and Texas laws providing the authority for the State to adopt and implement revisions to the SIP. The State also submitted a request to "parallel process" revisions to the LED rules in a letter from the Governor dated June 15, 2001. These revisions were proposed by the State on May 10, 2001.

Texas previously submitted a waiver request and EPA proposed approval of LED rules for nine counties in the DFW Consolidated Metropolitan Statistical area (66 FR 20415, April 23, 2001). For the HGA nonattainment area, Texas submitted data and analyses to support a finding under section 211(c)(4)(C) that the LED fuel requirement for the affected counties is necessary for the HGA nonattainment area to achieve the ozone NAAQS. The State has (1) identified the quantity of reductions of NO_X needed to achieve attainment of the ozone NAAQS; (2) identified all other control measures and the quantity of reductions each would achieve; (3) identified those control alternatives that were deemed unreasonable or impracticable; and (4) shown that even with the implementation of all reasonable and practicable control measures, the State would need additional emissions reductions for the nonattainment area to meet the ozone NAAQS on a timely basis, and that the LED fuel requirement would supply some of such additional reductions.

Texas submitted its demonstration of necessity for the LED fuel requirement in the State's attainment demonstration for the HGA nonattainment area. The State's submission used photochemical modeling to estimate the quantity of NO_X emission reductions necessary to achieve the ozone NAAQS by 2007. Based on this analysis, Texas estimates that NO_X reductions of 977.07 tons per day (tpd) are necessary to achieve the ozone NAAQS by 2007. Without the LED requirements for the affected counties in the HGA, BPA, and DFW nonattainment areas and the named attainment counties (the "covered area"), implementation of the reasonable and practicable non-fuel control measures would reduce NO_X emissions by only 918.53 tpd.

What are the Benefits From the LED Fuel Program?

The primary benefit of LED fuel in the HGA attainment demonstration is reduction of NO_X emissions. Without the proposed fuel controls, the area subject to the proposed fuel control would receive diesel fuel for nonroad use that is subject to no federal emissions-related standards or diesel fuel for on-highway use that meets the less stringent, current Federal standards.

Texas is controlling three components of diesel fuel for on-highway vehicles: aromatic hydrocarbons, cetane number and sulfur. The State's sulfur standard, however, is the same as the current Federal requirement for diesel fuel used in motor vehicles. Texas estimated that the 10% cap on aromatic hydrocarbons reduces NO_X from diesel combustion. The cetane number is an indication of ignition properties of the fuel. A fuel with better ignition properties will ignite at a lower heat of compression, thereby reducing the amount of NO_X produced during combustion.

For nonroad engines, Texas' sulfur content standards will provide additional emissions reductions. There is no direct NO_X benefit from controlling sulfur in fuel. However, the State is including the sulfur requirement for nonroad engines because lower sulfur levels prevent fouling of after-treatment NO_X emission control devices that may be installed on nonroad diesel equipment. The State does not need a waiver of preemption for fuel components of nonroad diesel fuel because section 211(c)(4)(A) applies only to State controls respecting motor vehicle (i.e., on-highway) fuel characteristics or components. In addition, there are no Federal requirements promulgated under section 211(c)(1) for characteristics or components of nonroad diesel fuel.

EPA recently reviewed and analyzed all available data on the emission reduction effects of low emission diesel fuels. The final outcome of this evaluation may or may not suggest a need to reconsider the emission reduction estimates used by the State for its LED rule. If the final results of EPA's evaluation indicate that Texas has incorrectly estimated the emission reductions attributable to the LED rule, then EPA will work with the State to adjust the emissions benefit as necessary.

What Other Measures Did Texas Consider Before Selecting LED?

The State evaluated a broad range of potential control measures and estimated the quantity of reductions that could be achieved through implementation of these measures. Over two hundred potential control strategies were initially considered by the State and HGA regional stakeholders as part of the planning process. This list is included in Appendix L of the HGA Attainment SIP (December 2000). The measures that were selected for the attainment demonstration are in Table 1.

TABLE 1.—STATE AND LOCAL CONTROL MEASURES [1] IN THE HGA ATTAINMENT DEMONSTRATION

Measure	NO_X reductions in tpd
Major Point Source NO_X reductions (overall NO_X reductions of 89% from 1997 baseline) in 8 counties	595
Vehicle Inspection and Maintenance (ASM, OBD, and remote sensing) in 8 counties	36.2
Heavy-duty diesel operating restrictions [2] (also called the "Construction shift") in 5 urbanized counties	6.7

TABLE 1.—STATE AND LOCAL CONTROL MEASURES [1] IN THE HGA ATTAINMENT DEMONSTRATION—Continued

Measure	NO_X reductions in tpd
Clean Diesel Fuel (subject of this action) in 110 counties on-highway + nonroad	6.67
Small, Spark-Ignition Engine Operating Restrictions in 5 urbanized counties	4.6
Voluntary Mobile Emission Reduction in 8 counties	23
Accelerated Purchase of Tier 2/Tier 3 Diesel Equipment (See footnote 2) in 8 counties	12.20
Speed Limit Reduction in 8 counties	12.33
Airport Ground Support Equipment Electrification in 8 counties	5.09
California Spark-Ignition Engines statewide	2.80
Internal Combustion Engine—Oil category (stationary diesel engines in 8 counties)	1.0
Vehicle Idling Restrictions in 8 counties	0.48
Gas-fired water heaters, small boilers, and process heaters statewide	0.5
Transportation Control Measures in 8 counties	1.06

[1] The attainment demonstration includes additional NO_X reductions from Federal measures.

[2] The 77th Texas Legislature passed a law requiring the TNRCC to submit, by October 1, 2001, a revision to the SIP that deletes the requirements of the "construction shift" and the early purchase of Tier 2 and Tier 3 equipment. The commission must include with the revision a report on the effectiveness of the Texas emissions reduction plan in delivering emissions reductions to the degree sufficient to replace the requirements of the construction shift and the early purchase of Tier 2 and Tier 3 equipment. For the purposes of this approval, we still include these measures in our analysis because we have not received this SIP revision. Even if these measures were implemented, there would still be a NO_X shortfall.

The State adopted some controls for implementation within only a portion of the nonattainment area. Heavy-duty diesel operating restrictions and Small, Spark-Ignition Engine Operating Restrictions are applicable to the five (5) urbanized counties of the nonattainment area. All 8 counties were not included because the State decided that it was impracticable to implement these rules beyond the five (5) urbanized counties of the HGA nonattainment area. Recent State legislation, if signed, would require the State to submit a SIP revision removing the Construction Shift rule and Accelerated Tier 2/Tier 3 Purchase from State regulations. (See footnote 2)

Expanding LED and several other measures beyond the HGA nonattainment area can be justified, but other controls beyond the 8 county nonattainment area were considered unreasonable or impracticable by the State, and we concur.

Major Point Source NO_X reductions: Major point source NO_X reductions are mandated only for the 8 county area because NO_X controls for those sources in the attainment areas are mandated by other rules. These rules are NO_X reductions of 30% for grandfathered sources, 50% reductions for grandfathered Electric Generating Facilities, and 30% reductions for Cement Kilns. Therefore the extreme cost of adding additional controls does not justify the relatively small benefit that would result.

Vehicle Inspection and Maintenance: This measure is not reasonable or practicable to implement in rural attainment counties of East Texas because changes in state law would be required, and the time required to seek such changes and implement them make the success of such a measure unpredictable. The State has no legislative authority to mandate this program. The Legislature provides the authority for counties to voluntarily opt in to I/M. In addition, the cost for small business, which would conduct the testing, is prohibitive based on the number of tests that would be conducted in rural areas in comparison to an urban area.

Voluntary Mobile Emission Reductions: This EPA policy provides States flexibility in designing SIPs to meet the NAAQS. The policy contemplates that up to 3% of the total needed emission reductions that can be included in this category. Reasonable and practicable VMEP programs totaling 3% have already been set up within nonattainment counties. A further expansion of this program would be inconsistent with this policy.

Speed Limit Reduction: The reduced speed limit measure is based on vehicle emission information from EPA's MOBILE5 model. There is not a significant amount of vehicle miles traveled and ample fleet size in the attainment counties to justify expanding this measure beyond the 8-county area.

Airport Ground Support Equipment Electrification: It is not necessary (or reasonable) to impose airport GSE electrification in the attainment counties because there are no major airports in those counties.

Internal Combustion Engine—Oil category (stationary diesel engines): The restrictions are designed to reduce unnecessary NO_X emissions in the nonattainment area. It is neither reasonable nor practicable to implement this type of restriction in rural, low density counties of the attainment area.

Vehicle Idling Restrictions: The restrictions are designed to reduce unnecessary vehicle exhaust in congested, nonattainment areas. It is neither reasonable nor practicable to implement this type of restriction in rural, low density counties of the attainment area.

Transportation Control Measures: A TCM is a project that attempts to reduce vehicle use, change traffic flow, or reduce congestion conditions. Due to the semi-rural nature of the attainment counties, reducing vehicle use is not a viable option in this lower population density area. Generally traffic flow is satisfactory and congestion is not an issue. Therefore, implementing TCMs is not reasonable or practicable in the attainment counties.

What Measures Were Considered But Not Selected?

Measures that were quantified but not selected for the SIP are listed in Tables 2 and 3. They fall into two categories: (1) direct NO_X reductions, and (2) VOC reductions that can be substituted for NO_X as achieving equivalent ozone reductions. VOC reduction substitutes for NO_X that produced less than one ton of equivalent NO_X reductions of ozone were rejected. (See the TSD for a more detailed discussion of these measures.) In each case the tons per day available for control were below the 1 ton per day NO_X equivalent reduction of ozone and were therefore rejected as unreasonable or impracticable due to the high cost of implementing VOC controls as NO_X controls.

TABLE 2.—VOC MEASURES QUANTIFIED BUT NOT SELECTED FOR THE SIP

Measure	TPD of VOC available for control
Area/Nonroad Sources (consumer & commercial products; architectural coatings; vehicle refueling; graphic arts; oil and gas; vehicle refinishing)	<2
Chemical manufacturing	<6
Petroleum refining	<5
VOC Storage	1.1

In conducting the point source analysis on reasonably available NO_X control measures, the State discovered one category of sources that may warrant additional controls to meet the RACM threshold. This is the Internal Combustion Engine—Oil category (stationary diesel engines). This category is estimated to produce reductions of about 1 tpd of NO_X. On May 10, 2001, the State proposed controls on this category of sources. This measure has been submitted along with a request for "parallel processing" and is the subject of a separate rulemaking. Even assuming the reductions from implementation of this measure, the LED program is still necessary for the attainment of the NAAQS.

Of the NO_X control measures initially considered, there were relatively few that were rejected as unreasonable or impracticable due to either economic or technological infeasibility. In addition there was another small cluster of measures about which there was insufficient information to make a determination. Table 3 lists the other rejected measures.

TABLE 3.—NO_X MEASURES DEEMED UNREASONABLE OR IMPRACTICABLE

Measure	TPD of NO_X available for control
Gas tax increase (gear to Consumer Price Index).	Unknown.
Emission-based registration fees.	Unknown.
Drive-through restrictions	Unknown.
Drive restrictions (time of day or alternate days restriction).	Unknown.
Drive restrictions (by geographic area).	Unknown.
Shuttle for hire (clean-fueled)	Unknown.
Restrictions on the use of agricultural equipment by day/week/season.	Unknown.

TABLE 3.—NO_X MEASURES DEEMED UNREASONABLE OR IMPRACTICABLE—Continued

Measure	TPD of NO_X available for control
Other measures (insufficient information).	Unknown.

Of the control measures identified above, for purposes of section 211(c)(4)(C), all measures in Tables 2 and 3 are considered unreasonable or impracticable for the HGA nonattainment area to implement at this time in comparison to the State's LED requirement. (See the TSD for a more detailed discussion.)

Based on the discussion above, we propose to find that reasonable or practicable non-fuel measures which would bring the HGA nonattainment area into attainment in a timely manner do not exist.

How Does Requiring LED Fuel in the Covered Area Benefit the HGA Nonattainment Area?

Requiring LED fuel in the covered area will reduce emissions of NO_X in the HGA nonattainment area by ensuring that the fuel used by intrastate fleets and long-haul truckers that transit the area but purchase fuel in Texas outside the nonattainment area but within the covered area meets the required fuel characteristics for lowering NO_X.

Requiring LED in the covered area which surrounds the HGA nonattainment area will reduce emissions of NO_X in those areas, which, in turn, benefits the HGA nonattainment area by reducing the transport of ozone and NO_X from the surrounding covered area to the nonattainment area.

The LED Fuel Program Will Reduce the Possible Transport of Ozone From the Surrounding Covered Areas to the Nonattainment Area

Transport into the HGA nonattainment area is not considered a major contributor of ozone, but with the State implementing every ozone reduction measure in the HGA nonattainment area that has ever been implemented elsewhere in the nation, the State is counting on every possible benefit. The Coastal Oxidant Assessment for Southeast Texas (COAST) Study documented the on-shore/off-shore phenomenon called flow reversal. This coastal phenomenon has its influence inland at least 50 km, and perhaps as far as 400 km, easily reaching into the attainment areas surrounding the HGA area.

In the COAST Study, researchers collected aerometric (meteorological and air quality) data to improve understanding of the causes of high ozone in Southeast Texas. This data was then used in conjunction with photochemical modeling to determine control strategy effectiveness including the sensitivity of ozone concentrations in the nonattainment areas to emission reductions in the attainment region. This sensitivity modeling indicated there was an influence of emission reductions in the attainment areas on the nonattainment areas.

The LED Fuel Program Will Reduce the Transport of NO_X From the Surrounding Covered Areas to the Nonattainment Area

EPA policy recognizes that ozone precursors emitted in attainment areas that surround nonattainment areas may be transported into those nonattainment areas and contribute to ozone problems therein. With the December 29, 1997, Guidance for Implementing 1-Hour Ozone and Pre-Existing PM10 NAAQS, EPA recognized that both VOCs and NO_X outside the nonattainment areas at 100 km and 200 km respectively could influence the nonattainment area. We allowed taking credit from sources within these areas of influence in the 9 percent Rate of Progress Plans. The fact that NO_X influence has been shown to be meaningful within 200 km of a nonattainment area supports Texas' justification for controlling the components of diesel fuel in many of the attainment areas surrounding the HGA nonattainment area. We believe it is appropriate to conclude that NO_X emission reductions within this area will benefit the nonattainment area.

Is the LED Fuel Program Necessary To Achieve the NAAQS?

Without the LED program, implementation of all reasonable and practicable non-fuel control measures would reduce NO_X emissions by only 918.53 tpd. An additional 52 tpd of NO_X emissions reductions is necessary for the HGA nonattainment area to achieve timely attainment of the ozone NAAQS. The LED fuel program will supply additional reductions needed for the HGA area to demonstrate attainment. Therefore, we propose to find the LED fuel requirements for the HGA, BPA, and DFW nonattainment counties and 95 attainment counties in East Texas necessary to achieve timely attainment of the ozone NAAQS in the HGA nonattainment area. This satisfies the

requirement of necessity in section 211(c)(4)(C).

Does the State Submittal Meet the SIP Approval Requirements Under Section 110?

The LED fuel control program meets the requirements outlined in section 110. Texas submitted the fuel portion of the HGA attainment SIP under a Governor's letter December 20, 2000. In a letter dated June 15, 2001, the Governor requested "parallel processing" of proposed revisions to the LED rules which were proposed for public comment on May 10, 2001. The submittals contain the appropriate hearing actions, a preamble, and the LED fuel rules.

How Will the Program Be Enforced?

The TNRCC will implement the LED fuel rule. Anyone, including producers and importers, who sells, offers for sale, supplies, or offers for supply to affected counties the LED fuel are subject to provisions of this rule. Registration, recordkeeping, reporting, and certification requirements are included. This rule will be enforced in the same way as other regulations implemented by the State. State law allows collection of administrative penalties up to $10,000 per day and civil penalties up to $25,000 per day for violations of air quality regulations. See Vernon's Texas Statutes & Codes, Annotated (VTCA) Water Code, sections 7.002, and 7.051. The State may also seek injunctive relief under section 7.032 of the Water Code.

Why Are We "Parallel Processing" and How Does It Work?

Because of the urgency associated with the October 15, 2001, approval deadline imposed by a consent decree order affecting, among others, the Houston Attainment SIP (*Natural Resources Defense Council* v. *Browner*, Civ No. 99–2976, November 30, 1999), Texas requested that EPA proceed with an expedited decision process for this revision to the SIP. Therefore, approval of this revision is being proposed under a procedure called "parallel processing", whereby EPA proposes rulemaking action concurrently with the State's procedures for approving a SIP submittal and amending its regulations (40 CFR part 51, appendix V, 2.3). If the State's proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking on the revisions after responding to any submitted comments. Final rulemaking action by EPA will occur only after the SIP revision has been fully adopted by Texas and submitted formally to EPA for incorporation into the SIP. In addition, any action by the State resulting in undue delay in the adoption of the rules may result in a re-proposal, altering the approvability of the SIP.

What Is Proposed?

We are proposing to approve rules establishing a LED fuel requirement for all diesel fuel sold in the HGA, DFW, and BPA nonattainment counties plus 95 attainment counties of East Texas beginning in 2005. We are also proposing to find, under section 211(c)(4)(C), that the State has demonstrated the fuel measure is necessary for attainment of the NAAQS and that no other measures exist which would bring about timely attainment, or if such measures exist, they are not reasonable or practicable.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and

recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 2, 2001.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 01–17471 Filed 7–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–7010–2]

RIN A2060–AJ51

Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996 and Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors That are Constructed On or Before September 20, 1994

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendment.

SUMMARY: We are proposing to amend the standards of performance for large municipal waste combustors (MWC) by expanding the definition of mass burn rotary waterwall municipal waste combustors to include mass burn tumbling-tile grate waterwall municipal waste combustors. This change ensures that the same emission limit is established for both types of MWC designs since they exhibit similar combustion characteristics. Since the emissions guidelines for large municipal waste combustors reference the definitions included in the standards of performance, this amendment to the standards has the effect of amending both the standards and the guidelines.

In the Rules and Regulations section of this **Federal Register**, we are making this amendment in a direct final rule, without prior proposal, because we view this revision as noncontroversial, and we anticipate no significant adverse comments. We have explained our reasons for this amendment in the preamble to the direct final rule.

If we receive no significant adverse comments, we will take no further action on this proposed rule. If an adverse comment applies to an amendment, paragraph, or section of the rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw only those provisions on which we received adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn.

DATES: *Comments.* Submit comments on or before August 13, 2001.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by August 1, 2001, we will hold a public hearing on August 13, 2001. Persons interested in attending the hearing should call Mrs. Kelly Hayes at (919) 541–5578 to verify that a hearing will be held.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–45, Subcategory IX–D, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–45, Subcategory IX–D, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at 10:00 a.m. in our Office of Administration Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby.

Docket. Docket No. A–90–45 contains supporting information used in developing the standards and guidelines. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5251; facsimile number (919) 541–5450; electronic mail address porter.fred@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect®'' version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number A–90–45. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit propriety information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such propriety information directly to the following address, and not to the public docket, to ensure that propriety information is not inadvertently placed in the docket: Attention: Mr. Roberto Morales, U.S. EPA, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 740, Durham NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of information compiled by EPA in development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket contains the record in the case of judicial review. The docket number for this rulemaking is A–90–45, which contains supporting information used in developing the standards and guidelines. An index for each docket, as well as individual items contained within the dockets, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying docket materials. Docket indexes are also available by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at *http://www.epa.gov/airprogm/oar/docket/faxlist.html.*

World Wide Web. In addition to being available in the docket, an electronic copy of today's action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page *http://www/epa/gov/ttn/caaa.* The TTN provides information and technology exchange in various areas of

air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated categories and entities that potentially will be affected by this amendment include the following:

Category	NAICS codes	SIC codes	Regulated entities
Industry, Federal government, and State/local/tribal governments.	562213 92411	4953 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in §§ 60.50b and 60.32b of the rules. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

What Are the Administrative Requirements for This Action?

For a complete discussion of all of the administrative requirements applicable to this action see the parallel direct final rule in the Rules and Regulations section of this **Federal Register**.

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business in the regulated industry that has a gross annual revenue less than $6 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

For additional information, see the direct final rule published in the Rules and Regulations section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 3, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–17331 Filed 7–11–01; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 66, No. 134
Thursday, July 12, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–052–1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of regulations allowing the importation of wheat seed, straw, and other products from the Mexicali Valley of Mexico into the United States.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 10, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–052–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–052–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information on the regulations allowing the importation of wheat seed, straw, and other products from the Mexicali Valley of Mexico into the United States, contact Mr. Wayne W. Burnett, Senior Import Specialist, Phytosanitary Issues Management Staff, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6799. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Mexicali Valley, Karnal Bunt.

OMB Number: 0579–0132.

Type of Request: Extension of a currently approved information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for preventing plant pests from entering the United States and controlling and eradicating plant pests in the United States. The Plant Protection Act authorizes the Department to carry out this mission. The Plant Protection and Quarantine (PPQ) program of USDA's Animal and Plant Health Inspection Service is responsible for implementing the regulations that carry out the intent of this Act.

To prevent the introduction and spread of various wheat diseases, including Karnal bunt, a fungal disease, the regulations in "Subpart—Wheat Diseases" (7 CFR 319.59 through 319.59–2) prohibit the importation of wheat seed, straw, and other products into the United States from certain parts of the world. Section 319.59–2(b)(3) recognizes a wheat-growing area within the Mexicali Valley of Mexico as being free from Karnal bunt and allows wheat seed, straw, and other products from the Mexicali Valley to be imported into the United States under specified conditions.

Because the remainder of Mexico is not designated as free of Karnal bunt, we require that a phytosanitary certificate accompany seed, straw, and other products imported from the Karnal bunt free area of the Mexicali Valley. The certificate is issued by the Mexican national plant protection organization and states that the wheat or wheat-related articles were grown in the designated Karnal bunt free area of the Mexicali Valley and remained in the Mexicali Valley prior to and during their movement to the United States.

We are asking the Office of Management and Budget (OMB) to approve our continued use of these information collections for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.2 hours per response.

Respondents: Mexican plant health authorities and growers and exporters of wheat products in the Mexicali Valley, Mexico.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 100.

Estimated total annual burden on respondents: 120 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 6th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17442 Filed 7–11–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–056–1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of regulations to prevent the introduction of exotic Newcastle disease in birds and poultry and chlamydiosis in poultry.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 10, 2001.

ADDRESSES: Please send your comment and three copies to: Docket No. 01–056–1, Regulatory Analysis and Development, PPD, APHIS,Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–056–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information regarding exotic Newcastle disease in birds and poultry and chlamydiosis in poultry, contact Dr. Joseph Annelli, Chief Staff Veterinarian, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Exotic Newcastle Disease in Birds and Poultry; Chlamydiosis in Poultry.

OMB Number: 0579–0116.

Type of Request: Extension of a currently approved information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for preventing the spread of contagious, infectious, or communicable diseases of animals and poultry from one State to another, and for eradicating such diseases from the United States when feasible.

In connection with this mission, APHIS regulates the interstate movement of certain poultry, birds, and other items from premises and areas quarantined because of exotic Newcastle disease and chlamydiosis. Restricting movement in this manner enables us to prevent infected or exposed poultry or birds or contaminated articles from spreading disease.

Regulating the interstate movement of poultry, birds, and other items (such as eggs, carcasses, vehicles, containers, and coops) requires the use of certain information gathering activities, including the completion of permit applications attesting to the health status of the birds or poultry being moved, the number and types of birds or poultry being moved in a particular shipment, the shipment's point of origin, the shipment's destination, and the reason for the interstate movement.

These documents also provide useful "traceback" information in the event infected birds or poultry are discovered and an investigation must be launched to determine where the birds or poultry originated.

The information provided by these documents is critical to our ability to prevent the interstate spread of exotic Newcastle disease and chlamydiosis, which are highly contagious and capable of causing significant economic harm to the U.S. poultry industry.

We are asking the Office of Management and Budget (OMB) to approve our continued use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .5965 hours per response.

Respondents: U.S. producers/shippers and State animal health protection authorities.

Estimated annual number of respondents: 57.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 57.

Estimated total annual burden on respondents: 34 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 6th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17443 Filed 7–11–01; 8:45 am]

BILLING CODE 3410–34–U

BROADCASTING BOARD OF GOVERNORS

Sunshine Meeting Act

DATE AND TIME: July 17, 2001; 8:30 a.m.–9:00 a.m.

PLACE: The Hotel Jerome, Conference Room, 330 East Main Street, Aspen, CO 81611.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG)

will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: July 9, 2001.

Carol Booker,

Legal Counsel.

[FR Doc. 01–17524 Filed 7–10–01; 10:16 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part.

SUMMARY: On February 5, 2001, the Department of Commerce published the preliminary results of the administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Sweden, and the United Kingdom. The merchandise covered by these orders are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 56 manufacturers/exporters. The periods of review are May 1, 1999, through April 30, 2000, for ball bearings and May 1, 1999, through December 31, 1999, for cylindrical roller bearings and spherical plain bearings.

Based on our analysis of the comments received, we have made changes, including corrections of certain programming and other clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Reviews."

EFFECTIVE DATE: July 12, 2001.

FOR FURTHER INFORMATION: Please contact the appropriate case analysts for the various respondent firms as listed below, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France

Edythe Artman (SNFA), George Callen (SNR), Lyn Johnson (Alfateam—Belgium, Alfa-Team—Germany, Bearing Discount—Germany, Motion Bearings—Singapore, Yoo Shin—South Korea, Rodamientos Rovi—Venezuela, Rovi-Valencia—Venezuela, Rovi-Maracay—Venezuela, RIRSA—Mexico, DCD—Northern Ireland, Euro-Latin-United Kingdom (collectively, Resellers)), David Dirstine, or Richard Rimlinger.

Germany

George Callen (Cerobear), Hermes Pinilla (INA), Thomas Schauer (Torrington Nadellager), Lyn Johnson (Resellers), David Dirstine, or Richard Rimlinger.

Italy

Lyn Johnson (Resellers) or David Dirstine.

Japan

Minoo Hatten (NSK), Thomas Schauer (NTN), Lyn Johnson (Koyo), David Dirstine, or Richard Rimlinger.

Sweden

Lyn Johnson (Resellers) or David Dirstine.

United Kingdom

Thomas Schauer (Timken, RHP/NSK), Dimitry Vladimirov (SNFA), David Dirstine, or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2000).

Background

On February 5, 2001, the Department published the preliminary results of the administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Sweden, and the United Kingdom (66 FR 8931). The reviews cover 56 manufacturers/exporters. The periods of review (POR) are May 1, 1999, through April 30, 2000, for ball bearings and May 1, 1999, through December 31, 1999, for cylindrical roller bearings and spherical plain bearings. We invited interested parties to comment on our preliminary results. At the request of certain parties, we held hearings for Germany-specific issues and reseller issues for France, Germany, Sweden and Italy on March 22, 2001, and for Japan-specific issues on March 26, 2001. The Department has conducted these administrative reviews in accordance with section 751 of the Act.

Scope of the Orders

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings (BBs) with integral shafts, BBs (including radial BBs) and parts thereof, and housed or mounted BB units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30,

8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

2. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) (CRBs) and parts thereof, and housed or mounted CRB units and parts thereof.

Imports of these products are classified under the following HTSUS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

3. *Spherical Plain Bearings, Mounted and Unmounted, and Parts Thereof:* These products include all spherical plain bearings (SPBs) that employ a spherically shaped sliding element and include spherical plain rod ends.

Imports of these products are classified under the following HTSUS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The HTSUS item numbers are provided for convenience and customs purposes. They are not determinative of the products subject to the orders. The written descriptions remain dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by one of the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scopes of these orders.

For a listing of scope determinations which pertain to the orders, see the "Scope Determinations Memorandum" (Scope Memo) from the Antifriction Bearings Team to Laurie Parkhill, dated May 11, 2001. The Scope Memo is on file in the Central Records Unit (CRU), Main Commerce Building, Room B–099.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these concurrent administrative reviews of the orders on antifriction bearings are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary, dated June 5, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. This Decision Memo, which is a public document, is on file in the CRU, Main Commerce Building, Room B–099, and is accessible on the Web at ia.ita.doc.gov. The paper copy and electronic version of the Decision Memo are identical in content.

Sales Below Cost in the Home Market

The Department disregarded home-market sales that failed the cost-of-production test for the following firms and classes or kinds of merchandise for these final results of reviews:

Country	Company	Subject merchandise
France	SNR	BBs
Germany	INA	CRBs
Japan	Koyo	BBs, CRBs
	NSK	BBs, CRBs
	NTN	BBs, CRBs, SPBs
United Kingdom	NSK–RHP	BBs

Partial Revocation of the Orders

In the preliminary results we stated our intent to revoke the order covering CRBs from France as it pertains to the sales of these bearings by SNFA France (66 FR at 8934). However, the order on CRBs from France was revoked on January 1, 2000, pursuant to a sunset review decision of the International Trade Commission under section 751(c) of the Act (see *Revocation of Antidumping Duty Orders on Certain Bearings From Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom*, 65 FR 46267 (July 11, 2000) (*Sunset Revocation Notice*)). Therefore, there is no need for us to rule on this matter in the context of this particular review.

In addition, also in our preliminary results, we stated our intent not to revoke the order covering BBs from the United Kingdom as it pertained to sales of these bearings by SNFA U.K. However, due to a recalculation of SNFA U.K.'s margin as the result of clerical errors in our preliminary calculations (see Post-Preliminary Disclosure Memo from Laurie Parkhill to Richard Moreland, dated May 4, 2001), the final margin for SNFA U.K. is zero, and we are revoking this order in part with respect to SNFA U.K. The revocation in part applies to subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 1, 2000.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made revisions that have changed the results for certain firms. We have corrected programming and clerical errors in the preliminary results, where applicable. Any alleged programming or clerical errors about which we or the parties do not agree are discussed in the relevant sections of the Decision Memo, which is accessible on the Web at ia.ita.doc.gov and is on file in the CRU, Room B–099.

Final Results of Reviews

We determine that the following percentage weighted-average margins exist for the period May 1, 1999, through April 30, 2000 (for BBs), and for the period May 1, 1999, through December 31, 1999 (for CRBs and SPBs):

Company	Ball	Cylindrical	Spherical plain
France:			
SNFA	(3)	0.00	
SNR	1.64	(3)	
Alfateam	66.18	(3)	
Alfa-Team	66.18	(3)	
Bearing Discount	(2)	(3)	
Motion Bearings	66.18	(3)	
Yoo Shin	66.18	(3)	
Rodamientos Rovi	(2)	(3)	
Rovi-Valencia	(2)	(3)	
Rovi-Maracay	(2)	(2)	(3)
RIRSA	(2)	(3)	
DCD	66.18	(3)	
Euro-Latin	(2)	(3)	
Germany:			
Cerobear	0.03	0.00	(3)
INA	(1)	2.96	(1)
Torrington Nadellager	1.22	61.60	(3)
Alfateam	70.41	61.60	(3)
Alfa-Team	70.41	61.60	(3)
Bearing Discount	(2)	(2)	(3)
Motion Bearings	70.41	61.60	(3)
Yoo Shin	70.41	61.60	(3)
Rodamientos Rovi	(2)	(2)	(3)
Rovi-Valencia	(2)	(2)	(3)
Rovi-Maracay	(2)	(2)	(3)
RIRSA	(2)	(2)	(3)
DCD	70.41	61.60	(3)
Euro-Latin	(2)	(2)	(3)
Italy:			
Alfateam	68.29		
Alfa-Team	68.29		
Bearing Discount	(2)		
Motion Bearings	68.29		
Yoo Shin	68.29		
Rodamientos Rovi	(2)		
Rovi-Valencia	(2)		
Rovi-Maracay	(2)		
RIRSA	(2)		
DCD	68.29		
Euro-Latin	(2)		
Japan:			
Koyo	10.10	5.28	0.00
NSK Ltd.	4.22	5.74	(3)
NTN	9.16	16.26	3.60
Sapporo	73.55	(3)	(3)
Sweden:			
Alfateam	13.55		
Alfa-Team	13.55		
Bearing Discount	(2)		
Motion Bearings	13.55		
Yoo Shin	13.55		
Rodamientos Rovi	(2)		
Rovi-Valencia	(2)		
Rovi-Maracay	(2)		
RIRSA	(2)		
DCD	13.55		
Euro-Latin	(2)		
United Kingdom:			
NSK/RHP	15.65		
SNFA	0.00		
Timken	1.11		

[1] No shipments or sales subject to this review. The deposit rate remains unchanged from the last relevant segment of the proceeding in which the firm had shipments/sales.
[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.
[3] No request for review under section 751(a) of the Act.

Resellers

With respect to Bearing Discount International, Euro-Latin Export Services Limited, Representaciones Industriales Rodriquez, S.A. de C.V., Rodamientos Rovi C.A., Rovi-Maracay, and Rovi-Valencia, we have determined that these respondents had no shipments during the POR. We have

based our determination on letters from these respondents indicating that they had no shipments and on our examination of the Customs Service database for imports of entered merchandise involving these respondents. Based upon the record and our methodology of reviewing Customs Service information, we have determined that the respondents at issue had no shipments during the POR, and we have not established margins for use as future cash-deposit rates.

As explained in the accompanying Decision Memorandum, however, notwithstanding their letters reporting that they had made no shipments, it is impossible to establish with certainty from Customs Service data the accuracy of their statements. Therefore, we will instruct the Customs Service at the time of liquidation to review all documentation for suspended entries of subject merchandise. If the Customs Service finds that any of the six "no-shipment" respondents in fact had shipments of subject merchandise during the POR, we will instruct the Customs Service to apply a facts-available rate to such respondents based on the adverse facts-available rate we have determined for the applicable country of origin (France, Germany, Italy, or Sweden) and subject merchandise. See Preliminary Results, 66 FR 8933, for a description of our determination of these rates.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer-specific assessment rate or value for subject merchandise.

a. Export Price

With respect to export-price (EP) sales for these final results, we divided the total dumping margins (calculated as the difference between normal value (NV) and EP) for each importer/customer by the total number of units sold to that importer/customer. We will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise on each of that importer's/customer's entries under the relevant order during the review period.

b. Constructed Export Price

For constructed-export-price (CEP) sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. When an affiliated party acts as an importer for export-price sales we have included the applicable export-price sales in the assessment-rate calculation. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (see 19 CFR 351.212(a)).

Cash-Deposit Requirements

To calculate the cash-deposit rate for each respondent (i.e., each exporter and/or manufacturer included in these reviews), we divided the total dumping margins for each company by the total net value for that company's sales of merchandise during the review period subject to each order.

In order to derive a single deposit rate for each order for each respondent, we weight-averaged the EP and CEP deposit rates (using the export price and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. We then divided the combined total dumping margins for both export-price and CEP sales by the combined total value for both export-price and CEP sales to obtain the deposit rate.

We will direct the Customs Service to collect the resulting percentage deposit rate against the entered customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. If an order has been revoked in full or in part, cash deposits will not be required on entries made after the effective date of the revocation, identified in the *Revocation* section above.

Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of antifriction bearings entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act unless the order has been revoked in full (see *Sunset Revocation Notice*) or in part (see *Revocation* section above): (1) the cash-deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore de minimis, the Department shall not require a deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the "All Others" rate for the relevant order made effective by the final results of review published on July 26, 1993 (see *Antifriction Bearings (Other Than Tapered Roller Bearings) and* Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993), and, for BBs from Italy, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472 (December 17, 1996)). These rates are the "All Others" rates from the relevant LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely

notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these determinations and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: July 5, 20002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Comments and Responses

1. Facts Available
2. CEP Profit
3. Price Adjustments
   A. Inventory Carrying Costs
   B. Commissions
   C. Bank Charges
   D. Other Direct Selling Expenses
   E. Other
4. Resellers
5. Level of Trade
6. Arm's-Length Test
7. Prototypes and Sales Outside the Ordinary Course of Trade
8. Further Manufacturing
9. Cost of Production and Constructed Value
   A. Profit for Constructed Value
   B. Affiliated-Party Inputs
   C. When to Use CV
10. Packing and Movement Expenses
11. Miscellaneous
    A. Clerical Errors
    B. Scope
    C. Other

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of the preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from respondent Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen") and Markovitz Enterprises, Inc. (Flowline Division), Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge ("Petitioners"), the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. This review covers one manufacturer and exporter of the subject merchandise. The period of review ("POR") is June 1, 1999 through May 31, 2000. We preliminarily determine that sales have been made below normal value ("NV"). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Ta Chen's merchandise during the period of review, in accordance with the Department's regulations (19 CFR 351.106 and 351.212(b)). The preliminary results are listed in the section titled "Preliminary Results of Review," infra.

EFFECTIVE DATE: July 12, 2001.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–6412 and (202) 482–0159, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On June 16, 1993, the Department published in the **Federal Register** the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. *See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Taiwan* 58 FR 33250 (June 16, 1993). On June 20, 2000, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan covering the period June 1, 1999 through May 31, 2000. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, Or Suspended Investigation* 65 FR 38242 (June 20, 2000). On June 20, 2000, respondent, Ta Chen, requested that the Department conduct an administrative review of Ta Chen for the period of June 1, 1999 through May 31, 2001. On June 30, 2000, Petitioners requested that the Department conduct an administrative review of Ta Chen for the period of June 1, 1999 through May 31, 2000. On July 31, 2000, the Department published a notice of initiation of this antidumping duty administrative review for the period of June 1, 1999 through May 31, 2000. *See Notice of Initiation of Antidumping or Countervailing Duty Administrative Reviews and Requests for Revocation in Part* 65 FR 46687 (July 31, 2000).

On October 26, 2000, the Department issued its antidumping questionnaire to Ta Chen. On November 27, 2000, Ta Chen reported that it made sales of subject merchandise to the United States during the period of review ("POR") in its response to Section A of the Department's questionnaire. On December 26, 2000, Ta Chen submitted its response to Sections B, C, and D of the Department's questionnaire. On January 2, 2001, Ta Chen submitted a page which was missing from its December 26, 2000 Sections B, C, and D of the Department's questionnaire. On January 8, 2001, the Department issued to Ta Chen a supplemental questionnaire to Section A of the Department's questionnaire. On February 5, 2001, the Department issued to Ta Chen a supplemental questionnaire on Sections B, C, and D of the Department's questionnaire. On February 6, 2001, Ta Chen submitted its supplemental response to Section A of the Department's questionnaire. On March 5, 2001, Ta Chen submitted its supplemental responses to Sections B, C, and D of the Department's questionnaire. On March 8, 2001, Ta Chen submitted a corrected narrative to the Department's supplemental Sections B, C, and D questionnaire. On March 15, 2001, the Department issued to Ta Chen the second supplemental questionnaire to Section A of the Department's questionnaire. On April 6, 2001, Ta Chen submitted its response to the second supplemental questionnaire to Section A of the Department's questionnaire. On April 9, 2001, Ta Chen submitted additional information it claimed was inadvertently omitted from its response to the Department's second Section A supplemental questionnaire. On April 12, 2001, the Department issued a third Section A supplemental questionnaire. On April 23, 2001, Ta Chen submitted its response to the third supplemental Section A response of the Department's questionnaire. On May 4, 2001, the Department issued to Ta Chen a fourth supplemental questionnaire to Section

A. On May 11, 2001, Ta Chen submitted its response to the fourth supplemental Section A of the Department's questionnaire.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days. On January 9, 2001, the Department extended the time limits for these preliminary results by 90 days to June 1, 2001 in accordance with the Act. *See Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan*, 66 FR 1644 (January 9, 2001). On March 15, 2001, the Department further extended the time limits for these preliminary results by 30 days to July 2, 2001 in accordance with the Act. *See Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan*, 66 FR 15078 (March 15, 2001).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products subject to this administrative review are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt-weld pipe fittings ("pipe fittings") are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: "elbows", "tees", "reducers", "stub ends", and "caps." The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

Period of Review

The POR for this administrative review is June 1, 1999 through May 31, 2000.

Verification

As provided in section 782(i) of the Act, from May 28, 2001 to June 1, 2001, the Department verified sales, cost and production information provided by Ta Chen, using standard verification procedures, including an examination of relevant sales, financial and production records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports and are on file in the Central Records Unit ("CRU") located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC. For changes to Ta Chen's expenses based on verification findings, *see Facts Available* section below.

Product Comparison

In accordance with section 771(16) of the Act, we considered all pipe fittings produced by Ta Chen, covered by the description in the "Scope of Review" section of this notice, supra, and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to pipe fittings sold in the United States. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Ta Chen as follows (listed in order of preference): specification, seam, grade, size and schedule.

As in the 1998–1999 administrative review ("98/99 review"), the record shows that Ta Chen both purchased from, and entered into tolling arrangements with, two unaffiliated Taiwanese manufacturers of subject merchandise. *See* Section A questionnaire response at 2. Also as in the 98/99 review, there was no evidence on the record that either manufacturer had knowledge that these fittings would be sold into the United States market. *See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results of the Antidumping Duty Administrative Review, ("98/99 Final")* 65 FR 81827 (December 27, 2000). A final unchanged fact from the 98/99 review is that the Department was able to segregate purchased from tolled fittings for certain fittings, but not for others. *Id.* These two factors were the key considerations in the following precedents, which contained similar fact patterns: *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order*, 63 FR 50867, 50876 (Sept. 23, 1998); *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy*, 64 FR 43152, 43154 (Aug. 9, 1999); *Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Italy*, 65 FR 7349, 7356–57 (Feb. 14, 2000); and *98/99 Final* and accompanying Decision Memo at Comment 6. ("*Issues and Decision Memo*"). Therefore, although the Department is able to separate out a significant portion of the sales of purchased fittings, we have determined that it is not appropriate to extract such sales from Ta Chen's U.S. sales database because we have no evidence on the record that the outside producers had knowledge that their subject fittings were destined for sale by Ta Chen in the U.S. market. However, section 771(16) of the Act defines "foreign like product" to be "[t]he subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise." Thus, consistent with the Department's past practice, we have restricted the matching of products which Ta Chen has identified with certainty that it purchased from an outside producer and resold in the U.S. market to identical or similar products purchased by Ta Chen from the same outside producer and resold in the home market. *Id;* and *Analysis Memorandum for Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of the 1999–2000 Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan ("Analysis Memo")* at 2–3. Finally, where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the physical characteristics or to constructed value ("CV"), as appropriate.

Date of Sale

The Department's regulations state that the Department will normally use

the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). If Commerce can establish "a different date [that] better reflects the date on which the exporter or producer establishes the material terms of sale," Commerce may choose a different date. *Id.*

In the present review, Ta Chen claimed that invoice date should be used as the date of sale in both the home market and U.S. market. *See* Ta Chen's Sections B, C, and D responses at 2–4 (December 26, 2000). Moreover, Ta Chen did not indicate any industry practice which would warrant the use of a date other than invoice date in determining date of sale.

Accordingly, we have no information demonstrating that another date is more appropriate, and we preliminarily based date of sale on invoice date recorded in the ordinary course of business by the involved sellers and resellers of the subject merchandise in accordance with 19 CFR 351.401(i).

Fair Value Comparisons

To determine whether sales of subject merchandise by Ta Chen to the United States were made at below NV, we compared, where appropriate, the CEP to the NV, as described below. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the monthly weighted-average NV of the foreign like product where there were sales at prices above the cost of production ("COP"), as discussed in the Cost of Production Analysis section, below. For a further discussion of the EP sales reclassification to CEP, see below.

Export Price/Constructed Export Price

Section 772(a) of the Act defines export price as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States.* * *" Section 772(b) of the Act defines constructed export price as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.* * *"

In the instant case, all of the sales at issue were "back-to-back" sales; that is, Ta Chen sold pipe fittings to Ta Chen's U.S. affiliate, TCI, and then TCI sold the pipe fittings to the unaffiliated U.S. customers at a marked-up price to account for TCI's commission and selling expenses. See Sections B, C, and D supplemental questionnaire response (February 6, 2001) at 5. In addition, the record evidence demonstrates that for sales reported by Ta Chen as EP sales, the sale to the first unaffiliated customer was made between TCI and the unaffiliated customer in the United States. See Sections B, C, and D supplemental questionnaire response database (February 6, 2001). TCI takes title to subject merchandise, invoices the U.S. customer, and receives payment from the U.S. customer. In addition, TCI incurs seller's risk, makes agreements with commission agents, relays orders and price requests from the U.S. customer to Ta Chen, and pays for containerization expenses, U.S. customs broker charges, U.S. antidumping duties and international freight. *See* Section A Supplemental Questionnaire Response (February 6, 2001) at 5–6. Ta Chen also stated that on occasion the U.S. customer will initiate the sale with TCI or TCI will initiate the sale with the customer. *Id.*

Based on these facts, we have determined that these sales originally reported as EP by Ta Chen meet the standard for CEP since the first sale to an unaffiliated customer occurred in the United States and was between TCI and the U.S. purchaser. Therefore, the sales originally reported by Ta Chen as EP sales were reclassified by the Department as CEP sales.

Having determined such sales are CEP, we calculated the price of Ta Chen's United States sales based on CEP in accordance with section 772(b) of the Act. We calculated CEP based on FOB or delivered prices to unaffiliated purchasers in the United States. Where appropriate, we deducted discounts. Also where appropriate, in accordance with section 772(d)(1), the Department deducted commissions, direct selling expenses and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. We also made deductions for movement expenses, which include foreign inland freight, foreign brokerage and handling, ocean freight, containerization expense, harbor construction tax, marine insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. Customs duties. Finally, pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. In accordance with Department practice, we recalculated credit expenses for CEP sales by basing credit on Ta Chen's U.S. dollar-denominated short-term borrowing rate, rather than on Ta Chen's home market currency-denominated short-term borrowing rate. *See* Import Administration Policy Bulletin, Imputed Credit Expenses and Interest rates (February 23, 1998); *Analysis Memo* at 7–9.

Normal Value

After testing home market viability, as discussed below, we calculated normal value ("NV") as noted in the "Price-to-CV Comparisons" and "Price-to-Price Comparisons" sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared Ta Chen's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. In addition, Ta Chen stated that the home market is viable since sales to the home market are more than 5 percent by quantity of sales in the United States. *See* Sections A questionnaire response (November 27, 2001) at 3. Because Ta Chen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. We, therefore, based NV on home market sales.

2. Cost of Production Analysis

Because we disregarded sales below the cost of production in the most-recently completed segment of this proceeding,[1] we have reasonable grounds to believe or suspect that sales by Ta Chen in its home market were made at prices below the COP, pursuant to sections 773(b)(1) and 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by Ta Chen.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Ta Chen's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses ("G&A"), interest expenses, and packing costs. We relied on the COP

[1] *See 98/99 Final*, 65 FR at 81828.

data submitted by Ta Chen in its original and supplemental cost questionnaire responses. For these preliminary results, we did not make any adjustments to Ta Chen's submitted costs.

B. Test of Home Market Prices

We compared the weighted-average COP for Ta Chen to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Ta Chen's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Ta Chen's sales of a given product during the POR were at prices less than the COP, we determined that such sales have been made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we use POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Ta Chen's cost of materials, fabrication, G&A (including interest expenses), U.S. packing costs, direct and indirect selling expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Ta Chen in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the cost of production ("COP"), we based NV on prices to home market customers. We calculated NV based on prices to unaffiliated home market customers. Where appropriate, we deducted early payment discounts, credit expenses, and inland freight. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6) of the Act; we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where there we no usable contemporaneous matches to a U.S. sale observation, we based NV on CV.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In reviewing the selling functions reported by the respondent, we examined all types of selling functions and activities reported in respondent's questionnaire response on LOT. In analyzing whether separate LOTs existed in this review, we found that no single selling function was sufficient to warrant a separate LOT in the home market. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997).

Ta Chen reported one LOT in the home market based on two channels of distribution: trading companies and end-users. We examined the reported selling functions and found that Ta Chen's selling functions, to its home market customers regardless of channel of distribution, include inventory maintenance to date of shipment, incurring risk of non-payment, extension of credit terms, addresses customer complaints, research and development and technical assistance, after-sale services, and freight and delivery arrangement. *See* Section A supplemental questionnaire response at 6–8. We, therefore, preliminarily conclude that the selling functions for the reported channels of distribution are sufficiently similar to consider them as one LOT in the comparison market.

Because Ta Chen reported that all of its U.S. CEP sales are made through TCI, Ta Chen is claiming that there is only one LOT in the U.S. market for its constructed export price sales and we preliminarily agree with Ta Chen that its U.S. sales constitute a single LOT. We examined the reported selling functions and found that Ta Chen's selling functions for sales to TCI include inventory maintenance to date of shipment, incurring risk of non-payment, extension of credit terms, research and development and technical assistance, after-sale services, and freight and delivery arrangement.

When we compared the LOT of the CEP sales to Ta Chen's home market LOT, we noted that Ta Chen reported that it provided moderate-to-low technical assistance at its home market LOT, while providing very similar services at its CEP level. Therefore, the selling functions performed by Ta Chen in both markets leads us to conclude that any differences in selling activities are not significant. Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same LOT. Therefore, we have not made a LOT adjustment because all price comparisons are at the

same LOT and an adjustment pursuant to section 773(a)(7)(A) of the Act is not appropriate. Additionally, because we found that the LOT in the home market matched the LOT of the CEP transactions, we did not make a CEP offset by adjusting normal value under section 777(a)(7)(B) of the Act.

Reimbursement

We found reimbursement in the most-recently completed segment of this proceeding. Therefore, we have analyzed the evidence on the record of this proceeding regarding reimbursement. *See 98/99 Final*, 65 FR at 81829. Unlike the prior review, information exists on the record which makes clear that the agreement to reimburse antidumping duties, when signed, was limited solely to the 1992–1994 PORs. *See* Section A Questionnaire Response (November 27, 2000) at 346. Because the agreement is clearly limited to those PORs, and therefore did not apply to any antidumping duties incurred during later periods, the rebuttable presumption that there is continuing reimbursement is overcome.[2] Therefore, the Department has preliminary determined that an agreement to reimburse is not in effect for this POR.

Facts Available

In accordance with section 776(a)(2)(A) of the Act, we preliminarily determine that the use of facts available is appropriate for one element of Ta Chen's dumping margin calculation. Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

In this case, section 776(a)(2)(A) of the Act applies because, at the verification of Ta Chen and TCI on May 28, 2001 through June 1, 2001, we discovered that TCI failed to report expenses incurred to move inventory among its warehouses, which should properly have been reported in its calculation of U.S. indirect selling expenses ("ISE"). *See U.S. Verification in the Administrative Review of the Antidumping Duty Order on Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan for the Period 6/1/99–5/31/00 ("U.S. Verification Report")* at 6.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See The Statement of Administrative Action to the URAA* at 870 ("SAA"). In this instance, the use of an adverse inference is appropriate because Ta Chen failed to act to the best of its ability in providing the data it had about these expenses in advance of verification because Ta Chen, without consulting with the Department, determined that the expenses were too small. *See U.S. Verification Report* at 6.

Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b) of the Act, we have preliminarily determined that the use of partial adverse facts available is warranted. As adverse facts available, the Department recalculated Ta Chen's reported U.S. ISE expenses by adding a certain percentage to the reported U.S. ISE percentage. The Department calculated the certain percentage by first taking the sum of the unreported expenses as listed in the U.S. Verification Report at Exhibit TCI–12, and deducting from that total the amount which is clearly attributable to non-subject merchandise. The Department subtracted the non-subject merchandise-related expenses in order to ensure that the numerator and denominator of the certain percentage were both calculated on the same basis to the extent possible, given the data collected at verification. The Department then divided the resulting figure by the total value of TCI's U.S. sales of subject merchandise as reported in its U.S. sales database, rather than TCI's total sales, to arrive at the certain percentage to be added to the reported U.S. ISE percentage as adverse facts available.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the exchange rates in effect on the dates of the U.S. sales as published by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in effect on the date of sale of subject merchandise in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined, as a general matter, that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 8915, 8918 (March 6, 1996) and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434, March 8, 1996. As indicated in these precedents, the benchmark is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the period June 1, 1999, through May 31, 2000:

CERTAIN STAINLESS STEEL BUTT-WELD PIPE FITTINGS FROM TAIWAN

Producer/manufacturer/exporter	Weighted-average margin (percent)
Ta Chen	5.24

The Department will disclose to any party to the proceeding, within five days of publication of this notice, the calculations performed (19 CFR 351.224(b)). Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with an additional copy of the public version of any such comments on diskette. The Department will publish the final results of this administrative review,

[2] Note that Ta Chen submitted a letter signed by Robert Shieh, President of Ta Chen on February 1, 2001 which indicated that the agreement has been terminated. *See* Section A Supplemental Questionnaire Response (February 6, 2001) at Attachment 19. However, the letter was written after the last date of the POR, is not related to the issue of the rebuttable presumption of reimbursement and, therefore, is not dispositive.

which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the results and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for Ta Chen, the only reviewed company, will be that established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the "all other" rate established in the LTFV investigation, which was 51.01 percent.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 2, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17485 Filed 7–11–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 01–00004." A summary of the application follows.

Summary of the Application

Applicant: International Trading Group, LLC ("ITG"), 300 E. Lombard Street, Baltimore, Maryland 21202.

Contact: Kathy L. Ducassou, President and Chief Operating Officer.

Telephone: (410) 466–8114.

Application No.: 01–00004.

Date Deemed Submitted: June 29, 2001.

Members (in addition to applicant): None.

ITG seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (as they Relate to the Export of Products, Services and Technology Rights)

Export Trade Facilitation Services, including, but not limited to: Professional services in the areas of government relations and assistance with state and federal export programs; foreign trade and business protocol; consulting; marketing research analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; bonding; warehousing; export trade promotion; trade show exhibitions;

organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands). The proposed Export Trade Certificate of Review would extend antitrust protection to ITG to conduct the following export trade activities:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotion and marketing activities and collect and distribute information on trade opportunities in the Export Market;
3. Enter into exclusive and/or non-exclusive agreements with distributors, foreign buyers, and/or sales representatives in Export Markets;
4. Enter into exclusive or non-exclusive sales agreements with Suppliers, Export Intermediaries, or other persons for the sale of Products and Services in Export Markets;
5. Enter into exclusive or non-exclusive agreements with Suppliers, Export Intermediaries, or other persons for licensing Technology Rights in Export Markets;
6. Allocate sales, export orders and/or divide Export Markets among Suppliers, Export Intermediaries, or other persons for the sale of Products and Services;
7. Allocate the licensing of Technology Rights in Export Markets among Suppliers, Export Intermediaries, or other persons;
8. Establish the price of Products and Services for sale in Export Markets;
9. Establish the fee for licensing of Technology Rights in Export Markets; and
10. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, ITG will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. ITG will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.
2. "Supplier" means a person who produces, provides, or sells a Product and/or Service.

Dated: July 9, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 01–17447 Filed 7–11–01; 8:45 am]

BILLING CODE 3510–DR–U

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Short Supply Request under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

July 6, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of request alleging that microfilament fabric of continuous polyester and nylon filaments with average size of 0.02 to 0.8 decitex cannot be supplied by the domestic industry in commercial quantities in a timely manner.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen or Lori Mennitt, International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Summary

On May 8, 2001 the Chairman of CITA received a petition on behalf of Freudenberg Nonwovens Group alleging that microfilament fabric of continuous polyester and nylon filaments with average size of 0.02 to 0.8 decitex, classified in subheading 5603.11.0090, 5603.12.0090, 5603.13.0090 or 5603.14.9090 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel articles of such fabric be eligible for preferential treatment under the CBTPA. As a result, CITA published a Federal Register Notice (66 FR 13912) requesting public comments on the petition. These comments were due May 30, 2001. Based on its review of the petition, public comments received, and other information obtained, CITA is denying Freudenberg's petition.

Background

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a CBTPA beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On May 8, 2001 the Chairman of CITA received a petition on behalf of Freudenberg Nonwovens Group alleging that microfilament fabric of continuous polyester and nylon filaments with average size of 0.02 to 0.8 decitex, classified in subheadings 5603.11.0090, 5603.12.0090, 5603.13.0090 or 5603.14.9090 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel articles of such fabric be eligible for preferential treatment under the CBTPA.

CITA solicited public comments regarding this request (66 FR 26841, published on May 15, 2001) particularly with respect to whether this fabric can be supplied by the domestic industry in commercial quantities in a timely manner.

On the basis of the petition, public comments received and other information obtained, CITA has determined that microfilament fabrics of continuous polyester and nylon filaments of 0.02 to 0.8 decitex are produced in commercial quantities in the United States and are readily available from U.S. producers. The Freudenberg product has unique features that are not duplicated by domestically produced nonwoven fabrics. However, the product that is the subject of the petition (microfilament fabrics of continous polyester and nylon filaments in sizes 0.02 to 0.8 decitex) encompasses a wide range of nonwoven fabrics, including those produced in the United States.

Based on its review of the petition, public comments received, and other information obtained, CITA is denying Freudenberg's petition. Freudenberg did not establish that microfilament fabrics of continous polyester and nylon filaments in sizes 0.02 to 0.8 decitex cannot be supplied by the domestic industry in commercial quantities in a timely manner.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–17437 Filed 7–11–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF ENERGY

Notice of Intent To Prepare a Programmatic Environmental Impact Statement on the, Disposition of Scrap Metals and Announcement of Public Scoping Meetings

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare a Programmatic Environmental Impact Statement.

SUMMARY: This notice announces the Department of Energy's (DOE's) intention to prepare a Programmatic Environmental Impact Statement (PEIS), under the National Environmental Policy Act, on the policy alternatives for the disposition of DOE scrap metals that may have residual surface radioactivity. The primary metals to be considered in the analysis are carbon steel and stainless steel. Other metals [e.g., copper, aluminum, lead, and precious metals (silver, gold, platinum)], which exist in smaller quantities, will also be addressed in the PEIS. The disposition alternatives to be analyzed include: continuation of the suspension on unrestricted release of scrap metals from DOE radiological areas for recycling; unrestricted release of scrap metals for recycling under existing DOE requirements; unrestricted release of scrap metals for recycling under alternative requirements; and no unrestricted release for recycling of scrap metals with any potential for residual surface radioactivity.

DATES: The public scoping period begins with publication of this Notice and concludes September 10, 2001. DOE invites Federal agencies, Native American tribes, state and local governments, and members of the public to comment on the scope of this PEIS. DOE will consider all comments received by the close of the scoping period and will consider comments received after that date to the extent practicable. DOE will conduct public scoping meetings to assist in defining the appropriate scope of the PEIS, including the alternatives and significant environmental issues to be considered. See **SUPPLEMENTARY INFORMATION** under Public Scoping Process for meeting locations.

ADDRESSES: Comments on the scope of the PEIS may be mailed to the address below or sent by facsimile or electronic mail. Written comments may be mailed to the following address: Kenneth G. Picha, Jr., Office of Technical Program Integration, EM–22, Attn: Metals Disposition PEIS, Office of Environmental Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0113.

Otherwise, send comments via facsimile to Metals Disposition PEIS at 301–903–9770 or send electronic mail to *Metals.Disposition.PEIS@em.doe.gov*. See **SUPPLEMENTARY INFORMATION** under Public Scoping Process for meeting locations.

FOR FURTHER INFORMATION CONTACT: To request further information about this PEIS, the public scoping meetings, or to be placed on the PEIS distribution list, use any of the methods listed under **ADDRESSES** above. For background documents in hard copy related to this PEIS contact the DOE Center for Environmental Management Information at 800–736–3282. For general information concerning the DOE National Environmental Policy Act (NEPA) process, contact: Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, Telephone: 202–586–4600, Voice Mail: 800–472–2756, Facsimile: 202–586–7031.

Additional NEPA information is also available on the DOE website: http//tis.eh.doe.gov/nepa/.

SUPPLEMENTARY INFORMATION:

Definitions

For purposes of this Notice, the following terms are defined:

Continued Radiological Control: The disposition of surplus and scrap metals for subsequent reuse or recycle in a government or commercial radiological application. Such reuse or recycle activities would be conducted under established agency-to-agency protocols, Nuclear Regulatory Commission (NRC) licenses, or NRC Agreement State licenses.

DOE Radiological Area: An area, designated under 10 CFR Part 835, for which DOE requires specific measures to be taken, such as access control and monitoring, to protect DOE workers from radiological hazards. A radiological area may or may not contain radioactive materials. An example of a radiological area that does not contain radioactive material is an area that contains only devices that produce radiation, such as X-ray machines, but which are not themselves radioactive and are unable to make other materials radioactive.

Recycle: The series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products. (Executive Order 13101)

Residual Radioactivity: Any radioactivity that is in or on soil, air, equipment, or structures as a consequence of past operations or activities at a DOE site. (Residual radioactivity does not include background radioactivity.)

Restricted Release: The release of scrap metals from DOE radiological control for a limited, specifically-stated application, subject to restrictions on use implemented by a designated party or through a specific process. An example would be the release of scrap steel specifically for use in making radioactive waste storage containers.

Reuse: The subsequent use of a surplus item in its original form for the same or similar purpose.

Scrap metal: Surplus metal that has no value except for its basic material content. Scrap metal could include items such as furniture and equipment

that cannot be reused, construction steel, and metals not yet put to use such as ingots that would have to be processed to be used.

Surplus metal: Metal items that DOE does not need.

Unrestricted Release: The release of property, including scrap metal, without any restrictions or controls on its use.

Volumetrically Contaminated: A material that has residual radioactivity distributed throughout its volume, as opposed to residing only on the exterior surface of the material.

Background

DOE generates surplus and scrap material during the normal course of activities. The types of surplus and scrap material include metals, concrete, soils, paper, wood, chemicals, equipment, and facilities. Consistent with common industrial practice, DOE has historically sought to reduce the amount of material that must be disposed of by reusing and recycling as much of this surplus and scrap material as possible. This practice is consistent with the requirements of Executive Orders 13101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition, and 13148, Greening the Government Through Leadership in Environmental Management. Historically, some of this material has been reused or recycled within the DOE system, some has been released for reuse or recycling outside of DOE, and some has been disposed of. The residual value of reused or recycled materials, along with the costs avoided by not having to pay to dispose of such materials, have reduced the cost of environmental cleanup and waste disposal activities at DOE sites.

The recycling of materials that have residual radioactivity could affect workers involved in the recycling of those materials, and also the general public, because products manufactured from recycled materials may have many exposure pathways to the public. To protect recycle workers, the general public, and the environment, DOE has established requirements (DOE Order 5400.5, Radiation Protection of the Public) for surveying materials for radioactivity and for allowable residual radioactivity levels for unrestricted release of such materials. These requirements allow unrestricted release of materials with radioactivity slightly above background radioactivity levels. Release limits under DOE Order 5400.5 are comparable to those in corresponding regulations established by the NRC and NRC Agreement States, and are generally more stringent than international standards set by the International Atomic Energy Agency. These release limits are intended to provide assurance that potential exposures to the public from residual radioactivity will be well below general radiation exposure limits established by DOE and NRC for protection of the public.

Despite these release limits, however, some members of the public and some industry groups have expressed concern regarding the potential impacts from radioactivity in or on the material released. This concern has primarily focused on releases of metals from DOE facilities, and is related to a number of factors, including the wide range of potential uses of recycled metals, such as in household products, and the potential effects on industrial operations and product acceptability. Although DOE has not identified any evidence that the public might be harmed by releases from DOE facilities, DOE has, in response to previously expressed concerns, identified opportunities to improve radiation monitoring, independent verifications, and record keeping and reporting.

The Department also responded to the stakeholders' concerns by taking two actions. First, on January 12, 2000, the Department established a moratorium on the release of volumetrically contaminated metals from any DOE location pending a decision by the NRC on potential policy and technical approaches for release of solid materials. The NRC continues to review this issue and the DOE moratorium remains in effect. Second, on July 13, 2000, the Department: (1) Initiated a process to improve the administration of its release limits, (2) enhanced its criteria for controlling the release of metal for recycling, and (3) temporarily suspended the unrestricted release of scrap metal, for recycling, from radiological areas at DOE facilities. The suspension was to remain in effect until DOE directives and guidance were reviewed and amended as necessary to ensure that no metal with detectable radioactivity above background (using appropriate commercially available monitoring equipment) would undergo unrestricted release for recycling. The suspension does not apply to metals released from non-radiological areas.

DOE subsequently proposed revisions to DOE Order 5400.5 that, if implemented, would permit the unrestricted release of scrap metals for recycling only if the metal had no residual radioactivity as determined by measurement or process knowledge. These proposed order revisions were made available for public comment (65 FR 60653, October 12, 2000). After considering comments received on the proposed revisions, DOE decided on January 19, 2001 to: (1) Continue the suspension on unrestricted release for recycling of scrap metals from radiological areas, and (2) suspend work on DOE Order 5400.5 revisions governing unrestricted release for recycling of metals, pending the preparation of a PEIS to allow an open discussion of concerns about such releases. (**Note:** This Notice of Intent to Prepare a PEIS is being provided to all persons who indicated they were interested in the proposed DOE Order 5400.5 revisions.)

DOE's materials release procedures that are not affected by the January 19, 2001, decision continue to be implemented. For example, all materials, including metals, located outside a DOE radiological area can be reused or recycled if the requirements established for radiological protection of the public (DOE Order 5400.5) are met. These same radiological protection requirements continue to govern the unrestricted release of surplus metal items from radiological areas for reuse rather than recycling.

DOE is reviewing international and national consensus-based radiological standards for unrestricted release of materials and is monitoring and, as appropriate, participating in related NRC and National Academy of Sciences (NAS) activities, but DOE has no specific plans for changing its own standards until at least the NAS has completed the current studies. DOE is, however, implementing procedural improvements for the existing release requirements in DOE Order 5400.5 to: (1) Clearly define areas and activities that can potentially radiologically contaminate materials; (2) clearly define radiological release criteria, including measurement and survey protocols; (3) ensure that released materials meet DOE requirements; and (4) improve DOE reporting on releases of material from radiological control. DOE also intends to prepare a PEIS on its policies relating to scrap metal recycling to allow for full and open dialogue with the public on the issues. While this PEIS is being prepared, DOE will continue the July 2000 suspension on recycling of scrap metal from radiological areas into commerce, unless DOE makes a specific determination that the metal could not have been radioactively contaminated by DOE activities or operations.

Purpose and Need for Action

The PEIS announced in this notice is being prepared in response to DOE's January 19, 2001, decision. DOE will use the PEIS as a basis for decisions

concerning disposition policies for the recycle of scrap metals that may have residual surface radioactivity.

In focusing the PEIS specifically on scrap metals, DOE considered whether the scope of the PEIS should include all potentially radioactive materials that might be released from DOE sites, including large volumes of concrete and soils. Recycled metals have comprised approximately one-quarter of the total amount of materials recycled by DOE. The options for reuse, recycling or disposal, however, vary widely among material categories. For example, the management of scrap metals and the steps by which they are recycled into commerce, and the consequent means by which people and the environment could be exposed to any residual radioactivity, are quite different from the corresponding process for other materials, such as soils, which might typically be used in highway construction projects rather than in manufactured products.

In addition, radiation exposure pathways for the various metal and non-metal materials are not likely to be connected, cumulative, or similar, and assessments to date indicate that potential radiation exposure from any of these materials (including metals) is very small, both individually and collectively.

DOE estimates that surplus metals currently in inventory and to be generated over the next 35 years will total more than a million tons, a significant fraction of which will contain no residual radioactivity. DOE estimates that approximately 30–50% of its surplus metals will be scrap metals that will be candidates for recycling, based on economic considerations. DOE's Environmental Management Program's decontamination and decommissioning activities are responsible for the majority of the current inventory of scrap metals, and will also generate the majority of the scrap metals that will become available for recycling in the future.

The current and future expected surplus metals are mostly carbon steel, stainless steel, and nickel. There will be more surplus carbon steel than all other surplus metals combined. Unlike the steels proposed to be addressed in the EIS, all the nickel is considered to be volumetrically contaminated, and is not covered in the proposed scope of the PEIS. There are smaller quantities of other metals [e.g., copper, aluminum, lead, and precious metals (silver, gold, platinum)] that will be addressed in the PEIS. More than half of the current and forecast scrap metal amounts, including almost all of the scrap nickel, will result from the decommissioning of the Gaseous Diffusion Plants in Ohio, Kentucky and Tennessee. The estimated average generation rates through the year 2015 are 50,000 tons per year for carbon steel, 4,000 tons per year for stainless steel, and 3,000 tons per year for nickel.

DOE proposes that the PEIS would not address volumetrically contaminated nickel and other metals, which remain subject to a moratorium on their release pending the outcome of NRC's review process. DOE plans to focus the PEIS primarily on those metals that represent the greatest potential for impacts due to their volumes, i.e., carbon steel and stainless steel. By focusing on the recycle of non-volumetrically contaminated scrap metals, DOE believes it can most effectively evaluate the benefits and risks of specific disposition alternatives. This would present the public and DOE with relevant, timely, and immediately useful information for resolving the most pressing and significant of DOE's material disposition issues.

For all these reasons, DOE believes the greatest value to the Department and the public for this effort will be to focus this PEIS on the recycle of scrap metals with potential for residual surface radioactivity.

As noted above, similar issues are being evaluated through the ongoing process being conducted by the NRC and the NAS to address technical requirements and NRC standards for unrestricted release of radioactively contaminated solid materials. DOE expects that this PEIS will be useful to NRC and NAS, and DOE also intends to incorporate into the PEIS any timely and relevant information developed by NRC and NAS.

Preliminary Alternatives

Consistent with NEPA implementation requirements, the PEIS will assess the range of reasonable alternative policies regarding disposition of DOE scrap metals with any potential for residual surface radioactivity. Each alternative identified below is a strategy or policy option. DOE welcomes comments on these or other reasonable alternatives and on the identification of a preferred alternative.

No Action Alternative (*Continue Current Suspension on Unrestricted Release for Recycling of Scrap Metals from Radiological Areas*)—The No Action Alternative would continue the status-quo established by the July 13, 2000, DOE policy decision, suspending the unrestricted release for recycling of scrap metals from DOE radiological areas. Such metals would be dispositioned through continued radiological control, restricted release for recycle, onsite storage, or disposal. Disposal would be either as radioactive waste at DOE or non-DOE facilities, in accordance with DOE's requirements for the applicable waste classification (i.e., transuranic, low-level, or mixed low-level), or as non-radioactive waste at appropriate facilities (industrial landfills, sanitary landfills, or hazardous waste disposal sites), depending upon the waste's characteristics after final treatment. Disposal in an industrial or sanitary landfill or a hazardous waste disposal facility would be considered a restricted release from radiological control.

Alternative 1 (*Unrestricted Release for Recycling of Scrap Metals under Requirements in DOE Order 5400.5, Radiation Protection of the Public*)—This alternative would permit unrestricted release of scrap metals from DOE radiological areas and scrap metals outside radiological areas that may have residual surface radioactivity, through application of radiological control standards currently incorporated in DOE Order 5400.5 (August 1993). This was the practice DOE followed before the July 2000 suspension. Such metals that could not meet these requirements would be dispositioned through continued radiological control, restricted release for recycle, onsite storage, or disposal, as described above under the No Action Alternative.

Alternative 2 (*Unrestricted Release for Recycling of Scrap Metals for Recycle under Alternative Standards*)—This broad alternative would permit unrestricted release of scrap metals from DOE radiological areas and scrap metals outside radiological areas that may have residual surface radioactivity, if they satisfy specific radiation protection requirements other than those in DOE Order 5400.5. DOE would analyze several alternative threshold radiological criteria for unrestricted release. Alternative radiological criteria that could be considered include international (e.g., International Atomic Energy Agency, European Commission) and U.S. (e.g., NRC, American National Standards Institute, National Council on Radiation Protection and Measurements) standards for unrestricted release. In addition, a more stringent standard that requires "radioactivity indistinguishable from background" will be evaluated. Under each alternative standard, metals that do not satisfy the standard for unrestricted release would be dispositioned through continued radiological control, restricted release for recycle, onsite

storage, or disposal, as described above under the No Action Alternative.

Alternative 3 (*No Unrestricted Release for Recycling of Scrap Metals with Potential for Residual Surface Radioactivity*)—This alternative would permit the unrestricted release for recycling of scrap metals from DOE sites only if there is clear process knowledge, confirmed by monitoring, that there is no potential for residual surface radioactivity. Metals that do not meet this condition would be dispositioned through continued radiological control, restricted release for recycle, onsite storage, or disposal, as described above under the No Action Alternative.

Preliminary Identification of Issues

DOE intends to address the issues listed below in the process of considering the potential impacts of alternatives for disposition of scrap metals from radiological areas or scrap metals outside radiological areas that may have residual surface radioactivity. DOE invites comment from Federal agencies, Native American tribes, state and local governments, and the public on these and any other issues that should be considered in the PEIS:

- Potential impacts on public health from using products made from recycled metals.
- Improvements in DOE's procedures for unrestricted release of scrap metals.
- Potential impacts from alternative approaches for determining which scrap metals on DOE sites may have come from radiological areas or may have residual radioactivity. Such approaches include: (1) Using records pertaining to the locations of the metal during its use and the circumstances to which it was subjected, (2) conducting radiation surveys of scrap metals, (3) using records to determine appropriate radiation survey strategies, and (4) integrating elements of each approach into formal procedures or protocols.
- Potential effects on air, soil, and surface and ground water from recycling, storage and disposal activities, and from reasonably foreseeable accidents associated with these activities.
- Potential impacts on ecological resources, including threatened and endangered species, floodplains, and wetlands.
- Potential health impacts on the public and DOE's workers from exposure to radiological and chemical hazards during routine recycling, storage or disposal operations and reasonably foreseeable accidents.
- Radiological considerations related to the management of recycled materials by both the commercial scrap metal recycle and metal-producing industries, including potential impacts on workers.
- Potential environmental and health impacts that might be avoided by recycling metals, as opposed to their disposal.
- Potential effects on industrial applications of recycled metals.
- Socioeconomic impacts.
- Compliance with applicable Federal, state and local requirements and agreements, and consistency with U.S. and international standards for unrestricted release.
- Potential effects on radioactive waste and non-radioactive waste disposal site construction and operation if scrap metals that might otherwise be recycled were instead disposed of.
- Potential effect on DOE's environmental cleanup activities and related costs.
- Pollution prevention, waste minimization, and energy and water use reduction technologies to reduce the use of energy, water, and hazardous substances, and to mitigate environmental impacts during activities to disposition scrap metals from DOE sites.
- Impacts on cultural and historic resources.
- Cumulative environmental impacts of past, present and reasonably foreseeable future actions.
- Irreversible and irretrievable commitment of resources.

In addition, DOE requests that the public provide information on, or responses to, specific topics such as:

- What other impacts beyond those identified above should DOE consider?
- Information sources for evaluating environmental impacts associated with the recycling of scrap metals that may have residual surface radioactivity.
- What specific health and safety impacts have arisen from implementing DOE's metals recycling program?
- What specific harm could occur to the general public or recycle industry workers under implementation of DOE Order 5400.5 or other standards for unrestricted release of scrap metals?

Related NEPA Documents

This PEIS will consider the information and analyses in the following DOE NEPA documents, which can be found at DOE Field Office Public Reading Rooms, the Environmental Management Information Center (800 736–3282), the DOE Environmental Management website (http://www.em.doe.gov/index4.html), or the DOE NEPA website (*http://tis.doe.gov/nepa/*).

- Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste (DOE/PEIS–0200–F, May 1997).
- Sale of Radioactively Contaminated Scrap Nickel Ingots at the Paducah Gaseous Diffusion Plant, Paducah, KY (DOE/EA–0994, April 1996).
- Recycling of Slightly Activated Copper Coil Windings from the 184-inch Cyclotron at Lawrence Berkeley Laboratory, Berkeley, California (DOE/EA–0851, June 1993).

Public Scoping Process

DOE will hold meetings in the following locations.

July 31, 2001

2:00–5:00 pm
8:00–11:00 pm
North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina 29841

August 2, 2001

2:00–5:00 pm
8:00–11:00 pm
American Museum of Science & Energy, 300 South Tulane Avenue, Oak Ridge, Tennessee 37830

August 7, 2001

2:00–5:00 pm
8:00–11:00 pm
Holiday Inn Oakland Airport, 500 Hegenberger Road, Oakland, California 94621

August 9, 2001

2:00–5:00 pm
8:00–11:00 pm
Red Lion Hotel, 802 George Washington Way, Richland, Washington 99352

August 14, 2001

2:00–5:00 pm
8:00–11:00 pm
Omni Netherland Plaza Hotel, 35 West Fifth Street, Cincinnati, Ohio 45202

August 16, 2001

2:00–5:00 pm
8:00–11:00 pm
Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington Virginia 22202

At 1:00 and 7:00 pm prior to each public scoping meeting, an information/open house will be offered to persons interested in radiation fundamentals, including sources and health effects, not specifically related to metal recycling.

At each scoping meeting, the public will have the opportunity to ask questions and to comment orally or in writing on the scope of the PEIS, including the alternatives and issues that DOE should consider. Also, at these meetings, DOE plans to provide background information on the program and the PEIS preparation schedule.

To ensure that the full range of issues related to the preparation of this PEIS is addressed, DOE is inviting comments on the proposed scope of the PEIS from all interested parties during the scoping period. Written comments should be addressed to Mr. Kenneth G. Picha, Jr. as provided above under the heading **ADDRESSES.** Agencies, organizations, and the general public are also invited to present oral comments at the public scoping meetings to be held at the places listed above. Written and oral comments will be given equal consideration. To ensure that everyone has an adequate opportunity to speak, each speaker at a scoping meeting will be allotted five minutes. Depending on the number of persons who ask to speak, more time may be provided for speakers representing organizations. Persons wishing to speak on behalf of organizations should identify the organization in their request. Written comments will also be accepted at the meetings. Speakers at the scoping meetings are encouraged to provide written versions of their oral comments for the record.

DOE will record and prepare transcripts of the oral comments received during the public scoping meetings. Interested persons will be able to receive copies of the transcripts and written comments by requesting this information from Mr. Picha (see **ADDRESSES**).

Preliminary PEIS Schedule

DOE plans to complete the Draft PEIS by January 2002. DOE will announce the availability of the Draft PEIS in the **Federal Register** and other media, and will provide the public, organizations, and agencies with an opportunity to submit comments. These comments will be considered and addressed in the Final PEIS, which DOE plans to issue by about July 2002. DOE will issue a Record of Decision no sooner than 30 days after publication of the Environmental Protection Agency's notice of availability of the Final PEIS.

Issued in Washington, D.C, on July 6, 2001.

Steven V. Cary,

Acting Assistant Secretary, Office of Environment, Safety and Health.

[FR Doc. 01–17438 Filed 7–11–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–98–000]

American Ref-Fuel Company of Niagara, L.P., Complainant v. Niagara Mohawk Power Corporation, Respondent; Notice of Complaint

July 6, 2001.

Take notice that on July 2, 2001, American Ref-Fuel Company of Niagara, L.P. filed a complaint against Niagara Mohawk Power Corporation pursuant to Sections 206 and 306 of the Federal Power Act, directing Niagara Mohawk to cease its unjust, unreasonable, unduly discriminatory and preferential practice of denying transmission service.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before July 16, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before July 16, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17457 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2008–001]

The Detroit Edison Company; Notice of Filing

July 6, 2001.

Take notice that on June 22, 2001, Detroit Edison Company (Detroit Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission) Service Agreements for Short-term Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and Wisconsin Electric Power Company dated as of February 13, 2001. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of July 20, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 16, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17458 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–62–029]

ISO New England Inc.; Notice of Filing

July 6, 2001.

Take notice that on June 29, 2001, ISO New England Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) a Substitute Original Sheet 1002A of New England Power Pool FERC Electric Rate Schedule No. 6, a blackline of Sheet 1002A showing the correction, and a changed page 32 to the filing letter reflecting the correction to the electrical units in the formula.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 13, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17456 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2459–001]

New York Independent System Operator, Inc.; Notice of Filing

July 6, 2001.

Take notice that on July 3, 2001, New York Independent System Operator, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) pages with corrected page numbers that were incorrectly numbered in its June 29, 2001 filing of tariff revisions to its Market Administration and Control Area Services Tariff.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 13, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17459 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2489–000]

New York Independent System Operator, Inc.; Notice of Filing

July 6, 2001.

Take notice that on July 2, 2001, the New York Independent System Operator, Inc. (NYISO), at the Direction of its independent Board of Directors, made an exigent circumstances filing to propose changes to its Market Administration and Control Area Services Tariff (Services Tariff) designed to implement certain market power mitigation penalties. The NYISO has requested that the Commission act on this filing in an expedited manner. The NYISO has also requested that the Commission waive its usual 60-day notice requirement and make the filing effective on July 3, 2001.

The NYISO has served a copy of the filing on all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, on the New York State Public Service Commission, on the electric utility regulatory agencies in New Jersey and Pennsylvania and on all parties in Docket No. ER01–2076–000. The NYISO has also emailed a copy of this filing to all of the subscribers to the NYISO's Technical Information Exchange list.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 16, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17460 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–123–000, et al.]

Duke Energy Vermillion, LLC, et al.; Electric Rate and Corporate Regulation Filings

July 5, 2001.

Take notice that the following filings have been made with the Commission:

1. Duke Energy Vermillion, LLC, Duke Energy Madison, LLC, CinCap VII, LLC, Duke Energy Trenton, LLC, CinCap VIII, LLC

[Docket No. EC01–123–000]

Take notice that on June 28, 2001, Duke Energy Vermillion, LLC (Duke Vermillion), Duke Energy Madison, LLC (Duke Madison), CinCap VII, LLC (CinCap VII), Duke Energy Trenton, LLC (Duke Trenton) and CinCap VIII, LLC (CinCap VIII) (the Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act (FPA) for authorization of the transfer of Duke Energy North America, LLC's (DENA) indirect interests in Duke Madison and CinCap VII to CinCap VIII and the transfer of Cinergy Corporation's (Cinergy) indirect interest in Duke Vermillion to Duke Trenton. The transfer may constitute the indirect disposition of FPA jurisdictional facilities associated with the facilities owned by Duke Vermillion, Duke Madison and CinCap VII (*e.g.*, market-based rate schedules of Duke Vermillion, Duke Madison and CinCap VII and the sales agreements entered into thereunder, limited transmission interconnection facilities and jurisdictional books and records).

Comment date: August 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company, PacifiCorp

[Docket No. EC01–125–000]

Take notice that on June 28, 2001, Arizona Public Service Company (APS) and PacifiCorp tendered for filing a joint application for authorization for APS to transfer to PacifiCorp a 10.4 mile segment of transmission line located in Arizona, which line is a segment of a longer single-circuit 230 kV transmission line located in both Arizona and Utah. The subject facility runs from the switchyard at Glen Canyon Dam in Coconino County, which is owned and operated by the United States Bureau of Reclamation, to the Arizona-Utah border. The 230 kV transmission line continues on to PacifiCorp's Sigurd Substation.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Tri-State Power, LLC

[Docket No. EG01–252–000]

Take notice that on July 2, 2001, Tri-State Power, LLC (TSP) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

TSP is a Colorado limited liability company. The Eligible Facilities are two electric generating stations located near Limon, Colorado and Brighton, Colorado. Each station consists of two gas-fired combustion turbines with a nominal rating of 70 MW each and associated step-up transformers, circuit breakers and related equipment.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. PSEG Fossil LLC, PSEG Nuclear LLC and PSEG Energy Resources & Trade LLC

[Docket No. ER01–2462–000]

Take notice that on June 26, 2001, PSEG Fossil LLC (PSEF Fossil), PSEG Nuclear LLC (PSEG Nuclear), and PSEG Energy Resources & Trade LLD (ER&T) (collectively the Applicants) filed with the Federal Energy Regulatory Commission (Commission) a Joint Application for Waiver of Filing Requirements relating to requirements contained in Parts 35, 41, 45, 101 and 141 of the Commission's regulations.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation; Orange & Rockland and Utilities, Inc.; Power Authority of the State of New York; and Rochester Gas and Electric Corporation, New York Power Pool

[Docket Nos. ER97–1523–064, OA97–470–059 and ER97–4234–057]

Take notice that on June 29, 2001, Niagara Mohawk Power Corporation (Niagara Mohawk) made a compliance filing consisting of an Amended and Restated Transmission Agreement with the Power Authority of the State of New York in conformance with the Commission's Letter Order in these proceedings dated May 30, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. PJM Interconnection, L.L.C.

[Docket No. ER01–2473–000]

Take notice that on June 29, 2001, PJM Interconnection, L.L.C. (PJM), filed amendments to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to revise PJM's authority to cost cap "must-run" generators to enable PJM to cost cap such units on a real-time as well as day-ahead basis.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM control area.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER01–2474–000]

Take notice that on June 29, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement for Long-Term Firm Out Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's regulations. Acceptance of this Service Agreement will recognize the provision of Long-Term Firm Out Service to Williams Energy Marketing & Trading Co., in accordance with the provisions of the NEPOOL Open Access Transmission Tariff, as amended and supplemented.

An effective date of July 1, 2001 for commencement of transmission service has been requested.

Copies of this filing were sent to the NEPOOL Participants, the New England state governors and regulatory commissions, and all parties to the transaction.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. MidAmerican Energy Company LLC

[Docket No. ER01–2475–000]

Take notice that on June 29, 2001, MidAmerican Energy Company LLC (MidAmerican) tendered for filing with the Federal Energy Regulatory Commission (Commission) under its market-based rate tariff a long-term service agreement, the Service Agreement between MidAmericanEnergy Company and Principal Generation Plant, LLC Under Producers.

MidAmerican requests an effective date of May 31, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Southwest Power Pool, Inc.

[Docket No. ER01–2476–000]

Take notice that on June 29, 2001, Southwest Power Pool, Inc. (SPP)

submitted for filing two executed service agreements for Firm Point-to-Point Transmission Service with Tenaska Power Service Company (Transmission Customer), designated as SPP Service Agreement Nos. 554 and 555.

SPP seeks an effective date of June 1, 2001 for Service Agreement No. 554, and January 1, 2002, for Service Agreement No. 555.

A copy of this filing was served on the Transmission Customer.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power Corporation

[Docket No. ER01–2477–000]

Take notice that on June 29, 2001, Florida Power Corporation (FPC) filed an executed Transmission Service System Impact Study Agreement (Agreement) with El Paso Merchant Energy, L.P. (El Paso) under FPC's open access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6. FPC files this Agreement in conjunction with the joint transmission system impact study process that FPC, Florida Power & Light Company and Tampa Electric Company have agreed to undertake to handle the pending transmission service requests that impact these three utility systems.

FPC requests this Agreement to become effective on May 31, 2001.

A copy of the filing was served on El Paso.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Indiana Gas & Electric Company

[Docket No. ER01–2478–000]

Take notice that on June 29, 2001, Southern Indiana Gas & Electric Company (SIGECO) tendered for filing a Service Agreement for Network Integration Transmission Service (Service Agreement) and a Network Operating Agreement (NOA) for the City of Huntingburg, Indiana. The Service Agreement and the NOA are being filed under SIGECO's FERC Electric Tariff, Second Revised Volume No. 3.

SIGECO requests that the Commission allow the Service Agreement and the NOA to become effective on June 1, 2001.

Copies of the filing were served upon the Indiana Utility Regulatory Commission and the City of Huntingburg, Indiana.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Mirant Zeeland, LLC

[Docket No. ER01–2479–000]

Take notice that on June 29, 2001, Mirant Zeeland, LLC (Mirant Zeeland) filed with the Federal Energy Regulatory Commission (Commission) filed a Tolling Agreement dated as of May 3, 2000, between SEI Michigan, LLC, (now Mirant Zeeland, LLC) and Southern Company Energy Marketing LP (now Mirant Americas Energy Marketing, LP).

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Tampa Electric Company

[Docket No. ER01–1895–001]

Take notice that on June 29, 2001, Tampa Electric Company (Tampa Electric) refiled its open access transmission tariff (OATT) in the format required by the Commission's Order No. 614. The filing was made in compliance with the Commission's letter order dated May 30, 2001, in Docket No. ER01–1895–000. Except for the updated transmission loss factor accepted in that letter order, the filing does not change the text of the preexisting OATT.

A copy of the compliance filing has been served on each person designated on the official service list in this docket, each party to a service agreement under the preexisting OATT, and the Florida Public Service Commission.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Valley Electric Association, Inc.

[Docket No. ER01–1229–002]

Take notice that on June 29, 2001, Valley Electric Association, Inc. tendered for filing a corrected tariff sheet and other information in compliance with the Commission's June 14, 2001 order in the above-captioned proceeding.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Valley Electric Association, Inc.

[Docket No. ER01–2455–000]

Take notice that on June 29, 2001, Valley Electric Association, Inc. tendered for filing a notice of cancellation with respect to its Rate Schedule FERC No. 15.

Valley Electric Association request notice of cancellation be effective July 2, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. California Independent System Operator Corporation

[Docket No. ER01–2457–000]

Take notice that the California Independent System Operator Corporation (ISO), on June 29, 2001, submitted an informational filing as to the new transmission Access Charge rates that will be in effect on July 1, 2001.

The ISO states that this filing has been served the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties, including Vernon, with effective Scheduling Coordinator Agreements under the ISO Tariff.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. San Diego Gas & Electric Company

[Docket No. ER01–2458–000]

Take notice that on June 29, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing as Service Agreement number 1 to its FERC Electric Tariff, First Revised Volume No. 7. Service Agreement No. 1 relates to the sale of electric power at wholesale to the California Department of Water Resources (Department) at prices agreed to by SDG&E and Department in accordance with SDG&E's FERC Electric Tariff, First Revised Volume No. 7. SDG&E states that copies of the filing have been served on Department and on the California Public Utilities Commission.

SDG&E requests an effective date of June 1, 2001 for the agreement.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Ameren Energy Marketing Company

[Docket No. ER01–1810–002]

Take notice that on June 29, 2001, Ameren Energy Marketing Company (AEM) submitted the compliance filing required by the Commission's June 14, 2001 order in this proceeding. AEM requests an effective date of June 1, 2001 for the changes reflected in this filing. A copy of this filing was served on all parties on the service list, and on all affected state commissions.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Walton Electric Membership Corporation

[Docket No. ER01–1400–002]

Take notice that on June 29, 2001, Walton Electric Membership

Corporation (Walton) tendered for filing Schedules D and 4.4 of the Power Supply and Energy Call Agreement by and between Williams Energy Marketing & Trading Company and Walton as requested by Commission Staff.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Company Services, Inc.

[Docket No. ER01–1698–003]

Take notice that on June 29, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Savannah Electric) (collectively referred to as Southern Company), filed their compliance filing to the Commission's Order in Southern Company Services, Inc., 95 FERC ¶ 61,307. In that order, the Commission accepted for filing an unexecuted Interconnection Agreement between Savannah Electric and Effingham County Power LLC. In addition, the Commission also ordered that Southern Company amend its Interconnection Procedure to make certain revisions to the scope of Interconnection Studies that it performs.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Florida Power Corporation

[Docket No. ER01–2466–000]

Take notice that on June 29, 2001, Florida Power Corporation (FPC) filed an executed Transmission Service System Impact Study Agreement (Agreement) with Reliant Energy Services, Inc. (Reliant) under FPC's open access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6. FPC files this Agreement in conjunction with the joint transmission system impact study process that FPC, Florida Power & Light Company and Tampa Electric Company have agreed to undertake to handle the pending transmission service requests that impact these three utility systems. FPC requests waiver of the Commission's notice of filing requirements to permit this Agreement to become effective on May 31, 2001.

A copy of the filing was served on Reliant.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. New York State Electric & Gas Corporation

[Docket No. ER01–2470–000]

Take notice that on June 29, 2001 New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, an amendment to Rate Schedule 200 filed with FERC corresponding to a Facilities Agreement with the New York Power Authority (NYPA). The proposed amendment would increase revenues by $2,480.37 for the period from September 1, 2001 through August 31, 2002. Copies of the filing were served upon the New York Power Authority and the Public Service Commission of the State of New York.

NYSEG requests an effective date of September 1, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Florida Power Corporation

[Docket No. ER01–2465–000]

Take notice that on June 29, 2001, Florida Power Corporation (FPC) filed an executed Transmission Service System Impact Study Agreement (Agreement) with NRG under FPC's open access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6. FPC files this Agreement in conjunction with the joint transmission system impact study process that FPC, Florida Power & Light Company and Tampa Electric Company have agreed to undertake to handle the pending transmission service requests that impact these three utility systems. FPC requests waiver of the Commission's notice of filing requirements to permit this Agreement to become effective on May 31, 2001.

A copy of the filing was served on NRG.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. PacifiCorp

[Docket No. ER01–2292–000]

Take notice that PacifiCorp on June 29, 2001, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a request to defer actions on PacifiCorp's original filing in this proceeding until further notice. Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Xcel Energy Services, Inc.

[Docket No. ER01–1311–001]

Take notice that on June 29, 2001, Xcel Energy Services, Inc., on behalf of Public Service Company of Colorado (PSCo), submitted for filing an Amended Power Sales Agreement between PSCo and Cheyenne Light, Fuel and Power Company.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. Idaho Power Company

[Docket No. ER01–1687–001]

Take notice that on June 29, 2001, Idaho Power Company tendered for filing, under its Market-Based Rates Tariff, Rate Schedule Designations as required by Order No. 614 pursuant to the Commission's Letter Order dated May 29, 2001 in the above-captioned docket.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

27. Nevada Power Company

[Docket No. ER01–1589–002]

Take notice that on June 29, 2001, Nevada Power Company (Nevada Power) tendered for filing a revision to the Regulation and Frequency Response Service provisions of Nevada Power's Electric Service Coordination Tariff in compliance with the Order issued in June 1, 2001 in this Docket No. ER01–1589–000. Copies of this filing have been served upon those person on the Commission's official service list compiled in Docket No. ER01–1589–000.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

28. Duke Energy Corporation

[Docket No. ER01–2469–000]

Take notice that on June 29, 2001, Duke Energy Corporation filed an amended, unexecuted Network Integration Transmission Service Agreement between Duke Power Co., Cinergy Services, Inc. and the Commissioners of Public Works of the City of Greenwood, South Carolina.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

29. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC (AE Supply)

[Docket No. ER01–2468–000]

Take notice that on June 29, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (AE Supply), filed Electric Rate Schedule FERC No. 10 (Rate Schedule) with Monongahela Power Company dba Allegheny Power in order for Allegheny Power to supply default service to its Ohio customers. AE Supply has requested a waiver of notice to make the Rate Schedule effective on June 1, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

30. Southwest Power Pool, Inc.

[Docket No. ER01–2471–000]

Take notice that on June 29, 2001, Southwest Power Pool, Inc. (SPP) submitted for filing eight executed service agreements for Firm Point-to-Point Transmission Service with Aquila Energy Marketing Corporation (Transmission Customer). SPP seeks an effective date of June 1, 2001 for each of these service agreements.

A copy of this filing was served on the Transmission Customer.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17427 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2467–000, et al.]

Florida Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 6, 2001.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. ER01–2467–000]

Take notice that on June 29, 2001, Florida Power Corporation (FPC) filed an executed Transmission Service System Impact Study Agreement (Agreement) with FPL Energy Marketing (FPL Energy) under FPC's open access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6. FPC files this Agreement in conjunction with the joint transmission system impact study process that FPC, Florida Power & Light Company and Tampa Electric Company have agreed to undertake to handle the pending transmission service requests that impact these three utility systems. FPC requests waiver of the Commission's notice of filing requirements to permit this Agreement to become effective on May 31, 2001.

A copy of the filing was served on FPL Energy.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Tampa Electric Company

[Docket No. ER01–1896–001]

Take notice that on June 29, 2001, Tampa Electric Company (Tampa Electric) refiled its transmission service agreements with Mulberry Phosphates, Inc. (Mulberry), Cargill Fertilizer, Inc. (Cargill), and Auburndale Power Partners, Limited Partnership (Auburndale), and interconnection agreements with Cargill and Auburndale, in the format required by the Commission's Order No. 614. The filing was made in compliance with the Commission's letter order date May 30, 2001.

Copies of the compliance filing have been served on the persons designated on the official service list in this docket, Mulberry, Cargill, Auburndale, and the Florida Public Service Commission.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corporation

[Docket No. ER01–2472–000]

Take notice that on June 29, 2001, Florida Power Corporation (FPC) filed an executed Transmission Service System Impact Study Agreement (Agreement) with Mirant Corporation (Mirant) under FPC's open access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6. FPC files this Agreement in conjunction with the joint transmission system impact study process that FPC, Florida Power & Light Company and Tampa Electric Company have agreed to undertake to handle the pending transmission service requests that impact these three utility systems. A copy of the filing was served on Mirant.

FPC requests waiver of the Commission's notice of filing requirements to permit this Agreement to become effective on June 1, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER01–2480–000]

Take notice that on June 29, 2001, Florida Power Corporation (FPC) filed an executed Transmission Service System Impact Study Agreement (Agreement) with Seminole Electric Cooperative, Inc. (Seminole) under FPC's open access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6. FPC files this Agreement in conjunction with the joint transmission system impact study process that FPC, Florida Power & Light Company and Tampa Electric Company have agreed to undertake to handle the pending transmission service requests that impact these three utility systems. A copy of the filing was served on Seminole.

FPC requests waiver of the Commission's notice of filing requirements to permit this Agreement to become effective on June 1, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Exelon Generation Company, LLC, Exelon Energy Company

[Docket No. ER01–2481–000]

Take notice that on June 29, 2001, Exelon Generation Company, LLC (Exelon Generation), and Exelon Energy Company (Exelon Energy) submitted for

filing a long-term power sales service agreement between Exelon Generation and Exelon Energy under which the parties will make sales of capacity and energy to each other.

Excelon Generation and Exelon Energy request that the Service Agreement be accepted for filing effective as of June 1, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. DPL Energy, LLC, DPL Energy, Inc.

[Docket No. ER01–2483–000]

Take notice that on June 29, 2001, DPL Energy, LLC (DPLE–LLC) and DPL Energy, Inc. (DPLE-Inc.) tendered for filing a Notice of Succession stating that DPLE–LLC is adopting and succeeding to the jurisdictional rate schedules and supplements thereto of DPLE-Inc.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER01–2484–000]

Take notice that on July 2, 2001, Cinergy Services, Inc. tendered for filing an Interconnection Agreement into by and between Cinergy Services, Inc. (Cinergy) and CinCap VII, LLC (CinCap VII), which is dated June 28, 2001. The Interconnection Agreement between the parties provides for the interconnection of a generation station with the transmission system of PSI Energy, Inc. (PSI), a Cinergy utility operating company, and further defines the continuing responsibilities and obligations of the parties with respect thereto. Cinergy states that it has served a copy of its filing upon the Indiana Utility Regulatory Commission and CinCap VII.

Cinergy and CinCap VII are requesting an effective date of June 29, 2001.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Tampa Electric Company

[Docket No. ER01–2485–000]

Take notice that on July 2, 2001, Tampa Electric Company tendered for filing notices of termination of its interchange contracts with the City of Wauchula, the City of Fort Meade, and the Tennessee Valley Authority, as well as specified service schedules and letters of commitment under its interchange contracts with 17 other utilities. Tampa Electric proposes that the terminations be made effective on August 1, 2001, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on the parties to the affected interchange contracts and the Florida and Georgia Public Service Commissions.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER01–2486–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on July 2, 2001, tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Second Revised Volume No. 2). Wisconsin Electric respectfully requests an effective date July 1, 2001.

Copies of the filing have been served on American Transmission Company LLC, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. The Montana Power Company

[Docket No. ER01–2487–000]

Take notice that on July 2, 2001, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 C.F.R. § 35.13 executed Network Integration Transmission Service Agreements with Luzenac America, Inc. (Luzenac) and ExxonMobil Corporation (ExxonMobil); and an executed Firm Point-To-Point Transmission Service Agreement with The Montana Power Power Marketing Company (Montana Power Power Marketing), all under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Luzenac, ExxonMobil, and Montana Power Power Marketing.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER01–2488–000]

Take notice that on July 2, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Interconnection and Operation Agreement between Kentucky Power Company and Kentucky Mountain Power, L.L.C. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of August 31, 2001. Copies of AEP's filing have been served upon the Kentucky Public Service Commission.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Umatilla Electric Cooperative Association

[Docket No. ER01–2490–000]

Take notice that on July 3, 2001, Umatilla Electric Cooperative Association submitted for filing an open access transmission tariff and accompanying rates.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Cambridge Electric Light Company, Boston Edison Company, Commonwealth Electric Company

[Docket Nos. ER01–1695–002; ER01–1705–002; and ER01–1782–002]

Take notice that on July 2, 2001, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company (NSTAR Companies) tendered for filing Attachment K to their respective Open Access Transmission Tariffs, "Standard Form of Interconnection Agreement" in compliance with the Commission's June 1, 2001 order in the above-referenced dockets.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. ISO New England Inc.

[Docket No. ER01–316–003]

Take notice that on July 2, 2001, ISO New England Inc. refiled its Index of Customers for the first quarter of 2001 for its Tariff for Transmission Dispatch and Power Administration Services in compliance with Order No. 614.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Southern Electric Generation Co.

[Docket Nos. ER01–602–008 and ER01–1773–001]

Take notice that on July 2, 2001, Southern Electric Generation Company tendered for filing revised original tariff sheets compliant with the formatting requirements of Commission Order No. 614.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER01–602–009]

Take notice that on July 2, 2001, in compliance with Commission letter orders dated January 21, 2001 and June 1, 2001, Southern Company Services, Inc. (SCS), as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively, Southern Companies), tendered for filing rate schedules and/or associated sheets compliant with Commission Order No. 614 for certain Southern Operating Companies Rate Schedules. These Rate Schedules are Georgia Power First Revised Rate Schedule FERC No. 803 and Southern Operating Companies First Revised Rate Schedules FERC Nos. 15, 30, 33, 51, 53, 59 and 62.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17454 Filed 7–11–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–4–000, CP01–5–000, CP01–8–000]

Maritimes & Northeast Pipeline, L.L.C., Algonquin Gas Transmission Company and Texas Eastern Transmission Corporation; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Phase III/Hubline Pipeline Project

July 6, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Draft Environmental Impact Statement (DEIS) on the natural gas pipeline facilities proposed by Maritimes & Northeast Pipeline, L.L.C. (Maritimes), and Algonquin Gas Transmission Company (Algonquin) (collectively the Applicants) in the above-referenced docket.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project with the appropriate mitigating measures as recommended, would have limited adverse environmental impact. The DEIS also evaluates alternatives to the proposal, including major route alternatives; and route variations, and requests comments on them.

The DEIS addresses the potential environmental effects of the construction and operation of the following facilities:

- About 24.8 miles of new, primarily onshore natural gas pipeline (23.8 miles of 30-inch-diameter pipeline and 1.0 miles of 24-inch-diameter pipeline) referred to as the Maritimes Phase III pipeline;
- About 29.4 miles of new, primarily offshore natural gas pipeline (24-inch-diameter pipeline) referred to as the HubLine pipeline;
- About 5.4 miles of new, primarily offshore natural gas pipeline (16-inch-diameter pipeline) referred to as the Deer Island Lateral; and
- Three new meter stations, four mainline valves, and related facilities.

The purpose of the proposed facilities would be to transport about 150,500 dekatherms per day of natural gas to five customers in Massachusetts and Connecticut. In addition, the project would provide leased capacity of 80,000 dekatherms per day of natural gas for Texas Eastern Transmission Corporation.

Joint State and Federal Review

On January 16, 2001, the Secretary of the Executive Office of Environmental Affairs for the Commonwealth of Massachusetts issued a Certificate on the Environmental Notification Form (state Certificate) for these projects. The Secretary determined that the projects require the preparation of an Environmental Impact Report (EIR) pursuant to the Massachusetts Environmental Policy Act (MEPA).

In order to accomplish the goal of addressing the requirements of both the state and the Federal government in a "single" document, the Applicants intend to file the DEIS with the MEPA office along with supplemental materials (Supplement) that will respond to specific issues identified in the state Certificate and in the comments submitted on the Environmental Notification Form (ENF) that may not have been identified or specifically addressed in the DEIS. The Supplement will include an appendix containing ENF comment letters with indexed and narrative responses by the Applicants. The Supplement and the DEIS are collectively intended to comprise the Draft EIR for purposes of review under MEPA.

The Applicants intend to file the Supplement with the MEPA office and the Commission as soon as practicable following the issuance of the DEIS so as to match as closely as possible the state and Federal comment periods. The Applicants have stated that they will consider, at the appropriate time, requesting an extension of either comment period so that commentors will have the opportunity to file a single set of comments with both the Commission and MEPA.

This DEIS has been distributed to the commentors and others listed in the state Certificate.

Comment Procedures and Public Meeting

Any person wishing to comment on the DEIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas 2, PJ11.2;
- Reference Docket Nos. CP01–4–000, CP01–5–000 and CP01–8–000; and

• Mail your comments so that they will be received in Washington, DC on or before August 27, 2001.[1]

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on "Login to File" and then "New User Account."

We will announce in a future notice, the location and time of at least one local public meeting to receive comments on the DEIS.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a Final Environmental Impact Statement (FEIS) will be published and distributed by the staff. The FEIS will contain the staff's responses to timely comments filed on the DEIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this DEIS. You must file your request to intervene as specified above. [2] You do not need intervenor status to have your comments considered.

The DEIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

A limited number of copies are available from the Public Reference and Files Maintenance Branch identified above. In addition, copies of the DEIS have been mailed to Federal, state and local agencies, public interest groups, individuals who have requested the DEIS, newspapers, and parties to this proceeding. It has also been distributed to the commentors and others listed in the state Certificate.

[1] The front material in the DEIS incorrectly identifies September 3, 2001 as the end of the comment period.

[2] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.gov) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 01–17455 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 6, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 1494–230.

c. *Date Filed:* May 31, 2001.

d. *Applicant:* Grand River Dam Authority (GRDA).

e. *Name of Project:* Pensacola Dam.

f. *Location:* The proposed action is located on the Grand Lake O' The Cherokees in Section 7, Township 24 North, Range 23 East, in Delaware County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mary E. Von Drehle, Assistant General Counsel, Grand River Dam Authority, P.O. Box 409 Vinita, Oklahoma 74301, (918) 256–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Brian Romanek at (202) 219–3076.

j. *Deadline for filing comments and or motions:* August 17, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the specific project number (P–1494–230) on any comments or motions filed.

k. *Description of Request:* GRDA proposes to permit White Chapel Homeowners Association to reconfigure two docks and install a breakwater within the project boundary. Presently the docks have 14 boat slips and after construction there would be 18 boat slips. The docks would provide boat access and docking on the project reservoir for residents of the White Chapel community. The slips would be constructed adjacent to an area with about 30 existing boat slips that serve the same residential area.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title

"COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17461 Filed 7–11–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 6, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 1494–231.

c. *Date Filed:* June 19, 2001.

d. *Applicant:* Grand River Dam Authority (GRDA).

e. *Name of Project:* Pensacola Dam.

f. *Location:* The proposed action is located on the Grand Lake O" The Cherokees in Section 12 Township 23 North, Range 22 East, in Drowning Creek, Delaware County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791 (a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mary E. Von Drehle, Assistant General Counsel, Grand River Dam Authority, P.O. Box 409 Vinita, Oklahoma 74301, (918) 256–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Brian Romanek at (202) 219–3076.

j. *Deadline for filing comments and or motions:* August 17, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the specific project number (P–1494–231) on any comments or motions filed.

k. *Description of Request:* The Grand River Dam Authority (GRDA) proposes to permit Hi-Lift Marina to add 15 boat slips to existing piers and to construct one new pier to accommodate 20 boat slips. A breakwater is also proposed to be constructed. The slips would be for the patrons of Hi-Lift Marina in the Fox Hollow/Drowning Creek area.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17462 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 6, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12053–000.

c. *Date filed:* June 18, 2001.

d. *Applicant:* Nicholas E. Josten.

e. *Name of Project:* West Valley A and B Project.

f. *Location:* On the South Fork Pit River and West Valley Reservoir, in Modoc County, California. The project would use U.S. Forest Service land within the Modoc National Forest and the Bureau of Land Management's West Valley Dam and Reservoir.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Nick Josten, 2742 Saint Charles Avenue, Idaho Falls, ID 83404, (208) 524–3542.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

Please include the project number (P–12053–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of the following two developments:

West Valley A Development would consist of: (1) A proposed intake structure located in the irrigation canal, (2) a proposed 1,320-foot-long, 30-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit having an installed capacity of 760 kW, (4) a proposed 6-mile-long 13.8 kV transmission line, and (5) appurtenant facilities.

West Valley B Development using the existing Bureau of Land Management's West Valley Dam would consist of: (1) A proposed intake structure located at the existing outlet works, (2) a proposed 2,800-foot-long, 30-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit having an installed capacity of 680 kW, (4) a proposed 5-mile-long 13.8 kV transmission line, and (5) appurtenant facilities.

The project would have an annual generation of 6.2 GWh that would be sold to a local utility.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–17464 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 11641–003, 11649–003, 11654–003, 11657–003, 11660–003, 11668–003, 11771–003, 11772–003, 11776–003, 11821–003, 11822–002]

Universal Electric Power Corporation; Notice of Surrender of Preliminary Permits

July 6, 2001.

Take notice that Universal Electric Power Corporation, permittee for the projects listed below, has requested to surrender the preliminary permits because the proposed projects no longer meet their investment criteria.

Project No.	Project name	Stream	State	Expiration date
11641–003	Tionesta Dam	Tionesta Creek	PA	04–30–2002

Project No.	Project name	Stream	State	Expiration date
11649–003	Dierks Dam	Salina River	AR	07–31–2002
11654–003	Gillham Dam	Cossatot River	AR	05–31–2002
11657–003	Loyalhanna Dam	Loyahannak Creek	PA	07–31–2002
11660–003	Union City Dam	French River	PA	03–31–2002
11668–003	Bellville Dam	Sandusky River	OH	05–31–2002
11771–003	Delaware Dam	Olentangy River	OH	08–31–2002
11772–003	Blue Marsh Lake Dam	Tulpehocken Creek	PA	08–31–2002
11776–003	Rankin Lock & Dam	Tombigbee River	MS	08–31–2002
11821–003	Deer Creek Dam	Deer River	OH	12–31–2002
11822–002	Pishkum Dam	Deep Creek	MT	07–31–2003

The permittee filed the request on June 19, 2001, and the eleven preliminary permits shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case each permit shall remain in effect through the first business day following that day. New applications involving these project sites, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

David P. Boergers,

Secretary.

[FR Doc. 01–17463 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE & TIME: Tuesday, July 17, 2001 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, July 19, 2001 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Notice of Proposed Rulemaking on Brokerage Loans and Lines of Credit.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–17546 Filed 7–10–01; 11:42 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011463–005.

Title: East Coast North America to West Coast South America and Caribbean Cooperative Working Arrangement.

Parties: APL Co. PTE Ltd. Compania Chilena De Navegacion Interoceanica, S.A. Hamburg-Sud, d/b/a Crowley American Transport.

Synopsis: The proposed modification provides that the agreement will remain in effect until at least March 31, 2002.

Agreement No.: 011715–002.

Title: IMC/ATL Space Charter and Sailing Agreement.

Parties: Associated Transport Line, LLC, Colombia Express, LLC, Industrial Maritime Carriers (U.S.A.), Inc.

Synopsis: The proposed modification substitutes Associated Transport Line for Colombia Express as a party to the agreement and changes the name of the agreement accordingly.

Dated: July 6, 2001.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–17420 Filed 7–11–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

R&R Shipping, Incorporated, 162 Dongan Hills Avenue, Staten Island, NY 10305. Officer: Vincent Ruggiero, President (Qualifying Individual)

Ketras Cargo USA, Inc., 9280 NW 12th Street, Miami, FL 33172. Officer: Daniel Domingo Scocca, President (Qualifying Individual), Diego Miguel Cejas, Vice President

Palumbo USA Miami, Inc., 8405 NW 53rd Street, Suite B–220, Koger Center, Athens Bldg., Miami, FL 33166. Officer: John Trimarchi, President (Qualifying Individual)

Seabound Freight, Inc., 8209 NW 68th Street, Miami, FL 33166. Officer: Sandra Gonzalez, President (Qualifying Individual)

Newkor America, Inc., 4707 S. Hoover Street, Los Angeles, CA 90037. Officers: Jung Nam Choi, President, Se Hwan Park, Vice President (Qualifying Individual)

Global Alliance Logistics (L.A.) Inc., 9111 S. LaCienga Blvd., Suite 205, Inglewood, CA 90301. Officers: Bill Chan, President (Qualifying Individual), Ricky Fan, Vice President

Unico Logistics Inc., 147–04 183rd Street, Jamaica, NY 11413. Officer: Seung W. Kim (a.k.a. Sam Kim) (Qualifying Individual)

Key International Group, Inc. dba Key International Shipping, 539 E. Bixby Road, #22, Long Beach, CA 90807. Officers: Juliet Kong, President (Qualifying Individual), Stephen A. Taub, Vice President

Leric, Inc., 1930 Japonica Street, New Orleans, LA 70117. Officer: Gerald P. Risberg, President (Qualifying Individual)

Royal Cargo Line, Inc., 1936 NW. 82nd Avenue, Miami, FL 33126. Officers: Charlie Diaz, President (Qualifying Individual), Claudia Quintero, Vice President

Trans Logistics, Inc., 520 E. Carson Plaza Court, Suite 205, Carson, CA 90746. Officers: O. H. Kim, President, Daniel Lee, Vice President (Qualifying Individual)

ABCO International Freight (USA) Inc. dba ABCO Logistics, 746 Glasgow Avenue, Inglewood, CA 90301. Officers: Don Lucky, President, Michael Tsui, Chief Operating Officer (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Transtar Navigation (USA), Inc., 153–A Utah Avenue, South San Francisco, CA 94080. Officer: Alix K. Co, President (Qualifying Individual)

Hepta Run, Inc., 6515 Corporate Drive, Suite R, Houston, TX 77036. Officers: Mike (Wai) Fan, Chief Executive Officer (Qualifying Individual) Ed Tseng, President

Bayanihan Cargo International, Inc. dba Bayanihan Cargo, 925 Linden Avenue, Unit D, South San Francisco, CA 94080. Officers: Manuel A. Espinosa, President/General Manager (Qualifying Individual), Amparo A. Espinosa, Vice President

Load Group International Inc. dba Bosmas Int. Inc., 8378 NW. 68th Street, Miami, FL 33166. Officer: Hermann Lange Mosquera, President (Qualifying Individual)

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

MFI International Forwarding, Inc., 3460 N. Delaware Avenue, Suite 104, Philadelphia, PA 19134. Officers: Thomas J. Tobin, President (Qualifying Individual) Joseph Centanni III, Vice President

Pacmil Logistics 6155 Cornerstone Court East, Suite 100, San Diego, CA 92121. Officers: Habib Rayes, President, Sammy Chou, Secretary (Qualifying Individual)

Caterpillar Logistics Services, Inc., 100 NE Adams Street, Peoria, IL 61629. Officers: William F. Springer, President, Michael L. Lesko, Assistant Secretary (Qualifying Individual)

Global Logistics Management, LLC dba Global Logistics Management, 6633 Fence Row Court, Caledonia, MI 49316. Members: Lina Karadsheh, Member and Manager, Ryan Karadsheh, Member

Restricted Article Specialists, Inc., 844 Foster Avenue, Bensenville, IL 60101. Officers: Nicholas Ciolli, President, Denise Weidner, Secretary (Qualifying Individual)

Dated: July 6, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–17419 Filed 7–11–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 2001.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Spector Holdings Management, LLC, San Antonio, Texas; to become a bank holding company by acquiring 1 percent of the voting shares of Spector Holdings Limited Partnership, San Antonio, Texas, and thereby indirectly acquire voting shares of Luling Bancshares, Inc., Luling, Texas, Luling Delaware Financial Corporation, Dover, Delaware, and Citizens State Bank, Luling, Texas.

In connection with this application, Spector Holdings Limited Partnership, San Antonio, Texas, has applied to become a bank holding by acquiring 57.9 percent of the voting shares of Luling Bancshares, Inc., Luling, Texas, and thereby indirectly acquire voting shares of Luling Delaware Financial Corporation, Dover, Delaware, and Citizens State Bank, Luling, Texas.

In connection with this application, Luling Bancshares, Inc., Luling, Texas, and Luling Delaware Financial Corporation, Dover, Delaware, have applied to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank, Luling, Texas.

Board of Governors of the Federal Reserve System, July 6, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–17415 Filed 7–11–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 2001.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Dacotah Banks, Inc., Aberdeen, South Dakota; to acquire 100 percent of the voting shares of F&M Bank Holding Company of Valley City, Inc., Valley City, North Dakota, and thereby indirectly acquire voting shares of Farmers & Merchants Bank of Valley City, Valley City, North Dakota.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Cornerstone Bancshares, Inc., Overland Park, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Cornerstone Bank, Overland Park, Kansas (in organization).

Board of Governors of the Federal Reserve System, July 9, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–17453 Filed 7–11–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Northern Trust Corporation, Chicago, Illinois; to engage *de novo* in acting as commodity pool operator and acting as commodity trading advisor, *see Dresdner Bank AG, 84 Fed. Res. Bull. 361 (1998); The Bessemer Group, Inc., 82 Fed. Res. Bull. 569 (1996)*, and serving as investment advisor, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, July 6, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–17414 Filed 7–11–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its regulations ("regulations") under the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act" of the "Act"). The FTC is seeking public comments on its proposal to extend through August 31, 2004 the current PRA clearance for information collection requirements contained in the regulations. That clearance expires on August 31, 2001.

DATES: Comments must be filed by August 13, 2001.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade Commission, and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "Smokeless Tobacco Regulations: Paperwork comment."

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Rosemary Rosso, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2174.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On May 4, 2001, the FTC sought comment on the information collection requirements associated with the instant regulations, 16 CFR Part 307 (Control Number: 3084–0082). See 66 FR 22561. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Smokeless Tobacco Act regulations.[1]

[1] The Commission seeks comment on the costs and burdens imposed by the existing smokeless tobacco regulations. In March 2000, the Commission commenced a regulatory review of its smokeless tobacco regulations to determine whether there is a continuing need for the regulations and, if so, what revisions, if any, should be made. 65 FR 11944 (Mar. 7, 2000). In addition to comments sought on the costs and benefits of the existing regulations, the Commission requested comment on whether the regulations are effective in meeting the Smokeless Tobacco Act's format and display requirements and whether the current "safe harbor" approach is sufficiently enforceable. If the Commission determines that the regulations should be amended, it will commence a rulemaking proceeding. Should resulting amendments materially affect PRA burden, the Commission will notify OMB and seek amended clearance.

Description of the collection of information and proposed use: The Smokeless Tobacco Act requires that manufacturers, packagers, and importers of smokeless tobacco products include one of three specified health warnings on packages and in advertisements. The Act also requires that each manufacturer, packager, and importer of smokeless tobacco products submit a plan to the Commission specifying the method to rotate, display, and distribute the warning statement required to appear in advertising and labeling. The Commission is required by the Act to determine that these plans provide for rotation, display, and distribution of warnings in compliance with the Act and implementing regulations. With one exception, all of the affected companies have previously filed plans. However, the plan submission requirement continues to apply to a company that amends its plan, or to a new company that enters the market.

Burden Statement

Estimated annual hours burden: 1,000 hours (rounded). The FTC is retaining its existing burden estimate of 1,000 hours. This amount is based on the burden previously estimated for fourteen smokeless tobacco companies to prepare and submit amended compliance plans, and to permit at least three new companies to submit initial compliance plans. Though staff's calculations underlying the estimate totaled 560 hours, staff then conservatively rounded up its estimate to 1,000 hours. Staff firmly believes that this prior rounded estimate will fully incorporate any incremental effects of an additional three companies submitting plans.

Virtually all affected companies filed their plans long ago with the Commission. Additional annual reporting burdens would occur only if those companies opt to change the way they display the warnings required by the Smokeless Tobacco Act. Although it is not possible to predict whether any of these companies will seek to amend an existing approved plan (and possibly none will), staff conservatively assumes that each company will file one amendment per year. This estimate is conservative because, over the past three years, the Commission has reviewed only two minor amendments to plans and the Commission has not changed the relevant regulations.[2] The estimated time to prepare the two amended plans was less than 20 hours each. The only major amendment of an approved plan, occurring more than three years ago, required only 40 hours to prepare, which is considerably less time than individual companies spent preparing their initial plans. Commission staff believes it reasonable to assume that each company would consume no more than 40 hours to prepare an amended plan.

Commission staff is currently reviewing an initial plan from a smokeless tobacco manufacturer, for an estimated additional burden of approximately 150 hours.[3] When the regulations were first proposed in 1986, representatives of the Smokeless Tobacco Council, Inc. indicated that the six companies it represented would require approximately 700 to 800 hours in total (133 hours apiece) to complete the initial required plans. Staff assumed that other, non-member companies would require more time, on average, to complete their plans. Staff conservatively estimated that this latter group of companies would each require approximately 150 hours, and it believes this estimate remains reasonable.

In addition to the estimates above, the Commission anticipates that in the next three years, up to two small importers, not currently participating in the domestic market, may submit initial plans, for an additional burden of approximately 80 hours. Over the past three years, two small importers submitted initial plans. Because these plans involved only a limited number of brands and no advertising, the estimated time to prepare the plans was very modest. Staff estimates that the companies spent no more than 40 hours each to prepare the plans.

Based on these assumptions, the total annual hours burden should not exceed 1,000 hours. [(14 companies amending their plans × 40 hrs. each) + (one manufacturing company submitting initial plan × 150 hours) + (2 importers submitting initial plans × 40 hrs. each) = 790 total hours, conservatively rounded up to one thousand hours.]

Estimated annual labor cost burden: $103,000

The total annualized labor cost to these companies should not exceed $103,000. This is based on the assumption that management or attorneys will account for 80% of the estimated 1,000 hours required to rewrite or amend the plans, at an hourly rate of $125, and that clerical support will account for the remaining time (20%) at an hourly rate of $15. [Management and attorneys' time (1,000 hrs. × 0.80 × $125 = $100,000) + clerical time (1,000 hrs. × 0.2 × $15 = $3,000).]

Estimated annual non-labor cost burden: $0 or minimal.

The Commission knows of no recordkeeping cost burden associated with the plans for the display of the warnings. The companies may keep copies of their plans to ensure the labeling and advertising complies with the requirements of the Smokeless Tobacco Act. Such recordkeeping would require the use of office supplies, e.g., file folders and paper, all of which the companies should have on hand in the ordinary course of their business.

While companies submitting initial plans may incur one-time capital expenditures for equipment used to print package labels in order to include the statutory health warnings or to prepare acetates for advertising, the warnings themselves disclose information completely supplied by the federal government. As such, the disclosure does not constitute a "collection of information" as it is defined in the regulations implementing the PRA, nor the extension, do the financial resources expended in relation to it constitute paperwork "burden." *See* 5 CFR 1320.3(c)(2). Moreover, any expenditures relating to the statutory health warning requirements would likely be minimal in any event. As noted above, virtually all affected firms have already submitted approved plans. For these companies, there are no capital expenditures. After the Commission approves a plan for the display of the warnings required by the Smokeless Tobacco Act, the companies must make additional submissions to the Commission only if there is a change in the way that they choose to display the warnings. Once the companies have prepared plates to print the required warnings on their labels, there are no additional set-up costs associated with the display of the warnings in labeling. Similarly, once the companies have prepared acetates of the required warnings for advertising and promotional materials, there are no additional set-up costs associated with printing the warnings in those materials.

Finally, capital expenditures for small importers are likely to be de minimis. Both firms that submitted plans over the past three years used stickers to place the warnings on their packages. The stickered warnings could be generated with office equipment and supplies such as computers and labels, all of

[2] See note 1.

[3] This company has been selling smokeless tobacco products for several years, but failed to submit a plan as required by the Act and the regulations. The company is in the process of obtaining approval of a complying rotational plan. Thus, most, if not all, of the 150 estimated burden hours likely will have been expended before August 31, 2001. However, erring on the conservative side, staff has included these hours in its burden estimate.

which the companies should have on hand in the ordinary course of their business. Because neither firm engaged in any advertising, no costs associated with advertising were incurred.

William E. Kovacic,

General Counsel.

[FR Doc. 01–17436 Filed 7–11–01; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Time and date: 9 a.m.–6 p.m., July 31, 2001.

Place: Children's Defense Fund Lodge, 1000 Alex Haley Lane, Clinton, TN 37716. Telephone: (865) 457–6466.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: A Memorandum of Understanding (MOU), signed in October 1990 and renewed in September 2000 between ATSDR and DOE, delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

Matters to be discussed: The agenda includes a discussion of consensus building techniques for committee members.

Agenda items are subject to change as priorities dictate.

Contact person for more information: La Freta Dalton, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/498–1744.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 6, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–17430 Filed 7–11–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01144]

CDC Support To Improve Uptake of Prevention of Mother to Child Transmission of HIV (PMTCT) Programme in Botswana; Notice of Availability of Program Support

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year FY 2001 funds for a grant program for the PMTCT Programme, Ministry of Health and Ministry of Local Government, Botswana. This program addresses the "Healthy People 2010" focus areas of Access to Quality Health Services, Health Communications, Maternal, Infant, and Child Health and Sexually Transmitted Diseases.

The project is a nationwide prevention program targeting pregnant females to identify HIV positive pregnant women so they may receive antiretroviral prophylactic treatment to prevent the transmission of HIV to their newborn children.

The Government of Botswana will take receipt of the equipment and list as its property to be maintained by them as any other equipment.

B. Eligible Applicants

Assistance will be provided only to the Government of Botswana, Ministry of Health. No other applications are solicited.

This is a sole source grant to provide assistance to the Government of Botswana in the form of equipment to enhance the ability of the program to provide confidential pre- and post-test HIV counseling, and identify HIV positive women eligible for antiretroviral prophylactic treatment so that HIV is not transmitted to the new born child.

The MOH is the only appropriate and qualified organization to fulfill the requirements set forth in this announcement because:

1. The Ministry of Health is uniquely positioned in terms of constitutional authority, mandate, and ability to oversee and safeguard public health. Additionally, it provides over 95% of health care services in Botswana and is the only health care agency to provide AZT, which is a crucial component of the PMTCT program. No other health care agency in Botswana is able to provide free health care services to the general public. The MOH has the unique ability to extend services to all parts of the country.

2.The MOH has in place the central, district, and community based support structure such as clinics and staff to immediately engage in the activities listed in this announcement.

3. The MOH is directly responsible for the implementation, monitoring, and evaluation of population-based HIV/AIDS prevention and care policies and services.

C. Availability of Program Support

It is expected that the support will begin on or about September 30, 2001 and will be made for a 12-month budget period within a project period of up to 2 years.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports.

Use of Support

Support is limited to the transfer of equipment to support the specified program activities.

Recipient Participation

The Ministry of Health of Botswana will provide the land, staff, medicines, utilities, and other supplies necessary to carry out the program to prevent mother-to-child transmission of HIV.

D. Program Requirements

In conducting activities to achieve the purpose and meet the objectives of this program, the recipient will be responsible for the following activities:

1. Selecting the sites for equipment installation.
2. Accepting, installing, and maintaining all property and equipment.
3. Integrating the equipment and group videotape into clinics to be used for the intended purpose.
4. Assuming all liability issues and maintaining all appropriate insurance, e.g. accident or property. Indemnify and hold harmless all US Government interest for any personal or property issue. If necessary, providing appropriate storage and coverage for any other incidental costs.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm

On or before August 9, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

G. Evaluation Criteria

Your application will be evaluated against the following criteria by an independent review group appointed by CDC.

1. Program Plan (25 Points)

The extent to which the applicant specifies the number of videotapes, videotape players, televisions, cabinets, portable buildings and other related equipment needed to show the videotapes which were designed for group pre-test counselling in the approximately 260 clinics and hospitals which provide antenatal clinic (ANC) services.

2. Program Objectives (25 Points)

The extent to which the program objectives are measurable, realistic, specific, and timephased.

3. Methods (25 Points)

The extent to which the applicant describes the methods for accomplishing the proposed objectives and identifies where activities or services will take place. This includes a description of how the applicant will receive and organize the equipment, how the equipment will be used in program activities, and how the applicant will coordinate the installation, maintenance and oversee the proper use and operation of the equipment.

4. Evaluation Plan (25 Points)

The extent to which the applicant describes how the use of the portable buildings by the PMTCT program and/or the clinics will be monitored; and describes methods to assess evidence of use and increases in program participation or up-take attributed to the success of this activity.

The extent to which the applicant describes evaluation activities to assess the impact of the PMTCT videotape and Group HIV Pretest Counselling activities; the ability of the videotape to be successfully integrated into the ANC setting, improve acceptance of counselling, testing, and short-course AZT among eligible pregnant women, and improve health care worker support and implementation of the PMTCT program in Botswana.

5. Equipment List (Not Scored)

The extent to which the applicant itemizes the type and amount of equipment requested.

H. Other Requirements

Technical Reporting Requirements Provide CDC with original plus two copies of quarterly progress reports regarding the acceptance and installation of the equipment.

An annual depreciation report must be submitted to CDC, until the point where the equipment's book value reaches $5,000. All reports shall be stated in U.S. dollars.

There will be a written agreement to execute the transfer of the equipment.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program.

AR–4 HIV/AIDS Confidentiality Provisions

AR–5 HIV Program Review Panel Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–14 Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, 42 U.S.C. section 242I, as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000 MS–15, Atlanta, GA 30341–4146, Telephone number: 770–488–2782, email address: dpr7@cdc.gov.

For program technical assistance, contact: Ethleen S. Lloyd, c/o U.S. Embassy Gaborone, 2170 Gaborone Place, Washington, DC 20521, Phone: +267–301–696, Fax: +267–373–117, E-mail: esl1@cdc.gov.

Dated: July 2, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–17040 Filed 7–11–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 2001–07]

Family Violence Prevention and Services Program, National Resource Center on Domestic Violence and Four Special Issue Resource Centers; Availability of Funds for Fiscal Year 2001 and Request for Applications

AGENCY: Office of Community Services (OCS), ACF, DHHS.

ACTION: Notice; correction.

SUMMARY: This notice corrects the announcement of Family Violence Prevention and Services program, National Resource Center on Domestic Violence and Four Special Issue Resource Centers; Availability of funds for Fiscal Year 2001 and Request for Applications published on June 12, 2001 (66 FR 31657).

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Office of Community Services, Division of State Assistance, 370 L'Enfant Promenade, SW, Washington DC 20447. Telephone William Riley, (202) 401–5529, James Gray, (202) 401–5705, Sunni Knight (202) 401–5319 or Shena Russell, (202) 205–5932.

Correction

In the **Federal Register** issued June 12, 2001 (66 FR 34657), make the following correction. On page 31661 in the first column, remove the paragraph under Budget Period and Federal Share, and replace with:

"The total FY 2001 Federal share for the four cooperative agreements in support of four Special Issue Resource Centers (SIRCs) is $4,351,075 for the first 12-month budget period, subject to the availability of funds."

(Catalog of Federal Domestic Assistance number 93.592, Family Violence Prevention and Services)

Dated: July 7, 2001.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 01–17441 Filed 7–11–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 2001–08]

Fiscal Year 2001 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications

AGENCY: Office of Community Services (OCS), ACF, DHHS.

ACTION: Notice; correction.

SUMMARY: This notice corrects the announcement of Fiscal Year 2001 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications published on July 2, 2001 (66 FR 34996).

FOR FURTHER INFORMATION CONTACT: Margaret Washnitzer, Director of State Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447 (202) 401–9343.

Correction

In our notice issued July 2, 2001 (66 FR 34996), make the following correction. On page 34998 in the first column, the first full paragraph, in the fifth line after the word, "follows", remove the four priority and subpriority areas and all the language therein, and add;

Priority Area 1.0: Training and Technical Assistance for ROMA Implementation

Sub-Priority Areas

1.1 National Academy (NA)
1.2 Leadership Development (LD)
1.3 Train-the-Trainers (TT)
1.4 Best Practices (BP)
1.5 Impact Information (IF)
1.6 Special ROMA Technical Assistance (RM)

Priority Area 2.0: CAA Capacity Building

Sub-Priority Areas

2.1 National Training (CB)
2.2 Collection, Analysis and Dissemination of Information On the CSBG Activities (IS)
2.3 Local Capacity Building (CP)
2.4 Strengthening CAA Capacity to Address Legal Issues (LF)
2.5 Addressing Urban Needs (UI)
2.6 State CAA Association Capacity Building (EQ)

Priority Area 3.0: Strengthening At-Risk Agencies

Sub-Priority Areas

3.1 Special State Technical Assistance
3.2 National Peer-to-Peer Assistance

Priority Area 4.0: Information Sharing

Sub-Priority Area

4.1 Information Sharing Tools

Dated: July 7, 2001.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 01–17440 Filed 7–11–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of OIG Special Advisory Bulletin on Practices of Business Consultants

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth a recently issued OIG Special Advisory Bulletin addressing certain questionable marketing and other practices by independent business consultants. These practices may put the Medicare and Medicaid programs at increased risk of fraud and abuse. The purpose in issuing this bulletin is to alert providers, suppliers and others to those practices.

FOR FURTHER INFORMATION CONTACT: Vicki Robinson, Office of Counsel to the Inspector General, (202) 619–0335.

SUPPLEMENTARY INFORMATION: In an effort to identify and eliminate fraud, waste and abuse, the Office of Inspector General (OIG) periodically develops and issues Special Advisory Bulletins to alert health care providers about industry practices and arrangements that potentially pose a risk to the Federal health care programs. The purpose of this Special Advisory Bulletin is to identify certain questionable practices that are engaged in by a small number of consultants and to emphasize the need for health care providers to exercise good business judgment when selecting and relying on a consultant. A reprint of the recently issued Special Advisory Bulletin follows.

Special Advisory Bulletin on Practices of Business Consultants (June 2001)

Introduction

The Office of Inspector General (OIG) was established at the Department of Health and Human Services (HHS) by Congress in 1976 to identify and eliminate fraud, abuse, and waste in the Department's programs, including the Medicare and Medicaid programs, and to promote efficiency, economy, and effectiveness in departmental operations. Historically, the OIG has

primarily carried out this mission through a nationwide program of audits, investigations, and inspections. More recently, the OIG has augmented its efforts to detect fraud, abuse, and waste with increased efforts to promote prevention through the issuance of guidance to the health care industry.

Providers, suppliers, and others [1] involved in the health care industry not only serve the health care needs of Federal program beneficiaries, but they also play an essential role in safeguarding the integrity of the Federal programs. As part of our commitment to working with industry, we want to alert providers to certain marketing and other practices used by some independent consultants that should concern providers and that may put the Medicare and Medicaid programs at increased risk of abuse. While some of the practices described in this bulletin may not themselves rise to the level of fraud and may not be illegal in all cases, all of the practices increase the risk of abuse of the Medicare and Medicaid programs. We encourage providers to recognize and protect themselves and the Federal programs against these questionable practices. Providers use the legitimate services of consultants, such as accountants, attorneys, business advisors, and reimbursement specialists, for many *bona fide* reasons, including, for example, improving the efficiency and effectiveness of the provider's operations (including its coding and billing systems), enhancing the accuracy of the provider's claims, conserving resources through outsourcing, and ensuring compliance with applicable laws, regulations, and rules. Responsible consultants play an integral role in developing and maintaining practices that enhance a client's business objectives, as well as improving the overall integrity of the health care system.

We believe that most consultants, like most providers, are honest and that the vast majority of relationships between providers and consultants are legitimate business activities. Unfortunately, a small minority of unscrupulous consultants engage in improper practices or encourage abuse of the Medicare and Medicaid programs. Depending on the circumstances, these practices may expose both the consultants and their clients to potential legal liability.[2] Hiring a consultant does not relieve a provider of responsibility for ensuring the integrity of its dealings with the Federal health care programs.

Questionable Practices

To safeguard themselves, providers engaging the services of consultants should be alert to the following questionable practices:

Illegal or Misleading Representations. Consultants may make illegal or misleading statements or representations about their relationship with the Medicare program, the Centers for Medicare and Medicaid Services (CMS),[3] or the OIG. For example, consultants may misrepresent that they have "inside" or "special" access to the OIG or to OIG materials. In other cases, consultants may misrepresent that their services or products are approved, certified, or recommended by Medicare, CMS, HHS, or the OIG. Such claims are misleading and potentially harmful to well-meaning providers. Illegal or misleading statements or representations include, for example:

- An educational consultant misrepresenting that its Medicare reimbursement seminars are mandatory for obtaining or maintaining a Medicare provider number. Although such training may be valuable, the Medicare program does not require a provider to attend training courses in order to participate in the Medicare program.
- A consultant misrepresenting that a provider that fails to attend its "Medicare-sanctioned" seminars will be subject to Government penalties. In truth, the Government does not penalize providers for such conduct.
- A consultant improperly using Federal program logos or symbols on its marketing materials.[4]
- A consultant claiming that it is recommended by the OIG. The OIG does not recommend or endorse particular consultants or particular consultants' services.
- A compliance consultant falsely asserting or implying that it offers recognized accreditation or certification for compliance programs or compliance officers.

Promises and Guarantees. Consultants may explicitly or implicitly promise or guarantee specific results that are unreasonable or improbable. In some cases, consultants may resort to improper means to effectuate these promises or guarantees, such as submitting false claims or preparing false cost reports on behalf of a client. This misconduct potentially subjects both the consultant and the provider to liability under the False Claims Act.[5] Problematic promises would include, for example:

- A valuation consultant promising or assuring a client that its appraisal of a physician's practice will yield a "fair market value" that satisfies the client's need for a particular valuation, regardless of the actual value of the practice.
- A billing consultant promising a prospective client that its advice or services will produce a specific dollar or percentage increase in the client's Medicare reimbursements. The consultant's fee is often based on a percentage of this increased reimbursement.

Encouraging Abusive Practices. Some consultants may knowingly encourage abuse of the Medicare or Medicaid programs. In some cases, reimbursement specialists or other consultants advocate that their clients engage in aggressive billing schemes or unreasonable practices that are fraudulent or abusive of the Medicare or Medicaid programs. This conduct potentially subjects both the consultant and the client to liability under the False Claims Act. For example:

- A reimbursement specialist may suggest that a client use inappropriate billing codes in order to elevate reimbursement and may describe methods to avoid detection.
- A consultant may encourage a client to modify or customize a routine medical supply in an insignificant manner to justify billing the supply as a device that generates higher reimbursement.
- A reimbursement specialist may advise a client to bill for an expensive item or service with a high reimbursement rate when a less expensive item or service with a lower reimbursement rate was actually provided to the patient.
- A consultant may advise a client to adopt a patently unreasonable interpretation of a reimbursement law, regulation, or rule to justify substantially greater reimbursement.
- A consultant may promise to increase Medicare revenues for laboratory services by showing its clients how to disguise double billings and claims for medically unnecessary services.
- A consultant may suggest the creation of deceptive documentation in order to mislead potential reviewers.

Discouraging Compliance Efforts. Some consultants may make absolute or blanket statements that a client should not undertake certain compliance efforts (such as retrospective billing reviews) or cooperate with payor audits, regardless of the client's circumstances. As reflected in the OIG's compliance guidances,[6] the OIG believes that voluntary compliance efforts, such as internal auditing and self-review, are important tools for doing business with the Federal health care programs. Left undetected and, therefore, unchecked and

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[1] For purposes of simplicity, the term "providers" as used in this bulletin refers to providers, suppliers, and practitioners that provide items or services payable in whole or in part by a Federal health care program.

[2] The practices described in this bulletin are illustrative, and this bulletin does not purport to identify every potentially improper practice arising from the relationship between a provider and a consultant, nor does it purport to identify every potential violation of the criminal or civil statutes. In particular, this bulletin is not intended to identify every potential violation of the False Claim Act or the anti-kickback statute, although some of the practices described may contribute to, or increase the risk of, violations of these provisions. This bulletin does not address the many fraud and abuse concerns that arise from sham consulting arrangements.

[3] The Health Care Financing Administration (HCFA) renamed the Centers for Medicare and Medicaid Services; misuse of the new or former name would be equally deceptive.

[4] Section 1140 of the Social Security Act prohibits the improper use of the words "Medicare", "Medicaid", "Health Care Financing Administrator", "HCFA", "Department of Health and Human Services", "DHHS", "Health and Human Services", "HHS", "Social Security", "Social Security Account", "Social Security System", "Social Security Administration", "Supplemental Security Income Program", "SSI", and "SSA", and any variation on these words, as well as the symbols or emblems for the SSA, HCFA and HHS. Violations are punishable by civil money penalties of $5,000 per violation (in the case of mail solicitation or advertisement, each piece of mail constitutes a separate violation) or $25,000 in the case of a broadcast or telecast. The OIG enforces this authority.

[5] The False Claims Act ascribes liability only where the party knows or acts with reckless disregard or deliberate ignorance of the falsity of the claim.

[6] The OIG's compliance guidances are available on our webpage at http://www.hhs.gov/oig.

uncorrected, improper billing or other conduct may exacerbate fraud and abuse problems for a provider in the future.

Conclusion

Consultants who abuse their position of trust pose a risk to their provider clients, to the Federal health care programs, and to themselves. While most consultants are honest and provide valuable services to their clients, a small minority engage in questionable practices or promote abuse of the Federal health care programs. In general, if a consultant's advice seems too good to be true, it probably is. We urge providers to be vigilant and to exercise judgment when selecting and relying on consultants.

Dated: July 3, 2001.

Michael F. Mangano,

Acting Inspector General.

[FR Doc. 01–17484 Filed 7–11–01; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–46]

Notice of Submission of Proposed Information Collection to OMB Outline Specifications

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 13, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0012) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Outline Specifications.

OMB Approval Number: 2577–0012.

Form Numbers: HUD–5087.

Description of the Need for the Information and Its Proposed Use: Information is prepared by the architect employed by the Public Housing Agency (PHA) or Turnkey Developers to establish types and qualities of materials and equipment to be incorporated into public housing developments. The PHA and HUD use this information to determine that suitable equipment and materials specified comply with the code and standards and are appropriate in the development. Applicable authority is Section 6(A) of the U.S. Housing Act of 1937.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion and monthly.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden	240		2.98		3.70		2,652

Total Estimated Burden Hours: 2,652.

Status: Extension of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 29, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–17422 Filed 7–11–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–47]

Notice of Submission of Proposed Information Collection to OMB Analysis of Proposed Main Construction Contract

AGENCY: Office of the Chief Information Officer, HID.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 13, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding the proposal. Comments should refer to the proposal by name/or OMB approval number (2577–0037) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov;

telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained fron Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) to OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Analysis of Proposed Main Construction Contract.

OMB Approval Number: 2577–0037.

Form Numbers: HUD–52396.

Description of the Need for the Information and Its Proposed Use: Housing Agencies must prepare and submit main construction contracts for projects proposed or being developed under the Low-income Housing Program. HUD form 52396 indicates the approved pre-bid budget amounts for various elements in a construction project, the actual bid for these same elements, any proposed changes in these amounts and the actual final adjusted for each category. It is a comparison of actual bid costs on a conventionally developed public housing project to the approved pre-bid estimate. Information is submitted to HUD to gain approval for award of a construction contract.

Respondents: State, Local or Tribal Government.

Frequency of Submission: Recordkeeping and reporting.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden	96		1.14		2.25		248

Total Estimated Burden Hours: 248.

Status: Extension of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 29, 2001

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–17423 Filed 7–11–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–48]

Notice of Submission of Proposed Information Collection to OMB 24 CFR Parts 55, Floodplain Management

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 13, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0151) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable, (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: 24 CFR Parts 55, Floodplain Management.

OMB Approval Number: 2506–0151.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: 24 CFR 55 implements decisionmaking procedures prescribed by E.O. 11988 with which applicants must comply before HUD financial assistance can be approved for projects that are located within floodplains. Records of compliance must be kept.

Respondents: Business or other for-profit, not-for-profit institutions, State, Local, or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden:	300		1		9		2,700

Total Estimated Burden Hours: 2,700.
Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 5, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–17424 Filed 7–11–01; 8:45 am]
BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Customer Satisfaction Survey; Information Collection

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection.

SUMMARY: The Bureau of Indian Affairs of the Department of the Interior is preparing a customer satisfaction survey to determine the quality of its services and its program delivery. Our intent is to improve our services and program delivery based upon the results of these surveys. The Bureau of Indian Affairs is requesting comments about this customer satisfaction survey project.

DATES: The deadline for comments to be received is September 10, 2001.

ADDRESSES: Commenters may submit comments to the Bureau of Indian Affairs via electronic mail (email), telefax or postal mail for the duration of the comment period. Comments by email must refer to "Customer Satisfaction Survey comments" and be sent to this email address: *jeanninebrooks@bia.gov*. Comments by fax must refer to "Customer Satisfaction Survey comments" and faxed to (202) 208–6635. The postal mail address is Bureau of Indian Affairs, Office of Planning, Budget and Management Support, 1849 C Street, NW, MS 4612–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jeannine Brooks, Supervisory Budget Analyst, Bureau of Indian Affairs, Office of Planning, Budget and Management Support, Branch of Strategic Planning, 1849 C Street, NW, MS 4612–MIB, Washington, DC 20240, (202) 219–1650; email: *jeanninebrooks@bia.gov*

SUPPLEMENTARY INFORMATION:

I. Background

The needs of the public in Indian Country are substantial. American Indians are younger and have higher levels of poverty, unemployment, single parent families, fertility and mortality than the U.S. population at large. Tribal self-determination relies on strong tribal self-governance and self-sufficiency.

The Bureau of Indian Affairs' mission statement is to fulfill its trust responsibilities and promote self-determination on behalf of tribal governments, American Indians and Alaska Natives. More specifically, the self-determination mission goal is to provide tribes with the resources they need to foster strong and stable tribal governments and exercise their authority as sovereign nations. The Community Development mission goal states that the Bureau of Indian Affairs will assist in strengthening tribal communities through the development of self-sustaining economies and improved human and physical infrastructure. To fulfill the mission statement and meet each of the Bureau of Indian Affairs' mission goals, the Bureau of Indian Affairs must deliver quality services and coordinate its work through government-to-government relationships with State, local and tribal governments. To evaluate the success of its efforts in meeting its goals and the needs of Indian Country, the Bureau of Indian Affairs is proposing to administer a series of customer satisfaction surveys. Within its major program areas, there are potentially several different types of customers. For example, the customers of the Bureau of Indian Affairs' Office of Tribal Services range from individual Indians and contractors to State and tribal governments.

Federal agencies are required by Federal Law and Executive Order to take certain steps to assure performance of Federal management objectives. The Government Performance and Results Act of 1993 (GPRA) requires agencies to take steps to measure their effectiveness in meeting their mission. In addition, Executive Order 12862 mandates that agencies take steps to survey customers to determine their desired services and their satisfaction with existing services. Customers will be provided 60 days to respond to the survey.

II. Discussion

A. Administrative Requirements

These information collections enable the Bureau of Indian Affairs to help the Department of the Interior meet the requirements of Executive Order 12862, Setting Customer Service Standards, which requires agencies to annually "survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services."

The Bureau of Indian Affairs customer satisfaction project will be administered by the Office of Planning, Budget and Management Support. All information provided through the surveys will be held in confidence and used only by the Office of Planning, Budget and Management Support for analysis. No identifying information will be shared with other offices within the Bureau of Indian Affairs. However, the Office of Planning, Budget and Management Support will share the results in report form with the Bureau of Indian Affairs management and its program areas without identifying specific sources.

The Office of Planning, Budget and Management Support will manage all aspects of the survey including dissemination, data analysis and results reporting. Approximately 6,500 surveys will be mailed to the customers. It is anticipated that between 2,500 to 3,000 respondents would be needed to make meaningful statements or analysis about customer satisfaction.

Any comments received during the public comment period will be considered in the development of the final survey instrument. Federal regulations require that agencies utilize such steps when developing any information collection from the public; regulations also require that such information collection be approved by the Office of Management and Budget (OMB) prior to collection. The Branch will present an information collection request to OMB which summarizes all steps taken related to the proposed surveys. As noted previously, the Bureau of Indian Affairs had several major program areas which provide public services. These range from trust responsibilities through law enforcement and human services. The Branch proposes to survey customers of all of the Bureau of Indian Affairs' service programs. The initial mission area to be examined will be the Office

of Tribal Services. The Office of Tribal Services is a broad collection of programs and functions ranging from social services and housing to tribal courts.

B. Survey Content

This section reproduces the major questions of the proposed surveys. Comments are invited on the questions' content and verbiage. The reader should note that the Bureau of Indian Affairs plans to do a mail survey; because of formatting limitations with the **Federal Register**, the Bureau of Indian Affairs has not reproduced the visual format of the questions. The actual surveys will be more user friendly.

Office of Tribal Services Survey

The following questions will be repeated in the actual survey for the various segments of the Office of Tribal Services. For illustrative purposes in this **Federal Register** notice, the questions are reproduced for only one of the Tribal Service's functional areas.

1. In the past 12 months, I have contacted the Office of Tribal Services regarding:

Judicial Services; Self Determination; Contract Support issues; Tribal Enrollment; Tribal Relations; Tribal Federal Acknowledgment; Housing; Social Services: (for each, check one) Daily, Weekly, Monthly, Quarterly, Annually, None.

2. My primary contact with the Housing staff has been at the: (check one) Washington, DC Office; Regional Office; Agency/Field Station.

3. The staff I deal with most often is: (check one) Secretaries, Clerks, Office Assistants; Professional/Technical Staff; Managers, Office Supervisors; Don't Know.

4. The Housing staff is: Readily available; helpful; knowledgeable about their jobs; courteous/respectful (for each, check one) always, often, sometimes, rarely, never, don't know.

5. As far as the people handling the Branch of Housing are concerned, would you say that you have a great deal of confidence, only some confidence or hardly any confidence at all in them? (Check one) a great deal of confidence; only some confidence; hardly any confidence; don't know; not applicable.

6. The Branch of Housing: Is easy to contact; responds or takes action in a timely manner; provides accurate information; understands my needs; values me as a customer (for each, check one) always, often, sometimes, rarely, never, don't know.

7. For the past 12 months, I would rate the performance of the Branch of Housing in: listening to my comments or concerns; considering my comments or concerns; responding to information requests (check one for each) excellent, good, average, fair, poor, not applicable.

8. If the Branch of Housing's staff can make one improvement in its interaction with you, what should it be? (open-ended question)

9. One thing the Branch of Housing can do new or differently to aid its customers is to: (open-ended question).

10. Please share any additional comments you may have regarding the Branch of Housing. (open-ended question)

Questions 2 through 10 repeat for the following areas: Division of Self-Determination Services, Division of Acknowledgment and Research, Branch of Social Services, Branch of Judicial Services and Division of Tribal Government Services.

III. Request for Comments

This notice covers the main points of the proposed survey. During the comment period, anyone may submit comments or suggestions related to any aspect of the proposed information collection.

A. Areas for Comment

This notice covers the main points of the proposed survey. During the comment period, anyone may submit comments or suggestions related to any aspect of the proposed information collection. The results of the survey will be used by the Bureau of Indian Affairs to improve delivery of its services to its customers. This action and this notice follows the requirements of the Government Performance and Results Act of 1993 (GPRA), Executive Order 12862, and the Paperwork Reduction Act of 1995. The Bureau will consider the comments received, make any warranted changes to its survey, and submit the information collection package to the Office of Management and Budget for approval. No survey will be conducted until we have received approval from the Office of Information and Regulatory Affairs, Office of Management and Budget. The surveys will display the OMB Control number and expiration date.

The Bureau of Indian Affairs invites your comments on the information collection concerning:

(a) Is the information necessary for the proper performance of the Bureau's functions?

(b) Is the request duplicated elsewhere?

(c) Is the request burdensome, hard to understand?

(d) Does it inform the respondent of the reason for collection, give a realistic time to complete the survey, inform the respondent whether the response is voluntary, mandatory, or required for a benefit, whether a copy must be retained and the length of time?

(e) Can the survey use any other information technology to lessen the respondent's burden?

B. Flexibility

The Bureau of Indian Affairs is considering ways to increase flexibility, including considering the possibility of allowing electronic returns. We estimate that 95 percent of surveys will be distributed by the Bureau of Indian Affairs and returned to it via postal mail. A small percent (5 percent) is expected to be returned via telefax. Of those sent and/or returned electronically, we expect those respondents to be organizational entities such as tribal governments or State governments.

C. Burden

Type of Action: New collection.

Title: Customer Satisfaction Survey.

Target Public: Tribes, Individual Indians and Alaska Natives, Individuals and Groups petitioning for Federal recognition, State and local offices.

Description of Collection: Survey of customer satisfaction with levels of services provided.

Number of Respondents: The Office of Planning, Budget and Management Support estimates that approximately 2,500 to 3,000 responses will be needed to complete an analysis for a major Bureau of Indian Affairs program area.

We estimate that completion of a survey will take 24 minutes per respondent; this figure includes time to read the introductory postcard, time to read and complete the survey, and time to mail the survey. As planned, we will provide a self-addressed stamped envelope for the survey to be returned; we believe that will aid in the response rate and minimize the burden on respondents.

Annual Burden: 2500 respondents × 24 minutes = 1000 hours with negligible costs.

Dated: June 1, 2001.

James H. McDivitt

Deputy Assistant Secretary—Indian Affairs (Management).

[FR Doc. 01–16804 Filed 7–11–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to a Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Deputy Assistant Secretary—Indian Affairs (Management), Department of the Interior, through his delegated authority, has approved the Amendment between the Rosebud Sioux Tribe and the State of South Dakota, which was executed on May 14, 2001.

DATES: This action is effective July 12, 2001.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 29, 2001.

James H. McDivitt,

Deputy Assistant Secretary—Indian Affairs (Management).

[FR Doc. 01–17490 Filed 7–11–01; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–66363]

Public Land Order No. 7491; Withdrawal of Public Lands and Minerals in Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 167,137.69 acres of public lands from surface entry and mining, but not from sales, exchanges, or recreation and public purposes for a 20-year period. This order would also withdraw 15,813.12 acres of reserved Federal mineral interest from mining. The purpose of the withdrawal is for the protection of open space values of public lands. The lands have been and will remain open to mineral leasing and mineral material sales.

EFFECTIVE DATE: July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Dennis Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 775–861–6532.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from sales and exchanges under Sections 203 and 206 of the Federal Land Policy and Management Act, as amended, conveyances under the Recreation and Public Purposes Act, as amended, mineral material sales under the Materials Act of 1947, or mineral leasing under the Mineral Leasing Act of 1920, for the protection of public lands in Washoe County:

Mount Diablo Meridian

T. 20 N., R. 18 E.,
- Sec. 2, lots 1 to 4, inclusive, S½N½ (that portion north of the south boundary of R/W Nev-042776 for U.S. Highway 395).

T. 21 N., R. 18 E.,
- Sec. 4, lots 1 to 4, inclusive, S½NW¼, and SW¼;
- Sec. 6, lots 11 to 14, inclusive;
- Sec. 7, lots 9 to 12, inclusive; secs. 8 and 10;
- Sec. 12, N½, NW¼SW¼, S½SW¼, and SW¼SE¼;
- Sec. 14;
- Sec. 18, lots 9 to 12, inclusive;
- Sec. 22;
- Sec. 26, lots 1 and 2, W½NW¼NE¼, NW¼, N½SW¼, and W½SE¼;
- Sec. 27, W½NE¼, N½NW¼, and SE¼NW¼;
- Sec. 34, NE¼, E½NW¼, E½W½NW¼, SW¼SW¼NW¼, N½N½SW¼, and N½SE¼, (those portions north of the south boundary of R/W Nev-042776 for U.S. Highway 395).

T. 22 N., R. 18 E.,
- Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 4, lots 5 to 20, inclusive;
- Sec. 5, lots 5 to 8, inclusive, S½N½, and S½;
- Sec. 6, lots 3 to 6, inclusive;
- Sec. 8, lots 1 to 12, inclusive, and SW¼;
- Sec. 9 to 11, inclusive;
- Sec. 12, W½;
- Sec. 13, W½;
- Sec. 14, lots 1 to 8, inclusive, and W½;

Secs. 15, 16, and 17;
- Sec. 18, lots 1 to 4, inclusive;
- Sec. 20, lots 1 to 8, inclusive, and S½;
- Sec. 21;
- Sec. 22, lots 1 to 4, inclusive, NE¼, and S½;
- Sec. 23;
- Sec. 24, lots 1 to 4, inclusive, and SW¼;
- Sec. 25, W½;

Secs. 26 to 29, inclusive;
- Sec. 30, lots 1 to 4, inclusive;
- Sec. 31, lots 3 to 7, inclusive;
- Sec. 32, lots 1 to 6, inclusive, E½, E½NW¼, NE¼SW¼, and S½SW¼;
- Sec. 33;
- Sec. 34, lots 1 to 8, inclusive, and N½;
- Sec. 35;
- Sec. 36, lots 1 to 8, inclusive.

T. 23 N., R. 18 E.,
- Sec. 7, lots 2, 3, and 4;
- Sec. 8, lots 2 to 7, inclusive, SW¼NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
- Sec. 9, lots 1 to 4, inclusive;
- Sec. 12, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, and E½SW¼;
- Sec. 13, lots 1 to 10, inclusive, E½NW¼, and SW¼SW¼;
- Sec. 16, lots 1 to 10, inclusive, and E½SE¼;
- Sec. 17;
- Sec. 18, lots 1 to 4, inclusive;
- Sec. 19, lots 1 to 4, inclusive;
- Sec. 20;
- Sec. 21, lots 1 to 10, inclusive, and NE¼NE¼;
- Sec. 22, SE¼SW¼ and SE¼;
- Sec. 24, lots 1 to 6, inclusive, W½NW¼, N½SW¼, SE¼SW¼, and SE¼;
- Sec. 25;
- Sec. 26, lots 1 to 4, and SE¼NE¼;
- Sec. 27, NE¼, E½NW¼, and S½;
- Sec. 28, lots 1 to 12, inclusive, W½NE¼, and SE¼NE¼;
- Sec. 29;
- Sec. 30, lots 1 to 4, inclusive;
- Sec. 31, lots 1 to 4, inclusive;
- Sec. 32, lots 1 to 4, inclusive, N½, and N½S½;
- Sec. 33, lots 1 to 12, inclusive, and SE¼;
- Sec. 34, lots 1 to 7, N½, and SW¼SE¼;
- Sec. 35, lots 1 to 6, inclusive, and NE¼;
- Sec. 36, lots 1 to 8, inclusive, and N½.

T. 17 N., R. 19 E.,
- Sec. 12, lots 1 and 2, NE¼, E½NW¼, S½SW¼, and N½SE¼.

T. 20 N., R. 19 E.,
- Sec. 1, W½ lot 1 in NE¼, lot 2 in NE¼, lots 1 and 2 in NW¼;
- Sec. 2, lots 1 and 2 in NE¼, lots 1 and 2 in NW¼, and S½;
- Sec. 4, S½SW¼;
- Sec. 10, NW¼NE¼ and N½NW¼;
- Sec. 12.

T. 21 N., R. 19 E.,
- Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 8, N½NE¼, SE¼NE¼, and E½SE¼;
- Sec. 10;
- Sec. 11, SW¼NE¼, W½NW¼, NE¼SW¼, and W½SE¼;

Secs. 12 and 13;
- Sec. 14, N½;
- Sec. 16, N½ and SE¼;
- Sec. 22, SW¼;
- Sec. 24, SE¼NW¼ and SW¼;
- Sec. 25;
- Sec. 26, E½NE¼ and NE¼SE¼;
- Sec. 28, NE¼, N½SE¼, and SE¼SE¼;
- Sec. 36.

T. 22 N., R. 19 E.,

Sec. 1, lots 3 to 11, inclusive, SE¼NW¼, and NE¼SW¼;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 2, 3, and 4;
Sec. 4, lots 1 to 11, inclusive, S½NW¼, N½SW¼, and NW¼SE¼;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 9, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 10 and 12;
Sec. 14, SE¼SW¼;
Sec. 15, W½;
Sec. 16, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 22 and 24;
Sec. 26, NE¼, NE¼NW¼, N½SE¼, and SW¼SE¼;
Sec. 36.

T. 23 N., R. 19 E.,
Sec. 1, S½;
Sec. 2, S½;
Sec. 3, S½;
Sec. 4, S½;
Sec. 5, S½;
Sec. 6, lots 6 and 7, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 8 to 17, inclusive;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 20 to 29, inclusive;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 32, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 33, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 34, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 35, N½;
Sec. 36, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.

T. 16 N., R. 20 E.,
Sec. 1, lot 3, lot 2 in NE¼, lots 1 and 2 in NW¼, and SW¼NE¼;
Sec. 2, lots 1 and 2 in the NE¼, lots 1 and 2 in NW¼, N½S½, and S½SW¼;
Sec. 3, lots 1 and 2 in NE¼, lots 1 and 2 in NW¼, and S½;
Sec. 4, lots 1 and 2 in NE¼, and S½;
Secs. 9 and 10;
Sec. 11, Excepting therefrom the following:
(a) That portion conveyed to Western Union Telegraph Company.
(b) That portion conveyed to the State of Nevada.
(c) That portion conveyed to KMBJ, Inc.
(d) That portion described in the deed to AT&T Communications of Nevada;
Sec. 14, irregular Washoe County portion within W½W½;
Sec. 15;
Sec. 16, SE¼SE¼;
Sec. 20, E½, E½SW¼, and SW¼SW¼;
Sec. 30, lot 1 in NW¼, S½ of lot 2 in NW¼, lots 1 and 2 in SW¼, and E½.

T. 17 N., R. 20 E.,
Sec. 1, lot 2 in NE¼, lot 2 in NW¼, and SW¼SE¼;
Sec. 2, E½ of lot 1 in NE¼, lot 2 in NE¼, W½ of lot 1 in NW¼, lot 2 in NW¼, SW¼, and W½SE¼;
Sec. 8, E½, SE¼NW¼, NE¼SW¼, and S½SW¼;
Sec. 9, S½;
Sec. 10, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 11;
Sec. 12, E½, S½NW¼, and SW¼;
Secs. 13 to 16, inclusive;
Sec. 17, E½, NW¼, W½SW¼, and SE¼SW¼;
Sec. 18, E½E½, E½NE¼SW¼, NE¼SE¼SW¼, E½NE¼NW¼SE¼, E½NW¼NW¼SE¼, S½NW¼SE¼, NE¼SW¼SE¼, and S½SW¼SE¼;
Sec. 20, lots 1 and 2, N½, N½S½, SW¼SW¼, and SE¼SE¼;
Secs. 21 to 26, inclusive;
Sec. 28;
Sec. 29, lots 1, 2, and 3, S½N½, and S½;
Sec. 30, N½ of lot 1 in SW¼ and E½;
Sec. 32, N½N½, SE¼NE¼, SW¼NW¼, and E½SE¼;
Sec. 33;
Sec. 34, lots 1 and 2, N½, SW¼, and W½SE¼;
Sec. 35, lots 1 and 2, N½, E½SW¼, and SE¼;
Sec. 36, lots 1 to 16, inclusive.

T. 18 N., R. 20 E.,
Sec. 4, lots 5 and 6, inclusive;
Sec. 26, SW¼SW¼;
Sec. 28, SW¼SW¼;
Sec. 33, NE¼NW¼;
Sec. 34, E½NW¼SE¼NE¼, S½SE¼NE¼, E½NW¼SW¼NW¼, W½SE¼SW¼NW¼, NW¼NW¼SW¼, S½NW¼SW¼, SW¼SW¼, N½N½NE¼SE¼, N½SW¼NE¼SE¼, S½SE¼NE¼SE¼, W½SW¼SW¼SE¼, W½SE¼SW¼SW¼SE¼, E½E½SE¼SW¼SE¼, NE¼NE¼SE¼SE¼, W½SE¼SE¼, and S½SE¼SE¼SE¼.

T. 19 N., R. 20 E.,
Sec. 12, SE¼SW¼ and SW¼SE¼;
Sec. 14, SE¼NE¼ and SE¼;
Sec. 32, SE¼NE¼, S½S½NE¼SE¼, and S½SE¼;
Sec. 34, W½NW¼NW¼NE¼NE¼, S½NW¼NE¼NE¼, W½SW¼NE¼NE¼, SE¼NE¼NE¼, E½NE¼NE¼NW¼NE¼, SE¼NE¼NW¼NE¼, W½NE¼NW¼NE¼, SE¼NE¼NW¼NE¼, W½NE¼NW¼SW¼NE¼, W½NW¼SW¼NE¼, SE¼NW¼SW¼NE¼, W½NE¼SW¼SW¼NE¼, W½SW¼SW¼NE¼, SE¼SW¼SW¼NE¼, SE¼SW¼NE¼, E½SE¼NE¼, E½W½SE¼NE¼, N½NW¼, NE¼SE¼NW¼, W½NW¼SE¼NW¼, NE¼SW¼, E½SE¼, NW¼SE¼, and W½SW¼SE¼.

T. 20 N., R. 20 E.,
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 2, 3, and lots 8 to 11, inclusive, SE¼NW¼, E½SW¼, and S½SE¼;
Sec. 7, lots 1, 2, and lots 5 to 9, inclusive, W½NE¼, E½NW¼, NE¼SW¼, and N½SE¼SW¼;
Sec. 9, SW¼;
Sec. 14, lots 14, 18, 22, lots 43 to 50, inclusive, lots 53 to 54, inclusive, lot 58, lots 62 to 69, inclusive, lots 71 to 73, inclusive, lots 75 to 90, inclusive, W½NE¼SW¼NE¼, and W½SW¼NE¼;
Sec. 16, N½NE¼, SW¼NE¼, W½, and NW¼SE¼;
Sec. 20, S½NE¼, E½SW¼, and SE¼;
Sec. 21, lots 3 and 4, and NW¼SW¼;
Sec. 28, lots 15, 16, lots 21 to 24, inclusive, lots 26, 29, and lots 31 to 41, inclusive, SW¼NE¼, SW¼NW¼, and SE¼;
Sec. 29, lots 9 to 15, inclusive, N½NE¼, SE¼NE¼, NE¼SE¼, SW¼SE¼, and all unpatented mining claims.

T. 21 N., R. 20 E.,
Sec. 2, lots 3 to 7, inclusive, SE¼NW¼, and E½SW¼;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lot 1, SE¼NE¼, and SE¼;
Sec. 6, lots 1 to 7, inclusive, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 7, lots 1 to 4, inclusive, E½NW¼, and E½SW¼;
Sec. 8, E½;
Sec. 10, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 15, lots 3, 4, and 5, W½NE¼, E½SE¼NW¼, and NE¼SW¼;
Sec. 17, NE¼ and S½;
Sec. 18, lots 1 to 4, inclusive, E½W½, and S½SE¼;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20;
Sec. 22, lots 2 to 11, inclusive, SE¼NW¼, and NE¼SW¼;
Secs. 28 and 29;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 5, inclusive, E½, E½NW¼, and NE¼SW¼;
Sec. 32.

T. 22 N., R. 20 E.,
Sec. 3, lots 3 to 7, inclusive, SE¼NW¼, and E½SW¼;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 8 and 9;
Sec. 10, lots 1 to 4, inclusive, lots 8 and 9, SE¼NW¼, and NE¼SW¼;
Sec. 15, W½;
Secs. 16 and 17;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 20, 21, and 22;
Sec. 23, lots 1 to 7, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 26, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 27, lots 2 to 4, inclusive, N½, SW¼, N½SE¼, and all unpatented mining claims;

Secs. 28 and 29;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 33 and 34;
Sec. 35, lots 5 to 7, inclusive, lots 9, 11, 12, and 13, W½E½, N½NW¼, and all unpatented mining claims.
T. 23 N., R. 20 E.,
Sec. 7, S½, unsurveyed;
Sec. 8, S½;
Sec. 9, S½, partly unsurveyed;
Sec. 10, S½;
Sec. 11, N½SW¼, SW¼SW¼, and E½SE¼;
Sec. 12, S½;
Sec. 14, S½NW¼ and N½SW¼;
Sec. 15, S½NE¼, W½NE¼NW¼, NW¼NW¼, S½NW¼, SW¼, N½SE¼, and SW¼SE¼;
Secs. 16 to 21, inclusive, unsurveyed;
Sec. 22, lots 2, 3, and lots 5 to 11, inclusive, and SW¼SW¼;
Sec. 27, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
Secs. 28, 29, and 30, unsurveyed;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32;
Sec. 33, lots 1 and 2, W½NE¼, W½, and SE¼;
Sec. 34.
T. 17 N., R. 21 E.,
Sec. 7, lots 1 to 4, inclusive, E½W½;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
T. 19 N., R. 21 E.,
Sec. 6, lots 1 to 6, inclusive, S½NE¼, and SE¼;
Sec. 8, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 10, N½, N½SW¼, E½NE¼SW¼SW¼, SE¼SW¼SW¼SW¼, SE¼SW¼SW¼, SE¼SW¼, and NW¼SE¼;
Sec. 16, NE¼, N½NW¼, and SE¼NW¼;
Sec. 18, lot 1 and N½NE¼.
T. 20 N., R. 21 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Secs. 8, 10, and secs. 12 to 16, inclusive;
Sec. 18, lots 1 to 4, inclusive, N½NE¼, SW¼NE¼, W½SE¼, and SE¼SE¼;
Sec. 19, lots 1 to 4, inclusive, E½;
Secs. 20 to 29, inclusive;
Sec. 30, lots 1 to 4, inclusive, and E½;
Sec. 31, lots 1 to 4, inclusive, and E½;
Sec. 32;
Sec. 33, N½;
Sec. 34;
Sec. 35, N½N½ and SE¼NE¼;
Sec. 36, lots 1, 4, and 5, N½, N½SW¼, and NW¼SE¼.
T. 21 N., R. 21 E.,
Sec. 36.
T. 22 N., R. 21 E.,
Sec. 7, lot 5.
T. 23 N., R. 21 E.,
Sec. 7, lots 3 and 4, E½SW¼, and SE¼;
Sec. 8, N½SW¼, SE¼SW¼, and SE¼;
Sec. 9, N½SE¼ and SW¼;
Sec. 10, NW¼SW¼;
T. 20 N., R. 22 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8, 10, 12, 14, and 16;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 20 and 22;
Sec. 24, irregular Washoe County portion within W½;
Sec. 26, N½ and N½S½;
Sec. 30, lots 1 to 4, inclusive, NE¼, and E½W½.
T. 21 N., R. 22 E.,
Secs. 32, 34, and 36;
T. 20 N., R. 23 E.,
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; sec. 8;
Sec. 18, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 20, N½N½, irregular Washoe County portion within SE¼NW¼.
The areas described aggregate 167,137.69 acres in Washoe County.

2. Subject to valid existing rights, the reserved Federal mineral interest in the following described lands is hereby withdrawn from the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from mineral material sales under the Materials Act of 1947 or mineral leasing under the Mineral Leasing Act of 1920, for the protection of lands in Washoe County:

Mount Diablo Meridian

T. 22 N., R. 18 E.,
Sec. 12, E½;
Sec. 24, E½;
Sec. 36, E½.
T. 23 N., R. 18 E.,
Sec. 15, NE¼, E½NW¼, and SE¼;
Sec. 16, W½NE¼ and SE¼NE¼;
Sec. 22, NE¼, SE¼NW¼, and NE¼SW¼;
T. 20 N., R. 19 E.,
Sec. 25, lots 1 to 7, inclusive, and lot 11, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼, (those portions north of the south boundary of R/W Nev-042776 for U.S. Highway 395).
T. 21 N., R. 19 E.,
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.
T. 22 N., R. 19 E.,
Sec. 8;
Sec. 13, SW¼NE¼;
Sec. 14, E½, NW¼, N½SW¼, and SW¼SW¼;
Sec. 18, lots 1 to 4, E½, and E½W½;
Sec. 20;
Sec. 26, W½NW¼, SE¼NW¼, SW¼, and SE¼SE¼;
Sec. 28;
Sec. 30, lots 1 to 4, E½, and E½W½;
Sec. 31, lots 3 and 4, E½SW¼, and SE¼;
Secs. 32 and 34.
T. 17 N., R. 20 E.,
Sec. 18, lots 3 to 11, inclusive, W½NE¼SW¼, W½SE¼SW¼, SE¼SE¼SW¼, W½NE¼NW¼SE¼, W½NW¼NW¼SE¼, and NW¼SW¼SE¼.
T. 18 N., R 20 E.,
Sec. 4, lots 3 and 4;
Sec. 34, NE¼SE¼NE¼, W½NW¼SE¼NE¼, NE¼SW¼NW¼, W½NW¼SW¼NW¼, SW¼SW¼NW¼, E½SE¼SW¼NW¼, E½SW¼, NE¼NW¼SW¼, S½N½NE¼SE¼, S½SW¼NE¼SE¼, N½SE¼NE¼SE¼, N½SW¼SE¼, NE¼SW¼SW¼SE¼, E½SE¼SW¼SW¼SE¼, W½SE¼SW¼SE¼, W½E½SE¼SW¼SE¼, NW¼NE¼SE¼SE¼, S½NE¼SE¼SE¼, and N½SE¼SE¼SE¼.
T. 19 N., R. 20 E.,
Sec. 2, SE¼SE¼;
Sec. 11, SW¼NE¼;
Sec. 26, W½E½, and W½;
Sec. 32, W½NE¼;
Sec. 34, NE¼NE¼NE¼, NE¼NW¼NE¼NE¼, E½NW¼NW¼NE¼NE¼, E½SW¼NE¼NE¼, W½NE¼NE¼NW¼NE¼, W½NW¼NW¼NE¼, W½NW¼NE¼SW¼NE¼, E½NE¼NW¼SW¼NE¼, E½NE¼SW¼SW¼NE¼, W½W½SE¼NE¼, E½NW¼SE¼NW¼, SW¼SE¼NW¼, and E½SW¼SE¼.
T. 20 N., R. 20 E.,
Sec. 14, lots 1, 2, and 3, and SW¼NE¼;
Sec. 26, SW¼SE¼SW¼ and W½SE¼SE¼SW¼;
Sec. 28, E½SE¼SW¼NE¼NW¼, and W½SW¼SE¼NE¼NW¼;
Sec. 29, lot 8, NW¼SW¼, and SE¼SW¼;
Sec. 30, W½NE¼SE¼, and N½SW¼SE¼, SW¼SW¼SE¼, and W½SE¼SW¼SE¼.
T. 21 N., R. 20 E.,
Sec. 1, lots 5, 6, and 7, inclusive, and lots 10 to 22, inclusive;
Sec. 2, lot 2, lots 8 to 46, inclusive, SW¼NE¼, NW¼NE¼SE¼, S½NE¼SE¼, W½SE, and N½SE¼SE¼;
Sec. 12, lots 3 to 12, inclusive, and SW¼;
Sec. 13, lots 1 and 4.
T. 22 N., R. 20 E.,
Sec. 10, lots 5, 6, and 7, NE¼, and NW¼SE¼;
Sec. 14, lots 5, 6, and 7;
Sec. 24, W½W½;
Sec. 36, S½SE¼.
T. 23 N., R. 20 E.,
Sec. 11, SE¼SW¼ and W½SE¼;
Sec. 14, W½E½ and N½NW¼;
Sec. 15, N½NE¼ and E½NE¼NW¼;
T. 19 N., R. 21 E.,
Sec. 10, W½NE¼SW¼SW¼, NW¼SW¼SW¼, N½SW¼SW¼SW¼, and SW¼SW¼SW¼SW¼.
T. 21 N., R. 21 E.,
Sec. 8, SE¼SW¼NE¼, S½SE¼NE¼, and S½;
Sec. 18, lots 1 and 2, S½NE¼NE¼, and SE¼NE¼;
Sec. 20, NE¼NW¼ and SW¼NW¼.
T. 23 N., R. 21 E.,

Sec. 8, SW¼SW¼,
Sec. 17, W½NW¼ and SW¼;
Sec. 18, lot 1, E½E½, NW¼NE¼, and NE¼NW¼;
Sec. 19, lots 3 and 4, E½E½, SW¼NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 20, W½;
Sec. 29, NW¼.
T. 22 N., R. 22 E.,
Sec. 4, lots 1 to 4, S½N½, and S½.
The areas described aggregate 15,813.12 acres in Washoe County.

3. In addition to paragraphs 1 and 2, if any of the non-Federal lands in Washoe County within the areas described below are acquired by the United States in the future by exchange, donation, or purchase, those lands will be included in the withdrawal:

T. 21 N., R. 18 E., (on north and east side of U.S. Highway 395).
T. 22 N., R. 18 E.
T. 23 N., R. 18 E., excepting secs. 1 to 5, inclusive, and the N½N½ of secs. 9 to 12, inclusive.
T. 20 N., R. 19 E., (on north and east side of U.S. Highway 395).
T. 21 N., R. 19 E.
T. 22 N., R. 19 E.
T. 23 N., R. 19 E., excepting sec. 4.
T. 16 N., R. 20 E.
T. 17 N., R. 20 E., (on east side of U.S. Highway 395).
T. 18 N., R. 20 E., (on east side of U.S. Highway 395).
T. 19 N., R. 20 E., (on east side of U.S. Highway 395).
T. 20 N., R. 20 E.
T. 21 N., R. 20 E.
T. 22 N., R. 20 E.
T. 23 N., R. 20 E., excepting secs. 2, 4 and 12.
T. 17 N., R. 21 E.
T. 19 N., R. 21 E.
T. 20 N., R. 21 E.
T. 21 N., R. 21 E.
T. 22 N., R. 21 E.
T. 23 N., R. 21 E., secs.18, 19, and secs. 30, 31, and 32.
T. 20 N., R. 22 E.
T. 21 N., R. 22 E.
T. 22 N., R. 22 E.
T. 23 N., R. 22 E., (outside the boundaries of the Pyramid Lake Indian Reservation).
T. 20 N., R. 23 E., secs. 5, 7, 17, 19 and 20.
T. 21 N., R. 23 E., sec. 31.

4. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

5. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: July 5, 2001.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 01–17494 Filed 7–11–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Proposed Notice of Sale for Outer Continental Shelf Oil and Gas Lease Sale 181 in the Eastern Gulf of Mexico

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the proposed Notice of Sale for proposed Sale 181.

SUMMARY: The MMS announces the availability of the proposed Notice of Sale for proposed Sale 181 in the Eastern Gulf of Mexico Outer Continental Shelf (OCS). This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments on the size, timing, or location of proposed Sale 181 are due from the affected States within 60 days following their receipt of the proposed Notice. The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for December 5, 2001.

SUPPLEMENTARY INFORMATION: The proposed Notice of Sale for Sale 181 and a "Proposed Sale Notice Package" containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

Dated: July 6, 2001.

Thomas R. Kitsos,

Acting Director, Minerals Management Service.

[FR Doc. 01–17487 Filed 7–11–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 22, 2001, a proposed Consent Decree in *United States* v. *Gulf Coast Recycling, Inc.*, Civil Action No. 8:01–cv–1191–T–24TBM was lodged with the United States District Court for the Middle District of Florida.

In this action the United States sought injunctive relief in order to remedy conditions in connection with the release and threatened release of hazardous substances into the environment at the Normandy Park Superfund Site in Hillsborough County, Florida ("Site"). The United States also sought to recover unreimbursed costs incurred and to be incurred for response activities undertaken and to be undertaken at the Site.

The proposed Consent Decree, which settles the liability of Gulf Coast Recycling, Inc. ("GCR"), for violations alleged in the Compliant, provides that GCR will perform the remedy at the Site as set forth in the Record of Decision executed by the Environmental Protection Agency on May 11, 2000. Under the Decree, GCR will also reimburse the United States for $257,181 of past response costs and one hundred percent of all future response costs to be incurred by the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Gulf Coast Recycling, Inc.*, D.J. Ref. 90–1–2–07156.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602, and at U.S. EPA Region IV, 61 Forsyth Street, Atlanta, Georgia, 30303. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $52.00 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy exclusive of exhibits, please enclose a check in the

amount of $10.25 payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–17478 Filed 7–11–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act, the Resource Conservation and Recovery Act; and the Comprehensive Environmental Response, Compensation, and Liability Act

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States and the South Carolina Department of Health and Environmental Control ("SCDHEC")* v. *Macalloy Corporation (D. S.C.)*, Civil Action No. 2:99–4234–18, was lodged with the United States District Court for the District of South Carolina on June 26, 2001. This decree resolves the potential liability of Macalloy alleged by the United States under Sections 309 and 402 of the Clean Water Act, 33 U.S.C. 1319 and 1342; Section 3008(g) of the Resource Conservation and Recovery Act, 42 U.S.C. 6928(g); and Section 48–1–330 of the South Carolina Pollution Control Act ("SCPCA"), S.C. Code Ann. § 48–1–330, and dismisses without prejudice claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601–9675. The proposed Decree provides that Macalloy will pay $300,000 from existing funds, with interest over time, and $900,000 additional from money currently held as a RCRA financial assurance, when the money becomes available. Macalloy is also required to control surface water discharges.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044; and refer to *United States and the South Carolina Department of Health and Environmental Control ("SCDHEC")* v. *Macalloy Corporation (D. S.C.)*, DOJ Ref. #90–5–1–1–4431.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Charleston, South Carolina and at the office of the Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303–3104. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8 (Consent Decree only: 32 pgs) or $9.50 (Consent Decree with Appendices) (25 cents per page reproduction costs), payable to the Consent Decree Library.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–17476 Filed 7–11–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 238–2001]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice (DOJ), Civil Division, proposes to modify the following system of records previously published in full text in the **Federal Register** on February 20, 1998 (63 FR 8665): Civil Division Case File System, Justice/CIV–001.

The Civil Division is adding two new routine uses to this system of records. Specifically, the Civil Division will add a new routine use to permit disclosure of information relating to qualified claimants in its Radiation Exposure Compensation Act Program files to the Department of Labor to adjudicate claims for supplemental compensation and benefits to these claimants under the Energy Employees Occupational Injury Compensation Program Act, Pub. L. 106–398, 114 Stat. 1654, Title XXXVI (2000), 42 U.S.C. 7384 *et seq.* In addition, the Civil Division is adding a routine use for disclosure to contractors when necessary to accomplish an agency function related to this system of records.

For public convenience, all existing routine uses are published along with the two new proposed routine uses.

Title 5 U.S.C. 552a(e)(4)(11) provides that the public be given a 30-day period in which to comment on proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of any proposal to add new routine use disclosures or make other major modifications.

You may submit any comments (by 30 days from the publication date of this notice). The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400 National Place Building). If no comments are received, the proposal will be implemented without further notice in the **Federal Register**.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed new routine uses.

Dated: July 3, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

JUSTICE/CIV–001

SYSTEM NAME:

Civil Division Case File System

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows: (1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, the record in question may be disseminated to the appropriate federal, state, local or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law; (2) in the course of investigating the potential or actual violation of any law, whether civil, criminal or regulatory in nature, or during the course of a trial or hearing, or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual or organization possesses information or is responsible for acquiring information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant; (3) a record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, or where the

agency or officials thereof are a party to litigation or where the agency or officials may be affected by a case or matter, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter; (4) a record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement; (5) a record may be disseminated to a federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency; (6) a record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in civil or criminal proceedings in which the United States or one of its officers or agencies has an interest; (7) a record, or any facts derived therefrom, may be disclosed in a grand jury proceeding or in a proceeding before a court or adjudicative body before which the Civil Division is authorized to appear when the United States, or any agency or subdivision thereof, is a party to litigation and such records are determined by the Civil Division to be arguably relevant to the litigation; (8) to facilitate processing Freedom of Information and Privacy Act requests for these records, information may be disclosed to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records; (9) information may be released to the news media and the public in accordance with 28 CFR 50.2 unless it is determined that release would constitute an unwarranted invasion of personal privacy; (10) a record may be disclosed to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; (11) in any health care-related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disclosed as a routine use to any federal, state, local, tribal, foreign, joint, international or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care-related laws or regulations. Further, information indicating an ongoing quality of care problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, neglect, abuse, or poor or inadequate quality of care may be disclosed to the affected patient or his or her representative or guardian at the discretion of and in the manner determined by the agency in possession of the information; (12) pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility; (This routine use was added by **Federal Register** notice of January 31, 2001 (66 FR 8425).) (13) information relating to health care fraud may be disclosed to private health plans, or associations of private health plans, and health insurers, or associations of health insurers, for the following purposes: To promote the coordination of efforts to prevent, detect, investigate, and prosecute health care fraud; to assist efforts by victims of health care fraud to obtain restitution; to enable private health plans to participate in local, regional, and national health care fraud task force activities; and to assist tribunals having jurisdiction over claims against private health plans; (This routine use was added by **Federal Register** notice of March 29, 2001 (66 FR 17200).) (14) for all claims made by individuals covered by the Energy Employees Occupational Injury Compensation Program Act, Pub. L. 106–398, 114 Stat. 1654, Title XXXVI (2000), 42 U.S.C. 7384 *et seq.*, the Civil Division may disclose to the Department of Labor all information contained in its Radiation Exposure Compensation Act, (42 U.S.C. 2210 note) files pertinent to those claims; (15) to contractors, experts, consultants employed by the Civil Division when necessary to accomplish an agency function related to this system of records.

* * * * *

[FR Doc. 01–17475 Filed 7–11–01; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States v. Signature Flight Support Corp., et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the U.S. District Court for the District of Columbia in *United States* v. *Signature Flight Support Corp., et al.*, Civil No. 01–CV–1365. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory sixty-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h).

On June 20, 2001, the United States filed a Compliant alleging that the proposed acquisition by Signature Flight Support Corp. ("Signature") of Ranger Aerospace Corporation ("Ranger") and its subsidiary Aircraft Service International Group, Inc. ("ASIG") would violate of Section 7 of the Clayton Act, 15 U.S.C. Signature and ASIG each own and operate fixed base operators ("FBOs") that provide flight support services at various airports in the United States. The proposed Final Judgment, filed at the same time as the Complaint, requires Signature to divest ASIG's FBO business at Orlando International Airport, along with certain tangible and intangible assets. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and remedies available to private litigants who may have been injured by the alleged violations.

Public comment is invited within the statutory sixty-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to

Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530 and the office of the Clerk of the U.S. District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Case Number 1: 01CV01365
Judge: Colleen Kollar-Kotelly
Deck Type: Antitrust
Date Stamp: 06/20/2001

Complaint

The United States of America, by its attorney, acting under the direction of the Attorney General of the United States, brings this civil action to prevent the proposed acquisition by Signature Flight Support Corporation ("Signature") of the competing fixed base operations of Ranger Aerospace Corporation ("Ranger") and its wholly owned subsidiary Aircraft Service International Group, Inc. ("ASIG").

I

Nature of the Action

1. Signature and ASIG both own and operate a fixed base operator ("FBO") business at Orlando International Airport ("MCO Airport"). FBOs provide flight support services—including fueling, ramp and hangar rentals, office space rentals, and other services—to general aviation customers from facilities at airports. General aviation customers include charter, private and corporate aircraft operators. Signature owns and operates FBOs at forty-four airports around the country, and ASIG owns and operates FBOs at three airports.

2. Currently, Signature and ASIG are the only two FBOs competing at MCO Airport. As the only two FBOs operating at MCO Airport, Signature and ASIG compete head-to-head on price and quality of services to general aviation customers. The acquisition would eliminate this competition, reducing the number of competitors from two to one, creating an FBO monopoly at MCO Airport. The acquisition would give Signature the ability to raise prices and lower the quality of services to MCO Airport general aviation customers. Accordingly, the proposed acquisition of those two FBOs is likely to lessen competition substantially in the market for FBO services at MCO Airport in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II

Jurisdiction and Venue

3. This action is filed pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton act, as amended, 15 U.S.C. 18.

4. All defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. Signature and Ranger, through its wholly owned subsidiary, ASIG, provide FBO services to aircraft landing throughout the United States and overseas. Signature, Ranger and ASIG consent to jurisdiction in the District of Columbia for purposes of 15 U.S.C. 22 and 28 U.S.C. 1391(c).

5. This Court has jurisdiction over the subject matter of this action and jurisdiction over the parties pursuant to 15 U.S.C. 1331 and 1337. Venue is proper pursuant to 28 U.S.C. 1391(c).

III

Defendants and the Transaction

6. Signature is a Delaware corporation with its principal place of business in Orlando, Florida. Signature owns and operates forty-four FBOs in the United States, including operations at MCO Airport. In addition, Signature provides services for commercial airlines and airport authorities, including into-plane fueling, fuel farm maintenance and operation, and other ground services.

7. Ranger is a Delaware corporation with its principal place of business in Greenville, South Carolina. ASIG is a wholly owned, indirect subsidiary of Ranger. ASIG, a Delaware corporation headquartered in Dania, Florida, owns and operates three FBOs in the United States and the Bahamas, including operations at MCO Airport. ASIG also provides services for commercial airlines and airport authorities, including into-plane fueling, fuel farm maintenance and operation, and other ground services.

8. Signature proposes to acquire the stock and assets of Ranger for approximately $137 million.

IV

Trade and Commerce

The Relevant Market

9. FBO services include the sale of jet aviation fuel ("Jet A fuel") and aviation gasoline ("avgas"), as well as related support services, to general aviation customers. FBOs typically do not charge separately for many services, such as use of customer and pilot lounges, baggage handling, and flight planning support. Rather, they recover the costs of these services in the price that they charge for fuel. There are other services for which FBOs charge separately, including hangar rental, office space rental, ramp parking fees, catering, cleaning the aircraft, arranging ground transportation, and maintenance on the aircraft. General aviation customers generally buy fuel from the same FBO from which they obtain other services.

10. The largest source of revenue for an FBO is its fuel revenues. FBOs sell Jet A fuel for jet aircraft, turboprops and helicopters, and avgas for smaller, piston operated planes. At MCO Airport, Signature and ASIG sold approximately 2.64 million gallons, or $5.4 million, of fuel in the year ending December 1999. Signature and ASIG obtained additional revenues of approximately $524,000 at MCO Airport for other FBO-related services.

11. The provision of FBO services to general aviation customers at MCO Airport is a relevant market (i.e., a line of commerce and a section of the country) under Section 7 of the Clayton Act. General aviation customers cannot obtain fuel, hangar, ramp and other services offered at an airport except through an FBO authorized to sell such products and services by the local airport authority. Thus, general aviation customers have no alternatives to FBOs for these products and services when they land at MCO Airport.

12. FBOs at other airports would not provide economically practical alternatives for general aviation customers who currently use MCO Airport. Although there are other airports in the same region as MCO Airport, those other airports are not economically viable substitutes for general aviation customers flying into MCO Airport. The location, convenience, and facilities of MCO Airport draws customers. General aviation customers have chosen MCO Airport because of its proximity to the Orlando metropolitan area and other destinations, and because of the size and quality of its facilities; using a different airport would significantly increase their driving time and

inconvenience. There are not enough general aviation customers who have selected MCO Airport as their airport and who would switch to another airport to prevent anticompetitive prices increases for fuel and other services at MCO Airport.

Competition and Entry

13. The market for FBO services at MCO Airport is highly concentrated, with only two providers—Signature and ASIG. If Signature acquires the ASIG FBO facility, it will have a monopoly for the market for FBO services at MCO Airport.

14. Signature's acquisition of the ASIG FBO at MCO Airport would eliminate competition in the market for the provision of FBO services to general aviation customers at MCO Airport. The existing competition between Signature's and ASIG's FBOs limits the ability of each to raise prices for fuel and other FBO services. The proposed acquisition would eliminate the constraint each imposes upon the other.

15. The prospect of new entry will not prevent a post merger price increase or service decrease at MCO Airport. There are significant sunk costs involved in building an FBO at MCO Airport. The airport authority has established minimum requirements for an FBO, including 20,000 square feet of hanger storage, a five acre lease, and other minimum operating requirements, and the permitting process at MCO Airport can take up to a year before construction begins. Entry that is timely and sufficient to prevent a post merger price increase or service decrease is unlikely because of these factors.

V

Violation Alleged

16. Unless restrained, Signature's proposed acquisition of ASIG's FBO at MCO Airport is likely to substantially lessen competition and restrain trade unreasonably in the market for FBO services at MCO Airport in violation of Section 7 of the Clayton Act, in the following ways:

a. Actual competition between Signature and ASIG in the market for FBO services at MCO Airport will be eliminated;

b. Concentration in the market for FBO services at MCO Airport will increase significantly, creating a monopoly at MCO Airport;

c. Competition generally in the market for FBO services at MCO Airport will be substantially lessened; and

d. Prices for fuel and other FBO services sold to general aviation customers at MCO Airport will increase and quality of service will decrease.

VI

Request for Relief

The United States requests: (a) Adjudication that Signature's proposed acquisition of ASIG's FBO at MCO Airport would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Dated this 20th day of June, 2001.

John M. Nannes,
Acting Assistant Attorney General.
Constance K. Robinson,
Director of Operational and Director of Merger Enforcement.
Roger W. Fones,
Chief.
Donna N. Kooperstein,
Asst. Chief.
Salvatore Massa,
Wisconsin Bar No. 1029907,
Douglas Rathbun,
Attorneys, U.S. Department of Justice, Antitrust Division, Transportation, Energy, and Agriculture Section, 325 Seventh Street, NW., Suite 500, Washington, DC 20530, (202) 307–6351.

Certificate of Mailing

I, Salvatore Massa, hereby certify that, on June 20, 2001, I caused the foregoing document to be mailed on defendants Signature Flight Support Corporation, Ranger Aerospace Corporation and Aircraft Service International Group, Inc., by having a copy mailed, first-class, postage prepaid, to:

William R. Norfolk, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004
James H. Mutchnik, Kirkland & Ellis, 200 East Randolph Dr., Chicago, IL 60601
Salvatore Massa

Civil Action No.: 01 1365

(Proposed)

Final Judgment

Whereas, plaintiff, the United States of America ("United States"), filed its complaint in this action on June 20, 2001, and plaintiff and defendants, Signature Flight Support Corporation ("Signature") and Ranger Aerospace Corporation ("Ranger"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of law or fact:

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestitures required below can and will be made, and that defendants will later raise no claim of hardship or difficult as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby *ordered, adjudged, and decreed:*

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties in this action. The Complaint states a claim upon which relief may be granted against the defendants, as defined below, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

Definitions

As used in this Final Judgment:

A. "Acquirer" means the entity to whom defendants divest the Assets to be Divested.

B. "Signature" means defendant Signature Flight Support Corporation, a Delaware corporation with a principal place of business in Orlando, Florida, its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Ranger" means Ranger Aerospace Corporation, a Delaware corporation headquartered in Greenville, South Carolina, its successors and assigns, and its parents, subsidiaries, divisions groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. One of Ranger's wholly owned subsidiaries, Aircraft Service International Group, Inc. ("ASIG"), a Delaware corporation headquartered in Dania, Florida, operates the Assets to be Divested, as defined in Section II(G).

D. "MCO Airport" means Orlando International Airport, located in the Orlando, Florida metropolitan area.

E. "FBO Services" means any or all services related to providing fixed based operator services to general aviation customers at MCO Airport, including, but not limited to, selling fuel, leasing

hangar, ramp, and office space, providing flight support services, performing maintenance, providing access to terminal facilities, or arranging for ancillary services such as rental cars or hotels, but does not include assets related to the commercial jet fueling business at MCO Airport of any of the defendants.

F. "FBO Facility" means any and all tangible and intangible assets that comprise the business of providing FBO Services, including, but not limited to, all personal property, inventory, office furniture, materials, supplies, terminal space, hangars, ramps, general aviation fuel tank farms for jet aviation fuel and aviation gas, and related fueling and maintenance equipment, and other tangible property and all assets used exclusively in connection with the business of providing FBO Services; all licenses, permits, and authorizations issued by any governmental organization relating to the business of providing FBO Services subject to licensor's approval of consent; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the business of providing FBO Services, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the business of providing FBO Services; all intangible assets used in the development, production, servicing, and sale of FBO Services, including, but not limited to, all licenses and sublicenses, technical information, computer software and related documentation, know-how, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, and safety procedures for the handling of materials and substances.

G. The "Assets to be Divested" means all rights, titles and interests, including all fee, leasehold and real property rights, in the existing FBO Facility that Signature will acquire from ASIG at MCO Airport.

III

Applicability

A. This Final Judgment applies to Signature, Ranger and ASIG, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Assets to be Divested, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the Acquirer.

IV

Divestiture of the Assets

A. Defendants are ordered and directed, within one hundred twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Assets to be Divested in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to two thirty (30) day periods, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. If pending state or local regulatory approval is the only remaining matter precluding a divestiture after the 120-day period, the United States will not withhold its agreement to an extension of the period. Defendants agree to use their best efforts to divest the Assets to be Divested as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Assets to be Divested. Defendants shall inform any person making inquiry regarding a possible purchase of the Assets to be Divested that they are being divested pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents regarding the Assets to be Divested customarily provided in a due diligence process, except such information or documents subject to the attorney-client or attorney work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the operation, management, and sale of the Assets to be Divested to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the operation, management, and sale of the Assets to be Divested.

D. Defendants shall permit prospective Acquirers of the Assets to be Divested to have reasonable access to personnel and to make such inspection of the physical facilities of the Assets to be Divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of the Assets to be Divested that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Assets to be Divested.

G. Defendants shall warrant to the Acquirer of the Assets to be Divested that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Assets to be Divested, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Assets to be Divested.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by a trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Assets to be Divested and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Assets to be Divested can and will be used by the Acquirer as part of a viable, on going business engaged in providing FBO Services at MCO Airport. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment: (1) Shall be made to an Acquirer that in the United State's sole judgment has the capability and intent (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of FBO Services at MCO Airport; and (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants gives defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V

Appointment of Trustee

A. If defendants have not divested the Assets to be Divested within the time

period specified in Section IV(A) of this Final Judgment, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Assets to be Divested.

B. After the appointment of a trustee becomes effective, only that trustee shall have the right to sell the Assets to be Divested. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the judgment of the trustee to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

D. A trustee shall serve at the cost and expense of defendants, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Assets to be Divested and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Assets to be Divested, and defendants shall develop financial or other information relevant to the Assets to be Divested as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth that trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Assets to be Divested, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Assets to be Divested.

G. If the trustee has not accomplished the divestiture within six (6) months after its appointment, the trustee shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment for a period requested by the United States.

VI

Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or a trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If a trustee is responsible, the trustee shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered, or expressed an interest in or a desire to acquire any ownership interest in the Assets to be Divested together with full details of same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendant's limited right to object to the sales under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, the divestiture proposed under Section IV or V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII

Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or Section V, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was

contacted or made an inquiry about acquiring, any interest in the Assets to be Divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Assets to be Divested and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by the defendants, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an on going basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Assets to be Divested until one year after the divestiture has been completed.

VIII

Hold Separate Order

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture order by this Court.

IX

Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

X

Compliance Inspection

A. For the purpose of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall upon written request of a duly authorized representatives of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants be permitted:

1. Access during defendants' office hours to inspect and copy, or at defendants' option, to require defendants to provide copies of, all books, ledgers, accounts, records, and documents in the possession, custody, or control of defendants relating to any matters contained in the Final Judgment; and

2. To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information nor any documents obtained by the means provided in this Section shall be divulged by the United States to any person other than a duly authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with the Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI

No Reacquisition

Defendants may not reacquire any part of the Assets to be Divested during the term of this Final Judgment.

XII

Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII

Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV

Public Interest Determination

Entry of this Final Judgment is in the public interest.

:Dated _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

Certificate of Mailing

I, Salvatore Massa, hereby certify that, on June 20, 2001, I caused the foregoing document to be mailed on defendants Signature Flight Support Corporation, Ranger Aerospace Corporation and Aircraft Service International Group, Inc., by having a copy mailed, first class, postage prepaid, to:

William R. Norfolk, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004

James H. Mutchnik, Kirkland & Ellis, 200 East Randolph Dr., Chicago, IL 60601

Salvatore Massa

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On June 20, 2001, the United States filed a Complaint alleging that the proposed acquisition by Signature Flight Support Corporation ("Signature") of Ranger Aerospace Corporation ("Ranger"), and its wholly owned subsidiary, Aircraft Service International Group, Inc. ("ASIG"), would violate Section 7 of the Clayton Act, 15 U.S.C. 18.

The Complaint alleges that Signature and ASIG own and operate fixed base operator ("FBO") businesses at various airports around the country. ASIG owns and operates three FBOs, including an FBO at Orlando International Airport ("MCO Airport"). The Complaint alleges that Signature and ASIG are the only two providers of FBO services for general aviation customers at MCO Airport, located in Orlando, Florida. The Complaint further alleges that the proposed acquisition will create a monopoly for Signature at this airport, giving it the ability to raise prices and lower the quality of service. Thus, the proposed acquisition would have likely lessened competition substantially in the market for FBO services at MCO Airport in violation of Section 7 of the Clayton Act, as amended 15 U.S.C. 18. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a preliminary and permanent injunction prevention Signature and Ranger or ASIG from consummating the proposed acquisition.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit Signature to complete its acquisition of Ranger, but requires a divestiture of one of the existing FBOs in order to preserve competition for general aviation customers at MCO Airport. This settlement consists of a Hold Separate Stipulation and Order ("Hold Separate Order"), and a proposed Final Judgment. The proposed Final Judgment orders defendants to sell the existing ASIG FBO assets at MCO Airport to a purchaser who has the capability to compete effectively in the provision of FBO services to general aviation customers at that airport. Defendants must complete the divestiture of ASIG's FBO operation at MCO Airport before the later on one hundred twenty (120) calendar days after filing the Complaint, or five (5) days after entry of the Final Judgment, in accordance with the procedures specified in the proposed Final Judgment. If defendants should fail to accomplish the divestiture, a trustee appointed by the Court would be empowered to divest these assets.

The Hold Separate Order and the proposed Final Judgment also impose a hold separate agreement that requires defendants to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, the ASIG FBO operation at MCO Airport will be held separate and apart from, and operated independently of, defendant Signature's other FBO assets and businesses.

The parties have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II

Events Giving Rise to the Alleged violation

A. The Parties and the Proposed Transaction

By an agreement dated November 14, 2000, Signature plans to acquire all the voting securities of Ranger for approximately $137 million.

Signature is a wholly owned subsidiary of BBA group PLC, a British holding company. Signature is a Delaware corporation with its principal place of business in Orlando, Florida. Signature operates a nationwide network of forty-four FBOs through the United States, including facilities at MCO Airport. Signature also provides services for commercial airlines and airport authorities, including into-plane fueling, fuel farm maintenance and operation, and other ground services.

Ranger is a Delaware corporation with its principal place of business in Greenville, South Carolina. ASIG is a wholly owned subsidiary of Ranger, which is a Delaware corporation with its principal place of business in Dania, Florida. ASIG owns and operates three FBOs, including one at MCO Airport. ASIG also provides services for commercial airlines and airport authorities, including into-plane fueling, fuel farm maintenance and operation, and other ground services.

B. The FBO Services Market

FBOs are facilities located at airports that provide flight support services, including aircraft fueling, ramp and hangar rentals, office space rentals, and other services to general aviation customers. General aviation customers include charter, private and corporate aircraft operators, as distinguished from scheduled commercial airlines.

FBOs sell aircraft fuel, as well as related support services such as ramp, hangar and office space rental. The largest source of revenues for an FBO is its fuel sales. FBOs sell jet aviation fuel for jet aircraft, turboprops and helicopters, and aviation gasoline for smaller, piston driven planes. FBOs do not charge separately for many services offered to general aviation customers, such as use of customer and pilot lounges, baggage handling, and flight planning support; rather, they recover the cost for these services in the price that they charge for fuel. FBOs do charge separately for certain services, such as hangar rental, office space rental, ramp parking fees, catering, cleaning the aircraft, arranging ground transportation, and maintenance on the aircraft. General aviation customers generally buy fuel from the same FBO from which they obtain those other services.

The Complaint alleges that the provision of FBO services to general aviation customers at MCO Airport is a relevant market (i.e., a line of commerce and a section of the country) under Section 7 of the Clayton Act. General aviation customers cannot obtain fuel, hangar, ramp and other services offered at MCO Airport, except through an FBO authorized to sell such products and services by the local airport authority. Thus, general aviation customers have no alternatives to FBOs for these products and services when they land at MCO Airport.

The Complaint also alleges that FBOs at other airports would not provide economically practical alternatives for general aviation customers who currently use MCO Airport. Although there are other airports in the same region as MCO Airport, those airports are not economically viable substitutes for passengers flying into MCO Airport. General aviation customers use MCO Airport because of the airport's location, convenience and facilities. General aviation customers have selected this airport in part because of it proximity to their ultimate destination (whether their residence, business or other place); using a different airport would significantly increase their driving time, reducing the convenience of maintaining a corporate jet. There are not enough general aviation customers who have selected MCO Airport as their airport who would switch to other airports to prevent anticompetitive price increases for fuel and other services at MCO Airport.

C. Competition Between Signature and ASIG at MCO Airport

Signature and ASIG are direct competitors in the provision of FBO services to general aviation customers at MCO Airport. As the only two FBOs at MCO Airport, Signature and ASIG compete on price and quality of service. General aviation customers have benefited from competition between Signature and ASIG at MCO Airport, receiving lower prices and improved FBO services. The acquisition would eliminate this competition, creating a

monopoly in the market for FBO services to general aviation customers at MCO Airport.

The prospect of new entry is not likely to check Signature's resulting ability to raise prices or reduce service. There are significant sunk costs involved in building an FBO, including the cost of building hangar and ramp facilities. The MCO Airport authority has established minimum requirements for an FBO, including 20,000 square feet of hangar storage, a five-acre lease and other minimum operating requirements. Furthermore, the permitting process to erect a new facility can consume as much as one year before construction begins. Therefore, entry that is timely and sufficient to prevent a post merger price increase or service decrease is unlikely.

D. Anticompetitive Consequences of the Acquisition

The Complaint alleges that Signature's acquisition of ASIG would result in an FBO monopoly at MCO Airport. The Complaint further alleges that the acquisition of Ranger by Signature would substantially lessen competition and restrain trade unreasonably. The transaction would eliminate actual competition between Signature and ASIG in the market for FBO services at MCO Airport, resulting in an increase in prices and a decline in quality of service for fuel and other FBO services.

III

Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the acquisition of Ranger by Signature may be substantially to lessen competition, in violation of Section 7 of the Clayton Act, in the market for FBO services provided to general aviation customers at MCO Airport.

The risk to competition posed by this acquisition at MCO Airport, however, would be eliminated if certain assets, leases, and agreements currently held by ASIG to operate its MCO Airport FBO business were sold and assigned to a purchaser that could operate them as an active, independent and financially viable competitor. To this end, the provisions of the proposed Final Judgment are designed to accomplish the sale and assignment of certain assets and leaseholds to such a purchaser and thereby prevent the anticompetitive effects of the proposed acquisition.

Section IV of the proposed Final Judgment requires defendants, within one hundred twenty (120) calendar days after filing of the Complaint in this matter, or within five (5) days after notice of entry of the Final Judgment by the Court, whichever is later, to divest the ASIG FBO business at MCO Airport, as set out in Section II(G) of the proposed Final Judgment. Unless the United States otherwise consents in writing, defendants are required to divest the existing ASIG FBO business at MCO Airport, including all hangars, ramp and office space, fuel farms, and any related terminal and maintenance facilities located on the property it presently leases as well as any other leases or options on leases it possesses at MCO Airport.

Defendants shall divest such equipment and supplies as is necessary and appropriate to operate a viable FBO at MCO Airport. Defendants shall transfer ASIG's existing contracts, including customer contracts, and customer lists, for providing FBO services at MCO Airport. Together with the equipment, supplies and customer contracts and lists, these assets will give the qualified purchaser the means to establish itself as a competitive alternative to Signature. Thus, as a result of the divesture required by the proposed Final Judgment, general aviation consumers at MCO Airport will continue to have a choice between two competitive FBOs.

Under the proposed Final Judgment, defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers by supplying all information relevant to the proposed sales. Should defendants fail to complete the divestiture within the required time period, the Court will appoint, pursuant to Section V, a trustee to accomplish the divestiture. Pursuant to Section IV(A), the United States will have the discretion to delay the appointment of the trustee in order to permit other governmental review (such as the county or municipal airport authority).

Following the trustee's appointment, only the trustee will have the right to sell the divestiture assets, and defendants will be required to pay for all of the trustee's sale-related expenses. The trustee's compensation will be structured to provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestiture as quickly as possible.

Section VI of the proposed Final Judgment would assure the United States an opportunity to review any proposed sale, whether by defendants or by the trustee, before it occurs. Under this provision, the United States is entitled to receive complete information regarding any proposed sale or any prospective purchaser prior to consummation. Upon objection by the United States to a sale of any of the divestiture assets by defendants, the proposed divestiture may not be completed. Should the United States object to a sale of any of the divested assets by the trustee, that sale shall not be consummated.

Pursuant to Section V(G), should the trustee not accomplish the divestiture within six months of appointment, the trustee and the parties will make a recommendation to the Court, which shall enter such orders as it deems appropriate to carry out the purpose of the trust, which may include extending the term of the trustee's appointment.

Under Section VIII of the proposed Final Judgment, defendants must take certain steps to ensure that, until the required divestiture has been completed, the Assets to be Divested will be maintained as a separate, ongoing, viable FBO business at MCO Airport and kept distinct from Signature's other FBO operations. Until such divestiture, Signature must also continue to maintain and operate the divestiture assets as a viable, independent competitor at MCO Airport, using all reasonable efforts to maintain sales of FBO services to general aviation customers at MCO Airport. Signature must maintain the FBO business at MCO Airport so that it continues to be stable, including maintaining all records, loans, and personnel necessary for their operations.

Section X requires defendants to make viable, upon request, the business records and the personnel of its business. This provision allows the United States to inspect defendant's facilities and ensure that defendants are complying with the requirements of the proposed Final Judgment. Section XI specifically bars defendants from reacquiring the Assets to be Divested during the term of the Final Judgment. Section XII of the proposed Final Judgment provides that it will expire on the tenth anniversary and its entry by the Court.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suite in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed

Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendants.

V

Procedure for Commenting on the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of a least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to:

Roger W. Fones, Chief Transportation, Energy & Agriculture Section, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530

VI

Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against Signature, Ranger and ASIG. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the provision of FBO services to general aviation customers at MCO Airport. Thus, the compliance with the proposed Final Judgment and the completion of the sale required by the Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the government's Complaint.

VII

Standard of Review under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court *may* consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the United States Court of Appeals for the D.C. Circuit has held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, "the court is nowhere compelled to go to trial or to engage in expended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [1] Rather,

Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanation of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" [3]

VIII

Determinative Materials and Documents

There are no materials or documents that the United States considered to be

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[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States v. Bechtel*, 648 F.2d 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716; *see also Microsoft*, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'") (citations omitted).

[3] *United States* v. *American Tel. and Tel. Co.*, Supp. 131, 150 (D.D.C. 1982) (citations omitted), *aff'd sub nom, Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting United States* v. *Gillette Co., supra*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: June 20, 2001.

Respectfully submitted,

Salvatore Massa,
Wisconsin Bar No. 1029907
Douglas Rathbun,
Trial Attorneys, U.S. Department of Justice, Antitrust Division, Transportation, Energy and Agriculture Section, Suite 500, 325 Seventh Street, NW., Washington, DC 20530, (202) 307–6351

Certificate of Mailing

I, Salvatore Massa, hereby certify that, on June 20, 2001, I caused the foregoing document to be mailed on defendants Signature Flight Support Corporation, Ranger Aerospace Corporation and Aircraft Service International Group, Inc., by having a copy mailed, first-class, postage prepaid, to:

William R. Norfolk, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004

James H. Mutchnik, Kirkland & Ellis, 200 East Randolph Dr., Chicago, IL 60601

Salvatore Massa

[FR Doc. 01–17479 Filed 7–11–01; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum ("PERF") Project No. 2000–03

Notice is hereby given that, on June 18, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petroleum Environmental Research Forum ("PERF") Project No. 2000–3 has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Amoco Oil Company, Naperville, IL; Equilon Enterprises LLC, Houston, TX; and Phillips Petroleum Company, Sweeny, TX. The nature and objectives of the venture are to establish a joint effort to test next-generation process heater burners with NO_X emissions in the 5–10 ppm range in a refinery process heater and to assist in the acceleration of burner vendors' commercial development of these burners by observing flame interaction, heat flux, tramp air, and other effects on NO_X emissions. The activities to be carried out include the collection, exchange, and analysis of commercial unit data, and development of correlations or other predictive methods based on available or readily measurable variables.

Participation in this project will remain open until the termination of the Agreement for PERF Project No. 2000–03, and the participants intend to file additional written notification disclosing all changes in membership of the project. Information regarding participation in this project may be obtained by contacting Dr. Colin G. Grieves, Manager, Environmental Management, BP Amoco Naperville Complex, 150 W. Warrenville Road, Mail Code H–7, Naperville, IL 60563–8469.

Constance K. Robinson,
Director of Operations, Antitrust Division.

[FR Doc. 01–17477 Filed 7–11–01; 8:45 am]
BILLING CODE 4410–15–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 71–0122 Approval No. 0122 EA–01–164]

In the Matter of JL Shepherd & Associates San Fernando, California; Order Withdrawing Quality Assurance Program Approval (Effective Immediately)

I

JL Shepherd & Associates (JLS&A or Approval Holder) is the holder of Quality Assurance (QA) Program Approval for Radioactive Material Packages No. 0122 (Approval No. 0122), issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 71, subpart H. The approval was issued pursuant to the QA requirements of 10 CFR 71.101. QA activities authorized by Approval No. 0122 include: design, procurement, fabrication, assembly, testing, modification, maintenance, repair, and use of transportation packages subject to the provisions of 10 CFR part 71. Approval No. 0122 was originally issued January 17, 1980. Revision No. 5 was issued January 24, 1996, with an expiration date on January 31, 2001, and is under timely renewal. In addition to having a QA program approved by the NRC to satisfy the provisions of 10 CFR part 71, subpart H, to transport or deliver for transport licensed material in a package, JLS&A is required by 10 CFR part 71, subpart C, to have and comply with the package's CoC issued by the NRC.

II

On November 3–4, 1999, NRC staff conducted an inspection of the JLS&A QA activities. The extent and nature of problems identified during this limited scope inspection raised serious concerns about implementation of the JLS&A QA program and missed opportunities, over the period of several years, to self-identify and correct package deficiencies. The inspection identified multiple examples of violations of 10 CFR part 71. These violations concerned shipments of licensed material in Type B packages that were not in accordance with two CoCs. JLS&A made nineteen shipments using two different package designs that did not meet the requirements of the CoCs. The team further identified six nonconformances: specifically, these included 10 CFR 71.13(a), using a package that was fabricated after August 31, 1986; 10 CFR 71.87, failure to determine that the package with its contents satisfies the applicable requirements of part 71; 10 CFR 71.107(c), package design control, where new wood liners were constructed with a wood that did not comply with the design specifications approved by NRC; and 10 CFR 71.111, failure to prepare formal procedures or instructions to establish and maintain model 181361 or model A–0117 packaging in conformance with the CoC. Both a Notice of Violation and a Notice of Nonconformance were issued on March 2, 2000. As a result of the extent and nature of the problems identified during the November 3–4, 1999, inspection, NRC issued a Confirmatory Action Letter on April 24, 2000. As part of its December 4, 2000, response to the NRC Confirmatory Action Letter, JLS&A stated that the packaging used in the August 15, 2000, export to be shipped to Ethiopia via the United Kingdom, which contained 18,000 curies of cobalt-60, met the terms and conditions of the NRC-issued CoC No. 6280.

As a result of an April 17, 2001, letter from the French Competent Authority raising concerns about noncompliance of the August 15, 2000, transportation package undergoing multilateral approval, NRC staff conducted an inspection of the returned package at JLS&A's facility to determine if JLS&A had delivered for export a model A–

0109 irradiator and the A–0117 overpack design that were not in accordance with CoC No. 6280. The inspection conducted on May 29–31, 2001, identified significant concerns with the implementation of the JLS&A QA program regarding the design, use, repair, and maintenance of transportation packages approved for use by NRC under CoC No. 6280. The inspection determined that JLS&A failed to implement portions of the QA program Approval No. 0122. The failure to implement portions of the QA program resulted in JLS&A delivering for export radioactive material in a transportation package that did not comply with the requirements of 10 CFR part 71. A description of the significant findings from the inspection follows:

1. The team determined that the package JLS&A delivered for export was not in accordance with the drawings listed in CoC No. 6280, Condition 5(a)(3). For example, the irradiator contained in the package did not conform to the drawings listed in the CoC No. 6280. The "stacks" used to restrict lateral movement of the irradiator were made of fir and pine woods and not hardwood as required by the CoC No. 6280. The "spacers" used to center the irradiator did not conform to the drawings listed in the CoC No. 6280.

1. The team determined that JLS&A had not notified NRC of the design changes to the A–0109 irradiator and did not provide a detailed analysis to support these changes to the conditions of the CoC No. 6280 for approval by NRC. This is of significant concern because the A–0109 is described in CoC No. 6280 as part of the packaging. As such, any changes to the drawings listed in CoC No. 6280, Condition 5(a)(3), required NRC approval. JLS&A made numerous changes to the irradiator design features that were not in conformance with the drawings listed in CoC No. 6280, Condition 5(a)(3).

2. The team determined that the JLS&A did not implement QA procedures to assure that the bolts used to attach the lid to the cask met the performance specifications required by CoC No. 6280. JLS&A also could not demonstrate that the balsa wood used to repair the A–0117 overpack met the density specifications identified in Drawing No. A–0117–B, listed in CoC No. 6280 Condition 5(a)(3). The team also determined that JLS&A had not established measures for the identification and control of materials, parts, and components used in the repair of the A–0117 overpack as required by 10 CFR 71.117.

3. The team determined that the A–0109 irradiator included in the shipment, an integral part of the packaging, was manufactured after August 31, 1986. Fabrication of previously approved packaging must have been completed by August 31, 1986 as required by 10 CFR 71.13.

4. The team determined that JLS&A had not obtained multilateral approval required by 10 CFR 71.13 before delivering the package for export shipment since the package was not of the design authorized by the NRC CoC No. 6280 nor as approved by the Competent Authority for the transportation of radioactive materials in the United Kingdom. The United Kingdom approval was issued about 3 months after JLS&A delivered the package for export to Ethiopia via the United Kingdom. The package was subsequently returned to the United States from the United Kingdom.

5. The team determined that the Vice President of JLS&A, who is also the Acting QA/Quality Control Program Plan Administrator, does not have sufficient independence from cost and schedule. JLS&A had not implemented procedures appropriate to preclude a conflict of interest from cost and scheduling as described in the JLS&A QA Program Plan and as required by 10 CFR 71.103(d).

As a result of the findings during the May 29–31, 2001, inspection the NRC no longer has confidence that JLS&A will implement the QA Program approved by NRC in accordance with 10 CFR part 71, subpart H, in a manner that will assure the required preparation and use of transportation packages in full conformance with the terms and conditions of an NRC CoC and with 10 CFR part 71. This is of significant concern because JLS&A, in addition to holding CoC No. 6280, also holds CoC No. 5984 for transportation packages which may be used by eight licensees, including JLS&A.

These inspection findings are of particular concern in light of the fact that on December 4, 2000, in response to an NRC Confirmatory Action Letter, JLS&A stated that the packaging used in the August 15, 2000, export to Ethiopia via the United Kingdom met the terms and conditions of the NRC issued CoC No. 6280. This package contained 18,000 curies of cobalt-60 in special form sources. The ability of the package to meet the performance requirements for transportation packages is evaluated for a specific design. The package that was to be shipped to Ethiopia via United Kingdom had been modified and did not meet the design that was approved by the NRC. Accordingly, the unapproved package design had not been demonstrated to meet the transportation package approval standards for both normal and accident conditions. This could have resulted in significant safety consequences.

Consequently, I lack the requisite reasonable assurance that the Approval Holder's current operations can be conducted under Approval No. 0122 in compliance with the Commission's requirements and that the health and safety of the public, including the Approval Holder's employees, will be protected. Therefore, the interests of protecting public health and safety, require that Approval No. 0122 be withdrawn. Accordingly, JLS&A may no longer certify to any person that its 10 CFR part 71 transportation activities are conducted under an NRC approved Quality Assurance Program. JLS&A is no longer authorized to design, procure, fabricate, assemble, test, modify, maintain, repair, and use transportation packages for which a 10 CFR part 71 QA program approval is required by 10 CFR part 71, subpart C. Furthermore, pursuant to 10 CFR section 2.202, I find that the significance of the conduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 62, 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR section 2.202 and 10 CFR Parts 71 and 110, *it is hereby ordered, effective immediately, that approval no. 0122 is withdrawn pending further order.*

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind this order upon demonstration by the Approval Holder of good cause.

V

In accordance with 10 CFR 2.202, the Approval Holder must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny

each charge made in this order and set forth the matters of fact and law on which the Approval Holder or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Director, Office of Nuclear Material Safety and Safeguards at the same address, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington TX, 76011, and to the Approval Holder if the hearing request is by a person other than the Approval Holder. If a person other than the Approval Holder requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR section 2.714(d).

If a hearing is requested by the Approval Holder or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Approval Holder, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated this 3rd day of July 2001.

Frank J. Congel,

Director, Office of Enforcement.

[FR Doc. 01–17450 Filed 7–11–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8006]

Consideration of License Amendment to Kerr-McGee Corporation Technical Center and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request and opportunity for a hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission is considering issuance of a license amendment to Material License No. SUB–986, issued to the Kerr-McGee Corporation, to perform remediation in accordance with the submitted decommissioning plan of its Technical Center in Oklahoma City, Oklahoma, and leading to release of the property for unrestricted use and subsequent termination of its license.

FOR FURTHER INFORMATION CONTACT: Blair Spitzberg, Ph.D., Chief, Fuel Cycle and Decommissioning Branch at (817) 860–8191 or Rachel Carr, FCDB at (817) 276–6552.

SUPPLEMENTARY INFORMATION: On April 5, 2001, the licensee submitted a decommissioning plan (DP) to the NRC for review that summarized the decommissioning activities which will be undertaken to remediate the Kerr-McGee Technical Center located in Oklahoma County approximately 15 miles northwest of downtown Oklahoma City, Oklahoma. The Kerr-McGee Technical Center was established in 1963 to provide a research and development facility for conducting chemical and radiological analyses for testing and calibration of instrumentation used for mineral prospecting and small-scale laboratory experiments to develop and prove new or proposed changes to processes for the extraction and purification of uranium and thorium. On April 5, 2001, the licensee submitted a decommissioning plan and license amendment request for unrestricted release of the site and subsequent termination of the license. The NRC will require the licensee to remediate the site to meet NRC's decommissioning criteria and, during decommissioning activities, to maintain doses within NRC requirements and as low as reasonably achievable.

NRC Approval Process

Prior to approving the decommissioning plan, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. The Kerr-McGee Technical Center falls under Type III decommissioning facility requirements as defined in NUREG/BR–0241. In addition, the licensee's activities are covered under the categorical exclusion in 10 CFR 51.22(c)(14)(v), "use of radioactive materials for research and development and for educational purposes." The final approval of the decommissioning plan will be incorporated into the license as a license amendment. Facilities under Type III decommissioning requirements will receive a confirmatory survey and a closeout inspection by the NRC. If the confirmatory survey results indicate that the licensee's evaluation of the final radiological status of the site is statistically valid and meets NRC's criteria and NRC has determined that the Final Status Survey demonstrates that the site satisfies NRC requirements, the site is suitable for release from regulatory control. At the time of release of the site or termination of the license, a subsequent **Federal Register** notice will be published to announce the intent of the NRC Staff to release the site for unrestricted use or to terminate the license.

Documents

The Decommissioning Plan submitted by Kerr-McGee Corporation is available for public inspection from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room). Assistance with the Public Electronic Reading Room may be obtained by calling (800) 397–4209.

Notice of Opportunity for Hearing

The NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by the proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville MD 20852–2738; or

2. By mail, telegram or facsimile addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d)—that is, filed within 30 days of the date of this notice.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Kerr-McGee Corporation, Kerr-McGee Technical Center, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73125; and

2. The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Arlington, Texas, this 3rd day of July, 2001.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. 01–17451 Filed 7–11–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 AND 50–362]

Southern California Edison Company, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 180 and 171 to Facility Operating Licenses Nos. NPF–10 and NPF–15, Southern California Edison Company (SCE or the licensee), which revised the Operating License and Technical Specifications for operation of the San Onofre Nuclear Generating Station (SONGS), Units Nos. 2 and 3, located in San Diego County, California. The amendments are effective as of the date of issuance.

The amendments modified the Technical Specifications and Operating License for SONGS Units 2 and 3, to allow SCE to increase the maximum reactor core power level for each unit from 3390 megawatts thermal (MWt) to 3438 MWt, which is an increase of 1.42 percent of rated core thermal power for SONGS Units 2 and 3.

The proposed action is in accordance with the licensee's application for amendment dated April 3, 2001, and supplemented by letters dated April 23, May 11, May 25, May 31, and June 25, 2001.

The application for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on April 18, 2001 (66 FR 19996). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendments will not have a significant effect on the quality of the human environment (66 FR 32964, and corrected in 66 FR 33982).

For further details with respect to the action see (1) the application for amendment dated April 3, 2001, (and supplemented by letters dated April 23, May 11, May 25, May 31, and June 25, 2001), (2) Amendments No. 180 to License No. NPF–10, and No. 171 to License No. NPF–15, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 6th day of July 2001.

For the Nuclear Regulatory Commission.

Joseph E. Donoghue,

Senior Project Manager, Project Directorate IV, Section 2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–17449 Filed 7–11–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and The U.S. Army Corps of Engineers for Coordination of Cleanup & Decommissioning of the Formerly Utilized Sites Remedial Action Program (FUSRAP) Sites With NRC-Licensed Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the Public of the issuance of a Memorandum of Understanding between the U.S. Army Corps of Engineers (USACE) and the U.S. Nuclear Regulatory Commission (NRC). The purpose of the MOU is to avoid unnecessary duplication of regulatory requirements that may hinder USACE in its remediation of sites under the Comprehensive Environmental Response, Compensation, and Liability

Act (CERCLA). Under the MOU, NRC could exercise its discretion to suspend NRC-issued licenses, or portions thereof, at FUSRAP sites. The MOU addresses unrestricted releases under 10 CFR 20.1402, and the MOU will ensure that the criteria of the License Termination Rule or a more stringent requirement will be met. The MOU will enhance interagency dialogue and will make the agencies activities and decisions concerning site decommissioning and cleanup more effective and efficient. The MOU will assist the agencies to reduce unnecessary burden on stakeholders and avoid duplication of regulatory requirements and effort by setting out cooperative conditions, consistent with the protection of the public health and safety.

EFFECTIVE DATE: July 5, 2001.

ADDRESSES: Copies of all NRC documents are available for public inspection, and copying for a fee, in the NRC Public Document Room, 11455 Rockville Pike (Mail Stop: 01F13), Rockville, MD. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday (except Federal holidays). Telephone service is provided from 8:30 a.m. to 4:15 p.m., at (301) 415–4737 or toll-free at 1–800–397–4209 or e-mail: pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Amir Kouhestani, NMSS Mail Stop T7-F27, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–0023; Fax (301) 415–5398; e-mail: *aak@nrc.gov*.

Dated at Rockville, Maryland, this 5th Day of July, 2001.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the U.S. Army Corps of Engineers for Coordination on Cleanup & Decommissioning of the Formerly Utilized Sites Remedial Action Program (FUSRAP) Sites With NRC-Licensed Facilities

Article I—Purpose and Authority

A. This Memorandum of Understanding (MOU) is entered into by and between the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Army Corps of Engineers (USACE), ("The Parties") for the purpose of minimizing dual regulation and duplication of regulatory requirements at FUSRAP sites with NRC-licensed facilities. For activities where a potential for dual regulation could exist, the two agencies agree to cooperate, share information, and/or coordinate activities in their respective programs. This MOU applies to USACE response actions meeting the decommissioning requirements of 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use." USACE Response actions meeting the restricted release requirements of 10 CFR 20.1403, are outside the scope of this MOU.

B. The NRC has the statutory responsibility for the protection of the public health and safety related to the possession and use of source, byproduct, and special nuclear material under the Atomic Energy Act of 1954, as amended (Public Law 83–703, 68 Stat. 919). This includes ensuring the decommissioning of the nuclear facilities that it licenses. The Commission's licenses and regulations set out conditions to provide for the protection of the public health and safety and the environment. To terminate such licenses, NRC must ensure that licensees meet the Commission's decommissioning requirements including the provisions of 10 CFR 20 subpart E—Radiation Criteria for License Termination.

C. USACE is administering and executing cleanup at FUSRAP sites pursuant to a March 1999, MOU with the Department of Energy and the provisions of the Energy and Water Development Appropriations Acts for Fiscal Years 1998–2001 (Public Laws 105–62, 105–245, 106–60 and 106–377, respectively). Section 611 of Pub. L. 106–60 requires the USACE to remediate FUSRAP sites, in accordance with, and subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR, chapter 1, part 300. Section 611 also confers lead agency status on the USACE for remedy selection. USACE, as provided for in section 121(e) of CERCLA and 40 CFR 300.400(e), is not required to obtain a NRC license for its on-site remediation activities conducted under its CERCLA authority. However, if a response action is required, CERCLA requires the remedy to be protective of human health and the environment.

D. This MOU describes how the two agencies will work together to meet their existing statutory responsibilities. It neither creates nor removes any agency responsibility or authority. This MOU is not an admission of responsibility or liability on the part of the United States with regard to any hazardous substances or operations at a licensed site; does not relieve a license holder of its responsibilities and liabilities under any law; and does not create rights in any third party against USACE, NRC, or the United States.

E. CERCLA obligations imposed on the USACE may duplicate the obligations established by NRC regulations and licenses, resulting in duplicate regulatory requirements at NRC-licensed FUSRAP sites that will impose an added regulatory burden without an added safety benefit. To avoid unnecessary duplication of regulatory requirements and effort, this MOU sets out the conditions, consistent with the protection of the public health and safety, that will permit NRC to exercise its discretion to suspend NRC issued licenses at FUSRAP sites so that NRC requirements do not hinder USACE in its remediation of sites under CERCLA.

F. Each agency will bear its own costs for actions consistent with this MOU, but this does not preclude each agency from recovering costs, based on it's statutory authority, from the licensee or responsible parties.

G. *Use of Terms.*

1. The term "response action" means response actions as defined in CERCLA at 42 U.S.C. 9601(25) including removal and remedial actions and related CERCLA enforcement actions.

2. The term "closeout" means that all construction activities and reports are complete, the cleanup goals specified in the final ROD are achieved, coordination with regulatory agencies, and publication of notice in accordance with the provisions of CERCLA, the National Contingency Plan (NCP) and USACE procedures have been completed.

3. The term "completed response action" means that all construction activities are complete; for components other than ground or surface water, the cleanup goals specified in the ROD are achieved; any ground and/or surface water restoration remedies are operating as designed; and a remedial or removal action report is complete.

4. The term "FUSRAP site" means any geographic area certified by the Department of Energy (DOE) to have been used for activities in support of the Nation's early atomic energy program, and determined by USACE to require a response action pursuant to CERCLA or placed into the FUSRAP program pursuant to Congressional direction. A FUSRAP site may overlap all, or any part, of an NRC-licensed site.

5. The term "possession" means physical control of the property or

materials for purposes of environmental restoration and protection of the health and safety of the public.

Possession does not require ownership nor is USACE assuming responsibility for the operations and activities of the NRC licensee or owner of the materials. The USACE will take control only of the FUSRAP-related materials on the licensed site as provided in paragraph III. B.. Non-FUSRAP materials, unless the responsibility of the USACE under CERCLA, remain under control of the licensee.

6. The term "licensed site" means that a NRC license has been issued, and remains active or suspended, to possess and use material licensed under the Atomic Energy Act at the site.

Article II—Intragency Communication

To provide for consistent and effective communication between NRC and USACE, each agency shall appoint a Principal Representative to serve as its headquarters-level point of contact on matters relating to this MOU. Written notices required by the MOU shall be sent to the USACE's and NRC's Principal representatives. The Principal Representatives are:

Chief, Decommissioning Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Chief, Environmental Division, Directorate of Military Programs, U.S. Army Corps of Engineers 441 G Street, NW., Washington, DC 20314–1000

Article III—Agreement

A. At the request of USACE, NRC will initiate action for the suspension of the NRC license or portions of the license for a FUSRAP site to be remediated by USACE under CERCLA authority contingent upon USACE notifying the NRC in writing that:

(1) USACE is prepared to take physical possession of all or part of the licensed site for purposes of control of radiation from FUSRAP materials subject to NRC jurisdiction and be responsible for the protection of the public health and safety from those materials consistent with 10 CFR part 20 "Standards For Protection Against Radiation" and other requirements consistent with CERCLA;

(2) USACE will conduct a response action at the licensed site under its FUSRAP and CERCLA authority, with regard to FUSRAP materials subject to NRC jurisdiction, to meet at least the standards required under 10 CFR 20.1402, and

(3) USACE has no objection to, and will facilitate, NRC observing USACE in-process remediation activities.

Such written notification to the NRC should be provided after the final Record of Decision (ROD), or its equivalent, is issued, if one is prepared, and at least 90 calendar days prior to USACE's expected date of initiation of a site response action so that the NRC can initiate the process for suspension of the license. Prior to submitting the notification, USACE will make a reasonable attempt to obtain the licensee's consent to USACE's proposed action and document the results of this effort in the notification.

B. Depending on the extent of FUSRAP materials and their separability from other hazardous substances on the site, USACE's responsibility may encompass the entire site, portions of the site, all the radioactive materials or just the FUSRAP and commingled materials, as specified in the final ROD. USACE will notify NRC of its findings regarding the type and extent of hazardous substance on a licensed site prior to requesting license suspension. Prior to USACE submitting a request for license suspension on a site where the NRC license suspension will not encompass the entire site, USACE and NRC will meet to agree on the scope of the suspension. The licensee may be involved in these discussions.

C. NRC licensing action for the suspension of the license, or portions of the license, will be effective, subject to:

(1) Written notification from USACE to the NRC that USACE has taken physical possession of the licensed site for purposes of radiation control and is now responsible for the protection of the public health and safety consistent with the requirements of 10 CFR Part 20 and

(2) The effectiveness rules of the NRC hearing process pursuant to 10 CFR Part 2, "Rules Of Practice For Domestic Licensing Proceedings And Issuance Of Orders."

Prior to license suspension, the licensee retains responsibility for meeting the Commission's requirements for protecting the environment and the health and safety of the public.

D. NRC may observe, as it deems warranted, remediation activities being conducted by USACE. For the purpose of scheduling in-process activity observation, USACE shall provide the NRC with the schedule of major activities, regular progress reports on sites' activities, studies, and/or remediation, and planned work stoppages.

E. The NRC shall keep USACE apprised in writing of questions, comments or concerns arising from any NRC observations of USACE response action activities and shall immediately notify the USACE of any conditions having a potential to adversely affect the environment or the health and safety of the public.

F. USACE shall be responsible for the protection of the health and safety of the public consistent with the requirements of CERCLA and 10 CFR part 20 during the time it is in physical possession of the licensed site or portions thereof which are suspended in accordance with the agreement at the time of license suspension.

G. USACE shall remediate the licensed site to meet at least the requirements of CERCLA and of 10 CFR 20.1402. The Applicable or Relevant and Appropriate Requirement (ARAR) in the final executed ROD will include 10 CFR 20.1402 or a more stringent requirement.

H. USACE shall manage all activities and prepare program estimates, funding requirements, and budget justifications for all FUSRAP activities for which it has been given responsibility as provided by the annual Energy and Water Development Appropriations Act, and the terms of this MOU. USACE shall request FUSRAP appropriations in the annual Energy and Water Development Appropriations Act for these activities. USACE shall respond to inquiries from public officials, Congressional interests, stakeholders, and members of the press regarding USACE activities under FUSRAP.

I. USACE shall consult with NRC if USACE surveys, investigations, and data analyses are inconsistent with the NRC description of the potential radioactive and/or chemical contaminants and processes involved in the historical activities at a licensed site at which the USACE is conducting a FUSRAP investigation or response action under CERCLA. USACE shall immediately notify NRC if, as a result of its Preliminary Assessments, Remedial Investigations, or other surveys prior to production of a ROD, conditions warrant a time-critical removal action, and the agencies will identify an appropriate response that protects the environment and the health and safety of the public.

J. USACE shall notify NRC in writing if there is a need for a radiological response action under FUSRAP on any property not covered by the license suspended or to be suspended (whether or not owned by the licensee) as a result of radioactive contamination from a licensed site undergoing a FUSRAP investigation or response action.

K. Following completion of the response action at a FUSRAP site with an NRC-licensed facility, USACE shall provide the NRC with a copy of the CERCLA Administrative Record for the NRC historical public record. At the time of close out USACE will provide NRC with copies of any additional information that has been placed in the CERCLA Administrative Record.

L. USACE shall notify the NRC in writing if there are NRC-licensed facilities on FUSRAP sites that may require coordination with the NRC in addition to the four known sites: Maywood Site (Stepan), Maywood, NJ; CE-Windsor Site, Windsor, CT; St. Louis Downtown Site (Mallinkrodt), St. Louis, MO; and the Shallow Land Disposal Area, Parks Township, PA.

M. USACE shall keep NRC apprised in writing of progress toward completion of Preliminary Assessments and/or Site Investigations at licensed sites to determine:

(1) Whether FUSRAP and commingled materials at the site are a threat or potential threat to public health and safety or the environment as a result of the licensed materials there; and

(2) Whether the release requires a response under CERCLA.

N. The NRC will reinstate the license or portions of the license put into suspension due to USACE's remediation if USACE:

(1) Is no longer controlling the FUSRAP-related portion of the licensed site for radiation protection purposes,

(2) Is no longer proceeding with a response action at the licensed site under CERCLA, or

(3) Has otherwise completed its response action.

At least 90 calendar days prior to USACE terminating its physical possession of the licensed site for purpose of control of radiation, USACE will notify the NRC in writing so that the NRC can initiate the process for reinstating the license. USACE shall promptly notify NRC in writing if annual funding for the FUSRAP response action at an NRC-licensed site does not appear to be sufficient to complete the response action.

O. NRC shall be responsible for appropriate regulatory action, including requiring any further decommissioning if necessary, following license reinstatement.

P. As may be necessary, NRC and USACE will develop working procedures to implement this MOU. Such procedures will be approved by the Principal Representatives.

Article IV—Further Assistance

NRC and USACE shall provide such information as may be reasonably necessary or required, which are not inconsistent with applicable laws and regulations, and the provisions of this MOU, in order to give full effect to this MOU and to carry out its intent.

Article V—Dispute Resolution

Every effort will be made to resolve issues between NRC and USACE by the staff directly involved in the activities at issue, through consultation and communication. If a mutually acceptable resolution cannot be reached, the dispute will be elevated to successively higher levels of management up to the signers of this MOU. If resolution cannot be reached, NRC may in its discretion reinstate the licenses involved after providing a written 30 calendar day advance notice to the USACE. Upon license reinstatement, USACE's obligations under this MOU for the particular site shall cease and the licensee becomes responsible for control of radioactive materials on the licensed site, as well as protecting the environment and the health and safety of the public, subject to NRC regulation and other applicable law. Upon determining that the licensee has established control of the site and hazardous substances, USACE will relinquish possession of the site and hazardous substances, will cease remediation activities, and will vacate the site. License reinstatement constitutes notice of the shift in responsibility for control of the site and its hazardous substances.

Article VI—Amendment and Termination

This MOU may be modified or amended in writing by the mutual agreement of the parties. Either party may terminate the MOU by providing written notice to the other party. The termination shall be effective 60 calendar days following notice, unless the parties agree to a later date. Termination of this MOU does not relieve USACE of its statutory responsibility for protecting the environment or the health and safety of the public until NRC has reinstated the license and the licensee has taken control of the site and its hazardous substances.

Article VII—Effective Date

This MOU shall become effective when signed by authorized officials of NRC and USACE.

Dated: February 2, 2001.

U.S. Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission.

Dated: July 5, 2001.

U.S. Army Corps of Engineers.

Hans A. Van Winkle,

Major General, U.S. Army, Director, Civil Works, U.S. Army Corps of Engineers.

[FR Doc. 01–17452 Filed 7–11–01; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested published review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on May 2, 2001, in 66 FR 22054, at which time a 60-calendar day comment period was announced. This comment period ended July 2, 2001. No comments were received in response to this Notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before August 13, 2001.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket

Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–3897.

Summary of Form Under Review

Type of Request: Form Renewal.
Title: Request for Registration for Political Risk Investment Insurance.
Form Number: OPIC 50.
Frequency of Use: Once per investor, per project.
Type of Respondents: Business or other institutions.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies investing overseas.
Reporting Hours: ½ hour per project.
Number of Responses: 850.
Federal Cost: $1,600.00.
Authority for Information Collection: Sections 231 and 234(a), of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The OPIC 50 form is submitted by eligible investors to register their intent to make international investments, and ultimately, to seek OPIC insurance. By submitting Form 50 to OPIC prior to making an irrevocable commitment, the incentive effect of OPIC is demonstrated.

Dated: July 6, 2001.

Rumu Sarkar,

Assistant General Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 01–17426 Filed 7–11–01; 8:45 am]

BILLING CODE 3210–01–M

SOCIAL SECURITY ADMINISTRATION

President's Commission To Strengthen Social Security

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of meeting.

DATES: July 24, 2001 10 a.m.–4 p.m.

ADDRESSES: Presidential Ballroom, Capitol Hilton, 1001 16th Street, NW., Washington, DC 20036, (202) 393–1000.

SUPPLEMENTARY INFORMATION: *Type of meeting:* The meeting will be open to the public between 10 a.m. and 4 p.m., with a break for lunch between Noon and 1 p.m.

Purpose: This is the second deliberative meeting of the Commission. No public testimony will be heard at this meeting. However, interested parties are invited to attend the meeting.

Agenda: The Commission will meet commencing Tuesday, July 24, at 10 a.m. The meeting will take place between 10 a.m. and 4 p.m., with a break for lunch between Noon and 1 p.m. During the meeting, the Commission will discuss its Interim Report.

Records are being kept of all Commission proceedings and will be available for public inspection at the Commission's office at the address below. Documents such as meeting announcements, agendas, minutes, and Commission reports will be available on the Commission's web page. Anyone requiring information regarding the Commission should contact Commission staff by:

- Internet at *http://www.CSSS.gov;*
- Mail addressed to President's Commission to Strengthen Social Security, 734 Jackson Place, NW., Washington, DC 20503;
- Telephone at (202) 343–1255;
- Email to Comments@CSSS.gov.

Dated: July 6, 2001.

Michael A. Anzick,

Designated Federal Officer.

[FR Doc. 01–17492 Filed 7–11–01; 8:45 am]

BILLING CODE 4191–02–U

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Computer Matching Program (Social Security Administration (SSA)/ Department of Housing and Urban Development (HUD))—Match Number 1061

AGENCY: Social Security Administration.

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with HUD.

DATES: HUD has filed a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–2935 or writing to the Acting Associate Commissioner, Office of Program Support, 2–Q–16 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Acting Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: July 2, 2001.

Glenna Donnelly,

Acting Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) With the Department of Housing and Urban Development (HUD)

A. Participating Agencies

SSA and HUD.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions and procedures for the computer matching of HUD's tenant data to SSA's title II (Social Security), title XVI (supplemental security income), and

title VIII (special veterans benefits) data and to wage, self-employment and retirement income data. The matching program will provide information confirming the accuracy of tenant-reported income. Administrators of HUD programs rely upon the accuracy of tenant-reported income to determine applicants' and participants' eligibility for, and level of, rental assistance benefits. Underreported or overreported tenant income affects tenant eligibility, level of housing benefits, and HUD subsidies. The matching program will provide indicators of potential underreported and overreported tenant income that will require additional verification to identify inappropriate (excess or insufficient) rental assistance, and perhaps administrative or legal actions.

C. Authority for Conducting the Matching Program

Section 1106 of the Social Security Act (42 U.S.C. 1306); 42 U.S.C. 3544(b) and (c)(2)(A)(ii); and 26 U.S.C. 6103(1)(7)(D)(ix).

D. Categories of Records and Individuals Covered by the Matching Program

HUD will provide information to SSA from its system of records entitled Tenant Housing Assistance and Contract Verification Data. This system of records includes two automated systems know as the multifamily Tenant Characteristics System and the Tenant Rental Assistance Certification System. Each record on the HUD file will be matched to SSA's Master Files of SSN Holders and SSN Applications, SSA's Earnings Recording and Self-Employment Income System, SSA's Master Beneficiary Record; and SSA's Supplemental Security Income and Special Veterans Benefits Record for the purposes described above in Section B.

E. Inclusive Dates of the Matching Program

The matching program shall become effective upon the signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of this matching program is sent to Congress and the Office of Management and Budget or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 01–17106 Filed 7–11–01; 8:45 am]

BILLING CODE 4191–02–U

OFFICE OF SPECIAL COUNSEL

Privacy Act of 1974, System of Records

AGENCY: Office of Special Counsel.

ACTION: Notice of technical revisions to system of records and proposed revision of system descriptions and routine uses.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 USC 552a, notice is given that the U.S. Office of Special Counsel (OSC) is making non-substantive technical revisions to the Privacy Act system notice for the system of records designated "OSC/GOVT–1, OSC Complaint, Litigation and Political Activity Files;" proposing to change descriptions of certain features of the system of records; and proposing the amendment of two current routine uses, and the addition of a new routine use. The affected system of records is maintained in connection with OSC program responsibilities under 5 U.S.C. 1212, *et seq.*, and 38 U.S.C. 4324.

SUPPLEMENTARY INFORMATION: OSC is an independent investigative and prosecutorial agency. Its responsibilities include investigation of allegations of: (a) Prohibited personnel practices under 5 U.S.C. 2302(b), and other prohibited employment practices under 5 U.S.C. 1216; (b) prohibited political activity by federal and District of Columbia employees under 5 U.S.C. 7321–7326, and by certain state and local government employees under 5 U.S.C. 1501–1508; and (c) prohibited personnel practices in cases referred to OSC by the Merit Systems Protection Board (MSPB) under 5 U.S.C. 1221(f)(3). OSC is authorized to seek appropriate corrective and/or disciplinary action in these matters through litigation before the MSPB. Under 5 U.S.C. 1213, OSC operates a hotline channel for confidential whistleblower disclosures by current and former federal employees or former federal employees. Section 1212(f) of title 5 authorizes OSC to provide advisory opinions on request to government employees and others about whether or not they may engage in specific political activities under the Hatch Act. Finally, OSC is authorized to represent claimants in cases arising under provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), at 38 U.S.C. 4311, *et seq.*

Information developed in connection with these OSC responsibilities is maintained in the OSC/GOVT–1 system of records, which includes certain records subject to the Privacy Act. These include records in complaint files, disclosure files, Hatch Act advisory opinion files, and litigation files (in connection with litigation filed by or against OSC or its employees). The last full notice of the system was published at 64 FR 63359–63361 (November 19, 1999); minor numbering corrections were published at 65 FR 6436 (February 9, 2000).

OSC is revising the OSC/GOVT–1 system notice to: (1) Make non-substantive technical revisions; (2) propose changes in the descriptions of certain features of the system of records to update information shown in prior system notices; and (3) propose the amendment of current routine uses "p" and "q," and the addition of a new routine use "r," addressing disclosures in furtherance of OSC and U.S. Department of Labor (DOL) responsibilities for the protection of federal employment rights of veterans and reservists.

Non-substantive technical revisions are made in this notice to correct editorial errors in the November 1999 system notice; add useful citations; reflect changes in the administrative location of the system manager and the system of records; update OSC's official mailing address; and correct the description of routine use "o" by restoring the word "under" in place of "use." ("[U]nder" had appeared in prior system notices, but was inadvertently changed to "use" in the November 1999 notice.)

This notice also proposes to change descriptions of categories of individuals covered by the system of records, retrievability of records in the system, and system safeguards, to update information shown in prior system notices.

Finally, this notice proposes to amend current routine use "p," by deleting "and" at the end of the text, and current routine use "q," by striking the period at the end and adding "; and". The notice also proposes a new routine use "r," to disclosures of information by OSC to DOL and others, in furtherance of OSC and DOL responsibilities for protection of federal employment rights under USERRA and the Veterans' Employment Opportunities Act of 1998 (VEOA) (amending title 5). Current routine uses cover OSC disclosures during the processing of all complaints within its jurisdiction, including for investigative and litigation purposes. OSC believes, however, that a routine

use tailored to certain responsibilities of OSC and DOL in processing alleged violations of veterans' and reservists' federal employment rights will facilitate implementation of those responsibilities, consistent with procedures agreed to by OSC and DOL. A brief summary of the responsibilities addressed by the proposed new routine use follows:

Violations of veterans' preference requirements (5 U.S.C. 2302(b)(11)). OSC initially refers alleged violations of veterans' preference requirements to DOL for further action under the VEOA. (The MSPB lacks authority to order corrective action for violations alleged under 5 U.S.C. 2302(b)(11), which makes it a prohibited personnel practice to knowingly take, recommend, or approve, or fail to take, recommend, or approve any personnel action, if doing so would violate a veterans' preference requirement.) OSC has agreed to notify DOL of each such referral. DOL, in turn, will refer matters as appropriate to OSC for possible disciplinary action under 5 U.S.C. 1215.

Violations of employment/re-employment rights (USERRA). Upon request by a claimant, DOL refers unresolved complaints alleging violations of veterans' rights to OSC pursuant to 38 U.S.C. 4324. If OSC is reasonably satisfied that the claimant is entitled to relief under USERRA, it may represent that person in litigation seeking corrective action before the MSPB (and, as necessary, the Federal Circuit Court of Appeals). In reviewing issues identified in the initial referral, OSC may contact DOL or any agency or person as needed to obtain relevant information on the claimant's entitlement to relief, and may consult with DOL on representation issues. If OSC declines representation, it notifies the claimant. OSC may also notify the agency involved. (No information about the basis for OSC's decision or OSC's assessment of the case is provided to the agency.)

For ease of reference by other government entities and the public, the entire system notice is printed below. It includes all non-substantive technical revisions, proposed changes to descriptions of system features listed above, proposed revisions to routine uses "p" and "q," and the proposed new routine use "r."

In accordance with 5 U.S.C. 552a(r), OSC has provided a report to the Office of Management and Budget (OMB) and the Congress on significant changes proposed in this notice.

COMMENTS: In accordance with 5 U.S.C. 552a(e)(4) and (11), members of the public are given a 30-day period in which to comment. (OMB, which has oversight responsibility under the Privacy Act, also requires an opportunity for its review of significant changes proposed in the notice.) Any comments should be submitted to OSC in writing by August 13, 2001. Comments should be sent by mail to Erin M. McDonnell, Planning and Advice Division, U.S. Office of Special Counsel, 1730 M Street, NW, Suite 201, Washington DC 20036–4505; comments may also be sent to the same addressee by fax, at (202)–653–5161.

DATES: The non-substantive technical revisions described in this notice are effective upon publication. Other changes proposed in the notice will become effective on [30 days after publication of this notice], unless comments received by OSC before then warrant further changes.

FOR FURTHER INFORMATION CONTACT: Erin M. McDonnell, U.S. Office of Special Counsel, at (202) 653–8971.

OSC/GOVT–1

SYSTEM NAME:

OSC/GOVT–1, OSC Complaint, Litigation and Political Activity Files.

SYSTEM LOCATION:

Human and Administrative Resources Management Branch, U.S. Office of Special Counsel, 1730 M Street, NW, Suite 201, Washington, DC 20036–4505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The principal categories of individuals covered by the system are persons filing allegations of prohibited personnel practices, improper political activity, or other prohibited activities; persons identified as engaging or participating in such practices or activities; persons filing disclosures of alleged wrongdoing by federal agencies, and persons identified as engaging or participating in such wrongdoing; persons requesting advisory opinions on political activity; persons charged by OSC in disciplinary action complaints filed by OSC with the Merit Systems Protection Board (MSPB); and plaintiffs seeking remedies against OSC in litigation related to the performance of its official functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence with persons (or their representatives) filing allegations of prohibited personnel practices, improper political activity, or other prohibited activities; correspondence with other agencies, entities, or individuals referring matters to OSC for review and/or investigation; exhibits and other documentation from complainants, governmental entities or other third parties; interview records, including notes, summaries, or transcripts; affidavits; reports or other summaries of investigation; factual and legal summaries and analyses; administrative determinations; referrals to other agencies for appropriate action; records created or compiled in connection with litigation by or against OSC, or pertinent to OSC operations; requests and decisions under the Freedom of Information and/or Privacy Acts; and other correspondence and documents arising out of the performance of official OSC functions under 5 U.S.C. 1211–1221, 1501–1508, and 7321–7326; 38 U.S.C. 4324, and other applicable law or regulation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 552a, 1211–1221, 1501–1508, and 7321–7326; and 38 U.S.C. 4324.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose the fact that an allegation of prohibited personnel practices or other prohibited activity has been filed;

b. To disclose information to the Office of Personnel Management (OPM) pursuant to Civil Service Rule 5.4 (5 CFR 5.4), or to obtain an advisory opinion concerning the application or effect of civil service laws, rules, regulations or OPM guidelines in particular situations;

c. To disclose to the Equal Employment Opportunity Commission or any other agency or office concerned with the enforcement of the anti-discrimination laws, information concerning any allegation or complaint of discrimination based on race, color, religion, sex, national origin, age, or handicapping condition;

d. To disclose information to the MSPB or the President upon the filing or referral of a disciplinary action complaint against an employee on the basis of an OSC investigation;

e. To disclose information to an agency, the MSPB, OPM, and the President reporting, under 5 U.S.C. 1214, the results of investigations which disclose reasonable grounds to believe a prohibited personnel practice has occurred, exists, or is to be taken;

f. To disclose information to Congress in connection with the submission of an annual report on activities of the Special Counsel;

g. To disclose information to any agency or person regarding allegations of prohibited personnel practices or

other prohibited activity or prohibited political activity filed against an agency or any employee thereof, for the purposes of conducting an investigation, in transmitting information to an agency under 5 U.S.C. 1213(c)(1) and the OSC procedures established thereunder; or to give notice of the status or outcome of the investigation;

h. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit;

i. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation, as set forth in OMB Circular No. A–19;

j. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office (made at the request of that individual);

k. To furnish information to the National Archives and Records Administration (NARA) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906;

l. To produce summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related work force studies;

m. To disclose records to the Department of Justice (DOJ) when:

(1) The OSC, or

(2) Any employee of the OSC in his or her official capacity, or

(3) Any employee of the OSC in his or her individual capacity where the DOJ has agreed to represent the employee, or

(4) The United States, where the OSC determines that litigation is likely to affect the OSC, is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the OSC to be relevant and necessary to the litigation, provided, however, that the OSC determines that disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

n. To disclose records maintained by the OSC in a proceeding before a court or adjudicative body before which the OSC is authorized to appear, when:

(1) The OSC, or

(2) Any employee of the OSC in his or her official capacity,

(3) Any employee of the OSC in his or her individual capacity where the OSC has agreed to represent the employee, or

(4) The United States, where the OSC determines that litigation is likely to affect the OSC, is a party to litigation or has an interest in such litigation, and the OSC determines that use of such records is relevant and necessary to the litigation, provided, however, that the OSC determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

o. To disclose information to the MSPB to aid in the conduct of special studies by the Board under 5 U.S.C. 1204(a)(3);

p. To disclose information to the Office of Inspector General (OIG) or comparable internal inspection, audit, or oversight office of an agency for the purpose of facilitating the coordination and conduct of investigations and review of allegations within the purview of both the OSC and the agency OIG or comparable office;

q. To disclose information to the news media and the public when (1) the matter under investigation has become public knowledge, (2) the Special Counsel determines that disclosure is necessary to preserve confidence in the integrity of the OSC investigative process or is necessary to demonstrate the accountability of OSC officers, employees, or individuals covered by this system, or (3) the Special Counsel determines that there exists a legitimate public interest (e.g., to demonstrate that the law is being enforced, or to deter the commission of prohibited personnel practices, prohibited political activity, and other prohibited activity within the OSC's jurisdiction), except to the extent that the Special Counsel determines in any of these situations that disclosure of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; and

r. To disclose information to the U.S. Department of Labor (DOL) about OSC's referral of a complaint alleging a violation of veterans preference requirements to DOL for further action under the Veterans' Employment Opportunities Act of 1998 further; action under the Veterans' Employment Opportunities Act of 1998 (VEOA); to disclose information to DOL or any agency or person as needed to develop relevant information about matters referred by DOL to OSC under 38 U.S.C. 4324 (the Uniformed Services Employment and Reemployment Rights Act of 1994)the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA); to disclose information to DOL or any agency or person as needed to advise on the status or disposition of matters referred by DOL to OSC for disciplinary action under 5 U.S.C. 1215, or corrective action litigation under 538 U.S.C. 4324.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVAL, ACCESS CONTROLS, RETENTION AND DISPOSAL OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in a variety of media, primarily consisting of file folders, and computer storage equipment.

RETRIEVABILITY:

Files in this system of records are retrievable by the names of key individuals or agencies involved (e.g., complainants or requesters; subjects identified in corrective action or disciplinary proceedings, warning letters, or other determinations; legal, congressional, or other representatives or points of contact; or key witnesses), although files are generally retrieved by the name of: (a) The complainant alleging a prohibited personnel practice, or other prohibited activity; (b) the alleged subject of a complaint about prohibited political activity; (c) the person filing an allegation through the OSC whistleblower disclosure channel; (d) the name of the person filing a request for an advisory opinion on political activity; (e) the name of the person on whose behalf OSC seeks corrective action, or the person against whom OSC seeks disciplinary action, in litigation before the MSPB; and (f) the plaintiff in litigation against OSC.

SAFEGUARDS:

These records are located in lockable file cabinets or in secured areas. The required use of computer password protection identification features and other system protection methods also restrict access. Access is limited to those agency personnel who have an official need for access to perform their duties.

RETENTION AND DISPOSAL:

NARA keeps records about prohibited personnel practices and other prohibited activity for three years after the matter or case is closed, or for six years if the file has been the subject of a Freedom of Information Act request.

NARA is responsible for disposal of OSC records pursuant to law and regulation.

SYSTEM MANAGER(S) AND ADDRESS:

The official responsible for records management functions associated with OSC program and administrative files, including those in the OSC/GOVT–1 system of records, is the Records Management Officer, Human and Administrative Resources Management Branch, U.S. Office of Special Counsel, 1730 M Street, NW, Suite 201, Washington, DC 20036–4505.

NOTIFICATION PROCEDURE:

Individuals who wish to inquire whether this system contains information about them should contact the system manager. To assist in the process of locating and identifying records, individuals should furnish the following:

a. Name and address;
b. Date and place of birth;
c. Social Security number;
d. A description of the circumstances under which records may have been included in the system.

RECORD ACCESS PROCEDURES:

Same as notification procedure, above.

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest records about them should contact the system manager, identify any information they believe should be corrected, and furnish a statement of the basis for the requested correction along with all available supporting documents and materials.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from a variety of sources, consisting of complainants or others on whose behalf allegations, or requests for information, have been submitted or referred to OSC; legal, congressional, or other representatives or points of contact; other government bodies; witnesses and subjects in matters under review; principals involved in litigation matters, including parties and their representatives; and other persons or entities furnishing information pertinent to the discharge of functions for which OSC is responsible.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

a. Complaint, Litigation and Political Activity files containing investigatory material compiled by OSC for law enforcement purposes are exempt to the extent allowed under subsections (k)(2) and (5) of the Privacy Act. This exemption is necessary to protect confidential sources and facilitate the voluntary cooperation of witnesses during inquiries into allegations of prohibited personnel practices or other prohibited activities.

b. Testing or examination material compiled by OSC solely to determine individual qualifications for appointment or promotion in the Federal service is exempt to the extent allowed under subsection (k)(6) of the Privacy Act. This exemption is necessary to prevent the disclosure of information that would potentially give an individual an unfair competitive advantage or diminish the utility of established examination procedures.

c. OSC reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency in responding to a request, and OSC may refuse access to information compiled in reasonable anticipation of a civil action or proceeding, pursuant to subsection (d)(5) of the Privacy Act.

Dated: June 29, 2001.

Elaine Kaplan,

Special Counsel.

[FR Doc. 01–17418 Filed 7–11–01; 8:45 am]

BILLING CODE 7405–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee: Request for Public Comments on the Preliminary Draft Consolidated Texts of the Free Trade Area of the Americas (FTAA) Agreement and the FTAA Technical Committee on Institutional Issues

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Office of the United States Trade Representative is providing notice that the preliminary draft consolidated text of the Free Trade Area of the Americas Agreement (FTAA) has been publicly released and posted on the FTAA website at *www.ftaa-alca.org*. The text is available in the four official languages of the FTAA: English, Spanish, French, and Portuguese. The Trade Policy Staff Committee (TPSC) is requesting written comment from the public on the FTAA preliminary draft consolidated text, as well as on the newly established FTAA Technical Committee on Institutional Issues.

DATES: Public comments should be received by 12 Noon, Wednesday, August 22, 2001.

ADDRESSES: Public comments (original plus 20 copies) should be submitted to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, 1724 F St., NW., Fifth Floor, Washington, DC 20508, Attention: Free Trade Area of the Americas Draft Text Release.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative at (202) 395–3475. All other questions concerning the FTAA negotiations should be addressed to the agency's Office of Western Hemisphere Affairs, FTAA Office at (202) 395–5190. The FTAA preliminary draft consolidated text is now available in four languages, through a link at USTR's homepage to the official FTAA website (*www.ftaa-alca.org*) which also contains general information regarding the FTAA process, including official documents.

SUPPLEMENTARY INFORMATION:

1. Background

A. Text Release

Western Hemisphere Trade Ministers decided at the Buenos Aires Ministerial meeting on April 7, 2001 to make public the FTAA preliminary draft consolidated text. That decision was endorsed by the hemisphere's leaders at the Quebec Summit of the Americas on April 20–22, 2001. The Ministers' decision to publish the text necessitated the translation of the preliminary draft texts produced by the nine Negotiating Groups (market access; agriculture; services; intellectual property rights; investment; government procurement; competition policy; dispute settlement; and subsidies, antidumping and countervailing duties) into the four official languages of the FTAA: English, Spanish, French, and Portuguese. The text is now available on the official FTAA website in all four languages. The preliminary draft consolidated text contains many brackets, indicating that the draft text enclosed by such brackets has not been agreed to by all FTAA members. Overall U.S. Government positions on the substantive areas covered by the FTAA negotiations can be found on the USTR website: *http://www.ustr.gov/regions/whemisphere/ftaa.shtml*

B. Technical Committee on Institutional Issues

At the Buenos Aires Ministerial, FTAA countries created the Technical Committee on Institutional Issues, known as the "TCI". The TCI will

immediately begin the process of developing the overall structure of the FTAA Agreement, including (1) drafting the general provisions of the Agreement, including but not limited to the purposes and objectives of the Agreement, the preamble, the scope and coverage of the obligations, general exceptions, the relationship between the FTAA Agreement and the WTO Agreements, and the relationship between the FTAA Agreement and other regional integration agreements, and (2) making recommendations on institutions which might be required to implement the Agreement, including the human and financial resource implications for any institutional proposals.

2. Public Comments

The TPSC previously has requested public comments on several FTAA issues, including: general US positions and objectives in the FTAA, see 63 FR 128 (July 6, 1998), and 64 FR 248 (December 28, 1999); specific rules of origin in the FTAA, see 66 FR 87 (May 4, 2001); scope of the environmental review for the FTAA pursuant to Executive Order 13141, see 65 FR 233 (December 4, 2000); identification of private sector experts on electronic commerce for the Joint Committee of Experts on Electronic Commerce, see 65 FR 40 (February 29, 2000), 65 FR 150 (August 3, 2000), 64 FR 94 (May 17, 1999), and 63 FR 151 (August 6, 1998); and market access and other issues under the FTAA, see 64 FR 71 (April 14, 1999). The TPSC also asked for comments on the operation of the FTAA Committee of Government Representatives on the Participation of Civil Society, see 63 FR 145 (July 29, 1998); and the TPSC provided notice in 65 FR 121 (June 22, 2000) that the FTAA Committee of Government Representatives on the Participation of Civil Society had issued a request for public comments on trade matters related to the FTAA process.

Written Comments

Written comments, with as much specificity as possible, are invited on:

(a) Any aspect of the FTAA preliminary draft consolidated text; and

(b) The newly established FTAA Technical Committee on Institutional Issues.

Persons submitting written comments should provide the original plus twenty (20) typed copies to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, 1724 F St., N.W., Fifth Floor, Washington, D.C. 20508, (202) 395–3475, no later than 12 Noon, August 22, 2001. If possible, comments should be submitted before this date.

Comments should state clearly the position taken and should describe with particularity the evidence supporting that position. Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room (Room Three) at the address noted above.

Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a nonconfidential summary thereof. If the submission contains business confidential information, twenty copies of a public version that does not contain confidential information must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "Confidential" at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Nonconfidential submissions will be available for public inspection at the USTR Reading Room in the annex of the Office of the USTR, 1724 F St., N.W., Room Three, Washington, D.C. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

To be assured of consideration in this round of negotiations, comments should be submitted by no later than 12 Noon on Wednesday, August 22, 2001.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 01–17435 Filed 7–11–01; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement or Possible Environmental Assessment on the Riverview Corridor Transit Project Located in the Cities of St. Paul and Bloomington, MN

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement or possible Environmental Assessment.

SUMMARY: The Federal Transit Administration (FTA) is issuing this notice to advise interested agencies and the public that, in accordance with the National Environmental Policy Act, an Environmental Impact Statement (EIS) is being prepared for the Riverview Corridor Transit Project in the cities of St. Paul and Bloomington, Minnesota. Based on the definition of the proposed Bus Rapid Transit (BRT) Alternative after the scoping period, an Environmental Assessment document could be determined to be the appropriate level of environmental documentation for the proposed action. This decision will be made at the end of the scoping period, and will depend upon the nature of the proposed action and its expected impacts.

DATES: One Interagency Scoping Meeting and two Public Scoping Meetings will be held on the following dates and times at the locations indicated.

Interagency Scoping Meeting

July 31, 2001, 2 pm to 4 pm, Metro State University, 700 East 7th Street, St. Paul, Minnesota 55106.

Public Scoping Meetings

July 31, 2001, 6 pm to 8 pm, Metro State University, 700 East 7th Street, St. Paul, Minnesota 55106.

August 1, 2001, 6 pm to 8 pm, West 7th Community Center, 265 Oneida Street, St. Paul, Minnesota 55102.

ADDRESSES: Written comments on the scope of analysis and impacts to be considered should be sent by August 13, 2001 to: Molly Grove, Metro Transit, 560 Sixth Avenue North, Minneapolis, MN 55411–4398; Telephone: (612) 349–7533, Fax: (612) 349–7675; Email: molly.grove@metc.state.mn.us; TTY: (612) 349–7439 (attention Molly Grove).

FOR FURTHER INFORMATION CONTACT: Mr. Joel P. Ettinger, Regional Administrator, Federal Transit Administration (FTA), Region V, 200 West Adams Street, Suite 2410, Chicago, IL 60606; Telephone: (312) 353–2789.

SUPPLEMENTARY INFORMATION: The FTA (the federal lead agency) in cooperation with the Metropolitan Council (the local lead agency) anticipates the preparation of an Environmental Impact Statement (EIS) for the Riverview Corridor Transit Project. As in the Summary, the determination may be made that an Environmental Assessment is the appropriate level of environmental documentation, based on the proposed action definition. This decision will be made at the end of the scoping process and it will depend upon the nature of the proposed action and its expected impacts.

I. Scoping

The FTA and Metropolitan Council invite interested individuals, organizations and federal, state and local agencies to participate in defining the alternatives to be evaluated in the environmental document; in identifying social, economic or environmental impacts to be evaluated; and suggesting alternatives that are less costly or have fewer environmental impacts while achieving similar transportation objectives. An information packet, referred to as the Scoping Booklet, will be circulated to all federal, state or local agencies having jurisdiction in the project, and all interested parties currently on the Riverview Corridor mailing list. Other interested parties may request this Scoping Booklet by contacting Molly Grove at (612) 349–7533.

Two public scoping meetings will be held in the study area. The first will be held from 6 pm to 8 pm on July 31, 2001 at the Metro State University. The second meeting will be held from 6:00 pm to 8:00 pm on August 1, 2001 at the West 7th Community Center. One Interagency Scoping Meeting will be held from2 pm to 4 pm on July 31, 2001 at the Metro State University. People with special needs should call Molly Grove at (612) 349–7533. The buildings are accessible to persons with disabilities.

Scoping comments may be made at the public scoping meetings or in writing by August 13, 2001. Comments or questions should be directed to Molly Grove at the address provided above.

II. Description of Study Area

The study area to be analyzed is the Riverview Corridor, which extends 12.3 miles from the Mall of America in Bloomington, through downtown Saint Paul and Saint Paul's Lower East Side. The corridor includes one key roadway (Interstate 35E) two major arterial roadways, West 7th Street and Shepard Road, which traverses the corridor with a railroad alignment and parallels the Mississippi River floodplain.

The Riverview Corridor study area can be described as long and narrow, aligned along a southwesterly to northeasterly axis. The study area limits are generally the Mississippi River on the southeast, I–35E and 7th Street on the northwest, 24th Avenue South and the Mall of America on the southwest, and Arcade Street on the northeast.

Several transportation issues have been identified for the Riverview Corridor. These include mobility limitations, development activity, projected residential population growth, transit captive residents, projected employment growth, efficient connections from the Minneapolis-Saint Paul International Airport to downtown Saint Paul, traffic congestion, and pedestrian vehicular safety.

III. Alternatives

In March 1999, the FTA, in cooperation with the Ramsey County Regional Railroad Authority (RCRRA) issued the Notice of Intent to prepare a Major Investment Study and possible Environmental Impact Statement for the Riverview Corridor in St. Paul, Minnesota. The Major Investment Study (MIS) defined and evaluated two transit technologies for the Riverview Corridor: light rail transit (LRT) and bus rapid transit (BRT). Each technology was reviewed using criteria developed to measure key characteristics important in meeting project goals. These evaluation measures included mobility, economic revitalization and land use, environmental impacts, and cost-effectiveness. Based on the alternative evaluation conducted during the MIS process, the RCRRA chose BRT along 7th Street and a portion of the Canadian Pacific Railroad (CPR) right-of-way as the locally preferred alternative. This action was endorsed by the City of St. Paul and the Metropolitan Council.

The alternatives proposed for consideration in the Riverview Corridor Transit Project environmental document include:

1. *No-Build Alternative*—The No-Build Alternative includes current roadway and transit networks, plus committed and funded transportation projects.

2. *Transportation Systems Management (TSM) Alternative*—The TSM comprises lower cost capital improvements to the existing transportation system to improve transit operations, travel time reliability, and traffic flow. The TSM alternative includes all programmed improvements defined in the No-Build alternative.

3. *Bus Rapid Transit (BRT) Alternative*—A busway would extend from the Mall of America in Bloomington to the Lower East side of Saint Paul. BRT alignment options include West 7th Street, the Canadian Pacific Rail Line, I–35E and Shepard Road. Depending on BRT alignment location and design, modifications to the I–35E/Shepard Road and TH 5/ Shepard Road interchanges will be evaluated as part of this project.

IV. Probable Effects/Potential Impacts for Analysis

The FTA and Metropolitan Council will evaluate each alternative for significant environmental, social and economic impacts. Anticipated primary environmental issues include: Land use, historic and archaeological resources, traffic and parking, noise and vibration, parklands, neighborhoods and environmental justice, floodplain encroachment, coordination with ongoing related transportation and economic development projects, and construction impacts. Other issues the EIS or EA will address include natural areas, rare and endangered species, air and water quality, groundwater, energy, potentially contaminated sites, displacements and relocations, ecosystems, water resources, and energy impacts. The impacts will be evaluated both for the construction period and the long-term period of operation of each alternative. In addition, cumulative effects of the proposed project and any irreversible or irretrievable commitment of resources will be identified. Measures to avoid or mitigate any significant adverse impacts will be developed. .

V. FTA Procedures

In accordance with the regulations and guidance established by the Council of Environmental Quality (CEQ), as well as the Code of Federal Regulations, Title 23, Part 771 (23 CFR Part 771) of the FHWA/FTA environmental regulations and policies, the EIS or possible EA, based on the definition of alternative(s) at the end of the scoping process, will include an evaluation of the social, economic and environmental impacts of each of the alternatives selected for evaluation. The environmental document will also comply with the requirements of the Clean Air Act Amendments of 1990 (CAAA), with the Executive Order 12898 regarding Environmental Justice and will meet the requirements of the US Environmental Protection Agency's transportation conformity regulations (40 CFR 93 and 23 CFR 450.322(b)(8)). After its publication, the Draft Environmental Impact Statement (DEIS) or EA

document will be available for public and agency review and comment. Public hearings will be held on the DEIS or EA document.

If the proposed build alternative(s) require the preparation of an EIS, the Final Environmental Impact Statement (FEIS) will consider comments received during the DEIS public review and will identify the preferred alternative. Opportunity for additional public comment will be provided throughout all phases of project development.

Issued on: July 9, 2001.

Joel P. Ettinger,

Region V Administrator, Federal Transit Administration, Chicago, Illinois.

[FR Doc. 01–17483 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 11 AM on Monday, July 30, 2001, by conference call in the Administrator's Office, room 5424, 400 7th Street, SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than July 25, 2001, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on July 6, 2001.

Marc C. Owen,

Chief Counsel.

[FR Doc. 01–17421 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01- 53]

Extension of Customs Approval for SGS Control Services, Incorporated as a Commercial Gauger

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of an extension of customs approval for SGS Control Services, Inc. as a commercial gauger.

SUMMARY: SGS Control Services, Inc. of Houston, Texas, has applied to U.S. Customs under Part 151.13 of the Customs Regulations for an extension of Customs approval as a commercial gauger for their Pasadena, Texas site, to gauge petroleum product, animal and vegetable oils, and organic compounds. Customs has determined that this company meets all of the requirements for an extension of Customs approval as a commercial gauger. Specifically, SGS Control Services, Inc., Pasadena, Texas, has been granted approval to gauge petroleum product under Chapter 27 and Chapter 29, animal and vegetable oils under Chapter 15 and organic compounds under Chapter 29 of the Harmonized Tariff Schedule of the United States (HTSUS). Therefore, in accordance with Part 151.13 of the Customs Regulations, SGS Control Services, Inc. is hereby approved to gauge the products named above.

Location: SGS Control Services, Inc. approved site is located at, 530 North Witter, Pasadena, Texas, 77506.

EFFECTIVE DATE: July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Parker, National Quality Manager, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Suite 1500 North, Washington, DC 20229, (202) 927–1060.

Dated: July 2, 2001.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 01–17488 Filed 7–11–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: "Red Bull North America, Inc."; Correction

ACTION: Notice of application for recordation of trade name; correction.

SUMMARY: In a document published in the **Federal Register** on June 14, 2001, Customs announced that an application has been filed for recordation of the trade name "Red Bull North America, Inc." under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124). There was an error in that document regarding the trade name for which the application for recordation was filed. This document corrects that error.

Correction of Publication

In the **Federal Register** issue of June 14, 2001, in FR Document 01–14987, on page 32414, in the second column, correct the first sentence of the Summary paragraph to read as follows:

"Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name 'Red Bull North America, Inc.'"

Dated: July 6, 2001.

Joanne Roman Stump,

Chief, Intellectual Property Rights Branch.

[FR Doc. 01–17489 Filed 7–11–01; 8:45 am]

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Federal Register

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July 12, 2001

Part II

Federal Financial Institutions Examination Council

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestments; Notice

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: The Consumer Compliance Task Force (we) of the Federal Financial Institutions Examination Council (FFIEC) is supplementing, amending, and republishing its Interagency Questions and Answers Regarding Community Reinvestment. The Interagency Questions and Answers have been prepared by staff of the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) to answer frequently asked questions about community reinvestment. These Interagency Questions and Answers contain informal staff guidance for agency personnel, financial institutions, and the public.

DATES: *Effective Date of Amended Interagency Questions and Answers on Community Reinvestment:* July 11, 2001.

FOR FURTHER INFORMATION CONTACT:
OCC: Karen Tucker, National Bank Examiner, Community and Consumer Policy Division, (202) 874–4446; or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Catherine M.J. Gates, Senior Review Examiner, (202) 452–3946; or Kathleen C. Ryan, Senior Attorney, (202) 452–3667, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Robert W. Mooney, Assistant Director, Division of Compliance and Consumer Affairs, (202) 942–3378; Stephanie Caputo, Senior Fair Lending Specialist, Division of Compliance and Consumer Affairs, (202) 942–3413; or A. Ann Johnson, Counsel, Legal Division, (202) 898–3573, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Theresa A. Stark, Project Manager, Compliance Policy, (202) 906–7054; or Richard R. Riese, Director, Compliance Policy, (202) 906–6134, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

In 1995, the agencies revised the Community Reinvestment Act (CRA) regulations by issuing a joint final rule, which was published on May 4, 1995 (60 FR 22156). *See* 12 CFR parts 25, 228, 345 and 563e, implementing 12 U.S.C. 2901 *et seq*. The agencies published related clarifying documents on December 20, 1995 (60 FR 66048) and May 10, 1996 (61 FR 21362).

The revised regulations are interpreted primarily through "Interagency Questions and Answers Regarding Community Reinvestment," which provide informal staff guidance for use by agency personnel, financial institutions, and the public, and which are supplemented periodically. We published our most recent guidance on April 28, 2000 (2000 Interagency Questions and Answers). 65 FR 25088. In addition to issuing the 2000 Interagency Questions and Answers, we re-proposed revisions to one question and answer, as well as a conforming amendment to another question and answer, in the accompanying supplementary information. The proposed revised question and answer addressed whether there must be a direct benefit from community development loans and services and qualified investments to an institution's assessment area. We specifically requested comment addressing the proposed revised question and answer, as well as general comments and questions regarding the CRA regulations. 65 FR at 25090–92.

We received 17 letters in response to our request for comments in the 2000 Interagency Questions and Answers. Comments came from financial institutions or financial institution holding companies (7), community organizations (2), financial institution trade associations (4), one state agency, and others (3). This document supplements, revises, and republishes the 2000 Interagency Questions and Answers based, in part, on questions and comments received from examiners, financial institutions, and other interested parties, and on comments received in response to our request for comments.

As discussed below, this document adopts the revisions to the question and answer about whether there must be a direct benefit to an institution's assessment area for an activity to benefit the assessment area that we proposed in April 2000, along with conforming changes to another existing question and answer, which addresses what is meant by a "regional area." We are also making slight clarifying revisions to eight existing questions and answers and adopting six new questions and answers.

The Interagency Questions and Answers has an index to aid readers in locating specific information in the document. The index contains keywords, listed alphabetically, along with numerical indicators of questions and answers that relate to that keyword. The list of questions and answers addressing each keyword in the index is not intended to be exhaustive. We welcome suggestions for additional entries to the index. Further, when this new version of the Interagency Questions and Answers is made available on the agencies' and the FFIEC's World Wide Web sites, the index question and answer numbers will be linked by hypertext to the questions and answers in the document to facilitate quick reference to relevant information.

Questions and answers are grouped by the provision of the CRA regulations that they discuss and are presented in the same order as the regulatory provisions. The Interagency Questions and Answers employ an abbreviated method to cite to the regulations. Because the regulations of the four agencies are substantially identical, corresponding sections of the different regulations usually bear the same suffix. Therefore, the Interagency Questions and Answers typically cite only to the suffix. For example, the small bank performance standards for national banks appear at 12 CFR 25.26; for Federal Reserve System member banks supervised by the Board, they appear at 12 CFR 228.26; for nonmember state banks, at 12 CFR 345.26; and for thrifts, at 12 CFR 563e.26. Accordingly, the citation in this document would be to § ____.26. In the few instances in which the suffix in one of the regulations is different, the specific citation for that regulation is provided. The question numbering system consists of the regulatory citation (as described above) and a number, connected by a dash. For example, the first question addressing § ____.21(a) would be identified as § ____.21(a)–1.

Adopting Question and Answer Re-Proposed in April 2000 and Conforming Revisions to One Question and Answer

We are adopting the revisions that we re-proposed in April 2000 to the question and answer about whether there must be a direct benefit to an institution's assessment area for an activity to benefit the assessment area. We are also adopting conforming revisions to another existing question

and answer to provide consistency with the amended question and answer.

Must There Be Some Immediate or Direct Benefit to the Institution's Assessment Area(s) To Satisfy the Regulations' Requirement That Qualified Investments and Community Development Loans or Services Benefit an Institution's Assessment Area(s) or a Broader Statewide or Regional Area That Includes the Assessment Area(s)?

The fifth question and answer addressing §§ ____.12(i) and 563e.12(h) (§§ ____.12(i) & 563e.12(h)–5) addresses whether there must be an immediate or direct benefit to an institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the assessment area(s). This question and answer currently states that an institution's assessment area(s) need not receive an immediate or direct benefit from the institution's specific participation in the broader statewide or regional organization or activity, provided the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located in the assessment area(s).

In May 1999, we first proposed revising this question and answer to permit consideration of support for community development organizations or activities serving individuals or geographies located somewhere in the broader statewide or regional area that includes the institution's assessment area. This consideration would be given even if the organization or activity did not have the purpose, mandate or function of serving geographies or individuals within the institution's assessment area(s). Most commenters responding to the 1999 proposal appeared to favor the original proposed revision, as it would provide increased flexibility in engaging in community development activities. However, it appeared that a number of those commenters did not recognize the revised answer as an expansion of existing options for institutions to engage in community development activities outside their assessment area(s). Therefore, we re-proposed for public comment a slightly revised question and answer to ensure that the public understood that the revised question and answer expands the current guidance.

The question and answer, as it was re-proposed in April 2000, contained two approaches to determine whether qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). First, as the agencies have always maintained, if an activity supports an organization or program that benefits the institution's assessment area or a broader statewide or regional area that is larger than, but includes, the assessment area(s), the activity will be considered if the purpose, mandate, or function of the organization or activity includes serving the assessment area(s). Second, if, in light of its performance context, an institution has adequately addressed the community development needs of its assessment area(s), examiners will consider community development activities that benefit low- and moderate-income individuals or geographies somewhere in the broader statewide or regional area that includes the assessment area(s), even if those activities do not have a purpose, mandate, or function of benefiting the institution's assessment area(s).

The following example explained the two approaches. An institution is located in Chicago. Its assessment area is the Chicago metropolitan area. Its community development activities include loans, investments, and services in organizations and projects located in and benefiting Chicago, its assessment area. These activities would be considered under the first approach. The institution's community development activities also include loans and investments in several projects that benefit the entire state of Illinois, including Chicago. These activities also are considered under the first approach. In addition, the institution participated in a community development activity that benefits the entire Great Lakes region, including the Chicago metropolitan area. This activity would also be considered under the first approach. Assume that, after considering its performance context, examiners have determined that the institution has adequately addressed the community development needs of its assessment area through loans, investments or services considered under the first approach. Examiners then would also consider the institution's investment in a community development organization located in Decatur, IL, that will serve only the Decatur area—with no potential that it will ever benefit Chicago, the institution's assessment area. Decatur, of course, is in the statewide area (Illinois) that includes the institution's assessment area. The institution would receive consideration for this activity under the second approach.

The agencies received 14 letters commenting on the proposed question and answer. All of the commenters were generally in favor of the proposed question and answer. As one financial institution commenter stated, "We believe that community development organizations and programs that operate on a local, statewide, or even multi-state basis ultimately provide benefit to all surrounding areas. Such initiatives help stabilize these markets and provide a ripple effect on neighboring geographies. As the capacity of one area grows, it is possible to leverage that effort to build community development momentum."

The agencies are adopting the amended question and answer, §§ ____.12(i) & 563e.12(h)–5, as it was proposed in April 2000.

What Is Meant by the Term "Regional Area"?

In addition, the agencies are also adopting the conforming amendment to question and answer, §§ ____.12(i) & 563e.12(h)–6, which was also proposed in April 2000. This revised question and answer is necessary so that, in cases where an institution has already adequately addressed the community development needs of its assessment area(s), examiner discretion does not unduly impede the broader choice and judgment permitted to institutions for performing community development activities in the relevant statewide or regional area. This conforming amendment clarifies that, if an institution has adequately addressed the community development needs of its assessment area(s), examiners will consider its community development activities that benefit geographies or individuals located somewhere within the broader statewide or regional area that includes the institution's assessment area(s), even if those activities do not benefit its assessment area(s).

New Questions and Answers

The agencies are adopting six new questions and answers, which are discussed below.

Revitalize and Stabilize Low- and Moderate-Income Areas

Financial institutions and examiners have asked us about the types of activities that are considered to revitalize and/or stabilize low- and moderate-income areas. In response, the agencies are adopting a new question and answer, §§ ____.12(h)(4) & 563e.12(g)(4)–1, which provides

guidance about such activities. It states that activities that revitalize or stabilize a low- or moderate-income geography are activities that help to attract and retain businesses and residents. Examiners will presume that an activity revitalizes or stabilizes a low- or moderate-income geography if the activity has been approved by the governing board of an Enterprise Community or Empowerment Zone (designated pursuant to 26 U.S.C. 1391) and is consistent with the board's strategic plan. They will make the same presumption if the activity has received similar official designation as consistent with a federal, state, local, or tribal government plan for the revitalization or stabilization of the low- or moderate-income geography. To determine whether other activities revitalize or stabilize a low- or moderate-income geography, examiners will evaluate the activity's actual impact on the geography, if information about this is available. If not, examiners will determine whether the activity is consistent with the community's formal or informal plans for the revitalization and stabilization of the low- or moderate-income geography.

Types of Lending Activities That May Warrant Favorable Consideration as Activities Responsive to the Credit Needs of an Institution's Community

Credit needs vary from community to community. However, there are some lending activities that are likely to be responsive in helping to meet the credit needs of many communities. The agencies are adopting a new question and answer, § ____.22(a)–1, which identifies the following activities as being responsive to the needs of an institution's assessment area:

- Providing loan programs that include a financial education component about how to avoid lending activities that may be abusive or otherwise unsuitable;
- Establishing loan programs that provide small, unsecured consumer loans in a safe and sound manner (i.e., based on the borrower's ability to repay) and with reasonable terms;
- Offering lending programs, which feature reporting to consumer reporting agencies, that transition borrowers from loans with higher interest rates and fees (based on credit risk) to lower-cost loans, consistent with safe and sound lending practices. Reporting to consumer reporting agencies allows borrowers accessing these programs the opportunity to improve their credit histories and thereby improve their access to competitive credit products. Examiners may consider favorably such lending activities, which have features augmenting the success and effectiveness of the institution's lending programs.

Indirect Community Development Services

The agencies are adopting a new question and answer, § ____.24(e)–1, that addresses the conditions under which an institution may receive consideration for community development services offered by affiliates or third parties. The guidance states that, at an institution's option, the agencies will consider services performed by an affiliate or by a third party on the institution's behalf under the service test if the services provided enable the institution to help meet the credit needs of its community. Indirect services that enhance an institution's ability to deliver credit products or deposit services within its community and that can be quantified may be considered under the service test if those services have not been considered already under the lending or investment test. For example, an institution that contracts with a community organization to provide home ownership counseling to low- and moderate-income home buyers as part of the institution's mortgage program may receive consideration for that indirect service under the service test. In contrast, donations to a community organization that offers financial services to low- or moderate-income individuals may be considered under the investment test, but would not also be eligible for consideration under the service test. Services performed by an affiliate will be treated the same as affiliate loans and investments made in the institution's assessment area and may be considered if the service is not claimed by any other institution.

Credit Card Banks' Activities

The agencies are adopting a new question and answer, § ____.25(a)–1, that applies only to credit card banks that are exempt from the definition of "bank" in the Bank Holding Company Act (BHCA), as amended by the Competitive Equality Banking Act of 1987 (CEBA credit card banks). This new guidance explains how a CEBA credit card bank (if designated as a limited-purpose institution) can meet its community's credit needs without losing its exemption from the definition of "bank." This guidance memorializes a letter issued in 1996 by staff at the Board of Governors of the Federal Reserve System to the president of the Association of Financial Services Holding Companies. The guidance clarifies that, although the BHCA restricts CEBA credit card banks to credit card operations, a CEBA credit card bank can engage in community development activities without losing its exemption under the BHCA. A CEBA credit card bank could provide community development services and investments without engaging in operations other than credit card operations. For example, the bank could provide credit card counseling, or the financial expertise of its executives, free of charge, to community development organizations. In addition, a CEBA credit card bank could make qualified investments, as long as the investments meet the guidelines for passive and noncontrolling investments provided in the BHCA and the Board's Regulation Y. Finally, although a CEBA credit card bank cannot make any loans other than credit card loans, under § ____.25(d)(2) (community development test— indirect activities), the bank could elect to have part of its qualified passive and noncontrolling investments in a third-party lending consortium considered as community development lending, provided that the consortium's loans otherwise meet the requirements for community development lending. When assessing a CEBA credit card bank's CRA performance under the community development test, examiners will take into account the bank's performance context. In particular, examiners will consider the legal constraints imposed by the BHCA on the bank's activities as part of the bank's performance context in § ____.21(b)(4).

Effect of Evidence of Other Illegal Credit Practices

Section ____.28(c) of our regulations states that evidence of discriminatory or other illegal credit practices adversely affects the evaluation of an institution's performance. The agencies are adopting a new question and answer addressing this provision. The new question and answer, § ____.28(c)–1, discusses what is meant by "discriminatory or other illegal credit practices." It explains that an institution engages in discriminatory credit practices if it discourages or discriminates against credit applicants or borrowers on a prohibited basis, in violation, for example, of the Fair Housing Act or the Equal Credit Opportunity Act (as implemented by Regulation B). Examples of other illegal credit practices inconsistent with helping to meet community credit needs include violations of:

- The Truth in Lending Act regarding rescission of certain mortgage transactions and regarding disclosures and certain loan term restrictions in

connection with credit transactions that are subject to the Home Ownership and Equity Protection Act;

- The Real Estate Settlement Procedures Act regarding the giving and accepting of referral fees, unearned fees or kickbacks in connection with certain mortgage transactions; and
- The Federal Trade Commission Act regarding unfair or deceptive acts or practices.

Examiners will determine the effect of evidence of illegal credit practices as set forth in examination procedures and § ____.28(c) of the regulations.

Violations of other provisions of the consumer protection laws generally will not adversely affect an institution's CRA rating, but may warrant the inclusion of comments in an institution's performance evaluation. These comments may address the institution's policies, procedures, training programs, and internal assessment efforts.

Electronic Public Files

Some financial institutions have inquired whether it is acceptable to maintain the required public file information electronically on an intranet or the Internet. The agencies believe that an institution may keep all or part of its public file on an intranet or the Internet, provided that the institution maintains all of the information, either in paper or electronic form, that is required in § ____.43 of the regulations. An institution that opts to keep part or all of its public file on an intranet or the Internet must follow the rules in § ____.43(c)(1) and (2) as to what information is required to be kept at a main office and at a branch. The institution must also ensure that the information required to be maintained at a main office and branch, if kept electronically, can be readily downloaded and printed for any member of the public who requests a hard copy of the information.

The agencies are adopting a new question and answer, § ____.43(c)–2, which addresses maintaining public files on an intranet or the Internet.

Revised Questions and Answers

The agencies are revising eight existing questions and answers, which are discussed below.

New Markets Venture Capital Companies

The Consolidated Appropriations Act of 2001 (Pub. L. 106–554), enacted December 21, 2000, included the New Markets Venture Capital Program Act of 2000. The New Markets Venture Capital Program, which is administered by the Small Business Administration (SBA), allows the SBA to designate New Market Venture Capital companies (NMVCCs). NMVCCs are investment funds that will promote economic development and create wealth and job opportunities in low-income geographies and among individuals living in such areas through equity-type investments in smaller enterprises located in those low-income geographical areas.

Based on the statutory mandate for NMVCCs, the agencies will presume that any loan to or lawful investment in NMVCCs will promote economic development. Therefore, we are revising § ____.12(h)(3)–1 to reflect this presumption.

Reporting Loans With a Business Purpose That Are Secured by Residential Real Estate

The agencies are adopting revisions to two existing questions and answers to accommodate the difference in treatment between the Call Report and Thrift Financial Report (TFR) instructions concerning loans secured by residential real estate that have a business purpose. Under the Call Report instructions, loans secured by nonfarm residential real estate that are used to finance small businesses must be reported as "loans secured by real estate" unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution. The TFR instructions, however, allow an institution to classify a loan that meets the definition of a mortgage loan, but that is used to finance small businesses, as a mortgage loan or as a nonmortgage loan according to the purpose of the loan, at the option of the reporting institution. As a result, institutions that file Call Reports and those that file TFRs may treat loans secured by nonfarm residential real estate, but that are for the purpose of financing a small business, in different ways.

The agencies are revising §§ ____.12(u) & 563e.12(t)–3 and § ____.42(c)(2)–1 to be consistent with guidance provided in the Call Report and TFR instructions. The agencies are bifurcating the answer to §§ ____.12(u) & 563e.12(t)–3 to account for the different treatment in the Call Report and TFR instructions. The guidance states that, for banks filing Call Reports, loans secured by nonfarm residential real estate to finance small businesses will typically not be included as "loans to small businesses" for Call Report purposes, unless the security interest in the property is taken only as an abundance of caution. The agencies recognize that many small businesses are financed by loans that would not have been made or would have been made on less favorable terms had they not been secured by residential real estate. If these loans have a primary purpose of community development, as defined in the regulations, they may be reported as community development loans. Otherwise, at an institution's option, the institution may collect and maintain data separately concerning these loans and request that the data be considered in its CRA evaluation as "Other Secured Lines/Loans for Purposes of Small Business."

For institutions that file TFRs, depending on how a loan is classified, it is possible that a loan secured by nonfarm residential real estate that finances a small business will be reported as a "small business loan." Loans secured by nonfarm residential real estate to finance small businesses may be reported as small business loans if they are reported on the TFR as nonmortgage, commercial loans. Otherwise, loans that meet the definition of mortgage loans, for TFR reporting purposes, may be classified as mortgage loans. These loans may be reported as community development loans, if appropriate, or collected as "Other Secured Lines/Loans for Purposes of Small Business."

The guidance provided in § ____.42(c)(2)–1 is being revised to be applicable only to banks that file Call Reports. This question and answer is inapplicable to thrifts that file TFRs. The question and answer reiterates that banks that make loans to finance small businesses, which are secured by nonfarm, residential real estate, and for which the security interest was not taken only as an abundance of caution, may either report the loans as community development loans, if appropriate, or may collect and maintain loan information as "Other Secured Lines/Loans for Purposes of Small Business."

Clarification of § ____.21(b)(5)–1 Addressing Assigned Ratings Being Adversely Affected by Poor Past Performance

The agencies are clarifying the wording of the answer to this question. We intend no substantive change.

Home Mortgage Loan Modification, Extension, and Consolidation Agreements (MECAs)

In several states, financial institutions use MECAs as an alternative to refinancings for their customers. Existing guidance § ____.22(a)(2)–3 states that an institution may receive

consideration under CRA as "other loan data" for MECAs, in which it obtains loans from other institutions without actually purchasing or refinancing the loans. The agencies are clarifying this guidance to indicate that it applies only to home mortgage loans.

Reporting Lines of Credit

The agencies have received inquiries from examiners and our institutions about how institutions should report increases to small business or small farm lines of credit once the total line exceeds the $1 million or $500,000 limit for reporting a loan to a small business or a loan to a small farm, respectively, as described in the Call Report or TFR instructions. Because the Call Report and TFR no longer consider lines of credit that have exceeded the $1 million or $500,000 thresholds as loans to small businesses or loans to small farms, respectively, such lines would also no longer be considered small business or small farm loans for CRA purposes.

The agencies are revising existing question and answer § ____.42–3 to clarify this view.

Clarification of § ____.42(a)–5 Addressing Reporting Data on Refinancings and Renewals of Small Business and Small Farm Loans

In the 2000 Interagency Questions and Answers, the agencies adopted a revised version of § ____.42(a)–5, which discusses collection and reporting of data on small business and farm loans that are refinanced or renewed. The 2000 guidance suggests that if a renewal of $15,000 and new money of $5,000 are provided in connection with the same loan to the same borrower, the two amounts should be reported separately as two separate originations. In response to several communications from institutions indicating that their data systems may not allow such a transaction to be reported as two originations, the agencies are clarifying that institutions may report the two originations (the renewal and the increase in the line) together as a single origination. In the example above, an institution may report one origination of $20,000.

We have also deleted from the answer to this question information that was relevant to data collected in the year 2000 and reported in 2001. Because this data should have been reported by March 1, 2001, this portion of the answer is no longer pertinent. The remaining answer is applicable beginning with data on small business and small farm collected in 2000 and reported in 2001.

Updating § ____.42–4

Consistent with the deletion of the out-dated portion of the answer to § ____.42(a)–5, we are also deleting the part of the answer to § ____.42 " – that was relevant only to data that was collected in 2000 and reported in 2001. The remaining answer is applicable beginning with data about renewals of lines of credit collected in 2000 that will be reported in 2001.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The SBREFA requires an agency, for each rule for which it prepares a final regulatory flexibility analysis, to publish one or more compliance guides to help small entities understand how to comply with the rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the agencies certified that their proposed CRA rule would not have a significant economic impact on a substantial number of small entities and invited public comments on that determination. *See* 58 FR 67478 (Dec. 21, 1993); 59 FR 51250 (Oct. 7, 1994). In response to public comment, the agencies voluntarily prepared a final regulatory flexibility analysis for the joint final rule, although the analysis was not required because it supported the agencies' earlier certification regarding the proposed rule. Because a regulatory flexibility analysis was not required, section 212 of the SBREFA does not apply to the final CRA rule. However, in their continuing efforts to provide clear, understandable regulations and to comply with the spirit of the SBREFA, the agencies have compiled the Interagency Questions and Answers. The Interagency Questions and Answers serve the same purpose as the compliance guide described in the SBREFA by providing guidance on a variety of issues of particular concern to small banks and thrifts.

The text of the Interagency Questions and Answers follows:

Interagency Questions and Answers Regarding Community Reinvestment

§ ____.11—Authority, Purposes, and Scope

§ ____.11(c) Scope

§§ ____.11(c)(3) & 563e.11(c)(2) Certain Special Purpose Institutions

§§ ____.11(c)(3) & 563e.11(c)(2)–1: *Is the list of special purpose institutions exclusive?*

A1. No, there may be other examples of special purpose institutions. These institutions engage in specialized activities that do not involve granting credit to the public in the ordinary course of business. Special purpose institutions typically serve as correspondent banks, trust companies, or clearing agents or engage only in specialized services, such as cash management controlled disbursement services. A financial institution, however, does not become a special purpose institution merely by ceasing to make loans and, instead, making investments and providing other retail banking services.

§ ____.11(c)(3) & 563e.11(c)(2)–2: *To be a special purpose institution, must an institution limit its activities in its charter?*

A2. No. A special purpose institution may, but is not required to, limit the scope of its activities in its charter, articles of association or other corporate organizational documents. An institution that does not have legal limitations on its activities, but has voluntarily limited its activities, however, would no longer be exempt from Community Reinvestment Act (CRA) requirements if it subsequently engaged in activities that involve granting credit to the public in the ordinary course of business. An institution that believes it is exempt from CRA as a special purpose institution should seek confirmation of this status from its supervisory agency.

§ ____.12—Definitions

§ ____.12(a) Affiliate

§ ____.12(a)–1: *Does the definition of "affiliate" include subsidiaries of an institution?*

A1. Yes, "affiliate" includes any company that controls, is controlled by, or is under common control with another company. An institution's subsidiary is controlled by the institution and is, therefore, an affiliate.

§§ ____.12(f) & 563e.12(e) Branch

§§ ____.12(f)–563e.12(e) & 1: *Do the definitions of "branch," "automated teller machine (ATM)," and "remote service facility (RSF)" include mobile branches, ATMs, and RSFs?*

A1. Yes. Staffed mobile offices that are authorized as branches are considered "branches" and mobile ATMs and RSFs are considered "ATMs" and "RSFs."

§§ ____.12(f) & 563e.12(e)–2: *Are loan production offices (LPOs) branches for purposes of the CRA?*

A2. LPOs and other offices are not "branches" unless they are authorized as branches of the institution through the regulatory approval process of the institution's supervisory agency.

§§ ____.12(h)–563e.12(g) Community Development

§§ ____.12(h) & 563e.12(g)–1: *Are community development activities limited to those that promote economic development?*

A1. No. Although the definition of "community development" includes activities that promote economic development by financing small businesses or farms, the rule does not limit community development loans and services and qualified investments to those activities. Community development also includes community- or tribal-based child care, educational, health, or social services targeted to low- or moderate-income persons, affordable housing for low- or moderate-income individuals, and activities that revitalize or stabilize low- or moderate-income areas.

§§ ____.12(h) & 563e.12(g)–2: *Must a community development activity occur inside a low- or moderate-income area in order for an institution to receive CRA consideration for the activity?*

A2. No. Community development includes activities outside of low- and moderate-income areas that provide affordable housing for, or community services targeted to, low- or moderate-income individuals and activities that promote economic development by financing small businesses and farms. Activities that stabilize or revitalize particular low- or moderate-income areas (including by creating, retaining, or improving jobs for low- or moderate-income persons) also qualify as community development, even if the activities are not located in these low- or moderate-income areas. One example is financing a supermarket that serves as an anchor store in a small strip mall located at the edge of a middle-income area, if the mall stabilizes the adjacent low-income community by providing needed shopping services that are not otherwise available in the low-income community.

§§ ____.12(h) & 563e.12(g)–3: *Does the regulation provide flexibility in considering performance in high-cost areas?*

A3. Yes, the flexibility of the performance standards allows examiners to account in their evaluations for conditions in high-cost areas. Examiners consider lending and services to individuals and geographies of all income levels and businesses of all sizes and revenues. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their "primary" purpose community development allows examiners to account for conditions in high-cost areas. For example, examiners could take into account the fact that activities address a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining or acquiring a house when determining whether an institution's loan to or investment in an organization that funds affordable housing for middle-income people or areas, as well as low- and moderate-income people or areas, has as its primary purpose community development.

§§ ____.12(h)(1) & 563e.12(g)(1) Affordable Housing (Including Multifamily Rental Housing) for Low- or Moderate-Income Individuals

§§ ____.12(h)(1) & 563e.12(g)(1)–1: *When determining whether a project is "affordable housing for low- or moderate-income individuals," thereby meeting the definition of "community development," will it be sufficient to use a formula that relates the cost of ownership, rental or borrowing to the income levels in the area as the only factor, regardless of whether the users, likely users, or beneficiaries of that affordable housing are low- or moderate-income individuals?*

A1. The concept of "affordable housing" for low- or moderate-income individuals does hinge on whether low- or moderate-income individuals benefit, or are likely to benefit, from the housing. It would be inappropriate to give consideration to a project that exclusively or predominately houses families that are not low- or moderate-income simply because the rents or housing prices are set according to a particular formula.

For projects that do not yet have occupants, and for which the income of the potential occupants cannot be determined in advance, or in other projects where the income of occupants cannot be verified, examiners will review factors such as demographic, economic and market data to determine the likelihood that the housing will "primarily" accommodate low- or moderate-income individuals. For example, examiners may look at median rents of the assessment area and the project; the median home value of either the assessment area, low- or moderate-income geographies or the project; the low- or moderate-income population in the area of the project; or the past performance record of the organization(s) undertaking the project. Further, such a project could receive consideration if its express, bona fide intent, as stated, for example, in a prospectus, loan proposal or community action plan, is community development.

§§ ____.12(h)(3) & 563e.12(g)(3) Activities That Promote Economic Development by Financing Businesses or Farms That Meet Certain Size Eligibility Standards

§ ____.12(h)(3) & 563e.12(g)(3)–1: *"Community development" includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet these size eligibility standards considered to be community development?*

A1. No. To be considered as "community development" under §§ ____.12(h)(3) and 563e.12(g)(3), a loan, investment or service, whether made directly or through an intermediary, must meet both a size test and a purpose test. An activity meets the size requirement if it finances entities that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less. To meet the purpose test, the activity must promote economic development. An activity is considered to promote economic development if it supports permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or supports permanent job creation, retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment by Federal, state, local or tribal governments. The agencies will presume that any loan to or investment in a SBDC, SBIC, or New Markets Venture Capital Company promotes economic development.

In addition to their quantitative assessment of the amount of a financial institution's community development activities, examiners must make qualitative assessments of an institution's leadership in community development matters and the complexity, responsiveness, and impact of the community development activities of the institution. In reaching a conclusion about the impact of an institution's community development activities, examiners may, for example, determine that a loan to a small business in a low- or moderate-income geography that provides needed jobs and services in that area may have a greater impact and be more responsive to the community credit needs than does a loan to a small business in the

same geography that does not directly provide additional jobs or services to the community.

§§ ____.12(h)(4) & 563e.12(g)(4) Activities That Revitalize or Stabilize Low- or Moderate-Income Geographies

§ ____.12(h)(4) & 563e.12(g)(4)–1: *What are activities that revitalize or stabilize a low- or moderate-income geography?*

A1. Activities that revitalize or stabilize a low- or moderate-income geography are activities that help to attract and retain businesses and residents. Examiners will presume that an activity revitalizes or stabilizes a low- or moderate-income geography if the activity has been approved by the governing board of an Enterprise Community or Empowerment Zone (designated pursuant to 26 U.S.C. 1391) and is consistent with the board's strategic plan. They will make the same presumption if the activity has received similar official designation as consistent with a federal, state, local or tribal government plan for the revitalization or stabilization of the geography. To determine whether other activities revitalize or stabilize a low- or moderate-income geography, examiners will evaluate the activity's actual impact on the geography, if information about this is available. If not, examiners will determine whether the activity is consistent with the community's formal or informal plans for the revitalization and stabilization of the low- or moderate-income geography. For more information on what activities revitalize or stabilize a low- or moderate-income geography, see §§ ____.12(h) & 563e.12(g)–2 and §§ ____.12(i) & 563e.12(h)–4.

§§ ____.12(i) & 563e.12(h) Community Development Loan

§§ ____.12(i) & 563e.12(h)–1: *What are examples of community development loans?*

A1. Examples of community development loans include, but are not limited to, loans to:

- Borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons;
- Not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs;
- Borrowers to construct or rehabilitate community facilities that are located in low- and moderate-income areas or that serve primarily low- and moderate-income individuals;
- Financial intermediaries including Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions that primarily lend or facilitate lending to promote community development.
- Local, state, and tribal governments for community development activities; and
- Borrowers to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income community in which the property is located.

The rehabilitation and construction of affordable housing or community facilities, referred to above, may include the abatement or remediation of, or other actions to correct, environmental hazards, such as lead-based paint, that are present in the housing, facilities, or site.

§§ ____.12(i) & 563e.12(h)–2: *If a retail institution that is not required to report under the Home Mortgage Disclosure Act (HMDA) makes affordable home mortgage loans that would be HMDA-reportable home mortgage loans if it were a reporting institution, or if a small institution that is not required to collect and report loan data under CRA makes small business and small farm loans and consumer loans that would be collected and/or reported if the institution were a large institution, may the institution have these loans considered as community development loans?*

A2. No. Although small institutions are not required to report or collect information on small business and small farm loans and consumer loans, and some institutions are not required to report information about their home mortgage loans under HMDA, if these institutions are retail institutions, the agencies will consider in their CRA evaluations the institutions' originations and purchases of loans that would have been collected or reported as small business, small farm, consumer or home mortgage loans, had the institution been a collecting and reporting institution under the CRA or the HMDA. Therefore, these loans will not be considered as community development loans. Multifamily dwelling loans, however, may be considered as community development loans as well as home mortgage loans. *See also* § ____.42(b)(2)–2.

§§ ____.12(i) & 563e.12(h)–3: *Do secured credit cards or other credit card programs targeted to low- or moderate-income individuals qualify as community development loans?*

A3. No. Credit cards issued to low- or moderate-income individuals for household, family, or other personal expenditures, whether as part of a program targeted to such individuals or otherwise, do not qualify as community development loans because they do not have as their primary purpose any of the activities included in the definition of "community development."

§§ ____.12(i) & 563e.12(h)–4: *The regulation indicates that community development includes "activities that revitalize or stabilize low- or moderate-income geographies." Do all loans in a low- to moderate-income geography have a stabilizing effect?*

A4. No. Some loans may provide only indirect or short-term benefits to low- or moderate-income individuals in a low- or moderate-income geography. These loans are not considered to have a community development purpose. For example, a loan for upper-income housing in a distressed area is not considered to have a community development purpose simply because of the indirect benefit to low- or moderate-income persons from construction jobs or the increase in the local tax base that supports enhanced services to low- and moderate-income area residents. On the other hand, a loan for an anchor business in a distressed area (or a nearby area), that employs or serves residents of the area, and thus stabilizes the area, may be considered to have a community development purpose. For example, in an underserved, distressed area, a loan for a pharmacy that employs, and provides supplies to, residents of the area promotes community development.

§§ ____.12(i) & 563e.12(h)–5: *Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A5. No. The regulations recognize that community development organizations and programs are efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multi-state basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The

institution's assessment area(s) need not receive an immediate or direct benefit from the institution's specific participation in the broader organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s).

In addition, a retail institution that, considering its performance context, has adequately addressed the community development needs of its assessment area(s) will receive consideration for certain other community development activities. These community development activities must benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s). Examiners will consider these activities even if they will not benefit the institution's assessment area(s).

§§ ____.12(i) & 563e.12(h)–6: *What is meant by the term "regional area"?*

A6. A "regional area" may be as small as a city or county or as large as a multistate area. For example, the "mid-Atlantic states" may comprise a regional area.

Community development loans and services and qualified investments to statewide or regional organizations that have a bona fide purpose, mandate, or function that includes serving the geographies or individuals within the institution's assessment area(s) will be considered as addressing assessment area needs. When examiners evaluate community development loans and services and qualified investments that benefit a regional area that includes the institution's assessment area(s), they will consider the institution's performance context as well as the size of the regional area and the actual or potential benefit to the institution's assessment area(s). With larger regional areas, benefit to the institution's assessment area(s) may be diffused and, thus less responsive to assessment area needs.

In addition, as long as an institution has adequately addressed the community development needs of its assessment area(s), it will also receive consideration for community development activities that benefit geographies or individuals located somewhere within the broader statewide or regional area that includes the institution's assessment area(s), even if those activities do not benefit its assessment area(s).

§§ ____.12(i) & 563e.12(h)–7: *What is meant by the term "primary purpose" as that term is used to define what constitutes a community development loan, a qualified investment or a community development service?*

A7. A loan, investment or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low-or moderate-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses and farms that meet the requirements set forth in §§ ____.12(h) or 563e.12(g). To determine whether an activity is designed for an express community development purpose, the agencies apply one of two approaches. First, if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes, then the activity will be considered to possess the requisite primary purpose. Alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose if (1) the express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; (2) the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and (3) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved. The fact that an activity provides indirect or short-term benefits to low-or moderate-income persons does not make the activity community development, nor does the mere presence of such indirect or short-term benefits constitute a primary purpose of community development. Financial institutions that want examiners to consider certain activities under either approach should be prepared to demonstrate the activities' qualifications.

§§ ____.12(j) & 563e.12(i) Community Development Service

§§ ____.12(j) & 563e.12(i)–1: *In addition to meeting the definition of "community development" in the regulation, community development services must also be related to the provision of financial services. What is meant by "provision of financial services"?*

A1. Providing financial services means providing services of the type generally provided by the financial services industry. Providing financial services often involves informing community members about how to get or use credit or otherwise providing credit services or information to the community. For example, service on the board of directors of an organization that promotes credit availability or finances affordable housing is related to the provision of financial services. Providing technical assistance about financial services to community-based groups, local or tribal government agencies, or intermediaries that help to meet the credit needs of low-and moderate-income individuals or small businesses and farms is also providing financial services. By contrast, activities that do not take advantage of the employees' financial expertise, such as neighborhood cleanups, do not involve the provision of financial services.

§§ ____.12(j) & 563e.12(i)–2: *Are personal charitable activities provided by an institution's employees or directors outside the ordinary course of their employment considered community development services?*

A2. No. Services must be provided as a representative of the institution. For example, if a financial institution's director, on her own time and not as a representative of the institution, volunteers one evening a week at a local community development corporation's financial counseling program, the institution may not consider this activity a community development service.

§§ ____.12(j) & 563e.12(i)–3: *What are examples of community development services?*

A3. Examples of community development services include, but are not limited to, the following:

- Providing technical assistance on financial matters to nonprofit, tribal or government organizations serving low- and moderate-income housing or economic revitalization and development needs;
- Providing technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program;
- Lending employees to provide financial services for organizations facilitating affordable housing construction and rehabilitation or development of affordable housing;
- Providing credit counseling, home-buyer and home-maintenance counseling, financial planning or other

financial services education to promote community development and affordable housing;

• Establishing school savings programs and developing or teaching financial education curricula for low-or moderate-income individuals;

• Providing electronic benefits transfer and point of sale terminal systems to improve access to financial services, such as by decreasing costs, for low- or moderate-income individuals; and

• Providing other financial services with the primary purpose of community development, such as low-cost bank accounts, including "Electronic Transfer Accounts" provided pursuant to the Debt Collection Improvement Act of 1996, or free government check cashing that increases access to financial services for low- or moderate-income individuals.

Examples of technical assistance activities that might be provided to community development organizations include:

• Serving on a loan review committee;

• Developing loan application and underwriting standards;

• Developing loan processing systems;

• Developing secondary market vehicles or programs;

• Assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;

• Furnishing financial services training for staff and management;

• Contributing accounting/bookkeeping services; and

• Assisting in fund raising, including soliciting or arranging investments.

§§ ____.12(k) & 563e.12(j) Consumer Loan

§§ ____.12(k) & 563e.12(j)–1: *Are home equity loans considered "consumer loans"?*

A1. Home equity loans made for purposes other than home purchase, home improvement or refinancing home purchase or home improvement loans are consumer loans if they are extended to one or more individuals for household, family, or other personal expenditures.

§§ ____.12(k) & 563e.12(j)–2: *May a home equity line of credit be considered a "consumer loan" even if part of the line is for home improvement purposes?*

A2. If the predominant purpose of the line is home improvement, the line may only be reported under HMDA and may not be considered a consumer loan. However, the full amount of the line may be considered a "consumer loan" if its predominant purpose is for household, family, or other personal expenditures, and to a lesser extent home improvement, and the full amount of the line has not been reported under HMDA. This is the case even though there may be "double counting" because part of the line may also have been reported under HMDA.

§§ ____.12(k) & 563e.12(j)–3: *How should an institution collect or report information on loans the proceeds of which will be used for multiple purposes?*

A3. If an institution makes a single loan or provides a line of credit to a customer to be used for both consumer and small business purposes, consistent with the Call Report and TFR instructions, the institution should determine the major (predominant) component of the loan or the credit line and collect or report the entire loan or credit line in accordance with the regulation's specifications for that loan type.

§§ ____.12(m) & 563e.12(l) Home Mortgage Loan

§§ ____.12(m) & 563e.12(l)–1: *Does the term "home mortgage loan" include loans other than "home purchase loans"?*

A1. Yes. "Home mortgage loan" includes a "home improvement loan" as well as a "home purchase loan," as both terms are defined in the HMDA regulation, Regulation C, 12 CFR part 203. This definition also includes multifamily (five-or-more families) dwelling loans, loans for the purchase of manufactured homes, and refinancings of home improvement and home purchase loans.

§§ ____.12(m) & 563e.12(l)–2: *Some financial institutions broker home mortgage loans. They typically take the borrower's application and perform other settlement activities; however, they do not make the credit decision. The broker institutions may also initially fund these mortgage loans, then immediately assign them to another lender. Because the broker institution does not make the credit decision, under Regulation C (HMDA), they do not record the loans on their HMDA–LARs, even if they fund the loans. May an institution receive any consideration under CRA for its home mortgage loan brokerage activities?*

A2. Yes. A financial institution that funds home mortgage loans but immediately assigns the loans to the lender that made the credit decisions may present information about these loans to examiners for consideration under the lending test as "other loan data." Under Regulation C, the broker institution does not record the loans on its HMDA–LAR because it does not make the credit decisions, even if it funds the loans. An institution electing to have these home mortgage loans considered must maintain information about all of the home mortgage loans that it has funded in this way. Examiners will consider this other loan data using the same criteria by which home mortgage loans originated or purchased by an institution are evaluated.

Institutions that do not provide funding but merely take applications and provide settlement services for another lender that makes the credit decisions will receive consideration for this service as a retail banking service. Examiners will consider an institution's mortgage brokerage services when evaluating the range of services provided to low-, moderate-, middle- and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies. Alternatively, an institution's mortgage brokerage service may be considered a community development service if the primary purpose of the service is community development. An institution wishing to have its mortgage brokerage service considered as a community development service must provide sufficient information to substantiate that its primary purpose is community development and to establish the extent of the services provided.

§§ ____.12(n) & 563e.12(m) Income Level

§§ ____.12(n) & 563e.12(m)–1: *Where do institutions find income level data for geographies and individuals?*

A1. The income levels for geographies, i.e., census tracts and block numbering areas, are derived from Census Bureau information and are updated every ten years. Institutions may contact their regional Census Bureau office or the Census Bureau's Income Statistics Office at (301) 763–8576 to obtain income levels for geographies. *See* Appendix A of these Interagency Questions and Answers for a list of the regional Census Bureau offices. The income levels for individuals are derived from information calculated by the Department of Housing and Urban Development (HUD) and updated annually. Institutions may contact HUD at (800) 245–2691 to request a copy of "FY [year number, e.g., 1996] Median Family Incomes for States and their Metropolitan and Nonmetropolitan Portions."

Alternatively, institutions may obtain a list of the 1990 Census Bureau-calculated and the annually updated HUD median family incomes for metropolitan statistical areas (MSAs) and statewide nonmetropolitan areas by calling the Federal Financial Institution Examination Council's (FFIEC's) HMDA Help Line at (202) 452–2016. A free copy will be faxed to the caller through the "fax-back" system. Institutions may also call this number to have "faxed-back" an order form, from which they may order a list providing the median family income level, as a percentage of the appropriate MSA or nonmetropolitan median family income, of every census tract and block numbering area (BNA). This list costs $50. Institutions may also obtain the list of MSA and statewide nonmetropolitan area median family incomes or an order form through the FFIEC's home page on the Internet at <http://www.ffiec.gov>.

§§ ____.12(o) & 563e.12(n) Limited Purpose Institution

§§ ____.12(o) & 563e.12(n)–1: *What Constitutes a "Narrow Product Line" in the Definition of "Limited Purpose Institution"?*

A1. An institution offers a narrow product line by limiting its lending activities to a product line other than a traditional retail product line required to be evaluated under the lending test (i.e., home mortgage, small business, and small farm loans). Thus, an institution engaged only in making credit card or motor vehicle loans offers a narrow product line, while an institution limiting its lending activities to home mortgages is not offering a narrow product line.

§§ ____.12(o) & 563e.12(n)–2: *What factors will the agencies consider to determine whether an institution that, if limited purpose, makes loans outside a narrow product line, or, if wholesale, engages in retail lending, will lose its limited purpose or wholesale designation because of too much other lending?*

A2. Wholesale institutions may engage in some retail lending without losing their designation if this activity is incidental and done on an accommodation basis. Similarly, limited purpose institutions continue to meet the narrow product line requirement if they provide other types of loans on an infrequent basis. In reviewing other lending activities by these institutions, the agencies will consider the following factors:

- Is the other lending provided as an incident to the institution's wholesale lending?
- Are the loans provided as an accommodation to the institution's wholesale customers?
- Are the loans made only infrequently to the limited purpose institution's customers?
- Does only an insignificant portion of the institution's total assets and income result from the other lending?
- How significant a role does the institution play in providing that type(s) of loan(s) in the institution's assessment area(s)?
- Does the institution hold itself out as offering that type(s) of loan(s)?
- Does the lending test or the community development test present a more accurate picture of the institution's CRA performance?

§§ ____.12(o) & 563e.12(n)–3: *Do "niche institutions" qualify as limited purpose (or wholesale) institutions?*

A3. Generally, no. Institutions that are in the business of lending to the public, but specialize in certain types of retail loans (for example, home mortgage or small business loans) to certain types of borrowers (for example, to high-end income level customers or to corporations or partnerships of licensed professional practitioners) ("niche institutions") generally would not qualify as limited purpose (or wholesale) institutions.

§§ ____.12(s) & 563e.12(r) Qualified Investment

§§ ____.12(s) & 563e.12(r)–1: *Does the CRA regulation provide authority for institutions to make investments?*

A1. No. The CRA regulation does not provide authority for institutions to make investments that are not otherwise allowed by Federal law.

§§ ____.12(s) & 563e.12(r)–2: *Are mortgage-backed securities or municipal bonds "qualified investments"?*

A2. As a general rule, mortgage-backed securities and municipal bonds are not qualified investments because they do not have as their primary purpose community development, as defined in the CRA regulations. Nonetheless, mortgage-backed securities or municipal bonds designed primarily to finance community development generally are qualified investments. Municipal bonds or other securities with a primary purpose of community development need not be housing-related. For example, a bond to fund a community facility or park or to provide sewage services as part of a plan to redevelop a low-income neighborhood is a qualified investment. Housing-related bonds or securities must primarily address affordable housing (including multifamily rental housing) needs in order to qualify. *See also* § ____.23(b)–2.

§§ ____.12(s) & 563e.12(r)–3: *Are Federal Home Loan Bank stocks and membership reserves with the Federal Reserve Banks "qualified investments"?*

A3. No. Federal Home Loan Bank (FHLB) stock and membership reserves with the Federal Reserve Banks do not have a sufficient connection to community development to be qualified investments. However, FHLB member institutions may receive CRA consideration for technical assistance they provide on behalf of applicants and recipients of funding from the FHLB's Affordable Housing Program. *See* §§ ____.12(j) & 563e.12(i)–3.

§§ ____.12(s) & 563e.12(r)–4: *What are examples of qualified investments?*

A4. Examples of qualified investments include, but are not limited to, investments, grants, deposits or shares in or to:

- Financial intermediaries (including, Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds, and low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation;
- Organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing;
- Organizations, including, for example, Small Business Investment Companies (SBICs) and specialized SBICs, that promote economic development by financing small businesses;
- Facilities that promote community development in low- and moderate-income areas for low- and moderate-income individuals, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers;
- Projects eligible for low-income housing tax credits;
- State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development;
- Not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as counseling for credit, home-ownership, home maintenance, and other financial services education; and
- Organizations supporting activities essential to the capacity of low- and

moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, day care operations and job training programs that enable people to work.

§§ ____.12(s) & 563e.12(r)–5: *Will an institution receive consideration for charitable contributions as "qualified investments"?*

A5. Yes, provided they have as their primary purpose community development as defined in the regulations. A charitable contribution, whether in cash or an in-kind contribution of property, is included in the term "grant." A qualified investment is not disqualified because an institution receives favorable treatment for it (for example, as a tax deduction or credit) under the Internal Revenue Code.

§§ ____.12(s) & 563e.12(r)–6: *An institution makes or participates in a community development loan. The institution provided the loan at below-market interest rates or "bought down" the interest rate to the borrower. Is the lost income resulting from the lower interest rate or buy-down a qualified investment?*

A6. No. The agencies will, however, consider the innovativeness and complexity of the community development loan within the bounds of safe and sound banking practices.

§§ ____.12(s) & 563e.12(r)–7: *Will the agencies consider as a qualified investment the wages or other compensation of an employee or director who provides assistance to a community development organization on behalf of the institution?*

A7. No. However, the agencies will consider donated labor of employees or directors of a financial institution in the service test if the activity is a community development service.

§§ ____.12(t) & 563e.12(s) Small Institution

§§ ____.12(t) & 563e.12(s)–1: *How are the "total bank and thrift assets" of a holding company determined?*

A1. "Total banking and thrift assets" of a holding company are determined by combining the total assets of all banks and/or thrifts that are majority-owned by the holding company. An institution is majority-owned if the holding company directly or indirectly owns more than 50 percent of its outstanding voting stock.

§§ ____.12(t) & 563e.12(s)–2: *How are Federal and State branch assets of a foreign bank calculated for purposes of the CRA?*

A2. A Federal or State branch of a foreign bank is considered a small institution if the Federal or State branch has less than $250 million in assets and the total assets of the foreign bank's or its holding company's U.S. bank and thrift subsidiaries that are subject to the CRA are less than $1 billion. This calculation includes not only FDIC-insured bank and thrift subsidiaries, but also the assets of any FDIC-insured branch of the foreign bank and the assets of any uninsured Federal or State branch (other than a limited branch or a Federal agency) of the foreign bank that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. § 3103(a)(8)).

§§ ____.12(u) & 563e.12(t) Small Business Loan

§§ ____.12(u) & 563e.12(t)–1: *Are loans to nonprofit organizations considered small business loans or are they considered community development loans?*

A1. To be considered a small business loan, a loan must meet the definition of "loan to small business" in the instructions in the "Consolidated Reports of Conditions and Income" (Call Report) and "Thrift Financial Reports" (TFR). In general, a loan to a nonprofit organization, for business or farm purposes, where the loan is secured by nonfarm nonresidential property and the original amount of the loan is $1 million or less, if a business loan, or $500,000 or less, if a farm loan, would be reported in the Call Report and TFR as a small business or small farm loan. If a loan to a nonprofit organization is reportable as a small business or small farm loan, it cannot also be considered as a community development loan, except by a wholesale or limited purpose institution. Loans to nonprofit organizations that are not small business or small farm loans for Call Report and TFR purposes may be considered as community development loans if they meet the regulatory definition.

§§ ____.12(u) & 563e.12(t)–2: *Are loans secured by commercial real estate considered small business loans?*

A2. Yes, depending on their principal amount. Small business loans include loans secured by "nonfarm nonresidential properties," as defined in the Call Report and TFR, in amounts less than $1 million.

§§ ____.12(u) & 563e.12(t)–3: *Are loans secured by nonfarm residential real estate to finance small businesses "small business loans"?*

A3. *Applicable to banks filing Call Reports:* Typically not. Loans secured by nonfarm residential real estate that are used to finance small businesses are not included as "small business" loans for Call Report purposes unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution. (*See* Call Report Glossary definition of "Loan Secured by Real Estate.") The agencies recognize that many small businesses are financed by loans that would not have been made or would have been made on less favorable terms had they not been secured by residential real estate. If these loans promote community development, as defined in the regulation, they may be considered as community development loans. Otherwise, at an institution's option, the institution may collect and maintain data separately concerning these loans and request that the data be considered in its CRA evaluation as "Other Secured Lines/Loans for Purposes of Small Business."

Applicable to institutions that file TFRs: Possibly, depending how the loan is classified for TFR purposes. Loans secured by nonfarm residential real estate to finance small businesses may be included as small business loans only if they are reported on the TFR as nonmortgage, commercial loans. (*See* TFR Q&A No. 62.) Otherwise, loans that meet the definition of mortgage loans, for TFR reporting purposes, may be classified as mortgage loans.

§§ ____.12(u) & 563e.12(t)–4: *Are credit cards issued to small businesses considered "small business loans"?*

A4. Credit cards issued to a small business or to individuals to be used, with the institution's knowledge, as business accounts are small business loans if they meet the definitional requirements in the Call Report or TFR instructions.

§§ ____.12(w) & 563e.12(v) Wholesale Institution

§§ ____.12(w) & 563e.12(v)–1: *What factors will the agencies consider in determining whether an institution is in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers?*

A1. The agencies will consider whether:

- The institution holds itself out to the retail public as providing such loans; and
- The institution's revenues from extending such loans are significant when compared to its overall operations.

A wholesale institution may make some retail loans without losing its wholesale designation as described above in §§ ____.12(o) & 563e.12(n)–2.

§ ____.21—Performance Tests, Standards, and Ratings, in General

§ ____.21(a) Performance Tests and Standards

§ ____.21(a)–1: *Are all community development activities weighted equally by examiners?*

A1. No. Examiners will consider the responsiveness to credit and community development needs, as well as the innovativeness and complexity of an institution's community development lending, qualified investments, and community development services. These criteria include consideration of the degree to which they serve as a catalyst for other community development activities. The criteria are designed to add a qualitative element to the evaluation of an institution's performance.

§ ____.21(b) Performance context

§ ____.21(b)–1: *Is the performance context essentially the same as the former regulation's needs assessment?*

A1. No. The performance context is a broad range of economic, demographic, and institution-and community-specific information that an examiner reviews to understand the context in which an institution's record of performance should be evaluated. The agencies will provide examiners with much of this information prior to the examination. The performance context is not a formal or written assessment of community credit needs.

§ ____.21(b)(2) Information Maintained by the Institution or Obtained From Community Contacts

§ ____.21(b)(2)–1: *Will examiners consider performance context information provided by institutions?*

A1. Yes. An institution may provide examiners with any information it deems relevant, including information on the lending, investment, and service opportunities in its assessment area(s). This information may include data on the business opportunities addressed by lenders not subject to the CRA. Institutions are not required, however, to prepare a needs assessment. If an institution provides information to examiners, the agencies will not expect information other than what the institution normally would develop to prepare a business plan or to identify potential markets and customers, including low-and moderate-income persons and geographies in its assessment area(s). The agencies will not evaluate an institution's efforts to ascertain community credit needs or rate an institution on the quality of any information it provides.

§ ____.21(b)(2)–2: *Will examiners conduct community contact interviews as part of the examination process?*

A2. Yes. Examiners will consider information obtained from interviews with local community, civic, and government leaders. These interviews provide examiners with knowledge regarding the local community, its economic base, and community development initiatives. To ensure that information from local leaders is considered—particularly in areas where the number of potential contacts may be limited—examiners may use information obtained through an interview with a single community contact for examinations of more than one institution in a given market. In addition, the agencies will consider information obtained from interviews conducted by other agency staff and by the other agencies. In order to augment contacts previously used by the agencies and foster a wider array of contacts, the agencies will share community contact information.

§ ____.21(b)(4) Institutional Capacity and Constraints

§ ____.21(b)(4)–1: *Will examiners consider factors outside of an institution's control that prevent it from engaging in certain activities?*

A1. Yes. Examiners will take into account statutory and supervisory limitations on an institution's ability to engage in any lending, investment, and service activities. For example, a savings association that has made few or no qualified investments due to its limited investment authority may still receive a low satisfactory rating under the investment test if it has a strong lending record.

§ ____.21(b)(5) Institution's Past Performance and the Performance of Similarly Situated Lenders

§ ____.21(b)(5)–1: *Can an institution's assigned rating be adversely affected by poor past performance?*

A1. Yes. The agencies will consider an institution's past performance in its overall evaluation. For example, an institution that received a rating of "needs to improve" in the past may receive a rating of "substantial noncompliance" if its performance has not improved.

§ ____.21(b)(5)–2: *How will examiners consider the performance of similarly situated lenders?*

A2. The performance context section of the regulation permits the performance of similarly situated lenders to be considered, for example, as one of a number of considerations in evaluating the geographic distribution of an institution's loans to low-, moderate-, middle-, and upper-income geographies. This analysis, as well as other analyses, may be used, for example, where groups of contiguous geographies within an institution's assessment area(s) exhibit abnormally low penetration. In this regard, the performance of similarly situated lenders may be analyzed if such an analysis would provide accurate insight into the institution's lack of performance in those areas. The regulation does not require the use of a specific type of analysis under these circumstances. Moreover, no ratio developed from any type of analysis is linked to any lending test rating.

§ ____.22—Lending Test

§ ____.22(a) Scope of Test

§ ____.22(a)–1: *Are there any types of lending activities that help meet the credit needs of an institution's assessment area(s) and that may warrant favorable consideration as activities that are responsive to the needs of the institution's assessment area(s)?*

A1. Credit needs vary from community to community. However, there are some lending activities that are likely to be responsive in helping to meet the credit needs of many communities. These activities include:

- Providing loan programs that include a financial education component about how to avoid lending activities that may be abusive or otherwise unsuitable;
- Establishing loan programs that provide small, unsecured consumer loans in a safe and sound manner (i.e., based on the borrower's ability to repay) and with reasonable terms;
- Offering lending programs, which feature reporting to consumer reporting agencies, that transition borrowers from loans with higher interest rates and fees (based on credit risk) to lower-cost loans, consistent with safe and sound lending practices. Reporting to consumer reporting agencies allows borrowers accessing these programs the opportunity to improve their credit histories and thereby improve their access to competitive credit products.

Examiners may consider favorably such lending activities, which have features augmenting the success and effectiveness of the institution's lending programs.

§ ____.22(a)(1) Types of Loans Considered

§ ____.22(a)(1)–1: *If a large retail institution is not required to collect and report home mortgage data under the*

HMDA, will the agencies still evaluate the institution's home mortgage lending performance?

A1. Yes. The agencies will sample the institution's home mortgage loan files in order to assess its performance under the lending test criteria.

§ ____.22(a)(1)–2: *When will examiners consider consumer loans as part of an institution's CRA evaluation?*

A2. Consumer loans will be evaluated if the institution so elects; and an institution that elects not to have its consumer loans evaluated will not be viewed less favorably by examiners than one that does. However, if consumer loans constitute a substantial majority of the institution's business, the agencies will evaluate them even if the institution does not so elect. The agencies interpret "substantial majority" to be so significant a portion of the institution's lending activity by number or dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded.

§ ____.22(a)(2) Loan Originations and Purchases/Other Loan Data

§ ____.22(a)(2)–1: *How are lending commitments (such as letters of credit) evaluated under the regulation?*

A1. The agencies consider lending commitments (such as letters of credit) only at the option of the institution. Commitments must be legally binding between an institution and a borrower in order to be considered. Information about lending commitments will be used by examiners to enhance their understanding of an institution's performance.

§ ____.22(a)(2)–2: *Will examiners review application data as part of the lending test?*

A2. Application activity is not a performance criterion of the lending test. However, examiners may consider this information in the performance context analysis because this information may give examiners insight on, for example, the demand for loans.

§ ____.22(a)(2)–3: *May a financial institution receive consideration under CRA for home mortgage loan modification, extension, and consolidation agreements (MECAs), in which it obtains home mortgage loans from other institutions without actually purchasing or refinancing the home mortgage loans, as those terms have been interpreted under CRA and HMDA, as implemented by 12 CFR pt. 203?*

A3. Yes. In some states, MECAs, which are not considered loan refinancings because the existing loan obligations are not satisfied and replaced, are common. Although these transactions are not considered to be purchases or refinancings, as those terms have been interpreted under CRA, they do achieve the same results. An institution may present information about its MECA activities with respect to home mortgages to examiners for consideration under the lending test as "other loan data."

§ ____.22(a)(2)–4: *Do institutions receive consideration for originating or purchasing loans that are fully guaranteed?*

A4. Yes. The lending test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans. The test does not take into account whether or not such loans are guaranteed.

§ ____.22(b) Performance Criteria

§ ____.22(b)–1: *How will examiners apply the performance criteria in the lending test?*

A1. Examiners will apply the performance criteria reasonably and fairly, in accord with the regulations, the examination procedures, and this Guidance. In doing so, examiners will disregard efforts by an institution to manipulate business operations or present information in an artificial light that does not accurately reflect an institution's overall record of lending performance.

§ ____.22(b)(1) Lending Activity

§ ____.22(b)(1)–1: *How will the agencies apply the lending activity criterion to discourage an institution from originating loans that are viewed favorably under CRA in the institution itself and referring other loans, which are not viewed as favorably, for origination by an affiliate?*

A1. Examiners will review closely institutions with (1) a small number and amount of home mortgage loans with an unusually good distribution among low- and moderate-income areas and low- and moderate-income borrowers and (2) a policy of referring most, but not all, of their home mortgage loans to affiliated institutions. If an institution is making loans mostly to low- and moderate-income individuals and areas and referring the rest of the loan applicants to an affiliate for the purpose of receiving a favorable CRA rating, examiners may conclude that the institution's lending activity is not satisfactory because it has inappropriately attempted to influence the rating. In evaluating an institution's lending, examiners will consider legitimate business reasons for the allocation of the lending activity.

§ ____.22(b)(2) & (3) Geographic Distribution and Borrower Characteristics

§ ____.22(b)(2) & (3)–1: *How do the geographic distribution of loans and the distribution of lending by borrower characteristics interact in the lending test?*

A1. Examiners generally will consider both the distribution of an institution's loans among geographies of different income levels and among borrowers of different income levels and businesses of different sizes. The importance of the borrower distribution criterion, particularly in relation to the geographic distribution criterion, will depend on the performance context. For example, distribution among borrowers with different income levels may be more important in areas without identifiable geographies of different income categories. On the other hand, geographic distribution may be more important in areas with the full range of geographies of different income categories.

§ ____.22(b)(2) & (3)–2: *Must an institution lend to all portions of its assessment area?*

A2. The term "assessment area" describes the geographic area within which the agencies assess how well an institution has met the specific performance tests and standards in the rule. The agencies do not expect that simply because a census tract or block numbering area is within an institution's assessment area(s) the institution must lend to that census tract or block numbering area. Rather the agencies will be concerned with conspicuous gaps in loan distribution that are not explained by the performance context. Similarly, if an institution delineated the entire county in which it is located as its assessment area, but could have delineated its assessment area as only a portion of the county, it will not be penalized for lending only in that portion of the county, so long as that portion does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies. The capacity and constraints of an institution, its business decisions about how it can best help to meet the needs of its assessment area(s), including those of low- and moderate-income neighborhoods, and other aspects of the performance context, are all relevant to explain why the institution is serving or not serving portions of its assessment area(s).

§ ____.22(b)(2) & (3)–3: *Will examiners take into account loans made by affiliates when evaluating the*

proportion of an institution's lending in its assessment area(s)?

A3. Examiners will not take into account loans made by affiliates when determining the proportion of an institution's lending in its assessment area(s), even if the institution elects to have its affiliate lending considered in the remainder of the lending test evaluation. However, examiners may consider an institution's business strategy of conducting lending through an affiliate in order to determine whether a low proportion of lending in the assessment area(s) should adversely affect the institution's lending test rating.

§ ____.22(b)(2) & (3)–4: *When will examiners consider loans (other than community development loans) made outside an institution's assessment area(s)?*

A4. Consideration will be given for loans to low- and moderate-income persons and small business and farm loans outside of an institution's assessment area(s), provided the institution has adequately addressed the needs of borrowers within its assessment area(s). The agencies will apply this consideration not only to loans made by large retail institutions being evaluated under the lending test, but also to loans made by small institutions being evaluated under the small institution performance standards. Loans to low- and moderate-income persons and small businesses and farms outside of an institution's assessment area(s), however, will not compensate for poor lending performance within the institution's assessment area(s).

§ ____.22(b)(2) & (3)–5: *Under the lending test, how will examiners evaluate home mortgage loans to middle- or upper-income individuals in a low- or moderate-income geography?*

A5. Examiners will consider these home mortgage loans under the performance criteria of the lending test, i.e., by number and amount of home mortgage loans, whether they are inside or outside the financial institution's assessment area(s), their geographic distribution, and the income levels of the borrowers. Examiners will use information regarding the financial institution's performance context to determine how to evaluate the loans under these performance criteria. Depending on the performance context, examiners could view home mortgage loans to middle-income individuals in a low-income geography very differently. For example, if the loans are for homes or multifamily housing located in an area for which the local, state, tribal, or Federal government or a community-based development organization has developed a revitalization or stabilization plan (such as a Federal enterprise community or empowerment zone) that includes attracting mixed-income residents to establish a stabilized, economically diverse neighborhood, examiners may give more consideration to such loans, which may be viewed as serving the low- or moderate-income community's needs as well as serving those of the middle- or upper-income borrowers. If, on the other hand, no such plan exists and there is no other evidence of governmental support for a revitalization or stabilization project in the area and the loans to middle- or upper-income borrowers significantly disadvantage or primarily have the effect of displacing low- or moderate-income residents, examiners may view these loans simply as home mortgage loans to middle- or upper-income borrowers who happen to reside in a low- or moderate-income geography and weigh them accordingly in their evaluation of the institution.

§ ____.22(b)(4); Community Development Lending

§ ____.22(b)(4)–1: *When evaluating an institution's record of community development lending, may an examiner distinguish among community development loans on the basis of the actual amount of the loan that advances the community development purpose?*

A1. Yes. When evaluating the institution's record of community development lending under § ____.22(b)(4), it is appropriate to give greater weight to the amount of the loan that is targeted to the intended community development purpose. For example, consider two $10 million projects (with a total of 100 units each) that have as their express primary purpose affordable housing and are located in the same community. One of these projects sets aside 40 percent of its units for low-income residents and the other project allocates 65 percent of its units for low-income residents. An institution would report both loans as $10 million community development loans under the § ____.42(b)(2) aggregate reporting obligation. However, transaction complexity, innovation and all other relevant considerations being equal, an examiner should also take into account that the 65 percent project provides more affordable housing for more people per dollar expended.

Under § ____.22(b)(4), the extent of CRA consideration an institution receives for its community development loans should bear a direct relation to the benefits received by the community and the innovation or complexity of the loans required to accomplish the activity, not simply to the dollar amount expended on a particular transaction. By applying all lending test performance criteria, a community development loan of a lower dollar amount could meet the credit needs of the institution's community to a greater extent than a community development loan with a higher dollar amount, but with less innovation, complexity, or impact on the community.

§ ____.22(b)(5) Innovative or Flexible Lending Practices

§ ____.22(b)(5)–1: *What is the range of practices that examiners may consider in evaluating the innovativeness or flexibility of an institution's lending?*

A1. In evaluating the innovativeness or flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending), examiners will not be limited to reviewing the overall variety and specific terms and conditions of the credit products themselves. In connection with the evaluation of an institution's lending, examiners also may give consideration to related innovations when they augment the success and effectiveness of the institution's lending under its community development loan programs or, more generally, its lending under its loan programs that address the credit needs of low- and moderate-income geographies or individuals. For example:

- In connection with a community development loan program, a bank may establish a technical assistance program under which the bank, directly or through third parties, provides affordable housing developers and other loan recipients with financial consulting services. Such a technical assistance program may, by itself, constitute a community development service eligible for consideration under the service test of the CRA regulations. In addition, the technical assistance may be favorably considered as an innovation that augments the success and effectiveness of the related community development loan program.
- In connection with a small business lending program in a low- or moderate-income area and consistent with safe and sound lending practices, a bank may implement a program under which, in addition to providing financing, the bank also contracts with the small business borrowers. Such a contracting arrangement would not, standing alone, qualify for CRA consideration. However, it may be favorably considered as an innovation that augments the loan program's success and effectiveness, and improves the program's ability to

serve community development purposes by helping to promote economic development through support of small business activities and revitalization or stabilization of low- or moderate-income geographies.

§ ____.22(c) Affiliate Lending

§ ____.22(c)(1) In General

§ ____.22(c)(1)–1: *If an institution elects to have loans by its affiliate(s) considered, may it elect to have only certain categories of loans considered?*

A1. Yes. An institution may elect to have only a particular category of its affiliate's lending considered. The basic categories of loans are home mortgage loans, small business loans, small farm loans, community development loans, and the five categories of consumer loans (motor vehicle loans, credit card loans, home equity loans, other secured loans, and other unsecured loans).

§ ____.22(c)(2) Constraints on Affiliate Lending

§ ____.22(c)(2)(i) No Affiliate May Claim a Loan Origination or Loan Purchase if Another Institution Claims the Same Loan Origination or Purchase

§ ____.22(c)(2)(i)–1: *How is this constraint on affiliate lending applied?*

A1. This constraint prohibits one affiliate from claiming a loan origination or purchase claimed by another affiliate. However, an institution can count as a purchase a loan originated by an affiliate that the institution subsequently purchases, or count as an origination a loan later sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes.

§ ____.22(c)(2)(ii) If an Institution Elects To Have Its Supervisory Agency Consider Loans Within a Particular Lending Category Made by One or More of the Institution's Affiliates in a Particular Assessment Area, the Institution Shall Elect To Have the Agency Consider All Loans Within That Lending Category in That Particular Assessment Area Made by All of the Institution's Affiliates

§ ____.22(c)(2)(ii)–1: *How is this constraint on affiliate lending applied?*

A1. This constraint prohibits "cherry-picking" affiliate loans within any one category of loans. The constraint requires an institution that elects to have a particular category of affiliate lending in a particular assessment area considered to include all loans of that type made by all of its affiliates in that particular assessment area. For example, assume that an institution has one or more affiliates, such as a mortgage bank that makes loans in the institution's assessment area. If the institution elects to include the mortgage bank's home mortgage loans, it must include all of mortgage bank's home mortgage loans made in its assessment area. The institution cannot elect to include only those low- and moderate-income home mortgage loans made by the mortgage bank affiliate and not home mortgage loans to middle- and upper-income individuals or areas.

§ ____.22(c)(2)(ii)–2: *How is this constraint applied if an institution's affiliates are also insured depository institutions subject to the CRA?*

A2. Strict application of this constraint against "cherry-picking" to loans of an affiliate that is also an insured depository institution covered by the CRA would produce the anomalous result that the other institution would, without its consent, not be able to count its own loans. Because the agencies did not intend to deprive an institution subject to the CRA of receiving consideration for its own lending, the agencies read this constraint slightly differently in cases involving a group of affiliated institutions, some of which are subject to the CRA and share the same assessment area(s). In those circumstances, an institution that elects to include all of its mortgage affiliate's home mortgage loans in its assessment area would not automatically be required to include all home mortgage loans in its assessment area of another affiliate institution subject to the CRA. However, all loans of a particular type made by any affiliate in the institution's assessment area(s) must either be counted by the lending institution or by another affiliate institution that is subject to the CRA. This reading reflects the fact that a holding company may, for business reasons, choose to transact different aspects of its business in different subsidiary institutions. However, the method by which loans are allocated among the institutions for CRA purposes must reflect actual business decisions about the allocation of banking activities among the institutions and should not be designed solely to enhance their CRA evaluations.

§ ____.22(d) Lending by a Consortium or a Third Party

§ ____.22(d)–1: *Will equity and equity-type investments in a third party receive consideration under the lending test?*

A1. If an institution has made an equity or equity-type investment in a third party, community development loans made by the third party may be considered under the lending test. On the other hand, asset-backed and debt securities that do not represent an equity-type interest in a third party will not be considered under the lending test unless the securities are booked by the purchasing institution as a loan. For example, if an institution purchases stock in a community development corporation ("CDC") that primarily lends in low- and moderate-income areas or to low-and moderate-income individuals in order to promote community development, the institution may claim a pro rata share of the CDC's loans as community development loans. The institution's pro rata share is based on its percentage of equity ownership in the CDC. § ____.23(b)–1 provides information concerning consideration of an equity or equity-type investment under the investment test and both the lending and investment tests.

§ ____.22(d)–2: *How will examiners evaluate loans made by consortia or third parties under the lending test?*

A2. Loans originated or purchased by consortia in which an institution participates or by third parties in which an institution invests will only be considered if they qualify as community development loans and will only be considered under the community development criterion of the lending test. However, loans originated directly on the books of an institution or purchased by the institution are considered to have been made or purchased directly by the institution, even if the institution originated or purchased the loans as a result of its participation in a loan consortium. These loans would be considered under all the lending test criteria appropriate to them depending on the type of loan.

§ ____.22(d)–3: *In some circumstances, an institution may invest in a third party, such as a community development bank, that is also an insured depository institution and is thus subject to CRA requirements. If the investing institution requests its supervisory agency to consider its pro rata share of community development loans made by the third party, as allowed under 12 CFR____.22(d), may the third party also receive consideration for these loans?*

A3. Yes, as long as the financial institution and the third party are not affiliates. The regulations state, at 12 CFR____.22(c)(2)(i), that two affiliates may not both claim the same loan origination or loan purchase. However, if the financial institution and the third party are not affiliates, the third party may receive consideration for the community development loans it originates, and the financial institution that invested in the third party may also receive consideration for its pro rata

share of the same community development loans under 12 CFR____.22(d).

§ ____.23—Investment Test

§ ____.23(a) Scope of Test

§ ____.23(a)–1: *May an institution receive consideration under the CRA regulations if it invests indirectly through a fund, the purpose of which is community development, as that is defined in the CRA regulations?*

A1: Yes, the direct or indirect nature of the qualified investment does not affect whether an institution will receive consideration under the CRA regulations because the regulations do not distinguish between "direct" and "indirect" investments. Thus, an institution's investment in an equity fund that, in turn, invests in projects that, for example, provide affordable housing to low- and moderate-income individuals, would receive consideration as a qualified investment under the CRA regulations, provided the investment benefits one or more of the institution's assessment area(s) or a broader statewide or regional area(s) that includes one or more of the institution's assessment area(s). Similarly, an institution may receive consideration for a direct qualified investment in a nonprofit organization that, for example, supports affordable housing for low- and moderate-income individuals in the institution's assessment area(s) or a broader statewide or regional area(s) that includes the institution's assessment area(s).

§ ____.23(b) Exclusion

§ ____.23(b)–1: *Even though the regulations state that an activity that is considered under the lending or service tests cannot also be considered under the investment test, may parts of an activity be considered under one test and other parts be considered under another test?*

A1. Yes, in some instances the nature of an activity may make it eligible for consideration under more than one of the performance tests. For example, certain investments and related support provided by a large retail institution to a CDC may be evaluated under the lending, investment, and service tests. Under the service test, the institution may receive consideration for any community development services that it provides to the CDC, such as service by an executive of the institution on the CDC's board of directors. If the institution makes an investment in the CDC that the CDC uses to make community development loans, the institution may receive consideration under the lending test for its pro-rata share of community development loans made by the CDC. Alternatively, the institution's investment may be considered under the investment test, assuming it is a qualified investment. In addition, an institution may elect to have a part of its investment considered under the lending test and the remaining part considered under the investment test. If the investing institution opts to have a portion of its investment evaluated under the lending test by claiming a share of the CDC's community development loans, the amount of investment considered under the investment test will be offset by that portion. Thus, the institution would only receive consideration under the investment test for the amount of its investment multiplied by the percentage of the CDC's assets that meet the definition of a qualified investment.

§ ____.23(b)–2: *If home mortgage loans to low- and moderate-income borrowers have been considered under an institution's lending test, may the institution that originated or purchased them also receive consideration under the investment test if it subsequently purchases mortgage-backed securities that are primarily or exclusively backed by such loans?*

A2. No. Because the institution received lending test consideration for the loans that underlie the securities, the institution may not also receive consideration under the investment test for its purchase of the securities. Of course, an institution may receive investment test consideration for purchases of mortgage-backed securities that are backed by loans to low- and moderate-income individuals as long as the securities are not backed primarily or exclusively by loans that the same institution originated or purchased.

§ ____.23(e) Performance Criteria

§ ____.23(e)–1: *When applying the performance criteria of § ____.23(e), may an examiner distinguish among qualified investments based on how much of the investment actually supports the underlying community development purpose?*

A1. Yes. Although § ____.23(e)(1) speaks in terms of the dollar amount of qualified investments, the criterion permits an examiner to weight certain investments differently or to make other appropriate distinctions when evaluating an institution's record of making qualified investments. For instance, an examiner should take into account that a targeted mortgage-backed security that qualifies as an affordable housing issue that has only 60 percent of its face value supported by loans to low -or moderate-income borrowers would not provide as much affordable housing for low- and moderate-income individuals as a targeted mortgage-backed security with 100 percent of its face value supported by affordable housing loans to low- and moderate-income borrowers. The examiner should describe any differential weighting (or other adjustment), and its basis in the Public Evaluation. However, no matter how a qualified investment is handled for purposes of § ____.23(e)(1), it will also be evaluated with respect to the qualitative performance criteria set forth in § ____.23(e)(2), (3) and (4) . By applying all criteria, a qualified investment of a lower dollar amount may be weighed more heavily under the Investment Test than a qualified investment with a higher dollar amount, but with fewer qualitative enhancements.

§ ____.23(e)–2: *How do examiners evaluate an institution's qualified investment in a fund, the primary purpose of which is community development, as that is defined in the CRA regulations?*

A2. When evaluating qualified investments that benefit an institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s), examiners will look at the following four performance criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

With respect to the first criterion, examiners will determine the dollar amount of qualified investments by relying on the figures recorded by the institution according to generally accepted accounting principles (GAAP). Although institutions may exercise a range of investment strategies, including short-term investments, long-term investments, investments that are immediately funded, and investments with a binding, up-front commitment that are funded over a period of time, institutions making the same dollar amount of investments over the same number of years, all other performance criteria being equal, would receive the same level of consideration. Examiners will include both new and outstanding investments in this determination. The dollar amount of qualified investments also will include the dollar amount of

legally binding commitments recorded by the institution according to GAAP.

The extent to which qualified investments receive consideration, however, depends on how examiners evaluate the investments under the remaining three performance criteria—innovativeness and complexity, responsiveness, and degree to which the investment is not routinely provided by private investors. Examiners also will consider factors relevant to the institution's CRA performance context, such as the effect of outstanding long-term qualified investments, the pay-in schedule, and the amount of any cash call, on the capacity of the institution to make new investments.

§ ____.24—Service Test

§ ____.24(d) Performance Criteria—Retail Banking Services

§ ____.24(d)–1: *How do examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services?*

A1. Convenient access to full service branches within a community is an important factor in determining the availability of credit and non-credit services. Therefore, the service test performance standards place primary emphasis on full service branches while still considering alternative systems, such as automated teller machines ("ATMs"). The principal focus is on an institution's current distribution of branches; therefore, an institution is not required to expand its branch network or operate unprofitable branches. Under the service test, alternative systems for delivering retail banking services, such as ATMs, are considered only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals.

§ ____.24(d)–2: *How do examiners evaluate an institution's activities in connection with Individual Development Accounts (IDAs)?*

A2. Although there is no standard IDA program, IDAs typically are deposit accounts targeted to low- and moderate-income families that are designed to help them accumulate savings for education or job-training, down-payment and closing costs on a new home, or start-up capital for a small business. Once participants have successfully funded an IDA, their personal IDA savings are matched by a public or private entity. Financial institution participation in IDA programs comes in a variety of forms, including providing retail banking services to IDA account holders, providing matching dollars or operating funds to an IDA program, designing or implementing IDA programs, providing consumer financial education to IDA account holders or prospective account holders, or other means. The extent of financial institutions' involvement in IDAs and the products and services they offer in connection with the accounts will vary. Thus, subject to § ____.23(b), examiners evaluate the actual services and products provided by an institution in connection with IDA programs as one or more of the following: community development services, retail banking services, qualified investments, home mortgage loans, small business loans, consumer loans, or community development loans.

§ ____.24(d)(3) Availability and Effectiveness of Alternative Systems for Delivering Retail Banking Services?

§ ____.24(d)(3)–1: *How will examiners evaluate alternative systems for delivering retail banking services?*

A1. The regulation recognizes the multitude of ways in which an institution can provide services, for example, ATMs, banking by telephone or computer, and bank-by-mail programs. Delivery systems other than branches will be considered under the regulation to the extent that they are effective alternatives to branches in providing needed services to low-and moderate-income areas and individuals. The list of systems in the regulation is not intended to be inclusive.

§ ____.24(d)(3)–2: *Are debit cards considered under the service test as an alternative delivery system?*

A2. By themselves, no. However, if debit cards are a part of a larger combination of products, such as a comprehensive electronic banking service, that allows an institution to deliver needed services to low- and moderate-income areas and individuals in its community, the overall delivery system that includes the debit card feature would be considered an alternative delivery system.

§ ____.24(e) Performance Criteria—Community Development Services

§ ____.24(e)–1: *Under what conditions may an institution receive consideration for community development services offered by affiliates or third parties?*

A1. At an institution's option, the agencies will consider services performed by an affiliate or by a third party on the institution's behalf under the service test if the services provided enable the institution to help meet the credit needs of its community. Indirect services that enhance an institution's ability to deliver credit products or deposit services within its community and that can be quantified may be considered under the service test, if those services have not been considered already under the lending or investment test (see § ____.23(b)–1). For example, an institution that contracts with a community organization to provide home ownership counseling to low- and moderate-income home buyers as part of the institution's mortgage program may receive consideration for that indirect service under the service test. In contrast, donations to a community organization that offers financial services to low- or moderate-income individuals may be considered under the investment test, but would not also be eligible for consideration under the service test. Services performed by an affiliate will be treated the same as affiliate loans and investments made in the institution's assessment area and may be considered if the service is not claimed by any other institution. See §§ ____.22(c) and .23(c).

§ ____.25 Community Development Test for Wholesale or Limited Purpose Institutions

§ ____.25(a) Scope of Test

§ ____.25(a)–1: *How can certain credit card banks help to meet the credit needs of their communities without losing their exemption from the definition of "bank" in the Bank Holding Company Act (the BHCA), as amended by the Competitive Equality Banking Act of 1987 (CEBA)?*

A1. Although the BHCA restricts institutions known as CEBA credit card banks to credit card operations, a CEBA credit card bank can engage in community development activities without losing its exemption under the BHCA. A CEBA credit card bank could provide community development services and investments without engaging in operations other than credit card operations. For example, the bank could provide credit card counseling, or the financial expertise of its executives, free of charge, to community development organizations. In addition, a CEBA credit card bank could make qualified investments, as long as the investments meet the guidelines for passive and noncontrolling investments provided in the BHC Act and the Board's Regulation Y. Finally, although a CEBA credit card bank cannot make any loans other than credit card loans, under § ____.25(d)(2) (community development test—indirect activities), the bank could elect to have part of its qualified passive and noncontrolling investments in a third-party lending consortium considered as community development lending, provided that the

consortium's loans otherwise meet the requirements for community development lending. When assessing a CEBA credit card bank's CRA performance under the community development test, examiners will take into account the bank's performance context. In particular, examiners will consider the legal constraints imposed by the BHCA on the bank's activities, as part of the bank's performance context in § ____.21(b)(4).

§ ____.25(d) Indirect Activities

§ ____.25(d)–1: *How are investments in third party community development organizations considered under the community development test?*

A1. Similar to the lending test for retail institutions, investments in third party community development organizations may be considered as qualified investments or as community development loans or both (provided there is no double counting), at the institution's option, as described above in the discussion regarding §§ ____.22(d) and ____.23(b).

§ ____.25(e) Benefit to Assessment Area(s)

§ ____.25(e)–1: *How do examiners evaluate a wholesale or limited purpose institution's qualified investment in a fund that invests in projects nationwide and which has a primary purpose of community development, as that is defined in the regulations?*

A1. If examiners find that a wholesale or limited purpose institution has adequately addressed the needs of its assessment area(s), they will give consideration to qualified investments, as well as community development loans and community development services, by that institution nationwide. In determining whether an institution has adequately addressed the needs of its assessment area(s), examiners will consider qualified investments that benefit a broader statewide or regional area that includes the institution's assessment area(s).

§ ____.25(f) Community Development Performance Rating

§ ____.25(f)–1: *Must a wholesale or limited purpose institution engage in all three categories of community development activities (lending, investment and service) to perform well under the community development test?*

A1. No, a wholesale or limited purpose institution may perform well under the community development test by engaging in one or more of these activities.

§ ____.26—Small Institution Performance Standards

§ ____.26(a) Performance Criteria

§ ____.26(a)–1: *May examiners consider, under one or more of the performance criteria of the small institution performance standards, lending-related activities, such as community development loans and lending-related qualified investments, when evaluating a small institution?*

A1. Yes. Examiners can consider "lending-related activities," including community development loans and lending-related qualified investments, when evaluating the first four performance criteria of the small institution performance test. Although lending-related activities are specifically mentioned in the regulation in connection with only the first three criteria (i.e., loan-to-deposit ratio, percentage of loans in the institution's assessment area, and lending to borrowers of different incomes and businesses of different sizes), examiners can also consider these activities when they evaluate the fourth criteria—geographic distribution of the institution's loans.

§ ____.26(a)–2: *What is meant by "as appropriate" when referring to the fact that lending-related activities will be considered, "as appropriate," under the various small institution performance criteria?*

A2. "As appropriate" means that lending-related activities will be considered when it is necessary to determine whether an institution meets or exceeds the standards for a satisfactory rating. Examiners will also consider other lending-related activities at an institution's request.

§ ____.26(a)–3: *When evaluating a small institution's lending performance, will examiners consider, at the institution's request, community development loans originated or purchased by a consortium in which the institution participates or by a third party in which the institution has invested?*

A3. Yes. However, a small institution that elects to have examiners consider community development loans originated or purchased by a consortium or third party must maintain sufficient information on its share of the community development loans so that the examiners may evaluate these loans under the small institution performance criteria.

§ ____.26(a)–4: *Under the small institution performance standards, will examiners consider both loan originations and purchases?*

A4. Yes, consistent with the other assessment methods in the regulation, examiners will consider both loans originated and purchased by the institution. Likewise, examiners may consider any other loan data the small institution chooses to provide, including data on loans outstanding, commitments and letters of credit.

§ ____.26(a)–5: *Under the small institution performance standards, how will qualified investments be considered for purposes of determining whether a small institution receives a satisfactory CRA rating?*

A5. The small institution performance standards focus on lending and other lending-related activities. Therefore, examiners will consider only lending-related qualified investments for the purposes of determining whether the small institution receives a satisfactory CRA rating.

§ ____.26(a)(1) Loan-to-Deposit Ratio

§ ____.26(a)(1)–1: *How is the loan-to-deposit ratio calculated?*

A1. A small institution's loan-to-deposit ratio is calculated in the same manner that the Uniform Bank Performance Report/Uniform Thrift Performance Report (UBPR/UTPR) determines the ratio. It is calculated by dividing the institution's net loans and leases by its total deposits. The ratio is found in the Liquidity and Investment Portfolio section of the UBPR and UTPR. Examiners will use this ratio to calculate an average since the last examination by adding the quarterly loan-to-deposit ratios and dividing the total by the number of quarters.

§ ____.26(a)(1)–2: *How is the "reasonableness" of a loan-to-deposit ratio evaluated?*

A2. No specific ratio is reasonable in every circumstance, and each small institution's ratio is evaluated in light of information from the performance context, including the institution's capacity to lend, demographic and economic factors present in the assessment area, and the lending opportunities available in the assessment area(s). If a small institution's loan-to-deposit ratio appears unreasonable after considering this information, lending performance may still be satisfactory under this criterion taking into consideration the number and the dollar volume of loans sold to the secondary market or the number and amount and innovativeness or complexity of community development loans and lending-related qualified investments.

§ ____.26(a)(1)–3: *If an institution makes a large number of loans off-shore, will examiners segregate the domestic*

loan-to-deposit ratio from the foreign loan-to-deposit ratio?

A3. No. Examiners will look at the institution's net loan-to-deposit ratio for the whole institution, without any adjustments.

§ ____.26(a)(2) Percentage of Lending Within Assessment Area(s)

§ ____.26(a)(2)–1: *Must a small institution have a majority of its lending in its assessment area(s) to receive a satisfactory performance rating?*

A1. No. The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s) is but one of the performance criteria upon which small institutions are evaluated. If the percentage of loans and other lending related activities in an institution's assessment area(s) is less than a majority, then the institution does not meet the standards for satisfactory performance only under this criterion. The effect on the overall performance rating of the institution, however, is considered in light of the performance context, including information regarding economic conditions, loan demand, the institution's size, financial condition and business strategies, and branching network and other aspects of the institution's lending record.

§ ____.26(a)(3) & (4) Distribution of Lending Within Assessment Area(s) by Borrower Income and Geographic Location

§ ____.26(a)(3) & (4)–1: How will a small institution's performance be assessed under these lending distribution criteria?

A1. Distribution of loans, like other small institution performance criteria, is considered in light of the performance context. For example, a small institution is not required to lend evenly throughout its assessment area(s) or in any particular geography. However, in order to meet the standards for satisfactory performance under this criterion, conspicuous gaps in a small institution's loan distribution must be adequately explained by performance context factors such as lending opportunities in the institution's assessment area(s), the institution's product offerings and business strategy, and institutional capacity and constraints. In addition, it may be impracticable to review the geographic distribution of the lending of an institution with few demographically distinct geographies within an assessment area. If sufficient information on the income levels of individual borrowers or the revenues or sizes of business borrowers is not available, examiners may use proxies such as loan size for estimating borrower characteristics, where appropriate.

§ ____.26(b) Performance Rating

§ ____.26(b)–1: *How can a small institution achieve an "outstanding" performance rating?*

A1. A small institution that meets each of the standards for a "satisfactory" rating and exceeds some or all of those standards may warrant an "outstanding" performance rating. In assessing performance at the "outstanding" level, the agencies consider the extent to which the institution exceeds each of the performance standards and, at the institution's option, its performance in making qualified investments and providing services that enhance credit availability in its assessment area(s). In some cases, a small institution may qualify for an "outstanding" performance rating solely on the basis of its lending activities, but only if its performance materially exceeds the standards for a "satisfactory" rating, particularly with respect to the penetration of borrowers at all income levels and the dispersion of loans throughout the geographies in its assessment area(s) that display income variation. An institution with a high loan-to-deposit ratio and a high percentage of loans in its assessment area(s), but with only a reasonable penetration of borrowers at all income levels or a reasonable dispersion of loans throughout geographies of differing income levels in its assessment area(s), generally will not be rated "outstanding" based only on its lending performance. However, the institution's performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s) may augment the institution's satisfactory rating to the extent that it may be rated "outstanding."

§ ____.26(b)–2: *Will a small institution's qualified investments, community development loans, and community development services be considered if they do not directly benefit its assessment area(s)?*

A2. Yes. These activities are eligible for consideration if they benefit a broader statewide or regional area that includes a small institution's assessment area(s), as discussed more fully in §§ ____.12(i) & 563e.12(h)–6.

§ ____.27—Strategic Plan

§ ____.27(c) Plans in General

§ ____.27(c)–1: *To what extent will the agencies provide guidance to an institution during the development of its strategic plan?*

A1. An institution will have an opportunity to consult with and provide information to the agencies on a proposed strategic plan. Through this process, an institution is provided guidance on procedures and on the information necessary to ensure a complete submission. For example, the agencies will provide guidance on whether the level of detail as set out in the proposed plan would be sufficient to permit agency evaluation of the plan. However, the agencies' guidance during plan development and, particularly, prior to the public comment period, will not include commenting on the merits of a proposed strategic plan or on the adequacy of measurable goals.

§ ____.27(c)–2: *How will a joint strategic plan be reviewed if the affiliates have different primary Federal supervisors?*

A2. The agencies will coordinate review of and action on the joint plan. Each agency will evaluate the measurable goals for those affiliates for which it is the primary regulator.

§ ____.27(f) Plan Content

§ ____.27(f)(1) Measurable Goals

§ ____.27(f)(1)–1: *How should "measurable goals" be specified in a strategic plan?*

A1. Measurable goals (e.g., number of loans, dollar amount, geographic location of activity, and benefit to low- and moderate-income areas or individuals) must be stated with sufficient specificity to permit the public and the agencies to quantify what performance will be expected. However, institutions are provided flexibility in specifying goals. For example, an institution may provide ranges of lending amounts in different categories of loans. Measurable goals may also be linked to funding requirements of certain public programs or indexed to other external factors as long as these mechanisms provide a quantifiable standard.

§ ____.27(g) Plan Approval

§ ____.27(g)(2) Public Participation

§ ____.27(g)(2)–1: *How will the public receive notice of a proposed strategic plan?*

A1. An institution submitting a strategic plan for approval by the agencies is required to solicit public comment on the plan for a period of

thirty (30) days after publishing notice of the plan at least once in a newspaper of general circulation. The notice should be sufficiently prominent to attract public attention and should make clear that public comment is desired. An institution may, in addition, provide notice to the public in any other manner it chooses.

§ ____.28—Assigned Ratings

§ ____.28–1: *Are innovative lending practices, innovative or complex qualified investments, and innovative community development services required for a "satisfactory" or "outstanding" CRA rating?*

A1. No. Moreover, the lack of innovative lending practices, innovative or complex qualified investments, or innovative community development services alone will not result in a "needs to improve" CRA rating. However, the use of innovative lending practices, innovative or complex qualified investments, and innovative community development services may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance rating.

§ ____.28–2: *How is performance under the quantitative and qualitative performance criteria weighed when examiners assign a CRA rating?*

A2. The lending, investment, and service tests each contain a number of performance criteria designed to measure whether an institution is effectively helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, in a safe and sound manner. Some of these performance criteria are quantitative, such as number and amount, and others, such as the use of innovative or flexible lending practices, the innovativeness or complexity of qualified investments, and the innovativeness and responsiveness of community development services, are qualitative. The performance criteria that deal with these qualitative aspects of performance recognize that these loans, qualified investments, and community development services sometimes require special expertise and effort on the part of the institution and provide a benefit to the community that would not otherwise be possible. As such, the agencies consider the qualitative aspects of an institution's activities when measuring the benefits received by a community. An institution's performance under these qualitative criteria may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance and rating.

§ ____.28(a) Ratings in General

§ ____.28(a)–1: *How are institutions with domestic branches in more than one state assigned a rating?*

A1. The evaluation of an institution that maintains domestic branches in more than one state ("multistate institution") will include a written evaluation and rating of its CRA record of performance as a whole and in each state in which it has a domestic branch. The written evaluation will contain a separate presentation on a multistate institution's performance for each metropolitan statistical area and the nonmetropolitan area within each state, if it maintains one or more domestic branch offices in these areas. This separate presentation will contain conclusions, supported by facts and data, on performance under the performance tests and standards in the regulation. The evaluation of a multistate institution that maintains a domestic branch in two or more states in a multistate metropolitan area will include a written evaluation (containing the same information described above) and rating of its CRA record of performance in the multistate metropolitan area. In such cases, the statewide evaluation and rating will be adjusted to reflect performance in the portion of the state not within the multistate metropolitan statistical area.

§ ____.28(a)–2: *How are institutions that operate within only a single state assigned a rating?*

A2. An institution that operates within only a single state ("single-state institution") will be assigned a rating of its CRA record based on its performance within that state. In assigning this rating, the agencies will separately present a single-state institution's performance for each metropolitan area in which the institution maintains one or more domestic branch offices. This separate presentation will contain conclusions, supported by facts and data, on the single-state institution's performance under the performance tests and standards in the regulation.

§ ____.28(a)–3: *How do the agencies weight performance under the lending, investment and service test for large retail institutions?*

A3. A rating of "outstanding," "high satisfactory," "low satisfactory," "needs to improve," or "substantial noncompliance," based on a judgment supported by facts and data, will be assigned under each performance test. Points will then be assigned to each rating as described in the first matrix set forth below. A large retail institution's overall rating under the lending, investment and service tests will then be calculated in accordance with the second matrix set forth below, which incorporates the rating principles in the regulation.

POINTS ASSIGNED FOR PERFORMANCE UNDER LENDING, INVESTMENT AND SERVICE TESTS

	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

COMPOSITE RATING POINT REQUIREMENTS

[Add points from three tests]

Rating	Total points
Outstanding	20 or over.
Satisfactory	11 through 19.
Needs to Improve	5 through 10.
Substantial Noncompliance	0 through 4.

Note: There is one exception to the Composite Rating matrix. An institution may not receive a rating of "satisfactory" unless it receives at least "low satisfactory" on the lending test. Therefore, the total points are capped at three times the lending test score.

§ ____.28(c) Effect of Evidence of Discriminatory or Other Illegal Credit Practices

§ ____.28(c)–1: *What is meant by "discriminatory or other illegal credit practices"?*

A1. An institution engages in discriminatory credit practices if it discourages or discriminates against credit applicants or borrowers on a prohibited basis, in violation, for example, of the Fair Housing Act or the Equal Credit Opportunity Act (as implemented by Regulation B). Examples of other illegal credit practices inconsistent with helping to meet community credit needs include violations of:

- The Truth in Lending Act regarding rescission of certain mortgage transactions and regarding disclosures and certain loan term restrictions in connection with credit transactions that are subject to the Home Ownership and Equity Protection Act;
- The Real Estate Settlement Procedures Act regarding the giving and accepting of referral fees, unearned fees or kickbacks in connection with certain mortgage transactions; and
- The Federal Trade Commission Act regarding unfair or deceptive acts or practices. Examiners will determine the effect of evidence of illegal credit practices as set forth in examination procedures and § ____.28(c) of the regulation.

Violations of other provisions of the consumer protection laws generally will not adversely affect an institution's CRA rating, but may warrant the inclusion of comments in an institution's performance evaluation. These comments may address the institution's policies, procedures, training programs, and internal assessment efforts.

§ ____.29—Effect of CRA Performance on Applications

§ ____.29(a) CRA Performance

§ ____.29(a)–1: *What weight is given to an institution's CRA performance examination in reviewing an application?*

A1. In cases in which CRA performance is a relevant factor, information from a CRA performance examination of the institution is a particularly important consideration in the applications process because it represents a detailed evaluation of the institution's CRA performance by its Federal supervisory agency. In this light, an examination is an important, and often controlling, factor in the consideration of an institution's record. In some cases, however, the examination may not be recent or a specific issue raised in the application process, such as progress in addressing weaknesses noted by examiners, progress in implementing commitments previously made to the reviewing agency, or a supported allegation from a commenter, is relevant to CRA performance under the regulation and was not addressed in the examination. In these circumstances, the applicant should present sufficient information to supplement its record of performance and to respond to the substantive issues raised in the application proceeding.

§ ____.29(a)–2: *What consideration is given to an institution's commitments for future action in reviewing an application by those agencies that consider such commitments?*

A2. Commitments for future action are not viewed as part of the CRA record of performance. In general, institutions cannot use commitments made in the applications process to overcome a seriously deficient record of CRA performance. However, commitments for improvements in an institution's performance may be appropriate to address specific weaknesses in an otherwise satisfactory record or to address CRA performance when a financially troubled institution is being acquired.

§ ____.29(b) Interested Parties

§ ____.29(b)–1: *What consideration is given to comments from interested parties in reviewing an application?*

A1. Materials relating to CRA performance received during the applications process can provide valuable information. Written comments, which may express either support for or opposition to the application, are made a part of the record in accordance with the agencies' procedures, and are carefully considered in making the agencies' decision. Comments should be supported by facts about the applicant's performance and should be as specific as possible in explaining the basis for supporting or opposing the application. These comments must be submitted within the time limits provided under the agencies' procedures.

§ ____.29(b)–2: *Is an institution required to enter into agreements with private parties?*

A2. No. Although communications between an institution and members of its community may provide a valuable method for the institution to assess how best to address the credit needs of the community, the CRA does not require an institution to enter into agreements with private parties. These agreements are not monitored or enforced by the agencies.

§ ____.41—Assessment Area Delineation

§ ____.41(a) In General

§ ____.41(a)–1: *How do the agencies evaluate "assessment areas" under the revised CRA regulations compared to how they evaluated "local communities" that institutions delineated under the original CRA regulations?*

A1. The revised rule focuses on the distribution and level of an institution's lending, investments, and services rather than on how and why an institution delineated its "local community" or assessment area(s) in a particular manner. Therefore, the agencies will not evaluate an institution's delineation of its assessment area(s) as a separate performance criterion as they did under the original regulation. Rather, the agencies will only review whether the assessment area delineated by the institution complies with the limitations set forth in the regulations at § ____.41(e).

§ ____.41(a)–2: *If an institution elects to have the agencies consider affiliate lending, will this decision affect the institution's assessment area(s)?*

A2. If an institution elects to have the lending activities of its affiliates considered in the evaluation of the institution's lending, the geographies in which the affiliate lends do not affect the institution's delineation of assessment area(s).

§ ____.41(a)–3: *Can a financial institution identify a specific ethnic group rather than a geographic area as its assessment area?*

A3. No, assessment areas must be based on geography.

§ ____.41(c) Geographic Area(s) for Institutions Other than Wholesale or Limited Purpose Institutions

§ ____.41(c)(1) Generally Consist of one or More MSAs or one or More Contiguous Political Subdivisions

§ ____.41(c)(1)–1: *Besides cities, towns, and counties, what other units of local government are political subdivisions for CRA purposes?*

A1. Townships and Indian reservations are political subdivisions for CRA purposes. Institutions should be aware that the boundaries of townships and Indian reservations may not be consistent with the boundaries of

the census tracts or block numbering areas ("geographies") in the area. In these cases, institutions must ensure that their assessment area(s) consists only of whole geographies by adding any portions of the geographies that lie outside the political subdivision to the delineated assessment area(s).

§ ____.41(c)(1)–2: *Are wards, school districts, voting districts, and water districts political subdivisions for CRA purposes?*

A2. No. However, an institution that determines that it predominantly serves an area that is smaller than a city, town or other political subdivision may delineate as its assessment area the larger political subdivision and then, in accordance with § ____.41(d), adjust the boundaries of the assessment area to include only the portion of the political subdivision that it reasonably can be expected to serve. The smaller area that the institution delineates must consist of entire geographies, may not reflect illegal discrimination, and may not arbitrarily exclude low- or moderate-income geographies.

§ ____.41(d) Adjustments to Geographic Area(s)

§ ____.41(d)–1: *When may an institution adjust the boundaries of an assessment area to include only a portion of a political subdivision?*

A1. Institutions must include whole geographies (i.e., census tracts or block numbering areas) in their assessment areas and generally should include entire political subdivisions. Because census tracts and block numbering areas are the common geographic areas used consistently nationwide for data collection, the agencies require that assessment areas be made up of whole geographies. If including an entire political subdivision would create an area that is larger than the area the institution can reasonably be expected to serve, an institution may, but is not required to, adjust the boundaries of its assessment area to include only portions of the political subdivision. For example, this adjustment is appropriate if the assessment area would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers (such as a river, mountain, or major highway system). When adjusting the boundaries of their assessment areas, institutions must not arbitrarily exclude low- or moderate-income geographies or set boundaries that reflect illegal discrimination.

§ ____.41(e) Limitations on Delineation of an Assessment Area

§ ____.41(e)(3) May not Arbitrarily Exclude Low- or Moderate-Income Geographies

§ ____.41(e)(3)–1: *How will examiners determine whether an institution has arbitrarily excluded low- or moderate-income geographies?*

A1. Examiners will make this determination on a case-by-case basis after considering the facts relevant to the institution's assessment area delineation. Information that examiners will consider may include:

- Income levels in the institution's assessment area(s) and surrounding geographies;
- Locations of branches and deposit-taking ATMs;
- Loan distribution in the institution's assessment area(s) and surrounding geographies;
- The institution's size;
- The institution's financial condition; and
- The business strategy, corporate structure and product offerings of the institution.

§ ____.41(e)(4) May Not Extend Substantially Beyond a CMSA Boundary or Beyond a State Boundary Unless Located in a Multistate MSA

§ ____.41(e)(4)–1: *What are the maximum limits on the size of an assessment area?*

A1. An institution shall not delineate an assessment area extending substantially across the boundaries of a consolidated metropolitan statistical area (CMSA) or the boundaries of an MSA, if the MSA is not located in a CMSA. Similarly, an assessment area may not extend substantially across state boundaries unless the assessment area is located in a multistate MSA. An institution may not delineate a whole state as its assessment area unless the entire state is contained within a CMSA. These limitations apply to wholesale and limited purpose institutions as well as other institutions.

An institution shall delineate separate assessment areas for the areas inside and outside a CMSA (or MSA if the MSA is not located in a CMSA) if the area served by the institution's branches outside the CMSA (or MSA) extends substantially beyond the CMSA (or MSA) boundary. Similarly, the institution shall delineate separate assessment areas for the areas inside and outside of a state if the institution's branches extend substantially beyond the boundary of one state (unless the assessment area is located in a multistate MSA). In addition, the institution should also delineate separate assessment areas if it has branches in areas within the same state that are widely separate and not at all contiguous. For example, an institution that has its main office in New York City and a branch in Buffalo, New York, and each office serves only the immediate areas around it, should delineate two separate assessment areas.

§ ____.41(e)(4)–2: *Can an institution delineate one assessment area that consists of an MSA and two large counties that abut the MSA but are not adjacent to each other?*

A2. As a general rule, an institution's assessment area should not extend substantially beyond the boundary of an MSA if the MSA is not located in a CMSA. Therefore, the MSA would be a separate assessment area, and because the two abutting counties are not adjacent to each other and, in this example, extend substantially beyond the boundary of the MSA, the institution would delineate each county as a separate assessment area (so, in this example, there would be three assessment areas). However, if the MSA and the two counties were in the same CMSA, then the institution could delineate only one assessment area including them all.

§ ____.42—Data collection, reporting, and disclosure

§ ____.42–1: *When must an institution collect and report data under the CRA regulations?*

A1. All institutions except small institutions are subject to data collection and reporting requirements. A small institution is a bank or thrift that, as of December 31 of *either* of the prior two calendar years, had total assets of less than $250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than $1 billion.

For example:

Date	Institution's asset size (in millions)	Data collection required for following calendar year?
12/31/94	$240	No.
12/31/95	260	No.
12/31/96	230	No.
12/31/97	280	No.
12/31/98	260	Yes, beginning 1/01/99.

All institutions that are subject to the data collection and reporting requirements must report the data for a calendar year by March 1 of the

subsequent year. In the example, above, the institution would report the data collected for calendar year 1999 by March 1, 2000.

The Board of Governors of the Federal Reserve System is handling the processing of the reports for all of the primary regulators. The reports should be submitted in a prescribed electronic format on a timely basis. The mailing address for submitting these reports is: Attention: CRA Processing, Board of Governors of the Federal Reserve System, 1709 New York Avenue, NW., 5th Floor, Washington, DC 20006.

§ ____.42–2: *Should an institution develop its own program for data collection, or will the regulators require a certain format?*

A2. An institution may use the free software that is provided by the FFIEC to reporting institutions for data collection and reporting or develop its own program. Those institutions that develop their own programs must follow the precise format for the new CRA data collection and reporting rules. This format may be obtained by contacting the CRA Assistance Line at (202) 872–7584.

§ ____.42–3: *How should an institution report data on lines of credit?*

A3. Institutions must collect and report data on lines of credit in the same way that they provide data on loan originations. Lines of credit are considered originated at the time the line is approved or increased; and an increase is considered a new origination. Generally, the full amount of the credit line is the amount that is considered originated. In the case of an increase to an existing line, the amount of the increase is the amount that is considered originated and that amount should be reported. However, consistent with the Call Report and TFR instructions, institutions would not report an increase to a small business or small farm line of credit if the increase would cause the total line of credit to exceed $1 million, in the case of a small business line, or $500,000, in the case of a small farm line. Of course, institutions may provide information about such line increases to examiners as "other loan data."

§ ____.42–4: *Should renewals of lines of credit be collected and/or reported?*

A4. Renewals of lines of credit for small business, small farm or consumer purposes should be collected and reported, if applicable, in the same manner as renewals of small business or small farm loans. *See* § ____.42(a)–5. Institutions that are HMDA reporters continue to collect and report home equity lines of credit at their option in accordance with the requirements of 12 CFR part 203.

§ ____.42–5: *When should merging institutions collect data?*

A5. Three scenarios of data collection responsibilities for the calendar year of a merger and subsequent data reporting responsibilities are described below.

- Two institutions are exempt from CRA collection and reporting requirements because of asset size. The institutions merge. No data collection is required for the year in which the merger takes place, regardless of the resulting asset size. Data collection would begin after two consecutive years in which the combined institution had year-end assets of at least $250 million or was part of a holding company that had year-end banking and thrift assets of at least $1 billion.
- Institution A, an institution required to collect and report the data, and Institution B, an exempt institution, merge. Institution A is the surviving institution. For the year of the merger, data collection is required for Institution A's transactions. Data collection is optional for the transactions of the previously exempt institution. For the following year, all transactions of the surviving institution must be collected and reported.
- Two institutions that each are required to collect and report the data merge. Data collection is required for the entire year of the merger and for subsequent years so long as the surviving institution is not exempt. The surviving institution may file either a consolidated submission or separate submissions for the year of the merger but must file a consolidated report for subsequent years.

§ ____.42–6: *Can small institutions get a copy of the data collection software even though they are not required to collect or report data?*

A6. Yes. Any institution that is interested in receiving a copy of the software may send a written request to: Attn.: CRA Processing, Board of Governors of the Federal Reserve System, 1709 New York Ave, NW., 5th Floor, Washington, DC 20006.

They may also call the CRA Assistance Line at (202) 872–7584 or send Internet e-mail to CRAHELP@FRB.GOV.

§ ____.42–7: *If a small institution is designated a wholesale or limited purpose institution, must it collect data that it would not otherwise be required to collect because it is a small institution?*

A7. No. However, small institutions must be prepared to identify those loans, investments and services to be evaluated under the community development test.

§ ____.42(a) Loan Information Required To Be Collected and Maintained

§ ____.42(a)–1: *Must institutions collect and report data on all commercial loans under $1 million at origination?*

A1. No. Institutions that are not exempt from data collection and reporting are required to collect and report only those commercial loans that they capture in the Call Report, Schedule RC-C, Part II, and in the TFR, Schedule SB. Small business loans are defined as those whose original amounts are $1 million or less *and* that were reported as either "Loans secured by nonfarm or nonresidential real estate" or "Commercial and Industrial loans" in Part I of the Call Report or TFR.

§ ____.42(a)–2: *For loans defined as small business loans, what information should be collected and maintained?*

A2. Institutions that are not exempt from data collection and reporting are required to collect and maintain in a standardized, machine readable format information on each small business loan originated or purchased for each calendar year:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- The loan amount at origination;
- The loan location; and
- An indicator whether the loan was to a business with gross annual revenues of $1 million or less.

The location of the loan must be maintained by census tract or block numbering area. In addition, supplemental information contained in the file specifications includes a date associated with the origination or purchase and whether a loan was originated or purchased by an affiliate. The same requirements apply to small farm loans.

§ ____.42(a)–3: *Will farm loans need to be segregated from business loans?*

A3. Yes.

§ ____.42(a)–4: *Should institutions collect and report data on all agricultural loans under $500,000 at origination?*

A4. Institutions are to report those farm loans that they capture in the Call Report, Schedule RC–C, Part II and Schedule SB of the TFR. Small farm loans are defined as those whose original amounts are $500,000 or less *and* were reported as either "Loans to finance agricultural production and other loans to farmers" or "Loans

secured by farmland" in Part I of the Call Report and TFR.

§ ____.42(a)–5: *Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?*

A5. An institution should collect information about small business and small farm loans that it refinances or renews as loan originations. (A *refinancing* generally occurs when the existing loan obligation or note is satisfied and a new note is written, while a *renewal* refers to an extension of the term of a loan. However, for purposes of small business and small farm CRA data collection and reporting, it is no longer necessary to distinguish between the two.) When reporting small business and small farm data, however, an institution may only report one origination (including a renewal or refinancing treated as an origination) per loan per year, unless an increase in the loan amount is granted.

If an institution increases the amount of a small business or small farm loan when it extends the term of the loan, it should always report the amount of the increase as a small business or small farm loan origination. The institution should report only the amount of the increase if the original or remaining amount of the loan has already been reported one time that year. For example, a financial institution makes a term loan for $25,000; principal payments have resulted in a present outstanding balance of $15,000. In the next year, the customer requests an additional $5,000, which is approved, and a new note is written for $20,000. In this example, the institution should report both the $5,000 increase and the renewal or refinancing of the $15,000 as originations for that year. These two originations may be reported together as a single origination of $20,000.

§ ____.42(a)–6: *Does a loan to the "fishing industry" come under the definition of a small farm loan?*

A6. Yes. Instructions for Part I of the Call Report and Schedule SB of the TFR include loans "made for the purpose of financing fisheries and forestries, including loans to commercial fishermen" as a component of the definition for "Loans to finance agricultural production and other loans to farmers." Part II of Schedule RC–C of the Call Report and Schedule SB of the TFR, which serve as the basis of the definition for small business and small farm loans in the revised regulation, capture both "Loans to finance agricultural production and other loans to farmers" and "Loans secured by farmland."

§ ____.42(a)–7: *How should an institution report a home equity line of credit, part of which is for home improvement purposes, but the predominant part of which is for small business purposes?*

A7. The institution has the option of reporting the portion of the home equity line that is for home improvement purposes under HMDA. That portion of the loan would then be considered when examiners evaluate home mortgage lending. If the line meets the regulatory definition of a "community development loan," the institution should collect and report information on the entire line as a community development loan. If the line does not qualify as a community development loan, the institution has the option of collecting and maintaining (but not reporting) the entire line of credit as "Other Secured Lines/Loans for Purposes of Small Business."

§ ____.42(a)–8: *When collecting small business and small farm data for CRA purposes, may an institution collect and report information about loans to small businesses and small farms located outside the United States?*

A8. At an institution's option, it may collect data about small business and small farm loans located outside the United States; however, it cannot report this data because the CRA data collection software will not accept data concerning loan locations outside the United States.

§ ____.42(a)–9: *Is an institution that has no small farm or small business loans required to report under CRA?*

A9. Each institution subject to data reporting requirements must, at a minimum, submit a transmittal sheet, definition of its assessment area(s), and a record of its community development loans. If the institution does not have community development loans to report, the record should be sent with "0" in the community development loan composite data fields. An institution that has not purchased or originated any small business or small farm loans during the reporting period would not submit the composite loan records for small business or small farm loans.

§ ____.42(a)–10: *How should an institution collect and report the location of a loan made to a small business or farm if the borrower provides an address that consists of a post office box number or a rural route and box number?*

A10. Prudent banking practices dictate that an institution know the location of its customers and loan collateral. Therefore, institutions typically will know the actual location of their borrowers or loan collateral beyond an address consisting only of a post office box.

Many borrowers have street addresses in addition to post office box numbers or rural route and box numbers. Institutions should ask their borrowers to provide the street address of the main business facility or farm or the location where the loan proceeds otherwise will be applied. Moreover, in many cases in which the borrower's address consists only of a rural route number or post office box, the institution knows the location (i.e., the census tract or block numbering area) of the borrower or loan collateral. Once the institution has this information available, it should assign a census tract or block numbering area to that location (geocode) and report that information as required under the regulation.

For loans originated or purchased in 1998 or later, if the institution cannot determine the borrower's street address, and does not know the census tract or block numbering area, the institution should report the borrower's state, county, MSA, if applicable, and "NA," for "not available," in lieu of a census tract or block numbering area code.

§ ____.42(a)(2) Loan Amount at Origination

§ ____.42(a)(2)–1: *When an institution purchases a small business or small farm loan, which amount should the institution collect and report—the original amount of the loan or the amount at purchase?*

A1. When collecting and reporting information on purchased small business and small farm loans, an institution collects and reports the amount of the loan at origination, not at the time of purchase. This is consistent with the Call Report's and TFR's use of the "original amount of the loan" to determine whether a loan should be reported as a "loan to a small business" or a "loan to a small farm" and in which loan size category a loan should be reported. When assessing the volume of small business and small farm loan purchases for purposes of evaluating lending test performance under CRA, however, examiners will evaluate an institution's activity based on the amounts at purchase.

§ ____.42(a)(2)–2: *How should an institution collect data about multiple loan originations to the same business?*

A2. If an institution makes multiple originations to the same business, the loans should be collected and reported as separate originations rather than combined and reported as they are on the Call Report or TFR, which reflect loans outstanding, rather than

originations. However, if institutions make multiple originations to the same business solely to inflate artificially the number or volume of loans evaluated for CRA lending performance, the agencies may combine these loans for purposes of evaluation under the CRA.

§ ____.42(a)(2)–3: *How should an institution collect data pertaining to credit cards issued to small businesses?*

A3. If an institution agrees to issue credit cards to a business' employees, all of the credit card lines opened on a particular date for that single business should be reported as one small business loan origination rather than reporting each individual credit card line, assuming the criteria in the "small business loan" definition in the regulation are met. The credit card program's "amount at origination" is the sum of all of the employee/business credit cards' credit limits opened on a particular date. If subsequently issued credit cards increase the small business credit line, the added amount is reported as a new origination.

§ ____.42(a)(3) The Loan Location

§ ____.42(a)(3)–1: *Which location should an institution record if a small business loan's proceeds are used in a variety of locations?*

A1. The institution should record the loan location by either the location of the business headquarters or the location where the greatest portion of the proceeds are applied, as indicated by the borrower.

§ ____.42(a)(4) Indicator of Gross Annual Revenue

§ ____.42(a)(4)–1: *When indicating whether a small business borrower had gross annual revenues of $1 million or less, upon what revenues should an institution rely?*

A1. Generally, an institution should rely on the revenues that it considered in making its credit decision. For example, in the case of affiliated businesses, such as a parent corporation and its subsidiary, if the institution considered the revenues of the entity's parent or a subsidiary corporation of the parent as well, then the institution would aggregate the revenues of both corporations to determine whether the revenues are $1 million or less. Alternatively, if the institution considered the revenues of only the entity to which the loan is actually extended, the institution should rely solely upon whether gross annual revenues are above or below $1 million for that entity. However, if the institution considered and relied on revenues or income of a cosigner or guarantor that is not an affiliate of the borrower, such as a sole proprietor, the institution should not adjust the borrower's revenues for reporting purposes.

§ ____.42(a)(4)–2: *If an institution that is not exempt from data collection and reporting does not request or consider revenue information to make the credit decision regarding a small business or small farm loan, must the institution collect revenue information in connection with that loan?*

A2. No. In those instances, the institution should enter the code indicating "revenues not known" on the individual loan portion of the data collection software or on an internally developed system. Loans for which the institution did not collect revenue information may not be included in the loans to businesses and farms with gross annual revenues of $1 million or less when reporting this data.

§ ____.42(a)(4)–3: *What gross revenue should an institution use in determining the gross annual revenue of a start-up business?*

A3. The institution should use the actual gross annual revenue to date (including $0 if the new business has had no revenue to date). Although a start-up business will provide the institution with pro forma projected revenue figures, these figures may not accurately reflect actual gross revenue.

§ ____.42(a)(4)–4: *When collecting and reporting the gross annual revenue of small business or farm borrowers, do institutions collect and report the gross annual revenue or the adjusted gross annual revenue of its borrowers?*

A4. Institutions collect and report the gross annual revenue, rather than the adjusted gross annual revenue, of their small business or farm borrowers. The purpose of this data collection is to enable examiners and the public to judge whether the institution is lending to small businesses and farms or whether it is only making small loans to larger businesses and farms.

The regulation does not require institutions to request or consider revenue information when making a loan; however, if institutions do gather this information from their borrowers, the agencies expect them to collect and report the borrowers' gross annual revenue for purposes of CRA. The CRA regulations similarly do not require institutions to verify revenue amounts; thus, institutions may rely on the gross annual revenue amount provided by borrowers in the ordinary course of business. If an institution does not collect gross annual revenue information for its small business and small farm borrowers, the institution would not indicate on the CRA data collection software that the gross annual revenues of the borrower are $1 million or less. (*See* § ____.42(a)(4)–2.)

§ ____.42(b) Loan Information Required To Be Reported

§ ____.42(b)(1) Small Business and Small Farm Loan Data

§ ____.42(b)(1)–1: *For small business and small farm loan information that is collected and maintained, what data should be reported?*

A1. Each institution that is not exempt from data collection and reporting is required to report in machine-readable form annually by March 1 the following information, aggregated for each census tract or block numbering area in which the institution originated or purchased at least one small business or small farm loan during the prior year:

- The number and amount of loans originated or purchased with original amounts of $100,000 or less;
- The number and amount of loans originated or purchased with original amounts of more than $100,000 but less than or equal to $250,000;
- The number and amount of loans originated or purchased with original amounts of more than $250,000 but not more than $1 million, as to small business loans, or $500,000, as to small farm loans; and To the extent that information is available, the number and amount of loans to businesses and farms with gross annual revenues of $1 million or less (using the revenues the institution considered in making its credit decision).

§ ____.42(b)(2) Community Development Loan Data

§ ____.42(b)(2)–1: *What information about community development loans must institutions report?*

A1. Institutions subject to data reporting requirements must report the aggregate number and amount of community development loans originated and purchased during the prior calendar year.

§ ____.42(b)(2)–2: *If a loan meets the definition of a home mortgage, small business, or small farm loan AND qualifies as a community development loan, where should it be reported? Can FHA, VA and SBA loans be reported as community development loans?*

A2. Except for multifamily affordable housing loans, which may be reported by retail institutions both under HMDA as home mortgage loans and as community development loans, in order to avoid double counting, retail institutions must report loans that meet the definitions of home mortgage, small

business, or small farm loans only in those respective categories even if they also meet the definition of community development loans. As a practical matter, this is not a disadvantage for retail institutions because any affordable housing mortgage, small business, small farm or consumer loan that would otherwise meet the definition of a community development loan will be considered elsewhere in the lending test. Any of these types of loans that occur outside the institution's assessment area can receive consideration under the borrower characteristic criteria of the lending test. *See* § ____.22(b)(2) & (3)–4.

Limited purpose and wholesale institutions also must report loans that meet the definitions of home mortgage, small business, or small farm loans in those respective categories; however, they must also report any loans from those categories that meet the regulatory definition of "community development loans" as community development loans. There is no double counting because wholesale and limited purpose institutions are not subject to the lending test and, therefore, are not evaluated on their level and distribution of home mortgage, small business, small farm and consumer loans.

§ ____.42(b)(2)–3: *When the primary purpose of a loan is to finance an affordable housing project for low-or moderate-income individuals, but, for example, only 40 percent of the units in question will actually be occupied by individuals or families with low or moderate incomes, should the entire loan amount be reported as a community development loan?*

A3. Yes. As long as the primary purpose of the loan is a community development purpose, the full amount of the institution's loan should be included in its reporting of aggregate amounts of community development lending. However, as noted in § ____.22(b)(4)–1, examiners may make qualitative distinctions among community development loans on the basis of the extent to which the loan advances the community development purpose.

§ ____.42(b)(3) Home Mortgage Loans

§ ____.42(b)(3)–1: *Must institutions that are not required to collect home mortgage loan data by the HMDA collect home mortgage loan data for purposes of the CRA?*

A1. No. If an institution is not required to collect home mortgage loan data by the HMDA, the institution need not collect home mortgage loan data under the CRA. Examiners will sample these loans to evaluate the institution's home mortgage lending. If an institution wants to ensure that examiners consider all of its home mortgage loans, the institution may collect and maintain data on these loans.

§ ____.42(c) Optional Data Collection and Maintenance

§ ____.42(c)(1) Consumer Loans

§ ____.42(c)(1)–1: *What are the data requirements regarding consumer loans?*

A1. There are no data reporting requirements for consumer loans. Institutions may, however, opt to collect and maintain data on consumer loans. If an institution chooses to collect information on consumer loans, it may collect data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If an institution collects data for loans in a certain category, it must collect data for all loans originated or purchased within that category. The institution must maintain these data separately for each category for which it chooses to collect data. The data collected and maintained should include for each loan:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- The loan amount at origination or purchase;
- The loan location; and
- The gross annual income of the borrower that the institution considered in making its credit decision.

Generally, guidance given with respect to data collection of small business and small farm loans, including, for example, guidance regarding collecting loan location data, and whether to collect data in connection with refinanced or renewed loans, will also apply to consumer loans.

§ ____.42(c)(1)(iv) Income of Borrower

§ ____.42(c)(1)(iv)–1: *If an institution does not consider income when making an underwriting decision in connection with a consumer loan, must it collect income information?*

A1. No. Further, if the institution routinely collects, but does not verify, a borrower's income when making a credit decision, it need not verify the income for purposes of data maintenance.

§ ____.42(c)(1)(iv)–2: *May an institution list "0" in the income field on consumer loans made to employees when collecting data for CRA purposes as the institution would be permitted to do under HMDA?*

A2. Yes.

§ ____.42(c)(1)(iv)–3: *When collecting the gross annual income of consumer borrowers, do institutions collect the gross annual income or the adjusted gross annual income of the borrowers?*

A3. Institutions collect the gross annual income, rather than the adjusted gross annual income, of consumer borrowers. The purpose of income data collection in connection with consumer loans is to enable examiners to determine the distribution, particularly in the institution's assessment area(s), of the institution's consumer loans, based on borrower characteristics, including the number and amount of consumer loans to low-, moderate-, middle-, and upper-income borrowers, as determined on the basis of gross annual income.

The regulation does not require institutions to request or consider income information when making a loan; however, if institutions do gather this information from their borrowers, the agencies expect them to collect the borrowers' gross annual income for purposes of CRA. The CRA regulations similarly do not require institutions to verify income amounts; thus, institutions may rely on the gross annual income amount provided by borrowers in the ordinary course of business.

§§ ____.42(c)(1)(iv)–4: *Whose income does an institution collect when a consumer loan is made to more than one borrower?*

A4. An institution that chooses to collect and maintain information on consumer loans collects the gross annual income of all primary obligors for consumer loans, to the extent that the institution considered the income of the obligors when making the decision to extend credit. Primary obligors include co-applicants and co-borrowers, including co-signers. An institution does not, however, collect the income of guarantors on consumer loans, because guarantors are only secondarily liable for the debt.

§ ____.42(c)(2) Other Loan Data

§ ____.42(c)(2)–1: *Schedule RC–C, Part II of the Call Report does not allow banks to report loans for commercial and industrial purposes that are secured by residential real estate, unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution.* (See *§§ ____.12(u) & 563e.12(t)–3.*) *Loans extended to small businesses with gross annual revenues of $1 million or less may, however, be secured by residential real estate. May a bank collect this information to supplement its small business lending data at the time of examination?*

A1. Yes. If these loans promote community development, as defined in the regulation, the bank should collect and report information about the loans as community development loans. Otherwise, *at the bank's option,* it may collect and maintain data concerning loans, purchases, and lines of credit extended to small businesses and secured by nonfarm residential real estate for consideration in the CRA evaluation of its small business lending. A bank may collect this information as "Other Secured Lines/Loans for Purposes of Small Business" in the individual loan data. This information should be maintained at the bank but should *not* be submitted for central reporting purposes.

§ ____.42(c)(2)–2: *Must an institution collect data on loan commitments and letters of credit?*

A2. No. Institutions are not required to collect data on loan commitments and letters of credit. Institutions may, however, provide for examiner consideration information on letters of credit and commitments.

§ ____.42(c)(2)–3: *Are commercial and consumer leases considered loans for purposes of CRA data collection?*

A3. Commercial and consumer leases are not considered small business or small farm loans or consumer loans for purposes of the data collection requirements in 12 CFR ____.42(a) & (c)(1). However, if an institution wishes to collect and maintain data about leases, the institution may provide this data to examiners as "other loan data" under 12 CFR ____.42(c)(2) for consideration under the lending test.

§ ____.42(d) Data on Affiliate Lending

§ ____.42(d)–1: *If an institution elects to have an affiliate's home mortgage lending considered in its CRA evaluation, what data must the institution make available to examiners?*

A1. If the affiliate is a HMDA reporter, the institution must identify those loans reported by its affiliate under 12 CFR part 203 (Regulation C, implementing HMDA). At its option, the institution may either provide examiners with the affiliate's entire HMDA Disclosure Statement or just those portions covering the loans in its assessment area(s) that it is electing to consider. If the affiliate is not required by HMDA to report home mortgage loans, the institution must provide sufficient data concerning the affiliate's home mortgage loans for the examiners to apply the performance tests.

§ ____.43—Content and Availability of Public File

§ ____.43(a) Information Available to the Public

§ ____.43(a)(1) Public Comments

§ ____.43(a)(1)–1: *What happens to comments received by the agencies?*

A1. Comments received by a Federal financial supervisory agency will be on file at the agency for use by examiners. Those comments are also available to the public unless they are exempt from disclosure under the Freedom of Information Act.

§ ____.43(a)(1)–2: *Is an institution required to respond to public comments?*

A2. No. All institutions should review comments and complaints carefully to determine whether any response or other action is warranted. A small institution subject to the small institution performance standards is specifically evaluated on its record of taking action, if warranted, in response to written complaints about its performance in helping to meet the credit needs in its assessment area(s) (§ ____.26(a)(5)). For all institutions, responding to comments may help to foster a dialogue with members of the community or to present relevant information to an institution's Federal financial supervisory agency. If an institution responds in writing to a letter in the public file, the response must also be placed in that file, unless the response reflects adversely on any person or placing it in the public file violates a law.

§ ____.43(a)(1)–3: *May an institution include a response to its CRA Performance Evaluation in its public file?*

A3. Yes. However, the format and content of the evaluation, as transmitted by the supervisory agency, may not be altered or abridged in any manner. In addition, an institution that received a less than satisfactory rating during it most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The institution must update the description on a quarterly basis.

§ ____.43(b) Additional Information Available to the Public

§ ____.43(b)(1) Institutions Other Than Small Institutions

§ ____.43(b)(1)–1: *Must an institution that elects to have affiliate lending considered include data on this lending in its public file?*

A1. Yes. The lending data to be contained in an institution's public file covers the lending of the institution's affiliates, as well as of the institution itself, considered in the assessment of the institution's CRA performance. An institution that has elected to have mortgage loans of an affiliate considered must include either the affiliate's HMDA Disclosure Statements for the two prior years or the parts of the Disclosure Statements that relate to the institution's assessment area(s), at the institution's option.

§ ____.43(b)(1)–2: *May an institution retain the compact disc provided by the Federal Financial Institution Examination Council that contains its CRA Disclosure Statement in its public file, rather than printing a hard copy of the CRA Disclosure Statement for retention in its public file?*

A2. Yes, if the institution can readily print out from the compact disc (or a duplicate of the compact disc) its CRA Disclosure Statement for a consumer when the public file is requested. If the request is at a branch other than the main office or the one designated branch in each state that holds the complete public file, the bank should provide the CRA Disclosure Statement in a paper copy, or in another format acceptable to the requestor, within 5 calendar days, as required by § ____.43(c)(2)(ii).

§ ____.43(c) Location of Public Information

§ ____.43(c)–1: *What is an institution's "main office"?*

A1. An institution's main office is the main, home, or principal office as designated in its charter.

§ ____.43(c)–2: *May an institution maintain a copy of its public file on an intranet or the Internet?*

A2. Yes, an institution may keep all or part of its public file on an intranet or the Internet, provided that the institution maintains all of the information, either in paper or electronic form, that is required in § ____.43 of the regulations. An institution that opts to keep part or all of its public file on an intranet or the Internet must follow the rules in §§ ____.43(c)(1) and (2) as to what information is required to be kept at a main office and at a branch. The institution also must ensure that the information required to be maintained at a main office and branch, if kept electronically, can be readily downloaded and printed for any member of the public who requests a hard copy of the information.

§ ____.44—Public Notice by Institutions

§ ____.44–1: *Are there any placement or size requirements for an institution's public notice?*

A1. The notice must be placed in the institution's public lobby, but the size and placement may vary. The notice should be placed in a location and be of a sufficient size that customers can easily see and read it.

§ ____.45—Publication of Planned Examination Schedule

§ ____.45–1: *Where will the agencies publish the planned examination schedule for the upcoming calendar quarter?*

A1. The agencies may use the **Federal Register**, a press release, the Internet, or other existing agency publications for disseminating the list of the institutions scheduled to for CRA examinations during the upcoming calendar quarter. Interested parties should contact the appropriate Federal financial supervisory agency for information on how the agency is publishing the planned examination schedule.

§ ____.45–2: *Is inclusion on the list of institutions that are scheduled to undergo CRA examinations in the next calendar quarter determinative of whether an institution will be examined in that quarter?*

A2. No. The agencies attempt to determine as accurately as possible which institutions will be examined during the upcoming calendar quarter. However, whether an institution's name appears on the published list does not conclusively determine whether the institution will be examined during that quarter. The agencies may need to defer a planned examination or conduct an unforeseen examination because of scheduling difficulties or other circumstances.

Appendix A to Part ____—Ratings

Appendix A to Part ____—1: *Must an institution's performance fit each aspect of a particular rating profile in order to receive that rating?*

A1. No. Exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others. For example, a retail institution that uses non-branch delivery systems to obtain deposits and to deliver loans may have almost all of its loans outside the institution's assessment area. Assume that an examiner, after consideration of performance context and other applicable regulatory criteria, concludes that the institution has weak performance under the lending test criteria applicable to lending activity, geographic distribution, and borrower characteristics within the assessment area. The institution may compensate for such weak performance by exceptionally strong performance in community development lending in its assessment area or a broader statewide or regional area that includes its assessment area.

Appendix B to Part ____—CRA Notice

Appendix B to Part____—1: *What agency information should be added to the CRA notice form?*

A1. The following information should be added to the form:

OCC-supervised institutions only: The address of the deputy comptroller of the district in which the institution is located should be inserted in the appropriate blank. These addresses can be found at 12 CFR 4.5(a).

OCC-, FDIC-, and Board-supervised institutions: "Officer in Charge of Supervision" is the title of the responsible official at the appropriate Federal Reserve Bank.

Appendix A—Regional Offices of the Bureau of the Census

To obtain median family income levels of census tracts, MSAs, block numbering areas and statewide nonmetropolitan areas, contact the appropriate regional office of the Bureau of the Census as indicated below. The list shows the states covered by each regional office.

Atlanta
(404) 730–3833
Alabama, Florida, Georgia

Boston
(617) 424–0510
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Charlotte
(704) 344–6144
Kentucky, North Carolina, South Carolina, Tennessee, Virginia

Chicago
(312) 353–9747
Illinois, Indiana, Wisconsin

Dallas
(214) 655–3050
Louisiana, Mississippi, Texas

Denver
(303) 969–7750
Arizona, Colorado, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, Wyoming

Detroit
(313) 259–1875
Michigan, Ohio, West Virginia

Kansas City
(913) 551–6711
Arkansas, Iowa, Kansas, Minnesota, Missouri, Oklahoma

Los Angeles
(818) 904–6339
Southern California, Hawaii

New York
(212) 264–4730
New York, New Jersey—selected counties

Philadelphia
(215) 656–7578
Delaware, District of Columbia, Maryland, New Jersey—selected counties, Pennsylvania

Seattle
(206) 553–5835
Alaska, Northern California, Idaho, Oregon, Washington

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Keyword	Q & A
Affiliate lending	§ ____.22(b)(1)–1 § ____.22(b)(2) & (3)–3 § ____.22(c)(1)–1 § ____.22(c)(2)(i)–1 § ____.22(c)(2)(ii)–1 § ____.41(a)–2 § ____.42(d)–1 § ____.43(b)(1)–1
Affiliates	§ ____.12(a)–1 § ____.27(c)–2
Affordable housing	§§ ____.12(h) & 563e.12(g)–1 §§ ____.12(h) & 563e.12(g)–2 §§ ____.12(h)(1) & 563e.12(g)(1)–1 § ____.42(b)(2)–3

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Alternative delivery systems	§ ____.24(d)–1 § ____.24(d)(3)–1 § ____.24(d)(3)–2
Applications, corporate	§ ____.29(a)–1 § ____.29(a)–2 § ____.29(b)–1
Assessment area	§ ____.22(b)(2) & (3)–2 § ____.22(b)(2) & (3)–3 § ____.22(b)(2) & (3)–4 § ____.26(a)(2)–1 § ____.41(a)–1 § ____.41(a)–2 § ____.41(a)–3 § ____.41(c)(1)–1 § ____.41(c)(1)–2 § ____.41(d)–1 § ____.41(e)(3)–1 § ____.41(e)(4)–1 § ____.41(e)(4)–2
Assessment area, benefit to	§§ ____.12(i) & 563e.12(h)–5 §§ ____.12(i) & 563e.12(h)–6 § ____.25(e)–1 § ____.26(b)–2
Assets	§§ ____.12(t) & 563e.12(s)–1 §§ ____.12(t) & 563e.12(s)–2
ATMs	§§ ____.12(f) & 563e.12(e)–1 § ____.24(d)–1 § ____.24(d)(3)–1 § ____.41(e)(3)–1
Borrower characteristics	§ ____.22(b)(2) & (3)–1 § ____.22(b)(2) & (3)–5 § ____.26(a)(3) & (4)–1 § ____.42(c)(1)(iv)–3
Branch	§§ ____.12(f) & 563e.12(e)–1 § ____.28(a)–1 § ____.41(e)(3)–1
Brokerage	§§ ____.12(m) & 563e.12(l)–2
CEBA credit card banks	§ ____.25(a)–1
Charitable contributions or activities	§§ ____.12(j) & 563e.12(i)–2 §§ ____.12(s) & 563e.12(r)–4 §§ ____.12(s) & 563e.12(r)–5
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Commercial loans	§ ____.12(u) & 563e.12(t)–2 § ____.42(a)–1 § ____.42(c)(2)–1
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Community contact interviews	§ ____.21(b)(2)–2
Community development	§§ ____.12(h) & 563e.12(g)–1 §§ ____.12(h) & 563e.12(g)–2 §§ ____.12(h) & 563e.12(g)(3)–1 § ____.42(b)(2)–3
Community development activities	§ ____.21(a)–1
Community development loan	§§ ____.12(i) & 563e.12(h)–1 §§ ____.12(i) & 563e.12(h)–2 §§ ____.12(i) & 563e.12(h)–3 §§ ____.12(i) & 563e.12(h)–4 §§ ____.12(i) & 563e.12(h)–5 §§ ____.12(i) & 563e.12(h)–6 §§ ____.12(i) & 563e.12(h)–7 §§ ____.12(s) & 563e.12(r)–6 §§ ____.12(u) & 563e.12(t)–1 § ____.22(b)(4)–1 § ____.22(d)–3 § ____.23(b)–1 § ____.25(d)–1 § ____.26(a)–1 § ____.26(a)–3 § ____.26(b)–2

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Credit cards	§§ ____.12(i) & 563e.12(h)–3 §§ ____.12(u) & 563e.12(t)–4
Data collection	§ ____.42(a)(2)–3 § ____.42–1 § ____.42–2 § ____.42–5 § ____.42–7 § ____.42(a)–1 § ____.42(a)–2 § ____.42(a)–4 § ____.42(a)–5 § ____.42(a)–8 § ____.42(a)–10 § ____.42(a)(2)–1 § ____.42(a)(2)–2 § ____.42(a)(2)–3 § ____.42(a)(3)–1 § ____.42(a)(4)–2 § ____.42(a)(4)–4 § ____.42(b)(1)–1 § ____.42(b)(3)–1 § ____.42(c)(1)–1 § ____.42(c)(1)(iv)–1 § ____.42(c)(1)(iv)–2 § ____.42(c)(1)(iv)–3 § ____.42(c)(2)–1 § ____.42(c)(2)–2
Data reporting	§ ____.42–1 § ____.42–3 § ____.42–4 § ____.42(a)–1 § ____.42(a)–5 § ____.42(a)–8 § ____.42(a)–9 § ____.42(a)–10 § ____.42(a)(2)–1 § ____.42(a)(4)–4 § ____.42(b)(1)–1 § ____.42(b)(2)–1 § ____.42(b)(2)–2 § ____.42(b)(2)–3
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End of text of the Interagency Questions and Answers

Dated: July 5, 2001.

Joanne Giese,

Assistant Executive Secretary, Federal Financial Institutions Examination Council.

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Part III

Environmental Protection Agency

40 CFR Part 52
Approval and Promulgation of Implementation Plans: Texas; the Houston/Galveston Nonattainment Area; Ozone; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX134–1–7501; FRL–7011–4]

Approval and Promulgation of Implementation Plans; Texas; the Houston/Galveston Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Through parallel processing, the EPA is proposing to approve the Texas one hour ozone attainment demonstration State Implementation Plan (SIP) for the Houston/Galveston (HG) severe nonattainment area based on Texas' commitment to submit by October 1, 2001 a SIP revision that incorporates enforceable commitments to adopt and submit the remaining measures necessary to demonstrate attainment of the one hour standard; that incorporates recent legislation and its effects upon the proposed control strategy necessary to demonstrate attainment of the standard; that corrects and modifies the Post 1999 Rate of Progress (ROP) plans; that adequately demonstrates all Reasonably Available Control Measures (RACM) have been implemented in the HG area; and that modifies the attainment Motor Vehicle Emissions Budget (MVEB) to account for changes in the Heavy Duty Diesel vehicle emissions projection. In the alternative, if they fail to meet this commitment, EPA is proposing to disapprove the attainment demonstration for the HG area.

DATES: Written comments must be received on or before August 13, 2001.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document (TSD), are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park Circle, Austin, Texas 78753.

Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Guy R. Donaldson, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone Number (214) 665–7242, E-mail Address: Donaldson.Guy@epa.gov.

SUPPLEMENTARY INFORMATION: In proposing to approve the attainment demonstration SIP, the EPA also is proposing the following related actions:

- Approval of the following local measures relied on in the attainment demonstration: speed limit reduction, voluntary mobile emission programs (VMEP) and transportation control measures (TCM).
- Approval of the Post 1999 ROP plans for the time periods 2000–2002, 2003–2005 and 2006–2007.
- Approval of the MVEB contained in the attainment demonstration SIP and the Post 1999 ROP plans.
- Approval of the 15% ROP Plan (Conversion of conditional interim approval to a full approval).
- Approval of the State's enforceable commitment to perform a mid-course review and submit a SIP revision with recommended mid-course corrective actions, to the EPA by May 1, 2004.
- Approval of the State's enforceable commitment to revise the MVEB using the MOBILE6 on-road emissions model.
- Approval of revisions to the 1990 base year inventory.
- Approval of the HG area's SIP as meeting the reasonably available control measures (RACM) requirement.

Of the above proposed actions, the EPA is proposing to approve through parallel processing the State's enforceable commitments to adopt and submit the remaining necessary measures, the revised control strategy as impacted by recent state legislation, modifications and corrections to the ROP plans, the RACM analyses, and revisions to the projected on-road emissions from Heavy Duty Diesel engines, as submitted by the Governor in a letter dated June 15, 2001. This proposed action is based on the requirements of the Federal Clean Air Act (the Act or the CAA) related to ozone demonstrations.

If the State makes significant changes between the versions being parallel reviewed and the final adopted versions, other than those changes resulting from issues discussed in this proposed rulemaking, EPA will issue an additional proposed rulemaking prior to taking final action. If there are no significant changes to the parallel-processed versions and Texas submits the final versions by September 2001, the EPA will proceed with final rulemaking. Final full approval of the attainment demonstration SIP is contingent on final approval of the MVEBs, ROP plans, the items being parallel processed, and the rules and other measures relied upon to demonstrate attainment. Due to an existing consent decree, by October 15, 2001, EPA must propose a Federal Implementation Plan (FIP) if EPA has not fully approved the attainment demonstration SIP for the HG area.

Throughout this document "we," "us," and "our" means EPA.

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I. Proposed Action

What Actions Are We Proposing to Approve?

Through parallel processing, we are proposing to approve the one-hour ozone attainment demonstration SIP for

the HG nonattainment area. This demonstration shows through photochemical modeling and other evidence that a combination of adopted measures, recent legislation, and commitments to adopt additional measures that the HG area will attain the one hour ozone standard by November 15, 2007, the latest date provided under the CAA.

As an integral part of the attainment demonstration we are proposing approval and adequacy of the associated MVEBs only until these emission budgets have been revised pursuant to the State's commitments to use MOBILE6 and to adopt additional measures necessary for attainment and we have found the revised budgets adequate for the purposes of transportation conformity.

Before approving an attainment demonstration SIP, we must approve all of the control measures relied on in the demonstration. The majority of the control measures relied on in the attainment demonstration are being approved in other **Federal Register** documents. We are proposing to approve in today's action, certain measures relied upon in the attainment demonstration and which were submitted December 20, 2000: The Speed Limit Reductions, the VMEP ,and the TCMs. We are also proposing approval of the following SIP submissions: (1) 15% ROP Plan, (2) the Post 1999 ROP Plans and their associated contingency measures; (3) a demonstration that all RACM have been adopted for the HG nonattainment area; and (4) revisions to the 1990 Base Year Inventory. Revisions to the Post 1999 ROP plans and the RACM analysis are being parallel processed.

We cannot finalize the proposed approval of the attainment demonstration SIP and its associated attainment MVEB, unless and until, we have fully approved all of the control measures relied upon in the State's attainment demonstration SIP for the HG area. A description of all of these measures that must be finally approved by EPA before any final approval of the attainment demonstration SIP and its associated MVEBs is in section VIII.

In addition, we believe that for the HG area to be successful in attaining the one-hour ozone standard, the State must be committed to certain future actions relating to adopting additional measures and to future evaluations of the inputs to the plan. Therefore, we are proposing to approve the following State commitments:

- The State's enforceable commitment to perform a mid-course review (including evaluation of all modeling, inventory data, and other tools and assumptions used to develop this attainment demonstration) and to submit a mid-course review SIP revision, with recommended mid-course corrective actions, to the EPA by May 1, 2004.
- The State's enforceable commitment to perform new mobile source modeling for the HG area, using MOBILE6, our on-road mobile emissions factor computer model, within 24 months of the model's official release; that if a transportation conformity analysis is to be performed between 12 months and 24 months after the MOBILE6 official release, transportation conformity will not be determined until Texas submits an MVEB which is developed using MOBILE6 and which we find adequate.
- An enforceable commitment to adopt rules that achieve at least the additional 56 tons/day of NO_X emission reductions that are needed for the area to show attainment of the one-hour ozone standard and identified potential measures that could achieve the reductions without requiring additional limits on highway construction.*
- An enforceable commitment to adopt measures to achieve 25% of the 56 tons/day needed additional NO_X reductions and submit these adopted measures to EPA as a SIP revision by December 2002.*
- An enforceable commitment to adopt measures for the remaining needed additional NO_X reductions and submit these adopted measures to EPA as a SIP revision by May 1, 2004.*
- An enforceable commitment that the rules needed for the additional NO_X reductions will be adopted as expeditiously as practicable and the compliance dates will be expeditious.*
- An enforceable commitment to concurrently revise the MVEBs and submit them to EPA as a revision to the attainment SIP if additional control measures reduce on-road motor vehicle emissions.

In a letter dated June 15, 2001, the Governor of Texas submitted several items for parallel processing. These items are: The enforceable commitments noted above with asterisks; the recent legislative changes with their impacts on and revisions to the proposed control strategy for the HG area; the corrections and modifications to the Post 1999 ROP plans; a demonstration that all RACM have been adopted for the HG nonattainment area; and a modification to the attainment demonstration and MVEB to revise the emission projection for Heavy Duty Diesel vehicles. Parallel processing means that EPA proposes action on a state rule before it becomes final under state law. Under parallel processing, EPA takes final action on its proposal if the final, adopted state submission is substantially unchanged from the submission on which the proposed rulemaking was based, or if significant changes in the final submission are anticipated and adequately described in EPA's proposed rulemaking or result from needed corrections determined by the State to be necessary through review of issues described in EPA's proposed rulemaking.

In summary, we cannot finalize action on the attainment demonstration SIP and its associated MVEBs unless and until the Governor submits the items we are parallel processing, including the finally adopted enforceable commitments, the finally adopted control strategy as revised by the recent legislation, the corrections to the Post 1999 ROP Plans, the RACM demonstration and the revisions to the attainment MVEBs. The State has begun its public comment process on these items. Public hearings are scheduled for June 13, 14 and 15, and July 2, 2001. Submission is anticipated in September 2001, but not later than October 1, 2001.

If the EPA cannot fully approve all of the control measures and commitments relied upon in the attainment demonstration, and the items proposed for parallel processing, EPA cannot fully approve the attainment demonstration SIP for the HG area. Under an existing consent decree, EPA must propose a Federal Implementation Plan (FIP) by October 15, 2001, if EPA has not fully approved an attainment demonstration SIP for the HG area by that day.

II. Background

A. Why Control Ozone?

Ozone is a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It can worsen bronchitis, asthma and reduce lung capacity.

The Act requires EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. CAA sections 108 and 109. In 1979, we promulgated the one hour (0.12 parts per million (ppm)) ground-level ozone standard to guard against the health effects discussed above. 44 FR 8202 (Feb. 8, 1979)

The ozone problem in the HG area is one of the most serious in the country.

In 2000, the one hour ozone standard was exceeded 44 times in the HG area, more than anywhere else in the country. The area's peak one hour reading in 2000 was 225 parts per billion (ppb), almost twice the one hour NAAQS. This was the highest value recorded in the country.

B. How Is Ozone Formed?

Ground-level ozone is not emitted directly from a smoke stack or tail pipe. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

VOC emissions are produced by a wide variety of sources, including stationary and mobile sources. Significant stationary sources of VOC include industrial solvent usage, various coating operations, industrial and utility combustion units, petroleum and oil storage and marketing operations, chemical manufacturing operations, personal solvent usage, etc. Significant mobile sources of VOC include on-road vehicle usage and off-road vehicle and engine usage, such as farm machinery, aircraft, locomotives, and motorized lawn care and garden implements.

NO_X emissions are produced primarily through combustion processes, including industrial and utility boiler use, process heaters and furnaces, and on-road and off-road mobile sources.

C. What Are the Relevant Clean Air Act Requirements?

The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period. Clean Air Act section 107(d)(4); 56 FR 56694 (November 6, 1991). The Act further classified these areas, based on the areas' ozone design values, as marginal, moderate, serious, severe, or extreme. The design value for an area, which characterizes the severity of the air quality problem, is represented by the highest design value at any individual ozone monitoring site (i.e., the highest of the fourth highest one hour daily maximum monitored ozone levels in a given three-year period with complete monitoring date). Marginal areas were suffering the least significant ozone nonattainment problems, while the areas classified as severe and extreme had the most significant ozone nonattainment problems.

The control requirements and date by which attainment is to be achieved vary with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the 1 hour standard by November 15, 1999, and severe areas are required to attain by November 15, 2005 or November 15, 2007, depending on the areas' ozone design values for 1987 through 1989. The HG ozone nonattainment area was classified as severe-17 (56 FR 56694, November 6, 1991). As such, it has until November 15, 2007 to attain the standard. The HG ozone nonattainment area is defined (40 CFR 81.314 and 81.326) to contain Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties in Texas.

The specific requirements of the Act for severe ozone nonattainment areas are found in part D, section 182(d). Section 172 in part D provides the general requirements for nonattainment plans. Section 172(c)(6) in part D of the Act and section 110 require SIPs to include enforceable emission limitations, and such other control measures, means or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment date. Section 172(c)(1) requires the SIP to provide for implementation of all RACM as expeditiously as practicable and for attainment of the NAAQS. Section 182(b)(1)(A) requires the State to submit for the moderate and above nonattainment areas, a 15% ROP Plan. Section 182(c)(2)(B) requires the State to submit for the serious and above nonattainment areas, a plan that will result in emissions reductions from the baseline emissions equal to at least 3 percent of the baseline emissions each year averaged over each consecutive 3-year period, from November 15, 1996, through the attainment date. Section 182(c)(2)(A) requires the State to provide for the serious and above nonattainment areas, an attainment demonstration based on photochemical modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective. EPA's "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992) provides the interpretive basis for EPA's rulemakings under the nonattainment plan provisions of the Act (General Preamble).

D. What Are the Components of an Acceptable Attainment Demonstration?

In general, an attainment demonstration SIP includes a photochemical modeling analysis and other evidence showing how an area will achieve the standard by its attainment date and the emission control measures necessary to achieve attainment.

In our December 16, 1999, proposed approval and proposed disapproval on one of the State's previously submitted attainment demonstrations for the HG area, we listed six elements that must be addressed for one hour ozone attainment plans to be approvable. Five of these elements apply to the HG area [1] and are listed below. For a more detailed discussion see our December 16, 1999, **Federal Register** document.

(1) CAA measures and measures relied on in the attainment demonstration. This includes adopted and submitted rules for all previously required CAA mandated measures for the specific area classification, such as the ROP plans that EPA is proposing to take action on today. This also includes measures that may not be required for the area classification but that the State relied upon to demonstrate attainment. A listing of the control measures that have been relied upon in the HG attainment demonstration upon which we are acting can be found in section IV.E. A discussion of the Act's requirements that apply to the HG area as a severe area can be found in section VIII. Finally, a list of items that must be finally approved before we can fully approve the HG attainment demonstration SIP can be found in section VIII.

(2) Motor vehicle emissions budgets. Motor vehicle emissions budgets which are consistent with attainment. A description of the MVEBs can be found at section IV.G.

(3) Tier 2/Sulfur program benefits. As part of factoring in these benefits in the attainment demonstration, the State must include an enforceable commitment to revise the attainment MVEB with MOBILE6, our on-road emissions factor model, within two years of its official release, and it is necessary for the State to include an enforceable commitment stating that if a transportation conformity analysis is to be performed between 12 months and

[1] The sixth element pertains to the NO_X SIP call which does not apply to Texas.

24 months after the official release of MOBILE6, transportation conformity will not be determined until the State submits an MVEB which is developed using MOBILE6 and which we find adequate. A discussion of the State's enforceable commitments can be found in section IV.F.

(4) Commitment to a mid-course review. Because of the uncertainty in long-term projections, EPA believes a viable attainment demonstration that relies on weight of evidence (as Texas does for the HG area) should contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. A discussion of the State's enforceable commitment can be found in section IV.F.

(5) Additional measures to further reduce emissions to support the attainment test. At the time of the December 1999 proposal, EPA had proposed that several State plans including Texas's plan for the HG area, did not include sufficient control measures to achieve the necessary emission reductions to demonstrate attainment. Therefore, it was necessary for those States to commit to adopting additional measures. As discussed in section IV.F., Texas still has not found sufficient control measures to demonstrate attainment and will continue to rely on enforceable commitments for a small portion of the needed reductions.

III. Background of Texas' Attainment Demonstration Submission

A. What Are the Contents of the State's Attainment Demonstration Submittals?

The December 20, 2000, SIP revision and the State's proposed May 30, 2001, SIP revision are actually the culmination of several years of efforts to develop a comprehensive plan to attain the one hour ozone standard in the HG ozone nonattainment area.

In a March 2, 1995 policy memorandum, we provided that States could submit their attainment demonstration and ROP plans in phases. Phase I was to insure that progress was maintained while a complete plan was developed. The Phase I plan was to include a set of specific control measures to obtain major reductions in ozone precursors. For Texas, these were to include:

- Rules to insure that Reasonably Available Control Technology (RACT) was implemented on major sources of volatile organic compounds,
- A demonstration that baseline emissions would be reduced by 9% during the time period 1997–1999 (Post 1996 ROP plan),
- An enforceable commitment to submit an attainment demonstration by mid-1997, and
- A commitment to participate in a consultative process to address Regional transport of ozone and precursors.

In a letter dated January 10, 1996, Texas submitted a plan intended to demonstrate the State had met the criteria for a Phase I submission under the March 2, 1995 policy memorandum.

In August 1996, Texas submitted corrections to its Post 1996 ROP plan and 15 Percent ROP plan primarily to address changes to the inspection and maintenance program.

A December 29, 1997, EPA guidance memorandum provided for additional time for submittal of an attainment demonstration from mid-1997 until April, 1998. The December 29, 1997, memorandum explained that additional time was warranted because the consultative process to address transport, which had become known as the ozone transport assessment group (OTAG), had been delayed by 9 months; therefore, it was appropriate to delay the submittal of the attainment demonstrations accordingly. Subsequently, the State submitted a SIP revision on May 19, 1998, containing the following:

(1) Evidence that all measures and regulations required for the nonattainment area by subpart 2 of title I of the Act to control ozone and its precursors had been adopted and implemented or were on an expeditious schedule to be adopted and implemented.

(2) A list of potential control measures to meet Post 1999 ROP requirements and attain the 1 hour NAAQS.

(3) An enforceable commitment to submit a plan on or before the end of 2000 containing (a) target calculations for post 1999 ROP milestones up to the attainment date and (b) adopted regulations needed to achieve the post 1999 ROP requirements up to the attainment date and to attain the 1 hour NAAQS.

(4) An enforceable commitment and schedule to implement the control programs and regulations in a timely manner to meet ROP and achieve attainment.

(5) Evidence of a public hearing on the State submittal, and

(6) Photochemical modeling showing that between 65% and 85% NO_X emission reductions are necessary for the area to attain the standard. The State did not model a specific control strategy that had been shown to demonstrate attainment.

On November 15, 1999, Texas submitted a SIP revision intended to correct deficiencies in the May 19, 1998, SIP revision. The November 1999 SIP revision included the following:

(1) A modeled control strategy and other evidence, and

(2) An associated MVEB.

In a letter dated April 25, 2000, Texas submitted a SIP revision that included the following:

(1) An enforceable commitment to revise the MVEB based on MOBILE6 within 2 years of the release of MOBILE6. If a transportation conformity analysis is to be performed between 12–24 months after the release of MOBILE6, transportation conformity will not be determined until Texas submits an MVEB which is developed using MOBILE6 and which the EPA finds adequate.

(2) An enforceable commitment to recalculate and resubmit an MVEB that includes the effects (if any) of the measures that are ultimately adopted should any of these measures pertain to motor vehicles.

(3) An enforceable commitment to perform a mid-course review.

(4) A list of measures that could be used to achieve the EPA-identified additional emission reductions needed to demonstrate attainment, including an indication that none of these measures would restrict highway construction.

On December 20, 2000, the State submitted a SIP revision, concerning the ozone attainment demonstration, containing:

(1) A photochemical modeling demonstration and additional weight-of-evidence analyses supporting the photochemical modeling demonstration,

(2) An accompanying control strategy, comprised of:

a. Regulations and initiatives in the HG area (and their documentation); and

b. Additional regional rules and orders (and their documentation), relied upon for demonstrating attainment in the HG area.

(3) A demonstration that the plan will achieve VOC reductions from the baseline emissions equal to 3% reduction per year averaged over each 3-year time period for the time period November 15, 1999 to November 15, 2007. As allowed under the Act, NO_X reductions were substituted for VOC reductions since the modeling shows ozone reduction in the HG area is more sensitive to NO_X controls.

(4) 2007 MVEBs associated with the attainment demonstration and 2002, 2005 and 2007 MVEBs associated with the Post 1999 ROP plan.

(5) Emissions growth estimates and a 2007 forecast emissions inventory.

The December 20, 2000, submission acknowledges that the HG area needs additional controls to attain the ozone standard by November 15, 2007. In the December 2000 SIP revision, Texas identifies the tons per year of additional NO_X reductions needed to attain. The Texas Natural Resources Commission (TNRCC) has begun its rulemaking procedures, including a public comment period and hearing, proposing to adopt an enforceable commitment to adopt the additional measures needed to meet the shortfall. As part of the commitment, the State identifies the to-be-considered control measures, their estimated range of projected emissions reductions, and the dates for submission to the EPA of the adopted control measures. The reductions represented by the enforceable commitment represent only a small percentage (approximately 6%) of the total emission reductions that have been shown are needed for the area to attain. On May 30, 2001, the Commission gave TNRCC permission to take formal comment on the following items: Commitments to adopt the remaining additional measures and to submit them as SIP revisions by specified dates, impacts upon the proposed control strategy as a result of recent legislation, a RACM analysis, corrections to the Post 1999 ROP plans, and a correction to the attainment plan to revise the projection of on-road diesel emissions and associated MVEB revision. A further discussion of these items that we are parallel processing can be found in later sections.

B. What Previous Actions Has EPA Taken on the HG Attainment Demonstration Submittals?

This proposed action incorporates the preamble to EPA's December 16, 1999 action, in which we proposed conditional approval, and alternatively, disapproval of portions of the May 19, 1998, SIP revision that pertained to the attainment demonstration and the attainment MVEBs, as supplemented by the November 15, 1999, SIP revision (64 FR 70548). EPA does not plan to take final action on that proposed action since the State submitted, in December 2000, revised modeling and analyses, Post 1999 ROP plans and MVEBs, and adopted measures relied upon in the attainment demonstration. As noted above, additional revisions are currently being processed by the State and EPA through parallel processing. To the extent that comments received on the December 1999 proposed action are applicable to this proposed rulemaking, however, EPA will respond to those comments in its final rulemaking action.

IV. Evaluation of Attainment Demonstration SIP

A. Photochemical Modeling

What Modeling Approach was used in the State's Attainment Demonstration?

Model Selection: Texas used the Comprehensive Air Quality Model with Extensions (CAMx) photochemical grid model (which is based on well-established treatments of advection, diffusion, deposition, and chemistry similar to the Urban Airshed photochemical grid model (i.e., UAM)) to conduct the SIP attainment demonstration modeling for the HG ozone nonattainment area. The TNRCC's modeling activities were performed as outlined in the modeling protocols, according to EPA's "Guideline for Regulatory Application of the Urban Airshed Model" (Guideline). For a full description of the State's modeling analysis, see the TSD for this proposed action.

Episode Selection:

EPA's Guideline sets forth a recommended procedure for selecting ozone exceedance episodes appropriate for conducting a modeling demonstration. This procedure, in part, considers wind rose analyses based upon the four morning hours of 0700 to 1000 standard time. However, the HG area is situated along the Upper Texas Coastal Region, and during the summer months when the highest ozone exceedances occur, this region frequently experiences a unique land-sea breeze meteorological regime. This land-sea breeze meteorological regime is characterized by morning land breezes which transition into afternoon sea breezes. There appears to be a strong correlation between the land-sea breeze meteorological regime and high ozone events. Thus, to assure that the land-sea breeze meteorological regime is well-represented in the episode selection process, TNRCC modified EPA's recommended procedure by including wind rose analyses based upon the four afternoon hours of 1300 to 1600 standard time. Both morning and afternoon wind rose analyses were considered in defining the meteorological patterns associated with high ozone events. EPA proposes to accept this modified procedure for the HG nonattainment area's modeling since it more adequately addresses the unique source-receptor relationship associated with the land-sea breeze meteorological regime.

TNRCC identified a total of seven episodes with high ozone and robust data sets as candidates for modeling. Three of the seven candidate episodes occurred during the intensive data collection period (from July 18-August 28, 1993) of the Coastal Oxidants Assessment for South Texas (COAST) study. Two other of the seven episodes (September 1–2 and September 8–11, 1993) occurred after the intensive data collection period; however, some of the COAST monitors were still operational so that more robust meteorological, precursor, and ozone data were still available. To include a broader base for the episode selection, TNRCC also identified two candidate episodes that occurred in October 1992 to supplement the COAST episodes. Initially, Texas selected four episodes to model: August 18–20, 1993, September 8–11, 1993, October 24–25, 1992, and September 1–2, 1993. The September 1–2 episode was chosen primarily to examine transport into the Beaumont/Port Arthur area.

The base case modeling for both the August 18–20, 1993, and the October 24–25, 1992, episodes did not perform within EPA's recommended performance standards. See the TSD for further details on the performance of the various episodes. In addition, the September 1–2 episode, while performing well in the Beaumont/Port Arthur portion of the domain, did not perform well in the HG area. These episodes, therefore could not be used as a basis for control strategy testing. The September 8–11, 1993, episode, however, performed within EPA's recommended performance ranges and could be used for control strategy testing. The September 8–11 episode includes both calm and land sea breeze meteorological conditions which are typical for high ozone events in the HG area. We propose to accept the use of the September 8–11, 1993, episode for the attainment demonstration modeling purposes for the HG area because this episode features wind patterns representative of typical high ozone occurrences in the HG area, high monitored ambient ozone level concentrations, and is a multi-day episode.

Modeling Domain: Texas has chosen a large modeling domain (i.e., SuperCOAST) to ensure capture of the influence of inter-urban transport, the important horizontal and vertical circulation patterns as well as the movement of ozone and ozone precursors. The State combined both the HG and Beaumont/Port Arthur ozone nonattainment areas into one nested modeling domain to avoid overlapping wind fields since the two areas are generally influenced by the same meso-scale meteorology. This domain, which is larger than the minimum recommended, encompasses all the

major emission sources and all surface meteorological/air quality monitors in both areas and, therefore EPA proposes to accept the domain since it is more representative of the HG area's conditions.

What Input Data Systems and Analyses Were Used as Part of the Modeling?

The following input data systems and analyses were used by the State:

Emissions: TNRCC developed two major types of modeling emission inventories, one type representing the actual emissions that occurred during the chosen specific episode period, and another type representing the projected emissions expected to occur at the attainment date for the HG area (i.e., 2007). The episode-specific modeling emissions, termed the "base case," were used to evaluate the model's reliability in replicating the ozone exceedances that occurred during the chosen episode. The 2007 projected modeling emissions, termed the "future base case," were used to estimate the overall level of reductions in VOC and NO_x needed to achieve attainment. For a more complete description of how these base case and future base case inventories were developed, see the TSD.

Meteorology: TNRCC developed the meteorological inputs to CAMx using the System Application International Mesoscale Model (SAIMM), which is a prognostic mesoscale meteorological model with four dimensional data assimilation (4DDA). EPA is proposing to accept TNRCC's use of SAIMM because it replicates the land-sea breeze and inter-urban area transport features which appear to be typical of conditions associated with ozone exceedances along the Texas Gulf coast more closely than diagnostic models.

Chemistry: Atmospheric chemistry within the modeling grid system was simulated using the Carbon Bond-Version IV model developed by the EPA.

Boundary and Initial Conditions: EPA's Guidelines recommend the use of the ROM photochemical model on a regional basis for developing boundary conditions. TNRCC in collaboration with ENVIRON conducted a regional modeling application to determine boundary and initial conditions for the COAST modeling domain. This regional modeling domain covered a rather large area of the southeastern United States, extending from San Angelo, Texas on the west to the Georgia-Alabama border on the east, and from south of Brownsville, Texas on the south to the Oklahoma-Kansas border on the north. EPA considers this modeling framework used by TNRCC for the development of boundary and initial conditions to be superior to ROM, since it encompasses many improvements in model formulation over ROM. Using the ozone transport (OTAG) model performance criteria as a gauge for the technical acceptability of this Texas regional modeling, EPA proposes to accept the TNRCC/ENVIRON regional modeling application as producing more accurate results upon which to derive initial and boundary conditions for the COAST modeling episode.

Modeling Performance

How did the State Validate the Modeling Performance?

Texas performed diagnostic and sensitivity analyses, and graphical and statistical performance measures to evaluate the performance of the modeling. These performance measures are to be used in conjunction with one another.

The model performance evaluation based upon diagnostic and sensitivity analyses consisted of testing the response of modeled ozone to changes in the various model inputs (i.e., meteorology, emission inventory, and initial and boundary conditions). The model performance evaluation based upon graphical measures consisted of comparing time series of monitored and modeled ozone and ozone precursor concentrations, and comparing modeled ozone concentration contours with monitored ozone data. The model performance evaluation based upon statistical measures consisted of comparing the modeled versus monitored ozone "Unpaired Peak Accuracy", "Normalized Bias", and "Gross Error" with the suggested limits in the EPA Guideline.

a. Diagnostic and Sensitivity Analyses

Texas conducted the following diagnostic/sensitivity analyses for the September 8–11, 1993 episode: Zero-out Anthropogenic emissions; Zero-out Initial and Boundary Conditions; Lowered Boundary Conditions (i.e. derived from Gulf of Mexico Air Quality Study (GMAQS)); and Half Wind Speed. These diagnostic tests did not reveal any flaws in the CAMx model formulation. Both physical and chemical responses demonstrated by the model are consistent with our underlying understanding of how the atmosphere behaves.

b. Graphical Measures

The graphical measures consisted of ozone contour plots and times series analyses. The ozone contour plots generally show the model to be simulating a notable amount of ozone in both magnitude and geographical extent. With the exception of September 9, the simulated ozone contour plots depict the area of ozone greater than 124ppb to be somewhat at odds geographically with the monitors recording the higher ozone concentrations. On all four days, the simulated ozone contour plots show the magnitude of high ozone to be somewhat less than the monitored ozone concentration levels. Thus, the model under-predicts the ozone concentration levels. The fact that the model does not precisely predict the position of the cloud of ozone geographically, does not, by itself, mean the model is not acceptable for control strategy development. The graphical performance is only one factor and was considered in conjunction with other measures of model performance.

c. Statistical Measures

Table 1 shows the statistical performance of the model for this episode. As indicated, the statistical parameters are within the EPA recommended limits for all days of the episode.

TABLE 1.—CAMx BASE CASE MODEL PERFORMANCE STATISTICS FOR SEPTEMBER 8–11, 1993

Episode date	Normalized bias (+ − 5–15%)	Normalized gross error (+ − 30–35%)	Unpaired peak accuracy (+ − 15–20%)	Domain-wide peak ozone (ppb)	
				Simulated	Observed
9/8/93	1.8	22.6	−12.7	187	214
9/9/93	2.6	29.1	−10.4	175	195
9/10/93	−13	26.1	6.2	172	162
9/11/93	−2.9	20.4	−3.9	182	189

Summary of Model Performance

Results of the statistical measures are within the EPA recommended ranges and the spatial and temporal patterns are generally representative of the observed patterns in the ambient data. It is EPA's technical position that taken together, the diagnostics, sensitivity, statistical and graphical performances of the model indicate the base case model performance is acceptable for use in this attainment demonstration.

B. Modeled Control Strategies

What Emission Control Strategies Were Included in the Modeling Demonstration?

The HG attainment demonstration SIP is directed at reductions of NO_X since the modeling shows reductions of NO_X will be most effective in bringing the area into attainment of the standard. The modeling includes Federal measures, State and local initiatives. The attainment demonstration modeling also relies on Regional measures applied in east and central Texas.

Federal Measures: The State included the following Federal Measures in the December 2000 revision's Future Year Base Case.

1. On-road mobile sources:
   —Tier 2 vehicle emission standards and federal low sulfur gasoline.
   —National Low Emitting Vehicle standards.
   —Heavy-duty diesel standards.

We believe that the projected growth rates and emissions reductions from the sources subject to the above federal measures were calculated correctly by the State.

2. Off-road mobile sources:
   —Lawn and garden equipment standards.
   —Tier II/III heavy-duty diesel standards.
   —Locomotive standards.
   —Compression ignition standards for vehicles and equipment.
   —Spark ignition standards for vehicles and equipment.
   —Recreational marine standards.

We believe that the State correctly projected the growth rates and emissions reductions for sources subject to these federal measures.

State Measures for the HG Area: The State included the following State Measures as local (HG) area controls in the Future Year control case in the December 2000 revision.

—Phase II reformulated gasoline (RFG) in the HG area.
—Electric generating and industrial point sources—HG area. The State is proposing a revision to this measure which we are parallel processing. The effects of this proposed revision upon the Future Year control case are discussed further in section IV.J. and the TSD.
—An expanded vehicle I/M program—HG area.
—Low emission diesel fuel—East Texas (including the HG area) for off-road and statewide for on-road.
—Heavy-duty diesel equipment operating restrictions—five counties. (Excludes Liberty, Chambers and Waller).

As required by the recently enacted Senate Bill 5, TNRCC will not be relying upon this measure in the final adopted control strategy, i.e., the Future Year control case. In its place, the State will substitute some of the projected emission reductions from the newly-established legislative incentive program, the Texas Emissions Reduction Program (TERP), that provides 130 million dollars/year for incentive programs to reduce emissions. We are not proposing action upon the Heavy-duty Diesel Operating Restrictions rule because a portion of the reductions from the TERP measure will be replacing it in the final control strategy. We believe that the incentive program can achieve more reductions than the projected reductions lost by the replacement of this control measure. The incentive program and its technical impacts upon the proposed control strategy are further discussed in section IV.I.

—Commercial lawn equipment operating restrictions—five counties. (Excludes Liberty, Chambers and Waller).
—Batch processes, bakeries, and offset lithographic printers—HG area.
—VMEP measures—HG area.

State's Regional measures: The State included the following Regional measures in the Future Year Base Case.

—Agreed orders with Alcoa, Inc. (formerly Aluminum Company of America) for its Milam Facility, and the Eastman Chemical Company, Texas operations, for its facility near Longview, Texas.
—Electric generating facilities in central and eastern Texas.
—Low Reid Vapor Pressure Gasoline in central and eastern Texas.
—Stage I gasoline vapor recovery at gas stations in central and eastern Texas.

We have reviewed the State's Regional and Local Measures and believe the State's projection of expected emissions reductions for these measures are correct. Further, we believe the State has correctly factored growth in emissions due to population and economic growth.

As discussed briefly above, since the model runs were performed, two measures, the Heavy-duty Diesel Equipment Operating restrictions and the rules for utilities are being changed. See sections IV.I. and IV.J. respectively for discussion of why EPA believes this will not adversely affect the modeling results.

With the exception of the VMEP measures and the Heavy-duty Diesel Equipment Operating restrictions, we have already published or shortly will be publishing actions on all of the above listed State control measures in various separate **Federal Register** documents. We are proposing action today on the acceptability of the VMEP program.

C. Modeling Results and Weight of Evidence

What Were the Modeling Results?

The future control case modeling was conducted using the projected 2007 emissions inventory coupled with emissions controls listed above. Table 2 summarizes modeled peak ozone for the future control case compared to the 1993 base case.

TABLE 2.—FUTURE CONTROL CASE PEAK MODELED OZONE IN THE HG 8–COUNTY AREA

Episode day	Peak modeled ozone (ppb)	
	1993 modeled	Final control case
September 8	187	141.0
September 9	175	128.6
September 10	172	134.7
September 11	182	130.7

There are two changes to the emission control programs that are not included in the modeling performed to achieve the results above. We do not believe these changes will affect the modeled results in a way to increase the modeled ozone. The substitution of a portion of the emission reductions from the new statutorily mandated TERP measure for the modeled heavy-duty diesel equipment operating restrictions along with the change in the NO_X point source measures, are not expected to increase the modeled ozone restrictions. A more detailed discussion of why these changes are not expected to increase modeled ozone can be found in the TSD and in sections IV.I and IV.J.

Does the Weight of Evidence Support the Attainment Demonstration?

While the 2007 post-control modeling does not demonstrate attainment of the

standard, it does project dramatic improvements in air quality. In Table 2, the reductions in peak ozone are documented. Texas has also documented dramatic improvements in hours of ozone exceedances and the area of ozone exceedances.

Texas did not conclude that the modeled control strategy demonstrated the area would attain the standard. Instead, using a weight of evidence analysis consistent with the EPA guidance entitled, "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled" November, 1999), they determined the amount of additional emission reductions that would be necessary for the area to attain the standard. The State calculated that an additional 96 tons/day of NO_X emission reductions will be necessary for the HG area to attain the standard. The State used a quadratic extrapolation of model results to make this estimation. This method is an improvement over the linear extrapolation example provided in the 1999 guidance. The replacement of the Heavy-duty Diesel Equipment Operating Restriction measure by a portion of the TERP reductions and the change to the NO_X point source rule will not change the results of the calculation. The EPA proposes to accept the calculated 96 tons/day of additional NO_X emission reductions as the amount of additional emission reductions, beyond those modeled, necessary for the HG area to attain. For a full description of this calculation technique, see the TSD.

D. Additional Control Measures That Have Not Been Modeled

What Measures Have Been Adopted That Were not Included in the State's Modeling?

The following measures were adopted by the State in order to address the 96 tons/day additional NO_X emission reductions that are shown by the modeling and the weight of evidence analysis to be needed to demonstrate attainment.

—Accelerated purchase of Tier 2/3 non-road diesel equipment. As required by the recent Senate Bill 5, this control measure will not be part of the final adopted control strategy for the HG area. In addition, on June 13, 2001, the U.S. District Court for the Western District of Texas ruled that this measure is preempted by the Clean Air Act (*Engine Manufacturers Association* v. *Robert J. Huston*, NO. A 00 CA 316 SS). In its place, a portion of the projected emission reductions from the newly established legislative incentive program, the TERP, will be substituted. EPA believes the projected emission reductions from the new incentive program can achieve more than the reductions that were projected to be achieved by this replaced control measure and the Heavy-duty Diesel Equipment Operating Restrictions measure. The incentive program is further discussed in section IV.I.

—Agreed Orders for airport ground support equipment electrification with Continental Airlines, Southwest Airlines, and the City of Houston.

—Gasoline heavy equipment engines—Statewide.

—Speed Limit Reduction—HG area.

—Energy Efficiency—reductions in the HG area based on DOE standards.

—Vehicle Idling Restrictions—HG area.

—Gas-fired water heaters, small boilers, and process heaters—statewide.

—TCMs

We have proposed to approve most of the above measures in separate **Federal Register** actions. We are proposing to approve the Speed Limit Reduction and TCMs in this proposal action, and have already approved the statewide rules for water heaters, small boilers, and process heaters. We are not proposing action upon the accelerated purchase of Tier 2/3 non-road diesel equipment rule since this measure will not be relied upon in the State's final attainment demonstration. A portion of the projected reductions from the new TERP measure will be relied upon instead. See the TSD and section VIII for a complete summary of EPA actions. We will supplement the TSD as each proposed and final action are published.

E. Summary of Control Measures

What are the Projected NO_X Reductions From the Modeled and Non-modeled Control Measures?

Table 3 provides the projected NO_X reductions for the 2007 attainment year resulting from the State rules and the local initiatives that were included in the final model run and the measures that were not modeled.

TABLE 3.—NO_X REDUCTION PROJECTIONS (TONS PER DAY)

2007 projected emissions	1083.0
Modeled measures:	
Major point sources	*586.0
Inspection/Maintenance	36.2
Low emission diesel fuel	5.7
HD diesel oper. restrictn (est)	6.7
Small, Spark operating restriction (est)	4.6
VMEP measures	23.0
Total modeled measures	663.2
Measures not modeled:	
Energy Eff	3.6
Acc purchase Tier II/III	12.2
Speed Limit Reductions	12.3
Airport GSE	5.1
Heavy equipment gas engines	2.8
Vehicle Idling Restrictions	0.5
Gas-fired water heaters, etc	0.5
Stationary Diesel Engine Cont	1.0
TCMs	1.1
Total NO_X reductions not modeled	39.0
Total Equivalent NO_X from VOC reduct	1.1
Total NO_X Reductions	710.1

*This number is adjusted in the May 30, 2001 State proposal to account for the proposed changes to the rules for control of electric utility generators.

Has the State Adopted Measures That Achieve Sufficient Emission Reductions To Achieve Attainment?

No, as discussed previously, using a weight of evidence analysis, the State has calculated that an additional 96 tons/day of NO_X emission reductions are needed beyond those that were modeled to demonstrate attainment. The State had adopted additional measures that were projected to achieve 40.1 tons/day of NO_X emission reductions. The legislature, however, repealed the TNRCC's authority to implement the Heavy-duty Diesel Operating Restrictions and Accelerated Purchase of Tier 2/3 non-road diesel equipment measures. This leaves a need to adopt additional measures that will achieve an additional 68.1 tons/day of NO_X emission reductions. Texas has submitted to EPA, for parallel processing, the impact of the TERP measure upon the shortfall. A portion of the TERP measure's projected emission reductions will be substituted for the Tier 2/3 non-road diesel equipment measure. The State has calculated that reliance upon this portion of the TERP measure will achieve 12.2 tons/day. EPA is proposing to agree with this projected emission reduction. This leaves an additional 55.9 tons/day of NO_X emission reductions needed to be addressed by the State. The State has submitted, through parallel processing, proposed enforceable commitments to address this shortfall of 55.9 tons/day. This shortfall is approximately 6% of

the overall emission reductions from the 1993 baseline shown to be necessary for attainment in the HG area.

F. Enforceable Commitments

What Is an Enforceable Commitment?

An enforceable commitment is a written commitment by the State to adopt plan revisions and submit them to EPA as SIP revisions by specific timeframes. In the case of the HG area, there are two types of enforceable commitments. First, the State is committing to continue to analyze the latest technical information and to incorporate it into planned revisions. There are specific provisions for future on-road modeling to incorporate the latest mobile emissions estimation models and to insure that the mobile emissions budgets used for conformity analyses are based on the most current information. Second, the State is committing to achieve additional emission reductions needed for attainment.

To be enforceable, commitments must be part of the SIP and, therefore, the State must have given notice and taken comment on the commitment and held a public hearing. The commitments must be specific as to the state agency's future plans for adoption of specified control measures. The dates for implementation of, or compliance with, the future to-be-adopted specified control measures must be included in the commitments and be as expeditious as practicable. A commitment is enforceable because EPA can find that the State failed to implement the SIP if the State does not follow through with the commitment. Further, the public can seek enforcement of the obligations under section 304(a) of the CAA.

Why Does EPA Believe That Enforceable Commitments To Achieve Additional Reductions Are Appropriate?

Texas has not been able to identify and therefore adopt additional programs that will achieve sufficient emission reductions to achieve attainment. They have reviewed measures that have been included in other State Implementation Plans and have been unable to identify additional RACM, except for one source category—stationary diesel engines. TNRCC is proposing to adopt a rule to control this category, and EPA is acting on the proposed rule through parallel processing. EPA is proposing to agree that the State has adopted all RACM for the HG area. For a more complete discussion of the State's RACM analysis and EPA's evaluation, see section IV.H and the TSD. Although the State has adopted or will have adopted all RACM, these adopted RACM measures are not enough to show attainment, leaving 6% of the reductions identified as necessary to show attainment not being controlled. Therefore, EPA is proposing to allow the State to rely upon enforceable commitments for this small portion of the attainment demonstration.

There are innovative programs and technologies that have the potential to achieve the needed emission reductions. These programs are listed in Chapter 7 of the HG SIP, which Texas has submitted to us for parallel processing. Through parallel processing, we are proposing to approve Chapter 7 with its enforceable commitments as part of the HG attainment demonstration SIP. (We are also proposing to approve the other Chapters and Appendices of the HG SIP, and through parallel processing, the proposed revisions to these other Chapters and Appendices.) The programs listed by the State require further development of new technology or new innovative programs. EPA is agreeing that, with additional time, Texas should be able to adopt enough of the additional identified innovative programs and new technologies so that these programs and technologies will achieve the needed 55.9 tons/day (or 6%) NO_X emission reductions. Texas is committing to submit them as SIP revisions with all of the measures adopted no later than the mid-course review submission in May 2004.

What Are the State's Enforceable Commitments?

In the proposed SIP parallel reviewed for this proposal action, the Commission commits to adopt measures necessary to achieve at least 56 tons/day of NO_X emission reductions in the HG area. Potential measures are identified that could achieve the reductions without requiring additional limits on highway construction. Further, they indicate that none of the to be adopted measures require additional limits on highway construction.

Should the mid-course review conducted in 2003 show that more or fewer NO_X emissions reductions are needed for attainment by November 15, 2007, they commit to submit the revised calculation to the EPA for approval. They state that the SIP revision submitted in May 2004 (committed-to in the mid-course review enforceable commitment submitted April 2000) will account for those additional reductions above and beyond the 56 tons/day commitment if the mid-course review shows they are necessary for attainment. They further commit to submit adopted measures as a SIP revision, with any resulting revision to the MVEB, to the EPA no later than December 31, 2002, that achieve at least 25% of the 56 tons/day NO_X emission reductions. They also commit to submit adopted measures to achieve at least the 56 tons/day of NO_X emission reductions, as SIP revisions as expeditiously as practicable but no later than May 2004. They commit that the implementation dates and compliance deadlines for the adopted measures will be as expeditious as practicable. They further note that they commit to adopting any additional measures necessary to achieve the reductions determined by any EPA-approved shortfall calculation and submitting the adopted rules with an attainment demonstration SIP no later than May 1, 2004.

In addition, as discussed earlier, the State has already submitted the following commitments to insure the plan continues to be based on the latest information.

- An enforceable commitment to perform a mid-course review (including evaluation of all modeling, inventory data, and other tools and assumptions used to develop this attainment demonstration) and to submit a mid-course review SIP revision, with recommended mid-course corrective actions, to the EPA by May 1, 2004;
- An enforceable commitment to submit new mobile source modeling for the HG area, using MOBILE6, our on-road mobile emissions factor computer model, within 24 months of the model's official release; and that if a transportation conformity analysis is to be performed between 12 months and 24 months after the MOBILE6 official release, transportation conformity will not be determined until Texas submits an MVEB which is developed using MOBILE6 and which we find adequate.
- Texas has also submitted for parallel processing, a commitment to concurrently revise the MVEB and submit the revised MVEB to EPA as a revision to the attainment SIP if additional control measures reduce on-road motor vehicle emissions.

In the State's Chapter 7, the State outlines in detail its plans to conduct the mid-course review, including new modeling analyses and scientific studies. Texas plans for the modeling analyses to include new episodes from the Texas 2000 intensive ozone study. Based on these studies and modeling analyses, the State may refine in the future the control strategy being proposed for approval by EPA today. The State acknowledges in Chapter 7 that any changes to the plan or methodology will have to be submitted to EPA for review and approval. Texas intends to approach the mid-course

review in two planned phases : One phase by December 2002 and the second phase is the full mid-course review that will be submitted to EPA as a SIP revision in May 2004.

What Measures Are Being Considered To Address the Shortfall?

Texas is considering a number of measures to address the 56 ton/day NO_X shortfall. The programs listed by the State in Chapter 7 require further development of new technology or new innovative programs and are described below. The State has cited ranges of potential reductions which are included here, and which give us reasonable assurance that the State can meet its commitment to submit adopted measures filling the shortfall. We are not, however, approving the particular amount of reductions presented by Texas for any individual measure. We will review the State's projected reductions from individual measures when they are fully adopted by the State and submitted as a SIP revision. Through the rulemaking procedures, we will propose action upon the acceptability of the projected reductions. Gasoline Additives: As of January 1, 1995, all gasoline marketed in the United States must contain an EPA-approved additive package with a detergent. Detergent in gasoline is critical to keep the fuel nozzles of injectors clear of varnish, gums and other deposits that can clog them. A clogged injector will result in incomplete combustion, resulting in increased tailpipe emissions. Research and development of gasoline additives is ongoing. The State represents, based on an additive manufacturer's claims for their additive package, an emission reduction potential for gasoline detergent additives in addition to what is federally required for detergent additives. The State believes that a gasoline additive program has potential to reduce emissions by 11–20 tons/day.

Diesel Emulsion: This is an emerging fuel technology that relies on a water in fuel mixture to lower NO_X and particulate matter (PM) emissions. The water tends to lower flame temperatures thus reducing the resulting NO_X emissions. The key to a successful diesel emulsion is an effective additive to act as an emulsifying agent to suspend the water in the diesel. At least two companies are marketing a diesel emulsion technology with NO_X emission reduction claims of 20–30%. Currently both the Port of Houston and the City of Houston are testing the fuel to determine its operational feasibility. Texas has projected that a widespread use of emulsified diesel could result in 4–10 tons/day of emission reductions.

Energy Efficiency: Texas has projected a potential 4–11 tons/day of emission reductions from measures to improve energy efficiency. Senate Bill 5 establishes State-wide energy efficient building codes and also sets energy efficiency targets for State and local governments. These programs will clearly reduce growth in demand and therefore will result in NO_X emission reductions. It is not clear, however, the amount and location of the emission reductions that will occur. We will work with TNRCC to quantify the expected reductions in demand growth and the anticipated amount of emission reductions.

Economic Incentives, Fleet Controls, Incentives for cleaner vehicles and/or vehicle fleets and funding for transit programs: 17–25 tons/day. To calculate the potential range of emission reductions, Texas has primarily looked to the diesel incentive program recently established by the Texas legislature (TERP). This program can reasonably be expected to provide 40 million dollars/year to the HG area for reducing emissions from existing diesel equipment. The program is based on similar California programs and has the potential to achieve substantial reductions. Based on the California experience, we believe that emission reductions should be obtainable at an average cost on the order of $5000/ton. A preliminary estimate is that 32–40 tons/day of emission reductions could potentially be achieved in the HG area. However, a portion of the reductions attributable to this program for the HG area will be used in the final control strategy to replace the projected reductions from the Heavy-duty Diesel Equipment Operating restrictions and the accelerated purchase of Tier 2/Tier 3 non-road diesel equipment measures. These two replaced programs were projected to achieve the equivalent of 18.9 tons/day of emission reductions, therefore leaving the potential of 13–21 tons/day of emission reductions from the diesel subsidy program to be used to help address the remaining shortfall.

The legislature has also appropriated money to provide incentive for consumers to buy cars that meet the most stringent Tier II standards. The technology exists for manufacturers to produce vehicles which meet the cleaner "incentive emissions standards," but EPA cannot predict at this time the availability of the cleaner vehicles produced by auto manufacturers during the 2002 to 2003 timeframe, regardless of incentives offered for individual purchase. The State believes that all of the programs, other than TERP, have potential to reduce emissions by 4 tons/day.

Diesel NO_X reduction systems: There are several diesel NO_X emission reductions technologies that are being tested by the Port of Houston and the City of Houston. These technologies are devices that can be added to on-road and off-road equipment to reduce NO_X emissions. Texas has estimated the potential of these devices to reduce emissions by 6–15 tons/day.

Additional Gasoline Sulfur Controls: Texas has estimated that reducing gasoline sulfur levels to 15ppm would result in another 1–2 tons/day of emission reduction beyond that achieved by Tier II in the HG area.

Fuel Cells: The State has projected that 1–5 tons/day of emission reductions can be achieved with increased use of fuel cells. Fuel cells are an emerging technology that have the potential to provide reliable electrical power with much less pollution and virtually no NO_X emissions. Currently, two projects are underway in the HG area to test the feasibility of fuel cells. First, electrical ground support equipment at Bush Intercontinental Airport is going to be charged using fuel cells. Second, a portion of ships' power while docked will be provided by a fuel cell. These projects will demonstrate the potential of fuel cells to provide reliable power at the point of use.

Innovative Idea measures: The following programs together are presented by Texas as having potential to achieve emission reductions of 12–33 tons/day: marine loading operations, episodic emission controls, reductions in vehicle miles traveled (VMT), pricing policies to reduce VMT, reductions at ports and airports, use of new technology and the internet to further reduce emissions.

It is worth noting that marine loading operations and episodic emissions are primarily emitters of VOC emissions. This attainment demonstration SIP for the HG area has been almost exclusively designed to reduce NO_X emissions, although 25% reduction of VOC emissions are shown to be needed for attainment. The attainment demonstration SIP has projected VOC reductions of at least 25%. Episodic high concentrations of VOC emissions, particularly in the heavily industrialized ship channel area, may contribute to the observed "spike" ozone peaks in the HG area. TNRCC is committed to performing further scientific analyses.

Does EPA Propose To Accept These Enforceable Commitments To Cover the Shortfall in the SIP?

The SIP submitted for parallel processing contains an enforceable commitment for the State to adopt, by May 2004, measures to achieve at least 56 tons/day of NO_x emission reductions. It identifies potential measures that could achieve the reductions without requiring additional limits on highway construction. The proposed SIP acknowledges that none of the measures could require additional limits on highway construction. They also commit to implement the adopted rules as expeditiously as practicable, but no later than the beginning of the ozone season in the HG area—January 2007. Further, the State commits to adopt, and submit to the EPA as a SIP revision, by December 2002, measures to achieve at least 25% of the 56 tons/day NO_x reductions. They commit to adopt, and submit to the EPA as a SIP revision, no later than May 2004, the remaining rules needed to obtain the rest of the shortfall. We believe these submission and implementation schedules are as expeditious as practicable. Further, we believe the State has identified sufficient innovative programs and new technologies such that it is reasonable to believe that, in the aggregate, the projected estimated emission reductions from these new programs and technologies can be achieved and will fill the shortfall. In addition, the State has made an enforceable commitment to concurrently revise the MVEB and submit the revised MVEB to EPA as a revision to the attainment SIP if additional control measures reduce on-road motor vehicle emissions. Therefore, through parallel processing, we propose approval of the State's commitments.

G. Attainment Motor Vehicle Emissions Budget

What Is a Motor Vehicle Emissions Budget (MVEB) and Why Is It Important?

The MVEB is the level of total allowable on-road emissions established by the measures in a control strategy implementation plan or maintenance plan. In this case, the MVEB establishes the maximum level of on-road emissions that can be produced in 2007, when considered with emissions from all other sources, which demonstrates attainment of the NAAQS. It is important because the MVEB is used to determine the conformity of transportation plans and programs to the SIP, as described by section 176(c)(2)(A) of the Act.

What Are the MVEBs Established by the Attainment Plan and Proposed for Approval by This Action?

The MVEBs established by this plan and that the EPA is proposing to approve through parallel processing are contained in Table 4.

TABLE 4.—2007 ATTAINMENT YEAR MOTOR VEHICLE EMISSIONS BUDGETS

[Tons per day]

Pollutant	2007
VOC	79.51
NO_x	156.60

We find the MVEBs consistent with all pertinent SIP requirements, and the MVEBs are proposed for approval as limited by the discussion below. In addition, we are taking comment in this action on the adequacy of the MVEBs for transportation conformity purposes pursuant to the criteria in 40 CFR 93.118(e)(4) as part of our proposed action on the SIP rather than using the web posting process because we are moving forward on this SIP in a quick manner as described in *Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations* dated November 3, 1999.

What Is the State's Commitment To Revise the Motor Vehicle Emissions Budgets With MOBILE6?

All States whose attainment demonstration includes the effects of the Tier 2/sulfur program have committed to revise and resubmit their motor vehicle emissions budgets after we release MOBILE6. The State committed in its April 2000 submission to performing new mobile source modeling for the HG area, using MOBILE6, within 24 months of the model's official release. If transportation conformity analysis is to be performed between 12 months and 24 months after the official release of MOBILE6, transportation conformity will not be determined until the State submits an MVEB which is developed using MOBILE6 and which we find adequate. Texas also commits in its Chapter 7, as proposed to be revised, that it will concurrently revise the MVEB if the adoption of any shortfall measures affects the MVEB and submit the revision to EPA as a revision to the attainment SIP.

What Is the Applicable Budget To Use for Conformity Analysis?

We propose to approve the MVEBs in Table 4, pursuant to the State's commitments relating to MOBILE6 and the shortfall measures, only until revised motor vehicle emissions budgets are submitted and we have found them adequate for transportation conformity purposes. In other words, the budgets that are part of this attainment demonstration will apply for transportation conformity purposes only until there are new, adequate budgets consistent with the State's commitments to revise the budgets. The revised budgets will apply for transportation conformity purposes as soon as we find them adequate since our approval of the current budgets will terminate at that time.

We are proposing to limit the duration of our approval in this manner because we are only proposing to approve the attainment demonstration and its budgets because the State has committed to revise them after we release MOBILE6, after the State adopts measures that affect motor vehicle emissions pursuant to their enforceable commitments, and after the State conducts its mid-course review. Therefore, once we have confirmed that the revised budgets are adequate, they will be more appropriate than the budgets we are proposing to approve for conformity purposes now.

If future changes to the budgets raise issues about the sufficiency of the attainment demonstration, we will work with the State. If the revised budgets show that motor vehicle emissions are lower than the budgets we approve, a reassessment of the attainment demonstration's analysis will be necessary.

This action does not propose any change to the existing transportation conformity rule or to the way it is normally implemented with respect to other submitted and approved SIPs, which do not contain commitments to revise the budget.

We can find the attainment MVEBs adequate for transportation conformity purposes and approvable, as limited above, because the budgets will not interfere with the area's ability to adopt additional measures to attain. Because the additional measures do not involve additional limits on highway construction, allowing new transportation investments to proceed consistent with the budgets will not prevent the area from achieving the additional reductions necessary to reach attainment.

H. Reasonably Available Control Measures

What Action Are We Proposing?

Through parallel processing, we are proposing to approve Texas'

demonstration that all Reasonably Available Control Measures have been or will be adopted in the HG area. The proposed analysis was submitted in a letter dated June 15, 2001, for us to parallel process. We believe Texas has shown that all reasonable measures that are RACM for the HG area have been or will be adopted. A full description of our evaluation of TNRCC's proposed analysis is contained in the TSD to this document. It is worth noting that through this analysis, Texas identified one measure, control of emissions from diesel fired generators, as being an additional RACM for the HG area. TNRCC has proposed a rule to control this source category and requested parallel processing. EPA will parallel process action on this rule in a separate rulemaking. If EPA cannot fully approve this diesel generator rule, we cannot fully approve the HG attainment demonstration SIP because it would not show that all RACM was being implemented in the area.

What Is the Reasonably Available Control Measure Requirement?

Section 172(c)(1) of the Act requires SIPs to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and for attainment of the standard. We have previously provided guidance interpreting the RACM requirements of 172(c)(1) in the General Preamble. See 57 FR 13498, 13560 (April 16, 1992). In the General Preamble, we indicated our interpretation of section 172(c)(1), under the 1990 amendments, as imposing a duty on States to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the particular nonattainment area. We also retained our pre-1990 interpretation of the RACM provisions that where measures that might in fact be available for implementation in the nonattainment area could not be implemented on a schedule that would advance the date for attainment in the area, we would not consider it reasonable to require implementation of such measures. We indicated that States could reject certain RACM measures as not reasonably available for various reasons related to local conditions. A State could include area-specific reasons for rejecting a measure as RACM, such as the rejected measure would not advance the attainment date, or technological and economic feasibility in the area.

We also issued a recent memorandum reaffirming our position on this topic, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas," John S. Seitz, Director, Office of Air Quality Planning and Standards, dated November 30, 1999. A copy can be obtained from *www.epa.gov/ttn/oarpg/t1pgm.html*. In this memorandum, we state that in order to determine whether a state has adopted all RACM necessary for attainment and as expeditiously as practicable, the state will need to provide a justification as to why measures within the arena of potential reasonable measures have not been adopted. The justification would need to support that a measure was not reasonably available for that area and could be based on technological or economic grounds.

How Did Texas Perform Its RACM Analysis?

Texas has based its analysis primarily on EPA's document "Control Measures for Serious and Severe Ozone Nonattainment Areas" issued November 1999. This document has a summary of the control measures that have been adopted in other areas of the country. Using this document as a guide, Texas was able to determine that measures as stringent or more stringent than other areas of the country are being implemented in the HG area for NO_X control. Texas used a modeling analysis in conjunction with the list of control measures in the EPA document to determine that additional VOC controls are not cost-effective in reducing ozone in the specific HG area because of the large number of small sources, difficulties in enforcement, and the large amount of VOC reductions needed to achieve a change in ozone concentrations. They also would not advance the attainment deadline.

I. Impacts of Texas Legislative Action

Numerous legislative changes occurred during Texas' 77th legislative session that impact the SIP that will be submitted by the State. As discussed earlier, Texas Senate Bill 5 creates an incentive program for purchase of low emission vehicles and establishes an energy efficiency program. The bill requires TNRCC to withdraw the control measures for the Heavy-duty Diesel Operating restrictions and the accelerated purchase of Tier 2/3 non-road diesel equipment,[2] and replace these with the incentive program (TERP). The TSD documents in detail the potential emission reductions of the incentive program. Based on the experience with similar programs in California, EPA is proposing that this new Texas program can achieve sufficient reductions to replace the two measures and also contribute to reducing the shortfall. Further, model sensitivity runs indicate that use of an incentive program, rather than the heavy duty diesel operating restrictions, will not increase the modeled shortfall. In fact, it may have positive impact.

House Bill 2912 also requires changes to the SIP. This bill limits TNRCC's authority to control fuel content. In anticipation of this legislation, the State proposed amendments to the low emission diesel rule on May 10, 2001. They have submitted this proposal, along with a request for parallel processing to EPA, for inclusion in the attainment demonstration. We have proposed to approve the rule and amendments in a separate action. These changes will not have an impact on the projected emission reductions from this measure nor on the peak modeled ozone concentrations and the gap methodology and the calculated 56 tons/day of NO_X emission reductions needed to show attainment because Texas had not previously included the benefits of requiring this rule in the western portion of the State in its modeling analysis.

House Bill 2912 also includes permit requirements for sources not previously required to obtain permits. The projected emission reductions from this measure are being used to replace the revised emission reductions projected from the NO_X point source measure. EPA discusses in the TSD how the emission reductions are projected and why, combined with the revised NO_X point source measure, there is no expected impact on the peak modeled ozone concentrations, the gap methodology and the calculated 56 tons/day of NO_X emission reductions needed to show attainment.

Texas House Bill 2134 creates the Texas Low-income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program. This program establishes a method for repair of high emitting vehicles or the retirement and replacement of those vehicles. It is anticipated that this legislation will have a neutral or slightly beneficial impact toward emission reductions. When the State implements the legislation, they will have to fully document the effects of the legislation. If the reductions are less than those currently relied upon from the scrappage program (included as a

[2] As also stated previously, the District Court for the Western District of Texas recently ruled that these two rules are preempted by the Clean Air Act. This ruling has no impact on the attainment demonstration because of the provisions of Senate Bill 5.

voluntary measure in the attainment demonstration), an additional measure will need to be submitted to account for the difference.

Further discussion of the projected emission reductions from the recent legislation and the effects upon the modeling and the shortfall methodology are discussed in the TSD.

J. Impacts of Recent State Settlement of Litigation

What Is the Basis for the Settlement of the Lawsuit?

A group of refinery, petrochemical and utility companies challenged a number of the State rules being relied on in the attainment demonstration in State court. In particular, they challenged the rules for control of industrial NO_X emissions. The TNRCC and EPA recognize that there are several factors contributing to the severity of the HG area's ozone problem. One is routine ozone formation such as that seen in other cities. Another is the HG area's unique land/sea breeze interaction. A characteristic of the HG area is "spike" ozone events where ozone rapidly builds up in the atmosphere. Meteorology, particularly the area's land/sea breeze interaction, may play a role in producing "spike" events.

The litigants, however, expressed their belief that this "spike" phenomenon is caused by episodic releases of highly reactive VOCs and that this phenomenon might play a role in determining ozone design values and control strategies. TNRCC in its Chapter 7 says that the sudden introduction of significant quantities of reactive hydrocarbons (or chlorine) could theoretically trigger dramatic increases in ozone concentrations. Thus, the TNRCC agreed in a settlement to perform a scientific study within one year. The study, as discussed in Chapter 7, would (1) develop a robust statistical definition of ozone "spikes"; (2) evaluate "spike" events from the 1998–2000 design value period; and (3) analyze "spike" events to determine their probable causes and locations within the modeling domain. The Commission states in Chapter 7 that they will perform analyses to see if "spikes" were at all influenced by upset releases. They will also review the inventory to see if it reflects or can be revised to reflect the varying temporal characteristics of many sources. Modeling of an August–September 2000 episode will be conducted as well. Planned enhancements to this modeling would be the incorporation of an upgrade to the model's chemical mechanism to account for chlorine chemistry, the TNRCC's determination of the role of chlorine in ozone formation, the role of "spikes", and possibly the use of very high resolution sub-domains. In Chapter 7 of the HG SIP, as proposed to be revised, the Commission commits to developing an enforceable plan to minimize releases of reactive hydrocarbon emissions and the emissions of chlorine. They further state that to the extent that the science (the study and modeling discussed above) confirms the benefit from this strategy, then it is the intent of the Commission to implement such a VOC-control strategy which will first offset NO_X reductions required for industrial sources from the existing strategy's required 90 percent to the 80 percent level. They also state that they would implement such a revised VOC-control program through a SIP revision. The Commission further states that in its discretion, it may allocate any additional benefit beyond 80 percent to other existing SIP strategies and/or to the point source NO_X control strategy. Any scientific determinations, supporting technical information, revised rules, revised control strategy, and revised attainment demonstration must be submitted to the EPA for approval as an attainment demonstration SIP revision.

Another element of the agreement is for the TNRCC to revise the reduction requirement for utility generators in the HG area from 93% to 90%. Relaxing this requirement is compensated by the NO_X reductions that will be achieved by the recent legislation requiring permitting of grandfathered sources. (The sources primarily affected by the revised measure are pump and compressor station engines.) Texas in Chapter 7, as proposed to be revised, states that it will perform a refined analysis modeling both the new emission reductions and the increases in NO_X from the power plant emissions in its planned first phase of the mid-course review (that planned modeling would also include the other enhancements discussed above). By June 2002, the Commission will assess the results of the modeling conducted. Depending upon the assessment, the Commission plans to begin rulemaking activities, if indicated, by June 2002 and finish in November 2002. We are proposing to agree with Texas that the effect of the reduced amount of NO_X reductions from power plants should be small and will be offset by the reductions at the currently un-permitted facilities. Further discussion of the projected emission reductions from the proposed revisions for electric utility generators and the effects upon the modeling and the shortfall methodology are discussed in the TSD.

V. Local Measures

What Are the Local Initiatives and Are They Approvable?

The State submitted in the December 2000 SIP revision, three local initiatives; speed limit reductions, a voluntary mobile emissions program in the eight county area, and transportation control measures.

A. Speed Limit Reductions

The Texas Department of Transportation (TxDOT) revised regulations relating to speed limits to allow TNRCC to submit a request to change speed limits for environmental reasons when justified. Please see adopted rules, 25 TexReg 5686, June 9, 2000. TxDOT, using this authority, will lower posted speed limits currently above 55 mph to 55 mph in the eight county area beginning May 1, 2002. The reduced speed limits will apply year-round beginning May 2002. Traveling at slower speeds will reduce the emissions of NO_X and improve air quality. In estimating the benefits of this measure, TNRCC did not assume that all cars would comply with the new speed limits but instead assumed a similar level of noncompliance would continue at the lower speed limits as occurs presently. The State estimates a reduction of 12.33 tons/day of NO_X emissions and 1.76 tons/day of VOC emissions from this measure. We propose approval of the speed limit reductions control measure and associated emission reductions.

B. Voluntary Mobile Emissions Program (VMEP)

What Is EPA's VMEP?

Voluntary mobile source strategies that attempt to complement existing regulatory programs through voluntary, non-regulatory changes in local transportation activities or changes in in-use vehicle and engine composition constitute the VMEP. EPA believes that the Act allows SIP credit for new approaches to reducing mobile source emissions, where supported by enforceable commitments to monitor and assess implementation and backfill any emissions reductions shortfall in a timely fashion. This flexible approach is consistent with the Clean Air Act section 110. Economic incentive provisions are also available in sections 182 and 108 of the Act. Credits generated through VMEP can be counted toward attainment and maintenance of the NAAQS. Due to the innovative nature of this program, up to

3% of the total future year emissions reductions required to attain the appropriate NAAQS, may be claimed under the VMEP policy.

What Qualifies for SIP Credit?

The basic framework for ensuring SIP credit for VMEPs is spelled out in guidance that came out under a memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, dated October 24, 1997, entitled "Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs)." Generally, to obtain credit for a VMEP, a State submits a SIP that:

(1) Identifies and describes a VMEP;

(2) Contains projections of emission reductions attributable to the program, along with any relevant technical support documentation;

(3) Commits to evaluation and reporting on program implementation and results; and

(4) Commits to the timely remedy of any credit shortfall should the VMEP not achieve the anticipated emission reductions.

More specifically, the guidance suggests the following key points be considered for approval of credits. The credits should be quantifiable, surplus, enforceable, permanent, and adequately supported. In addition, VMEPs must be consistent with attainment of the standard and with the ROP requirements and not interfere with other Clean Air Act requirements.

What Did the State Submit?

The State submitted program descriptions that projected emission reductions attributable to each specific program as part of the HG attainment demonstration submitted December 20, 2000. The State commits to evaluating each program to validate estimated credits. Table 5 lists the programs and projected credits.

TABLE 5.—VOLUNTARY MOBILE EMISSION REDUCTION PROGRAMS AND CREDITS CLAIMED

Program type	NO_X benefits (tons per day)
Scrappage Program	0.39
Smoking Vehicle Program	0.04
Public Fleet Measures	1.02
Highway Demonstration Projects	0.84
Private Fleet Measures	3.21
Non-road Demonstration	2.5
Locomotive Controls	2.0
Marine Measures	4.8
Commute Solutions	1.8
Transtar Expansion	0.0
Clean Air Action/Cool Cities/ Other	0.03
Signal Light Timing	0–0.5
Smart Growth	0.3
Local County Emission Reduction Plan	1.5
AERCO Pilot Project	6.0
Total Benefits (tpd)	23

The State's goal is 23 tons/day of NO_X benefit from the VMEP program. Since overall, the HG area needs to reduce emissions by 768 tons/day from uncontrolled 2007 levels, this is within the 3% criteria in our guidance. The State has committed to evaluating and reporting on the program implementation and results and to timely remedy any credit shortfall.

Do the VMEPs Meet the Requirements for Approval?

A detailed analysis of all the VMEP measures can be found in the TSD for this document. For each creditable VMEP, the measure was found to be quantifiable. The reductions are surplus by not being substitutes for mandatory, required emission reductions. The commitment to monitor, assess and timely remedy any shortfall from implementation of the measures will be enforceable against the State. The reductions will continue at least for as long as the time period in which they are used by this SIP demonstration, so they are considered permanent. Each measure is adequately supported by personnel and program resources for implementation.

What Action Is EPA Taking on the VMEP?

The HG area's ozone SIP VMEP meets the criteria for credit in the SIP. The State has shown that the credits are quantifiable, surplus, enforceable, permanent, adequately supported, and consistent with the SIP and the Act. We propose to approve the VMEP portion of the Texas SIP.

C. Transportation Control Measures (TCMs)

The State has included a variety of TCMs in the December 2000 SIP as a control strategy for attainment of the ozone NAAQS. The specific TCMs have been described in detail in appendix I of the SIP, and they will be incorporated by reference in the Code of Federal Regulations in the final approval action. Detailed information is necessary for those TCMs used as emissions reduction measures in the SIP to ensure that they are specific and enforceable as required by the Act and reflected in our policy. The TCMs' description in the SIP includes identification of each project, location, length of each project (if applicable), a brief project description, implementation date, and emissions reductions for both VOC and NO_X.

The TCMs identified through this process and included in the SIP are contained and funded in the metropolitan transportation plan (MTP) and transportation improvement program (TIP) to ensure funding for implementation.

We propose approval of the TCMs.

VI. Post 1999 Rate Of Progress Plan

A. Proposed Action

What Action Are We Proposing To Take?

We are proposing approval of the Post 1999 ROP plans, submitted by the Governor on December 20, 2000. These plans were supplemented with proposed revisions to the SIP submitted for parallel processing in a letter dated June 15, 2001. We are proposing to parallel process approval of these revisions to the plans.

These plans demonstrate that ozone forming emissions will be reduced from the baseline emissions by 9% in each of the periods 2000–2002 and 2003–2005 and by 6% during the time period of 2006–2007. We are also proposing to approve the MVEBs associated with these plans and revisions thereto by parallel process approval. We are also proposing to approve the changes to the 1990 base year emissions inventory for the HG nonattainment area.

These Post 1999 ROP plans build upon the 15% ROP plan that was to cover the time period 1990–1996 and the Post 1996 ROP Plan that covered the time period 1997–1999. The 15% ROP plan was given conditional interim approval November 10, 1998, 63 FR 62943. In this action, the 15% plan is being proposed for full approval (see section VII.). The Post 1996 ROP plan was approved on April 25, 2001, 66 FR 20778.

B. Calculation of Required Reductions and Summary of Plans

What Are the Changes to the 1990 Base Year Inventory?

The 1990 base year inventory was originally approved November 8, 1994 (59 FR 55586). The State revised the VOC inventory on August 8, 1996.

These changes were approved November 10, 1998 (63 FR 62943). The State revised the 1990 base year VOC inventory again in the December 20, 2000 SIP revision. The December 20, 2000, SIP revision also contains the State's first revisions to the 1990 base year NO_X emissions inventory. The changes resulted from data gathered for the 1993 and 1996 periodic inventories. Analysis of the changes in the periodic inventories was backcast to the 1990 inventory for consistency since the 1990 inventory remains the ROP beginning point. We have reviewed the inventory revisions and they have been developed in accordance with our guidance on emission inventory preparation. Thus, we are proposing approval of the December 20, 2000, revisions to the 1990 base year inventory.

How Do We Calculate the Needed VOC and NO_X Emissions Reductions?

Calculating the needed emission reductions is a multi-step process that is described in detail in the TSD for this proposed action. In summary, the State (1) estimates the baseline emissions in 1990; (2) adjusts the baseline emissions to factor out emission reductions from pre-1990 federal motor vehicle control programs and Reid vapor pressure controls because the Act does not allow States to take credit for these reductions; (3) estimates the target level of emissions in the milestone years; and (4) estimates the anticipated growth in emissions during each period and calculates the needed emission reductions.

How Do the Plans Achieve the Required Reductions?

Tables 6 and 7 summarize the ROP plans submitted by Texas.

TABLE 6.—VOC RATE OF PROGRESS

Milestone Year	2002	2005	2007
Target Level	696.25	694.81	693.84
Projected emissions after controls	670.99	644.93	629.68
Measures	Pulp and Paper	Small Engine	Small Engine
	I/M	Tier I	Marine Engine
	Small engine	I/M	Tier I/II
	Tier I	Tier I/II	NLEV
	RFG	NLEV	HDDV
	NLEV	HDDV.	
	HDDV.		

TABLE 7.—NO_X RATE OF PROGRESS

Milestone Year	2002	2005	2007
Target Level	1127.08	1011.33	935.67
Projected emission after controls	1116.06	695.05	542.0
Measures	Tier I	Tier I/II	Tier I/II
	NLEV	I/M	HDDV Standards
	RFG	HDDV Standards	NO_X Point source controls
	I/M	NO_X Point source controls.	
	Small Engine.		
	HDDV Standards.		

Do the Plans Achieve the Rate of Progress Goals?

Tables 6 and 7 show that the projected emissions after controls are less than the target level in each of the milestone years. In the 2002 ROP milestone year, Texas is able to meet the ROP requirement by a small margin through the documentation of progress made by Federal Measures. In 2005, the plan meets the ROP milestone by a wide margin since the bulk of the State's NO_X point source are required to be implemented in 2003 and 2005. It should be noted that TNRCC's ROP proposal does not reflect the changes proposed May 30, 2001 to the NO_X point source rules in response to the settlement of the industry legal challenge. These proposed changes delay some of the reductions planned for 2005 and reduce slightly the amount of total emission reductions that will occur in 2007 due to the relaxation of the electric utility generation rules. EPA has estimated the amount of emission reductions that it believes will occur in 2005 and 2007 as a result of the proposed changes to the rules and reflected these estimates in the Tables. Also, because of the wide margin, TNRCC did not include in the ROP plans a significant portion of the emission reductions included in the attainment plan, such as the Voluntary Measures program, Low emission diesel and speed limit reductions.

C. Post 1999 ROP MVEBs

What Are the MVEBs Established by These Plans and Proposed for Approval?

The MVEBs established by these plans and that we are proposing to approve are contained in Table 8. We find the MVEBs consistent with all ROP SIP requirements. In addition, we are taking comment in this action on the adequacy of the MVEBs for transportation conformity purposes pursuant to the criteria in 40 CFR 93.118(e)(4) as part of our proposed action on the SIP rather than using the web posting process because we are moving forward on this SIP in a quick manner as described in *Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations* dated November 3, 1999.

TABLE 8.—ROP SIP MOTOR VEHICLE EMISSIONS BUDGETS

[Tons per day]

Pollutant	2002	2005	2007
VOC	100.07	68.52	79.51
NO_X	260.85	185.48	156.6

The 2005 and 2007 ROP budgets are being proposed for revision in the June 15, 2001 submission being parallel processed. The new 2007 budgets are being proposed by Texas pursuant to a settlement agreement and are taken from the attainment demonstration modeling rather than directly from the ROP calculations. Emissions estimates used to demonstrate transportation

conformity will be derived using the assumptions used to develop these emissions budgets for the 2007 attainment SIP MVEBs, pursuant to 40 CFR 93.122(a)(6). We find such MVEBs consistent with ROP.

VII. 15% Rate Of Progress Plan

Proposed Action

What Action Are We Proposing To Take?

We are proposing full approval of the 15% plan submitted on August 8, 1996, contingent upon us finalizing full approval of the State's I/M program for the HG nonattainment area, which is included in the 15% plan. The 15% plan was given conditional, interim approval on November 10, 1998, pending corrections to the I/M program. This ROP plan was given conditional, interim approval because it relied on emissions reductions from the I/M program that received conditional, interim approval. For further information on the I/M conditional, interim approval, see 62 FR 37138, July 11, 1997. We found that the State had met the conditions of the conditional approval, and on April 23, 1999, we removed the conditions and granted Texas a final interim approval of the I/M SIP under the National Highway System Designation Act of 1995, Public Law 104–59, section 348(c)(1). See, 64 FR 19910. The interim approval expired on February 11, 1999. Texas has submitted significant revisions to the I/M program for the HG area. The revisions expand the program from Harris county to seven additional counties in the nonattainment area. We are taking a separate action on these I/M revisions (proposed approval 66 FR 31199, June 11, 2001). Because the revisions appear to have eliminated the last impediment to full approval of the I/M program for the HG area, we are proposing full approval of the HG area's 15% plan. This proposed full approval of the 15% plan will not be finalized unless and until action finalizing full approval of the I/M program is signed. If the I/M program is disapproved, we will disapprove the 15% plan. If we disapprove the 15% plan, we cannot finalize a full approval of the HG attainment demonstration SIP. See 63 FR 62943 and the 15% plan TSD for additional information on the HG area's 15% plan.

How Did the Inspection/Maintenance Program Submitted With the Attainment Demonstration Purport To Cure the Previous Deficiencies?

As stated previously, a conditional interim approval for the Motorist Choice I/M Program was proposed on October 3, 1996 (61 FR 51651). Conditional interim approval was published on July 11, 1997 (62 FR 37138). The conditions were removed from the interim approval on April 23, 1999 (64 FR 19910). The interim approval status of this program lapsed on February 11, 1999.

The State submitted an approvable 18-month demonstration on February 8, 1999, as required by the National Highway System Designation Act of 1995, Public Law 104–59, section 348(c)(1). The program was not fully approved at that time because one provision of the interim approval remained: that the State provide evidence that the remote sensing program was effective in identifying the shortfall in number of vehicles needed to make up for the lack of a tailpipe testing program in all the nonattainment counties.

Modeling has since shown that NO_X reductions are essential to reaching attainment in the HG area. As a result, the Texas Motorist Choice I/M program has been revised to include measurement for NO_X emissions and to provide additional NO_X emission reductions by expanding coverage of the program to all eight counties within the HG nonattainment area. By revising the program to expand area coverage for NO_X SIP credits, the deficiency that prohibited full approval in the HG nonattainment area appears to be cured. All counties within the HG designated ozone nonattainment area will be participating in the full program. As indicated above, we have not yet taken a final action on the I/M submittal and cannot take final action on the ROP Plan and attainment demonstration SIP which rely upon reductions from the I/M plan, until the I/M revision is finally approved.

VIII. Summary of Related Measures EPA Must Approve Before EPA can Fully Approve the HG Attainment Demonstration

What Clean Air Act Requirements Apply to the HG Severe Area?

The following table presents a summary of the CAA requirements that are required for each severe nonattainment area for the 1-hour ozone NAAQS. These requirements are specified in section 182 of the CAA.

CAA REQUIREMENTS FOR SEVERE AREAS

—NSR, including an offset ratio of 1.3:1 and a major VOC and NO_X source cutoff of 25 tons per year (tpy).
—Reasonably Available Control Technology (RACT) for VOC and NO_X.
—15 percent Rate-Of-Progress (ROP) plan for VOC through 1996.
—9 percent Rate-Of-Progress (ROP) plan for VOC through 1999.
—1990 baseline emissions inventory for VOC and NO_X.
—Periodic emissions inventory and source emission statement regulations.
—Enhanced Vehicle inspection and maintenance (I/M) program.
—Clean fuel vehicle program.
—Enhanced monitoring program.
—Reformulated gasoline.
—3%/yr ROP plan(Post 1999).
—Measures to offset VMT growth.
—Requirement for fees for major sources for failure to attain.

** Areas that are currently attaining the standard or can demonstrate that NO_X controls are not needed can request a NO_X waiver under section 182(f). The HG area is not such an area.

A listing of applicable requirements and the effective dates of their EPA approvals for the HG area is contained in the TSD for this rulemaking.

What Measures Must Be Finally Approved Before We Can Finalize the Approval of the Attainment SIP?

We cannot finalize approval of the attainment demonstration SIP and its associated MVEBs unless and until we have finalized action on the following rules since they are relied upon in the attainment demonstration:

1. Vehicle I/M program (30 TAC 114). Recent legislation and the rule allow Liberty, Chambers and Waller counties to submit an alternative air control strategy by May 1, 2002 (the I/M program does not apply in those counties until May 1, 2004). The alternative strategy must be approved by TNRCC and EPA (in the form of a SIP revision) and must provide modeled reductions in NO_X and VOC equivalent to the reductions modeled for these counties from the I/M program. This flexibility is an acceptable approach as long as the implemented I/M program covers the urbanized area within the HG Metropolitan statistical Area and does not rely on the remote sensing program for vehicle coverage.[3] For further discussion, please see the proposed approval (66 FR at 31200) and accompanying TSD as well as 30 TAC section 114.50(a)(4)(G). It should be noted that unless the equivalent emission reductions are from mobile

[3] It should be noted that these three counties are not part of the urbanized area and, therefore, not required to be part of the I/M program. See, 40 CFR 51.350(a)(2).

sources, the MVEBs will be impacted by these areas opting out of I/M.

2. Revised emission specifications in the HG area for NO_X Point Sources (30 TAC 117). Note certain portions of this rule submitted December 20, 2000 have been proposed for revision. Texas has submitted these revisions for parallel processing.

3. NO_X Cap and Trading program (30 TAC 101). Note certain portions of this rule submitted December 20, 2000 has been proposed for revision. Texas has submitted these revisions for parallel processing.

4. Low emission diesel fuel (30 TAC 114). Texas has proposed a revision to the rule that was submitted by the Governor in December 2000. Further revisions that were approved for public comment by TNRCC on May 10, 2001, include a change to the area of coverage, a later implementation deadline, and allowing alternate diesel formulations (if approved by EPA) as a means of compliance. These revisions correspond to changes in the statutory authority of TNRCC to regulate fuels. These changes are in Texas House Bill 2912. This bill establishes certain guidelines for fuel regulations that are more stringent than federal requirements. In a letter dated June 15, 2001, a SIP revision was submitted, along with a request for parallel processing.

5. Non-Road Large Spark-Ignition (LSI) Engines (30 TAC Chapter 114, Subchapter I, Division 3). This rule requires that non-road large spark-ignition engines of 25 horsepower (hp) or larger conform to Title 13 of the California Code of Regulations, Chapter 9. Section 209(e)(2)(B) of the Act allows another state to adopt requirements for non-road engines if such regulations are identical to California's requirements. EPA has promulgated regulations, codified at 40 CFR 85.1606, setting forth the criteria for adoption of California regulations regarding non-road vehicles and non-road engines. We are addressing this measure in a separate action.

6. Agreed Orders with Continental and Southwest Airlines and the City of Houston. The Agreed Orders make enforceable specific local emission reductions of NO_X from sources under the airlines' control. The agreement with the City of Houston is to bring about additional reductions from operations in the Houston Airport System. We will address the agreed orders in a separate action.

7. Reasonably Available Control Technology (RACT) rules regulating VOCs from Batch Processes (30 TAC 115) and Offset Lithographers (30 TAC 115). These rules submitted December 20, 2000 ensure that RACT is in place on major sources of VOCs in these categories in the HG area. We will address these rules in a separate action.

8. A determination that the HG SIP includes all Reasonably Available Control Measures. See section IV.H.

9. The 15% ROP Plan. See section VII.

10. The Post 1999 ROP Plans and contingency measures. See section VI.

11. The revisions to the 1990 base year inventory. See Section VI.

12. The speed limit reductions, the VMEP and the TCMs. See section V.

13. Lawn service equipment operating restrictions (30 TAC 114.452–459). This is a rule that would implement an operating-use restriction program requiring that the handheld and non-handheld spark-ignition engines, rated at 25 hp and below, be restricted from use by commercial operators between the hours of 6:00 a.m. and noon, April 1 through October 31, in Brazoria, Fort Bend, Galveston, Harris, and Montgomery counties. For more information on this measure, see our proposed approval at 66 FR 31197 (June 11, 2001).

14. Vehicle Miles Traveled (VMT) Offset Plan.

15. Motor Vehicle Idling Limitations (30 TAC 114.500–509). This rule establishes idling limits for gasoline and diesel-powered engines in heavy-duty motor vehicles in the HG area. For more information on this measure, see our proposed approval at 66 FR 31197 (June 11, 2001).

16. Stationary Diesel Generator rule (30 TAC 117.206). This rule was submitted for parallel processing in a letter dated June 15, 2001, as part of other proposed revisions to the NO_X point source rules. Its approval is necessary to insure that all RACM have been adopted in the HG area.

17. The Post 1996 ROP Plan and contingency measures. See Section VI.

IX. EPA Guidance

What EPA Guidelines Apply To the Attainment Demonstration Submittals?

The following documents, among others, contain EPA's guidelines affecting the content and review of ozone attainment demonstration submittals:

1. *Guideline for Regulatory Application of the Urban Airshed Model*, EPA–450/4–91–013, July 1991. Web site: *http://www.epa.gov/ttn/scram/* (file name: "UAMREG").

2. Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources (Revised) (1992).

3. *Guidance on Urban Airshed Model (UAM) Reporting Requirements for Attainment Demonstrations*, EPA–454/R–93–056, March 1994. Web site: *http://www.epa.gov/ttn/scram/* (file name: "UAMRPTRQ").

4. User's Guide to MOBILE5 (Mobile Source Emission Factor Model), May 1994.

5. Memorandum, "Ozone Attainment Demonstrations," from Mary D. Nichols, Assistant Administrator for Air and Radiation, March 2, 1995. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

6. *Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, EPA–454/B–95–007, June 1996. Web site: *http://www.epa.gov/ttn/scram/* (file name: "O3TEST").

7. Memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS," from Richard Wilson, Office of Air and Radiation, December 29, 1997. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html* .

8. Memorandum, "Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS (Draft)," 1998.

9. Memorandum, "Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations," from Merrylin Zaw-Mon, Acting Director of the Regional and State Programs Division, November 3, 1999. Web site: *www.epa.gov/oms/transp/conform/nov3guid.pdf*

10. Memorandum, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas," from John S. Seitz, Director of Office of Air Quality Planning and Standards, November 30, 1999.

11. Draft Memorandum, "1-Hour Ozone NAAQS—Mid-Course Review Guidance," from John Seitz, Director, Office of Air Quality Planning and Standards.

12. Memorandum "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled" November, 1999.

VIII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely

proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Attainment, Hydrocarbons, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 2, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 01–17470 Filed 7–11–01; 8:45 am]

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Part IV

Department of Commerce

Bureau of Export Administration

15 CFR Part 740, et al.

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 515, et al.

Exports of Agricultural Commodities, Medicines, and Medical Devices to Cuba, Sudan, Libya, and Iran; Cuba Travel-Related Transactions; Final Rules

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740, 742, 746, 772 and 774

[Docket No. 010612152–1152–01]

RIN 0694–AC37

Exports of Agricultural Commodities, Medicines and Medical Devices

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to implement certain provisions of the Trade Sanctions Reform and Export Enhancement Act (TSRA) of 2000. The TSRA requires the President to terminate existing U.S. unilateral agricultural and medical sanctions and also provides that the export of agricultural commodities, medicines and medical devices to designated terrorist countries be made in accordance with the licensing regime described in that Act. The Department of Commerce is implementing TSRA as it relates to exports of agricultural commodities to Cuba. This rule establishes License Exception Agricultural Commodities (AGR) to permit exports and reexports to Cuba of agricultural commodities that are not specifically identified on the Commerce Control List (CCL) and are classified as EAR99. The Department of the Treasury's Office of Foreign Assets Control (OFAC) is implementing TSRA as it relates to exports to Iran, Libya, and Sudan of agricultural commodities, medicines and medical devices that are not specifically identified on the CCL and are classified as EAR99.

DATES: This rule is effective July 26, 2001. Comments must be received by September 10, 2001.

ADDRESSES: Written comments should be sent to Kirsten Mortimer, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Brian Nilsson, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4196, E-mail: bnilsson@bxa.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2000, the President signed the Trade Sanctions Reform and Export Enhancement Act (TSRA) (Title IX of Pub. L. 106–387) which provides that the President shall terminate any unilateral agricultural sanction or unilateral medical sanction in effect as of the date of enactment of the TSRA, except that exports of agricultural commodities, medicines and medical devices to designated terrorist countries are subject to the export requirements described in the TSRA. A designated terrorist country is a country that has been determined by the Secretary of State to have repeatedly provided support for acts of international terrorism under section 620A of the Foreign Assistance Act of 1961, section 6(j)(1) of the Export Administration Act of 1979, or section 40(d) of the Arms Export Control Act.

The TSRA does not require the President to terminate any unilateral agricultural sanction or unilateral medical sanction that prohibits, restricts or conditions the provision or use of any agricultural commodity, medicine or medical device that is controlled on the United States Munitions List, controlled on any control list established by the Export Administration Act of 1979 or any successor statute, or used to facilitate the development or production of chemical or biological weapons or weapons of mass destruction.

This rule amends the EAR to create a new License Exception AGR for exports of agricultural commodities classified as EAR99 from the United States to Cuba and reexports of U.S. origin agricultural commodities classified as EAR99 to Cuba. The Department of the Treasury's Office of Foreign Assets Control is also taking action to implement the TSRA requirements, notably with respect to agricultural and medical exports classified as EAR99 to Iran, Sudan and Libya.

I. License Exception Agricultural Commodities (AGR) to Cuba

This rule establishes a new License Exception Agricultural Commodities (AGR) in § 740.18 of the EAR. License Exception AGR authorizes exports and certain reexports of agricultural commodities provided that they are classified as EAR99 and meet all the other criteria of License Exception AGR, including the prior notification requirements described below. License Exception AGR is not applicable for items controlled under a specific Export Control Classification Number (ECCN) on the Commerce Control List (CCL). To be eligible for AGR, shipments of agricultural commodities must be made pursuant to a written contract and must take place within one year of the signing of a contract, unless the shipment is a commercial sample or donation in which case the contract requirement does not apply. Agricultural commodities are defined in part 772 (Definitions of Terms) of the EAR *and* must be classified as EAR99 to be eligible for License Exception AGR. Transactions that do not satisfy all the criteria of License Exception AGR require a license from BXA.

Prior Notification Requirement

As noted above, to be eligible for License Exception AGR, exporters must also provide prior notification by completing the Multipurpose Application Form (BXA–748P) or its electronic equivalent and including certain information requested on the BXA–748P form. The following blocks must be completed, as appropriate, on the Multipurpose Application Form: Blocks 1, 2, 3, 4, 5, 14, 16, 17,18, 19, 21, 22 (a), (e), (f), (g), (h), (i), (j), 23, and 25. If your commodity is fertilizer, western red cedar or live horses, you must confirm that BXA has previously classified your commodity as EAR99 by placing the Commodity Classification Automatic Tracking System (CCATS) number in block 22(d). The box "other" must be selected as the type of application. This designator will automatically place the notification into a special review track. BXA will not initiate the registration of the notice unless all the required information is complete. BXA will refer notifications to interested reviewing agencies within two business days of registration. The application control number will allow exporters and reexporters to track their notices by calling the System for Tracking Export License Applications (STELA) at (202) 482–2752. STELA will provide the date of registration of the notification and a notification number. If no reviewing agencies raise objections within nine business days, STELA will confirm that you may proceed with the transaction, provided you satisfy all other requirements of License Exception AGR, including the requirement to have a written contract prior to any shipment. BXA will issue subsequent written confirmation. STELA will also advise if a license is required, in which case BXA will process the notification as a license application in accordance with the procedures described in part 750 and the licensing policies set forth in the EAR. BXA will change the notification number to a license application number. At this time, BXA may request additional information to complete the

processing of the license application. These procedures implement section 906(a)(1) of the Trade Sanction Reform and Export Enhancement Act which requires that procedures be in place to deny exports of agricultural commodities to any entity in Cuba that promotes international terrorism.

Donations of Agricultural Commodities to Cuba

Donations of agricultural commodities are eligible for export and reexport to Cuba under License Exception AGR, provided the transaction meets the requirements and procedures of this license exception, except the contract requirement does not apply. Donations of food items to non-governmental organizations (NGOs) and individuals in Cuba may also be eligible for License Exception GFT. See § 740.12 for eligibility requirements of gift parcels and humanitarian donations under License Exception GFT.

Exports of Medicines and Medical Devices to Cuba

Exports of medicines and medical devices are not eligible for export or reexport to Cuba under TSRA procedures and, therefore, License Exception AGR is not available. Such items continue to require authorization for export to Cuba under the provisions of the Cuban Democracy Act (CDA) (22 U.S.C. 6004). BXA reviews applications for such exports on a case-by-case basis and will generally approve such exports unless one of the restrictions set forth in the CDA and in section 746.2 of the EAR applies. As is the standard licensing practice under the EAR, licenses issued have a twenty-four month validity period. Exporters are not required to have a written contract to apply for an export license.

II. OFAC Authorization for Agricultural Commodities, Medicines and Medical Devices to Iran, Libya and Sudan

The Department of the Treasury's Office of Foreign Assets Control (OFAC) is implementing the provisions of TSRA as they relate to exports of agricultural commodities, medicines and medical devices that are classified as EAR99 to Iran, Libya and Sudan. Exporters should review OFAC's regulations for the requirements relating to exports of agricultural commodities, medicines and medical devices to Iran, Libya and Sudan.

As explained in the OFAC regulations, exporters must have an official commodity classification of EAR99 from BXA for all medical devices (including supplies) prior to submitting an application to OFAC, unless the item is specifically listed on BXA's website at *www.bxa.doc.gov/Regulations/Trade Sanctions ReformExport EnhancementAct.html*. This list identifies those medical supplies, such as syringes, bandages, gauze and similar items, that *do not* require BXA classification prior to OFAC review. When submitting a license application to OFAC under its expedited review procedures, exporters must indicate to OFAC that their medical supply is on the BXA medical supply list on BXA's website. Otherwise, exporters must provide OFAC with a copy of the BXA commodity classification for those medical devices that BXA has classified as EAR99. Exporters who are unable to access BXA's website may contact BXA at 202–482–4811 to obtain BXA's medical supplies list.

In addition, BXA has identified on its website a list of medicines that are on the CCL and not eligible for OFAC's expedited review procedures. As explained in the OFAC regulations, when submitting a license application to OFAC under its expedited review procedures, exporters must indicate to OFAC that their medicine is not on the BXA medicine list on BXA's website. If exporters are unsure if their medicine is on the CCL, they should seek an official commodity classification from BXA confirming that their medicine is classified as EAR99 prior to submission of an application to OFAC under its expedited review procedures. Exporters who are unable to access BXA's website may contact BXA at 202–482–4811 to obtain BXA's list of medicines that are on the CCL.

For agricultural commodities, an official commodity classification of EAR99 from BXA is only required for fertilizers, western red cedar, and live horses. See section 748.3 of the EAR for instructions for submitting commodity classification requests.

III. Definitions and Procedures for Classifying Agricultural and Medical Commodities

This rule establishes new definitional entries for "agricultural commodities", "medicines" and "medical devices" in part 772 of the EAR. Commodities included within these definitions must be classified as EAR99 to be eligible for License Exception AGR or OFAC authorization. Exporters should review OFAC's regulations for the requirements relating to exports of agricultural commodities, medicines and medical devices to Iran, Libya and Sudan.

Agricultural Commodities

Agricultural commodity is defined in § 902 of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (§ 902 of Public Law 106–387), which incorporates by reference the definition of agricultural commodity in section 102 of the Agriculture Trade Act of 1978 (7 U.S.C. 5602). Section 775 of Public Law 106–387 also provides that, for purposes of administering Title IX of the TSRA, the term agricultural commodity also includes fertilizer and organic fertilizer.

Under this rule, agricultural commodities include food commodities, feed, fish, shellfish and fish products; beer, wine and spirits; soft drinks; livestock; fiber, including cotton, wool and other fibers; tobacco and tobacco products; wood and wood products, including lumber and utility poles; seeds; and reproductive materials such as fertilized eggs, embryos and semen. A list of these commodities is available for review at the U.S. Department of Agriculture website at http://www.fas.usda.gov/itp/sanctions.html. If you have questions regarding whether an item is defined by section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. § 5602), you should consult with the Department of Agriculture.

Consistent with section 775 of Pub. L. 106–387, this rule also includes fertilizers and organic fertilizers in the scope of agricultural commodities. Although items in this paragraph may not be specifically identified as agricultural commodities on the Department of Agriculture website, they are considered agricultural commodities under the EAR and for purposes of implementation of the TSRA.

For purposes of License Exception AGR (see section 740.18), agricultural commodities also include vitamins, minerals, food additives and dietary supplements, and bottled water. These items do not fall within the scope of § 102 of the 1978 Agricultural Trade Act and are not identified as agricultural commodities on the Department of Agriculture website, but are treated as agricultural commodities for the purposes of License Exception AGR.

Under this rule, agricultural commodities do *not* include furniture made from wood; clothing manufactured from plant or animal materials; agricultural equipment (whether hand tools or motorized equipment); pesticides, insecticides, or herbicides; or cosmetics (unless derived entirely from plant materials).

Note, however, that certain items that meet the definition of agricultural commodity are controlled on the CCL

and are not eligible for BXA's License Exception AGR for Cuba or OFAC's revised export procedures for Iran, Libya and Sudan. These include certain fertilizer products controlled under new ECCN 1C997, western red cedar controlled under ECCN 1C988, and live horses (if to be exported by sea) controlled under ECCN 0A980. For other fertilizer products, western red cedar and live horses that are not controlled on the CCL, exporters must have an official commodity classification of EAR99 from BXA prior to submission of a notification under License Exception AGR to BXA (for Cuba) or submission of a request for authorization to OFAC (for Iran, Libya, and Sudan). Exporters should review OFAC's regulations for the requirements relating to exports of agricultural commodities to Iran, Libya and Sudan.

In sum, two specific determinations are required prior to qualifying for BXA or OFAC authorization under the TSRA procedures: that the product is an agricultural commodity as defined in part 772 of the EAR; and that it is classified as EAR99 under the EAR.

For Cuba, items that are not agricultural commodities, as well as items that are agricultural commodities but that are on the CCL, will require a license from BXA. BXA will review such applications under the licensing policies set forth in § 746.2 (15 CFR 746.2).

Medicines and Medical Devices

Medicines and medical devices are not eligible under License Exception AGR to Cuba, but are eligible for OFAC authorization to Iran, Libya and Sudan. For the purposes of TSRA, medicines are drugs as defined in section 201 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321). Pursuant to the Act, BXA has determined that for the purposes of this rule, medicines include prescription medicines and over the counter medicines for humans and animals. Medical devices are defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) under the term "device". Pursuant to the Act, BXA has determined that for the purposes of this rule, medical devices include medical supplies, instruments, equipment, equipped ambulances, institutional washing machines capable of sterilizing hospital clothing and bedding, and vehicles with installed medical testing equipment. Medical devices do not include general purpose furniture such as desks, tables, or lamps used in hospital offices and waiting rooms. Exporters should consult with the Food and Drug Administration for guidance on whether an item meets the definition of medicine or medical device under the Federal Food, Drug and Cosmetic Act. Although most medicines and medical devices are classified as EAR99, certain vaccines, biological and chemical products, and parts for medical devices are controlled under specific ECCNs on the CCL.

For exports of medicines and medical devices to Iran, Libya, and Sudan, two specific determinations are required prior to submitting a request for OFAC authorization: that the product is a medicine or medical device as defined in part 772 of the EAR; and that it is classified as EAR99 under the EAR.

Exporters should review OFAC's regulations for the requirements relating to exports of medical devices to Iran, Libya and Sudan. As explained in the OFAC regulations, prior to submitting an application to OFAC, exporters must have an official commodity classification of EAR99 from BXA for all medical devices (including supplies), unless the item is specifically listed on BXA's website at *www.bxa.doc.gov/Regulations/Trade Sanctions Reform Export EnhancementAct.html*. This list identifies those medical supplies, such as syringes, bandages, gauze and similar items, that *do not* require BXA classification prior to OFAC review. When submitting a license application to OFAC under its expedited review procedures, exporters must indicate to OFAC that their medical supply is on the BXA medical supply list on BXA's website. Otherwise, exporters must provide OFAC with a copy of the BXA commodity classification for those medical devices that BXA has classified as EAR99.

In addition, BXA has identified on its website a list of medicines that are on the CCL and not eligible for OFAC's expedited review procedures. As explained in the OFAC regulations, when submitting a license application to OFAC under its expedited review procedures, exporters must indicate to OFAC that their medicine is not on the BXA medicine list on BXA's website. If exporters are unsure if their medicine is on the CCL, they should seek an official commodity classification from BXA confirming that their medicine is classified as EAR99 prior to submission of an application to OFAC under its expedited review procedures. Exporters should review OFAC's regulations for the requirements relating to exports of medicines to Iran, Libya and Sudan.

As noted above, exports of medicines and medical devices are not eligible for export or reexport to Cuba under TSRA procedures. Such items continue to require authorization for export to Cuba under the provisions of the Cuban Democracy Act (CDA) (22 U.S.C. 6004). For clarity and conformity, however, the term "medical devices" defined under TSRA is determined to be coextensive with the terms "medical supplies, instruments and equipment" used in section 1705 of the CDA. This rule also defines the term "medicines" for the purposes of the TSRA and will also apply this definition to "medicines" as that term is used in the CDA.

IV. Commodity Classification Requirements

As explained in the OFAC regulations, for exports of medical devices to Iran, Libya, and Sudan, exporters must have an official commodity classification of EAR99 from BXA prior to submission of a request for authorization under OFAC's expedited review procedures, unless the medical supply is specifically listed on BXA's website. The medical supply list identifies those medical supplies that *do not* require BXA classification prior to OFAC review. For exports of medicines to Iran, Libya, and Sudan, exporters must confirm that their item is *not* described on BXA's medicines list on BXA's website. The medicines list identifies medicines that are not eligible for OFAC's expedited review procedures. For exports of fertilizers, western red cedar, and live horses, a BXA commodity classification is required prior to submission of a notification for Cuba under License Exception AGR or prior to submission of a request to OFAC under its expedited review procedures for Iran, Libya or Sudan.

V. Continuing Controls

This rule also does not affect controls on any agricultural commodity, medicine or medical device classified under a specific ECCN on the CCL. In addition, this rule does not affect U.S. controls on technology or software used to manufacture agricultural commodities or on technology to design or produce biotechnological items, or medical devices.

Except for the creation of new License Exception AGR in section 740.18, this rule does not make any other license exception available for exports to Cuba, nor does it change the availability or non-availability of any other License Exception. Note that License Exception AVS does not authorize the export of vessels from the United States on temporary sojourn. Consistent with the 1992 Cuban Democracy Act, License Exception AVS does not authorize the export of ship stores, equipment or spares for use on a vessel, bunkering fuel, petroleum and petroleum items

and dunnage for use on any vessel carrying goods or passengers to or from Cuba. Therefore, a specific license is required from BXA for all such exports.

Also in continuation of current rules, aircraft that are on temporary sojourn to Cuba that are carrying items eligible for export under License Exception AGR and that satisfy all the requirements of License Exception AVS (§ 740.15(a) of the EAR) do not need a specific license from BXA. Aircraft that do not satisfy all requirements of License Exception AVS will require a specific license from the BXA and license applications will be reviewed on a case-by-case basis and favorably considered when carrying commodities authorized under the EAR. OFAC also is responsible for licensing family remittances and the financial transactions of persons traveling to Cuba, including travel associated with sales of agricultural commodities to Cuba and persons that accompany cargo on aircraft authorized by BXA.

Finally, this rule does not affect U.S. nonproliferation export controls, including end-use controls (known as the Enhanced Proliferation Control Initiative or EPCI). This rule does not relieve exporters or reexporters of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that you may not, without a license, knowingly export or reexport any item subject to the EAR for use in an activity that is prohibited by part 744 of the EAR. BXA strongly urges the use of Supplement No. 3 to part 732 of the EAR, BXA's "Know Your Customer" Guidance and Red Flags.

VI. New Controls

Consistent with the provisions of the Export Administration Act (EAA), as amended, and after consultation with the Secretary of State, BXA submitted a foreign policy report to the Congress providing notice of its intent to impose new foreign policy controls on ammonium nitrate, including fertilizers and fertilizer blends containing more than 15% by weight ammonium nitrate, except liquid fertilizers (containing any amount of ammonium nitrate) or dry fertilizers containing less than 15% by weight ammonium nitrate. These items are now classified as ECCN 1C997, and require a license for anti-terrorism reasons. This foreign policy report was sent to Congress on June 15, 2001. In the development of a final rule, BXA may further amend the EAR to add certain medicines and medical devices to the CCL.

VII. Technical Changes

This rule amends sections 746.3 and 746.7 to clarify the requirements for exports and reexports to Iran and Iraq.

This rule amends the EAR in the following ways:

Part 740 (License Exceptions)

New License Exception Agricultural Commodities (AGR) is established in § 740.18 of the EAR for exports of agricultural commodities classified as EAR99. License Exception AGR authorizes the export of agricultural commodities from the United States and reexport of U.S. origin agricultural commodities to Cuba provided that the notification requirements and other provisions of License Exception AGR are met.

For purpose of transparency, this rule also restates in section 740.2 (Restrictions on All License Exceptions) that license exceptions may not be used for exports or reexports to a destination subject to a comprehensive embargo, unless specifically authorized in the section dealing with a particular embargoed country in part 746 (Embargoes and Other Special Controls) of the EAR.

Part 742 (Control Policy: CCL Based Controls)

In § 742.8, § 742.9, § 742.10, § 742.19, and Supplement No. 1 to Part 742, references are added to reflect the new control status and licensing policy for ammonium nitrate, including certain fertilizers containing ammonium nitrate, under ECCN 1C997. Licenses are required under the EAR for the export and reexport of fertilizers controlled by ECCN 1C997 to Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. Applications for items controlled under new ECCN 1C997 are subject to a case-by-case review with general policy of denial to all end-users.

Part 746 (Embargoes and Other Special Controls)

Section 746.2 Cuba

In § 746.2 (Cuba), License Exception AGR eligibility is established for exports and certain reexports of agricultural commodities classified as EAR99 to Cuba. The licensing review policy in § 746.2 is revised to apply to exports and reexports of agricultural commodities subject to the EAR that do not meet the eligibility requirements of License Exception AGR and to other agricultural items (e.g. insecticides, pesticides and herbicides).

Medicines and medical devices continue to require an export license to Cuba under the provisions of the CDA. Note that the definition of medical devices under TSRA is determined to be coextensive with the terms "medical supplies", "instruments" and "equipment" under the CDA and § 746.2 is revised to use the terms medicines and medical devices, which are defined in part 772.

Section 746.3 Iraq

§ 746.3 is revised to reflect new controls on certain fertilizer products under new ECCN 1C997. This section also clarifies that no person may export or reexport any item subject to both the EAR and OFAC's Iraqi Sanctions Regulations without prior OFAC authorization and that exports and reexports subject to the EAR that are not subject to the Iraqi Sanctions Regulations may require authorization from BXA.

Section 746.7 Iran

This section is revised to clarify that exports and reexports subject to the EAR that are not subject to the Iranian Transactions Regulations may require authorization from BXA.

Part 772 Definitions of Terms

In part 772, this rule adds definitions for the terms "agricultural commodities", "medicines", and "medical devices" consistent with Sections 902 and 775 of Pub. L. 106–387.

Part 774 The Commerce Control List

In Supplement No. 1 to part 774, ECCN 1C997 is added to the CCL. A license is required for the export or reexport of ammonium nitrate, including fertilizers which contain certain concentrations of ammonium nitrate, to terrorist supporting countries.

Rulemaking Requirements

1. This interim final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and

45 minutes to submit manually on multipurpose Application Form (BXA–748P). This rule contains a new information collection requirement that has been submitted for emergency approval under control number 0694-XXXX, "Prior Notification for Exports under License Exception AGR". Prior notification using existing form BXA–748P requires burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. *See* 5 U.S.C. 553(a)(1). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close September 10, 2001. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

Copies of the public record concerning these regulations may be requested from: Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–0637. This component does not maintain a separate public inspection facility. Requesters should first view BXA's website (which can be reached through www.bxa.doc.gov). If requesters cannot access BXA's website, please call the number above for assistance.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Parts 742, 772 and 774

Exports, Foreign trade.

15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 740, 742, 746, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citations for parts 740 and 772 are revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106–387; Pub. L. No. 106–508; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13206 (66 F.R. 18397, April 9, 2001).

2. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106–387; Pub. L. No. 106–508; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 9, 2000 (65 F.R. 68063, November 13, 2000); E.O. 13206 (66 F.R. 18397, April 9, 2001).

3. The authority citation for part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106–387; Pub. L. No. 106–508; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13088, 63 FR 32109, 3 CFR, 1998 Comp., p. 191; E.O. 13121 of April 30, 1999, 64 FR 24021 (May 5, 1999); E.O. 13206 (66 F.R. 18397, April 9, 2001).

4. The authority citation for parts 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106–387; Pub. L. No. 106–508; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13206 (66 F.R. 18397, April 9, 2001).

PART 740—[AMENDED]

5. Section 740.1 is amended by revising paragraph (a) to read as follows:

§ 740.1 Introduction.

* * * * *

(a) *Scope.* A "License Exception" is an authorization contained in this part that allows you to export or reexport under stated conditions, items subject to the Export Administration Regulations (EAR) that would otherwise require a license under General Prohibition One, Two, or Three, as indicated under one or more of the Export Control Classification Numbers (ECCNs) in the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR and items subject to the EAR that would require a license based on the embargo policies described in part 746 of the EAR. If your export or reexport is subject to General Prohibition Six for embargoed destinations, refer to part 746 of the EAR to determine the availability of any License Exceptions. Special commodity controls apply to short supply items. License Exceptions for items listed on the CCL as controlled for Short Supply reasons are found in part 754 of the EAR. If your export or reexport is subject to General Prohibition Five, consult part 744 of the EAR. If your export or reexport is subject to General Prohibitions Four, Seven, Eight, Nine, or Ten, then no License Exceptions apply.

* * * * *

6. Section 740.2 is amended by adding paragraph (a)(6) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(6) The export or reexport is to an embargoed destination (Cuba, Iran, Iraq, and Libya), unless a license exception or portion thereof is specifically listed in the license exceptions paragraph pertaining to a particular embargoed country in part 746 of the EAR.

* * * * *

7. Section 740.18 is added to read as follows:

§ 740.18 Agricultural commodities (AGR).

(a) *Eligibility requirements.* License Exception AGR permits the export of agricultural commodities to Cuba, as well as the reexport of U.S. origin agricultural commodities to Cuba, provided your transaction meets *all* of the following criteria:

(1) The commodity meets the definition of "agricultural commodities" in part 772 of the EAR;

(2) The commodity is EAR99. You must have an official commodity classification of EAR99 from BXA for fertilizers, western red cedar and live horses before you submit a notification under this license exception. See § 748.3 of the EAR for information on how to submit a commodity classification request;

(3) The export or reexport is made pursuant to a written contract, except for donations and commercial samples which are not subject to this contract requirement;

(4) The export or reexport is made within 12 months of the signing of the contract or within 12 months of notification that no objections were raised (if no contract is required). In the case of multiple partial shipments, all such shipments must be made within the 12 months of the signing of the contract or within 12 months of notification that no objections were raised (if no contract is required); and

(5) You notify BXA prior to exporting or reexporting according to the procedures set forth in paragraph (c) of this section. If you intend to engage in multiple shipments during the one-year period after the signing of the contract, you need only notify BXA prior to the first shipment.

(b) *Restrictions.* (1) No export or reexport to any individual or entity designated as a Specially Designated Terrorist or Foreign Terrorist Organization may be made under License Exception AGR (see part 744 of the EAR).

(2) No export or reexport to or for use in biological, chemical, nuclear warfare or missile proliferation activities may be made under License Exception AGR (see part 744 of the EAR).

(3) No U.S.-owned or controlled foreign firm may export from abroad to Cuba a foreign produced agricultural commodity containing more than 10% U.S.-origin content. Such U.S.-owned or controlled foreign firms require a specific license from BXA as well as the Department of the Treasury's Office of Foreign Assets Control (OFAC). Transactions not subject to the EAR (under 10% U.S.-origin content) require a license from OFAC.

(c) *Prior notification.* (1) *General requirement.* You must notify BXA prior to any export or reexport (or prior to the first of multiple shipments) under License Exception AGR.

(2) *Procedures.* You must provide prior notification of exports and reexports under License Exception AGR by submitting a completed Multipurpose Application Form (BXA–748P) or its electronic equivalent. The following blocks must be completed, as appropriate, on the Multipurpose Application Form: Blocks 1, 2, 3, 4, 5 (by marking box 5 "Other"), 14, 16, 17, 18, 19, 21, 22 (a), (e), (f), (g), (h), (i), (j), 23, and 25 according to the instructions described in Supplement No. 1 to part 748 of the EAR. If your commodity is fertilizer, western red cedar or live horses, you must confirm that BXA has previously classified your commodity as EAR99 by placing the Commodity Classification Automatic Tracking System (CCATS) number in block 22(d). BXA will not initiate the registration of an AGR notification unless all requested information on the Multipurpose Application form is complete.

(3) *Action by BXA.* Within two business days of the registration of the AGR notification, BXA will refer the notification for interagency review, or if necessary return the notification without action (e.g., if the information provided is incomplete). Registration is defined as the point at which the notification is entered into BXA's electronic system.

(4) *Review by other departments or agencies.* The Departments of Defense, State, and other agencies, as appropriate, may review the AGR notification. BXA must receive department or agency objections within nine business days of the referral. Unlike the provisions described in § 750.4(b) of the EAR, there are no provisions for stopping the processing time of the AGR notification. If, within 11 business days after the date of registration, any reviewing agency provides a written objection that the recipient may promote international terrorism or the transaction raises nonproliferation concerns, you may not use License Exception AGR. In such cases, BXA will notify you that a license is required for the export or reexport. BXA will then process the AGR notification as a license application in accordance with the provisions described in § 750.4 of the EAR, and the licensing policies set forth in the EAR. At this time, BXA may request additional information. When BXA confirms that no agency has raised an objection within eleven business days (as described in paragraph (c)(5) of this section), you may proceed with the transaction provided that you satisfy all other requirements of License Exception AGR, including the requirement to have a written contract prior to any shipment (unless a donation or commercial sample). (Note that the fact that you have been advised that no agency has objected to the transaction does not exempt you from other licensing requirements under the EAR, such as those based on knowledge of a prohibited end-use or end-user as referenced in general prohibition five (part 736 of the EAR) and set forth in part 744 of the EAR.)

(5) *Status of pending AGR notification requests.* You must contact BXA's System for Tracking Export License Applications ("STELA") at (202) 482–2752 for status of your pending AGR notification. (See § 750.5 of the EAR for procedures to access information on STELA.) STELA will provide the date of registration of the AGR notification. If no department or agency objection is raised within 11 business days, STELA will, on the twelfth business day following the date of registration, provide you with confirmation of that fact. You may not proceed with your shipment unless you confirm with STELA that no objection has been raised. BXA will subsequently issue written confirmation to you. If an objection is raised, STELA will indicate that a license is required. The AGR notification will then be processed as a license application. In addition, BXA may provide notice of an objection by telephone, fax, courier service, or other means.

(d) *Donations.* (1) Donations of agricultural commodities are eligible for export and reexport to Cuba under License Exception AGR, provided the transaction meets the requirements and procedures of this license exception (except the written contract requirement).

(2) Donations of food items to non-governmental organizations (NGOs) and individuals in Cuba may also be eligible for License Exception GFT. See § 740.12 for eligibility requirements of gift

parcels and humanitarian donations under License Exception GFT.

PART 742—[AMENDED]

8. § 742.8 is amended by revising the phrase "(c)(6) through (c)(41)" in paragraph (a)(4)(ii) to read "(c)(6) through (c)(43)".

9. § 742.9 is amended by revising the phrase "(c)(22) through (c)(41)" in paragraph (a)(3)(ii) to read "(c)(22) through (c)(43)" and by adding new paragraph (b)(1)(viii) to read as follows:

§ 742.9 Anti-terrorism: Syria.

* * * * *

(b) * * *

(1) * * *

(viii) Ammonium nitrate, including certain fertilizers containing ammonium nitrate, controlled under ECCN 1C997.

* * * * *

10. § 742.10 is amended by revising the phrase "(c)(16) through (c)(41)" in paragraph (a)(4)(ii) to read "(c)(16) through (c)(43)" and by adding new paragraph (b)(1)(ix) to read as follows:

§ 742.10 Anti-terrorism: Sudan.

* * * * *

(b) * * *

(1) * * *

(ix) Ammonium nitrate, including certain fertilizers containing ammonium nitrate, controlled under ECCN 1C997.

* * * * *

11. § 742.19 is amended by adding new paragraph (b)(1)(xviii) to read as follows:

§ 742.19 Anti-terrorism: North Korea.

* * * * *

(b) * * *

(1) * * *

(xviii) Ammonium nitrate, including certain fertilizers containing ammonium nitrate, controlled under ECCN 1C997.

* * * * *

12. Supplement No. 2 to Part 742 is amended by revising paragraph (b)(3)(ii) and adding paragraph (c)(43) to read as follows:

Supplement No. 2 to Part 742—Anti-Terrorism Controls: Iran, North Korea, Syria and Sudan Contract Sanctity Dates and Related Policies

* * * * *

(b) * * *

(3) * * *

(ii) The following items to all end-users: for Iran, items in paragraphs (c)(6) through (c)(43) of this Supplement; for North Korea, items in paragraph (c)(6) through (c)(44) of this Supplement; for Sudan, items in paragraphs (c)(6) through (c)(14), and (c)(16) through (c)(43) of this Supplement; and for Syria, items in paragraphs (c)(6) through (c)(8), (c)(10) through (c)(14), (c)(16) through (c)(19), and (c)(22) through (c)(43) of this Supplement.

(c) * * *

(43) Ammonium nitrate, including certain fertilizers containing ammonium nitrate, under ECCN 1C997 on the CCL.

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(ii) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: June 15, 2001.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied.

(iv) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: June 15, 2001.

* * * * *

PART 746—[AMENDED]

13. Section 746.2 is amended by adding paragraph (a)(1)(xii), by revising paragraphs (b)(1) introductory text, (b)(3)(iii)(B), (b)(3)(iii)(D) and (b)(4)(iii), by redesignating paragraph (d) as (e), and by adding new paragraph (d), and by revising redesignated paragraph (e) to read as follows:

§ 746.2 Cuba.

(a) * * *

(1) * * *

(xii) Exports of agricultural commodities, classified as EAR99, under License Exception Agricultural Commodities (AGR) and certain reexports of U.S. origin agricultural commodities, classified as EAR99, under License Exception AGR (see § 740.18 of the EAR).

* * * * *

(b) * * *

(1) *Medicines and Medical Devices.* Applications to export medicines and medical devices as defined in part 772 of the EAR will generally be approved, except:

* * * * *

(3) * * *

(iii) * * *

(B) Your transaction involves the export of foreign-produced medicines or medical devices incorporating U.S. origin parts, components or materials, in which case the application will be reviewed according to the provisions of paragraph (b)(1) of this section.

(C) * * *

(D) Your transaction is for the export of donated food to individuals or non-governmental organizations in Cuba and does not qualify as a humanitarian donation under License Exception GFT (§ 740.12 of the EAR) or License Exception AGR (§ 740.18 of the EAR).

(4) * * *

(iii) Exports of agricultural items, which are outside the scope of agricultural commodities as defined in part 772 of the EAR, such as insecticides, pesticides and herbicides, as well as agricultural commodities not eligible for License Exception AGR, require a license and will be reviewed on a case-by-case basis.

* * * * *

(d) *Definitions.* For purposes of this section, "U.S. person" means any person subject to the jurisdiction of the United States, as described in § 515.329 of the Cuban Assets Control Regulations (31 CFR 515.329).

(e) *Related controls.* OFAC maintains controls on the activities of persons subject to U.S. jurisdiction, wherever located, involving transactions with Cuba or any specially designated Cuban national, as provided in 31 CFR part 515. OFAC's Terrorism List Government Sanctions Regulations in 31 CFR part 596 prohibit U.S. persons from engaging in a financial transaction with the government of a designated state sponsor of international terrorism without OFAC authorization. The Department of State also implements sanctions on countries that are designated state sponsors of international terrorism. Exporters and reexporters should consult with those agencies for further guidance on these related controls.

14. Section 746.3 is amended by revising paragraph (a) introductory text to read as follows:

§ 746.3 Iraq.

(a) *License requirements.* OFAC administers an embargo against Iraq under the authority of the International Emergency Economic Powers Act of 1977, as amended, and the United Nations Participation Act of 1945, as amended, and in conformance with United Nations Security Council Resolutions. The applicable OFAC regulations, the Iraqi Sanctions Regulations, are found in 31 CFR part 575. You should consult with OFAC for authorization to export or reexport items subject to U.S. jurisdiction to Iraq, or to any entity owned or controlled by, or specially designated as acting for or on behalf of, the Government of Iraq. Please note that such applications will generally be denied by OFAC, absent a published policy stating otherwise. Under the EAR, you need a license to export or reexport to Iraq any item on the CCL containing a CB Column 1, CB

Column 2, CB Column 3, NP Column 1, NP Column 2, NS Column 1, NS Column 2, MT Column 1, RS Column 1, RS Column 2, CC Column 1, CC Column 2, CC Column 3 in the Country Chart Column of the License Requirements section of an ECCN, or classified under ECCNs 1C980, 1C981, 1C982, 1C983, 1C984, 1C997, 5A980, 0A980, 0A982, 0A983, 0A985, and 0E982; however, to avoid duplication, an authorization from OFAC constitutes authorization under the EAR, and no separate BXA authorization is necessary. No person may export or reexport any item subject to both the EAR and OFAC's Iraqi Sanctions Regulations without prior OFAC authorization. Exports and reexports subject to the EAR that are not subject to the Iraqi Sanctions Regulations may require authorization from BXA.

* * * * *

15. Section 746.7 is amended by adding a sentence to the end of the introductory paragraph, to read as follows:

§ 746.7 Iran.

* * * Exports and reexports subject to the EAR that are not subject to the Iranian Transactions Regulations may require authorization from BXA.

* * * * *

PART 772—[AMENDED]

16. Section 772.1 is amended by adding the definitions of "agricultural commodities", "medical devices", and "medicines" in alphabetical order, to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Agricultural commodities. Agricultural commodities include food (including processed food); feed; fish; shellfish and fish products; beer, wine and spirits; livestock; fiber including cotton, wool and other fibers; tobacco and tobacco products; wood and wood products; seeds; fertilizer and organic fertilizer; reproductive materials such as fertilized eggs, embryos and semen. For the purposes of the EAR, agricultural commodities do not include furniture made from wood; clothing manufactured from plant or animal materials; agricultural equipment (whether hand tools or motorized equipment); pesticides, insecticides, or herbicides; or cosmetics (unless derived entirely from plant materials).

Note 1: This definition of agricultural commodities includes fertilizer and organic fertilizer, as listed in section 775 of the 2001 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (Act) (Public Law 106–387) and commodities listed in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602) as incorporated in section 902 of the Act, as well as commodities determined by the Department of Agriculture to fall within the scope of section 102 of the 1978 Agricultural Trade Act.

Note 2: For purposes of License Exception AGR (see § 740.18 of the EAR), agricultural commodities also include vitamins, minerals, food additives and dietary supplements, and bottled water. These items do not fall within the scope of section 102 of the 1978 Agricultural Trade Act, but are treated as agricultural commodities for the purposes of License Exception AGR.

Note 3: For purposes of License Exception AGR and export license applications to Iran, Sudan and Libya under the licensing procedures set forth in the appropriate regulations promulgated and administered by Treasury's Office of Foreign Assets Control, agricultural commodities only include those that are classified as EAR99.

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Medical devices. For purposes of the EAR, medical devices are "devices" as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) including medical supplies, instruments, equipment, equipped ambulances, institutional washing machines for sterilization, and vehicles with medical testing equipment. Note that certain component parts and spares to be exported for incorporation into medical devices are on the Commerce Control List. Only items meeting the definition of "medical device" and that are classified as EAR99 are eligible for export to Iran, Libya and Sudan under the licensing procedures set forth in the appropriate regulations promulgated and administered by Treasury's Office of Foreign Assets Control.

Medicines. Medicines means "drug" as defined in section 201 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321). For purposes of the EAR, medicines includes prescription and over the counter medicines for humans and animals. Note that certain medicines, such as vaccines and immunotoxins, are on the Commerce Control List. Only items meeting the definition of "medicine" and that are classified as EAR99 are eligible for export to Iran, Libya and Sudan under the licensing procedures set forth in the appropriate regulations promulgated and administered by Treasury's Office of Foreign Assets Control.

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PART 774—[AMENDED]

17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and "Toxins" is amended by adding Export Control Classification Number (ECCN) 1C997 to read as follows:

1C997 Ammonium Nitrate, Including Fertilizers and Fertilizer Blends Containing More Than 15% by Weight Ammonium Nitrate, Except Liquid Fertilizers (Containing Any Amount of Ammonium Nitrate) or Dry Fertilizers Containing Less Than 15% by Weight Ammonium Nitrate

License Requirements

Reason for Control: AT.

Control(s)	Country chart
AT applies to entire entry.	AT Column 1 and Iraq

License Exceptions

LVS: N/A.
GBS: N/A.
CIV: N/A.

List of Items Controlled

Unit: Kilograms.
Related Controls: N/A.
Related Definitions: N/A.
Items: The list of items controlled is contained in the ECCN heading.

Dated: July 9, 2001.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 01–17465 Filed 7–10–01; 11:02 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR parts 515, 538, 550, and 560

Exports of Agricultural Products, Medicines, and Medical Devices to Cuba, Sudan, Libya, and Iran; Cuba Travel-Related Transactions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim rule with request for comments; amendments.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is issuing and amending regulations to implement the Trade Sanctions Reform and Export Enhancement Act of 2000, Title IX of Public Law 106–387 (October 28, 2000). These regulations amend the licensing

provisions of the Cuban Assets Control Regulations, the Sudanese Sanctions Regulations, the Libyan Sanctions Regulations, and the Iranian Transactions Regulations, 31 CFR parts 515, 538, 550, and 560, respectively, as they relate to the exportation and reexportation from the U.S. or by U.S. persons of agricultural commodities, medicine, or medical devices to Cuba, Sudan, Libya, and Iran. These regulations also amend the Cuban Assets Control Regulations with respect to Cuba travel-related transactions.

DATES: *Effective Date:* July 26, 2001.

Comments: Written comments must be received no later than September 10, 2001. Comments should be sent to David W. Mills, Chief, Policy Planning and Program Management Division, Room 2176 Main Treasury Annex, 1500 Pennsylvania Ave. N.W., Washington, DC 20220 or via OFAC's website (http://www.treas.gov/ofac).

FOR FURTHER INFORMATION CONTACT: Dennis P. Wood, Chief of Compliance Programs, tel.: 202/622–2490, Steven I. Pinter, Acting Chief of Licensing, tel.: 202/622–2480, or Barbara C. Hammerle, Acting Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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Background

The Trade Sanctions Reform and Export Enhancement Act of 2000, Title IX of Public Law 106–387 (October 28, 2000) (the "TSRA"), provides that the President shall terminate any unilateral agricultural sanction or unilateral medical sanction in effect as of the date of enactment of the TSRA. The TSRA does not direct the termination of any unilateral agricultural sanction or unilateral medical sanction that prohibits, restricts, or conditions the provision or use of any agricultural commodity, medicine, or medical device that is controlled on the United States Munitions List, controlled on any control list established by the Export Administration Act of 1979 or any successor statute, or used to facilitate the development or production of chemical or biological weapons or weapons of mass destruction. Exporters should consult the Department of Commerce, Bureau of Export Administration ("BXA"), to determine whether a particular item is controlled under specific Export Commodity Control Number ("ECCN") on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (the "CCL").

Section 906 of the TSRA further requires that the export of agricultural commodities, medicine, or medical devices to Cuba or to the government of a country that has been determined by the Secretary of State, under Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)), to have provided support repeatedly for acts of international terrorism, or to any other entity in such a country, shall only be made pursuant to one-year licenses issued by the United States Government. The governments of Cuba, Sudan, Libya, and Iran have been designated as supporting international terrorism pursuant to section 6(j) of the Export Administration Act of 1979.

These regulations amend the Cuban Assets Control Regulations, 31 CFR part 515 ("CACR"), the Sudanese Sanctions Regulations, 31 CFR part 538 (the "SSR"), the Libyan Sanctions Regulations, 31 CFR part 550 (the "LSR"), and the Iranian Transactions Regulations, 31 CFR part 560 (the "ITR"), to implement the TSRA as required. The Department of Treasury's Office of Foreign Assets Control ("OFAC") has endeavored to implement the TSRA in a way that is consistent with both the statutory language and the intent of its drafters and in a manner that also provides exporters with an efficient and expedited process for engaging in authorized exports of agricultural commodities, medicine, and medical devices. Following this approach, OFAC is applying the licensing procedures required by section 906 of the TSRA to all exports and reexports of agricultural commodities, medicine, and medical devices to Sudan, Libya, and Iran that are within the current scope of OFAC's licensing jurisdiction. Similarly, OFAC is applying this licensing procedure to cover exports to the governments of Sudan, Libya, and Iran, any entities in these countries, and individuals in these countries, as well as to persons in third countries purchasing specifically for resale to any of the foregoing.

Cuban Assets Control Regulations. This rule implements the TSRA with respect to the Cuban Assets Control Regulations, 31 CFR part 515 (the "CACR"), in the following ways:

With respect to exports from the United States to Cuba, § 515.533 of the CACR already provides a general license for transactions incident to exportations that are licensed or otherwise authorized by the Department of Commerce. As was the case prior to enactment of the TSRA, exporters seeking to export items from the United States to Cuba should seek authorization from the Commerce Department, which is also amending its regulations to implement the TSRA.

OFAC is amending § 515.533 to clarify that reexports of U.S.-origin items by persons subject to U.S. jurisdiction are also covered by this general license. Thus, overseas persons subject to U.S. jurisdiction that wish to reexport U.S.-origin items to Cuba are authorized to do so provided the reexport is licensed or otherwise authorized by the Commerce Department.

OFAC is also amending § 515.533 to clarify the general restrictions on financing sales of licensed items to Cuba and to implement the special financing restrictions with respect to licensed agricultural sales to Cuba contained in Section 908(b) of the TSRA. The new language slightly expands the payment and financing terms that may be used in agricultural sales to Cuba from those that previously existed.

Although § 515.207 of the CACR prohibits the entry into U.S. ports by vessels engaged in Cuban commerce, § 515.550 already provides a waiver for those vessels engaged in trade with Cuba that is licensed or otherwise exempt. Thus, vessels carrying exports or reexports of agricultural commodities, medicine, or medical supplies that have been licensed or otherwise authorized by the Commerce Department will be permitted to enter U.S. ports, provided they have not carried unlicensed and non-exempt cargo or persons to or from Cuba and provided they are not currently carrying unauthorized goods in which Cuba or a

Cuban national has an interest. A short note referencing this waiver is added to the end of § 515.207, which contains the prohibition on vessel entry.

Section 1706(a)(1) of the Cuban Democracy Act of 1992, 106 Stat. 2575, prohibits the issuance of licenses authorizing U.S.-owned or controlled foreign firms to engage in transactions related to the exportation to Cuba of commodities produced outside of the United States. OFAC is amending the Note to § 515.559 to make clear that U.S.-owned or controlled foreign firms may, however, be authorized to engage in the reexport of U.S.-origin items to Cuba pursuant to § 515.533. Otherwise, the provisions of § 515.559 remain unchanged.

With respect to section 910(a) of the TSRA, which authorizes Cuba travel-related transactions regarding the commercial sale of agricultural commodities, § 515.533(e) of the CACR already states that specific licenses may be issued on a case-by-case basis authorizing Cuba travel-related transactions directly incident to marketing, sales negotiation, accompanied delivery, and servicing of exports and reexports that appear consistent with the export and reexport licensing policy of the Commerce Department. A prospective exporter does not need to obtain a license from the Commerce Department before applying for such a travel license provided that the proposed exports or reexports clearly fit within current Commerce licensing policy. Section 515.560(b) of the CACR is amended to implement section 910(b) of the TSRA.

Sudanese Sanctions Regulations ("SSR"), Libyan Sanctions Regulations ("LSR"), Iranian Transaction Regulations ("ITR"). With respect to the SSR, LSR, and ITR, this rule is intended to establish an expedited process for the issuance of the one-year license required by section 906 of the TSRA. This rule also is intended to clarify the agricultural commodities, medical devices, and medicines covered by the new licensing provisions in these regulations. The Department of Treasury's Office of Foreign Assets Control ("OFAC") will put in place expedited procedures to respond to requests for licenses to export agricultural commodities, medicine, and medical devices to Sudan, Libya, and Iran. Exporters of all fertilizers, live horses, western red cedar, and medical devices require commodity classification from the Department of Commerce, Bureau of Export Administration ("BXA") certifying that the product is EAR 99 included with the exporter's license request to OFAC. See, 15 CFR 748.3 for instructions for submitting commodity classifications. However, BXA will publish on its website at www.bxa.doc.gov/Regulations/Trade Sanctions ReformExport EnhancementAct.html a list of medical supplies, such as syringes, bandages, gauze and similar items, that *do not* require BXA commodity classification prior to submitting a license application to OFAC. When submitting a license request to OFAC under its expedited review procedures, exporters must indicate to OFAC that their medical supply is on the BXA medical supply list on BXA's website. Otherwise, exporters must provide OFAC with a copy of the BXA commodity classification for those medical devices that BXA has classified as EAR99. BXA's website will also include a list of medicines that are not EAR 99 and, therefore, not eligible for exportation under these rules.

The expedited process will include, when appropriate, referral of the one-year license request to other government agencies for guidance in evaluating the request. If no government agency raises an objection to or concern with the application within nine business days from the date of any such referral, OFAC will issue the one-year license, provided that the request otherwise meets the requirements set forth in this rule. If any government agency raises an objection to the request within nine business days from the date of referral, OFAC will deny the request for the one-year license. If any government agency raises a concern short of an objection with the request within nine business days from the date of referral, OFAC will delay its response to the license request for no more than thirty additional days to allow for further review of the request.

The TSRA defines *agricultural commodities* by reference to the meaning given to that term in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602). This definition includes food commodities, feed, fish, shellfish and fish products, beer, wine and spirits, soft drinks, livestock, fiber, including cotton, wool, and other fibers, tobacco and tobacco products, wood and wood products (including lumber and utility poles), seeds, and reproductive materials such as fertilized eggs, embryos, and semen. It also includes certain fertilizers and organic fertilizers that are not otherwise controlled. The term *agricultural commodities* does not include furniture made from wood, clothing manufactured from plant or animal materials, agricultural equipment (whether hand tools or motorized equipment), pesticides, insecticides, herbicides, or cosmetics (unless derived entirely from plant materials). Exporters may consult the Department of Agriculture website at http://www.fas.usda.gov for assistance in determining whether a particular item meets the definition of *agricultural commodities* under the Agricultural Trade Act. Although the definition of *agricultural commodities* under the TSRA does not include vitamins and minerals, food additives or supplements, or bottled drinking water, OFAC will include such items in the definition of *agricultural commodities* for the purposes of this rule. An Official Commodity Classification of EAR 99 obtained from BXA is required to be submitted with the exporter's request to OFAC for a one-year license to export to Sudan, Libya, or Iran fertilizers, live horses, or western red cedar. An Official Commodity Classification from BXA *is not* required to be submitted with the exporter's request for a one-year license to export to Sudan, Libya, or Iran any other agricultural commodity. *See*, 15 CFR 745.3 for instructions for obtaining an Official Commodity Classification of EAR 99 from BXA.

The TSRA defines the terms *medicine* and *medical device* by adopting the definitions of drug and device set forth in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). These definitions include prescription medicines and over-the-counter medicines for humans and animals that are classified as EAR 99. They also include medical supplies, instruments, equipment, and equipped ambulances that are so classified. They do not include general-purpose furniture and equipment (such as desks, tables, lamps, and office computers) used in medical offices and waiting rooms. Exporters may consult with the Food and Drug Administration for assistance in determining whether a particular item meets the definition of drug or device under the Federal Food, Drug, and Cosmetic Act. Although most medicines and medical devices are classified under the Export Administration Regulations, 15 CFR part 774, as EAR 99, certain vaccines, biological and chemical products, medical devices and parts for such devices are listed on the CCL and are not eligible for export under this rule. Exporters must have an Official Commodity Classification of EAR 99 from BXA for all medical devices (including supplies) prior to submitting a license request to OFAC, unless the item is specifically listed on BXA's website at *www.bxa.doc.gov/Regulations/TradeSanctionsReform*

ExportEnhancementAct. This list identifies those medical supplies, such as syringes, bandages, gauze and similar items, that *do not* require BXA classification prior to submitting a license application to OFAC. When submitting a license request to OFAC under its expedited review procedures, exporters must indicate to OFAC that their medical supply is listed on the BXA medical supply list on BXA's website. Otherwise, exporters must provide OFAC with a copy of the BXA Official Commodity Classification of EAR 99 for those medical devices not listed on the BXA website. *See*, 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BXA.

In addition, BXA has identified on its website a list of medicines that are on the CCL and not eligible for OFAC's expedited review procedures. When submitting a license application to OFAC under its expedited review procedures, exporters must indicate to OFAC that their medicine is not on the BXA medicine list on BXA's website, in other words, that it is classified as EAR 99. If exporters are unsure of whether their medicine is on the CCL, they should seek an Official Commodity Classification from BXA confirming that their medicine is classified as EAR99 prior to submitting a license request to OFAC under its expedited review procedures. See, 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BXA.

Sections 538.523, 550.569, and 560.530 set forth procedures and requirements for requesting and obtaining these one-year licenses. Incomplete requests will be returned to the requestor without action and without prejudice.

These amendments to the SSR, LSR, and ITR also grant by general license the authority for sellers to respond to public tenders on an executory basis, negotiate and sign executory contracts, and make necessary shipping and financing arrangements, not otherwise specifically prohibited by Chapter V of 31 CFR, for the exportation to Libya and the exportation or reexportation to Sudan and Iran of agricultural commodities, medicine, and medical devices. Before the actual exportation to Libya or exportation or reexportation to Sudan or Iran takes place, prospective exporters must obtain a one-year license issued by the Department of the Treasury upon a determination that such exports are covered by the TSRA and are not exports to any entity within Sudan, Libya, or Iran promoting international terrorism.

Specific licenses issued prior to the effective date of this rule authorizing the performance of executory contracts for the sale of agricultural commodities, medicine, or medical equipment shall remain in effect until the expiration date specified in the license or the first anniversary of the effective date of this rule, whichever comes first. However, after the effective date of this rule, new contracts for the exportation of agricultural commodities, medicine, or medical devices may be entered into only pursuant to the terms of, and as authorized by, this new rule.

Specific licenses issued prior to the effective date of this rule authorizing the sale and exportation or reexportation of bulk agricultural commodities listed in Appendix A to 31 CFR parts 538 and 550 and Appendix B to 31 CFR part 560 shall remain in effect solely to permit completion of performance of contracts already entered into prior to the effective date of this rule pursuant to the license. As of the effective date of this rule, new contracts for the exportation of bulk agricultural commodities may be entered into only pursuant to the terms of, and as authorized by, this new rule.

Nothing in this rule, however, affects prohibitions on the exportation of any agricultural commodity, medicine, or medical device listed on the CCL. Moreover, nothing in this rule affects prohibitions on the sale or supply of U.S. equipment, technology, or software used to manufacture agricultural commodities, medicine, or medical devices, such as technology to design or produce biotechnological items or medical devices. This rule does not affect U.S. nonproliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

This rule amends the SSR, LSR, and ITR in the following ways:

The amendments to §§ 538.523, 550.569, and 560.530 of these regulations implement section 906 of the Act by amending current sanctions against Sudan, Libya, and Iran to require that all exports of covered agricultural products, medicine, and medical devices to the governments of these countries or any entities in these countries be authorized by one-year licenses issued by the Department of the Treasury. These one-year licenses will authorize the exporter to engage in the exportation or reexportation of the licensed products for up to one year from the date of signing of any contract that is entered into during the one-year period of the license.

The amendments to §§ 538.523, 550.569, and 560.530 of these regulations further implement section 906 of the Act by providing exporters a general license to engage in certain transactions relating to the sale and exportation of covered items to Sudan, Libya, or Iran prior to obtaining the one-year license, such as responding to public tenders on an executory basis, negotiating and signing executory contracts or other agreements capable of acceptance, making shipping arrangements, obtaining insurance, and arranging financing, to the extent not otherwise prohibited by Chapter V of 31 CFR. The one-year licenses will also authorize the performance of executory contracts entered into pursuant to the general license. The amendments specify that any executory contracts entered into prior to obtaining the one-year license will be deemed to have been entered into on the date the one-year license is issued for the purpose of determining the beginning of the 12-month period during which exports may be shipped.

The amendments to §§ 538.523, 550.569, and 560.530 of these regulations also implement section 906 of the Act by providing procedures for requesting, and for the issuance of, the one-year licenses.

Sections 538.526, 550.572, and 560.533 are amended to extend the general license for U.S. persons to broker sales of bulk agricultural commodities by U.S. persons to include the provision of brokerage services on behalf of U.S. persons for sales of all agricultural commodities, medicines, and medical devices as defined by §§ 538.523, 550.569, and 560.530.

Clarifying amendments are made to §§ 538.205, 538.211, 538.405, 550.306, 550.318, 550.405, and 560.405.

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the "APA") requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close September 10, 2001. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after

the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary nature or for any other reason, and it will return such submission to the originator without considering them in the development of final regulations. In the interest of accuracy and completeness, the Department requires comments in written form.

All public comments on these regulations will be a matter of public record. Copies of the public record concerning these regulations will be made available, not sooner than October 10, 2001 and may be obtained from OFAC's website (http://www.treas.gov/ofac). If that service is unavailable, written requests for copies may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW Washington, DC 20220, Attn: Merete Evans.

Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously approved by the Office of Management and Budget ("OMB") under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects

31 CFR Part 515

Administrative practice and procedure, Agricultural commodities, Banks, Banking, Cuba, Drugs, Exports, Foods, Foreign trade, Imports, Information, Investments, Loans, Medical devices, Medicine, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

31 CFR Part 538

Administrative practice and procedure, Agricultural commodities, Banks, Banking, Drugs, Exports, Foods, Foreign trade, Imports, Information, Investments, Libya, Loans, Medical devices, Medicine, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

31 CFR Part 550

Administrative practice and procedure, Agricultural commodities, Banks, Banking, Drugs, Exports, Foods, Foreign trade, Imports, Information, Investments, Iran, Loans, Medical devices, Medicine, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

For the reasons set forth in the preamble, 31 CFR chapter V, parts 515, 538, 550, and 560 are amended as follows:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

Authority

1. Revise the authority citation for 31 CFR part 515 to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart B—Prohibitions

2. Amend § 515.207 by adding a note to the end of the section to read as follows:

§ 515.207 Entry of vessels engaged in trade with Cuba.

* * * * *

Note to § 515.207: For the waiver of the prohibitions contained in this section for certain vessels engaged in licensed or exempt trade with Cuba, see § 515.550.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

3. Revise the heading and paragraphs (a) and (e) and remove paragraph (f) of § 515.533 to read as follow:

§ 515.533 Transactions incident to exportations from the United States and reexportations of U.S.-origin items to Cuba.

(a) All transactions ordinarily incident to the exportation of goods, wares, and merchandise from the United States, or the reexportation of U.S.-origin goods, wares, and merchandise from a third country, to any person within Cuba are hereby authorized, provided the following terms and conditions are complied with:

(1) The exportation or reexportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420) (see the Export Administration Regulations, 15 CFR 730–774); and

(2) Only the following payment or financing terms may be used:

(i) Payment of cash in advance;

(ii) For authorized sales of agricultural items, financing by a banking institution located in a third country provided the banking institution is not a designated national, United States citizen, United States permanent resident alien, or an entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches). Such financing may be confirmed or advised by a United States banking institution; or

(iii) For all other authorized sales, financing by a banking institution located in a third country provided the banking institution is not a designated national or a person subject to the jurisdiction of the United States. Such financing may be confirmed or advised by a United States banking institution.

* * * * *

(e) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to the marketing, sales negotiation, accompanied delivery, or servicing of exports or reexports that are consistent with the export or reexport licensing policy of the Department of Commerce.

* * * * *

4. Revise the heading of § 515.559 and the Note to § 515.559 to read as follows:

§ 515.559 Certain transactions by U.S.-owned or controlled foreign firms with Cuba.

* * * * *

Note to § 515.559: For reexportation of U.S.-origin goods, wares, or merchandise by U.S.-owned or controlled foreign firms, see § 515.533. Transactions by U.S.-owned or controlled foreign firms directly incident to the exportation of information or informational materials or the donation of

food to nongovernmental entities or individuals in Cuba are exempt from the prohibitions of this part. See § 515.206. For the waiver of the prohibitions contained in § 515.207 with respect to vessels transporting shipments of goods, wares, or merchandise pursuant to this section, see § 515.550.

5. Revise paragraph (b) of § 515.560 to read as follows:

§ 515.560 Travel-related transactions to, from, and within Cuba by persons subject to the jurisdiction of the United States.

* * * * *

(b) Effective October 28, 2000, no specific licenses will be issued authorizing the travel-related transactions in paragraph (c) of this section in connection with activities other than those referenced in paragraph (a) of this section.

* * * * *

PART 538—SUDANESE SANCTIONS REGULATIONS

Authority

1. Revise the authority citation for 31 CFR part 538 to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2339B, 2332d; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 106–387, 114 Stat. 1549; E.O. 13067, 62 FR 59989; 3 CFR, 1997 Comp., p. 230.

Subpart B—Prohibitions

2. Revise § 538.205 to read as follows:

§ 538.205 Prohibited exportation and reexportation of goods, technology, or services to Sudan.

Except as otherwise authorized, the exportation or reexportation, directly or indirectly, to Sudan of any goods, technology (including technical data, software, or other information) or services from the United States or by a United States person, wherever located, or requiring the issuance of a license by a Federal agency, is prohibited.

3. Amend § 538.211 to redesignate paragraphs (b) through (e) as paragraphs (c) through (f) and to add a new paragraph (b) to read as follows:

§ 538.211 Exempt transactions.

* * * * *

(b) *Humanitarian donations.* The prohibitions of this part do not apply to donations by United States persons of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering.

* * * * *

Subpart D—Interpretations

4. Amend § 538.405 by revising paragraph (b) to read as follows:

§ 538.405 Transactions incidental to a licensed transaction authorized.

* * * * *

(b) Provision of any transportation services to or from Sudan not explicitly authorized in or pursuant to this part other than loading, transporting, and discharging licensed or exempt cargo there.

* * * * *

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

5. Revise § 538.523 to read as follows:

§ 538.523 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical devices.

(a) *One-year license requirement.* The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix A to this part 538), medicine, or medical devices to the Government of Sudan, any entity in Sudan, individuals in Sudan, or persons in third countries purchasing specifically for resale to any of the foregoing, shall only be made pursuant to a one-year license issued by the U.S. Department of the Treasury, Office of Foreign Assets Control, for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract. No license will be granted for the exportation or reexportation of agricultural commodities, medicine, or medical equipment to any entity or individual in Sudan promoting international terrorism. Executory contracts entered into pursuant to paragraph (b)(2) of this section prior to the issuance of the one-year license described in this paragraph shall be deemed to have been signed on the date of issuance of that one-year license (and, therefore, the exporter is authorized to make shipments under that contract within the 12-month period beginning on the date of issuance of the one-year license).

(b) *General license for arrangement of exportation or reexportation of covered products.*

(1) The making of shipping arrangements, cargo inspection, obtaining of insurance, and arrangement of financing (consistent with § 538.525) for the exportation or reexportation of agricultural commodities, medicine, or medical devices to the Government of Sudan, entities in Sudan, individuals in Sudan, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized.

(2) If desired, entry into executory contracts (including executory pro forma invoices, agreements in principle, or executory offers capable of acceptance such as bids in response to public tenders) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to the Government of Sudan, entities in Sudan, individuals in Sudan, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized, provided that performance of an executory contract is expressly made contingent upon the prior issuance of the one-year license described in paragraph (a) of this section.

(c) *Instructions for obtaining one-year licenses.* In order to obtain the one-year license described in paragraph (a), the exporter must provide to the Office of Foreign Assets Control:

(1) The applicant's full legal name (if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business).

(2) The applicant's mailing and street address (so that OFAC may reach a responsible point of contact, the applicant should also include the name of the individual(s) responsible for the application and related commercial transactions along with their telephone and fax numbers and, if available, email addresses).

(3) The names, mailing addresses, and if available, fax and telephone numbers of all parties with an interest in the transaction. If the goods are being exported or reexported to a purchasing agent in Sudan, the exporter must identify the agent's principals at the wholesale level for whom the purchase is being made. If the goods are being exported or reexported to an individual, the exporter must identify any organizations or entities with which the individual is affiliated that have an interest in the transaction.

(4) A description of all items to be exported or reexported pursuant to the requested one-year license, including a statement that the item is classified as EAR 99, and, if necessary, documentation sufficient to verify that the items to be exported or reexported are classified as EAR 99 and do not fall within any of the limitations contained in paragraph (d) of this section.

(5) An Official Commodity Classification of EAR 99 issued by the Department of Commerce, Bureau of Export Administration ("BXA"), certifying that the product is EAR 99 is required to be submitted to OFAC with the request for a license authorizing the exportation or reexportation of all fertilizers, live horses, western red cedar, and medical devices other than basic medical supplies, such as

syringes, bandages, gauze and similar items, that are specifically listed on BXA's website, *www.bxa.doc.gov/Regulations/Trade Sanctions ReformExport EnhancementAct.html*. Medical supplies that are specifically listed on BXA's website do not require an Official Commodity Classification of EAR 99 from BXA. BXA will also provide a list on its website of medicines that are ineligible for a one-year license under these procedures. If an exporter is uncertain whether the medicine to be exported is eligible, they should seek an Official Commodity Classification of EAR 99 from BXA and submit a copy to OFAC. See, 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BXA.

(d) *Limitations.*

(1) Nothing in this section or in any license issued pursuant to paragraph (a) of this section relieves the exporter from compliance with the export license application requirements of another Federal agency.

(2) Nothing in this section or in any license issued pursuant to paragraph (a) of this section authorizes the exportation or reexportation of any agricultural commodity, medicine, or medical device controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); controlled on any control list established under the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 et seq.; or used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.

(3) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects prohibitions on the sale or supply of U.S. technology or software used to manufacture agricultural commodities, medicine, or medical devices, such as technology to design or produce biotechnological items or medical devices.

(4) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects U.S. nonproliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

(5) This section does not apply to any transaction or dealing involving property blocked pursuant to this chapter or to any other activity prohibited by this chapter that is not otherwise authorized in this part.

(e) *Covered items.* For the purposes of this part, agricultural commodities, medicine, and medical devices are defined below.

(1) *Agricultural commodities.* For the purposes of this section, agricultural commodities are:

(i) Products that are not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, and that fall within the term "agricultural commodity" as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, that are intended for ultimate use in Sudan as:

(A) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* For the purposes of this section, the term medicine has the same meaning given the term "drug" in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(3) *Medical device.* For the purposes of this section, the term medical device has the meaning given the term "device" in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(f) *Transition period.*

(1) Specific licenses issued prior to July 26, 2001 authorizing the performance of executory contracts for the sale of agricultural commodities, medicine, or medical equipment shall remain in effect until the expiration date specified in the license or July 26, 2002, whichever comes first. However, after July 26, 2001, new contracts for the exportation of agricultural commodities, medicine, or medical devices may be entered into only pursuant to the terms of, and as authorized by, this part.

(2) Specific licenses issued prior to July 26, 2001 authorizing the sale and exportation or reexportation of bulk agricultural commodities listed in Appendix A to 31 CFR parts 538 and 550 and Appendix B to 31 CFR part 560 shall remain in effect solely to permit completion of performance of contracts already entered into prior to July 26, 2001 pursuant to the license. As of July 26, 2001, new contracts for the exportation of bulk agricultural commodities may be entered into only pursuant to the terms of, and as authorized by, this part.

§ 538.524 [removed and reserved]

6. Remove and reserve § 538.524.

7. Amend § 538.525 to revise the heading and paragraph (d) and to add a new paragraph (e) to read as follows:

§ 538.525 Payment for and financing of commercial sales of agricultural commodities, medicine, and medical equipment.

* * * * *

(d) *Transfers through the U.S. financial system.* Before a United States financial institution initiates a payment on behalf of any customer, or credits a transfer to the account on its books of the ultimate beneficiary, the United States financial institution must determine that the underlying transaction is not prohibited by this part. Any payment relating to a transaction authorized in or pursuant to § 538.523 or § 538.526 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the blocking or rejection of the transfer.

(e) Notwithstanding any other provision of this part, no commercial exportation to Sudan may be made with United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees absent a Presidential waiver.

8. Amend § 538.526 to revise the heading and paragraphs (a), (b) introductory text, (b)(1) and (b)(2) to read as follows:

§ 538.526 Brokering sales of agricultural commodities, medicine, and medical devices.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to provide brokerage services on behalf of U.S. persons for the sale and exportation or reexportation by United States persons of agricultural commodities, medicine, and medical devices, provided that the sale and exportation or reexportation is authorized by a one-year license issued pursuant to § 538.523.

(b) *Specific licensing for brokering sales by non-U.S. persons of bulk agricultural commodities.* Specific licenses may be issued on a case-by-case

basis to permit United States persons to provide brokerage services on behalf of non-United States, non-Sudanese persons for the sale and exportation or reexportation of bulk agricultural commodities to the Government of Sudan, entities in Sudan or individuals in Sudan. Specific licenses issued pursuant to this section will authorize the brokering only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix A to this part 538;

(2) Are to purchasers permitted pursuant to § 538.523;

Note to paragraph (b)(2): Requests for specific licenses to provide brokerage services under this paragraph must include all of the information described in § 538.523(c).

* * * * *

PART 550—LIBYAN SANCTIONS REGULATIONS

Authority

1. Revise the authority citation for 31 CFR part 550 to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 287c, 2349aa–8 and 2349aa–9; 31 U.S.C. 321(b); 49 U.S.C. 40106(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 12543, 51 FR 875; 3 CFR, 1986 Comp., p. 181; E.O. 12544, 51 FR 1235, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 57 FR 14319 3 CFR, 1992 Comp., p. 294.

Subpart C—Definitions

2. Revise § 550.206 to read as follows:

§ 550.306 Person.

The term *person* means an individual or entity.

3. Revise § 550.308 to read as follows:

§ 550.308 United States person.

The term *United States person*, or as abbreviated, *U.S. person*, means any United States citizen, permanent resident alien, juridical person authorized under the laws of the United States (including foreign branches), or any person in the United States.

4. Revise § 550.318 to read as follows:

§ 550.318 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, or other organization.

Subpart D—Interpretations

5. Amend § 550.405 to revise paragraph (b) to read as follows:

§ 550.405 Transactions incidental to a licensed transaction authorized.

* * * * *

(b) Provision of any transportation services to or from Libya not explicitly authorized in or pursuant to this part other than loading, transporting, and discharging licensed or exempt cargo there.

* * * * *

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

6. Revise § 550.569 to read as follows:

§ 550.569 Commercial sales and exportation of agricultural commodities, medicine, and medical devices.

(a) *One-year license requirement.* The exportation of agricultural commodities (including bulk agricultural commodities listed in appendix A to this part 550), medicine, or medical devices to the Government of Libya, any entity in Libya, individuals in Libya, or persons in third countries purchasing specifically for resale to any of the foregoing, shall only be made pursuant to a one-year license issued by the United States Department of the Treasury, Office of Foreign Assets Control, for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract. No license will be granted for the exportation of agricultural commodities, medicine, or medical equipment to any entity or individual in Libya promoting international terrorism. Executory contracts entered into pursuant to paragraph (b)(2) of this section prior to the issuance of the one-year license described in this paragraph shall be deemed to have been signed on the date of issuance of that one-year license (and, therefore, the exporter is authorized to make shipments under that contract within the 12-month period beginning on the date of issuance of the one-year license).

(b) *General license for arrangement of exportation of covered products.*

(1) The making of shipping arrangements, cargo inspection, obtaining of insurance, and arrangement of financing (consistent with § 550.571) for the exportation of agricultural commodities, medicine, and medical devices to the Government of Libya, entities in Libya, individuals in Libya, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized.

(2) If desired, entry into executory contracts (including executory pro forma invoices, agreements in principle, or executory offers capable of acceptance such as bids in response to public tenders) for the exportation of agricultural commodities, medicine, and medical devices to the Government of Libya, entities in Libya, individuals in Libya, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized, provided that performance of an executory contract is expressly made contingent upon the prior issuance of the one-year license described in paragraph (a) of this section.

(c) *Instructions for obtaining one-year licenses.* In order to obtain the one-year license described in paragraph (a), the exporter must provide to the Office of Foreign Assets Control:

(1) The applicant's full legal name (if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business).

(2) The applicant's mailing and street address (so that OFAC may reach a responsible point of contact, the applicant should also include the name of the individual(s) responsible for the application and related commercial transactions along with their telephone and fax numbers and, if available, email addresses).

(3) The names and addresses and, if available, fax and phone numbers of all parties with an interest in the transaction. If the goods are being exported to a purchasing agent in Libya, the exporter must identify the agent's principals at the wholesale level for whom the purchase is being made. If the goods are being exported to an individual, the exporter must identify any organizations or entities with which the individual is affiliated that have an interest in the transaction.

(4) A description of all items to be exported pursuant to the requested one-year license, including a statement that the item is classified as EAR 99, and, if necessary, documentation sufficient to verify that the items to be exported are classified as EAR 99 and do not fall within any of the limitations contained in paragraph (d) of this section.

(5) An Official Commodity Classification of EAR 99 issued by the Department of Commerce, Bureau of Export Administration ("BXA"), certifying that the product is EAR 99 is required to be submitted to OFAC with the request for a license authorizing the exportation or reexportation of all fertilizers, live horses, western red cedar, and medical devices other than basic medical supplies, such as syringes, bandages, gauze and similar items, that are specifically listed on BXA's website, *www.bxa.doc.gov/Regulations/TradeSanctionsReformExportEnhancementAct.html*. Medical supplies that are specifically listed on BXA's website do not require an Official

Commodity Classification of EAR 99 from BXA. BXA will also provide a list on its website of medicines that are ineligible for a one-year license under these procedures. If an exporter is uncertain whether the medicine to be exported is eligible, they should seek an Official Commodity Classification of EAR 99 from BXA and submit a copy to OFAC. See, 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BXA.

(d) *Limitations.*

(1) Nothing in this section or in any license issued pursuant to paragraph (a) of this section relieves the exporter from compliance with the export license application requirements of another Federal agency.

(2) Nothing in this section or in any license issued pursuant to paragraph (a) of this section authorizes the exportation or reexportation of any agricultural commodity, medicine, or medical device controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); controlled on any control list established under the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 *et seq.*); or used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.

(3) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects prohibitions on the sale or supply of U.S. technology or software used to manufacture agricultural commodities, medicine, or medical devices, such as technology to design or produce biotechnological items or medical devices.

(4) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects U.S. nonproliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

(5) This section does not apply to any transaction or dealing involving property blocked pursuant to this chapter or any other activity prohibited by this chapter not otherwise authorized in this part.

(e) *Covered items.* For the purposes of this part, agricultural commodities, medicine, and medical devices are defined below.

(1) *Agricultural commodities.* For the purposes of this section, agricultural commodities are:

(i) Products that are not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, and that fall within the term "agricultural commodity" as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, that are intended for ultimate use in Libya as:

(A) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* For the purposes of this section, the term *medicine* has the same meaning given the term "drug" in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(3) *Medical device.* For the purposes of this section, the term *medical device* has the meaning given the term "device" in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(f) *Transition period.*

(1) Specific licenses issued prior to July 26, 2001 authorizing the performance of executory contracts for the sale of agricultural commodities, medicine, or medical equipment shall remain in effect until the expiration date specified in the license or July 26, 2002, whichever comes first. However, after July 26, 2001, new contracts for the exportation of agricultural commodities, medicine, or medical devices may be entered into only pursuant to the terms of, and as authorized by, this part.

(2) Specific licenses issued prior to July 26, 2001 authorizing the sale and exportation or reexportation of bulk agricultural commodities listed in Appendix A to 31 CFR parts 538 and 550 and Appendix B to 31 CFR part 560 shall remain in effect solely to permit completion of performance of contracts already entered into prior to July 26, 2001 pursuant to the license. As of July 26, 2001, new contracts for the exportation of bulk agricultural commodities may be entered into only pursuant to the terms of, and as authorized by, this part.

7. Remove and reserve § 550.570.

§ 550.570 [Removed and reserved]

8. Amend § 550.571 to revise the heading and paragraph (d) and to add a new paragraph (e) to read as follows:

§ 550.571 Payment for and financing of exports of agricultural commodities, medicine, and medical equipment.

* * * * *

(d) *Transfers through the U.S. financial system.* Before a United States financial institution initiates a payment on behalf of any customer, or credits a transfer to the account on its books of the ultimate beneficiary, the United States financial institution must determine that the underlying transaction is not prohibited by this part. Any payment relating to a transaction authorized in or pursuant to § 550.569 or § 550.572 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the blocking or rejection of the transfer.

(e) Notwithstanding any other provision of this part, no commercial exportation to Libya may be made with United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees absent a Presidential waiver.

9. Amend § 550.572 to revise the heading and paragraphs (a), (b) introductory text, (b)(1) and (b)(2) to read as follows:

§ 550.572 Brokering sales of agricultural commodities, medicine, and medical devices.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to provide brokerage services on behalf of U.S. persons for the sale and exportation or reexportation by United States persons of agricultural commodities, medicine, and medical devices, provided that the sale and exportation or reexportation is authorized by a one-year license issued pursuant to § 550.569.

(b) *Specific licensing for brokering sales by non-U.S. persons of bulk agricultural commodities.* Specific licenses may be issued on a case-by-case basis to permit United States persons to provide brokerage services on behalf of non-United States, non-Libyan persons for the sale and exportation or reexportation of bulk agricultural commodities to the Government of Libya, entities in Libya or individuals in

Libya. Specific licenses issued pursuant to this section will authorize the brokering only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix A to this part 550;

(2) Are to purchasers permitted pursuant to § 550.569;

Note to paragraph (b)(2): Requests for specific licenses to provide brokerage services under this paragraph must include all of the information described in § 550.569(c).

* * * * *

10. Revise § 550.573 to read as follows:

§ 550.573 Travel transactions in connection with the exportation of agricultural commodities, medicine, and medical devices.

Travel transactions to, from, and within Libya for the sole purpose of engaging in transactions authorized by § 550.569 are authorized. Travel transactions related to installation or servicing of medical equipment sold pursuant to § 550.569 must be authorized by specific license. *See* § 501.801(b) of this chapter for specific licensing procedures.

Note to § 550.573: U.S. passports must be validated by the U.S. Department of State for travel to Libya.

PART 560—IRAN TRANSACTION REGULATIONS

Authority

1. Revise the authority citation for part 560 to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CRF, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart D—Interpretations

2. Amend § 560.405 to revise paragraph (b) to read as follows:

§ 560.405 Transactions incidental to a licensed transaction authorized.

* * * * *

(b) Provision of any transportation services to or from Iran not explicitly authorized in or pursuant to this part other than loading, transporting, and discharging licensed or exempt cargo there.

* * * * *

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

3. Amend § 560.520 to revise the heading to read as follows:

§ 560.520 Exportation of agricultural commodities on contracts entered into prior to May 7, 1995.

* * * * *

4. Revise § 560.530 to read as follows:

§ 560.530 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical devices.

(a) *One-year license requirement.* The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix B to this part 560), medicine, or medical devices to the Government of Iran, any entity in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, shall only be made pursuant to a one-year license issued by the United States Department of the Treasury, Office of Foreign Assets Control, for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract. No license will be granted for the exportation or reexportation of agricultural commodities, medicine, or medical equipment to any entity or individual in Iran promoting international terrorism. Executory contracts entered into pursuant to paragraph (b)(2) of this section prior to the issuance of the one-year license described in this paragraph shall be deemed to have been signed on the date of issuance of that one-year license (and, therefore, the exporter is authorized to make shipments under that contract within the 12-month period beginning on the date of issuance of the one-year license).

(b) *General license for arrangement of exportation and reexportation of covered products.*

(1) The making of shipping arrangements, cargo inspections, obtaining of insurance, and arrangement of financing (consistent with § 560.532) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to the Government of Iran, entities in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized.

(2) If desired, entry into executory contracts (including executory pro forma invoices, agreements in principle, or executory offers capable of acceptance such as bids in response to public tenders) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to the Government of Iran, entities in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized, provided that performance of an executory contract is expressly made contingent upon the prior issuance of the one-year license described in paragraph (a) of this section.

(c) *Instructions for obtaining one-year licenses.* In order to obtain the one-year license described in paragraph (a), the exporter must provide to the Office of Foreign Assets Control:

(1) The applicant's full legal name (if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business).

(2) The applicant's mailing and street address (so that OFAC may reach a responsible point of contact, the applicant should also include the name of the individual(s) responsible for the application and related commercial transactions along with their telephone and fax numbers and, if available, email addresses).

(3) The names, mailing addresses, and, if available, fax and telephone numbers of all parties with an interest in the transaction. If the goods are being exported or reexported to a purchasing agent in Iran, the exporter must identify the agent's principals at the wholesale level for whom the purchase is being made. If the goods are being exported or reexported to an individual, the exporter must identify any organizations or entities with which the individual is affiliated that have an interest in the transaction.

(4) A description of all items to be exported or reexported pursuant to the requested one-year license, including a statement that the item is classified as EAR 99, and, if necessary, documentation sufficient to verify that the items to be exported or reexported are classified as EAR 99 and do not fall within any of the limitations contained in paragraph (d) of this section.

(5) An Official Commodity Classification of EAR 99 issued by the Department of Commerce, Bureau of Export Administration ("BXA"), certifying that the product is EAR 99 is required to be submitted to OFAC with the request for a license authorizing the exportation or reexportation of all fertilizers, live horses, western red cedar, and medical devices other than basic medical supplies, such as syringes, bandages, gauze and similar items, that are specifically listed on BXA's website, *www.bxa.doc.gov/Regulations/Trade Sanctions*

ReformExport EnhancementAct.html. Medical supplies that are specifically listed on BXA's website do not require an Official Commodity Classification of EAR 99 from BXA. BXA will also provide a list on its website of medicines that are ineligible for a one-year license under these procedures. If an exporter is uncertain whether the medicine to be exported is eligible, they should seek an Official Commodity Classification of EAR 99 from BXA and submit a copy to OFAC. See, 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BXA.

(d) *Limitations.*

(1) Nothing in this section or in any license issued pursuant to paragraph (a) of this section relieves the exporter from compliance with the export license application requirements of another Federal agency.

(2) Nothing in this section or in any license issued pursuant to paragraph (a) of this section authorizes the exportation or reexportation of any agricultural commodity, medicine, or medical device controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); controlled on any control list established under the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 *et seq.*); or used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.

(3) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects prohibitions on the sale or supply of U.S. technology or software used to manufacture agricultural commodities, medicine, or medical devices, such as technology to design or produce biotechnological items or medical devices.

(4) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects U.S. nonproliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

(5) This section does not apply to any transaction or dealing involving property blocked pursuant to this chapter or any other activity prohibited by this chapter not otherwise authorized in this part.

(e) *Covered items.* For the purposes of this part, agricultural commodities, medicine, and medical devices are defined below.

(1) *Agricultural commodities.* For the purposes of this section, agricultural commodities are:

(i) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, and that fall within the term "agricultural commodity" as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, that are intended for ultimate use in Iran as:

(A) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* For the purposes of this section, the term medicine has the same meaning given the term "drug" in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(3) *Medical device.* For the purposes of this section, the term medical device has the meaning given the term "device" in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(f) *Transition period.*

(1) Specific licenses issued prior to July 26, 2001 authorizing the performance of executory contracts for the sale of agricultural commodities, medicine, or medical equipment shall remain in effect until the expiration date specified in the license or July 26, 2002, whichever comes first. However, after July 26, 2001, new contracts for the exportation of agricultural commodities, medicine, or medical devices may be entered into only pursuant to the terms of, and as authorized by, this new part.

(2) Specific licenses issued prior to July 26, 2001 authorizing the sale and exportation or reexportation of bulk agricultural commodities listed in Appendix A to 31 CFR parts 538 and 550 and Appendix B to 31 CFR part 560 shall remain in effect solely to permit completion of performance of contracts already entered into prior to July 26, 2001 pursuant to the license. As of July 26, 2001, new contracts for the exportation of bulk agricultural commodities may be entered into only pursuant to the terms of, and as authorized by, this part.

§ 560.531 [Removed and reserved]

5. Remove and reserve § 560.531.

6. Amend § 560.532 to revise the heading and paragraph (d) and to add a new paragraph (e) to read as follows:

§ 560.532 Payment for and financing of exports and reexports of commercial commodities, medicine, and medical devices.

* * * * *

(d) *Transfers through the U.S. financial system.* Any payment relating to a transaction authorized in or pursuant to § 560.530 or § 560.533 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the rejection of the transfer. *See* § 560.516(b).

(e) Notwithstanding any other provision of this part, no commercial exportation to Iran may be made with United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees absent a Presidential waiver.

7. Amend § 560.533 to revise the heading and paragraphs (a), (b) introductory text, (b)(1), and (b)(2) to read as follows:

§ 560.533 Brokering sales of agricultural commodities, medicine, and medical devices.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to provide brokerage services on behalf of U.S. persons for the sale and exportation or reexportation by United States persons of agricultural commodities, medicine, and medical devices, provided that the sale and exportation or reexportation is authorized by a one-year license issued pursuant to § 560.530.

(b) *Specific licensing for brokering sales by non-U.S. persons of bulk agricultural commodities.* Specific licenses may be issued on a case-by-case basis to permit United States persons to provide brokerage services on behalf of non-United States, non-Iranian persons for the sale and exportation or reexportation of bulk agricultural commodities to the Government of Iran, entities in Iran or individuals in Iran. Specific licenses issued pursuant to this section will authorize the brokering only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix B to this part 560;

(2) Are to purchasers permitted pursuant to § 560.530;

* * * * *

Note to § 560.533(b)(2): Requests for specific licenses to provide brokerage services under this paragraph must include all of the information described in § 560.530(c).

Dated: June 6, 2001.

Loren L. Dohm,

Acting Director, Office of Foreign Assets Control.

Approved: June 14, 2001.

James F. Sloan,

Acting Under Secretary (Enforcement), Department of the Treasury.

[FR Doc. 01–17466 Filed 7–10–01; 11:02 am]

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Rules and Regulations

Federal Register
Vol. 66, No. 135
Friday, July 13, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 00–111–2]

Change in Disease Status of Uruguay Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by removing Uruguay from the list of regions considered free of rinderpest and foot-and-mouth disease. We are also removing Uruguay from the list of regions that are declared to be free of these diseases, but that are subject to certain restrictions because of their proximity to or trading relationships with regions affected with rinderpest or foot-and-mouth disease. We are taking this action because the existence of foot-and-mouth disease has been confirmed in 18 departments in Uruguay. The effect of this action is to prohibit or restrict the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Uruguay.

DATES: This interim rule is effective retroactively to April 2, 2001. We invite you to comment on this docket. We will consider all comments that we receive by September 11, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to:

Docket No. 00–111–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–111–2.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products into the United States in order to prevent the introduction of various animal diseases including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD exists in all other regions of the world not listed. Section 94.11 of the regulations lists regions of the world that have been declared free of rinderpest and FMD, but are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions.

On December 13, 2000, we published in the **Federal Register** an interim rule (65 FR 77771–77773, Docket No. 00–111–1) to remove the Uruguayan department of Artigas, a region in northern Uruguay, from the list of regions considered to be free of rinderpest and FMD because FMD had been confirmed there. Prior to the effective date of that interim rule, Uruguay was among the regions listed in §§ 94.1 and 94.11 as regions considered to be free of rinderpest and FMD.

On April 25, 2001, FMD was confirmed in the Uruguayan department of Soriano. Subsequently, on May 3, 2001, Uruguay's Ministry of Livestock, Agriculture and Fisheries notified the U.S. Department of Agriculture and the Office International des Epizooties (OIE) with clinical confirmation of 123 new cases of FMD. The new outbreaks of FMD were confirmed in the departments of Artigas, Canelones, Colonia, Durazno, Flores, Florida, Paysandu, Rio Negro, Rivera, Salto, San Jose, Soriano, and Treinta y Tres. As of June 22, 2001, there were 1,596 confirmed cases of FMD in the departments of Artigas, Canelones, Cerro Largo, Colonia, Durazno, Flores, Florida, Lavalleja, Maldonado, Paysandu, Rio Negro, Rivera, Rocha, Salto, San Jose, Soriano, Tacuarembo, and Treinta y Tres.

Uruguay maintains a surveillance system capable of detecting FMD should the disease be introduced to other regions of the country, and has the laws, policies, and infrastructure to detect and respond to any occurrence of FMD. Uruguay is taking the following control measures: (1) The movement of all animals, including non-susceptible species, is prohibited; (2) a total of 5,295 cattle, 1,481 sheep, and 332 pigs were slaughtered and their carcasses destroyed before stamping out was suspended on April 30, 2001; (3) an emergency ring vaccination campaign began on April 28, 2001. A containment zone was established, with strategic vaccination of 842,000 cattle in the departments of San Jose, Flores, Duranzo, Tacuarembo, Rio Negro, Paysandu, and Salto; (4) in addition to sanitary measures being applied within the outbreak areas, fixed control and disinfection posts have been strategically placed on the main access routes to the affected areas; and (5) sanitary certificates are being issued for the export of animal products that do not present any risk.

We believe it is necessary, given the spread of FMD outside the department of Artigas, to impose restrictions on all of Uruguay to protect the livestock of the United States from FMD. Therefore,

we are amending the regulations in § 94.1 by removing Uruguay from the list of regions considered to be free of rinderpest and FMD. We are also removing Uruguay from the list in § 94.11 of regions that are considered to be free of these diseases, but are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. As a result of this action, the importation into the United States of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants and swine from any part of Uruguay is prohibited or restricted. We are making these amendments effective retroactively to April 2, 2001, because the disease may have been present in the affected areas outside of the department of Artigas for some time before it was detected in the department of Soriano on April 25, 2001.

Although we are removing Uruguay from the list of regions considered to be free of rinderpest and FMD, we recognize that Uruguay's Ministry of Livestock, Agriculture and Fisheries responded immediately to the detection of the disease by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products from the affected areas and by initiating measures to eradicate the disease. We intend to reassess the situation in accordance with the standards of the OIE. As part of that reassessment process, we will consider all comments received on this interim rule. This future reassessment will enable us to determine whether it is necessary to continue to prohibit or restrict the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from Uruguay, or whether we can restore all or portions of Uruguay to the list of regions considered free of rinderpest and FMD.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of FMD into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations governing the importation of certain animals, meat, and other animal products by removing Uruguay from the list of regions considered to be free of rinderpest and FMD. We are taking this action because the existence of FMD has been confirmed in 18 departments in Uruguay. The effect of this action is to prohibit or restrict the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Uruguay.

FMD is among the most infectious and destructive of all animal diseases. While it rarely kills adult animals, the virus may kill young and weak animals. Production losses are substantial, and costs to eradicate the disease are high. A single outbreak of FMD in the United States has the potential to close our major livestock export markets overnight. During the eradication process, most exports of meat, animals, and animal byproducts would be curtailed. Additionally, if the early signs of an outbreak were not immediately recognized, eradication could take years. Therefore, efforts to reduce the risk of the entry of FMD into the United States continue to be a high priority.

Imports of infected animal products pose the greatest risk of entry for FMD into the United States. The virus can survive in chilled, frozen, salted, cured, and partially cooked meats. Additionally, the virus can also be present in cheese, since the pasteurization process does not completely kill the virus. Strict quarantine regulations minimize the risk of any infected products entering the United States. With the exception of North and Central America (north of Panama), Australia, and New Zealand, FMD is still present in many areas of the world. FMD was last reported in the United States in 1929, in Canada in 1952, and in Mexico in 1954.

The United States livestock industry plays a significant role in international trade. Maintaining favorable trade conditions depends, in part, on continued aggressive efforts to prevent the entry of FMD into the United States. In 1999, the total earnings from exports of live cattle and swine and of beef and veal, pork, and dairy products were approximately $4.818 billion, while the value of imports was $5.671 billion. Livestock and related product exports generated about $11.7 billion in output sales and created about 100,000 jobs in the United States.

However, the value of live animals and animal products imported from Uruguay represents a small percentage of total U.S. imports of these products. Therefore, U.S. price and supply are not expected to be affected by this rule. Further, any shortfall of supply could easily be met from domestic or other sources without any significant effect on producer or consumer prices. Therefore, this rule can be expected to produce economic benefits by minimizing the risk of FMD entering the United States with little to no effect on supply or consumer prices.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule;

(2) has retroactive effect to April 2, 2001; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding the word "and" after the word "Tobago," and by removing the words ", and Uruguay except the department of Artigas".

§ 94.11 [Amended]

3. In § 94.11, paragraph (a) is amended by adding the word "and" after the word "Sweden," and by removing the words "and Uruguay except the department of Artigas,".

Done in Washington, DC, this 9th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17554 Filed 7–12–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM189; Special Conditions No. 25–182–SC]

Special Conditions: Gulfstream Model G–V Airplanes; Certification of Cooktops

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Gulfstream G–V airplanes modified by Gulfstream Aerospace Corporation. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of an electrically heated surface, called a cooktop. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for addressing the potential hazards that may be introduced by cooktops. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: July 3, 2001.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Transport Standards Staff, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background Information

On July 28, 2000, Gulfstream Aerospace Corporation, 4150 Donald Douglas Drive, Long Beach, CA, 90808, applied for a Supplemental Type Certificate (STC) to modify Gulfstream Model G–V airplanes. The Model G–V is a small transport category airplane powered by two BMW—Rolls Royce Mark BR700–710A1–10 engines, with a maximum takeoff weight of 90,500 pounds. The G–V operates with a 2-pilot crew and can hold up to 19 passengers.

The modification incorporates the installation of an electrically heated surface, called a cooktop. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. These potential hazards to the airplane and its occupants must be satisfactorily addressed. Since existing airworthiness regulations do not contain safety standards addressing cooktops, special conditions are needed.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Gulfstream Aerospace Corporation must show that the Model G–V airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. A12EA, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate Data Sheet No. A12EA are part 25, as amended by Amendments 25–1 through 25–81, with reversions to earlier Amendments, voluntary compliance to later Amendments, special conditions, equivalent safety findings, and exemptions listed in the Type Certificate Data Sheet.

If the Administrator finds that the applicable airworthiness regulations (that is, part 25 as amended) do not contain adequate or appropriate safety standards for the Gulfstream G–V airplanes modified by Gulfstream Aerospace Corporation because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, these Gulfstream G–V airplanes must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Gulfstream Aerospace Corporation apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the modification of the Gulfstream G–V airplanes will include installation of a cooktop in the passenger cabin. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards to protect the airplane and its occupants from these potential hazards. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

Currently, ovens are the prevailing means of heating food on airplanes. Ovens are characterized by an enclosure that contains both the heat source and the food being heated. The hazards represented by ovens are thus inherently limited, and are well understood through years of service experience. Cooktops, on the other hand, are characterized by exposed heat sources and the presence of relatively unrestrained hot cookware and heated food, which may represent unprecedented hazards to both occupants and the airplane.

Cooktops could have serious passenger and airplane safety implications if appropriate requirements are not established for their installation and use. These special conditions apply to cooktops with electrically powered burners. The use of an open flame cooktop (for example natural gas) is beyond the scope of these special conditions and requires separate rulemaking action. The requirements identified in the special condition are in addition to those considerations identified in Advisory Circular (AC) 25–10, Guidance for Installation of Miscellaneous Non-required Electrical

Equipment, and those in AC 25–17, Transport Airplane Cabin Interiors Crashworthiness Handbook. The intent of these special conditions is to provide a level of safety that is consistent with that on similar airplanes without cooktops.

Discussion of Comments

Notice of proposed special conditions No. 25–01–03–SC for Gulfstream Model G–V airplanes, modified to incorporate an electrically heated surface, was published in the **Federal Register** on April 6, 2001 (66 FR 18214). No comments were received.

Applicability

As discussed above, these special conditions are applicable to Gulfstream G–V airplanes modified by Gulfstream Aerospace Corporation. Should Gulfstream Aerospace Corporation apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of 21.101(a)(1).

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Gulfstream Model G–V airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on the Gulfstream G–V airplanes modified by Gulfstream Aerospace Corporation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Gulfstream Model G–V airplanes modified by Gulfstream Aerospace Corporation.

Cooktop Installations With Electrically-Powered Burners

1. Means, such as conspicuous burner-on indicators, physical barriers, or handholds, must be installed to minimize the potential for inadvertent personnel contact with hot surfaces of both the cooktop and cookware. Conditions of turbulence must be considered.

2. Sufficient design means must be included to restrain cookware while in place on the cooktop, as well as representative contents (soups or sauces, for example) from the effects of flight loads and turbulence.

(a) Restraints must be provided to preclude hazardous movement of cookware and contents. These restraints must accommodate any cookware that is identified for use with the cooktop.

(b) Restraints must be designed to be easily utilized and effective in service. The cookware restraint system should also be designed so that it will not be easily disabled, thus rendering it unusable.

(c) Placarding must be installed which prohibits the use of cookware that cannot be accommodated by the restraint system.

3. Placarding must be installed which prohibits the use of cooktops (that is, power on any burner) during taxi, takeoff, and landing (TTL).

4. Means must be provided to address the possibility of a fire occurring on or in the immediate vicinity of the cooktop caused by materials or grease inadvertently coming in contact with the burners.

Note: Two acceptable means of complying with this requirement are as follows:

• Placarding must be installed that prohibits any burner from being powered when the cooktop is unattended (this would prohibit a single person from cooking on the cooktop and intermittently serving food to passengers while any burner is powered). In addition, a fire detector must be installed in the vicinity of the cooktop, which provides an audible warning in the passenger cabin; and a fire extinguisher of appropriate size and extinguishing agent must be installed in the immediate vicinity of the cooktop. A fire on or around the cooktop must not block access to the extinguisher. One of the fire extinguishers required by 25.851 may be used to satisfy this requirement if the total complement of extinguishers can be evenly distributed throughout the cabin. If this is not possible, then the extinguisher in the galley area would be additional.

• An automatic, thermally-activated fire suppression system must be installed to extinguish a fire at the cooktop and immediately adjacent surfaces. The agent used in the system must be an approved total flooding agent suitable for use in an occupied area. The fire suppression system must have a manual override. The automatic activation of the fire suppression system must also automatically shut off power to the cooktop.

5. The surfaces of the galley surrounding the cooktop, which would be exposed to a fire on the cooktop surface or in cookware on the cooktop, must be constructed of materials that comply with the flammability requirements of Part III of Appendix F of part 25. This requirement is in addition to the flammability requirements typically required of the materials in these galley surfaces. During the selection of these materials, consideration must also be given to ensure that the flammability characteristics of the materials will not be adversely affected by the use of cleaning agents and utensils used to remove cooking stains.

6. The cooktop must be ventilated with a system independent of the airplane cabin and cargo ventilation system. Procedures and time intervals must be established to inspect and clean or replace the ventilation system to prevent a fire hazard from the accumulation of flammable oils. These procedures and time intervals must be included in the Instructions for Continued Airworthiness (ICA). The ventilation system ducting must be protected by a flame arrestor.

Note: The applicant may find additional useful information in Society of Automotive Engineers, Aerospace Recommended Practice 85, Rev. E, entitled "Air Conditioning Systems for Subsonic Airplanes," dated August 1, 1991.

7. Means must be provided to contain spilled foods or fluids in a manner that will prevent the creation of a slipping hazard to occupants and will not lead to the loss of structural strength due to airplane corrosion.

8. Cooktop installations must provide adequate space for the user to immediately escape a hazardous cooktop condition.

9. A means to shut off power to the cooktop must be provided at the galley containing the cooktop and in the cockpit. If additional switches are introduced in the cockpit, revisions to smoke or fire emergency procedures of the AFM will be required.

or

Issued in Renton, Washington, on July 3, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17565 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–236–AD; Amendment 39–12314; AD 2001–14–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 Series Airplanes Modified by Supplemental Type Certificate ST00118SE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767–300 series airplanes modified by Supplemental Type Certificate ST00118SE, that requires modification of the in-flight entertainment (IFE) system and revision of the Airplane Flight Manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the IFE system when necessary and is advised of appropriate procedures for such action. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 17, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Matsushita Avionics System Corporation, 22333 29th Drive SE, Bothell, Washington 98021. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 767–300 series airplanes modified by Supplemental Type Certificate (STC) ST00118SE was published in the **Federal Register** on March 29, 2001 (66 FR 17115). That action proposed to require modification of the in-flight entertainment (IFE) system and revision of the Airplane Flight Manual (AFM).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 20 Model 767–300 series airplanes modified by STC ST00118SE in the worldwide fleet. The FAA estimates that no airplanes of U.S. registry will be affected by this AD. All airplanes included in the applicability of this AD currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD. However, the FAA considers that this AD is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 50 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will be provided at no charge to the operator. Based on these figures, the cost impact of the required modification will be $3,000 per airplane.

Should an affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 1 work hour per airplane to accomplish the required AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required AFM revision will be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001-14-04 Boeing: Amendment 39-12314. Docket 2000-NM-236-AD.

Applicability: Model 767-300 series airplanes modified by Supplemental Type Certificate (STC) ST00118SE; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the in-flight entertainment (IFE) system when necessary and is advised of appropriate procedures for such action; accomplish the following:

Modification and Airplane Flight Manual Revision

(a) Within 18 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the IFE system installed on the airplane in accordance with Matsushita Avionics Systems Corporation Service Bulletin S2GFAB767-23-1, dated February 7, 2001.

(2) Revise the procedures under "Electrical Smoke or Fire" in the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual (AFM) to include the following information. This may be accomplished by inserting a copy of this AD into the AFM.

"If Smoke Source Cannot Be Located:

Utility bus switches—Off

Establish communications with cabin crew.

Instruct cabin crew to place in-flight entertainment (IFE) system Master Power Switch in "OFF" position.

Obtain confirmation from cabin crew that electrical power to the IFE system has been removed."

Spares

(b) As of the effective date of this AD, no person shall install an IFE system in accordance with STC ST00118SE on any airplane, unless it is modified and the AFM is revised in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The modification shall be done in accordance with Matsushita Avionics Systems Corporation Service Bulletin S2GFAB767-23-1, dated February 7, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Matsushita Avionics Systems Corporation, 22333 29th Drive SE, Bothell, Washington 98021. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 17, 2001.

Issued in Renton, Washington, on June 29, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-17157 Filed 7-12-01; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AWP-12]

Establishment of Class E Airspace at Van Nuys Airport; Van Nuys, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes a Class E Surface Area at the Van Nuys Airport in Van Nuys, CA. The purpose of this action is to provide additional controlled airspace at this high-density airport during hours when the control tower is closed. A Class D Surface Area is in effect daily at Van Nuys Airport during the specific hours when Air Traffic Control Tower (ATCT) is operational. Van Nuys Class D Surface Area hours are published continuously in the Airport/Facility Directory, and existing Class D airspace will not change as a result of this action. However, this action to establish a Class E Surface Area eliminates Class G uncontrolled airspace at Van Nuys Airport during hours when the ATCT is closed.

EFFECTIVE DATE: 0901 UTC November 1, 2001. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before August 13, 2001.

ADDRESSES: Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP-520, Docket No. 01-AWP-12, Air Traffic Division, P.O. Box 92007, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Division, Airspace Specialist, AWP-520, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6611.

SUPPLEMENTARY INFORMATION: This action establishes Class E airspace designated as a Surface Area at the Van Nuys Airport in Van Nuys, CA. The purpose of this action is to provide additional controlled airspace at this high-density airport during the hours when the air traffic control tower is closed. A Class D Surface Area is in effect daily at Van Nuys Airport during the specific hours when Van Nuys Air Traffic Control Tower is operational. The Van Nuys Call D Surface Area hours are published continuously in the Airport/Facility Directory. Existing Class D airspace will not change as a result of this action. However, this action to establish a Class E Surface Area eliminates Class G uncontrolled airspace at Van Nuys Airport when the control tower is closed. Van Nuys Airport now provides official aviation weather reporting service on a 24-hour daily basis, and meets all criteria for establishment of a Class E Surface Area at this location. The intended effect of this action is to provide adequate Class E controlled airspace to serve the

volume of aircraft operating at Van Nuys Airport during hours when the tower is closed.

Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in that Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules of Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 01–AWP–12." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national governments and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS.

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

Paragraph 6002. Class E Airspace Designated as Surfae Areas.

* * * * *

AWP CA E2 Van Nuys, CA [New]

Van Nuys Airport, CA
(Lat. 34°12'35"N, long. 118°29'24"W)
Burbank-Glendale-Pasadena Airport, CA
(Lat. 34°12'02"N, long. 118°29'30"W)
Van Nuys VOR/DME
(Lat. 34°13'24"N, long. 118°29'30"W)
Whiteman Airport, CA
(Lat. 34°15'35"N, long. 118°24'48"W)

That airspace extending upward from the surface to but not inclding 3,000 feet MSL withn a 4.3-mile radius of Van Nuys Airport, excluding that airspace within the Burbank-Glendale-Pasadena Airport, CA, Class C airspace Area, and excluding that airspace between the Van Nuys VOR/DME 219° radial clockwise to the Van Nuys VOR/DME 314° radial extending beyond the Burank-Glendale-Pasadena Airport 10-mile radius, and excluding that airspace within a 1.8-mile radius of Whiteman Airport.

* * * * *

Issued in Los Angeles, California, on June 28, 2001.

Rose Cusic,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 01–17566 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–3–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

Forms, Securities Exchange Act of 1934

CFR Correction

In Title 17 of the Code of Federal Regulations, parts 240 to end, revised as of April 1, 2001, on page 514, part 249 is corrected by removing § 249.1a.

[FR Doc. C1–55521 Filed 7–12–01; 8:45 am]

BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in August 2001. Interest assumptions are also published on the PBGC's Web site (http://www.pbgc.gov).

EFFECTIVE DATE: August 1, 2001.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) Adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during August 2001, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during August 2001, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during August 2001.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 6.40 percent for the first 20 years following the valuation date and 6.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for July 2001) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 4.75 percent for the period during which a benefit is in pay status, and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for July 2001) of 0.25 percent for the period during which a benefit is in pay status and the seven-year period directly preceding the benefit's placement in pay status; they are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during August 2001, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 94, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
.	.	.	.	.	.	.	.	.
94	8–1–01	9–1–01	4.75	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 94, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
94	8–1–01	9–1–01	4.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
August 2001	.0640	1–20	.0625	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of July 2001.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 01–17574 Filed 7–12–01; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 29

Federal Benefit Payments Under Certain District of Columbia Retirement Plans

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of the Treasury, Departmental Offices, is issuing an interim rule and requesting comments on this rule, which implements the provisions of the Balanced Budget Act of 1997, as amended (Act). The Act assigns the Secretary of the Treasury responsibility for payment of benefits (hereafter, Federal Benefit Payments) under the District of Columbia (District) retirement plans for police officers and firefighters, and teachers for benefits based on credit for service accrued as of June 30, 1997, and under the District retirement plan for judges. The interim rule establishes the general rules for the Treasury Department's processes for (1) debt collections arising from overpayments of Federal Benefit Payments or debt claims by Federal agencies, and (2) waiver of recovery of overpaid benefits or amounts otherwise owed to the retirement plans.

DATES: Interim rule effective August 13, 2001; comments must be received on or before September 11, 2001.

ADDRESSES: Send comments to Ronald A. Glaser, Director, Office of Personnel Policy, Department of the Treasury, Metropolitan Square Building, Room 6075, 15th Street and Pennsylvania Avenue, NW, Washington, DC 20220. Comments may also be submitted by electronic mail to dcpensions@do.treas.gov.

FOR ADDITIONAL INFORMATION CONTACT: Harold L. Siegelman, (202) 622–1540, Department of the Treasury, Metropolitan Square Building, Room 6033, 15th Street and Pennsylvania Avenues, NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Title XI of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, 712–731, 756–759, enacted August 5, 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105–277, 112 Stat. 2681, 2681–530 through 538, 2681–552, and as further amended by the Consolidated Appropriations Act of 2001, Public Law 106–554, 114 Stat. 2763, transferred certain unfunded pension liabilities from the District government to the Federal Government. The Act requires the Federal Government to assume responsibility for payment of certain benefits that accrued on or before June 30, 1997, under the retirement plans for District teachers (Teachers Plan) and police officers and firefighters (Police Officers and Firefighters Plan) as they existed on June 29, 1997, and for past and future benefits under the retirement plan for judges (Judges Plan) (collectively, the Retirement Funds). The Act also required the District government to establish replacement retirement plans that will provide retirement benefits for service after June 30, 1997, for current and future teachers, police, and firefighters.

The Office of D.C. Pensions developed the interim rule in consultation with the Department of the Treasury's Financial Management Service and acknowledges its constructive assistance.

1. *Requirement to establish processes for debt collection and waivers of debt collection.* The interim rule implements section 11021(3) of the Act (codified at D.C. Code Ann. 1–763.1) and section 11251 (c)(2)(B) of the Act (amending D.C. Code Ann. 11–1570). These statutes provide for the collection of, or waiver of collection of, overpayments of Federal Benefit Payments.

The interim rule is based in part on the Office of Personnel Management (OPM) regulations with respect to

similar debt collection functions for retirement programs that OPM administers. For the most part, the principles that affect debt collection activities are the same for OPM and the Retirement Funds for which the Treasury Department is responsible. This is especially true for debt collection matters in which OPM and the Treasury Department are implementing the same statute—the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, and implemented by 31 CFR 900.1 et seq., the Federal Claims Collection Standards.

With respect to the collection of, or waiver of collection of, overpayments of Federal Benefit Payments, the Treasury Department intends to follow the practices and guidelines OPM has already established. To that end, the interim rule closely adheres to the OPM debt collection regulations. With respect to the collection of other Federal debts against the payment of Federal Benefit Payments, this interim rule refers to the general debt collection regulations promulgated by the Treasury Department in parts 5 and 285 of Title 31 of the Code of Federal Regulations.

2. *Contracting for administrative services.* Section 11035(a) and (b) and section 11251(b)(1) of the Act provide for the selection of a Trustee to administer the Department's responsibilities for the Retirement Funds under the Act, including collection of, or waiver of collection of, overpayments of Federal Benefit Payments.

Sections 11035(c) and 11251(b)(1) of the Act authorize the Trustee to subcontract with the District government or any person to provide services to the Trustee in connection with the Trustee's performance of its contract with the Secretary.

Section 11035(d) of the Act authorizes the Secretary to perform any function of the Trustee if the Secretary determines that, in the interest of economy and efficiency, the Secretary rather than the Trustee should perform such function.

Section 11041(a) of the Act (codified at D.C. Code Ann. 1–765.1) requires the District to continue to discharge its duties with respect to making Federal Benefit Payments until such time as the Secretary notifies the District that he has directed the Trustee to carry out the duties and responsibilities required under the contract or determines that the Secretary shall carry out those functions.

Because it is likely that, after the interim period is over, the Retirement Funds will be administered by the Trustee, a subcontractor of the Trustee, or another agent of the Secretary, the interim rule uses the term "Benefits Administrator" throughout this subpart to denote the entity charged with recovering or recouping overpayments of Federal Benefit Payments and collecting other Federal debts against the payment of Federal Benefit Payments. The term "Benefits Administrator" is also used in the interim regulations in subpart D to identify the entity charged with making Federal Benefit Payment determinations. It is anticipated that, after the interim period is over, the same entity will act as Benefits Administrator for purposes of this subpart and subpart D. It should be noted, however, that potentially the Secretary may be the Benefits Administrator for the purpose of this subpart.

3. *Development of these procedures.* Subpart E establishes debt collection procedures and standards for waiver of collection of overpayments of Federal Benefit Payments. This subpart is in three groups of sections.

Sections 29.501 through 29.506 provide general information helpful in understanding the regulations throughout subpart E. This information includes a description of the purpose and scope of the subpart, definitions of terms used in the subpart, and statements of general principles that apply throughout the subpart. This information also refers to regulations that govern other aspects of debt collection not addressed in this subpart, specifically those governing the compromise, suspension, or termination of collection action, and the procedures for Federal agencies to submit requests to the Department to offset Federal Benefit Payments to collect a debt.

Sections 29.511 through 29.520 establish procedures for collection of debts due the Retirement Funds. The procedures are intended to fulfill the Department's obligations under the Federal Claims Collection Standards, 31 CFR 900.1 et seq. These sections establish safeguards to, in most cases, allow recipients to administratively appeal the determination of a debt or seek waiver or compromise of the debt before offset of Federal Benefit Payments occurs. See section 29.516(e). This interim rule also establishes a limit to the amount that can be offset from monthly Federal Benefit Payments to protect those recipients who depend upon these payments for all or a substantial part of their income. Section 29.516(d) establishes a formula for calculating the maximum amount which may be offset from a monthly Federal Benefit Payment. This formula is identical to one set forth in 31 CFR 285.4(e), which limits the amount that can be offset from benefit payments under the Social Security Act, the Black Lung Benefits Act, and laws administered by the Railroad Retirement Board. It is intended that section 29.516(d) be interpreted in an identical manner as 31 CFR 285.4(e).

Sections 29.521 through 29.526 establish standards for the waiver of collection of overpayments of Federal Benefit Payments. The standards are intended to have the same general effect as the corresponding OPM regulations.

Pursuant to section 553(b)(3)(B) of title 5, United States Code, it has been determined that good cause exists for waiving a general notice of proposed rulemaking for the rule. Overpayments of Federal Benefit Payments must be collected expeditiously to protect and maintain the integrity of the Trust Funds from which Federal Benefit Payments are made. Delaying implementation of this rule could forestall efforts to collect overpayments promptly. Moreover, beneficiaries who are subject to debt collection action to collect overpayments of Federal Benefit Payments need the clear procedures provided in the rule for seeking review of such decisions or waiver of the overpayments. Delaying implementation of these provisions would be contrary to the public interest.

E.O. 12866, Regulatory Review

Because the interim rule is not a significant regulatory action for purposes of E.O. 12866, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that the rule will not have a significant economic impact on a substantial number of small entities. The rule will only affect the determination of the Federal portion of retirement benefits to certain former employees of the District of Columbia. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 31 CFR Part 29

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Intergovernmental relations, Law enforcement officers, Pensions, Retirement, Teachers.

Department of the Treasury.

James Flyzik,

Acting Assistant Secretary of the Treasury.

Accordingly, the Department of the Treasury is amending part 29 of Title 31 of the Code of Federal Regulations, as follows:

1. The authority citation for part 29 is amended to read as follows:

Authority: Sections 11083 and 11251(a) of Public Law 105–33, 111 Stat. 730 and 756, as amended by Public Law 105–277, 112 Stat. 2681–530 through 538, and as further amended by Public Law 106–554, 114 Stat. 2763; subpart D also issued under section 11022 of Public Law 105–33, 111 Stat. 730 and 756, as amended by Public Law 105–277, 112 Stat. 2681–530 through 538, and as further amended by Public Law 106–554, 114 Stat. 2763.

2. In section 29.102, paragraph (a) is revised and paragraph (f) is added to read as follows:

§ 29.102 Related regulations.

(a) This part contains the following subparts:

(1) General Provisions (Subpart A);

(2) Coordination with the District Government (Subpart B);

(3) Split Benefits (Subpart C); [1]

(4) Claims and Appeals Procedures (Subpart D); and

(5) Debt Collection and Waivers of Collection (Subpart E).

* * * * *

(f) Parts 835 and 845 and subparts M, N, and R of part 831 of title 5, Code of Federal Regulations, contain information about debt collection and waiver of collection under the Civil Service Retirement System and the Federal Employees Retirement System.

3. In § 29.103, paragraph (a) is revised by adding in alphabetical order definitions of the terms "Act," "Benefits Administrator," "Reconsideration," and "Retirement Funds" to read as follows:

§ 29.103 Definitions.

(a) * * *

Act means the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, 712–731, 756–759, enacted August 5, 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105–277, 112 Stat. 2681, 2681–530 through 538, 2681–552, and by the Consolidated Appropriations Act of 2001, Public Law 106–554, 114 Stat. 2763.

Benefits Administrator means:

(1) During the interim administration period under section 11041(a) of the Act, the District of Columbia government; or

(2) After the end of the interim administration period,

(i) The Trustee selected by the Department under section 11035(a) of the Act;

(ii) The Department if a determination is made under section 11035(d) of the Act that, in the interest of economy and efficiency, the Trustee's functions shall be performed by the Department rather than the Trustee; or

(iii) Any other agent of the Department designated to make initial benefit determinations and to recover or recoup or waive recovery or recoupment of overpayments of Federal Benefit Payments, or to recover or recoup debts owed to the Federal Government by annuitants.

* * * * *

Reconsideration means the process of reexamining an individual's entitlement to benefits or liability for a debt to determine whether—

(1) The law and regulations were properly applied; and/or

(2) The mathematical computation of the benefit or liability is correct.

Retirement Funds means the District of Columbia Federal Pension Liability Trust Fund established under section 11031 of the Act (codified at D.C. Code Ann. 1–764.1), the Federal Supplemental District of Columbia Pension Fund established under section 11051 of the Act (codified at D.C. Code Ann. 1–766.1), and the District of Columbia Judicial Retirement and Survivors Annuity Fund established under section 11252 of the Act (codified at D.C. Code Ann. 1–714).

* * * * *

4. Subpart E is added to read as follows:

Subpart E—Debt Collection and Waivers of Collection

Sec.

29.501 Purpose; incorporation by reference; scope.
29.502 Definitions.
29.503 Prohibition against collection of debts.
29.504 Status of debts.
29.505 Compromise of claims; termination and suspension of collection actions.
29.506 Recovery of other debts owed to the United States.

Collection of Overpayments

29.511 Demand letters.
29.512 Reconsideration by the Benefits Administrator.
29.513 Appeals to the Department.
29.514 Requests for waiver and/or compromise.
29.515 Judicial review.
29.516 Collection of overpayments.
29.517 Collection by offset.
29.518 Reporting delinquent debts to credit bureaus.
29.519 Referral to a collection agency.
29.520 Referral for litigation.

Standards for Waiver of Overpayments

29.521 Conditions for waiver and other adjustments.
29.522 Fault.
29.523 Equity and good conscience.
29.524 Financial hardship.
29.525 Ordinary and necessary living expenses.
29.526 Waiver precluded.

Subpart E—Debt Collection and Waivers of Collection

§ 29.501 Purpose; incorporation by reference; scope.

(a) This subpart regulates—

(1) The recovery of overpayments of Federal Benefit Payments;

(2) The standards for waiver of recovery of overpayments of Federal Benefit Payments; and

(3) The use of Federal Benefit Payments to recover certain other debts due the United States.

(b) The regulations of this subpart incorporate by this reference all provisions of the Federal Claims Collection Standards (FCCS) (parts 900–904 of Title 31, Code of Federal Regulations), and supplement those regulations by the prescription of procedures and directives necessary and appropriate for the operation and administration of the Retirement Funds. To the extent they are not inconsistent with the regulations contained in this subpart, the regulations in part 5 of title 31, Code of Federal Regulations, also apply to the collection of debts under this subpart.

(c)(1) *Debts based on fraud, misrepresentation, or the presentation of a false claim.* This subpart does not apply to any overpayments of Federal Benefit Payments which arose, in whole or in part, due to fraud, misrepresentation, or the presentation of a false claim by the debtor or any party having an interest in the claim. Such debts should be referred by the Benefits Administrator immediately to the U.S. Justice Department for action pursuant to 31 CFR 900.3.

(2) *Tax debts.* This subpart does not apply to tax debts.

(d)(1) Sections 29.501 through 29.506 state the rules of general applicability to this subpart.

(2) Sections 29.511 through 29.520 prescribe procedures to be followed by the Benefits Administrator which are consistent with the FCCS in the collection of debts owed to the Retirement Funds.

(3) Sections 29.521 through 29.526 prescribe the standards that the

[1] The effective date for section 29.102(a)(3) and Subpart C, originally scheduled for March 31, 2001, has been postponed indefinitely.

Department will apply in decisions to waive recoupment or recovery of overpayments from the Retirement Funds under sections 11021(3) and 11251(c)(2)(B) of the Act.

§ 29.502 Definitions.

For purposes of this subpart—

Additional charges means interest, penalties, and/or administrative costs owed on a debt.

Administrative offset, as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt the person owes the United States.

Agency means:

(1) An Executive agency as defined in section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department, as defined in section 102 of title 5, United States Code;

(3) An agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

Annuitant means a retired participant, former spouse, spouse, widow(er), child or other beneficiary receiving recurring Federal Benefit Payments.

Annuity means the monthly benefit (including a retirement salary under the Judges Plan) of indefinite duration payable to an annuitant.

Anticipated expenses means expenditures which are expected to occur and for which the debtor can provide documentation of the estimated cost.

Beneficiary means an individual designated by a participant, or by the terms of the Judges Plan, Police Officers and Firefighters Plan, or Teachers Plan, who is or may become entitled to a benefit under those plans.

Change of position for the worse means an individual would be left in a worse financial position after recovery of the overpayment than prior to the receipt of the overpayment because the individual reasonably relied on the amount of the overpayment to his or her detriment. For example, an individual has "changed position for the worse" if he or she made expenditures or assumed new liabilities that he or she would not have otherwise done, and he or she is unable to withdraw from the commitment without incurring significant financial loss.

Compromise means accepting less than payment in full in satisfaction of a debt.

Consent means the debtor has agreed in writing to administrative offset of one or more Federal Benefit Payments after receiving notice of the available rights under 31 U.S.C. 3716 and this subpart; to Federal salary offset after receiving notice of the available rights under 5 U.S.C. 5514 and 31 CFR part 5; and to judgment offset under section 124 of Public Law 97–276, 96 Stat. 1195–1196.

Credit bureau has the same meaning as the definition of "consumer reporting agency" provided in 31 U.S.C. 3701(a)(3).

Creditor agency means the agency to which a debt is owed.

Debt has the same meaning as the definition of "debt" provided in 31 U.S.C. 3701(b)(1), and includes an overpayment of Federal Benefit Payments.

Debtor means a person who owes a debt or from whom a debt is to be recovered, including an annuitant.

Delinquent means delinquent as defined in 31 CFR 900.2(b).

Department means the Secretary of the Treasury or a designee authorized to exercise the Secretary's authority with respect to Federal Benefit Payments under the Act.

FCCS means the Federal Claims Collection Standards (parts 900–904 of Title 31, Code of Federal Regulations).

Liquid asset means cash or other property readily convertible into cash with little or no loss of value.

Lump-sum credit means:

(1) Under the Judges Plan, the Police Officers and Firefighters Plan, and the Teachers Plan, the unrefunded amount consisting of—

(i) Retirement contributions from the basic salary of a participant;

(ii) Amounts deposited covering earlier creditable service; and

(iii) Such interest as authorized by statute to be included in the payment of refunds of retirement contributions; and

(2) Under the Judges Plan, "lump-sum credit for survivor annuity" is defined in section 11–1561(10) of the D.C. Code.

Offset means to withhold the amount of a debt, or a portion of that amount, from one or more payments due the debtor. Offset also means the amount withheld in this manner.

Ordinary and necessary living expenses means such expenses as rent, mortgage payments, utilities, maintenance, food (including expenses for dining out), clothing, insurance (life, health, and accident), taxes, installment payments, medical expenses, reasonable expenses for recreation and vacations, expenses for support of a dependent when the debtor holds primary or joint legal responsibility for such support, and other miscellaneous expenses that the debtor can establish as being ordinary and necessary.

Overpayment or *overpayment debt* means a payment of one or more Federal Benefit Payments to an individual in the absence of entitlement or in excess of the amount to which an individual is properly entitled.

Participant means an individual who is or may become eligible to receive a benefit under the Police Officers and Firefighters Plan or Teachers Plan based on credit for service accrued as of June 30, 1997, or under the Judges Plan, or whose beneficiaries may be eligible to receive any such benefit.

Refund means the payment of a lump-sum credit to an individual who meets all requirements for payment and files an application for it.

Relinquish a valuable right means the individual has relinquished a valuable privilege, claim, entitlement, or benefit having monetary worth because of the overpayment or because of notice that such a payment would be made.

Repayment schedule means the amount of each payment and the number of payments to be made to liquidate the debt as determined by the Department or the Benefits Administrator.

Salary offset means any offset authorized by 5 U.S.C. 5514 and 31 U.S.C. 3716.

Substantially all, as used in § 29.524, means that a debtor's income is less than or equal to his or her ordinary and necessary expenses plus a reasonable monthly allowance for unexpected or emergency expenses and does not allow for the deduction of a reasonable monthly installment payment to recover the debt.

Voluntary repayment agreement means an agreement wherein the debtor makes installment payments to repay an overpayment debt in accordance with a repayment schedule agreed to by the Benefits Administrator or the Department.

Waiver means a decision not to recover all or part of an overpayment debt owed to the Retirement Funds under authority of sections 11021(3) or 11251(c)(2)(B) of the Act.

§ 29.503 Prohibition against collection of debts.

(a) Debts may be collected from Federal Benefit Payments only to the extent expressly authorized by Federal debt collection statutes and any other applicable Federal law.

(b) When collection of a debt from Federal Benefit Payments is authorized under paragraph (a) of this section, the collection will be made in accordance with this subpart and other applicable federal law.

§ 29.504 Status of debts.

A payment of a Federal Benefit Payment to a debtor because of an error on the part of the Department or Benefits Administrator, or the failure of the creditor agency to properly and/or timely submit a debt claim, does not erase the debt or affect the validity of the claim by the creditor agency.

§ 29.505 Compromise of debts; termination and suspension of collection actions.

The procedures for compromise of a claim for an overpayment or the termination or suspension of a collection action seeking to recover an overpayment, other than waiver of an overpayment under §§ 29.521 through 29.526, are controlled exclusively by the FCCS and 31 CFR part 5.

§ 29.506 Recovery of other debts owed to the United States.

(a) *Procedures for Creditor Agencies.* Agencies seeking to recover a debt by offset of Federal Benefit Payments payable to the debtor must comply with the offset procedures set forth in 31 U.S.C. 3716 and the FCCS. A creditor agency may seek to collect a debt through offset of Federal Benefit Payments pursuant to the Department's procedures for administrative offset set forth in 31 CFR part 5.

(b) *Offset by the Benefits Administrator.* As required by 31 U.S.C. 3716(c), the Benefits Administrator must compare payment records of the Retirement Funds with records of debts submitted to the Financial Management Service for collection by administrative offset, and must offset payments to satisfy, in whole or in part, debts owed by any annuitant.

Collection of Overpayments

§ 29.511 Demand letters.

Except as provided in § 29.516(e), before starting collection action to recover an overpayment, the Benefits Administrator must send a demand letter that informs the debtor in writing—

(a) That an overpayment has occurred, the amount of the overpayment, and the facts giving rise to the overpayment;

(b) The date by which payment of the debt should be made to avoid additional charges (i.e., interest, penalties and administrative costs) permitted by the FCCS and enforced collection;

(c) The requirement that any overpayment debt delinquent for more than 180 days be transferred to the Department of the Treasury's Financial Management Service for collection;

(d) The name, address, and phone number of the appropriate person or office the debtor may contact about the debt;

(e) The remedies which may be used to enforce payment of the debt, including assessment of interest, administrative costs and penalties; administrative wage garnishment; the use of collection agencies; Federal salary offset; tax refund offset; administrative offset; and litigation.

(f) Whether offset is available and, if so, the types of payment(s) to be offset or eligible for offset, the repayment schedule (if any), the right to request an adjustment in the repayment schedule, and the right to request a voluntary repayment agreement in lieu of offset;

(g) An explanation of the Department's policy on interest, penalties, and administrative costs as set forth in 31 CFR part 5, the FCCS, and 31 U.S.C. 3717, including a statement that such assessments must be made unless excused in accordance with the FCCS;

(h) The debtor's opportunity to request repayment in installments if the debtor can show an inability to repay the debt in one lump sum;

(i) The debtor's opportunity to inspect and/or receive a copy of the records relating to the overpayment;

(j) The method and time period (60 calendar days) for requesting reconsideration, waiver, and/or compromise of the overpayment;

(k) That all requests for waiver or compromise must be accompanied by a disclosure of the debtor's financial condition and ability to pay the debt;

(l) The standards used by the Department in deciding requests for waiver (set forth in §§ 29.521 through 29.526) and compromise (set forth in 31 CFR 902.2); and

(m) The fact that a timely filing of a request for reconsideration, waiver and/or compromise, or a subsequent timely appeal of a reconsideration decision, will stop collection proceedings, unless—

(1) Failure to take the offset would substantially prejudice the Federal Government's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of these procedures.

§ 29.512 Reconsideration by the Benefits Administrator.

(a) *Right to reconsideration of overpayment determinations.* Individuals who receive a demand letter and who wish to contest the existence or amount of the overpayment may ask the Benefits Administrator to reconsider the determination.

(b) *Requests for waiver or compromise.* Individuals who wish to seek waiver or compromise of the overpayment may file such requests with the Department under § 29.514. An individual may file a request for reconsideration in addition to a request for waiver or compromise.

(c) *Form and timing of requests for reconsideration.* (1) A request for reconsideration must be in writing and must state the basis for the request. Individuals requesting reconsideration will be given a full opportunity to present any pertinent information and documentation supporting their position and should, to the extent possible, include such information and documentation in their request.

(2) A request for reconsideration must be received by the Benefits Administrator within 60 calendar days of the date of the demand letter. The Department may extend the time limit for filing when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit, or for other good and sufficient reason.

(3) When a request for reconsideration covered by this subpart is properly filed before the death of the debtor, it will be processed to completion unless the relief sought is nullified by the debtor's death.

(d) *Reconsideration decisions.* (1) The Benefits Administrator's decision on a request for reconsideration will be based upon the individual's written submissions, evidence of record, and other pertinent available information.

(2) A reconsideration decision by the Benefits Administrator must—

(i) Be in writing;

(ii) Provide notice of the extent of the individual's liability for the overpayment, if any;

(iii) If the individual is determined to be liable for all or a portion of the overpayment, reaffirm or modify the conditions for the collection of the overpayment previously proposed in the demand letter;

(iv) Provide notice of the right to appeal the Benefits Administrator's decision to the Department, the address to which such an appeal must be submitted, and the time limits applicable to such an appeal; and

(v) State that a timely appeal of the Benefits Administrator's decision to the

Department will suspend action to collect the debt.

(e) *Appeal of reconsideration decisions.* The Department will review an appeal of a reconsideration decision under § 29.513.

§ 29.513 Appeals to the Department.

(a) *Form of appeal.* An appeal of a reconsideration decision under § 29.512 must be in writing and must state the basis for the appeal.

(b) *Time limits on appeals.* (1) An appeal must be received by the Department within 60 calendar days from the date of the reconsideration decision.

(2) The Department may extend the time limit for filing when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit, or for other good and sufficient reason.

(c) *Final decision.* After consideration of the appeal, the Department will issue a final decision. The Department's decision will be in writing, will fully set forth the Department's findings and conclusions on the appeal, and will contain notice of the right to judicial review provided in § 29.515. If the Department determines that the individual is liable for all or a portion of the overpayment, the decision also will contain the conditions for the collection of the overpayment. Copies of the final decision will be sent to the individual seeking appeal and to the Benefits Administrator.

§ 29.514 Requests for waiver and/or compromise.

(a) *Right to request waiver and/or compromise.* Individuals who receive a demand letter regarding an overpayment may ask the Department to waive and/or compromise, in whole or part, the amount of the overpayment.

(b) *Requests for reconsideration.* Individuals who have filed a request for reconsideration under § 29.512 may also request a waiver and/or compromise under this section.

(c) *Form and timing of requests for waiver and/or compromise.* (1) A request for waiver and/or compromise must be in writing and must state the basis for the request. Individuals making such requests will be given a full opportunity to present any pertinent information and documentation supporting their position and should, to the extent possible, include such information and documentation in their request. Individuals seeking waiver or compromise of an overpayment must also submit required financial information identified in the demand letter.

(2) A request for waiver or compromise must be filed with the Department. If the request is sent by mail, it must be postmarked within 60 calendar days of the date of the demand letter. If the request is hand delivered or delivered electronically, it must be received within 60 calendar days of the date of the demand letter. The Department may extend the time limit for filing when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit, or for other good and sufficient reason.

(3) When a request for waiver and/or compromise under this section is properly filed before the death of the debtor, it will be processed to completion unless the relief sought is nullified by the debtor's death.

(d) *Waiver and/or compromise decisions.* (1) The Department's decision on a request for waiver and/or compromise will be based upon the individual's written submissions, evidence of record, and other pertinent available information. An individual's request for waiver will be evaluated by the standards set forth in § 29.521 through § 29.526. An individual's request for compromise will be evaluated by the standards set forth in the FCCS in 31 CFR part 902.

(2) A waiver or compromise decision by the Department will—

(i) Be in writing;

(ii) Provide notice of whether the overpayment will be waived or compromised, and the extent to which the individual is still liable for the overpayment, if at all;

(iii) If the individual is determined to be liable for all or a portion of the overpayment, reaffirm or modify the conditions for the collection of the overpayment previously proposed in the demand letter; and

(iv) Be issued within 120 calendar days from the Department's receipt of a timely request for waiver and/or compromise. This time limit does not apply to requests for compromise that are referred to the Department of Justice for consideration pursuant to 31 CFR 902.1(b).

§ 29.515 Judicial review.

An individual whose request for reconsideration has been denied (in whole or part) in a final decision by the Department under § 29.513 may, within 180 days of the date of the final decision, file a civil action in the United States District Court for the District of Columbia. Any such civil action must be filed in accordance with the rules of that court.

§ 29.516 Collection of overpayments.

(a) *Means of collection.* Collection of an overpayment may be made by means of offset under § 29.517, or under any statutory provision providing for offset of money due the debtor from the Federal Government including, but not limited to, Federal Benefit Payments. Collection may also be effected by referral to the Justice Department for litigation, as provided in § 29.520, or referral to a collection agency as provided in § 29.519, or by other means authorized by federal law.

(b) *Additional charges.* Interest, penalties, and administrative costs will be assessed on the overpayment in accordance with standards established in 31 U.S.C. 3717 and 31 CFR 901.9. Additional charges will be waived when required by the FCCS. The Department will waive the collection of interest on the overpayment pending the Benefits Administrator's consideration of a request for reconsideration and the Department's consideration of a request for waiver and/or compromise or the appeal of a reconsideration decision. In addition, such charges may be waived when the Department determines—

(1) Collection of those charges would be against equity and good conscience under the standards prescribed in §§ 29.523 through 29.525; or

(2) Waiver of those charges would be in the best interest of the United States.

(c) *Collection in installments.* (1) Whenever feasible, overpayments will be collected in one lump sum.

(2) However, installment payments may be effected when—

(i) The debtor establishes that he or she is financially unable to pay in one lump sum; or

(ii)(A) The benefit payable is insufficient to make collection in one lump sum;

(B) The debtor fails to respond to a demand for full payment; and

(C) Offset is available.

(d) *Offset Amount.* (1) The amount offset from a monthly Federal Benefit Payment will be the lesser of:

(i) The amount of the debt, including any interest, penalties and administrative costs;

(ii) An amount equal to 15 percent of the monthly Federal Benefit Payment; or

(iii) The amount, if any, by which the monthly Federal Benefit Payment exceeds $750.

(2) For purposes of this subsection, the "monthly Federal Benefit Payment"

is the amount of the gross monthly benefit after any reductions or deductions required under law, including reductions made to recover overpayments of Federal Benefit Payments.

(e) *Commencement of collection.* (1) Except as provided in paragraph (e)(2) of this section, collection will begin after the time limits for requesting further rights stated in § 29.512 through § 29.514 expire and no such requests have been made, or after the Benefits Administrator and/or the Department have issued decisions on all timely requests for or appeals of those rights, unless failure to make an offset would substantially prejudice the Department's ability to collect the overpayment and the time before the payment is to be made does not reasonably permit the completion of the proceedings in § 29.511 through § 29.514 or litigation. When offset begins without completion of the administrative review process, these procedures will be completed promptly, and amounts recovered by offset but later found not owed will be refunded promptly.

(2) The procedures identified in § 29.511 through § 29.514 will not be applied when the overpayment is caused by—

(i) A retroactive adjustment in the periodic rate of annuity or any deduction taken from annuity when the adjustment is a result of the annuitant's election of different entitlements under law, if the adjustment is made within 120 days of the effective date of the election; or

(ii) interim estimated payments made before the formal determination of entitlement to annuity, if the amount is recouped from the total annuity payable on the first day of the month following the later of—

(A) The last interim payment or

(B) The date the formal determination is made.

(f) *Collection of delinquent debts.* (1) *Debts delinquent over 180 days.* The Benefits Administrator must refer all overpayment debts that are over 180 days delinquent to the Secretary for collection pursuant to 31 U.S.C. 3711(g) and 3716, and 31 CFR part 901.

(2) *Debts delinquent less than 180 days.* Once an overpayment debt becomes delinquent, the Benefits Administrator should refer it to the Secretary for collection by centralized administrative offset pursuant to 31 CFR 901.3, unless collection of the debt by some other means is likely to occur in a more timely and efficient manner.

(3) Once a debt is referred under this subsection, the Benefits Administrator has no further obligation to collect the debt.

§ 29.517 Collection by offset.

(a) *Offset from retirement payments.* An overpayment may be collected in whole or in part from any refund payment or recurring Federal Benefit Payments.

(b) *Offset from other payments*—(1) *Administrative offset.* When offset under subsection (a) is not available, an overpayment may be offset from other Federal payments due the debtor from other agencies under the procedures set forth in 31 CFR part 5 and 31 CFR 901.3(c).

(2) *Salary offset.* When the debtor is an employee of the Federal Government, the Department may effect collection of an overpayment by offset of the debtor's pay in accordance with regulations published to implement such offsets under 5 U.S.C. 5514 (see 5 CFR part 550, subpart K; 31 CFR 285.7; and 31 CFR Part 5). Due process described in the federal salary offset regulations of 31 CFR part 5 will apply. When the debtor did not receive a hearing under those regulations and requests such a hearing, one will be conducted in accordance with 5 CFR part 550, subpart K and 31 CFR part 5.

(3) *Tax refund offset.* The Department may effect collection of an overpayment by offset of the debtor's tax refund in accordance with the Department's tax refund offset regulations found at 31 CFR part 5.

§ 29.518 Reporting delinquent debts to credit bureaus.

(a) *Notice.* If a debtor's response to the demand letter does not result in payment in full, payment by offset, or payment in accordance with a voluntary repayment agreement or other repayment schedule acceptable to the Benefits Administrator, and the debtor's rights under § 29.512 through § 29.514 have been exhausted, the Benefits Administrator must report the debtor to a credit bureau. In addition, a debtor's failure to make subsequent payments in accordance with a repayment schedule must result in a report to a credit bureau. Before making a report to a credit bureau, the Benefits Administrator must notify the debtor in writing that—

(1) The payment is overdue;

(2) The Benefits Administrator intends, after 60 days, to make a report as described in paragraph (b) of this section to a credit bureau;

(3) The debtor's right to dispute the liability has been exhausted under § 29.512 through § 29.514; and

(4) The debtor may avoid having the Benefits Administrator report the debtor to a credit bureau by paying the debt in one lump sum or making payments current under a repayment schedule.

(b) *Report.* If, after being sent the notice described in paragraph (a) of this section, the debtor does not pay the overpayment debt or make payments current under a repayment schedule or fails to respond to the notice, and 60 days have elapsed since the notice was mailed, the Benefits Administrator will report to a credit bureau that the debtor is responsible for an unpaid debt and provide the following information:

(1) The debtor's name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the debt; and

(3) The fact that the debt arose in connection with the administration of Federal Benefit Payments under a District Retirement Fund.

(c) *Subsequent reports.* The Benefits Administrator must update its report to the credit bureau whenever it has knowledge of events that substantially change the status or the amount of the liability.

(d) *Other reporting of delinquent debts.* Pursuant to 31 CFR 901.4, delinquent overpayment debts should be reported to the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS).

(e) *Privacy Act considerations.* A delinquent debt may not be reported under this section unless a notice issued pursuant to the Privacy Act, 5 U.S.C. 552a(e)(4), authorizes the disclosure of information about the debtor to a credit bureau or CAIVRS.

§ 29.519 Referral to a collection agency.

(a) The Department retains the responsibility for resolving disputes, compromising debts, referring overpayment debts for litigation, and suspending or terminating collection action.

(b) The Department may not refer overpayment debts to commercial collection agencies until all procedures required by or requested under § 29.511 through § 29.514 have been completed.

§ 29.520 Referral for litigation.

The Department may refer to the Justice Department for litigation overpayment debts which cannot be compromised or waived, or on which collection activity cannot be suspended or terminated, and which the Department has been unable to recover pursuant to the collection activity described in § 29.511 through § 29.519. (See 31 CFR part 904.) Such debts

should be referred to the Justice Department as early as possible, but at least within 1 year of the date such debts last became delinquent. In the case of overpayments arising from fraud, misrepresentation, or the presentation of a false claim, referral should be made to the Justice Department immediately. (See 31 CFR 900.3(a).) Referral of a debt to the Justice Department will suspend processing under § 29.511 through § 29.519 of this subpart.

Standards for Waiver of Overpayments

§ 29.521 Conditions for waiver and other adjustments.

(a) *General.* Overpayments made from the Retirement Funds will be recovered unless there is substantial evidence that the individual from whom recovery is to be made is eligible for waiver.

(b) *Waiver.* The Department may waive an overpayment from the Retirement Funds (provided there is no indication of fraud, misrepresentation, or lack of good faith on the part of the debtor) under sections 11021(3) or 11251(c)(2)(B) of the Act when it is established by substantial evidence that the individual from whom recovery is to be made—

(1) Is not at fault in causing or contributing to the overpayment, and

(2) Recovery would be against equity and good conscience.

(c) *Adjustment in the installment schedule.* (1)(i) An overpayment will not be waived because of financial hardship if a reasonable installment schedule can be established for repayment of the debt by adjusting the installment schedule originally established.

(ii) For example, if the Department finds that the original installment schedule—24 installments at $125 each—causes the debtor financial hardship, but that repayment in 60 installments at $50 each does not, it may adjust the installments and recover the debt in full.

(2) Where it has been determined that an individual is ineligible for a waiver, but the individual has shown that collection action pursuant to the original installment schedule would cause him or her financial hardship, the Department may—

(i) Adjust the installment schedule if the individual shows that it would cause him or her financial hardship to make payments at the rate initially scheduled by the Department; or

(ii) Terminate the collection action under 31 CFR 903.3 if the costs of collecting the debt are anticipated to exceed the amount recoverable.

§ 29.522 Fault.

(a) *General rule.* A debtor is considered to be at fault if he or she, or any other person having an interest in obtaining a waiver of the claim, caused or contributed to the accrual of the overpayment. The Department considers a debtor or any other person having an interest in obtaining a waiver of the claim to have caused or contributed to the accrual of an overpayment if—

(1) Payment resulted from the individual's incorrect but not fraudulent statement, which the individual knew or should have known to be incorrect; or

(2) Payment resulted from the individual's failure to disclose facts in his or her possession which the individual knew or should have known were material, when the Department has identified that the individual has a duty to report and has clearly notified the individual of this reporting requirement.

(3) The following factors may affect the decision as to whether the debtor is or is not at fault where the debtor submitted an incorrect statement, or the debtor failed to disclose material facts in his or her possession—

(i) The debtor's age;

(ii) The debtor's physical and/or mental condition; and

(iii) The availability and nature of the information provided to the debtor by the Department.

(b) *Knowledge of an overpayment.* (1) Individuals who are aware that they are not entitled to a payment or are aware that a payment is higher than the payment to which they are entitled are not considered to have contributed to the overpayment if they promptly contact the Benefits Administrator and question the correctness of the payment and take no further action in reliance of the overpayment.

(2) Any contact made with the Benefits Administrator concerning the overpayment within 60 days of receipt (if the overpayment is a recurring payment, contact must be made within 60 days of the initial payment) will satisfy the prompt notification requirement.

(c) *Reasonable person standard.* The Department will use a reasonable person standard to determine whether an individual should have known that a statement was incorrect or that material facts in the individual's possession should have been disclosed. The reasonable person standard will take into account the objective factors set forth is paragraph (a)(3) of this section.

§ 29.523 Equity and good conscience.

Recovery is against equity and good conscience when there is substantial evidence that—

(a) It would cause financial hardship to the person from whom it is sought no matter what the amount and length of the proposed installment;

(b) The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment he or she either has relinquished a valuable right or has changed positions for the worse; or

(c) Recovery would be unconscionable under the circumstances.

§ 29.524 Financial hardship.

Financial hardship may be deemed to exist when the debtor needs substantially all of his or her current and anticipated income and liquid assets to meet current and anticipated ordinary and necessary living expenses during the projected period of collection. Financial hardship will not be found to exist when the debtor merely establishes that the repayment causes a financial burden, i.e., when it is inconvenient to repay the debt. If there are anticipated changes in income or expenses that would allow for the recovery of the overpayment at a later date, the Department may suspend collection action until a future date.

(a) *Considerations.* Pertinent considerations in determining whether recovery would cause financial hardship include the following:

(1) The debtor's financial ability to pay at the time collection is scheduled to be made, and

(2) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the debtor.

§ 29.525 Ordinary and necessary living expenses.

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, transportation, food, clothing, insurance (life, health, and accident), taxes, installment payments for which the individual is already liable, medical expenses, support expenses for which the individual is legally responsible, and other miscellaneous expenses that the individual can establish as being ordinary and necessary.

§ 29.526 Waiver precluded.

Waivers will not be offered or granted when—

(1) The overpayment was obtained by fraud, misrepresentation, or by improper negotiation of checks or withdrawal of electronic fund transfer payments after the death of the payee; or

(2) The overpayment was made to an estate and a timely demand for repayment is made prior to the final disbursement by the administrator or executor of the estate.

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 668

Report On Use of Employees of Non-Federal Entities To Provide Services to Department of the Army

AGENCY: Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), and Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology), Department of Army, DOD.

ACTION: Final rule.

SUMMARY: This action removes the Department of the Army regulations on Contractor Manhour Reporting Requirement. The Director of Defense Procurement directed the Department of the Army to withdraw the regulations pending approval of, and further rulemaking on, the repetitive use provisions employed in covered Army contracts. In addition, the Office of Management and Budget concluded that the final rule made significant changes to the interim rule in apparent conflict with the Paperwork Reduction Act.

DATES: Effective July 13, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Conklin, at *john.conklin@saalt.army.mil*, or Dr. John C. Anderson at 703–614–8247 or John.Anderson@hqda.army.mil.

SUPPLEMENTARY INFORMATION: 1. *Applicability:* No new contract actions containing the requirements cited in 32 CFR Part 668 may be awarded after the effective date of this rule. Contracting officers shall timely notify, in writing, all contractors whose existing contracts contain 32 CFR Part 668 requirements, that the requirement has been eliminated and that no further reporting is required under those contract actions. Any actual modification of such contracts to formally eliminate the requirement must take into account such issues as consideration and best interest of the Government on a case-by-case basis.

2. *Background:* The Department of the Army, in the **Federal Register** (65 FR 13906) dated Wednesday, March 15, 2000, announced an interim rule to establish and implement basic contractor-reporting requirements to identify the number and value of direct, and associated indirect, labor work year equivalents for contracted services in support of the Army. This requirement was Army's implementation of statutory mandates and FY 2000 Congressional data requirements (10 U.S.C. 129a, 10 U.S.C. 2461(g) and Section 343 of the FY 2000 DoD Authorization Act).

Army contracting officers were directed to include the reporting requirements in all covered contracts involving services for Research and Development or Other Services and Construction. The interim rule was effective on the date of publication. A final rule, published at 65 FR 81357–81362, December 26, 2000, codified regulations at 32 CFR Part 668 that mandated the inclusion of a reporting requirement in certain contract actions as described in the rule.

As a result of a number of legal and technical/procedural issues and significant complaints from industry about the scope and methodology of the Army final rule and the rulemaking process, the Director of Defense Procurement (DDP) in memorandums dated May 5, and June 5, 2001, directed the Army to cease using the standard contract requirements language ("repetitive use clause") in covered contracts absent approval by the DDP and rulemaking in 40 CFR (covering acquisition regulations supplementing and implementing the Federal Acquisition Regulations System). The Office of Management and Budget concluded that the final rule made significant changes to the interim rule without changing the Paperwork Reduction Act estimates and assumptions, and without allowing for additional public comment thereon, in apparent conflict with the requirements of the Paperwork Reduction Act.

Based on the foregoing, the Army hereby removes the resulting regulations from the Code of Federal Regulations (32 CFR Part 668).

General: The Army's requirement for information on unit level contractor manpower equivalents, as stated in the December 26, 2000, final rule, remains. The Army needs this information for a host of reasons, including planning, programming and budgeting, and priortization and allocation of resources. From March 2000 to the present, the Army collected over $9.2 billion in contract data from approximately 1,200 contractors. Although this data has yet to be validated and analyzed in depth, initial indications are that the numbers of contract manpower equivalents reported by contractors were lower (for the associated values) than those estimated employing algorithms currently used by the Department of the Army and the Department of Defense for reporting to Congress.

List of Subjects in 32 CFR Part 668

Government contracting, Reporting and recordkeeping requirements.

PART 668—[REMOVED AND RESERVED]

Accordingly, for the reasons set out in the preamble, 32 CFR Chapter V, Subchapter L, Part 668, *Contractor Manhour Reporting Requirement*, is removed in its entirety.

Luz D. Ortiz,
Army Federal Register Liaison Officer.

[FR Doc. 01–17613 Filed 7–12–01; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

Miscellaneous Rules Relating to Common Carriers

CFR Correction

In Title 47 of the Code of Federal Regulations, parts 40 to 69, revised as of Oct. 1, 2000, in §§ 64.2103, 64.2104 and 64.2105 remove the effective date note.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No.010710169–1169–01; I.D. 060401B]

RIN 0648–AP31

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule; request for comments.

SUMMARY: NMFS issues an emergency rule closing the Northeast Distant Statistical Reporting (NED) Area to pelagic longline fishing. Additionally, this emergency rule requires operators of all vessels that use pelagic longline gear and have been issued, or are required to have, Federal highly migratory species (HMS) limited access fishing permits and that fish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, to follow certain requirements in deploying their gear. Finally, all operators of vessels that have been issued, or are required to have, HMS fishing permits must post in the wheelhouse safe handling guidelines for sea turtles captured in pelagic longline fisheries to be supplied by NMFS. This rule is necessary to reduce the bycatch and bycatch mortality of loggerhead and leatherback sea turtles in the Atlantic pelagic longline fishery as required by the June 8, 2001, Biological Opinion (BO).

DATES: This emergency rule is effective July 11, 2001, through January 9, 2002, except for amendments to: § 635.21(a)(3), effective September 15, 2001, local time, through January 9, 2002; § 635.21(c)(2) and § 635.21(c)(6), effective from July 15, 2001, local time through January 9, 2002; and § 635.21(c)(5)(iii), effective August 1, 2001, local time, through January 9, 2002.

ADDRESSES: Written comments on this action must be mailed to Christopher Rogers, Acting Chief, NMFS Highly Migratory Species Management Division, 1315 East–West Highway, Silver Spring, MD 20910; or faxed to 301–713–1917. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the environmental assessment and regulatory impact review prepared for this action may be obtained from Tyson Kade at the address listed here.

FOR FURTHER INFORMATION CONTACT: Tyson Kade or Karyl Brewster-Geisz at 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act. Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635.

Pelagic Longline Fishery

Pelagic longline gear is a type of commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target HMS. The gear consists of a mainline, often many miles long, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target yellowfin tuna, bigeye tuna, or swordfish.

Data collected through observer and vessel logbook programs indicate that pelagic longline fishing for Atlantic swordfish and tunas often results in the catch of non-target finfish species, including sharks, bluefin tuna, billfish, undersized swordfish, and of protected species, including threatened and endangered sea turtles. The bycatch of protected species (sea turtles or marine mammals) may significantly impair the recovery of these species. Consistent with national standard 9 of the Magnuson-Stevens Act, NMFS has implemented measures to reduce bycatch and bycatch mortality to the extent practicable in the Atlantic pelagic longline fishery.

Sea Turtle Bycatch Reduction

Under the Endangered Species Act (ESA), NMFS is required to address the fishery-related take of sea turtles that are listed as threatened or endangered. Although a high percentage of hooked sea turtles are released alive, NMFS remains concerned about serious injuries of turtles taken by pelagic longline gear.

In a Biological Opinion (BO) prepared under section 7 of the ESA, completed June 30, 2000, NMFS concluded that operation of the pelagic longline fishery jeopardized the continued existence of threatened loggerhead and endangered leatherback sea turtles. After the June 30, 2000, BO was issued, NMFS concluded that further analyses of observer data and additional population modeling of loggerhead sea turtles were needed to determine more precisely the impact of the pelagic longline fishery on sea turtles. Consequently, NMFS re-initiated consultation on September 7, 2000. The new BO, issued on June 8, 2001, incorporates information from the February 2001 Stock Assessment of Loggerhead and Leatherback Sea Turtles and an Assessment of the Impact of the Pelagic Longline Fishery on the Loggerhead and Leatherback Sea Turtles of the Western North Atlantic.

The June 8, 2001, BO concludes that the operation of the U.S. pelagic longline fishery jeopardizes the continued existence of loggerhead and leatherback sea turtles. The June 8, 2001, BO estimates that a 55-percent reduction in bycatch mortality from the pelagic longline fishery is necessary to allow for the recovery of these two species. It is anticipated that this level of reduction can be achieved by implementing an area closure and by modifying how pelagic longline gear is deployed.

Area Closure and Gear Modifications

The intent of this emergency rule is to reduce the incidental take and mortality of sea turtles captured by pelagic longlines. The first measure is a closure of the NED area effective July 15, 2001. The NED area has the highest incidental take rate of sea turtles by the U.S. pelagic longline fleet. This emergency regulation will close the NED area to vessels that have been issued, or are required to have, Federal HMS limited access permits and/or use pelagic longline gear. The closed area is bounded by the following coordinates: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long. This closure comprises an area of 2,631,00 square nautical miles (nm^2), including the Grand Banks and other fishing locations. Only larger vessels, primarily fishing out of ports in the northeast, travel to this area on a seasonal basis, from June to October. Although the NED area is large, vessels fishing in that area primarily utilize only about 168,000 nm^2 or less than 10 percent of the total area subject to the closure.

The second measure, effective August 1, 2001, is designed to reduce the mortality rate of captured sea turtles year-round and in all fishing areas. All Atlantic vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits are prohibited from setting gangions within two gangion lengths of the floatline. Specifically, while the gear is deployed, gangions may not be attached to floatlines, nor to the mainline except at a distance from the attachment point of the floatline to the mainline of at least twice the length of the average gangion length in the set. Based on information from the Hawaii longline fleet, hooks that are beneath or adjacent to floatlines have a much higher incidental take of sea turtles than hooks one or more positions away from the floatline. NMFS projects that this measure will result in reductions of 22 percent for loggerhead interactions and 24 percent for leatherback interactions.

In addition to restricting the gangion placement relative to the floatline, all Atlantic vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits must deploy the gear during shallow sets so that the length of the gangion is greater than the length of the floatline. The intent of this requirement is to ensure that hooked or entangled turtles have sufficient slack line to be able to reach the surface and avoid drowning. For longline sets in which the combined depth of the floatline plus the gangion is 100 meters or less, the length of the gangion must be at least 10 percent longer than the length of the floatline. For sets over 100 meters, the requirement does not apply.

Finally, all Atlantic vessels that have been issued, or are required to have, Federal HMS permits for any gear type and/or target species are required to post inside the wheelhouse the guidelines for the safe handling of sea turtles captured in a pelagic longline interaction. This measure will allow vessel captains to refer to the appropriate handling and release guidelines in the event a sea turtle is accidentally hooked or entangled. The requirement to post sea turtle handling instructions is effective September 15, 2001. NMFS will distribute the guidelines via mail to all HMS permit holders and announce this requirement and the availability of the guidelines via the fax network. If a vessel owner does not receive the document by September 1, 2001, it will be available for downloading by that date from the Internet at: http://www.nmfs.noaa.gov/sfa/hmspg.html, or NMFS can be contacted to request a copy requested (see **ADDRESSES**).

Experimental Fishery

Consistent with the BO, NMFS expects to undertake a research program, in consultation and cooperation with the domestic pelagic longline fleet, to develop and evaluate the efficacy of new technologies and changes in fishing practices to reduce sea turtle interactions. The experimental fishery will use a limited number of qualifying commercial fishing vessels as cooperative research platforms in the NED area. To provide for the maximum amount of transparency and public participation in the process of developing the experimental fishery, NMFS has applied for an ESA section 10 permit to conduct this scientific research (June 4, 2001, 66 FR 29934). Any research plan approved for this experimental fishery, as stated in the BO, will comply with four conditions: the sea turtle target mortality reduction will be 55 percent, the duration will be 3 years, all measures that are tested must be exportable to international fleets, and the level of mortality reduction may be achieved through reducing take rates or improving post-release survival for captured sea turtles.

Classification

This emergency rule is issued under the authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act. The Acting Assistant Administrator for Fisheries, NOAA (AA) has determined that these regulations are necessary to comply with the requirements of the June 8, 2001, BO.

NMFS prepared an Environment Assessment for this emergency rule that describes the impact on the human environment and found that no significant impact would result. This emergency rule is of limited duration. NMFS plans to undertake rulemaking, including preparation of an environmental impact statement, that will propose measures necessary to meet the requirements of the June 8, 2001, BO on a permanent basis.

To comply with Executive Order 12866, NMFS also prepared a Regulatory Impact Review for this action which assesses the net economic costs and benefits of this action. In 1999, 10 vessels fished in the NED area and accounted for 18.5 percent of the total number of swordfish landed by the entire fleet. Tuna are also caught by vessels fishing in this area, but the percentage is minuscule compared to the amount of swordfish landed by these vessels. The estimated total annual ex-vessel gross revenues from swordfish for the 10 vessels in the NED area were approximately $3.2 M in 1999, with an estimated average of $323,532 ex-vessel revenues per vessel. The estimated total annual ex-vessel revenues from swordfish for all areas except the NED area is $13.9 M for 1999.

Thus, closing the NED area could reduce the total annual ex-vessel gross revenues of the swordfish fishery by almost 20 percent. This reduction would likely cause some individual fishermen who normally fish in the NED area (10 vessels in 1999) to experience a large decrease in gross revenues. This reduction would also likely cause some individual processors, dealers, and suppliers to experience a slight increase in costs if they need to relocate, and possibly a decrease in gross revenues if they rely mostly on landings from the NED area. However, this closure should not affect the fleet as a whole. It is anticipated that some of the vessels that have historically fished in the NED area will participate in the planned experimental fishery. It is intended that participants in the research program will be compensated by NMFS for costs not covered through sale of swordfish, shark, and tunas caught during fishing operations.

The gear modifications required by this emergency rule are not expected to incur significant economic costs other than the potential effect on catch rates for target species. In many cases, the fishermen would be required to purchase these expendable supplies (monofilament and hooks) in the normal course of business. Posting the sea turtle handling guidelines is not expected to incur any additional expense. Thus, this emergency rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS issues this emergency rule, effective for 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This emergency rule may be extended for an additional 180 days provided the public has had an opportunity to comment on the emergency rule and, at the time of extension, a plan amendment or proposed regulations to address sea turtle bycatch and bycatch mortality on a permanent basis is being actively pursued. Public comments on this emergency rule will be considered in determining whether to extend this emergency rule to reduce sea turtle bycatch. Responses to comments will be provided if the emergency rule is revoked, modified, or extended.

Because no general notice of proposed rulemaking is required to be published in the **Federal Register** for this emergency rule, the analytical requirements of the Regulatory Flexibility Act are not applicable and no Regulatory Flexibility Analysis was prepared.

The AA finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as providing prior notice and an opportunity for public comment would be contrary to the public interest. Public comments were received regarding the April 11, 2001 draft BO, which indicated the measures to be implemented by this emergency rule. This emergency rule is necessary to reduce the anticipated impacts of the pelagic longline fishery on listed sea turtles and to implement the provisions of the June 8, 2001, BO, prepared under section 7 of the ESA. To avoid jeopardy to listed sea turtles, the NED area closure must be in effect by July 15, 2001, the gangion placement and length requirements must be in effect by

August 1, 2001, and the sea turtle safe handling guidelines must be posted in the wheelhouse of all vessels with an HMS permit by September 15, 2001. The months of July through October, are historically high periods of sea turtle interactions. If these actions are delayed, the highest level of fishing activity in the NED area will have already occurred for the 2001 fishing year and the expected reduction in sea turtle bycatch and associated mortality will not be achieved.

The AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of the NED area closure for the 30 days normally required. The AA finds that this measure is necessary to reduce sea turtle bycatch and bycatch mortality that otherwise would occur this fishing season and that fishermen do not need time in order to comply with this regulation. Given NMFS's ability to communicate regulations to fishing interests through the HMS Fax network, NOAA weather radio, press releases, mailing lists, the Internet, and the HMS Infoline, and because NMFS has previously notified the public via fax network and **Federal Register** notice of the results and requirements of the June 8, 2001, BO and that the agency will promulgate an emergency rule, the AA has determined there is good cause to waive the 30-day delay in the effective date because such delay would be contrary to the public interest.

Similarly, the AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of the gear modifications for all of the 30 days normally required. The AA finds that this measure is also necessary to reduce sea turtle bycatch and bycatch mortality that would otherwise occur during this fishing season. The AA also finds that a small delay is justified so that fishermen can modify the gear as required by this emergency rule. However, because the modifications should not be difficult to make, because NMFS has previously notified the public via fax network and **Federal Register** notice of the results and requirements of the June 8, 2001, BO, and because the fishing season has already started, the AA has determined there is good cause to waive part of the 30-day delay in the effective date because such delay would be contrary to the public interest.

Given the time required for NMFS to print and distribute the sea turtle handling and release guidelines, the BO allowed for delayed effectiveness of the posting requirement.

The AA has determined that this emergency rule is consistent to the maximum extent practicable with the coastal zone management programs of those Atlantic, Gulf of Mexico, and Carribean coastal states that have approved coastal zone management programs. NMFS notified the states as soon as the June 8, 2001, BO was released and requested that they notify the agency with respect to concurrence with the consistency determination.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: July 10, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, new definitions for "floatline," "gangion," and "northeast distant closed area" are added alphabetically to read as follows:

§ 635.2 Definitions.

* * * * *

Floatline means a line attached to a buoyant object that is used to support the mainline of a longline at a specific target depth.

Gangion means a line that serves to attach a hook, suspended at a specific target depth, to the mainline of a longline.

* * * * *

Northeast Distant closed area means the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 60°00′ W. long.

* * * * *

3. In § 635.21, paragraph (c)(2) is suspended and paragraphs (a)(3), (c)(5)(iii), and (c)(6) are added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(a) * * *

(3) Effective September 15, 2001, through January 9, 2002, operators of all vessels issued, or required to have, a permit under this part must post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

* * * * *

(c) * * *

(5) * * *

(iii) *Gear modifications.* The following measures to reduce the incidental capture and mortality of sea turtles are effective August 1, 2001, through January 9, 2002.

(A) *Gangion placement.* Pelagic longline gear must be deployed such that gangions may not be attached to floatlines nor to the mainline except at a distance from the attachment point of the floatline to the mainline, along the mainline, of at least twice the length of the average gangion length in the set.

(B) *Gangion length.* Pelagic longline gear must be deployed such that the length of the gangion is at least 10 percent greater than the length of the floatline for longline sets in which the combined length of the floatline and the gangion is 100 meters or less.

(6) If pelagic longline gear is on board a vessel issued, or required to have, a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in:

(i) The Northeastern United States closed area from June 1 through June 30 each calender year;

(ii) In the Charleston Bump closed area from March 1 through April 30, 2001, and from February 1 through April 30 each calender year thereafter;

(iii) In the East Florida Coast closed area at any time beginning at 12:01 a.m. on March 1, 2001;

(iv) In the DeSoto Canyon closed area at any time beginning at 12:01 a.m. on November 1, 2000;

(v) In the Northeast Distant closed area from July 15, 2001, through January 9, 2002.

* * * * *

[FR Doc. 01–17657 Filed 7–11–01; 12:17 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 135
Friday, July 13, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 950 and 952

[No. 2001–15]

RIN 3069–AA99

Amendment of Community Investment Cash Advance Programs Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation on Community Investment Cash Advance (CICA) Programs (CICA Regulation) to make certain technical revisions clarifying CICA Program requirements and improving the operation of CICA Programs. The proposed rule would clarify that the Federal Home Loan Banks (Banks) may offer grants, in addition to advances, under certain CICA Programs, and add a definition of "median income for the neighborhood" in connection with the funding of manufactured housing park projects and economic development projects located in a neighborhood.

DATES: Comments on this proposed rule must be received in writing on or before August 13, 2001.

ADDRESSES: Send comments to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Deputy Director, (202) 408–2537, or Melissa L. Allen, Program Analyst, (202) 408–2524, Program Assistance Division, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, Office of General Counsel, (202) 408–2930, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(10) of the Federal Home Loan Bank Act (Bank Act) authorizes the Banks to establish CICA Programs to support community investment. *See* 12 U.S.C. 1430(j)(10). In order to facilitate and encourage targeted community lending under section 10(j)(10), in 1998, the Finance Board adopted a final regulation providing the Banks with parameters for the establishment of CICA Programs. *See* 63 FR 65536 (Nov. 27, 1998); 12 CFR part 952 (formerly 12 CFR part 970).

In the course of implementing CICA Programs under the new CICA Regulation, the Banks and Finance Board staff have identified several technical issues, the resolution of which would clarify CICA Program requirements and improve the effectiveness of CICA Programs. These issues are discussed in the Analysis of the Proposed Rule section below.

II. Analysis of the Proposed Rule

A. Providing Grants Under Certain CICA Programs—§§ 950.1, 952.2, 952.3, 952.5, 952.7

A number of Banks have asked whether the CICA Regulation does or could authorize the Banks to provide grants, in addition to advances, to members under certain CICA Programs. The current CICA Regulation defines an "RDA program or Rural Development Advance program" and a "UDA program or Urban Development Advance program" as a program offered by a Bank for community lending in rural or urban areas, respectively. *See* 12 CFR 952.3. Even though these programs are styled as "advance" programs in the CICA Regulation, the definitions do not specify the types of financing, such as advances or grants, that a Bank may offer under such programs nor do they limit financing to advances. Accordingly, the Finance Board has interpreted these definition provisions to mean programs under which a Bank offers advances or grants to members. *See* Finance Board Regulatory Interpretation 2000–RI–2 (April 10, 2000).

The proposed rule would amend the definitional provisions and terminology in § 950.1 of the Finance Board's Advances Regulation and §§ 952.2, 952.3, 952.5 and 952.7 of the CICA Regulation to incorporate the Finance Board's interpretation, thereby specifying and clarifying the grant authority in the rule.[1] Specifically, references to the authority to provide grants under RDA and UDA Programs would be added, and the word "funding," which incorporates the concept of grants, would be substituted for the word "advance," where applicable. Thus, the "RDA program or Rural Development Advance program" would be renamed the "RDF program or Rural Development Funding program," and the "UDA program or Urban Development Advance program" would be renamed the "UDF program or Urban Development Funding program." The definitions of "RDA or Rural Development Advance" and "UDA or Urban Development Advance" would be deleted as redundant. Certain other technical amendments would be made to provide greater clarity to the language.

Under the current CICA Regulation, members receiving grants from a Bank must use the proceeds of such grants to "provide financing" to targeted beneficiaries, which is defined to include certain types of financing, including making loans to targeted beneficiaries. *See* 12 CFR 952.3. If a Bank chooses to provide grants under its RDF or UDF Programs, the Bank may establish requirements with which members must comply in order to obtain and use the grants.

B. Definition of "Median Income for the Neighborhood"—§ 952.3

Under the current CICA Regulation, economic development projects and manufactured housing parks are eligible for CICA funding if they are located in areas or neighborhoods with a median income at or below the targeted income level of the specific CICA Program (*e.g.*, 80% for CIP, 100% for UDA Programs, 115% for RDA Programs). *See* 12 CFR 952.3. Section 952.3 defines "median income for the area" generally as one or more of the following, as determined by the Bank: (1) The median income for the area, as published annually by the Department of Housing and Urban Development (HUD); (2) the applicable median family income, as determined under 26 U.S.C. 143(f) and published by a state mortgage revenue bond program;

[1] This interpretation and the proposed amendments, however, would not apply to the Banks' Community Investment Programs (CIP), which remain exclusively advance programs.

(3) the median income for the area, as published by the U.S. Department of Agriculture; or (4) the median income for any definable geographic area, as published by a Federal, state or local government entity for purposes of that entity's housing and economic development programs, and approved by the Finance Board, at the request of a Bank. *See* 12 CFR 952.3. These are the same median income data sources as those adopted by the Finance Board in the revised Affordable Housing Program (AHP) Regulation in 1997. *See* 12 CFR 951.1 (formerly 12 CFR 960.1). However, the AHP Regulation does not incorporate the concept of "neighborhood" in its median income standards. A "neighborhood" is defined in the CICA Regulation as a small geographic area, *i.e.*, a census tract, block numbering area, unit of local government with a population of 25,000 or less, rural county, or other geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographic designation that is within, but smaller than, a unit of general local government. 12 CFR 952.3.

The Finance Board has determined that the median income data provided by the above sources for determining the median income for an area are not sufficient for the Banks to determine the median income for a neighborhood, as defined in the CICA Regulation. The sources provide current median income data on an annual basis for areas, such as counties, Metropolitan Statistical Areas and states, but not for smaller geographical areas defined as "neighborhoods" in the CICA Regulation. HUD does publish annually the 1990 Census information for median income for census tracts, but this data is not updated from the 1990 figures. The Finance Board believes that up-to-date income data will enhance the Banks' capacity to implement effectively the "neighborhood" provisions of the CICA Regulation, an important tool in meeting local economic development needs. Consequently, the proposed rule would add a definition of "median income for the neighborhood" to the CICA Regulation that would enable the Banks to obtain median income data for neighborhoods from: (1) The Federal Financial Institutions Examination Council (FFIEC); or (2) other public or private sources with the approval of the Finance Board. The proposed rule specifies FFIEC because it is a Federal government source that publishes such median income data. The proposed rule does not specify any of the possible private sources, but allows the Banks to obtain Finance Board approval for the use of a source other than FFIEC if one can be identified.

The proposed rule would allow the use of these additional sources of data only for economic development projects and manufactured housing parks located in neighborhoods, as defined in the CICA Regulation, and only when current median income data for the applicable neighborhood is unavailable from the sources prescribed in the definition of "median income for the area" in the CICA Regulation.

C. Technical Clarification of Definition of "Housing Projects"—§ 952.3

Section 952.3 of the current CICA Regulation defines "Housing projects" as projects or activities that involve the purchase, construction or rehabilitation of, or predevelopment financing for, certain types of housing. *See* 12 CFR 952.3. Section 952.5(c) of the current CICA Regulation states that CICA funding other than AHP funding also may be used to refinance economic development projects and housing projects under certain conditions. *See* 12 CFR 952.5(c). The proposed rule would add refinancing (subject to the conditions in § 952.5(c)) to the definition of "Housing projects" in § 952.3 to clarify, consistent with § 952.5(c), that housing projects involving refinancing also are eligible projects for CICA funding.

D. Technical Clarification of Definition of "Geographically Defined Beneficiaries"— § 952.3 (par. (1)(ix))

A "Geographically defined beneficiary" is defined in the current CICA Regulation to include a "project [that] is located in a state declared disaster area, or qualifies for assistance under another Federal or state targeted economic development program, approved by the Finance Board." 12 CFR 952.3 (definition of "Targeted beneficiaries" (par. (1)(ix))). The proposed rule would insert the words "other area that" before the word "qualifies" in this sentence to clarify that, to be a geographically defined beneficiary, it is not the project itself, but rather the area in which the project is located, that must qualify for such targeted economic development assistance.

III. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* section 605(b), the Finance Board hereby certifies that the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 950

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 952

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, chapter IX, title 12, Code of Federal Regulations, is hereby proposed to be amended, as set forth below:

Subchapter G—Federal Home Loan Bank Assets and Off-Balance Sheet Items

PART 950—ADVANCES

1. The authority citation for part 950 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, and 1431.

§ 950.1 [Amended]

2. Amend § 950.1 in the definition of *Community Investment Cash Advance or CICA* by:

a. Removing the words "advances for targeted community lending" and adding, in their place, the words "funding for targeted community lending"; and

b. Removing the words "Rural Development Advance (RDA)" and "Urban Development Advance (UDA)" and adding, in their place, the words "Rural Development Funding (RDF)" and "Urban Development Funding (UDF)", respectively.

PART 952—COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS

3. The authority citation for part 952 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1) and 1430.

§ 952.2 [Amended]

4. Amend § 952.2 by:

a. Removing the words "Rural Development Advance (RDA)" and "Urban Development Advance (UDA)" and adding, in their place, the words "Rural Development Funding (RDF)" and "Urban Development Funding (UDF)", respectively; and

b. Adding a sentence at the end of the section to read as follows:

§ 952.2 Purpose.

* * * A Bank may provide advances or grants under its CICA programs except for CIP programs, under which a Bank may only provide advances.

§ 952.3 [Amended]

5. Amend § 952.3 by:

a. In the definition of *CICA program* or *Community Investment Cash Advance program,* in paragraph (3), removing the term "REA" and adding, in its place, the word "A", and removing the terms "RDA" and "UDA" and adding, in their place, the terms "RDF" and "UDF", respectively, and in paragraph (4), adding the words "advance or grant" before the word "program";

b. In the definition of *CIP,* removing the words "a CICA program" and adding, in their place, the words "an advance program under CICA";

c. In the introductory text of the definition of *Housing projects,* removing the words "purchase, construction or rehabilitation" and adding, in their place, the words "purchase, construction, rehabilitation or refinancing (subject to § 952.5(c) of this part)";

d. Adding, in alphabetical order, a definition of "Median income for the neighborhood";

e. In the definition of *Provide financing,* removing the words "an advance" in paragraphs (4) and (5) and the word "advance" in paragraph (6), and adding, in their place, the word "funding";

f. Removing the definition of *RDA* or *Rural Development Advance;*

g. In the definition of *RDA program* or *Rural Development Advance program,* removing the terms "RDA" and "Advance" and adding, in their place, the terms "RDF" and "Funding", respectively, and removing the words "a program" and adding, in their place, the words "an advance or grant program";

h. In paragraph (1)(ix) of the definition of *Targeted beneficiaries,* adding the words "or other area that" before the word "qualifies";

i. In the definition of *Targeted income level,* amending the introductory text of paragraph (3) by removing the term "CICA"; and amending paragraph (4) by removing the words "CICA advances" and adding, in their place, the words "advances or grants";

j. Removing the definition of *UDA* or *Urban Development Advance;* and

k. In the definition of *UDA program* or *Urban Development Advance program,* removing the terms "UDA" and "Advance" and adding, in their place, the terms "UDF" and "Funding", respectively, and removing the words "a program" and adding, in their place, the words "an advance or grant program", to read as follows:

§ 952.3 Definitions.

* * * * *

Median income for the neighborhood. In the case of manufactured housing park projects and economic development projects located in a neighborhood, for which current median income data listed in the definition of "median income for the area" in this section is unavailable, median income for the neighborhood means the median income for the neighborhood published by the Federal Financial Institutions Examination Council, or the median income for the neighborhood obtained from another public entity or a private source and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

* * * * *

§ 952.5 [Amended]

6. Amend § 952.5 by:

a. In paragraph (a)(3), removing the terms "RDA" and "UDA" and adding, in their place, the terms "RDF" and "UDF", respectively;

b. In paragraph (c), removing the word "advances" and adding, in its place, the word "funding";

c. In the heading of paragraph (d), and in paragraphs (d)(2) and (d)(3), removing the term "CICA" wherever it appears; and

d. In paragraphs (d)(5) and (d)(6)(i), removing the words "CICA advances" wherever they appear and adding, in their place, the words "advances made under CICA programs".

§ 952.7 [Amended]

7. Amend § 952.7 by:

a. In paragraph (a), removing the words "by a CICA advance" and adding, in their place, the words "under a CICA program"; and

b. In paragraph (c), removing the word "lending" and adding, in its place, the word "funding".

Dated: June 29, 2001.

By the Board of Directors of the Federal Housing Finance Board.

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–17417 Filed 7–12–01; 8:45 am]

BILLING CODE 6725–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD059/71/98/114–3068; FRL–7011–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Rate of Progress Plans, Contingency Measures and Corrections to the Base Year Inventories for the Maryland Portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and withdrawal of previous proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions establish the three percent per year emission reduction rate-of-progress (ROP) requirement for the period from 1996 through 2005 for the Maryland portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area), namely Cecil County. In conjunction with the ROP plans for Cecil County, EPA is also approving the plans' contingency measures and corrections to the 1990 base year inventories of ozone precursor emissions. EPA is approving these revisions in accordance with the requirements of the Clean Air Act. In conjunction with this proposed action to approve the ROP plans for Cecil County, EPA is also withdrawing a previous Notice of Proposed Rulemaking to approve the 1999 ROP plan for Cecil County published in the **Federal Register** on February 3, 2000.

DATES: Written comments must be received on or before August 13, 2001.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 814–2092. Or by e-mail at gaffney.kristeen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (the Act) requires that for certain ozone nonattainment areas, states are to submit plans demonstrating a reduction in volatile organic compound (VOC) emissions of at least three percent per year, averaged over each three year consecutive period, through the area's designated attainment date. This is known as the rate-of-progress (ROP) requirement of the Act. The first ROP requirement covers the period 1990–1996 and is commonly known as the 15% Plan. Subsequent ROP milestone years are grouped in three year intervals beginning after 1996 (i.e., ROP milestone years are 1999, 2002, 2005). Section 182(c)(2)(C) of the Act allows states to substitute nitrogen oxides (NO_X) emission reductions for VOC emission reductions in post 1996 ROP plans. To qualify for SIP credit in ROP plans, emission reduction measures, whether mandatory under the Act or adopted at the state's discretion, must ensure real, permanent and enforceable emission reductions.

Under the Act, the post 1996 ROP plans were due by November 15, 1994. However, on March 2, 1995, EPA issued a policy memorandum establishing an alternative approach for meeting the attainment demonstration and post 1996 ROP requirements of the Act. This policy memorandum established a phased approach for the submittal of the attainment demonstration. In the first phase (the Phase I plan), states were to submit a plan with specific control measures demonstrating at least the first 9 percent ROP reduction for 1999, interim assumptions or modeling about ozone transport, and enforceable commitments to:

(1) Participate in a consultative process to address regional transport,

(2) Adopt additional control measures as necessary to attain the ozone national ambient air quality standard, and

(3) Identify any reductions that are needed from upwind areas for the area to meet the ozone standard.

In the second phase of this approach, (the Phase II plan), states were to submit modeling and attainment plans to show attainment through local and regional controls. For severe ozone nonattainment areas, such as the Philadelphia-Wilmington-Trenton area (the Philadelphia area), the Phase II plan was also to identify the measures needed to demonstrate ROP through the 2005 attainment year. States were to phase-in adoption of rules and implement measures to meet ROP beginning in the period immediately following 1999 and provide for timely implementation of progress requirements.

Section 172(c)(9) of the Act requires moderate and above ozone nonattainment areas to adopt contingency measures to be implemented should the area fail to achieve ROP or to attain by its attainment date. In addition, section 182(c)(9) of the Act requires serious and above areas to adopt contingency measures which would be implemented if the area fails to meet any applicable milestone. States are required to develop contingency measures in the event an area fails to meet ROP in a given milestone year.

Under EPA's transportation conformity rule, like an attainment plan, an ROP plan is referred to as a control strategy SIP (62 FR 43779). A control strategy SIP identifies and establishes the motor vehicle emissions budgets (MVEBs) to which an area's transportation improvement program and long range transportation plan must conform. Conformity to a control strategy SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. States are required to identify motor MVEBs for both NO_X and VOCs in their ROP plans for all milestone years.

On March 2, 1999, the D.C. Circuit Court ruled that MVEBs contained in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. Please note that an adequacy finding for MVEBs contained in a submitted control strategy SIP is separate from EPA's completeness determination of the SIP submission, and separate from EPA's action to approve or disapprove the SIP. Therefore, even if the MVEBs in a submitted control strategy SIP have been found adequate for conformity purposes, the SIP itself could later be disapproved. The process for determining the adequacy of submitted SIP budgets is provided in a guidance memorandum dated May 14, 1999 and titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision." You may obtain a copy of this guidance from EPA's conformity website: http://www.epa.gov/oms/traq (once there, click on the "Conformity" button). The criteria by which EPA determines whether a SIP's MVEBs are adequate for conformity purposes are found at 40 CFR 93.118(e)(4). Final approval or disapproval of MVEBs occurs in conjunction with final approval or disapproval of the control strategy SIP which identifies and establishes those budgets.

Cecil County, Maryland is part of the Philadelphia area with an attainment date of 2005. This rulemaking addresses the SIP revisions submitted by the Maryland Department of the Environment (MDE) to satisfy the post 1996 ROP requirements of the Act for Cecil County. In this rulemaking, EPA is proposing to approve Maryland's plans demonstrating ROP in Cecil County from 1996 through the 2005 attainment year into the SIP. Also as part of this rulemaking, EPA is proposing to approve the contingency measures and corrections to the 1990 base year emissions inventories for the Maryland portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area that were submitted in conjunction with the ROP plans.

II. Maryland's SIP Revisions

Although Maryland's SIP revision submittals for Cecil County's Phase I and Phase II plans, discussed below, also included Phase I and Phase II plan revisions for the Baltimore severe ozone nonattainment area (the Baltimore area) and revisions for the Maryland portion of the Metropolitan Washington, D.C. serious ozone nonattainment area (the Washington, D.C. area); this proposed rulemaking pertains to the post 1996 ROP plans for the Cecil County portion of the Philadelphia area. Also as part of this rulemaking, EPA is proposing to approve the plans' contingency measures and corrections to the 1990 base year emissions inventories for the Maryland portion of the Philadelphia area (Cecil County) that were submitted in conjunction with the ROP plans. The attainment demonstration plan portion of Cecil County's Phase II plan submitted by Maryland for the Philadelphia area is the subject of a separate rulemaking. Likewise, the Phase I and Phase II plans SIP revisions submitted by MDE pertaining to the Baltimore and Washington, D.C. areas either are or have been the subject of separate rulemakings.

Under the phased approach, MDE submitted the Phase I plan for Cecil County on December 24, 1997 and the Phase II plan for Cecil County on April 24, 1998, with a supplemental submittal on August 18, 1998. MDE subsequently revised portions of both its Phase I and Phase II plan submittals for Cecil County and submitted those revisions to EPA as SIP revisions on December 21, 1999 and December 28, 2000. Descriptions of the submitted SIP revisions related to the ROP plans for Cecil County are provided below.

On December 24, 1997, Maryland submitted a SIP revision for the Phase I plan for Cecil County. Maryland's December 24, 1997 Phase I plan submittal contained:

- The first 9 percent ROP demonstration for the 1999 milestone year;
- Corrections to the 1990 base year emissions inventories for Cecil County; and
- Enforceable commitments to address the first phase of the attainment plan.

On April 24, 1998, MDE submitted a SIP revision for the Phase II plan for Cecil County. EPA asked MDE to submit additional technical information for the Phase II plan. MDE submitted this additional information as a supplement to its Phase II plan on August 18, 1998. The Phase II plan contained the 2005 attainment demonstration and the ROP demonstrations for milestone years 2002 and 2005. The Phase II plan also contained additional information and revised mobile emissions modeling for the December 24, 1997 Phase I ROP submittal. Specifically for Cecil County, the Phase II plan SIP revision requested that the chapter on conformity, including MVEBs, and appendix E, including the target levels, emission estimates, projection year estimates and reduction credit estimates for 1999 contained in the original Phase I plan be replaced by the information contained in the Phase II plan submittal.

On December 3, 1999, MDE submitted a draft SIP revision to EPA for parallel processing. On December 21, 1999, MDE submitted the formal SIP revision. This SIP revision modified the Phase II plan for Cecil County. Specifically, this SIP revision revised the MVEBs for Cecil County for the ROP milestone years 2002 and 2005. EPA determined these MVEBs adequate for use in conformity determinations on May 31, 2000. That determination became effective on June 23, 2000 (see 65 FR 36441, published June 8, 2000).

On December 28, 2000, MDE submitted a SIP revision again modifying the Phase II plan for Cecil County. This SIP revision consisted of new mobile source modeling that used updated 1999 vehicle registration data to project mobile emissions growth in Cecil County. The plan also modified the MVEBs for 2005 for Cecil County to reflect the emission reduction benefits of the Federal Tier 2/Sulfur-in-Fuel regulation. EPA determined these MVEBs adequate for use in conformity determinations on March 26, 2001. That determination became effective on April 27, 2001 (see 66 FR 18928, published April 12, 2001). This SIP submittal also provided more information and revised the Cecil County ROP demonstrations for the milestone years 1999, 2002 and 2005.

III. EPA Rulemaking History on Cecil County ROP Plans

On July 29, 1997, EPA approved Maryland's 15 percent ROP plan for Cecil County as a SIP revision (62 FR 40457).

On February 3, 2000, EPA published a direct final rule approving the 1999 ROP plan, submitted by MDE on December 24, 1997, for Cecil County (65 FR 5252). On that same day, February 3, 2000, EPA published a companion notice of proposed rulemaking to approve that 1999 ROP plan for Cecil County (65 FR 5296). Because EPA received adverse comments during the public comment period, it withdrew the direct final rule on March 28, 2000 (65 FR 16320). Since the time of EPA's February 3, 2000 proposed approval action on the 1999 ROP plan, MDE submitted a SIP revision to revise the 1999 ROP demonstration for Cecil County. As stated previously, that SIP revision was submitted on December 28, 2000.

Because MDE has revised the 1999 ROP plan for which EPA proposed approval on February 3, 2000, EPA is, hereby, withdrawing that previous proposed approval action on the 1999 ROP plan for Cecil County. EPA is, today, proposing to approve the revised 1999 ROP plan in conjunction with the 2002 and 2005 ROP plans. As stated previously, as part of this rulemaking, EPA is proposing to approve the plans' contingency measures and corrections to the 1990 base year emissions inventories for the Maryland portion of the Philadelphia area (Cecil County) that were submitted in conjunction with the ROP plans.

IV. EPA Evaluation of Maryland's Submittals

A. Corrections to the 1990 Base Year Emissions Inventory for Cecil County

Maryland submitted the original 1990 base year emissions inventories for Cecil County as a SIP revision on March 21, 1994. EPA approved the base year inventories into the SIP on September 27, 1996 (61 FR 50715). As part of the Phase I plan submittal of December 24, 1997, Maryland revised certain portions of the 1990 base year inventories because of refinements, such as updated information on point source emissions, and to correct certain errors in the inventories found while auditing the inventories in preparation for the attainment demonstration modeling.

EPA is approving the corrections to the 1990 base year inventories for Cecil County. Table 1 below illustrates the corrections that will be approved into the Maryland SIP. A more detailed description of the changes to Maryland's base year inventories and EPA's evaluation are included in the technical support document (TSD) prepared in support of this proposed rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

TABLE 1.—REVISED BASE YEAR INVENTORY FOR CECIL COUNTY IN TONS PER DAY

	VOC previously approved	VOC revised	Change	NO_X previously approved	NO_X revised	Change
Mobile Sources	7.2	7.2	0	9.3	9.3	0
Point Sources	.55	.6	(+.05)	0	0	0
Nonroad Sources	2.02	2.0	(−.02)	2.5	2.6	(+.1)
Area Sources	9.23	8.7	(−.53)	1.1	1.8	(+.7)
Biogenic Sources	32.96	32.96	0	NA	NA	NA
Total	51.96	51.46	(−.5)	12.9	13.7	(+.8)

B. Rate-of-Progress Plans

1. Calculation of Needed Reductions

The first step in demonstrating ROP is to determine the target level of allowable emissions in the given ROP milestone year. The target level of emissions represents the maximum amount of emissions that can be emitted in a nonattainment area in the given ROP milestone year, which in this case is 1999, 2002 and 2005. The Act allows states to substitute NO_X emission reductions that occur after 1990 for VOC emission reductions in post 1996 ROP plans. The required ROP is demonstrated when the sum of all creditable VOC and NO_X emission reductions equal at least 3 percent per year averaged over a three year period (i.e., 1996–1999), for a total of 9 percent. If a state wishes to substitute NO_X for VOC emission reductions, then a target level of emissions demonstrating a representative combined 9 percent emission reduction in VOC and NO_X emissions must be developed for that milestone year. The MDE has established target levels for both VOC and NO_X emissions for Cecil County. However, the ROP control scenario for Cecil County is based solely on a VOC reduction strategy. Because enough VOC emission reductions exist to demonstrate the full 9 percent reduction for all ROP milestone years, Maryland assumed no NO_X emission reductions to demonstrate ROP. The process for calculating the target level is as follows:

1. Develop the base year inventory.
2. Develop the 1990 ROP base year inventory (by subtracting biogenic emissions and sources located outside the nonattainment area from the base year inventory).
3. Calculate the 1990 adjusted base year inventory (this part excludes from the baseline the emissions that would be eliminated by the Federal Motor Vehicle Control Program (FMVCP) and Reid Vapor Pressure (RVP) regulations promulgated prior to enactment).[1]
4. Calculate the 3 percent per year reduction required to demonstrate ROP for each consecutive three year milestone interval (multiply the adjusted base year inventory by 0.09). The ROP milestone years are 1999, 2002 and 2005.
5. Calculate the fleet turnover correction term for the three year period. The fleet turnover correction is the difference between the FMVCP/RVP emission reductions calculated in step #3 and the previous milestone year's FMVCP/RVP emission reductions.
6. Calculate the target level of emissions for the milestone year, by subtracting #4 and #5 from the previously established target level for the area. For the 1999 milestone year, the VOC target level for 1996 was established in the 15 percent plan. For NO_X, there is no 1996 target level, so the 1999 target level is calculated from the NO_X adjusted base year inventory.

Tables 2 and 3 below summarize the target level calculations for both NO_X and VOCs for Cecil County for the 1999, 2002 and 2005 ROP milestone years. Maryland has correctly calculated the 1999, 2002 and 2005 target level of emissions for Cecil County following EPA's guidance and the approach outlined above.

TABLE 2.—VOC TARGET LEVELS IN TONS PER DAY

[Based upon 9 percent control strategy]

	1999	2002	2005
1990 Base Year Inventory	51.5	51.5	51.5
(Minus Biogenic Emissions)	(−33.0)	(−33.0)	(−33.0)
1990 Rate of Progress Base Year Inventory	18.5	18.5	18.5
(Minus Non-creditable FMVCP/RVP 1990–1999)	(−2.1)	(−2.3)	(−2.6)
1990 Adjusted Base Year Inventory	16.4	16.2	15.9
9 Percent Required Reduction (1996–1999)	*.09	*.09	*.09
Rate of Progress Emission Reduction Requirement	1.5	1.5	1.4
Fleet Turnover Correction	0.0	0.2	0.1
Target Level from Previous Milestone Year	14.1	12.6	10.9
(Minus Emission Reduction Requirement)	(−1.5)	(−1.5)	(−1.4)
(Minus Fleet Turnover Correction)	(−0.0)	(−0.2)	(−0.1)
Target Level	12.6	10.9	9.4

TABLE 3.—NO_X TARGET LEVELS IN TONS PER DAY

[Based upon 0 percent control strategy]

	1999	2002	2005
1990 Base Year Inventory	13.7	13.7	13.7
(Minus Non-creditable FMVCP/RVP 1990–1999)	(−1.7)	(−1.9)	(−2.0)
1990 Adjusted Base Year Inventory	12.0	11.8	11.7
0 Percent Required Reduction	0	0	0
Rate of Progress Emission Reduction Requirement	0.0	0.0	0.0
Fleet Turnover Correction	0.0	0.2	0.1
Target Level From Previous Milestone Year	12.0	12.0	11.8
(Minus Emission Reduction Requirement)	(−0.0)	(−0.0)	(−0.0)
(Minus Fleet Turnover Correction)	(−0.0)	(−0.2)	(−0.1)
Target Level	12.0	11.8	11.7

[1] Section 182(b)(2)(B) of the Act defines the baseline year of emissions as "the total amount of actual VOC and NO_X emissions from all anthropogenic sources in the area during the calendar year of enactment of the Clean Air Act amendments. This section prohibits from the baseline the emissions that would be eliminated by the FMVCP regulations promulgated by January 1, 1990, and the RVP regulations promulgated by the time of enactment.

2. Growth Projections (1990–2005)

ROP must be demonstrated net of all new emissions growth in the area. Therefore, states must include adequate emission reductions in their ROP plans to offset the emissions growth projected to occur after 1990. States account for growth by projecting their 1990 base year emission inventories to estimate emissions growth between 1990 and the attainment year. The projected inventories must reflect expected growth in activity, as well as regulatory actions which will affect emission levels. EPA guidance says that emission projections for point sources can be based on information obtained directly from facilities and/or permit applications. Area and mobile source emission projections may be developed from information from local planning agencies. In the absence of source-specific data, credible growth factors must be developed from accurate forecasts of economic variables and the activities associated with the variables.

Economic variables that may be used as indicators of activity growth are: product output, value added, earnings, and employment. Population can also serve as a surrogate indicator. Mobile source emissions projections can be estimated using EPA's MOBILE5 emissions model.

The methodologies used by Maryland to project emissions growth and EPA's evaluation are discussed in the TSD prepared in support of this proposed rulemaking action. The 1999 projection year inventories for Cecil County were revised in the Phase II plan submitted by Maryland in August 1998. Maryland then further revised the mobile source growth estimates for Cecil County in the December 28, 2000 SIP submittal. Maryland used appropriate methodologies to project emissions growth in all source categories. A summary of the projection year inventories for NO_X and VOCs through the 2005 attainment year is shown in Tables 4 and 5 below. The EPA has determined that these growth estimates are approvable.

TABLE 4.—PROJECTED (UNCONTROLLED) VOC EMISSIONS FOR CECIL COUNTY IN TONS PER DAY

Source category	1990 VOC baseline	1999 VOC projected	2002 VOC projected	2005 VOC projected
Point	0.6	0.6	0.6	0.6
Mobile	7.2	10.3	11.5	12.2
Nonroad	2.0	2.3	2.4	2.5
Area	8.7	9.0	9.1	9.2
Total	18.5	22.2	23.6	24.5

TABLE 5.—PROJECTED (UNCONTROLLED) NO_X EMISSIONS FOR CECIL COUNTY IN TONS PER DAY

Source category	1990 NO_X baseline	1999 NO_X projected	2002 NO_X projected	2005 NO_X projected
Point	0	0	0	0
Mobile	9.3	12.7	13.2	13.4
Nonroad	2.6	2.8	3.0	3.0
Area	1.8	1.9	2.0	2.2
Total	13.7	17.4	18.2	18.6

3. Evaluation of Emission Control Measures

The purpose of the ROP plan is to demonstrate how the State has reduced emissions 3 percent per year grouped in three year intervals, through the area's attainment year. In general, reductions toward ROP requirements are creditable provided the control measures occurred after 1990 and are real, permanent, quantifiable, federally enforceable and they occurred by the applicable ROP milestone year. An evaluation of each of the control measures implemented by Maryland in Cecil County can be found in the TSD prepared for this rulemaking. Table 6 below provides a summary of the control measures used by Maryland to achieve ROP in Cecil County. All control measures in the ROP demonstration have been adopted and implemented by the State of Maryland or are Federal measures being implemented nationally. All state control measures have been fully approved by EPA into the Maryland SIP and are permanent and enforceable. The mobile source control programs includes the total amount of reductions associated with enhanced vehicle inspection and maintenance, Tier 1 motor vehicle emission standards, reformulated gasoline, Stage II vapor recovery controls at gas stations, the National Low Emissions Vehicle program, highway heavy duty engine standards, and FMVCP/RVP reductions. EPA's MOBILE5b emissions model was used to generate emission reductions.

TABLE 6.—SUMMARY OF ROP EMISSION CONTROL MEASURES FOR CECIL COUNTY IN TONS PER DAY

Control measure	1999 VOC reduction	1999 NO_X reduction	2002 VOC reduction	2002 NO_X reduction	2005 VOC reduction	2005 NO_X reduction
Architectural coatings	0.2	0.0	0.2	0.0	0.2	0.0
Consumer and commercial products	0.1	0.0	0.1	0.0	0.1	0.0
Antibody refinishing	0.2	0.0	0.2	0.0	0.2	0.0
Surface cleaning	0.2	0.0	0.2	0.0	0.2	0.0
Gasoline vapor recovery at tank loading	0.8	0.0	0.8	0.0	0.8	0.0
Printing operations (screen, lithographic, flexographic and rotogravure combined)	0.1	0.0	0.1	0.0	0.1	0.0

TABLE 6.—SUMMARY OF ROP EMISSION CONTROL MEASURES FOR CECIL COUNTY IN TONS PER DAY—Continued

Control measure	1999 VOC reduction	1999 NO_x reduction	2002 VOC reduction	2002 NO_x reduction	2005 VOC reduction	2005 NO_x reduction
Nonroad heavy duty diesel	0.0	0.2	0.0	0.3	0.0	0.5
Nonroad small gas engines	0.4	0.0	0.5	0.0	0.8	0.0
Locomotive engines	.....	.....	0.0	0.1	0.0	0.2
Open burning ban	3.5	0.7	3.5	0.7	3.5	0.7
Mobile source control programs	6.2	4.9	8.4	6.3	9.5	7.4
Total	11.7	5.8	14.0	7.4	15.4	8.8

4. Summary of ROP Evaluation

Maryland's ROP demonstration for Cecil County is summarized in tons per day in Table 7 below. The table shows that the projected control strategy inventories are less than or equal to the target level for each milestone year, therefore, the ROP plans demonstrate that the 9 percent reduction, net of growth, requirement is met in Cecil County.

TABLE 7.—CECIL COUNTY ROP DEMONSTRATION IN TONS PER DAY

Cecil County	1999 VOC	1999 NO_x	2002 VOC	2002 NO_x	2005 VOC	2005 NO_x
Projected Uncontrolled Emissions (refer to tables 4 and 5) (includes growth)	22.2	17.4	23.6	18.2	24.5	18.6
Reductions From Creditable Emission Control Measures (refer to table 6)	11.7	5.8	14.0	7.4	15.4	8.8
Emissions Level Obtained (projected uncontrolled emissions minus emission reductions)	10.5	11.6	9.6	10.8	9.1	9.8
Projected Target Levels (refer to tables 2 and 3)	12.6	12.0	10.9	11.8	9.4	11.7
Surplus Emission Reductions (target levels minus emissions level obtained)	2.1	0.4	1.3	1.0	0.3	1.9

C. Motor Vehicle Emissions Budgets

Under EPA's transportation conformity rule, like an attainment plan, an ROP plan is referred to as a control strategy SIP (62 FR 43779). A control strategy SIP identifies and establishes the motor vehicle emissions budgets (MVEBs) to which an area's transportation improvement program and long range transportation plan must conform. Conformity to a control strategy SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. States are required to identify motor MVEBs for both NO_x and VOCs in their ROP plans for all milestone years. These budgets are illustrated in Table 8 below.

TABLE 8.—MOTOR VEHICLE EMISSION BUDGETS FOR CECIL COUNTY IN TONS PER DAY

	VOC	NO_x
1999	4.4	7.8
2002	2.7	6.3
2005	2.6	5.6

As explained previously, EPA determined the MVEBs identified and established in the December 21, 1999 submittal of the ROP plans adequate for use in conformity determinations on May 31, 2000. That determination became effective on June 23, 2000 (see 65 FR 36441, published June 8, 2000). Most recently, EPA determined the MVEBs identified and established in the December 28, 2000 submittal adequate for use in conformity determinations on March 26, 2001. That determination became effective on April 27, 2001 (see 66 FR 18928, published April 12, 2001).

D. Contingency Measures

Section 172(c)(9) of the Act requires moderate and above ozone nonattainment areas to adopt contingency measures to be implemented should the area fail to achieve ROP or to attain by its attainment date. In addition, section 182(c)(9) of the Act requires serious and above areas to adopt contingency measures which would be implemented if the area fails to meet any applicable milestone. EPA issued guidance that allows states to implement their contingency measures early, provided the measures are not needed now to demonstrate ROP. EPA does not believe it is logical to penalize areas that are taking extra steps to implement contingency measures early, nor should states be required to backfill for the early activation of contingency measures.

In the Cecil County ROP plan, Maryland outlines its approach for using already implemented control measures for contingency purposes. The EPA encourages the early implementation of required control measures and of contingency measures as a means of guarding against failure to meet a milestone or to attain. Maryland has adopted more emission control programs than is necessary to demonstrate ROP in the Cecil County area. These extra or "surplus" emission reductions are shown in Table 7 above. Maryland's plan for Cecil County shows an adequate amount of emission reductions have occurred beyond those

required for ROP, and therefore, any surplus emission reductions can be considered as early implementation of contingency measures. Surplus emission reductions associated control measures that are either not required in the nonattainment area by the Act, nor are Federal measures may be used for contingency purposes. Maryland has adopted two such measures (controls on open burning and the National Low Emissions Vehicle program), which are available for consideration as the early implementation of contingency measures. Pursuant to EPA guidance, the requirements of the Act with regard to providing contingency measures should the area fail to achieve ROP, have been satisfied in the Cecil County portion of the Philadelphia area.

EPA's review of Maryland's SIP revisions indicates that the post 1996 ROP requirements of the Act have been met for the Cecil County portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area. EPA is proposing to approve the post 1996 ROP plans for Cecil County for milestone years 1999, 2002, and 2005 that were submitted on December 24, 1997, as revised on April 24 and August 18, 1998, December 21, 1999 and December 28, 2000. EPA is soliciting public comments on its proposal to approve these post 1996 ROP plans, corrections to the base year inventories and the contingency measures as discussed in this document. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

V. Proposed Action

EPA is proposing to approve the post 1996 ROP plans for milestone years 1999, 2002 and 2005 for the Cecil County portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area submitted on December 24, 1997, as revised on April 24 and August 18, 1998, December 21, 1999 and December 28, 2000. EPA is also proposing to approve corrections to the 1990 base year emissions inventories for Cecil County, submitted on December 24, 1997. EPA is also proposing to approve the contingency plans for failure to meet ROP for Cecil County, submitted in conjunction with the ROP demonstrations.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule to approve the post 1996 ROP plans for the Cecil County, Maryland portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 5, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 01–17562 Filed 7–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7012–2]

RIN 2060–AG85

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Idaho National Engineering and Environmental Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, or "we") is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents on waste characterization programs applicable to certain transuranic (TRU) radioactive waste at the Idaho National Engineering and Environmental Laboratory (INEEL)

proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are procedures and other materials related to the Waste Assay Gamma Spectrometer (WAGS) system, which INEEL proposes to use for radioassay of transuranic (TRU) radioactive waste. The documents are available for review in the public dockets listed in **ADDRESSES.** We will use these documents to evaluate the WAGS system during an inspection conducted in accordance with EPA's WIPP Compliance Criteria in July 2001. The purpose of the inspection is to verify that the proposed new system at INEEL can characterize transuranic solid waste properly, consistent with the WIPP Compliance Criteria and Condition 3 of EPA's final certification decision for the WIPP.

DATES: The EPA is requesting public comment on these documents. Comments must be received by EPA's official Air Docket on or before August 13, 2001.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

DOE documents related to the WAGS system are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A–2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 am–9 pm, Friday–Saturday, 10 am–6 pm, and Sunday, 1 pm–5 pm; in Albuquerque at the Government Publications Department, General Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 am–5 pm.

Copies of items in the docket may be requested by writing to Docket A–98–49 at the address provided above, or by calling (202) 260–7548. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Scott Monroe, Office of Radiation and Indoor Air, (202) 564–9310, or call EPA's 24-hour, toll-free WIPP Information Line, 1–800–331–WIPP, or visit our website at http://www.epa.gov/radiation/wipp/announce.html.

SUPPLEMENTARY INFORMATION: The DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Most TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and organic and inorganic sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision states that the WIPP will comply with the EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes a condition that prohibits shipment of TRU waste for disposal at WIPP from any site other than LANL until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.24(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision making process, DOE is required to submit to EPA relevant documentation of waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to the WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and in informational dockets in the State of New Mexico, for public review and comment.

We initially approved certain waste characterization processes at INEEL following an inspection on July 28–30, 1998. Since December 2000, INEEL has been using a new radioassay system, called the SWEPP Waste Assay Gamma Spectrometer (WAGS) system, to complete measurements of the radioactive constituents of waste drums. EPA recently learned that drums characterized by the WAGS system were sent to the WIPP without EPA's approval. On June 27, 2001, we instructed DOE to suspend shipments from INEEL pending investigation by EPA inspectors. On July 2–3, 2001, we performed a preliminary test of the WAGS system and found that it appears to operate at a level comparable to an EPA-approved system. Consequently, there appears to be no risk to public safety or the environment from INEEL drums already placed in the mine. We also found that INEEL is taking proper actions to identify the cause of the error and prevent recurrence. Therefore, we allowed DOE to resume shipment of INEEL waste not characterized by the WAGS. Information related to this action, including EPA's report of the preliminary inspection, has been placed in Air Docket A–98–49.

We will conduct a separate inspection in accordance with § 194.8 to verify that this new waste characterization process is technically adequate and in compliance with Condition 3 of our WIPP Certification Decision (appendix A to 40 CFR part 194) and § 194.24(c)(4). This inspection will occur in July 2001. Documents related to the WAGS system have been placed in Air Docket A–98–49, particularly: "Waste Assay Gamma-Ray Spectrometer (WAGS) System Description, TPR–1561, Rev. 1," and "SWEPP Waste Assay Gamma Spectrometer (WAGS) System, TPR–1654, Rev. 2." In accordance with § 194.8 of the WIPP compliance criteria, we are providing the public 30 days to comment on the documents and on the proposed new process. Because the inspection will occur during the comment period, we will respond to relevant comments received prior to, during, and after the inspection.

If EPA determines that the provisions in the documents are adequately implemented, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, and in the informational docket locations in New Mexico. A positive approval letter will allow INEEL to ship TRU waste characterized by the WAGS system. We will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on EPA's radioactive waste disposal standards (40 CFR part 191), the compliance criteria (40 CFR part 194), and EPA's certification decision is filed in the official EPA Air Docket, Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review in Washington, D.C., and at the three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket after the October 1992 enactment of the WIPP LWA.

Dated: July 9, 2001.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 01–17612 Filed 7–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7008–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by Texas Arai Manufacturing Facility (Texas Arai) to exclude (or delist) certain solid wastes generated by its Houston, Texas, facility from the lists of hazardous wastes.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

The EPA is proposing to use the Delisting Risk Assessment Software (DRAS) in the evaluation of the delisting petition. Based on waste specific information provided by the petitioner, EPA is proposing to use the DRAS to evaluate the impact of the petitioned waste on human health and the environment.

If finalized, we would conclude that Texas Arai's petitioned waste is nonhazardous with respect to the original listing criteria and that the wastewater treatment process Texas Arai uses will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that its process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until August 27, 2001. We will stamp comments received after the close of the comment period as "late". These late" comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by July 30, 2001. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas, 75202. A third copy should be sent to the Texas Natural Resource Conservation Commission (TNRCC), P.O. Box 13087, Austin, Texas, 78711–3087. Identify your comments at the top with this regulatory docket number: "F–00–TXDEL–Texas Arai."

You should address requests for a hearing to the Director, Carl Edlund, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Deanna R. Lacy at (214) 665–6461.

SUPPLEMENTARY INFORMATION:

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I. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing:

(1) To grant Texas Arai's petition to have its F006 wastewater treatment sludge excluded, or delisted, from the definition of a hazardous waste, subject to certain continued verification and monitoring conditions; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency would use this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

Texas Arai's petition requests a delisting for listed hazardous wastes. Texas Arai does not believe that the petitioned waste meets the criteria for which EPA listed it. Texas Arai also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet these criteria. EPA's proposed decision to delist waste from

Texas Arai's facility is based on the information submitted in support of this proposal, i.e., descriptions of the wastewater treatment system, and analytical data from the Houston facility.

C. How Will Texas Arai Manage the Waste if it Is Delisted?

Texas Arai currently disposes of the wastewater treatment sludge by transporting it to a disposal facility, Phillips Services (formerly Eltex Chemical) in Houston. Then, according to Phillips Services, it is transported to Texas Ecologists located in Robstown, Texas, for stabilization and final disposal. If delisted, Texas Arai plans to manage the wastewater treatment sludge as a Class I nonhazardous industrial solid waste, and proposes to dispose of the sludge at an approved and permitted industrial waste landfill to be determined pending successful completion of the petition.

D. When Would EPA Finalize the Proposed Delisting?

RCRA section 3001(f) specifically requires EPA to provide proposal and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposed rule.

RCRA section 3010(b)(1) at 42 U.S.C.A. 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of § 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States which have received authorization from EPA to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's under § 3009 of RCRA, 42 U.S.C.A. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If Texas Arai transports the petitioned waste to or manages the waste in any State with delisting authorization, Texas Arai must obtain delisting authorization from that State before they can manage the waste as nonhazardous in that State.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does it Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which a waste was listed wastes. The criteria for which EPA lists a waste are in Part 261 further explains and in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See Part 261 and the background documents for the listed wastes.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the waste.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a) and § 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded.

The "mixture" and "derived-from" rules are now final, after having been vacated, remanded, and reinstated. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to EPA on procedural grounds. See *Shell Oil Co.* v. *EPA.*, 950 F.2d 741 (DC Cir. 1991). On

March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues. See (57 *FR* 7628). These rules became final on October 30, 1992. See (57 *FR* 49278). Consult these references for more information about mixtures and derived from wastes.

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did Texas Arai Petition EPA To Delist?

On April 13, 2000, Texas Arai petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32 a F006 wastewater treatment sludge generated from the treatment of process wastewater associated with metal plating and finishing operations. Specifically, in its petition, Texas Arai located in Houston, Texas, requested that EPA grant an exclusion for 186 cubic yards per year of wastewater treatment sludge resulting from its hazardous waste treatment process.

B. Who Is Texas Arai and What Process Do They Use To Generate the Petitioned Waste?

Texas Arai is a manufacturing facility in Houston, TX which has been in operation since 1981 and began its generation of the petitioned waste in 1997. Texas Arai produces carbon steel couplings for the petroleum and petrochemical industry.

The facility machines tubular carbon steel into threaded couplings which are then finished by chromium steel plating, followed by paint marking and packaging. The couplings are machined from raw carbon steel and alloy metals and are plated to American Petroleum Institute (API) specifications. Metal finishing and plating operations generate wastewater which is treated in an on-site wastewater treatment system prior to discharge. Hazardous wastes generated during facility operations include: wastewater treatment sludge, zinc phosphate solution, alkaline cleaning solution, spent solvents, and spent paint wastes. The petitioned waste has been disposed of as a hazardous waste at Texas Ecologists in Robstown, Texas. The waste code of the constituents of concern is EPA Hazardous Waste No. F006. The constituents of concern for F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

C. How Did Texas Arai Sample and Analyze the Waste Data in This Petition?

Four grab samples were collected each week over a period of five weeks. The grab sample locations were selected using a random sampling strategy. Each of the four grab samples were combined into a single composite sample. Samples were collected from two trays underlying the filter press. Sampling was conducted by Dames & Moore consulting firm.

To support its petition, Texas Arai submitted:

(1) Descriptions of its wastewater treatment system associated with petitioned wastes;

(2) Results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, and metals except pesticides, herbicides, and PCBs;

(3) Results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) Results for total sulfide,

(5) results for total cyanide;

(6) Results for pH;

(7) Results of the metals; amd

(9) Results from oil and grease.

D. What Were the Results of Texas Arai's Analyses?

The EPA believes that the descriptions of the Texas Arai hazardous waste process and analytical characterization provide a reasonable basis to grant Texas Arai's petition for an exclusion of the wastewater treatment sludge. The EPA believes the data submitted in support of the petition show Texas Arai's process renders the wastewater treatment sludge nonhazardous. The EPA has reviewed the sampling procedures used by Texas Arai and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the wastewater treatment sludge. The data submitted in support of the petition show that constituents in Texas Arai's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that Texas Arai has successfully demonstrated that the wastewater treatment sludge is nonhazardous.

E. How Did EPA Evaluate the Risk of Delisting the Waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Texas Arai's petitioned waste. The EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000) to predict the maximum allowable concentrations of hazardous constituents that may release from the petitioned waste after disposal and determined the potential impact of the disposal of Texas Arai's petitioned waste on human health and the environment. In assessing potential risks to ground water, specifically, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10–5 and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and the EPACMTP fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

The EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

Similarly, the DRAS used the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). In the ground water analyses, the DRAS uses the established acceptable risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point

concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or "delisting levels"). In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, Texas Arai does not dispose of waste onsite, therefore, no groundwater data is available.

From the evaluation of Texas Arai's delisting petition, EPA developed a list of constituents for the verification testing conditions. Proposed maximum allowable leachable concentrations for these constituents were derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (i.e., "delisting levels") are part of the proposed verification testing conditions of the exclusion.

The EPA believes that the descriptions of the Texas Arai, Inc., hazardous waste process and analytical characterization, in conjunction with the proposed testing requirements (as discussed later in this proposed exclusion) provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized. Thus, EPA should grant Texas Arai's petition for a standard conditional exclusion of the wastewater treatment sludge.

The EPA Region 6 Delisting Program guidance document states that the appropriate fate and effect model will be used to determine the effect the petitioned waste could have on human health if it is not managed as a hazardous waste. Specifically, the model considers the maximum estimated waste volume and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) are then compared directly to the health-based levels used in delisting decision-making for hazardous constituents of concern. EPA Region 6 has selected the DRAS as the appropriate model for the delisting program. This subsection presents an evaluation of the potential for ground water contamination for the petitioned waste using the DRAS.

The EPA considered the appropriateness of alternative waste management scenarios for Texas Arai's wastewater treatment sludge. The EPA decided, based on the information provided in the petition, that disposal of the wastewater treatment sludge in a municipal solid waste landfill is the most reasonable, worst-case scenario for the wastewater treatment sludge. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated Texas Arai's petitioned waste using DRAS which predicts the potential for ground water contamination from waste placed in a landfill.

For the evaluation of Texas Arai's petitioned waste, EPA used the DRAS to evaluate the mobility of the hazardous constituents detected in the extract of samples of Texas Arai's wastewater treatment sludge. Total analysis was also utilized for the wastewater treatment sludge. The maximum annual waste volume for Texas Arai is 186 cubic yards per year. The Dilution Attenuation Factors are currently calculated assuming an ongoing process generates waste for 20 years.

Analytical data for the wastewater treatment sludge samples were used in the model. The data summaries for detected constituents are presented in Table I. The data in this table shows that the Maximum Total concentration in the waste is low and if leached, the waste would not pose a significant risk to the environment.

The EPA's evaluation of the wastewater treatment sludge is based on the maximum reported Total and TCLP concentrations (See Table II). Based on the DRAS, the petitioned waste should be delisted because no constituents of concern exceed the delisting concentrations.

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS WASTEWATER TREATMENT SLUDGE [1]

Constituent	Total constituent analyses (mg/kg) (SW–846, Method 8240, 8260, 8030, 8020, 8010, 8015, 8270, 8080, 8150, 6010, 7470, 7870, 9030, 9010, 9040)	TCLP leachate concentration (mg/1) (SW–846, method 1311)
Aluminum	643	ND(0.1)
Arsenic	3.55	ND(0.1)
Barium	37.4	ND(0.1)
Chromium	70.7	(0.1)
Chromium (VI)	0.1	N/A
Cobalt	3.63	0.021
Copper	33.6	ND(0.02)
Manganese	862	7
Nickel	2560	14.9
Tin	10800	0.92
Zinc	19300	9.5
Ethylbenzene	0.022	ND(0.005)
Xylenes	0.073	ND(0.005)
Carbon Disulfide	0.28	ND(0.005)
Methylene Chloride	0.017	ND(0.05)
Acetonitrile	0.21	0.21
Allyl Chloride	0.018	0.018
bis(2-ethylhexyl) phthlate	4.4	ND(0.005)
Chloride	549	N/A

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS WASTEWATER TREATMENT SLUDGE [1]—Continued

Constituent	Total constituent analyses (mg/kg) (SW–846, Method 8240, 8260, 8030, 8020, 8010, 8015, 8270, 8080, 8150, 6010, 7470, 7870, 9030, 9010, 9040)	TCLP leachate concentration (mg/1) (SW–846, method 1311)
Sulfides	24200	N/A
pH	8.94	N/A

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
ND Denotes that the constituent was not detected at the method detection limit specified in the table.
N/A Not Applicable.

TABLE II.—MAXIMUM ALLOWABLE CONCENTRATIONS OF CONSTITUENTS IN LEACHATE

Constituent	Maximum allowable leachate concentration (mg/L)
Allyl Chloride	0.187
Acetonitrile	21.3
Arsenic	0.163
Barium	100
Bis (2-ethylhexyl) phthalate	4.88
Carbon Disulfide	2.94
Chromium	5.0
Cobalt	39.3
Copper	130
Ethylbenzene	3.33
Manganese	91.7
Methylene Chloride	3.95
Nickel	49.3
Tin	393.0
Xylenes	104.0
Zinc	489.0

F. What did EPA Conclude About Texas Arai's Analysis?

The EPA concluded, after reviewing Texas Arai's processes, that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by products in Texas Arai's waste. In addition, on the basis of explanations and analytical data provided by Texas Arai pursuant to § 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See, §§ 261.21, 261.22, and 261.23, respectively.

G. What Other Factors Did EPA Consider in Its Evaluation?

During the evaluation of Texas Arai's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Texas Arai's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Texas Arai's waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Texas Arai's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Texas Arai's Wastewater treatment sludge. A description of EPA's assessment of the potential impact of Texas Arai's waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for the proposed rule F–00–TXDEL–TXARAI.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 *FR* 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this proposed rule due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, EPA evaluated the potential impacts on surface water if Texas Arai's waste were released from a municipal solid waste landfill through runoff and erosion. See the RCRA public docket for the proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that Texas Arai's wastewater treatment sludge is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

H. What Is EPA's Final Evaluation of This Delisting Petition?

The descriptions of Texas Arai's hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this proposed exclusion) provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (see Table II). We believe Texas Arai has an effective treatment process that has rendered the waste as nonhazardous.

Thus, EPA believes we should grant Texas Arai an exclusion for the wastewater treatment sludge. The EPA believes the data submitted in support of the petition show Texas Arai's process renders the wastewater treatment sludge nonhazardous.

We have reviewed the sampling procedures used by Texas Arai and have determined they satisfy EPA criteria for collecting representative samples of variable constituent concentrations in the wastewater treatment sludge. The data submitted in support of the petition show that constituents in Texas Arai's waste are presently below the compliance point concentrations used in the delisting decision-making and do not pose a substantial hazard to the environment. The EPA believes that Texas Arai has successfully demonstrated that the wastewater treatment sludge is nonhazardous.

The EPA therefore, proposes to grant a standard conditional exclusion to the Texas Arai, in Houston, Texas, for the wastewater treatment sludge described in its petition. The EPA's decision to conditionally exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the wastewater treatment sludge.

If we finalize the proposed rule, the Agency will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Texas Arai, must comply with the requirements in 40 CFR part 261, Appendix IX, Table 1. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents Texas Arai must test the leachate from the wastewater treatment sludge, below which these wastes would be considered nonhazardous.

The EPA selected the set of inorganic and organic constituents specified in Paragraph (1) because of information in the petition. We compiled the list from the composition of the waste, descriptions of Texas Arai's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making.

These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that any wastewater treatment sludge which might contain hazardous levels of inorganic and organic constituents are managed and disposed of in accordance with Subtitle C of RCRA. If EPA determines that the data collected under this condition do not support the data provided in the petition, the exclusion will not cover the petitioned waste.

(3) Verification Testing Requirements

Although the wastewater treatment sludge is considered delisted upon promulgation of this rule, EPA believes that conditional testing requirements are still warranted to ensure continued effectiveness of the treatment process. During the verification period, which is described in paragraph (3)(A)(i), Texas Arai must collect four samples quarterly for a period of one year. After successful completion of the initial verification period, which is approximately 12 months from the date of promulgation of the final rule, Texas Arai may begin annual sampling of the wastewater treatment sludge.

(A) *Testing.* The EPA believes that the concentrations of the constituents of concern in the wastewater treatment sludge may vary over time. Therefore, EPA believes that quarterly sampling of this waste is adequate for Texas Arai to collect sufficient data to verify that the data provided for the wastewater treatment sludge is representative. Texas Arai may dispose of the sludge as a nonhazardous waste during the initial verification period if the waste meets the exclusion levels of Paragraph (1). Texas Arai would begin annual sampling on the first anniversary date of the final exclusion if the quarterly sampling is completed.

(4) Changes in Operating Conditions

Paragraph (4) would allow Texas Arai the flexibility of modifying its processes (for example, changes in equipment or changes in operating conditions) to improve its treatment process. However, Texas Arai must prove the effectiveness of the modified process and request approval from the EPA. Texas Arai must manage wastes generated during the new process demonstration as hazardous waste until it has obtained written approval and Paragraph (3) is satisfied.

(5) Data Submittals

To provide appropriate documentation that Texas Arai's facility is properly treating the waste, Texas Arai must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that Texas Arai furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the proposed exclusion is made final, it will apply only to 186 cubic yards of wastewater treatment sludge, generated annually at the Texas Arai facility after successful verification testing.

We would require Texas Arai to file a new delisting petition under any of the following circumstances:

(a) If it uses any new manufacturing or production process(es), or significantly change from the current process(es) described in its petition; or

(b) If it makes any changes that could affect the composition or type of waste generated.

Texas Arai must manage annual waste volumes greater than 186 cubic yards of wastewater treatment sludge as hazardous unless or until we grant a new exclusion.

If this exclusion becomes final, Texas Arai's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. Texas Arai must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or is registered to manage municipal or industrial solid waste.

(6) Reopener Language

The purpose of Paragraph 6 is to require Texas Arai to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. Texas Arai must also use this procedure, if the waste sample in the annual testing fails to meet the levels found in Paragraph 1. This provision will allow EPA to reevaluate the exclusion if a source provides new or additional information to the Agency. The EPA will evaluate the information on which we based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition if presented. This provision expressly requires Texas Arai to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

The EPA believes that we have the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. We may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

The Agency believes a clear statement of its authority in delistings is merited in light of Agency experience. *See* Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the Agency to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations

case by case. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA § 553 (b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that Texas Arai provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. Texas Arai must provide this notification within 60 days of commencing this activity.

B. What Happens if Texas Arai Violates the Terms and Conditions?

If Texas Arai violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will continue to evaluate the need for enforcement activities on a case-by-case basis. The Agency expects Texas Arai to conduct the appropriate waste analysis and comply with the criteria explained above in Paragraphs 1, 2, 3, 4, 5 and 6 of the exclusion.

VI. Public Comments

A. How Can I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency (EPA), Region 6, 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: "F–00–TXDEL–Texas Arai."

You should submit requests for a hearing to Carl Edlund, Director, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from the proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that the delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets

both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental Protection, Hazardous Waste, Recycling, Reporting and Recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: June 15, 2001.

Carl E. Edlund,

Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
.	.	.
Texas Arai Chemical Company	Houston, Texas	Wastewater treatment sludge EPA Hazardous Waste No. F006 generated at a maximum annual rate of 186 cubic yards per calendar year after (publication date of the final rule) and disposed of in a Subtitle D landfill. Texas Arai must implement a testing program that meets the following conditions for the exclusion to be valid: (1) Delisting Levels: All concentrations for the following constituents must not exceed the following levels (mg/l). The wastewater treatment sludge constituents must be measured in the waste leachate by the method specified in 40 CFR 261.24.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) Wastewater treatment sludge: (i) Inorganic Constituents: Arsenic—0.163; Barium—100; Chromium—5.0; Cobalt—39.3; Copper—130; Manganese—91.7; Nickel—49.3; Tin—393.0 ; Zinc—489.0. (ii) Organic Constituents: Acetonitrile—21.3; Allyl Chloride—0.00435; Carbon Disulfide—2.94; bis(2-ethylhexylphthalate—4.88; Ethylbenzene—3.33; Methylene Chloride—3.95; Xylenes—104.0. (2) Verification Testing Requirements: Texas Arai must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. (A) Required Testing: (i) Texas Arai must collect and analyze at least four composite samples of the wastewater treatment sludge quarterly for a period of one year. The samples must be analyzed for constituents listed in Paragraph 1. (ii) After paragraph (3)(A)(i) has been completed, Texas Arai must collect and analyze at least one composite sample of the wastewater treatment sludge annually. (3) Changes in Operating Conditions: If Texas Arai significantly changes the process which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Paragraph(1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), Texas Arai must notify the EPA in writing and may no longer manage the waste generated from the new process as nonhazardous until the waste meet the delisting levels set in Paragraph (1) and it has received written approval to do so from EPA. (4) Data Submittals: Texas Arai must submit or maintain, as applicable, the information described below. If Texas Arai fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. Texas Arai must: (A) Submit the data obtained through Paragraph 3 to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code (6PD-O) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the State of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. § 1001 and 42 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate, and complete." As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

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TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Reopener Language* (A) If, anytime after disposal of the delisted waste, Texas Arai possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Texas Arai must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If Texas Arai fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility, in writing, of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The proposal shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's action to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(C) or (if no information is presented under paragraph (6)(C) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B)), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (6) Notification Requirements: Texas Arai must do the following before transporting the delisted waste off-site: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if they ship the delisted waste to a different disposal facility.

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[FR Doc. 01–17561 Filed 7–12–01; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 100

RIN 0906–AA55

National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary has made findings as to a condition that can reasonably be determined in some circumstances to be caused by vaccines containing live, oral, rhesus-based rotavirus. Based on these findings, the Secretary proposes to amend the Vaccine Injury Table (Table) by adding to the Table vaccines containing live, oral, rhesus-based rotavirus as a distinct category, with intussusception listed as a covered Table injury. This proposal is based upon the recommendation by the Centers for Disease Control and Prevention (CDC) that Rotashield, the only U.S.-licensed rotavirus vaccine, no longer be administered to infants in the United States based on review of data indicating a strong association between Rotashield and intussusception in the 1 to 2 weeks following vaccination. The Secretary also proposes several additional amendments to the Table described below under **SUPPLEMENTARY INFORMATION**.

DATES: Comments on this proposed rule must be submitted by January 9, 2002. A public hearing on this proposed rule will be held before the end of the public comment period. A separate notice will be published in the **Federal Register** to provide the details of this hearing.

ADDRESSES: Written comments should be addressed to Samuel Shekar, Associate Administrator for Health Professions, Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), Parklawn Building, Room 8–05, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Planning and Program Development, BHPr, Room 8–67, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, Medical Director, Division of Vaccine Injury Compensation, BHPr, HRSA, Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number (301) 443–4198.

SUPPLEMENTARY INFORMATION:

Rotavirus Vaccine

On August 31, 1998, the Food and Drug Administration (FDA) licensed a live, oral, rhesus-based rotavirus tetravelant vaccine for use in infants between the ages of 6 weeks and 1 year. Distribution of the vaccine began on October 1, 1998. Following a review by the Advisory Committee on Immunization Practices (ACIP), the CDC published its rotavirus recommendation in the March 19, 1999, issue of the *Morbidity and Mortality Weekly Report* (MMWR), calling for doses to be administered at 2, 4 and 6 months of age, the first dose to be administered between 6 weeks and 6 months. The series was not to be initiated in children who were 7 months of age or older due to an increased rate of febrile (fever) reactions after the first dose among older infants.

Over the next 8 months, the Secretary's Vaccine Adverse Event Reporting System (VAERS) began receiving reports of intussusception (a type of bowel obstruction that occurs when the bowel folds in on itself) in infants receiving rotavirus vaccine, mostly after the first dose. Based on an analysis of 15 reports, CDC, in the July 16, 1999, issue of the MMWR, recommended that health-care providers and parents postpone use of the rotavirus vaccine. Additional epidemiological studies were undertaken by CDC to determine if there was a true association between the vaccine and intussusception. Also at that time, the manufacturer, in consultation with FDA, voluntarily ceased further distribution of the vaccine. Upon further consideration, and following consultation with CDC officials in preparation for the upcoming ACIP meeting, the manufacturer announced withdrawal of the only U.S.-licensed rotavirus vaccine from the market on October 15, 1999, and requested the immediate return of all doses of the vaccine.

At its October 22, 1999, meeting, the ACIP reviewed scientific data from several sources, including a 19-State case-control study which showed a statistically significant rate of intussusception among recipients of the live, oral, rhesus-based rotavirus vaccine in the 1- to 2-week period following vaccine administration. Beyond 14 days, there did not appear to be more cases than might occur by chance alone. The ACIP concluded that intussusception occurs with significantly increased frequency in the first 14 days following rotavirus administration and withdrew its recommendation for use of the rhesus-based rotavirus vaccine in infants. CDC published the Committee's decision in the November 5, 1999, issue of the MMWR.

As of December 2000, VAERS had received over 100 reports of confirmed and presumptive intussusception cases, 58 of which had onset within 7 days of vaccine receipt. No reports have been received thus far for vaccines administered after the July 1999 MMWR notice. Of the cases reported, approximately one-half required surgical intervention. Nearly all of the remaining cases of bowel obstruction were relieved through barium enema, a radiological procedure used to both diagnose and often rectify the telescoped bowel segment, or resolved without any intervention. At least one death associated with rotavirus vaccine was reported to VAERS.

The general category of rotavirus vaccines was added for coverage under the VICP effective October 22, 1998. Section 2114(e)(2) of the Public Health Service (PHS) Act provides for the inclusion of additional vaccines in the VICP when they are recommended by the CDC for routine administration to children. In compliance with the requirements of the Omnibus Budget Reconciliation Act of 1993, which added a new section 2114(e)(3) to the Act, a vaccine added to the Table through section 2114(e) will be included in the Table, effective when an excise tax to provide funds for they payment of compensation with respect to such vaccines takes effect. This section, codified at 42 U.S.C. 300aa–14(e)(3), read as follows:

> (3) **Effective Date**—A revision by the Secretary under section 2114(e) of the Public Health Service Act (42 U.S.C. 300aa–14(e)) (as amended by paragraph (2)) shall take effect upon the effective date of a tax enacted to provide funds for compensation paid with respect to the vaccine to be added to the vaccine injury table in section 2114(a) of the Public Health Service Act (42 U.S.C. 300aa–14(a)).

The two prerequisites for adding rotavirus vaccine to the VICP were satisfied by enactment of Public Law 105–77, the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, which set

an excise tax of 75 cents per vaccine dose, and publication in the MMWR the following March of the CDC recommendation of the vaccine for "routine use in children." The effective date of coverage, however, was the date of imposition of the excise tax, which was October 22, 1998.

In order to gain entitlement to compensation under title XXI of the PHS Act for a covered vaccine, a petitioner must establish a vaccine-related injury or death, either by showing an event listed on the Table (referred to as a "Table injury" case), and therefore presumed to be caused by a vaccine, or by proving causation in fact. In addition, section 2111(c) of the PHS Act requires that a petitioner must show (except in death cases) 6 months of residual effects of the injury or, as explained below, inpatient hospitalization and surgery resulting from the injury. With regard to a Table injury case, it must be shown that the vaccine recipient suffered an injury of the type enumerated in the "Vaccine Injury Table" corresponding to the vaccination in question, and that the *onset* of such injury took place within a time period from the vaccination also specified in the Table. If so, as set out in sections 2111(c)(1)(C)(i), 2113(a)(1)(B), and 2114(a) of the PHS Act, the Table injury is in effect given the legal presumption that it was caused by the vaccination, and the petitioner is entitled to compensation, *unless* it is affirmatively shown by the Secretary that the injury was caused by some factor unrelated to the vaccination.

Based on the requirements of section 2114(e) of the PHS Act, the Secretary added rotavirus vaccine to the Table with "no condition specified." (42 CFR 100.3). In other words, at the time rotavirus was included for coverage under the Program, no adverse events had been identified to include in the Table. Until specified injuries are added to the Table through the Secretary's rulemaking authority, individuals who receive newly recommended vaccines do not receive a legal presumption of causation for any claimed injury, and are required to prove that the vaccine actually caused the claimed injury.

Consistent with the general process for revising the Table, once the Secretary determines that specific adverse events have been associated with newly recommended vaccines, the Secretary will propose further changes to the Vaccine Injury Table in order to confer the appropriate presumption of causation. Until the Table is amended, petitioners must prove causation in fact to prevail. However, once sufficient data is available to confirm a causal relationship between the newly added vaccine and the adverse event, the Secretary is able to concede causation in fact while the rulemaking process to revise the Table is underway.

The Secretary has reviewed the epidemiological data showing a strong statistical association between the rotavirus vaccine administration and subsequent onset of intussusception within a 14-day time interval. In addition, the studies conducted are not precise enough to demonstrate that an intussusception occurring in the 15- to 30-day interval is not caused by the rotavirus vaccine. For this reason, and because the evidence of a casual link between the Rotashield vaccine and the injury of intussusception is so strong, the Secretary is now proposing to add to the Table the category of "vaccines containing live, oral, rhesus-based rotavirus" with the injury of intussusception. The Secretary proposes that this injury of intussusception have an onset interval of 30 days under sections 2114(c) and (e) of the PHS Act. The Advisory Committee on Childhood Vaccines (ACCV) voted unanimously to approve this time interval at its December 1, 1999, meeting. Claims can be filed for alleged vaccine-related cases whose onset is beyond 30 days, but petitioners will be required to prove causation in fact.

Section XII of the Table in 42 U.S.C. 100.3(a) currently includes the broad category of "rotavirus vaccine" with no condition specified. At its December 1, 1999, meeting, the ACCV voted unanimously to retain this category of rotavirus vaccines on the Table, with no condition specified, and to add the category of "vaccines containing live, oral, rhesus-based rotavirus" with the injury of intussusception. In this Notice of Proposed Rulemaking, the Secretary proposes implementing this recommendation. Although the Secretary proposes retaining the current broad category of rotavirus vaccines on the Table in addition to adding the narrower category of "vaccines containing live, oral, rhesus-based rotavirus," at this time the Secretary expects petitions for compensation relating only to this latter category, as the only rotavirus vaccine that has been licensed contains live, oral, rhesus-based rotavirus.

Under this approach, the Department proposes including two different categories of rotavirus vaccines on the Table, with different effective dates of coverage. Of course, petitions must also be filed within the applicable statute of limitations. The statutes of limitations applicable to petitions filed with the VICP, which are set out in section 2116(a) of the PHS Act (42 U.S.C. 300aa–16(a)) continue to apply. In addition, section 2116(b) of the PHS Act lays out specific exceptions to these statutes of limitations that apply when the effect of a revision to the Table makes a previously ineligible person eligible to receive compensation or when an eligible person's likelihood of obtaining compensation significantly increases. Under this section, individuals who may be eligible to file petitions based on the revised Table may file a petition for compensation not later than 2 years after the effective date of the revision if the injury or death occurred not more than 8 years before the effective date of the revision of the Table (42 U.S.C. 300aa–16(b)).

The first category of rotavirus vaccines, the general category of "rotavirus vaccines," will continue to have an effective date of coverage for petitions filed beginning on October 22, 1998, with no corresponding ending date of coverage. Therefore, this category of vaccines will continue to be effective for vaccines administered in the future. The second category of rotavirus vaccines, those "vaccines containing live, oral, rhesus-based rotavirus," will have an effective date of coverage beginning on October 22, 1998, provided that they were administered on or before the effective date of the final rule resulting from this Notice of Proposed Rulemaking. Because the only live, oral, rhesus-based rotavirus vaccine licensed in the United States has been withdrawn from the market and is no longer recommended for routine administration to children, the Department believes that all petitions arising from administrations of the Rotashield vaccine will fall within this covered period.

Any rotovirus vaccines that are licensed in the future, including those containing live, oral, rhesus-based rotavirus, will automatically be covered under the Program under the Table's broad category of rotavirus vaccines. Because no injury is associated with this category of rotavirus vaccines, petitioners would retain the burden of showing causation in fact with respect to injuries unless and until the Department amended the Table through rulemaking. Thus, while both categories of vaccines will remain on the future Table resulting from the final rule, petitioners bringing claims concerning rotavirus vaccines administered after the effective date of that final rule will only be covered under the general category of rotavirus vaccines. The Department believes that this approach best maintains the scientific integrity of the Table because there is no evidence

that future rotavirus vaccines would be associated with the injury of intussusception. The Department presented this proposal, outlining the effective coverage dates for the two categories of rotavirus vaccines, to the ACCV at its December 2000 meeting. The ACCV reached consensus that this approach was appropriate.

Recent legislation also affects petitioners filing claims concerning rotavirus vaccines. Until recently, the PHS Act required all claimants to establish either that the residual effects of an injury persisted for more than 6 months after the administration of the vaccine or that a death resulted from the administration of a vaccine. Since most patients with intussusception recover after immediate treatment and do not suffer lasting complications for more than 6 months, some petitioners alleging intussusception from a rotavirus vaccine might have been denied compensation under that standard. However, a recent statutory amendment increases access to compensation for some petitions raising rotavirus-related intussusception claims. The Children's Health Act of 200 amends section 2111(c)(1)(D) of the PHS Act to permit payment of compensation for claims alleging injuries where the effects of the injury last less than 6 months if the petitioner demonstrates that the vaccine-related illness, disability, injury or condition "resulted in inpatient hospitalization and surgical intervention." Pub. L. No. 106–310. This statutory change, which became effective on October 17, 2000, applies to new petitions for compensation as well as to petitions pending on that date. Thus, under current law, infants who experience intussusception following a rotavirus vaccine and do not suffer residual effects for more than 6 months may qualify for compensation if their injury resulted in inpatient hospitalization and surgery.

Residual Seizure Disorder: Qualifications and Aids to Interpretation

In a final rule published in the **Federal Register** on February 20, 1997, which became effective on March 24, 1997, residual seizure disorder was removed from the Table as an adverse event for vaccines containing the components of measles, mumps, or rubella. Because residual seizure disorder is no longer listed on the Table in 42 CFR 100.3 as an illness, disability, injury or condition for any covered vaccine, the Secretary proposes removing residual seizure disorder from the Table's Qualifications and Aids to Interpretation. The Secretary believes that his approach will minimize confusion about the Table. At its December 2000 meeting, the ACCV reached consensus that this technical change was appropriate.

Hemophilus Influenzae Type b (Hib) Polysaccharide (Unconjugated) Vaccines

The Secretary proposes removing hemophilus influenzae type b (Hib) polysaccharide (unconjugated) vaccines from the Table. The first licensed Hib vaccine was an unconjugated polysaccharide vaccine, which was licensed in April 1985. Two other unconjugated Hib vaccines were licensed in December 1985. In December 1987, the first conjugate Hib vaccine was licensed. Several conjugate Hib vaccines have subsequently been licensed. Because studies demonstrated the superior immunogenicity of conjugate Hib vaccines as compared to unconjugated Hib vaccines, the Secretary, believes that unconjugated Hib vaccines had little, if any, use since 1989.

In a February 20, 1997, final rule, the Secretary added both Hib conjugate and Hib unconjugated vaccines to the Table. Based on the Secretary's findings, early-onset Hib disease was listed as a table injury for unconjugated Hib vaccines. No condition was specified for Hib conjugate vaccines.

Section 904(b) of the Taxpayer Relief Act of 1997, which was signed into law on August 5, 1997, provided an excise tax for Hib vaccines. Thus, petitioners alleging an injury or death as a result of a Hib vaccine, either conjugate or unconjugated, were able to seek compensation beginning on August 6, 1997, the effective date of the addition of the vaccine to the Table.

The Secretary now proposes removing the unconjugated Hib vaccine from the Table for several reasons. First, under section 2116(b) of the PHS Act, petitions relating to unconjugated Hib vaccines administered before August 6, 1989, are not eligible for compensation. Under the terms of section 2116(b), petitions related to a vaccine added to the Table are compensable only if the vaccine-related injury or death occurred within the 8-year period before the date of the addition of the vaccine to the Table. Because Hib vaccines were added to the Table as of August 6, 1997, petitions relating to Hib vaccines administered before August 6, 1989, are ineligible for compensation. Second, because section 2116(b) imposes a 2-year statute of limitations for vaccines added to the Table, all petitions relating to a Hib vaccine administered between August 6, 1989, and August 5, 1997, had to be filed by August 6, 1999. Because this date has passed, such claims are no longer eligible for compensation. Third, the Department believes that unconjugated Hib vaccines have had little, if any, use since 1989 and expects no petitions relating to unconjugated Hib vaccines administered after August 5, 1997. This belief is supported by the fact that the Department has never received any petitions for compensation relating to unconjugated Hib vaccines. In sum, the Secretary proposes removing unconjugated Hib vaccines from the Table because the Secretary believes that no potential claims relating to this category of vaccines exist.

Because the Secretary proposes removing the unconjugated Hib vaccines from the Table, the Secretary further proposes removing early onset Hib disease from the Table's Qualifications and Aids to Interpretation. This proposal arises from the fact that early-onset Hib disease is associated with only the unconjugated polysaccaride Hib vaccine. Because the unconjugated Hib vaccine will no longer be listed on the Table, it is unnecessary to list any illness, disability, injury or condition for the unconjugated Hib vaccine. The Secretary believes this approach will minimize confusion about the Table. At its December 2000 meeting, the ACCV reached consensus that these technical changes were appropriate.

Pneumococcal Conjugate Vaccine

On December 17, 1999, the excise tax for pneumococcal conjugate vaccines was enacted by Public Law 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, with an effective date of December 18, 1999. Section 523 of this Act provides that all conjugate vaccines against streptococcus pneumoniae (pneumococcus) are added to section 4132(a)(1) of the Internal Revenue Code of 1986, which defines all taxable vaccines. On February 17, 2000, a pneumococcal conjugate vaccine, Prevnar, was licensed by the FDA. Following a review by the ACIP, the CDC recommended the pneumococcal conjugate vaccine for routine administration to children up to 23 months of age. This recommendation was published in the October 6, 2000, issue of the MMWR.

Because the excise tax for the pneumococcal conjugate vaccines has been enacted, and because the CDC has recommended a licensed pneumococcal conjugate vaccine for routine administration to children, the Secretary proposes adding this vaccine to the Table listed at 42 CFR 100.3(a). We have not identified any illness, disease,

injury, or condition which is caused by pneumococcal conjugate vaccines. Thus, the Secretary proposes adding this vaccine to the Table of Injuries with "No Condition Specified." If we learn of any such illness, disease, injury, or condition which is caused by pneumococcal conjugate vaccines, we will consider amending the Table of Injuries to provide for its coverage, and a time period in which the first symptom or manifestation of its onset will be presumed to be vaccine-related. Pneumococcal conjugate vaccines are presently included in the Table under the Table's broad category XIII (notice published in the **Federal Register** on May 22, 2001, 66 FR 28166).

Under section 2114(e)(3) of the PHS Act, as amended by section 13632(a) of the Omnibus Budget Reconciliation Act of 1993, a revision to the Table adding a vaccine recommended by the CDC for routine administration to children shall take effect upon the effective date of the tax enacted to provide funds for compensation with respect to the vaccine added to the Table. Thus, the Secretary proposes covering pneumococcal conjugate vaccines under the Program effective for petitions filed beginning on December 18, 1999, the date the excise tax for these vaccines became effective. Because the addition of pneumococcal conjugate vaccines to the Table is mandated by the PHS Act, this Table change has not been submitted to the ACCV for review.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Secretary has determined that no resources are required to implement the requirements in this rule. Compensation will be made in the same manner. This proposed rule only lessens the burden of proof for potential petitioners. Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

The Secretary has also determined that this proposed rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures. We have determined that the proposed rule is not a "major rule" within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, it will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Nor on the basis of family well-being will the provisions of this rule effect the following family elements: family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

As stated above, this proposed rule would modify the Vaccine Injury Table based on legal authority.

Impact of the New Rule

To date, three petitions have been filed alleging a vaccine-related injury caused or aggravated by a rotavirus vaccine. This proposed rule will have the effect of decreasing the burden of proof on expected future petitioners. Under this proposed rule, future petitioners alleging the injury of intussusception as the result of a live, oral rhesus-based rotavirus vaccine, the only type of rotavirus vaccine licensed to date in the U.S., will be afforded a presumption of causation. This proposed rule will not change the burden of proof applicable to petitioners alleging other injuries related to a rotavirus vaccine, who must rely on a causation in fact analysis.

Because the proposed rule limits the Table injury of intussusception to live, oral, rhesus-based rotavirus vaccines, administered on or before the effective date of the final rule, individuals seeking compensation for injuries related to such a vaccine administered after the final rule becomes effective will no longer receive the presumption of a Table injury for intussusception. Because the manufacturer of the only U.S.-licensed rotavirus vaccine voluntarily ceased distribution of the vaccine in July 1999, and because the CDC recommended that this vaccine no longer be recommended for infants in the United States on October 22, 1999, the Secretary has concluded that no potential claims arising after the final rule is published will be likely to exist. This proposed rule adds a Table injury only for rotavirus vaccines that contain live, oral, rhesus-based rotavirus. Because the only U.S.-licensed rotavirus vaccine falls within this category, the Secretary has concluded that this will not negatively disadvantaged potential petitioners.

This proposed rule will have a similar effect for petitioners seeking compensation for injuries related to hemophilus influenzae type b polysaccharide (unconjugated) vaccines. No claims relating to the administration of an unconjugated Hib vaccine before or on August 5, 1997, are eligible for compensation under the Act. In addition, the Secretary believes that these vaccines were not administered after 1997, and hence that no potential claims relating to this category of vaccines exist. Thus, it is very unlikely that the removal of unconjugated Hib vaccines from the Table will have an adverse impact upon potential petitioners. Removing early-onset Hib disease from the Table's Qualifications and Aids to Interpretation will not have an adverse effect on petitioners because it will no longer be listed as an adverse event for any vaccine on the Table.

Similarly, because residual seizure disorder is not listed on the Table as an adverse event for any vaccine on the Table, removing residual seizure disorder will not have an adverse impact for future petitioners.

Finally, this proposed rule will have the effect of making petitioners seeking compensation for injuries related to pneumococcal conjugate vaccines eligible for compensation under the PHS Act.

Paperwork Reduction Act of 1980

This proposed rule has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Health insurance, and Immunization.

Dated: March 2, 2001.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

Approved: March 23, 2001.

Tommy G. Thompson,

Secretary.

Accordingly, 42 CFR part 100 is proposed to be amended as set forth below:

PART 100—VACCINE INJURY COMPENSATION

1. The authority citation for 42 CFR part 100 is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 2115 of the PHS Act; 100 Stat. 3767, as revised (42 U.S.C. 300aa–15); § 100.3 Vaccine Injury Table, issued under secs. 312 and 313 of Pub. L. 99–660, 100 Stat. 3779–3782 (42 U.S.C. 300aa–1 note); and sec. 2114(c) and (3) of the PHS Act, 100 Stat. 3766 and 107 Stat. 645 (42 U.S.C. 300aa–14(c) and (e)); sec. 904(b) of Pub. L. 105–34, 111 Stat. 873; and sec. 523(a) of Pub. L. 106–170, 113 Stat. 1860.

2. Section 100.3 is amended as follows:

a. In paragraph (a), the Table is amended by removing Item IX; redesignating Items X, XI, XII, and XIII as Items IX, X, XI, and XIV; and adding new Items XII and XIII to read as set forth below.

b. Paragraph (b)(3) is removed and reserved.

c. Paragraph (b)(4) is amended by revising the phrase "paragraphs (b)(2) and (3)" in the first sentence to read "paragraph (b)(2)".

d. Paragraph (b)(11) is removed.

e. Paragraph (c)(2) is amended by removing the words ", and XI" in the parenthetical and adding the word "and" before the number "X".

f. Paragraph (c)(3) is revised as set forth below.

g. Paragraph (c)(4) is redesignated as (c)(5).

h. A new paragraph (c)(4) is added to read as set forth below.

§ 100.3 Vaccine Injury Table.

(a) * * *

VACCINE INJURY TABLE

Vaccine	Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
* * *	* * *	* * *
XII. Vaccines containing live, oral, rhesus-based rotavirus	Intussusception	0–30 days.
XIII. Pneumococcal conjugate vaccines	No condition specified	Not applicable
* * *	* * *	* * *

(c) * * *

(3) Rotavirus vaccines (Item XI of the Table) are included in the Table as of October 22, 1998. Vaccines containing live, oral, rhesus-based rotavirus (Item XII of the Table) are included in the Table as of October 22, 1998, provided that they were administered on or before [Effective date of the final rule].

(4) Pneumococcal conjugate vaccines (Item XIII of the Table) are included in the Table as of December 18, 1999.

* * * * *

[FR Doc. 01–16814 Filed 7–12–01; 8:45 am]

BILLING CODE 4165–15–M

Notices

Federal Register
Vol. 66, No. 135
Friday, July 13, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–01–05]

Nominations for Members of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB). The NOSB is a 15 member board that is responsible for developing and recommending to the Secretary a proposed National List of Approved and Prohibited Substances. The NOSB also advises the Secretary on all other aspects of the National Organic Program. The U.S. Department of Agriculture (USDA) is requesting nominations to fill five (5) upcoming vacancies on the NOSB. The Secretary of Agriculture will appoint persons to serve 5-year terms of office that will commence in January 2002. USDA encourages eligible minorities, women, and persons with disabilities to apply for membership on the NOSB.

DATES: Written nominations, with resumes, must be postmarked on or before October 11, 2001.

ADDRESSES: Nominations should be sent to Ms. Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–TMP–NOP, 1400 Independence Avenue, SW., Room 2510–So., Ag Stop 0268, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Strother, (202) 720–3252; E-mail: toni.strother2@usda.gov; Fax: (202) 690–2624.

SUPPLEMENTARY INFORMATION: The OFPA of 1990, as amended (7 U.S.C. Section 6501 *et seq.*), requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. In developing this program, the Secretary is required to establish an NOSB. The purpose of the NOSB is to assist in the development of a proposed National List of Approved and Prohibited Substances and to advise the Secretary on other aspects of the National Organic program.

The current NOSB has made recommendations to the Secretary regarding the establishment of the initial organic program. It is anticipated that the NOSB will continue to make recommendations on various matters, including recommendations on substances it believes should be allowed or prohibited for use in organic production and handling.

The NOSB is composed of 15 members; 4 organic producers, 2 organic handlers, a retailer, 3 environmentalists, 3 public/consumer representatives, a scientist, and a certifying agent. Nominations are being sought to fill the following five (5) upcoming NOSB vacancies: organic producer, organic handler, consumer/public interest representative, environmentalist, and scientist (in the fields of toxicology, ecology, or biochemistry). Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of an organic production operation, an owner or operator of an organic handling operation, a person who represents public or consumer interest groups, an individual with expertise in areas of environmental protection and resource conservation, or someone with expertise in the fields of toxicology, ecology or biochemistry. Selection criteria will include such factors as: Demonstrated experience and interest in organic production and handling; diverse commodity and geographic representation; support of consumer and public interest organizations; demonstrated experience with environmental matters; and such other factors as may be appropriate for specific positions.

Nominees will be supplied with a biographical information form that must be completed and returned to USDA within 10 working days of its receipt. Completed biographical information forms are required for a nominee to receive consideration for appointment by the Secretary.

Equal opportunity practices will be followed in all appointments to the NOSB in accordance with USDA policies. To ensure that the members of the NOSB take into account the needs of the diverse groups that are served by the Department, membership on the NOSB will include, to the extent practicable, individuals who demonstrate the ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505–0001.

Dated: July 10, 2001.

Barry L. Carpenter,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–17553 Filed 7–12–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Little Reed Island Creek Watershed, Carroll, Pulaski and Wythe Counties, VA

AGENCY: Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the National Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Little Reed Island Creek Watershed in Carroll, Pulaski and Wythe Counties and the Town of Hillsville, Virginia.

FOR FURTHER INFORMATION CONTACT: M. Denise Doetzer, State Conservationist, USDA, Natural Resources Conservation Service, Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, Virginia 23229–5014, telephone (804) 287–1691.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action provides evidence that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, M. Denise Doetzer, State Conservationist, has issued a Finding of No Significant Impact and determined that the preparation and review of an Environmental Impact Statement are not needed for this project.

The project purposes are to improve water quality, improve fish and wildlife habitat, and reduce on-farm damages caused by excessive erosion and sedimentation. The planned works of improvement include the installation of 15,569 acres of conservation practices on pastureland, hayland, cropland, woodland and riparian zone land in the Little Reed Island Creek Watershed in Carroll, Pulaski, and Wythe Counties and the Town of Hillsville, Virginia. The watershed protection will be accomplished by the installation of soil and water conservation practices on private lands.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single-copy requests at the above address. Basic data developed during the Environmental Assessment are on file and may be reviewed by contacting M. Denise Doetzer, State Conservationist.

No administrative action on implementation of the proposed will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901, Watershed and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

M. Denise Doetzer,

State Conservationist.

[FR Doc. 01–17512 Filed 7–12–01; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 13, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each the commodities or services will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Mop, Flat, w/Scrubber
M.R. 1045
NPA: Arizona Industries for the Blind, Phoenix, Arizona
Government Agency: Defense Commissary Agency

Mop, Twist-N-Lock,
M.R. 1040
NPA: LCI/Signature Works, Inc., Hazlehurst, Mississippi
Government Agency: Defense Commissary Agency

Services

Grounds Maintenance
Illinois Air National Guard, 126th ARW, Scott Air Force Base, Illinois
NPA: Challenge Unlimited, Inc., Alton, Illinois
Government Agency: Illinois Air National Guard

Janitorial/Custodial
Minnesota Valley National Wildlife Refuge Visitors Center, Bloomington, Minnesota
NPA: AccessAbility, Inc., Minneapolis, Minnesota
Government Agency: U.S. Fish and Wildlife Service

Mailing Services
Department of Energy, Argonne National Laboratory, Argonne, Illinois
NPA: Jewish Vocational Service & Employment Center, Chicago, Illinois
Government Agency: Department of Energy

Photocopying
Environmental Protection Agency, Research Triangle Park, North Carolina
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina
Government Agency: Environmental Protection Agency

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodity is proposed for deletion from the Procurement List:

Commodity

Buckle, Belt

8315–00–664–9126

Louis R. Bartalot,

Director, Program Analysis and Evaluation.

[FR Doc. 01–17608 Filed 7–12–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 13, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 2, March 9, May 18 and May 25, 2001, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 13041, 14123, 27627 and 28889) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will not have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List.

Services

Central Facility Management

Social Security Administration, Trust Fund Building, Chambersburg, Pennsylvania

Food Service Attendant

Hickam Air Force Base, Hawaii

Janitorial/Custodial

Naval & Marine Corps Reserve Center (NMCRC), 1201 N. 35th Avenue, Phoenix, Arizona

Janitorial/Custodial

Bombay Hook National Wildlife Refuge Smyrna, Delaware

Janitorial/Custodial

At the following U.S. Army Reserve Center Locations:
Brandt Memorial USARC, Baltimore, Maryland
Fleming Goodwin USARC, Dover, Delaware
Cape Henlopen USARC, Lewes, Delaware
Annapolis USARC, Annapolis, Maryland
Sheridan USARC, Baltimore, Maryland
Jachman USARC, Owings Mills, Maryland
AMSA 83 Curtis Bay, Baltimore, Maryland
Jecelin USARC, Baltimore, Maryland

Janitorial/Custodial

U.S. Fish & Wildlife Service, Bosque del Apache National Wildlife Refuge, Socorro, New Mexico

Janitorial/Custodial

St. John's Border Station Route 9B, New York

Janitorial/Custodial

Naval and Marine Corps Reserve Center, Milwaukee, Wisconsin

Provision of Customized Recognition & Awards Program

50% of the Governments Requirement

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,

Director, Program Analysis and Evaluation.

[FR Doc. 01–17609 Filed 7–12–01; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 070901E]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Observer Workshop/Conference Survey.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 44.

Number of Respondents: 175.

Average Hours Per Response: 15 minutes.

Needs and Uses: In March 1998 and June 2000 NOAA coordinated and conducted workshops on fishery observer programs. NOAA now wants to request feedback about these workshops from participants. The information will be used to plan for the next workshop, which is planned for 2002 and which will also be coordinated and sponsored by NOAA.

Affected Public: Federal government, individuals or households, business or other for-profit organizations, not-for-profit institutions, and State, Local, or Tribal Government.

Frequency: Biennial.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 6, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17577 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 070901G]

Submission for OMB Review; Comment Request

The Department of Commerce (D0C) has submitted to the Office of Management and Budget (OMB) for

clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Tag Recapture Card.

Form Number(s): None.

OMB Approval Number: 0648–0259.

Type of Request: Regular submission.

Burden Hours: 8.

Number of Respondents: 240.

Average Hours Per Response: 2 minutes.

Needs and Uses: The Cooperative Gamefish Tagging Program was established to determine the migratory patterns of and other biological information about billfish, tunas, red drum, and numerous other species. An essential part of the tagging program is for fishermen catching tagged fish to voluntarily report on when and where the catch took place, the size and weight of the fish, and similar information. The information resulting from the tagging program is used to help make management decisions.

Affected Public: Individuals and households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 6, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17578 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1178]

Grant of Authority for Subzone Status Audiovox Specialized Applications, LLC (Motor Vehicle Audio/Video Products) Elkhart, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the St. Joseph County Airport Authority, grantee of Foreign-Trade Zone 125 (South Bend, Indiana), has made application for authority to establish special-purpose subzone status at the motor vehicle audio/video products manufacturing plant of Audiovox Specialized Applications, LLC, located in Elkhart, Indiana (FTZ Docket 51–2000, filed 8–14–00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 51293, 8–23–2000); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the motor vehicle audio/video products manufacturing plant of Audiovox Specialized Applications, LLC, located in Elkhart, Indiana (Subzone 125D), at the location described in the application, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 28th day of June 2001.

Richard W. Moreland,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–17625 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Low Enriched Uranium From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 13, 2001.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Gabriel Adler, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3003 or (202) 482–3813, respectively.

The Applicable Statute and Regulations: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determination: We preliminarily determine that low enriched uranium is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on December 27, 2000.[1] *See Initiation of Antidumping Duty Investigations: Low Enriched Uranium from France,*

[1] The petitioners in this investigation are USEC Inc. and its wholly-owned subsidiary, the United States Enrichment Corp. (collectively USEC), and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, CLC, Local 5–550 and Local 5–689 (collectively PACE)

Germany, the Netherlands, and the United Kingdom, 66 FR 1080 (January 05, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

In the initiation notice, we invited interested parties to comment, by January 17, 2001, on the scope of this investigation. On January 17, 2001, we received comments from Eurodif, S.A. (Eurodif), the sole producer/exporter of subject merchandise, and its owner, Compagnie Generale des Matieres Nucleaires (Cogema) (collectively, "Eurodif/Cogema" or "the respondent"), as well as from the petitioners. In addition, on April 5, 2001, we received comments from the Ad Hoc Utilities Group (Ad Hoc Group), an industrial user/consumer of subject merchandise. Our analysis of these comments can be found in a memorandum to Bernard Carreau, dated May 7, 2001, on file in the Central Records Unit, Room B–099, of the Main Commerce Building.

On January 22, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from France, Germany, the Netherlands, and the United Kingdom of low enriched uranium. *See Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom*, 66 FR 8424 (January 31, 2001).

On January 29, 2001, the Department invited interested parties to submit comments on model matching criteria and proposed modifications to the standard questionnaire. We received comments from Eurodif/Cogema and the petitioners on January 31, 2001. On February 5, 2001, after considering those comments, the Department requested additional information from Eurodif/Cogema for purposes of formulating an antidumping questionnaire appropriate to the unique nature of the uranium industry. We received a response to that request on February 12, 2001. After considering this information, on February 28, 2001, we issued an antidumping questionnaire to Eurodif/Cogema.[2]

[2] Section A of the antidumping questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, then a listing of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

The respondent submitted its initial responses to the Department's questionnaire in April and May of 2001. After analyzing these responses, we issued supplemental questionnaires to the respondent to clarify the initial questionnaire responses or to request more complete responses to the initial questions.

On April 18, 2001, the Department postponed, by 50 days, the preliminary determination in this case (from May 16, 2001 to July 5, 2001) in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2). *See Low Enriched Uranium From France, Germany, The Netherlands, and the United Kingdom: Notice of Extension of Preliminary Antidumping Duty Determinations*, 66 FR 20969 (April 26, 2001).

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. On July 2, 2001, Eurodif/Cogema, the sole producer/exporter of subject merchandise, made such a request. In its request, the respondent consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register**.

Period of Investigation

The period of investigation (POI) is October 1, 1999 through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, December 2000).

Scope of Investigation

The scope of this investigation covers low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of this investigation. Specifically, this investigation does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this investigation. For purposes of this investigation, fabricated uranium is defined as enriched uranium dioxide (UO_6), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of this investigation.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

The Ad Hoc Group contends that certain sales subject to these investigations are in actuality transactions for separative work units (SWU) of enrichment, and therefore constitute the provision of services, not the production or sale of goods subject to the antidumping law.

In particular, the Ad Hoc Group focuses upon the relevant sale to be used in determining whether LEU is sold at less than fair value. The Ad Hoc Group contends that sales of SWU or enrichment do not constitute sales of subject merchandise. They argue further that because "toll-produced LEU" is consumed by the parties who contract for the tolling, such LEU is never sold in the United States. The Ad Hoc Group cites the Department's tolling regulation and practice to support its conclusion that such sales should be excluded from the scope of these investigations.

This is an exceptionally complicated issue. Based upon our analysis of the record and the arguments of the parties, we preliminarily determine that all LEU entering the United States from Germany, the Netherlands, the United

Kingdom, and France is subject to these investigations regardless of the way in which the sales for such merchandise are structured.[3] This preliminary determination is based on several factors. First, no party disputes that LEU entering the United States is a good. As the product yield of a manufacturing operation, LEU is a tangible product. Moreover, under the U.S. Customs regulations, any item that is within a tariff category of the Harmonized Tariff System constitutes merchandise for customs purposes. See 19 CFR 141.4 (2000). In this case, LEU is normally classified under HTSUS 2844.20.0020, but also satisfies three other HTSUS classifications described as enriched uranium compounds, enriched uranium, and radioactive elements, isotopes, and compounds.

Second, it is well established that the enrichment process is a major manufacturing operation that is required to produce LEU. No party disputes that the enrichment operation constitutes substantial transformation of the uranium feedstock, nor does any party dispute that the country of origin for LEU is based upon where that substantial transformation takes place. Thus, the LEU exported from Germany, the Netherlands, the United Kingdom, and France are products of those respective countries, and are therefore subject to these investigations.

Third, in these investigations there are significant volumes of LEU sold pursuant to contracts that expressly provide separate prices for SWU and feedstock, and no party disputes that such sales constitute sales of subject merchandise.[4] Rather, it is only for those transactions in which utility companies arguably obtain LEU through separate transactions of SWU and feedstock from separate entities that the Ad Hoc Group contends that such LEU entering the United States cannot be subject to the antidumping law. The Department has considered whether it would be appropriate to include in these investigations only the former type of transactions and exclude the latter. We believe, however, that, based on the petitioners' arguments, discussed below, there is little substantive commercial difference between these types of transactions, and, therefore, we have preliminarily included both. Simply because an unaffiliated customer purchases subject merchandise arguably in the form of two transactions, instead of a single, conventional type of transaction, does not mean that the merchandise entering the United States is not subject to the antidumping law. The purpose of the antidumping law is to provide a remedy to U.S. industries injured by unfairly priced goods. Subject merchandise purchased in the form of two transactions, instead of one, does not eliminate the possibility of unfair pricing, nor does it alleviate the need for the remedy established under the antidumping law.

Fourth, contrary to the Ad Hoc Group's claim, the tolling regulation does not provide a basis to exclude merchandise from the scope of an investigation. The purpose of the tolling regulation is to identify the seller of the subject merchandise for purposes of establishing export price, constructed export price, and normal value. Under § 351.401(h), therefore, the Department focuses upon which party controls the relevant sale of the subject merchandise and foreign like product. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan*, 64 FR 15493, 15498 (Mar. 31, 1999)). Thus, under the tolling regulation the issue is not whether the LEU in question is subject to the antidumping law, but rather who is the seller of the subject merchandise for determining U.S. price and normal value or, more specifically, what is the appropriate way in which to value subject merchandise and foreign like product. To the extent that sales of subject merchandise are structured as two transactions, the Department would combine such transactions to obtain the relevant price of subject merchandise, or normal value, as appropriate. On the other hand, to the extent that a company located in the United States sells the subject merchandise that is toll-processed in a country subject to investigation, the company in the United States would be the seller of subject merchandise. Even if in these cases we considered the utilities to be the producers of the subject merchandise within the meaning of the tolling regulation, this would not mean the antidumping law is not applicable. Regardless of the appropriate seller identified or how the sales are structured, the merchandise entering the United States is subject to the antidumping law.

The petitioners maintain that enrichers are the sellers of LEU in both types of contracts—either as an exchange of SWU and uranium feedstock for cash, or as an exchange of SWU for cash and a swap of uranium feedstock. The petitioners contend that the two transactions are essentially identical. First, regardless of whether the utility company pays in cash or in kind for the natural uranium content, the petitioners point out that the LEU is delivered under essentially the same contract terms, including warranties and guarantees pertaining to the complete LEU product. Second, enrichers do not use the uranium feedstock provided by the utility companies. Instead, the petitioners note that the natural uranium is typically delivered shortly before, or even after, delivery of the LEU, making the delivery of such uranium a payment in kind for the natural uranium component of the LEU. Third, the petitioners contend that the utility company does not have control over the process used to produce LEU that the utility company receives. Rather, the petitioners point out that the enrichers control the manufacture of LEU, as demonstrated by the fact that the product assay under the contract (transactional assay) differs from the product assay produced and delivered by the enricher (operational assay). According to the petitioners, the enricher makes the decision of the particular product assay based upon its own operational requirements and input costs. Taken together, these facts indicate that enrichers are in effect selling LEU under both types of contractual arrangements.

We have preliminarily treated the sales at issue as sales of subject merchandise for the reasons stated above and based upon the petitioners' arguments. In all transactions concerning LEU, regardless of how the sales are structured, the utility companies purchase LEU for use in the production and sale of electricity to consumers. Accordingly, the Department has established the value of the subject merchandise and foreign like product for purposes of determining U.S. price and normal value based on these transactions. We will further examine this issue for the final determination, and we invite comments on this issue. For purposes of these preliminary determinations, we have assigned a value to the natural uranium feedstock where no price was provided. We also invite comments from interested parties as to the valuation of the uranium feedstock for such transactions.

Fair Value Comparisons

To determine whether sales of LEU from France were made in the United States at LTFV, we compared the constructed export price (CEP) to the constructed value (CV), as described in the Constructed Export Price and

[3] This statement is limited to imports of LEU that were enriched in the respective countries.

[4] This is also true of a contract for enriched uranium product (EUP) that provides one price for both components.

Normal Value sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weight-average CEPs and compared them to CV.

We note that during the POI, the respondent sold LEU pursuant to different types of contracts. For some contracts, the respondent undertook to manufacture and deliver LEU for a cash payment covering both the value of the enrichment component and the value of the natural uranium feedstock contained in the LEU (so-called EUP contracts). For other contracts, the respondent undertook to manufacture and deliver LEU for a cash payment covering only the value of the enrichment component; for the natural uranium feedstock component, the respondent received an amount of natural uranium equivalent to the amount used to produce the LEU shipped (so-called SWU contracts). For both types of transactions, the product manufactured and delivered by the respondent was LEU. For purposes of our antidumping analysis, we have translated prices and costs involved in SWU contracts to an LEU basis, increasing those values to account for the cost of the uranium feedstock involved. These adjustments are described in greater detail below.

Constructed Export Price

In accordance with section 772 of the Act, we calculated a CEP. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation by or for the account of the producer or exporter of the merchandise or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act. Consistent with this definition, we found that Eurodif/Cogema made CEP sales during the POI because the sales were made for the account of Eurodif/Cogema by the respondent's U.S. subsidiaries, Cogema, Inc. and Urangesellschaft USA, Inc. (UG Inc.), in the United States.

We calculated CEP based on packed prices charged to the first unaffiliated customer in the United States. For sales involving cash payments on a SWU basis, we translated the prices to an LEU basis by adding a value for the uranium feedstock used in the production of the LEU. This value was derived from the respondent's average cost of uranium feedstock purchases during the POI.

Section 351.401(i) of the Department's regulations provide that the date of sale will normally be the date of invoice, unless the material terms of sale are set on some other date. In the instant case, the material terms of sale are set on the date of the contract with the U.S. customer. Therefore, we based the date of sale on that date.

Because many of these contracts are long-term, spanning over five years, in most instances there have been only partial deliveries to date pursuant to POI contracts. Under the long-term contracts, the LEU provider is obligated to supply a percentage of the utility's overall requirements for given periods of time. The LEU provider does not know the specifications for the desired enrichment level of a given shipment of LEU until it receives delivery instructions for particular shipments of LEU. The desired enrichment level (or "product assay") determines the price for each specific delivery. Given the speculative nature of estimating the product assays to be associated with future shipments of LEU for which no delivery instructions exist (as well as the fact that exchange rates, selling expenses, and costs of production for future deliveries pursuant to POI contracts would also have to be estimated), we have decided, preliminarily, to base the dumping analysis on completed deliveries only.

We note that two of the sales during the POI involved pre-existing contracts, which were amended during the POI. The petitioners have argued that, while the Department typically includes in its dumping analysis the entire sales quantity covered by an amended contract, the long-term nature of uranium contracts warrants including in the analysis only the additional quantities associated with the amendments. Further, the petitioners argue the Department should isolate the prices for the additional quantities called for by the amendments, segregating them from prices specified by the pre-existing contracts. For purposes of this preliminary determination, consistent with past practice, we have considered the amended contract to constitute a new sale, and have included in the dumping analysis all deliveries pursuant to the amended contract up to the date of the initial questionnaire response. We will examine this issue further at verification, and invite comment from interested parties for the final determination.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign inland freight from the plant to the French port of exit, international freight, international air freight/insurance, charges for shipment of samples, U.S. brokerage and handling fees, and port charges. We also deducted any discounts from the starting price.

In addition, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including indirect selling expenses, credit expense, and inventory carrying costs.

Finally, in accordance with 772(d)(3) and 772(f) of the Act, we made a deduction for CEP profit. The CEP profit rate is normally calculated on the basis of comparison market sales and U.S. sales. In this case, there were no home market or viable third-country market sales of LEU during the POI. Therefore, we based the CEP profit calculation on the profit rate of the respondent's U.S. affiliate(s) that had a profit during the POI.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market (or third country market), provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. Eurodif/Cogema did not have a viable comparison market during the POI. Therefore, we have based NV on CV. Adjustments made in deriving the CV are described in detail in the *Calculation of Normal Value Based on Constructed Value*, below.

B. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. We calculated a weight-averaged cost of production (COP) for each control number of LEU, based on the sum of the cost of materials, fabrication and general expenses, and packing costs. We relied on the data submitted by the respondent in its supplementary questionnaire response except in specific instances

where the submitted costs were not appropriately quantified or valued.

Specifically, we adjusted the reported costs as follows:

(1) We included the cost of centrifugal separation studies (which had been excluded by the respondent) in the calculation of the general and administrative expenses rate.

(2) We recalculated the net interest ratio on the basis of the consolidated interest expenses of Cogema's parent, CEA Industrie, for the year ended December 31, 1999.

For some deliveries pursuant to contracts based on SWU prices, the respondent's reported costs did not include a value for the uranium feedstock used in the production of the delivered LEU. To translate the reported costs to an LEU basis, we added to the reported costs a value for the uranium feedstock used in the production of the LEU. This value was derived from the respondent's average cost of uranium feedstock purchases during the POI.

We note that, during the POI, Eurodif/Cogema obtained electricity from Electricite de France (EDF), an affiliated French utility. Section 773(f)(2) of the Act provides that the Department may value any element obtained from an affiliate at the market value of the element, if the transfer price does not fairly reflect a market value (the "transactions disregarded" rule). In the instant case, the rate charged by EDF to Eurodif/Cogema is below that charged to other large industrial users. However, the record indicates that Eurodif/Cogema is by far the largest consumer of electricity in France. The rate charged by EDF to Eurodif/Cogema appears to be commensurate with the respondent's massive consumption of electricity. Moreover, there is evidence on the record that at least one unaffiliated European electricity provider offered electricity to Eurodif/Cogema at rates even lower than that charged by EDF. Given the facts of this case, we have preliminarily determined to rely on the transfer price for electricity reported by Eurodif/Cogema. We will examine this further at verification.

Because there is no viable comparison market for Eurodif/Cogema, and hence no actual company-specific profit data available for Eurodif/Cogema, we calculated profit in accordance with section 773(e)(2)(B)(iii) of the Act and the Statement of Administrative Action (SAA) at 841. (Where, due to the absence of data, the Department cannot determine amounts for profit under alternatives (i) or (ii) of section 773(e)(2)(B) of the Act or a "profit cap" under alternative (iii) of section 773(e)(2)(B) of the Act, the Department may apply alternative (iii) on the basis of the facts available.) In this case, we based CV profit on the profit rate on the 1999 financial statements of CEA Industrie, a holding company for the industrial interests of the French Atomic Energy Commission, which consolidates the financial results of the respondent and other companies associated with the French nuclear industry.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from the respondent about the marketing stages involved in the reported U.S. sales, as well as in the home market,[5] including a description of the selling activities performed by the respondent for each channel of distribution. Given that all U.S. sales were CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

In the U.S. market, the respondent sells to utility customers. After deducting expenses associated with the selling activities reflected in the price under section 772(d) of the Act (*i.e.*, the expenses of Cogema Inc. and Urangesellschaft), we noted selling expenses associated with strategic planning and marketing, customer sales contact, production planning and evaluation, and contract administration. These expenses did not vary by U.S. channel of distribution. Therefore, we found all U.S. sales to be made at single LOT.

Home market selling expenses for CV were based on the selling expenses of Cogema for pre-POI home market contracts. We have no basis for attributing different expenses to different channels of distribution. Therefore, we found a single LOT of trade in the home market.

The respondent generally performs the same kinds of selling functions in both markets. Although the respondent described different degrees of selling activities associated with home market sales and U.S. sales by characterizing the levels of different activities as "low," "medium" or "high," the respondent did not explain the distinctions between these terms with respect to the different categories of selling activities, leaving these terms ambiguous. Therefore, we have no basis for concluding whether or not a CEP offset to normal value is appropriate and we did not calculate a CEP offset. We will examine this further at verification.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of low enriched uranium from France that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this

[5] Although the home market was not viable, for the purpose of calculating CV, the respondent provided POI home market selling expenses (related to pre-POI contracts) in its questionnaire responses.

notice in the **Federal Register**.[6] We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Eurodif/Cogema	17.52
All Others	17.52

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one low-enriched uranium case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will issue our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: July 5, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17622 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–DS–P

[6] On July 3, 2001, the Department received comments from the respondent requesting that, in the event of an affirmative preliminary determination, the application of any cash deposit, bond or other security be limited to transactions involving the sale of enriched uranium, and exclude imports pursuant to so-called SWU contracts. We will consider these comments for the final determination.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–808; A–412–820; A–428–828]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Low Enriched Uranium From the United Kingdom; Preliminary Determinations of Sales at Not Less Than Fair Value: Low Enriched Uranium From Germany and the Netherlands; and Postponement of Final Determinations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 13, 2001.

FOR FURTHER INFORMATION CONTACT: Frank Thomson or James Terpstra, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4793 or (202) 482–3965, respectively.

The Applicable Statute and Regulations: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determinations: We preliminarily determine that low-enriched uranium (LEU) from Germany and the Netherlands is not being sold, or is not likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act.

We preliminarily determine that LEU from the United Kingdom is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

These investigations were initiated on December 27, 2000.[1] *See Notice of Initiation of Antidumping Duty Investigations: Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom*, 66 FR 1080 (January 5, 2001). (*Initiation Notice*).

In the initiation notice, we invited interested parties to comment on the scope of these investigations by January 17, 2001. On January 17, 2001, we received a letter with comments from Urenco Ltd., Urenco (Capenhurst) Ltd., Urenco Nederland BV, and Urenco Deutschland GmbH (collectively, "Urenco" or "the respondent"), as well as from the petitioners. In addition, on April 5, 2001, we received comments from the Ad Hoc Utilities Group (Ad Hoc Group), an industrial user/consumer of subject merchandise. Our analysis of these comments is in a memorandum from the team to Bernard Carreau, dated May 7, 2001, which is on file in the Central Records Unit, Room B–099, of the Main Commerce Building.

On January 22, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by

[1] The petitioners in this investigation are USEC Inc. and its wholly-owned subsidiary, the United States Enrichment Corp. (collectively USEC), and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, CLC, Local 5–550 and Local 5–689 (collectively PACE) (the petitioners).

reason of imports of the products subject to each of these antidumping investigations. *See Low Enriched Uranium From France, Germany, The Netherlands, and the United Kingdom*, 66 FR 8424 (January 31, 2001).

On January 29, 2001, the Department invited interested parties to submit comments on model matching criteria and proposed modifications to the standard questionnaire. We received comments from Urenco and the petitioners on January 31, 2001. On February 5, 2001, after considering those comments, the Department requested additional information from Urenco for purposes of formulating antidumping questionnaires appropriate to the unique nature of the uranium industry. We received Urenco's response to that request on February 13, 2001. After considering this information, on February 26, 2001, the Department issued its antidumping questionnaires to Urenco.[2]

We issued supplemental questionnaires where appropriate. Responses to those supplemental questionnaires were timely filed on May 30, 2001 and June 4, 2001, and we have incorporated the information provided in those responses into this preliminary determination. On May 5, 2001, Urenco requested an extension of time to respond to certain questions in the supplemental questionnaires: On May 29, 2001, the Department granted Urenco a five-day extension to respond to certain questions in the Department's supplemental questionnaires.

On April 18, 2001, the Department concluded, consistent with section 733(c)(1)(B) of the Act, that these cases concerning LEU from Germany, the Netherlands, and the United Kingdom are extraordinarily complicated, and that additional time was necessary to issue the preliminary determinations. Consequently, we extended the deadline for the preliminary determinations to July 5, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom*, 66 FR 20969 (April 26, 2001).

In addition to the principal events listed above, petitioners and respondent have filed numerous submissions suggesting alternative calculation methodologies, the appropriate treatment of separative work unit (SWU) contracts, and the possible calculation of a consolidated rate for the Urenco group. These comments have been addressed insofar as we have made a specific determination on how to handle each aspect of the calculations. One suggestion not elsewhere addressed is petitioners' request that we rely on adverse facts available for these preliminary determinations based on Urenco's failure to respond to the questionnaire to the best of its ability. Petitioners cite numerous instances of Urenco's failure to initially provide information, most notably a lack of full disclosure about affiliated party transactions. Although we agree with petitioners that there were deficiencies in the information provided by Urenco, which are detailed in our supplemental questionnaires, we preliminarily determine that Urenco's questionnaire responses are not so deficient as to be unuseable or that reliance on facts available is appropriate for purposes of these preliminary determinations.

Postponement of Final Determination

Section 735(a)(2)(B) of the Act provides that a final determination may be postponed until no later than 135 days after the date of the publication of the preliminary determination if, in the event of a negative preliminary determination, as in the case for Germany and the case for the Netherlands, a request for such postponement is made by the petitioner. On July 5, 2001, the petitioners made such a request. Since these preliminary determinations are negative, with respect with Germany and the Netherlands, and there is no compelling reason to deny the petitioners' request, we have extended the deadline for issuance of these final determinations until the 135th day after the date of publication of these preliminary determinations in the **Federal Register**.

In the event of an affirmative preliminary determination, as is the case for the United Kingdom, section 735(a)(2)(A) of the Act states that the Department may postpone making the final determination until no later than the 135th day after publication of the preliminary determination if a request in writing for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. On June 29, 2001, Urenco Ltd., the sole producer/exporter of subject merchandise from the United Kingdom, made such a request. In its request, the respondent consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, with respect with the United Kingdom, and there is no compelling reason to deny respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register**.

Period of Investigation

The period of investigation (POI) is October 1, 1999, through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, December 2000).

Scope of Investigation

The scope of these investigations covers low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF_6) with a U_{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of these investigations. Specifically, these investigations do not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of these investigations. For purposes of these investigations, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of these investigations.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[2] Section A of the antidumping questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, then a listing of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

The Ad Hoc Group contends that certain sales subject to these investigations are in actuality transactions for separative work units (SWU) of enrichment, and therefore constitute the provision of services, not the production or sale of goods subject to the antidumping law. In particular, the Ad Hoc Group focuses upon the relevant sale to be used in determining whether LEU is sold at less than fair value. The Ad Hoc Group contends that sales of SWU or enrichment do not constitute sales of subject merchandise. They argue further that because "toll-produced LEU" is consumed by the parties who contract for the tolling, such LEU is never sold in the United States. The Ad Hoc Group cites the Department's tolling regulation and practice to support its conclusion that such sales should be excluded from the scope of these investigations.

This is an exceptionally complicated issue. Based upon our analysis of the record and the arguments of the parties, we preliminarily determine that all LEU entering the United States from Germany, the Netherlands, the United Kingdom, and France is subject to these investigations regardless of the way in which the sales for such merchandise are structured.[3] This preliminary determination is based on several factors. First, no party disputes that LEU entering the United States is a good. As the product yield of a manufacturing operation, LEU is a tangible product. Moreover, under the U.S. Customs regulations, any item that is within a tariff category of the Harmonized Tariff System constitutes merchandise for customs purposes. See 19 CFR 141.4 (2000). In this case, LEU is normally classified under HTSUS 2844.20.0020, but also satisfies three other HTSUS classifications described as enriched uranium compounds, enriched uranium, and radioactive elements, isotopes, and compounds.

Second, it is well established that the enrichment process is a major manufacturing operation that is required to produce LEU. No party disputes that the enrichment operation constitutes substantial transformation of the uranium feedstock, nor does any party dispute that the country of origin for LEU is based upon where that substantial transformation takes place. Thus, the LEU exported from Germany, the Netherlands, the United Kingdom, and France are products of those respective countries, and are therefore subject to these investigations.

Third, in these investigations there are significant volumes of LEU sold pursuant to contracts that expressly provide separate prices for SWU and feedstock, and no party disputes that such sales constitute sales of subject merchandise.[4] Rather, it is only for those transactions in which utility companies arguably obtain LEU through separate transactions of SWU and feedstock from separate entities that the Ad Hoc Group contends that such LEU entering the United States cannot be subject to the antidumping law. The Department has considered whether it would be appropriate to include in these investigations only the former type of transactions and exclude the latter. We believe, however, that, based on the petitioners' arguments, discussed below, there is little substantive commercial difference between these types of transactions, and, therefore, we have preliminarily included both. Simply because an unaffiliated customer purchases subject merchandise arguably in the form of two transactions, instead of a single, conventional type of transaction, does not mean that the merchandise entering the United States is not subject to the antidumping law. The purpose of the antidumping law is to provide a remedy to U.S. industries injured by unfairly priced goods. Subject merchandise purchased in the form of two transactions, instead of one, does not eliminate the possibility of unfair pricing, nor does it alleviate the need for the remedy established under the antidumping law.

Fourth, contrary to the Ad Hoc Group's claim, the tolling regulation does not provide a basis to exclude merchandise from the scope of an investigation. The purpose of the tolling regulation is to identify the seller of the subject merchandise for purposes of establishing export price, constructed export price, and normal value. Under § 351.401(h), therefore, the Department focuses upon which party controls the relevant sale of the subject merchandise and foreign like product. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan*, 64 FR 15493, 15498 (Mar. 31, 1999)). Thus, under the tolling regulation the issue is not whether the LEU in question is subject to the antidumping law, but rather who is the seller of the subject merchandise for determining U.S. price and normal value or, more specifically, what is the appropriate way in which to value subject merchandise and foreign like product. To the extent that sales of subject merchandise are structured as two transactions, the Department would combine such transactions to obtain the relevant price of subject merchandise, or normal value, as appropriate. On the other hand, to the extent that a company located in the United States sells the subject merchandise that is toll-processed in a country subject to investigation, the company in the United States would be the seller of subject merchandise. Even if in these cases we considered the utilities to be the producers of the subject merchandise within the meaning of the tolling regulation, this would not mean the antidumping law is not applicable. Regardless of the appropriate seller identified or how the sales are structured, the merchandise entering the United States is subject to the antidumping law.

The petitioners maintain that enrichers are the sellers of LEU in both types of contracts—either as an exchange of SWU and uranium feedstock for cash, or as an exchange of SWU for cash and a swap of uranium feedstock. The petitioners contend that the two transactions are essentially identical. First, regardless of whether the utility company pays in cash or in kind for the natural uranium content, the petitioners point out that the LEU is delivered under essentially the same contract terms, including warranties and guarantees pertaining to the complete LEU product. Second, enrichers do not use the uranium feedstock provided by the utility companies. Instead, the petitioners note that the natural uranium is typically delivered shortly before, or even after, delivery of the LEU, making the delivery of such uranium a payment in kind for the natural uranium component of the LEU. Third, the petitioners contend that the utility company does not have control over the process used to produce LEU that the utility company receives. Rather, the petitioners point out that the enrichers control the manufacture of LEU, as demonstrated by the fact that the product assay under the contract (transactional assay) differs from the product assay produced and delivered by the enricher (operational assay). According to the petitioners, the enricher makes the decision of the particular product assay based upon its own operational requirements and input costs. Taken together, these facts indicate that enrichers are in effect selling LEU under both types of contractual arrangements.

We have preliminarily treated the sales at issue as sales of subject

[3] This statement is limited to imports of LEU that were enriched in the respective countries.

[4] This is also true of a contract for enriched uranium product (EUP) that provides one price for both components.

merchandise for the reasons stated above and based upon the petitioners' arguments. In all transactions concerning LEU, regardless of how the sales are structured, the utility companies purchase LEU for use in the production and sale of electricity to consumers. Accordingly, the Department has established the value of the subject merchandise and foreign like product for purposes of determining U.S. price and normal value based on these transactions. We will further examine this issue for the final determination, and we invite comments on this issue. For purposes of these preliminary determinations, we have assigned a value to the natural uranium feedstock where no price was provided. We also invite comments from interested parties as to the valuation of the uranium feedstock for such transactions.

Fair Value Comparisons

To determine whether sales of low enriched uranium from Germany, the Netherlands, and the United Kingdom were made in the United States at less than fair value, we compared the export price (EP) to the constructed value (CV), as described in the *Export Price* and *Constructed Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and compared them to CV.

We note that during the POI, the respondent sold LEU pursuant to different types of contracts. For some contracts, the respondent undertook to manufacture and deliver LEU for a cash payment covering both the value of the enrichment component and the value of the natural uranium feedstock deemed to be contained in the LEU (referred to as EUP contracts). For other contracts, the respondent undertook to manufacture and deliver LEU for a cash payment covering only the value of the enrichment component; for the natural uranium feedstock component, the respondent received an amount of natural uranium equivalent [5] to the amount deemed to be used to produce the LEU shipped (referred to as SWU contracts). For both types of transactions, the product manufactured and delivered by the respondent was LEU. For purposes of our antidumping analysis, we have translated prices and costs involved in SWU contracts to an LEU basis. To value the natural uranium component for SWU contracts we have made our calculations based upon the presumption that the value of this natural uranium was equal to the value of natural uranium paid by Urenco's customers pursuant to EUP contracts.

Export Price

Germany, the Netherlands, and the United Kingdom

For the price to the United States, we used EP in accordance with section 772(a) of the Act because the merchandise was sold by the producer or exporter outside the United States to the first unaffiliated purchaser in the United States prior to importation. In addition, constructed export price was not otherwise warranted based on the facts on the record. Consistent with this definition, we found that Urenco made EP sales during the POI.

We based the date of sale on the date of the contract with the U.S. customer; *i.e.*, the date that the terms of sale were established. Section 351.401(i) of the Department's regulations provide that the date of sale will normally be the date of invoice, unless the material terms of sale are set on some other date. In the instant cases, we preliminarily determine the material terms of sale are set by contract.

We note that some of the sales during the POI involved pre-existing contracts which were amended during the POI. The petitioners argue that, while the Department typically includes in its dumping analysis the entire sales quantity covered by an amended contract, the long-term nature of uranium contracts warrants including in the analysis only the additional quantities associated with the amendments.[6] Further, the petitioners argue that the Department should isolate the prices for the additional quantities called for by the amendments, segregating them from prices specified by the pre-existing contracts. For purposes of these preliminary determinations, we have considered the amended contract to constitute an entirely new sale, and have included in the dumping analysis all deliveries to date pursuant to the amended contract. We will examine this issue further at verification, and invite comment from interested parties for the final determinations.

Because many of these contracts are long-term, spanning over five years, in most instances there have been only partial deliveries to date pursuant to contracts entered into during the POI. Based on the nature of the contracts, the specifications for the desired enrichment level of the LEU (*i.e.* "product assay" of the LEU) and, therefore, the per-kilogram price for the LEU, are not known, until the customer requests delivery.[7] Given the speculative nature of estimating the product assays and prices associated with future deliveries, coupled with the fact that we are unable to determine the country of origin until delivery actually occurs, we have preliminarily decided to base the dumping analysis on completed deliveries only.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign inland freight from the plant to the port of export, international freight, international air freight/insurance, charges for shipment of samples, U.S. brokerage and handling fees, and port charges. We also deducted any discounts from the starting price.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that normal value (NV) be based on the price at which the foreign like product is sold in the home market (or third country market), provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

Germany

Pursuant to section 773(a)(1) of the Act, because Urenco Deutschland GmbH's (UD) aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

The Netherlands

Urenco Nederland B.V. (UN) had no sales in its home market. Japan was its largest third-country market, and, following our normal practice, it was selected as the comparison market.

[5] The actual quantity of feedstock used by enrichers to produce the LEU they ship is normally different from the quantity of feedstock they receive from their utility customers. This difference, between the operational and transactional tails assays, is adjusted for in the constructed value calculation.

[6] Due to the fact that many long-term contracts covering an existing quantity are renegotiated when newer quantities are purchased, price reductions are taken on existing contracts that are related to new sales in the POI.

[7] Prices, exchange rates, selling expenses, and costs of production for future deliveries pursuant to POI contracts would also have to be estimated.

The United Kingdom

Urenco (Capenhurst) Ltd. (UCL) had no sales in its home market. Japan was its largest third-country market and, following our normal practice, it was selected as the comparison market.

B. Constructed Value

For Germany and the Netherlands, Urenco reported no actual shipments in the respective comparison markets. Because, as discussed above, we limited our analysis to actual shipments, we therefore used constructed value as the basis for normal value. For the United Kingdom, although UCL had actual shipments to Japan, we have preliminarily determined not to rely on these sales for determining normal value. Due to the differences in product and tails assays and the unique manner in which LEU is sold, a difference in merchandise adjustment (diffmer) will not adequately reflect price differentials. Accordingly, we have also relied on constructed value as the basis for normal value for the United Kingdom. We will examine this issue further at verification and invite comment from interested parties for the final determination. *See* "Calculation Memorandum".

C. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the merchandise, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. We calculated a weighted-averaged cost of production (COP) for each control number of low enriched uranium, based on the sum of the cost of materials, fabrication and general expenses, and packing costs.

We relied on the data submitted by respondents in their supplementary cost questionnaire responses, except, as noted below, in specific instances where the submitted costs were not appropriately quantified or valued.

Common

We adjusted the reported general and administrative expenses (G&A) rate to include certain non-operating income and expense amounts which appear to relate to the general operations of each of the companies.

Urenco (Capenhurst) Limited

1. We increased UCL's depreciation expense to account for the effect of acquiring fixed assets from affiliates at less than full cost.

2. We adjusted UCL's reported cost of manufacturing by including the portion of the centrifuge losses allocated to the POI.

Urenco Nederland B.V.

1. We increased UNL's reported costs by including the unreconciled difference between the audited financial statement cost of manufacturing and the total costs reported.

2. We increased UNL's reported cost of manufacturing to account for foreign exchange losses that were excluded from the reported costs.

Urenco Deutschland GmbH

We increased UD's reported cost to include depreciation expense calculated in accordance with German GAAP rather then that in accordance with UK GAAP.

In accordance with section 773(e)(2)(B)(iii) of the Act, we calculated Urenco's SG&A and profit using the individual company's audited financial statements. For further details, *see* calculation Memorandum from Ernest Gziryan to Neal Halper, dated July 5, 2001.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine CV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The CV LOT is that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether CV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which CV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In the U.S. market, we found selling expenses associated with strategic planning and marketing, customer sales contact, production planning and evaluation, and contract administration. Urenco reported one channel of distribution in the U.S. market (*i.e.*, from Urenco Ltd. to U.S. utilities). Therefore, we found all U.S. sales to be made at single level of trade.

For the comparison markets Urenco reported one channel of distribution (*i.e.*, from Urenco Ltd. to the utility companies). Moreover all the companies in the Urenco group sell through Urenco Inc. and have similar marketing processes and selling activities in these comparison markets (*i.e.*, strategic planning, marketing, and customer sales contact). Therefore, we found a single level of trade. Moreover, since the Urenco group sells to the United States and in the comparison markets through Urenco Ltd., where the marketing activities and selling functions are similar, we found the level of trade in the comparison markets comparable to that of the U.S. market.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of low enriched uranium, with the exception of those exported from Germany and the Netherlands, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.[8] We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

[8] On July 3, 2001, the Department received comments from the respondent requesting that, in the event of an affirmative preliminary determination, the application of any cash deposit, bond or other security be limited to transactions involving the sale of enriched uranium, and exclude imports pursuant to so-called SWU contracts. We will consider these comments for the final determination.

Exporter/manufacturer	Weighted-average margin percentage
Urenco Deutschland GmbH	[1] 0.46
Urenco Netherlands B.V	[1] 0.55
Urenco (Captenhurst) Ltd.	3.35

[1] (de minimis).

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to the proceedings in these investigations in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determinations. If our final antidumping determinations are affirmative, the ITC will determine whether the imports covered by the determinations are materially injuring, or threaten material injury to, the U.S. industry. The deadline for the ITC determinations would be the later of 120 days after the date of these preliminary determinations or 45 days after the date of our final determinations.

Public Comment

Case briefs for these investigations must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one low-enriched uranium case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determinations no later than 135 days after the date of publication of this notice in the **Federal Register**.

These determinations are issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: July 5, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17624 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial Rescission of Antidumping Duty Administrative Review

EFFECTIVE DATE: August 13, 2001.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR part 351 (2000).

Background

On February 14, 2001, the Department published in the **Federal Register** (66 FR 10269) a notice of "Opportunity To Request Administrative Review" of the antidumping duty order on certain preserved mushrooms from India for the period February 1, 2000, through January 31, 2001. On February 26, 2001, Agro Dutch Foods, Ltd., Himalya International, and Hindustan Lever Limited (formerly Ponds India, Ltd.) requested an administrative review of their sales for the above-mentioned period, and on February 27, 2001, Weikfield Agro Products, Ltd, requested an administrative review of its sales for the same period. On February 29, 2001, the petitioner [1] requested an administrative review of the above-referenced antidumping duty order for the period February 1, 2000, through January 31, 2001, for the following companies: Agro Dutch Foods, Ltd., Alpine Biotech, Ltd., Mandeep Mushrooms, Ltd., Hindustan Lever Limited, Saptarishi Agro Industries, Ltd., Techtran Agro Industries, Ltd., Transchem, Ltd., Premier Mushroom Farms, Flex Foods, Ltd., Weikfield Agro Products, Ltd., Dinesh Agro Products, Ltd., and Himalya International. On March 22, 2001, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 66 FR 16037.

Partial Recission of Review

On April 23, 2001, Hindustan Lever Limited timely withdrew its request for an administrative review of its sales during the above-referenced period. On April 24 and June 14, 2001, the petitioner timely withdrew its request for review with respect to the following companies: Alpine Biotech, Ltd., Dinesh Agro Products, Ltd., Flex Foods, Ltd., Hindustan Lever Limited, Mandeep Mushrooms, Ltd., Premier Mushroom Farms, Techtran Agro Industries, and Transchem Ltd. Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request within 90 days of the date of publication of notice of initiation of the requested review. In this case, the petitioner and Hindustan Lever Limited

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushroom Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

have withdrawn their requests for review within the 90-day period. We have received no other submissions regarding the petitioner's and Hindustan Lever Limited's withdrawal of their requests for review. Therefore, we are rescinding in part this review of the antidumping duty order on certain preserved mushrooms from India as to Alpine Biotech, Ltd., Dinesh Agro Products, Ltd., Flex Foods, Ltd., Hindustan Lever Limited, Mandeep Mushrooms, Ltd., Premier Mushroom Farms, Techtran Agro Industries, and Transchem Ltd. This review will continue with respect to Agro Dutch Foods, Ltd., Himalya International, Saptarishi Agro Industries, Ltd., and Weikfield Agro Products, Ltd.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: July 3, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–17623 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Certain Preserved Mushrooms From Indonesia: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 8, 2001, the Department of Commerce published the preliminary results of the first administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia (66 FR 13903). The review covers three manufacturers/exporters. The periods of review are August 5, 1998, through January 31, 2000, for PT Indo Evergreen Agro Business Corporation and PT Zeta Agro Corporation, and December 31, 1998 through January 31, 2000, for PT Dieng Djaya and PT Surya Jaya Abadi Perkasa.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: August 13, 2001.

FOR FURTHER INFORMATION CONTACT: Sophie Castro or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0588 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2000).

Background

The review covers three manufacturers/exporters, PT Indo Evergreen Agro Business Corporation (Indo Evergreen), PT Zeta Agro Corporation (Zeta), and PT Dieng Djaya (Dieng Djaya) and PT Surya Jaya Abadi Perkasa (Surya Jaya). The periods of review are August 5, 1998, through January 31, 2000, for Indo Evergreen and Zeta and December 31, 1998 through January 31, 2000,[1] for Dieng Djaya and Surya Jaya.

On March 8, 2001, the Department of Commerce (the Department) published the preliminary results of the first administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia (66 FR 13903). We invited parties to comment on the preliminary results of review. We received case briefs from the petitioners and respondents on April 9, 2001. We received rebuttal briefs from the petitioners and the respondents on April 17, 2001. We have conducted this administrative review in accordance with section 751 of the Act.

Scope of Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this review are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated July 6, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Internet at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memo are identical in content.

Changes From the Preliminary Results

Based on our analysis of the comments received, we have made

[1] *See Notice of Antidumping Duty Order: Certain Preserved Mushroom from Indonesia*, 64 FR 8310 (February 19, 1999).

certain changes to the margin calculations. For a discussion of these changes, *see* the "Margin Calculations" section of the Decision Memo, the public version of which is on file in room B–099 of the Department and available on the Internet at http://ia.ita.doc.gov.

Final Results of Review

We determine that the following weighted-average margin percentages exist:

Manufacturer/exporter	Margin (percent)	Period of review
PT Dieng Djaya and PT Surya Jaya Abadi Perkasa	0.44 (*de minimis*)	12/31/1998–01/31/2001
PT Indo Evergreen Agro Business Corp	5.16	08/05/1998–01/31/2001
PT Zeta Agro Corporation	0.02 (*de minimis*)	08/05/1998–01/31/2001

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific assessment rates. We will direct the Customs Service to assess the resulting rates against the entered customs values for the subject merchandise on each importer's entries under the relevant order during the review period. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of the subject merchandise for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent).

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain preserved mushrooms from Indonesia entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Dieng/Surya Jaya, Indo Evergreen and Zeta will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 6, 2001.

Faryar Shirzad,

Assistant Secretary for International Trade.

Appendix—List of Issues

Dieng Djaya and Surya Jaya-

1. Use of Adverse Facts Available for Dieng
2. Calculation of a Single Weighted-Average Cost
3. Dieng's and Surya Jaya's Reported Can Cost
4. General Expenses and Application of Weighted-Average Financial Ratios
5. Classification of U.S. Sales Through an Affiliated Trading Company

Zeta

6. Packing Expenses
7. Reported Quantity of Waste
8. Sale of Compost and Casing Soil
9. Allocation of Costs Based on Fancy and Non-Fancy Mushrooms
10. Warranty Expenses
11. Home Market Credit Expense

Indo Evergreen

12. Home Market Credit Expenses
13. Warranty Expenses on U.S. sales
14. Allocation of Shrinkage Costs
15. Sales of Compost and Casing Soil as an Offset to Cost of Production
16. Packing Cost
17. Selling, General and Administrative Expenses

[FR Doc. 01–17626 Filed 7–12–01; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070201B]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that the Washington Department of Fish and Wildlife (WDFW) has submitted a Fisheries Management and Evaluation Plan (FMEP) pursuant to the protective regulations promulgated for Snake River (SR) steelhead under the Endangered Species Act (ESA). The FMEP specifies the future management of inland recreational fisheries potentially affecting the SR steelhead in the State of Washington. This document serves to notify the public of the availability of the FMEP for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the draft FMEP must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on August 13, 2001.

ADDRESSES: Written comments and requests for copies of the draft FMEP should be addressed to Debbie Martin, Sustainable Fisheries Division, Hatchery and Inland Fisheries Branch, 10215 West Emerald Street, Suite 180, Boise, ID 83704 or faxed to 208/378–5699. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Debbie Martin, Boise, ID at phone number 208/321–2959 or e-mail: *debbie.martin@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Snake River steelhead (*Oncorhynchus mykiss*) Evolutionarily Significant Unit (ESU).

Background

WDFW has submitted to NMFS an FMEP for inland recreational fisheries potentially affecting listed adults and juveniles of the SR steelhead ESU. These include all freshwater fisheries managed under the sole jurisdiction of the State of Washington occurring within the boundaries of the SR steelhead ESU including the anadromous portions of the Snake River mainstem and tributaries, from the mouth upstream to the Washington-Oregon border. The objective of the fisheries is to harvest known, hatchery-origin steelhead, hatchery spring and fall chinook and other fish species in a manner that does not jeopardize the survival and recovery of the listed SR ESU. All steelhead fisheries included in this FMEP will be managed such that only hatchery-produced adult steelhead that are adipose fin clipped may be retained. Impact levels to the listed SR steelhead ESU are specified in the FMEP. Population risk assessments in the FMEP indicate the extinction risk for the listed ESU under the proposed fishery impact levels to be low. A variety of monitoring and evaluation tasks are specified in the FMEP to assess the abundance of steelhead, determine fishery effort and catch of steelhead, and angler compliance. WDFW will annually conduct a wild population status and a review of the fisheries within the provisions of the FMEP. WDFW will conduct, at a minimum of every 5 years, a comprehensive review to evaluate the effectiveness of the FMEP.

As specified in the July 10, 2000, ESA 4 (d) rule for salmon and steelhead (65 FR 42422), NMFS may approve an FMEP if it meets criteria set forth in § 223.203 (b)(4)(i)(A) through (I). Prior to final approval of an FMEP, NMFS must publish notification announcing its availability for public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4 (d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with fishery harvest provided that an FMEP has been approved by NMFS to be in accordance with the salmon and steelhead 4 (d) rule.

Dated: July 6 , 2001.

Phil Willliams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–17576 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for July 19, 2001 at 10:00 a.m., in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, July 2, 2001.

Charles H. Atherton,

Secretary.

[FR Doc. 01–17513 Filed 7–12–01; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Petition HP 01–3 Requesting a Ban on Use of Chromated-Copper-Arsenate (CCA) Treated Wood In Playground Equipment

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a submission that contains a request that the Commission ban use of chromated-copper-arsenate (CCA) treated wood in playground equipment. This request has been docketed as petition under number HP 01–3 under the Federal Hazardous Substances Act (FHSA). The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by September 11, 2001.

ADDRESSES: Comments on the petition, preferably in five copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504–0127 or by e-mail to cpsc-os@cpsc.gov. Comments should be captioned "Petition HP 01–3, Petition for Ban on Use of CCA Treated Wood in Playground Equipment." A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from the Environmental Working Group (EWG) and the Healthy Building Network (HBN) requesting that it issue a ban on use of chromated-copper-arsenate (CCA) treated wood in playground equipment. The petitioners assert that a ban is necessary because "[r]ecent research has shown that arsenic is more carcinogenic than previously recognized, that arsenic is present at significant concentrations on CCA-treated wood and in underlying soil, that the health risks posed by this wood are greater than previously recognized, and that past risk assessments were incomplete."

The Commission is docketing the request for a ban as a petition under provisions of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261–1278.

The submission also requests that the Commission review the safety of CCA-treated wood for general use. This request has not been docketed as part of the petition because this action does not require rulemaking. (The request for a review will be considered separately by the CPSC's Office of Hazard Identification and Reduction.)

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer

Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: July 9, 2001.

Todd A. Stevenson,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 01–17501 Filed 7–12–01; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number: Personnel Security Investigation Projection for Industry Survey; DSS Form 232; OMB Number 0704–0417.

Type of Request: Reinstatement.

Number of Respondents: 11,000.

Responses per Respondent: 1.

Annual Responses: 11,000.

Average Burden per Response: 75 minutes.

Annual Burden Hours: 13,750.

Needs and Uses: Under the National Industrial Security Program (NISP), the Defense Security Service (DSS) is responsible for conducting personnel security investigations (PSIs) of employees of those cleared contractor entities under its security cognizance. The execution of the DSS Form 232 is an essential factor in projecting the needs of cleared contractor entities for PSIs. This collection of information requests the voluntary assistance of the Facility Security Officer to provide projections of the numbers and types of PSIs. The data will be incorporated into DSS budget submissions.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 6, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–17508 Filed 7–12–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Inland Waterways Users Board

AGENCY: Department of the Army, DOD.

ACTION: Notice of request for nominations.

SUMMARY: Section 302 of Public Law (Pub. L.) 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its 11 members are appointed by the Secretary of the Army. This notice is to solicit nominations for five (5) appointments or reappointments to two-year terms that will begin January 1, 2002.

ADDRESSES: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20310–0103. Attention: Inland Waterways Users Board Nominations Committee.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary of the Army (Civil Works) (703) 697–8986.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of Section 302 of Pub. L. 99–662. The substance of those provisions is as follows:

a. *Selection.* Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterborne commerce as determined by commodity ton-miles statistics.

b. *Service.* The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

c. *Appointment.* The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463, as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in Section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

(1) *Carriers and Shippers.* The law uses the terms "primary users and shippers." Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

(2) *Geographical Representation.* The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Pub. L. 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lowe Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake Rivers System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

(3) *Commodity Representation.* Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in Waterborne Commerce of the United States. These categories are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the

selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

d. *Nomination.* Reflecting preceding selection criteria, the current representation by the five (5) Board members whose terms expire December 31, 2001 is one member representing region 1, two members representing region 2, one member representing region 3, and one member representing region 5. Also, these Board members represent three carriers, one shipper, and one shipper/carrier. Three (3) of the five members whose terms expire December 31, 2001, are eligible for reappointment. Nominations to replace Board members whose terms expire December 31, 2001, may be made by individuals, firms or associations. Nominations will:

(1) State the region to be represented;

(2) State whether the nominee is representing carriers, shippers or both;

(3) Provide information on the nominee's personal qualifications;

(4) Include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to last year's **Federal Register** notice, published on July 18, 2000, have been retained for consideration. Renomination is not required but may be desirable.

Deadline for Nominations. All nominations must be received at the address shown above no later than August 31, 2001.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–17615 Filed 7–12–01; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Draft Feasibility Report and Environmental Impact Statement/Environmental Report (DFR/DEIS–EIR) for the Pine Flat Dam, Fish and Wildlife Habitat Restoration Investigation, California

AGENCY: U.S. Army Corps of Engineers. DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, in coordination with the Kings River Conservation District and Kings River Water Association, have prepared a DFR/DEIS–EIR for the Pine Flat Dam, Fish and Wildlife Habitat Restoration Investigation. This investigation proposes to restore and protect the ecosystem for fish and wildlife resources in Pine Flat Lake, and in and along the lower Kings River by improving the fishery habitat; increasing the fishery survival rate; increasing riparian, shaded riverine aquatic (SRA), and oak woodland habitats; and reestablishing native historic plant and wildlife communities. This DFR/DEIS–EIR is being made available for a 45-day public comment period. All comments should be submitted on or before August 28, 2001.

FOR FURTHER INFORMATION CONTACT: To obtain additional information related to this Report, interested persons are invited to contact the following: Mr. David Tedrick, Biological Sciences Environmental Manager, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California 95814–2922, (916) 557–7087 or (916) 557–5138 (FAX), *dtedrick@spk.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Report Availability. Printed copies of the DFR/DEIS–EIR are available for public inspection and review at the following locations:

U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Sacramento, CA 95814–2922

Kings River Conservation District, 4886 E. Jensen Avenue, Fresno, CA 93725

Fresno County Library, Main, 2420 Mariposa, Fresno, CA 93721

Fresno County Library, Clovis Branch, 1155 5th Street, Clovis, CA 93611

Fresno County Library, Fig Garden Branch, 3071 W. Bullard, Fresno, CA 93711

Fresno County Library, Sunnyside Branch, 5562 E. Kings Canyon Road, Fresno, CA 93727

Reedley Public Library, 1027 E Street, Reedley, CA 93654

Sanger Public Library, 1812 7th Street, Sanger, CA 93657

2. Commenting. Comments received in response to this report, including names and addresses of those who comment, will be considered part of the public record on this proposed action. Comments submitted anonymously will be accepted and considered. Pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Corps will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without the name and address.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–17614 Filed 7–12–01; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 11, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of

Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 9, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.
Title: International Adult Literacy and Lifestyle Skills Survey.
Frequency: One time.
Affected Public: Businesses or other for-profit.
Reporting and Recordkeeping Hour Burden:
Responses: 2,320.
Burden Hours: 5,140.
Abstract: The International Adult Literacy and Lifeskills Survey (IALL) will collect internationally comparable information on the literacy and numeracy performance of adults from around the world. The IALL will be administered in the general household population aged 16–65 and in selected federally-funded adult education programs. The IALL household assessment will provide a detailed picture of the literacy and numeracy skills of U.S. adults compared to adults from other countries. The IALL adult education program assessment will show the literacy skills of the adults enrolled in adult education programs and how they differ from the U.S. general population and international populations.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–17523 Filed 7–12–01; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for the Approval of Public Postsecondary Vocational Education, and State Agencies for the Approval of Nurse Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education (The Advisory Committee).

What Is the Purpose of This Notice?

The purpose of this notice is to invite written comments on accrediting agencies whose applications to the Secretary for initial or renewed recognition or request for an expansion of scope will be reviewed at the Advisory Committee meeting to be held on December 10–11, 2001.

Where Should I Submit My Comments?

Please submit your written comments by August 27, 2001 to Carol Griffiths, Chief, Accrediting Agency Evaluation, Accreditation and State Liaison. You may contact her at the U.S. Department of Education, 1990 K Street, NW., 7th Floor, Room 7105, Washington, DC 20006–8509, telephone: (202) 219–7011. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. One of the purposes of the Advisory Committee is to advise the Secretary of Education on the recognition of accrediting agencies and State approval agencies.

Will This Be My Only Opportunity To Submit Written Comments?

Yes, this notice announces the only opportunity you will have to submit written comments. However, a subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests to make oral presentations before the Advisory Committee on the agencies that the Committee will review. That notice, however, does not offer a second opportunity to submit written comment.

What Happens to the Comments That I Submit?

We will review your comments, in response to this notice, as part of our evaluation of the agencies' compliance with the Secretary's Criteria for Recognition of Accrediting Agencies. The Criteria are regulations found in 34 CFR part 602 (for accrediting agencies) and in 34 CFR part 603 (for State approval agencies).

We will also include your comments in the staff analyses we present to the Advisory Committee at its December 2001 meeting. Therefore, in order for us to give full consideration to your comments, it is important that we receive them by August 27, 2001. In all instances, your comments about agencies seeking initial or continued recognition or request for an expansion of scope must relate to the Criteria for Recognition. In addition, your comments for any agency whose interim report is scheduled for review must relate to the issues raised and the Criteria for Recognition cited in the Secretary's letter that requested the interim report.

What Happens to Comments Received After the Deadline?

We will review any comments received after the deadline. If such comments, upon investigation, reveal that the accrediting agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate.

What Agencies Are on the Agenda for the Meeting?

The Secretary of Education recognizes accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education if the Secretary determines that they meet the Criteria for Recognition. Recognition means that the Secretary considers the agency to be a reliable authority as to the quality of education offered by institutions or programs that are encompassed within the scope of recognition he grants to the agency. The following agencies will be reviewed during the December 2001 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies

Petition for Initial Recognition

1. Commission on Massage Therapy Accreditation (Requested scope of recognition: the accreditation of institutions and programs that award

postsecondary certificates, diplomas, and degrees in the practice of massage therapy.)

Petitions for Renewal of Recognition

1. Accrediting Association of Bible Colleges, Commission on Accreditation (Current scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of Bible colleges and institutes offering undergraduate programs.)

2. American Academy for Liberal Education (Current scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of institutions of higher education and programs within institutions of higher education that offer liberal arts degrees at the baccalaureate level or a documented equivalency.)

3. American Physical Therapy Association, Commission on Accreditation in Physical Therapy Education (Current scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation" status) of programs for the preparation of physical therapists and physical therapist assistants. Requested scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of physical therapist education programs leading to the first professional degree at the master's or doctoral level and physical therapist assistant education programs at the associate degree level, including the use of distance education.)

4. American Veterinary Medical Association, Council on Education (Current scope of recognition: The accreditation and preaccreditation ("Reasonable Assurance") of programs leading to professional degrees (D.V.M. or D.M.V.) in veterinary medicine.)

5. Association for Clinical Pastoral Education, Inc., Accreditation Commission (Current scope of recognition: The accreditation of clinical pastoral education (CPE) centers and CPE and supervisory CPE programs.)

6. Commission on Collegiate Nursing Education (Current scope of recognition: The accreditation of nursing education programs at the baccalaureate and graduate degree levels.)

7. Distance Education and Training Council, Accrediting Commission (Current scope of recognition: The accreditation of private and non-private distance education institutions offering non-degree and associate, baccalaureate, and master's degree programs primarily through the distance learning method. Requested scope of recognition: The accreditation of private and non-private distance education institutions offering non-degree and associate, baccalaureate, master's, and first professional degree programs primarily through the distance learning method.)

8. National League for Nursing Accrediting Commission (Current scope of recognition: The accreditation of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs.)

Petition for an Expansion of Scope

1. Accrediting Council for Continuing Education and Training (Current scope of recognition: The accreditation of institutions of higher education that offer non-collegiate continuing education programs. Requested scope of recognition: The accreditation of institutions of higher education that offer non-collegiate continuing education programs and occupational associate degrees (Associate in Occupational Studies (A.O.S) and Associate in Applied Science (A.A.S.))

Where Can I Inspect Petitions and Third-Party Comments Before and After the Meeting?

All petitions and those third-party comments received in advance of the meeting, will be available for public inspection and copying at the U.S. Department of Education, 1990 K Street, NW., 7th Floor, Room 7105, Washington, DC 20006–8509, telephone (202) 219–7011 between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, until November 16, 2001. They will be available again after the December 10–11 Advisory Committee meeting. An appointment must be made in advance of such inspection or copying.

Authority: 5 U.S.C. Appendix 2.

Dated: June 27, 2001.

Maureen A. McLaughlin,

Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education.

[FR Doc. 01–17536 Filed 7–12–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Science; Energy Biosciences Program, et al.; Extension of Due Date for Notices Inviting Grant Applications

AGENCY: Department of Energy (DOE).

ACTION: Extension of due dates for notices inviting grant applications.

The Office of Science (SC), U. S. Department of Energy (DOE), hereby extends the due dates for the following notices:

Notice 01–15: Energy Biosciences Program.

Published in FR, Vol. 66, No. 2, pages 356–357, January 3, 2001.

The deadline for formal applications has been extended to July 13, 2001.

Notice 01–24: Theoretical Research in Plasma and Fusion Science.

Published in FR, Vol. 66, No. 61, pages 17165–17167, March 29, 2001.

The deadline for formal applications has been extended to July 13, 2001.

Notice 01–25: Development of Diagnostic Systems for Magnetic Fusion Energy Sciences.

Experiments Published in FR, Vol. 66, No. 78, pages 20442–20443, April 23, 2001.

The deadline for the Letter-of-Intent has been extended to July 27, 2001.

The deadline for formal applications has been extended to August 31, 2001.

Notice 01–26: Program for Ecosystem Research (PER).

Published in FR, Vol. 66, No. 97, pages 27636–27638, May 18, 2001.

The deadline for preapplications has been extended to August 2, 2001.

The deadline for formal applications has been extended to September 13, 2001.

FOR FURTHER INFORMATION CONTACT:

Notice 01–15: Energy Biosciences Program

Ms. Pat Snyder, Chemical Sciences, Geosciences and Biosciences Division, Office of Basic Energy Sciences, SC–143, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–2873; E-mail *pat.snyder@science.doe.gov*.

Notice 01–24: Theoretical Research in Plasma and Fusion Science

Office of Fusion Energy Sciences, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. Specific contacts for each area of interest, along with telephone numbers and Internet addresses, are listed below:

Magnetohydrodynamics and Stability: Rostom Dagazian, Research Division, SC–55, Telephone: (301) 903–4926, or by Internet address, rostom.dagazian@science.doe.gov.

Confinement and Transport: Curt Bolton, Research Division, SC–55, Telephone: (301) 903–4914, or by Internet address, curt.bolton@science.doe.gov.

Edge and Divertor Physics: Walter Sadowski, Research Division, SC–55, Telephone: (301) 903–4678, or by Internet address, walt.sadowski@science.doe.gov.

Plasma Heating and Non-inductive Current Drive: Walter Sadowski,

Research Division, SC–55, Telephone: (301) 903–4678, or by Internet address, walt.sadowski@science.doe.gov.

Innovative Confinement Concepts: Steve Eckstrand, Research Division, SC–55, Telephone: (301) 903–5546, or by Internet address, steve.eckstrand@science.doe.gov.

Atomic and Molecular Processes in Plasmas: Mike Crisp, Research Division, SC–55, Telephone: (301) 903–4883, or by Internet address, michael.crisp@science.doe.gov.

Notice 01–25: Development of Diagnostic Systems for Magnetic Fusion Energy Sciences Experiments

Darlene Markevich, SC–55 GTN, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–4920, or by e-mail address, darlene.markevich@science.doe.gov. Or contact John Sauter, SC–55 GTN, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone 301–903–3287, or by e-mail address, john.sauter@science.doe.gov.

Notice 01–26: Program for Ecosystem Research (PER)

Dr. Jeffrey S. Amthor, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–2507, e-mail: Jeff.Amthor@science.doe.gov, fax: (301) 903–8519.

Issued in Washington DC on July 3, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 01–17547 Filed 7–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 01–25–NG, 01–27–NG, 01–26–NG, 01–30–NG, 01–14–NG, 01–29–NG, 01–33–NG, 01–31–NG, 01–34–NG]

Office of Fossil Energy; Pan-Alberta Gas (U.S.) Inc.; et. al.; Orders Granting and Amending Authority to Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during June 2001, it issued Orders granting and amending authority to import and export natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at http://www.fe.doe.gov, or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 9, 2001.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix—Orders Granting and Amending Import/Export Authorizations

[DOE/FE authority]

Order No.	Date issued	Importer/exporter FE Docket No.	Import volume	Export volume	Comments
1688	06–07–01	Pan-Alberta Gas (U.S.) Inc.; 01–25–NG.	730 Bcf		Import from Canada beginning on July 4, 2001, and extending through July 3, 2003.
1689	06–13–01	Dartmouth Power Associates Limited Partnership; 01–27–NG.	11.68 Bcf		Import from Canada beginning on May 7, 2001, and extending through May 6, 2003.
1690	06–13–01	Pawtucket Power Associates Limited Partnership; 01–26–NG.	10.584 Bcf		Import from Canada beginning on May 31, 2001, and extending through May 30, 2003.
1691	06–21–01	AEC Marketing (USA) Inc.; 01–30–NG	200 Bcf		Import from Canada beginning on June 30, 2001, and extending through June 29, 2003.
1677–A	06–21–01	AltaGas Marketing (U.S.) Inc.; 01–14–NG.		15 Bcf	Amendment to Import authority to include exports to Canada, over a two-year term beginning on the date of first delivery.
1692	06–25–01	Cascade Natural Gas Corporation; 01–29–NG.	100 Bcf		Import from Canada beginning on July 1, 2001, and extending through June 30, 2003.
1693	06–25–01	Dynegy Power Marketing, Inc.; 01–33–NG.	600 Bcf	330 Bcf	Import a combined total from Canada and Mexico, and export a combined total to Canada and Mexico beginning on June 25, 2001, and extending through June 24, 2003.
1695	06–26–01	Coral Canada US Inc.; 01–31–NG	350 Bcf	350 Bcf	Import and export from and to Canada, over a two-year term beginning on the date of first delivery.
1696	06–28–01	Sithe/Independence Power Partners, LP; 01–34–NG.	60 Bcf		Import from Canada beginning on July 1, 2001, and extending through June 30, 2003.

[FR Doc. 01–17548 Filed 7–12–01; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–383–000]

Raton Gas Transmission Company; Notice of Filing

July 9, 2001.

Take notice that on June 12, 2001, Raton Gas Transmission Company. (RGT), P.O. Box 308, Raton, New Mexico 87740, filed an abbreviated application for a temporary emergency certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act, 15 U.S.C. 717f(c), and Part 157 the Commission's Rules and Regulations.

RGT requests an immediate temporary certificate authorizing RGT to transport up to 6290 Dth/d of natural gas for the City of Las Vegas, New Mexico (the City). In the alternative, RGT requests the Commission to grant to RGT and Zia Natural Gas Company, a division of Natural Gas Processing Company (Zia), a waiver of any and all Commission regulations as may be required to allow the City to transport its own gas supplies through Zia's capacity on RGT and that portion of the Colorado Interstate Gas Company (CIG) capacity held by RGT for its customers.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 30, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 01–17544 Filed 7–12–01; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 344 California]

Southern California Edison; Notice Soliciting Applications

July 9, 2001.

On April 24, 1998, the Southern California Edison Company, licensee for the San Gorgonio Nos. 1 and 2 Hydroelectric Project No. 344, filed a notice of intent to file an application for a new license, pursuant to Section 15(b)(1) of the Federal Power Act (Act). The original license for Project No. 344 was issued effective May 1, 1983 and expires April 26, 2003. The project occupies lands of the United States within the San Bernardino National Forest.

The project is located on the San Gorgonio River, in San Bernardino County, California. The principal project works consist of: (a) Two diversion dams; (b) concrete-lined canals; (c) two water tanks; (d) two forebays; (e) two penstocks; (f) two powerhouses with a total installed capacity of 2,440 kilowatts, (g) two switchyards; (h) a transmission line; and (i) appurtenant facilities.

The licensee did not file an application for new license which was due by April 26, 2001. Pursuant to Section 16.25 of the Commission's Regulations, the Commission is soliciting applications from potential applicants other than the existing licensee. This is necessary because the deadline for filing an application for new license and any competing license applications, pursuant to Section 16.9 of the regulations, was April 26, 2001, and no other applications for license for this project were filed.

The licensee is required to make available certain information described in Section 16.7 of the regulations. For more information from the licensee contact Mr. Walt Pagel, Southern California Edison Company, 300 North Lone Hill Avenue, San Dimas, CA 91773 or (909) 394–8720.

A potential applicant that files a notice of intent within 90 days from the date of issuance of this notice: (1) May apply for a license under part I of the Act and part 4 (except Section 4.38) of the Commission's Regulations within 18 months of the date on which it files its notice; and (2) must comply with the requirements of Sections 16.8 and 16.10 of the Commission's Regulations.

Questions concerning this notice should be directed to Tim Looney at (202) 219–2852 or by email at *timothy.looney@ferc.fed.us.*

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 01–17543 Filed 7–12–01; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–124–000, et al.]

PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

July 6, 2001.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company, Commonwealth Edison Company, Exelon Generation Company, LLC

[Docket No. EC01–124–000]

Take notice that on June 29, 2001, PECO Energy Company (PECO Energy), Commonwealth Edison Company (ComEd), and Exelon Generation Company, LLC (Exelon Generation) tendered for filing a joint application for authorization for PECO Energy and ComEd to transfer to Exelon Generation service agreements under PECO Energy's and ComEd's wholesale power sales tariffs.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Communications Company

[Docket Nos. ER95–1586–011, EL96–17–005 and OA96–184–008]

Take notice that on June 29, 2001, Citizens Communications Company (Citizens) tendered for filing with the Federal Energy Regulatory Commission (Commission) in compliance with the Commission's April 30, 2001 order in the above-referenced proceedings, certain tariff and rate schedule sheets with respect to its Vermont Electric Division's open access transmission tariff (FERC Electric Tariff First Revised Volume No. 4, Second Revised Sheet Nos. 139, 144 and 148), and Rate Schedule FERC No. 28. To comply with this order, Citizens filed these tariff and rate schedule sheets under the name of Citizens Utilities Company, and

requested an effective date of December 31, 2001.

A copy of this filing was served on the parties on the official service list in the above-referenced proceedings.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER01–2491–000]

Take notice that on July 2, 2001, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and ExxonMobil Refining & Supply Co.

Entergy Services requests that the service agreements become effective by June 14, 2001.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. American Electric Power Service Corporation

[Docket No. ER01–2492–000]

Take notice that on July 2, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing two service agreements with Enron Power Marketing, Inc. for transactions exceeding one year in length by the AEP Companies under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, Effective January 8, 1998 in Docket ER 98–542–000 (Market-Based Rate Power Sales Tariff of the CSW Operating Companies).

AEPSC respectfully requests waiver of notice to permit these service agreements to be made effective on or prior to July 1, 2001.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Central Maine Power Company

[Docket No. ER01–2493–000]

Take notice that on July 2, 2001, Central Maine Power Company (CMP), tendered for filing with the Federal Energy Regulatory Commission (FERC), in accordance with section 1.18 of the settlement agreement approved in Docket Nos. ER00–26–000, et al., an informational filing containing the data used to update the formula rates in its open access transmission tariff. The charges associated with the updated data took effect June 1, 2001.

Copies of this filing were sent to FERC Staff and the Maine Public Utilities Commission.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Bethlehem Steel Corporation

[Docket No. ER01–2494–000]

Take notice that on July 2, 2001, Bethlehem Steel Corporation (Bethlehem) tendered for filing under Section 205 of the Federal Power Act an umbrella Service Agreement For Short-Term Sales between Bethlehem and PSEG Energy Resources & Trade LLC. The umbrella service agreement provides for sales of energy and capacity under Bethlehem's market-based rate schedule.

Bethlehem requests an effective date for the umbrella service agreement of June 1, 2001.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER01–2495–000]

Take notice that on July 2, 2001, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an Interconnection Agreement between Niagara Mohawk Power Corporation and Allegany Limited Partnership for a 2 MW internal combustion generating facility located in the Town of Carrollton, Cattaraugus County, New York, dated as of June 29, 2001. The filing has been designated by the New York Independent System Operator as FERC Electric Rate Schedule No. 311 and Niagara Mohawk has asked for approval of same as a Service Agreement.

Niagara Mohawk requests an effective date of July 13, 2001.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17541 Filed 7–12–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 9, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12056–000.

c. *Date Filed:* June 25, 2001.

d. *Applicant:* Trinity River Authority of Texas.

e. *Name of Project:* Livington Dam Project.

f. *Location:* The proposed project would be located on an existing dam owned by the applicant, on the Trinity River, in San Jacinto, Polk, Walker, and Trinity Counties, Texas. The project would not utilize any federal facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Danny F. Vance, General Manager, Trinity River Authority of Texas, 5300 South Collins Street, P.O. Box 60, Arlington, TX 76010, (817) 467–4343.

i. *FERC Contact:* Robert Bell at (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov/efi/doorbell.htm.* Please include the project number (P–12056–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 11997–000, Date Filed: April 23, 2001, Due Date: August 7, 2001.

l. *Description of Project:* The proposed project would consist of: (1) The existing 14,400-foot-long Livingston Dam, varying in height from 45 to 90 feet, (2) the existing reservoir having a surface area of 83,000 acres with a storage capacity of 1,750,000 acre-feet and normal water surface elevation of 131 feet msl, (3) a proposed 800-foot-long, 250-foot-wide, 25-foot-deep headrace canal, (4) a proposed 1,000-foot-long, 45-foot-high earth embankment, (5) a proposed intake structure, (6) four proposed 450-foot-long, two 15.5-foot-diameter and two at 19-foot-diameter steel penstocks, (7) a proposed powerhouse containing four generating units having a total installed capacity of 50 MW, (8) a proposed 2,000-foot-long, 135-foot-wide, 69-foot-deep tailrace canal, (9) a proposed 2-mile-long, 138 kV transmission line, and (10) appurtenant facilities.

The project would have an annual generation of 178 GWh.

m. *Locations of the application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202) 208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

n. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17542 Filed 7–12–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Proposed Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for the disbursement of $6,672,934, plus accrued interest, in refined petroleum overcharges obtained by the DOE pursuant to a remedial order OHA issued to Hudson Oil Company, Inc., Case No. VEF–0011. The OHA has tentatively determined that the funds will be distributed in accordance with the provisions of 10 CFR Part 205, Subpart V.

DATES: Comments must be filed in duplicate on or before August 13, 2001.

ADDRESSES: Comments should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0107. All comments should display a reference to Case No. VEF–0011.

FOR FURTHER INFORMATION CONTACT: Richard A. Cronin, Jr. Assistant Director, Office of Hearings and Appeals, 1000 Independence Ave., SW.,

Washington, DC 20585–0107, (202) 287–1562, richard.cronin@hq.doe.gov.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $6,672,934, plus accrued interest, obtained by the DOE pursuant to a Remedial Order OHA issued to Hudson Oil Company, Inc. (Hudson) and Hudson Refining Company, Inc. (Hudson Refining), on March 15, 1985. Under the Remedial Order, Hudson and Hudson Refining were found to have violated the federal petroleum price regulations involving the sale of refined petroleum products during the relevant audit periods.

The OHA has proposed to distribute the Remedial Order funds in a refund proceeding described in the Proposed Decision and Order. Purchasers of motor gasoline from Hudson, Hudson Refining or its affiliated firms will have the opportunity to submit refund applications. Refunds will be granted to applicants who satisfactory demonstrate that they were injured by the pricing violations and who document the volume of refined petroleum products they purchased from one of the Hudson-affiliated firms during the relevant audit period.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to forward two copies of their submission, within 30 days of the publication of this notice in the **Federal Register**, to the address set forth at the beginning of this notice. Comments so received will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal Holidays, in Room 7132 (the public reference room), 950 L'Enfant Plaza, Washington, DC.

Dated: July 5, 2001.

George Breznay,

Director, Office of Hearings and Appeals.

Department of Energy,
Washington, DC, July 5, 2001.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Hudson Oil Company, Inc.
Date of Filing: March 20, 1995
Case Number: VEF–0011

On March 20, 1995, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds received pursuant to an OHA Remedial Order issued to Hudson Oil Company, Inc. (Hudson) and Hudson Refining Company, Inc. (Hudson Refining). *See Hudson Oil Company, Inc.*, 12 DOE ¶ 83,035 (1985). In accordance with the provisions of the procedural regulations at 10 CFR Part 205, Subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Remedial Order.

I. Background

ERA audits of Hudson, a retailer with headquarters in Kansas City, Kansas and Hudson Refining, a refiner located in Cushing, Oklahoma, revealed possible violations of the Mandatory Petroleum Price Regulations in Hudson's sales of gasoline during the period of price controls.[1] Subsequently, ERA issued a proposed remedial order (PRO) alleging that Hudson and its affiliated firms had violated the petroleum price regulations. Hudson challenged the PRO before OHA. In our March 15, 1985 Remedial Order, we found that Hudson had violated the price regulations and had overcharged its motor gasoline customers by $10,670,000 during the period June 1979 through August 1979 (refund period). *See Hudson*, 12 DOE at 86,479. Hudson and its affiliates were found to be jointly and severally liable for the overcharge amount.[2] *Id.* at 86,481. On March 20, 1995, the Office of General Counsel filed a Petition for the Implementation of Special Refund Proceeding for the $6,672,934 in funds Hudson has remitted to the DOE.[3]

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (Vickers).

III. Refund Procedures

A. Proposed Standards for the Evaluation of Claims

This section sets forth our proposals for the standards to be used in evaluating refund claims in the Hudson refund proceeding. From our experience with Subpart V proceedings, we expect that refund applicants will fall into the following categories: (i) end-users; (ii) regulated entities, such as public utilities and cooperatives; (iii) refiners, resellers and retailers (collectively referred to as "resellers") and (iv) consignees.

In order to receive a refund, each claimant will be required to submit a schedule of its gasoline purchases from Hudson during the refund period. If the gasoline was not purchased directly from Hudson, the claimant must establish that the gasoline originated from Hudson.[4]

In addition, a reseller, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Hudson's regulatory violations. This showing will consist of two distinct elements. First, a reseller claimant will be required to show, through credible, firm-specific data, that it had "banks" of unrecouped increased product costs beginning in June 1979 through August 1979. In addition, such a claimant must demonstrate that market conditions would not have allowed those costs to be passed through to its customers. This showing may be made in a comparative disadvantage analysis, which compares the price paid by the applicant with the average price paid for the same product at the relevant level of distribution. *See, e.g., Enron Corp./MAPCO, Inc.*, 27 DOE ¶ 85,018 (1998).

A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the overcharges, or is eligible for a refund of less than the applicable presumption-level amount, will not then be eligible for a presumption-based refund. Instead, such a claimant will receive a refund which reflects the level of injury established in its Application. No refund will be approved if its submission indicates that it was not injured as a result of its gasoline purchases from Hudson.

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[1] Hudson and its affiliates operated a widespread retail operation. While information in the available files is incomplete, Hudson gasoline may have been sold by retailers in Virginia, Florida, Pennsylvania, Maryland, New York, West Virginia and Georgia.

[2] The Remedial Order references Hudson Van Oil Company, Hudson Van Oil Company of Kansas City, Inc., Hudson Van Oil Company of Florida, Inc., Hudson Van Oil Company of California, Inc., Hudson Stations, Inc., Wind Stations, Inc., News, Inc. and Hudson Petroleum, Inc. as Hudson affiliates covered in ERA's PRO. *See Hudson*, 12 DOE at 86,483 n.1.

[3] Hudson and Hudson Refining filed for bankruptcy in 1984. In addition to the March 1985 Remedial Order discussed above OHA issued another Remedial Order to Hudson on July 1, 1985, finding that Hudson had violated the price regulations concerning sales of crude oil and was liable for overcharges of $6,380,506. *See Hudson Oil Company*, 13 DOE ¶ 83,022 (1985). ERA's petition requests that we institute a refund proceeding covering both Remedial Orders. However, since Husdon has failed to remit sufficient money to fully comply with the March 1985 Remedial Order, and this Remedial Order was first in time, we will institute a refund proceeding that covers only Hudson's violation of price regulations concerning its sales of motor gasoline detailed in the March 1985 Remedial Order.

[4] Indirect purchasers who establish that their gasoline purchases originated with Hudson will be eligible for a refund unless the direct purchaser has filed a refund claim and established that it did not pass through the Hudson overcharges to its customers. *See Texaco*, 20 DOE ¶ 85,147 at 88,319 n. 39 (1990) (Texaco). As a result, applications from indirect purchasers will generally be considered only after evaluating the applications of their suppliers.

1. Presumptions for Claims Based Upon Hudson Gasoline Purchases

Our general practice is to grant refund on a pro-rata or volumetric basis. In order to calculate the volumetric refund amount, the OHA divides the amount of money available for direct restitution by the number of gallons sold by the firm during the period covered by the consent order.

Based on the available ERA workpapers, we estimate that during the period June 1979 through August 1979 Hudson sold 80,207,000 gallons of gasoline. See Schedule II–Q—Summary of allowable cost recoveries at 3. Dividing the recovered overcharge amount of $6,672,934 by this estimated number of gallons sold by Hudson results in a volumetric refund amount (or allocable share) of $0.0832 per gallon. In addition, each successful applicant is entitled to receive a proportionate share of accrued interest.[5]

In order to expedite the processing of applications in this proceeding and to ensure that refund claims are evaluated in the most efficient and equitable manner possible, we propose to use the following presumptions in addition to the volumetric presumption described above.

a. End-Users

End-Users of Hudson gasoline, i.e., consumers, whose use of the gasoline was unrelated to the petroleum business are presumed injured and need only document their purchase volumes from Hudson during the refund period to be eligible to receive a full allocable share.

b. Refiners, Resellers and Retailers Seeking Refunds of $10,000 or Less

Reseller claimants whose allocable share is $10,000 or less, i.e. who purchased 120,192 gallons or less of Hudson gasoline during the refund period will be presumed injured and therefore need not provide a further demonstration of injury, besides documentation of their volumes, to receive its full allocable share.

c. Medium-Range Refiners, Reseller and Retailer Claimants

In lieu of making a detailed showing of injury, a reseller claimant whose allocable share exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 40 percent of its allocable share up to $50,000.[6] An applicant in this group will only be required to provide documentation of its purchase volumes of Hudson gasoline during the refund period in order to receive a refund of 40 percent of its total volumetric share, or $10,000, whichever is greater.

[5] In addition, we propose, as in previous cases, that the minimum refund amount that will be paid to an claimant is $15.00. We have found through our experience that the cost of processing claims for less than $15.00 outweighs the benefits of restitution in these cases. *See, e.g., Texaco*, 20 DOE at 88,320 n. 43.

[6] That is, claimants who purchased between 120,192 gallons and 1,502,404 gallons of Hudson gasoline during the refund period may elect to utilize the presumption. Claimants who purchased more than 1,502,404 gallons from Hudson may elect to limit their claims to $50,000.

d. Regulated Firms and Cooperatives

We have determined that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, *e.g.*, a public utility, or by the terms of a cooperative agreement, needs only to submit documentation of Hudson gasoline used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or cooperative whose allocable share is greater that $10,000 will also be required to certify that it will pass through any refund received to its customers or member-customers, provide us with a full explanation of how it plans to accomplish that restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund.

e. Spot Purchasers

We propose creation of a rebuttable presumption that a reseller that made only irregular or sporadic, *i.e.*, spot, gasoline purchases from Hudson did not suffer injury as a result of those purchases. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases of Hudson gasoline. In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not sufficiently recouped through draw down of banks. *See Texaco*, 20 DOE at 88,320–21.

f. Consignees

Finally, as in previous cases, we will presume that consignees of Hudson gasoline, if any exist, were not injured by the Hudson overcharges. *See Atlantic Richfield Company*, 17 DOE ¶ 85,069 at 88,153 (1988). A consignee agent is an entity that distributed its products pursuant to an agreement whereby its supplier established the prices to be paid and charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products distributed. This presumption may be rebutted by showing that the consignee's sales volumes and corresponding commission declined due to the alleged uncompetitiveness of Hudson's gasoline pricing practices. *See Gulf Oil Corporation/C.F. Canter Oil Company*, 13 DOE ¶ 85,388 at 88,962 (1986).

B. Refund Application Requirements

To apply for a refund from the Hudson monies paid to the DOE, a claimant should submit an Application for Refund containing the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and the name and address of the person who should receive any refund check.[7]

(2) A monthly purchase schedule covering the refund period. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its Hudson gasoline purchases, but the estimation method must be reasonable and must be explained;

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Hudson refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with Hudson, it should explain this affiliation, including the time period in which it was affiliated;[8]

(5) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled with Hudson Oil Company, Inc. and Case No. VEF–0011. Each applicant must submit an original and one

[7] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the regulations codified at 10 CFR Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[8] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of Hudson were not injured by the firm's overcharges. *See, e.g., Marathon Petroleum Co./EMRO Propane Co.*, 15 DOE ¶ 85,288 (1987). This is because Hudson presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. *See Marathon Petroleum Co./Pilot Oil Corp.*, 16 DOE ¶ 85,611 (1987), amended claim denied, 17 DOE ¶ 85,291 (1988), *reconsideration denied*, 20 DOE ¶ 85,236 (1990). Furthermore, if an affiliate of Hudson were granted a refund, Hudson would be indirectly compensated from a remedial order fund remitted to settle its own alleged violations.

copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for that information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked on or before October 31, 2001, and sent to:

Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585

We will adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by "representatives," including refund filing services, consulting firms, accountants, and attorneys. *See, e.g., Texaco; Starks Shell Service*, 23 DOE ¶ 85,017 (1993); *Shell Oil Co.*, 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant. The OHA reiterates its policy to scrutinize applications filed by filing services closely. Applications submitted by a filing service should contain all of the information indicated above.

Additionally, the OHA reserves the authority to require additional information to be submitted before granting any particular refund in the Hudson proceeding.

C. Impact of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA) Amendments on Hudson Refund Claims

The Interior and Related Agencies Appropriations Act for FY 1999 amended certain provisions of the Petroleum Overcharge and Distribution and Restitution Act of 1986 (PODRA). These amendments extinguished rights that refund applicants had under PODRA to refunds for overcharges on the purchases of refined petroleum products. They also identified and appropriated a substantial portion of the funds being held by the DOE to pay refund claims (including the funds paid by Hudson). Congress specified that these funds were to be used to fund other DOE programs. As a result, the petroleum overcharge escrow accounts in the refined product area contain substantially less money than before. In fact they may not contain sufficient funds to pay in full all pending and future refund claims (including those in litigation) if they should all be found to be meritorious. *See Enron Corp./Shelia S. Brown*, 27 DOE ¶ 85,036 at 88,244 (2000) (*Brown*). Congress directed OHA to "assure the amount remaining in escrow to satisfy refined petroleum product claims for direct restitution is allocated equitably among all claimants."Omnibus Consolidated and Emergency Supplemental Appropriation Act, 1999, Pub. L. No. 105–277 § 337, 112 Stat 2681, 2681–295 (1998) (language added to PODRA); Brown, 27 DOE at 88,244. In view of this Congressional directive and the limited amount of funds available, it may become necessary to prorate the funds available among the meritorious Hudson claims. However, it could be several years before we know the full value of the meritorious claims and the precise total amount available for distribution. It will be some time before we are able to determine the amount that is available for distribution for each claimant.

We therefore propose the following mechanism. All successful small claimants (refunds under $10,000) will be paid in full. To require small claimants to wait several more years for their refunds would constitute an inordinate burden and would be inequitable. *See Brown*, 27 DOE at 88,244. For all others granted refunds, including reseller claimants who have elected to take presumption refunds, we propose to immediately pay the larger of $10,000 or 50 percent of the refund granted. Once the other pending refund claims have been resolved, the remainder of these Hudson claims will be paid to the extent that it is possible through an equitable distribution of the funds remaining in the petroleum overcharge escrow account.

It Is Therefore Ordered That:

The payments remitted to the Department of Energy by Hudson Oil Company, Inc., pursuant to the remedial order issued on March 15, 1985, will be distributed in accordance with the forgoing Decision.

[FR Doc. 01–17439 Filed 7–12–01; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100173; FRL–6791–3]

Oak Ridge National Laboratory/DOE and Waterborne Environmental Inc., and Summitec Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Oak Ridge National Laboratory/ Department of Energy (DOE) and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, have been awarded a contract to perform work for OPP, and access to this information will enable Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, to fulfill the obligations of the contract.

DATES: Oak Ridge National Laboratory/ DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, will be given access to this information on or before July 18, 2001.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations,""Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**— Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under Contract No. DW-89-93921701, Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc and Summitec Corporation, will perform the following based on the statement of work:

The purpose of this collaborative effort is to assist OPP/EPA in systematically analyzing, evaluating, simulating, and identifying data/ information gaps for pesticides with complex issues from the registrant's submissions to fully characterize the safe manufacture, application, reentry, and residue issues prior to a FIFRA registration or reregistration. Several major tasks have been identified to

support the OPP/EPA mission under the FIFRA mandate.

1. *Risk assessments.* Assess risks of specific pesticides using the best scientific rationale and state-of-the-art information to evaluate adverse effects to exposed human and ecological populations in support of the Food Quality Protection Act (FQPA) and ecological risk assessments conducted under FIFRA. In addition, provide state-of-the-art risk assessment methodologies (i.e., probabilistic risk assessment) as requested.

2. *Fate and transport.* Develop and evaluate environmental fate and transport data and models in support of the Ecological Committee on FIFRA Risk Assessment Methods (ECOFRAM) Guidance. In addition, provide research in areas of uncertainty and sensitivity analyses to advance the use and usefulness of probabilistic techniques in fate and transport modeling.

3. *Geo-spatial analysis.* Provide data analysis, modeling, Geographic Information System (GIS) and software programming support to enhance assessments of potential pesticide transport from crop areas to surface waters and drinking water intake sources. Assess potential impacts of pesticide use at differing spatial scales and resolution.

4. *Computerization of toxicology data.* Systematically compile toxicity data submitted by the registrants into an electronic format. This would enable easy access and effective retrieval of data that would assist in the evaluation of chemicals under current review, and make recommendations to OPP/EPA in identifying data/information gaps for future studies.

5. *Evaluations of complex toxicology studies and issues.* Perform evaluations of difficult and complex toxicology studies, and provide assessments of the overall significance of the findings as they relate to the expected effects and environmental persistence of a chemical. Such studies may include population based dynamics in addition to those specified under Task 1. Evaluations of difficult and complex issues in toxicology will be performed. The Oak Ridge National Laboratory will be exploring the state-of-the-art bio-statistical and dose/response methodologies for hazard assessments, identifying data gaps for research studies, and making recommendations to OPP/EPA for handling data gap issues.

The OPP has determined that access by Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc. and Summitec Corporation, to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, until the requirements in this document have been fully satisfied. Records of information provided to Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, will be maintained by EPA Project Officers for this contract. All information supplied to Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, by EPA for use in connection with this contract will be returned to EPA when Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: June 27, 2001.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 01–17632 Filed 7–12–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6619–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency

Office of Federal Activities, General Information (202) 564–7167
www.epa.gov/oeca/ofa

Weekly receipt of Environmental Impact Statements
Filed July 02, 2001 Through July 06, 2001
Pursuant to 40 CFR 1506.9.

EIS No. 010241, Draft EIS, FHW, RI, Sakonnet River Bridge Rehabilitation or Replacement Project, Portsmouth & Tiverton, Newport County, RI, Due: September 07, 2001, Contact: Daniel J. Berman (401) 528–4541.

EIS No. 010242, Draft EIS, FHW, CA, CA–78/111 Brawley Bypass, Construction of an Expressway from CA–86 to CA–11, City of Brawley, Funding, Imperial County, CA, Due: August 27, 2001, Contact: Jeffrey W. Kolb (916) 498–5037.

EIS No. 010243, Final EIS, FHW, IL, Illinois Route 3 (FAP–14) Relocation, Improved Transportation from Sauget to Venice, Funding, NPDES Permit and COE Section 404 Permit, Madison and St. Clair Counties, IL, Due: August 13, 2001, Contact: Daniel M. Mathis (217) 492–4640.

EIS No. 010244, Final EIS, FHW, NY, NY–120/22, Reconstruction Corridor, from Exits 2 and 3 on I–684 and Old Post Road (PIN–8130.75), Funding, COE Section 10 and 404 Permits, Town of North Castle, Westchester County, NY, Due: August 13, 2000, Contact: H.J. Brown (518) 472–3616.

EIS No. 010245, Final EIS, NRS, WV, Upper Tygart Valley River Watershed Plan, Water Supply Project, Approval and Funding, Randolph and Pocahontas Counties, WV, Due: August 13, 2001, Contact: William J. Hartman (304) 284–7545.

EIS No. 010246, Draft Supplement, BLM, ID, Smoky Canyon Mine Panels B and C, Propose to Mine Phosphate Ore Reserves in the Final Two Mine Panels, National Forest System Lands and Federal Mineral Leases, Caribou National Forest, Permit, Caribou County, ID, Due: September 11, 2001, Contact: Jeffery Cundick (208) 478–6354. The U.S. Department of Interior's Bureau of Land Management and U.S. Department of Agriculture, Forest Service are Joint Lead Agencies for this project.

EIS No. 010247, Final EIS, MMS, LA, AL, MS, FL, Eastern Planning Area

Outer Continental Shelf Oil and Gas Lease Sale 181 (December 2001), Gulf of Mexico, Offshore Marine Environment and Coastal Counties/ Parishes of LA, MI, AL and northwestern FL, Due: August 13, 2001, Contact: Archie Melancon (703) 787–1547.

EIS No. 010248, Draft EIS, USN, HI, Programmatic EIS—Ford Island Development Program, Proposed Consolidation of Selected Operation at Pearl Harbor by Locating and Relocating Certain Activities Ford Island, HI, Due: August 27, 2001, Contact: Stanley Uehara (808) 471–9338.

EIS No. 010249, Draft EIS, COE, CA, Pine Flat Dam Fish and Wildlife Habitat Restoration Investigation, Propose to Restore and Protect the Ecosystem for Fish and Wildlife Resource, King River Basin, Fresno County, CA, Due: August 27, 2001, Contact: David Tedrick (916) 557–7087.

EIS No. 010250, Draft EIS, FRC, MA, CT, Phase III/Hubline Project, Construction and Operation a Natural Gas Pipeline, Maritimes and Northeast Pipeline (Docket No. CPO1–4–000), Algonquin Gas Transmission (Docket No. CP01–5–000) and Texas Eastern Transmission (Docket No. CP01–8–000), MA and CT, Due: September 03, 2001, Contact: Berne Mosley (202) 208–0004.

EIS No. 010251, Final EIS, FTA, CA, Mid-Coast Corridor Mass Transit Improvement Project, Funding, San Diego County, CA , Due: August 13, 2001, Contact: Tim Pennington (415) 744–3116.

Dated: July 10, 2001.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–17627 Filed 7–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6619–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 04, 2001 through June 08, 2001 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–J65337–MT Rating EC2, Cave Gulch Post-Fire Salvage Sale, Harvesting Dead or Dying Trees, Implementation, Helena National Forest, Big Belts Mountain, Lewis and Clark Counties, MT.

Summary: EPA expressed concerns about adverse effects of timber harvest on water quality. EPA indicated that harvest methods and mitigation measures should avoid and minimize further adverse impacts to fire stressed water bodies and recommended additional mitigation, and monitoring to detect effects on water quality.

ERP No. D–AFS–L65232–OR Rating EC2, Deep Vegetation Management Project, Implementation, Ochoco National Forest, Paulina Ranger District, Crook and Wheeler Counties, OR.

Summary: EPA expressed concerns about possible impacts to air and water quality, the limited information on cumulative impacts, and the limited range of alternatives. EPA requests that the final EIS discuss these potential impacts in greater detail.

ERP No. D–AFS–L65369–00 Rating EC2, Boise National Forest, Payette National Forest and Sawtooth National Forest, Forest Plan Revision, Implementation, Southwest Idaho Ecogroup, several counties, ID, Malhaur County, OR and Box Elder County, UT.

Summary: EPA expressed environmental concerns regarding air and water quality impacts and with the discussion regarding alternatives and cumulative impacts.

ERP No. D–BOP–K81025–CA Rating LO, Fresno Federal Correctional Facility Development, Orange Cove, Fresno County, CA.

Summary: EPA had no objections to the project.

ERP No. DS–DOE–A06181–00 Rating EC2, Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste, Construction, Operation, Monitoring and Eventually Closing a Geologic Repository at Yucca Mountain, Updated and Additional Information, Nye County, NV.

Summary: The Supplement updates information about the repository design, but because of its limited scope, the Supplement does not address most of the comments EPA had on the draft EIS. EPA therefore continues to have environmental concerns with the project. EPA also requests additional information to clarify information presented in the Supplement.

ERP No. D1–AFS–J65250–CO Rating LO, Forest Development Trail (FDT) 1135 (Arapaho Ridge Trail), Forest Development Road (FDR) 711.1 and FDR 711.1A Motorized or Non-Motorized Determination and Trailhead Parking Areas Creation at both ends of the Trail, Routt National Forest, Jackson County, CO.

Summary: EPA expressed a lack of objections with the preferred alternative.

Final EISs

ERP No. F–AFS–J65322–MT, Spar and Lake Subunits Forest Health Project, Improvements, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns about the lack of information on aquatics monitoring and weed control chemicals to be used in the project area.

ERP No. F–RUS–E39053–KY, Jackson County Lake Project, Implementation, To Provide Adequate Water Supplies for the Projected Residential, Commercial and Industrial Needs, Funding and Possible COE Section 10 and 404 Permits, Jackson County, KY.

Summary: EPA's original environmental concerns remain, especially since other water supply options can address purpose/need goals with lesser adverse (long-term) water quality impacts.

Dated: July 10, 2001.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–17628 Filed 7–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–1028; FRL–6785–8]

Notice of Filing a Pesticide Petition to Establish a Tolerance fora Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1028, must be received on or before August 13, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1028 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–1028. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1028 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1028. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for

residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 20, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Aventis CropScience

PP 4F4281 and PP 0F6126

EPA has received pesticide petitions (PP 4F4281 and PP 0F6126) from Aventis CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of iprodione, 3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer, 3-(1- methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidaxolidinecarboxamide and its metabolite,3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidine carboxamide in or on the raw agricultural commodity rapeseed (canola) at 1.0 part per million (ppm)(4F4281) and increasing the tolerance in or on the commodity almond hulls to 5.0 ppm (0F6126). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of iprodione in plants is well understood. EPA concluded that the residues of concern in plants are the parent, its isomer 3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide.

2. *Analytical method.* An adequate analytical method, gas liquid chromatography using an electron-capture detector, is available in the Pesticide Analytical Manual, Vol. II, for enforcement purposes.

3. *Magnitude of residues —i. Canola.* a. *Foliar application.* Residue data were reported for 11 field trials conducted in the major canola production areas of Canada. Most of the trial locations also represent major canola production areas of the United States. Residues ranged from 0.05 ppm to 0.62 ppm.

b. *Seed treatment.* Residue data were reported for 8 field trials conducted in EPA Regions II, V, VII, and XI. The seed were treated with iprodione and planted with equipment customarily used for canola seed. Mature canola seed generated from the treated seed was collected at normal commercial harvest and analyzed. Iprodione residues were non-detectable in all samples. The LOD was estimated to be 0.005 ppm.

c. *Processing.* A canola processing study was found to be adequate by the Agency to support a tolerance on canola. Combined residues do not concentrate in canola meal, crude oil, or refined oil. Food or feed additive tolerances are not necessary.

ii. *Almonds.* A residue study was conducted at five field trial locations in California, the only state with commercial almond production. The product was applied four times as airblast applications using equipment customarily used to apply pesticides to almonds at a nominal rate of 1.0 lb ai/A per application. This represents a rate increase compared to thecurrent label rate of 0.5 lb ai/A per application. All resulting iprodione residues in/on almond nutmeat samples were below the current tolerance of 0.3 ppm. Residues in almond hull samples ranged from 1.6 ppm to 3.9 ppm.

B. Toxicological Profile

1. *Acute toxicity.* A complete battery of acute toxicity studies for iprodione was completed. Iprodione has low acute toxicity. The acute oral toxicity study in the rat resulted in LD_{50} of 3,629 milligrams/kilograms and 4,468 mg/kg for females and the combined sexes, respectively. The acute dermal LD_{50} in both rats and rabbits is > 2,000 mg/kg. The acute inhalation LC_{50} for a four hour exposure to rats is > 5.16 mg/L. No skin or eye irritation or dermal sensitization is produced by iprodione. Based on the results of this study iprodione was placed in toxicity category III.

2. *Genotoxicty.* Mutagenicity studies completed include*Salmonella typhimurium* and *Escherichia coli* reverse mutation (all negative), induction tests with *Escherichia coli*, (all negative), DNA repair test in *Escherichia coli* (negative), DNA damage in *Bacillus subtilis* (positive), Rec assay in *Bacillus subtilis* (negative), mutagenicity in *Saccharomyces cerevisiae* D7 (negative), forward mutation in CHO/HGPRT assay (negative), chromosome aberrations in CHO cells (negative), sister chromatid exchange in CHO cells (negative), *in vivo* micronucleus test (negative), *in vivo* host mediated assay with *Salmonella typhimurium* G46 (negative) and dominant lethal test in male mice (negative). Based on these data, the weight of evidence indicates that iprodione does not pose a mutagenic hazard to humans.

3. *Reproductive and developmental toxicity.* The embryo/fetal toxicity and teratogenicity of iprodione were evaluated in Sprague-Dawley rats at oral (gavage) dose levels of 0, 40, 90 or 200 mg/kg/day by gavage from day 6 through 15 of gestation. Iprodione showed no embryotoxicity or teratogenicity at any of the dose levels examined. Although no maternal effects were detected at any treatment level in the definitive study, dose selection was justified from the pilot study in which maternal toxicity was noted at 120 and 240 mg/kg/day. In addition, an increase in the average number of late resorptions per litter was observed at 240 mg/kg/day. A clear and conservative developmental and maternal NOAEL was observed at 90 mg/kg/day.

The potential effects of iprodione on pregnancy and on parameters of sex differentiation have been investigated in the rat. Iprodione was administered by gavage at dose levels of 0, 20, 120 or 250 mg/kg/day to pregnant female Sprague –Dawley rats on days 6 to 19 of

gestation. Iprodione induced severe maternal toxicity, including mortality, at 250 mg/kg/day. Maternal body weight gain was reduced during the treatment period at 120 and 250 mg/kg/day. Mean fetal bodyweight was reduced at 250 mg/kg/day in both sexes. In the final report of the FQPA Safety Factor Committee, April 14, 1998, EPA concluded that for developmental toxicity, the NOAEL was 20 mg/kg/day and the LOAEL was 120 mg/kg/day based on decreased anogenital distance in the male pups. Aventis CropScience disagrees with EPA's evaluation of the study findings. The effects observed on AGD at 120 mg/kg/day are marginal (4.5% decrease) and of extremely doubtful biological significance considering the presence of substantial maternal toxicity (28% decrease in maternal body weight gain on GD 16–20). Nevertheless, it should be noted that since the completion of the FQPA Safety Factor Committee, April 14, 1998, EPA Dr. Earl Gray published in the January-March 1999 issue of Toxicology and Industrial Health An International Journal, findings from a sex differentiation study conducted with iprodione. Dr. Gray reports no decrease in AGD in male rats when iprodione is administered at 100 mg/kg/day from gestational day 14 to postnatal day 3. EPA's findings support a change in the NOAEL to 100 mg/kg/day. Additionally, EPA has relied and used the data generated by Dr. Gray to regulate the product, vinclozolin. The Agency should handle iprodione in a similar fashion and use the data generated by Dr. Gray at the 100 mg/kg/day dose level to regulate iprodione concerning this endpoint.

The embryo/fetal toxicity and teratogenicity of iprodione were evaluated in rabbits dosed by gavage at levels of 0, 20, 60 or 200 mg/kg/day No treatment-related embryotoxicity or teratogenicity was noted at doses of 20 or 60 mg/kg/day. Even though iprodione at 200 mg/kg/day was too maternally toxic for a complete teratologic evaluation, no malformations were observed in the fetuses examined from this group. The developmental NOAEL was 60 mg/kg/day and the maternal NOAEL was 20 mg/kg/day based on decreases in maternal body weight gain.

In a multi-generation study, iprodione was administered to male and female Sprague–Dawley rats via dietary admixture at dose levels of 0, 300, 1,000 or 2,000/3,000 ppm (for males 18.5, 61.4 and 154.8 mg/kg/day and for females 22.49, 76.2 and 201.2 mg/kg/day, respectively). It was necessary to reduce the high dose from 3,000 to 2,000 ppm following the first mating period of the F1 parents owing to excessive toxicity. No effects on reproductive performance were observed at any of the treatment levels. Parental toxicity, as evidenced by reduced bodyweight, body weight gain and food consumption was observed at dietary levels of 1,000 ppm and higher. Effects on pup viability and pup weight were noted at 2,000/3,000 ppm. The NOAELs for parental and offspring toxicity were 300 ppm and 1,000 ppm, respectively. Based on these data, it is concluded that Iprodione is not a reproductive toxicant.

4. *Subchronic toxicity.* In a dermal toxicity study, rabbits were administered iprodione on the skin at dose levels of 0, 100, 500, and 1,000 mg/kg/day for 21 days. There were no deaths or clinical signs of toxicity and no adverse effects were observed on body weight, food consumption, the skin, liver or kidneys. The NOAEL was 1,000 mg/kg/day, the highest dose tested (HDT).

In a 90–day subchronic feeding study, rats were administered iprodione in the diet at doses of 0, 1,000, 2,000, 3,000, and 5,000 ppm (0, 78, 151, 252, and 355 mg/kg/day for males and 0, 89, 189, 266, and 408 mg/kg/day for females). The NOAEL in this study was 1,000 ppm (78 mg/kg/day for males and 89 mg/kg/day for females). The LOAEL was 2,000 ppm (151 mg/kg/day for males and 189 mg/kg/day for females), based on decreased body weight gain, decreased food consumption and food utilization, organ weight effects, and microscopic lesions in the sex organs.

5. *Chronic toxicity and carcinogenicity*– i. *Non–rodent dog.* In a first chronic feeding study, 6 Beagle dogs/sex/group were administered iprodione in the diet at dose levels of 0, 100, 600 and 3,600 ppm (equivalent to 0, 4.2, 26.6, and 148.9 mg/kg/day) for 12 months. There were no teatment–related for body weight, food consumption, or clinical signs observed in either male or female dogs. In the 3,600 ppm dose group, increases in alkaline phoshatase, SGOT, SGTP, and LDH levels were observed in both male and female dogs. Increases in absolute and relative liver and adrenal weights were observed in both male and female in the 3,600 ppm dose level. Increased erthrocytes with Heinz bodies were observed in the male dogs at both the 600 and 3,600 ppm dose groups. Additionally decreased prostate weights were seen in these same male dogs. A clear NOAEL was established at 100 ppm (4.2 mg/kg/day). The LOAEL was set at 600 ppm based on equivocal effects such as decreased prostate weight and an increased incidence of Heinz bodies in erythrocytes in males.

A second chronic feeding study designed to complement the above study in dogs was conducted at dose levels of 0, 200, 300, 400 and 600 ppm. In this study no clear indications of any toxicological effects were noted with the exception of minor effects seen at the 600 ppm dose group, which consisted of decreased red blood cell parameters. From the results of the two complementary studies, a conservative NOAEL of 400 ppm (17.5 mg/kg/day in males and 18.4 mg/kg/day in females) and a LOAEL of 600 ppm (24.6 mg/kg/day in males and 26.4 mg/kg/day in females) based on depressed blood cell parameters were established.

ii. *Rodent —Rat.* a. *Study A.* In the initial chronic/carcinogenicity study, Charles River outbred CD albino rats were fed diets containing 125, 250 or 1,000 ppm (6.25, 12.5 and 50 mg/kg/day) of Iprodione technical for 24 months. In this study, no treatment-related effects were observed for parameters measured (i.e., body weight, clinical signs, and etc.) No treatment–related tumors were observed in this study. The NOAEL of iprodione in rats was observed to be greater than 1,000 ppm (i.e. >50 mg/kg/day), the HDT. Therefore, the rat chronic/carcinogenicity study discussed below was repeated to comply with EPA guidelines as in the initial study a MTD was not attained.

b. *Study B.* In the second study, Sprague Dawley rats were administered 150, 300, or 1,600 ppm iprodione technical in the diet for 24 months. The NOAEL for chronic toxicity was set at 150 ppm (mean intake of males and females was 7.25 mg/kg/day) and the LEL was 300 ppm (12.4 mg/kg/day for males and 16.5 mg/kg/day for females). The NOEL for carcinogenicity in males in this study was 300 ppm (12.4 mg/kg/day) and the LEL was 1,600 ppm (69 mg/kg/day). There was no indication of carcinogenicity in females at any dose levels.

The following summarizes the findings at the mid and high dose levels in this study:

In the high dose group mean body weight gains were reduced from 13.7% to 16.4% between weeks 0 to 12, 12 to 22, and 0 to 104 of the study in high dose males.

Terminal sacrifice: Increased relative liver weight was noted in males receiving 300 or 1,600 ppm, significantly increased testes weight were recorded at 1,600 ppm and slight increases in relative adrenal and thyroid weights in males were recorded at 1,600 ppm.

Interim sacrifice: An increased incidence of centrilobular hepatocyte

enlargement was seen in males at 300 and 1,600 ppm and an increased incidence of extramedullary haemopoiesis and haemosiderosis was observed in female rats receiving 1,600 ppm. In the adrenals, generalized and/or focal enlargement of cells of the zona glomerulosa was observed in numerous male and female rats treated at 1,600 ppm. A high proportion of rats in this group revealed generalized rarefaction and fine vacuolation of zona fasciculata; only one female in the 300 ppm group showed this latter change. A high proportion of male rats also showed a generalized fine vacuolation of zona reticularis.

Terminal sacrifice: In the testes, interstitial cell hyperplasia was observed at 300 and 1,600 ppm and an increased incidence of atrophy of seminiferous tubules was noted in rats treated with 1,600 ppm. In the epididymides, reduced spermatozoa were noted at 300 and 1,600 ppm and an increased incidence of spermatozoa absent was noted in males treated with 1,600 ppm. An increased atrophy of the prostate was noted at 1,600 ppm. In seminal vesicles, secretory colloid was absent/empty in rats treated with 1600 ppm and reduced secretion was also observed at 300 ppm. In the spleen, the incidence of minimal haemosiderosis was increased amongst female rats treated with 300 or 1,600 ppm. In the adrenals, an increased incidence of either generalized or focal enlargement of cells of zona glomerulosa for males and females treated with 1600 ppm, often with generalized vacuolation of zona fasciculata and zona reticularis for males treated with 1,600 ppm were noted. Generalized vacuolation of zona reticularis was also observed in male rats treated at 300 ppm.

No increase in tumor incidence was noted at interim sacrifice.

Macroscopic examination of animals found dead or sacrificed in extremis did not show an increased incidence of any tumor type. In the high dose group there was an increase in the incidence of both unilateral and bilateral benign interstitial cell tumors in the testes of males. No treatment–related neoplastic lesions were observed in the 150 or 300 ppm dose levels.

iii. *Rodent —Mouse.* a. *Study A.* In the initial study, Carworth CF–1 outbred albino mice were fed diets containing 200, 500, 1,250 ppm (28.6, 71.4 and 178.6 mg/kg/day) of iprodione technical for 18 months. In this study, no treatment–related effects were observed for parameters measured (i.e., body weight, clinical signs, and etc.). No treatment–related tumors were observed in this study. In this study, the NOAEL of Iprodione in mice was greater than 1,250 ppm (i.e. > 178.6 mg/kg/day). Therefore, the mouse life–time feeding study discussed below was repeated to comply with EPA guidelines as in the initial study a MTD was not attained.

b. *Study B.* In the second study (MRID 42825002), iprodione technical was administered at dietary concentrations of 160, 800 or 4,000 ppm to CD–1 mice for 99 weeks. The NOAEL for chronic toxicity was set at 160 ppm (23 mg/kg/day for males and 27 mg/kg/day for the females) and the LEL at 800 ppm (115 mg/kg/day for males and 138 mg/kg/day for females). The NOAEL for oncogenicity in this study was 800 ppm (115 mg/kg/day in males and 138 mg/kg/day in females) and the LEL was 4,000 ppm (604 mg/kg/day in males and 793 mg/kg/day in females).

The following summarizes the findings at the mid and high dose levels in this study:

Over the duration of the study, weight gain was reduced 14% and 11% in high dose males and females respectively. During weeks 18 to 45, weight gain was reduced 44% and 47%, respectively.

Biochemistry investigations at week 52 revealed significant increases in GOT and GPT values in both sexes at 4,000 ppm.

At interim sacrifice, Significantly higher liver weights and slightly higher adrenal weights were noted in animals of both sexes at 4,000 ppm. A decrease in uterine and ovarian weights was also observed at 4,000 ppm although they were not statistically significantly reduced in comparison with the controls. At terminal sacrifice the following organ weight changes were noted at 4,000 ppm: Significant increases in liver weights in both sexes, marginal increases in thyroid weights in both sexes and significantly decreased uterus weights in females. A decrease in ovarian weights was also noted at 4,000 ppm, although the reduction was not statistically significant.

At interim sacrifice, non-neoplastic findings were only observed in mice treated with 4,000 ppm. In the livers of both sexes an increase in the incidence and degree of centrilobular hepatocyte enlargement was observed with increased incidence of centrilobular hepatocyte vacuolation in females. In the adrenals, an increased incidence of hypertrophy of the cells of the zona fasciculata was observed in females. In the testes, generalized vacuolation and hypertrophy of the interstitial cells was observed in most males. In the ovaries, luteinisation of the interstitial cells and absence of corpora lutea were observed.

At terminal sacrifice, the following non-neoplastic lesions were noted: In the liver, single and multiple areas of eosinophilic hepatocytes, focal fat containing hepatocytes and centrilobular hepatocyte enlargement were present more frequently in both sexes treated at 4,000 ppm with minimal centrilobular hepatocyte enlargement in female mice treated with 800 ppm. In male mice receiving 4,000 ppm, pigmented macrophages were more frequently observed. In the testes, an increased incidence of generalized vacuolation and hypertrophy of interstitial cells of the testes were noted in male mice treated with 800 and 4,000 ppm. In the ovaries, luteinisation of the interstitial cells, absence of corpora lutea, arrest of follicular development were more frequently noted in female mice treated with 4,000 ppm. In the stomach, an increased incidence of hyperkeratosis of the non-glandular stomach was noted in male mice treated with 800 and 4,000 ppm. In the spleen, haemosiderosis was more frequent in females treated with 4,000 ppm. In the kidneys amyloidosis/amyloid deposits and cortical scarring were noted in female mice treated with 4,000 ppm.

Microscopic examination of animals found dead, sacrificed in extremis, or killed at termination after 99 weeks revealed an increased incidence of benign and malignant liver cell tumors in both sexes. A slight increase in the incidence of luteomas in the ovaries of females was also noted at 4,000 ppm.

No increased incidence of any other tumor type was recorded.

No treatment–related neoplastic lesions were observed in the 160 or 800 ppm treatment groups.

c. *Conclusion.* The chronic reference dose (RfD) for iprodione should be 0.0725 mg/kg/day based on the NOEL of 7.25 mg/kg/day determined from the rat combined chronic toxicity and carcinogenicity study. Aventis CropScience believes that using an uncertainty factor of 100 to account for inter- and intra-species variations is adequate to protect all population subgroups.

Aventis CropScience have developed a complete and reliable database which demonstrates that pre-and/or postnatal exposure to iprodione does not result in an increased susceptibility to the developing organism in comparison to the adult.

Iprodione has no teratogenic potential, even at maternally toxic dose levels. In addition the results of a recently completed study have confirmed that iprodione has no effects on sex differentiation. An acceptable two generation rat reproduction study indicated that iprodione has no adverse effects on reproductive performance,

fertility, fecundity, sex ratio or ano-genital distance. Effects on pup weight and viability were only noted in the presence of severe parental toxicity.

These studies constitute a very stringent test of developmental and reproductive toxicity because of the types of dosing regimens employed (e.g. MTD throughout the sensitive period of organogenesis), the large numbers of animals examined, and the multiplicity of parameters measured.

The Agency Hazard Identification Review Committee (HIARC) concluded "based on the weight-of-the-evidence of all available studies, the HIARC concluded that there is no increased susceptibility to rat and rabbit fetuses following *in utero* and/or post natal exposure to iprodione. Additionally, HED also stated that the special prenatal study in rats ..."demonstrated no indication of increased susceptibility. Therefore, based on these statements and available data base for iprodione, a standard 100–fold UF (10–fold for inter–species extrapolation and 10–fold for intra–species variability) is sufficient to assure protection for all population sub–groups, including females of child-bearing age, infants and children, to dietary, residential or occupational exposure to iprodione residues.

iv. *Supplementary information and discussion.* A number of mechanistic studies have been conducted in order to elucidate the mechanism of testicular toxicity and carcinogenicity in the rat and hepatic toxicity and carcinogenicity in the mouse.

a. *Background and introduction.* The HED Carcinogenicity Peer Review Committee (CPRC) met in 1994 and determined that iprodione should be classified a group B2 carcinogen. The CPRC recommended that a low dose quantitative risk assessment for iprodione be estimated from the benign rat interstitial cell tumors of the testes, and also from the mouse male and female liver tumors separately.

In November 1997, HED's Cancer Assessment Review Committee re-affirmed its position for the risk characterization of iprodione on the basis that a definitive mode of action for the formation of either tumor type had not yet been provided.

Aventis CropScience has since produced significant new data to address all the Agency's outstanding issues relative to the induction of rat Leydig cell tumors by iprodione. These data provide a definitive mode of action for the induction of rat Leydig cell tumors and support a move to a MOE (i.e. non–linear) approach for cancer risk assessment for this tumor type. Work has also been conducted on the mechanism of hepatic toxicity and carcinogenicity in the mouse.

b. *Mechanism of Leydig cell toxicity in the rat.* Aventis CropScience contends that a complete evaluation of the carcinogenicity issue indicates that Iprodione is a threshold carcinogen acting through a non-genotoxic mechanism of toxicity. The application of a low dose quantitative risk assessment for Iprodione is inappropriate. These conclusions are based on the available data from the following areas:

(1) *Genetic toxicity of iprodione.* The genotoxicity of iprodione has been assessed in a large number of assays conducted using bacteria, yeast and mammalian cells and whole animals. A single positive result was observed in an outdated and deficient assay designed to assess DNA damage using *Bacillus subtilis.* All other genotoxicity assays, including those conducted *in vivo*, were found to be negative. This considerable body of data indicates that iprodione does not pose a mutagenic hazard to humans. A hormonally-mediated mechanism of carcinogenesis has therefore been investigated. *In vivo* mechanistic studies: Iprodione has recently been shown to decrease plasma testosterone levels significantly in rats in a dose–dependent manner at dose levels analogous to those at which tumors were induced in the rat bioassay (approx. 70 mg/kg/day). Following a single gavage administration of iprodione, plasma testosterone levels were reduced 2 and 4 hours post dosing. Thereafter plasma testosterone levels returned to baseline, presumably as a consequence of the compensatory increase in plasma LH which was significantly increased 2 and 4 hours post dosing (MRID 44729201). This profile of transient hormonal changes mirrors that of the classic testosterone biosynthesis inhibitor ketoconazole.

In previous *in vivo* studies in the rat, detectable hormonal changes have been limited to increases in LH and FSH levels following 14/15 days of iprodione treatment and alterations in the secretion pattern of LH and testosterone following 30–days of treatment (MRID 43535002, 44171903). The rapid reversibility of the hormonal changes observed in the recent study (MRID 44729201) helps to explain the absence of detectable decreases in testosterone levels *in vivo*in previous studies. In the 15–day gavage study, blood sampling was performed 12–14 hours following the final gavage (MRID 43535002). In the 14–day feeding study, blood samples were not taken until mid- to late morning i.e. several hours following the conclusion of the animals' anticipated nocturnal feeding (MRID 44171903). Since, in the recent study, plasma testosterone levels were observed to return to normal approximately 6 hours post dosing (MRID 44729201) it is probable that no significant decreases in circulating testosteronelevels were demonstrated in earlier experiments due to inappropriate sampling times following iprodione administration.

(2) *Combined chronic toxicity/carcinogenicity studies.* Pathologic evidence of a chronic perturbation of steroidogenesis and/or compromised testosterone availability was observed in the rat bioassay. An increased incidence of Leydig cell hyperplasia was observed both at the interim and terminal sacrifices. Other indicators of testosterone deficiency noted at terminal sacrifice included reductions in epididymal spermatozoa, reduced secretion in the seminal vesicles, and decreased weight of seminal vesicles.

Similar effects on steroid hormone producing organs such as the adrenal cortex, testis and ovary have been observed in other subchronic and chronic studies conducted with iprodione in rodents and dogs. Hypertrophy and intracellular accumulation of lipid, most likely due to an interference with cholesterol utilization in steroidogenesis, was observed in the interstitial cells of the mouse ovary and in the zonal fasciculata of the adrenal cortex in rodents and dogs.

(3) *In vitro mechanistic studies.* No clear evidence of competitive binding to the androgen receptor was found for iprodione or its major metabolites.

Iprodione and certain metabolites (RP36112 and RP36115) have been shown to rapidly and reversibly inhibit testosterone secretion from cultures of porcine Leydig cells. Inhibition was found to occur at media concentration of 1–10 ug/ml. No inhibitory effects on testosterone secretion were noted at media concentrations of iprodione or its active metabolites below 1 ug/ml demonstrating a threshold for this effect. Iprodione has also been shown to inhibit testosterone secretion from rat testicular sections *in vitro* at similar media concentration.

The mode of action whereby iprodione and its metabolites (RP36112 and RP36115) modulates steroidogenesis in Leydig cells has been identified using porcine Leydig cell cultures. Iprodione and RP36112 interfere with the active transport of cholesterol substrate into mitochondria while another metabolite RP36115 appears to inhibit steroidogenic enzymes.

(4) *Toxicokinetic study.* Groups of male Sprague Dawley rats received a single oral administration of ^{14}C-iprodione at the nominal rate of 70 mg/kg. Levels of iprodione and its metabolites RP36112 and RP36115 were estimated in the testes and plasma 0.5, 1, 2, 4, 6, 10, 24, and 48 hours post dose.

The results of this study indicate that the changes previously observed in plasma testosterone and LH levels at 70 mg/kg were most likely induced by the presence of RP36112, RP36115, and/or iprodione, which were present in the testes as early as 0.5 hours post dosing. At 2 hours post dosing, when maximal changes in plasma testosterone levels were observed to have occurred, the concentrations of RP36115 and iprodione were already at, or near, peak values in the plasma and testes. These levels were maintained for at least 8 hours, after which the levels rapidly declined to very low concentrations by 24 hours post dosing. It is also noteworthy that the range of concentrations of iprodione and RP36115 achieved in the testes samples by 2 hours post dosing were of the order of 5.6–6.8 ug/g which fall within the range of concentrations known to provide inhibition of testosterone secretion *in vitro* (1–10 ug/ml).

c. *Hepatotoxicity and carcinogenicity in male and female mice.* The development of hepatocellular tumors in mice appeared secondary to hepatic toxicity at a dose level at which body weight gain was severely reduced indicating that the MTD was probably exceeded (over the duration of the study, weight gain was reduced 14% and 11% in high dose males and females respectively. During weeks 18 to 45, weight gain was reduced 44% and 47%, respectively. This severity of the weight gain decrement is compounded by the fact that the livers in these animals weighed more than double their respective controls, i.e., the weight gain decrement is even more serious than the body weights alone would indicate). The animals at the highest dose level, and to a lesser extent, the mid-dose group, exhibited signs of liver toxicity, including increased liver weights, hepatocytic hypertrophy, enlarged eosinophilic hepatocytes, pigmented macrophages, centrilobular necrosis, amyloid deposits and statistically significant increases in levels of the liver enzymes GPT and GOT. Clear NOAELs exist for these effects. In a 14–day toxicity study in male mice, dose levels similar to those at which tumors were observed in the mouse carcinogenicity study induced a number of hepatic changes including the induction of Cytochrome P450 isoenzymes CYP 2B and CYP 3A and cellular proliferation in a similar manner to the well established liver promotor phenobarbital (MRID 44171902). This mechanism is not relevant to humans based on the pharmaceutical use of phenobarbital in humans for over 50 years.

d. *Conclusion.* As demonstrated above, the administration of iprodione to the Sprague Dawley rat results in transient hormonal imbalances *in vivo* (decreased plasma testosterone and increased plasma LH). It is well established that the chronic administration of a number of xenobiotic chemicals which cause similar changes to the hypothalamic-pituitary-gonodal axis result in the development of Leydig cell tumors in highly sensitive species, such as the rat. The dose–response for this type of hormonally–mediated effect is expected to be non–linear

The biochemical basis for this hormonal imbalance is an inhibition of testosterone biosynthesis by iprodione and its active metabolites(s). Testicular concentrations of iprodione, and at least one of its active metabolites, attained *in vivo* are within the range of those demonstrated to inhibit testosterone biosynthesis in Leydig cells *in vitro*. The mode of action whereby iprodione modulates Leydig cell steroidogenesis is *via* a reversible interference with the active transport of cholesterol into the mitochondria of Leydig cells as opposed to vinclozolin and procymidone which interact directly with the androgen receptor. As shown with vinclozolin and procymidone, direct interaction with the androgen receptor leads to marked effects on reproduction systems. However, iprodione does not lead to such marked reproductive effects. In fact, iprodione has no effects on reproductive parameters, sex differentiation, and other parameters measured in these study types.

For iprodione, the male interstitial cell tumors seen only at the high dose in the lifetime rat study was due to mode of action with a clear threshold. This conclusion is based on the following rationale: (i) The tumors were benign and only observed at a dose level at or above the MTD, (ii) the mechanistic toxicological research designed to elucidate the biochemical mode of action described above and (iii) the consensus of scientific experts that benign Leydig cell tumors in the rat are not valid predictors of human disease as will be discussed below.

Furthermore, concerning the testicular tumors (Leydig cell tumors) and as stated in the recent **Federal Register** notice for Vinclozolin April 21, 2000 (65 FR 21427),(FRL–6555–6) "the relevance of Leydig cell tumors to men should be seen in the light that this is a very rare human tumor and that the precursor change (i.e. Leydig cell hyperplasia) has not been observed in patients treated with flutamide. In addition, the toxicology of cimitidine, an H2-receptor antagonist with anti-androgenic properties results in a size reduction and atrophy of the prostate and seminal vesicles in chronic rat studies. Moreover, an increase in benign Leydig cell tumors, and a decrease in pituitary and mammary tumor incidence were noted; hence a toxicity potential not unlike that of vinclozolin is evident. Despite the fact that over 30 million patients have been treated with cimitidine, this therapeutic agent has been demonstrated to be extremely safe, clearly indicating that the rat Leydig cell tumors have very little relevance for humans." A similar conclusion is drawn by other investigators "Leydig cell tumors of the rat have limited significance because of the fundamental differences in testicular control mechanisms." It is therefore concluded that the observed neoplastic changes do not pose a relevant hazard to humans. EPA in the September 1996, Cancer Peer Review Document for vinclozolin, came to the same basic conclusion that the Leydig cell tumors are a very uncommon tumor type in humans which implies the threshold dose for humans would be greater than for rats. EPA based this conclusion on the work performed by Dr. Charles C. Capen (Professor Charles C. Capen, Leydig Cell Tumors: Pathology, Physiology, and Mechanistic Considerations in Rats, The Toxicology Forum, 1994 Annual Summer Meeting, p. 110). Consistent with the data and the advice of the OPP Scientific Advisory Panel and using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified the potent anti- androgen, vinclozolin, as a Group C chemical–possible human carcinogen. The Agency Cancer Peer Review Committee (CPRC) chose an–linear approach margin (MOE) to regulate vinclozolin. More recently, the Agency in its recent **Federal Register** notice of May 26, 2000 (65 FR 34179),(FRL–6588–6) stated the following, "Vinclozolin is classified as a Group C carcinogen based on Leydig (interstitial testicular) cell tumors in a perinatal rat developmental toxicity study. A nonlinear (MOE) approach was determined to be appropriate based on the weight of the evidence conclusion that tumor induction is via an anti-androgenic effect mechanism." The

Agency should handle iprodione in a similar fashion and regulate iprodione via the MOE Approach.

Supporting this position, Aventis CropScience notes, that the joint meeting of the Food and Agriculture Organization of the United Nations (FAO) Panel of Experts on Pesticide Residues and the World Health Organization (WHO) Expert Group on Pesticide Residues determined in 1995 that a risk assessment utilizing a margin of safety approach with an uncertainty factor of 100 applied to the no oberserved adverse effect level (NOAEL) from the chronic rat study was appropriate to provide adequate dietary safety for Iprodione.

Again, Aventis CropScience contends that a complete evaluation of the carcinogenicity issue indicates that iprodione is a threshold carcinogen acting through a non–genotoxic mechanism of toxicity. The application of a low dose quantitative risk assessment for Iprodione is inappropriate.

6. *Animal metabolism*. A general metabolic pathway for iprodione in the rat indicates that biotransformation results in hydroxylation of the aromatic ring, degradation of the isopropylcarbamoyl chain and rearrangement followed by cleavage of the hydantoin moiety. Additionally, structural isomers of iprodione resulting from molecular rearrangement, as well as intermediates in the pathway, were detected.

7. *Metabolite toxicology*. The residues of concern in plants for tolerance setting purposes are the parent, its isomer 3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1- imidazolidinecarboxamide, and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide. In animal commodities, tolerances are established on the parent, its isomer 3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, its metabolite 3-(3,5-dichlorophenyl)-2,4- dioxo-1-imidazolidinecarboxamide, and an additional metabolite N-(3,5-dichloro-4-hydroxyphenyl)-ureidocarboxamide.

8. *Endocrine disruption*. In the carcinogenicity studies conducted for iprodione, the primary lesion at the level of the target organs (testes, ovaries & adrenals) is likely to be related to an inhibition of steroid/androgen biosynthesis. The resulting endocrine toxic effect due to iprodione is fairly moderate compared to that produced by potent endocrine disruptors such as Flutamide, Vinclozolin (and other structural analogs) and is insufficiently potent to produce effects on reproduction or development.

The increased incidence in tumors in both rats and mice was only observed when animals were treated at or above the MTD. For all three tumor sites (testis, liver, ovary) tumors only develop on pre–existing non–neoplastic lesions (cell hypertrophy/vacuolation, hyperplasia) and Aventis CropScience concludes that a clear threshold level exist for both non–neoplastic lesions and tumors. Those thresholds are far in excess of those levels of iprodione that the general public would be exposed to. Iprodione is not expected to induce any adverse effects related to endocrine disruption in members of the general population via the consumption of food containing residues of this compound.

C. Aggregate Exposure

1. *Dietary exposure*. Aventis CropScience expects that potential residues resulting from the proposed use of iprodione on canola and the increased application rate on almonds will not significantly affect EPA's exposure and risk assessments for currently registered uses of iprodione.

i. *Food*. Dietary exposures for iprodione were reevaluated by EPA as part of the reregistration process (1998). The lifetime cancer risk from potential iprodione residues in foods with existing tolerances and drinking water was estimated to be 1.8×10^{-6}. This cancer risk corresponds to a dietary exposure of 0.000041 mg/kg/day or 0.2% of the reference dose (RfD). A chronic dietary exposure analysis for iprodione residues in canola only was conducted for the overall population and 0 26 population subgroups, including infants and children, to determine the incremental risk resulting from the proposed use on canola. Chronic exposure estimates from residues in canola only were less than 0.1% of the RfD for all population subgroups examined. The corresponding lifetime cancer risk was estimated to be 9.44×10^{-9} or less for all lifetime population groups. Chronic exposure estimates from residues in almonds only were also less than 0.1% of the RfD for all population subgroups examined. The corresponding lifetime cancer risk was estimated to be 2.23×10^{-8} 8 or less for all lifetime population groups. Thus, the incremental chronic dietary risk resulting from the proposed use on canola and the increased application rate on almonds does not increase the cancer risk to an unacceptable level.

Acute dietary exposure was estimated for the population subgroup of concern, women 13 years of age and older. Utilizing the Tier 3 methodology (Monte Carlo) for acute exposure, margins of exposure (MOEs) up to the 99.9th percentile of exposure for this population subgroup were at least 351 for currently registered crops. Adding residues in canola and residues in almonds that reflect the revised application rate resulted in MOEs of 351 and 366, respectively, at the 99.9th percentile of exposure. The EPA has determined that a MOE of at least 300 is acceptable for iprodione.

ii. *Drinking water*. Iprodione, applied according to labeled use and good agricultural management practices, is predicted and demonstrated to present no significant, if any, concentrations in drinking water sources. Iprodione's physical-chemical properties and actual measured environmental concentrations in field dissipation/monitoring studies provide support for this conclusion.

Five conservative aggregate exposure and risk assessments were conducted by EPA for the Iprodione RED. These risk assessments include combined exposures to iprodione through food and water in the diet: (a) Acute dietary; (b) chronic dietary; (c) cancer; (d) short-term; and (e) intermediate-term risk. EPA concludes in the RED document that residues of iprodione are not expected to exceed the Agency's drinking water level of concern for either acute or chronic exposure. EPA also concluded with reasonable certainty that residues of iprodione in drinking water (when considered along with exposure from food) would not result in unacceptable short-term and intermediate term aggregate human health risk estimates at this time.

Since the completion of the RED, EPA recently issued a Data Call–In requiring the submission of 3,5-dichloroaniline (3,5-DCA)-targeted surface and ground water monitoring studies relating to golf course use of iprodione products. Aventis has since submitted to the Agency an aerobic soil metabolism study and a soil adsorption/desorption study conducted with 3,5-DCA. Risk analyses using these recent data and EPA's standard operating procedures confirm that there is no concern for contamination of drinking water resulting from the use of iprodione products on golf courses.

Aventis CropScience expects that potential residues resulting from the proposed use of iprodione on canola and the proposed application rate increase on almonds will not significantly affect EPA's exposure and risk assessments for drinking water. Most of the use on canola will occur in the states of North Dakota and Minnesota. The amount of product that

will be used on canola is expected to be minimal compared to that used on currently registered crops. The total amount of product used on almonds is not expected to increase significantly.

2. *Non–dietary exposure.* This assessment is not applicable since all residential uses of iprodione products have been cancelled.

D. Cumulative Effects

The Agency has previously noted both structural and toxicological similarities between iprodione, procymidone and vinclozolin. There are clear differences in both the type and magnitude of effects observed after exposure to iprodione in contrast to vinclozolin and procymidone. Vinclozolin and procymidone are known to exert their identical endocrine effects via a blockage of the androgen receptor. By contrast, iprodione has poor binding affinity to the androgen receptor and the primary lesion appears to be a blockage of testosterone biosynthesis and secretion. Subsequently, iprodione only appears to induce transient changes in plasma hormone levels until compensatory mechanisms take effect. Consequently, Aventis CropScience concludes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no reliable data to indicate that the toxic effects caused by Iprodione would be cumulative with those of any other compound.

E. Safety Determination

1. *U.S. population.* Dietary exposures for iprodione were reevaluated by EPA as part of the reregistration process (1998). The lifetime cancer risk from potential iprodione residues in foods with existing tolerances and drinking water is estimated to be 1.8×10^{-6}. This cancer risk corresponds to a dietary exposure of 0.000041 mg/kg/day or 0.2% of the reference dose (RfD). Chronic dietary exposure to iprodione residues in/on canola only was estimated to be less than 0.1% of the RfD for the general U.S. population and 26 population subgroups. The lifetime cancer risk from potential iprodione residues in canola only was estimated to be 8.27×10^{-9} for the overall U.S. population. For the most highly exposed population subgroup, nonhispanics other than black or white, the cancer risk was estimated to be 9.44×10^{-9}. Chronic dietary exposure to iprodione residues in/on almonds only was also estimated to be less than 0.1% of the RfD for the general U.S. population and 26 population subgroups. The lifetime cancer risk from potential iprodione residues in almonds treated at the increased application rate was estimated to be 1.36×10^{-8} for the overall U.S. population. For the most highly exposed population subgroup, those living in the Pacific region of the U.S., the cancer risk was estimated to be 2.23×10^{-8}. The cancer risk estimates for currently registered crops, drinking water, almonds treated at the proposed increased application rate, and the proposed use on canola are within the range the Agency generally considers negligible for excess life-time cancer risk.

For crops with existing tolerances, acute dietary exposure at the 99.9th percentile for women 13 years of age and older resulted in a MOE of 351. Separate acute exposure analyses conducted for (i) all registered crops including almonds treated at the increased application rate and (ii) all registered crops and canola, resulted in MOEs of 351 and 366, respectively, for this subgroup. Iprodione uses are not expected to impact ground water. Upper bound estimates of iprodione in surface waters from conservative screening models indicate concentrations of a few parts per billion.

Both the chronic and acute dietary exposure assessments clearly demonstrate a reasonable certainty that no harm will result from the use of iprodione on currently registered crops, including almonds treated at the increased application rate, and canola.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of iprodione the available teratology and reproductive toxicity studies and the potential for endocrine modulation by iprodione were considered.

Developmental studies in two species indicate that iprodione has no teratogenic potential, even at maternally toxic dose levels. Maternal and developmental NOAELs and LOAELs were generally comparable indicating no increased susceptibility of developing organisms. In addition the results of a recently completed study have confirmed that Iprodione has no effects on sex differentiation. Multigeneration rodent reproduction studies indicated that Iprodione has no adverse effects on reproductive performance, fertility, fecundity or sex ratio. Effects on pup weight and viability were only noted in the presence of severe parental toxicity.

The mechanism of endocrine modulation associated with iprodione (inhibition of testosterone biosynthesis) appears to be distinct from that of anti-androgens acting at the level of the androgen receptor and may help to explain the lack of adverse effects on reproductive function observed with Iprodione.

Therefore, based upon the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from exposure to residues of iprodione and no additional uncertainty factor is warranted.

The EPA Health Effects Division (HED) determined that the developmental NOAEL for iprodione was relevant only to women of childbearing age and concluded that the developmental NOAEL is not relevant to acute dietary exposures to infants and children. Because no non-developmental acute effects have been identified, there is no acute toxicological endpoint to assess acute dietary risk to infants and children.

Based on the chronic exposure assessment conducted by EPA for uses currently registered, aggregate exposure to iprodione from food utilizes 1.6% of the RfD for non-nursing infants less than 1 year old and less than 1% for all other population subgroups. Chronic dietary exposure to iprodione residues in/on canola only was estimated to be less than 0.1% of the RfD. Chronic dietary exposure to iprodione residues in/on almonds only (treated at the increased application rate) was also estimated to be less than 0.1% of the RfD. EPA generally has no concern for exposures below 100% of the RfD. Since the potential for exposure to iprodione in drinking water is low and there is no risk from non–dietary, non-occupational exposure, the aggregate exposure is expected to be well below 100% of the RfD when accounting for the proposed use on canola and for the increased application rate on almonds. Thus, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to iprodione residues.

F. International Tolerances

A Codex MRL for iprodione on rape seed is established at 0.5ppm. In Canada, PMRA supports the establishment of a MRL of 1.0 ppm for iprodione on canola and a temporary registration was granted. A Codex MRL for iprodione on almonds is established at 0.2 ppm.

[FR Doc. 01–17634 Filed 7–12–01;8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7011–8]

Proposed Past Cost Administrative Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response Compensation and Liability Act; In the Matter of Westinghouse Electric Corporation Facility, Bloomington, Monroe County, Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the ABB/Westinghouse Electric Corporation Plant site in Bloomington, Monroe County, Indiana, with Viacom Inc., f/k/a/ CBS Corporation, f/k/a/ Westinghouse Electric Corporation. The settlement requires Viacom Inc. to pay $940,398.47 to the Hazardous Substance Superfund, which represents 100% of U.S. EPA's documented past costs.

Under the terms of the settlement, Viacom Inc. agrees to pay the settlement amount. In exchange for its payment, the United States covenants not to sue or take administrative action pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), relating to the Site. In addition, Viacom Inc. is entitled to protection from contribution actions or claims as provided by sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for all response costs incurred and to be incurred by any person at the Site.

For thirty (30) days after the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the Monroe County Public Library in Bloomington, Indiana.

DATES: Comments must be submitted on or before August 13, 2001.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–6670. Comments should reference the Westinghouse Electric Corporation Facility site, Bloomington, Monroe County, Indiana, and EPA Docket No. V–W–01–C–638, and should be addressed to Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–6670.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Dated: June 11, 2001.

William E. Muno,

Director, Superfund Division.

[FR Doc. 01–17631 Filed 7–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51973; FRL–6792–3]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 4, 2001 to June 15, 2001 consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical identity is specific or generic.

DATES: Comments identified by the docket control number OPPTS–51973 and the specific PMN number, must be received on or before August 13, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51973 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations", "Regulations and Proposed Rules", and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51973. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable

comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51973 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51973 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 4, 2001 to June 15,2001, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 32 PREMANUFACTURE NOTICES RECEIVED FROM: 06/04/01 TO 06/15/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0651	06/04/01	09/02/01	CBI	(G) Inks	(G) Polyester acrylate
P–01–0652	06/04/01	09/02/01	CBI	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(G) Plant extract
P–01–0653	06/04/01	09/02/01	CBI	(G) Urethane coating	(G) Urethane modified mdi
P–01–0654	06/04/01	09/02/01	CBI	(G) Urethane coating	(G) Urethane modified mdi
P–01–0655	06/04/01	09/02/01	CBI	(G) Urethane coating	(G) Urethane modified mdi
P–01–0656	06/04/01	09/02/01	CBI	(G) Open non-dispersive (thickener)	(G) Polyurethane based thickening agent
P–01–0657	06/05/01	09/03/01	Ciba Specialty Chem. Corp., Colors Division	(G) Textile dye	(G) 2-anthracenesulfonic acid, 4-[[3-(acetylamino)phenyl]amino]-1-amino-9,10-dihydro-9,10-dioxo-, compd. with substituted amine polymer
P–01–0658	06/05/01	09/03/01	CBI	(G) Toner	(G) Substituted epoxy-modified silicone compound
P–01–0659	06/05/01	09/03/01	Basf Corporation	(S) Uv-printing inks;optical film coating	(G) Substituted alkyl ester acid
P–01–0660	06/07/01	09/05/01	King Industries, Inc.	(S) Synthetic base fluid;additive for lubricants	(G) Alkylated aromatic
P–01–0661	06/07/01	09/05/01	King Industries, Inc.	(S) Synthetic base fluid;additive for lubricants	(G) Alkylated aromatic
P–01–0662	06/07/01	09/05/01	3m Company	(S) Adhesive	(G) Acrylate polymer
P–01–0663	06/08/01	09/06/01	Vulcan Performance Chemicals	(S) Wastewater/sludge treatment	(G) Polymer of cationic quaternary and anionic acid
P–01–0664	06/05/01	09/03/01	CBI	(S) Aqueous dispersion of polymer for leather finishing	(G) Polytetrahydrofuran, polymer with a diisocyanate, a diamine and an amine
P–01–0665	06/11/01	09/09/01	CBI	(S) Fluorescent brighter for use in cellulosic paper applications	(G) Benzenesulfonic acid, 2,2'-(1,2-ethenediyl)bis[5-[[4-substituted-6-substituted-1,3,5-triazin-2-yl]amino-, sodium salt, compd. with (substituted)oxirane polymer with sorbitol, (substituted)amine and (substituted)triol formate (salt)
P–01–0666	06/12/01	09/10/01	Gaco Western, Inc.	(S) Hypalon activator	(S) Isocyanic acid, polymethylenepolyphenylene ester, 2-(diethylamino)ethanol-blocked
P–01–0667	06/14/01	09/12/01	Specialty Fertilizer Products LLC	(G) Fertilizer dust control coating and agronomic enhancement product	(G) Maleic acid copolymer salt
P–01–0668	06/14/01	09/12/01	Specialty Fertilizer Products LLC	(G) Fertilizer dust control coating and agronomic enhancement product	(G) Maleic acid co-polymer salt
P–01–0669	06/14/01	09/12/01	CBI	(G) Oil and water repellant;water proofing product	(G) Fluorinated copolymer
P–01–0670	06/14/01	09/12/01	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–01–0671	06/15/01	09/13/01	CBI	(G) Polymeric chromphore	(G) Polyalkoxylated aromatic chromophore
P–01–0672	06/15/01	09/13/01	CBI	(G) Polymeric chromphore	(G) Polyalkoxylated aromatic chromophore
P–01–0673	06/15/01	09/13/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated intermediate
P–01–0674	06/15/01	09/13/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated intermediate
P–01–0675	06/15/01	09/13/01	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–01–0676	06/15/01	09/13/01	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–01–0677	06/15/01	09/13/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated intermediate
P–01–0678	06/15/01	09/13/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated intermediate
P–01–0679	06/15/01	09/13/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated intermediate
P–01–0680	06/15/01	09/13/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated intermediate
P–01–0683	06/15/01	09/13/01	CBI	(G) Resin coating	(G) Urethane acrylate
P–01–0684	06/15/01	09/13/01	Ciba Specialty Chemicals Corporation	(S) Paper pulp retention and drainage aid	(G) Phenolic sulfone reaction products

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 24 NOTICES OF COMMENCEMENT FROM: 06/04/01 TO 06/15/01

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0479	06/05/01	05/24/01	(S) Fatty acids, C_{16-18} and C_{18}-unsatd., branched and linear, sodium salts
P–00–0544	06/08/01	06/07/01	(G) Hydrofluoroether
P–00–0615	06/12/01	04/28/01	(G) Alkylphenol polyether amine
P–00–0821	06/08/01	05/10/01	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with butyl 2-propenoate, ethenylbenzene, 2-hydroxyethyl 2-propenoate and 2-propenoic acid, compd. with *n,n*-diethylethanamine
P–00–1116	06/07/01	05/21/01	(G) Unsaturated polyester
P–00–1167	06/11/01	05/30/01	(G) Acrylic solution polymer
P–01–0095	06/11/01	05/16/01	(G) Aliphatic urethane
P–01–0106	06/11/01	05/16/01	(G) Hydrogen-functional polysiloxane(s)
P–01–0124	06/05/01	05/21/01	(G) Aromatic amino polyol
P–01–0150	06/06/01	05/22/01	(S) 1,3-benzenedicarboxylic acid, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 2,5-furandione and 1,2-propanediol, 2-ethylhexyl ester
P–01–0185	06/06/01	06/04/01	(G) Fatty acids, tall-oil, reaction products with castor oil and substituted amines
P–01–0244	06/11/01	05/24/01	(G) Co-polymer of acrylic esters
P–01–0273	06/12/01	05/31/01	(G) Alkylarylpolyether salt
P–01–0274	06/12/01	05/31/01	(G) Alkylarylpolyether
P–01–0275	06/12/01	05/31/01	(G) Alkylarylpolyether salt
P–01–0294	06/05/01	05/10/01	(S) Siloxanes and silicones, di-me, di-ph, polymers with vinyl silsesquioxanes, methoxy-terminated
P–01–0295	06/05/01	05/10/01	(S) Siloxanes and silicones, di-ph, polymers with ph silsesquioxanes, sec-butoxy- and [(trimethylsilyl)oxy]-terminated
P–01–0305	06/05/01	05/02/01	(G) Polyureapolyurethane polyol
P–01–0342	06/14/01	05/14/01	(G) Metalorganics
P–01–0365	06/11/01	06/05/01	(G) Polyacrylate, modified with siloxane
P–93–0897	06/05/01	02/04/01	(G) Aliphatic diol polyester
P–97–0920	06/05/01	05/22/01	(G) Isocyanate terminated polyester polyurethane
P–99–0808	06/06/01	05/07/01	(G) Ethylene interpolymer
P–99–1308	06/05/01	05/23/01	(G) Blocked aliphatic polyisocyanate

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: June 28, 2001.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 01–17633 Filed 7–12–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1370–DR]

Minnesota; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1370–DR), dated May 16, 2001, and related determinations.

EFFECTIVE DATE: July 3, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 3, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17528 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1376–DR]

North Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota (FEMA–1376–DR), dated May 28, 2001, and related determinations.

EFFECTIVE DATE: July 3, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 3, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services

Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17529 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1383–DR]

Pennsylvania; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA–1383–DR), dated June 21, 2001, and related determinations.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared disaster is June 15–23, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 01–17531 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1383–DR]

Pennsylvania; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania, (FEMA–1383–DR), dated June 21, 2001, and related determinations.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 21, 2001:

Montgomery County for Public Assistance (already designated for Individual Assistance).

Berks County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17532 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1378–DR]

West Virginia; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia, (FEMA–1378–DR), dated June 3, 2001, and related determinations.

EFFECTIVE DATE: July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 3, 2001:

Calhoun and Putnam Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17530 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1369–DR]

Wisconsin; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin, (FEMA–1369–DR), dated May 11, 2001, and related determinations.

EFFECTIVE DATE: July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 11, 2001:

Adams, Chippewa, Dunn, Jackson, Juneau, and Taylor Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537,

Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17525 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1369–DR]

Wisconsin; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1369-DR), dated May 11, 2001, and related determinations.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 6, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17526 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1369–DR]

Wisconsin; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin, (FEMA–1369–DR), dated May 11, 2001, and related determinations.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 11, 2001:

Clark County for Public Assistance.
Barron County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17527 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of the State Management of Public Assistance Operations in Small Disasters

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: We (FEMA) give notice that we will devolve major management responsibility of the Public Assistance Program in small disasters to interested States with demonstrated capability beginning on or after the date this notice is published. Interested Indian Tribal Governments, which are acting as their own Grantee, are also invited to participate in this program. We award Public Assistance grants, which supplement community assets in the recovery of State, tribal, local and certain eligible private non-profit infrastructure when the President declares an emergency or major disaster. The change in the program management does not constitute a change to the process by which assistance is provided nor does it constitute a change in benefits under the law or regulation.

DATES: This notice is effective July 13, 2001. We invite comments on this initiative, particularly on the criteria for State selection. Comments received by September 11, 2001 will be considered when making future program revisions.

FOR FURTHER INFORMATION CONTACT: James A. Walke, P.E., Public Assistance Branch Chief, Federal Emergency Management Agency, Washington DC 20472, 202–646–2751 (phone), 202–646–3304 (fax), or *James.Walke@fema.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, provides for the award of grants to assist in the repair and reconstruction of community infrastructure. In April 2000, we convened a task force of FEMA and State officials to explore the option of allowing capable States to manage the Public Assistance Program in small disasters. The purpose of this initiative is to streamline disaster operations and enhance States' program capabilities. This initiative does not change eligibility requirements or the amount of assistance available. Small disasters are those with sufficient severity and magnitude to warrant a major disaster declaration by the President, but are limited in scope and size as defined by the following: statewide infrastructure damage is less than $2 per capita; or, total estimated infrastructure damage is less than $15 million; or, categories of work are limited to debris removal and emergency protective measures; or, the Public Assistance operation is within a State's capability to manage (varies by State). The task force developed a concept of operations, a sample operational agreement, a list of FEMA and State roles and responsibilities, and a list of frequently asked questions to guide program implementation.

Participation in the State Management of Small Disasters program is voluntary. If a State is interested in managing a disaster, it must specify this in the

Governor's request for a disaster declaration. FEMA will determine whether a State is capable of managing a disaster. Interested States should have recent Federal disaster experience, adequate staff, a current management plan, an adequate fiscal accounting system, the ability to meet deadlines for grant management activities, environmental knowledge and awareness, and a commitment to training. FEMA regional offices and States should work together before a disaster to determine capability and ensure that States meet selection criteria. When a State elects to manage the disaster and FEMA determines that the State is capable, FEMA and the affected State will enter into an operational agreement. The operational agreement defines the roles and responsibilities of the State and FEMA as well as the processes and procedures in effect under the agreement.

Under this initiative, a capable State provides staff to manage the Public Assistance Program operation, including project eligibility reviews, process control, and resource allocation on small disasters. We will provide a minimum number of FEMA staff to support the operation, which will include: Federal Coordinating Officer (FCO), Public Assistance Officer (PAO), Deputy PAO, data entry specialist, and environmental specialist. We will retain obligation authority, final approval of environmental and historic preservation reviews, and will help the State to the extent that the State requests such assistance. FEMA and the State will conduct on-going quality control checks of a sample of Project Worksheets to ensure accurate eligibility decisions, scopes of work, and cost estimates.

In July 2000, FEMA published a **Federal Register** Notice regarding the program and plans for a field test. Subsequently, the concept was pilot-tested in three selected disasters that were declared in November 2000 (FEMA–1344–DR–FL), January 2001 (FEMA–1347–DR–AZ), and February 2001 (FEMA–1349–DR–OK). A FEMA/State team evaluated the Public Assistance recovery operation in each of these disasters to determine the success of the pilot program. The teams found that the State Management of Small Disasters concept and its implementation in the field were successful and identified additional refinements before full program implementation. The teams cited the necessity of adhering to State selection criteria and providing training to State personnel as two important keys to the program's success.

* * * * *

Dated: July 6, 2001.

Lacy E. Suiter,

Assistant Director, Readiness, Response, and Recovery Directorate.

[FR Doc. 01–17533 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2001–N–10]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2000–01 sixth quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the 2000–01 sixth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before August 24, 2001.

ADDRESSES: Bank members selected for the 2000–01 sixth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Office of Policy, Research and Analysis, Program Assistance Division, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, or by electronic mail at fitzgeralde@fhfb.gov.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Policy, Research and Analysis, Program Assistance Division, by telephone at 202/408–2874, by electronic mail at fitzgeralde@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. See 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. See 12 U.S.C. 1430(g)(2). Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the August 24, 2001 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before July 27, 2001, each Bank will notify the members in its district that have been selected for the 2000–01 sixth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site:

www.fhfb.gov. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2000–01 sixth quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

Connecticut

Charter Oak Federal Credit Union, Groton
Salisbury Bank & Trust Company, Lakeville
Hometown Bank, Moodus
Chelsea Groton Savings Bank, Norwich
Dime Savings Bank of Norwich, Norwich
Rockville Bank, Rockville
Thomaston Savings Bank, Thomaston
American Bank of Connecticut, Waterbury
North American Bank & Trust Company, Waterbury
Wilton Bank, Wilton

Maine

Kennebec Savings Bank, Augusta
Bath Savings Institution, Bath
Barco Federal Credit Union, Hampden
Androscoggin Savings Bank, Lewiston
Saco & Biddeford Savings Institution, Saco
Sanford Institution for Savings, Sanford

Massachusetts

Asian American Bank & Trust Company, Boston
The Community Bank, Brockton
Bay State Federal Savings Bank, Brookline
Chicopee Savings Bank, Chicopee
Weymouth Co-operative Bank, East Weymouth
Easthampton Savings Bank, Easthampton
Dukes County Savings Bank, Edgartown
Bank of Fall River, A Co-operative Bank, Fall River
Foxborough Savings Bank, Foxboro
MetroWest Bank, Framingham
Gloucester Bank & Trust Company, Gloucester
Gloucester Cooperative Bank, Gloucester
Hudson Savings Bank, Hudson
Lee Bank, Lee
Lenox Savings Bank, Lenox
Washington Savings Bank, Lowell
Community Credit Union of Lynn, Lynn
Eastern Bank, Lynn
National Grand Bank of Marblehead, Marblehead
Strata Bank, Medway
Nantucket Bank, Nantucket
Middlesex Savings Bank, Natick
First and Ocean National Bank, Newburyport
Newburyport Five Cents Savings Bank, Newburyport
North Easton Savings Bank, North Easton
Norwood Co-Operative Bank, Norwood
Seamen's Bank, Provincetown
Granite Savings Bank, Rockport
Rockport National Bank, Rockport
The Cooperative Bank, Roslindale
Bank of Western Massachusetts, Springfield
Randolph Savings Bank, Stoughton
The Savings Bank, Wakefield
Walpole Co-operative Bank, Walpole
Watertown Savings Bank, Watertown
Winchester Co-operative Bank, Winchester
Northern Bank & Trust Company, Woburn

New Hampshire

First Colebrook Bank, Colebrook
New Hampshire Federal Credit Union, Concord
Merrimack County Savings Bank, Concord
Laconia Savings Bank, Laconia
Mascoma Savings Bank, FSB, Lebanon
Southern New Hampshire Bank & Trust, Windham

Rhode Island

First Bank and Trust Company, Providence

Federal Home Loan Bank of New York—District 2

New Jersey

Bridge View Bank, Englewood Cliffs
Skylands Community Bank, Hackettstown
Haddon Savings Bank, Haddon Heights
Gibraltar Savings Bank, SLA, Newark
New Community Federal Credit Union, Newark
The Rahway Savings Institution, Rahway
Interchange Bank, Saddle Brook
Merrill Lynch Trust Company, FSB, Somerset
Minotola National Bank, Vineland

New York

Charter One Commercial, Albany
Albion Federal Savings & Loan Assn. Albion
Bath National Bank, Bath
Flatbush FS&LA of Brooklyn, Brooklyn
Manufacturers and Traders Trust Co., Buffalo
Trustco Savings Bank, Canajoharie
The Bank of Greene County, Catskill
Ontario National Bank, Clifton Springs
Bank, of Richmondville, Cobleskill
Champlain National Bank, Elizabethtown
Fairport Savings Bank, Fairport
Highland Falls FS&LA, Highland Falls
Steuben Trust Company, Hornell
Ulster Savings Bank, Kingston
Suffolk Federal Credit Union, Medford
Atlantic Bank of New York, New York
Habib American Bank, New York
Sterling National Bank, New York
Rome Savings Bank, Rome
Trustco Bank, N.A., Schenectady
Sleepy Hollow National Bank, Sleepy Hollow
Solvay Bank, Solvay
The Troy Savings Bank, Troy
European American Bank, Uniondale
Walden Savings Bank, Walden

Puerto Rico

Banco Popular de Puerto Rico, San Juan

Federal Home Loan Bank of Pittsburgh—District 3

Pennsylvania

Enterprise Bank, Allison Park
Apollo Trust Company, Apollo
Farmers and Merchants Trust Company, Chambersburg
Cambria County FS&LA Cresson
Premier Bank, Doylestown
Elderton State Bank, Elderton
East Penn Bank, Emmaus
PFC Bank, Ford City
First National Bank of Fredericksburg, Fredericksburg
PeoplesBank, a Codorus Valley Company, Glen Rock
Gratz National Bank, Gratz
Harleysville NB & Trust Company, Harleysville
Harris Savings Bank, Harrisburg
Irwin Bank and Trust Company, Irwin
Jersey Shore State Bank, Jersey Shore
The Farmers National Bank of Kittanning, Kittanning
Bank, of Landisburg, Landisburg
First National Bank of Liverpool, Liverpool
Mars National Bank, Mars
Fulton County NB & Trust, Company, McConnellsburg
Union National Bank, of Mount Carmel, Mount Carmel
Nazareth NB and Trust Company, Nazareth
The New Tripoli National Bank, New Tripoli
The National Bank of North East, North East
St. Edmond's Federal Savings Bank, Philadelphia
Police and Fire Federal Credit Union, Philadelphia
Reliance Standard Life Insurance Company, Philadelphia
Phoenixville FS&LA, Phoenixville
Portage National Bank, Portage
Security National Bank, Pottstown
LA Bank, N.A., Scranton
Sun Bank, Selinsgrove

Guaranty Bank, N.A., Shamokin
Orrstown Bank, Shippensburg

West Virginia

Progressive Bank, N.A.—Buckhannon, Buckhannon
First Exchange Bank, Mannington
One Valley Bank, North, Inc., Moundsville
F&M Bank—West Virginia, Inc., Ranson
First National Bank of Romney, Romney
AmeriBank, Welch

Federal Home Loan Bank of Atlanta—District 4

Alabama

AuburnBank, Auburn
First Commercial Bank of Huntsville, Huntsville
Peachtree Bank, Maplesville
North Jackson Bank, Stevenson

Florida

First Bradenton Bank, Bradenton
Riverside National Bank, Fort Pierce
The Bank of Brevard, Melbourne
PineBank, Miami
First National Bank of Florida, Milton
Palm Beach NB and Trust Company, Palm Beach
SOUTHBANK, Palm Beach Gardens
Tarpon Coast National Bank, Port Charlotte
Citizens FSB of Port St. Joe, Port St. Joe
First Commercial Bank of Tampa, Tampa
The Bank of Tampa, Tampa
Indian River National Bank, Vero Beach

Georgia

First National Bank of South Georgia, NA, Albany
First American Bank and Trust, Athens
Cornerstone Bank, Atlanta
Appalachian Community Bank, Blairsville
The Fannin County Bank, N.A., Blue Ridge
First National Bank of Grady County, Cairo
Main Street Bank, Covington
First State Bank of Randolph County, Cuthbert
Georgia First Bank, Gainesville
The Glennville Bank and Trust Company, Glennville
Farmers and Merchants Bank, Lakeland
Security Bank of Bibb County, Macon
Southwest Georgia Bank, Moultrie
Carver State Bank, Savannah
The First State Bank, Stockbridge
Bank of Upson, Thomaston
Thomasville National Bank, Thomasville

Maryland

Farmers Bank of Maryland, Annapolis
Kopernik Federal Savings Association, Baltimore
Liberty Federal Savings & Loan Assn., Baltimore
Slavie Federal Savings Bank, Baltimore
Chesapeake Bank and Turst Company, Chestertown
The Chestertown Bank of Maryland, Chestertown
Hagerstown Trust Company, Hagerstown
Lafayette Federal Credit Union, Kensington
First United Bank and Trust, Oakland
The National Bank of Rising Sun, Rising Sun
Farmers and Mechanics NB, Taneytown

North Carolina

Bank, of Stanly, Albemarle
Home Savings Bank of Albemarle, SSB, Albemarle
Self-Help Credit Union, Durham
Gibsonville Community Savings Bank, Gibsonville
Farmers & Merchants Bank, Granite Quarry
Carolina Community Bank, Murphy
Citizens Savings Bank of Salisbury, SSB, Salisbury
First National Bank of Shelby, Shelby
Farmers and Merchants Bank, Holly Hill

Virginia

E-Trade Bank, Arlington
American National Bank and Trust Co., Danville
The Bank of Fincastle, Fincastle
Marshall National Bank and Trust Co., Marshall
The Middleburg Bank, Middleburg
First Sentinel Bank, Richlands
First Bank, Strasburg
F&M Bank—Peoples, Warrenton
Northern Neck State Bank, Warsaw

Federal Home Loan Bank of Cincinnati—District 5

Kentucky

Bedford Loan and Deposit Bank, Bedford
Berea National Bank, Berea
South Central Bank of Bowling Green, Inc., Bowling Green
Meade County Bank, Brandenburg
Campbellsville National Bank, Campbellsville
Edmonton State Bank, Edmonton
Bank of Germantown, Germantown
First Security Bank and Trust, McLean, Island
Lawrenceburg National Bank, Lawrenceburg
Farmers National Bank, Lebanon
Square D Employees' Federal Credit Union, Lexington
Fifth Third Bank of Kentucky, Inc., Louisville
Citizens National Bank, Russellville
Bullitt County Bank, Shepardsville
Bank of McCreary County, Whitley City
Williamsburg National Bank, Williamsburg

Ohio

First National Bank of Ohio (FirstMerit), Akron
Bellevue Federal Credit Union, Bellevue
Bethel Building and Loan Company, Bethel
The Equitable Savings and Loan Company, Cadiz
CinFed Employees Federal Credit Union, Cincinnati
Lenox Savings Bank, Cincinnati
Mt. Washington Savings & Loan Company, Cincinnati
Shore Bank and Trust Company, Cleveland
Community First Bank, N.A., Forest
First Ohio Credit Union, Inc., Fostoria
Galion Building and Loan Association, Galion
Greenville National Bank, Greenville
Second National Bank, Greenville
First FS&LA of Lorain, Lorain
New Richmond National Bank, New Richmond
Citizens National Bank of Norwalk, Norwalk
Ripley National Bank, Ripley
Ripley Federal Savings and Loan Assn., Ripley
The First National Bank of Shelby, Shelby
Strasburg Savings and Loan, Strasburg
Toledo Area Catholic Credit Union, Sylvania
Peoples Savings Bank, Urbana
First Federal Savings and Loan Association, Van Wert
Second National Bank of Warren, Warren
Perpetual Savings Bank, Wellsville
First Federal Savings Bank, Zanesville

Tennessee

Citizens National Bank, Athens
Bank of Putnam County, Cookeville
Farmers Bank, Cornersville
First Federal Savings Bank, Dickson
Carter County Bank, Elizabethton
Jackson Bank and Trust, Gainesboro
Gates Banking and Trust Company, Gates
Tennessee State Bank, Gatlinburg
Bank of Gleason, Gleason
Greene County Bank, Greeneville
Bank of Halls, Halls
Commercial Bank, Harrogate
Union Bank, Jamestown
Bank of Tennessee, Kingsport
First Bank, Lexington
Enterprise National Bank, Memphis
The Bank of Milan, Milan
Cavalry Banking, Murfreesboro
Rutherford Bank and Trust, Murfreesboro
Commercial Bank and Trust Company, Paris

Farmers Bank, Portland
Central Bank, Savannah
First Community Bank, Shelbyville
Farmers and Merchants Bank, Trezevant
American City Bank of Tullahoma, Tullahoma
Reelfoot Bank, Union City

Federal Home Loan Bank of Indianapolis—District 6

Indiana

First National Bank, Cloverdale
CSB State Bank, Cynthiana
Blue River Federal Savings Bank, Edinburgh
Bright National Bank, Flora
Three Rivers Federal Credit Union, Fort Wayne
Grabill Bank, Grabill
Fifth Third Bank of Central Indiana, Indianapolis
Landmark Savings Bank, F.S.B., Indianapolis
Meridian Security Insurance Company, Indianapolis
Union Federal SB of Indianapolis, Indianapolis
Heritage Bank, Jeffersonville
Lafayette Savings Bank, F.S.B., Lafayette
Peoples Savings & Loan Association, Monticello
New Washington State Bank, New Washington
First Citizens State Bank, Newport
Citizens State Bank of Petersburg, Petersburg
American Trust & SB of Whiting, Whiting

Michigan

Firstbank Alma, Alma
Signature Bank, Bad Axe
Lake Osceola State Bank, Baldwin
Central State Bank, Beulah
Community Bank, Caro
Eastern Michigan Bank, Croswell
Alpha-Crystal Falls, Crystal Falls
State Bank of Ewen, Ewen
Oakland Commerce Bank, Farmington Hills
Credit Union One, Ferndale
Grand Bank, Grand Rapids
LSI Credit Union, Grand Rapids
National Bank of Hastings, Hastings
Valley Ridge Bank, Kent City
Co-op Services Credit Union, Livonia
Firstbank, Mount Pleasant
First National Bank of Norway, Norway
Sterling Bank and Trust, FSB, Southfield
First Resource Federal Credit Union, St. Joseph

Federal Home Loan Bank of Chicago—District 7

Illinois

National Bank of Commerce, Berkeley
Prairie Bank and Trust Company, Bridgeview
Cerro Gordo Building and Loan, s.b., Cerro Gordo
Marquette National Bank, Chicago
Shore Bank, Chicago
The First Commercial Bank, Chicago
Resource Bank, N.A., DeKalb
Du Quoin State Bank, Du Quoin
Crossroads Bank, Effingham
Midwest Bank and Trust Company, Elmwood Park
The Fisher National Bank, Fisher
Midwest Bank of Freeport, Freeport
Midwest Bank, Hinsdale
Jacksonville Savings Bank, Jacksonville
Commonwealth Credit Union, Kankakee
Kankakee Federal Savings Bank, Kankakee
Union Federal Savings and Loan Assn., Kewanee
Citizens State Bank, Lena
Brickyard Bank, Lincolnwood
Citizens National Bank, Macomb
First Suburban National Bank, Maywood
Community National Bank, Metropolis
Morris Building and Loan, s.b., Morris
Marquette Bank Morrison, Morrison
First National Bank of Nokomis, Nokomis
Nokomis Savings Bank, Nokomis
Orangeville Community Bank, Orangeville
First National Bank of Pana, Pana
Vermillion Valley Bank, Piper City
First State Bank of Red Bud, Red Bud
Capaha Bank, Tamms
AmeriMark Bank, Villa Park
North Shore Trust and Savings, Waukegan
Waukegan Savings & Loan Association, Waukegan
Prospect Federal Savings Bank, Worth
First National Bank of Xenia, Xenia

Wisconsin

American Fox Cities, Appleton
State Bank of Arcadia, Arcadia
First National Bank of Barron, Barron
Blackhawk State Bank, Beloit
First National Bank of Berlin, Berlin
Badger State Bank, Cassville
State Bank of Chilton, Chilton
American Bank, Eau Claire
American Bank, Fond du Lac
Franklin State Bank, Franklin
Peoples National Bank, Hayward
Horicon State Bank, Horicon
Farmers State Bank, Markesan
Mid-Wisconsin Bank, Medford
Lincoln State Bank, Milwaukee
Mitchell Bank, Milwaukee
Bank of Monticello, Monticello
The Bank of New Glarus, New Glarus
The First NB of New Richmond, New Richmond
RiverBank, Osceola
Bank of Poynette, Poynette
Johnson Bank, Racine
Shell Lake State Bank, Shell Lake
Eagle Valley Bank, St. Croix Falls
Acuity Bank, SSB, Tomah
The Equitable Bank, S.S.B., Wauwatosa
ALLCO Credit Union, West Allis
Fortress Bank of Westby, Westby
Westby Co-op Credit Union, Westby

Federal Home Loan Bank of Des Moines—District 8

Iowa

Ackley State Bank, Ackley
Exchange State Bank, Adair
First State Bank, Belmond
Freedom Security Bank, Coralville
Iowa State Savings Bank, Creston
Decorah Bank and Trust Company, Decorah
AmerUS Life Insurance Company, Des Moines
Wells Fargo Bank Iowa, NA, Des Moines
Dupaco Community Credit Union, Dubuque
The Grundy NB of Grundy Center, Grundy Center
Hartwick State Bank, Hartwick
Hiawatha Bank and Trust Company, Hiawatha
Community State Bank, Indianaola
Green Belt Bank and Trust, Iowa Falls
First National Bank in LeMars, Le Mars
Western Bank & Trust, Moville
First National Bank of Muscatine, Muscatine
Security State Bank, New Hampton
Oakland State Bank, Oakland
Citizens State Bank, Oakland
Perry State Bank, Perry
First National Bank of Sioux Center, Sioux Center
The Security National Bank of Sioux City, Sioux City
Heartland Bank, Somers
Farmers Trust & Savings Bank, Spencer
State Bank, Spencer
First Bank & Trust, Spirit Lake
Citizens First National Bank, Storm Lake
West Chester Savings Bank, Washington
Community National Bank, Waterloo
First National Bank, Waverly
Peoples Savings Bank, Wellsburg
Farm Bureau Life Insurance Company, West Des Moines
Farm Bureau Mutual Insurance Company, West Des Moines
Farmers Savings Bank, Wever
State Bank, Worthington

Minnesota

Atwater State Bank, Atwater
First National Bank of Brewster, Brewster
City-County Federal Credit Union, Brooklyn Center
Peoples Bank of Commerce, Cambridge
First National Bank Chisholm, Chisholm
Clinton State Bank, Clinton
Eitzen State Bank, Eitzen

The County Bank, Forest Lake
Citizens State Bank of Glenville, Glenville
Marquette Bank N.A., Golden Valley
First Security Bank—Hendricks, Hendricks
First National Bank of Henning, Henning
Jackson Federal Savings and Loan Assn., Jackson
Janesville State Bank, Janesville
Citizens State Bank of Kelliher, Kelliher
Security State Bank, of Kenyon, Kenyon
First Security Bank—Lake Benton, Lake Benton
State Bank of Long Lake, Long Lake
Lake Country State Bank, Long Prairie
United Prairie Bank, Madison
Bank of Maple Plain, Maple Plain
Superior Guaranty Insurance Company, Minneapolis
First National Bank in Montevideo, Montevideo
Mountain Iron First State Bank, Mountain Iron
State Bank and Trust Co. of New Ulm, New Ulm
Citizens Bank of New Ulm, New Ulm
Community National Bank, Northfield
Minnwest Bank Ortonville, Ortonville
Pine River State Bank, Pine River
Border State Bank, Roseau
First Security Bank—Sanborn, Sanborn
Americana Community Bank, Sleepy Eye
Western Bank, St. Paul
Vermillion State Bank, Vermillion
Northern State Bank of Virginia, Virginia
First State Bank of Wabasha, Wabasha
Heritage Bank N.A., Willmar
Merchants National Bank of Winona, Winona
First State Bank of Wyoming, Wyoming
Bank of Zumbrota, Zumbrota

Missouri

Jefferson Heritage Bank, Ballwin
Boone County National Bank, Columbia
Tri-County State Bank, El Dorado Springs
Commercial Trust Company, Fayette
Home Exchange Bank of Jamesport, Jamesport
Jefferson Bank of Missouri, Jefferson City
Community America Credit Union, Kansas City
Central Bank of Kansas City, Kansas City
Kearney Trust Company, Kearney
Lawson Bank, Lawson
United State Bank, Lewistown
First State Bank, Poplar Bluff
First State Bank of Purdy, Purdy
The Seymour Bank, Seymour
State Bank of Slater, Slater
Citizens Bank of Sparta, Sparta
Metropolitan National Bank, Springfield
Heritage Bank of St. Joseph, St. Joseph
Southwest Bank of St. Louis, St. Louis
Webb City Bank, Webb City

North Dakota

Security State Bank of Edgeley, Edgeley
Bremer Bank, N.A., Grand Forks
Community National Bank of Grand Forks, Grand Forks
Stutsman County State Bank, Jamestown
Northland Financial, Steele
Peoples State Bank, Westhope
Security State Bank, Wishek

South Dakota

Dakota State Bank, Blunt
Security Bank, Madison
BankWest, Inc., Pierre
American Memorial Life Insurance Co., Rapid City
First National Bank of White, White
First Dakota National Bank, Yankton

Federal Home Loan Bank of Dallas—District 9

Arizona

American Founders Life Insurance Co., Phoenix

Arkansas

Bank of Cave City, Cave City
First National Bank of Crossett, Crossett
Simmons First National Bank of Dumas, Dumas
National Bank of Commerce, El Dorado
Bank of Arkansas, Fayetteville
Greers Ferry Lake State Bank, Heber Springs
First National Bank of Phillips County, Helena
Little River Bank, Lepanta
Malvern National Bank, Malvern
Citizens National Bank, Nashville
Merchants and Planters Bank, Newport
American State Bank, Osceola
Bank of Pocahontas, Pocahontas
The Farmers & Merchants Bank, Prairie Grove
Arvest Bank, Rogers
Commercial National Bank of Texarkana, Texarkana

Louisiana

The Cottonport Bank, Cottonport
Kaplan State Bank, Kaplan
Sabine State Bank and Trust Company, Many
Exchange Bank and Trust Company, Natchitoches
Liberty Bank and Trust Company, New Orleans
American Bank of Ruston, N.A., Ruston
Sicily Island State Bank, Sicily Island
St. Martin Bank and Trust Company, St. Martinville
Concordia Bank and Trust Company, Vidalia
The Evangeline Bank and Trust Company, Ville Platte
Progressive State Bank and Trust Company, Winnsboro

Mississippi

First Security Bank, Batesville
Peoples Bank of Franklin County, Bude
Bank of the South, Crystal Springs
Commercial Bank of DeKalb, DeKalb
Community Bank, Ellisville
Community Bank of Mississippi, Forest
Community Bank, Indianola
Century Bank, Lucedale
Great Southern National Bank, Meridian
Newton County Bank, Newton
First National Bank of Oxford, Oxford
The Citizens Bank of Philadelphia, Philadelphia
Peoples Bank and Trust Company, Tupelo

New Mexico

Bank of Belen, Belen
Carlsbad National Bank, Carlsbad
Community Bank, Espanola, Espanola
Western Bank of Lordsburg, Lordsburg
Centinel Bank of Taos, Taos
Peoples Bank, Taos

Texas

First Community Bank, N.A., Alice
Amarillo National Bank, Amarillo
First National Bank of Bastrop, Bastrop
Citizens State Bank, Buffalo
National Bank of Daingerfield, Daingerfield
First National Bank, Edinburg
First National Bank, Fabens
First National Bank, Fairfield
Town North National Bank, Farmers Branch
First National Bank in Graham, Graham
First State Bank, Granger, Granger
First Community Credit Union, Houston
First National Bank of Huntsville, Huntsville
Community Bank, Kirbyville
The Laredo National Bank, Laredo
First State Bank of Livingston, Livingston
First National Bank of Livingston, Livingston
Franklin National Bank, Mount Vernon
First State Bank, Smithville
Texline State Bank, Texline
Randolph-Brooks Federal Credit Union, Universal City
American Bank, N.A., Waco
Union Square Federal Credit Union, Wichita Falls

Federal Home Loan Bank of Topeka—District 10

Colorado

FirstBank of Arvada, N.A., Arvada
FirstBank of Aurora, N.A., Aurora
FirstBank of Douglas County, N.A., Castle Rock
Mountain Bell Credit Union, Colorado Springs

Western National Bank of Colorado, Colorado Springs
Community Bank, Dove Creek
FirstBank of Lakewood, N.A., Lakewood
First Bank of Littleton, N.A., Littleton
Olathe State Bank, Olathe
FirstBank of Silverthorne, N.A., Silverthorne
First National Bank of Strasburg, Strasburg
First National Bank, Telluride, Telluride
WestStar Bank, Vail
FirstBank of Wheat Ridge, N.A., Wheat Ridge
First National Bank of Yuma, Yuma

Kansas

First State Bank of Burlingame, Burlingame
Emporia State Bank and Trust Company, Emporia
Home State Bank, Erie
Union State Bank of Everest, Everest
Emprise Bank, N.A., Hillsboro
The Farmers State Bank, Holton
First Community Bank, Kansas City
Guaranty Bank and Trust, Kansas City
First National Bank & Trust Co. in Larned, Larned
Gold Bank, Leawood
The Bank, Oberlin
First National Bank of Onaga, Onaga
First State Bank and Trust, Tonganoxie
Capital City Bank, Topeka
Commerce Bank and Trust, Topeka
Security Benefit Life Insurance Company, Topeka
Wellsville Bank, Wellsville
Boeing Wichita Employees Credit Union, Wichita

Nebraska

First National Beatrice Bank &Trust Co., Beatrice
Exchange Bank, Gibbon
First State Bank, Gothenburg
Bank of Nebraska, La Vista
West Gate Bank, Lincoln
Home State Bank, Louisville
Bank of Mead, Mead
Farmers and Merchants Bank, Milford
Wells Fargo Bank Nebraska, Omaha
First State Bank, Scottsbluff
The Cattle National Bank, Seward
The First National Bank of Unadilla, Unadilla
First National Bank of Valentine, Valentine
CharterWest National Bank, West Point
Winside State Bank, Winside

Oklahoma

AmeriState Bank, Atoka
WestStar Bank, Bartlesville
First National Bank of Chelsea, Chelsea
Alfalfa County Bank, Cherokee
First National Bank, Edmond
Grand Federal Savings Bank, Grove
American Fidelity Assurance Company, Oklahoma City
Bank One, Oklahoma City
Weokie Credit Union, Oklahoma City
Arvest Bank, Shawnee
First National Bank and Trust Company, Weatherford
First National Bank in Wewoka, Wewoka

Federal Home Loan Bank of San Francisco—District 11

California

Western Sierra National Bank, Cameron Park
First Coastal Bank, N.A., El Segunda
Farmers & Merchants Bk—Central CA, Lodi
Southern Pacific Bank, Los Angeles
County Bank, Merced
Omni Bank, N.A., Monterey Park
CivicBank of Commerce, Oakland
Bay Area Bank, Redwood City
Central Sierra Bank, San Andreas
Santel Federal Credit Union, San Diego
Sequoia National Bank, San Francisco
Santa Barbara Bank and Trust, Santa Barbara
Coast Commercial Bank,Santa Cruz
Del Amo Savings Bank, FSB, Torrance

Nevada

Silver State Bank, Henderson

Federal Home Loan Bank of Seattle—District 12

Hawaii

Honolulu City & County Employees FCU, Honolulu

Montana

Valley Bank of Belgrade, Belgrade
Rocky Mountain Bank, Billings
Blackfeet National Bank, Browning
Mountain West Bank, N.A., Helena
Three Rivers Bank of Montana, Kalispell
Bitterroot Valley Bank, Lolo
Missoula Federal Credit Union, Missoula
Glacier Bank of Whitefish, Whitefish
Western Bank of Wolf Point, Wolf Point

Oregon

Rogue Federal Credit Union, Medford

Utah

First National Bank of Layton, Layton
Capital Community Bank, Orem
Deseret First Credit Union, Salt Lake City

Washington

Anchor Mutual Savings Bank, Aberdeen
The Bank of the Pacific, Aberdeen
Bank NorthWest, Bellingham
Whatcom Educational Credit Union, Bellingham
Security State Bank, Centralia
North Cascades National Bank, Chelan
Bank of Whitman, Colfax
Islanders Bank, Friday Harbor
Community First Bank, Kennewick
Bank of Latah, Latah
Washington Credit Union, Mountlake Terrace
Credit Union of the Pacific, Seattle
Fremont First National Bank, Seattle
Yakima National Bank, Yakima
Yakima Valley Credit Union, Yakima

Wyoming

First National Bank of Wyoming, Laramie
Bank of Lovell, Lovell
Rawlins National Bank, Rawlins
First State Bank of Thermopolis, Thermopolis
First State Bank, Wheatland

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before July 27, 2001, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2000–01 sixth quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2000–01 sixth quarter review cycle must be delivered to the Finance Board on or before the August 24, 2001 deadline for submission of Community Support Statements.

Dated: July 6, 2001.

By the Federal Housing Finance Board.

James L. Bothwell,

Managing Director.

[FR Doc. 01–17416 Filed 7–12–01; 8:45 am]

BILLING CODE 6725–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0080]

Submission for OMB Review; Comment Request Entitled Contract Financing

AGENCY: General Services Administration (GSA).

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the General Services Administration

(GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Contract Financing.

DATES: Comments may be submitted on or before September 11, 2001.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Acquisition Policy Division, GSA (202) 501–3221.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0080, concerning Contract Financing. Offerors are required to identify whether items are foreign source end products and the dollar amount of import duty for each product.

B. Annual Reporting Burden.

Respondents: *2,000.*

Annual Responses: *2,000.*

Average Hours Per Response: *.1.*

Burden Hours: *200.*

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0080, Contract Financing, in all correspondence.

Dated: June 18, 2001.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–17611 Filed 7–12–01; 8:45 am]

BILLING CODE 6820–61–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement–01126]

Enhancement of State, County or Local Public Health Departments Participation in Brownfields Decisions and Actions; Notice of Availability of Funds Amendment

A notice announcing the availability of fiscal year 2001 funds for the Enhancement of State, County or Local Public Health Departments Participation in Brownfield Decisions and Actions was published in the **Federal Register** on June 27, 2001, [Vol. 66, No. 124, page 34201]. The notice is amended as follows:

On page 34201, under B., include:

A. Eligible Applicants

Applicants will be limited to the official county, city, federally recognized tribal governments, and other local public health agencies of local communities (with the exception of Rhode Island where the State Health Department is the eligible applicant) located in the twenty-eight (28) Brownfields Showcase Communities as designated by the Environmental Protection Agency (EPA) 62 FR 44274 & 65 FR 14273). The Brownfield Showcase Communities are:

1. Baltimore, Maryland
2. Chicago, Illinois
3. Dallas, Texas
4. Denver, Colorado
5. Des Moines, Iowa
6. East Palo Alto, Califronia
7. Gila River Indian Community, Arizona
8. Glen Cove, New York
9. Houston, Texas
10. Jackson, Mississippi
11. Kansas City, Kansas & Missouri
12. Los Angeles, California
13. Lowell, Massachusetts
14. Metlakatla Indian Community, Alaska
15. Milwaukee, Wisconsin
16. Mystic Valley Development Commission (Malden, Medford, Everett), Massachusetts
17. New Bedford, Massachusetts
18. Niagara Region, New York
19. Cape Charles/Northhampton County, Virginia
20. Portland, Oregon
21. State of Rhode Island
22. Saint Louis, Missouri/East St. Louis, Illinois
23. Saint Paul, Minnesota
24. Salt Lake City, Utah
25. Seattle/King County, Washington
26. Southeast Florida (Eastward Ho!, Florida
27. Stanford, Connecticut
28. Trenton, New Jersey

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in Section 501 (c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any form.

Dated: July 9, 2001.

Donna Garland,

Deputy Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–17534 Filed 7–12–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 66 FR 29577, dated May 31, 2001) is amended to establish the Office of Compensation and Analysis within the Office of the Director, National Institute for Occupational Safety and Health.

Section C–B, Organization and Functions, is hereby amended as follows:

After the mission statement for the *Office of Administrative and Management Services (CC11), Office of the Director (CC1), National Institute for Occupational Safety and Health (CC),* insert the following:

Office of Compensation Analysis and Support (CC12). (1) Conducts a program in support of Federal rulemaking to promulgate science-based methods and guidelines mandated by the Energy Employees Occupational Illness Compensation Program Act of 2000 ("the Act") to estimate the occupational radiation doses of claimants under the Act and evaluate the relationship between such doses and cancers incurred by the claimants; (2) develops and implements a program of science-based analysis and policymaking by which the Secretary of Health and Human Services shall consider and

issue determinations on petitions by classes of employees to be included as members of the Special Exposure Cohort established under the Act; (3) conducts a program of individual dose reconstruction to estimate and report the radiation doses of claimants under the Act; and (4) identifies and recommends the appointment of occupational physicians to physician panels to be established by the Secretary of Energy to consider the claims of workers with illnesses applying for compensation under state workers' compensation programs.

Dated: July 2, 2001.

Martha Katz,

Acting Director, Centers for Disease Control and Prevention.

[FR Doc. 01–17583 Filed 7–12–01; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–2002A]

Fiscal Year 2002 Discretionary Announcement for The Administration for Native Americans Availability of Financial Assistance

AGENCY: Administration for Native Americans, ACF, DHHS.

ACTION: Correction.

SUMMARY: This document contains a correction to the Notice that was published in the **Federal Register** on Wednesday, June 27, 2001 (66 FR 34206). On page 34208, second column, first paragraph the following statement "Current grantees whose grant project period extends beyond September 30, 2001" is incorrect. The correct statement should read "Current grantees whose grant project period extends beyond September 30, 2002".

On page 34210, third column, second paragraph, the following statement "Current ANA SEDS grantees whose grant project period ends on or before September 30, 2001" is incorrect. The correct statement should read "current ANA SEDS grantees who grant project period ends on or before September 30, 2002".

On page 34216, second column, second paragraph, the following statement "Applicants for new grants may not have a pending request to extend their existing grant beyond 2001" is incorrect. The correct statement should read "Applicants for new grants may not have a pending request to extend their existing grant beyond 2002".

FOR FURTHER INFORMATION CONTACT: The Administration for Native Americans for referral to the appropriate contact person in ANA for programmatic questions or send an email to ANA@acf.dhhs.gov.

Dated: July 9, 2001.

Larry A. Guerrero,

Acting Commissioner, Administration for Native Americans.

[FR Doc. 01–17510 Filed 7–12–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01F–0293]

Novus International, Inc.; Filing of Food Additive Petition (Animal Use)—Ethoxyquin Phosphate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Novus International, Inc., has filed a petition proposing that the food additive regulation be amended to provide for the safe use of ethoxyquin phosphate in animal feeds.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Michael Henry, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0161, e-mail: mhenry@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2244) has been filed by Novus International, Inc., 530 Maryville Centre Dr., St. Louis, MO 63141–5862. The petition proposes to amend the food additive regulations in part 573 Food Additives Permitted in Feed and Drinking Water of Animals (21 CFR part 573) for the addition of an additional salt, ethoxyquin phosphate, to be used as a preservative in yellow grease, oils, and other fats.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 27, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–17497 Filed 7–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1407]

International Conference on Harmonisation; Guidance on S7A Safety Pharmacology Studies for Human Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "S7A Safety Pharmacology Studies for Human Pharmaceuticals." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides a definition, general principles, and recommendations for the nonclinical safety pharmacology studies. The guidance is intended to help protect clinical trial participants and patients receiving marketed products from potential adverse effects of pharmaceuticals, while avoiding unnecessary use of animals and other resources.

DATES: This guidance is effective August 13, 2001. Submit written comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Single copies of the recommendations may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–

FAX or 301–827–3844. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section of this document for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:
Regarding the guidance:
Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–024), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5476, or
Martin D. Green, Division of Clinical Trials and Design, Center for Biologics Evaluation and Research (HFM–579), 1401 Rockville Pike, Rockville, MD 20852, 301–827–5349,
Regarding the ICH:
Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000), this document is being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency has changed its procedure for publishing ICH guidances. As of April 2000, we no longer include the text of ICH guidances in the **Federal Register**. Instead, we publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance is placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section). Draft guidances are left in the original ICH format. The final guidance is reformatted to conform to the GGP style before issuance.

In the **Federal Register** of August 7, 2000 (65 FR 48246), FDA published a notice of availability for a draft tripartite guidance entitled "S7A Safety Pharmacology Studies for Human Pharmaceuticals." The notice gave interested persons an opportunity to submit comments by September 6, 2000.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in November 2000.

The guidance describes general principles and recommendations for safety pharmacology evaluations. The guidance is intended to help protect clinical trial participants and patients receiving marketed products from potential adverse reactions to pharmaceuticals and avoid unnecessary use of animals and other resources. The guidance generally applies to new chemical entities and biotechnology-derived products for human use. The guidance may be applied to marketed pharmaceuticals when appropriate. For example, adverse clinical events, a new patient population, or a new route of administration may raise concerns not previously addressed.

The guidance incorporates the following changes:

1. The guidance recommends that in the absence of a safety pharmacology response, the highest tested dose should be a dose associated with moderate toxicity. The draft guidance recommended that the highest dose tested should equal or exceed those doses producing some adverse effects.

2. The guidance recommends that, in addition to respiratory rate, other measures of respiratory function (e.g., tidal volume or hemoglobin oxygen saturation) should be evaluated in assessing effects of the test substance on the respiratory system.

3. Concerning the application of good laboratory practice (GLP), the guidance clarifies that secondary pharmacodynamic studies that contribute to the safety evaluation should be conducted in compliance with GLP.

This guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet can obtain the guidance at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/publications.htm.

Dated: July 6, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17498 Filed 7–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00P–1548]

Determination That Cyclosporine Capsules USP, 50 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that cyclosporine capsules USP (Neoral Soft Gelatin Capsules), 50 milligrams (mg), were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for cyclosporine capsules USP, 50 mg.

FOR FURTHER INFORMATION CONTACT: Paul C. Varki, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

Cyclosporine capsules USP, 50 mg, are the subject of NDA 50–715. On July 14, 1995, Sandoz, Inc. (now Novartis), obtained approval to market the 25-, 50-, and 100-mg capsules. Novartis has never marketed the 50-mg capsules.

On September 29, 2000, Lachman Consultant Services, Inc., submitted a citizen petition (Docket No. 00P–1548/CP1) under 21 CFR 10.30 to FDA requesting that the agency determine whether cyclosporine capsules USP, 50 mg, were withdrawn from sale for reasons of safety or effectiveness. FDA has determined that, for purposes of § 314.161(a) and (c), never marketing an approved drug product is equivalent to withdrawing the drug from sale.

FDA has reviewed its records and, under § 314.161, has determined that Novartis' decision not to market cyclosporine capsules USP, 50 mg, was not due to concerns about safety or effectiveness of the product. Accordingly, the agency will maintain cyclosporine capsules USP, 50 mg, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to cyclosporine capsules USP, 50 mg, may be approved by the agency.

Dated: July 6, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17496 Filed 7–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

National Mammography Quality Assurance Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: National Mammography Quality Assurance Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 22, 2001, from 9 a.m. to 6 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Charles Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301-594-3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12397. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review facility inspection findings and current compliance followup actions, the Mammography Quality Standards Act (the MQSA) compliance guidance, facility satisfaction survey, mammography access issues and the future direction of the MQSA program. The committee will also receive updates on the status of accreditation and certification of full field digital mammography, States as certification agencies under the MQSA, and the inspection demonstration project. The MQSA compliance guidance documents, which are in a question and answer format, are available to the public on the Internet at http://www.fda.gov/cdrh/mammography. This guidance is being updated continually in response to questions that FDA receives from the public. Additional information regarding guidance updates may be obtained by calling the Information Line.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 27, 2001. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.m. on August 22, 2001. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 27, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the

approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 6, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–17537 Filed 7–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0314]

Guidance for Industry on Levothyroxine Sodium Products—Enforcement of August 14, 2001, Compliance Date and Submission of New Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Levothyroxine Sodium Products—Enforcement of August 14, 2001, Compliance Date and Submission of New Applications." This guidance discusses how FDA plans to exercise its enforcement discretion after August 14, 2001, with regard to levothyroxine sodium products that are marketed without approved applications. This guidance also answers certain frequently asked questions concerning the submission of applications for levothyroxine sodium products. It replaces the previously issued guidance entitled "Levothyroxine Sodium, Questions and Answers" (February 2001).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Levothyroxine Sodium Products—Enforcement of August 14, 2001 Compliance Date and Submission of New Applications." This guidance discusses how FDA plans to exercise its enforcement discretion after August 14, 2001, with regard to levothyroxine sodium products that are marketed without approved applications. This guidance also answers certain frequently asked questions concerning the submission of applications for levothyroxine sodium products and replaces the previously issued guidance entitled "Levothyroxine Sodium, Questions and Answers" (February 2001) (see 66 FR 13935, March 8, 2001).

In the **Federal Register** of August 14, 1997 (62 FR 43535), FDA announced that orally administered levothyroxine sodium drug products are new drugs. The notice stated that by August 14, 2000, manufacturers who wish to continue to market these products must obtain approved applications as required by section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and 21 CFR part 314. The notice stated that after August 14, 2000, any orally administered drug product containing levothyroxine sodium that is introduced or delivered for introduction into interstate commerce without an approved application will be subject to regulatory action, unless found by FDA to be not subject to the new drug requirements of the act under a citizen petition submitted for that product. FDA issued a second **Federal Register** notice on April 26, 2000 (65 FR 24488), extending the deadline for obtaining approved applications until August 14, 2001.

The agency permitted orally administered levothyroxine sodium products to remain on the market during this period of time without approved new drug applications to give manufacturers time to conduct the required studies, prepare applications, and have them approved. FDA stated in the 1997 **Federal Register** notice that levothyroxine sodium products are used to treat hypothyroidism, and no alternative drug is relied on by the medical community as an adequate substitute.

As of June 2001, two orally administered levothyroxine sodium products have been approved by FDA. These approved products have been evaluated by FDA and found to be safe and effective for their intended uses. FDA has not evaluated the safety and effectiveness of unapproved marketed products, but it has determined that no currently marketed unapproved orally-administered levothyroxine sodium product is generally recognized as safe and effective (see 62 FR 43535 at 43538, August 14, 1997).

Notwithstanding the fact that there are now two approved applications for orally administered levothyroxine sodium, FDA has determined that it will take time for the millions of patients taking unapproved products to switch to approved products, and for manufacturers of approved products to scale up their production and to introduce this increased production into the distribution chain. To provide time for manufacturers of approved products to scale up their production and for patients and health care providers to make a reasonable transition from unapproved to approved products, FDA has decided to continue to exercise its enforcement discretion by establishing a gradual phase-out of unapproved products. The phase-out plan and a number of frequently asked questions are addressed in this guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). The guidance is being implemented immediately without prior public comment because there are public health reasons for the immediate implementation of the guidance document. The guidance pertains to the agency's exercise of enforcement discretion and it is being issued to facilitate planning by patients, health care providers, manufacturers, and distributors who need information about the agency's plans to transition patients from unapproved to approved levothyroxine sodium products after August 14, 2001. The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments

on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: July 9, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17538 Filed 7–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–339]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Provider Cost Report Reimbursement Questionnaire and Supporting Regulations in 42 CFR 413.20, 413.24, 415.50, 415.55, 415.60, 415.70, 415.150, 415.152, 415.160, and 415.162; *Form No.:* HCFA–339 (OMB# 0938–0301); *Use:* The Medicare Provider Cost Report Reimbursement Questionnaire must be completed by all providers to assist in preparing an acceptable cost report, to ensure proper Medicare reimbursement, and to minimize subsequent contact between the provider and its fiscal intermediary. It is designed to answer pertinent questions about key reimbursement concepts found in the cost report and to gather information necessary to support certain financial and statistical entries on the cost report. In addition, it provides an audit trail for the fiscal intermediary; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, local and tribal government; *Number of Respondents:* 33,144; *Total Annual Responses:* 33,144; *Total Annual Hours:* 1,342,332.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 19, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–17514 Filed 7–12–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10036]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Request to Use Inpatient Rehabilitation Assessment Instrument and Data Set for PPS for Inpatient Rehabilitation Facilities: Implementation Phase and Supporting Regulations in 42 CFR, Parts 412 and 413;

Form No.: HCFA–10036 (OMB# 0938-NEW); *Use:* This is a request to use a modification of an instrument currently in use by the majority of inpatient rehabilitation facilities for the implementation phase of the prospective payment system. Use of this instrument will enable HCFA to implement a classification and payment system for the legislatively mandated inpatient rehabilitation hospital and exempt units prospective payment system.;

Frequency: On occasion; *Affected Public:* Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 359,000;

Total Annual Responses: 359,000;

Total Annual Hours: 269,250.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 26, 2001.

John P. Burke III,

HCFA Reports Clearance Officer. Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–17515 Filed 7–12–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Survey on Drug Use and Health Clinical Validation Study of the Substance Dependence and Abuse Measures—(New)—The Substance Abuse and Mental Health Services Administration's (SAMHSA) National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse, is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, the Office of National Drug Control Policy, other Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

From 2001–2003, the NSDUH plans a two or three-phase Clinical Validation Study of Substance Dependence and Abuse Measures. Specific aims are to achieve the best overarching format, and the best wording and ordering for the assessment questions. The goal is quicker administration time, improved validity, and reduced respondent burden.

Half of all subject will be between 12 and 17, and half 18 years of age or older; subjects will be recruited from the Research Triangle and the Triad areas of North Carolina. In Phase 1, subjects, recruited through fliers and newspaper ads, will be asked (1) demographic information and (2) questions from two self-administered sections of the NSDUH questionnaire: Questions about the quantity and frequency of use of drugs and alcohol, and questions about symptoms of substance dependence and abuse.

A semi-structured clinical interview will then be administered to these same subjects by a trained clinician to determine the presence or absence of substance dependence and abuse. The clinical instruments used to assess subjects will be the substance abuse modules from the Structured Clinical Interview for DSM–IV (SCID) (for adults) and the Kiddie Schedule for Affective Disorders and Schizophrenia (K–SADS) (for those between 12 and 17 years of age). The correspondence of the diagnosis of substance dependence and abuse between the clinical and survey interview will then be compared.

Information from Phase 1 will then be used to assess if a lack of correspondence exists between the clinical and survey measures. If there is a lack of sufficient correspondence, we will then examine reasons for any lack of correspondence, and make decisions about how to modify the NSDUH questions on substance dependence and abuse to achieve better correspondence. This information will then be used to develop a revised NSDUH substance dependence and abuse module.

In Phase 2, a second clinical validation study will be conducted using the same procedures as Phase 1. This will allow a determination of the correspondence (kappa) between the revised diagnosis obtained from the NSDUH substance dependence and abuse module and the diagnosis from the structured clinical interviews. Final revisions to the survey instrument will be made based on findings from Phase 2.

Finally, if the revised NSDUH survey assessment of substance dependence and abuse still does not have sufficient correspondence with a structured clinical interview, overall, or for certain groups (for example, youth or marijuana users) or for certain criteria (withdrawal symptoms or substance abuse without dependence), then an additional phase of the study will be undertaken. Even if the overall correspondence from Phase 2 is good, for example, additional small validation studies might be conducted for specific groups (e.g., adolescent females, Hispanics) for whom there was not good correspondence as a result of small sample sizes or real differences in interpretation of the questionnaire items. All decisions about final revisions to the module will balance the need for correspondence across different groups.

	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Phase I				
Screener only	60	1	.08	5
Screener and Interview	270	1	1.5	405
Phase II				
Screener only	100	1	.08	8
Screener and Interview	455	1	1.5	683
Phase III				
Screener only	100	1	.08	8
Screener and Interview	455	1	1.5	683
Total	1,440			1,792

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 9, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–17535 Filed 7–12–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–28]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 13, 2001.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 5, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 01–17271 Filed 7–12–01; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Aquatic Nuisance Species Task Force will meet from 8:30 a.m. to noon, Tuesday, July 24, 2001 and 8:30 a.m. to 4:30 p.m., Wednesday, July 25, 2001.

ADDRESSES: The ANS Task Force meeting will be held at the Westin, 909 North Michigan Avenue, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at *sharon_gross@fws.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force meeting on Tuesday and Wednesday include: An overview of regional issues identified by the ANS Task Force Great Lakes Regional Panel; a discussion on the draft strategic plan for the ANS Task Force; an update of activities from the Task Force's regional panels and a recommendation for forming a new Northeast Regional Panel; status and updates from several other Task Force committees including the Caulerpa Prevention Committee and the Communications, Education and Outreach Committee; and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: July 10, 2001.

Cathleen I. Short,

Co-chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 01–17629 Filed 7–12–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of two currently approved information collections (OMB Control Numbers 1010–0018 and 1010–0039).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval two information collection requests (ICRs). We are also soliciting comments from the public on these ICRs., titled "Form MMS–126, Well Potential Test Report (WPT)"; and "Form MMS–127, Sensitive Reservoir Information Report (SRI)." The submissions to OMB request approval of revisions (to both forms) that clarify the submittal requirements and eliminate certain data elements. The current title (Request for Reservoir Maximum Efficient Rate) of Form MMS–127 is renamed.

DATES: Submit written comments by August 13, 2001.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0018 or 1010–0039), 725 17th Street, NW., Washington, DC 20503. Mail or hand carry a copy of your comments to the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the e-mail address is: rules.comments@mms.gov. Reference "Information Collection Form MMS–126" or "Form MMS–127" as appropriate in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your

comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the revised forms MMS–126 and MMS–127.

SUPPLEMENTARY INFORMATION:

Titles and OMB Control Numbers:

Form MMS–126, Well Potential Test Report (WPT), 1010–0039.

Form MMS–127, Sensitive Reservoir Information Report (SRI), 1010–0018.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*), as amended, requires the Secretary of the Interior (Secretary) to preserve, protect, and develop oil and gas or sulphur resources on the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources offshore; preserve and maintain free-enterprise competition; and ensure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time. Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations "to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein" and to include provisions "for the prompt and efficient exploration and development of a lease area."

To carry out these responsibilities, MMS has issued regulations to ensure that operations in the OCS will meet statutory requirements; provide for safety and protect the environment; and result in diligent exploration, development, and production of OCS leases. Various sections of 30 CFR part 250, subpart K, require respondents to submit forms MMS–126 and MMS–127.

For several years, the MMS Gulf of Mexico Region (GOMR) has issued instructions to lessees and operators that when they submit these forms, they do not need to request a maximum production rate (MPR) or a maximum efficient rate (MER), nor complete data elements 110 through 114 on cumulative well production during approved testing periods. The GOMR does, however, retain the authority to set MPRs for individual well completions, and to set MERs for individual reservoirs, if necessary to ensure natural resources conservation and to maximize ultimate recovery.

The MMS Alaska and Pacific OCS Regions agree with the determination that MMS no longer needs to collect the information reported in data elements 110 through 114 on both forms. They will still require lessees and operators in those regions to complete data element 91 (Requested MPR) on form MMS–126 and data elements 119 and 120 (Present and Requested MER) on form MMS–127. The revised forms reflect these decisions. When we next revise the 30 CFR 250, subpart K, regulations, we anticipate proposing to officially incorporate these changes in regulation.

MMS District and Regional Supervisors use the information on form MMS–126 for various environmental, reservoir, reserves, and conservation analyses, including the determination of MPRs when necessary for certain oil and gas completions. The form contains information concerning the conditions and results of a well potential test. This requirement implements the conservation provisions of the OCS Lands Act and 30 CFR 250. The information obtained from the well potential test is essential to determine if an MPR is necessary for a well and to establish the appropriate rate. It is not possible to specify an MPR in the absence of information about the production rate capability (potential) of the well.

MMS District and Regional Supervisors use the information submitted on form MMS–127 to determine whether a rate-sensitive reservoir is being prudently developed. This represents an essential control mechanism that MMS uses to regulate production rates from each sensitive reservoir being actively produced. Occasionally, the information available on a reservoir early in its producing life may indicate it to be non-sensitive, while later and more complete information would establish the reservoir as being sensitive. Production from a well completed in the gas cap of a sensitive reservoir requires approval from the Regional Supervisor. The information submitted on form MMS–127 provides reservoir parameters that are revised at least annually or sooner if reservoir development results in a change in reservoir interpretation. The engineers and geologists use the information for rate control and reservoir studies.

Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), 30 CFR 250.196 (Data and information to be made available to the public), and 30 CFR part 252 (OCS Oil and Gas Information Program). Proprietary information concerning geological and geophysical data will be protected according to 43 U.S.C. 1352.

Frequency: The frequency is "on occasion," but not less than annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The average "hour" burden for both forms MMS–126 and MMS–127 is 1 hour.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no "non-hour cost" burden associated with either form MMS–126 or MMS–127.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on April 6, 2001, we published a **Federal Register** notice (66 FR 18294) announcing that we would submit these ICRs to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms; specifies that the public may comment at anytime on these collections of information; and provides the address to which they should send comments. This information is also contained in the PRA statement on each of the forms. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, send your comments

directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 13, 2001. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 5, 2001.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 01–17617 Filed 7–12–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved information collection (OMB Control Number 1010–0067).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR), titled "30 CFR part 250, subpart E, Oil and Gas Well-Completion Operations." We are also soliciting comments from the public on this ICR.

DATES: Submit written comments by August 13, 2001.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0067), 725 17th Street, NW., Washington, DC 20503. Also, provide a copy of your comments to the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street; Herndon, Virginia 20170–4817. Or, you may e-mail comments to: rules.comments@mms.gov. Reference "Information Collection 1010–0067" in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart E, Oil and Gas Well-Completion Operations

OMB Control Number: 1010–0067.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on resources offshore; and preserve and maintain free enterprise competition. Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." This authority and responsibility are among those delegated to MMS. To carry out these responsibilities, MMS issues regulations governing oil and gas and sulphur operations in the OCS. This collection of information addresses 30 CFR part 250, subpart E, Oil and Gas Well-Completion Operations.

Last year we submitted an ICR to the Office of Management and Budget (OMB) to renew the information collection requirements of the subpart E regulations. That approved information collection covered the paperwork burdens specifically required in § 250.517 (tubing and wellhead equipment and their requirements). This included the requirement under § 250.517(c) to notify the District Supervisor if sustained casing pressure (SCP) is observed on a well. This situation represents an ongoing safety hazard and can cause serious or immediate harm or damage to human life, the marine and coastal environment, and property.

After receiving notification, the Region provides the lessee/operator the procedures and requirements necessary to monitor and report SCP conditions, and the process for obtaining a departure to produce wells with SCP. Because the Gulf of Mexico Region (GOMR) now has over 8,000 wells affected by SCP, the GOMR plans to issue an NTL updating its policy and procedures on SCP. The NTL will detail the SCP reporting and recordkeeping requirements. The paperwork burden for these are included in our revised ICR to OMB for approval of the information collection requirements in the subpart E regulations and related NTLs.

The MMS District Supervisors analyze and evaluate the information and data collected under subpart E to ensure that planned well-completion operations will protect personnel safety and natural resources. They use the analysis and evaluation results in the decision to approve, disapprove, or require modification to the proposed well-completion operations. Specifically, MMS uses the information to ensure: (a) Compliance with personnel safety training requirements; (b) crown block safety device is operating and can be expected to function to avoid accidents; (c) proposed operation of the annular preventer is technically correct and provides adequate protection for personnel, property, and natural resources; (d) well-completion operations are conducted on well casings that are structurally competent; and (e) sustained casing pressures are within acceptable limits. The MMS district and regional offices will use paperwork requirements in the new GOMR NTL to determine that production from wells with SCP continues to afford the greatest possible degree of safety under these conditions.

Responses are mandatory. No items of a sensitive nature are collected. Proprietary information respondents submit is protected according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), 30 CFR 250.196 (Data and information to be made available to the public), and 30 CFR part 252 (OCS Oil and Gas Information Program).

Frequency: Varies by section, but is mostly "on occasion" or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The following chart details the components of the information collection requirements in subpart E and related NTLs—which we estimate to be a total of 9,575 burden hours. In estimating the burden, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden. The paperwork

requirements of the GOMR SCP NTL increase the currently approved burden by 3,903 hours.

Citation 30 CFR 250 subpart E and NTL sec.	Reporting and recordkeeping requirement	Hour burden per requirement
Reporting Requirements		
502	Request approval not to shut-in well during equipment movement	1 hour.
502 (MMS condition of approval)	Notify MMS of well-completion rig movement on or off platform or from well to well on same platform.	6 minutes.
505; 513; 515(a); 516(g), (j); NTL I.C, III.B.	Submit forms MMS–123, MMS–124, MMS–125 for various approvals, including remediation procedure for SCP.	Burden covered under 1010–0044, 1010–0045, 1010–0046.
512	Request field well-completion rules be established and canceled (on occasion, however, there have been no requests in many years).	1 hour.
515(a)	Submit well-control procedure	1 hour.
517(b)	Pressure test, caliper, or otherwise evaluate tubing & wellhead equipment casing; submit results (every 30 days during prolonged operations).	4 hours.
517(c); NTL I, III.B	Notify MMS if sustained casing pressure is observed on a well	¼ hour.
NTL I.A, I.E, I.G, I.H, II, III Appendix	Submit results of diagnostic tests, departure requests and supporting information, including plan of action for non-producing wells.	2 hours.
NTL I.C	Notify MMS when remediation procedure is complete	1 hour.
NTL I.D	Appeal departure request denial according to 30 CFR part 290	Burden covered under 1010–0121.
500–517	General departure and alternative compliance requests not specifically covered elsewhere in subpart E regulations.	2 hours.
Recordkeeping Requirements		
506	Instruct crew members in safety requirements of operations to be performed; document meeting (weekly for 2 crews × 2 weeks per completion = 4).	10 minutes.
511	Perform operational check of traveling-block safety device; document results (weekly × 2 weeks per completion = 2).	6 minutes.
516 tests; 516(i)	Perform BOP pressure tests, actuations & inspections; record results; retain records 2 years following completion of well (when installed; minimum every 14 days; as stated for component).	6 hours.
516(d)(5) test; 516(i)	Function test annulars and rams; document results (every 7 days between BOP tests—biweekly; note: part of BOP test when conducted).	10 minutes.
516(e)	Record reason for postponing BOP system tests (on occasion)	6 minutes.
516(f)	Perform crew drills; record results (weekly for 2 crews × 2 weeks per completion = 4).	½ hour.
NTL I.F	Retain complete record of well's casing pressure and diagnostic tests for 2 years.	¼ hour.
NTL & Appendix	Perform diagnostic tests and record results; perform follow-up tests at least annually to determine departure status.	4 hours.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no "non-hour cost" burdens.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 8, 2001, we published a **Federal Register** notice (66 FR 13960) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 displays the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms; specifies that the public may comment at anytime on these collections of information; and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 13, 2001. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We will provide you, without charge, a copy of our submission to OMB which includes the regulations and Notice to Lessees and Operators (NTL) that require the subject collection of information.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the

record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 4, 2001.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 01–17617 Filed 7–12–01; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–449]

In the Matter of Certain Abrasive Products Made Using a Process for Making Powder Preforms, and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Amending the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") amending the complaint and notice of investigation in the above-captioned investigation to include allegations of infringement of additional claims of the patent in issue.

FOR FURTHER INFORMATION CONTACT: Donnette Rimmer, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–0663. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission may also be obtained by accessing the Commission's internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–Line) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 6, 2001, based on a complaint filed on behalf of Minnesota Mining and Manufacturing Co. of St. Paul, Minnesota and Ultimate Abrasive systems, L.L.C. of Atlanta, Georgia. The complaint named two respondents, Kinik Company of Taipei, Taiwan and Kinik Corporation of Anaheim, California.

On June 8, 2001, complainants filed a motion pursuant to Commission rule 210.14 for an order amending the complaint and notice of investigation by including allegations of infringement of dependent claims 4, 5, and 8 of U.S. Letters Patent 5,620,489, in addition to independent claim 1 of that patent that is already in issue. Respondents opposed the motion and the Commission investigative attorney supported it. On June 19, 2001, the presiding ALJ issued an ID (Order No. 16) granting the motion. No party petitioned for review of the ID.

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) and in section 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., DC 20436, telephone (202) 205–2000.

Issued: July 10, 2001.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17620 Filed 7–12–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731–TA–943–947 (Preliminary)]

Circular Welded Non-Alloy Steel Pipe From China, Indonesia, Malaysia, Romania, and South Africa

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of circular welded non-alloy steel pipe,[2] provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV). The Commission also determines [3] that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Indonesia, Malaysia, Romania, and South Africa of circular welded non-alloy steel pipe, provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at LTFV.

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation with respect to China. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if its preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigation with respect to China. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] For a complete description of the product, see Commerce's **Federal Register** Notice of Initiation of Antidumping Duty Investigations, June 21, 2001, 66 FR 33227.

[3] Commissioners Lynn M. Bragg and Dennis M. Devaney dissenting.

Background

On May 24, 2001, a petition was filed with the Commission and Commerce on behalf of Allied Tube & Conduit Corp., Harvey, IL; IPSCO Tubulars, Inc., Camanche, IA; LTV Copperweld, Youngstown, OH; Northwest Pipe Co., Portland, OR; Western Tube & Conduit Corp., Long Beach, CA; Century Tube Corp., Pine Bluff, AR; Laclede Steel Co., St. Louis, MO; Maverick Tube Corp., Chesterfield, MO; Sharon Tube Co., Sharon, PA; Wheatland Tube Co., Wheatland, PA; and the United Steelworkers of America, AFL–CIO, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of circular welded non-alloy steel pipe from China, Indonesia, Malaysia, Romania, and South Africa. Accordingly, effective May 24, 2001, the Commission instituted antidumping duty investigations Nos. 731–TA–943–947 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 4, 2001 (66 FR 29988). The conference was held in Washington, DC, on June 14, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 9, 2001. The views of the Commission are contained in USITC Publication 3439 (July 2001), entitled Circular Welded Non-Alloy Steel Pipe from China, Indonesia, Malaysia, Romania, and South Africa: Investigations Nos. 731–TA–943–947 (Preliminary).

Issued: July 10, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17618 Filed 7–12–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–455]

In the Matter of Certain Network Interface Cards and Access Points for Use in Direct Sequence Spread Spectrum Wireless Local Area Networks and Products Containing Same; Notice of Decision to Affirm Two Initial Determinations Granting Intervention but Denying Respondent Status

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to adopt two initial determinations ("IDs") (Orders Nos. 12 and 13) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation, granting the motions of Intersil Corporation ("Intersil") and Agere Systems, Inc. ("Agere"), respectively, to intervene, but denying the parties respondent status. The Commission has also issued an opinion clarifying its views on intervention.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 9, 2001, based on a complaint filed by Proxim, Inc. ("Proxim") against 14 entities other than Intersil or Agere. The notice of investigation was published in the **Federal Register** on April 9, 2001. 66 FR 18507. The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain wireless network interface cards and access points by reason of infringement of certain U.S. patents owned by Proxim. On April 16, 2001, Intersil and Agere each filed separate motions to intervene as respondents in the investigation.

Proxim filed a response to Intersil's motion in which it opposed the intervention of Intersil as a respondent, but did not object if Intersil was permitted to become a party to the investigation as an intervenor. The Commission investigative attorney ("IA") supported intervention of Intersil as an intervenor, but not as a respondent.

Proxim and the IA did not oppose intervention of Agere. However, Proxim noted that Agere failed to state why it should be considered a respondent rather than an intervenor and, therefore, Proxim saw no reason to designate Agere as a respondent. The IA supported intervention of Agere as an intervenor, but opposed granting Agere respondent status.

On May 8, 2001, and on May 15, 2001, the ALJ issued two IDs (Orders Nos. 12 and 13) allowing Intersil and Agere, respectively, to become intervenors in the present investigation, but denying Intersil and Agere respondent status. On May 18, 2001, Intersil filed a petition for review of Order No. 12. No party petitioned for review of Order No.13. On June 15, 2001, the Commission determined to review both IDs because they affected Commission policy.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.45).

Issued: July 9, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17502 Filed 7–12–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–445]

In the Matter of Certain Plasma Display Panels and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Granting a Motion to Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting complainants" motion to amend the complaint and notice of investigation in the above-captioned investigation to add "components thereof" to the investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 16, 2001, based on a complaint filed by the Board of Trustees of the University of Illinois, of Urbana, Illinois, and Competitive Technologies, Inc. of Fairfield, Connecticut. The respondents named in the investigation are Fujitsu Limited, Fujitsu General Limited, Fujitsu General America Corp., Fujitsu Microelectronics, Inc. and Fujitsu Hitachi Plasma Display Ltd. (collectively "Fujitsu"). The complaint alleged that Fujitsu violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and/or selling within the United States after importation certain plasma display panels and products containing same by reason of infringement of certain claims of U.S. Letters Patents Nos. 4,866,349, and 5,081,400.

On June 15, 2001, complainants moved pursuant to rule 210.14(b) to amend the complaint and notice of investigation to add "components thereof" to the complaint and notice. Fujitsu responded to the motion, but did not oppose it.

On June 21, 2001, the ALJ issued an ID granting complainants' unopposed motion. No petitions for review of the ID were filed.

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) and in section 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

Issued: July 10, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17619 Filed 7–12–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–949 and 950 (Preliminary)]

Processed Gum Arabic From France and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition in antidumping investigations.

SUMMARY: On July 5, 2001, the Department of Commerce and the Commission received a letter from petitioner in the subject investigations (Importers Service Corporation, Jersey City, NJ) withdrawing its petition. Commerce has not initiated investigations as provided for in section 732(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigations concerning processed gum arabic from France and the United Kingdom (investigations Nos. 731–TA–949 and 950 (Preliminary)) are discontinued.

EFFECTIVE DATE: July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

Issued: July 10, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17621 Filed 7–12–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects

to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled "General Wage determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA010001 (Mar. 02, 2001)
MA010002 (Mar. 02, 2001)
MA010003 (Mar. 02, 2001)
MA010007 (Mar. 02, 2001)
MA010008 (Mar. 02, 2001)
MA010018 (Mar. 02, 2001)
New York
NY010003 (Mar. 02, 2001)
NY010004 (Mar. 02, 2001)
NY010005 (Mar. 02, 2001)
NY010013 (Mar. 02, 2001)
NY010018 (Mar. 02, 2001)
NY010022 (Mar. 02, 2001)
NY010040 (Mar. 02, 2001)
NY010048 (Mar. 02, 2001)
NY010050 (Mar. 02, 2001)
NY010051 (Mar. 02, 2001)
NY010072 (Mar. 02, 2001)
NY010075 (Mar. 02, 2001)
NY010076 (Mar. 02, 2001)
NY010077 (Mar. 02, 2001)
Rhode Island
RI010001 (Mar. 02, 2001)

Volume II

West Virginia
WV010002 (Mar. 02, 2001)
WV010003 (Mar. 02, 2001)
WV010006 (Mar. 02, 2001)
WV010009 (Mar. 02, 2001)
WV010011 (Mar. 02, 2001)

Volume III

Tennessee
TN010001 (Mar. 02, 2001)
TN010002 (Mar. 02, 2001)
TN010005 (Mar. 02, 2001)
TN010040 (Mar. 02, 2001)
TN010045 (Mar. 02, 2001)
TN010048 (Mar. 02, 2001)
TN010062 (Mar. 02, 2001)

Volume IV

Illinois
IL010018 (Mar. 02, 2001)
Indiana
IN010001 (Mar. 02, 2001)
IN010002 (Mar. 02, 2001)
IN010004 (Mar. 02, 2001)
IN010005 (Mar. 02, 2001)
IN010006 (Mar. 02, 2001)
IN010016 (Mar. 02, 2001)
IN010032 (Mar. 02, 2001)
IN010047 (Mar. 02, 2001)
Michigan
MI010076 (Mar. 02, 2001)
MI010077 (Mar. 02, 2001)
MI010078 (Mar. 02, 2001)
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MI010080 (Mar. 02, 2001)
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MI010098 (Mar. 02, 2001)
MI010099 (Mar. 02, 2001)
MI010100 (Mar. 02, 2001)
MI010101 (Mar. 02, 2001)

Volume V

Oklahoma
OK010014 (Mar. 02, 2001)

Volume VI

Idaho
ID010001 (Mar. 02, 2001)
Washington
WA010001 (Mar. 02, 2001)
WA010003 (Mar. 02, 2001)
WA010007 (Mar. 02, 2001)

Volume VII

Nevada
NV010001 (Mar. 02, 2001)
NV010003 (Mar. 02, 2001)
NV010004 (Mar. 02, 2001)
NV010005 (Mar. 02, 2001)
NV010006 (Mar. 02, 2001)
NV010007 (Mar. 02, 2001)
NV010009 (Mar. 02, 2001)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800. When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 5th day of July 2001.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–17291 Filed 7–12–01; 8:45 am]

BILLING CODE 4510–21–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 98–54

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the information collection provisions of Prohibited Transaction Exemption 98–54 (PTE 98–54). A copy of the Information Collection Request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before September 11, 2001.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

PTE 98–54 permits certain foreign exchange transactions between employee benefit plans and certain banks, broker-dealers, and domestic affiliates thereof, which are parties in interest with respect to such plans, pursuant to standing instructions. In the absence of an exemption, foreign exchange transactions pursuant to standing instructions would be prohibited under circumstances where the bank or broker-dealer is a party in interest or disqualified person with respect to the plan under the Employee Retirement Income Securities Act (ERISA) or the Internal Revenue Code (Code).

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

III. Current Actions

The class exemption has five basic information collection requirements. The first requires the bank or broker-dealer to maintain written policies and procedures for handling foreign exchange transactions for plans for which it is a party in interest which ensure that the party acting for the bank or broker-dealer knows it is dealing with a plan. The second requires that the transactions are performed in accordance with a written authorization executed in advance by an independent fiduciary of the plan. The third requires that the bank or broker-dealer provides the authorizing fiduciary with a copy of its written policies and procedures for foreign exchange transactions involving income item conversions and de minimis purchase and sale transactions prior to the execution of a transaction. The fourth requires the bank or broker-dealer to furnish the authorizing fiduciary a written confirmation statement with respect to each covered transaction within five days of execution. The fifth requires that the bank or broker-dealer maintains records necessary for plan fiduciaries, participants, and the Department and Internal Revenue Service to determine whether the conditions of the exemption are being met for period of six years form the date of execution of a transaction.

This notice requests comments on the extension of the ICR included in the PTE 98–54. The Department is not proposing or implementing changes to the existing ICR at this time.

Type of Review: Extension of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Titles: Prohibited Transaction Class Exemption 98–54.

OMB Number: 1210–0111.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 35.

Frequency of Response: On occasion.

Responses: 8,400.

Estimated Total Burden Hours: 4,200.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: July 9, 2001.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 01–17550 Filed 7–12–01; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request; Comment Request; Prohibited Transaction Class Exemption 77–4

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and

financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Class Exemption 77–4 for certain transactions between investment companies and employee benefit plans. A copy of the proposed information collection request (ICR) can be obtained by contacting the person listed below in the **ADDRESSES** section.

DATES: Written comments must be submitted on or before September 11, 2001.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; FAX (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 77–4 permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company (mutual fund) when a fiduciary with respect to the plan (e.g., investment manager) is also the investment advisor for the investment company. In the absence of the exemption, certain aspects of these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act (ERISA).

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

Without the relief provided by this exemption, an open-end mutual fund would be unable to sell shares to or purchase shares from a plan when the fiduciary with respect to the plan is also the investment advisor for the mutual fund. As a result, plans would be compelled to liquidate their existing investments involving such transactions and to amend their plan documents to establish new investment structures and policies.

In order to insure that the exemption is not abused and that the rights of participants and beneficiaries are protected, the Department has included in the exemption three basic disclosure requirements. The first requires at the time of the purchase or sale of such mutual fund shares that the plan's independent fiduciary receive a copy of the current prospectus issued by the open-end mutual fund and a full and detailed written statement of the investment advisory fees charges to or paid by the plan and the open-end mutual fund to the investment advisor. The second requires that the independent fiduciary approve in writing such purchases and sales. The third requires that the independent fiduciary, once notified of changes in the fees, re-approve in writing the purchase and sale of mutual fund shares.

Type of Review: Extension of a currently approved collection.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 77–4 for Certain Transactions Between Investment Companies and Employee Benefit Plans.

OMB Numbers: 1210–0049.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 431.

Frequency of Response: On occasion.

Total Responses: 82,000.

Average Time Per Response: 5 minutes.

Total Annual Burden: 7,000 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 9, 2001.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 01–17551 Filed 7–12–01; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Alternative Method of Compliance for Certain SEPs Pursuant to 29 CFR 2520.104–49

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the collection of information included in the alternative method of compliance for certain simplified employee pensions regulation (29 CFR 2520.104–49). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 11, 2001.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782, FAX (202) 219–4782 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Section 110 of the Employment Retirement Income Security Act (ERISA) authorizes the Secretary to prescribe alternative methods of compliance with the reporting and disclosure requirements of Title I of ERISA for pension plans. Simplified employee pensions (SEPs) are established in section 408(k) of the Internal Revenue Code (Code). Although SEPs are primarily a development of the Code and subject to its requirements, SEPs are also pension plans subject to the reporting and disclosure requirements of Title I of ERISA.

The Department previously issued a regulation under the authority of section 110 of ERISA (29 CFR 2520.104–49) that intended to relieve sponsors of certain SEPs from ERISA's Title I reporting and disclosure requirements by prescribing an alternative method of compliance. These SEPs are, for purposes of this Notice, referred to as "non-model" SEPs because they exclude (1) those SEPs which are created through use of Internal Revenue Service (IRS) Form 5305–SEP, and (2) those SEPs in which the employer limits or influences the employees' choice to IRAs into which employers' contributions will be made and on which participant withdrawals are prohibited. The disclosure requirements in this regulation were developed in conjunction with the Internal Revenue Service (IRS Notice 81–1). Accordingly, sponsors of "non-model" SEPs that satisfy the limited disclosure requirements of the regulation are relieved from otherwise applicable reporting and disclosure requirements under Title I of ERISA, including the requirements to file annual reports (Form 5500 Series) with the Department, and to furnish summary plan descriptions and summary annual reports to participants and beneficiaries.

This ICR includes four separate disclosure requirements. First, at the time an employee becomes eligible to participate in the SEP, the administrator of the SEP must furnish the employee in writing specific and general information concerning the SEP; a statement on rates, transfers and withdrawals; and a statement on tax treatment. Second, the administrator of the SEP must furnish participants with information concerning any amendments. Third, the administrator must notify participants of any employer contributions made to the IRA. Fourth, in the case of a SEP that provides integration with Social Security, the administrator shall provide participants with statement on Social Security taxes and the integration formula used by the employer.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

The existing collection of information should be continued because the alternative disclosure arrangement provided through this regulation relieves sponsors of "non-model" SEPs of most of the reporting and disclosure requirements under Title I of ERISA. Also, the disclosure requirements set forth in this regulation, insure that administrators of "non-model" SEPs provide participants with specific written information concerning SEPs.

Type of Review: Extension.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Alternative Method of Compliance for Certain SEPs pursuant to 29 CFR 2520.104–49.

OMB Numbers: 1210–0034.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 460.

Total Responses: 20,700.

Frequency of Response: On occasion.

Average Time per Response: 35 minutes.

Estimated Total Annual Burden: 2,000 hours.

Total Burden Cost (operating/maintenance): $7,900.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 9, 2001.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 01–17552 Filed 7–12–01; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Notice of Availability of 2002 Competitive Grant Funds for Service Area MI–1, MI–2, MI–3, MI–4, MI–5, MI–6, MI–7, MI–8, MI–9, MI–10, and MI–11 in Michigan

AGENCY: Legal Services Corporation.

ACTION: Solicitation of Proposals for the Provision of Civil Legal Services for Basic Field-General service areas MI–1, MI–2, MI–3, MI–4, MI–5, MI–6, MI–7, MI–8, MI–9, MI–10, and MI–11 in Michigan.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering federal funds provided for civil legal services to the poor. Congress has adopted legislation requiring LSC to utilize a system of competitive bidding for the award of grants and contracts.

LSC hereby announces that it is reopening competition for 2002 competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to the eligible client population in the Basic Field General service areas in Michigan. The exact amount of congressionally appropriated funds and the date and terms of their availability for calendar year 2002 are not known, although it is anticipated that the funding amount will be similar to calendar year 2001 funding. LSC has canceled the competition and rejected all bids for Michigan service areas MI–12, MI–13, MI–14, and MI–15.

DATES: Request for Proposals(RFP) are available from *www.ain.lsc.gov*. A Notice of Intent to Compete is due by 5:00 p.m. EDT, July 30, 2001. Grant proposals must be received at LSC offices by 5:00 p.m. EDT, September 4, 2001.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Jennifer Bateman, Grants Coordinator, Office of Program Performance, (202) 336–8835.

SUPPLEMENTARY INFORMATION: LSC is seeking proposals from non-profit

organizations that have as a purpose the furnishing of legal assistance to eligible clients, and from private attorneys, groups of private attorneys or law firms, state or local governments, and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The solicitation package, containing the grant application, guidelines, proposal content requirements and specific selection criteria, is available at *www.ain.lsc.gov*.

Dated: July 10, 2001.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 01–17610 Filed 7–12–01; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–088]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Wednesday, July 25, 2001, 8:30 a.m. to 5:30 p.m.; Thursday, July 26, 2001, 8:30 a.m. to 5:30 p.m.; and Friday, July 27, 2001, 8:30 a.m. to Noon.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Conference Room 6H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following:

—Associate Administrator's Program Status Report
—Subcommittee Reports
—OSS Program Status
—IT Security Issues
—Technology Programs Update
—Space Operations Status
—Research Programs Review

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 9, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–17509 Filed 7–12–01; 8:45 am]

BILLING CODE 7510–01–U

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in July 2001. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in August 2001. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the third quarter (July through September) of 2001.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in July 2001 is 4.82 percent (*i.e.*, 85 percent of the 5.67 percent yield figure for June 2001)

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between August 2000 and July 2001.

For premium payment years beginning in:	The assumed interest rate is:
August 2000	4.97
September 2000	4.86
October 2000	4.96
November 2000	4.93
December 2000	4.91
January 2001	4.67
February 2001	4.71
March 2001	4.63
April 2001	4.54
May 2001	4.80
June 2001	4.91
July 2001	4.82

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the third quarter (July through September) of 2001, as announced by the IRS, is 7 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	9/30/01	7

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the third quarter (July through September) of 2001 (*i.e.*, the rate reported for June 15, 2001) is 7.00 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
4/1/95	9/30/95	9.00
10/1/95	3/31/96	8.75
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in August 2001 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of July 2001.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 01–17575 Filed 7–12–01; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 44528; File No. SR–CBOE–2001–31]

In the Matter of Chicago Board Options Exchange, Incorporated; Order of Summary Abrogation

July 9, 2001.

Notice is hereby given that the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(3)(C) of the Securities Exchange Act of 1934 ("Act"),[1] is summarily abrogating a rule of the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange").

On June 11, 2001, the CBOE filed with the Commission a rule change ("Rule Change") establishing a new fee to be imposed on clearing firms. The new fee applies to each contract that the clearing firm sends to the Exchange's Public Automated Routing ("PAR") system in a given month, if the total number of contracts cancelled by the firm on the PAR system that month exceeds 40% of the total number of contracts that the firm sent to PAR in that same month. The fee does not apply to any clearing firm that sends fewer than 4,000 contracts to PAR in a given month. The CBOE designated the Rule Change to take effect upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.[2]

On July 6, 2001, the Commission published notice of the filing and immediate effectiveness of the Rule Change ("Notice").[3] In the Notice, the Commission specifically noted that section 19(b)(3)(C) of the Act provides that, within 60 days of the filing of the Rule Change, the Commission may summarily abrogate the Rule Change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[4]

It appears that the Rule Change raises questions as to whether the fee is consistent with the Act. Accordingly, the Commission believes that the procedures provided by section 19(b)(2) will provide a more appropriate mechanism for determining whether the Rule Change is consistent with the provisions of the Act. Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act to abrogate the Rule Change.

It Is Therefore Ordered, pursuant to section 19(b)(3)(C) of the Act, that the Rule Change (File No. SR–CBOE–2001–31) is summarily abrogated as of this date, and that, if the CBOE chooses to refile the Rule Change, it do so pursuant to section 19(b)(2) of the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17516 Filed 7–12–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(3)(C).

[2] 15 U.S.C. 78s(b)(3)(A).

[3] Securities Exchange Act Release No. 44489 (June 28, 2001), 66 FR 35683 (July 6, 2001).

[4] *Id.*

[5] 17 CFR 200.30–3(a)(58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44521; File No. 4–443]

Joint Industry Plan; Order Approving a Proposed Options Listing Procedures Plan by the American Stock Exchange LLC, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, The Options Clearing Corporation, Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc.

July 6, 2001.

I. Introduction

On January 11, 2001, pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 11Aa3–2 thereunder,[2] the American Stock Exchange LLC ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), International Securities Exchange LLC ("ISE"), The Options Clearing

[1] 15 U.S.C. 78k–1(a)(3)(B).

[2] 17 CFR 240.11Aa3–2.

Corporation ("OCC"), Pacific Exchange, Inc. ("PCX"), and Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, the "Sponsors") filed with the Securities and Exchange Commission ("Commission") a proposed options listing procedures plan ("OLPP" or "Plan").[3] The Sponsors filed amendments to the proposed Plan on March 3, 2001[4] and May 9, 2001.[5] The proposed OLPP, as amended, was published in the **Federal Register** on May 16, 2001.[6] No comments were received.

II. Background

On September 17, 1991, the Commission approved the Joint-Exchange Options Plan ("JEOP"), which sets forth procedures governing the listing of new options.[7] The Amex, CBOE, PCX, Phlx, and New York Stock Exchange[8] were parties to the JEOP.[9] On September 11, 2000, the Commission instituted public administrative proceedings pursuant to Section 19(h)(1) of the Act[10] against, and simultaneously accepted offers of settlement from, the Amex, CBOE, PCX, and Phlx (collectively, the "respondent exchanges").[11] Under the Settlement Order, the respondent exchanges were ordered to amend the JEOP to eliminate provisions that require advance notice to any other exchange of the intention to list a new option and to eliminate provisions that prevent or delay a market from commencing to list or trade any option.[12]

On January 11, 2001, the respondent exchanges, along with the ISE and the OCC, submitted the proposed OLPP to the Commission to replace and supersede the JEOP and to comply with the respondent exchanges' obligations under Section IV.B.a. of the Settlement Order. Although not parties to the Settlement Order, the ISE and the OCC have elected to become Sponsors of the proposed OLPP to facilitate the listing and trading of standardized options contracts.

III. Description of the OLPP

The proposed Plan would provide procedures for: (i) Listing and trading new options classes; (ii) selecting new options series; (iii) petitioning the OCC to review the eligibility, pursuant to the exchanges' listing standards, of a selected option class without delaying the trading of that option class; (iv) determining operational details for option contracts adjusted pursuant to OCC By-Laws; (v) admitting new sponsors; and (vi) losing eligibility to participate in the Plan.

A. Selection of an Option Class

Under the proposed OLPP a Sponsor that seeks to trade an option on an equity security ("Selecting Exchange") would be required to submit a certificate notifying the OCC of its intention to trade the option. If the option was not currently trading on another exchange, or had not been certified for listing and trading on another exchange, the Selecting Exchange would be required to provide the options symbol, initial exercise prices, expiration cycle, and the position and exercise limits for the selected option class. The OCC would notify all Selecting Exchanges and all other exchanges that traded the option class of identity of each Selecting Exchange.

B. Selection of a New Option Series

The proposed OLPP would provide procedures for each of the Sponsors to trade additional series of an option class it currently trades. The OLPP would require different procedures if the addition of a new series would involve the introduction of a new expiration month. With respect to adding new option series and melding LEAP series into near—term series, the proposed OLPP would permit an exchange they wanted to trade a new series and any other exchange that traded the same option class to determine jointly, when necessary, the symbol and trading codes for the new series.

C. Petition To Review the Eligibility of a New Option Class

Under the proposed Plan, a Sponsor would be permitted to petition the OCC to review whether an option class was eligible for listing on the day a Selecting Exchange certified the option for listing and trading. The exchange listing and trading the option class would be permitted to continue to do so unless and until the OCC determined that the class was ineligible. The proposed OLPP would set forth the procedures to be followed by the petitioning exchange, the OCC, and the Selecting Exchange. If the OCC determined that the option class was ineligible, each Selecting Exchange would be required, on the first trading day after the OCC's determination, to delist any option series written open interest and allow only closing transaction in any series with open interest. If the option class subsequently became eligible, any Sponsor would be permitted to submit a certificate to the OCC to list and trade the option class.

D. Adjustment Pursuant to OCC By-Laws

The OCC's By-Laws permit a securities committee composed of representatives from each registered options exchange trading options on a particular security to determine whether to make adjustment to reflect particular events affecting the underlying security, as well as operational issues attendant to the adjustment.[13] Events affecting the underlying security that may require an

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[3] *See* Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("OLPP"), dated January 11, 2001. The proposed OLPP is available at the Commission's Public Reference Room.

[4] Letter dated March 2, 2001, from Claire P. McGrath, Vice President and Special Counsel, Amex, to Elizabeth King, Associate Director, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). Amendment No. 1 provided information required by Rule 11Aa3–2(b)(4) under the Act, 17 CFR 240.11Aa3–2(b)(4), regarding implementation of the proposed OLPP, the proposed OLPP's impact on competition, and written agreements or understandings among the Sponsors of the Plan.

[5] Letter dated May 4, 2001, from Claire P. McGrath, Vice President and Special Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission ("Amendment No. 2"). Amendment No. 2 would add procedures for new eligible exchanges to become Sponsors of the Plan and a provision for Sponsors that are no longer eligible to participate in the Plan.

[6] *See* Securities Exchange Act Release No. 44287 (May 10, 2001), 66 FR 27184.

[7] *See* Securities Exchange Act Release No. 29698 (September 17, 1991), 56 FR 48954 (September 25, 1991). The JEOP provides specific procedures governing the selecting, listing, challenging, and arbitrating the eligibility of new equity options overlying both exchange-traded and over-the-counter listed securities.

[8] The NYSE later sold its options business to the CBOE. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[9] The parties filed, and the Commission approved, the JEOP as identical proposed rule changes. In addition, the ISE incorporated the JEOP into its rules at the time its application for registration as a national securities exchange was approved by the Commission. *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000). The proposed OLPP would not replace these rules. The Sponsors would have to file proposed rule changes to amend their rules.

[10] 15 U.S.C. 78s(h)(1).

[11] *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) ("Settlement Order"). The Settlement Order states that the respondent exchanges have significantly impaired the operations of the options markets by, among other things, refraining from multiply listing a large number of options.

[12] *See* Section IV.B.a. of the Settlement Order. The Settlement Order requires an exchange to provide to the OCC (i) not more than one business day's notice of the exchange's intent to list an existing option, and (ii) reasonable advance notice of the exchange's intention to list a new option. *Id.*

[13] *See* Article VI, Section 11 of the OCC By-Laws. Operational issues attendant to the adjustment could include option symbols and trading codes, contract multipliers, and position and exercise limits applicable to the adjusted option class.

adjustment would include, among other things, stock dividends or distributions, stock splits, rights offerings mergers, and reorganizations. The proposed OLPP would permit the Sponsors to make these adjustments, as well as determine operational issues in connection with such adjustments.

E. New Plan Sponsors

The proposed OLPP contains a self-effecting provision for the addition of new sponsors, in which an "Eligible Exchange" would be able to become a sponsor of the Plan by: (i) Executing a copy of the Plan; (ii) providing each then-current Plan Sponsor with a copy of such executed Plan; and (iii) effecting an amendment to the Plan reflecting the addition of the new sponsor's name.[14] An Eligible Exchange would be defined as a national securities exchange registered with the Commission in accordance with section 6(a) of the Act[15] that: (i) has effective rules for the trading of option contracts issued and cleared by OCC approved in accordance with the provisions of the Act and the rules and regulations thereunder; and (ii) is a party to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information.[16]

F. Loss of Eligibility

An exchange would no longer be an Eligible Exchange when it ceased trading OCC issued and cleared option contracts, or, if it had become a Plan Sponsor and it had not commenced, within one year of becoming a Plan Sponsor, to list and trade OCC issued and cleared option contracts.

IV. Discussion

In section 11A of the Act,[17] Congress directed the Commission to facilitate the development of a national market system consistent with the objectives of the Act. Section 11A(a)(3)(B) of the Act[18] authorizes the Commission "by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof." Rule 11Aa3–2 under the Act[19] establishes the procedures for filing, amending, and approving national market system plans. Pursuant to paragraph (c)(2) of Rule 11Aa3–2, the Commission must approve a national market system plan if it finds that the proposed plan "is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act."[20]

After careful review, the Commission has determined to approve, pursuant to section 11A(a)(3)(B) of the Act and Rule 11Aa3–2 thereunder, the proposed OLPP. The Commission finds that approval of the Plan is consistent with the Act, the rules thereunder, and specifically, with the objectives set forth in section 11A of the Act and in Rule 11Aa3–2 thereunder. The Commission believes that, by ensuring uniform procedures for the listing of standardized options, the proposed OLPP will help to maintain fair and orderly markets and remove impediments to, and perfect the mechanisms of, a national market system. Specifically, the Commission believes that by providing uniform procedures for selecting option classes and series, as well as adjusting options to reflect particular events affecting the underlying security, the proposed OLPP will ensure the continued fungibility of option contracts and permit effective multiple trading of options. The Commission also believes that the proposed OLPP will minimize potential confusion among member firms and investors by ensuring uniformity with respect to symbology, trading codes, and contract terms.

In addition, the Commission believes that the proposed procedures for petitioning the OCC to review the eligibility of a new option class will minimize the potential for trading options on ineligible securities, without preventing or delaying an exchange from commencing to list or trade any option, as required by the Settlement Order. The Commission notes that these proposed procedures would not prohibit a Sponsor from submitting a certificate to list an option class, while at the same time petitioning for review of another Sponsor's listing of the same class. The Commission, however, notes that, as self-regulatory organizations, each exchange has an obligation to enforce its own rules, including its listing standards.

The Commission believes that the proposed provisions governing the admission of new sponsors to the OLPP and the circumstances under which a Sponsor would no longer be eligible to participate in the OLPP are consistent with the Act. The proposed procedures would permit new eligible exchanges to become sponsors of the Plan without the approval of current Sponsors, which should promote the multiple trading of options without permitting anticompetitive actions on the part of existing Sponsors to prevent or delay the plans of the new entrant into the market. In addition, the proposed procedures reasonably address the need to limit the eligibility to participate in the Plan of Sponsors that no longer trade, or never commenced trading, OCC issued and cleared options.

Finally, the Commission finds that the proposed OLPP would comply with the respondent exchanges' obligations under the Settlement Order. The proposed OLPP contains no requirement of advance notice of the intention to list a new option or provisions that would allow one exchange to prevent or delay another exchange from commencing to list or trade any option class other than the one-day advance notice requirement to the OCC needed for operational purposes.

V. Conclusion

It is therefore ordered, pursuant to section 11A of the Act,[21] and Rule 11Aa3–2 thereunder,[22] that the proposed OLPP, as amended, is approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17519 Filed 7–12–01; 8:45 am]

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[14] An amendment to the Plan may be effected by a new Eligible Exchange executing a copy of the Plan, as then in effect (with the only change being the addition of the new Plan Sponsor's name in Section 9 of the Plan) and submitting such executing Plan to the Commission. Such amendment will be effective when it has been approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder.

[15] 15 U.S.C. 78f(a).

[16] *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981.).

[17] 15 U.S.C. 78k–1.

[18] 15 U.S.C. 78k–1(a)(3)(B).

[19] 17 CFR 240.11Aa3–2.

[20] 17 CFR 240.11Aa3–2(c)(2).

[21] 15 U.S.C. 78k–1(a)(3)(B).

[22] 17 CFR 240.11Aa3–2.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 16, 2001.

An open meeting will be held on Wednesday, July 18, 2001, in Room 1C30, the William O. Douglas Room, at

10:00 a.m., and closed meetings will be held on Wednesday, July 18, 2001, at 3:00 p.m., and Thursday, July 19, 2001, at 11:00 a.m.

The subject matters of the open meeting on Wednesday, July 18, 2001, will be:

(1) The Commission will hear oral argument on an appeal by the Division of Enforcement from an administrative law judge's initial decision.

The law judge dismissed proceedings against Quest Capital Strategies, Inc., a registered broker-dealer and investment adviser, and David Chen Yu, Quest's president and sole owner. Quest and Yu were charged with failing to exercise reasonable supervision over John Nakoski, a Quest branch manager, from August 1992 through August 1993. The law judge concluded that Nakoski engaged in a complex fraudulent scheme that, through no fault of Quest and Yu, circumvented their reasonable supervisory controls.

Among the issues likely to be argued are the following:

For further information, contact Roy Sheetz at (202) 942–0950.

(a) whether the response of Quest and Yu to the notice they received of Nakoski's activities was adequate;

(b) whether the Division of Enforcement obstructed the supervisory efforts of Quest and Yu; and

(c) what sanctions, if any, are appropriate.

For further information contact William Stern at (202) 942–0949.

(2) The Commission will also hear oral argument on an appeal by Stonegate Securities, Inc. ("Stonegate") and J.W. Barclay & Co., Inc. ("Barclay"), a registered broker-dealer.

The law judge found that Stonegate and Barclay willfully violated the reporting provisions of federal securities laws by failing to file Part II of Commission Form BD–Y2K until over a month after it was due. The law judge censured Stonegate and Barclay, and ordered them to pay $50,000 each in civil money penalties.

Among the issues likely to be argued is whether the sanctions assessed by the law judge are in the public interest.

For further information, contact Roy Sheetz at (202) 942–0950.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), 9(B), and (10) and 17 CFR 200.402(a)(5), (7), (9)(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Wednesday, July 18, 2001, will be: Post argument discussion.

The subject matter of the closed meeting scheduled for Thursday, July 19, 2001, will be: Institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: July 11, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17764 Filed 7–11–01; 3:50 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44512; File No. SR–NASD–00–39]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to Proposed Rule Change Amending Schedule A of the NASD By-Laws for the Timely Filing of Reports, and Amendments to IM–9216, Minor Rule Violation Plan

July 3, 2001.

On June 20, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through it wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to amend Schedule A of the NASD By-Laws for the timely filing of reports, and amendments to IM–9216, the Minor Rule Violation Plan ("MRVP"). NASD Regulation amended the proposal on September 5, 2000.[3] NASD Regulation again amended the proposal on September 21, 2000.[4] The proposed rule change, including Amendment Nos. 1 and 2, was published for notice and comment in the **Federal Register** on September 29, 2000.[5] No comments were received on the proposal. On June 28, 2001, NASD Regulation amended the proposal.[6] This order approves the proposed rule change. Also, Amendment No. 3 is approved on an accelerated basis.

The Commission has reviewed carefully the proposed rule change, and Amendment Nos. 1, 2 and 3, and finds the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[7] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(6) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* September 1, 2000 letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation to Joseph P. Morra, Special Counsel, Division of Market Regulation ("Division"), SEC ("Amendment No. 1"). In Amendment No. 1, NASD Regulation made technical, non-substantive changes to the original proposal. In addition, NASD Regulation provided clarifying language to assist in describing the requirements under Rule 1120.

[4] *See* September 19, 2000 letter from Gregory J. Dean, Jr., Assistant General Counsel, NASD Regulation to Joseph P. Morra, Special Counsel, Division, SEC ("Amendment No. 2"). In Amendment No. 2, NASD Regulation corrected the reference to SEC Rule 19d–1(c)(2) in the title to IM–9216.

[5] Securities Exchange Act Release No. 43330 (September 22, 2000), 65 FR 58585.

[6] *See* June 28, 2001 letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division, SEC ("Amendment No. 3, NASD Regulation made the following changes to the proposal regarding the MRVP: (1) Member firm violations of the Regulatory Element of NASD Rule 1120, Continuing Education, will not be eligible for consideration under the MRVP; (2) untimely notifications filed pursuant to NASD Rule 4619(d) may be appropriate for disposition as a minor violation, where, for example, a member inadvertently misses the filing deadline but files the notification the following day before the commencement of trading and no customer harm has occurred; intentionally late filings are inappropriate for disposition as a minor violation of the rule; (3) synchronization of business clocks pursuant to NASD Rule 6953 is deleted from the proposal; (4) Securities Exchange Act Rule 17a–11, Notification Provisions for Brokers and Dealers, is deleted from the proposal; (5) payment of annual fees pursuant to MSRB Rule A–14 is clarified to reflect that, in the event NASD Regulation staff were to issue a minor violation to a firm for failure to pay the annual fee in a timely manner, the firm would remain obligated to pay the annual fee to the MSRB; firms would not be permitted to pay the minor violation fine in lieu of paying the annual fee to the MSRB; and (6) changes in language to the "Purpose" section of the proposal as originally filed (the new language is delineated in Amendment No. 3).

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Act,[8] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also finds that the proposal, as amended, is consistent with section 15A(b)(7) of the Act,[9] in that it will allow for reasonable safeguarding of investors' interests while establishing fair and reasonable rules for the Association's members and persons associated with its members. The Commission also finds the proposal is consistent with section 15A(b)(8) of the Act,[10] in that it furthers the statutory goal of providing a fair procedure for disciplining the Association's members and associated persons. Finally, the Commission finds the proposal is consistent with Securities Exchange Act Rule 19d–1(c)(2)[11] that governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Association's MRVP. The Commission believes that the violation of any self-regulatory organizations' rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Association with greater flexibility in addressing certain violations, the MRVP provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Association will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under its MRVP, on a case by case basis, or if a violation requires formal disciplinary action.

The Commission finds good cause for approving proposed Amendment No. 3 before the 30th day after the date of publication of notice of filing of Amendment No. 3 in the **Federal Register**. The Association filed Amendment No. 3 largely in response to concerns raised by the Commission regarding language in the original proposal, and ambiguity regarding how the Association intended to monitor violations of certain rules if those rules were administered under the Association's MRVP. Amendment No. 3 clarifies the ambiguities noted by the Commission and eliminates some rules that did not lend themselves to enforcement through an MRVP to address the Commission's concerns. The substantive changes implemented in Amendment No. 3 warrant accelerated approval. For these reasons, the Commission finds good cause for accelerating approval of Amendment No. 3.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether proposed Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–39 and should be submitted by August 3, 2001.

It Therefore Is Ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NASD–00–39), including Amendment Nos. 1, 2 and 3, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17518 Filed 7–12–01; 8:45 am]

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[8] 15 U.S.C. 78o–3(b)(6).
[9] 15 U.S.C. 78o–3(b)(7).
[10] 15 U.S.C. 78o–3(b)(8).
[11] 17 CFR 240.19d–1(c)(2).
[12] 15 U.S.C. 78s(b)(2).
[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44522; File No. SR–NASD–2001–36]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Eliminate the Service Desk Feature of the Automated Confirmation Transaction Service

July 6, 2001.

On May 16, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–6 thereunder,[2] a proposed rule change to eliminate the Service Desk feature of the Automated Confirmation Transaction Service ("ACT"). Nasdaq amended the proposal on May 31, 2001,[3] and again amended the proposal on June 7, 2001.[4]

The proposal, as amended, was published in the **Federal Register** on June 19, 2001.[5] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[6] and, in particular, the requirements of section 15A of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 15A(b)(6) of the Act,[8] which requires that the Association's rules be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–6.
[3] *See* May 30, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission and attachments.
[4] *See* June 6, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission.
[5] *See* Securities Exchange Act Release No. 44411 (June 12, 2001), 66 FR 32971.
[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[7] 15 U.S.C. 78o–3.
[8] 15 U.S.C. 78o–3(b)(6).

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds good cause for granting accelerated approval of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Notice of the proposal indicated that the Commission would consider granting accelerated approval of the proposed rule change after a 15-day comment period.[9] The Commission received no comments on the proposal. Given the absence of comments, and Nasdaq's desire to eliminate this service while simultaneously offering to assist members in transitioning towards other methods of reporting trades to ACT, the Commission finds good case to approve the proposal on an accelerated basis.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2001–36), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17520 Filed 7–12–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44526; File No. SR–NASD–00–30]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change To Include UTP Exchanges on a Voluntary Basis in the Nasdaq National Market Execution Service

July 6, 2001.

I. Introduction

On May 25, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant, to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to include unlisted trading privilege exchanges ("UTP Exchanges") in the automatic-execution function of the Nasdaq National Market Execution Service ("NNMS") on a voluntary basis. The proposed rule change was published for comment in the **Federal Register** on June 5, 2000.[3] The Commission received one comment letter on the proposed rule change.[4] On July 6, 2001, the Association submitted Amendment No. 1 to the proposed rule change.[5] This order approves the proposed rule change. The Commission also is granting accelerated approval to Amendment No. 1 to the proposed rule change and is soliciting comment on Amendment No. 1 from interested persons.

II. Description of the Proposal

On January 14, 2000, the Commission approved the NNMS trading platform, which is scheduled to be phased-in on July 9, 2001.[6] As approved, the NNMS will be an automatic execution system that will serve as the primary trading platform for Nasdaq National Market securities. Under the NNMS rules, participation in the NNMS will be mandatory for Nasdaq market makers, and those market makers will be required to participate in the automatic-execution function of the system. In this proposed rule change, Nasdaq amended the NASD rules governing the NNMS to enable UTP Exchanges to participate in the automatic-execution function of the NNMS. Participation by UTP Exchanges in the NNMS, however, is voluntary.[7]

In the NNMS, the quotes of market makers, ECNs[8] (Full Participant ECNs and Order Entry ECNS), and UTP Exchanges are accessed in general price/time priority. As the NNMS was originally proposed and approved, UTP Exchanges would only receive orders through Nasdaq's SelectNet system. This was because UTP Exchanges have traditionally received orders against their quotes through the order-delivery functionality of SelectNet. Because SelectNet is an order-delivery system—as opposed to an automatic-execution system like the NNMS—UTP Exchanges that receive SelectNet orders must manually respond to the order to complete a trade.

After the Commission approved the NNMS, the Chicago Stock Exchange ("CHX") and Nasdaq began discussion the possibility of the CHX participating in the automatic-execution functionality of the NNMS. Both Nasdaq staff and the CHX recognized that there cold be delays in processing orders if a UTP Exchange is alone at the inside and does not respond, within 90 seconds, to orders delivered to its quote.[9] This could occur if the UTP Exchange is experiencing system problems, is slow to process an order, or if there are delays in Nasdaq systems.

In light of the above, Nasdaq is proposing to permit UTP Exchanges to participate in the automatic-execution functionality of the NNMS. Participation by UTP Exchanges is voluntary. The proposed rule change also clarifies that if a UTP Exchange participates in the automatic-execution functionality of the NNMS, orders preferenced to the UTP Exchange's quotes mut meet the oversized requirement or other conditions of the rule. This is to limit the potential for dual liability for UTP Exchanges.

In addition, Nasdaq is proposing non-substantive rule changes to correct drafting errors in the original rule proposal to clarify that orders sent to quotes of Order Entry ECNs are not subject to the oversized order or the requirements in the rule, while orders sent to Full Participant ECNs are subject

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42847 (May 26, 2000), 65 FR 35690.

[4] *See* letter to Jonathan G. Katz, Secretary, SEC, from Gerald D. Putnam, Chief Executive Officer, Archipelago, L.L.C., dated October 25, 2000 ("Archipelago Letter").

[5] *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, from Thomas Moran, Associate General Counsel, Nasdaq, dated July 6, 2001 ("Amendment No. 1"). In Amendment No. 1, the Association amended the language of NASD Rule 4720 to reflect amendments recently published by the Commission. *See* Securities Exchange Act Release No. 44506 (July 3, 2001). In addition, the Association clarified that participation by UTP Exchanges in the NNMS is voluntary. Finally, the Association added language to clarify the continued use SelectNet upon implementation of NNMS.

[6] The NNMS trading platform was scheduled for implementation on July 10, 2000, prompting Nasdaq's request for approval of this proposed rule change by that date. On June 30, 2000, Nasdaq announced that it was postponing the implementation until the last quarter of 2000. Telephone conversation between Tom Moran, Associate General Counsel and John Malitzis, Assistant General Counsel, Office of the General Counsel, Nasdaq, and Heather Traeger, Attorney, Division of Market Regulation, SEC, on July 5, 2000. *See also* Securities 2000) (approving the new NNMS trading platform).

[7] *See* Amendment No. 1.

[8] For a description of the NNMS and the terms used in this order, *see* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000).

[9] While this is also a concern with ECNs, Nasdaq believes the concern is substantially smaller because ECNs are required to provide an automated response to SelectNet messages, and, in Nasdaq's experience, they generally respond in 5 seconds or less to orders presented to their quotes. UTP Exchanges are not under the same explicit obligation.

[9] *See* footnote 5, *supra.*

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

to these requirements. Further, the proposed rule change clarified the use of SelectNet for order sent to, or orders sent by, UTP Exchanges that do participant in the automatic functionality of the NNMS. Finally, the Association proposed a definition for "UTP Exchange" are eliminated the definition and references to "UTP Specialists".

Summary of Comments

The Commission received one comment letter on the proposed rule changes from Archipelago.[10] This commenter objected to the differing treatment of ECNs and UTP Exchanges in the NNMS. Specifically, the commenter whether it was consistent with the Act for the Association to permit ECNs to participate in the NNMS as either a Full Participate ECN or an Order Entry ECN, while only permitting UTP Exchanges the option of participating fully in the automatic execution functionality of the NNMS; *i.e.*, UTP Exchanges that choose to participate in NNMS must both route orders for automatic execution in the NNMS as well as provide automatic execution for orders routed to their quotes.

The commenter also argued that as a securities information processor ("SIP"), Nasdaq should remain neutral with respect to all market centers and that Nasdaq therefore should not be able to treat UTP Exchanges differently than NASD members.

The Commission notes that the Archipelago Letter was submitted prior to the Commission's SuperMontage Order,[11] which specifically addressed Archipelago's concerns.[12] In that order, the Commission stated that the NASD did not have to make accommodations for competing exchanges that are comparable to accommodations provided to its members. The Commission further noted that it believed that NASD should be able to provide access to a competing exchange that is equivalent to the access the competing exchange provides for NASD members. In addition, the Commission also addressed Nasdaq's role as an exclusive SIP.[13] Specifically, in the SuperMontage Order, the Commission directed the NASD and the UTP Exchanges to re-evaluate the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("UTP Plan").[14]

[10] *See* note 4 *supra*.

[11] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) ("SuperMontage Order").

[12] For the Commission's complete discussion, *see* SuperMontage Order, Section V.G.

[13] *See* SuperMontage Order, Section V.I.3.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[15] and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposal is consistent with the requirements of sections 15A(b)(6)[16] of the Act because the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in the regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that, by allowing UTP Exchanges to participate in the automatic-execution functionality of the NNMS, the proposed rule change will eliminate the potential for order queuing or for the system to stop processing orders when an UTP Exchange is alone at the best bid/best offer. The Commission notes that UTP Exchange participation in the auto-ex feature of NNMS is voluntary; these rules merely describe how a UTP Exchange that chooses to participate in the automatic execution function will need to operate.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The NASD plans to implement the NNMS system on July 9, 2001 and thus, accelerated approval is necessary to accommodate this timeframe. Since Amendment No. 1 clarifies the application of the proposed rule change, but did not change the intent of the proposal, the Commission believes that good cause exists, consistent with section 15A(b)(6)[17] and 19(b) of the Act[18] to accelerate approval of Amendment No. 1 to the proposed rule change.

[14] The Commission notes the UTP Plan participants are currently considering these issues.

[15] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78o–3(b)(6).

[17] 15 U.S.C. 78o–3(b)(5).

[18] 15 U.S.C. 78s(b).

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–30 and should be submitted by August 3, 2001.

VI. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change, as amended, (SR–NASD–00–30), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17522 Filed 7–12–01; 8:45 am]

BILLING CODE 8010–01–M

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44527; File No. SR–Phlx–2001–19]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Institute an Antitrust Compliance Policy

July 9, 2001.

On March 5, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposal to institute an Antitrust Compliance Policy. On June 7, 2001, the Commission published the proposed rule change in the **Federal Register**.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest.[5]

In September 2000, the Commission issued an order instituting public administrative proceedings against Phlx and other options exchanges, finding that Phlx and the other options exchanges had, among other things, followed a course of conduct that limited multiple listing of options, impeded competition in multiple listing, and failed appropriately to enforce rules relating to harassment and intimidation of members.[6] The Commission believes that Phlx's establishment of an Antitrust Compliance Policy should help to promote just and equitable principles of trade.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2001–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17517 Filed 7–12–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44373 (May 31, 2001), 66 FR 30783.

[4] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] *See Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions*, Securities Exchange Act Release No. 43268 (September 11, 2001).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44514; File No. SR–Phlx–2001–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to PACE Delivery of Certain Orders Without Agency Execution Guarantees

July 5, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Phlx submitted Amendment No. 1 on June 14, 2001,[3] Amendment No. 2 on June 26, 2001,[4] and Amendment No. 3 on June 29, 2001.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to modify the order delivery aspect of PACE[6] to permit the specialist to choose to accept orders through PACE, without participating in the PACE execution guarantees for agency orders, where the entering member organization has elected not to receive automatic execution or primary market print protection for electronically delivered limit orders, in accordance with the procedures established by the Floor Procedure Committee. The text of the proposed rule change is below. Proposed new language is in italics.

* * * * *

Rule 229. Philadelphia Stock Exchange Automated Communication and Execution System (PACE)

PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions. Orders accepted under the system may be executed on a fully automated or manual basis in accordance with the provisions of this Rule. Securities admitted to dealings on the equity floor are eligible for trading on the PACE System in which equity specialists and member organizations may choose to participate. The conditions under which orders will be accepted and executed are set forth below. When used in the Rule, PRL means a combined round-lot and odd-lot order, and PACE Quote means the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate. The PACE rules, conditions and guidelines do not apply to orders not on the system, and existing rules governing orders not on the system are not affected hereby.

Supplementary Material

The following PACE execution parameters are minimum standards applicable to agency orders received through PACE. Orders transmitted to the floor through the PACE system can be executed on a basis better than the applicable minimum standard:

.01 Member organizations wishing to participate in PACE may send to the Philadelphia trading floor market and limit orders up to the maximum number of shares in securities traded under PACE as shall be fixed by the Exchange from time to time. All orders in eligible securities shall be executed in whole or in part on a first in first out basis.

.02 Specialists are required to provide, at a minimum, PACE execution parameters, as defined by the Rule, to agency orders received through the system, *except as provided below.*

Although specialists are not required to provide PACE execution parameters to non-agency orders received through PACE, if the specialists choose to execute non-agency orders automatically through PACE, they must provide the same PACE executions to non-agency orders as they provide to agency orders. If however, the specialists choose to execute non-agency orders manually, the must adhere to existing Exchange rules governing orders not on the system with respect to such orders.

For purposes of the PACE System, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 11, 2001 ("Amendment No. 1"). In Amendment No. 1, the Phlx clarified the procedures required to permit the specialist to choose to accept orders through the Philadelphia Stock Exchange Automated Communications and Execution System ("PACE") without participating in PACE execution guarantees for agency orders.

[4] *See* letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 25, 2001 ("Amendment No. 2").

[5] *See* letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 27, 2001 ("Amendment No. 3"). Amendment No. 3 replaced Amendment No. 2 in its entirety and deleted the term "generally" from the proposed rule text.

[6] PACE is the Exchange's electronic order routing, delivery, execution and reporting system. *See* Phlx Rule 229.

dealer has any direct or indirect interest. Non-agency orders are not permitted on PACE except where the Exchange has been provided with a Specialist Agreement, signed by the respective specialist, acknowledging the acceptance of such non-agency orders from the specific firm(s), and any minimum execution parameters (order size guarantees) agreed to be provided to such orders by the respective specialist. Any such Specialist Agreement must provide the same minimum execution parameters to all non-agency orders by that specialist and will not provide for greater order size guarantees to non-agency orders than those provided to agency orders.

The specialist may choose to accept orders through PACE, without participating in the PACE execution guarantees for agency orders, where the entering member organization has elected not to receive automatic execution or primary market print protection for electronically delivered limit orders, in accordance with the procedures established by the Floor Procedure Committee.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit equity specialists to accept orders for delivery over PACE, without necessarily having to provide them with the agency execution guarantees detailed within Phlx Rule 229.

PACE is a voluntary system, meaning order-entry (entering) member organizations may choose to establish PACE connectivity and deliver orders to the Exchange's equity floor via PACE. Similarly, Phlx equity specialists may choose to participate in PACE with respect to specialty securities. Currently, under Phlx Rule 229, specialists are required to provide, at a minimum, PACE execution parameters, as defined by the rule, to agency orders received through the system. Specialists may also choose to accept non-agency (broker-dealer) orders, as long as they also receive agency orders, pursuant to the rule. This proposal modifies the order delivery aspect of PACE to provide a third category of PACE processing that would be available to specialists who could choose to receive orders from member organizations who, in turn, choose not to elect certain execution guarantees. This proposal is intended to permit specialists to choose the third category of PACE processing, without either: (i) Agency orders entitled to PACE execution parameters; or (ii) agency and broker-dealer orders.

Specifically, the new paragraph in Commentary .02 to Phlx rule 229 permits the specialist to accept electronically-delivered orders over PACE, pursuant to procedures determined by the Floor Procedure Committee.[7] This provision would apply where the entering member organization has elected not to receive automatic execution or primary market print protection for limit orders.[8]

Over time and in response to various market developments, the Exchange has modified various aspects of the PACE system, such as the order delivery size, automated price improvement features and, most recently, the elections of order-entry member organizations respecting PACE guarantees.[9] The Exchange believes that the proposal and hand to provide a third category of PACE processing is similar in that it addresses the specific requests and needs of order delivery firms respecting their particular order flow character and demands.

Under the proposal, equity specialists are afforded a third alternative respecting PACE processing. Thus, a specialist may determine to accept PACE orders in a security under this provision, in lieu of eliminating the security from the PACE eligibility list (noting that the PACE system is voluntary). The Phlx represents that many factors drive whether a specialist chooses to accept orders over PACE, including customer demand and competitive pressures (such as what other exchanges guarantee). some of these factors are unique to a particular security, such as its votalility, liquidity, volume, and and trading patterns. Where a specialist believes that a security may not be well-suited for automatic execution, or primary market print protection, the proposal preserves the specialist's ability to accept orders electronically over PACE, without the concomitant execution guarantees. Thus, the Exchange believes that the proposal should assist a specialist's ability to accept orders electronically, without impairing the ability to make fair and orderly markets.

2. Statutory Basis

The Phlx believes the proposed rule change is consistent with the provisions of section 6(b) of the Act[10] in general, and furthers the objectives of section 6(b)(5)[11] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by encouraging specialists to participate in PACE order delivery, even where a security may not be appropriate for agency-type guarantees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[12] and subparagraph (f)(5) of Rule 19b–4 thereunder[13] because it effects a change in an existing order-entry or trading system of the Exchange that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on

[7] Under the proposal, the specialist will be required to submit a letter to the appropriate Exchange department stating the specialist's intentions to accept orders over the modified PACE system and to specify that the specialist is accepting orders over PACE under the proposal without agency guarantees. In addition, the proposal provides that the Floor Procedure Committee may change this procedure. *See supra* note 3.

[8] *See* Phlx Rules 229.10 (a)(i) and (ii), respectively, containing those guarantees. Under the proposal, the entering member organization would communicate its election not to receive certain automatic execution or primary market print protection guarantees by submitting a letter to the Exchange. *See supra* note 3.

[9] *See* Securities Exchange Act Release Nos. 41081 (February 22, 1999), 64 FR 10053 (March 1, 1999) (SR–Phlx–1998–46); 42973 (June 21, 2000), 65 FR 39974 (June 28, 2000) (SR–Phlx–2000–43); and 43059 (July 20, 2000), 65 FR 46541 (July 28, 2000) (SR–Phlx–2000–58).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(5).

competition; and (iii) does not have the effect of limiting the access to or availability of the system. At any time within 60 days of the filing of the proposed rule change as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx–2001–53 and should be submitted by August 3, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17521 Filed 7–12–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3345]

State of West Virginia (Amendment #3)

In accordance with a notice received from the Federal Emergency Management Agency, dated July 5, 2001, the above-numbered Declaration is hereby amended to include Calhoun and Putnam Counties in the State of West Virginia as a disaster area caused by flooding, severe storms, and landslides beginning on May 15, 2001 and continuing.

In addition, applications for economic injury loans from small businesses located in Gilmer and Ritchie Counties in the State of West Virginia may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 2, 2001, and for loans for economic injury is March 4, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 9, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–17540 Filed 7–12–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meeting.

DATES: August 21, 2001, 10 a.m.–5 p.m. Pacific Time (PT), August 22, 2001, 9 a.m.–5 p.m. PT, August 23, 2001, 9 a.m.–4 p.m. PT.

ADDRESSES: Doubletree Hotel—Portland Downtown, 310 SW Lincoln Street, Portland, OR 97201, Phone: (503) 221–0450, Fax: (503) 226–6260.

The hotel is located in downtown Portland and 25 minutes from the airport. The hotel offers complimentary shuttle service to/from the airport. Upon arriving at the airport, follow the signs to Baggage Claim and then follow the signs to hotel shuttle. Board the Doubletree Downtown-Lloyd Center shuttle.

SUPPLEMENTARY INFORMATION: *Type of meeting:* This is a quarterly meeting open to the public. The interested public is invited to participate by coming to the address listed above. Public comment will be taken. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Agenda: The Panel will meet in person commencing Tuesday, August 21, 2001 from 10 a.m. to 5 p.m. PT; Wednesday, August 22, 2001 from 9 a.m. to 5 p.m. PT; and Thursday, August 23, 2001 from 9 a.m. to 4 p.m. PT. The Panel will use the meeting time to receive public testimony, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA, hold committee meetings, receive briefings and conduct business. Public testimony will be heard in person on Wednesday, August 22, 2001 from 9:30 a.m. to 10:30 a.m. PT. The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel/* one week before the meeting or can be received in advance electronically or by fax upon request.

Individuals interested in providing testimony in person should contact the Panel staff as outlined in the "Contact Information" section below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in person or by mail, fax or e-mail on an on-going basis to the Panel for consideration. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024;

[14] 17 CFR 200.30–3(a)(12).

- Telephone contact with Kristen Breland at (202) 358–6423;
- Fax at (202) 358–6440;
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: July 9, 2001.

Deborah M. Morrison,

Designated Federal Officer.

[FR Doc. 01–17495 Filed 7–12–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–95–246]

North American Free Trade Agreement Conference

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice (1) announces a North American Free Trade Agreement (NAFTA) information conference, to be held at the Hyatt Hotel in San Antonio, Texas, October 21–24, 2001, (2) provides information about the conference for prospective attendees; and (3) identifies a dedicated website that will provide continuously updated information about the conference including registration information. U.S., Canadian, and Mexican government officials representing agencies that have inspection, security and other defined responsibilities affecting the clearance of cross-border transport operations will conduct panel sessions that convey information about the requirements that each of their agencies imposes on motor carrier operations.

Background

The North American Free Trade Agreement (NAFTA) created a timetable for the removal of barriers to the provision of transportation services among the NAFTA countries for carriage of international cargo and of passengers. For trucks and buses, NAFTA was to have liberalized access for motor carriers on a phased schedule over six years from entry into force of the agreement, and it provided for liberalizing investment restrictions on trucking companies established in Mexico and the United States. Liberalization was to have begun in 1995, but the United States postponed implementation due to concerns regarding safety and enforcement. A NAFTA dispute resolution panel subsequently ruled that the U.S. blanket prohibition on processing Mexican applications for operating authority violated the NAFTA. Since 1995, the United States has taken steps to augment its ability to assure compliance with U.S. motor carrier safety regulations. These efforts enable the United States to safely comply with the dispute panel's findings and move forward with implementation of NAFTA's access provisions no later than January 1, 2002.

All foreign motor carriers operating in the United States are subject to the same federal and state regulations and procedures that apply to U.S. carriers. These include safety regulations, insurance requirements, tariff requirements, and payment of all taxes and fees. In addition, foreign motor carriers and drivers must comply with applicable customs and immigration laws and regulations. Under NAFTA, these compliance obligations are completely reciprocal so that U.S. carriers and drivers are similarly obligated to comply with Canadian and Mexican statutory and regulatory requirements while conducting operations in those countries.

While U.S. and Canadian carriers have been conducting operations in each other's respective countries for some time, implementation of NAFTA's access provisions will mean that many Mexican motor carriers will be operating in the United States for the first time. Similarly, operations into Mexico will be a new experience for most U.S. and Canadian motor carriers. The many federal and state regulatory requirements and the multiplicity of federal and state agencies imposing them may be confusing and intimidating to these first-time entrants and could discourage them from attempting to take advantage of NAFTA's transportation provisions. For this reason, the Department of Transportation, in cooperation with Canada, Mexico, other federal agencies, and state and provincial representatives, will host a NAFTA information conference in San Antonio, Texas, October 21–24, 2001 to promote an understanding of the requirements for legal cross-border transport operations among the three NAFTA countries.

Who Should Attend: This conference will be beneficial for commercial truck carriers, bus operators, customs brokers, shippers, and other companies and/or associations that have an interest in the conduct of cross-border business that will involve transport operations.

Meetings and Deadlines: The NAFTA conference will include panels that convey information about: (1) Applying for federal motor carrier operating authority; (2) immigration requirements for drivers operating outside of their own country; (3) Customs requirements for foreign trucks engaged in international operations; (4) agriculture regulations applicable to imported commodities; (5) tax obligations for companies operating commercial vehicles outside their own country; (6) motor carrier safety standards; (7) hazardous materials transportation safety regulations; (8) vehicle weight and dimensions standards; and other requirements. In addition, state and provincial jurisdictions will provide information on their operating requirements. Other panels may be added as preparations for the conference progress. Representatives from the various agencies will be available following panel discussions to address questions from conference attendees. Finally, each attendee will be provided a resource book from each country containing additional information, contact names, e-mail and phone numbers that may be used to obtain additional information.

Languages: All conference sessions will be conducted with simultaneous translation in English and Spanish. To the extent possible, agency representatives who address specific questions from attendees will be bilingual as well.

Updated Information and Hotel Registration: To provide a continuous source of updated conference information, the Department of Transportation's Office of International Transportation & Trade has established a website for prospective attendees and other interested parties. The DOT website will contain an updated schedule of events, guest speakers, and agendas for the panel sessions as they are developed. The website can be accessed by going to the DOT homepage at www.dot.gov/NAFTA.

The DOT website also has a link to the Free Trade Alliance San Antonio's website, where a registration forms for the conference can be downloaded. All participants are requested to fill out a conference registration form, which should be returned to the Free Trade Alliance, 203 South St. Mary's Street, Suite 130, San Antonio, Texas 78205, or faxed to 210–229–9724. Registration forms and information about the conference, hotel accommodations, and the city of San Antonio can also be obtained by writing to the Free Trade Alliance or by telephoning 210–229–9036.

A block of rooms is reserved at the Hyatt Hotel, 123 Lasoya Street, San Antonio, Texas 78205. Interested parties can contact the hotel by telephone at 210–222–1234 or by fax at 210–227–4927. Further information about accommodations can be found on the

Free Trade Alliance website at www.freetradealliance.org.

Address and Phone Numbers: For further information please contact Eddie Carazo, U.S. Department of Transportation, OST/X–20, Room 10300, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2892, or fax (202) 366–7417.

Dated: July 9, 2001.

Bernestine Allen,

Director, Office of International Transportation and Trade.

[FR Doc. 01–17571 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10066]

Define Inflatable Liferafts as Associated Equipment for Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) recommended that the Coast Guard (we) extend the application of our existing authority so that, when necessary, we can recall defective inflatable liferafts carried on recreational vessels. We would like your comments to help us determine the current extent of any problems with inflatable liferafts. Comments received will help us fully evaluate the NBSAC recommendation.

DATES: Comments and related material must reach the Docket Management Facility on or before October 11, 2001.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Rick Gipe, Project Manager, Office of Boating Safety, telephone 202–267–0985, e-mail *rgipe@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or read it on the Internet at the Web Site for the Office of Boating Safety at *http://www.uscgboating.org* or at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 46 U.S.C. 4310, manufacturers of recreational boats and certain items of associated equipment identified by regulation must notify owners and recall and repair or replace their products when the products either fail to comply with an applicable Coast Guard safety standard or contain defects that create a substantial risk of personal injury to the public. The defect-notification regulations in 33 CFR part 179 currently apply to the following items of designated associated equipment: (1) An inboard engine, (2) an outboard engine, (3) a stern drive unit, and (4) an inflatable personal flotation device approved under 46 CFR 160.076.

By law, the Coast Guard Office of Boating Safety is required to consult with the National Boating Safety Advisory Council (NBSAC) in prescribing regulations and regarding other major boating safety matters. NBSAC is made up of 21 members: Seven from the boating industry, seven who are State boating officials, and seven who represent national boating organizations or the general public.

At a May 2000 meeting, a NBSAC member, who is also an inflatable boat and liferaft manufacturer, briefed the council about problems with the construction of certain inflatable liferafts typically carried by recreational boaters. Liferafts that do not deploy properly, e.g., fail to inflate or fail to maintain inflation, are a danger to recreational boaters who depend upon them as a safety device. We informed NBSAC that, unlike Coast Guard approved liferafts which are required to be carried on commercial vessels, the liferafts typically carried by recreational boaters are not constructed to any specific standard and do not fall within the Coast Guard's existing recall authority. Therefore, NBSAC passed a resolution urging the Coast Guard to consider making inflatable liferafts carried on recreational vessels an additional item of designated associated equipment subject to the existing defect-notification requirements.

Questions

To assist us in considering NBSAC's resolution, we ask for your comments, particularly in response to the following questions:

1. What data or studies are available indicating failure rates or failure modes for inflatable liferafts carried on recreational vessels?

2. What types of defects in the construction of inflatable liferafts carried on recreational vessels should be considered severe enough to require a manufacturer to conduct defect notification?

3. What are the economic and other impacts on inflatable liferaft manufacturers if the Coast Guard were to require those companies to notify owners and to recall and repair or replace defective liferafts that contain defects that create a substantial risk of personal injury to the public?

4. Would the designation of inflatable liferafts carried on recreational vessels as "associated equipment" place an inappropriate and inconsistent burden on manufacturers in relation to other items of "associated equipment?" Why or why not?

5. The Coast Guard is mindful of the potential adverse impacts on small business entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. To what extent are small entities engaged in the manufacture of inflatable liferafts carried on recreational vessels?

6. How many companies are currently manufacturing inflatable liferafts for use on recreational vessels?

7. In order to properly designate inflatable liferafts carried on recreational vessels as "associated equipment," we request your suggestions on how to define these liferafts so as to distinguish them from

similar equipment, such as inflatable buoyant apparatus for merchant vessels approved under 46 CFR 160.010–3, inflatable liferafts for domestic service approved under 46 CFR part 160, subpart 160.051, SOLAS inflatable liferafts approved under 46 CFR part 160, subpart 160.151, and water toys used at beaches and in swimming pools. In other words, how should we define the term "inflatable liferaft carried on recreational vessels"?

8. U.S. manufacturers and importers of recreational boats and designated associated equipment are required by law to maintain first purchaser lists and conduct recalls when their products fail to comply with an applicable Coast Guard safety standard or contain substantial risk defects. However, currently we have no legal authority over foreign manufacturers of inflatable liferafts carried on recreational vessels. How could we ensure that foreign manufacturers of inflatable liferafts carried on recreational vessels would be legally responsible for the safety of their products?

9. What other information about boating accidents involving the use of inflatable liferafts carried on recreational vessels should we consider?

Request for Comments

We encourage you to participate in this request for comments by submitting comments and related material and answering the above questions. If you do so, please include your name and address, identify the docket number for this notice (USCG–2001–10066), indicate by number each question you are answering, and give the reason for each comment. You may submit your comments and material by mail, hand-delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand-delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. Your comments will help us to determine whether to initiate a rulemaking in response to the NBSAC resolution.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid the consideration of the NBSAC resolution, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Dated: July 6, 2001.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 01–17570 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction At of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the new Information Collection Request (ICR) abstracted below had been forwarded to the Office of Management and Budget (OMB) for review and request for clearance. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following new collection of information was published on April 25, 2001, pages 20848–20849.

DATES: Comments must be submitted on or before (August 13, 2001. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: FAA Form 1200–5, NAS Data Release Request.

Type of Request: New.

OMB Control Number: xxxx–xxxx.

Forms(s) FAA Form 1200–5.

Affected Public: An estimated 9 respondents (vendors in private industry who have been contacted by airport authorities to conduct various studies such as noise abatement pollution reduction, or private airport operators who may have a need to study various radar tracts to ascertain airport position.)

Abstract: The FAA is collecting basic vendor information such as name, address, phone number, point of contact, purpose of request, type of data requested, and method of acquiring FAA NAS data. The FAA is collecting this information in order to assess the validity of the data requestor. This is a standardized collection vehicle that will eliminate confusion among the nine FAA regions, and allow electronic tracking of the standard data requested for trend analysis.

Estimated Annual Burden Hours: 27 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 6, 2001.

Steve Hopkins,

Manager, Standards and Information Division.

[FR Doc. 01–17568 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement and To Hold an Environmental Scoping Meeting for James M. Cox-Dayton International Airport, Vandalia, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement and hold public scoping meetings.

SUMMARY: The Federal Aviation Administration (FAA) intends to prepare an Environmental Impact Statement (EIS) to address anticipated environmental impacts associated with the implementation of proposed improvements at James M. Cox-Dayton International Airport. Because the project includes the realignment of off-Airport roadways, the Federal Highways Administration (FHWA) will be a cooperating agency.

FOR FURTHER INFORMATION CONTACT: Ernest P. Gubry, Community Planner; Federal Aviation Administration; Detroit Airports District Office; Willow run Airport East; 8820 Beck Road; Belleville, Michigan 48111; Telephone: (734) 487–7280; E-mail: *Ernest.Gubry@faa.gov*

SUPPLEMENTARY INFORMATION: The FAA intends to prepare an EIS for proposed runway improvements and associated airfield improvements and roadway realignments at James M. Cox-Dayton International Airport. The project proposes to: (1) Extend Runway 6R–24L 4,400 feet to the southeast and decommission the northeastern 400 feet of the runway for a total runway length of 11,000 feet and (2) extend Runway 18–36 4,100 feet to the north and decommission the southern 3,100 feet of the runway for a total runway length of 9,500 feet. The project also includes the associated airfield improvements. The proposed extension of Runway 6R–24L would require the realignment of the Airport Access Road and U.S. 40. Therefore FHWA will be the cooperating agency.

The EIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA), following the guidelines for airport projects as outlined in FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts and FAA Order 5050.4A, Airport Environmental Handbook. The EIS will also be prepared to meet the requirements of FHWA.

Public Scoping Meetings

The FAA intends to conduct an agency scoping meeting and three public scoping meetings to obtain input regarding any issues of concern associated with the proposed project. Federal, State, and local agencies which have jurisdiction by law or have specific qualifications or expertise with respect to the potential environmental impacts will be notified and invited by letter to attend a scoping meeting on Tuesday, August 14, 2001, from 10:00 a.m. until noon at the Dayton Airport Hotel.

Members of the public are invited to attend public scoping meetings to be held on the following dates and times at the following locations:

Tuesday, August 14, 2001, 4 p.m. to 8 p.m., Butler High School Cafeteria, 600 South Dixie Drive, Vandalia, Ohio 45377

Wednesday, August 15, 2001, 4 p.m. to 8 p.m., Dayton Convention Center, Room 106, 22 East Fifth Street, Dayton, Ohio 45402

Thursday, August 16, 2001, 4 p.m. to 8 p.m., L.T. Ball Junior High School Cafeteria, 575 N. Hyatt Street, Tipp City, Ohio 45371

The meetings will all be identical in terms of content and format and are intended to allow the public an opportunity to provide their input to the process. Letters are being sent inviting individuals who have participated in meetings for the FAR part 150 Noise Compatibility Study Update or the Strategic Master Plan Update. A notice will also be placed in newspaper(s) of general and wide circulation in the project area inviting the public to the public scoping meetings. It should be noted that all comments provided at the scoping meetings will be considered equally and that a comment provided at more than one meeting by the same individual will not be considered any more heavily than a comment made by an individual at only one of the meetings. Written scoping comments may be sent to Mr. Gubry at the above noted address to be received prior to August 31, 2001.

Issued in Des Plaines, Illinois, on July 6, 2001.

Larry Ladendorf,

Assistant Manager, Airports Division, FAA, Great Lakes Region.

[FR Doc. 01–17569 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–51]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 2, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 10, 2001.

Gary A. Michel,

Acting, Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–9982.

Petitioner: Cessna Aircraft Company.

Section of 14 CFR Affected: 14 CFR 25.785(b).

Description of Relief Sought: To permit Cessna to equip Cessna Model 608 Sovereign airplanes with multiple-occupancy side-facing couches that are not designed to include the general occupant protection requirements of § 25.785(b).

[FR Doc. 01–17567 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–99–6585]

Hours-of-Service of Drivers; Pilot Program for Drivers Delivering Home Heating Oil

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final determination.

SUMMARY: The FMCSA announces the initiation of a pilot program to grant an exemption from the weekly hours-of-service restrictions for drivers of commercial motor vehicles (CMVs) making home heating oil deliveries that occur within a 100 air-mile radius of a central terminal or distribution point, during the winter months. The FMCSA will also allow States to grant temporary exemptions from the weekly restrictions in their intrastate hours-of-service regulations for the transportation of home heating oil during the winter months for the purpose of enabling intrastate motor carriers conducting such operations to do so under terms and conditions identical to those used in the FMCSA's pilot program. The intrastate carriers will be required by the States in which they operate to report certain accident data to the FMCSA so that the agency can monitor their safety performance, combine the intrastate data with the interstate data, and analyze the results. Under the current regulations, drivers operating in interstate commerce may not drive after being on duty 60 hours in any seven consecutive days if the motor carrier does not operate CMVs every day of the week (60-hour rule), or after being on duty 70 hours in any eight consecutive days if the motor carrier operates CMVs every day of the week (70-hour rule). During the pilot program, participating motor carriers will be allowed to "restart" calculations for the 60- or 70-hour rule, whichever is applicable, after the driver has an off-duty period encompassing two consecutive nights off-duty that include the period of midnight to 6 a.m. This action is in response to a request from the Petroleum Marketers Association of America (PMAA). The exemption preempts inconsistent State and local requirements applicable to interstate commerce.

DATES: The pilot program begins July 13, 2001. The exemption covers the period between November 1 and April 30 for three consecutive heating seasons, the first of which begins on November 1, 2001.

ADDRESSES: Home heating oil transporters (both interstate and intrastate) interested in participating in the pilot program should submit written, signed requests, containing the information required by this notice to: Federal Motor Carrier Safety Administration, Office of Bus and Truck Standards and Operations (MC–PSD)—Home Heating Oil Program, 400 Seventh Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, (202) 366–4009, or Mr. Charles E. Medalen, Office of the Chief Counsel, MC–CC, (202) 366–1354, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

PMAA Request for Home Heating Oil Delivery Flexibility Program

The PMAA requested that the FMCSA implement a three-year Winter Home Heating Oil Delivery Flexibility Program. A copy of the request is included in the docket. The PMAA requested that the new program be available to interstate and intrastate motor carriers operating in any State. The association indicated that elements of the previous heating oil program initiated in response to section 346 of the National Highway System (NHS) Designation Act (Pub.L. 104–59, 109 Stat. 569, at 615, November 28, 1995) could be used to address most of the guidelines for the new program, as well as satisfy most of the rules in 49 CFR 381.505, concerning minimum requirements for a pilot program. (For more information about the previous pilot program see 61 FR 51486, October 2, 1996; and 62 FR 4372, January 29, 1997.) The PMAA believes a home heating oil program would benefit many citizens and help to ensure that consumers are not deprived of an essential product during severe weather, all without compromising safety.

Notice of Proposal to Initiate a Pilot Program

On February 16, 2000 (65 FR 7906), the FMCSA published a notice announcing its proposal to initiate a pilot program in which the agency would grant an exemption from the weekly hours-of-service restrictions for drivers of CMVs making home heating oil deliveries. The notice discussed the proposed structure of the program and requested public comment.

The agency received comments from: Advocates for Highway and Auto Safety (Advocates); National Propane Gas Association (NPGA); Parents Against Tired Truckers (PATT); Petroleum Marketers Association of America (PMAA); and the National Tank Truck Carriers, Inc. A summary of the comments is presented below.

Comments Opposed to Conducting a Pilot Program

Advocates and PATT were opposed to the initiation of a pilot program for hours of service. Advocates argued that the research cited in the notice proposing a home heating oil pilot program does not support the proposed exemption. Advocates stated that there was no analysis of the actual number or percentage increase in driving hours over different time frames provided in the notice proposing the pilot program. Also, there was no review of the differences in risk exposure that could be produced by granting the exemption and installing a minimum 32-hour restart. Advocates believes the agency did not comply with the requirements of TEA–21 because the agency did not "propose the machinery for conducting the pilot project, including its data collection and safety analysis activities." Advocates states that the program fails to address the TEA–21 requirement that each pilot program include adequate countermeasures to protect the health and safety of study participants and the general public.

PATT expressed concern that the proposed pilot program would have the effect of causing truck drivers to experience a high level of fatigue. PATT states:

> Every year when the Petroleum Industry asks the State Police to waive the Hours of Service for their drivers because of a claimed shortage of heating oil, we get many calls from the delivery drivers, explaining that they really don't want to do the extra time that is forced on them because they fear a tragedy that can be caused by fatigue.

Comments Supporting the Pilot Program But Requesting a Revised Program Structure

The NPGA supports the proposal for a home heating oil pilot program but requested that the program be expanded to include transporters of propane, or that the FMCSA establish a separate pilot program for drivers delivering propane. NPGA believes the delivery infrastructure for both fuels is virtually identical. Both fuels are carried by pipeline, railcar, or trucks from the point of production to central

distribution facilities. Smaller local delivery trucks are used to serve each company's customers. NPGA indicated that both industries are busiest during the winter heating season, and sometimes have to respond to supply challenges beyond the industry's control.

NPGA believes there will be significant confusion within companies that serve both fuel oil and propane customers if the FMCSA covers only home heating oil. NPGA argues that "* * * it would be unfair for FMCSA to grant regulatory relief to one fuel over another, when companies are competing within an increasingly deregulated energy marketplace."

NTTC noted that its members compete economically with PMAA members. Both groups of motor carriers operate cargo tanks and both transport home heating oil. The difference is that NTTC members do not make deliveries to residences and PMAA members focus heavily on such deliveries. NTTC explained that residential deliveries are made by single-unit or straight trucks while deliveries to large commercial customers are made by combination units (i.e., towing unit and a trailer).

NTTC argues that the pilot program should be more rigidly controlled to avoid giving a marketplace advantage to PMAA members. It requested that the program be applicable to deliveries to terminals and distribution points, and be limited to vehicles with gross weights between 10,001 pounds and 40,000 pounds. The NTTC believes the weight range would ensure that only straight trucks are used in the program.

PMAA Comments

PMAA requested that the FMCSA not limit the number of States in the pilot program. They believe the program will become a regional program because of the use of home heating oil in certain parts of the country. PMAA does not believe the number of participants should be limited because weather patterns will limit the amount of data gathered.

PMAA submitted additional comments in response to Advocates and PATT comments. PMAA explained that all home heating oil delivery drivers work daytime hours. Customers do not want drivers delivering heating oil at nighttime. Also, it is not safe for drivers to fill tanks in the dark. During the winter months, drivers generally begin delivering oil at 7 a.m. and complete their deliveries by 5 p.m.

The PMAA stated that drivers sleep at home every night. The drivers work within a 100 air-mile radius of the normal work-reporting location. On average, the typical driver spends nine hours on duty, not driving, and two and one-half hours driving. The PMAA argues that sleep debt is not relevant to these drivers since they are working and resting on a "synchronous circadian rhythm shift rotation."

FMCSA Response to Commenters

The FMCSA has considered the comments submitted and decided to exercise its authority under TEA–21 to initiate a pilot program.

The agency has carefully reviewed the comments from Advocates and PATT. Although Advocates explained its reasons for arguing that none of the studies cited by the FMCSA in the notice of proposal supports the initiation of a pilot program, the agency does not agree. The agency did not claim that the research reports cited in the proposal support conducting this specific pilot program. However, the research is a strong indicator that under certain conditions, it is more likely than not that motor carriers could use an alternative to the current rule concerning a restart of the 60-/70-hour rule, and achieve a level of safety equivalent to, or greater than, that achieved through compliance with the safety regulations. The agency believes an off-duty period encompassing two consecutive nights off-duty that include the period of midnight to 6 a.m. is an appropriate restart period for drivers delivering home heating oil to consumers.

Under the current regulations the time required to restart the 60-/70-hour "clock" may vary depending on the driver's schedule. In an example of a worse-case scenario, if a driver using the 70-hour rule worked an intensive schedule starting at 12:01 a.m on Monday morning and alternated non-stop between 15 consecutive hours on-duty (10 hours driving time and 5 hours on-duty, not driving) and 8 hours off duty, the driver would be prohibited from driving a CMV from 6 a.m. on Friday until 12:01 a.m. the following Tuesday (a period of 90 consecutive hours). If the driver started at the same time on Monday but alternated non-stop between 10 consecutive hours driving and 8 hours off-duty, the driver would be prohibited from driving a CMV from 10 p.m. on Friday until 12:01 a.m. the following Tuesday.

Under the alternative restart that will be used for the pilot program, the driver in both of these examples could return to work as early as 7 a.m. on Sunday, approximately 41 hours earlier than the current regulations allow. The driver would basically be restarting the 70-hour clock two days earlier than the current regulations allow. Therefore, if the driver continued to operate on an equally intensive schedule, the next work week would begin on Sunday and end around Thursday afternoon for a driver alternating between 15 hours on-duty and 8 hours off duty. The work week would end early Friday morning for the driver alternating between 10 hours driving and 8 hours off duty.

These worst-case scenarios, however, are not representative of the home heating oil industry's scheduling practices. The information presented in the PMAA's comments make it clear that the drivers' schedules would be far less intensive than the ones described above. Advocates and PATT did not present any information suggesting that the restart provision used for this program would reduce the level of safety for the home heating oil residential-delivery segment of the motor carrier industry.

While it is clear that drivers will be allowed to work more hours over the course of seven or eight consecutive days than under the 60- or 70-hour rule, the scheduling practices for delivering heating oil to residential customers combined with the alternative restart provision will ensure a level of safety that is equal to, or greater than, that achieved by using a minimally compliant scheduling system (i.e., either one of the worse-case scenarios described above).

As for PATT's comment that drivers are being forced to work longer hours than they consider safe, the FMCSA is not aware of drivers' concerns about working additional hours. The agency requested comments from all interested parties but received no comments from current or former drivers responsible for delivering home heating oil, or organizations or groups representing the drivers. Therefore, the FMCSA can neither confirm nor refute the statement.

However, the pilot program does not diminish in any way Federal protection of drivers' rights to a safe workplace. Current Federal regulations prohibit motor carriers from requiring or permitting a driver to operate a CMV while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause that it is unsafe for the driver to begin or continue to operate the CMV (49 CFR 392.3). This rule applies to the pilot program. Section 405 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 31105) states, in part, that no person shall discharge, discipline, or in any manner discriminate against an employee with respect to the employee's compensation, terms,

conditions, or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rule, regulation, standard, or order applicable to CMV safety. This means that the participating drivers may contact the FMCSA at any time they are being forced to violate safety regulations or the terms and conditions of this pilot program. Drivers may use the FMCSA's toll free telephone number: 1–800–DOT–SAFT to report unsafe operations.

With regard to the Advocates' comment about compliance with TEA–21 requirements for pilot programs, the FMCSA published a detailed description of the program, including the exemption being considered. The notice discussed the safety measures (i.e., criteria for participating drivers and carriers, accident reporting requirements) intended to achieve a level of safety equivalent to, or greater than, that achieved through compliance with the safety regulations. The FMCSA discussed each of the following elements of its proposed design of the pilot program as required by section 4007 of TEA–21:

1. A scheduled life of not more than 3 years for the pilot program.
2. A data collection and safety analysis plan that identifies a method for comparison.
3. A "reasonable" number of participants to yield statistically valid findings.
4. An oversight plan to ensure that participants comply with the terms and conditions of participation.
5. Adequate countermeasures to protect the health and safety of study participants and the general public.
6. A plan to inform State partners and the public about the pilot program and to identify approved participants to safety compliance and enforcement personnel and to the public.

The agency indicated that the exemption offered as part of the pilot program would be in effect during the period between November 1 and April 30 for three consecutive heating seasons, the first of which would have begun on November 1, 2000. The agency explained its plan to perform a before-and-after comparison of the accident experiences and hazardous materials incidents for each of the participating motor carriers. The agency also explained why a more scientifically rigorous data collection and analysis scheme was not used, such as a comparison of the safety performance of participating carriers with that of a control group (i.e., home heating oil transporters operating under the current regulations) and requested comments.

Although the agency did not propose a minimum number of participating carriers to ensure that the results are statistically valid or meaningful, the agency requested comments. None of the commenters provided suggestions or recommendations for a minimum or maximum number of motor carriers. Therefore, the agency will use its discretion to determine whether the number of motor carrier applicants, the number of drivers employed by these motor carriers, and the number of States in which they operate would form the basis for initiating a pilot program.

On the subject of an oversight plan, the agency proposed requirements for accident and hazardous materials incident reporting. The agency could conduct random visits to participating carriers, in addition to periodic reviews of each interstate motor carrier's accident experience reported by State officials through SAFETYNET, and Hazardous Materials Incident Reports (DOT Form F 5800.1) (see 49 CFR 171.16) filed with the Research and Special Programs Administration (RSPA) by the motor carriers. The participating motor carriers would continue to be subject to compliance reviews and investigations conducted independently of their involvement in the pilot program.

The FMCSA does not believe it would be appropriate at this time to expand the pilot program to include transportation of propane as requested by the NPGA. Although residential demand for propane is significant, it does not appear to be as urgent as the demand for home heating oil.

The FMCSA has reviewed information from the U.S. Department of Energy's Energy Information Administration (EIA) to determine the number of households that rely on home heating oil and propane. Of the 101.5 million households in the U.S., approximately 7.7 million use heating oil. Residential space heating is the primary use for heating oil, making the demand highly seasonal. The area of the country most reliant on heating oil is the Northeast. Approximately 4.6 million households rely on propane for their primary heating fuel. Propane is most commonly used to provide energy to areas not serviced by the natural gas distribution system. Therefore, it competes mainly with heating oil for space heating purposes. Homeowners in the Midwest use it predominantly for heating, while Northeast residences rely on it more for cooking.

The FMCSA believes that the motor carrier and driver populations required to service residential users of home heating oil provide a better opportunity for conducting a pilot program. The agency does not believe that limiting the program to home heating oil will adversely impact motor carriers transporting propane, or consumers relying on propane as their primary means of residential space heat. It is very unlikely that residential propane customers would switch or alter their heating systems to use heating oil simply because the agency is conducting a pilot program for three consecutive winter seasons. This is especially the case given that there are no guarantees that the regulatory alternative allowed during the pilot program will become part of the Federal hours of service rules. Nor is it clear that any cost savings realized by companies delivering home heating oil under the pilot program would be passed along to consumers. Therefore, the implementation of a pilot program should not, in and of itself, place propane distributors at an economic disadvantage compared to transporters of home heating oil.

As for the NTTC, the agency does not believe the program should be expanded to include deliveries to terminals and distribution points. The purpose of the program is to test an alternative to the current 60-/70-hour rule for a segment of the trucking industry responsible for delivering heating fuel to residential customers. To include terminals and distribution points would shift the focus away from the potential needs of residential customers, and towards business and/or commercial activities that may not be as much of a factor in making certain consumers have an adequate supply of heating fuel.

The FMCSA does not consider it necessary to include a restriction on the size of the vehicles used in the pilot program. Since the program limits participation to motor carriers making residential deliveries, the maximum size of the vehicles used would be governed by the residential street configuration, and applicable local rules restricting certain classes of CMVs from residential neighborhoods. While NTTC members may compete with PMAA members, both groups can participate in the program provided they are delivering home heating oil within a 100 air-mile radius of a central terminal or distribution point. Membership in the PMAA is not a prerequisite for participation in the pilot program.

FMCSA Determination

The FMCSA is exercising its authority under TEA–21 to initiate a pilot program in which the agency will grant an exemption from the weekly (but not the daily) limitation in the Federal

hours-of-service regulations for drivers of CMVs making home heating oil deliveries in interstate commerce. The program would cover deliveries that occur within a 100 air-mile radius of central terminals or distribution points, during the winter months (November 1 to April 1). Deliveries between terminals and distribution points would not be covered by the exemption. The exemption to enable interstate motor carriers to participate in the pilot program would preempt inconsistent State hours-of-service requirements applicable to interstate commerce.

The FMCSA will include drivers making intrastate deliveries of home heating oil in the pilot program and is therefore requesting assistance from the States in which these drivers operate. The agency is allowing States to grant temporary exemptions from the weekly limitations provisions of their intrastate hours-of-service regulations for the transportation of home heating oil during the winter months for the purpose of enabling intrastate motor carriers conducting such operations to do so under State-established terms and conditions identical to those used by the FMCSA. The States may grant the intrastate exemptions without jeopardizing MCSAP funding to those States.

Intrastate motor carriers transporting home heating oil in States that have established identical terms and conditions for the temporary hours-of-service exemption must submit all required information to the FMCSA. The FMCSA will, in turn, provide the respective States with lists of the intrastate motor carriers and drivers the FMCSA believes should be considered eligible for the States' approval for participation. The States may allow the intrastate motor carriers and drivers to operate under the terms and conditions of the study based on recommendations from the FMCSA. This process is necessary because the FMCSA does not have the authority to grant intrastate exemptions.

Unlike the previous pilot program for drivers delivering home heating oil, this one does not require the States to meet any criteria (e.g., having an approved plan for monitoring the motor carriers, or having a substantial number of citizens relying upon home heating oil, etc.) before being allowed to grant the temporary exemptions.

The FMCSA has determined that the proposed eligibility requirement for motor carriers and drivers is, with one exception (concerning carriers currently under investigation), appropriate for use in the pilot program. The agency is requiring that interstate motor carriers meet three eligibility criteria discussed below for participating in the pilot program. The States granting temporary exemptions must require that intrastate carriers meet the same eligibility requirements in order to take advantage of the exemption. The purpose of the eligibility criteria for motor carriers is to keep entities with questionable safety performance and/or safety management controls out of the program.

The first criterion is that participating motor carriers be either "unrated," or have a current safety rating of "Satisfactory." Unrated motor carriers are those that have not received compliance reviews or audits. The compliance review is an on-site examination of a motor carrier's operations, including records on drivers' hours of service, maintenance and inspection, driver qualification, commercial drivers license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The FMCSA is allowing unrated motor carriers to participate since it would be unfair to exclude them simply because they were not selected by the agency for a compliance review. The absence of a compliance review is in no way an indication that the carrier has done anything wrong or has safety problems.

Motor carriers that have received compliance reviews are required to have a "satisfactory" rating. This means that a motor carrier has in place adequate safety management controls to comply with the Federal safety regulations, and that the safety management controls are appropriate for the size and type of operation of the motor carrier. The agency is not allowing motor carriers with conditional or unsatisfactory ratings to participate because both of those ratings indicate there are safety management control problems. There is little reason to believe that carriers rated either unsatisfactory or conditional could be relied upon to comply with the terms and conditions for participating in the pilot program.

The second criterion is that motor carriers must not have been the subject of a Federal or State investigation resulting in penalties or fines for violations of motor carrier safety, or hazardous materials transportation, regulations or laws within the last three years. If a motor carrier's operating practices are such that an investigation followed by penalties or fines was necessary, its safety management controls are not adequate for the purposes of the pilot program. This criterion will be used irrespective of a motor carrier's safety rating.

The third criterion involves accidents. A motor carrier cannot participate in the program if the cause of, or a contributing factor to, any of its accidents in the past three years was determined to be (1) a CMV owned or operated by the carrier that was in unsafe operating condition or (2) a driver for the carrier who violated Federal or State regulations. For purposes of this criterion, "accidents" are the incidents specified in 49 CFR 390.5. An unsafe operating condition is typically one that is likely to cause an accident or a breakdown of the vehicle (which could also trigger an accident). A Federal, State, or local official responsible for investigating the cause of CMV accidents must make the determination of causation.

With regard to the proposed criterion that motor carriers must not currently be the subject of any Federal or State investigation of alleged violations of motor carrier safety or hazardous materials transportation regulations or laws, the agency has reconsidered this requirement and has determined that it is inappropriate. The proposed criterion implied wrongdoing on the part of the motor carrier whenever allegations of regulatory violations are made. This approach would be fundamentally unfair to motor carriers. Allegations are not evidence. They are sometimes based on a misunderstanding of the regulations; in rare cases, they may even be made in bad faith. The FMCSA (or a State applying the same standards) will not bar a motor carrier from the program unless it has evidence that the carrier fails to meet the criteria for eligibility.

The FMCSA has determined that drivers must also meet criteria to participate in the pilot program. Participating drivers must not have committed, during the past three years, any disqualifying offenses listed in (1) 49 CFR 383.51 concerning commercial driver's license disqualifications and penalties, (2) 49 CFR 391.15 concerning disqualification of drivers operating CMVs in interstate commerce, or (3) comparable State regulations or laws concerning disqualifications of individuals operating vehicles with a gross vehicle weight rating/gross combination weight rating or gross weight of 10,001 pounds or more. The disqualifying offenses include regulatory violations such as driving a commercial motor vehicle while under the influence of alcohol, driving under the influence of a controlled substance, leaving the scene of an accident, and using a commercial motor vehicle in the

commission of a felony involving manufacturing, distributing, or dispensing a controlled substance. The driver criteria are intended to prevent unsafe drivers from participating in the pilot program. This determination will be made independent of any decision concerning the motor carrier's eligibility. If the driver has been convicted of a disqualifying offense within the last three years, the driver cannot be included in the participating carrier's pool of drivers that use the alternative restart.

Structure of the Home Heating Oil Pilot Program

The FMCSA's Home Heating Oil Pilot Program is a simplified version of the intrastate program established in 1997 in response to the NHS Designation Act. The program will include interstate and intrastate motor carriers delivering home heating oil within a radius of 100 air-miles of a central terminal or distribution point, during the winter. Deliveries between terminals or distribution points are not covered by this exemption. The exemption covers three consecutive winters, beginning with November 1, 2001, through April 30, 2002, and followed by two successive winters. The length of the exemption period is intended to accommodate motor carriers operating in regions of the country where there is a significant demand for heating oil before the first official day of winter, or after the first day of spring. Through this notice of final determination, the FMCSA is establishing the criteria for motor carriers to participate in the study. The agency will collect and analyze data concerning the safety performance of these carriers during the study.

The FMCSA believes the terms and conditions of the pilot program will ensure that the program achieves a level of safety equivalent to, or greater than, that achieved through compliance with the safety regulations. The terms and conditions, or safety measures, presented below are designed to ensure that the program does not adversely affect safety.

Alternative Hours-of-Service Restart

The FMCSA is allowing participating motor carriers to "restart" calculations for the 60- or 70-hour rule, whichever is applicable, after the driver has an off-duty period encompassing two consecutive nights off-duty that include the periods from midnight to 6 a.m. However, if the driver reached the 60- or 70-hour limit without having taken any such off-duty period, he or she is required to do so at that time. Drivers are required to comply with the 10-hour driving limit in § 395.3(a)(1).

The FMCSA continues to believe there is sufficient scientific information to justify a limited pilot program allowing drivers for motor carriers that deliver home heating oil to "restart" their calculations for the 60-hour or 70-hour rule, whichever is applicable, after having an off-duty period encompassing two consecutive nights off-duty that include the periods from midnight to 6 a.m.

The FMCSA believes an off-duty period that includes two consecutive midnight to 6 a.m. periods to obtain restorative sleep would ensure these carriers a level of safety that is equivalent to, or greater than, the level of safety that they would achieve by complying with the current weekly limitations in the hours-of-service regulations. A minimum 32 to 56-hour break that includes the minimum of two consecutive nights of sleep would provide drivers a full day off with two sleep periods between the hours of midnight and 6 a.m.

The minimum off-duty periods are intended to afford the drivers the opportunity for restorative sleep. The "weekend" may be longer depending on when the motor carrier releases the driver from duty on the last workday of the workweek. However, the alternative "restart" in the pilot program would allow drivers to take as few as 32 consecutive hours off-duty on a "weekend," if the time period includes two consecutive midnight to 6 a.m. periods and the driver is released from work at exactly 11 p.m. on the last workday of the workweek.

It is unreasonable to expect that a driver will get full advantage of two consecutive midnight to 6 a.m. sleep periods if he/she is released at or just before midnight, and required to return to work at or just after 6 a.m. Therefore, the FMCSA has chosen 11 p.m. as the latest time drivers could get off work and still get to sleep for the first full midnight to 6 a.m. period on the first night of a "weekend." Likewise, the agency has chosen 7 a.m. as the earliest time drivers could start a new workweek and still sleep the last full midnight to 6 a.m. period on the last night of a "weekend."

Generally, drivers would be off duty for more than the minimum 32 consecutive hours, but fewer than the 63 consecutive hours in a "normal weekend" (5 p.m. Friday to 8 a.m. Monday). A driver completing a workweek at 11 p.m., for example, could take the minimum 32 hours before beginning the next workweek. A driver completing a workweek at 11:10 p.m., though, would have to be off-duty for approximately 56 hours before beginning the next workweek.

The FMCSA is not suggesting that participating motor carriers provide only 32 hours that include the two consecutive midnight to 6 a.m. periods. That is the minimum off-duty time. The FMCSA expects the participating motor carriers to provide, and drivers to take, as much time as necessary to recover from any sleep debts and other conditions resulting from cumulative weekly fatigue.

Drivers and motor carriers utilizing the "restart" provisions will, of course, continue to operate as their customers insist, generally making home heating oil deliveries only between the hours of 7:00 a.m. and 5:00 p.m. That fact, combined with the 10- and 15-hour rules which remain applicable to the pilot program [§§ 395.3(a)(1) and 395.3(a)(2), respectively] and the "weekend" requirements discussed above, ensures that drivers should have enough daily rest to avoid a significant sleep debt and enough time periodically off duty to eliminate any cumulative fatigue that may occasionally develop despite these precautions.

Management of the Program

The FMCSA is managing the home heating oil program, including the collection and analysis of all data, and the monitoring of all motor carriers participating in the program. However, we are requesting that the States make compliance with the FMCSA's monitoring requirements a condition of their waiving the intrastate hours-of-service requirements. The agency has developed a pilot program plan which includes the elements specified in 49 CFR 381.505.

Pilot Program Plan

The FMCSA will review participating carriers' accident data from the three-years prior to entering the pilot program, and compare this pre-pilot program safety performance data with data collected during the program. This before-and-after comparison will provide a practical and effective means of determining whether the alternative restart provision affects safety performance, provided there are no other significant changes in the operating practices of the participating carriers that could also affect safety performance.

Eligibility Criteria for Motor Carriers To Participate

The FMCSA is requiring that interstate motor carriers meet all of the eligibility criteria listed below for

participating in the pilot program. The States granting temporary exemptions must require that intrastate carriers meet the same eligibility requirements in order to take advantage of the exemption. The purpose of the eligibility criteria is to keep motor carriers with questionable safety performance and/or safety management controls out of the program. Participating motor carriers—

1. Must be either "unrated," or have a current safety rating of "Satisfactory" issued, by the FMCSA (or the FHWA or OMCS prior to the establishment of the FMCSA), or a State;

2. Must not have been the subject of a Federal or State investigation resulting in penalties or fines for violations of motor carrier safety or hazardous materials transportation regulations or laws within the last three years;

3. Must not have had, during the last three years, any accidents (as defined in 49 CFR 390.5) in which a determination was made by a Federal, State, or local official responsible for investigating the cause of CMV accidents, that the motor carrier's CMV was in unsafe operating condition (i.e., a condition likely to cause an accident, or breakdown of the vehicle) and the mechanical condition was a contributing factor in the accident, or that the driver was cited for violation of Federal or State motor carrier safety regulations or laws (whichever were applicable at the time of the accident) and the driver's violation of those regulations or laws was a contributing factor in the accident.

Participating drivers must not have committed, during the past three years, any disqualifying offences listed in (1) 49 CFR 383.51 concerning commercial driver's license disqualifications and penalties, (2) 49 CFR 391.15 concerning disqualification of drivers operating CMVs in interstate commerce, or (3) comparable State regulations or laws concerning disqualifications of individuals operating vehicles with a gross vehicle weight rating/gross combination weight rating or gross weight of 10,001 pounds or more.

Process for Motor Carriers To Apply for Participation in the Pilot Program

In order to be considered for the pilot program interstate motor carriers (or intrastate motor carriers operating in States that agree to grant exemptions consistent with the requirements and conditions of this program) must submit, in writing, the following to the FMCSA:

(1) The name of the motor carrier;

(2) USDOT Number, MC Number, and State-issued motor carrier identification number;

(3) The address for the principal place of business, telephone number, and fax number;

(4) Name and title of company official who will serve as the carrier's point of contact for inquiries from the FMCSA;

(5) A driver roster consisting of names and driver license numbers and State of licensure for all participating drivers;

(6) The number of home heating oil delivery vehicles that will be operated by drivers using the alternative restart;

(7) The total number of accidents, as defined in § 390.5, for each of the previous three calendar years, and the number of accidents that occurred during each of the previous winter seasons (November 1 through April 30);

(8) The following certification signed by a motor carrier official:

I certify that *(Name of the motor carrier)* operates CMVs used to deliver home heating oil, and is not currently rated "Unsatisfactory" or "Conditional" by the FMCSA (or the FHWA prior to the establishment of the FMCSA), or a State. I certify that each of the drivers listed on the roster is eligible to participate in the project, that each operates a CMV used predominantly to transport home heating oil, and that we have verified that the driving record of each driver does not include any convictions within the past three years of any disqualifying offense. I have read and agree to be bound by the requirements for notification and submission of information to the FMCSA outlined in the section entitled "The Agreement" in the notice of final determination for this project. I certify under penalty of perjury pursuant to 28 U.S.C. 1746 that the foregoing is true and correct.
Executed on ___ (Date)
Signature _____
Name _____
Title _____
Name of Motor Carrier _____

Intrastate motor carriers operating in States that provide a temporary exemption must also submit their requests for participation to the FMCSA. The FMCSA will provide the State with a list of the motor carriers and drivers for the State's approval for participation in the Study. If the State agrees with the FMCSA's recommendation, the carriers and drivers will be allowed to participate in the study and must agree to submit required accident information to the FMCSA during the study.

If the FMCSA determines that a motor carrier applicant is qualified to participate in the pilot program, the agency will notify the carrier by letter. The agency will notify intrastate motor carriers after the State in which they operate approves their participation in the study. A copy of the letter must then be made available by the motor carrier to each driver and carried onboard the vehicle at all times the vehicle is being operated under the terms and conditions of this program.

The Agreement

All motor carriers participating in the pilot program must limit participation in the program to only those drivers predominantly engaged in the delivery of home heating oil to residential customers within a 100 air-mile radius of central terminals or distribution points, during winter months. A driver is not "predominantly engaged" in residential deliveries if more than 20 percent of his or her deliveries, on a weekly basis, are to non-residential customers. Motor carriers and drivers must meet the eligibility requirements to be accepted into the pilot program, and to remain in the program.

Participating motor carriers are allowed to "restart" calculations for the 60- or 70-hour rule (§ 395.3(b)(1) or (b)(2), respectively), whichever is applicable, after the driver has an off-duty period encompassing two consecutive nights off-duty that include the periods from midnight to 6 a.m. However, if the driver reaches the 60- or 70-hour limit without having taken any such off-duty period, he or she is required to do so at that time. Drivers must comply with the 10-hour driving limit in § 395.3(a)(1), and the 15-hour on-duty limit in § 395.3(a)(2).

The off-duty period used to "restart" the calculations for the 60- or 70-hour rule must not begin any later than 11 p.m. for the first full midnight to 6 a.m. period on the first night of a "weekend." The earliest time drivers may start a new workweek and still sleep the last full midnight to 6 a.m. period on the last night of a "weekend" is 7 a.m. Participating motor carriers must provide, and driver must take, as much time as necessary to recover from any sleep debts and other conditions resulting from cumulative weekly fatigue.

Participating drivers must comply with § 395.3(b)(1) or (b)(2), whichever is applicable, while performing driving tasks other than delivering home heating oil to residential customers within 100 air-miles of central terminals or distribution points.

By agreement, participating motor carriers must do the following:

1. Within 10 business days following an accident (as defined in 49 CFR 390.5) or any unintentional discharge of home heating oil that requires the submission of the Department of Transportation Hazardous Materials Incident Report (DOT Form F 5800.1) (see 49 CFR

171.16) involving any of the motor carrier's CMVs, irrespective of whether the CMV was being operated by a participating driver, the motor carrier must submit the following information:

(a) Date of the accident,

(b) City or town in which the accident occurred, or city or town closest to the scene of the accident,

(c) Driver's name and license number,

(d) Vehicle number and State license number,

(e) Number of injuries,

(f) Number of fatalities, and

(g) Whether hazardous materials, other than fuel spilled from the fuel tanks of the motor vehicles involved in the accident, were released,

(h) The police-reported cause of the accident,

(i) Whether the driver was cited for violating any traffic laws, motor carrier safety regulations, or hazardous materials discharge.

(j) Whether the driver was participating in the pilot program, and if so, the total driving time, on-duty time since the last restart period prior to the accident, and the length of the last restart period.

2. Notify the FMCSA of the addition of a new driver operating under the alternative restart pilot program within 10 business days, providing the name, driver license number, and date of employment of the new driver.

3. Notify the FMCSA within 10 business days after a participating driver ceases to be employed by the motor carrier providing the driver's name, license number, and date of termination.

4. Notify the FMCSA within 10 business days after a participating driver leaves the pilot program, providing the driver's name, license number, and date participation ended.

Removal From the Project

The FMCSA expects that any motor carrier satisfying the eligibility criteria of this project will maintain its safety record. However, should any deterioration occur, the FMCSA will, consistent with the statutory requirements of TEA–21, take all steps necessary to protect the public interest, as well as the integrity of the program. Participation in this program is voluntary, and the FMCSA will immediately revoke participation of an interstate motor carrier or driver for failure to comply with the terms and conditions of the pilot program, or immediately terminate the pilot program if its continuation proves to be inconsistent with the goals and objectives of the safety regulations issued under the authority of 49 U.S.C. chapter 313, or 49 U.S.C. 31136.

With regard to intrastate motor carriers and drivers, the FMCSA will notify State officials immediately if the agency determines that the carrier or driver has failed to comply with the terms and conditions of the pilot program. The FMCSA will request that the State agency granting the temporary exemption immediately revoke participation of the intrastate motor carrier or driver.

FMCSA Use of Data

The FMCSA plans to carefully review the data collected as a result of the program in preparing a report to the Congress, as required by the TEA–21. The agency will document findings, conclusions, and recommendations of the program, including any suggested amendments to laws and regulations that would enhance motor carrier and driver safety and improve compliance with the hours-of-service regulations.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA)(44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this program is subject to the PRA and the required clearance documents were submitted to the OMB for its approval of this information collection requirement.

This **Federal Register** notice establishes a voluntary pilot program for participation by certain motor carriers that transport home heating oil. In return for receiving an exemption from the weekly limitations in the Federal hours-of-service regulations, or comparable State hours-of-service requirements, each program motor carrier is required to develop and/or furnish certain information about its operations, determine the eligibility of its drivers to participate in the program, provide information about past accidents, and agree to provide detailed information about accidents that occur during the pilot program. It is anticipated that the initial application will require on average, about one hour to complete. This document is necessary to identify those motor carriers that believe they are eligible to participate in the project, and to indicate their desire to be included in the project.

Participating motor carriers are required to submit to the FMCSA: (1) The total number of CMVs that will be operated by a driver using the alternative to the 60-/70-hour restart; (2) the names and driver license numbers for all drivers using the alternative restart; (3) the total number of accidents (as defined in 49 CFR 390.5) for each of the three years prior to participating in the project, including the total number of injuries and fatalities; (4) information about all accidents that occur while the carrier is participating in the program; and (5) information about the addition or removal of drivers from the project.

The most likely respondents to this information collection will be motor carriers operating CMVs transporting home heating oil during the winter, with a safety rating of satisfactory or unrated. The FMCSA does not have a precise count of the total number of carriers that would be eligible to participate in the program. However, the PMAA represents approximately 8,000 motor carriers that supply home heating oil. For the purposes of estimating the information collection burden, the FMCSA used an estimate of 8,000 motor carriers.

Each accident involving project drivers must be reported to the FMCSA within 10 calendar days. This information is necessary in order to detect immediately those motor carriers whose safety performance is declining during the project and will also be used to assist in making the before-and-after comparison of each carrier's safety performance. The reporting and recordkeeping burden for this information is estimated to be 15 minutes per accident.

With regard to the total reporting requirement, if 8,000 motor carriers participate, a total of 8,000 hours would be expended by these carriers to apply for the project. If each of the motor carriers averages two accidents per winter, the burden for each year would be 4,000 hours (0.25 hours per accident × (2 accidents per year × 8,000 motor carriers) = 4,000 hours per year. The total burden for submitting accident data during the three-winter period would be 12,000 hours. Therefore, the FMCSA estimates approximately 20,000 burden hours during the pilot project.

The FMCSA requested public comment on the collection of information discussed above as part of the February 16, 2000, notice of proposal to conduct the pilot program. None of the commenters to the docket discussed the information collection burden. Therefore, the FMCSA is using the estimates included in the proposal for the pilot program.

Issued on: July 9, 2001.

Brian M. McLaughlin,

Associate Administrator for Policy and Program Development.

[FR Doc. 01–17573 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–10094]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TONYA LEE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 13, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10094. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* Tonya Lee. Owner: Thomas E. Weske and Judith A. Weske.

(2) Size, capacity and tonnage of vessel. According to the applicant: "* * * Gross Tons 10, Net Tons 8, Length 28 ft, Breadth 10 ft, Depth 5.5 ft"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Coastwise passenger: Charter Fishing, Sightseeing, Whale Watching. Southeast Alaska: Juneau to Skagway to Cross sound to Sitka to Ketchikan to Juneau."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1978. Place of construction: Unknown.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This waiver will have no more or less impact on the charter fleet or any other commercial operators than other vessel licensed to operate in this geographic area."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This vessel * * * will have no effect on any U.S. shipbuilders now or in the future."

Dated: July 10, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–17582 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–10095]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the coastwise trade laws for the vessel ADVENTURE CAT.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 13, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10095. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime

Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: *Adventure Cat*. Owner: J.B. Ewing Enterprises, Inc.

(2) Size, capacity and tonnage of vessel. According to the applicant: "* * * 9.7 tons. It is a 47 feet catamaran with a 23-foot beam and has 4 staterooms."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "This is a charter vessel with a captain and crew and no more than 12 guests for sailing in the Gulf of Mexico from the Sanibel Island area."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1998. Place of construction: Bordeaux, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Currently there is no other vessel of this class, size and capacity offing sailing services in the Southwest Florida or the Gulf waters. We do have within 100 miles, larger vessels who market themselves as 50 or more guests for fishing, sightseeing and gambling."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The U.S. boat manufacturers passed on the construction of large sailing catamaran, as it was not view as a profitable market. I also learn from U.S. salesmen for Beneteau Group (who own Lagoon) that the France government had made available tax relief for this vessel type and class allowing it to be made in France. If I were a U.S. boat builder back then, looking at this market size, I too would let someone else build the vessel and focus all my resources to a more production volume vessel for the U.S. market."

Dated: July 10, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–17581 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34064]

Waccamaw Coast Line Railroad—Modified Rail Certificate

On June 25, 2001, the Waccamaw Coast Line Railroad (WCLR), a division of The Baltimore and Annapolis Railroad Company (B&A), a Class III rail carrier, filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity*, to operate approximately 14.1 miles of rail line owned by Horry County, SC, between the connection with the B&A d/b/a The Carolina Southern Railroad Company tracks at Station 9 + 34.65 (milepost 336.18) in the City of Conway, SC, and the end of track beyond the Intracoastal Waterway at Station 748 + 30.23 (milepost 350.17) within the limits of the City of Myrtle Beach, SC.

Horry County, SC, a political subdivision of the State of South Carolina, owns the track and right-of-way that is the subject of this notice. Horry County purchased the trackage in 1984 under 49 CFR 1150.22, after it was abandoned by the Seaboard System Railroad (now CSX Transportation, Inc.). *See Seaboard System Railroad Inc.—Abandonment—In Horry County, South Carolina*, ICC Docket No. AB–55 (Sub-No. 107) (ICC served Sept. 12, 1984). The trackage is approximately 14.1 miles in length, running between Conway and Myrtle Beach. Horry County received title by deed dated October 22, 1984.

The Horry County Railroad Company was the initial operator over the line, later changing its name to WCLR. Ownership of WCLR changed in 1990. A dispute subsequently developed regarding car interchange at Conway between WCLR and the Mid-Atlantic Railroad Co., Inc. (MRR), the sole interline connection for WCLR. On or about September 22, 1995, B&A, successor-in-interest to MRR, acquired most of the assets of WCLR, including the track lease, and continued operation of WCLR as a separate division under a series of a short-term leases from Horry County.

The initial term of the lease between Horry County and B&A is 30 years. The lease commenced on February 9, 2001, with one renewal term of 20 years.

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions*, Finance Docket No. 28990F (ICC served July 16, 1981).

WCLR indicates that no subsidy is involved, that there are no preconditions for shippers to meet in order to receive rail service, and that B&A has obtained liability insurance coverage.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 1120 G St., NW., Suite 520, Washington, DC 20005.

Decided: July 9, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–17580 Filed 7–12–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–565 (Sub-No. 1X) and AB–55 (Sub-No. 598X)]

New York Central Lines, LLC—Abandonment Exemption—in Middlesex County, MA; CSX Transportation, Inc.—Discontinuance of Service Exemption—in Middlesex County, MA

On June 25, 2001, New York Central Lines, LLC (NYC), and CSX Transportation, Inc. (CSXT), jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for NYC to abandon and

CSXT to discontinue service over a 4.80-mile portion of a line of railroad known as the Albany Division, Fitchburg Subdivision, extending from milepost QBS 0.00 at Framingham to milepost QBS 4.80 at South Sudbury, in Middlesex County, MA.[1] The line traverses U.S. Postal Service Zip Code 01701. There are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in the railroads' possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 12, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 2, 2001. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–565 (Sub-No. 1X) and AB–55 (Sub-No. 593X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, Jacksonville, FL 32202. Replies to the exemption petition are due on or before August 2, 2001.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 9, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–17579 Filed 7–12–01; 8:45 am]

BILLING CODE 4915–00–P

[1] CSX Corporation, CSXT's parent company, and Norfolk Southern Corporation jointly acquired control of Conrail Inc., and its wholly owned subsidiary, Consolidated Rail Corporation (Conrail). As a result of that acquisition, certain assets of Conrail have been assigned to NYC, a wholly owned subsidiary of Conrail, to be exclusively operated by CSXT pursuant to an operating agreement. The line to be abandoned is included among the property being operated by CSXT pursuant to the NYC operating agreement.

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Acceptance Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 20 to the Treasury Department Circular 570; 2000 Revision, published June 30, 2000 at 65 FR 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 65 FR 40869, June 30, 2000.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 30, 2001.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 01–17504 Filed 7–12–01; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Liquidation—Amwest Surety Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: Liquidation of an insurance company formerly certified by this Department as an acceptable surety/reinsurer on Federal bonds.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Amwest Surety Insurance Company, a Nebraska company, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 65 FR 40873, June 30, 2000. The Company's authority was terminated by the Department of the Treasury effective May 31, 2001. Notice of the termination was published in the **Federal Register** of May 31, 2001, on page 29632.

On, June 7, 2001, upon a petition by the Director of Insurance for the State of Nebraska, the District Court of Lancaster County, Nebraska, issued an Order of Liquidation with respect to Amwest Surety Insurance Company. L. Tim Wagner, Director of Insurance for the State of Nebraska, was appointed as the Liquidator. All persons having claims

against Amwest Surety Insurance Company must file their claims by June 7, 2002, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. Federal Agencies should assert claim priority status under 31 U.S.C. 3713, and send a copy of their claim, in writing, to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044–0875, Attn: Mr. Randy Harwell, Attorney.

The above office will consolidate and file any and all claims against Amwest Surety Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Mr. Harwell at (202) 307–0180.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, (202) 512–1800. When ordering the Circular from GPO, use the following stock number 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 30, 2001.

Wanda Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 01–17507 Filed 7–12–01; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Bankers Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 21 to the Treasury Department Circular 570; 2000 Revision, published June 30, 2000 at 65 FR 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 65 FR 40874, June 30, 2000.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 30, 2001.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 01–17505 Filed 7–12–01; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Liquidation—Credit General Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: Liquidation of an insurance company formerly certified by this Department as an acceptable surety/reinsurer on Federal bonds.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Credit General Insurance Company, an Ohio company, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 64 FR 35872, July 1, 1999. The Company's authority was terminated by the Department of the Treasury effective June 29, 2000. Notice of the termination was published in the **Federal Register** of July 13, 2000, on page 43404.

On January 5, 2001, upon a petition by the Superintendent of Insurance for the State of Ohio, the Court of Common Pleas of Franklin County, Ohio, issued an Order of Liquidation with respect to Credit General Insurance Company. Douglas L. Hertlein was appointed as the Chief Deputy Liquidator. All persons having claims against Credit General Insurance Company must file their claims by January 31, 2002, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. Federal Agencies should assert claim priority status under 31 U.S.C. 3713, and send a copy of their claim, in writing to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044–0875, Attn: Mr. Randy Harwell, Attorney.

The above office will consolidate and file any and all claims against Credit General Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Mr. Harwell at (202) 307–0180.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, (202) 512–1800. When ordering the Circular from GPO, use the following stock number 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 30, 2001.

Wanda Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 01–17506 Filed 7–12–01; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 66, No. 135
Friday, July 13, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

[Docket No. FGIS-2001-001b]

RIN: 0580-AA75

Fees for Official Inspection and Official Weighing Services

Correction

In rule document 01–17005 beginning on page 35751 in the issue of Monday, July 9, 2001, make the following correction:

§800.71 [Corrected]

On page 35753, §800.71(a), in Table 1, "(1) Inspection and Weighing Services Hourly Rates (per service representative)" should appear directly beneath the table heading.

[FR Doc. C1–17005 Filed 7–12–01; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 3575]

Bureau of Political-Military Affairs; Amendments to the International Traffic in Arms Regulation: Canadian Exemption

Correction

In rule document 01–3877 beginning on page 10575 in the issue of Friday, February 16, 2001, make the following corrections:

§126.5 [Corrected]

1. On page 10576, second column, §126.5 (b), fifth line, "paragraph" should read "paragraphs".

2. On the same page, second column, §126.5 (b), sixth line, "section", should read "section,".

3. On the same page, third column, §126.5 (b), first line, "section", should read "section,".

[FR Doc. C1–3877 Filed 7–12–01; 8:45 am]
BILLING CODE 1506–01–D

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 7, and 23

[Docket No. 01–13]

RIN 1557–AB94

Investment Securities; Bank Activities and Operations; Leasing

Correction

In rule document 01–16328 beginning on page 34784 in the issue of Monday, July 2, 2001, make the following corrections:

1. On page 34786, in the preamble, in the third column, in the second paragraph, in the 12th line, remove the word "is" after "however,".

2. On the same page, in the preamble, in the same column, in the third paragraph, in the 13th line, remove the "," and insert a "." after the word "change", and remove the text "and, therefore, we adopt it in the final rule as proposed. change." that follows.

[FR Doc. C1–16328 Filed 7–12–01; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
July 13, 2001

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6768–3]

RIN 2060–AE48

National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for integrated iron and steel manufacturing facilities. The EPA has identified integrated iron and steel manufacturing facilities as a major source of hazardous air pollutant (HAP) emissions. These proposed standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT).

The HAP emitted by facilities in the integrated iron and steel manufacturing source category include metals (primarily manganese and lead with small quantities of other metals) and trace amounts of organic HAP (such as polycyclic organic matter, benzene, and carbon disulfide). Exposure to these substances has been demonstrated to cause adverse health effects, including chronic and acute disorders of the blood, heart, kidneys, reproductive system, and central nervous system.

DATES: *Comments.* Submit comments on or before October 11, 2001.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by August 3, 2001, a public hearing will be held on August 13, 2001.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–44, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–44, Room M–1500, U.S. EPA, 401 M Street, SW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public hearing. If a public hearing is held, it will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC beginning at 10 a.m.

Docket. Docket No. A–2000–44 contains supporting information used in developing the proposed standards. The docket is located at the U.S. EPA, 401 M Street SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Phil Mulrine, Metals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5289, electronic mail address: mulrine.phil@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: air-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect ® version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–2000–44. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Roberto Morales, U.S. EPA, OAQPS Document Control Officer, Attn: Phil Mulrine, 411 W. Chapel Hill Street, Room 740B, Durham, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mary Hinson, Metals Group, Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5601, in advance of the public hearing. Persons interested in attending the public hearing must also call Mary Hinson to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this proposed rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Example of regulated entities
Integrated iron and steel mills	3312	331111	Steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.7781 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the statutory authority for NESHAP?
B. How do we develop NESHAP?
C. What source category is affected by this proposed rule?
D. What processes are used at integrated iron and steel manufacturing facilities?
E. What HAP are emitted and how are they controlled?
F. What are the health effects associated with emissions from integrated iron and steel manufacturing processes?
II. Summary of the Proposed Rule
A. What are the affected sources and emission points?
B. What are the emission limitations?
C. What are the operation and maintenance requirements?
D. What are the initial compliance requirements?
E. What are the continuous compliance requirements?
F. What are the notification, recordkeeping, and reporting requirements?
G. What are the compliance deadlines?
III. Rationale for Selecting the Proposed Standards
A. How did we select the affected sources?
B. What criteria are used in the development of NESHAP?
C. How did we determine the bases and levels of the proposed standards?
D. How did we select the initial compliance requirements?
E. How did we select the continuous compliance requirements?
F. How did we select the notification, recordkeeping, and reporting requirements?
IV. Summary of Environmental, Energy, and Economic Impacts
A. What are the air emission impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health, environmental and energy impacts?
V. Solicitation of Comments and Public Participation
VI. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996(SBREFA), 5 U.S.C. *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act

I. Background

A. What Is the Statutory Authority for NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's proposed NESHAP, Integrated Iron and Steel Manufacturing, was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tons/yr of any one HAP or 25 tons/yr of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

The NESHAP for new and existing sources developed under section 112 must reflect the maximum degree of reduction of HAP emissions that is achievable taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental benefits, and energy requirements. Emission reductions may be accomplished through promulgation of emission standards under section 112(d). These may include, but are not limited to:

- Reducing the volume of, or eliminating emissions of HAP through process changes, substitution of materials, or other modifications;
- Enclosing systems or processes to eliminate emissions;
- Collecting, capturing, or treating such pollutants when released from a process, stack, storage, or fugitive emissions point;
- Design, equipment, work practice or operational standards or any combination thereof if it is not feasible to prescribe or enforce an emission standard (including requirements for operator training or certification); or
- A combination of the above.

Section 112 requires us to establish standards that are no less stringent than a certain minimum baseline, we refer to this as the "MACT floor." For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The standards for existing sources can be less stringent than the standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (excluding certain sources) for categories and subcategories with 30 or more sources. For categories and subcategories with fewer than 30 sources, the standards cannot be less stringent than the average emission limitation achieved by the best-performing five sources.

We may take alternative approaches to establishing the MACT floor, depending on the type, quality, and applicability of available data. The three approaches most commonly used involve reliance on State regulations or permit limits, source test data that characterize actual emissions, and use of a technology floor with an accompanying demonstrated achievable emission level that accounts for process and/or air pollution control device variability.

Section 112(d) allows us to distinguish among classes, types, and sizes of sources within a category or subcategory. For example, we can establish classes of sources within a category or subcategory based on size and establish a different emission standard for each class, provided both standards are at least as stringent as the MACT floor for that class of sources.

We evaluate several alternatives (which may be different levels of emission control or different levels of applicability or both) to select the one that best reflects the appropriate MACT level. The selected alternative may be more stringent than the MACT floor, but the control level selected must be technically achievable. In selecting an alternative, we consider the achievable HAP emission reduction (and possibly other pollutants that are co-controlled), cost and economic impacts, energy impacts, and other environmental impacts. The objective is to achieve the maximum degree of emission reduction without unreasonable economic or other impacts. The regulatory alternatives selected for new and existing sources may be different because of different MACT floors, and separate regulatory decisions may be made for new and existing sources.

We then translate the selected regulatory alternative into a proposed rule. The public is invited to comment on the proposal during the public comment period. Based on an evaluation of these comments, we reach a final decision and promulgate the standards.

C. What Source Category Is Affected by This Proposed Rule?

Section 112(c) of the CAA requires us to list all categories of major and area

sources of HAP for which we will develop national emission standards. We published the initial list of source categories on July 16, 1992 (57 FR 31576). "Integrated Iron and Steel Manufacturing" is one the source categories on the initial list. The listing was based on our determination that integrated iron and steel manufacturing facilities may reasonably be anticipated to emit a variety of HAP listed in section 112(b) in quantities sufficient to be major sources.

An integrated iron and steel manufacturing facility produces steel from iron ore. The integrated iron and steel manufacturing source category includes sinter production, iron production, and steel production.

D. What Processes Are Used at Integrated Iron and Steel Manufacturing Facilities?

The primary processes of interest because of their potential to generate HAP emissions include sinter plants, blast furnaces that produce iron, and basic oxygen process furnaces (BOPF) that produce steel. There are also several ancillary processes, including hot metal transfer, desulfurization, slag skimming, and ladle metallurgy. Iron and steel are produced at 20 plant sites in the United States (U.S.) that have a total of 39 blast furnaces, 50 BOPF, and 9 sinter plants. Integrated iron and steel plants are located in ten States; however, the majority of the iron and steel is produced in Indiana, Ohio, and Illinois.

The sintering process converts fine-sized raw materials, including iron ore, coke breeze, limestone, mill scale, and flue dust, into an agglomerated product (sinter) of suitable size for charging into the blast furnace. The raw materials are mixed with water to provide a cohesive matrix and then placed on a continuous traveling grate called the sinter strand. A burner hood at the beginning of the sinter strand ignites the coke in the mixture, after which the combustion is self supporting and provides sufficient heat (2,400 to 2,700 degrees Fahrenheit) to cause surface melting and agglomeration of the mix. On the underside of the sinter strand are a series of windboxes that draw combusted air down through the material bed into a common duct leading to a gas cleaning device (either a venturi scrubber or a baghouse).

The fused sinter is discharged at the end of the sinter strand where it is crushed and screened. Undersize sinter is recycled to the mixing mill and back to the strand. The remaining sinter product is cooled in open air or in a circular cooler with mechanical fans. The cooled sinter is crushed and screened for a final time, then the fines are recycled and the product is sent to be charged to the blast furnace. Generally, 2.5 tons of raw materials, including water and fuel, are required to produce 1 ton of product sinter.

Iron is produced in blast furnaces by the reduction of iron bearing materials with a hot gas. The large, refractory lined furnace is charged through its top with iron ore, iron ore pellets, sinter, flux (limestone and dolomite), and coke, which provides fuel and forms a reducing atmosphere in the furnace. Many modern blast furnaces also inject pulverized coal to reduce the quantity of coke required. Iron oxides, coke, coal, and fluxes react with the heated blast air injected into the bottom of the furnace to form molten reduced iron, carbon monoxide (CO), and slag. The molten iron and slag collect in the hearth at the base of the furnace. The by-product gas is collected through offtakes located at the top of the furnace and is recovered for use as fuel.

The molten iron and slag are removed, or cast, from the furnace periodically. The casting process begins with drilling a hole, called the taphole, into the clay-filled iron notch at the base of the hearth. During casting, molten iron flows into runners that lead to transport ladles. Slag also flows from the furnace and is directed through separate runners to a slag pit adjacent to the casthouse, or into slag pots for transport to a remote slag pit. At the conclusion of the cast, the taphole is replugged with clay. The area around the base of the furnace, including all iron and slag runners, is enclosed by a casthouse.

The blast furnace by-product gas, which is collected from the furnace top, contains CO and particulate matter (PM). As a fuel, the blast furnace gas has a low heating value, about 75 to 90 British thermal units per cubic foot (Btu/ft^3). Before it can be efficiently burned, the PM must be removed from the gas. Initially, the gases pass through a settling chamber or dry cyclone to remove about 60 percent of the particulate. Next, the gases undergo a one or two stage cleaning operation. The primary cleaner is normally a wet scrubber, which removes about 90 percent of the remaining particulate. The secondary cleaner is a high-energy wet scrubber (usually a venturi) which removes up to 90 percent of the particulate that eludes the primary cleaner. Together, these control devices provide a clean fuel with less than 0.02 grains per dry standard cubic foot (gr/dscf) of PM. A portion of this gas is fired in the blast furnace stoves to preheat the blast air, and the rest is used in other plant operations.

After the molten iron (called "hot metal") is produced in the blast furnace, it is transferred to the BOPF shop. Brick-lined torpedo cars are used because their insulating properties lower heat loss from the iron. Hot metal transfer occurs when the molten iron is transferred ("reladled") from the torpedo car to the BOPF shop ladle.

Hot metal is desulfurized by adding various reagents such as soda ash, lime, and magnesium. The reagents are usually injected pneumatically with either dry air or nitrogen. Following desulfurization, any slag formed is skimmed from the ladle and the hot metal is transferred to a BOPF.

In the BOPF, molten iron from a blast furnace and iron scrap are refined by lancing (or injecting) high-purity oxygen. The input material is typically 70 percent hot metal and 30 percent scrap metal. The oxygen reacts with carbon and other impurities to remove them from the metal. Because the reactions are exothermic, no external heat source is necessary to melt the scrap and to raise the temperature of the metal to the desired range for tapping. For a BOPF, tapping begins when the furnace is tilted to remove steel and slag and ends when the furnace returns to an upright position. The large quantities of CO produced by the reactions in the BOPF can be controlled by combustion at the mouth of the furnace and then vented to gas cleaning devices, as with open hoods, or combustion can be suppressed at the furnace mouth, as with closed hoods.

The BOPF is a large (up to 400-ton capacity) refractory lined pear-shaped furnace. There are two major variations of the process. Conventional BOPF have oxygen blown into the top of the furnace through a water-cooled lance (top-blown). In the newer Quelle Basic Oxygen process (Q-BOP), oxygen is injected through tuyeres located in the bottom of the furnace (bottom-blown). A typical BOPF cycle consists of the scrap charge, hot metal charge, oxygen blow (refining) period, testing for temperature and chemical composition of the steel, alloy additions and reblows (if necessary), tapping, and slagging. The full furnace cycle typically ranges from 25 to 45 minutes.

Ladle metallurgy is a secondary step of the steelmaking process performed in a ladle after the initial refining process in the BOPF is completed. The purpose of ladle metallurgy (also referred to as secondary steelmaking) is to produce steel that satisfies the many stringent requirements associated with surface and internal quality as well as

mechanical properties. Nearly all of the integrated iron and steel facilities perform some type of ladle metallurgy, such as vacuum degassing, ladle refining, reheating, alloy addition, argon/oxygen decarburization, argon stirring, and lance powder injection.

After the steel has been refined in the BOPF and ladle metallurgy operations, the molten metal is transferred to a continuous casting operation where it is cast and subsequently rolled into a semi-finished product, such as a bloom, billet, or slab.

E. What HAP Are Emitted and How Are They Controlled?

1. Sinter Plants

The primary source of HAP emissions from sinter plants (over 40 percent) is the windbox exhaust. The windbox exhaust is a high volume stream of hot gases on the order of 300,000 to 600,000 dscfm. Control devices applied include baghouses and venturi scrubbers. The HAP emissions include HAP metal compounds, primarily lead and manganese, which comprise about 3 percent of the total PM. Organic HAP compounds, including both volatile and semivolatile HAP such as polycyclic organic matter, are also emitted. The organic compounds are formed from oily materials, mostly rolling mill scale, that are used in the sinter feed. Most plants minimize emissions of organic compounds by carefully monitoring and limiting the quantity of oil introduced with the sinter feed.

The discharge end emission points include the crusher, hot screen and various transfer points as the hot sinter is conveyed to the cooler. The sinter cooler stack is also an emission point. These operations are a source of PM emissions from the dusty sinter product and account for only 7 percent of the HAP emissions from the sinter plant. The most significant HAP found in emissions from the discharge and sinter cooler is manganese, which comprises only about 0.75 percent of the PM.

2. Blast Furnace Casthouse

The primary source of blast furnace emissions is the casting operation. Particulate emissions are generated when the molten iron and slag contact air above their surface. Casting emissions are also generated by drilling and plugging the taphole. The occasional use of an oxygen lance to open a clogged taphole can increase emissions. During the casting operation, iron oxides, magnesium oxide and carbonaceous compounds are generated as PM. The only significant HAP found in the PM is manganese, which comprises about 0.6 percent of the PM.

Casting emissions are controlled by evacuation through capture hoods to a baghouse or by suppression techniques. The basic concept of suppression techniques that use steam or inert gas is to prevent the formation of pollutants by preventing ambient air from contacting the molten surfaces. Newer furnaces have been constructed with evacuated covered runners and local hooding ducted to a baghouse.

3. Hot Metal Transfer, Desulfurization, and Slag Skimming

Hot metal transfer from the torpedo car into the BOPF shop ladle is accompanied by the emissions of kish, a mixture of fine iron oxide particles together with larger graphite particles. The reladling generally takes place under a hood to capture these emissions. Emissions during desulfurization are created by both the reaction of the reagents injected into the metal and the turbulence during injection. The pollutants emitted are mostly iron oxides, calcium oxides, and oxides of the compound injected. The sulfur reacts with the reagents and is skimmed off as slag.

The emissions generated from desulfurization and slag skimming are usually collected by a hood positioned over the ladle and vented to a baghouse. Many plants perform hot metal transfer, desulfurization, and slag skimming at the same station to take advantage of a single capture and control system. Manganese is the predominant HAP in the PM emissions. The level of manganese is expected to be comparable to that of PM from the casthouse (on the order of 0.6 percent).

4. Basic Oxygen Process Furnace

Emissions from the BOPF occur during charging, the oxygen blow and tapping. Fugitive emissions escape through the BOPF shop roof monitor, and stack emissions are released through primary and secondary control systems. The predominant compounds emitted are iron oxides, and the most significant HAP is manganese. Manganese comprises about 1 percent of the particulate, which is more than all of the other HAP metals combined.

Emissions during oxygen blow periods are controlled using a primary hood capture system located directly over the open mouth of the furnaces. Two types of capture systems are used to collect exhaust gas as it leaves the furnace mouth: a closed hood design that suppresses combustion, and an open hood design that promotes combustion. A closed hood fits snugly against the furnace mouth, ducting all PM and CO to a venturi scrubber. The CO is flared at the scrubber outlet stack. The open hood design allows combustion air to be drawn into the hood, thus burning the CO. Electrostatic precipitators (ESP) and venturi scrubbers are used as the primary controls for open hood BOPF.

Charging and tapping emissions are controlled by a variety of evacuation systems and operating practices. Charging hoods, tapside enclosures, and full furnace enclosures are used to capture these emissions and send them either to the primary control device or to a secondary device, usually a baghouse. Almost all closed hood BOPF have a secondary capture and control system, whereas many open hood BOPF rely on the primary system for capture and control of fugitive emissions.

5. Ladle Metallurgy

Most BOPF shops have a ladle metallurgy station where various adjustments are made to the steel's physical and chemical properties. Almost all ladle metallurgy stations are enclosed or hooded, and any fume from the vessel is ducted to a baghouse. There are few data on the HAP composition of ladle metallurgy emissions; however, the composition should be similar to that of emissions from the BOPF (primarily manganese).

F. What Are the Health Effects Associated With Emissions From Integrated Iron and Steel Manufacturing Processes?

There are a variety of metal HAP contained in the PM emitted from iron and steel manufacturing processes. These include primarily manganese and lead, with much smaller quantities of antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, nickel, and selenium. Organic HAP compounds are released in trace amounts from the sinter plant windbox exhaust and include polycyclic organic matter (such as polynuclear aromatic hydrocarbons and chlorinated dibenzodioxins and furans), and volatile organics such as benzene, carbon disulfide, toluene, and xylene. These HAP are associated with a variety of adverse health effects including chronic and acute disorders of the blood, heart, kidneys, reproductive system, and central nervous system.

Manganese and lead comprise the majority of the metal HAP emissions. Health effects in humans have been associated with both deficiencies and excess intakes of manganese. Chronic exposure to low levels of manganese in the diet is considered to be nutritionally essential in humans, with a

recommended daily allowance of 2 to 5 milligrams per day. Chronic exposure to high levels of manganese by inhalation in humans results primarily in central nervous system (CNS) effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. Manganism, characterized by feelings of weakness and lethargy, tremors, a mask-like face, and psychological disturbances, may result from chronic exposure to higher levels. Impotence and loss of libido have been noted in male workers afflicted with manganism attributed to inhalation exposures. We have classified manganese in Group D, not classifiable as to carcinogenicity in humans.

Lead is a very toxic element, causing a variety of effects at low dose levels. Brain damage, kidney damage, and gastrointestinal distress may occur from acute exposure to high levels of lead in humans. Chronic exposure to lead in humans results in effects on the blood, CNS, blood pressure, and kidneys. Children are particularly sensitive to the chronic effects of lead, with slowed cognitive development, reduced growth and other effects reported. Reproductive effects, such as decreased sperm count in men and spontaneous abortions in women, have been associated with lead exposure. The developing fetus is at particular risk from maternal lead exposure, with low birth weight and slowed postnatal neurobehavioral development noted. Human studies are inconclusive regarding lead exposure and cancer, while animal studies have reported an increase in kidney cancer from lead exposure by the oral route. We have classified lead as a Group B2, probable human carcinogen.

Trace quantities of organic HAP, such as chlorinated dibenzodioxins and furans (CDD/F) and benzene, have been detected in the windbox exhaust at sinter plants. One CDD/F compound, 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD, commonly called "dioxin") is listed singly as a HAP. Other CDD/F compounds, many of which cause adverse health effects in the same way as dioxin, are HAP under the definition of polycyclic organic matter. Exposure to CDD/F mixtures causes chloracne, a severe acne-like condition, and has been shown to be extremely toxic in animal studies. Dioxin itself is known to be a developmental toxicant in animals, causing skeletal deformities, kidney defects, and weakened immune responses in the offspring of animals exposed during pregnancy. Human studies have shown an association between dioxin and soft-tissue sarcomas, lymphomas, and stomach carcinomas. We have classified dioxin as a probable human carcinogen (Group B2).

Acute inhalation exposure of humans to benzene may cause drowsiness, dizziness, headaches, as well as eye, skin, and respiratory tract irritation, and, at high levels, unconsciousness. Chronic inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells and aplastic anemia, in occupational settings. Reproductive effects have been reported for women exposed by inhalation to high levels, and adverse effects on the developing fetus have been observed in animal tests. Increased incidence of leukemia (cancer of the tissues that form white blood cells) has been observed in humans occupationally exposed to benzene. We have classified benzene as a Group A, known human carcinogen.

In addition to HAP, the proposed rule also would reduce PM emissions, which are controlled under national ambient air quality standards. Briefly, emissions of PM have been associated with aggravation of existing respiratory and cardiovascular disease and increased risk of premature death.

We recognize that the degree of adverse effects to health experienced by exposed individuals can range from mild to severe. The extent and degree to which the health effects may be experienced depends on:

- Pollutant-specific characteristics (e.g., toxicity, half-life in the environment, bioaccumulation, and persistence);
- The ambient concentrations observed in the area (e.g., as influenced by emission rates, meteorological conditions, and terrain);
- The frequency and duration of exposures; and
- Characteristics of exposed individuals (*e.g.*, genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population.

II. Summary of the Proposed Rule

A. What Are the Affected Sources and Emission Points?

The affected sources are each new and existing sinter plant, blast furnace, and BOPF shop at an integrated iron and steel manufacturing facility that is a major source. A new affected source is one constructed or reconstructed after July 13, 2001. An existing affected source is one constructed or reconstructed on or before July 13, 2001. The proposed rule covers emissions from the sinter plant windbox exhaust, discharge end, and sinter cooler; the blast furnace casthouse; and the BOPF, BOPF shop roof monitor, and BOPF ancillary operations (hot metal transfer, hot metal desulfurization, slag skimming, and ladle metallurgy).

B. What Are the Emission Limitations?

The proposed rule includes PM emission limits and opacity limits as well as operating limits for capture systems and control devices. Particulate matter and opacity serve as a surrogate measures of HAP emissions.

1. Sinter Plants

The proposed PM emission limit for the windbox exhaust stream, 0.3 pounds per ton (lb/ton) of product sinter, is the same for existing and new sinter plants. The proposed rule limits PM emissions from a discharge end to 0.02 gr/dscf for an existing plant and 0.01 gr/dscf at a new plant. The discharge end PM limit is a flow-weighted average for one or more control devices that operate in parallel. A 20 percent opacity limit is proposed for secondary emissions from a discharge end at an existing sinter plant; a 10 percent opacity limit is proposed for a new sinter plant. The proposed PM emission limits for sinter cooler stacks are 0.03 gr/dscf for an existing plant and 0.01 gr/dscf for a new plant.

2. Blast Furnaces

The proposed PM emission limit for a control device applied to emissions from a casthouse is 0.009 gr/dscf for the casthouse at a new or existing blast furnace. The proposed opacity limits are 20 percent for a casthouse at an existing blast furnace and 15 percent for a casthouse at a new blast furnace (both 6-minute averages).

3. Basic Oxygen Process Furnaces

For primary emissions from BOPF, we are proposing different PM emission limits based on hood system (closed or open). For BOPF with closed hood systems, we are proposing a PM emission limit of 0.024 gr/dscf which would apply only during periods of primary oxygen blow. For BOPF with open hood systems, we are proposing a PM emission limit of 0.019 gr/dscf which would apply during all periods of the steel production cycle. The primary oxygen blow is the period in which oxygen is initially blown into the furnace and does not include any subsequent reblows. The steel production cycle begins when the furnace is first charged with either scrap or hot metal and ends 3 minutes after slag is removed. The PM emission limits are the same for BOPF at new and

existing BOPF shops. The proposed PM emission limits for a control device applied solely to secondary emissions from a BOPF are 0.01 gr/dscf for an existing BOPF shop and 0.0052 gr/dscf for a new BOPF shop. Secondary emissions are those not controlled by the primary emission control system, including emissions that escape from open and closed hoods and openings in the ductwork to the primary control system.

For the BOPF shop, a PM emission limit of 0.007 gr/dscf is proposed for a control device applied to emissions from ancillary operations (hot metal transfer, skimming, desulfurization, or ladle metallurgy) at a new or existing BOPF shop. For the BOPF roof monitor, a 20 percent opacity limit is proposed for secondary emissions from the BOPF or BOPF shop operations in an existing BOPF shop. This opacity limit is based on 3-minute averages. For a new BOPF shop housing a bottom-blown furnace, a 10 percent opacity limit is proposed (6-minute average) except that one 6-minute period not to exceed 20 percent may occur once during each steel production cycle. For a new BOPF shop housing a top-blown furnace, a 10 percent opacity limit is proposed (3-minute average) except that one 3-minute period greater than 10 percent but less than 20 percent may occur once during each steel production cycle.

For capture systems applied to emissions from a sinter plant discharge end or blast furnace casthouse, the proposed rule provides two options: maintain the hourly average volumetric flow rate through each separately ducted hood at or above the level established during the performance test, or maintain the total hourly average volumetric flow rate at the control device inlet at or above the level established during the performance test with all capture system dampers in the same positions as during the performance test.

The same options are available in the operating limits proposed for capture systems applied to secondary emissions from a BOPF. However, the averaging period is the steel production cycle rather than each 1-hour period.

The proposed operating limit for baghouses requires that the bag leak detection system alarm not sound for more than 5 percent of the total operating time in a semiannual reporting period. For a venturi scrubber, the hourly average pressure drop and scrubber water flow rate must remain at or above the level established during the initial performance test. For an ESP, the hourly average opacity must remain at or below the level established during the initial performance test. The proposed rule requires plants to submit information on monitoring parameters if another type of control device is used.

The proposed rule also requires sinter plants to maintain the oil content of the feedstock at or below 0.025 percent. This limit is based on a 30-day rolling average.

C. What Are the Operation and Maintenance Requirements?

All plants subject to the proposed rule would be required to prepare and implement a written startup, shutdown, and malfunction plan according to the requirements in § 63.6(e) of the NESHAP General Provisions. A written operation and maintenance plan is also required for capture systems and control devices subject to an operating limit. This plan must describe procedures for monthly inspections of capture systems, preventative maintenance requirements for control devices, and corrective action requirements for baghouses. In the event of a bag leak detection system alarm, the plan must include specific requirements for initiating corrective action to determine the cause of the problem within 1 hour, initiating corrective action to fix the problem within 24 hours, and completing all corrective actions needed to fix the problem as soon as practicable.

D. What Are the Initial Compliance Requirements?

The proposed rule requires performance tests to demonstrate that each affected source meets all applicable emission and opacity limits. The PM concentration would be measured using EPA Method 5, 5D, or 17 in 40 CFR part 60, appendix A. The proposed rule also allows plants to use a method developed by the American Society for Testing and Materials (ASTM), Standard Test Method for High-Volume Sampling for Solid Particulate Matter and Determination of Particulate Emissions (ASTM D4536–96). Plants may use this method instead of the sampling equipment and procedures required by EPA Method 5 or 17 when testing a positive pressure baghouse, but must use the sample traverse location and number of sampling locations required by EPA Method 5D. The EPA Method 9 in 40 CFR part 60, appendix A, is proposed for determining the opacity of emissions, with special instructions for computing 3-minute averages. The proposed testing requirements also include procedures for establishing site-specific operating limits for capture systems and control devices and for revising the limits, if needed, after the performance test.

The proposed rule also requires a performance test to demonstrate initial compliance with the operating limit for the oil content of the sinter plant feedstock. This test would require measurements of the oil content using EPA Method 9071B (Revision 2, April 1998) for 30 consecutive days and computing the 30-day rolling average. To demonstrate initial compliance with the proposed operation and maintenance requirements, plants would certify in their notification of compliance status that they have prepared the written plans and will operate capture systems and control devices according to the procedures in the plan.

E. What Are the Continuous Compliance Requirements?

The proposed rule would require plants to conduct performance tests at least twice during each title V operating permit term (at midterm and renewal) to demonstrate continuous compliance with the emission and opacity limits. Plants also would be required to monitor operating parameters for capture systems and control devices subject to operating limits and carry out the procedures in their operation and maintenance plan.

For capture systems, a continuous parameter monitoring system (CPMS) is required to measure and record the volumetric flow rate through each separately ducted hood or the total volumetric flow rate at the control device inlet. Plants electing to monitor the total volumetric flow rate also must check the capture system dampers at least once a day (every 24 hours) to verify that all dampers are in the same position as during the initial performance test. To demonstrate continuous compliance, plants must keep records documenting compliance with the rule requirements for monitoring, the operation and maintenance plan, and installation, operation, and maintenance of CPMS.

For baghouses, plants would be required to monitor the relative change in PM loading using a bag leak detection system and make inspections at specified intervals. The bag leak detection system must be installed and operated according to the EPA guidance document "Fabric Filter Bag Leak Detection Guidance," EPA 454/R–98–015, September 1997. The document is available on the TTN at http:www.epa.gov/ ttnemc01/cem/ tribo.pdf. If the system does not work based on the triboelectric effect, it must be installed and operated consistent

with the manufacturer's written specifications and recommendations. The basic inspection requirements include daily, weekly, monthly, or quarterly inspections of specified parameters or mechanisms with monitoring of bag cleaning cycles by an appropriate method.

To demonstrate continuous compliance, the proposed rule requires records of bag leak detection system alarms and records documenting conformance with the operation and maintenance plan, as well as the inspection and maintenance procedures.

For venturi scrubbers, plants would be required to use CPMS to measure and record the hourly average pressure drop and scrubber water flow rate. To demonstrate continuous compliance, plants would keep records documenting conformance with the monitoring requirements and the installation, operation, and maintenance requirements for CPMS.

For ESP, plants would be required to use a continuous opacity monitoring system (COMS) to measure and record the average hourly opacity of emissions exiting each stack of the control device. Plants must operate and maintain the COMS according to the requirements in § 63.8 of the NESHAP General Provisions and Performance Specification 1 in 40 CFR part 60, appendix B. These requirements include a quality control program including a daily calibration drift assessment, quarterly performance audit, and annual zero alignment.

To demonstrate continuous compliance with the operating limit for the sinter plant feedstock, plants would be required to determine the oil content every 24 hours (from the composite of three samples taken at 8-hour intervals) and compute and record the 30-day rolling average oil content for each operating day.

F. What Are the Notification, Recordkeeping, and Reporting Requirements?

The proposed notification, recordkeeping, and reporting requirements rely on the NESHAP General Provisions in 40 CFR part 63, subpart A. Table 4 to proposed subpart FFFFF lists each of the requirements in the General Provisions (§§ 63.2 through 63.15) with an indication of whether they do or do not apply.

The plant owner or operator would be required to submit each initial notification required in the NESHAP General Provisions that applies to their facility. These include an initial notification of applicability with general information about the facility and notifications of performance tests and compliance status.

Plants would be required to maintain the records required by the NESHAP General Provisions that are needed to document compliance, such as performance test results; copies of startup, shutdown, and malfunction plans and associated corrective action records; monitoring data; and inspection records. Except for the operation and maintenance plan for capture systems and control devices, all records must be kept for a total of 5 years, with the records from the most recent 2 years kept onsite. The proposed rule requires that the operation and maintenance plan for capture systems and control devices subject to an operating limit be kept onsite and available for inspection upon request for the life of the affected source or until the affected source is no longer subject to the rule requirements.

Semiannual reports are required for any deviation from an emission limitation, including an operating limit. Each report would be due no later than 30 days after the end of the reporting period. If no deviation occurred, only a summary report would be required. If a deviation did occur, more detailed information would be required.

An immediate report would be required if there were actions taken during a startup, shutdown, or malfunction that were not consistent with the startup, shutdown, and malfunction plan. Deviations that occur during a period of startup, shutdown, or malfunction are not violations if the owner or operator demonstrates to the authority with delegation for enforcement that the source was operating in accordance with the startup, shutdown, and malfunction plan.

G. What Are the Compliance Deadlines?

The owner or operator of an existing affected source would have to comply within [24 MONTHS OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. New or reconstructed sources that startup on or before the effective date of the final rule must comply by the effective date of the final rule. New or reconstructed sources that startup after the effective date of the final rule must comply upon initial startup.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Affected Sources?

Affected source means the collection of equipment and processes in the source category or subcategory to which the emission limitations, work practice standards, and other regulatory requirements apply. The affected source may be the same collection of equipment and processes as the source category or it may be a subset of the source category. For each rule, we must decide which individual pieces of equipment and processes warrant separate standards in the context of the CAA section 112 requirements and the industry operating practices.

We considered three different approaches for designating the affected source: the entire integrated iron and steel manufacturing facility, groups of emission points, and individual emission points. In selecting the affected sources for regulation, we identified the HAP-emitting operations, the HAP emitted, and the quantity of HAP emissions from the individual or groups of emissions points. We concluded that designating the group of emission points associated with each of the major processes as the affected source is the most appropriate approach. The major processes include sinter production in a sinter plant, iron production in a blast furnace, and steel production in a BOPF shop. Consequently, we selected the sinter plant, blast furnace, and BOPF shop as the affected sources. The proposed rule includes requirements for the control of emissions from the windbox exhaust, discharge end, and cooler at sinter plants; the blast furnace casthouse; the BOPF shop including both primary and secondary emissions from the furnace; and the ancillary operations in the BOPF shop (hot metal transfer, desulfurization, slag skimming, and ladle metallurgy).

B. How Did We Select the Pollutants?

For the proposed rule, we decided that it is not practical to establish individual standards for each specific type of metallic HAP that could be present in the various processes (e.g., separate standards for manganese emissions, separate standards for lead emissions, and so forth for each of the metals listed as HAP and potentially could be present). When released, each of the metallic HAP compounds behave as PM. As a result, strong correlations exist between air emissions of PM and emissions of the individual metallic HAP compounds. The control technologies used for the control of PM emissions achieve comparable levels of performance on metallic HAP emissions. Therefore, standards requiring good control of PM will also achieve good control of metallic HAP emissions. Therefore, we decided to establish standards for total PM as a surrogate pollutant for the individual

types of metallic HAP. In addition, establishing separate standards for each individual type of metallic HAP would impose costly and significantly more complex compliance and monitoring requirements and achieve little, if any, HAP emissions reductions beyond what would be achieved using the surrogate pollutant approach based on total PM.

For stack discharges, we have traditionally relied on setting numerical emission limits, sometimes coupled with limits on opacity. In the case of fugitive emissions, we have traditionally relied on setting visible emission standards, typically expressed as opacity limits.

C. How did we determine the bases and levels of the proposed standards?

- Sinter plant windbox exhaust

There are nine sinter plants in the U.S.; however, only seven are currently operating. The windbox exhaust is controlled by a baghouse at four plants and by a venturi scrubber at five plants. Useful test data on actual emissions are available for six of the nine plants, two equipped with baghouses and four equipped with venturi scrubbers. In each case, the data reflect the results of performance tests comprised of the average of three test runs, expressed in terms of total PM.

An initial characterization of achievable performance based on concentration (gr/dscf) suggested that baghouses perform substantially better than do scrubbers. Concentration values recorded for the two baghouses are two to nearly four times lower than those recorded for the four scrubbers. Upon closer scrutiny, we determined that much of the difference in perceived performance is due to the fact that baghouses require the addition of relatively large quantities of ambient air to cool the hot windbox exhaust gases prior to control, whereas scrubbers do not. To correct for this difference, we transformed the test results into a pounds of PM emissions per ton of sinter format. The test results expressed in terms of the hourly mass rate were converted to annual emissions assuming 8,760 hours per operating year. The resultant annual emissions were then divided by a best estimate of annual sinter production for each plant (average for the 5-year period from 1995 through 1999). The results range from 0.26 to 0.33 lb PM/ton of sinter. Averaging the results for the top five performers produces a MACT floor value of 0.29 lb PM/ton of sinter. Relying on the median value produces a MACT floor value of 0.30 lb/ton. Included among the top five performers are two baghouses and three venturi scrubbers, which indicates that both control devices are capable of achieving the MACT floor level of control as expressed in the lb/ton format.

The windbox exhaust gas can contain appreciable quantities of organic HAP, including both volatile and semivolatile compounds. There is strong evidence that demonstrates that the quantity of organic HAP emitted is directly related to the quantity and oil content of the mill scale component of the sinter feed. United States sinter plants limit organic emissions by carefully monitoring and limiting the oil content of the sinter feed. This pollution prevention control measure is an effective method for preventing, and thus reducing, emissions of organic HAP. Two plants in Indiana have performed testing to relate oil content with emissions of volatile organic compounds (VOC). The test results show a strong correlation between oil content and potential VOC emissions.

One of the organic pollutants of concern that has been related to oil content is a family of compounds called polychlorinated dibenzodioxins and furans (D/F). A 1994 paper [1] identified sinter plants in Germany as one of the most important industrial sources of D/F. Tests showed an average concentration in the windbox exhaust of 47 nanograms (ng) expressed in toxic equivalency (TEQ)/per cubic meter (m^3) and annual emissions of 122 grams (g) TEQ. The D/F emissions were attributed to high levels of oils and chlorinated organics in the waste materials recycled to the sinter plant.

We decided to perform testing at two representative facilities to characterize D/F emissions from U.S. sinter plants, one that uses a venturi scrubber as the windbox control device and one that uses a baghouse. The tests were performed in 1997 on the venturi scrubber in East Chicago, IN and on the baghouse in Youngstown, OH. These plants routinely monitor the oil content of their sinter feed, which averages 0.014 percent oil at the East Chicago, IN facility and 0.025 percent oil at the Youngstown, OH facility. The average D/F concentration from three 4-hour runs at each plant ranged from 0.2 ng TEQ/m^3 at the East Chicago, IN facility to 0.8 ng TEQ/m^3 at the Youngstown, OH facility, both far below the levels reported for the German sinter plant. Assuming typical operation of each plant (310 days/yr), annual emissions would range from 0.7 to 2.8 g TEQ/yr, well below the levels indicated by the German data. Based upon emission factors derived from these test results, we estimate nationwide emissions from all U.S. sinter plants to be 26 g TEQ/yr, which corresponds to less than 1 percent of current estimates of the national inventory from all sources.

We surveyed the operators of all seven active sinter plants, as well as the two inactive plants, to obtain information on the oil content of their sinter feed. Four of the active plants provided data that ranged in magnitude from 976 samples collected over 1 year (sampling about three times per day) to 14 samples collected over 14 months (monthly sampling). All four plants carefully monitor their sinter feed for oil to minimize emissions of VOC. In addition, plants with baghouses are motivated to limit oil content due to concerns over blinding of bags and possible fire hazards. The other three active plants and the two inactive plants provided little data since none routinely monitor oil content. The four plants providing data reported long-term averages of 0.014, 0.02, 0.02, and 0.025 percent, respectively. We conclude that limiting substantially the oil content in the sinter feed represents the MACT floor for organic HAP in the windbox exhaust.

We know of no control devices besides venturi scrubbers and baghouses that can achieve better emissions reductions than that indicated by the level of performance selected as the MACT floor. As a result, we are selecting 0.3 lb/ton as the standard. We selected 0.3 lb/ton as opposed to either 0.29 or 0.30 lb/ton to provide a modest but warranted margin of safety given the relatively limited data available for this standard setting and the inherent uncertainty associated with the needed transformations of the test data from mass rate to mass per ton.

For the PM limit, we also considered setting alternative concentration limits that would be tailored to each type of control device—baghouses and venturi scrubbers. Concentration limits (*e.g.*, gr/dscf) have several advantages over a lb/ton format when determining compliance. A lb/ton format requires that three measurements be made very accurately: The concentration of PM in the exhaust gas, the volumetric flow rate of exhaust gas, and the sinter production rate. Concentration is directly measured by EPA reference methods (such as Method 5), and there is no uncertainty introduced by additional measurements or calculations. The concentration limit is a direct and accurate measure of how

[1] Lahl, Uwe. Sintering Plants of Steel Industry—PCDD/F Emission Status and Perspective. In Chemosphere, vol. 29, nos. 9–11, pages 1939–1945. 1994.

well the emission control device is performing.

The two plants with baghouses averaged 0.007 and 0.009 gr/dscf when meeting the 0.3 lb/ton MACT floor level of control. Individual runs ranged from 0.004 to 0.01 gr/dscf. Considering the run-to-run variability, we conclude that an appropriate alternative concentration limit for baghouses used for the control of windbox exhaust gases would be on the order of 0.01 gr/dscf. As noted previously, plants with baghouses introduce large volumes of tempering air to cool the windbox exhaust gas prior to entering the baghouse, whereas plants with venturi scrubbers do not. Consequently, a concentration limit for scrubbers, reflecting an equivalent level of control as baghouses, would of necessity be higher than one for baghouses. The four plants equipped with scrubbers recorded average concentration values of 0.017, 0.017, 0.025, and 0.026 gr/dscf when meeting the 0.3 lb/ton MACT floor level of control. Individual runs ranged from 0.014 to 0.029 gr/dscf. Since all four of these scrubbers represent MACT, an alternative concentration limit for scrubbers would be on the order of 0.03 gr/dscf considering run-to-run variability. We request comments on both the appropriateness of setting concentration limits in addition or instead of a lb/ton limit and on the suggested values for these limits.

Relative to sinter feed oil content, we know of no control measures beyond this pollution prevention measure which would be more effective in limiting HAP organic emissions from sinter plant windboxes. Based on our review of the data obtained through our survey on oil content, we select a limit of 0.025 percent oil in sinter feed as representative of the MACT floor. Although 0.025 percent is the highest average value reported by the four plants, all of the averages are low, all are indicative of careful control of oil content, and for all intents and purposes are indistinguishable.

- Sinter plant discharge end

The sinter plant discharge end is comprised of sinter breakers (crushers), hot screens, conveyors, and transfer points that are designed to separate undersize sinter and to transfer the hot sinter to the cooler. In most cases, these discharge end operations are housed in a building. Emissions are usually controlled by local hooding and ventilation to one or more baghouses or wet scrubbers. Seven plants use baghouses and two plants use wet scrubbers.

Existing State regulations include both building opacity standards to limit releases of fugitive emissions (those escaping capture) and PM emission standards assigned to control devices. Five of the seven operating sinter plants are subject to a building opacity limit. One plant is subject to a 10 percent limit (6-minute average), and four plants are subject to 20 percent limits (6-minute average). The PM limits for control devices vary substantially from plant to plant both in terms of format and numerical values. Four plants have concentration limits for total PM (0.01, 0.02, 0.02, and 0.03 gr/dscf), one has concentration limits for PM–10, and three have mass rate limits (42.9, 50, and 50 lb/hr).

We have credible source test data on actual emissions from only one plant—the refurbished sinter plant in Youngstown, OH. Captured emissions from the discharge end are ventilated to a relatively new baghouse (1991) for control. We have no data from any source on the opacity of fugitive emissions that escape capture from the discharge end.

In selecting the MACT floor for the discharge end, we evaluated all of the available information on control measures, State regulations, and actual emissions. Due to the limited information on actual emissions available, we concluded that the available information on State regulations provided the best and most complete information for establishing floor conditions for both the discharge end building and control devices. We believe that these State limits are in fact a reasonable representation of what is actually achieved in practice and are, therefore, suitable proxies for establishing MACT floor conditions. The existing State emission limits reflect a level of performance which we would expect from the capture systems and control devices which are currently applied to the control of emissions from sinter plant discharge ends.

As noted above, five plants are subject to State standards that limit the opacity of visible emissions released from the discharge end building. These range from 10 percent (one plant) to 20 percent (four plants). We chose the median value as the MACT floor, which is 20 percent opacity based on a 6-minute average.

For control devices, we examined the top five most stringent existing State permit limits for total PM emissions. These include the four concentration limits cited above and a fifth value derived from the lowest mass rate limit to which a plant is subject (42.9 lb/hr), which is equivalent to 0.02 gr/dscf. The resulting five most stringent limits are 0.01, 0.02, 0.02, 0.02 and 0.03 gr/dscf. Averaging these five values produces a MACT floor limit of 0.02 gr/dscf.

We examined options to go beyond the floor level of control. One option is a concentration limit lower than the floor level of 0.02 gr/dscf. For example, the installation of a new pulse jet baghouse could conceivably achieve a concentration limit of 0.01 gr/dscf. We estimate the capital cost of a new pulse jet baghouse designed for a flow rate of 120,000 dscfm (typical for discharge ends) to be $3.5 million and the total annual cost to be $840,000 per year. We estimate the corresponding reduction in HAP metals achieved by reducing the PM concentration from 0.02 to 0.01 gr/dscf (for 120,000 dscfm and 0.75 percent metal HAP in the PM) to be 0.34 tons per year. The cost per ton of HAP is $2.5 million. We believe that the high cost, coupled with the small reduction in HAP emissions, does not justify this beyond the floor alternative. We could not identify any other beyond the floor alternatives. Consequently, we chose the floor level of control (0.02 gr/dscf) as MACT.

For new source MACT, we chose an opacity limit of 10 percent (6-minute average) based on the most stringent emission limit currently in place (Sparrows Point, MD). For control devices used on the discharge end, we relied on test data for the baghouse at the Youngstown, OH sinter plant. We believe this baghouse represents the best controlled similar source among the seven operating plants. It is a relatively recent installation (1991) and is a state-of-the-art pulse jet unit. The discharge end at this facility is comprised of a sinter breaker, single deck hot screen, four-stack sinter cooler, and a double deck cold screen. Capture systems are used for the breaker, hot screen, cold screen, and about 40 transfer points. The capture system is ventilated to a four compartment pulse jet baghouse with polyester bags at a rate of 140,000 dscfm.

Three test runs were conducted in 1991. The runs range from 0.005 to 0.006 gr/dscf and average 0.006 gr/dscf. Rounding the results of this single performance test (average of three runs) would support a new source MACT concentration limit of 0.01 gr/dscf. We believe that rounding from 0.006 to 0.01 is justified given the data are limited to the one performance test conducted in 1991.

The numerical limit selected for the standard is the same as that established for MACT: (1) An opacity limit of 20 percent (6-minute average) for the building and a concentration limit of

0.02 gr/dscf for control devices for existing sinter plants, and (2) an opacity limit of 10 percent (6-minute average) and a concentration limit of 0.01 gr/dscf for new sinter plants.

For compliance demonstration purposes, we are proposing a flow-weighted average for emission control devices on the discharge end. Some plants employ multiple control devices applied to the several emission points that comprise the discharge end (crushers, screens, conveyor transfer points). For example, one plant routes emissions from the crusher to one baghouse, and emissions from screens and conveyors are sent to a second baghouse. Averaging emissions across multiple control devices provides flexibility and enhances achievability. With this approach, some air pollution control devices may under perform and others may over perform provided that the average concentration weighted by volumetric flow rate meets the concentration limit for the discharge end.

• Sinter plant cooler

Sinter plant coolers are large diameter circular tables through which ambient air is drawn to cool the hot sinter after screening. Seven plants operate sinter coolers to cool the sinter product prior to storage. Two plants that are not currently operating have no cooler and stockpile hot sinter directly. Of the seven plants with coolers, three vent directly to the atmosphere, one vents to a cyclone, two vent to a baghouse, and one vents half of the cooler exhaust to a baghouse with the remainder vented directly to the atmosphere. Five plants are currently subject to State emission limits expressed as concentration or mass rate while two plants are not subject to State emission limits. Information on actual releases is limited to one source test of controlled emissions from the cooler located at the Youngstown, OH plant that is equipped with a baghouse.

We examined all of the available information on controls, State limits, and actual emissions. We decided that existing State permit limits provide the best information for establishing the floor. Emission source test data on actual emissions are limited to one source. We believe that a technology approach would provide a limit that is less representative of actual performance because it would result in a floor based on cyclone control or a 50/50 no control/baghouse control split (technology for which we have no emission test data from within this source category).

Three plants are subject to State permit limits on emission concentrations (0.01, 0.03, and 0.03 gr/dscf), and two plants are subject to State mass rate permit limits. We converted the mass rates in lb/hr to equivalent concentration limits in gr/dscf based on the volumetric flow rate through the subject coolers. The two mass rate limits resulted in equivalent concentration values of 0.03 and 0.05 gr/dscf. Averaging the five concentration limits produces a floor value for existing sources of 0.03 gr/dscf.

We considered a level of control beyond the floor. A new pulse jet baghouse installed on the sinter cooler could reduce emissions to 0.01 gr/dscf. We estimated the capital cost of a new baghouse designed for a flow rate of 200,000 dscfm as $5.5 million with a total annual cost of $1.3 million per year. The reduction in HAP emissions associated with reducing the PM concentration from 0.03 to 0.01 gr/dscf (at 0.75 percent HAP in the PM) is from 1.7 to 0.6 tons per year. The cost per ton of HAP is $1.2 million. We believe that the high cost, coupled with the small emission reduction, does not justify this beyond the floor alternative. We could not identify any other beyond the floor alternatives. Consequently, we selected the floor (0.03 gr/dscf) as MACT for existing sources.

We evaluated the source test data for the baghouse located at Youngstown, OH and the most stringent existing limit to develop MACT for new sources. The baghouse is a modern pulse jet unit that averaged 0.009 gr/dscf during the test. Individual runs were 0.005, 0.005, and 0.018. Coincidentally, the most stringent existing State permit limit for sinter coolers, which is applied at a different plant, is 0.01 gr/dscf. Given that the baghouse source test result and the most stringent emission limit are ostensibly the same, we selected 0.01 gr/dscf as the proposed standard for sinter coolers at new sinter plants.

• Blast furnace casthouse

The casthouse is a building or structure that encloses the section of the blast furnace where hot metal and slag are tapped from the furnace. The emissions from the blast furnace casthouse are fugitive emissions that escape through the roof monitor and other building openings during tapping. The emissions are primarily metal oxide fumes that are formed when air contacts the surface of the molten metal. Factors affecting these emissions include the duration of tapping, the exposed surface area of metal and slag, and the presence or absence of runner covers and flame suppression, which reduce contact with air.

As described previously, these emissions are controlled in one of two fundamentally different ways, flame suppression or conventional ventilation practices and control. Flame suppression consists of blowing natural gas over the iron runners and torpedo cars. The combustion of the gas consumes oxygen, which retards (suppresses) the formation of emissions. Ventilation practices employed include the use of localized hooding and ventilation applied at the iron trough and iron and slag runners. Alternatively, the casthouse may be totally enclosed and evacuated. Eighteen of the 39 blast furnaces have capture and control systems, 16 are controlled by baghouses and two are controlled by one wet scrubber.

As a means for limiting fugitive emissions of PM from the casthouse during hot metal tapping, most States have developed visible emission standards that limit the opacity of emissions discharged from the casthouse roof monitor or other openings. The most common limit is 20 percent (6-minute average), which is applied to 24 of the 39 casthouses. States also apply particulate limits on gases discharged from control devices used to capture tapping emissions. The most common form is a concentration limit, typically on the order of 0.01 gr/dscf.

We evaluated the available information on actual emissions, State limits, and control measures in selecting the floor for opacity from existing casthouses. Attempts to locate actual opacity data proved unsuccessful. Since most of the States have developed opacity standards, we concluded that State regulations provided the best information for establishing floor conditions.

The most stringent opacity limit is 15 percent (6-minute average) and is applied to two casthouses. The next most stringent limit is 20 percent (6-minute average), which is applied to 24 casthouses. For existing sources, we selected the 20 percent opacity limit as the floor for the roof monitor, which is the median of the top five most stringent limits and by far the most representative.

As with existing sources, MACT for new sources is also based on existing State limits since we were unable to locate and obtain data on actual emissions. As noted above, the most stringent State limit is 15 percent opacity (6-minute average). This limit applies to the casthouses for the Number 7 blast furnace at East Chicago,

IN and the Number 3 blast furnace at Lorain, OH. Therefore, we have selected 15 percent opacity (6-minute average) as the floor for new sources.

We also examined available information on actual emissions, State limits, and control measures to develop the floor for control devices applied to casthouse emissions. There are 18 casthouses equipped with hooding and ventilation equipment to limit fugitive emissions. Sixteen use a baghouse for the control of captured emissions. Industry survey information on the baghouses indicate they are similar in design and performance. Most are pulse jet baghouses with air-to-cloth ratios of around 4 feet per minute (fpm). We selected baghouses with these minimum design features as the MACT floor technology for controlled emissions from blast furnace casthouses.

To determine the level of control associated with the use of a baghouse, we obtained available performance test data that characterized baghouse performance for four of the 16 baghouses. The database includes a total of eight source tests; four tests at one facility, two tests at another facility, and single tests at the two other facilities. Each performance test is comprised of three individual test runs. The three-run averages for each of the eight tests range from 0.002 to 0.009 gr/dscf. Results from individual runs range from 0.001 to 0.009 gr/dscf.

The highest emitting unit is the Granite City, IL facility for which we have information on four independent performance tests. The performance tests range from 0.006 to 0.009 gr/dscf with individual runs ranging from 0.003 to 0.009 gr/dscf. Three tests were conducted in 1988 and one in 1985, and all tests met the facility's State limit of 0.01 gr/dscf.

Since each of the baghouses is considered a MACT floor unit, we must set the standard at a point that accommodates the performance indicated by the highest emitting unit which we believe reflects a reasonable worst-case scenario. Consequently, the level of control associated with the MACT floor is 0.009 gr/dscf. We believe this emission limit represents a reasonable expectation of performance for an appropriately designed and well maintained and operated baghouse used to control blast furnace casthouse emissions. Therefore, we selected a concentration limit of 0.009 gr/dscf as the MACT floor for both new and existing blast furnace casthouses.

For the casthouse opacity standard, we selected the same format and values as that established for the MACT floors. For existing casthouses, we selected an opacity limit for the roof monitor of 20 percent using 6-minute averages. For new casthouses, we selected an opacity limit for the roof monitor of 15 percent using 6-minute averages.

Relative to control devices, we examined options for better emissions reductions. However, we could find no control alternatives that would provide additional reductions in HAP emissions for blast furnace casthouses beyond that achieved by a well-designed and operated baghouse. Consequently, we have chosen the limit of 0.009 gr/dscf, the level achieved in practice with the use of a baghouse, as the standard for both new and existing sources.

- BOPF primary emission control systems

Primary emissions from the BOPF refer to the particulate emissions generated during the steel production cycle which are captured and controlled by the primary emission control system. The majority of the emissions occur during the oxygen blow. The oxygen blow is the period in the steel production cycle when oxygen is lanced or injected into the vessel. Some shops operate open hood furnaces and others use closed hood systems. Open and closed hood furnaces are very different in terms of design and operation, pollutant loading, and emissions. Open hood systems are characterized by very high primary exhaust air flow rates due to the large quantities of combustion air introduced at the furnace mouth to support CO combustion. In contrast, closed hood systems, which include hoods that are tightly fitted to the vessel to suppress CO combustion, are characterized by much lower exhaust air flow rates. Typical flow rates for open hood systems are 200,000 to 500,000 acfm, while closed hood designs are usually less than 100,000 acfm.

There are 50 BOPF located in 23 BOPF shops. The 50 BOPF include 34 furnaces with open hood systems at 16 shops and 16 furnaces with closed hood systems at eight shops. All of the BOPF have capture and control systems for the primary emissions. For the open hood systems, eight shops are controlled by venturi scrubbers and eight shops are controlled by ESP. All eight of the closed hood shops are controlled by venturi scrubbers. Each shop is subject to existing State limits with a wide variety of formats, including concentration limits in gr/dscf and lb/1,000 lb gas for PM or PM_{10}, mass emission rate limits in lb/hr, and process weighted limits in lb/ton of steel. In addition, the emission test period required for compliance with the existing State limits varies from testing over the steel production cycle, only during the oxygen blow, for 1-hour runs, and for 2-hour runs.

We developed separate subcategories for open and closed hood furnaces due to the operational differences and volumetric air flow rates between the two designs. This subcategorization is consistent with the development of separate standards for open and closed hood BOPF for the new source performance standard (NSPS) in 40 CFR part 60, subpart N.

We examined the available test data for open hood BOPF, existing State limits, and control measures to evaluate options for selecting the MACT floor. We concluded that the source test data could not be used to rank the relative performance of all of the shops for two reasons. In several instances, the periods during which testing was conducted differed substantially from plant to plant. Some plants tested only during periods of oxygen blowing while others tested during the entire production cycle from charge to tap. The emissions generated and the control performance can be quite different depending on the part of the production cycle tested. For example, the largest amount of emissions is generated during the oxygen blow, and this period presents the greatest challenge to the control device. Another difficulty with some of the source test data is that measurements were made for PM–10 rather than for total PM which is the basis for the proposed PM limit.

As discussed earlier, there are two basic problems which prevent us from assessing the relative stringency of existing State limits and putting them on a common basis. The existing State limits are in different formats, and the required testing periods associated with the limits vary from plant to plant. Any attempt to convert them to a common basis requires assumptions on parameters such as typical volumetric flow rates and steel production rates, both of which have the potential to introduce significant errors in the conversion.

Because the available data and State limits are not useful to identify the five best-performing sources, we opted for the technology floor approach. Control devices applied to primary emissions at open hood shops include both ESP and venturi scrubbers. We have source test data and design information for seven of the 16 open hood shops, five with ESP and two with venturi scrubbers. The test data indicate that the ESP perform better than the venturi scrubbers. All the test data (charge-to-tap measurements) for the ESP are less than 0.019 gr/dscf. All of the ESP are similar in design and

operation. All have three to five fields in series and operate at specific collection areas greater than 300 square feet per thousand cubic feet per minute. Data for the two plants with venturi scrubbers, operating at pressure drops of 25 to 35 inches of water, averaged 0.025 and 0.035 gr/dscf, respectively. Based on these test data, we conclude the existing inventory of ESP constitutes the MACT floor technology for open hood BOPF.

We examined the test data for the five ESP for which we have both design information and emission source test data. As noted previously, all are similar in design and operation. We have data from 13 different source tests; seven emission source tests at one facility, three tests at another facility, and single tests at three other facilities. Each of the performance tests is comprised of three individual test runs. Each run was conducted over an entire furnace cycle from charge to tap.

The three-run averages for each of the 13 tests range from 0.004 to 0.019 gr/dscf. Results from individual runs range from 0.003 to 0.025 gr/dscf. Since each of the ESP is considered a MACT floor unit, we must set the MACT floor at a level that reflects a reasonable worst-case scenario and that accommodates the ordinary and unavoidable variability in the performance of the MACT technology. We selected the highest three-run average value of 0.019 gr/dscf for the MACT floor.

We also believe that this emission limit represents the best performance that can reasonably be expected of an appropriately designed and well maintained and operated ESP applied to open hood BOPF emissions. Therefore, we selected 0.019 gr/dscf as the MACT floor for open hood BOPF at both new and existing BOPF shops.

We examined the available test data for closed hood BOPF, existing State limits, and control measures to evaluate options for selecting the MACT floor. As was the case with open hood BOPF, we also had limited actual emission data and a mixture of different formats for State emission limits from closed hood BOPF. We looked at the technology used to control primary emissions from closed hood BOPF and found that all 16 of the furnaces at the eight closed hood shops use high-energy venturi scrubbers. Closed hood systems produce an exhaust gas high in CO which precludes the use of other types of control devices (such as baghouses or ESP) due to potential explosion or fire hazards.

We collected information on the design and operation of these scrubbers through an industry survey. These scrubbers operate at a pressure drop of 50 inches of water or more, and most have liquid-to-gas ratios greater than 10 gallons per thousand cubic feet of gas. We selected high-energy venturi scrubbers with a pressure drop of 50 inches of water or more as the floor technology for closed hood BOPF.

We have recent test data for only one of the eight closed hood shops. In addition, we have performance test data from five other furnaces that were collected and used to develop the NSPS. All tests include three test runs and all were performed only during the oxygen blow. Each of these plants use the MACT floor technology for closed hood shops, which is a high-energy venturi scrubber with a pressure drop of 50 inches of water or more. The three run averages for each of the six tests range from 0.015 to 0.024 gr/dscf. Results from individual runs range from 0.013 to 0.031 gr/dscf.

Since each of the scrubbers is considered a MACT floor unit, we must set the MACT floor emission limit at a level that reflects a reasonable worst-case scenario and that accommodates the ordinary and unavoidable variability in the performance of the MACT technology. We selected the highest three run average value of 0.024 gr/dscf as the MACT floor. We also believe that this value represents the best performance that can reasonably be expected of an appropriately designed and well maintained and operated high-energy venturi scrubber applied to closed hood BOPF emissions. Therefore, we have selected 0.024 gr/dscf as the MACT floor for closed hood BOPF at both new and existing BOPF shops.

We examined options for better emissions reductions for open hood BOPF. However, we could not find any control alternatives that would provide reductions in HAP emissions beyond that demonstrated to be achievable by ESP. Consequently, the floor (0.019 gr/dscf) was chosen as the standard for both new and existing sources.

We examined options for more effective control for closed hood BOPF. However, we could not find any alternative that would provide greater reductions in HAP emissions from closed hood BOPF than high energy venturi scrubbers. Consequently, the MACT floor (0.024 gr/dscf) was chosen as the standard for both new and existing sources.

- BOPF secondary emission control systems

Secondary or fugitive emissions occur from the BOPF when the molten iron and scrap metal are charged to the furnace, and when the molten steel and slag are tapped from the furnace. The emissions generated are primarily metal oxides formed when oxygen in the air reacts with the molten iron or steel. Twelve of the 23 BOPF shops have a separate capture and control system for BOPF charging and tapping emissions. Ten of these shops use baghouses and the other two use scrubbers. Existing State limits for the control devices range from 0.0052 to 0.015 gr/dscf and the NSPS limit is 0.01 gr/dscf. The most common limit is 0.01 gr/dscf. Available data on secondary BOPF emissions are limited to one test run at a facility using a baghouse, for which we have limited documentation. This one test run measured a concentration value of 0.001 gr/dscf.

In selecting the MACT floor for existing sources, we evaluated all of the available information on existing control measures, State regulations, and actual emissions. Due to the limited information on actual emissions available, we concluded that State regulations provided the best and most complete information for establishing floor limitations for secondary BOPF emission control systems. We believe that these State limits are in fact a reasonable representation of what is actually achieved in practice and are, therefore, suitable proxies for establishing MACT floor conditions. The existing State emission limits reflect a level of performance which, based on engineering judgement, we would expect from the capture systems and control devices which are currently applied to the control of emissions from secondary BOPF emission control systems.

We examined the top five most stringent existing emission limits for total PM. The five plants with the most stringent secondary BOPF emission State limits are subject to concentration limits of 0.0052, 0.006, 0.01, 0.01 and 0.012 gr/dscf. Each of these is associated with a facility with baghouse controls. The median of the five values produces a MACT floor limit of 0.01 gr/dscf.

It is not likely that one test run will adequately reflect the full range of performance of a particular technology, and the results of the one available test run appear to represent, at most, what this type of control is able to achieve under very favorable circumstances. Therefore, we do not believe that it represents the actual level of performance that this technology is capable of consistently achieving.

We believe that 0.01 gr/dscf reasonably represents the average emission limitation achieved by the best performing five sources in the category.

Consequently, we chose 0.01 gr/dscf as the MACT floor for existing sources.

As with existing sources, MACT for new sources is also based on existing State limits since we have no credible data on actual emissions beyond the single test run. As noted above, the most stringent State limit is 0.0052 gr/dscf. Consequently, we chose 0.0052 gr/dscf as the MACT floor for new sources.

Because of the limited amount of data available, we could not identify any basis for developing a limit more stringent than the floor for either new or existing BOPF shops. Consequently, we chose the MACT floor as the standard for new and existing BOPF shops, 0.01 gr/dscf for existing sources, and 0.0052 gr/dscf for new sources.

- Hot metal transfer, desulfurization, slag skimming, and ladle metallurgy

There are several different ancillary operations performed within the BOPF shop: (1) Operations associated with the molten iron before it is charged to the BOPF (hot metal transfer, desulfurization, and slag skimming), and (2) treatment of the molten steel after tapping (various ladle metallurgy operations). The emissions from these operations are primarily metal oxides formed when oxygen in the air reacts with the molten iron or steel.

Molten iron is transported from the blast furnace casthouse to the BOPF shop in a torpedo car and transferred to a vessel at the reladling (or hot metal) station, where it is usually desulfurized and slag is skimmed from the surface. Emissions from these operations are captured by local hooding and controlled by a baghouse. Existing State emission limits for these operations range from 0.0052 to 0.04 gr/dscf, but most are on the order of 0.01 gr/dscf.

The steel from the BOPF is usually transferred to a ladle where final adjustments in temperature and chemistry are made in an operation known as ladle metallurgy. Emissions from ladle metallurgy are captured by a close fitting hood and ducted to a baghouse. Existing State limits for ladle metallurgy are a mixture of mass emission rates in lb/hr and concentration limits in gr/dscf. The mass emission rate limits range from 0.42 to 7.5 lb/hr, and the concentration limits range from 0.0052 to 0.02 gr/dscf.

In selecting the MACT floor for existing sources, we evaluated all of the available information on control techniques, State regulations, and actual emissions. Relative to information on actual emissions, we have information on three tests of hot metal transfer and desulfurization and seven tests of ladle metallurgy. Since all of the facilities using controls use baghouses and have similar types of emissions, we selected baghouses as the MACT floor technology for hot metal transfer, desulfurization, slag skimming, and ladle metallurgy.

To develop the MACT floor limitation, we examined source test data for three of the 23 baghouses that control emissions from hot metal transfer and desulfurization, and for seven of the 20 baghouses that control emissions from ladle metallurgy. Each performance test is comprised of three individual runs. The three-run averages for the ten tests range from 0.001 to 0.012 gr/dscf. Results from individual runs range from 0.001 to 0.021 gr/dscf.

Since each of the baghouses is considered a MACT floor unit, we must set the MACT floor at a level that reflects a reasonable worst-case situation and that accommodates the ordinary and unavoidable variation in the performance of the MACT technology. We looked at both the highest three-run averages and highest individual runs measured. In this case, both were obtained on the same baghouse, 0.012 and 0.021 gr/dscf. An examination of the test results on all ten baghouses indicates that these results are 2 to 2.5 times higher than those obtained on the next highest emitting unit, suggesting that this baghouse is either an under performer or that the test results include an outlier. Eliminating the 0.021 gr/dscf value from the three-run average produces an average of 0.007 gr/dscf which is in line with the next highest emitting unit's three-run average of 0.006 gr/dscf and the highest individual run of 0.0085 gr/dscf. Consequently, we believe the 0.021 gr/dscf value is an outlier and does not reflect the level of performance demonstrated to be achievable for a baghouse applied to emissions from hot metal transfer, desulfurization, and ladle metallurgy operations.

We also believe that a concentration limit of 0.007 gr/dscf represents the best reasonable expectation of performance for a baghouse applied to these emission points. Therefore, we selected 0.007 gr/dscf as the MACT floor limit for emissions from hot metal transfer, desulfurization, and ladle metallurgy operations at both new and existing BOPF shops.

We know of no control alternatives that would provide additional reductions in HAP emissions for hot metal transfer, desulfurization, slag skimming, and ladle metallurgy beyond that achieved with baghouses. Consequently, the MACT floor (0.007 gr/dscf) was chosen as the standard for both new and existing sources.

- BOPF shop fugitive emissions

The BOPF shop is a building or structure that houses several operations involved in steelmaking. These include hot metal transfer, desulfurization, slag skimming stations; one or more BOPF for refining iron into steel; and ladle metallurgy stations. Fugitive emissions from these operations in the BOPF shop exit through the roof monitor and other building openings.

In selecting the MACT floor for existing sources, we evaluated all of the available information on existing control measures, State regulations, and actual emissions. We were unable to locate any opacity data to establish MACT floors for BOPF fugitive emissions based on actual opacity readings. However, most States have visible emission standards that limit opacity from BOPF shops during all periods of the production cycle. In addition, there are existing NSPS opacity limits applicable to fugitive emissions from BOPF shops. We believe that State regulations provide the best and most complete information for establishing floor limitations for fugitive emissions from BOPF shops. We believe that these State limits are in fact a reasonable representation of what is actually achieved in practice and are, therefore, suitable proxies for establishing MACT floor conditions. The existing State opacity limits reflect a level of performance which, based on engineering judgement, we would expect to be achievable for fugitive emissions from BOPF shops.

We decided to look at top and bottom blown furnaces independently based on operational differences between the two designs. For top blown furnaces, the most stringent and also the most common State standard is a 20 percent limit (3-minute average) that is applied to 13 of the 20 BOPF shops that operate top blown furnaces. For bottom blown furnaces, the BOPF shop with the most stringent standard is subject to a 10 percent opacity limit (6-minute average, with one exception per cycle up to 20 percent). A second shop has three furnaces subject to a 20 percent limit (3-minute average). A third shop has two furnaces subject to a 20 percent limit (6-minute average), and a third subject to a 10 percent limit (3-minute average), with one 3-minute average greater than 10 percent but less than 20 percent applied only during hot metal transfer or skimming operations. Similar to the existing State standards, the NSPS for top blown furnaces applies during the entire production cycle. However, the NSPS for bottom blown furnaces applies only during periods of hot metal transfer

and slag skimming. Both standards limit opacity to less than 10 percent (3-minute average), except that one 3-minute average greater than 10 percent but less than 20 percent can occur during each applicable performance period.

We are selecting a 20 percent (3-minute average) opacity limit as the MACT floor for existing sources for both new and existing top blown and bottom blown BOPF shops. In both cases, this level of control corresponds to the median level of control achieved by the top five performing shops. For top blown BOPF shops, the MACT floor for new sources is an opacity limit of 10 percent (3-minute average), except for one 3-minute average greater than 10 percent but less than 20 percent. This limit is based on the most stringent existing limit applicable to top blown BOPF shops (the existing NSPS). For bottom blown BOPF shops, we are selecting a MACT floor limit of 10 percent opacity (6-minute average with one exception per cycle up to 20 percent) for new sources, based on the most stringent existing State limit. This limit is more stringent than the NSPS since it applies during all periods of the production cycle rather than only during hot metal transfer and skimming.

Because of the limited amount of data available, we could not identify any basis for developing a limit more stringent than the floor for either new or existing BOPF shops. Consequently, we chose the MACT floor as the standard for both new and existing bottom and top blown BOPF shops. For both existing bottom blown and top blown BOPF shops, we selected an opacity limit for fugitive emissions of 20 percent using 3-minute averages. For new bottom blown BOPF shops, we selected an opacity limit for fugitive emissions of 10 percent opacity limit (6-minute average, with one exception per cycle up to 20 percent), which is based on the most stringent State limit. For new top blown BOPF shops, we are selecting an opacity limit of 10 percent (3-minute average), except that one 3-minute average greater than 10 percent but less than 20 percent can occur during each steel production cycle.

D. How Did We Select the Initial Compliance Requirements?

The proposed rule requires a performance test for each control device to demonstrate initial compliance with the applicable PM limit, and the reference method for PM is EPA Method 5 or 5D in 40 CFR part 60, appendix A (or ASTM 4536–96). The proposed rule also requires that a certified observer conduct a performance test by EPA Method 9 in 40 CFR part 60, appendix A, to determine the opacity of fugitive emissions. Consistent with Method 9 and the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A), we are requiring that opacity observations be made for at least 3 hours. We are also requiring that compliance testing for PM and opacity be performed during the production period with the greatest emissions, which is during tapping for the blast furnace; during the steel production cycle for open hood BOPF; and during the oxygen blow for closed hood BOPF.

For the measurement of oil content, we chose EPA Method 9071B, "n-Hexane Extractable Material for Sludge, Sediment, and Solid Samples." This method is used to quantify low concentrations of oil in solid materials by extracting the sample with hexane to dissolve the oil, evaporating the hexane, and weighing the residue (oil). This is consistent with the method specified in Indiana's regulation for the oil content of sinter feed. Three samples of the sinter feed must be taken at 8-hour intervals each day. The three samples are composited and analyzed for oil content to provide a measure of the percent oil in the sinter feed for that day. The daily results are averaged over a 30-day period on a rolling basis to determine the 30-day rolling average. We chose a format of a 30-day rolling average for the standard because it is consistent with the data on which the limit is based, which were long term averages of historical measurements, and provides for dampening of possible short-term intermittent spikes in oil content.

We also require that certain operating limits be determined during the initial compliance test to ensure that capture and control devices operate properly on a continuing basis. All operating limits must be established during a performance test that demonstrates compliance with the applicable emission limit. During performance tests for PM, operating limits must be established for pressure drop and scrubber water flow rate for venturi scrubbers, and opacity (using a COMS) for ESP. During opacity observations of roof monitors, operating limits must be established for capture systems used on the sinter plant discharge end, blast furnace casthouse, and BOPF secondary emissions. Two options are available for the operating limits for these capture systems: (1) Establish a minimum volumetric flow rate for each individual duct, or (2) establish a minimum volumetric flow rate for the total flow to the control device along with settings for damper positions.

E. How Did We Select the Continuous Compliance Requirements?

For continuous compliance, we chose periodic performance testing for PM and opacity, which is consistent with current permit requirements. We consulted with several States on how they were implementing title V permitting requirements for performance tests. In general, performance tests are repeated every 2.5 to 5 years, depending on the magnitude of the source. Consequently, we decided that performance tests should be repeated no less frequently than twice per permit term of a source's title V operating permit (at mid-term and renewal).

Continuous compliance provisions were also established for capture equipment used on the discharge end, blast furnace casthouse, and BOPF secondary emissions to ensure the emissions are captured. There are two options: (1) Monitor the volumetric flow rate in each individual duct, or (2) monitor the total volumetric flow rate to the control device in combination with damper positions. These parameters must be in the range established during the EPA Method 9 performance test. We believe this monitoring will be sufficient to assure that ventilation adequate for the capture of fugitive emissions consistent with that demonstrated during the initial performance test will be maintained.

We also developed procedures to ensure that control equipment is operating properly on a continuous basis. When baghouses are used, the alarm for the bag leak detection system must not sound for more than 5 percent of the time in any semiannual reporting period. Venturi scrubbers must be monitored for pressure drop and scrubber water flow rate, and they must not fall below the limits established during the performance test. Electrostatic precipitators must be monitored for opacity using COMS. The opacity must not exceed the operating limit established during the performance test. If a facility uses equipment other than a baghouse, venturi scrubber, or ESP to control emissions from an affected source, the owner or operator would be required to send us a monitoring plan containing information on the type of device, performance test results, appropriate operating parameters to be monitored, operating limits, and operation and maintenance.

For demonstrating continuous compliance with the oil content standard on sinter plant feed, we chose daily sampling and analysis of sinter

plant feed with daily compliance determined against a 30-day rolling average.

F. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

We selected the notification, recordkeeping, and reporting requirements to be consistent with the NESHAP General Provisions (40 CFR part 63, subpart A). One-time notifications are needed by EPA to know what facilities are subject to the standard, if a facility has complied with the rule requirements, and when certain events such as performance tests and performance evaluations are scheduled. Semiannual compliance reports containing information on any deviation from the rule requirements are also required. These reports would include information on any deviation that occurred during the reporting period; if no deviation occurred, only summary information would be required. Consistent with the General Provisions, we also require an immediate report of any startup, shutdown, or malfunction where the actions taken in response were not consistent with the startup, shutdown, and malfunction plan. This information is needed to determine if changes to the plan need to be made. Records would be required of information needed to document compliance with the rule requirements. These notifications, reports, and records are the minimum needed to ensure initial and continuous compliance.

IV. Summary of Environmental, Energy, and Economic Impacts

Generally, we do not expect the impacts of the proposed rule to be very serious or significant. Most plants have and continue to operate air pollution control equipment sufficient to meet all or most of the emission limitations contained in the proposed rule. Our best projection is that four plants will have to upgrade or install new control equipment on one or more of the affected sources. One plant does not have controls for fugitive emissions from their blast furnace casthouse and may have to install a capture and control system. One plant is expected to install new venturi scrubbers for their primary emission control system in the BOPF shop, and another plant will need to upgrade their venturi scrubbers. One of these plants may also need to install a capture and control system for fugitive emissions from the BOPF because they operate a closed hood BOPF without a capture system. Two plants use venturi scrubbers as the control devices for fugitive emissions from the BOPF; these plants may need to replace the scrubbers with baghouses.

A. What Are the Air Emission Impacts?

The installation of new controls and upgrades discussed in the preceding paragraph will result in reductions in emissions of metal HAP and PM. We estimate that the new capture and control system for the blast furnace casthouse will reduce these emissions by 90 percent, a reduction of 2 tons per year (tpy) of HAP and 324 tpy of PM. The new BOPF scrubbers at one plant and upgrade at another will result in a 50 percent reduction in emissions, 2.8 tpy of HAP and 315 tpy of PM. The new capture and control system for fugitive emissions from the BOPF would result in a 90 percent reduction in emissions, 6 tpy of HAP and 600 tpy of PM. We expect that the upgrade or replacement of the two scrubbers used as controls for BOPF fugitive emissions would result in a 50 percent reduction in emissions, 2.7 tpy of HAP and 270 tpy of PM. Overall, the proposed standard is expected to reduce metal HAP emissions by 13 tpy and PM emissions by about 1,500 tpy.

B. What Are the Cost Impacts?

The nationwide capital and annual costs of new and upgraded capture and control systems are estimated at $34 million and $5.9 million/yr, respectively. The total nationwide annual costs (including monitoring and recordkeeping) are about $6.2 million/yr. These costs are based on a new primary control system for one BOPF shop, upgraded controls at another, two new capture and control systems for secondary BOPF emissions, and one new capture and control system for a blast furnace casthouse. In addition, the estimate includes the cost of bag leak detection systems for baghouses.

C. What Are the Economic Impacts?

We conducted a detailed economic impact analysis to determine the impacts of the proposed rule on both the industry and the U.S. market for steel mill products. We estimate the economic impacts in both areas to be negligible. We project the price of steel mill products, in aggregate, to increase by less than 0.1 percent with domestic production from integrated mills declining by only 3,100 short tons. This slight decline in production at affected integrated mills is somewhat offset by increases at nonintegrated domestic steel producers (600 short tons) and foreign imports (600 short tons). In terms of industry impacts, the integrated steel producers are projected to experience a slight decrease in operating profits of $5.2 million annually, which reflects increased costs of compliance and associated reductions in revenues from producing final steel mill products. In addition, we don't foresee any individual integrated facility being in jeopardy of closure because of the proposed standards.

Based on the market analysis, the annual costs to society of the proposed rule are projected to be $5.9 million. As a result of slightly higher prices for steel mill products, the final consumers of these products will incur an additional $1.7 million annually. Integrated steel mills are expected to decline $5.2 million annually in profits related to directly incurred control costs and reduced product revenues. Non-integrated steel mills that directly compete with integrated mills in these markets and are unaffected by today's proposed rule will experience a slight increase in profits of $0.6 million. Similarly, foreign steel producers will also experience a slight increase in profits of $0.4 million due to the slightly higher prices and increases in imports to the U.S. market. For more information, consult the economic impact analysis supporting this proposed rule.

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

Implementation of the rule as proposed would be expected to result in a small increase in solid waste: 3,200 tpy of sludge and 1,200 tpy of dust. The energy increase could be expected to be 24,000 megawatt-hours per year, primarily due to the energy requirements of new venturi scrubbers.

V. Solicitation of Comments and Public Participation

We seek full public participation in arriving at final decisions and encourage comments on all aspects of this proposal from all interested parties. You need to submit full supporting data and detailed analysis with your comments to allow use to make the best use of them. Be sure to direct your comments to the Air and Radiation Docket and Information Center, Docket No. A–2000–44 (see **ADDRESSEES**).

We are requesting comments on two specific issues. The first is whether the emission limit for the windbox exhaust at sinter plants should be expressed in terms of lb/ton of sinter (0.3 lb/ton), concentration (0.01 gr/dscf for baghouses and 0.03 gr/dscf for scrubbers), or a combination. The second issue is whether MACT standards are warranted for the discharge end and sinter cooler at sinter plants and for ladle metallurgy operations in the BOPF shop. The

discharge end contributes only 1 percent of the HAP emissions from sinter plants, and the cooler contributes less than 10 percent. Ladle metallurgy contributes less than 1 percent of the HAP emissions from BOPF shops.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this regulatory action is not a "significant regulatory action" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule does not have federalism implications. None of the affected facilities are owned or operated by State governments, and the proposed rule would not preempt any State laws that are more stringent. Therefore, it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. In addition, the proposed rule is required by statute and, if implemented, will not impose any substantial direct compliance costs. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

C. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

On January 1, 2001, Executive Order 13084 was superseded by Executive Order 13175. However, this proposed rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084. Development of the final rule will address tribal considerations under Executive Order 13175. Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate integrated iron and steel manufacturing facilities. The proposed rule is required by statute and will not impose any substantial direct compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to

influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is technology based and not based on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Further, this proposed rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. The maximum total annual cost of this proposed rule for any year has been estimated to be less than $6 million. Thus, today's proposed rule is not subject to sections 202 and 205 of the UMRA. In addition, the EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business according to Small Business Administration (SBA) size standards for NAICS code 331111 (*i.e.*, Iron and Steel Mills) of 1,000 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Based on the above definition of small entities, the Agency has determined that there are no small businesses within this source category that would be subject to this proposed rule. Therefore, because this proposed rule will not impose any requirements on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 2003.01), and a copy may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy also may be downloaded off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The rule would require applicable one-time notifications required by the General Provisions for each affected source. As required by the NESHAP General Provisions, all plants would be required to prepare and operate by a startup, shutdown, and malfunction plan. Plants also would be required to prepare an operation and maintenance plan for capture systems and control devices subject to operating limits. Records would be required to demonstrate continuous compliance with the monitoring, operation, and maintenance requirements for capture systems, control devices, and monitoring systems. Semiannual compliance reports also are required. These reports would describe any deviation from the standards, any period a continuous monitoring system was "out-of-control," or any startup, shutdown, or malfunction event where actions taken to respond were inconsistent with startup, shutdown, and malfunction plan. If no deviation or other event occurred, only a summary report would be required. Consistent with the General Provisions, if actions taken in response to a startup, shutdown, or malfunction event are not consistent with the plan, an immediate report must be submitted within 2 days of the event with a letter report 7 days later.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to total 5,512 labor

hours per year at a total annual cost of $352,302, including labor, capital, and operation and maintenance.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after July 13, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by August 13, 2001. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed rule involves technical standards. The EPA proposes to use EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, 9, and 17 in 40 CFR part 60, appendix A; Performance Specification 1 (PS–1) in 40 CFR part 60, appendix B; and OSW 846 Method 9071B. Consistent with the NTTAA, we conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 2F, 2G, 5D, 9, and OSW 846 Method 9071B. The search and review results have been documented and placed in Docket A–2000–44.

One voluntary consensus standard was identified as applicable to PS–1. The standard ASTM D6216 (1998), Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications, has been incorporated by reference into PS–1 (65 FR 48920, August 10, 2000).

Another voluntary consensus standard, ASTM D4536–96, Particulate (Matter) Modified High Volume, is being proposed as an alternative to the sampling equipment and procedures in Method 5 or 17 in conducting emissions testing of positive pressure baghouses. The ASTM D4536–96 equipment and procedures would be used in conjunction with the sample traverse and calculations as described in Method 5D for the application. We invite comments on whether including this ASTM standard method is appropriate for this or other applications.

In addition to the voluntary consensus standards we propose to use in this rule, our search for emissions monitoring procedures identified 15 other voluntary consensus standards. We determined that 12 of these 15 standards were impractical alternatives to EPA test methods for the purposes of this proposed rule. Therefore, we do not propose to include these 12 voluntary consensus standards in this proposed rule. Our detailed review comments for these 12 standards are in Docket A–2000–44.

Three of the 15 voluntary consensus standards identified in this search were unavailable at the time the review was conducted for the purposes of this proposed rule because they are under development by the voluntary consensus body. Our review comments for these three standards are in Docket A–2000–44.

The EPA invites comment on the compliance demonstration requirements proposed in this rule and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commentors should also explain why this regulation should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A, was used).

The EPA test methods and performance specifications that would be required for integrated iron and steel manufacturing facilities are included in §§ 63.7822, 63.7823, and 63.7831 of the proposed rule. Under § 63.8 of the NESHAP General Provisions in 40 CFR part 63, subpart A, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

List of Subjects in 40 CFR part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Iron and steel, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 19, 2001.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—[Amended]

2. Section 63.14 is amended by adding paragraph (b)(20) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(20) ASTM D4536–96, Standard Test Method for High-Volume Sampling for Solid Particulate Matter and Determination of Particulate Emissions,

IBR approved [EFFECTIVE DATE OF FINAL RULE] for § 63.7822.

* * * * *

3. Part 63 is amended by adding subpart FFFFF to read as follows:

Sec.

Subpart FFFFF—National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities

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63.7781 Am I subject to this subpart?
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Emission Limitations

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Initial Compliance Requirements

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Tables to Subpart FFFFF of Part 63

Table 1 to Subpart FFFFF of Part 63—Emission and Opacity Limits
Table 2 to Subpart FFFFF of Part 63—Initial Compliance with Emission and Opacity Limits
Table 3 to Subpart FFFFF of Part 63—Continuous Compliance with Emission and Opacity Limits
Table 4 to Subpart FFFFF of Part 63—Applicability of General Provisions to Subpart FFFFF

Subpart FFFFF—National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities

What This Subpart Covers

§ 63.7780 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for integrated iron and steel manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations and operation and maintenance requirements in this subpart.

§ 63.7781 Am I subject to this subpart?

You are subject to this subpart if you own or operate an integrated iron and steel manufacturing facility that is (or is part of) a major source of hazardous air pollutant (HAP) emissions on the first compliance date that applies to you. Your integrated iron and steel manufacturing facility is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

§ 63.7782 What parts of my plant does this subpart cover?

(a) This subpart applies to each new and existing affected source at your integrated iron and steel manufacturing facility.

(b) The affected sources are each new or existing sinter plant, blast furnace, and basic oxygen process furnace (BOPF) shop at your integrated iron and steel manufacturing facility.

(c) This subpart covers emissions from the sinter plant windbox exhaust, discharge end, and sinter cooler; the blast furnace casthouse; and the BOPF shop including each individual BOPF and shop ancillary operations (hot metal transfer, hot metal desulfurization, slag skimming, and ladle metallurgy).

(d) A sinter plant, blast furnace, or BOPF shop at your integrated iron and steel manufacturing facility is existing if you commenced construction or reconstruction of the affected source before July 13, 2001.

(e) A sinter plant, blast furnace, or BOPF shop at your integrated iron and steel manufacturing facility is new if you commence construction or reconstruction of the affected source on or after July 23, 2001. An affected source is reconstructed if it meets the definition of "reconstruction" in § 63.2.

§ 63.7783 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you no later than [2 YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(b) If you have a new affected source and its initial startup date is on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you by [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) If you have a new affected source and its initial startup date is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your integrated iron and steel manufacturing facility is an area source that becomes a major source of HAP, the following compliance dates apply to you:

(1) Any portion of the existing integrated iron and steel manufacturing facility that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the integrated iron and steel manufacturing facility must be in compliance with this subpart no later than 2 years after it becomes a major source.

(e) You must meet the notification and schedule requirements in § 63.7840. Several of these notifications must be submitted before the compliance date for your affected source.

§§ 63.7784–63.7789 [Reserved]

Emission Limitations

§ 63.7790 What emission limitations must I meet?

(a) You must meet each emission limit and opacity limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit for capture and control devices in paragraphs (b)(1) through (5) of this section that applies to you.

(1) For each capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse, you must:

(i) Maintain the hourly average volumetric flow rate through each separately ducted hood in the capture system at or above the minimum level established during the initial performance test; or

(ii) Maintain the total hourly average volumetric flow rate at the control device inlet at or above the minimum level established during the initial performance test and all capture system dampers in the same position as during the initial performance test.

(2) For each capture system applied to secondary emissions from a BOPF, you must:

(i) Maintain the average volumetric flow rate through each separately ducted hood in the capture system for each steel production cycle at or above the minimum level established during the initial performance test; or

(ii) Maintain the total average volumetric flow rate at the control device inlet for each steel production cycle at or above the minimum level established during the initial performance test and all capture system dampers in the same position as during the initial performance test.

(3) For each baghouse applied to meet any particulate emission limit in Table 1, you must operate the baghouse such that the bag leak detection system does not alarm for more than 5 percent of the total operating time in any semiannual reporting period.

(4) For each venturi scrubber applied to meet any particulate emission limit in Table 1, you must maintain the hourly average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial performance test.

(5) For each electrostatic precipitator applied to emissions from a BOPF, you must maintain the hourly average opacity of emissions exiting the control device stack at or below the level established during the initial performance test.

(6) An owner or operator who uses an air pollution control device other than a baghouse, venturi scrubber, or electrostatic precipitator must submit a description of the device; test results collected in accordance with § 63.7822 verifying the performance of the device for reducing emissions of particulate matter to the atmosphere to the levels required by this subpart; a copy of the operation and maintenance plan required in § 63.7800(b); and appropriate operating parameters that will be monitored to maintain continuous compliance with the applicable emission limitation(s). The monitoring plan identifying the operating parameters to be monitored is subject to approval by the Administrator.

(c) For each sinter plant, you must maintain the 30-day rolling average oil content of the sinter plant feedstock at or below 0.025 percent.

§§ 63.7791–63.7799 [Reserved]

Operation and Maintenance Requirements

§ 63.7800 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for each capture system and control device subject to an operating limit in § 63.7790(b). Each plan must address the elements in paragraphs (b)(1) through (3) of this section.

(1) Monthly inspections of the equipment that is important to the performance of the total capture system (i.e., pressure sensors, dampers, and damper switches). This inspection must include observations of the physical appearance of the equipment (e.g., presence of holes in ductwork or hoods, flow constrictions caused by dents or accumulated dust in ductwork, and fan erosion). The operation and maintenance plan also must include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection.

(2) Preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

(3) In the event a bag leak detection system alarm is triggered, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Actions may include, but are not limited to:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repair the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

§§ 63.7801–63.7809 [Reserved]

General Compliance Requirements

§ 63.7810 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction as defined in § 63.2.

(b) During the period between the compliance date specified for your affected source in § 63.7783 and the date upon which continuous monitoring systems have been installed and certified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

§§ 63.7811–63.7819 [Reserved]

Initial Compliance Requirements

§ 63.7820 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) As required in § 63.7(a)(2), you must conduct a performance test within 180 calendar days of the compliance date that is specified in § 63.7783 for your affected source to demonstrate initial compliance with each emission and opacity limit in Table 1 to this subpart that applies to you, and the 30-day rolling average oil content limit for the sinter plant feedstock in § 63.7790(c).

(b) For each operation and maintenance requirement that applies to you where initial compliance is not demonstrated using a performance test or opacity observation, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.7783.

(c) If you commenced construction or reconstruction between July 13, 2001 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must demonstrate initial compliance with either the proposed emission limit or the promulgated emission limit no later than [180 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or no later than 180 days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction between [INSERT DATE OF PUBLICATION OF THIS PROPOSED RULE IN THE **Federal Register**] and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by [3 YEARS AND 180 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.7821 When must I conduct subsequent performance tests?

You must conduct subsequent performance tests to demonstrate compliance with all applicable emission and opacity limits in Table 1 to this subpart no less frequently than twice (at mid-term and renewal) during each term of your title V operating permit.

§ 63.7822 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraphs (b) through (h) of this section.

(b) To determine compliance with the applicable emission limit for particulate matter in Table 1 to this subpart, follow the test methods and procedures in paragraphs (b)(1) and (2) of this section.

(1) Determine the concentration of particulate matter according to the following test methods in appendix A to part 60 of this chapter:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5, 5D, or 17, as applicable, to determine the concentration of particulate matter. You can also use ASTM D4536–96 (incorporated by reference—see § 63.14) as an alternative to the sampling equipment and operating procedures in Method 5 or 17 when testing a positive pressure baghouse, but you must use the sample traverse location and number of sampling points described in Method 5D.

(2) Collect a minimum sample volume of 60 dry standard cubic feet of gas during each particulate matter test run. Three valid test runs are needed to comprise a performance test.

(c) For each sinter plant windbox exhaust stream, you must complete the requirements of paragraph (c)(1) and (2) of this section:

(1) Include procedures in your source test plan for measuring and recording the sinter production rate for each test run in tons per hour; and

(2) Compute the process-weighted mass emissions (E_p) for each test run using Equation 1 of this section as follows:

$$E_p = \frac{C \times Q}{P \times K} \qquad \text{(Eq. 1)}$$

Where:

E_p = Process-weighted mass emissions of particulate matter, lb/ton;

C = Concentration of particulate matter, gr/dscf;

Q = Volumetric flow rate of stack gas, dscf/hr;

P = Production rate of sinter during the test run, tons/hr; and

K = Conversion factor, 7,000 gr/lb.

(d) If you apply two or more control devices in parallel to emissions from a sinter plant discharge end, compute the average flow-weighted concentration for each test run using Equation 2 of this section as follows:

$$C_w = \frac{\sum_{i=1}^{n} C_i Q_i}{\sum_{i=1}^{n} Q_i} \qquad \text{(Eq. 2)}$$

Where:

C_w = Flow-weighted concentration, gr/dscf;

C_i = Concentration of particulate matter from exhaust stream "i", gr/dscf; and

Q_i = Volumetric flow rate of effluent gas from exhaust stream "i", dscfm.

(e) For a control device applied to emissions from a blast furnace casthouse, sample for an integral number of furnace tapping operations sufficient to obtain at least 1 hour of sampling for each test run.

(f) For a primary emission control device applied to emissions from a BOPF with a closed hood system, sample only during the primary oxygen blow and do not sample during any subsequent reblows. Continue sampling for each run for an integral number of primary oxygen blows.

(g) For a primary emission control system applied to emissions from a BOPF with an open hood system and for a control device applied solely to secondary emissions from a BOPF, you must complete the requirements of paragraphs (g)(1) and (2) of this section:

(1) Sample only during the steel production cycle. Discontinue sampling during periods of abnormal operation. Record the start and end time of each steel production cycle and each period of abnormal operation; and

(2) Sample for an integral number of steel production cycles. The steel production cycle begins when the scrap or hot metal is charged to the furnace (whichever operation occurs first) and ends 3 minutes after the slag is emptied from the vessel into the slag pot. Consecutive cycles are not required for determining compliance.

(h) For a control device applied to emissions from BOPF shop ancillary operations (hot metal transfer, skimming, desulfurization, or ladle metallurgy), sample only when the operation(s) is being conducted.

§ 63.7823 What test methods and other procedures must I use to demonstrate initial compliance with the opacity limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(h)(5) and the conditions detailed in paragraphs (b) through (d) of this section.

(b) You must conduct each visible emissions performance test such that the opacity observations overlap with the performance test for particulate matter.

(c) To determine compliance with the applicable opacity limit in Table 1 to this subpart for a sinter plant discharge end or a blast furnace casthouse:

(1) Using a certified observer, determine the opacity of emissions according to Method 9 in appendix A to part 60 of this chapter.

(2) Obtain a minimum of 30 6-minute averages. For a blast furnace casthouse, make observations during tapping of the furnace. Tapping begins when the furnace is opened, usually by creating a hole near the bottom of the furnace, and ends when the hole is plugged.

(d) To determine compliance with the applicable opacity limit in Table 1 to this subpart for BOPF shops:

(1) For an existing BOPF shop:

(i) Using a certified observer, determine the opacity of emissions according to Method 9 in appendix A to part 60 of this chapter except as specified in paragraphs (d)(1)(ii) and (iii) of this section.

(ii) Instead of procedures in section 2.4 of Method 9 in appendix A to part 60 of this chapter, record observations to the nearest 5 percent at 15-second intervals for at least three steel production cycles.

(iii) Instead of procedures in section 2.5 of Method 9 in appendix A to part 60 of this chapter, determine the 3-minute average opacity from the average of 12 consecutive observations recorded at 15-second intervals.

(2) For a new BOPF shop housing a bottom-blown BOPF:

(i) Using a certified observer, determine the opacity of emissions according to Method 9 in appendix A to part 60 of this chapter.

(ii) Select the highest and second highest sets of 6-minute average opacities for each steel production cycle.

(3) For a new BOPF shop housing a top-blown BOPF:

(i) Determine the opacity of emissions according to the requirements for an existing BOPF shop in paragraphs (d)(1)(i) through (iii) of this section.

(ii) Select the highest and second highest sets of 3-minute average opacities for each steel production cycle.

(4) Opacity observations must cover the entire steel production cycle and must be made for at least three cycles. The steel production cycle begins when the scrap or hot metal is charged to the furnace (whichever operation occurs first) and ends 3 minutes after the slag is emptied from the vessel into the slag pot. Consecutive cycles are not required for determining compliance.

(5) Determine and record the starting and stopping times of the steel production cycle.

§ 63.7824 What test methods and other procedures must I use to establish and demonstrate initial compliance with the operating limits?

(a) For a capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse and subject to an operating limit in § 63.7790(b)(1) for flow rate, you must establish a site-specific operating limit(s) according to the procedures in paragraph (a)(1) or (2) of this section.

(1) If you elect the operating limit in § 63.7790(b)(1)(i) for the volumetric flow rate through each separately ducted hood:

(i) Using the continuous parameter monitoring system (CPMS) required in § 63.7830(a)(1), measure and record the actual volumetric flow rate through each separately ducted hood in the capture system during each visible emissions performance test.

(ii) Compute and record the hourly average volumetric flow rate for the performance test. Your operating limit is the lowest hourly flow rate value in a test that meets the opacity limit.

(2) If you elect the operating limit in § 63.7790(b)(1)(ii) for total flow rate and damper position:

(i) Using the CPMS required in § 63.7830(a)(2), measure and record the total volumetric flow rate at the control device inlet during each visible emissions performance test.

(ii) Compute and record the hourly average flow rate for the performance test. Your operating limit is the lowest hourly flow rate value in a test that meets the opacity limit.

(iii) Record the position of each damper for the capture system damper position during the visible emissions performance test. Your operating limit is the position of each damper.

(b) For each capture system applied to secondary emissions from a BOPF and subject to an operating limit in § 63.7790(b)(2) for flow rate, you must establish a site-specific operating limit(s) according to the procedures in paragraph (b)(1) or (2) of this section.

(1) If you elect the operating limit in § 63.7790(b)(2)(i) for the volumetric flow rate through each separately ducted hood:

(i) Using the CPMS required in § 63.7830(b)(1), measure and record the actual volumetric flow rate through each separately ducted hood in the capture system for each steel production cycle during the visible emissions performance test.

(ii) Compute and record the average volumetric flow rate for each steel production cycle during the performance test. Your operating limit is the lowest average flow rate value in a test that meets the opacity limit.

(2) If you elect the operating limit in § 63.7790(b)(2)(ii) for total flow rate and damper position:

(i) Using the CPMS required in § 63.7830(b)(2), measure and record the total volumetric flow rate at the control device inlet for each steel production cycle during the visible emissions performance test.

(ii) Compute and record the average flow rate for the performance test. Your operating limit is the lowest average flow rate value in a test that meets the opacity limit.

(iii) Record the position of each damper for the capture system damper position during the visible emissions performance test. Your operating limit is the position of each damper.

(c) For a venturi scrubber subject to operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(4), you must establish site-specific operating limits according to the procedures in paragraphs (c)(1) and (2) of this section.

(1) Using the CPMS required in § 63.7830(d), measure and record the pressure drop and scrubber water flow rate during each run of the particulate matter performance test.

(2) Compute and record the hourly average pressure drop and scrubber water flow rate for each individual test run. Your operating limits are the lowest average pressure drop and scrubber water flow rate value in any of the three runs that meet the applicable emission limit.

(d) For an electrostatic precipitator subject to the operating limit in § 63.7790(b)(5) for opacity, you must establish a site-specific operating limit according to the procedures in paragraphs (d)(1) and (2) of this section.

(1) Using the continuous opacity monitoring system (COMS) required in § 63.7830(e), measure and record the opacity of emissions from each control device stack during each run of the particulate matter performance test.

(2) Compute and record the hourly average opacity for each individual test run. Your operating limit is the highest hourly opacity in any of the three runs that meet the emission limit.

(e) You may change the operating limits for a capture system, venturi scrubber, or electrostatic precipitator if you meet the requirements in paragraphs (e)(1) through (3) of this section.

(1) Submit a written notification to the Administrator of your request to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate compliance with the applicable emission limitation in Table 1 to this subpart.

(3) Establish revised operating limits according to the applicable procedures in paragraphs (a) through (d) of this section.

(f) To determine compliance with the operating limit for the oil content of the sinter plant feedstock in § 63.7790(c), follow the test methods and procedures in paragraphs (f)(1) through (3) of this section.

(1) Sample the feedstock three times a day (once every 8 hours), composite the three samples each day, and analyze the composited samples using Method 9071B "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 (Revision 2, April 1998) (Incorporated by reference).

(2) Continue the sampling and analysis procedure for 30 consecutive days.

(3) Compute and record the 30-day rolling average using that day's value and the 29 previous daily values.

§ 63.7825 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission or opacity limit in Table 1 to this subpart, you have demonstrated initial compliance if:

(1) You meet the conditions in Table 2 to this subpart; and

(2) For each capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse and subject to the operating limit in § 63.7790(b)(1), you have established appropriate site-specific operating limit(s) and:

(i) If you elect the operating limit in § 63.7790(b)(1)(i) for flow rate, you have a record of the actual volumetric flow rate through each separately ducted hood measured during the performance test in accordance with § 63.7824(a)(1); or

(ii) If you elect the operating limits in § 63.7790(b)(1)(ii) for total flow rate and damper position, you have a record of the total volumetric flow rate at the inlet to the control device measured during the performance test and the position of each damper during the test in accordance with § 63.7824(a)(2); and

(3) For each capture system applied to secondary emissions from a BOPF and subject to the operating limit in § 63.7790(b)(2), you have established appropriate site-specific operating limit(s) and:

(i) If you elect the operating limit in § 63.7790(b)(2)(i) for flow rate, you have a record of the actual volumetric flow rate through each separately ducted hood measured during each steel production cycle in the performance test in accordance with § 63.7824(b)(1); or

(ii) If you elect the operating limits in § 63.7790(b)(2)(ii) for total flow rate and damper position, you have a record of the total volumetric flow rate at the inlet to the control device measured during each steel production cycle in the performance test and the position of each damper during the test in accordance with § 63.7824(b)(2); and

(4) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(4), you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.7824(c); and

(5) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(5), you have established an appropriate site-specific operating limit and have a record of the opacity measurements made during the performance test in accordance with § 63.7824(d).

(b) For each existing or new sinter plant subject to the operating limit for the oil content of the feedstock in § 63.7790(c), you have demonstrated initial compliance if the 30-day rolling average of the oil content of the feedstock, measured during the initial performance test in accordance with § 63.7824(f), is no more than 0.025 percent.

(c) For each emission limitation that applies to you, you must submit a notification of compliance status according to § 63.7840(e).

§ 63.7826 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

(a) You have demonstrated initial compliance if you certify in your notification of compliance status that:

(1) You have prepared the operation and maintenance plan according to the requirements in § 63.7800(b); and

(2) You will operate each capture system and control device according to the procedures in the plan; and

(3) You submit a notification of compliance status according to the requirements in § 63.7840(e).

(b) [Reserved]

§§ 63.7827–63.7829 [Reserved]

Continuous Compliance Requirements

§ 63.7830 What are my monitoring requirements?

(a) For each capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse and subject to an operating limit in § 63.7790(b)(1), you must meet the requirements in paragraph (a)(1) or (2) of this section.

(1) If you elect the operating limit in § 63.7790(b)(1)(i) for flow rate, you must at all times monitor the hourly average actual volumetric flow rate through each separately ducted hood using a CPMS according to the requirements in § 63.7831(a).

(2) If you elect the operating limits for flow rate and damper position in § 63.7790(b)(1)(ii), you must at all times monitor the average hourly total volumetric flow rate at the inlet to the control device using a CPMS according to the requirements in § 63.7831(a) and make a visual check at least once every 24 hours to verify that each damper for the capture system is in the same position as during the initial performance test.

(b) For each capture system applied to secondary emissions from a BOPF and subject to an operating limit in § 63.7790(b)(2), you must meet the requirements in paragraph (b)(1) or (2) of this section.

(1) If you elect the operating limit in § 63.7790(b)(2)(i) for flow rate, you must at all times monitor the average actual volumetric flow rate through each separately ducted hood for each steel production cycle using a CPMS according to the requirements in § 63.7831(a).

(2) If you elect the operating limits for flow rate and damper position in § 63.7790(b)(2)(ii), you must at all times monitor the average total volumetric flow rate at the inlet to the control device for each steel production cycle using a CPMS according to the requirements in § 63.7831(a) and make a visual check at least once every 24 hours to verify that each damper for the capture system is in the same position as during the initial performance test.

(c) For each baghouse subject to the operating limit in § 63.7790(b)(3) for the bag leak detection system alarm, you must at all times monitor the relative

change in particulate matter loadings using a bag leak detection system according to the requirements in § 63.7831(b) and conduct inspections at their specified frequencies according to the requirements in paragraphs (c)(1) through (8) of this section.

(1) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range identified in the manual.

(2) Confirm that dust is being removed from hoppers through weekly visual inspections or other means of ensuring the proper functioning of removal mechanisms.

(3) Check the compressed air supply for pulse-jet baghouses each day.

(4) Monitor cleaning cycles to ensure proper operation using an appropriate methodology.

(5) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means.

(6) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or laying on their sides. You do not have to make this check for shaker-type baghouses using self-tensioning (spring-loaded) devices.

(7) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks.

(8) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

(d) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(4), you must at all times monitor the hourly average pressure drop and water flow rate using a CPMS according to the requirements in § 63.7831(c).

(e) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(5), you must at all times monitor the hourly average opacity of emissions exiting each control device stack using a continuous opacity monitoring system (COMS) according to the requirements in § 63.7831(f).

§ 63.7831 What are the installation, operation, and maintenance requirements for my monitors?

(a) For each capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse that is subject to operating limits in § 63.7790(b)(1) for flow rate and for each capture system applied to secondary emissions from a BOPF that is subject to operating limits in § 63.7790(b)(2) for flow rate, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (a)(1) through (4) of this section.

(1) Locate the flow sensor and other necessary equipment such as straightening vanes in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(2) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flow rate.

(3) Conduct a flow sensor calibration check at least semiannually.

(4) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(b) For each baghouse subject to the operating limit in § 63.7790(b)(3) for the bag leak detection system alarm, you must install, operate, and maintain each bag leak detection system according to the requirements in paragraphs (b)(1) through (7) of this section.

(1) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The system must provide output of relative changes in particulate matter loadings.

(3) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings is detected over a preset level. The alarm must be located such that it can be heard by the appropriate plant personnel.

(4) Each system that works based on the triboelectric effect must be installed, operated, and maintained in a manner consistent with the guidance document, "Fabric Filter Bag Leak Detection Guidance," EPA–454/R–98–015, September 1997. You may obtain a copy of this guidance document by contacting the National Technical Information Service (NTIS) at 800–553–6847. You may install, operate, and maintain other types of bag leak detection systems in a manner consistent with the manufacturer's written specifications and recommendations.

(5) To make the initial adjustment of the system, establish the baseline output by adjusting the sensitivity (range) and the averaging period of the device. Then, establish the alarm set points and the alarm delay time.

(6) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in your operation and maintenance plan. Do not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365-day period unless a responsible official certifies, in writing, that the baghouse has been inspected and found to be in good operating condition.

(7) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) For each venturi scrubber subject to the operating limits in § 63.7790(b)(4) for pressure drop and scrubber water flow rate, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (c)(1) and (2) of this section.

(1) For the pressure drop CPMS, you must:

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure and that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(iii) Check the pressure tap for pluggage daily.

(iv) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(vi) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) For the scrubber water flow rate CPMS, you must:

(i) Locate the flow sensor and other necessary equipment in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(ii) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flow rate.

(iii) Conduct a flow sensor calibration check at least semiannually according to the manufacturer's instructions.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) You must install, operate, and maintain each CPMS for a capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse and each CPMS for a venturi scrubber according to the

requirements in paragraphs (d)(1) through (3) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of three of the required four data points to constitute a valid hour of data.

(2) Each CPMS must have valid hourly data for at least 95 percent of every averaging period.

(3) Each CPMS must determine and record the hourly average of all recorded readings.

(e) You must install, operate, and maintain each CPMS for a capture system applied to secondary emissions from a BOPF according to the requirements in paragraphs (e)(1) through (3) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 15-minute period during a steel production cycle.

(2) Each CPMS must have valid data for at least 95 percent of every averaging period.

(3) Each CPMS must determine and record the average of all recorded readings for a steel production cycle.

(f) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(5), you must install, operate, and maintain each COMS according to the requirements in paragraphs (f)(1) through (4) of this section.

(1) You must install each COMS and conduct a performance evaluation of each COMS according to § 63.8 and Performance Specification 1 in appendix B to 40 CFR part 60.

(2) You must develop and implement a quality control program for operating and maintaining each COMS according to § 63.8. At a minimum, the quality control program must include a daily calibration drift assessment, quarterly performance audit, and annual zero alignment of each COMS.

(3) You must operate and maintain each COMS according to § 63.8(e) and your quality control program. Identify periods the COMS is out of control, including any periods that the COMS fails to pass a daily calibration drift assessment, quarterly performance audit, or annual zero alignment audit.

(4) You must determine and record the hourly average opacity using all the 6-minute averages collected for periods during which the COMS is not out of control.

§ 63.7832 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times an affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

§ 63.7833 How do I demonstrate continuous compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission or opacity limit in § 63.7790(a), you must demonstrate continuous compliance according to the requirements in Table 3 to this subpart.

(b) For each capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse and subject to an operating limit in § 63.7790(b)(1), you must demonstrate continuous compliance by completing the requirements in paragraphs (b)(1) and (2) of this section:

(1) If you elect the operating limit for flow rate in § 63.7790(b)(1)(i):

(i) Maintaining the hourly average volumetric flow rate through each separately ducted hood at or above the level established during the initial or subsequent performance test;

(ii) Inspecting and maintaining each capture system CPMS according to § 63.7831(a) and recording all information needed to document conformance with these requirements; and

(iii) Collecting and reducing monitoring data for the actual volumetric flow rate through each separately ducted hood according to § 63.7831(d).

(2) If you elect the operating limits for flow rate and damper position in § 63.7790(b)(1)(ii):

(i) Maintaining the hourly average total volumetric flow rate at the control device inlet at or above the level established during the initial or subsequent performance test and all capture system damper positions in the same positions as during the initial or subsequent performance test;

(ii) Inspecting and maintaining each capture system CPMS according to § 63.7831(a) and recording all information needed to document conformance with these requirements;

(iii) Collecting and reducing monitoring data for the total volumetric flow rate at the control device inlet according to § 63.7831(d); and

(iv) Checking all capture system dampers at least once each day (24 hours) to verify each damper is in the same position as during the initial or subsequent performance test and recording all information needed to document conformance with these requirements.

(c) For each capture system applied to secondary emissions from a BOPF and subject to an operating limit in § 63.7790(b)(2), you must demonstrate continuous compliance by completing the requirements in paragraphs (c)(1) and (2) of this section:

(1) If you elect the operating limit for flow rate in § 63.7790(b)(2)(i):

(i) Maintaining the average volumetric flow rate through each separately ducted hood for each steel production cycle at or above the level established during the initial or subsequent performance test;

(ii) Inspecting and maintaining each capture system CPMS according to § 63.7831(a) and recording all information needed to document conformance with these requirements; and

(iii) Collecting and reducing monitoring data for the actual volumetric flow rate through each separately ducted hood according to § 63.7831(e).

(2) If you elect the operating limits for flow rate and damper position in § 63.7790(b)(2)(ii):

(i) Maintaining the average total volumetric flow rate at the control device inlet for each steel production cycle at or above the level established during the initial or subsequent performance test and all capture system damper positions in the same positions as during the initial or subsequent performance test;

(ii) Inspecting and maintaining each capture system CPMS according to § 63.7831(a) and recording all information needed to document conformance with these requirements;

(iii) Collecting and reducing monitoring data for the total volumetric flow rate at the control device inlet according to § 63.7831(e); and

(iv) Checking all capture system dampers at least once each day (24 hours) to verify each damper is in the

same position as during the initial or subsequent performance test and recording all information needed to document conformance with these requirements.

(d) For each baghouse subject to the operating limit for the bag leak detection system alarm in § 63.7790(b)(3), you must demonstrate continuous compliance by completing the requirements in paragraphs (d)(1) through (3) of this section:

(1) Maintaining each baghouse such that the bag leak detection system alarm does not sound for more than 5 percent of the operating time during any semiannual reporting period. To determine the percent of time the alarm sounded:

(i) Alarms that occur due solely to a malfunction of the bag leak detection system are not included in the calculation.

(ii) Alarms that occur during startup, shutdown, or malfunction are not included in the calculation if the condition is described in the startup, shutdown, and malfunction plan and all the actions you took during the startup, shutdown, or malfunction were consistent with the procedures in the startup, shutdown, and malfunction plan.

(iii) Count 1 hour of alarm time for each alarm when you initiated procedures to determine the cause of the alarm within 1 hour.

(iv) Count the actual amount of time you took to initiate procedures to determine the cause of the alarm if you did not initiate procedures to determine the cause of the alarm within 1 hour of the alarm.

(v) Calculate the percentage of time the alarm on the bag leak detection system sounds as the ratio of the sum of alarm times to the total operating time multiplied by 100.

(2) Maintaining records of the times the bag leak detection system alarm sounded, and for each valid alarm, the time you initiated corrective action, the corrective action(s) taken, and the date on which corrective action was completed.

(3) Inspecting and maintaining each baghouse according to the requirements in § 63.7830(c)(1) through (8) and recording all information needed to document conformance with these requirements. If you increase or decrease the sensitivity of the bag leak detection system beyond the limits specified in § 63.7831(b)(6), you must include a copy of the required written certification by a responsible official in the next semiannual compliance report.

(e) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(4), you must demonstrate continuous compliance by completing the requirements of paragraphs (e)(1) through (3) of this section:

(1) Maintaining the hourly average pressure drop and scrubber water flow rate at levels no lower than those established during the initial or subsequent performance test;

(2) Inspecting and maintaining each venturi scrubber CPMS according to § 63.7831(c) and recording all information needed to document conformance with these requirements; and

(3) Collecting and reducing monitoring data for pressure drop and scrubber water flow rate according to § 63.7831(d) and recording all information needed to document conformance with these requirements.

(f) For each electrostatic precipitator subject to the site-specific opacity operating limit in § 63.7790(b)(5), you must demonstrate continuous compliance by completing the requirements of paragraphs (f)(1) and (2) of this section:

(1) Maintaining the hourly average opacity of emissions no higher than the site-specific limit established during the initial or subsequent performance test;

(2) Operating and maintaining each COMS and reducing the COMS data according to § 63.7831(f).

(g) For each new or existing sinter plant subject to the operating limit for the feedstock oil content in § 63.7790(c), you must demonstrate continuous compliance by completing the requirements of paragraphs (g)(1) through (3) of this section:

(1) Sampling and recording the oil content of the sinter plant feedstock every 24 hours according to the performance test procedures in § 63.7824(f);

(2) Computing and recording the 30-day rolling average oil content for each operating day; and

(3) Maintaining the oil content of the feedstock no higher than 0.025 percent at all times.

§ 63.7834 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each capture system and control device subject to an operating limit in § 63.7790(b), you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.7800(b) by completing the requirements of paragraphs (a)(1) through (3) of this section:

(1) Making monthly inspections of capture systems according to § 63.7800(b)(1) and recording all information needed to document conformance with these requirements;

(2) Performing preventative maintenance for each control device according to § 63.7800(b)(2) and recording all information needed to document conformance with these requirements; and

(3) Initiating and completing corrective action for a bag leak detection system alarm according to § 63.7800(b)(3) and recording all information needed to document conformance with these requirements.

(b) You must maintain a current copy of the operation and maintenance plan required in § 63.7800(b) onsite and available for inspection upon request. You must keep the plans for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

§ 63.7835 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* You must report each instance in which you did not meet each emission limitation in § 63.7790 that applies to you. This includes periods of startup, shutdown, and malfunction. You also must report each instance in which you did not meet each operation and maintenance requirement in § 63.7800 that applies to you. These instances are deviations from the emission limitations and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements in § 63.7841.

(b) *Startups, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

§§ 63.7836–63.7839 [Reserved]

Notifications, Reports, and Records

§ 63.7840 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(f)(4), and 63.9(b)

through (h) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you startup your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than [120 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start your new affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, opacity observation, or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

§ 63.7841 What reports must I submit and when?

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7783 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your source in § 63.7783.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(3)(iii)(A) or 40 CFR 71.6(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) *Compliance report contents.* Each compliance report must include the information in paragraphs (b)(1) through (3) of this section and, as applicable, paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in §§ 63.7833 and 63.7834 that apply to you, a statement that there were no deviations from the emission limitations or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a continuous monitoring system (including a CPMS or COMS) was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(7) For each deviation from an emission limitation in § 63.7790 that occurs at an affected source where you are not using a continuous monitoring system (including a CPMS or COMS) to comply with an emission limitation in this subpart, the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) as applicable and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a continuous monitoring system (including a CPMS or COMS) to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(8)(i) through (xi) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(c) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emission limitation or operation and maintenance requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

§ 63.7842 What records must I keep?

(a) You must keep the following records:

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, performance evaluations, and opacity observations as required in § 63.10(b)(2)(viii).

(b) For each COMS, you must keep the records specified in paragraphs (b)(1) through (4) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Monitoring data for COMS during a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(3) Previous (that is, superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records required in § 63.6(h)(6) for visual observations.

(d) You must keep the records required in §§ 63.7833 and 63.7834 to show continuous compliance with each emission limitation and operation and maintenance requirement that applies to you.

§ 63.7843 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

§§ 63.7844–63.7849 [Reserved]

Other Requirements and Information

§ 63.7850 What parts of the General Provisions apply to me?

Table 4 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.7851 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternative opacity emission limits in Table 1 to this subpart under § 63.6(h)(9).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.7852 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on tribroelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Basic oxygen process furnace means any refractory-lined vessel in which high-purity oxygen is blown under pressure through a bath of molten iron, scrap metal, and fluxes to produce steel. This definition includes both top and bottom blown furnaces, but does not include argon oxygen decarburization furnaces.

Basic oxygen process furnace shop means the place where steelmaking operations that begin with the transfer of molten iron (hot metal) from the torpedo car and end prior to casting the molten steel, including hot metal transfer, desulfurization, slag skimming, refining in a basic oxygen process furnace, and ladle metallurgy occur.

Basic oxygen process furnace shop ancillary operations means the processes where hot metal transfer, hot metal desulfurization, slag skimming, and ladle metallurgy occur.

Blast furnace means a furnace used for the production of molten iron from iron ore and other iron bearing materials.

Bottom-blown furnace means any basic oxygen process furnace in which oxygen and other combustion gases are introduced into the bath of molten iron through tuyeres in the bottom of the vessel or through tuyeres in the bottom and sides of the vessel.

Casthouse means the building or structure that encloses the bottom portion of a blast furnace where the hot metal and slag are tapped from the furnace.

Certified observer means a visible emission observer certified to perform EPA Method 9 opacity observations.

Desulfurization means the process in which reagents such as magnesium, soda ash, and lime are injected into the hot metal, usually with dry air or nitrogen, to remove sulfur.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including operating limits) or operation and maintenance requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Discharge end means the place where those operations conducted within the sinter plant starting at the discharge of the sintering machine's traveling grate including (but not limited to) hot sinter crushing, screening, and transfer operations occur.

Emission limitation means any emission limit, opacity limit, or operating limit.

Hot metal transfer station means the location in a basic oxygen process furnace shop where molten iron (hot metal) is transferred from a torpedo car or hot metal car used to transport hot metal from the blast furnace casthouse to a holding vessel or ladle in the basic oxygen process furnace shop. This location also is known as the reladling station or ladle transfer station.

Integrated iron and steel manufacturing facility means an establishment engaged in the production of steel from iron ore.

Ladle metallurgy means a secondary steelmaking process that is performed typically in a ladle after initial refining in a basic oxygen process furnace to adjust or amend the chemical and/or mechanical properties of steel.

Primary emission control system means the combination of equipment used for the capture and collection of primary emissions (e.g., an open hood capture system used in conjunction with an electrostatic precipitator or a closed hood system used in conjunction with a scrubber).

Primary emissions means particulate matter emissions from the basic oxygen process furnace generated during the steel production cycle which are captured and treated in the furnace's primary emission control system.

Primary oxygen blow means the period in the steel production cycle of a basic oxygen process furnace during which oxygen is blown through the molten iron bath by means of a lance inserted from the top of the vessel (top-blown) or through tuyeres in the bottom and/or sides of the vessel (bottom-blown).

Responsible official means responsible official as defined in § 63.2.

Secondary emission control system means the combination of equipment used for the capture and collection of secondary emissions from a basic oxygen process furnace.

Secondary emissions means particulate matter emissions that are not controlled by a primary emission control system, including emissions that escape from open and closed hoods, lance hole openings, and gaps or tears in ductwork to the primary emission control system.

Sinter cooler means the apparatus used to cool the hot sinter product that is transferred from the discharge end through contact with large volumes of induced or forced draft air.

Sinter plant means the machine used to produce a fused clinker-like aggregate or sinter of fine iron-bearing materials suited for use in a blast furnace. The machine is composed of a continuous traveling grate that conveys a bed of ore fines and other finely divided iron-bearing material and fuel (typically coke breeze), a burner at the feed end of the grate for ignition, and a series of downdraft windboxes along the length of the strand to support downdraft combustion and heat sufficient to produce a fused sinter product.

Skimming station means the locations inside a basic oxygen process furnace shop where slag is removed from the top of the molten metal bath.

Steel production cycle means the operations conducted within the basic oxygen process furnace shop that are required to produce each batch of steel. The following operations are included: scrap charging, preheating (when done), hot metal charging, primary oxygen blowing, sampling, (vessel turndown and turnup), additional oxygen blowing (when done), tapping, and deslagging. The steel production cycle begins when the scrap or hot metal is charged to the furnace (whichever operation occurs first) and ends after the slag is emptied from the vessel into the slag pot.

Top-blown furnace means any basic oxygen process furnace in which oxygen is introduced into the bath of molten iron by means of an oxygen lance inserted from the top of the vessel.

Windboxes means the compartments that provide for a controlled distribution of downdraft combustion air as it is drawn through the sinter bed of a sinter plant to make the fused sinter product.

§§ 63.7853–63.7879 [Reserved]

Tables to Subpart FFFFF of Part 63

Table 1 to Subpart FFFFF of Part 63 Emission and Opacity Limits

As required in § 63.7790(a), you must comply with each applicable emission and opacity limit in the following table:

For . . .	You must comply with each of the following . . .
1. Each windbox exhaust stream at a new or existing sinter plant..	You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.3 lb/ton of product sinter.
2. Each discharge end at an existing sinter plant.	a. You must not cause to be discharged to the atmosphere any gases that exit from one or more control devices that contain particulate matter in excess of 0.02 gr/dscf; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the building or structure housing the discharge end that exhibit opacity greater than 20 percent (6-minute average).

For . . .	You must comply with each of the following . . .
3. Each discharge end at a new sinter plant	a. You must not cause to be discharged to the atmosphere any gases that exit from one or more control devices that contain, on a flow weighted basis, particulate matter in excess of 0.01 gr/dscf; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the building or structure housing the discharge end that exhibit opacity greater than 10 percent (6-minute average).
4. Each sinter cooler stack at an existing sinter plant.	You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.03 gr/dscf.
5. Each sinter cooler stack at a new sinter plant.	You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.01 gr/dscf.
6. Each casthouse at an existing blast furnace	a. You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.009 gr/dscf; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the casthouse or structure housing the blast furnace that exhibit opacity greater than 20 percent (6-minute average).
7. Each casthouse at a new blast furnace	a. You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.009 gr/dscf; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the casthouse or structure housing the blast furnace that exhibit opacity greater than 15 percent (6-minute average).
8. Each basic oxygen process furnace (BOPF) at a new or existing BOPF shop.	a. You must not cause to be discharged to the atmosphere any gases that exit from a primary emission control system for a BOPF with a closed hood system that contain particulate matter in excess of 0.024 gr/dscf during the primary oxygen blow; and b. You must not cause to be discharged to the atmosphere any gases that exit from a primary emission control system for a BOPF with an open hood system that contain particulate matter in excess of 0.019 gr/dscf during the steel production cycle; and c. You must not cause to be discharged to the atmosphere any gases that exit from a control device used solely for the collection of secondary emissions from the BOPF that contain particulate matter in excess of 0.01 gr/dscf for an existing BOPF shop or 0.0052 gr/dscf for a new BOPF shop.
9. Each hot metal transfer, skimming, desulfurizaiton, and ladle metallurgy operation at a new or existing BOPF shop.	You must not cause to be discharged to the atmosphere any gases that exist from a control device that contain particulate matter in excess of 0.007 gr/dscf.
10. Each roof monitor at an existing BOPF shop.	You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the BOPF shop or any other building housing the BOPF or BOPF shop operation that exhibit opacity greater than 20 percent (3-minute average).
11. Each roof monitor at a new BOPF shop	a. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the BOPF shop or other building housing a bottom-blown BOPF or BOPF shop operations that exhibit opacity (for any set of 6-minute averages) greater than 10 percent, except that one 6-minute period not to exceed 20 percent may occur once per steel production cycle. b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the BOPF shop or other building housing a top-blown BOPF or BOPF shop operations that exhibit opacity (for any set of 3-minute averages) greater than 10 percent, except that one 3-minute period greater than 10 percent but less than 20 percent may occur once per steel production cycle.

Table 2 of Subpart FFFFF to Part 63.—Initial Compliance With Emission and Opacity Limits

As required in § 63.7825(a)(1), you must demonstrate initial compliance with the emission and opacity limits according to the following table:

For . . .	You have demonstrated initial compliance if . . .
1. Each windbox exhaust stream at an existing or new sinter plant.	The process-weighted mass rate of particulate matter from a windbox exhaust stream at a new or existing sinter plant, measured according to the performance test procedures in § 63.7822(c), did not exceed 0.3 lb/ton of product sinter.
2. Each discharge end at an existing sinter plant.	a. The flow-weighted average concentration of particulate matter from one or more control devices applied to emissions from a discharge end, measured according to the performance test procedures in § 63.7822(d), did not exceed 0.02 gr/dscf; and b. The opacity of secondary emissions from each discharge end, determined according to the performance test procedures in § 63.7823(c), did not exceed 20 percent (6-minute average).

For . . .	You have demonstrated initial compliance if . . .
3. Each discharge end at a new sinter plant	a. The flow-weighted average concentration of particulate matter from one or more control devices applied to emissions from a discharge end, measured according to the performance test procedures in § 63.7822(d), did not exceed 0.01 gr/dscf; and b. The opacity of secondary emissions from each discharge end, determined according to the performance test procedures in § 63.7823(c), did not exceed 10 percent (6-minute average).
4. Each sinter cooler stack at an existing sinter plant.	The average concentration of particulate matter from a sinter cooler stack, measured according to the performance test procedures in § 63.7822(b), did not exceed 0.03 gr/dscf.
5. Each sinter cooler stack at a new sinter plant.	The average concentration of particulate matter from a sinter cooler stack, measured according to the performance test procedures in § 63.7822(b), did not exceed 0.01 gr/dscf.
6. Each casthouse at an existing blast furnace	a. The average concentration of particulate matter from a control device applied to emissions from a casthouse, measured according to the performance test procedures in § 63.7822(e), did not exceed 0.009 gr/dscf; and b. The opacity of secondary emissions from each casthouse, determined according to the performance test procedures in § 63.7823(c), did not exceed 20 percent (6-minute average).
7. Each casthouse at a new blast furnace	a. The average concentration of particulate matter from a control device applied to emissions from a casthouse, measured according to the performance test procedures in § 63.7822(e), did not exceed 0.009 gr/dscf; and b. The opacity of secondary emissions from each casthouse, determined according to the performance test procedures in § 63.7823(c), did not exceed 15 percent (6-minute average).
8. Each basic oxygen process furnace (BOPF) at a new or existing BOPF shop.	a. The average concentration of particulate matter from a primary emission control system applied to emissions from a BOPF with a closed hood system, measured according to the performance test procedures in § 63.7822(f), did not exceed 0.024 gr/dscf; and b. The average concentration of particulate matter from a primary emission control system applied to emissions from a BOPF with an open hood system, measured according to the performance test procedures in § 63.7822(g), did not exceed 0.019 gr/dscf; and c. The average concentration of particulate matter from a control device applied solely to secondary emissions from a BOPF, measured according to the performance test procedures in § 63.7822(g), did not exceed 0.01 gr/dscf for an existing BOPF shop or 0.0052 gr/dscf for a new BOPF shop.
9. Each hot metal transfer, skimming, desulfurization, or ladle metallurgy operation at a new or existing BOPF shop.	The average concentration of particulate matter from a control device applied to emissions from hot metal transfer, skimming, desulfurization, or ladle metallurgy, measured according to the performance test procedures in § 63.7822(h), did not exceed 0.007 gr/dscf.
10. Each roof monitor at an existing BOPF shop.	The opacity of secondary emissions from each BOPF shop, determined according to the performance test procedures in § 63.7823(d), did not exceed 20 percent (3-minute average).
11. Each roof monitor at a new BOPF shop	a. The opacity of the highest set of 6-minute averages from each BOPF shop housing a bottom-blown BOPF, determined according to the performance test procedures in § 63.7823(d), did not exceed 20 percent and the second highest set of 6-minute averages did not exceed 10 percent. b. The opacity of the highest set of 3-minute averages from each BOPF shop housing a top-blown BOPF, determined according to the performance test procedures in § 63.7823(d), was less than 20 percent and the second highest set of 3-minute averages did not exceed 10 percent.

Table 3 to Subpart FFFFF of Part 63.—Continuous Compliance With Emission and Opacity Limits

As required in § 63.7833(a), you must demonstrate continuous compliance with the emission and opacity limits according to the following table:

For . . .	You must demonstrate continuous compliance by . . .
1. Each windbox exhaust stream at an existing or new sinter plant.	a. Maintaining emissions of particulate matter at or below 0.3 lb/ton of product sinter, and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
2. Each discharge end at an existing sinter plant.	a. Maintaining emissions of particulate matter from one or more control devices at or below 0.02 gr/dscf, and b. Maintaining the opacity of secondary emissions that exit any opening in the building or structure housing the discharge end at or below 20 percent (6-minute average), and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).

For . . .	You must demonstrate continuous compliance by . . .
3. Each discharge end at a new sinter plant	a. Maintaining emissions of particulate matter from one or more control devices at or below 0.01 gr/dscf, and b. Maintaining the opacity of secondary emissions that exit any opening in the building or structure housing the discharge end at or below 10 percent (6-minute average), and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
4. Each sinter cooler stack at an existing sinter plant.	a. Maintaining emissions of particulate matter at or below 0.03 gr/dscf, and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
5. Each sinter cooler stack at a new sinter plant.	a. Maintaining emissions of particulate matter at or below 0.01 gr/dscf, and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
6. Each casthouse at an existing blast furnace	a. Maintaining emissions of particulate matter from a control device at or below 0.009 gr/dscf, and b. Maintaining the opacity of secondary emissions that exit any opening in the casthouse or structure housing the blast furnace at or below 20 percent (6-minute average), and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
7. Each casthouse at a new blast furnace	a. Maintaining emissions of particulate matter from a control device at or below 0.009 gr/dscf, and b. Maintaining the opacity of secondary emissions that exit any opening in the casthouse or building housing the casthouse at or below 15 percent (6-minute average), and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
8. Each basic oxygen process furnace (BOPF) at a new or existing BOPF shop.	a. Maintaining emissions of particulate matter from the primary emission control system for a BOPF with a closed hood system at or below 0.024 gr/dscf, and b. Maintaining emissions of particulate matter from the primary emission control system for a BOPF with an open hood system at or below 0.019 gr/dscf, and c. Maintaining emissions of particulate matter from a control device applied solely to secondary emissions from a BOPF at or below 0.01 gr/dscf for an existing BOPF shop or 0.0052 gr/dscf for a new BOPF shop, and d. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
9. Each hot metal transfer, skimming, desulfurization, and ladle metallurgy operation at a new or existing BOPF shop.	a. Maintaining emissions of particulate matter from a control device at or below 0.007 gr/dscf. and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
10. Each roof monitor at an existing BOPF shop.	a. Maintaining the opacity of secondary emissions that exit any opening in the BOPF shop or other building housing the BOPF or shop operation at or below 20 percent (3-minute average), and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
11. Each roof monitor at a new BOPF shop	a. Maintaining the opacity (for any set of 6-minute averages) of secondary emissions that exit any opening in the BOPF shop or other building shop housing a bottom-blown BOPF or shop operation at or below 10 percent, except that one 6-minute period greater than 10 percent but no more than 20 percent may occur once per steel production cycle, b. Maintaining the opacity (for any set of 3-minute averages) of secondary emissions that exit any opening in the BOPF shop or other building housing a top-blown BOPF or shop operation at or below 10 percent, except that one 3-minute period greater than 10 percent but less than 20 percent may occur once per steel production cycle, and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).

Table 4 to Subpart FFFFF of Part 63.—Applicability of General Provisions to Subpart FFFFF

As required in § 63.7850, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

Citation	Subject	Applies to Subpart FFFFF	Explanation
§ 63.1	Applicability	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5	Construction/Reconstruction	Yes.	

Citation	Subject	Applies to Subpart FFFFF	Explanation
§63.6(a), (b), (c), (d), (e), (f), (g), (h)(2)(ii)–(h)(9).	Compliance with Standards and Maintenance Requirements.	Yes.	
§63.6(h)(2)(i)	Determining Compliance with Opacity and VE Standards.	No	Subpart FFFFF specifies Method 9 in appendix A to part 60 of this chapter to comply with roof monitor opacity limits
§63.7(a)(1)–(2)	Applicability and Performance Test Dates.	No	Subpart FFFFF specifies performance test applicability and dates.
§63.7(a)(3), (b), (c)–(h)	Performance Testing Requirements	Yes.	
§63.8(a)(1)–(a)(3), (b), (c)(1)–(3), (c)(4)(i)–(e), (c)(7)–(8), (f)(1)–(5), (g)(1)–(4).	Monitoring Requirements	Yes	CMS requirements in §63.8(c)(4)(i)–(ii), (c)(5) and (6), (d), and (e) apply only to COMS for electrostatic precipitators.
§63.8(a)(4)	Additional Monitoring Requirements for Control Devices in §63.11.	No	Subpart FFFFF does not require flares.
§63.8(c)(4)	Continuous Monitoring System Requirements.	No	Subpart FFFFF specifies requirements for operation of CMS.
§63.8(f)(6)	RATA Alternative	No	Subpart FFFFF does not require continuous emission monitoring systems.
§63.9	Notification Requirements	Yes	Additional notifications for CMS in §63.9(g) apply to COMS for electrostatic precipitator.
§63.9(g)(5)	DATA Reduction	No	Subpart FFFFF specifies data reduction requirements.
§63.10(a), (b)(1)–(2)(xii), (b)(2)(xiv), (b)(3), (c)(1)–(6), (c)(9)–(15), (d), (e)(1)–(2), (e)(4), (f).	Recordkeeping and Reporting Requirements.	Yes	Additional records for CMS in §63.10(c)(1)–(6), (9)–(15), and reports in §63.10(d)(1)–(2) apply only to COMS for electrostatic precipitators.
§63.10(b)(2)(xiii)	CMS Records for RATA Alternative	No	Subpart FFFFF doesn't require continuous emission monitoring systems.
§63.10(c)(7)–(8)	Records of Excess Emissions and Parameter Monitoring Exceedances for CMS.	No	Subpart FFFFF specifies record requirements.
§63.11	Control Device Requirements	No	Subpart FFFFF does not require flares.
§63.12	State Authority and Delegations	Yes.	
§§63.13–63.15	Addresses, Incorporation by Reference, Availability of Information.	Yes.	

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July 13, 2001

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1219

Proposed Hass Avocado Promotion, Research, and Consumer Information Order; Proposed Rule,

Hass Avocado Promotion, Research, and Information Order; Subpart B—Referendum Procedures; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1219

[FV–01–705–PR#1]

RIN 0581–AB92

Proposed Hass Avocado Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Department of Agriculture (Department or USDA) is seeking comments on an industry-funded research, promotion, industry information, and consumer information program for Hass avocados. A proposed program—the Hass Avocado Research, Promotion, and Consumer Information Order (Order)—was submitted to the Department by the California Avocado Commission (Commission). In addition, Mexican, Chilean, and New Zealand producers and associations submitted partial proposals.

Under the proposed Order, producers and importers would pay an initial assessment of 2.5 cents per pound of Hass domestic and imported avocados to the Hass Avocado Board (Board). The Board would be appointed by the Secretary of Agriculture (Secretary) to conduct research, promotion, industry information, and consumer information needed for the maintenance, expansion, and development of domestic markets for Hass avocados.

DATES: Comments must be received by August 27, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Division (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–S, Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this proposed rule may be found at: http://www.ams.usda.gov/rpdocketlist.htm.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Julie Morin, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535–S, Washington, DC 20250–0244, telephone (202) 720–6930 or (1)(888) 720–9917, fax (202) 205–2800, e-mail julie.morin@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed Order is issued under the Hass Avocado Research, Promotion, and Consumer Information Act (Act) [Pub. L. 104–127], enacted on October 23, 2000.

Question and Answer Overview

Why Is USDA Proposing a Program for Hass Avocados?

The Department received a proposal from the California Avocado Commission and partial proposals from Hass avocado interests in Chile, Mexico, and New Zealand. The Department is issuing this rule to obtain comments on the proposals and the potential impact of the proposed program on the Hass avocado industry before developing a final proposed program and conducting a referendum on it.

What Is the Purpose of the Hass Avocado Program?

The purpose of the program is to increase consumption of Hass avocados in the United States.

Who Will Be Covered by the Program?

Producers and importers of Hass avocados will pay assessments under the program, and first handlers will be involved in the assessment collection process.

Who Will Sit on the Board?

The Act provides that there will be a 12-member Board consisting of seven domestic Hass avocado producers, two importers, and three additional members who can either be importers or domestic producers. The three "swing" seats will be allocated to producers and importers so as to assure as nearly as possible that the composition of the Board reflects the proportion of domestic production and imports supplying the United States market. The proportion shall be based on the average volume of domestic production and imports in the United States over the previous three years. Each member will have an alternate.

How Will Members of the Board Be Selected?

The Order will provide for a nomination and election process to identify industry members who are interested and willing to serve on the Board. The Commission will conduct an election to determine who will be nominated for each domestic producer seat. USDA will conduct an election among importers or importer associations will nominate persons to fill the importer seats. Two names must be submitted for each member and alternate position. From the names submitted, the Secretary will appoint the members and alternates of the Board.

How Can I Express My Views on the Proposals?

You have 45 days to submit written comments to USDA on the proposals and also to OMB on the paperwork burden associated with the proposed order. You may submit your comments by mail, fax, or e-mail as indicated above. In addition, if you are a producer or importer of Hass avocados, you will have the opportunity to vote either "yes" or "no" in a referendum to determine if the program will be implemented.

If the Hass Avocado Program Is Implemented and There Are Concerns About How It Is Operating, What Can the Secretary Do?

Three years after the program is implemented, the Secretary could conduct a referendum to determine whether the Hass avocado industry supports continuation of the program: (1) at any time; (2) at the request of 30 percent or more of the producers and importers required to pay assessments; or (3) at the request of the Board.

Executive Orders 12866 and 12988

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866 and therefore has not been reviewed by OMB.

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1212 of the Act states that the Act may not be construed to preempt or supersede any other program relating to Hass avocado promotion, research, industry information, and

consumer information organized and operated under the laws of the United States or of a state.

Under Section 1207 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The California avocado industry initiated this program by asking the U.S. Congress (Congress) to pass legislation to authorize the Secretary to create a generic program of promotion and research for Hass avocados. Congress found that this program is vital to the welfare of Hass avocado producers and other persons concerned with producing, marketing, and processing Hass avocados.

This program is intended to: develop and finance an effective and coordinated program of research, promotion, industry information, and consumer information regarding Hass avocados; strengthen the position of the Hass avocado industry in U.S. markets; maintain, develop, and expand domestic markets for Hass avocados; and treat persons producing, handling, and importing avocados fairly.

Hass avocado producers and importers must approve the program in a referendum in advance of its implementation and would serve on the Board that would administer the program under the Department's supervision. In addition, any person subject to the program may file with the Secretary a petition stating that the Order or any provision of the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. Administrative proceedings were discussed earlier in this proposed rule.

In this program, handlers would be required to collect assessments from producers, file reports, and submit assessments to the Board. Importers would be required to remit to the Board assessments not collected by the U.S. Customs Service (Customs) and to file reports with the Board. Exports of U.S. Hass avocados would be exempt from assessment. While the proposed Order would impose certain recordkeeping requirements on producers, handlers, and importers, information required under the proposed Order could be compiled from records currently maintained and would involve clerical or accounting skills. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. The estimated cost in providing information to the Board by the 6,310 respondents (6,000 producers, 100 handlers, 200 importers, and 10 exempt handlers) would be $40,020 for all producers or $6.67 per producer, $6,500 for all handlers or $65 per handler, $50 for all importers or $0.25 per importer, and $25 for exempt handlers or $2.50 per exempt handler. These totals have been estimated by multiplying total burden hours requested by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

The Department would oversee the operation of the program. Three years after the program is implemented, the Secretary could conduct a referendum to determine whether the Hass avocado industry supports continuation of the program at any time, at the request of 30 percent or more of the producers and importers required to pay assessments, or at the request of the Board.

There are approximately 6,000 producers, 200 importers, and 100 first handlers of Hass avocados that would be covered by the program. The program would also affect 10 exempt handlers, a state association (the Commission), which consists of avocado producers, and several importer associations.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $500,000 or less annually and small agricultural service firms as those having annual receipts of $5 million or less. Importers and first handlers would be considered agricultural service firms. Using these criteria, most producers and importers to be covered by the proposed program would be considered small businesses, and most handlers would not. On August 6, 2001, the threshold for small agricultural producers will be increased to $750,000. This increase has little import on the determination of whether those covered by the proposed program would be considered small businesses.

According to the USDA's National Agricultural Statistics Service (NASS), total U.S. production of all varieties of avocados during the 1999–2000 season was 181,300 tons, most of which was utilized fresh except for a small processed quantity that NASS included in fresh utilization to protect the confidentiality of individual operations. The value of the 1999–2000 crop was $392 million. Production in 1999–2000 was up 14 percent from the previous year's total of 159,250 tons, which had a value of $344 million.

California is the source for practically all of the Hass avocados handled in the United States. In turn, according to industry sources, Hass avocados account for about 85 percent of the total California avocado crop. The California Hass avocado industry consists of approximately 6,000 producers.

The majority of imported fresh avocados come from Chile, with the remaining coming from Mexico, the Dominican Republic, and New Zealand. Data on imports is not collected by variety, but it is believed to be mostly Hass. Hass avocados are imported both in fresh and processed form. According to U.S. Census Bureau data, fresh avocado imports during the 1999–2000 season (November/October) accounted for about 75 percent of the total tonnage of fresh and processed avocados imported. In 1999–2000, imported fresh avocados totaled 66,237 tons, up from 55,515 tons during the 1998–1999 season.

The total import value for fresh and processed avocados was $137 million in 1999–2000, up from $95 million in 1998–99. Almost all prepared or preserved avocado imports come from Mexico. The trend in imports is up, and imports have more than doubled since 1995.

The value of exports in 1999–2000 was $4.9 million, down from $7 million.

The proposed Hass avocado Order would authorize assessments on producers (to be collected by first handlers) and on importers (collected by Customs) of Hass avocados at an initial rate of 2.5 cents a pound. Exports of

domestic Hass avocados are exempt from assessment. At the initial rate of assessment, about $10 million will be collected to administer the program: about 65 percent from domestic production and 35 percent from imports. The Act authorizes assessments on fresh, frozen, and processed Hass avocados. However, initially only fresh Hass avocados will be assessed.

An exempt handler is a person who would otherwise be considered a first handler, except that all Hass avocados purchased by the person have already been subject to assessments under the Order. Others affected by the program would be the Commission, which would receive 85 percent of the assessments paid by domestic producers, and importer associations which would receive 85 percent of the assessments paid by their members. The Association could use the assessment funds to promote California Hass avocados in the United States, and the importer associations could use the assessments to promote Hass avocados on a country-of-origin basis in the United States. The funds remaining with the Board would be used to promote Hass avocados in the United States. The Board would also enter into contracts with the Association as provided for in the Act.

Associations and related industry media would receive news releases and other information regarding the implementation and referendum process. Furthermore, all the information would be available electronically.

If the program is implemented, the Hass avocado industry would nominate individuals to serve as members and alternates of the Board. USDA would ensure that the nominees represent the Hass avocado industry as specified in the Act.

The Board would develop guidelines for compliance with the program. The Board would recommend changes in the assessment rate; programs, plans, and projects; a budget; and any rules and regulations that might be necessary for the administration of the program. Among the rules and regulations that might be necessary for the administration of the program would be provisions to assess other types of avocados that are so similar to the Hass variety that they are indistinguishable to consumers in fresh form. The Board could also recommend the assessment of imported frozen and processed Hass avocados. The Board also has the authority to recommend the exemption of certain processed avocado products for sale to a retailer if the avocado portion of the products does not constitute a substantial value of the product. The administrative expenses of the Board are limited by the Act to no more than 10 percent of its assessment income.

There is a federal marketing order program for avocados grown in south Florida [7 CFR part 915]. According to NASS, in Florida, there is little or no production of Hass avocados. Under the program, Hass avocados are covered by the grade regulations, but not by the maturity regulations. Since California is the source for over 95 percent of avocados produced in the United States and Florida does not produce Hass avocados, there is little duplication between this Order and the federal marketing order.

There is also a state avocado program in California, which is administered by the Commission. The Commission's chief objective is to increase consumer awareness of and demand for avocados on behalf of the state's 6,000 growers. The Commission assesses growers a percentage-of-revenue fee allowed under the California Marketing Act to fund a variety of market-development programs. In 1998–1999, California producers paid $13,165,544 in assessments at a rate of 4 cents of the gross dollar value. In 1999–2000, the assessment rate was 3.5 percent of the gross dollar value. The Commission's assessment may not exceed 6.5 percent of the gross dollar value of the year's sales of avocados by all producers to handlers, or which are sold by handlers on behalf of growers. It also provides that expenditures for administrative purposes within the maximum assessment shall not exceed 2.5 percent of the gross dollar value of sales. Handlers collect the assessments and remit the money to the Commission.

Paragraph (b)(1) of section 1212 of the Act states that nothing in the Act may be construed to provide for the control of production or otherwise limit the right of any Hass avocado grower, handler, and importer to produce, handle, or import Hass avocados. Paragraph (b)(2) of section 1212 of the Act states that the Order must treat all persons producing, handling, and importing Hass avocados fairly and that the Order must be implemented in an equitable manner. Further, paragraph (c) of section 1212 states that nothing in the Act may be construed to preempt or supersede any other program relating to Hass avocado promotion, research, industry information, and consumer information organized and operated under the laws of the United States or of a state.

Alternatives to the proposed Hass avocado program are limited by the Act. The Act requires the Secretary to publish proposals submitted by the Commission and others for a Hass avocado program. In addition, the Act is very specific on many provisions which must be included in the programs. However, the Act does include a few alternatives which USDA has included as permissive terms—rather than requirement—in this proposed rule. These alternatives include the identification and assessment of avocado varieties that are so similar to Hass avocados that they are indistinguishable to consumers in fresh form, the exemption of certain processed Hass avocado products for sale to a retailer if the Hass avocado portion of the products does not constitute a substantial value of the product, and the identification and assessment of imported frozen and processed Hass avocado products.

While we have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with OMB regulations [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that may be imposed by this Order have been submitted to OMB for approval. Those requirements will not become effective prior to OMB review.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–NEW.

Expiration Date of Approval: NA.

Type of Request: New information collection for advisory committees and boards and for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act.

In addition, there will be the additional burden on producers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures that is published separately in this issue of **Federal Register**.

Under the proposed program, first handlers would be required to collect assessments from producers and file reports with and submit assessments to the Board. While the proposed Order would impose certain recordkeeping requirements on producers, handlers, and importers, information required under the proposed Order could be compiled from records currently maintained.

The estimated annual cost in providing information to the Board by the estimated 6,310 respondents (6,000 producers, 100 handlers, 200 importers, and 10 exempt handlers) would be $40,020 for all producers or $6.67 per producer; $6,500 for all handlers or $65 per handler, $50 for all importers or $0.25 per importer, and $25 for all exempt handlers or $2.50 per exempt handler. These totals have been estimated by multiplying total burden hours requested by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already maintained by handlers for the Commission.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information. Collecting information monthly coincides with normal business practices.

Collecting information less frequently would hinder the Board from effectively carrying out the provisions of the program. Requiring reports less frequently than monthly would impose additional recordkeeping requirements by requiring information from several months to be consolidated prior to filling out the form rather than just copying end-of-month figures already available onto the forms. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports.

Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) *A monthly report by each handler who handles Hass avocados.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.50 hours per each respondent reporting on Hass avocados handled.

Respondents: Handlers.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 600 hours.

(2) *A periodic report by each importer who imports Hass avocados.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per each importer respondent reporting on Hass avocados imported.

Respondents: Importers.

Estimated Number of Respondents: 200.

Estimated Number of Responses per Respondent: 1 every ten years (0.10).

Estimated Total Annual Burden on Respondents: 5 hours.

(3) *An exemption application for handlers who will be exempt from assessments.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each exempt producer and importer.

Respondents: Exempt handlers.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.5 hours.

(4) *Voting in the nomination process.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Producers and importers.

Estimated Number of Respondents: 6,200.

Estimated Number of Responses per Respondent: 1 every 3 years (0.33).

Estimated Total Annual Burden on Respondents: 1,023 hours.

(5) *A background questionnaire for nominees.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response for each producer and importer nominated to the Board.

Respondents: Producers and importers.

Estimated Number of Respondents: 24 for the initial nominations to the Board and approximately 12 respondents annually thereafter.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12 hours for the initial nominations to the Board and 6 hours annually thereafter.

(6) *A requirement to maintain records sufficient to verify reports submitted under the Order for two years.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Recordkeepers: Producers, handlers and importers.

Estimated Number of Recordkeepers: 6,300.

Estimated Total Recordkeeping Hours: 3,150 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of the AMS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the Docket Clerk and the OMB Desk Officer for Agriculture at the address listed above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

Background

The Hass Avocado Research, Promotion, and Consumer Information Act (Act) authorizes the Secretary of Agriculture (Secretary) to establish a Hass avocado research, promotion, and information program. The program would be funded by an assessment levied on producers and importers of 2.5 cents per pound of Hass avocados. The rate could be raised up to a

maximum rate of 5 cents per pound. Exports of U.S. Hass avocados would be exempt from assessment. The Act authorizes assessments on domestic Hass avocados and on imports of fresh, frozen, and processed Hass avocados. Initially, only fresh domestic and imported Hass avocados will be assessed.

The Hass Avocado Board (Board) would use the funds to pay for research, promotion, industry information, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

The Board would be composed of 12 voting members: 7 producers, 2 importers, and 3 producers and importers (swing seats). The three "swing" seats will be allocated to producers and importers so as to assure as nearly possible that the composition of the Board reflects the proportion of domestic production and imports supplying the United States market, based on the three-year average of domestic production and imports.

First handlers would be responsible for the collection of assessments from the producer and payment to the Board. First handlers would be required to maintain records for each producer for whom Hass avocados is handled, including Hass avocados produced by the handler. In addition, first handlers would be required to file reports regarding the collection, payment, or remittance of the assessments and the disposition of exported Hass avocados, which are exempt from assessment. All information obtained through handler reports would be kept confidential.

An exempt handler is a person who would otherwise be considered a first handler, except that all Hass avocados purchased by the person have already been subject to assessments under the Order. Others affected by the program would be the Commission, which would receive 85 percent of the assessments paid by domestic producers, and importer associations which would receive 85 percent of the assessments paid by their members. The Association could use the assessment funds to promote California Hass avocados in the United States, and the importer associations could use the assessments to promote Hass avocados on a country-of-origin basis in the United States. The funds remaining with the Board would be used to promote Hass avocados in the United States. The Board would also enter into contracts with the Association as provided for in the Act.

The U.S. Customs Service (Customs) would collect assessments on imported Hass avocados and would remit those assessments to the Board for a fee.

The Act requires the Department to conduct a referendum during the 60-day period preceding the proposed Order's effective date. Hass avocado producers and importers would vote in the referendum to determine whether they favor the Order's implementation. The proposed Order must be approved by a majority of eligible producers and importers voting in the referendum. After the program has been in operation for three years, referenda could be conducted at any time, when requested by 30 percent of Hass avocado producers and importers covered by the Order, or when requested by the Board.

The Act provides for the submission of proposals for a Hass avocado research, promotion, and information Order by industry organizations or any other interested person affected by the Act.

The Department issued a news release on January 8, 2001, requesting proposals for an initial Order or portions of an initial Order by February 7, 2001. A second news release, extending the deadline for submission of proposals to March 9, 2001, was issued on February 2, 2001.

An entire proposed Order was submitted by the Commission (Proposal 1). In addition, partial proposals were submitted by the Asociacion de Productores y Empacadores Exportadores de Aguacate de Michoacan (APEAM) (Proposal 2); the Chilean Exporters Association (ASOEX), Chilean Fruit Growers Federation (FEDEFRUTA), and Comite de Paltas de Chile (Proposal 3); and the New Zealand Avocado Growers Association (NZAGA) and the New Zealand Avocado Industry Council (NZAIC) (Proposal 4). The Chilean and New Zealand proposals have been considered jointly because they are identical in every respect except for the provision on the importer definition, which is included in the Chilean comments, but not in the New Zealand comment. Proposals 2, 3, and 4 contain alternatives to provisions in Proposal 1 as well as provisions not included in Proposal 1.

Proposal 1

The proposed Order submitted by the Commission is summarized as follows:

Sections 1219.1 through 1219.26 of the proposed Order define certain terms, such as Hass avocado, handler, producer, and importer, which are used in the proposed Order.

Sections 1219.30 through 1219.42 include provisions relating to the establishment, adjustment, and membership; nominations; appointment; terms of office; vacancies; reimbursement; powers; and duties of the Board.

The Board would be the body organized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about Hass avocados, under the supervision of the Secretary. Further, the Board would be authorized to incur expenses necessary for the performance of its duties and to set a reserve fund.

Sections 1219.50 through 1219.57 authorize the collection of assessments, specify who pays them and how, and specifies persons who would be exempt from paying the assessment. The assessment rate may not exceed 5 cents per pound of Hass avocados. The assessment sections also outline the procedures to be followed by handlers and importers for remitting assessments; and establish interest charges for unpaid or late assessments.

Sections 1219.60 through 1219.64 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information obtained from such books, records, or reports and the maintenance of a list of handlers required by the Act.

Sections 1219.70 through 1214.77 describe the rights of the Secretary, the authority for the Secretary to suspend or terminate the Order, proceedings after termination, the effect of termination or amendment, personal liability of Board members and staff, separability, amendments, and OMB control number.

The Department has modified the Commission's proposal to make it consistent with the Act, as necessary as well as provide clarity, consistency, and correctness with respect to word usage and terminology. For example, the Department alphabetized definitions in §§ 1219.1 through 1219.26; organized sections of the Order to be more consistent with current programs and renumbered them accordingly; deleted redundant provisions; deleted referendum procedures and drafted a separate rule on referendum procedures; and changed the proposal to make it consistent with the Act and USDA policy.

In the definitions section, the definitions of "crop year" and "Association" were added to provide clarity, and the definition of "retailer" was removed because a specific definition was not warranted.

In the apportionment of three swing positions in § 1219.30(b)(3), USDA specified that Customs or USDA may

provide import data in order to ensure accuracy. Section 1219.31(a)(3) was changed to indicate that two nominees must be submitted for each producer vacancy and two nominees must be submitted for each alternate vacancy because this is the standard practice for similar national programs. In § 1219.36(d), USDA specified that nominations and replacement shall not be required if the unexpired term is less than six months, and, in § 1219.35, a term of office for alternates was added to enhance administration of the program. In § 1219.36, authority for the Board to select alternates to fill vacant alternate positions by majority vote was revised to state that the Board may select, by majority vote, nominees to submit to the Secretary for appointment. The Commission's proposal provided for the Board to appoint the replacement members, but only the Secretary may appoint persons to serve on the Board as members or alternates. A paragraph on bylaws was added to § 1219.38 as paragraph (b) to ensure that the activities of the Board are consistent with the Order. In § 1219.38(k), the citation for the act which requires periodic evaluations was corrected so that it complies with provisions of the Federal Agricultural Improvement and Reform Act of 1996 [7 U.S.C. 7401 *et seq.*]

Under § 1219.52, the Department revised the Commission's proposed limitation on administrative expenses of Board to 10 percent of the funds available for generic promotion and research to reflect the fact that as much as 85 percent of the assessments collected under the program could be remitted to the Association and importer associations. The Act limits the administrative expenses of the Board in carrying out its generic programs, plans, and projects. In addition, the provision for the Board to make payments of assessments to the Association and importer associations within 30 days following the month in which the assessments were received because this language was inconsistent with other provisions which require payments to the Association and importer associations within 30 days of receipt of the assessments by the Board. USDA modified § 1219.56 to specify that the Board will apply overpayments of assessments against the amount due in succeeding months unless the person requests a refund.

A requirement for producers and exempt handlers to maintain records and file reports with the Board or the Secretary was added to § 1219.60(a) in order to facilitate enforcement of the Order and to make the Order consistent with current practice for similar national programs. In § 1219.61, authority for the Board to use agents to conduct audits—not just Board and USDA employees—was added to increase flexibility. Since agents were added in § 1219.61 for audits, they were also added to § 1219.63(a) on confidentiality to ensure that information obtained in audits is protected.

Lastly, a section on the rights of the Secretary was added so that the program would be consistent with other national programs and specify the rights of the Secretary.

Proposal 2

A partial proposal was submitted by APEAM. APEAM is an association of persons who export avocados produced in Mexico to the United States.

We are publishing several of the provisions submitted by APEAM. Other provisions are not being published either because they are covered by Proposal 1 or because they are not authorized by the Act.

The provisions that are being published for comment are as follows: (1) A definition of first handler; (2) a definition of fiscal period; (3) a provision requiring the Department to use data from import associations, Customs, and the Bureau of the Census for determining the level of imports in making its determination of the composition of the initial Board; (4) a provision defining "substantial activity" as it pertains to eligibility requirements for importer members; (5) a provision authorizing importer associations in general or by country of origin; (6) a provision authorizing the Secretary to certify only one importer association per country of origin; (7) authority for importer associations to include representatives of foreign avocado exporting industries; (8) a provision authorizing importer associations to invest funds received from the Board and conduct promotion and research on a country of origin basis. (9) a provision requiring final payments for a crop year to be received no later than May 31; and (10) a provision requiring the administrative staff of the Board to periodically review the list of Hass avocado producers and requiring the Association to provide a list of producers to the Secretary or to the administrative staff of the Board.

The following provisions are not being published because they are covered by Proposal 1: (1) A provision requiring the Board to remit funds to importer associations no later than 30 days after such funds are received by the Board; (2) a requirement to allocate producer and importer members in the three swing positions in such a manner that, to the extent possible, importers will have proportional representation on the Board as a whole; (3) a requirement to reallocate the three swing positions to producers and importers in such a manner that, to the extent possible, there will be proportional representation on the Board as a whole.

The following provisions are not being published because they are not authorized by the Act: (1) Authority for the Secretary to appoint a board to govern importer associations; (2) authority for Customs to send import assessments directly to importer associations; (3) a requirement for the Board to remit 85 percent of all import assessments to importer associations; (4) authority for importers to pay assessments 30 days after the end of the month in which the imported Hass avocados are sold in the United States; and (5) authority for the Board to enter into a contract or agreement with an importer association.

Proposals 3 and 4

Proposal 3 was submitted by ASOEX and FEDEFRUTA and the Chilean Avocado Committee. ASOEX and FEDFRUTA are the principal trade associations representing fruit exporters and producers in Chile. Proposal 4 was submitted by NZAGA and NZAIC. NZAGA is a voluntary association of avocado growers representing avocado production in New Zealand.

We are publishing several of the provisions submitted by ASOEX, FEDEFRUTA, NZAGA, and NZAIC. Other provisions are not being published either because they are covered by Proposals 1 and 2 or because they are not authorized by the Act.

The provisions that are being published are: (1) An eligibility requirement for importer members on the Board; (2) a requirement for the Board's generic programs to be conducted throughout the year; (3) a requirement for the Board to consult with the Commission and country-of-origin importer associations when developing generic programs; (4) a provision limiting the Board's administrative expenses for generic programs to 1.5 percent of total assessments; (5) a requirement for importer associations to be formed as soon as possible after the effective date of the Order; (6) a requirement for importer associations to establish bylaws; (7) authority for importer associations to use existing organizations for establishing their associations and their promotional and

research programs; and (8) certification requirements for importer associations.

Provisions that will not be published because they are covered by Proposals 1 or 2 are: (1) A requirement for overall representation of importers on the Board to be based on the proportion of domestic and import assessments; (2) a requirement for the Secretary to notify all importer associations on nominations for the initial Board within 30 days of the effective date of the Order; (3) a requirement for the Secretary to develop nomination procedures for importer members; and (4) a requirement for the Secretary to prepare a ballot containing the names of all persons nominated by all importer associations.

The provisions which are not being published because they are not authorized by the Act are: (1) A requirement for USDA to serve as an advisor to importer associations; (2) a requirement for all importers and country-of-origin producers and exporters to participate in importer associations; (3) authorization for the assessment of all varieties of avocados; (4) a requirement for the Board to contract with importer associations; (5) authority for importers to pay import assessments 60 days after the sale of avocados in the United States; (6) a requirement for importer associations to receive 85 percent of all import assessments, prorated by each country of origin; (7) authority for producers and importers to receive credit towards their assessments under the proposed program for contributions to generic state or country of origin promotion programs at a regional, state, or local level; (8) authority for importer associations to use import assessments for reasonable administrative expenses; and (9) a requirement to include a vote by volume in referenda.

A 30-day comment period is provided on this proposed rule. This period is deemed appropriate to better effect the implementation time frames provided for in the Act.

USDA seeks comments on the provisions included in this proposed rule, the initial regulatory flexibility analysis, and the information collection burden that would be imposed by this rule. In addition, USDA requests information on how and when first handlers would collect the assessments due on domestic Hass avocados and remit the assessments to the Board and how long after importation occurs does Customs bill importers and how long Customs allows importers to remit the payment.

On June 25, 2001, the United States Supreme Court issued a decision in the case of *United States* v. *United Foods, Inc.* (*United Foods*), that held that the imposition of mandatory assessments to fund generic mushroom advertising violated the First Amendment insofar as it required the mushroom industry to subsidize commercial speech with which they disagreed. The Court expressly declined to reach the question whether the generic advertising conducted under the mushroom program constitutes government speech.

The Department will analyze all written views received to date as well as written comments on the three proposals published below before issuing a final Order.

List of Subjects in 7 CFR Part 1219

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Hass avocados, Promotion, Reporting and recordkeeping requirements.

Proposal I

1. Part 1219 is added to read as follows:

PART 1219—HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION

Subpart A—Hass Avocado Promotion, Research, and Information Order

Definitions

Sec.

1219.1 Act.
1219.2 Association.
1219.3 Conflict of interest.
1219.4 Consumer information.
1219.5 Crop year.
1219.6 Customs.
1219.7 Department.
1219.8 Exempt handler.
1219.9 First handler.
1219.10 Fiscal period or marketing year.
1219.11 Handle.
1219.12 Hass avocado.
1219.13 Hass Avocado Board.
1219.14 Importer.
1219.15 Industry information.
1219.16 Marketing.
1219.17 Order.
1219.18 Part and subpart.
1219.19 Person.
1219.20 Producer.
1219.21 Programs, plans, and projects.
1219.22 Promotion.
1219.23 Research.
1219.24 Secretary.
1219.25 State.
1219.26 United States.

The Hass Avocado Board

1219.30 Establishment and membership.
1219.31 Initial nomination and appointment of producer members and alternates.
1219.32 Initial nomination and appointment of importer members and alternates.
1219.33 Subsequent nomination and appointment of Board members and alternates.
1219.34 Failure to nominate.
1219.35 Term of office.
1219.36 Vacancies.
1219.37 Alternate members.
1219.38 Powers and duties.
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Subpart B—[Reserved]

Authority: 7 U.S.C. 7801–7813.

Subpart A—Hass Avocado Promotion, Research, and Information Act of 2000

Definitions

§ 1219.1 Act.

Act means the Hass Avocado Promotion, Research, and Information Act of 2000, Pub. L. 106–387, 7 U.S.C. 7801–7813, and any amendments thereto.

§ 1219.2 Association.

Association means an avocado organization established by State statute in a State with the majority of Hass avocado production in the United States.

§ 1219.3 Conflict of interest.

Conflict of interest means a situation in which a Board member or employee has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1219.4 Consumer information.

Consumer information means any action or program that disseminates or otherwise provides information to consumers and other persons, on the use, nutritional attributes, and other information that will assist consumers and other persons in the United States in making evaluations and decisions regarding the purchase, preparation, and use of Hass avocados.

§ 1219.5 Crop year.

Crop year means the period from November 1 of one year through October 31 of the following year, or such other one-year period recommended by the Board and approved by the Secretary.

§ 1219.6 Customs.

Customs means the United States Customs Service.

§ 1219.7 Department.

Department means the United States Department of Agriculture.

§ 1219.8 Exempt handler.

Exempt handler means a person who would otherwise be considered a first handler, except that all Hass avocados purchased by the person have already been subject to assessments under the Order. A person who handles both Hass avocados that have already been subject to assessments under the Order and Hass avocados that have not been subject to assessments under the Order is a first handler.

§ 1219.9 First handler.

First handler means a person operating in the Hass avocado marketing system that sells domestic or imported Hass avocados for consumption in the United States and who is responsible for remitting assessments to the Board. For the purposes of the Order, the term means the first person who handles Hass avocados for sale (except a common or contract carrier of Hass avocados owned by another person), including a producer who handles Hass avocados for sale of the producer's own production.

§ 1219.10 Fiscal period or marketing year.

Fiscal period or *marketing year* means the period beginning on November 1 of any year and extending through the last day of October of the following year, or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

§ 1219.11 Handle.

Handle means to pack, process, transport, purchase, or in any other way to place or cause Hass avocados to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of Hass avocados by the producer thereof to a handler.

§ 1219.12 Hass avocado.

Hass avocado means the fruit grown in or imported into the United States of the species *Persea americana* Mill., or other type of avocados that, in the determination of the Board, with approval of the Secretary, is so similar to the Hass variety avocado as to be indistinguishable to consumers in fresh form. For the purposes of this subpart, the term shall include all fruit in fresh, frozen, or any other processed form.

§ 1219.13 Hass Avocado Board.

Hass Avocado Board or the *Board* means the administrative body established pursuant to § 1219.40.

§ 1219.14 Importer.

Importer means any person who imports Hass avocados into the United States. The term includes a person who holds title to Hass avocados produced outside of the United States immediately upon release by Customs, as well as any person who acts on behalf of others, as an agent, broker, or consignee, to secure the release of Hass avocados from Customs and the introduction of the released Hass avocados into the current of commerce and who is listed in the import records of Customs as the importer of record for such Hass avocados.

§ 1219.15 Industry information.

Industry information means information, programs, and activities that are designed to increase efficiency in processing, enhance the development of new markets and marketing strategies, increase marketing efficiency, and enhance the image of Hass avocados and the Hass avocado industry in the United States.

§ 1219.16 Marketing.

Marketing means any activity related to the sale or other disposition of Hass avocados in any channel of commerce.

§ 1219.17 Order.

Order means this subpart.

§ 1219.18 Part and subpart.

Part means the Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order itself shall be a subpart of such part.

§ 1219.19 Person.

Person means any individual, group of individuals, firm, partnership, corporation, joint stock company, association, cooperative, or any other legal entity.

§ 1219.20 Producer.

Producer means any person who is engaged in the business of producing Hass avocados in the United States for commercial use, who owns, or shares the ownership and risk of loss, of such Hass avocados.

§ 1219.21 Programs, plans, and projects.

Programs, plans, and projects means those research, promotion, and information programs, plans, studies, or projects established pursuant to § 1219.50.

§ 1219.22 Promotion.

Promotion means any action to advance the image, desirability, or marketability of Hass avocados in the United States, including paid advertising, sales promotion, and publicity. Promotion activities are designed to improve the competitive position and stimulate sales of Hass avocados in the domestic marketplace.

§ 1219.23 Research.

Research means any type of test, study, or analysis relating to market research, market development, and market efforts, or relating to the use, quality, or nutritional value of Hass avocados, other related food science research, or research designed to advance the knowledge, image, desirability, usage, or marketability of Hass avocados in the United States.

§ 1219.24 Secretary.

Secretary means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1219.25 State.

State means any of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, and the Federated States of Micronesia.

§ 1219.26 United States.

United States means collectively the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the

Republic of the Marshall Islands, and the Federated States of Micronesia.

Hass Avocado Board

§ 1219.30 Establishment and membership.

(a) A Hass Avocado Board, hereinafter called the Board, is hereby established to administer the terms and provisions of this subpart. The Board shall consist of 12 members nominated by the Hass avocado industry and appointed by the Secretary as provided in this subpart, each of whom shall have an alternate nominated and appointed in the same manner as members of the Board are nominated and appointed. Board members and alternates shall be domiciled in the United States.

(b) The membership of the Board shall be divided as follows:

(1) Seven members and their alternates shall be producers of Hass avocados that are subject to assessments under this subpart;

(2) Two members and their alternates shall be importers of Hass avocados that are subject to assessments under this subpart; and

(3) Three members shall be producers of Hass avocados that are subject to assessments under this subpart or importers of Hass avocados that are subject to assessments under this subpart. Producers and importers shall be allocated to these positions so as to assure as nearly as possible that the composition of the 12-member Board reflects the proportion of domestic production and imports supplying the United States market. Such proportion shall be based on the Secretary's determination of the average volume of domestic production and the average volume of imports into the United States market over the previous three years. For determining proportional representation on the initial Board, the Secretary shall determine the domestic level of production and the level of imports by using data provided by the California Avocado Commission, the Department of Agriculture, the Department of Commerce, and Customs.

(c) Three years after the assessment of funds commences pursuant to this subpart, and at the end of each three-year period thereafter, the Board shall review the production of domestic Hass avocados in the United States and the volume of imported Hass avocados on the basis of the amount of assessments collected from producers and importers over the immediately preceding three-year period and, if warranted, recommend to the Secretary the reapportionment of the positions authorized in paragraph (b)(3) of this section to reflect changes in the proportion of domestic Hass avocado production to the volume of imported Hass avocados, to the extent possible in the Act. Any adjustment under this paragraph shall be subject to the review and approval of the Secretary.

(d) For purposes of this section, *importer* means a person who is involved in, as a substantial activity, the importation of Hass avocados for sale or marketing in the United States (either directly or as an agent, broker, or consignee of any person that produces Hass avocados outside of the United States for sale in the United States), who is subject to assessments under the Order, and who is listed by Customs as the importer of record for such Hass avocados.

§ 1219.31 Initial nomination and appointment of producer members and alternates.

(a) The Association will nominate producer members and alternates to serve on the Board in accordance with the following procedures.

(1) Within 30 days of implementation of this subpart, the Association shall establish a list of producers in the United States who are eligible to serve on the Board and notify all producers that they may nominate persons to serve as members and alternates on the Board.

(2) After names are received from the producers, the Association shall prepare a ballot with the names of all persons nominated and mail it to all producers to allow them the opportunity to vote for the persons who will represent their interests on the Board.

(3) After tabulating the vote, the Association shall announce the results and submit two names for each producer member and two names for each alternate producer member to the Secretary from the persons receiving the highest number of votes.

(b) The Secretary shall select the producer members and alternates of the Board from the names submitted by the Association.

§ 1219.32 Initial nomination and appointment of importer members and alternates.

(a) The Department will conduct the nomination process for the initial importer members and alternates on the Board in accordance with the following procedures.

(1) Within 30 days of implementation of this subpart, the Department shall notify all known importers and importer organizations that they may nominate persons to serve as importer members and alternates on the Board.

(2) After names are received from the importers and importer organizations, the Department shall prepare a ballot with the names of all persons nominated and mail it to all known importers and importer organizations to allow them the opportunity to vote for the persons who will represent their interests on the Board.

(3) After tabulating the vote, the Department shall announce the results and submit two names for each importer member and two names for each alternate importer member to the Secretary from the persons receiving the highest number of votes.

(b) The Secretary shall select the importer members and alternates of the Board from the nominees submitted.

§ 1219.33 Subsequent nomination and appointment of Board members and alternates.

The Board's staff shall announce at least 150 days in advance of the expiration of members' and alternates' terms that such terms are expiring and shall solicit nominations in accordance with procedures recommended by the Board and approved by the Secretary. Nominations for such positions should be submitted to the Secretary no less than 90 days prior to the expiration of the terms.

§ 1219.34 Failure to nominate.

In any case in which producers or importers fail to nominate individuals for appointment to the Board, the Secretary may appoint individuals to fill vacancies from the appropriate segments of the industry.

§ 1219.35 Term of office.

The members and alternate members of the Board shall serve for terms of three years, except the members of the initial Board shall serve terms as follows: Four members and four alternates shall serve for two-year terms; four members and four alternates shall serve for three-year terms; and four members and four alternates shall serve for four-year terms. No member shall serve more than two consecutive three-year terms. Members and alternates serving initial two-year or four-year terms may serve for one additional three-year term. A Board member may serve as an alternate during the years the member is ineligible for a member position. Each term of office will end on October 31, with new terms of office beginning on November 1.

§ 1219.36 Vacancies.

(a) In the event any member or alternate of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such member or alternate shall be disqualified from serving on the

Board and the position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds that the recommendation of the Board shows adequate cause, the member shall be removed from office.

(c) Should any Board member position become vacant in the event of the death, removal, resignation, or disqualification, the alternate of that member shall automatically assume the position of said member. The alternate shall serve until the end of the member's normal term. If there is no alternate member to assume the position of member, the successor member and alternate shall be nominated and selected in the manner specified in §§ 1219.31, 1219.32, or 1219.33.

(d) Should any alternate member become vacant in the event of death, removal, resignation, or disqualification, the Board may nominate persons to serve for the unexpired term of such alternate member. The nomination shall be conducted at a regularly scheduled Board meeting as soon as practicable after the vacancy occurs. The Board may solicit the names of nominees from producers and importers prior to the meeting and from the floor of the meeting. All nominees must meet the qualifications for nomination. The Board shall submit two nominees for each vacancy to the Secretary. A vacancy will not be required to be filled if the unexpired term is less than six months.

§ 1219.37 Alternate members.

An alternate member of the Board, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of the death, removal, resignation, or disqualification of any member, the alternate for that member shall automatically assume the position of said member. In the event that both a member of the Board and the alternate are unable to attend a meeting, the Board may not designate any other alternate to serve in such member's or alternate's place and stead for the meeting.

§ 1219.38 Powers and duties.

The Board shall have the following powers and duties in addition to the responsibilities and authorities specified in other sections of this subpart:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, at the start of each fiscal period, and at such other times as the Board determines to be appropriate;

(d) To recommend to the Secretary rules and regulations to effectuate the terms and conditions of this subpart;

(e) To employ such persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(f) To appoint from its members an executive committee and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board and approved by the Secretary;

(g) To develop budgets for the implementation of this subpart and submit the budgets to the Secretary for approval and to propose and develop (or receive and evaluate), approve, and submit to the Secretary for approval programs, plans, and projects for Hass avocado promotion, industry information, consumer information, or related research;

(h) To develop and implement after the approval by the Secretary programs, plans, and projects for Hass avocado promotion, industry information, consumer information, or related research, to contract or enter into agreements with appropriate persons to implement the programs, plans, and projects, and to pay the costs of the implementation of contracts and agreements with funds collected under this subpart.

(i) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(j) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the Hass avocado industry's position in the domestic marketplace; to maintain and expand existing domestic markets and uses for Hass avocados; to create new domestic markets; and to carry out programs, plans, and projects designed to provide maximum benefits to the Hass avocado industry;

(k) To evaluate on-going and completed programs, plans, and projects for Hass avocado promotion, industry information, consumer information, or related research and to comply with the independent evaluation provisions of the Federal Agricultural Improvement and Reform Act of 1996 [7 U.S.C. 7401 *et seq.*];

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary amendments to this Order;

(n) To invest, pending disbursement under a program, plan, or project, funds collected through assessments authorized under this Act only in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(4) Obligations fully guaranteed as to principal and interest by the United States, except that income from any such invested funds may be used only for a purpose for which the invested funds may be used;

(o) To borrow funds necessary for the startup expenses of the Order;

(p) To cause the books of the Board to be audited by a qualified independent auditor at the end of each fiscal period and to submit a report of the audit directly to the Secretary;

(q) To give the Secretary the same notice of meetings and teleconferences of the Board and its committees as is given to members in order that the Secretary's representative(s) may attend or participate in the meetings;

(r) To act as intermediary between the Secretary and any producer, first handler, or importer;

(s) To periodically prepare and make public reports of its activities carried out, and at least once each fiscal period, to make public an accounting of funds received and expended; and

(t) To notify Hass avocado producers, first handlers, and importers of all Board meetings through news releases or other means.

§ 1219.39 Board procedure.

(a) At a properly convened meeting of the Board, seven (7) members, including alternates acting in place of members of the Board, shall constitúte a quorum: *Provided,* that such alternates shall serve only when the member is absent from a meeting. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or other means of communication. Such alternative means for the Board taking action may be undertaken for various reasons. These reasons include the need to address matters of an emergency nature when there is not enough time to call an assembled meeting of the Board. All telephone votes shall be confirmed promptly in writing. In that event, all members must be notified and provided an opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All votes shall be recorded in the Board minutes.

(c) All Board members and alternates and the Secretary will be notified at least 10 days in advance of all Board meetings, except the chairperson of the Board can waive the 10-day notice requirement in matters of an emergency nature.

(d) Each member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members present.

(e) There shall be no voting by proxy.

(f) The chairperson shall be a voting member of the Board.

§ 1219.40 Committee procedure.

(a) The Board may establish committees as deemed necessary to carry out the purposes and objectives of the Order.

(b) The chairperson of the Board shall appoint all committee chairpersons and shall appoint all members of each committee after consultation with the committee chairperson affected. Appointments are subject to approval by the Board and may be changed from time to time as determined by the chairperson of the Board with the concurrence of the Board.

(c) The chairperson of the Board may appoint committee members from among the Board members and alternates and from the industry in general.

(d) The rules and procedures under which committees conduct their activities shall be prescribed in the Board's bylaws.

(e) Committee members and the Secretary will be notified at least 10 days in advance of all committee meetings.

(f) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present.

(g) There shall be no voting by proxy on committees.

(h) The chairperson of the Board shall be an ex-officio member of all committees.

§ 1219.41 Compensation and expenses.

(a) The members and alternates of the Board and committee members shall serve without compensation but shall be reimbursed for reasonable out-of-pocket expenses, as approved by the Board, incurred by them in the performance of their duties.

(b) The Board shall have in place sufficient internal controls to prevent reimbursements or expenditures for unreasonable or otherwise controversial travel and meeting expenses.

§ 1219.42 Prohibited activities.

The Board may not engage in and shall prohibit its employees and agents from engaging in:

(a) Any action that would be a conflict of interest. For the purposes of this subpart, Board members and employees thereof must disclose any relationship with any organization or company that has a contract with the Board or operates a State promotion program. No member may vote on any matter in which the member or member's business entity has a financial interest.

(b) Using funds collected under this subpart for the purpose of influencing legislation or governmental action or policy, by local, national, and foreign governments, except to develop and make recommendations to the Secretary as provided for in this subpart.

(c) In a program, plan, or project conduc'ed under this subpart:

(1) Making any reference to private brand names or making false, misleading, disparaging, or unwarranted claims on behalf of Hass avocados or

(2) Making any false, misleading, or disparaging statements with respect to the attributes or use of any agricultural product. This subsection shall not preclude the Board from offering its programs, plans, and projects for use by commercial parties under such terms and conditions as the Board may prescribe as approved by the Secretary.

(d) For the purposes of this section, a reference to State of origin or country of origin does not constitute a reference to a private brand name with regard to any funds credited to or disbursed by the Board to the Association or to any importer association established in accordance with § 1219.54(l).

Budgets, Expenses, and Assessments

§ 1219.50 Budgets, programs, plans, and projects.

(a) The Board shall submit to the Secretary, on a fiscal period basis, annual budgets of its anticipated expenses and disbursements of the Board in the administration of this subpart, including the projected costs of Hass avocado promotion, industry information, consumer information, and related research programs, plans, and projects. The first budget, which shall be submitted promptly after the effective date of this subpart, shall cover such period as may remain before the beginning of the next fiscal period. If such fiscal period is 90 days or less, the first budget shall cover such period, as well as the next fiscal period. Thereafter, the Board shall submit budgets for each succeeding fiscal period not less than 60 days before the beginning of such fiscal period.

(b) The Board shall receive and evaluate, or on its own initiative develop programs, plans and projects for Hass avocado promotion, industry information, consumer information as well as related research. The Board shall submit to the Secretary for approval any program, plan, or project authorized in this subpart. Such programs, plans or projects shall provide for:

(1) The establishment, implementation, issuance, effectuation, administration, and evaluation of appropriate programs, plans, or projects for advertising, sales promotion, other promotion, and consumer information with respect to Hass avocados directed toward increasing the general demand for Hass avocados in the United States. Funds shall be available as necessary to carry out this section;

(2) The establishment, implementation, issuance, effectuation, administration, and evaluation of appropriate programs, plans, and projects designed to strengthen the position of the Hass avocado industry in the domestic marketplace; to maintain, develop, and expand markets for Hass avocados in the United States; to lead to the development of new marketing

strategies; to advance the image and desirability of, increase the efficiency of, and encourage further development of the Hass avocado industry; and to provide for the disbursement of necessary funds for the purposes described in this section;

(3) The establishment, implementation, issuance, effectuation, administration, and evaluation of programs, plans and projects for marketing development research; research on the sale, distribution,. marketing, use, quality, and nutritional value of Hass avocados; and other research with respect to Hass avocado marketing, promotion, industry information, or consumer information, including the creation of new products thereof. Information acquired from such plans and projects shall be disseminated as appropriate. Funds shall be available as necessary to carry out this subsection; and

(4) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, and information, and pay for the costs of such contracts or agreements with funds collected pursuant to § 1219.54.

(c) A budget, program, plan, or project for Hass avocados promotion, industry information, consumer information, or related research may not be implemented prior to approval of the budget, program, plan, or project by the Secretary. If the Secretary fails to provide notice to the Board or approval or disapproval of a budget, program, plan, or project within 45 days after receipt, such budget, program, plan, or project shall be deemed approved by the Secretary and may be implemented by the Board.

(d) The Board, from time to time, may seek advice and consult with experts from the production, import, wholesale, and retail segments of the Hass avocado industry to assist in the development of promotion, industry information, consumer information, and related research programs, plans, and projects. For these purposes, the Board may appoint special committees composed of persons other than Board members. A committee so appointed shall consult directly with the Board.

§ 1219.51 Contracts and agreements.

(a) The Board shall enter into a contract or an agreement with the Association for the implementation of programs, plans, or projects for promotion, industry information, consumer information, or related research with respect to Hass avocados and for the payment of the cost of the contract or agreement with funds received by the Board under this subpart. The Board may disburse such funds as necessary for these purposes after such programs, plans, or projects have been submitted to and approved by the Secretary.

(b) Any contract or agreement entered into shall provide that the contracting or agreeing party shall develop and submit to the Board a program, plan or project, together with a budget that includes the estimated costs to be incurred for the program, plan or project, and such program, plan or project shall become effective on the approval of the Secretary. For such contract or agreement, the contracting or agreeing party shall:

(1) Keep accurate records of all transactions of the party;

(2) Account for funds received and expended;

(3) Make periodic reports to the Board of activities conducted; and

(4) Make such other reports as the Board or the Secretary shall require.

(c) The Secretary may audit the records of the contracting or agreeing party periodically.

(d) Contractors and subcontractors are subject to the provisions of § 1219.42.

(e) The Board may enter into contracts or agreements for administrative services, including contracts for employment, as may be required to conduct its business. To the extent appropriate to the contract involved, contracts or agreements entered into by the Board under the authority of this section shall conform to the provisions described in § 1219.51(b).

§ 1219.52 Control of administrative costs.

(a) As soon as practicable after this subpart becomes effective and after consultation with the Secretary and other appropriate persons, the Board shall implement a system of cost controls based on normally accepted business practices to:

(1) Ensure that the costs incurred by the Board in administering this subpart in any fiscal period shall not exceed 10 percent of the projected level of assessments and other income received by the Board for generic promotion and research programs for that fiscal period; and

(2) Cover the minimum administrative activities and personnel needed to properly administer and enforce this subpart, and conduct, supervise, and evaluate programs, plans, and projects under this subpart.

(b) Reimbursements to the Secretary required under § 1219.53(b) are excluded from the limitation on spending.

(c) To the extent possible, the Board shall use the resources, staffs, and facilities of existing avocado organizations as provided in § 1219.54(a).

§ 1219.53 Budget and expenses.

(a) The Board is authorized to incur such expenses, including provision for a reasonable reserve for operating contingencies, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board, including assessments, contributions from any person not subject to assessments under this subpart, and other funds available to the Board.

(b) The Board shall reimburse the Department:

(1) For expenses not to exceed $25,000 incurred by the Secretary in connection with any referendum conducted under the Act;

(2) For administrative costs incurred by the Secretary for supervisory work of up to two employee years annually after the Order or amendment to the Order has been issued and made effective; and

(3) For costs incurred by the Secretary in implementation of the Order, for enforcement of the Act and the order, for subsequent referenda conducted the Act, and in defending the Board in litigation arising out of action taken by the Board or otherwise in defense of the Order.

(c) The Board shall establish and maintain the minimum level of annual administrative expenses necessary to efficiently and effectively carry out the programs authorized by the Act. The Board shall include its annual administrative expenses as a separate item in its annual report. The Board shall adhere to its fiduciary responsibilities and ensure that all monies are spent in accordance with the Act, and the Order.

(d) With the approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first period of operation of the Board.

(e) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. The contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

§ 1219.54 Assessments.

(a) Except as provided in § 1219.55, the initial rate of assessment shall be 2.5 cents per pound on fresh Hass avocados produced and handled in the United States and on fresh Hass avocados imported into the United States. An equivalent rate shall be assessed on processed and frozen Hass avocados on which an assessment has not been paid. Such equivalent rate will be assessed on processed or frozen Hass avocados upon the recommendation of the Board with the approval of the Secretary. The rate of assessment may be increased or decreased as recommended by the Board and approved by the Secretary. Such an increase or decrease may occur not more than once annually. Any change in the assessment rate shall be announced by the Board at least 30 days prior to going into effect and shall not be subject to a vote in a referendum. The maximum assessment rate authorized is 5 cents per pound. No more than one assessment shall be made on any Hass avocados.

(b) *Domestic assessments.* The collection of assessments on domestic Hass avocados will be the responsibility of the first handler.

(1) In the case of a producer acting as the producer's own first handler, the producer will be required to collect and remit the assessments due to the Board.

(2) Each first handler shall collect from the producer and pay to the Board an assessment of 2.5 cents per pound in accordance with this subpart. Assessments shall be remitted by each first handler to the Board or its agent within 30 days after the end of the month in which the sale or non-sale transfer subject to assessment under this subpart took place.

(3) The first handler shall maintain a separate record of the domestic Hass avocados of each producer whose domestic Hass avocados are handled, including the domestic Hass avocados owned by the handler and domestic Hass avocados that are exported. For the purposes of this section, a producer who is also a handler shall be considered the first handler of domestic Hass avocados produced by such producer, and the first handler shall be the first person who packs the domestic Hass avocados for sale at the wholesale or retail level.

(4) Assessment of other types of fresh avocados may be added at the recommendation of the Board with the approval of the Secretary.

(c) *Import assessments.* Each importer of fresh Hass avocados shall pay an assessment to the Board through Customs on fresh Hass avocados imported for marketing in the United States.

(1) The assessment rate for imported fresh Hass avocados shall be the same or equivalent to the rate for fresh Hass avocados produced and handled in the United States.

(2) The import assessment shall be uniformly applied to imported fresh Hass avocados that are identified by the number 08–04.00.00.10 in the Harmonized Tariff Schedule of the United States or any other numbers to identify fresh Hass avocados. Assessments on other types of imported fresh avocados or on processed Hass avocados, such as prepared, preserved, or frozen Hass avocados or Hass avocado paste, puree, and oil will be added at the recommendation of the Board with the approval of the Secretary.

(3) The assessments due on imported Hass avocados shall be paid when they are released from custody by Customs and introduced into the stream of commerce in the United States.

(d) All assessment payments and reports will be submitted to the Board's office. All final payments for a crop year are to be received no later than November 30 of that year, unless the Board determines that assessments due from the first handler shall be paid to the Board at a different time and manner, with approval of the Secretary.

(e) A late payment charge prescribed by the Secretary shall be imposed on any first handler who fails to remit to the Board the total amount for which any such handler is liable on or before the due date. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the handler is liable. The rate of interest shall be prescribed by the Secretary. The timeliness of a payment to the Board shall be based on the date the payment is actually received by the Board.

(f) Regulations issued by the Secretary may provide for different first handler payment schedules of assessments on domestic Hass avocados, so as to recognize differences in marketing or purchasing practices and procedures.

(g) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(h) The Board may authorize other organizations to collect assessments on its behalf with approval of the Secretary.

(i) The collection of assessments shall commence on or after a date established by the Secretary and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be remitted, the Secretary shall have the authority to receive assessments on behalf of the Board and may hold such assessments in an interest-bearing account until the Board is constituted and the funds are transferred to the Board.

(j) To facilitate the payment of assessments under this section, the Board shall publish lists of first handlers required to remit assessments under this subpart and exempt handlers.

(k) The Association shall receive an amount of assessment funds equal to 85 percent of the assessments paid on Hass avocados produced in such State. Such funds shall be remitted to such State organization no later than 30 days after such funds are received by the Board. In addition, such funds and any proceeds from the investment of such funds shall be used by the Association to finance promotion, research, consumer information, and industry information programs, plans, and projects in the United States. However, no such funds shall be used for any administrative expenses incurred by the Association.

(l) An association of Hass avocado importers established pursuant to State law or certified by the Secretary shall receive an amount of assessment funds equal to 85 percent of the assessments paid on Hass avocados imported by its members. Such funds shall be remitted to such importer association no later than 30 days after such funds are received by the Board. In addition, such funds and any proceeds from the investment of such funds shall be used by the importer association to finance promotion, research, consumer information, and industry information programs, plans, and projects in the United States. However, no such funds shall be used for any administrative expenses incurred by the importer association.

(m) An association of avocado importers is eligible to receive assessment funds and any proceeds from the investment of such funds only if such importer association is:

(1) Established pursuant to State law that requires detailed State regulation comparable to that applicable to the State organization of domestic avocado producers, as determined by the Secretary; or

(2) Certified by the Secretary as meeting the requirements applicable to the Board as to its operations and obligations, including budgets, programs, plans, projects, audits, conflicts of interest, and reimbursements for administrative costs incurred by the Secretary.

(n) In general, assessment funds received by the Board shall be used:

(1) For payment of costs incurred in implementing and administering this subpart;

(2) To provide for a reasonable reserve to be maintained from assessments to be available for contingencies; and

(3) To cover the administrative costs incurred by the Secretary in implementing and administering this Act, except for the limits on expenses of the Secretary set forth in § 1219.53(b).

(o) The Board may establish an operating monetary reserve which may carry over to subsequent fiscal periods: *Provided, That* the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Secretary, reserve funds may be used to defray any expenses authorized under this part.

§ 1219.55 Exemption from assessment.

(a) Any sale of Hass avocados for export from the United States is exempt from assessment.

(b) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt Hass avocados.

§ 1219.56 Adjustments of accounts.

Whenever the Board or the Secretary determines through an audit of a person's reports, records, books, or accounts or by some other means that additional money is due to the Board, the person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against any amounts due in succeeding months unless the person requests a refund of the overpayment.

§ 1219.57 Patents, copyrights, trademarks, publications, and product formulations.

(a) Any patents, copyrights, trademarks, inventions, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, trademarks, inventions, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval of the Secretary. Section 1219.72 describes the procedures for termination.

(b) Should patents, copyrights, trademarks, inventions, publications, or product formulations be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, trademarks, inventions, publications, or product formulations shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, trademark, invention, publication, or product formulation in a manner consistent with paragraph (a) of this section.

Reports, Books, and Records

§ 1219.60 Reports.

(a) Each first handler of domestic Hass avocados, producer, and importer subject to this subpart shall report to the administrative staff of the Board, at such times and in such manner as the Board may prescribe, such information as may be necessary for the Board to perform its duties.

(b) First handler reports shall include, but shall not be limited to, the following:

(1) Number of pounds of domestic Hass avocados received during the reporting period;

(2) Number of pounds on which assessments were collected;

(3) Assessments collected during the reporting period;

(4) Name and address of person(s) from whom the first handler collected the assessments on each pound handled;

(5) Date collection was made on each pound handled;

(6) Record of assessments paid, including a statement from the handler that assessments have been paid on all domestic Hass avocados handled during the reporting period; and

(7) Number of pounds exported.

(c) Each importer subject to this subpart may be required to report the following:

(1) Number of pounds of Hass avocados imported during the reporting period;

(2) Number of pounds on which an assessment was paid;

(3) Name and address of the importer;

(4) Date collection was made on each pound imported and to whom payment was made; and

(5) Record of each importation of Hass avocados during such period, giving quantity, variety, date, and port of entry.

§ 1219.61 Books and records.

Each producer, first handler, and importer subject to this subpart shall maintain and make available for inspection by the employees and agents of the Board and the Secretary, such books and records as are necessary to carry out the provisions of this subpart, and the regulations issued thereunder, including such records as are necessary to verify any reports required. Books and records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1219.62 Books and records of the Board.

(a) The Board shall maintain such books and records as the Secretary may require. Such books and records shall be made available upon request by the Secretary for inspection and audit.

(b) The Board shall prepare and submit to the Secretary, from time to time, such reports as the Secretary may require.

(c) The Board shall account for the receipt and disbursement of all the funds entrusted to the Board.

(d) The Board shall cause the books and records of the Board to be audited by an independent auditor at the end of each fiscal period. A report of each audit shall be submitted to the Secretary.

§ 1219.63 Confidential treatment.

(a) All information obtained from the books, records, or reports under this Act, this subpart, and the regulations issued thereunder shall be kept confidential and shall not be disclosed to the public by any person, including all current and former employees and agents of the Department, the Board, and contracting and subcontracting agencies or agreeing parties having access to such information. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed, and then only in a judicial proceeding or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected from such reports, if such statements do not identify the information furnished by any person; or

(2) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

(b) Any disclosure of any confidential information by any employee or agent of the Board shall be considered willful misconduct.

(c) No information on how a person voted in a referendum conducted under the Act shall be made public.

§ 1219.64 List of importers.

The administrative staff of the Board shall periodically review the list of importers of Hass avocados to determine whether persons on the list are subject to this subpart. On the request of the Secretary, Customs shall provide to the Secretary or the administrative staff of the Board a list of importers of Hass avocados.

Miscellaneous

§ 1219.70 Right of the Secretary.

All fiscal matters, programs, plans, and projects, contracts, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1219.71 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Order or the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of the producers and importers voting who, during a representative period determined by the Secretary, have been engaged in the production or importation of Hass avocados.

(c) If, as a result of a referendum, the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Suspend or terminate, as appropriate, the collection of assessments not later than 180 days after making such determination; and

(2) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

§ 1219.72 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property owned, in possession of or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person or persons as the Secretary may direct; and (4) Upon the request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or, if not practicable, shall be turned over to the Secretary to be distributed to authorized Hass avocado producer and importer organizations in the interest of continuing Hass avocado promotion, research, and information programs.

§ 1219.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any such rule or regulation issued thereunder; or (b) Release or extinguish any violation of this subpart or of any rule or regulation issued thereunder; or (c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any person, with respect to any such violation.

§ 1219.74 Personal liability.

No member, alternate member, employee, or agent of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of Association or omission, as such member, alternate, employee, or agent, except for acts of dishonesty or willful misconduct.

§ 1219.75 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1219.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested persons affected by the provisions of the Act, including the Secretary. Except for changes in the assessment rate, the provisions of the Act applicable to the Order are applicable to any amendment of the Order.

§ 1219.77 OMB control number.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number _____.[1]

Proposal 2

3. Part 1219 is added as set forth in Proposal 1 with the following changes:

* * * * *

Definitions

* * * * *

§ 1219.9 First handler.

First handler means the first person operating in the Hass avocado marketing system that sells domestic or imported Hass avocados in the United States for domestic consumption, and who is responsible for remitting assessments to the Board. The term includes an importer or producer who sells directly to consumers of Hass avocados that the importer has imported into the United States or the producer has produced in the United States.

§ 1219.10 Fiscal period or marketing year.

Fiscal period or marketing year means the period beginning on April 1 of any year and extending through the last day of March of the following year.

* * * * *

[1] OMB will assign a control number after it has approved the information collection requirements of this subpart.

Hass Avocado Board

§ 1219.30 Establishment and membership.

(a) * * *

(b) * * *

(3) Three members shall be producers of Hass avocados that are subject to assessments under this subpart or importers of Hass avocados that are subject to assessments under this subpart. Producers and importers shall be allocated to these positions so as to assure as nearly as possible that the composition of the 12-member Board reflects the proportion of domestic production and imports supplying the United States market. Such proportion shall be based on the Secretary's determine of the average volume of domestic production and the average volume of imports into the United States market over the previous three years. For determining proportional representation on the initial Board, the Secretary shall determine the domestic level of production using data provided by the Association and the Department and shall determine the level of imports by using data provided by importer associations, the U.S. Customs Service, and the Bureau of the Census.

* * * * *

(d) For purposes of this section, *importer* means a person who is involved in, as a substantial activity, the importation of Has avocados into the United States and who is subject to assessments under the Order. To be deemed to have a substantial activity in the importation and marketing of Hass avocados, the person must have imported 75 percent or more of the total annual volume of all Hass avocados produced, handled, or imported by such person.

Hass Avocado Importer Associations

§ 1219.___ Establishment and membership.

(a) Hass avocado importer associations may be established pursuant to the terms and provisions of this section. An importer association may represent all importers of Hass avocados or importers of Hass avocados from a particular foreign country. An importer association which meets the requirements applicable to the Board with respect to budgets, plans, projects, audits, conflicts of interest, and reimbursements for administrative costs incurred by the Secretary shall be certified by the Secretary. The Secretary may not certify more than one importer association per country of origin.

(b) An importer association may be composed of importers as well as representatives of the foreign avocado exporting industries.

* * * * *

Budgets, Expenses, and Assessments

§ 1219.54 Assessments.

* * * * *

(d) All final assessment payments and reports will be submitted to the office of the Board. All final payments for a crop year are to be received no later than May 31 of that year, unless the Board determines that assessments due from the first handler shall be paid to the Board at a different time and manner, with the approval of the Secretary.

* * * * *

(l) An association of Hass avocado importers shall receive an amount of assessment funds equal to the product obtained by multiplying the aggregate amount of assessments attributable to the pounds of Hass avocados imported by its member importers by 85 percent. Such funds shall be remitted to such importer association no later than 30 days after such funds are received by the Board. Such funds shall be used by the importer association for the financing of promotion, research, consumer information, and industry information programs, plans, and projects in the United States. An importer association representing importers of Hass avocados from a single foreign country may finance the promotion and research on a country of origin basis rather than a generic basis. However, no such funds shall be used for any administrative expenses of such importer association.

* * * * *

Books, Records, and Reports

§ 1219.65 List of producers.

The administrative staff of the Board shall periodically review the list of producers of Hass avocados to determine whether persons on the list are subject to this subpart. On the request of the Secretary or the Board, the Association shall provide to the Secretary or the administrative staff of the Board the list of producers of Hass avocados.

Proposals 3 and 4

4. Part 1219 is added as set forth in Proposal 1 with the following changes:

* * * * *

Hass Avocado Board

§ 1219.30 Establishment and membership.

* * * * *

(d) In order for a person to be eligible to serve on the Board as an importer representative, Hass avocado imports must constitute 75 percent or more of such person's combined total annual volume of Hass avocados produced, handled, or imported by that person.

* * * * *

Budget, Expenses, and Assessments

§ 1219.50 Budgets, programs, plans, and projects.

* * * * *

(e) Programs must be conducted throughout the year to reflect the periods when imported and domestic Hass avocados are in the U.S. marketplace.

(f) The Board shall consult with both the Association and country of origin importer associations on programs, plans, and projects for generic promotions.

* * * * *

§ 1219.52 Control of administrative costs.

(a) * * *

(1) Ensure that the costs incurred by the Board in administering this subpart in any fiscal year shall not exceed 1.5 percent of total assessments; and * * *

* * * * *

§ 1219.54 Assessments.

* * * * *

(u) Importer associations shall be established by importers and country of origin producers and exporters within a reasonable amount of time after the effective date of this subpart. The country of origin importer associations should establish their own bylaws and may use existing organizations for establishment of their associations and coordination of their promotional and research efforts.

(v) For the purposes of the Order, the information required for certification of the country of origin importer associations by the Secretary may include, but is not limited to, the following:

(1) Evidence of incorporation under any state law with all appropriate legal requirements;

(2) Evidence that the association is composed of importers that are located in any state and subject to assessments under the Order, no matter where the association has been incorporated or in which state the importers reside;

(3) Certification of the association's ability and willingness to further the aims and objectives of the Order;

(4) Evidence of stability and permanency; and

(5) A description of the functions of the association.

* * * * *

Dated: July 5, 2001.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 01–17429 Filed 7–10–01: 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1219

[FV–01–706–PR]

Hass Avocado Promotion, Research, and Information Order; Subpart B—Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Hass Avocado Promotion, Research, and Information Order (Order) is favored by the producers and importers of Hass avocados. The Order will be implemented if it is approved by a simple majority of the producers and importers voting in the referendum. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposed Order is being published in a separate document. This proposed program would be implemented under the Hass Avocado Promotion, Research, and Information Act of 2000.

DATES: Comments must be received by August 27, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch (RP), Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Julie A. Morin, RP, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–S, Washington, DC 20250–0244; telephone (202) 720–6930 or fax (202) 205–2800, or julie.morin@usda.gov.

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible producers and importers of Hass avocados to determine whether they favor issuance of the proposed Hass Avocado Promotion, Research, and Information Order (Order) [7 CFR Part 1218]. The program will be implemented if it is approved by a simple majority of the producers and importers voting in the referendum. The Order is authorized under the Hass Avocado Promotion, Research, and Information Act of 2000 (Act) [Pub. L. 106–387, 7 U.S.C. 7801–7813]. It would cover domestic and imported Hass avocados. A proposed Order is being published separately in the **Federal Register**.

Question and Answer Overview

Why Are These Referendum Procedures Being Proposed?

USDA will conduct rulemaking and a national referendum on the Order. In order to conduct the referendum, procedures need to be established. Publishing this proposed rule provides the opportunity for public input on the procedures before they are finalized.

How Long Do I Have To Comment on the Proposed Rule?

You have 45 days to submit written comments to USDA on the proposed procedures or to OMB on the paperwork burden associated with the procedures. You may submit your comments by mail, fax, or e-mail as indicated above.

Who Is Eligible To Vote in the Referendum?

Each eligible producer, handler, and importer will be allowed one vote in the referendum. In order to be implemented, the amendment must be approved by a majority of the producers and importers voting in the referendum.

When Will the Referendum Be Held?

After we have analyzed the comments on this proposed rule, we will issue final referendum procedures. The voting period will last 30 days and be announced 30 days in advance.

How Can I Vote in the Referendum?

Voting will take place by mail. All known eligible producers and importers will receive a ballot and voting instructions in the mail from USDA. Producers and importers who believe they are eligible to vote and who do not receive a ballot in the mail may request a ballot by calling a toll-free telephone number. The ballot must be received by USDA by the close of business on the last day of the voting period.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1212 of the Act states that the Act may not be construed to preempt or supersede any other program relating to Hass avocado promotion, research, industry information, and consumer information organized under the laws of the United States or of a state.

Under Section 1207 of the Act, a person subject to the order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of the Secretary's final ruling.

Executive Order 12866

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Secretary to implement a research and promotion program covering domestic and imported Hass avocados, became effective on October 23, 2000.

This proposed rule would establish the procedures under which producers and importers may vote on whether they want a national promotion, research, and information program to be implemented for Hass avocados. Producers and importers of Hass avocados who have produced or imported Hass avocados for at least one year prior to the referendum would be eligible to vote. This proposal would add a new subpart which establishes procedures to conduct the initial and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

According to industry sources, there are approximately 6,000 producers and 200 importers who will vote in the referendum.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $500,000 or less annually and small agricultural service firms as those having annual receipts of $5 million or less. Importers would be considered agricultural service firms. Using these criteria, most producers and importers would be considered small businesses. On August 6, 2001, the threshold for small agricultural producers will be increased to $750,000. This increase has little import on the determination of whether those covered by the program would be considered small businesses.

The Act authorizes assessments on fresh, frozen, and processed Hass avocados. However, initially only fresh Hass avocados will be assessed. Therefore, only producers and importers of fresh Hass avocados are covered by this proposed rule.

California is the source for over 95 percent of the Hass avocados produced in the United States. According to the Commission, seven avocado varieties are grown in California. Hass, the most popular variety, accounts for 85 percent of the volume of California avocado production. Hass avocados are available 12 months a year.

According to USDA's National Agricultural Statistics Service (NASS), total U.S. production of avocados during the 1999–2000 season was 181,300 tons, most of which was utilized fresh except for a small processed quantity that NASS included in fresh utilization to protect the confidentiality of individual operations. The value of the 1999–2000 crops was $392 million. Production in 1999–2000 was up 14 percent from the previous year's total of 159,250 tons, which had a value of $344 million. According to an industry report, the U.S. avocado category is expected to grow to more than 600 million pounds this year (2000–2001)—up 53% from 1997–1998.

In the 1999–2000 season, the major countries exporting to the U.S. were Chile (59 percent), Mexico (20 percent), and the Dominican Republic (15 percent). Data on imports is not collected by variety, but it is believed to be mostly Hass. Avocados are imported both in fresh and processed form. According to U.S. Census Bureau data, fresh avocado imports during the 1999–2000 season (November/October) accounted for about 75 percent of the total tonnage of fresh and processed avocados imported. In 1999–2000, imported fresh avocados totaled 66,237 tons, up from 55,515 tons during the 1998–99 season.

The total import value for fresh and processed avocados was $137 million in 1999–2000, up from $95 million in 1998–99. Almost all prepared or preserved avocado imports come from Mexico. The trend in imports is up, and imports have more than doubled since 1995.

This proposed rule provides the procedures under which producers and importers of Hass avocados vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that these proposed procedures would apply.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on producers and importers. This rule provides for a ballot to be used by eligible producers and importers to vote in the referendum. The estimated annual cost of providing the information by an estimated 6,000 producers would be $3,000 or $0.50 per producer and for an estimated 200 importers would be $100 or $0.50 per importer.

The Secretary considered requiring eligible voters to vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal, current technology is not reliable enough to ensure that electronic ballots would be received in a readable format, and technology is insufficient at this time to provide sufficient safeguards of voters' confidentiality. Conducting the referendum from one central location by mail ballot would be more cost-effective and reliable. The Department will provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

While we have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in obtaining more information on the number of small entities that may incur benefits or costs from the implementation of this proposed rule and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–NEW.

Expiration Date of Approval: To be assigned by OMB.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each producer and importer.

Respondents: Producers and importers.

Estimated Number of Respondents: 6,200.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 310 hours.

The estimated annual cost of providing the information by an estimated 6,000 producers would be $3,000.00 or $0.50 per producer and for an estimated 200 importers would be $100.00 or $0.50 per importer.

Comments are invited on: (a) Whether the proposed collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

Background

The Act, which became effective on October 23, 2000, authorizes the Secretary to establish a national research and promotion program covering domestic and imported Hass avocados. The Commission submitted an entire proposed Order on December 29, 2000. Subsequently, on March 9, 2001, partial proposals were received from Hass avocado interests in Chile, Mexico, and New Zealand. These proposals are being published for public comment in this issue of the **Federal Register**.

The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for Hass avocados in the United States. The program would be funded by an assessment levied on producers (to be collected by handlers) and importers (to be collected by the U.S. Customs Service at time of entry into the United States) at an initial rate of 2.5 cents per pound. The Act authorizes assessments on fresh, frozen, and processed Hass avocados. However, initially, only fresh domestic and imported Hass avocados will be covered by the program.

The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the Hass Avocado Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

Section 1206 of the Act requires that a referendum be conducted among eligible producers and importers of Hass avocados to determine whether they favor implementation of the Order. That section also requires the Order to be approved by a simple majority of the producers and importers voting. In order to be eligible to vote, producers and importers must have been engaged in producing or importing Hass avocados for at least one year prior to the referendum.

This proposed rule establishes the procedures under which producers and importers of Hass avocados may vote on whether they want the Hass avocado promotion, research, and information program to be implemented. There are approximately 6,200 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda.

The subpart covers definitions, registration, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

A 30-day comment period is provided on this proposed rule. This period is deemed appropriate to better reflect the implementation time frames provided in the Act.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the Hass avocado industry.

List of Subjects in 7 CFR Part 1219

Administrative practice and procedure, Advertising, Consumer Information, Hass avocados, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended by amending part 1219 proposed elsewhere in this issue as follows:

1. The authority citation for part 1219 continues to read as follows:

Authority: 7 U.S.C. 7801–7813.

2. Subpart B is added to proposed Part 1219 to read as follows:

PART 1219—HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION

* * * * *

Subpart B—Referendum Procedures

Sec.

1219.100 General.
1219.101 Definitions.
1219.102 Registration.
1219.103 Voting.
1219.104 Instructions.
1219.105 Subagents.
1219.106 Ballots.
1219.107 Referendum report.
1219.108 Confidential information.

Subpart B—Referendum Procedures

§ 1219.100 General.

Referenda to determine whether eligible producers and importers of Hass avocados favor the issuance, amendment, suspension, or termination of the Hass Avocado Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1219.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Eligible importer* means any person who imported Hass avocados, that are identified in the Harmonized Tariff Schedule of the United States,[1]

[1] The Department of Agriculture has applied to the International Trade Commission for an

for at least one year prior to the referendum. Importation occurs when Hass avocados originating outside the United States are released from custody by the U.S. Customs Service and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced Hass avocados immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of Hass avocados from the U.S. Customs Service when such Hass avocados are entered or withdrawn for consumption in the United States.

(c) *Eligible producer* means any person who produced Hass avocados in the United States for at least one year prior to the referendum who:

(1) Owns, or shares the ownership and risk of loss of, the crop;

(2) Rents Hass avocado production facilities and equipment resulting in the ownership of all or a portion of the Hass avocados produced;

(3) Owns Hass avocado production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the Hass avocados produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce Hass avocados who share the risk of loss and receive a share of the Hass avocados produced. No other acquisition of legal title to Hass avocados shall be deemed to result in persons becoming eligible producers.

(d) *Hass avocados* means the fruit grown in or imported into the United States of the species *Persea americana* Mill. For the purposes of the initial referendum, the term shall include fresh fruit only.

(e) *Order* means the Hass Avocado Promotion, Research, and Information Order.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a Hass avocado farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(g) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(h) *Representative period* means the period designated by the Secretary.

(i) *United States.*—The term "United States" means collectively of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia.

§ 1219.102 Registration.

An eligible producer or importer of Hass avocados, as defined in this subpart, at the time of the referendum and during a representative period, who chooses to vote in any referendum conducted under this subpart, shall register with the Secretary prior to the voting period, after receiving notice from the Secretary concerning the referendum under § 1219.103.

§ 1219.103 Voting.

(a) Each eligible producer and eligible importer who registers to vote in the referendum shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce Hass avocados, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Secretary.

§ 1219.104 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast (voting period).

(b) Notify producers and importers of the voting period for the referendum and the requirement to register to vote in the referendum at least 30 days in advance by utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio.

(c) Develop the ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(d) Develop a list of producers and importers who register to vote.

(e) Mail to registered voters the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order.

(f) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(g) Prepare a report on the referendum.

(h) Announce the results to the public.

§ 1219.105 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1219.106 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect

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Harmonized Tariff Code number for Hass avocados. The number will be available prior to the finalization of this rule.

thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1219.107 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1219.108 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be strictly confidential and shall not be disclosed.

Dated: July 5, 2001.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 01–17428 Filed 7–10–01; 8:45 am]

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Federal Register

Friday,
July 13, 2001

Part IV

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 319

Mexican Hass Avocado Import Program; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 00–003–2]

RIN 0579–AB27

Mexican Hass Avocado Import Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of fruits and vegetables to expand the number of States in which fresh avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed. We are also proposing to increase the length of the shipping season during which the Mexican Hass avocados may be imported into the United States. We are proposing this action in response to a request from the Government of Mexico and after determining that expanding the current Mexican avocado import program would present a negligible risk of introducing plant pests into the United States.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 11, 2001. We will also consider comments made at public hearings in Escondido, CA; Austin, TX; Denver, CO; and Homestead, FL. The exact dates and times for the hearings and the specific locations of all four hearings will be announced in a notice to be published in a future issue of the **Federal Register**.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–003–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale MD 20737–1238. Please state that your comment refers to Docket No. 00–003–2.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Public hearings regarding this proposed rule will be held at the following locations: (1) Escondido, CA; (2) Austin, TX; (3) Denver, CO; and (4) Homestead, FL.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Public Hearings

Hearings on this proposed rule will be held in Escondido, CA; Austin, TX; Denver, CO; and Homestead, FL. The exact dates and times for the hearings and the specific locations of all four hearings will be announced in a notice published in a future issue of the **Federal Register**.

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

Under the regulations in 7 CFR 319.56–2ff (referred to below as the regulations), fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be imported into specified areas of the United States, subject to certain conditions. Those conditions, which include pest surveys and pest risk-reducing cultural practices, packinghouse procedures, inspection and shipping procedures, and restrictions on the time of year (November through February) that shipments may enter the United States, are designed to reduce the risk of pest introduction to a negligible level. Further, the regulations limit the distribution of the avocados to 19 northeastern States (Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin) and the District of Colombia, where climatic conditions preclude the establishment in the United States of any of the exotic plant pests that may attack avocados in Michoacan, Mexico.

In January 2000, we amended the regulations to require handlers and distributors of Mexican Hass avocados to enter into compliance agreements with APHIS. We also added requirements regarding the repackaging of avocados after their entry into the United States. These amendments were necessary to ensure that distributors and handlers are familiar with the distribution restrictions and other requirements of the regulations and to ensure that any boxes used to repackage the avocados in the United States bear the same information that is required to be displayed on the original boxes in which the fruit was packed in Mexico.

In September 1999, the Government of Mexico requested that APHIS amend the regulations to (1) increase the number of States into which the avocados may be imported and (2) to allow the shipping season to begin 1 month earlier (October rather than November) and end 1 month later (March rather than February).

On May 11, 2000, we published a notice in the **Federal Register** (65 FR 30365–30366, Docket No. 00–003–1) in which we solicited comments on Mexico's request. In particular, we asked the public for comments and recommendations regarding the scope of our review of Mexico's request and requested interested persons to submit any data or information that may have a bearing on our review of the Mexican Government's request. We requested that comments focus on scientific, technical, or other issues that commenters believed should be considered during our review of the Mexican Government's request.

We solicited comments on our request for 90 days, ending August 9, 2000. By that date, we received 265 comments. The comments were submitted by avocado growers, processors, packers and importers, grocers, Members of Congress, Mexican Government officials, researchers, and State and local departments of agriculture. In general, the majority of commenters supported expanding the area of distribution of Hass avocados and increasing by the length of the shipping season during which Hass avocados may be imported into the United States. Two commenters provided data that were considered in the development of a study titled "Identification of Susceptible Areas for the Establishment of *Anastrepha* spp. Fruit Flies in the United States and Analysis of Selected Pathways" (Sequeira, *et al.*, 2001). This study, along with several previous risk documents, provides the basis for this proposed rule. Several commenters had specific concerns about Mexico's

request and the current Hass avocado import program. These comments are discussed later in this document.

We have completed our review of the Mexican Government's request and have evaluated the information submitted by commenters in response to our request for comments. Based on our review of the public comments (discussed later in this document) and the findings of various risk analysis documents prepared by APHIS, which are discussed in detail below beginning with the section titled *Risk Assessment Documentation Supporting the Proposed Rule*, we are proposing to amend § 319.56–2ff(a)(2) of the regulations to extend by 2 months the shipping season during which Hass avocados from approved orchards in approved municipalities in Michoacan, Mexico, may be imported into approved areas of the United States. With this proposed change, the shipping season would run from November through April.

We are also proposing to expand the area to which the Mexican Hass avocados may be distributed by adding Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming to the list of approved States in § 319.56–2ff(a)(3). These 12 additional States, like the currently approved States, do not contain host material for any of the avocado-specific pests of concern and have phenological conditions that do not support the establishment of fruit flies, especially during the proposed shipping season.

Note: Since the publication of the May 2000 request for comments on this subject, the Government of Mexico has requested that APHIS amend the regulations to allow Hass avocados to be imported year round into all 50 States. We are not proposing to allow avocados to be imported year round to all U.S. States per Mexico's request because we do not currently have documentation available to support Mexico's position that such importations would not present a risk of introducing plant pests into certain States.

In addition to the proposed changes to § 319.56–2ff(a)(2) and (a)(3) discussed above, our proposed expansion of the shipping season and the number of States in which Mexican Hass avocados may be distributed would necessitate several other changes in the regulations. First, we would amend the limited distribution statement required by § 319.56–2ff(c)(3)(vii) to reflect the addition of the 12 new States. Specifically, the statement that must be placed on boxes used to ship imported Hass avocados from Mexico would be changed to read "Distribution limited to the following States: CT, CO, DC, DE, ID, IL, IA, IN, KS, KY, ME, MD, MA, MI, MN, MO, MT, NE, NH, NJ, NY, ND, OH, PA, RI, SD, UT, VA, VT, WV, WI, and WY."

Paragraphs (e)(2) and (e)(3) of § 319.56–2ff each refer to the "entire shipping season of November through February." We are proposing to amend those paragraphs so that they refer to the shipping season as running from November through April.

We would also amend the existing regulations to allow the imported avocados to transit additional States. Currently, the regulations in § 319.56–2ff(g) do not allow avocados to be moved west of a line extending from El Paso, TX, to Denver, CO, and due north from Denver. Given that, under our proposal, avocados would be eligible for importation into several States west of this line, we are proposing to revise the description of the area through which Mexican Hass avocados may be moved by truck or rail car. Under our proposal, avocados would not be allowed to transit the area to the west of the following line: Following Interstate 10 north from El Paso, TX, to Las Cruces, NM, and then north following Interstate 25 to the Colorado border. Once in Colorado, trucks and rail cars carrying avocados would be free to move to any State located within the approved distribution area described in § 319.56–2ff(a)(3). The current eastern shipping boundary would not change.

Finally, we would amend several paragraphs in the regulations to remove references to "northeastern States," as that geographic limitation would no longer apply.

Risk Assessment Documentation Supporting the Proposed Rule

The final rule that established the current Mexican Hass avocado import program was published in the **Federal Register** on February 5, 1997, and became effective on March 7, 1997 (62 FR 5293–5315, Docket No. 94–116–6). In the final rule, we stated, in response to a comment about expanding the approved avocado distribution area to include additional States, that new States could be added to the list of approved States in the future if APHIS received a request to do so and the Agency determined that avocados could be imported into other States without presenting a significant pest risk.

After considering the comments received in response to our May 2000 request for information and reviewing our existing data, we have determined that there is sufficient information to support the Mexican Government's request to expand the list of approved States and the avocado shipping season. The information on which this determination is based is primarily derived from the following documents:

- A risk management analysis, "A Systems Approach for Mexican Avocado" (USDA, May 1995), prepared for the July 1995 proposed rule.
- A supplemental pest risk assessment, "Importation of Avocado Fruit (*Persea americana*) from Mexico" (USDA, May 1995) and an addendum to it, "Estimates for the Likelihood of Pest Outbreaks Based on the Draft Final Rule" (USDA, July 1996).
- A document, "Identification of Susceptible Areas for the Establishment of *Anastrepha* spp. Fruit Flies in the United States and Analysis of Selected Pathways" (Sequeira, *et al.*, 2001), which was completed in 2001 as the U.S. portion of a project by a subcommittee of the Pest Risk Assessment Panel of the North American Plant Protection Organization (NAPPO).
- Four shipping seasons (1997–2001) worth of shipping and inspection data collected either by APHIS or jointly by APHIS and its Mexican counterpart, the Secretariat of Agriculture, Livestock and Rural Development, Fisheries and Food (SAGARPA).
- Two avocado program review reports, prepared in June 1999 and May 2001, which include evaluations of the program based on site visits to production areas in Mexico.
- Four years worth of fruit fly trapping data for the approved orchards in approved municipalities in Mexico.

The content of these documents, and our analysis of their applicability to this proposed rule, are summarized below. This summary is an excerpt from an APHIS document entitled "Information Memo for the Record" (April 30, 2001). Copies of all of the documents referenced above, including the information memo, are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, or via the Internet at http://www.aphis.usda.gov/ppq/avocados/.

1995 Risk Management Analysis

The risk management analysis describes the degree to which the various elements of the systems approach employed for the importation of Mexican Hass avocados are expected to mitigate the pest risk associated with such importations. The risk management analysis evaluates the following pests:

- Small avocado seed weevils (*Conotrachelus perseae* and *C. aguacatae*),

- Large avocado seed weevil (*Heilipus lauri*),
- Avocado stem weevil (*Copturus aguacatae*),
- Avocado seed moth (*Stenoma catenifer*),
- Fruit flies (*Anastrepha ludens*, *A. striata* and *A. serpentina*),[1] and
- Hitchhikers and miscellaneous other pests.

The risk mitigation elements of the systems approach evaluated in the document include the following measures:

- Field surveys,
- Trapping and field treatments,
- Field sanitation,
- Host resistance,
- Post harvest safeguards,
- Winter shipping only (November through February),
- Packinghouse inspection and fruit cutting,
- Port-of-arrival inspection, and
- Limited U.S. distribution (northeastern States only).

The risk management analysis concluded that the cumulative effects of the systems approach lower the risk of all target pests to an insignificant level and that even if one of the mitigation measures should completely fail, the risk reduction effect of the other measures would maintain risk at a low level. The risk management analysis further concluded that the risk from hitchhikers and other pests would be lower than the comparative risk posed by hundreds of other products that are imported into the United States with port-of-entry inspection as the primary clearance requirement.

1995 Supplemental Pest Risk Assessment and 1996 Addendum

The primary components of the supplemental pest risk assessment are:

- A listing of avocado pests known to occur in Mexico;
- A qualitative assessment of the consequences of introducing specific quarantine pests expected to follow the pathway of avocado fruit imported in accordance with the systems approach;
- Biological information on those quarantine pests;
- A scenario analysis considering the likelihood that infested fruit transported to suitable habitat would result in the establishment of those quarantine pests in the United States; and
- Quantitative estimates of the likelihood that infested fruit transported to suitable habitat would result in the establishment of those quarantine pests in the United States; and
- Brief recommendations regarding measures to manage plant pest risk.

The document estimates the probability of pest establishment by comparing two scenarios for imported Mexican Hass avocados: (1) That there were no specific risk mitigation measures in place (i.e., the baseline scenario), and (2) that the mitigation measures described in the July 3, 1995, proposed rule were in place (the mitigated scenario).

The supplementary pest risk assessment identifies 91 pests of avocado in Mexico (26 pathogens and 65 arthropods). Of the 91 pests identified, 32 (2 pathogens and 30 arthropods) satisfy the geographic and regulatory criteria for designation as a quarantine pest. Of these 32 quarantine pests, only 9 arthropods are expected, based on their biology, to follow the pathway of imported Mexican Hass avocado fruit. Those nine arthropods (which were identified for consideration in the risk management analysis) are:

- *Anastrepha fraterculus*—fruit fly.
- *Anastrepha ludens*—fruit fly.
- *Anastrepha serpentina*—fruit fly.
- *Anastrepha striata*—fruit fly.
- *Conotrachelus aguacatae*—seed weevil.
- *Conotrachelus perseae*—seed weevil.
- *Heilipus lauri*—seed weevil.
- *Copturus aguacatae*—stem weevil.
- *Stenoma catenifer*—seed moth.

The nine pests are categorized for the purposes of the extended assessment as follows:

- Fruit flies: *Anastrepha fraterculus*, *A. ludens*, *A. serpentina*, and *A. striata*.
- Seed weevils: *Conotrachelus aguacatae*, *C. perseae*, *Heilipus lauri*.
- Stem weevil: *Copturus aguacatae*.
- Seed moth: *Stenoma catenifer*.

The supplemental pest risk assessment then rates pest groups qualitatively for their "Pest Risk Potential" (PRP). The ratings are based on a series of risk elements that are used to estimate the consequences of a pest's introduction. The PRP is considered to be a biological indicator of the potential destructiveness of the pest. The seed weevils, stem weevil, and seed moth have PRP values considered to be medium. The supplemental pest risk assessment's ratings are based on our findings that, although these pests could potentially have a significant economic impact on domestic avocado production, their host range is extremely narrow (the weevils are only known to attack avocado, and the seed moth attacks only avocado and one other plant species), they have a narrow climatic tolerance, and their dispersal potential is limited. The fruit flies' PRP is considered high. The difference in the ratings for the fruit flies as compared to the weevils and the seed moth can be attributed to the broader range of hosts attacked by the fruit flies, their greater motility, and higher potential economic impact.

The supplemental pest risk assessment estimates the likelihood that particular pests would be introduced into the United States as a result of importation of Mexican Hass avocado fruit. First, the events that would have to occur before pest outbreaks could occur were conceptualized using the method of scenario analysis. The results of the scenario analysis were then used to run a series of Monte Carlo simulations to estimate the frequency of pest outbreaks. The chosen endpoint for the simulations was the frequency of pest outbreaks. Two scenarios (i.e., program alternatives) were considered:

- Importation of Mexican avocado fruit with no specific measures to mitigate plant pest risks, and
- Importation of only Hass avocado fruit and only under the systems approach proposed in the July 3, 1995, proposed rule.

A single risk model was employed for both the unmitigated (baseline) scenario and the mitigated (program) scenario. It is a linear, multiplicative model comprised of seven "nodes" with the endpoint of frequency of outbreaks (establishment) per year based on an estimated number of shipments. It is assumed that all of the events (nodes) in the model are independent and all must occur before a pest establishment can take place. The risk model is as follows:

F1: Frequency of shipments (number of boxes imported per year) ×
P1: Probability pest infests fruit: pre-or postharvest ×
P2: Probability pest not detected during harvest or packing ×
P3: Probability pest survives shipment ×
P4: Probability pest not detected at port of entry inspection ×
P5: Probability fruit is transported to area with suitable hosts and climate ×
P6: Probability infested fruit in suitable habitat leads to outbreak =
F2: Frequency of pest outbreaks in the United States

Because the actual probabilities of the independent events comprising the risk model were not known, they were estimated. Although the probabilities were estimated, pertinent data were available for each independent event. The estimates were based to a large extent on expert judgment. A core team

[1] In Attachment 1 of the risk management analysis, APHIS discusses its consideration of *Anastrepha fraterculus* as a pest of avocados. *A. fraterculus* is not considered in the body of the risk management analysis because no research suggests the population of *A. fraterculus* found in Mexico is a pest of avocados.

of four entomologists estimated probabilities, and numerous technical specialists (e.g., scientists specializing in particular taxonomic groups, port inspectors, specialists in international trade, etc.) were consulted throughout the process. The estimates were specified as probability distribution functions that described a range of values between specified maximums and minimums. The frequency of pest outbreaks was calculated using Monte Carlo simulation.

The results of quantitative estimates of the "Likelihood of Introduction" section of the 1995 supplemental pest risk assessment are summarized in the following table:

TABLE 1.—PEST OUTBREAK FREQUENCY: MEXICAN AVOCADO PESTS, BY PROGRAM ALTERNATIVE, AS CALCULATED IN THE 1995 SUPPLEMENTAL PEST RISK ASSESSMENT

Program alternative	Pest	Outbreak frequency (per year)	
		Mode	Mean
A—No specific mitigation program	Fruit flies	0.0139 or 1 chance in 72	0.0518 or 1 chance in 19
	Seed weevils	0.0105 or 1 chance in 95	0.0419 or 1 chance in 24
	Stem weevil	1.389 or 1 chance in 0.7	5.183 or 1 chance in 0.2
	Seed moth	0.00282 or 1 chance in 355	0.0120 or 1 chance in 83
B—Systems approach for risk mitigation	Fruit flies	8.64×10^{-8} or 1 chance in 12 million	3.57×10^{-7} or 1 chance in 3 million
	Seed weevils	6.66×10^{-7} or 1 chance in 1.5 million	3.13×10^{-6} or 1 chance in 320,000
	Stem weevil	8.77×10^{-5} or 1 chance in 11,042	0.000387 or 1 chance in 2600
	Seed moth	1.87×10^{-7} or one chance in 5 million	8.98×10^{-7} or one chance in 1.1 million

Following our review of the comments received from the public regarding the July 3, 1995, proposed rule, APHIS made modifications to the systems approach that had not been considered in the 1995 supplemental pest risk assessment. The changes that appeared in the February 5, 1997, final rule are:

1. Fallen fruit must be removed from the orchard no less frequently than every 7 days during harvest.

This change affected the estimates for node P1 (Probability pest infests fruit: pre- or postharvest).

2. The number of fruit inspected from each lot was increased from 250 to 300.

This change affected estimates for node P2 (Probability pest not detected during harvest or packing).

3. A sticker identifying the packinghouse must be placed on each individual fruit imported under the program.

This change affected both the probability that the pests would evade detection at the ports of entry (P4) and the probability that fruit will be transported to a habitat with suitable hosts and climate (P5).

As a consequence of these changes, APHIS revised the calculations presented in the 1995 supplemental pest risk assessment for the likelihood of introduction under the mitigation program. The revised calculations were reported in the 1996 addendum to the supplemental pest risk assessment. The revised calculations were intended to estimate how much further risk reduction would be achieved by the additional measures. Since the risk, prior to these modifications, was already deemed insignificant, the revised calculations of the addendum (shown in the table below) were not considered necessary for publication of the final rule.

TABLE 2.—PEST OUTBREAK FREQUENCY: MEXICAN AVOCADO PESTS, BY PROGRAM ALTERNATIVE—INPUT VALUES BASED ON THE 1997 DRAFT FINAL RULE

Program alternative	Pest	Outbreak frequency (per year)	
		Mode	Mean
B—Systems approach for risk mitigation	Fruit flies	8.89×10^{-11} or 1 chance in 11 billion	4.85×10^{-8} or 1 chance in 21 million
	Seed weevils	5.76×10^{-9} or 1 chance in 173 million	4.01×10^{-7} or 1 chance in 2.5 million
	Stem weevil	3.08×10^{-6} or 1 chance in 325,000	1.03×10^{-4} or 1 change in 9708
	Seed moth	3.60×10^{-9} or 1 chance in 278,000	1.19×10^{-7} or 1 chance in 8 million

Identification of Susceptible Areas for the Establishment of Anastrepha spp. Fruit Flies in the United States and Analysis of Selected Pathways

This document reviews the risk associated with *Anastrepha* spp., especially in relation to these pests as they occur in U.S. fruit imports from Mexico. It focuses on the likelihood that *Anastrepha ludens* (Mexfly), *A. serpentina*, *A. striata* and *A. fraterculus* could become established in the United States via the Mexican avocado pathway. The study described in the document was motivated by U.S. grower concerns that existing and proposed changes in import patterns will pose increased risks to American agricultural productivity and profitability. This document represents the U.S. portion of a project by a subcommittee of the NAPPO Pest Risk Assessment Panel, and is intended to be published as part of a larger NAPPO document when Mexico and Canada's portions of the document are complete.

Paraphrasing from the document, the approach used was to first examine the resource at risk (commercial fruit production), then characterize host susceptibility (timing and location of susceptible fruit) and characterize climatology so as to study pest reproduction potential as a function of the previous factors. This approach can be characterized as an epidemiological analysis. The avocado pathway was used as a case study for the risks associated with fruit imports. The study used fruit cutting, pest survey, and

trapping data that have been recorded since the initiation of the avocado import program to determine the probability that fruit flies are passing undetected along this pathway.

Epidemiologically, the study concludes that a combination of factors, primarily the Hass avocado's status as a poor to inadequate fruit fly host and the marginal conditions for fruit fly development in the growing areas, leads to low fruit fly densities in production areas. They note that *Anastrepha* spp. favor peaches, citrus, and other species of fruit over avocados. Statistically, the study demonstrates that the probability is near zero that fruit fly infestations (even very low-level infestations) are going undetected in inspections under the current avocado import program. That is, the statistical evidence suggests that if infestations were even as low as 1 *Anastrepha* spp. larva per 100,000 fruit, they would be detected with likelihood greater than 95 percent. The study concludes that the existing *Anastrepha* populations in Mexico, given the cropping and pest management practices currently in use there, are too low to be a threat to agriculture in the States currently approved to receive imported Mexican avocados or in the States that we are proposing to allow to receive imported Mexican avocados.

The study concludes that the highest likelihood for the potential spread of Mexfly in the United States is concentrated in portions of the States of Arizona, California, Florida, Georgia, Louisiana, South Carolina, and Texas. The State of Hawaii showed the highest risk for the establishment of *Anastrepha* spp. A combination of limited host availability, a short period of climate conducive to *Anastrepha* spp. development, and lethal low temperatures for prolonged periods causes most of the continental United States outside of those States to be at low risk from these fruit fly species.

Program Reviews, Shipping and Inspection Data, and Trapping Data

In May 2001, APHIS completed a review of the Mexican Hass avocado import program. The review was triggered by a request from a representative of the California Avocado Commission. As part of the review, a team of several APHIS officials conducted a site visit to avocado production areas in Michoacan, Mexico, in September 2000. The site visit team observed trapping and orchard sanitation practices in Michoacan and concluded that the program was being operated in compliance with the regulations.

The current regulations in § 319.56–2ff require that Mexican avocado-producing municipalities and orchards that wish to participate in the U.S. import program must fulfill certain obligations regarding pest surveys. The municipality must be surveyed at least annually and found to be free of the large avocado seed weevil (*Heilipus lauri*), the avocado seed moth (*Stenoma catenifer*), and the small avocado seed weevils (*Conotrachelus aguacatae* and *C. perseae*). Trapping must be conducted in the municipality for Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) at the rate of 1 trap per 1 to 4 square miles. The orchard and all contiguous orchards and properties must be surveyed annually and found to be free from the avocado stem weevil (Copturus aguacatae). Trapping must be conducted in the orchard for the fruit flies *Anastrepha ludens, A. serpentina,* and *A. striata* at the rate of 1 trap for each 10 hectares.

Data from these various trapping and survey programs, as well data on the number of fruit shipped, the number of fruit intercepted outside of the approved States, and the number of fruit cut and inspected are now available for the four shipping seasons that the import program has been in place (1997–1998 through 2000–2001). These data are summarized in the tables below.

TABLE 3.—NUMBER OF MEXICAN HASS AVOCADO FRUIT ENTERING THE UNITED STATES

Season	Shipments	Boxes	Fruit
1997–1998	347	537,850	25,816,800
1998–1999	560	868,000	41,664,000
1999–2000	669	1,036,950	49,773,600
2000–2001	576	895,900	42,854,400
Total	2,152	3,338,700	160,108,800
Average	538	834,675	40,027,200

TABLE 4.—NUMBER OF MEXICAN HASS AVOCADO FRUIT INTERCEPTED OUTSIDE APPROVED STATES

Season	Boxes	Fruit
1997–1998	668	32,064
1998–1999	3,114	149,472
1999–2000	45	2,160
2000–2001	54	2,592
Total	3,881	186,288
Average	970	46,572

TABLE 5.—NUMBER OF MEXICAN HASS AVOCADO FRUIT CUT AND INSPECTED

[All fruit cut and inspected were negative for target pests. Orchard and packinghouse inspections were joint Mexican (SAGARPA) / United States (APHIS) inspections. Border inspections were conducted by U.S. inspectors.]

Season	Orchard (SAGARPA/ APHIS)	Packinghouse (SAGARPA / APHIS)	At Border (APHIS)	Total
1997–1998	1,155,305	417,900	10,410	1,583,615
1998–1999	1,121,471	203,250	16,800	1,341,521

TABLE 5.—NUMBER OF MEXICAN HASS AVOCADO FRUIT CUT AND INSPECTED—Continued

[All fruit cut and inspected were negative for target pests. Orchard and packinghouse inspections were joint Mexican (SAGARPA) / United States (APHIS) inspections. Border inspections were conducted by U.S. inspectors.]

Season	Orchard (SAGARPA/ APHIS)	Packinghouse (SAGARPA / APHIS)	At Border (APHIS)	Total
1999–2000	952,423	166,650	20,070	1,139,143
2000–2001	1,209,814	172,800	17,280	1,399,894
Total	4,439,013	960,600	64,560	5,464,173
Average	1,109,753	240,150	16,140	1,366,043

TABLE 6.—MEXICAN FRUIT FLY TRAPPING DATA

Year	Number of fruit flies trapped during current and proposed shipping seasons by municipality			
	Periban	Salvador Escalante	Tancitaro	Uruapan
1997	0	0	0	0
1998	0	0	3 (Nov)	0
999	0	0	0	0
2000	0	4 (Jan) 4 (Feb) 3 (Mar) 2 (Apr)	0	0

The May 2001 program review document, as well as complete import, inspection, fruit cutting, and survey data sets are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** and via the Internet at http://www.aphis.usda.gov/ppq/avocados/.

Evaluation of the Applicability of Existing Risk Analyses to Proposed Changes to the Mexican Hass Avocado Import Program

The changes proposed in this document would directly affect the estimates of risk in the 1995 risk management analysis, the 1995 supplemental pest risk assessment, and the 1996 addendum that relate to "limited distribution" of Hass avocados in the United States (19 Northeastern States and District of Columbia) and "winter shipping only" (November through February).

The 1995 risk management analysis concluded that "winter shipping only" reduces the pest risk presented by fruit flies. In the risk management analysis, we estimated a risk reduction between 60 and 90 percent for fruit flies, given the "winter shipping only" restriction. According to the risk management analysis, the majority of reduction in pest risk from this mitigation measure can be attributed to limited adult fruit fly activity under colder temperatures in the growing areas in Mexico. Given this assumption, the question arises: Would extending the shipping season for 2 additional months to include March and April result in fruit being shipped from orchards with high rates of adult fruit fly activity? Trapping data collected as required by the current program would indicate this is not the case. In 4 years of trapping, only five fruit flies have been captured during the months of March and April. All five of those captures (three in March and two in April) occurred in a single season (2000) and in a single municipality (Salvador Escalante.) Climatological data presented in the document entitled "Identification of Susceptible Areas for the Establishment of *Anastrepha* spp. Fruit Flies in the United States and Analysis of Selected Pathways" (referred to below as Sequeira, *et al.*) indicate that even in the very unlikely event fruit flies were shipped with Mexican Hass avocados, escaped detection, and arrived during the months of March or April, temperatures in the approved and proposed States would still fall below the optima for fruit fly activity.

Furthermore, Sequeira, et al., concluded that sampling evidence and statistical analysis showed that the likelihood of introducing a mating pair in shipments of up to a million avocados is low.

The risk management analysis estimated that limiting U.S. distribution would significantly reduce the risk of all nine analyzed pests. The reduction was estimated to range from 95 to 99 percent for all of the pests except the avocado stem weevil (90 to 99 percent) and hitchhikers (75 to 95 percent). The authors attributed this reduction to the low prevalence of host material and the reduced likelihood of survival of these generally tropical or subtropical pests in northern U.S. States. The same is true for the 12 States proposed for addition to the list of approved States. According to Sequeira, *et al.*, none of the additional States supports the growth of avocado, the sole host of avocado seed and stem weevils and the preferred host of the seed moth. Although the weather conditions appropriate for *Anastrepha* spp. include a wider range of temperatures, prolonged low winter temperatures inhibit fruit fly establishment. According to Sequeira, *et al.*, winter temperatures are low enough to prevent establishment in all of the States that we are proposing to add to the list of approved States.

The pest risk assessment qualitatively estimated the PRP for the avocado seed weevils, stem weevil, seed moth, and fruit flies based on the pests' climatic needs, host range, dispersal potential, economic impact, and environmental impact. The addition of the 12 proposed States to the list of approved States and the extension of the shipping season do not alter host availability, nor would they be expected to appreciably impact the other risk elements that comprise the PRP. Consequently, the PRP ratings would be expected to remain at medium for seed weevils, stem weevil, and seed moth and high for fruit flies.

The 1995 supplemental pest risk assessment used scenario analysis and Monte Carlo simulation to probabilistically estimate the likelihood of introducing the above-named pests into the United States via imports of Mexican Hass avocados. The risk model for the analysis was comprised of seven nodes corresponding to specific independent events that must occur in order for a pest to be introduced. The impact of the proposed changes in the avocado program and the body of data collected under the current program are summarized below.

F1: Frequency of Shipments (Number of Boxes Imported Per Year)

The 1995 supplemental pest risk assessment (as well as the 1996 addendum) estimated that between 1 and 2 million boxes of fruit would be imported under the systems approach program. The actual number of boxes imported fell short of the minimum in all but 1 of the 4 years the program has been in place. As indicated in Table 3 above, the program averaged only 834,675 boxes per year. Because of this, we believe that the 1995–1996 assessments actually overestimated the risk. It also means that even if the addition of 12 States to the program doubled the number of imported Hass avocados, the actual number of imported boxes would still fall within the range of values in the 1995–1996 estimate, and the existing results would remain valid. Given that, as a whole, the population of the 12 additional States is less than the 19 States currently approved, it seems likely that the number of imported boxes would not actually double, and the number of boxes would continue to fall within the range predicted by the existing estimate for F1.

P1: Probability Pest Infests Fruit: Pre- or Postharvest

The 1996 addendum to the supplemental pest risk assessment estimated that the value for P1 would range between 5×10^{-8} and 5×10^{-6} for the fruit flies, between 5×10^{-6} and 5×10^{-5} for the seed weevils, between 1×10^{-3} and 1×10^{-2} for the stem weevil, and between 5×10^{-6} and 5×10^{-5} for the seed moth. One might suspect that the risk of Mexican Hass avocados being infested with fruit flies (if one accepts that Hass avocado is a host for fruit flies) would increase as the shipping season was extended into March and April based on the assumption that as temperatures warmed, fruit flies would become more active. However, as described above, fruit fly trapping data do not support the assumption that there is significant adult fruit fly activity in Michoacan avocado orchards in March and April. Likewise, fruit cutting in the orchards has produced no finds of any of the pests of concern, even after sampling nearly 4.5 million fruit over the course of 4 growing seasons. Similarly, no pest detections have been made after cutting nearly 1 million fruit in packinghouse inspections. To date, nearly 3.4 million boxes of Mexican Hass avocados have been shipped to the United States under the import program with no target pest finds. These data suggest that, even with an increase in the volume of imports, the original risk assessment numbers still represent a reasonable estimate and may even overestimate the likelihood that pests will infest program fruit.

P2: Probability Pest Not Detected During Harvest or Packing

The proposed changes to the import program would not impact the estimates for this node. It is worth noting, however, that in the four shipping seasons under the current program, no target pests have been detected after nearly 1 million fruit have been inspected by cutting at the packinghouse (see Table 5).

P3: Probability Pest Survives Shipment

The proposed changes to the import program would not impact the estimates for this node.

P4: Probability Pest Not Detected at Port of Entry Inspection

The proposed changes to the import program would not impact the estimates for this node. It is worth noting, however, that in the four shipping seasons under the current program, no target pests have been detected after nearly 65,000 fruit have been inspected by cutting at the port of entry (see Table 5).

P5: Probability Fruit Is Transported to Area With Suitable Hosts and Climate

As stated above, according to Sequeira, et al., none of the States proposed for addition to the list of approved States supports the growth of avocado, the sole host of avocado seed and stem weevils and the preferred host of the seed moth. Likewise, all of the States we are proposing to add to the list of approved distribution areas pose a low risk for the establishment of *Anastrepha* spp. fruit flies even in the very unlikely event any would be imported on Mexican Hass avocados. For similar reasons, the proposed change in the western transit boundary for Mexican Hass avocados would not affect any existing risk estimates.

The 1995 supplemental pest risk assessment estimated that between 0.5 percent and 5.0 percent of the imported Hass avocado would be transported to an area with suitable hosts and habitat. This was assumed to be the result of either inadvertent or intentional (smuggling) movement to nonapproved avocado-growing or fruit fly-supporting States. The 1996 addendum to the supplemental pest risk assessment reduced these estimates to between 0.05 percent and 2.0 percent as a consequence of the requirement for stickering that was included in the February 1997 final rule.

Actual data for seizures of fruit outside the approved States (see Table 4) indicate that in the 1997–1998 and 1998–1999 shipping seasons, 0.12 percent and 0.36 percent of boxes of imported Mexican Hass avocados were intercepted outside of the approved States. Assuming, for the purposes of this discussion, that all of these intercepted boxes ended up in areas with suitable hosts and climates, the actual values fall well within the range of predicted values. Beginning midway through the third year of the program (1999–2000), a more stringent compliance requirement became effective. Consequently, in the 1999–2000 and 2000–2001 shipping seasons, 0.004 and 0.006 percent of the imported boxes of Mexican Hass avocados were intercepted outside of approved States (see Table 4). Given the reduced levels of fruit leaving the approved States under the stronger compliance requirement, even if one assumes not all diverted fruit is intercepted, the estimates in the 1995 and 1996 risk assessments are, at the very least, accurate and more likely overestimate the likelihood that fruit will be transported to an area with suitable hosts and climate.

P6: Probability Infested Fruit in Suitable Habitat Leads to Outbreak

The proposed changes to the import program would not impact the estimates for this node.

Conclusion

We have reviewed the documents summarized above and find that the evidence, assumptions, and conclusions of the 1995 risk management analysis and the 1995 supplemental pest risk assessment and its 1996 addendum would remain valid even if the proposed changes are made to the Mexican Hass avocado program. Therefore, we have determined that the importation of Hass avocados from Mexico in accordance with the existing regulations as modified by this

proposed rule would present a negligible risk of introducing plant pests into the United States.

Discussion of Comments Received in Response to the May 2000 Notice

Some commenters expressed concern over the number of violations that occurred during the first 2 years of the avocado import program. The commenters requested that the program be terminated because imported Hass avocados have not been completely contained within the limited distribution area. The comments expressed concerns over the number of shipments of Mexican avocados that were moved illegally to States where temperatures are higher, there is more suitable host material available, and the risk of introduction of a plant pest of concern is greater.

During the first 2 years of the Hass avocado import program, boxes of avocados were diverted to States that were not listed as approved for distribution. APHIS conducted investigations and prosecuted several distributors for violations of the regulations. However, the pest risk analysis prepared for the rulemaking that established the current program to import Hass avocados from Mexico takes into account the expected diversion of some avocados to States not approved to receive them. The amount of avocados that were diverted during the first 2 years of the Hass avocado import program did not exceed the estimate used in the calculations of risk.

To help reduce the number of boxes of avocados diverted to nonapproved areas, we amended the regulations (see 64 FR 68001–68005) during the third (1999–2000) shipping season to require that all distributors of Hass avocados enter into a compliance agreement with APHIS that fully explains the distribution restrictions and the distributor's obligations. Before the 1999–2000 shipping season, we conducted an information campaign to inform the public and industry about Mexican avocados and published press releases regarding penalties for violations during previous seasons. The 1999–2000 season had a 20 percent increase in number of boxes of avocados shipped from Mexico to the United States, but only 45 boxes were intercepted in States not approved to receive them (see Table 4 under the heading *Risk Assessment Documentation Supporting the Proposed Rule*). This is 1.5 percent of the number of boxes diverted in the previous (1998–1999) season.

Some commenters stated that fruit flies and stem weevils do exist in the areas of production in Michoacan, Mexico, and expressed concern about the constant danger of infestation or reinfestation of avocado orchards from neighboring orchards and from untreated backyard grown host plants in the production areas.

The risk assessment documents used as the basis for the existing program take into account that fruit flies and stem weevils exist in avocado production areas in Mexico. The regulations in § 319.56–2ff require that trapping must be conducted in the orchard for the fruit flies *Anastrepha ludens, A. serpentina,* and *A. striata* at the rate of one trap per 10 hectares. If one of those fruit flies is trapped, at least 10 additional traps must be deployed in a 50-hectare area immediately surrounding the trap in which the fruit fly was found. If within 30 days of the first finding any additional fruit flies are trapped within the 260-hectare area surrounding the first finding, malathion bait treatments must be applied in the affected orchard in order for the orchard to remain eligible to export avocados.

In addition, the regulations require that the orchards where avocados are grown and all contiguous orchards and properties be surveyed annually and found to be free from the avocado stem weevil *Copturus aguacatae*. The survey must be conducted during the growing season and completed prior to the harvest of the avocados. If Sanidad Vegetal (Mexico's plant protection organization) discovers the stem weevil in an orchard during an orchard survey or other monitoring or inspection activity in the orchard, Sanidad Vegetal must provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken and the orchard in which the pest was found will lose its export certification immediately and will be denied export certification for the entire shipping season. Further, if Sanidad Vegetal discovers the stem weevil in fruit at a packinghouse, Sanidad Vegetal must investigate the origin of the infested fruit and provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard where the infested fruit originated will lose its export certification immediately and will be denied export certification for the entire shipping season.

Survey information from trapping in avocado orchards, and fruit cutting in avocado orchards, packinghouses in the production areas in Mexico, and at the border when shipments enter the United States, show that avocados imported under the Mexican Hass avocado import program are not infested by any pest of concern (see Table 5 under the heading *Risk Assessment Documentation Supporting the Proposed Rule*). Based on these surveys, we believe the elements of the systems approach regulations described above protect against infestation or reinfestation of avocado orchards from neighboring orchards and from untreated, backyard-grown host plants in the production areas.

Some commenters stated that there are other hosts for fruit flies that APHIS has not considered that grow or are being cultivated in States where expanded avocado distribution is proposed. The commenters suggest that we need information from extension services in States where distribution is proposed in order to identify what alternate hosts are present and available for infestation. One comment stated that all but five States in the United States have plants that are suitable hosts for fruit flies, and that seven States (AL, AZ, CA, GA, FL, LA, and TX) grow suitable host plants that are valued at $3 billion.

As stated earlier in this document, APHIS recently completed the U.S. portion of a NAPPO project, entitled "Identification of Susceptible Areas for the Establishment of *Anastrepha* spp. Fruit Flies in the United States and Analysis of Selected Pathways" (Sequeira, et al., 2001), that identifies areas in the United States that are susceptible to the establishment of fruit flies. In conducting this study, we did contact extension services in States where expansion of the distribution area is proposed. The information that we received from extension services on alternate hosts cultivated in those States and on wild host material common in those States was used in the development of the Sequeira, *et al.*, study.

The Sequeira, et al., study identifies U.S. States that have suitable host material for fruit flies. Based on the findings of the Sequeira, et al., study and the other risk documents discussed in this document, we are not proposing to allow avocados to be imported into any of the seven States listed above by the commenter (AL, AZ, CA, GA, FL, LA, and TX).

Some commenters asserted that our determinations on when and where to allow importations of Hass avocados from Mexico depend too much on temperature data alone. Commenters suggested that we should consider other climactic factors that also play a role in the establishment of fruit flies.

We agree with the commenters that any determination regarding when and

where avocados may be distributed in the United States should be based on a study of all relevant climate-related factors. For the 1995 and 1996 risk documents, we used only temperature data in considering the risk posed by imported Mexican Hass avocados. However, the Sequeira, et al., study, which is described above, considers and evaluates the effects of the following climate-related variables on potential fruit fly establishment:

- The presence of fruit fly hosts and their seasonal and geographical availability.
- Reproduction potential of fruit flies at various temperatures.
- Selection of areas where temperatures are warm enough for a long enough period of time to support reproducing fruit fly populations.

Some commenters suggested that we use several verifiable and reliable sources of temperature data in determining monthly and daily mean, minimum, and maximum temperatures in Mexico.

We believe that additional temperature data for production areas is not necessary for the purposes of this proposed rule. As stated elsewhere in this document, trapping, survey, and fruit cutting data for production areas in Mexico show that imported avocados are not infested with any pests of concern. We believe that such data provide a more accurate estimate of pest presence in avocado production areas than the consideration of additional temperature data would.

Some commenters requested that we wait until the NAPPO Fruit Fly Panel completes its investigation into the susceptibility of areas for the establishment of fruit flies until we move forward with this proposed rule. The NAPPO Fruit Fly Panel requested the NAPPO Pest Risk Assessment Panel to conduct a study using modeling, climatology, and phenology to determine where fruit flies could become established in North America.

Again, the Sequeira, et al., study described above represents the U.S. portion of the NAPPO project. The study provides part of the basis for our decision to expand the Mexican Hass avocado import program to include 12 more States and to lengthen the shipping season by 2 months. We are not basing our proposal to allow the expanded importation of Mexican Hass avocados on the findings of the other portions of the NAPPO project and see no reason to wait for their completion.

Some commenters criticized as inadequate the survey techniques used in the areas of production in Michoacan, Mexico, to determine population levels of pests of concern, stating that McPhail traps are ineffective, avocado stem weevils are surveyed in the wrong season, and reliable surveys for avocado seed moths are not conducted.

We believe that the required trap density of 1 trap per 10 hectares will be sufficient to indicate the presence of fruit fly populations in the orchards. In the United States, the national detection protocol for *Anastrepha* ranges from 1 trap per 10 square miles to 5 traps per square mile; the Rio Grande Valley and Florida citrus protocol for *Anastrepha* ranges from 5 to 15 traps per square mile. The density required in the Mexican orchards—1 trap per 10 hectares—works out to approximately 25 traps per square mile, which is the same density required to maintain the fruit fly-free zone in the Mexican State of Sonora. With regard to the type of traps used, we believe that some of the other traps currently available may be comparable to the McPhail trap, but none are better for monitoring for *Anastrepha* fruit flies. Further, the surveys for avocado stem weevils and seed moths are conducted twice a year and include a survey in the spring when pest numbers are the highest. These surveys use the most effective available methods for detecting the pests.

One commenter stated that APHIS should assess the potential for introduction of other Mexican insect pests that could infest crops grown in the United States. The commenter cited introductions of the Persea mite (*Oligonychus perseae*) and avocado thrip (*Scirtothrips perseae*) into California as cause for concern.

As stated earlier in this document, in our 1995 supplemental pest risk assessment, APHIS identified a list of 91 pests of avocado in Mexico (26 pathogens and 65 arthropods). Of the 91 pests identified, 32 (2 pathogens and 30 arthropods) satisfy the geographic and regulatory criteria for designation as a quarantine pest. Of these 32 quarantine pests, only 9 arthropods are expected, based on their biology, to follow the pathway of imported Mexican Hass avocado fruit.

The persea mite (*Oligonychus perseae*) and avocado thrip (*Scirtothrips perseae*) are currently established in the United States, and are not under official control, and therefore, do not meet the definition of a quarantine pest. Pests that do not satisfy internationally accepted criteria for designation as quarantine pests are not analyzed in detail in risk assessments because nonquarantine pests are not candidates for risk mitigation. Although *O. persea* and *S. perseae* should have been listed on the pest list, their inclusion would not have changed the supplemental pest risk assessment beyond the pests listed in table 3. Listing of *O. persea* and *S. perseae* in table 3 would not have changed the findings of the risk assessment and would not have altered the proposed mitigation program, which focuses on quarantine pests.

One commenter questioned if surveys have been conducted in Michoacan within the context of limited pesticide use, since pesticides can mask the presence of pest species during surveys but do not eliminate pests possibly present in or on fruit eligible for export.

APHIS pest surveys include areas with backyard and feral avocado trees and groves. We believe that surveying such areas provides a context to examine the presence of pests in a limited pesticide use context.

One commenter suggested that the States bordering avocado-producing States should be considered buffer States. Buffer States should not be eligible to receive Mexican Hass avocados due to their proximity to avocado producing areas.

We have not proposed to allow Mexican Hass avocados to be distributed in any State that borders California, Florida, and Texas, the only U.S. States that produce avocados.

One commenter asked that the Government of Mexico be required to submit detailed workplans to APHIS and to growers in the United States, with survey protocols, orchard management practices, and inspection reports from site visits to observe the program in Mexico.

The Government of Mexico and APHIS already agree upon such an operational workplan, which is reviewed and updated annually and shared with the California Avocado Commission. Since the avocado import program began, APHIS has conducted two comprehensive reviews, which are available to the public as described earlier in this document.

Some commenters argued that we should conduct a new pest risk analysis and include new data and new developments in risk assessment methodology made available since the original assessment was completed in 1995.

We believe that the 1995 and 1996 risk documents, in conjunction with the Sequeira, et al., study and 4 years of trapping and shipping data, provide a sound scientific basis for this proposed rule. APHIS' review and consideration of the existing pest risk analysis for the avocado program is described in the information memo for the record mentioned earlier in this document. The information memo for the record

explains our proposal to expand the area of distribution to include 12 more States and lengthen the shipping season by the months of March and April and is supported by the documents described above under the heading *Risk Assessment Documentation Supporting the Proposed Rule.* We acknowledge that there have been developments in risk methodology since 1995, but there are no new methodologies that would substantively alter the findings of the pest risk analysis used for the 1997 final rule.

Further, APHIS does not intend to conduct a new risk assessment for this proposed rule because the relevant information that would be needed to complete a new risk assessment is already available in the risk documents that we used as a basis for this proposed rule. We believe that the "Information Memo for the Record" (April 30, 2001) described earlier in this document synthesizes the findings of the various risk documents and provides a clear statement that this proposed rule presents a negligible risk of introducing plant pests into the United States.

One commenter suggested that we use a mean monthly temperature of 50 degrees in destination States to determine their eligibility to receive Mexican Hass avocados, because fruit flies can successfully reproduce at 55 degrees. The comment also suggested that Mexican Hass avocados should not be approved for destination States where alternate host material is available up to 3 months after the shipping season ends, because a partially mature fruit fly can live as long as 3 months after shipping.

While it is possible that fruit flies could survive and reproduce in an area with a mean monthly temperature of 55 degrees, other factors play a role in determining whether fruit flies could survive in a given environment. The Sequeira, et al., study described above considers temperature and the presence of suitable host material, as well as other factors, to identify the areas in the United States that are not at risk for the introduction of fruit flies. We believe this type of study provides a more accurate identification of areas in which fruit flies can survive than an analysis based on mean monthly temperatures alone.

One commenter suggested that APHIS approve the month of April for the lengthened shipping season, rather than October, because October is warmer than April.

In our May 2000 request for comments, we stated that Mexico had requested that APHIS allow the Hass avocado shipping season to begin 1 month earlier (October rather than November) and end 1 month later (March rather than February). As stated earlier in this document, since the request for comments was published, Mexico has requested that avocados be allowed to be shipped year round. After a review of temperature and fruit fly survey data for Mexico and a review of phenological data for the United States, we are proposing to lengthen the shipping season of Hass avocados by 2 months, from November to April. Fruit fly trapping data for the approved municipalities in Michoacan show that in recent years, fewer fruit flies have been trapped in April than October. Based on the available trapping data, and the findings of the Sequeira, et al., study, we believe the pest risk posed by allowing Hass avocados to be imported in March and April would be no greater than it is for the current shipping season.

One commenter suggested that we develop temperature data for all species of the pests of concern, not just for fruit flies.

The other species of pests found on avocados are host-specific, and therefore are only able to live with avocados as their food source, whereas fruit flies can attack other crops than avocados. Since the proposed rule would allow distribution of Mexican Hass avocados only in areas where avocados are not grown, we see no reason to consider temperature and other climatic data for avocado pests other than fruit flies at this time.

Some commenters critiqued the pest risk analysis used to establish the present importation program for Hass avocados from Mexico. They asserted that we should not have used median temperatures in our calculations, but rather we should have used mean daily maximum temperatures, which are more scientifically sound.

The 1995 supplemental pest risk assessment that provided the basis for the proposed and final rules that established the current avocado import program did, as noted by the commenters, use monthly median temperatures in determining what areas in the United States and Mexico are susceptible to fruit fly infestations. While we continue to believe that the conclusions of the 1995 supplemental pest risk assessment are valid, we do agree with the commenters that using daily temperature data provides a more accurate estimate in determining what areas are susceptible to fruit fly infestations. The Sequeira, et al., study, which provides the primary basis for the proposed expansion of the current program, does use daily maximum and minimum temperatures to determine the susceptibility of areas of the United States to the establishment of fruit flies, as suggested by the commenters. We believe that the Sequeira, et al., study, in conjunction with the other risk documents discussed in this document, provide a sound scientific basis for this proposed rule.

Another commenter stated that fruit flies are hardier and more long-lived than we estimated in the calculations for our 1995 and 1996 risk assessment documents.

In node P3 of the risk model used in the 1995 supplemental pest risk assessment, we estimated that in the highly unlikely event that imported Mexican Hass avocados were infested with fruit flies, there is a 70 to 90 percent chance that the fruit flies could survive shipment to the United States. Once in the United States, the fruit flies would have to escape detection at the port of entry (considered in node P4) and be transported to areas with suitable hosts and climate (node P5). Consistent with the findings of the 1995 supplemental pest risk assessment and the 1996 addendum to it, the Sequeira, et al., study shows that during the proposed shipping season of November to April, the current and proposed avocado distribution areas would not provide the host material and climatic conditions necessary for the survival of fruit flies. For these reasons, we concluded, and continue to believe, that the likelihood that fruit flies could become established in the United States via imported Mexican Hass avocados is extremely low.

Some commenters submitted temperature and other data in response to our request for data regarding Mexico's request that APHIS expand the area of distribution and the length of shipping season for Mexican Hass avocados. All such information was considered in the development of the Sequeira, et al., study.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this proposed rule, we have prepared a regulatory impact analysis. The regulatory impact analysis also contains an initial regulatory flexibility analysis, which considers the potential economic effects of this proposed rule on small entities, as required under 5 U.S.C. 603. The regulatory impact

analysis and regulatory flexibility analysis are summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT,** or on the Internet at http://www.aphis.usda.gov/ppq/avocados/. We do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

Summary of Regulatory Impact Analysis

Our analysis considers economic impacts on U.S. producers and consumers/ merchandisers of Hass avocados that could result from allowing fresh Hass avocados from Michoacan, Mexico, to be imported into additional areas of the United States and over a longer period each year than is currently allowed. Since the 1997/98 season, imports of avocados from approved orchards in Michoacan, Mexico, have been allowed to be imported into the United States and distributed in Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin during the months of November through January. Under this proposed rule, distribution would be expanded to include the States of Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. The shipping season would also be expanded to include March and April.

We are proposing this action in response to a request from the government of Mexico, and after determining that this action would present a negligible risk of introducing plant pests into the United States.

Impacts on U.S. producers and consumers/merchandisers would derive from the increased supply of Hass avocados from Mexico and concomitant price declines. Essentially all domestically produced Hass avocados are grown in California. U.S. producers and California producers are therefore used interchangeably in the analysis. The 1997 rule that first allowed for the importation of Mexican Hass avocados to 19 states and the District of Columbia resulted in a redistribution of California-grown Hass avocados from markets in the approved States during the months that imports are allowed from Mexico. This proposed rule, if adopted, is expected to have a similar effect. Anecdotal experience suggests that benefits resulting from the existing rule have been largely realized at the wholesale level, and discussion of consumer gains therefore includes explicit reference to merchandisers as well.

In our analysis, we use two models are used to estimate impacts. The first is a nationwide model that does not distinguish between the approved and nonapproved States. The rationale underlying this model is that given sufficient time, a single price for avocados would obtain in the two regions. Although Mexico's supply is restricted to the approved States for specified months of the year, California and other foreign suppliers can move in and out of the two markets, and would do so in search of profits until prices in the approved and nonapproved States essentially equalize.

The second model explicitly recognizes the approved and nonapproved States as two regions. Estimated economic losses include direct market loss for California producers in approved States, and losses related to increased supply in nonapproved States, as the diversion of California Hass avocados from approved to nonapproved States depresses prices. Consumers/merchandisers would be expected to gain in both approved and nonapproved States from the lower prices. A theoretical limitation of the regional model, in contrast to the national model, is the assumed maintenance of a price differential between the approved and nonapproved States.

Both models use a partial equilibrium economic surplus framework to consider benefits and costs of the proposed rule. Potential producer losses and consumer/merchandiser gains are quantified in terms of changes in producer and consumer surplus resulting from the increased imports expected from Mexico. To simplify the analysis, the demand curve is assumed to be of constant elasticity while U.S. supply is assumed to be fixed. The supply curve is assumed to be vertical at least in the short run, that is, supply is perfectly inelastic and does not respond to changes in price.

In the national model, additional Hass avocado imports from Mexico totaling 16.87 million pounds are estimated to result in a 12 percent drop in the wholesale price, from $1.34 per pound to $1.18 per pound. Consumers/ merchandisers would gain by $27.65 million per year and California Hass avocado producers would lose by $17.93 million per year, for a net benefit of $9.72 million per year.

In the regional model, the same level of additional Mexican Hass avocado imports is assumed (16.87 million pounds), an amount equivalent to the maximum quantity assumed could be wholly diverted from approved to nonapproved States. Impacts are examined using three scenarios. In the first scenario, 70 percent of California Hass avocados that would otherwise be sold in the approved States are diverted to nonapproved States; in the second scenario, 85 percent are diverted; and in the third scenario, 100 percent are diverted. The 85 percent diversion scenario is considered representative of what is most likely to occur, given historic changes in quantities of California Hass avocados shipped to the existing approved States due to Mexican imports.

The first scenario of the regional model (70 percent diversion) would mean 6.07 million pounds of California Hass avocados remain in the approved States, and 11.81 million pounds are diverted to the nonapproved States. The additional supply of Mexican Hass avocados results in a price decline that benefits consumers/merchandisers in the approved States by about $10.12 million per year. California producers whose Hass avocados are sold in the approved States face a revenue loss of $17.15 million per year. The net loss in the approved States is $7.03 million per year.

In the nonapproved States, the 11.81 million pounds of California Hass avocados diverted from the approved States result in a price decline that causes a revenue loss of $0.35 million per year for California producers. Consumers/merchandisers in the nonapproved States benefit by $19.31 million per year, for a net benefit of $18.96 million per year.

Net losses in the approved States ($7.03 million per year) and net gains in the nonapproved States ($18.96 million per year) yield an overall net gain of $11.94 million per year in the first scenario.

The second scenario (85 percent diversion) yields producers losses and consumer/ merchandiser gains comparable to the first one. Net losses in the approved States ($13.93 million

per year) and net benefits in the nonapproved States ($22.79 million per year) combine for an overall net gain estimated at $8.87 million per year.

In the third scenario (100 percent diversion), 16.87 million pounds of California Hass avocados are diverted to the nonapproved States. Consumers/merchandisers in the approved States gain by $1.59 million per year, and California's producers lose by $22.64 million per year, for a net loss of $21.05 million per year. Consumers/merchandisers in the nonapproved States gain by $28.14 million per year, and California's producers lose by $1.60 million per year, for a net gain of $26.54 million per year. With 100 percent diversion, net losses in the approved States ($21.05 million per year) and net gains in the nonapproved States ($26.54 million per year) yield a combined net benefit of $5.50 million per year in the third scenario.

In sum, impacts of the proposed rule for U.S. producers and consumers/merchandisers range from net benefits of $11.94 million per year for the 70 percent diversion scenario and $8.87 million per year for the 85 percent diversion scenario, to $5.50 million per year for the 100 percent diversion scenario. The net benefit estimated using the national model, $9.72 million per year, is contained within this range. The overall impact in all cases is minor. In the event the price elasticity of demand is larger than that used in this analysis (−0.86), losses to California producers will be less than those calculated. APHIS requests comments on the appropriate choice of elasticity for the analysis. Another factor that could reduce losses to California producers would be activities to increase the demand for Hass avocados, that is, activities would increase sales at any given price.

Summary of Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that impacts on small entities be taken into consideration in rulemaking, to ensure that such businesses are not disproportionately burdened. There are about 6,000 producers and 100 handlers of Hass avocados in southwestern California that could be affected by this rule, as well as about 200 importers. APHIS has been unable to obtain information on the size distribution of affected avocado producers, and invites public comment that would help in determining the number of producers that can be considered small. For the purposes of our analysis, we assume that the size distribution of the 6,000 producers is the same as the size distribution of avocado farms reported in the 1997 Census of Agriculture; that is, 98 percent are small entities ($750,000 or less in annual receipts). Most avocado importers are reportedly also small entities (100 or fewer employees, respectively), while most Hass avocado handlers are large (more than $5 million in annual receipts). Given the declines in revenue that are described in the three scenarios of the regional model, average annual losses for small-entity California Hass avocado producers could range between $1,870 and $2,593. This impact could prove significant if producers rely upon Hass avocado production as their principal source of income.

Two variations of the regional model are presented as examples of rule modifications that would mitigate adverse impacts on small-entity California Hass avocado producers. Alternative A would extend the four-month period of import by two months, March and April, but would not expand the region of approved States. Alternative B would maintain the current four-month period of import, but would expand the approved region by the same States as in the proposed rule. For both alternatives, losses to California's Hass avocado producers would be less than have been calculated for the proposed rule. Under the 85 percent diversion scenario, California producer losses would be $12.46 million per year and $2.50 million per year for alternatives A and B, respectively, compared to an annual producer loss of $20.55 million under the proposed rule. However, consumer/merchandiser gains would also be reduced in both cases. Annual net benefits are estimated to be $6.52 million per year for alternative A and $3.67 million per year for alternative B, compared to $8.87 per year for the proposed rule.

There are no other rules that would overlap, duplicate, or conflict with this proposed rule.

This proposed rule contains information collection requirements, which have been submitted for approval to the Office of Management and Budget (see "Paperwork Reduction Act" below).

Executive Order 12988

This proposed rule would allow fresh Hass avocado fruit to be imported into the United States from the Mexican State of Michoacan. If this proposed rule is adopted, State and local laws and regulations regarding fresh Hass avocado fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh avocados are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment has been prepared for this proposed rule. The environmental assessment documents our review of the environmental impacts associated with this proposed rule. We are making the environmental assessment available to the public for review and comment.

The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** The environmental assessment is also available on the Internet at: http://www.aphis.usda.gov/ppq/avocados/.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–003–2. Please send a copy of your comments to: (1) Docket No. 00–003–2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road

Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we are proposing to amend the regulations governing the importation of fruits and vegetables to expand the number of States in which fresh avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed. We are also proposing to increase the length of the shipping season during which the Mexican Hass avocados may be imported into the United States. This action would require that importers, shippers, distributors, and handlers of Mexican Hass avocados in the United States enter into compliance agreements with APHIS. We are asking OMB to approve our use of this information collections in connection with our efforts to ensure that fresh Hass avocados from Mexico pose a negligible risk of introducing exotic insect pests into the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.2 hours per response.

Respondents: Importers, shippers, distributors, and handlers of fresh Hass avocados imported into the United States.

Estimated annual number of respondents: 250.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 250.

Estimated total annual burden on respondents: 300 hours.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56–2ff would be amended as follows:

a. By revising the section heading, the introductory text, and paragraphs (a)(2), (a)(3), and (c)(3)(vii).

b. In paragraphs (e)(2) and (e)(3), by removing the word "February" each time it appears and adding the word "April" in its place.

c. By revising paragraphs (f)(1), (g), and (i).

§ 319.56–2ff Administrative instructions governing movement of Hass avocados from Mexico to approved States.

Fresh Hass variety avocados (Persea americana) may be imported from Mexico into the United States for distribution in approved States only under a permit issued in accordance with § 319.56–4, and only under the following conditions:

* * * * *

(a) * * *

(2) The avocados may be imported only during the months of November, December, January, February, March, and April; and

(3) The avocados may be distributed only in the following States: Colorado, Connecticut, Delaware, the District of Columbia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

* * * * *

(c) * * *

(3) * * *

(vii) The avocados must be packed in clean, new boxes. The boxes must be clearly marked with the identity of the grower, packinghouse, and exporter, and the statement "Distribution limited to the following States: CO, CT, DC, DE, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, MT, NE, NH, NJ, NY, ND, OH, PA, RI, SD, UT, VA, VT, WV, WI, and WY."

* * * * *

(f) * * *

(1) Any port located in a State specified in paragraph (a)(3) of this section;

* * * * *

(g) *Shipping areas.* (1) Except as explained in paragraph (g)(3) of this section for avocados that enter the United States at Nogales, AZ, avocados moved by truck or rail car may transit only that area of the United States bounded as follows:

(i) On the east and south by a line extending from Brownsville, TX, to Galveston, TX, to Kinder, LA, to Memphis, TN, to Knoxville, TN, following Interstate 40 to Raleigh, NC, and due east from Raleigh, and

(ii) On the west by following Interstate 10 North from El Paso, TX, to Las Cruces, NM, and north following Interstate 25 to the Colorado border, then west along Colorado and Utah's southern borders, then north along Utah's western border, then west along Idaho's southern border and north along Idaho's western border to the border with Canada.

(2) All cities on the boundary lines described in paragraph (g)(1) of this section are included in this shipping area. If the avocados are moved by air, the aircraft may not land outside this shipping area.

(3) Avocados that enter the United States at Nogales, AZ, must be moved to Las Cruces, NM, by the route specified on the permit, and then must remain within the shipping area described in paragraph (g)(1) of this section.

* * * * *

(i) *Inspection.* The avocados are subject to inspection by an inspector at the port of first arrival, at any stops in the United States en route to an approved State, and upon arrival at the terminal market in the approved States. At the port of first arrival, an inspector will sample and cut avocados from each shipment to detect pest infestation.

* * * * *

Done in Washington, DC, this 9th day of July 2001.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs, USDA.

[FR Doc. 01–17444 Filed 7–10–01; 8:45 am]

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Rules and Regulations

Federal Register
Vol. 66, No. 136
Monday, July 16, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

[Docket No. 00–083–1]

Subpoenas Issued Under the Plant Protection Act and Title V of the Agricultural Risk Protection Act of 2000

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: We are amending the administrative regulations of the Office of the Secretary of Agriculture to reflect the provisions of the Plant Protection Act and Title V of the Agricultural Risk Protection Act of 2000 regarding subpoenas. Under the Plant Protection Act, the Secretary of Agriculture can subpoena witnesses and documents relating to the administration or enforcement of the Plant Protection Act or any matter being investigated in connection with the Plant Protection Act. Under Title V of the Agricultural Risk Protection Act of 2000, the Secretary of Agriculture can subpoena witnesses and documents relating to the enforcement of that title or the investigation of persons harming or interfering with animals used in official U.S. Department of Agriculture inspections. The final rule is necessary to establish regulations governing issuance of subpoenas under these authorities.

EFFECTIVE DATE: July 16, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Jones, Regulatory Coordination Specialist, Regulatory Coordination, APHIS Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236; (301) 734–7467.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), through its Plant Protection and Quarantine program (PPQ), regulates plants and plant products and other commodities to prevent the importation or spread of diseases and pests. When it appears that PPQ regulations have been violated, APHIS conducts an investigation. Until the Plant Protection Act (PPA, 7 U.S.C. 7701–7772) became law, APHIS did not have authority to subpoena documents and other records for use in PPQ investigation cases. This sometimes hampered the Agency's ability to enforce its PPQ regulations.

Section 423 of the PPA (7 U.S.C. 7733) gives the Secretary of Agriculture (Secretary, USDA) authority to issue subpoenas for testimony and for documents and other records relating to administration or enforcement of the PPA. This authority has been delegated from the Secretary to the Under Secretary of Marketing and Regulatory Programs, and from the Under Secretary of Marketing and Regulatory Programs to the Administrator, APHIS (7 CFR 2.22 and 2.80). In addition, Title V of the Agricultural Risk Protection Act of 2000 authorizes the Secretary to subpoena witnesses and documents relating to the investigation or enforcement of section 501 of that title. Section 501 authorizes the Secretary to assess a civil penalty not to exceed $10,000 against any person who causes harm to, or interferes with, an animal used for official inspections by USDA.

The PPA and Title V of the Agricultural Risk Protection Act of 2000 require that we publish procedures for issuing subpoenas. According to § 422(e) of the PPA (7 U.S.C. 7733) and § 502(e) of Title V of the Agricultural Risk Protection Act of 2000, the procedures must "include a requirement that subpoenas be reviewed for legal sufficiency and signed by the Secretary. If the authority to sign a subpoena is delegated, the agency receiving the delegation shall seek review for legal sufficiency outside that agency."

In order to comply with these requirements, we are amending 7 CFR 1.29 and 1.131. Section 1.29 governs the issuance of subpoenas relating to investigations under statues administered by the Secretary. We are adding a new paragraph (3) to state that the Office of the General Counsel, USDA, will review for legal sufficiency subpoenas issued under the PPA and Title V of the Agricultural Risk Protection Act of 2000. Section 1.131 comes under subpart H of part. 1. Subpart H contains rules of practice for formal adjudicatory proceedings instituted by the Secretary under various statutes. We are amending § 1.131 to add the PPA and Title V of the Agricultural Risk Protection Act of 2000 to the list of covered statutes.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Orders 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reductions Act

This rule contains no information collections and recordkeeping requirements under the Paperwork Regulation Act of 1955 (44 U.S.C. 2501 *et seq.*).

List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

Accordingly, we are amending 7 CFR part 1 as follows:

PART 1—ADMINISTRATIVE REGULATIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

Subpart B—Departmental Proceedings

2. In § 1.29, a new paragraph (a)(3) is added to read as follows:

§ 1.29 Subpoenas relating to investigations under statutes administered by the Secretary of Agriculture.

(a) * * *

(3) In the case of a subpoena issued under the Plant Protection Act (7 U.S.C. 7701–7772) or Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e–2279f), the subpoena will be reviewed for legal sufficiency by the Office of the General Counsel, USDA.

* * * * *

Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

3. The authority citation for Subpart H is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2279e, 2621, 2714, 2908, 3812, 4610, 4815, 4910, 6009, 6107, 6207, 6307, 6411, 6808, 7107, 7734; 15 U.S.C. 1828; 16 U.S.C. 620d, 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740; 7 CFR 2.35, 2.41.

§ 1.131 [Amended]

4. In § 1.131, paragraph (a) is amended by adding, in alphabetical order, "Plant Protection Act, section 424 (7 U.S.C. 7734)," and "Title V of the Agricultural Risk Protection Act of 2000, section 501(a) (7 U.S.C. 2279e)."

Dated: July 9, 2001.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 01–17652 Filed 7–13–01; 8:45 am]

BILLING CODE 3410–34–M

FARM CREDIT ADMINISTRATION

12 CFR Part 613

RIN 3052–AB90

Eligibility and Scope of Financing; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issued a direct final rule with opportunity for comment under part 613 on May 24, 2001 (66 FR 28641) implementing the decision that the United States Court of Appeals for the District of Columbia issued on January 19, 1999. The opportunity for comment expired on June 25, 2001. The FCA received no comments and therefore, the final rule becomes effective without change. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is July 12, 2001.

EFFECTIVE DATE: The regulation amending 12 CFR part 613 published on May 24, 2001 (66 FR 28641) is effective July 12, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Donnelly, Senior Accountant, Office of Policy and Analysis, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444, or Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(Authority: 12 U.S.C. 2252(a)(9) and (10)).

Dated: July 10, 2001.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 01–17694 Filed 7–13–01; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2001–ASW–11]

Establishment of Class E Airspace; Clinton, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment establishes Class E airspace at Clinton, AR. The development of two area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAP's), to Holley Mountain Airpark, Clinton, AR, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Holley Mountain Airpark, Clinton, AR.

DATES: Effective 0901 UTC, November 1, 2001. Comments must be received on or before August 30, 2001.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2001–ASW–11, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 establishes the Class E airspace at Clinton, AR. The development of two RNAV (GPS) SIAP's to Holley Mountain Airpark, Clinton, AR, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Holley Mountain Airpark, Clinton, AR.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document will be published in the **Federal Register**. This document may withdraw the direct final

rule in whole or in part. After considering the adverse or negative comment, we may publish another direct final rule or publish a notice of proposed rulemaking with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–ASW–11." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.7 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, *Airspace Designations and Reporting Points*, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW AR E5 Clinton, AR [New]

Clinton, Holley Mountain Airpark, AR
(Lat. 35°39′05″N., long. 92°24′24″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Holley Mountain Airpark and within 3.7 miles either side of the 237° bearing from the airport extending from the 6.4-mile radius to 9.1 miles southwest of the airport and within 3.9 miles either side of the 057° bearing from the airport extending from the 6.4-mile radius to 9.1 miles northeast of the airport.

* * * * *

Issued in Fort Worth, TX, on June 29, 2001.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 01–17724 Filed 7–13–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 772 and 774

[Docket No. 010423100–1100–01]

RIN 0694–AC03

Harmonization of Definitions of Terms

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This regulation harmonizes the list of definitions of terms found in the Export Administration Regulations (EAR) with the terms found in the Wassenaar Arrangement list of dual-use items and terms found in the European Union List, as of 1999. Additional changes regarding definitions will be incorporated into other regulations of the EAR as necessary.

DATES: This rule is effective July 16, 2001.

ADDRESSES: Comments should be submitted in writing to: U.S. Department of Commerce, Bureau of Export Administration, Office of Exporter Services, 14th and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230, Attention: Sharron Cook.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

This rule adds definitions to part 772 of the EAR and in some cases revises or removes definitions to harmonize with definitions found in the list of terms that accompanied the Wassenaar Arrangement list of dual-use items and the European Union List. In addition, revisions are made to the Related Definitions paragraph in the List of Items Controlled Section of certain Export Control Classification Numbers (ECCNs) to harmonize with the revisions being made to part 772. Also, language is added to the introduction to part 772 to clarify that terms that only appear in a single ECCN will be defined in the Related Definitions paragraph in

the List of Items Controlled Section of that ECCN, instead of in part 772.

Rule Making Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a current valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088. There are neither additions nor subtractions to this collection due to this rule.

3. This rule does not contain policies with Federalism impacts as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 772 and 774

Exports, Foreign trade.

Accordingly, parts 772 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended, as follows:

1. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. 106–508; 50 U.S.C. 1701 *et seq.*; E.O. 13206, 66 FR 18397, April 9, 2001.

2. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. 106–508; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13206, 66 FR 18397, April 9, 2001.

PART 772—[AMENDED]

3. Section 772.1 is amended by revising the introductory text to § 772.1 and:

a. Revising the phrase "A maximum" to read "A minimum" in the definition for "active pixel";

b. Revising the phrase "Cat 7 and 9" to read "Cat 1, 7, and 9" in the definition for "Aircraft";

c. Revising the phrase "(ATM)" to read "("ATM")" and removing the parenthetical phrase "(CCITT Recommendation I.113)" in the definition for "Asynchronous transfer mode";

d. Revising the phrase "Cat 7 and 9" to read "Cat 1, 7, and 9" in the definition for "Civil aircraft";

e. Revising the phrase "Cat 1, 6, 8, and 9" to read "Cat 1, 2, 6, 8 and 9" in the definition for "Composite";

f. Revising the phrase "Cat 4" to read "Cat 3 and 4" in the definition for "Composite theoretical performance";

g. Amending the phrase "numerically controlled" by adding quotation marks around it in the definition for "Contouring control";

h. Revising the phrase "variables:" to read "variables, perform all of the following:" in the definition for "Digital computer";

i. Adding the parenthetical phrase "(See also "total digital transfer rate")" to the end of the definition for "Digital transfer rate";

j. Revising the phrase "Cat 6" to read "Cat 5 and 6" in the definition for "Electronically steerable phased array antenna";

k. Revising the phrase "Cat 4" to read "Cat 4 and 7" in the definition for "Expert systems";

l. Revising the phrase "Cat 3" to read "Cat 3 and 5" in the definition for "Instantaneous bandwidth";

m. Revising the phrase "(Ref.: VDI/VDE 2617)" to read "(Ref.: ISO 10360–2 or VDI/VDE 2617)" in the definition for "Measurement uncertainty";

n. Revising the phrase "Cat. 1 and 7" to read "All Categories" in the definition for "Production";

o. Revising the phrase "Cat 2 and 4" to read "Cat 2, 4, 6, and 7" in the definition for "Real time processing";

q. Revising the phrase "As applied" to read "(General Technology Note)(Cat 4, 5, 6, and 9)—As applied" in the definition for "Required";

r. Revising the phrase "Cat 3, 4 and 5" to read "Cat 3, 4, 5, and 6" in the definition for "Signal processing";

s. Revising the phrase "Cat 4" to read "Cat 4, 5, 6, 7, and 9" in the definition for "Source Code";

t. Revising the phrase "Cat 4" to read "Cat 9" in the definition for "Object Code";

u. Revising the phrase "Cat 2, 4, and 5" to read "Cat 2, 4, 5, and 6" in the definition for "Program";

v. Revising the phrase "General Technology Note" to read "All categories and General Technology Note" in the definition for "Use";

w. Revising the definition title "Superalloys" to read "Superalloy".

x. Revising the definitions for "Asymmetric algorithm", "Basic gate propagation delay time", "Data signalling rate", "Personalized smart card"; and "Program".

y. Removing the definitions for "Bandwidth of one voice channel", "Communications channel controller", "Computer using facility", "Cryptanalysis", "Datagram", "Family", "Fast select", "Generic software", "Most immediate storage", "PABX", "Private Automatic Branch Exchange", "Production facility", "Simple educational devices", "Swept frequency network analyzers", "Switch fabric", "Telecommunication transmission equipment", "Two dimensional Vector Rate", "SDH", "SONET", "Synchronous digital hierarchy", "Synchronous optical network"; and

z. Adding the following definitions in alphabetical order, to read as follows:

§ 772.1 Definitions of Terms as Used in the Export Administration Regulations (EAR).

The following are definitions of terms as used in the Export Administration Regulations (EAR). In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. Those terms in quotation marks refer to terms used on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR). Parenthetical references following the terms in quotation marks (i.e., (Cat 5)) refer to the CCL category in which that term is found. If a term is used in only one Export Control Classification Number (ECCN) on the CCL, then that term will *not* appear in this part, but will be defined in the Related Definitions paragraph in the List

of Items Controlled Section of that ECCN.

* * * * *

"*All compensations available.*" (Cat 2) means after all feasible measures available to the manufacturer to minimize all systematic positioning errors for the particular machine-tool model are considered.

* * * * *

"*Asymmetric algorithm.*" (Cat 5) means a cryptographic algorithm using different, mathematically-related keys for encryption and decryption.

Technical Note: A common use of "asymmetric algorithms" is key management.

* * * * *

"*Basic gate propagation delay time.*" (Cat 3) The propagation delay time value corresponding to the basic gate used in a "monolithic integrated circuit." For a 'family' of "monolithic integrated circuits", this may be specified either as the propagation delay time per typical gate within the given 'family' or as the typical propagation delay time per gate within the given 'family'.

Technical Notes: 1. "Basic gate propagation delay time" is not to be confused with the input/output delay time of a complex "monolithic integrated circuit."

2. 'Family' consists of all integrated circuits to which all of the following are applied as their manufacturing methodology and specifications except their respective functions:

a. The common hardware and software architecture;

b. The common design and process technology; *and*

c. The common basic characteristics.

* * * * *

"*Carbon fiber preforms.*" (Cat 1) means an ordered arrangement of uncoated or coated fibers intended to constitute a framework of a part before the "matrix" is introduced to form a "composite."

* * * * *

"*Data signalling rate.*" (Cat 5) means the rate, as defined in ITU Recommendation 53–36, taking into account that, for non-binary modulation, baud and bit per second are not equal. Bits for coding, checking and synchronization functions are to be included.

Note: When determining the "data signalling rate", servicing and administrative channels shall be excluded.

Technical Note: It is the maximum one-way rate, i.e., the maximum rate in either transmission or reception.

* * * * *

"*Deformable mirrors.*" (Cat 6) (also known as adaptive optic mirrors) means mirrors having:

a. A single continuous optical reflecting surface which is dynamically deformed by the application of individual torques or forces to compensate for distortions in the optical waveform incident upon the mirror; *or*

b. Multiple optical reflecting elements that can be individually and dynamically repositioned by the application of torques or forces to compensate for distortions in the optical waveform incident upon the mirror.

* * * * *

"*Depleted uranium.*" (Cat 0) means uranium depleted in the isotope 235 below that occurring in nature.

* * * * *

"*Effective Gram.*" (of "special fissile material") (Cat 0 and 1) means:

a. For plutonium isotopes and uranium-233, the isotope weight in grams;

b. For uranium enriched 1 percent or greater in the isotope uranium-235, the element weight in grams multiplied by the square of its enrichment expressed as a decimal weight fraction;

c. For uranium enriched below 1 percent in the isotope uranium-235, the element weight in grams multiplied by 0.0001.

* * * * *

"*Electronic assembly.*" (Cat 3, 4, and 5) means a number of electronic components (i.e., 'circuit elements', 'discrete components', integrated circuits, etc.) connected together to perform (a) specific function(s), replaceable as an entity and normally capable of being disassembled.

Technical Notes: 1. 'Circuit element': a single active or passive functional part of an electronic circuit, such as one diode, one transistor, one resistor, one capacitor, etc.

2. 'Discrete component': a separately packaged 'circuit element' with its own external connections.

* * * * *

"*FADEC.*" See "full authority digital engine control."

* * * * *

"*Flight control optical sensor array.*" (Cat 7) is a network of distributed optical sensors, using "laser" beams, to provide real-time flight control data for on-board processing.

"*Flight path optimization.*" (Cat 7) is a procedure that minimizes deviations from a four-dimensional (space and time) desired trajectory based on maximizing performance or effectiveness for mission tasks.

* * * * *

"*Full Authority Digital Engine Control.*" ("FADEC") (Cat 7 and 9) means an electronic control system for gas turbine or combined cycle engines utilizing a digital computer to control the variables required to regulate engine thrust or shaft power output throughout the engine operating range from the beginning of fuel metering to fuel shutoff.

* * * * *

"*Microcomputer microcircuit.*" (Cat 3) means a "monolithic integrated circuit" or "multichip integrated circuit" containing an arithmetic logic unit (ALU) capable of executing a series of general purpose instructions from an internal storage, on data contained in the internal storage.

Technical Note: The "microprocessor microcircuit" normally does not contain integral user-accessible storage, although storage present on-the-chip may be used in performing its logic function.

Note: This definition includes chip sets which are designed to operate together to provide the function of a "microprocessor microcircuit."

* * * * *

"*Microorganisms.*" (Cat 1 and 2) means bacteria, viruses, mycoplasms, rickettsiae, chlamydiae or fungi, whether natural, enhanced or modified, either in the form of isolated live cultures or as material including living material which has been deliberately inoculated or contaminated with such cultures.

* * * * *

"*Monospectral imaging sensors.*" (Cat 6) are capable of acquisition of imaging data from one discrete spectral band.

* * * * *

"*Natural uranium.*" (Cat 0) means uranium containing the mixtures of isotopes occurring in nature.

* * * * *

"*Nuclear reactor.*" (Cat 0 and 2) includes the items within or attached directly to the reactor vessel, the equipment which controls the level of power in the core, and the components which normally contain, come into direct contact with or control the primary coolant of the reactor core.

* * * * *

"*Personalized smart card.*" (Cat 5) A smart card containing a microcircuit which has been programmed for a specific application and cannot be reprogrammed for any other application by the user.

* * * * *

"*Previously separated.*" (Cat 1) The application of any process intended to

increase the concentration of the controlled isotope.

"*Primary flight control.*" (Cat 7) "Aircraft" stability or maneuvering control using force/moment generators, *i.e.*, aerodynamic control surfaces or propulsive thrust vectoring.

* * * * *

"*Program.*" (Cat 2, 4, 5, and 6)—A sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer.

* * * * *

"*SHPL.*" (Cat 6) is equivalent to "Super High Power Laser", see definition for "super high power laser."

* * * * *

"*Special fissile material.*" (Cat 0) means plutonium-239, uranium-233, "uranium enriched in the isotopes 235 or 233", and any material containing the foregoing.

Note: As defined by 10 CFR 110.2 of the Nuclear Regulatory Commission Regulations, "Special fissile material" means: plutonium, uranium-233 or uranium enriched above 0.711 percent by weight in the isotope uranium-235.

* * * * *

"*Total control of flight.*" (Cat 7) means an automated control of "aircraft" state variables and flight path to meet mission objectives responding to real time changes in data regarding objectives, hazards or other "aircraft."

* * * * *

"*Toxins.*" (Cat 1 and 2) means toxins in the form of deliberately isolated preparations or mixtures, no matter how produced, other than toxins present as contaminants of other materials such as pathological specimens, crops, foodstuffs or seed stocks of "microorganisms."

* * * * *

PART 774—[AMENDED]

4. In Supplement No. 1 to part 774, the Commerce Control List, Category 0 (Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items]), Export Control Classification Number (ECCN) 0B001 is amended by revising the Related Definitions paragraph in the List of Items Controlled Section, to read as follows:

0B001 Plant for the Separation of Isotopes of "NaturalUranium" and "Depleted Uranium", "Special Fissile Materials" and "Other Fissile Materials", and Specially Designed or Prepared Equipment and Components Therefor, as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: "*Materials resistant to corrosion by UF_6*" may be copper, stainless steel, aluminum, aluminum oxide, aluminum alloys, nickel or alloy containing 60 weight percent or more nickel and UF_6-resistant fluorinated hydrocarbon polymers, as appropriate for the type of separation process.
Items:

* * * * *

5. In Supplement No. 1 to part 774, the Commerce Control List, Category 1 (Materials, Chemicals, "Microorganisms," and Toxins), Export Control Classification Number (ECCN) 1C012 is amended by revising the List of Items Controlled section, to read as follows:

1C012 Materials, as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: N/A.
Related Controls: N/A.
Related Definitions: These materials are typically used for nuclear heat sources.
Items:

a. Plutonium in any form with a plutonium isotopic assay of plutonium-238 of more than 50% by weight;

Note: 1C012.a does not control:

1. Shipments with a plutonium content of 1 g or less;
2. Shipments of 3 "effective grams" or less when contained in a sensing component in instruments.

b. Previously separated neptunium-237 in any form.

Note: 1C012.b does not control shipments with a neptunium-237 content of 1 g or less.

6. In Supplement No. 1 to part 774, the Commerce Control List, Category 4 (Computers), Export Control Classification Number (ECCN) 4A994 is amended by revising the Related Definitions paragraph in the List of Items Controlled section, to read as follows:

4A994 Computers, "Electronic Assemblies", and Related Equipment not Controlled by 4A001, 4A002, or 4A003, and Specially Designed Components Therefor

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: "*Two dimensional vector rate*" is the number vectors generated per second that have 10 pixel poly line vectors, clip tested, randomly oriented, with either integer or floating point X–Y coordinate values (whichever produces the maximum rate) (see paragraph (g) of this ECCN).
Items:

* * * * *

7. In Supplement No. 1 to part 774, the Commerce Control List, Category 5 (Telecommunications and "Information Security", Part I. Telecommunications), Export Control Classification Number (ECCN) 5A991 is amended by revising the Related Definitions paragraph in the List of Items Controlled section, to read as follows:

5A991 Telecommunication Equipment, not Controlled by 5A001

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: "*Bandwidth of one voice channel*" is data communication equipment designed to operate in one voice channel of 3,100 Hz, as defined in CCITT Recommendation G.151. "*Communications channel controller*" is the physical interface that controls the flow of synchronous or asynchronous digital information. It is an assembly that can be integrated into computer or telecommunications equipment to provide communications access. "*Datagram*" is a self-contained, independent entity of data carrying sufficient information to be routed from the source to the destination data terminal equipment without reliance on earlier exchanges between this source and destination data terminal equipment and the transporting network. "*Fast select*" is a facility applicable to virtual calls that allows data terminal equipment to expand the possibility to transmit data in call set-up and clearing "*packets*" beyond the basic capabilities of a virtual call, where a "*packet*" is a group of binary digits including data and call control signals that is switched as a composite whole. The data, call control signals, and possible error control information are arranged in a specified format.
Items:

* * * * *

8. In Supplement No. 1 to part 774, the Commerce Control List, Category 7 (Navigation and Avionics), Export Control Classification Number (ECCN) 7A003 is amended by revising the List of Items Controlled section, to read as follows:

7A003 Inertial Navigation Systems (Gimballed or Strapdown) and Inertial Equipment Designed for "Aircraft", Land Vehicle or "Spacecraft" for Attitude, Guidance or Control, Having any of the Following Characteristics (see List of Items Controlled), and Specially Designed Components Therefor

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 7A103 and 7A994. Inertial navigation systems and inertial equipment, and specially designed components therefor specifically designed, modified or configured for military use are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.)

Related Definitions: N/A.

Items:

a. Navigation error (free inertial) subsequent to normal alignment of 0.8 nautical mile per hour (50% Circular Error Probable (CEP)) or less (better); or

b. Specified to function at linear acceleration levels exceeding 10 g.

Note: The parameters of 7A003.a are applicable with any of the following environmental conditions:

1. Input random vibration with an overall magnitude of 7.7 g rms in the first half hour and a total test duration of one and one half hour per axis in each of the three perpendicular axes, when the random vibration meets the following:

a. A constant power spectral density (PSD) value of 0.04 g^2/Hz over a frequency interval of 15 to 1,000 Hz; and

b. The PSD attenuates with frequency from 0.04 g^2/Hz to 0.01 g^2/Hz over a frequency interval from 1,000 to 2,000 Hz; or

2. A roll and yaw rate of equal to or more than +2.62 radian/s (150 deg/s); or

3. According to national standards equivalent to 1. or 2. of this note.

Note: 7A003 does not control inertial navigation systems that are certified for use on "civil aircraft" by civil authorities of a country in Country Group A:1.

9. In Supplement No. 1 to part 774, the Commerce Control List, Category 7 (Navigation and Avionics), Export Control Classification Number (ECCN) 7E004 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

7E004 Other "Technology", as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: "*Primary flight control*" means an "aircraft" stability or maneuvering control using force/moment generators, i.e., aerodynamic control surfaces or propulsive thrust vectoring.

Items:

* * * * *

Dated: July 5, 2001.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 01–17549 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–133–1–7493a; FRL–7011–6]

Approval and Promulgation of Implementation Plans; Texas; Houston/Galveston Volatile Organic Compound Reasonably Available Control Technology Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to approve revisions to the Texas State Implementation Plan (SIP). This rulemaking covers four separate actions approving revisions to the Texas Rules for Control of Air Pollution from Volatile Organic Compounds (VOC Rules), 30 TAC Chapter 115. First, EPA is approving amendments to sections 115.161, 115.162, 115.164–115.167, and 115.169, concerning Batch Processes. Second, EPA is approving amendments to sections 115.120, 115.122, 115.125–115.127, and 115.129, concerning control requirements for bakeries and testing requirements for vents. Third, we are approving amendments to section 115.449, concerning Offset Lithographic Printing. Finally, EPA is approving numerous minor administrative changes to the VOC rules. The Texas Natural Resource Conservation Commission (TNRCC or Commission) adopted these revisions to Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds (VOC), and to the State Implementation Plan (SIP) in order to meet the Clean Air Act (Act) Reasonably Available Control Technology (RACT) requirements and to control VOC emissions in the Houston/Galveston ozone nonattainment area (HGA). By approving these SIP revisions, EPA is finding that RACT will be implemented for VOC emissions resulting from the operation of batch processes, bakeries (vent gas control), and offset lithography printing sources in the HGA area accordance with the requirements of the Act. In addition, the changes to test methods for vent gas control and various other minor changes will clarify and strengthen the SIP.

DATES: This rule is effective on September 14, 2001 without further notice, unless EPA receives adverse comment by August 15, 2001. If EPA receives such adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public the rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below.

Copies of the documents relevant to this action, including the Technical Support Document (TSD), are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Region 6, Dallas, 1445 Ross Avenue, Texas 75202–2733, telephone: (214) 665–7214.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

Interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Boyce, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone: (214) 665–7259.

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Throughout this document "we," "us," and "our" means EPA. Please note that if we receive adverse comment(s) on an amendment, paragraph, or section of this rule and if that provision is independent of the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of adverse comment.

1. What Action Is EPA Taking?

Texas submitted revisions to its Rules for Control of Air Pollution from Volatile Organic Compounds to the EPA in a letter dated December 20, 2000. We are approving these revisions as part of the Texas State Implementation Plan. Specifically, we are approving the following changes:

- Revisions to portions of sections 115.161, 115.162, 115.164–115.167, and 115.169 incorporating Reasonably Available Control Technology requirements to control emissions from batch processes in the Houston/ Galveston (HGA) area.
- Revisions to portions of sections 115.122(a)(3), 115.126(5) revising the requirements for vent gas controls for bakery ovens in the HGA area.
- Revisions to vent gas testing, monitoring and recordkeeping requirements, found in section 115.125 and 115.126.
- Revisions to 115.449 to ensure that Reasonably Available Control Technology requirements of 115.440, 115.442, 115.443, 115.445, 115.446 and 115.449 are implemented on offset lithography sources that have potential to emit more than 25 tons/year or more in the HGA area.
- And several minor changes to various provisions of Chapter 115.

In this document, we are now approving revisions to the Texas SIP concerning control of VOC emissions from batch processing, bakery oven emissions and offset lithographic printing as meeting the Act's RACT requirements for controlling VOC emissions from such operations in the HGA ozone nonattainment area. For more information on the SIP revision and EPA's RACT evaluation, please refer to our TSD dated June 2001. We are not acting on the Attainment Demonstration Plan for HGA in this action.

2. What Is a Volatile Organic Compound (VOC)?

Volatile Organic Compound is a term used to describe a class of chemicals that react in the atmosphere in the presence of sunlight to form ozone. Sources include vehicle exhaust, gasoline vapors, oil-based paints and industrial operations. A regulatory definition of Volatile Organic Compounds can be found at 40 CFR 51.100(s). The definition in Texas can be found in 30 TAC section 115.10.

3. Why Do We Regulate Volatile Organic Compounds (VOCs)?

Oxygen in the atmosphere reacts with VOCs and Oxides of Nitrogen to form ozone, a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It also can worsen bronchitis and asthma. Exposure to ozone can also reduce lung capacity in healthy adults.

4. What Do the Batch Processing Rules Require?

The Texas rules, found in sections 115.161, 115.162, 115.164–115.167 and 115.169, provide control requirements for batch processes in Texas. The revisions being approved here extend the applicability of requirements currently in affect for the Beaumont/ Port Arthur (BPA) area to the HGA area. Batch processes are those processes characterized by non-steady state conditions. Products are used to make pharmaceuticals and specialty chemicals. The products are made in batches rather than continuously. They generate emissions from vents, reactors and process vessels.

The rules require that the VOC emissions from the vents be reduced by 90%. Vents can be exempted from control based on the volumetric flow rate of the gas stream and the mass flow rate of the VOCs. The rules include equations that allow vent streams to be considered separately and in combination to determine whether it is cost effective to control the vents. The rules envision that several vent streams could be routed together to a common control device if in combination the streams are cost effective to control. If, based on the equations, control of a stream is not found to be cost effective, either individually or combined with other streams in the batch process, the stream is exempted from control. We are approving these rules as implementing RACT for batch processing in the HGA area. For a complete description of our review of the Batch Processing Rules please see the Technical Support Document for this action.

5. Where Can I Find EPA Guidelines for Batch Processes?

You can find our guidelines on batch processing in the document number EPA–450/R–94–020, "Control of VOC's emissions from Batch Processes." We have evaluated the Texas batch processing rules against our guidance document and have determined that the Texas batch processing rules meet our RACT requirement for such sources.

6. What Are the Revisions to the Requirements for Bakery Ovens?

The intended purpose of these rules to reduce VOC emissions and comply with the RACT requirements of the Act. The previous bakery rules which EPA granted limited approval, 62 FR 27965 (May 22, 1997), called for 30 percent control in the HGA, Beaumont/Port Arthur, and Dallas/Fort Worth areas, and we did not consider the 30 percent control as meeting the RACT. The amendments to section 115.122, concerning Control Requirements, change the 30% emission reduction requirement from the 1990 baseline emission inventory for major source bakeries in HGA to an 80% emission reduction requirement from the uncontrolled VOC emission rate of the oven(s). EPA approves this revision as meeting RACT requirements for bakery ovens, and strenghtening the existing approved Texas SIP. For further discussion of our review see the TSD for this action dated June 2001. Bakeries in the HGA ozone nonattainment area must comply with this rule as soon as practicable, but no later than December 31, 2001. *See* 30 TAC section 115.122(a)(3)(A).

7. Where Can I Find EPA Guidelines on Bakery Oven Emissions?

You can find our guidelines on bakery oven emissions in the document number EPA–453/R–92–017, "Alternative Control Technology for Bakery Oven Emissions." You can also refer to the Memorandum from John S. Seitz, Director of Air Quality Planning and Standards, dated February 15, 1995 (Bakery Memo), that addresses issues concerning bakery RACT requirements.

We have included a copy of the Bakery Memo in our TSD dated June, 2001, for reference purposes.

8. What Are the Changes to the Testing Requirements for Vent Streams?

The vent gas testing requirements have been revised to do the following:

- Section 115.125 has been modified to make clear the same test methods previously required in the nonattainment areas apply in all areas of the State.
- Establish New Source Performance Standard requirements set forth in 40 CFR 60.18 as the testing requirements for flares in the Beaumont/Port Arthur, Dallas/Fort Worth, and HGA ozone nonattainment areas.
- Section 126 has been modified to extend the monitoring and record keeping requirements for the nonattainment counties such as in the HGA area to Aransas, Bexar, Calhoun, Matagorda, San Patricio, Travis and Victoria counties.

We have reviewed the revisions to the test methods and are approving them on the basis of strengthening the SIP in the attainment counties. The changes to flare testing requirements are being approved as RACT in the Beaumont/ Port Arthur area, Dallas/Fort Worth area and HGA.

9. What Are the Changes to the Offset Lithography Requirements?

The intended purpose of this rule is to reduce VOC emissions and comply with the requirements of the RACT. Specifically, this rule revision impacts sources located or operating in the HGA ozone nonattainment area. The amendments to sections 115.449(d) concerning Counties and Compliance Schedules, require the implementation of the offset lithographic printing rules contained in sections 115.440, 115.442, 115.443, 115.445, 115.446 in HGA for sources with VOC emissions equal to or greater than 25 tpy. The offset lithographic printing operations in the HGA ozone nonattainment area must comply with this rule as soon as practicable, but no later than December 31, 2002. *See* 30 TAC sections 115.449(d). The offset lithographic printing rule was originally adopted by Texas as contingency rule for HGA, meaning that it would only be implemented if the HGA missed a Rate of Progress milestone. After the effective date of these amendments, the rule will still be a contingency rule for offset lithographic printers in HGA with VOC emissions emitting less than 25 tpy to be implemented if the area misses a Rate of Progress Milestone. *See* 30 TAC section 115.449(e). We are approving this revision as implementing RACT for offset lithography sources in HGA.

10. Where Can I Find EPA Guidelines on Offset Lithographic Printing?

You can find our guidelines on offset lithographic printing in the document number EPA–453/R–94–054, "Alternative Control Techniques Document: Offset Lithographic Printing." The TNRCC submitted its Offset Lithography Printing rules to us in August 1993. We have evaluated the Texas Offset Lithography Printing rules against our guidance document and have determined that the Texas Offset Lithography Printing rules meet our RACT requirement for such sources.

11. What Other Revisions Are Being Approved Here?

Texas made numerous minor revisions to the definitions used in the VOC rules, which are administrative in nature. These include:

- Moving definitions from the general definitions section contained at section 115.10 to the applicable rule sections 115.120, 115.240, and 115.430 where the definition is only used in that particular section.
- Deleting the definitions of flare and vapor combustor from chapter 115 because these terms are defined more clearly at in the TNRCC general rules 30 TAC 101.10.
- Clarifying the definitions of external and internal floating roofs in section 115.10.
- Adding a definition of incinerator to section 115.10 to clarify the difference between VOC vapor combustor for the purpose of VOC emission control and a solid or liquid waste incinerator.
- Adding a definition of Liquified Petroleum Gas (LPG) to clarify terms used in the VOC loading and unloading rules in section 115.10.
- Clarifying the definition of polymer and resin manufacturing process in section 115.10.
- Clarifying the definition of transport vessel in section 115.10.

We have reviewed these changes and are approving them as RACT.

12. What Are Alternative Control Techniques (ACTs)?

Section 183(c) of the Act provides that we will issue technical documents which identify alternative controls for stationary sources of VOC which emit, when uncontrolled, 25 tpy or more of this pollutant. We have to revise and update these ACT documents as needed. We generate the information in the ACT documents from our papers, literature sources and contacts, control equipment vendors, engineering firms, and Federal, State, and local regulatory agencies. States can use information in the ACT to develop their Reasonably Available Control Technology regulations. Sections 5, 7 and 10 of this document name the titles of EPA's ACT documents for batch processes, bakery oven emissions and offset lithographic printing operations.

13. What Is a Reasonably Available Control Technology?

The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. See 44 FR 53761 (September 17, 1979). RACT is required for major sources in ozone nonattainment areas and for minor sources where EPA has issued a Control Technique Guideline. A state may choose to develop its own RACT requirements on a case by case basis, considering the economic and technical circumstances of an individual source. Section 172(c)(1) of the Act contains general requirements for States to implement RACT in areas that do not meet the National Ambient Air Quality Standard (NAAQS). Section 182(b)(2) of the Act contains more specific requirements for moderate and above ozone nonattainment areas.

14. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

15. What Is the Federal Approval Process for a SIP?

When a State wants to incorporate its regulations into the federally enforceable SIP, the State must formally adopt the regulations and control

strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State adopts a rule, regulation, or control strategy, the State may submit the adopted provisions to us and request that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If we receive adverse comments, we must address them prior to a final action.

Under section 110 of the Act, when we approve a State's regulation(s) and supporting information, those State regulation(s) and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the Code of Federal Regulations at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations that we approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

16. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

17. What Areas in Texas Will This Action Effect?

These changes to the rules for batch processing, offset lithography and bakeries that we are approving today will affect the HGA ozone nonattainment area. The HGA area is classified as severe ozone nonattainment and includes the following counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. If you are in one of these counties, you need to refer to these rules to find out if and how these rules will affect you.

The test methods in section 115.125 now apply Statewide.

The changes to flare requirements apply in the HGA area, Beaumont/Port Arthur area, and Dallas/Fort Worth area.

The changes to the Vent Gas Monitoring and Recordkeeping requirements apply in the eight county HGA area, the Beaumont/Port Arthur nonattainment area (Jefferson, Hardin and Orange), the Dallas/Fort Worth nonattainment area (Dallas, Tarrant, Collin and Denton counties)the El Paso nonattainment area (El Paso county) and the foilowing additional counties: Aransas, Bexar, Calhoun, Matagorda, Nueces, San Patricio, Travis and Victoria Counties.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on September 14, 2001 without further notice unless we receive adverse comment by August 15, 2001. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and

other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 14, 2001 unless EPA receives adverse written comments by August 15, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 14, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Nitrogen oxides, Ozone, and Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 3, 2001.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. In § 52.2270 the table in paragraph (c) is amended under Chapter 115 as follows:

a. Under Chapter 115 (Reg 5), Subchapter A, by removing the entry for "Section 115.10" and adding in its place a new entry for Section 115.10;

b. Under Subchapter B, by removing the heading "Vent Gas Control" and removing entries for Sections 115.121 to 115.129 and adding in their place the heading "Division 2: Vent Gas Control" and individual entries for Sections 115.120, 115.121, 115.122, 115.123, 115.125, 115.126, 115.127, and 115.129;

c. Under Subchapter B, Division 6, revising the entries for Sections 115.161, 115.162, 115.164, 115.165, 115.166, 115.167, 115.169;

d. Under Subchapter C, before Section 115.211, add the heading "Division 1: Loading and Unloading of Volatile Organic Compounds";

e. Under Subchapter C, Division 1, revise the individual entries for Sections 115.211, 115.212 and 115.216;

f. Under Subchapter C, by removing the entry for "Section 115.241 to 115.249" and adding in its place "Division 4: Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities" and individual entries for Sections 115.240, 115.241, 115.242, 115.243, 115.244, 115.245, 115.246, 115.247, 115.248, 115.249;

g. Under Subchapter E, by removing the entry for "Section 115.432 to 115.439" and adding in its place "Division 3: Flexographic And Rotogravure Printing" and individual entries for Sections 115.430, 115.432, 115.433, 115.435, 115.436, 115.437, and 115.439;

h. Under Subchapter E, by revising the heading "Offset Lithographic Printing" to read "Division 4: Offset Lithographic Printing".

i. Under Subchapter E, Division 4, by removing the individual entries for Sections 115.440, 115.443, 115.446, and 115.442 to 115.449, and adding in their place individual entries for Sections 115.440, 115.442, 115.443, 115.445, 115.446, and 115.449;

§ 52.2270 Identification of plan.

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(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/submittal date	EPA approval date	Explanation
* * * * * * * * *				
Chapter 115 (Reg. 5)—Control of Air Pollution From Volatile Organic Compounds				
* * * * * * * * *				
Subchapter A—Definitions				
Section 115.10	Definitions	36865	07/16/2001 66 FR 36917.	
Subchapter B—General Volatile Organic Compound Sources				
* * * * * * * * *				
Division 2: Vent Gas Control				
Section 115.120	Vent Gas Definitions	36865	07/16/2001 66 FR 36917	
Section 115.121	Emission Specifications	35549	01/26/1999, 64 FR 03841	
Section 115.122	Control Requirements	36865	07/16/2001 66 FR 36918	
Section 115.123	Alternate Control Requirements	36214	04/26/2000, 65 FR 18007	
Section 115.125	Testing Requirements	36865	07/16/2001 66 FR 36917	
Section 115.126	Monitoring and Recordkeeping Requirements.	36865	07/16/2001 66 FR 36917	
Section 115.127	Exemptions	36865	07/16/2001 66 FR 36917	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/submittal date	EPA approval date	Explanation
Section 115.129	Counties and Compliance Schedules.	36865	07/16/2001 66 FR 36918	
* * * * * * * * *				
Division 6: Batch Processes				
Section 115.160	Batch Process Definitions	36459	12/20/2000, 65 FR 79749	
Section 115.161	Applicability	36865	[Insert publication date and Federal Register page number].	
Section 115.162	Control Requirements	36865	07/16/2001 66 FR 36918	
* * * * * * * * *				
Section 115.164	Determination of Emissions and Flow Rates.	36865	07/16/2001 66 FR 36918	
Section 115.165	Approved Test Methods and Testing Requirements.	36865	07/16/2001 66 FR 36918	
Section 115.166	Monitoring and Recordkeeping Requirements.	36865	07/16/2001 66 FR 36918	
Section 115.167	Exemptions	36865	07/16/2001 66 FR 36918	
Section 115.169	Counties and Compliance Schedules.	36865	07/16/2001 66 FR 36918	
Subchapter C—Volatile Organic Compound Transfer Operations				
Division 1: Loading and Unloading of Volatile Organic Compounds				
Section 115.211	Emission Specifications	36865	07/16/2001 66 FR 36918	
Section 115.212	Control Requirements	36865	07/16/2001 66 FR 36918	
* * * * * * * * *				
Section 115.216	Monitoring and Recordkeeping Requirements.	36865	07/16/2001 66 FR 36918	
* * * * * * * * *				
Division 4: Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities				
Section 115.240	Stage II Vapor Recovery Definitions	36865	07/16/2001 66 FR 36918.	
Section 115.241	Emission Specifications	33892	04/15/1994, 59 FR 17942.	
Section 115.242	Control Requirements	34282	05/22/1997, 62 FR 27967.	
Section 115.243	Alternate Control Requirements	34282	05/22/1997, 62 FR 27967.	
Section 115.244	Inspection Requirements	34282	05/22/1997, 62 FR 27967.	
Section 115.245	Testing Requirements	34282	05/22/1997, 62 FR 27967.	
Section 115.246	Recordkeeping Requirements	34282	05/22/1997, 62 FR 27967.	
Section 115.247	§115.247. Exemptions	34282	05/22/1997, 62 FR 27967.	
Section 115.248	Training Requirements	34282	05/22/1997, 62 FR 27967.	
Section 115.249	Counties and Compliance Schedules.	34282	05/22/1997, 62 FR 27967.	
* * * * * * * * *				
Subchapter E—Solvent-Using Processes				
* * * * * * * * *				
Division 3: Flexographic and Rotogravure Printing				
Section 115.430	Flexographic and RotogravurePrinting Definitions.	36865	07/16/2001 66 FR 36918.	
Section 115.432	Control Requirements	34457	05/22/1997, 62 FR 27968.	
Section 115.433	Alternate Control Requirements	35108	01/26/1999, 64 FR 03848.	
Section 115.435	Testing Requirements	35108	01/26/1999, 64 FR 03848.	
Section 115.436	Monitoring and Recordkeeping Requirements.	35108	01/26/1999, 64 FR 03849.	
Section 115.437	Exemptions	35108	01/26/1999, 64 FR 03848.	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/submittal date	EPA approval date	Explanation
Section 115.439	Counties and Compliance Schedules.	35108	01/26/1999, 64 FR 03848.	
	Division 4: Offset Lithographic Printing			
Section 115.440	Offset Printing Definitions	36214	04/06/2000, 65 FR 18008.	
Section 115.442	Control Requirements	35549	01/26/1999, 64 FR 03849.	
Section 115.443	Alternate Control Requirements	36214	04/06/2000, 65 FR 18008Requirements.	
Section 115.445	Approved Test Methods	35108	01/26/1999, 64 FR 03848.	
Section 115.446	Monitoring and Recordkeeping Requirements.	36214	04/06/2000, 65 FR 18008.	
Section 115.449	Counties and Compliance Schedules.	36865	07/16/2001 66 FR 36919.	

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[FR Doc. 01–17467 Filed 7–13–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–057–200116; FRL–7012–1]

Approval and Promulgation of Implementation Plans: Alabama: Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Alabama on March 12, 2001. This revision was submitted to satisfy EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the OzoneTransport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." This revision establishes and requires a nitrogen oxides (NO_X) allowance trading program for large electric generating and industrial units, and reductions for cement kilns, beginning in 2004. The intended effect of this SIP revision is to reduce emissions of NO_X in order to help attain the national ambient air quality standard for ozone. On December 26, 2000, EPA determined that Alabama had failed to submit a SIP in response to the NO_X SIP Call, thus starting a 18 month clock for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP) within 24 months. On March 12, 2001, Alabama submitted a NO_X SIP and EPA found that SIP submission complete on March 19, 2001, stopping the sanctions clock. Through this **Federal Register** document, both the sanctions clock and EPA's FIP obligation are terminated.

EFFECTIVE DATE: This final rule is effective on August 15, 2001.

ADDRESSES: All comments should be addressed to: Sean Lakeman at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 2001, the Alabama Department of Environmental Management (ADEM) submitted a revision to its SIP to meet the requirements of the NO_X SIP Call. The revision consists of the adoption of one new section to chapter 335–3–1 General Provisions: (.14) Emissions Reporting Requirements Relating to Budgets for NO_X Emissions; and 11 new sections to chapter 335–3–8 Control of Nitrogen Oxide Emissions: (.01) Standards for Portland Cement Kilns; (.04) Standards For Stationary Reciprocating Internal Combustion Engines (reserved); (.05) NO_X Budget Trading Program; (.06) Authorized Account Representative for NO_X Budget Sources; (.07) Permits; (.08) Compliance Certification; (.09) NO_X Allowance Allocations; (.10) NO_X Allowance Tracking System; (.11) NO_X Allowance Transfers; (.12) Monitoring and Reporting; and (.13) Individual Unit Opt-ins. On May 16, 2001, (66 FR 27047) EPA published a notice of proposed rulemaking (NPR) proposing to approve the March 12, 2001 SIP revision. That NPR provided for a public comment period ending on June 15, 2001. A detailed description of this SIP revision and EPA's rationale for approving it was provided in the proposed rule and will not be restated here. No significant or adverse comments were received on EPA's proposal.

II. Final Action

EPA is approving Alabama's SIP revision including its NO_X Reduction and Trading Program and cement kiln rule, which was submitted on March 12, 2001. EPA finds that Alabama's submittal is fully approvable because it meets the requirements of the NO_X SIP Call.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For

this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

The approval of the Alabama NO_x Reduction and Trading Program does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 14, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and will not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: July 6, 2001.

Phyllis P. Harris,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

2. Section 52.50 is amended in the Table in paragraph (c) as follows:

a. Under Chapter No. 335–3–1 by adding entry "Section 335–3–1–.14."

b. Under Chapter No. 335–3–8 by redesignating the entry "Section 335–3–8–.01" as "Section 335–3–8–.14" and adding new entry "Section 335–3–8–.01."

c. Under Chapter No. 335–3–8 by adding entry "Section 335–3–8–.04."

d. Under Chapter No. 335–3–8 by adding entries for Sections 335–3–8–.05 through 335–3–8–.13.

The additions read as follows:

§ 52.50 Identification of plan.

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(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title subject	Adoption date	EPA approval date	Federal Register notice
	Chapter No. 335–3–1—General Provisions			
* * * * * * *				
Section 335–3–1–.14	Emissions Reporting Requirements Relating to Budget for NO_X Emissions.	April 6, 2001	July 16, 2001	66 FR 36921
* * * * * * *				
	Chapter No. 335–3–8—(2) Nitrogen Oxide Emissions			
Section 335–3–8–.01	Standards for Portland Cement Kilns.	April 6, 2001	July 16, 2001	66 FR 36921
* * * * * * *				
Section 335–3–8–.04	Standards for Stationary Reciprocating Internal Combustion Engines (Reserved).	April 6, 2001	July 16, 2001	66 FR 36921
Section 335–3–8–.05	NO_X Budget Trading Program.	April 6, 2001	July 16, 2001	66 FR 36921
Section 335–3–8–.06	Authorized Account Representative for NO_X Budget Sources.	April 6, 2001	July 16, 2001	66 FR 36921
Section 335–3–8–.07	Permits	April 6, 2001	July 16, 2001	66 FR 36921
Section 335–3–8–.08	Compliance Certification ...	April 6, 2001	July 16, 2001	66 FR 36921
Section 335–3–8–.09	NO_X Allowance Allocations	April 6, 2001	July 16, 2001	66 FR 36921
Section 335–3–8–.10	NO_X Allowance Tracking System.	April 6, 2001	July 16, 2001	66 FR 36921
Section 335–3–8–.11	NO_X Allowance Transfers	April 6, 2001	July 16, 2001	66 FR 36921
Section 335–3–8–.12	Monitoring and Reporting	April 6, 2001	July 16, 2001	66 FR 36921
Section 335–3–8–.13	Individual Unit Opt-ins	April 6, 2001	July 16, 2001	66 FR 36921
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[FR Doc. 01–17560 Filed 7–13–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–57–1–7183a; FRL–7010–9]

Approval and Promulgation of Implementation Plan for Texas: Transportation Control Measures Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves a revision to the Texas State Implementation Plan (SIP) that contains the transportation control measures (TCM) rule. The requirements in the State TCM rule address the roles and responsibilities of the Metropolitan Planning Organizations (MPO), implementing transportation agencies, and provide a method for substitution of the TCMs without a SIP revision in the nonattainment and maintenance areas. The TCM rule is intended to promote effective implementation of the TCMs, streamline TCM substitution process and approval, and increase interaction between the Texas Natural Resource Conservation Commission (TNRCC) and the MPOs in the air quality-transportation planning process at the local levels.

The EPA is approving this SIP revision under section 110(k) and 182 of the Clean Air Act (the Act). The rationale for the final approval action and other information are provided in this document.

DATES: This rule is effective on September 14, 2001 without further notice, unless EPA receives adverse comment by August 15, 2001. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214

Texas Natural Resource Conservation Commission, Mobile Source Division, 12124 Park 35 Circle, Austin, Texas 78753, Telephone: (512) 239–1000.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION: The information contained under this title includes the following sections:

I. What is the Background for this Action?

II. What did the State submit and how did we evaluate the State's SIP submission?
III. What is our final action?
IV. Administrative Requirements

I. What Is the Background for This Action?

Section 182(d)(1)(A) of the Act requires States containing ozone nonattainment areas which are classified as "severe" pursuant to section 181(a) of the Act to adopt TCM and transportation control strategies to offset any growth in emissions from growth in Vehicle Miles Traveled (VMT) or number of vehicle trips and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the Act's reasonable-further-progress (RFP) milestones and attainment requirements. The requirements for establishing a VMT Offset program are discussed in the General Preamble to Title I of the Act (57 FR 13498), April 16, 1992, in addition to section 182(d)(1)(A).

In addition, the states may adopt TCMs as control strategies in order to meet the requirements of sections 182(b) and 182(c) of the Act for RFP and attainment SIPs in the ozone nonattainment areas. The EPA can only accept the emission credits resulting from such TCMs if the State can provide adequate evidence that the State will have authority to enforce the TCMs which are identified as a part of control strategy in the RFP and attainment demonstration SIPs for meeting the ozone standard. See section 110(a)(2)(A) of the Act. The State of Texas has adopted certain TCMs for meeting the RFP requirements under sections 182(b) and (c) of the Act for the 15 percent RFP and attainment demonstration SIPs.

Our action today is only addressing the State's authority, processes, procedures, and responsibilities of each agency regarding implementation and substitution of the TCMs in any SIP in the designated nonattainment or maintenance areas.

II. What Did the State Submit and How Did We Evaluate the State's SIP Submission?

The Governor of Texas submitted the TCM SIP revision on May 17, 2000. The TNRCC adopted the Texas TCM rule on May 9, 2000, after appropriate public notice and hearing. The TCM rule consists of two parts. 30 Texas Administrative Code (TAC) Chapter 14 Section 114.5 includes "Transportation Planning Definitions" and 30 TAC Chapter 14 Section 114.270 contains "Transportation Control Measures" which sets forth the processes and procedures. The TNRCC developed the TCM rule in cooperation with the MPOs, Texas Department of Transportation, and in consultation with the Federal Highway Administration, Federal Transit Administration, and EPA. The State TCM rule identifies responsibility of each agency and sets forth the procedures and processes for selection of the TCMs, inclusion in the SIP, periodic reporting and record-keeping, corrective measures, emissions reductions and TCM effectiveness, and consequences of non-implementation. In addition, the rule specifically establishes processes and procedures for substitution of any TCM in the SIP that can not be implemented for any reason by the implementation date in the SIP. The procedures for substitution of the TCMs require public notice and comment period and consultation, but they do not require a formal SIP revision and approval by the EPA.

We have reviewed the State TCM processes and procedures, and we have evaluated the provisions of the rule based on the criteria provided in the Act for development of SIPs in the nonattainment and maintenance areas. We note that neither the Act nor the EPA rules require the State to develop a TCM rule and submit a SIP revision for the TCM purposes. Our evaluation is specifically based on Sections 110, 176, 182, and consistency of this rule with the Act. Based on this review, we have determined that the TNRCC's TCM rule provides adequate authority and procedures for implementation and substitution of TCMs in the designated nonattainment and maintenance areas including how equivalency is determined, public participation and EPA concurrence. Therefore, we are approving this SIP revision.

III. What Is Our Final Action?

We are approving the Texas TCM rule which addresses the roles and responsibilities of the MPOs, implementing transportation agencies, and provides a method for substitution of the TCMs without a SIP revision in the nonattainment and maintenance areas. We have evaluated this SIP revision and have determined that the State's rules in TAC 30 Chapter 114 sections 114.5 and 114.270 provide adequate processes and procedures consistent with the Act for implementing, tracking, and substitution of the TCMs which are used as a control strategy in the SIPs for attainment and maintenance of the NAAQS. The TNRCC conducted appropriate public participation during development and adoption of this rule at the local level.

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse comments be filed. This action will be effective on September 14, 2001, unless adverse comments are received by August 15, 2001. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective September 14, 2001.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 14, 2001 unless EPA receives adverse written comments by August 15, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 14, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Air Quality-Transportation Planning, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and record-keeping requirements, Transportation Control Measures, Volatile organic compounds.

Dated: June 13, 2001.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. Section 52.2270 is amended:

a. In the table in paragraph (c) under Chapter 114 by adding new Section 114.5, Transportation Planning Definition, under Subchapter A;

b. In the table in paragraph (c) by adding new Section 114.270, Transportation Control Measures, under Subchapter G.

c. In the table entitled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP" in paragraph (e) by adding to the end of the table an entry for "Transportation Control Measures SIP Revision".

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* * * * * * *				
Chapter 114 (Reg 4)—Control of Air Pollution From Motor Vehicles				
Subchapter A—Definitions				
* * * * * * *				
Section 114.5	Transportation Planning Definition	05/09/2000	July 16, 2001 66 FR 36923	
* * * * * * *				
Subchapter G—Transportation Planning				
* * * * * * *				
Section 114.270	Transportation Control Measures ...	05/09/2000	July 16, 2001 66 FR 36923	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
*	*	*	*	*
Transportation Control Measures SIP Revision.	All Nonattainment and Maintenance Areas.	05/09/2000	July 16, 2001 66FR 32924	Chapter 1. Introduction, chapter 2. General, and chapter 3. Criteria and procedures.

[FR Doc. 01–17555 Filed 7–13–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7010–1]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins and Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: The EPA is taking final action to amend certain portions of the national emission standards for hazardous air pollutants (NESHAP) for Group I Polymers and Resins; and the NESHAP for Group IV Polymers and Resins, which were promulgated in September 1996. These changes consist of minor cross referencing and typographical errors, as well as minor clarifications.

These amendments will not change the basic control requirements of the NESHAP or the level of health protection they provide. These amendments do not alter the requirement for new and existing major sources to control emissions of hazardous air pollutants to the level reflecting application of the maximum achievable control technology.

Section 553 of the Administrative Procedure Act provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making these rule amendments final without prior proposal and opportunity for comment because these minor technical corrections are noncontroversial in nature, and because they do not substantively change the requirements of these NESHAP. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under section 553 of the Administrative Procedure Act.

EFFECTIVE DATE: July 16, 2001.

ADDRESSES: Docket number A–92–44 for the Group I Polymers and Resins NESHAP and Docket number A–92–45 for the Group IV Polymers and Resins NESHAP contain supporting information used in developing the standards. The dockets are located at the U.S. EPA, Room M–1500, 1200 Pennsylvania Avenue, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning these final rule amendments, contact Mr. Robert Rosensteel, Organic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608, facsimile number (919) 541–3470, electronic mail address: rosensteel.bob@epa.gov.

SUPPLEMENTARY INFORMATION: *Docket.* The docket reflects the full administrative record for this action and includes all the information relied upon by EPA in the development of these NESHAP. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated NESHAP and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	SIC codes	NAICS	Examples of regulated entities
Industry	2821, 2822	325211, 325212	Butyl Rubber, Halobutyl Rubber, Epichlorohydrin Elastomer, Ethylene Propylene Rubber, Hypalon™, Neoprene, Nitrile Butadiene Rubber, Nitrile Butadiene Latex, Polybutadiene Rubber, Styrene-Butadiene Rubber or Latex, Acrylonitrile Butadiene Styrene Resin, Styrene Acrylonitrile Resin, Methyl Methacrylate Acrylonitrile Butadiene Styrene Resin, Methyl Methacrylate Butadiene Styrene Resin, Poly(ethylene terephthalate) Resin, Polystyrene Resin, and Nitrile Resin producers.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the amendments to the standards affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in § 63.480 of the Group I Polymers and Resins NESHAP and § 63.1310 of the Group IV Polymers and Resins NESHAP. If you have any questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

On September 5, 1996 (61 FR 46906) and September 12, 1996 (61 FR 48208), the EPA promulgated NESHAP for Group I Polymers and Resins (40 CFR part 63, subpart U) and the NESHAP for Group IV Polymers and Resins (40 CFR part 63, subpart JJJ), respectively. In November 1996, petitions for review of the September 1996 Groups I and IV Polymers and Resins NESHAP were filed in the U.S. Court of Appeals for the District of Columbia Circuit. The petitioners raised numerous technical issues and concerns with these NESHAP. Based on a settlement agreement that was reached in 1998 between EPA and the petitioners, EPA promulgated amendments to these NESHAP on June 19, 2000 (65 FR 38030). After promulgation of those amendments, based in part on information provided by industry, EPA determined the rule required some minor changes both to carry out the purpose of the June 19, 2000 amendments and to correct errors in sections of the rule. These changes consist of minor referencing and typographical corrections, removing discrepancies between subparts U and JJJ, as well as minor clarifications. In this action, we are promulgating amendments to correct these minor errors.

In addition to these final amendments to subparts U and JJJ, other actions taken to amend various aspects of subparts U and JJJ since the original promulgation of these NESHAP in September of 1996 include the following **Federal Register** notices: January 14, 1997 (62 FR 1835), equipment leaks compliance date extension for both NESHAP; June 6, 1997 (62 FR 30993), equipment leaks compliance date extension for poly(ethylene terephthalate) (PET) resin affected sources; July 15, 1997 (62 FR 37720), minor corrections and clarifications to the NESHAP; February 27, 1998 (63 FR 9944), change in the effective date to February 27, 1998 for subpart JJJ; March 31, 1998 (63 FR 15312), a temporary compliance extension until February 27, 2001 for existing affected sources producing PET using the continuous terephthalic acid (TPA) high viscosity multiple end finisher process; December 9, 1998 (63 FR 67879), notification of a proposed partial settlement; March 9, 1999 (64 FR 11536), clarifications and corrections to the NESHAP; March 9, 1999 (64 FR 11561), proposed amendments to the NESHAP; May 7, 1999 (64 FR 24511), withdrawal of one amendment from the amendments in the March 9, 1999 direct final rule as a result of adverse comments; June 8, 1999 (64 FR 30406), equipment leaks compliance date extension for new and existing affected sources producing PET; June 8, 1999 (64 FR 30456), proposed denial of petition for reconsideration of the equipment leak requirements in subpart JJJ; June 30, 1999 (64 FR 35023), indefinite stay of the compliance dates for certain provisions under subparts U and JJJ; June 19, 2000 (65 FR 38030), promulgated amendments to the NESHAP; August 29, 2000 (65 FR 52319), indefinite stay of compliance date for existing affected sources producing PET using the TPA high viscosity multiple end finisher process; October 26, 2000 (65 FR 64161), withdrawal of indefinite stay of compliance date for existing affected sources producing PET using the TPA high viscosity multiple end finisher process; February 23, 2001 (66 FR 11233), indefinite stay of compliance date for existing affected sources producing PET using the TPA high viscosity multiple end finisher process; and February 26, 2001 (66 FR 11543), compliance date extension for new and existing affected sources producing PET, in order to complete reconsideration of the equipment leaks requirements in subpart JJJ.

II. Summary of Corrections

Today's changes are described in Table 2 to this preamble for the convenience of the reader.

40 CFR, Part 63	Change
Subpart U:	
§ 63.480(i)(2)(ii)	Corrects compliance date.
§ 63.482	Clarifies the definitions of the terms "Group 1 wastewater stream" and "Reconstruction" by removing an internal inconsistency.
§ 63.485(k)	Adds cross reference.
§ 63.487(a)(1)(i)	Corrects typographical error.
§ 63.487(b)(2)	Clarifies when correction to 3 percent oxygen is required for combustion control devices by making language internally consistent within the rule.
§ 63.487(f)(1)(ii)	Corrects cross reference.
§ 63.487(g)(1)(ii)	Corrects cross reference.
§ 63.489(e)(1)(ii)	Clarifies the emission reduction options.
§ 63.501(c)	Clarifies exemptions to certain wastewater requirements.
§ 63.506(e)(5)(i)	Removes the inapplicable term "continuous monitoring system performance evaluations."
§ 63.506(e)(5)(ii)(D)	Corrects cross reference.
§ 63.506(e)(6)(iii)(A)	Corrects cross reference.
§ 63.506(e)(7)(ii)(A)	Removes cross reference to (e)(7)(iii).
§ 63.506(e)(7)(ii)(B)	Removes cross reference to (e)(7)(ii).
Table 1	Clarifies compliance demonstration requirements for flares.
Table 2	Changes § 63.183 to § 63.182 and notes that § 63.131 is a reserved section.
Table 6	Moves entry regarding "Absorber" control/recovery device into the correct columns.
Table 9	Corrects due dates for Precompliance Report and Emissions Averaging Plan; moves text regarding the Precompliance Report in "Description of Report" to the correct "Due Date" column.
Subpart JJJ:	
§ 63.1310(i)(1)(i)	Corrects text, removes "as provided in § 63.6(b)" consistent with Table 1 entry.
§ 63.1310(i)(2)(ii)	Removes reference to § 63.1329 applicable to existing process contact cooling towers.
§ 63.1310(i)(2)(iii)	Removes reference to § 63.1329 applicable to existing process contact cooling towers.
§ 63.1311(b)	Corrects compliance date that was inadvertently changed in a previous notice.
§ 63.1312	Clarifies the definition of the term "Group 1 wastewater stream" by removing an internal inconsistency.
§ 63.1315(a)(9)	Adds cross reference.
§ 63.1315(d)	Removes "are not subject to the provisions of this section and instead."
§ 63.1316(b)(1)(i)(B)	Adds word "or" to the end of the paragraph.
§ 63.1318(a)	Clarifies performance test requirements.
§ 63.1319(a)	Corrects cross reference.
§ 63.1320(a)	Corrects cross reference.
§ 63.1320(b)(3)	Removes incorrect citation.
§ 63.1322(f)(1)(ii)	Corrects cross reference.
§ 63.1322(g)(1)(ii)	Corrects cross reference.
§ 63.1323(b)(6)(i)(C)	Corrects cross reference.
§ 63.1323(h)(1)	Adds text ". . . after the last recover device (if any recovery devices are present) . . ." to clarify the location for determining halogen status.
§ 63.1324(f)(1)(ii)	Clarifies that there are two emission reduction control options.
§ 63.1327(b)	Corrects cross reference.
§ 63.1330(a)	Revises paragraph (a) to be consistent with added paragraphs (d) and (e).
§ 63.1330(b)(8)(i)–(ii)	Removes typographical error—extra word "of" in each paragraph.
§ 63.1330(d)	Adds paragraph inadvertently left out of the NESHAP.
§ 63.1330(e)	Adds paragraph inadvertently left out of the NESHAP.
§ 63.1335(e)(5)(i)	Removes the inapplicable term "continuous monitoring system performance evaluations."
§ 63.1335(e)(7)(ii)(A)	Removes cross reference (e)(7)(ii).
§ 63.1335(e)(7)(i)(B)	Removes cross reference (e)(7)(ii).
Table 1	Clarifies compliance demonstration requirements for flares.
Table 6	Adds check marks for acrylonitrile and 1,3-butadiene to MABS row.
Table 6	Adds check marks for methylmethacrylate to MABS and MBS rows.
Table 7	Corrects superscript error for Precompliance Report in the fourth record/report for scrubber for halogenated batch vents.
Table 9	Corrects due date for Precompliance Report; moves text regarding the Precompliance Report in "Description of Report" to the correct "Due Date" column; corrects Emissions Averaging Plan due date.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see summary), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. These rule amendments also do not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). These rule amendments will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). These rule amendments also are not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because they are not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. These rule amendments also do not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing these amendments, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of these rule amendments in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. These rule amendments do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rules is discussed in the September 5, 1996 (61 FR 46906) and the September 12, 1996 (61 FR 48208) **Federal Register** notices.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of July 16, 2001. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 3, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

2. Section 63.480 is amended by revising paragraph (i)(2)(ii) to read as follows:

§ 63.480 Applicability and designation of affected sources.

* * * * *

(i) * * *

(2) * * *

(ii) If any components are replaced at an existing affected source such that the criteria specified in paragraphs (i)(2)(i)(A) and (i)(2)(i)(B) of this section are not met and that replacement of components creates one or more emission points (i.e., either newly created Group 1 emission points or emission points that change from Group 2 to Group 1) or causes any other emission point to be added (i.e., Group 2 emission points, back-end process operations subject to §§ 63.493 and 63.500, and heat exchange systems and equipment leak components subject to § 63.502), the resulting emission point(s) shall be subject to the applicable requirements for an existing affected source. The resulting emission point(s) shall be in compliance by 120 days after the date of initial start-up or by the appropriate compliance date specified in § 63.481 (i.e., July 31, 1997 for most equipment leak components subject to § 63.502, and June 19, 2001 for emission points other than equipment leaks), whichever is later.

* * * * *

3. Section 63.482(b) is amended by revising the definitions "Group 1 wastewater stream" and "Reconstruction."

§ 63.482 Definitions.

* * * * *

(b) * * *

Group 1 wastewater stream means a wastewater stream consisting of process wastewater from an existing or new affected source that meets the criteria for Group 1 status in § 63.132(c), with the exceptions listed in § 63.501(a)(10) for the purposes of this subpart (i.e., for organic HAP as defined in this section).

* * * * *

Reconstruction means the replacement of components of an affected source or of a previously unaffected stationary source that becomes an affected source as a result of the replacement, to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required

to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the provisions of this subpart.

* * * * *

4. Section 63.485 is amended by revising the first sentence of paragraph (k) to read as follows:

§ 63.485 Continuous front-end process vent provisions.

* * * * *

(k) When § 63.114(e) or § 63.117(f) specifies that an owner or operator shall submit the information required in § 63.152(b) in order to establish the parameter monitoring range, the owner or operator of an affected source shall comply with the provisions of § 63.505 for establishing the parameter monitoring level and shall comply with § 63.506(e)(5) for the purposes of reporting information related to the establishment of the parameter monitoring level, for the purposes of this subpart. * * *

* * * * *

5. Section 63.487 is amended as follows:

a. By revising paragraph (a)(1)(i);

b. By revising paragraph (b)(2);

c. In paragraph (f)(1)(ii), by revising the reference to "§ 63.506(e)(5)(iv)" to read "§ 63.506(e)(5)(ix)".

d. In paragraph (g)(1)(ii), by revising the reference to "§ 63.506(e)(5)(iv)" to read "§ 63.506(e)(5)(ix)".

The revisions to paragraphs (a)(1)(i) and (b)(2) read as follows:

§ 63.487 Batch front-end process vents—reference control technology.

(a) * * *

(1) * * *

(i) The owner or operator of the affected sources shall comply with the requirements of § 63.504(c) for the flare.

* * * * *

(b) * * *

(2) For each aggregate batch vent stream, reduce organic HAP emissions by 90 weight percent or to a concentration of 20 ppmv, whichever is less stringent, on a continuous basis using a control device. For purposes of complying with the 20 ppmv outlet concentration standard, the outlet concentration shall be calculated on a dry basis. When a combustion device is used for purposes of complying with the 20 ppmv outlet concentration standard, the concentration shall be corrected to 3 percent oxygen if supplemental combustion air is used to combust the emissions. If supplemental combustion air is not used, a correction to 3 percent oxygen is not required.

* * * * *

6. Section 63.489 is amended by revising paragraph (e)(1)(ii) to read as follows:

§ 63.489 Batch front-end process vents—monitoring equipment.

* * * * *

(e) * * *

(1) * * *

(ii) For aggregate batch vent streams using a control device to comply with § 63.487(b)(2), the established level shall reflect the emission reduction requirement of either 90 percent or 20 ppmv specified in § 63.487(b)(2).

* * * * *

7. Section 63.501 is amended by revising paragraph (c) to read as follows:

§ 63.501 Wastewater provisions.

* * * * *

(c) The provisions of paragraphs (a) and (b) of this section do not apply to the following:

(1) Back-end streams originating from equipment whose only elastomer products are latex products.

(2) Back-end streams at affected sources that are subject to a residual organic HAP limitation in § 63.494(a), and that are complying with these limitations through the use of stripping technology.

* * * * *

8. Section 63.506 is amended as follows:

a. By revising paragraph (e)(5)(i) introductory text;

b. In paragraph (e)(5)(ii)(D), by revising the reference to "§ 63.505 (b)(3)(ii)" to read "§ 63.505 (b)(3)(iii)';

c. In paragraph (e)(6)(iii)(A), by revising the references to "§ 63.146(f)" to read "§ 63.146(g)" and "§ 63.104(b)(4)" to read "§ 63.104(f)(2); and

d. By revising paragraph (e)(7)(ii)(A); and

e. By revising paragraph (e)(7)(ii)(B).

The revisions read as follows:

§ 63.506 General recordkeeping and reporting provisions.

* * * * *

(e) * * *

(5) * * *

(i) The results of any emission point group determinations, process section applicability determinations, performance tests, inspections, any other information used to demonstrate compliance, values of monitored parameters established during performance tests, and any other information required to be included in the Notification of Compliance Status under §§ 63.122 and 63.484 for storage vessels, § 63.117 for continuous front-end process vents, § 63.492 for batch front-end process vents, § 63.499 for back-end process operations, § 63.146 for process wastewater, and § 63.503 for emission points included in an emissions average. In addition, the owner or operator of an affected source shall comply with paragraphs (e)(5)(i)(A) and (e)(5)(i)(B) of this section.

* * * * *

(7) * * *

(i) * * *

(ii) * * *

(A) If use of a nominal control efficiency is part of the initial Emissions Averaging Plan described in paragraph (e)(4)(ii) of this section, the information shall be submitted with the Emissions Averaging Plan.

(B) If an owner or operator elects to use a nominal control efficiency after submittal of the initial Emissions Averaging Plan as described in paragraph (e)(4)(ii) of this section, the information shall be submitted at the discretion of the owner or operator.

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9. Revise Tables 1, 2, 5, 6, and 9 to subpart U of part 63, to read as follows:

TABLE 1 TO SUBPART U OF PART 63

[Applicability of general provisions to subpart U affected sources]

Reference	Applies to subpart U	Explanation
§63.1(a)(1)	Yes	§63.482 specifies definitions in addition to or that supersede definitions in §63.2.
§63.1(a)(2)	Yes.	
§63.1(a)(3)	Yes	§63.481(f) through (k) and §63.160(b) identify those standards which may apply in addition to the requirements of subparts U and H of this part, and specify how compliance shall be achieved.
§63.1(a)(4)	Yes	Subpart U (this table) specifies the applicability of each paragraph in subpart A to subpart U.
§63.1(a)(5)	No	[Reserved.].
§63.1(a)(6)–(8)	Yes.	
§63.1(a)(9)	No	[Reserved.].
§63.1(a)(10)	Yes.	
§63.1(a)(11)	Yes.	
§63.1(a)(12)–(14)	Yes.	
§63.1(b)(1)	No	§63.480(a) contains specific applicability criteria.
§63.1(b)(2)	Yes.	
§63.1(b)(3)	No	§63.480(b) provides documentation requirements for EPPUs not considered affected sources.
§63.1(c)(1)	Yes	Subpart U (this table) specifies the applicability of each paragraph in subpart A to subpart U.
§63.1(c)(2)	No	Area sources are not subject to subpart U.
§63.1(c)(3)	No	[Reserved.].
§63.1(c)(4)	Yes.	
§63.1(c)(5)	Yes	Except that affected sources are not required to submit notifications that are not required by subpart U.
§63.1(d)	No	[Reserved.].
§63.1(e)	Yes.	
§63.2	Yes	§63.482 specifies those subpart A definitions that apply to subpart U.
§63.3	Yes.	
§63.4(a)(1)–(3)	Yes.	
§63.4(a)(4)	No	[Reserved.].
§63.4(a)(5)	Yes.	
§63.4(b)	Yes.	
§63.4(c)	Yes.	
§63.5(a)(1)	Yes	Except the terms "source" and "stationary source" should be interpreted as having the same meaning as "affected source".
§63.5(a)(2)	Yes.	
§63.5(b)(1)	Yes	Except §63.480(i) defines when construction or reconstruction is subject to new source standards.
§63.5(b)(2)	No	[Reserved.].
§63.5(b)(3)	Yes.	
§63.5(b)(4)	Yes	Except that the Initial Notification and §63.9(b) requirements do not apply.
§63.5(b)(5)	Yes.	
§63.5(b)(6)	Yes	Except that §63.480(i) defines when construction or reconstruction is subject to the new source standards.
§63.5(c)	No	[Reserved.].
§63.5(d)(1)(i)	Yes	Except that the references to the Initial Notification and §63.9(b)(5) do not apply.
§63.5(d)(1)(ii)	Yes	Except that §63.5(d)(1)(ii)(H) does not apply.
§63.5(d)(1)(iii)	No	§63.506(e)(5) and §63.502(f) specify Notification of Compliance Status requirements.
§63.5(d)(2)	No.	
§63.5(d)(3)	Yes	Except §63.5(d)(3)(ii) does not apply, and equipment leaks subject to §63.502 are exempt.
§63.5(d)(4)	Yes.	
§63.5(e)	Yes.	
§63.5(f)(1)	Yes.	
§63.5(f)(2)	Yes	Except that where §63.9(b)(2) is referred to, the owner or operator need not comply.
§63.6(a)	Yes.	
§63.6(b)(1)	No	The dates specified in §63.481(b) apply, instead.
§63.6(b)(2)	No.	
§63.6(b)(3)	No.	
§63.6(b)(4)	No.	
§63.6(b)(5)	No.	
§63.6(b)(6)	No	[Reserved.].
§63.6(b)(7)	No.	
§63.6(c)(1)	Yes	§63.481 specifies the compliance date.
§63.6(c)(2)	No.	

TABLE 1 TO SUBPART U OF PART 63—Continued

[Applicability of general provisions to subpart U affected sources]

Reference	Applies to subpart U	Explanation
§ 63.6(c)(3)	No	[Reserved.].
§ 63.6(c)(4)	No	[Reserved.].
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	[Reserved.].
§ 63.6(e)	Yes	Except as otherwise specified for individualparagraphs. Does not apply to Group 2 emission points, unless they are included in an emissions average.[a]
§ 63.6(e)(1)(i)	No	This is addressed by § 63.480(j)(4).
§ 63.6(e)(1)(ii)	Yes.	
§ 63.6(e)(1)(iii)	Yes.	
§ 63.6(e)(2)	Yes.	
§ 63.6(e)(3)(i)	Yes	For equipment leaks (subject to § 63.502), the start-up, shutdown, and malfunction planrequirement of § 63.6(e)(3)(i) is limited to control devices and is optional for other equipment. The start-up, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair.
§ 63.6(e)(3)(i)(A)	No	This is addressed by § 63.480(j)(4).
§ 63.6(e)(3)(i)(B)	Yes.	
§ 63.6(e)(3)(i)(C)	Yes.	
§ 63.6(e)(3)(ii)	Yes.	
§ 63.6(e)(3)(iii)	No	Recordkeeping and reporting are specified in § 63.506(b)(1).
§ 63.6(e)(3)(iv)	No	Recordkeeping and reporting are specified in § 63.506(b)(1).
§ 63.6(e)(3)(v)	Yes.	
§ 63.6(e)(3)(vi)	Yes.	
§ 63.6(e)(3)(vii)	Yes.	
§ 63.6(e)(3)(vii) (A)	Yes.	
§ 63.6(e)(3)(vii) (B)	Yes	Except the plan shall provide for operation in compliance with § 63.480(j)(4).
§ 63.6(e)(3)(vii) (C)	Yes.	
§ 63.6(e)(3)(viii)	Yes.	
§ 63.6(f)(1)	Yes.	
§ 63.6(f)(2)	Yes	Except 63.7(c), as referred to in § 63.6(f)(2)(iii)(D) does not apply, and except that § 63.6(f)(2)(ii) does not apply to equipment leaks subject to § 63.502.
§ 63.6(f)(3)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No	Subpart U does not require opacity and visibleemission standards.
§ 63.6(i)(1)	Yes.	
§ 63.6(i)(2)	Yes.	
§ 63.6(i)(3)	Yes.	
§ 63.6(i)(4)(i)(A)	Yes.	
§ 63.6(i)(4)(i)(B)	No	Dates are specified in § 63.481(e) and § 63.506(e)(3)(i).
§ 63.6(i)(4)(ii)	No.	
§ 63.6(i)(5)–(14)	Yes.	
§ 63.6(i)(15)	No	[Reserved.].
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7(a)(1)	Yes.	
§ 63.7(a)(2)	No.	§ 63.506(e)(5) specifies the submittal dates of performance test results for all emission pointsexcept equipment leaks; for equipment leaks, compliance demonstration results are reported in the Periodic Reports.
§ 63.7(a)(3)	Yes.	
§ 63.7(b)	No	§ 63.504(a)(4) specifies notification requirements.
§ 63.7(c)	No	Except if the owner or operator chooses to submit an alternative nonopacity emission standard for approval under § 63.6(g).
§ 63.7(d)	Yes.	
§ 63.7(e)(1)	Yes	Except that all performance tests shall beconducted at maximum representative operating conditions achievable at the time without disruption of operations or damage to equipment.
§ 63.7(e)(2)	Yes.	
§ 63.7(e)(3)	No	Subpart U specifies requirements.
§ 63.7(e)(4)	Yes.	
§ 63.7(f)	Yes	Except that § 63.144(b)(5)(iii)(A) & (B) shall apply for process wastewater. Also, since a site specific test plan is not required, the notification deadline in § 63.7(f)(2)(i) shall be 60 days prior to the performance test, and in § 63.7(f)(3) approval or disapproval of the alternative test method shall not be tied to the site specific test plan.

TABLE 1 TO SUBPART U OF PART 63—Continued

[Applicability of general provisions to subpart U affected sources]

Reference	Applies to subpart U	Explanation
§63.7(g)	Yes	Except that the requirements in §63.506(e)(5) shall apply instead of references to the Notification of Compliance Status report in 63.9(h). In addition, equipment leaks subject to §63.502 are not required to conduct performance tests.
§63.7(h)	Yes	Except §63.7(h)(4)(ii) is not applicable, since the site-specific test plans in §63.7(c)(2) arenot required.
§63.8(a)(1)	Yes.	
§63.8(a)(2)	No.	
§63.8(a)(3)	No	[Reserved.].
§63.8(a)(4)	Yes.	
§63.8(b)(1)	Yes.	
§63.8(b)(2)	No	Subpart U specifies locations to conductmonitoring.
§63.8(b)(3)	Yes.	
§63.8(c)(1)	Yes.	
§63.8(c)(1)(i)	Yes.	
§63.8(c)(1)(ii)	No	For all emission points except equipment leaks, comply with §63.506(b)(1)(i)(B); for equipmentleaks, comply with §63.181(g)(2)(iii).
§63.8(c)(1)(iii)	Yes.	
§63.8(c)(2)	Yes.	
§63.8(c)(3)	Yes.	
§63.8(c)(4)	No	§63.505 specifies monitoring frequency; not applicable to equipment leaks, because §63.502does not require continuous monitoring systems.
§63.8(c)(5)–(8)	No.	
§63.8(d)	No.	
§63.8(e)	No.	
§63.8(f)(1)–(3)	Yes.	
§63.8(f)(4)(i)	No	Timeframe for submitting request is specified in §63.506(f) or (g); not applicable to equipmentleaks, because §63.502 (through reference to subpart H) specifies acceptable alternative methods.
§63.8(f)(4)(ii)	No	Contents of request are specified in §63.506(f) or (g).
§63.8(f)(4)(iii)	No.	
§63.8(f)(5)(i)	Yes.	
§63.8(f)(5)(ii)	No.	
§63.8(f)(5)(iii)	Yes.	
§63.8(f)(6)	No	Subpart U does not require CEM's.
§63.8(g)	No	Data reduction procedures specified in§63.506(d) and (h); not applicable to equipment leaks.
§63.9(a)	Yes.	
§63.9(b)	No	Subpart U does not require an initial notification.
§63.9(c)	Yes.	
§63.9(d)	Yes.	
§63.9(e)	No	§63.504(a)(4) specifies notification deadline.
§63.9(f)	No	Subpart U does not require opacity and visible emission standards.
§63.9(g)	No.	
§63.9(h)	No	§63.506(e)(5) specifies Notification of Compliance Status requirements.
§63.9(i)	Yes.	
§63.9(j)	No.	
§63.10(a)	Yes.	
§63.10(b)(1)	No	§63.506(a) specifies record retention requirements.
§63.10(b)(2)	No	Subpart U specifies recordkeeping requirements.
§63.10(b)(3)	No	§63.480(b) requires documentation of sources that are not affected sources.
§63.10(c)	No	§63.506 specifies recordkeeping requirements.
§63.10(d)(1)	Yes.	
§63.10(d)(2)	No	§63.506(e)(5) specifies performance test reporting requirements; not applicable to equipment leaks.
§63.10(d)(3)	No	Subpart U does not require opacity and visible emission standards.
§63.10(d)(4)	Yes.	
§63.10(d)(5)(i)	Yes	Except that reports required by §63.10(d)(5)(i) shall be submitted at the same time as Periodic Reports specified in §63.506(e)(6). The start-up, shutdown, and malfunction plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.
§63.10(d)(5)(ii)	No.	
§63.10(e)	No	§63.506 specifies reporting requirements.
§63.10(f)	Yes.	

TABLE 1 TO SUBPART U OF PART 63—Continued

[Applicability of general provisions to subpart U affected sources]

Reference	Applies to subpart U	Explanation
§63.11	Yes	§63.11(b) specifies requirements for flares used to comply with provisions of this subpart. §63.504(c) contains the requirements to conduct compliance demonstrations for flares subject to this subpart.
§63.12	Yes	Except that the authority of §63.503(i) and the authority of §63.177 (for equipment leaks) will not be delegated to States.
§§63.13–63.15	Yes.	

[a] The plan and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.

TABLE 2 TO SUBPART U OF PART 63

[Applicability of Subparts F, G, & H of this Part to Subpart U affected sources]

Reference	Applies to Subpart U	Comment	Applicable section of Subpart U
Subpart F:			
§63.100	No.		
§63.101	Yes	Several definitions from §63.101 are referenced in §63.482.	§63.482.
§§63.102–63.103	No.		
§§63.104–63.105	Yes		§§63.501 and 63.502.
§§63.106–63.109	No.		
Subpart G:			
§63.110	No.		
§63.111	Yes	Several definitions from §63.111 reference in §63.482.	§63.482.
§63.112	No.		
§§63.113–63.118	Yes	With the differences noted in §63.485 (b) through §63.485(k).	
§§63.119–63.123	Yes	With the differences noted in §63.484(c) through 63.484(s).	63.484.
§§63.124–63.125	No	[Reserved.].	
§§63.126–63.130	No.		
§63.131		[Reserved.].	
§§63.133–63.147	Yes	With the differences noted in §63.501(a)(1) through (19).	§63.501.
§§63.148–63.149	Yes	With the differences noted in §§63.484(c) through (s) and 63.501(a)(1) through (23).	§§63.484 and 63.501.
§63.150(a) through (f)	No.		
§63.150(g)(1) and (2)	No.		
§63.150(g)(3)	Yes		§63.503(g)(3).
§63.150(g)(4)	No.		
§63.150(g)(5)	Yes		§63.503(g)(5).
§63.150(h)(1) and (2)	No.		
§63.150(h)(3)	Yes		§63.503(h)(3).
§63.150(h)(4)	No.		
§63.150(h)(5)	Yes		§63.503(h)(5).
§63.150(i) through (o)	No.		
§§63.151–63.152	No.		
Subpart H:			
§§63.160–63.182	Yes	Subpart U affected sources shall comply with all requirements of subpart H of this part, with the differences noted in §63.502.	§63.502.

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TABLE 5 TO SUBPART U OF PART 63

[Known organic HAP emitted from the production of elastomer products]

Organic HAP/chemical name (CAS No.)	Elastomer product/subcategory											
	BR	EPI	EPR	HBR	HYP	NEO	NBL	NBR	PBR/SBRS	PSR	SBL	SBRE
Acrylonitrile (107131)							✔	✔				
1,3 Butadiene (106990)							✔	✔	✔		✔	✔

TABLE 5 TO SUBPART U OF PART 63—Continued

[Known organic HAP emitted from the production of elastomer products]

Organic HAP/chemical name (CAS No.)	Elastomer product/subcategory											
	BR	EPI	EPR	HBR	HYP	NEO	NBL	NBR	PBR/SBRS	PSR	SBL	SBRE
Carbon Disulfide							✔	✔	✔		✔	✔
Carbon Tetrachloride (56235)					✔							
Chlorobenzene (108907)					✔							
Chloroform (67663)					✔							
Chloroprene (126998)						✔						
Epichlorohydrin (106898)		✔										
Ethylbenzene (100414)	✔										✔	
Ethylene Dichloride (107062)										✔		
Ethylene Oxide (75218)		✔								✔		
Formaldehyde (50000)		✔								✔		
Hexane (110543)	✔		✔						✔			
Methanol (67561)	✔								✔			
Methyl Chloride (74873)	✔				✔							
Propylene Oxide (75569)		✔										
Styrene (100425)									✔		✔	✔
Toluene (108883)		✔	✔			✔			✔			
Xylenes (1330207)	✔											
Xylene (m-) (108383)	✔											
Xylene (o-) (95476)	✔											
Xylene (p-) (106423)	✔											

CAS No. = Chemical Abstract Service Number.
BR = Butyl Rubber.
EPI = Epichlorohydrin Rubber.
EPR = Ethylene Propylene Rubber.
HBR = Halobutyl Rubber.
HYP = Hypalon ™.
NEO = Neoprene.
NBL = Nitrile Butadiene Latex.
NBR = Nitrile Butadiene Rubber.
PBR/SBRS = Polybutadiene and Styrene Butadiene Rubber by Solution.
PSR = Polysulfide Rubber.
SBL = Styrene Butadiene Latex.
SBRE = Styrene Butadiene Rubber by Emulsion.

TABLE 6 TO SUBPART U OF PART 63

[Group 1 batch front-end process vents and aggregate batch vent streams—monitoring, recordkeeping, and reporting requirements]

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
Thermal incinerator	Firebox temperature [a]	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in §63.491(e)(2). 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed.	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average upstream and downstream temperatures and the average temperature difference across the catalyst bed measured during the performance test—NCS.[c] 3. Record the batch cycle daily average upstream temperature and temperature difference across catalyst bed as specified in §63.491(e)(2). 4. Report all batch cycle daily average upstream temperatures that are below the minimum upstream value established in the NCS or operating permit—PR.[d e]

TABLE 6 TO SUBPART U OF PART 63—Continued

[Group 1 batch front-end process vents and aggregate batch vent streams—monitoring, recordkeeping, and reporting requirements]

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
		5. Reporting all batch cycle daily average temperature differences across the catalyst bed that are below the minimum difference established in the NCS or operating permit—PR.[d e] 6. Report all instances when monitoring data are not collected.
Boiler or process heater with a design heat input capacity less than 44 megawatts and where the batch front—end process vents or aggregate batch vent streams are "not" introduced with or used as the primary fuel.	Firebox temperature[a]	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in §63.491(e)(2).[d] 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Flare	Presence of a flame at the pilot light	1. Hourly records of whether the monitor was continuously operating during light batch emission episodes selected for control and whether a flame was continuously present at the pilot light during each hour. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS.[c] 3. Record the times and durations of all periods during batch emission episodes when all flames at the pilot light of a flare are absent or the monitor is not operating. 4. Report the times and durations of all periods during batch emission episodes selected for control when all flames at the pilot light of a flare are absent—PR.[d]
Scrubber for halogenated batch front-end process vents or aggregate batch vent streams (Note: Controlled by a combustion device other than a flare).	a. pH of scrubber effluent, and	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average pH of the scrubber effluent measured during the performance test—NCS.[c] 3. Record the batch cycle daily average pH of the scrubber effluent as specified in §63.491(e)(2). 4. Report all batch cycle daily average pH values of the scrubber effluent that are below the minimum operating value established in the NCS or operating permit and all instances when insufficient monitoring data arecollected—PR.[d e]
	b. Scrubber liquid and gas flow rates (§63.489(b)(4)(ii)).	1. Records as specified in §63.491(e)(1).[b] 2. Record and report the scrubber liquid/gas ratio averaged over the full period of the performance test—NCS.[c] 3. Record the batch cycle daily average scrubber liquid/gas ratio as specified in §63.491(e)(2). 4. Report all batch cycle daily average scrubber liquid/gas ratios that are below the minimum value established in the NCS or operating permit and all instances when insufficient monitoring data are collected—PR.[d e]
Absorber[f]	a. Exit temperature of the absorbing liquid, and	1. Continuous records as specified in §63.491(e)(1).[b]

TABLE 6 TO SUBPART U OF PART 63—Continued

[Group 1 batch front-end process vents and aggregate batch vent streams—monitoring, recordkeeping, and reporting requirements]

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
		2. Record and report the average exit temperature of the absorbing liquid measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit temperature of the absorbing liquid as specified in §63.491(e)(2) for each batch cycle. 4. Report all the batch cycle daily average exit temperatures of the absorbing liquid that are above the maximum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]
	b. Exit specific gravity of the absorbing liquid	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average exit specific gravity measured during the performance test—NCS. 3. Record the batch cycle daily average exit specific gravity as specified in §63.491(e)(2). 4. Report all batch cycle daily average exit specific gravity values that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]
Condenser[f]	Exit (product side) temperature	1. Continuous records as specified in §63.491(e)(1)[b] 2. Record and report the average exit temperature measured during the performance test—NCS. 3. Record the batch cycle daily average exit temperature as specified in §63.491(e)(2). 4. Report all batch cycle daily average exit temperatures that are above the maximum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]
Carbon adsorber[f]	a. Total regeneration steam flow or nitrogen flow, or pressure gauge or absolute) during carbon bed regeneration cycle(s), and	1. Record of total regeneration steam flow or nitrogen flow, or pressure for each carbon bed regeneration cycle. 2. Record and report the total regeneration steam flow or nitrogen flow, or pressure during each carbon bed regeneration cycle during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the total regeneration steam flow or nitrogen flow, or pressure is above the maximum value established in the NCS or operating permit—PR.[d,e]
	b. Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s).	1. Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s). 2. Record and report the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s)measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the temperature of the carbon bed after regeneration, or within 15 minutes of completing any cooling cycle(s), is above the maximum value established in the NCS or operating permit—PR.[d,e]

TABLE 6 TO SUBPART U OF PART 63—Continued

[Group 1 batch front-end process vents and aggregate batch vent streams—monitoring, recordkeeping, and reporting requirements]

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
All control devices	a. Diversion to the atmosphere from the control device *or*	1. Hourly records of whether the flow indicator was operating during batch emission episodes selected for control and whether a diversion was detected at any time during the hour, as specified in § 63.491(e)(3). 2. Record and report the times of all periods during batch emission episodes selected for control when emissions are diverted through a bypass line, or the flow indicator is not operating—PR.[d]
	b. Monthly inspections of sealed valves	1. Records that monthly inspections were performed as specified in § 63.491(e)(4)(i). 2. Record and report all monthly inspections that show that valves are in the diverting position or that a seal has been broken—PR.[d]
Absorber, condenser, and carbon adsorber (as an alternative to the above).	Concentration level or reading indicated by an organic monitoring device at the outlet of the recovery device.	1. Continuous records as specified in § 63.491(e)(1).[b] 2. Record and report and average batch vent concentration level or reading measured during the performance test—NCS. 3. Record the batch cycle daily average concentration level or reading as specified in § 63.491(e)(2). 4. Report all batch cycle daily average concentration levels or readings that are above the maximum values established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]

[a] Monitor may be installed in the firebox or in the duct work immediately downstream of the firebox before any substantial heat exchange is encountered.
[b] "Continuous records" is defined in § 63.111.
[c] NCS = Notification of Compliance Status described in § 63.506(e)(5).
[d] PR = Periodic Reports described in § 63.506(e)(6).
[e] The periodic reports shall include the duration of periods when monitoring data are not collected as specified in § 63.506(e)(6)(iii)(C).
[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.

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TABLE 9 TO SUBPART U OF PART 63

[Routine reports required by this subpart]

Reference	Description of report	Due Date
§ 63.506(b) and subpart A	Refer to § 63.506(b), Table 1 of this subpart, and to subpart A.	Refer to subpart A.
§ 63.506(e)(3)	Precompliance Report[a]	1. Existing affected sources: December 19, 2000. 2. New affected sources: with the application for approval of construction or reconstruction.
§ 63.506(e)(4)	Emissions Averaging Plan	September 19, 2000.
§ 63.506(e)(4)(iv)	Updates to Emissions Averaging Plan	120 days prior to making the change necessitating the update.
§ 63.506(e)(5)	Notification of Compliance Status[b]	Within 150 days after the compliance date.
§ 63.506(e)(6)	Periodic reports	Semiannually, no later than 60 days after the end of each 6-month period. See § 63.506(e)(6)(i) for the due date for this report.
§ 63.506(e)(6)(xi)	Quarterly for reports Emissions Averaging	No later than 60 days after the end of each quarter. First report is due with the Notification of Compliance Status.
§ 63.506(e)(6)(xii)	Quarterly reports upon request of the Administrator.	No later than 60 days after the end of each quarter.
§ 63.506(e)(7)(i)	Storage Vessels Notification of Inspection	At least 30 days prior to the refilling of each storage vessel or the inspection of each storage vessel.

TABLE 9 TO SUBPART U OF PART 63—Continued

[Routine reports required by this subpart]

Reference	Description of report	Due Date
§ 63.506(e)(7)(ii)	Requests for Approval of a Nominal Control Efficiency for Use in Emissions Averaging.	Initial submittal is due with the Emissions Averaging Plan; later submittals are made at the discretion of the owner or operator as specified in § 63.506(e)(7)(ii)(B).
§ 63.506(e)(7)(iii)	Notification of Change in the Primary Product	For notification under § 63.480(f)(3)(ii)—notification submittal date at the discretion of the owner or operator.[c] For notification under § 63.480(f)(4)(ii)—within 6 months of making the determination.

[a] There may be two versions of this report due at different times; one for equipment subject to § 63.502 and one for other emission points subject to this subpart.

[b] There will be two versions of this report due at different times; one for equipment subject to § 63.502 and one for other emission points subject to this subpart.

[c] Note that the EPPU remains subject to this subpart until the notification under § 63.480(f)(3)(i) is made.

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

10. Section 63.1310 is amended by revising paragraphs (i)(1)(i) introductory text and (i)(2)(ii) and (iii) to read as follows:

§ 63.1310 Applicability and designation of affected sources.

* * * * *

(i) * * *

(1) * * *

(i) If a group of one or more TPPUs that produce the same primary product is added to a plant site, the added group of one or more TPPUs and associated equipment, as listed in paragraph (a)(4) of this section, shall be a new affected source and shall comply with the requirements for a new affected source in this subpart upon initial start-up or by June 19, 2000, whichever is later, except that new affected sources whose primary product, as determined using the procedures specified in paragraph (f) of this section, is poly(ethylene terephthalate) (PET) shall be in compliance with § 63.1331 upon initial start-up or February 27, 2001, whichever is later, if the added group of one or more TPPUs meets the criteria in either paragraph (i)(1)(i)(A) or (i)(1)(i)(B) of this section, and the criteria in either paragraph (i)(1)(i)(C) or (i)(1)(i)(D) of this section are met.

* * * * *

(2) * * *

(ii) If any components are replaced at an existing affected source such that the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section are not met, and that replacement of components creates one or more Group 1 emission points (i.e., either newly created Group 1 emission points or emission points that change group status from Group 2 to Group 1) or causes any other emission point to be added (i.e., Group 2 emission points, equipment leak components subject to § 63.1331, continuous process vents subject to §§ 63.1316 through 63.1320, and heat exchange systems subject to § 63.1328), the resulting emission point(s) shall be subject to the applicable requirements for an existing affected source. The resulting emission points shall be in compliance by 120 days after the date of initial start-up or by the appropriate compliance date specified in § 63.1311 (i.e., February 27, 1998 for most equipment leak components subject to § 63.1331, and June 19, 2001 for most emission points other than equipment leaks), whichever is later.

(iii) If an addition or process change (not including a process change that solely replaces components) is made to an existing affected source that creates one or more Group 1 emission points (i.e., either newly created Group 1 emission points or emission points that change group status from Group 2 to Group 1) or causes any other emission point to be added (i.e., Group 2 emission points, equipment leak components subject to § 63.1331, continuous process vents subject to §§ 63.1316 through 63.1320, and heat exchange systems subject to § 63.1328), the resulting emission point(s) shall be subject to the applicable requirements for an existing affected source. The resulting emission points shall be in compliance by 120 days after the date of initial start-up or by the appropriate compliance date specified in § 63.1311 (i.e., February 27, 1998 for most equipment leak components subject to § 63.1331, and June 19, 2001 for most emission points other than equipment leaks), whichever is later.

* * * * *

11. Section 63.1311 is amended by revising paragraph (b) to read as follows:

§ 63.1311 Compliance dates and relationship of this subpart to existing applicable rules.

* * * * *

(b) New affected sources that commence construction or reconstruction after March 29, 1995 shall be in compliance with this subpart upon initial start-up or by June 19, 2000, whichever is later, except that new affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 upon initial start-up or August 27, 2001, whichever is later.

* * * * *

12. Section 63.1312(b) is amended by revising the definitions for the terms "Group 1 wastewater stream" and "Reconstruction."

§ 63.1312 Definitions.

* * * * *

(b) * * *

Group 1 wastewater stream means a wastewater stream consisting of process wastewater from an existing or new affected source that meets the criteria for Group 1 status in § 63.132(c) and/or that meets the criteria for Group 1 status in § 63.132(d), with the exceptions listed in § 63.1330(b)(8) for the purposes of this subpart (i.e., for organic HAP as defined in this section).

* * * * *

Reconstruction means the replacement of components of an affected source or of a previously unaffected stationary source that becomes an affected source as a result of the replacement, to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required

to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the provisions of this subpart.

* * * * *

13. Section 63.1315 is amended by revising paragraphs (a)(9) and (d) to read as follows:

§ 63.1315 Continuous process vents provisions.

* * * * *

(a) * * *

(9) When § 63.114(e) or § 63.117(f) specifies that an owner or operator shall submit the information required in § 63.152(b) in order to establish the parameter monitoring range, the owner or operator of an affected source shall comply with the provisions of § 63.1335(e)(5) for purposes of reporting information related to establishment of the parameter monitoring level for purposes of this subpart. Further, the term "level" shall apply when the term "range" is used in §§ 63.114, 63.117, and 63.118.

* * * * *

(d) Affected sources producing PET or polystyrene using a continuous process are subject to the emissions control provisions of § 63.1316, the monitoring provisions of § 63.1317, the testing and compliance demonstration provisions of § 63.1318, the recordkeeping provisions of § 63.1319, and the reporting provisions of § 63.1320. However, in some instances as specified in § 63.1316, select continuous process vents present at affected sources producing PET or polystyrene using a continuous process are subject to the provisions of this section.

* * * * *

14. Section 63.1316 is amended by revising paragraph (b)(1)(i)(B) to read as follows:

§ 63.1316 PET and polystyrene affected sources—emissions control provisions.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) As specified in § 63.1318(d), the owner or operator shall maintain the daily average outlet gas stream temperature from each final condenser in a material recovery section at a temperature of +3°C (+37°F) or less (i.e., colder); or

* * * * *

15. Section 63.1318 is amended by revising paragraph (a) to read as follows:

§ 63.1318 PET and polystyrene affected sources—testing and compliance demonstration provisions.

(a) Except as specified in paragraphs (b) through (d) of this section, continuous process vents using a control or recovery device to comply with § 63.1316 shall comply with the applicable testing and compliance provisions for continuous process vents specified in § 63.1315(a) except that, for purposes of this paragraph (a), references to group determinations (i.e., total resource effectiveness) do not apply and owners or operators are not required to comply with § 63.113.

* * * * *

16. Section 63.1319 is amended in paragraph (a) by revising the reference to "§ 63.1315" to read "§ 63.1315(a)."

17. Section 63.1320 is amended in paragraph (a) by revising the reference to "§ 63.1315" to read "§ 63.1315(a)." and by revising paragraph (b)(3) to read as follows:

§ 63.1320 PET and polystyrene affected sources—reporting provisions.

* * * * *

(b) * * *

(3) Whenever a process change, as defined in § 63.115(e), is made that causes emissions from continuous process vents in the collection of material recovery sections (i.e., methanol recovery) within the affected source to be greater than 0.12 kg organic HAP per Mg of product, the owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report. The report shall include the information specified in § 63.1319(b)(1) and a description of the process change.

* * * * *

18. Section 63.1322 is amended in paragraphs (f)(1)(ii) and (g)(1)(ii) by revising the references to "§ 63.1335(e)(5)(iv)" to read "§ 63.1335(e)(5)(viii)."

19. Section 63.1323 is amended in paragraph (b)(6)(i)(C) by revising the reference to "§ 63.506(e)(3)" to read "§ 63.1335(e)(3)," and by revising paragraph (h)(1) introductory text to read as follows:

§ 63.1323 Batch process vents—methods and procedures for group determination.

* * * * *

(h) * * *

(1) The concentration of each organic compound containing halogen atoms (ppmv, by compound) for each batch emission episode shall be determined after the last recovery device (if any recovery devices are present), based on any one of the following procedures:

* * * * *

20. Section 63.1324 is amended by revising paragraph (f)(1)(ii) to read as follows:

§ 63.1324 Batch process vents—monitoring equipment.

* * * * *

(f) * * *

(1) * * *

(ii) For aggregate batch vent streams using a control device to comply with § 63.1322(b)(2), the established level shall reflect the emission reduction requirement of either 90 percent or 20 ppmv specified in § 63.1322(b)(2).

* * * * *

21. Section 63.1327 is amended in paragraph (b) by revising the reference to "§ 63.480(i)(2)(ii)" to read "§ 63.1310(i)(2)(ii)."

22. Section 63.1330 is amended as follows:

a. By revising paragraph (a);

b. By revising paragraph (b)(8)(i);

c. By revising paragraph (b)(8)(ii);

d. By adding paragraph (d); and

e. By adding paragraph (e).

The revisions and additions read as follows:

§ 63.1330 Wastewater provisions.

* * * * *

(a) Except as specified in paragraphs (d) and (e) of this section, the owner or operator of each affected source shall comply with paragraphs (b) and (c) of this section.

(b) * * *

(8) * * *

(i) When §§ 63.132 through 63.149 refer to table 8 compounds, the owner or operator is only required to consider 1,3-butadiene for purposes of this subpart.

(ii) When §§ 63.132 through 63.149 refer to table 9 compounds, the owner or operator is only required to consider compounds that meet the definition of organic HAP in § 63.1312 and that are listed on table 9 of 40 CFR part 63, subpart G, for the purposes of this subpart, except for ethylene glycol which need not be considered.

* * * * *

(d) The provisions of paragraph (b) of this section do not apply to each affected source producing ASA/AMSAN.

(e) The provisions of paragraphs (b) and (c) of this section do not apply to each affected source producing polystyrene using either a continuous or batch process.

23. Section 63.1335 is amended as follows:

a. By revising paragraph (e)(5)(i) introductory text;
b. By revising (e)(7)(ii)(A); and
c. By revising (e)(7)(ii)(B).
The revisions read as follows:

§ 63.1335 General recordkeeping and reporting provisions.

* * * * *

(e) * * *

(5) * * *

(i) The results of any emission point group determinations, process section applicability determinations, performance tests, inspections, any other information used to demonstrate compliance, values of monitored parameters established during performance tests, and any other information required to be included in the Notification of Compliance Status under §§ 63.1311(m), 63.122, and 63.1314 for storage vessels, § 63.117 for continuous process vents, § 63.146 for process wastewater, §§ 63.1316 through 63.1320 for continuous process vents subject to § 63.1316, § 63.1327 for batch process vents, § 63.1329 for process contact cooling towers, and § 63.1332 for emission points included in an emissions average. In addition, the owner or operator of an affected source shall comply with paragraphs (e)(5)(i)(A) and (e)(5)(i)(B) of this section.

* * * * *

(7) * * *

(i) * * *

(ii) * * *

(A) If use of a nominal control efficiency is part of the initial Emissions Averaging Plan described in paragraph (e)(4)(ii) of this section, the information shall be submitted with the Emissions Averaging Plan.

(B) If an owner or operator elects to use a nominal control efficiency after submittal of the initial Emissions Averaging Plan as described in paragraph (e)(4)(ii) of this section, the information shall be submitted at the discretion of the owner or operator.

* * * * *

24. Revising Tables 1, 6, 7, and 9 to Subpart JJJ of Part 63, to read as follows:

TABLE 1 TO SUBPART JJJ OF PART 63

[Applicability of general provisions to subpart JJJ affected sources]

Reference	Applies to Subpart JJJ	Explanation
§ 63.1(a)(1)	Yes	§ 63.1312 specifies definitions in addition to or that supersede definitions in § 63.2.
§ 63.1(a)(2)	Yes.	
§ 63.1(a)(3)	Yes	§ 63.1311(g) through (l) and § 63.160(b) identify those standards which may apply in addition to the requirements of subparts JJJ and H of this part, and specify how compliance shall be achieved.
§ 63.1(a)(4)	Yes	Subpart JJJ (this table) specifies the applicability of each paragraph in subpart A to subpart JJJ.
§ 63.1(a)(5)	No	[Reserved.].
§ 63.1(a)(6)–(8)	Yes.	
§ 63.1(a)(9)	No	[Reserved.].
§ 63.1(a)(10)	Yes.	
§ 63.1(a)(11)	Yes.	
§ 63.1(a)(12)–(14)	Yes.	
§ 63.1(b)(1)	No	§ 63.1310(a) contains specific applicability criteria.
§ 63.1(b)(2)	Yes.	
§ 63.1(b)(3)	No	§ 63.1310(b) provides documentation requirements for TPPUs not considered affected sources.
§ 63.1(c)(1)	Yes	Subpart JJJ (this table) specifies the applicability of each paragraph in subpart A to subpart JJJ.
§ 63.1(c)(2)	No	Area sources are not subject to subpart JJJ.
§ 63.1(c)(3)	No	[Reserved.].
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	Yes	Except that affected sources are not required to submit notifications that are not required by subpart JJJ.
§ 63.1(d)	No	[Reserved.].
§ 63.1(e)	Yes.	
§ 63.2	Yes	§ 63.1312 specifies those subpart A definitions that apply to subpart JJJ.
§ 63.3	Yes.	
§ 63.4(a)(1)–(3)	Yes.	
§ 63.4(a)(4)	No	[Reserved.].
§ 63.4(a)(5)	Yes.	
§ 63.4(b)	Yes.	
§ 63.4(c)	Yes.	
§ 63.5(a)(1)	Yes	Except the terms "source" and "stationary source" should be interpreted as having the same meaning as "affected source."
§ 63.5(a)(2)	Yes.	
§ 63.5(b)(1)	Yes	Except § 63.1310(i) defines when construction or reconstruction is subject to new source standards.
§ 63.5(b)(2)	No	[Reserved.].
§ 63.5(b)(3)	Yes.	
§ 63.5(b)(4)	Yes	Except that the Initial Notification and § 63.9(b) requirements do not apply.
§ 63.5(b)(5)	Yes.	
§ 63.5(b)(6)	Yes	Except that § 63.1310(i) defines when construction or reconstruction is subject to new source standards.
§ 63.5(c)	No	[Reserved.]
§ 63.5(d)(1)(i)	Yes	Except that the references to the Initial Notification and § 63.9(b)(5) do not apply.
§ 63.5(d)(1)(ii)	Yes	Except that § 63.5(d)(1)(ii)(H) does not apply.

TABLE 1 TO SUBPART JJJ OF PART 63—Continued

[Applicability of general provisions to subpart JJJ affected sources]

Reference	Applies to Subpart JJJ	Explanation
§63.5(d)(1)(iii)	No	§§63.1335(e)(5) and 63.1331(a)(4) specify Notification of Compliance Status requirements.
§63.5(d)(2)	No.	
§63.5(d)(3)	Yes	Except §63.5(d)(3)(ii) does not apply, and equipment leaks subject to §63.1331 are exempt.
§63.5(d)(4)	Yes.	
§63.5(e)	Yes.	
§63.5(f)(1)	Yes.	
§63.5(f)(2)	Yes	Except that where §63.9(b)(2) is referred to, the owner or operator need not comply.
§63.6(a)	Yes.	
§63.6(b)(1)	No	The dates specified in §63.1311(b) apply, instead.
§63.6(b)(2)	No.	
§63.6(b)(3)	No.	
§63.6(b)(4)	No.	
§63.6(b)(5)	No.	
§63.6(b)(6)	No	[Reserved.].
§63.6(b)(7)	No.	
§63.6(c)(1)	Yes	Except that §63.1311 specifies the compliance date.
§63.6(c)(2)	No.	
§63.6(c)(3)	No	[Reserved.].
§63.6(c)(4)	No	[Reserved.].
§63.6(c)(5)	Yes.	
§63.6(d)	No	[Reserved.].
§63.6(e)	Yes	Except as otherwise specified for individual paragraphs. Does not apply to Group 2 emissionpoints, unless they are included in an emissions average.[a]
§63.6(e)(1)(i)	No	This is addressed by §63.1310(j)(4).
§63.6(e)(1)(ii)	Yes.	
§63.6(e)(1)(iii)	Yes.	
§63.6(e)(2)	Yes.	
§63.6(e)(3)(i)	Yes	For equipment leaks (subject to §63.1331), the start-up, shutdown, and malfunction plan requirement of §63.6(e)(3)(i) is limited to control devices and is optional for other equipment. The start-up, shutdown, malfunction plan may include written procedures that identifyconditions that justify a delay of repair.
§63.6(e)(3)(i)(A)	No	This is addressed by §63.1310(j)(4).
§63.6(e)(3)(i)(B)	Yes.	
§63.6(e)(3)(i)(C)	Yes.	
§63.6(e)(3)(ii)	Yes.	
§63.6(e)(3)(iii)	No	Recordkeeping and reporting are specified in §63.1335(b)(1).
§63.6(e)(3)(iv)	No	Recordkeeping and reporting are specified in §63.1335(b)(1).
§63.6(e)(3)(v)	Yes.	
§63.6(e)(3)(vi)	Yes.	
§63.6(e)(3)(vii)	Yes.	
§63.6(e)(3)(vii)(A)	Yes.	
§63.6(e)(3)(vii)(B)	Yes	Except the plan shall provide for operation in (B) compliance with §63.1310(j)(4).
§63.6(e)(3)(vii)(C)	Yes.	
§63.6(e)(3)(viii)	Yes.	
§63.6(f)(1)	Yes.	
§63.6(f)(2)	Yes	Except §63.7(c), as referred to in §63.6(f)(2)(iii)(D), does not apply, and except that §63.6(f)(2)(ii) does not apply to equipment leaks subject to §63.1331.
§63.6(f)(3)	Yes.	
§63.6(g)	Yes.	
§63.6(h)	No	Subpart JJJ does not require opacity and visible emission standards.
§63.6(i)(1)	Yes.	
§63.6(i)(2)	Yes.	
§63.6(i)(3)	Yes.	
§63.6(i)(4)(i)(A)	Yes.	
§63.6(i)(4)(i)(B)	No	Dates are specified in §63.1311(e) and §63.1335(e)(3)(i).
§63.6(i)(4)(ii)	No.	
§63.6(i)(5)–(14)	Yes.	
§63.6(i)(15)	No	[Reserved.].
§63.6(i)(16)	Yes.	
§63.6(j)	Yes.	
§63.7(a)(1)	Yes.	
§63.7(a)(2)	No	§63.1335(e)(5) specifies the submittal dates of performance test results for all emission points except equipment leaks; for equipment leaks, compliance demonstration results are reported in the Periodic Reports.
§63.7(a)(3)	Yes.	
§63.7(b)	No	§63.1333(a)(4) specifies notification requirements.
§63.7(c)	No.	

TABLE 1 TO SUBPART JJJ OF PART 63—Continued

[Applicability of general provisions to subpart JJJ affected sources]

Reference	Applies to Subpart JJJ	Explanation
§63.7(d)	Yes.	
§63.7(e)(1)	Yes	Except that all performance tests shall be conducted at maximum representative operating conditions achievable at the time without disruption of operations or damage to equipment.
§63.7(e)(2)	Yes.	
§63.7(e)(3)	No	Subpart JJJ specifies requirements.
§63.7(e)(4)	Yes.	
§63.7(f)	Yes	Except that §63.144(b)(5)(iii)(A) and (B) shall apply for process wastewater. Also, because a site specific test plan is not required, the notification deadline in §63.7(f)(2)(i) shall be 60 days prior to the performance test, and in §63.7(f)(3), approval or disapproval of the alternative test method shall not be tied to the site specific test plan.
§63.7(g)	Yes	Except that the requirements in §63.1335(e)(5) shall apply instead of references to the Notification of Compliance Status report in §63.9(h). In addition, equipment leaks subject to §63.1331 are not required to conduct performance tests.
§63.7(h)	Yes	Except §63.7(h)(4)(ii) is not applicable, because the site-specific test plans in §63.7(c)(2) are not required.
§63.8(a)(1)	Yes.	
§63.8(a)(2)	No.	
§63.8(a)(3)	No	[Reserved.].
§63.8(a)(4)	Yes.	
§63.8(b)(1)	Yes.	
§63.8(b)(2)	No	Subpart JJJ specifies locations to conduct monitoring.
§63.8(b)(3)	Yes.	
§63.8(c)(1)	Yes.	
§63.8(c)(1)(i)	Yes.	
§63.8(c)(1)(ii)	No	For all emission points except equipment leaks, comply with §63.1335(b)(1)(i)(B); for equipment leaks, comply with §63.181(g)(2)(iii).
§63.8(c)(1)(iii)	Yes.	
§63.8(c)(2)	Yes.	
§63.8(c)(3)	Yes.	
§63.8(c)(4)	No	§63.1334 specifies monitoring frequency; not applicable to equipment leaks because §63.1331 does not require continuous monitoring systems.
§63.8(c)(5)–(8)	No.	
§63.8(d)	No.	
§63.8(e)	No.	
§63.8(f)(1)–(3)	Yes.	
§63.8(f)(4)(i)	No	Timeframe for submitting request is specified in §63.1335(f) or (g); not applicable to equipment leaks because §63.1331 (through reference to subpart H) specifies acceptable alternative methods.
§63.8(f)(4)(ii)	No	Contents of requests are specified in §63.1335(f) or (g).
§63.8(f)(4)(iii)	No.	
§63.8(f)(5)(i)	Yes.	
§63.8(f)(5)(ii)	No.	
§63.8(f)(5)(iii)	Yes.	
§63.8(f)(6)	No	Subpart JJJ does not require continuous emission monitors.
§63.8(g)	No	Data reduction procedures specified in §63.1335(d) and (h); not applicable to equipment leaks.
§63.9(a)	Yes.	
§63.9(b)	No	Subpart JJJ does not require an initial notification.
§63.9(c)	Yes.	
§63.9(d)	Yes.	
§63.9(e)	No	§63.1333(a)(4) specifies notification deadline.
§63.9(f)	No	Subpart JJJ does not require opacity and visible emission standards.
§63.9(g)	No.	
§63.9(h)	No	§63.1335(e)(5) specifies Notification of Compliance Status requirements.
§63.9(i)	Yes.	
§63.9(j)	No.	
§63.10(a)	Yes.	
§63.10(b)(1)	No	§63.1335(a) specifies record retention requirements.
§63.10(b)(2)	No	Subpart JJJ specifies recordkeeping requirements.
§63.10(b)(3)	No	§63.1310(b) requires documentation of sources that are not affected sources.
§63.10(c)	No	§63.1335 specifies recordkeeping requirements.
§63.10(d)(1)	Yes.	
§63.10(d)(2)	No	§63.1335(e) specifies performance test reporting requirements; not applicable to equipment leaks.
§63.10(d)(3)	No	Subpart JJJ does not require opacity and visible emission standards.
§63.10(d)(4)	Yes.	

TABLE 1 TO SUBPART JJJ OF PART 63—Continued

[Applicability of general provisions to subpart JJJ affected sources]

Reference	Applies to Subpart JJJ	Explanation
§63.10(d)(5)(i)	Yes	Except that reports required by §63.10(d)(5)(i) may be submitted at the same time as Periodic Reports specified in §63.1335(e)(6). The start-up, shutdown, and malfunction plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.
§63.10(d)(5)(ii)	No.	
§63.10(e)	No	§63.1335 specifies reporting requirements.
§63.10(f)	Yes.	
§63.11	Yes	§63.11(b) specifies requirements for flares used to comply with provisions of this subpart. §63.1333(e) contains the requirements to conduct compliance demonstrations for flares subject to this subpart.
§63.12	Yes	Except that the authority of §63.1332(i) and the authority of §63.177 (for equipment leaks) shall not be delegated to States.
§§63.13–63.15	Yes.	

•The plan and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.

* * * * * * *

TABLE 6 TO SUBPART JJJ OF PART 63

[Known organic HAP emitted from the production of thermoplastic products]

Thermoplastic product/ Subcategory	Organic HAP/chemical name (CAS No.)							
	Acetaldehyde (75–07–0)	Acrylo-nitrile (107–13–1)	1,3 Butadiene (106–99–0)	1,4-Dioxane (123–91–1)	Ethylene Glycol (107–21–1)	Methanol (67–56–1)	Methyl methacrylate (80–62–6)	Styrene (100–42–5)
ABS latex		✔	✔					✔
ABS using a batch emulsion process		✔	✔					✔
ABS using a batch suspension process		✔	✔					✔
ABS using a continuous emulsion process		✔	✔					✔
ABS using a continuous mass process		✔	✔					✔
ASA/AMSAN		✔						✔
EPS								✔
MABS		✔	✔					✔
MBS			✔				✔	✔
Nitrile resin		✔						
PET using a batch dimethyl terephthalate process	✔			✔	✔	✔		
PET using a batch terephthalic acid process	✔			✔	✔			
PET using a continuous dimethyl terephthalate process	✔			✔	✔	✔		
PET using a continuous terephthalic acid process	✔			✔	✔			
PET using a continuous terephthalic acid high viscosity multiple end finisher process	✔			✔	✔			
Polystyrene resin using a batch process								✔
Polystyrene resin using a continuous process								✔
SAN using a batch process		✔						✔
SAN using a continuous process		✔						✔

CAS No. = Chemical Abstract Service Number.
ABS = Acrylonitrile butadiene styrene resin.

ASA/AMSAN = Acrylonitrile styrene resin/alpha methyl styrene acrylonitrile resin.
EPS = expandable polystyrene resin.
MABS = methyl methacrylate acrylonitrile butadiene styrene resin.
PET = poly(ethylene terephthalate) resin.
SAN = styrene acrylonitrile resin.
MBS = methyl methacrylate butadiene styrene resin.

TABLE 7 OF SUBPART JJJ OF PART 63

[Group 1 batch process vents and aggregate batch vent streams—monitoring, recordkeeping, and reporting requirements]

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
Thermal incinerator	Firebox temperature[a]	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average upstream and bed downstream temperatures and the average temperature difference across the catalyst bedmeasured during the performance test—NCS.[c] 3. Record the batch cycle daily average upstream temperature and temperature difference across catalyst bed as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average upstream temperatures that are below the minimum upstream value established in the NCS or operating permit—PR.[d e] 5. Report all batch cycle daily average temperature differences across the catalyst bed that are below the minimum difference established in the NCS or operating permit—PR.[d,e] 6. Report all instances when monitoring data are not collected.[e]
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and where the batch process vents or aggregate batch vent streams are not introduced with or used as the primary fuel.	Firebox temperature[a]	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in § 63.1326(e)(2).[d] 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Flare	Presence of a flame at the pilot light	1. Hourly records of whether the monitor was continuously operating during batch emission episodes, or portions thereof, selected for control and whether a flame was continuously present at the pilot light during said periods. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS.[c] 3. Record the times and durations of all periods during batch emission episodes, or portions thereof, selected for control when all flames at the pilot light of a flare are absent or the monitor is not operating. 4. Report the times and durations of all periods during batch emission episodes, or portions thereof, selected for control when all flames at the pilot light of a flare are absent—PR.[d]
Scrubber for halogenated batch process vents or aggregate batch vent streams (Note: Controlled by a combustion device other than a flare).	a. pH of scrubber effluent, and	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average pH of the scrubber effluent measured during the performance test—NCS.[c] 3. Record the batch cycle daily average pH of the scrubber effluent as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average pH values of the scrubber effluent that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
	b. Scrubber liquid and gas flow rates	1. Records as specified in § 63.1326(e)(1).[b] 2. Record and report the scrubber liquid/gas ratio averaged over the full period of the performance test—NCS.[c]

TABLE 7 OF SUBPART JJJ OF PART 63—Continued

[Group 1 batch process vents and aggregate batch vent streams—monitoring, recordkeeping, and reporting requirements]

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
		3. Record the batch cycle daily average scrubber liquid/gas ratio as specified in §63.1326(e)(2). 4. Report all batch cycle daily average scrubber liquid/gas ratios that are below the minimum value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Absorber[f]	a. Exit temperature of the absorbing liquid, and.	1. Continuous records as specified in §63.1326(e)(1).[b] 2. Record and report the average exit temperature of the absorbing liquid measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit temperature of the absorbing liquid as specified in §63.1326(e)(2) for each batchcycle. 4. Report all the batch cycle daily average exit temperatures of the absorbing liquid that are above the maximum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
	b. Exit specific gravity for the absorbing liquid.	1. Continuous records as specified in §63.1326(e)(1).[b] 2. Record and report the average exit specific gravity measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit specific gravity as specified in §63.1326(e)(2). 4. Report all batch cycle daily average exit specific gravity values that are above the maximum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Condenser[f]	Exit (product side) temperature	1. Continuous records as specified in §63.1326(e)(1).[b] 2. Record and report the average exit temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit temperature as specified in §63.1326(e)(2). 4. Report all batch cycle daily average exit temperatures that are above the maximum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Carbon Adsorber[f]	a. Total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute) during carbon bed regeneration cycle(s), and.	1. Record the total regeneration steam flow or nitrogen flow, or pressure for each carbon bed regeneration cycle. 2. Record and report the total regeneration steam flow or nitrogen flow,or pressure during carbon bed regeneration cycle measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the total regeneration steam flow or nitrogen flow, or pressure is above the maximum value established in the NCS or operating permit—PR.[d e]
	b. Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s).	1. Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s). 2. Record and report the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s) measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the temperature of the carbon bed after regeneration, or within 15 minutes of completing any cooling cycle(s), is above the maximum value established in the NCS or operating permit—PR.[d e]
All control devices	a. Diversion to the atmosphere from the control device or.	1. Hourly records of whether the flow indicator was operating during batch emission episodes, or portions thereof, selected for control and whether a diversion was detected at any time during said periods as specified in §63.1326(e)(3). 2. Record and report the times of all periods during batch emission episodes, or portions thereof, selected for control when emissions are diverted through a bypass line or the flow indicator is not operating—PR.[d]
	b. Monthly inspection of sealed valves.	1. Records that monthly inspections were performed as specified in §63.1326(e)(4)(i).

TABLE 7 OF SUBPART JJJ OF PART 63—Continued

[Group 1 batch process vents and aggregate batch vent streams—monitoring, recordkeeping, and reporting requirements]

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
Absorber, condenser, and carbon Adsorber (as an alternative to the requirements previously presented in this table).	Concentration level or reading indicated by an organic monitoring device at the outlet of the control device.	2. Record and report all monthly inspections that show the valves are in the diverting position or that a seal has been broken—PR.[d] 1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average batch vent concentration level or reading measured during the performance test—NCS.[c] 3. Record the batch cycle daily average concentration level or reading as specified § 63.1326(e)(2). 4. Report all batch cycle daily average concentration levels or readings that are above the maximum value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[b] "Continuous records" is defined in § 63.111.
[c] NCS = Notification of Compliance Status described in § 63.1335(e)(5).
[d] PR = Periodic Reports described in § 63.1335(e)(6).
[e] The periodic reports shall include the duration of periods when monitoring data are not collected as specified in § 63.1335(e)(6)(iii)(C).
[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.

* * * * * * *

TABLE 9 OF SUBPART JJJ OF PART 63

[Routine reports required by this subpart]

Reference	Description of report	Due date
§ 63.1335(b) and subpart A	Refer to Table 1 and subpart A	Refer to subpart A.
§ 63.1335(e)(3)	Precompliance Report[a]	Existing affected sources—December 19, 2000. New affected sources—with application for approval of construction or reconstruction.
§ 63.1335(e)(4)	Emissions Averaging Plan	September 19, 2000.
§ 63.1335(e)(4)(iv)	Updates to Emissions Averaging Plan	120 days prior to making the change necessitating the update.
§ 63.1335(e)(5)	Notification of Compliance Status[b]	Within 150 days after the compliance date.
§ 63.1335(e)(6)	Periodic Reports	Semiannually, no later than 60 days after the end of each 6-month period. See § 63.1335(e)(6)(i) for the due date for the first report.
§ 63.1335(e)(6)(xi)	Quarterly reports for Emissions Averaging	No later than 60 days after the end of each quarter. First report is due with the Notification of Compliance Status.
§ 63.1335(e)(6)(xii)	Quarterly reports upon request of the Administrator.	No later than 60 days after the end of each quarter.
§ 63.1335(e)(7)(i)	Storage Vessels Notification of Inspection	At least 30 days prior to the refilling of each storage vessel or the inspection of each storage vessel.
§ 63.1335(e)(7)(ii)	Requests for Approval of a Nominal Control Efficiency for Use in Emissions Averaging.	Initial submittal is due with the Emissions Averaging Plan specified in § 63.1335(e)(4)(ii); later submittals are made at the discretion of the owner or operator as specified in § 63.1335(e)(7)(ii) (B).
§ 63.1335(e)(7)(iii)	Notification of Change in the Primary Product	1. For notification under § 63.1310(f)(3)(ii)—notification submittal date at the discretion of the owner or operator.[c] 2. For notification under § 63.1310(f)(4)(ii)—within 6 months of making the determination.

[a] There may be two versions of this report due at different times; one for equipment subject to § 63.1331 and one for other emission points subject to this subpart.
[b] There will be two versions of this report due at different times; one for equipment subject to § 63.1331 and one for other emission points subject to this subpart.
[c] Note that the TPPU remains subject to this subpart until the notification under § 63.1310(f)(3)(i) is made.

[FR Doc. 01–17333 Filed 7–13–01; 8:45 am]
BILLING CODE 6560–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7007–1]

National Oil and Hazardous SubstancesPollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final deletion of the Red Penn Landfill Site from the National Priorities List (NPL).

SUMMARY: EPA Region 4 announces the deletion of the Kentucky Red Penn Landfill Site (site) from the NPL and requests public comment on this action. The NPL constitutes appendix B to Part 300 of the National and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. The EPA has determined that the site poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, no further remedial measures pursuant to CERCLA are warranted.

DATES: This "direct final" action will be effective on September 14, 2001 unless EPA receives significant adverse or critical comments by August 15, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Femi Akindele, Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303, or by email to *akindele.femi@epa.gov*. Comprehensive information on this site is available through the public docket which is available for viewing at the site information repositories at the following locations: U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; and the South Oldham Library, 6720 W. Highway 146, Crestwood, Kentucky 40014, telephone number (270) 247–2911.

FOR FURTHER INFORMATION: Contact Femi Akindele, Project Manager, U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303, telephone (404) 562–8809, fax number(404) 562–8788, email address: *akindele.femi@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion
V. Action
VI. State Concurrence Statement

I. Introduction

The U.S. EPA, Region 4, announces the deletion of the Red Penn Landfill Superfund Site, Oldham County, Kentucky, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL for these sites. EPA has determined that the Red Penn Site *does not* pose a significant risk to human health or the environment. EPA will accept public comments for thirty days after publication of this notice in the **Federal Register**.

Sections II and III of this notice describe the criteria for deleting sites from the NPL and the procedure used for the intended deletion of the Red Penn Site. Section IV summarizes the history of Red Penn and explains how the site meets EPA deletion criteria. Section V provides a summary statement on the current action of deleting the site from the NPL subject to any dissenting comments received during the comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or re-categorized on the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response action required;

(ii) All appropriate fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) Remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, no remedial measures are needed.

In the case of the Red Penn Site, EPA's remedial investigation and subsequent groundwater monitoring conducted by the state indicated that the site did not pose a significant threat to public health or the environment, and, therefore, no Superfund remedial measures were justifiable. However, pursuant to State solid waste law, the landfill required proper closure to prevent deterioration and threat to human health and the environment. Therefore, the responsible parties implemented an appropriate response action by installing a landfill cap at the site under the State's authority and supervision. Nevertheless, EPA may initiate any necessary remedial action in the future if new information so indicates. In accordance with the NCP (40 CFR § 300.425(e)(3)), whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System (HRS).

III. Deletion Procedures

The following procedures were used for the intended deletion of the site:(1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate; (2) The Commonwealth of Kentucky has concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Direct Final Deletion; and, (4) All relevant documents have been made available for public review in the local site information repository. EPA is requesting only dissenting comments on this proposed action to delete.

EPA's Regional Office will accept and evaluate public comments on EPA's Final Notice before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary, responding to each significant comment submitted during the public comment period. If no dissenting comments are received, no further activities will be implemented and this "direct final" action will become effective. Deletion of the site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for information purposes and to assist EPA management. As mentioned in Section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

IV. Basis for Intended Site Deletion

The following site summary provides EPA's rationale for the proposal to

delete the Red Penn Landfill Site from the NPL.

The Red Penn Landfill is located approximately 1.5 miles southeast of Pewee Valley in Oldham County, Kentucky. Shelby County lies to the east and southeast of the site, and Jefferson County lies to the south and southwest. Floyds Fork Creek bounds the property on the east and southeast sides while an unnamed creek tributary, which runs along Kentucky State Route 362, forms the southwest boundary. Hawley Gibson Road forms the northwest property boundary.

The landfill was operated as an unlined waste disposal facility between 1954 and late 1986. Although, the facility was permitted by the local authority to accept only sanitary waste, the operators allowed industrial wastes to be placed in the landfill. Paint waste, sludge, drawing solution from copper wire curing, and scrap varnish were some of the materials found in drums which were buried in the landfill. The Kentucky Division of Waste Management (KDWM) discovered that the landfill operator accepted unauthorized wastes which were potentially hazardous at the facility in 1986, and ordered that the wastes be removed and disposed of at appropriate locations. Approximately 154 tons of hazardous materials and contaminated soil were removed under the order. Additional waste removal required of the operators were never conducted and when the facility was shut down by KDWM in 1987, for improper operations and violation of permit requirements, it was not properly closed.

The site was scored by KDWM in 1987, after the results of a preliminary assessment and site investigation indicated that surface water and groundwater in the area could be affected adversely by the site. A major source of drinking water in the area is the Laurel aquifer which is exposed at the landfill and the Floyds Fork Creek is used locally for recreational fishing. On the basis of high hazard ranking system results, the site was listed on the NPL by EPA in 1989. Following the listing, a fund-lead remedial investigation was conducted on the site. After a careful evaluation of all exposure routes, estimated carcinogenic and non-carcinogenic health risks, and ecological impacts, EPA concluded in 1993, that the landfill does not pose an unacceptable risk to human health and the environment. However, because the landfill was not properly closed, EPA advised KDWM to ask the responsible parties to implement an appropriate corrective action at the site. As planned by EPA and KDWM, the Record of Decision indicating no further EPA action at the site was issued in September 2000, to coincide with the completion of the necessary corrective action.

The responsible parties submitted a draft scope of work for a landfill cap to KDWM in 1994. The proposal was finalized in 1998. KDWM and the responsible parties signed an Agreed Order in August 1999, requiring the responsible parties to design and install an approved cap on the landfill. The cap design included landfill regrading, installation of a geosynthetic clay liner and clean dirt, grass planting, and site monitoring. Construction of the cap was completed in September 2000, under KDWM supervision. The final inspection conducted by KDWM in October 2000, concluded that the corrective action implemented at the site was satisfactory.

V. Action

In view of the satisfactory completion of the corrective action taken by the responsible parties at the Red Penn Site, EPA notified the Commonwealth of Kentucky on April 5, 2001, of the intent to delete the site from the NPL. In its letter of April 15, 2001, the Commonwealth concurred that no further CERCLA action is necessary at the site and that the deletion action is appropriate. The site does not pose a threat to human health and the environment and it continues to be monitored by the responsible parties under state authority. In the event of a significant future release of contamination that may impact human health or the environment, EPA may initiate appropriate CERCLA actions in accordance with the NCP.

VI. State Concurrence

As stated above, the Commonwealth of Kentucky, in a letter dated April 15, 2001, concurred with EPA that the criteria for deletion of the NPL listing have been met. Therefore, EPA is deleting the Red Penn Landfill Site from the NPL, effective on June 29, 2001. However, if EPA receives dissenting comments by June 28, 2001, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous wastes, Intergovernmental relations, Penalties, Superfund, Water pollution control, Water supply.

Dated: May 14, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, U.S. EPA Region 4.

Part 300, title 40 of Chapter I of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the listing under Kentucky for the "Red Penn Sanitation Co. Landfill".

[FR Doc. 01–17557 Filed 7–13–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7765]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Ed Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street,

SW., Room 429,Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current Effective Map Date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Massachusetts: Holbrook, town of Norfolk County.	255212	July 31, 1970, Emerg.; January 2, 1976, Reg July 5, 2001.	July 5, 2001	July 5, 2001.
Region III				
Pennsylvania: Buffalo, township of, Butler County.	421416	July 7, 1975, Emerg.; January 18, 1984, Reg. July 5, 2001.	.....do	Do.
Virginia: Purcellville, town of, Loudoun County.	510231	July 30, 1976, Emerg.; November 15, 1989, Reg. July 5, 2001.	.....do	Do.
Region II				
New Jersey:				
Chatham, borough of Morris County	340338	January 28, 1972, Emerg.; February 14, 1976, Reg. July 19, 2001.	July 19, 2001. ...	July 19, 2001.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current Effective Map Date	Date certain Federal assistance no longer available in special flood hazard areas
Chatham, township of, Morris County ...	340504	April 22, 1975, Emerg.; May 15, 1980, Reg. July 19, 2001.	.....do	Do.
Frenchtown, borough of, Hunterdon County.	340234	January 15, 1974, Emerg.; March 16, 1981, Reg. July 19, 2001.	.....do	Do.
Phillipsburg, borough of, Warren County.	340493	January 28, 1972, Emerg.; January 16, 1981, Reg. July 19, 2001.	.....do	Do.
Region V				
Ohio:				
Brooklyn Heights, village of, Cuyahoga County.	390101	May 16, 1975, Emerg.; June 15, 2981, Reg. July 19, 2001.	.....do	Do.
Cuyahoga Heights, village of, Cuyahoga County.	390654	June 18, 1976, Emerg.; June 15, 1981, Reg. July 19, 2001.	.....do	Do.
Glouster, village of, Athens County	390018	July 18, 1975, Emerg.; July 19, 2001	.....do	Do.
Independence, city of, Cuyahoga County.	390111	July 22, 1975, Emerg.; February 18, 1981, Reg. July 19, 2001.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: July 3, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance, Administration and Mitigation.

[FR Doc. 01–17640 Filed 7–13–01; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1538; MM Docket No. 01–63; RM–10075]

Radio Broadcasting Services; Kingman and Dolan Springs, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed on behalf of Hualapai Broadcasters, Inc., licensee of Station KRCY(FM), Kingman, Arizona, the Commission substitutes Channel 224C for Channel 224C1 at Kingman, reallots Channel 224C to Dolan Springs, Arizona, as that community's second local aural transmission service, and modifies the license for Station KRCY(FM) accordingly pursuant to the provisions of Section 1.420(i) of the Commission's Rules. *See* 66 FR 14871, March 14, 2001. Coordinates used for Channel 224C at Dolan Springs 35–35–31 NL and 114–16–21 WL

DATES: Effective August 13, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–63, adopted June 20, 2001, and released June 29, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 224C at Dolan Springs and by removing Channel 224C1 at Kingman.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17635 Filed 7–13–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1543; MM Docket No. 00–159; RM–9889]

Radio Broadcasting Services; Thermopolis and Story, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Legend Communications of Wyoming, L.L.C. (formerly Idaho Broadcasting Consortium, Inc.), substitutes Channel 252C1 for Channel 252C2 at Thermopolis, Wyoming, reallots Channel 252C1 from Thermopolis to Story, Wyoming, and modifies Station KHWC(FM)'s construction permit accordingly. *See* 65 FR 55930, September 15, 2000. Channel 252C1 can be reallotted to Story in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The reference coordinates for Channel 252C1 at Story are 44–34–28 North Latitude and 106–52–14 West Longitude.

DATES: Effective August 13, 2001.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–159, adopted June 20, 2001, released June 29, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center

(Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Story, Channel 252C1; and by removing Channel 252C2 at Thermopolis.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17665 Filed 7–13–01; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 66, No. 136
Monday, July 16, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AB84

General Administrative Regulations; Submission of Policies, Provisions of Policies, and Rates of Premium

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the procedures for the submission of policies, plans of insurance, or other rates or premium by insurance companies, or other persons or entities, to the FCIC Board of Directors (Board) for approval for reinsurance and subsidy under section 508(h) of the Federal Crop Insurance Act (Act) (7 U.S.C. 1501 *et seq.*).

This rule will prescribe the respective roles and responsibilities of FCIC and the submitter. This rule also prescribes guidelines for the timing, content, and approval process for policies, plans of insurance, and rates of premium submitted under section 508(h) of the Act. In addition, this rule establishes requirements and guidelines for the reimbursement of research and development costs and maintenance costs for such submissions approved by the Board, and the payment of fees by insurance companies after the maintenance period has expired. For submissions approved by the Board prior to publication of this regulation, applicants may either submit documentation of research and development costs or use a formula method to determine the amount of the research and development reimbursement. The formula presented in this regulation is an objective measurement using the average number of policies per year earning premium from inception of the product to the time this regulation is published times $7 with the result of this calculation adjusted for scope and complexity, as required by legislation. The $7 was determined by using estimated product development costs with the intent to provide research and development cost reimbursement on an equitable basis considering the sales life cycle to date and market penetration. This rule also provides guidelines for non-reinsured supplemental policies to be submitted to FCIC for review in accordance with the Standard Reinsurance Agreement (SRA).

DATES: Written comments and opinions on this proposed rule will be accepted until close of business August 15, 2001 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through September 14, 2001.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133. Comments titled "General Administrative Regulation; Submission of Policies, Provisions of Policies, and Rates of Premium" may be sent via the Internet to: DirectorPDD@rm.fcic.usda.gov. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Timothy Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–3707.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is significant for the purpose of Executive Order 12866 and, therefore, it has been reviewed by OMB.

Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection and record keeping requirements included in the proposed rule have been submitted for approval to OMB. Please submit written comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Comments are being solicited from the public concerning this proposed information collection and record keeping requirements. This outside input will help:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission responses.)

Title: General Administrative Regulation; Submission of Policies, Provisions of Policies, and Rates of Premium.

Abstract: This rule revises guidelines for the submission of policies or other material to the Board under section 508(h) of the Act. In accordance with section 508(h) of the Act, this rule establishes the process for the submission of policies, plans of insurance, and rates of premium, the deadlines for the review and approval process by the Board, and the respective roles and responsibilities of FCIC and the submitter related to the submission. This rule specifies information that must be included in a new or revised submission and the format it must be in to be considered for Board approval. This rule establishes requirements and guidelines for the reimbursement of research and development costs and maintenance costs for such submissions approved by the Board and the payment of fees by insurance companies after the

maintenance period has expired. It also requires non-reinsured supplemental policies developed by companies reinsured by FCIC to be submitted to FCIC for review in accordance with provisions contained in the Standard Reinsurance Agreement (SRA).

Purpose: To amend 7 CFR part 400 by revising subpart V.

Burden statement: This proposed rule is needed to ensure that the Board receives complete submissions that are ready for review and approval. It also ensures the fair and equitable distribution of limited funds for research and development costs and maintenance costs. This proposed rule will ensure an effective, orderly, and efficient crop insurance marketplace, and that the Federal crop insurance program is delivered to all producers in a manner that does not unfairly discriminate among producers or insurance companies.

The burden associated with this rule, with the exception of reading the rule, is in the development and submission of a policy, revision to a policy or rates of premium for any policy or plan authorized under the Act. FCIC estimates that annually 75 people (excluding Federal employees) will spend 2 hours reading this document for a total of 150 hours (75 × 2 = 150). FCIC estimates people in 14 positions (marketing manager, computer manager, financial manager, technical writer, actuary, accountant, lawyer, economist, computer programmer, underwriter, paralegal, marketing researcher, statistician, and office assistant) will respond for a total of 210 respondents (14 positions × 15 submissions = 210). FCIC estimates 105 annual responses (15 × 7 = 105) due to 15 applicants completing seven objectives (preparing the submission, modifying the submission, corresponding with the Board, preparation and presentation to the Board, responding to issues, negotiating agreements, costs and fees and maintenance of approved products). To determine approximate annual burden hours, FCIC estimates 15 entities will prepare a submission (applicants) and will spend the following amount of time for each of the seven objectives: (1) Preparing and submitting the submission—22,500 hours (15 applicants × 1,500 hours = 22,500); (2) Modifying submission prior to Board approval—15,000 hours (15 applicants × 1,000 hours = 15,000); (3) Preparation of correspondence between Board and applicant—150 hours (15 applicants × 10 hours = 150); (4) Preparation and presentation of the submission to the Board—600 hours (15 applicants × 40 hours = 600 hours); (5) Responding to procedural, policy, and data automation issues subsequent to Board approval—15,000 hours (15 applicants × 1,000 hours = 15,000); (6) Negotiation of agreements, costs and fees—600 hours (15 applicants × 40 hours); and (7) Maintenance of approved products—3,000 hours (15 applicants × 200 hours = 3,000).

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 543 hours per response.

Respondents: Insurance Companies, insureds, insurance agents, and other persons or entities who may wish to submit policies or policy provisions to the Board for approval.

Estimated Annual Number of Respondents: 210.

Estimated Annual Number of Responses Per Respondent: 0.5.

Estimated Annual Number of Responses: 105.

Estimated Total Annual Burden of Respondents: The total public burden for this proposed rule is estimated at 57,000 hours.

Record keeping requirements: FCIC requires records to be kept for three years, and all records required by FCIC are retained as part of the normal business practice. Therefore, FCIC is not estimating additional burden related to record keeping.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. Additionally, the regulation does not require any greater action on the small entities than is required on the part of large entities. The amount of work required of the insurance companies will not increase because the information must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 or 7 CFR 400.169, as applicable, must be exhausted before any action for judicial review of any determination or action by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC makes available standard policies and forms for producers to insure certain crops against various agricultural production risks and perils. Under the provisions of section 508(h) of the Act (7 U.S.C. 1501 et seq.), any person may submit or propose other crop insurance policies, plans of insurance, provisions of policies, or rates of premium. These policies may be submitted without regard to limitations contained in the Act.

The Act requires that FCIC issue regulations to establish guidelines for the submission and Board review of policies or other material submitted to the Board under the Act. This rule prescribes guidelines for the timing, content, approval process, and the reimbursement for research and development costs and maintenance costs, and potential use fees for such submissions. This rule also clarifies the roles and responsibilities of FCIC and the submitter with respect to the submission. This rule also provides guidelines for non-reinsured supplemental policies to be submitted to FCIC for review in accordance with the SRA.

List of Subjects in 7 CFR Part 400

Administrative practice and procedures, Crop insurance.

Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 400 by revising Subpart V to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart V—Submission of Policies, Provisions of Policies and Rates of Premium

Sec.

400.700 Basis, purpose, and applicability.
400.701 Definitions.
400.702 Confidentiality of submission and duration of confidentiality.
400.703 Timing of submission.
400.704 Type of submission.
400.705 Contents of submission for a new submission or changes to a previously approved submission.
400.706 Review of submission.
400.707 Presentation to the Board for approval or disapproval.
400.708 Approved submission.
400.709 Roles and responsibilities.
400.710 Preemption and premium taxation.
400.711 Right of review, modification, and the withdrawal of reinsurance.
400.712 Research and development reimbursement, maintenance reimbursement, and use fees.
400.713 Non-reinsured supplemental (NRS) policy

Authority: 7 U.S.C. 1506(1), 1506(p).

Subpart V—Submission of Policies, Provisions of Policies and Rates of Premium.

§ 400.700 Basis, purpose, and applicability.

This subpart v establishes guidelines for the submission of policies, plans of insurance, and rates of premium to the Board under section 508(h) of the Act and for non-reinsured supplemental policies in accordance with the SRA, and the roles and responsibilities of FCIC and the applicant. It also specifies the procedures for requesting reimbursement for research and development and maintenance costs for products and the approval process.

§ 400.701 Definitions.

Act. The Federal Crop Insurance Act, as amended (7 U.S.C. 501 et seq.)

Actuarial documents. The forms and associated materials applicable to a crop or insurance year, which are available for public inspection in an agent's office and FCIC's website at www.act.fcic.usda.gov. These materials show the insurable acreage or commodities, the applicable guarantees, coverage levels, premium rates, insurable cropping practices common to the area, and other related information regarding crop insurance or other risk management plans of insurance in the county or state.

Actuarially appropriate. Premium rates determined to cover the anticipated loss and a reasonable reserve based on valid reasoning, an examination of all known risk data, and founded on thorough knowledge or experience of the expected value of all future costs associated with a risk transfer.

Administrative and operating (A&O) subsidy. An amount for expenses associated with selling and servicing insurance products authorized by the Act and paid by FCIC on behalf of the producer to approved insurance providers.

Applicant. Any person or entity that submits a policy, provisions of a policy, or premium rates to the Board for approval under section 508(h) of the Act.

Approved insurance provider. A private insurance company that has been approved by FCIC to provide insurance coverage to producers participating in programs authorized by the Act.

Board. The Board of Directors of FCIC.

Complexity. Complexity takes into consideration such factors as originality, the number and type of factual determinations necessary to establish insurable interest, evaluate risk, and determine whether an indemnity is payable, the number of commodities and areas to which the product is applicable, the rating methodology, the number of risks covered, and any unique policy provisions or endorsements, the delivery process of the submission, and the process of creating rules, policy terms and conditions, underwriting procedures, rating methodologies, administrative and operating procedures, and supporting materials.

Development. The process of creating rules, methodologies, administrative and operating procedures, supporting materials, and documentation necessary to submit, gain approval, and implement a proposed policy or coverage.

Endorsement. A document appended to a policy reinsured under the Act that supplements or amends the insurance coverage of that policy.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

Maintenance. The process of continual support and improvement, as needed, for a policy or plan of insurance, including the periodic review of setting prices, updating premium rates or the rating methodology, updating or modifying policy terms and conditions, expanding into new commodities and areas, and other measures necessary to assure financial viability and actuarial soundness or to respond to statutory or regulatory changes.

Maintenance costs. Specific itemized expenses associated with the maintenance of a policy during the maintenance period.

Maintenance period. A period of time that begins on the date the Board approves the submission and ends on the date that is not later than four reinsurance years after the date of Board approval.

Manager. The Manager of FCIC.

Marketability. A measure of the acceptability of a policy as reflected by percent of market penetration of the identified target market.

Marketing plan. A detailed, written plan that identifies, at a minimum, the expected number of potential buyers, premium, and liability and the data upon which such information is based.

Multiple Peril Crop Insurance (MPCI). All insurance policies reinsured by FCIC.

National Agricultural Statistics Service (NASS). An agency of the United States Department of Agriculture, or a successor agency.

Non-reinsured supplemental policy (NRS). A policy, endorsement or other risk management tool that is developed by an approved insurance provider, or an entity affiliated in some manner with an approved insurance provider, that offers coverage for commodities in addition to coverage available under a policy or plan of insurance that is reinsured by FCIC. This policy,

endorsement or other risk management tool has not been submitted under 508(h) for FCIC approval for reinsurance.

Non-significant changes. Minor changes to the policy or plan of insurance, such as technical corrections, that do not affect the rating or pricing methodologies, the amount of subsidy owed, the amount of coverage, the interests of producers, FCIC's reinsurance risk, or any condition that may affect liability or the amount of loss to be paid under the policy. This includes any changes due to statutory or regulatory requirements.

Policy. A contract for insurance that includes an application, basic provisions, applicable commodity provisions, other applicable options and endorsements, the actuarial documents for the insured commodity, and related materials.

Plan of insurance. A class of policies, such as MPCI or Crop Revenue Coverage, that offer a specific type of coverage to one or more agricultural commodities.

Rate of premium. The dollar amount per insured unit or percentage rate per dollar of liability that is needed to pay anticipated losses and provide a reasonable reserve.

Related materials. The actuarial documents, special provisions, and any underwriting or loss adjustment manuals, handbooks, forms or other materials.

Research. The processes used to determine the need, producer interest, marketability, and feasibility of a proposed policy, plan of insurance or rate of premium.

Research and development costs. Specific expenses incurred and directly related to research and development of a submission approved by the Board.

Revenue insurance. Plans of insurance providing protection against loss of income or change in price.

Risk Management Agency (RMA). An agency of The United States Department of Agriculture, responsible for the administration of all programs authorized under the Federal Crop Insurance Act and other authorities.

Risk subsidy. The portion of the approved premium paid by FCIC on behalf of the insured person.

Sales closing date. The final calendar date on which an approved insurance provider may accept an application by a producer for insurance.

Secretary. The Secretary of the United States Department of Agriculture.

Significant change. Any change to the policy or plan of insurance that may affect the rating and pricing methodologies, the amount of subsidy owed, the amount of coverage, the interests of producers, FCIC's reinsurance risk, or any condition that may affect liability or the amount of loss to be paid under the policy.

Special Provisions. The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area.

Submission. A policy, plan of insurance, provision of a policy or plan of insurance, or rates of premium provided by an applicant to FCIC in accordance with the requirements of this subpart.

USDA. The United States Department of Agriculture.

Use fees. Fees, approved by the Board, that can be charged to approved insurance providers for use of a policy or plan of insurance.

§ 400.702 Confidentiality of submission and duration of confidentiality.

(a) Prior to approval by the Board, any submission made to the Board under section 508(h) of the Act, including any information generated from the submission, will be considered confidential commercial or financial information for purposes of 5 U.S.C. 552(b)(4) and will not be released by FCIC to the public, unless the applicant authorizes such release in writing.

(b) Once the Board approves a submission, all information provided with the submission, or generated in the approval process, may be released to the public, including any mathematical modeling and data, unless it remains confidential business information under 5 U.S.C. 552(b).

(c) Any submission disapproved by the Board will remain confidential commercial or financial information in accordance with 5 U.S.C. 552(b) and no information related to such submission will be released by FCIC unless authorized in writing by the applicant.

§ 400.703 Timing of submission.

Any submission must be received by the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133–4676, not later than 180 days prior to the earliest proposed sales closing date to be considered for sale in the requested crop year.

§ 400.704 Type of submission.

(a) An applicant may submit to the Board in accordance with section 400.705:

(1) A policy or plan of insurance not currently reinsured by FCIC;

(2) One or more proposed revisions to a policy or plan authorized under the Act; or

(3) Rates of premium for any policy or plan authorized under the Act.

(b) An applicant must submit to the Board any significant change to a previously approved submission prior to making the change.

§ 400.705 Contents of submission for a new submission or changes to a previously approved submission.

A complete submission must contain the following material, as applicable, in the order given, and be contained in a 3-ring binder, with section dividers clearly labeling each section. The entire submission must be included in an electronic format acceptable to RMA. Six identical copies of each submission must be sent to the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133–4676, and also provide one identical copy of each submission to the Administrator, Risk Management Agency, 1400 Independence Ave., Stop 0801, Room 3053 South Building, Washington, D.C. 20250–0801.

(a) The first section will contain general information, including, as applicable:

(1) The applicant's name, address or primary business location, phone number, and e-mail address;

(2) The type of submission (see § 400.704);

(3) A statement of whether the applicant is requesting:

(i) Reinsurance;

(ii) Risk subsidy and A&O subsidy; and,

(iii) Reimbursement for research and development; or

(iv) Reimbursement for maintenance.

(4) The proposed agricultural commodities, including types, varieties, and practices covered by the submission;

(5) The crop and reinsurance years in which the submission is proposed to be available for purchase by producers;

(6) The proposed sales closing date;

(7) The proposed duration and scope of the plan of insurance;

(8) A marketing plan;

(9) Any known or anticipated future expansion plans;

(10) Identification, including names, addresses, telephone numbers, and e-mail addresses, of the persons responsible for:

(i) Addressing questions regarding the policy, underwriting rules and procedures, rate and price methodologies, data processing and record keeping requirements, and any other questions that may arise in administering the program after it is approved; and

(ii) Annual reviews to ensure compliance with all requirements of the Act, this subpart, and any agreements executed between the applicant and FCIC.

(11) A statement whether the submission will be filed with the applicable office responsible for regulating insurance in each state proposed for insurance coverage, and, if not, reasons why the submission will not be filed for review.

(b) The second section must contain the benefits of the plan, including, as applicable a statement about the plan that demonstrates:

(1) How the submission offers coverage or other benefits not currently available from existing public and private programs.

(2) The demand for the submission, which must be supported by information from market research, producers or producer groups, agents, lending institutions, and other interested parties that provide verifiable evidence of demand; and

(3) How the submission meets public policy goals and objectives consistent with the Act and other laws, as well as policy goals supported by USDA and the Federal Government.

(c) The third section must contain the policy, including, as applicable:

(1) If the submission involves a new insurance policy or plan of insurance:

(i) All applicable policy provisions; and,

(ii) A list and description of any additional coverage that may be elected by the insured, including how such coverage may be obtained.

(2) If the submission involves a change to a previously approved policy, plan of insurance, or rates of premium, the proposed revisions, rationale for each change, data and analysis supporting each change, the impact of each change, and the impact of all changes in aggregate.

(d) The fourth section must contain the information related to the marketing of the policy or plan of insurance, including, as applicable:

(1) A list of states and counties where the submission is proposed to be offered;

(2) The amount of commodity (acres, head, board feet, etc.) and the amount of production and the value of each agricultural commodity proposed to be covered in each proposed county and state;

(3) The expected liability and premium for each proposed county and state;

(4) If available, any insurance experience for each year and in each proposed county and state in which the policy has been offered for sale including an evaluation of the policy's performance and, if data are available, a comparison with other similar insurance policies reinsured under the Act; and

(5) The projected insurance experience expected if the proposed submission is approved.

(e) The fifth section must contain the information related to the underwriting of the submission, including, as applicable:

(1) A sample of each document that will be used to present and sell the product;

(2) Detailed rules for determining insurance eligibility, including all producer reporting requirements;

(3) Relevant dates, if not included in the proposed policy;

(4) Detailed examples of the data and calculations needed to establish the insurance guarantee, liability, and premium per acre or other unit of measure, including worksheets that provide the calculations in sufficient detail and in the same order as presented in the policy to allow verification that the premiums charged for the coverage are consistent with policy provisions;

(5) A detailed example of calculations used to determine a claim for indemnity for each unique situation in which a loss may be payable;

(6) A detailed description of the causes of loss covered by the policy or plan of insurance and any causes of loss excluded; and

(7) Any statements to be included in the actuarial documents.

(f) The sixth section must contain the information related to prices and the rates of premium, including, as applicable:

(1) A list of all assumptions made in the premium rating and commodity pricing methodologies, and the basis for these assumptions;

(2) A detailed description of the pricing and rating methodologies, including supporting documentation, all mathematical formulas, equations, and data sources used in determining rates and prices and an explanation of premium components that detail how rates were determined for each component, that demonstrate the rate is appropriate;

(3) An example of a rate calculation and an example of a price calculation;

(4) A discussion of the reliability of the data; and

(5) An analysis of the results of simulations or modeling showing the performance of proposed rates and commodity prices, as applicable, based on one or more of the following (Such simulations must use all years of experience available to the applicant):

(i) A recalculation of total premium and losses compared to a similar or comparable insurance plan offered under the authority of the Act with modifications, as needed, to represent the components of the submission;

(ii) A simulation based on the probability distributions used to develop the rates and commodity prices, as applicable, including sensitivity tests that demonstrate price or yield extremes, and the impact of inappropriate assumptions; or

(iii) Any other comparable simulation that provides results indicating both aggregate and individual performance of the submission under various scenarios depicting good and poor actuarial experience.

(g) The seventh section must contain an evaluation and certification from an accredited associate or fellow of the Casualty Actuarial Society, or other similarly qualified professional, that certifies the submission is actuarially appropriate and consistent with appropriate insurance principles and practices.

(h) The eighth section must contain all forms applicable to the submission, including:

(1) An application for insurance and procedures for accepting the application; and

(2) All applicable policy forms, instructions and procedures that are necessary to establish the amounts of coverage or loss.

(i) The ninth section must contain the following;

(1) A statement agreeing that sales will be deferred until the next applicable sales closing date if policy information, forms, premium rates, prices, any automated premium calculator, and other related information or documents are not made available to all approved insurance providers:

(i) For a new submission, at least 60 days prior to the earliest sales closing date specified in the submission; or

(ii) For a revised submission, at least 60 days prior to the earliest contract change date specified in the submission;

(2) An explanation of any provision of the policy not authorized under the Act and identification of the portion of the rate of premium due to these provisions;

(3) Agent and loss adjuster training plans; and

(4) A certification from the applicant's legal counsel that the submission meets and complies with all requirements of the Act, applicable regulations, and any reinsurance agreement.

(j) The tenth section must contain the documents that demonstrate the

submission complies in all respects with the standards established for processing and acceptance of data as specified in the FCIC Data Acceptance System Handbook (Manual 13), unless other arrangements have been made with RMA. This handbook is available from the Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133–4676 or on the FCIC web site (http://www.rma.usda.gov/data/#m13).

(k) The eleventh section must contain the information related to a request for reimbursement of research and development costs, and maintenance costs, as applicable, in accordance with § 400.712.

§ 400.706 Review of submission.

(a) Prior to providing any submission, including a new submission, a resubmission, or a change to a previously approved submission, to the Board for its review, RMA will:

(1) Review the submission for completeness to determine if all necessary and appropriate documentation is included in accordance with § 400.705;

(2) Review the submission to determine whether the documentation is of a level of quality to conduct a meaningful review by the Board;

(3) If the submission is determined to be complete and the documentation of sufficient quality to permit a meaningful review, acknowledge receipt of the submission. The date on this acknowledgment will be considered the date that the submission was received by the Board and commence the period in which the submission must be approved or disapproved by the Board;

(4) Return to the applicant a submission lacking any of the information required in section 400.705, or with documentation of insufficient quality to permit a meaningful review. (Such submission will not be considered as received by the Board for the purpose of commencing the period by which the submission must be approved or disapproved by the Board. If the submission is resubmitted, it will be considered a new submission.);

(b) When FCIC determines that the submission is complete and the documentation of sufficient quality to permit a meaningful review, it will forward the submission to the Board for consideration of approval or disapproval.

(c) Prior to considering the submission, the Board will:

(1) For all new submissions or significant changes to previously approved submissions, contract with five independent persons with underwriting or actuarial experience to review the submission:

(i) Of the five reviewers, no more than one will be employed by the Federal Government, and none may be employed by any approved insurance provider or their representatives; and

(ii) The reviewers will determine if the submission protects the interests of agricultural producers and taxpayers, is actuarially appropriate, follows appropriate insurance principles, meets the requirements of the Act, does not contain excessive risks, follows sound, reasonable, and appropriate underwriting principles, as well as other items the Board deems necessary;

(2) For all submissions:

(i) Request review by FCIC to determine whether the submission protects the interests of agricultural producers and taxpayers, is actuarially appropriate, follows appropriate insurance principles, meets the requirements of the Act, does not contain excessive risks, is consistent with USDA's public policy goals, does not increase or shift risk to any other FCIC reinsured policy, can be administered and delivered efficiently and effectively, and meets the standards pursuant to section 400.712 for reimbursement of research and development costs and maintenance costs, if requested, and determine whether the requested amount of government reinsurance, risk subsidy, and administrative and operating subsidies is reasonable and appropriate for the type of coverage provided by the policy submission; and

(ii) Seek review from the Office of the General Counsel (OGC) to determine whether the interests of producers are adequately protected and if the submission conforms to the requirements of the Act.

(3) Render a decision to approve or give notice of an intent to disapprove within 90 days after the submission is considered received by the Board in accordance with paragraph (a)(3) of this section, unless the applicant and Board negotiate a time delay in accordance with paragraph (h) of this section.

(d) All comments and evaluations will be forwarded to the Board by a date determined to allow the Board adequate time for review and consideration of approval or disapproval.

(e) The Board will consider all comments, evaluations, and recommendations in its review process. Prior to making a decision, the Board may request additional information from RMA, OGC, the independent reviewers, or the applicant.

(f) The Board may disapprove a submission if it determines that:

(1) The interests of producers are not protected;

(2) The premium rates are not actuarially appropriate;

(3) The submission does not conform to sound insurance and underwriting principles;

(4) The risks associated with the submission are excessive; or

(5) There is insufficient time before the submission would become effective under section 508(h) of the Act for the Board to make an informed decision with respect to whether the interests of producers are protected, the premium rates are actuarially appropriate, or the risks associated with the submission are excessive.

(g) If the Board intends to disapprove the submission, the applicant will be notified in writing at least 30 days prior to the Board taking such action. The Board will provide the applicant with a written explanation for the intent to disapprove the submission.

(h) An applicant may negotiate, at any time, a time delay before the Board provides a notice of intent to disapprove the submission. The Board is not required to agree to such an extension.

(1) The applicant will not be limited in the length of the delay or the number of delays negotiated. However, delays may make implementation of the submission for the targeted crop year impractical or impossible.

(2) The time period during which the Board must make a decision to approve or disapprove the submission is not in effect during any negotiated time delay.

(3) After the expiration of the negotiated time delay, the time period in which the Board must make its decision to approve or disapprove will commence again (For example, on day 85, the applicant and the Board negotiate a time delay of 90 days. At the end of the 90 day period, the Board will have 5 days to act on the submission or negotiate an additional time delay).

(i) The applicant may withdraw a submission at any time by written request to the Board. A withdrawn submission that is resubmitted will result in the submission being deemed a new submission for the purposes of determining the amount of time that the Board must act on such submission.

(j) Following notification of the Board's intention to disapprove a submission, the applicant may modify the submission:

(1) The applicant must notify the Board in writing prior to Board action if the submission will be modified. Once written notice is received from the applicant, Board action for disapproval will be suspended.

(2) The applicant has an unlimited number of days in which to submit a modified submission.

(3) The Board will approve or disapprove a modified submission not later than 30 days after receiving a modified submission from the applicant, unless the applicant and the Board negotiate a time delay. If a time delay is negotiated, the time period during which the Board must act on the modified submission will not be in effect during any negotiated time delay.

(4) The Board will disapprove a modified submission if:

(i) All causes for disapproval stated by the Board in its notification of its intent to disapprove the submission are not satisfactorily addressed;

(ii) Insufficient time is available for review of the modified submission to determine whether all causes for disapproval have been satisfactorily addressed; or

(iii) If modification is substantial so the Board determines that independent review is required and a time delay cannot be negotiated to allow for independent review.

(k) When the applicant is notified of the Board's intent to disapprove and the submission is not revised or withdrawn, the Board will provide written notification to the applicant that the submission has been disapproved no less than 30 days after the date that the notice of intent to disapprove was provided to the applicant.

(l) If the Board fails to take action on a new submission within the prescribed 90 day period in paragraph (b)(3) of this section, or within 30 days after receiving the revised submission, such submission will be deemed approved by the Board for the initial reinsurance year designated for the submission. The Board must approve the submission for it to be available for subsequent reinsurance years.

§ 400.707 Presentation to the Board for approval or disapproval.

(a) The Board will inform the applicant of the date, time, and place of the Board meeting.

(b) The applicant will be given the opportunity and is encouraged to present the submission to the Board in person. The applicant must confirm, in writing, whether the applicant will present the submission to the Board.

(c) If the applicant elects, at any time, not to present the submission to the Board, the Board will make its decision based on the submission and the reviews provided in accordance with section 400.706(c).

§ 400.708 Approved submission.

(a) After a submission is approved by the Board, and prior to it being made available for sale to producers, the following items, as applicable, must be completed:

(1) An agreement between the applicant and FCIC that specifies the responsibilities of each with respect to the implementation, delivery and oversight of the submission, including the disposition of property rights for the policy; and

(2) A reinsurance agreement if terms and conditions differ from the Standard Reinsurance Agreement.

(b) A submission approved by the Board under this subpart will be made available to all approved insurance providers under the same reinsurance and subsidy terms and conditions as received by the applicant.

(c) Any solicitation, sales, marketing, or advertising of the approved submission by the applicant before FCIC has made the submission and related materials available to all interested parties through its official issuance system will result in the denial of reinsurance, risk subsidy, and A&O subsidy for those policies affected.

§ 400.709 Roles and responsibilities.

(a) With respect to the applicant:

(1) The applicant is responsible for:

(i) Preparing and ensuring that all policy documents, rates of premium, and supporting materials, including actuarial materials, are submitted to FCIC in the form approved by the Board;

(ii) Annually updating and providing maintenance changes no later than 180 days prior to the earliest sales closing date for the commodity in all counties or states in which the policy or plan of insurance is sold; and

(iii) Addressing responses to procedural issues, questions, problems or clarifications in regard to a policy or plan of insurance. (All such resolutions will be communicated to all approved insurance providers through FCIC's official issuance system.);

(2) Only the applicant may make changes to the policy, plan of insurance, or rates of premium approved by the Board. (Any changes, both non-significant and significant, must be submitted to FCIC no later than 180 days prior to the earliest sales closing date for the commodity in all counties or states in which the policy or plan of insurance is sold. Significant changes must be submitted to the Board for review in accordance with this subpart and will be considered as a new submission.);

(3) Except as provided in paragraph (a)(4) of this section, the applicant is solely liable for any mistakes, errors, or flaws in the submitted policy, plan of insurance, their related materials, or the rates of premium that have been approved by the Board;

(4) If the mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium is discovered not less than 45 days prior to the cancellation or termination date for the policy or plan of insurance, the applicant can request in writing that FCIC withdraw the approved policy, plan of insurance, or rates of premium:

(i) Such request must state the discovered mistake, error, or flaw in the policy, plan of insurance, or rates of premium, and the expected impact on the program; and

(ii) For all timely received requests for withdrawal, no liability will attach to such policies, plans of insurance, or rates of premium that have been withdrawn and no producer, approved insurance provider, or any other person will have a right of action against the applicant; and

(5) Notwithstanding the policy provisions regarding cancellation, policies, plans of insurance, or rates of premium that have been timely withdrawn are deemed canceled and applications for insurance not accepted as of the date that FCIC publishes the notice of withdrawal on its website at www.act.fcic.usda.gov. Producers will have the option of selecting any other policy or plan of insurance authorized under the Act by the sales closing date for such policy or plan of insurance.

(6) Failure of the applicant to perform the applicant's responsibilities may result in the denial of reinsurance for the policy or plan of insurance.

(b) With respect to FCIC:

(1) FCIC is responsible for:

(i) Ensuring that all approved insurance providers receive the approved policy or plan of insurance, and related materials, for sale to producers in a timely manner (All such information shall be communicated to all approved insurance providers through FCIC's official issuance system.);

(ii) Ensuring that all approved insurance providers receive reinsurance under the same terms and conditions as the applicant (Approved Insurance Providers should contact FCIC to obtain and execute a copy of the reinsurance agreement);

(iii) Conducting the best review of the submission possible in the brief time allowed; and

(iv) Reviewing the activities of approved insurance providers, agents, loss adjusters, and producers to ensure that they are in accordance with the

terms of the policy or plan of insurance, the reinsurance agreement, and all applicable procedures;

(2) FCIC will not be liable for any mistakes, errors, or flaws in the policy, plan of insurance, their related materials, or the rates of premium and no cause of action will exist against FCIC as a result of such mistake, error, or flaw in a submission submitted under this subpart under any circumstance;

(3) If at any time prior to the cancellation or termination date, FCIC discovers that there is a mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium that results in over or under insurance, FCIC will deny reinsurance to such policy or plan of insurance; and

(4) If reinsurance is denied under paragraph (b)(4) of this section, the approved insurance provider will have the option of:

(i) Selling and servicing the policy or plan of insurance at its own risk; or

(ii) Canceling the policy or plan of insurance in accordance with its terms.

§ 400.710 Preemption and premium taxation.

A policy or plan of insurance that is approved by the Board for FCIC reinsurance, A&O subsidy, and risk subsidy is preempted from state and local taxation.

§ 400.711 Right of review, modification, and the withdrawal of reinsurance.

At any time after approval, the Board may review any policy, plan of insurance, related materials, and rates of premium approved under this subpart and request additional information to determine whether the policy, plan of insurance, related materials, and rates of premium comply with statutory or regulatory changes or court orders, are still actuarially appropriate, and protect program integrity and the interests of producers. The Board will notify the submitter of any problems or issues that arise and allow the submitter an opportunity to make any needed changes. The Board may deny reinsurance for the applicable policy, plan of insurance or rate of premium if;

(a) The applicant fails to perform their responsibilities under section 400.709; or

(b) If the applicant does not satisfactorily provide materials or resolve any issue so that necessary changes can be made prior to the earliest contract change date.

§ 400.712 Research and development reimbursement, maintenance reimbursement, and use fees.

(a) Submissions approved by the Board for reinsurance under section 508(h) of the Act may be eligible for a one time payment of research and development costs and payment of maintenance costs for up to four reinsurance years, as determined by the Board, after the date such costs have been approved by the Board. Reimbursements made under this section will be considered as payment in full for research, development, and maintenance, as applicable, for any policy or plan of insurance and any property rights to the policy or plan of insurance.

(b) For submissions approved by the Board for reinsurance under this subpart a request for reimbursement of research and development costs, and maintenance costs, as applicable, must, in accordance with this section, be included with the original submission to the Board.

(c) For a submission approved by the Board prior to publication of this subpart, a request for reimbursement for research and development costs must be received within 60 days following publication of this subpart. This request should be sent to the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133–4676, and also provide one identical copy of each submission to the Administrator, Risk Management Agency, 1400 Independence Ave., Stop 0801, Room 3053 South Building, Washington, D.C. 20250–0801.

(d) To be eligible for any reimbursement under this section, FCIC must determine that a submission is marketable, based on a reasonable marketing plan.

(e) To be considered for reimbursement in any fiscal year, requests for research and development costs and maintenance costs, as applicable, must be received by FCIC not later than August 1. Given the limitation on funds, regardless of when the request is received, no payment will be made prior to September 15 of the applicable fiscal year.

(f) There are limited funds available on an annual fiscal year basis as contained in the Act. Therefore, requests for reimbursement will not be considered in the order in which they are received. Consistent with paragraphs (g), (h), (i), (j), and (l) of this section, if all applicants' requests for reimbursement of research and development costs and maintenance costs in any fiscal year:

(1) Do not exceed the maximum amount authorized by law, the applicants may receive the full amount of reimbursement authorized under these subsections.

(2) Exceed the amount authorized by law, each applicant's reimbursement will be determined by dividing the total amount of each individual applicants' reimbursable costs authorized in paragraphs (g), (h), (i), (j), and (l) by the total amount of the aggregate of all applicants' reimbursable costs authorized in paragraphs (g), (h), (i), (j), and (l) for that year and multiplying the result by the amount of reimbursement authorized under the Act.

(g) The amount of reimbursement for research and development costs and maintenance costs, as applicable, will be determined based on the amount of reimbursement authorized under paragraph (f) of this section, adjusted for the complexity of the policy, plan of insurance, or rates of premium, as determined by FCIC, and the size of the area in which the policy, plan of insurance, or rates of premium may be offered.

(1) Policies or plans of insurance that offer new and innovative coverages that are not currently available will be eligible for a higher reimbursement than policies or plans of insurance that are, or have components that are based on existing policies or plans of insurance.

(2) Policies or plans of insurance that offer new premium rating or market price methodologies will be eligible for a higher reimbursement than policies or plans of insurance that use existing premium rating or market price methodologies.

(3) Policies or plans of insurance that cover new commodities that are not otherwise covered by crop insurance or that offer innovative coverage and original policy language will be eligible for a higher reimbursement than policies or plans of insurance for commodities for which insurance is currently available.

(4) Policies or plans of insurance that may be offered for sale nationwide or in large geographical regions will be eligible for higher reimbursement than those that are applicable to only a few counties or states or a small geographical region.

(5) Any reimbursement under this subpart will be scored as follows:

(i) Complexity scores:

(A) Basic or Common Provisions:

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (g)(3) of this section): 0.20

(B) Crop Provisions and Special Provisions:

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (g)(3) of this section): 0.20

(C) Market prices

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (g)(3) of this section): 0.20

(D) Rates of Premium

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (g)(3) of this section): 0.20

(E) Underwriting

(*1*) Uses existing policies or plans of insurance: 0.05

(*2*) Contains modifications to existing policies or plans of insurance: 0.10

(*3*) Original (See paragraph (g)(3) of this section): 0.20

(ii) Geographic scope scores

(A) Potential national availability: 0.10

(B) Potential regional, state or county availability: 0.05

(6) In accordance with paragraph (e) of this section, those policies or plans of insurance that receive a summed total score for both complexity and geographic scope that is:

(i) Equal to or greater than 0.6 may receive the full amount of reimbursement approved by the Board under paragraphs (h), (i) or (j) of this section;

(ii) Greater than 0.25 but lower than 0.60 will receive a reimbursement that is not greater than 75 percent of the full amount of reimbursement approved by the Board under paragraphs (h), (i) or (j) of this section; and

(iii) Equal to or less than 0.25 will receive a reimbursement that is not greater than 50 percent of the full amount of reimbursement approved by the Board under paragraphs (h), (i) or (j) of this section.

(h) For those submissions that were approved by the Board prior to the date of publication of this subpart, reimbursement for research and development costs will be determined in accordance with paragraph (i) of this section or by multiplying the average number of policies earning premium each crop year since inception of the policy or plan of insurance by $7.00 and multiplying the result by the complexity and scope score from paragraph (g) of this section.

(i) For those submissions submitted to the Board prior to the date of publication of this subpart but not yet approved, or submitted to the Board for approval after the date of publication of this part, research and development costs must be supported by itemized statements and supporting documentation. Costs will be examined for reasonableness and may be adjusted at the sole discretion of the Board.

(1) Allowable research and development expense items may include the following;

(i) Straight-time hourly wage, exclusive of bonuses, overtime pay, or shift differentials (One line per employee, include job title, total hours, and total dollars.) Compensation amounts will be compared with the Occupational Employment Statistics Survey, published each January by the U.S. Department of Labor, Bureau of Labor Statistics;

(ii) Benefit cost per employee (Benefit costs are considered overhead and will be compared with the Employment Cost Index Annual Employer Cost Survey published each March by the U.S. Department of Labor, Bureau of Labor Statistics.);

(iii) Contracted expenses (include a copy of the contract);

(iv) Professional fees (include the job title, straight-time hourly wage, total hours, and total dollars);

(v) Travel and transportation (One line per event, include the job title, destination, purpose of travel, lodging cost, mileage, air or other identified transportation costs, food and miscellaneous expenses, other costs, and the total cost);

(vi) Software and computer programming developed specifically to determine appropriate rates, prices, or coverage amounts (Identify the item, include the purpose, and provide receipts or contract or straight-time hourly wage, hours, and total cost.) (Software developed to calculate premiums or losses, or development of software to send or receive data between the producer, agent, Approved Insurance Provider or RMA may not be included as an allowable cost.);

(vii) Miscellaneous expenses such as postage, telephone, express mail, and printing (Identify the item, cost per unit, number of items, and total dollars);

(2) The following expenses are specifically not eligible for research and development cost reimbursement:

(i) Copyright or patent fees;

(ii) Training costs;

(iii) State filing fees and expenses;

(iv) Normal ongoing administrative expenses;

(v) Paid or incurred losses;

(vi) Loss adjustment expenses;

(vii) Sales commission;

(viii) Marketing costs;

(ix) Indirect overhead costs;

(x) Lobbying costs;

(xi) Product or applicant liability resulting from the research, development, preparation or marketing of the policy;

(xii) Copyright infringement claims resulting from the research, development, preparation or marketing of the policy;

(xiii) Costs of making program changes as a result of case or statutory law effecting the policy; and

(xiv) Maintenance costs associated with the submission.

(j) Requests for reimbursement of maintenance costs must be supported by itemized statements and supporting documentary evidence. Costs will be examined for reasonableness and may be adjusted at the sole discretion of the Board.

(1) Maintenance costs for the following activities may be reimbursed:

(i) Expansion of the original submission to cover additional commodities;

(ii) Expansion of the original submission into additional counties or states;

(iii) Reasonable and required modifications to the policy and any related materials;

(iv) Adjustment to premium rates and commodity prices as necessary or required; and

(v) Other costs associated with maintaining the policy, as determined by the Board.

(2) [Reserved]

(k) Not later than six months prior to the end of the last reinsurance year in which a maintenance reimbursement will be paid, as approved by the Board, the applicant must notify FCIC regarding its election regarding the treatment of the policy or plan of insurance for subsequent reinsurance years.

(1) The applicant must notify FCIC whether it intends to:

(i) Continue to maintain the policy or plan of insurance and charge a use fee, as approved by the Board, to approved insurance providers to cover maintenance expenses; or

(ii) Transfer responsibility for maintenance to FCIC.

(2) If the applicant elects to:

(i) Transfer the policy or plan of insurance to FCIC, FCIC may, at its sole discretion, elect to withdraw the availability of the policy or plan of insurance or continue to maintain the policy or plan of insurance; or

(ii) Continue to maintain the policy or plan of insurance, at the time of the election, the applicant must submit a

request for approval of the use fee by the Board.

(3) Requests for approval of the use fee must be accompanied by written documentation to support the amount requested.

(4) The Board will approve the amount of use fee that is payable to the applicant by approved insurance providers unless the Board determines that the use fee charged:

(i) Is unreasonable in relation to the maintenance costs associated with the policy or plan of insurance; or

(ii) Unnecessarily inhibits the use of the policy or plan of insurance by other Approved Insurance Providers.

(5) Reasonableness of the use fees will be determined by the Board based on a comparison with the amount of reimbursement for maintenance previously received, the number of policies, the number of Approved Insurance Providers, and the expected total amount of use fees to be received in any reinsurance year.

(6) A use fee unnecessarily inhibits the use of a policy or plan of insurance if it is so high that other Approved Insurance Providers are unable to pay such fees because of the volume of business currently underwritten by the approved insurance provider.

(7) The use fee charged to each Approved Insurance Provider will be considered payment in full for the use of such policy, plan of insurance or rate of premium for the reinsurance year in which payment is made.

(l) The Board may consider information from the Equal Access to Justice Act, 5 U.S.C. 504, the Bureau of Labor Statistic's Occupational Employment Statistics Survey, the Bureau of Labor Statistic's Employment Cost Index, and any other information determined applicable by the Board, in making a determination whether to approve a submission for reimbursement of research, development, or maintenance costs under this section or the amount of reimbursement.

(m) Any false statements made to FCIC may subject the applicant to administrative, criminal, or civil penalties as authorized by law.

(n) For purposes of this section, rights to, or obligations of, research and development reimbursement, maintenance reimbursement, or use fees cannot be transferred from any individual or entity unless specifically approved in writing by the Board.

§ 400.713 Non-Reinsured Supplemental (NRS) Policy.

(a) The reinsured company must submit three copies of the new or revised NRS policy and related materials to the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133–4676 for review, approval or disapproval at least 90 days prior to the first sales closing date applicable to the policy reinsured by FCIC.

(b) FCIC will approve the NRS policy if it does not increase or shift risk to the underlying policy or plan of insurance reinsured by FCIC, affect any rights of the insured with respect to the underlying reinsured policy or plan of insurance, or cause disruption in the marketplace for products reinsured by FCIC. Marketplace disruption includes adversely affecting sales or administration of the underlying reinsured policy, undermining producers' confidence in the Federal crop insurance program, decreasing the producer's willingness or ability to use Federally reinsured risk management products, or harming public perception of the Federal crop insurance program.

(c) Failure to timely submit the NRS policy to FCIC will result in the denial of reinsurance and subsidy for all policies reinsured by FCIC for which the insured has obtained the NRS policy.

Signed in Washington, D.C. on July 10, 2001.

Phyllis W. Honor,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 01–17607 Filed 7–11–01; 3:48 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–RM/TP–97–440]

RIN 1904–AA46

Energy Conservation Program for Consumer Products: Test Procedures for Central Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On January 22, 2001, the Department of Energy published a Notice of Proposed Rulemaking (66 FR 6768) to revise the test procedures for central air conditioners and heat pumps. The notice announced that the closing date for receiving public comments would be March 23, 2001. The Air-Conditioning and Refrigeration Institute (ARI) requested that the comment period be extended to allow additional time for understanding the lengthy revisions to the test procedures. The Department agreed to this extension of the comment period to May 23, 2001. On June 4, 2001, the ARI requested that the comment period be extended once more to allow additional time for collecting and analyzing data on the cyclic degradation coefficients C_D . The Department agrees to the extension of the comment period to August 16, 2001, for the ARI and other interested parties, for the limited purpose of obtaining information on default values of the cyclic degradation coefficients C_D. If DOE receives further information concerning this issue, it will allow further public comment on this limited issue before issuing a final rule.

DATES: Comments must be received on or before August 16, 2001.

ADDRESSES: Please submit written comments to: Michael Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, Test Procedures for Central Air Conditioners Including Heat Pumps, Docket No. EE–RM–97–440, EE–41, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. You may send an email to: michael.raymond@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: Michael Raymond at (202) 586–9611, E-mail: *michael.raymond@ee.doe.gov*, or Eugene Margolis, Esq., (202) 586–9507, E-mail: *Eugene.Margolis@HQ.DOE.GOV*.

Issued in Washington, DC, on July 10, 2001.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 01–17685 Filed 7–13–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK85

Copayments for Medications

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend VA's medical regulations to set forth copayment requirements for medications. This document is

necessary to implement provisions of the Veterans Millennium Health Care and Benefits Act.

DATES: Comments must be received on or before September 14, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGSRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK85." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Nancy L. Howard at (202) 273–8198, Revenue Office (174), Office of Finance, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420. (This is not a toll-free telephone number).

SUPPLEMENTARY INFORMATION: This document proposes to amend VA's medical regulations to set forth copayment requirements for medications provided to veterans by VA.

The provisions of 38 U.S.C. 1722A require certain veterans to pay a copayment for each 30-day or less supply of medication furnished on an outpatient basis for the treatment of a nonservice-connected disability or condition. The copayment amount was set at $2 in 1990 by 38 U.S.C. 1722A for each 30-day or less supply of medication and has never been changed. The Veterans Millennium Health Care and Benefits Act, Public Law 106–117, amended 38 U.S.C. 1722A to allow VA to increase the copayment amount and to establish maximum copayment amounts. This document proposes to increase the copayment amount from $2 to $7 through December 31, 2002 and also proposes to establish an annual copayment cap of $840 through calendar year 2002 for veterans in certain enrollment priority categories. We also are proposing to establish escalator provisions to automatically increase the copayment and the cap amount under certain conditions.

Based on a review of industry standards, we believe that the medication copayment should be increased from $2 to $7. We believe that the proposed $7 medication copayment would be lower than or equal to most medication copayments charged by the private health care industry. Further, we believe it is a reasonable amount for the majority of medications dispensed.

Also, under 38 U.S.C. 1722A, VA may not require a veteran to pay an amount in excess of the actual cost of the medication and the pharmacy administrative costs related to the dispensing of the medication. VHA conducted a study of the pharmacy administrative costs relating to the dispensing of medication on an outpatient basis and found that VA incurred a cost of $7.28 to dispense an outpatient medication even without consideration of the actual cost of the medication. This amount covers the cost of consultation time, filling time, dispensing time, an appropriate share of the direct and indirect personnel costs, physical overhead and materials, and supply costs. Under these circumstances, we believe that a $7 copayment would not exceed VA's costs.

We propose to include escalator provisions for the copayment amount. We propose that the copayment amount for each calendar year after 2002 would be established using the Prescription Drug component of the Medical Consumer Price Index as follows: For each calendar year beginning after December 31, 2002, the Index as of the previous September 30 will be divided by the Index as of September 30, 2001. The ratio so obtained will be multiplied by the original copayment amount of $7. The copayment amount for the new calendar year will be this result, rounded down to the whole dollar amount.

This is intended to ensure that the copayment amounts increase with inflation. Also, increasing the copayment amount in whole dollar increments would be easily understood by veterans and lessen the administrative burden on VA. Further, based on commensurate increased costs to VA, we believe that VA's costs would remain higher than the increases made by the escalator provisions.

For purposes of determining the copayment amount, we have added the following note to the proposed rule: "*Note to [§ 17.110]* Paragraph (b)(1): Example for determining copayment amount. If the ratio of the Prescription Drug component of the Medical Consumer Price Index for September 30, 2003, to the corresponding Index for September 30, 2001, is 1.2242, then this ratio multiplied by the original copayment amount of $7 would equal $8.57, and the copayment amount for calendar year 2004, rounded down to the whole dollar amount, would be $8."

We propose to establish a maximum annual copayment cap for certain veterans. Under the proposal, the total amount of copayments in a calendar year for a veteran enrolled in one of the priority categories 2 through 6 of VA's health care system (see 38 CFR 17.36) would not exceed the cap established for the calendar year. We propose that the cap for the last quarter of calendar year 2001 would be $210 and that the cap for calendar 2002 would be $840. We also propose that the cap for each calendar year after calendar year 2002 would be $840 plus $120 for each $1 increase in the copayment amount. This would increase the cap at the same rate as copayments would increase.

The purpose of the annual cap is to help eliminate financial hardships for veterans who in unusual circumstances need a significant number of prescriptions. We believe the cap should apply to a veteran who averages more than 10 prescriptions per month. Accordingly, we calculated the annual cap of $840 by multiplying the $7 prescription amount by 120 (10 prescriptions per month multiplied by 12 months).

The copayment cap would not apply to those in priority category 1 because those individuals are statutorily exempt from the copayments. We propose that the cap would not apply to priority category 7 veterans. These veterans have the lowest priority for enrollment in the VA health care system. Moreover, Congress has determined that these veterans have sufficient resources to contribute to VA inpatient and outpatient care. Consistent with this direction, we believe that the cap should not apply to these veterans.

The proposal also sets forth certain exemptions from the medication copayment requirements. These are all statutory exemptions that were in place prior to the establishment of the Veterans Millennium Health Care and Benefits Act.

Compliance With the Congressional Review Act and Executive Order 12866—Cost-Benefit Analysis

This rule is economically significant under Executive Order 12866 and constitutes a major rule under the Congressional Review Act. The rule is necessary to implement the provisions of section 201 of Public Law 106–117, The Veterans Millennium Health Care and Benefits Act. These provisions, which are set forth at 38 U.S.C. 1722A, authorize VA to set the copayment charge for medications.

I. Benefits Costs

This rule would directly impact veterans that receive prescriptions for other than service-connected conditions

that currently pay a $2 copayment. Based on VA records for fiscal year 2000, we found that approximately 1.1 million veterans averaged 47 30-day supply prescriptions per year. VA collected $101 million in fiscal year 2000 for this provision. This proposed rule would increase the copayment from the current $2 level to $7. We do not believe that this increase in the copayment amount will have an impact upon utilization. It is anticipated that the same number of veterans will continue to receive the same average number of prescriptions generating an increase in collections of $250 million annually.

II. Administrative Costs

The estimated administrative cost for these increased collections would remain the same at the current collection expense of $17 million. This is based upon an average cost of a GS–5 at $12/hour × 8.2 million bills per year at the average rate of 10.3 minutes per bill.

III. Alternatives

VA considered establishing higher and lower copayment and cap amounts and considered whether or not to have escalator provisions. However, for the reasons discussed above, we believe that the copayment and cap amounts, and the escalator provisions, are appropriate.

Administrative Requirements

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: June 20, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. An undesignated centerheading and § 17.110 are added to read as follows:

Copayments

§ 17.110 Copayments for medication.

(a) *General.* This section sets forth requirements regarding copayments for medications provided to veterans by VA.

(b) *Copayments.* (1) Unless exempted under paragraph (c) of this section, a veteran is obligated to pay VA a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment). For the period from [the effective date of the final rule] through December 31, 2002, the copayment amount is $7. The copayment amount for each calendar year thereafter will be established by using the Prescription Drug component of the Medical Consumer Price Index as follows: For each calendar year beginning after December 31, 2002, the Index as of the previous September 30 will be divided by the Index as of September 30, 2001. The ratio so obtained will be multiplied by the original copayment amount of $7. The copayment amount for the new calendar year will be this result, rounded down to the whole dollar amount.

Note to Paragraph (b)(1): Example for determining copayment amount. If the ratio of the Prescription Drug component of the Medical Consumer Price Index for September 30, 2003, to the corresponding Index for September 30, 2001, is 1.2242, then this ratio multiplied by the original copayment amount of $7 would equal $8.57, and the copayment amount for calendar year 2004, rounded down to the whole dollar amount, would be $8.

(2) The total amount of copayments in a calendar year for a veteran enrolled in one of the priority categories 2 through 6 of VA's health care system (see § 17.36) shall not exceed the cap established for the calendar year. The cap for the last quarter of calendar year 2001 is $210. The cap for calendar year 2002 is $840. If the copayment amount increases after calendar year 2002, the cap of $840 shall be increased by $120 for each $1 increase in the copayment amount.

(c) *Medication not subject to the copayment requirements.* The following are exempt from the copayment requirements of this section:

(1) Medication for a veteran who has a service-connected disability rated 50% or more based on a service-connected disability or unemployability;

(2) Medication for a veteran's service-connected disability;

(3) Medication for a veteran whose annual income (as determined under 38 U.S.C. 1503) does not exceed the maximum annual rate of VA pension which would be payable to such veteran if such veteran were eligible for pension under 38 U.S.C. 1521;

(4) Medication authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Persian Gulf War veterans, or post-Persian Gulf War combat-exposed veterans;

(5) Medication for treatment of sexual trauma as authorized under 38 U.S.C. 1720D;

(6) Medication for treatment of cancer of the head or neck authorized under 38 U.S.C. 1720E; and

(7) Medications provided as part of a VA approved research project authorized by 38 U.S.C. 7303.

(Authority: 38 U.S.C. 501, 1710, 1720D, 1722A)

[FR Doc. 01–17734 Filed 7–13–01; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–133–1–7493b; FRL–7011–7]

Approval and Promulgation of Implementation Plans; Texas; Houston/Galveston Volatile Organic Compound Reasonably Available Control Technology Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action to approve revisions to the Texas State Implementation Plan (SIP). This rulemaking covers four separate actions approving revisions to the Texas Rules for Control of Air Pollution from Volatile Organic Compounds (VOC Rules), 30 TAC Chapter 115. First, EPA is approving amendments to sections 115.161, 115.162, 115.164–115.167, and 115.169, concerning Batch Processes. Second, EPA is approving amendments to sections 115.120, 115.122, 115.125–115.127, and 115.129, concerning control requirements for bakeries and testing requirements for vents. Third, we are approving amendments to section 115.449, concerning Offset Lithographic Printing. Finally, EPA is approving numerous minor administrative changes to the VOC rules. The Texas Natural Resource Conservation Commission (TNRCC or Commission) adopted these revisions to Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds (VOC), and to the State Implementation Plan (SIP) in order to meet the Clean Air Act (Act) Reasonably Available Control Technology (RACT) requirements and to control VOC emissions in the Houston/Galveston ozone nonattainment area (HGA). By approving these SIP revisions, EPA is finding that RACT will be implemented for VOC emissions resulting from the operation of batch processes, bakeries (vent gas control), and offset lithography printing sources in the HGA area accordance with the requirements of the Act. In addition, the changes to test methods for vent gas control and various other minor changes will clarify and strengthen the SIP.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comments, the EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by August 15, 2001.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Boyce, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7259.

SUPPLEMENTARY INFORMATION: This document concerns Control of Air Pollution from Control of Air Pollution from VOC emissions resulting from the operation of batch processes, bakeries (vent gas control), and offset lithography printing sources in accordance with the requirements of the Act. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 3, 2001.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 01–17468 Filed 7–13–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–57–1–7183b; FRL–7011–1]

Approval and Promulgation of Implementation Plan for Texas: Transportation Control Measures Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to approve a revision to the Texas State Implementation Plan (SIP) that contains the transportation control measures (TCM) rule. The requirements in the State TCM rule address the roles and responsibilities of the Metropolitan Planning Organizations (MPO), implementing transportation agencies, and provide a method for substitution of the TCMs without a State Implementation Plan (SIP) revision in the nonattainment and maintenance areas. The TCM rule is intended to promote effective implementation of the TCMs, streamline TCM substitution process and approval, and increase interaction between the Texas Natural Resource Conservation Commission (TNRCC) and the MPOs in the air quality-transportation planning process at the local levels.

The EPA is proposing to approve this SIP revision under sections 110(k) and 182 of the Clean Air Act (the Act).

In the Rules and Regulations section of this **Federal Register**, EPA is approving this TCM SIP as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no adverse comment, EPA will not take further action on this proposed rule. If EPA receives adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by August 15, 2001.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION: This document concerns the Texas SIP and the transportation control measures rule. For further information, please see the information provided in the direct final action that is located in the Rules and Regulations section of this **Federal Register** publication.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 13, 2001.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 01–17556 Filed 7–13–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD–3072; FRL–7012–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; One-Hour Ozone Attainment Demonstration Plans for the Baltimore and Philadelphia-Wilmington-Trenton Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rule.

SUMMARY: On December 16, 1999, EPA proposed approval of the attainment demonstration plans for the Baltimore and Philadelphia-Wilmington-Trenton severe ozone nonattainment areas. Among other things, EPA proposed approval of these SIPs only if Maryland submitted: adequate motor vehicle emissions budgets reflecting the benefits from the Federal Tier 2/Sulfur-in-Fuel rule; and enforceable commitments to: submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, revise the SIP and motor vehicle emissions budgets by October 31, 2001 if additional measures affect the motor vehicle emissions inventory, submit revised SIP and motor vehicle emissions budgets within one year after MOBILE6 issued, and perform a mid-course review. In this rulemaking, EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions establish the requisite enforceable commitments relating to the attainment demonstration and the motor vehicle emissions budgets incorporating the benefits of the Tier 2/Sulfur-in-Fuel rule. The intended effect of this action is to supplement our December 16, 1999 proposed approvals by opening a comment period on these enforceable commitments and motor vehicle emissions budgets. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before August 13, 2001.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179. Or by e-mail at cripps.christopher@*epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean EPA.

I. Background

A. What Previous Proposed Actions Have Been Taken on the Attainment Demonstration SIP Revisions?

On December 16, 1999, we proposed approval of the attainment demonstration for the following attainment demonstration SIP revisions submitted by the State of Maryland for the following areas: the Baltimore severe ozone nonattainment area (64 FR 70397) and the Philadelphia-Wilmington-Trenton severe ozone nonattainment area (64 FR 70412). Our approval was contingent upon certain actions by Maryland for each of the two areas. These actions were:

1. Maryland had to adopt and submit an adequate motor vehicle emissions budget including the benefits of the Federal Tier 2/Sulfur-in-Fuel rule.

2. Maryland had to adopt and submit an enforceable commitment to do the following:

(a) Submit measures by 10/31/01 for additional emission reductions as required in the attainment demonstration test as discussed in section I.C.5. of that proposed approval. For additional emission reduction measures developed through the regional process, the State must also submit an enforceable commitment for the additional measures and a backstop commitment to adopt and submit intrastate measures for the emission reductions in the event the OTR process does not recommend measures that produce emission reductions.

(b) Submit a revised SIP & motor vehicle emissions budget by 10/31/01 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP and motor vehicle emissions budget one year after MOBILE6 issued (required because the attainment SIPs include the benefits of EPA's Tier 2/Sulfur-in-Fuel rule), and

(d) Perform a mid-course review.

On July 28, 2000, EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration (65 FR 46383). In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in these SIPs. In the July 28, 2000 SNPR, we reopened the comment period to take comment on these two issues and to allow comment on any additional materials that were placed in the dockets for the proposed actions close to or after the initial comment period closed on February 14, 2000. For many of the areas covered by the July 28, 2000 SNPR, additional information had been placed in the docket close to or since the initial comment period concluded. In general, these materials were identified as consisting of motor vehicle emissions budgets, and revised or additional commitments or reaffirmations submitted by the States (65 FR at 46387, July 28, 2000). The comment period established by the July 28, 2000 SNPR concluded on August 28, 2000.

As we proposed in the July 28, 2000 SNPR, the attainment budgets that we

are proposing to approve today would be effective for conformity purposes only until revised attainment motor vehicle emissions budgets are submitted and we have found them adequate. The revised MOBILE6 attainment budgets will apply for conformity purposes as soon as we find them adequate. We are limiting the duration of our approval in this manner because we are only approving the attainment demonstrations and their budgets because the States have committed to revise them with MOBILE6.

B. Has Maryland Submitted Any Other Revisions to or Other Material Relevant to the Attainment Demonstration Close to or After August 28, 2000?

On December 28, 2000, the State of Maryland submitted a SIP revision (SIP Revision 00–15) with revised attainment motor vehicle emissions budgets for the Baltimore severe ozone nonattainment area. These motor vehicle emissions budgets incorporate the benefits of the Federal Tier 2/Sulfur-in-Fuel rule as required by EPA's proposed action on the attainment demonstration for the Baltimore area (64 FR 70397, December 16, 1999). In thisDecember 28, 2000 submittal, Maryland also included the enforceable commitments as required by EPA's December 16, 1999 proposed action.

On December 28, 2000, the State of Maryland also submitted a SIP revision (SIP Revision 00–14) with revised attainment motor vehicle emissions budgets for the Maryland portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area (Cecil County). These motor vehicle emissions budgets incorporate the benefits of the Federal Tier 2/Sulfur-in-Fuel rule as required by EPA's proposed action on Maryland's attainment demonstration for the Philadelphia-Wilmington-Trenton area (64 FR 70412, December 16, 1999). In this December 28, 2000 submittal, Maryland also included the enforceable commitments as required by EPA's December 16, 1999 proposed action.

C. Did the December 28, 2000 Submittals Contain Any Other Amendments?

Each of the December 28, 2000 submittals contains revisions to the post-1996 rate-of-progress plans and incorporates a number of changes in 2005 year projected emissions. We are proposing to approve the changes in 2005 projections as they relate to the attainment demonstration as part of this rulemaking action. The first of these changes was a change in the method of incorporating the effects of certain programs affecting on-road mobile sources when projecting 2005 "uncontrolled" emissions and when determining 2005 emission reductions. The second was updating future projected 2005 controlled emissions in the point, area and nonroad mobile portions of the 2005 inventories, i.e., 2005 emissions reflecting all the control strategies, to account for more recent information. This proposed rulemaking does not include any action on Maryland's rate-of-progress plans for each area. The revisions to the rate-of-progress plans and the changes in 2005 projections as these revisions relate to Maryland's rate-of-progress plans for each of the two areas are the subject of separate rulemaking actions.

D. Has EPA Determined That the Motor Vehicle Emissions Budgets Incorporating the Tier 2/Sulfur-in-Fuel Rule Benefits Are Adequate?

On April 12, 2001, EPA sent a letter to the MDE which constituted final Agency actions finding the motor vehicle emissions budgets in the December 28, 2000 SIP revision for the Maryland portion of the Philadelphia-Wilmington-Trenton area (Cecil County) adequate for transportation conformity purposes (also see 66 FR 18928).

On June 19, 2001, EPA sent a letter to the MDE which constitutes final Agency actions finding the motor vehicle emissions budgets in the December 28, 2000 submittal for the Baltimore area adequate for transportation conformity purposes. A notice announcing the adequacy status of these budgets was published in the **Federal Register** on July 5, 2001.

E. What Are the Motor Vehicle Emissions Budgets Contained Within the December 28, 2001 Revisions?

The December 28, 2000 revisions set the motor vehicle emissions budgets for the 2005 attainment year as follows: The motor vehicle emissions budgets for the Baltimore area are 45.5 tons per day volátile organic compounds and 96.9 tons per day nitrogen oxides. The motor vehicle emissions budgets for the Maryland portion of the Philadelphia-Wilmington-Trenton area are 2.6 tons per day volatile organic compounds and 5.6 tons per day nitrogen oxides.

II. Reopening of the Public Comment Period

We are reopening the comment period for the Maryland attainment demonstration SIP revisions for the Baltimore and Philadelphia-Wilmington-Trenton areas to address the additional information that has been placed in the docket close to or since the last comment period established by the July 28, 2000 SNPR that concluded on August 28, 2000. These materials consist of revised motor vehicle emissions budgets, and the enforceable commitments required under the two December 16, 1999 notices of proposed rulemaking discussed above.

EPA proposing to approve the motor vehicle emissions budgets, enforceable commitments and changes in 2005 year projected emissions in the Maryland SIP revisions for the Baltimore and Philadelphia-Wilmington-Trenton areas, which were submitted on December 28, 2000. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

III. Proposed Action

EPA is proposing to approve the motor vehicle emissions budgets and enforceable commitments submitted by MDE on December 28, 2000 as part of the attainment demonstration SIPs for the Baltimore and Philadelphia-Wilmington-Trenton areas. EPA is also proposing to approve changes to the 2005 year projected emissions which were submitted on December 28, 2000 as part of the attainment demonstration SIPs.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the

distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order.

This supplemental proposed rule on Maryland's attainment demonstrations to include motor vehicle emission budgets which reflect the benefits of the Federal Tier 2/Sulfur-in-Fuel rule and enforceable commitments as required by EPA's December 16, 1999 proposed rulemaking does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 5, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 01–17704 Filed 7–13–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7007–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed deletion of the Red Penn Landfill Site from the National Priorities List (NPL).

SUMMARY: The EPA proposes to delete the Kentucky Red Penn Landfill Site (site) from the NPL and requests public comment on this action. The NPL constitutes appendix B to Part 300 of the National and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The EPA has determined that the site poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, no further remedial measures pursuant to CERCLA are warranted.

We are publishing this proposal concurently with the final rule because the EPA does not anticipate dissenting comments on the deletion. A detailed rationale for the deletion is set forth in the direct final rule. If no dissenting comments are received, no further EPA activity is contemplated. If EPA receives dissenting comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this action must be received by August 15, 2001.

ADDRESSES: Comments may be mailed to Femi Akindele, Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303. Comprehensive information on this site is available through the public docket which is available for viewing at the site information repositories at the following locations: U.S. EPA Region 4,61 Forsyth Street, SW., Atlanta, GA 30303; and the South Oldham Library, 6720 W. Highway 146, Crestwood, Kentucky 40014, telephone number (502) 241–1108.

FOR FURTHER INFORMATION CONTACT: Femi Akindele, Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303, (404) 562–8809, Fax (404) 562–8788, *akindele.femi@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Action which is located in the Rules section of this **Federal Register**.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Dated: May 14, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, U.S. EPA Region 4.

[FR Doc. 01–17558 Filed 7–13–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

43 CFR Part 2

RIN 1090–AA61

Revision of the Freedom of Information Act Regulations and Implementation of the Electronic Freedom of Information Act Amendments of 1996

AGENCY: Department of the Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior (DOI or Agency) proposes to revise its regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. The FOIA regulations have been completely rewritten in plain language, question and answer format. The regulations also contain new provisions implementing the Electronic Freedom of Information Act Amendments of 1996 (E–FOIA). Additionally, the regulations have been updated to reflect changes in the Department's policies and procedures, developments in case law, cost figures for calculating and charging fees, and organizational changes within DOI. As a result, the public will have a clearer understanding of DOI's policies and procedures implementing the FOIA.

DATES: We will accept comments from all interested parties until September 14, 2001.

ADDRESSES: Submit your comments to Alexandra Mallus, Office of Information Resources Management (OIRM), Department of the Interior, 1849 C Street, NW., MS–5312–MIB, Washington, DC 20240. Submit electronic comments to alexandra_mallus@os.doi.gov. See **SUPPLEMENTARY INFORMATION** for file format and other information regarding electronic filing. Hand deliver comments to OIRM/DOI, 1849 C Street, NW., Room 5312–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Alexandra Mallus by telephone at (202) 208–5342, by fax at (202) 501–2360, or by e-mail at alexandra_mallus@os.doi.gov.

SUPPLEMENTARY INFORMATION: The revision of part 2, subparts A and B, incorporates changes to the language and structure of the regulations and adds new provisions to implement the E–FOIA (Pub. L. 104–231). New provisions implementing the amendments are found at § 2.4(c) (electronic reading rooms), § 2.9 (format of disclosure), § 2.12 (timing of responses), § 2.14 (expedited processing), § 2.21(a) (electronic searches), § 2.21(c) (marking deletions), § 2.21(d)(3) (volume estimation), and § 2.25 (multitrack processing).

Subpart B now describes information that is routinely available to the public through the agency reading rooms and the Internet. Requesters are encouraged to use these resources first before filing a FOIA request. Subpart E is added to include information on DOI's FOIA annual report.

Requesters now have 30 workdays, instead of 20 workdays, to file an appeal after the date of DOI's response or receipt of any records provided (§ 2.28(a)).

New sections have been added, such as: (1) § 2.24 concerning submitter designations; and (2) § 2.26 to clarify the difference between a FOIA request and a Privacy Act request.

The Department's fee schedule has been revised; proposed revisions may be found in Appendix C. The duplication charge will remain the same, at thirteen cents per page. Document search and review charges will increase to reflect the average hourly labor costs of employees in the following three categories: clerical, professional, and managerial (this is a new category designed to cover employees at the GS–13 level and above), respectively. Also, the criteria for determining fee waivers have been clarified to make it clear that DOI decides fee waiver requests on a case-by-case basis and to ensure that requesters know that they must provide sufficient justification to support their fee waiver requests (§ 2.19 and Appendix D).

The DOI does not charge a requester if the fee to process the FOIA request is $15 or less (§ 2.16(b)(2)). We are reviewing the true administrative costs associated with processing a FOIA request. This review may result in an increase of the dollar amount below which we will not bill a requester. If the review warrants, the increase will be reflected in the final rule. We specifically request your comments regarding this issue.

Due to the fact that the FOIA regulations have been completely rewritten and reorganized, subparts C through E of the old regulations will be redesignated as subparts F through H in the proposed rule. While the proposed rule redesignates these three subparts, it does not revise them.

If you submit electronic comments, you should provide them as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: (RIN 1090–AA61)" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 208–5342.

Our practice is to make comments, including names and home addresses of respondents available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments along with the reason(s) for your request. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Public comments will be available for inspection by appointment (call (202) 208–5342) during normal business hours at the above address. A reasonable fee may be charged for copying.

Regulatory Planning and Review (E.O. 12866)

DOI has determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and therefore is not subject to OMB review because it is not likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments, or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; or

(4) Raise novel legal or policy issues.

Regulatory Flexibility Act

DOI certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 606(b)). Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by DOI are nominal.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not result in an annual effect on the economy of more than $100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based enterprises. It deals strictly with implementation of the FOIA within DOI.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have any takings implications. It deals strictly with implementation of the FOIA within DOI. Therefore, a takings assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, This rule does not have Federalism implications as it deals strictly with implementation of the FOIA within DOI. Therefore, a Federalism assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) is required.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act(42 U.S.C. 4321–4347) of 1969 is not required.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E. O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to such questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, § 2.7 What do I need to know before filing a FOIA request?) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, 1849 C Street, NW., MS–7229–MIB, Washington, DC 20240. You also may e-mail the comments to this address: Exsec@ios.doi.gov.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Classified information, Courts, Freedom of information, Government employees, Privacy.

Dated: June 21, 2001.

Robert J. Lamb,

Deputy Assistant Secretary, Budget and Finance.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend part 2 of title 43 of the Code of Federal Regulations, as set forth below:

PART 2—RECORDS AND TESTIMONY: FREEDOM OF INFORMATION ACT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552 and 552a; 31 U.S.C. 9701; and 43 U.S.C. 1460.

2. Subparts C through E are redesignated as subparts F through H and the heading of newly redesignated subpart H is revised to read as follows:

Subpart H—Compulsory Process and Testimony of Employees

3. Subparts A and B are revised in their entirety and redesignated as subparts A through E to read as follows:

Subpart A—General Information

Sec.

2.1 What do the regulations cover?
2.2 What is DOI's policy regarding release of records under the FOIA?
2.3 What terms do I need to know?

Subpart B—Information Routinely Available to the Public without Filing a FOIA Request

2.4 How do I obtain information routinely available to the public?
2.5 Does DOI maintain an index of its reading room materials?
2.6 Will the Department accept written requests, including fax, e-mail, or telephone requests, for routinely available information?

Subpart C—Requests for Records under the FOIA

2.7 What do I need to know before filing a FOIA request?
2.8 What information must I include in my request?
2.9 May I specify the form or format of disclosure?
2.10 Where do I send my request?
2.11 Why is it important to send my request to the right office?
2.12 When can I expect the response?
2.13 When may the bureau take a time extension to respond to my request?
2.14 When can I get expedited processing?
2.15 Will I be charged fees?
2.16 How are fees determined?
2.17 How will my requester category affect the fees that I am charged?
2.18 How are fees assessed and collected?
2.19 When will bureaus waive fees?
2.20 When will bureaus grant discretionary fee waivers?
2.21 How will the bureau respond to my request?
2.22 What happens if a bureau receives a request for records it does not have or did not create?
2.23 How will a bureau handle a request for confidential commercial or financial information that it has obtained from a person or entity outside the Federal Government?
2.24 Is a submitter required to designate information that is commercially or financially sensitive?
2.25 Does the bureau provide multitrack processing of FOIA requests?
2.26 What is the difference between a FOIA request and a Privacy Act request?

Subpart D—FOIA Appeals

2.27 Which FOIA decisions may I appeal?
2.28 How long do I have to file an appeal?
2.29 How do I file an appeal?
2.30 How will DOI respond to my appeal?
2.31 How long does DOI have to respond to my appeal?

Subpart E—FOIA Annual Report

2.32 Where can I get a copy of DOI's FOIA annual report?

Subpart A—General Information

§ 2.1 What do the regulations cover?

(a) The regulations implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, and contain the procedures by which the public may inspect and obtain copies of Department of the Interior (DOI or Department) records through the FOIA or by other means.

(b) They apply to all agency records as defined in § 2.3(c).

(c) The policy and procedures set forth in these regulations apply to all bureaus and offices of the Department.

(d) Nothing in the regulations will entitle you to any service or any record that is not required to be provided under the FOIA.

(e) These regulations do not apply to records that fall under the law enforcement exclusions in Appendix E to this part.

§ 2.2 What is DOI's policy regarding release of records under the FOIA?

It is our policy to make records of the Department available to the public to the greatest extent possible, in keeping with the spirit of the FOIA.

§ 2.3 What terms do I need to know?

For the purposes of this part, the following definitions apply:

(a) *Act* and *FOIA* mean the Freedom of Information Act, 5 U.S.C. 552, as amended.

(b) *Agency* means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency.

(c) *Agency record* means any documentary material which is either created or obtained by an agency in the transaction of agency business and under agency control at the time the FOIA request is received.

(1) Agency records include:

(i) Books, papers, maps, charts, plats, plans, architectural drawings, photographs, and microfilm;

(ii) Machine-readable materials such as magnetic tape and disks;

(iii) Electronic records (including e-mail messages);

(iv) Audiovisual material such as still pictures, sound and video recordings; and

(v) All other documentary materials, regardless of physical form, format or characteristics.

(2) This definition generally does not cover records of an individual which are:

(i) Created and maintained primarily for an individual's convenience;

(ii) Not subject to agency creation or retention requirements; and

(iii) Not distributed to other agency employees for their official use.

(d) *Bureau* means any major component of the Department administering its own FOIA program. A list of these components is contained in Appendix A to this part.

(e) *Commercial-use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester falls into this category, the bureau will consider the identity of the requester and intended use of the records in addition to any other available information about the requester.

(f) *Direct costs* means those expenses that a bureau actually incurs in searching for and duplicating (and in the case of commercial-use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary and benefits of the employee performing the work and the cost of operating duplicating equipment. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(g) *Duplication* means making a copy of a record, or the information contained in it, to respond to a FOIA request. Copies can take the form of paper, microform, photographs, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others.

(h) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(i) *Expedited processing* means giving a FOIA request priority and processing it ahead of other requests pending before the bureau because a requester has shown an exceptional need or urgency for the records (*See* § 2.14).

(j) *FOIA request* means a written request (this includes facsimile (fax) and electronic mail (e-mail)) made by any member of the public for Federal agency records.

(k) *Free-lance journalist* means a representative of the news media who is able to demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. A publication contract or past record of publication, or evidence of a specific free-lance assignment from a news organization may indicate a solid basis for expecting publication.

(l) *Multitrack processing* means placing simple requests, requiring relatively minimal review, in one processing track and more voluminous and complex requests in one or more other tracks. Requests in each track are processed on a first-in/first-out basis.

(m) *Noncommercial scientific institution* means an institution that is not operated for commerce, trade or profit, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(n) *Privacy Act request* means a written request (paper copy with an original signature) made by an individual for information about himself or herself that is contained in a Privacy Act system of records. The Privacy Act applies only to U.S. citizens and aliens lawfully admitted for permanent residence. Therefore, only those individuals may make Privacy Act requests.

(o) *Reading room materials* mean records (paper or electronic) that are required to be made available to the public under 5 U.S.C. 552(a)(2), as well as other records that a bureau, at its discretion, makes available to the public for inspection and copying without requiring the filing of a FOIA request.

(p) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. To be in this category, a requester must not be seeking the requested records for a commercial use. Further, a bureau normally will not consider requests for records involving news dissemination to be commercial-use requests.

(q) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes the deletion of exempt material or other processing necessary to prepare the record(s) for disclosure, including routine consultation among bureau staff and attorneys regarding the applicability of exemptions.

(r) *Search* means the process of looking for and retrieving agency records and information responsive to a

request (manually or by automated means).

(s) *Submitter* means any person or entity outside the Federal Government from whom the Department directly or indirectly obtains commercial or financial information. The term includes, but is not limited to individuals, corporations, and state, local, tribal, and foreign governments.

(t) *Workday* means a regular Federal workday. It does not include Saturdays, Sundays, or Federal legal public holidays.

Subpart B—Information Routinely Available to the Public without Filing a FOIA Request

§ 2.4 How do I obtain information routinely available to the public?

A great deal of information is available to the public without filing a FOIA request. Examples are Departmental policies, procedures, and organizational descriptions. The following guidance will help you obtain this information. (Note: For copies of records that are not routinely available, you must submit a FOIA request to the DOI office where the records are located. Procedures for requesting records under the FOIA are provided in subpart C of this part.)

(a) *General.* (1) General information about DOI or one of its bureaus may be obtained by visiting DOI's home page (see Appendix B to this part for a list of Internet addresses) or by contacting the Office of Public Affairs/ Communications for the appropriate bureau (see Appendix A to this part for a list of DOI contacts). Many documents are made available to the public through DOI's reading rooms. Some documents also may be available in DOI's electronic reading rooms on the Internet.

(2) Information on DOI's FOIA Program and a Reference Guide to assist you in obtaining various types of information are available in DOI's reading rooms, through the FOIA home page, or by contacting the Departmental FOIA Officer.

(3) To obtain information about specific records in DOI, you also may refer to:

(i) The index of documents frequently requested under the FOIA which is available in DOI's reading rooms, through the FOIA home page, or by contacting one of the bureau FOIA Officers; and

(ii) The index and description of DOI's major information and record locator systems, which are available in DOI's reading rooms, through the FOIA home page, or by contacting one of the bureau FOIA Officers.

(4) Another source of information is DOI's Library which contains over one million holdings dealing with a broad range of matters pertaining to the Department's mission. You may wish to visit the Library, which is located at the C Street entrance of the Main Interior Building, 1849 C Street, NW., Washington, DC. 20240 (see Appendix A to ths part). The Library is open to the public for on-site reference use from 7:45 a.m.–5:00 p.m., Monday–Friday (excluding holidays). Additional information regarding the Library's holdings and services may be obtained by visiting its home page (see Appendix B to this part).

(b) *Published information and rules.* Under 5 U.S.C. 552(a)(1), bureaus are required to publish certain information in the **Federal Register** for the guidance of the public, such as descriptions of their central and field organizations, functions, procedures, substantive rules, and statements of general policy.

(c) *Reading room materials.* (1) Under 5 U.S.C. 552(a)(2), each bureau is responsible for making the following information available for public inspection and copying unless the materials are promptly published and copies offered for sale. Bureaus must make any such records created on or after November 1, 1996, available by the Internet or by other computer telecommunication methods or electronic means as quickly as practicable.

(i) Final opinions rendered in the adjudication of cases.

(ii) Policy statements and interpretations which have been adopted by DOI and are not published in the **Federal Register**.

(iii) Administrative staff manuals and instructions affecting the public.

(iv) Copies of records frequently requested under the FOIA and an index of those documents.

(v) A subject-matter index of its reading room records.

(2) Bureaus may, at their discretion, make other records available for inspection and copying in reading rooms or via their home pages.

(d) *Inspection and copying.* (1) Reading room materials are available for inspection and copying at the locations listed in Appendix A to this part and, in some cases, through the Internet; however, not all records may be available in all locations. If you need assistance in determining the location and availability of the records you are seeking, contact the appropriate reading room or FOIA Contact listed in Appendix A to this part.

(2) A bureau may delete exempt information from some records before making them available for inspection and copying. (See § 2.21(c)). If you would like access to the entire record, you must submit a FOIA request under the procedures in subpart C of this part. However, submission of a FOIA request does not guarantee that the entire record will be released.

(3) There is no charge to inspect reading room materials. Copying services will be provided at the fees specified in Appendix C to this part. However, other fees may apply where a bureau has a statute that specifically requires the bureau to set fees for particular types of records.

§ 2.5 Does DOI maintain an index of its reading room materials?

Each bureau will maintain and make available for public inspection and copying a current subject-matter index of its reading room materials (5 U.S.C. 552(a)(2)). The index will be available in the bureau's reading room(s) and in their electronic reading rooms on the Internet. Each index will be updated regularly.

§ 2.6 Will the Department accept written requests, including fax, e-mail, or telephone requests, for routinely available information?

Yes. Although a request for this type of information is not a FOIA request, the bureau will send you the requested information and charge you for the copies, according to the fee schedule in Appendix C to this part. While the bureau will attempt to respond to oral requests (those made by telephone or otherwise) for routinely available information, you should submit complex requests in writing to avoid any risk of misunderstanding.

Subpart C—Requests for Records Under the FOIA

§ 2.7 What do I need to know before filing a FOIA request?

(a) If the records you are seeking are not routinely available as described in Subpart B of this part, you must submit a FOIA request to the FOIA Contact at the bureau office where the records are maintained. FOIA requests must be submitted in writing—DOI does not accept oral FOIA requests. Before submitting a request, you may find it useful to contact the appropriate bureau FOIA Contact or the Departmental FOIA Officer for additional information concerning DOI's FOIA Program. You may find the Department's Reference Guide, which is available electronically through the FOIA home page and in paper form as well, helpful in making your request.

(b) The FOIA requires that we release records unless they are protected by one of nine exemptions or one of three special law enforcement exclusions (see Appendix E to this part).

(c) The Act does not require a bureau to answer questions that may be asked in a FOIA request.

(d) An agency record must exist at the time a FOIA request is received in order to be considered subject to the FOIA. There is no obligation for the bureau to create or compile a record to satisfy a FOIA request (for example, by combining or compiling selected items from manual files, preparing a new computer program, calculating proportions, percentages, frequency distributions, trends and comparisons, or creating maps). Normally if a bureau is extracting information from an existing computer database, this would not constitute the creation of a new record. However, a bureau has the option of creating a new record if—

(1) Doing so will provide a more useful response to the requester,

(2) It is less burdensome than providing the existing records, and

(3) The newly created record is fully responsive to the request.

(e) The fee in this case will not be more than the fee for the individual records. Fees will be charged consistent with the schedule in Appendix C to this part.

§ 2.8 What information must I include in my request?

(a) *Description of records.* (1) Describe the requested records in enough detail to enable an employee familiar with the subject area of the request to locate the record(s) with a reasonable amount of effort. Be as specific as possible in describing the records you are seeking. For example, whenever possible:

(i) Identify the date, title or name, author, recipient, and the subject of the record; the office that created it, the present custodian of the record and the geographical location (e.g., headquarters or a regional/field office); the timeframe for which you are seeking records, and any other information that will assist the bureau in locating the material.

(ii) If the request involves a matter in litigation, state the case name and docket number as well as the court in which the case was filed.

(2) The bureau will not begin processing your request until any issues regarding the scope or nature of your request are resolved. When a request is overly broad, unclear, involves an extremely voluminous amount of records, or a burdensome search, the bureau will contact you to identify and clarify the records you are seeking. It will work with you to define the subject matter, clarify terms that are used, or narrow the scope of your request.

(3) The time limit will not start until the bureau receives a request reasonably describing the records or clarifying the initial request. If the bureau asks you for additional clarification and does not hear from you within 20 workdays, it will assume that you are no longer interested in pursuing your request and will close the file on your request.

(b) *Fee information.* (1) Unless you request a fee waiver (see paragraph (b)(2) of this section), you should state that you are willing to pay all fees associated with processing your request or that you are willing to pay up to a specified amount. The bureau will not begin processing your request until this written assurance has been received. If the bureau anticipates that the fees for processing your request exceed the amount you have indicated you are willing to pay, the bureau will notify you that it needs your assurance of payment of fees as high as are anticipated, or an advance payment (see § 2.18(b) and (c)). If the bureau does not hear from you within 20 workdays, it will assume that you are no longer interested in pursuing your request and will close the file on your request.

(2) You may request a fee waiver. If you are seeking a fee waiver, you must provide sufficient justification to support your fee waiver request (see the criteria in § 2.19 and in Appendix D to this part). Failure to provide adequate justification will result in a denial of your fee waiver request. Remember if you are requesting a fee waiver, the burden is on you to demonstrate in your request that you are entitled to it. The bureau will not begin processing your request until the fee issues are resolved. As an option, at the same time you request a fee waiver you may state your willingness to pay regardless of whether a fee waiver is granted. This will permit the bureau to process your request for records at the same time it is considering the fee waiver request. If you are required to pay a fee, and it is later determined on appeal that you are entitled to a full or partial fee waiver, an appropriate refund will be made.

(3) You should indicate what fee category you are in, i.e., if you are a commercial use, news media, educational institution/noncommercial scientific institution, or other requester (*See* §§ 2.3 and 2.17(a)). If you submit a FOIA request on behalf of another person or organization—for example, if you are an attorney submitting a request on behalf of a client—it is the underlying requester's identity and intended use that determines the fee category. If your fee category is unclear to the bureau, the 20-workday statutory time limit for processing your request will not begin to run (see § 2.12(b)) until this matter has been resolved. If the bureau requests additional clarification and does not hear from you within 20 workdays, it will assume that you are no longer interested in pursuing the request and will close the file.

(c) *Mailing information.* Your postal address is required for the bureau to mail any responsive documents to you.

(d) The following information will assist the bureau in processing your request:

(1) The words "FOIA REQUEST" (prominently displayed) on the request letter and the envelope, or subject line of a request sent via e-mail or fax, or "PRIVACY ACT REQUEST" when requesting records pertaining to yourself, as well as citing the appropriate act in your letter;

(2) Your e-mail address (if applicable), telephone number (where you can be reached during normal business hours), and fax number, if available, in case the bureau needs additional information or clarification of your request. Your telephone number is especially important in case the bureau needs to contact you about your request.

(3) A list of all the bureau FOIA Contacts to which you are sending your request. For the quickest possible handling, you should address a separate copy of your request to each bureau FOIA Contact where you believe the records are maintained.

(4) When making a request for records about another individual that may be covered by the Privacy Act, a written authorization from that individual and any other information required by the Privacy Act system of records notice; or proof that the individual is deceased (for example, a copy of a death certificate or an obituary). The Privacy Act does not apply to a deceased individual.

§ 2.9 May I specify the form or format of disclosure?

Generally, you may choose the form or format of disclosure for records that you request under the FOIA (5 U.S.C. 552(a)(3)(B)). Bureaus must provide the record in the requested form/format if the office responding to the request can readily reproduce the record in that form/format with reasonable efforts. However, if the process of providing the information in the requested format would damage or destroy an original document, it may not be possible to honor your format request. Bureaus must make reasonable efforts to maintain their records in forms or

formats that are reproducible. You may be charged the direct costs involved in converting information to the requested format if the bureau normally does not maintain the information in that format.

§ 2.10 Where do I send my request?

(a) DOI does not have a central location where you may submit your FOIA request nor does it maintain a central index or database of documents in its possession. DOI's files are decentralized and are maintained by various bureau offices throughout the country.

(b) Submit your request in writing to the FOIA Contact at the bureau office where you believe the records are maintained. If it is unclear where to send your request, contact the Departmental FOIA Officer. You may have to do a little research to find the proper office to handle your inquiry, but you will save time in the long run if you send your request directly to the FOIA Contact at the appropriate bureau office.

(1) A request to a bureau headquarters office may be presumed to seek only records from the headquarters office, unless the request specifies otherwise.

(2) A request to a regional/field office of a bureau may be presumed to seek only records at that office, unless the request specifies otherwise.

(3) If a request to a bureau office specifies that it seeks records located at other offices of the same bureau, the appropriate FOIA Contact will refer the request to the other office(s).

(4) If a request to a bureau specifies that it seeks records of another bureau, the bureau will refer the request to the appropriate bureau for response and notify the requester.

§ 2.11 Why is it important to send my request to the right office?

Failure to send your request to the FOIA Contact at the appropriate bureau office may delay processing, because the time limit for the bureau to respond will not begin to run until a request complying with §§ 2.8 and 2.10 is received by the bureau office where the records are maintained. The processing of your request may be delayed if you send it to the Secretary of the Interior (or other high-level officials), the Office of Public Affairs/Communications, the DOI FOIA Officer, or the Department/bureau's webmaster.

§ 2.12 When can I expect the response?

(a) *Basic time limit.* Ordinarily, a bureau has 20 workdays from the date of receipt to determine whether to grant or deny your FOIA request (see paragraph (b) of this section). The bureau will notify you immediately upon reaching its decision. If you have not received a response within 20 workdays, or 30 workdays if an extension has been taken (see § 2.13) (be sure to allow for mailing time), you may contact the bureau to ask about the delay (see Appendix A to this part). You also have the right to consider any nonresponse within these time limits as a denial of records and file a formal appeal (*See* § 2.27(a)(5)) or lawsuit. These time limits do not apply to requests for expedited processing (*See* § 2.14).

(b) *Running of basic time limit.* The 20 workday time limit begins to run when a request complying with the procedures in §§ 2.8 and 2.10 is received by the FOIA contact at the bureau office that has the records you are seeking. This also applies to electronic requests (the receipt date is the date the e-mail message is opened by the FOIA Contact at the bureau office responsible for the information). This means that all issues regarding fees and the scope of your request must be resolved before the bureau will begin processing your request.

§ 2.13 When may the bureau take a time extension to respond to my request?

(a) The bureau may extend the 20-workday time limit for 10 more workdays when it needs to:

(1) Search for and collect the requested records from multiple offices; or

(2) Search for, collect, and examine a voluminous amount of separate and distinct records sought in a single request; or

(3) Consult with another agency having a substantial interest in the determination of the request or with one or more bureaus of the Department having substantial subject-matter interest in the request.

(b) If the bureau intends to take an extension under this subsection, it will notify you in writing and provide the reason for the extension and the date it expects to make a determination on your request.

(c) If an extension is necessary and the bureau is unable to respond to your request within 30 workdays, it will notify you in writing when you may expect a final response and advise you of your appeal rights. If an extension is taken and you have not received a response in 30 workdays, you may consider the request denied and file an appeal or lawsuit in accordance with §§ 2.28(a)(5) and 2.32(c).

(d) A bureau may not take an extension of time to decide whether to grant a request for a fee waiver.

§ 2.14 When can I get expedited processing?

(a) When requested, a bureau will provide expedited processing if you demonstrate to the satisfaction of the bureau that the request involves:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal Government activity if the request is made by a person primarily engaged in disseminating information, e.g., a representative of the news media. This refers to information which has particular value that will be lost if not disseminated quickly, and ordinarily refers to a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news; or

(3) The loss of substantial due process rights.

(b) A request for expedited processing should be submitted with your FOIA request. For a prompt determination, you must submit a request complying with the requirements of § 2.8 to the FOIA contact at the bureau office that maintains the records you are seeking.

(c) If you are seeking expedited processing, you must submit a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for your request. For example, a requester within the category of paragraph (a)(2) of this section, if not a full time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his/her sole occupation.

(d) Within 10 calendar days after the date of the request, the bureau will notify you whether it will grant expedited processing. If expedited processing is granted, the bureau will give priority to that FOIA request and process the request as soon as practicable. If expedited processing is denied, the bureau will notify you of your right to appeal the decision on expedited processing. Appeals of denials of requests for expedited processing will be processed ahead of other appeals (see § 2.31(a)).

§ 2.15 Will I be charged fees?

Bureaus will charge fees consistent with the provisions in §§ 2.16 and 2.17. The fee schedule in Appendix C to this

part applies to all bureaus of the Department.

§ 2.16 How are fees determined?

(a) *Authority.* Bureaus are authorized to charge fees to recover the direct costs of searching for, reviewing (commercial-use requesters only) and duplicating documents to respond to a FOIA request. However, nothing in this subsection will supersede any statutory authority which requires the bureau to charge specific fees for certain types of records.

(b) *Policy.* (1) Unless waived under the criteria in § 2.19 or § 2.20, bureaus will charge fees for responding to FOIA requests consistent with the provisions of this section and the fee schedule in Appendix C to this part.

(2) A bureau normally will not charge a fee where the fee would be $15 or less. However, if the bureau has a reasonable basis to conclude that a requester or group of requesters has divided a request into a series of requests on a single subject or related subjects to avoid fees, the requests may be aggregated and fees charged accordingly. Bureaus may presume that multiple requests of this type that are made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, bureaus will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(3) Where a bureau responds to a request on behalf of more than one bureau, the fees that would be chargeable by all bureaus involved will be considered in determining whether the fee is $15 or less. If a bureau is responding on behalf of more than one bureau, and you fall under one of the fee categories in § 2.17(a)(2) through (a)(4), you will be entitled to receive up to a total of 100 pages of duplication and two hours of search time free.

(c) *Searches.* Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both you and the bureau. Except where provided in §§ 2.17(a)(2) and (a)(3), bureaus will charge for time spent in the following search activities:

(1) Time spent in trying to locate records which come within the scope of the request, whether documents responsive to the request are located or not, or the records located are exempt from disclosure; and

(2) Direct costs involving the use of computer time to locate requested records.

(d) *Reviews (Commercial-use requests only).* (1) Bureaus will charge commercial-use requesters (see § 2.17(a)(1)) for time spent by bureau staff and attorneys in reviewing requested records for releasability. (See § 2.3(e).)

(2) Review costs will be assessed even if a record ultimately is not disclosed.

(e) *Duplication.* Bureaus will charge duplication fees according to the fee schedule in Appendix C to this part.

(f) *Categories of requesters.* There are four categories of requesters for the purposes of determining fees—commercial-use, educational and noncommercial scientific institutions, news media, and all others. (See §§ 2.3 and 2.17.)

§ 2.17 How will my requester category affect the fees that I am charged?

(a) When you submit a FOIA request, you must specify your fee category. Based on the information you provide, the bureau office processing your request will decide your fee category and charge as follows:

(1) Commercial-use requesters are charged for document search, review, and duplication. They are not entitled to any free search or duplication costs.

(2) Educational/noncommercial scientific institutions are charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) will be provided without charge. The bureau will not charge such requesters for document search and review.

(3) News media requesters are charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) will be provided without charge. The bureau will not charge such requesters for document search and review.

(4) Requesters not covered by paragraphs (a)(1) through (a)(3) of this section—"other requesters" will be charged fees for document search and duplication, except that they are entitled to the first two hours of search time and the first 100 pages of paper copies without charge (or the equivalent cost thereof if the records are in some other form). The bureau will not charge such requesters for document review.

(b) Requests for clarification. If you do not provide sufficient information for the bureau to determine whether you are covered by paragraphs (a)(1) through (a)(4) of this section, the bureau may ask you to provide additional clarification to determine the fee category. This applies to all requesters. The bureau will notify you promptly when additional information is needed. In these circumstances, the 20-workday statutory time limit for responding to your request will not begin to run until you provide sufficient information. If the bureau requests additional clarification and does not hear from you within 20 workdays, it will assume that you are no longer interested in pursuing your request and will close the file.

(c) The following table summarizes the chargeable fees for each category of requester.

Category	Search fees	Review fees	Duplicaiton fees
(1) Commercial Use	Yes	Yes	Yes.
(2) Educational Institution	No	No	Yes (100 pages free).
(3) Non-Commercial Scientific Institution	No	No	Yes (100 pages free).
(4) News Media	No	No	Yes (100 pages free).
(5) All Other	Yes (2 hours free)	No	Yes (100 pages free).

Note: A bureau will not charge any fee if the applicable fee would be $15 or less. (*See* §§ 2.16(b)(2) and (2.18(a).)

§ 2.18 How are fees assessed and collected?

(a) *No charge.* Except in those situations covered by § 2.16(b)(2), the bureau will not charge you if the fee is $15 or less.

(b) *Notice of anticipated fees.* Unless you have been granted a fee waiver or have previously agreed to pay the fees associated with your request, or the anticipated fee is $15 or less, the bureau will:

(1) Promptly notify you of the estimated costs and ask you to provide written assurance of payment; and

(2) Give you an opportunity to modify your request at that time to reduce the fee.

(c) *Advance payment.* (1) The bureau will require advance payment when the estimated fee is over $250 and—

(i) You have never made a FOIA request to DOI requiring fees; or

(ii) You did not pay a previous FOIA fee promptly.

(2) If you have previously failed to pay a fee within 30 calendar days of the date of billing, the bureau will require you to:

(i) Pay the full amount owed plus any applicable interest penalties (see paragraph (g) of this section) and to make an advance payment of the full amount of the estimated fee of the new request; or

(ii) Demonstrate that you have, in fact, paid the prior fee.

(3) At the same time the bureau notifies you that an advance payment is due, it will give you an opportunity to modify your request to reduce the fee.

(d) *Resolving the fee issue.* The bureau will not start processing your request until the fee issue has been resolved (see §§ 2.8(b) and 2.12(b)). If the bureau does not hear from you within 20 workdays, it will assume that you are no longer interested in pursuing the request and will close the file.

(e) *Billing procedures.* If you are required to pay a fee associated with your request, the bureau that processes your request will send you a bill for collection.

(f) *Form of payment.* You should submit a check or money order made payable to the "Department of the Interior" or the bureau furnishing the information. The term United States or the initials "U.S." should not be included on the check or money order. Where appropriate, the official responsible for handling a request may require that payment by check be made in the form of a certified check. Some bureaus accept payment by credit card. Contact the bureau to determine what forms of payment it accepts.

(g) *Failure to pay fees.* The bill for collection or the response letter will include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, as amended (31 U.S.C. 3717) and implementing regulations, if the fees are not paid within 30 calendar days of the date of the bill. This requirement does not apply if the requester is a state, local, or tribal government.

§ 2.19 When will bureaus waive fees?

(a) Fees for processing your request may be waived if you meet the criteria listed in paragraph (b) of this section and Appendix D to this part. In certain circumstances, a partial fee waiver may be appropriate. The burden is on you to justify entitlement to a fee waiver. Requests for fee waivers are decided on a case-by-case basis. The fact that you have received a fee waiver in the past does not mean you are automatically entitled to a fee waiver for every request you may submit, because the essential element of any fee waiver determination is whether the release of the particular documents sought in the request will contribute significantly to public understanding. The bureau will rely on the fee waiver justification you have submitted in your request letter. If you do not submit sufficient justification, your fee waiver request will be denied. The bureau may, at its discretion, communicate with you to request additional information if necessary. However the bureau must make a determination on the fee waiver request within the statutory time limit, even if the agency has not received such additional information.

(b) Bureaus will waive fees (in whole or part) if disclosure of all or part of the information is in the public interest because its release—

(1) Is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(2) Is not primarily in the commercial interest of the requester.

(c) If a bureau denies your request for a fee waiver, it will notify you, in writing, of the following:

(1) The basis for the denial, including a full explanation of why your fee waiver request did not meet DOI's fee waiver criteria (see paragraph (b) of this section and Appendix D to this part);

(2) The name(s) and title(s) or position(s) of each person responsible for the denial;

(3) The name and title of the Office of the Solicitor attorney consulted; and

(4) A statement that the denial may be appealed within 30 workdays after the date of the denial letter to the FOIA Appeals Officer (see Appendix A to this part) under the procedures in § 2.29.

§ 2.20 When will bureaus grant discretionary fee waivers?

(a) A bureau may waive fees at its discretion if a request involves:

(1) Furnishing a copy of a document that the bureau has reproduced for free distribution;

(2) Furnishing one copy of a personal document (e.g., a birth certificate) to a person who has been required to furnish it for retention by the Department;

(3) Furnishing one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held;

(4) Furnishing records to donors with respect to their gifts;

(5) Furnishing records to individuals or private nonprofit organizations having an official voluntary or cooperative relationship with the Department to assist the individual or organization in its work with the Department;

(6) Furnishing records to state, local, and foreign governments, public international organizations, and Indian tribes, when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of the Department and to do so will help to accomplish the work of the Department;

(7) Furnishing records when to do so is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former Department employees); or

(8) Furnishing one copy of a single record in order to assist the requester in obtaining financial benefits to which he or she may be entitled (e.g., veterans or their dependents, employees with Government employee compensation claims).

(b) You cannot appeal the denial of a discretionary fee waiver.

§ 2.21 How will the bureau respond to my request?

(a) After all the criteria in §§ 2.8 and 2.10 have been met, the bureau will make a reasonable effort to search for records responsive to your request. This will include searching for records in an electronic form/format, except where it would interfere significantly with the bureau's automated information systems.

(b) In response to your request, the bureau will do one of two things:

(1) Include the requested records with the response letter or notify you of how, when, and where the records will be made available; or

(2) Deny part or all of your request. Your request will be denied or partially denied if one of the nine statutory exemptions or any of the law enforcement exclusions listed in Appendix E to this part applies to all or part of the records you have requested.

(c) Where a document contains both exempt and nonexempt material, the bureau will generally separate and release the nonexempt information. When disclosing a record in part, the bureau will indicate on the released portion of the record how much information was deleted, unless doing so would harm an interest protected by the exemption used to withhold the information. Further, if technically

feasible, the amount of information deleted and the exemption used to withhold the information will be indicated where the deletion is made. If the nonexempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases, the entire portion may be withheld.

(d) If a bureau denies your request for records in whole or in part, the bureau's response will include:

(1) A reference to the specific exemption or exemptions authorizing the withholding;

(2) A brief statement of the reason(s) for the denial;

(3) An estimate of the volume of information being withheld. The bureau will make a reasonable effort to estimate the volume of any records denied, or portions of records (e.g., 100 pages, 4 Federal Record Center boxes, 1,000 kilobytes, etc.), unless such an estimate would harm an interest protected by the exemption used to withhold the information.

(4) The name(s) and title(s) of the person(s) responsible for the denial;

(5) The name and title of the Office of the Solicitor attorney consulted; and

(6) A statement that the denial may be appealed within 30 workdays of the date of the denial letter or 30 workdays after the records have been released, to the FOIA Appeals Officer (see Appendix A to this part) under the procedures in § 2.29.

(e) If records do not exist within DOI, cannot be located, are not reasonably described, or if a procedural issue remains unresolved (*e.g.*, a fee issue), the bureau will respond to you in writing, including the following information, as applicable:

(1) An explanation of the basis of the decision;

(2) The name(s) and title(s) of the person(s) responsible for the decision; and

(3) A statement that the matter may be appealed within 30 workdays of the date of the response, to the FOIA Appeals Officer under the procedures in § 2.29.

(f) The bureau must consult with the Office of the Solicitor if it is considering withholding a requested record or denying a fee waiver.

(g) If any fees are due, the bureau will notify you in writing of the amount.

(h) All bureau responses will include the name and telephone number of a contact person in case you have questions concerning the response.

(i) Requests for information concerning coal under the Mineral Leasing Act are subject to special rules (see Appendix F to this part).

§ 2.22 What happens if a bureau receives a request for records it does not have or did not create?

(a) *Consultations/referrals within DOI.* (1) If a bureau receives a request for records not in its possession, but which are likely to be in the possession of another bureau within DOI, it will refer the request to that bureau(s) for response. It also will notify you of the referral in writing and provide the name of a contact in the other bureau(s) to which the referral was made. The time limit for responding to your request starts when the request reaches the bureau office that has the records.

(2) If a bureau (other than the Office of Inspector General) receives a request for records in its possession that another bureau created or is substantially concerned with, it will consult with the other bureau before deciding whether to release or withhold the records. As an alternative, the bureau may refer the request along with the records to that bureau for direct response. Such a referral does not restart the statutory time limit.

(b) *Consultations/referrals with agencies outside DOI.* (1) If a bureau receives a request for records not in its possession, but which the bureau believes may be in the possession of another Federal agency, the bureau will return your request and advise you to submit it directly to the other agency. If you still believe that the records exist within DOI, you should notify the bureau FOIA contact of any additional information which leads you to believe the records exist and where they might be found. Alternatively, you may treat such a response as a denial of records and file an appeal.

(2) If, in response to a request, a bureau locates documents that originated with another Federal agency, it will either consult with the originating agency to determine if the requested documents are releasable, or refer the request, along with any responsive document(s), to that agency for a direct response to you unless—

(i) The record is of primary interest to DOI (a record is of primary interest to DOI if it was developed or prepared according to DOI regulations, directives or request);

(ii) DOI is in a better position than the originating agency to assess whether the record is exempt from disclosure; or

(iii) the originating agency is not subject to the FOIA.

(3) If a bureau receives a request for records which have been classified by another agency under Executive Order 12958, Classified National Security Information, or superseding Executive order, it must refer the request to that agency for response.

§ 2.23 How will a bureau handle a request for confidential commercial or financial information that it has obtained from a person or entity outside the Federal Government?

(a) If a bureau receives a FOIA request for records containing confidential commercial or financial information submitted by a person or entity outside the Federal Government, under Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Financial Information, or superseding Executive order, it must provide the submitter with prompt written notice of the request, except as provided in paragraph (i) of this section, whenever:

(1) The submitter has designated the information as confidential commercial information, or

(2) The bureau has reason to believe that the information may be protected under exemption (4).

(b) The letter to the submitter will—

(1) Include a copy of the FOIA request,

(2) Describe the information requested or include copies of the pertinent records,

(3) Advise the submitter of the procedures for objecting to the release of the requested material and specify the time limit for responding.

(4) Give the submitter a reasonable time from receipt of the bureau's notice to object to the release and to explain the basis for the objection, if any. A reasonable time for a submitter to respond to such a request is normally 10 workdays.

(c) Where a large number of submitters is involved, the bureau may publish or post a notice in a place reasonably accessible to the public (i.e., in a newspaper/newsletter or on a bulletin board).

(d) Whenever a bureau notifies a submitter that it may be required to disclose information in response to a FOIA request, it also will notify you that it is giving the submitter an opportunity to review and comment on the material.

(e) If the submitter has any objection to disclosure he/she must submit a detailed written statement including the following:

(1) The justification for withholding any portion of the information under any exemption of the FOIA and, in the case of exemption (4), a specific and detailed explanation of how substantial competitive or other business harm would result from disclosure; and

(2) A certification that the information is confidential, has not been disclosed

to the public by the submitter, and is not routinely available to the public from other sources.

(f) The bureau will review and consider all objections to release that are received within the time specified in the notification letter. However, it is the bureau, rather than the submitter, that is responsible for deciding whether the information should be released or withheld. If a submitter fails to respond to the bureau within the time limits specified in the letter, the bureau will presume that the submitter has no objection to disclosure of the information. Information received after the time specified in the notification letter will not be considered.

(g) Information provided by the submitter under paragraph (e) of this section also may be subject to disclosure under the FOIA.

(h) If the bureau decides to release records over the submitter's objections, it will inform the submitter and you in writing. The letter to the submitter will include copies of the records proposed for release and the bureau's reasons for deciding to release them. The bureau also will inform the submitter that it intends to release the records 10 workdays after the date of this notice.

(i) The bureau will not consult with the submitter if:

(1) The bureau responsible for the decision determines that the information should not be disclosed;

(2) The information has been lawfully published or otherwise made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or regulation (other than this subpart);

(4) Disclosure of the information is prohibited by statute; or

(5) The designation of confidentiality made by the submitter appears obviously frivolous; however, the bureau will notify the submitter of any final decision to disclose the information a reasonable number of days (normally 10 workdays) prior to releasing it.

(j) The bureau will inform the submitter promptly if you file a lawsuit for access to any of the withheld records. Similarly, the bureau will notify you promptly if the submitter files a lawsuit to prohibit the bureau from disclosing the records.

(k) The procedures in this section will be followed when processing FOIA appeals as well.

§ 2.24 Is a submitter required to designate information that is commercially or financially sensitive?

(a) No, however, a submitter should designate either at the time of submission or a reasonable time thereafter, any records (or portions thereof) that it considers to be protected from disclosure under exemption (4).

(b) These designations will expire ten years after the date of the submission unless the submitter requests and provides justification for a longer period and the bureau grants the request.

§ 2.25 Does the bureau provide multitrack processing of FOIA requests?

(a) A bureau may use two or more processing tracks to distinguish between simple and complex requests based on the amount of work and/or time needed to process the request.

(b) If a bureau uses multitrack processing, a person making a request that does not qualify for processing on the fast track may be given an opportunity to limit the scope of his or her request in order to qualify for faster processing.

§ 2.26 What is the difference between a FOIA request and a Privacy Act request?

(a) When you request records pertaining to yourself that are covered by the Privacy Act, the request will be processed under both the FOIA and the Privacy Act. If you request records about yourself, you must submit certain identifying information, usually an original signature (see the appropriate Privacy Act system notice and subpart G of this part) before the bureau will process your request. If you request records pertaining to yourself that are not covered by the Privacy Act, the request will be treated as a FOIA request.

(b) Sometimes a request for Privacy Act records is submitted by an individual other than the person who is the subject of the Privacy Act records. If you request records about another individual, the material will not be disclosed without the prior written approval of the individual on whom the record is maintained unless the release is provided for under one of the Privacy Act conditions of disclosure (5 U.S.C. 552a(b)), or if the individual is deceased. See § 2.8(c)(4).

(c) The Privacy Act never prohibits disclosure of material that the FOIA requires to be released. Both a Privacy Act and a FOIA exemption must apply to withhold information from the subject of the Privacy Act records.

(d) In handling a request covered by paragraph (a) of this section, the fee provisions and time limits under the FOIA will apply, except that with regard to those records that are subject to the Privacy Act, the bureau will charge only for duplication and not for search and review time (see Appendix C to this part). There will be no charge if the fee for processing the request is $15 or less.

(e) See DOI's Privacy Act regulations (subpart G of this part) for additional information.

Subpart D—FOIA Appeals

§ 2.27 Which FOIA decisions may I appeal?

(a) You may file an appeal when:

(1) Records or parts of records have been withheld;

(2) A request has been denied for failure to adequately describe requested records, because the records do not exist, or because they cannot be located;

(3) You believe there is a procedural deficiency (e.g., fees are improperly calculated);

(4) A fee waiver has been denied;

(5) A determination has not been made on your request within the time limits provided in § 2.12; or

(6) A request for expedited processing has been denied. (Special procedures apply to this type of appeal (see §§ 2.14, 2.28(c), and 2.31(a)). An appeal of this type relates only to the request for expedited processing and does not constitute an appeal of your underlying request for records.

(b) Before filing an appeal, you may wish to communicate with the contact person listed in the FOIA response or the bureau's FOIA Officer to see if the issue can be resolved informally. Informal resolution of your concerns may be appropriate where the bureau has not responded to your request or where you believe the search conducted was not adequate. In this latter instance, you may be able to provide additional information that may assist the bureau in locating records. The receipt of poor copies or the miscalculation of a fee also would be appropriate for informal resolution. However, if you wish to file an appeal, it must be filed with the FOIA Appeals Officer within the time limits in § 2.28.

§ 2.28 How long do I have to file an appeal?

(a) Appeals covered by §§ 2.27(a)(1) thru (4). Your appeal must be received by the FOIA Appeals Officer no later than 30 workdays after the date of the final response or 30 workdays after receipt of any records that are provided to you.

(b) Appeals covered by § 2.27(a)(5). You may file an appeal any time after the time limit for responding to your request has passed.

(c) Appeals covered by § 2.27(a)(6). You should file an appeal as soon as possible.

§ 2.29 How do I file an appeal?

(a) You must submit your appeal in writing, i.e., by mail, fax or e-mail, to the FOIA Appeals Officer, U.S. Department of the Interior (see Appendix A to this part for the address). For appeals that are submitted electronically, the receipt date is the date the e-mail message is opened by the FOIA Appeals Officer. Your appeal must include the information specified in paragraph (b) of this section. Failure to send your appeal directly to the FOIA Appeals Officer may result in a delay in processing.

(b) Your appeal must contain copies of all correspondence between the bureau and you, including your request and the bureau's response. DOI will not begin processing your appeal and the time limits for responding to your appeal will not begin to run until these documents are received.

(c) You also should include any reason(s) why you believe the bureau's response was in error. Include your name and daytime telephone number (or the name and telephone number of an appropriate contact) in case DOI needs additional information or clarification of your appeal.

(d) If you file an appeal concerning a fee waiver denial or a denial of expedited processing, you should, in addition to complying with paragraph (b) of this section, demonstrate fully how the criteria in §§ 2.19(b) (see Appendix D to this part) and 2.14(a) are met. You also should state why you believe the initial decision was incorrect.

(e) All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL."

§ 2.30 How will DOI respond to my appeal?

(a) Appeals will be decided by the FOIA Appeals Officer. When necessary, the FOIA Appeals Officer will consult other appropriate offices, including the Office of the Solicitor (in the case of all denials of information and fee waivers, and other technical issues as necessary).

(b) The final determination on an appeal will be in writing and will state the basis for the determination.

(1) *Decision to release or withhold records.*

(i) If the determination is to release the withheld records or portions thereof, the FOIA Appeals Officer will make the records available or instruct the appropriate bureau to make them available as soon as possible.

(ii) If the determination upholds in whole or part the denial of a request for records, the FOIA Appeals Officer will advise you of your right to obtain judicial review, and will set forth the name(s) and title(s) or position(s) of each person responsible for the determination.

(2) *Fee waiver denials.* If the determination is to grant your request for a fee waiver, the FOIA Appeals Officer will advise the appropriate bureau of the Department's determination and instruct the bureau to proceed with processing the request or to refund any monies you have paid. If the determination is to deny the fee waiver request, the Department will advise you of your right to seek judicial review. You also should contact the bureau office to make further arrangements to process your request if you still wish to obtain the records.

(3) *Non-possession of records.* If the determination is that the requested records exist, the bureau that has the records will issue a response to you promptly and the FOIA Appeals Officer will close the file on your appeal. If the determination is that the requested records cannot be located or do not exist, the FOIA Appeals Officer will advise you of your right to treat the Department's response as a denial and seek judicial review.

(4) *Non-response to a FOIA request.* If an appropriate response has not been issued to your FOIA request within the 20-workday statutory time limit, the FOIA Appeals Officer will direct the bureau to issue a response directly to you as soon as possible, and provide you with the name and telephone number of a contact person. The FOIA Appeals Officer will close your FOIA appeal and advise you that you may treat the lack of a response by the bureau as a denial of your appeal and seek judicial review.

(c) If a requested record (or portion thereof) is being made available over the objections of a submitter, the FOIA Appeals Officer will notify the submitter following the same procedures described in § 2.23, prior to releasing the records to you.

(d) A determination to grant an appeal for expedited processing will instruct the bureau to process your request as soon as practicable. If your request for expedited processing is denied on appeal, you will be advised of your right to seek judicial review of the denial of expedited processing.

§ 2.31 How long does DOI have to respond to my appeal?

(a) The statutory time limit for responding to an appeal is 20 workdays after receipt of an appeal, meeting the requirements of § 2.29. The Department will give an appeal involving the denial of a request for expedited processing priority and process it ahead of other appeals pending before the agency due to the fact that you have shown an exceptional need or urgency for the records (see § 2.14).

(b) If you have not received a determination on your appeal within 20 workdays, you will be considered to have exhausted your administrative remedies (meaning you do not have to seek further resolution of your appeal from the Department). This gives you the right to seek review in a District Court of the United States (see 5 U.S.C. 552(a)(4) and (6)). In the event that the Department is unable to reach a determination within the given time limits, the FOIA Appeals Officer will notify you of the reason for the delay, the date when you can expect to receive the determination, and the right to seek judicial review.

Subpart E—FOIA Annual Report

§ 2.32 Where can I get a copy of DOI's annual report?

Under 5 U.S.C. 552(e), DOI is required to prepare an annual report regarding its FOIA activities. The report includes information about FOIA requests, appeals, and litigation against the Department. Copies of DOI's annual FOIA report may be obtained from the Departmental FOIA Officer or by contacting DOI's Library which is located at the C Street entrance of the Main Interior Building (MIB), 1849 C Street, NW., Washington, DC 20240 (see Appendix A to this part). You may access the annual reports electronically by visiting DOI's FOIA home page (see Appendix B to this part for the Internet address).

4. Appendices A through F to part 2 are revised to read as follows:

BILLING CODE 4310-RK-P

Appendix A to Part 2—Department of the Interior

FOIA/PUBLIC AFFAIRS CONTACTS AND READING ROOMS

DEPARTMENTAL

Departmental FOIA Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5342 Fax No. (202) 501-2360	Departmental FOIA Appeals Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5339 Fax No. (202) 501-2360	Departmental Privacy Act Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 219-0868 Fax No. (202) 501-2360
Public Affairs Office MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Reading Room - DOI's Library 1849 C St., NW. Located at C Street Entrance, MIB Washington, DC 20240 Telephone No. (202) 208-5815 Fax No. (202) 208-6773	

OFFICE OF THE SECRETARY

FOIA Officer MS-1540, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-6045 Fax No. (202) 208-5048	Public Affairs Office MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Office of Trust Fund Management 505 Marquette, NW., Suite 1500 Albuquerque, NM 87102 Telephone No. (505) 248-5701 Fax No. (505) 248-5704
	Reading Room - DOI's Library 1849 C St., NW. Located at C Street Entrance, MIB Washington, DC 20240 Telephone No. (202) 208-5815 Fax No. (202) 208-6773	

OFFICE OF AIRCRAFT SERVICES

FOIA Officer PO Box 15428 Boise, ID 83715-5428 Telephone No. (208) 387-5752 Fax No. (208) 387-5830	Public Affairs Office MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Reading Room National Interagency Fire Center 2350 W. Robinson Rd. Boise, ID 83705 Telephone No. (208) 387-5750 Fax No. (208) 387-5830

OFFICE OF HEARINGS AND APPEALS (OHA)
HEADQUARTERS

FOIA Officer MS-1103, BT #3 4015 Wilson Blvd. Arlington, VA 22203 Telephone No. (703) 235-3800 Fax No. (703) 235-9014	Public Affairs Office MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No (202) 208-3171 Fax No. (202) 208-3231	Reading Room Office of the Director Room 1103, BT #3 4015 Wilson Blvd. Arlington, VA 22203 Telephone No. (703) 235-3800 Fax No. (703) 235-9014

OHA REGIONAL/FIELD OFFICES

Oklahoma State Office 215 Dean McGee Ave., Rm 820 Oklahoma City, OK 73102 Telephone No. (405) 231-4896 Fax No. (405) 231-5568	Minnesota State Office The Court International Bldg. 2550 University Ave., Suite 416N St. Paul, MN 55114 Telephone No. (612) 725-3920 Fax No. (612) 727-2780	Utah State Office Elks Bldg. 139 East South Temple, Ste 600 Salt Lake City, UT 84111 Telephone No. (801) 524-5344 Fax No. (801) 524-5539
California State Office 801.I St., Rm 406 Sacramento, CA 95814 Telephone No. (916) 978-4326 Fax No. (916) 568-7422	New Mexico State Office 1700 Louisiana, NE., Ste 220 Albuquerque, NM 87110 Telephone No. (505) 262-6265 Fax No. (505) 262-6267	

OFFICE OF THE INSPECTOR GENERAL

FOIA Officer MS-5341, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4357 Fax No. (202) 208-4998	Public Affairs Office MS-5341, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4618 Fax No. (202) 219-3856	Reading Room Room 5351, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4358 Fax No. (202) 208-4998

OFFICE OF THE SOLICITOR (SOL)
HEADQUARTERS

FOIA Officer MS-7456-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-2961 Fax No. (202) 219-6780	Public Affairs Office MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Reading Room Room 7069, MIB 1849 C St., NW. Washington DC 20240 Telephone No. (202) 208-5763 Fax No. (202) 219-6780

SOL REGIONAL/FIELD OFFICES

Alaska Region Office of the Regional Solicitor 4230 University Dr., Suite 300 Anchorage, AK 99508-4626 Telephone No. (907) 271-4131 Fax No.	Northeast Region Office of the Regional Solicitor 1 Gateway Center, Suite 612 Newton Corner, MA 02458-2802 Telephone No. (617) 527-3400 Fax No. (617) 527-6848	Pittsburgh Field Office Office of the Field Solicitor 3 Parkway Center, Suite 385 Pittsburgh, PA 15220 Telephone No. (412) 937-4017 Fax No. (412) 937-4003
Twin Cities Field Office Office of the Field Solicitor Bishop Whipple Federal Building 1 Federal Dr., Rm. 686 Fort Snelling, MN 55111 Telephone No. (612) 725-3540 Fax No. (612) 725-3547	Pacific Northwest Region Office of the Regional Solicitor 500 NE Multnomah St., Suite 607 Portland, OR 97232 Telephone No. (503) 231-2145 Telephone No. (503) 231-2160 Fax No. (503) 231-2166	Billings Field Office Office of the Field Solicitor 316 North 26th St., Rm. 3004 Billings, MT 59101 Telephone No. (406) 247-7583 Fax No. (406) 247-7587
Boise Field Office Office of the Field Solicitor Federal Building, U.S. Courthouse 550 West Fort St., Rm. 365 Boise, ID 83724 Telephone No. (208) 334-1911 Fax No. (208) 334-1378	Pacific Southwest Region Office of the Regional Solicitor 2800 Cottage Way, Rm. W-2215 Sacramento, CA 95825-1890 Telephone No. (916) 979-2153 Fax No. (916) 979-2164	Palm Springs Field Office Office of the Field Solicitor 555 S. Palm Canyon Dr., Rm. A-208 Palm Springs, CA 92263 Telephone No. (619) 327-0959 Fax No. (619) 322-9537
Phoenix Field Office Office of the Field Solicitor Sandra Day O'Connor U.S. Courthouse, Suite 404 401 West Washington Street, SPC 44 Phoenix, AZ 85003-2151 Telephone No. (602) 364-7880 Fax No. (602) 364-7885	Salt Lake City Field Office Office of the Field Solicitor 6201 Federal Bldg. 125 S. State St. Salt Lake City, UT 84138 Telephone No. (801) 524-5677 Fax No. (801) 524-4506	San Francisco Field Office Office of the Field Solicitor 600 Harrison St., Suite 545 San Francisco, CA 94107 Telephone No. (415) 744-4095 Fax No. (415) 744-4122
Southeast Region Office of the Regional Solicitor 75 Spring St., SW., Suite 304 Atlanta, GA 30303 Telephone No. (404) 331-3441 Fax No. (404) 730-2682	Knoxville Field Office Office of the Field Solicitor 530 Gay St., Rm 308 Knoxville, TN 37902 Telephone No. (615) 545-4315 Fax No. (615) 545-4314	Southwest Region Office Office of the Regional Solicitor 2400 Louisiana Blvd., NE Bldg. 1, Suite 200 Albuquerque, NM 87110-4316 Telephone No. (505) 883-6700 Fax No. (505) 883-67
Santa Fe Field Office Office of the Field Solicitor 150 Washington Ave., # 207 Santa Fe, NM 87501 Telephone No. (505) 988-6200 Fax No. (505) 988-6217	Tulsa Field Office Office of the Field Solicitor 7906 E. 33rd St. Tulsa, OK 74145 Telephone No. (918) 669-7730 Fax No. (918) 581-7501	Rocky Mountain Region Office of the Regional Solicitor 755 Parfet St., Suite 151 Lakewood, CO 80215 Telephone No. (303) 231-5353 Fax No. (303) 231-5363

FISH & WILDLIFE SERVICE (FWS)
HEADQUARTERS

FOIA Officer Arlington Square, Room 222 4401 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 358-2504 Fax No. (703) 358-2269	Public Affairs Office MS-3447, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5634 Fax No. (202) 208-5850	Reading Room Room 224, Arlington Sq. 4401 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 358-1730 Fax No. (703) 358-2269

FWS REGIONAL/FIELD OFFICES

Region 1 (CA, HI, ID, NV, OR, WA) State Office Eastside Federal Complex 911 Northeast 11th Ave. Portland, OR 97232-4181 Telephone No. (503) 231-6188 Fax No. (503) 231- 6259	Region 2 (AZ, NM, OK, TX) State Office P.O. Box 1306 500 Gold Ave., SW Albuquerque, NM 87103 Telephone No. (505) 248-6925 Fax No. (505) 766-2105	Region 3 (IA, IL, IN, MN, MO, MI, OH, WI) State Office BHW Federal Building 1 Federal Dr. Fort Snelling, MN 55111-4056 Telephone No. (612) 713-5230 Fax No. (612) 713-5281
Region 4 (AZ, FL, GA, KY, LA, MS, NC, SC, TN, VI, PR) State Office 1875 Century Blvd. Atlanta, GA 30345 Telephone No. (404) 679-4096 Fax No. (404) 679-7273	Region 5 (CT, DC, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VA, VT, WV) State Office 300 West Gate Center Dr. Hadley, MA 01035 Telephone No. (413) 253-8221 Fax No. (413) 253-8456	Region 6 (CO, KS, MT, ND, NE, SD, UT, WY) State Office Asst. Regional Director P.O. Box 25486 Denver Federal Center Denver, CO 80225 Telephone No. (303) 236-7917 Fax No. (303) 236-6958
	Region 7 Alaska State Office 1011 East Tudor Rd. Anchorage, AK 99503 Telephone No. (907) 786-3455 Fax No. (907) 786-3625	

NATIONAL PARK SERVICE (NPS)
HEADQUARTERS

FOIA Officer MS-3317, MIB 1849 C St., NW., Washington, DC 20240 Telephone No. (202) 208-3933 Fax No. (202) 501-1340	Public Affairs Office P.O. Box 37127 Washington, DC 20013-7127 Telephone No. (202) 208-6843 Fax No. (202) 219-0910	Reading Room Room 3316, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3933 Fax No. (202) 501-1340

NPS REGIONAL/FIELD OFFICES

Alaska Region 2525 Gambell St. Anchorage, AK 99503-2892 Telephone No. (907) 257-2696 Fax No. (907) 257-2533	National Capital Region 1100 Ohio Dr., SW. Washington, DC 20242 Telephone No. (202) 619-7187 Fax No. (202) 619-7062	Pacific Region 600 Harrison St., Suite 600 San Francisco, CA 94107 Telephone No. (415) 427-1320 Fax No. (415) 427-1485
Intermountain Region P.O. Box 25287 Denver, CO 80225 Telephone No. (303) 969-2062 Fax No. (303) 969-2002	Midwest Region 1709 Jackson St. Omaha, NE 68102 Telephone No. (402) 221-3448 Fax No. (402) 341-2039	Northeast Region U.S. Customs House, 3rd Floor 200 Chestnut St. Philadelphia, PA 19106 Telephone No. (215) 597-7384 Fax No. (215) 597-0065
Southeast Region 100 Alabama St., SW 1924 Building Atlanta, GA 30303 Telephone No. (404) 562-3103 Fax No. (404) 562-3263	Denver Service Center 12795 West Alameda Pkwy. Denver, CO 80225-0187 Telephone No. (303) 969-6722 Fax No. (303) 987-6679	Harpers Ferry Center P.O. Box 50 Harpers Ferry, WV 25425 Telephone No. (304) 535-6124 Fax No. (304) 535-6008

BUREAU OF LAND MANAGEMENT (BLM)
HEADQUARTERS

FOIA Officer 1620 L St., NW., Room 725 Washington, DC 20240 Telephone No. (202) 452-5086 Fax No. (202) 452-5002	Public Affairs Office Room 406, LS (WO-610) 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 452-5125 Fax No. (202) 452-5124	Reading Room 1620 L St., NW. - Room 750 Washington, DC 20240 Telephone No. (202) 452-5193 Fax No. (202) 452-0395

BLM REGIONAL/FIELD OFFICES

Alaska State Office 222 West 7th Ave., # 13 Anchorage, AK 99513-5076 Telephone No. (907) 271-5054 Fax No. (907) 271-3624	Arizona State Office 222 North Central Ave. Phoenix, AZ 85004-2203 Telephone No. (602) 417-9364 Fax No. (602) 417-9556	California State Office Federal Building 2800 Cottage Way Sacramento, CA 95825-0451 Telephone No. (916) 978-4409 Fax No. (916) 978-4416
Colorado State Office 2850 Youngfield St. Lakewood, CO 80215-7076 Telephone No. (303) 239-3600 Fax No. (303) 239-3933	Eastern State Office 7450 Boston Blvd. Springfield, VA 22153 Telephone No. (703) 440-1634 Fax No. (703) 440-1687	Idaho State Office 1387 South Vinnell Way Boise, ID 83709-1657 Telephone No. (208) 373-3947 Fax No. (208) 373-3904
Montana State Office P.O. Box 36800 Billings, MT 59107-6800 Telephone No. (406) 896-5069 Fax No. (406) 896-5298	Nevada State Office 1340 Financial Blvd. P.O. Box 1200 Reno, NV 89520 Telephone No. (775) 861-6632 Fax No. (775) 861-6411	New Mexico State Office 1474 Rodeo Rd. P.O. Box 27115 Santa Fe, NM 87502-0115 Telephone No. (505) 438-7636 Fax No. (505) 438-7435
Oregon State Office P.O. Box 2965 Portland, OR 97208 Telephone No. (503) 952-6276 Fax No. (503) 952-6308	Utah State Office Box 45155 Salt Lake City, UT 84145-0155 Telephone No. (801) 539-4161 Fax No. (801) 539-4183	Wyoming State Office 5353 Yellowstone Rd. Cheyenne, WY 82009 Telephone No. (307) 775-6066 Fax No. (307) 775-6082
National Interagency Fire Center 3833 South Development Ave. Boise, ID 83705-5354 Telephone No. (208) 387-5360 Fax No. (208) 387-5359	Denver Area Service Center Denver Federal Center Building 50, HR-250 Denver, CO 80225-0047 Telephone No. (303) 236-6362 Fax No. (303) 236-0711	National Training Center 9828 N. 31st Ave. Phoenix, AZ 85051 Telephone No. (602) 906-5572 Fax No. (602) 906-5619

BLM READING ROOMS

Information Access Center 222 West 7th Ave. #13 Anchorage, AK 99513 Telephone No. (907) 271-5960 Fax No. (907) 271-3624	Information Access Center 222 North Central Ave. Phoenix, AZ 85004-2203 Telephone No. (602) 417-9200 Fax No. (602) 417-9556	Information Access Center 2800 Cottage Way Sacramento, CA 95825-0451 Telephone No. (916) 978-4401 Fax No. (916) 978-4416
Information Access Center 2850 Youngfield St. Lakewood, CO 80215 Telephone No. (303) 239-3600 Fax No. (303) 239-3933	Information Access Center 7450 Boston Blvd. Springfield, VA 22153 Telephone No. (703) 440-1600 Fax No. (703) 440-1609	Information Access Center 1387 S. Vinnell Way Boise, ID 83709-1657 Telephone No. (208) 373-3889 Fax No. (208) 373-3899
Information Access Center P.O. Box 36800 Billings, MT 59107-6800 Telephone No. (406) 896-5069 Fax No. (406) 896-5298	Information Access Center P.O. Box 12000 1340 Financial Blvd. Reno, NV 89520 Telephone No. (702) 861-6500 Fax No. (702) 861-6606	Information Access Center 1474 Rodeo Rd. Santa Fe, NM 87505 Telephone No. (505) 438-7400 Fax No. (505) 438-7435
Information Access Center P.O. Box 2965 1515 SW Fifth Ave. Portland, OR 97208 Telephone No. (503) 952-6001 Fax No. (503) 952-6422	Information Access Center 324 South State St. Fourth Floor Salt Lake City, UT 84145 Telephone No. (801) 539-4001 Fax No. (801) 539-4230	Information Access Center 5353 Yellowstone Road Cheyenne, WY 82009 Telephone No. (307) 775-6256 Fax No. (307) 775-6129

MINERALS MANAGEMENT SERVICE (MMS) HEADQUARTERS

FOIA Officer 381 Elden St. MS-2200 Herndon, VA 20170-4817 Telephone No. (703) 787-1132 Fax No. (703) 787-1207	Public Affairs Office 1849 C St., NW Washington, DC 20240 Telephone No. (202) 208-3985 Fax No. (202) 208-3968

MMS REGIONAL/FIELD OFFICES

Minerals Revenue Management P.O. Box 25165, MS-320B2 Denver, CO 80225-0165 Telephone No. (303) 231-3013 Fax No. (303) 231-3781	Offshore Minerals Management 381 Elden St. MS-4063 Herndon, VA 20170-4817 Telephone No. (703) 787-1689 Fax No. (703) 787-1922	Gulf Of Mexico 1201 Elmwood Park Blvd., MS-5030 New Orleans, LA 70123-2394 Telephone No. (504) 736-2513 Fax No. (504) 736-2977
Alaska 949 East 36th Ave., Rm 300, MS-8000 Anchorage, AK 99508-4302 Telephone No. (907) 271-6621 Fax No. (907) 271-6805	Pacific 770 Paseo Camarillo, MS-7001 Camarillo, CA 93010-6064 Telephone No. (805) 389-7621 Fax No. (805) 389-7689	Southern Administrative Service Center 1201 Elmwood Park Blvd., MS-2620 New Orleans, LA 70123-2394 Telephone No. (504) 736-2878 Fax No. (504) 736-2478
Western Administrative Service Center P.O. Box 25165, MS-2700 Denver, CO 80225-0165 Telephone No. (303) 275-7305 Fax No. (303) 275-7347	READING ROOM Public Information Office 1201 Elmwood Park Blvd. New Orleans, LA 70123-2394 Telephone No. (800) 200-GULF Fax No. (504) 736-2602	

OFFICE OF SURFACE MINING (OSM)
HEADQUARTERS

FOIA Officer MS-262, SIB 1951 Constitution Ave. Washington, DC 20240 Telephone No. (202) 208-2961 Fax No. (202) 219-3100	Public Affairs Office MS-262, SIB 1951 Constitution , NW. Washington, DC 20240 Telephone No. (202) 208-2534 Fax No. (202) 501-0549	Reading Room Contact: OSM FOIA Officer Room 263, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 208-2961 Fax No. (202) 501-4734

OSM REGIONAL/FIELD OFFICES
Appalachian Region

FOIA Coordinator 3 Parkway Center Pittsburgh, PA 15220 Telephone No. (412) 937-2146 Fax No. (412) 937-2177	Virginia State Office Big Stone Gap Field Office 1941 Neeley Rd., Suite 201 Compartment 116 Gig Stone Gap, VA 24219 Telephone No. (540) 523-0000 Fax No. (540) 523-5053	West Virginia State Office Charleston Field Office 1027 Virginia St., East Charleston, WV 25301 Telephone No. (304) 347-7162 Fax No. (304) 347-7170
Ohio, Maryland, Michigan State Office 4480 Refugee Rd., Suite 201 Columbus, OH 43232 Telephone No. (614) 866-0578 Fax No. (614) 469-2506	Massachusetts, Pennsylvania, Rhode Island State Office 415 Market St., Suite 3C Harrisburg, PA 17101 Telephone No. (717) 782-4036 Fax No. (717) 782-3771	Georgia, North Carolina, Tennessee State Office Knoxville Field Office 530 Gay St., Suite 500 Knoxville, TN 37902 Telephone No. (423) 545-4103 Fax No. (423) 545-4111
	Kentucky State Office Lexington Field Office 2675 Regency Rd. Lexington, KY 40503 Telephone No. (606) 233-2896 Fax No (606) 233-2895	

Mid-Continent Region

Iowa, Kansas, Missouri State Office Alton Federal Building 501 Belle St. Alton, IL 62002 Telephone No. (618) 463-6463 Fax No. (618) 463-6470	Alabama, Mississippi State Office Birmingham Field Office 135 Gemini Circle, Suite 215 Homewood, AL 35209 Telephone No. (205) 290-7286 Fax No. (205) 290-7280	Indiana, Illinois State Office Indianapolis Field Office 575 North Pennsylvania St., Room 301 Indianapolis, IN 46204 Telephone No. (317) 226-6700 Fax No. (317) 226-6182
	Arizona, Louisiana, Oklahoma, Texas State Office Tulsa Field Office 5100 East Skelly Dr., Suite 470 Tulsa, OK 74135 Telephone No. (918) 581-6430 Fax No. (918) 581-6419	

Western Region

Western Regional Office 1999 Broadway, Suite 3320 Denver, CO 80202 Telephone No (303) 844-1435 Fax No. (303) 844-1522	Arizona, California, New Mexico State Office Albuquerque Field Office 505 Marquette NW., Suite 1200 Albuquerque, NM 87102 Telephone No. (505) 248-5070 Fax No. (505) 248-5081	Idaho, Montana, North Dakota, South Dakota, Wyoming State Office Casper Field Office 100 East B St., Room 2128 Casper, WY 82601-1918 Telephone No. (307) 261-6542 Fax No. (307) 261-6552
FIELD READING ROOMS Contact: OSM FOIA Coordinators at the region/field locations		

U.S. GEOLOGICAL SURVEY (USGS) HEADQUARTERS

FOIA Officer MS-807, National Center Room 2C405 Reston, VA 20192 Telephone No. (703) 648-7313 Fax No. (703) 236-9201	Office of Public Affairs MS-119 12201 Sunrise Valley Dr. Reston, VA 20192 Telephone No. (703) 646-4460 Fax No. (703) 648-4466	Reading Room USGS Library 12201 Sunrise Valley Dr. Reston, VA 20192 Telephone No. (703) 648-4302 Fax No. (703) 648-6373

USGS REGIONAL/FIELD OFFICES

Central Regional Office Denver Federal Center Building 53, MS- 201 Room H1927 P.O. Box 25046 Denver, CO 80225 Telephone No. (303) 236-9201 Fax No. (303) 236-5882	Western Regional Office 345 Middlefield Rd., MS-211 Menlo Park, CA 94025-3591 Telephone No. (650) 329-4458 Fax No. (650) 329-5095

BUREAU OF RECLAMATION (BOR)
HEADQUARTERS

FOIA Officer P.O. Box 25007, D-7924 Denver, CO 80225-0007 Telephone No. (303) 445-2048 Fax No. (303) 445-6575	Public Affairs Office, D-5010 Denver Federal Center, Bldg. 67 P.O. Box 25007 Denver, CO 80225-0007 Telephone No. (303) 236-7000 Fax No. (303) 236-9235	READING ROOM Reclamation Library D-7925 Room 167, BLDG. 67, Denver Federal Center Denver, CO 80225-0007 Telephone No. (303) 445-2072 Fax No. (303) 445-6303

BOR REGIONAL/FIELD OFFICES

Great Plains Region P.O. Box 36900, GP-3100 Billings, MT 59107-6900 Telephone No. (406) 247-7620 Fax No. (406) 247-7622	Lower Colorado Region P.O. Box 61470, LC-5301 Boulder City, NV 89006-1470 Telephone No. (702) 293-8071 Fax No. (702) 293-8615	Mid-Pacific Region 2800 Cottage Way, MP-3000 Sacramento, CA 95825-1898 Telephone No. (916) 978-5552 Fax No. (916) 978-5176
Pacific Northwest Region 1150 North Curtis Rd., PN-7600 Boise, ID 83706-1234 Telephone No. (208) 378-5120 Fax No. (208) 378-5129	Upper Colorado Region 125 South State St., Room 6107 UC482 Salt Lake City, UT 84138-1102 Telephone No. (801) 524-3655 Fax No. (801) 524-5499	

BUREAU OF INDIAN AFFAIRS (BIA)
HEADQUARTERS

FOIA Officer P.O. Box 68 Room 5021 Albuquerque, NM 87103 Telephone No. (505) 248-6090 Fax No. (505) 248-6103	Public Affairs Office MS-4542, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 219-4150 Fax No. (202) 501-1516	Reading Room Room 4658, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4174 Fax No. (202) 208-3575

BIA REGIONAL/FIELD OFFICES

Pacific Region (California State) 2800 Cottage Way Sacramento, CA 95825 Telephone No. (916) 978-6000 Fax No. (916) 978-6099	Great Plains Region (Nebraska, North Dakota, South Dakota States) 115 4th Ave., SE. Aberdeen, SD 57401 Telephone No. (605) 226-7426 Fax No. (605) 226-7429	Southwest Region (Colorado, New Mexico States) P.O. Box 26567 615 First St., NW. Albuquerque, NM 87120 Telephone No. (505) 346-7592 Fax No. (505) 346-7151
Southern Plains Region (Kansas, Oklahoma States) WCD Office Complex P.O. Box 368 Anadarko, OK 73005 Telephone No. (405) 247-6673 Fax No. (405) 247-6989	Rocky Mountain Region (Montana, Wyoming States) 316 North 26th St. Billings, MT 59101 Telephone No. (406) 657-6675 Fax No. (406) 657-5916	Eastern Region (Florida, Louisiana, Maine, Mississippi, New York, North Carolina States) MS-260, Virginia Sq. 3701 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 235-4349 Fax No. (703) 235-8610
Juneau Region (Alaska State) P.O. Box 25520 Juneau, AK 99802-5520 Telephone No. (907) 586-7177 Fax No. (907) 586-7169	Midwest Region (Iowa, Michigan, Minnesota, Wisconsin States) 331 South 2nd Ave. Minneapolis, MN 55401 Telephone No. (612) 373-1182 Fax No. (612) 373-1186	Eastern Oklahoma Region (Oklahoma State Office) 101 North 5th St. Muskogee, OK 74401 Telephone No. (918) 687-2414 Fax No. (918) 687-2571
Navajo Region (Arizona, California, Nevada, Utah States) P.O. Box 1060 Gallup, NM 87305 Telephone No. (505) 863-8268 Fax No. (505) 863-8245	Western Region (Arizona, California, Nevada, Utah States) P.O. Box 10 Phoenix, AZ 85001 Telephone No. (602) 379-6741 Fax No. (602) 379-6764	Northwest Region (Idaho, Oregon, Washington, Alaska States) 911 Northeast 11th Ave. Portland, OR 97232 Telephone No. (503) 231-6702 Fax No. (503) 231-2201

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Note: For more information on FOIA, including the most current listing of FOIA Contacts, visit DOI's FOIA home page at http:// *www.doi.gov/foia/.*

Appendix B to Part 2—Internet Addresses

1. Department of the Interior (DOI) Home Page: http://www.doi.gov
2. DOI FOIA Home Page: http://www.doi.gov/foia/
3. DOI Reference Guide for Obtaining Information: http://www.doi.gov/foia/foitabl.htm
4. List of DOI Public Affairs Offices: http://www.doi.gov/foia/list.html
5. DOI FOIA Contacts: http://www.doi.gov/foia/contacts.html
6. DOI FOIA Regulations (43 CFR, part 2, subparts A and B): http://www.doi.gov/foia/policy.html
7. FOIA Policy and Guidance: http://www.doi.gov/foia/policy.html
8. Electronic Reading Room: http://www.doi.gov/foia/readroom.html
9. Index of Frequently Requested Documents: http://www.doi.gov/foia/frrindex.html
10. FOIA Annual Reports to Congress: http://www.doi.gov/foia/frrindex.html
11. DOI's Library: http://library.doi.gov
12. General Record Schedule 14, Information Services Records: http://ardor.nara.gov/grs/grs14.html
13. DOI Records Management Program: http://www.doi.gov/oirm/records/
14. DOI Privacy Act Program: http://www.doi.gov/oirm/privacy/
15. DOI Privacy Act Officers: http://www.doi.gov/oirm/privacyofficer.htm
16. DOI Privacy Act Regulations: http://www4.law.cornell.edu/uscode/5/552a.text.html
17. DOI Privacy Act Systems of Records Notices: http://www.doi.gov/foia/frrindex.html
18. FirstGov Portal: *http://www.firstgov.gov.*

Appendix C to Part 2—Fee Schedule

If you submit a FOIA request, the bureau will charge you to search for, review, and duplicate the requested records depending on your fee category (*see* §§ 2.16 and 2.17). In addition, the bureau will charge you for any special services performed in connection with processing your request and/or appeal under subparts C and D of this part. The following fees apply to all bureaus of the Department; these fees apply to services performed in making documents available for public inspection and copying under subpart B of this part as well. The duplicating fees also are applicable to records provided in response to requests made under the Privacy Act. Fees will not be charged under either the FOIA or the Privacy Act where the total amount of fees for processing the request is $15 or less (*See* § 2.16(b)(2)), where the requester has met the requirements for a statutory fee waiver, or where the bureau has granted a discretionary fee waiver (*See* §§ 2.19 and 2.20).

(1) *Search and review (review applies to commercial-use requesters only).* Fees are based on: the average hourly salary (base salary plus DC locality payment), plus 16 percent for benefits, of employees in the following three categories. The average grade was established by surveying the bureaus to obtain the average grade of employees conducting FOIA searches and reviews. Fees will be increased annually consistent with Congressionally approved pay increases. Fees are charged in quarter hour increments.

(a) Clerical—Based on GS–7, Step 2, pay
(b) Professional—Based on GS–12, Step 2 pay
(c) Managerial—Based on GS–14, Step 2 pay

Note: Fees for the current fiscal year are posted on DOI's FOIA home page (see appendix B to this part). If you do not have access to the Internet, please call the Departmental FOIA office (see appendix A to this part) for a copy of the fee schedule.

	Fee
(2) *Duplication:*	
Pages no larger than 8.5 x 14 inches, when reproduced by standard office copying machines	$.13 per page ($ .26 for double-sided copying).
Color copies of pages no larger than 8.5 x 11 inches	$.90 per page.
Pages larger than 8.5 x 14 inches.	Direct cost to DOI.
Color copies of pages no larger than 11 x 17 inches	$1.40 per page.
Photographs and records requiring special handling (e.g., because of age, size, or format).	Direct cost to DOI.
(3) *Electronic records:*	
Charges for services related to processing requests for electronic records	Direct cost to DOI.
(4) *Certification:*	
Each certificate of verification attached to authenticate copies of records	$.25
(5) *Postage/Mailing:*	
Charges that exceed the cost of first class postage. Examples of such charges are Express Mail or overnight delivery.	Postage or Delivery charge.
(6) *Other Services:*	
Cost of special services or materials, other than those provided for by this fee schedule, when requester is notified of such costs in advance and agrees to pay them.	Direct cost to DOI.

Appendix D to Part 2—Fee Waiver Criteria

If you are seeking a fee waiver, it is your responsibility to provide detailed information to support your request. You must submit this information with your FOIA request. Each fee waiver request is judged on its own merit-we do not grant "blanket" fee waivers, i.e., obtaining a fee waiver once does not mean you will obtain a subsequent fee waiver. Please note that inability to pay is not sufficient to justify a fee waiver. The statutory requirement for granting a fee waiver is that release of the information must be in the public interest because it—

(1) Is likely to contribute significantly to public understanding of the operations and activities of the Government; and

(2) Is not primarily in your commercial interest.

(b) In deciding whether you are entitled to a fee waiver, the bureau will consider the criteria in paragraphs (a)(1) through (4). Your request for a fee waiver must address each of these criteria.

(1) How do the records concern the operations or activities of the Government?

(2) If the records concern the operations or activities of the Government, how will disclosure likely contribute to public understanding of these operations and activities?

(i) How are the contents of the records you are seeking meaningfully informative on the agency's operations and activities? Is there a logical connection between the content of the records and the operations or activities you are interested in?

(ii) Other than enhancing your knowledge, how will disclosure of the requested records contribute to the understanding of the public at large or a reasonably broad audience of persons interested in the subject?

(iii) Your identity, vocation, qualifications, and expertise regarding the requested information (whether you are affiliated with a newspaper, college or university, have previously published articles, books, etc.) may be relevant factors. However, merely stating that you are going to write a book, research a particular subject, or perform doctoral dissertation work, is insufficient, without demonstrating how you plan to disclose the information in a manner which will be informative to a reasonably broad audience of persons interested in the subject.

(iv) Do you have the ability and intention to disseminate the information to the general public?

(A) How and to whom do you intend to disseminate the information?

(B) How do you plan to use the information to contribute to public understanding of the Government's operations or activities?

(3) If there is likely to be a contribution to public understanding, will release of the requested records contribute significantly to public understanding?

(i) Is the information being disclosed new or does it confirm or clarify data which has been released previously?

(ii) How will disclosure increase the level of public understanding of the operations or activities of the Department or a bureau that existed prior to disclosure?

(iii) Is the information already publicly available? If the information you are seeking has previously been published or is routinely available to the public in a library, reading room, through the Internet, or as part of the administrative record for a particular issue (e.g., the listing of the spotted owl as an endangered species), it is less likely that there will be a significant contribution from release.

(4) Would disclosure be primarily in your commercial interest?

(i) Do you have a commercial interest that would be furthered by disclosure? A commercial interest is a commercial, trade, or profit interest as these terms are commonly understood. Your status as "profitmaking" or "non-profitmaking" is not the deciding factor. Not only profitmaking entities, but other organizations or individuals may have a commercial interest to be served by disclosure, depending on the circumstances involved.

(ii) If you do have a commercial interest that would be furthered by disclosure, would disclosure be primarily in that interest? Would the public interest in disclosure be greater than any commercial interest you or your organization may have in the documents? If so, how would it be greater?

(iii) Your identity, vocation, and the circumstances surrounding your request are all factors to be considered in determining whether disclosure would be primarily in your commercial interest. For example:

(A) If you are a representative of a news media organization seeking information as part of the news gathering process, we will presume that the public interest outweighs your commercial interest.

(B) If you represent a business/corporation/association or you are an attorney representing such an organization, we will presume that your commercial interest outweighs the public interest unless you demonstrate otherwise.

(C) If the bureau cannot make a determination based on the information you have provided, it may ask you for additional justification regarding your request.

Appendix E to Part 2—FOIA Exemptions and Law Enforcement Exclusions

Under the FOIA (5 U.S.C. 552(b)), there are *nine exemptions* which may be used to protect information from disclosure. The exemptions are summarized as follows:

(1) National security information concerning national defense or foreign policy, provided that such information has been properly classified, in accordance with an Executive Order;

(2) Information related solely to the internal personnel rules and practices of an agency;

(3) Information specifically exempted from disclosure by statute (other than the Privacy Act or the Trade Secrets Act), provided that such statute:

(A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information which is obtained from a person and is privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters, which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, the release of which:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Would deprive a person of a right to a fair or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) Could reasonably be expected to disclose the identity of a confidential source;

(E) Would disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(F) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Information contained in or related to examination, operating, or condition reports, prepared by, or on behalf of, or for the use of an agency responsible for regulating or supervising financial institutions; and

(9) Geological and geophysical information and data, including maps, concerning wells.

In addition to the nine exemptions, there are *three law enforcement* exclusions under the FOIA (5 U.S.C. 552(c)). The procedures in subparts C and D of this part do not apply to the following information which is covered by the law enforcement exclusions:

(1) Records or information compiled for law enforcement purposes and covered by exemption (7)(A) of the FOIA, if—

(A) The investigation or proceeding involves a possible violation of criminal law; and

(B) There is reason to believe that—

(i) The subject of the investigation or proceeding is not aware that it is pending, and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(2) Informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

(3) Records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in exemption (1) as long as the existence of the records remains classified information.

Appendix F to Part 2—Mineral Leasing Act—Special Rules

(a) *Definitions.* As used in the section:

(1) *Exploration license* means a license issued by the Secretary of the Interior to conduct coal exploration operations on land subject to the Mineral Leasing Act pursuant to the authority in 30 U.S.C. 201(b).

(2) *Fair-market value of coal to be leased* means the minimum amount of a bid the Secretary is willing to accept in leasing coal within leasing tracts offered in general lease sales or reserved and offered for lease to public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations, controlled by any of such entities pursuant to 30 U.S.C. 201(a)(1) .

(3) *Information* means data, statistics, samples and other facts, whether analyzed or processed or not, pertaining to Federal coal resources.

(b) *Applicability.* This section applies to the following categories of information:

(1) *Category A.* Information provided to or obtained by a bureau under 30 U.S.C. 201(b)(3) from the holder of an exploration license;

(2) *Category B.* Information acquired from commercial or other sources under service contract with United States Geological Survey (USGS) pursuant to 30 U.S.C. 208–1(b), and information developed by USGS under an exploratory program authorized by 30 U.S.C. 208–1;

(3) *Category C.* Information obtained from commercial sources which the commercial source acquired while not under contract with the United States Government;

(4) *Category D.* Information provided to the Secretary by a Federal department or agency pursuant to 30 U.S.C. 208–1(e); and

(5) *Category E.* The fair-market value of coal to be leased and comments received by the Secretary with respect to such value.

(c) *Availability of information.* Information obtained by the Department from various sources will be made available to the public as follows:

(1) *Category A—Information.* Category A information must not be disclosed to the public until after the areas to which the information pertains have been leased by the Department, or until the Secretary determines that release of the information to the public would not damage the competitive position of the holder of the exploration license, whichever comes first.

(2) *Category B—Information.* Category B information must not be withheld from the public; it will be made available by means of and at the time of open filing or publication by USGS.

(3) *Category C—Information.* Category C information must not be made available to the public until after the areas to which the information pertains have been leased by the Department.

(4) *Category D—Information.* Category D information must be made available to the public under the terms and conditions to which, at the time he or she acquired it, the head of the department or agency from whom the Secretary later obtained the information agreed.

(5) *Category E—Information.* Category E information must not be made public until the lands to which the information pertains have been leased, or until the Secretary has determined that its release prior to the issuance of a lease is in the public interest.

[FR Doc. 01–17491 Filed 7–13–01; 8:45 am]

BILLING CODE 4310–RK–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; DA 01–1623]

Wireless E911 Compatibility; Public Safety Answering Points

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document solicits further comment regarding a petition for clarification and/or a declaratory ruling concerning the process by which a Public Safety Answering Point ("PSAP") makes a valid request for Phase II enhanced 911 ("E911") service from a wireless carrier as provided for in the Commission's rules. It seeks comment on whether the rule should be amended to clarify its meaning and/or adopt criteria.

DATES: Comments are due on or before July 25, 2001, and reply comments are due on or before August 6, 2001.

ADDRESSES: Federal Communications Commission, Office of the Secretary, Room TW–A325, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peter Wolfe, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in CC Docket No. 94–102; DA 01–1623, released July 10, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

Synopsis

1. The Wireless Telecommunications Bureau ("the Bureau") seeks comment on whether 47 CFR 20.18(j) should be amended to clarify its meaning and/or adopt some criteria as to when a PSAP has made a valid request for Phase II E911 service. Comments were initially sought in a public notice published at 66 FR 19781, April 17, 2001. The Commission seeks now further comment to expand the record.

2. Specifically, the Bureau seeks comment on what objective criteria a PSAP could be required to meet to demonstrate at the time it makes a request that it has taken sufficient steps to assure that it will be able to receive and utilize the E911 data prior to the

delivery of service by the carrier. For example, what kinds of identifiable, measurable criteria could be put in place that would reasonably predict for the Commission, carrier, and PSAP whether a PSAP will be ready to receive and utilize Phase II information within six months of a request? Would it be sufficient for the PSAP to show (1) that it has the necessary funding available; (2) that it has purchase orders with vendors that will install the necessary facilities with obligations that the vendors must perform within the 6 month period; and (3) that it has made arrangements with local exchange carriers to supply the necessary trunking, the ALI database, and any other necessary facilities or capabilities in a timely fashion? Would it be sufficient if the PSAP shows that it has implemented Phase I using a Non-Call Path Associated Signaling (NCAS) capability? Would it also be necessary for the PSAP to have a state-of-the-art mapping capability versus a less sophisticated plotting mechanism, or is that a matter of the efficiency of the PSAP's handling the information, not its capability to use it?

Procedural Matters

3. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments in response to the document in CC Docket No. 94–102 on or before July 23, 2001, and reply comments on or before July 30, 2001. Comments and reply comments should be filed in CC Docket No. 94–102 and should include a separate heading to identify the comments for the Docket Number. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street, SW., Washington, DC 20554, with copies to Peter Wolfe, Policy Division, Wireless Telecommunications Bureau at 445 Twelfth Street, SW., Washington, DC 20554.

4. Comments also may be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-mail/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking numbers. Parties also may submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your E-Mail address>." A sample form and directions will be sent in reply.

5. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Center, Room CY–A257, at the Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, NW., Washington, DC 20037, (202) 857–3800.

Initial Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), the Bureau has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the rule amendments suggested in this document in CC Docket No. 94–102. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines. The Commission's Consumer Information Bureau, Reference Information Center will send a copy of the document, including the IRFA to the Chief Counsel for Advocacy of the Small Business Administration.

7. This document is to ascertain whether and to what extent the Commission should amend 47 CFR 20.18(j) to clarify the process by which a Public Safety Answering Point (PSAP) makes a valid request for Phase II E911 service. The suggested rule amendment is meant to ensure that all parties involved in providing critical E911 services are aware of their responsibilities in this regard. If the Commission adopts a requirement that PSAPs demonstrate compliance with specified criteria, the purpose will be to enable affected carriers to verify a PSAP's capability to receive and act on Phase II data, thus avoiding costly delays in response time.

8. The suggested action is authorized under sections 1, 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j) of the Communications Act of 1934, 47 U.S.C. 151, 154(j),157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j).

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations.

10. The definition of "small governmental entity" is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,00. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

11. Nationwide, there are 4.44 million small business firms, according to SBA reporting data. The applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the a report issued by the Federal Communications Commission's Common Carrier Bureau in December 2000, of the 1,495 current wireless service providers, 989 employ 1,500 or fewer workers, and 506 employ more than 1,500 workers.

12. The Commission is unable at this time to precisely quantify the specific impact of the suggested actions on these entities at this early point in the proceeding, but invites comment on this issue. The impact will depend on what type of demonstration and criteria (if any) the Commission ultimately adopts. If a demonstration and criteria are adopted, small carriers would find it less burdensome to confirm that a PSAP is indeed capable of participating in E911 service provision. The Commission is acutely aware of its responsibility to balance the needs of the PSAPs, who presumably would need to comply with any demonstration requirement adopted. Therefore, the Commission will carefully consider the affects in time and money on PSAPs of any demonstration requirement or inherent criteria before adopting final rule amendments.

13. The reporting, recordkeeping, or other compliance requirements will depend on what format the demonstration requirement, if adopted, ultimately takes and on what criteria, if any, are adopted. The document is inviting public comment on this issue and is open to any suggestions submitted in this regard. All comments will be carefully considered before final rules are adopted.

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; (4) an exemption from coverage of the rule, or any part thereof, for small entities.

15. The Commission is severely limited in this proceeding as to minimizing the burden on small entities. The proceeding originates in Congressional mandate with the intention of ultimately offering the most reliable, responsive emergency services technologically possible. The critical nature of this goal demands that all entities involved, regardless of size, bear the same responsibility for complying with requirements adopted to expedite reaching this goal. A delay in response caused by a small entity could result in the same fatal consequences as a delay cased by a large entity. However, if the rule is amended as suggested in the document is adopted, all entities will benefit as indicated in criteria 2 cited above, the clarification of compliance or reporting requirements under the rule. The alternatives at this early point in the proceeding seem to be to leave the rule as it stands, to amend the rule without placing a demonstration burden and criteria on PSAPs, or, if the Commission finds after reviewing the comments filed in response to the document that the benefits of amending the rule and adopting criteria and a demonstration requirement outweigh the additional onus placed on PSAPs, whether a detailed demonstration of compliance or a more general demonstration will suffice to verify PSAP capability to participate in Phase II of the Commission's E911 program. For example, if the rule is amended and PSAPs are asked to demonstrate their compliance with certain criteria, the Commission could allow PSAPs the flexibility to comply with this requirement in whatever manner they believe best demonstrates their capability. This alternative would place a minimal additional reporting burden on PSAPs, but small carriers may find this an inadequate means for determining capability. On the other hand, the Commission could adopt a requirement that clearly states what a satisfactory demonstration must include, thus increasing the reporting burden on PSAPs but allowing no room for confusion over when a PSAP may be considered E911 capable. These are issues on which this document invites comment from all sources.

16. There are no federal rules that may duplicate, overlap, or conflict with the proposed rules.

17. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this document including the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 604(b).

Ordering Clauses

18. Pursuant to sections 1, 4(i), 201, 251, 303, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201, 251, 303, 309, and 332, this document is adopted.

Federal Communications Commission.

Thomas J. Sugrue,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 01–17785 Filed 7–13–01; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 66, No. 136
Monday, July 16, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Office of the Under Secretary, Research, Education, and Economics; Secretary's Advisory Committee on Agricultural Biotechnology

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: We are giving notice that the Secretary of Agriculture has reestablished the Secretary's Advisory Committee on Agricultural Biotechnology. The Secretary of Agriculture has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue, SW., Washington, DC 20250; Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *mschechtman@ars.usda.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the Secretary's Advisory Committee on Agricultural Biotechnology is to advise the Secretary of Agriculture on a broad range of policy issues related to expanding dimensions and importance of agricultural biotechnology.

Done in Washington, DC, this 2d day of July, 2001.

Lou Gallegos,

Assistant Secretary for Administration.

[FR Doc. 01–17650 Filed 7–13–01; 8:45 am]

BILLING CODE 3410–03–U

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Agricultural Biotechnology Meeting

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the Advisory Committee on Agricultural Biotechnology (ACAB).

DATES: August 1 and 2, 2001, 8:30 a.m. to 5:30 p.m. both days.

ADDRESSES: John Jay Room at the Hay-Adams Hotel, 16th and H Streets, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue, SW., Washington, DC 20250; Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *mschechtman@ars.usda.gov*.

SUPPLEMENTARY INFORMATION: The fifth meeting of the ACAB has been scheduled for August 1–2, 2001. The topics to be discussed will include: (1) USDA biotechnology budget priorities for the FY 2003 budget; (2) continued discussion on a draft ACAB report on the future of public plant breeding programs; and (3) continued discussion on gene flow from transgenic crops to other plants and current and potential USDA roles in addressing the issues presented. There will in addition be several updates on current biotechnology developments and on ongoing USDA biotechnology-related activities.

Background information regarding the work of the ACAB is available on the USDA web site at *http://www.usda.gov/agencies/biotech/acab.html*. Members of the public who wish to make oral statements should also inform Dr. Schechtman in writing or via E-mail at the indicated addresses at least three business days before the meeting. On August 1, 2001, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration.

The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Vanessa Simon at (202) 690–8647, by fax at (202) 720–3191 or by E-mail at vsimon@*ars.usda.gov* at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, telephone, and fax number when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

Edward B. Knipling,

Associate Administrator.

[FR Doc. 01–17651 Filed 7–13–01; 8:45 am]

BILLING CODE 3410–03–U

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Request for Public Comments on Administration of the Specialty Sugar Allocation of the Refined Sugar Tariff-Rate Quota

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Request for public comments.

SUMMARY: This notice requests public comments on the administration of the allocation of the speciality sugar tariff-rate quota (TRQ), which is an administrative breakout of the refined sugar TRQ provided for in Additional U.S. Note 5 (a)(i) of Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: Comments should be received on or before July 31, 2001 to be assured of consideration.

ADDRESSES: Comments should be mailed or delivered to the Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., AgStop 1021, Washington DC 20250–1021, or e-mailed to *Blabey@fas.usda.gov*. Comments received may be inspected between 10:00 a.m. and 4:00 p.m. at room 5531–S, 1400 Independence Avenue, SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard Blabey at the address above, or

telephone at (202) 720–2916, or e-mail at *Blabey@fas.usda.gov*. Persons with disabilities who require this request for comment in an alternative means of communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: USDA is preparing to establish the FY 2002 speciality sugar allocation under which imports may enter under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, 2106.90.44 of the HTS. Imports must be accompanied by a speciality sugar certificate issued by the USDA Certifying Authority to be eligible to enter under his TRQ allocation.

USDA is proposing to administer the speciality sugar TRQ in two tranches. The first tranche would permit imports not exceeding 1,656 metric tons raw value to enter under this TRQ beginning in October 2001. All speciality sugars identified in 15 CFR 2011, Subpart B would be eligible for entry. When combined with other refined sugars, syrups, and molasses entered under the above HTS subheadings, this tranche would permit sufficient imports of specialty sugar to satisfy the requirement of Additional U.S. Note 5 of Chapter 17 of the HTS that the Secretary establish a TRQ of not less than 22,000 metric tons raw value annually for refined sugar.

A second tranche would permit entry of speciality sugars not currently commercially produced in the United States or reasonably available from domestic sources. For FY 2002, USDA proposes to establish the quantity permitted entry under the second tranche at a level sufficient to assure that supplies of various types of specialty sugars meet domestic demand at reasonable prices. USDA would make known the size of the second tranche in its press release announcing the establishment of the FY 2002 refined sugar TRQ. The second tranche would be adjusted annually thereafter to reflect changing market conditions.

USDA also proposes that beginning in FY 2002 all imports of specialty sugar entered under the TRQ must be entered in bags containing not more than 50 kilos of sugar stowed in containers. This is the traditional method of importing specialty sugars and is intended to facilitate enforcement of the Regulation for specialty sugar.

USDA is soliciting comments on the above proposals for administering the specialty sugar TRQ and, in particular, solicits comments regarding appropriate dates for announcing the refined sugar TRQ and for opening of the second specialty sugar tranche.

Signed at Washington, DC, on June 22, 2001.

Mattie R. Sharpless,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 01–17649 Filed 7–13–01; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Uruguay Round Agricultural Safeguard Trigger Levels

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of product coverage and trigger levels for safeguard measures provided for in the Uruguay Round Agreement on Agriculture.

SUMMARY: This notice lists the updated quantity trigger levels for products which may be subject to additional import duties under the safeguard provisions of the Uruguay Round Agreement on Agriculture. It also includes the relevant period applicable for trigger levels on each of those products.

EFFECTIVE DATE: July 16, 2001.

FOR FURTHER INFORMATION CONTACT: Charles K. Bertsch, Multilateral Trade Negotiations Division, Foreign Agricultural Service, room 5530—South Building, U.S. Department of Agriculture, Washington, DC 20250–1022, telephone at (202) 720–6278, or email bertschc@fas.usda.gov.

SUPPLEMENTARY INFORMATION: Article 5 of the Uruguay Round Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication during the Uruguay Round if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties to be imposed if the volume of imports of an article exceeds the average of the most recent 3 years for which data are available by 5, 10, or 25 percent, depending on the article. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity, may be applied at any given time to an article.

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** information regarding the price and quantity safeguards, including the quantity trigger levels, which must be updated annually based upon import levels during the most recent 3 years. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994. The Secretary of Agriculture further delegated the duty to the Administrator of the Foreign Agricultural Service (7 CFR 2.43(a)(2)). The Annex to this notice contains the updated quantity trigger levels.

Additional information on the products subject to safeguards and the additional duties which may apply can be found in subchapter IV of Chapter 99 of the Harmonized Tariff Schedule of the United States and in the Secretary of Agriculture's Notice of Safeguard Action, published in the **Federal Register** at 60 FR 427, January 4, 1995.

Notice: As provided in section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the Agreement on Agriculture, the safeguard quantity trigger levels previously notified are superceded by the levels indicated in the Annex to this notice.

Issued at Washington, DC, this 27th day of June, 2001.

Mattie R. Sharpless,

Acting Administrator, Foreign Agricultural Service.

Annex

The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register**, at 60 FR 427, January 4, 1995.

QUANTITY BASED SAFEGUARD TRIGGER

Product	Trigger level	Period
Beef	1,062,131 mt	January 1, 2001 to December 31, 2001.
Mutton	14,101 mt	January 1, 2001 to December 31, 2001.
Cream	6,599,822 liters	January 1, 2001 to December 31, 2001.
Evaporated or Condensed Milk	6,199,769 kilograms	January 1, 2001 to December 31, 2001.

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QUANTITY BASED SAFEGUARD TRIGGER—Continued

Product	Trigger level	Period
Nonfat Dry Milk	4,689,770 kilograms	January 1, 2001 to December 31, 2001.
Dried Whole Milk	2,946,410 kilograms	January 1, 2001 to December 31, 2001.
Dried Cream	4,485 kilograms	January 1, 2001 to December 31, 2001.
Dried Whey/Buttermilk	136,940 kilograms	January 1, 2001 to December 31, 2001.
Butter	8,183,104 kilograms	January 1, 2001 to December 31, 2001.
Butter Oil and Butter Substitutes	7,823,523 kilograms	January 1, 2001 to December 31, 2001.
Dairy Mixtures	3,875,137 kilograms	January 1, 2001 to December 31, 2001.
Blue Cheese	3,618,036 kilograms	January 1, 2001 to December 31, 2001.
Cheddar Cheese	11,278,847 kilograms	January 1, 2001 to December 31, 2001.
American Type Cheese	10,140,963 kilograms	January 1, 2001 to December 31, 2001.
Edam/Gouda Cheese	7,765,924 kilograms	January 1, 2001 to December 31, 2001.
Italian-Type Cheese	17,172,739 kilograms	January 1, 2001 to December 31, 2001.
Swiss Cheese with Eye Formation	37,920,677 kilograms	January 1, 2001 to December 31, 2001.
Gruyere Process Cheese	8,204,076 kilograms	January 1, 2001 to December 31, 2001.
Lowfat Cheese	3,205,090 kilograms	January 1, 2001 to December 31, 2001.
NSPF Cheese	54,467,260 kilograms	January 1, 2001 to December 31, 2001.
Peanuts	54,876 mt	April 1, 2001 to March 31, 2002.
Peanut Butter/Paste	21,836 mt	January 1, 2001 to December 31, 2001.
Raw Cane Sugar	1,945,430 mt.	October 1, 2000 to September 30, 2001.
	1,645,884 mt	October 1, 2001 to September 30, 2002.
Refined Sugar and Syrups	27,058 mt.	October 1, 2000 to September 30, 2001.
	27,871 mt	October 1, 2001 to September 30, 2002.
Blended Syrups	0 mt.	October 1, 2000 to September 30, 2001.
	0 mt	October 1, 2001 to September 30, 2002.
Articles Over 65% Sugar	0 mt.	October 1, 2000 to September 30, 2001.
	0 mt	October 1, 2001 to September 30, 2002.
Articles Over 10% Sugar	80,282 mt.	October 1, 2000 to September 30, 2001.
	80,886 mt	October 1, 2001 to September 30, 2002.
Sweetened Cocoa Powder	1,555 mt.	October 1, 2000 to September 30, 2001.
	1,196 mt	October 1, 2001 to September 30, 2002.
Chocolate Crumb	23,579,229 kilograms	January 1, 2001 to December 31, 2001.
Lowfat Chocolate Crumb	148 kilograms	January 1, 2001 to December 31, 2001.
Infant Formula Containing Oligosaccharides	125,000 kilograms	January 1, 2001 to December 31, 2001.
Mixes and Doughs	6,064 mt.	October 1, 2000 to September 30, 2001.
	5,366 mt	October 1, 2001 to September 30, 2002.
Mixed Condiments and Seasonings	232 mt.	October 1, 2000 to September 30, 2001.
	243 mt	October 1, 2001 to September 30, 2002.
Ice Cream	2,908,496 liters	January 1, 2001 to December 31, 2001.
Animal Feed Containing Milk	703,742 kilograms	January 1, 2001 to December 31, 2001.
Short Staple Cotton	5,340,573 kilograms	September 20, 2000 to September 19, 2001.
	5,197,960 kilograms	September 20, 2001 to September 19, 2002.
Harsh or Rough Cotton	0 mt.	August 1, 2000 to July 31, 2001.
	0 mt	August 1, 2001 to July 31, 2002.
Medium Staple Cotton	622,754 kilograms	August 1, 2000 to July 31, 2001.
	701,895 kilograms	August 1, 2001 to July 31, 2002.
Extra Long Staple Cotton	1,482,280 kilograms	August 1, 2000 to July 31, 2001.
	5,481,363 kilograms	August 1, 2001 to July 31, 2002.
Cotton Waste	0 kilograms	September 20, 2000 to September 19, 2001.
	0 kilograms	September 20, 2001 to September 19, 2002.
Cotton, Processed, Not Spun	798 kilograms	September 11, 2000 to September 10, 2001.
	748 kilograms	September 11, 2001 to September 10, 2002.

[FR Doc. 01–17648 Filed 7–13–01; 8:45 am]
BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Reconstruction of Meadows Road #205 and Issuance of a Road Easement for Access to Private Land

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement in conjunction with issuance of a road easement and reconstruction of the Meadows Road #205 through an inventoried roadless area Dolores County, Colorado.

SUMMARY: The Forest Service will prepare an environmental impact statement in conjunction with a proposal to issue a road easement to a private landowner and the reconstruction of an existing classified roadway, the Meadows Road #205, across a portion of an inventoried roadless area to access the landowners property.

This notice describes known issues with the proposed road reconstruction project, estimated dates for filing the environmental impact statement, information concerning public and tribal participation, and the names and addresses of the agency officials who can provide additional information.

DATES: Comments concerning the scope of the analysis should be received in writing by August 30, 2001. The agency expects to file a draft environmental impact statement with the Environmental Protection Agency (EPA) and make it available for public, agency, and tribal government comment in late fall of 2001. A final environmental impact statement is expected to be filed in February of 2002.

ADDRESSES: Send written comments to: James Powers, Forest Planner, San Juan National Forest, 15 Burnett Court, Durango, CO 81301.

FOR FURTHER INFORMATION CONTACT: John Reidinger, Forester, Mancos-Dolores Ranger District, P.O. Box 210, Dolores, CO 81323 (970–882–7296).

Responsible Official: Rick Cables, Rocky Mountain Regional Forester at P.O. Box 25127, Lakewood, CO 80225–0127.

SUPPLEMENTARY INFORMATION: Pursuant to Part 36 Code of Federal Regulations (CFR) 219.10(g), the Regional Forester for the Rocky Mountain Region gives notice of the agency's intent to prepare an environmental impact statement for road reconstruction and issuance of an easement across such road in an inventoried roadless area for the purpose of providing the applicant access to non-federally owned lands within the boundaries of the National Forest System.

The Regional Forester gives notice that the Forest is initiating an environmental-analysis and decision-making process for this proposed action so that interested or affected people can participate in the analysis and contribute to the final decision.

Opportunities will be provided to discuss the road reconstruction and easement issuance proposal openly with the public. The public is invited to help identify issues and define the range of alternatives to be considered in the environmental impact statement. Written comments identifying issues for analysis and the range of alternatives will be encouraged.

The public has already identified a number of issues. Additional issue identification (scoping) will continue in the summer of 2001. Requests to be on the mailing list should be sent to: John Reidinger, Forester, P.O. Box 210, Dolores, CO 81323 (970) 882–7296.

This project is being undertaken to provide access to a private, non-federally owned land as required by the Alaska Native Interest Lands Conservation Act (P.L. 96–487). Private land inholders are to be provided access across National Forest System land to private land that is adequate to secure the owners thereof of reasonable use and enjoyment of their land. The private landowner has proposed use of the existing road across the inventoried roadless area to meet their access needs.

Major Issues

Lizard Head Roadless Area

This RARE II area is an area of approximately 4,940 acres that is immediately south of the Lizard Head Wilderness and north of Colorado Highway 145. It has a low wilderness attribute rating because of its proximity to the highway and the West Dolores road and was excluded from the Lizard Head wilderness when it was created in 1983. The existing Meadows road #205 crosses a portion of this inventoried roadless area.

Wetlands

The existing roadway crosses several small areas of wetlands.

Geological Hazards

The only alternative to the Meadows Road that provides access to the private lands is another existing two-track road that is unsafe and is closed by landslides.

Involving the Public: The Forest Service is seeking information, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies that are interested in or may be affected by the proposed action. The range of alternatives to be considered in the DEIS will be based on public issues, management concerns, resource management opportunities, and specific decisions to be made.

Public participation will be solicited by notifying in person and/or may mail known interested and affected local government agencies. News releases will be used to give the public general notice.

Release and review of the EIS: We expect the DEIS to be filed with the Environmental Protection Agency (EPA) and to be available for public, agency, and tribal government comment in summer of 2001. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register.** The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must participate in the environmental review of the proposal in such a way that their participation is meaningful and alerts an agency to the reviewer's position and contentions; Vermont *Yankee Nuclear Power Corp.* v. *NRDC.* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.,* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period, so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns relating to the proposed actions, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. In addressing these points, reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

After the comment period on the DEIS ends, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The FEIS is scheduled to be completed in February of 2001. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making decisions regarding these revisions. The responsible official will document the decisions and reasons for the decisions in a Record of Decision. The decision will be subject to appeal in accordance with 36 CFR 215.

Dated: July 9, 2001.

Kent Hoffman,

Deputy Forest Supervisor, San Juan National Forest, USDA Forest Service.

[FR Doc. 01–17654 Filed 7–13–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Prior Notification of Exports Under License Exception AGR.

Agency Form Number: BXA–748P.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 926 hours.

Number of Respondents: 250 respondents.

Average Hour Per Response: 52–57 minutes.

Needs and Uses: Section 906 of the Trade Sanctions Reform and Export Enhancement Act requires that exports of agricultural commodities, medicine or medical devices to Cuba or to the government of a country that has been determined by the Secretary of State to have repeatedly provide support for acts of international terrorism, or to any other entity in such a country, are made pursuant to one-year licenses issued by the U.S. Government; while further providing that the requirements of one-year licenses shall be no more restrictive than license exceptions administered by the Department of Commerce, except that procedures shall be in place to deny licenses for exports to any entity within such country promoting international terrorism.

Affected Public: Individuals, businesses or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, D.C. 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: July 11, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–17720 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; 2002 Census of Governments—Government Employment Phase

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 14, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ellen Thompson, Chief, Employment Branch, Governments Division, U.S. Census Bureau, Washington, DC 20233–6800 (301 457–1531).

SUPPLEMENTARY INFORMATION:

I. Abstract

Title 13, Section 161, of the United States Code requires the Secretary of Commerce to conduct a Census of Governments every 5 years. The 2002 Census of Governments includes 3 phases—Organization, Employment and Finance. For the Employment phase, these authorizations include, but are not limited to, collecting and disseminating data by function for full-time and part-time employees, payroll, and number of part-time hours worked.

The state and local government statistics produced cover national, state, local, and type-of-government aggregates on various functions with comparative detail for individual governments for the pay period that includes March 12. The employment survey provides the only comprehensive count of employees and payrolls in state and local governments. Government employees constitute approximately one-sixth of the entire U.S. workforce and their salaries are a major source of personal income.

The Census Bureau provides these employment data to the Bureau of Economic Analysis (BEA) for constructing the functional payrolls in the public sector Gross Domestic Product, payroll being the single largest component of current operations. Other government users include the Bureau of Labor Statistics, as a benchmark for its monthly employment programs, and the Department of Housing and Urban Development, to establish payroll guidelines for local public housing authorities.

The employment survey has increasingly been used as the base for reimbursable programs of other Federal agencies such as: (1) The government portion of the Medical Expenditure Panel Survey commissioned by the Agency for Healthcare Research and Quality to provide timely, comprehensive information about health care use and costs in the United States; and (2) the Bureau of Justice Statistics (BJS) Criminal Justice Expenditure and Employment Survey, which provides criminal justice expenditure and employment data on spending and personnel levels; and (3) the BJS Justice Assistance Data Survey, for sample verification and the existence of contracted services.

Findings are produced as data files in both electronic and printed formats. The program has made possible the dissemination of comprehensive and comparable governmental statistics since 1940.

The many users of the Census of Governments data include Federal agencies, state and local governments and related organizations, public interest groups, the academic community, and many business, market, and private research organizations.

II. Method of Collection

Each of the 90,000 state and local governments designated for the census will be sent an appropriate form or the data will be collected through a data sharing arrangement between Census and the state government.

We developed cooperative agreements with state and large local government officials to collect the data from their dependent agencies and report to us as one central respondent. These arrangements reduce the need for a mail canvass of approximately 2700 state agencies and 700 school systems. Currently we have central collection agreements with 36 states and four school district governments.

We are in the process of expanding the conversion of paper submissions

into electronic formats, for individual units and central collection units.

III. Data

OMB Number: None.

Form Number: E–1, E–2, E–3, E–4, E–5, E–6, E–7, E–9.

Type of Review: Regular.

Affected Public: State governments and local governments, including counties, cities, townships, special district, and public school systems.

Estimated Number of Respondents: 77,273.

Estimated Average Time Per Response: 0.8884 hours.

Estimated Total Annual Burden Hours: 68,649.

Estimated Total Annual Cost: $1,171,838.

Note: Based upon the average hourly pay for full-time equivalent employment for the financial administration function within the 2000 annual survey of state and local government employment.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 United States Code, Section 161.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17636 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; 2002 Census of Governments—Government Finance Phase

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 14, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Poyta, Chief, Census Management Staff, Governments Division, U.S. Census Bureau, Washington, DC 20233–6800 (301 457–1580).

SUPPLEMENTARY INFORMATION:

I. Abstract

Title 13, Section 161, of the United States Code authorizes the Secretary of Commerce to conduct a Census of Governments every 5 years. The 2002 Census of Governments includes 3 phases—Organization, Employment and Finance. For the Finance phase, these authorizations include, but are not limited to, collecting and disseminating data on taxes, governmental receipts (revenues), expenditures by function and character, indebtedness, cash and security holdings, and insurance trust systems.

The state and local government statistics produced cover national, state, local, and type-of-government aggregates on various financial transactions. They are aggregated by size-groups, and contain comparative detail for individual governments for the fiscal year ending periods between July 1, 2001 and June 30, 2002. Findings are produced as data files in both electronic and printed formats. The finance survey provides the only comprehensive accounting of financial activity in state and local governments. Comparable programs have made possible the dissemination of similar governmental statistics since 1902.

The Census Bureau provides these governmental finance data to the Bureau of Economic Analysis (BEA) for use in determining the Gross Domestic Product. Discontinuing this finance program would create a large gap in public sector economic statistics by: eliminating the Census of Governments results; nullifying the development of related sample-based annual governmental finance statistics; and making it impossible for the BEA to calculate the government sector of the national income and product accounts.

The many users of these Census of Governments data include Federal agencies, State and local governments and related organizations, public interest groups, the academic community, and many business, market, and private research organizations.

II. Method of Collection

Each of the 90,000 county governments, consolidated city-county governments, independent cities, towns, townships, special district governments, and public school systems designated for the census will be sent an appropriate form or the data will be collected through a data sharing arrangement between Census and the state government. State governments, as well as 50 of the largest local governments, are manually compiled by office staff from basic source information.

The Census Bureau has concluded a wide variety of cooperative data collection and data sharing arrangements with offices in many states. These arrangements include: (1) Making use of state mandated reports on local government finances; (2) assisting states in establishing statewide uniform local government financial and employment reporting systems; (3) sharing Census Bureau collected and processed data with state officials; and (4) assisting in the development of state government automated reporting systems. These arrangements involve a variety of methodologies and technologies. In some cases, the data are shared by the state submitting state collected data in a variety of electronic formats. In other instances, the Census Bureau supplies data to the state in electronic formats. The Census Bureau also receives files from respondents and sends data to customers over the Internet.

In the Finance Phase, the Census Bureau has established different cooperative data collection arrangements in 29 states for general purpose and special district governments, and 49 states for school systems. We are in the process of expanding the conversion of paper submissions into electronic formats, with a concentration on the largest governments. The finance central collection program has resulted in eliminating direct mail canvassing for approximately 1,100 counties, 25,000 municipalities and townships, 8,000 special districts, and 16,000 local school systems.

III. Data

OMB Number: None.
Form Number: F–L1, F–11, F–12, F–13, F–21, F–22, F25, F–28, F–29, F–32, F–33L, F–42.
Type of Review: Regular.
Affected Public: State governments, county governments, consolidated city-county governments, independent cities, towns, townships, special district governments, and public school systems.
Estimated Number of Respondents: 51,534.
Estimated Time Per Response: 2.27 hours.
Estimated Total Annual Burden Hours: 116,982.
Estimated Total Annual Cost: $ 1,923,350.45.

Note: Based upon the average hourly pay for full-time equivalent employment for the financial administration function within the latest annual survey of state and local government employment.)

Respondent's Obligation: Voluntary.
Legal Authority: Title 13 United States Code, Section 161.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17637 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; 2002 Economic Census Covering the Construction Sector

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 14, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patricia L. Horning, U.S. Census Bureau, Manufacturing and Construction Division, (301) 457–4680, Room 2229, Building #4, Washington, DC 20233 (or via the Internet at patricia.l.horning@census.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The economic census, conducted under authority of Title 13, United States Code, is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public. The 2002 Economic Census Covering the Construction Sector (as defined by the North American Industry Classification System (NAICS) is a sample survey that will measure the economic activity of almost 700,000 establishments engaged in building construction and land subdivision and land development, heavy construction (except buildings), such as highways, power plants, pipelines; and construction activity by special trade contractors.

The information collected from businesses in this sector of the economic census will produce basic statistics by industry for number of establishments, value of construction work, payroll, employment, selected costs, depreciable assets, inventories, and capital expenditures. It also will yield a variety of subject statistics, including estimates of type of construction work done, kind of business activity, size of establishments and other industry-specific measures.

Primary strategies for reducing burden in Census Bureau economic data collections are to increase electronic reporting through broader use of computerized self-administered census questionnaires, on-line questionnaires and other electronic data collection methods.

II. Method of Collection

The construction industry sector of the economic census will select establishments for its mail canvass from a frame given by the Census Bureau's Business Register. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) It must be classified in the construction industry sector; (ii) it must be an active operating establishment of a multi-establishment firm, or it must be a single-establishment firm with payroll; and (iii) it must be located in one of the 50 states or the District of Columbia. Mail selection procedures will distinguish the following groups of establishments:

A. Establishments of Multi-Establishment Firms

Selection procedures will assign all active construction establishments of multi-establishment firms to the mail component of the potential respondent universe. We estimate that the mail canvass for the 2002 construction sector will include approximately 11,000 establishments of multi-establishments firms.

B. Single-Establishment Firms with Payroll

As an initial step in the selection process, we will conduct a study of the potential respondent universe for construction industries. The entire set of eligible single-establishment firms will be considered for inclusion in the mail canvass. Sampling strata and corresponding probabilities of selection will be determined by this study conducted shortly before mail selection operations begin.

One of the primary goals is to produce reliable State level estimates for each NAICS industry. We will use a stratified random sample strategy for selecting the sample of single-establishments firms. The population of eligible single-establishment firms will be partitioned into State by NAICS groupings. Within each group, we will further sub-divide the population into a minimum of two strata based on the annualized payroll of the firms within these groupings. Independent random samples will be selected for each stratum. The total sample size for each State by NAICS cell will be determined based on the reliability constraint for the cell and any additional U.S. level reliability constraints for the industry. The impact of the multi-establishment firms in producing the estimates will be factored into determining the sample sizes for the single-establishment firms. We estimate that the census mail canvass 2002 will include approximately 159,000 establishments.

There is some uncertainty associated with the new 2002 NAICS classification for the construction sector on the Census Bureau's Business Register. The number of single-establishment firms selected in the sample is dependent upon conducting the Census Bureau's classification refile operation in 2001 (see **Federal Register** Notice dated January 30, 2001, 2002 Economic Census Construction Refile Survey). The refile operation will significantly increase the accuracy of the 2002 NAICS classification of construction firms on the Business Register. When the refile operation is conducted, the number of single-establishment construction firms included in the mail canvass needed to produce reliable estimates for the 2002 Economic Census on a State by NAICS basis will be reduced from the estimated 159,000 to approximately 119,000.

III. Data

OMB Number: Not available.

Form Number: The 13 forms used to collect information from businesses in this sector of the economic census are tailored to specific business practices and are too numerous to list separately in this notice. You can obtain information on the proposed content of the forms by calling Patricia L. Horning on (301) 457–4680 (or via the Internet at patricia.l.horning@census.gov).

Type of Review: Regular review.

Affected Public: Businesses or other for profit, non-profit institutions or organizations, and State or Local Governments.

Estimated Number of Respondents: 170,000.

Estimated Time Per Response: 2.4 hours.

Estimated Total Annual Burden Hours: 408,000.

Estimated Total Annual Cost: $6,250,560.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 131 and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17638 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–815] [A–475–814]

Revocation of Antidumping and Countervailing Duty Orders: Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping and countervailing duty orders: certain seamless carbon and alloy steel standard, line and pressure pipe from Italy.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the United States International Trade Commission ("the Commission") determined that revocation of the antidumping and countervailing duty orders on certain seamless carbon and alloy steel standard, line and pressure pipe ("seamless pipe") from Italy is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (66 FR 34717 (June 29, 2001)). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the Department of Commerce ("the Department") is revoking the antidumping and countervailing duty orders on certain seamless carbon and alloy steel standard, line and pressure pipe from Italy. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(i) the effective date of revocation of the antidumping duty order is August 03, 2000, and the effective date of revocation of the countervailing duty order is August 8, 2000.

DATES: *Effective Date:* August 3, 2000 and August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2000, the Department initiated (65 FR 41053), and the Commission instituted (65 FR 41090), sunset reviews of the antidumping and countervailing duty orders on seamless pipe from Argentina, Brazil, Germany, and Italy pursuant to section 751(c) of the Act. As a result of these reviews, the Department found that revocation of the antidumping and the countervailing duty orders on seamless pipe from Italy would likely lead to continuation or recurrent of dumping, and notified the Commission of the magnitude of the margin likely to prevail were the antidumping and countervailing duty orders revoked. *See* Final Results of Expedited Sunset Reviews: Seamless Pipe From Argentina, Brazil, Germany,

and Italy, 65 FR 66708 (November 7, 2000.)

On June 29, 2001, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping and countervailing duty order on seamless pipe from Italy would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Argentina, Brazil, Germany, and Italy, 66 FR 34717 (June 29, 2001), and USITC Pub. 3429 (June 2001), Investigation Nos. 701–TA–362 and 731–TA–707–710 (Reviews).

Scope of the Orders

The merchandise subject to these orders include seamless pipes produced to the American Society for Testing and Materials ("ASTM") standards A–335, A–106, A–53, and American Petroleum Institute ("API") standard API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of these orders also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification. For purposes of these orders, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe, or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes. The seamless pipes subject to these orders are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The following information further defines the scope of these orders, which covers pipes meeting the physical parameters described above: Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM standard A–106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification. Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent ASTM A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple-certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers. The primary application of ASTM A–106 pressure pipes and triple-certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of these orders include all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of these orders. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–335, ASTM A–106, ASTM A–53, or API 5L standards shall be covered if used in a standard, line or pressure application. For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of these orders.

Specifically excluded from these orders are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–335, ASTM A–106, ASTM A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished oil country tubular goods ("OCTG") are excluded from the scope of these orders, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from these orders are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Determination

As a result of the determination by the Commission that revocation of the antidumping and the countervailing duty orders is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act is revoking the antidumping and countervailing duty orders on seamless pipe from Italy.

Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(i), revocation is effective August 3, 2000, with respect to the antidumping duty order, and August 8, 2000, with respect to the countervailing duty order. The Department will instruct the Customs Service to discontinue the suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after August 3, 2001, and August 8, 2000 (the effective dates). The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: July 6, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17715 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–814]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-RolledCarbon Steel Flat Products From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 16, 2001.

FOR FURTHER INFORMATION CONTACT: Constance Handley at (202) 482–0631 or David Bede at (202) 482–3693, respectively, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Final Determination

We determine that certain hot-rolled carbon steel flat products (HRS) from Argentina are being, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on April 23, 2001. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Argentina*, 66 FR 22180 (May 3, 2001) (''*Preliminary Determination*''). No case briefs were filed.[1] On May 16, 2001, Siderar Saic (Siderar) requested that the final determination be postponed. This request was denied. *See Memorandum from Gary Taverman to Faryar Shirzad: Request for Postponement of Final Determination* (June 19, 2001).

Scope of Investigation

For purposes of this investigation, the products covered are certain HRS of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight length, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00,

[1] Normally, when the Department issues a final determination, the **Federal Register** notice is accompanied by a separate Issues and Decision Memorandum. Since no briefs were filed in this case, a separate memorandum is not required.

7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including vacuum degassed fully stabilized, high strength low alloy, and the substrate for motor lamination steel may also enter under the following tariff classification numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise subject to this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) for this investigation is October 1, 1999 through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2000).

Facts Available

In the preliminary determination, the Department based the dumping margin for Siderar on facts otherwise available pursuant to section 776(a)(2)(A) of the Act. The use of facts otherwise available was warranted because Siderar failed to respond to the Department's questionnaire, and failed to provide any indication that it was unable to respond. Therefore, the Department found that Siderar failed to cooperate by not acting to the best of its ability. As a result, pursuant to section 776(b) of the Act, the Department used an adverse inference in selecting from the facts available. Specifically, the Department assigned Siderar the highest margin alleged in the petition. We continue to find this margin corroborated, pursuant to section 776(c) of the Act, for the reasons discussed in the *Preliminary Determination*. No interested parties have objected to the use of adverse facts available for Siderar in this investigation, nor to the Department's choice of the facts available margin. Accordingly, for the final determination, the Department is continuing to use, for Siderar, the highest margin alleged in the petition. *See Preliminary Determination*. In addition, the Department has left unchanged from the preliminary determination the "All Others Rate" in this investigation.

On January 17, 2001, the other mandatory respondent, Acindar Industria Argentina de Aceros SA (Acindar), informed the Department that it did not sell the subject merchandise to the United States during the period of investigation (POI) and, therefore, had no sales to report. Upon reviewing U.S. Customs data, the Department confirmed that Acindar did not sell the subject merchandise to the United States during the POI and, as such, any future exports from Acindar will be subject to the "All Others Rate."

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend all entries of HRS from Argentina, that are entered, or withdrawn from warehouse, for consumption on or after May 3, 2001, the date of publication of our preliminary determination. The Customs Service shall require a cash deposit or bond equal to the dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
Siderar Saic (Siderar)	44.59
All Others	40.60

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: July 7, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17717 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–809]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 16, 2001.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Maureen Flannery at (202)-482–1395 or (202) 482–3020, respectively; Office of Antidumping/ Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the

Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 2001).

Final Determination

We determine that certain hot-rolled carbon steel flat products (HR) from South Africa are being, or are likely to be sold, in the United States at less than fair value (LFTV), as provided in section 735 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Background

On May 3, 2001, the Department published its preliminary determination in the above-captioned antidumping duty investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from South Africa*, 66 FR 22173 (May 3, 2001) (*Preliminary Determination*).

On January 25, 2001, Saldahna Steel Limited (Saldanha), and Iscor Limited (Iscor), two of the three mandatory respondents, informed the Department that they would not be responding to the Department's questionnaire. Just prior to publication of the *Preliminary Determination*, Highveld Steel and Vanadium Corporation Limited (Highveld)—the only respondent to have submitted information in response to the Department's questionnaires—was afforded an additional opportunity to submit information to the record via supplemental cost and sales questionnaires issued by the Department on April 10 and April 17, 2001, respectively. The Department received the responses to its April 10 and April 17, 2001 supplemental cost and sales questionnaires on April 20 and 27, 2001, respectively. The April 27, 2001 supplemental sales questionnaire response was filed on Highveld's behalf by Highveld's affiliated U.S. reseller. On May 23, 2001, we rejected the submission filed by Highveld's affiliated U.S. reseller. *See* letters to Highveld and Highveld's affiliated U.S. reseller dated May 23, 2001. On May 23, 2001, we rejected Highveld's submission(s). *See* letter to Highveld dated May 23, 2001.

We gave interested parties an opportunity to comment on the preliminary determination. No case or rebuttal briefs were submitted. On June 4, 2001, the petitioners requested a hearing in this case. On June 13, 2001, the petitioners withdrew their request.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation. Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., ASTM specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this investigation is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for

convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Analysis of Comments Received

As noted above, there were no case or rebuttal briefs submitted in this investigation, nor was there a hearing. There were, however, further supplemental questionnaire responses supplied by Highveld and its U.S. affiliate after the publication of the *Preliminary Determination*. An explanation of the history of this investigation following the preliminary determination can be found in the *Issues and Decision Memorandum for Final Determination (Decision Memorandum)*, dated July 9, 2001, which is hereby adopted by this notice. The *Decision Memorandum* is on file in the Central Records Unit, room B–099 ("B–099") of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Use of Facts Available

In the *Preliminary Determination*, the Department applied total adverse facts available to each mandatory respondent. Specifically, the Department assigned the mandatory respondents the rate of 9.28 percent—the margin calculated from information in the petition and information gathered by the Department, and used for initiation. The Department also applied the 9.28 percent margin as the "all others" rate. The interested parties did not object to the use of adverse facts available, nor to the Department's choice of facts available.

Subsequent to the *Preliminary Determination*, both Highveld and its affiliated U.S. reseller submitted additional information to the Department, but for reasons discussed in greater detail in the *Decision Memorandum*, we have continued to use facts available for purposes of this final determination. As also discussed in the *Decision Memorandum*, notwithstanding these submissions, we have determined that Highveld did not cooperate to the best of its ability to comply with the Department's requests for information. Therefore, the Department continues to find, pursuant to section 776(b) of the Act, that the use of adverse facts available is warranted. Consequently, we have continued to apply the rate of 9.28 percent for purposes of this final determination.

Affiliation

In the *Preliminary Determination*, the Department concluded that, in accordance with section 771(33)(E) of the Act, Iscor and Saldanha are affiliated for purposes of this proceeding. No new facts were submitted, or arguments made, which would cause the Department to revisit this decision. Therefore, we continue to determine that these companies are affiliated for purposes of this proceeding.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing the U.S. Customs Service to continue to suspend liquidation of all entries of HR from South Africa that are entered, or withdrawn from warehouse, for consumption on or after May 3, 2001 (the date of publication of the *Preliminary Determination* in the **Federal Register**). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following percentage margins exist for the period October 1, 1999 through September 30, 2000:

Exporter/Manufacturer	Margin (Percent)
Highveld Steel and Vanadium Corporation Limited	9.28
Iscor Limited/Saldanha Steel Limited	9.28
All Others	9.28

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 9, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17718 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–809][A–351–826][A–428–820]

Continuation of Antidumping Duty Orders: Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Argentina, Brazil, and Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty orders: certain seamless carbon and alloy steel standard, line and pressure pipe from Argentina, Brazil, and Germany.

SUMMARY: On November 7, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 (c) of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on certain seamless carbon and alloy steel standard, line and pressure pipe ("seamless pipe") from Argentina, Brazil, and Germany would be likely to lead to continuation or recurrence of dumping (65 FR 66708).

On June 29, 2001, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on seamless pipe from Argentina, Brazil, and Germany would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable

time (66 FR 34717). Therefore, pursuant to 751(d)(2) of the Act and 19 CFR 351.218(f)(4), the Department is publishing this notice of the continuation of the antidumping duty orders on seamless pipe from Argentina, Brazil, and Germany.

DATES: *Effective Date:* July 16, 2001.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2000, the Department initiated (65 FR 41053), and the Commission instituted (65 FR 41090), sunset reviews of the antidumping duty orders on seamless pipe from Argentina, Brazil, and Germany, pursuant to section 751(c) of the Act. As a result of its reviews, the Department found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders revoked. *See* Final Results of Expedited Sunset Reviews: Seamless Pipe From Argentina, Brazil, Germany, and Italy, 65 FR 66708 (November 7, 2000).

On June 29, 2001, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on seamless pipe from Argentina, Brazil, and Germany would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Argentina, Brazil, Germany, and Italy, 66 FR 34717 (June 29, 2001) and USITC Publication 3429 (June 2001), Investigation Nos. 701–TA–362 and 731–TA–707–710 (Reviews).

Scope of Orders: See Appendix

Determinations:

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on seamless pipefrom Argentina, Brazil, and Germany. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than June 2006.

Dated: July 6, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Scope of Orders: Argentina (A–357–809) and Germany (A–428–820)

The antidumping duty orders on imports from Argentina and Germany, cover small diameter seamless carbon and alloy standard, line, and pressure pipes ("seamless pipes") produced to the American Standard for Testing and Materials ("ASTM") standards A–335, A–106, A–53, and American Petroleum Institute ("API") standard API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of these orders also include all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. For purposes of these orders, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe, or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes. The seamless pipes subject to these orders are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The following information further defines the scope of these orders, which covers pipes meeting the physical parameters described above: Specifications, Characteristics and Uses—Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM standard A–106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification. Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers. The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for

use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of these orders includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of these orders. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application. For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of these orders.

Specifically excluded from the scope of these orders are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from these orders, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in these orders when used in standard, line or pressure applications. Finally, also excluded from these orders are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Scope of Order: Brazil (A–351–826)

The antidumping duty order on imports from Brazil covers small diameter seamless carbon and alloy standard, line and pressure pipes (seamless pipes) produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification.

For purposes of the scope of this order, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to this order are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the HTSUS. The following information further defines the scope of this order, which covers pipes meeting the physical parameters described above: Specifications, Characteristics and Uses—Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM standard A–106 may be used in temperatures of up to 1,000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard. Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers. The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications. The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this order. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application. For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this order. Specifically excluded from this order are boiler tubing and

mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG review, finished and unfinished OCTG are included in the scope of this order when used in standard, line or pressure applications. Finally, also excluded from the scope of this order are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order (amended as indicated below) is dispositive. Excluded from the scope of this order, as a result of a changed circumstances review (63 FR 37338 (July 10, 1998)) are the following: Shipments of seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness or manufacturing process (hot-finished or cold-drawn) that (1) has been cut into lengths of six to 120 inches, (2) has had the inside bore ground to a smooth surface, (3) has had multiple layers of specially formulated corrosion resistant glass permanently baked on at temperatures of 1,440 to 1,700 degrees Fahrenheit in thicknesses from 0.032 to 0.085 inch (40 to 80 mils), and (4) has flanges or other forged stub ends welded on both ends of the pipe. The special corrosion resistant glass referred to in this definition may be glass containing by weight (1) 70 to 80 percent of an oxide of silicone, zirconium, titanium or cerium (Oxide Group RO sub2), (2) 10 to 15 percent of an oxide of sodium, potassium, or lithium (Oxide Group RO), (3) from a trace amount to 5 percent of an oxide of either aluminum, cobalt, iron, vanadium, or boron (Oxide Group R sub2 O sub3) , or (4) from a trace amount to 5 percent of a fluorine compound in which fluorine replaces the oxygen in any one of the previously listed oxide groups. These glass-lined pressure pipes are commonly manufactured for use in glass-lined equipment systems for processing corrosive or reactive chemicals, including acrylates, alkanolamines, herbicides, pesticides, pharmaceuticals and solvents. The glass-lined pressure pipes subject to the changed circumstances review are currently classifiable under subheadings 7304.39.0020, 7304.39.0024 and 7304.39.0028 of the HTSUS. The HTSUS subheadings are provided for convenience and U.S. Customs' purposes only. The written description of the excluded products remains dispositive.

[FR Doc. 01–17716 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–815]

Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Argentina

AGENCY: Import Administration, International Trade Administration Department of Commerce.

ACTION: Notice of final affirmative countervailing duty investigation.

SUMMARY: On February 21, 2001, the Department of Commerce (the Department) published in the **Federal Register** its preliminary affirmative determination in the countervailing duty investigation of certain hot-rolled carbon steel flat products from Argentina for the period January 1, 1999 through December 31, 1999.

The net subsidy rates in the *Final Determination* differ from those of the *Preliminary Determination*. The revised final net subsidy rate for the investigated company is listed below in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: July 16, 2001.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds at (202) 482–6071 or Darla Brown at (202) 482–2849, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Background

On February 21, 2001, the Department published the results of its preliminary determination in the investigation of certain hot-rolled carbon steel flat products from Argentina. *See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Argentina*, 66 FR 10990 (February 21, 2001) (*Preliminary Determination*). We invited interested parties to comment on the *Preliminary Determination*. On March 8, 2001, we received comments from petitioners. We received no other comments.

This investigation covers a single producer/exporter, Siderar Sociedad Anomina Industrial & Commercial (Siderar) for the period January 1, 1999 through December 31, 1999.

Scope of the Investigation

The merchandise subject to this investigation is certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this investigation is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Analysis of Comments Received

All issues raised in the sole brief submitted in this countervailing duty investigation are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Bernard T. Carreau, Deputy Assistant Secretary, AD/CVD Enforcement II, to Faryar Shirzad, Assistant Secretary for Import Administration, dated July 9, 2001, which is hereby adopted by this notice. The Department's responses to issues petitioners raised are included in the Decision Memorandum, which is attached to this notice as Appendix I. This public memorandum, which is on file in room B–099 of the Main Commerce Building, also contains a complete discussion of the issues raised in this investigation and the corresponding recommendations. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at http://ia.ita.doc.gov, under the heading "**Federal Register** Notices." The paper copy and electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the company under investigation, Siderar. With respect to the "all others" rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish an "all others" rate for exporters and producers not individually investigated. In this case, although the rate for the only other investigated company is based entirely on facts available under section 776 of the Act, there is no other information on the record upon which we could determine an "all others" rate. As a result, we have used the rate for Siderar as the "all others" rate.

Producer/exporter	Net subsidy rate
Siderar	41.69% *Ad Valorem.*
All Others	41.69 % *Ad Valorem.*

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain hot-rolled carbon steel flat products from Argentina, which were entered or withdrawn from warehouse, for consumption on or after February 21, 2001, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after June 21, 2001, but to continue the suspension of liquidation of entries made between February 21, 2001 and June 20, 2001.

We will reinstate suspension of liquidation under section 706(a) of the Act for all entries if the ITC issues a final affirmative injury determination and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose

such information, either publically or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated. If however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 9, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Issues and Decision Memorandum

Methodology and Background Information

I. *Use of Facts Available*
II. *Change in Ownership*
III. *Subsidies Valuation Information*
  A. *Allocation Period*
  B. *Equityworthiness*
  C. *Calculation of Discount Rate and Creditworthiness*
IV. *Programs Determined to Confer Subsidies*
  A. *Equity Infusions Bestowed From 1986 Through 1990*
  B. *GOA Assumption of SOMISA Debt*
  C. *Relief from Liquidation Costs*
  D. *Additional Subsidies From Reorganization/Privatization Under Decree 1144/92*
  E. *Investment Commitment*
  F. *Rebate of Indirect Taxes (Reembolso)*
  G. *Pre- and Post-Shipment Export Financing*
  H. *Zero-Tariff Turn Key Bill*
V. *Total Ad Valorem Rate*
VI. *Analysis of Comments*
  Comment 1: Siderar's Uncreditworthiness
  Comment 2: Relief from Liquidation Costs

[FR Doc. 01–17719 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Alternate Member Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or Sanctuary) is seeking applicants for the following three vacant alternate member seats on its Sanctuary Advisory Council (Council): Hawaii County, Research, and Whale Watching. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants will serve as alternate members, fulfilling the duties of their member in his/her absence. Applicants who are chosen as alternate members should expect to serve two-year terms, pursuant to the Council's Charter.

DATES: Applications are due by July 31, 2001.

ADDRESSES: Application kits may be obtained from Kellie Cheung at the Hawaiian Islands Humpback Whale National Marine Sanctuary, 6700 Kalanianaole Hwy, Suite 104, Honolulu, Hawaii 96825. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Kellie Cheung at (808) 397–2651, or Kellie.Cheung@noaa.gov.

SUPPLEMENTARY INFORMATION: The HIHWNMS Advisory Council was established in March 1996 (the current Council has served since July 1998) to assure continued public participation in the management of the Sanctuary. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The Council's twenty-three voting members represent a variety of local user groups, as well as the general public, plus ten local, state, and federal governmental jurisdictions.

The Council is supported by three working groups: the Research Subcommittee chaired by the Research Representative, the Education Subcommittee chaired by the Education Representative, and the Conservation Subcommittee chaired by the Conservation Representative, each respectively dealing with matters concerning research, education and resource protection.

The Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat around the main Hawaiian Islands.

The Council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of Hawaii's marine programs and policies.

Authority: 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 11, 2001.

Ted I. Lillestolen,

Deputy Assistant Administrator for Oceans and Coastal Zone Management.

[FR Doc. 01–17733 Filed 7–13–01; 8:45 am]

BILLING CODE 3570–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071001A]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Summer Flounder Monitoring Committee, Scup Monitoring Committee, Black Sea Bass Monitoring Committee, and Bluefish Monitoring Committee will hold public meetings.

DATES: The meetings will be held on Thursday, August 2, 2001, beginning at 9 a.m.

ADDRESSES: This meeting will be held at the Sheraton Hotel, BWI, 7031 Elm Road, Baltimore, MD; telephone: 1–410–859–3300.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to recommend the 2002 commercial management measures, commercial quotas, and recreational harvest limits for summer flounder, scup, and black sea bass. The Bluefish Monitoring Committee will meet to recommend commercial management measures, recreational management measures, and a commercial quota for bluefish for 2002.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 10, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17728 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071001B]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee will hold a public meeting.

DATES: The meeting will be held on Tuesday, July 31, 2001, from 1 p.m. until 5 p.m., and Wednesday, August 1, 2001, from 9 a.m. until 4 p.m.

ADDRESSES: This meeting will be held at the Sheraton Hotel, BWI, 7031 Elm Road, Baltimore, MD; telephone: 1–410–859–3300.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to develop a recommendation on the overfishing definition for summer flounder.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 10, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17729 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071001E]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Oversight Committee in August 2001. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Friday, August 3, 2001 at 10 a.m.

ADDRESSES: The meeting will be held at the Hampton Inn, 230 Leebank Highway, Revere, MA 02151; telephone: (781) 286–5665.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Oversight Committee will develop advice and guidance for the Plan Development Team and other technical committees, following Council approval of management alternatives to be included in Draft Amendment 10 and analyzed by its Draft Supplemental Environmental Impact Statement.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 10, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17731 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071001C]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: A subcommittee of the Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Strategic Plan Implementation Oversight Committee (SPOC) will hold a working meeting to further discuss full retention measures for groundfish in West Coast groundfish fisheries. Additionally, the Council's Groundfish Management Team (GMT) will hold a working meeting. Both meetings are open to the public.

DATES: The SPOC subcommittee meeting will convene Monday, August 6, 2001, from 10 a.m. until 1 p.m. The GMT working meeting will begin Monday, August 6, 2001 at 1 p.m. and may go into the evening until business for the day is completed. The GMT meeting will reconvene from 8 a.m. to 5 p.m. Tuesday, August 7 through Friday, August 10 until business for the day is completed.

ADDRESSES: Both meetings will be held at the Pacific Fishery Management Council office, Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220; 503–326–6352.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: John DeVore, Staff Officer, Groundfish; 503–326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the SPOC subcommittee meeting is to further discuss full retention of groundfish in West Coast fisheries as per implementation of the Council's groundfish strategic plan. The primary purpose of the GMT meeting is to review the groundfish management measures in place for the fall months and prepare recommendations for Council consideration, respond to assignments relating to implementation of the Council's groundfish strategic plan, consider technical aspects of draft stock rebuilding plans and analyses, review new groundfish stock assessments, and address other assignments relating to groundfish management.

Although non-emergency issues not contained in this agenda may come before the SPOC subcommittee or GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. SPOC subcommittee and/or GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the SPOC subcommittee's and/or GMT's intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–326–6352 at least 5 days prior to the meeting date.

Dated: July 10, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17730 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070501B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permits 1296 and 1304; Issuance of modification #1 to permit 1227; and modification #2 to permit 1245.

SUMMARY: Notice is hereby given of the following actions regarding permits for lethal and non-lethal takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has issued permit 1296 to Dr. R. Michael Laurs, of Southwest Fisheries Science Center (NMFS-SWFSC); NMFS has issued permit 1304 to Mr. William C. Coles, of Department of Planning and Natural Resources, Division of Fish and Wildlife, U.S. Virgin Islands; NMFS has issued modification #1 to permit #1227 to Dr. Peter Dutton, of NMFS–SWFSC; and NMFS has issued modification #2 to Mr. J. David Whitaker, of South Carolina Department of Natural Resources (SCDNR).

ADDRESSES: The permits, applications and related documents are available for review in the indicated office, by appointment:

Endangered Species Division, F/PR3, 1315 East West Highway, Silver Spring, MD 20910 (phone: 301–713–1401, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (phone: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under Section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Sea Turtles

Threatened and endangered Green turtle (*Chelonia mydas*)

Endangered Hawksbill turtle (*Eretmochelys imbricata*)

Endangered Kemp's ridley turtle (*Lepidochelys kempii*)

Endangered Leatherback turtle (*Dermochelys coriacea*)

Threatened Loggerhead turtle (*Caretta caretta*)

Threatened and endangered Olive ridley turtle (*Lepidochelys olivacea*)

Permits and Modified Permits Issued

Permit # 1296

Notice was published on March 5, 2001 (66 FR 13305) that Dr. R. Michael Laurs, of the National Marine Fisheries Service - Southwest Fisheries Science Center(NMFS-SWFSC) applied for a scientific research permit (1296). NMFS-SWFSC overseeing and working with long line captains and crew members to perform sea turtle research activities at sea tor better fulfill NMFS ESA responsibilities to protect, conserve, and recover listed species of sea turtles and better meet the goals and objectives of the U.S. Pacific Sea Turtle Recovery Plans and the requirements of present and future Section 7 biological Opinions developed for this fishery. Permit 1296 was issued on July 2, 2001, authorizing non-lethal take of 42 olive ridley, 61 leatherback, 13 green, and 122 loggerhead sea turtles annually. Permit 1296 expires July 31, 2006.

Permit #1304

Notice was published on May 2, 2001 (66 FR 21912) that Mr. William C. Coles, of the U.S. Virgin Islands Department of Planning and Natural Resources, Division of Fish and Wildlife applied for a scientific research permit (1304). The applicant requested a permit to take endangered and threatened sea turtles in the U.S. Virgin Islands for scientific research. The applicant proposes to capture, handle, tag, collection of biological samples and release green, hawksbill, leatherback and olive ridley turtles. Permit 1304 was issued on July 3, 2001, authorizing non-lethal take of 100 green, 50 hawksbill and 1 leatherback turtles annually. Permit 1304 expires July 31, 2006.

Permit #1227

Notice was published on May 2, 2001 (66 FR 21912) that Dr. Peter Dutton, of NMFS-SWFSC applied for a modification to 1227. Modification #1 authorizes Dr. Dutton to increase the number of leatherback turtles captured under permit #1227 from 5 to 100 over the life of the permit. It also extends the expiration date of the permit to December 31, 2005 and the research area from Monterey Bay, California to the nearshore waters of California and Oregon. This study proposes to capture up to 100 leatherback turtles for genetic stock identification and equip up to 20 of them with transmitters to track movements and dive behavior. This study is aimed at addressing priorities outlined in the U.S. Pacific leatherback Recovery Plan; to identify critical forage habitats, genetic stock structure, migratory corridors and potential fishery impacts on this species in the Pacific. Modification #1 to Permit 1227 was issued on July 2, 2001, authorizing non-lethal take of an additional 95 leatherback turtles for a total of 100 over the 5 year life of the permit. Permit 1227 expires December 31, 2005.

Permit #1245

Notice was published on May 10, 2001 (66 FR 23882) that Mr. J. David Whitaker, of South Carolina Department of Natural Resources applied for a modification to permit 1245. Modification #2 the applicant requests authorization to intubate and ventilate any turtles verified to be unconscious after retrieval from the trawl (approximately 5 a year); authorization to collect tissue biopsies from any abnormal growth noted on a turtle captured during this study (approximately 5 a year) and authorization to collect keratin samples and tissue biopsies from 50 Kemp's ridley and 50 loggerhead turtles currently authorized for capture under permit #1245. Life history and population information gained from this study will improve our understanding of these species and will allow NMFS to improve our conservation and recovery actions. The applicant possesses a 3-year permit to establish a scientifically-valid indices of abundance for the northern sub-population of the threatened loggerhead turtle and the endangered Kemp's ridley, green and leatherback sea turtles which occur in the Atlantic Ocean off the southeastern United States. This study is intended to capture juveniles and adults, thereby providing a more comprehensive assessment of total population abundance and an assessment of the health of individual animals. Modification #2 to Permit 1245 was issued on July 3, 2001, authorizing the lethal take of 4 loggerhead turtles annually and the non-lethal take of 250 loggerhead, 50 Kemp's ridley, 10 green, 5 hawksbill and 1 leatherback turtle annually. Permit 1245 expires October 31, 2002.

Dated: July 10, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–17732 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Trademark Processing.

Form Number(s): PTO Form 4.8/4.9/4.16/1478/1478(a)/1553/1581/1583/1963/2000, PTO/TM/4.16/1583.

Agency Approval Number: 0651–0009.

Type of Request: Revision of a currently approved collection.

Burden: 144,587 hours annually.

Number of Respondents: 677,151 responses per year.

Avg. Hours Per Response: The time needed to respond is estimated to range from 3 to 30 minutes. It is estimated that the time needed to complete the paper forms ranges from 5 to 23 minutes, and the time needed to complete the electronic forms ranges from 4 to 21 minutes. The information collection also includes four items, namely, powers of attorney, designations of domestic representatives, trademark amendments/corrections/surrenders, and petitions to revive abandoned applications, for which forms have not been created. The USPTO estimates that completing these items ranges from 3 to 30 minutes. This includes time to gather the necessary information, create the documents, and submit the completed requests.

Needs and Uses: This collection of information is required by the Trademark Act, 15 U.S.C. 1051 et. seq, which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses who use their marks, or intend to use their marks, in commerce regulable by Congress, may file an application to register their mark. The

mark will remain on the register for ten years.

The USPTO administers the Trademark Act through 37 CFR part 2, which contains the rules that implement the Act. These rules mandate that each register entry contain the mark, the goods and/or services that the mark is used in connection with, identifying ownership information, dates of use, and certain other information. The USPTO also requires that similar information be provided in applications for registration. The register and pending application information may be accessed by the public to determine availability of a mark. Use of the USPTO's information may lessen the likelihood that a potential trademark user will use a mark already adopted by another entity.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the federal Government; and state, local or tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Management,Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at susan.brown@uspto.gov.

Written comments and recommendations for the proposed information collection should be sent on or before August 15, 2001 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: July 6, 2001.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 01–17655 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Short Supply Request under the African Growth and Opportunity Act (AGOA) and the United States - Caribbean Basin Trade Partnership Act (CBTPA).

July 10, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of request alleging that yarns of 55 percent polyester staple fibers and 45 percent worsted wool, 1, 2, and 3 ply yarns, in their natural (undyed) state or in their stock dyed state (fiber dyed), with 12 to 20 twists per inch, and in sizes of 1/15 to 1/30, 2/30 to 2/60, and 3/48 to 3/60 worsted count (1/17 to 1/34, 2/34 to 2/68 and 3/54 to 3/68 metric count) classified in subheading 5509.52.00 of the Harmonized Tariff Schedule of the United States, cannot be supplied by the domestic industry in commercial quantities in a timely manner.

SUMMARY: On May 11, 2001 the Chairman of CITA received a petition on behalf of Stillwater Sales, Inc./Metcalf Bros. and Company (Stillwater/Metcalf) alleging that, yarns of 55 percent polyester staple fibers and 45 percent worsted wool, 1, 2, and 3 ply yarns, in their natural (undyed) state or in their stock dyed state (fiber dyed), with 12 to 20 twists per inch, and in sizes of 1/15 to 1/30, 2/30 to 2/60, and 3/48 to 3/60 worsted count (1/17 to 1/34, 2/34 to 2/68 and 3/54 to 3/68 metric count) classified in subheading 5509.52.00 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel articles of woven U.S. formed fabric from such yarn be eligible for preferential treatment under the AGOA and the CBTPA. As a result, CITA published a Federal Register Notice (66 FR 27078) requesting public comments on the petition. These comments were dueMay 31, 2001. Based on its review of the petition, public comments received, and other information obtained, CITA is denying the petition.

FOR FURTHER INFORMATION CONTACT: Lori Mennitt, International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001.

Background:

The AGOA and the CBTPA provide for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The AGOA and the CBTPA also provide for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more AGOA or CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or an AGOA or CBTPA beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and CBTPA. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On May 11, 2001 the Chairman of CITA received a petition on behalf of Stillwater/Metcalf alleging that yarns of 55 percent polyester staple fibers and 45 percent worsted wool, 1, 2, and 3 ply yarns, in their natural (undyed) state or in their stock dyed state (fiber dyed), with 12 to 20 twists per inch, and in sizes of 1/15 to 1/30, 2/30 to 2/60, and 3/48 to 3/60 worsted count (1/17 to 1/34, 2/34 to 2/68 and 3/54 to 3/68 metric count) classified in subheading 5509.52.00 of the HTSUS, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel articles of such fabric be eligible for preferential treatment under the AGOA and the CBTPA.

CITA solicited public comments regarding this request (66 FR 27078, published on May 16, 2001) particularly with respect to whether this yarn can be supplied by the domestic industry in commercial quantities in a timely manner.

On the basis of the petition, public comments received and other information obtained, CITA has determined that these yarns are spun in the United States and are available from U.S. producers in commercial quantities in a timely manner. CITA's review of the public comments and other information obtained indicates that there is amply domestic capacity and availability to supply this product.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–17784 Filed 7–12–01; 11:29 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

July 10, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 16, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69910, published on November 21, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 10, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on July 16, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
335	242,103 dozen.
336/636	683,858 dozen.
342/642	641,869 dozen.
347/348	3,804,561 dozen.
641	853,056 dozen.
645/646	463,917 dozen.
647/648	2,392,807 dozen.
847	514,555 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–17686 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Bulgaria

July 10, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 410/624 and 433 are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66719, published on November 7, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 10, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 27, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Bulgaria and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on July 17, 2001, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
410/624	3,255,710 square meters.
433	15,891 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–17687 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

July 10, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift, carryover, carryforward and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69911, published on November 21, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 10, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on July 17, 2001, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Levels in Group I	
200	1,197,707 kilograms.
219	12,304,608 square meters.
225	8,821,592 square meters.
300/301	5,333,710 kilograms.
313–O [2]	24,141,068 square meters.
314– O [3]	79,294,573 square meters.
315– O [4]	34,156,471 square meters.
317–O [5]/326–O [6]/617	32,994,099 square meters of which not more than 5,220,052 square meters shall be in Category 326–O.
331/631	3,274,776 dozen pairs.
334/335	325,331 dozen.
336/636	881,156 dozen.
338/339	1,855,016 dozen.
340/640	1,989,217 dozen.
341	1,177,918 dozen.
342/642	522,256 dozen.
345	550,420 dozen.
347/348	2,389,848 dozen.
350/650	179,386 dozen.
351/651	706,090 dozen.
359–C/659–C [7]	1,966,853 kilograms.
359–S/659–S [8]	2,070,371 kilograms.
360	1,660,021 numbers.
361	1,699,894 numbers.
369–S [9]	1,270,885 kilograms.
433	12,503 dozen.
443	98,829 numbers.
445/446	64,230 dozen.
447	19,770 dozen.
448	21,683 dozen.
604–A [10]	913,653 kilograms.
611–O [11]	4,198,707 square meters.
613/614/615	31,092,809 square meters.
618–O [12]	7,281,490 square meters.
619/620	11,735,418 square meters.
625/626/627/628/629–O [13]	34,166,509 square meters.
634/635	397,214 dozen.
638/639	1,863,671 dozen.
641	3,185,141 dozen.
643	408,449 numbers.
644	589,607 numbers.
645/646	1,088,057 dozen.
647/648	4,368,985 dozen.
847	580,605 dozen.
Subgroup in Group II	
400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt., 464 and 469pt., as a group.	2,962,580 square meters equivalent.
In Group II subgroup	
435	49,344 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085.

[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[7] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 369–S: only HTS number 6307.10.2005.

[10] Category 604–A: only HTS number 5509.32.0000.

[11] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[12] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[13] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–17690 Filed 7–13–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

July 10, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 16, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66724, published on November 7, 2000.

D. Michael Hutchinson

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 10, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 27, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001.

Effective on July 16, 2001, you are directed to adjust the current limits for the following categories, as provided for in the Memorandum of Understanding between the Governments of the United States and the Former Yugoslav Republic of Macedonia dated November 7, 1997:

Category	Adjusted twelve-month limit [1]
433	24,266 dozen.
434	12,788 dozen.
435	33,117 dozen.
448	70,827 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–17688 Filed7–13–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Oman

July 10, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 77593, published on December 12, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 10, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001.

Effective on July 17, 2001, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
334/634	175,657 dozen.
335/635	305,908 dozen.
338/339	747,582 dozen.
347/348	1,270,090 dozen.
647/648/847	410,398 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–17689 Filed7–13–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Global Markets Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(a), that the Commodity Futures Trading Commission's Global Markets Advisory Committee ("GMAC") will conduct a public meeting on August 1, 2001, in the first floor hearing room (Room 1000) of the Commission's Washington, DC headquarters, Three Lafayette Center, 1155-21st Street, NW., Washington, DC 20581. The meeting will begin at 1 p.m. and last until 4:30 p.m. The Agenda will consist of the following:

Agenda

A. Part 1

1. Introductory Remarks by Commissioner Barbara Pedersen Holum, Chairman, GMAC.
2. Overview of CFTC Rules to Implement the Commodity Futures Modernization Act of 2000 (CFMA).
3. Update on Recent Developments in Electronic Derivatives Trading.
4. Discussion of Security Futures Products under the CFMA.
5. Discussion of Cross-Border Market Access to Domestic and Foreign Investors.

B. Part 2

6. Presentation on the Regulators Information Alert System.
7. Overview of Activities of the International Organization of Securities Commissions (IOSCO).
8. New Business.

The GMAC was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on the many complex and novel issues raised by the ever-increasing globalization of futures markets. The purposes and objectives of the GMAC are more fully set forth in its charter.

The meeting is open to the public. The Chairman of the GMAC, Commissioner Barbara Pedersen Holum, is empowered to conduct the meeting in a fashion that will, in her judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: Global Markets Advisory Committee, c/o Commissioner Barbara Pedersen Holum, Commodity Futures Trading Commission, Three Lafayette Centre, 1155-21st Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Commissioner Holum in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on July 11, 2001.

Catherine D. Dixon,

Assistant Secretary for the Commission.

[FR Doc. 01–17707 Filed 7–13–01; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) for Yuma Proving Ground, AZ

AGENCY: Yuma Proving Ground, Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the Yuma Proving Ground FEIS. The FEIS is programmatic in nature and discloses impacts associated with direct, indirect, and cumulative effects of the proposed action under a range of alternatives. New programs require land use changes and construction of new facilities and military ranges. Examples of new programs that resulted in this action include: combat systems testing and troop training. Activities to support this action include modernization of outdated facilities, improvements to infrastructure, installation of utilities, and land use changes.

DATES: The public review period for this FEIS will end 30 days after publication of the Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Anyone wishing to receive a copy of this FEIS may send a postcard with their name and address to Commander, Yuma Proving Ground, Environmental Sciences Division, ATTN: STEYP–CD–ES (Mr. Junior Kerns), Yuma Proving Ground, AZ 85365. Requests may also be submitted electronically to: jkerns@yuma-exch1.army.mil.

FOR FURTHER INFORMATION CONTACT: Mr. Junior Kerns at (800) 330–1348 or (520) 328–2148.

SUPPLEMENTARY INFORMATION: The EIS's proposed action and alternatives are described below:

Proposed Action: The proposed action is the conversion of Yuma Proving Ground from a traditional Army test installation to a diversified, multipurpose test range. The multipurpose installation will integrate troop training and other mission-compatible uses with research, development, test, and evaluation activities as indicated in the Installation Master Plan and other planning documents. This proposed action supports the defense mission of the United States to maintain a prepared and technologically advanced military.

Alternatives Considered: Five alternatives were considered in the Draft EIS: Maintain Baseline Activity Levels (No Action), Decreased Military Mission, Increased Military Mission, Modified Nonmilitary Mission, and Diversified Mission. The Preferred Alternative was developed after public and agency comments on the Draft EIS were considered. Impacts of the alternatives are disclosed in accordance with the National Environmental Policy Act. The Preferred Alternative is analyzed in the FEIS.

Dated: July 11, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I&E).

[FR Doc. 01–17706 Filed 7–13–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of full and partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than July 23, 2001. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting

site is accessible to individuals with disabilities.

DATES: August 2–4, 2001.

Time:

August 2—Ad Hoc Committee on Confirming Test Results, 4:00 p.m.–5:00 p.m.; Executive Committee, 5:30 p.m.–7:00 p.m., (open), 6:00 p.m.–7:00 p.m. (closed).

August 3—Full Board 8:30 a.m.–9:30 a.m. (open); Assessment Development Committee 9:30 a.m.–10:15 a.m. (closed); 10:15 a.m.–12:00 p.m., (open); Committee on Standards, Design and Methodology, 9:30 a.m.–12:00 p.m. (open); Reporting and Dissemination Committee, 9:30 a.m.–12:00 p.m. (open); Full Board, 12:00 p.m.–1:15 p.m., (closed); 1:15 p.m.–4:15 p.m., (open).

August 4—Nominations Committee, 7:30 a.m.–8:00 a.m.; Full Board, 8:00 a.m.–12:00 p.m. (open).

Location: Ritz Carlton Pentagon City, 1250 South Hayes Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Ad Hoc Committee on Confirming Test Results will meet in open session on August 2, 2001 from 4:00 p.m. to 5:00 p.m. to discuss matters pertaining to NAEP's confirming role envisaged under President Bush's "No Child Left Behind" initiative. The Executive Committee will meet on August 2, 2001 in open session from 5:30 p.m. to 6:00 p.m., and in closed session from 6:00 p.m. to 7:00 p.m.

In open session, the Executive Committee will receive updates on proposed legislation affecting NAEP and NAGB and on the contract to maintain test questions, and will receive a report on the Ad Hoc Committee on Confirming Test Results.

From 6:00—7:00 p.m. the Executive Committee will meet in closed session to discuss Independent Government Cost Estimates and Contract Decisions pertaining to the National Assessment of Educational Progress (NAEP) program. This session of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial and technical impact on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

During the latter part of the closed portion of the Executive Committee meeting on August 2, the Committee will nominate the Vice Chair of the National Assessment Governing Board. This session has to be conducted in closed session, as reference will be made to private and personal background qualifications that will be assessed by the Committee in the nomination of the Vice Chair, in accordance with NAGB's bylaws. These discussions relate solely to information of a personal nature which disclosure would constitute an unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of title 5 U.S.C.

On August 3, the full Board will convene in open session from 8:30 a.m.–9:30 a.m. The Board will approve the agenda; hear a report from the Executive Director of the National Assessment Governing Board; and receive an update on the NAEP Program. From 9:30 a.m. to 12:00 p.m., the Board's standing committees will meet in open session.

The Assessment Development Committee (ADC) will meet in closed session on Friday, August 3, 2001 from 9:30 a.m.–10:15 a.m. to review secure items from the NAEP reading assessment. This meeting must be closed because references will be made to specific test items from the NAEP assessment and premature disclosure of the items being reviewed whould significantly frustrate the implementation of the NAEP program. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

Following the closed session, the Assessment Development Committee will meet in open session from 10:15 a.m. to 11:30 a.m. to discuss the NAEP Oral Reading Study; the Economics Framework Procurement; and the draft 2004 NAEP Mathematics Framework.

From 11:30 a.m.–12:00 noon the ADC will meet in joint session with the Committee on Standards, Design and Methodology (COSDAM) to discuss technical issues related to the draft NAEP Mathematics Framework.

The Committee on Standards, Design, and Methodology will meet on Friday, August 3, 2001 from 9:30 a.m.–11:30 a.m. to discuss technical issues arising from changes in the NAEP block/booklet structure; technical issues related to increasing precision; proposed changes to the 2004 mathematics framework with scaling considerations; and technical considerations pertaining to Office and Management Budget (OMB) mandated changes in racial/ethnic questions. This session will then be followed by the joint session of the ADC and COSDAM from 11:30 a.m. to 12:00 p.m. to discuss technical issues related to the draft NAEP Mathematics Framework.

The Reporting and Dissemination Committee will meet on Friday, August 3, 2001 from 9:30 a.m.–12:00 p.m. to review background questions for NAEP 2000; to discuss policy matters on the content of NAEP reports in reading and mathematics; and to discuss reporting matters pertaining to OMB mandated changes in racial/ethnic questions.

On August 3, 2001, the full Board will meet in closed session from 12:00 p.m.–1:15 p.m. to receive a briefing on the NAEP 2000 Science Report Card. This meeting must be closed because the report has not gone through complete National Center for Education Statistics (NCES) adjudication process and has not been released by the Secretary of Education. Premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The full Board will meet in open session on August 3, 2001 from 1:15 p.m.–2:00 p.m. to receive survey results on academic standards and testing. From 2:15 p.m.–3:00 p.m., the Board will receive an update from Congressional staff on "NAEP/NAGB: View from the Hill." From 3:00 p.m.–4:15 p.m., the full Board will hear a discussion on NAEP Mathematics Trends from a State Perspective upon which the August 3, 2001 session of the Board meeting will adjourn.

On August 4, 2001 the Nominations Committee will convene from 7:30 a.m.–8:00 a.m. to discuss a letter received from the Secretary of Education requesting NAGB to continue to provide input and names of potential candidates

for NAGB appointments made by the Secretary; to approve the timeline for seeking potential candidates in various categories; and to review and approve the rating and selection procedures.

From 8:00 a.m. to 8:30 p.m., the Board will receive a briefing on Achieve's Mathematics Achievement Partnership, followed by an update and discussion on the NAEP 2004 Mathematics Framework project from 8:30 a.m. to 9:30 a.m. The Board will then hear and take action on Committee reports from 9:30 a.m. to 11:45 a.m. From 11:45 a.m. to 12:00 p.m. the Board will elect the Vice Chair of the National Assessment Governing Board, whereupon the meeting will adjourn.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, DC, from 8:30 a.m. to 5:00 p.m. Eastern Standard Time.

Dated: July 11, 2001.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 01–17693 Filed 7–13–01; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–471–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2001.

Take notice that on June 29, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective July 1, 2001:

Original Sheet No. 11B

CIG states that the above tariff sheet is being filed to implement a new negotiated rate contract pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17669 Filed 7–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–325–003]

Colorado Interstate Gas Company; Notice of Compliance Filing

July 10, 2001.

Take notice that on July 2, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective October 1, 2001.

CIG states that the filing is being made in compliance with the Commission's order issued May 31, 2001 at Docket No. RP00–325–000, et al.

CIG states that copies of the filing has been served upon all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17670 Filed 7–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–026]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

July 10, 2001.

Take notice that on June 29, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a recently negotiated rate transaction:

ITS–2 Service Agreement No. 70782 between Columbia Gulf Transmission Company and Amoco Energy Trading Corporation dated June 26, 2001

Transportation service is to commence July 1, 2001 under the Agreement.

Columbia Gulf states that copies of the filing has served on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17681 Filed 7–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–100–000]

Corn Belt Energy Corp.; Notice of Complaint

July 10, 2001.

Take notice that on July 6, 2001, Corn Belt Energy Corp. (Corn Belt) tendered for filing with the Federal Energy Regulatory Commission (Commission) a complaint against Soyland Power Cooperative, Inc., pursuant to 18 CFR 385.206 of the Commission's Rules of Practice and Procedure.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before July 26, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before July 26, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17683 Filed 7–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–029]

Dominion Transmission, Inc.; Notice of Negotiated Rate

July 10, 2001.

Take notice that on July 2, 2001, Dominion Transmission, Inc. (DTI) tendered for filing the following tariff sheets for disclosure of a recently negotiated transaction with Sithe Power Marketing, LP:

Original Sheet No. 1416
Sheet Nos. 1417–1499

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17679 Filed 7–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–479–000]

Florida Gas Transmission Company; Notice of Proposed Changes In FERC Gas Tariff

July 10, 2001.

Take notice that on July 5, 2001, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective August 4, 2001:

Seventh Revised Sheet No. 2
First Revised Sheet No. 209
First Revised Sheet Nos. 210 through 299

FGT states that the tariff sheets listed above are being filed to include a general statement in its Tariff that the "shipper must hold title" policy is waived to the extent that FGT renders service for others using off-system capacity pursuant to its existing Tariff and rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17680 Filed 7–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–009]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Negotiated Rate

July 10, 2001.

Take notice that on June 29, 2001, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, Third Revised Sheet No. 4G, to be effective July 1, 2001.

KMIGT states that the above-referenced tariff sheet reflects a negotiated rate contract effective July 1, 2001 and removes a negotiated rate contract which was in effect for the month of June, 2001. This tariff sheet is being filed pursuant to Fourth Revised Volume No. 1–B, Section 36 of KMIGT's FERC Gas Tariff, and the procedures prescribed by the Commission in its December 31, 1996 "Order Accepting Tariff Filing Subject to Conditions", in Docket No. RP97–81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97–81–001, and RP01–70–000, respectively.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17671 Filed 7–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–347–023]

Northern Natural Gas Company; Notice of Cashout Report

July 10, 2001.

Take notice that on June 29, 2001 pursuant to the Carlton Settlement filed in Docket No. RP96–347 and its FERC Gas Tariff, Northern Natural Gas Company (Northern) has filed various schedules detailing the Carlton buyout and surcharge dollars reimbursed to the appropriate parties.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 17, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17673 Filed 7–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–476–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2001.

Take notice that on July 2, 2001 Northern Natural Gas Company (Northern) tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective August 1, 2001:

Eighth Revised Sheet No. 201
Second Revised Sheet No. 304
Sheet No. 305

Northern is filing these tariff sheets to amend the current language in Northern's FERC Gas Tariff to include a general statement that the "shipper must hold title" policy is waived to the extent that Northern renders service for others using off-system capacity pursuant to its existing tariff and rates.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17675 Filed 7–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–034]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2001.

Take notice that on July 3, 2001, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute 12 Revised Sheet No. 66A, proposed to become effective on July 1, 2001.

Northern states that the above sheet is being filed to change the delivery points previously reported for the negotiated rate transaction with WPS Energy Services, Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines. The previously filed Sheet No. 66A identified the primary delivery point as Wisconsin Gas/NNG–Waukesha. The amended delivery points are reflected on Substitute 12 Revised Sheet No. 66A. No other change has been made to this tariff sheet.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 01–17678 Filed 7–13–01; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–026]

TransColorado Gas Transmission Company; Notice of Compliance Filing

July 10, 2001.

Take notice that on June 29, 2001, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No.1, the following tariff sheets, with an effective date of July 1, 2001:

Twenty-Sixth Revised Sheet No. 21
Twenty-Second Revised Sheet No. 22
Original Sheet No. 22A

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets revised TransColorado's Tariff to reflect one amended and three new negotiated-rate contracts.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 01–17672 Filed 7–13–01; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–478–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

July 10, 2001.

Take notice that on July 3, 2001, TransColorado Gas Transmission Company (TransColorado) tendered for filing of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 262, Second Revised Sheet No. 263 and Original Sheet No. 263A, to be effective August 1, 2001.

TransColorado states that the tendered tariff sheets revise the Negotiated Rates section of TransColorado's Tariff consistent with current Commission policy and decisions concerning tariff filings made by other interstate pipelines with respect to negotiated-rate authority.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17676 Filed 7–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–477–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

July 10, 2001.

Take notice that on July 3, 2001, TransColorado Gas Transmission Company(TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective August 1, 2001:

Fifth Revised Sheet No. 102
Fourth Revised Sheet No. 112
Sixth Revised Sheet No. 200
Second Revised Sheet No. 244 and 245
Fourth Revised Sheet No. 246
First Revised Sheet Nos. 246A and 247B
Second Revised Sheet No. 265
First Revised Sheet No. 266
Second Revised Sheet No. 401 and 403

TransColorado is proposing to add a tiered cashout provision to its tariff to more appropriately link the cashout percentage penalty with the degree of the shipper's imbalance percentage. The proposed section will be added to TransColorado's Section 12.6, Cashout Procedures. This provision is in accordance with the Commission's Order No. 637 directive to provide a variety of imbalance provisions for Shippers.

Further, Section 12.10, Credit of Cashout Revenues, has been added to provide that cashout revenues in excess of cashout-related costs will be credited to firm shippers in proportion to the reservation charges paid by each shipper during the annual period that the cashed out imbalance occurred.

TransColorado is also proposing a provision for the incidental purchase and sale of gas necessary to provide transportation services or maintain system integrity, including the implementation of the proposed cashout provisions. The flexibility to buy and sell gas is essential for TransColorado's prudent management of its system.

TransColorado states that a copy of this filing has been served upon TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17677 Filed 7–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–475–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2001.

Take notice that on July 2, 2001, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, 19 Revised Sheet No. 48 and First Revised Sheet No. 97, proposed to be effective August 1, 2001.

Transwestern is filing these tariff sheets to amend the current language in Transwestern's FERC Gas Tariff to include a general statement that the "shipper must hold title" policy is waived to the extent that Transwestern renders service for others using off-system capacity pursuant to its existing tariff and rates. In addition, this filing provides that Transwestern will acquire off-system capacity on Public Service Company of New Mexico pursuant to such generic authorization.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17674 Filed 7–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–253–000, et al.]

CPV Cana, Ltd., et al.; Electric Rate and Corporate Regulation Filings

July 10, 2001.

Take notice that the following filings have been made with the Commission:

1. CPV Cana, Ltd.

[Docket No. EG01–253–000]

Take notice that on July 6, 2001, CPV Cana, Ltd. (CPV Cana or Applicant), % Competitive Power Ventures, Inc., Silver Spring Metro Plaza II, 8403 Colesville Road, Suite 915, Silver Spring, MD 20910, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status, pursuant to Part 365 of the Commission's Regulations and

Section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant, a Florida limited partnership, is a special purpose entity established to develop, construct, own and operate a nominally rated 250 MW natural gas-fired combined cycle generating facility (Facility) to be located in St. Lucie County, Florida. The Facility will consist of one (1) F class combustion turbine, one (1) heat recovery steam generator and one (1) steam turbine. The Facility as currently configured will include certain transmission interconnection facilities necessary to effect the sale of electric energy at wholesale and interconnect the Facility to the transmission grid. All of the electricity generated by the Facility will be sold exclusively at wholesale.

Comment date: July 31, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Commonwealth Edison Company

[Docket No. ER00–3668–002]

Take notice that on July 5, 2001, Commonwealth Edison Company (ComEd), in compliance with the Commission's June 4, 2001 "Order Accepting in Part and Rejecting in Part Compliance Filing, and Establishing Further Proceedings," 95 FERC 61,349 (2001), submitted for filing in the above-referenced proceeding a new Order 614 designation for the Interconnection and Letter Agreements between ComEd and University Park LLC (University Park) that were submitted in the above-referenced proceeding. Copies of this filing were served on University Park, on the Illinois Commerce Commission and on the parties designated on the official service list compiled by the Secretary.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Sithe Fore River Development LLC; Sithe Mystic Development LLC

[Docket Nos. ER01–41–002 ER01–42–002]

Take notice that on July 5, 2001, Sithe Fore River Development LLC (SFRD) and Sithe Mystic Development LLC (SMD) filed with the Commission rate schedule designations for their FERC Electric Rate Schedules Nos. 1 and 2, in compliance with Order No. 614.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Megawatt Marketing, LLC

[Docket No. ER01–1690–001]

Take notice that on July 2, 2001, Megawatt Marketing, LLC (Megawatt Marketing), tendered for filing an amendment to an application filed on April 2, 2001, for acceptance of Megawatt Marketing Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. The instant filing amends the application by including required designations in the tariff rate schedule and including a statement that the individual principals do not have ownership interests in other businesses involved in the production of marketing of electric power.

Megawatt Marketing intends to engage in wholesale electric power and energy purchases and sales as a marketer. Megawatt Marketing is not in the business of generating or transmitting electric power. Megawatt Marketing is a Nevada limited liability company with its principal place of business in Carson City, Nevada.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Altorfer, Inc.

[Docket No. ER01–1758–001]

Take notice that Altorfer Inc. (Altorfer), of Cedar Rapids, Iowa, on July 5, 2001 tendered for filing with the Commission a revised Power Purchase Agreement with Central Illinois Light Company, under which Altorfer would sell energy to CILCO at market-based rates.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. PPL Southwest Generation Holdings, LLC

[Docket No. ER01–1870–001]

Take notice that on July 5, 2001, PPL Southwest Generation Holdings, LLC (PPL Southwest Generation) filed with the Commission a revised tariff sheet to PPL Southwest Generation's FERC Electric Tariff Original Volume No. 1 in compliance with the Letter Order issued on June 21, 2001 in the above-captioned docket. The revision incorporates a prohibition on power purchases from any affiliated public utility with a franchised service territory absent a separate filing under Section 205 of the Federal Power Act.

PPL Southwest Generation states that copies of this filing have been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Moses Lake Generating LLC

[Docket No. ER01–1871–001]

On July 5, 2001, Moses Lake Generating LLC (Seller) made a compliance filing pursuant to the order of the Federal Energy Regulatory Commission (Commission) issued on June 22, 2001, in the above-captioned docket. The Commission's June 22 order accepted Seller's market-based rate filing, conditioned upon Seller, within 15 days of the order, deleting the term "to others that are self-supplying ancillary services to the ISO" from Section 1(a) of its tariff, and adding the term "all" to Section 2(b) of its Code of Conduct. Seller's filing reflects these changes.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Maclaren Energy, Inc.

[Docket No. ER01–2104–001]

Take notice that on July 5, 2001, Maclaren Energy, Inc. submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, an amendment to its Petition for authorization to make sales of electric capacity and energy, including certain ancillary services, at market-based rates and for related waivers and blanket authorizations. The amendment was submitted in response to the Commission Staff's oral request for additional information.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. San Diego Gas & Electric Company

[Docket No. ER01–2318–001]

Take notice that on July 5, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing its amended Service Agreements numbers 7 and 8 to its FERC Electric Tariff, First Revised Volume No. 6. The amended filing was made to conform the Service Agreements to FERC Order No. 614. No substantive changes were made to either agreement.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Sierra Pacific Power Company

[Docket No. ER01–2506–000]

Take notice that on July 8, 2001, Sierra Pacific Power Company (Sierra) filed, pursuant to Section 205 of the Federal Power Act, an executed Interconnection and Operation Agreement between Sierra and Naniwa Energy LLC.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. IDACORP Energy LP

[Docket No. ER01–2507–000]

Take notice that on July 5, 2001, IDACORP Energy LP tendered for filing with the Federal Energy Regulatory Commission Service Agreements under IDACORP Energy LP's FERC Electric Tariff No. 1, Market Rate Power Sales Tariff.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. ENMAX Energy Marketing Inc.

[Docket No. ER01–2508–000]

Take notice that on July 5, 2001, ENMAX Energy Marketing Inc. (ENMAX) tendered for filing its FERC Electric Tariff No. 1 authorizing ENMAX to make sales of power services at market-based rates and requesting certain waivers of Commission regulations.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Valley Electric Association, Inc.

[Docket No. ER01–2510–000]

Take notice that on July 5, 2001, Valley Electric Association, Inc. tendered for filing a notice of cancellation of Service Schedule D to its Rate Schedule FERC No. 16.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER01–2511–000]

Take notice that on July 5, 2001, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an executed Interconnection and Operating Agreement with BASF Fina Petrochemicals Limited Partnership (BASF), and a Generator Imbalance Agreement with BASF.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Avista Corporation

[Docket No. ER01–2512–000]

Take notice that on July 5, 2001, Avista Corporation (Avista) tendered for filing with the Federal Energy Regulatory Commission an executed Generation Interconnection Agreement Between Avista Corporation and Plummer Forest Products, Inc.

Avista requests waiver of the Commission's notice requirements to allow the Service Agreements to become effective on April 30, 2001.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Illinois Power Company

[Docket No. ER01–2513–000]

Take notice that on July 5, 2001, Illinois Power Company (Illinois Power), filed with the Commission the First Revised Firm Long-Term Point-To-Point Transmission Service Agreement with Axia Energy, L. P. (Axia), entered into pursuant to Illinois Power's Open Access Transmission Tariff. Illinois Power states that a copy of this filing has been sent to Axia.

Illinois Power requests an effective date of July 1, 2001 for the First Revised Service Agreement and a waiver of the Commission's notice requirement.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER01–2514–000]

Take notice that on July 5, 2001, Illinois Power Company (Illinois Power), filed a Firm Short Term Point-to-Point Transmission Service Agreement entered into with EnerStar Power Corporation pursuant to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of July 1, 2001 for the Agreements. Illinois Power states that a copy of this filing has been sent to EnerStar Power Corporation.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER01–2515–000]

Take notice that on July 5, 2001, Illinois Power Company (Illinois Power), filed a Non Firm Point-to-Point Transmission Service Agreement entered into with EnerStar Power Corporation pursuant to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of July 1, 2001 for the Agreements. Illinois Power states that a copy of this filing has been sent to EnerStar Power Corporation.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Exelon Generation Company, LLC

[Docket No.ER01–2516–000]

Take notice that on July 5, 2001, Exelon Generation Company, LLC (Exelon Generation) submitted for filing with the Federal Energy Regulatory Commission (FERC or the Commission) a service agreement for wholesale power sales transactions between Exelon Generation and Peoples Energy Services under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff, Original Volume No. 1.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. PacifiCorp

[Docket No.ER01–2517–000]

Take notice that PacifiCorp on July 5, 2001, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Umbrella Service Agreements for Non-Firm and Short-Term Firm Transmission Service with Conoco Power Marketing, Inc. (Conoco), Desert Power LP (Desert), Dynegy Power Marketing, Inc. (Dynegy), State of Nevada, Colorado River Commission (Nevada), and Pinnacle West Marketing & Trading (Pinnacle) under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. The Dayton Power and Light Company

[Docket No. ER01–2518–000]

Take notice that on July 5, 2001, The Dayton Power and Light Company (Dayton) submitted a service agreement establishing Orion Power Marketing as a customer under the terms of Dayton's FERC Electric Tariff, Original Volume No. 10.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Orion Power Marketing and the Public Utilities Commission of Ohio.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Basin Electric Power Cooperative, Inc.

[Docket No. NJ01–8–000]

Take notice that on July 5, 2001, Basin Electric Power Cooperative, Inc. (Basin Electric) tendered for filing a modification to its loss factor under its Open Access Transmission Tariff, FERC Electric Original Volume No. 1 (Tariff).

Basin Electric requests that the modification become effective July 5, 2001.

Copies of the filing were served upon Basin Electric's customers receiving service under the Tariff.

Comment date: August 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17667 Filed 7–13–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1800–001, et al.]

Pierce Power LLC, et al.; Electric Rate and Corporate Regulation Filings

July 9, 2001.

Take notice that the following filings have been made with the Commission:

1. Pierce Power LLC

[Docket No. ER01–1800–001]

Take notice that on July 3, 2001, Pierce Power LLC tendered for filing its FERC Electric Tariff, Original Volume No. 1, Substitute Original Sheet No. 1, in compliance with the Commission's June 8, 2001, Order in the above-referenced Docket.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Ameren Services Company

[Docket No. ER01–2437–000]

Take notice that on July 3, 2001, Ameren Services Company (AMS) submitted a request to withdraw the filing of the Network Integration Transmission Service Agreement, dated June 1, 2001 for EnerStar Power Corporation and AMS and terminate this Docket.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2442–000]

Take notice that on July 3, 2001, Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC filed a request to withdraw Market Rate Tariff Service Agreement No. 136 filed at the above Docket.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER01–2369–001]

Take notice that, on July 3, 2001, Wisconsin Public Service Corporation (WPSC) filed an amended, fully-executed long-term service agreement with Duke Energy Lee, LLC (Duke) under WPSC's market-based rate tariff, FERC Electric Tariff, Third Revised Volume No. 10 (Tariff). This service agreement replaces the unexecuted service agreement filed on June 21, 2001 in this Docket. WPSC requests that the Commission waive its notice of filing requirements to allow the service agreement to become effective on May 22, 2001.

A copy of the filing was served upon all parties on the Commission's official service list.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2376–000]

Take notice that on July 3, 2001, Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC filed a request to withdraw Market Rate Tariff Service Agreement No. 134 filed at the above Docket.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2377–000]

Take notice that on July 3, 2001, Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC filed a request to withdraw Market Rate Tariff Service Agreement No. 133 filed at the above Docket.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2378–000]

Take notice that on July 3, 2001, Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC filed a request to withdraw Market Rate Tariff Service Agreement No. 131 filed at the above Docket.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2379–000]

Take notice that on July 3, 2001, Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC filed a request to withdraw Market Rate Tariff Service Agreement No. 132 filed at the above Docket.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2381–000]

Take notice that on July 3, 2001, Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC filed a request to

withdraw Market Rate Tariff Service Agreement No. 129 filed at the above Docket.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2382–000]

Take notice that on July 3, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC filed a request to withdraw Market Rate Tariff Service Agreement No. 127 filed at the above docket.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–2383–000]

Take notice that on July 3, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC filed a request to withdraw Market Rate Tariff Service Agreement No. 128 filed at the above docket.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Northern Indiana Public Service Company

[Docket No. ER01–2496–000]

Take notice that on July 3, 2001, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Axia Energy, LP (Axia). Copies of this filing have been sent to Axia Energy, LP, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Non-Firm Point-to-Point Transmission Service to Axia pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of July 5, 2001.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Potomac Electric Power Company

[Docket No. ER01–2497–000]

Take notice that on July 3, 2001, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 5, entered into between Pepco and: Allegheny Energy Supply Company, LLC. An effective date of June 28, 2001 for this service agreement, with waiver of notice, is requested.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Citizens Communications Company

[Docket No. ER01–2498–000]

Take notice that on July 2, 2001, in compliance with the Commission's Order in Arizona Independent Scheduling Administrator Association, Citizens Communications Company (Citizens) filed an Open Access Transmission Tariff (OATT) for its Arizona Electric Division (AED).

Citizens has requested an effective date of September 1, 2001 for the common service provisions and the point-to-point service provisions of its OATT. For the retail network integration transmission service provisions, Citizens requests an effective date that is coincident with the implementation date of a rule or order of the Arizona Corporation Commission (ACC) that directs AED to provide unbundled retail transmission service.

A copy of this filing was served on Arizona Independent Scheduling Administrator Association and the ACC. In addition, a copy is available for inspection at Citizens' AED's offices during regular business hours.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. CinCap IX, LLC

[Docket No. EG01–213–000]

On July 6, 2001, CinCap IX, LLC, 139 East Fourth Street, Cincinnati, Ohio 45202, filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended. The applicant is a limited liability company that will be engaged directly or indirectly and exclusively in the business of developing and ultimately owning and/or operating an approximately 88 megawatt gas-fired electric generating facility located in Erlanger, Kenton County, Kentucky and selling electric energy at wholesale.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

16. IDACORP Energy LP

[Docket No. ER01–2499–000]

Take notice that on July 3, 2001, IDACORP Energy LP tendered for filing with the Federal Energy Regulatory Commission Service Agreements under IDACORP Energy LP's FERC Electric Tariff No. 1, Market Rate Power Sales Tariff.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE, Ameren Energy Marketing Company and Ameren Energy Generating Company

[Docket No. ER01–2500–000]

Take notice that on July 3, 2001, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE, Ameren Energy Market Company, and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing a pro forma umbrella power sales service agreement under the Ameren Parties' market rate authorizations. Ameren Energy seeks Commission acceptance of this form of service agreement for use by Ameren Energy on behalf of the Ameren Parties effective July 4, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. PacifiCorp

[Docket No. ER01–2501–000]

Take notice that PacifiCorp, July 3, 2001, tendered for filing Amendatory Agreement No. 5, to the Pacific Northwest Coordination Agreement datedSeptember 15, 1964.

PacifiCorp states that Amendatory Agreement No. 5 modifies the primary agreement to change agreement terms and conditions regarding: the City of Tacoma's withdrawal of its west-side hydroelectric projects from the primary agreement; the rate charged for interchange energy transactions; and the methods of accounting for interchange energy transactions.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Xcel Energy Services Inc.

[Docket ER01–2502–000]

Take notice that on July 3, 2001 Xcel Energy Services Inc. (XES), on behalf of Public Service Company of Colorado (Public Service) tendered for filing an executed umbrella service agreement between Public Service and Idaho Power Company under Public Service's Rate Schedule for the Sale, Assignment, or Transfer of Transmission Rights.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. TXU Electric Company and TXU SESCO Company

[Docket No. ER01–2503–000]

Take notice that TXU Electric Company and TXU SESCO Company (TXU) on July 3, 2001, tendered for filing an amendment to the Remote Control Area Load Agreement for the Tex-La Load (Agreement) between TXU Electric Company and West Texas Utilities Company (WTU) under TXU's FERC Electric Service Tariff, Volume No. 2. The amendment to the Agreement adds a new point of delivery. TXU seeks an effective date of April 20, 2001 for this filing and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on WTU, Tex-La Electric Cooperative of Texas, Inc., and the Public Utility Commission of Texas.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER01–2504–000]

Take notice that on July 3, 2001, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (AlleghenyPower), filed an Interconnection Agreement (Agreement) with Allegheny Energy Supply Company, LLC as Service Agreement No. 358 under Allegheny Power's Open Access Transmission Tariff. The proposed effective date under the Agreement is September 14, 2001.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. TXU Electric Company and TXU SESCO Company

[Docket No. ER01–2505–000]

Take notice that TXU Electric Company and TXU SESCO Company (TXU) on July 3, 2001, tendered for filing amendments to the Transmission Service Agreement for Planned Service and Unplanned Service for Tex-La Electric Cooperative of Texas, Inc. between TXU and Tex-La Electric Cooperative of Texas, Inc. (Tex-La) and the Interconnection Agreement between TXU and Tex-La (collectively, the Agreements) under TXU's FERC Electric Service Tariff, Volume No. 2. The amendments to the Agreements add a new point of delivery. TXU seeks an effective date of March 30, 2001 for this filing and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on Tex-La and the Public Utility Commission of Texas.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17668 Filed 7–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9025–012 Washington]

Hancock Hydro Inc.; Notice of Availability of Draft Environmental Assessment

July 10, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for amendment of the license for the Hancock Creek Hydroelectric Project, located on Hancock Creek in King County, Washington, and has prepared a Draft Environmental Assessment (DEA) for the project. No federal lands are affected by this project.

The DEA contains the staff's analysis of the potential environmental impacts of modifications to the project and concludes that amending the license for the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review at the Commission's Public Reference Room, located at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. The DEA may be viewed on the web at *http://www.ferc.gov* (call (202) 208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Please affix Project No. 9025–012 to all comments. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov*.

For further information, contact Kenneth Hogan at (202) 208–0434.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17682 Filed 7–13–01; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2495]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

July 10, 2001.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by July 31, 2001. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject:

Federal-State Joint Board on Universal Service (CC Docket No. 96–45)

Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers (CC Docket No. 00–256)

Number of Petitions Filed: 4.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–17664 Filed 7–13–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Request for Comment on Study of Banking Regulations Regarding the Online Delivery of Banking Services

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Request for comment.

SUMMARY: The FDIC is reviewing its regulations regarding the delivery of financial services. The purpose of this review is to identify changes or additions to its regulations that would facilitate the use of new technologies by financial institutions. This Request for Comment solicits comment on issues arising from the electronic delivery of financial products and services.

DATES: Comments must be received by September 14, 2001.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (facsimile number (202) 898–3838; Internet address: *comments@fdic.gov <mailto:comments@fdic.gov>*). Comments may be posted on the FDIC internet site at *http://www.fdic.gov/regulations/laws/federal/propose.html* and may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Kopchik, Senior Policy Analyst, Division of Supervision (202) 898–3872; or Robert A. Patrick, Counsel, Legal Division (202) 898–3757.

SUPPLEMENTARY INFORMATION:

Introduction

Section 729 of the Gramm-Leach-Bliley Act, Public Law 106–102 (GLBA), requires the FDIC, and other federal bank regulatory agencies, to review regulations regarding the delivery of financial services and report to Congress recommendations for adapting existing requirements to online banking and lending. The purpose of this Request for Comment is to invite public comment on issues regarding financial institutions' involvement in electronic banking, before submission of the Corporation's report to Congress. Public comment will help determine whether any FDIC regulations should be revised to remove regulatory impediments to financial institutions' use of new technologies. The FDIC also would like to know whether it should consider promulgating regulations that would facilitate financial institutions' use of new technologies. Based on the comments received, the FDIC, in its report to Congress, may identify possible revisions or additions to FDIC regulations or supervisory guidance.

Background

The application of new technologies to traditional banking products and services is dramatically altering the ways in which financial institutions conduct business. Advances in telecommunications provide financial institutions with faster and more efficient communication and data transmission. The Internet provides financial institutions with a vehicle to reach a global market area without an investment in "brick and mortar" offices. Developments in technology are causing financial institutions to reevaluate existing delivery channels and business practices, develop new products and services, and serve customers more efficiently.

Through the issuance of supervisory guidelines such as the Standards for Safeguarding Customer Information, 12 CFR part 364, Appendix B (66 FR 8616, Feb. 1, 2001) (FIL 22–2001, March 14, 2001), the FDIC is working to identify and educate banks about the risks presented by electronic banking and to ensure that its regulations appropriately address these risks.[1]

General Comments

Commenters are invited to submit comments and recommendations in connection with any of the following questions or any other issues relating to the FDIC's policies or procedures for supervising financial institutions' use of electronic delivery channels.

- Are there specific regulations the FDIC should modify because they impede the use of a new technology that would allow financial institutions to offer improved products or services in a more efficient manner and at a lower cost?

- Are there areas where financial institutions would benefit from additional clarification of rules or guidance concerning the risks associated with electronic banking activities?

- Are there specific areas in which regulatory changes are needed to enhance consumer acceptance of, confidence in, or access to, electronic banking?

[1] The FDIC issued electronic banking examination procedures in January 1997 and implemented an electronic banking subject matter expert program in April 1997. The Division of Supervision created an Electronic Banking Branch to focus attention on electronic banking supervisory issues in September 2000. In addition, the FDIC has issued a variety of written guidance concerning risks and appropriate procedures for electronic banking. See *e.g.*, FIL 81–2000, Risk Management of Technology Outsourcing (November 29, 2000); FIL 77–2000, Bank Technology Bulletin, Internet Domain Names (November 9, 2000); FIL 72–2000, Electronic Signature in Global and National Commerce Act (November 2, 2000); FIL 67–2000, Security Monitoring of Computer Networks (October 3, 2000); FIL 63–2000, Online Banking (September 21, 2000); FIL 131–97, Security Risks Associated with the Internet (December 18, 1997).

Hyperlinking

The Internet has made it possible for financial institutions and non-financial commercial enterprises to partner in ways that may not be apparent to customers visiting a web site. For example, a financial institution's web site may include hyperlinks that transfer the customer to the web sites of one or more non-financial institutions. These other web sites may provide non-financial information or sell non-financial products or services. Sites differ in the degree to which they inform a person that products or services accessible through the selection of a hyperlink are, or are not, offered, sponsored, or endorsed by the bank, which may be confusing to site visitors.

- Should the FDIC promulgate a regulation or publish guidance setting forth standards for state nonmember banks concerning the use of hyperlinks?
- Are there technology solutions to address these issues?

Physical Location

Internet banking raises issues with respect to how the FDIC should interpret existing laws and regulations that reference geographic terms or rely on concepts of physical presence. For example, the definition of "branch" contained in § 303.41(a) of the FDIC's regulations (12 CFR 303.41(a)) assumes the existence of a building permanently or temporarily located at a specific physical location. It does not address banking transactions conducted over the Internet where the consumer and a bank representative do not meet face to face. *See* 12 CFR part 303, subpart C.

- Does reliance on these terms and concepts create an impediment to financial institutions conducting operations on the Internet? If so, how should the FDIC clarify its regulations?
- Are there other instances in which online banking or lending would benefit from a clarification of references to physical location in FDIC regulations? If so, how should the FDIC address those instances?

Appraisals

Certain loans must be supported by written real estate appraisals performed in accordance with uniform standards, supported by the presentation and analysis of relevant market information. *See* 12 CFR part 323.

- Would online lending benefit from any clarification of the FDIC's application of this regulation in terms of what constitutes a written appraisal, or the presentation of relevant market information. If so, what clarifications should the FDIC make to facilitate the use of appraisals in electronic form?
- What types of controls regarding authentication of an electronic appraisal, certification of the appraiser, or other standards would be appropriate to assure authenticity and integrity in connection with filing electronic appraisals?

Electronic Signatures

The Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, *et seq.* (E-Sign Act), provides that contracts and signatures with respect to any transaction affecting interstate commerce may not be denied validity solely because they are in electronic form. The E-Sign Act also provides that records of such contracts may be maintained in electronic form, subject to certain requirements, *i.e.*, they must accurately reflect the information in the contract, be accessible to all persons who are entitled to access them, and be capable of being accurately reproduced for later reference.

- Should the FDIC promulgate regulations or publish guidance setting forth standards for the use of electronic signatures and records? *See* 15 U.S.C. 7004.

By order of the Board of Directors.

Dated at Washington, DC, this 10th day of July, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–17666 Filed 7–13–01; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1370–DR]

Minnesota; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota, (FEMA–1370–DR), dated May 16, 2001, and related determinations.

EFFECTIVE DATE: June 26, 2001

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 16, 2001:

Dodge, Faribault, and Isanti Counties for Public Assistance.

Beltrami County for Public Assistance (already designated for Individual Assistance).

McLeod and Pope Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17642 Filed 7–13–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1384–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1384–DR), dated June 29, 2001, and related determinations.

EFFECTIVE DATE: June 29, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 29, 2001, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from severe storms, flooding, and tornadoes on May 27–30, 2001, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joe D. Bray of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

The counties of Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Choctaw, Cimarron, Coal, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Harper, Haskell, Jackson, Jefferson, Johnston, Kingfisher, Kiowa, Latimer, LeFlore, Love, Major, Marshall, McClain, McCurtain, Murray, Muskogee, Okmulgee, Pushmataha, Roger Mills, Stephens, Texas, Tillman, Washita, and Woodward for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–17643 Filed 7–13–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1369–DR]

Wisconsin; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin, (FEMA–1369–DR), dated May 11, 2001, and related determinations.

EFFECTIVE DATE: June 29, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 11, 2001:

Calumet and Rusk Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17641 Filed 7–13–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 9, 2001.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Bank, Inc., St. Louis, Missouri and First Banks America, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Charter Pacific Bank, Agoura Hills, California.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Stamford Banco, Inc., Stamford, Nebraska; to acquire and additional 16.7 percent, for a total of 33.32 percent, of the voting shares of First Gothenburg Bancshares, Inc., Gothenburg, Nebraska, and thereby indirectly acquire First State Bank, Gothenburg, Nebraska.

Board of Governors of the Federal Reserve System, July 10, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–17647 Filed 7–13–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309–4470:

1. Medley Group, Inc., Dothan, Alabama; to become a bank holding company by acquiring 100 percent of the nonvoting shares of Bonifay Holding Company, Inc., Bonifay, Florida, and thereby indirectly The Bank of Bonifay, Bonifay, Florida.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. First Financial Corporation, Terre Haute, Indiana; to merge with Community Financial Corp., Olney, Illinois, and thereby indirectly acquire Community Bank and Trust, National Association, Olney, Illinois.

Board of Governors of the Federal Reserve System, July 11, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–17714 Filed 7–13–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Public Conference: Factors That Affect Prices of Refined Petroleum Products

AGENCY: Federal Trade Commission.

ACTION: Notice announcing public conference and opportunity for public comment.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") will hold an initial public conference on August 2, 2001, to examine issues concerning prices of refined petroleum products in the United States. The Commission intends to solicit information and views relevant to the major factors affecting prices of refined products, and the relative importance of such factors. The Commission will hear from all interested parties—including consumer groups, industry participants, and independent experts—to identify issues that merit in-depth study in public hearings to be held later this year. Interested parties are invited to attend or to submit written presentations.

DATES: The public conference will be held on August 2, 2001. It will be open to the public, without fee, and advance registration is not required. Seats in the conference room will be available on a first-come, first-served basis; limited overflow seating will be available to view the conference via closed-circuit television. Because of the limited time available before the conference, written presentations may be submitted by September 14, 2001.

ADDRESSES: The initial public conference will be held in Room 432 of the Federal Trade Commission Headquarters Building, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. All interested parties are invited to attend. Any interested party may submit a written presentation relevant to the Commission's inquiry; such presentations should be submitted on or before September 14, 2001. To facilitate efficient review of public presentations, each public presentation should if possible be filed in electronic form (as a WordPerfect, Word, or ASCII text file), by attaching it to an email message sent to the following email box: refinedpetroleumproducts@ftc.gov. The email message to which the presentation is attached should include the caption "Presentation on Factors that Affect Prices of Refined Petroleum Products;" the name of the presenter; and the name and version of the word processing program used to create the comment. Presentations which are instead filed in paper form should include the same caption and the name of the presenter, and should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James Mongoven, Office of Policy and Evaluation, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Room 390, Washington, DC 20580; (202) 326–2879 (telephone); *jmongoven@ftc.gov*. (email). A detailed agenda and additional information relating to the public conference will be posted on the Commission's website, *http://www.ftc.gov*, in advance of the conference.

SUPPLEMENTARY INFORMATION: The level and volatility of prices of refined petroleum products have resulted in increased public concern. Both crude oil and refined petroleum products prices have been volatile in recent years, including occasional price spikes that have brought prices to high levels. In addition, the oil industry has experienced substantial restructuring through mergers and joint ventures in the 1990s.

The Commission has longstanding expertise and authority with respect to the oil and refined petroleum products industries. For example, the Commission has recently concluded two investigations into gasoline prices on the West Coast and in a number of Midwestern states. The Commission has also conducted antitrust investigations of a number of recent oil industry mergers, and issued orders requiring substantial divestitures in several cases to preserve competition.

Because of the importance to the American economy of issues raised in these investigations, the Commission plans to broaden its focus beyond law enforcement and to study in more detail the central factors that can affect the level and volatility of refined petroleum products prices throughout the United States.

This public conference will be the first step in soliciting information from interested parties that will assist the Commission in structuring later hearings to focus in a comprehensive manner on the most relevant and important issues. During this initial

conference, participants will be asked to assist in identifying the issues that they find to be the most significant and that merit further study by the Federal Trade Commission.

The Commission anticipates that participants in the initial conference will focus on domestic and international aspects of some or all of the following areas: (1) The supply of crude oil, including exploration, production, importation, and transportation of crude oil; (2) the refining of fuel products and the importation of refined products; (3) the transportation of refined petroleum products; (4) the marketing and distribution of refined petroleum products; and (5) other factors that participants believe may be of interest to the Commission. Due to the expected high level of interest in this inquiry, participants will be limited to brief presentations, with questions and discussion to follow.

The Commission anticipates that the information gathered at this initial conference, and studied in greater depth at the later hearings, will lead to insights of importance to public policy concerning the level and volatility of prices of refined petroleum products, which the Commission expects to summarize and discuss in a public report.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–17684 Filed 7–13–01; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health and Science; Office of Disease Prevention and Health Promotion

AGENCY: Office of Public Health and Science, Office of Disease Prevention and Health Promotion, HHS.

ACTION: Notice of availability of funds and request for applications for the Healthy People 2010 Community Implementation Program.

SUMMARY: The Office of Disease Prevention and Health Promotion announces the availability of fiscal year (FY) 2001 funds for a competitive cooperative agreement with one or more organizations to manage and support one or more two-year pilots of the Healthy People 2010 Community Implementation Program to study the efficacy of microfinance to support Healthy People 2010 implementation activities by community-based organizations. The goal of this program is to provide very small amounts of money to a wide variety of local, community-based organizations to assist them in conducting one or more activities related to Healthy People 2010 and the Leading Health Indicators. Approximately $500,000 to $700,000 is available in first-year funds for creation and promotion of a program for distributing very small grants (no more than $2,010 per organization) to multiple community-based organizations from one or more predefined, geographic areas; for the coordination of solicited applications from community-based organizations; for administration of the selection process; and for evaluation of the project with the aim of developing a model to be used for national replication. This award will begin on or about September 30, 2001 for a 12-month budget period with a project period of 2 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds. The OMB Catalog of Federal Domestic Assistance number for the National Health Promotion Program is 93.990.

SUPPLEMENTARY INFORMATION: The Office of Disease Prevention and Health Promotion (ODPHP) uses cooperative agreements with public and non-profit organizations to support its mandate to provide leadership to promote health and prevent disease among Americans through management and coordination of the implementation of Healthy People 2010, the nation's health objectives for this decade. Through cooperative agreements, ODPHP has forged public-private partnerships to extend the reach and effectiveness of its work. For a copy of Healthy People 2010, visit the Internet site: *http://www.health.gov/healthypeople.*

ODPHP intends to provide financial assistance in the range of $500,000 to $700,000 to one or more successful grantees to plan and administer one or more competitive grant programs for community-based organizations who demonstrate an interest in conducting Healthy People 2010 implementation activities at the local level and to pilot this program over two years in a defined geographic region with the intent of developing recommendations that will form the basis of a national program. The purpose of this program is to provide "seed money" to local, non-profit organizations to begin or continue programs designed to increase the quality and years of healthy life and/or to eliminate health disparities through the implementation of one or more Healthy People 2010 objectives or the Leading Health Indicators at the community level. This cooperative agreement is intended to encourage community health promotion efforts and link them to the larger, national health agenda that is described by Healthy People 2010. By developing catalysts in communities whose aim is to improve the quality of life of residents, we make progress toward improving the quality of life for the entire nation. The successful grantee will: design the program; advertise availability of funds; coordinate distribution of announcements; develop, distribute, receive and screen applications; arrange for the transfer of funds (the balance of the total grant award) to community-based projects with successful applications; design and implement a basic program evaluation component as described below; and develop recommendations and a model for national implementation of the program at the end of the two-year period.

Submission Information

Applications for this announcement shall be submitted to Ms. Karen Campbell, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852. Send the original and 2 copies of the complete application to this address.

Application Deadline

To receive consideration, applications must be received by August 15, 2001. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked by the U.S. Postal Service on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier such as FedEx will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications hand-carried by applicants or by applicant couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date between the hours of 9 am to 5 pm at the address indicated above. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

Application Kit

For this cooperative agreement, Form PHS 5161–1 (Revised July, 2000 and approved by OMB under Control Number 0937–0189) must be used. An applicant is advised to pay close attention to the specific program guidelines and general instructions provided in the application kit. To get an application kit, write to: Ms. Karen Campbell, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852; or call Karen Campbell at (301) 594–0758.

FOR FURTHER INFORMATION CONTACT: Ms. Sally Jones, Administrative Officer, Office of Disease Prevention and Health Promotion, Hubert H. Humphrey Building Room 738–G, 200 Independence Avenue, SW., Washington, DC 20201, (202) 260–7654.

Authority

This program is authorized under section 301 and sections 1701 through 1704 of the Public Health Service Act, as amended, 42 U.S.C. 241 and 42 U.S.C. 300u through 300u–3.

Eligible Applicants

To qualify for funding, an applicant must be a non-profit organization with a history of addressing health and human services or public health issues. The successful applicant must have a strong knowledge of disease prevention and health promotion policy and programs; must have an understanding of the Healthy People program and formulation and management of national health goals and objectives; must have demonstrated the ability to work with and obtain information from both community-based and public organizations in the health sector; must have demonstrated program evaluation experience; must have capacity to promote and manage this program in a defined geographic area; and must share the vision of the value of the microfinance approach to stimulate health promotion activities in communities.

Availability of Funds

About $500,000 to $700,000 is expected to be available for award in FY 2001, funding one or more cooperative agreements. It is expected that this award will begin on or about September 30, 2001 and will be made for a 12-month budget period with a project period of up to two years. Funding estimates may change. It is expected that the successful grantee will make at least 100 awards to widely diverse community-based organizations, with an amount of no more than $2,010 per award.

Use of Funds

Funds cannot be used for construction or renovation, to purchase or lease vehicles or vans, to purchase a facility to house project staff or carry out project activities, or to substitute new activities and expenditures for current ones.

Project Requirements

Recipient Responsibilities

1. The successful applicant(s) will widely advertise and solicit proposals in a particular geographic region of the nation from community-based organizations providing health promotion and disease prevention activities for the purpose of increasing progress toward the achievement of Healthy People 2010 objectives and the Leading Health Indicators at the local level. A key responsibility is making the program known to as wide a range of groups as possible.

2. The successful applicant(s) will provide funding to selected community-based organizations in their particular geographic region to implement Healthy People 2010 at the local level. Recipients could include community service or civic organizations; groups focused on specific populations such as youth, the elderly, minorities or the medically under-served; faith-based organizations; public health service groups, or any other relevant non-profit organization. The selected organizations must:

- Be a preexisting organization with a history of providing public health activities in the local community;
- Focus their project activities on one or more Healthy People 2010 objectives or Leading Health Indicators.

Priority will be given to collaborations of three or more organizations.

3. The successful applicant(s) will establish a management team to execute the Healthy People 2010 Community Implementation Program.

4. The successful applicant(s) will establish a 9 member advisory board, comprised of experts in community-based public health, which will provide guidance and technical advice solely to the cooperative agreement management team. This board will review and approve criteria and design plans before the pilot is implemented in the first year.

5. The successful applicant(s) will convene a meeting with the Advisory Board at least once a year thereafter.

6. The successful applicant(s) will require a one-page written summary of activities from each funded institution and will conduct site visits to at least 5 percent of funded institutions to ensure compliance with the intent of the program.

7. The successful applicant(s) will initiate an evaluation of the overall project at the end of the first year, which will be completed by the end of the second year.

8. The applicant will submit a report on the overall project at the end of the second year that provides recommendations for project design and implementation and details a national model that can be used to replicate the program across the country.

ODPHP Responsibilities

Substantial programmatic involvement is as follows:

1. ODPHP will provide technical assistance and oversight as necessary for the overall design and implementation of the Healthy People 2010 Community Implementation Program.

2. ODPHP will participate in the development of, and ultimately approve, evaluation criteria for the selection and funding of the applications.

3. ODPHP will have final approval of the Advisory Board membership.

4. ODPHP will provide assistance to the management team on program strategies, direction, evaluation activities, and decisions related to adjustments in funding levels of participating institutions.

5. ODPHP will participate in site visits to the participating projects as deemed appropriate.

Review of Applications

Applications that are not complete or that do not conform to or address the criteria of the announcement will be returned without comment. Each organization may submit no more than one proposal under this announcement. Organizations submitting more than one proposal will be deemed ineligible. The proposals will be returned without comment. Accepted applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Panel. Panel members are chosen for their expertise in community-based public health and their understanding of health promotion and disease prevention issues at the national and local levels. Applications should be no more than 30 pages in length, excluding resumes and organizational background material.

Application Review Criteria

The technical review of applications will consider the following 5 generic factors:

(1) Project Approach and Activities (30 points)

The proposed objectives in the work plan relate to the goal to increase the quality and years of healthy life and/or to eliminate health disparities through implementation of Healthy People 2010 at the local level through the engagement of community-based organizations addressing public health issues. Each work plan describes:

- Measurable or quantifiable results or outcomes;
- How the results or outcomes relate to the project goals;
- How the project can be accomplished with the available or expected resources during the project period;
- How the main activities will be accomplished;
- Which staff will conduct the specific project activities;
- How the criteria for selection of funded organizations will be developed and applied;
- How the application for community-based organizations will be developed, distributed, promoted, processed; and screened;
- How to ensure selected organizations link their projects to Healthy People 2010 objectives and/or the Leading Health Indicators;
- How to promote awareness of this program to nontraditional groups, especially local community-based organizations;
- How to ensure diversity of projects funded by type and subject; and
- How to ensure broad distribution of projects within the target population and/or region.

(2) Project Evaluation (20 points)

Clarity of the intent and plans to document the activities and their outcomes;

Feasibility and appropriateness of evaluation design;

Ability to share and disseminate project results widely;

Demonstration of innovative approaches for evaluating microfinancing in public health;

Preliminary indications of potential for replication of the project on a national level for communities; and

Described approach for final project report that focuses on expanding the project nationally and replicating best practices.

(3) Organizational Capabilities/ Qualifications (20 points)

The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly demonstrates the successful management of projects of similar scope by the organization and or by the individual and/or team designated to manage the project. The organization's active involvement in community-based public health is demonstrated.

Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the proposed approach and in the proposed budget of the application. Position descriptions clearly describe the position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the proposed activities. Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

(4) Background and Goals (15 points)

Demonstrated knowledge of health promotion and disease prevention objectives and issues at the local and national levels;

Demonstrated need within the proposed target population;

Demonstrated ties to the community;

Demonstrated support and established linkages in order to conduct proposed model;

Extent and documented outcome of past efforts/activities with the target population;

Description of stated priorities and goals in the targeted region or population proposed; and

Proposed number and type of community-based organizations the grantee plans to target.

(5) Budget (15 points)

A detailed and fully explained budget is provided which:

- Justifies each line item, with a well-written justification, in the budget categories of the application;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project;
- Requests funds which are appropriate and necessary for the scope of the proposed project; and
- Demonstrates administrative efficiency and value which allows for the maximizing of resources available to the selected, community-based organizations.

Reporting and Other Requirements

General Reporting Requirements

A successful applicant under this notice will submit: (1) Quarterly progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by ODPHP, in accordance with provisions of the general regulations which apply under "Monitoring and Reporting Program Performance," 45 CFR 74.51— 74.52, with the exception of State and local governments to which 45 CFR part 92, Subpart C reporting requirements apply.

Provision of Smoke-Free Workplace and Non-Use of Tobacco Products by Recipients of PHS Grants

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to Public Health System Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a

summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Disease Prevention and Health Promotion.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit available under this notice will contain a list of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Disease Prevention and Health Promotion's Acting Grants Management Officer. The Office of Disease Prevention and Health Promotion does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See "Intergovernmental Review of Federal Programs" Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

Dated: July 3, 2001.

Randolph F. Wykoff,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 01–17696 Filed 7–13–01; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community and Tribal Subcommittee of the Board of ScientificCounselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee and committee meetings.

Name: Community and Tribal Subcommittee.

Times and Dates: 9 a.m.–5 p.m., July 27, 2001; 8:30 a.m.–4:30 p.m., July 28, 2001.

Place: Reno Hilton Hotel, 2500 E. Second Street, Reno Nevada 89595.

Status: Open to the public, limited by the available space.

The meeting room accommodates approximately 50 people.

Purpose: This subcommittee brings to the Board advice, citizen input, and recommendations on community and tribal programs, practices, and policies of the Agency.

Matters to be Discussed: Agenda items include a discussion of the ATSDR draft document "Public Health Reviews of Hazardous Waste Thermal Treatment Technologies;" an update on Action Items and Recommendations; an update by the CTS on the Task Force progress report and interactive session, and a discussion on the future activities of the Task Force.

Written comments are welcomed and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Robert Spengler, Executive Secretary, BSC, ATSDR contact, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/498–0003.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for ToxicSubstances and Disease Registry.

Dated: July 10, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–17659 Filed 7–13–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01153]

Expansion of Prevention, Care and HIV/AIDS Surveillance With the Ministry of Public Health, Kingdom of Thailand; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program with the Kingdom of Thailand, Ministry of Public Health (MOPH) for the improvement and expansion of prevention activities, care and surveillance, and targeting HIV/AIDS and HIV/AIDS-related conditions in Thailand.

The purpose of this cooperative agreement is to improve and expand in Thailand: (1) HIV transmission prevention capacity (e.g., MTCT, heterosexual, homosexual, and blood-borne), (2) care and support services for persons living with HIV/AIDS (e.g., psychosocial support, enhancing opportunistic infection prevention and treatment, and monitoring use of antiretroviral drugs), and (3) surveillance efforts, including laboratory-based surveillance activities (e.g., STDs, TB and other opportunistic infections, and drug-resistant HIV strains), which will be accomplished through cooperation between CDC and the Thai MOPH.

The U.S. Government seeks to reduce the impact of HIV/AIDS and related conditions in specific countries within sub-Saharan Africa, Asia, and the Americas through its Leadership and Investment in Fighting an Epidemic (LIFE) initiative. Through this program, CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of (1) HIV primary prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. Government agencies are already active. Thailand is one of these targeted countries.

To carry out its activities in these countries, CDC is working in a collaborative manner with national

governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic. CDC's program of technical assistance to Thailand focuses on several areas including strengthening surveillance and laboratory measures, scaling up promising prevention and care strategies, supporting behavior change communication projects, promoting technology transfer, and other capacity building efforts.

Thailand is experiencing one of Asia's most severe AIDS crises. As of the end of 1999, it was estimated that approximately 755,000 adults and children were living with HIV/AIDS in Thailand. In 1999, nearly 66,000 adults and children died of AIDS. Since the beginning of the epidemic, 75,000 children have been orphaned as a result of AIDS. Cumulative reported AIDS cases through 2000 (n = 160,350) demonstrate that sexual transmission accounts for the majority of cases (83 percent). Vertical transmission (mother to child) and transmission through injecting drug use each account for about five percent. In seven percent of AIDS cases, information about transmission is incomplete or unknown. The rising number of symptomatic HIV patients is posing an increasing burden for hospitals in Thailand-especially in the northern part of the country.

Internationally, Thailand is considered a model in the developing world for the implementation of timely and effective HIV/AIDS policies and programs. Thailand's National AIDS Program began in 1987, and was strongly endorsed by the Prime Minister, who chaired the National AIDS Committee to coordinate Program efforts. Three key accomplishments of the Program are noted here: (1) In 1990–91, in response to rising HIV prevalence among brothel-based CSWs (from three percent in 1989 to 15 percent in 1991) and male military conscripts (five-tenths percent in 1989 to three percent in 1991), the Thai government launched a multi-sectoral nationwide campaign to reduce HIV transmission. Key elements of the plan included expanded sexually transmitted diseases (STD) treatment, a mass media information campaign and a program to promote universal and consistent condom use in commercial sex "100 percent Condom Programme". As a result of these efforts, utilization of commercial sex declined, condom use in commercial sex increased, STD cases dropped, and the prevalence of HIV among army conscripts decreased by more than half. The World Bank estimates that since 1993, behavior change and condom use have prevented an estimated 200,000 new HIV infections in Thailand. (2) Since the early 1990's, voluntary counseling and testing (VCT) for all pregnant women has been progressively implemented throughout Thailand. To reduce maternal to child transmission (MTCT) of HIV, Thailand began in year 2000 a national program to provide HIV infected pregnant women a short regimen of AZT before and during delivery, AZT syrup for the child, and a one-year supply of infant formula. Initial results from earlier pilot programs demonstrated a reduction in vertical transmission rates from 30 percent to seven to eight percent. (3) Another major Thai accomplishment has been in ensuring the safety of the blood supply. The estimated rate of HIV transmission through blood products in Thailand is 1 in 80,000 transfusions—one of the lowest rates in any developing country. The Ministry of Public Health made HIV screening of all blood units mandatory in 1989 and has, through screening, discouraged high risk donors from donating.

However, despite these and others interventions, the World Bank estimates that 29,000 people in Thailand were newly infected with HIV in the year 2000 (25,000 adults and 4,000 children). Roughly half of the new adult infections occurred among women infected by their husbands, or sex partners, one-quarter were found among injection drug users (IDUs), about twenty percent were among sex workers and their clients, and five percent among other groups. Without appropriate intervention, it is estimated that the proportion of HIV infections related to injection drug use, either directly (e.g., sharing injection equipment between IDUs) or indirectly (i.e., sex partner of an IDU), will rise to some 40 percent of all new infections by 2005.

The Thai MOPH has a well-functioning, national HIV sero-surveillance system. Groups tested include blood donors, antenatal clinic attendees, IDUs, male STD clinic patients, and female sex workers in brothels "direct" sex workers as well as those in massage parlors and other places "indirect" sex workers. Surveillance needs to be strengthened to include behavioral surveillance among special populations such as IDUs and indirect sex workers engaging clients in new venues, and expanded, especially among youth, to include sexually active adolescents who are still attending school, and who are out of school. In addition, monitoring and evaluation activities to assess the impact of care and support programs for persons living with HIV/AIDS is urgently needed. Such activities should include enhanced surveillance for tuberculosis (TB) and other opportunistic infections, and monitoring the increasing use of antiretroviral drugs and the likely emergence of drug resistant HIV strains.

These collaborative activities could profoundly impact the scope and intensity of the implementation the National AIDS Policy. Cooperative efforts could lead to significant improvements in the collection of critical data to support future action, a better understanding of the association between specific behaviors and HIV prevalence, improved and more responsive systems of care, and strengthened aspects of the public health infrastructure. Since 1990, CDC has had a strong collaboration with the Thai MOPH to conduct research and related activities on HIV infection and AIDS in Thailand in order to improve understanding of the disease and provide a scientific basis for the development of public health actions. The collaboration seeks to broaden its mission to include the LIFE Initiative activities outlined in this program.

B. Eligible Applicants

Assistance will be provided only to the MOPH, Kingdom of Thailand. No other applications are solicited.

The MOPH is the only appropriate and qualified organization to fulfill the requirements set forth in this announcement for the following reasons:

1. The MOPH is directly responsible for the implementation, monitoring and evaluation of population-based HIV/AIDS prevention and care policies and services.

2. The MOPH is uniquely positioned-in terms of constitutional authority, mandate and ability-to oversee and safeguard public health, and to collect and analyze information and disseminate surveillance and health system performance reports related to the prevalence and incidence of HIV/AIDS, HIV/AIDS-related conditions and other health issues.

3. The MOPH has in place the central, provincial and district-based structures required to immediately engage in the activities listed in this announcement.

C. Availability of Funds

Approximately $1,500,000 is available in FY 2001 to fund this agreement. It is expected that the awards will begin on or about September 30, 2001 and will be made for a 12-month budget period within a project period of five years. Annual funding estimates may change.

Continuation awards within the approved project period will be made on the basis of satisfactory progress as

evidenced by required reports and the availability of funds.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Use of Funds

Funds received from this announcement may not be used for the direct purchase of antiretroviral drugs for treatment of established HIV infection (with the exception of nevirapin in PMTCT cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations) and delivery of prevention services for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

1. *Alterations and Renovations:* Unallowable.

2. *Customs and Import Duties:* Unallowable. This includes consular fees, customs surtax, value added taxes, and other related charges.

3. *Indirect Costs:* With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Expand HIV/AIDS Prevention Programs

Support the national program to prevent mother-to-child HIV transmission through national monitoring and evaluation of the program and training health care workers implementing it; develop and implement pilot projects to improve the program by integrating into the program enhanced HIV prevention activities during pregnancy and systematic HIV-related care for HIV-infected pregnant women and their families.

b. Expand HIV/AIDS Care and Support Programs

(1) Collaborate in the development of national strategies for increasing the quality of community and home-based care of persons with HIV/AIDS and related conditions, and implement pilot projects in increased quality of HIV/AIDS care at district and provincial levels.

(2) Expand the development of stronger linkages between TB and HIV/AIDS prevention and care programs.

(3) Enhance access to TB preventive therapy and other opportunistic infection primary and secondary prophylaxis regimens and monitor their impact.

(4) Assist in monitoring and evaluating novel and appropriate uses of antiretroviral agents.

c. Strengthen HIV/AIDS and HIV/AIDS-Related Surveillance

(1) Expand and improve national HIV/AIDS/STD/TB surveillance programs with a focus on improved systems for case reporting, monitoring and evaluation, and measures to determine incidence, prevalence, and behavioral risk factors.

(2) Produce and disseminate an MOPH annual HIV/AIDS surveillance report containing data accruing from the HIV/AIDS-related surveillance systems (e.g., surveillance for TB, and other opportunistic infections), operational research, and special studies; expand the report to include data generated from other sources (e.g., non-MOPH), where appropriate; expand presentation and discussion of surveillance data, particularly at the local level to improve programs; and increase distribution of the report.

(3) In collaboration with CDC and other partner agencies, present project findings to other researchers and policy makers at local and international meetings and conferences.

d. Strengthen of Public Health Laboratory Services Supporting Surveillance, Prevention and Care Activities

(1) In collaboration with CDC and other relevant agencies, finalize the establishment of a National Microbiology Reference Laboratory (NMRL) system supportive of surveillance, training, research, reference-level testing services and quality assurance activities.

(2) Expand introduction of the use of rapid HIV tests through development of national guidelines, point of service protocols and quality assurance programs appropriate for national, provincial and district levels.

(3) Improve management of public health laboratory functions through development of information management systems and improved telecommunication infrastructure.

e. Strengthen of the Public Health Infrastructure

Improve MOPH planning for and infrastructure supporting the collection, management, analysis and distribution of health information related to HIV/AIDS and related conditions.

2. CDC Activities

a. Collaborate with MOPH on designing and implementing the activities listed above, including but not limited to the provision of technical assistance to develop and implement program activities, laboratory services, quality assurance, data management, statistical analysis, and presentation of program methods and findings.

b. Collaborate with MOPH and other relevant partners and agencies in the development of special laboratory-based surveillance activities.

c. Monitor project and budget performance.

E. Application Content

Please use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections of this document to develop your application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and with unreduced font. Pages should be numbered, and a complete index to the application and any appendices must be included.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189).

Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm

On or before August 15, 2001, in both electronic (Microsoft Word and Excel format) and hard copy, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

G. Evaluation Criteria

Your application will be evaluated against the following criteria by an independent review group appointed by CDC.

1. Understanding of the Problem (10 Points)

Extent to which the applicant demonstrates a clear and concise understanding of the nature of the problem described in the Purpose section of this announcement. This specifically includes description of the public health importance of the planned activities to be undertaken and realistic presentation of proposed objectives and projects.

2. Technical Approach (30 Points)

The extent to which the applicant's proposal includes an overall design strategy, including measurable time lines, the extent to which the proposal addresses regular monitoring and evaluation, and the potential effectiveness of the proposed activities in meeting objectives.

3. Ability to Carry Out the Project (25 Points)

The extent to which the applicant documents demonstrated capability to achieve the purpose of the project.

4. Personnel (20 Points)

The extent to which professional personnel involved in this project are qualified, including evidence of experience in working with HIV/AIDS, opportunistic infections, and HIV/STD surveillance.

5. Plans for Administration and Management of Projects (15 Points)

Adequacy of plans for administering the projects.

6. Budget (Not Scored)

The extent to which itemized budget for conducting the project, along with justification, is reasonable and consistent with stated objectives and planned program activities.

7. Protection of Human Subjects (Not Scored)

The extent to which the application adequately addresses the requirements of 45 CFR 46 for the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Written quarterly progress reports;
2. Financial status report, no more than 45 days after the end of the budget period; and
3. Final financial and performance reports, no more than 90 days after the end of the project period.
4. Annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

Send all reports to the program contact and the Grants Management Specialist, both identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement. Some of the more complex requirements have some additional information provided below.

AR–1—Human Subjects Requirements
AR–6—Patient Care
AR–14—Accounting System Requirements
AR–22—Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, [42 U.S.C. section 242l], as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, MS–15, Atlanta, GA 30341–4146, Telephone: (770) 488–2782, Fax: (770) 488–2847, e-mail: dpr7@cdc.gov.

For program technical assistance, contact: Jordan W. Tappero, MD, MPH, Director, Thailand-CDC Collaboration, Director, The HIV/AIDS Program, DMS 6 Building, Ministry of Public Health, Tivanon Road, Nonthaburi 11000, THAILAND, Tel: (66 2) 591 8358, Fax: (66 2) 591 5443, Mobile: (66 1) 755 9011, e-mail: jwt0@cdc.gov.

Dated: July 10, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 01–17658 Filed 7–13–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

BRB Array Tools

Richard Simon (NCI)
DHHS Reference No. E–154–01/0

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov.*

The invention is a desktop software package that integrates into Microsoft Excel as an add-in for the analysis of DNA microarray data. The software incorporates numerous statistical analysis methods tailored to the analysis of DNA microarray data, providing a robust visualization capability for translating the data into biological knowledge that is lacking in currently available packages. The software is

oriented for use by biologists, but was developed by professional statisticians for this application. The invention is expected to find a wide range of applications throughout the biomedical sciences.

Real Time Interactive Volumetric Magnetic Resonance Imaging

Michael Guttman and Elliott McVeigh (NHLBI)
DHHS Reference No. E–082–01/0 filed Feb 16, 2001.

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov*.

The invention makes possible "live" volume renderings from a Magnetic Resonance Imaging (MRI) scanner. Previously, volume renderings from MRI data could only be generated off-line, some time after the image data was collected. In one embodiment of the invention, the time between data collection and volume rendering update (the latency) is approximately one third of a second at a frame rate of approximately 10 updates per second. User interaction with the rendering, such as rotation and cut planes, are allowed during imaging. This gives a caregiver real-time three-dimensional feedback while manipulating devices within a patient's body. The invention may be of benefit to several types of image-guided interventional procedures, including cardiac catheterization, tumor removal, ablation or biopsies.

STATLAB—A Matlab® Toolbox for Advanced Statistical Modeling and Data Analysis

Philip S. Rosenberg (NCI)
DHHS Reference No. E–217–00/0 filed Apr 05, 2001

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov*.

The invention relates to a set of programs (a toolbox) to enhance Matlab's® statistical capabilities by utilizing an object-oriented design that helps statistical scientists more rapidly design, build and debug sophisticated statistical applications entirely in the Matlab® environment. This saves researchers from the time and effort required to code algorithms in low-level languages such as Fortran or C. Matlab® is the commercially available premiere technical computing environment that is widely used by scientists and engineers to solve mathematical problems arising in diverse scientific and engineering disciplines. STATLAB is the name given by the inventor to the set of programs that make up the invention, a toolbox for advanced statistical modeling and data analysis. This toolbox offers advanced error checking, report generation and data management capabilities not found together in any other package.

Engineered Human Topoisomerase I

Gary S. Laco (NCI), Michael A. Eissenstat, and Tatiana Guerassina (NCI)
DHHS Reference No. E–052–01/0

Licensing Contact: Sally Hu; 301/496–7056 ext. 265; e-mail: *hus@od.nih.gov*.

This invention describes a recombinant form of human topoisomerase (top68c) that encodes human topiosomerase (top 1) minus its localization signals. This invention provides an expression and purification strategy that allows wild type and mutant forms of top68c to be over-expressed and easily purified in vitro. The expressed top68c is pure (>99%) and retains full activity with a high yield. This invention has overcome the problems of the existing production of human topiosomerase 1 in insect cells such as low yields of difficult to purify protein. Therefore, this invention makes more research opportunities possible, such as screening for inhibitors, and providing sufficient quantities of the protein to do X-ray crystallography studies of top68c complexed with substrates and inhibitors. Such research is very important for determining the mechanism of top 1 activity and for finding future therapeutics related to top1. Finally, inhibiting this enzyme has possible anti-cancer and anti-HIV usage. This invention is available for licensing through a Biological Materials License because no patent applications exist.

Glycosylation-resistant Cyanovirins and Related Conjugates, Compositions, Nucleic Acids, Vectors, Host Cells, Methods of Production and Methods of Using Nonglycosylated Cyanovirins

Michael R. Boyd (NCI)
DHHS Reference No. E–074–99/7 filed Mar 22, 2001

Licensing Contact: Sally Hu; 301/496–7056 ext. 265; e-mail: *hus@od.nih.gov*.

This invention has two major aspects. The first is that cyanovirin-N (CV-N) and homologous proteins and peptides potently inhibit diverse laboratory and clinical isolates of influenza viruses A and B. Since influenza A and B are the two major types of influenza virus that infect humans, an agent that has anti-influenza virus activity against both influenza A and B, like CV-N, would be particularly useful in prevention or treatment of influenza virus infection. The second aspect provides CV-N mutants called glycosylation-resistant mutants. These mutants code sequences to enable ultra large-scale recombinant production of functional cyanovirins in non-bacterial (yeast or insect) host cells or in transgenic animals or plants. Therefore, these glycosylation-resistant mutants may allow industry to produce CV-Ns on a large scale and make CV-Ns cheap enough for developing countries to benefit from this invention.

Dated: July 6, 2001.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–17750 Filed 7–13–01; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Susan S. Rucker, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 245; fax: 301/402–0220; e-mail: *ruckers@od.nih.gov*. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Interaction of AAV4 With Sialic Acid

JA Chiorini (NIDCR)

Serial No. E–131–01/0 filed Mar 28, 2001.

This patent application describes the ability of AAV4 (adeno-associated virus, serotype 4) to interact with particular alpha 2,3-linked sialic acid residues on susceptible cells. The 2,3-linked sialic acid residues constitute part of the cell surface receptor(s) for AAV4. The identification of these residues provides

a means of identifying host cells which may be particularly suited as targets for gene therapy using AAV4-based vector systems. In addition, the identification of this interaction permits the development of new means of purifying AAV4 viral particles.

This work will be published, in part, at Kaludov, N. et al., J. Virol. (2001), in press.

Interaction of AAV5 With Sialic Acid

JA Chiorini (NIDCR)

Serial No. E–145–01/0 filed Mar 28, 2001.

This patent application describes the ability of AAV5 (adeno-associated virus, serotype 5) to interact with particular alpha 2,3-linked sialic acid residues on cells. These 2,3-linked sialic acid residues are part of the cell surface receptor(s) for AAV5. The identification of these residues as part of the AAV5 receptor, or receptor complex, provides a means of identifying host cells that may be particularly suited as targets for gene therapy using AAV5-based vector systems. In addition, the identification of this interaction permits the development of new means of purifying AAV5 viral particles.

This work has been published, in part, at Walters, RW et al., JBC 276 (No. 23) 20610–16 (June 8, 2001), and Kaludov, N. et al., J. Virol. (2001), in press.

Use of Activity Dependent Neurotrophic Factor Derived Peptides for Enhancing Learning and Memory

DE Brenneman and Catherine Spong (NICHD), Ilana Gozes (Tel Aviv University)Serial No/Ref: No.: E–147–96/8 (PCT) filed May 31, 2001 which claims priority to 60/267,805 (E–147–96/6) filed February 8, 2001 and 60/208,944 (E–147–96/5) filed May 31, 2000.

These application(s) disclose the use of ADNF polypeptides, ADNF and ADNF III/ADNP or the ADNF derived peptides SAL (SALLRSIPA) and NAP (NAPVSIPQ) to improve learning and memory. The peptides SAL and NAP are preferred because of their ability to cross the blood-brain barrier and for their ease of synthesis. The peptides, when given alone or in combination, either *in utero* or post-natally, improve performance related to learning and memory. Combinations of NAP and SAL are preferred for prenatal administration. NAP alone is preferred for post-natal administration. The ability to improve learning and memory when given *in utero* makes them attractive as candidates for the development of therapeutics for prevention or treatment of Down's Syndrome or Fragile X syndrome or other conditions associated with mental retardation. The ability to improve performance related to learning and memory in adults makes them attractive candidates for the development of therapeutics for Alzheimer's disease as well as Down's Syndrome or other conditions associated with mental retardation.

This work has been published, in part, at Gozes I, et al. "Activity-dependent neurotrophic factor: intranasal administration of femtomolar-acting peptides improve performance in a water maze" J Pharmacol Exp Ther, 293(3):1091–8 (Jun 2000).

Dated: July 6, 2001.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–17751 Filed 7–13–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee A—Cancer Centers.

Date: August 3, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David E. Maslow, P.h.D., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8117, Bethesda, MD 20892–7405; 301/496–2330.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17741 Filed 7–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: August 3, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jeanette M. Hosseini, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, (301) 496–5561.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: August 9, 2001.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, 301–496–5561.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17743 Filed 7–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart Lung, and Blood Institute Special Emphasis Panel, PA–00–005—MidCareer Investigator Award in Patient-Oriented Research (K24).

Date: July 12, 2001.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Rockledge II, Room 7214, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Diane M. Reid, M.D., Review Branch, Room 7182, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0277.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Name of Committee: National Heart Lung, and Blood Institute Special Emphasis Panel, PA–00–004—Mentored Patient-Oriented Research Career Development Award.

Date: July 13, 2001.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Rockledge II, Room 7214, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Diane M. Reid, M.D., Review Branch, Room 7182, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0277.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 9, 2001.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17735 Filed 7–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, July 10, 2001, 8 a.m. to July 11, 2001, 5 p.m., Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD, 20815 which was published in the **Federal Register** on June 29, 2001, 66 FR 34700.

The meeting was previously advertised as a meeting open to the public, and now has changed to a meeting closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The meeting is closed to the public.

Dated: July 9, 2001.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17736 Filed 7–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: October 14–15, 2001.

Time: October 14, 2001, 7 p.m. to adjournment on 10/15/2001.

Agenda: To review and evaluate grant applications.

Place: Embassy Square, 2000 N Street, NW., Washington, DC 20036.

Contact Person: Yen Li, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, *yli@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17738 Filed 7–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: August 8, 2001.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Robert H. Stretch, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6912.
(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 10, 2001.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 01–17739 Filed 7–13–01; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.
The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.
Date: July 17, 2001.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications,
Place: 6100 Executive Blvd. 5th Floor, Rockville, MD 20852, (Telephone Conference Call).
Contract Person: Gopal M. Bhatnagar, PhD., Scientific Review Administrator, Division of Scientific, Review, National Institute of Child Health, and Human Development, National Institutes of Health, PHS DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 10, 2001.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 01–17740 Filed 7–13–01; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory General Medical Sciences Council, September 13, 2001, 8:30 a.m. to September 14, 2001, 5 p.m., Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD, 20892 which was published in the **Federal Register** on April 19, 2001, 66 FR 20154–20155.
The times for the Council agenda were changed. The new agenda follows: closed—September 13, 2001, 8:30 a.m. to 10:30 a.m.; open—September 13, 2001, 10:30 a.m. to 5 p.m.; closed—September 14, 2001, 8:30 a.m. to adjournment. The meeting is partially Closed to the public.

Dated: July 10, 2001.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 01–17742 Filed 7–13–01; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.
The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Regulatory Affairs Support".
Date: July 17, 2001.
Time: 9 a.m. to 12 p.m.
Agenda: To review and evaluate contract proposals.
Place: Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, national Institutes of health, HHS)

Dated: July 10, 2001.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 01–17744 Filed 7–13–01; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.
The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 8–10, 2001.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ronald Suddendorf, PhD. Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17746 Filed 7–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(b)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 20, 2001.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Irina Gordienko, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 615H, MSC 9608, Bethesda, MD 20892–9608, 301–443–1178.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review of funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17747 Filed 7–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 16, 2001, 9 a.m. to July 16, 2001, 5 p.m., Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD, 20910 which was published in the **Federal Register** on July 5, 2001, 66 FR 35446–35449.

The meeting will be held on July 19, 2001. The time and location remain the same. The meeting is closed to the public.

Dated: July 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17737 Filed 7–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasions of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 13, 2001.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gillian Einstein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20817, 301–435–4433, *einsteig@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 17, 2001.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary P. McCormick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, 301–435–1047.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 23–24, 2001.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Nancy Shinowara, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, 301–435–1173, *shinowan@drg.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 23, 2001.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 2092, (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 23, 2001.
Time: 11:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 23, 2001.
Time: 12:00 p.m. 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (303) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 24, 2001.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.
Contact Person: Mary Sue Krause, BA, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3182, MSC, Bethesda, MD 20892, (301) 435–0902, *mkrause@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 24, 2001.
Time: 11:00 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 24, 2001.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverse@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 24, 2001.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 25, 2001.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 25, 2001.
Time: 11:30 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: David M. Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *monseesd@drg.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 25, 2001.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, *fungv@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 2001.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jerry L. Klein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, (301) 435–1213.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26–27, 2001.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC7890, Bethesda, MD 20892–7890, 301–435–1159, *ameros@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 27, 2001.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, Washington, DC 20037.
Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *dowellr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 27, 2001.
Time: 11 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 27, 2001.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 27, 2001.

Time: 1 p.m. to 1:40 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David M. Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *monseesd@drg.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 30–31, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 30–31, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jay Cinque, MSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 31, 2001.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, 301/435–1776, *davidsoh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 31, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hay Adams, One Lafayette Square, 16th and H Streets, NW, Washington, DC 20006.

Contact Person: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 31, 2001.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael H. Sayre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 31, 2001.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17745 Filed 7–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16, 2001.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 2001.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 23, 2001.

Time: 8:30 a.m. to 2:30 p.m.

Agenda: The review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: H. Mac Stiles, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892, (301) 435–1785.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 23, 2001.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: H. Mac Stiles, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892, (301) 435–1785.

(Catalogue of Federal Domestic Assistance Program Nos. 93306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 10, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–17748 Filed 7–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Draft Methanol Expert Panel Report and Meeting

National Toxicology Program (NTP), National Institute of Environmental Health Sciences (NIEHS), Center for the Evaluation of Risks to Human Reproduction (CERHR), announces:

(1) Availability of the Draft Methanol Expert Panel Report—Public comments are solicited on the draft report and the deadline for written comments is September 7, 2001.

(2) Methanol Expert Panel Meeting scheduled for October 15–17, 2001—The meeting is open to the public and will be held at the Radisson Hotel in Old Town Alexandria in Alexandria, Virginia.

Background

The NTP and the NIEHS established the NTP Center for the Evaluation of Risks to Human Reproduction (CERHR) [**Federal Register** (FR), December 14, 1998 (Volume 63, Number 239, page 68782)] in June 1998. The purpose of the Center is to provide scientifically-based, uniform assessments of the potential for adverse effects on reproduction and development caused by agents to which humans may be exposed. Expert panels conduct scientific evaluations of agents selected by the Center in public forums. The agent currently under evaluation is methanol. Additional details about CERHR and the formal review process are provided below (see Additional Information about CERHR).

Methanol (CASRN: 67–56–1) is a commercially important, high production volume chemical (10.54 billion pounds, US production, 1993), with high potential for occupational, consumer, and environmental exposure. Methanol is used in chemical syntheses and as an industrial solvent. It is found in a variety of consumer products such as paints, antifreeze, cleaning solutions, and adhesives and is a by-product of sewage treatment, fermentation, and paper production. Methanol is used in racing car fuels, and there is the potential for the expanded use of methanol as a vehicle fuel or fuel additive. There is a large toxicity database on reproductive and developmental effects of methanol, including a recently completed study in primates.

Draft Methanol Expert Panel Report Available

The Draft Methanol Draft Expert Panel Report is composed of the following sections:

1.0 Chemistry, Use, and Human Exposure
2.0 General Toxicological and Biological Effects
3.0 Developmental Toxicity Data
4.0 Reproductive Toxicity Data
5.0 Summary, Conclusions, and Critical Data Needs

Sections 1–4 will be available to the public by July 9. Copies can be obtained electronically on the CERHR web site (http://cerhr.niehs.nih.gov) or in hard copy by contacting Dr. Michael Shelby, CERHR Director (NIEHS, 79 T.W. Alexander Drive, Building 4401, Room 103, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709, Phone: (919) 541–3455; Fax: (919)316–4511; shelby@niehs.nih.gov).

Request for Written Comments on Draft Methanol Expert Panel Report

The CERHR invites written public comments on Sections 1–4 of the Draft Methanol Expert Panel Report. Comments can be submitted in hard copy or electronic format and must be received by the Center by September 7, 2001. These comments will be distributed to CERHR staff and the Methanol Expert Panel for consideration in reviewing the draft report and in preparing for the Methanol Expert Panel Meeting (see below). These comments should be sent to Dr. Michael Shelby at the address provided above. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, if any).

Expert Panel Will Review Methanol

An expert panel (the Panel) of 13 independent scientists selected for their scientific expertise in reproductive and developmental toxicology and other relevant areas of science are conducting this review. The roster of experts follows:

Methanol Expert Panel (Name and Affiliation)

Eula Bingham, Ph.D. (Chair), University of Cincinnati, Cincinnati, Ohio
Stanley Barone, Ph.D. US EPA, Research Triangle Park, NC
David Bellinger, Ph.D., Children's Hospital, Boston, MA
Gary Burin, Ph.D., Technology Sciences Group, Washington, DC
Robert Chapin, Ph.D., DuPont Pharmaceuticals, Newark, DE
J. Michael Davis, Ph.D., US EPA, Research Triangle Park, NC
David Dorman, DVM, Ph.D., CIIT Centers for Health Research, Research Triangle Park, NC
John R. Glowa, Ph.D., LSU Medical Center, Shreveport, LA
Deborah K. Hansen, Ph.D., National Center for Toxicological Research, Jefferson, AR
H.B. (Skip) Matthews, Ph.D., Consultant, Durham, NC
Mark Miller, M.D., MPH Cal EPA, Oakland, CA
Kathleen M. Nauss, Ph.D., Consultant, Sudbury, MA
John M. Rogers, Ph.D., US EPA, Research Triangle Park, NC

Public Meeting of the Methanol Expert Panel

This meeting is open to the public and attendance is limited only by the availability of space. Theis meeting will take place from October 15–17, 2001 in the Washington Ballroom of the Radisson Hotel Old Town Alexandria, 901 N. Fairfax Street, Alexandria, Virginia, telephone (703) 683–6000, fax (703) 683–7597.

Preliminary Meeting Agenda

The meeting begins each day at 8:30 a.m. It is anticipated that a lunch break will occur from 12–1 p.m. daily and that adjournment will be between 5 and 6 p.m. each day.

October 15, 2001 (8:30 a.m.)

Opening comments—Public Comment comment session

- The Panel will receive comments from the public (up to seven minutes per speaker; details are given below).

Review of Sections 1–4 of the Draft Methanol Expert Panel Report
Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs

October 16, 2001 (8:30 a.m.)

Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs
Preparation of draft summaries and conclusion statements

October 17, 2001 (8:30 a.m.)

Presentation and discussion of and agreement on summaries and conclusions
Closing comments

Oral Comments Can Be Presented at the Expert Panel Meeting

Time is set aside on October 15 for presentation of oral public comments at

the Methanol Expert Panel Meeting. To facilitate planning of this meeting, those persons wishing to make oral public comments are asked to contact the CERHR Director by October 10 [Dr. Michael Shelby, NIEHS, 79 T.W. Alexander Drive, Building 4401, Room 103, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709, Phone: (919) 541–3455; Fax (919) 316–4511; shelby@niehs.nih.gov]. Seven minutes will be available for each speaker (one speaker per organization). When registering to comment orally, please provide your name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization (if any). If possible, also send a copy of the statement or talking points to CERHR by October 10. This information will be provided to the Expert Panel and will assist the Panel in identifying issues for discussion. Registration for presentation of oral comments will also be available at the meeting on October 15 (7:30—8:30 a.m.). Those registering at the meeting are asked to bring 20 copies of their statement or talking points. In lieu of making an oral presentation at the meeting, the public is invited to submit a written statement to CERHR by October 10. This statement will be distributed to CERHR staff and the Methanol Expert Panel and noted in the meeting record.

Post-Meeting Public Comments

Following the Methanol Expert Panel Meeting and completion of the Expert Panel Report, public comment will be solicited. This solicitation will be announced in a future **Federal Register** notice.

For other questions about the Draft Methanol Report or the Methanol Expert Panel Meeting, contact Dr. Michael Shelby [CERHR, NIEHS, 79 T.W. Alexander Drive, Building 4401, Room 103, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709, Phone: (919) 541–3455; Fax (919) 316–4511; *shelby@niehs.nih.gov*.]

Additional Information About CERHR

CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting the Center Director, Dr. Shelby (contact information provided above). The Center selects chemicals for evaluation based upon several factors including production volume, extent of human exposure, public concern, and published evidence of reproductive or developmental toxicity. The Center establishes an expert panel to review the scientific evidence on the chemical(s) under review, to receive public comments, and to prepare a report on the chemical(s). This draft Expert Panel Report is made publicly available for comment on the CERHR web site and upon request from CERHR, and an Expert Panel Meeting is held to discuss and evaluate the draft report. Following the Expert Panel Meeting and completion of the Expert Panel Report, public comment is solicited again.

After this public comment period ends, the NTP staff prepares a NTP Center Report on the evaluated chemical(s) that integrates background information on the chemical(s), findings of the expert panel, and a discussion of any additional, recent studies. The NTP Center Report includes all public comments received on the Expert Panel Report. The final NTP Center Report is made publicly available and distributed to interested stakeholders and to appropriate regulatory and research agencies. The formal evaluation process is outlined below.

CERHR Review Process

• Chemical Nominations.

Open nomination process includes interested individuals, NTP ExecutiveCommittee, Federal Agencies, NTP Staff, Labor Unions, Industry

• CERHR Multi-agency Core Committee.

—Nominations reviewed quarterly by Core Committee made up of NTP agency representatives

—Highest priority chemicals identified based on production volume, evidence of reproductive or developmental toxicity, human exposure, public concern

—Center staff prepares dossiers on priority chemicals for review by Core Committee

—Core Committee recommends candidate chemicals to be considered for evaluation

—Candidate chemicals approved by Associate Director, NTP

• First Solicitation of Public Comment.

—Notice of candidate chemicals and request for public comment published in **Federal Register**, NTP Newsletter and listserver, and CERHR web site

—Center staff compiles public comments for review by the Core Committee

• CERHR Core Committee Review.

—Reviews dossiers and material submitted in public comments

—Recommends list of prioritized chemicals to Associate Director, NTP, for final selection

• Second Solicitation of Public Comment.

—**Federal Register** notice announces selected chemical(s) and solicits public comment, new data, information on exposure, and nominations of individuals qualified to serve on the Expert Panel

• Third Solicitation of Public Comment.

—**Federal Register** notice announces availability of sections 1–4 of the Draft Expert Panel Report, requests public comments, and announces the Expert Panel Meeting

• Expert Panel Meeting.

—The Panel meets in public session to discuss their review of the literature and to prepare the final panel report

—The meeting includes time for presentation of public comments

• Final Solicitation of Public Comment.

—**Federal Register** notice announces availability of Expert Panel Report and requests public comment

• NTP Center Report Transmitted.

—NTP staff prepares an NTP Center Report on the chemical(s). This report integrates background information on the chemical evaluated, the findings in the Expert Panel Report, a discussion of any recent relevant study findings, public comments, and an executive summary that includes conclusions intended for a readership of non-scientists

—The Center Report is distributed to Federal and state agencies, interested stakeholders, and the public

Dated: July 2, 2001.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 01–17749 Filed 7–13–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information

on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Historically Black College and University Substance Use Survey Project—New—The National Historically Black College and University (HBCU) Substance Abuse Consortium, sponsored by the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Treatment (CSAT), was organized in an effort to increase awareness of substance abuse related problems on our nation's HBCU campuses. To this end, CSAT and the Consortium's major objectives include: (a) Assess the prevalence of alcohol, tobacco, and other drug use at participating institutions and identify strategies for combating the problem; (b) enhance substance abuse curriculum development that will lead to degrees in substance abuse treatment and prevention; (c) provide resources for the development of substance abuse education awareness programs on campuses, and (d) provide resources for the necessary counseling and referral for students with substance abuse problems.

This survey will be used to assess the extent of substance knowledge, attitudes and behaviors in first semester freshmen at HBCUs across the country. The survey is an anonymous, self-report 65-item questionnaire. The objectives of this project are to assess the attitudes, knowledge and behaviors of entering freshmen students in a select sample of 40 HBCU's and to determine the extent of problem behavior as it relates to substance abuse on these campuses. This data will give valuable information that will enable CSAT and Consortium schools to meet the above objectives. A follow-up survey activity is planned during the students' junior year which will allow for an examination of the changes in attitudes, behaviors and knowledge as the students matriculate on the campuses. The National HBCU Substance Use Survey project will be able to fill gaps in the literature and contribute incremental knowledge about an important, but understudied population.

The burden estimates are summarized below and include time for distributing the survey questionnaire, giving instructions and collecting the completed questionnaires. This burden will be experienced over a three-year period.

Survey	Number of respondents	Responses per respondent	Average burden per response (Hr.)	Total burden
Freshmen	35,000	1	1	35,000
Juniors	35,000	1	1	29,750
Total	29,750			64,759

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 9, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–17660 Filed 7–13–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4653–N–10]

Notice of Proposed Information Collection for Public Comment; Notice of Funding Availability and Application Kit for the Community Development Work Study Program (CDWSP)

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* September 14, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and be sent to: Reports Liaison Officer, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships—telephone (202) 708–1537. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected entities concerning the proposed information collection to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of information to be collected; and (4) minimize the burden of collection of information on those who are to respond; including through the use of appropriate technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of the Proposal: Notice of Funding Availability and Application Kit for the Community Development Work Study Program (CDWSP).

Description of the need for the information and proposed use: The

information is being collected to select grantees in this statutorily created competitive grant program. The information is also being used to monitor the performance of grantees to ensure that they meet statutory and program goals and requirements.

Members of the affected public: Institutions of higher education offering graduate degrees in community development fields: 60 applicants and 30 grantees.

Estimation of the total number of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response: Information pursuant to submitting applications will be submitted once. Information pursuant to grantee monitoring requirements will be submitted once a year.

The following chart details the respondent burden on an annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Application	60	60	40	2,400
Annual Reports	30	30	6	180
Final Reports	30	30	8	240
Recordkeeping	30	30	5	150
				2,970

Status of proposed information collection: OMB approved a paperwork clearance for this information collection and assigned it OMB Control No. 2528–0175, expiration date March 31, 2002.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 3, 2001.

Lawrence L. Thompson,

General Deputy Assistant, Secretary for Policy Development and Research.

[FR Doc. 01–17646 Filed 7–13–01; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–032–1430–BJ, ES–51103, Group 104, Michigan]

Notice of Filing of Plat of Survey; Michigan

The plat of the dependent resurvey of the Pointe Aux Barques Lighthouse Reservation in lot 2, section 2, Township 18 North, Range 14 East, Michigan Meridian, Michigan, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on August 20, 2001.

The survey was made at the request of the Milwaukee Field Office.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., August 20, 2001.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: June 25, 2001.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 01–17661 Filed 7–13–01; 8:45 am]

BILLING CODE 4310–GJ–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–935–942 (Preliminary)]

Certain Structural Steel Beams From China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan of certain structural steel beams, provided for in subheadings 7216.32.00, 7216.33.00, 7216.50.00, 7216.61.00, 7216.69.00, 7216.91.00, 7216.99.00, 7228.70.30, and 7228.70.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in these investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On May 23, 2001, a petition was filed with the Commission and Commerce by counsel on behalf of Northwestern Steel & Wire Co., Sterling, IL; Nucor Corp., Charlotte, NC; Nucor-Yamato Steel Co., Blytheville, AR; and TXI-Chaparral Steel Co., Midlothian, TX, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of structural steel beams from China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan. Accordingly, effective May 23, 2001, the Commission instituted antidumping duty investigations Nos. 731–TA–935–942 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 4, 2001 (66 FR 29989). The conference was held in Washington, DC, on June 13, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 9, 2001. The views of the Commission are contained in USITC Publication 3438 (July 2001), entitled Certain Structural Steel Beams from China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan: Investigations Nos. 731–TA–935–942 (Preliminary).

Issued: July 10, 2001.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17662 Filed 7–13–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Appointment of Individuals To Serve as Members of Performance Review Boards

AGENCY: United States International Trade Commission.

ACTION: Appointment of individuals to serve as members of performance review board.

EFFECTIVE DATES: July 10, 2001.

FOR FURTHER INFORMATION CONTACT: Micheal J. Hillier, Director of Personnel U.S. International Trade Commission (202) 205–2651.

SUPPLEMENTARY INFORMATION: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB).

Chairman of PRB: Vice-Chairman Deanna Tanner Okun.

Members: Commissioner Lynn M. Bragg, Commissioner Marcia E. Miller, Commissioner Jennifer A. Hillman, Commissioner Dennis M. Devaney, Robert A. Rogowsky, Lyn M. Schlitt, Stephen A. McLaughlin, Eugene A. Rosengarden, Lynn Featherstone, Vern Simpson, Lynn I. Levine, Robert B. Koopman.

Notice of these appointments is being published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: July 10, 2001.

By order of the Chairman:

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17663 Filed 7–13–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. The Thomson Corporation, Harcourt General, Inc. & Reed Elsevier Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *The Thomson Corporation, Harcourt General, Inc., and Reed Elsevier Inc.*, No. 1:01CV01419. On June 27, 2001, the United States filed a Complaint alleging that The Thomson Corporation's proposed acquisition of the college textbook publishing and computer-based testing businesses of Harcourt General, Inc. from Reed Elsevier Inc. would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires the defendants to divest textbooks and related ancillary educational materials for thirty-eight college courses and Harcourt's national computer-basing testing business. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC.

Public comment is invited within sixty days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James R. Wade, Chief, Civil Task Force, Antitrust Division, Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, DC 20530 (telephone: (202) 616–5935).

Constance K. Robinson,

Director of Operations and Merger Enforcement.

United States District Court for the District of Columbia

[Civil Action No: 01–1419 (Antitrust)]

United States of America, Plaintiff, v. The Thomson Corporation, Harcourt General, Inc. and Reed Elsevier Inc., Defendants

Filed: June 27, 2001.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Acquirer" or "Acquirers" means the entity or entities to whom defendants divest any of the Divestiture Assets.

B. "AIMS Business" means Harcourt's Agency Information Management Services business, which provides assistance to state agencies, departments, or other such organizations in the management of the state licensing process, including:

1. All tangible assets that are used exclusively for the AIMS Business, including research and development activities, all networking equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property, and all assets used exclusively in connection with the AIMS Business; all licenses, permits and authorizations issued by any governmental organization relating exclusively to the AIMS Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating exclusively to the AIMS Business, including supply agreements; all customer lists, contracts, accounts, and credit records or similar records of all sales and potential sales by the AIMS Business; all sales support and promotional materials, advertising materials and production, sales, and marketing files relating exclusively to the AIMS Business; all repair and performance records, and all other records relating exclusively to the AIMS Business.

2. All intangible assets that are used exclusively in the AIMS Business and are used in the development, production, servicing, sale, administration, assessment, and

dissemination of tests and test results including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, but no corporate trademarks or trade names of Thomson or Harcourt; technical information; computer software and related documentation; know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices; all research data concerning historic and current research and development relating exclusively to the AIMS Business including, but not limited to the designs of experiments, and the results of successful and unsuccessful designs and experiments; quality assurance and control procedures; design tools and simulation capability; and all manuals and technical information defendants provide to those employees, customers, suppliers, agents or licensees exclusively devoted to the AIMS Business.

C. "ASI" means all of the assets of defendant Harcourt's wholly-owned subsidiary Assessment Systems, Inc., a Pennsylvania corporation with its headquarters in Bala Cynwyd, Pennsylvania, excluding Harcourt's AIMS Business and State Testing Business, as defined in the proposed Final Judgment, but including the following:

1. All tangible assets that comprise ASI, including research and development activities, all fixed, mobile, and other testing centers listed in Exhibit B of the proposed Final Judgment, any accompanying property rights in real estate or equipment used in any of those testing centers, all networking equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property, and all assets used exclusively in connection with ASI; all licenses, permits and authorizations issued by any governmental organization relating to ASI; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to ASI, including supply agreements; all customer lists, contracts, accounts, and credit records or similar records of all sales and potential sales by ASI; all sales support and promotional materials, advertising materials and production, sales, and marketing files relating to ASI; all repair and performance records, and all other records relating to ASI.

2. All intangible assets used in the development, production, servicing, sale, administration, assessment, and dissemination of tests and test results including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, but no corporate trademarks or trade names of Thomson or Harcourt; technical information; computer software and related documentation including, but not limited to, test drivers, scheduling software, and the OMEGA, EXPro, and REG2000 software platforms; know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices; all research data concerning historic and current research and development relating to ASI including, but not limited to, all test item banks, psychometric data, statistical reports of test results, designs of computer-based examinations and testing centers, and the designs of experiments, and the result of successful and unsuccessful designs and experiments; quality assurance and control procedures, including all security measures used in the development, administration, and assessment of computer-based tests and the report of exam results; design tools and simulation capability; and all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees.

D. "College Textbook Products" means all of the college textbooks identified on Exhibit A of the proposed Final Judgment. Each College Textbook Product also includes all ancillary educational materials offered for sale or under development by any subsidiary or division of the defendants that are designed to be specific to a textbook product identified in Exhibit A, including teacher editions, workbooks, notebooks, charts, audio, video, software, any CD–ROM, DVD–ROM, Internet and broadcast components, teacher support and staff development materials, and any other materials in any form, format or media, and also includes:

1. All tangible assets that comprise the College Textbook Products, including research and development activities; all original and digital artwork, film plates, and other reproductive materials relating to the College Textbook Products including, but not limited to, all manuscripts, illustrations, any other content, and any revisions or revision plans thereof in print or digital form; all licenses, permits and authorizations issued by any governmental organization relating to the College Textbook Products; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings relating to the College Textbook Products including, but not limited to, author permissions and other similar agreements, supply and distribution agreements; all customer lists, contracts, accounts, and credit records, or similar records of all sales and potential sales of the College Textbook Products; all sales support and promotional materials, advertising materials, and production, sales and marketing files relating to the College Textbook Products; at the Acquirer(s)' option, computers and other tangible assets used primarily for the production of the College Textbook Products; and all performance and all other records relating to the College Textbook Products;

2. All intangible assets used in the development, production, servicing, marketing, and sale of the College Textbook Products including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks (registered and unregistered), trade names, service marks, service names, including all titles of existing products comprising the College Textbook Products, but no corporate trademarks or trade names of Thomson or Harcourt; all technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts relating to the College Textbook Products, including, but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments.

Defendants shall use their best efforts to facilitate the assignment to the Acquirer(s) of any of the above that defendants presently hold or use pursuant to a license or any other agreement.

E. "Complete ASI Assets" means ASI, the AIMS Business, and the State Testing Business, as defined in this Hold Separate Stipulation and Order.

F. "Divestiture Assets" means the College Textbook Products and the Complete ASI Assets, as defined in this Hold Separate Stipulation and Order.

G. "Harcourt" means defendant Harcourt General, Inc., a Delaware corporation with its headquarters in Chestnut Hill, Massachusetts, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

H. "Reed Elsevier" means defendant Reed Elsevier Inc., a Massachusetts corporation with its headquarters in Newton, Massachusetts, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

I. "State Testing Business" means only those contracts, agreements, or other understandings between Harcourt and any entity for the development, delivery, or administration of any licensing examinations to any state agencies or departments that are in effect as of the date of the filing of the Complaint in this matter, including:

1. All tangible assets that are used exclusively for the State Testing Business, including research and development activities, all networking equipment, tooling and fixed assets, personal property, office furniture, materials, supplies, and other tangible property, and all assets used exclusively in connection with the State Testing Business, including supply agreements; all customer lists, contracts, accounts, and credit records or similar records of all sales and potential sales relating exclusively to the State Testing Business; all sales support and promotional materials, advertising materials and production, sales, and marketing files relating exclusively to the State Testing Business; and

2. All intangible assets that are used exclusively in the State Testing Business and are used in the development, production, servicing, sale and assessment of tests and test results including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, but no corporate trademarks or trade names of Thomson or Harcourt; technical information; computer software and related documentation; know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices; all research data concerning historic and current research and development relating exclusively to the State Testing Business including, but not limited to, all item banks, psychometric data, test development resources, statistical reports of test results, designs of computer-based examinations, the designs of experiments, and the results of successful and unsuccessful designs and experiments; quality assurance and control procedures; design tools and simulation capability; and all manuals and technical information defendants provide to those employees, customers, suppliers, agents or licensees exclusively devoted to the State Testing Business.

Provided, however that, to the extent that any of these assets are also employed in the delivery or administration of any tests that are the subject of these contracts, such assets shall not deem to be part of the State Testing Business.

J. "Thomson" means defendant The Thomson Corporation, a foreign corporation with its headquarters in Toronto, Ontario, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

II. Objectives

The proposed Final Judgment filed in this case is meant to ensure the defendants' prompt divestiture of the College Textbook Products and either ASI or the Complete ASI Assets for the purposes of establishing one or more viable competitors in the college textbook publishing and computer-based testing businesses, to remedy the effects the United States alleges would otherwise result from Thomson's acquisition of certain assets of the Higher Education and Corporate and Professional Services Groups of Harcourt from Reed Elsevier. This Hold Separate Stipulation and Order ensures that, prior to such divestitures, the Divestiture Assets will continue to be economically viable and ongoing business concerns that will remain independent and uninfluenced by the defendants and, further, that competition will be maintained during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Proposed Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending its entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Hold Separate Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Compliant herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event that: (1) The United States has withdrawn its consent, as provided in Section IV.A above; or (2) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, the parties are released from all further obligations under this Hold Separation Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestitures required by the proposed Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Divestiture Assets as independent, ongoing, economically viable competitive businesses, with management, production, operation, marketing, distribution, licensing, or sale of such assets held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate the production, operation, development, delivery, marketing, distribution, licensing, sale, or editorial content of any products or services with those produced, operated, developed, delivered, marketed, distributed, licensed, or sold under any of the Divestiture Assets. Within twenty (20) calendar days after the entry of this Hold Separate Stipulation and Order, defendants will inform the United States of the steps taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that: (1) The Divestiture Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the college textbook publishing and computer-based testing businesses; (2) management of the Divestiture Assets will not be influenced by defendants; and (3) the books, records, competitively sensitive sales, marketing, and pricing information, and decision-making concerning production, operation, development, delivery, marketing, distribution, licensing, sale, or editorial content of products, services, or facilities by or under any of the Divestiture Assets will be kept separate and apart from defendants' other operations.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the products and services produced, operated, developed, delivered, marketed, distributed, licensed, or sold under the Divestiture Assets, and shall maintain at 2001 or previously approved levels for 2002, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divestiture Assets.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as economically viable and competitive ongoing businesses, consistent with the requirements of Sections V.A and B of this Hold Separate Stipulation and Order.

E. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable and saleable condition at no less than their current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Divestiture Assets.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

I. Defendants' employees with primary responsibility for the production, operation, development, delivery, marketing, distribution, licensing, sale, or editorial content of the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days notice of such transfer.

J. Defendants shall appoint a person or persons to oversee the Divestiture Assets and be responsible for defendants' compliance with this section. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of the proposed Final Judgment. In the event such person is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to an Acquirer or Acquirers acceptable to the United States.

L. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further Order of the Court.

Respectfully submitted,

For Plaintiff United States of America

James D. Villa,
D.C. Bar #417471, U.S. Department of Justice, Antitrust Division, Civil Task Force, 325 Seventh Street, NW., Washington, DC 20530, (202) 514–8361.

For Defendant Thomson Corporation

Paul L. Yde, Esq.,
D.C. Bar #449751, Vinson & Elkins, LLP, The Willard Office Building, 1455 Pennsylvania Ave. NW., Washington, DC 20004–1008, (202) 639–6685.

For Defendant Harcourt General, Inc.

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For Defendant Reed Elsevier Inc.

Robert A. Lipstein,
D.C. Bar #253724, Lipstein, Jaffe & Lawson, LLP, 1225 I Street, NW., Suite 700, Washington, DC 20005–3914, (202) 296–6655.

Order

It is so ordered by the Court, this _____day of June, 2001.

United States District Judge

Parties Entitled to Notice of Entry of Order

Counsel for Plaintiff United States of America

James R. Wade, U.S. Department of Justice, Antitrust Division, Civil Task Force, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

Counsel for Defendant The Thomson Corporation

Paul L. Yde, Esq., Vinson & Elkins, LLP, The Willard Office Building, 1455 Pennsylvania Avenue, NW., Washington, DC 20004–1008.

Counsel for Harcourt General, Inc.

Stephen M. Axinn, Esq., Axinn, Veltrop & Harkrider LLP, 1370 6th Avenue, 19th Floor, New York, NY 10019.

Counsel for Reed Elsevier Inc.

Robert A. Lipstein, Esq., Lipstein, Jaffe & Lawson LLP, 1225 I Street, NW., Washington, DC 20005–3914.

Final Judgment

Whereas, plaintiff, the United States of America ("United States"), filed its Complaint on June 27, 2001, plaintiff and defendants, The Thomson Corporation ("Thomson"), Harcourt General, Inc. ("Harcourt"), and Reed Elsevier Inc. ("ReedElsevier"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by defendants to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Acquirer" or "Acquirers" means the entity or entities to whom defendants divest any of the Divestiture Assets.

B. "AIMS Business" means Harcourt's Agency Information Management Services business, which provides assistance to state agencies, departments, or other such organizations in the management of the state licensing process, including:

1. All tangible assets that are used exclusively for the AIMS Business, including research and development activities, all networking equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property, and all assets used exclusively in connection with the AIMS Business; all licenses, permits and authorizations issued by any governmental organization relating exclusively to the AIMS Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating exclusively to the AIMS Business, including supply agreements; all customer lists, contracts, accounts, and credit records or similar records of all sales and potential sales by the AIMS Business; all sales support and promotional materials, advertising materials and production, sales, and marketing files relating exclusively to the AIMS Business; all repair and performance records, and all other records relating exclusively to the AIMS Business;

2. All intangible assets that are used exclusively in the AIMS Business and are used in the development, production, servicing, sale, administration, assessment, and dissemination of tests and test results including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, but no corporate trademarks or trade names of Thomson or Harcourt; technical information; computer software and related documentation; know-how, trade secrets, drawings, blueprints, design, design protocols, specifications for materials, specifications for parts and devices; all research data concerning historic and current research and development relating exclusively to the AIMS Business including, but not limited to the designs of experiments, and the results of successful and unsuccessful designs and experiments; quality assurance and control procedures; design tools and simulation capability; and all manuals and technical information defendants provide to those employees, customers, suppliers, agents or licensees exclusively devoted to the AIMS Business.

C. "ASI" means all of the assets of defendant Harcourt's wholly-owned subsidiary Assessment Systems, Inc., a Pennsylvania corporation with its headquarters in Bala Cynwyd, Pennsylvania, excluding Harcourt's AIMS Business and State Testing Business, as defined in this Final Judgment, but including the following:

1. All tangible assets that comprise ASI, including research and development activities, all fixed, mobile, and other testing centers listed in Exhibit B, any accompanying property rights in real estate or equipment used in any of those testing centers, all networking equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property, and all assets used exclusively in connection with ASI; all licenses, permits and authorizations issued by any governmental organization relating to ASI; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to ASI, including supply agreements, all customer lists, contracts, accounts, and credit records or similar records of all sales and potential sales by ASI; all sales support and promotional materials, advertising materials and production, sales, and marketing files relating to ASI; all repair and performance records, and all other records relating to ASI;

2. All intangible assets used in the development, production, servicing, sale, administration, assessment, and dissemination of tests and test results including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, but no corporate trademarks or trade names of Thomson or Harcourt; technical information; computer software and related documentation including, but not limited to, test drivers, scheduling software, and the OMEGA, EXPro, and REG2000 software platforms; know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices; all research data concerning historic and current research and development relating to ASI including, but not limited to, all test item banks, psychometric data, statistical reports of test results, designs of computer-based examinations and testing centers, and the designs of experiments, and the results of successful and unsuccessful designs and experiments; quality assurance and control procedures, including all security measures used in the development, administration, and assessment of computer-based tests and the reporting of exam results; design tools and simulation capability; and all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees.

D. "College Textbook Products" means all of the college textbooks identified on Exhibit A attached hereto. Each College Textbook Product also includes all ancillary educational materials offered for sale or under development by any subsidiary or division of the defendants that are designed to be specific to a textbook product identified in Exhibit A, including teacher editions, workbooks, notebooks, charts, audio, video, software, any CD–ROM, DVD–ROM, Internet and broadcast components, teacher support and staff development materials, and any other materials in any form, format or media, and also includes:

1. All tangible assets that comprise the College Textbook Products,

including research and development activities, all original and digital artwork, film plates, and other reproductive materials relating to the College Textbook Products including, but not limited to, all manuscripts, illustrations, any other content, and any revisions or revision plans thereof in print or digital form; all licenses, permits and authorizations issued by any governmental organization relating to the College Textbook Products; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings relating to the College Textbook Products including, but not limited to, author permissions and other similar agreements, supply and distribution agreements; all customer lists, contracts, accounts, and credit records, or similar records of all sales and potential sales of the College Textbook Products; all sales support and promotional materials advertising materials, and production, sales and marketing files relating to the College Textbook Products; at the Acquirer(s)' option, computers and other tangible assets used primarily for the production of the College Textbook Products; and all performance and all other records relating to the College Textbook Products;

2. All intangible assets used in the development, production, servicing, marketing, and sale of the College Textbook Products including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks (registered and unregistered), trade names, service marks, service names, including all titles of existing products comprising the College Textbook Products, but no corporate trademarks or trade names of Thomson or Harcourt; all technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts relating to the College Textbook Products, including, but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments.

Defendants shall use their best efforts to facilitate the assignment to the Acquirer(s) of any of the above that defendants presently hold or use pursuant to a license or any other agreement.

E. "Complete ASI Assets" means ASI, the AIMS Business, and the State Testing Business, as defined in this Final Judgment.

F. "Divestiture Assets" means the College Textbook Products and the Complete ASI Assets, as defined in this Final Judgment.

G. "Harcourt" means defendant Harcourt General, Inc., a Delaware corporation with its headquarters in Chestnut Hill, Massachusetts, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnership and joint ventures, and their directors, officers, managers, agents, and employees.

H. "Reed Elsevier" means defendant Reed Elsevier Inc., a Massachusetts corporation with its headquarters in Newton, Massachusetts, its successors and assigns, and subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

I. "Retained Products" means any product offered for sale or in development by defendants as of the date of the filing of the Complaint in this matter that are not Divestiture Assets.

J. "State Testing Business" means only those contracts, agreements, or other understandings between Harcourt and any entity for the development, delivery, or administration of any licensing examinations to any state agencies or departments that are in effect as of the date of the filing of the Complaint in this matter, including

1. All tangible assets that are used exclusively for the State Testing Business, including research and development activities, all networking equipment, tooling and fixed assets, personal property, office furniture, materials, supplies, and other tangible property, and all assets used exclusively in connection with the State Testing Business, including supply agreements; all customer lists, contracts, accounts, and credit records or similar records of all sales and potential sales relating exclusively to the State Testing Business; all sales support and promotional materials, advertising materials and production, sales, and marketing files relating exclusively to the State Testing Business; and

2. All intangible assets that are used exclusively in the State Testing Business and are used in the development, production, servicing, sale and assessment of tests and test results including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, but no corporate trademarks or trade names of Thomson or Harcourt; technical information; computer software and related documentation; know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices; all research data concerning historic and current research and development relating exclusively to the State Testing Business including, but not limited to, all item banks, psychometric data, test development resources, statistical reports of test results, designs of computer-based examinations, the designs of experiments, and the results of successful and unsuccessful designs and experiments; quality assurance and control procedures; design tools and simulation capability; and all manuals and technical information defendants provide to those employees, customers, suppliers, agents or licensees exclusively devoted to the State Testing Business.

Provided, however that, to the extent that any of these assets are also employed the delivery or administration of any tests that are the subject of these contracts, such assets shall not be deemed to be part of the State Testing Business.

K. "Thomson" means defendant The Thomson Corporation, a foreign corporation with its headquarters in Toronto, Ontario, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

III. Applicability

A. This Final Judgment applies to Thomson, Harcourt, and Reed Elsevier, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendant Thomson shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided, however, that defendant Thomson need not obtain such an agreement from the Acquirer(s).

IV. Divestitures

A. Defendants are ordered and directed, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of

this Final Judgment by the Court, whichever is later, to divest the College Textbook Products in a manner consistent with this Final Judgment to an Acquirer or Acquirers acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one extension of time of up to thirty (30) calendar days, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the College Textbook Products as expeditiously as possible.

B. Defendants are ordered and directed, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest in accordance with the procedures set forth in this paragraph, either ASI or the Complete ASI Assets to an Acquirer or Acquirers acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to up to two extensions of this time period of up to thirty (30) calendar days each, and shall notify the Court in such circumstances. Defendants shall invite bids for both: (1) ASI, as defined in this Final Judgment, as well as (2) the Complete ASI Assets, as defined in this Final Judgment. Defendants shall permit all Acquirers to make an offer to purchase either or both ASI or the Complete ASI Assets. Defendants agree to use their best efforts to accomplish such divestitures as expeditiously as possible.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make such information available to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide the Acquirer(s) and the United States information relating to the personnel responsible for the editorial content of any College Textbook Product identified in Exhibit A to enable the Acquirer(s) to make offers of employment. In addition, defendants shall provide the Acquirer(s) and the United States information relating to all personnel of ASI or the Complete ASI Assets, as appropriate, including employees, agents, consultants, and independent contractors, to enable the Acquirer(s) to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer(s) to employ any defendant employee whose primary responsibility is for the editorial content of any College Textbook Product listed in Exhibit A, nor interfere with any negotiations by the Acquirer(s) to employ any employee, agent, consultant, or independent contractor of ASI or the Complete ASI Assets, as appropriate.

E. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel responsible for the editorial content of any College Textbook Product identified in Exhibit A and to all personnel of the Complete ASI Assets. Defendants shall permit prospective Acquirers of ASI to make inspections of the physical facilities of ASI, and to have access to any and all environmental, zoning, and other permit documents and information of ASI. Further, defendants shall permit prospective Acquirers of the Complete ASI Assets to make inspections of the physical facilities of the Complete ASI Assets, and to have access to any and all environmental, zoning, and other permit documents and information of the Complete ASI Assets. Defendants shall also permit prospective Acquirers of the Divestiture Assets to have reasonable access to any and all financial, operational, or other documents and information related to the Divestiture Assets that are customarily provided as part of a due diligence process.

F. Defendants shall warrant to all Acquirers of the Divestiture Assets that each asset will be operational on the date of sale. Defendants Reed Elsevier and Harcourt shall make the warrants required under this provision to Thomson at the time of the sale by Reed Elsevier to Thomson of the Harcourt assets identified in Paragraph 10 of the complaint filed in this matter, and shall thereafter have no further obligations under this provision.

G. Defendants shall take no action that will impede in any way the permitting, publication, marketing, sale, development, administration, operation, or divestiture of the Divestiture Assets.

H. Defendants shall warrant to the Acquirer(s) of the Divestiture Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets. Defendants Reed Elsevier and Harcourt shall make the warrants required under this provision to Thomson at the time of the sale by Reed Elsevier to Thomson of the Harcourt assets identified in Paragraph 10 of the complaint filed in this matter, and shall thereafter have no further obligations under this provision.

I. Defendant Thomson shall retain the right to use any College Textbook Product listed on Exhibit A to the extent necessary to fulfill the terms of agreements, in effect as of the date this Final Judgment is filed with the Court, with purchasers of the product lines listed on Exhibit A. The Acquirer of any College Textbook Product listed on Exhibit A shall grant defendant Thomson a royalty-free license to continue to use that College Textbook Product to the extent necessary to fulfill the terms of such existing agreements. The Acquirer of any College Textbook Product that defendants currently use, in whole or in part, in any Retained Product, shall grant to defendant Thomson a royalty-free license to continue to use the College Textbook Product to the same extent in the production or sale of the Retained Product.

J. At the option of the Acquirer(s) of ASI and upon commercially reasonable terms, defendant Thomson shall contract with the Acquirer(s) to allow the Acquirer(s) to provide the delivery and administration of the State Testing Business. Such contractual arrangement between defendant Thomson and Acquirer(s) shall continue for the duration of the terms of each state contract, agreement or other understanding included in the State Testing Business. The Acquirer(s) of ASI shall grant to defendant Thomson a royalty-free license to any patents, licenses, or other intellectual property divested pursuant to Section IV.B of this Final Judgment to the extent that such intellectual property is used in the AIMS Business or the State Testing Business as of the date of the filing of the Complaint in this matter. This paragraph shall not apply in the event that defendant Thomson divests the Complete ASI Assets.

K. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire

Divestiture Assets, and shall be accomplished in such a way as to satisfy the Untied States, in its sole discretion, that the Divestiture Asset can and will be used by the Acquirer(s) of the College Textbook Products as part of a viable, ongoing college textbook publishing business and by the Acquirer of ASI or the Complete ASI Assets as part of a viable, ongoing computer-based testing business. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and that the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Seetion IV or Section V of this Final Judgment.

(1) Shall be made to an Acquirer (or Acquirers), that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of college textbook publishing in the case of the Acquirer(s) of the College Textbook Products and in the business of computer-based testing in the case of the Acquirer(s) of ASI or the complete ASI Assets; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer (or Acquirers) and Thomson, Harcourt, and/or Reed Elsevier give Thomson, Harcourt, and/or Reed Elsevier the ability unreasonably to raise the Acquirer's or (Acquirers') costs, to lower the Acquirer's or (Acquirers') efficiency, or otherwise to interfere in the ability of the Acquirer(s) to compete effectively.

V. Appointment of Trustee

A. If defendant Thomson has not divested the College Textbook Products and either ASI or the Complete ASI Assets within the time periods specified in Sections IV.A and B of this Final Judgment, defendant Thomson shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestitures of the College Textbook Products and the Complete ASI Assets, which are defined herein as the Divestiture Assets. Upon appointment, the trustee may only sell the Complete ASI Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. Upon notice to defendant Thomson, the trustee shall have the power and authority to accomplish the divestitures to an Acquirer (or Acquirers) acceptable to the Untied States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as the Court deems appropriate. Subject to Section V.D of this Final Judgment, the trustee may hire, at the cost and expense of defendant Thomson, any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee and are reasonably necessary in the trustee's judgment to assist in the divestitures.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendant Thomson on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendant Thomson and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished, but timeliness is paramount.

E. Defendants Thomson and Harcourt shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and defendants Thomson and Harcourt shall develop financial and other information relevant to such businesses as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestitures.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment which may necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestitures

A. Within two (2) business days following the execution of a definitive divestiture agreement, defendant Thomson or the trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States of any proposed divestitures required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendant Thomson. The notice shall set forth the details of the proposed divestitures and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in any of

the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendant Thomson and Harcourt, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestitures, the proposed Acquirer(s), and any other potential Acquirer. Defendants Thomson and Harcourt and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to defendant Thomson and the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If the United States provides written notice that it does not object, the divestitures may be consummated, subject only to defendants' limited right to object to the sale under Section V. C of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V C, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize the divestitures ordered by the Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the Divestiture assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, each defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions that have been taken and all steps such defendant has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Each defendant shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in such defendant's earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

D. Defendant Reed Elsevier's obligations under paragraphs A. and B. of this Section shall cease upon completion of its sale to Thomson of the Harcurt assets identified in Paragraph 10 of the Complaint filed in this matter.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy or, at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to the United States, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give such defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendant Thomson may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for

further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

EXHIBIT A

College course	Divesture products
Accounting: Financial: Introductory: Graduate	Pratt, *Financial Accounting in an Economic Context* (2000) (Thomson)
Chemistry: Biochemistry: Principles: One Term	Boyer, *Concepts in Biochemistry* (1999) (Thomson)
Chemistry: Introductory: Nursing/Allied Health	Hein, *Introduction to General, Organic, and Biochemistry* (1997) (Thomson) Lygre, *General, Organic, and Biological Chemistry* (1995) (Thomson)
Chemistry: Organic: Introductory: One Term	Brown, *Introduction to Organic Chemistry* (2000) (Harcourt)
Communication: Communication: Interpersonal Communications	Alder, *Interplay* (1998) (Harcourt) Verderber, *Inter-Act: Using Interpersonal Communication Skills* (1998) (Thomson) Trenholm, *Interpersonal Communication* (2000) (Thomson)
Communication: Communication: Principles	Alder, *Understanding Human Communication* (2000) (Harcourt)
Communication: Journalism: Reporting	Felder, *Reporting for the Media* (1997) (Harcourt) Lanson, *Writing and Reporting the News* (1994) (Harcourt) Scanlan, *Reporting and Writing, Basics for the 21st Century* (1999) (Harcourt)
Criminal Justice: Introductory	Inciardi, *Elements of Criminal Justice* (1996) (Harcourt) Inciardi, *Criminal Justice* (1998) (Harcourt)
Economics: Introductory	Welch, *Economics* (1998) (Harcourt)
Economics: Microeconomics: Managerial Economics	Samuelson, *Managerial Economics* (1998) (Harcourt) Truett, *Managerial Economics* (1998) (Thomson)
Education: Psychology: Learning and Cognition	Best, *Cognitive Psychology* (1999) (Thomson) Medin, *Cognitive Psychology* (1996) (Harcourt) Matlin, *Cognition* (1998) (Harcourt)
Environmental Science: Introductory	Raven, *Environment* (2000) (Harcourt)
Family and Consumer Studies: Nutrition	Smolin, *Nutrition: Science & Application* (2000) (Harcourt)
Finance: Financial Markets and Institutions: Commercial Bank Management.	Fraser, *Commercial Banking: The Management of Risk* (1995) (Thomson)
Finance: Financial Markets and Institutions: Financial Institutions and Markets.	Kidwell, *Financial Institutions, Markets & Money* (2000) (Harcourt)
Finance: Survey	Melicher, *Finance, Introduction to Institituions* (2000) (Thomson)
Foreign Languages & Literature: French: Language: Elementary	Magnan, *Paroles* (1999) (Harcourt)(Harcourt) Siskin, *Situations et Contexts* (1994) (Harcourt) Rassias, *Le Francais Depart Arrivee* (1992) (Thomson) Rosenthal, *Objectif France: Introduction to French* (1993) (Thomson) Rosenthal, *Objectif France: Travaux Pratiques* (1993) (Thomson)
Foreign languages and Literature: French: Language: Intermediate	Comeau, *Ensemble* (all versions and years) (Harcourt)
Foreign Language and Literature: French: Literature	Berg, *Litterature francaise* (Vol. I) (1980) (Harcourt) Berg, *Litterature francaise* (Vol. II) (1997) (Harcourt)
Foreign Languages & Literature: Spanish: Language: Intermediate	Gilman, *Horizontes: Cultura Y Literatura* (1997) (Thomson) Gilman, *Horizontes: Gramatica Y Conversacioin* (1997) (Thomson)
Foreign Languages & Literature: Spanish: Literature: Literature	Anderson-Imber, *Literatura Hispanoamerica* (1970) (Harcourt) Mujica, *Texto Y Vida: Introduction a La Literatura Hispanoamerica* (1992) (Harcourt)
Geology: History	Wicander & Monroe, *Historical Geology: Evolution of the Earth* (2000) (Thomson)
Management: Strategic Management: Small Business Management	Hodgetts, *Effective Small Business Management* (1998) (Harcourt)
Marketing: Research	McDaniel/Gates, *Contemporary Marketing Research* (1999) (Thomson) McDaniel/Gates, *Marketing Research Essentials* (1998) (Thomson)
Mathematics: Calculus: General: Reform	Ostebee, *Calculus from Graphical, Numerical & Symbolic Points* (1997) (Harcourt)
Mathematics: Trigonometry	Barnett, *Analytical Trigonometry with Applications* (1999) (Thomson)
Music: Applied: Piano/Organ	Mach, *Contemporary Class Piano* (1997) (Harcourt)
Music: Music Theory: All Other	Benjamin, *Music for Analysis: Examples from the Common Practice* (1996) (Thomson)
Philosophy: Introductory	Solomon, *Introducing Philosophy* (1997) (Harcourt) Pojman, *Philosophy: the Quest for Truth* (1999)(Thomson) Pojman, *Introduction to Philosophy: Classical and Contemporary Readings* (2000) (Thomson) Kolak, *Experience of Philosophy* (1999) (Thomson) Titus, *Living Issues in Philosophy* (1995) (Thomson)

EXHIBIT A—Continued

College course	Divesture products
Philsophy: Logic: Logic	Barcalow, *Open Questions: An Introduction to Philosophy* (1997) (Thomson) Kalish, *Logic* (1980) (Harcourt) Bonevac, *Simple Logic* (1999) (Harcourt) Baum, *Logic* (1996) (Harcourt) Pine, *Essential Logic* (1996) (Harcourt) Herrick *The Many Worlds of Logic* (1999) (Harcourt)
Philosophy: Philosophy of: Law	Schauer, *Philosophy of Law* (1996) (Harcourt)
Philosophy: Philosophy of: Religion	Rowe & Wainright *Philosophy of Religion: Selected Readings* (1997) (Harcourt)
Psychology: Adjustment	Rathus, *Adjustment and Growth* (1998) (Harcourt)
Psychology: Clinical: Personality	Monte, *Beneth the Mask* (1998) (Harcourt) McAdams, *The Person: An Introduction to Personality* (1994) (Harcourt)(Harcourt) Mischel, *Introduction to Personality* (1998) (Harcourt)
Psychology: Development: Motivation and Emotion	Reeve, *Understanding Motivation and Emotion* (1997) (Harcourt)
Psychology: Physiological: Sensation and Perception	Coren, *Sensation and Perception* (1999) (Harcourt)
Psychology: Research: Statistics	Witte, *Statistics* (1996) (Harcourt) Welkowitz, *Introductory Statistics for Behavioral Sciences* (1991) (Harcourt)
Psychology: Social: of Women	Rider, *Our Voices: Psychology of Women* (2000) (Thomson)

EXHIBIT B.—LOCATIONS OF ASSESSMENT SYSTEMS, INC. TESTING CENTERS

Test center No.	Type	Address
0019	Flex	DBM-Falls Church Test Center, 3141 Fairview Park Drive, Suite 410, Falls Church, VA 22042.
0020	Flex	DBM/ASI Richmond Center, 9011 Arboretum Parkway, #150, Richmond, VA 23236.
0174	Lease	New York ASI Assessment Center, 15 East 26th Street, 1st Floor, New York, NY 10010.
0176	Lease	Tarrytown ASI Center, 220 White Plains, 2nd Floor, Tarrytown, NY 10591.
0179	Lease	Westbury ASI Center, 1600 Stewart Avenue, Suite 109, Westbury, NY 11590.
0180	Lease	Binghamton ASI Center, 49 Court Street/Metro Center, Binghamton, NY 13901.
0182	Lease	Albany ASI Center, 14 Computer Drive East, 2nd Floor, Albany, NY 12205.
0183	Lease	Amherst/Buffalo ASI Center, 385 N. French Road, Suite 104, Amherst, NY 14228.
0184	Lease	Syracuse ASI Center, 6315 Fly Road, Suite 3, Syracuse, NY 13057.
0185	Lease	Rochester ASI Center, 1200–A Scottsville Rd., Suite 397-Floor C, Rochester, NY 14624.
0270	Lease	Boston ASI/Harcourt Learning Center, 745 Boylston Street, Suite #300, Boston, MA 02116.
0271	Flex	Downes Professional Building, 1201 Westford Street, Lowell, MA 01851.
0272	Lease	Springfield ASI Center, Tower Square, 1500 Main Street, 25th Floor, Springfield, MA 01115.
0273	Lease	Dartmouth ASI Center, Smith Mill Shops, 331 State Road, Suite D, North Dartmouth, MA 02747.
0274	Lease	Malden ASI Cosmetology Center, Gateway Apartment Building, 14 Summer Street, Malden, MA 02148.
0275	Flex	Mansfield Beauty Academy, 266 Bridge Street, Springfield, MA 01103.
0277	Flex	Rob Roy Academy, 150 Pleasant Street, Worcester, MA 01608.
0330	Flex	ASI Phoenix/DBM, 2398 E. Camelback Road, Suite 600, Phoenix, AZ 85016.
0331	Lease	Tucson ASI Center, 1605 N. Wilmot, Suite 105 B, Tucson, AZ 85712.
0416	Lease	Little Rock ASI Assessment, University Tower Building, 1123 S. University, Suite 915, Little Rock, AR 72204.
0417	Lease	Springdale ASI Center-Building H, Springdale Business Park, 3291 S. Thompson, Suite 102 B, Springdale, AR 72764.
0418	Flex	El Dorado, Arkansas.
0540	Lease	Sacramento ASI Center, 1300 Ethan Way, Suite 330, Sacramento, CA 95825.
0541	Flex	DBM/ASI, 100 Bayview Circle, Suite 5500, Newport Beach, CA 92660.

EXHIBIT B.—LOCATIONS OF ASSESSMENT SYSTEMS, INC. TESTING CENTERS—Continued

Test center No.	Type	Address
0542	Flex	San Jose ASI Center, 1735 Technology Drive, Suite 150, Career Transition Center, San Jose, CA 95110.
0543	Lease	San Diego ASI Center, Kearny Office Park, Suite 109, 8334 Clare-mont Mesa Boulevard, San Diego, CA 92111.
0545	Lease	Glendale ASI Assessment Center, 213 N. Orange Street, Suite D, Glendale, CA 91203.
0546	Lease	DBM-Bakersfield Test Center, Ming Office Park, 5500 Ming Avenue, Suite 490, Bakersfield, CA 93309.
0547	Lease	Edgewater Park Plaza, 7700 Edgewater Drive, 600 Building, Suite 602, Oakland, CA 94621.
0550	Flex	DBM Site/Los Angeles, 6701 Center Drive West, Suite 11011, Los Angeles, CA 90045.
0623	Lease	Colorado Springs ASI Center, 1045 Garden of Gods Road, Unit F, Colorado Springs, CO 80907.
0624	Lease	Grand Junction ASI Center, Skyline Building, 751 Horizon Court #101, Grand Junction, CO 81506.
0625	Lease	Denver ASI Center, Denver Interplaza, Suite G, 601 S. Broadway, Denver, CO 80209.
0626	Lease	Pueblo ASI Center, University Center, 41 Montebello, 2nd Floor, Pueblo, CO 81001.
0627	Flex	Bayfield Senior High School, 800 County Road 501, Room 103, Bayfield, CO 81122.
0629	Lease	Greeley ASI Center, 5754 West 11th Street, #203, Greeley, CO 80634.
0714	Lease	Rocky Hill ASI Center, Pavilion-West Shopping Center, 632 Cromwell Avenue, Unit A, Rocky Hill, CT 06067.
0716	Flex	DBM-Stamford Test Center, Drake Beam Morin, One Station Place, 3rd Floor South, Stamford, CT 06901.
0805	Lease	Dover ASI Center, Kays Building–Suite 202, 1012 College Road, Dover, DE 19904.
0807	Lease	Wilmington/New Castle ASI Center, New Castle Corporation Com-mon Complex, 2 Reads Way–Suite 212, New Castle, DE 19720.
0918	Lease	DC ASI Center, Suite 820, 1000 Vermont Avenue, NW., Washington, DC 20005.
1055	Lease	Harcourt/ASI Orlando Center, Harcourt Building, 6277 Sea Harbor Drive, Orlando, FL 32887.
1056	Lease	Boynton Beach ASI Center, Woolbright Professional Building, 2240 Woolbright Road, Suite #403, Boynton Beach, FL 33426.
1057	Lease	Ft. Lauderdale ASI Center, Oakland Commerce Center, 3317 NW 10th Terrace, Suite 401, Ft. Lauderdale, FL 33309.
1058	Lease	Ft. Myers ASI Center, 11691 Gateway Boulevard/Bank of America Building/Suite 200, Ft. Myers, FL 33913.
1059	Lease	Gainesville ASI Center, Northwood Park, 5000 NW 34th Street, Unit #10, Gainesville, FL 32606.
1060	Lease	Jacksonville ASI Center, Centurion Square, Suite #11, 8380 Baymeadows Road, Jacksonville, FL 32256.
1061	Lease	Miami ASI Center, Atrium Office Park, 3900 NW 79th Avenue, Suite 518, Miami, FL 33166.
1062	Lease	Pensacola ASI Center, Eastgate Plaza, 7143A North 9th Avenue, Pensacola, FL 32504.
1063	Lease	Tallahassee ASI Center, Capital Circle Commerce Center, 508 Cap-ital Circle SE, Suite D–1, Tallahassee, FL 32301.
1064	Lease	Tampa ASI Center, Carrollwood Crossing, 4012 Gunn Highway/Suite 110, Tampa, FL 33624.
1065	Lease	Hollywood ASI Center, 6363 Taft Street, Suite 101, Hollywood, FL 33024.
1066	Lease	St. Petersburg ASI Center, Bay View Centre Building, Suite 250, 11300 4th Street North, St. Petersburg, FL 33716.
1067	Lease	Miami 2 ASI Center, 5805 Blue Lagoon Drive–Suite #380, Waterford Building Complex, Miami, FL 33126.
1068	Lease	Daytona Beach ASI Center, Sun Trust Bank Building, 501 N. Grand-view Avenue/Suite #205, Daytona Beach, FL 32118.
1070	Lease	Lake Mary ASI Center, 100 Technology Park, Suite 165, Lake Mary, FL 32746.
1072	Flex	DBM-Boca Raton Test Center, 777 Yamato Road, Suite 310, Boca Raton, FL 33431.
1073	Flex	DBM-Miami 4 Test Center, 5200 Blue Lagoon Drive, Suite #110, Miami, FL 33126.
1120	Lease	Norcross ASI Center, 6500 McDonough Drive, Building E—Suite 5, Norcross, GA 30093.
1121	Lease	Marietta ASI Center, Cobb Corporate Center, 425 Franklin Road, Suite 525, Marietta, GA 30067.

EXHIBIT B.—LOCATIONS OF ASSESSMENT SYSTEMS, INC. TESTING CENTERS—Continued

Test center No.	Type	Address
1122	Lease	Macon ASI Center, 828 Walnut Street, Suite B, Macon, GA 31201.
1123	Flex	Realty Exec., 231 Stephenson Avenue, 2nd Floor Training Room, Savannah, GA 31405.
1124	Lease	Augusta ASI Center, Westgate Center Office Park, 2531 Center West Parkway, Suite 232, Augusta, GA 30909.
1125	Lease	Tifton ASI Center, 114 West 12th Street, Suite G, Tifton, GA 31794.
1128	Lease	Marietta North ASI Center, 1279 Kennestone Circle, Suite 100, Marietta, GA 30066.
1236	Lease	Honolulu ASI Center, Kapiolani Business Plaza, 1580 Makaloa, Suite 900, Honolulu, HI 96814.
1237	Flex	Waikloa ASI Center, 68–1845 Waikoloa Shopping Center, Suite 211, Waikoloa Highlands, HI 96738.
1238	Flex	Kauai Community College, Campus Center Building, Room 214, 3–1901 Kaumaulii Highway, Lihue, HI 96766.
1239	Flex	Lihikai School, 335 S. Papa Avenue, Building C, Rooms 1&2, Kahula-Maui, HI 96732.
1320	Lease	Boise ASI Center, Blackeagle Center, 9376 Overland Road, Boise, ID 83709.
1321	Flex	Tesh, Inc., 3803 Industrial Avenue South, Coeur d' Alene, ID 83814.
1322	Lease	Pocatello ASI Center, Re/Max Building, 812 E. Clark Street, Pocatello, ID 83201.
1440	Lease	Springfield ASI Center, Realty Plaza, Suite 301, 3180 Adloff Lane, Springfield, IL 62703.
1441	Lease	Schaumberg ASI Center, Salem Plaza, 1089 North Salem Plaza, Schaumberg, IL 60194.
1442	Lease	Chicago ASI Center, 645 North Michigan Avenue, Room 410, Michigan & Erie, Chicago, IL 60611.
1445	Lease	Westmont ASI Center, 508 A East Ogden Avenue, Westmont, IL 60559.
1446	Flex	Knox College, Corner of South & West Street, Science-Math Center, Room A–107, Galesburg, IL 61401.
1448	Flex	DBM-Deerfield Test Center, 520 Lake Cook Road, Suite 200, Deerfield, IL 60015.
1451	Flex	John A Logan College, 700 John Logan Drive, Administrative Building, E–132, Carterville, IL 62918.
1541	Lease	Evansville ASI Center, 125 N. Weinbach Avenue, Suite 720, Evansville, IN 47711.
1542	Lease	Schererville ASI Center, Oak Ridge Center, 142–4 East Highway 30, Schererville, IN 46375.
1543	Lease	Indianapolis ASI Center, First Floor, Room 170, 9102 North Meridian Street, Indianapolis, IN 46260.
1620	Flex	Univ Park Holiday Inn, 1800 50th Street, Lucas Room, W. Des Moines, IA 50266.
1621	Mobile	Holiday Inn Express, North Cedar Rapids, 1230 Collins Road, Cedar Rapids, IA 52402.
1622	Mobile	Sioux City Hilton, 707 4th Street, Sioux City, IA 51106.
1704	Flex	DBM-Overland Park Test Center, 7400 West 130th Street, Suite 150, Overland Park, KS 66213.
1705	Flex	Johnson County Community College, 12345 College Boulevard, CC Building, 2nd Floor, Room 224, Overland Park, KS 66210.
1706	Lease	Wichita ASI Center, Building 400, Northrock Business Park, 3450 N. Rock Road, Suite 407, Wichita, KS 67266.
1707	Lease	Topeka ASI Center, 2942 B Wanamaker Drive, Suite #2D, Topeka, KS 66604.
1708	Flex	Hays High School, 2300 East 13th Street, Room 102 Hays, KS 67601.
1827	Lease	Lexington ASI Center, 2365 Harrodsburg Road, Suite B–175, Lexington, KY 40504.
1828	Lease	Louisville ASI Center, 11003 Bluegrass Parkway, Suite 590, Louisville, KY 40299.
1942	Lease	Shreveport ASI Center, Harry Patterson Tower, 6007 Financial Plaza, Suite 505, Shreveport, LA 71129.
1943	Lease	Metairie ASI Center, Hibernia Bank Building, Suite 411, 2201 Veterans Memorial Boulevard Metairie, LA 70005.
2015	Flex	Beal College, 629 Main Street, Bangor, ME 04401.
2016	Lease	Portland ASI Center, 500 Southborough Drive, S. Portland, ME 04106.
2150	Lease	Parkville ASI Center, North Plaza Office Building, #204, 8813 Waltham Woods Road, Parkville, MD 21234.
2151	Lease	Crofton ASI Center, 2137 Epsey Court, Unit #5, Crofton, MD 21114.
2152	Flex	Landover ASI Center, Metro-Plex II, Suite 400, 8201 Corporate Drive, Landover, MD 20785.

EXHIBIT B.—LOCATIONS OF ASSESSMENT SYSTEMS, INC. TESTING CENTERS—Continued

Test center No.	Type	Address
2153	Flex	Allegany Community College, 12401 Willowbrook Road, Room 20, Continuing Education Building, Cumberland, MD 21502.
2260	Lease	Anchorage ASI Center, 2217 E. Tudor Road, Suite 5, Anchorage, AK 99503.
2261	Lease	Fairbanks ASI Center, Eagle Plaza Mall, 418 3rd Avenue, Unit 1B, Fairbanks, AK 99701.
2262	Lease	University of Alaska, 11120 Glasier Highway, Juneau, AK 99801.
2345	Lease	Redford ASI Center, Heritage Plaza Shopping Center, 14645 Telegraph Road, Redford, MI 48239.
2346	Lease	Lansing ASI Center, 6920 S. Cedar, Suite 6, Lansing, MI 48911.
2347	Lease	Grand Rapids ASI Test Center, 4489 Byron Center Drive, Wyoming, MI 49509.
2348	Flex	DBM Troy Test Center, 201 West Big Beaver Road, Suite 450, Troy, MI 48007.
2353	Flex	Marquette High School, 1203 W. Fair Avenue, Room 222, NE entrance, Marquette, MI 49855.
2440	Lease	Edina ASI Center, 4550 W. 77th Street, Suite 224, Edina, MN 55435.
2441	Lease	Duluth ASI Center, 718 Medical Arts Building, 324 W. Superior Street, Suite 718, Duluth, MN 55802.
2442	Flex	University Rochester Center (UCR), 851 30th Avenue SE, Room SH105—Singley Hall, Rochester, MN 55904.
2443	Lease	Waite Park/St. Cloud ASI Center, Market Place Annex, 256 2nd Avenue South, Waite Park, MN 56387.
2444	Lease	Moorhead ASI Center, McDonald's Plaza, 501 Main Avenue, Moorhead, MN 56560.
2445	Flex	Marshall High School, 401 South Saratoga Street, Room C20, Marshall, MN 56258.
2520	Lease	Ridgeland ASI Center, Odyssey North Shopping Center, 731 S. Pear Orchard Road, Suite 35, Ridgeland, MS 39157.
2616	Lease	St. Ann ASI Center, 500 Northwest Plaza Office Tower, Suite 813, St. Ann, MO 63074.
2617	Lease	Kansas City ASI Center, Broadway Summit Building, 3101 Broadway, Suite 214, Kansas City, MO 64111.
2618	Lease	Springfield ASI Center, 3046 S. Delaware, Suite K, Springfield, MO 65804.
2620	Flex	DBM—St. Louis Test Center, Clayton Mercantile Center, 8000 Maryland Avenue, Suite 1300, St. Louis, MO 63105.
2722	Mobile	The Billings Hotel and Conference Center, 1223 Mullowny Lane, Billings, MT 59101.
2730	Flex	Billings Skyview High School, 1775 High Sierra Boulevard, Room #126, Billings, MT 59105.
2731	Flex	University of Montana, The Lodge Building, Room 231, Arthur & University Avenues, Missoula, MT 59812.
2820	Lease	Omaha ASI Center, 11635 Arbor Street #100, Omaha, NE 68144.
2914	Lease	Las Vegas ASI Center, Renaissance III, 3230 E. Flamingo Road, Suite #1, Las Vegas, NV 89121.
2915	Lease	Reno ASI Center, 5250 S. Virginia Street, Suite 255, Reno, NV 89502.
3020	Lease	Lebanon ASI Center, Miracle Mile Plaza #8, Route #4, Lebanon, NH 03766.
3180	Lease	Milburn ASI Center, 15 Bleeker Street, Suite #102, Millburn, NJ 07041.
3183	Lease	Mt. Laurel ASI Center, Princeton Place, 3747 Church 2nd Floor, Mount Laurel, NJ 08054.
3184	Lease	Cedar Knolls ASI Center, 14 Ridgedale Avenue, Cedar Knolls, NJ 07927.
3185	Lease	Northfield ASI Center, 950 Tilton Road, Northfield, NJ 08225.
3186	Lease	Toms River ASI, Summer Plaza, 1228 Route 27 West, Suite 5, Toms River, NJ 08753.
3187	Lease	Hamilton Township ASI Center, Quakerbridge Plaza, Building 2, 3444 Quakerbridge Road—Rear, Hamilton Township, NJ 08619.
3188	Lease	Pompton Plains ASI Center, Scott Center, 449 Route 23 (Southbound), Pompton Plains, NJ 07444.
3220	Lease	Albuquerque ASI Center, 2815 Broadbent Parkway, NE, Suite C, Albuquerque, NM 87107.
3320	Lease	Montgomery ASI Center, East Park Plaza, 140 Mendel Parkway, Montgomery, AL 36117.
3221	Lease	BZirmingham ASI Center, 216 Acquarius Drive, Suite 305, Homewoodd, AL 35209.
3440	Flex	DBM—Charlotte Test Center, 8720 Red Oak Boulevard, Suite 301, Charlotte, NC 28217.

EXHIBIT B.—LOCATIONS OF ASSESSMENT SYSTEMS, INC. TESTING CENTERS—Continued

Test center No.	Type	Address
3441	Flex	DBM—Raleigh Test Cetner, 1121 Situs Court, Suite 100, Raleigh, NC 27606.
3442	Lease	Wilmington ASI Center, Pine Valley II Shopping Center, 3534 S. College Road, Unit D, Wilmington, NC 28412.
3443	Lease	Raleigh ASI Center, 2801 Blue Ridge Road, Suite 110, Raleigh, NC 27607.
3444	Lease	Statesville ASI Center, City Center Building, 211 S. Center Street, Suite 218, Statesville, NC 28687.
3445	Lease	Huntersville ASI Center, Northcross Corporate Center, 16419 B Northcross Drive Hunterville, NC 28078.
3446	Lease	Ascheville ASI Center, 1316 D Patton Avenue, Asheville, NC 28806.
3447	Lease	New Bern ASI Center, 3515 Trent Road, #16 Village Square, New Bern, NC 28562.
3520	Mobile	Radisson Inn Bismarck, 800 South Third Street, Bismarck, ND 58504.
3521	Mobile	Westward Ho Grand Forks, 3500 Gateway Drive, Grand Forks, ND 58206.
3522	Mobile	Holiday Inn Minot, 2200 Burdick Expressway, East, Minot, ND 58206.
3656	Lease	Columbus ASI Center, 6555 Busch Boulevard, Suite 101, Columbus, OH 43229.
3657	Lease	Cleveland ASI Center, The Superior Building, Suite 1420, 815 Superior Avenue NE, Cleveland, OH 44114.
3658	Lease	Cincinnati ASI, Center, Court Street Center, Suite 475 E, 250 West Court Street, Cincinnati, OH 45202.
3720	Lease	Oklahoma City ADSI Center, Shepherd Mall, Suite 45, 2401 NW 23rd Street, Oklahoma City, OK 73107.
3721	Lease	Tulsa ASI Center, Business Common Tech Center, 5115 S. 122nd E. Avenue, Suite 201, Tulsa, OK 74146.
3722	Mobile	Ardmore Omega Mobile, Best Western/ASI, 6 Holiday Drive, Ardmore, OK 73401.
3819	Flex	Portland ASI/DBM Center, 2 Centerpointe Drive, Suite 100, Lake Oswego, OR 97035.
3820	Lease	Springfield ASI Center, Gateway Market Place, 840 Beltline Road, #206, Springfield, OR 97477.
3972	Lease	Bala Cynwyd ASI Center, 3 Bala Plaza West, 2nd Floor, Bala Cynwyd, PA 19004.
3973	Lease	Pittsburgh ASI Center, Campbell Run Business Center, 500 Business Center Drive, Suite 501, Pittsburgh, PA 15205.
3974	Flex	DBM–Berwyn Test Center, 1205 Westlakes Drive, Suite 250, Berwyn, PA 19312.
3976	Flex	South Hills Business School, 480 Waupelani Drive, State College, PA 16801.
3977	Lease	Scranton ASI Center, 409 Lackawanna Avenue, Mezzanine Level, Scranton, PA 18503.
3979	Mobile	Lemoyne ASI Center, 20 Erford Road, Suite 204, Lemoyne, PA 17043.
4011	Lease	Providence ASI Center, 36 Hemingway Drive, E. Providence, RI 02815.
4108	Lease	Greenville ASI Center, Greengate Office Park, 25 Woodslake Road, Suite 708, Greenville, SC 29607.
4109	Lease	Charleston ASI Center, 7410 Northside Drive, Suite 103,North Charleston, SC 29420.
4110	Lease	Columbia ASI Center, Converse Building, 250 Berryhill Road, Suite 210, Columbia, SC 29210.
4218	Mobile	Sioux Falls Mobile Test Center, Sheraton Hotel and Convention Center, 1211 N. West Avenue, Sioux Falls, SC 57104.
4219	Mobile	Ramada Inn Aberdeen, 272 6th Avenue SE, Aberdeen, SD 57401.
4220	Mobile	Rapid City Mobile Test Center, Holiday Inn Rushmore Plaza Hotel and Conference Center, 505 North Fifth Street, Rapid City, SD 57701.
4322	Lease	Nashville ASI Center, Bell Trace Plaza, Suite 106, 5814 Nolensville Pike, Nashville, TN 37211.
4323	Lease	Knoxville ASI Center, The Terraces 154–F, Market Place Boulevard, Knoxville, TN 37922.
4324	Lease	Memphis ASI Center, 6073 Mt. Moriah Extended, Appletree Center, Suite 8, Memphis, TN 38115.
4340	Lease	Johnson City ASI Assessment Center, 503 Princeton Road, Suite E, Johnson City, TN 37601.
4341	Lease	Jackson ASI Center, 77B Executive Drive, Jackson, TN 38305.
4342	Lease	Chattanooga ASI Center, 115 Nowlin Lane, Suite 3000, Chattanooga, TN 37421.

EXHIBIT B.—LOCATIONS OF ASSESSMENT SYSTEMS, INC. TESTING CENTERS—Continued

Test center No.	Type	Address
4402	Lease	El Paso ASI Center, 10737 Gateway West, Suite 220, El Paso, TX 79935.
4407	Lease	Arlington ASI Center, 2201 North Collins, Suite 230, Arlington, TX 76011.
4408	Flex	Lubbock Christian University, Nursing and Math Building, Room 1, 5601 19th Street, Lubbock, TX 79407.
4412	Flex	Del Mar College-West Campus, Morgan St.-at Old Airport road, Coleman Center, Room 144, Corpus Christi, TX 78404.
4421	Flex	DBM–Suite 200 E, 9600 Great Hills Trail, Great Hills Plaza, Austin, TX 78759.
4422	Lease	Houston ASI Center, 2424 Wilcrest, Suite 240, Houston, TX 77042.
4423	Flex	Texas Careers, 1015 Jackson Keller Road, Suite 204, San Antonio, TX 78213.
4517	Flex	Midvale ASI Center, 7302 South 300 West, Suite B, 301, Midvale, UT 84047.
4813	Flex	Wenatchee Valley College, Eller Fox Building, Rooms 3012 and 3016, Wenatchee, WA 98195.
4814	Lease	Lacey ASI Center, 719 Sleater-Kinney Road, Suite 124, Lacey, WA 98503.
4815	Lease	Kennewick ASI Center, 1149 N. Edison, Suite B, Kennewick, WA 99336.
4816	Lease	Seattle/Tukwila ASI Assessment Center, 12720 Gateway Drive, Suite 208, Tukwila, WA 98168.
4817	Lease	Spokane ASI Center, North 505 Argonne Road, Suite 4, Spokane, WA 99212.
4818	Lease	Vancouver ASI Center, First Place Plaza, 12503 SE Mill Plain Road, #130, Vancouver, WA 98684.
4819	Lease	Yakima, Washington.
4931	Lease	Dunbar ASI Center, 1400 Ohio Avenue, Suite C, Dunbar, WV 25064.
4932	Flex	West Virginia University, Oakland Street, 701 B Allen/Percival Hall, Morgantown, WV 26506.
4933	Flex	Beckley High School, 410 Stanford Road, Room #D–12, Beckley, WV 25801.
5050	Lease	Elm Grove ASI Center, Enterprise Center, 2nd Floor, 12700 West Blue Mound Road, Elm Grove, WI 53122.
5051	Lease	Madison ASI Center, 582 Grand Canyon Drive, Madison, WI 53719.
5052	Lease	Green Bay ASI Center, 2350 University Avenue, #100, Green Bay, WI 54302.
5053	Lease	Menomonie ASI Center, 2521 South Broadway, Office 101 (lower level), Menomonie, WI 54751.
5054	Flex	University of Wisconsin Center, Marathon County, Room 070, 518 South 7th Avenue, Wausau, WI 54401.
5055	Flex	DBM–Milwaukee, 18000 West Sara Lane, Suite 300, Brookfield, WI 53045
5118	Mobile	Rock Springs Holiday Inn, 1675 Sunset Boulevard, Rock Springs, WY 99999.
5119	Mobile	Sharidan Holiday Inn and Convention Center, 1809 Sugurland Drive, Sharidan, WY 99999.
5121	Mobile	Holiday Inn Casper, 300 West "F" Street, Casper, WY 82601.

United States District Court for the District of Columbia

CASE NUMBER 1:01CV01419
JUDGE: Gladys Kessler
DECK TYPE: Antitrust
DATE STAMP: 06/27/2001

United States of America, Plaintiff, v. The Thomson Corporation, Harcourt General, Inc., and Reed Elsevier Inc., Defendants

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On June 27, 2001, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by The Thomson Corporation ("Thomson") of the college textbook publishing and computer-based testing businesses of Harcourt General, Inc. ("Harcourt") from Reed Elsevier Inc. ("Reed Elsevier") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Thomson and Harcourt, two of the world's largest publishers of textbooks and other educational materials, are direct competitors in the development, marketing, and sale of textbooks and print and Internet-based supplemental educational materials used in college courses. For dozens of college courses, they publish textbooks that are close substitutes. Unless the acquisition is blocked, competition in certain markets for college textbooks and ancillary educational materials will be substantially lessened and likely will lead to higher textbook prices and a reduction in the number and quality of ancillary educational materials provided to teachers and students.

Thomson and Harcourt also are direct competitors in the market for nationwide delivery and administration

of certain high stakes computer-based tests used by professional organizations and state and local government agencies for licensure and certification. Further, the Complaint alleges that competition in the market for nationwide delivery and administration of certain high stakes computer-based examinations will be substantially lessened and likely will result in both test sponsors and candidates paying higher prices for such examinations and in a reduction in the quality of test delivery and administration services.

The request for relief in the Complaint seeks: (1) A judgment that Thomson's proposed acquisition would violate section 7 of the Clayton Act; (2) a preliminary and permanent injunction preventing consummation of the merger agreement; (3) an award of costs to the plaintiff; and (4) such other relief as the Court may deem just and proper.

Shortly before the Complaint was filed, the parties reached a proposed settlement that permits Thomson to complete its acquisition of Harcourt's college textbook publishing and computer-based testing businesses, yet preserves competition in the markets in which the transaction would raise significant competitive concerns. Along with the Complaint, the parties filed a Hold Separate Stipulation and Order and a proposed Final Judgment which establishes the terms of the settlement.

The proposed Final Judgment orders the defendants to divest sixty-eight (68) college textbooks and related ancillary educational materials so that competition in the development, marketing, and sale of textbooks in each of the thirty-eight (38) courses identified in the Complaint will be preserved. In addition, the proposed Final Judgment orders the defendants to make certain divestitures of Harcourt's computer-based testing business, specifically, Harcourt's subsidiary Assessment Systems, Inc. ("the Complete ASI Assets") or ASI, which includes all the assets of Assessment Systems, Inc., excluding the Agency Information Management Services Business and the State Testing Business, as such terms are defined in the proposed Final Judgment. Unless the United States agrees to an extension of time, the defendants must complete all of these divestitures within one hundred and twenty (120) calendar days of the filing of the Complaint, or within five (5) days of the expiration of the sixty-day (60) statutory notice-and-comment period that commenced upon the publication of this Competitive Impact Statement, whichever is later.

If defendant Thomson does not complete the college textbook divestitures within the appropriate time period, the Court, upon application of the United States, will appoint a trustee selected by the United States to complete the remaining divestitures. Should defendant Thomson fail to complete the computer-based testing business divestitures within the specified time period, the Court, upon application of the United States, will appoint a trustee selected by the United States to accomplish the divestiture of the Complete ASI Assets. The proposed Final Judgment also requires the defendants to take all steps necessary to maintain, operate, and market the divestiture assets as independent and active competitors until the divestitures mandated by the proposed Final Judgment have been accomplished.

The plaintiff and defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce provisions of the Final Judgment and punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

The Thomson Corporation is a foreign corporation organized and existing under the laws of Canada, with its headquarters in Toronto, Ontario. Thomson publishes textbooks and other educational materials used in higher education under such names as Southwestern, Wadsworth, Heinle & Heinle, and Brooks/Cole. It is one of the world's largest commercial publishers and a leading competitor in many segments of the educational publishing marketplace. In addition, through its subsidiary Prometric, Inc., a Maryland corporation, Thomson offers computer-based testing services, including test delivery and administration, throughout the United States. Prometric is one of the few companies that operates a nationwide network of testing facilities, and/or is offering high stakes computer-based testing delivery and administration services.

Harcourt General, Inc. is a corporation organized and existing under the laws of Delaware, with its headquarters in Chestnut Hill, Massachusetts. Harcourt publishes textbooks and other educational materials under the Harcourt, Saunders, Dryden, and Holt Rinehart Winston imprints. It is one of the world's largest publishing companies and a leading competitor in many segments of the educational publishing marketplace. In addition, through its subsidiary Assessment Systems, Inc., a Pennsylvania corporation, Harcourt offers computer-based testing services, including test development, delivery, and administration, throughout the United States. Assessment Systems, Inc. is one of the few companies that operates a nationwide network of facilities, and/or is offering high stakes computer-based testing delivery and administration services.

Reed Elsevier Inc. is a corporation organized and existing under the laws of Massachusetts, with its headquarters in Newton, Massachusetts. Reed Elsevier and Harcourt reached in agreement on October 27, 2000, under which Reed Elsevier will purchase all of the assets of Harcourt. On the same date, Reed Elsevier and Thomson reached a separate agreement under which Thomson will acquire from Reed Elsevier: (1) Harcourt's Higher Education Group, which publishes textbooks and print and Internet-based ancillary educational materials in major academic disciplines in higher education, and (2) most of Harcourt's Corporate and Professional Services Group, the latter of which includes Assessment Systems, Inc.

B. Product Markets

1. College Textbook Markets

a. *Description of the Markets.* Publishers market textbooks and ancillary educational materials to professors and in colleges and universities throughout the country. College professors generally select textbooks to serve as the primary teaching material for their courses. Textbooks provide the core written material for a course, serve as the foundation for the professor's overall lesson plan, and establish the framework for class discussions. Professors choose among textbooks that can provide this core content and structure. Students then buy the selected textbooks, typically at college bookstores.

Publishers often attempt to induce a professor to select their textbooks by offering free ancillary educational materials, such as a teacher's edition of the textbooks, audio-visual teaching tools, and copies of the textbooks for teaching assistants. In addition, sometimes students buy the textbooks as part of a discounted package that includes further ancillary educational materials, such as CD–ROMs, workbooks, and study guides.

The Complaint identifies thirty-eight (38) college courses in which Thomson and Harcourt are among the leading competitors in the provision of textbooks and related educational materials. These courses fall primarily within the disciplines of chemistry, communications, finance, foreign languages, philosophy, and psychology. In most of these courses, textbooks are used as a primary teaching material. A small but significant increase in the price of textbooks for a college course—or a small but significant decrease in the number of quality of ancillary educational materials provided with the textbooks—would not cause a significant number of professors or students to switch to alternative products. In addition, used textbooks cannot defeat an increase in the price of new textbooks or a decrease in the supply of ancillaries provided with them. The supply of used textbooks is limited, and professors usually require their students to use the newest edition of a textbook, which, generally, is revised every three to four years.

b. *Harm to Competition as a Consequence of the Merger.* In each of the thirty-eight (38) college textbook markets identified in the Complaint, Thomson and Harcourt compete vigorously by offering textbooks that are close substitutes. Together, they account for a major share of new textbook sales and face significant competition from only a few other publishers. Thus, the proposed acquisition would significantly increase concentration in already high concentrated markets.

Competition between Thomson and Harcourt has resulted in lower prices and has created a significant incentive for each to publish new titles and improve product quality. The proposed acquisition would eliminate this competition, giving Thomson the ability to raise the prices of its or Harcourt's textbooks or reduce the number of quality of ancillary educational materials provided with the textbooks.

In each of the thirty-eight (38) college textbook markets, there is unlikely to be timely entry by any company that would be sufficient to defeat an anticompetitive increase in textbook prices or a decrease in the number or quality of ancillary educational materials or that would spur continuing innovation in the development and production of such products. Successful entry involves a costly and time-consuming process in which a publisher must locate an author qualified to write a new textbook and assemble an editorial staff to edit and develop the textbook, which then must be reviewed by numerous professors prior to its publication. In addition, effectively selling college textbooks require a trained and knowledgeable sales force to visit and foster relationships with professors at each school to which the textbooks are sold, along with direct mail solicitation and participation in educational conventions. Entry is also impeded by the difficulty in challenging the reputation of successful incumbent textbooks.

The Complaint alleges that the transaction likely will have the following effects:

i. Actual and future competition between Thomson and Harcourt will be eliminated;

ii. Competition generally in the markets for the textbooks and ancillary educational materials for each of the college courses identified in the Complaint will be substantially lessened;

iii. Prices for college textbooks and ancillary educational materials for each of the college courses identified in the Complaint will increase or the number and quality of materials will decline; and

iv. Competition in the development and improvement of college textbooks and ancillary educational materials in each of the college courses identified in the Complaint will be substantially lessened.

2. Computer-Based Testing Markets

a. *Description of the Markets.* Many different test sponsors, including professional associations and state and local governments, use computer-based testing for licensing and certification. The creation, delivery, and evaluation of a test involves three stages: (1) Developing test content; (2) delivering and administering tests; and (3) processing and reporting test results. Test sponsors using computer-based testing generally rely upon outside companies to perform each of the steps involved in developing and delivering their tests and evaluating the results.

Test sponsors' examinations may be classified as either "high stakes" or "low stakes." High stakes tests involve those that have very important consequences for the candidates, such as real estate or stockbroker licenses, and certification to assist in surgical procedures, while low stakes tests include practice, training, and self-improvement tests. Test sponsors invariably require a higher level of security during the delivery and administration of high stakes tests than of low stakes tests.

Traditionally, licensing and certification examinations have been administered through paper-and-pencil tests. However, computer-based testing offers both test sponsors and candidates a number of significant advantages compared to paper-and-pencil testing. Typically, paper-and-pencil tests are given only a few times each year at specified dates and times, while computer-based testing allows test sponsors to offer a test throughout the year on multiple days of the week. Candidates can therefore schedule the test at a convenient time. Such flexible schedule also benefits test sponsors, enabling them to distribute work evenly throughout the year, rather than in concentrated periods surrounding the test dates, thus increasing the efficiency of their business operations.

Computer-based testing also allows the use of more innovative testing features than paper-and-pencil testing. Computer-based tests can be scored instantly, and test questions are more easily updated and improved. Computer-based tests also allow test sponsors to better identify questions that lead to false positives or false negatives. Further, "computer adaptive testing" allows for the test to adapt to the test taker's performance (*e.g.*, correct responses lead to increasingly difficult questions), thereby providing for more effective evaluations.

Test sponsors that offer high stakes computer-based examinations to a nationwide pool of candidates require that the computer-based testing company with whom they contract have a network of testing centers throughout the United States. Test sponsors require that, while examinations are occurring, such testing centers be devoted solely to testing and have adequate security to ensure the integrity of the sponsor's examination and to prevent candidates from cheating. Requisite security measures include having secure computer servers, checking each candidate's identification prior to the examination, and providing proctors to ensure that candidates are not using unauthorized materials during the examination period. Because the proctors' attention and time must be dedicated to monitoring the candidates, they cannot perform other tasks during the examination period. Additional security measures that may be used include video cameras, fingerprint checks, viewing windows, and additional proctors.

Test sponsors using or considering nationwide high stakes computer-based tests would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in the price of delivery and administration services provided through a secure testing center network. As discussed

above, computer-based testing providing numerous advantages over paper-and-pencil testing. As a result, the existence of paper-and-pencil testing cannot defeat an increase in the price of computer-based test delivery and administration given through a nationwide secure testing center network.

Test sponsors also would not self-deliver and administer computer-based tests in response to a small but significant increase in the price of such services. Individual test sponsors do not have the testing volume to justify operating a network of year-round testing centers or purchasing the necessary computer equipment and software to operate such centers. Additionally, computer-based testing administered via the Internet cannot defeat a small but significant increase in the price of delivery and administration services given through a secure testing center network because the security required for high stakes examinations still requires that they be administered in a secure, proctored environment. Currently, the technology is not available to enable test proctoring via the Internet.

b. *Harm to Competition as a Consequence of the Acquisition.* Both Prometric and Assessment Systems, Inc. offer a nationwide network of secure testing centers for the delivery and administration of high stakes computer-based examinations that are close substitutes. They are among the very few firms that compete to provide such a network and account for a significant share of all new contracts.

Competition between Prometric and Assessment Systems, Inc. to provide nationwide high stakes computer-based testing delivery and administration services has resulted in lower prices for test sponsors and candidates, and has created significant incentives for each to maintain and expand its nationwide network of testing centers and improve service quality. The proposed transaction would eliminate this competition, give Prometric the ability to raise the prices for, or reduce the quality of, its high stakes computer-based testing delivery and administration services, and significantly increase concentration in this already highly concentrated market.

If Thomson acquires Assessment Systems, Inc. there is unlikely to be timely entry by any company offering a nationwide network of secure testing sites for the delivery and administration of high stakes computer-based examinations sufficient to defeat an anticompetitive increase in the price of such services. Successful entry requires a computer-based testing vendor to develop a nationwide network of approximately 200 secure testing centers that meet the requirements for high stakes computer-based testing. The ongoing, day-to-day operation of such a network is costly and time-consuming.

In addition, to successfully enter the market for nationwide delivery and administration of high stakes computer-based tests, a vendor must be able to obtain contracts with enough test sponsors to cover the cost building and maintaining a nationwide network. A new entrant faces a number of hurdles in attempting to obtain the requisite amount of business. First, the duration for contracts for high stakes computer-based testing delivery and administration services typically is several years, and test sponsors generally contract with a single company to provide these services. A computer-based testing vendor attempting to enter the market for delivery and administration services therefore must wait until a contract is near its expiration before the company has an opportunity to bid for it. Second, because there are significant costs involved in switching computer-based test providers, an incumbent provider has a substantial advantage in bidding for such contracts. Third, it is expensive and time-consuming to convert an examination from paper-and-pencil to computer-based format, thus making it difficult for a new entrant to enter the market through conversion of sponsors currently using paper-and-pencil testing. Finally, many test sponsors will contract only with a provider whose testing centers are currently operational, and who has demonstrated an ability to successfully administer high stakes examinations.

The complaint alleges that the transaction likely will have the following effects:

i. Actual and future competition between Thomson and Harcourt will be eliminated;

ii. Competition generally in the market for nationwide computer-based testing delivery and administration services will be substantially lessened;

iii. Prices for nationwide computer-based testing delivery and administration services will increase or the value of services will decline; and

iv. Competition in the development and improvement of nationwide computer-based testing delivery and administration services will be substantially lessened.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to eliminate the anticompetitive effects of the proposed acquisition by Thomson of Harcourt's college textbook publishing and computer-based testing businesses from Reed Elsevier and to ensure that adequate competition is maintained in each of the relevant product markets identified in the Complaint.

The proposed Final Judgment requires the defendants to divest the sixty-eight (68) college textbooks identified on Exhibit A to the proposed Final Judgment to an acquirer(s) acceptable to the United States within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or within five (5) days after the expiration of the sixty-day (60) statutory notice-and-comment period that commenced with the publication of this Competitive Impact Statement in the **Federal Register**, whichever is later, so as to ensure competition in the market for the development, marketing, and sale of college textbooks and other ancillary educational materials. The United States, in its sole discretion, may agree to an extension of time for one additional thirty (30) day period, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the college textbook assets as expeditiously as possible.

Exhibit A to the proposed Final Judgment specifies the one or more textbooks in each course that must be divested to ensure that there is no reduction in competition in each such course. The college textbook divestitures include all textbooks and ancillary educational materials offered for sale or under development by any subsidiary or division of the defendants that are designed to be specific to a textbook product listed in Exhibit A of the proposed Final Judgment, including all the tangible and intangible assets that constitute the college textbook products identified in the Complaint including, but not limited to, teacher editions, workbooks, notebooks, charts, audio, video, software, any CD–ROM, DVD–ROM, Internet and broadcast components, teacher support and staff development materials, and any other materials in any form, format or media.

The proposed Final Judgment also requires the defendants to divest all of Assessment Systems, Inc. (as previously defined, the "Complete ASI Assets") or that entity excluding Harcourt's Agency Information Management Services and State Testing Businesses (as previously

defined, "ASI") to an acquirer or acquirers acceptable to the United States within one hundred and twenty (120) days after the filing of the Complaint in this matter, or within five (5) days after the expiration of the sixty-day (60) statutory notice-and-comment period that commenced with the publication of this Competitive Impact Statement in the **Federal Register**, whichever is later, so as to ensure competition in the market for the nationwide delivery and administration of high stakes computer-based tests. The United States, in its sole discretion, may agree to an extension of time for two additional thirty (30) day periods, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants shall offer for sale to an Acquirer or Acquirers both: (1) ASI, as well as (2) the Complete ASI Assets. The proposed acquirers may then make an offer to purchaser either ASI or the Complete ASI Assets, or both. The United States shall decide which, if any, of the proposed divestitures of the computer-based testing business adequately resolve the competitive harms identified in the Complaint. Defendants agree to use their best efforts to divest either ASI or the Complete ASI Assets as expeditiously as possible.

In the event that ASI also is divested, at the acquirer's or acquirers' option and on commercially reasonable terms, defendant Thomson shall contract with the acquirer(s) to allow the acquirer(s) to provide the delivery and administration of the State Testing Business. Any such contractual arrangement shall continue for the duration of the terms of each currently existing state contract, agreement, or other understanding included in the State Testing Business.

Divestiture of ASI alone shall include all tangible and intangible assets of ASI including, but not limited to, all research and development activities, all fixed, mobile, and other testing centers listed in Exhibit B of the proposed Final Judgment, any accompanying property rights in real estate or equipment used in any of those testing centers, all networking equipment, licenses, permits and authorizations issued by any governmental organization relating to ASI, all patents, intellectual property, copyrights, trademarks, trade names, service marks, service names, but no corporate trademarks or trade names of Thomson or Harcourt, technical information, computer software and related documentation including, but not limited to, test drivers, scheduling software, and the OMEGA, EXPro, and REG2000 software platforms, all test item banks, psychometric data, statistical reports of test results, designs of computer-based examinations and testing centers, and all security measures used in the development, administration, and assessment of computer-based tests and the reporting of exam results. Divestiture of the Complete ASI Assets shall include the foregoing list of tangible and intangible assets, as well as the Agency Information Management Systems and State Testing Businesses.

Until the divestitures occur, the defendants are required to develop and maintain all assets to be divested as independent, ongoing, economically viable, and active competitors, and to continue to fund their development, operations, promotional advertising, sales, marketing, merchandising, and support at existing or already approved levels. If defendant Thomson fails to make the required divestitures within the applicable time periods, the Court will appoint a trustee selected by the United States to effect the remaining divestitures. With regard to the computer-based testing business, should defendant Thomson fail to divest either ASI or the Complete ASI Assets within the requisite time periods, the trustee will effect the divestiture of the Complete ASI Assets. The proposed Final Judgment provides that defendant Thomson will pay all costs and expenses of the trustee. After the trustee's appointment becomes effective, the trustee will file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures. At the end of six (6) months, if the divestitures have not been accomplished, the trustee and the parties will have the opportunity to make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment.

The proposed Final Judgment takes steps to ensure that the acquirer(s) of the college textbook assets will be viable and effective competitors in the college textbook publishing. The United States must be satisfied that the acquiring parties of each of the college textbook products have the ability and intention (including the necessary managerial, operational, technical and financial capability) to operate and market the divestiture assets as viable, ongoing businesses, as appropriate. The proposed Final Judgment requires defendants to provide the acquirer(s) and the United States with information relating to the personnel responsible for the editorial content of the college textbooks to be divested, including employees, agents, consultants, and independent contractors, to enable the acquirer(s) to make offers of employment. The proposed Final Judgment forbids the defendants from interfering with any acquirer's employment negotiations with those employees, and from transferring those employees to new positions prior to the divestitures.

Further, the proposed Final Judgment takes steps to ensure that the acquirer(s) of the computer-based testing assets will be viable and effective competitors in the computer-based testing business. The United States must be satisfied that the acquiring parties of the computer-based testing business have the ability and intention (including the necessary managerial, operational, technical and financial capability) to operate and market the divestiture assets as viable, ongoing businesses. The proposed Final Judgment requires defendants to provide the acquirer(s) and the United States with information relating to all personnel of either ASI or Complete ASI Assets, as appropriate, including employees, agents, consultants, and independent contractors, to enable the acquirer(s) to make offers of employment. The proposed Final Judgment forbids the defendants from interfering with any acquirer's employment negotiations with those employees, and from transferring those employees to new positions prior to the divestitures.

The proposed Final Judgment is designed to maintain the present level of competition in the college textbook publishing market identified in the Compliant in this matter by replacing the competitor eliminated as a result of the merger with one or more that is equally effective. It accomplishes this goal by: (1) Requiring prompt divestitures of the college textbook products so that the acquirer(s) has adequate time to participate in the significant upcoming sales opportunities in colleges and universities; (2) providing the acquirer(s) with an opportunity to employ the personal that are critical to the success of the divestiture assets; and (3) requiring divestiture of all tangible and intangible assets that make up each of those assets.

Further, the proposed Final Judgment is designed to maintain the present level of competition in the computer-based testing market identified in the Compliant in this matter by replacing the competitor eliminated as a result of the merger with one or more that is equally effective. It accomplishes this goal by: (1) Affording the acquirer(s) an opportunity to purchase either ASI or

the Complete ASI Assets, thus ensuring a viable competitor in the computer-based testing market; (2) in the event that ASI alone is divested, and should the acquirer(s) so choose, requiring that defendant Thomson contract with the acquirer of ASI for the delivery and administration of the State Testing Business for the duration of all existing state contracts; (3) providing the acquirer(s) with an opportunity to employ the personnel that are critical to the success of the divestiture assets; and (4) requiring divestiture of all tangible and intangible assets that make up each of those assets.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the proposed Final Judgment upon the Court's determination that it is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdrawn its consent to the proposed Final Judgment at any time prior to entry. The comments and the response to the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: James R. Wade, Chief, Civil Task Force, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the defendants. The United States is satisfied that the divestitures required by the proposed Final Judgment will facilitate continued viable competition in the college textbook publishing and computer-based testing markets identified in the Compliant and will effectively prevent the anticompetitive effects that the Compliant alleges would result from the proposed acquisition.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that consent judgments in antitrust cases brought by the United States be subject to a sixty-day (60) comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the compliant including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). The courts have recognized that the "'term "public interest" * * * take[s] meaning from the purposes of the regulatory legislation." *NAACP* v. *Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve "free and unfettered competition as the rule of trade," *Northern Pacific Railway Co* v. *United States*, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied* 465 U.S. 1101 (1984); *United States* v. *Waste Management Inc.*, 1985–2 Trade Cas. ¶66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[1] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS. Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981)). Precedent requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the

[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S.C.C.A.N. 6535, 6538.

Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

A proposed consent decree is an agreement between the parties that is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

> waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. *Armour & Co.*, 402 U.S. 673, 681 (1971).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest'"[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For Plaintiff United States of America

Dated: June 27, 2001.

Respectfully submitted,

James D. Villa,
(D.C. Bar #417471),
Ahmed E. Taha,
Jacqueline S. Kelley,
Laura A. Brill,
Trial Attorneys, U.S. Department of Justice, Antitrust Division, Civil Task Force, 325 Seventh Street, NW., Suite 300, Washington, DC 20530, Telephone: (202) 514–8361, Facsimile: (202) 307–9952.

[FR Doc. 01–17480 Filed 7–13–01; 8:45 am]
BILLING CODE 4410–11–M

[2] *United States* v. *Bechtel*, 648 F.2d at 666 (emphasis added) (internal citations omitted). *See United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

[3] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) (quoting *Gillette*, 406 F. Supp. at 716, other citations omitted); *United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—RXHUB LLC

Notice is hereby given that, on May 14, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), RxHub LLC has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties are AdvancePCS, Dallas, TX; Express Scripts, Inc., Maryland Heights, MO; and Merck-Medco Managed Care, L.L.C., Franklin Lakes, NJ.

The nature and objectives of the venture are the development and operation of an electronic prescription and information routing service for the purpose of facilitating error-free prescription benefit communications.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–15671 Filed 7–13–01; 8:45 am]
BILLING CODE 4410–11–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369, 370, 413, and 414]

Duke Energy Corporation, McGuire, Units 1 and 2, and Catawba, Units 1 and 2; Notice of Receipt of Application for Renewal of Facility Operating License Nos. NPF–9, NPF–17, NPF–35, and NPF–52 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission has received applications from Duke Energy Corporation, dated June 13, 2001, filed pursuant to section 103 of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54 for renewal of Operating License Nos. NPF–9, NPF–17, NPF–35, and NPF–52, which authorize the applicant to operate McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2, respectively. The McGuire nuclear facility is located 17miles north-northwest of Charlotte, NC, in Mecklenburg County. The current operating licenses for McGuire, Units 1 and 2, expire on June 12, 2021, and March 3, 2023, respectively. The Catawba nuclear facility is located 18 miles southwest of Charlotte, NC, in York County. The operating licenses for Catawba, Units 1 and 2, expire on December 6, 2024, and February 24, 2026, respectively. All four Duke Energy Corporation nuclear units are four-loop pressurized-water reactors designed by Westinghouse. The acceptability of the tendered applications for docketing and other matters, including an opportunity to request a hearing will be the subject of a subsequent **Federal Register** notice.

Copies of the applications are available electronically for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMSPublic Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html*. In addition, the applications are available on the NRC web page at *http://www.nrc.gov/NRC/REACTOR/LR/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

The staff has verified that copies of the license renewal applications for the McGuire and Catawba nuclear stations have been provided to the J. Murrey Atkins Library in Charlotte, North Carolina, and to the York County Library System in South Carolina.

Dated at Rockville, Maryland, the 10th day of July 2001.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Chief, License Renewal and Standardization Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 01–17697 Filed 7–13–01; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–335]

Florida Power & Light Company; Notice of Withdrawal of Application for Amendments to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power and Light Company (FPL, the licensee) to withdraw its January 17, 2001, application for proposed amendment to Facility Operating License No. DPR–67 for the St. Lucie Nuclear Plant, Unit 1, located in St. Lucie County, Florida.

The proposed amendment would have revised the Technical Specification (TS) Section 4.8.1.1.2.e by relocating the restriction to only perform the 18-month surveillance tests during shutdown to the individual surveillance requirements under 4.8.1.1.2.e. In addition, the proposed amendment would have revised TS 4.8.1.1.2.e.6 to remove the restriction to perform the emergency diesel generator 24-hour run surveillance test during shutdown.

The Commission had previously issued a Notice of Consideration of Issuance of amendment published in the **Federal Register** on March 7, 2001 (66 FR 13804). However, by letter dated May 14, 2001, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 17, 2001, and the licensee's letter dated May 14, 2001, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the Commission's Public Document room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index/html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 10th day of July 2001.

For the Nuclear Regulatory Commission.

Brendan T. Moroney,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–17699 Filed 7–13–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, 50–287]

Duke Energy Corporation; Oconee Nuclear Station, Units 1, 2, and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the requirements of Title 10 of the Code of Federal Regulations (10 CFR) § 50.44, 10 CFR part 50, Appendix A, General Design Criterion 41, and 10 CFR Part 50, Appendix E, Section VI for Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, issued to the Duke Energy Corporation (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3 (ONS), located in Seneca, South Carolina. The licensee requested the exemption by letter dated July 26, 2000.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the ONS from certain requirements of 10 CFR 50.44, 10 CFR part 50, Appendix A, General Design Criterion 41, and Part 10 CFR 50, Appendix E, Section VI pertaining to the hydrogen control system requirements (i.e., containment post-accident hydrogen monitors and recombiners) and remove them from the ONS design basis. The licensee's exemption request from the functional requirements for hydrogen monitoring is not being approved. This position is described in the safety evaluation for the associated exemption. Consequently, this environmental assessment only addresses the exemption from the requirements related to the recombiners and the removal of the recombiners from the ONS design basis.

The Need for the Proposed Action

The requested exemption to remove the requirements pertaining to recombiners would improve the safety focus at ONS during an accident and would represent a more effective and efficient method of maintaining adequate protection of public health and safety by simplifying the Emergency and Emergency Response Plan Procedures. This would reduce the operators' post-accident burden and allow them to give higher priority to more important safety functions following postulated plant accidents.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no environmental impacts associated with the removal of the recombiners from the ONS design basis. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for ONS.

Agencies and Persons Consulted

In accordance with its stated policy, on July 2, 2001, the staff consulted with the South Carolina State official, Mr. Henry Porter of the Division of Waste Management, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 26, 2000. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 10th day of July 2001.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–17698 Filed 7–13–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25060; 812–12126]

Northern Institutional Funds, et al.; Notice of Application

July 11, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") exempting applicants from section 12(d)(1) of the Act, under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act, under section 6(c) of the Act for an exemption from section 17(e) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act permitting certain joint transactions.

SUMMARY: *Summary of Application:* The order would permit certain registered open-end investment companies to use their cash reserves that have not been invested in portfolio securities ("Uninvested Cash") to purchase shares of certain money market funds ("Money Market Portfolios"). The order also would permit certain registered open-end investment companies to use cash collateral from securities lending transactions ("Cash Collateral") to purchase shares of the Money Market Portfolios or private investment funds ("Private Funds" and, together with the Money Market Portfolios, the "Investment Funds") and to pay fees based on a share of the revenue generated from securities lending transactions to an affiliated lending agent. The order also would permit the lending agent and certain of its affiliates to engage in principal transactions with, and receive brokerage commissions from, certain open-end investment companies that are affiliated with the lending agent and its affiliates solely as a result of investing Cash Collateral in the Investment Funds.

Applicants: Northern institutional Funds ("NIF"), Northern Funds ("NF"), The Northern Trust Company ("Northern"), Northern Trust Investments, Inc. ("NTI"), Northern Trust Global Investments (Europe) Limited ("NTGIE"), and AB Funds Trust ("AB").

Filing Dates: The application was filed on May 31, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 31, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants (other than AB), 50 South LaSalle Street, Chicago, IL 60675. AB, 2401 Cedar Springs Road, Dallas, TX 75201.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. NIF, NF and AB, all of which are Delaware business trusts, are open-end management investment companies registered under the Act that have 22, 35 and 13 portfolio series, respectively. Northern, a principal subsidiary of Northern Trust Corporation, is an Illinois state-chartered commercial bank and a member of the Federal Reserve System. NTI, an indirect wholly owned subsidiary of Northern Trust Corporation, is an Illinois state-chartered trust company. NTGIE, an indirect wholly owned subsidiary of Northern Trust Corporation, is organized under the laws of the United Kingdom. NTI and NTGIE are registered investment advisers under the Investment Advisers Act of 1940 and serve as the investment advisers to both NIF and NF. It is contemplated that Northern, NTI, NTGIE or an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Northern, NTI, or NTGIE (collectively, "Northern Entities") will serve as sub-adviser to certain portfolio series of AB when they commence operations. NIF, NF, AB and any other registered investment company or portfolio series that currently, or in the future, is advised by a Northern Entity are collectively referred to as the "Affiliated Funds." [1] The Money Market Portfolios will comply with rule 2a–7 under the Act and will either be a portfolio series of NIF or an Affiliated Fund that is organized specifically for the investment of Uninvested Cash and/or Cash Collateral.

2. The Private Funds are common trust funds that will operate as private investment companies in reliance on section 3(c)(1) or 3(c)(7) of the Act. Units of the Private Funds ("Units") may be offered to the Lending Funds (as defined below) in reliance on Regulation D under the Securities Act of

[1] A registered investment company or series that is subadvised, but not advised, by a Northern Entity may be considered an Affiliated Fund for purposes of the requested relief except that (a) the relief requested from section 12(d)(1) to permit the investment of Uninvested Cash will not apply to such fund, and (b) such fund will not be a Money Market Portfolio that receives Uninvested Cash and/or Cash Collateral.

1933. Any Private Fund that uses the amortized cost method of valuation as defined in rule 2a–7 under the Act will comply with rule 2a–7. A Northern Entity will act as the trustee ("Trustee") of each Private Fund.

3. Applicants request relief for any existing or future Northern Entity, Affiliated Fund, Private Fund, or other registered investment company or series that is not an Affiliated Fund ("Other Fund").[2]

4. Each of the Affiliated Funds has, or may be expected to have, Uninvested Cash that results from a variety of sources, including new monies received from investors, dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, and liquidation of investment securities to meet anticipated redemptions and dividend payments. Applicants propose that the Affiliated Funds use Uninvested Cash to purchase shares ("Shares") of the Money Market Portfolios. An Affiliated Fund's aggregate investment of Uninvested Cash in Money Market Portfolios will not exceed 25% of the Affiliated Fund's total assets and will be in accordance with the Affiliated Fund's investment restrictions and policies described in its prospectus and statement of additional information.

5. A Northern Entity (the "Lending Agent") will administer a securities lending program (the "Lending Program") whose participants will include Affiliated Funds and Other Funds (together, the "Lending Funds"). Each Lending Fund will be authorized to seek additional income by lending portfolio securities. The Lending Agent will enter into agreements ("Agreements") with certain entities ("Borrowers") designated by a Lending Fund. Under the Agreements, the Lending Agent will lend securities to Borrowers in exchange for Cash Collateral or other types of collateral, such as U.S. Government securities or irrevocable letters of credit, as approved by the board of directors or trustees of a Lending Fund ("Board"). Cash Collateral will be delivered in connection with most loans. The Lending Agent will invest Cash Collateral in accordance with specific guidelines provided by the Lending Fund. These guidelines will identify the particular types of instruments, including Shares, Units, repurchase agreements and other money market instruments, in which Cash Collateral may be invested, as well as the amounts that may be invested.

6. The personnel of the Northern Entity providing day-to-day lending agency services to the Lending Funds will neither provide investment advisory or sub-advisory services to the Lending Funds, nor participate in any way in the selection of portfolio securities for, or other aspects of management of the Lending Funds.

7. With respect to loans involving Cash Collateral, the Borrower will be entitled to receive an agreed-upon Cash Collateral rebate ("Borrower's Rebate"). The Lending Fund will be compensated based on the difference between the Borrower's Rebate and the actual return on the investment of the Cash Collateral. In the case of collateral other than cash, the Lending Agent will negotiate a loan free to be paid by the Borrower, which will likely approximate the return the Lending Fund would receive had the Borrower delivered Cash Collateral. For its services, the Lending Agent will receive fees based on a share of the revenue generated from the securities lending transactions.

8. As agent for a Lending Fund, the Lending Agent may not purchase Shares or Units with Cash Collateral unless participation in the Lending Program has been approved by the Board of each Lending Fund, including a majority of the directors or trustees who are not "interested persons" of the Lending Fund within the meaning of section 2(a)(19) of the Act ("Independent Directors"). The Board, including the Independent Directors, is required to determine that the investment of Cash Collateral in an Investment Fund is in the best interests of the shareholders of the Lending Fund.

9. In addition, the Lending Agent may not purchase Shares or Units of any Investment Fund as agent for a Lending Fund unless the Lending Fund has represented to the Lending Agent that (a) its policies generally permit the Lending Fund to engage in securities lending transactions, (b) the transactions are conducted in accordance with the guidelines of the Commission and/or its staff, (c) its policies permit the Lending Fund to purchase Shares or Units with Cash Collateral, and (d) its securities lending activities are conducted in accordance with all representations and conditions in the applications.

[2] All existing Affiliated Funds that currently intend to rely on the requested order have been named as applicants. Any existing or future Northern Entity, Affiliated Fund, Private Fund, or Other Fund may rely on the requested order in the future only in accordance with the terms and conditions stated in the application.

Applicants' Legal Analysis

A. Investment of Uninvested Cash and Cash Collateral in Money Market Portfolios and Private Funds

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent that the exemption is consistent with the public interest and the protection of investors.

2. Applicants request an exemption under section 12(d)(1)(J) to permit each Affiliated Fund to use Uninvested Cash and Cash Collateral and each Other Fund to use Cash Collateral to acquire Shares in excess of the limits imposed by section 12(d)(1)(A), and each Money Market Portfolio to sell its securities to Affiliated Funds and Other Funds in excess of the limits in section 12(d)(1)(B).

3. Applicants state that none of the abuses meant to be addressed by section 12(d)(1) is created by the proposed investment of Uninvested Cash and Cash Collateral in the Money Market Portfolios. Applicants further state that access to the Money Market Portfolios will enhance each Affiliated Fund's and Other Fund's ability to manage and invest Cash Collateral and each Affiliated Fund's ability to manage and invest Uninvested Cash. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because the Money Market Portfolios will not charge a sales load, redemption fee, asset-based distribution fee or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules). In addition, in connection with approving any advisory contract, the Affiliated Fund's Board, including a majority of the Independent Directors, will consider to what extent, if any, the advisory fees charged to the

Affiliated Fund by its adviser should be reduced to account for reduced services provided when Uninvested Cash is invested in Money Market Portfolios. Applicants represent that if a Money Market Portfolio offers more than one class of shares, each Affiliated Fund or Other Fund will invest its Cash Collateral or Uninvested Cash (in the case of Affiliated Funds) in the class with the lowest expense ratio at the time of investment. Applicants represent that no Money Market Portfolio in which Uninvested Cash or Cash Collateral is invested will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. Sections 17(a)(1) and (2) of the Act prohibit an affiliated person of a registered investment company, or any affiliated person of the affiliated person ("Second Tier Affiliate"), acting as principal, from selling any security to, or purchasing any security from, the registered investment company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person directly or indirectly controlling, controlled by, or under common control with, the other person; and, in the case of an investment company, its investment adviser.

5. Applicants state that NTI and NTGIE, by serving as investment advisers to the Affiliated Funds (including the Money Market Portfolios), are affiliated persons of each of these entities. Applicants state that a Northern Entity may be deemed to control the Private Funds by virtue of being the Trustee, and thus may be an affiliated person of the Private Funds. Therefore, an Investment Fund may be deemed either an affiliated person, or a Second Tier Affiliate, of the Affiliated Funds. In addition, applicants indicate that if an Other Fund acquires 5% or more of a Money Market Portfolio's Shares or a Private Fund's Units, the Money Market Portfolio or Private Fund may be deemed to be an affiliated person of the Other Fund. As a result, section 17(a) may prohibit each Investment Fund from selling its Shares or Units to, and redeeming its Shares or Units from, Affiliated Funds or Other Funds.

6. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

7. Applicants request an order under sections 6(c) and 17(b) to permit (a) Investment Funds to sell Shares or Units to, and redeem Shares or Units from, the Lending Funds (in connection with the investment of Cash Collateral) and (b) Money Market Portfolios to sell Shares to and redeem Shares from the Affiliated Funds (in connection with the investment of Uninvested Cash). Applicants maintain that the terms of the proposed transactions are reasonable and fair because the Affiliated Funds and the Other Funds will be treated like any other investors in the Investment Funds, and will purchase and sell Shares and/or Units on the same terms and one the same basis as Shares and/or Units are purchased and sold by all other shareholders of the Money Market Portfolios and all other unitholders of the Private Funds. Applicants assert that the proposed transactions will comply with the investment restrictions and policies of each Affiliated Fund and Other Fund. Applicants state that Cash Collateral of a Lending Fund that is a Money Market Portfolio will not be used to acquire Units of any Private Fund that does not comply with rule 2a–7 under the Act. Applicants further state that the investment of Cash Collateral will comply with all present and future Commission and staff positions concerning securities lending. Applicants state that the Private Funds will comply with the major substantive provisions of the Act, including the prohibitions against affiliated transactions, leveraging and issuing senior securities, and rights of redemption.

8. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter for a registered investment company, or a Second Tier Affiliate, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates, without an order of the Commission.

9. Applicants state that the Affiliated Funds and the Other Funds (by purchasing and redeeming Shares and Units), the Northern Entities (by (a) managing the assets of the Affiliated Funds and the Private Funds and (b) acting as Lending Agent, investing Cash Collateral in Shares or Units, and receiving portion of the revenue generated by securities lending transactions), and the Money Maker Portfolios and Private Funds (by selling Shares or Units to, and redeeming them from, the Affiliated Funds and Other Funds) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) and rule 17d–1. Applicants request an order in accordance with section 17(d) and rule 17d–1 to permit certain transactions incident to investment in Investment Funds.

10. Under rule 17d–1, in passing on applications for orders under section 17(d), the Commission considers whether the company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet these standards for the reasons discussed above.

B. Payment of Lending Agent Fees to a Northern Entity

1. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the Commission has approved the transaction. Applicants state that a lending agent arrangement between an Affiliated Fund or Other Fund and the Lending Agent under which compensation is based on a share of the revenue generated by the Lending Agent's activities may be a joint enterprise or other joint arrangement or profit sharing plan within the meaning of section 17(d) and rule 17d–1. Consequently, applicants request an order to permit each Northern Entity, as Lending Agent, to receive fees on a share of the revenue generated from securities lending transactions undertaken pursuant to the Lending Program.

2. Each Affiliated Fund that will enter into the Lending Program will adopt the following procedures to ensure that the proposed fee arrangement and other terms governing the relationship with a Northern Entity, as Lending Agent, will be fair and meet the standards of rule 17d–1:

(a) In connection with the approval of any Northern Entity as Lending Agent

for an Affiliated Fund and implementation of the proposed fee arrangement, a majority of the Board (including a majority of the Independent Directors) will determine that (i) the securities lending agreement with the Northern Entity is in the best interests of the Affiliated Fund and its shareholders; (ii) the services to be performed by the Northern Entity are appropriate for the Affiliated Fund; (iii) the nature and quality of the services provided by the Northern Entity are at least equal to those provided by others offering the same or similar services for similar compensation; and (iv) the fees for the Northern Entity's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) Each Affiliated Fund's securities lending agreement with a Northern Entity for lending agent services will be reviewed annually by the Board and will be approved for continuation only if a majority of the Board (including a majority of the Independent Directors) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of the proposed fee arrangement whereby a Northern Entity will be compensated as lending agent based on a percentage of the revenue generated by an Affiliated Fund's participation in the Lending Program, the Board will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

(d) The Board, including a majority of the Independent Directors, will: (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application, and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Affiliated Fund will maintain and preserve: (i) permanently, in an easily accessible place, a written copy of the procedures and conditions described in the application and (ii) for a period of not less than six years from the end of the fiscal year in which any loan transaction under the Lending Program occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that the loan was made in accordance with the procedures set forth above and the conditions to the application.

3. With respect to Other Funds, applicants assert that the nature of the affiliation between the Other Funds and any Northern Entity serving as Lending Agent is only technical. Applicants assert that any Northern Entity serving as Lending Agent would not have any influence over the decisions made by any Other Fund and that any fee arrangements between the Other Funds and the Northern Entities will be the product of arms-length bargaining. Accordingly, applicants believe that the proposed arrangement between Other Funds and the Northern Entities would meet the standards of rule 17d–1.

C. Transactions by Other Funds With Northern Entities

1. As noted above, sections 17(a)(1) and (2) prohibit certain principal transactions between a registered investment company and its affiliates. Applicants assert that a Northern Entity could be deemed a Second-tier Affiliate of an Other Fund that owns 5% or more of an Investment Fund.

2. Applicants request relief under sections 6(c) and 17(b) from sections 17(a)(1) and (2) to permit principal transactions between Other Funds and Northern Entities where the affiliation between the parties arises solely as a result of an investment of Cash Collateral by an Other Fund in Shares and/or Units. Applicants state that there will be no element of self-dealing because none of the Northern Entities has any influence over the decisions made by any Other Fund. Applicants assert that each transaction will be the product of arms-length bargaining. Because the interests of the Other Funds' investment advisers are solely aligned with those of the Other Funds (to which the advisers have fiduciary responsibilities), applicants believe it is reasonable to conclude that the consideration paid to or received by Other Funds in connection with a principal transaction with a Northern Entity will be reasonable and fair.

3. Section 17(e) of the Act makes it unlawful for any affiliated person of a registered investment company, or any Second-tier Affiliate, acting as broker in connection with the sale of securities to or by that registered investment company, to receive from any source a commission for effecting the transaction that exceeds specified limits. Rule 17e–1 under the Act provides that a commission shall be deemed a usual and customary broker's commission if certain procedures are followed by the registered investment company.

4. Applicants request relief under section 6(c) from section 17(e) to the extent necessary to permit the Northern Entities to receive fees or commissions for acting as broker or agent in connection with the purchase or sale of securities for any Other Fund for which a Northern Entity becomes a Second-tier Affiliate solely because of the investment of Cash Collateral by the Other Fund in Shares and/or Units.

5. Applicants submit that brokerage or similar transactions by a Northern Entity for the Other Funds raise no possibility of self-dealing or any concern that these Other Funds would be managed in the interest of a Northern Entity. Applicants believe that each transaction between an Other Fund and a Northern Entity would be the product of arms-length bargaining because each adviser to an Other Fund would have no interest in benefiting a Northern Entity at the expense of the Other Fund.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

Securities Lending Program

1. Before a Lending Fund may participate in the Lending Program, a majority of the Board (including a majority of the Independent Directors) will approve of the Lending Fund's participation in the Lending Program. Such Board also will evaluate the Lending Program and its results no less frequently than annually and a majority of the Board (including a majority of the Independent Directors) will determine that any investment of Cash Collateral in Shares and/or Units is in the best interests of the shareholders of the Lending Fund.

2. Cash Collateral of any Affiliated Fund or Other Fund that relies on rule 2a–7 under the Act will not be used to acquire Units of any Private Fund that does not comply with the requirements of rule 2a–7.

3. The approval of an Affiliated Fund's Board, including a majority of the Independent Directors, will be required for the initial and subsequent approvals of a Northern Entity's service as Lending Agent for the Affiliated Fund pursuant to the Lending Program, for the institution of all procedures relating to the Lending Program as it relates to the Affiliated Fund, and for any periodic review of loan transactions for which a Northern Entity acted as Lending Agent pursuant to the Lending Program.

4. The Lending Program of each Lending Fund will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

Private Funds

5. Each Lending Fund will purchase and redeem Units as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other holders of the Units. A separate account will be established in the unitholder records of each Private Fund for the account of each Lending Fund.

6. Each Private Fund will comply with the requirements of sections 17(a), (d), (e), and 18 of the Act as if the Private Fund was a registered open-end investment company. With respect to all redemption requests made by a Lending Fund, the Private Funds will comply with section 22(e) of the Act. The Trustee of a Private Fund shall adopt procedures designed to ensure that the Private Fund complies with sections 17(a), (d), and (e), 18 and 22(e) of the Act. Such Trustee will periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii) and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and its staff.

7. The net asset value per Unit with respect to Units of the Private Funds will be determined separately for each Private Fund by dividing the value of the assets belonging to that Private Fund, less the liabilities of that Private Fund, by the number of Units outstanding with respect to that Private Fund.

8. Any Private Fund that uses the amortized cost method of valuation, as defined in rule 2a–7 under the Act, will comply with rule 2a–7. With respect to each such Private Fund, the Trustee will adopt and monitor the procedures described in rule 2a–7(c)(7) and will take such other actions as are required to be taken under those procedures. The Lending Funds may only purchase Units of such Private Fund if the Trustee determines on an ongoing basis that the Private Fund is in compliance with rule 2a–7. The Trustee will preserve for a period of not less than six years from the date of determination, the first two years in an easily accessible place, a record of the determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and its staff.

Other Conditions

9. Investment of Uninvested Cash in Shares and Cash Collateral in Shares and/or Units will be in accordance with each Affiliated Fund's and Other Fund's respective investment restrictions, if any, and will be consistent with its policies as recited in its prospectus and statement of additional information (and supplements thereto).

10. Shares and Unites will not be subject to a sales load, redemption fee, asset-based distribution fee or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

11. Before the next meeting of the Board of an Affiliated Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Northern Entity acting as investment adviser of the Affiliated Fund will provide the Board with specific information regarding the approximate cost to such investment adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Affiliated Fund that can be expected to be invested in the Money Market Portfolios. In connection with approving any advisory contract for an Affiliated Fund, the Board of the Affiliated Fund, including a majority of the Independent Directors, will consider to what extent, if any, the advisory fees charged to the Affiliated Fund by a Northern Entity should be reduced to account for reduced services provided to the Affiliated Fund by the Northern Entity as a result of Uninvested Cash being invested in the Money Market Portfolios. The minute books of the Affiliated Fund will record fully the Board's consideration in approving the advisory contract, including the consideration referred to above.

12. Each Affiliated Fund will invest Uninvested Cash in, and hold Shares of, the Money Market Portfolios only to the extent that the Affiliated Fund's aggregate investment of Uninvested Cash in the Money Market Portfolios does not exceed 25% of the Affiliated Fund's total assets.

13. Each Affiliated Fund, Money Market Portfolio and Private Fund that relies on the order will be advised by a Northern Entity.

14. Neither the Private Funds nor the Money Market Portfolios in which Cash Collateral or Uninvested Cash is invested shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17721 Filed 7–13–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44532; File No. SR–Amex–2001–25]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to Generic Listing Standards for Portfolio Depositary Receipts and Index Fund Shares

July 10, 2001.

On May 3, 2001, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 1000, Commentary .03 and Amex Rule 1000A, Commentary .02 regarding generic listing standards for Portfolio Depositary Receipts and Index Fund shares to increase from 25 percent to 30 percent the permissible weight of the most heavily weighted component stock in an underlying index.

The proposed rule change was published for comment in the **Federal Register** on June 4, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[6] because it is designed to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–44354 (May 25, 2001), 66 FR 30031.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–Amex–2001–25) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17712 Filed 7–13–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44530 File No. SR–CBOE–2001–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Rerouting of Certain Orders

July 9, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 6.8, *RAES Operations*, to make it clear than an order rerouted from RAES may be routed to a location of the sending firm's choice. Below is the text of the proposed rule change. New text is in *italics*. Proposed deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Inc. Rules

* * * * *

Chapter IX—Doing Business with the Public

* * * * *

RAES Operations

Rule 6.8.

(a)–(c) No change.

(d) Execution on RAES.

(i) When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry to the system, except as otherwise provided in this Rule 6.8 and the Interpretations to this rule. A buy order will pay the offer, a sell order sell at the bid. Marketable limit orders will not be executed to sell for less or buy for more than the specified price, but the order can be executed to sell for a higher price or buy for a lower price. However, if the order's limit price is under $3, RAES will execute the order only if the necessary bid or offer is 1 point or less from the limit price. If the order's limit price is $3 of more, RAES will execute the order only if the necessary bid or offer is one dollar or less from the limit price.

(ii) A Market-Maker logged on to participate in RAES (a "Participating Market-Maker") will be designated as contra-broker on the trade.

(iii) A trade executed on RAES at an erroneous quote should be treated as a trade reported at an erroneous price and adjusted to reflect the accurate market after receiving a Floor Official's approval.

(iv) When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange, contra-side incoming RAES orders shall be executed in accordance with either *(A)*[(i)] or *(B)*[(ii)] below, as determined by the appropriate Floor Procedure Committee is a class-by-class basis.

(A)[(i)] When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange and is for a size less than RAES order eligibility size for that class, such fact shall be denoted in the Exchange's disseminated quote by a "Book Indicator". An incoming RAES order will be executed against the order in the book. In the event the order in the book is for a smaller number of contracts than the RAES order, the balance of the RAES order will be assigned to participating market-makers at the same price at which the initial portion of the order was executed up to an amount prescribed by the appropriate Floor Procedure Committee on a class-by-class basis (the "Book Price Commitment Quantity"). Any remaining balance thereafter shall be (i) routed to the crowd PAR terminal *(or to another location in the event of system problems or contrary firm routing instructions)* if Autoquote is not in effect for that series; (ii) assigned to participating market-makers at the Autoquote price if Autoquote constitutes the new prevailing market bid or offer; or (iii) executed against any order in the book that constitutes the new prevailing market bid or offer with the balance of the RAES order being assigned to participating market-makers at that price up to the Book Price Commitment Quantity. Any additional remaining balance of a RAES order shall be handled in accordance with (ii) or (iii) of this paragraph.

(B)[(ii)] An incoming RAES order will be executed against the order in the book. In the event the order in the book is for a smaller number of contracts than the RAES order, the balance of the RAES order will be assigned to participating market-makers at the same price at which the initial portion of the RAES order was executed.

(v) Notwithstanding sub-paragraph (d)(iv), for a six month pilot program ending August 21, 2001, for any series of options where the bid or offer generated by the Exchange's Autoquote system (or any Exchange approved proprietary quote generation system used in lieu of the Exchange's Autoquote system) crosses or locks the Exchange's best bid or offer as established by an order in the Exchange's customer limit order book, orders in RAES for options of that series will not be automatically executed but instead will be rerouted on ORS to the crowd PAR terminal or to another location in the event of system problems or contrary firm routing instructions.

(e)–(g) No change.

Interpretations and Policies

.01 No change.

.02 Orders to buy or sell options that are multiply traded in one or more markets in addition to the Exchange will not be automatically executed on RAES at prices inferior to the current best bid or offer in any other market, as such best bids or offers are identified in RAES. In respect of those classes of options that have been specifically designated by the appropriate Floor Procedure Committee as coming within the scope of this sentence ("automatic step-up classes"),

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[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

under circumstances where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by no more than the "step-up amount" as defined below, such orders will be automatically executed on RAES at the current best bid or offer in the other market. In respect of (i) automatic step-up classes of options under circumstances where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by more than the step-up amount, or (ii) in respect of series of option classes designated by the appropriate Floor Procedure Committee or its Chairman under circumstances where the NBBO for one of the series is cross (e.g., 6.10 bid, 6 asked) or locked (e.g., 6 bid, 6 asked), or (iii) in respect of specified automatic step-up classes or series of options or specified markets under circumstances where the Chairman of the appropriate Floor Procedure Committee or his designee has determined that automatic step-up should not apply because quotes in such options or markets are deemed not to be reliable, or (iv) in respect of classes of options other than automatic step-up classes where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by any mount, such orders will be rerouted *for nonautomated handling* to the DPM or OBO for that class of options, *or to any other location in the event of system problems or contrary routing instructions for the firm that forwarded the order to RAES.* [for non-automated handling.] *If the order has been rerouted to the DPM or OBO, the* [The] DPM or OBO will report the execution or non-execution of such orders to the firm that originally forwarded the order to RAES. With respect to the orders that are rerouted for manual handling pursuant to (ii) above, the appropriate Floor Procedure Committee may determine to have the orders for a particular series within a designated class of options executed on RAES notwithstanding the fact that the NBBO is either cross or locked. Also, with respect to (ii) above, the appropriate Floor Procedure Committee may determine to have the orders rerouted for manual handling only when the CBOE RAES becomes cross or locked as a result of applying the step-up amount. As used in this Interpretation and Policy .02, the term "step-up amount" shall mean the minimum increment for options of that series established pursuant to Rule 6.42, or any greater amount established by the appropriate Floor Procedure Committee in respect of specified automatic step-up classes or series of options. The procedures described in this Interpretation .02 shall not apply in circumstances where a "fast market" in the options that are the subject of the orders in question has been declared on the Exchange or where comparable conditions exist in the other market such that firm quote requirements do not apply.

.03–.08 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Exchange Rule 6.8 to make it clear that an order that is rerouted from RAES may be routed to a location designated by the order routing firm. Currently, there are two sections in the RAES rule that provide that orders rerouted from RAES will be routed to the Designated Primary Market-Maker ("DPM") or to the Public Automated Routing ("PAR") terminal in the trading crowd.[3] Specifically, paragraph (d)(iv)(A) of Rule 6.8 states that where a RAES order is executed against a booked order and there is a remaining balance, that remaining balance may be routed to one of three locations. The first location which the rule designates as a location for the remaining balance is "the crowd PAR terminal if Autoquote is not in effect for that series." The second section in Rule 6.8 which describes an order rerouted from RAES being routed to a PAR terminal is in Interpretation .04 to the rule, which governs orders that are rerouted because another market is displaying a better bid or offer. Interpretation .04 states that "in respect of classes of options other than automatic step-up classes where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by any amount, such orders will be rerouted to the DPM or OBO for that class of options."

In both of these cases, the Exchange was not intending to limit the alternative locations to which a firm could choose to have a rejected RAES order route. Instead, the rules were meant to describe the default locations to which the RAES order would route absent any contrary indications from the firm. In fact, paragraph (d)(v) states that orders that are rejected from RAES pursuant to this provision will "be rerouted on ORS to the crowd PAR terminal or *to another location in the event of system problems or contrary firm routing instructions.*" [emphasis added]. The Exchange is, therefore, making clear in its rules that a firm may choose to determine to have its orders routed to another location other than to PAR or to the DPM.[4] The Exchange believes that, unless there is some overriding regulatory concern, firms should be able to choose the location to which their orders should be routed so that they may handle their business in the most effective manner.

Additionally, system problems may occasionally prevent the Exchange from routing an order to the PAR terminal or to the DPM. In these events, although this fact may be obvious, the Exchange believes that it should specifically note this possibility in its RAES rule in those locations where it is not presently noted.

2. Statutory Basis

Because the proposed rule amends the Exchange's rules to make clear that a firm may determine where to route its RAES rejected orders and because the proposed rule otherwise makes clear that there may be some circumstances where RAES orders will need to be rerouted due to system problems, the proposed rule change is consistent with Section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(5)[6] in particular in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or

[3] DPMs in each trading crowd typically are responsible for managing the orders that are routed to the PAR terminal in each crowd.

[4] Currently, the Exchange's ORS provides for the order to route to a firm booth (whereupon it may be rerouted electronically from a BART terminal) or to a crowd printing terminal. The Exchange may provide other routing locations in the future.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[7] and subparagraph (f)(1) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. CBOE–2001–27 and should be submitted by August 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17653 Filed 7–13–01; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(1).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44534; File No. SR–CHX–2001–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The Chicago Stock Exchange, Inc., To Eliminate the "E-Session" After-Hours Trading Session

July 10, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2001, The Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete CHX Article XXA, which governed an after-hours trading session (the "E-Session") conducted by the Exchange, and to eliminate other rule references to the E-Session. The Exchange intends to cease conducting the E-Session following the Commission's approval of this proposed rule change. The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 7, 2000, the Commission approved the CHX's proposed rule change granting access to and governing the E-Session.[3] Following continuous operation for the E-Session for the past year, the E-Session has not sustained the increases in order flow that the CHX anticipated. Consequently, in light of the costs attendant to operation of an after-hours trading session by a self-regulatory organization, the Exchange has determined that it is not feasible at this time to continue conducting the E-Session. The Exchange has discussed its intention to eliminate the E-Session with its principal E-Session order-sending firms, and is confident that each of these order-sending firms has sufficient alternative liquidity sources in the after-hours market. Accordingly, upon the Commission's approval of this proposed rule change, which proposal would delete from the CHX rules all references to the E-Session, the CHX intends to cease conducting the E-Session.

2. Statutory Basis

• The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. In particular, the Exchange believe the proposed rule change is consistent with sections 6(b) of the Act.[4] In particular, the CHX believes the proposal is consistent with the section 6(b)(5) of the Act,[5] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42403 (February 7, 2000), 65 FR 7581 (February 15, 2000)(SR–CX–99–08). *See also* Securities Exchange Act Release No. 42004 (October 13, 1999), 64 FR 56548 (October 20, 1999) (SR–CHX–99–16).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (I) as the commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2001–14 and should be submitted by August 6, 2001.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17711 Filed 7–13–01; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44529; File No. SR–NASD–2001–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

July 9, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 6, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through November 5, 2001 the current pilot price-improvement standards for decimalized securities contained in NASD Interpretative Material 2110–2—Trading Ahead of Customer Limit Order ("Manning Interpretation" or "Interpretation"). Without such an extension these standards would terminate on July 9, 2001. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through November 5, 2001. Nasdaq requests that the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Items IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and Small Cap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[7]

[6] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001). (Order approving proposed rule change modifying NASD's Interpretative Material 2110–2—Trading Ahead of Customer Limit Order).

[7] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on July 9, 2001. Nasdaq originally selected the July 9, 2001, termination date of its Manning pilot to coincide with deadline for submitting rule filings related to decimalization contained in the Commission's June 8, 2000 Order directing the submission of a Decimals Implementation Plan For the Equities and Options Markets (Implementation Plan or Plan).[8]

Subsequent to the Interpretation pilot's approval, the Commission extended the deadline for the submission of decimal-related rule filing to November 5, 2001.[9] As such, Nasdaq has determined to seek an extension of its current Manning Interpretation pilot until that date. Nasdaq believes that such an extension will provide needed additional time for Nasdaq and the Commission to analyze data and the many complex issues related to customer limit order protection in a decimalized Nasdaq.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[10] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited or received.

SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. *See* Securities Exchange Act Release No. 43876 (January 23, 2001) 66 FR 8251 (January 30, 2001).

[8] *See* Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

[9] *See* Securities Exchange Act Release No. 44336 (May 22, 2001), 66 FR 29368 (May 30, 2001).

[10] 15 U.S.C. 78o–3.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)[13] and has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through November 5, 2001, the deadline for which self-regulatory organizations must file proposed rule changes to set the minimum price variation for quoting in a decimals environment. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written date, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2001–43 and should be submitted by August 6, 2001.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] *Id.*

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17710 Filed 7–13–01; 8:45 am]

BILLING CODE 8010–01–M

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44533; File No. SR–Phlx–00–20]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Trading Certain Over-the-Counter Securities

July 10, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change regarding the trading of certain over-the-counter ("OTC") securities. Notice of the proposed rule change was published in the **Federal Register** on December 14, 2000.[3] On May 14, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change, as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended by Amendment No. 1, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43692 (December 8, 2000), 65 FR 78240.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to trade certain OTC securities, Nasdaq National Market ("Nasdaq/NM") securities, on the Exchange, pursuant to unlisted trading privileges ("UTP") under Section 12(f) of the Act.[4] As discussed in the original notice, minor changes to Phlx rules are necessary to accommodate such trading, including a revision to the term "Nasdaq/NM securities," and the addition of a reference to handheld orders received from a floor broker on the floor of the Exchange to Phlx Rule 233(b).

In Amendment No. 1, the Exchange proposes to amend the application of the odd-lot rules to Nasdaq/NM securities and to add provisions relating to the allocation of Nasdaq/NM securities to specialist on a pilot basis. The text of the proposed rule change, including Amendment No. 1, is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement Regarding the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1992, the Commission approved on a pilot basis a Phlx proposal to permit the trading of Nasdaq/NM securities on the Exchange pursuant to UTP ("Phlx OTC/UTP Pilot Program" or "Pilot").[5] The Phlx began trading Nasdaq/NM securities pursuant to the Pilot in February 1993. The effectiveness of the Pilot was extended four times[6] before the Phlx determined to cease trading such securities pending reorganization of its OTC/UTP program as a whole. The Phlx OTC/UTP Pilot Program expired on February 12, 1996. The Phlx intends to reinstate OTC/UTP trading in Nasdaq/NM securities in the near future, and, thus, seeks reinstatement of the Phlx OTC/UTP Pilot Program. Such reinstatement requires no changes to Phlx rules except as stated herein, since various rules implicated by OTC/UTP trading were amended in connection with the original Phlx OTC/UTP Pilot Program.

Reinstatement of the Phlx OTC/UTP Pilot Program will enable the trading of Nasdaq/NM securities Phlx specialists. The Phlx proposes to reinstate the Pilot for a six-month period.[7] Initially, Phlx specialists will be provided with quotation generation capability, as well as the ability to manually enter and execute orders through a separate system designed by a third party vendor, TradinGear, separate from the Exchange's PACE System.[8]

In this regard, the Phlx proposes to trade these securities pursuant to its equity rules, where applicable. The following series of provisions that continue to appear in Phlx rules specifically reference Nasdaq/NM securities and are outlined more fully below. They include Phlx Rules 102; 105, Supplementary Material .01; 226; 233; 455 and 606.

- Phlx Rule 102: Specifies that all Nasdaq/NM securities transactions must be conducted during the applicable Exchange trading floor hours.
- Phlx Rule 105: Includes language requiring that in the event of unusual market conditions, as determined by the Floor Procedure Committee, quotations in a given issue will not be subject to firmness provided that the Exchange notifies the processor of Nasdaq/NM securities.
- Phlx Rule 226: Incorporates Nasdaq/NM securities into the rule dealing with round-lot orders.
- Phlx Rule 233: Enables the Exchange to trade Nasdaq/NM securities pursuant to UTP.
- Phlx Rule 455: Exempts Nasdaq/NM securities from the short sale rule.
- Phlx Rule 606: Enables access by telephone or any other such access as may be established between the Exchange and the Nasdaq system to the Phlx assigned specialist for any Nasdaq system market maker.

In addition, the Exchange proposes to amend Phlx Rule 225 ("Odd Lot Orders in Nasdaq/NM Securities and Securities for Which the Exchange is the Primary Market") to delete the reference to Nasdaq/NM securities. By deleting this reference, odd-lot orders for Nasdaq/NM securities will be governed by Phlx Rule 227 as amended ("Odd Lot Orders in Securities for Which Another Exchange is the Primary Market and in Nasdaq/NM Securities"), which states specifically, in new paragraph (b), the execution parameters for odd-lot market and limit orders in Nasdaq/NM Securities. According to proposed Phlx Rule 227(b), odd-lot market orders would be executed at a price equal to or better than the best bid disseminated pursuant to SEC Rule 11Ac1–1[9] on a sell order, or the best offer disseminated pursuant to SEC Rule 11Ac1–1[10] on a buy order, which would be in effect at the time the order is presented at the specialist post. Odd-lot limit orders in Nasdaq/NM securities would be executed at the limit price or better when the consolidated best bid or offer disseminated pursuant to SEC Rule 11Ac1–1[11] is at the limit price on a sell or buy order respectively.[12]

Finally, the Exchange proposes to add a new rule, Phlx Rule 516, which will govern the allocation of the Nasdaq/NM securities to specialists. Specifically, the proposed rule would permit the Equity Allocation, Evaluation and Securities Committee ("Committee") to solicit and allocate each Nasdaq/NM security to a specialist on a six-month pilot basis (or such shorter period as determined by the Committee). At the expiration of the pilot period, the Committee would resolicit specialists for the security. During the resolicitation period, the existing specialist would receive a preference in the allocation process.[13] The allocation criteria of Phlx Rule 511(b) would apply to each applicant, however the 90-day evaluation procedure of Phlx Rule 511 would not automatically apply, but could be invoked by the Exchange in its discretion. This provision is intended to coincide with its vendor contract as well as enable the Committee to resolicit

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[4] 15 U.S.C. 78*l*.

[5] *See* Securities Exchange Act Release No. 31672 (December 30, 1992), 58 FR 3054 (January 7, 1993).

[6] Most recently, the Pilot was extended through February 12, 1996. *See* Securities Exchange Act Release No. 36087 (August 10, 1995), 60 FR 42637 (August 16, 1995).

[7] The current number of Nasdaq/NM securities that may be traded on an unlisted trading privileges basis is 1,000 securities. *See* Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999).

[8] PACE is the Exchange's Automated Communication and Execution System. PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions. *See generally* Phlx Rule 229 which includes the ability, if available, to use PACE as an order delivery system for Nasdaq/NM securities.

[9] 17 CFR 240.11Ac1–1.

[10] *Id.*

[11] *Id.*

[12] For a similar rule, *see* Chicago Stock Exchange Article XXXI, Rule 9.

[13] This is similar to an existing Phlx provision respecting foreign currency option specialists who apply to trade their option during a different trading hours segment.

such securities more widely, because this program represents a new business for the Exchange (albeit a re-entry) as well as a new technology platform.

2. Statutory Basis

The Exchange believes that reinstatement of the Phlx OTC/UTP Pilot Program with the above-noted changes is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, including sections 6(b)(5),[14] 11A[15] and 12(f)[16] of the Act. Specifically, the Phlx believes that the proposed rule change, as amended, is consistent with section 6(b)(5)[17] of the Act, because permitting Phlx specialists to trade Nasdaq/NM securities should promote just and equitable principles of trade and facilitate transactions in securities, thereby removing impediments to and perfecting the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.[18]

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1.

[16] 15 U.S.C. 78*l*.

[17] 15 U.S.C. 78f(b)(5).

[18] The Commission notes that the Exchange has requested accelerated approval of Amendment No. 1 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–20 and should be submitted July 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17709 Filed 7–13–01; 8:45 am]

BILLING CODE 8010–01–M

[19] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503

(SSA)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. Chinese Custom Marriage Statement; Statement Regarding Marriage—0960–0086. The information collected on Forms SSA–1344 and SSA–1345 is used to determine whether the spouse/claimant is (or was) legally married to the numberholder for the purpose of paying Social Security Benefits. The respondents are individuals who were married in a Chinese custom marriage.

	SSA–1344	SSA–1345
Number of Respondents	10	10
Frequency of Response	1	1
Average Burden Per Response (in minutes)	14	14
Estimated Annual Burden (in hours)	2.3	2.3

2. State Agency Ticket Assignment Form—0960–NEW. The information collected on this form will be used by SSA's contracted Program Manager (PM) to perform the task of assigning beneficiaries' tickets and monitoring the use of tickets under the Ticket to Work and Self-Sufficiency Program. The State Vocational Rehabilitation (VR) agency answers the questions and the beneficiary reviews the data and if in agreement will sign the form acknowledging their Ticket assignment. The respondents are State VR agencies.

Number of Respondents: 21.

Frequency of Response: 4,048 annually per respondent.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 4,250 hours.

Please note that the Ticket to Work Program is being implemented in stages. The above represents the initial phase of the program with 13 participating states that includes 21 State VR agencies. As the program continues to be phased in, each initial program year will result in a large number of new tickets for the participating State VRs because existing clients will also be brought into the program.

3. Statement for Determining Continuing Eligibility, Supplemental Security Income Payment—0960–0145—Forms SSA–8202–F6 and SSA–8202–OCR–SM. SSA uses form SSA–8202–F6 to conduct low- and middle-error-profile (LEP–MEP) telephone or face-to-face redetermination (RZ) interviews with Supplemental Security Income (SSI) recipients and representative payees. The information collected during the interview is used to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been and are still receiving the correct payment amount. Form SSA–8202–OCR–SM (Optical Character Recognition-Self Mailer) collects information similar to that collected on Form SSA–8202–F6. However it is used exclusively in LEP RZ cases on a 6-year cycle. The respondents are recipients of SSI benefits or their representative payees.

	Respondents	Frequency of response	Average burden per response (in minutes)	Estimated annual burden (in hours)
SSA–8202–F6	920,000	1	18	276,000
SSA–8202–OCR–SM	800,000	1	9	120,000
Total Burden				396,000

4. Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—0960–0416. SSA uses form SSA–8203–BK for high-error-profile (HEP) redeterminations. The information is normally completed in field offices by personal contact (face-to-face or telephone interview) using the automated Modernized SSI Claim System (MSSICS). The paper form is used only when a systems limitation prevents the interview from being completed on MSSICS. When the paper form is used, a tear-off sheet (Pages 7 and 8 of the form) is given to recipients at the conclusion of a face-to-face interview or is mailed to recipients at the completion of the telephone interview. The tear-off includes information about how, what, when, where, and why SSI recipients report when there is a change in income, resources, or living arrangements. The respondents are recipients of title XVI SSI benefits.

Number of Respondents: 920,000.

Frequency of Response: 1.

Average Burden Per Response: 18 minutes.

Estimated Annual Burden: 276,000 hours.

5. Summary of Evidence—0960–0430. The information on Form SSA–887 is used by State Disability Determination Services (DDS) to provide claimants with a list of medical/vocational reports pertaining to their disability. The form will aid claimants in reviewing the evidence in their folders and will be used by hearing officers in preparing for and conducting hearings. The respondents are State DDSs that make disability determinations.

Number of Respondents: 49,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Average Burden: 12,250 hours.

6. Notice Regarding Substitution of Party Upon Death of Claimant—Reconsideration of Disability Cessation—0960–0351. The Social Security Administration uses the form SSA–770 to obtain information from substitute parties regarding their intention to pursue the appeals process for an individual who has died. The respondents are such parties.

Number of Respondents: 1,200.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 200 hours.

Dated: July 9, 2001.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 01–17539 Filed 7–13–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3680]

Notice of Meetings; United States International Telecommunication Advisory Committee Telecommunication Development Sector (ITAC–D)

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union. Meetings will be held at the Department of State, 2201 "C" Street, NW., Washington, DC.

The IATC–D will meet from 10 a.m. to noon on July 18, and August 1, 2001 to prepare for the September meeting of ITU–D Study Groups 1 and 2. Both meetings will be in Room 2533A in Main State.

Members of the general public may attend these meetings. Directions to meeting locations and actual room assignments may be determined by calling the Secretariat at 202 647–0965/2592. For meetings held at the Department of State: entrance to the building is controlled; people intending to attend any of the ITAC meetings should send an e-mail to samuelsrn@state.gov no later than 48 hours before the meeting for preclearance. This e-mail should display the name of the meeting and date of meeting, your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: U.S. driver's license, passport, U.S. Government identification card. Enter the Department of State from the C Street Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Attendees may join in the discussions, subject to the instructions of the Chair. Admission of members will be limited to seating available.

Dated: July 2, 2001.

Doreen McGirr,

Director, Telecommunication Development Sector, U.S. Department of State.

[FR Doc. 01–17835 Filed 7–13–01; 8:45 am]

BILLING CODE 4710–45–M

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1532).

TIME AND DATE: 9 a.m. (EDT), July 18, 2001.

PLACE: Bristol, Tennessee, Electric System Meeting Room.

STATUS: Open.

Agenda

Approval of minutes of meeting held on June 11, 2001.

New Business

B—Purchase Award

B1. Contract with Primacy Relocation, LLC, for relocation services.

C—Energy

C1. Supplement to Contract No. 00BYS–254372–000 with Henwood Energy Services, Inc., to increase the contract expenditure ceiling for consulting services.

E—Real Property Transactions

E1. Sale of noncommercial, nonexclusive permanent easements to Kevin and Karen Millikan (Tract No. XTELR–220RE) and Merle and Marilyn Isaacs (Tract No. XTELR–222RE) for construction and maintenance of recreational water-use facilities affecting approximately 0.19 acre of Tellico Reservoir shoreline in Loudon and Monroe Counties, Tennessee.

E2. Grant of a 30-year term easement to Campbell County, Tennessee, for a county park affecting approximately 35 acres of land on Norris Reservoir in Campbell County, Tennessee (Tract No. XTNR–114RE).

E3. Grant of a 30-year term easement to the City of Knoxville, Tennessee, for a public park affecting approximately 30.1 acres of land on Fort Loudoun Reservoir in Knox County, Tennessee (Tract No. XTFL–126RE).

E4. Approval of Cherokee Reservoir Land Management Plan—Jefferson, Hamblen, Grainger, and Hawkins Counties, Tennessee.

F—Other

F1. Approval to file condemnation cases to acquire easement rights-of-way and right to enter upon land to survey for transmission lines. The affected tracts are West Ringgold-Center Point transmission line in Whitfield County, Georgia, and Aspen Grove-Bingham transmission line in Williamson County, Tennessee.

Information Item

1. Approval of the transfer to the State of Tennessee of approximately 12,800 acres of land acquired for the Columbia Dam Project and of various easements.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000.

Dated: July 11, 2001.

Charles L. Young,

Assistant General Counsel, and Assistant Secretary.

[FR Doc. 01–17865 Filed 7–12–01; 2:37 pm]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–10067]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on Prevention Through People (PTP) will meet to discuss the progress and development of its risk guide for the chemical transportation industry. This meeting will be open to the public.

DATES: The Subcommittee will meet on Monday, August 6, 2001, from 12:30 p.m. to 4 p.m. and on Tuesday, August 7, 2001, from 8:30 a.m. to 4 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before July 25, 2001. Requests to have a copy of your material distributed to each member of the Subcommittee should reach the Coast Guard on or before July 25, 2001.

ADDRESSES: The Subcommittee will meet at the American Bureau of Shipping (ABS) Offices, 16855 Northchase Drive, Houston, Texas. Send written material and requests to make oral presentations to Lieutenant Greg Herold, Coast Guard Technical Representative for the Subcommittee, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Gregory F. Herold, Deputy Assistant to the Executive Director of CTAC, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda of the Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on PTP includes the following:

(1) Introduction of Subcommittee members.

(2) Brief overview of Subcommittee's past work and review of the chemical transportation industry risk guide.

(3) Review and discussion of case studies to measure and incorporate into the risk guide.

(4) Development of future Subcommittee activities.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. All attendees at the meeting are encouraged to fully review the Subcommittee's task statement prior to the meeting. Copies of the Subcommittee's task statement can be obtained from Lieutenant Gregory F. Herold, telephone 202–267–1217, fax 202–267–4570. It is also available from the CTAC Internet Website at: *www.uscg.mil/hq/g-m/advisory/ctac.* At the discretion of the Subcommittee Chair, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Coast Guard Technical Representative to the Subcommittee and submit written material on or before July 25, 2001. If you would like a copy of your material distributed to each member of the Subcommittee in advance of a meeting, please submit 25 copies to the Coast Guard Technical Representative to the Subcommittee no later than July 25, 2001.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the Deputy Assistant to the Executive Director of CTAC as soon as possible.

Dated: July 9, 2001.

Howard L. Hime,

Director of Standards (Acting), Marine Safety and Environmental Protection.

[FR Doc. 01–17725 Filed 7–13–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Aircraft Certification Procedures Issues Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss Aircraft Certification Procedures issues.

DATES: The meeting will be held on July 20, 2001, from 9 a.m. to 11 a.m. Arrange for oral presentations by July 16, 2001.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave. SW., room 827, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, FAA, Office of Rulemaking (ARM–205), 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7653, fax: (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on July 20, 2001, from 9 a.m. to 11 a.m. at the Federal Aviation Administration, 800 Independence Ave. SW., room 827, Washington, DC. The agenda will include:

1. Opening Remarks.
2. Committee Administration.
3. A status report on the FAA submitted rulemaking projects for "Establishment of Organization Designation Authorization (ODA) Procedures" and "Production Certification and Parts Manufacturing".
4. A status report on the Parts and Production Certification Working Groups tasking.
5. Future Meetings.

Attendance is open to the interested public, but will be limited to the space available. The FAA will arrange teleconference capability for individuals wishing to participate by teleconference if we receive notification before July 16, 2001. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

The public must make arrangements by July 16, 2001, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director, or by bringing the copies to the meeting. Public statements will only be considered if time permits. In addition, sign an oral interpretation, as well as an assistive listening device, can be made available at the meeting, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on July 10, 2001.

Brian Yañez,

Assistant Executive Director for Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–17713 Filed 7–11–01; 3:48 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2001–10120]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on April 20, 2001.

DATES: Comments must be submitted before August 15, 2001. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION: *Title:* 49 CFR part 611 Major Capital Investment Projects

Abstract: On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178) was enacted. Section 3009(e)(5) of TEA–21 requires FTA to issue regulations on the manner in which candidate projects for capital investment grants and loans for new fixed guideway systems and extensions to existing systems ("new starts") will be evaluated and rated for purposes of the FTA Capital Investment Grants and Loans program for new starts under 49 U.S.C. Section 5309.

The Notice of Proposed Rulemaking (NPRM) for this regulation was issued on April 7, 1999, (64 FR 17062). The docket was open for public comment through July 6, 1999, though late-filed comments were accepted through July 19, 1999. Comments were received from a total of 41 individuals and organizations. During the comment period, FTA held three additional public outreach workshops to solicit comments on the proposed rule: one in Toronto, Ontario, on May 24, 1999, in conjunction with the 1999 American Public Transit Association's Commuter Rail/Rapid Transit Conference; one in Oakland, California, on June 3, 1999; and one in in Washington, DC, on June 8, 1999. Notes from these workshops have been placed in the docket for this rule (Docket No. FTA–99–5474–48).

The Final Rule was issued on December 7, 2000, (65 FR 76864) noting that a separate burden analysis would be published for public comment and that FTA would seek a control number from the Office of Management and Budget (OMB) authorizing FTA to collect the required information. This notice serves that purpose. It is important to note that while the new starts project evaluation and rating regulation is new, the requirements for project evaluation and data collection for the new starts program are not. FTA's requirement to evaluate proposed new starts against a prescribed set of statutory criteria is longstanding. The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) established in law a set of criteria that proposed projects had to meet in order to be eligible for federal funding. The requirement for summary project ratings has been in place since 1998.

In general, the information used by FTA for new starts project evaluation and rating purposes should arise as a part of the normal planning process. Prior to this Rule, FTA collected project evaluation information from project sponsors under a Paperwork Reduction Act request (OMB No. 2132–0529) approved under the joint FTA/FHWA planning regulations. However, as the project evaluation criteria have expanded under TEA–21, it has become apparent that some information required

under this Rule may be beyond the scope of ordinary planning activities. Further, while FTA has long required the reporting of information for project evaluations, there has never been a regulatory requirement until TEA–21. Finally, this Rule adds a new requirement for before-and-after data collection for purposes of Government Performance and Results Act reporting as a condition of obtaining a Full Funding Grant Agreement (FFGA). Therefore, FTA is submitting a separate Paperwork Reduction Act request.

It is also important to note that since this is a new regulatory requirement, the burden estimates include all data collection efforts required by this Rule, regardless of whether or not the same data would have been required under the previous, policy statement-driven process. Thus, the total burden estimate includes items that would have been required whether this regulation had been issued or not. These estimates were also provided in the preamble to the Final Rule dated December 7, 2000.

Estimated Total Annual Burden: 47,200 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the collected information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: July 11, 2001.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 01–17727 Filed 7–13–01; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–00–7740 (PD–25(R))]

Missouri Prohibition Against Recontainerization of Hazardous Waste at a Transfer Facility

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

Applicant: The Kiesel Company (Kiesel).

Local Laws Affected: 10 Missouri Code of State Regulations (CSR) 25–6.263(2)(A).10.H.

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

Mode Affected: Rail and highway.

SUMMARY: Federal hazardous material transportation law preempts Missouri's prohibition against the recontainerization of hazardous wastes at a transfer station, in 10 CSR 25–6.263(2)(A).10.H, because that prohibition is not substantively the same as provisions in the HMR on the packing, repacking, and handling of hazardous material.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

In this determination, RSPA considers whether Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts the prohibition against recontainerization of hazardous waste in the following regulation of the Missouri Department of Natural Resources (DNR) at 10 CSR 25–6.263(2)(A).10.H:

> Recontainerization of hazardous waste at a transfer facility is prohibited; however, hazardous waste containers may be overpacked to contain leaking or to safeguard against potential leaking. When containers are overpacked, the transporter shall affix labels to the overpack container, which are identical to the labels on the original shipping container; * * *.

In a notice published in the **Federal Register** on August 14, 2000, RSPA invited interested parties to submit comments on Kiesel's application for a determination that this regulation is preempted. 65 FR 49633. In its application, Kiesel stated that it is a licensed hazardous waste transporter and wanted to off-load hazardous wastes from rail cars to trucks at a rail siding at its facility located within the City of St. Louis, Missouri, for further transportation to a licensed disposal site in Illinois. Kiesel stated that the transfer from rail car to motor vehicle would constitute a prohibited "recontainerization" and that RSPA had found "an identical regulation" preempted in PD–12(R), New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Waste Incidental to Transportation, 60 FR 62527 (Dec. 6, 1995), decision on petition for reconsideration, 62 FR 15970 (Apr. 3, 1997), petition for judicial review dismissed, *New York* v. *U.S. Dep't of Transportation*, 37 F. Supp. 2d 152 (N.D.N.Y. 1999).

Following publication of the August 14, 2000 notice, it appears that Kiesel and DNR exchanged correspondence regarding the prohibition in 10 CSR 25–6.263(2)(A).10.H, because (1) Kiesel first clarified that it had not been advised by DNR that transferring hazardous waste from a rail car to motor vehicles would constitute a prohibited recontainerization; (2) DNR then stated that it had informed Kiesel that "the off-loading of hazardous waste from rail cars onto trucks is not prohibited by 10 CSR 25–6.263(1)"; and (3) Kiesel purported to withdraw its application. In response to the August 14, 2000 notice, RSPA also received comments from National Tank Truck Carriers, Inc. (NTTC) and Safco Safe Transport supporting a finding that Missouri's prohibition is preempted.

In a further public notice published in the **Federal Register** on December 11, 2000, RSPA explained that it does not have any procedure for withdrawing an application for a preemption determination. 65 FR 77417. RSPA stated that, in the past, it has dismissed proceedings when a local requirement never went into effect or was repealed after the application was filed, but an applicant does not have the option to end a preemption determination proceeding by simply withdrawing its application when the non-Federal requirement on transporting hazardous materials remains in effect. As discussed in the December 11, 2000 notice (65 FR at 77418–19),

> Unlike a lawsuit, these administrative proceedings are initiated only when RSPA

publishes a notice in the **Federal Register** inviting interested persons to comment on an application. 49 U.S.C. 5125(d)(1), 49 CFR 107.203(d), 107.205(b). RSPA may dismiss an application without prejudice and return it to the applicant without publishing a notice in the **Federal Register**. *See* 49 CFR 107.207(b). Moreover, there is no "default" suffered in a preemption proceeding if the State, locality, or Indian tribe does not submit comments on an application. *See, e.g.*, PD–5(R), Massachusetts Requirement for an Audible Back-up Alarm on Bulk Tank Carriers Used to Deliver Flammable Material, 58 FR 62702 (Nov. 29, 1993), and IR–27, Colorado Regulations on Transportation of Radioactive Materials, 54 FR 16326 (Apr. 21, 1989), *aff'd, Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

Any interested person may submit comments on an application for a preemption determination, unlike a lawsuit where the proceedings are limited to the named parties. 49 CFR 107.205(c). And RSPA may go beyond the application and comments to "initiate an investigation of any statements in an application and utilize * * * any relevant facts obtained by that investigation" and "may consider any other source of information." 49 CFR 107.207(a). Following issuance of a determination, any "aggrieved" person may file a petition for reconsideration, 49 CFR 107.211(a), and any party to the proceeding may "bring an action for judicial review." 49 U.S.C. 5125(f), 49 CFR 107.213.

These differences from a lawsuit are consistent with the very purpose for issuing preemption determinations. RSPA believes that the value in deciding whether a non-Federal requirement is inconsistent with (or preempted by) Federal hazardous material transportation law "goes beyond the resolution of an individual controversy. At a time when hazardous materials transportation is receiving a great deal of public attention, the forum provides [RSPA] an opportunity to express its views on the proper role of State and local vis-a-vis Federal regulatory activity in this area." IR–2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas, etc., decision on appeal, 45 FR 71881, 71882 (Oct. 30, 1980).

Therefore, RSPA reopened the period for interested parties to comment on Kiesel's application and specifically invited comments on the meaning of the Missouri prohibition, the manner in which that prohibition is applied and enforced, and whether that prohibition precludes the transfer of hazardous wastes from a rail car to a motor vehicle and is preempted because it is not substantively the same as requirements in the HMR on packing, repacking, and handling. The only further comments were submitted by DNR.

II. Federal Preemption

RSPA explained in its August 14, 2000 notice that 49 U.S.C. 5125 contains several preemption provisions that are relevant to this proceeding. 65 FR at 49634–35. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under § 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if

(1) complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter or a regulation prescribed under this chapter is not possible; or

(2) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the "dual compliance" and "obstacle" criteria that RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93–633 § 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not "substantively the same as" a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be "substantively the same," the non-Federal requirement must conform "in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted." 49 CFR 107.202(d).

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 § 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA "without substantive change," at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745.)

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision, or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to RSPA to make determinations of preemption, except for those that concern highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.53(b).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. *See* 49 C.F.R.

107.209. A short period of time is allowed for filing of petitions for reconsideration. 49 C.F.R. 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is "fair" within the meaning of 49 U.S.C. 5125(g)(1). A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policies set forth in Executive Order No. 13132, entitled "Federalism" (64 FR 43255 (August 10, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

III. Discussion

In its application, Kiesel stated that 10 CSR 25–6.263(2)(A).10.H "prohibits recontainerization" whereas nothing in the HMR or regulations of the U.S. Environmental Protection Agency (EPA) precludes recontainerization of hazardous waste at a transfer facility. Kiesel also stated that, in PD–12(R), RSPA had found that 49 U.S.C. 5125(b)(1)(B) preempts "an identical regulation" of the New York Department of Environmental Conservation because "the prohibition of recontainerization 'applies to the "repacking" and "handling" of hazardous materials and transportation and is not substantively the same as the requirements in the HMR.'" In further comments, Kiesel stated that "the plain language" of DNR's regulation prohibits "the practice of transferring product from railcar to trucks or trailers for further transportation."

NTTC stated that Missouri "has imposed a prohibition on a transportation-related activity which is (not only) permitted by Federal regulations, but is necessary to the safe and prudent handling of environmentally sensitive products." NTTC considered that Missouri's regulation prohibits "the transfer of product from one container to another" and stated that "[p]roduct transfer (in contemplation of subsequent transportation) is a common 'unloading/loading' activity, particularly in intermodal transportation" which is encompassed by Federal hazardous material transportation law and permitted by the HMR. NTTC found "an inherent conflict within the state's regulatory structure," because Missouri has adopted the HMR as State law. *See* 10 CSR 25–6.263(1), Mo. Rev. Stat. 307.177.1.

In its initial submission in this proceeding, DNR stated that it had informed Kiesel that its regulations did not prohibit "the off-loading of hazardous wastes from rail cars onto trucks," and that "nothing in Missouri hazardous waste regulations is intended to impede intermodal transportation activities." In its further comments, DNR stated that 10 CSR 25–6.263(2)(A).10.H

> is a general prohibition on the re-containerization of hazardous waste at transfer facilities; however, the Department has interpreted the regulation to prohibit blending separate contents of containers. The Department has not interpreted the regulations to mean a transporter may not transfer hazardous waste from a railcar to a truck or similar container (intermodal transfer).

With this submission, DNR included a copy of its October 13, 2000 letter to Kiesel stating that "misunderstanding [of its regulation] is not uncommon" and that it "means to control the blending of different materials into a common container, perhaps leading to some type of adverse reaction, similar in scope to the United States Department of Transportation's prohibition of mixing incompatibles." DNR also advised that it is in the process of amending its regulations and is proposing to replace the first sentence of 10 CSR 25–6.263(2)(A) to read: "The contents of separate containers of hazardous waste may not be combined at a transfer facility."

DNR also stated that its hazardous waste regulations are authorized by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921 *et seq.*, and argued that, under RCRA, the "state may enact regulations and statutes that are stricter than the RCRA" because 49 U.S.C. 5125(a) and (b) do not preempt non-Federal requirements that are "authorized by another law of the United States." DNR stated that the decision in *New York* v. *U.S. Dep't of Transportation* "is a district court case and thus is not precedent."

In PD–12(R), RSPA discussed industry practices of transferring hazardous wastes from one container to another during transportation. It noted that EPA had recognized this practice in a 1980 rule amending its hazardous waste regulations:

> Many transporters own or operate transfer facilities (sometimes called "break-bulk" facilities) as part of their transportation activities. At these facilities, for example, shipments may be consolidated into larger units or shipments may be transferred to different vehicles for redirecting or rerouting.

Interim final amendments and request for comments, Hazardous Waste Management System, etc., 45 FR 86966 (Dec. 31, 1980), quoted at 60 FR at 62528. RSPA also referred to comments that consolidation occurs in various forms. NCH Corporation stated that some transporters pick up hazardous waste in drums from relatively small generators and then consolidate them

> into loads that are large enough to be accepted by the permitted recycler or waste treatment facility. Transferring the drummed waste upon delivery to the transfer facility into a tanker truck * * * eliminates the labor-intensive and wasteful unloading, reloading, and management of multiple drums of waste that would otherwise be necessary.

60 FR at 62528. The Association of American Railroads stated that

> It is a common practice for hazardous waste to be transferred from truck to rail. For example, contaminated soil has been trucked from hazardous waste sites to rail sidings for rail delivery to treatment or disposal facilities. Hazardous waste liquids are trucked to sidings for pumping into tank cars and subsequent delivery to consignees for burying or recycling.

Id. at 62528–29.

In addition, RSPA explained that both the HMR and EPA's regulations place limitations on, but do not completely prohibit, transferring hazardous wastes from one container to another. As summarized in the August 14, 2000 notice in this proceeding, "Specific provisions in the HMR prohibit:

—mixing two materials in the same packaging or container when it "is likely to cause a dangerous evolution of heat, or flammable or poisonous gases or vapors, or to produce corrosive materials." 49 CFR 173.21(e).

—loading two or more materials in the same cargo tank motor vehicle "if, as a result of any mixture of the materials, an unsafe condition would occur, such as an explosion, fire, excessive increase in pressure or heat, or the release of toxic vapors." 49 CFR 173.33(a)(2).

—loading certain flammable materials from tank trucks or drums into tank cars on the carrier's property. 49 CFR 173.10(e).

—transferring a Class 3 (flammable liquid) material between containers or vehicles "on any public highway, street, or road, except in case of emergency." 49 CFR 177.856(d).

65 FR at 49834. RSPA also noted that:

> [T]he HMR contain segregation requirements, applicable to rail and motor carriers, limiting which hazardous materials may be "loaded, transported, or stored together." 49 CFR 174.81(f), 177.848(d). EPA's regulations provide that a hazardous waste transporter must also follow the requirements applicable to generators if it "[m]ixes hazardous wastes of different DOT shipping descriptions by placing them into a single container." 40 CFR 263.10(c).

Id. See also 60 FR at 62534, 62529.

In PD–12(R), RSPA found that, "[b]y its very terms," New York's prohibition against the "consolidation or transfer of [hazardous wastes] either by repackaging in, mixing, or pumping from one container or transport vehicle into another" involved "repacking" and was not substantively the same as requirements in the HMR for "the packing, repacking, [and] handling * * * of hazardous material." 60 FR at 62536. The prohibition against "recontainerization" in 10 CSR 25–6.263(2)(A).10.H similarly involves "repacking" and is not substantively the same as requirements in the HMR for "the packing, repacking, [and] handling * * * of hazardous material." 49 U.S.C. 5125(b)(1)(B).

DNR's claim that it interprets its "recontainerization" prohibition "to control the blending of different materials into a common container" is inconsistent with the plain words of its regulation and, in light of the Federal regulations adopted as State requirements, unnecessary. In PD–12(R), RSPA discussed that New York's

> prohibition against repackaging hazardous wastes prevents transporters from transferring the contents of many drums into a cargo tank, from transferring the contents of several cargo tanks into a tank car (or from dump trucks into a gondola or hopper car), and from transferring the contents from rail cars into trucks.

60 FR at 62536. DNR's interpretation that it allows intermodal transfers "from a rail car to a cargo tank" accepts only one of these forms of transfer, and seems to leave the remainder prohibited. Apparently, DNR would allow only the transfer from a larger container to smaller ones (railcar to trucks) and not consolidation of the contents of smaller containers into a larger one (drums to a cargo tank or cargo tanks to a rail car), on the theory that there is the possibility of "blending of different materials into a common contalner."

Because Missouri has adopted the HMR as State law (*see* 10 CSR 25–6.263(1)), it is already a violation of separate State requirements to "blend[] different materials into a common container" whenever there would be "a dangerous evolution," or "an unsafe condition" in a cargo tank motor vehicle. 49 CFR 173.21(e), 173.33(a)(2). Missouri has also adopted EPA's "Standards Applicable to Transporters of Hazardous Waste" in 40 CFR Part 263 (*see* 10 CSR 25–6.263(1)), making a hazardous waste generator subject to all requirements applicable to a generator if it mixes hazardous wastes of different DOT shipping descriptions. 40 CFR 263.10(c).

In PD–12(R), RSPA rejected arguments that New York's consolidation prohibition was "consistent with and complimentary to" the HMR, or a regulation on "management activities" at a transfer facility. 60 FR at 62535. RSPA also discussed at length and rejected the argument that RCRA authorized New York to adopt additional requirements that are "more stringent" than EPA's regulations, under 42 U.S.C. 6929. *Id.* at 62532–34.

As RSPA noted, this issue had been raised, without success, several times before. *See* PD–1(R), Maryland, Massachusetts, and Pennsylvania Bonding Requirements, 57 FR 58848, 58854–55 (Dec. 11, 1992), decision on petition for reconsideration, 58 FR 32418, 32420 (June 9, 1993), reversed, 93 F.3d 890 (D.C. Cir. 1996); PD–2(R), Illinois Environmental Protection Agency's Uniform Hazardous Waste Manifest, 58 FR 11176, 11183 (Feb. 23, 1993); and PD–7(R), Maryland Certification Requirements for Transporters of Oil or Controlled Hazardous Substances, 59 FR 28913, 28919–20 (June 3, 1994).

In all of these decisions and PD–12(R), RSPA found "no basis for the position * * * that any State can avoid preemption of its hazardous waste requirements simply by obtaining authorization under RCRA." 60 FR at 62534. RSPA discussed the requirement in RCRA (42 U.S.C. 6923) for EPA to consult with DOT and issue regulations on the transportation of hazardous waste that are "consistent with" Federal hazardous material transportation law and the HMR. *Id.* Moreover, Congress also provided that a State program "must be equivalent to the Federal program" under RCRA and "consistent with the Federal or State programs applicable in other States" to be approved by EPA. 42 U.S.C. 6926(b).

Thus, EPA itself has stated that "preemption issues under other Federal laws * * * do not affect the State's RCRA authorization" and "the RCRA authorization decisions provide no basis for shielding state regulations touching upon hazardous materials transport from possible preemption challenges raised under the HMTA." Quoted at 60 FR at 52533.

DNR's argument that RCRA authorizes States to adopt "more stringent" regulations on hazardous waste transportation was also rejected when New York petitioned for review of PD–12(R) in Federal court. In *New York* v. *U.S. Dep't of Transportation*, the court specifically agreed that:

> DOT does have primary jurisdiction over the regulation of the transportation of hazardous waste as hazardous "material" includes that of "waste." *See* 49 CFR § 171.8. * * * EPA is statutorily obligated to coordinate its RCRA regulations applicable to transporters of hazardous waste with DOT regulations applicable to transporters of all hazardous material * * * [and] this general state empowerment [in 42 U.S.C. 6929] must be read in conjunction with the statutory mandate that EPA regulations be consistent with the HMTA. *See* 42 U.S.C. § 6923(b); * * *
>
> Finally, EPA clearly does not decide whether a preemption problem exists under the HMTA when considering an application for state authorization under the RCRA. * * * EPA's authorization of a state RCRA program is not the equivalent of "authoriz[ation] by another law of the United States." Therefore, if the [State] regulation at issue is "about" one of the "covered subjects," then the [State] regulation must be found to be preempted as it is not "authorized" by the RCRA.

37 F. Supp. 2d at 157–58 (footnote omitted).

IV. Ruling

Federal hazardous material transportation law preempts Missouri's prohibition against the recontainerization of hazardous wastes at a transfer station, in 10 CSR 25–6.263(2)(A).10.H, because that prohibition is not substantively the same as provisions in the HMR on the packing, repacking, and handling of hazardous material.

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), any person aggrieved by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register**. Any party to this proceeding may seek review of RSPA's decision "in an appropriate district court of the United States * * * not

later than 60 days after the decision becomes final." 49 U.S.C. 5125(f).

This decision will become RSPA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register**, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, DC on July 11, 2001.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 01–17726 Filed 7–13–01; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34058 (Sub–No. 1)]

Union Pacific Railroad Co.—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Co.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34058 [1] to permit the trackage rights to expire, as they relate to the operations extending from Pasco, WA, to Spokane, WA, on September 4, 2001.

DATES: This exemption is effective on September 15, 2001. Petitions to reopen must be filed by September 5, 2001.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34058 (Sub-No. 1) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Robert T. Opal, Esq., Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1 (800) 877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā to Dā Office Solutions, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1 (800) 877–8339.]

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: July 6, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–17708 Filed 7–13–01; 8:45 am]

BILLING CODE 4915–00–P

[1] On June 18, 2001, UP concurrently filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement (agreement) by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to UP over 136.5 miles of BNSF trackage extending from BNSF milepost 2.7, near Pasco, WA, to BNSF milepost 11.8, near Spokane, WA. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34058 (STB served June 29, 2001). The agreement is scheduled to expire on September 4, 2001. The trackage rights operations under the exemption were scheduled to be consummated on June 26, 2001.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Race and National Origin Identification.

DATES: Written comments should be received on or before September 14, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dennis Snyder, Employment Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8553.

SUPPLEMENTARY INFORMATION:

Title: Race and National Origin Identification.

OMB Number: 1512–0547.

Form Number: ATF F 2931.1.

Abstract: This form when combined with other Bureau tracking forms will allow the Bureau to determine its applicant/employee pool, and thereby, enhance its recruitment plan. It will also allow the Bureau to determine how its diversity/EEO efforts are progressing and to determine adverse impact on the employee selection process.

Current Actions: There are no changes to this information collection and it is only being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 29, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01–17691 Filed 7–13–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC is soliciting comment concerning its information collection titled, "(MA)—Management Official Interlocks—12 CFR 26."

DATES: You should submit written comments by September 14, 2001.

ADDRESSES: You should direct written comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0196, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: (MA)—Management Official Interlocks—12 CFR 26.

OMB Number: 1557–0196.

Description: The OCC is requesting comment on its proposed extension, without change, of the information collection titled, "(MA)-Management Official Interlocks—12 CFR 26."

Under the Interlocks Act, two competing depository institutions generally may not share management officials. However, the OCC has legal authority to implement exemptions to this general prohibition. This information collection is needed to prevent any management official interlock that would result in a monopoly or substantial lessening of competition, and to foster competition between unaffiliated institutions. The OCC uses the information to ensure that a proposed management interlock is permitted under statute, is eligible for an exemption, and does not have an anticompetitive effect. The OCC also uses the information to determine whether it can share a management official with a competing depository institution.

Type of Review: Extension of OMB approval.

Affected Public: Businesses or other for-profit (national banks).

Estimated Number of Respondents: 7.

Estimated Total Annual Responses: 7.

Frequency of Response: On occasion.

Estimated Time per Respondent: 4 hours.

Estimated Total Annual Burden: 29 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 9, 2001.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 01–17656 Filed 7–13–01; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–88–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–88–90 (TD 8530), Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change; Special Rule for Value of a Loss Corporation Under the Jurisdiction of a Court in a Title 11 Case (Section 1.382–9).

DATES: Written comments should be received on or before September 14, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change; Special Rule for Value of a Loss Corporation Under the Jurisdiction of a Court in a Title 11 Case.

OMB Number: 1545–1324.

Regulation Project Number: CO–88–90.

Abstract: This regulation provides guidance on determining the value of a loss corporation following an ownership change to which section 382(1)(6) of the Internal Revenue Code applies. Under Code sections 382 and 383, the value of the loss corporation, together with certain other factors, determines the rate at which certain pre-change tax attributes may be used to offset post-change income and tax liability.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,250.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 813.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 9, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–17722 Filed 7–13–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–99–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–99–91 (TD 8490), Limitations on Corporate Net Operating Loss (Section 1.382–3).

DATES: Written comments should be received on or before September 11, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Corporate Net Operating Loss.

OMB Number: 1545–1345.

Regulation Project Number: CO–99–91.

Abstract: This regulation modifies the application of the segregation rules under Internal Revenue Code section 382 in the case of certain issuances of stock by a loss corporation. The regulation provides exceptions to the segregation rules for certain small issuances of stock and for certain other issuances of stock for cash. The regulation also provides that taxpayers may make an irrevocable election to apply the exceptions retroactively.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 10.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 9, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–17723 Filed 7–13–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program; Availability of 2002 Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains a notice that the IRS has made available the grant application package (Publication 3319) for parties interested in applying for a Low-Income Taxpayer Clinic Grant for the 2002 grant cycle. The IRS will award a total of up to $6,000,000 to qualifying organizations.

DATES: Grant applications for the 2002 grant cycle must be received by the IRS (not postmarked) by August 24, 2001.

ADDRESSES: Send completed grant applications to: Internal Revenue Service, SPEC Hqs, Mail Stop 54 WI, Attn: Grants Administration Office, 401 W. Peachtree St. NW, Atlanta, GA 30308. Copies of the grant application

package (IRS Publication 3319) can be downloaded from the IRS Internet site at: *http://www.irs.gov* or ordered by calling 1–800–829–3676.

FOR FURTHER INFORMATION CONTACT: Carolyn Sanders-Walsh, LITC Program Analyst at 202–283–0769 or Beverly Smith, LITC Program Analyst, at 317–226–6771. (not a toll-free number)

SUPPLEMENTARY INFORMATION:

Background

Section 7526 of the Internal Revenue Code authorizes the IRS, subject to the availability of appropriated funds, to make grants to provide matching funds for the development, expansion, or continuation of qualified low income taxpayer clinics. Section 7526 authorizes the IRS to provide grants to qualified organizations that represent low income taxpayers in controversies with the IRS and/or inform individuals for whom English is a second language of their tax rights and responsibilities.

Selection Criteria

Applications that pass the eligibility screening process will be numerically ranked in each of the areas listed below based on the information contained in their proposed program plan. Each criterion reflects the maximum number of points that may be assigned. In assigning numerical points, the IRS will evaluate the program plan based on how it will assist in accomplishment of the IRS mission and goals and meeting the LITC statutory requirements as stated elsewhere in the application package. Organizations can receive a maximum of 100 points. If you are applying for more than one qualifying activity (i.e. representation, referral, ESL, or combination thereof) each type of program will be evaluated separately. The ranking points will be assigned as follows:

A. Quality of programs offered to assist low income taxpayers or individuals for whom English is a second language, including (Maximum 75 points) —

1. Qualifications of administrators and qualified representatives;
2. The amount of time devoted to the program by clinic staff;
3. Training clinic participants will be provided;
4. Plans for supervising clinic participants;
5. Procedures for ensuring the confidentiality of taxpayer information;
6. Publicity of clinic operations; and
7. The dates and days and hours of clinic operation.

B. Experience in sponsoring a tax clinic where individuals with tax controversies with the IRS were represented; or

Experience in sponsoring a tax clinic where individuals with tax controversies with the IRS were referred; or

Experience in providing a program to inform individuals for whom English is a second language about their rights and responsibilities. (Maximum 10 points)

C. Quality of grant administration and internal accounting procedures. (Maximum 10 points)

D. Number of low-income and ESL taxpayers in geographical area. (Maximum 5 points)

Other Considerations

Please note that the IRS Volunteer Income Tax Assistance (VITA) Program is a separate and distinct program from the LITC grant program. Organizations currently participating in the VITA Program may be eligible to apply for a LITC grant if they meet the criteria and qualifications outlined in the LITC Grant Application Package & Guidelines (Publication 3319). Organizations that seek to operate both VITA and LITC programs must maintain separate and distinct programs to ensure proper cost allocation for LITC grant funds and adherence to both VITA and LITC program rules and regulations. In addition to the foregoing criteria, to foster parity regarding clinic availability and accessibility for taxpayers nationwide, the IRS will consider the geographic area of applicants as part of the decision making process. The IRS will also seek to attain a proper balance of academic and non-profit organizations as well as a proper balance of start-up and existing clinics.

Comments

Interested parties are encouraged to provide comments on the IRS's administration of the grant program on an ongoing basis.

Jim Grimes,

Director, Field Operations, Stakeholder, Partnership, Education and Communications (SPEC), Wage and Investment Division.

[FR Doc. 01–17207 Filed 7–13–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
July 16, 2001

Part II

Department of Housing and Urban Development

24 CFR Part 1000
Indian Housing Block Grant Allocation Formula; Notice of Intent To Establish a Negotiated Rulemaking Committee and Request for Nominations; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4676–N–01]

Indian Housing Block Grant Allocation Formula; Notice of Intent To Establish a NegotiatedRulemaking Committee and Request for Nominations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of intent to establish a Negotiated Rulemaking Committee and request for comments.

SUMMARY: HUD announces its intent to establish a negotiated rulemaking committee for the purpose of negotiating a proposed rule that would revise the allocation formula used under the Indian Housing Block Grant (IHBG) Program. The establishment of the committee will offer Indian tribal governments the opportunity to have input into any changes determined to be necessary to improve the distribution of funds under the IHBG Program. Section 564 of the Negotiated Rulemaking Act of 1990 requires that an agency, prior to the establishment of a negotiated rulemaking committee, publish a document in the **Federal Register** announcing its intent to establish the committee, provide certain information regarding the formation of the committee, and solicit nominations for membership on the committee. The purpose of this document is to implement the requirements of section 564.

DATES: Comment Due Date: August 15, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding the Committee and its proposed members to the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Key, Acting Deputy Assistant Secretary for Native American Programs, Office Public and Indian Housing, Department of Housing and Urban Development, Room 4126, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 401–7914 (this number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 1998 (63 FR 12349), HUD published its final rule implementing the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (referred to as "NAHASDA"). NAHASDA reorganized the system of Federal housing assistance to Native Americans by eliminating several separate HUD programs of assistance and replacing them with a single Indian Housing Block Grant (IHBG) Program. In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide Federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance. As required by NAHASDA, HUD developed the March 12, 1998 final rule with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). The March 12, 1998 final rule created a new 24 CFR part 1000 containing the regulations for the IHBG Program.

Under the IHBG Program, HUD makes assistance available to tribes for Indian housing activities. The amount of assistance made available to each Indian tribe is determined using a formula that was developed as part of the NAHASDA negotiated rulemaking process. A regulatory description of the formula is located in subpart D of 24 CFR part 1000 (§§ 1000.301–1000.340). Generally, the amount of funding for a tribe is the sum of the formula's Need component and the Formula Current Assisted Stock (FCAS) component, subject to a minimum funding amount authorized by § 1000.328. Based on the amount of funding appropriated annually for the IHBG Program, HUD calculates the annual grant for each tribe and conveys this information to Indian tribes. An Indian Housing Plan (IHP) for the tribe is then submitted to HUD. If the IHP is found to be in compliance with statutory and regulatory requirements, the grant is made. In Federal fiscal year 2001, HUD allocated approximately $643.4 million to Indian tribes.

Section 1000.306 of the IHBG Program regulations provide that the allocation formula shall be reviewed within five years after issuance. This 5-year period does not close until March 2003. However, the recently enacted Omnibus Indian Advancement Act (Pub.L. 105–568, approved December 27, 2000) (referred to hereafter as the "Omnibus Act") makes several statutory changes to the IHBG allocation formula that HUD has decided to implement through rulemaking. Accordingly, HUD believes this would be an appropriate time to revisit the IHBG formula and to determine whether any changes, in addition to those mandated by the Omnibus Act, should be made to 24 CFR part 1000, subpart D.

The Omnibus Act made two statutory changes concerning allocations under the IHBG formula. First, section 1003(g) of the Omnibus Act amends section 302(d)(1) of NAHASDA to address the allocation of funds for operation and modernization of housing units developed under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (referred to as the "1937 Act") to tribes with an Indian housing authority that owns or operates fewer than 250 units. Further, section 1003(k)(3) of the Omnibus Act amends section 502(a) of NAHASDA to provide that any housing that was subject to a terminated contract for tenant-based assistance under the 1937 Act shall be treated as a dwelling unit for purposes of section 302(b)(1) of NAHASDA (which establishes the factors for determination of need under the IHBG formula).

II. Negotiated Rulemaking

HUD intends to establish a negotiated rulemaking committee for the purpose of reviewing HUD's regulations for the IHBG formula (24 CFR part 1000, subpart D), and negotiating recommendations for a possible proposed rule modifying the formula. The committee membership will consist of elected officers of tribal governments (or authorized designees of those tribal governments) with a definable stake in the outcome of a proposed rule. The committee would be established, and conduct its work, in accordance with the procedures of the Negotiated Rulemaking Act of 1990.

The basic concept of negotiated rulemaking is to have the agency that is considering drafting a rule bring together representatives of affected interests for face-to-face negotiations. The give-and-take of the negotiation process is expected to foster constructive, creative and acceptable solutions to difficult problems. The establishment of the negotiated rulemaking committee will offer Indian tribal governments the opportunity to have input into any changes determined to be necessary to improve the

distribution of funds under the IHBG formula.

The use of negotiated rulemaking procedures in this matter is consistent with the statutory goal of NAHASDA to respect the rights of Indian self-determination and tribal self-governance. Negotiated rulemaking also conforms to the consultation requirements of Executive Order 13175, entitled "*Consultation and Coordination with Indian Tribal Governments*," issued on November 6, 2000 (the Order was published in the **Federal Register** on November 9, 2000 at 65 FR 67249). Executive Order 13175 requires that Federal agencies establish regular and meaningful collaboration with Indian tribal officials in the development of Federal policies that have tribal implications.

Section 564 of the Negotiated Rulemaking Act of 1990 requires that an agency, prior to the establishment of a negotiated rulemaking committee, publish a notice in the **Federal Register** announcing its intent to establish the committee, provide certain information regarding the formation of the committee, and solicit nominations for selection to the committee. The purpose of this notice is to implement the requirements of section 564.

III. Committee Membership

HUD's goal is to develop a committee whose membership reflects a balanced representation of Indian tribes. NAHASDA acknowledges the government-to-government relationship that exists between the Federal Government and federally-recognized Indian tribes. In furtherance of this fundamental principle, membership on the committee shall be limited to elected officers of tribal governments (or authorized designees of those tribal governments). HUD has determined that a total of 18 tribal representatives will fairly represent the wide range of diverse interests needed. One HUD representative will represent the interests of the Federal Government. Travel and per diem costs will be paid by HUD on an as-needed basis.

Section IV. of this notice establishes a procedure for nominating individuals with the requisite experience and expertise, representing a wide range of interests (including geographically diverse small, medium and large tribes) that are willing and able to work within a consensus framework, on determining the need to revise the IHBG allocation formula. HUD invites interested persons and organizations to submit nominations for members of this committee. HUD will review the nominations submitted for committee membership to ensure that those selected will reflect the diversity of tribes in terms of size, location, and special circumstances. After review of all the nominations, HUD will publish a notice in the **Federal Register** announcing its proposed list of committee members, and soliciting public comment on the proposed membership.

HUD does not believe that each potentially affected tribe must have its own representative. However, HUD must be satisfied that the group as a whole reflects a proper balance and mix of interests. Negotiation sessions will be open to members of the public, so individuals and organizations that are not members of the committee may attend all sessions and communicate informally with members of the committee.

IV. Nominations for Committee Membership

Interested persons and organizations may nominate persons for committee membership by submitting a written nomination to HUD at the address listed in the **ADDRESSES** section of this notice no later than August 15, 2001. Nominations for membership on the committee must include:

1. The name and address of the nominee and a description of the interests such person shall represent;
2. Evidence that the nominee is authorized to represent a tribal government or group of tribal governments related to the interests the person proposes to represent;
3. A written commitment that the nominee shall actively participate in good faith in the development of the rule under consideration; and
4. A written statement indicating how the nominee meets the following five selection criteria:

- The nominee is an elected tribal officer, or is otherwise authorized by the tribal government to act on the tribe's behalf during the negotiated rulemaking sessions;
- The nominee has demonstrated housing experience as a member of the board of commissioners of a housing authority, housing entity, or other tribal organization;
- Selection of the nominee will help to ensure the committee contains an appropriate balance of representatives from small, medium and large Indian tribal governments;
- Selection of the nominee will ensure the geographic diversity of the committee membership; and
- The nominee has demonstrated ability to analyze and extrapolate complex data.

V. Final Committee Membership

After reviewing any comments on this notice and all nominations for membership, HUD will issue a follow-up **Federal Register** notice. That notice will announce HUD's proposed list of negotiated rulemaking committee members, and provide the public with an opportunity to comment on the proposed membership. The notice will also provide interested individuals and organizations with an additional opportunity to submit nominations for committee membership. HUD will announce the final composition of the negotiated rulemaking committee in a **Federal Register** notice.

VI. Tentative Schedule

At this time, HUD's tentative plan is to hold the first committee meeting in [insert approximate dates and locale]. The purpose of the meeting will be to orient members to the negotiated rulemaking process, to establish a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus, and to begin to address the issues. Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter.

Advance notice of committee meetings will be published in the **Federal Register**. Meetings of the negotiated rulemaking committee will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public will be provided the opportunity to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. In the event that the date and time of these meetings are changed, HUD will advise the public through **Federal Register** notice.

VII. Applicability of the Federal Advisory Committee Act (FACA)

The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) (FACA) do not apply to this negotiated rulemaking committee. In accordance with section 204(b) of the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4, approved March 22, 1995), FACA is not applicable to consultations between the Federal government and elected officers of Indian tribal governments (or their designated employees with authority to act on their behalf).

The Office of Management and Budget (OMB) has issued guidelines implementing section 204(b). The OMB

guidelines interpret the exemption broadly to include State, local, or tribal representative with the authority to act on behalf of the State, local, or tribal government, regardless of their actual employment status. As the OMB guidelines provide:

> In accordance with the legislative intent, the exemption should be read broadly to facilitate intergovernmental communications on responsibilities or administration. This exemption applies to meetings between Federal officials and employees and State, local or tribal governments acting through their elected officers, officials, employees, and Washington representatives, at which 'views, information, or advice' are exchanged concerning the implementation of intergovernmental responsibilities or administration, including those that arise explicitly or implicitly under statute, regulation, or Executive Order. The scope of meetings covered by this exemption should be construed broadly to include meetings called for any purpose relating to intergovernmental responsibilities or administration. Such meetings include, but are not limited to, meetings called for the purpose of seeking consensus, exchanging views, information, advice, and/or recommendations; or facilitating any other interaction relating to intergovernmental responsibilities or administration. (OMB Memorandum 95–20 (September 21, 1995), pp. 6–7, published at 60 FR 50651, 50653 (September 29, 1995)).

Dated: July 9, 2001.

Alphonso Jackson,

Deputy Secretary.

[FR Doc. 01–17644 Filed 7–13–01; 8:45 am]

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VOL 66 ISS 136 JL 16 2001 UMI

Federal Register

Monday,
July 16, 2001

Part III

Department of Housing and Urban Development

Notice of Request for Comments on Obstacles to the Participation of Faith-Based and Other Community Organizations; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4685–N–02]

Notice of Request for Comments on Obstacles to the Participation of Faith-Based and Other Community Organizations

AGENCY: Office of the Secretary; Center for Faith-Based and Community Initiatives, HUD.

ACTION: Notice of request for comments.

SUMMARY: This Notice re-opens the comment period inviting interested parties to comment on regulatory, contracting and other programmatic obstacles to the participation of faith-based and other community organizations in HUD's grant funding programs.

DATES: Comment Due Date: August 15, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Loyd LaMois, Center for Faith-Based and Community Initiatives, Room 10286, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone number (202) 708–2404. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–0455. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On June 5, 2001, at 66 FR 30276, HUD published a Notice requesting comments on obstacles to the participation of faith-based and other community organization in HUD's grant funding programs. Because of the high degree of interest in, and response to, that Notice, HUD is re-opening the comment period to provide an additional opportunity for the submission of comments. As a convenience to commenters, the text of the first Notice, slightly revised to focus this request for comments on additional programs, is republished below:

Executive Order 13198, entitled "Agency Responsibilities With Respect to Faith-Based and Community Initiatives" and issued on January 29, 2001, requires, among other actions, certain Executive Departments, including HUD, to inventory current programs in order to identify any existing or perceived impediments "to the participation of faith-based and other community organizations in the delivery of social services by the department, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs." To assist in carrying out this action, HUD is requesting comments that identify specific issues with HUD programs that in any way discourage or inhibit participation of faith-based and community-based groups. Examples might include burdensome application, documentation or reporting requirements, or requirements for a mandatory organizational structure (*e.g.*, 501(c)(3) status). HUD will consider the comments received in conducting its review to determine whether any regulations or procedures may discriminate against religious or local groups' participation in HUD programs.

Under this notice, HUD is requesting that commenters specifically focus on the following programs, which are also identified by their Catalog of Federal Domestic Assistance numbers:

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Housing Choice Vouchers—14.871
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Resident Opportunities for Self-Sufficiency (ROSS)—14.870

Comments not covered by the above specific interest areas are welcome.

For each of these funding programs, HUD especially wants comments to address the following questions:

1. Are there restrictive conditions that constrict the participation of faith-based and community-based organizations?

2. How are restrictions manifested or applied (specifically identify the provision which you believe creates the restrictive condition and explain how it prevents participation by faith-based and community-based organizations. Also, if possible give a specific example):

a. In Departmental regulations;

b. In the eligibility criteria in Notices of Funding Availability (NOFAs);

c. In Requests for Proposals (RFPs);

d. In grant monitoring;

e. In guidance the Department gives its State and local government partners;

f. In contract or grant manuals; and

g. In guidance to grant managers?

3. Are any information collection, submission or monitoring requirements duplicative or unduly burdensome?

In addition, HUD requests that commenters identify any positive program practices or procedures that presently facilitate, or that would increase, the participation of faith-based and other community organizations.

HUD seeks specific information, *e.g.*, the name of the program, the form, etc., where the impediment or the positive practice is found. It will also be helpful if respondents indicate whether they have ever applied (successfully or unsuccessfully) for the program, or otherwise been involved with the program(s).

For comments on the CDBG or HOME programs and the Continuum of Care process, it will help if the comment identifies the jurisdiction that administered the program, *i.e.*, the relevant State, county or municipal government.

HUD also requests that the comments provide the name, size, and location of the nonprofit, faith-based, or other organization submitting the comments, and identify a contact person to permit HUD to follow-up on the concerns and issues raised.

Dated: July 10, 2001.

Robin McDonald,

Director, Center for Faith-Based and Community Initiatives.

[FR Doc. 01–17645 Filed 7–13–01; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S. 657/P.L. 107–19

To authorize funding for the National 4-H Program Centennial Initiative. (July 10, 2001; 115 Stat. 153)

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

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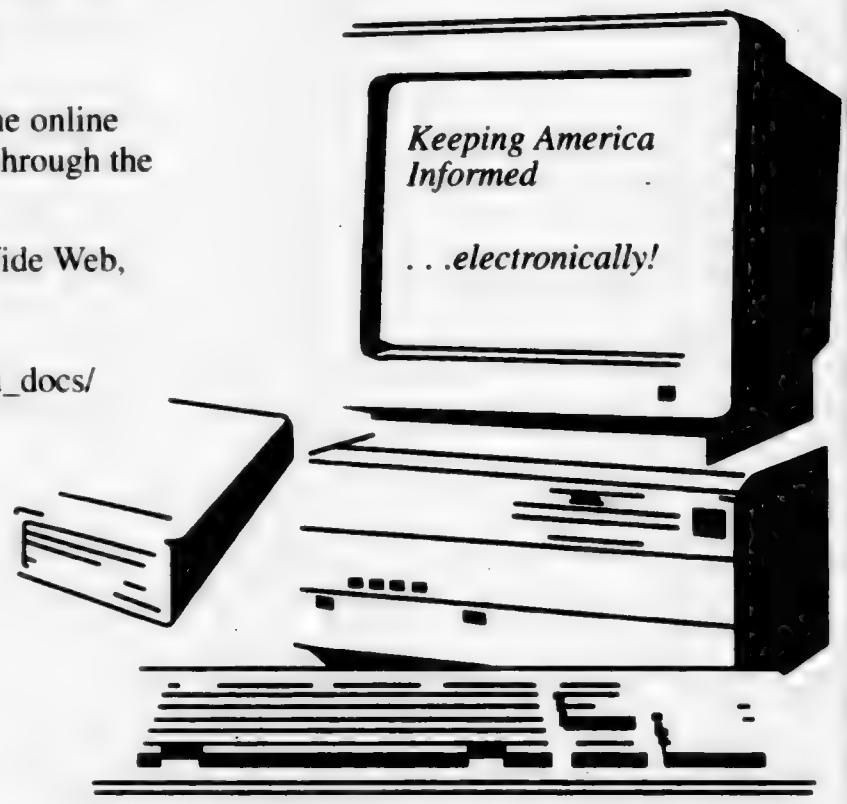

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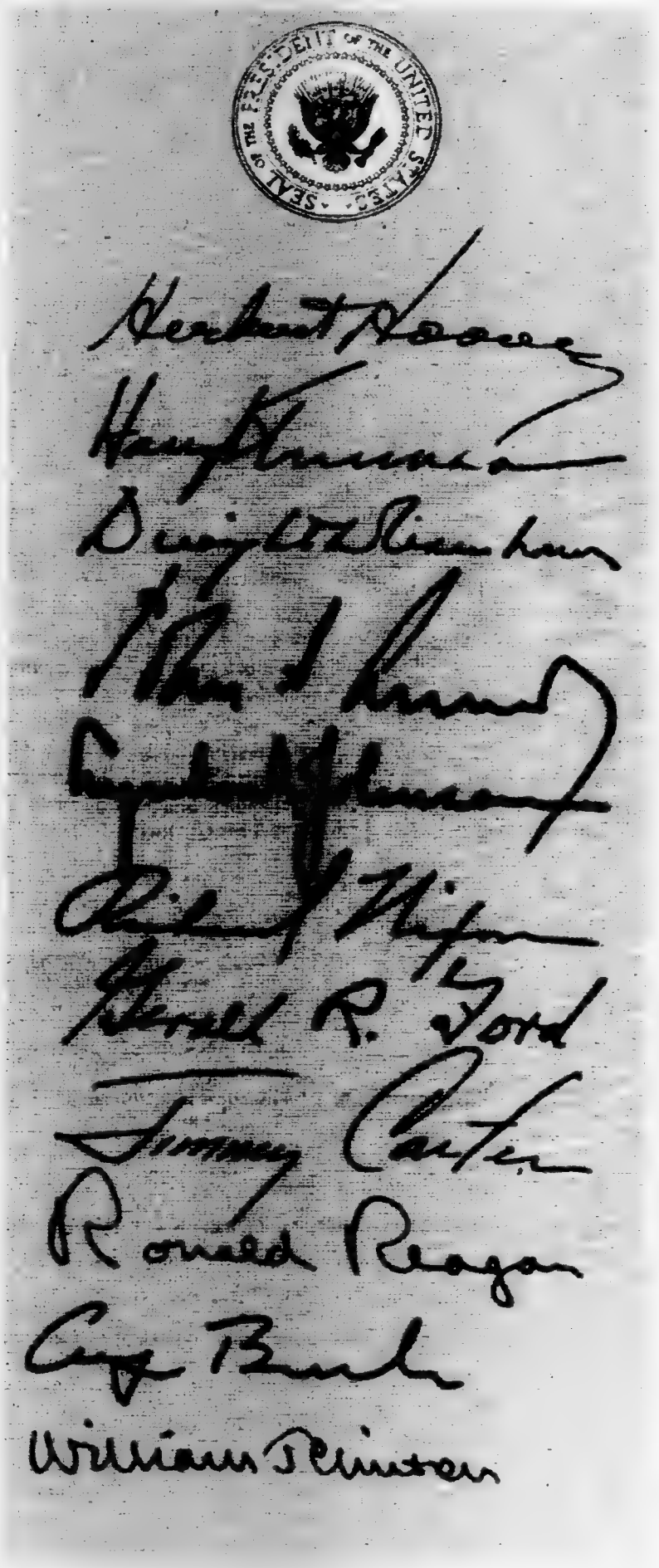

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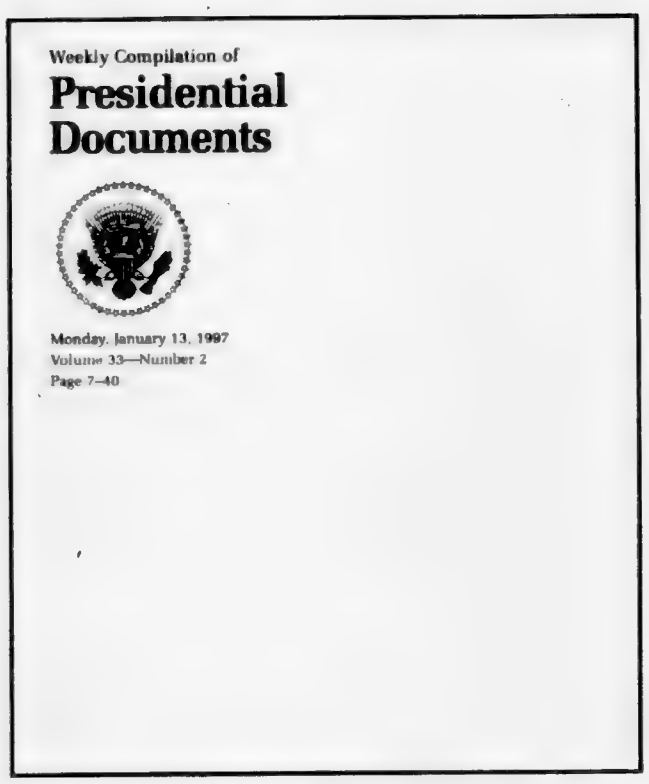

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Presidential Documents

Proclamation 7455 of July 12, 2001

Captive Nations Week, 2001

By the President of the United States of America

A Proclamation

The 21st century must become the "Century of Democracy." Democracy and freedom have taken root across the globe, and the United States will continue to stand for greater consolidation of pluralism and religious freedom, wider access to information, and respect for human rights and for the rule of law. Our Nation and many of our allies share this vision for the world. In the words of President Ronald Reagan, "For the sake of peace and justice, let us move toward a world in which all people are at last free to determine their own destiny."

During the 20th century, dictators, monarchs, and colonialism gave way to democracy through ballot boxes, pressure from citizens, and negotiated settlements to conflicts. However, freedom and liberty remained out of reach for many. In 1959, the Congress promulgated a Joint Resolution authorizing and requesting the President to declare the third week of July as Captive Nations Week and to continue this annual statement "until such time as freedom and independence shall have been achieved for all the captive nations of the world."

Worldwide, many nations have successfully made transitions to democracy since President Eisenhower signed the Captive Nations Resolution. These democracies, whether nascent or consolidated, are found in areas that the great General and 34th President could have barely imagined would find freedom before the 20th century closed.

In spite of the proliferation of democracies over the past century, many people across the globe are held captive by their governments. More than a decade after the Berlin Wall fell, more than 2 billion people still live under authoritarian regimes. America must remain vigilant in our support of those living under authoritarianism. There remain people in Asia, the Americas, Europe, the Middle East, Africa, and Central Asia who do not enjoy the right to choose their own governments and to hold those governments accountable.

Americans and the 3 billion others across the globe living in democracies desire the same freedoms for the remaining 42 percent of the world's population who live without them. But as long as governments like those in Afghanistan, Burma, Cuba, Iraq, and Sudan exist, freedom is not accessible to all. Greater access to robust marketplaces of ideas, as well as freedom of worship and expression, will empower those living in closed societies. Strong and transparent judicial systems and respect for human rights and the rule of law also serve as necessary foundations for democracy.

To promote the development of democratic practices worldwide, I reaffirm America's support for freedom, justice, and pluralism. I have asked my Administration to examine our programs to support democracy and human rights movements closely and to ensure that these programs advance American policy. In addition, I want to make certain that our annual State Department human rights, trafficking in persons, and religious freedom reports are integrated into American foreign policy.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim July 15–21, 2001, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities and to reaffirm their devotion to the aspirations of all peoples for liberty, justice, and self-determination.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of July, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.

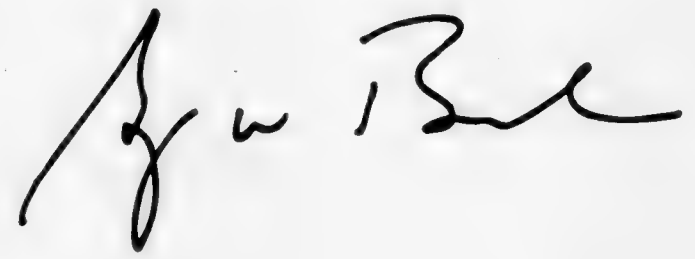

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Memorandum of July 11, 2001

Implementing Government Reform

Memorandum for the Heads of Executive Departments and Agencies

Throughout the campaign and in my Budget, I have called for "active, but limited" Government: one that empowers States, cities, and citizens to make decisions; ensures results through accountability; and promotes innovation through competition. Thus, if reform is to help the Federal Government adapt to a rapidly changing world, its primary objectives must be a Government that is:

- Citizen-centered—not bureaucracy centered;
- Results-oriented—not process-oriented; and
- Market-based—actively promoting, not stifling, innovation and competition.

In order to establish and implement Government reform throughout the executive branch, I hereby direct the following:

1. *Establish Chief Operating Officers.*

Each agency head shall designate a Chief Operating Officer, who shall be the senior official with agency-wide authority on behalf of the Secretary or agency head. The Chief Operating Officer, the equivalent of the Deputy Secretary, shall report directly to the agency head and shall be responsible for:

(a) implementing the President's and agency head's goals and the agency's mission;
(b) providing overall organization management to improve agency performance;
(c) assisting the agency head in promoting Government reform, developing strategic plans, and measuring results; and
(d) overseeing agency-specific efforts to integrate performance and budgeting, expand competitive sourcing, strengthen their workforce, improve financial management, advance e-government, apply information policy and technology policies, and other Government-wide management reforms.

2. *Implement Additional Agency Reforms.*

Each agency head shall identify and implement additional changes within the agency that will promote the principles of government reform.

3. *Establishment of President's Management Council.*

In order to advise and assist the President in ensuring that Government reform is implemented throughout the executive branch, I hereby establish the President's Management Council ("Council"). The Council shall comprise:

(a) The Deputy Director, Office of Management and Budget;
(b) The Chief Operating Officers from the following agencies:
  (1) Department of State;
  (2) Department of the Treasury;
  (3) Department of Defense;
  (4) Department of Justice;
  (5) Department of the Interior;
  (6) Department of Agriculture;
  (7) Department of Commerce;
  (8) Department of Labor;

(9) Department of Health and Human Services;
(10) Department of Housing and Urban Development;
(11) Department of Transportation;
(12) Department of Energy;
(13) Department of Education; and
(14) Department of Veterans Affairs.

(c) The following central management agency representatives:
(1) Director of the Office of Personnel Management;
(2) Administrator of General Services;

(d) Chief Operating Officers of the following agencies:
(1) Environmental Protection Agency;
(2) National Aeronautics and Space Administration;
(3) National Science Foundation;
(4) Social Security Administration; and
(5) Federal Emergency Management Agency.

(e) Chief Operating Officers of three other executive branch agencies designated by the Chairperson, in his or her discretion;

(f) Assistant to the President and Cabinet Secretary;

(g) Deputy Assistant to the President for Management and Administration; and

(h) Deputy Chief of Staff to the Vice President; and

(i) Such other officials of the executive departments and agencies as the Director of the Office of Management and Budget or I may, from time to time, designate.

The Deputy Director of the Office of Management and Budget shall serve as Chairperson of the Council. The Chairperson of the Council may appoint a Vice-Chairperson from the Council's membership to assist the Chairperson in conducting affairs of the Council.

The functions of the Council shall include, among others:

(a) improving overall executive branch management, including implementation of the President's Management Agenda;

(b) coordinating management-related efforts to improve Government throughout the executive branch and, as necessary, resolving specific interagency management issues;

(c) ensuring the adoption of new management practices in agencies throughout the executive branch; and

(d) identifying examples of, and providing mechanisms for, interagency exchange of information about best management practices.

The Council shall seek advice and information as appropriate from non-member Federal agencies, particularly smaller agencies. The Council shall also consider the management reform experience of corporations, nonprofit organizations, State and local governments, Government employees, public sector unions, and customers of Government services.

Agencies shall cooperate with the Council and provide such assistance, information, and advice to the Council as the Council may request, to the extent permitted by law.

4. *Independent Agencies.*

Independent agencies are requested to comply with this memorandum.

5. *Revocation and Judicial Review.*

(a) the memorandum of October 1, 1993, entitled "Implementing Management Reform in the Executive Branch" is revoked.

(b) this memorandum is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

6. *Publication.*

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, July 11, 2001

[FR Doc. 01–17967
Filed 07–16–01; 8:45 am]
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Federal Register
Vol. 66, No. 137
Tuesday, July 17, 2001

Presidential Documents

Title 3—

The President

Presidential Determination No. 2001–20 of July 2, 2001

Determination Under Section 402(c)(2)(A) of the Trade Act of 1974—Republic of Belarus

Memorandum for the Secretary of State

Pursuant to section 402(c)(2)(A) of the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978) as amended (the "Act"), I determine that a waiver by Executive Order of the application of subsections (a) and (b) of section 402 of the Act with respect to the Republic of Belarus will substantially promote the objectives of section 402.

On my behalf, please transmit this determination to the Speaker of the House of Representatives and to the President of the Senate.

You are authorized and directed to publish this determination in the **Federal Register**.

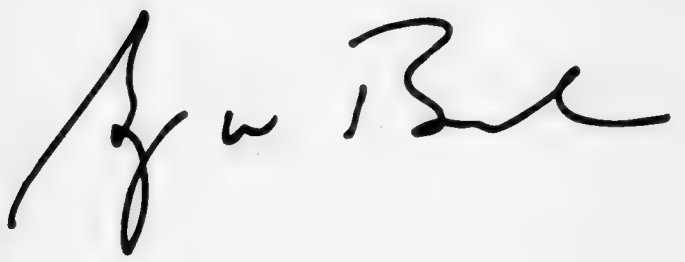

THE WHITE HOUSE,
Washington, July 2, 2001.

[FR Doc. 01–17964
Filed 7–16–01; 8:45 am]
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Presidential Documents

Presidential Determination No. 2001–21 of July 4, 2001

Provision of $20 Million for a U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO)

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1) (the "Act"), I hereby determine that it is important to the security interests of the United States to furnish up to $20 million in funds made available under the title II (Nonproliferation, Anti-Terrorism, Demining and Related Programs) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (Public Law 106–429), for assistance for KEDO without regard to any provision of law within the scope of section 614(a)(1). I hereby authorize the furnishing of this assistance.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.

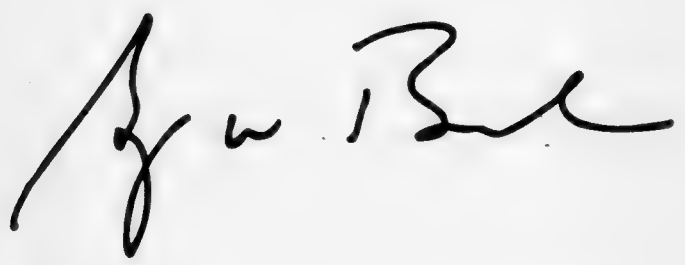

THE WHITE HOUSE,
Washington, July 4, 2001.

[FR Doc. 01–17965
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Rules and Regulations

Federal Register
Vol. 66, No. 137
Tuesday, July 17, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–049–1]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the gypsy moth regulations by adding counties in Illinois, Indiana, Michigan, Ohio, West Virginia, and Wisconsin to the list of generally infested areas. As a result of this action, the interstate movement of certain articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested States. We are also making nonsubstantive revisions to the entries for Maine, Virginia, West Virginia, and Wisconsin to address inconsistencies in the county listings and to correct misspellings.

DATES: This interim rule is effective on July 17, 2001. We invite you to comment on this docket. We will consider all comments that we receive by September 17, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–049–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–049–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Jones, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45–12 and referred to below as the regulations) restrict the interstate movement of certain articles from generally infested areas in the quarantined States to prevent the artificial spread of the gypsy moth.

Section 301.45–2 provides that generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if:

(1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) The designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth. Section 301.45–3 lists generally infested areas in the quarantined States.

Surveys conducted by the United States Department of Agriculture, in cooperation with the States, detected multiple life stages of the gypsy moth in 22 additional areas in 5 states (Illinois, Indiana, Ohio, West Virginia, Wisconsin). Based on these surveys, we determined that reproducing populations exist at significant levels in these areas. Eradication of these populations is not considered feasible because these areas are immediately adjacent to areas currently recognized as generally infested and are, therefore, subject to reinfestation.

In addition, the State of Michigan recommended that the remaining six counties in Michigan be designated as generally infested areas due to patterns of moth catches, the counties proximity to infestation, and the State's desire for uniform application of Federal regulations.

Therefore, in accordance with the regulations, we are designating Lake County, IL; DeKalb and Noble Counties, IN; Baraga, Gogebic, Houghton, Iron, Keweenaw, and Ontonagon Counties, MI; Fairfield, Huron, Knox, Morgan, Perry, Richland, and Washington Counties, OH; Braxton, Calhoun, Gilmer, Greenbriar, Nicholas, Pleasants, Ritchie, Wirt, and Wood Counties, WV; and Walworth, Waupaca, and Waushara Counties, WI, as generally infested areas, and we are adding them to the list of generally infested areas provided in § 301.45–3(a). In addition, we are adding Illinois to the notice of quarantined states provided in § 301.45(a).

Miscellaneous

We are also making nonsubstantive revisions to § 301.45–3(a) to address inconsistencies in the county listings and to correct misspellings in the entries for Maine, Virginia, West Virginia, and Wisconsin.

Emergency Action

This rulemaking is necessary on an emergency basis because of the possibility that the gypsy moth could be artificially spread to noninfested areas of the United States, where it could cause economic losses due to the defoliation of susceptible forest and shade trees. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication

of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived it review process required by Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.45, paragraph (a) is amended by adding the word "Illinois" in alphabetical order.

3. In § 301.45–3, paragraph (a) is amended as follows:

a. By adding an entry for Illinois.

b. Under Indiana, by adding new counties in alphabetical order.

c. Under Maine, in the entry for Aroosktook County, by removing the word "Aroosktook" and adding in its place the word "Aroostook".

d. Under Maine, in the entry for Penobscot County, by removing the word "LaGrange" and adding in its place the word "Lagrange".

e. Under Michigan, by revising the entries to include the entire State.

f. Under Ohio, by adding counties in alphabetical order.

g. Under Virginia, in the entry for Appomatox County, by removing the word "Appomatox" and by adding in its place the word "Appomattox".

h. Under West Virginia, by adding counties in alphabetical order and by revising the entry for Brook County.

i. Under Wisconsin, by adding new counties in alphabetical order and by revising the entry for Fond du Lac.

§ 301.45–3 Generally infested areas.

(a) * * *

Illinois

Lake County. The entire county.

Indiana

* * * * *

De Kalb County. The entire county.

* * * * *

Noble County. The entire county.

* * * * *

Michigan

The entire State.

* * * * *

Ohio

* * * * *

Fairfield County. The entire county.

* * * * *

Huron County. The entire county.

* * * * *

Knox County. The entire county.

* * * * *

Morgan County. The entire county.

* * * * *

Perry County. The entire county.

* * * * *

Richland County. The entire county.

* * * * *

Washington County. The entire county.

* * * * *

West Virginia

* * * * *

Braxton County. The entire county.

Brooke County. The entire county.

Calhoun County. The entire county.

* * * * *

Gilmer County. The entire county.

* * * * *

Greenbrier County. The entire county.

* * * * *

Nicholas County. The entire county.

* * * * *

Pleasants County. The entire county.

* * * * *

Ritchie County. The entire county.

* * * * *

Wirt County. The entire county.

Wood County. The entire county.

Wisconsin

* * * * *

Fond du Lac County. The entire county.

* * * * *

Walworth County. The entire county.

* * * * *

Waupaca County. The entire county.

Waushara County. The entire county.

* * * * *

Done in Washington, DC, this 10th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17695 Filed 7–16–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 353

[Docket No. 99–100–3]

Export Certification; Canadian Solid Wood Packing Materials Exported From the United States to China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the export certification regulations for the certification of softwood (coniferous) packing materials used with goods exported from the United States to China. Prior to this interim rule, the

packing materials had to be certified as having been heat treated in the United States. We are allowing certification of packing materials that were heat treated in Canada if that treatment is certified by the Canadian Food Inspection Agency to meet requirements established by the Government of the People's Republic of China. This change is necessary to facilitate the exportation to China of the large volume of United States goods that is shipped using Canadian-origin coniferous solid wood packing materials. This change will affect persons who use coniferous solid wood packing materials to export goods from the United States to the People's Republic of China.

DATES: This interim rule is effective July 11, 2001. We invite you to comment on this docket. We will consider all comments that we receive by September 17, 2001 .

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 99–100–3, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–100–3.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick Thomas, Export Specialist, PIM, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8367.

SUPPLEMENTARY INFORMATION:

Background

The export certification regulations contained in 7 CFR part 353 (referred to below as the regulations) set forth the procedures for obtaining certification for plants and plant products offered for export or reexport. Export certification is not required by the regulations; rather, it is provided by the Animal and Plant Health Inspection Service (APHIS) as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry. After assessing the condition of the plants or plant products intended for export relative to the receiving country's regulations, an inspector will issue an internationally recognized certificate, if warranted.

In a final rule that was effective and published in the **Federal Register** on August 17, 2000 (65 FR 50128–50131), we amended the regulations to create a new certificate of heat treatment and to establish procedures for issuing it to exporters who have heat treated their coniferous solid wood packing materials (SWPM) in order to ship goods to the People's Republic of China. We took this action in response to a new requirement imposed by the People's Republic of China that SWPM exported from the United States to China be certified as having been heat treated. As stated in that final rule, the information collection or recordkeeping requirements associated with the new certificate have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0147. One of the requirements of the final rule was that, to be certified, coniferous SWPM must be heat treated in the United States. That requirement was based on our belief that it would be extremely difficult for U.S. exporters to document that a heat treatment has been properly performed if it has been performed in a foreign country.

Since the final rule was published, we have received numerous requests to amend it to provide a means to certify coniferous SWPM that originated and was heat treated in Canada, but is later used to export U.S. goods to China. A great deal of the coniferous SWPM used in the United States is of Canadian origin. According to USDA's Foreign Agricultural Service (FAS), about 21 percent of coniferous SWPM used in the United States in 1999 was of Canadian origin. In that year—the last full year in which U.S. exporters could effectively use Canadian-origin coniferous SWPM in shipments to China—about 35 million pallets were imported from Canada, compared to a total U.S. inventory of about 168 million reusable pallets. The final rule's requirement that only coniferous SWPM treated in the United States may be certified causes adverse impacts on large and small U.S. exporters by denying them continued access to Canadian origin coniferous SWPM that is readily available at attractive prices for use in shipments to China.

We have examined this problem to determine whether there is a way for APHIS to certify that coniferous SWPM from Canada has been properly heat treated in accordance with the requirements of the People's Republic of China. Before issuing such certificates, APHIS must be confident that the required treatment was actually performed, and there must be sufficient documentation of the treatment. As discussed in the final rule of August 17, 2000, it is not practical for APHIS to coordinate or rely on records maintained by a multitude of foreign heat treatment facilities. However, the Canadian Food Inspection Agency (CFIA) is willing to provide U.S. exporters who use coniferous SWPM treated in Canada with a certificate documenting that the SWPM has been heat treated. CFIA has developed a heat treatment certification process for coniferous SWPM that meets the requirements of both APHIS and China. CFIA will issue a certificate only for coniferous SWPM that has been heat treated in accordance with the requirements of the People's Republic of China—*i.e.*, a treatment process that increases the minimum core wood temperature to 56 degrees Celsius for 30 minutes. This CFIA certificate would provide the U.S. exporter with the necessary "documentation showing that heat treatment was performed on packing materials," as required by § 353.7(e)(4). With this documentation on file, the exporter could apply for the APHIS heat treatment certificate required by the People's Republic of China. This Canadian heat treatment certification process for coniferous SWPM would enable U.S. exporters to use Canadian-origin heat treated SWPM in shipments to China.

To accomplish this change, we are amending the definition of *certificate of heat treatment* in § 353.1 of the regulations. In the part of the definition that states that the certificate endorses "the statement of an exporter that the coniferous packing materials associated with a shipment for export have been heat treated in the United States," we are adding the phrase "or in Canada." We are also amending § 353.7(e)(4), which deals with the records an exporter must keep on file at his office, by adding the following: "If the coniferous solid wood packing materials were heat treated in Canada, this documentation must include a certificate issued by the Canadian Food Inspection Agency stating that the packing materials have been heat treated through a treatment process that increased the minimum core wood

temperature to 56 degrees Celsius for 30 minutes."

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to relieve a restriction that prevents U.S. exporters from obtaining certificates that the Government of the People's Republic of China requires to accompany shipments of U.S. goods to China that are packaged with Canadian-origin SWPM.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Effective January 1, 2000, the People's Republic of China required that SWPM exported from the United States to China be certified as having been heat treated. To be certified, coniferous SWPM must be heat treated in the United States. This rule changes that requirement to allow Canadian-origin coniferous SWPM to be heat treated in Canada.[1]

This rule affects U.S. exporters—primarily manufacturers and freight forwarders who act on their behalf—who ship goods to China using coniferous SWPM. It is estimated that there are about 125,000 such shipments per year, spread among approximately 5,000 exporters. A wide variety of products are shipped to China using coniferous SWPM, such as pharmaceuticals, auto parts, diapers, and fruits and vegetables.

This rule restores U.S. exporters' ability to use Canadian-origin coniferous SWPM in shipments to China. At the present time, their ability to use that SWPM is effectively precluded, because it is not cost effective to heat treat Canadian-origin SWPM in the United States. In addition to giving them another, perhaps less costly, source of coniferous SWPM for their shipments to China, the rule change enables affected exporters to avoid separating their U.S. and Canadian-treated coniferous SWPM so as to ensure that only the former is used in shipments to China.[2] The dollar impact of this rule on U.S. exporters is unknown, but the rule is likely to benefit exporters, though the benefits will not constitute a significant economic impact on a substantial number of exporters.

U.S. producers of coniferous SWPM could also be affected by this change, to the extent that it causes exporters to switch to Canadian producers for their supply of SWPM for shipments to China. The number of U.S. exporters who would switch to Canadian producers is unknown. However, it seems unlikely that allowing the use of Canadian SWPM to be resumed for U.S. shipments to China would create significant harm to U.S. coniferous SWPM producers. (During the period from September through December, 2000—the first 4 full months that the current exclusion on Canadian SWPM was in effect—U.S. imports of pallets from Canada declined by about 3 million, or 27 percent, from the level for same 4-month period in 1999. However, that decline appears to be due more to competitive pressures faced by Canada in the U.S. market than to the current exclusion itself, as U.S. imports of pallets from all countries other than Canada showed an increase of about 4 million pallets during the same 4-month period.[3] In effect, Canadian exports of pallets to the United States were supplanted by exports from other countries. Since non-Canadian exports to the United States are also subject to the current exclusion, the decline in Canadian exports, therefore, would seem to be largely unrelated to the rule that became effective August 17, 2000.)

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of rule changes on small entities (i.e., businesses, organizations, and governmental jurisdictions). This rule potentially affects the approximately 5,000 U.S. exporters—primarily manufacturers and freight forwarders who act on their behalf—who ship goods to China using coniferous SWPM. However, for the reasons discussed above, there is no reason to believe that the rule change will have a significant economic impact on a substantial number of entities, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 353 is amended as follows:

PART 353—EXPORT CERTIFICATION

1. The authority citation for part 353 continues to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7718, 7751, and 7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 353.1 [Amended]

2. In § 353.1, the definition of *Certificate of heat treatment* is amended by adding the phrase "or in Canada" immediately after the phrase "in the United States".

3. In § 353.7, paragraph (e)(4) is revised to read as follows:

§ 353.7 Certificates.

* * * * *

(e) * * *

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[1] The Canadian Food Inspection Agency has developed a heat treatment process that meets the requirements of the People's Republic of China and USDA.

[2] U.S. exporters can use Canadian-origin coniferous SWPM for shipments to countries other than the People's Republic of China.

[3] Foreign Agricultural Service data.

(4) The exporter or his or her representative must keep on file at his or her office a copy of each certificate issued in his or her name and documentation showing that heat treatment was performed on packing materials in the shipment referred to in the certificate. If the coniferous solid wood packing materials were heat treated in Canada, this documentation must include a certificate issued by the Canadian Food Inspection Agency stating that the packing materials have been heat treated through a treatment process that increased the minimum core wood temperature to 56 degrees Celsius for 30 minutes. The exporter must make these documents available to an inspector upon request for a period of 1 year following the date of issuance of the certificate.

(Approved by the Office of Management and Budget under control numbers 0579–0052 and 0579–0147)

Done in Washington, DC, this 11th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17840 Filed 7–16–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[FV–00–706–FR]

Blueberry Promotion, Research, and Information Order; Amendment No. 1

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the title of the U.S.A. Blueberry Council to the "U.S.A. Cultivated Blueberry Council" (Council). The purpose of this change is to avoid confusion in the industry and to clarify that only cultivated blueberries are covered by this program.

EFFECTIVE DATE: August 16, 2001.

FOR FURTHER INFORMATION CONTACT: Daniel Rafael Manzoni, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535-S, Washington, D.C. 20250–0244; telephone (202) 720–5951, fax (202) 205–2800, or e-mail *daniel.manzoni@usda.gov*.

SUPPLEMENTARY INFORMATION: *Legal authority.* The Blueberry Promotion, Research, and Consumer Information Order (Order) [7 CFR Part 1218] became effective on August 16, 2000 [65 FR 43961, July 17, 2000]. It was issued under the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7401–7425].

Question and Answer Overview

Why Is the U.S. Department of Agriculture (USDA or the Department) Changing the Name of the Council?

The wild blueberry industry requested that USDA change the title of the Council in order to avoid confusion in the industry and to clarify that the program covers only cultivated blueberries.

Will Anything Else Change About the Program?

No. The program as published on July 17, 2000 in the **Federal Register** remains the same.

Executive Orders 12866 and 12988

This rule has been determined "not significant" for purposes of Executive Order (E.O.) 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

In addition, this rule has been reviewed under E.O. 12988, Civil Justice Reform. The rule is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

Final Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], AMS has examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

There are approximately 2,000 producers, 200 first handlers, 50 importers, and 4 exporters of blueberries subject to the program. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. Most importers and first handlers would not be classified as small businesses, and, while most exporters are large, we assume that some are small. The SBA defines small agricultural handlers as those whose annual receipts are less than $5 million, and small agricultural producers are defined as those having annual receipts of not more than $500,000 annually.

This rule will amend the Order to revise the title of the U.S.A. Blueberry Council to the "U.S.A. Cultivated Blueberry Council" (Council). All other provisions of the Order as published on July 17, 2000, in the **Federal Register** will remain the same. The amendment is not considered a substantial change that will impact the cultivated blueberry industry. The purpose of this change is to avoid confusion in the industry and clarify that only cultivated blueberries are covered by this program.

The amendment will not impose additional recordkeeping requirements on first handlers, producers, or importers or exporters of cultivated blueberries. Therefore, recordkeeping and reporting requirements for the promotion, research, and information program for cultivated blueberries will remain unchanged by this final rule.

There are no relevant federal rules that duplicate, overlap, or conflict with this final rule.

Background

The Order became effective on August 16, 2000. Under the Order, producers and importers pay an assessment of $12 per ton on the cultivated blueberries they produce in or import into the United States. The Secretary will appoint an industry group to administer the program under USDA supervision.

Although the Order states that the program covers only cultivated blueberries and not wild blueberries, the

wild blueberry industry has continued to object, among other things, to the fact that the name of the Council does not specifically reference cultivated blueberries. The wild blueberry industry had submitted two comments on this issue, and others, in response to the first proposed rule on the Order which was published in the **Federal Register** on July 22, 1999 [64 FR 39790]. The comments were summarized in the second proposed rule on the Order, which was published in the **Federal Register** on February 15, 2000 [65 FR 7657]. The commenters requested that, throughout the proposal and in the name of the Council, the term "blueberry" be changed to "cultivated blueberry." The commenters stated that the generic use of the term "blueberry" in the Order was misleading as to the specific type of blueberry and industry segment represented by the program. These comments were denied for the reasons explained in the February 15, 2000, rule.

However, since February 2000, the wild blueberry industry continued to contact USDA officials requesting that the name changes be made. Therefore, on September 21, 2000 [65 FR 57104], USDA published a proposed rule to change the official title of the program to the "Promotion, Research and Information Order for Cultivated Blueberries" and the name of the industry group from the U.S.A. Blueberry Council to the "U.S.A. Cultivated Blueberry Council." In addition, the proposed rule provided that all references to "blueberries" in the Order would be changed to "cultivated blueberries." The deadline for comments was November 20, 2000.

In response to that proposed rule, USDA received four comments from the wild blueberry industry in favor of various aspects of the proposed rule, and six comments from the cultivated blueberry industry opposed to various aspects of the proposed rule. A summary of the comments and USDA's responses follow:

All four commenters from the wild blueberry industry stated that although the Order does not cover wild blueberries, the name U.S.A. Blueberry Council (Council) causes confusion regarding who the Council represents and which variety of blueberries it is promoting. The commenters believed that this potential confusion could adversely affect their various initiatives in support of wild blueberries. The commenters agreed with the proposal to change the Council's name of the "U.S.A. Cultivated Blueberry Council" in order to avoid any possibility of confusion.

We agree with the commenters that the Council's current name could cause confusion in the industry. Accordingly, we are adopting the proposal to change the U.S.A. Blueberry Council's name to the "U.S.A. Cultivated Blueberry Council."

Two of the four commenters from the wild blueberry industry also supported the proposals to change the title of the Blueberry Promotion, Research, and Information Order to the "Promotion, Research, and Information Order for Cultivated Blueberries," and to change every reference to blueberries in the Order to "cultivated blueberries." They believed that these changes would further distinguish the wild blueberry industry from the cultivated blueberry industry.

After further view and careful deliberation on these issues, USDA believed that these changes are not necessary. Changing the name of the Council should be sufficient to distinguish the research and promotional efforts of the wild blueberry industry from the Order's cultivated blueberry industry. The Order's definition of blueberry excludes wild blueberries, and it is not uncommon in other USDA national research and promotional programs to use a generic name for a commodity that is defined in the Order with further specificity. Accordingly, USDA is not adopting the proposals to change the name of the Blueberry Promotion, Research, and Information Order to the "Promotion, Research, and Information Order for Cultivated Blueberries," and to change every reference to blueberries in the Order to "cultivated blueberries."

Promoting blueberries generically will be consistent with other national promotion programs, such as those for milk and potatoes. Even though the federal dairy and fluid milk boards cover only cow's milk, they promote milk generically. This is because cow's milk is the most common type of milk, and other types of milk (such as goat's milk) are identified as such to commercial buyers and consumers. Similarly, the potato board promotes potatoes generically, whereas the program covers only white potatoes. Sweet potatoes are identified as such. We view the blueberry program in the same way.

All of the comments from the cultivated blueberry industry opposed the proposals on the basis that there was no need to differentiate cultivated blueberries from wild blueberries. Our explanations above address the issues raised by the commenters.

It should also be noted that USDA is not supporting or endorsing the cultivated blueberry industry at the expense of the wild blueberry industry, as alluded to by one of the commenters. The cultivated blueberry industry voluntarily requested the Secretary to implement a national program to assess domestic and imported cultivated blueberries to increase demand for the commodity. Any agricultural commodity group, such as the wild blueberry industry, has the right to request the same type of program under the Act. In addition, the cultivated blueberry industry will finance the entire cost of the program, including the cost of this rulemaking proceeding. National research and promotion programs are considered industry self-help programs. The government's involvement is to ensure that the programs have the support of the industry affected and that the programs are carried out within the scope of their authority under the Act.

Accordingly, the proposed rule is adopted with the change discussed above.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberries, Consumer Information, Marketing agreements, Blueberry promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1218 is amended as follows:

1. The authority citation for part 1218 continues to read as follows:

Authority: 7 U.S.C. 7401–7425.

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION

Subpart A—Blueberry Promotion, Research, and Information Order

§ 1218.3 [Amended]

2. In § 1218.3 the words "U.S.A. Blueberry Council" are removed and the words "U.S.A. Cultivated Blueberry Council" are added in its place and "USABC" is removed and "USACBC" is added in its place.

§ 1218.23 [Amended]

3. In § 1218.23 "USABC" is removed from the heading and the text and "USACBC" is added in its place and "U.S.A. Blueberry Council" is removed and "U.S.A. Cultivated Blueberry Council" is added in its place.

4. The undesignated center heading preceding § 1218.40 is revised to read as follows:

U.S.A. Cultivated Blueberry Council

§ 1218.40 [Amended]

5. In § 1218.40 the words "U.S.A. Blueberry Council" are removed and the words "U.S.A. Cultivated Blueberry Council" are added in its place, and "USABC" is removed Wherever it appears and "USACBC" is added in its place.

§§ 1218.41, 1218.42, 1218.43, 1218.44, 1218.45, 1218.46, 1218.47, 1218.48, 1218.50, 1218.51, 1218.55, 1218.56, 1218.62, 1218.70, 1218.73, 1218.75, and 1218.77 [Amended]

6. In §§ 1218.41, 1218.42, 1218.43, 1218.44, 1218.45, 1218.46, 1218.47, 1218.48, 1218.50, 1218.51, 1218.55, 1218.56, 1218.62, 1218.70, 1218.73, 1218.75, and 1218.77, "USABC" is removed wherever it appears and "USACBC" is added in its place.

§§ 1218.52, 1218.53, 1218.54, and 1218.60 [Amended]

7. In §§ 1218.52, 1218.53, 1218.54, and 1218.60, "USABC" is removed wherever it appears and "USACBC" is added in its place.

Dated: July 11, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–17767 Filed 7–16–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

8 CFR Part 3

[EOIR No. 128P; AG Order No. 2467–2001]

RIN 1125–AA31

Motions To Reopen for Suspension of Deportation and Special Rule Cancellation of Removal Pursuant to Section 1505(c) of the LIFE Act Amendments

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the regulations of the Executive Office for Immigration Review (EOIR) by establishing a special procedure for the filing and adjudication of motions to reopen deportation and removal proceedings to apply for suspension of deportation and special rule cancellation of removal pursuant to section 1505(c) of the Legal Immigration Family Equity Act Amendments of 2000 (LIFE Act Amendments).

DATES: *Effective date:* This interim rule is effective July 17, 2001.

Comment date: Comments must be submitted on or before September 17, 2001.

Motions to reopen under this rule must be filed on or before October 16, 2001.

ADDRESSES: Please submit written comments to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041; or e-mail comments to the following e-mail address: LIFE.1505(c)@USDOJ.GOV.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION: This rule revises the special reopening provisions previously established in 8 CFR 3.43. The revisions account for changes in eligibility established by sections 1506 and 1510 of the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386, Div. B, tit. V, 114 Stat. 1464, 1527–29, 1531–32) (VTVPA) and section 1505(c) of the LIFE Act Amendments (Pub. L. 106–554, App. D, tit. XV, 114 Stat. 2763, 2763A–326 to 328). The rule permits aliens with reinstated final orders and aliens with newly issued final orders, where those new orders were issued based on their having reentered the United States illegally after having been removed or having departed voluntarily under an order of removal subject to reinstatement under section 241(a)(5) of the Immigration and Nationality Act (the Act), to move to reopen immigration proceedings for the sole purpose of applying for suspension of deportation or special rule cancellation of removal under section 203 of the Nicaraguan Adjustment and Central American Relief Act of 1997 (Pub. L. 105–100, 111 Stat. 2160, 2196–200) (NACARA).

Why Is the Department Issuing This Interim Rule?

Section 241(a)(5) of the Act provides for the reinstatement of a removal order against any alien who illegally reenters the United States after having been removed or having departed voluntarily under an order of removal. It also bars any alien whose removal order has been reinstated from receiving any relief under the Act, and prohibits the reopening or review of the previous order.

Section 1505(c) of the LIFE Act Amendments added a new subsection (h) to the transition provisions in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act (Pub. L. 104–208, Div. C, tit. III, subtit. A, 110 Stat. 30009, 3009–625) (IIRIRA). Section 309(h)(1) of IIRIRA, as so amended, provides that aliens who are otherwise eligible for suspension of deportation or special rule cancellation of removal under section 203 of NACARA shall not be barred from applying for such relief by operation of section 241(a)(5) of the Act.

Section 309(h)(2) of IIRIRA, as amended, provides that aliens who have become eligible for relief based on new subsection (h)(1) will have the opportunity to submit an additional motion to reopen, within a designated period, solely for the purpose of adjudicating the NACARA claim. Consistent with the provisions of section 203(c) of NACARA, an alien with a final order of deportation or removal who has become eligible for suspension of deportation or special rule cancellation of removal as a result of section 1505(c) of the LIFE Act Amendments may file one such motion to reopen removal or deportation proceedings on or before October 16, 2001.

This rule also clarifies that those persons eligible for relief under new section 309(h) (as added by section 1505(c) of the LIFE Act Amendments) include the classes added to section 309(c)(5)(C)(i) of IIRIRA by sections 1506(b)(3) and 1510(b) of the VTVPA. These additional classes of eligible aliens include certain spouses and children who have been battered or subjected to extreme cruelty by a NACARA section 203 applicant, or by a United States citizen or lawful permanent resident.

The VTVPA also contains an additional provision making certain classes of battered aliens who are not covered by this rule eligible to submit a motion to reopen. See section 1506(c) of the VTVPA. The Department anticipates promulgating regulations in the near future regarding relief for those aliens who are addressed in the VTVPA, but are not covered by this rule.

How Has the VTVPA Changed the Classes of Aliens Eligible for Suspension of Deportation or Special Rule Cancellation of Removal Pursuant to Section 309(c)(5)(C)(i) of IIRIRA?

The six classes of eligible aliens in section 309(c)(5)(C)(i) of IIRIRA, as amended by NACARA, are set forth in § 3.43(d)(1)–(6) of this rule. The VTVPA added two additional classes of eligible aliens, which are set forth in § 3.43(d)(7) and (8) of this rule.

The first new class of aliens (class 7) includes aliens (1) who were issued Orders to Show Cause or were in deportation proceedings before April 1, 1997, and (2) who applied for suspension of deportation under former section 244(a)(3) of the Act (as in effect before the date of enactment of section 309 of IIRIRA) as aliens who had been battered or subjected to extreme cruelty by a spouse or parent who is a United States citizen or lawful permanent resident.

The second new class of aliens (class 8) includes the spouses or children of aliens described in classes 1 through 4, 8 CFR 3.43(d)(1)–(4), as amended, if they were the spouse or child of such alien: (1) At the time a decision is rendered to suspend deportation or to cancel removal of that alien; (2) at the time that alien filed an application for suspension of deportation or cancellation of removal; or (3) at the time that alien registered for benefits under the settlement agreement in *American Baptist Churches, et al.* v. *Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (ABC), applied for Temporary Protected Status (TPS), or applied for asylum. In addition, the spouse or child must demonstrate that he or she (or the child of that spouse) has been battered or subjected to extreme cruelty by the alien parent or spouse who is within one of the four classes described at 8 CFR 3.43(d)(1)–(4), as amended. Aliens in the new classes 7 and 8 are not required to be nationals of El Salvador, Guatemala, or former Soviet bloc countries.

Who Is Eligible To Reopen Proceedings Under Section 1505(c) of the LIFE Act Amendments?

Consistent with the existing provisions of 8 CFR 3.43, an individual submitting a motion to reopen under section 1505(c) of the LIFE Act Amendments must establish certain preliminary requirements. The motion to reopen must establish that the alien:

(1) Is prima facie eligible for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(2) Was or would be ineligible, by operation of section 241(a)(5) of the Act, for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or for cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, but for enactment of section 1505(c) of the LIFE Act Amendments;

(3) Has not been convicted at any time of an aggravated felony; and

(4) Is within one of the classes of aliens described in section 309(c)(5)(C)(i) of IIRIRA, as amended by section 203 of NACARA and sections 1506 and 1510 of the VTVPA.

Section 3.43(d) of this rule describes with more particularity the eight classes of aliens covered by this special reopening procedure. Prima facie eligibility is discussed in greater detail in this rule under the section entitled "How is prima facie eligibility defined?"

What Is the Deadline for Filing Motions To Reopen Pursuant to Section 1505(c) of the LIFE Act Amendments?

Section 1505(c) of the LIFE Act Amendments requires that the Attorney General designate a specific time period for filing motions to reopen under this section. Section 1505(c) further provides that the time period is to begin no later than 60 days after the enactment of the LIFE Act Amendments and is to extend for a period not to exceed 240 days. See section 309(h)(2) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments. Consistent with that statutory directive, this rule designates the period from February 19, 2001, through October 16, 2001, as the time period for filing motions to reopen pursuant to section 1505(c) of the LIFE Act Amendments.

This rule does not address the provision in section 1506(c) of the VTVPA providing for motions to reopen proceedings by certain other classes of battered aliens. The Department anticipates promulgating regulations in the near future that will address the motions to reopen at issue in section 1506(c) of the VTVPA.

Does This Rule Extend the September 11, 1998, Deadline for Motions To Reopen Under Section 203(c) of NACARA?

No. Only aliens who have final orders of removal and deportation that have been reinstated, or aliens who have newly issued final orders that were issued based on their having reentered the United States illegally after having been removed or having departed voluntarily under a prior order of removal that was subject to reinstatement under section 241(a)(5) of the Act, may move to reopen proceedings for the purpose of applying for suspension of deportation or special rule cancellation of removal under section 203 of NACARA. Although this rule amends the existing procedures of § 3.43, which originally dealt only with motions to reopen under section 203(c) of NACARA, this rule does not extend the September 11, 1998, filing deadline for those NACARA motions. Editorial changes within the text of former § 3.43 have been made for consistency purposes only and do not change or extend the requirements or procedures applicable to motions to reopen under section 203(c) of NACARA.

What Are the Procedures for Reopening Deportation or Removal Proceedings Pursuant to Section 1505(c) of the LIFE Act Amendments?

The Department has adapted for purposes of section 1505(c) motions to reopen the existing procedures of § 3.43, which originally dealt only with motions to reopen under section 203(c) of NACARA. An alien seeking to reopen proceedings pursuant to section 309(h) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments, must file a motion to reopen and include with that motion an application for suspension of deportation or cancellation of removal and supporting documents, on or before October 16, 2001. An eligible alien may file only one motion to reopen pursuant to section 309(h) of IIRIRA. The alien must establish in such motion that he or she satisfies each of the requirements for reopening in § 3.43(c). The front page of the motion to reopen and any envelope containing such motion should include the notation "Special LIFE 1505(c) Motion." A copy of both the motion to reopen and the application for suspension of deportation or cancellation of removal, with all other supporting documents, must be served on the Immigration and Naturalization Service (Service). Persons filing a motion to reopen under section 309(h) should follow standard motion practice, as set forth in the regulations at 8 CFR 3.2(c) and 3.23(b)(3), with the exception that the fee (required under 8 CFR 3.8 and 3.24) for motions to reopen submitted pursuant to this rule will be waived.

If an alien has previously filed an application for suspension of deportation or cancellation of removal with the Immigration Judge or the Board of Immigration Appeals (Board), he or she must file a copy of that application or a new application with the motion to reopen. If the motion to reopen is granted, and the alien has previously filed an application, the alien will not be required to pay a new filing fee for the suspension/cancellation application.

If an alien has not previously filed an application for suspension of deportation or cancellation of removal,

the alien must submit a suspension/cancellation application with the motion to reopen. Nothing in this notice changes the requirements and procedures in 8 CFR 3.31(b), 103.7(b)(1), and 240.11(f) for paying the application fee for suspension/cancellation after a motion to reopen is granted if such an application was not previously filed.

If an eligible alien fails to file the required motion, and the applicable application and supporting documents, by October 16, 2001, the alien will have lost his or her one opportunity to move under section 309(h)(2) to reopen proceedings to seek suspension of deportation or special rule cancellation of removal relief. However, an individual may still be eligible to reopen proceedings under other statutory and regulatory provisions.

How Is Prima Facie Eligibility Defined?

An alien filing a motion to reopen pursuant to section 309(h) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments, must establish prima facie eligibility for suspension of deportation under former section 244(a) of the Act, as in effect prior to April 1, 1997, or special rule cancellation of removal under section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA. In general, the alien must have been physically present in the United States for a continuous period of at least 7 years immediately preceding the date of such application or at least 3 years in the case of certain battered aliens; must be a person of good moral character during such period; and must establish that deportation or removal would result in extreme hardship to the alien or to the alien's spouse, parent, or child who is a citizen of the United States or an alien lawfully admitted for permanent residence. Different standards apply to aliens who are deportable because of a criminal conviction or certain other grounds. See section 244(a)(2) of the Act, as in effect prior to April 1, 1997, and special rule cancellation of removal under section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA. The period of continuous physical presence must be established as of no later than October 16, 2001.

Further, to be prima facie eligible to apply for suspension of deportation or special rule cancellation of removal, the alien must not be subject to any of the statutory bars to seeking such relief which are discussed below.

What Are the Statutory Bars to Suspension of Deportation and Special Rule Cancellation of Removal?

Section 309(h)(1) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments, waives only the statutory bar created by the reinstatement provision in section 241(a)(5) of the Act; all other bars remain. Section 240A(c) of the Act and former section 244(f) of the Act (as it existed prior to April 1, 1997) provide that certain categories of aliens are ineligible for suspension of deportation or cancellation of removal. Moreover, an alien who was previously granted voluntary departure and received oral and written notice of the consequences of failing to depart, but did not depart the United States voluntarily within the time specified, is barred for a specific period of time from various forms of discretionary relief. See section 240B(d) of the Act and section 242B(e)(2), as in effect prior to April 1, 1997. These include suspension of deportation and cancellation of removal, pursuant to section 240B(d) of the Act and former section 242B(e)(2) of the Act (as it existed prior to April 1, 1997). Former section 242B(e)(1), (3) and (4) of the Act (as it existed prior to April 1, 1997) also bars eligibility for such relief for certain aliens who, after receiving the required oral and written notices, failed to appear at their removal or deportation hearings, failed to appear as ordered for deportation, or failed to appear at an asylum hearing. These and any other statutory bars to eligibility for suspension of deportation or cancellation of removal are not waived by section 1505(c) of the LIFE Act Amendments.

Which Application Form Must Be Filed With the Motion To Reopen?

When filing a motion to reopen, aliens in the classes described in paragraphs (d)(1)–(d)(6) and (d)(8) must attach to the motion a copy of the Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to section 203 of Pub. L. 105–100). The Form I–881 is currently being revised to include specifically aliens described in paragraph (d)(8); aliens should attach the most current Form I–881 available to the motion to reopen. Aliens described in paragraph (d)(7) must attach to the motion a copy of the Form EOIR–40, Application for Suspension of Deportation. Aliens should follow the instructions for submitting the appropriate application to the Immigration Court or the Board of Immigration Appeals (Board), but should not submit evidence of payment of the filing fee, unless and until the motion to reopen is granted.

Where Should a Motion To Reopen Under Section 1505(c) of the LIFE Act Amendments Be Filed?

Any motion to reopen and all supporting documentation to apply for suspension of deportation or special rule cancellation of removal under section 309(h) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments, shall be filed with the Immigration Court or the Board, whichever last held jurisdiction over the case. If the Immigration Court has jurisdiction and grants only the motion to reopen proceedings to apply for suspension of deportation and cancellation of removal, the scope of the reopened proceeding shall be limited to a determination of the alien's eligibility for suspension of deportation or special rule cancellation of removal.

If the Board has jurisdiction and grants only the motion to reopen to apply for suspension of deportation or special rule cancellation of removal, it shall remand the case to the Immigration Court solely for adjudication of the application for suspension of deportation or special rule cancellation of removal.

Must All Aliens Eligible for Relief Under Section 309(h)(1) of IIRIRA Submit a Motion To Reopen Under Section 309(h)(2) in Order To Obtain Such Relief?

Not all aliens are required to file a motion to reopen in order to obtain relief under section 309(h)(1) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments. Section 309(h)(1) removes the bar to applying for suspension of deportation or special rule cancellation of removal that would otherwise be imposed by section 241(a)(5) of the Act where the alien has reentered the United States illegally after being removed or having departed voluntarily under a final order of removal. Section 309(h)(1) removes that bar regardless of whether the prior order of deportation or removal has been reinstated by the Service. In those cases in which the prior order has not been reinstated, there is no final order to seek to reopen, and, consequently, the motion to reopen provision in section 309(h)(2) is inapplicable. Instead, aliens who are not in deportation or removal proceedings and whose prior orders have not been reinstated may apply for relief before the Service pursuant to the jurisdictional requirements for applications set forth in 8 CFR 240.62(a). Aliens who are currently in deportation or removal proceedings and

whose prior orders have not been reinstated may apply for relief before the Immigration Court pursuant to the jurisdictional requirements for applications set forth in 8 CFR 240.62(b).

What Happens if a Motion To Reopen Under Section 1505(c) of the LIFE Act Amendments Is Denied?

In those cases where a motion to reopen is denied by final order, the Service will evaluate the facts of the case to determine whether reinstatement of the prior order is required.

Good Cause Exception

The Department's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the exception for rules of agency organization, procedures, or practice in 5 U.S.C. 553(b)(3)(A) and upon the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). Section 1505(c) of LIFE Act Amendments became effective immediately on December 21, 2000. Publication of this rule as an interim rule will expedite implementation of that section and allow certain eligible aliens to submit motions to reopen their removal or deportation proceedings during the limited time period permitted by the LIFE Act Amendments for filing such motions to reopen. That period began on February 19, 2001, and terminates on October 16, 2001. It would be impracticable and contrary to the public interest to delay the effective date of this rule, as such a delay would have the effect of limiting the ability of eligible aliens to move to reopen their proceedings in order to seek the benefits of the LIFE Act Amendments.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule allows certain individual aliens to apply for suspension of deportation or special rule cancellation of removal; it will have no significant effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Attorney General has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f) and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone (703) 305–0470.

Paperwork Reduction Act

This interim rule permits certain aliens to file motions to reopen proceedings to apply for suspension of deportation and special rule cancellation of removal pursuant to section 1505(c) of the LIFE Act Amendments. Motions to reopen under this rule must be filed on or before October 16, 2001, and must be accompanied by either a Form I–881 or a Form EOIR–40.

The information collection requirement of Form I–881 contained in this rule was previously approved for use by the Office of Management and Budget (OMB). The OMB control number for this collection is 1115–0227.

The Form EOIR–40 is also considered an information collection. The OMB control number on the Form EOIR–40 has expired. Accordingly, the Department of Justice, Executive Office for Immigration Review (EOIR), has submitted an information collection request to the Office of Management and Budget (OMB). Since a delay in issuing this interim rule would harm the public and disrupt EOIR's ability to receive and process motions to reopen proceedings under section 1505(c) of the LIFE Act Amendments within the limited time period permitted for the filing of such motions, EOIR has sought emergency review and clearance as provided for in the Paperwork Reduction Act of 1995. 44 U.S.C. 3507(j). Emergency review and approval has been granted by OMB. That emergency approval is only valid for 180 days.

A regular review of the information collection requirement of the Form EOIR–40 is also being undertaken. All comments and suggestions, or questions regarding additional information, including obtaining a copy of the proposed information collection instrument with instructions, should be directed to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041; telephone: (703) 305–0470. We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Any comments on the information collection must be submitted on or before September 17, 2001. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) Title of Form/Collection: Application for Suspension of Deportation.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–40, Executive Office for Immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Individuals or households. An alien who is deportable from the United States may request that the Attorney General suspend his or her deportation pursuant to 8 U.S.C. 1254 (as in effect prior to April 1, 1997, and as made applicable by section 1505(c) of the LIFE Act Amendments) and 8 CFR 240.56. To be granted such relief, the alien must prove that he or she meets all of the statutory requirements for suspension of deportation and that he or she is entitled to a favorable exercise of discretion. The proposed Form EOIR–40 would be completed by the applicant for suspension of deportation and would contain information necessary for the Attorney General to decide whether or not to suspend the alien's deportation from the United States.

(5) An estimate of the total number of respondents and the amount of time for an average respondent to respond: 1,518 responses per year at 5 hours and 45 minutes per response.

(6) An estimate of the total of public burden (in hours) associated with the collection: Approximately 8,728 annual burden hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW., Washington, DC 20530.

List of Subjects of 8 CFR Part 3

Administrative practice and procedure, Immigration; Organization and functions (Government agencies).

Accordingly, part 3 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; sec. 203 of Pub. L. 105–100, 111 Stat. 2196–200; sec. 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; sec. 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Revise § 3.43 to read as follows:

§ 3.43 Motions to reopen for suspension of deportation and cancellation of removal pursuant to section 203(c) of NACARA and section 1505(c) of the LIFE Act Amendments.

(a) *Standard for Adjudication.* Except as provided in this section, a motion to reopen proceedings under section 309(g) or (h) of the Illegal Immigration Reform and Immigrant Responsibility Act (Pub. L. 104–208) (IIRIRA), as amended by section 203(c) of the Nicaraguan Adjustment and Central American Relief Act (Pub. L. 105–100) (NACARA) and by section 1505(c) of the Legal Immigration Family Equity Act Amendments (Pub. L. 106–554) (LIFE Act Amendments), respectively, will be adjudicated under applicable statutes and regulations governing motions to reopen.

(b) *Aliens eligible to reopen proceedings under section 203 of NACARA.* A motion to reopen proceedings to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, must establish that the alien:

(1) Is prima facie eligible for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or the special rule for cancellation of removal pursuant to section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(2) Was or would be ineligible:

(i) For suspension of deportation by operation of section 309(c)(5) of IIRIRA (as in effect prior to November 19, 1997); or

(ii) For cancellation of removal pursuant to section 240A of the Act, but for operation of section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(3) Has not been convicted at any time of an aggravated felony; and

(4) Is within one of the six classes of aliens described in paragraphs (d)(1) through (d)(6) of this section.

(c) *Aliens eligible to reopen proceedings under section 1505(c) of the LIFE Act Amendments.* A motion to reopen proceedings to apply for suspension of deportation or cancellation of removal under the special rules of section 309(h) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments, must establish that the alien:

(1) Is prima facie eligible for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(2) Was or would be ineligible, by operation of section 241(a)(5) of the Act, for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA, but for enactment of section 1505(c) of the LIFE Act Amendments;

(3) Has not been convicted at any time of an aggravated felony; and

(4) Is within one of the eight classes of aliens described in paragraph (d) of this section.

(d) *Classes of Eligible Aliens.*

(1) *Class 1.* A national of El Salvador who:

(i) First entered the United States on or before September 19, 1990;

(ii) Registered for benefits pursuant to the settlement agreement in *American Baptist Churches, et al.* v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991) (ABC) on or before October 31, 1991, or applied for Temporary Protected Status (TPS) on or before October 31, 1991; and

(iii) Was not apprehended after December 19, 1990, at time of entry.

(2) *Class 2.* A national of Guatemala who:

(i) First entered the United States on or before October 1, 1990;

(ii) Registered for ABC benefits on or before December 31, 1991; and

(iii) Was not apprehended after December 19, 1990, at time of entry.

(3) *Class 3.* A national of Guatemala or El Salvador who applied for asylum with the Service on or before April 1, 1990.

(4) *Class 4.* An alien who:

(i) Entered the United States on or before December 31, 1990;

(ii) Applied for asylum on or before December 31, 1991; and

(iii) At the time of filing such application for asylum was a national of

the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia.

(5) *Class 5.* The spouse or child of a person who is described in paragraphs (d)(1) through (d)(4) of this section and such person is prima facie eligible for and has applied for suspension of deportation or special rule cancellation of removal under section 203 of NACARA.

(6) *Class 6.* An unmarried son or daughter of a person who is described in paragraphs (d)(1) through (d)(4) of this section and such person is prima facie eligible for and has applied for suspension of deportation or special rule cancellation of removal under section 203 of NACARA. If the son or daughter is 21 years of age or older, the son or daughter must have entered the United States on or before October 1, 1990.

(7) *Class 7.* An alien who was issued an Order to Show Cause or was in deportation proceedings before April 1, 1997, and who applied for suspension of deportation as a battered alien under former section 244(a)(3) of the Act (as in effect before September 30, 1996).

(8) *Class 8.* An alien:

(i) Who is or was the spouse or child of a person described in paragraphs (d)(1) through (d)(4) of this section:

(A) At the time a decision is rendered to suspend deportation or cancel removal of that person;

(B) At the time that person filed an application for suspension of deportation or cancellation of removal; or

(C) At the time that person registered for ABC benefits, applied for TPS, or applied for asylum; and

(ii) Who has been battered or subjected to extreme cruelty (or the spouse described in paragraph (d)(8)(i) of this section has a child who has been battered or subjected to extreme cruelty) by the person described in paragraphs (d)(1) through (d)(4) of this section.

(e) *Motion to reopen under section 203 of NACARA.*

(1) An alien filing a motion to reopen proceedings pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, may initially file a motion to reopen without an application for suspension of deportation or cancellation of removal and supporting documents, but the motion must be filed no later than September 11, 1998. An alien may file only one motion to reopen pursuant to section 309(g) of IIRIRA. In such motion to reopen, the alien must address each of the four requirements for eligibility described in paragraph (b) of this section and establish that the alien satisfies each requirement.

(2) A motion to reopen filed pursuant to paragraph (b) of this section shall be considered complete at the time of submission of an application for suspension of deportation or special rule cancellation of removal and accompanying documents. Such application must be submitted no later than November 18, 1999. Aliens described in paragraphs (d)(5) or (d)(6) of this section must include, as part of their submission, proof that their parent or spouse is prima facie eligible and has applied for relief under section 203 of NACARA.

(3) The Service shall have 45 days from the date the alien serves the Immigration Court with either the Form EOIR–40 or the Form I–881 application for suspension of deportation or special rule cancellation of removal to respond to that completed motion. If the alien fails to submit the required application on or before November 18, 1999, the motion will be denied or abandoned.

(f) *Motion to reopen under section 1505(c) of the LIFE Act Amendments.* (1) An alien filing a motion to reopen proceedings pursuant to section 309(h) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments, must file a motion to reopen with an application for suspension of deportation or cancellation of removal and supporting documents, on or before October 16, 2001. An alien may file only one motion to reopen proceedings pursuant to section 309(h) of IIRIRA. In such motion to reopen, the alien must address each of the four requirements for eligibility described in paragraph (c) of this section and establish that the alien satisfies each requirement.

(2) A motion to reopen and the accompanying application and supporting documents filed pursuant to paragraph (c) of this section must be submitted on or before October 16, 2001. Aliens described in paragraphs (d)(5) and (d)(6) of this section must include, as part of their submission, proof that their parent or spouse is prima facie eligible and has applied for relief under section 203 of NACARA.

(3) The Service shall have 45 days from the date the alien serves the Immigration Court to respond to that motion to reopen.

(g) *Fee for motion to reopen waived.* No filing fee is required for a motion to reopen to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) or (h) of IIRIRA, as amended by section 203(c) of NACARA and by section 1505(c) of the LIFE Act Amendments, respectively.

(h) *Jurisdiction over motions to reopen under section 203 of NACARA and remand of appeals.* (1) Notwithstanding any other provisions, any motion to reopen filed pursuant to the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, shall be filed with the Immigration Court, even if the Board of Immigration Appeals (Board) issued an order in the case. The Immigration Court that last had jurisdiction over the proceedings will adjudicate the motion.

(2) The Board will remand to the Immigration Court any presently pending appeal in which the alien appears eligible to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) of IIRIRA, as amended by section 203 of NACARA, and appears prima facie eligible for that relief. The alien will then have the opportunity to apply for suspension or cancellation under the special rules of NACARA before the Immigration Court.

(i) *Jurisdiction over motions to reopen under section 1505(c) of the LIFE Act Amendments and remand of appeals.* (1) Notwithstanding any other provisions, any motion to reopen filed pursuant to paragraph (f) of this section to apply for suspension of deportation or cancellation of removal under section 1505(c) of the LIFE Act Amendments shall be filed with the Immigration Court or the Board, whichever last held jurisdiction over the case. Only an alien with a reinstated final order, or an alien with a newly issued final order that was issued based on the alien having reentered the United States illegally after having been removed or having departed voluntarily under a prior order of removal that was subject to reinstatement under section 241(a)(5) of the Act, may file a motion to reopen with the Immigration Court or the Board pursuant to this section. An alien whose final order has not been reinstated and as to whom a newly issued final order, as described in this section, has not been issued may apply for suspension of deportation or special rule cancellation of removal before the Service pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments, according to the jurisdictional provisions for applications before the Service set forth in 8 CFR 240.62(a) or before the Immigration Court as set forth in 8 CFR 240.62(b).

(2) If the Immigration Court has jurisdiction and grants only the motion to reopen filed pursuant to paragraph (f)

of this section, the scope of the reopened proceeding shall be limited to a determination of the alien's eligibility for suspension of deportation or cancellation of removal pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments.

(3) If the Board has jurisdiction and grants only the motion to reopen filed pursuant to paragraph (f) of this section, it shall remand the case to the Immigration Court solely for adjudication of the application for suspension of deportation or cancellation of removal pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments.

(4) Nothing in this section shall be interpreted to preclude or restrict the applicability of any other exceptions regarding motions to reopen that are provided for in 8 CFR 3.2(c)(3) and 3.23(b).

Dated: June 28, 2001.

John Ashcroft,

Attorney General.

[FR Doc. 01–16767 Filed 7–16–01; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 74

[Docket No. 00–016–3]

Importation and Interstate Movement of Certain Land Tortoises

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, two interim rules concerning the importation and interstate movement of certain land tortoises. The first interim rule established regulations to prohibit the importation and interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise. The second interim rule amended the regulations by allowing the interstate movement of these land tortoises if they were accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises have been examined by that veterinarian and found free of ticks. This document amends the second interim rule by allowing that certificate to be either a health certificate or a certificate of veterinary inspection and by providing that only an accredited veterinarian may sign the certificate. This action is necessary to enable the export, interstate commerce, health care, and adoption of these types of tortoises while providing protection against the spread of exotic ticks known to be vectors of heartwater disease. This action will also relieve an unnecessary burden on Federal veterinarians.

EFFECTIVE DATE: July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. D. D. Wilson, Senior Staff Entomologist, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2000, we published in the **Federal Register** (65 FR 15216–15218, Docket No. 00–016–1) an interim rule that prohibits, until further notice, the importation of the following tortoises into the United States: All species and subspecies of leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), and Bell's hingeback tortoise (*Kinixys belliana*). The interim rule also prohibits the interstate movement of all species and subspecies of these land tortoises. These prohibitions were established in order to prevent the spread of exotic ticks known to be vectors of heartwater disease, an acute infectious disease of ruminants.

We solicited comments on our interim rule for 60 days, ending May 22, 2000. We received 53 comments by that date. They were from tortoise breeders and owners, representatives of the reptile industry, animal advocacy groups, and other interested individuals. Many commenters supported the prohibition on importation of these tortoises, but most expressed concerns about the effect of prohibiting the interstate movement of these tortoises. Because of the prohibition on interstate movement, these tortoises could not be moved interstate for sale, health care, or adoption. In addition, many domestic tortoise breeders who must move their tortoises interstate prior to exporting them could no longer export these tortoises.

Based on these comments, on July 21, 2000, we published in the **Federal Register** (65 FR 45275–45277, Docket No. 00–016–2) an interim rule that allowed the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise if they were accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises had been examined by that veterinarian and found free of ticks. This action was necessary to enable the export, interstate commerce, health care, and adoption of these types of tortoises while providing protection against the spread of exotic ticks known to be vectors of heartwater disease.

We solicited comments on our second interim rule for 60 days, ending September 19, 2000. We received two comments by that date. They were from a State department of agriculture and an association. We discuss the comments we received on the second interim rule, as well as comments we received on the first interim rule that were not addressed by the action we took in the second interim rule, below.

Public Comments on Interim Rules

Comment: You should allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise with veterinary inspection and certification that the tortoises have been found free of ticks. This would allow the importation of these tortoises while protecting against the introduction of exotic ticks and could help decrease the potential for smuggled tortoises.

Response: Allowing the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise with veterinary inspection and certification that the tortoises have been found free of ticks would require long-term preparation both for exporting regions and for the United States. Currently, most regions, including the United States, do not have a national export certification program for reptiles. Establishing such a program would require time, resources, and review by trading partners of the proposed components of the program. We are in the process of determining whether regions that export reptiles to the United States have any interest in establishing export certification programs.

In addition, if we were to allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise with veterinary inspection and certification that the tortoises have been found free of ticks, we would have to hire additional port personnel and train our inspectors to examine documents, as well as tortoises, at U.S. ports of entry. We would also have to ensure that adequate facilities for tortoise inspection are available at U.S. ports. At this time, we do not have the resources necessary to implement such a program, but we are working to establish effective treatment and biosecurity controls for tortoises and other reptiles. Until those treatment and biosecurity controls are in place, we believe that it is necessary to continue to prohibit the importation

into the United States of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise.

Therefore, we are making no changes to the interim rules in response to this comment.

Comment: You should prohibit the importation and interstate movement of only wild-caught leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises. If a tortoise can be documented or certified as captive-bred, it should be allowed to be imported and to move interstate without restrictions.

Response: We are considering a certification program for captive-bred tortoises. Before instituting such a program, however, we would need to develop standards for establishments that breed tortoises in captivity and to inspect and certify those establishments as free of ticks. If we decide to pursue a certification program, we will publish a proposed rule for public comment in the **Federal Register**.

However, at this time, because it is impossible to certify that a tortoise has been captive-bred based on a visual inspection of the tortoise, we are making no changes to the interim rules in response to this comment.

Comment: You should limit the prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises to only those tortoises imported from Africa.

Response: International trade in leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises is very active. We fear that limiting our prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises to only those tortoises imported from Africa would encourage transshipment of these animals from Africa through other countries to the United States. Our wider prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises from all foreign regions ensures that these tortoises will not be transshipped and, therefore, provides protection against the introduction of exotic ticks into the United States. Therefore, we are making no changes to the interim rules in response to this comment.

Comment: Florida, the location of the primary U.S. port of entry for importations of leopard tortoise and African spurred tortoise, developed a comprehensive set of protocols for imported tortoises. The set of protocols includes mandatory inspection of all shipments of tortoises and treatment and quarantine of all shipments found to possess ticks. The set of protocols has proven effective in ensuring that imported tortoises do not introduce exotic ticks into the United States. You should allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise under a similar set of protocols.

Response: If we were to allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise under a set of protocols like the one Florida developed, we would have to hire additional port personnel and train our inspectors to examine tortoises at U.S. ports of entry. We would also have to ensure that adequate facilities for tortoise inspection and quarantine are available at U.S. ports throughout the country. At this time, we do not have the resources necessary to implement this kind of national program, but we are working to establish practical, effective treatment and biosecurity controls for tortoises and other reptiles. Florida's protocols will offer us important data as we build our national program. However, until our treatment and biosecurity controls are in place, we believe that it is necessary to continue to prohibit the importation into the United States of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise. Therefore, we are making no changes to the interim rules in response to this comment.

Comment: Exotic ticks known to be vectors of heartwater disease cannot survive in all climates. Therefore, you should allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise to States where the climate ensures that the ticks will not survive.

Response: Leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises need a specific temperature and humidity range for survival, and that range adequately supports the survival of ticks. Therefore, although it is true that owners of these tortoises may live in areas with climates that seasonally do not support exotic ticks known to be vectors of heartwater disease (such as the northernmost United States during the winter months), these owners must house their tortoises indoors, where ticks can easily survive on their host during harsh, inclement, or otherwise unsuitable weather. Because of this, it is possible that when the season changes and an indoor tortoise is placed outside, that tortoise may still carry ticks that could act as vectors of heartwater disease to local wildlife or livestock. Therefore, we are making no changes to the interim rules in response to this comment.

Comment: You should also prohibit the importation of Savannah monitor lizards, plated lizards, ball pythons, and other reptiles and amphibians that may carry exotic ticks known to be vectors of heartwater disease. Alternately, you could prohibit the importation of all reptiles and amphibians from regions known to have heartwater disease and allow the importation of reptiles and amphibians from regions that do not have heartwater disease with veterinary inspection and certification that the reptiles or amphibians have been found free of ectoparasites.

Response: We are gathering information on whether other reptiles and amphibians present a risk of introducing exotic ticks known to be vectors of heartwater disease into the United States. At this time, however, we are prohibiting the importation of only leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise because interception records from 1995-1999 report that 90 percent of the tropical bont ticks, African tortoise ticks, and ticks of the species *Amblyomma sparsum* found on reptiles entering the United States occurred on these three species of land tortoise. Further, tortoises generally live outdoors, unlike most other reptiles and amphibians, and, therefore, obviously present a greater risk of coming into contact with and spreading ticks to other potential hosts.

Regarding the commenter's alternate suggestion, we fear that limiting our prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises to only those tortoises imported from countries known to have heartwater disease would encourage transshipment of these animals from those countries through countries known to be free of heartwater disease to the United States. Our wider prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises from all foreign regions ensures that these tortoises will not be transshipped and, therefore, provides protection against the introduction of exotic ticks into the United States.

Therefore, we are making no changes to the interim rules in response to this comment.

Comment: U.S. exporters, in an effort to profit from the huge demand for turtle meat in many Asian countries, may decimate our native tortoise populations. Therefore, you should also ban the exportation of tortoises from the United States.

Response: This comment requests an action outside of our authority. Therefore, we are making no changes to the interim rules in response to this comment.

Comment: Ensuring that tortoises are free of ticks before importation or interstate movement may not be enough to protect against the introduction or spread of heartwater disease via tortoises. Research points out that an African tortoise was infected with heartwater rickettsia and remained a latent carrier, infective to ticks, for at least 3 months. In addition, at least three ticks native to the United States have been shown experimentally to be vectors of the rickettsia.

Therefore, a tick-free tortoise infected with the rickettsia could infect native ticks, which could in turn transmit the disease to domestic livestock or wildlife. Any changes made to the prohibition on importation and interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise should include either a test for infection in tortoises, a minimum period of quarantine for tortoises, or a course of antibiotics.

Response: According to Dr. Michael Burridge, very recent research (unpublished data) conducted in Zimbabwe in conjunction with the University of Florida indicates that leopard tortoise is not a carrier of heartwater disease. Further, we have no evidence that either African spurred tortoise or Bell's hingeback tortoise is a carrier of the disease. Therefore, we are making no changes to the interim rules in response to this comment.

Comment: Instead of issuing health certificates for each shipment of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises moving interstate, you should inspect each tortoise breeder's facility, certify those facilities that are free of ticks, and then allow tortoises to be moved interstate from certified facilities without further restrictions. This would significantly reduce expenses for breeders who move their tortoises interstate.

Response: If we were to allow interstate movement of these tortoises based on inspection of each tortoise breeder's facility and certification that facilities are free of ticks, then APHIS personnel would have to inspect each facility and all of its tortoises. We would likely not approve other individuals to conduct these inspections. Therefore, it would take us months, if not years, to complete these initial inspections. This would mean that while many breeders wait for an undetermined amount of time to move their tortoises interstate, which would increase expenses for these breeders, a few breeders would be free to move their tortoises interstate and reap the profits that may be associated with a smaller supply of these types of tortoises. This would also mean that, at the outset of such a program, we would have to spend time establishing the criteria we would use to determine the order of such inspections. In addition, the inspections would have to be conducted on a regular basis, such as annually or every other year, to ensure that facilities remain free of ticks. Instead, we elected through our second interim rule to allow the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise if they were accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises had been examined by that veterinarian and found free of ticks. We believe that this system ensured that every breeder's tortoises could move interstate as quickly as possible following the effective date of the second interim rule and, therefore, provided a method to allow interstate movement of these tortoises that is fair to all affected breeders. Therefore, we are making no changes to the interim rules in response to this comment.

Comment: In addition to Federal and accredited veterinarians, you should allow also State veterinarians to examine leopard tortoises, African spurred tortoises, or Bell's hingeback tortoises and sign the health certificate required for their interstate movement.

Response: We believe that State veterinarians should not sign health certificates for the interstate movement of leopard tortoise, African spurred tortoise, or Bell's hingeback tortoise for three reasons. First, several States have indicated to APHIS that they believe that the time spent performing the thorough inspection that would be required prior to the issuance of a health certificate would take time away from the State veterinarian's primary mission activities. Second, if State veterinarians were allowed to sign these health certificates, many accredited veterinarians, who are generally private practitioners, would lose business, and its accompanying revenue, to State veterinarians. Third, and perhaps most important, we believe that accredited veterinarians who have experience dealing with tortoises and other reptiles can perform a more knowledgeable and thorough examination of leopard tortoises, African spurred tortoises, or Bell's hingeback tortoises than could many State and Federal veterinarians, who are less likely to have experience with tortoises and other reptiles. Upon further consideration, we also believe that these same reasons provide a sound basis for withdrawing Federal veterinarians from those eligible to sign the health certificate for the interstate movement of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises. Therefore, we are amending the second interim rule by allowing only an accredited veterinarian to sign the health certificate for the interstate movement of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises. Further, in order to ensure that those tortoises are accompanied by a health certificate that can be reasonably expected to reflect their status at the time they are moved interstate, we are also amending the second interim rule to state that the certificate must be signed within the 30 days prior to the interstate movement.

Comment: You should change the name of the certificate required for the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise. Instead of "health certificate," you should call it a "certificate of veterinary inspection."

Response: "Health certificate" is the term we use most often in our regulations and is consistent with our approved forms. However, we agree that a certificate of veterinary inspection, which is used by many States, would also provide the necessary certification that tortoises have been examined by an accredited veterinarian and found free of ticks. Therefore, we are amending the regulations to allow the accredited veterinarian to sign either a health certificate or a certificate of veterinary inspection for the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise.

Therefore, for the reasons given in the interim rules and in this document, we are adopting the interim rules as a final rule, with the changes discussed in this document.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rules adopted as final by this rule were effective on March 22, 2000, and July 17, 2000. This rule revises the second interim rule by allowing the certificate for interstate movement to be either a health certificate or a certificate of veterinary inspection and by providing that only an accredited veterinarian may sign the certificate. Immediate action is necessary to relieve an unnecessary burden on Federal veterinarians, who cannot be compensated through user fees for the time they spend inspecting and certifying tortoises for interstate movement. Therefore, the Administrator of the Animal and Plant Health

Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The United States accounts for about 80 percent of the world's live reptile trade. In 1998, a total of 1,921,272 reptiles were imported, valued at approximately $6.37 million. Of these, turtles, including tortoises, accounted for about 26.5 percent of imports. Three states, California (48 percent), Florida (33.2 percent), and Louisiana (11.7 percent), accounted for nearly 93 percent of turtle imports. Almost all turtles imported into the United States are wild caught.

The United States exports about 9 million live reptiles annually. Red-eared slider turtles make up about 85 percent of these exports every year. South Korea, Japan, and European countries are the major importers of U.S. turtles. However, Canada appears to be the major importer of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise. In 1995, the United States exported to Canada 32 leopard tortoises, 527 African spurred tortoises, and 2,332 Bell's hingeback tortoises. During the same year, U.S. imports of these species were 2,683, 1,223, and 952, respectively.

In 1996, between 1.5 million and 2.5 million households in the United States owned various reptiles as pets. Of these, about 534,000 households, or about 35 percent, owned a total of 950,000 turtles, including tortoises. Overall, turtles represented about 27 percent of the total reptile pet population. The prices paid for turtles ranged between $25 and $750, depending on species, size, and age. Between 1993 and 1996, the average price in the United States for a leopard tortoise was $190, for an African spurred tortoise $578, and for a Bell's hingeback tortoise $35.

This rule will require persons wishing to move these tortoises interstate to acquire a health certificate or a certificate of veterinary inspection from an accredited veterinarian. We estimate that a certificate will cost about $25 to $50 for the first tortoise, plus $2 to $5 for each additional tortoise in the shipment. These costs are small when compared to the potential losses in revenue and animals that could result from a reinstitution of the prohibition on the interstate movement of these species of tortoises. The health certificate will also help ensure the acceptability of these animals in international markets and prevent the spread of exotic ticks known to be vectors of heartwater disease, an acute infectious disease of ruminants, including cattle, sheep, goats, white-tailed deer, and antelope.

Heartwater disease has a 60 percent or greater mortality rate in livestock and a 90 percent or greater mortality rate in white-tailed deer. The direct contribution of the U.S. livestock industry to the gross domestic product is close to $60 billion; with indirect and induced impacts taken into account, that figure could reach about $150 billion. Considering the virulence and high mortality rate of heartwater disease, its introduction and spread in the United States could have severe economic consequences, even when a less than worst-case scenario is considered. Thus, the costs associated with this rule are far outweighed by the benefits of maintaining the United States' freedom from heartwater disease.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule also affirms the information contained in the interim rules concerning Executive Orders 12372 and 12988.

Paperwork Reduction Act

The information collection and recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under control number 0579–0156.

List of Subjects in 9 CFR Part 74

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, the interim rules amending 9 CFR part 74 which were published at 65 FR 15216–15218 on March 27, 2000, and 65 FR 45275–45277 on July 21, 2000, are adopted as a final rule with the following changes:

PART 74—PROHIBITION OF INTERSTATE MOVEMENT OF LAND TORTOISES

1. The authority citation for part 74 is revised to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 115, 117, 120, 122–126, 134b, 134f; 7 CFR 2.22, 2.80, and 371.4.

2. Section 74.1 is revised to read as follows:

§ 74.1 General prohibition.

The interstate movement of leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), and Bell's hingeback tortoise (*Kinixys belliana*) is prohibited except when tortoises are accompanied by either a health certificate or a certificate of veterinary inspection. The health certificate or certificate of veterinary inspection must be signed by an accredited veterinarian within 30 days prior to the interstate movement and must state that the tortoises have been examined by that veterinarian and found free of ticks.

Done in Washington, DC, this 11th day of July 2001.

(Approved by the Office of Management and Budget under control number 0579–0156)

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17841 Filed 7–16–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE168, Special Condition 23–108–SC]

Special Conditions; Raytheon C90A; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Raytheon Aircraft Services, Inc., 1115 Paul Wilkens Road, San Antonio, Texas, 78216, for a Supplemental Type Certificate for the Raytheon C90A airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays manufactured by Collins for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to

establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is May 25, 2001. Comments must be received on or before August 16, 2001.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE168, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE168. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE168." The postcard will be date stamped and returned to the commenter.

Background

On January 17, 2001, Raytheon Aircraft Services, Inc., 1115 Paul Wilkens Road, San Antonio, Texas, 78216, made an application to the FAA for a new Supplemental Type Certificate for the Raytheon C90A airplane. The C90A is currently approved under TC No. 3A20. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of a copilot's EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Raytheon Aircraft Services, Inc. (San Antonio) must show that the C90A aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the change to Raytheon C90A: Under the provisions of 14 CFR part 21, 21.101, Raytheon Aircraft Services (San Antonio) must show that the C90A aircraft meets the following provisions, or the applicable regulations as specified in Type Certificate Data Sheet 3A20, Revision 58 dated March 15, 1999 and the special conditions adopted by this rule making action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions are normally issued in accordance with § 11.19, as required by §§ 11.38, and become a part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

Raytheon Aircraft Services, Inc. (San Antonio) plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include a copilot's EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable Raytheon C90A airplane. Should Raytheon Aircraft Services (San Antonio) apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.101; and 14 CFR part 11, §§ 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Raytheon C90A airplane modified by Raytheon Aircraft Services (San Antonio) to add a copilot's EFIS.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on May 25, 2001.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17860 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–357–AD; Amendment 39–12327; AD 2001–14–16]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model G–V Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Gulfstream Model G–V series airplanes, that requires repetitively replacing the existing nose wheel steering actuator with a new or reworked actuator having the same part number. The actions specified by this AD are intended to prevent loss of nose wheel steering control without a corresponding alert message annunciation due to the effects of moisture intrusion into the rotary variable displacement transducer (RVDT) inside the steering actuator, and consequently, an over steering condition. If an over steering condition were to occur during landing, the airplane could depart the runway. This action is intended to address the identified unsafe condition.

DATES: Effective August 21, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Frank Mokry, Systems Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6066; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Gulfstream Model G–V series airplanes was published in the **Federal Register** on February 15, 2001 (66 FR 10378). That action proposed to require repetitively replacing the existing nose wheel steering actuator with a new or reworked actuator having the same part number.

Public Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Since the Issuance of the Proposed Rule

In the preamble of the proposed rule, the FAA indicated that the actions proposed were considered to be interim action, and that further rulemaking was being considered. Since the issuance of the proposed rule, the manufacturer has developed a new improved nose wheel steering actuator, and the FAA has approved replacement of the actuator with the new improved actuator as terminating action for the repetitive inspection requirements specified in the final rule.

Optional Terminating Action

Since the public has not been given opportunity to comment on the replacement of the steering actuator with the new improved actuator, the FAA has included that replacement action as an optional terminating action in new paragraph (b) of the final rule.

Interim Action

The FAA is considering further rulemaking to require the replacement of the nose wheel steering actuator with the new improved actuator.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change, specifying an optional terminating action, will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 94 Model G–V series airplanes of the affected design in the worldwide fleet. The FAA estimates that 89 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $15,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,367,040, or $15,360 per airplane, per replacement.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–14–16 Gulfstream Aerospace Corporation: Amendment 39–12327. Docket 2000–NM–357–AD.

Applicability: Model G–V series airplanes, serial numbers 501 and subsequent, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of nose wheel steering control, without a corresponding alert message annunciation, due to the effects of moisture intrusion into the rotary variable displacement transducer (RVDT) inside the steering actuator, which could result in the airplane departing the runway if an over steering condition were to occur during landing, accomplish the following:

Repetitive Replacement

(a) Replace the nose wheel steering actuator, part number (P/N) 1159SCL500–41 Rev. D, with a new or restored actuator

having the same part number, per Gulfstream V Maintenance Manual Chapter 05–10–00, dated September 15, 2000; at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Repeat this replacement thereafter every 450 flight hours or 12 months, whichever occurs first.

(1) Within 450 flight hours or 12 months after replacing the nose wheel steering actuator, P/N 1159SCL500–41 Rev. D, with a new or restored actuator having the same part number, whichever occurs first.

(2) Within 30 days after the effective date of this AD.

Optional Terminating Action

(b) Replacement of all nose wheel steering actuators with new improved actuators having P/N 1159SCL500–51, per Gulfstream V Maintenance Manual Chapter 05–10–00, dated April 30, 2001, constitutes terminating action for the repetitive replacement requirements specified in paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on August 21, 2001.

Issued in Renton, Washington, on July 10, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17758 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30258; Amdt. No. 2060]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Federal Procedure Standards Branch (AMCAFS–420), Flight Technologies and Program Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes, Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulation (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change consideration, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice of Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the

close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on July 6, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23, VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	Subject
06/08/01	FL	Hollywood	North Perry	1/5584	GPS Rwy 9R, Orig.
06/11/01	CA	Fresno	Fresno Yosemite Intl	1/5712	GPS Rwy 11L, Orig. This corrects NOTAM 1/5712 in TL01–15.
06/19/01	NM	Albuquerque	Albuquerque Intl Sunport	1/5989	ILS Rwy 8, Amdt 5A.
06/19/01	NM	Albuquerque	Albuquerque Intl Sunport	1/5990	VOR or TACAN or GPS Rwy 8, Admt 19A.
06/19/01	TX	Stephenville	Stephenville/Clark Field Muni	1/5996	VOR/DME–A, Orig.
06/20/01	VT	Barre-Montpelier	Edwards F. Knapp State	1/6029	VOR Rwy 35, Admt 3A.
06/20/01	TX	Andrews	Andrews County	1/6033	NDB Rwy 15, Admt 2.
06/20/01	TX	Andrews	Andrews County	1/6034	GPS Rwy 15, Orig–A.
06/20/01	CA	Watsonville	Watsonville Muni	1/6040	VOR/DME or GPS–A, Orig–C.
06/20/01	CA	Salinas	Salinas Muni	1/6041	LOC/DME Rwy 31, Admt 4B.
06/20/01	CA	Salinas	Salinas Muni	1/6042	VOR Rwy 13, Admt 11B.
06/20/01	CA	Monterey	Monterey Peninsula	1/6043	LOC/DME Rwy 28L, Admt 3C.
06/20/01	CA	Santa Ana	John Wayne Airport-Orange County	1/6048	ILS Rwy 19R, Admt 11.
06/21/01	TX	Del Rio	Del Rio Intl	1/6083	LOC Rwy 13, Orig.
06/22/01	NC	Jacksonville	Albert J. Ellis	1/6132	NDB or GPS Rwy 5, Admt 7A.
06/22/01	NC	Jacksonville	Albert J. Ellis	1/6133	ILS Rwy 5, Admt 7B.
06/22/01	TN	Bristol-Johnson-Kingsport	Bristol/Tri Cities Regional	1/6135	NDB or GPS Rwy 23, Admt 18.
06/22/01	TN	Bristol-Johnson-Kingsport	Bristol/Tri Cities Regional	1/6136	ILS (CATS I, II) Rwy 23, Admt 24C.
06/26/01	FL	Miami	Miami Intl	1/6268	ILS Rwy 27R, Admt 14A.
06/26/01	NE	Ainsworth	Ainsworth Muni	1/6279	GPS Rwy 35, Orig.
06/26/01	IL	Chicago	Merrill C. Meigs	1/6280	GPS Rwy 36, Admt 1.
06/27/01	FL	Miami	Miami Intl	1/6320	ILS Rwy 9L, Admt 29.
06/28/01	FL	Ocala	Ocala Regional/Jim Taylor Field	1/6399	RNAV (GPS) Rwy 18, Orig–A
06/28/01	RI	North Kingstown	Quonset State	1/6406	GPS Rwy 34, Admt 1.
06/29/01	IL	Mattoon-Charleston	Coles County Memorial	1/6429	VOR or GPS Rwy 24, Admt 10B.
07/02/01	SC	Pickens	Pickens County	1/6497	NDB or GPS Rwy 5, Orig.
07/02/01	SC	Pickens	Pickens County	1/6498	VOR/DME or GPS–A, Orig–A.

FDC Date	State	City	Airport	FDC No.	Subject
07/02/01 ...	NJ	Teterboro	Teterboro	1/6512	Copter ILS Rwy 6, Admt 1A.
07/03/01 ...	OR	Eugene	Mahlon Sweet Field	1/6546	GPS Rwy 3, Orig–A.
07/03/01 ...	OR	Eugene	Mahlon Sweet Field	1/6547	GPS Rwy 16, Orig-A.
07/03/01 ...	OR	Eugene	Mahlon Sweet Field	1/6549	VOR/DME or TACAN Rwy 35, Admt 4B.
07/03/01 ...	OR	Eugene	Mahlon Sweet Field	1/6550	VOR/DME or TACAN Rwy 3, Admt 3A.
07/03/01 ...	OR	Eugene	Mahlon Sweet Field	1/6551	VOR or GPS-A, Admt 6A.

[FR Doc. 01–17862 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30257; Amdt. No. 2059]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing and anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 6, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23, VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97,25 LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective August 9, 2001*

Waco, TX, Mc Gregor Executive, VOR RWY 17, Amdt 10

* * * *Effective September 6, 2001*

Harrison, AR, Boone County, NDB–B, Amdt 2B
Brinkley, AR, Frank Federer Memorial, NDB–A, Amdt 2
Brinkley, AR, Frank Federer Memorial, RNAV (GPS) RWY 20, Orig
Brinkley, AR, Frank Federer Memorial, GPS RWY 20, Orig-A (Cancelled)
Eagle, CO, Eagle County Regional, RNAV (GPS) D. Orig
Eagle, CO, Eagle County Regional, GPS–D, Orig (Cancelled)
Orlando, FL, Orlando Sanford, RNAV RWY 9L, Amdt 1
Olathe, KS, Johnson County Executive, VOR RWY 36, Amdt 11
Olathe, KS, Johnson County Executive, NDB–B, Amdt 3
Olathe, KS, Johnson County Executive, NDB RWY 36, Amdt 1
Olathe, KS, Johnson County Executive, NDB RWY 18, Amdt 4
Olathe, KS, Johnson County Executive, LOC RWY 36, Amdt 1
Olathe, KS, Johnson County Executive, LOC RWY 18, Amdt 7
Olathe, KS, Johnson County Executive, GPS RWY 36, Orig-B (Cancelled)
Olathe, KS, Johnson County Executive, RNAV (GPS) RWY 36, Orig
Olathe, KS, Johnson County Executive, RNAV (GPS) RWY 18, Orig
Alexandria, LA, Alexandria Intl, RNAV (GPS) RWY 18, Orig
Alexandria, LA, Alexandria Intl, RNAV (GPS) RWY 32, Orig
Alexandria, LA, Alexandria Intl, GPS RWY 18, Orig-C (Cancelled)
Brainerd, MN, Brainerd-Crow Wing Co Regional, RNAV (GPS) RWY 5, Orig
Brainerd, MN, Brainerd-Crow Wing Co Regional, GPS RWY 5, Orig (Cancelled)
Minneapolis, MN, Flying Cloud, VOR RWY 9R, Amdt 8
Minneapolis, MN, Flying Cloud, ILS RWY 9R, Amdt 2
Minneapolis, MN, Flying Cloud, RNAV (GPS) RWY 36, Amdt 1
Bay St. Louis, MS, Stennis Intl, VOR OR GPS–A, Amdt 6
Miles, MT, Frank Wiley Field, RNAV (GPS) RWY 4, Orig
Kansas City, MO, Kansas City Intl, RNAV (GPS) RWY 1L, Orig
Kansas City, MO, Kansas City Intl, RNAV (GPS) RWY 1R, Orig
Kansas City, MO, Kansas City Intl, RNAV (GPS) Y RWY 9, Orig
Kansas City, MO, Kansas City Intl, RNAV (GPS) Z RWY 9, Orig
Kansas City, MO, Kansas City Intl, RNAV (GPS) RWY 19L, Orig
Kansas City, MO, Kansas City Intl, RNAV (GPS) RWY 19R, Orig
Kansas City, MO, Kansas City Intl, RNAV (GPS) RWY 27, Orig
Kansas City, MO, Kansas City Intl, GPS RWY 1R, Orig (Cancelled)
Kansas City, MO, Kansas City Intl, GPS RWY 9, Orig (Cancelled)
Kansas City, MO, Kansas City Intl, GPS RWY 19R, Orig (Cancelled)
Kansas City, MO, Kansas City Intl, GPS RWY 27, Orig (Cancelled)
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 5, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 18L, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 18R, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 23, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 36L, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 36R, Orig
Charlotte, NC, Charlotte/Douglas Intl, GPS RWY 5, Orig (Cancelled)
Charlotte, NC, Charlotte/Douglas Intl, GPS RWY 23, Orig (Cancelled)
Charlotte, NC, Charlotte/Douglas Intl, GPS RWY 36L, Orig (Cancelled)
Charlotte, NC, Charlotte/Douglas Intl, GPS RWY 36R, Orig (Cancelled)
Kinston, NC, Kinston Regional Jetport at Stallings Fld, RNAV (GPS) RWY 5, Amdt 1
Kinston, NC, Kinston Regional Jetport at Stallings Fld, RNAV (GPS) RWY 23, Orig
Lincoln, NE, Lincoln Muni, GPS RWY 14, Orig-A (Cancelled)
Durant, OK, Eaker Field, GPS RWY 35, Orig-A
Enid, OK, Enid Woodring Muni, NDB RWY 35, Amdt 6B
Miami, OK, Miami Muni, GPS RWY 17, Orig-A
Muskogee, OK, Davis Field, GPS RWY 4, Orig-B
Muskogee, OK, Davis Field, NDB RWY 31, Amdt 9A
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 13, Orig
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 17L, Orig
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 17R, Orig
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 35L, Orig
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 35R, Orig
Oklahoma City, OK, Will Rogers World, GPS RWY 17L, Orig (Cancelled)
Oklahoma City, OK, Will Rogers World, GPS RWY 17R, Orig (Cancelled)
Oklahoma City, OK, Will Rogers World, GPS RWY 35L, Orig (Cancelled)
Oklahoma City, OK, Will Rogers World, GPS RWY 35R, Orig (Cancelled)
Pittsburgh, PA, Allegheny County, RNAV (GPS) RWY 5, Amdt 1
Pittsburgh, PA, Allegheny County, RNAV (GPS) RWY 10, Amdt 1
Pittsburgh, PA, Allegheny County, RNAV (GPS) RWY 28, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 10C, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 10L, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 10R, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 14, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) Y RWY 28C, Orig
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) Z RWY 28C, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) Y RWY 28L, Orig
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) Z RWY 28L, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 28R, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) Y RWY 32, Orig
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) Z RWY 38, Amdt 1
Abilene, TX, Abilene Regional, RNAV (GPS) RWY 17L, Orig
Abilene, TX, Abilene Regional, RNAV (GPS) RWY 35R, Orig
Abilene, TX, Abilene Regional, GPS RWY 17L, Orig (Cancelled)
Abilene, TX, Abilene Regional, GPS RWY 35R, Orig (Cancelled)
Bay City, TX, Bay City Muni, GPS RWY 31, Orig-A
Beaumont, TX, Beaumont Muni, RNAV (GPS) RWY 13, Orig

Beaumont, TX, Beaumont Muni, RNAV (GPS) RWY 31, Orig
Beaumont, TX, Beaumont Muni, VOR/DME RWY 13, Amdt 3
Beaumont, TX, Beaumont Muni, VOR/DME RWY 31, Amdt 4
Beaumont, TX, Beaumont Muni, GPS RWY 13, Orig (Cancelled)
Fort Worth, TX, Fort Worth Meacham, GPS RWY 34R, Orig-A
Lubbock, TX, Lubbock Intl, LOC BC RWY 35L, Amdt 18A
Lufkin, TX, Angelina County, GPS RWY 7, Orig-A
Lufkin, TX, Angelina County, NDB RWY 7, Amdt 2A
Lufkin, TX, Angelina County, VOR/DME RNAV RWY 7, Amdt 3A
Lufkin, TX, Angelina County, VOR/DME RNAV RWY 15, Amdt 4A
Tyler, TX, Tyler Pounds Field, RNAV (GPS) RWY 4, Orig
Tyler, TX, Tyler Pounds Field , RNAV (GPS) RWY 13, Orig
Tyler, TX, Tyler Pounds Field, RNAV (GPS) RWY 22, Orig
Tyler, TX, Tyler Pounds Field, RNAV (GPS) RWY 31, Orig
Tyler, TX, Tyler Pounds Field, GPS RWY 31, Orig (Cancelled)
Tyler, TX, Tyler Pounds Field, NDB RWY 13, Amdt 17E
Tyler, TX, Tyler Pounds Field, VOR/DME RWY 22, Amdt 3D
Tyler, TX, Tyler Pounds Field, VOR/DME RWY 4, Admt 3D
Suffolk, VA, Suffolk Muni, RNAV (GPS) RWY 4, Orig
Suffolk, VA, Suffolk Muni, GPS RWY 4, Orig-B (Cancelled)

[FR Doc. 01–17861 Filed 7–16–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending the rule that governs reparole decisions for District of Columbia prisoners whose paroles have been revoked. The amendment clarifies the Commission's intent that, in the case of a prisoner whose parole was revoked by the District of Columbia Board of Parole prior to August 5, 2000, the Commission may make findings of fact concerning issues that were not resolved by the Board at the prisoner's revocation hearing, without having to conduct a new revocation hearing. The amendment is intended to correct an interpretation according to which the Commission could not, at a parole reconsideration hearing, inquire into such matters as prior criminal conduct that was not adjudicated by the Board. Because a prisoner whose parole has been revoked upon charges sufficient to warrant his return to prison stands on the same legal footing as any other prisoner who makes an application for parole, the procedures for determining that prisoner's suitability for a grant of reparole are the procedures for initial parole hearings. In such hearings, the public safety requires the Commission to inform itself to the fullest possible extent concerning the prisoner's prior criminal conduct.

EFFECTIVE DATE: August 16, 2001.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd, Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: Under the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33 (at D.C. Code Section 24–1231), the U.S. Parole Commission assumed jurisdiction to make parole, reparole, and parole revocation decisions for all eligible District of Columbia felony offenders, effective August 5, 2000. Prior to that effective date, and for a two-year period commencing August 5, 1998, the Commission had jurisdiction only to grant paroles and reparoles to eligible District of Columbia prisoners, while the D.C. Board of Parole retained jurisdiction to supervise District of Columbia parolees and to revoke their paroles. Under the procedures of the D.C. Board of Parole, when a decision was made to revoke parole on charges sufficiently serious to return the parolee to prison, the Board would continue the revoked parolee to a reconsideration hearing at a later date. Only at such a reconsideration hearing would the Board consider the offender for a new grant of parole, or "reparole," pursuant to D.C. Code Section 24–206(a). Under that statute a prisoner whose parole has been revoked "* * * unless subsequently reparoled, shall serve the remainder of the sentence originally imposed less any commutation for good conduct which may be earned by him after his return from custody." Accordingly, reconsideration hearings for such offenders, whether conducted by the D.C. Board of Parole prior to August 5, 1998, or by the U.S. Parole Commission after August 5, 1998, have been conducted under the procedures applicable to initial parole hearings.

When the Commission adopted a rule of procedure to govern reparole decisions pursuant to D.C. Code Section 24–206(a), it required that reparole hearings would be conducted according to the procedures set forth at 28 CFR 2.72 for initial parole hearings, and specified that "* * * the Commission's decision to grant or deny reparole on the parole violation term shall be made by reference to the reparole guidelines at § 2.21." See 28 CFR 2.81(a) and (d), originally published at 63 FR 39183 (July 21, 1998), as 28 CFR 2.87, recodified at as 28 CFR 2.81 at 65 FR 45894 (July 26, 2000). These guidelines require the Commission to assess the seriousness of the prisoner's past misconduct while on parole.

At the time the Commission adopted its rule governing reparole decisions, it did not anticipate that it would be faced with a significant number of reparole applicants whose paroles had been revoked by the D.C. Board of Parole on charges sufficient to warrant revocation and return to prison, but without resolving all of the charges concerning the offender's conduct while on parole. For example, the Board would revoke parole on non-criminal charges, and make "no finding" on criminal charges if such charges were pending trial or had been dismissed. In order to determine the offender's suitability for a grant of reparole, and to apply the guidelines at 28 CFR 2.21, the Commission is obliged to consider all relevant information concerning the offender's conduct during his previous periods of parole, notwithstanding the Board's decision not to resolve all such matters at the revocation hearing. The Commission's duty to protect the public safety requires it to be fully apprised of each prisoner's real potential for further criminal conduct before it can responsibly grant a reparole..

The interpretation has been urged upon the Commission that, because 28 CFR 2.81 incorporates by reference the "reparole guidelines" at 28 CFR 2.21, it also incorporates the provision at § 2.21 that new criminal conduct ". . . may be determined either by a new federal, state, or local conviction or by an independent finding by the Commission at [a] revocation hearing." *See* 28 CFR 2.21(a)(2) (2000). Proponents of this view believe that the Commission cannot consider any allegations of criminal conduct that were not adjudicated by the Board of Parole at the revocation hearing. This interpretation is incorrect because § 2.21(a)(2) is not a

"guideline" for decision making, and was intended by the Commission to apply solely in the context of a reparole decision made by the Commission during a Commission-conducted revocation proceeding. Under the rules of the Commission for federal offenders (which are now applied to District of Columbia offenders whose revocation hearings are conducted by the Commission after August 5, 2000), the Commission will attempt to address and resolve, at the revocation hearing, all allegations of criminal and non-criminal conduct bearing upon the period of parole in question. The reparole guidelines at § 2.21 will be assessed based upon the Commission's findings of fact, and a reparole decision will be issued by the Commission at the same time as the revocation decision itself. Because this was not the practice of the D.C. Board of Parole, the Commission did not intend that the fact-finding provisions of § 2.21(a)(2) would be applicable in the context of a reconsideration hearing conducted for a D.C. offender whose parole was previously revoked by the D.C. Board of Parole. When issues of fact relevant to the question of reparole have been left unresolved by the Board, the Commission must be able to address them at the reparole stage.

When the Commission adopted 28 CFR 2.81, the Commission intended that such unresolved issues of fact be determined at a reconsideration hearing under the procedures of 28 CFR 2.72, just as in the case of any other parole applicant with unadjudicated allegations bearing upon the prisoner's suitability for release to the community. At an initial parole hearing, there may be unadjudicated allegations of criminal conduct, including dismissed criminal charges and other allegations of unlawful behavior described in the presentence investigation report or other documents, which the Commission must resolve in order to determine whether the prisoner is safe to release on parole. Under Rule 32(c)(1) of the Federal Rules of Criminal Procedure, federal sentencing judges have the option, when allegations in a presentence investigation report are challenged at the sentencing hearing, of determining that "no finding is necessary." In such cases, the Commission is permitted to make an independent determination of fact notwithstanding the court's decision to make "no finding." *See, e.g., Ochoa* v. *United States,* 819 F.2d 366 (2d. Cir. 1987) and *Lewis* v. *Beeler,* 949 F.2d 325(10th Cir. 1991). The same principle applies to a reparole applicant whose parole was revoked by the D.C. Board of Parole. *Sparks* v. *Gaines,* 2001 WL 568004 (D.D.C. May 17, 2001).

Moreover, the due process that governs the decision to revoke parole and to return a parolee to prison under *Morrissey* v. *Brewer,* 408 U.S. 471 (1972), no longer applies once the revocation proceeding is concluded, and the parolee has been returned to prison. Under D.C. Code Section 24–206(a), the offender is legally presumed to have been returned to prison to serve the remainder of his sentence "unless subsequently reparoled," so the Commission's fact-finding procedures may constitutionally be the same for parole as well as reparole applicants.

The Commission is therefore amending 28 CFR 2.81(d) to clarify its intent that it will apply the guidelines of § 2:21, to call reparole decisions, but will follow the fact-finding procedures that apply to initial hearings under § 2.72. *See* 28 CFR 2.19(c), incorporated for D.C. offenders at 28 CFR 2.89 (2000).

Implementation

This amendment to 28 CFR 2.81 shall be fully retroactive to all reparole decisions of the Commission from August 5, 1998, forward, and shall apply to all reparole decisions made by the Commission in the future with respect to offenders whose paroles were revoked by the D.C. Board of Parole. Moreover, the amended rule shall also apply to any reparole consideration by the Commission where new information has arisen since the time of the offender's revocation hearing, and that information is relevant to the offender's suitability for reparole. This interpretative rule conforms to Commission's original intent, and does not constitute in any respect a change in the Commission's decision-making policy or practice.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866. The final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(30(c) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Final Rule

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.81 is amended to add the following two sentences to the end of paragraph (d):

§ 2.81 Reparole decisions.

* * * * *

(d) * * * If the prisoner is serving a period of imprisonment imposed upon revocation of his parole by the D.C. Board of Parole, the Commission shall consider all available and relevant information concerning the prisoner's conduct while on parole, including any allegations of criminal or administrative violations left unresolved by the Board, pursuant to the procedures applicable to initial hearings under § 2.72 and § 2.19(c). The same procedures shall apply in the case of any new information concerning criminal or administrative violations of parole presented to the Commission for the first time following the conclusion of a revocation proceeding that resulted in the revocation of parole and the return of the offender to prison.

Dated: July 6, 2001.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 01–17793 Filed 7–16–01; 8:45 am]

BILLING CODE 4410–31–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

RIN 1218–AA65

Safety Standards for Steel Erection

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule; delay of effective date.

SUMMARY: By this document the Occupational Safety and Health

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Administration (OSHA) revises the effective date of the new final rule for steel erection, Subpart R of 29 CFR Part 1926, which was published on January 18, 2001. The original effective date was to be July 18, 2001. Since publication of the standard, however, employers have contacted OSHA with a wide range of questions regarding whether, and how, the standard will be applied to projects that are in various stages of completion as of July 18, 2001. Specifically, employers have expressed concerns about their ability to comply with the new standard by that date, particularly with regard to provisions that address construction safety design aspects of structural components. To address these problems, and to allow additional time for the Agency to explain the new standard to the affected industry, the effective date of the standard is changed to January 18, 2002.

DATES: The effective date of the amendments to 29 CFR part 1926 published on January 18, 2001 at 66 FR 5196 is delayed from July 18, 2001 until January 18, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Public Affairs, Room N–3647, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210; telephone: (202) 693–1999.

SUPPLEMENTARY INFORMATION:

I. Background

On January 18, 2001 (66 FR 5196) OSHA published a final safety standard for steel erection, with an effective date of July 18, 2001. A number of provisions in the final rule address the safety of certain structural components. These provisions ("component requirements") contain requirements for these components to help ensure that the structure can be erected safely. For example, there are provisions that prohibit shear connectors on members before they are erected (§ 1926.754(c)(1)(i)); require all columns to be anchored by a minimum of 4 anchor bolts, which must meet specified strength requirements (§ 1926.755(a)) (there is a comparable requirement for systems-engineered metal buildings, § 1926.758(b)); set requirements for double connections (§ 1926.756(c)(1)) (there is a comparable requirement for systems-engineered metal buildings § 1926.758(e)); require column splices to be at a specified height and meet a strength requirement (§ 1926.756(d)); require perimeter columns to have holes or other devices for perimeter safety cables (§ 1926.756(e)); in some instances require a vertical stabilizer plate to stabilize steel joists (§ 1926.757(a)(1)(i)); require certain joists to be strong enough to allow one employee to release the hoisting cable without the need for erection bridging (§ 1926.757(a)(3)), and require certain joists to be fabricated to allow for field bolting during erection (§ 1926.757(a)(8)(i)).

On January 20, 2001, Andrew H. Card, Jr., the Assistant to the President and Chief of Staff, issued a memorandum entitled "Regulatory Review Plan" (66 FR 7702). The memorandum directed that, with respect to regulations published in the **Federal Register** that had not yet taken effect, agencies were to temporarily postpone the effective date of the regulations for 60 days, subject to certain exceptions.

Since publication of the standard, a number of employers in the steel erection industry have asked whether the final rule will be applied to projects in various stages of completion as of the effective date. For example, they have asked if and how the standard will apply to a steel erection project when: (1) The project was designed before July 18, 2001; (2) the structural components were fabricated before that date and do not meet the requirements in the final rule, and (3) the steel erection work for the project began before that date and construction is continuing afterwards.

II. New Effective Date

These questions have highlighted a need to give the industry additional time to comply with the final rule. As explained below, we believe that changing the effective date to January 18, 2002 will give the industry sufficient time to adjust to the new requirements.

Based on information available to the Agency, we understand that, while the design of structural components can be changed, some time is necessary to make changes needed to conform to the final rule's requirements. Components are typically fabricated 2 or 3 months prior to being erected. Not only would it be very costly to have to re-fabricate components that were already-made, such re-fabrication would cause serious delays to the project, affecting all the trades involved. The new effective date will give an additional 6 months to facilitate these changes. The additional 6 months should ensure that re-fabrication of already made components will be unnecessary. In addition, there will be additional time for the Agency to conduct outreach activities on the new standard, in order to inform employers and employees of the requirements of the standard.

III. How The New Effective Date Will Be Applied to Component Requirements

There are two situations that could cause significant confusion under the new standard: (1) Components used in steel erection projects that were designed before the final rule was *published* (January 18, 2001), and for which a building permit was obtained prior to that date; and (2) components used in steel erection projects in which the steel erection work has begun before the final rule becomes effective (originally July 18, 2001, now to be January 18, 2002). We will apply the component requirements of the final rule to these situations as follows:

Building Permits Obtained Before January 18, 2001

It is easier to alter a structural design before the building permit has been obtained, since changes prior to that point do not need as many reviews and approvals as are needed afterwards. Therefore, where a building permit was obtained before the final rule was published (January 18, 2001), the component requirements referred to above will not apply to the project.

Steel Erection Work Begins Before January 18, 2002

It would be difficult, costly and confusing to begin to comply with the new component requirements to a project in which steel erection work has started under the previous steel erection standard. (For example, the column splice height on a lower floor affects the column splice height on successive floors. The new standard makes significant changes in this area.) Since the final rule was published on January 18, 2001, employers have been on notice that the new standard's stated effective date was July 18, 2001, and they have been expected to make plans to meet the new requirements. However, on May 14, 2001, the Department published its Semi-Annual Regulatory Agenda (66 FR 25679), in which the effective date of the final rule was listed as September 16, 2001. Since that publication, affected employers have expressed confusion as to when the final rule would actually go into effect.

As of January 18, 2002, some steel erection projects will be partly completed. Since some employers may have been expecting the rule to go into effect on September 16, 2001 (rather than July 18, 2001), we will use that date to determine whether projects partially completed on January 18, 2002 will be subject to the component provisions in the final rule. In sum, the

component requirements of the final rule will not be applied to those projects if the steel erection had begun on or before September 16, 2001.

IV. Further Guidance on Section 1926.757(a)(3)

The Steel Joist Institute (SJI) has asked the Agency to delay implementation of § 1926.757(a)(3) for two years. That provision requires that, "where steel joists at or near columns span 60 feet (18.3m) or less, the joist shall be designed with sufficient strength to allow one employee to release the hoisting cable without the need for erection bridging." SJI has informed OSHA that they have encountered unanticipated problems in developing some of the longer joists that will meet this requirement. OSHA intends to address this issue separately.

Paperwork Reduction Act

The information requirements of the steel erection standard have been approved under OMB Control Number 1218–0237. The present regulatory action delays the effective date of that standard and imposes no additional paperwork burdens.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), the Acting Assistant Secretary certifies that the delay in the effective date of the steel erection standard will not have a significant adverse impact on a substantial number of small entities.

Executive Order 12866

The delay in the effective date of the steel erection standard is not a significant regulatory action for the purposes of Executive Order 12866.

Exemption from Notice and Comment

To the extent that 5 U.S.C. 553 applies to this action, the Secretary finds that good cause exists to exempt this action from notice and comment, and to make it effective immediately upon publication today in the **Federal Register**. 5 U.S.C. 553(b)(B), 553 (d)(3).

As discussed above, prior official statements may have left the regulated community uncertain about when it would need to comply with the steel erection rule. In the last several weeks, OSHA has received a significant number of inquiries manifesting this uncertainty. The rule is currently scheduled to take effect on July 18, and the regulated community has an immediate need to know its obligations under the standard. In addition, the additional time needed for notice and comment would add further uncertainty about compliance obligations during that period. Accordingly, the Agency has determined that there is good cause to dispense with notice and comment and to make this delay effective immediately.

In summary, given the imminence of the effective date of the steel erection standard, seeking prior public comment on this delay is unnecessary and impracticable, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

Authority

This document was prepared under the direction of R. Davis Layne, Acting Assistant Secretary for Occupational Safety and Health. It is issued under Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), Sections 6 and 8 of the Occupational Safety and Health Act (29 U.S.C. 655, 657), and 5 U.S.C. 553.

Issued at Washington, DC, this 13th day of July, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–17944 Filed 7–16–01; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–089]

RIN 2115–AE47

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills and Their Tributaries, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; extension of effective date period.

SUMMARY: The Coast Guard is extending a temporary final rule published March 23, 2001, governing the operation of the Pulaski Bridge, at mile 0.6, across the Newtown Creek between Brooklyn and Queens, New York. This extension will continue to allow the bridge owner to open only one bascule span for the passage of vessel traffic through September 30, 2001. This action is necessary to facilitate the completion of scheduled maintenance at the bridge.

DATES: Section 117.801 (a)(3) and (h) added at 66 FR 16129 effective April 23, 2001 through August 31, 2001 are extended in effect through September 30, 2001.

ADDRESSES: The public docket and all documents referred to in this notice are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM.

This temporary final rule will extend the effective period previously published in the **Federal Register** on March 23, 2001 (66 FR 16128), as Drawbridge Operation Regulations Newtown Creek, Dutch Kills, English Kills, and their tributaries, New York. That temporary rule allowed a single span operation at the bridge from April 23, 2001 through August 31, 2001, to facilitate cleaning and painting the bridge.

The bridge owner subsequently advised the Coast Guard that the cleaning and painting operations would not be completed by August 31, 2001, due to lost work time as a result of inclement weather conditions. The bridge owner requested a second temporary final rule to extend the single span operation at the bridge an additional month from September 1, 2001 through September 30, 2001, to complete the maintenance at the bridge.

Accordingly, an NPRM was deemed unnecessary because no known waterway users have objected to the single span operation of the bridge and none have objected to extending it an additional 30 days. The additional 30 days of single span operation will further the public interest by permitting the uninterrupted completion of the necessary maintenance at the bridge.

Background

The Pulaski Bridge, at mile 0.6, across Newtown Creek between Brooklyn and Queens has a vertical clearance of 39 feet at mean high water and 43 feet at mean low water. The existing regulations require the draw to open on signal at all times.

The bridge owner, New York City Department of Transportation, requested a single bascule span operation in order to facilitate sandblasting and painting at the bridge.

The Coast Guard contacted all known users advising of the extension of the

single span operation until September 30, 2001. No objections were received.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the bridge will continue to open at all times for navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the bridge will continue to open on signal at all times for navigation.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this rule.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Dated: June 25, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 01–17392 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–098]

Drawbridge Operation Regulations: Kennebec River, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Carlton Bridge, mile 14.0, across the Kennebec River between Bath and Woolwich, Maine in order to facilitate major rehabilitation construction at the bridge. This deviation from the regulations, effective from July 5, 2001 through August 31, 2001, allows the bridge to remain closed for periods up to 48 consecutive hours as often as once a week. At all other times, the bridge will open at three scheduled times each weekday and will remain in the open position weeknights and weekends. Inbound commercial fishing vessels will be passed as soon as possible, except during the 48-hour closure periods.

DATES: This deviation is effective from July 5, 2001 through August 31, 2001.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Carlton Bridge, at mile 14.0, across the Kennebec River has a vertical clearance in the closed position of 10 feet at mean high water and 16 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.525.

The bridge owner, Maine Department of Transportation (MDOT), requested a temporary deviation from the drawbridge operating regulations to facilitate the rehabilitation construction at the bridge. Scheduled bridge openings will allow the contractor to accomplish more work on a daily basis by eliminating work stoppage to provide bridge openings. Additionally, sufficient time is necessary to safely remove all construction workers and equipment from the bridge in order to provide timely bridge openings.

The bridge owner also requested that the bridge be allowed to remain in the closed position at various times to facilitate several phases of the rehabilitation construction. MDOT anticipates that the closures will not occur more than once a week and should not exceed 48 hours in duration. MDOT will provide three days notice prior to each closure to the Bath Harbor master, the local newspapers, and the Coast Guard in order to notify the public and assist marine interests.

This deviation to the operating regulations, effective from July 5, 2001 through August 31, 2001, allows the Carlton Bridge to need not open for vessel traffic between 6:30 a.m. and 4:30 p.m., Monday through Friday; except that, from 9 a.m. to 9:15 a.m., 12 p.m. to 12:30 p.m., and 2 p.m. to 2:15 p.m., the draw shall remain open for vessel traffic. The bridge will remain in the open position from 4:30 p.m. to 6:30 a.m., Monday through Friday, and all day on weekends. The bridge will also be allowed to remain closed to vessel traffic for periods up to 48 hours once a week during this deviation to facilitate bridge repairs. Inbound commercial fishing vessels will be passed as soon as possible, except during the 48 hour closure periods.

The bridge owner did not provide the required thirty-day notice to the Coast Guard for this deviation; however, this deviation was approved because the repairs are necessary in order to keep the bridge operating and prevent an unscheduled closure due to component failure.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 5, 2001.

Gerald M. Davis,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 01–17797 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–067]

RIN 2115–AA97

Safety Zone; Lake Michigan, Grand Haven, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Loeks-Star Theatres Fireworks in Grand Haven, Michigan. This safety zone is necessary to protect vessels and spectators from potential airborne hazards during a planned fireworks display over Lake Michigan. The safety zone is intended to restrict vessels from a portion of Lake Michigan off Grand Haven, Michigan.

DATES: This rule is effective from 9 p.m. until 10:30 p.m. (local), August 1, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–067] and are available for inspection or copying at Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois 60521, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Mike Hogan, U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, IL 60521. The telephone number is (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments with regard to this event.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Chicago has determined firework launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risks.

Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Chicago or his designated on-scene representative. The designated on-scene representative may be contacted on VHF/FM Marine Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in a portion of Lake Michigan off Grand Haven from 9 p.m. to 10:30 p.m., August 1, 2001. This regulation would not have a significant economic impact for the following reasons. The regulation is only in effect for only 1 and 1/2 hours on one day. The designated area is being established to allow for maximum use of the waterway for commercial vessels to

enjoy the fireworks display in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–957 is added to read as follows:

§ 165.T09–957 Safety Zone; Lake Michigan, Grand Haven, MI.

(a) *Location.* The following area is a safety zone: all waters of Lake Michigan within the arc of a circle with a 140-foot radius from the fireworks launch site with its center in approximate position 43° 00′ 00″ N, 086° 13′ 7″ W (off #50 Wilderness Drive) (NAD 1983).

(b) *Effective time and date.* This regulation is effective from 9 p.m. until 10:30 p.m. (local), on August 1, 2001.

(c) *Regulations.* This safety zone is being established to protect the boating public during a planned fireworks display. In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Chicago, or the designated Patrol Commander.

Dated: June 25, 2001.

R.E. Seebald,

Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 01–17798 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–15–U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 95–7C]

Registration of Claims to Copyright, Group Registration of Photographs

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is announcing final regulations to establish a new procedure for group registration of published photographs. The new regulations permit submission of groups of published images in a variety of formats as deposit copies, together with an application and filing fee. This option applies to groups of works created by an individual photographer that are published within one calendar year. The Office is also modifying deposit requirements for groups of unpublished

photographs registered as unpublished collections.

EFFECTIVE DATE: August 16, 2001.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Patricia Sinn, Senior Attorney, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: In this document, we announce a final rule governing group registration of published photographs. The rule also liberalizes the deposit requirements for photographs included in unpublished collections of photographs registered pursuant to 37 CFR 202.3(b)(3). The new rule permits a group of photographs taken by the same photographer and published within the same calendar year to be submitted as a group for a single registration. If the claimant does not wish to or cannot identify the specific date of publication of each photograph, a range of publication dates may be stated provided that all of the photographs in the group were first published within three months before the date the application, fee and deposit are received by the Copyright Office. The deposit for the group registration of photographs, or for photographs submitted as unpublished collections pursuant to 37 CFR 202.3(b)(3), may consist of images on CD–ROMs or DVD–ROMs, unmounted prints measuring at least 3 inches by 3 inches, contact sheets, slides with single or multiple images, the photograph in a form in which it has been published (e.g., clippings from newspapers or magazines); photocopies; or a videotape clearly depicting each photograph.

I. Background

Under the 1976 Copyright Act, as amended, an applicant may seek registration of a claim in an original work of authorship with the Copyright Office by submitting a completed application, the applicable fee, and a deposit of the work to be registered. Title 17, United States Code, sets forth some of the requirements for the deposit and authorizes the Register of Copyrights to specify by regulation the nature of the copies or phonorecords to be deposited. See 17 U.S.C. 408(b), 408(c). The legislative history of the 1976 Act also reflects Congress's intent to give the Register the ability to adjust deposit requirements. See H.R. Rep. No. 94–1476, at 153, 154 (1976) ("House Report"). Generally, one complete copy or phonorecord of an unpublished work is required as a deposit, and two complete copies or phonorecords of the best edition of a published work are required if the work is first published in the United States. However, the Register of Copyrights may permit the deposit of identifying material instead of copies or phonorecords "where copies or phonorecords are bulky, unwieldy, easily broken, or otherwise impractical to file and retain as records identifying the work registered * * *" Id. at 154. Congress has also authorized the Register to allow a single registration for a group of related works in order to alleviate expense for authors and administrative burdens on the Copyright Office. 17 U.S.C. 408(c). See also 65 FR 26162, 26163 (May 5, 2000). A group of photographs by one photographer was cited as one example where group registration might be appropriate. House Report at 154.

During congressional hearings on the proposed Copyright Reform Act of 1993, photographers complained that they were unable to take advantage of the benefits of registration because the Copyright Office practices were too burdensome. Photographers stated that it required a tremendous amount of time and effort to submit a copy of each image that they wished to register and that registration was financially burdensome.[1]

In reaction to these concerns and following the 1993 recommendations of the Librarian of Congress's Advisory Committee on Copyright Registration and Deposit (ACCORD), see Library of Congress, Advisory Committee on Copyright Registration and Deposit, Report of the Co-Chairs, at 20 (1993), the Office initiated a proposed rulemaking in December 1995. 60 FR 61657 (Dec. 4, 1995). The Office initially proposed regulations which would have permitted group registration of mixed unpublished and published photographs, with a deposit of identifying material consisting of general descriptions of the photographs rather than a deposit of images of the photographs. Because the proposed rules elicited much controversy, the Office held a public hearing and allowed an additional comment period. See 61 FR 28829 (June 6, 1996). Sharply differing views were presented by interested parties.

Having reviewed all the comments and testimony, and having considered various approaches to facilitate copyright registration for photographers, a year ago the Office announced new proposed rules that would permit group registration of related published photographs and liberalize the deposit requirements for unpublished collections of photographs. 65 FR 26162 (May 5, 2000). Under this proposal, a group registration of up to 500 photographs created by one photographer published within the same calendar year would be permitted. Id. However, this proposal incorporated a less liberal deposit requirement than the original proposal; rather than accept general descriptions of the subject matter of the photographs in lieu of the photographs themselves, the Office proposed to require the deposit of a copy of each photograph in the group. The Office explained that it was reluctant to implement a procedure that would permit acceptance of deposits that do not meaningfully reveal the works for which copyright protection is claimed. On the other hand, the proposed rule would permit submission of images in a number of formats, in order to make it as easy and inexpensive as possible for photographers to register their works while still providing the actual images for which copyright was claimed. The proposed formats included digital images on CD–ROM or DVD–ROM, single images, contact sheets, slides with single images, slides each containing up to 36 images, multiple images on video tape, or the formats in which the images were originally published (e.g., clippings from newspapers or magazines). 65 FR 26164.

In this announcement, comment was requested on several issues, including: how many images should an applicant be permitted to include in one registration; how the date of publication should be provided for each photograph in a group; whether the Office's general continuation sheet (CON) should be used for identification purposes, or whether an optional specialized continuation sheet which would provide specific information about each photograph included in a group should be used; whether claimants should be required to number the photographs in a group consecutively, and the manner in which the numbering would be accomplished; whether the Office should accept deposits in formats other than those set forth in the proposed rule, and if so, in what formats; what file formats should be accepted for photographs submitted in electronic form; and whether the Office should consider offering the alternative of providing a range of dates for images covering a three-month period, rather than providing the specific date of

[1] See Copyright Reform Act of 1993: Hearings on H.R. 897 Before the Subcomm. On Intellectual Property and Judicial Administration of the House Comm. On the Judiciary, 103d Cong., 1st Sess. 370–72 (1993). See also, Copyright Reform Act of 1993: Hearing on S. 373 Before the Subcomm. On Patents, Copyrights and Trademarks of the Senate Comm. On the Judiciary, 103d Cong., 1st Sess. 169 (1993).

publication of each photograph in the group. 65 FR 26165–26166.

II. Comments Received in Response to the May 5, 2000 Notice of Proposed Rulemaking

The Office received eleven sets of comments in response to its proposed regulations published May 5, 2000. The comments covered not only the questions the Office presented May 5, 2000, but also other issues such as whether the Office should revisit its earlier proposal to permit the use of general descriptions of photographs in lieu of requiring deposit of the actual images; whether applicants for group registration of photographs should be required to comply with proposed "Photo Industry Copyright Guidelines" developed by associations representing manufacturers, photographers, photo processing firms and camera stores; and whether the proposed limit of 500 photographic images in a group should be rejected.

A. Comments in Response to Questions Posed in Notice of Proposed Rulemaking

1. How Should the Date of Publication of Each Photograph Be Indicated on (a) the Deposit Itself, and (b) a Continuation Sheet? Should a New Continuation Sheet Be Created for This Purpose, or Should the Office's Current Continuation Sheet, Form CON, Be Used?

The American Society of Media Photographers (ASMP) suggested that for digital media, the file name for a particular image could be cross referenced to the image's date of publication by entering the file name and publication date on a reference sheet. For slides containing up to 36 images, each image should be numbered and that the number and the date of publication of the image could similarly be recorded on a list. For contact sheets, that date of publication could be written on an accompanying sheet with the frame number of the image cross-referenced to the date of publication. For videotapes, a cross-referenced list could be made on which the date of publication of each image is listed in the same sequence in which the images appear on the videotape. ASMP comments at 1. ASMP noted that the date of publication of each photograph can be indicated "by attaching * * * reference sheets * * * to the continuation sheet." ASMP comments at 1. By doing so, "the date of publication is indicated." Id. ASMP also endorsed the idea of fashioning a special continuation sheet tailored to the requirements for group registration of photographs.

A number of commenters asserted that requiring photographers to identify dates of publication specifically for each photograph submitted would be unduly burdensome, placing a hardship on photographers outweighing any benefit to the public record. Professional Photographers of America (PPA) suggested that if such a requirement is retained, photographers should have the flexibility to identify publication dates on the deposited image itself, the application form, or on a continuation sheet, and that photographers be given latitude to choose the most efficient methods of dating the photographs based upon the nature of their own businesses. PPA comments at 10. PPA also suggested that a photographer should be free to use any labeling system as long as it meets the goal of enabling one to identify the specific date of publication of any photograph in the group. Id. at 12. The Advertising Photographers of America, National (APA) suggested that the regulations should require only that a claimant indicate in a permanent manner the publication date of each photograph on the deposit or on the registration application or continuation sheet, and suggested that claimants choosing to note the publication date on the registration application or continuation sheet should number each photograph on the deposit and indicate the publication date for each image by photograph number. APA comments at 1–2. APA commented that claimants who choose to state the publication date on the continuation sheet should number each photograph on the deposit and, on the continuation sheet, indicate the publication date for each image by photograph number. APA comments at 2. APA also suggested that photographers be permitted to choose the form (Form CON or a new, specialized continuation sheet) most appropriate in a given case. The Graphic Artists Guild (Guild) commented that the simplest standard means of identifying and numbering images would be by referencing the numbers on a continuation sheet. Guild comments at 2.

Professor Peter Jaszi (Jaszi) suggested that applicants be required to provide not only information about the date on which each photograph in a group was taken, but also a brief amount of information about what each photograph or sequence of photographs depicts. Jaszi comments at 1–2. The Magazine Publishers of America and Newspaper Association of America (MPA/NAA) also suggested that descriptive information be required. MPA/NAA comments at 3. Both comments emphasized that such a requirement would foster a more meaningful and comprehensive public record.

Professor Jaszi and MPA/NAA also suggested that use of a continuation sheet should be mandatory in order to provide information about each photograph. Jaszi comments at 1; MPA/NAA comments at 5. ASMP agreed that a special continuation sheet should be made available for group registration of photographs. ASMP comments at 2. APA asserted that photo claimants should be allowed to choose the form that is most appropriate, on a case-by-case basis, to ease burdens on photographers while still creating meaningful identification of works being registered. APA comments at 2–3. The Guild agreed that a continuation sheet should be available, but expressed no views on whether the Office's existing continuation sheet should be used or whether a special continuation sheet for group registration of photographs should be created. Guild comments at 2.

2. Should Claimants Be Required To Number the Photographs in a Group Consecutively (e.g., from 1 to 500), and To Indicate the Number of Each Photograph on or Affixed to the Individual Image of the Photograph That Is Deposited?

As noted above, ASMP suggested using the file name for each photographic image or, in the case of contact sheets, assign a number to each image on the contact sheet, and coordinate the file name or number with the date of publication on a reference sheet. ASMP comments at 1–2. PPA asserted that requiring a uniform numbering system would be unduly burdensome for most photographers. PPA comments at 12. Other commenters agreed. E.g., APA comments at 3–4, Patti McConville Photography comments at 1. No comments supported imposition of a numbering requirement.

3. Should the Office Accept Deposits in Formats Other Than CD–ROM or DVD–ROM; Single Images; Contact Sheets; Slides With Single Images; Slides Each Containing Up to 36 Images; or Multiple Images on Video Tape? If So, What Other Formats Should Be Accepted?

One commenter asserted that photocopies of images should also be accepted. ASMP comments at 1.C.3. Another commenter found the proposed regulations to be acceptable, but suggested that the Office should be prepared to accept deposits in

additional formats as they become available. Guild comments at 2. Another commenter proposed that the advanced photo system (APS) be used, with enhancements that permit copyright-related information about each photograph to be electronically encoded on the film itself. It is not clear whether this proposal envisioned that applicants be required to use this technology, but the commenter admitted that the hardware and systems needed to implement the proposal do not currently exist. Coalition for Consumers' Picture Rights comments at 7–10.

One commenter urged the Office to return to an earlier proposal that would have permitted the use of descriptive identifying material in lieu of a deposit of actual images. PPA comments at 3–6.

Some commenters believed the Office's proposed formats were too liberal. For example, one commenter questioned what function would be served by including an analog option such as "a videotape clearly depicting each photograph" rather than proven and cost-effective new technologies for digital image storage and retrieval. The same commenter questioned the wisdom of including "slides containing up to 36 images" as a deposit option. Jaszi comments at 2. Another commenter criticized the inclusion of contact sheets and slides, observing that such deposits are difficult to search. That commenter also expressed concerns about the potential shelf-life of other formats, such as videotape. MPA/NAA comments at 5–6.

4. For Photographs Submitted on CD–ROMs or in Other Electronic Formats, What File Formats (e.g., JPEG, GIF, etc.) Should Be Accepted, and Why?

One commenter asserted that claimants should be permitted to submit digital deposits in any commercially available file format provided the format is identified. APA comments at 4. Another commenter wrote that the Office should not limit the types of electronic formats acceptable for meeting the deposit requirements to a static list. It noted that JPEG and GIF are currently the most common formats by which images are stored digitally. PPA comments at 12–13. Another commenter recommended accepting JPEG, TIFF and PCD formats, which it claimed are the most popular file formats for storage used by photographers. ASMP comments at 3.

5. As an Alternative To Requiring a Claimant To Provide the Date of Publication of Each Photograph in the Group, Should the Office Consider Offering the Alternative of Providing a Range of Dates Over a Three-Month Period (e.g., January 1-March 31, 2001)? What Would Be the Advantages and Disadvantages—to Claimants and to the Public Record—of Such an Approach?

PPA and ASMP observed that requiring claimants to provide the precise date of publication of each photograph in a group would impose an unjustifiable and burdensome hardship on photographers. They endorsed the Office's alternate proposal that would not require an application to specify the date of publication of each photograph in the group, but would permit the application to provide a range of dates of publication over a period of no more than three months. See PPA comments at 8–10; ASMP comments at 3. APA suggested that the range of dates should be as minimally restrictive as possible, although a three month range would be acceptable. APA comments at 4–5. The Graphic Artists Guild (Guild) did not favor allowing a range of publication dates, asserting that this practice could compromise the requirements of 17 U.S.C. 412 that permit claims for attorneys' fees and statutory damages when a work has been registered within three months after publication. Guild comments at 3.

B. Additional Comments Submitted in Response to the May 5, 2000 Notice of Proposed Rulemaking

Commenters also addressed a number of additional issues, such as the number of photographs that may be included in a group registration, whether works made for hire should be eligible for group registration, and whether claimants using the group registration procedure should be required to abide by Photo Industry Copyright Guidelines.

1. The number of photographs that may be included in a group registration. The May 2000 notice proposed that a maximum of 500 photographs could be included in a group registration. Many commenters objected to limiting a group registration to 500 photographs. PPA observed that many professional photographers take 500 images or more in the course of one or two days' work. PPA comments at 3, 6–8. Another commenter agreed, noting that it generates thousands of images per quarter. Patti McConville Photography comments at 1.

2. Works made for hire. PPA objected that the proposed regulation could be read as being available only to single individual photographers, ignoring the realities of the photography business where many photographs are works made for hire. PPA comments at 3, 11. In contrast, the Graphic Artists Guild objected that the proposed regulation was available to works made for hire. The Guild asserted that the proposed amendments are intended to ease the burdens of registration for individual authors and noted that in other contexts, the Office has restricted certain benefits such as the Short Form VA to individual authors. Guild comments at 2.

3. Adoption of Photo Industry Copyright Guidelines. Some commenters urged the Office to incorporate proposed Photo Industry Copyright Guidelines into the group registration regulations. These Guidelines were negotiated by ASMP, PPA, the Photo Marketing Association International (PMA), the Association of Professional Color Laboratories, the Professional School Photographers Association, and the Coalition for Consumers' Picture Rights (CCPR). PMA comments (Appendix). Among the guidelines are requirements that photographers advise customers of the photographer's ownership of copyright and give information on how to obtain additional copies of photographs; that when reasonably possible, photographers identify and mark their photographs to permit others to know whom to contact to obtain permission to copy them; that they respond promptly to requests for permission to copy their photographs; and that they give written notice to photo processors when they believe their copyrights have been infringed, in an effort to prevent further infringement, determine the cause of the alleged infringement, and permit possible resolution of the matter. Id.

Representatives of photo processors, camera stores, manufacturers of photographic equipment and others, concerned about the possibility of being sued for copyright infringement by professional photographers for duplicating photographs in cases where they were not aware of a photographer's copyright, urged that the Office require photographers who take advantage of group registration of photographs to agree to follow the guidelines and consent to application of the guidelines in any infringement action. PMA comments at 6. Under their proposal, photographers who take advantage of group registration of photographs would be required to waive any claims for statutory damages or attorney's fees in cases in which the infringer acted "innocently" in accordance with the Photo Industry Guidelines. Eastman

Kodak Company comments at 2; PMA comments at 6 and Appendix.

PMA argues that because the Office is not required to institute a group registration of photographs proposal, it has the power to require photographers to waive their rights to statutory damages and attorney's fees in the circumstances where the guidelines would deny those remedies. PPA comments at 6–7. PPA cites two instances in which the Office has established special requirements as a condition of registration: (1) Regulations for registration of holograms that require deposit not only of the hologram itself, but also of detailed instructions for displaying and viewing the hologram and a photograph or other description of the hologram (37 CFR § 202.20(c)(2)(iii)); and (2) the Office's **Federal Register** notice accompanying the announcement of the final regulations for group registration of daily newsletters, 64 FR 29522 (1999), in which the Office stated that the group registration privilege is contingent upon the claimant meeting the conditions specified in the regulation. PMA comments at 7–8.

PPA also asserted that the Office could adopt the guidelines, but this assertion was made in the context of PPA's plea that the Office accept the earlier proposal that would have permitted group registration without requiring deposit of the actual images of the works being registered. PPA comments at 1–2 & n.2. PPA noted that in other contexts, the Office, Congress, and the courts have cited industry-endorsed guidelines with the intent that they be used by the courts in infringement litigation, referring to the Agreement of Guidelines for Classroom Copying in Not-For-Profit Educational Institutions, adopted in H.Rep. No. 94–1467, 96th Cong., 2d Sess. At 68–70 (1976). PPA comments at 2–3 n.2.

4. Other opposition to the proposal. Groups representing photo processors, camera stores, manufacturers of photographic equipment, consumers and others expressed their opposition to the group registration proposal. Although willing to accept the proposal if compliance with the Photo Industry Copyright Guidelines were required by claimants, PMA expressed concern that without such a provision, the group registration proposal would make it easy for photographers to collect statutory damages and attorney's fees for infringement, leading to a flood of litigation over minor matters. PMA comments at 5. The Coalition for Consumers' Picture Rights (CCPR), an ad hoc organization of camera store owners, minilab retailers, photo processors and photofinishers, film and paper manufacturers, camera and lens manufacturers, frame and album manufacturers, photographers, and consumers, asserted that the proposal "could jeopardize the successful photofinishing industry." CCPR comments at 2. The Coalition noted the difficulty photofinishers have in determining whether a copyright in a photograph is owned by someone other than the customer who brings the photo into the shop or, in the internet environment, transmits a photo in digital form to a photofinisher. CCPR comments at 2–3. CCPR asserted that making it easier to register photographs without building in safeguards for users will lead to more copyright infringement litigation by photographers, to the detriment of photofinishers. CCPR (and MPA/NAA) urged that the Office refrain from announcing final rules on group registration of photographs until after the Office has conducted its study that will examine copyright deposit in general. CCPR comments at 6–7; MPA/NAA comments at 6.

III. The Office's Decisions

The Office has carefully considered the comments described in part II of this notice and has resolved the issues addressed in those comments as follows.

1. Date of publication and continuation sheet. As is discussed below, the Office has decided to implement its alternative proposal that would permit applicants to designate a range of dates of publication within the three-month period immediately prior to registration, rather than require identification of the specific date of publication of each photograph in a group. Nevertheless, it is anticipated that many photographers will elect to register an entire year's worth of published photographs and to identify the specific date of publication of each photograph. For those who elect the latter alternative, the Office is persuaded by the commenters who asserted that a photographer should be free to use any labeling system as long as it meets the goal of enabling one to identify the specific date of publication of any photograph in the group. Accordingly, the final regulation provides that the date of publication of each photographic work within a group must be identified either on the deposited image or on a continuation sheet, in such a manner that for each photographic work in the group, the date of publication can be identified. So long as the applicant selects a method that clearly accomplishes this purpose, the application will be acceptable. For example, an applicant might choose to number the images, or to give each image a unique name, and cross-reference the number or name of each photograph on a continuation sheet along with the date of publication. The procedure suggested by ASMP appears to meet these requirements.[2]

The Office will make available a special optional continuation sheet for group registration of photographs that applicants may use to provide information such as the date of publication of each photograph.

The proposal to require descriptive information about each photograph in a group has merit, in that such descriptions would assist in providing a more meaningful and comprehensive public record. However, the Office does not require such descriptions in other contexts. Indeed, one can currently register an individual photograph without providing any descriptive information about that photograph (apart from a title that may provide no information about the nature of the photograph), resulting in a public record that sheds no light about the nature of the photograph. One can also currently register an unpublished collection of photographs, pursuant to § 202.3(b)(3)(B), without providing any description of the subject matter of the photographs in the collection apart from a title that does not necessarily describe the works included in the collection. Indeed, apart from information on titles (which may or may not describe the subject matter of a work) and the generalized descriptions that appear in the "nature of this work" and "nature of authorship" spaces, a typical registration of any work will offer little information about the content of the work being registered. The Office concludes that the burdens that would result from requiring a description of each photograph in a group registration would outweigh the benefits of the proposed requirement.

However, applicants are encouraged to provide descriptive information for each photograph, or each group of

[2] Although applicants will now have a number of options for designating the date of publication, including the option of providing a range of dates within three months of registration and the option of indicating the date of publication on the deposited image, applicants should consider the advantages of indicating the specific date of publication of each photograph on the continuation sheet. Because the certificate of registration is prepared from the application (including the continuation sheet), a specific date of publication that is indicated on the application becomes part of the certificate of registration. The recital of the date of publication on the certificate becomes prima facie evidence that the identified photograph was published on that date. See 17 U.S.C. 410(c).

related photographs. To that end, space will be set aside on the optional continuation sheet to permit the entry of such information.

2. Numbering of photographs. In light of the decision not to require any particular labeling system to identify the date of publication for each photograph in a group, the Office agrees with the weight of comments that no numbering requirement should be imposed.

3. Acceptable formats. The Office concludes that applicants should be permitted to submit photographs in any of the formats included in the list of acceptable formats in the May 2000 notice of proposed rulemaking. Although some commenters questioned the utility of options such as slides containing up to 36 images and videotapes depicting each photograph, the Office believes that providing applicants with a variety of options will serve the purpose of facilitating the registration of photographs.

The Office also concludes that the proposal to permit submission of photocopies of images has merit. This conclusion is reinforced by the Office's recognition that the current regulation governing registration of contributions to collective works, which can and often do include photographs, permit submission of a deposit in the form of "a photocopy of the contribution itself as it was published in the collective work" See 37 CFR 202.20(b)(2)(iii); 202.20(c)(2)(xv). However, this proposal is accepted with some hesitation, because the quality of photocopies of photographs can vary considerably. The final rule provides that photocopies must "clearly depic[t] the photograph," and photocopies that do not present clear images of the underlying photograph will be rejected as deposits. The final rule also requires that when a photograph was first published in color, a photocopy deposit of the photograph must also be in color. This requirement will assist in insuring that photocopies received as deposits are clear representations of the photographs being registered.

The permitted formats are listed in § 202.20(c)(2)(xx) in the Library of Congress's order of preference, and applicants are encouraged to select a format as close to the top of that list as possible. It should be noted, however, that compliance with the requirements of § 202.20(c)(2)(xx) is not necessarily compliance with the mandatory deposit requirement of 17 U.S.C. 407. If the Library determines that it desires the "best edition" of a particular photograph as published in the United States for its collections, it may demand the deposit of that photograph in its best edition as set forth in 37 CFR 202.19. This is a separate legal requirement, independent of the deposit requirements for registration of copyright.

Finally, the Office rejects the plea of at least one commenter to permit the use of descriptive identifying material in lieu of the actual images. Although the Office had previously expressed a willingness to consider such a proposal, the most recent notice of proposed rulemaking noted that "the Office is reluctant to implement a procedure that would permit the acceptance of deposits that do not meaningfully reveal the work for which copyright protection is claimed." 65 FR at 26164. Deposit of the work being registered is one of the fundamental requirements of copyright registration, and it serves an important purpose. As the legislative history of the Copyright Act of 1976 recognizes, copies of registration deposits may be needed for identification of the copyrighted work in connection with litigation or for other purposes. See H.R. Rep. No. 94–1476, at 171 (1976). See also *Seiler* v. *Lucasfilm, Inc.*, 808 F.2d 1316, 1322 (9th Cir. 1986) (noting that "possibilities for fraud would be limitless" if reconstructions of claimant's original work could be submitted as registration deposits); *Tradescape.com* v. *Shiraram*, 77 F.Supp.2d 408, 413–14 (S.D.N.Y. 1999) (noting that when deposit of redacted version of computer program is permitted, the result in infringement litigation is uncertainty as to whether allegedly infringed code actually is the subject of an existing registration). The ability of litigants to obtain a certified copy of a registered work that was deposited with the Office prior to the existence of the controversy that led to a lawsuit serves an important evidentiary purpose in establishing the identify and content of the plaintiff's work.[3]

It is true that, as PPA observed in its comments, current registration procedures permit the deposit of identifying material in some contexts. However, as noted in the May 2000 notice of proposed rulemaking, the Office intends to issue a notice of inquiry to reexamine the purpose of section 408 copyright deposit for all classes of works, and this examination may cause the Office to reconsider whether many or all of the circumstances in which it accepts identifying material are justified when the identifying material does not reveal the copyrightable expression for which protection is claimed. Prior to the conclusion of such a study, the Office will not initiate as far-reaching an expansion of the practice of accepting identifying material as that which is proposed by PPA.[4]

4. File formats for deposits on CD-ROM. While the Office sympathizes with the comment that a deposit in digital form should be accepted in any commercially available file format, it is necessary to limit the acceptable formats to those which the computers in the Office's Examining Division are equipped to handle. The file formats specifically identified in comments were JPEG, GIF, TIFF, and PCD. The Office accepts the assertions by the proponents of these file formats that they are the formats most commonly used by photographers. Currently, a claimant who submits deposits of photographs in digital form will be required to use one of these formats, and the Office will ensure that the Examining Division is equipped to view deposits submitted in those formats. If the Office becomes aware that other file formats have come into common use, it will include them in the list of acceptable file formats and acquire the necessary equipment and/or software to view them.

5. The option of providing a range of dates. In the May 2000 notice of proposed rulemaking, the Office sought comments on whether applications for group registration of photographs should be permitted to state a range of dates of up to three months (e.g., January 1–March 31, 2001) in which all the photographs in the group were published, rather than stating specific dates of publication for each photograph. The Office noted that it would consider such an alternative only if it were persuaded that requiring specific dates of publication for each photograph would impose an unjustifiable and burdensome hardship on photographers, and that the advantages (to claimants and to the public record) of such an alternative would outweigh its disadvantages.

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[3] That ability is, however, limited by the Office's policy on retention of deposits of published works. See Notice of Policy Decision; Policy Statement on Deposit Retention Schedule, 48 FR 12862 (March 28, 1983).

[4] The Office rejects PPA's assertion that its insistence that the actual copyrighted images be deposited is arbitrary, capricious, and contrary to law. The statute requires that for an unpublished work, "one complete copy or phonorecord" be deposited, and that for a published work, "two complete copies or phonorecords of the best edition" be deposited. 17 U.S.C. 408(b)(1)&(2) (emphasis added). It gives the Register discretion to permit the deposit of identifying material instead of copies or phonorecords. 17 U.S.C. 408(c)(1). The Register's reasoned refusal to exercise her discretion to depart from a statutory deposit requirement is hardly arbitrary, capricious or contrary to law.

As noted above, a large number of commenters endorsed this alternative, noting the considerable difficulty and burden of identifying specific dates of publication for each photograph in a group of photos published over a period of as much as a year. The Office recognizes the burden and believes that some relaxation of the requirement that the date of publication be specified is justified. On the other hand, a key benefit of copyright registration is the availability of statutory damages and attorney's fees for a plaintiff in a copyright infringement suits who has registered a work within three months after first publication of the work. 17 U.S.C. 412(2). Moreover, 17 U.S.C. 409(7) requires that an application for copyright registration include the date and nation of first publication.[5]

The Office believes that the requirements of section 409 and 412, and the needs of photographer claimants, can best be reconciled by offering the option to designate a range of dates of publication for all the photographs in a group, rather than requiring the specific date of publication for each photograph, so long as all of the photographs were first published within three months of the effective date of registration, i.e., the date on which an acceptable application, an acceptable deposit, and the applicable fee are received in the Copyright Office. Thus, a correctly completed application for group registration received (with the applicable fee and acceptable deposit) on March 31, 2002 could include photographs first published as early as January 1, 2002 and as late as March 31, 2002, and the date of publication could be entered in space 3 of the Form VA application as "January 1–March 31, 2002."[6] Because all of the photographs would have been first published within three months of the effective date of registration, the applicant would legitimately obtain the benefit of section 412(2) without having to identify, in the application, the precise date of publication of each photograph.[7]

6. The number of photographs that may be included in a group registration. In light of the comments from photographers observing that the proposed 500-photo limit is too low, the Office has reexamined its reasons for proposing such a limit. The Office has concluded that the administrative burdens of processing a group registration of a large number of photos in excess of 500 would be acceptable. Therefore, the final rule contains no limitation on the number of photographs that may be included in a group.

7. Works made for hire. The final rule clarifies that works made for hire may be included in a group registration of published photographs, but does not permit an employer for hire to include works by a number of different photographers in the same group registration. Rather, the rule provides that "[t]he photographer who photographed each of the photographic works submitted for registration as part of the group must be the same person." Thus, a photographic studio that employs a number of photographers under work-for-hire agreements may register those photographers' works in group registrations, but must submit separate registrations for the photos taken by each photographer. The Office recognizes that many photographers work as employees of photographic studios, and that their employers—many of them small businesses—experience the same difficulties that individual photographers experience in registering their photographs. However, the Office is also mindful that its power to fashion group registrations is limited to cases involving "groups of related works." 17 U.S.C. 408(c)(1). Some of the commenters objecting to this group registration proposal contended that it lacks the type of nexus required by the Copyright Act. See, e.g., MPA/NAA comments at 3. The Office disagrees with that objection, but it recognizes that there must nevertheless be a relationship between all the photographs in a group. The Office believes that limiting the group to photographs (1) taken by the same individual and (2) first published within the same year, satisfies that requirement. This conclusion finds support in the statutory and regulatory requirements for group registration of contributions to periodicals, a form of group registration similar in many respects to the new group registration of photographs. The Copyright Act limits the availability of group registration of contributions to periodicals to a group of works by the same individual author, and the Office's regulations implement this statutory requirement by providing that all the works in the group must be by the same author and that the author of each work must be an individual, and not an employer or other person for whom the work was made for hire. See 17 U.S.C. 408(c)(2); 37 CFR § 202.3(b)(7); see also 17 U.S.C. 408(c)(3). The legislative history of the 1976 Copyright Act also supports such a limitation, noting that group registration may be desirable for "a group of photographs *by one photographer*." House Report at 154 (emphasis added).

When a group registration consists of works made for hire, the claimant will be required to designate as the author, in space 2 of the Form VA, the name of the employer for hire as well as the name of the photographer who took the photograph (e.g., "XYZ Corporation, employer for hire of John Doe").

8. Photo industry guidelines. The Office does not believe that it has the authority to impose those guidelines on photographers who register their copyrights using the group registration regulation, nor does it believe the incorporation of the guidelines is advisable. Although representatives of photographers, photofinishers and users agreed upon the Photo Industry Guidelines several years ago, that agreement was in the context of a proposal that would have permitted photographers to register groups of photographs without depositing the images of the works. The Office has declined to permit such a liberal registration scheme. We do not infer from PPA's endorsement of the guidelines in the former context that photographers would accept incorporation of the guidelines into the more modest group registration proposal adopted today.

Whatever the merits might have been when the guidelines were being considered in the context of a more liberal group registration scheme, the Office does not believe that requiring photographers to surrender valuable rights enjoyed by other copyright owners is justified in the context of the more modest group registration proposal adopted in the final regulation. Photographers have long been able to register collections of their unpublished photographs under conditions similar to those adopted today for published photographs, and have not been required to waive their rights to statutory damages and attorneys fees in

[5] In recognition of the fact that an author may not always know the precise date of publication of a work, it is permissible to qualify the date stated on the application; e.g., "approximately," "on or about," "circa," "no later than," or "no earlier than." Compendium of Copyright Office Practices, Compendium II, Sec. 910.02 (1984).

[6] As a practical matter, a registration using this option might have to consist of photographs first published over a period of slightly less than three months, unless the applicant is able to deliver the application, fee and deposit to the Office on the same day as the day of publication of the last of the photographs in the group.

[7] The certificate of registration would be prima facie evidence that each of the photographs included in the group was first published between January 1 and March 31, inclusive. 17 U.S.C. 410(c). Of course, that conclusion could be rebutted by evidence that a specific photograph was not first published within that time period.

order to do so. Photographers have also been able to register groups of published photographs so long as those photographs were published as contributions to periodicals, also without being required to waive those rights. The proposal adopted today is not a radical departure from those already-existing group registrations, and the Office does not believe that the case has been made for incorporating the guidelines into this particular group registration regulation.

On the merits, the arguments made in support of the Office's power to require photographers to comply with the guidelines in order to participate in the group registration program are unconvincing. The existing registration requirements cited by PMA in support of the guideline proposal related to the nature of the deposit or the application, and not to other legal obligations having nothing to do with registration. The requirement of additional identifying material to accompany applications to register holograms exists simply to assist the Office's examiners in their examination of the deposits. The Office's statement when it adopted regulations on group registration of daily newsletters that "[t]he group registration privilege is contingent upon the claimant meeting the conditions specified in the regulation," 64 FR 2922 (1999), is a truism. None of the conditions in that regulation required claimants to comply with any industry guidelines or waive any rights; rather, all of the conditions related to registration and deposit. The guidelines on classroom copying cited by PPA have not been incorporated into any registration regulations; rather, Congress simply endorsed those guidelines, in legislative history, as offering guidance on fair use in the classroom.

The Office is unconvinced that it has the power to require copyright owners to waive statutory rights they have against infringers in order to take advantage of a registration option designed to facilitate the registration of their works. Even if the Office had such power, it does not appear that this would be a wise precedent to set. The purpose of the group registration regulation is to make it possible for photographers to obtain the benefits conferred by registration, not to require them to waive those benefits.

9. The threat of litigation. The Office understands the fears of photofinishers and others that by making it easier for photographers to register their works, the Office is also increasing the risk that those who process film and make copies of photographs will be sued for copyright infringement. With that risk comes the prospect of statutory damages and attorney's fee awards. But the concerns expressed by these opponents of the regulation really relate not to the group registration option being adopted today, but to longstanding provisions of copyright law that permit awards of statutory damages and attorney's fees to prevailing plaintiffs who have made timely registration of their works. A photofinisher who is truly an "innocent" infringer and who had no reason to believe that he was infringing probably has little to fear from this regulation. Courts are not likely to award attorney's fees to such innocent infringers, and the minimum award of statutory damages, even against a defendant who is not an innocent infringer, is very modest. Litigation can be burdensome and expensive, but those burdens and expenses are borne by plaintiffs as well as defendants. The Office has no reason to believe that photographers will wish to bear the burdens and expenses of litigation to pursue claims against photo finishers who have acted reasonably and in good faith, when the costs of such litigation are likely to outweigh any recovery. But photographers, like all other copyright owners, should be entitled to enforce their copyrights. The Office rejects any suggestion that a regulation that enables photographers to register their copyrights is unjustified because it makes it easier for them to assert their rights.

IV. Conclusion

The final regulation announced today liberalizes requirements for registration of photographs by permitting photographers to register their published photographs in groups, with a variety of deposit options (all of which require deposit of the actual images of the works being registered). In practice, it represents an incremental expansion of current options available to photographers (such as group registration of contributions to collective works and registration of unpublished collections). It also expands the list of options for deposit for photographs registered under the existing regulation for registration of unpublished collections. The Copyright Office believes that this regulation will make it easier for photographers to register their works, thereby populating the public record with many more works in a field where registration has been difficult. The Office has attempted to strike the appropriate balance between those who urge adoption of a group registration scheme that would leave the public record bereft of any reliable indication of what works are actually included in a registration, and those who urge that liberalizing registration procedures for photographers will open the floodgates of litigation against those who unwittingly infringe copyrights in photographs.

Regulatory Flexibility Act

Although the Copyright Office, located in the Library of Congress and part of the legislative branch, is not an "agency" subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Register of Copyrights has considered the effect of a proposed amendment on small businesses. The purpose of this regulation is to facilitate the ability of photographers, who usually constitute small businesses, to register the copyrights in their works, by simplifying the requirements for registration.

List of Subjects in 37 CFR Part 202

Claims, Copyright.

Final Regulation

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 202 as follows:

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 is revised to read as follows:

Authority: 17 U.S.C. 408, 702.

2. In § 202.3, paragraph (b)(9) is redesignated as paragraph (b)(10), and a new paragraph (b)(9) is added to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(9) *Group registration of published photographs.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights will accept a single application (on Form VA), deposit and filing fee for registration of a group of photographs if the following conditions are met:

(i) The copyright claimant in all of the photographs must be the same.

(ii) The photographer who photographed each of the photographs submitted for registration as part of the group must be the same person.

(iii) The photographs in the group must have been published within the same calendar year.

(iv) If the photographs in a group were all published on the same date, the date of publication must be identified in space 3b of the application. If the photographs in a group were not all published on the same date, the range

of dates of publication (e.g., January 1–December 31, 2001) must be provided in space 3b of the application, and the date of publication of each photograph within the group must be identified either on the deposited image or on a continuation sheet, in such a manner that for each photograph in the group, the date of publication can be identified. A special continuation sheet for registration of a group of photographs shall be made available by the Copyright Office.

(v) If each photograph within the group was first published within three months before the date on which an acceptable application, an acceptable deposit, and the applicable fee are received in the Copyright Office, the applicant may, in lieu of the procedure set forth in paragraph (b)(9)(iv) of this section, simply state the range of dates of publication (e.g., February 15–May 15, 2001) in space 3b of the application, without specifically identifying the date of publication of each photograph in the group either on the deposited image or on a continuation sheet.

(vi) The deposit(s) and application must be accompanied by the fee set forth in § 201.3(c) of this chapter for a basic registration.

(vii) The applicant must state "Group Registration/Photos" and state the approximate number of photographs included in the group in space 1 of the application Form VA under the heading "Previous or Alternative Titles" (e.g., "Group Registration/Photos; app. 450 photographs").

(viii) If the photographs in the group are works made for hire, the applicant must note, as part of the applicant's entry in space 2 of the application Form VA for "Name of Author," both the name of the employer for hire and the name of the photographer who photographed the works in the group (e.g., "XYZ Corporation, employer for hire of John Doe").

(ix) As an alternative to the best edition of the work, one copy of each photograph shall be submitted in one of the formats set forth in § 202.20(c)(2)(xx).

* * * * *

3. Section 202.20 is amended by adding a new paragraph (c)(2)(xx) to read as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

* * * * *

(c) * * *

(2) * * *

(xx) *Photographs: group registration.* For groups of photographs registered with one application under §§ 202.3(b)(3)(i)(B) (unpublished collections) or 202.3(b)(9) (group registration of published photographs), photographs must be deposited in one of the following formats (listed in the Library's order of preference):

(A) Digital form on one or more CD-ROMs (including CD-RW's) or DVD-ROMs, in one of the following formats: JPEG, GIF, TIFF, or PCD;

(B) Unmounted prints measuring at least 3 inches by 3 inches (not to exceed 20 inches by 24 inches);

(C) Contact sheets;

(D) Slides, each with a single image;

(E) A format in which the photograph has been published (e.g., clippings from newspapers or magazines);

(F) A photocopy of each of the photographs included in the group, clearly depicting the photograph, provided that if registration is made pursuant to § 202.3(b)(9) for group registration of photographs, the photocopy must be either a photocopy of an unmounted print measuring at least 3 inches by 3 inches (not to exceed 20 inches by 24 inches) or a photocopy of the photograph in a format in which it has been published, and if the photograph was published as a color photograph, the photocopy must be a color photocopy;

(G) Slides, each containing up to 36 images; or

(H) A videotape clearly depicting each photograph.

* * * * *

Dated: July 9, 2001.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 01–17864 Filed 7–16–01; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AJ75

Board of Veterans' Appeals: Rules of Practice—Notification of Representatives in Connection With Motions for Revision of Decisions on Grounds of Clear and Unmistakable Error

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule the provisions of an interim final rule that amended the Rules of Practice of the Board of Veterans' Appeals (Board) relating to challenges to Board decisions on the grounds of "clear and unmistakable error" (CUE). The amendment provides for notification of the party's representative and an opportunity for a response when the Board receives a request for CUE review.

DATES: Effective Date: July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller (01C), Acting Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: The Board is an administrative body that decides appeals from denials of claims for veterans' benefits. There are currently 57 Board members, who decide 35,000 to 40,000 such appeals per year.

This amendment was previously published in the **Federal Register** as an interim final rule on February 12, 1999 at 64 FR 7090, with a request for comments by March 15, 1999. We received no comments. Based on the rationale set forth in the interim final rule, we are adopting its provisions as a final rule with minor technical changes.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would affect only the processing of claims by VA and would not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: July 9, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR Part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

2. In subpart O, § 20.1405(a) is revised to read as follows:

§ 20.1405 Rule 1405. Disposition.

(a) *Docketing and assignment; notification of representative*—(1) *General.* Motions under this subpart will be docketed in the order received and will be assigned in accordance with § 19.3 of this title (relating to assignment of proceedings). Where an appeal is pending on the same underlying issue at the time the motion is received, the motion and the appeal may be consolidated under the same docket number and disposed of as part of the same proceeding. A motion may not be assigned to any Member who participated in the decision that is the subject of the motion. If a motion is assigned to a panel, the decision will be by a majority vote of the panel Members.

(2) *Notification of representative.* When the Board receives a motion under this subpart from an individual whose claims file indicates that he or she is represented, the Board shall provide a copy of the motion to the representative before assigning the motion to a Member or panel. Within 30 days after the date on which the Board provides a copy of the motion to the representative, the representative may file a relevant response, including a request to review the claims file prior to filing a further response. Upon request made within the time allowed under this paragraph (a)(2), the Board shall arrange for the representative to have the opportunity to review the claims file, and shall permit the representative a reasonable time after making the file available to file a further response.

* * * * *

[FR Doc. 01–17853 Filed 7–16–01; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Postage Meters and Meter Stamps

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is changing the Domestic Mail Manual P030 to extend the use of postage meters to include postage-evidencing systems that print information-based indicia.

DATES: This rule is effective on July 17, 2001.

FOR FURTHER INFORMATION CONTACT: James Luff, 703–292–3693.

SUPPLEMENTARY INFORMATION: The Postal Service published a proposed rule on May 1, 2001 to amend DMM P030.1.4 to allow mailers to use information-based indicia (IBI) to show evidence of postage, as they would letterpress and digital meter stamps. Comments on the proposed rule were due on or before May 31, 2001. We did not receive any comments. Therefore, the rule is adopted as final without any changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

For the reasons stated in the preamble, the Postal Service amends 39 CFR part 111 as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise section P030.1.4 of the Domestic Mail Manual as follows:

P Postage and Payment Methods

P000 Basic Information

* * * * *

P030 Postage Meters and Meter Stamps

* * * * *

1.0 BASIC INFORMATION

* * * * *

1.4 Classes of Mail

Postage may be paid by printing postage meter stamps (including letterpress, digital meter stamps, and information-based indicia) on any class of mail except Periodicals. Information-based indicia (IBI) include human-readable information and a USPS-approved two-dimensional barcode with a digital signature and other required data fields. Metered mail (including mail bearing IBI) is entitled to all privileges and subject to all conditions applying to the various classes of mail.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–17848 Filed 7–16–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA032–0241a; FRL–7001–2]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District, Monterey Bay Unified Air Pollution District, Modoc County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Kern County Air Pollution Control District (KCAPCD), Modoc County Air Pollution Control District (MCAPCD), and Monterey Bay Unified Air Pollution District (MBUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern visible emissions (VE) from many different sources of air pollution. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on September 17, 2001 without further notice, unless EPA receives adverse comments by August 16, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington D.C. 20460;

California Air Resources Board, Stationary Source Division, Rule

Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;
Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301;
Modoc County Air Pollution Control, 202 West 4th Street, Alturas, CA 96101; and,
Monterey Bay Unified Air Pollution District, 24580 Silver Cloud Court, Monterey, CA 93940–6536.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
KCAPCD	401	Visible Emissions	11/29/93	3/29/94
MCAPCD	4.1	Visible Emissions	1/15/89	12/31/90
MBUAPCD	400	Visible Emissions	3/22/00	5/26/00

On the following dates, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V: June 3, 1994, KCAPCD Rule 401; October 6, 2000, MBUAPCD Rule 400; and, February 28, 1991, MCAPCD Rule 4.1. These criteria must be met before formal EPA review may begin.

B. Are There Other Versions of These Rules?

There are versions of all of these rule within the SIP. In all cases, the submitted rule consolidates several SIP rules into a single rule format. The TSD for each rule provides a detailed discussion of each consolidation. Only MBUAPCD adopted and submitted prior versions of Rule 400. While we can act on only the most recently submitted version of Rule 400, we have reviewed materials provided with previous submittals.

C. What Is the Purpose of the Submitted Rule Revisions?

Each of these rules limit the emissions of visible air contaminants of any type; usually, but not always particulate matter from combustion sources and industrial sites. Specifically, these rules prohibit emissions beyond a defined opacity standard. The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must meet Reasonably Available Control Measure (RACM) requirements for nonattainment areas (see section 189), and must not relax existing requirements (see sections 110(l) and 193). The KCAPCD regulates an PM nonattainment area (see 40 CFR part 81), so Rule 401 must fulfill RACM. MBUAPCD and MCAPCD meet the PM standard and are not required to meet RACM requirements.

We used the following guidance and policy documents to define our specific enforceability and RACT requirements:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACM, and SIP relaxations. KCAPCD and MBUAPCD rules contain agricultural exemptions that are narrowly construed by each district. Consequently, these exempted sources are a neglible source of emissions in each district. The TSDs have more information on our respective evaluations.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules. In particular, MCAPCD has retained a 40% opacity standard. While MCAPCD need not meet the RACM 20% opacity standard given its PM attainment status, almost all air districts in California have adopted 20% opacity standard. This suggests that the standard is readily achievable and should be considered by MCAPCD.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 16, 2001, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 17, 2001. This will incorporate these rules into the federally enforceable SIP.

III. Background Information

Why Were These Rules Submitted?

Visible emission rules with their opacity standards are basic components of an air quality regulation program and a general RACM requirement for PM–10 regulations. Section 110(a) of the CAA requires states to submit regulations that control VE emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VE rules.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

Date	Event
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
December 10, 1993.	Section 189(a)(1)(C) requires that PM–10 nonattainment areas implement all reasonably available control measures (RACM) by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 8, 2001.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(182)(i)(F)(*4*), (196)(i)(F)(*4*), and (279)(i)(B)(*3*), to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(182) * * *

(i) * * *

(F) * * *

(*4*) Rule 4.1, adopted on January 15, 1989.

* * * * *

(196) * * *

(i) * * *

(F) * * *

(*4*) Rule 401, adopted on April 18, 1972 and amended on November 29, 1993.

* * * * *

(279) * * *

(i) * * *

(B) * * *

(*3*) Rule 400, adopted July 1, 1969 and amended on March 22, 2000.

[FR Doc. 01–17702 Filed 7–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 241–0239a; FRL–7005–1]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District, El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and El Dorado County Air Pollution Control District (EDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from polyester resin operations and the manufacture of foam products composed of polystyrene, polyethylene or polypropylene. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on September 17, 2001 without further notice, unless EPA receives adverse comments by August 16, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

El Dorado County Air Pollution Control District, 2830 Fairlane Ct., Bldg. C, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1197.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
BAAQMD	8–52	Polystyrene, Polypropylene, and Polyethylene Foam Product Manufacturing Operations.	07/07/99	03/28/00
EDCAPCD	240	Polyester Resin Operations	02/15/00	07/26/00

On May 19, 2000 and October 4, 2000, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

These rules are new with no previous versions in the SIP.

C. What Is the Purpose of the Submitted Rules?

BAAQMD Rule 8–52 contains the following requirements:

- Emission limits per 100 lbs of raw materials processed
- 98% control device efficiency
- Monitoring and recordkeeping requirements
- Test methods necessary to determine compliance

EDCAPCD Rule 240 contains the following requirements:

- Monomer content for polyester resins
- Requirements for cleaning materials and closed containers
- Recordkeeping requirements
- Test methods for determining compliance

The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The BAAQMD and EDCAPCD regulate ozone nonattainment areas (see 40 CFR part 81), so both rules must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. CARB's RACT/BARCT Guidance Document, "Polyester Resin Operations," January 1991.

4. Control Technique Guidelines (CTG) entitled, "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins" (EPA–450/3–83–008).

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance

regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 16, 2001, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 17, 2001. This will incorporate these rules into the federally enforceable SIP.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549,104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be

challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 6, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(277)(i)(C)(*5*) and (c)(280)(i)(B)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(C) * * *

(277) * * *

(i) * * *

(C) * * *

(*5*) Bay Area Air Quality Management District Rule 8–52, adopted on July 7, 1999.

* * * * *

(280) * * *

(i) * * *

(B) El Dorado County Air Pollution Control District

(*1*) Rule 240, adopted on February 15, 2000.

[FR Doc. 01–17700 Filed 7–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7011–2]

RIN 2060–AI98

Regulation of Fuel and Fuel Additives: Reformulated Gasoline Adjustment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With today's action, EPA is adjusting the volatile organic compound (VOC) performance standard under Phase II of the reformulated gasoline (RFG) program for ethanol RFG blends containing 3.5 weight percent oxygen (10 volume percent ethanol) sold in the Chicago and Milwaukee RFG areas. As discussed in the Notice of Proposed Rulemaking for this adjustment, the EPA is exercising its discretion under Section 211(k)(1) of the Clean Air Act which directs EPA, in promulgating emission reduction standards for RFG, to consider the cost of achieving such emission reductions as well as any nonair-quality and other air-quality related health and environmental impacts.

This adjustment reduces by 2.0 percentage points (equivalent to an increase in Reid Vapor Pressure (RVP) of approximately 0.3 pounds per square inch (psi)) the summertime VOC performance standard applicable to RFG blends containing 10 volume percent ethanol.

DATES: This rule is effective on July 17, 2001. For additional information on the effective date, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For further information about this rule, contact Barry Garelick, Environmental Protection Specialist, Office of Transportation and Air Quality, Transportation and Regional Programs Division, at (202) 564–9028.

SUPPLEMENTARY INFORMATION: EPA believes that it is appropriate to make today's final rule effective immediately upon today's publication in the **Federal Register**. Because of the limited geographic scope of this rule, and because this rule generally provides for additional flexibility, it should not be problematic for regulated parties to immediately utilize and/or comply with the provision of this rule. Although this final rule includes some new requirements, these requirements are reasonable and necessary to provide the increased flexibility also included in this rule. EPA notes that the general requirement in 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), concerning publication or service of a substantive rule not less than 30 days prior to its effective date, does not apply here. CAA section 307(d)(1) provides that section 553 of the APA does not apply to promulgation or revision of any regulation pertaining to fuels or fuel additives under section 211 of the CAA. Even if section 553(d) of the APA were to apply, there is good cause under section 553(d)(3) to provide less than 30 days notice, for the reasons noted above.

The purpose of the RFG program is to improve air quality in specified areas of the country by requiring reductions in emissions of ozone-forming volatile organic compounds (VOCs) and oxides of nitrogen (NO_X), and in emissions of toxic air pollutants, through the reformulation of gasoline, pursuant to 211(k) of the Clean Air Act (CAA or the Act), as amended. In the Act, Congress specified that RFG contain at least 2.0 weight percent oxygen. MTBE and ethanol are the two forms of chemical oxygen (or oxygenates) that gasoline producers most commonly use to add oxygen to gasoline. MTBE and ethanol have also been used in conventional gasoline, as octane enhancers, since the 1970s.

In September 1996, EPA awarded a contract to the National Research Council (NRC) to determine whether the reactivity (i.e., ozone-forming capacity) of VOCs can be taken into account in the RFG program without adversely impacting RFG's air quality benefits. In a report released in May 1999, the NRC found significant air quality benefits from RFG and recommended that "the contribution of carbon monoxide (CO) to ozone formation should be recognized in assessments of the effects of RFG." Ozone-Forming Potential of Reformulated Gasoline, National Academy Press, at p. 6 (1999). Mobile sources are a major source of CO emissions, contributing approximately 90 percent of the total CO for Chicago and Milwaukee.

In December 1998, EPA established the Blue Ribbon Panel on Oxygenates in Gasoline, a panel of independent experts, to examine MTBE's performance in gasoline, its presence in water, and alternatives to its use. (While EPA established the panel for reasons that were independent of ethanol issues and the NRC study on RFG, its relevance to this rulemaking is discussed further below.) Panel recommendations made to EPA in July 1999 include:

- Ensure no loss of current air quality benefits from RFG.
- Reduce the use of MTBE, and seek Congressional action to remove the RFG oxygen requirement in the Act.
- Strengthen the nation's water protection programs, including the Underground Storage Tank (UST), Safe Drinking Water, and private well protection programs.

On July 12, 2000, EPA proposed to adjust the VOC performance standard for RFG with 3.5 weight percent oxygen (equivalent to 10 volume percent ethanol) by 1.0 percentage point. As proposed, this adjustment to the VOC performance standard would apply to RFG marketed in all areas of the nation using RFG. As discussed in the Notice of Proposed Rulemaking for this

adjustment (65 FR 42922; July 12, 2000), EPA proposed to exercise its discretion under Section 211(k)(1) of the Clean Air Act which directs EPA, in promulgating emission reduction standards for RFG, to consider the cost of achieving such emission reductions as well as any nonair-quality and other air-quality related health and environmental impacts. The intent of the proposed rule was to increase the flexibility available to refiners to formulate RFG with ethanol while continuing to achieve ozone benefits similar to those of the current Phase II RFG program. Finally, the proposed rule was also intended to implement the NRC recommendation that EPA take into consideration the contribution of CO to ozone formation.[1]

In the proposal for the 1.0 percentage point adjustment (equivalent to an increase in RVP of approximately 0.2 psi), we also solicited comment on a recommendation by the Illinois Environmental Protection Agency (IEPA) for a VOC adjustment of 3.7 percentage points (equivalent to an increase in RVP of 0.5 psi). IEPA's recommendation was based in part on a photochemical modeling study conducted for the lower Lake Michigan region.

We received approximately 30 comments on the proposed rule, from states and state associations, refiners and their trade associations, automobile manufacturing associations, oxygenate producer associations, and 200 post cards from citizens of Illinois advocating adoption of the larger adjustment recommended by IEPA. Comments from refiners generally expressed concern that the adjustment as proposed would not provide sufficient flexibility to switch from MTBE to ethanol because the size of the adjustment would not result in a significant cost reduction. Ethanol industry representatives commented that the adjustment should be larger than proposed, specifically endorsing IEPA's recommendation of an adjustment equivalent to a 0.5 psi increase in RVP. States were divided on the proposal which was not restricted to Chicago and Milwaukee; some maintained that the adjustment would have an adverse effect on air quality, while others supported an adjustment.

[1] Additionally, the NPRM discussed reduction and avoidance of increased MTBE as a potential benefit. We recognize, however, that EPA's evaluation of the potential water quality impacts of using MTBE and the strategies available to minimize any such impacts is incomplete. Therefore, we believe that today's rule is appropriate regardless of any effects on MTBE use. We do not specifically rely on MTBE-related benefits as a justification for this adjustment of the VOC performance standard.

Refiners and representatives of the ethanol industry opposed the proposed prohibition of oxygen credit generation for batches of RFG that comply with the adjusted VOC standard and argued that the prohibition might increase the use of MTBE among refiners that would otherwise rely upon such credits. Refiners also opposed the Product Transfer Document requirements, claiming that they would result in higher costs because refiners would need to build more tankage to ensure segregation of VOC adjusted RFG from other RFG.

After evaluating all of the comments, EPA has decided to finalize the VOC adjustment rule, with certain modifications and clarifications. We are limiting application of the adjusted VOC standard to the Chicago and Milwaukee RFG areas where ethanol RFG currently makes up 100 percent of the market. With 100 percent ethanol penetration, there is no mixing of ethanol and non-ethanol RFG in vehicle gas tanks. When gasoline with ethanol is mixed with non-ethanol gasoline in a car's fuel tank (often referred to as "commingling"), the evaporation rate of the mixture is increased, resulting in an increase in emissions of smog-causing pollutants and which is not currently accounted for in the RFG program. In areas like St. Louis, where less than 100 percent of the RFG contains ethanol, the rule as proposed had the potential to cause more ethanol RFG to be made in these mixed RFG areas. If more ethanol RFG is used, the amount of commingling will tend to increase, resulting in an increase in emissions of VOC in addition to those associated with the adjustment to the VOC performance standard itself. To avoid the possibility of any significant VOC increases associated with commingling (which EPA has not fully analyzed or evaluated), the rule as finalized will be restricted to Chicago and Milwaukee. Analysis and quantification of the VOC increases—as well as the existing unaccounted for VOC emissions—associated with commingling would need to be factored into any consideration of a potential adjustment of the RFG performance standard in areas outside of Chicago and Milwaukee. Finally, the adjusted standard is based on photochemical modeling conducted by IEPA that is unique to the Chicago/Milwaukee area (discussed in further detail in Section I.G. below). We do not believe that the results of this modeling can be extended to areas outside this region and we currently lack photochemical modeling similar to IEPA's for other regions that would allow us to make conclusions about the appropriateness of adjustments to the VOC standard in other RFG areas.

While we are not adopting IEPA's recommended adjustment of 3.7 percentage points, we are increasing the 1.0 percentage point adjustment to 2.0 percentage points (equivalent to an increase in RVP of approximately 0.3 psi). We have concluded that IEPA's approach does not provide sufficient confidence that adverse ozone effects would not occur in the Chicago nonattainment area with the larger adjustment of 3.7 percentage points. We found several deficiencies in the emission calculations which IEPA used in its justification of a 0.5 psi adjustment. These are discussed in detail in Section I.G. below.

Finally, we are not taking or proposing action at this time regarding elimination or adjustment of the 1.5 weight percent oxygen minimum. We are continuing to review the comments received, however, and may consider action in the future.

The contents of today's preamble are listed in the following outline.

I. Adjusted VOC Standard Under Phase II of the RFG Program
A. Regulated Entities
B. Regional Applicability
C. Commingling Effects
D. Oxygen Credit Generation for VOC Adjusted RFG
E. Segregation
F. Effect of Rule on NO_x and Toxics
G. Consideration of Recommendation of Illinois EPA
H. Impact of Adjusted Standard on SIPs
II. Administrative Requirements
A. Submission to Congress and the Comptroller General
B. Executive Order 12866
C. Executive Order 13132 (Federalism)
D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
E. Regulatory Flexibility
F. Paperwork Reduction Act
G. Unfunded Mandates Reform Act
H. Executive Order 13045: Children's Health Protection
I. National Technology Transfer and Advancement Act of 1995 (NTTAA)
J. Statutory Authority
K. Executive Order 13211 (Energy Effects)

I. Adjusted VOC Standard Under Phase II of the RFG Program

A. Regulated Entities

Regulated categories and entities potentially affected by this action include:

Category	Examples of regulated entities
NAICS 32411	Refiners, importers, oxygenate producers, and oxygenate blenders of reformulated gasoline.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this action, one should carefully examine the RFG provisions at 40 CFR Part 80, particularly § 80.41 dealing specifically with the RFG standards. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Regional Applicability

EPA has determined that a 2.0 percentage point adjustment to the VOC performance standard for 10 percent ethanol RFG (equivalent to an increase in RVP of approximately 0.3 psi) is appropriate in the Chicago and Milwaukee RFG areas. As expressed in our notice of proposed rulemaking (65 FR 42920, 42924, July 12, 2000), EPA's intent is to offset partially the incremental cost associated with the production of ethanol-blended RFG in order to provide additional flexibility to refiners.[2] EPA is also taking a reasonable approach to ensure that RFG will continue to provide a similar level of overall benefits.

By limiting application of the VOC adjustment to the Chicago and Milwaukee RFG areas, we will provide additional flexibility for fuel providers that currently produce RFG for ethanol blending in the two metropolitan areas that use ethanol exclusively in RFG. This flexibility will help to ensure that the refiners that make ethanol RFG are able to continue to do so at reduced cost. Moreover, we are confident based on modeling that Illinois Environmental Protection Agency (IEPA) has conducted (discussed in more detail in Section I.G.) that a 2.0 percentage point adjustment to the VOC standard (equivalent to an RVP increase of approximately 0.3 psi) for these areas will still realize ozone benefits similar to those of the current Phase II program.

Based on our evaluation of the relevant data, however, we have concluded that there is sufficient uncertainty regarding the potential for adverse environmental consequences from a VOC adjustment in RFG areas outside of Chicago and Milwaukee to allow such an adjustment at this time. Specifically, several commenters[3] pointed out that in areas where both MTBE-blended and ethanol-blended RFG are used, increased VOC emissions could occur due to the additional commingling of MTBE and ethanol RFG in automobile gasoline tanks. (See the discussion of commingling in section I.C. for further details.) Therefore, commenters suggested that if EPA established a VOC adjustment for RFG areas where ethanol is not the predominant oxygenate (i.e., areas other than Chicago and Milwaukee), EPA would need to consider the emissions impact of commingling. Additionally, several comments suggested that any increase in ethanol use might be accompanied by an increase in evaporative VOC emissions due to increased permeation of ethanol through vehicle fuel system components such as hoses and seals. We agree that any evaluation of the appropriateness of a VOC adjustment should include consideration of commingling and permeation as well as other emission-related impacts. Based on uncertainty regarding the potential emissions impact of mixed ethanol/MTBE pools in RFG areas outside of Chicago and Milwaukee, we are unable to conclude at this time that a VOC adjustment is appropriate for such areas.

In addition, the size of the adjusted VOC standard itself is derived from data specific to the Chicago/Milwaukee region. As discussed in detail in Section I.G below, the 2.0 percentage point adjustment (equivalent to an RVP increase of 0.3 psi) was based on photochemical modeling that Illinois Environmental Protection Agency (IEPA) conducted. The modeling represents the specific lower Lake Michigan region to which the standard will apply. As such, because the modeling results are dependent on the pollutant mix and geographic and meteorological features specific to that region, the photochemical modeling results cannot be extended to other areas.

Overall, we believe that a 2.0 percentage point adjustment to the VOC performance standard (equivalent to an RVP increase of approximately 0.3 psi) is appropriate for RFG with 10 volume percent ethanol sold in the Chicago and Milwaukee RFG area. Because ethanol RFG constitutes virtually 100 percent of the RFG market in the Chicago and Milwaukee area, they are significantly different from other RFG areas. Today's rule is unlikely to change this market share. For this reason, and because EPA is relying on modeling data specific to these areas, we believe it is appropriate to limit the rule to Chicago and Milwaukee. (See Section I.C. for a more detailed discussion of commingling.)

Several questions remain regarding the impact that such a VOC performance standard adjustment might have on overall emissions from RFG in the future. Specifically, newer car technology and low sulfur gasoline will tend to lower CO emissions generally, and therefore decrease the amount of CO reduction resulting from the higher oxygen levels associated with RFG containing 10 volume percent ethanol. Also, while it is our expectation that the market share of ethanol-blended RFG in the Chicago and Milwaukee areas will remain at 100 percent, some question exists regarding the future market share of ethanol blends in these areas based in part on future demand for ethanol in other areas of the U.S. and how that might affect supply, prices, and penetration level in the Midwest. Therefore, EPA will continue to evaluate the effect of Tier 2 technology and Tier 2 low sulfur gasoline on CO emissions as well as market conditions with respect to ethanol and MTBE use.

C. Commingling Effects

Several parties commented that, in areas that currently use RFG with MTBE, increases in the use of ethanol-blended RFG associated with the proposed rule would result in an increase of commingling of MTBE and ethanol RFG blends in automobile gasoline tanks. Since the presence of ethanol causes an increase in the volatility of gasoline (as measured by Reid Vapor Pressure or RVP), such additional commingling would

[2] The ethanol industry originally feared that the increased stringency of the Phase II VOC standard would result in ethanol being "locked out" of the RFG market. Last summer's RFG market proved otherwise, however. This suggests that with economic conditions similar to last summer's the current Phase II standard should not prevent refiners from making RFG with ethanol. More importantly, however, it suggests that an adjustment will offer increased flexibility to refiners. Thus even if market conditions change, we believe an adjustment will provide an incentive to make more RFG with ethanol than without such adjustment. Finally, one refiner commented that the 1 percentage point adjustment would result in that refiner making approximately 5 percent more RFG with ethanol than without the adjustment. We believe, therefore that the 2 percentage point adjustment will allow even greater flexibility to refiners, and will help to prevent increased use of MTBE in these areas.

[3] Commenters were Alliance of Automobile Manufacturers, Oxygenated Fuels Association, American Lung Association, California Air Resources Board, and NESCAUM.

contribute to an increase in VOC emissions beyond that associated with the adjustment itself. Some comments raised this issue, and pointed out that our estimates of VOC emission increases resulting from the VOC adjustment should have taken commingling effects into account.

In Chicago and Milwaukee, however, virtually 100 percent of the RFG has been oxygenated with ethanol since 1995, and EPA generally does not expect that pattern to change significantly in the foreseeable future; in fact, one of the outcomes of this rule is to help ensure that this pattern continues, by making ethanol use more cost-effective. EPA believes that this rule will not result in any additional VOC emissions due to commingling in the Chicago and Milwaukee RFG areas.

Given that there may be unaccounted commingling emissions in other areas (unlike in Chicago and Milwaukee), and that EPA has not fully evaluated such areas, we are finalizing the VOC adjustment only for the Chicago and Milwaukee areas.

D. Oxygen Credit Generation for VOC Adjusted RFG

Today's final rule allows refiners to trade oxygen credits that are generated by production of VOC adjusted RFG. EPA proposed to prohibit refiners from generating oxygen credits for adjusted VOC RFG because we believed that trading such credits might result in less overall ozone reduction from the oxygen content requirement than the statute implicitly anticipates. Many comments opposed EPA's proposed prohibition on oxygen credit generation for adjusted VOC RFG, arguing that the prohibition would limit refiner flexibility and could result in increased use of MTBE by refiners that would otherwise rely on oxygen credits. Comments further argued that the emission benefits in the region where RFG containing 3.5 weight percent oxygen is used are not diminished even if the oxygen credits are traded, because such credits are traded to other areas that use predominantly MTBE.

Currently, some RFG contains oxygen in excess of 2.0 weight percent (e.g., most ethanol blends contain 3.5 weight percent oxygen). Such blends provide greater CO reductions than RFG blends with 2.0 percent or lower oxygen. Oxygen trading allows refiners to bank and trade credits for the oxygen content of their RFG above 2.0 by weight (or above 2.1 percent if the refiner complies on average). The refiner may then sell these credits to other refiners that produce RFG with less than 2.0 weight percent oxygen, allowing them to meet the oxygen content limit. However, no gallon of RFG may contain less than 1.5 weight percent oxygen (subject to EPA raising—or ratcheting—the per gallon minimum if an RFG area fails an annual oxygen content survey). See 40 CFR 80.67. The oxygen credit trading program may result in different CO benefits for different areas of the country; i.e., where oxygen is used at higher rates, RFG provides a greater CO benefit, and where oxygen is used at lower rates, RFG provides less CO benefit. The minimum oxygen requirement, however, limits the potential for differing effects and assures some degree of CO benefit everywhere RFG is used.

The RFG program has not generally accounted for the impact that its various requirements may have on CO emissions. Today's rule is the first rule under the RFG program that attempts to take CO emissions into account. Nonetheless, this rule is not intended to establish a comprehensive mechanism for recognizing the CO benefits of the RFG program.

Conceptually, a limit on the trading of oxygen credits for VOC adjusted RFG might help to ensure that the greater CO benefits from ethanol RFG areas are not used to both offset a VOC increase in the ethanol RFG areas and result in less CO benefits in non-ethanol RFG areas through credit trading. However, this would be, at best, an indirect approach to addressing the issue of a comprehensive accounting for CO. Additionally, such a restriction would not, in fact, have provided any assurance that greater CO reductions would have actually been achieved by non-ethanol blends. That is, refiners wishing to market gasoline with less than 2.0 percent oxygen by weight might simply turn to other sources of oxygen credits.

Moreover, because the actual gasoline oxygen content in a non-ethanol RFG area is not likely to be below 2.0 weight percent for all the gasoline in the area (and if it is, there is already a mechanism in the regulations to address the situation), and because the level cannot fall below 1.5 percent for any gallon of RFG (subject to ratcheting), the reduction in CO benefits for non-ethanol areas (if any) will be small relative to the increase in benefits associated with ethanol RFG. In any event, implementation of today's VOC adjustment, without any restriction on credit generation or trading, will not result in any increase or change in emissions in non-ethanol areas above current levels.

Finally, because oxygen credits are generally used by refiners producing non-ethanol gasoline sold in Northeast RFG areas, any shortage of credits resulting from a trading restriction is likely to result in an increase in MTBE use in the Northeast, which would run directly contrary to one of the reasons for today's action.

Based on the above considerations, EPA has determined that it is not appropriate at this time to prohibit the generation and trading of oxygen credits for batches of RFG that are subject to the adjusted VOC standard.

E. Segregation

In the proposed rule, we introduced a requirement that refiners identify RFG blendstock for oxygenate blending (RBOB) destined to be used in making adjusted VOC RFG. We also proposed that the Product Transfer Document specify the use of the RBOB. Several comments pointed out that EPA's establishment of VOC adjusted RFG would create additional slates of RFG requiring segregation. Additional tankage for segregation would increase refiner costs and the complexity of gasoline storage and distribution.

Since EPA is not requiring refiners to choose between taking advantage of the adjusted VOC standard and generating oxygen credits, as we proposed, segregation is of minimal importance. EPA expects that refiners providing RFG for the Chicago and Milwaukee markets will produce adjusted VOC RFG. Enforcement of the downstream per-gallon VOC standard in the Chicago and Milwaukee RFG areas will be to the level of the adjusted VOC standard. Mixtures of adjusted VOC RFG with non-adjusted VOC 10 volume percent ethanol RFG will not result in VOC noncompliance, since the non-adjusted standard is stricter. As a result, EPA does not believe that mixing VOC adjusted and non-VOC adjusted RFG together will result in any harmful environmental consequences. For RFG sold in areas outside the Chicago and Milwaukee RFG areas, the downstream per-gallon VOC standard will be enforced to the ordinarily applicable Phase II limit.

For the reasons above, therefore, EPA is not requiring segregation of VOC adjusted RFG from non-VOC adjusted RFG in those areas where the VOC adjustment applies. In the final rule, segregation is not required downstream of the refinery. Refiners must still keep track of the volume of adjusted VOC RFG or RBOB that they produce, but the Product Transfer Document will not track whether RBOB is destined to be used for adjusted VOC gasoline beyond the refinery gate. Instead, we will require refiners to specify on the

Reformulated Gasoline and Anti-Dumping Batch Report that RFG with 10 volume percent ethanol complies with either the current (i.e., non-adjusted) VOC performance standard, or the adjusted standard as "adjusted VOC gasoline" per the fuel certification procedures in 40 CFR 80.40.

F. Effect of Rule on NO_X and Toxics

Some comments stated that the VOC adjustment rule could adversely impact NO_X and toxics overcompliance in the RFG program because RFG areas that switch from MTBE to ethanol may experience increased toxics, mostly attributable to increased acetaldehyde emissions, and increased NO_X, from increased oxygen. EPA does not believe any loss of overcompliance is likely. In December 2000, EPA promulgated a gasoline toxics emission performance standard that will maintain the current level of toxics overcompliance in the RFG program. Additionally, changes in NO_X performance are a function of many fuel properties, particularly sulfur content and olefins. The overall impact of the VOC adjustment on NO_X emissions is highly uncertain given the variety of other fuel parameters such as aromatics, olefins, and other gasoline components that can affect NO_X emissions. Specifically, there is no adequate basis to conclude what the effect on NO_X would be absent information about what impact this rule (or oxygen levels) will have on how refineries reformulate their gasoline for all of the fuel parameters relevant to NO_X. In any event, today's action will not result in an increase in ethanol use in the Chicago and Milwaukee RFG areas above current levels.

G. Consideration of Recommendation of Illinois EPA

As discussed in the Notice of Proposed Rulemaking for this adjustment (65 FR 42922; July 12, 2000), the VOC adjustment is motivated primarily by Section 211(k)(1) of the Clean Air Act which directs EPA, in promulgating emission reduction standards for RFG, to consider the cost of achieving such emission reductions as well as any nonair-quality and other air-quality related health and environmental impacts. We then proposed an adjustment to the VOC performance standard specific to that provision in the Clean Air Act in order to limit cost, but based the adjustment ultimately on a level that we felt achieved ozone air quality benefits similar to those for the Phase II RFG program.

Prior to publication of the Notice of Proposed Rulemaking (NPRM), the Illinois Environmental Protection Agency (IEPA) submitted to EPA a proposal and supporting analysis which suggested that EPA should allow a VOC adjustment of 3.7 percentage points, approximately equal to an increase in RVP of 0.5 psi, for RFG using 10 percent volume ethanol. (See Documents II–D–4, 5 and 6 in Docket A–99–32.)

Briefly, IEPA's analysis compared the VOC and CO emissions associated with a complying fuel with an RVP of 6.8 psi, and an oxygen content of 2.0 weight percent, to the emissions associated with a fuel having an RVP of 7.3, representing an increase in RVP of 0.5 psi, and an oxygen content of 3.5 weight percent. IEPA concluded that the ozone impact of these two fuels would be identical, and that EPA should therefore provide an adjustment that corresponds to an RVP increase of 0.5 psi.

The IEPA analysis used a combination of urban airshed modeling (see Document II–D–4 in Docket A–99–32), and VOC and CO emission calculations (see Document II–D–6 in Docket A–99–32) to establish the relationship between VOC and CO and its effect on ozone formation. We evaluated IEPA's analysis (see Document II–D–13 in Docket A–99–32) and believe that the photochemical modeling portion of the analysis is generally useful for evaluating the conditions studied in the Chicago area. While the modeling covered only a portion of the Lake Michigan airshed and a single 4-day ozone episode, this portion of the airshed contained projections of significant ozone violation. Also, the episode was fairly typical of ozone episodes in the lower Lake Michigan region inclusive of Milwaukee, based on geographic proximity and the lake-influenced meteorology.

In contrast, we found several deficiencies with IEPA's emission calculations [4] which were used in their justification of a 0.5 psi adjustment. Specifically, the motor vehicle VOC emission rates were taken from the EPA Complex Model and represent emissions from solely 1990 model year vehicles rather than those of the in-use fleet post-2000. IEPA then obtained the emission factor for CO by multiplying the Complex Model-derived VOC emission factor by a ratio of nationwide CO to VOC emissions for onroad vehicles, taken from the 1997 EPA Emissions Trends report rather than using values contained in the emission inventory for this region. This method is highly inaccurate, in that it represents a blend of emissions in areas with conventional and reformulated gasoline, summer and winter conditions and a wide range of local emission control programs, such as I/M, rather than the specific conditions existing in Chicago during the ozone episodes. Finally, IEPA's estimate of a 10 percent reduction in CO due to 10 volume percent ethanol in RFG relative to the required 2.1 weight percent oxygen is overstated; using draft MOBILE6 methodology, [5] we estimate a reduction of approximately 7 percent. We therefore found that their approach did not provide adequate technical support for an adjustment to the VOC standard of 3.7 percentage points (0.5 psi). Also, IEPA relied upon the use of relative reactivity factors for exhaust and evaporative VOC emissions. EPA does not support the use of relative reactivity factors, for reasons stated in the preamble of the NPRM. See 65 FR 42924.

While we do not accept IEPA's recommendation for an adjustment equivalent to 0.5 psi, we find that the photochemical modeling that IEPA conducted does reasonably support a larger adjustment to the VOC standard than we originally proposed when more recent information on emissions of CO and VOC from onroad vehicles is used. The photochemical modeling consisted of a four day ozone episode from 1991. IEPA modeled reductions in VOC and CO emissions independently, determining the impact of each on peak ozone during each day. A comparison of the impact of differing levels of VOC and CO emissions on peak ozone during each day showed that, on a mass basis,

[4] IEPA compared the emissions (expressed in mg/mi) of a "complying fuel" (assumed to have an RVP of 6.8 psi and 2.0 weight percent oxygen; other parameters are described in Document II–D–6 in Docket A–99–32) with an alternative fuel consisting of a 7.3 psi RVP and 3.5 weight percent oxygen, with the other parameters defined for the complying fuel held constant). IEPA calculated the ozone impact from the "complying fuel" versus the 7.3 psi fuel using a relationship of ozone forming potential between CO and VOC derived from photochemical modeling. Using this technique, IEPA calculated that the ozone capacity of complying fuel is 4.289 mg ozone/mi and the ozone capacity of the 7.3 psi fuel with accompanying CO reductions due to the 3.5 weight percent oxygen would be 4.291 mg ozone/mi-a comparable amount.

[5] MOBILE is an integrated set of FORTRAN routines for use in the analysis of the air pollution impact of gasoline-fueled and diesel-powered highway mobile sources. MOBILE is used in the preparation of all projection year emission inventories required by the Clean Air Act Amendments of 1990 for non-California areas. MOBILE calculates emission factors for gasoline-fueled light-duty vehicles (LDGVs), light-duty trucks (LDGTs), heavy-duty vehicles (HDGVs), and motorcycles. MOBILE also contains provisions for modeling the impact on emission factors of oxygenated fuels (i.e., gasoline/alcohol and gasoline/ether blends) and of participation in the reformulated gasoline (RFG) program under the 1990 Clean Air Act Amendments.

CO was 4.3 to 8.6 percent as effective in producing ozone as VOC.

At the lower end of this range, the results indicate that for each ton of VOC increase, approximately 23 tons of CO decrease are necessary to maintain ozone levels. At the high end of the range, a 12 ton reduction in CO emissions would be required to compensate for a one ton increase in VOC emissions. As discussed in the Response to Comment Document for this rulemaking (see Document II–B–3 in Docket A–99–32), at the VOC adjustment level of 1.0 percentage point (i.e., an equivalent RVP increase of approximately 0.2 psi), CO emissions would be reduced by 45 tons for each one ton increase in VOC emissions.[6] We believe that in light of IEPA's photochemical model results, the proposed level of 1.0 percentage point (0.2 psi equivalent increase in RVP) is overly conservative.

The mean value of the CO to VOC ozone forming capacities obtained from IEPA's analysis is 6.8 percent, at which level the minimum ratio of CO reductions to VOC increase needed to maintain ozone levels is 14.7:1. As shown in the above referenced Response to Comment Document for this rulemaking, we determined that the use of RFG with ethanol at 10 volume percent (3.5 weight percent oxygen) in these areas can generally be expected to reduce emissions of CO (compared to RFG with 2.0 weight percent oxygen) by approximately 15 tons for every 1 ton increase in VOC emissions associated with a VOC adjustment of 2.0 percentage points (i.e., the equivalent RVP increase of 0.3 psi).

Significantly, the modeled day producing the ratio of 15:1 yielded the highest ozone concentration of the four days modeled. Because the highest ozone concentration is associated with the 15:1 ratio, adjustments based on lower ratios (i.e., 12:1 and 13:1) should not be used. We believe, therefore, that IEPA's analysis provides reasonable assurance that the 0.3 psi adjustment level is appropriate and would tend to preserve the ozone air quality benefits of the Phase II RFG program.

Finally, we note that the photochemical analysis for Chicago can be said to be generally representative of the Milwaukee area due to the similarity in fuel formulations (100 percent ethanol blended RFG), their geographical proximity (less than 100 miles apart), and the fact that lake effects on local meteorology would be expected to be similarly important in the formation of ozone in these two areas.

Consequently, we are promulgating an adjustment of 2.0 percentage points to the VOC performance standard for 10 percent ethanol RFG sold in the Chicago and Milwaukee RFG areas (RVP equivalent increase of approximately 0.3 psi). We believe that IEPA's photochemical modeling reasonably supports a finding that the level of CO decrease likely to occur in the Chicago and Milwaukee areas will offset the potential ozone air-quality impacts of a 2.0 percentage point adjustment to the VOC performance standard (0.3 psi equivalent RVP increase). As such, we believe the adjustment will result in ozone air quality benefits similar to those generally achieved under Phase II of the RFG program.

H. Impact of Adjusted Standard on SIPs

In the proposal, EPA explained that it believed states should not be required to account in their ROP plans, in the near term, for any potential increase in mass VOC emissions associated with the VOC adjustment, based on uncertainty related to market conditions and the predictability of such emission. We proposed to amend the "Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration" to indicate that, for several years, states are not required to evaluate whether their ROP plans would be affected by will be an increase in mass VOC emissions as a result of adjusted VOC gasoline. We also proposed to assess the impact of any mass VOC increases on state attainment of the 3.0 percent rate of progress goal at a later date, when more data on oxygenate use and distribution and the effect of the VOC adjustment are available. No comments were received on the appropriateness of this approach, and we will assess the impact of any VOC increases on state attainment of the 3.0 percent rate of progress goal as a component of our continued evaluation of this adjustment.

II. Administrative Requirements

A. Submission to Congress and the Comptroller General

Under 5 U.S.C. 801 (a)(1) (A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C 804 (2).

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order.

The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency has determined that this regulation results in none of the adverse economic effects set forth in Section 1 of the Order because it generally relaxes the requirements of the RFG program by providing regulated parties with more

[6] We calculated the ratio of CO decrease to VOC increase for varying adjustments of RVP using the following procedure: Using the MOBILE 5.b model, we calculated VOC emissions for RVP varying from 6.7 to 7.7 psi in increments of 0.1 psi. We multiplied the resulting VOC emission rates (expressed in g/mi) by the respective Vehicle Miles travelled (VMT) estimates for Chicago and Milwaukee to obtain the tons per day VOC emissions for each RVP level in each area. (VMT was obtained from the 1996 inventories of the Illinois Environmental Protection Agency (IEPA) and Wisconsin Department of Natural Resources (DNR), respectively.) Taking 6.7 psi RVP as the baseline, the increase in VOC for each 0.1 psi incremental increase above 6.7 was computed for the two areas. To calculate the CO decrease EPA obtained the baseline CO emission rates at 2.0 weight percent oxygen from the Chicago and Milwaukee inventories (from IEPA and Wisconsin DNR) inventories. We then computed the emission rates for gasoline at 3.5 weight percent oxygen using an equation derived from those in MOBILE 6 and which have undergone peer review. This equation is discussed in further detail in the Response to Comment document for this rulemaking (EPA 420–R–01–017). We then calculated the ratio of CO decrease to VOC increase for the varying RVP values. Since CO is a function of oxygen content, the CO reduction is constant, while the VOC emissions, which are a function of RVP, vary. The emission increases for the Mobile 5b runs as well as the respective ratios of CO decrease to VOC increase are summarized in Table 1 of the Response to Comment document.

flexibility with respect to compliance with the RFG requirements. Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order because it raises novel legal or policy issues. EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with state and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of state and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule provides regulatory relief, by adjusting the VOC performance standard, for refiners that choose to make RFG with 10 volume percent ethanol. As discussed in the preamble, we believe that the increased VOC associated with the adjusted VOC standard should not affect states' ROP plans in the near term, and does not impose any substantial direct effects on the states. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA developed this final rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's rule does not create a mandate for any tribal governments. This rule applies to gasoline refiners, blenders and importers that supply gasoline to RFG areas. Today's action generally relaxes certain RFG requirements, and does not impose any enforceable duties on communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

E. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. sections 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's rule provides regulatory relief by making the VOC standard for RFG that contains 10 volume percent ethanol used in Chicago and Milwaukee slightly less stringent. This action will provide more flexibility for refiners to

reduce MTBE use by decreasing the cost of ethanol-blended RFG. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

F. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1591.11) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*.

The action will result in revision of the Reformulated Gasoline and Anti-Dumping Batch Report form (EPA Form 3520–20C) that refiners must complete. The form would be revised to include under Item 4.0 a new product type called "Adjusted VOC gasoline." This revision does not represent significant new reporting requirements, nor a substantial increase in the amount of time spent filling out the form.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local or tribal governments or the private sector. The rule imposes no enforceable duty on any state, local or tribal governments or the private sector. This rule applies to gasoline refiners, blenders and importers that supply RFG areas. Today's action provides regulated parties with more flexibility with respect to compliance with RFG requirements.

H. Executive Order 13045: Children's Health Protection

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. For reasons stated in the preamble, we believe that the adjusted VOC standard for RFG with 10 volume percent ethanol will continue to provide a similar level of ozone benefits to those anticipated from the current standard, and will assure that the Phase II RFG program will continue to achieve the significant environmental benefits that it was designed to provide.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards, and does not specify the use of technical methods. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Statutory Authority

Sections 114, 211, and 301(a) the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

K. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning

Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866."

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reformulated gasoline, Reporting and recordkeeping requirements.

Dated: July 5, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40, of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.40 is amended by adding paragraph (c) to read as follows:

§ 80.40 Fuel certification procedures.

* * * * *

(c)(1) "Adjusted VOC gasoline" for purposes of the general requirements in § 80.65(d)(2)(ii), and the certification procedures in this section is gasoline that contains 10 volume percent ethanol, or RBOB intended for blending with 10 volume percent ethanol, that is intended for use in the areas described at § 80.70(f) and (i), and is designated by the refiner as adjusted VOC gasoline subject to the less stringent VOC standards in § 80.41(e) and (f). In order for "adjusted VOC gasoline" to qualify for the regulatory treatment specified in § 80.41(e) and (f), reformulated gasoline must contain denatured, anhydrous ethanol. The concentration of the ethanol, excluding the required denaturing agent, must be at least 9% and no more than 10% (by volume) of the gasoline. The ethanol content of the gasoline shall be determined by use of one of the testing methodologies specified in appendix F to this part.

(2) Refiners may choose not to designate as adjusted VOC gasoline or RBOB that otherwise meets the requirements of paragraph (c)(1) of this section, in which case the more stringent VOC standards in § 80.41 apply.

(3) For purposes of § 80.78(a)(1)(v), the "Adjusted VOC gasoline" standards under § 80.41 are the applicable VOC emissions performance standards only for adjusted VOC gasoline that is intended for use in or sold for use by an ultimate consumer in the covered areas described at § 80.70(f) and (i). For purposes of § 80.78(a)(1)(v), gasoline designated as adjusted VOC gasoline that is intended for use or that is sold for use by an ultimate consumer in any covered area in VOC-Control Region 2 other than those described at § 80.70(f) and (i), is subject to the VOC performance standards in § 80.41 applicable to all other gasoline designated for VOC-Control Region 2.

3. Section 80.41 is amended by revising paragraphs (e) and (f) to read as follows:

§ 80.41 Standards and requirements for compliance.

* * * * *

(e) *Phase II complex model per-gallon standards.* The Phase II "complex model" standards for compliance when achieved on a per-gallon basis are as follows:

PHASE II—COMPLEX MODEL PER-GALLON STANDARDS

VOC emissions performance reduction (percent):	
Gasoline designated for VOC-Control Region 1	≥27.5
Adjusted VOC gasoline designated for VOC-Control Region 2	≥23.9
All other gasoline designated for VOC-Control Region 2	≥25.9
Toxic air pollutants emissions performance reduction (percent)	≥20.0
NO_X emissions performance reduction (percent):	
Gasoline designated as VOC-controlled	≥5.5
Gasoline not designated as VOC-controlled	≥0.0
Oxygen content (percent, by weight)	≥2.0
Benzene (percent, by volume)	≤1.00

(f) *Phase II complex model averaged standards.* The Phase II "complex model" standards for compliance when achieved on average are as follows:

PHASE II COMPLEX MODEL AVERAGED STANDARDS

VOC emissions performance reduction (percent):	
Gasoline designated for VOC-Control Region 1	
Standard	≥29.0
Per-Gallon Minimum	≥25.0
Adjusted VOC gasoline designated for VOC-Control Region 2	
Standard	≥25.4
Per-Gallon Minimum	≥21.4
All other gasoline designated for VOC-Control Region 2	
Standard	≥27.4
Per-Gallon Minimum	≥23.4
Toxic air pollutants emissions performance reduction (percent)	≥21.5
NO_X emissions performance reduction (percent):	
Gasoline designated as VOC-controlled	≥6.8
Gasoline not designated as VOC-controlled	≥1.5
Oxygen content (percent, by weight):	
Standard	≥2.1
Per-Gallon Minimum	≥1.5
Benzene (percent, by volume):	
Standard	≤0.95
Per-Gallon Maximum	≤1.30

* * * * *

4. Section 80.65 is amended by revising paragraph (d)(2)(ii) and by removing "[Reserved]" in paragraph (d)(2)(iii), to read as follows:

§ 80.65 General requirements for refiners, importers, and oxygenate blenders.

* * * * *

(d) * * *

(2) * * *

(ii) In the case of gasoline or RBOB designated as VOC-controlled:

(A) Either intended for use in VOC-Control Region 1 or VOC-Control Region 2 (as defined in § 80.71); or

(B) Designated as "adjusted VOC gasoline" (as defined in § 80.40(c)(1));

* * * * *

4. Section 80.67 is amended by revising paragraph (g)(1) to read as follows:

§ 80.67 Compliance on average.

* * * * *

(g) * * *

(1)(i)(A)The compliance total using the following formula:

$$\text{COMPLIANCE TOTAL} = \left(\sum_{i=1}^{n} V_i\right) \times \text{std}$$

Where:

V_i=the volume in gallons of gasoline batch i.
std=the standard for the parameter being evaluated.
n=the number of batches of gasoline produced or imported during the averaging period.

(B) For computation of the VOC performance standard compliance total, Std for each VOC control region is determined by the following formula:

$$\text{Std} = \frac{\text{Std}_u \times \sum_{i=1}^{n_u} VU_i + \text{Std}_a \times \sum_{i=1}^{n_a} VA_i}{\sum_{i=1}^{n_u} VU_i + \sum_{i=1}^{n_a} VA_i}$$

Where, for gasoline and RBOB designated for that VOC control region:

Std=the value to be used in the compliance total formula.
Std_u=the averaged VOC emissions performance reduction standard applicable to reformulated gasoline and RBOB not designated for compliance with the adjusted VOC gasoline standard.
Std_a=the averaged VOC emissions performance reduction standard applicable to reformulated gasoline and RBOB designated for compliance with the adjusted VOC gasoline standard.
VU_i=the volume of batch i not designated for compliance with the adjusted VOC gasoline standard.
VA_i=the volume of batch i designated for compliance with the adjusted VOC gasoline standard.
n_u=the number of batches produced or imported and not designated for compliance with the adjusted VOC gasoline standard.
n_a=the number of batches produced or imported and designated for compliance with the adjusted VOC gasoline standard.

(C) The actual total using the following formula:

$$\text{ACTUAL TOTAL} = \sum_{i=1}^{n} (V_i \times \text{parm}_i)$$

Where:

V_i=the volume in gallons of gasoline batch i.
parm_i=the parameter value of gasoline batch i.
n=the number of batches of gasoline produced or imported during the averaging period.

(ii) [Reserved]

* * * * *

5. Section 80.68 is amended by removing the period at the end of paragraph (c)(8)(ii)(B) and adding in its place a semicolon and by adding paragraph (c)(8)(ii)(C) to read as follows:

§ 80.68 Compliance surveys.

* * * * *

(c) * * *

(8) * * *

(ii) * * *

(C) For adjusted VOC gasoline sold in the covered areas described at § 80.70(f) and (i), the covered area shall have failed the complex model VOC survey if the VOC emissions reduction percentage average of all survey samples is less than the weighted average of the applicable per-gallon standards for VOC emissions reduction calculated according to the following formula:

$$\text{WSTD} = \frac{\text{VOCU} \times n_u + \text{VOCA} \times n_a}{n}$$

Where:

WSTD=Weighted average of the applicable per-gallon VOC standards.
VOCU=Per gallon VOC standard applicable in the covered area to RFG containing less than 10 percent ethanol by volume.
VOCA=Per gallon VOC standard applicable in the covered area to RFG containing 10 percent ethanol by volume.
n_u=Number of samples in the VOC survey with oxygen content less than 3.5 percent by weight.
n_a=Number of samples in the VOC survey with oxygen content equal to or greater than 3.5 percent by weight.
n=Total number of samples in the VOC survey.

* * * * *

6. Section 80.69 is amended by revising the introductory text to read as follows:

§ 80.69 Requirements for downstream oxygenate blending.

The requirements of this section apply to all reformulated gasoline blendstock for oxygenate blending, or RBOB, to which oxygenate is added at any oxygenate blending facility, except that paragraph (a)(7) of this section does not apply to adjusted VOC gasoline as defined in § 80.40(c).

* * * * *

[FR Doc. 01–17563 Filed 7–16–01; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 001121328–1041–02; I.D. 071101C]

Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 3 Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; Quarter 3 commercial black sea bass fishery.

SUMMARY: NMFS announces that the black sea bass commercial quota available in the quarter 3 period to the coastal states from Maine through North Carolina has been harvested. Commercial vessels may not land black sea bass in these states north of 35°15.3′ N. lat. for the remainder of the 2001 quarter 3 quota period (through September 30, 2001). Regulations governing the black sea bass fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing black sea bass in these states north of 35°15.3′ N. lat.

DATES: Effective 0001 hrs local time, July 17, 2001, through 2400 hrs local time, September 30, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Anderson, Fishery Management Specialist, at (978) 281–9226.

SUPPLEMENTARY INFORMATION: Regulations governing the black sea bass

fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into four quota periods based upon percentages of the annual quota. The quarter 3 (July through September) commercial quota is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota is described in § 648.140.

The initial total commercial quota for black sea bass for the 2001 calendar year was 3,024,742 lb (1,372,000 kg) (66 FR 12902, March 1, 2001). The quarter 3 period quota, which is equal to 12.33 percent of the annual commercial quota, was 372,951 lb (169,168 kg). The quota allocation was adjusted downward to compensate for 2000 quarter 3 landings in excess of the 2000 quarter 3 quota, consistent with the procedures in § 648.140. The final adjusted quarter 3 quota was 276,875 lb (125,588 kg).

The Regional Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial black sea bass quota for each quota period on the basis of dealer reports, state data, and other available information to determine when the commercial quota has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the black sea bass commercial quota has been harvested and no commercial quota is available for landing black sea bass for the remainder of the quarter 3 period, north of 35°15.3′ N. lat. The Regional Administrator has determined, based upon dealer reports and other available information, that the black sea bass commercial quota for the 2001 quarter 3 period has been harvested.

The regulations at § 648.4 (b) provide that Federal black sea bass moratorium permit holders agree as a condition of the permit not to land black sea bass in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for the black sea bass is available. The Regional Administrator has determined that the quarter 3 period for black sea bass no longer has commercial quota available. Therefore, effective 0001 hrs local time, July 17, 2001, further landings of black sea bass in coastal states from Maine through North Carolina, north of 35°15.3′ N. lat., by vessels holding commercial Federal fisheries permits are prohibited through September 30, 2001. The 2001 quarter 4 period for commercial black sea bass harvest will open on October 1, 2001. Effective July 17, 2001, federally permitted dealers are also advised that they may not purchase black sea bass from federally permitted black sea bass moratorium permit holders who land in coastal states from Maine through North Carolina, north of 35°15.3′ N. lat., for the remainder of the quarter 3 period (through September 30, 2001).

The regulations at § 648.4 (b) also provide that, if the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3′ N. lat., any vessel owners who hold valid commercial permits for both the black sea bass and the NMFS Southeast Region snapper-grouper fisheries may surrender their black sea bass moratorium permit by certified mail addressed to the Regional Administrator (see Table 1 at § 600.502) and fish pursuant to their snapper-grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3′ N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 12, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17837 Filed 7–12–01; 3:08 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 071201A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). This is action is necessary to prevent exceeding the 2001 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 12, 2001, through 2400 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–2778.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2001 TAC of Pacific ocean perch for the Central Regulatory Area was established as 9,610 metric tons (mt) by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2001 TAC for Pacific ocean perch in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,610 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the 2001 TAC of Pacific ocean perch for the Central Regulatory Area of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR

679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the 2001 TAC of Pacific ocean perch for the Central Regulatory Area of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 12, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17836 Filed 7–12–01; 3:08 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1168–06; I.D. 011101B]

RIN 0648–A082

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures and 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; extension and request for comments.

SUMMARY: NMFS amends and corrects the emergency interim rule that implements the 2001 Steller sea lion protection measures and the 2001 harvest specifications and extends its effectiveness through December 31, 2001. These amendments include adjustments to open and closed areas and seasons for important prey species, exemptions for various gear sectors for socio-economic and safety purposes, the establishment of a pollock research area in the Chiniak Gully, and various amendments to the harvest specifications to implement the North Pacific Fishery Management Council's (Council) recommendations. This action is necessary to implement Steller sea lion protection measures for the remainder of 2001 as recommended by the Council and is intended to manage the groundfish fishery in a manner that is consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to provide adequate protection to Steller sea lions and their critical habitat, as required by the Endangered Species Act and section 209 of the Consolidated Appropriations Act of 2001.

DATES: In the final rule published January 22, 2001 at 66 FR 7276 (corrected March 20, 2001 (66 FR 15656) and July 2, 2001 (66 FR 34852)), and amended March 29, 2001 (66 FR 17083 and 17087) and June 13, 2001 (66 FR 31845), certain amendments were made effective January 18, 2001 through July 17, 2001, and others were made effective June 10, 2001, through July 17, 2001. This rule extends the effective date for those amendments through December 31, 2001, except for: 50 CFR 679.20(a)(5)(i)(B)(*2*) and (c)(7); § 679.22(a)(11), (a)(12)(i), (a)(12)(ii), (a)(12)(iii)(A), (a)(12)(iv), (a)(12)(v), (a)(13), (b)(3) and (b)(5); § 679.23(d)(4); and Table 21 of 50 CFR part 679, which expire July 17, 2001. The amendments to 50 CFR 679.20, 679.22, 679.23, 679.31, and to Tables 21 through 24 to part 679, in this final rule are effective July 18, 2001 through December 31, 2001. Comments must be received by August 15, 2001.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the November 30, 2000, Biological Opinion and Incidental Take Statement on Authorization of the Bering Sea and Aleutian Islands (BSAI) groundfish fisheries based on the Fishery Management Plan for the Groundfish Fishery of the BSAI and Authorization of the Gulf of Alaska (GOA) groundfish fisheries based on the Fishery Management Plan for Groundfish of the Gulf of Alaska (Comprehensive Biological Opinion), including the Reasonable and Prudent Alternative (RPA), may be obtained from the same address. The Comprehensive Biological Opinion is also available on the NMFS Alaska Region home page at *http://www.fakr.noaa.gov*.

Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) for the Extension and Revision of the Emergency Interim Rule for 2001 Harvest Specifications for the Alaska Groundfish Fisheries and for Steller Sea Lion Protective Fisheries Management Measures may be obtained from the same address. The EA/RIR is also available on the NMFS Alaska Region home page at *http://www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, NMFS, 907–586–7228 or e-mail at *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The Council prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679. NMFS also has management responsibility for certain threatened and endangered species, including Steller sea lions, under the Endangered Species Act (ESA), 16 U.S.C. 1531, *et seq.*, and the authority to promulgate regulations to enforce provisions of the ESA to protect such species.

Introduction

This preamble consists of two parts. Part I explains the process followed for developing and the basis for the amendments to the Steller sea lion protection measures. Part II contains amendments to several harvest specifications for groundfish harvest for the second half of 2001.

Part I. Steller Sea Lion Protection Measures

Background

On January 22, 2001, NMFS published an emergency interim rule, effective January 18, 2001, that established 2001 harvest specifications for the BSAI and GOA groundfish fisheries and implemented 2001 Steller sea lion protection measures for these fisheries (66 FR 7276). These protection measures initiated a 1-year phase-in of the RPA developed in the Comprehensive Biological Opinion (See **ADDRESSES**) as directed under section 209 of Public Law 106–554. NMFS determined that the 2001 protection measures provided a sufficient degree of protection to endangered Steller sea lions for 2001 and were consistent with the RPA, the ESA, and with section 209 of Public Law 106–554. Public Law 106–554, which was signed by the President on December 21, 2000,

provides for independent scientific review and additional public and Council assessment of the Comprehensive Biological Opinion and the RPA prior to full implementation of the RPA in 2002.

The January 18, 2001, emergency interim rule extended the Steller sea lion protection measures that were in place during 2000 for the BSAI and GOA pollock fisheries, with several changes. These changes included two fishing seasons for GOA Pacific cod and for non-Community Development Quota (CDQ) Pacific cod in the BSAI. A complete description and justification of the 2001 Steller sea lion protection measures can be found in the preamble to the January 18, 2001, emergency interim rule (66 FR 7276). A 30-day public comment period on the emergency interim rule ended February 21, 2001. One letter of comment was received during this period and is summarized and responded to under Response to Comments, below.

On March 20, 2001, NMFS issued a correction to the January 18, 2001, emergency interim rule that addressed various technical and editorial errors (66 FR 15656). Effective March 23, 2001, NMFS amended the emergency interim rule to change fishing restrictions on vessels fishing for groundfish off Alaska with jig gear and on vessels less than 60 ft (18.3 m) length overall (LOA) fishing for BSAI Pacific cod with hook-and-line or pot gear (66 FR 17083, March 29, 2001). A 30-day public comment period on the amendment ended April 23, 2001. One letter of comment was received and also is summarized and responded to under Response to Comments. Also effective March 23, 2001, NMFS also amended the emergency interim rule to adjust the seasonal apportionment of Pacific halibut bycatch limits for the trawl and hook-and-line groundfish fisheries of the GOA (66 FR 17087, March 29, 2001). Effective June 10, 2001, NMFS amended the rule to prohibit directed fishing for Pacific cod in the Western and Central GOA and by vessels equal to or greater than 60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI (66 FR 31845, June 13, 2001). A 30-day public comment period on this amendment ended July 9, 2001. No written comments were received during the comment period. To reserve halibut PSC bycatch amounts to support the delayed Pacific cod season in the GOA, NMFS amended the emergency interim rule to prohibit shallow water trawl fisheries effective on June 27, 2001 (66 FR 34852, July 2, 2001).

The RPA measures were independently reviewed by a committee (RPA Committee) established by the Council. This RPA Committee developed recommendations for Steller sea lion protection measures for the second half of the 2001 groundfish fisheries. These recommendations were approved by the Council in April 2001 and forwarded to NMFS. By this action today, NMFS implements those recommendations.

Specific Elements of the Steller Sea Lion Protection Measures Revisions

Amendments to the emergency interim rule include: (1) Adjustments to the open and closed pollock, Atka mackerel, and Pacific cod directed fishing areas in Steller sea lion critical habitat; (2) adjustments to specific Pacific cod fishing seasons; (3) exemptions for various Pacific cod non-trawl gear vessels from several fishing closure areas; (4) establishment of the Chiniak Gully pollock research program; and (5) elimination of the pollock harvest limit in the Steller sea lion conservation area in the Bering Sea.

Adjustments to Atka Mackerel, Pollock, and Pacific Cod Directed Fishing Area Closures

The RPA Committee recommended directed fishing closures that are consistent with the criteria established under the Comprehensive Biological Opinion for minimum levels of protection. The criteria for protection in the Comprehensive Biological Opinion require protection of more than 50 percent of critical habitat, more than 50 percent of the areas used by non-pups and more than 75 percent of the area where pups are born. The recommended closures by the RPA Committee protect 57 percent of critical habitat and 80 percent of the areas for pups birthing and non-pups use. The RPA Committee recommended closures to directed fishing of 10 nautical miles (nm) in the trawl fisheries for pollock, Pacific cod, and Atka mackerel. This was different than the level of protection provided by the RPA in the Comprehensive Biological Opinion, under which many rookery and haulout sites were closed to all directed fishing for pollock, Pacific cod, and Atka mackerel out to 20 nm. The reason for the difference in protected areas is based on the results of analyses of recent telemetry data and the importance of certain areas to commercial fishing. Previous data indicated that maximum foraging distances from the point of tagging ranged between 20 to 60 nm. While this still remains valid for some individuals, the more recent telemetry data show that Steller sea lions spend a significant amount of their time at sea within 10 nm of the shoreline. Tagged animals ranged in a line that was parallel to and within 10 nm of the shoreline. Therefore, even though the telemetry data indicated that an animal may travel a great distance during a foraging trip, most of that movement is parallel to the shoreline and not perpendicular to it.

The RPA Committee recommended that the 3 nm no-entry zones established around selected rookeries under the authority of the ESA remain in effect. The RPA Committee also recommended that major rookeries and haulouts be closed to directed fishing for pollock, Pacific cod, and Atka mackerel out to 10 nm in all three fishery areas—the Gulf of Alaska, the Aleutian Islands, and the Eastern Bering Sea—and that rookeries that had experienced an annual decline in Steller sea lion population of 10 percent or greater since 1991 be closed out to 20 nm. Exceptions were recommended in some areas for non-trawl gear.

Some allowance is provided for fishing outside of 3 nm, but within 10 nm by pot and hook-and-line vessels equal to or greater than 60 ft (18.3 m) LOA, given the slower rate of harvest by these vessels, the limited amount of groundfish harvested by these vessels during the remainder of 2001, and commensurate reduction of concerns about competition with Steller sea lions during this time period. Based on this information, NMFS believes that the protection of rookeries and haulouts out to 10 nm adequately protects a significant portion of the Steller sea lion population.

Adjustments to the Pacific Cod Fishing Seasons

The January 18, 2001, emergency interim rule established two fishing seasons for the BSAI and GOA Pacific cod fisheries, January 1 to June 10 (with 60 percent of the TAC available for harvest) and June 10 to December 31 (with 40 percent of the TAC available for harvest), except that directed fishing for Pacific cod with trawl gear was prohibited after November 1, 2001. The emergency interim rule effective March 23, 2001, removed the season restrictions for the BSAI jig gear fisheries and BSAI vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear. Separate allocations of the BSAI Pacific cod TAC for these two groups of vessels at § 679.20(a)(7)(i)(C) facilitated separate seasonal fishing restrictions. Justification for this relief of seasonal harvest constraints was discussed in the preamble to the emergency interim rule (66 FR 17083, March 29, 2001).

In April, the Council recommended delaying the June 10 opening date of the GOA Pacific cod fishery and the BSAI Pacific cod fishery by vessels greater than 60 ft (18.3 m) LOA using pot or hook-and-line gear. The Council's recommendation was based on the following management considerations: Poor product recovery and quality in summer months; competition with summer salmon fisheries for processing facilities; potential gear conflicts between pot and trawl gear fleets; and coordination between BSAI Pacific cod fisheries within the CDQ and non-CDQ sectors. The Council's recommended season delays also would address salmon and Pacific halibut bycatch concerns and are intended to manage the Pacific cod fisheries in a manner consistent with the objectives of 2001 Steller sea lion protection measures to avoid localized depletion of Pacific cod.

Specifically, the Council recommended, and NMFS approves, except for the Eastern GOA, the second season opening date for the Gulf of Alaska Pacific cod fisheries be delayed from June 10 to September 1. In the preamble to the emergency interim rule amendment effective June 10, 2001 (66 FR 31845, June 13, 2001), all of the GOA was intended to be closed to directed fishing for Pacific cod until the emergency interim rule extension took place in July. Due to a technical error, the regulatory text closed only the Western and Central areas of the GOA. As of June 28, 2001, only 3 percent of the annual TAC for the Eastern GOA has been harvested. Five Steller sea lion sites are located in the Eastern GOA. By this action today, each of these sites is protected by a 20 nm no Pacific cod fishing zone. Because the Eastern GOA area is not likely to harvest much of the TAC apportioned and because Steller sea lion sites within the Eastern GOA are now protected by 20 nm no Pacific cod fishing zones, NMFS has determined that the season delay is necessary only for the Western and Central GOA. Except for an allocation between inshore and offshore sectors under § 679.20(a)(6)(iii), the GOA Pacific cod TAC is not allocated among different gear sectors. Therefore, separate treatment of vessels using jig, pot, hook-and-line, or trawl gear is not feasible and the season delay affects vessels using any gear type.

Also, the Council recommended a delay of the second season opening date of the BSAI hook-and-line vessels equal to or greater than 60 ft (18.3 m) LOA in the fisheries for Pacific cod from June 10 until August 15. In taking this action, the Council recognized that NMFS already has implemented the 2001 seasonal apportionment of the non-trawl Pacific halibut bycatch limit in a manner that currently delays the BSAI hook-and-line Pacific cod fisheries to August 1. The additional delay from August 1 to August 15 was adopted by the Council to maintain temporal distribution of the fishery consistent with the objectives of existing Steller sea lion protection measures and to minimize high halibut bycatch rates during summer months. The delay also reduces the potential for interaction of the hook-and-line gear fisheries with the endangered short-tailed albatross and other seabird species during summer months.

The Council recommended a June 10 to September 1 delay in the second season opening date for the BSAI Pacific cod pot gear fishery by vessels equal to or greater than 60 ft (18.3 m) LOA. This action was taken because the amount of BSAI Pacific cod that remains to be harvested by these vessels in the second season represents less than 2 percent of the BSAI Pacific cod TAC. The Council also recognized that harvest removals by this gear type are slow paced and are unlikely to affect Steller sea lions in a manner not already considered by NMFS.

The Pacific cod seasons recommended by the Council and approved by NMFS impose no seasonal harvest constraints for vessels fishing in the BSAI using jig gear, for vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear, or for vessels participating in the CDQ fisheries. The start dates for the second season in 2001 for Pacific cod sectors are summarized in the following table:

Pacific cod fishery sector*	Second season opening date of directed fishing for Pacific cod		
	June 10	August 15	September 1
Western and Central Gulf of Alaska:			
All gear types			X
Bering Sea and Aleutian Islands:			
All trawl	X		
Bering Sea and Aleutian Islands:			
Pot vessels ≥ 60 ft LOA			X
Bering Sea and Aleutian Islands:			
Vessels ≥ 60 ft LOA using hook-and-line gear		X	

*Seasonal harvest constraints are not established for BSAI vessels using jig gear, BSAI vessels less than 60 feet LOA using pot or hook-and-line gear, or for vessels participating in the CDQ fisheries.

The June 10 second season opening date for BSAI Pacific cod harvested by trawl vessels remained unchanged to maintain overall spatial and temporal distribution of the BSAI Pacific cod fisheries. Potential bycatch concerns ensuing from a summer trawl effort for Pacific cod was assumed by the Council to be self limiting due to low summer catch rates and the fleets' avoidance of high Pacific halibut bycatch rates that could preempt more lucrative fall fishing. Salmon bycatch in the non-pollock trawl fisheries typically has not posed a concern given that summer trawl fisheries are limited due to halibut bycatch concerns and restrictions. These fisheries also tend to operate on fishing grounds that avoid high bycatch rates of salmon.

Pacific cod fishing prohibitions were effective by June 10, 2001, to meet the intent of the Council for adjustments to the second season start dates and to avoid industry confusion and a race for the available Pacific cod TAC. NMFS prohibited fishing for Pacific cod by specified vessels consistent with the Council's recommendation by an amendment to the January 18, 2001, emergency interim rule published on June 13, 2001 (66 FR 31845). The closures resulting from the fishing prohibitions are in effect until the new season dates established by this amendment to the emergency interim rule take effect.

Exemptions for Selected Non-trawl Gear Pacific Cod Vessels From Steller Sea Lion Protective Measures Fishing Closures

The Council recommended exemptions for selected non-trawl gear vessels fisheries closures in the GOA designed to protect Steller sea lions. These exemptions are in addition to those already implemented by NMFS. On March 23, 2001, NMFS amended the emergency interim rule to relieve fishing restrictions on vessels fishing for groundfish off Alaska with jig gear and on vessels less than 60 ft (18.3 m) LOA fishing for BSAI groundfish with hook-and-line or pot gear (66 FR 17083, March 29, 2001). Vessels under the March 23, 2001, exemption are permitted to fish to the shore around haulouts and beyond 3 nm around rookeries in areas closed to groundfish, pollock, Atka mackerel, and Pacific cod fishing. The Council's recommendation expands the areas opened and the types of vessels exempted. Areas specified in the Council's recommendation are identified by specific locations in Tables 21, 22, and 23 of 50 CFR part 679 and in § 679.22. Exemptions include:

1. In Area 8 of the Bering Sea, all pot vessels may operate within 3 nm to 10 nm or 20 nm Pacific cod fishing closures around rookeries and haulouts.

2. In Areas 5 and 6 of the GOA, non-trawl gear vessels less than 60 ft (18.3 m) LOA may operate Pacific cod and pollock fisheries within 3 nm to 10 nm around haulouts and rookeries.

3. In Area 2 of the GOA, non-trawl gear vessels less than 60 ft (18.3 m) LOA may operate Pacific cod and pollock fisheries within 3 nm to 20 nm around haulouts.

Based on the continuation of 3 nm no groundfish fishing zones under the exemption specified above, these exemptions will not locally deplete important prey species and thus will not detrimentally impact Steller sea lions.

The Chiniak Gully Pollock Research Program

The Council endorsed a research project proposed by NMFS in the Chiniak Gully off Kodiak Island to determine the effect of pollock fisheries on short term changes in the pollock school dynamics, and if the pollock fisheries cause localized depletion of Steller sea lion prey off the east side of Kodiak Island. The experiment will include the closure of Chiniak Gully to trawl fishing from August 1 to no later than September 20. The 20 nm Pacific cod and pollock fishing closure in the Chiniak Gully area around Cape Chiniak and Long Island haulouts will be reduced to 10 nm closures from October 1 through December 31. A more detailed description of the experiment is provided in the draft environmental assessment/regulatory impact review/final regulatory flexibility analysis for the proposed rule to implement a seasonal closure of a portion of the Central Regulatory Area, GOA, to vessels using trawl gear (65 FR 41044, July 3, 2000). For copies of these documents, please contact NMFS (see **ADDRESSES**). Amendments are made to the emergency interim rule (66 FR 7276) to implement this experiment including trawl closures necessary to conduct the experiment.

Elimination of the Steller Sea Lion Conservation Area (SCA) Pollock Harvest Limit

The Council recommended the elimination of the pollock harvest limit for the SCA for the second half of 2001. The January 18, 2001, emergency interim rule established a harvest limit for pollock in the SCA based upon the level of harvest established for the 2000 fishing season. This was done to ensure adequate prey resources were available for Steller sea lions. Additional information may be found in the January 18, 2001, emergency interim rule (66 FR 7276, January 22, 2001). The Council based its recommendations on the following:

1. *Steller sea lion population growth.* Non-pup counts of Steller sea lions in the areas of the Bering Sea where the pollock and Pacific cod fisheries occur have experienced the least decline or increase. Steller sea lion abundance near Unimak Island and to the east, including the rookery on Amak Island, are increasing at a 3-percent annual rate. Steller sea lion abundance on rookeries near Dutch Harbor are increasing at a 7-percent annual rate, the fastest increase of any group within the western population. However, NMFS notes that when looking at the eastern Aleutian Islands subpopulation of Steller sea lions, which includes animals from the Dutch Harbor area, Unimak Island, Amak Island, and waters on the south side of the Aleutian Island from these areas, the overall trend is a population decline of 1.75 percent.

2. *Steller sea lion diet.* Recent scat analysis indicates that sea lion diet may be more variable in the summer and early fall than previously thought. Primary prey for sea lions on Amak Island is highly varied and dependent on spawning aggregations. The top three species appearing in scat samples in the summer were herring, pollock, and sand lance. Scats collected from Amak Island were found to include a dozen fish species that occurred in more than 10 percent of the scats. For the rookeries and haulouts from Unimak and west to Dutch Harbor, the top summer prey were salmon, pollock, herring, and some Atka mackerel. Although pollock is one of the primary prey species from Unimak west to Dutch Harbor, the sea lions in these areas eat many different species, particularly in the summer. The frequency of occurrence of Pacific cod in Steller sea lion scat is less in the summer than in the winter, approximately 28 percent in the winter and 7 percent in the summer.

3. *Steller sea lion foraging distance.* Telemetry data indicate that the great majority of at-sea locations for the lactating females, juveniles, and pups that were tagged were very close to shore, with 60-to-75 percent occurrences within 2 miles of the shore and 85-to-92 percent occurrences within 10 miles of the shore. Although the data cannot specify whether the animals were foraging, the extremely high percentage of "hits" so close to shore must include most foraging trips.

4. *Summer/fall Pacific cod fishery.* The Pacific cod fishery by all gear groups is significantly dispersed in the summer and fall because of the dispersion of the Pacific cod. During the period 1995 through 1999, when no critical habitat restrictions on Pacific cod were in place, hook-and-line catch of Pacific cod occurred in significant amounts northwest of the Pribilof Islands and north of the SCA. Pacific cod fishing by trawl gear occurred both inside and outside the SCA, but the summer trawl fishery is small because of the low catch per unit of effort.

5. *Catcher Vessel Operational Area (CVOA) exclusion.* Current closure regulations prohibit pollock fishing during the "B season" inside the CVOA by the catcher/processor offshore component, which has 40 percent of the pollock TAC. Section 679.22(a)(5) of 50 CFR is amended with this action to ensure continued closure in the CVOA to pollock catcher processor vessels during the C/D season, June 10 through November 1. This closure reduces the amount of fishing effort in a large portion of the SCA.

6. *Reduction of the inshore pollock trawl fleet.* The American Fisheries Act (AFA) authorized the Bering Sea pollock trawlers to organize into cooperatives. This allowed the sector to decapitalize, which resulted in a 24-percent reduction in the number of boats in the inshore pollock fleet. Consequently, the amount of fishing effort on pollock at any one time has been reduced in the last 2 years.

7. *Vessel safety.* Although summer weather in the Bering Sea is certainly less threatening than winter weather, smaller boats are at risk when they must travel far from land and far from processing facilities. The SCA boundaries and harvest limits would require vessels to travel more than 60 miles offshore and even further from their processing facilities to fully utilize available resources. The Magnuson-Stevens Act requires NMFS to consider safety in fishery management decisions (national standard 10).

8. *Product quality and cost.* Pollock quality varies considerably by location and an exclusion from the SCA often results in poor quality because of fishing location and long trips back to processing facilities. In addition, costs increase significantly, particularly with the current high cost of fuel. The Magnuson-Stevens Act requires that efficiency and cost minimization be goals in fisheries management (national standards 5 and 7).

9. *Salmon bycatch.* Concerns over poor chum salmon returns in Western Alaska have put serious pressure on the pollock trawl fleet to reduce chum salmon bycatch. For the 2001 season, the AFA cooperatives have established a salmon savings plan to address salmon bycatch. If pollock trawling is largely excluded from the SCA, salmon bycatch will be higher than if the fleet has more flexibility to move away from bycatch hotspots. The Magnuson-Stevens Act requires fishery management measures to minimize or avoid bycatch (national standard 9).

10. *Limited period of applicability.* The second half of a year is not considered as critical to Steller sea lions as the first half of the year. The Council's recommendations are for the second half of 2001 only.

11. *Availability of new information.* Extended foraging areas were originally established in 1993 based on the platform of opportunity data (POP data), on the theory that indirect competition could exist with the fisheries. Yet, with Steller sea lion populations currently at a low level, and pollock populations at a near record high, 8 to 15 times more pollock are available per Steller sea lion today than in 1993. Further, new telemetry information suggests that sea lions spend very little time beyond 10 nm during this time of the year.

NMFS approves the elimination of the SCA limit for the second half of 2001 because the action is for a short duration, prey resources are likely to be available because of the increase in pollock biomass over 2000, and the telemetry data indicate that foraging may be occurring closer to shore than thought when the SCA was established so that a large foraging area may not be necessary for prey availability.

In summary, for the reasons set forth above, NMFS approves all the Council's recommendations and implements them by this action. It should be noted that (1) these measures are limited to the second half of 2001; (2) a large increase in 2001 pollock biomass has occurred without the equivalent large increase in total allowable catch (TAC) over 2000 levels, making prey more likely to be available to Steller sea lions; (3) the protection measures are in the process of being reassessed through NEPA and ESA analyses; and (4) the recommended protection measures met the Comprehensive Biological Opinion criteria for closure areas by meeting or exceeding minimum requirements for protection of critical habitat, protection of the non-pup population, and protection of areas where pups are born.

Part II. Specifications

This emergency interim rule extends the 2001 harvest specifications through December 31, 2001, including corrections and amendments made to the January 18, 2001, emergency interim rule (66 FR 7276, January 22, 2001; 66 FR 15656, March 20, 2001; 66 FR 17083, March 29, 2001; 66 FR 17087, March 29, 2001; 66 FR 31845, June 13, 2001; and 66 FR 34852, July 2, 2001, halibut PSC reapportionment and shallow water trawl closure). The discussion in this preamble is limited to the amendments contained in this emergency interim rule.

The amendments included in this action are: (1) A technical correction for AFA sectoral allocations in the BSAI fisheries; (2) elimination of the SCA pollock harvest limits; (3) changes to Pacific cod seasons; (4) corrections to AFA inshore cooperative allocations; (5) corrections to the non-exempt AFA catcher vessel groundfish harvest specifications; (6) an increase in the contribution of arrowtooth flounder to the CDQ non-specific reserve; and (7) reallocation of GOA halibut PSC apportionment in the shallow water trawl fishery to account for the Pacific cod season changes. The following is a discussion of each amendment to the 2001 harvest specifications included in this emergency interim rule.

Bering Sea and Aleutian Islands

AFA Sectoral Allocations

Section 679.20(a)(5)(i)(C) contains the sectoral allocations for AFA vessels in the BSAI. This section expired January 16, 2001, and was inadvertently left out of the January 18, 2001, AFA emergency interim rule (66 FR 7327, January 22, 2001), and the January 18, 2001, 2001 harvest specifications and Steller sea lion protection measures emergency interim rule (66 FR 7276, January 22, 2001). This section is added to the regulations and appears in the regulatory text under the same section number. No changes were made to the language.

Elimination of SCA Harvest Limits

As explained in Part I of the preamble, in April 2001 the Council recommended that the SCA pollock harvest limits be eliminated for the C/D fishing season. Table 5 is amended and published to show the allocations of the pollock TAC for the C/D season without SCA harvest limits. Offshore components of catcher/processors continue to be prohibited from fishing in the CVOA within the SCA per § 679.22(a)(5), which is amended by this emergency interim rule.

TABLE 5.—ALLOCATIONS OF THE POLLOCK TAC AND DIRECTED FISHING ALLOWANCE TO THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ COMPONENTS [1]

[All amounts are in metric tons]

Area and Sector	2001 DFA	A/B Season [1]			C/D Season [1]
		A/B DFA	A SCA limit [2]	B SCA limit [2]	C/D DFA
Bering Sea subarea	1,400,000	560,000	166,751	55,497	840,000
CDQ	140,000	56,000	28,247	9,339	84,000
ICA [3]	50,400	.....	.....	.....	.....
AFA Inshore	604,800	241,920	81,802	27,267	362,880
AFA C/Ps [4]	483,840	193,536	38,564	12,854	290,304
Catch by C/Ps	442,714	177,085	.....	.....	265,628
Catch by CVs [4]	41,126	16,451	.....	.....	24,676
Restricted C/P cap [5]	2,419	968	.....	.....	1,452
AFA Motherships	120,960	48,384	14,607	4,869	72,576
Excessive shares cap [6]	211,680	.....	.....	.....	.....
Aleutian Islands:					
ICA [7]	2,000				
Bogoslof District:					
ICA [7]	1,000				

[1] After subtraction for the CDQ reserve and the incidental catch allowance, the pollock TAC is allocated as follows: inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. Under paragraph 206(a) of the AFA, the CDQ reserve for pollock is 10 percent. NMFS, under regulations at § 679.24(b)(4), prohibits nonpelagic trawl gear to engage in directed fishing for non-CDQ pollock in the BSAI. The A/B season, January 20–June 10, is allocated 40 percent and the C/D season, June 10–October 31 is allocated 60 percent.

[2] The SCA limits are established as the amount, in metric tons, authorized for the 2000 pollock fishery (65 FR 3896, January 25, 2000).

[3] The pollock incidental catch allowance for the BS subarea is 4 percent of the TAC after subtraction of the CDQ reserve.

[4] Subsection 210(c) of the AFA requires that not less than 8.5 percent of the directed fishing allowance allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors.

[5] The AFA requires that vessels described in section 208(e)(21) be prohibited from exceeding a harvest amount of one-half of one percent of the directed fishing allowance allocated to vessels for processing by AFA catcher/processors.

[6] Paragraph 210(e)(1) of the AFA specifies that "No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery."

[7] Consistent with the RPAs, the Aleutian Islands subarea and the Bogoslof District are closed to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season or sector.

Under § 679.20(a)(5)(i)(C), NMFS must subdivide the inshore pollock allocation into allocations for cooperatives and vessels not fishing in a cooperative (i.e., the open access sector). Accordingly, Table 11 lists the apportionment of the BS subarea inshore pollock allocation into allocations for vessels fishing in a cooperative and for vessels not participating in a cooperative. Table 11, as published January 22, 2001, emergency interim rule was corrected by NMFS (66 FR 15656, March 20, 2001). The March amendment had an incorrect value of 3,192 mt for the A season inside the SCA open access sector. The correct value is 319 mt. Table 11 is amended and published here without the SCA limits for the C and D seasons and with the correct value for the open access A season inside the SCA.

TABLE 11.—BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY

[Amounts are expressed in metric tons]

	A/B season TAC	A season inside SCA [1]	B season inside SCA	C/D season TAC
Cooperative sector:				
Vessels > 99 ft	n/a	65,036	n/a	n/a
Vessels ≤ 99 ft	n/a	16,447	n/a	n/a
Total	241,184	81,483	27,161	361,772
Open access sector	736	319	106	1,105
Total inshore	241,920	81,802	27,267	362,880

[1] Steller sea lion conservation area established at § 679.22(a)(11)(iv) until July 18, 2001.
[2] Reserved.

Pacific Cod Seasons

Effective June 10, 2001, NMFS prohibited directed fishing for Pacific cod in the GOA and by vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line or pot gear in the BSAI (66 FR 31845, June 13, 2001). This action was necessary to prohibit certain Pacific cod fisheries, which had been authorized to start on June 10, 2001, and was intended to provide for orderly implementation of Steller sea lion protection measures for the second half of 2001. The text of this emergency interim rule incorporates Council recommendations in the January 18 emergency interim rule preamble and republishes Table 7 for the opening date of the Pacific cod B season by vessels using trawl gear and non-trawl gear.

Table 7 also lists the 2001 gear shares and seasonal apportionments of the BSAI Pacific cod TAC. Under § 679.23(e)(6)(ii)(B), directed fishing for Pacific cod in the B season in the BSAI by vessels using trawl gear closes 0001 hours, A.l.t., November 1, 2001. As recommended by the Council in April 2001 and as discussed in Part I of the preamble, the beginning dates for the B season for vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear is August 15, 2001, and for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is September 1, 2001.

TABLE 7.—2001 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD TAC

Gear sector	Percent	Share [1] (mt)	Subtotal percentages for gear sectors	Share of gear-sector total (mt)	Seasonal apportionment [2]	
					Date	Amount (mt)
Total hook-and-line and pot gear allocation of Pacific cod TAC.	51	88,689				
Incidental Catch Allowance				500		
Processor and Vessel sub-Total				88,189		
Hook-and-line Catcher			80	70,551	Jan 1–Jun 10	42,331
Processors (≥ 60 ft LOA)			80	70,551	Aug 15–Dec 31	28,220
Hook-and-Line Catcher			0.3	265	Jan 1–Jun 10	159
Vessels (≥60 ft LOA)					Aug 15–Dec 31	106
Pot Gear Vessels			18.3	16,139	Jan 1–Jun 10	9,683
(≥60 ft LOA)					Sept 1–Dec 31	6,455
Catcher Vessels < 60 feet (18.3 m) LOA using Hook-and-line or Pot gear.			1.4	1,235	no seasonal apportionment	
Trawl gear Total	47	81,733				
Trawl Catcher Vessel			50	40,867	Jan 1–Jun 10	24,520
					Jun 10–Nov 1	16,347
Trawl Catcher Processor			50	40,867	Jan 1–Jun 10	24,520
					Jun 10–Nov 1	16,347
Jig	2	3,478				
Total				173,900		

[1] The reserve has been released for Pacific cod see (Table 4).
[2] The first season is allocated 60 percent of the TAC and the second season is allocated 40 percent of the TAC. Any unused portion of the first seasonal Pacific cod allowance will be reapportioned to the second seasonal allowance.

The Council also recommended that the harvest by vessels less than 60 ft (18.3 m) LOA using pot gear be applied to the 18.3 percent harvest share of the vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear only when directed fishing by vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is open. When Pacific cod directed fishing by vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is closed, the harvest by vessels less than 60 ft (18.3 m) LOA using pot gear will be applied to the 1.4 percent Pacific cod allocation for this vessel size. This recommendation is implemented by amending the regulatory text in § 679.20(a)(7)(i)(C)(*4*). This amendment will provide the larger pot vessels more opportunity to harvest the amount of Pacific cod allocated to them under the 2001 harvest specifications.

AFA Inshore Cooperative Allocations

Table 12 of the January 18, 2001, emergency interim rule preamble lists the pollock allocations to the seven inshore catcher vessel pollock cooperatives that have been approved and permitted by NMFS for the 2001 fishing year. These allocations are revised based on corrections to AFA vessels' catch history and Table 12 is amended and published as follows.

TABLE 12.—BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catch histories [1]	Percentage of inshore sector allocation (%)	Annual co-op allocation
Akutan Catcher Vessel Association:			
Aldebaran, Arcturus, Blue Fox, Cape Kiwanda, Columbia, Dominator, Dona Martita, Exodus, Gladiator, Golden Dawn, Golden Pisces, Hazel Lorraine, Intrepid Explorer, Leslie Lee, Lisa Melinda, Majesty, Marcy J, Margaret Lyn, Nordic Explorer, Northern Patriot, Northwest Explorer, Pacific Ram, Pacific Viking, Pegasus, Peggie Jo, Perseverance, Predator, Raven, Royal American, Seeker, Sovereignty, Traveler, Viking Explorer	249,800	28.682	173,466
Arctic Enterprise Association:			
Arctic Explorer, Bristol Explorer, Ocean Explorer, Pacific Explorer	51,022	5.858	35,431
Northern Victor Fleet Cooperative:			
Anita J, Nordic Fury, Pacific Fury, Goldrush, Excalibur II, Half Moon Bay, Sunset Bay, Commodore, Storm Petrel, Poseidon, Royal Atlantic, Miss Berdie	72,517	8.326	50,358

TABLE 12.—BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS—Continued

Cooperative name and member vessels	Sum of member vessel's official catch histories [1]	Percentage of inshore sector allocation (%)	Annual co-op allocation
Peter Pan Fleet Cooperative:			
Amber Dawn, American Beauty, Elizabeth F, Morning Star, Oceanic, Ocean Leader, Topaz, Walter N, Providian	15,347	1.762	10,657
Unalaska Cooperative:			
Alaska Rose, Bering Rose, Destination, Great Pacific, Messiah, Morning Star, Ms Amy, Progress, Sea Wolf, Vanguard, Western Dawn	106,737	12.255	74,121
UniSea Fleet Cooperative:			
Alsea, American Eagle, Argosy, Auriga, Aurora, Defender, Gun-Mar, Nordic Star, Pacific Monarch, Seadawn, Starfish, Starlite, Starward	212,608	24.411	147,640
Westward Fleet Cooperative:			
A.J., Alaskan Command, Alyeska, Arctic Wind, Caitlin Ann, Chelsea K, Hickory Wind, Fierce Allegiance, Ocean Hope 3, Pacific Challenger, Pacific Knight, Pacific Prince, Viking, Westward I	160,257	18.400	111,286
Open access AFA vessels	2,652	0.304	1,841
Total inshore allocation	870,941	100	604,800

[1] Under § 679.62(e)(1) the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.
[2] Reserved.

Increase the Contribution of Arrowtooth Flounder CDQ to the CDQ Non-specific Reserve

Regulations at § 679.31(f) establish the CDQ non-specific reserve, comprised of 15 percent of the CDQ reserves of arrowtooth flounder and "other species" (skates, sharks, sculpin, and octopus). These species are taken incidentally in the CDQ fisheries. A CDQ group may request that NMFS transfer amounts in the CDQ non-specific reserve back into either its arrowtooth flounder or "other species" CDQ categories to reduce the possibility that the catch of these species would limit overall CDQ catch. Species or species groups that comprise the CDQ non-specific reserve are low-valued species for which no target fishery currently exists. These species have an adequate buffer between the TAC and the overfishing limit (OFL).

During the 2001 harvest specification process for the BSAI fisheries, the Bering Sea pollock TAC was set at 1,400,000 mt, based on increases to the 2001 pollock ABC and OFL. This is a 23-percent increase over the 2000 pollock TAC of 1,139,000 mt. The total BSAI TAC for all groundfish must be maintained within a required optimum yield range of 1.4 million to 2.0 million mt. In order to stay within the 2.0 million mt limit, the Council chose to decrease the arrowtooth flounder TAC to approximately 20 percent of the arrowtooth flounder ABC. This meant that the amount of the arrowtooth flounder CDQ reserve and the subsequent contribution of this amount to the CDQ non-specified reserve was proportionately decreased for 2001.

During the first 3 years of the groundfish CDQ fisheries, the non-specific reserve contained sufficient amounts of quota to support the bycatch needs in the "other species" CDQ category. Arrowtooth flounder was the largest contributor to the non-specific reserve in 1999 and 2000, the first complete years of groundfish CDQ fishing. For these years, the arrowtooth flounder TAC was set at or close to the acceptable biological catch (ABC) level. However, in 2001, the arrowtooth flounder TAC was set significantly less than the arrowtooth flounder ABC.

At the April 2001 Council meeting, CDQ representatives testified about their concern that vessels fishing for the groups were going to catch the "other species" CDQ allocation before they fully harvested target species such as pollock, Pacific cod, sablefish, and Greenland turbot. One of the primary reasons they cited for the shortfall in "other species" CDQ was the reduction in the 2001 arrowtooth flounder TAC. The concern about the effect of reducing the arrowtooth flounder TAC on the CDQ fishery was not recognized at the time the Council recommended the 2001 TACs in December 2000. NMFS regulations limit the amount of "other species" CDQ available to each CDQ group and prohibit the groups from exceeding their allocations.

In response to the groups' testimony, the Council asked staff to prepare an analysis of alternatives to address whether the catch of target species in the CDQ fisheries are constrained by the "other species" CDQ allocation and options to address this issue. Initial review of this analysis is scheduled for the October 2001 meeting and final action at the December 2001 meeting. The Council also stated that the CDQ non-specific reserve was "intended, in part, to provide adequate 'other species' quota to allow reasonable CDQ fisheries." At its June 2001 meeting, the Council requested that NMFS adjust the contribution of arrowtooth flounder CDQ to the CDQ non-specific reserve from 15 percent to 50 percent via emergency rulemaking.

In response to the Council's request, NMFS is amending the CDQ non-specific reserve to increase the contribution of arrowtooth flounder to the CDQ non-specific reserve from 15 percent of the arrowtooth flounder CDQ reserve to 50 percent of the arrowtooth flounder CDQ reserve for the remainder of 2001. This increase will allow the CDQ groups to transfer quota from the CDQ non-specific reserve to the "other species" CDQ account to reduce the possibility that the incidental catch of "other species" would prevent the CDQ groups from fully harvesting their target species allocations.

The maximum amount of "other species" available for harvest in the combined CDQ and non-CDQ fisheries is the aggregate amount of the following components: The open access ITAC (22,525 mt), the CDQ reserve (1,988 mt), and the current amount of arrowtooth flounder in the CDQ non-specific reserve that could be released to the "other species" category (248 mt). The sum of these components is 24,761 mt. If 50 percent (826 mt) of the arrowtooth flounder CDQ reserve is moved to the

non-specific CDQ reserve and subsequently released to the "other species" CDQ category, the revised total amount of "other species" available for harvest in the combined open access and CDQ fisheries would increase to 25,339 mt. This is 578 mt more than the currently available total "other species" amount of 24,761 mt. However, the increase in the amount of "other species" CDQ available for harvest through transfers from the CDQ non-specific reserve is still less than the combined CDQ and non-CDQ fisheries 2001 "other species" TAC of 26,500 mt and will not likely result in the total catch of "other species" exceeding the 2001 "other species" TAC. NMFS has determined that the TAC, ABC and OFL controls associated with both the "other species" and arrowtooth flounder species categories are not compromised by this action.

Gulf of Alaska

Seasons for Pacific Cod TAC in the GOA

This emergency interim rule corrects the January 18, 2001, emergency interim rule preamble for the opening and closing date of the B season Pacific cod fishery by vessels using trawl gear in the Western and Central Regulatory Areas of the GOA. The reasons for changing the season dates is discussed in detail in Part I of this preamble and in the preamble to the amendment to the emergency interim rule published June 13, 2001 (66 FR 31845). Under amendments to § 679.23(d)(4)(ii)(B) in this emergency interim rule, directed fishing for Pacific cod in the B season in the Western and Central Regulatory Areas of the GOA by vessels using trawl gear opens at 1200 hours, A.l.t., September 1, 2001, and closes at 0001 hours, A.l.t., November 1, 2001. The B season for non-trawl vessels directed fishing for Pacific cod in the GOA is changed to 1200 hours A.l.t. September 1, 2001, through 2400 hours A.l.t. December 31, 2001, by amending § 679.23(d)(4)(i)(B).

Pacific Halibut PSC Seasonal Allocation Reapportionment

At its April 2001 meeting, the Council recommended changing the GOA Pacific cod B season to September 1, without recommending changes to the Pacific halibut PSC seasonal allowance. Pacific halibut PSC seasonal allowance was still available starting June 10. At the Council's June 2001, meeting, certain industry representatives expressed their concern that fishermen could start fishing for the other species in the "shallow water trawl fishery" and could catch substantial amounts of the Pacific halibut PSC seasonal limit, leaving insufficient amounts of this seasonal limit to support the September 1 Pacific cod fishery.

In response to industry concerns, at its June meeting, the Council recommended that NMFS close by emergency interim rule directed fishing for the shallow-water complex by vessels using trawl gear until July 1 and to reapportion what remained of the original 150 mt seasonal apportionment of the Pacific halibut trawl PSC to the September 1 through October 1 period instead of during the June 10 through July 1 period. Trawl gear bycatch of Pacific halibut in the GOA Pacific cod fishery is deducted from the Pacific halibut PSC seasonal allowance established for the shallow-water complex trawl fishery. Effective June 27, 2001 (66 FR 34852, July 2, 2001), NMFS prohibited directed fishing in the shallow-water complex fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This closure was intended to ensure that remainder of the original June 10 through July 1 halibut PSC allocation is available for reallocating to a September 1 through October 1 season. NMFS has determined that as of July 1, 2001, 100 mt remains of the original 150 mt apportionment of halibut PSC to trawl vessels targeting the shallow-water complex from the June 10 to July 1, 2001 period.

The text of this emergency interim rule incorporates the Council's recommendation to reapportion the remaining 100 mt of the 150 mt Pacific halibut PSC allocated June 10 through July 1 to a new September 1 through October 1 season to provide for the Pacific cod trawl fishery. Accordingly, Tables 24 and 25 of the 2001 harvest specifications (66 FR 7276, January 22, 2001, amended 66 FR 17087, March 29, 2001) are adjusted to read as follows:

TABLE 24.—FINAL 2001 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS

[The Pacific Halibut PSC Limit for Hook-and-Line Gear is Allocated to the Demersal Shelf Rockfish (DSR) Fishery and Fisheries Other Than DSR. The Hook-and-Line Sablefish Fishery is Exempt from Halibut PSC Limits.]

[Values are im mt]

Trawl gear		Hook-and-line gear			
			DSR		
Dates	Amount	Other than DSR	Dates	Amount	Dates
Jan 1–Apr 1	550 (28%)	Jan 1–May 17	205 (70%)	Jan 1–Dec 31	10 (100%)
Apr 1–Jul 1	450 (22%)	May 17–Aug 31	Any rollover		
Jul 1–Oct 1	700 (35%)	Aug 31–Dec 31	85 (30%)		
Oct 1–Dec 31	300 (15%)				
Total	2,000 (100%)		290 (100%)		10 (100%)

TABLE 25.—FINAL 2001 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX

[Values are in metric tons]

Season	Shallow-water	Deep-water	Total
Jan. 20–Apr. 1	450	100	550
Apr. 1–Jul. 1	150	300	450
Jul. 1–Sep. 1	200	400	600
Sep. 1–Oct. 1	100	Any rollover	100

TABLE 25.—FINAL 2001 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX—Continued

[Values are in metric tons]

Season	Shallow-water	Deep-water	Total
Subtotal—Jan. 20–Oct. 1	900	800	1,700
Oct. 1–Dec. 31			300
Total			2,000

Unused seasonal apportionments of halibut PSC limits specified for trawl gear will be added to the respective seasonal apportionment for the next season during a current fishing year. No apportionment between shallow-water and deep-water fishery complexes during the October 1 through December 31.

Non-exempt American Fisheries Act (AFA) Catcher Vessel Groundfish Harvest

Non-exempt AFA catcher vessel groundfish harvest in 2001 are shown in Table 27 to the preamble in the January 18, 2001, emergency interim rule. In this emergency interim rule, NMFS is correcting several numerical errors that appeared in the preamble in Table 27 in the January 18, 2001, emergency interim rule and is publishing in this preamble the amended Table 27. In column 3, Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC, the pollock annual ratio in the Southeast Outside District is corrected from 0.3542, to read 0.3642, the Pacific cod ratio in the Western GOA for the offshore component during the A and B seasons is corrected from 0.1206, to read 0.1026, and the Pacific ocean perch ratio in the Eastern GOA is corrected from 0.0255, to read 0.0225. In column 5, 2001 non-exempt AFA catcher vessel sideboard (amounts in mt), the amount for trawl sablefish in the Central and Eastern GOA is corrected from 44 and 7, to read 42 and 6, respectively, and the amount for "other rockfish" in the Central GOA is corrected from 3 to 30 mt. These corrected amounts are presented in Table 27 listing the final 2001 GOA groundfish harvest limitations (sideboards).

TABLE 27.—FINAL 2001 GOA NON-EXEMPT AFA CATCHER VESSEL (CV) GROUNDFISH HARVEST LIMITATIONS (SIDEBOARDS)

[Values are in mt]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 Non-Exempt AFA CV catch to 1995–1997 TAC	2001 TAC	2001 Non-Exempt AFA catcher vessel sideboard
Pollock	A Season (W/C areas only)			
	January 20–March 1			
	Shelikof Strait	0.1672	12,431	2,075
	Shumagin (610)	0.6238	7,707	4,808
	Chirik of (620) (outside Shelikof)	0.1262	560	71
	Kodiak (630) (outside Shelikof)	0.1984	5,474	1,086
	B Season (W/C areas only):		6,206	1,038
	March 15–May 31	0.1672	3,854	2,404
	Shelikof Strait	0.6238		
	Shumagin (610)		280	35
	Chirikof (620) (outside Shelikof)	0.1262	2,737	543
	Kodiak (630) (outside Shelikof)	0.1984		
	C Season (W/C areas only)		10,998	6,861
Pacific code	A Season (W/C areas January 1–June 10		6,546	826
	W inshore	0.1310	9,882	1,295
	offshore	0.1026	1,098	113
	C inshore	0.0542	16,335	885
	offshore	0.0721	1,815	131
	B Season (W/C areas only) Sept. 1–December 31 (non-trawl); Sept. 1–Nov. 1 (trawl).			
	W inshore	0.1310	6,588	863
	C inshore	0.1026	732	75
	offshore	0.0721	1,210	87
	Annual			
	E inshore	0.000	3,206	0
	offshore	0.0078	356	3
Flatfish deep-water	W	0.0000	280	0
	C	0.0620	2,710	168
	E	0.0021	2,310	5
Rex sole	W	0.0043	1,230	5
	C	0.0117	5,660	66
	E	0.0026	2,550	7
Flathead sole	W	0.0129	2,000	26
	C	0.0097	5,000	49

TABLE 27.—FINAL 2001 GOA NON-EXEMPT AFA CATCHER VESSEL (CV) GROUNDFISH HARVEST LIMITATIONS (SIDEBOARDS)—Continued

[Values are in mt]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 Non-Exempt AFA CV catch to 1995–1997 TAC	2001 TAC	2001 Non-Exempt AFA catcher vessel sideboard
Flatfish shallow-water	E	0.0008	2,060	2
	W	0.0260	4,500	117
	C	0.0420	12,950	544
Arrow-tooth flounder	E	0.0106	1,950	21
	W	0.0047	8,000	38
	C	0.0206	25,000	515
Sable-fish	E	0.0016	5,000	8
	W trawl gear	0.0023	402	1
	C trawl gear	0.0384	1,082	42
	E trawl gear	0.0236	271	6
Pacific ocean perch	W	0.0051	1,280	7
	C	0.0692	9,610	655
	E	0.0225	2,620	59
Short-raker/rougheye	W	0.0000	210	0
	C	0.0145	930	13
	E	0.0105	590	6
Other rockfish	W	0.0000	20	0
	C	0.0410	740	30
	E	0.0000	250	0
Northern rockfish	W	0.0005	600	0
	C	0.0307	4,280	131
Pelagic shelf rockfish	W	0.0004	550	0
	C	0.0000	4,480	0
	E	0.0066	1,350	9
Thorny-head rockfish	W	0.0118	420	5
	C	0.0118	970	11
	E	0.0118	920	11
Deferral shelf rockfish	SEO	0.0000	330	0
Atka mackerel	Gulfwide	0.0443	600	27
Other species	Gulfwide	0.0067	13,619	91

Response to Comments

NMFS received one letter of comment in response to the January 18, 2001, emergency interim rule (66 FR 7672). The letter indicated concern over the economic impact of the Steller sea lion protection measures on the freezer longliners fishing for Pacific cod in the BSAI and expressed support for NMFS working with the Council in the development of Steller sea lion protection measures for 2002.

Comment 1. The Comprehensive Biological Opinion provides little data regarding the decline of the Steller sea lions and the relationship to the Pacific cod fisheries. The Comprehensive Biological Opinion refers to the hook-and-line method of fishing as conducive to minimizing adverse effects on Steller sea lions. In spite of this determination, the 2001 protection measures will be economically harmful to the freezer longliner fishery and will impose disproportionate and adverse impacts on this sector with the implementation of closure areas in 2001.

Response. The Comprehensive Biological Opinion contained the best available information at the time the document was prepared on: (1) The importance of Pacific cod to the diet of Steller sea lions; and (2) the competition between fish and Steller sea lions for prey. NMFS has acknowledged that the harvest rates for the Pacific cod hook-and-line sector as reported in the Comprehensive Biological Opinion were higher than actual rates and that future consultations will use the corrected information.

The Steller sea lion protection measures phased-in for 2001 impose some, but not all, of the protection measures specified in the RPA to the Comprehensive Biological Opinion to reduce impacts on industry and coastal communities while maintaining consistency with the goals of the Comprehensive Biological Opinion. As a result, potential impacts in 2001 on the fishing industry and coastal communities have been reduced from what they would have been if the RPA had been fully implemented. Further, the freezer longliner fishery for BSAI Pacific cod typically is spatially distributed over a wide geographic area so that closure of some critical habitat during the second half of 2001 should not impose undue hardship.

For 2002, NMFS has reinitiated consultation on the effects of the pollock, Pacific cod, and Atka mackerel fisheries on the threatened and endangered populations of the Steller sea lions. The consultation will include accurate harvest rates for the Pacific cod hook-and-line fishery and other fisheries. Based on the best scientific and commercial data available, and with input from the Council and the RPA Committee, NMFS will reconsider the potential impact of the hook-and-line gear fisheries on the Steller sea lions and their critical habitat. Based on this consultation, NMFS will implement 2002 protection measures. However, until that consultation is complete, NMFS must take a cautious approach and implement the measures contained in this emergency interim rule extension

and amendments for the second half of 2001.

Comment 2. Closing portions of the Aleutian Islands to freezer hook-and-line vessels will force these vessels into less productive fishing grounds already dominated by trawl and pot gear vessels. As a result, gear conflicts will increase.

Response. NMFS agrees that incidences of gear conflicts may increase if various gear sectors share fishing areas that have not been shared in the past as portions of critical habitat are closed to fishing. Some of these areas also may be less productive. Nonetheless, the critical habitat closures implemented for the Pacific cod fisheries during the second half of 2001 have been modified from those established in the Comprehensive Biological Opinion to better accommodate historical fishing practices while ensuring minimal thresholds established in the Comprehensive Biological Opinion for protection of critical habitat and Steller sea lion pups and non-pups are met.

Comment 3. Hook-and-line vessels will have higher halibut bycatch outside of closed areas, leading to earlier closure of the fishery.

Response. NMFS disagrees. A 2000 draft environmental assessment of the interaction between the Pacific cod fisheries in the BSAI and GOA and Steller sea lions [1] determined that in 1999, the rate of Pacific halibut bycatch was similar inside and outside critical habitat. On June 10, 2001, NMFS prohibited directed fishing for Pacific cod by most vessels using hook-and-line gear (66 FR 31845, June 13, 2001) to allow the Pacific cod hook-and-line seasons to be delayed to August 15 in the BSAI and September 1 in the GOA with this emergency interim rule amendment. The delay in the season will help reduce the amount of halibut bycatch in the summer and will likely allow the Pacific cod hook-and-line fishery to have halibut bycatch allocations available for the fall fishery that would have otherwise been taken in the summer.

Comment 4. If the hook-and-line fleet cannot harvest a large portion of the TAC in the early part of the year, the potential exists that part of the annual TAC will not be harvested and the CDQ portion of the TAC may not be harvested, which is important to Native communities.

Response. The 2001 Steller sea lion protection measures authorized up to 60 percent of the non CDQ TAC to be harvested early in the year and no limitation was placed on the amount of Pacific cod CDQ that could be harvested early in the year. These provisions, as well as the delay of the second season start date from June 10 to September 1, are intended to increase the opportunity to harvest the Pacific cod CDQ reserve and reduce the potential of premature closure of the non CDQ hook-and-line gear Pacific cod fishery due to halibut bycatch restrictions.

Comment 5. The Pacific cod freezer hook-and-line fishery will experience a disproportionate and adverse impact with the implementation of the 40 percent A season and 60 percent B season TAC allocation in 2002.

Response. The 2002 seasonal apportionments of TAC have not been established at this time and comments on the 2002 protection measures are outside the scope of the subject action that implement protection measures for the second half of 2001. NMFS is working with the Council to develop Steller sea lion protection measures, including TAC seasonal allocations for 2002. The impact of Pacific cod TAC allocations will be analyzed in the supplemental environmental impact statement and regulatory impact review being prepared for 2002 Steller sea lion protection measures. This analysis will be considered by the Council and NMFS before 2002 protection measures are implemented.

Comment 6. Freezer hook-and-line vessels do not create "holes in the prey field".

Response. See response to Comment 1. NMFS acknowledges that the hook-and-line fishery generally removes fish at rates slower than trawl gear. Nonetheless, removal rates by hook-and-line gear are not inconsequential and will be reassessed in the SEIS and biological opinion being prepared for proposed Steller sea lion protection measures in 2002 and beyond.

Comment 7. Freezer hook-and-line vessels are affected by near shore closures.

Response. NMFS agrees and acknowledges that all groundfish fisheries are affected by the 3 nm groundfish fishing closures around rookeries and haulouts. See also response to comment 1.

Comment 8. The freezer longliner sector is committed to pursuing conservation measures that are supported by sound science.

Response. NMFS commends this commitment.

NMFS received one letter of comment on the March 23, 2001, amendments (66 FR 17083, March 29, 2001) to the emergency interim rule exempting jig vessel off Alaska and vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI from certain Steller sea lion protection measures. In general, the letter did not support the exemptions.

Comment 1. NMFS must rethink its entire RPA proposal from the Comprehensive Biological Opinion.

Response. NMFS has reinitiated consultation on the 2002 Steller sea lion protection measures under development by the Council and the proposed action will be analyzed to determine if it avoids jeopardy to Steller sea lions and adverse modification to their critical habitat. If the 2002 Steller sea lion protection measures are determined to not avoid jeopardy for Steller sea lions or result in adverse modification of their critical habitat, an RPA will be developed.

Comment 2. NMFS' action to exempt specified small non-trawl vessels from critical habitat closures within 3 nm of Steller sea lion haulouts in the BSAI will encourage the use of these areas and further erodes the protections afforded to the most vulnerable segments of the sea lion populations.

Response. NMFS agrees that near shore waters will be more accessible to small non-trawl gear vessels with the exemptions in the amendment to the emergency interim rule. NMFS believes that the important aspect of protection for these sites is maintaining prey availability for the Steller sea lions. As stated in the justification accompanying the amendment, the relatively small harvest of Pacific cod and Atka mackerel by the jig gear fleet and other small non-trawl vessels in the BSAI during the 2001 phase-in year of the RPA poses little concern to Steller sea lions or their critical habitat. In 2000, jig gear vessels in the BSAI harvested no Atka mackerel and only 77 mt of Pacific cod. For comparison, the BSAI 2001 ABC specifications for Atka mackerel and Pacific cod are 69,300 mt and 188,000 mt, respectively. In the GOA, jig gear vessels harvested 42 mt of Pacific cod during the Federal waters fishery. For comparison, the GOA 2001 ABC for Pacific cod is 67,800 mt. The amount of Pacific cod harvested in 2000 in the BSAI by vessels less than 60 ft (18.8 m) LOA using pot or hook-and-line gear was 501 mt, which, by comparison, amounts to only 0.3 percent of the 2001 Pacific cod ABC (188,000 mt). NMFS did not provide relief for small vessels using pot or hook-and-line gear in the GOA because the amount of Pacific cod

[1] Draft Environmental Assessment: Interactions Between the Pacific Cod Fisheries in the Bering Sea, Aleutian Islands, and the Gulf of Alaska and Steller Sea Lions. August 23, 2000. Available from NMFS Alaska Region (See **ADDRESSES**).

harvested by these vessels approached 17 percent of the ABC.

Comment 3. Haulouts and rookeries are traditionally used by generations of sea lions making it important that disturbances in the immediate vicinity of these sites is minimized so that sea lions are not driven away. Oregon studies of rookeries and urchin fisheries show that sea lions were displaced during fishing activities. These disturbances with the small non-trawl gear vessel exemptions are also likely around haulouts.

Response. NMFS acknowledges that near shore activity around rookeries could disturb Steller sea lions and will maintain the 3 nm groundfish fishing closures around all rookeries. It is not known if Steller sea lions on haulouts have the same potential for disturbance from near shore fishing activity, as seen with Oregon sea lions on rookeries and the urchin fishery. NMFS will be reconsidering this issue in the biological opinion being prepared for the 2002 protection measures.

Comment 4. Young-of-the-year Steller sea lions may be in near shore waters around haulouts while their mothers are foraging, and fishing activities may have an adverse effect on these animals.

Response. NMFS agrees that small fishing vessels within 3 nm may interact with Steller sea lions. The specific effect on young-of-the-year animals is not known. However, NMFS determined that the relatively small number of vessels and harvest levels resulting from the exemption likely would not pose irreversible harm to Steller sea lions or their critical habitat during the 2001 phase-in year of the RPA.

Comment 5. Near shore habitat (3 nm or less) around rookeries and haulouts should remain off-limits to all fishing.

Response. See response to comment 3.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this emergency interim rule is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this emergency interim rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This action has been determined to be significant for purposes of Executive Order 12866 and a regulatory impact review was prepared. Consistent with the National Environmental Policy Act, an environmental assessment was prepared for this action. This rule contains no reporting, recordkeeping, or compliance requirements, and no relevant Federal rules exist that may duplicate, overlap, or conflict with this action.

This amended emergency interim rule is consistent with the objectives for Steller sea lion protection measures implemented in 2001 under section 209(c)(6) of Pub. L. No. 106–554, the ESA, and other applicable law. This action also will minimize bycatch rates of salmon and Pacific halibut in the pollock and Pacific cod fisheries while providing for continued temporal and spatial distribution of the pollock and Pacific cod fisheries. As such, the opportunity for harvest of pollock and Pacific cod will be optimized under prohibited species catch restrictions and the desire to avoid high bycatch rates of chum salmon in the Bering Sea and GOA groundfish fisheries. The extension and amendments to the emergency interim rule must be in place by July 18, 2001, to allow the continued management of the 2001 groundfish fisheries with Steller sea lion protection measures. Thus, this action must be implemented as soon as practical and in a manner that makes it impracticable to provide prior notice and an opportunity for public comment. Therefore, good cause exists to waive those requirements pursuant to 5 U.S.C. 553(b)(3). For the same reason, good cause exists to waive the 30-day delay in effective date. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived. Because prior notice and opportunity for public comment are not required for this emergency interim rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are not applicable. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 12, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The effective date period for the amendments to the following sections, published January 22, 2001, at 66 FR 7276, is extended through December 31, 2001:

Sections

679.2
679.5(f)(4)
679.7(a)(17)
679.7(j)
679.20(a)(5)(i)(B)(*1*) and (a)(5)(ii)(C)
679.20(c)(2)(iii)
679.22(a)(12)(iii)(B), (C), and (D)
679.23(d)(3)
679.23(e)(4)(iv) and (e)(4)(v)
679.23(e)(5) and (e)(6)(ii)
679.23 (i)

2. The suspension date period for the amendments to the following sections, published January 22, 2001, at 66 FR 7276, is extended through December 31, 2001:

Sections

679.7(a)(11) and (b)
679.20(a)(5)(i)(A) and (a)(5)(ii)(B)
679.20(c)(2)(ii)
679.22(a)(7) and (a)(8)
679.22(b)(2)
679.23(d)(2)
679.23(e)(2) and (e)(4)(iii)

2a. The suspension date period for § 679.23(e)(6)(i), published March 29, 2001, at 66 FR 17087, is extended through December 31, 2001.

3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 10–277; Sec. 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106–554.

4. In § 679.20, paragraph (a)(7)(i)(C)(*2*) is suspended and paragraphs (a)(5)(i)(C), (a)(7)(i)(C)(*4*), and (c)(7) are added to read as follows:

§ 679.20 General limitations.

(a) * * *
(5) * * *
(i) * * *

(C) *AFA allocations (applicable through December 31, 2001).* The pollock TAC apportioned to each BSAI subarea or district, after subtraction of the 10 percent CDQ reserve under § 679.31(a), will be allocated as follows:

(*1*) *Incidental catch allowance.* The Regional Administrator will establish an incidental catch allowance to account for projected incidental catch of pollock by vessels engaged in directed fishing for groundfish other than pollock and by vessels harvesting non-pollock CDQ. If during a fishing year the Regional Administrator determines that the incidental catch allowance has been set too high or too low, the Regional Administrator may issue inseason notification in the **Federal Register** that reallocates pollock to or from the directed pollock fisheries to or from the incidental catch allowance according to the proportions established under § 679.20(a)(5)(i)(C)(*2*).

(*2*) *Directed fishing allocations.* The remaining pollock TAC apportioned to each BSAI subarea or district will be allocated for directed fishing as follows:

(*i*) 50 percent to vessels harvesting pollock for processing by AFA inshore processors,

(*ii*) 40 percent to vessels harvesting pollock for processing by catcher/processors, with not less than 8.5 percent of this allocation made available for harvest by AFA catcher vessels and not more than 0.5 percent of this allocation made available for harvest by restricted AFA catcher/processors, and

(*iii*) 10 percent to vessels harvesting pollock for processing by AFA motherships.

(*3*) *Allocations for fishing by inshore cooperatives and vessels not participating in cooperatives.* The TAC allocated to vessels harvesting pollock for processing by AFA inshore processors will be divided into separate allocations for cooperatives and vessels not participating in cooperatives. The TAC allocation for cooperative fishing will be equal to the aggregate annual allocations of all inshore cooperatives that receive pollock allocations under § 679.61(e). The TAC allocation for fishing for vessels not participating in cooperatives will be equal to the allocation made to vessels harvesting pollock for processing by AFA inshore processors minus the TAC allocation for cooperative fishing.

(*4*) *Excessive harvesting share.* NMFS will establish an excessive harvesting share limit equal to 17.5 percent of the sum of the allocations made under § 679.20(a)(5)(i)(C)(*2*). The excessive share limit will be published in the proposed, interim, and final specifications.

* * * * *

(7) * * *

(i) * * *

(C) * * *

(*4*) *(Applicable through December 31, 2001).* Harvest of Pacific cod made by catcher vessels less than 60 ft (18.3 m) LOA using pot gear:

(*i*) Will accrue against the 18.3 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iii*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is open.

(*ii*) Will accrue against the 1.4 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is closed.

* * * * *

(c) * * *

(7) *BSAI and Western and Central GOA Pacific cod season allocations (applicable through December 31, 2001).* (i) The annual TAC of Pacific cod in the BSAI and the Western and Central GOA will be divided, after the subtraction of any reserves and incidental catch between the A Season and B Season as provided in §§ 679.23(d)(4) and (e)(6).

(ii) Each season apportionment will be allocated among the various sectors as provided in §§ 679.20(a)(6)(iii) and (a)(7).

(iii) Any overage or underage of Pacific cod harvest from the A season may be subtracted from or added to the subsequent B season.

* * * * *

5. In § 679.22, paragraph (a)(5)(i) is suspended and paragraphs (a)(5)(iv), (a)(11), (a)(12)(i), (a)(12)(ii), (a)(12)(iii)(A), (a)(12)(iv) through (viii), (a)(13), (b)(3), (b)(6), and (b)(7) are added to read as follows:

§ 679.22 Closures.

* * * * *

(a) * * *

(5) * * *

(iv) *AFA catcher/processor restrictions (applicable through December 31, 2001).* A catcher/processor or vessel authorized to fish for BSAI pollock under § 679.4(l)(2) is prohibited from conducting directed fishing for pollock in the CVOA during the C/D pollock season defined at § 679.23(e)(5)(i)(B).

* * * * *

(11) *Steller sea lion protection measures—Bering Sea subarea and Bogoslof Foraging Area (applicable through December 31, 2001)*—(i) *Bogoslof Foraging Area*—(A) *Boundaries.* The Bogoslof Foraging area consists of all waters of Area 518 as described in Figure 1 of this part south of a straight line connecting 55°00′ N/170°00′ W, and 55°00′ N/168°11′4.75″ W;

(B) *Fishing prohibition.* All waters within the Bogoslof Foraging area are closed to directed fishing for pollock, Pacific cod, and Atka mackerel.

(ii) Directed fishing for groundfish by federally permitted vessels is prohibited within 3 nm of selected sites. These sites are listed on Table 21 of this part and are identifiable by "Bering Sea" in column 2.

(iii) Directed fishing for Pacific cod is prohibited within the Pacific cod no fishing zones around selected sites. These sites are listed in Table 23 of this part and are identifiable by "Bering Sea" in column 2 and either "20" or "10" in column 7.

(iv) Directed fishing for pollock is prohibited within pollock no fishing zones around selected sites. These sites are listed in Table 22 of this part and are identifiable by "Bering Sea" in column 2 and either "20" or "10" in column 7.

(v) Directed fishing for Atka mackerel is prohibited within Atka mackerel no fishing zones around selected sites. These sites are listed in Table 24 of this part and are identifiable by "Bering Sea" in column 2 and either "20" or "10" in column 7.

(12) *Steller sea lion protection measures—Aleutian Islands Subarea (applicable through December 31, 2001)*—(i) *Pollock closure.* Directed fishing for pollock within the Aleutian Islands subarea is prohibited at all times.

(ii) *Seguam foraging area.* (A) The Seguam foraging area is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30′ W long. and 172°30′ W.

(B) Directed fishing for Pacific cod and Atka mackerel is prohibited in the Seguam Foraging area as described in paragraph (a)(12)(ii)(A) of this section.

(iii) *Western and Central Aleutian Islands closures.* (A) *General.* Trawling is prohibited within 20 nm of selected rookery and haulout sites in the Aleutian Islands subarea when the Regional Administrator announces by notification in the **Federal Register** that the criteria for a trawl closure in a district set out in paragraph (a)(12)(iii)(B) of this section have been met. These sites are listed in Table 21 of this part and are identifiable by "Aleutian Islands" in column 2 and by coordinates west of 177° W long. and east of 177° E long. for the Central area (542), and west of 177° E long. for the Western area (543) in column 4. Rat Island/Krysi Point and Amchitka Island/Cape Ivakin are excluded from the trawling prohibition described in this paragraph.

* * * * *

(iv) Directed fishing for groundfish by federally permitted vessels is prohibited within 3 nm of selected sites. These sites are listed in Table 21 of this part and are identifiable by "Aleutian Islands" in column 2.

(v) Directed fishing for Pacific cod by all gear types is prohibited within the Pacific cod no fishing zones around selected sites. These sites are listed in Table 23 of this part and are identifiable by "Aleutian Islands" in column 2 and either "20" or "10" in column 7.

(vi) Directed fishing for Pacific cod by trawl gear is prohibited within the trawl Pacific cod no fishing zones around selected sites. These sites are listed in Table 23 of this part and are identifiable by "Aleutian Islands" in column 2 and "20" in column 8.

(vii) Directed fishing for Pacific cod by non-trawl gear is prohibited within the non-trawl gear Pacific cod no fishing

zones around selected sites. These sites are listed in Table 23 of this part and are identifiable by "Aleutian Islands" in column 2 and "3" in column 9.

(viii) Directed fishing for Atka mackerel is prohibited within Atka mackerel no fishing zones around selected sites. These sites are listed in Table 24 of this part and are identifiable by "Aleutian Islands" in column 2 and either "20" or "10" in column 7.

(13) *Fishing Prohibition Exemptions (applicable through December 31, 2001).* The following vessels are exempt from fishing prohibitions described in this section.

(i) For federally permitted vessels directed fishing for groundfish:

(A) All jig vessels are exempt from 3 nm closures around selected sites. These sites are listed in Table 21 and identifiable by a "Bering Sea" or "Aleutian Islands" in column 2 and "Y" in column 10.

(B) All vessels less than 60 ft (18.3 m) LOA using non-trawl gear are exempt from the 3 nm fishing closure around selected sites. These sites are listed in Table 21 and identifiable by a "Bering Sea" or "Aleutian Islands" in column 2 and a "Y" in column 9.

(ii) For vessels directed fishing for Atka mackerel:

(A) All vessels using jig gear and vessels less than 60 ft (18.3 m) LOA using non-trawl gear are exempt from the fishing prohibitions of paragraphs (a)(11)(i)(B) and (a)(12)(ii)(B) of this section and from Atka mackerel no fishing zones for all sites listed in Table 24 of this part.

(B) All pot vessels are exempt from the Atka mackerel no fishing zones for selected sites. These sites are listed in Table 24 of this part and identifiable by a "Bering Sea" in column 2 and a "Y" in column 8.

(iii) For vessels directed fishing for Pacific cod:

(A) All vessels using jig gear are exempt from the fishing prohibitions of paragraphs (a)(11)(i)(B) and (a)(12)(ii)(B) of this section and from Pacific cod no fishing zones for selected sites. These sites are listed in Table 23 of this part and identifiable by a "Bering Sea" or "Aleutian Islands" in column 2.

(B) All vessels less than 60 ft (18.3 m) LOA using non-trawl gear are exempt from the fishing prohibitions of paragraphs (a)(11)(i)(B) and (a)(12)(ii)(B) of this section and from Pacific cod no fishing zones for selected sites. These sites are listed in Table 23 of this part and identifiable by a "Bering Sea" or "Aleutian Islands" in column 2.

(C) All pot vessels are exempt from Pacific cod no fishing zones for selected sites. These sites are listed in Table 23 of this part and identifiable by a "Bering Sea" in column 2 and a "Y" in column 11.

(iv) All vessels less than 60 ft (18.3 m) LOA using non-trawl gear in directed fishing for pollock are exempt from the fishing prohibitions of paragraphs (a)(11)(i)(B) and (a)(12)(ii)(B) of this section and from pollock no fishing zones for selected sites. These sites are listed in Table 22 of this part and identifiable by a "Bering Sea" in column 2 and a "Y" in column 8.

* * * * *

(b) * * *

(3) *Steller sea lion protection measures (applicable through December 31, 2001)*—(i) *Shelikof Strait Conservation Area*—(A) *Boundaries.* The Shelikof Strait conservation area consists of the area bound by straight lines and shoreline connecting the following coordinates in the following order:

58°51′ N lat. 153°15′ W long.
58°51′ N lat. 152°00′ W long.

and the intersection of the 152°00′ W long. with Afognak Island; aligned counterclockwise around the shoreline of Afognak, Kodiak, and Raspberry Islands to:

57°00′ N lat. 154°00′ W long.
56°30′ N lat. 154°00′ W long.
56°30′ N lat. 155°00′ W long.
56°00′ N lat. 155°00′ W long.
56°00′ N lat. 157°00′ W long.

and the intersection of 157°00′ W long. with the Alaska Peninsula.

(B) Directed fishing for pollock, Pacific cod, and Atka mackerel is prohibited in all waters of the Shelikof Strait conservation area that lie east of Kodiak Island to the east of 154° W long.

(ii) Directed fishing for groundfish by federally permitted vessels is prohibited within 3 nm of selected sites. These sites are listed in Table 21 of this part and are identifiable by "Gulf of Alaska" in column 2.

(iii) Directed fishing for Pacific cod is prohibited within Pacific cod no fishing zones around selected sites. These sites are listed in Table 23 of this part and are identifiable by "Gulf of Alaska" in column 2 and either "20" or "10" in column 7.

(iv) Directed fishing for pollock is prohibited within pollock no fishing zones around selected sites. These sites are listed in Table 22 of this part and are identifiable by "Gulf of Alaska" in column 2 and either "20" or "10" in column 7.

* * * * *

(6) Chiniak Gully Research Area (applicable through December 31, 2001)—(i) *Description of Chiniak Gully Research Area.* The Chiniak Gully Research Area is defined as that part of statistical Area 630 bounded by straight lines connecting the coordinates in the order listed:

57.81° N lat., 152.37° W long.;
57.81° N lat., 151.85° W long.;
57.22° N lat., 150.64° W long.;
56.98° N lat., 151.27° W long.;
57.62° N lat., 152.16° W long.; and hence counterclockwise along the shoreline of Kodiak Island to 57.81° N lat., 152.37° W long.

(ii) *Closure.* (A) The Chiniak Gully Research Area is closed to vessels using trawl gear from August 1 to a date no later than September 20, except that trawl gear may be tested in the manner described at § 679.24(d)(2) in the Kodiak Test Area defined at § 679.24(d)(4)(i) and illustrated in Figure 7 to this part.

(B) Prior to September 20, the Regional Administrator may publish notification in the **Federal Register** rescinding the trawl closure in the Chiniak Gully Research Area described in paragraph (b)(6)(ii)(A) of this section.

(7) *Fishing Prohibition Exemptions (applicable through December 31, 2001).* The following vessels are exempt from fishing prohibitions described in this section.

(i) All jig vessels directed fishing for groundfish are exempt from 3 nm closures around selected sites. These sites are listed in Table 21 of this part and identifiable by a "Gulf of Alaska" in column 2 and a "Y" in column 10.

(ii) For vessels directed fishing for Pacific cod:

(A) All vessels using jig gear are exempt from the fishing prohibitions of paragraph (b)(3)(i)(B) of this section and from Pacific cod no fishing zones for selected sites. These sites are listed in Table 23 of this part and identifiable by a "Gulf of Alaska" in column 2.

(B) All vessels less than 60 ft (18.3 m) LOA using non-trawl gear are exempt from the fishing prohibitions of paragraph (b)(3)(i)(B) of this section and from Pacific cod no fishing zones for selected sites. These sites are listed in Table 23 of this part and identifiable by a "Gulf of Alaska" in column 2 and a "Y" in column 10.

(iii) All vessels less than 60 ft (18.3 m) LOA using non-trawl gear in directed fishing for pollock are exempt from the fishing prohibitions of paragraph (b)(3)(i)(B) of this section and from pollock no fishing zones for selected sites. These sites are listed in Table 22 of this part and identifiable by a "Gulf of Alaska" in column 2 and a "Y" in column 8.

* * * * *

6. In § 679.23, paragraphs (d)(4) and (e)(6)(iii) are added to read as follows:

§ 679.23 Seasons.

(d) * * *

(4) *Directed fishing for Pacific cod (applicable through December 31, 2001)*—(i) *Non-trawl gear.* Subject to other provisions of this part, directed fishing for Pacific cod with non-trawl gear in the Western and Central Regulatory Areas is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., September 1, through 2400 hours A.l.t., December 31.

(ii) *Trawl gear.* Subject to other provisions of this part, directed fishing for Pacific cod with trawl gear in the Western and Central Regulatory Areas is authorized only during the following two seasons:

(A) *A season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., September 1, through 0001 hours A.l.t., November 1.

* * * * *

(e) * * *

(6) * * *

(iii) *Non-trawl gear (applicable through December 31, 2001).* Except for vessels using jig gear and for vessels less than 60 ft (18.3 m) LOA using pot and hook-and-line gear, subject to other provisions of this part, directed fishing for Pacific cod with non-trawl gear in the BSAI is authorized only during the following two seasons:

(A) *A season.* From 0001 hours A.l.t., January 1, through 1200 hours A.l.t., June 10; and

(B) *B season.* (*1*) For vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear, from 1200 hours A.l.t., August 15, through 2400 hours A.l.t., December 31.

(*2*) For vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear, from 1200 hours A.l.t., September 1, through 2400 hours A.l.t., December 31.

* * * * *

7. In § 679.31, paragraph (f) is suspended and paragraph (g) is added to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(g) *Non-specific CDQ reserve (applicable through December 31, 2001).* Annually, NMFS will apportion 50 percent of the arrowtooth flounder CDQ and 15 percent of the "other species" CDQ for each CDQ group to a non-specific CDQ reserve. A CDQ group's non-specific CDQ reserve must be for the exclusive use of that CDQ group. A release from the non-specific reserve to the CDQ group's arrowtooth flounder or "other species" CDQ is a technical amendment to a community development plan as described in § 679.30(g)(5). The technical amendment must be approved before harvests relying on CDQ transferred from the non-specific CDQ reserve may be conducted.

8. Tables 21, 22, 23, and 24 to part 679 are added to read as follows:

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Table 21 to 50 CFR Part 679 Steller Sea Lion Protection Areas 3nm No Groundfish Fishing Sites

Column Number 1	2	3	4	5	6	7	8	9	10
Site name	Management Region	Boundaries from		Boundaries to [1]		Site Type	No transit [2] 3 nm	Vessels < 60 ft. (18.3m) using non-trawl gear exempt from 3 nm fishing closure [3]	Jig vessels exempt from 3 nm fishing closure [4]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)				
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			H		Y	Y
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			H		Y	Y
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			H		Y	Y
St Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			H		Y	Y
St Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			H		Y	Y
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			R	Y		
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			H		Y	Y
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			H		Y	Y
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			H		Y	Y
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			H		Y	Y
Attu I./Cape Wrangell	Aleutian Islands	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	R	Y		
Agattu I./Gillon Pt	Aleutian Islands	52 24.13 N	173 21.31 E			R	Y		
Attu I./Chirikof Pt.	Aleutian Islands	52 49.75 N	173 26.00 E			H		Y	Y
Agattu I./Cape Sabak	Aleutian Islands	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	R	Y		
Alaid I.	Aleutian Islands	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	H		Y	Y
Shemya I.	Aleutian Islands	52 44.00 N	174 08.70 E			H		Y	Y
Buldir I.	Aleutian Islands	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	R	Y		
Kiska I./Cape St. Stephen	Aleutian Islands	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	R	Y		
Kiska I./Sobaka & Vega	Aleutian Islands	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	H		Y	Y
Kiska I./Lief Cove	Aleutian Islands	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	R	Y		
Kiska I./Sirius Pt.	Aleutian Islands	52 08.50 N	177 36.50 E			H		Y	Y
Tanadak I. (Kiska)	Aleutian Islands	51 56.80 N	177 46.80 E			H		Y	Y
Segula I.	Aleutian Islands	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	H		Y	Y
Ayugadak Point	Aleutian Islands	51 45.36 N	178 24.30 E			R	Y		
Rat I./Krysi Pt.	Aleutian Islands	51 49.98 N	178 12.35 E			H		Y	Y
Little Sitkin I.	Aleutian Islands	51 59.30 N	178 29.80 E			H		Y	Y
Amchitka I./Column Rocks	Aleutian Islands	51 32.32 N	178 49.28 E			R	Y		
Amchitka I./East Cape	Aleutian Islands	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	R	Y		
Amchitka I./Cape Ivakin	Aleutian Islands	51 24.46 N	179 24.21 E			H		Y	Y
Semisopochnoi/Petrel Pt.	Aleutian Islands	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	R	Y		
Semisopochnoi I./Pochnoi Pt.	Aleutian Islands	51 57.30 N	179 46.00 E			R	Y		
Amatignak I./Nitrof Pt.	Aleutian Islands	51 13.00 N	179 07.80 W			H		Y	Y
Unalga & Dinkum Rocks	Aleutian Islands	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	H		Y	Y
Ulak I./Hasgox Pt.	Aleutian Islands	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	R	Y		
Kavalga I.	Aleutian Islands	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	H		Y	Y
Tag I.	Aleutian Islands	51 33.50 N	178 34.50 W			R	Y		
Ugidak I.	Aleutian Islands	51 34.95 N	178 30.45 W			H		Y	Y
Gramp Rock	Aleutian Islands	51 28.87 N	178 20.58 W			R	Y		

Column Number 1	2	3	4	5	6	7	8	9	10
Site name	Management Region	Boundaries from		Boundaries to [1]		Site Type	No transit [2] 3 nm	Vessels < 60 ft. (18.3m) using non-trawl gear exempt from 3 nm fishing closure [3]	Jig vessels exempt from 3 nm fishing closure [4]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)				
Tanaga I./Bumpy Pt.	Aleutian Islands	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	H		Y	Y
Bobrof I.	Aleutian Islands	51 54.00 N	177 27.00 W			H		Y	Y
Kanaga I./Ship Rock	Aleutian Islands	51 46.70 N	177 20.72 W			H		Y	Y
Kanaga I./North Cape	Aleutian Islands	51 56.50 N	177 09.00 W			H		Y	Y
Adak I.	Aleutian Islands	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	R	Y		
Little Tanaga Strait	Aleutian Islands	51 49.09 N	176 13.90 W			H		Y	Y
Great Sitkin I.	Aleutian Islands	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	H		Y	Y
Anagaksik I.	Aleutian Islands	51 50.86 N	175 53.00 W			H		Y	Y
Kasatochi I.	Aleutian Islands	52 11.11 N	175 31.00 W			R	Y		
Atka I./N. Cape	Aleutian Islands	52 24.20 N	174 17.80 W			H		Y	Y
Amlia I./Sviech. Harbor	Aleutian Islands	52 01.80 N	173 23.90 W			H		Y	Y
Sagigik I.	Aleutian Islands	52 00.50 N	173 09.30 W			H		Y	Y
Amlia I./East	Aleutian Islands	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	H		Y	Y
Tanadak I. (Amlia)	Aleutian Islands	52 04.20 N	172 57.60 W			H		Y	Y
Agligadak I.	Aleutian Islands	52 06.09 N	172 54.23 W			R	Y		
Seguam I./Saddleridge Pt.	Aleutian Islands	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	R	Y		
Seguam I./Finch Pt.	Aleutian Islands	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	H		Y	Y
Seguam I./South Side	Aleutian Islands	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	H		Y	Y
Amukta I. & Rocks	Aleutian Islands	52 27.25 N	171 17.90 W			H		Y	Y
Chagulak I.	Aleutian Islands	52 34.00 N	171 10.50 W			H		Y	Y
Yunaska I.	Aleutian Islands	52 41.40 N	170 36.35 W			R	Y		
Uliaga	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	H		Y	Y
Chuginadak	Gulf of Alaska	52 46.70 N	169 41.90 W			H			Y
Kagamil	Bering Sea	53 02.10 N	169 41.00 W			H		Y	Y
Samalga	Gulf of Alaska	52 46.00 N	169 15.00 W			H			Y
Adugak I.	Bering Sea	52 54.70 N	169 10.50 W			R	Y		
Umnak I./Cape Aslik	Bering Sea	53 25.00 N	168 24.50 W			H		Y	Y
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			R	Y		
Bogoslof I./Fire Island	Bering Sea	53 55.69 N	168 02.05 W			R	Y		
Polivnoi Rock	Gulf of Alaska	53 15.96 N	167 57.99 W			H			Y
Emerald I.	Gulf of Alaska	53 17.50 N	167 51.50 W			H			Y
Unalaska/Cape Izigan	Gulf of Alaska	53 13.64 N	167 39.37 W			H			Y
Unalaska/Bishop Pt	Bering Sea	53 58.40 N	166 57.50 W			H		Y	Y
Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	H		Y	Y
Unalaska I./Cape Sedanka	Gulf of Alaska	53 50.50 N	166 05.00 W			H			Y
Old Man Rocks	Gulf of Alaska	53 52.20 N	166 04.90 W			H			Y
Akutan I./Cape Morgan	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	R	Y		

Column Number 1	2	3	4	5	6	7	8	9	10
Site name	Management Region	Boundaries from		Boundaries to [1]		Site Type	No transit [2] 3 nm	Vessels < 60 ft. (18.3m) using non-trawl gear exempt from 3 nm fishing closure[3]	Jig vessels exempt from 3 nm fishing closure[4]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)				
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	R	Y		
Rootok	Gulf of Alaska	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	H			Y
Tanginak I.	Gulf of Alaska	54 12.00 N	165 19.40 W			H			Y
Tigalda/Rocks NE	Gulf of Alaska	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	H			Y
Unimak/Cape Sarichef	Bering Sea	54 34.30 N	164 56.80 W			H		Y	Y
Aiktak	Gulf of Alaska	54 10.99 N	164 51.15 W			H			Y
Ugamak I.	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	R	Y		
Round (GOA)	Gulf of Alaska	54 12.05 N	164 46.60 W			H			Y
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			R	Y		
Amak I. and rocks	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	H		Y	Y
Bird I.	Gulf of Alaska	54 40.00 N	163 17.2 W			H			Y
Caton I.	Gulf of Alaska	54 22.70 N	162 21.30 W			H			Y
South Rocks	Gulf of Alaska	54 18.14 N	162 41.3 W			H			Y
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			R	Y		
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			R	Y		
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			R	Y		
Sushilnoi Rocks	Gulf of Alaska	54 49.30 N	161 42.73 W			H			Y
Olga Rocks	Gulf of Alaska	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	H			Y
Jude I.	Gulf of Alaska	55 15.75 N	161 06.27 W			H			Y
Sea Lion Rocks (Shumagins)	Gulf of Alaska	55 04.70 N	160 31.04 W			H			Y
Nagai I./Mountain Pt.	Gulf of Alaska	54 54.20 N	160 15.40 W	54 56.00 N	160 15.00 W	H			Y
The Whaleback	Gulf of Alaska	55 16.82 N	160 05.04 W			H			Y
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	R	Y		
Castle Rock	Gulf of Alaska	55 16.47 N	159 29.77 W			H			Y
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			R	Y		
Spitz I.	Gulf of Alaska	55 46.60 N	158 53.90 W			H			Y
Mitrofania	Gulf of Alaska	55 50.20 N	158 41.90 W			H			Y
Kak	Gulf of Alaska	56 17.30 N	157 50.10 W			H			Y
Lighthouse Rocks	Gulf of Alaska	55 46.79 N	157 24.89 W			H			Y
Sutwik I.	Gulf of Alaska	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	H			Y
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	R	Y		
Nagai Rocks	Gulf of Alaska	55 49.80 N	155 47.50 W			H			Y
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	R	Y		
Puale Bay	Gulf of Alaska	57 40.60 N	155 23.10 W			H			Y
Kodiak/Cape Ikolik	Gulf of Alaska	57 17.20 N	154 47.50 W			H			Y
Takli I.	Gulf of Alaska	58 01.75 N	154 31.25 W			H			Y
Cape Kuliak	Gulf of Alaska	58 08.00 N	154 12.50 W			H			Y
Cape Gull	Gulf of Alaska	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	H			Y
Kodiak/Cape Ugat	Gulf of Alaska	57 52.41 N	153 50.97 W			H			Y
Sitkinak/Cape Sitkinak	Gulf of Alaska	56 34.30 N	153 50.96 W			H			Y
Shakun Rock	Gulf of Alaska	58 32.80 N	153 41.50 W			H			Y
Twoheaded I.	Gulf of Alaska	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	H			Y

Column Number 1	2	3	4	5	6	7	8	9	10
Site name	Management Region	Boundaries from		Boundaries to [1]		Site Type	No transit [2] 3 nm	Vessels < 60 ft. (18.3m) using non-trawl gear exempt from 3 nm fishing closure [3]	Jig vessels exempt from 3 nm fishing closure [4]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)				
Cape Douglas (Shaw I.)	Gulf of Alaska	59 00.00 N	153 22.50 W			H			Y
Kodiak/Cape Barnabas	Gulf of Alaska	57 10.20 N	152 53.05 W			H			Y
Kodiak/Gull Point	Gulf of Alaska	57 21.45 N	152 36.30 W			H			Y
Latax Rocks	Gulf of Alaska	58 40.10 N	152 31.30 W			H			Y
Ushagat I./SW	Gulf of Alaska	58 54.75 N	152 22.20 W			H			Y
Ugak I.	Gulf of Alaska	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	H			Y
Sea Otter I.	Gulf of Alaska	58 31.15 N	152 13.30 W			H			Y
Long I.	Gulf of Alaska	57 46.82 N	152 12.90 W			H			Y
Sud I.	Gulf of Alaska	58 54.00 N	152 12.50 W			H			Y
Kodiak/Cape Chiniak	Gulf of Alaska	57 37.90 N	152 08.25 W			H			Y
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			R	Y		
Sea Lion Rocks (Marmot)	Gulf of Alaska	58 20.53 N	151 48.83 W			H			Y
Marmot I.	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	R	Y		
Nagahut Rocks	Gulf of Alaska	59 06.00 N	151 46.30 W			H			Y
Perl	Gulf of Alaska	59 05.75 N	151 39.75 W			H			Y
Gore Point	Gulf of Alaska	59 12.00 N	150 58.00 W			H			Y
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	R	Y		
Steep Point	Gulf of Alaska	59 29.05 N	150 15.40 W			H			Y
Seal Rocks (Kenai)	Gulf of Alaska	59 31.20 N	149 37.50 W			H			Y
Chiswell Islands	Gulf of Alaska	59 36.00 N	149 34.00 W			H			Y
Rugged Island	Gulf of Alaska	59 50.00 N	149 23.10 W	59 51.00 N	149 24.70 W	H			Y
Point Elrington	Gulf of Alaska	59 56.00 N	148 15.20 W			H			Y
Perry I.	Gulf of Alaska	60 44.00 N	147 54.60 W			H			Y
The Needle	Gulf of Alaska	60 06.64 N	147 36.17 W			H			Y
Point Eleanor	Gulf of Alaska	60 35.00 N	147 34.00 W			H			Y
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			R			
Glacier Island	Gulf of Alaska	60 51.30 N	147 14.50 W			H			Y
Seal Rocks (Cordova)	Gulf of Alaska	60 09.78 N	146 50.30 W			R			
Cape Hinchinbrook	Gulf of Alaska	60 14.00 N	146 38.50 W			H			Y
Middleton I.	Gulf of Alaska	59 28.30 N	146 18.80 W			H			Y
Hook Point	Gulf of Alaska	60 20.00 N	146 15.60 W			H			Y
Cape St. Elias	Gulf of Alaska	59 47.50 N	144 36.20 W			H			Y

H = haulout

R = rookery

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] See 50 CFR 223.202(a)(2)(i) for regulations regarding 3 nm no transit zones.

[3] See 679.22(a)(14)(B)

[4] See 679.22(a)(14)(A) and (b)(8)

Table 22 to 50 CFR Part 679 Steller Sea Lion Protection Areas for Pollock Fisheries

Column Number 1	2	3	4	5	6	7	8
Site name	Management Region	Boundaries from		Boundaries to [1]		Pollock no fishing zone[2,7] (nm)	Vessels < 60 Ft (18.3m) using non-trawl gear exempt from pollock fishing closures[3]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)		
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20	Y
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20	Y
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20	Y
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			10	Y
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20	Y
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20	Y
Chuginadak	Gulf of Alaska	52 46.70 N	169 41.90 W			20	
Samalga	Gulf of Alaska	52 46.00 N	169 15.00 W			20	
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			20	
Polivnoi Rock	Gulf of Alaska	53 15.96 N	167 57.99 W			20	
Emerald I.	Gulf of Alaska	53 17.50 N	167 51.50 W			20	
Unalaska/Cape Izigan	Gulf of Alaska	53 13.64 N	167 39.37 W			20	
Unalaska/Bishop Pt	Bering Sea	53 58.40 N	166 57.50 W			10	Y
Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	Y
Unalaska I./Cape Sedanka	Gulf of Alaska	53 50.50 N	166 05.00 W			20	
Old Man Rocks	Gulf of Alaska	53 52.20 N	166 04.90 W			20	
Akutan I./Cape Morgan	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20	
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10	Y
Rootok	Gulf of Alaska	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20	
Tanginak I.	Gulf of Alaska	54 12.00 N	165 19.40 W			20	
Tigalda/Rocks NE	Gulf of Alaska	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	
Unimak/Cape Sarichef	Bering Sea	54 34.30 N	164 56.80 W			10	Y
Aiktak	Gulf of Alaska	54 10.99 N	164 51.15 W			20	
Ugamak I.	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20	
Round (GOA)	Gulf of Alaska	54 12.05 N	164 46.60 W			20	
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			10	Y
Amak I. and rocks	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10	Y
Bird I.	Gulf of Alaska	54 40.00 N	163 17.2 W			10	Y
Caton I.	Gulf of Alaska	54 22.70 N	162 21.30 W			10	Y
South Rocks	Gulf of Alaska	54 18.14 N	162 41.3 W			10	Y
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			10	Y
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			10	Y
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			10	Y
Sushilnoi Rocks	Gulf of Alaska	54 49.30 N	161 42.73 W			10	Y
Olga Rocks	Gulf of Alaska	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10	Y
Jude I.	Gulf of Alaska	55 15.75 N	161 06.27 W			10	Y
Sea Lion Rocks (Shumagins)	Gulf of Alaska	55 04.70 N	160 31.04 W			10	Y
Nagai I./Mountain Pt.	Gulf of Alaska	54 54.20 N	160 15.40 W	54 56.00 N	160 15.00 W	10	Y
The Whaleback	Gulf of Alaska	55 16.82 N	160 05.04 W			10	Y

Column Number 1	2	3	4	5	6	7	8
Site name	Management Region	Boundaries from		Boundaries to [1]		Pollock no fishing zone[2,7] (nm)	Vessels < 60 Ft (18.3m) using non-trawl gear exempt from pollock fishing closures[3]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)		
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	10	Y
Castle Rock	Gulf of Alaska	55 16.47 N	159 29.77 W			10	Y
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			10	Y
Spitz I.	Gulf of Alaska	55 46.60 N	158 53.90 W			10	Y
Mitrofania	Gulf of Alaska	55 50.20 N	158 41.90 W			10	Y
Kak	Gulf of Alaska	56 17.30 N	157 50.10 W			20	
Lighthouse Rocks	Gulf of Alaska	55 46.79 N	157 24.89 W			20	
Sutwik I.	Gulf of Alaska	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20	
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20	
Nagai Rocks	Gulf of Alaska	55 49.80 N	155 47.50 W			20	
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20	
Kodiak/Cape Ugat	Gulf of Alaska	57 52.41 N	153 50.97 W			20	Y
Shakun Rock	Gulf of Alaska	58 32.80 N	153 41.50 W			20	Y
Cape Douglas (Shaw I.)	Gulf of Alaska	59 00.00 N	153 22.50 W			20	Y
Latax Rocks	Gulf of Alaska	58 40.10 N	152 31.30 W			20	Y
Ushagat I./SW	Gulf of Alaska	58 54.75 N	152 22.20 W			20	Y
Sea Otter I.	Gulf of Alaska	58 31.15 N	152 13.30 W			20	Y
Long I.[4]	Gulf of Alaska	57 46.82 N	152 12.90 W			20	Y
Sud I.	Gulf of Alaska	58 54.00 N	152 12.50 W			20	Y
Kodiak/Cape Chiniak [4,6]	Gulf of Alaska	57 37.90 N	152 08.25 W			20	Y
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			20	
Sea Lion Rocks (Marmot)	Gulf of Alaska	58 20.53 N	151 48.83 W			20	Y
Marmot I.	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	20	
Nagahut Rocks	Gulf of Alaska	59 06.00 N	151 46.30 W			20	Y
Perl	Gulf of Alaska	59 05.75 N	151 39.75 W			20	Y
Gore Point	Gulf of Alaska	59 12.00 N	150 58.00 W			20	Y
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20	
Steep Point	Gulf of Alaska	59 29.05 N	150 15.40 W			20	Y
Seal Rocks (Kenai)	Gulf of Alaska	59 31.20 N	149 37.50 W			20	Y
Chiswell Islands	Gulf of Alaska	59 36.00 N	149 34.00 W			20	Y
Rugged Island	Gulf of Alaska	59 50.00 N	149 23.10 W	59 51.00 N	149 24.70 W	20	Y
Point Elrington[5]	Gulf of Alaska	59 56.00 N	148 15.20 W			20	
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			20	
Seal Rocks (Cordova)	Gulf of Alaska	60 09.78 N	146 50.30 W			20	
Cape Hinchinbrook	Gulf of Alaska	60 14.00 N	146 38.50 W			20	
Middleton I.	Gulf of Alaska	59 28.30 N	146 18.80 W			20	
Hook Point	Gulf of Alaska	60 20.00 N	146 15.60 W			20	
Cape St. Elias	Gulf of Alaska	59 47.50 N	144 36.20 W			20	

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] See 679.22(a)(11)(v) and (b)(3)(v).

[3] See 679.22(a)(14)(iv) and (b)(8)(iii).

[4] Pollock fishing closure to 10 nm from October 1 through December 31.

[5] Pollock fishing closure extends 20 nm into federal waters outside of Prince William Sound only.

[6] The pollock no fishing area extends in an arc from 3nm to 20 nm to a line connecting the point 57°31'3" N lat /152°17'48" W long with the point 57°24'36" N lat./151° 40'29" W long

[7] No fishing zones are the waters within 3 nm to the nm specified in columns 7 around each site.

Table 23 to 50 CFR Part 679 Steller Sea Lion Protection Areas for Pacific Cod Fisheries

Column Number 1	2	3	4	5	6	7	8

point 57°24'36" N lat./151° 40'29" W long

[7] No fishing zones are the waters within 3 nm to the nm specified in columns 7 around each site.

Table 23 to 50 CFR Part 679 Steller Sea Lion Protection Areas for Pacific Cod Fisheries

Column Number 1	2	3	4	5	6	7	8	9	10	11
Site name	Management Region	Boundaries from		Boundaries to [1]		All P. Cod no fishing zone[3, 8]	Trawl Gear P. Cod no fishing Zone[4, 8]	Non-trawl Gear P. Cod no fishing Zone[5, 8]	Vessels < 60 ft. (18.3m) using non-trawl gear exempt from column 7 P. cod fishing closures[6]	All pot vessels exempt from P. cod fishing closures[7]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	(nm)	(nm)	(nm)		
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20			Y	Y
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20			Y	Y
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20			Y	Y
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			10			Y	Y
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20			Y	Y
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20			Y	Y
Attu I./Cape Wrangell	Aleutian Island	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E		20	3		
Agattu I./Gillon Pt	Aleutian Island	52 24.13 N	173 21.31 E				20	3		
Attu I./Chirikof Pt.	Aleutian Island	52 49.75 N	173 26.00 E				20			
Agattu I./Cape Sabak	Aleutian Island	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E		20	3		
Alaid I.	Aleutian Island	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E		20			
Shemya I.	Aleutian Island	52 44.00 N	174 08.70 E				20			
Buldir I.	Aleutian Island	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20			Y	
Kiska I./Cape St. Stephen	Aleutian Island	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E		20	3		
Kiska I./Sobaka & Vega	Aleutian Island	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E		20			
Kiska I./Lief Cove	Aleutian Island	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E		20	3		
Kiska I./Sirius Pt.	Aleutian Island	52 08.50 N	177 36.50 E				20			
Tanadak I. (Kiska)	Aleutian Island	51 56.80 N	177 46.80 E				20			
Segula I.	Aleutian Island	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E		20			
Ayugadak Point	Aleutian Island	51 45.36 N	178 24.30 E				20	3		
Rat I./Krysi Pt.	Aleutian Island	51 49.98 N	178 12.35 E				20			
Little Sitkin I.	Aleutian Island	51 59.30 N	178 29.80 E				20			
Amchitka I./Column Rocks	Aleutian Island	51 32.32 N	178 49.28 E				20	3		
Amchitka I./East Cape	Aleutian Island	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E		20	3		
Amchitka I./Cape Ivakin	Aleutian Island	51 24.46 N	179 24.21 E				20			
Semisopochnoi/Petrel Pt.	Aleutian Island	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E		20	3		
Semisopochnoi I./Pochnoi Pt.	Aleutian Island	51 57.30 N	179 46.00 E				20	3		
Amatignak I./Nitrof Pt.	Aleutian Island	51 13.00 N	179 07.80 W				20			
Unalga & Dinkum Rocks	Aleutian Island	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W		20			
Ulak I./Hasgox Pt.	Aleutian Island	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W		20	3		
Kavalga I.	Aleutian Island	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W		20			
Tag I.	Aleutian Island	51 33.50 N	178 34.50 W				20	3		
Ugidak I.	Aleutian Island	51 34.95 N	178 30.45 W				20			
Gramp Rock	Aleutian Island	51 28.87 N	178 20.58 W				20	3		
Adak I.	Aleutian Island	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	10			Y	
Kasatochi I	Aleutian Island	52 11.11 N	175 31.00 W			10			Y	
Agligadak I	Aleutian Island	52 06.09 N	172 54.23 W			20			Y	
Seguam I./Saddleridge Pt.	Aleutian Island	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20			Y	
Yunaska I.	Aleutian Island	52 41.40 N	170 36.35 W			10			Y	
Chuginadak	Gulf of Alaska	52 46.70 N	169 41.90 W			20				
Samalga	Gulf of Alaska	52 46.00 N	169 15.00 W			20				
Ogchul I	Gulf of Alaska	52 59.71 N	168 24.24 W			20				

Column Number 1	2	3	4	5	6	7	8	9	10	11
Site name	Management Region	Boundaries from		Boundaries to [1]		All P. Cod no fishing zone[2, 6]	Trawl Gear P. Cod no fishing Zone[4, 6]	Non-trawl Gear P. Cod no fishing Zone[5, 6]	Vessels ≤ 60 ft. (18.3m) using non-trawl gear exempt from column 7 P. cod fishing closures[6]	All pot vessels exempt from P. cod fishing closures[7]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	(nm)	(nm)	(nm)		
Polivnoi Rock	Gulf of Alaska	53 15.96 N	167 57.99 W			20				
Emerald I.	Gulf of Alaska	53 17.50 N	167 51.50 W			20				
Unalaska/Cape Izigan	Gulf of Alaska	53 13.64 N	167 39.37 W			20				
Unalaska/Bishop Pt	Bering Sea	53 58.40 N	166 57.50 W			10			Y	Y
Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10			Y	Y
Unalaska I./Cape Sedanka	Gulf of Alaska	53 50.50 N	166 05.00 W			20				
Old Man Rocks	Gulf of Alaska	53 52.20 N	166 04.90 W			20				
Akutan I./Cape Morgan	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20				
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10			Y	Y
Rootok	Gulf of Alaska	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20				
Tanginak I	Gulf of Alaska	54 12.00 N	165 19.40 W			20				
Tigalda/Rocks NE	Gulf of Alaska	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20				
Unimak/Cape Sarichef	Bering Sea	54 34.30 N	164 56.80 W			10			Y	Y
Aiktak	Gulf of Alaska	54 10.99 N	164 51.15 W			20				
Ugamak I.	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20				
Round (GOA)	Gulf of Alaska	54 12.05 N	164 46.60 W			20				
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			10			Y	
Amak I. and rocks	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10			Y	
Bird I.	Gulf of Alaska	54 40.00 N	163 17.2 W			10			Y	
Caton I.	Gulf of Alaska	54 22.70 N	162 21.30 W			10			Y	
South Rocks	Gulf of Alaska	54 18.14 N	162 41.3 W			10			Y	
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			10			Y	
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			10			Y	
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			10			Y	
Sushilnoi Rocks	Gulf of Alaska	54 49.30 N	161 42.73 W			10			Y	
Olga Rocks	Gulf of Alaska	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10			Y	
Jude I.	Gulf of Alaska	55 15.75 N	161 06.27 W			10			Y	
Sea Lion Rocks (Shumagins)	Gulf of Alaska	55 04.70 N	160 31.04 W			10			Y	
Nagai I./Mountain Pt.	Gulf of Alaska	54 54.20 N	160 15.40 W	54 56.00 N	160 15.00 W	10			Y	
The Whaleback	Gulf of Alaska	55 16.82 N	160 05.04 W			10			Y	
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	10			Y	
Castle Rock	Gulf of Alaska	55 16.47 N	159 29.77 W			10			Y	
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			10			Y	
Spitz I.	Gulf of Alaska	55 46.60 N	158 53.90 W			10			Y	
Mitrofania	Gulf of Alaska	55 50.20 N	158 41.90 W			10			Y	
Kak	Gulf of Alaska	56 17.30 N	157 50.10 W			20				
Lighthouse Rocks	Gulf of Alaska	55 46.79 N	157 24.89 W			20				
Sutwik I.	Gulf of Alaska	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20				
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20				
Nagai Rocks	Gulf of Alaska	55 49.80 N	155 47.50 W			20				
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20				
Kodiak/Cape Ugat	Gulf of Alaska	57 52.41 N	153 50.97 W			20			Y	
Shakun Rock	Gulf of Alaska	58 32.80 N	153 41.50 W			20			Y	
Cape Douglas (Shaw I.)	Gulf of Alaska	59 00.00 N	153 22.50 W			20			Y	

Column Number 1	2	3	4	5	6	7	8	9	10	11
Site name	Management Region	Boundaries from		Boundaries to [1]		All P. Cod no fishing zone[3, 8]	Trawl Gear P. Cod no fishing Zone[4, 8]	Non-trawl Gear P. Cod no fishing Zone[5, 8]	Vessels < 60 ft. (18.3m) using non-trawl gear exempt from column 7 P. cod fishing closures[6]	All pot vessels exempt from P. cod fishing closures[7]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	(nm)	(nm)	(nm)		
Latax Rocks	Gulf of Alaska	58 40.10 N	152 31.30 W			20			Y	
Ushagat I./SW	Gulf of Alaska	58 54.75 N	152 22.20 W			20			Y	
Sea Otter I.	Gulf of Alaska	58 31.15 N	152 13.30 W			20			Y	
Long I.[2]	Gulf of Alaska	57 46.82 N	152 12.90 W			20			Y	
Sud I.	Gulf of Alaska	58 54.00 N	152 12.50 W			20			Y	
Kodiak/Cape Chiniak[2,9]	Gulf of Alaska	57 37.90 N	152 08.25 W			20			Y	
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			20				
Sea Lion Rocks (Marmot)	Gulf of Alaska	58 20.53 N	151 48.83 W			20			Y	
Marmot I.	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	20				
Nagahut Rocks	Gulf of Alaska	59 06.00 N	151 46.30 W			20			Y	
Perl	Gulf of Alaska	59 05.75 N	151 39.75 W			20			Y	
Gore Point	Gulf of Alaska	59 12.00 N	150 58.00 W			20			Y	
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20				
Steep Point	Gulf of Alaska	59 29.05 N	150 15.40 W			20			Y	
Seal Rocks (Kenai)	Gulf of Alaska	59 31.20 N	149 37.50 W			20			Y	
Chiswell Islands	Gulf of Alaska	59 36.00 N	149 34.00 W			20			Y	
Rugged Island	Gulf of Alaska	59 50.00 N	149 23.10 W	59 51.00 N	149 24.70 W	20			Y	
Point Elrington	Gulf of Alaska	59 56.00 N	148 15.20 W			20				
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			20				
Seal Rocks (Cordova)	Gulf of Alaska	60 09.78 N	146 50.30 W			20				
Cape Hinchinbrook	Gulf of Alaska	60 14.00 N	146 38.50 W			20				
Middleton I.	Gulf of Alaska	59 28.30 N	146 18.80 W			20				
Hook Point	Gulf of Alaska	60 20.00 N	146 15.60 W			20				
Cape St. Elias	Gulf of Alaska	59 47.50 N	144 36.20 W			20				

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Fishing closure zone is 10 nm between October 1 through December 31.

[3] See 679.22(a)(11)(iv) and (a)(12)(v)

[4] See 679.22(a)(12)(vi)

[5] See 679.22(a)(12)(vii).

[6] See 679.22(a)(13)(iii)(B).

[7] See 679.22(a)(13)(iii)(C).

[8] No fishing zones are the waters within 3 nm to the nm specified in columns 7, 8, and 9 around each site.

[9] The Pacific cod no fishing area extends in an arc from 3nm to 20 nm to a line connecting the point 57°31'3" N lat./152°17'48" W long. with the point 57°24'36" N lat./151° 40'29" W long

Table 24 to 50 CFR Part 679 Steller Sea Lion Protection Areas for Atka Mackerel Fisheries

Column Number 1	2	3	4	5	6	7	8
Site name	Management Region	Boundaries from		Boundaries to [1]		Atka mackerel no fishing zone[2,4] (nm)	All pot vessels exempt from Atka mackerel fishing closures[3]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)		
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20	Y
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20	Y
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20	Y
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			10	Y
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20	Y
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20	Y
Attu I./Cape Wrangell	Aleutian Islands	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	10	
Agattu I./Gillon Pt	Aleutian Islands	52 24.13 N	173 21.31 E			10	
Agattu I./Cape Sabak	Aleutian Islands	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	10	
Buldir I.	Aleutian Islands	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20	
Kiska I./Cape St. Stephen	Aleutian Islands	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	10	
Kiska I./Lief Cove	Aleutian Islands	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	10	
Ayugadak Point	Aleutian Islands	51 45.36 N	178 24.30 E			10	
Amchitka I./Column Rocks	Aleutian Islands	51 32.32 N	178 49.28 E			10	
Amchitka I./East Cape	Aleutian Islands	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	10	
Semisopochnoi/Petrel Pt.	Aleutian Islands	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	10	
Semisopochnoi I./Pochnoi Pt.	Aleutian Islands	51 57.30 N	179 46.00 E			10	
Ulak I./Hasgox Pt.	Aleutian Islands	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	10	
Tag I.	Aleutian Islands	51 33.50 N	178 34.50 W			10	
Gramp Rock	Aleutian Islands	51 28.87 N	178 20.58 W			10	
Tanaga I./Bumpy Pt.	Aleutian Islands	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20	
Bobrof I.	Aleutian Islands	51 54.00 N	177 27.00 W			20	
Kanaga I./Ship Rock	Aleutian Islands	51 46.70 N	177 20.72 W			20	
Kanaga I./North Cape	Aleutian Islands	51 56.50 N	177 09.00 W			20	
Adak I.	Aleutian Islands	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	20	
Little Tanaga Strait	Aleutian Islands	51 49.09 N	176 13.90 W			20	
Great Sitkin I.	Aleutian Islands	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	20	
Anagaksik I.	Aleutian Islands	51 50.86 N	175 53.00 W			20	
Kasatochi I.	Aleutian Islands	52 11.11 N	175 31.00 W			20	
Atka I./N. Cape	Aleutian Islands	52 24.20 N	174 17.80 W			20	
Amlia I./Sviech. Harbor	Aleutian Islands	52 01.80 N	173 23.90 W			20	
Sagigik I.	Aleutian Islands	52 00.50 N	173 09.30 W			20	
Amlia I./East	Aleutian Islands	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	20	
Tanadak I. (Amlia)	Aleutian Islands	52 04.20 N	172 57.60 W			20	
Agligadak I.	Aleutian Islands	52 06.09 N	172 54.23 W			20	
Seguam I./Saddleridge Pt.	Aleutian Islands	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20	
Seguam I./Finch Pt.	Aleutian Islands	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	20	
Seguam I./South Side	Aleutian Islands	52 21.60 N	172 19.30 W	52 15.55 N	172. 31.22 W	20	
Amukta I. & Rocks	Aleutian Islands	52 27.25 N	171 17.90 W			20	
Chagulak I.	Aleutian Islands	52 34.00 N	171 10.50 W			20	
Yunaska I.	Aleutian Islands	52 41.40 N	170 36.35 W			20	
Unalaska/Bishop Pt	Bering Sea	53 58.40 N	166 57.50 W			10	Y
Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	Y
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10	Y

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BILLING CODE 3510-22-C

Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	Y
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10	Y

Column Number 1	2	3	4	5	6	7	8
Site name	Management Region	Boundaries from		Boundaries to [1]		Atka mackerel no fishing zone[2,4] (nm)	All pot vessels exempt from Atka mackerel fishing closures[3]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)		
Unimak/Cape Sarichef	Bering Sea	54 34.30 N	164 56.80 W			10	Y
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			10	
Amak I. and rocks	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10	

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] See 679.22(a)(12)(viii)

[3] See 679.22(a)(14)(ii)(B)

[4] No fishing zones are the waters within 3 nm to the nm specified in columns 7 around each site.

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Proposed Rules

Federal Register
Vol. 66, No. 137
Tuesday, July 17, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 98–099–1]

Viruses, Serums, Toxins, and Analogous Products; Erysipelothrix Rhusiopathiae Bacterin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the standard requirement for Erysipelothrix Rhusiopathiae Bacterin to specify that those requirements apply only to bacterins recommended for use in swine and turkeys, to require that the immunogenicity of such bacterins be demonstrated in a host animal protection study, to establish "protection to market weight/age" as the minimum duration of immunity requirement, and to replace the current mouse protection potency test used for serial release with an in vitro potency test. We are proposing these changes as a result of our evaluation that showed that some swine vaccinated with Erysipelothrix Rhusiopathiae Bacterins that meet the current standard requirement may be diagnosed with acute erysipelas infection before they reach market age. These actions would update the regulations by standardizing the efficacy and duration of immunity requirements, provide for the use of a validated serial release potency test, and ensure that serials that pass the serial release potency test will also protect swine and turkeys to market weight.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 17, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 98–099–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–099–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1228; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

Standard requirements are prescribed in 9 CFR part 113 for the preparation and testing of certain veterinary biological products. A standard requirement consists of test methods, procedures, and criteria that define the standards of purity, safety, potency, and efficacy for a veterinary biological product. The regulations in 9 CFR 113.119 specify purity, safety, and potency requirements for Erysipelothrix Rhusiopathiae Bacterin.

Although purity, safety, and potency requirements for Erysipelothrix Rhusiopathiae Bacterin are specified in § 113.119 of the standards, they do not prescribe the requirements by which such bacterin must be evaluated for immunogenicity and duration of immunity. Most of the currently available Erysipelothrix Rhusiopathiae Bacterins were licensed on the basis of host animal protection studies performed in either swine or turkeys. In the typical host animal protection study, swine or turkeys were vaccinated with Erysipelothrix Rhusiopathiae Bacterin and challenged with virulent *Erysipelothrix rhusiopathiae* culture 2 to 4 weeks post vaccination. The elapsed time between the completion of the immunization regimen and the administration of the challenge culture establishes the duration of vaccinal immunity. Therefore, 2 to 4 weeks' protection would be the demonstrated duration of immunity provided by Erysipelothrix Rhusiopathiae Bacterin licensed in accordance with the requirements currently specified in the regulations in § 113.119.

Currently, the serial release potency test prescribed in § 113.119 is a mouse protection relative potency assay in which an Erysipelothrix Rhusiopathiae Bacterin (Unknown) and an *Erysipelothrix rhusiopathiae* standard reference bacterin (Standard) are compared in their ability to protect mice challenged with a virulent *Erysipelothrix rhusiopathiae* culture. The mouse potency test measures the relative strength of the Unknown as compared to the Standard and provides an indication of the ability of the Unknown to protect swine against erysipelas. The Standard used in the mouse potency test must have been shown to protect swine against erysipelas. The Unknown is considered to be potent enough to protect swine against erysipelas if it passes the mouse protection test.

Based on the current standards, it was expected that a serial of Erysipelothrix Rhusiopathiae Bacterin would protect swine or turkeys until they reached market weight/age if it passed the mouse protection test. However, we have received complaints that swine vaccinated with Erysipelothrix Rhusiopathiae Bacterin at an early age were being diagnosed with erysipelas before reaching market weight/age. In response to these complaints, we evaluated four representative Erysipelothrix Rhusiopathiae Bacterins recommended for use in swine and found that three of the four failed to protect swine at 22 weeks of age, which is the age at which most swine are marketed. We did not evaluate Erysipelothrix Rhusiopathiae Bacterin recommended for use in turkeys for duration of immunity.

On the basis of our evaluation of Erysipelothrix Rhusiopathiae Bacterins, we concluded that the mouse protection serial release potency test using the *Erysipelothrix rhusiopathiae* standard reference bacterin should be discontinued. This is because all of the

serials that failed to protect swine to market weight had passed the mouse protection relative potency test required for serial release. Western blot analyses performed on *Erysipelothrix rhusiopathiae* cultures used in our studies provided evidence that mice and swine recognize different immunogens. This may account for the failure in our analysis.

As a result of our findings, we are proposing to amend the regulations in § 113.119 to require that Erysipelothrix Rhusiopathiae Bacterin be tested for immunogenicity and duration of immunity in swine and/or turkeys. As a serial release potency test, we are proposing to require each serial of Erysipelothrix Rhusiopathiae Bacterin to be: (1) Tested for relative antigen content (potency) as compared with an unexpired *Erysipelothrix rhusiopathiae* reference bacterin by an in vitro parallel line immunoassay or other procedure acceptable to APHIS, or (2) evaluated in animals using antibody titers or other animal test data previously correlated to host animal protection as evidence of immunogenicity.

We are also proposing to specify that the requirements prescribed in § 113.119 pertain to Erysipelothrix Rhusiopathiae Bacterins for use in swine and turkeys. The basis for this proposed amendment is a host animal vaccination challenge study conducted by APHIS in which 6-week old pigs vaccinated with Erysipelothrix Rhusiopathiae Bacterin were protected against challenge with a virulent *Erysipelothrix rhusiopathiae* culture at 22 weeks of age.

Immunogenicity

We are further proposing that Erysipelothrix Rhusiopathiae Bacterins be evaluated for immunogenicity in swine and/or turkeys as appropriate. Thirty *Erysipelothrix rhusiopathiae*-susceptible swine and/or turkeys (20 vaccinates and 10 controls) of the youngest age recommended on the label would be vaccinated with an Erysipelothrix Rhusiopathiae Bacterin (master reference bacterin or qualifying serial, as defined in the regulations in § 101.5) by each route of administration recommended on the label.

Protection to Market Weight/Age (Duration of Immunity)

The proposed changes to the regulations in § 113.119 would also require Erysipelothrix Rhusiopathiae Bacterin to protect vaccinates against the characteristic signs of erysipelas until they reach market weight, which occurs at approximately 22 weeks of age for swine and 14 weeks of age for turkeys. To demonstrate protection and duration of immunity, swine used in the immunogenicity study would be challenged with a virulent culture of *Erysipelothrix rhusiopathiae* at 22 weeks of age or older, while turkeys would be challenged with a virulent culture of *Erysipelothrix rhusiopathiae* at 14 weeks of age or older.

Potency

Under this proposed rule, each serial would have to be evaluated for relative antigen content by a direct or indirect in vitro parallel line immunoassay using a monospecific antibody that has been shown to provide passive protection in animals after challenge with virulent *Erysipelothrix rhusiopathiae*. Alternatively, potency could also be determined by measuring serologic response in animals, provided that such response had been correlated to protection in a host animal immunogenicity study using a protective protein.

Reagents

In order to facilitate the development of Erysipelothrix Rhusiopathiae Bacterin that provides the host animal protection and duration of immunity specified in this proposed rule, APHIS will supply reagent (monospecific antibody) produced by the hybridoma cell line ERHU1–B60–91, which is the same cell line that produced the antisera used to demonstrate passive protection and to purify the protein used to demonstrate active protection in the host animal vaccination-challenge study conducted by APHIS that serves as the basis for this proposed rule. If they prefer, firms could develop their own reagents for use in satisfying the requirements specified in this proposed rule. However, we believe that the use of APHIS-supplied reagent would greatly reduce the expenditure of time and resources needed to develop a potency test that would ensure that the product provides the duration of immunity that would be required by this proposed rule.

Safety

Currently, the regulations require each serial of biological product containing *Erysipelothrix rhusiopathiae* to be tested for safety in guinea pigs in accordance with § 113.38. However, for consistency with the regulations for other bacterins, we are proposing that each serial of biological product containing *Erysipelothrix rhusiopathiae* immunogen be tested for safety in mice in accordance with § 113.33.

Currently Licensed Bacterins

Veterinary biologics manufacturers that produce Erysipelothrix Rhusiopathiae Bacterin under the present standards would be allowed 1 year after the effective date of the final rule to come into compliance. In the interim, we would allow such manufacturers to continue to release serials of Erysipelothrix Rhusiopathiae Bacterins using the current standards, provided that such serials of product are shown to be effective and the labels for such products specify the demonstrated duration of immunity.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations regarding the standard requirement for Erysipelothrix Rhusiopathiae Bacterins to require that such bacterins be shown to protect vaccinated swine and/or turkeys at least to market weight based on vaccination-challenge studies conducted in host animals. We are also proposing to replace the mouse protection (potency) test used for serial release with an in vitro parallel line immunoassay because we have data that demonstrate that some Erysipelothrix Rhusiopathiae Bacterins that pass the mouse potency test do not protect animals to market weight (normally reached at 22 weeks of age for swine and 14 weeks of age for turkeys) when used as directed. The effect of these actions would be to standardize the duration of immunity and potency test requirements for Erysipelothrix Rhusiopathiae Bacterins and ensure that serials that pass the potency test also protect animals to market weight.

This proposed rule would affect all licensed manufacturers of veterinary biologics that produce Erysipelothrix Rhusiopathiae Bacterins. Currently, there are approximately 135 veterinary biologics establishments, and approximately 45 of these establishments produce Erysipelothrix Rhusiopathiae Bacterins. According to the standards of the Small Business Administration, most veterinary biologics establishments would be classified as small entities.

This proposed rule would require each manufacturer of Erysipelothrix Rhusiopathiae Bacterins to incur the expense of developing an Erysipelothrix

Rhusiopathiae Bacterin that provides the duration of immunity specified in this proposed rule. However, the cost of developing such a bacterin would be greatly reduced if manufacturers use the reagents developed and provided by APHIS. In addition, the in vitro potency test specified in this proposed rule would result in a reduction in the number of animals used for serial release testing and would also reduce the time and personnel costs associated with animal care and housing.

Veterinary biologics manufacturers that produce Erysipelothrix Rhusiopathiae Bacterin under the present standards would be allowed 1 year after the effective date of the final rule to come into compliance. In the interim, we would allow such manufacturers to continue to release serials of Erysipelothrix Rhusiopathiae Bacterins using the current standards, provided that such serials of product are shown to be effective and the labels for such products specify the demonstrated duration of immunity.

We do not have an alternative option to this proposed rule because swine and turkey producers need a vaccine that offers protection until the animals reach market weight. However, we believe that, in the long term, expended developmental costs would be recovered and manufacturers would actually realize a savings, as the cost of purchasing, feeding, and housing the animals needed to test Erysipelothrix Rhusiopathiae Bacterins, as currently required, would be reduced and/or eliminated by utilizing nonanimal (in vitro) potency tests for serial release as proposed in this document.

This proposed rule would not require manufacturers to use the same monospecific antibodies that APHIS used in the host animal protection study. However, manufacturers may use the reagents developed by APHIS to facilitate their ability to comply with the requirements specified in this proposed rule or develop their own.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 113 as follows:

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. Section 113.119 would be revised to read as follows:

§ 113.119 Erysipelothrix Rhusiopathiae Bacterin.

Erysipelothrix Rhusiopathiae Bacterin must be produced from a culture of *Erysipelothrix rhusiopathiae* or a culture expressing protective proteins from *Erysipelothrix rhusiopathiae* that are inactivated and nontoxic. Each serial of biological product containing *Erysipelothrix rhusiopathiae* immunogen must meet the applicable requirements of § 113.100 and must be tested for purity, safety, potency, and immunogenicity as prescribed in this section. A serial found unsatisfactory by any prescribed test may not be released. The requirements in this section apply to bacterins used in swine and turkeys. Firms currently producing *Erysipelothrix rhusiopathiae* bacterin that does not satisfy the immunogenicity and/or duration of immunity requirement will have 1 year from the effective date of this rule to be in compliance with this requirement unless granted an extension by the Administrator based on a showing by the firm that it has made a good faith effort with due diligence to achieve compliance.

(a) Erysipelothrix Rhusiopathiae Bacterins must be tested for immunogenicity as follows:

(1) For Erysipelothrix Rhusiopathiae Bacterins recommended for use in swine or turkeys, 30 *Erysipelothrix rhusiopathiae*-susceptible animals (20 vaccinates and 10 controls) of the youngest age recommended on the label must be used as test animals for each route of administration.

(2) A master reference (as defined in § 101.5 of this chapter) must be established before the immunogenicity test is conducted. The method of production and conditions of storage of the master reference must be described in the outline of production filed with the Animal and Plant Health Inspection Service (APHIS). The 20 animals used as vaccinates must be injected as recommended on the label with either the master reference or a qualifying serial (as defined in § 101.5 of this chapter). The vaccinates and controls must be examined and their body temperature determined daily for 3 days prior to challenge. At 22 weeks of age or older for swine or 14 weeks or age or older for turkeys, the vaccinates and controls must be challenged with a virulent *Erysipelothrix rhusiopathiae* culture and observed for 7 days. The challenge culture and instructions for preparation and use must be obtained from APHIS.

(3) A satisfactory challenge in swine will be evidenced in the controls by a high body temperature or clinical signs, including, but not limited to, acute illness with hyperemia of the abdomen and/or ears, possibly terminating in sudden death; moribundity, with or without skin lesions; depression with anorexia, stiffness, and/or joint involvement; or any combination of these symptoms and lesions. If at least 8 of the 10 controls do not show characteristic signs of erysipelas during the observation period, including, but not limited to, a body temperature of at least 105.6 °F on at least 2 consecutive days, the test will be considered inconclusive. However, control swine that meet the requirements for susceptibility, except for high body temperature, will be considered susceptible if *Erysipelothrix rhusiopathiae* organisms are isolated from the blood, spleen, or other organs.

(4) A satisfactory challenge in turkeys will be evidenced in the controls by a generalized septicemia accompanied by the isolation of *Erysipelothrix rhusiopathiae* organisms from the joints or organs. If at least 8 of the 10 controls do not show characteristic signs or demonstrate other evidence of infection during the observation period, the test will be considered inconclusive.

(5) To demonstrate immunity after challenge, at least 80 percent of the vaccinates must remain free of clinical signs, and the body temperature of 80

percent of the swine must not exceed 104.6 °F on 2 or more consecutive days.

(6) The allowable dating of the master reference previously qualified as specified in paragraph (a)(2) of this section is the same as the dating of a serial of product or as approved by APHIS. The expiration date and the lot number of the master reference must be specified in the filed outline of production. The dating of the master reference may be extended by confirming its stability in accordance with § 113.8 prior to the expiration date specified in the filed outline of production.

(7) The master reference may be requalified by one of the following methods:

(i) Performing an immunogenicity test as specified in paragraph (a)(1) through (a)(5) of this section, except that the number of test animals may be reduced to 10 vaccinates and 5 controls, provided that 8 of 10 vaccinates and 4 of 5 controls meet the criteria specified in paragraphs (a)(3), (a)(4), and (a)(5) of this section.

(ii) Immunologic methods not requiring vaccination and challenge (e.g., serology) may be used to demonstrate the stability of a reference if the immunologic response was initially correlated to protection during the immunogenicity test. For a satisfactory test, 5 of 5 controls must remain seronegative at a 1:2 dilution, and 80 percent of the vaccinates must demonstrate bioequivalent serologic titers when compared to the protective titers established during the immunogenicity test. The length of the serologic study need not be the same as the immunogenicity test if adequate data acceptable to APHIS exist to correlate the serologic response earlier after vaccination than the immunogenicity test with protection at market weight.

(iii) A purified protein from *Erysipelothrix rhusiopathiae* that has been shown to elicit a protective response to challenge with virulent *Erysipelothrix rhusiopathiae* in swine may be used to requalify a working reference or qualify a new working reference. Such protein must be prepared by immunoaffinity purification methods using monospecific antisera or by other purification methods acceptable to APHIS. The purity and potency of a purified protein master reference must be well-characterized by in vitro methods such as high-performance liquid chromatography, protein quantification methods, immunoblot analyses, and/or other methods acceptable to APHIS. The immunogenicity of a purified protein master reference must be directly established or indirectly established using a qualifying serial of product as provided in § 113.8 and paragraphs (a)(3), (a)(4), and (a)(5) of this section.

(8) An outline of production and data acceptable to APHIS must be approved for filing before authorization for the use of a new lot of master reference, a new lot of working reference, or a requalified master reference is granted.

(b) *Test requirements for release.* Each serial of Erysipelothrix Rhusiopathiae Bacterin must meet the applicable requirements of § 113.100 and must be tested for purity, safety, and potency as prescribed in this section. A serial found unsatisfactory by any prescribed test is not eligible for release.

(1) *Purity test.* Final container samples of completed product from each serial must be tested for viable bacteria and fungi as prescribed in § 113.26.

(2) *Safety test.* Bulk or final container samples of completed product from each serial must be tested for safety as provided in § 113.33(b).

(3) *Potency test.* In accordance with § 113.8(c), bulk or final container samples of completed product from each serial derived from an approved master seed must be evaluated for relative antigen content (potency) by the procedure specified in the filed outline of production as compared with an unexpired reference (which has been shown directly or indirectly to elicit acceptable duration of immunity) by a direct or indirect parallel line immunoassay. Potency may also be evaluated by measuring serologic response in animals that has been correlated to protection provided by a protective protein or other procedure acceptable to APHIS. The immunoassay must use a monoclonal antibody or monospecific antibody that has been shown to impart passive protection in animals following challenge with virulent *Erysipelothrix rhusiopathiae.*

(i) For a valid potency assay, at least two replications of at least six dilutions of the reference must be compared to at least two replications of at least six dilutions of each test serial on the same microtitration plate.

(ii) When comparing the test serial to the master reference by a relative potency method, a satisfactory test must have a minimum relative potency greater than or equal to 1.0. A relative potency of 1.0 is based on the antigen concentration of the master reference or qualifying serial of vaccine used in the host animal duration of immunity efficacy trial specified in paragraphs (a)(3), (a)(4), and (a)(5) of this section or on the serologic response to a protective immunogen elicited by the master reference or qualifying serial.

(iii) On the basis of the results of such tests, each serial that meets the required minimum relative potency of greater than or equal to 1.0 will be released for marketing. Each serial that does not meet the required minimum potency must be withheld from the market.

(c) *Products without the required duration of immunity.* This section's requirement that an Erysipelothrix Rhusiopathiae Bacterin provide 22 weeks' duration of immunity in swine and 14 weeks' duration of immunity in turkeys will become effective 1 year after the publication of the final rule. Producers of Erysipelothrix Rhusiopathiae Bacterin may use the 1-year interval between the date of publication of the final rule and its effective date to update their products to provide the required duration of immunity. During this 1-year period, Erysipelothrix Rhusiopathiae Bacterins that do not protect vaccinates to market age (22 weeks for swine and 14 weeks for turkeys) may continue to be marketed if the labels for such products specify the duration of immunity demonstrated in the host animal protection study required for licensing. At the end of this 1-year period, Erysipelothrix Rhusiopathiae Bacterins that do not provide the minimum specified protection must be withheld from the market until they comply with the requirements of this section.

Done in Washington D.C., this 11th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17802 Filed 7–16–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–27–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Boeing Model 727–100 series airplanes.

That action would have required repetitive inspections to detect corrosion of the lower surface of the wing center section and the surrounding area, and follow-on actions. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new information that indicates that the unsafe condition does not exist on the airplanes identified in the proposed rule. Accordingly, the NPRM is withdrawn.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Boeing Model 727–100 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on April 5, 2000 (65 FR 17827). The NPRM would have required repetitive inspections to detect corrosion of the lower surface of the wing center section and the surrounding area, and follow-on actions. The NPRM was prompted by a report from the manufacturer indicating that the affected airplanes were subject to corrosion progression through the lower surface of the wing center section into the center wing fuel tank, and subsequent fuel leakage into the ram air duct. The proposed actions were intended to detect and correct such conditions, which, if combined with a leak in the primary or secondary heat exchanger, could result in the release of fuel vapors into the cabin and consequent adverse effects on flight crew and passengers.

Actions Since the NPRM Was Issued

Since the issuance of the NPRM, the FAA has received new information concerning the configuration of Model 727–100 series airplanes, which are identified in the applicability of the NPRM. The NPRM was based on configuration similarities between those airplanes and Model 727–200 series airplanes, which are identified in the applicability of AD 85–24–02, amendment 39–5170 (50 FR 47356, November 18, 1985). That AD addresses a corrosion problem in the area of the lower surface of the wing center section, which forms the upper wall of the ram air plenum chambers. As a result of the corrosion problem, fuel leaked into the plenum chambers and fuel vapors were circulated into the airplane air conditioning system and cockpit. The FAA has verified that the configuration of the subject area on Model 727–100 series airplanes is not the same as that on Model 727–200 series airplanes. Therefore, the three Model 727–100 series airplanes affected by the NPRM are not susceptible to the unsafe condition.

FAA's Conclusions

Upon further consideration, the FAA has determined that the identified unsafe condition does not exist on the airplanes identified in the NPRM. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2000–NM–27–AD, published in the **Federal Register** on April 5, 2000 (65 FR 17827), is withdrawn.

Issued in Renton, Washington, on July 10, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17759 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 20

[Notice No. 923]

RIN 1512–AB57

Distribution and Use of Denatured Alcohol and Rum (2000R–291P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) proposes to amend the regulations in 27 CFR part 20 by eliminating the requirement for users of specially denatured spirits (SDS) to file a bond. ATF believes that elimination of the requirement to file a bond will greatly reduce and simplify the qualification process for industrial alcohol user permits. ATF also proposes to liberalize certain qualification requirements relating to industrial alcohol user permits.

DATES: Written comments must be received on or before September 17, 2001.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, (Attention: Notice No. 923). See "Public Participation" section of this notice if you want to comment by facsimile or e-mail.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226, (202–927–9347) or e-mail at LMGesser@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

Background on SDS

Specially denatured spirits (SDS) are alcohol or rum that have been treated with denaturants to make them unfit for beverage use. SDS include specially denatured alcohol (SDA) and specially denatured rum (SDR). A user purchases SDS to use in a process or in the manufacture of a substance, preparation, or product requiring SDS. SDS have many uses, such as:

- In laboratories as a solvent, for cleansing purposes, or in the preparation of indicator solutions and reagents.
- In the manufacture of such articles as perfumes, proprietary solvents, tobacco flavors, lotions, and sprays.
- In conversion processes to produce other substances, such as vinegar or ethyl acetate.

An industrial alcohol user permit is needed to procure, use, recover, or deal in SDS. To obtain an industrial alcohol user permit, certain registration requirements must be met. These requirements may include the submission of a detailed application with supporting data, the payment of special (occupational) tax (SOT), and the acquisition of bond coverage. Once

such registration requirements are met, the applicant is issued an industrial alcohol user permit and may commence conducting any of the uses authorized under the law and regulations for industrial alcohol user permittees. The permittee is allowed to purchase and acquire alcohol from a registered distilled spirits plant (DSP) free of the excise tax payments normally required by the DSP proprietor. For this reason, SDS authorized uses are limited or restricted under the law. Any permittee who uses SDS in a manner that violates the laws and regulations becomes liable for the tax and other provisions of the Internal Revenue Code of 1986, 26 U.S.C. 5001(a)(5).

Bonds and Consents of Surety

Section 5272 of the Internal Revenue Code of 1986 provides that bond coverage may be required as part of the industrial alcohol user permit qualification process. Prior to 1985, the regulations required applicants (other than States, political subdivisions, and the District of Columbia) who wished to obtain more than 120 gallons of SDS per year, to submit an Industrial Alcohol Bond, ATF Form 5150.25. In 1985, the SDS regulations were revised and the exemption from bond coverage was expanded. See, T.D. ATF–199, (50 FR 9152), published on March 6, 1985. Under those revisions, the percentage of users of SDS who were exempt from filing a surety bond increased from 43 percent, under the prior regulations, to 75 percent under the adopted regulations.

Subpart E of 27 CFR part 20 still reflects that expansion today. Specifically, applicants (other than States, political subdivisions, and the District of Columbia) who wish to obtain more than 5,000 gallons of SDS per year must, in addition to other requirements, submit an Industrial Alcohol Bond, ATF Form 5150.25.

Based on the post-1985 experience in administering part 20, ATF believes that bond coverage should no longer be required of any applicant for an industrial alcohol use permit. Additionally, ATF believes that elimination of the bond requirement under subpart E will result in substantially reduced administrative and financial burdens on industrial alcohol permittees. Therefore, ATF is soliciting public comments on the proposal to delete the bond requirements.

Qualification Requirements

Section 5271 of the Internal Revenue Code of 1986 requires the submission of an application before a permit may be issued to procure, deal in, or use SDS. Current regulations require the submission of a detailed application with supporting data by all applicants. The appropriate ATF officer is authorized to waive some of the application and supporting data requirements for applicants who are a State, political subdivisions thereof, or the District of Columbia, or whose annual withdrawal and sale or usage of SDS will not exceed 5,000 proof gallons.

ATF believes that this waiver should be available to all applicants when the appropriate ATF officer concludes that the revenue is adequately protected with respect to the person submitting the application and that there is no hindrance to the effective administration of part 20. Therefore, ATF is soliciting public comments on the proposal to amend the regulations to allow the appropriate ATF officer to waive detailed applications with supporting data for all applicants.

Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The proposed regulations will simplify the qualification process for an industrial alcohol user permit by eliminating the requirement to obtain a bond. A copy of the proposed rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, the proposed rule is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this proposed rule because there are no new reporting or recordkeeping requirements.

Public Participation

Who May Comment on This Notice?

ATF requests comments from all interested parties. In addition, ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

Can I Review Comments Received?

Copies of the proposed regulations and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of the Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Will ATF Keep My Comments Confidential?

ATF will not recognize any comment as confidential. All comments and materials may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We will also disclose the name of any person who submits a comment.

Can I Request a Public Hearing?

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

How Do I Send Facsimile Comments?

You may submit comments by facsimile transmission to (202) 927–8525.

Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be on paper 8½" x 11" in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-Mail) Comments?

You may submit comments by e-mail by sending the comments to nprm@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on not more than three pages, 8½" x 11" in size.

We will not acknowledge receipt of e-mail. We will treat comments submitted by e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF internet web site at www.atf.treas.gov/alcohol/rules/index.htm.

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 20

Administrative practice and procedure, Advertising, Alcohol and alcohol beverages, Authority delegations, Claims, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

Authority and Issuance

ATF is proposing to amend part 20 in title 27 of the Code of Federal Regulations as follows:

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Paragraph. 1. The authority citation for 27 CFR part 20 continues to read as follows:

Authority: 26 U.S.C. 5001, 5206, 5214, 5271–5275, 5311, 5552, 5555, 5607, 6065, 7805.

§ 20.3 [Amended]

Par. 2. Amend § 20.3, Related Regulations, by removing the cite to "31 CFR Part 225."

§ 20.21 [Amended]

Par. 3. Amend § 20.21(a) by removing the word "bonds" from the first sentence.

§ 20.22 [Amended]

Par. 4. Amend § 20.22 as follows:

a. Remove paragraph (a)(3); and

b. Redesignate paragraph (a)(4) as paragraph (a)(3).

§ 20.26 [Removed]

Par. 5. Remove § 20.26.

Par. 6. Amend § 20.43 by revising paragraphs (a)(2) and (b) to read as follows:

§ 20.43 Exceptions to application requirements.

(a) * * *

(2) Applications, Form 5150.22, filed by applicants, where the appropriate ATF officer has determined that the waiver of such requirements does not pose any jeopardy to the revenue or a hindrance of the effective administration of this part.

(b) The waiver provided for in this section will terminate for a permittee, other than States or political subdivisions thereof or the District of Columbia, when the appropriate ATF officer determines that the conditions justifying the waiver no longer exist. In this case, the permittee will furnish the information in respect to the previously waived items, as provided in § 20.56(a)(2).

Par. 7. Amend the second sentence of § 20.58 to read as follows:

§ 20.58 Adoption of documents by a fiduciary.

* * * The fiduciary may adopt the formulas and statements of process of the predecessor. * * *

§ 20.59 [Amended]

Par. 8. Amend § 20.59 as follows:

a. Remove paragraph (b);

b. Redesignate paragraph (c) as paragraph (b); and

c. Redesignate paragraph (d) as paragraph (c).

§ 20.61 [Amended]

Par. 9. Amend § 20.61 by removing the last sentence of the text.

§ 20.62 [Amended]

Par. 10. Amend § 20.62 as follows:

a. Remove the paragraph letter and title designation "(a) Permit"; and

b. Remove paragraph (b).

§ 20.68 [Amended]

Par. 11. Amend § 20.68 as follows:

a. Remove paragraph (b).

b. Redesignate paragraph (c) as paragraph (b).

Subpart E—[Removed and Reserved]

Par. 12. Remove and reserve Subpart E—Bonds and Consents of Surety.

Par. 13. Revise paragraph (c) of § 20.175 to read as follows:

§ 20.175 Shipment for account of another dealer.

* * * * *

(c) The dealer who ordered the shipment shall be liable for the tax while the specially denatured spirits are in transit and the person actually shipping the specially denatured spirits shall not be liable.

§ 20.177 [Amended]

Par. 14. Amend paragraph (b) of § 20.177 by removing the word "bonded" in the first sentence.

§ 20.232 [Amended]

Par. 15. Amend § 20.232 as follows:

a. Remove paragraph (b).

b. Redesignate paragraph (c) as paragraph (b).

§ 20.241 [Amended]

Par. 16. Amend § 20.241 by removing the words "and filing of a bond are" and add, in their place, the word "is."

Signed: April 20, 2001.

Bradley A. Buckles,

Director.

Approved: June 11, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 01–17692 Filed 7–16–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–013]

RIN 2115–AE46

Special Local Regulations for Marine Events; Fireworks Displays, Atlantic Ocean, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for fireworks displays to be held over the waters of the Atlantic Ocean, Virginia Beach, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the fireworks displays. This action is intended to temporarily restrict vessel traffic during the fireworks displays to protect spectator craft and other vessels transiting the event area from the dangers associated with the fireworks.

DATES: Comments and related material must reach the Coast Guard on or before September 17, 2001.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 maintains the public docket for this rulemaking. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9

a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, telephone number (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–01–013), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The City of Virginia Beach sponsors fireworks displays at various times throughout the year over the waters of the Atlantic Ocean, adjacent to the beachfront between 17th Street and 24th Street. The events consist of pyrotechnic displays fired from a vessel positioned in the Atlantic Ocean. Spectator vessels gather nearby to observe the fireworks. Due to the need for vessel control during the fireworks displays, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish special local regulations on specified waters of the Atlantic Ocean. The special local regulations will temporarily restrict general navigation in the event area during the fireworks. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement time period. These regulations are needed to control vessel traffic during the fireworks displays to enhance the safety of spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed rule will prevent traffic from transiting a portion of the Atlantic Ocean adjacent to the beachfront during the events, the effect of this regulation will not be significant due to the limited duration of the events, the comparatively small size of the regulated area and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the owners or operators of vessels, some of which may be small entities, intending to transit or anchor in the effected portions of the Atlantic Ocean during the events.

Although this regulation prevents traffic from transiting or anchoring in portions of the Atlantic Ocean adjacent to the beachfront during the event, the effect of this regulation will not be significant because of its limited duration, the comparatively small size of the regulated area and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the

Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule will not impose an unfunded mandate.

Taking of Private Property

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are specifically excluded from further analysis and documentation under that section. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add § 100.522 to read as follows:

§ 100.522 Fireworks Displays, Atlantic Ocean, Virginia Beach, Virginia.

(a) *Regulated area.* The regulated area is defined as the waters of the Atlantic Ocean enclosed within the arc of a circle with a radius of 850 yards and with its center located at latitude 36°51′35″ N, longitude 075°58′30″ W. All coordinates reference Datum NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the area shall:

(i) Stop the vessel immediately when directed to do so by the Coast Guard Patrol Commander, and

(ii) Proceed as directed by the Coast Guard Patrol Commander.

(d) *Effective Dates.* This section is effective:

(1) Annually from 9 p.m. to 11 p.m. eastern time every Friday, Saturday and Sunday between May 1 and October 31;

(2) Annually from 9 p.m. to 11 p.m. eastern time on July 4; and

(3) As otherwise specified in the Coast Guard Local Notice to Mariners and a **Federal Register** notice.

Dated: July 2, 2001.

T.C. Paar,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 01–17796 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–15–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AB02

Records Disposition

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA is proposing to change the records management regulations in Subchapter B to simplify certain records disposition procedures. The current rule addresses only hard copy distribution of agency records disposition manuals. This proposed rule reflects agencies' use of the Internet and Intranets to distribute copies of agency records manuals that include the disposition authorities approved by NARA. The proposed rule also eliminates the requirement that agencies request authority for a retention period that differs from the General Records Schedules if NARA previously has granted a disposition authority specifically to an agency. This proposed rule will affect Federal agencies, and we urge agencies to provide comments on the proposal.

DATES: Comments are due by September 17, 2001.

ADDRESSES: Comments must be sent to Regulation Comment Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–713–7270. You may also comment via the Internet to comments@nara.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: 3095-AB02" and your name and return address in your Internet message. If you do not receive notification that we have received your Internet message, contact the Regulation Comment Desk at 301–713–7360, ext. 226.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–713–7360 or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: NARA requires agencies to provide copies of records manuals that contain records

disposition authorities approved by NARA for distribution to NARA appraisal staff and records centers. The records centers need to have current instructions for scheduling the records sent for storage by Federal agencies. This proposed rule would permit agencies to provide copies of their records disposition manuals to NARA electronically, instead of submitting 20 printed copies as is now required.

Currently, agencies that wish to retain records for a different period of time than specified in the General Records Schedules must request NARA approval, unless an agency received NARA approval for a shorter retention period prior to the issuance of the GRS. This means that if an agency wishes to retain records longer than provided in the GRS, it must submit an SF 115, Request for Records Disposition Authority, to NARA for approval even if NARA approved the longer retention period prior to issuance of the GRS item. This proposed rule would permit agencies to apply either the retention period in the GRS or the retention period previously approved for that agency's records. This change reduces the scheduling burden by eliminating the need for agencies to submit SF 115s when they have already scheduled a records series. Agencies must notify NARA if they will continue to use the agency schedule instead of the GRS.

This proposed rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies. This proposed rule has no federalism or tribalism implications.

List of Subjects in 36 CFR Part 1228

Archives and records, Federal buildings and facilities, Incorporation by reference.

For the reasons set forth in the preamble, NARA proposes to amend Part 1228 of Title 36 of the CFR as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for part 1228 continues to read as follows:

Authority: 44 U.S.C. chs. 21, 29, and 33.

2. Revise § 1228.40 to read as follows:

§ 1228.40 Authority.

The Archivist of the United States issues schedules authorizing disposal, after specified periods of time, of temporary records common to several or all agencies of the U.S. Government. General Records Schedules authorize the destruction of records after the stated retention period expires. Application of the disposition instructions in these schedules is mandatory (44 U.S.C. 3303a), provided an agency has not already received disposition authority from NARA.

3. Amend § 1228.42 by redesignating paragraph (c) as paragraph (d); revising paragraphs (a) and (b); and adding new paragraph (c) to read as follows:

§ 1228.42 Applicability.

(a) Agencies must apply GRS authorizations except as provided in paragraphs (b) or (c) of this section. Agencies must not include on SFs 115 records covered by the GRS unless a different retention period is requested, as specified in paragraph (c) of this section.

(b) Agencies may apply either the disposition instructions in the GRS or the disposition instructions previously approved by NARA in an agency schedule for the same series or system of records, unless NARA indicates that the GRS standard must be applied without exception. The authority chosen by the agency must be applied on an agency-wide basis. The agency must notify NARA if it intends to continue using the agency schedule.

(c) Except as provided in paragraph (b) of this section, agencies that wish a different retention period must request an exception to the GRS by submitting an SF 115 in accordance with § 1228.30 accompanied by a written justification for the different retention period.

* * * * *

4. Amend § 1228.50 by revising paragraph (a)(4) to read as follows:

§ 1228.50 Application of schedules.

* * * * *

(a) * * *

(4) Agencies must submit to the National Archives and Records Administration (NWML) copies of published records schedules and all directives and other issuances relating to records disposition, within 30 days of implementation or internal dissemination.

(i) Agencies that print these materials for internal distribution must forward to NARA (NWML) three copies of each final directive or other issuance relating to records disposition and 20 copies of all published records schedules (printed agency manuals) and changes to all manuals as they are issued.

(ii) Agencies that make these materials available via the Internet or internally on an Intranet web site or by other electronic means must submit one printed or electronic copy to NARA in a format specified by NARA when the directive or manual is posted or distributed. If the document is posted on the Internet, the agency must also provide the Internet address (URL).

* * * * *

Dated: July 6, 2001.

John W. Carlin,

Archivist of the United States.

[FR Doc. 01–17791 Filed 7–16–01; 8:45 am]

BILLING CODE 7515–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA032–02–0241b; FRL–7001–3]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District, Monterey Bay Unified Air Pollution District, Modoc County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Kern County Air Pollution Control District (KCAPCD), Modoc County Air Pollution Control District (MCAPCD), and Monterey Bay Unified Air Pollution District (MBUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern visible emissions (VE) emissions from many different sources of air pollution. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by August 16, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301;
Modoc County Air Pollution Control, 202 West 4th Street, Alturas, CA 96101; and,
Monterey Bay Unified Air Pollution District, 24580 Silver Cloud Court, Monterey, CA 93940–6536.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: KCAPCD Rule 401—Visible Emissions, MCAPCD Rule 4.1—Visible Emissions, and MBUAPCD Rule 400—Visible Emissions. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 8, 2001.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 01–17703 Filed 7–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 241–0239b; FRL–7005–2]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District and El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and El Dorado County Air Pollution Control District (EDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from polyester resin operations and the manufacture of foam products composed of polystyrene, polyethylene or polypropylene. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by August 13, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

El Dorado County Air Pollution Control District, 2830 Fairlane Ct., Bldg. C, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office (Air–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1197.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: BAAQMD 8–52 and EDCAPCD 240. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 6, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01–17701 Filed 7–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 063–0042; FRL–7013–8]

Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Pinal County Air Quality Control District (PCAQCD) portion of the Arizona State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from organic solvents, dry cleaners, coating operations, and degreasers. We are proposing to remove from the SIP a local rule regulating these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). This action is a reproposal of EPA's July 14, 2000 proposed rule (65 FR 43727) to disapprove this revision to the Arizona SIP. We do not plan to finalize our July 14, 2000 proposed disapproval. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by August 16, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revision at the following locations:

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012
Pinal County Air Quality Control District, 31 North Pinal Street, Building F, Florence AZ 85232

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Is the State Requesting To Be Rescinded?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—RULE PROPOSED FOR RESCISSION

Local agency	Rule No.	Rule title	Adopted	Submitted
PCAQCD	7–7–3.4	Organic Solvents	10/12/95	11/27/95

PCAQCD concluded that Rule 7–3–3.4 was not necessary for purposes of attaining and maintaining the ozone National Ambient Air Quality Standards (NAAQS) and the ADEQ forwarded to us the PCAQCD's request to rescind the rule. On February 2, 1996, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 7–3–3.4 into the SIP on April 12, 1982. The PCAQCD rescinded the SIP-approved version on October 12, 1995 and ADEQ submitted the rescission request to us on November 27, 1995.

C. What Is the Purpose of the Submitted Rule Revision?

The submitted rule revision removes a previously approved rule from the SIP. The TSD has more information about why this rule was originally adopted by the PCAQCD and why it is now being removed from the SIP.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule Rescission?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The PCAQCD regulates an ozone attainment area (see 40 CFR part 81), so RACT is not required.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Document," (Blue Book) notice of availability published in the **Federal Register** on May 25, 1988.

B. Does the Rule Rescission Meet the Evaluation Criteria?

We believe this rule rescission is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Reproposal

On July 14, 2000 (65 FR 43727), EPA proposed to disapprove the rescission of Rule 7–3–3.4 because this revision was submitted with several other replacement rules which weakened the SIP by establishing less stringent emissions limits and by narrowing the scope of regulated sources. During the original 30-day comment period provided in 65 FR 43727 and the subsequent 30-day reopening of the comment period provided in 65 FR 53962, EPA received extensive comments from the PCAQCD and local area businesses.

PCAQCD commented that the rescission of Rule 7–3–3.4 should be approved because it is not necessary to ensure continued attainment of the NAAQS and that the replacement provisions determined by EPA to not be enforceable should also be approved into the SIP as voluntary elements. Alternatively, the PCAQCD commented that EPA could rescind the current SIP rule without approving the replacement provisions.

Pinal County has never been classified as nonattainment for ozone pursuant to section 107 of the Act and Rule 7–3–3.4 is not specifically required by the Act. Supporting documentation submitted during the comment period by the PCAQCD on October 6, 2000 attests that anticipated changes in emissions associated with rescission of Rule 7–3–3.4 will not have a meaningful impact on Pinal County's continued ozone NAAQS attainment status. The TSD has more information on our evaluation.

EPA concurs that the rescission of Rule 7–3–3.4 will not have an adverse air quality impact or otherwise interfere with section 110, 111, 112, or any applicable provision of the Act. Therefore, EPA is proposing to fully approve the rescission of Rule 7–3–3.4 as described in section 110(k)(3) of the Act. At this time we are not finalizing action on the other associated replacement rules included in our original July 14, 2000 proposal.

We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will remove this rule from the federally enforceable SIP.

III. Background Information

Why Was This Rule Submitted and Why Is It Being Rescinded?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
Mar. 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
Nov. 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and

Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

(Authority: 42 U.S.C. 7401 et seq.)

Dated: June 28, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01–17833 Filed 7–16–01; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 66, No. 137
Tuesday, July 17, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 2001 to June 30, 2002

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or, where applicable, cash in lieu thereof, to be provided in the 2002 school year for each lunch served by schools participating in the National School Lunch Program (NSLP) or by commodity only schools and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program.

EFFECTIVE DATE: July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Suzanne Rigby, Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 305–2644.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 2001 Through June 30, 2002

This notice implements mandatory provisions of sections 6(c), 14(f) and 17(h)(1)(B) of the National School Lunch Act (the Act) (42 U.S.C. 1755(c), 1762a(f), and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments as of July 1 of each year to reflect changes in a three-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the Child and Adult Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under NSLP (7 CFR part 210) and per lunch and supper under the Child and Adult Care Food Program (7 CFR part 226) shall be 15.50 cents for the period July 1, 2001 through June 30, 2002.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April and May each year. The three-month average of the Price Index increased by 3.7 percent from 131.78 for March, April and May of 2000 to 136.60 for the same three months in 2001. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 2001 through June 30, 2002 will be 15.50 cents per meal. This is an increase of .50 cents from the school year 2001 rate.

In addition to the 15.50 cents per meal, Congress has authorized additional funds to be used to purchase foods under Section 6(e) of the Act (42 U.S.C. 1755(e)). Therefore, for this school year, schools will receive more than 15.50 cents per meal in commodities.

Section 14(f) of the Act provides that commodity only schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(c) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents per meal of this value in cash for processing and handling expenses related to the use of such commodities.

Commodity only schools are defined in section 12(d)(2) of the Act (42 U.S.C. 1760(d)(2)) as "schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs." For the 2002 school year, commodity only schools shall be eligible to receive donated food assistance valued at 35.50 cents for each free, reduced price, and paid lunch served. This amount is based on the sum of the section 6(c) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 2002. The section 4 factor for commodity only schools does not include the two cents per lunch increase for schools where 60 percent of the lunches served in the school lunch program in the second preceding school year were served free or at reduced prices, because that increase is applicable only to schools participating in the NSLP.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), 14(f) and 17(h)(1)(B) of the National School Lunch Act, as amended (42 U.S.C. 1755(c)(1)(A) and (B) and 6(e)(1), 1762a(f), and 1766(h)(1)(B)).

Dated: July 11, 2001.

George A. Braley,

Acting Administrator.

[FR Doc. 01–17752 Filed 7–16–01; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Written Assurances for Exports of Technical Data Under License Exception TSR.

Agency Form Number: None.

OMB Approval Number: 0694–0023.

Type of Request: Extension of a currently approved collection of information.

Burden: 103 hours.

Average Time Per Response: 31 minutes per response.

Number of Respondents: 200 respondents.

Needs and Uses: The Export Administration Regulations (EAR) require in Section 740.6 that exporters obtain letters of assurance from their importers stating that technology or software will not be reexported or released to unauthorized destinations that are subject to controls for national security or foreign policy and nuclear non-proliferation reasons. The importer, in making these assurances acknowledges his/her requirement to comply with the EAR. The written assurance requirement of License Exception TSR (Technology and Software Under Restriction) provides greater security for the protection of U.S. origin technology and software that becomes incorporated into foreign products.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: July 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17779 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Procedure for Voluntary Self-Disclosure of Violations.

Agency Form Number: None.

OMB Approval Number: 0694–0058.

Type of Request: Extension of a currently approved collection of information.

Burden: 800 hours.

Average Time Per Response: 10 hours per response.

Number of Respondents: 80 respondents.

Needs and Uses: BXA codified its voluntary self-disclosure policy to increase public awareness of this policy and to provide the public with a good idea of BXA's likely response to a given disclosure. Voluntary self-disclosures allow BXA to conduct investigations of the disclosed incidents faster than would be the case if BXA had to detect the violations without such disclosures.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: July 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17780 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Delivery Verification Certificate.

Agency Form Number: BXA–647P.

OMB Approval Number: 0694–0016.

Type of Request: Extension of a currently approved collection of information.

Burden: 31.

Average Hours Per Response: 31 to 271 minutes.

Number of Respondents: 100.

Needs and Uses: The Delivery Verification Certificate is the result of an agreement between the United States and a number of other countries to increase the effectiveness of their respective controls over international trade in strategic commodities. The form is issued and certified by the government of the country of ultimate destination, at the request of the U.S. government (BXA). It is a service performed to honor an agreement between the U.S. Government and the other countries participating in this Delivery Verification procedure.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: July 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17781 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Census Bureau

Field Representative Exit Questionnaire

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 17, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Geraldine Burt, Census/Field Division, Room 1784/FOB 3, Washington, DC 20233–4400, and 307–457–1935.

SUPPLEMENTARY INFORMATION:

I. Abstract

Retention of trained field interviewing staff is a major concern for the Census Bureau because of both the monetary costs associated with employee turnover, as well as the potential impact on data quality. The Field Representative Exit Survey is used to collect data from a sample of our former current survey interviewers (field representatives) and decennial operations interviewers (enumerators). The purpose of the Field Representative Exit Survey is to determine the reasons for interviewer turnover and what the Census Bureau might do to help reduce its turnover rate for interviewing staff.

We will use Form BC–1294 to collect data from field representatives who leave the Census Bureau. We will use Form BC–1294(D) to collect data from the enumerators hired to work on the 2010 Test Census in 2003/2004 who stop working before the operation for which they were hired is completed. Both forms ask questions about the factors that affected an interviewer's decision as to whether to stay with the Census Bureau. The BC–1294 and BC–1294(D) cover the same topics, but the questions and response choices on the BC–1294 (D) have been tailored to decennial census operations.

The 2010 Test Censuses (the first of which is scheduled to be conducted in 2004) will be used by the Census Bureau to test and experiment with procedures in a simulated census environment in preparation for the 2010 Census. It is expected that some early operations for the 2004 Test will begin in 2003. Interviewer turnover is of heightened concern during a decennial census because of the short time periods for data collection operations.

The information collected via the Field Representative Exit Survey will help the Census Bureau develop plans to reduce turnover in its current survey and decennial interviewing staff. This in turn should allow for better informed management decisions regarding the field work force and the implementation of more effective pay plans, interviewer training and retention strategies for both current and decennial interviewers.

II. Method of Collection

The data will be collected by telephone. Interviews with former field representatives should take approximately seven (7) minutes. The form BC–1294(D) contains a few more questions related to decennial pay and work conditions and interviews with former enumerators should take approximately ten (10) minutes. We estimate that interviews will be conducted with a total of 500 field representatives on a yearly basis. The first 2010 Test Census is scheduled for 2004 with initial hiring to begin in 2003 for early operations. It is estimated that interviews will be conducted with 375 former enumerators in 2003/2004.

Approximately every month, a sample of one-half of all field representatives who voluntarily resigned within the period will be contacted by telephone to complete a BC–1294 questionnaire. Beginning approximately two weeks after the start of 2010 Test Census operations, a sample of enumerators who have continuously been in a non-pay status for a period of two weeks will be contacted by telephone to complete a BC–1294(D) questionnaire.

III. Data

OMB Number: 0607–0404.
Form Number: BC–1294, BC–1294(D).
Type of Review: Regular Submission.
Affected Public: Former Census Bureau Interviewers (Field Representatives and Enumerators).

Estimated Number of Respondents: 500 Former Current Survey Interviewers; 375 Former 2010 Test Census Enumerators.

Estimated Time Per Response: 7 minutes for Former Current Survey Interviewers; 10 minutes for Test Census Enumerators.

Estimated Total Annual Burden Hours

FY02—59 hours for former Current Survey Interviewers

0 hours for former 2010 Test Census Enumerators

59 Total Hours

FY03—59 hours for former Current Survey Interviewers

0 hours for former 2010 Test Census Enumerators

59 Total Hours

FY04—59 hours for former Current Survey Interviewers

63 hours for former 2010 Test Census Enumerators

122 Total Hours

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 15 U.S.C. Section 3101 and Title 13 USC Section 23.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17782 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Technical Data Letter of Explanation; Notice and Request for Comments

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 17, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington DC 20230 or via e-mail at MClayton@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Department of Commerce, Room 6883, 14th & Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information contained in these letters will assure BXA that no unauthorized technical data will be exported for unauthorized end-uses or to unauthorized destinations and thus provide assurance that U.S. national security and foreign policy programs are followed. In addition, shipments to Poland, Hungary, and Czechoslovakia, need an Import Certificate issued by the appropriate national government.

II. Method of Collection

Submitted, as appropriate, with form BXA–748P.

III. Data

OMB Number: 0694–0047.
Form Number: BXA 748–P.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 461.
Estimated Time Per Response: 2–4 hours per response.
Estimated Total Annual Burden Hours: 722.
Estimated Total Annual Cost: No capital start up expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 10, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer

[FR Doc. 01–17639 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Computers and Related Equipment

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 17, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Department of Commerce, Room 6883, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

When BXA receives this information it is thoroughly reviewed by a licensing officer who, depending on the limits of parameters of the system, may submit the application for review by other government agencies. If the application is approved, the respondent is issued a validated export license that authorizes shipment of the computer system. If additional information is required, the respondent will be notified. Applications may be rejected if it is determined that the export or reexport of the system poses a threat to U.S. national security.

II. Method of Collection

Submitted, as required, with form BXA–748P.

III. Data

OMB Number: 0694–0013.
Form Number: N/A.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 80.
Estimated Time Per Response: 32 minutes per response.
Estimated Total Annual Burden Hours: 86.
Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17778 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1174]

Designation of New Grantee for Foreign-Trade Zone 76, Bridgeport, Connecticut; Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The Foreign-Trade Zones (FTZ) Board (the Board) has considered the application (filed 12/12/2000) submitted by the City of Bridgeport, Connecticut, grantee of FTZ 76, Bridgeport, Connecticut, requesting reissuance of the grant of authority for said zone to the Bridgeport Authority, a municipal corporation, which has accepted such reissuance subject to approval of the FTZ Board. Upon review, the Board finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the request and recognizes the Bridgeport Port Authority as the new grantee of Foreign-Trade Zone 76.

The approval is subject to the FTZ Act and the FTZ Board's regulations, including § 400.28.

Signed at Washington, DC, this day 9th of July 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–17858 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1177]

Approval for Extension of Authority of Board Order 735, Foreign-Trade Zone 9, Pacific Allied Products, Ltd. (Plastic Food/Beverage Containers), Honolulu, HI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Board Order 735 (60 FR 26715, 5/18/95) granted authority on behalf of Pacific Allied Products, Ltd. (PAP) to manufacture plastic food/beverage containers under FTZ procedures subject to the following restrictions: (1) that manufacture under zone procedures was intended solely for the Hawaiian and export markets, and (2) the authority was approved at the outset for five years, subject to extension;

Whereas, the Department of Business, Economic Development & Tourism of the State of Hawaii, grantee of Foreign-Trade Zone 9, has requested authority, on behalf of PAP, to extend its manufacturing authority on a permanent basis by removing Restriction #2;

Whereas, notice inviting public comment has been given in the **Federal Register** (65 FR 36887, 6/12/00);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the request would be in the public interest if approval were subject to the restriction listed below;

Now, Therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including § 400.28, and further to a restriction requiring that manufacture under zone procedures be solely for the Hawaiian and export markets.

Signed at Washington, DC, this 9th day of July 2001.

Faryar Shirzad,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–17859 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Final Results of Changed-Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed-circumstances antidumping duty administrative review.

SUMMARY: On November 20, 2000, the Department of Commerce published a notice of initiation and preliminary results of changed-circumstances antidumping duty review of the antidumping duty order on brake rotors from the People's Republic of China, in which we preliminarily determined that Laizhou Auto Brake Equipment Co., Ltd. is the successor-in-interest to Laizhou Auto Brake Equipments Factory for purposes of determining antidumping liability. We are now affirming our preliminary results.

EFFECTIVE DATE: July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (April 2001).

Background

Since the Department published in the **Federal Register** on November 20, 2000, the initiation and preliminary results of this changed-circumstances review of the antidumping duty order on brake rotors from the PRC (65 FR 69732), the following events have occurred.

On January 16, 2001, the petitioner [1] submitted its case brief. In its case brief, the petitioner alleged that the information on the record was insufficient for purposes of demonstrating that Laizhou Auto Brake Equipment Co., Ltd. ("LABEC") is the successor-in-interest to Laizhou Auto Brake Equipments Factory ("LABEF"). In addition, the petitioner requested that the Department verify the data contained in LABEC's response for purposes of establishing whether LABEC is the successor-in-interest to LABEF.

On January 26, 2001, the Department issued a supplemental questionnaire to LABEC, which addressed the petitioner's concerns raised in its case brief. On February 5, 2001, LABEC requested an extension of time until February 16, 2001, to file its response to the supplemental questionnaire, which the Department subsequently granted on February 7, 2001. On February 16, 2001, LABEC submitted its supplemental questionnaire response.

On January 31, 2001, the Department notified LABEC that it intended to conduct a verification of the data it submitted in support of its successor-in-interest claim and provided it with a sample verification outline for purposes of familiarizing LABEC with the verification process.

On February 23, 2001, the Department provided the complete verification outline to LABEC. On March 16, 2001, the Department conducted its verification of the information submitted by LABEC in accordance with 19 CFR 351.307.

On April 23, 2001, the Department issued its verification report. On June 7, 2001, we provided parties with an opportunity to submit comments on our verification findings for consideration in these final results. Neither party submitted comments.

Scope of Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans, recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

[1] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those rotors which have undergone some drilling and on which the surface is not entirely smooth. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles and do not contain in the casting a logo of an original equipment manufacturer ("OEM") which produces vehicles sold in the United States (e.g., General Motors, Ford, Chrysler, Honda, Toyota, and Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron which contain a steel plate but otherwise meet the above criteria. Excluded from the scope of the order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Separate Rates

Because LABEC is owned by individuals in the People's Republic of China ("PRC"), the Department as a matter of practice first must conduct a separate rates analysis of the company. In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate.

Based on information contained in its September 29, 2000, submission, LABEC is registered in the PRC as a limited liability company owned by private individuals. Thus, a separate rates analysis is necessary to determine whether LABEC is independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* ("*Bicycles*") 61 FR 19026 (April 30, 1996)).

To establish whether a firm is sufficiently independent from government control, and therefore entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

LABEC has placed on the administrative record documentation to demonstrate absence of *de jure* governmental control, including the 1994 "Foreign Trade Law of the People's Republic of China," and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations," promulgated on June 3, 1988.

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of stock companies including limited liability companies. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* ("*Furfuryl Alcohol*") 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China* 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to LABEC.

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of,

a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide* and *Furfuryl Alcohol*.

LABEC asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, statements contained in LABEC's September 29, 2000, submission indicate that the company does not coordinate its prices with other exporters.

The Department conducted verification of LABEC's separate rate claim and found no evidence at verification of government involvement in LABEC's business operations. Specifically, Department officials examined sales documents that showed that LABEC negotiated its contracts and set its own sales prices with its customers. In addition, the Department reviewed sales payments, bank statements and accounting documentation that demonstrated that LABEC received payment from its U.S. customers via bank wire transfer, which was deposited into its own bank account without government intervention. Finally, the Department examined internal company memoranda, such as appointment notices and election results, which demonstrated that LABEC selected its own management. *See* Department verification report on LABEC at pages 3 through 6. This information, taken in its entirety, supports a finding that there is an absence of *de facto* governmental control of LABEC's export functions. Consequently, we have determined that LABEC has met the criteria for the application of a separate rate.

Final Results of the Review

We also verified data contained in LABEC's September 29, 2000, submission and February 16, 2001, supplemental submission as it pertained to the claim that LABEC is the successor-in-interest to LABEF.

In accordance with section 751(b) of the Act and in order to determine whether LABEC is the successor-in-interest to LABEF, we examined several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) ("*Brass from Canada*"). While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994); *Brass from Canada*, and *Fresh and Chilled Atlantic Salmon from Norway: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 63 FR 50880 (September 23, 1998). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

Based on our verification findings, we determine that LABEC is the successor-in-interest to LABEF. Specifically, LABEF has demonstrated through registration and ownership documentation examined at verification that it changed its name to LABEC as a result of decisions made by LABEF's original owners. Moreover, LABEF has demonstrated through production and accounting records examined at verification that changing its name to LABEC has resulted in no significant changes in either production facilities, supplier relationships, customer base, or management. *See* Department verification report on LABEC at pages 7 through 10.

Thus, we determine that LABEC is the successor-in-interest to LABEF for purposes of determining antidumping duty liability, and should receive the same antidumping duty treatment with respect to brake rotors as the former LABEF.

We will instruct the Customs Service to suspend shipments of subject merchandise made by LABEC at LABEF's cash deposit rate (*i.e.*, zero percent). The shipments of subject merchandise to be suspended are those which are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this changed-circumstances review.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: July 9, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17857 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–583–835

Postponement of Final Determination for Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of final antidumping duty determination of certain hot-rolled carbon steel flat products from Taiwan.

SUMMARY: The Department of Commerce (the Department) is postponing the final determination in the antidumping duty investigation of certain hot-rolled carbon steel flat products from the Taiwan.

EFFECTIVE DATE: July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia Tran at 202–482–1121, Mike Heaney at 202–482–4475, or Robert James at 202–482–0649, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (April 2000).

Postponement of Final Determination and Extension of Provisional Measures

On May 3, 2001, the Department published the affirmative preliminary determination for the investigation of

certain hot-rolled carbon steel flat products from Taiwan. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Taiwan*, 66 FR 22204 (May 3, 2001). Pursuant to 19 CFR 351.401(f)(2) of the Department's regulations, we determined that respondents China Steel Corporation (China Steel) and Yieh Loong Enterprise Co., Ltd. (Yieh Loong) are affiliated companies and should be collapsed for purposes of an antidumping analysis. *See* Memorandum to Joseph A. Spetrini, "Affiliation Issue regarding China Steel * * * and Yieh Loong * * *," dated April 19, 2001 (Affiliation Memorandum). The collapsed entity is hereafter referred to as China Steel.

Pursuant to section 735(a)(2) of the Tariff Act and § 351.210(b)(2)(ii) of the Department's regulations, on April 30, 2001, respondent China Steel requested the Department extend the final determination for the full sixty days as permitted by the statute and regulations. China Steel also agreed to the extension of provisional measures (*i.e.*, suspension of liquidation) from a four-month period to a period not to exceed six months, pursuant to 19 CFR 351.210(e)(2).

Section 735(a)(2) of the Tariff Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

In accordance with 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative, (2) the respondent requesting a postponement accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting China Steel's request and are postponing the final determination to no later than 135 days after the publication of the preliminary determination in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(b)(2).

Dated: July 6, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17856 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 84–12A12."

Northwest Fruit Exporters' ("NFE") original Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); October 22, 1997 (62 FR 55783, October 28, 1997); November 2, 1998 (63 FR 60304, November 9, 1998); October 20, 1999 (64 FR 57438, October 25, 1999); and October 16, 2000 (65 FR 63567, October 24, 2000). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Northwest Fruit Exporters 105 South 18th Street, Suite 227, Yakima, Washington 98901–2149,

Contact: James R. Archer, Manager, Telephone: (509) 576–8004

Application No.: 84–12A12.

Date Deemed Submitted: July 9, 2001.

Proposed Amendment: Northwest Fruit Exporters seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Bertha's Marketing, Inc., Wenatchee, Washington; Crane & Crane, Inc., Brewster, Washington; Garrett Ranches Packing, Wilder, Idaho; Sun Fresh International, LLC, Wenatchee, Washington; and Valicoff Fruit Company, Wapato, Washington;

2. Delete the following companies as "Members" of the Certificate: Beebe Orchard Company, Chelan, Washington; Cashmere Fruit Exchange, Cashmere, Washington; Custom Fruit Packers,

Wenatchee, Washington; Chief Tonasket Growers, Tonasket, Washington; and Wells & Wade Fruit Co., Wenatchee, Washington; and

3. Change the listing of the following Members: "Custom Apple Packers, Inc., Brewster and Quincy, Washington" to the new listing "Custom Apple Packers, Inc., Brewster, Quincy & Wenatchee, Washington"; "Columbia Reach Pack, Yakima, Wasington" to "Chiawana, Inc. dba Columbia Reach Pack, Yakima, Washington"; and "Double Diamond Fruit, Quincy, Washington" to "Morgan's of Washington dba Double Diamond Fruit, Quincy, Washington".

Dated: July 12, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading, Company Affairs.

[FR Doc. 01–17844 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071001D]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Capacity Committee and Groundfish Oversight Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on August 1 and 2, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Wednesday, August 1, 2001, 10 a.m.—Capacity Committee Meeting.

The Capacity Committee will discuss nine proposals for reducing latent effort and changing permit transfer restrictions in the Northeast Multispecies Fishery. The Council has directed the Committee to make recommendations on revising the restrictions, and combine these proposals for possible inclusion in Amendment 13 to the Multispecies Fishery Management Plan (FMP). The Committee will not make final decisions about the choice of alternatives, but will report its recommendations to the Council and the Council's Groundfish Committee.

Thursday, August 2, 2001, 9:30 a.m.—Groundfish Oversight Committee Meeting.

The Groundfish Oversight Committee will meet to continue development of management options for Framework Adjustment 36 and Amendment 13 to the Northeast Multispecies FMP. Framework 36 was initiated by the Council in January, 2001, to address the following issues: reducing excessive regulatory discards of Gulf of Maine cod resulting from a trip limit, meeting the fishing mortality objectives for Gulf of Maine cod, extending and/or adjusting the Western Gulf of Maine closure (currently scheduled to open May 1, 2002), considering allowing access to groundfish closures by tuna purse seine vessels, and expanding the area for the northern shrimp exempted fishery. The Council plans to complete its work on Framework 36 at the July 24-26, 2001 Council meeting, but, if necessary, the Committee will continue development of this action at this meeting.

The Committee will also continue development of Amendment 13. Amendment 13 will adopt programs to rebuild overfished stocks and end overfishing where necessary. The Committee will continue its efforts to develop management alternatives that will meet the goals of the Amendment. Options under consideration include approaches to addressing unused Days-at-Sea, and a wide variety of management tools (closed areas, gear restrictions, effort restrictions, trip limits, recreational fishing restrictions, etc.) as necessary to meet the amendment's objectives.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 10, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17851 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0024]

Federal Acquisition Regulation; Proposed Collection; Buy American Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0024).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Certificate. The clearance currently expires on September 30, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can

minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 11, 2001.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Buy American Act requires that only domestic end products be acquired for public use unless specifically authorized by statute or regulation, provided that the cost of the domestic products is reasonable.

The Buy American Certificate provides the contracting office with the information necessary to identify which products offered are domestic end products and which are of foreign origin. Components of unknown origin are considered to have been supplied from outside the United States.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows:

Respondents: 3,906.
Responses Per Respondent: 25.
Total Responses: 59,475.
Hours Per Response: .167.
Total Burden Hours: 9,932.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0024, Buy American Certificate, in all correspondence.

Dated: July 11, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–17768 Filed 7–16–01; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 16, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_ Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 11, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Reinstatement.
Title: Streamlined Process for Education Department General Administrative Regulations (EDGAR) Approved Grant Applications.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1.
Burden Hours: 1.

Abstract: Since April 1997, EDGAR's menu of selection criteria become effective. For each competition, the Secretary would select one or more criteria that best enable the Department to identify the highest quality applications consistent with the program purpose, statutory requirements, and any priorities established. This allows the Secretary the flexibility to weigh the criteria according to the needs of each individual program. This menu of selection criteria will provide the Department the flexibility to choose a set of criteria tailored to a given competition and obviate the need to create specific selection criteria through individual program regulations. ED is requesting a streamlined clearance process for programs of approved applications who choose to change: (1) Criteria from the same EDGAR menu; (2) old EDGAR to new EDGAR criteria, or (3) program criteria to EDGAR criteria.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address *Jackie.Montague@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–17769 Filed 7–16–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB

review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 16, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 11, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.
Title: National Study of Title I Schools—Data Collection Instruments.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 18,700.
Burden Hours: 23,425.
Abstract: This National Study of Title I Schools will be the main source of nationally-representative school-level information on the implementation of Title I provisions and standards-based reform generally, over a three-year period from the 2001–02 through 2003–04 school years. The study will examine and describe how Title I schools are using standards-based reforms to assist in improving learning, with a particular focus on implementation of provisions in the Title I program that are designed to support such improvements. The study will also examine more specifically the quality of instruction and instructional support in Title I schools, with a focus on implementation of Title I provisions designed to support more effective instruction and instructional support.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address *Jackie.Montague@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–17770 Filed 7–16–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 16, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren__Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 11, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.
Title: Moving Reading/English Language Arts Standards to the Classroom Study: The Impact of Systemic, Standards-based Reform on Instruction.
Frequency: One Time.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 2,328.
Burden Hours: 1,455.
Abstract: The purpose of Moving Standards Reading is to understand the relationship between state-initiated standards-based reforms and student achievement. The study will assess the impact of grade 4 reading/English language arts content standards and instructional supports on teachers' classroom instructional practices. It will also assess the relationship between instruction aligned with standards and grade 4 student achievement on state-administered reading/English language

arts assessments. The study is to be conducted in 4 states, 100 districts, and 400 schools. The results of the study will highlight the features of effective standards-based reform policies and practices. The results are also expected to inform future federal programs and state, district, and school policy development and implementation.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address *Jackie.Montague@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–17771 Filed 7–16–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Peer Review of DOE's Photovoltaic Program

AGENCY: Department of Energy.

ACTION: Announcement of a peer review of the Department of Energy's (DOE's) Photovoltaic Program.

SUMMARY: The U.S. Department of Energy (DOE), Office of Power Technology is announcing its intention to conduct a Peer Review of DOE's Photovoltaic Program August 6th and 7th, 2001 in Golden, Colorado at the Denver Marriott West.

DATES: Monday, August 6th, 2001 from 8:00 am–5:30 pm (MDT) and Tuesday, August 7th, 2001 from 8:00 am–4:30 pm (MDT).

ADDRESSES: Denver Marriott West, 1717 Denver West Parkway, Golden, CO 80401.

FOR FURTHER INFORMATION CONTACT: Jeffrey Mazer, Department of Energy, (202) 586–2455, via facsimile at (202) 586–8148 or electronically at *Jeffrey.Mazer@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: The DOE Photovoltaic (PV) Program recognizes that achievement of aggressive technical goals is a formidable task that requires a highly directed and carefully monitored program of research and development, in partnership with the national laboratories, universities, and industry. Program management not only requires that the progress of all research participants be constantly monitored, but that the overall balance of program activities and relevance of the research be evaluated, particularly in view of limited budgets and multiple priorities. With this in mind, the Program conducts a series of ongoing review activities aimed at guiding the Program toward achievement of the long-term goals. From time to time, the Program has also benefited from independent reviews conducted by other organizations, which provided valuable feedback on the research progress, relevance, and priorities, as well as an assessment of the Program's own processes for conducting reviews.

The PV Program Peer Review during FY 2001 builds extensively on ongoing review processes and will address activities up to this point in Fiscal Year (FY) 2001 (Government's Fiscal Year is from October 1st through September 30th). Additional information on DOE's PV Program can be obtained at *www.eren.doe.gov/pv/*.

The goals of the PV Program Peer Review are to obtain input from DOE recognized experts from the research, technology and business communities. This independent and objective panel will convene to provide input for improving PV Program decision making of program priorities and balance, and improving the technical quality and relevance of research activities. The review will cover a representative group of projects supported by the PV Program in FY 2001. The review meeting is open to the public to attend and observe. Attendance is free of charge.

Issued in Golden, Colorado, on July 5, 2001.

Matthew A. Barron,

Acting Director, Office of Acquisition and Financial Assistance.

[FR Doc. 01–17822 Filed 7–16–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–481–000]

ANR Storage Company; Notice of Tariff Filing

July 11, 2001.

Take notice that on July 6, 2001, ANR Storage Company (ANR Storage), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of August 6, 2001:

Third Revised Sheet No. 1
First Revised Sheet No. 11
First Revised Sheet No. 45
Original Sheet No. 155A
Original Sheet No. 155B
Original Sheet No. 155C

ANR states that tariff sheets are being filed to expressly state in its tariff the types of conditions ANR Storage may apply to discounts without having to file the discount agreement with the Commission as a non-conforming service agreement and to implement the ability for ANR Storage to enter into negotiated rate agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17813 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–913–003]

Commonwealth Edison Company; Notice of Filing

July 11, 2001.

Take notice that on May 30, 2001, Commonwealth Edison Company, tendered for filing in compliance with Federal Energy Regulatory Commission (FERC) order dated April 30, 2001, in Docket Nos. EL94–38–001 and ER94–913–11, 95 FERC 61,163 (2001).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at http://www.ferc.gov using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17818 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2464–000]

The Detroit Edison Company; Notice of Filing

July 11, 2001.

Take notice that June 28, 2001, the Detroit Edison Company (Detroit Edison) tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1.

Detroit Edison also tendered for filing Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and Engage Energy America LLC dated as of June 4, 2001.

The parties have not engaged in any transactions under the Service Agreements prior to thirty days of this filing.

Detroit Edison requests that the Service Agreements become effective July 26, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17814 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2007–001]

The Detroit Edison Company; Notice of Filing

July 11, 2001

Take notice that on June 22, 2001, The Detroit Edison Company (Detroit Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to the Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, filed on May 7, 2001. These Service Agreements are between Detroit Edison and Exelon Generation Company, LLC dated as of April 23, 2001. The parties have not engaged in any transactions under the Service Agreements prior to thirty days of this filing.

Also Detroit Edison filed Service Agreements for Short-Term Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Exelon Generation Company, LLC dated as of April 23, 2001.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of July 21, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17815 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2006–001]

The Detroit Edison Company; Notice of Filing

July 11, 2001.

Take notice that on June 22, 2001, The Detroit Edison Company (Detroit Edison) amended its Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1 filed with the Federal Energy Regulatory Commission (Commission) on May 7, 2001. These Service Agreements are between Detroit Edison and First Energy Services Corporation, dated as of April 20, 2001.

The Detroit Edison Company (Detroit Edison) also tendered for filing Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and First Energy Services Corporation, dated as of March 30, 2001. These parties have not engaged in any transactions under the Service Agreements prior to thirty days of this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of July 20, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17816 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2009–001]

The Detroit Edison Company; Notice of Filing

July 11, 2001.

Take notice that on June 22, 2001, The Detroit Edison Company (Detroit Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its Service Agreement for Short-term Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. This Service Agreement is between Detroit Edison and Quest Energy LLC, dated as of February 1, 2001. The parties have not engaged in any transactions under the Service Agreement prior to thirty days of this filing.

Detroit Edison also filed Service Agreements for Short-Term Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1. This Service Agreement is between Detroit Edison and Quest Energy LLC, dated as of February 1, 2001. The parties have not engaged in any transactions under the Service Agreement prior to thirty days of this filing.

Detroit Edison requests that the Service Agreements become effective July 20, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17817 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–396–000]

Equitrans, L.P. and Equitable Field Services, L.L.C. Notice of Abandonment Application

July 11, 2001

Take notice that on July 2, 2001, Equitrans, L.P. (Equitrans), 100 Allegheny Center Mall, Pittsburgh, Pennsylvania 15212, and Equitable Field Services, L.L.C. (EFS), 1710 Pennsylvania Avenue, Charleston, West Virginia 25302, filed an application in Docket No. CP01–396–000 pursuant to Section 1(b) and 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon certain certificated facilities by sale to EFS as part of a sale to EFS of five gathering systems. The application also requests that the Commission determine that the facilities sold to EFS, and the services rendered by means of such facilities, are non-jurisdictional gathering facilities and services, and will be exempt from the Commission's jurisdiction under the NGA.

EFS proposes to operate the facilities to be abandoned and other facilities to be acquired from Equitrans in Allegheny, Armstrong, Greene, Indiana and Washington Counties, Pennsylvania; and in Braxton, Clay, Doddridge, Fayette, Gilmer, Harrison, Lewis, Marion, Nicholas, Ritchie, Taylor, Tyler, Upshur and Wetzel Counties, West Virginia as a gas gatherer providing gas gathering and related services on a non-discriminatory basis to all customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" from the RIMS Menu

and follow the instructions (please call (202) 208–2222 for assistance).

Any questions regarding this application should be directed to Fredrick K. Dalena, Vice President, 100 Allegheny Center Mall, Pittsburgh, PA 15212, at (412) 395–3270 or Donald R. Nelson, Rate Analyst, at (412) 395–3237.

There are two ways to become involved in the Commission's review of this abandonment. First, any person wishing to obtain legal status by becoming a party to the proceedings for this abandonment should, on or before August 1, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this abandonment. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the abandonment provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this abandonment should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying abandonment will be issued.

David P. Boergers

Secretary.

[FR Doc. 01–17807 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–22–000]

Iroquois Gas Transmission System; Notice of Filing

July 11, 2001.

Iroquois Gas Transmission System filed revised standards of conduct on July 2, 2001 in Docket No. MG01–22–000.

Iroquois Gas Transmission System states that it mailed copies of this filing to all customers and state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before July 26, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17808 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–361–003]

Northern Border Pipeline Company; Notice of Compliance Filing

July 11, 2001.

Take notice that on July 6, 2001, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective May 1, 2001:

First Revised Sheet Number 235C

Northern Border states that the purpose of this filing is to comply with the Commission's order dated June 25, 2001 in Docket No. RP01–361–002 (95 FERC 61,427).

Northern Border states that copies of this filing have been served on all parties on the Commission's service list for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17811 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–426–005]

Texas Gas Transmission Corporation; Notice of Negotiated Rate and Tariff

July 11, 2001.

Take notice that on July 6, 2001, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective July 6, 2001:

Second Revised Sheet No. 40

Texas Gas states that the purpose of this filing is to reflect the a new negotiated rate/non-conforming contract in its tariff as required Section 154.112(b) of the Commission's regulations and as directed by Commission Letter Order dated April 27, 2001.

Texas Gas states that copies of the revised tariff sheet is being mailed to all parties on the service list, Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17810 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–480–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

July 11, 2001.

Take notice that on July 6, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to become effective July 6, 2001:

Fifteenth Revised Sheet No. 187

Williston Basin states that the purpose of this filing is to clarify that it will update information required by Section 161.3(l)(2) of the Commission's Regulations within three (3) business days of any change.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17812 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–841–000]

Xcel Energy Services, Inc.; Notice of Filing

July 11, 2001.

Take notice that on June 21, 2001, Xcel Energy Services, Inc. tendered for filing a notice of withdrawal of Section 206 of the Federal Power Act.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17819 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–913–000, et al.]

Commonwealth Edison Company, et al.; Electric Rate and Corporate Regulation Filings

July 11, 2001.

Take notice that the following filings have been made with the Commission:

1. Haleywest L.L.C.

[Docket No. ER01–1760–001]

Take notice that on July 2, 2001, Haleywest L.L.C., tendered for filing,

pursuant to the Federal Energy Regulatory Commission's (FERC) directive issued June 8, 2001 in the above referenced Docket No., files the FERC Rate Schedule No. 1 in the format as required by 18 CFR 35.9.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER01–1791–001]

Take notice that on July 6, 2001, Niagara Mohawk Power Corporation tendered for filing a service agreement, i.e. an Interconnection Agreement between Niagara Mohawk Power Corporation and Canastota Wind Power, LLC for a 30 MW wind-powered generating facility located in the Town of Fenner, Madison County, New York, dated as of April 2, 2001. The filing has been designated by the New York Independent System Operator, Inc. as Service Agreement No. 306 under its FERC Electric Tariff, Original Volume No. 1. Same was filed to comply with the June 6, 2001 Order of the Commission in this docket.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. West Texas Utilities Company

[Docket No. ER01–1798–001]

Take notice that on July 6, 2001, in compliance with the Commission's Order No. 614 and the June 6, 2001 letter order issued in the above referenced docket, West Texas Utilities Company (WTU) filed a revised Restated Service Agreement (Restated Agreement) between WTU and Tex-La Electric Cooperative of Texas, Inc. (Tex-La). The Restated Agreement was revised to reflect its designation as a Service Agreement under WTU's FERC Electric Tariff, Original Volume No. 1. WTU states that it has made no other changes to the Restated Agreement.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER01–1894–001]

Take notice that on July 6, 2001, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a service agreement, i.e. an Interconnection Agreement between Niagara Mohawk Power Corporation and Athens Generating Company, L.P. for a 1230 MW (winter rating) natural gas-fired combined cycle combustion turbine generating facility that is to be constructed in the Town of Athens, Greene County, New York, dated as of April 27, 2001. The filing has been designated by the New York Independent System Operator, Inc. as Service Agreement No. 307 under its FERC Electric Tariff, Original Volume No. 1. The filing was made to comply with a June 6, 2001 Order of the Commission in this docket.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER01–2519–000]

Take notice that on July 6, 2001, MidAmerican Energy Company (MidAmerican), filed with the Commission a Fourth Supplement to Service Agreement No. 15 (Fourth Supplement), dated June 8, 2001, entered into by MidAmerican and the Resale Power Group of Iowa, pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (FERC Docket No. ER96–719–000; amended in FERC Docket No. ER00–2051–000).

MidAmerican requests an effective date of June 8, 2001 for the Fourth Supplement and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Resale Power Group of Iowa, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER01–2520–000]

Take notice that on July 6, 2001, Southern California Edison Company (SCE) tendered for filing under SCE's Wholesale Distribution Access Tariff a Service Agreement for Wholesale Distribution Service and an Interconnection Facilities Agreement (collectively, Agreements) between SCE and California Portland Cement Company (CPCC). Copies of this filing were served upon the Public Utilities Commission of the State of California and CPCC.

SCE respectfully requests the Agreements to become effective July 7, 2001.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. MidAmerican Energy Company

[Docket No. ER01–2521–000]

Take notice that on July 6, 2001, MidAmerican Energy Company (MidAmerican), filed with the Commission a Firm Transmission Service Agreement with the City of Pella, Iowa, dated June 19, 2001, entered into pursuant to MidAmerican's Open Access Transmission Tariff. MidAmerican has served a copy of the filing on the Iowa Utilities Board and the City of Pella, Iowa.

MidAmerican requests an effective date of June 19, 2001 for the Agreement and seeks a waiver of the Commission's notice requirement.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER01–2522–000]

Take notice that PacifiCorp on July 6, 2001, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Long-Term Firm Transmission Service Agreement with Powerex Corporation (Powerex) under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER01–2523–000]

Take notice that PacifiCorp on July 6, 2001, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Long-Term Firm Transmission Service Agreements with Idaho Power Company (Idaho) under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER01–2524–000]

Take notice that PacifiCorp on July 6, 2001, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Long-Term Firm Transmission Service Agreements with Cargill-Alliant, LLC. under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER01–2525–000]

Take notice that PacifiCorp on July 6, 2001, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Long-Term Firm Transmission Service Agreement with PacifiCorp Power Marketing (PPM) under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. MidAmerican Energy Company

[Docket No. ER01–2526–000]

Take notice that on July 6, 2001, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement and a Non-Firm Transmission Service Agreement with Axia Energy, LP, both dated June 19, 2001, and entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of June 19, 2001 for the Agreement and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Iowa Utilities Board and Axia Energy, LP.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Southwest Power Pool, Inc.

[Docket No. ER01–2527–000]

Take notice that on July 6, 2001, Southwest Power Pool, Inc. (SPP) submitted for filing three executed service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service, and Loss Compensation Service with Exelon Generation Company, LLC (Exelon), three executed service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service, and Loss Compensation Service with Blue Canyon Windpower, LLC (Blue Canyon), and two executed service agreements for Firm Point-to-Point Transmission Service and Loss Compensation Service with Arkansas Electric Marketing, LLC (AEM)(collectively, Transmission Customers). SPP requests an effective date of June 27, 2001 for the service agreements with Exelon and AEM and July 2, 2001, for the service agreements with Blue Canyon.

A copy of this filing was served on the Transmission Customers.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. PJM Interconnection, L.L.C.

[Docket No. ER01–2528–000]

Take notice that on July 6, 2001, PJM Interconnection, L.L.C. (PJM) tendered for filing proposed amendments to the Appendix to Attachment K of PJM Open Access Transmission Tariff and to Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to add a new section 8 implementing an interregional congestion pilot program between PJM and the New York Independent System Operator, Inc. (NYISO).

Copies of this filing have been served on all PJM Members, the NYISO, and the state electric regulatory commissions in the PJM control area the NYISO control areas.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Sierra Pacific Power Company and Nevada Power Company

[Docket No. ER01–2529–000]

Take notice that on July 6, 2000, Sierra Pacific Power Company (Sierra) and Nevada Power Company (Nevada Power) tendered for filing a Notice of Termination of Sierra Pacific Resources Operating Companies FERC Electric Tariff, Second Revised Volume No. 1 (the Retail Access Tariff), which was intended to implement retail access in Nevada. Sierra and Nevada Power note that the statute implementing retail access in Nevada was repealed before the Retail Access Tariff went into effect. Sierra and Nevada Power request that the termination be made effective as of October 1, 2001.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Exelon Generation Company, LLC

[Docket No. ER01–2530–000]

Take notice that on July 6, 2001, Exelon Generation Company, LLC (Exelon Generation) submitted for filing with the Federal Energy Regulatory Commission (FERC or Commission) a service agreement for wholesale power sales transactions between Exelon Generation and Central Illinois Light Company under Exelon Generation's wholesale power sales tariff, FERC Electric tariff, Original Volume No. 1.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Central Maine Power Company

[Docket No. ER01–2531–000]

Please take notice that on July 6, 2001, Central Maine Power Company (CMP) tendered for filing a service agreement for Short-Term Firm Point-to-Point Transmission Service entered into with NRG Power Marketing Inc. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated as CMP—FERC Electric Tariff, Fifth Revised, Volume No. 3, Original Service Agreement No. 132.

CMP request a waiver of the Commission's notice requirements to permit service under the agreement to begin effective as of June 21, 2001.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Central Maine Power Company

[Docket No. ER01–2532–000]

Please take notice that on July 6, 2001, Central Maine Power Company (CMP) tendered for filing a service agreement for Umbrella Non-Firm Point-to-Point Transmission Service entered into with NRG Power Marketing Inc. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated as CMP—FERC Electric Tariff, Fifth Revised, Volume No. 3, Original Service Agreement No. 130.

CMP requests waiver of the Commission's notice requirements to permit service under the agreement to begin effective as of June 6, 2001.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Central Maine Power Company

[Docket No. ER01–2533–000]

Please take notice that on July 6, 2001, Central Maine Power Company (CMP) tendered for filing a service agreement for Umbrella Non-Firm Point-to-Point Transmission Service entered into with Axia Energy, LP. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated as CMP—FERC Electric Tariff, Fifth Revised, Volume No. 3, Original Service Agreement No. 131.

CMP request waiver of the Commission's notice requirements to permit service under the agreement to begin effective as of June 12, 2001.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. New England Power Pool

[Docket No. ER01–2534–000]

Take notice that on July 6, 2001, the New England Power Pool (NEPOOL) Participants Committee submitted

changes to multiple Market Rules to implement changes to the treatment of Installed Capability (ICAP) transactions in order to facilitate and standardize the trading of ICAP and firm Energy products across control area boundaries. A September 1, 2001 effective date has been requested.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Vermont Electric Power Company, Inc.

[Docket No. ER01–2535–000]

Take notice that on July 6, 2001, Vermont Electric Power Company, Inc. (VELCO) submitted three firm point-to-point and three non-firm point-to-point service agreements establishing the following as customers under the terms of VELCO's Local Open Access Transmission Tariff: Axia Energy, LP, Legacy Energy Group, LLC, and Energy USA—TPC. VELCO also filed a revised List of Customers With Active Service Agreements.

VELCO asks that these agreements become effective as of the respective dates of the agreements, and that the revised List of Customers become effective as of the date of filing. Accordingly, VELCO requests a waiver of the Commission's notice requirements. Copies of this filing were served on the customers, the Vermont Department of Public Service, and the Vermont Public Service Board.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. New York Independent System Operator, Inc.

[Docket No. ER01–2536–000]

Take notice that the New York Independent System Operator, Inc. (NYISO) on July 6, 2001 tendered for filing proposed revisions to Sections 5.9—5.16 of its Market Administration and Control Area Services Tariff. The NYISO requests an effective date of 60 days after this filing (September 4, 2001).

Copies of this filing were served upon all persons who have executed Service Agreements under the ISO Market Services Tariff and all parties included on the service list for docket number ER98–3169–000.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. CalPeak Power—Midway LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC, CalPeak Power—El Cajon LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Border LLC, and CalPeak Power—Mission LLC

[Docket Nos. ER01–2537–000, ER01–2543–000, ER01–2544–000, ER01–2545–000, ER01–2546–000, ER01–2547–000, and ER01–2548–000]

Take notice that on July 6, 2001, CalPeak Power—Midway LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC, CalPeak Power—El Cajon LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Border LLC and CalPeak Power—Mission LLC (together, the Applicants) requested the Commission to: (1) Accept for filing the Applicants' proposed FERC Electric Tariffs, and grant their requests for blanket authority to make market-based sales of energy, capacity and certain ancillary services; and (2) grant the Applicants such waivers and authorizations as have been granted by the Commission to other entities authorized to transact at market-based rates.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17806 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures In Preparing a License Application

July 11, 2001.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

a. *Type of Application:* Request to use alternative procedures to prepare a new license application.

b. *Project No.:* 2586.

c. *Date filed:* May 23, 2001.

d. *Applicant:* Alabama Electric Cooperative, Inc. (AEC).

e. *Name of Project:* Conecuh River Hydroelectric Project.

f. *Location:* On the Conecuh River near the towns of Gantt and River Falls, in Covington County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mike Noel, Environmental Engineer, Alabama Electric Cooperative, Inc., Post Office Box 550, Anadalusia, AL 36420, (334) 427–3248.

i. *FERC Contact:* Ron McKitrick, (770) 452–3778; e-mail ronald.mckitrick@ferc.fed.us.

j. *Deadline for Comments:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

k. The Conecuh River Project consists of two developments: The existing Point "A" development consists of a 2,800-foot-long earthen dam, 700-acre

reservoir, three generating units with an installed capacity of 5,200 kW, and a 0.39-mile-long transmission line. The existing Gantt Development consists of a 1,562-foot-long earthen dam, a 2,767-acre reservoir, and two generating units with an installed capacity of 3,050 Kw.

l. Alabama Electric Cooperative, Inc. (AEC) has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. AEC has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. AEC has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on AEC's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. AEC will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

AEC has had preliminary discussion with federal and state resources agencies, NGOs, county and local governments, homeowners, and members of the public regarding the Conecuh River Project. AEC intends to file 6-month progress reports during the alternative procedures process that leads to the filing of a license application by April 30, 2003.

David P. Boergers,

Secretary.

[FR Doc. 01–17809 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft License Application and Preliminary Draft Environmental Assessment and Request for Preliminary Recommendations, Prescriptions, and Terms and Conditions

July 11, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 469.

c. *Date Filed:* July 5, 2001.

d. *Applicant:* Minnesota Power Inc.

e. *Name of Project:* Winton Hydroelectric Project.

f. *Location:* On the Kawishiwi River near the City of Ely, in Lake and St. Louis Counties, MN. The project occupies federal lands within the Superior National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Paulson, Minnesota Power, Inc., 30 West Superior Street, Duluth, MN 55802, *jpaulson@mnpower.com*, 218–722–5642, ext. 3569.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us*, 202–219–2778.

j. *Status of Project:* With this notice the Commission is soliciting: (1) Preliminary recommendations, prescriptions, and terms and conditions on the Preliminary Draft Environmental Assessment (PDEA); and (2) comments on the Draft License Application.

k. *Deadline for filing preliminary comments, recommendations, prescriptions, and terms and conditions:* 60 days from the issuance date of this notice.

All comments on the Preliminary DEA and Draft License Application should be sent to the addresses noted above in Item h, with one copy filed with FERC at the following address: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must include the project name and number and bear the heading Preliminary Comments, Preliminary Recommendations, Preliminary Prescriptions, or Preliminary Terms and Conditions. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 219–1371 and may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Minnesota Power Inc. has mailed notification to members of the collaborative team and interested parties of the filed PDEA and Draft License Application. Copies of these documents are also available from the internet at *www.mnpower.com/wintonrelicensing* or by calling the applicant contact identified in Item h above.

m. With this notice, we are initiating consultation with the Minnesota STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

David P. Boergers,

Secretary.

[FR Doc. 01–17820 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Soliciting Additional Study Requests and Establishing Procedures for Relicensing

July 11, 2001.

Take notice that additional study requests are being solicited for the following hydroelectric applications.

a. *Type of Application:* Amendment of License Application.

b. *Project No.:* 2030–036.[1]

c. *Date Filed:* June 29, 2001.

d. *Applicants:* Portland General Electric Company (PGE) and the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS).

[1] On December 16 and 17, 1999, PGE and the CTWS, respectively, filed competing applications for license for the Pelton Round Butte Project. On June 29, 2001, PGE and the CTWS filed a joint, final amendment to their applications for license to become co-applicants for license, thereby eliminating any competition for a new license for the project. Based on footnote No. 19 of the Commission's Order Approving Settlement and Amending Application, issued November 21, 2000, we are merging both applications into one docket, 2030–036. Docket 11832–000, established for the CTWS license application, and docket 2030–031, established for PGE's application have been merged into docket P–2030–036.

e. *Name of Project:* Pelton Round Butte Hydroelectric Project.

f. *Location:* The project is located on the Deschutes River in Jefferson, Marion, and Wasco Counties, Oregon. The project occupies lands of the Deschutes National Forest; Mt Hood National Forest; Willamette National Forest; Crooked River National Grassland; Bureau of Land Management; and tribal lands of the Warm Springs Reservation of Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Ms. Julie Keil, Director, Hydro Licensing, Portland General Electric Company, 121 SW Salmon Street, Portland, OR 97204, (503) 464–8864; and Mr. James Manion, General Manager, Warm Springs Power Enterprises, P.O. Box 690, Warm Springs, OR 97761, (541) 553–1046.

i. *FERC Contact:* Any questions on this notice should be addressed to Nan Allen at (202) 219–2839. E-mail address: *nan.allen@ferc.fed.us.*

j. *Deadline for filing additional study requests:* August 28, 2001.[2]

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, additional study requests, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The applications for license and the joint, final amendment application are not ready for environmental analysis at this time.

l. The Round Butte development consists of: (1) The 440-foot-high, 1,382-foot-long compacted rock-filled Round Butte dam with a crest elevation of 1,955 feet above mean sea level (msl) with a spillway intake structure, a spillway tunnel and a modified flip bucket discharge; (2) Lake Billy Chinook with a gross storage capacity of 535,000 acre-feet and a normal maximum water surface area of 4,000 acres at normal maximum water elevation of 1,945 feet msl; (3) a powerhouse intake structure, with trashracks, on the left abutment about 700 feet upstream from the dam; (4) a 23-foot-diameter, 1,425-foot-long steel-lined power tunnel; (5) a reinforced concrete-encased steel bifurcation consisting of three 14-foot-diameter penstocks; (6) the Round Butte powerhouse containing three turbine/generator units with a total installed capacity of 300 megawatts (MW); (7) a tailrace channel; (8) a 100-mile-long, 230-kilovolt (kV) transmission line from the switchyard to PGE's Bethel substation; (9) a 10.5-mile-long, 12.5-kV transmission line from the switchyard to the Reregulating dam; and (10) other appurtenances.[3]

The Pelton development consists of: (1) The 204-foot-high, 636-foot-long thin-arch variable-radius reinforced concrete Pelton dam with a crest elevation 1,585 feet msl; (2) a reinforced concrete spillway on the left bank with a crest elevation of 1,558 feet msl; (3) Lake Simtustus with a gross storage capacity of 31,000 acre-feet and a normal maximum surface area of 540 acres at normal maximum water surface elevation of 1,580 feet msl; (4) an intake structure at the dam; (5) three 16-foot-diameter penstocks, 107 feet long, 116 feet long, and 108 feet long, respectively; (6) a powerhouse with three turbine/generator units with a total installed capacity of 108 MW; (7) a tailrace channel; (8) a 7.9-mile-long, 230-kV transmission line from the powerhouse to the Round Butte switchyard; and (9) other appurtenances.

The Reregulating development consists of: (1) The 88-foot-high, 1,067-foot-long concrete gravity and impervious core rockfilled Reregulating dam with a spillway crest elevation of 1,402 feet msl; (2) a reservoir with a gross storage capacity of 3,500 acre feet and a normal maximum water surface area of 190 acres at normal maximum water surface elevation of 1,435 feet msl; (3) a powerhouse at the dam containing a 18.9-MW turbine/generator unit; (4) a tailrace channel; (5) a 3.2-mile-long, 69-kV transmission line from the development to the Warm Springs substation; and (6) other appurtenances.

m. A copy of PGE's and CTWS's applications for license and their joint, final amendment are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

n. With this notice, we are initiating consultation with the *OREGON STATE HISTORIC PRESERVATION OFFICER (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural schedule:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application being accepted for filing
Notice of NEPA Scoping
Notice of application being ready for environmental analysis
Notice of the availability of the draft NEPA document
Notice of the availability of the final NEPA document
Order issuing the Commission's decision on the application

David P. Boergers,

Secretary.

[FR Doc. 01–17821 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

[2] The Commission issued a tendering notice and solicitation for additional study requests for PGE's and the CTWS's license applications on December 28, 1999. On January 6, 2000, the Commission canceled the solicitation for additional study requests in anticipation of the joint final amendment filed on June 29, 2001. We now establish the deadline for additional study requests as 60 days from the date of filing of the joint amendment.

[3] On June 18, 2001, PGE filed an application to amend the current project license to install a 70-kilowatt-turbine/generator unit on a pipeline that drains ground water from the lower grout tunnel on the west abutment of the Round Butte dam. The Commission has not yet acted on PGE's application.

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00678B; FRL–6793–6]

Announcement of Public Meeting; Opportunity to Comment on Implications of Revised Bt Crops Reassessment for Regulatory Decisions Affecting These Products, and on Potential Elements of Regulatory Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is currently engaged in a comprehensive reassessment of the time-limited registrations for all existing *Bacillus thuringiensis* (*Bt*) corn and cotton plant-pesticides (also known as plant-incorporated protectants). This

reassessment has been designed to assure that the decisions on the renewal and/or extension of these registrations are based on the most current scientific data (including recently reviewed non-target impact data), and incorporates recommendations made by the FIFRA Scientific Advisory Panel (SAP) and any public comments received by the Agency. The reassessment process has also been designed to assure maximum transparency of the decision-making process. This notice announces the opportunity to comment on the implications of the revised risk and benefit sections of the reassessment for regulatory decisions affecting these *Bt* products. This notice also announces EPA's plan to make available shortly a document discussing potential draft risk mitigation and regulatory options for public comment and a request for others to submit proposals for regulatory options for consideration. EPA's plans to hold a technical briefing for the public on these documents on July 24, 2001.

DATES: The technical briefing will be held on July 24, 2001, from approximately 9 a.m. to 4 p.m.

Comments, identified by docket control number OPP–00678B, must be received on or before August 31, 2001.

ADDRESSES: The public technical briefing will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00678B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8715; fax number: (703) 308–7026; e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to manufacturers, producers, distributors, users, and other persons interested in the registrations listed below. This action may also be of interest to other persons who have an interest in the registration and/or the use of *Bt* corn, *Bt* cotton, and *Bt* potato plant-pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and under the Federal Food, Drug, and Cosmetic Act (FFDCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of these Documents and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of these documents, and certain other related documents (including copies of EPA's fact sheets on each registered *Bt* plant-pesticide, workshop proceedings on resistance management, EPA technical papers on regulation of agricultural biotechnology including resistance management for *Bt* plant-pesticides, ecological effects data requirements for protein plant-pesticides, allergenicity and health effects for protein plant-pesticides, and SAP reports from EPA's Biopesticide Internet Home Page at http://www.epa.gov/pesticides/biopesticides and from EPA's SAP Home Page at http://www.epa.gov/scipoly/sap). To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00678B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00678B in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00678B. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the

information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background and Explanation of Actions Being Taken

A. Revised Risk and Benefit Sections and Draft Risk Mitigation and Regulatory Options Section

This notice announces the opportunity for public comment on the implications of EPA's revised risk and benefit sections of the *Bt* crops reassessment. The risk and benefit sections have been revised based on the recent SAP report on the preliminary risk and benefit sections, as well as in response to public comment surrounding the regulatory decisions affecting these products.

Although the Agency's conclusions regarding risk to the Monarch butterfly are available, the Agency's analysis of Monarch butterfly risk is undergoing a CBI substantiation process due to claims of confidentiality by the data submitters. The Agency is working on a priority basis to resolve this issue.

The Agency anticipates to release prior to the July 24th technical briefing, a document discussing potential risk mitigation and regulatory options with questions to be considered by the public. In addition, EPA will be holding a briefing for the public on these documents on July 24, 2001, from 9 a.m. to 4 p.m. at the Sheraton Hotel Crystal City, 1800 Jefferson Davis Highway, Arlington, VA.

EPA encourages other submissions of potential risk mitigation and regulatory options at the public meeting and during the comment period. To encourage public participation and dialog, EPA will place all comments and proposals in the public docket, and, if possible, will also place all comments and proposals on the Biopesticides web site at: www.epa.gov/pesticides/biopesticides. In addition, EPA is likely to develop additional documents regarding this reassessment and will also make these documents available through the public docket and the Biopesticides web site.

B. Overall Bt Crops Reassessment

EPA is currently engaged in a comprehensive reassessment of the time-limited registrations for all existing *Bt* corn and cotton plant-pesticides. This reassessment has been designed to assure that the decisions on the renewal and/or extension of these registrations are based on the most current scientific data. Current registrations are set to expire September 30, 2001. As part of EPA's reassessment, the Agency will decide whether to extend the registrations and, if so, whether to include any additional terms and conditions in such registrations on issues that could include insect resistance management, compliance mechanisms, and the protection of non-target organisms among other measures.

During this reassessment, EPA is committed to conducting an open and transparent public process that incorporates sound and current science, public involvement, and balanced decision-making. The major components of the process and time frames for action are as follows:

1. *Comprehensive risk and benefit assessments.* This review incorporated consideration of all available scientific information on *Bt* products, including results of recent scientific studies and recommendations from various individuals and organizations.

2. *Scientific peer review and public comment.* After completing the scientific risk assessment, the Agency provided the registrants of the products an opportunity to review the risk assessment and suggest technical corrections to the Agency. After technical corrections were made, EPA released the risk assessments and invited public comment and scientific peer review. That release included EPA's regulatory assessment and the underlying data, along with registrants' technical error correction comments and the corrective actions taken by the Agency. All of these materials were placed in the *Bt* crop reassessment docket.

3. *Recommendations from the SAP, National Academy of Sciences, public comments, and the Administration-wide review.* Since there are many organizations providing regulatory and scientific recommendations, EPA used the time since the SAP report was issued in March to consider and incorporate these recommendations into our revised risk and benefit assessments, as appropriate. This included recommendations and comments from the public, from the SAP on insect resistance management, and on ecological and public health aspects of our regulatory program, along with consideration of issues identified from the report released by the National Academy of Sciences titled: "Genetically Modified Pest-Protected Plants, Science and Regulation" and from the Administration-wide review.

4. *Revised risk and benefits assessments and proposed regulatory options.* EPA has considered all of the public comments and the recommendations from the SAP in revising the risk and benefit assessments, and in developing elements to be included in risk mitigation and the potential options for regulatory decisions. EPA will hold a technical briefing to describe the revised scientific reassessment and take comments on potential regulatory options.

5. *Final decisions on Bt registrations.* This will complete the scientific and public process. EPA will continue to take public comments for 45 days from publication of this Notice before announcing any registration decisions regarding these *Bt* plant-pesticides for future growing seasons on or before September 30, 2001.

List of Subjects

Environmental protection, Plant-pesticides.

Dated: July 11, 2001.

Janet L. Andersen.

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 01–17906 Filed 7–13–01 12:20 pm]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1385–DR]

Montana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–1385–DR), dated July 7, 2001, and related determinations.

EFFECTIVE DATE: July 7, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 7, 2001, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, as follows:

I have determined that the damage in certain areas of the State of Montana, resulting from severe winter storms on June 3–14, 2001, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael Bolch of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Montana to have been affected adversely by this declared major disaster:

Gallatin, Missoula and Powell Counties for Public Assistance.

All counties within the State of Montana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–17775 Filed 7–16–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1378–DR]

West Virginia; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia, (FEMA–1378–DR), dated June 3, 2001, and related determinations.

EFFECTIVE DATE: July 10, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–5920.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 3, 2001:

Doddridge and Fayette Counties for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17776 Filed 7–16–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1378–DR]

West Virginia; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1378–DR), dated June 3, 2001, and related determinations.

EFFECTIVE DATE: July 10, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the reopening of the incident period for this disaster. The incident period for this declared disaster is now May 15, 2001, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–17777 Filed 7–16–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL TRADE COMMISSION

[File No. 002 3308]

ValueVision International, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair

methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 13, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Daniel Kaufman or Keith Fentonmiller, FTC/S–4002, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–2675 or 326–2263.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 11, 2001), on the World Wide Web, at "http://www.ftc.gov/os/2001/07/index.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from respondent ValueVision International, Inc. ("ValueVision"), which operates a live, 24-hour per day television home shopping network.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves allegedly misleading representations about two weight-loss products (WeightPerfect Fat Loss Accelerators and Fight the Fat), an internal cleanser (NutriFirm Internal Cleanser), an anti-cellulite lotion (NutriFirm Perfect Body Solution), and a topical anti-hair-loss solution (NutriFirm Vitamin H Serum). It concerns unsubstantiated health, disease, and weight loss claims made on television and in Internet advertising about these products.

According to the FTC complaint, ValueVision made unsubstantiated claims that the WeightPerfect Fat Loss Accelerators: Cause substantial loss in body weight or body fat in one to twelve weeks without exercise or restricting caloric intake; prevent weight gain regardless of exercise or caloric intake; increase the body's metabolic rate and burn calories; suppress the appetite; and cause substantial loss in body weight or body fat while sleeping. The studies relied upon by ValueVision involved subjects who were on restricted calorie diets, and/or exercise programs, and the studies did not involve the specific formulation of WeightPerfect Fat Loss Accelerators.

The complaint also alleges that ValueVision made unsubstantiated claims that Fight the Fat: enables consumers to lose substantial weight without the need for a change in diet or exercise; enables consumers to lose substantial weight even if consumers eat substantial amounts of foods that are high in fat, including steaks, pizza, hamburgers, butter, fried chicken and chocolate; and prevents the human body from absorbing substantial amounts of fat consumed. The studies relied upon by ValueVision involved subjects who were on restricted calorie diets, and the studies did not involve the specific formulation of Fight the Fat.

The complaint also alleges that ValueVision made unsubstantiated claims that NutriFirm Perfect Body Solution substantially reduces or eliminates cellulite; that NutriFirm Internal Cleanser alleviates backaches, muscle aches, headaches, colds, influenza and allergies, and improves impaired memory; and that NutriFirm Vitamin H Serum prevents or reduces hair-loss, including hair-loss in women after pregnancy.

The proposed consent order contains provisions designed to prevent ValueVision from engaging in similar acts and practices in the future. Part I of the proposed order prohibits ValueVision from making any unsubstantiated claim (a claim lacking competent and reliable scientific evidence) that the WeightPerfect Fat Loss Accelerators, Fight the Fat, NutriFirm Perfect Body Solution, or any other food, drug, dietary supplement, or cosmetic: Causes substantial weight loss or fat loss; causes substantial loss in body weight or body fat without exercise or restrictions on caloric intake; prevents weight gain, regardless of exercise or caloric intake; increases metabolic rate or burns calories; reduces or eliminates cellulite; suppresses the appetite; causes substantial loss in body weight or body fat while sleeping; prevents the human body from absorbing fat; or enables consumers to lose weight even if consumers eat foods that are high in fat, including steaks, pizza, hamburgers, butter, fried chicken or chocolate.

Part II of the order prohibits unsubstantiated claims that NutriFirm Internal Cleanser, or any other food, drug, or dietary supplement, alleviates back aches, muscle aches or headaches; alleviates colds, influenza or allergies; or improves impaired memory.

Part III of the order prohibits unsubstantiated claims that NutriFirm Vitamin H Serum, or any other food, drug, dietary supplement or cosmetic, prevents or slows the rate of hair-loss, including hair-loss in women after pregnancy.

Part IV requires ValueVision to have competent and reliable scientific evidence for any claims it makes that any food, drug, dietary supplement, cellulite-treatment product or weight-loss program can or will cure, treat, or prevent disease, or will have any effect on the structure or function of the human body.

Part V of the order contains a consumer redress provision, requiring ValueVision to send a letter to all purchasers of the covered products from ValueVision since February 1, 2000, offering a completed refund for up to three bottles of the product, including shipping and handling charges. ValueVision may choose to offer consumers the choice of a refund or a credit toward the purchase of other ValueVision merchandise. The order, and appendices 1 through 4 thereto, specify the content of the consumer

letters and of the envelopes in which the refund offer and refund checks will be sent. Part V also requires ValueVision to provide the Commission with documentation regarding its efforts to provide refunds.

Part VI is a standard safe harbor for FDA-approved drug claims, and Part VII is a standard safe harbor for food or dietary supplement claims authorized under the Nutrition Labeling and Education Act of 1990.

Part VIII through XI of the order require ValueVision to keep copies of relevant advertisements and materials substantiating claims made in the advertisements, to provide copies of the order to certain of its personnel, to notify the Commission of changes in corporate structure, and to file compliance reports with the Commission. Part XII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–17842 Filed 7–16–01; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0058]

Submission for OMB Review; Comment Request Entitled Deposit Bond Annual-Sale of Government Personal Property, Standard Form 151

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Deposit Bond Annual-Sale of Government Personal Property, Standard Form 151.

DATES: Comments may be submitted on or before September 17, 2001.

FOR FURTHER INFORMATION CONTACT: Judith R. Cotter, Federal Supply Services, GSA (703) 305–7052.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0058, concerning Deposit Bond Annual-Sale of Government Personal Property, Standard Form 151. This form is used by bidders participating in sales of Government personal property whenever the sales invitation permits an annual type of deposit bond in lieu of cash or other form of deposit.

B. Annual Reporting Burden

Respondents: 1000.
Annual Responses: 1000.
Burden Hours: 250.

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0058, Deposit Bond Annual-Sale of Government Personal Property, in all correspondence.

Dated: July 3, 2001.

Gloria M. Sochon,

Acting Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–17753 Filed 7–16–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0027]

Submission for OMB Review; Comment Request Entitled GSAM, Part 542, Contract Administration, and Part 546, Quality Assurance

AGENCY: Acquisition Policy, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning GSAM, Part 542, Contract Administration, and Part 546, Quality Assurance.

DATES: Comments may be submitted on or before September 17, 2001.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC, 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0027, concerning GSAM, Part 542, Contract Administration, and Part 546, Quality Assurance. Under certain contracts, because of reliance on contractor inspection in lieu of Government inspection. GSA's Federal Supply Service (FSS) requires documentation from its contractors to effectively monitor contractor performance and ensure that it will be able to take timely action should that performance be deficient.

B. Annual Reporting Burden

Respondents: 4604.
Annual Responses: 116,869.
Burden Hours: 7830.

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0027, GSAM, Part 542, Contract Administration, and Part 456, Quality Assurance, in all correspondence.

Dated: July 3, 2001.

Gloria M. Sochon,

Acting Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–17754 Filed 7–16–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0121]

Submission for OMB Review; Comment Request Entitled Contractor's Report of Sales

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance 3090–0121, Contractor's Report of Sales.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Contractor's Report of Sales.

DATES: Comment Due Date: September 17, 2001.

ADDRESSES: Comments regarding this collection of information should be submitted to: Ed Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0121, Contractor's Report of Sales. The information is used primarily by contracting officers to estimate requirements for the subsequent year, evaluate the effectiveness of a schedule, negotiate better prices based on volume and for special reports.

B. Annual Reporting Burden

Number of Responses: 9,214.
Total Annual Responses: 184,280.
Percentage of these responses collected electronically: 100.
Average hours per response: .0083 hrs.
Total Burden Hours: 1530.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4744. Please cite OMB Control No. 3090–0121, Contractor's Report of Sales.

Dated: July 3, 2001.

Gloria M. Sochon,

Acting Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–17755 Filed 7–16–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0118]

Submission for OMB Review; Comment Request Entitled Standard Form 94, Statement of Witness

AGENCY: Federal Vehicle Policy Division, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Standard Form 94, Statement of Witness.

DATES: Comments may be submitted on or before September 17, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Moses, Federal Vehicle Policy Division, (202) 501–2507.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 2040.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0118, concerning Standard Form 94, Statement of Witness. This form is used by all Federal agencies to report accident information involving U.S. Government motor vehicles.

B. Annual Reporting Burden

Respondetns: 874.
Annual Responses: 874.
Burden Hours: 291.

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0118, Standard Form 94, Statement of Witness, in all correspondence.

Dated: July 3, 2001.

Gloria M. Sochon,

Acting Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–17756 Filed 7–16–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0057]

Submission for OMB Review; Comment Request Entitled Deposit Bond Individual—Sale of Government Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Deposit Bond Individual—Sale of Government Personal Property.

DATES: Comments may be submitted on or before September 17, 2001.

FOR FURTHER INFORMATION CONTACT: Judith R. Cotter, Federal Supply Services, GSA (703) 305–7052.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration, (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0057, concerning Deposit Bond Individual—Sale of Government

Personal Property. This form is used by bidders participating in sales of Government personal property whenever the sales invitation permits an individual type of deposit bond in lieu of cash or other form of bid deposit.

B. Annual Reporting Burden

Respondents: 500.
Annual Responses: 500.
Burden Hours: 125.
Obtaining Copies of Proposals. A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0057, Deposit Bond Individual—Sale of Government Personal Property, in all correspondence.

Dated: July 3, 2001.

Gloria M. Sochon,

Acting Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–17757 Filed 7–16–01; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding an "HIV Research Network". The RFP was published in the Commerce Business Daily on May 30, 2001.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Healthcare Research and Quality—"HIV Research Network".

Date: July 31, 2001 (Closed to the public).

Place: Agency for Healthcare Research & Quality, 2101 East Jefferson Street, Suite 601, Conference Room 2, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Fred Hellinger, Center for Cost and Delivery Studies, Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 605, Rockville, Maryland, 20852, 301–594–6817.

Dated: July 2, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–17849 Filed 7–16–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–01–53]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Survey to Assess Hepatitis B Vaccination Coverage Among U.S. Health-Care Workers—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). Since 1982, CDC has recommended hepatitis B vaccination of health-care workers who perform tasks that place them at risk for exposure to blood or other potentially infectious materials that may contain hepatitis B virus. Data from 1997 indicated that approximately 65% of U.S. health-care workers had received the hepatitis B vaccine.

Increasing national hepatitis B vaccination coverage among health-care workers to 98% has been included as a goal in the Healthy People 2010 initiative published by the National Center for Health Statistics. A cross-sectional survey has been developed to assess hepatitis B vaccination coverage levels among health-care workers in the United States. The proposed survey will provide data that can be used to assess progress towards achieving the 2010 goal. This survey will also provide data on facility-based hepatitis B vaccination policies and procedures that may affect vaccine coverage levels. The results of the project will assist the Division of Viral Hepatitis, National Center for Infectious Diseases, in the prevention and control of hepatitis B among health-care workers. There are no costs to respondents. The total response burden for the study is estimated as follows:

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Form A	300	1	30/60	150
Form B	300	25	15/60	1875

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Total				2025

Dated: July 11, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 01–17792 Filed 7–16–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Impact Study.

OMB No.: New Collection.

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to conduct the Head Start Impact Study. This study is being conducted under contract with Westat, Inc. (with the Urban Institute, American Institutes for Research, and Decision Information Resources as their subcontractors) (#282–00–0022) to collect information for determining, on a national basis, how Head Start affects the school readiness of children participating in the program as compared to children not enrolled in Head Start and to determine under which conditions Head Start works best and for which children.

The Head Start Impact Study involves ten waves of data collection. The first two waves will occur during the field test in fall 2001 and spring 2002. The field test will involve approximately 600 first time enrolled three- and four-year old preschool children across eight grantee/delegate agencies representing different community contexts. The children participating will be randomly assigned to either a Head Start group (that receives Head Start program services) or a comparison group (that does not receive Head Start services but may enroll in other available services selected by their parents or be cared for at home). Waves three through ten will involve data collection for the full-scale study. The Head Start Impact Study is a longitudinal study that will involve approximately 5,000–6,000 first time enrolled three- and four-year old preschool children across an estimated 75 nationally representative grantee/delegate agencies (in communities where there are more eligible children and families than can be served by the program). Data collection for the full-scale study will begin in fall 2002 and extend through spring 2006 with child assessments, conducted in the fall and spring of the Head Start years and in the spring of the kindergarten and first grade years and parent interviews conducted in the fall and spring of each year. Interviews/surveys with program staff/care providers, and quality of care assessments will be conducted in the spring of each year. This schedule of data collection is necessitated by the mandate in Head Start's 1998 reauthorization (Coates Human Services Amendments of 1998, PL 05–285) that DHHS conduct research to determine, on a national level, the impact of Head Start on the children it serves.

Respondents: Individuals or households, Head Start Agencies, school districts, and other child care providers.

Annual Burden Estimates: Estimated Response Burden for Respondents to the Head Start Impact Study—fall 2001, spring 2002, fall 2002, spring 2003, fall 2003, spring 2004, fall 2004, spring 2005, fall 2005, and spring 2006.

Instrument	Number of respondents	Number of responses per respondent	Avergae burden hours per response	Total burden hours
Year 1 (fall 2001):				
Parent Interviews	600	1	1.00	600
Child Assessments	600	1	0.66	400
Year 1 (spring 2002):				
Parent Interviews	540	1	1.00	540
Child Assessments	540	1	0.66	360
Teacher Ratings	108	5	0.25	27
Family Services Coordinators	50	1	0.75	38
Education Coordinators	50	1	0.75	38
Center Directors/Principals	50	1	1.00	50
Classroom Teachers/Care Providers	108	1	0.50	54
Year 2 (fall 2002):				
Parent Interviews	5,111	1	1.00	5,111
Child Assessments	5,111	1	0.66	3,407
Year 2 (spring 2003):				
Parent Interviews	4,599	1	1.00	4,599
Child Assessments	4,599	1	0.66	3,066
Teacher Ratings	920	5	0.25	230
Family Services Coordinators	500	1	0.75	375
Education Coordinators	500	1	0.75	375
Center Directors/Principals	500	1	1.00	500
Classroom Teachers/Care Providers	920	1	0.50	460
Year 3 (fall 2003):				
Parent Interviews	4,139	1	1.00	4,139
Child Assessments	2,287	1	0.66	1,525
Year 3 (spring 2004):				
Parent Interviews	3,910	1	1.00	3,910

Instrument	Number of respondents	Number of responses per respondent	Avergae burden hours per response	Total burden hours
Child Assessments	3,910	1	0.66	2,607
Teacher Ratings	782	5	0.25	196
Family Services Coordinators	450	1	0.75	338
Education Coordinators	450	1	0.75	338
Center Directors/Principals	450	1	1.00	450
Classroom Teachers/Care Providers	782	1	0.50	391
Year 4 (fall 2004):				
Parent Interviews	3,519	1	1.00	3,519
Year 4 (spring 2005):				
Parent Interviews	3,519	1	1.00	3,519
Child Assessments	3,519	1	0.66	2,346
Teacher Ratings	704	5	0.25	176
Family Services Coordinators	405	1	0.75	304
Education Coordinators	405	1	0.75	304
Center Directors/Principals	405	1	1.00	405
Classroom Teachers/Care Providers	704	1	0.50	352
Year 5 (fall 2005):				
Parent Interviews	1,667	1	1.00	1,667
Year 5 (spring 2006):				
Parent Interviews	1,667	1	1.00	1,667
Child Assessments	1,667	1	0.66	1,111
Teacher Ratings	333	5	0.25	83
Family Services Coordinators	300	1	0.75	225
Education Coordinators	300	1	0.75	225
Center Directors/Principals	300	1	1.00	300
Classroom Teachers/Care Providers	333	1	0.50	167
Estimated Total Annual Burden Hours:				10,099

Note: The 10,099 Total Annual Burden Hours is based on an average of 2001–02, 2002–03, 2003–04, 2004–05, and 2005–06 estimated burden hours.

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: July 11, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–17838 Filed 7–16–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Subcommittee for the Center for Devices and Radiological Health Science Review of the Science Board to the Food and Drug Administration; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a subcommittee of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Subcommittee for the Center for Devices and Radiological Health Science Review of the Science Board to the Food and Drug Administration.

General Function of the Subcommittee: To provide advice and recommendations to the agency's Science Board for full public discussion at a future meeting of the Board.

Date and Time: See table 1 in the *"Location"* section of this document.

Location: See table 1 below.

TABLE 1.

Meeting Address	Date and Local Time	FDA Contact Person
Twinbrook Bldg., rm. 100, 12725 Twinbrook Pkwy., Rockville, MD	Tuesday, July 24, 2001, from 8:30 a.m. to 5 p.m.	Hany W. Demian
Corporate Bldg., rm. 020B, 9200 Corporate Blvd., Rockville, MD	Wednesday, July 25, 2001, from 8:30 a.m. to 5 p.m.	Do
Piccard Bldg., rm. 100, 1350 Piccard Dr., Rockville, MD	Thursday, July 26, 2001, from 8:30 a.m. to 5 p.m.	Do

Contact: Hany W. Demian, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12522. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 25, 2001, the subcommittee will hear public comments related to the Center's science review. Information is available on the Internet at http://www.fda.gov/cdrh/strategic/.

Procedure: On July 25, 2001, from 1 p.m. to 2 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, regarding the Center's science review. Written submissions may be made to the contact person by July 20, 2001. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by July 20, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Subcommittee Deliberations: On July 24, 2001, from 8:30 a.m. to 5 p.m.; on July 25, 2001, from 8:30 a.m. to 1 p.m., and from 2 p.m. to 5 p.m.; and on July 26, 2001, from 8:30 a.m. to 3 p.m., the meeting will be closed to the public. The meeting will be closed to permit discussion and review of trade secret and/or confidential information.

FDA regrets that it was unable to publish this notice 15 days prior to the July 24, 25, and 26, 2001, Subcommittee for the Center for Devices and Radiological Health Science Review of the Science Board to the Food and Drug Administration meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Subcommittee for the Center for Devices and Radiological Health Science Review of the Science Board to the Food and Drug Administration were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Dated: July 12, 2001.

Bonnie H. Malkin,

Special Assistant to the Senior Associate Commissioner.

[FR Doc. 01–17917 Filed 7–13–01; 12:20 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4652–N–13]

Announcement of OMB Approval Number for the Requirements for the Designated Housing Projects Plan

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to the requirements for a designated housing projects plan.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3642 Extension 4128. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to requirements for a designated housing projects plan. The approval number for this information collection is 2577–0192, which expires on 6/30/2004.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: July 3; 2001.

Paula O. Blunt,

Acting General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 01–17760 Filed 7–16–01; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: Barbara Dicely, Occidental, CA, PRT–045171

The applicant requests a permit to acquire through interstate commerce a captive born snow leopard (*Uncia uncia*) from Oakhill Center for Rare and Endangered Species, Luther, OK, for the purpose of enhancement of the survival of the species through conservation education.

Applicant: Alden B. Glidden, Klamath Falls, OR, PRT–045252

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Applicant: David A. Dykstra, Naples, FL, PRT–043614

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Applicant: Benny F. Cummings, Shreveport, LA, PRT–045251

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Written data, comments, or requests for copies of these complete applications or requests for a public hearing on these applications should be

submitted to the Director (address below) and must be received within 30 days of the date of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Gilbert E. Orr, San Martin, CA, PRT–045254

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: July 10, 2001.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Office of Management Authority.

[FR Doc. 01–17846 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Special Resource Study/ Environmental Assessment for Carter G. Woodson Home, Washington, DC; Notice of Availability

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service is preparing an environmental assessment for the Special Study of the Carter G. Woodson Home.

The National Park Service has been directed, by an act of Congress, to conduct a special resource study to evaluate the potential for the future management and operation of the Carter G. Woodson Home and to determine what role or roles the Federal Government might assume here in the future.

Public Review: A 45-day public review period for comment on the draft document will begin after publication of this notice. In order to facilitate the review process, public reading copies of the document will be available at the following locations:

Watha T. Daniel Public Library, 1701 8th Street, NW., Washington, D.C. 20001–3111, 202–727–1228

National Capital Parks-East, 1900 Anacostia Drive, SE., Washington, D.C. 20020

National Park Service, National Capital Region, Office of Lands, Resources and Planning, Attention: Gail Cain, 1100 Ohio Drive, SW., Washington, D.C. 20242

A limited number of printed copies will be available on request by calling Ms. Gail Cain at 202–619–7025. The public may also obtain access to the document over the Internet at the following site: *www.nps.gov/woodson.*

A public meeting on the Special Resource Study of the Carter G. Woodson Home will be held July 25 at 6:30 at the Watha T. Daniel Public Library, 1701 8th Street, NW., Washington, DC, phone 202–727–1228. Those unable to attend may contact the National Park Service for further information and be put on our mailing list.

Written comments may be submitted to: Mr. John Parsons, Associate Regional Director, Lands, Resources and Planning, National Capital Region, National Park Service, 1100 Ohio Dr., SW., Washington, DC 20242 or e-mailed to *john_parsons@nps.gov.*

Decision Process: Notice of the availability of the Finding of No Significant Impact will be published in the **Federal Register**. The official responsible for the decision is the Regional Director, National Capital Region, National Park Service.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 01–17827 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the National Coal Heritage Area, Management Action Plan

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the National Coal Heritage Area (NCHA) Management Action Plan.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement (EIS) for the Management Action Plan for the National Coal Heritage Area. The National Coal Heritage Area Act of 1996 requires the NCHA, with guidance from the National Park Service, to prepare a management plan for the heritage area. The purpose of the Management Action Plan is to (1) set forth the integrated cultural, historical, and land resource management policies and programs in order to retain, enhance, and interpret the significant values of the lands, water, and structures of the Area; (2) describe the guidelines and standards for projects that involve preservation, restoration, maintenance, operations, interpretation, and promotion of buildings, structures, facilities, and sites; and (3) set forth the responsibilities of the State of West Virginia, units of local government, nonprofit entities, in order to further historic preservation and compatible economic revitalization.

The study area, designated as the National Coal Heritage Area, includes the following eleven counties in the southern region of West Virginia: Boone, Cabell, Fayette, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne, and Wyoming.

The National Park Service (NPS) maintains three park sites within the region: New River Gorge National River, The Bluestone National Scenic River and the Gauley National Recreation Area. Otherwise the majority of land is non-federal and the NPS assumes a management role only within their park units. Instead, conservation, interpretation and other activities are managed by partnerships among federal, state, and local governments and private nonprofit organizations. The national heritage area is managed by the State of West Virginia Division of Culture and History and Division of Tourism. The National Park Service has been authorized by Congress to provide technical and financial assistance for a limited period to the state (up to 10 years from the time of the designation in 1996).

The EIS will address a range of alternatives—they include a no-action alternative and two action alternatives. The first action alternative involves a phased action plan that follows development of transportation access through the region. The basic premise involves: (1) Building interpretive

centers where existing transportation access and visitor services are relatively unconstrained and adequate, and (2) building capacity throughout the rest of the region to prepare for development when access improves. The second action alternative emphasizes one focal point in the region—the crossroads of the NCHA—for capturing, informing and dispersing visitors. In addition, this alternative would provide for dispersed, but less extensive, financial sport for community-based initiatives to construct interpretive displays or centers.

The EIS will assess the impacts of the alternatives. A scoping meeting will be scheduled and notice will be made of the meeting through a broad public mailing and publication in the local newspapers.

FOR FURTHER INFORMATION CONTACT: Peter Samuel, Project Leader, Philadelphia Support Office, National Park Service, US Custom House, 200 Chestnut Street, Philadelphia, PA 19106, *peter_samuel@nps.gov*, 215–597–1848.

If you correspond using the internet, please include your name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for the public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: June 20, 2001.

Marie Rust,

Regional Director, Northeast Region.

[FR Doc. 01–17823 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park of American Samoa; Federal Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the National Park of American Samoa Federal Advisory Commission will be held from 10 a.m. to 5 p.m., Saturday, July 28, 2001, at the National Tropical Botanical Garden, 3530 Papalina Rd., Kalaheo on the Island of Kauai, Hawaii. The agenda for the meeting will include:

Roll Call, Welcome and introductions
Superintendents report and discussion
Other Board issues
Public comments

The meeting is open to the public and opportunity will be provided for public comments prior to closing the meeting. The meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after they have been approved by the full Advisory Commission. For copies of the minutes, contact the National Park of American Samoa Superintendent at 011 (684) 633–7082 or email *NPSA_Superintendent@nps.gov*.

Dated: June 21, 2001.

Charles Cranfield,

Superintendent, National Park of American Samoa.

[FR Doc. 01–17829 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Thursday, October 11, 2001 at 7:00 p.m.

Address: Bushkill Visitor Center, U.S. Route 209, Bushkill, PA 18324.

The agenda will include reports from Citizen Advisory Commission committees. Superintendent Bill Laitner will give a report on various park issues. The meeting will be open to the public and there will be an opportunity for public comment on these issues.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION: Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

Dated: June 29, 2001.

William G. Laitner,

Superintendent.

Congressional Listing for Delaware Water Gap NRA

Honorable Jon Corzine, United States Senate, Washington, DC 20510
Honorable Robert G. Torricelli, U.S. Senate, Washington, D.C. 20510–3001
Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, D.C. 20510
Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, D.C. 20510–3802
Honorable Pat Toomey, U.S. House of Representatives, Cannon House Office Bldg., Washington, D.C. 20515
Honorable Don Sherwood, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, D.C. 20515–3810
Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, D.C. 20515–3005
Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120
Honorable Donald DiFrancesco, State House, Trenton, NJ 08625

[FR Doc. 01–17828 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 7, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register

criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by August 1, 2001.

Carol D. Shull,

Keeper of the National Register of Historic Places.

GEORGIA

Chatham County

New Ogeechee Missionary Baptist Church, 751 Chevis Rd., Savannah, 01000854

IDAHO

Bingham County

Eastern Idaho District Fair Historic District, 97 Park Dr., Blackfoot, 01000864

Bonner County

Sandpoint Federal Building, 419 N. Second Ave., Sandpoint, 01000836

Kootenai County

Kootenai County Jail, 802 Second St., Rathdrum, 01000834

ILLINOIS

Coles County

Sixth, Seventh, and Tenth Street Stone Arch Bridges, 700 blks of Sixth, Seventh and Tenth Sts., Charleston, 01000869

Cook County

Berwyn Municipal Building, 6700 26th St., Berwyn, 01000865
Building at 5510 North Sheridan, 5510 N. Sheridan Rd., Chicago, 01000870
United States Post Office—Chicago, 433 W. Van Buren St., Chicago, 01000868

Lake County

Cook Memorial Library, 413 N. Milwaukee Ave., Libertyville, 01000867

McDonough County

King, Moses, Brick and Tile Works, 738 N. Coal St., Colchester, 01000866

IOWA

Lee County

McGreer, John, Barn and Crib, 2056 150th Ave., Donnellson, 01000859

Marion County

Vander Wilt, Dirk and Cornelia J., Cottage, 925 Broadway St., Pella, 01000856

Plymouth County

Le Mars Municipal Park and Golf Course Historic District (Conservation Movement in Iowa MPS), Jct. of Le Mars, 4th Ave., NE or IA 3, Le Mars, 01000858

Polk County

Henshie—Briggs Row House, 1106 High St., Des Moines, 01000855

Pottawattamie County

Bennett Building, 405 West Broadway, Council Bluffs, 01000861

Story County

Budd, Prof. J.L., Sarah M., and Etta Budd, House, 804 Kellogg Ave., Ames, 01000860

Winneshiek County

Burr Oak Savings Bank, 3608 236th Ave., Burr Oak, 01000857

MASSACHUSETTS

Suffolk County

Peabody, The, 195–197 Ashmont St., Boston, 01000872

Worcester County

West Sutton Historic District, Central Tpk., Douglas, Town Farm, West Sutton Rds., Sutton, 01000871

MINNESOTA

Renville County

Heins Block, 102–104 N. 9th St., Olivia, 01000842

MISSOURI

Buchanan County

South Fourth Street Commercial Historic District (St. Joseph, Missouri MPS) roughly bounded by S. 3rd, S. 5th, Charles and Messanie Sts., St. Joseph, 01000838

Jackson County

Waltower Building, 823 Walnut St., Kansas City, 01000837

Jasper County

Colonial Apartments, 406 Walnut St., Cathage, 01000835

St. Louis Independent City

Ford Motor Company Building, 4100 Forest Park Blvd., St. Louis (Independent City), 01000840

Stoddard County

Dexter Gymnasium, jct. of Park Lane and Fannetta St., Dexter, 01000839

NEVADA

Clark County

Spanish Trail, Old,—Mormon Road Historic District, from California border to Arizona across southern Nevada, through Las Vegas, Las Vegas, 01000863

NEW JERSEY

Monmouth County

Old Scots Burying Ground, Gordon's Corner Rd., Marlboro, 01000841

NEW YORK

Montgomery County

Glen Historic District, NY 30A, NY 161 and Logtown Rd., Glen, 01000844

Orange County

Belknap Stone House, NY 17K, Newburgh, 01000843
Boulders, The, 99 Shore Ave., Warwick, 01000848

Schoharie County

Best, Dr. Christopher S., House and Office, 34 Clauverwie St., Middleburgh, 01000849

Suffolk County

Bay Shore Hose Company No. 1 Firehouse, Second Ave., Bay Shore, 01000851
Bay Shore Methodist Episcopal Church, E. Main St., jct. Second Ave., Bay Shore, 01000847
Davis Town Meeting House, jct. of Middle Country Rd. and Coram-Mt. Sinai Rd., Coram, 01000850

Ulster County

Dutch Church, Old, Parsonage, 109 Pearl St., Kingston, 01000845

Westchester County

Nelson, Thomas, House, 1231 Seymour Ln., Peekskill, 01000846

TENNESSEE

Washington County

Thankful Baptist Church, 104 Water St., Johnson City, 01000852

TEXAS

Hemphill County

Battle of Lyman's Wagon Train (Battle Sites of the Red River War in the Texas Panhandle MPS), Address Restricted, Canadian, 01000875

Smith County

St. Louis Southwestern Railway (Cotton Belt) Passenger Depot (Tyler, Texas MPS), 100 blk. E. Oakwood St., at N. Spring St., Tyler, 01000873

Travis County

Perry Estate—St. Mary's Academy, 701 E. 41st St., Austin, 01000874

Wheeler County

Battle of Sweetwater Creek (Battle Sites of the Red River War in the Texas Panhandle MPS), Address Restricted, Mobeetie, 01000876

VIRGINIA

Lynchburg Independent City

Court House Hill—Downtown, Church, Clay, Court, Main Sts., roughly bounded by 5th through 13th Sts., Lynchburg (Independent City), 01000853

[FR Doc. 01–17824 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 30, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park

Service, 1849 C St., NW., NC400, Washington, DC 20240. Written comments should be submitted by August 1, 2001.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Apache County

Rattlesnake Point Pueblo, Lyman Lake State Park, St. Johns, 01000792

CALIFORNIA

Alameda County

10th Street Market, 901–921 Washington St., Oakland, 01000826

KENTUCKY

Allen County

Graves, Dr. Pellie G., House, 301 N 4th St., Scottsville, 01000798
Scottsville Downtown Commercial Historic District, Public Square and extending roughly one block N and S on Court St., and one block E and W on Main, Scottsville, 01000797
Scottsville Freight Depot, E. Main St. at 8th St., Scottsville, 01000799
Scottsville Public Spring, Jct. of First and Locust Sts., Scottsville, 01000801
Tabernacle, The, 829 Holland Rd., Scottsville, 01000800

Caldwell County

Halleck's Chapel and Halleck's School, 0.5 mi. N of jct. of KY 293 and Caldwell Chapel Rd., Princeton, 01000802

Hart County

Horse Cave Historic District, KY 218, roughly bet. US 31W and Edwards Ave., Horse Cave, 01000796

Monroe County

Baxter, Barlow, House, (Monroe County, Kentucky MPS) Celina Rd., KY 163, Hestand, 01000795
Fowler, Clark C., House, (Monroe County, Kentucky MPS) KY 214, Turkey Neck Bend Rd., Tompkinsville, 01000794
Proffitt, George W., Jr., House, (Monroe County, Kentucky MPS) 1945 County House Rd., Tompkinsville, 01000793

Union County

Camp Breckinridge Non-Commissioned Officers' Club, 1116 N. Village Rd., Morganfield, 01000804

Warren County

Mitchell, Carrie Burks, House, Address Restricted, Bowling Green, 01000803

LOUISIANA

Livingston Parish

Hungarian Settlement School, LA 43 and Presbyterian Church Rd., Albany, 01000805

Rapides Parish

Rugg Elementary School, 1319 Bush Ave., Alexandria, 01000807

Vermilion Parish

Villien, Dr. Joseph Angel, House, 200 W. Joseph St., Maurice, 01000806

Winn Parish

Brister School House, Parish Rd. 240 and Brister School Rd., Sikes, 01000808

MAINE

Androscoggin County

Union Church, 744 Royalsborough Rd., Durham, 01000810

Cumberland County

Proprietors Meeting House and Parish House, Jct. of ME 22 and Old County Rd., S. Buxton, 01000813

Hancock County

Beth Eden Chapel, Naskeag Point Rd., .05 mi. N of jct. with Naskeag Loop Rd., Brooklin, 01000818
First Baptist Church, 362 Lamoine Beach Rd., E. Lamoine, 01000817

Kennebec County

Maine Insane Hospital (Boundary Increase), Roughly bounded by Hospital St. and Hospital Ave., Augusta, 01000811
Winthrop Street Historic District, Roughly bounded by State, Bridge, North and South Chestnut, and Green Sts. Augusta, 01000815

Washington County

Governors Point, Address Restricted, Grand Lake Stream Plantation, 01000812
Grace Episcopal Church, US 1, 0.5 mi. NW of jct. with Third Rd., Robbinston, 01000816
Maine Archeological Survey site 62.46, Address Restricted, Machiasport, 01000814
Ntolonapemk, Eastern Surplus Superfund Site, Address Restricted, Meddybemps, 01000819

MARYLAND

Anne Arundel County

Oakwood, 4566 Solomons Island Rd., Harwood, 01000820

Baltimore Independent city

Grace—Hampden Methodist Episcopal Church, 1014 W. 36th St., Baltimore (Independent City), 01000809

Washington County

Nicodemus Mill Complex, 20019 Nicodemus Mill Rd., Keedyville, 01000821

MISSISSIPPI

Jackson County

Orange Avenue Historic District, (Pascagoula MPS) Roughly bounded by Live Oak and Orange Aves. and Frederic and Magnolia Sts., Pascagoula, 01000827

NEVADA

Churchill County

Douglass, Robert L., House, 10 S. Carson St., Fallon, 01000822

OREGON

Columbia County

Woodbine Cemetery, 75900 Larson Rd., Rainier, 01000829

Jackson County

Skidmore Academy Historic District, Roughly bounded by the RR R–O–W, Granite, Scenic, and Maple Sts., Ashland, 01000832

Multnomah County

Nelson, Otto W. and Ida L., House, 203 SE 15th Ave., Portlant, 01000831
Nicolai—Cake—Olson House, 1903 NE Hancock St., Portland, 01000828

Umatilla County

Meacham Hotel, Main St., Meacham, 01000830

UTAH

Salt Lake County

Central City Historic District (Boundary Increase), Roughly bounded by S. Temple, 400 South, 700 East and 1100 East, Salt Lake City, 01000823

VERMONT

Orleans County

District Number Four School, (Educational Resources of Vermont MPS) 116 N. Craftsbury Rd., Craftsbury, 01000825

Windsor County

Taftsville Historic District, Portions of US 4, Upper River Rd., Quechee Main St., all Butternut Ln., Happy Valley Rd., Sugar Hill Rd., Hartford, 01000824

A request for removal has been made for the following resource:

OREGON

Clackamas County

Moralla High School 413 S. Molalla Ave., Molalla, 96000622

Lane County

Spores, Jacob C., House N of Eugene at 90311, Coburg Rd. Eugene, 77001107

[FR Doc. 01–17825 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 23, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400,

Washington, DC 20240. Written comments should be submitted by August 1, 2001.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

San Bernardino County

Kelso Depot, Restaurant and Employees Hotel, Kelbaker Rd., jct. of Kelbaker and Cima Rds. at Union Pacific Railroad crossing, Kelso, 01000760

FLORIDA

Broward County

Croissant Park Administration Building, 1421 S. Andrews Ave., Ft. Lauderdale, 01000761

GEORGIA

Douglas County

Carnes, John Thomas, Family Log House, Clinton Nature Preservem 8270 Ephesus Church Rd., Winston, 01000762

LOUISIANA

Ouachita Parish

Milner Motors, 212 Walnut St., Monroe, 01000764

Washington Parish

Varnado, D.A. and Son Store, 936 Pearl St., Franklinton, 01000763

West Feliciana Parish

Rosedown Plantation, US 61 and LA 10, St. Francisville, 01000765

MINNESOTA

Cass County

Minnesota State Sanatorium for Consumptives, 7232 Ah-Gwah-Ching Rd. NW, Walker, 01000766

MISSOURI

Jackson County

Kirkwood Building, 1737–41 McGee St., Kansas City, 01000767

NEW JERSEY

Gloucester County

Green's, G.G., Block, 108 S. Broad St., Woodbury, 01000769

Mount Zion African Methodist Episcopal Church and Mount Zion Cemetery, 172 Garwin Rd., Woolwich, 01000768

NEW MEXICO

Bernalillo County

Monte Vista and College View Historic District, Roughly bounded by Girard and Lomas Blvds, Morningside Dr., Copper Ave., Campus and Monte Vista Blvds., Albuquerque, 01000770

Santa Fe County

El Puente de Los Hidalgos, Grant Ave. approx. 50 yds N of jct. with Paseo de Peralta, Santa Fe, 01000771

NEW YORK

Dutchess County

First Baptist Church (Poughkeepsie MRA), 260 Mill St., Poughkeepsie, 01000774

TENNESSEE

Monroe County

First Presbyterian Church, 601 Church St., Sweetwater, 01000772

WEST VIRGINIA

Doddridge County

Smith, Silas P., Opera, House, 117 Court St., West Union, 01000788

Jefferson County

Bolivar Heights—School House Ridge Skirmish Site (Harpers Ferry National Historical Park MPS), Bloomery Rd., Harpers Ferry, 01000786

Charles Town Mining, Manufacturing, and Improvement Company Building, 312 S. Mildred St., Ranson, 01000779

Grand View School (Harpers Ferry National Historical Park MPS), Putnam St., Harpers Ferry, 01000782

Hydroelectric Power Plant (Harpers Ferry National Historical Park MPS), Potomac Street extended, along Potomac R, Harpers Ferry, 01000787

Nash, Bradley, Farm (Harpers Ferry National Historical Park MPS), Old Furnace Rd., Harpers Ferry, 01000784

Niswarner Tract (Harpers Ferry National Historical Park MPS), Chestnust Hill Rd., Harpers Ferry, 01000785

Shipley School (Harpers Ferry National Historical Park MPS), 847 Washington St., Harpers Ferry, 01000783

Storer College (Harpers Ferry National Historical Park MPS), Fillmore St., Harpers Ferry, 01000781

Tattersal Property (Harpers Ferry National Historical Park MPS), Union St., Bolivar, 01000780

Mercer County

McNutt, Dr. Robert B., House, 1522 N. Walker St., Princeton, 01000777

Nicholas County

Beaver Mill, West Webster Rd., Craigsville, 01000776

Carden, James B., House, 1082 Country Rd., Summersville, 01000773

Downtown Richwood Historic District, Roughly including portions of Main St. Oakford Ave. and Commercial St., Richwood, 01000778

Summers County

Cooper's Mill, Off Ellison Ridge Rd.—Cty Rd. 27, Jumping Branch, 01000775

WYOMING

Natrona County

Casper Army Air Base, 8500 Fuller St., Casper, 01000789

Ohio Oil Company Building, 159 N. Wolcott St., Casper, 01000791

Teton County

Queen's Laundry Bath House, Sentinel Meadows, Lower Geyser Basin, Yellowstone National Park, 01000790

A request for removal has been made for the following resource:

COLORADO

La Plata County

La Plata County Fairgrounds, 2500 Main St., Durango, 91001031

[FR Doc. 01–17826 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collections; Comment Request

ACTION: Notice of information collection under review; revision of a currently approved collection; Victims of Crime Act, Victim Compensation Grant Program, State Performance Report.

The Department of Justice, Office of Justice Programs has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 21, 2001, Volume 66, page 15899, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until August 16, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Victims of Crime Act, Victim Compensation Grant Program, State Performance Report.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The OJP Administration form number is 7390/6. Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State government. *Other:* None.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 53 respondents to complete an annual report in 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 106 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1200, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530, or via facsimile at (202) 514–1590.

Dated: June 29, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–17772 Filed 7–16–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Revision of a Currently Approved Collection; Comment Request

ACTION: Notice of information collection under review; revision of a currently approved collection; Firearms Addendum to the Arrestee Drug Abuse Monitoring (ADAM) Program Instrument.

The Department of Justice, Office of Justice Programs, National Institute of Justice, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 9, 2001, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until August 16, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer,, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Firearms Addendum to the Arrestee Drug Abuse Monitoring (ADAM) Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number for the addendum is AD–1; there is no form number for the main ADAM questionnaire.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Misdemeanor and felony arrestees in city and county jails. The ADAM program monitors the extent and types of drug use among arrestees. Currently the program operates in 38 counties. Data are collected in each county every three months from a new, county-based representative sample of arrestees. Participation is voluntary and confidential and data collected include a personal interview and urine specimen.

In the next 6 months, OJP proposes to introduce a supplemental instrument to the currently approved ADAM instrument (OMB No. 1121–0137). This supplemental instrument is termed the Firearms Addendum and is intended to collect information from ADAM program arrestees about their participation in legal and illegal firearms markets. The respondents to the firearms questionnaire will be arrestees selected for the ADAM study, who are asked to participate in a supplemental interview immediately following the ADAM interview.

The firearms instrument initially will be implemented in 2 ADAM sites for testing, and subsequently finalized and made available to all ADAM sites for their use.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The total number of respondents is estimated to be a maximum of 70,000 (revised from current inventory of 100,000 respondents). Each response for the core instrument averages 30 minutes. The Firearms Addendum questionnaire will be administered to a maximum of 52,550 respondents at full implementation, taking 10 minutes a response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 43,750 hours (for core questionnaire and Firearms Addendum together).

If additional information is required contact: Ms. Brenda E. Dyer, Deputy

Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530, or via facsimile at (202) 514–1590.

Dated: July 11, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–17773 Filed 7–16–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; extension of a currently approved information collection; National Evaluation of the Safe Schools/Healthy Students Initiative.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 14, 2001, Volume 65, page 78191, allowing for a 60-day comment period from the public and affected agencies.

The purpose of this notice is to allow an additional 30 days for public comment until August 16, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile at (202) 395–7285. Comments may also be submitted to the Department of Justice, Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Office, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(3) Enhance the quality, utility, and clarity of the information to be collected.

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Application for new collection effort.

(2) *The title of the form/collection:* The National Evaluation of the Safe Schools/Healthy Students Initiative has several information collection forms, which are: District Personnel Survey, School Personnel Surveys, Classroom Teacher Survey, Teacher Rating Scale, Coalition/Partnership Survey, Key Partners Survey, Student Survey, Project Director Survey, Archival Data Collection, Economic Data Collection, Focus Group Discussion Questions for Parents and Community, Focus Group Discussion Questions for Students.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None; Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* School personnel, which includes superintendents, principals, counselors, and violence prevention and drug coordinators; 1st, 3rd, 5th, 7th, 9th and 11th grade teachers; Coalition Members; Students in grades 7, 9, and 11 (15 sites only); Project directors; Parents (15 sites only); Community members (15 sites only); and Chief Financial Officers (15 sites only). 42 U.S.C. 5633 authorizes the Office of Juvenile Justice and Delinquency Prevention to collect information on all aspects of the Safe Schools/Healthy Students Initiative programs. The purposes of the surveys, coalition discussion guides, focus groups, etc., are to obtain information from the respondents that will assist in evaluating the effectiveness of the Safe Schools/Healthy Students Initiative and contribute to the development of policies and programs that reduce violence, crime, substance use, and other risk-related behaviors, and that support healthy childhood development. The survey instruments focus on the nature and scope of alcohol, tobacco, and other drug use among youth, and perceptions about school safety; crime and violence; educational climate; school policies and programs; and mental health development.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:*

ANNUAL BURDEN ESTIMATES [1]

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
District Personnel Survey	308	1	1.0	308
School Personnel Surveys:				
Principal	1,335	1	1.0	1335
Mental Health Coord	1,335	1	.50	667.5
Substance Use Prevention Coord	1,335	1	.50	667.5
Violence Prevention Coord	1,335	1	.50	667.5
School-level Total	5,340		2.5	3,337.5
Classroom Teacher Survey	4,252	1	.50	2,126
Teacher Rating Scale	1,397	5	.42	2,933.7

ANNUAL BURDEN ESTIMATES [1]—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Student Survey	10,184	1	.75	7,638
Archival Data Collection (None)	378	1	[2]	
Coalition Survey	1,540	1	.50	770
Key Partners Survey	231	1	.50	115.5
Project Director Survey	77	1	.75	57.75
Economic Data Collection	15	1	4.0	60
Focus Groups Questions: Parents and Community Members	150	1	2.0	300
Focus Groups Questions: Students	150	1	1.0	150

[1] All estimates are based on 77 sites except for student surveys, teacher rating scales, economic and focus groups which are drawn from the 15 Sentinel sites only.

[2] Data to be collected for personnel responsible for providing publicly available agency-level data; thus SS/HS data collection burden is not expected to exceed general practice.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,796.45 hours.

If additional information is required, contact Mrs. Brenda E. Dyer, Deputy Clearance Officer, Department of Justice, Information Management and Security Staff, Justice Management Division, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: July 11, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–17774 Filed 7–16–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Solicitation for Grant Applications (SGA) 01–05; HIV/AIDS Global Workplace Prevention and Education Program; Correction and Due Date Extension

AGENCY: Bureau of International Labor Affairs, Labor.

ACTION: Notice of corrections and extension of due date for receipt of proposal.

SUMMARY: In the **Federal Register**, Vol. 66, No. 124, page 34244, Wednesday, June 27, 2001 the competition was announced and the SGA printed in its entirety. Section V. B. (1)(c), instructs applicants to create a model workplan and budget based on Ethiopia. Applicants may now select, at their discretion, any country to develop the model workplan and budget required for the Technical Sample. Due to this correction, the due date for submission of applications is extended. All applications must now be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 pm EDT, August 3, 2001.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, Department of Labor, Telephone (202) 219–9355, e-mail: harvey-lisa@dol.gov.

Signed at Washington, DC, this 9th day of July, 2001.

Daniel P. Murphy,

Director, Procurement Services Center.

[FR Doc. 01–17783 Filed 7–16–01; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Preservation

This notice is published in accordance with the provisions of Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Preservation for a two-year period. In accordance with the Office of Management and Budget (OMB) Circular A–135, OMB has approved the inclusion of the Advisory Committee on Preservation in NARA's ceiling of discretionary advisory committees.

The Archivist of the United States has determined that the renewal of the Advisory Committee on Preservation is in the public interest due to the expertise and valuable advice the committee members provide on technical preservation issues affecting Federal records of all types of media. NARA uses the Committee's recommendations in NARA's implementation of strategies for preserving the permanently valuable records of the Federal Government.

Dated: July 6, 2001.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 01–17790 Filed 7–16–01; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 16, 2001. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures, developed by the

Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest."

The applications received are as follows: 1. *Applicant,* Permit Application No. 2002–001, Jerry, Mullins, U.S. Geological Survey, MS–521, Reston, VA 20192.

Activity for Which Permit is Requested

Enter Antarctic Specially Protected Area. The McMurdo Dry Valleys are a primary site for calibration and validation of NASA's ICESat satellite data, set for launch in the coming year. The applicant plans to use a scanning laser altimeter from a Twin Otter to measure very precisely the surface elevation and topography of the valleys within the 70-meter footprint of the laser. Due to the relatively confined region of the Dry Valleys, it is necessary to survey all of the ice-free portions for the satellite calibration data set, including the Barwick Valley (ASPA #123). For optimal data, the survey will require that flights be conducted over the region at a minimum altitude of 1500 feet above ground level. All ground support activities will be provide this data set, without new aerial photography and intensive ground-based activities in the Valley.

Location

ASPA 123—Barwick Valley, Victoria Land, and other McMurdo Dry Valleys

Dates

December 1, 2001 to February 20, 2003

2. *Applicant, Permit Application No. 2002–002, Robert L. Pitman, Southwest Fisheries Science Center, NOAA/NMFS, 8604 La Jolla Shores Drive, La Jolla, CA 92037.*

Activity for Which Permit is Requested

Take and Import into the U.S. The applicant proposes to collect biopsy samples (tiny bits of skin) from up to 50 Killer whales (*Orcinus orca*) in the Ross Sea to determine the status of the resident stock. Killer whales were described as a separate species years ago but molecular genetic analysis is needed to confirm or deny the allegation. Samples will be returned to the Southwest Fisheries Science Center DNA tissue bank.

Location

Ross Sea, Antarctica

Dates

December 20, 2001 to March 31, 2003

3. *Applicant, Permit Application No. 2002–003, Randall Davis, Department of Marine Biology, Texas A&M University, 5007 Avenue U, Galveston, TX 77551*

Activity for Which Permit is Requested

Take and Import into the U.S. The applicant proposes to enter White Island (ASPA #137) to conduct a census and assess Weddell seal abundance, distribution and habitat. Access to the site for one day will be by helicopter or surface vehicle.

Location

Northwest White Island, McMurdo Sound—ASPA #137

Dates

October 1, 2001 to December 20, 2001

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 01–17854 Filed 7–10–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a remote field support and emergency provisions for the Expedition Vessel, Kapitan Khlebnikov for the 2001–2002 season and four following austral summers. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before August 16, 2001. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko or Nadene Kennedy at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of up to three expeditious per year to Antarctica. During each trip, passengers are taken ashore at selected sites by Zodiac (rubber raft) or helicopter for approximately two to four hours at a time. On each helicopter landing, emergency gear would be taken ashore in case weather deteriorates and passengers are required to camp on shore. Anything taken ashore will be removed from Antarctica and disposed of in Hobart, Australia, Lyttleton, New Zealand, or a substitute port of disembarkation. No hazardous domestic products or wastes (aerosol cans, paints, solvents, etc.) will be brought ashore. Cooking stoves/fuel will be used only in an emergency were passengers are forced to spend night on shore. Conditions of the permit would include requirements to report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

Application for the permit is made by: Lars Wikander, Quark Expeditions, Inc., 980 Post Road, Darien, CT 06820.

Location: Ross Sea region.

Dates: November 25, 2001 to March 31, 2006.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 01–17855 Filed 7–16–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, July 24, 2001.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20494.

STATUS: The first two items are open to the public and the last two items are closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

7377—Marine Accident Report—Fire On Board the Netherlands Registered Passenger Ship Nieuw Amsterdam at Glacier Bay, Alaska on May 23, 2000,

the Related Safety Recommnedations (DCA–00–MM–027)

7159A—Railroad Accident Report—Derailment of Amtrak Train 21 on the Union Pacific Railroad at Arlington, Texas on December 20, 1998 (DCA–99–MR–001).

7336A—Opinion & Order: Administrator v. Shrader, Docket SE–15472; Disposition of Administrator's Appeal.

7367—Opinion & Order: Administrator v. Ramaprakash, Docket SE–15534; Disposition of Respondent's Appeal.

News Media Contact): Telephone: (202) 314–6100. Individuals requesting specific accommodation should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, July 20, 2001.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: July 13, 2001.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 01–17956 Filed 7–13–01; 2:14 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Sequoyah Nuclear Plant, Units 1 and 2, Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–77 and DPR–79, issued to the Tennessee Valley Authority (TVA or the licensee), for operation of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, located in Soddy-Daisy, Tennessee.

The proposed amendments would change Technical Specification (TS) 3.7.5.c to allow an increase in the average essential raw cooling water (ERCW) supply header temperature from 84.5 °F to 87 °F until September 30, 2002.

The circumstance that makes this amendment necessary, strictly as a contingency measure, is significant increases in the average water temperature of the Tennessee River (Chickamauga Reservoir), which serves as the ultimate heat sink for the SQN, Units 1 and 2. This temperature, as measured at SQN's ERCW header, has increased as the result of drought-induced low flow conditions and is expected to closely approach the current TS limit of 84.5 °F, which applies when the Chickamauga Reservoir water level is above elevation 680 feet mean sea level. This change to the TS would be temporary, pending additional heat load analyses by TVA to justify the higher temperature limit on a permanent basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The Proposed Amendment Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The probability of occurrence or the consequences of an accident are not increased as presently analyzed in the safety analysis since the objective of the event mitigation is not changed. No changes in event classification as discussed in Final Safety Analysis Report Chapter 15 will occur due to the increased river water temperature (with respect to both containment integrity and safety-system heat removal). Therefore, the probability of an accident or malfunction of equipment presently evaluated in the safety analyses will not be increased. The containment design pressure is not challenged by allowing an increase in the river water temperature above that allowed by the TS, thereby ensuring that the potential for increasing offsite dose limits above those presently analyzed at the containment design pressure of 12.0 pounds per square inch is not a concern. In addition, SQN's essential raw cooling water (ERCW) and component cooling system (CCS) piping, pipe supports remain qualified to the design basis and code allowables. Therefore, the proposed variance to TS 3.7.5.c will not significantly increase the probability or consequences of an accident previously evaluated.

B. The Proposed Amendment Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The possibility of a new or different accident situation occurring as a result of this condition is not created. The ERCW system is not an initiator of any accident and only serves as a heat sink for normal and upset plant conditions. By allowing this change in operating temperatures, only the assumptions in the containment pressure analysis are changed. The variance in the ERCW temperature results in minimal increase in peak containment accident pressure. As for the net positive suction head requirements relative to the essential core cooling system and containment spray system, it has been demonstrated that this operational variance will not challenge the present design requirements. In addition, increased river temperatures will not significantly affect the design basis analysis of ERCW or CCS piping, pipe supports, and components. Therefore, the potential for creating a new or unanalyzed condition is not created.

C. The Proposed Amendment Does Not Involve a Significant Reduction in a Margin of Safety

The margin of safety as reported in the basis for the TS is also not reduced. The design pressure for the containment and all supporting equipment and components for worse-case accident condition is 12.0 pounds per square inch gauge (psig). This variance in river water temperature will not challenge the design condition of containment. Further, 12.0 psig design limit is not the failure point of containment, which would lead to the loss of containment integrity. In addition, analysis of the margins associated with ERCW and CCS piping, pipe supports, and components indicate these remain enveloped by the proposed increase in river temperature. Therefore, a significant reduction in the margin to safety is not created by this variance.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should

the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 16, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to pdr@nrc.gov. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Council, Tennessee Valley Authority, ET 11H, 400 West Summit Hill Drive, Knoxville, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 10, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 11th day of July 2001.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–17834 Filed 7–16–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of July 16, 23, 30, August 6, 13, 20, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 16, 2001

Thursday, July 19, 2001

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on Results of Agency Action Review Meeting—Reactors (Public Meeting) (Contact: Ron Frahm, 301–425–2986)

1:30 p.m.—Briefing on Readiness for New Plant Applications and Construction (Public Meeting) (Contact: Nanette Gilles, 301–415–1180)

Friday, July 20, 2001

9:30 a.m.—Briefing on Results of Reactor Oversight Process Initial Implementation (Public Meeting) (Contact: Tim Frye, 301–415–1287)

1:00 p.m.—Briefing on Risk-Informing Special Treatment Requirements (Public Meeting) (Contact: John Nakoski, 301–415–1278)

Week of July 23, 2001—Tentative

There are no meetings scheduled for the Week of July 23, 2001.

Week of July 30, 2001—Tentative

Tuesday, July 31, 2001

1:25 a.m.—Affirmation Session (Public Meeting) (If needed)

Week of August 6, 2001—Tentative

There are no meetings scheduled for the Week of August 6, 2001.

Week of August 13, 2001—Tentative

Tuesday, August 14, 2001

9:30 a.m.—Briefing on NRC International Activities (Public Meeting) (Contact: Elizabeth Doroshuk, 301–415–2775)

Wednesday, August 15, 2001

9:30 a.m.—Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

1:25 p.m.—Affirmation Session (Public Meeting) (If needed)

1:30 p.m.—Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–1277)

Week of August 20, 2001—Tentative

There are no meetings scheduled for the Week of August 20, 2001.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet: *http://www.nrc.gov/SECY/smi/schedule.htm*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: July 12, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–17943 Filed 7–13–01; 12:58 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

[Extension: Rule 17f–1(g), SEC File No. 270–30, OMB Control No. 3235–0290]

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17f–1(g) Requirements for reporting and inquiry with respect to missing, lost, counterfeit, or stolen securities.

Rule 17f–1(g), under the Securities Exchange Act of 1934 ("Act"), requires that all reporting institutions (*i.e.*, every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank insured by the FDIC) maintain and preserve a number of documents related to their participation in the Lost and Stolen Securities Program ("Program") under Rule 17f–1. The following documents must be kept in an easily accessible place for three years, according to paragraph (g): (1) Copies of all reports of theft or loss (Form X–17F–1A) filed with the Commission's designee: (2) all agreements between reporting institutions regarding registration in the Program or other aspects of Rule 17f–1; and (3) all confirmations or other information received from the Commission or its designee as a result of inquiry.

Reporting institutions utilize these records and reports (a to report missing, lost, stolen or counterfeit securities to the database, (b) to confirm inquiry of the database, and (c) to demonstrate compliance with Rule 17f–1. The Commission and the reporting institutions' examining authorities utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f–1. If such records were not retained by reporting institutions, compliance with Rule 17f–1 could not be monitored effectively.

The Commission estimates that there are 25,824 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (33 minutes or .55 hours). The total estimated annual burden is 14,203.2 hours (25,824 × .55 hours = 14,203.2). Assuming an average hourly cost for clerical work of $18.75, the average total yearly record retention cost for each respondent would be $10.30. Based on these estimates, the total annual cost for the estimated 25,824 reporting institutions would be approximately $265,987.

Rule 17f–1(g) does not require periodic collection, but does require retention of records generated as a result

of compliance with Rule 17f–1. Under Section 17(b) and (f) of the Act, the information required by Rule 17f–1(g) is available to the Commission and Federal bank regulators for examinations or collection purposes. Rule 0–4 of the Act deems such information to be confidential. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General Comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 10, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17765 Filed 7–16–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc.; (Amwest Insurance Group, Inc., Common Stock, $.01 Par Value, and Preferred Stock Purchase Rights) File No. 1–9580

July 11, 2001.

Amwest Insurance Group, Inc. Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value, and Preferred Stock Purchase Rights ("Securities"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

The Issuer states in its application that it has met the requirements of the PCX by complying with all applicable laws in effect in the state of Delaware, in which it was incorporated, and with the PCX's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

In making the decision to withdraw the Securities from listing on the Exchange, the Issuer considered (i) the Issuer's non-compliance with the PCX maintenance standards concerning the price per share of the Issuer's common stock; and (ii) the Issuer's net tangible assets, which are substantially below the minimum qualification of the Exchange.

In addition, the Issuer states that the Insurance Director of the State of Nebraska has placed the Issuer's principal asset, Amwest Surety Insurance Company, in liquidation. The Issuer has no independent operations and no source of funds other than those provided by its subsidiary. The Issuer has not filed with the Commission all of its required periodic reports, including its Form 10–K for the year ending December 31, 2000, due to its inability to complete its audited financial statements. The Issuer does not expect to obtain audited financial statements in the future.

Any interested person may, on or before August 1, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz

Secretary.

[FR Doc. 01–17794 Filed 7–16–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC; (Amwest Insurance Group, Inc., Common Stock, $.01 Par Value, and Preferred Stock Purchase Rights) File No. 1–9580

July 11, 2001.

Amwest Insurance Group, Inc., a Delaware Corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value, and Preferred Stock Purchase Rights ("Securities"), from listing and registration on the American Stock Exchange LLC ("Amex").

The Issuer has stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it was incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

In making the decision to withdraw the Securities from listing on the Exchange, the Issuer considered (i) the Issurer's non-compliance with the Amex maintenance standards concerning the Issuer's net tangible assets; and (ii) the Issuer has sustained substantial losses in relation to its overall operations and its existing financial resources.

In addition, the Issuer states that the Insurance Director of the State of Nebraska placed the Issuer's principal asset, Amwest Surety Insurance Company, in liquidation. The Issuer has no independent operations and no source of funds other than those provided by its subsidiary. The Issuer has not filed with the Commission all of its required periodic reports, including its Form 10–K for the year ending December 31, 2000, due to its inability to complete its audited financial statements. The Issuers does not expect to obtain audited financial statements in the future.

Any interested person may, on or before August 1, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the commission for the protection investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 17 CFR 200.30–3(a)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17795 Filed 7–16–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44535; File No. SR–CHX–2001–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated to Extend Pilot Rule Interpretation Relating to Trading of Nasdaq/NM Securities in Subpenny Increments

July 10, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 6, 2001, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through November 5, 2001 the pilot rule interpretation relating to the trading of Nasdaq/NM securities in subpenny increments. The pilot is due to expire on July 9, 2001. The CHX does not propose to make any substantive or typographical changes to the pilot; the only change is an extension of the pilot's expiration date through November 5, 2001. The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a proposed rule change (CHX Article XXX, Rule 2, Interpretation and Policy .06 "Trading in Nasdaq/NM Securities in Subpenny Increments")[6] that requires a CHX specialist (including a market maker who holds customer limits orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer ("NBBO") by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot, which was approved in conjunction with exemptive relief granted by the Commission to allow for trading in Nasdaq/NM securities in subpenny increments, is due to expire on July 9, 2001.

The Exchange is not proposing any substantive or typographical changes in the pilot; rather, the Exchange merely proposes that the pilot remain in effect through November 5, 2001.[7]

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[8] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date. The Commission finds good cause

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[3] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has asked the Commission to waive the 5-day pre-filing requirement and the 30-day operative delay to allow the proposal to be effective upon filing with the Commission. The Commission has agreed to do both. *See* Rule 19b–4(f)(6). 17 CFR 250.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 11, 2001) (SR–CHX–2001–07).

[7] In February, 2001, the Commission extended the effective date of the Exchange's decimal-related pilot rules through July 9, 2001, the date by which national securities exchanges and the National Association of Securities Dealers, Inc. were required to submit their rule filings to establish minimum price variations for the quoting of equity securities or options. *See* Securities Exchange Act Release Nos. 43974 (February 16, 2001), 66 FR 11621 (February 26, 2001) (SR–CHX–2001–03) and 42914 (June 8, 2000), 65 FR 38010 (June 19, 2001). These July 9th rule filings were scheduled to follow the submission of studies by each market that describe the impact of decimalization of trading behavior, capacity and liquidity and that likely would offer insights into any other rule changes that would be necessary to maintain fair and orderly markets. In a recent order, the Commission extended the dates by which both these studies and related rule filings must be submitted. *See* Securities Exchange Act Review Release No. 44336 (May 22, 2001), 66 FR 29368 (May 30, 2001). The Exchange is now requesting that its decimalization-related pilot rule interpretation relating to trading of Nasdaq/NM securities in subpenny increments be extended through November 5, 2001, the new date for filing of exchange proposed rule changes.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through November 5, 2001, the deadline for which self-regulatory organizations must file proposed rule changes to set the minimum price variation for quoting in a decimals environment. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–2001–15 and should be submitted by August 7, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17766 Filed 7–16–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3350]

State of Pennsylvania, Amendment #1

In accordance with notices received from the Federal Emergency Management Agency, dated July 6, 2001, the above-numbered Declaration is hereby amended to include Berks County as a disaster area caused by Tropical Storm Allison occurring on June 15, 2001. In addition, the Declaration is also amended to establish the incident period as occurring June 15 through June 23, 2001.

In addition, applications for economic injury loans from small businesses located in Lancaster, Lebanon and Schuylkill Counties in the State of Pennsylvania may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 20, 2001 and for economic injury the deadline is March 20, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 11, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–17788 Filed 7–16–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3345]

State of West Virginia; Amendment #4

In accordance with a notice received from the Federal Emergency Management Agency, dated June 11, 2001, the above numbered declaration is hereby amended to establish the incident period as beginning on May 15, 2001 and continuing through June 11, 2001.

In accordance with notices received from the Federal Emergency Management Agency, dated July 10, 2001, the Declaration is also amended to reestablish the incident period for this disaster as beginning on May 15, 2001 and continuing. This notice also includes Doddridge and Fayette Counties in the State of West Virginia as disaster areas caused by flooding, severe storms, and landslides beginning on May 15, 2001 and continuing.

In addition, applications for economic injury loans from small businesses located in Harrison, Lewis, Tyler and Wetzel Counties in the State of West Virginia may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 2, 2001, and for loans for economic injury is March 4, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 10, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–17787 Filed 7–16–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3339]

State of Wisconsin; Amendment #6

In accordance with a notice received from the Federal Emergency Management Agency, dated July 6, 2001, the above-numbered Declaration is hereby amended to include Barron County as a disaster area caused by flooding, severe storms and tornadoes occurring between April 10, 2001 and continuing.

Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 10, 2001 and for economic injury the deadline is February 11, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 11, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–17789 Filed 7–16–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

Notice of Opportunity for Public Comment on Surplus Property Release at Gastonia Municipal Airport, Gastonia, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the City of Gastonia to waive the requirement that a 19.9 acre parcel of surplus property, located at the

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

Gastonia Municipal Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before August 16, 2001.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Larry W. Wood, Assistant City Manager of the City of Gastonia at the following address: Post Office Box 1748, Gastonia, NC 28053–1748.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the City of Gastonia to release 19.9 acres of surplus property at the Gastonia Municipal Airport. The property will be purchased by Gaston Day School, Inc. The school plans to use this property to expand its athletic venues. The net proceeds from the sale of this property will be used for airport purposes. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Gastonia Municipal Airport.

Issued in Atlanta, Georgia on July 9, 2001.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 01–17863 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–1999–6583]

Request for Comments and Notice of Public Workshop; NCAP Consumer Braking Initiative

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments; notice of public workshop.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is holding a public workshop and soliciting comments on a draft test protocol to expand the New Car Assessment Program (NCAP) to provide brake performance information on new light vehicles to consumers. Since 1979, NHTSA has been providing consumers with useful information on the frontal crash performance of motor vehicles through the NCAP. The NCAP program has been expanded over the past few years to include side impact crash performance and rollover resistance ratings. Focus groups have indicated that motor vehicle brake performance is a prime area for consumer information. To date, brake testing variability has been NHTSA's primary concern in the development of an effective brake system rating. Based on new findings from vehicle research, the agency believes that testing variability can be sufficiently minimized to make a NCAP braking program viable when vehicles equipped with 4-wheel antilock braking systems are tested.

DATES: *Written comments:* Written comments may be submitted to this agency and must be received on or before October 15, 2001.

Public workshop: The public workshop will be held on September 26, 2001, from 9 a.m. to 4 p.m. Those wishing to participate should contact Mr. Jeff Woods by September 24, 2001.

ADDRESSES: *Written comments:* Comments must refer to the Docket and Notice numbers cited at the beginning of this Notice and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. Alternatively, you may submit your comments electronically by logging onto Docket Management System web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

Public workshop: The public workshop will be held at the Nassif Building, 400 Seventh St., SW., Washington, DC 20590; room number to be provided to participants prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Woods, Office of Safety Performance Standards, NPS–22, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–6206; Fax: (202) 366–4329.

SUPPLEMENTARY INFORMATION:

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I. Background

Since 1979, NHTSA has been providing consumers with valuable safety information on frontal crash performance of motor vehicles through the New Car Assessment Program (NCAP). NCAP is perhaps one of the most recognized motor vehicle consumer information programs in the U.S. and has been expanded to provide data on motor vehicle side impact performance. Other countries have joined in NHTSA's effort to give the public meaningful comparative information about the safety of different vehicles. At this time, Australia, Japan, and Europe have NCAP programs in place.

However, no crash avoidance performance information has ever been made available from the U.S. NCAP vehicles. As a result, NHTSA has explored the possibility of providing crash avoidance consumer information through non-destructive testing of NCAP vehicles before they are crash tested. The agency believes that providing brake performance information to consumers would give consumers important and meaningful safety information and help motivate vehicle manufacturers to continue to improve the brake performance of light vehicles. Good braking performance can be a key factor in crash avoidance.

Japan initiated its NCAP braking program in 1995 and has been providing braking performance information to its consumers since that time. The Japanese NCAP braking program provides stopping distances on dry and wet road surfaces from a vehicle speed of 100 km/h (62 mph) and indicates whether the vehicle remained in the test lane throughout the stop. This information is provided to the public together with the NCAP crash testing information.

In August 1996, NHTSA released the results of a 4000-person national survey conducted in 1995 under the National Performance Review. Among the key findings was that 75.7% of drivers ranked safety as very important in affecting their purchase of a new vehicle.

In the 1980's, NHTSA considered publishing comparative vehicle stopping distance data provided by manufacturers under the subsequently-rescinded consumer regulation on that subject. However, one of the drawbacks with those data was that many manufacturers, including Chrysler, Ford, and General Motors, were simply providing the stopping distance required for all of their models under FMVSS No. 105, rather than the actual stopping distance. This factor contributed to the agency's decision to rescind that consumer information regulation in 1985.

NHTSA's chief technical concerns with developing a brake system performance rating have focused primarily on issues of variability. The three primary sources of variability are: vehicle-to-vehicle variability, test driver variability, and test conditions (test surface, etc.). In 1997, the agency initiated a vehicle research program to evaluate how best to minimize test driver and test surface variability expected from NCAP brake testing. We did not address the issue of vehicle-to-vehicle variability since it is a function of the vehicle manufacturing process and therefore would not be minimized by the test methodology. The two reports from the vehicle research conducted in 1998 and 1999 are summarized below and can be accessed through the Docket Management System web site at *http://dms.dot.gov* in Docket Nos. NHTSA–1999–6583–1 and NHTSA–1999–6583–2.

II. Vehicle Research

The agency has conducted light vehicle brake testing in a variety of research programs, including the Light Vehicle ABS Research Program that is evaluating the effectiveness of ABS in reducing crashes. We believe that of the brake system performance measures evaluated during testing, the easiest for consumers to understand and use is probably stopping distance. Other measures of brake performance evaluated during research, such as brake efficiency, ABS efficiency and brake pedal gain, showed higher levels of variability, and are less intuitive concepts to communicate to consumers.

Based on the agency's findings from prior light vehicle brake research, we have tentatively concluded that (a) stopping distance is the best measure of brake performance for consumer use; (b) variability exists between vehicles of the same model; (c) ABS generally improves stopping distance performance; (d) and low coefficient of friction surfaces, such as wet jennite, produce the most variability and would not be useful for consumer information.

Aberdeen Test Center

The agency initiated additional testing at Aberdeen Test Center (Aberdeen) in 1998 to evaluate a simplified test protocol and the magnitude of driver and surface variability. The ten ABS-equipped vehicles selected for testing included 5 passenger cars, 2 minivans, 1 full-size van, 1 Sport Utility Vehicle (SUV) and 1 pickup truck with rear-wheel-only ABS. One of the passenger cars was used as a control vehicle, and was tested throughout the duration of the testing period. Ten straight line stops were conducted on each test surface condition, including dry and wet asphalt, from a vehicle speed of 100 km/h (62 mph), with the vehicle in the loaded and unloaded conditions. The agency used ten stops to ensure that any variability in brake performance from stop to stop could be well identified.

The results of the stopping distance tests showed that the five passenger cars were the best performers with an average stopping distance of 46.3 m (152 ft) on the dry asphalt and 51.2 m (168 ft) on the wet asphalt road surface. The three vans were mid-performers with dry road stops averaging 50.3 m (165 ft) and wet road stops averaging 52.7 m (173 ft). The average stopping distance of the SUV and the pickup truck was 56.4 m (185 ft) on the dry asphalt surface and 62.2 m (204 ft) on the wet asphalt surface, although the pickup truck had longer stops and more variability since it was equipped with rear-wheel-only ABS. The test results were also analyzed to provide a standard deviation and a 95th percentile stopping distance value for the ten stops. The 95th percentile stopping distance provides a measure of brake performance based on the average stopping distance and the variability of the data set, and represents the distance within which the vehicle would stop 95 percent of the time. Vehicles with high variability will have 95th percentile stopping distances significantly longer than the reported average.

A comparison of the standard deviation for the ten stops for each test vehicle shows the low variability that was achieved by each vehicle grouping. The standard deviation, which is a measure of the variability of the data set, indicates a low variability for the stops conducted on the passenger cars and vans, and a somewhat higher variability for the sport utility vehicle on the dry road surface. The pickup truck had a higher degree of variability as well. The standard deviation for the passenger cars tested on the dry surface in a lightly loaded condition had a range of 0.43–0.98 m (1.4–3.2 ft), and on the wet surface in a lightly loaded condition ranged from 0.55–1.88 m (1.8–6.0 ft). Similarly, for the vans tested, the standard deviation for the dry, lightly loaded condition, and for the wet, lightly loaded condition ranged from 0.40–0.95 m (1.3–3.1 ft) and 0.27–1.01 m (0.9–3.3 ft), respectively. The SUV had a standard deviation of 2.47 m (8.1 ft) on the dry test surface and 0.82 m (2.7 ft) on the wet test surface, both in the lightly loaded condition. The pickup truck, which was equipped with a rear-wheel-only ABS had a larger standard deviation mainly because of the driver modulation that was required to prevent front wheel lockup and achieve the best stop.

The brake pedal application force for the stopping distance tests was targeted at 500 Newtons (112 pounds). However, even though the peak pedal forces were up to three times higher than target forces, this did not affect the stopping distance results. Since the vehicles were all ABS-equipped, once the ABS activated the stopping distance performance seemed impervious to brake pedal force, except for the pickup truck, which required test driver brake pedal modulation to prevent front wheel lockup. An analysis of the test data showed that even though the test drivers were able to achieve pedal forces as high as 1730 N (390 lbs) in some of the test runs, such high pedal forces did not improve the stopping distance performance of the vehicle. For example, on the Pontiac Grand Am, which was used as the control vehicle, the shortest stop (42.4 m [139 ft]) was achieved with 1050 N (237 lbs) of pedal force, whereas the longest stop (45.7 m [150 ft]) was achieved with a higher pedal force of 1370 N (309 lbs). The parameter that seemed the most relevant to consistent and shorter stops was the brake application rate. The results show that consistency could be achieved using a brake application rate of greater than 445 N (100 lbs) of pedal force in 0.2 seconds or less.

The test surfaces used for this testing were dry asphalt and wet asphalt. These are typical of the road surfaces that most drivers experience and would therefore provide useful information for consumers. The peak friction coefficient (PFC) measurement for the dry asphalt test surface ranged from 0.89 to 0.95 during the testing period, and for the wet asphalt surface 0.85 to 0.88. The ambient temperatures during the testing period ranged from 7 °C to 22 °C (45 °F to 71 °F). Although these moderate temperatures did not show any

correlation with the stopping distance performance of the vehicles tested, the agency believes that testing in moderate ambient temperatures in the Fall and Spring might yield more consistent results for testing conducted in northerly parts of the U.S.

The conclusions we tentatively reached from the Aberdeen research were that driver and surface variability can be minimized to make the NCAP brake performance program a viable one. Driver variability could be minimized by testing only ABS-equipped vehicles, by using straight line stops, and by specifying a minimum application rate for the brake pedal force. Surface variability could be minimized by specifying high coefficient of friction dry and wet test surfaces, and by specifying an ambient temperature or surface temperature range for testing.

Round-Robin Testing

The agency initiated a round-robin test in September 1999 to further evaluate the effects of surface variability on braking performance. The objective was to determine the impact that surface variability has on stopping distance performance by analyzing and comparing the stopping distance performance of the same vehicles tested at different facilities using the same test protocol. The agency also wanted to determine if different test drivers could obtain similar results. Four vehicles (a passenger car, a SUV, a minivan, and a pickup truck) were tested at three different test sites and again at the first test site. The PFC of the test surface was measured at each test facility during the vehicle testing.

As was the case for the earlier testing (with the exception of the pickup truck) all of the vehicles were equipped with four-wheel antilock braking systems. By using only ABS-equipped vehicles, the driver is able to make a rapid, hard brake pedal application resulting in ABS activation and control of the brake forces at the wheels to prevent wheel lockup and optimize stopping distance performance.

Four rounds of testing were conducted at three test facilities—at Aberdeen, MGA Research in Madison, Wisconsin, and the Transportation Research Center (TRC) in East Liberty, Ohio. The first and fourth rounds of testing were both conducted at Aberdeen. Pavement friction was measured at each facility using a skid trailer, and meteorological measurements including air and road surface temperatures and wind speed were monitored during the testing. Test surface slope and grade measurements were recorded.

PFC measurements taken at Aberdeen indicated that during the first round of testing, the dry PFC was 0.94 and the wet PFC was 0.93. PFC measurements during the fourth round of testing at Aberdeen were higher for the dry pavement, at 0.95 and 1.00 for pre- and post-test measurements, respectively. PFC measurements for the wet surface at Aberdeen for the fourth round were 0.91 and 0.90 for pre- and post-test measurements, respectively.

The PFC measurements from TRC for the dry surface were 0.91 and 0.94 for the pre- and post-test measurements, respectively, and for the wet surface were 0.84 and 0.83 for pre- and post-test, respectively. The difference in PFC between Aberdeen (higher PFC) and TRC (lower PFC) resulted in stopping distances of 6 to 15 feet longer at TRC than the fourth round Aberdeen stopping distances. The PFC measurements at MGA were 0.99 and 0.95 for pre- and post-test dry pavement, respectively, and 0.97 and 0.96 for pre- and post-test wet pavement, respectively. The MGA test surface had several pavement repair strips, which affected the vehicle stopping results with larger standard deviations for each series of stops on each vehicle, compared to the results at Aberdeen and TRC.

The results of this Round Robin testing indicate that specifying the test surface in terms of PFC will be of primary importance for the NCAP braking program since the PFC value does affect the stopping distance results. The results also indicate that conducting the brake testing for all NCAP vehicles at the same test facility would reduce the surface variability and result in more consistent stopping distances for all tested vehicles.

III. Agency Plan

1. ABS-Equipped Vehicles

The test vehicles used during the research program were all ABS-equipped so as to minimize the effects of driver variability due to driver skill. A vehicle's ABS senses impending wheel lockup and automatically modulates the brake to provide the shortest stop for the given road surface condition. This automatic modulation performed by the ABS maintains the braking force close to the level just short of wheel lockup. For the Phase I testing conducted at Aberdeen, the control vehicle tested using different brake application rates showed very little change in its stopping distance performance even though the brake pedal application force ranged from 472 N to 1721 N (106 lbs to 387 lbs). In essence, once the ABS activates, increasing the brake pedal force has no impact on the stopping distance performance.

The agency has no immediate plans to conduct brake testing on vehicles not equipped with 4-wheel ABS for the NCAP program. The concern associated with testing vehicles with rear-wheel-only systems or without ABS is that it would increase the influence of driver variability since a driver would be required to modulate the brakes manually to achieve the no-wheel-lock requirement. Driver brake pedal modulation introduces more variability from stop to stop and results in larger deviations between test runs. The agency notes that in recent NCAP braking tests conducted in Japan, all vehicles were equipped with ABS although the information provided does not indicate if these were all vehicles with 4-wheel ABS.

2. Transmission Selector Control

The agency's draft test protocol includes testing each vehicle with its transmission selector control in gear. Federal motor vehicle safety standards require most stopping distance tests to be conducted with the transmission selector control in neutral so that the stopping distance performance of the vehicle would not be affected by engine braking. We believe that stopping distance data with vehicles tested in gear would produce more relevant consumer information since this condition is more representative of what a driver encounters during an emergency braking situation. Even though engine braking may help to shorten vehicle stopping distance, we believe that its relevance for consumer use outweighs any small adverse impact on establishing a valid comparison of the performance of service brake systems on light vehicles.

3. Brake Application Rate

The test data indicate that the rate of brake pedal application is more important for consistent and short stopping distances, than the magnitude of the brake pedal force. An analysis of the results showed that data sets including stops where the pedal application rate was at least 222 N (50 lbs) in 0.2 seconds generally had a higher variability in stopping distance than the same data sets with the stops having an application rate of below 445 N (100 lbs) in 0.2 seconds removed. We concluded that slow pedal force rates may have delayed the activation of the ABS system and consequently,

increased the stopping distance variability of the data set. These results independently correlate closely to the Japan NCAP braking test procedure which specifies that the brake pedal force shall reach 500 N (112 lbs) in 0.25 seconds. Therefore, in the interest of harmonizing to a certain extent with the Japanese program, the agency proposes that the brake pedal application force of 500 N (112 lbs) be achieved within 0.25 seconds. This brake pedal application rate is important for minimizing the variability caused by differences in the initial pedal force input and will ensure repeatable ABS activation.

In addition to the initial application rate, we believe that it is important to specify a steady state pedal force for the remainder of the stop. After the initial ramp up in the brake force to achieve the 445 N (100 lbs) in 0.25 seconds, test drivers achieved pedal forces as high as 1735 N (390 lbs) to ensure that the ABS remained activated for the duration of the stop. An analysis of the data showed that such high pedal forces are not necessary to ensure ABS activation throughout the stop, and that a steady-state pedal force of about 670 N (151 lbs) would be appropriate. We also have considered establishing an upper limit for the brake pedal force peak after the initial application rate is satisfied. However, since that upper limit value could vary based on the vehicle and test driver performance, we believe that it would be better to establish a time frame within which the steady state pedal force condition should be achieved. This would ensure a consistent time frame for achieving the steady state braking force applied by the test driver, and therefore, enhance the repeatability of the test protocol.

As mentioned above, the Japanese NCAP brake test procedure specifies an initial application rate of 500 Newtons in 0.25 seconds. In addition, their procedure specifies a steady state application force of 500 ± 30 Newtons, without specifying a time frame within which this force should be achieved. The difficulty in using this protocol is that our tests indicate that a peak pedal force in the 670 to 900 N (150 to 202 lbs) range always occurs in order to achieve the rapid brake pedal application rate. The agency believes that to achieve the rapid application rate without exceeding a 530 N (119 lbs) limit, a special brake application device may be required in lieu of using a test driver.

The agency, therefore, contemplates specifying that a steady state pedal force of 670 ± 70 N (151 ± 15.7 lbs), and that this pedal force be attained within the initial 0.75 seconds of the brake pedal application.

4. Test Surface Variability

The coefficient of friction of the test surface plays a major role in the braking performance of a vehicle. The PFC is currently used as the measure of the surface friction in the agency's light vehicle brake standard and has a nominal value of 0.90 for dry pavement. Vehicle compliance testing on dry pavement by the agency is conducted on a surface 0.90 or higher. Dry and wet asphalt surfaces were used for the NCAP brake testing because they represent the type of road surfaces on which consumers typically drive. The PFC measurements recorded during the Phase I testing at Aberdeen ranged for 0.89 to 0.95 for the dry asphalt surface, and 0.85 to 0.88 for the wet asphalt surface. For the Phase II round robin testing, the PFC recorded at the three test sites ranged from 0.91 to 1.00 for the dry surfaces and 0.83 to 0.97 for the wet test surfaces. The stopping distance results for the test vehicles in both Phase I and Phase II show no correlation between small changes in PFC and corresponding changes in vehicle stopping distance. Therefore, we believe that for the NCAP brake program, a test surface friction range should be specified to accommodate small daily variances in PFC.

Based on the agency's experience with PFC values and given the PFC values obtained during the NCAP brake testing, we contemplate that the PFC specification for the dry surface would be 0.90 to 0.95, and for the wet surface 0.80 to 0.85.

5. Surface Temperature

The agency believes that ambient and test surface temperatures have an impact on vehicle stopping distance performance. However, an analysis of the temperature effects was not possible since the temperature changes were not sufficiently large to draw any conclusions or establish any correlation between ambient and/or surface temperature and stopping distance. The vehicle testing in both Phase I and Phase II was conducted in the Fall with the ambient temperatures ranging from 2°C to 24°C (35°F to 76°F) and within the ambient temperature range specified in FMVSS No. 135 (0°C and 40°C).

We believe that conducting vehicle testing in moderate ambient temperatures, as those experienced in the northern continental U.S. during the Fall or Spring, would provide more repeatable stopping distance results, compared with testing at ambient temperature extremes during the Winter or Summer. The Japanese NCAP brake test procedure specifies a surface temperature range and makes no reference to ambient temperature. The surface temperature they specify include 25 °C – 45 °C (77 °F – 113 °F) for the dry surface and 22 °C – 32 °C (72 °F – 90 °F) for the wet surface. In the interest of developing a test procedure that is similar to the Japanese procedure, we are contemplating specifying a surface temperature range, instead of an ambient temperature range. We believe that variances in the surface temperature would have a more direct impact on the PFC and stopping distance performance of tested vehicles, and by specifying surface temperatures for NCAP brake testing the surface variability would be minimized.

6. Number of Stops

The stopping distance performance requirements specified in the agency's brake standards generally require the best of six stops for specific test conditions, which considers that the test driver needs several attempts in order to achieve his best stop. However, the agency believes that ten stops would allow for a better determination of the stopping distance value we convey to consumers. Since the NCAP braking program is for consumer information, as opposed to for vehicle compliance, and since it is necessary to convey a stopping distance value that the consumer is likely to achieve in an emergency braking situation, the agency believes that ten stops would be more appropriate than six stops for the NCAP braking test procedure. Furthermore, even though ABS-equipped vehicles reduce driver variability compared with non-ABS vehicles, there still exists some small variability in the performance of ABS that could be minimized by requiring more stops.

7. Presentation of Data

The goal of the NCAP braking program is to provide accurate, unbiased brake performance information that is useful and informative to the consumer. Two measures of stopping distance performance that could be used to inform the consumer of a vehicle's braking performance are average stopping distance and the 95th percentile stopping distance. The average stopping distance represents a mean of the vehicle's brake performance over the ten stops performed during the testing, with all stops included in the calculated average. The 95th percentile stopping distance provides a measure of brake performance based on the average stopping distance and the variability of the data set, and informs the consumer of the distance within which the vehicle

should stop 95 percent of the time. For the Aberdeen testing, the 95th percentile stopping distance is equal to: (10-stop average) + (1.645 × Standard Deviation). Vehicles with high stop-to-stop variability will have 95th percentile stopping distances significantly higher than the reported average, while those with small deviations between individual stopping distances will have values closer to the reported average.

The agency believes that presenting the information in the form of the 95th percentile stopping distance would be more beneficial to consumers since this stopping distance value is based on the average stopping distance and the variability experienced in the ten stops. We believe that providing the average stopping distance value would not, by itself, indicate the variability from stop to stop; hence a comparison of two vehicles with similar averages but with different stop-to-stop variability could be misleading to the consumer in conveying the performance that he is most likely to achieve for that vehicle. Given that a consumer has one opportunity to obtain a best stop in an emergency braking situation, the 95th percentile stopping distance represents the stopping distance that he/she is likely to achieve in such a situation, provided that the brake pedal application rate and force, the road surface friction and load conditions are similar to those used during the NCAP braking test. The agency, therefore, contemplates that the 95th percentile stopping distance value would be presented as the brake performance measure for the NCAP brake program.

The test lane width is specified at 3.5 meters (11.5 ft) for the NCAP brake testing and is the same as specified in Standard No. 135. NHTSA believes that vehicle stability and stopping distance are both important for achieving good braking performance, and that we should indicate, along with the stopping distance data, whether the vehicle stayed within the lane throughout the stop. Japan currently indicates in their data whether the vehicle deviated from the test lane during the stopping distance test, and a review of results reported in their consumer information shows that none of the vehicles tested that were equipped with 4-wheel ABS deviated from the lane during the braking test.

IV. Proposed Test Protocol

The test conditions that the agency included in the draft test protocol are based on the conditions specified in FMVSS No. 135, Light vehicle brake systems, with a few modifications.

Definitions

Gross vehicle weight rating or GVWR means the value specified by the manufacturer as the loaded weight of a single vehicle.

Initial brake temperature or IBT means the average temperature of the service brakes on the hottest axle of the vehicle 0.32 km (0.2 miles) before any brake application.

Lightly loaded vehicle weight or LLVW means unloaded vehicle weight plus the weight of a mass of 180 kg (396 pounds), including driver and instrumentation. The unloaded vehicle weight includes all fluid reservoirs filled to maximum capacity, but without cargo and accessories that are ordinarily removed from the vehicle when they are not in use.

Peak friction coefficient or PFC means the ratio of the maximum value of braking test wheel longitudinal force to the simultaneous vertical force occurring prior to wheel lockup, as the braking torque is progressively increased.

Stopping distance means the distance traveled by a vehicle from the point of application of force to the brake control to the point at which the vehicle reaches a full stop.

General Conditions

Pavement friction dry. The road test surface produces a peak friction coefficient (PFC) of 0.90–0.95 when measured using an American Society for Testing and Materials (ASTM) E1136 standard reference test tire, in accordance with ASTM Method E1337–90, at a speed of 64.4 km/h (40 mph), without water delivery.

Pavement friction wet. The road test surface produces a peak friction coefficient (PFC) of 0.80–0.85 when measured using an American Society for Testing and Materials (ASTM) E1136 standard reference test tire, in accordance with ASTM Method E1337–90, at a speed of 64.4 km/h (40 mph), with water delivery.

Pavement temperature dry. The test temperature for the dry pavement is 35 °C ± 10 °C (95 °F ± 18 °F).

Pavement temperature wet. The test temperature for the wet pavement is 27 °C ± 5 °C (81 °F ± 9 °F).

Wet pavement condition. For wet surface testing, the test area shall be fully wet with standing water not deeper than 3 mm (⅛ inch). Water shall be applied to the test surface prior to each brake stop.

Gradient. The test surface has no more than a 0.5% gradient in the direction of testing and no more than 1.5% gradient perpendicular to the direction of testing.

Lane width. Tests are conducted on a test lane 3.5 m (11.5 ft) wide.

Vehicle Conditions

Vehicle weight. The vehicle shall be tested at lightly loaded vehicle weight (LLVW).

Tire inflation pressure. Tires are inflated to the pressure recommended by the vehicle manufacturer for the LLVW of the vehicle.

Instrumentation

Brake temperature measurement. The brake temperature is measured by plug-type thermocouples installed in the approximate center of the facing length and width of the most heavily loaded shoe or disc pad, one per brake. A second thermocouple may be installed at the beginning of the test sequence if the lining wear is expected to reach a point causing the first thermocouple to contact the metal rubbing surface of a drum or rotor. For center-grooved shoes or pads, thermocouples are installed within 3 mm (0.12 in) to 6 mm (0.24 in) of the groove and as close to the center as possible.

Vehicle speed and stopping distance measurement. The vehicle speed measurement is performed using a calibrated rolling fifth-wheel transducer with quadrature capability. Prior to testing, fifth-wheel calibration shall be performed with maximum error not exceeding 0.5 percent of measured value as verified on a pre-measured 60-m (200-ft) test lane.

Brake pedal effort measurement. The pedal effort measurement is performed with a calibrated transducer on the brake pedal. This transducer should not interfere with normal brake application.

Brake pedal force indicator. An indication of the pedal force is to be located in view of the driver.

Ambient temperature. The ambient temperature shall be measured continuously during stopping distance testing, using a calibrated thermometer.

Anemometer. The wind speed and wind direction shall be measured continuously during stopping distance testing, using a calibrated anemometer located at the test site.

Surface temperature. The road surface is measured at the test lane with a calibrated hand-held pyrometer, prior to each test run.

Procedural Conditions

Brake control. All vehicle brake stops must be met solely by use of the service brake control.

Test speed. The vehicle is tested at a speed of 100 km/h (62.1 mph).

Stopping distance. The braking performance of a vehicle is determined

by measuring the stopping distance from a given initial speed. The stop is initiated when the stop lamp circuit is closed.

Vehicle position and attitude. (a) The vehicle is aligned in the center of the lane at the start of each brake application. Steering corrections are permitted during each stop.

(b) Stops are made without any part of the vehicle leaving the lane and without rotation of the vehicle about its vertical axis of more than ± 15° from the center line of the test lane at any time during any stop.

Transmission selector control. All vehicle brake stops are made with the transmission selector in a control position recommended by the manufacturer for driving on a level surface at the applicable test speed. In initiating each test run, (a) Exceed the test speed by 6 to 12 km/h (3.7 to 7.5 mph); (b) close the throttle and coast in gear; and (c) when the test speed is reached, apply the brakes; (d) to avoid engine stall, a manual transmission may be shifted to neutral (or the clutch disengaged) when the vehicle speed is below 30 km/h (18.6 mph).

Initial brake temperature (IBT). If the lower limit of the IBT for the first stop in the test has not been reached, the brakes are heated to the IBT by making one or more brake applications from a speed of 50 km/h (31.1 mph), at a deceleration not greater than 3 m/s^2 (9.8 fps^2).

Required Test Data

Test data to be collected includes:
- Vehicle speed.
- Stopping distance.
- Brake pedal application force.
- Brake lining temperatures.
- Road Surface temperature.
- Ambient temperature.
- Tire pressure.

Road Test Procedures

1. Burnish

Vehicle conditions.
- Vehicle load is at GVWR.
- Transmission position. In gear.

Test conditions.
- IBT: 65 °C to 100 °C (149 °F to 212 °F).
- Test speed: 80 km/h (49.7 mph).
- Pedal force: Adjust as necessary to maintain specified constant deceleration.
- Deceleration: Maintain a constant deceleration of 3.0 m/s^2 (9.8 fps^2).
- Number of runs: 200 stops.
- Interval between runs: The interval from the start of one service brake application to the start of the next is either the time necessary to reduce the IBT to 100 °C (212 °F) or less, or the distance of 2 km (1.24 miles), whichever occurs first.
- Accelerate to 80 km/h (49.7 mph) after each stop and maintain that speed until making the next stop.
- After burnishing, adjust the brakes according to the manufacturers' recommendation.

2. Stopping distance test

Vehicle conditions.
- Vehicle load is at LLVW.
- Transmission position. In gear.

Environmental conditions.
- Wind speed not greater than 5 m/s.

Test conditions.
- IBT: 65 °C to 100 °C (149 °F to 212 °F)
- Test speed: 100 km/h (62.1 mph).
- Pedal force: The brake pedal is to be applied so that the pedal force is at least 500 N (112 lbs.) in 0.25 seconds or less, and a steady state application force 670 N ± 70 N (151 ± 15.7 lbs.) achieved within 0.75 seconds. The steady state application force is to be held constant until the vehicle comes to a complete stop.
- Number of runs: 10 stops.
- Test surface—dry: PFC of 0.90 to 0.95.
- Surface temperature—dry: 35 °C ± 10 °C.
- Test surface—wet: PFC of 0.80 to 0.85.
- Water depth of 3 mm (⅛ inch) or less.
- Surface temperature—wet: 27 °C ± 5 °C
- For each stop, bring the vehicle to test speed and then stop the vehicle using the pedal force application method described in Pedal force section above.

3. Water Application Procedure

For wet surface testing, water shall be applied using a water tanker truck that is equipped to distribute water evenly across the width of the test lane. Prior to wet surface testing, three passes shall be made with the water tanker truck traveling longitudinally along the test lane. The total length of the wetted area shall be at least 100 m (330 ft). Prior to each brake stop event, an additional pass shall be made with the water tanker truck along the test lane where the brake stops are to be performed. Water shall be distributed to fully wet the asphalt surface while keeping the water depth in any area of the test lane below 3 mm (⅛ inch).

4. Stopping Distance Normalization

All stopping distance measurements shall be normalized in accordance with SAE J299 SEP93, Stopping Distance Test Procedure. Stopping distance corrections for initial speed errors greater than ±3.2 km/h (±2 mph) are invalid due to inaccuracy.

$$S_c = S_m V_d^2 / V_a^2$$

where:

V_d = desired initial vehicle stopping speed, km/h (mph)

V_a = actual initial vehicle stopping speed, km/h (mph)

S_m = measured stopping distance, m (ft)

S_c = calculated stopping distance from V_d, m (ft)

V. Implementation

The agency hopes to gather data to support the NCAP brake testing program beginning with model year 2001 vehicles. The data obtained from testing these MY 2001 vehicles would not be published as consumer information, but would be used to make any refinements to the test procedure and/or data presentation. Assuming no major issues are identified in the comments on this Notice or the data gathered from the 2001 vehicles, the agency hopes to fully implement the NCAP brake program, in MY 2002, by testing and releasing the stopping distance information for the vehicles tested.

VI. Request for Comments—Questions

The agency seeks comments about topics relating to the NCAP braking program and the draft test procedure that has been developed from vehicle research. For ease of reference, the questions posed are numbered consecutively. The agency requests that commenters identify each answer they give by the number of each question being answered.

1. Based on the agency's existing brake performance requirements in the Federal motor vehicle safety standards and its experience with brake testing of light vehicles, stopping distance appears to be one of the best measures of brake performance. For the NCAP braking program, our desire is to provide consumers with a measure of brake performance that would be useful for comparing the capabilities of new vehicles. The agency requests comments about stopping distance and other measures of braking performance. Are other measures of brake performance more useful for consumer information? If so, please explain why.

2. The agency seeks to minimize driver variability by testing 4-wheel ABS-equipped vehicles only. If we were to expand the program to include non-ABS-equipped vehicles, how could we best minimize driver variability in testing non-ABS vehicles?

3. During vehicle research, the agency found that the brake pedal application rate is an important parameter in achieving consistent and short stopping distances because it reduces the driver variability for the brake application. Based on the agency's independent research, an application rate of 445 Newtons (100 lbs.) in 0.2 seconds was derived, which is almost identical to the brake application rate of 500 Newtons (112 lbs.) in 0.25 seconds specified by the Japanese for their NCAP brake testing and that we are now considering to use as well. Are these brake pedal application rates achievable for all light vehicles, including full-size sport utility vehicles, pickup trucks and vans? Are there any concerns about NHTSA using the same brake application rate specified by Japan?

4. After the initial brake application rate is achieved, the agency believes that it is important to establish additional criteria for the steady state brake application force and the time to attain that force. We have specified in the draft test protocol 670 ± 70 Newtons (151 ± 15.7 lbs.) in 0.75 seconds as the steady state force. How appropriate is this force and the specified time frame for achieving consistent stopping distance performance? Should a peak value be established in addition to the steady state force or as an alternative?

5. Straight line stops are specified for the draft NCAP procedure so as to minimize braking performance variability due to driver skill. We have also considered braking-in-a-curve, lane-change and other maneuvers where a steering maneuver is combined with braking, and concluded that straight line stops might be the most useful for consumer information. What are your views on the various maneuvers that could be used for NCAP braking? Which maneuvers do you consider to be best for consumer information, and why?

6. The agency seeks to minimize surface variability by specifying high coefficient of friction dry and wet surfaces. We specify in the draft test protocol a dry surface with a PFC of 0.90–0.95 and a wet surface with a PFC of 0.80–0.85. Are these PFC ranges appropriate for dry and wet asphalt surfaces? Would a smaller range ensure less variability in vehicle braking performance? Is such a range realistic given the variability in PFC readings from day to day and from week to week? What range would you recommend given your experience with test surface variability? How often should the PFC for the surface be measured during NCAP brake testing?

7. The agency believes that stopping distance testing in extreme ambient temperatures is likely to produce greater performance variability than testing in milder ambient temperatures, primarily because the surface temperature impact on the PFC of the surface. Japan specifies a surface temperature range for its NCAP brake testing, with the dry surface temperature between 25°C and 45°C and for the wet surface and the wet surface temperature between 22°C and 32°C. The agency seeks comments on whether such a surface temperature range is appropriate for brake testing on a dry surface and on a wet surface, and whether the range should be changed? Would specifying an ambient similar to the range specified in FMVSS No. 135, Light vehicle brake systems, 0°C–40°C, be adequate for NCAP brake testing? Would the PFC specification without any temperature requirements be adequate? Please support any recommendations for a different surface temperature range with data showing its impact on vehicle braking performance.

8. The agency has specifies in the draft test protocol that ten (10) stops be made for each test condition. Given that test driver and surface variability can be minimized but not eliminated during brake testing, we believe that 10 stops would provide a large enough sample with which to calculate an average or a 95th percentile value. The agency seeks comments on the number of stops that would be considered sufficient for providing an average or 95th percentile stopping distance value to consumers.

9. Given that the 95th percentile stopping distance is based on a calculated average and the standard deviation among the number of stops, would it be considered more appropriate for consumer use? What are the pro's and con's of providing the 95th percentile stopping distance? Is it important to convey the variability between stops as part of the stopping distance information? Why or why not?

10. The agency contemplates testing the vehicles in the lightly loaded condition only since most consumers seek braking performance information in that condition. The lightly loaded condition is defined as the unloaded vehicle weight plus 180 kg. for driver and instrumentation. For the research program, we also tested the vehicles at their gross vehicle weight rating (GVWR) and found that, as expected, stopping distances were longer than for the lightly loaded condition. Do you believe that stopping distance tests should also be conducted at GVWR? Why would this information be useful to consumers? We note that data shows that the vast majority of consumers operate their vehicles lightly loaded.

11. The agency specifies in the draft test protocol testing vehicles with the transmission selector in gear since this is the transmission position that most consumers' vehicles are in when faced with an emergency braking situation. Testing with the transmission in neutral provides a stopping distance performance that does not include the effects due to engine braking and is more appropriate for vehicle compliance testing. Which method do you believe would provide relevant or useful information to consumers? Should the stopping distance value exclude the effects of engine braking? Why or why not?

12. The water depth specified is 3mm or less for the wet pavement test. What alternative method can be used to describe a wetted surface while ensuring that no puddles or excessive standing water is present? What measurement method should be specified for measuring water depth?

VII. Public Workshop

All interested persons and organizations are invited to attend the workshop. To assist interested parties in preparing for the September 26, 2001 workshop, this agency has developed a preliminary agenda, shown below, of introductory presentations and of topics for discussion at the meeting. Requests for this agency to consider additional topics should be addressed to Mr. Jeff Woods at the address or numbers given above.

A. Purpose

NHTSA is holding a workshop to facilitate an exchange of ideas among all participants. The purpose of the workshop is to present and discuss the test protocol that has been developed for the NCAP braking program. The agency hopes that this workshop will provide opportunities for improving and refining the test protocol and other areas of the program. We plan to consider the information and the views presented at the workshop and in the subsequent written comments in developing the final braking test protocol.

B. Procedures

The agency intends to conduct the workshop informally. The Associate Administrator for Safety Performance Standards will preside at the workshop. Any person planning to participate in the workshop should contact Mr. Jeff Woods at the address and telephone number provided at the beginning of this notice, no later than September 24. 2001.

C. Agenda

i. Opening remarks
ii. NHTSA Presentation—NCAP braking program
iii. Presentations by organizations and the public
iv. Open discussion

Issued on: July 12, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–17801 Filed 7–16–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration, Federal Motor Carrier Safety Administration

[Docket No. RSPA–00–7021 (PD–23(RF))]

Morrisville, PA Requirements for Transportation of "Dangerous Waste"

AGENCY: Research and Special Programs Administration (RSPA) and Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of administrative determination of preemption.

APPLICANT: Med/Waste, Inc. and Sanford Motors, Inc.

LOCAL LAWS AFFECTED: Morrisville, Pennsylvania Ordinance No. 902.

APPLICABLE FEDERAL REQUIREMENTS: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

MODES AFFECTED: Highway.

SUMMARY: Federal hazardous material transportation law preempts the following provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania:

1. The definitions of "infectious waste," "hospital waste," and "dangerous waste" in Section 01 and the use of the term "dangerous waste" throughout the ordinance.

2. The designation of Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough that may be used by trucks transporting dangerous waste, in Section 02.

3. The requirement that each truck transporting dangerous waste carry and have available "the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act," in Section 05(a).

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), or Joseph Solomey, Office of the Chief Counsel, Federal Motor Carrier Safety Administration (Tel. No. 202–366–1374), U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

A. Application for Preemption Determination

This proceeding is based on the December 30, 1999 application of Med/Waste, Inc. and its subsidiary, Sanford Motors, Inc. (collectively "Med/Waste") for a determination that Federal hazardous material transportation law preempts requirements contained in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania (the Borough). The copy of Ordinance No. 902 attached to Med/Waste's application indicates that this ordinance was adopted on September 20, 1999, and it regulates "the movement of infectious and chemotherapeutic wastes (hereinafter dangerous waste) by motor vehicle truck in the Borough of Morrisville."

In its application, Med/Waste challenged (1) the definition and use of the term "dangerous waste" and the definitions of "infectious waste" and "hospital waste"; (2) the limitation of trucks transporting dangerous waste within the Borough to Route 1; and (3) the requirement to carry the uniform manifest required for hazardous wastes. The text of Med/Waste's application and a March 1, 2000 letter from the Borough of Morrisville in response were published in the **Federal Register** on April 14, 2000, and interested parties were invited to submit comments. 65 FR 20258. Comments were submitted by Med/Waste, Sanitec, the Medical Waste Institute (the Institute), Biosystems, and American Waste Industries, Inc. (American). The Borough did not submit any further comments.

In comments submitted in response to the April 14, 2000 notice, Med/Waste stated that several of its drivers have received tickets for violating Ordinance No. 902, and it provided documents on citations issued on September 29 and October 8, 1999. On the summons, the fine is specified at $300, plus costs, for violations of Ordinance No. 902. Because the "location" is shown as Pennsylvania Avenue on each of the citations, where Med/Waste's facility is located, it is assumed that the citations were issued for departing from Route 1.[1]

In its comments, Med/Waste also stated that Ordinance No. 902 "must be preempted in its entirety in order to preserve the integrity of the national, uniform scheme of hazardous material transportation." Med/Waste and others discussed additional provisions in Ordinance No. 902 concerning speed limits, accident reporting, time limits on storage of dangerous waste, and the posting of a $50,000,000 indemnity bond with the Borough Secretary. These additional requirements are discussed generally at the end of Part III, below. However, no determination is made whether Federal hazardous material transportation law preempts these additional requirements because Med/Waste's application did not specifically challenge or address them, and the April 14, 2000 notice in the **Federal Register** did not clearly indicate that RSPA and FMCSA would consider these other requirements or the ordinance as a whole.

B. Federal Regulation of Medical Waste Transportation

In a March 1993 notice in its rulemaking proceeding under docket No. HM–181G, RSPA discussed the Federal regulation of medical waste transportation. 58 FR 12207, 12208 (March 3, 1993). As explained there, DOT has listed and regulated "etiologic agents" as hazardous materials since 1972. In a 1991 final rule, RSPA accepted an industry proposal "that medical waste should be treated differently than other infectious substances." *Id.* at 12209, referring to RSPA's final rule, 56 FR 66124 (Dec. 20, 1991). At that time, RSPA concluded that medical waste should remain regulated as a hazardous material:

> Since the majority of these wastes are untreated and, thus, may potentially contain infectious substances, RSPA strongly believes that the public and transport personnel [should] be protected from the hazards of these materials during transportation.

56 FR 66142. Accordingly, RSPA has provided "less rigorous requirements" for regulated medical wastes than for other infectious substances. 56 FR 66131.

In the March 1993 notice, RSPA also referred to a two-year demonstration program that the U.S. Environmental Protection Agency (EPA) had

[1] In a November 29, 2000 letter, Med/Waste asked RSPA for "some indication of the estimated time of decision" in this matter, because dates for court hearings on these citations (which had previously been continued) were coming due. This letter and a copy of RSPA's December 11, 2000 response have been placed in the docket.

established under the Medical Waste Tracking Act of 1988, but observed that "EPA's regulations on medical waste in 40 CFR part 259 applied in only five States and had expired on June 22, 1991." 58 FR at 12209. RSPA explained that—

> To provide less rigorous requirements for medical waste containing infectious substances, RSPA turned to the expired EPA regulations as a model that could be adapted, with some modifications, to the HMR.

Id. at 12209–10.

Accordingly, RSPA acted consistently with the expired EPA regulations when it "created a subcategory of infectious substances—infectious substances that are contained in or constitute medical waste." *Id.* at 12210. *See also* RSPA's final rules, 59 FR 48762 (Sept. 22, 1994), 59 FR 53116 (Oct. 21, 1994), and a further notice, 59 FR 65860 (Dec. 21, 1994), and final rule, 60 FR 48780 (Sept. 20, 1995), all in docket No. HM–181G. The Medical Waste Tracking Act of 1988 (Pub. L. 100–582, 102 Stat. 2950) and EPA's demonstration program for tracking and managing medical waste are also described in EPA's interim final rule establishing the two-year demonstration program, 54 FR 12326 (Mar. 24, 1989), and its final rule removing obsolete rules, 60 FR 33912 (June 29, 1995).

The HMR define and provide exceptions applicable to "regulated medical waste" in 49 CFR 173.134 (which also covers infectious substances and etiologic agents), and specific packaging requirements are set forth in § 173.196 (for infectious substances) and § 173.197 (for regulated medical waste).[2] Thus, regulated medical wastes must be distinguished from (and are not within the category of) "hazardous wastes." In its March 24, 1989 final rule, 54 FR at 12330, EPA stated that it "did not list infectious waste in the final rule" listing hazardous wastes under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.* The HMR specifically state that "A hazardous waste is not subject to regulation as a regulated medical waste." 49 CFR 173.134(b)(2).

[2] In a Notice of Proposed Rulemaking in Docket No. RSPA–98–3971 (HM–226), published in the **Federal Register** on January 22, 2001 (66 FR 6942), RSPA has proposed to adopt the "risk groups" developed by the World Health Organization; modify definitions of Division 6.2 materials (infectious substances), biological products, diagnostic specimens, and regulated medical waste; add additional definitions or cultures and stocks, sharps, and toxins; and include provisions on used health care products. However, these proposed changes would not change the overall scheme of designation and classification of infectious substances in the HMR.

In its regulations at 67 PA Code 403.4, the Pennsylvania Department of Transportation has adopted as State law those parts of the HMR in 49 CFR parts 171–173 and 178–180 and those parts of FMCSA's Federal Motor Carrier Safety Regulations in 49 CFR parts 388 and 397.

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to Med/Waste's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under § 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—

> (1) Complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or
>
> (2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the "dual compliance" and "obstacle" criteria that RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93–633 section 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not "substantively the same as" a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

> (A) The designation, description, and classification of hazardous material.
>
> (B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.
>
> (C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.
>
> (D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.
>
> (E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be "substantively the same," the non-Federal requirement must conform "in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted." 49 CFR 107.202(d).

Subsection (c)(1) of 49 U.S.C. 5125 provides that, beginning two years after DOT prescribes regulations on standards to be applied by States and Indian tribes in establishing requirements on highway routing of hazardous materials,

> a State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b).[3]

[3] Section 5112(b)(1) provides that the highway routing standards shall include:

> (A) A requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall enhance public safety in the area subject to the jurisdiction of the State or tribe and in areas of the United States not subject to the jurisdiction of the State or tribe and directly affected by the designation, limitation, or requirement;
>
> (B) Minimum procedural requirements to ensure public participation when the State or Indian tribe is establishing a highway routing designation, limitation, or requirement;
>
> (C) A requirement that, in establishing a highway routing designation, limitation, or requirement, a State or Indian tribe consult with appropriate State, local, and tribal officials having jurisdiction over areas of the United States not subject to the jurisdiction of the State of tribe establishing the designation, limitation, or requirement and with affected industries;
>
> (D) A requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall ensure through highway routing for the transportation of hazardous material between adjacent areas;
>
> (E) A requirement that a highway routing designation, limitation, or requirement of one State or Indian tribe affecting the transportation of hazardous material in another State or tribe may be established, maintained, and enforced by the State or tribe establishing the designation, limitation, or requirement only if—
>
> (i) The designation, limitation, or requirement is agreed to by the other State or tribe within a reasonable period or is approved by the Secretary under subsection (d) of this section; and
>
> (ii) the designation, limitation, or requirement is not an unreasonable burden on commerce;
>
> (F) a requirement that establishing a highway routing designation, limitation, or requirement of a State or Indian tribe be completed in a timely manner;
>
> (G) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe provide reasonable routes for motor vehicles transporting hazardous material to reach terminals, facilities for food, fuel, repairs, and rest, and places to load and unload hazardous material;
>
> (H) a requirement that the State be responsible—
>
> (i) for ensuring that political subdivisions of the State comply with standards prescribed under this subsection in establishing, maintaining, and

Continued

FMCSA's standards that a State or Indian tribe must follow in establishing highway routing requirements for nonradioactive materials are set forth in 49 CFR part 397, subpart C, and apply to any designations that are established or modified on or after November 14, 1994. 49 CFR 397.69(a).

The preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

> (3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,
>
> (4) Because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,
>
> (5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 § 2, 104 Stat. 3244.

A Federal Court of Appeals has found that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA "without substantive change," at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745.) To achieve safety through consistent Federal and State requirements, Congress has also authorized DOT to make grants to States "for the development or implementation of programs for the enforcement of regulations, standards, and orders" that are "compatible" with the highway-related portions of the HMR. 49 U.S.C. 31102(a). In this fiscal year, $155 million is available for grants to States under the Federal Motor Carrier Safety Assistance Program. *See* 49 CFR Parts 350 & 355 and the preamble to FMCSA's March 21, 2000 final rule, 65 FR 15092, 15095–96.

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. This administrative determination replaced RSPA's process for issuing advisory inconsistency rulings (IRs) under the "dual compliance" and "obstacle" criteria now explicitly set forth in section 5125(a).

The Secretary of Transportation has delegated to FMCSA the authority to make determinations of preemption that concern highway routing and to RSPA the authority to make such determinations concerning all other hazardous materials transportation issues. 49 CFR 1.53(b)(2), 1.73(d)(2). In this determination, FMCSA's Administrator has addressed the highway routing issues, and RSPA's Associate Administrator for Hazardous Materials Safety has addressed the non-highway routing issues. 49 CFR 107.209(a), 397.211(a).

Section 5125(d)(1) requires that notice of an application for a preemption determination be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA and FMCSA publish their determination in the **Federal Register**. *See* 49 CFR 107.209(c), 397.211(d). A short period of time is allowed for filing petitions for reconsideration. 49 CFR 107.211, 397.223. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA and FMCSA are guided by the principles and policies set forth in Executive Order No. 13132, entitled "Federalism" (64 FR 43255 (August 10, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA and FMCSA have implemented through their regulations.

III. Discussion

A. Authority To Set "More Stringent" Requirements

In its March 1, 2000 letter (published as Appendix B to the April 14, 2000 **Federal Register** notice), the Borough argued that Federal environmental statutes set only "minimum standards," and that "local governments [may] enact more stringent regulations." It cited *City of Philadelphia* v. *New Jersey*, 437 U.S. 617 (1978), as support for the position that RCRA allows state, regional, and local authorities "to control the collection and disposal of solid waste as one of their primary functions," and quoted from that case that there was "no clear and manifest purpose of Congress to preempt the entire field of interstate waste management." 437 U.S. at 620. The Borough also cited *Ensco, Inc.* v. *Dumas*, 807 F.2d 743 (8th Cir. 1986), as holding that—

> states and local municipalities are permitted to establish waste management standards more stringent than those imposed by federal law and that only local regulations which totally prohibit storage, transportation or treatment should be preempted.

The Borough's arguments fail for two reasons. First, as discussed in Section I.B., above, EPA's two-year demonstration program for tracking and managing medical wastes ended in 1991, and the types of wastes regulated by Ordinance No. 902 are not within the category of hazardous wastes regulated by EPA under RCRA. The "more stringent" language in 42 U.S.C. 6929

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enforcing a highway routing designation, limitation, or requirement; and

(ii) for resolving a dispute between political subdivisions; and

(I) a requirement that in [establishing, maintaining, and enforcing a highway routing designation, limitation, or requirement], a State or Indian tribe shall consider—

(i) population density;

(ii) the types of highways;

(iii) the types and amounts of hazardous materials;

(iv) emergency response capabilities;

(v) the results of consulting with affected persons;

(vi) exposure and other risk factors;

(vii) terrain consideration;

(viii) the continuity of routes;

(ix) alternate routes;

(x) the effects on commerce;

(xi) delays in transportation; and

(xii) other factors that the Secretary considers appropriate.

does not apply to "dangerous waste" and other categories of wastes covered by Ordinance No. 902.

Second, in enacting RCRA, Congress provided that EPA's regulations on the transportation of hazardous waste must be "consistent with" the HMR. 42 U.S.C. 6923(b). Also, a State program must be "equivalent to" and "consistent with" EPA's regulations in order to be approved by EPA. 42 U.S.C. 6926(b). RCRA and EPA's regulations do not authorize a State or locality to impose requirements on the transportation of hazardous waste that fail to satisfy the preemption criteria in 49 U.S.C. 5125, as discussed in more detail in PD–12(R), New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Wastes, etc., 60 FR 62527, 62533–34 (Dec. 6, 1995), decision on petition for reconsideration, 62 FR 15970 (Apr. 3, 1997), petition for judicial review dismissed, *New York* v. *U.S. Dep't of Transportation*, 37 F. Supp. 2d 152, 158 (N.D.N.Y. 1999) ("EPA's authorization of a state RCRA program is not the equivalent of 'authoriz[ation] by another law of the United States.' ").

B. Designation, Description and Classification of Hazardous Material

Ordinance No. 902 added a new part entitled "Dangerous Waste" to the Borough's Motor Vehicles and Traffic Code. The term "dangerous waste" is defined in Section 01(f) as "infectious wastes, or chemotherapeutic wastes, or hazardous wastes, or any combination thereof." In addition, "all Hospital Waste will be presumed to be DANGEROUS WASTE," according to Section 07.

"Infectious waste" is defined in Section 01(c) as "waste that contains or may contain any disease-producing microorganism or material," including but not limited to 12 examples such as "cultures and stocks of etiologic agents," "waste blood and blood products," and "[t]issues, organs, body parts, blood and body fluids that are removed during surgery and autopsy." The term "hospital waste" is defined in Section 01(g) as:

> waste of any sort generated by nursing homes, hospitals, clinics for the treatment of disease, or like institutions or businesses. The term shall also include paper products, bedding, towels, containers, or cleaning implements that have been exposed to infectious, chemotherapeutic, pathological wastes, solid wastes and/or hazardous wastes generated by nursing homes, hospitals, clinics for the treatment of disease, or like institutions or businesses.[4]

In its application, Med/Waste stated that the terms "infectious waste," "hospital waste," and "dangerous waste" conflict with the category of "regulated medical waste" in the HMR. Med/Waste also stated that the use of "dangerous" in the ordinance is not consistent with the HMR's category of materials that are "Dangerous when wet." Both Sanitec and American commented that Ordinance No. 902 contains "confusing and conflicting" definitions that create confusion about the HMR and regulations of the State of Pennsylvania.

The Institute stated that the term "dangerous waste" differs substantively from the HMR by classifying as hazardous, and regulating, materials that are not covered in the HMR. As examples, the Institute referred to the definition of "infectious waste" in Section 01(c) as including (1) tissues, organs, body parts, blood and body fluids that are removed during surgery and autopsy (but which does not take into account the exception in 49 CFR 173.134(b)(1) for ceremonial interment or cremation), and (2) animal bedding and other wastes that have been "in contact with" laboratory research animals but may have not been used in "diagnosis, treatment or immunization" of animals as covered in the HMR's definition of "regulated medical waste" in 49 CFR 173.134(a)(4). The Institute also asserted that materials defined in the HMR as "regulated medical waste" are categorized or classified differently in Ordinance No. 902, because the Borough imposes on infectious waste "the requirements for hazardous waste under RCRA," despite the fact that hazardous waste under RCRA "does not include infectious substances."

The Borough stated that the definitions in Ordinance No. 902 "address essentially the same types of materials" as the HMR. It compared the definition of "infectious waste" in the ordinance, including several of the examples, to wording in 49 CFR 173.134(a). However, the Borough did not address its definitions for "dangerous waste" and "hospital waste" or attempt to show that these terms are substantively the same as definitions and classifications of hazardous materials in the HMR.

The scheme in Ordinance No. 902 for describing and classifying "dangerous waste" differs markedly from that in the HMR. In the HMR, among the "infectious substances" in Division 6.2 are diagnostic specimens, biological agents, and regulated medical waste. 49 CFR 173.134(a). The Borough's comments attempt to explain that the examples listed in the definition of "infectious waste" in Ordinance No. 902 cover diagnostic specimens, biological agents, and regulated medical waste. However, these subcategories of infectious waste (and the manner in which they are regulated) overlap; they are not separated as they are in the HMR. Moreover, the language in Section 01(g) of Ordinance No. 902, "waste of any sort generated by nursing homes, hospitals, clinics for the treatment of disease, or like institutions or businesses" appears to include ordinary trash from administrative offices, which is not within the scope of an "infectious substance" regulated by the HMR. Thus, "hospital waste" in Ordinance No. 902 encompasses both (1) items that are within the definition of "regulated medical waste" in the HMR and (2) other items that may not contain any infectious substance and, therefore, are not regulated under the HMR.

The term "dangerous waste" in Ordinance No. 902 is also used in a manner that differs from the designation and classification scheme in the HMR. While the HMR do not define the word "dangerous" by itself or as modifying the word "waste," in the overall context of the HMR, "dangerous" is a synonym for the word "hazardous." The HMR use the term "hazardous materials" in the same manner as the term "dangerous goods" is used in international regulations. *See* the UN Recommendations on the Transport of Dangerous Goods, the Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the International Maritime Dangerous Goods Code, each of which deals with those materials regulated as "hazardous" under the HMR. In the same manner, when used in the HMR to describe materials that are "dangerous when wet," the word "dangerous" means the same as "hazardous."

In Ordinance No. 902, however, the term "dangerous waste" does not correspond to the category of "hazardous waste" in the HMR. It appears to include (1) types of waste infectious materials that are regulated by DOT as infectious substances, rather than "hazardous waste" and (2) other types of waste that present no hazards at all, such as "hospital waste." In this manner, the term "dangerous waste" in Ordinance No. 902 is not substantively the same as any definition, description or classification of hazardous material in the HMR.

[4] Section 01 of Ordinance No. 902 also defines the terms "waste," "hazardous waste," and "chemotherapeutic waste."

As discussed in Part II above, 49 U.S.C. 5125(b)(1)(A) provides that (in the absence of a waiver or specific authorization in another Federal law), a local requirement on "the designation, description, and classification of hazardous material" is preempted when it is not "substantively the same as" the HMR. Under this standard, the overall scheme of designation and classification of hazardous materials must be substantively the same as in the HMR. It is not sufficient that one particular definition is similar to a definition of a category of hazardous materials, or that the local ordinance covers "essentially the same types of materials" as the Borough stated, if the scheme of designation and classification are markedly different.

In this case, the definitions of "infectious waste," "hospital waste," and "dangerous waste" in Ordinance No. 902 are preempted by 49 U.S.C. 5125(b)(1)(A) because these terms are used to create a scheme for designating and classifying hazardous material that is not substantively the same as in the HMR. In addition, the word "dangerous" in the term "dangerous waste" is preempted under 49 U.S.C. 5125(b)(1)(A) because it is used and defined in Ordinance No. 902 in a manner that is substantively different from the use of the word "dangerous" in the HMR.

C. Prohibition Against Using Streets Other Than Route 1

Section 02 of Ordinance No. 902 provides that "at this time" the only street on which trucks may transport dangerous waste within the Borough is Route 1.[5] Because this limitation was established after November 14, 1994, it must comply with FMCSA's standards in 49 CFR part 397, subpart C. 49 CFR 397.69(a). These standards, issued pursuant to 49 U.S.C. 5112(b), specify that there must be:

—A finding by the State that the highway routing designation "enhances public safety in the areas subject to its jurisdiction and in other areas which are directly affected by such highway routing designation." 49 CFR 397.71(b)(1).
—Notice to the public of the proposed routing designation, a 30-day period for the public to submit comments, and consideration of whether to hold a public hearing (with advance notice to the public). 49 CFR 397.71(b)(2).
—Notice to and consultation with "officials of affected political subdivisions, States and Indian tribes, and any other affected parties," and completion of the routing designation process within 18 months of the notice to the public or notice to other affected jurisdictions. 49 CFR 397.71(b)(3), (6).
—Assurance of "through highway routing * * * between adjacent areas." 49 CFR 397.71(b)(4).
—No unreasonable burden on commerce and agreement by any other affected State. 49 CFR 397.71(b)(5).
—Reasonable access for vehicles to terminals; pickup and delivery points and loading and unloading locations; and facilities for food, fuel, repairs, rest, and safe havens. 49 CFR 397.71(b)(7).
—Consideration of specific factors, including population density, emergency response capabilities, continuity of routes, alternative routes, effects on commerce, potential delays in transportation, and congestion and accident history. 49 CFR 397.71(b)(9).

In addition, the State must (1) ensure that its political subdivisions comply with FMCSA's standards and procedures (49 CFR 397.71(b)(8)); (2) make information on highway routing designations available to the public "in the form of maps, lists, road signs or some combination thereof" (49 CFR 397.73(a)); and (3) report highway routing designations to FMCSA for publication in the **Federal Register** (49 CFR 397.73(b)).[6]

Med/Waste stated that the Borough failed to follow FMCSA's standards and procedures when it designated Route 1 as the only street on which trucks may transport dangerous waste within the Borough; "there was no notification that the Borough was even considering the Ordinance * * * and there is still no signage in the Borough regarding the restrictions of this Ordinance."

Med/Waste also stated that the designation of Route 1 as the only street on which trucks may transport dangerous waste within the Borough cuts off access to its permitted facility at 1307 South Pennsylvania Avenue, which it has operated for more than five years. That address appears to be approximately three-quarters of a mile from Route 1 and, on the citations Med/Waste provided, the location of the violation is shown as Pennsylvania Avenue.

Sanitec, American and the Institute agreed that the Borough's routing limitation in Section 02 is invalid because the procedures in 49 CFR 397.71(b) were not followed. The Institute also stated that there was no notice of an opportunity to comment on "the impacts of the routing restrictions," which prevents Med/Waste from access to its facility and also "restricts intra and interstate transporters from servicing the many health care facilities located in and around the Borough." The Institute noted that the stated basis in Ordinance No. 902 for limiting trucks transporting dangerous waste to Route 1 cannot be valid because "the Borough is not regulating other industries whose heavy trucks traverse roads located within the Borough."

The Borough stated that the State of Pennsylvania has delegated to counties and municipalities "the right to designate specific highway routes over which hazardous material may and may not be transported by motor vehicle." In response to Med/Waste's reference to 49 U.S.C. 31114, the Borough stated that there was no restriction "on access to the interstate highway system" because "no interstate highways traverse the Borough of Morrisville." However, the Borough did not discuss the provisions in 49 U.S.C. 31114(a)(2) and 49 CFR 397.71(b)(7) that any routing designation may not prevent "reasonable access" to a motor carrier's terminals or points of pickup and delivery. Nor did the Borough dispute the assertions by Med/Waste and other commenters that this routing limitation was adopted without notice to the public and an opportunity to comment, as required by 49 CFR 397.71(b)(2).

It is clear that the Borough failed to comply with FMCSA's standards in 49 CFR part 397 when it adopted Section 02 of Ordinance No. 902, limiting trucks transporting dangerous waste to Route 1. Among other failures, the Borough did not follow the required notice and comment procedure, and its limitation prevents reasonable access to terminals and points of pickup and delivery. Section 02 of Ordinance No. 902 is preempted by 49 U.S.C. 5125(c)(1), because the Borough failed to comply with FMCSA's standards for establishing highway routing designations issued pursuant to 49 U.S.C. 5112(b).

[5] Section 02 states that because the Borough's streets "are generally narrow, winding, and in places congested, and not generally designed to accommodate heavy or constant truck traffic," the Borough may "designate certain routes and/or particular streets for use by motor vehicle trucks hauling DANGEROUS WASTE." There is no indication that the Borough has designated any streets other than Route 1.

[6] The routing designations and restrictions reported to FMCSA have been published in the **Federal Register**, 63 FR 31549 (June 9, 1998), 65 FR 75771 (Dec. 4, 2000), and they are also posted on FMCSA's internet web site at <http://hazmat.fmcsa.dot.gov>.

D. Requirement To Carry Uniform Manifest

Section 05(a) of Ordinance No. 902 requires that—

> Each truck hauling DANGEROUS WASTE shall carry and have available for inspection the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act. Such manifest shall be presented upon request of any Morrisville Borough police officer.

In doing so, the Borough has extended the requirement to use a hazardous waste manifest, in 49 CFR 172.205, to materials that are not hazardous wastes. The HMR do not require the use of a specific form except for hazardous wastes. *See* 49 CFR 171.8 (definition of "shipping papers" as including "a shipping order, bill of lading, manifest or other shipping document serving a similar purpose and containing the information required by §§ 172.202, 172.203 and 172.204") and RSPA's final rule in Docket No. HM–145D, "Hazardous Waste Manifest; Shipping Papers," 49 FR 10507 (Mar. 20, 1984) (there is no "requirement for the use of a specific form").

In its application, Med/Waste stated that, because "Regulated medical waste as defined by the HMR is not a hazardous waste as defined in 40 CFR part 262," the Borough's manifest requirement conflicts with 49 CFR 172.205(a). Sanitec and American stated that the requirement to transport medical waste under a uniform hazardous waste manifest "is in direct conflict with the current regulatory scheme." The Institute stated that EPA's "manifesting requirements apply to hazardous wastes, which do not include infectious substances" and that "DOT adopted RCRA's hazardous waste manifesting regulations under the shipping paper requirements, but only for those wastes defined as a hazardous waste under federal rules."

EPA has stated that the uniform manifest form *may* be used for "wastes defined as hazardous by either the generator's State or the consignment State, but not defined as hazardous by EPA or DOT." EPA's final rule adopting the uniform manifest, 49 FR 10490, 10495 (Mar. 20, 1984). However, RSPA found that additional requirements by States (or localities) for the use of a specific form beyond what is required in Federal regulations create "a substantial burden for both generators and transporters." 45 FR at 10507. Moreover, EPA regulations specifically provide that a State may not "impose enforcement sanctions on a transporter during transportation of the shipment for failure of the form to include * * * optional State information items." 40 CFR 271.10(h)(3).

Congress amended the HMTA in 1990 to provide that (in the absence of a waiver or specific authorization in another Federal law), a local requirement on "the preparation, execution, and use of shipping documents related to hazardous material" is preempted when it is not "substantively the same as" the HMR. 49 U.S.C. 5125(b)(1)(C). In adding this provision, Congress specifically found that "consistency in all aspects of [shipping] documents will promote more precise and easier identification of any hazardous material, improve systems for handling hazardous materials, and enhance capabilities for dealing with emergencies associated with the transportation of hazardous materials." H. Rep. 101–444, Part 1, 101st Cong, 2nd Sess., p. 34.

Because the HMR does not require the use of any specific form for shipments of regulated medical waste (or other hazardous materials that are not hazardous wastes), the requirement in Section 05 of Ordinance No. 902 that a uniform hazardous waste manifest be carried on any truck transporting dangerous waste within the Borough is not substantively the same as requirements in the HMR for the "preparation, execution, and use of shipping papers." Accordingly, Section 05 of Ordinance No. 902 is preempted by 49 U.S.C. 5125(b)(1)(C).

E. Discussion of Other Requirements

In its comments submitted in response to the April 14, 2000 notice, Med/Waste referred to additional provisions in Ordinance No. 902 on speed limits, accident reporting, time limits on storage of dangerous waste, and the posting of a $50,000,000 indemnity bond with the Borough Secretary as part of a separate regulatory scheme that should be found to be preempted. Other commenters addressed the storage time limits and the bond. American also referred to requirements of the Pennsylvania Department of Environmental Protection (DEP) for marking and labeling containers and vehicles used to transport infectious waste and chemotherapeutic waste and requested DOT to find that "the conflicting parts of the Pennsylvania Code should also be preempted." No determination is being made whether Federal hazardous material transportation law preempts these additional requirements because the April 14, 2000 notice in the **Federal Register** did not clearly indicate that RSPA and FMCSA would consider these other requirements or regulations of Pennsylvania DEP. However, the following general discussion is provided with respect to other provisions in Ordinance No. 902.

1. *Speed limits.* Section 03 of Ordinance No. 902 states that:

> Trucks carrying DANGEROUS WASTE within the Borough of Morrisville are hereby limited to the designated speed limit on Route 1, and the posted speed limit on any other state or Borough road within the Borough of Morrisville that may eventually be approved for use by such trucks bearing DANGEROUS WASTE.

Med/Waste seems to read this section as authorizing the Borough to set specific speed limits for trucks carrying "dangerous waste" that are different from the speed limits applicable to other vehicles traveling on the same roads. However, no other comments addressed this section or provided any information on whether and how the Borough is implementing this provision.

Speed limits are a form of local traffic controls that are not specifically addressed in the HMR, and they are "presumed to be valid." IR–32, City of Montevallo, Alabama Ordinance on Hazardous Waste Transportation, 55 FR 36736, 36744 (Sept. 6, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992). It is possible that a substantially lower speed limit applicable only to trucks carrying one or more hazardous materials, as compared to other trucks of similar size and weight, could cause congestion and create an obstacle to the safe transportation of hazardous materials. However, in the absence of "significant relevant evidence," including the speed limit for other vehicles, RSPA has not found that a local speed limit is preempted. *Id.*

2. *Accident reporting.* Section 05(c) of Ordinance No. 902 states that "Each driver of any such truck [carrying dangerous waste] shall immediately report any accident or collision involving his truck to the Borough of Morrisville police." The Institute stated that this requirement is substantively different than the requirement in 49 CFR 171.15 for a carrier to immediately report certain incidents in transportation to the National Response Center, Federal Aviation Administration, or Centers for Disease Control.

In PD–18(R), Broward County, Florida Requirements on Transportation of Certain Hazardous Materials, 65 FR 81950 (Dec. 27, 2000), petition for reconsideration pending, RSPA recently explained that only *written* incident reporting requirements are preempted when those requirements are not

substantively the same as provisions in the HMR. Rather, Congress did not intend the "substantively the same as" standard to apply to oral incident reporting, and "RSPA and the courts have consistently held that requirements for immediate, oral accident/incident reports for emergency response purpose generally are consistent with Federal law and regulations and, thus, not preempted." *Id.* at 81955.

3. *Time limits on storage.* Section 06 of Ordinance No. 902 provides that, "[e]xcept as provided for by DEP regulations," dangerous waste may not be stored "in one place" within the Borough for more than 24 hours, and "in separate places" for a total of more than 48 hours.

The Institute stated that this time limit on storage creates an obstacle to the handling requirements in the HMR if this restriction is applied to storage that is a part of transportation (such as at a transfer station). It referred to PD–9(R), California and Los Angeles County Requirements Applicable to the On-site Handling and Transportation of Hazardous Materials, 60 FR 8774, 8783 (Feb. 15, 1995), petition for reconsideration pending.

In PD–9(R), RSPA found that Federal hazardous material transportation law preempts a local prohibition against a rail tank car being connected for transfer (unloading) operations at a consignee's facility for more than 24 hours, unless otherwise approved by the Fire Chief, because the local regulation was not substantively the same as requirements in the HMR on tank car unloading procedures (which contained no time limit). *Id.* at 8788. In IR–19, Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials, 52 FR 24404, 24409–10 (June 30, 1987), decision on appeal, 53 FR 11600, 11603 (April 7, 1988), upheld in *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352, 358 (9th Cir. 1990), RSPA also found that a prohibition against storage or retention of hazardous materials for more than 48 hours without a permit was inconsistent with the "comprehensive series of regulations [in the HMR] relating to the storage of hazardous materials incidental to transportation by rail."

The decisions in PD–9(R) and IR–19 may not be directly on point, because the HMR do not contain the same comprehensive procedures on interim storage during highway transportation (other than the separation and segregation requirements in 49 CFR 177.848). While the HMR prohibit any "unnecessary delay" in the highway transportation of hazardous materials, "from and including the time of commencement of the loading of the hazardous material until its final unloading at destination," 49 CFR 177.800(d), specific time limits on interim storage of hazardous materials apply only to rail shipments. *See* 49 CFR 174.14 (shipments of hazardous materials by rail must be forwarded "promptly and within 48 hours (Saturdays, Sundays, and holidays excluded)," or on the first available train when only biweekly or weekly service is performed).

The 10-day period during which a transporter may store hazardous wastes at a transfer station without obtaining a permit, in EPA's regulations at 40 CFR 263.12, also does not apply to "dangerous wastes" as defined in Ordinance No. 902, because these are not hazardous wastes, as discussed above. Rather, the absence of a more specific time limitation in the HMR on interim storage of hazardous materials in highway transportation reflects RSPA's view that this type of limitation is not necessary or appropriate for hazardous materials that are not hazardous wastes. The Supreme Court has found that local requirements on transportation may be preempted when the DOT "has decided that no such requirement should be imposed at all." *Ray* v. *Atlantic Richfield Co.*, 435 U.S. at 171–72.

4. *Indemnity bond.* Under Section 05(d) of Ordinance No. 902, a truck carrying dangerous waste may not enter the Borough unless the truck driver or owner or consignor of the dangerous waste has deposited with the Borough Secretary—

> an indemnity bond with limits of not less than $50,000,000 per occurrence * * * conditioned to pay all or part of such sum as damages or restitution to the Borough of Morrisville unless the responsible party shall reimburse any person, firm, partnership, trust or corporation, including the Borough itself, for any damages to person, property or natural resources resulting from the hauling of such DANGEROUS WASTE, or accidents or spills incident thereto, in the Borough of Morrisville.

Med/Waste stated that the requirement for a $50,000,000 indemnity bond "is so excessive that it actually makes the Ordinance prohibitive." Sanitec and American stated that this requirement creates a "separate regulatory scheme" that conflicts with the HMR and is an obstacle to accomplishing and carrying out the HMR. Biosystems stated that the indemnity bond requirement "is an extreme impediment to interstate commerce" that seems to apply to through traffic as well as that "originating or destined within the borough." Biosystems also stated that the amount of the bond "is patently unreasonable on its face" and compared it to "State environmental" requirements for liability insurance of $1 million to $2 million (for those who transport regulated medical waste) or $5 million (for those who operate a medical waste treatment facility).

The Institute stated that the requirement for an indemnity bond is actually a "back door approach to creating routing restrictions," because it "is clearly intended to prevent any vehicle transporting infectious waste from ever entering the Borough." It states that $50,000,000 "far exceeds the worst case scenario for a single vehicle transporting infectious waste," and echoes the statement of Biosystems that closure bonds required by some States for an entire infectious waste facility are a small fraction of the amount required by Ordinance No. 902.

Under FMCSA's regulations, transporters of regulated medical waste must maintain at least $1,000,000 in insurance, surety bonds, or evidence of self-insurance. 49 CFR 387.9 (with exceptions in 387.3(c) for intrastate carriers transporting non-bulk packagings and all carriers using smaller vehicles, less than 10,000 pounds gross vehicle weight rating). Under the required endorsement form, this financial responsibility covers bodily injury, property damage, and environmental restoration. 49 CFR 387.15.

In several inconsistency rulings, RSPA found that non-Federal requirements for indemnity bonds (or other forms of financial responsibility) specifically applicable to hazardous materials, beyond those prescribed in 49 CFR part 387, are in conflict with the purposes and objectives of the HMTA and the HMR. IR–25, Maryland Heights, Missouri Ordinance Requiring Bond for Vehicles, 54 FR 16308, 16311 (Apr. 21, 1989); IR–18, Prince Georges County, Maryland Code Section Governing Transportation of Radioactive Materials, 52 FR 200, 204 (Jan. 2, 1987); IR–10 (New York State Thruway Authority), IR–11 (Ogdensburg Bridge and Port Authority), and IR–15 (Vermont), 49 FR 46632, 46645, 46647, 46660 (Nov. 27, 1984). In IR–25, 54 FR at 16311, RSPA stated that:

> The existence in the U.S. of more than 30,000 local jurisdictions, each having the potential to impose such [bonding] requirements demonstrates the havoc which could be created if even a small percentage of them were to impose such requirements (with their inevitable differences). It would

be extremely difficult for carriers to learn about, let alone comply with, such local requirements.

In PD–1(R), Maryland, Massachusetts, and Pennsylvania Bonding Requirements for Vehicles Carrying Hazardous Wastes, 57 FR 58848, 58854 (Dec. 11, 1992), decision on petitions for reconsideration, 58 FR 32418 (June 9, 1993), RSPA also found that State requirements to post a bond in order to pick up or deliver hazardous waste within the State were preempted because of "the potential for expense and delay associated with meeting these requirements, as well as the diversion of traffic to other States when the hazardous waste transporter cannot or does not post the required bond." RSPA's determination as to Massachusetts' requirement was overturned by a Federal Court of Appeals in *Commonwealth of Massachusetts* v. *United States Dep't of Transp.*, 93 F.3d 890, 892 (D.C. Cir. 1996), where the Court found that Massachusetts required a performance bond to assure that the transporter "shall faithfully perform all the requirements" of the State. The Court stated that the bond required by Massachusetts was "distinct from other forms of liability insurance requirements" because it did not create "a general fund against which other parties may seek indemnity for their claims against the transporter." *Id.*

The performance bond in the *Massachusetts* case is distinguishable from the indemnity bond required under Ordinance No. 902. In addition, as discussed in PD–20(R), Cleveland, Ohio Requirements for Transportation of Hazardous Materials, 66 FR 29867, 29870 (June 1, 2001), RSPA and FMCSA disagree with the conclusion of the Court of Appeals in the *Massachusetts* case that the "obstacle" test for preemption in 49 U.S.C. 5125(a)(2) only applies to non-Federal requirements "with which a party cannot comply if it complies with the HMTA, or [non-Federal] rules that otherwise pose an obstacle to fulfilling explicit provisions, not general policies, of HMTA." 93 F.3d at 895.

IV. Ruling

Federal hazardous material transportation law preempts the following provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania:

1. The definitions of "infectious waste," "hospital waste," and "dangerous waste" in Section 01 and the use of the term "dangerous waste" throughout the ordinance.

2. The designation of Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough that may be used by trucks transporting dangerous waste, in Section 02.

3. The requirement that each truck transporting dangerous waste carry and have available "the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act," in Section 05(a).

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a) and 397.223(a), any person aggrieved by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register**. Any party to this proceeding may seek review of RSPA's decision "in an appropriate district court of the United States * * * not later than 60 days after the decision becomes final." 49 U.S.C. 5125(f).

This decision will become the final decision of RSPA and FMCSA 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register**, the action by RSPA and FMCSA on the petition for reconsideration will be the final decision. 49 CFR 107.211(d), 397.223(d).

Issued in Washington, DC, on July 9, 2001.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety Research and Special Programs Administration.

Brian M. McLaughlin,

Associate Administrator for Policy and Program Development, Federal Motor Carrier Safety Administration.

[FR Doc. 01–17572 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting describing the results of the nineteenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) held from 2 to 6 July 2001 in Geneva, Switzerland.

DATES: August 7, 2001 9:30 AM–12:30 PM, Room 8236–8238.

ADDRESSES: The meeting will be held at DOT Headquarters, Nassif Building, Room 8236–8238, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bob Richard, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting will be to describe the results of the nineteenth session of the UNSCOE. Topics to be covered during the public meeting will include (1) Global harmonization of classification criteria, (2) Criteria for Environmentally Hazardous Substances, (3) Intermodal requirements for the transport of solids in bulk containers, (4) Harmonized requirements for compressed gas cylinders, (5) Classification of individual substances, (6) Requirements for packagings used to transport hazardous materials, (7) Requirements for infectious substances, and (8) Hazard communication requirements.

The public is invited to attend without prior notification.

Documents

Copies of documents for the UNSCOE meeting may be obtained by downloading them from the United Nations Transport Division's web site at *http://www.unece.org/trans/main/dgdb/dgsubc/c3doc.html*. Information concerning UNSCOE meetings, including agendas, can be downloaded at *http://www.unece.org/trans/main/dgdb/dgsubc/c3.html*. These sites may also be accessed through RSPA's Hazardous Materials Safety Homepage at *http://hazmat.dot.gov/intsandards.htm*.

Issued in Washington, DC, on July 11, 2001.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 01–17799 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–97–2426]

Pipeline Safety: National Pipeline Mapping System

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice; availability of operator and repository standards for National Pipeline Mapping System.

SUMMARY: The Office of Pipeline Safety (OPS) finalized "Standards for Pipeline and Liquefied Natural Gas Operator Submissions" and "Standards for the NPMS National and State Repositories" in March 1999. Copies of the National Pipeline Mapping System (NPMS) operator and repository standards are available for viewing and downloading from the NPMS Web site at www.npms.rspa.dot.gov/submissions/standards.htm and from the Docket Management System's home page at *http://dms.dot.gov.* from the NPMS National Repository at (703) 317–6205.

ADDRESSES: Paper copies of the NPMS operator and repository standards are available from the NPMS National Repository at (703) 317–6205 or from the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steve Fischer, OPS, (202) 366–6267 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The National Pipeline Mapping System is a voluntary initiative that relies on pipeline operators to submit hard copy or digital pipeline data. The NPMS, when complete, will contain locational information for all natural gas and hazardous liquid transmission pipelines operating in the United States. The Office of Pipeline Safety (OPS) created NPMS standards that describe how an operator should prepare and submit pipeline data and how the NPMS repositories will process and maintain the pipeline data. The "Standards for Pipeline and Liquefied Natural Gas Operator Submissions" and "Standards for the NPMS National and State Repositories" were finalized in March 1999.

The NPMS consists of a National Repository and fifteen state repositories, including Alabama, California, Connecticut, Illinois, Kansas, Kentucky, Louisiana, Maine, Minnesota, New Jersey, Oklahoma, Pennsylvania, Texas, Virginia, and Washington. The state repositories process state pipeline data. The National Repository processes pipeline data for states without a state repository and integrates national and state data.

The NPMS will serve as a decision support tool to enable OPS to understand the relationship between pipelines and their environments, to plan effective pipeline inspection programs, to effectively respond to gas and hazardous liquid releases, and to quickly and accurately respond to requests for pipeline information. The NPMS will also serve as a community education tool that will enable local officials to make better planning and emergency response decisions.

Issued in Washington, DC on July 11, 2001.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 01–17800 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34053 (Sub-No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34053[1] to permit the trackage rights to expire on November 30, 2001, in accordance with the agreement of the parties.

DATES: This exemption will be effective on August 16, 2001.

Petitions to reopen must be filed by August 6, 2001.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34053 (Sub-No. 1) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioners' representatives (1) Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179, and (2) Yolanda Grimes Brown, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da-To-Da Office Solutions, Room 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 10, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–17847 Filed 7–16–01; 8:45 am]

BILLING CODE 4915–00–P

[1] On June 8, 2001, the Union Pacific Railroad Company (UP) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by BNSF to grant temporary overhead trackage rights to UP over 235 miles of BNSF's rail line between BNSF milepost 885.2 near Bakersfield, CA, and BNSF milepost 1120.54 near Stockton, CA. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34053 (STB served June 22, 2001). The trackage rights agreement is scheduled to expire November 30, 2001. The trackage rights operations under the exemption were scheduled to be consummated on June 17, 2001.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 5, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 16, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0458.
Form Number: IRS Form 4852.
Type of Review: Extension.
Title: Substitute for Form W–2, Wage and Tax Statement, or Form 1099–R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Etc.
Description: In the absence of Form W–2 or 1099R from the employer or payer, Form 4852 is used by the taxpayer to estimate gross wages, pensions, annuities, retirement or IRA payments received as well as income or FICA tax withheld during the year. It is attached to the return for processing.
Respondents: Individuals or households, Business or other for-profit, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents/ Recordkeepers: 1,500,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 18 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 450,000 hours.
OMB Number: 1545–0982.
Regulation Project Number: LR–77–86 Temporary (TD 8124).
Type of Review: Extension.
Title: Certain Elections Under the Tax Reform Act of 1986.
Description: These regulations establish various elections with respect to which immediate interim guidance on the time and manner of marking the election is necessary. These regulations enable taxpayers to take advantage of the benefits of various Code provisions.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, State, Local or Tribal Government.
Estimated Number of Respondents: 114,710.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 28,678 hours.
OMB Number: 1545–1287.
Regulation Project Number: FI–3–91 Final.
Type of Review: Extension.
Title: Capitalization of Certain Policy Acquisition Expenses.
Description: Insurance companies that enter into reinsurance agreements must determine the amounts to be capitalized under those agreements consistently. The regulations provide elections to permit companies to shift the burden of capitalization for their mutual benefit.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 2,070.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 2,070 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 01–17761 Filed 7–16–01; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 6, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 16, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1043.
Notice Number: Notice 88–30 and Notice 88–132.
Type of Review: Extension.
Title: Diesel Fuel and Aviation Fuels Taxes Imposed at Wholesale Level (88–30); and Diesel and Aviation Fuel Taxes; Rules Effective 1/1/89 (88–132).
Description: Producers of aviation fuel must be registered by the IRS to sell the fuel tax-free. Producers must also obtain certifications from their tax-free buyers.
Respondents: Business or other for-profit, Not-for-profit institutions; Farms, State, Local or Tribal Government.
Estimated Number of Respondents/ Recordkeepers: 3,500.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 6 minutes.
Frequency of Response: Quarterly.
Estimated Total Reporting/ Recordkeeping Burden: 3,850 hours.
OMB Number: 1545–1613.
Regulation Project Number: REG–209446–82 Final.
Type of Review: Extension.
Title: Passthrough of Items of an S Corporation to its Shareholders.
Description: Section 1366 requires shareholders of an S corporation to take into account their pro rata share of separately stated items of the S corporation and nonseparately computed income or loss. The regulations provide guidance regarding this reporting requirements.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 01–17762 Filed 7–16–01; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 10, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 16, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0191.
Form Number: IRS Form 4952.
Type of Review: Extension.
Title: Investment Interest Expense Deduction.
Description: Form 4952 is used by taxpayers who paid or accrued interest on money borrowed to purchase or carry investment property. The form is used to compute the allowable deduction for interest on investment indebtedness and the information obtained is necessary to verify the amount actually deducted.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 800,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—13 min.
Learning about the law or the form—16 min.
Preparing the form—21 min.
Copying, assembling, and sending the form to the IRS—10 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 808,000 hours.

OMB Number: 1545–1056.
Regulation Project Number: REG–209020–86 NPRM & Temporary (formerly INTL–61–86).
Type of Review: Extension.
Title: Foreign Tax Credit; Notification and Adjustment Due to Foreign Tax Redeterminations.
Description: Section 905(c) requires notification and redetermination of a taxpayer's United States tax liability to account for the effect of a foreign tax redetermination, in certain cases. The reporting requirements will enable the Internal Revenue Service to recompute a taxpayer's United States Tax liability.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 10,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10,000 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 01–17763 Filed 7–16–01; 8:45 am]
BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 66, No. 137
Tuesday, July 17, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 2001–08]

Fiscal Year 2001 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications

Correction

In notice document 01–16447 beginning on page 34996 in the issue of Tuesday, July 2, 2001, make the following corrections:

1. On page 35002, in the table, in the third column, in the second line, 1(²), should read 1(¹).

2. On the same page, in the same table, in the same column, in the 15th line, insert "1".

[FR Doc. C1–16447 Filed 7–16–01; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–231–AD; Amendment 39–12313; AD 2001–14–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–30 Series Airplanes Modified by Supplemental Type Certificate ST00054SE

Correction

In rule document 01–17154 beginning on page 36150, in the issue of Wednesday, July 11, 2001, make the following correction:

On page 36150, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C1–17154 Filed 7–16–01; 8:45 am]
BILLING CODE 1505–01–D

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Federal Register

Tuesday,
July 17, 2001

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 107 and 139
Airport Security; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 139

[Docket No. FAA–2001–9724; Formerly Docket No. 28979; Amendment No. 107–13, 139–23]

RIN 2120–AD46

Airport Security

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the existing airport security rules. It revises certain applicability provisions, definitions, and terms; reorganizes these rules into subparts containing related requirements; and incorporates some requirements already implemented in security programs. This revision also incorporates certain new measures to provide for enhanced airport security. Specifically, this final rule more clearly defines the areas of the airport in which security interests are the most critical and where security measures should be the most stringent. The intent of this final rule is to enhance security for the traveling public, aircraft operators, and persons employed by or conducting business at public airports by increasing awareness of and compliance with civil aviation security measures.

EFFECTIVE DATE: November 14, 2001.

FOR FURTHER INFORMATION CONTACT: Robert J. Cammaroto, Office of Civil Aviation Security Policy and Planning, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–7723.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/armhome.htm or the **Federal Register**'s web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA on the Internet at our site, http://www.faa.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us 9-AWA-SBREFA@faa.gov.

Background

The FAA published a proposed rule on airport security on August 1, 1997 (62 FR 41760; Notice No. 97–13). On the same date, the FAA issued Notice 9712 to revise part 108, Aircraft Operator Security (62 FR 41730). The crash of TWA 800 on July 17, 1996 raised concerns about the safety and security of civil aviation, leading the President to create the White House Commission on Aviation Safety and Security, headed by the Vice President. The Commission issued an initial report on September 9, 1996, with 20 specific recommendations for improving aviation security. On February 12, 1997, the Commission issued its Final Report with 57 recommendations, 31 of which deal with improving aviation security for travelers. In addition, the Federal Aviation Reauthorization Act of 1996 (Pub. L. 104–264) was signed on October 9, 1996, and directs the FAA to amend rules to upgrade civil aviation security.

The FAA has been working to respond to the recommendations of the Commission and to carry out the legislation, and has issued several proposals, in addition to the proposed rule put forth in Notice No. 97–13. On September 24, 1998, the FAA issued a Final Rule on employment history, verification, and criminal records checks. (63 FR 51218; September 24, 1998).

The rules proposed in Notice No. 97–13 were not written in response to the Commission or the Reauthorization Act. Rather, the notice, which proposed to update the overall regulatory structure for airport and aircraft operator security, involved the FAA, other Federal agencies and commissions, airports and aircraft operators, and the Aviation Security Advisory Committee (ASAC). Nevertheless, the extensive proposed revisions were considered to be consistent with the intentions of the mandates, contained proposals industry had identified as necessary or appropriate, and outlined a new organization for the regulations that would assist in developing future changes to the rules. For these reasons, the FAA published the proposed rule for comment. This final rule addresses comments to that proposal.

The revision of part 108, published concurrently with this rule, contains a discussion of the current terrorist threat that also is applicable to concerns under part 107.

The Role of the ASAC

On April 3, 1989, the Secretary of Transportation announced the formation of a national ASAC under the provision of the Federal Advisory Committee Act (Title 5 U.S. Code, Appendix II).

The ASAC was formed to examine all areas of civil aviation security and to ensure a higher degree of safety for the traveling public by recommending improvement of aviation security equipment and procedures. The ASAC is chaired by the FAA's Assistant Administrator for Civil Aviation Security and makes recommendations to the FAA Administrator. Committee membership represents a balance of Federal government, aviation industry, and consumer advocacy groups.

All ASAC meetings are open to the public and are announced in the **Federal Register**. Meetings typically are held three times a year. Members of the public are permitted to attend and appear before the committee, subject to reasonable limitations of space and time.

In December 1993, the FAA sought the ASAC's comments on a "discussion paper" that included a broad range of security issues and concerns. A copy of this paper is filed in the FAA public docket for Notice No. 97–13 (Docket No. 28979).

To address the issues raised in the discussion paper, the ASAC formed two subcommittees, and developed recommendations on airport and aircraft operator security issues, which were reported to the FAA on March 15, 1994. Individual ASAC members also provided comments on issues when their respective organizations disagreed with the position of the committee.

Then the ASAC's and individual committee members' comments were forwarded to the FAA with an overall recommendation that security regulations should remain flexible and contain only general security performance standards.

General Discussion of the Rule

The FAA is required to prescribe rules as needed, to protect persons and property on aircraft against acts of criminal violence and aircraft piracy, and to prescribe rules for screening passengers and property for dangerous weapons, explosives, and destructive substances (*See* 49 U.S.C. 44901 through 44904).

To comply with the statute, the FAA has issued rules that require airport operators to perform various duties to ensure the security of civil aviation. Title 14, Code of Federal Regulations, contains part 107 that is directed specifically toward airport operators, and contains general requirements for promoting civil aviation security.

Airport operators are required by new § 107.101 to have a security program, approved by the Administrator that specifies measures they will use to perform their regulatory and statutory responsibilities. The airport security program contains sensitive security information (SSI) and is available only to persons with a need-to-know. Most airport security programs include the following information: descriptions of the air operations area (AOA), each area on or adjacent to the airport that affects the security of the AOA, and air carriers exclusive areas; procedures to control access to the AOA; alternate security procedures for use in emergency and other unusual conditions; and law enforcement support training and record maintenance programs in furtherance of part 107. Programs for some airports include a description of the law enforcement support training program and the system for maintaining records.

Other sources of information and measures are contained in Security Directives and Information Circulars described in new § 107.303. These sources address threats to civil aviation security as well as responsive measures to those threats.

The airport security program is far more detailed than the regulations and, therefore, there will be items specifically addressed in detail that may only be broadly addressed in the regulatory language of part 107. Once approved, the security program has the force of law, and like the part 107 regulations, airport operators must comply with their security program.

This revision of part 107 comprehensively updates airport security regulations to more efficiently and effectively address terrorist and other criminal threats to civil aviation. This action incorporates procedures currently in security programs into part 107, in a manner that is intended to allow regulated entities and individuals to better understand their respective security responsibilities. Concurrent with the issuance of this final rule, the FAA is updating relevant guidance that will help to ensure that airport security programs are consistent with this rule. Lastly, the final rule incorporates certain new measures that will provide for enhanced security. For example, the revisions make individuals directly accountable to the FAA for non-compliance with certain regulations.

Furthermore, local authorities will not be prevented from also taking action against an individual for non-compliance with the regulation, even if the FAA previously has taken action against that individual for the same offense. In fact, the FAA realizes that some local actions may be imposed more quickly and effectively than the agency's actions.

The proposal would have required that an airport's security program include specific local disciplinary actions and penalties for employees who do not comply with security requirements. Initially, this proposal was quite controversial. However, the public's opinion regarding this issue apparently has changed. In response, the FAA reopened the comment period from August 10–September 24, 1999, to receive additional comments from the public on the individual accountability issue [64 FR 43321 (August 10, 1999)]. Therefore, the FAA will not address this issue in this final rule, it will be addressed in a future rulemaking.

Through these changes, the FAA hopes to create a more effective mix of individual and corporate responsibility for complying with security regulations, particularly those relating to access controls and challenge procedures.

General Discussion of the Comments

The NPRM initially requested comments by December 1, 1997. Two public meetings were announced on October 15, 1997, in Washington, DC, and on October 22, 1997, in Fort Worth, TX. On April 14, 1998, the FAA reopened the comment period and announced two public meetings on the NPRM. The public meetings were held on May 21, 1998, in Washington, DC, and June 4, 1998, in Nashville, TN.

As of June 26, 1998, the closing of the second comment period, about 200 comments were received addressing the NPRM. Comments were received from 62 airports, two State and local governments, four law enforcement entities, eight air carriers, and seven industry associations representing these interests. Comments were also received from numerous individuals.

Secured Area, Air Operations Area (AOA), and Security Identification Display Area (SIDA)

Proposal: Notice 97–13 proposed to change the names of the various areas controlled under part 107, and to make some changes in the security measures that apply to each. Under the current rule there are several areas that have been introduced over the years for various security purposes.

Security measures have been required in the AOA since the inception of part 107 in 1972. The definition of AOA in current § 107.1(b)(2) is "a portion of an airport designed and used for landing, takeoff, or surface maneuvering of airplanes. * * *" Current § 107.13 provides the security requirements for the AOA. Basically, the airport operator must use the measures in its security program to control access to the AOA and prevent entry of unauthorized persons and ground vehicles; to control movement of persons and ground vehicles, including display of ID when appropriate; and to detect and control each unauthorized penetration.

The secured area was introduced in 1989 in § 107.14. Its location on airports intentionally was not defined to avoid compromising airport operators' security programs. See 54 FR 582 at 584 (January 6, 1989). Section 107.14 requires enhanced access controls for secured areas of the airport mostly using computerized access controls. This area for most airports has evolved to be mainly portions of the AOA near the terminal and in baggage make-up areas, where the highest levels of security are needed. For some airports, the entire AOA is a secured area, because of such factors as the location of the airport and the inability to use adequate security controls to separate general aviation and other areas from air carrier operations.

The SIDA was defined in 1991. The SIDA is defined in current § 107.25(a) as "any area identified in the airport security program as requiring each person to continuously display on their outermost garment, an airport-approved ID medium unless under airport-approved escort." The ID medium is referred to as being used for both access control and controlling the presence and movement of persons. The portions of the airport that must be a SIDA are not set out in current part 107. The

preambles to proposed and final § 107.205, however, indicate that SIDA generally would include secured areas (§ 107.14), air operations areas (§ 107.1(b)(2)), cargo and baggage make-up areas, and other areas specified in individual airport security programs. SIDA would not include the sterile area. There also would be site-specific provisions at those airports where general aviation and other areas are positively separated from air carrier operations [56 FR 13552 at 13553, and 56 FR 41412 at 41413]. Thus, the secured area, part or all of the AOA, and some areas that are neither secured areas nor AOA (such as some cargo makeup areas) could be within a SIDA. The security measures required in the SIDA are in §§ 107.25 and 107.31. These sections require training of persons with unescorted access to the SIDA, and employment history, verification, and criminal history records checks of those persons.

This systematic design of interlocking areas has created some confusion in the past. It has not been clear where the limits of the secured area should be, for instance. Notice 97–13 attempted to propose a design that would be simpler and clearer. It proposed to eliminate overlapping areas, such as where both the AOA rules and the secured area rules apply. It also proposed, based in part on recommendations from the ASAC, to rename the areas so that what is now the secured area would be the critical security area (CSA), and what is now the AOA outside of the secured area would be the restricted operations area (ROA). Definitions of these terms were proposed in § 107.3. Sections 107.201 and 107.203 proposed specific requirements for access systems, ID systems, and other security measures to be applied in the CSA and ROA, respectively. The intent was to more clearly describe those areas of the airport in which the security interests are the most critical and require the most stringent measures, and to enhance the security of other parts of the ROA.

Comments on changing the names of the areas: Many commenters object to changing the names of the secured area, AOA, and SIDA. They state that the industry has become familiar with these names and that changing them now would create confusion. It would also result in very large expenses to change training programs and videos, airport manuals, emergency plans, signs, and many other items. The commenters note that spending a significant amount of time, effort, and funds on retraining, signs, documentation, and security programs for renaming the above noted areas, would not improve security. The commenters strongly urge that the names not be changed.

One commenter suggests that acronyms for defined terms should be included in the definitions. Another commenter says that the FAA should avoid using 3-letter acronyms that replicate an airport's 3-letter designator code.

FAA response: The FAA has decided not to change the names of the areas to CSA and ROA. After further consideration, changing these names would create a burden to change numerous documents, signs, training programs, and the like with insufficient benefit. The industry has become used to these names and there is not the same concern there was several years ago about them.

Regarding the use of acronyms, the FAA will adopt the suggestion to reference commonly used acronyms in the definitions. Also, in response to the comment on acronyms relating to security terms as opposed to 3-letter airport designator codes, the FAA notes that security terms and their acronyms are based on functional descriptions of what they are intended to define. The FAA's system of 3-letter airport designator codes is a separate and distinct program. The agency recognizes that some acronyms and 3-letter airport identifiers may be unintentionally identical, but it is not aware of any conflicts at this time. However, it is expected that the context in which overlapping terms would be used will indicate their intent.

Comments on definitions of critical security area, restricted security area, secured area, AOA, and SIDA: National Air Transport Association (NATA) and Missoula International Airport comment that areas used by general aviation should be excluded from the critical security area and maintained in the AOA, and have less intrusive security requirements. The ATA requests a definition of "AOA." Several commenters including three airports requested a definition of "SIDA."

The Port Authority of NY and NJ suggests that "critical security area" should be defined as "where aircraft operators and foreign aircraft operators enplane and deplane passengers and sort and load baggage and any *immediately* adjacent areas that are not separated by security controls, physical or visual barriers, adequate time and distance separation or visual surveillance."

Atlanta Hartsfield International Airport requests that the FAA add the phrase "time and distance" after the phrase "physical barriers" in the definition of "restricted operations area." Furthermore, Ft. Wayne Airport suggests the definition should be modified to include *only* areas that are used by aircraft operators for the carriage of passengers. Another commenter says that the restricted operations area should allow the use of "visual barriers," such as lines or words painted on the pavement.

One commenter requests clarification of the phrases "adjacent areas" and "other security measures" which are used in the definition of "critical security area."

The NATA requests a definition of the area of an airport where general aviation activities occur. One suggestion is to define the term "General Aviation Security Area" so that the general aviation areas are not included in the critical security area or restricted operations area.

Two airports state that the ROA should be defined and limited to only those areas outside the critical security area and immediately adjacent to facilities needed for aircraft operators to land, depart, taxi, park, and maneuver aircraft. All other areas should be considered non-restricted AOA portions of the airport and a definition for an AOA included in the new part 107. The proposed rule, as written, would require a massive expenditure of critically needed funds to extend and upgrade the systems presently installed.

The Airport Council International-North America (ACI–NA), American Association of American Executives (AAAE), and two airports state that increasing the size of the restricted operations area directly contravenes the recommendations of the ASAC working group.

FAA Response: This rule adds definitions to better describe the limits of the secured area, AOA, and SIDA. These definitions in part are intended to conform part 107 to what has become common practice in determining the limits of these areas at airports. The FAA anticipates that there will be few changes needed in the boundaries of current secured areas, SIDAs, and AOAs based on these rule changes, although nationwide we anticipate a small reduction in the current security areas and corresponding increase in the AOA. These definitions reduce the overlap between the areas by clearly separating the AOA from the secured area. Each will be a distinct area, with different requirements. This assists in accomplishing the goal of providing for the highest levels of security at those places where operations regulated under parts 108 and 129 are conducted.

The secured area is that area where the highest level of security measures

are needed. This includes areas where part 108 operations enplane and deplane passengers and sort and load baggage, and adjacent areas that are not separated by adequate security measures. Unlike the current rule, the term "secured area" is not used only to describe the area where enhanced access controls are required. It is used to describe an area where a range of enhanced security measures are required, including identification media, escort, and challenge programs. This is consistent with current practice. For example, those areas in which the enhanced access controls are considered necessary are also SIDAs with ID display required.

The SIDA is essentially not changed from the current rule. It overlays secured area, in that the secured area must be a SIDA. It may overlap an AOA, in that at some airports it may be necessary for part or all of the AOA to be a SIDA. The SIDA may also be in an area outside of either the secured area or AOA, such as a cargo makeup area. The security measures required for the SIDA have not been changed significantly.

The AOA is almost the same concept as used in current part 107, except that it is limited to those areas that are used by parts 108 and 129 operations, and those adjacent areas that are not separated by adequate security measures. Further, the secured area is no longer considered part of the AOA. The security measures required in the AOA include controlling access and presence of unauthorized persons and vehicles. There remains flexibility as to exact measures to be used to accomplish these tasks, because each airport is different and may have different needs in the AOA. For instance, personnel ID systems may or may not be used in the AOA.

The proposal used the phrase "any adjacent areas that are not separated by security controls or physical barriers." The final rule uses the phrase "adjacent areas that are not separated by adequate security systems, measures, or procedures." Physical barriers are one sort of security measure, and may be a critical part of a security system that permits an adjacent area to be excluded from a secured area or an AOA. There are many other provisions that in appropriate combinations may provide adequate security systems, measures, or procedures. They include remoteness from the adjacent operation ("time and distance") combined with specific measures to detect and respond to unauthorized penetrations, fences, personnel ID systems, closed circuit TV, clear markings, and security patrols. Given the wide variations in airports and the various security systems in use, it is impossible to state specifically in the rule what is needed at each airport. Further, much of the information on the security systems to be used at each airport must be kept non-public to avoid giving unauthorized persons information that could be used to attempt to defeat them.

As to signs, markings, and visual barriers, it must be noted that these are effective mostly for people who are attempting in good faith to comply with the security systems at the airport. Standing alone, they are not very effective at keeping out persons who are intending to defeat the system.

The FAA considered using the term "immediately adjacent," rather than just "adjacent." However, this might be viewed as too limiting. The key is whether the adjacent area can be separated by adequate security measures. Distance alone is not sufficient. For instance, to be effective, distance must be coupled with adequate measures to detect and respond to unauthorized persons attempting to cross that distance. In each case, the airport operator and the FAA must consider not only how close the adjacent area is, but also what security measures are present, what related activity is in the area, and all other factors. It is impossible to state specifically how far an area might extend before it is excluded from the secured area or the AOA. For instance, at airports where general aviation (GA) activity is sufficiently remote from the secured area and there are dedicated measures to detect and challenge persons moving from the GA area to the secured area, that GA area may not need to be included in the secured area. At other locations where the GA activity is close to the terminal, and it is not possible to erect adequate physical barriers, there may be no way to provide adequate security measures to exclude the GA area from the secured area. Removing GA areas from the AOA, this too depends on the airport. GA areas are usually near taxiways and/or runways used by parts 108 and 129 aircraft, and are usually within the perimeter fence of the airport. Even if a GA area is remote from the secured area it may not be possible to have adequate security measures to omit it from the AOA. However, if the GA area is separated from the taxiways and runways by a fence and controlled gate, there may be a basis to exclude it from the AOA. Again, the FAA does not consider the secured area and AOA, as defined in the final rule, to be vastly different than what currently exists at the airports. This final rule to a large extent more clearly reflects the areas as they have evolved from the more general and vague language of the current rule.

The security measures required in each area are discussed more fully in the Section-by-Section Analysis.

The Notice did not propose to retain the term SIDA. As discussed above, the FAA has decided to retain this term, with modifications. As used in current § 107.25, SIDA refers to "any area identified in the airport security program as requiring each person to continuously display on their outermost garment, an airport-approved identification medium unless under airport-approved escort." It was based on the idea that, if the area was of such an importance to security to have a requirement in the security program for the continuous display of identification, it should also have the training requirements in § 107.25 to ensure that airport personnel know their duties to challenge persons without ID, and the employment verification of § 107.31.

This final rule changes the definition of SIDA to "a portion of an airport, specified in the airport security program, in which security measures specified in this part are carried out. This area includes the secured area and may include other areas of the airport, such as areas where there are activities related to the operations of aircraft operators and foreign air carriers that have security programs under part 108 or § 129.25 of this chapter." This definition is intended to capture the original intent of the SIDA. It includes the secured area, in which the highest level of security is required. An airport operator may include in the SIDA other areas, such as cargo makeup areas, fuel farms, and other areas, particularly where activities related to part 108 and part 129 operations are carried out. On some airports the entire AOA may be designated a SIDA. Again, because of the varied configuration of airports it is not possible to describe exactly the limits of the SIDA.

New § 107.205 states the security measures that must be carried out in the SIDA, and is discussed in the Section-by-Section Analysis.

A strict reading of current § § 107.25 and 107.31 would suggest that any area in which continuous display of ID is provided for in the security program also requires the more extensive training in escort and challenge procedures, and employment verification in these sections. It has become evident to the FAA that there are areas of airports outside of the secured area in which, due to local circumstances, the continuous display of ID is required by

local rule, but that do not necessarily warrant the higher security requirements of a SIDA. Examples include areas used exclusively by an aircraft manufacturer or other private corporation, in which continuous display of a corporate ID is required largely for corporate security purposes. Such areas are described in the airport security program because they are part of the overall security situation at the airport. For instance, the airport would make sure that the color and appearance of the corporate ID was not confusingly similar to that of the airport IDs used in the SIDA. The corporate areas, however, need not have all the measures that apply to the SIDA. Nevertheless, the definition as it appears in current part 107 could be read to mean that such areas must be formal SIDA's. New § 107.203(b)(5) acknowledges that such areas may exist in the AOA without them being deemed SIDA's under new § 107.205.

The Notice proposed, in essence, that the CSA (now the secured area) would have all the attributes of the SIDA, with full training and employment verification. The proposed ROA (now AOA) would have ID display required, but not have the same extensive training or employment verification as the SIDA. The final rule represents a middle ground between the current rule and the proposal by requiring the secured area to be a SIDA, and providing the option of less burdensome ID requirements in the AOA.

Time Limits

Proposal: The Notice proposed various time limits for carrying out various tasks, such as approval of a security program, amendments to security programs, and changed conditions affecting security. These tasks were presented with deadlines that were in terms of calendar days and hours.

Comments: A commenter states that compliance timeframes should be adjusted to reflect realistic opportunities. The recommendation was made that the FAA refer to "business days" versus a specified number of hours when setting deadlines for compliance.

FAA response: Regarding the use of business days in favor of a specific number of hours, the FAA notes that its regulations usually deal in terms of calendar days or hours (for instance, 30 days or 72 hours). When setting deadlines for compliance the FAA will set reasonable deadlines, based on circumstances, while taking into account holidays and weekends. In emergency situations, it may not be in the interest of security to delay compliance for a weekend or holiday. The agency sees no need to alter its practice. Further, the use of "business days" can be confusing. Most airports are open for business every day of the week, including holidays. Further, the observance of holidays is not uniform throughout the country.

Compliance Dates

Proposal: The Notice requested comments regarding compliance dates.

Comments: ACI–NA and AAAE comment that the FAA should provide sufficient time following issuance of a final rule for airports to be in compliance. A minimum phase-in period of 18 months was suggested.

FAA response: The FAA believes this final rule has allowed adequate time for airports to comply. The agency notes that the complexities involved in compliance, as well as anticipated costs, are carefully weighed when deadlines are established. Where difficulties are encountered, airport operators are encouraged to contact their local FAA security field office. The FAA has attempted to ensure a realistic approach to compliance timeframes but recognizes that such timeframes are sometimes not met for good cause. The agency is prepared to extend reasonable consideration when the merits of a situation warrant.

The final rule has far fewer required changes than the NPRM. For instance, the boundaries and names of the secured area, AOA, and SIDA will change little, if at all. Also, some new requirements have intended compliance dates such as for AOA training under § 107.213(c) and (f).

Security Requirements Based on Size of Aircraft Served

Comments: One commenter states that increased airport security thresholds should not be based on the size of the aircraft serving an airport, but on the number of passengers screened annually. One commenter agrees with the statement that experience shows airports served by smaller aircraft need not comply with all of the requirements imposed on larger airports. However, security should be a function of the nature of the service resident at an airport; that is, medium and large hub airports are of more concern, so operations to and from them should be of more concern. The commenter suggests that perhaps the analysis should focus on city pairs instead; and further still, to more highly threatened city pairs. Aircraft sizes and their variations do not, in themselves, create security issues.

FAA response: The agency understands the commenters' concerns about appropriate measures as determined by the size and threat level of particular airports. But, contrary to the comments, the FAA believes that aircraft size and capabilities affect their desirability as targets of terrorism or other criminal acts. Such criteria have historically proven good indicators of where and how to focus limited security resources. There are some requirements that may vary based on the amount of activity at the airport and other factors, which are set out in the individual airport's security programs.

Supplemental Notice of Proposed Rulemaking (SNPRM)

Comments: The ACI–NA and AAAE strongly urge the FAA not to implement the proposed rule until the FAA publishes an SNPRM and reviews the comments. It would be appropriate within this timeframe to examine ways that the ASAC, or a new working group within the ASAC, could be appointed to clarify and streamline this proposal.

Twenty-four airports, an air carrier, a local government, five local departments, and commissions recommend that the FAA publish an SNPRM.

Many commenters state that the FAA states throughout the NPRM that it is an incomplete proposal, and notes that additional language will be supplied at a later, unspecified date.

FAA response: Having received a vast amount of public and industry input to this proposal, and in view of the many changes reflected in the final rule, the FAA is confident that the rule can go forward without the issuance of an SNPRM that covers the entire part 107. This decision is based partly on the fact that the FAA has agreed with many of the issues the commenters felt most strongly about, such as renaming the airport areas. As to another issue of common concern, compliance programs in proposed § 107.103(a)(2) as mentioned under General Discussion of the Rule, the agency reopened the comment period.

The proposal and the final rule, as well as extensive historical experience, make it clear that many specifics of the design and implementation of security programs are not appropriate for the public rulemaking process. The FAA has carefully and diligently indicated the difference between public requirements of the regulation, and specific information that can only appear in the security program. The specific details of security measures, in order to be effective, must often be held closely by those with a "need to know."

Since many of the requirements of this final rule have been in place at airports in one form or another for many years, the FAA does not anticipate any regulated parties would be unduly or unnecessarily inconvenienced in complying with them.

Section-by-Section Analysis

The following is a discussion of comments and FAA responses for each proposed section.

Section 107.1 Applicability

The NPRM proposed to extend airport security requirements to airports regularly serving any aircraft operator required to have a security program under parts 108 or 129. This would be a change from the current rule, which covers airport operators regularly serving scheduled operations of aircraft operators required to have a security program. The increase would be those airports that only regularly serve certain public charter operations. The NPRM also proposed to extend the applicability of existing § 107.1 to individuals entering or in critical security areas, restricted operations areas, and sterile areas.

Under proposed § 107.1(b), the term "Assistant Administrator for Civil Aviation Security" would be used, rather than the existing "Director of Civil Aviation Security." This position would be defined as the official who oversees civil aviation security operations and approves security programs. In addition, § 107.1(b) would clarify that the Deputy Assistant Administrator for Civil Aviation Security, or any individual formally designated, could act in the capacity of the Assistant Administrator and the duties of this position could be further delegated.

Comments: A commenter states that smaller regional airports do not have staff to perform all requirements in the proposed rule. The FAA would have to fund the salaries of additional personnel so that the facility could comply with the rule.

Another commenter recommends removing the reference to "sterile area" in § 107.1(a)(3), as it is controlled by part 108 rules.

Finally, Air Transport Association (ATA) comments that the delegation of the Administrator's authority should be narrowly circumscribed due to the potential for conflicting and overlapping authority.

FAA response: In the past, the FAA generally chose to hold only the airport operator accountable for the actions of persons under its control, with the expectation that corrective actions taken by airport operators would discourage employees and others from repeated non-compliance. The FAA continues to believe that corporate accountability is key to achieving and maintaining compliance. However, the agency also believes that the concept of holding individuals accountable for security violations, in a timely fashion, is a worthy one. The agency remains committed to broadening accountability and the final rule reflects that under new § 107.11.

In response to the comment regarding the lack of staff at smaller regional airports, the FAA refers to the Regulatory Evaluation. Economic analyses are based on estimates which anticipate costs associated with all sizes of airports, and recognizing the costs of the different levels of security measures associated with each.

Regarding removal of the term "sterile area" from § 107.1(a)(3), that term originated in part 108, and is used in part 107 to define locations at which a person is subject to individual responsibility for their conduct under this part. The FAA, therefore, has decided to leave the proposed language unchanged while the definition of "sterile area" is retained in part 108.

In response to ATA's comment about the delegation of the Administrator's authority, the FAA notes that the proposal reflects the manner in which the FAA's internal chain of command carries out its statutory responsibilities. The FAA agrees that delegations must be carefully evaluated to avoid unnecessary conflicts of authority.

Section 107.3 Definitions

The FAA proposed a new definitions section (§ 107.3) which would include revised definitions from the current part 107. Section 107.3 also would add several new definitions. Existing § 107.3, Security Program, would be incorporated under proposed Subpart B, Airport Security Program. The FAA proposed that the terms defined in part 108, e.g., "sterile area," would apply to this part.

The proposals regarding the secured area, AOA, SIDA, CSA, and ROA are discussed under the General Discussion above. In addition, the FAA proposed the following in § 107.3. The definition of "exclusive area" in existing § 107.1 would be revised and grouped with a newly defined "exclusive area agreement." Under the proposal, the definition of "escort" was revised to include a reference to the proposed critical security area and restricted operations area. The definition "sterile area" was revised in the proposal to clarify the responsibility to conduct inspections of persons and property.

The FAA also proposed adding the following definitions: "airport security program," "airport tenant," "airport tenant security program," "Assistant Administrator," "exclusive area agreement, "and "unescorted access authority."

Comments on definitions in general: The Regional Airline Association (RAA), Federal Express (FedEx), eight airports, an air carrier, and a local department of aviation request that the FAA define terms more clearly, or continue using the current terms. The commenters also provide detailed suggestions on how to more clearly define some of the terms.

United Parcel Service (UPS), Alaska Airlines, Trans World Airways (TWA), Port Authority of NY and NJ, and Phoenix Aviation Department suggest incorporating the same definitions in parts 107 and 108.

FAA response: Clarity of definitions is a fundamental goal of this rulemaking. In response to RAA, FedEx, and the many other commenters who offered comments on exactly how to go about that task, the FAA wishes to assure them that every effort has been made for clarity and distinctness. The challenge was to develop clarity, while at the same time providing flexibility to allow for local applications and unique circumstances.

As to the requests to repeat the definition of terms used in both parts 107 and 108, the FAA has decided to retain the definitions in the most applicable part. Cross references will indicate that the terms apply to the other part as well. Although it might be more convenient for some users to have the definitions repeated in each part, there is a risk that the definitions would become inconsistent as parts are individually amended from time to time.

Comments on "escort": The ATA states that the term "escort" should not apply to employees temporarily without aircraft operator identification media.

The UPS and three airports state that the proposed definition of "escort" leaves too much room for interpretation. Airport commenters state that the phrase "sufficient to take action" is unclear. The FAA should add language that holds individuals accountable for being in direct physical control of persons under escort.

FAA response: In consideration of the comments, the FAA has revised the definition of escort. The term "escort" now means "to accompany or monitor the activities of an individual who does not have unescorted access authority

into or within a secured area or SIDA." This emphasizes the primary function of the escorter—to determine whether the escortee is limiting his or her activities to those authorized. If the escortee departs from authorized activities, the escorter would take action in accordance with the security program. This could include verbally challenging the individual, summoning a supervisor, or summoning law enforcement. The minimum requirements for the local design and implementation of escort procedures are set forth in new §§ 107.201 and 107.205. Specifics as to where and how this method is to be applied will appear in individual airport security programs. As to the escorter being in "direct physical control" of the escortee, this phrase might imply a level of physical control that generally is not needed, such as the level of control a law enforcement officer exerts over a person they have arrested.

Comments on "exclusive area": Denver International Airport suggests that the definition of "exclusive area" include the concept that now individual access points can be designated as "exclusive areas." The commenter also recommends adding "located anywhere on the airport" after the phrase "access points."

FAA response: The definition of "exclusive area" as proposed was intended to provide the regulated parties with the opportunity to transfer the accountability and responsibilities under part 107 from the airport operator to aircraft operators under parts 108 or 129. The definition as proposed expands the scope of the former definition, which allowed exclusive area agreements only for portions of the AOA. The new definition permits inclusion of portions of an AOA, secured area, and SIDA, which may include access points. For example, a part 108 regulated aircraft operator may now assume specific security responsibilities under part 107 for that portion of the secured area within its leasehold. The aircraft operator may also accept an exclusive area agreement with the airport for part 107 responsibility for any access point (for persons or vehicles) which leads directly into that portion of the secured area. Individual access points may be included in exclusive area agreements in the final rule. Further discussion of exclusive areas appears in response to comments relating to proposed § 107.111.

Comments on "sterile area": Several commenters, including three airports, requested that the FAA put the definition of "sterile area" in § 107.3 instead of referring the reader to part 108.

FAA response: The definition of sterile area will remain in § 108.3, and will not be repeated in this part. As explained earlier, the FAA has decided to keep the definitions in the most applicable part, with cross-references showing that the terms apply to other parts as well. Section 108.3 states that the term "sterile area" means a portion of an airport defined in the security program that provides passengers access to boarding aircraft and to which the access generally is controlled by an aircraft operator or foreign air carrier through the screening of persons and property in accordance with the security program. The use of the term "sterile area" in part 107 is for descriptive purposes only.

Comments on "unescorted access authority": The Air Line Pilots Association (ALPA) and Juneau International Airport request a definition of "unescorted access authority."

Another commenter says that the airport operator should be the only person authorized to grant unescorted access authority.

FAA response: The FAA defines unescorted access authority as the authority granted to individuals to gain entry to, and be present without an escort in secured areas and SIDA's. The FAA disagrees with the comment that only the airport operator should grant unescorted access authority. It has been a longstanding practice for aircraft operators holding security programs under parts 108 or 129 to join with the airport operator in "exclusive area agreements." The intent of such agreements is to transfer certain part 107 requirements to the aircraft operator, as specified in the agreement.

Additionally, it is a common practice for the airport operator to extend or broaden authorization for unescorted access to a class of persons. For example, the acceptance of a particular company's employee identification card, as airport-approved media, effectively extends to such companies the authority to determine who may have such privileges on a case-by-case basis. In each of these cases the airport operator has agreed to extend the privilege to the other party. The FAA believes that as long as a responsible party is empowered to extend that privilege under specific terms, the safety of the flying public can be ensured. Therefore, absent any compelling reasons to the contrary, the FAA will permit parties other than the airport operator to grant unescorted access authority within the constraints of this part.

Comments on clarification of definitions and new definitions: Many commenters request clarification of the following terms: "media," "vehicle," "person," "physical barriers," and "law enforcement personnel." Atlanta Hartsfield International Airport requests clarification of the term "person." A commenter requests a definition of "physical barriers," and recommends including time, distance, or signage in the definition.

The Monterey Peninsula Airport District comments that the FAA should define "law enforcement personnel" to consist of state certified police officers. Security guards should supplement, not replace police officers.

FAA response: In response to comments regarding clarification of definitions or the use of new definitions, the FAA notes that it usually does not define terms that are used within their common, everyday meaning. For example, the terms "media," "ground vehicle," and "physical barriers" are not used in this rule in unique ways. There is no need to include definitions in the rule.

The term "media," for instance, is used in a conventional sense to identify any means, materials, or techniques that identify an individual or vehicle or convey an individual's access or personnel identification authorization. In common usage, access media can include keys, magnetic cards, or other means to gain entry. In the case of identification media, § 107.211 provides additional standards for such media. The FAA used the term "physical barriers" in a conventional sense to include, for example, fences, walls, and buildings. The FAA has not used that term in the final rule, as discussed under Secured Area, AOA, and SIDA, above.

The word "person" is already defined in 14 CFR § 1.1. That definition is controlling with regard to part 107 so that there is no reason to repeat that definition in part 107.

Section 107.5 Airport Security Coordinator

The FAA proposed that existing § 107.5, "Approval of security program," would be incorporated into proposed § 107.105, "Approval and amendments," under proposed Subpart B, Airport Security Program. Existing § 107.29, "Airport Security Coordinator" would be revised and renumbered as new § 107.5 under new Subpart A, General.

The FAA proposed to further define the functions and responsibilities of the

ASC. The functions of the ASC were discussed in the Employment Standards Rulemaking (56 FR 41412 at 41417–8; August 20, 1991). The FAA also proposed that this section would clarify that an individual serving as an ASC may perform other duties in addition to those required by the FAA, and this need not be the ASC's only duties. It was the FAA's intent to clarify that the ASC requirements did not mandate that airport operators establish additional positions, the duties of which are exclusively security-related. Further, the proposed language was intended to clarify the relationship between the FAA and the ASC.

The FAA also proposed to require training for the ASC every 2 years to ensure that ASC's remain updated on both airport and aircraft operator security regulatory and operational requirements. The FAA requested comments on methods airport operators would use to meet this training requirement.

Lastly, the FAA proposed moving to this section certain provisions of existing § 107.31, recently effective (60 FR 51854; October 3, 1995), regarding the ASC responsibility to review and control results of employment and criminal history checks and to serve as the contact for individuals appealing their results.

Comments on ASC Functions: (Proposed § 107.5(a) and (b)): Cheyenne Airport disagrees with incorporating specific functions and duties of the ASC into the rule. A detailed job description is redundant and unnecessary. Several commenters questioned whether there could be more than one ASC.

FAA response: The FAA's general description of the functions of the ASC reflects the expectation that similar tasks are to be conducted at hundreds of individual airports across the nation. The regulatory framework is considered essential to ensure consistent and reliable understanding of the ASC's duties.

In response to the comments, the final rule clarifies that the airport must have one or more ASC's. This would allow different people to be on call at different times. The FAA anticipates the airport generally will designate a lead ASC, and others who will assist.

Comments on § 107.5(b): One airline commenter says that proposed § 107.5(b)(2) should state that ASC's have contact with Federal Security Managers (FSM), who are FAA special agents, located at certain larger or more complex airports. Another commenter says that the ASC should have contact with the Aircraft Operator Security Coordinator (AOSC) and notes that AOSC's are to be designated at the corporate level.

Atlanta Hartsfield International Airport, Minneapolis Airport, the Port Authority of NY and NJ, Lincoln Airport Authority, and the Phoenix Aviation Department state that the requirement in proposed § 107.5(b)(3) to "review with sufficient frequency all security related functions" is vague and leaves a considerable amount of room for interpretation. Denver International Airport states that the phrase "airport tenant activities" in this paragraph needs to be defined.

The ACI–NA, AAAE, Atlanta Hartsfield International Airport, Miami International Airport, Tucson Airport, Metropolitan Washington Airports Authority, Capital Region Airport Authority, Lincoln Airport Authority, and Phoenix Aviation Department are under the perception that the ASC would "perform any duties deemed necessary" (proposed § 107.5(b)(7)). The commenters believe that this situation would be like leaving a "blank check" for the FAA to impose new duties and requirements on the airports; some commenters believe that this paragraph should be deleted and that any additional FAA directed changes should be coordinated and implemented under proposed § 107.107.

FAA response: Regarding the airline comment related to § 107.5(b)(2) that the proposal should state that ASC's should have contact with the FSM, the FAA notes that FSM's are senior FAA civil aviation security specialists whose duties apply specifically to particular airports. Such airports are generally larger and more complex facilities. A FSM is the FAA's designated point of contact for the ASC's at such airports. If there is no FSM for that airport, another contact point from a FAA field office is given to the ASC. Hence, the FAA does not see a need to add or to modify proposed language in this regard.

As to requiring the ASC to contact the AOSC, the AOSC for the aircraft operator is designated at the corporate level, while the ASC is designated at the local airport level. It is not the FAA's intent to require that the ASC communicate with corporate aircraft operator personnel. Generally, the ASC can carry out his or her duties by dealing with their aircraft operator counterpart who is a local Ground Security Coordinator (GSC), as required under part 108. The FAA would prefer to leave the option to contact corporate offices to the airport operator, as it deems necessary.

Regarding § 107.5(b)(3), the FAA disagrees that the proposed language is unduly vague. However, the FAA also recognizes that the scope of airports' security-related functions vary greatly based upon the size and complexity of the markets served by the airport. The proposed language clearly directed the airport operator, through the ASC, to review security functions specified in such documents as the security program, tenant security programs, and applicable Security Directives. These documents are written to a high degree of specificity, and therein lie the details the ASC is expected to review. Hence, the language of the regulation is seen by the FAA to be at the appropriate level of specificity. Consequently, the FAA has chosen to retain in the regulation the broader language with an expectation that more specific requirements will be reflected in or flow from the individual security programs.

In response to Denver International Airport, the FAA notes it has removed the general phrase "airport tenant activities" from § 107.5(b)(3). This section has been rewritten to reflect the more specific mandate. The airport operator, through the ASC, must review with sufficient frequency all security-related functions to ensure that all are effective and in compliance with this part and the security program. The agency notes, however, that the security program may include tenant security programs, exclusive area agreements, and other implementing documents. The FAA believes a frequent review of the activities specified in and required by such documents will yield an appropriate level of airport operator oversight and local communications regarding security measures.

The FAA agrees with the many comments about proposed § 107.5(b)(7) that may have implied an unlimited ability of the FAA to add to the duties of the ASC through changes to the security program. Consequently, proposed § 107.5(b)(7) does not appear in this final rule.

Comments on § 107.5(c) Training Schedule and Hours: Anchorage International Airport and Phoenix Aviation Department say that the FAA should host and pay for any ASC training. Port Authority of NY and NJ and Anchorage International Airport say that the FAA should provide initial ASC training and recommends that the AAAE perform recurrent training every 2 years.

The ACI–NA, AAAE, Cheyenne Airport, and Lincoln Airport Authority suggest that biannual training for ASC's at smaller airports is economically burdensome. These commenters add that attendance at training seminars for ASC's at smaller airports is difficult due to tight budgets and limited staff.

Two airports suggest that 180 days after publication of final rule is not sufficient time to be in compliance with such extensive training and recordkeeping and instead recommend a longer compliance date.

FAA response: While the FAA disagrees that it should fund ASC training, it notes that such basic training on the civil aviation security program is available from several sources. For example, the FAA jointly sponsors basic training courses with several industry associations that could provide the ASC with requisite information. Such training, when supplemented with additional information necessary to understand local concerns, would prepare the ASC to carry out the locally defined duties.

The FAA believes that the amount of time necessary for an ASC to receive instruction on the security provisions relevant to their own location would be minimal. Consequently, the FAA does not believe that ASC training comprises an undue burden for any airport.

In response to the last comment above, the FAA accepts that 180 days may be insufficient time for airports to complete training for ASC's. Since training has not been required in the past, it must be developed and budgeted for. The final rule allows for 2 years following the publication date of the rule to achieve compliance with this requirement.

The FAA recognizes the many and valued services currently provided by the nation's ASC's. However, the FAA is also aware that there are inconsistencies in the level of knowledge and experience among ASC's. This variance stems from many factors, such as, tenure in the position, initial training (if any), the individual's current primary duties, and the individual's experience in the performance of ASC duties as well as the individual's background prior to assuming the position. Consequently, the FAA is convinced that baseline training is essential to ensure an adequate level of knowledge of the ASCs.

Therefore, this final rule does not allow for the grandfathering of ASCs as a means to avoid initial training. However, recurrent training is required for only those who have a break in service of 2 years or more during which time the person did not actively perform the duties of a designated ASC. Such persons would have to again take the training to resume ASC duties.

Comments on § 107.5(c) Training Guidance: One airport states that the FAA should formulate guidance materials to clarify airport security issues, and make them available as part of the ASC training. Atlanta International Airport states that ASC training standards should be outlined in an advisory circular (AC) or proposed FAA rule. Lincoln Airport Authority and Port Authority of NY and NJ state that the ASC training curriculum, proficiency standards, and training materials should be developed by the FAA in cooperation with the industry.

Three airports state that the FAA should explain what the ASC training entails.

Two airports suggest that anyone performing in the capacity of the ASC 90 days prior to the effective date of the final rule should be "grandfathered" in and not be subject to the basic ASC portions of training. Furthermore, Tucson Airport states that the ASC is the most knowledgeable person at any airport and of the airport's security program and the FAA requirements and, therefore, the retraining of the ASC's basic job skills would be inefficient.

FAA response: The FAA recognizes that the role of the ASC has been expanded. In that context, it is the agency's view that the ASC should be trained to a level of functional familiarity with parts 107, 108, 129, and 191, the airport's relevant operational manuals, the local emergency services support, the process which results in issuances of Security Directives, the security programs (to include contingency plans), and the respective rules and the means to communicate with all airport tenants, the FAA, Federal and local LEO's, and other emergency services.

Section 107.5 of the final rule outlines the duties and functions that the FAA expects the ASC to conduct in this regard. As the performance of those basic duties may vary in detail from airport to airport, the FAA does not anticipate issuance of an AC on this topic. However, the FAA will develop a suggested training curriculum, in coordination with the airport industry. The FAA expects that the training itself would not exceed 24 classroom hours, in most cases, and would average approximately 16 hours.

The FAA would expect the specifics of the training curriculum to be developed locally, in accordance with FAA guidance and local needs. The curriculum should and would be reflected in the security program.

Comments on § 107.5(c) Maintenance of Training Records: A commenter states that where ASC's training records are maintained is a matter of legal guidance and operational preference. As long as those records are available for FAA inspection upon request, there is no need for the FAA to micromanage record maintenance. The Port Authority of NY and NJ recommends removal of language specifying that records are to be maintained in the principal operations office.

Atlanta International Airport says that training records and other documentation requirements will create unnecessary recordkeeping burdens.

FAA response: The FAA has modified the rule so as to permit the airport operator to maintain the ASC training records in a location and manner of its choosing. Further, the FAA believes that the recordkeeping burdens would amount to no more than 30 minutes a year to document the training of each ASC. The FAA anticipates that a simple statement to the record that the ASC has completed training, as specified in the security program, with date and location, is acceptable. The FAA does not believe that this requirement is excessive.

Section 107.7 Inspection Authority

The FAA proposed to move existing § 107.7, "Changed conditions affecting security" to proposed Subpart B, § 107.107. In its place, the FAA proposed to insert § 107.7, "Inspection authority," which included current § 107.27, "Evidence of compliance." The proposed section would include the evidence of compliance requirements of existing § 107.27 and additional requirements based on the FAA's statutory authority to conduct inspections, investigations, and tests.

The FAA proposed that § 107.7(a) state the Administrator's authority to conduct inspections and investigations necessary to determine compliance with part 107 and the security program.

The FAA proposed that § 107.7(b) restate the language of existing § 107.27. Also, it was proposed that § 107.7(c) clarify the airport operator's obligation to provide FAA special agents the necessary access and identification media to conduct inspections. Significantly, this proposed requirement did not propose to require airport operators to provide access or identification media to any FAA employee other than special agents.

Comments on § 107.7(a): Miami International Airport suggests referring to special agents as FAA "Security" Special Agents.

Atlanta International Airport, Alaska Airlines, and Missoula International Airport state that § 107.7(a)(3) should be removed and placed in part 108 as it relates to carriage of hazardous materials by aircraft operators. Another commenter believes part 139 adequately addresses hazardous materials on airports.

The RAA, UPS, ACI–NA, AAAE, the Port Authority of NY and NJ, Detroit Metropolitan Airport, Lincoln Airport Authority, Federal Express, Phoenix Aviation Department, Tampa International Airport, and Denver International Airport had concerns regarding the FAA's inspection authority. These commenters state that the phrase "at any time and place" is too broad and could subject aircraft operators to unreasonable and frequent intrusions into all aspects of operations by untrained FAA personnel. These commenters, including Atlanta International Airport, recommend adding the word "reasonable" at the beginning of the phrase. One commenter states that this section should be amended to limit access by FAA special agents to only those portions related to their duties. Another commenter says that FAA special agents should be allowed to access airport operational areas only after they have received appropriate local training to ensure that safety is not compromised (such as, local rules, vehicle markings, driver's training). The ATA suggests that the FAA modify § 107.7(a) and (c) to state that the FAA provide written notice of an inspection to the airport operator 24 hours prior to commencing it. Atlanta International Airport requests that the FAA inspector be required to inform the airport operator or ASC of the inspection results.

FAA response: In response to the suggestion that the FAA refer to special agents as FAA "security" special agents, the agency notes that "special agent" is the correct term, and that "security special agent" is not a job title used in FAA service.

By statute, the Administrator is empowered to conduct inspections, investigations, tests, and other such duties as may be necessary to ensure the safety and security of the civil aviation system. Since performance of such inspections is not limited to special agents, it is conceivable that other FAA employees, from time to time, may be called upon to assist special agents in the performance of their duties on behalf of the Administrator. Therefore, to avoid confusion, the reference to special agents has been removed from § 107.7(a).

The FAA agrees with the commenters that hazardous materials inspections should be removed from part 107, however, it should not be placed in part 108. The FAA continues to have authority to inspect for violations of hazardous materials regulations, but its authority is based on different statute provisions than those for civil aviation security. Proposed § 107.7(a)(3) referred to determining compliance with 49 CFR part 172, which provides requirements under the Hazardous Materials Transportation Act. This reference has been removed from the final rule. Part 107 is devoted to civil aviation security issues. To avoid misunderstanding, reference to hazardous materials inspections is deleted.

With respect to concerns about the FAA's inspection authority, the Administrator is empowered to conduct such investigations and inspections as necessary to ensure the safety of civil aviation, under the statute. The statute, Title 49 USC Section 40113, does not restrict such activities by time and place, nor should they be restricted if the mission of the FAA is to be accomplished as effectively and efficiently as possible, and in the best interest of the public. Therefore, the FAA will not restrict its security-related activities through the regulation as suggested.

The FAA agrees with the commenters that the FAA is required to conduct its investigations and tests in a reasonable manner, but does not believe that the words "reasonable" should be added to the regulation. The wording used is similar to that used in a number of other FAA rules that have existed for years, including § § 119.59 (air carriers and commercial operators), 141.21 (pilot schools), 145.23 (repair stations), and 147.43 (aviation maintenance technician schools). The wording of these rules has not caused significant problems in the past. The FAA does not anticipate any change in its inspection procedures based on this new rule.

The FAA does not agree with the commenters who suggest that the access by special agents be limited in any way. The FAA has authority to conduct inspections and investigations throughout the airport property, wherever regulated activity is conducted. Any limitations placed upon FAA personnel acting on behalf of the Administrator could potentially hinder their ability to most effectively perform their assigned duties. Therefore, the final rule will not impose such limits.

As to the suggestion that the FAA provide advance notice of inspections, the FAA routinely notifies airport operators of scheduled inspections. This notice gives the parties to be inspected the opportunity to gather evidence of compliance and to arrange to have appropriate personnel available to assist the FAA. However, inspections related to a particular incident, or which are intended to be made without notice are necessary. Some inspections can only be effective if they are unannounced. Such considerations fall within the purview of the FAA's internal guidance and will not be addressed in this final rule.

Section 107.7(a) only provides for inspection by the FAA. Unlike the Notice, it does not refer to inspection by other Federal government entities. The FAA has no authority to grant or to deny inspection authority to another agency. The section was changed to avoid any appearance that the FAA was purporting to grant such authority.

Comments on § 107.7(b): Tucson Airport requests guidance to foster consistency when providing "evidence of compliance with this part and its security program" as described in § 107.7(b).

FAA response: Since its adoption, this provision has been intended to require airport operators to provide the FAA access to existing records. *See* 56 FR 41412 at 41416 (August 20, 1991). Such records may vary from airport to airport, and are not the subject of standard guidance.

Proposed § 107.5(a) referred to the Administrator making inspections and tests, and § 107.5(b) referred to the airport operator providing evidence of compliance to the Administrator. The final rule adds the clarification that these include the FAA making copies of records or the airport operator providing copies. Obtaining copies of records is an inherent part of the FAA inspecting compliance with safety and security requirements. It is necessary to preserve the records for further review by the FAA. This is true for all FAA inspections, including those by FAA aviation safety inspectors (who look at compliance with operational and airworthiness rules) and FAA special agents. Often, the copying is done at the aircraft operator's or airport operator's office with their permission. Sometimes other arrangements are made, such as the FAA temporarily removing the records to copy them at a FAA office or a commercial service. The FAA has rarely encountered difficulty on this point, but includes these explicit statements in the final rule to avoid misunderstanding in the future.

This section refers to copying of records, not just documents. Records may be kept in a number of forms, such as paper, microfilm, and electronic. The special agent may request copies of any of these forms, usually by having paper copies made of the records. If another form is easily used by the special agent, he/she may accept records in that form.

New § 107.7(c) states that FAA personnel may gain access to the SIDA and other controlled areas without holding access or personnel identification media issued by the airport or aircraft operator, when

necessary to conduct an inspection or investigation. The FAA agrees that in most circumstances FAA personnel should comply with the access and identification requirements in place at the airport, and it has been FAA practice to require that, when practicable, FAA personnel first obtain local media before conducting inspections. However, there are times when the FAA cannot adequately inspect and test compliance if its employees first obtain access and ID media from the airport or aircraft operator. The act of obtaining such media may provide an opportunity for the FAA representative to be recognized by personnel at the airport, thereby reducing or negating the value of the inspection. The FAA sometimes must make unannounced tests by entering the SIDA or other areas without first having obtained such media. The FAA authorizes such tests only under very controlled conditions, using personnel who are trained to avoid creating a safety hazard or an undue security response. For instance, they carry their FAA credentials to display if they are challenged, to immediately establish their authority to conduct such inspections. This technique is intended to be used only when it is not practicable to obtain local media before the inspection, such as when making unannounced tests of the access and identification systems in place. Otherwise, the FAA representatives have the appropriate access and ID media.

Comments on § 107.7(d): Atlanta International Airport states that proposed § 107.7(c) should be amended to delete the reference to "any FAA special agent." The FAA should be required to designate a local point of contact to verify the need for local airport identification media. Commenters suggest it is difficult to maintain control and accountability of media issued to the FAA.

Juneau International Airport requests a description of valid FAA special agent credentials, as this information is currently not available.

The Port Authority of NY and NJ states that the display and wearing of an FAA special agent identification should be sufficient identification for unescorted access to any area of an airport which the agent has an operational inspection need.

The Sacramento County Department of Airports suggests that FAA special agents should have to go through the same identification media requests as an airport tenant. Ft. Wayne Airport suggests the FAA special agents should have to go through SIDA training to become familiar with the security program for which they are inspecting. Further, a commenter suggests the airports should charge reasonable fees associated with issuing airport identification media and providing SIDA training to FAA special agents.

Tucson Airport says that the Administrator should develop part 107 testing protocols that meet the FAA's needs without needlessly diverting resources to a "cry of wolf." In a related comment, ALEAN states that it is unsafe for armed law enforcement officers (LEO's) to be running through airport terminals, believing that they are responding to an actual threat at the checkpoint when it is just a test. Such tests should be administered in the same manner that part 139 timed response drills are run.

FAA response: In response to the comment about deleting reference to "any FAA special agent," the FAA agrees, in part, with Atlanta International Airport, and others that the proposed language was broad. Any FAA special agent seeking local access and identification media, should have an operational need for the media, and the concurrence of the designated local FAA point of contact. The proposed rule stated that the media would be issued on request of the FAA special agent and presentation of credentials. As some commenters note, not all FAA special agents have duties and training to conduct inspections at the airport, and those agents do not need local media. The Administrator (usually through the local FAA field office) will provide to the airport or aircraft operator the names of special agents who require media.

In response to the request of Juneau International Airport, the commenter is welcome to request and to view the FAA special agent credentials in the possession of any special agent. They may contact the local FAA security office to view those credentials.

In response to the comment by the Port Authority of New York and New Jersey about the display and wearing of special agent identification, the FAA has addressed that under the new § 107.7(c). When exercising such privileges it is anticipated that the FAA employee acting on behalf of the Administrator will be in the possession of, but not necessarily displaying such credentials, as the situation may warrant. The circumstances under which this authority could be exercised include surveillance and unannounced testing or inspections.

Regarding the comment by the Sacramento County Department of Airports, the FAA acknowledges that appropriate safety and security-related training should be provided to FAA special agents before they exercise full access privileges to the secured areas and AOA's of the airport under normal circumstances. The aspects of such training that have common application can be provided at the agent's primary duty location and can be supplemented with local training at other airports requiring such training. This approach is in common use today, throughout the industry for those persons requiring similar access privileges. The revised § 107.7(d) addresses these concerns. However, in emergency situations or other initiatives, the responding agents may not have been provided the training or access media for that particular airport. The exigencies of their duties may require this access media, therefore, the language of the final rule has been modified accordingly. Where appropriate, coordination through the ASC or other local authorities would take place.

In response to the comment about allowing the airport to charge reasonable fees for issuing airport identification media, the FAA notes that nothing in the regulations would preclude the airport operator from imposing reasonable charges for its services. In fact, many already charge for initial identification media and issuance of replacements. Consequently, language permitting the airport to do so is not necessary in the final rule.

Regarding the comment about developing part 107 testing protocols, the FAA appreciates the complexity and sensitivities of the regulated parties' ongoing operations. The agency also understands both the importance and the impacts of its own operations, especially while conducting essential testing. These testing efforts will continue under the FAA's internal guidance. The agency will continue to be mindful of actual safety and security concerns during testing operations and will maintain dialog on this subject with the industry at the local and national levels.

The final rule states that the media must be issued "promptly." The FAA expects that the media will be issued without undue delay, generally within a similar time frame that media are issued to airport, aircraft operator, and contractor employees who need the media. The particular procedures will be worked out at each airport with its FAA field office.

In response to ALEAN's comment, the FAA understands and concurs with the proposition that safety in testing is essential. The FAA also believes that testing of a law enforcement response differs in some aspects from testing

firefighting and other emergency responses. For example, the latter services tend to be more focused on a more specific range of duties and generally operate from a fixed position. Law enforcement response is a resource with numerous missions unrelated to civil aviation security as addressed in this rule, and which can take it away from the immediate vicinity of the passenger screening facilities. As such, the law enforcement response can originate from anywhere, but must arrive at a designated location within a given timeframe. The FAA recognizes that testing of the law enforcement response must be conducted as judiciously and as safely as possible. Often, that can be accomplished with full disclosure in advance to the law enforcement agency. The FAA will continue to share ALEAN's concerns with its special agents but does not believe it appropriate to modify any portion of part 107 in this regard. Instead, such concerns will be addressed through the FAA's internal guidance and in keeping with the missions of both the law enforcement entities involved, the airport operators, and the FAA.

Section 107.9 Falsification

The FAA proposed a new § 107.9, entitled "Falsification." This section is the same as the current § 107.2 adopted on November 27, 1996 (61 FR 64242, December 3, 1996).

Comments: The UPS and Atlanta International Airport request an outline of the enforcement procedures and guidance to the airport operators for falsification findings. The commenters say that the airport operator should be informed of all investigations and be provided a copy of the report of findings.

The UPS, Port Authority of NY and NJ, Detroit Metropolitan Airport, and Lincoln Airport Authority say that it should be stated that persons are directly accountable to the FAA for compliance with this regulation, including federal enforcement procedures and fines.

FAA response: Enforcement procedures are contained in 14 CFR part 13 and in FAA order 2150.3A. There is no need to repeat the procedures in part 107.

Section 107.11 Security Responsibilities of Employees and Other Persons

In this section, the FAA proposed to prohibit persons, as defined in part 1, from tampering or interfering with, compromising, or modifying any security system, or attempting to do so. It also proposed to prohibit carrying a deadly or dangerous weapon, explosive, or destructive substance into sterile areas, critical security areas, or restricted operations areas.

This section proposed the use of civil penalty actions to penalize persons, those employed by the airport operator and those not under the direct authority of the airport operator (such as trespassers), who fail to comply with this section.

The FAA proposed in § 107.11(c), that individuals authorized by the Federal government, airport operator, and aircraft operators would be allowed to conduct tests and inspections of security systems.

The FAA proposed in § 107.11(d) that provisions of this section that apply to firearms and weapons would not be applicable to law enforcement personnel, Federal Air Marshals, and certain individuals authorized in a security program to carry a weapon.

Comments on § 107.11(a): Atlanta International Airport and Roanoke Regional Airport request an outline of the enforcement procedures and guidance to the airport operators for noncompliance by individuals. The enforcement concept requires more explanation. The airport operator should be informed of all investigations and be provided a copy of the report of findings.

Port Authority of NY and NJ is concerned that the majority of enforcement of Federal responsibilities are placed on the airport. The Port Authority holds that the FAA should not be unique among Federal enforcement and oversight agencies in abdicating its enforcement responsibilities.

Burbank Airport Authority suggests that civil penalties should be up to $10,000 on a case by case basis, rather than $1,000 as stated in the preamble.

The UPS, RAA, Federal Express, a local department of aviation, Miami International Airport, and many other commenters support the adoption of proposed regulations which would require individual accountability to the FAA and use of civil penalties and enforcement actions against employees, contractors, and other individuals.

The ACI–NA, AAAE, and an airport suggest language stating that failure to comply by an individual will result in revocation of privileges, application of fines, or other punitive action by the Administrator. They also suggest language stating that this rule would not prohibit State or local governments from adopting similar or more stringent regulations for local enforcement. On the other hand, ALEAN suggests that the NPRM is a superficial and impractical attempt to solve a lack of personal accountability and responsibility.

FAA response: The enforcement procedures are found in part 13, Investigative and Enforcement Procedures, and FAA Order 2150.3, Compliance and Enforcement Program.

In further response to ACI–NA and AAAE, the FAA does not believe there is a need for the agency to insert language stating that the rule would not prohibit State or local governments from adopting similar or more stringent regulations. Many State and local governments are currently permitted to adopt similar or more stringent security rules within the context of their respective jurisdictions. Many have already done so. Airport operators are primarily responsible for the security and safety of their airports, both for civil aviation security and other security issues they encounter. As part of this effort, they adopt rules and procedures to gain compliance of their employees, contractors, tenants, and others with safety and security rules. Absent very unusual circumstances, State or local governments are free to adopt penalty provisions to promote compliance.

In response to UPS and other supporting comments on individual accountability, the agency wishes to emphasize an increased reliance on individual accountability, particularly with regard to a person's interaction with security measures. But, at the same time, the agency also emphasizes that the airport operator and aircraft operator are responsible for ensuring that their employees, contractors, and others comply with security duties. The FAA agrees with ALEAN that this section is not, standing alone, adequate to address all issues of individual compliance with security rules. It is intended to serve as another tool to assist the airport operators, aircraft operators, and others to emphasize the responsibility of individuals and other persons to do their part.

Proposed § 107.11 outlined provisions of the regulation for which individual accountability would attach. However, aside from the merits of this proposal, much attention, as reflected by the comments, seemed to focus not on § 107.11, so much as on the related impact of proposed § 107.103(a)(2). This language would have required the airport operators to establish and carry out an enforcement program to hold persons in violation of the program accountable at the local level. As discussed above, the comment period was reopened for that provision.

Burbank Airport Authority sought an increase in the amount of civil

penalties. The maximum civil penalty is set by statute, however, as to individuals in these circumstances, the amount is $1,100 (adjusted for inflation since Notice 97–13 was issued).

The FAA notes that the circumstances surrounding a single security violation may involve more than one responsible party. For example, if an employee circumvents an access control to a secured area, and gains unauthorized access to an aircraft, that person can be held individually responsible for his/her actions under new § 107.11(a). At the same time, the airport operator may be responsible for failure to control access to the secured area under new § 107.201(b), and the aircraft operator may be responsible under part 108.

This rule will also have the effect of prohibiting some unauthorized testing if it violates § 107.11. The unauthorized testing of security systems may be a form of compromise, circumvention, or interference. An example is a person who is not authorized to be in the secured area without escort, but who deliberately enters the secured area without escort. Many of these actions may serve to distract unnecessarily security or law enforcement resources from their duties, increasing the risks from actual threats. Such unauthorized "testing" of security systems can prove dangerous to the "tester" (such as if they are not aware of the safety issues in the AOA, with taxiing aircraft and other hazards). The final rule language is consistent with this position, and can be cited in holding accountable persons who conduct such unauthorized activities.

Comments on proposed § 107.11(b): Anchorage International Airport states that § 107.11(b) seems appropriate for what is now known as the "sterile area" or "secured areas" of the airport, not for areas that are currently known as the "restricted areas."

Miami International Airport and TWA state that § 107.11(b) should clarify that compliance with this section rests on the individual and not the airport.

Roanoke Regional Airport states that § 107.11(b) does not recognize that construction contractors may need to bring explosives into secure areas of the airport.

The Port Authority of NY and NJ, Northwest Airlines, and Detroit Metropolitan Airport question the means by which the airport can ensure that no person will have "any deadly or dangerous weapon, etc." without screening all employees. Several commenters request clarification of "deadly or dangerous weapon" and "other destructive substances."

The ATA, UPS, and Federal Express strongly object to the imposition of screening procedures for employees at access points controlled by proposed § 107.205, and to rescreening of employees who have access clearance from the airport to enter secured areas.

FAA response: In the proposal, the agency sought to provide a means by which unauthorized persons carrying deadly or dangerous weapons, explosives, or incendiaries into the secured area could be held liable under the agency's compliance and enforcement program. The proposed language provided for persons who would have to carry such items into the secured area in the course of their authorized duties. After careful review, the agency has determined that local airport operators, through their local rules and laws, and law enforcement personnel, have the responsibility, authority and the capability to control the presence of weapons and other deadly items on airport property. Hence, there does not appear to be a need to introduce any new rulemaking regarding this issue at this time. The FAA has decided not to adopt proposed § 107.11(b), as well as the related language under § 107.11(c). Over time, the agency will monitor any incidents relating to persons carrying unauthorized weapons or deadly or dangerous items that may be detrimental to the flying public and if warranted, will develop comprehensive security measures.

Section 107.101 General Requirements

The FAA proposed this new section to incorporate related provisions of the existing regulation that require the security program to be current and in writing, and that a copy be kept at the principal operations office. The program's objective was proposed to be modified to include protection against the introduction of a deadly or dangerous weapon, explosive, or incendiary onto aircraft.

In the preamble, the FAA noted its intention to develop a standard airport security program, similar to the air carrier standard security program.

Comments: The ATA and Tucson Airport request that if the use of a standard airport security program is to be a mandatory requirement, then the airports should be given an opportunity to review and comment on its contents and application effects, prior to implementation. The additional time would provide consistency of airport and aircraft operator security programs and benefit the passengers, baggage, and cargo processing. Any policy directives for the model program should also be made available for review and comment.

FAA response: Upon review, the FAA has determined that it will be easier, less disruptive, less expensive, and equally effective to not develop a standard security program, but to modify the language of § 107.101(a)(4) to require that airport security programs include an index, arranged according to the order of subject areas cited in § 107.103. This requirement will preclude the need for major security program modifications. The FAA is also convinced that an index in each security program, arranged in accordance with this standard format, will moderate significantly the FAA's difficulties associated with overseeing the hundreds of vastly different security programs across the nation. The final language has been modified to that end.

Comments on § 107.101(a): Atlanta International Airport states that proposed § 107.101(a) should be written to reflect that airports are responsible for the safety and security of persons and property while at the airport. Roanoke Regional Airport states that the aircraft operator must be responsible for the security of persons and property onboard the aircraft.

Continental Airlines requests that § 107.101(a)(1) be clarified to exempt passenger checkpoint screening responsibilities from the security programs.

FAA response: The FAA believes that the delineation of authorities, for example the screening of passengers or the provision of law enforcement response, are properly assigned based on statute, regulation, reasonable attachment of liability, and the authority possessing the appropriate resources. The term "on an aircraft operating in air transportation in air commerce" reflects that the mandated measures in the statute at airports are ultimately in support of the security of person on board aircraft, and are not designed to address other security concerns. The proposed language was included because some of the airport's tasks do include support of the screening function, which prevents the introduction of weapons, explosives, and incendiaries on an aircraft.

Federal law assigns solely to aircraft operators the responsibility for passenger screening. That law cannot be overcome by regulation. Rather the intent of § 107.101(a)(1) is to emphasize the airport operator's role in supporting the screening system in cooperation with aircraft operators.

Comments on § 107.101(b): Atlanta International Airport, Tucson Airport, Minneapolis Airport, Port Authority of

NY and NJ, Detroit Metropolitan Airport, and Lincoln Airport Authority state that the "principal operations office" may not be the appropriate area to store the security program. Denver International Airport believes that specifying the storage location of the security program is not necessary and that making the security program available to the FAA for review upon request should be sufficient. However, requests from the FAA to review the security program should be made through the ASC.

FAA response: Upon reflection, the FAA agrees with the commenters. The rule language has been modified to delete reference to the "principal operations office." Instead, the airport operator is required to maintain at least one current and complete copy at the airport and to provide a copy of the security program to the Administrator upon request. In most cases, the ASC required under new § 107.5 would be the primary contact for such requests.

Section 107.103 Content

The FAA proposed this new section to describe the required content of the security program. The proposed rule specifies three different levels of security programs varying in complexity. The most comprehensive security program would continue to be applicable to airports serviced by scheduled passenger operations on aircraft with more than 60 seats.

The type of passenger operations that trigger the two remaining types of security programs have been expanded somewhat, as the result of changes to part 108. The intent is to ensure complete protection of the sterile area and to ensure security of passengers.

Comments on proposed § 107.103(a)(1): Atlanta International Airport, Missoula International Airport, and Phoenix Aviation Department request removal of the requirement to outline the ASC's training. Training requirements should be provided in an advisory circular (AC), not the security program.

Juneau International Airport requested the FAA explain what the training requirements for ASC's and alternates are under § 107.103(a)(1).

FAA response: While ASC training has been addressed in the discussion of § 107.5, it seems appropriate to address the administrative aspect of the ASC training program requirements here. The FAA disagrees with comments submitted by the Atlanta, Missoula, and Phoenix airport authorities that the ASC training requirements should appear in AC's. Rather, the agency believes general training mandates appearing in the regulation must be clearly defined and required under specific language appearing in nonpublic security programs. The agency notes that the guidance in AC's is not mandatory. The proposed language is adopted without change.

Comments on § 107.103(a)(2): Numerous comments were received on the proposal to require each airport to have a security compliance program.

FAA response: As explained above under General Discussion of the Rule, the comment period on this section was reopened. The FAA will respond to all comments in a later action. The comments recounted here are only a representative sampling of the many comments received in response to proposed § 107.103(a)(2). Yet, since the close of the comment period, the FAA has become aware of shifting views by many of the same parties with regard to this and related issues. Therefore, the FAA has reserved decision on proposed § 107.103(a)(2), and reopened the docket for comments on August 10, 1999. The new comment period closed on September 24, 1999. The FAA will consider the comments received and consider what action, if any should be taken on this proposal.

Comments on § 107.103(a)(3)–(20): Five airports suggest that the FAA replace the word "dimensions" in § 107.103(a)(3)(i) with "general description." A general description or a map would provide sufficient details of the areas. Information about the dimensions of the map should be delegated to appendices and not subject to FAA approval. Ft. Wayne Airport says that a scale map or diagram has been and should be sufficient to delineate these areas. If the FAA needs more detailed information, it should state the reason behind the requirement and include costs associated with calculating the dimensions of these areas into a cost benefit scenario. Quad City International Airport states that detailed map-making is a costly undertaking.

Denver International Airport and Port Authority of NY and NJ recommend modifying § 107.103(a)(5) to state "sterile areas with direct access to the critical security area." Only those activities with direct access to secured areas in the NPRM from the sterile areas should be listed.

Another commenter recommends deleting any references to "sterile areas" in proposed § 107.103(a)(5) and throughout part 107 since the term is not defined.

Tucson Airport states that the following information should be outlined in an appendix, not included in the body of the security program: The system for maintaining records and the schedule for reporting them required by proposed § 107.103(a)(12), the contingency plan required by proposed § 107.103(a)(14), the exclusive area agreements required by proposed 107.103(a)(19) and the tenant security agreements required by proposed § 107.103(a)(20).

One commenter states that the incident and emergency management procedures, required by § 107.103(a)(17) are adequately covered for airports complying with part 139 programs. A reiteration of these procedures would be redundant and a cross-reference to the part 139 emergency plan should be sufficient.

FAA response: The FAA disagrees with the commenters that a "general description" rather than "dimensions" would suffice in describing various aspects of the airport in the security program. The FAA believes that the exact dimensions and boundaries, as required in the security program, are necessary to clearly establish where various security measures are required at different locations on the airport. With the advent of the tenant security program (new § 107.113), and the possible increased reliance upon exclusive area agreements (new § 107.111), this requirement becomes increasingly important. The detailed descriptions are necessary so that all parties are aware of what security procedures apply in what areas, and which party is responsible for carrying out those procedures. At the same time, the FAA does not expect the airport operators to generate detailed maps drawn specifically for this purpose. Rather, existing maps used for engineering and maintenance at most airports are usually acceptable and are in common use today. The wording remains the same. If an airport has a method of clearly identifying the boundaries of the areas without using dimensions, it may request to use that method.

In considering the comments that stated that only sterile areas leading to critical security areas (now secured area) should be detailed, the FAA notes that while most sterile areas have access points leading directly to secured areas, that condition may not be the case universally. Further, there are other considerations besides access to secured areas that forces the FAA to require that such details appear in the security program. Lastly, the FAA does not accept the suggestion to delete the term "sterile area," since it is not defined in this part. It is defined in the final rule

to part 108, in § 108.3, and is a commonly used and understood term.

A security program may be structured in the manner suggested by the Tucson Airport by incorporating information appearing in program appendices. New § 107.103(d) (and current § 107.3(c)) provides for including information in an appendix.

As to the comments regarding proposed § 107.103(a)(17) regarding incident management (new § 107.103(a)(18)), the FAA wishes to emphasize that the requirement speaks to the evaluation of a threat, rather than to a response to an actual incident as referenced in § 139.325. The level of response to a threat is tied to the evaluation of that threat, which is a different process than responding to an actual highjacking or other event in progress. Evaluating which threats call for what type of response is a security issue, best handled under part 107. It may involve evaluation of non-public security information.

Comments on § 107.103(b) and (c): Minneapolis Metropolitan Airport states that the procedures for public advisories required by § § 107.103(b)(7) and 107.103(c)(6) (i.e., that a foreign airport has, in the judgment of the Secretary of Transportation, failed to maintain and administer effective security measures (new § 107.305)) should rest with the aircraft operators, that should be responsible for informing their passengers. This should not be an airport operator responsibility.

FAA response: The requirement to provide public notification that a foreign airport has been determined to have failed to maintain or carryout effective security measures, is found in the Section 44907(d)(ii), Title 49, United States Code. The FAA believes the requirement to prominently post the identity of such foreign airports at all U.S. airports having regularly scheduled aircraft operator operations is best accomplished at each U.S. airport by a single entity at each location. For consistency's sake, the FAA has determined that the airport operator should be responsible for the posting of this information. The law also requires aircraft operators serving the subject airports to notify their passengers of the foreign airport's status. With this dual requirement, the FAA believes all persons using the airport, and those using the specified carriers, will have ample warning before risking travel to a location that the Secretary of Transportation has determined lacks effective security measures.

Comments on § 107.103(d): Tucson Airport asks whether the FAA would allow inclusion of an airport's part 139 emergency plan in the appendix as sufficient compliance with this rule.

FAA response: Regarding placement of the part 139 emergency plan in the security plan as an appendix, the FAA notes its previous comments, above. It has no objections to this method where the plans are mutually supportive and meet the requirements of the respective parts. However, the FAA's civil aviation security organization's review and approval process of the security plan may employ different criteria than the reviews under part 139, for the review of the emergency plan. Simple inclusion in the security plan without the opportunity for the FAA's civil aviation security organization's review and approval on a case-by-case basis would not be acceptable. Additionally, only those limited portions of the emergency plan with direct relevance to security concerns should be incorporated into the airport security plan.

Section 107.105 Approval and Amendments

The FAA proposed to combine existing § § 107.5, 107.9, and 107.11 into a new section, proposed § 107.105. Several changes were proposed to the amendment process itself. Proposed § 108.105 prescribed the same approval and amendment procedures for aircraft operators.

Throughout this proposed section, any references to the "Director of Civil Aviation Security" were replaced with "Assistant Administrator." Also, time restraints on filing petitions for reconsideration of the FAA's decision were included for airport operators. Specifically, § 107.105(a)(2) proposed that airport operators submit to the Administrator a petition for reconsideration within 30 days after receiving the notice to modify. Proposed § 107.105(a)(2) included the provision in current § 107.11(c) that the filing of a petition would stay the notice to modify pending a decision by the Administrator. Section 107.105(a)(3) proposed that the Administrator disposes of any petition within 30 days of receipt.

Section 107.105(b) prescribed procedures for an airport operator to request an amendment to its security program currently covered under existing § 107.9. The FAA proposed to increase the number of days prior to the effective date that the airport must submit its proposed amendment from 30 to 45 days. The proposed rule also noted that the amendment process may take longer than 45 days if the proposed amendment was modified or denied.

Existing § 107.9(b) states that the FAA will respond to an amendment proposed by the airport operator within 15 days. The proposal extended this time period to give the FAA 30 days after receipt for approval or denial of the proposed amendment.

In proposed § 107.105(b)(4), the FAA proposed to modify existing § 107.9(d) to limit the time that an airport operator may petition the Administrator to reconsider the denial to 30 days.

Retention of the FAA's existing procedures to amend a security program was proposed in § 107.105(c) and (d). Two significant changes, however, were proposed to the existing procedures of § 107.11: (1) A new requirement for airport operators to submit petitions for reconsideration no later than 15 days before the effective date of the amendment, and (2) a clarification that a petition for reconsideration stays the effective date of the amendment, unless the emergency procedures are used.

Comments: Miami Airport states that there must be procedures in place to ensure that amendments are not sent into an abyss which is created by returning the amendments to airports repeatedly for rewrites, or with general disapproval language that does nothing to aid the airport to satisfy the FAA's objective. Another commenter states that as written, this section leaves the airport with the feeling that there will be even longer delays to requests from airport for items that are essential to airport operations.

FAA response: The FAA agrees with the proposition that amendments, when submitted by airport operators, must be handled in a timely manner and in good faith. They must be submitted in the same manner. In practice, the complexity of any given amendment and the differences between the respective positions of the FAA and the airport operator will determine how often the amendment is handled and how long the process will take. The regulatory language appearing in the final rule attempts to place good faith constraints upon the parties, but recognizes that the exigencies of business as well as other factors often preclude strict adherence to deadlines. It is, therefore, in the mutual interest of both the operator and the FAA to work closely to agree upon amendment language that has been submitted as completely and in the most timely manner possible.

Comments on § 107.105(b): Several commenters suggest that this section should be amended to require the FAA to acknowledge receipt of an airport's proposed amendment within 5 business days. Within 30 days of receipt, the FAA should either approve or deny, in writing, the proposed amendment. One

commenter had submitted a proposed amendment to the FAA with no action for 11 months.

One commenter states that the submission of amendments to the Administrator presents problems, since airports dissatisfied with local FAA replies, could submit their requests to Washington.

Another commenter suggests that the FAA's civil aviation security field units (CASFU) should be required to review and return comments to airports within 120 days after receipt of an airport-submitted security program amendment. The FAA personnel should be required to approve and return the final security program to the airport for initiation and distribution to the necessary parties, within 60 days after any required resubmission by the airport of the final version of the security program.

The ATA and Anchorage International Airport oppose increasing the time for the FAA to approve an amendment request for either an airport operator or an aircraft operator and recommend that the FAA expedite the amendment process.

The ACI–NA and AAAE oppose the changes to the amendment procedures that impose more stringent deadlines on the regulated parties and relax the time burden on the FAA. These commenters recommend a modification to the rule that would require the airport to submit the amendment 30 days prior to the proposed effective date. Then, the FAA would have 15 days after receipt to approve, deny, or question the amendment, after which the airport operator would have 15 days to respond to the FAA's request.

FAA response: The FAA agrees that the airport operator is entitled to an acknowledgement of receipt of a proposed amendment. The FAA does not believe that this issue needs to be resolved through the regulation, since the airport operator can have the amendments hand-delivered, or sent via return receipt mail.

Also, the agency has noted elsewhere that references to the Administrator are to be interpreted as referring not only to that office, but to a subordinate level of the civil aviation security chain-of-command. This level would include the Assistant Administrator and the subordinates to whom he has delegated program authority, as noted in § 107.1(b).

As noted above, the FAA concurs that the expeditious handling of amendments is essential, and that every effort is made to ensure their timeliness. The agency will strive to meet that commitment.

The agency has carefully considered the time constraints the regulation will place upon all parties to the amendment and the approval process. The FAA has decided to implement a timeframe that it believes is fair and equitable when approached by all parties in good faith. It should also be noted that, in practice, the regulated parties have often requested amendments for activities that were to take place much sooner than the regular amendment process call for. The FAA often handles these on an expedited basis.

The FAA also notes that exclusive area agreements under § 107.111(b) and tenant security programs under § 107.113(a) may be terminated at any time by the FAA if it is determined to be in the interest of security and safety.

Comments on § 107.105(d): Miami International Airport, Lincoln Airport Authority, Federal Express, and Denver International Airport support the ASAC recommendations that Emergency Amendments be issued to the airport program with expiration dates.

Tucson Airport and Port Authority of NY and NJ state that FAA Emergency Amendments should be "sunsetted" 180 days from date of issuance if not canceled sooner. The 180-day constraint would not preclude reissuing of the Emergency Amendment, but would build in a review of the propriety and effectiveness of measures to be implemented.

One commenter states that there should be some provision to allow for local modifications to the FAA amendments.

Sacramento Department of Airports states that the current practice of policy memoranda should be discontinued. While there are instances where changes must be issued immediately, in memoranda, these memoranda should be followed up by the FAA within 30 days from the official regulatory change.

FAA response: The comments received in response to this section dealing with "Emergency Amendments" illustrate the different practices that have developed. In its original context, "Emergency Amendment" was used for exigent and permanent change to the basic individual airport's security program. It also has been used much like the Security Directive process available for several years to aircraft operators under § 108.18, that is, an amendment issued to address time critical threats that are expected to have a limited duration. Depending on the nature of the threat upon which the Emergency Amendment was based and the measures imposed, an expiration date was either set or left "indefinite." But, in either case, the directive nature of the Emergency Amendment was focused on a specific threat, ostensibly with a finite period of applicability.

The final language of this section is intended to return this process to one in which permanent changes to the actual security program are made based upon such emergencies as may arise. Response to certain threats of finite duration, that were formerly handled by Emergency Amendments, now may be addressed in the new § 107.303, Security Directives and Information Circulars. The agency now intends for Emergency Amendments to security programs to be used for exigent changes made to the individual security program, on what is expected to be a permanent basis.

The FAA wishes to assure the regulated parties that it does not issue security program changes through policy memoranda. While memoranda are used for the FAA's internal guidance regarding ongoing programs and enforcement policies for existing requirements, the Emergency Amendment process under § 107.105(d) will only transmit Emergency Amendments to airport operators under cover memoranda. In many cases, where temporary emergency measures subsequently have become part of the baseline, those changes have been proposed through the normal process, with comments invited and considered before any final determination had been made. The FAA has become increasingly sensitive to the airport operators' concerns in this regard, and will continue to follow that practice under the new § 107.105, and as will be noted later, § 107.303.

Section 107.107 Changed Conditions Affecting Security

Proposed § 107.107 would expand the types of changed conditions that would require operators to take corrective actions. It would expand the scope of the requirement to encompass all the elements of the security program to ensure that any changes that may impact security would be reported to and addressed by the FAA as soon as possible.

As proposed, the airport operator would be required to report any changes in the physical layout of the airport, both areas relating to airport operations and aircraft operator operations. The proposal would augment the existing procedures for the airport operators to follow when a changed condition occurs by requiring the airport operator to initially notify the FAA within 2 hours, or within an approved timeframe, of the discovery of any changed condition that

could affect how an airport complies with regulatory requirements.

The proposal would require the airport operator during this initial notification to obtain verbal approval of any interim measures to be taken to maintain adequate security. The proposal would continue to allow the FAA to issue emergency security program amendments under proposed § 107.105(d) if an agreement on adequate interim measures could not be reached. However, the proposal provided relief in responding to short-term changes.

Proposed § 107.107(c) and (d) would require the airport operator to follow certain procedures to amend its security program to reflect the change. For changed conditions under 60 days' duration, § 107.107(c) proposed that the airport operator be relieved from the amendment process required under proposed § 107.105 and only be required to provide written notification within 72 hours for FAA approval. Recognizing that many changed conditions affecting security can be readily resolved in less time than it would take to complete the formal amendment process, the FAA sought this change to provide some relief in reporting short-term or temporary changes while ensuring that the FAA retains oversight of temporary or short-term changed conditions to security.

Proposed § 107.107(d) would provide procedures for the disposition of changed conditions anticipated to be over 60 days in duration.

Comments on § 107.107(a): Atlanta International Airport, among others, stated that the airport operator cannot be held accountable to notify the FAA of changes of aircraft operator operations, level of services, and aircraft. Miami International Airport and Ft. Wayne Airport state that this requirement would be more appropriate in parts 108 and 129.

The CALA states that changes should only include things as airport perimeter and structural redesigns, relocation of screening checkpoints, and redefining of airport secured areas. Miami International Airport, Port Authority of NY and NJ, and Lincoln Airport Authority state that the layout and physical structure (§ 107.107(a)(3)) can change frequently during construction. An overall construction plan should be submitted to the FAA, but not a constant series of notifications about the changes.

The ATA requests very clear criteria as to what "changed conditions" are, to satisfy the notification requirement. Denver International Airport suggests that "changed conditions" should be limited to conditions that have a serious and continuing impact on security. Furthermore, it was stated, the FAA did not consider the cost associated with personnel staff changes and equipment requirements for scheduling notification to comply with the newly revised notification requirements.

FAA response: In response to these comments, the FAA would like to clarify that its intent is that the only changes which need to be reported are those that cause the airports to be out of compliance with the provisions of part 107 or the FAA-approved security program, at the time the changed condition occurs. Furthermore, this section is not intended to include all construction projects, only those that impact its security program, such as access, movement control functions, and its support of passenger screening checkpoints. The language of the final rule has been modified to more accurately reflect that position, and to provide greater latitude to the airport operator insofar as the required timeframes for reporting changes that impact its compliance posture.

Comments on proposed § 107.107(b): Thirty-four airports, two local governments, a State government, six local departments and commissions of aviation, two airlines, and UPS suggest that a 2 hour initial notification of changed conditions is unnecessary and an arbitrary timeframe. These commenters state that the FAA does not seem prepared to handle the information overload for after-hours, weekend, and holiday occurrences when it is anticipated that FAA field reps would not be available to receive such information. These commenters recommend that the requirement to verbally contact the FAA should apply only to changes that seriously impact security and only as soon as practicable (such as within 24 hours of discovery by the airport operator). The option to provide this information electronically should be considered (such as e-mail and fax). On the other hand, ACI–NA and AAAE recommend that notification should occur within 48 hours. ATA suggests deleting this section because it lacks clear definition.

FAA response: The FAA agrees that a 2-hour initial notification of changed conditions may not be an acceptable timeframe. To provide some flexibility to the operators, this section has been modified to provide that notification be made within 6 hours of discovery or other timeframe for notification to be established in the individual security program. Further, while FAA field offices are not open 24 hours a day, telephone notification can be made to alternate contact numbers for field office staff.

Section 107.109 Alternate Means of Compliance

The FAA proposed this new section to provide relief for small airports located in communities that are only served by seasonal air carrier operator or foreign aircraft operator traffic (such as ski resorts), remotely located, subject to extreme environmental conditions, or have limited facilities and few employees. Often these airports serve aircraft larger than 60 seats for only a portion of the year, or on an infrequent but regular basis. This section would permit the FAA to approve airport operators of such airports to use alternative means to comply with the requirements of the rule. To petition for relief from part 107 requirements, larger airport operators would still have to use the exemption process under existing § 11.25, Petitions for rule making or exemptions.

Comments: The FAA received some comments regarding unique alternate measures at specific airports.

FAA response: Alternate measures at specific airports must be considered case-by-case and questions regarding them cannot be resolved in this rulemaking.

Section 107.111 Exclusive Area Agreements

Proposal: The notice proposed that the Administrator may approve an amendment to an airport security program that permits an air carrier or foreign air carrier that has an approved security program under part 108 or part 129 to assume responsibility for specified security measures for all or portions of the critical security areas or restricted operations areas. The exclusive area agreement must be in writing and must include all of the necessary information, as indicated in the NPRM, to be considered complete.

Comments: A commenter recommends that regulated entities be held responsible for the activities of their unregulated contractors, permitees, invitees, etc. The ALPA and RAA comment that the FAA should allow exclusive area agreements to be developed, which create joint liability and responsibility for the airlines involved. The RAA notes that this requirement could take the form of a consortium to share responsibilities.

Roanoke Regional Airport states that if the airport is conducting the "monitoring and auditing" to ensure compliance, then no "responsibility" transfer has occurred and such an

"exclusive lease" for that purpose would be meaningless.

The ACI–NA and AAAE propose new language stating that the FAA may unilaterally revoke the agreement and descriptions of punitive actions that may be imposed on the aircraft operator or its employees by the FAA for violations of security regulations.

The ATA believes that no security requirements other than those agreed to by the parties to the agreement should be mandated.

One airport asks if the carrier's leasehold agreement could serve as the binding document for exclusive areas. If not, specific guidance for exclusive area agreements should be provided in an AC.

The Port Authority of New York and New Jersey and the city of Phoenix request that the words "or one entity" be added to § 107.111(a) after the phrase "foreign air carrier," to allow air carriers to form a consortium or a corporation, like fuel farms and other enterprises operating international terminals. Shared responsibility should be allowed, but only when there is a legal entity established as the responsible party to ensure that the FAA has the ability to enforce the regulations.

FAA response: The FAA agrees that regulated entities are responsible for the actions of their unregulated contractors. The regulation provides for this concern by not excluding the regulated entities from such responsibilities. Hence, the FAA does not believe it is necessary to modify the proposed language in order to respond to the comment. The fundamental responsibilities for compliance with this part rest with the airport operator or on an aircraft operator or foreign air carrier under an exclusive area agreement.

Under the existing exclusive area provisions of § 107.13, and new § 107.111, the FAA's intent is for the airport operator to maintain an awareness of the security posture of the area covered under the agreement. To avoid misunderstanding, we have not adopted proposed § 107.111(b)(4) and (5) regarding the airport monitoring and auditing the aircraft operator, or terminating the exclusive area agreement. The FAA expects the ASC to maintain a general awareness of all security functions, and raise with the aircraft operator and/or the FAA any apparent deficiencies.

The FAA will continue to be responsible for inspection duties in exclusive areas, and for ensuring compliance, and will initiate enforcement actions when necessary.

The FAA agrees with the suggestion made by ACI–NA and AAAE that the regulation permits the agency, in extraordinary circumstances, to unilaterally and immediately terminate exclusive area agreements. In most cases the FAA will work directly with the aircraft operator to correct the problems. However, since poorly implemented agreements represent a vulnerability in the system, and thereby compromise the safety of the larger community, the FAA sees a clear connection between such circumstances and the need for immediate termination, and the return of the responsibility to the airport operator. For that reason, the procedures set forth in § 107.105(d), Emergency Amendments, would be employed for that purpose. The FAA sees no need for additional language toward that end in this section.

On the issue of joint liability and responsibility, the FAA has chosen not to provide such latitude. The agency believes that when more than one party holds joint responsibility for such matters, the responsibilities often are overlooked under the presumption that the "other" party will act. In that same view, a shared agreement might tend to fragment responsibility. Not that this would not prevent several aircraft operators from using the same portion of the secured area. Only one of them, however, could have an exclusive area agreement for a given part of the secured area.

The proposed rule stated that the exclusive area agreement could cover security measures in the critical security area or restricted operations area. The final rule clarifies that these measures include §§ 107.201, 107.203, and 107.205, and would include other sections cited in those, such as § 107.207. Other responsibilities held by the airport operator cannot be assumed by the aircraft operator. An example is the provision of law enforcement support (*see* § 107.215), which can only fall to the airport operator.

In response to the question as to whether a leasehold agreement could substitute for an exclusive area agreement, the FAA believes that it is permissible if the leasehold agreement meets the criteria established in § 107.111. Such an agreement, in appropriate part, could be approved by the FAA as a part of the approved security program. Often, however, a leasehold agreement includes material not relevant to the security program, such as financial arrangements. Such information likely would have to be removed.

Comments on § 107.111(a): The RAA stated that they were very concerned about the provision that responsibility for the security of an exclusive area cannot be shared. The nature of regional airline operations often mandates that they share facilities with their major airline partners, some of which have exclusive area agreements with airports.

Atlanta Hartsfield International Airport asks if this provision will allow the assignment of access points, leading from the public area to the sterile or critical security areas, to the air carriers. They would like to have the flexibility to assign doors and portals leading to baggage make-up areas, directly to the affected air carrier.

FAA response: Like the proposal, this new section assembles all of the provisions relating to exclusive area agreements that previously appeared in §§ 107.3(b)(3), (b)(5) and 107.13. Section 107.111(a) expands the existing exclusive area responsibilities for air carriers and foreign aircraft operators to include individual access points (e.g., doors and gates). The security responsibilities for these points may be assumed by a part 108 aircraft operator, or part 129 foreign air carriers, based on a local agreement with the airport operator when approved by the FAA as a part of the airport security program.

Comments on § 107.111(b): A commenter states that nothing in this section specifically notes that the aircraft operator is directly accountable to the FAA as a regulated party for any responsibilities assumed in the agreement. This should be stated in the rule and the ACSSP.

Two airports suggest changing the word "dimensions" to "general description."

Port Authority of NY and NJ would like the flexibility to assign doors and portals leading from the baggage make-up areas directly to the affected aircraft operator.

FAA response: Complementary language in the newly rewritten part 108 (*see* § 108.227) provides that the aircraft operator is required to comply with the responsibilities in the exclusive area agreement. A failure to comply could result in enforcement action against the aircraft operator.

Section 107.111(a) exclusive area agreements, states that in an approved amended security program, an aircraft operator or foreign air carriers (one that has a security program under parts 108 or 129) would be permitted to assume responsibility for specified security measures for all or portions of the secured area, AOA or SIDA. This may include doors between baggage make-up areas and secured areas.

With regard to comments about the term "dimensions" in paragraph (b)(1), the agency's position remains as previously stated. In performing its

regulatory responsibility, the airport operator, aircraft operator, foreign air carriers, and the FAA must be able to distinguish clearly the boundaries of the exclusive area. This distinction is necessary in determining what security measures must be applied, and by whom.

The FAA removed proposed paragraphs (b)(4) and (5) from the final rule language of § 107.111. These sections had required that the airport operators monitor and audit the carrier with whom it had an exclusive area agreement.

Furthermore, in response to the Port Authority of NY and NJ, the language of the proposed regulation clearly allows for the airport operator as well as the aircraft operator to be responsible for doors and portals leading from the baggage make-up areas (*see* § 107.111(b)(1)).

New § 107.111(c) provides a compliance date one year after the effective date of the rule for existing exclusive area agreements to meet new § 107.111. This will give aircraft operators and airport operators time to change existing agreements to conform to the new rules. Any new agreements, however, will have to meet the new rules.

Section 107.113 Airport Tenant Security Programs

As noted in the NPRM, this new section was proposed to permit the use of airport tenant security programs. These programs allow airport tenants, other than aircraft operators regulated under part 108, or foreign air carriers regulated under part 129, to assume some of an airport operator's security responsibilities, as specified in 49 U.S.C. § 44903(c)(2). That statute also clarifies that when an airport operator chooses to implement this program, it accepts the responsibility to inspect the tenant for compliance with the tenant security program, and to take enforcement action as appropriate.

Comments: Detroit Metropolitan Airport disagrees with the notion that tenants would be responsible to the airport operator and not the FAA on security matters.

Ft. Wayne Airport states that this section should include a blanket exemption for any and all military and other Federal facilities co-located on the airport property. If they are not exempted, then close coordination between the FAA and the Department of Defense must occur prior to initiation of the new part 107 regulation.

The LSG/Sky Chefs and Lincoln Airport Authority urge the FAA to either mandate the tenant security program everywhere or eliminate this option altogether. The FAA should provide clear guidance as to what a tenant program consists of, instead of addressing the issues for the first time by each airport during the development of the program or through enforcement actions.

The ACI–NA and AAAE state that nothing in proposed § 107.113 specifically identifies tenants as the regulated party with direct accountability to the FAA for security responsibilities assumed in the agreement.

The NATA strongly opposes any attempt to regulate directly airport tenants and believes that this Congressionally-approved approach of airport tenant security programs will address the concerns of the airport operator community that were raised previously over security violations of its tenants. The penalties posed by the airport operator should not be permitted to go beyond those provided by the FAA. The tenant should not be required to enter into such an agreement with the airport, and it should be emphasized that it is voluntary in nature. There must be an allowance for the airport tenant to cancel the agreement with the airport operator.

FAA response: While Detroit Metropolitan Airport objects that tenants would be responsible to the airport operator rather than to the FAA on security matters, the statute that enacted this program provides no latitude in this regard, and was enacted largely through the efforts of an industry association.

In response to the suggestion by the Fort Wayne Airport that military and other Federal facilities at the airport be exempted, the FAA notes that Federal civilian entities are merely tenants within the context of civil aviation security. The FAA does not regulate military facilities, in that the agency's jurisdiction does not extend to military reservations. The military's cooperation in ensuring a secure airport environment is always sought. As an integral part of the host airport, the military facility, and relevant security issues, must be reflected in the airport security program.

In response to the suggestions made by LSG/Sky Chef and the Lincoln Airport Authority, there does not appear to be any reason to either require tenant security programs for all tenants or to forbid them. Each airport and tenant has different circumstances, and the use of these programs will be based on the needs and wishes of concerned parties at each airport. Within the latitude of the statute, the FAA believes such decisions are best made at the local level. However, in further response, the FAA has provided more information in the rule as to what must be in the tenant security program.

As with exclusive area agreements, airport tenant security programs would only provide for the tenant to assume responsibility for measures under §§ 107.201, 107.203, and 107.205, and sections cited in those provisions. If appropriate in a given situation the airport might simply copy provisions from its own program into the tenant program. The airport operator may not transfer responsibility to provide law enforcement support. Further, the tenant may only take on employment verification responsibilities as provided in § 107.209. The tenant may not conduct the criminal history records checks, which under title 49, United States Code, section 44936, may only be done by the airport operator or aircraft operator.

Section 44903(c)(2) provides that the tenant may assume responsibility in an area that it leases or is designated for its exclusive use. The FAA interprets this to foreclose the use of an airport tenant security program for companies that contract with the airport operator to manage a terminal building. The terminal is used by one or more aircraft operators and numerous passengers, visitors, and businesses. Further, it remains the fundamental responsibility of the airport operator to provide security under the statute and the regulations for areas that directly serve the flying public. This has been made more clear in § 107.113(a). The FAA views the airport tenant security program to permit a tenant to take on security duties for areas that are not directly handling passengers for whom part 108 measures apply. It is not a means for the airport to transfer duties that are directly dealing with passengers, which is the fundamental mission of part 107. Thus, a fixed base operator at a remote site may be an acceptable candidate for an airport tenant security program. Its duties, while important to the overall security of the airport, are not as directly involved with passengers. Security at the terminal building is directly involved with passengers and should not be transferred from the airport operator.

At some airports an aircraft operator with a part 108 security program is the major or only aircraft operator at a terminal, and may lease and manage the terminal building. The aircraft operator may assume security responsibilities for that terminal under an exclusive area agreement under § 107.111.

The final rule also has been clarified to provide that only one tenant can be responsible for each area covered by a tenant security program. This is consistent with the statutory provision that the area be leased to or used exclusively by the tenant. Further, as with aircraft operators, it is evident that when responsibility is unduly diluted, it is more difficult to promote compliance with the security requirements. It should be noted that the FAA will carefully consider whether security is served before approving an airport tenant security program. Before approving the program, the FAA must find that the tenant realistically is capable of carrying out the security measures it is assuming and is willing to do so.

In response to ACI–NA and AAAE, the FAA notes that the statute does not provide for the tenant to be directly accountable to the FAA for violations. Rather, the airport operator is responsible for taking action against the tenant if it fails to comply with its security program. The term "regulated party" is a vague one. The tenant is regulated in that it becomes responsible for carrying out its FAA-approved security program, with consequences from the airport operator if it fails to do so.

In response to the NATA comment, the statute on which airport tenant security programs are based states that the tenant will be required to pay financial penalties to the airport operator in the event that the tenant fails to carry out any such security requirement. The statute does not address the amount to be assessed by the airport operator. The FAA's interest in this process will be served when the agency is satisfied that the program includes provisions for the imposition of fines or other penalties adequate to promote or ensure compliance by the tenant participating in the agreement.

As to NATA's comment that the tenant's agreement to an airport tenant security program should be voluntary, Section 44903(c)(2) is silent as to whether airport operators can require their tenants to enter such an agreement. The FAA generally is not involved in such tenant-landlord issues unless there are violations of Federal law, regulations, or grant assurances. As to whether the tenant will be able to cancel the agreement, if the tenant is not able or willing to carry out the tenant security program the FAA will amend the airport security program to remove the tenant security program and provide that the airport operator is directly responsible for the security measures. Any issues between the airport operator and tenant as to possible breach of contract generally will not be resolved by the FAA.

Comments on § 107.113(b): One airport suggests removal of the reference to "monetary and other penalties." The airport operator must have the flexibility to resolve tenant security program infractions on a case-by-case basis.

Two airports comment that under proposed § 107.113(b)(4) tenants should be directly accountable to the FAA, if a "person" can be accountable.

FAA response: The tenant security program must outline the terms of the agreement, including monetary and other penalties. The reference to "money penalties" comes from the statute, Section 44903(c)(2)(A)(ii). The term "other penalties" allows flexibility on the part of the airport operator; however, the nature of that phrase must be outlined in the program by the airport operator. By the same token, the FAA will not approve a tenant security program for which the airport operator has not established a meaningful system of monetary penalties and other penalties applicable in cases of noncompliance. Further, the agency recognizes that token penalties may yield only token compliance or may be willingly incurred by some tenants as a cost of doing business. Such factors will be considered by the FAA in evaluating each tenant security program.

As to responsibility of the tenant under § 107.11, routine use of enforcement action by the FAA against the tenant would dilute the airport operator's responsibility under Section 444903(c) to make sure its security program is carried out. However, in appropriate cases, the FAA will consider action, particularly against individuals.

Section 107.201 Security of the Secured Area

The FAA proposed in § 107.201 to require the airport operator to establish a critical security area and implement certain security measures. The proposed critical security area essentially replaced the secured area that originated with existing § 107.14.

Proposed § 107.201(b) would require an identification system that incorporates the standards of proposed § 107.209 (now § 107.211), including implementation of a challenge program and escort procedures.

It was proposed that, under this section, individuals with unescorted access to the critical security area continue to be required to submit an employment verification as specified in proposed § 107.207 (now § 107.209.)

The FAA proposed that § 107.201(b)(6) require the airport operator to train individuals in a manner prescribed in proposed § 107.211 (now § 107.213) prior to authorizing such individuals unescorted access to the critical security area.

This section also proposed in § 107.201(b)(7) to require signs at access points to and along the perimeter of critical security areas. The NPRM's preamble discussion of the sign requirements referred readers to the FAA's AC 107–1 (May 19, 1972). This AC recommends that airport operators appropriately post signs warning of the entry restrictions to certain areas at the airport and any penalties associated with unauthorized entry. The FAA proposed that the airport operator be permitted 2 years to implement the new sign requirements.

Comments on § 107.201(a): One commenter states that § 107.201 should be deleted, as the systems called for in § 107.209 (Identification Systems) are unnecessary and systems identified by proposed § 107.205 (Access Control Systems) are sufficient.

The Airport Consultants Council (ACC) states that the FAA should not have different training and identification requirements for the critical security area and restricted operations area.

Another commenter asks if it is the intention of the FAA to have the critical security area replace the present SIDA. If so, the requirement for display of identification media should be completely spelled out.

FAA response: The secured area is discussed above under General Discussion of the Final Rule. As noted in the earlier General Discussion, the FAA has decided to retain the term "AOA" and "secured area." Therefore, these terms will be used in place of "critical security area" and "restricted operations area," respectively, for the remainder of this discussion.

Contrary to the views of the first commenter, the FAA does not believe that this section should be deleted. Proposed § 107.205, Access Control Systems (§ 107.207 in the final rule), specifies the requirements for the system, measures, or procedures for controlling entry into the secured area. An important element of strong security is redundancy. If an unauthorized person were to enter the secured area, the airport operator must have a means to determine that the person who is present is not authorized to be there; hence, the need for an identification system as provided for in proposed § 107.209 (new § 107.211). Section 107.201 establishes the secured area as

a place on the airport that incorporates these two critical security systems, as well as others, to protect the most critical operations of part 108 and part 129 aircraft operators.

In response to ACC, the FAA notes the different burdens of providing training in the secured area versus the more general requirement attached to the AOA, as noted by ACC. The agency believes that a strict training and ID standard should attach to unescorted access privileges to the secured area, where the most critical operations are performed. In other areas, there is not the same need at each airport for the most intense security requirements.

As to the commenter who asked if it is the FAA's intention to have the critical security area replace the current secured area, the FAA notes this was the intention in the NPRM. Again, however, the term "critical security area" has not been adopted, in favor of the current term "secured area."

In response to the commenters question regarding replacing the SIDA, the FAA notes that a secured area is a SIDA, and incorporates other security measures as well.

Comments on § 107.201(b): Federal Express, eight airports and one air carrier recommend changing the word "prevent" to "deter and/or detect." These commenters believe that the program must be able to detect and remove unauthorized personnel from these areas.

One commenter states that this section implies that full badging may be required everywhere inside the fence at an airport. Such determinations should be made on an airport-specific basis in concert with local FAA officials. Badging should be based on need, not by definition of an area.

The ACI–NA and AAAE expressed several concerns regarding the proposed vehicle identification requirements.

The CALA and an airport state that § 107.201(b)(5) should be more clear and be expanded to exempt airports from having to review background investigations completed by airport tenants on persons requiring SIDA access, received from aircraft operators, that are directly regulated by the FAA.

Several airports state that this proposal should allow general terms on the signs and variations in interpretation depending upon how the airport is divided. Adding sign requirements for all doors would increase the cost significantly. Furthermore, posting signs meeting the additional criteria discussed in the NPRM would pose additional costs without any accompanying increase in security. One airport states that a minimum distance between the warning signs on the perimeter should be provided to ensure uniformity at airports. The ACC states that the proposal lacks reference to sign requirements relevant to the Americans with Disabilities Act.

FAA response: Several commenters questioned the use of the word "prevent" as it appears in §§ 107.201 and 107.205. The FAA disagrees with the arguments put forth by commenters. The word "prevent" in this context means to keep unauthorized persons and ground vehicles from the area, and appears in current § 107.13(a)(1). The section goes on to list the methods the airport operator must use to do so. The FAA believes that the high level of security required in the secured area is best completed by first preventing unauthorized access.

Further, the FAA agrees with the commenters, to the extent that a detection capability must also exist should a security system fail to prevent an unauthorized penetration or other potentially dangerous situation from occurring. This philosophy is consistent with the FAA's long held belief that the civil aviation security system is an integrated set of interdependent measures. Consequently, the final regulation also incorporates the requirement for "detection" in § 107.201(b), a carryover from existing § 107.13. As to the commenter who noted that the proposal implies that full badging may be required everywhere at an airport, the FAA notes that the proposal to require identification systems in both the critical security area and the restricted operations area has not been adopted. The final rule requires identification media only in the SIDA, of which the secured area is a part.

As to ACI-NA's and AAAE's questions about vehicle identification systems as proposed in §§ 107.201 and 107.203, for reasons discussed in response to comments in § 107.211, the FAA has decided not to adopt the proposed requirements for vehicle identification systems.

In response to the commenter who suggested that this proposal should allow for general terms on signs, the FAA notes its intent is to allow each local program the latitude to place appropriate signs in a manner that befits the local conditions. Signs remind the person working at the airport that they are entering an area where certain security measures are in place and for which they may be held individually accountable. Also, the signs warn the uninitiated person that access to the area beyond that point is restricted, and that security measures are in effect beyond that point. The FAA believes there is a value to the notification and deterrence effect of such signs. Consequently, the proposed language essentially is unchanged.

Section 107.203 Security of the AOA

The FAA proposed in this new section to require the designation of a restricted operations area and to specify security measures that must be implemented in it.

As in the critical security area, this section proposed that airport operators use a personnel and vehicle identification system to control movement that meets the standards prescribed in proposed § 107.209.

The FAA proposed to require that the airport operator implement the same escort and challenge procedures used in the proposed critical security area; however, access investigation would differ. This section proposed to require the existing 5-year employment history verification standards currently used in the AOA and as they appear in local airport security programs. This section also proposed requirements for signs similar to those of the critical security area.

Comments on § 107.203(a): One airport states that conducting background investigations, badging, training, and auditing all of these operators and individuals would be extremely costly, while adding no improvement to airfield security. This commenter recommends that the focus remain on security and protecting the SIDA or critical security area.

The ACI–NA and AAAE strongly recommend that the requirements formerly associated with the SIDA be limited in application to the critical security area and that the terminology be changed.

FAA response: The AOA is discussed above under General Discussion of the Final Rule. As previously noted, the FAA has deleted the proposed change to the use of the term "restricted operations area," and has retained the term "air operations area" to reflect that area and its requirements under § 107.203. The term AOA will be used from this point on.

After further consideration, the FAA has determined that requiring identification in the AOA is not necessary at all airports, nor are the strict escort and challenge procedures that were proposed. The final rule reflects the emphasis placed on the secured area under § 107.201, as more latitude is permitted for the airport operator under § 107.203 than was proposed. However, while the measures

to be used in the AOA are not strictly prescribed by regulation, the airport operator continues to be responsible for the burden of preventing and detecting unauthorized entry, presence, or movement of persons and ground vehicles in the AOA. Some airports have decided it is necessary, with FAA approval, to require the display of identification throughout their AOA. Also, most airports require a 5-year employment history verification for those with unescorted access to the AOA. This provision, or another check to verify the person's identification, would continue to be part of the airports system to control the AOA.

Under the final rule, security requirements for the AOA remain similar to those in current § 107.13. They are: control of access to and movement on the AOA, the response to unauthorized penetrations, the provision of security information to persons with unescorted access to the AOA, and the posting of signs. The FAA believes this less prescriptive approach in the AOA will provide the greatest flexibility to the airport and its tenants. These measures generally are in effect today. The concerns of many commenters are, therefore, mitigated since part 107 airports currently possess FAA-approved security programs which adequately describe the AOA and no new burden is imposed.

Comments on proposed § 107.203(b): Two airports recommend deleting the requirement for access media for personnel with equipment within the AOA from § 107.203(b). The practicality is that this requirement will be very burdensome for small airport operators with little or no benefit to the critical security area as a result of the additional expense and manpower requirements.

Continental Airlines and the National Association of Police Officers (NAPO) state that § 107.203(b)(2) should be more thoroughly clarified and expanded to exempt airports from reviewing background investigations by airport tenants or persons requiring SIDA access. These background investigations are received from aircraft operators who are directly regulated by the FAA.

Three airports state that the posting of signs meeting the additional criteria appearing in the discussion of the NPRM would pose repetitive monetary expenditures without any accompanying increase in security. One commenter states that a minimum distance between the warning signs on the perimeter should be provided to ensure uniformity at airports.

FAA response: To the commenter who suggested deleting the requirement for access media for personnel with equipment within the AOA, the FAA points out that it is possible under the regulation and would be a local decision. For example, the FAA is aware that at some locations individuals working in teams (such as, construction crews) may not each possess individual access or identification media. Instead, such teams may work under escort of someone with the appropriate authority. The latitude for an airport operator to employ this practice continues to be acceptable under this final rule.

As to Continental's and NAPO's suggestion to exempt airports from reviewing background investigations for unescorted access to the AOA, the FAA points out that it has not adopted the specific 5-year employment verification requirement proposed under § 107.203(b)(2). Instead, the FAA chose to retain in that section the less prescriptive approach of current § 107.13 as regards control of the AOA. New § 107.203 fixes the airport operator's responsibility for the AOA to that of control of entry and movement, and the prevention and detection of unauthorized persons and vehicles.

The FAA expects that airport operators seeking to comply with new § 107.203 will need to verify the identification of persons granted unescorted access to the AOA. Since the 5-year employment verification process has provided for that for many years, some airports may choose to retain that approach. The FAA would also consider other methods to accomplish the same end.

As to the comments regarding fencing, the FAA disagrees that the costs do not result in additional security. Fences provide a positive, physical barrier to intrusions. They provide deterrence, as well as notice to well-intentioned persons who recognize that fencing sets an area apart for some purpose. Taken together with the requirements for the posting of signs under the rulemaking, the agency is convinced the two measures will provide a visible and effective means to provide an initial level of protection to the airport.

The FAA does not wish to specify a fixed distance between signs. Local conditions, the character of fence lines, topography, etc., should be more determining of sign placement than a distance set in regulation. At the same time, the FAA would expect signs to be constructed and placed in such a way as to be readily visible and readable from any point along the fence line, with details reflected in the airport security program.

Section 107.205 Security of the Security Identification Display Area (SIDA)

As noted under the General Discussion of the Final Rule, the term "SIDA" is being retained, but its definition is being revised.

It is the FAA's intent that airport operators who choose to apply the provisions of new § 107.209 to areas outside of secured areas must have clearly justifiable reasons for doing so. The use of the employment history verification and in some cases, criminal history records checks, under § 107.205, imposes a burden on individuals that only should be used when necessary. Examples of areas outside of the secured area that may be SIDA's include cargo make-up areas, fuel farms, maintenance areas, and other areas handling activities related to part 108 operations.

The following table illustrates the differences in security requirements between the secured area, SIDA, and AOA.

Requirements	Secured area	Security identification display area	Portions of air operations area that are not SIDA
Complex Access Controls	X		
Baseline Access Controls			X
Escort Procedures	X	X	
Personnel Identification System and Continuous Display of Identification	X	X	
Challenge Program	X		X
Employment History	X	X	
Verification and Criminal Records Check	X		X
Security Training	X	X	X
Security Briefing			X

Requirements	Secured area	Security identification display area	Portions of air operations area that are not SIDA
Signs	X	X	X

Section 107.207 Access Control Systems

This section was proposed as § 107.205 but was renumbered in the final rule as § 107.207.

The FAA proposed in this section to specify the requirements for access control systems that are required in proposed § 107.201 and § 107.203.

Proposed § 107.205(a) covered access systems for critical security areas that were essentially the same as in current § 107.14. As proposed, § 107.205(b) covers access requirements for the restricted operations area. The proposal was largely the same as the requirement in current § 107.13(a), except for the proposal that the system be locally controlled, and that the airport have accountability procedures. The proposed accountability procedures included regular audits of issued access media, and measures to ensure that access controls are locally controlled and could not be used to gain access to the restricted operations area of other airports.

Proposed § 107.205(c) addressed concerns raised by the ASAC on the issuance of temporary access media to individuals who are not in possession of their original access media. A typical example of this is an airport or aircraft operator employee who reports to work without her/his approved access and identification medium and cannot practicably be escorted throughout the course of her/his assigned shift.

Section 107.205(d) proposed that the airport operator establish and implement escort procedures for individuals who do not have access authority. Many airport operators already have some type of escort procedure in place based on FAA policy guidance, but such procedures are applied inconsistently and often ineffectively.

The FAA proposed § 107.205(e) to allow airport operators to address the issue of group validation access. The present performance standards under § 107.14(a) do not allow for group access, but the proposed language would have allowed the FAA to work with each airport operator to resolve the issue locally. Comments regarding the practicality of group access were requested.

The FAA proposed § 107.205(f) to address access control points that lead from non-public areas, other than critical security areas, to the sterile area.

Proposed § 107.205(g) would incorporate the current provisions of § 107.14(b) for alternative access systems.

Comments on proposed § 107.205 (new § 107.207): A commenter says this section is unclear and impossible to implement, while several commenters noted that the whole burden appears to be placed on the airport operator with none on the aircraft operator. An airport asks whether the proposal envisions access controls such as cameras and gate guards.

ATA is concerned about the proposed access controls for employees, particularly crewmembers, because existing controls are more than adequate.

FAA response: In response to the comment that this section is unclear and impossible to implement, the FAA disagrees. The agency wishes to point to the fact that most of the provisions of the proposal are successfully in daily use at hundreds of airports across the country under current §§ 107.13 and 107.14. As to the claim that the burden falls only to the airport operator and not aircraft operators, the FAA has long held that the responsibility to ensure a safe airport operating environment falls primarily to the airport. However, aircraft operators are required to control access to their aircraft under part 108 and, therefore, are jointly responsible for adequate security in portions of the secured area and the AOA. Further, under exclusive area agreements aircraft operators take complete responsibility for much of the security. Under this final rule, the FAA provides a means for greater relief to the airport operator through the broadened exclusive area provisions appearing in § 107.111 and with the new provision for tenant security agreements under § 107.113.

As to the exact measures to be used to control access under new § 107.207, the means by which the requirements are accomplished is largely a local decision for the airport operator, as detailed in the security program. The final rule does not specifically require the use of cameras and gate guards, although both are in common use throughout the industry today and can be a part of the systems that provide the appropriate level of security under this rule.

The FAA agrees with the ATA that the requirements for access controls under the current regulation are adequate when diligently and conscientiously implemented. For that reason, access control standards have not been expanded in the final rule. Rather, new §§ 107.201, 107.203, and 107.207 essentially reflect the access control requirements of current §§ 107.13 and 107.14.

To the commenter who objected to identification media that displayed a persons access authority, the FAA offers that this requirement has been in place for years at many airports and has proven effective. Each airport operator has flexibility to design a system that works for its airport.

Comments on proposed § 107.205(a) (new § 107.207(a)): Tucson Airport Authority states that the FAA should also address the regulatory requirement of § 107.205(a)(2) in part 108 and part 129.

ACI–NA, AAAE and two airport commenters state that § 107.205(a)(3) should be deleted, while several other airports and a local aviation department state that under § 107.205(a)(3) it would be too complex and difficult for airport employees to challenge access to different critical security areas.

One commenter questions the reasoning to allow employees to have access to only a portion of the critical security area.

Several airports reject the proposed requirement in § 107.205(a)(4) to control an individual's access to critical security area by time and date. Industry does not have the personnel required to modify access by time and date. An airport and a local aviation department state that a universal access system (UAS) for flight crews would make compliance with proposed § 107.205(a)(4) impossible. An airline states that during contingency plan operations, the issuance of special identification media limiting access by time and date could be controlled in accordance with § 107.205(g).

FAA response: As background information, the FAA notes that proposed § 107.205(a) reflects the requirements in current § 107.14(a), and represents no new requirements. The FAA agrees with the Tucson Airport

Authority that aircraft operators and foreign air carriers must notify airport operators in a timely manner of individuals whose access authority has changed. This is an element of carrying out their duties to protect their aircraft from access by unauthorized persons.

In response to the ACI–NA, AAAE, and others' comments opposing proposed § 107.205(a)(3), the requirement that the access system differentiates between individuals authorized to have access to an entire secured area or to portions of a secured area is in current § 107.14(a). The rule does not require airport operators to restrict individuals' access to specific portions of the secured areas. The rule provides that if the airport does in fact restrict access, the access control system must be capable of recognizing these restrictions. The airport is given latitude to design a system that works for its particular circumstances.

The current § 107.14(a) requires that a system be capable of limiting an individual's access by time and date has existed in the regulation since it was adopted in 1989. The proposal contained this requirement in § 107.205(a)(4). The intent was to ensure that the airport operators had a capability to limit the number of persons accessing the secured area while under a heightened or specific threat. Despite many such threats since that time, to include several during the Gulf War of 1990, the FAA has never felt the need to direct the implementation of that capability. However, it is conceivable that a threat situation may develop which could be so specific that only through implementation of this capability would the airport be permitted to remain operational. The agency notes, however, that in such a situation, the emergency authority available to the Administrator under new §§ 107.105 and 107.305 would permit the FAA to impose such requirements as necessary to respond to the emergency, as is true under current § 107.11. Hence, the retention of the disputed language is unnecessary. Its retention may impose more of a continuous burden on the industry than the worth of the measure might justify. The deletion would relieve the airports with existing systems from having to exercise, maintain, and upgrade this capability. Further, if new systems are installed, they will not have to meet this criterion.

Comments on proposed § 107.205(b) (new § 107.207(c)): ACI–NA, AAAE and several airports state that the language in the proposed rule seems to suggest that § 107.14 type controls would be required at all access points to the restricted operations area. This would be an expansion of the existing automated access control systems. These commenters do not believe that this is the FAA's intent, and request clarification of this issue.

One commenter states that if the FAA insists on the issuance of some type of airport operator access media for the AOA (proposed restricted operations areas), then a detailed justification for this identification media should be established. One airport suggests that the FAA delete the requirement under § 107.205(b)(2) and replace this with language that requires the airport operator to prevent inadvertent entry into the AOA.

UPS requests specific definition under § 107.205(b)(3) of "be locally controlled." UPS requests that the system be located off property for centralization of control and reporting capability.

FAA response: In response to ACI–NA, AAAE, and others who understood the proposal to place the same level of access controls on the AOA as on the secured area, the agency notes that this is a misapprehension. Rather, the proposed rule (and the final rule, § 107.207(c)) reflect largely the same requirements on access points to the AOA as those in current § 107.13. In new § 107.207(a) of the final rule, the FAA only is to a large extent continuing the current requirements to control access to the AOA. The main addition is that the system must have an accountability system to maintain the integrity of the system. Such a system, would for instance, maintain program accountability for keys that are issued, including retrieval of the keys and re-keying the locks when necessary.

The FAA has chosen not to adopt the commenter's suggestion to delete the requirement under § 107.205(b)(2) and replace it with language which requires the airport operator to "prevent inadvertent entry" into the AOA. Part 107 deals directly with intentional, potentially criminal acts against civil aviation. Part 139 deals with concerns regarding inadvertent entry into or onto the AOA.

UPS asked for clarification of the term "local control" in proposed § 107.205(b)(3). The original concept of "local control," was that a system be totally contained by the local airport or the air carrier on a local basis. When the proposed rule was written, the FAA's intent was to preclude system-wide manual access control media such as lock and key systems, in which the same access medium could be used at many airports. The danger the FAA saw, for example, was that a lost or stolen key could compromise security at all the airports where that key could operate the access control system. This has been a practice by certain air carriers in the past. The concern was a situation could arise requiring an immediate change of locks at all affected locations systemwide. This would be logistically difficult and extremely costly to achieve.

Upon review, the FAA agrees the proposal that access systems be locally controlled overstated the intent. Locks with keys that can be used throughout an aircraft operator's system may be acceptable. However, the FAA continues to object to the use of such systems that could not be altered immediately at the local level to prevent compromise of the system. Therefore, such system-wide access controls would not be approved in either airport or aircraft operator security programs unless there was sufficient local ability to alter the system as needed.

Comments on proposed § 107.205(c) (new § 107.207(d)): One commenter states that "secondary" access media should be renamed "temporary" access media, to more accurately convey the intent of this section.

UPS, Federal Express, and an airport recommend that this section be clarified to state that secondary access media can be issued when an individual unintentionally/inadvertently forgets his/her access media.

FAA response: In response to the commenter who recommends the name change, the FAA term "secondary" access media was chosen since it was believed to more accurately represent the fact that this privilege could be granted by the airport operator only to those persons who already have an access medium and who have already fulfilled requirements for this privilege. The use of the term "temporary" access media was considered but was dismissed because the FAA believes "temporary" implies granting of a privilege that did not previously exist and that would have a finite life. Therefore, the FAA has maintained the term "secondary" access media, while using "temporary" elsewhere in the rule (see § 107.211).

In considering the comments of UPS, Federal Express, and others, the FAA's intent in the proposed language of § 107.205(c) was to extend to the airport operator the latitude to issue "secondary" media. It was not the FAA's intent to require the airport operator to use secondary access media, but rather to provide the option should the airport operator choose.

Comments on proposed § 107.205(d) (new § 107.211(e)): ACI–NA, AAAE, and

several airports state that § 107.205(d)(2) should read "* * * individuals are continuously accompanied, supervised or monitored * * *"

One airport states that escorting procedures that include group validation are flawed in that there is no means of determining who is responsible or if the group remains together.

FAA response: In the final rule, the requirements for escort appear in § 107.211.

In considering the escort function and its importance to providing for a flexible civil aviation security system, the FAA adopts the suggestion by ACI–NA and others to include the word "monitored." The FAA believes the escort function can be consistently and effectively applied under this latitude at some locations. The key is whether the person monitoring the subject can immediately assess the actions of the subject and take action if the subject engages in unauthorized activity. The exact procedures may be developed at each airport and placed in the airport security program.

To the airport concerned about fixing responsibility for group escort, the FAA notes that the local escort procedures should be designed and implemented in such a way as to make clear where that responsibility lies. Further, the local escort procedures should be clear as to the actions a person providing escort should take should a person or group under escort fail to comply with the conditions of the escort.

The final rule refers to escort within the secured area or SIDA. There are some areas of AOA's, however, where escort and challenge are part of the system for controlling the presence and movement of individuals. For instance, a fixed base operator (FBO) in the AOA may monitor the activities of GA pilots and others, and challenge them if they go beyond the FBO area.

Comments on proposed § 107.205(e): Several commenters asked questions about group validation.

FAA response: Current § 107.14(a) precludes group access. The performance standards requires that each person using a § 107.14(a) access point must be tested to ensure that their authority is appropriate to the access point. At the time the changes to part 107 were proposed the operational difficulties associated with § 107.14(a) access points caused the FAA to consider permitting group access at § 107.14(a) points.

The FAA conducted tests at several locations to determine if group access through § 107.14(a) points was a viable option in light of the inherent criticality of secured areas. The results convinced the FAA that in most cases, the operational benefits offered through group access at such points could not be justified when weighed against the threat to the secured areas. Consequently, the FAA has determined that the proposed language permitting group access in § 107.205(e) is not adopted. The effect in the final rule is that only single person access will be permitted through access points that must meet the requirements of new § 107.207(a), that is, access to the secured area.

Comments on proposed § 107.205(f) (new § 107.211(e)(5)): ATA and FedEx request clarification of the areas/points included within the scope of § 107.205(f). The terms "all points" and "nonpublic" need to be defined.

ACI–NA, AAAE and an airport state that when someone accompanies a person with authorized access at that airport, the requirements of this section should not be necessary.

FAA response: The FAA has reevaluated proposed § 107.205(f). In the many cases where access points described in the proposal are indirectly controlled in accordance with current § 107.14(a) or (b), the proposed new language would require those access points to be directly controlled. Hence, a potentially burdensome requirement would have been imposed unnecessarily. The agency believes the current language is adequate for its purposes, therefore, the agency has decided not to adopt the requirement proposed in § 107.205(f).

However, as the preamble noted, there is a concern regarding a person bypassing the screening checkpoint by being escorted from the critical security area (now secured area) into the sterile area. New § 107.211(e)(5) addresses this by requiring that persons escorted into the sterile area must be screened or be escorted out of the sterile area.

Comments on the UAS: A number of comments were received on the UAS, which would allow a single access medium to be used at many airports, yet the proposed provision seems to rule out that possibility.

FAA response: The discussion in the NPRM regarding UAS was for information only. UAS has been implemented at some airports and is an on-going program.

Section 107.209 Employment History, Verification, and Criminal History Records Checks (Proposed § 107.207)

The NPRM did not contain the text of this section because it was being revised in a separate rulemaking. On September 24, 1998, the FAA issued a final rule (63 FR 51204). That rulemaking amended § 107.31, Employment history, verification, and criminal history records checks. Under the current final rule, § 107.31 has been renumbered as § 107.209 and appears under Subpart C, Operations.

Comments: Two airports state that the complexity of employment history verification requires that language should have been included in the NPRM (Notice No. 97–13) to fully assess its provisions against the other proposed changes to part 107.

Another commenter requests that the FAA continue to aggressively pursue access to the DOJ/FBI Integrated Automated Fingerprint Identification System—for security investigation—by the law enforcement entities supporting United States airports. The current program remains less than practical and largely unworkable.

FAA response: An NPRM (62 FR 13262; March 19, 1997) and a final rule (63 FR 51204; September 24, 1998) have already been issued with respect to Employment history, verification, and criminal histor, records check. Therefore, there was no need to republish changes associated with that rulemaking along with the NPRM for this rulemaking.

In this final rule, § 107.209 has been modified to correct an oversight that appeared in the final rule for old § 107.31. The new rule adds § 107.209(b)(3), which states that when an individual has admitted to a conviction of a disqualifying crime the investigative process ends and the individual is denied unescorted access privileges. Although this was the obvious implication of the section and the preamble, it was not clearly stated in the rule.

As to the comments submitted by two airports that sought consideration of the requirements of 107.209 within the context of the NPRM, the FAA wishes to ensure those commenters that this was done, and that the final rule reflects that process.

To the commenter that addressed the FAA's pursuit of the Integrated Automated Fingerprint Identification System, the FAA notes that it has in fact done so and tests are ongoing at this time.

The FAA receives numerous calls requesting clarification on the use of automated telephone systems that provide employment information. The FAA has contacted several of these companies and found that the information being provided comes directly from the past employer.

These telephone services provide employment information that may be

used to partially satisfy current §§ 107.31 and 108.33 regarding the employment history of those individuals seeking certain positions at an airport. The automated services provide the employment dates and does so only if the person calling has the past employer's company identification number and the specifically assigned identification number of the individual whose employment information is sought.

The use of the specifically assigned numbers reflects a level of security is being provided to the information contained within the system. The security is viewed as a means to protect the information from unauthorized changes. Since this method of providing past employment information is the "current state of business" the FAA will accept this method as an adequate means to verify past employment dates when the telephone services have security measures in place.

Therefore, the FAA interpretation of current §§ 108.33(c)(4) and 107.31(c)(4) and new §§ 107.209(c)(4) and 108.2(c)(4) includes the use of these automated telephone services that require the use of special information to access an individual's employment history. No language change is deemed necessary for this final rule.

Section 107.211 Identification Systems (Proposed § 107.209)

The FAA proposed that under this new section, an identification system would be required for both the critical security area and the restricted operations area. The FAA added this section to regulate standards governing the issuance, display, and accountability of identification systems to promote their effectiveness.

In addition, the FAA proposed that the standards become effective 2 years after a final rule is adopted, providing airport operators with time to make necessary changes so that their systems meet regulatory requirements. The ASAC requested that airport operators be afforded 5 years to phase in any identification changes required by the revised rule, however, the committee did not provide any financial or operational data to support this position.

In proposed § 107.209(a), standards were proposed for personnel identification media. Under this proposal, the media must convey accurate information about the individual, bear an expiration date, be readily identifiable for challenge purposes, and indicate the individual's authorization for access and movement. The FAA also proposed procedures to ensure the airport's accountability for the effectiveness of the system. It is anticipated that initial accountability criteria and percentages will have to be tested over an extended period of time and amended as appropriate.

In proposed § 107.209(b), standards were proposed for a vehicle identification system, including identification media requirements and procedures to ensure accountability of the system. At ASAC's suggestion, the FAA also proposed in § 107.209(c) to permit the use of the identification program for vehicles used under part 139, if that system also meets the requirements of this proposed section.

Under § 107.209(d) the FAA proposed that airport operators may issue temporary identification media to persons whose duties are expected to be temporary, such as contractors. To minimize the number of accountable and valid identification media, the FAA proposed that such individuals should have their identification media valid only for the time needed to perform their temporary duties.

The FAA proposed in § 107.209(e) to allow an airport operator to approve the identification media of other entities, which meet the standards of this regulation. Inclusion of this practice would codify an acceptable practice used by many airports.

Under § 107.209(f) the FAA proposed to require an airport operator to develop a challenge program. Airport operators currently establish their own challenge procedures to meet the requirements of existing § 107.25(e)(2), but in this paragraph the FAA proposed to expand these requirements in order to ensure more standardized challenge procedures between airports, and within the critical security areas and restricted operations areas.

General comments on proposed § 107.209 (new § 107.211): ACI–NA, AAAE, ALPA, UPS, ATA, NATA, FedEx, TWAA, RAA, several airports, and others provided comments concerning the identification systems. In general these commenters request greater clarification and detail in what the rule requires. ALPA recommends that an identification system cannot "control the presence" or "movement" of people or vehicles. It can only "identify" or "validate" the authority of the person or vehicle to be in the critical security area, or it can be used to "control access."

FAA response: The agency believes the responses to comments on specific paragraphs of § 107.209, below, provide the clarification and detail that the commenters request.

The FAA agrees with ALPA who noted that identification systems alone cannot control the presence or movement of people or vehicles. The FAA recognizes that an identification system is one of the many components of the security system. The identification media worn by persons indicate the authority of those persons to be present at given locations, and permit challenge of those without the appropriate identification. This fact, in the FAA's view, provides a means to control "movement" and "presence." The FAA also recognizes that an identification system that relies upon display, challenge, and escort can only be as good as its users are vigilant and responsible.

Comments on proposed § 107.209(a) (new § 107.211(a)): UPS and ATA oppose application of identification requirements to flight and cabin crewmembers. They also oppose mandatory inclusion of expiration dates on media for current employees of aircraft operators. ATA states that an exemption should be allowed for flight and cabin crewmembers while they are in areas governed by exclusive area agreements. FedEx suggests that this section would place a tremendous administrative and logistical burden on the aircraft operator and crewmembers. One commenter urges the FAA to consider developing a photo identification for FAA pilot certificates in lieu of the existing non-photo based pilot certificate currently in use.

Several airports and two local aviation departments questioned the feasibility of having "scope of access" information on the face of the badge, particularly if there are numerous areas. To assist operators these commenters request that the FAA define "accurate identification." ALPA raised the same concern and recommends that an AC be developed, or the current one amended, prescribing guidance for airport operators on the development of identification media. The AC should outline standard characteristics for all cards to make challenge easier while allowing latitude in other areas to accommodate individual airport needs. Furthermore, ALPA recommends that airport identification media be in full compliance with UAS standards, recently adopted by the FAA-chaired UAS Working Group.

ACI–NA, AAAE, and an airport agree with ASAC's recommendations that a 5-year expiration date for identification media is appropriate, particularly if the date is carried within the media itself. RAA does not support the requirement for an expiration date on personnel

identification media and requests that the FAA delete this provision.

ACI–NA and AAAE state that if audits are necessary, the FAA should consult with the industry to develop specific audit criteria and guidance documents. One commenter states that the FAA should define audit criteria, since airports need this definition to develop a system of record keeping to simplify the audit process. One airport agrees with ASAC's recommendation that 2-year audits are sufficient.

Two airports state that unaccountable badge percentages should be defined system-wide as the "total unaccountable badges which include those lost, stolen, or not retrieved, divided by total unexpired badges issued." One commenter states that expired badges should not be considered as an "unaccounted for" badge. Another commenter states that factoring in badges with an expiration date in the unaccounted for percentage is not representative of any particular logic and requests the FAA to expand their discussion in terms of why an expiration date is necessary on a badge since airport operators are required to replace badges after a certain number of badges are not accounted for. This consideration should be a component in a cost analysis comparison for airports to upgrade their old § 107.14 systems to accommodate an expiration date on security badges.

Several airports agree with the ASAC's recommendations that the unaccountable percentages of identification badges should be raised from 5 to 10 percent. This is a more logical and rational benchmark to replace an access media badging system.

An airport states that personnel who work for more than one company that requires access to the restricted operations area should be allowed to obtain an identification card for each company. One commenter states that this gives the companies more control.

FAA response: A fundamental concept of industrial security, to include that form practiced at the nation's airports, is to establish a credible and well controlled identification system. Without such a system, there can be no surety that the persons present at or having access to a protected asset are so authorized. As discussed earlier, identification systems are useful only if unbadged persons are challenged in a timely manner. It is important to limit the number of different identification media that can be used in an area. Too many different authorized ID's, or ID's that are difficult to read, make it too hard for authorized persons to determine who is not displaying a proper ID. Expiration dates, clearly visible at a reasonable distance, contribute to a system's usefulness. With this in mind, and in specific response to ATA, the FAA will not exempt or exclude any category of person or occupation from the requirement to properly display appropriate identification in such areas as the regulation or security program mandates with exceptions noted in new § § 107.7 and 107.11. Further, a person's failure to display proper identification in accordance with an approved security program, may result in an individual becoming the subject of an FAA enforcement action under new § 107.11. This situation would not preclude other actions being taken by local authorities against the individual. Conceivably, additional culpability may attach to the regulated party responsible for control of the area in which the violation occurred.

At the same time, it must be noted that new part 108 provides a means for aircraft operators to develop identification systems that meet these standards that can be accepted by the airport operator. In this way, cabin and flight crew would not need to have a different ID for each airport, but could use their aircraft operator ID.

The FAA is not adopting the suggestion to add a photograph to the airman certificate to use it as a security tool. At best, the airman certificate would show that the person is a qualified pilot. It would not show that person's authority to be in any particular area of any particular airport.

In response to the several commenters who requested that the FAA further define "accurate identification," the FAA has clarified the final rule. This information includes full name, full-face image, and identification number. The airport operator may include additional details or information at its option. Scope of access information can be displayed by using color-coded badges—a method in common use today.

In response to the commenters who addressed the issue of expiration dates, the FAA believes that clearly displayed expiration dates are an important aspect of identification media and challenge procedures. The recurring need to replace media that have reached an expiration date will afford the issuing authority the opportunity to review the holders' continued need for the media. Additionally, most identification systems will suffer some degree of unaccountability soon after implementation—identification can be lost, stolen, or otherwise become unaccounted. The unaccountable percentage generally grows over time. If expiration dates are clearly displayed, unaccountable identification media will become useless upon reaching their expiration date. Wearing an expired medium would single out the wearer as someone whose authority to be present must be challenged. The specific criteria for establishing expiration dates can be developed locally and in consideration of conditions unique to that location.

Additionally, the inclusion of an expiration date provides a benefit from a logistics standpoint. Media that have reached their expiration can be dropped from the population upon which the unaccountable percentage is based. Section 107.209(a)(3)(v) is changed in the final rule to make it clear that only media that are unexpired need to be counted for revalidation purposes.

Given the criticality of tightly controlled identification systems, the FAA cannot adopt the ASAC's suggestion that audits be performed only once every 2 years. It is not unreasonable to expect the various regulated parties to conduct comprehensive audits a minimum of once per year. In fact, such a practice is common at many airports today, while automation permits many airports to conduct audits even more frequently.

The FAA agrees with ACI–NA and AAAE that the FAA should consult with the industry to develop specific audit criteria. This will be accomplished following this rulemaking. The criteria will be incorporated into FAA-approved security programs.

The validity of an identification system is based, in part, on the idea that the media in circulation are controlled, and that only those persons who have a legitimate need for such media possess them. The validity of most identification systems can be expected to erode as media are lost, stolen, or otherwise unaccounted for over time. So, when a particular percentage of media become unaccounted for, this would represent a critical point marked as a percentage of the total population of the media. At some point, that percentage represents an unacceptably high risk to the assets the system seeks to protect. Therefore, the FAA supports the concept that the percentage figure of unaccounted identification must be based upon a common and valid formulation.

Along those lines, the FAA called for comments on what criteria should be the basis for accountability percentages. As noted in the NPRM, a range of 2 to 10 percent seems common, depending upon the nature of the venue. The FAA acknowledges the ASAC's recommendation that the traditional 5 percent maximum figure should be

increased to 10 percent, thereby allowing for a greater number of identification media to be unaccounted for before a system would need revalidation or replacement. However, the FAA believes 10 percent to be unacceptably high. Further, with technological advances, and the fact that the 5 percent figure has been in wide use for many years within the civil aviation system, the FAA sees no reason to alter that number as a maximum point at this time. However, as technologies change, and as systems are redesigned, a formula fixed in regulation may prove unwieldy. Hence, the FAA is not imposing a fixed system-wide percentage in the regulation. Since changing technologies and events may alter policy regarding the percentage, language fixing a percentage in regulation would be difficult to change in a timely fashion. Rather, the percentage will appear in the FAA-approved security programs, in accordance with FAA policy. Such programs can be modified in accordance with § 107.105. Again, at present, the FAA policy provides for a maximum allowable unaccounted percentage of 5 percent. The economic analysis for this rule has been based upon that figure.

In response to the comments on personnel who work for more than one company, the FAA has revised the language in the final rule. The revision permits the airport operator to issue to the individual such identification media as are necessary to carry out the duties of any employment the individual may hold at the airport. But, the airport operator, if it chooses to exercise that option, must ensure that its records reflect all other media issued to that individual. The FAA's intent is that any situation that would cause the airport operator to modify, suspend, or revoke any of the privileges associated with any of the individual's identification media, would also cause the airport operator to review the privileges for all other identification media issued to that individual. The airport operator would then be expected to make a finding as to whether the circumstances giving rise to the change would warrant additional modifications to other privileges held by the individual.

As to the need for retrieval of media that bears an expiration date, the FAA notes that it is not uncommon in the press of business at an airport for expiration dates to go unobserved. In order to limit the exposure to the system posed by numerous expired identification media that may otherwise appear valid, the FAA believes retrieval of expired or unnecessary media to be a prudent measure and a reasonable expectation. Where retrieval is not possible, a readily observable expiration date may provide the airport operator an added dimension of security.

Comments on proposed § 107.209(b) and (c): Several airports are concerned about the complex and exhaustive efforts that would be required of airport operators to license, catalogue and audit vehicles used in the critical security area and restricted operations area. An airport says that the cost to build and maintain a vehicle identification database and development of vehicle identification media would be significant. Federal Express, TWA and Alaska Airlines suggest that there is no case to support the inclusion of all airport vehicles in this system and that this requirement should only apply to vehicles which access the AOA from public roadways. ACI–NA, AAAE, UPS, and Federal Express state that this section and similar references to a new vehicle identification system should be deleted as they address no known security concern. Many other comments point out significant logistical and administrative difficulties with adopting a vehicle ID system.

ACC suggests the deletion of the requirement for vehicle identification altogether.

FAA response: The agency has reviewed the comments received on the proposed requirements for vehicle identification. It has come to agree with the commenters that a significant enhancement of security using this procedure at this time would not be realized. The agency believes, however, that it remains the responsibility of the regulated parties as well as individuals, all of who are now subject to new § 107.11, to assure that existing systems and procedures are applied as intended.

In light of existing requirements for control of ground vehicles under part 139, the requirements for access control in § 107.205(a) and the challenge program in § 107.209(f), the FAA believes that adequate measures are in place to identify unauthorized individuals and any vehicles they may be driving. These measures will only be successful if tenants and employees diligently apply the required measures so as to avoid incidents that may require more stringent standards.

The agency has removed the proposed vehicle identification requirements at this time, however, the FAA will monitor the situation and may reconsider vehicle identification in future rulemakings, should circumstances warrant.

Comments on proposed § 107.209(d) (new § 107.211(b)): There were no comments on this section.

FAA response: The FAA notes that the intended purpose of temporary identification is the same as for permanent identification, and as discussed in the response to comments on § 107.209(a). One difference is that the need is short term. The use of temporary identification media is not restricted to any particular class of person or occupation. The FAA believes such latitude is best left to the local authorities. Further, the agency wishes to make clear that the decision to use such media is left solely to the airport operator. The language of § 107.211(c) is only intended to place a consistent and reliable structure to such a program should it be employed.

Comments on proposed § 107.209(e) (new § 107.211(c)): ALPA states that "Airport-approved identification media" should be renamed "Non-airport issued identification media" for the sake of accuracy and clarity.

One commenter states the security program should indicate that use of aircraft operator identification media issued to flightcrew members of certificated aircraft operators is authorized for unescorted movement in the following portions of the AOA: (1) The immediate vicinity of the aircraft to which flightcrews are assigned, (2) flightcrews operations/flight office, or the equivalent; and (3) points in between, as defined in this security program.

One commenter opposes allowance of airport operators to approve the identification media of other entities that meet the standard of the regulation. This commenter would be willing to allow such media in exclusive area agreements where the entity responsible for that area permits that media.

FAA response: In response to ALPA's call to rename "airport-approved identification media," the agency offers the following. For an identification medium to be accepted as a reliable indication of unescorted access authority in the SIDA, the media must be approved for the individual airport security program. For instance, an airport security program would not approve the use of an aircraft operator identification medium unless that aircraft operator was operating at that airport.

Of the airport-approved media, some are issued directly by the airport operator. Other media approved for use by the airport actually are issued by other entities such as the aircraft operators or the FAA. The main difference is the party of issuance. "Airport-approved media" is a term that encompasses all media, regardless of issuing party, since all such media are

cited as valid for use on the airport in the language of the security program. On the other hand, "airport-issued media" refers only to those physically issued directly by the airport operator. The agency believes the terminology to be properly descriptive, historically useful, and accurate. The proposed terminology is retained.

The suggestion to include language in the security program specifying the unescorted movement privilege that attach to flight crew identification media is fully consistent with a nationally mandated amendment to all FAA-approved security programs. The amendment became effective in 1993 and remains current. The new part 108 requires the same standards for identification media as part 107.

Additionally, contrary to the views of the last commenter, the FAA strongly believes that a great deal of discretion must fall to airport operators in exercising their judgment as to what other media, if any, meets the standards for approval and use within their airport security system. Since such a major portion of the responsibility for the security of the airport's surface falls on the airport operator, the FAA believes it reasonable to relegate most decisions in regard to the acceptability of others' identification to the airport operator.

Comments on proposed § 107.209(f) (new § 107.211(d)): One commenter states that challenge procedures should continue to be solely reflective of locally developed performance standards and the FAA should not micromanage the program further. The commenter urges serious reconsideration of this measure.

ACI–NA and AAAE recommend adding a subparagraph (4) under § 107.209(f), incorporating the details of the "challenge program" to be described in the security program.

One airport requests that the phrase "law enforcement support" be replaced with "support." All challenges may not need to escalate to the LEO level.

FAA response: The agency is not dictating specific challenge procedures. Instead, it only proposed requiring that an acceptable local program be developed in compliance with the general language of new § 107.211(d).

The FAA concurs with the principle that the details of the challenge program should be developed locally and reflected in the security program, and § 107.211(d) so states.

The FAA agrees in part with the comment to replace the phrase "law enforcement support" with the less specific "support." The language in new § 107.211(d)(3) clarifies that a response by other than law enforcement personnel may be included in the program. However, the airport operator continues to be obligated to ensure adequate armed law enforcement response in support of the program. This has been reflected in the final language.

New § 107.211 also includes requirements for escort, which is discussed above under proposed § 107.205(d).

Section 107.213 Training (Proposed § 107.211)

The FAA renumbered this section as § 107.213, it was proposed as § 107.211. In the NPRM, the FAA proposed that persons with security responsibilities and with unescorted access to the critical security area (now the secured area or a SIDA in the final rule) be trained similar to that current requirements under existing § 107.25.

All individuals who have unescorted access to, and movement privileges within, the AOA would be provided with information commensurate with their security responsibilities under this proposal.

In addition, this proposed section directed the airport operator to ensure that persons performing security functions for the airport are briefed on their responsibilities under the proposed rule, the security program, and any other pertinent security information.

This proposed section also specified requirements for maintaining documentation of training and the deadline for implementing a revised training syllabus.

Comments on proposed § 107.211(a) (new § 107.213(a)): One airport requests that the FAA delete the phrase "Security Directives and Information Circulars" from § 107.211(a). The airport operator cannot be responsible for retraining all employees every time new Security Directives or Information Circulars are issued.

FAA response: While the FAA understands the commenter's concerns, the proposal may not be as broad as the commenter may perceive. An airport operator is only required to train a person on a new Security Directive or Information Circular if the requirements and information in the document is applicable to the person's job and when that job is performed on behalf of the airport operator. A person without "the need to know" need not be briefed, and in fact, cannot be briefed under the provisions of § 107.101(c)(1).

Comments on proposed § 107.211(b) and (c) (new § 107.213(b) and (c)): Under § 107.211(b) and (c), the airport operator is required to ensure that all employees authorized access to the critical security area or the restricted operations area have training. Under proposed § 107.7, the airport is required to issue any FAA special agent an airport identification upon request. Commenters see this requirement as a double standard; they state that everyone requesting an airport badge should be required to complete local airport safety training. Miami International Airport states that a new airport employee can not obtain an identification badge without taking the SIDA class.

Commenters say that § 107.211(c) indicates that the airport operator would have to provide every individual a copy of the whole curriculum. Commenters hope that this is not the intent. ACI–NA and AAAE interpret the proposal to mean that each airport would develop its own curriculum, and suggest that national standards may not be appropriate at individual airports.

Several airports comment that a statement should be included to allow for "grandfathering" existing individuals authorized unescorted access privileges under the existing SIDA badge issuance under old § 107.25.

Another airport states that for secured areas, an individual must be trained but should not need to acknowledge the training in writing. For AOA's, they must receive information and acknowledge in writing. This seems to be putting more stringent requirements on AOA's than secured areas training.

A commenter states that the two-tiered training program, which provides less stringent training requirements for AOA personnel, has little utility. The commenter submits the differences between the two to be minimal and states that a more conservative higher level training standard approach does no harm.

FAA response: The FAA understands the commenters concerns regarding issuance of an airport identification upon request of any FAA special agent. As discussed more fully under § 107.7, the agency agrees that under routine circumstances, appropriate safety and security related training should be provided to FAA special agents before they exercise full access privileges to an airport. Such training can be provided at the airport which is the agent's primary duty location and can be supplemented with local training at other airports requiring such training. This approach is in common use today throughout the industry for persons requiring similar access privileges. In emergency situations, such as in responses to hijacking situations, the responding agents may not have the opportunity to

be provided the training or access media for that particular airport. The exigencies of their unique duties in such circumstances may override other considerations and the language of the final rule has been modified to permit this.

New § 107.213(c) does not require that each trainee be provided the whole curriculum. The intent is to ensure that employees have been provided all relevant information in accordance with the security program. The relevant information can be given in writing, by videotape, a personal briefing, or any other means the airport operator chooses to provide the information to the individual. The FAA agrees that each airport would develop its own curriculum.

The rule does not provide that all individuals who have already taken training under current § 107.25 may be "grandfathered." Each airport will have to evaluate whether there have been changes, for example, designations of areas as AOA or secured area. If changes are made, the airport must train those individuals who need to comply with the new conditions.

In regard to the comment that the proposal on training acknowledgements seems inconsistent on its face, persons receive the more definitive training required for unescorted secured area and SIDA access in a more formal, classroom-like setting, with the ability to ask questions. The airport operator can directly observe whether the person has successfully completed that training.

Conversely, persons receiving information necessary for AOA access may do so in a less formal, more self-study process in which case an acknowledgement by the trainee would be an appropriate record. However, it is evident that training under § 107.213(c) may also be in a classroom setting. The final rule in § 107.213(d) does not require an acknowledgement by the trainee under § 107.213(c), it only requires that a record of training given to each individual be maintained.

In regard to the comment on the two levels of training, the FAA has sought to provide for an option to train those with access to the AOA only using a lower-cost method. Should an airport operator wish to exceed the minimum required training standards and require more formal training, the FAA would be supportive.

Comments on proposed § 107.211(e) (new § 107.213(f)): One airport is concerned that proposed § 107.211(e) would allow all training to be dropped for the 2-year period prior to the effective date of the rule.

FAA response: After further consideration, it appears that the only new feature in § 107.203(b) for training for persons with access to secured areas or SIDA's is training in § 107.11. Therefore, new § 107.213(e) provides that for persons who already have such access, classroom training will not be required. The airport operator need only to provide them information on § 107.11. Providing information under new § 107.213(e) is a new requirement, but is less complicated than the § 107.213(b) training. Airports will have 1 year to implement this program.

Section 107.215 Law Enforcement Support (Proposed § 107.213)

This section was renumbered in the final rule as § 107.215, it was proposed as § 107.213. In the Notice, this section specified the qualifications of law enforcement support required under proposed § 107.103, which were similar to those in current § 107.15. The most substantial change made to this proposed section was the distinction between the use of uniformed and "plainclothes" law enforcement personnel.

Comments: Phoenix Aviation Department, Tucson Airport, and Port Authority of NY and NJ request more flexibility for airport operators to be permitted to respond with "plainclothes" officers provided appropriate insignia/badge is displayed when necessary. The FAA was urged to reconsider the uniformed concept and allow plainclothes LEO response, while airports should be expected to maintain a visible uniformed presence throughout the airport environment.

ALEAN and two airports request the FAA to delete references to "in the number and manner" in § 107.213(a). Several airports state that the number of officers necessarily is a local decision.

Alaska Airlines recommends that the airport law enforcement and aircraft operator should establish a triage type system for LEO response. Two airports state that § 107.213(b)(1) should be clarified to state that LEO's are to be available to respond to an "airport security related" incident. Another airport states that § 107.213(b) is a general and non-specific section and could mean response at anytime to any location on the airport. If this section is referring to the screening checkpoint, it should state that.

ATA and RAA support the requirement that, on request of an aircraft operator or foreign air carrier, certified law enforcement personnel should respond to an incident.

FAA response: In response to the commenters who urged the FAA to reconsider its position on the use of only uniformed law enforcement personnel for the response to the screening checkpoint, the agency points out that the language of the regulation does not preclude the use of plain-clothes officers to supplement a uniformed response, or to supplement or comprise a complete response to any other situation. Regarding a response to the checkpoint, however, the value of a uniformed law enforcement presence in terms of deterrence, ease of recognition during an emergency situation, and in sustaining the confidence of the public, cannot be overstated. The FAA insists that this capability continue.

The FAA recognizes that the "number and manner" in which law enforcement personnel are provided is largely a local determination under new § 107.215(a)(1). The FAA looks to whether law enforcement responds to screening checkpoints, alarming doors, and other events in a timely manner, as well as providing adequate security patrols.

In response to Alaska Airlines and others, the FAA notes that proposed § 107.213(b) (new § 107.215 (b)) applies only to those airports identified in § 107.103(c). Such airports normally do not have airport law enforcement on site and only have limited passenger operations that would require screening and law enforcement support. The wording in the proposal is essentially unchanged from the current § 107.15(b) and refers to a law enforcement response for any reason in support of the civil aviation security program. The FAA sees no need to modify the language or to require a "triage system" as suggested.

Section 107.217 Law Enforcement Personnel (Proposed § 107.215).

In Notice 97–13, this section was proposed as § 107.215. It has been renumbered as § 107.217 in the final rule. As discussed in regards to proposed § 107.213 above, the requirement for all law enforcement personnel to be in uniform was modified. To reflect the proposed change it was proposed that § 107.215(a)(2) not include the uniform requirement as appears in current § 107.17(a)(2).

Proposed § 107.215(c) updated training requirements in current § 107.17(c) for State and local law enforcement officers to reflect the fact that all states have law enforcement training programs. This proposed paragraph also specified that private security personnel used to meet the requirements of part 107 must be trained in a manner acceptable to the

Administrator if the State and local jurisdiction does not prescribe training standards for such personnel.

Comments on proposed § 107.215(a) (new § 107.217(a)): NAPO and Monterey Peninsula Airport are concerned that there will be substantial replacements of law enforcement officers (LEO's) by less experienced and inadequately trained private security forces. NAPO states that the FAA should not generate a rule inviting substantial replacements of experienced and well-trained LEO's which will have potentially serious consequences on airport and aircraft operator security. NAPO recommends that the FAA specify areas of the airport and situations mandating the presence of LEO's and also require a minimum contingent of LEO's at each US airport. One airport suggests replacing the word "indicia" with "appropriate badge or uniform of authority."

FAA response: The FAA does not have the latitude to provide for the concerns raised by the NAPO and other commenters. The term's "law enforcement personnel" and "indicia of authority," as reflected in proposed § 107.215 (new § 107.217), were established under Title 49, United States Code section 44903. The statute authorizes the operator to use the services of qualified State, local, and private law enforcement personnel. The regulation is revised to be consistent with the statutory language.

Comments on proposed § 107.215(b) (new § 107.217(b)): Miami International Airport, UPS, ACI–NA, AAAE, and others comment that the FAA should provide for local law enforcement officers to be "deputized" to enforce federal regulations. Some of the commenters' note that LEO's are more often called to respond to incidents such as interference with flight crews, where they have no authority to take action nor are they supported by the statute.

FAA response: Situations such as cited by Miami International Airport and other commenters fall outside the scope of this rulemaking. The FAA notes, however, that nothing in the final rule precludes having law enforcement personnel deputized to enforce selected Federal statutes. Further, there are some airports at which selected airport police officers have been deputized by the United States Marshal Service.

Comments on proposed § 107.215(c) (new § 107.217(c)): Two airports request a deletion of the reference to "LEO's" from § 107.215(c). Another commenter recommends retaining the title law enforcement "officer" instead of law enforcement "personnel." Miami International Airport states that LEO is a recognized term within the industry. ALEAN states that the term "private law enforcement personnel" is confusing and problematic. The phrase should be "private security personnel."

Tucson Airport and Phoenix Aviation Department request clarification of what constitutes adequate training under this section. Two airports and a port authority request removal of reference to "any other subject the Administrator determines is necessary," stating that this gives the FAA a blank check to do anything.

FAA response: As explained previously, the use of the terms "law enforcement personnel" and "private law enforcement personnel" are consistent with Title 49 U.S.C. § 44903. To be qualified for this task, law enforcement personnel (whether state, local, or private) must have the arrest authority, weapons authority, and training set out in this section. The term "private security personnel" often is used for uniformed persons who are not armed and do not have arrest powers, and is not suitable for this section. The FAA knows of at least one airport jurisdiction in which law enforcement support had been provided to the airport operator under contract by a private firm. There, privately employed individuals were granted arrest powers and in all other respects meet the requirements for law enforcement support as outlined in this statute and part 107.

In response to the Tucson Airport, the FAA notes that the language of the final rule, in effect, leaves to the local jurisdiction the determination as to what constitutes "adequate training" for publicly employed LEO's. In the case of private law enforcement personnel serving the law enforcement role required under this part, the Administrator must approve their training, and must, therefore, determine the adequacy of their training.

With respect to the phrase "any other subject the Administrator determines is necessary," the FAA Administrator reserves the right to add to the training program. The changing nature of the civil aviation security program, and of terrorism or other criminal threats in general, may generate the necessity for additional training in the future that cannot be anticipated at this time.

Comments on proposed § 107.215(d) (new § 107.217(d)): Five airports state that the FAA should remove reference to "principal operations office" and add "as detailed in the security program." The place of retention of training records is a matter of legal guidance and operational needs and preferences.

Another commenter states that police training records should be maintained by airport police personnel. A commenter asks who pays for maintaining the training records required by this paragraph.

The Tucson and Phoenix Airports question the means and resources of training under this section.

FAA response: The FAA concurs with the commenters' concerns regarding the location of the records. The final rule does not specify the location of the records.

The final rule does not require the airport operator to possess the actual records, it only requires that they be available for review upon request in accordance with § 107.7(a)

The rule does not specify who will absorb the costs for maintaining the training records. Likely, this will depend on what entity maintains the records.

Section 107.219 Supplementing Law Enforcement Personnel (Proposed § 107.217)

In the Notice, this section appeared as § 107.217; it has been renumbered in the final rule as § 107.219. Under the proposal, existing § 107.19 entitled "Use of Federal law enforcement officers," was revised and renumbered as § 107.217, "Supplementing law enforcement personnel." This revised section sets forth the same procedures for an airport operator to request Federal assistance in supplementing local law enforcement, and has incorporated statutory language that would provide for supplemental support from any personnel employed by the Federal government.

Comments: Commenters suggest that the idea of supplementing airport LEO's with Federal officers is fraught with problems including jurisdiction, legal authority, training and availability. The NAPO recommends that the FAA should reconsider its clarification of statutory authority to allow for wholesale substitution of governmental LEO's in all airport locations under most circumstances and situations. Another commenter suggests that § 107.217(b) should be removed because the statement is too broad and serves no interest.

FAA response: New § 107.219(a), which remains unchanged from the proposal, is intended to provide emergency law enforcement support to airport operators where local law enforcement is either no longer available or is not adequate to meet the requirements of an emergency situation. While this provision has existed in regulation for many years, it has not yet

been invoked. Commenters are referred to Title 49 United States Code section 44903(c).

The basic information required by § 107.219(b) is intended to help the Administrator decide whether or not to supplement local law enforcement personnel and to prioritize assignment of resources in the event multiple requests are received. The specific requirements of paragraph (b) are directly related to Title 49 United States Code section § 44903, and therefore must be retained.

Section 107.221 Records of Law Enforcement Response (Proposed § 107.219)

This section has been renumbered in the final rule as § 107.221; it was numbered as § 107.219 in the proposed rule. The FAA proposed that § 107.219 would incorporate new recordkeeping requirements found throughout the proposed rule and ensure that the FAA has access to such records.

Under proposed § 107.219(a) the FAA would have access to any record required under the proposed rule and would require the submission of records to the FAA pursuant to a schedule approved in the airport's security program.

A slight modification was proposed for records resulting from law enforcement activity. In proposed § 107.219(b)(l), the word "action" was changed to "response." Proposed § 107.219(b)(2) extended the period of time during which records must be maintained to a more practical 180 days. It was also proposed in § 107.219(c) to require records to include more specific information about individuals who are detained or arrested. This information would aid the FAA and the FBI in the investigation of such incidents and in the analysis of data as a management tool.

The addition of proposed § 107.219(d) would require the airport operator to make and maintain for 180 days records of any corrective action taken against persons who fail to comply with falsification and security responsibilities under § § 107.9 and 107.11. A new § 107.219(e) was also proposed to require the airport operator to maintain any additional records that may be needed to support the security program, and highlight additional recordkeeping requirements found throughout the proposed rule.

Comments on proposed § 107.219(a): Three airports, a port authority and an aviation department request that the FAA replace the word "furnished" with "made available." Another commenter states that § 107.219(a) should be deleted, and add "Records required to be maintained should be made available to the Administrator upon request."

One commenter states that increasing record creation/maintenance requirements for the pleasure of the FAA incorporates no increase in security posture while encroaching upon visible patrol time and availability of personnel for timely response to needs for LEO services.

FAA response: After further consideration, it is evident that new § 107.7 provides for inspection by the FAA of records used to show compliance with this part. Therefore, proposed § 107.219(a) is not needed and is not adopted.

Comments on proposed § 107.219(b) (new § 107.221(a)): The Airport Consultants Council (ACC), an airport, a port authority, and a local aviation department state that the FAA should consider more realistic record retention requirements and strongly urges the FAA to reassess the across-the-board 180-day timeframe and develop a more logical retention matrix associated with the type of information. Another commenter recommends maintaining the current 90-day requirement. A commenter states that the vast majority of the records required in this section is generated at the security checkpoint and would be best supplied and retained by the aircraft operator and their contractors. Another airport states that records for police actions should be the only requirement as there are a significant number of responses where no action is taken. Metropolitan Washington Airports Authority requests that the FAA replace the phrase "law enforcement response" with "law enforcement action."

FAA response: This paragraph is renumbered § 107.221(a) in the final rule. The FAA's 180-day timeframe is intended to ensure that the subject records are maintained during what is expected to be the maximum period between regularly scheduled FAA inspections. It is hoped that this interval will ensure that records are available when and as needed for FAA purposes.

The records required by this section refer to law enforcement records. The FAA agrees with the substance of the comment that only certain actions taken in support of the security program should be provided to the FAA, while other records need only be made available upon request. Therefore, the final rule requires that records be made of law enforcement "actions" instead of the broader category of "responses." The specific types of records that the FAA expects the airport operator to provide routinely, in accordance with the schedule included the security program, would include actions taken in support of the security program and that result in arrests, detentions, or discovery or confiscation of weapons, explosives, and incendiaries.

Comments on proposed § 107.219(c) (new § 107.221(b)): The ACC and an airport state that § 107.219(c)(4) is too broad a category. The FAA needs to assess the validity of retaining this information. One commenter suggests the FAA provide a process to gather and store relevant statistics in a timely manner.

FAA response: This paragraph is renumbered § 107.221(b) in the final rule. The FAA disagrees that the information cited under the proposed rule is broad. Rather, it believes that such information in 107.221(b)(4) is specific, and is routinely developed for each instance of detention or arrest. The agency believes this information is necessary to identify trends, and to meet reporting requirements placed upon the FAA by other entities, to include the Congress.

Comments on proposed § 107.219(d): FAA is not adopting language related to a compliance and enforcement program as proposed under § 107.103, at this time. Such issues will be dealt with in a later rulemaking action.

Comments on proposed § 107.219(e): An airport, a port authority and a local aviation department suggest that the FAA delete the phrases "maintain any additional records" and "but not limited to" in § 107.219(e). Any new requirement for maintaining records should be introduced through the rulemaking or amendment process with sufficient time to implement the recordkeeping procedures.

FAA response: The FAA agrees that any additional reporting requirements, particularly as levied by entities with authority over the FAA, such as, the Department of Transportation and the Congress, would not be so time critical that a more deliberate approach is precluded. The agency, therefore, recognizes that airports would need time to comment on and to implement any additional recordkeeping procedures beyond that already specifically required in regulations or security program language. Proposed § 107.219(e) is withdrawn.

Section 107.301 Contingency Plan

This proposed new section would require airport operators to implement FAA-issued contingency measures contained in their security programs when directed by the Administrator. It also proposed that airport operators (and aircraft operators under parallel

language of part 108) should test these contingency plans to ensure that all parties involved are aware of their responsibilities and that information contained in the plan is current.

Comments: Sacramento County Department of Airports requests clarification of the Contingency Plan and asks whether the FAA expects airports to replace the Aviation Security Contingency Plan (AVSEC).

ACC requests that the FAA update its alert levels and contingency measures.

An airport and a port authority state that the term "exercises" should be removed from the phrase, "conduct reviews and exercises." Then the regulations would parallel to existing part 107 and part 139. Another commenter recommends an annual requirement to review and exercise the contingency plan.

Two airports state that § 107.301(b) should specify that table top exercises instead of the application of measures with real events is sufficient to meet the requirement for reviews and exercises.

One commenter states that it is the FAA's responsibility to ensure that invited parties participate in contingency plan reviews and exercises. Another commenter recommends that aircraft operator participation should be addressed in part 108.

FAA response: The current AVSEC Plan is mandated by a security program amendment. The FAA does not expect the airports to replace the AVSEC Plan based upon this rulemaking. Rather, this proposal language was intended to clearly state the regulatory foundation for the existing plan.

The FAA disagrees with the commenter who suggested removal of the requirement for airport operators to conduct "exercises" of their contingency plans. The FAA developed the AVSEC Plan to ensure that the FAA, airport operators, aircraft operators, and other affected parties are able to respond effectively and on short notice, to each threat to civil aviation security. A contingency plan, in order to be most effective, must be rehearsed regularly with all key participants and infrastructures involved. The FAA experience has shown this approach will help to ensure a timely response to actual threats, therefore, the requirement to perform "exercises" will remain. The agency expects that such exercises will be conducted in accordance with requirements established in local security programs.

The airport operator has a responsibility to ensure that all key participants, including aircraft operators, are knowledgeable about the contingency plan and participate in exercises. Consistent with this, aircraft operators have a responsibility under § 108.301 to develop and practice the contingency plan and to participate in tabletop exercises of the airport plan. The FAA views its role as ensuring that all parties to this plan maintain a state of preparedness necessary to respond to reasonably foreseeable situations. The agency believes the regulation, as modified, promotes that end.

Section 107.303 Security Directives and Information Circulars

This proposed new section would correspond to proposed § 108.305 and requires airport operators to respond to Security Directives in the same manner as aircraft operators.

The FAA has used Security Directives as a means to disseminate information to aircraft operators concerning security threats and to require appropriate measures to be implemented. The FAA uses Information Circulars for the notification of general information regarding threats to civil aviation security.

This section also proposed to permit the ASC to apply for a security clearance through the FAA in order to receive classified information related to national security.

Comments on § 107.303(a): One airport states that § § 107.303(a) and (b) are inconsistent. Paragraph (a) refers to the Assistant Administrator issuing a Security Directive and paragraph (b) refers to the Administrator issuing a Security Directive. Another commenter states that the language should be amended to account for the fact that the Administrator issues Information Circulars to convey threat information.

One commenter states that the type and quality of threat information provided to the airport operators is barely useful in security practices.

One port authority states that the FAA should specify in the language that all Security Directives will be addressed to the ASC and/or their designated alternate.

One commenter states that there should be some distinction made between airport and aircraft operator Security Directives.

FAA response: The FAA agrees that there were apparent inconsistencies in the language. The final rule has been amended to reflect that all actions are taken by the Administrator. However, under § 107.1(b) the Administrator's authority is also exercised by the Assistant Administrator for Civil Aviation Security or the Deputy Assistant Administrator for Civil Aviation Security. Section 107.1(b) also addresses further delegation of the Administrator's authority.

In response to the commenter that stated that threat information is "barely useful," the FAA notes that it makes every effort to provide useful threat information to all regulated parties. However, much of the information upon which Security Directives and Information Circulars are based may have been classified by other Government agencies. Consequently such information can only be released if it has been crafted in such a way as to protect the interests of those agencies. The ability of the agency to grant a Federal security clearance to certain airport officials allows greater latitude in passing on more specific, and hopefully more useful information.

Further, often the information the government holds is very limited, and there is little more specific information to pass along. In such a case, the FAA provides what information it can to keep the airport operator as informed as possible.

The FAA agrees with the commenter that the ASC plays a crucial role in the chain of communication. The final language of the regulation reflects in § 107.5(b)(1) the ASC as the point of contact for this purpose, however, other officials at the airport may also receive information at the FAA's discretion and based upon the circumstances.

The FAA agrees with the commenter who notes that confusion could result when more than one type of regulated party receives a similarly titled document. The FAA also recognizes that the Emergency Amendment process has been used for the notification of both airports and foreign air carriers regulated under part 129. The agency notes that the language of the documents generated under this provision will clearly indicate their applicability and intent.

Comments on § 107.303(b): One airport and a local aviation department state that airports should have a minimum of 3 business days to comply with Security Directives.

FAA response: The FAA does not believe it is appropriate to provide in the regulation a minimum of 3 business days to comply with Security Directives. Security Directives usually respond to an immediate threat. Hence, the FAA will not place regulatory constraints upon its ability to be responsive in these situations. It will, however, be mindful of the difficulties in complying with contingency measures and will permit additional time for implementation where the circumstances of the situation permit.

Comments on proposed § 107.303(c): One commenter strongly opposes § 107.303(c) that presumes to regulate the airport via the Security Directive.

One airport states that a Security Directive cannot be implemented in "24 hours." Another commenter suggests replacing the references to "24 hours" or "72 hours" with references to business days (such as, 1 day or 3 days). Miami International Airport suggests that "24 hours" and "72 hours" should refer to business hours. Smaller airports are not continuously staffed and may not receive a Security Directive until resuming normal workday hours. Otherwise, the FAA must be required to contact the airport to advise that a Security Directive is being transmitted.

One commenter strongly disagrees with the time requirements to comply with a Security Directive. Any significantly intrusive or expensive measure would only need to be implemented if the airport, aircraft operators and the FAA agree that the threat justifies the action.

One commenter states in regards to § 107.303(c)(3) that airports should only be responsible for advising employees directly employed by the airport with a need to know (those on the payroll).

FAA response: The Security Directive process, like the Emergency Amendment process that has been in use for years, is intended to respond to imminent threats. The FAA cannot categorically state in this rule that in each case the airport should have a specified number of hours or days to implement the measures. The FAA is aware that each case must be evaluated, and the circumstances of each airport must be considered, in determining compliance times.

The FAA disagrees with the commenter who addressed § 107.303(c)(3) in that the airport operator may be the only appropriate authority to pass on such information, especially to persons not employed directly by the airport operator or an aircraft operator. The airport operator may also be the only authority in the position to design, describe, and institute appropriate measures. Further, the airport operator has control over such critical functions as the access systems and identification systems. As such, the duty to provide such details to persons having the need to know would logically fall to the airport operator.

Comments on proposed § 107.303(d) and (e): There were no comments on these paragraphs.

Comments on proposed § 107.303(f): Another commenter strongly supports receiving classified information after the ASC has applied and received a security clearance.

FAA response: The proposed language was intended to highlight this option. However, the language has been deleted in the final rule simply because it is unnecessary. The FAA wants to make it clear that the option for the airport operator to receive classified material by an appropriate designated official still exists, and the FAA actively encourages the exercise of that privilege.

New § 107.303(e) makes clear that the airport operator may submit written comments on a Security Directive. The FAA currently receives many verbal comments on Emergency Amendments, and expects to continue to receive verbal comments on Security Directives issued to airports. This often is a quick way for industry and the FAA to exchange information on the practical impact of the Emergency Amendment or Security Directive and for the FAA to provide guidance, and make changes to the Emergency Amendment or Security Directive as needed.

Section 107.305 Public Advisories

This proposed new section was added to incorporate new statutory language and a 1986 security program amendment.

Comments: ASAC and six airports recommend that the most effective means to notify passengers of public advisories is to flag those foreign airports on airline reservations systems. The booking agent would then notify the passengers verbally that the destination airport does not meet FAA standards.

Three airports and a local aviation department recommend that the aircraft operators should be responsible for posting warnings in the ticket jacket. A part 108 requirement to advise passengers via ticket sleeve inserts would diminish airport signage costs, information overload and clutter.

One airport asks why the security program has to specify the timeframe that the public advisory shall be posted? It is meaningless to have an arbitrary time of posting in the security program. Another airport states that by the time the passengers see the sign, they have checked in and committed themselves to the trip.

FAA response: The requirement to provide public notification at US airports that a foreign airport has been determined to have failed to maintain or carryout effective security measures is found in the Title 49 U.S.C. 44907(d)(1)(ii)(A). Under this statute the notification also is published in the **Federal Register** and the news media is notified. The FAA believes that posting the identity of that airport is best accomplished by a single entity at each location. That entity is determined to be the airport operator. The law also requires aircraft operators to notify their passengers of that foreign airports' status.

As to the question regarding timeframes for postings, the rule provides that the period of time is determined by the Secretary of Transportation.

Section 107.307 Incident Management

This new section was added to require the airport operator to establish procedures to evaluate and respond to threats of sabotage, aircraft piracy, and other unlawful interference to civil aviation operations.

Proposed § 107.307(b) would specifically provide that the evaluation of a threat would be conducted in accordance with the security program. However, any event covered by the part 139 airport emergency plan, such as an actual hijacking, would be handled as specified in the airport emergency plan.

To promote coordination between part 107 and part 139, the FAA also proposed to amend § 139.325 to ensure that emergency response procedures to hijack and sabotage incidents contained in the airport emergency plan are consistent with the approved security program. Proposed § 107.307(d) supported this coordination by requiring the airport operator to review annually threat and incident response procedures. Such a review is intended simply to ensure threat response procedures and contacts are still accurate and should not be interpreted as a requirement for a full-scale exercise.

In the event that an airport required to have a security program under part 107 is not required to have an airport emergency plan under part 139, proposed § 107.307(c) would require the airport to develop emergency response procedures in addition to threat evaluation procedures.

Comments: The Sacramento County Department of Transportation and two airports recommend deleting § 107.307. An airline suggests that § 107.307(a) could lead to disputes between the aircraft and airport operators as to who should actually evaluate bomb threats against flights and aircraft. One commenter recommends removing the phrase, "As described in the security program" from § 107.307(a) since it is unnecessary.

FAA response: The FAA agrees that the proposal was not clear as to the airport's role in evaluating threats made to air carriers. The final rule states that

the airport operator must evaluate or take action on only those bomb threats it receives directly, or that are referred to the operator by any other entity. For example, should an aircraft operator receive a bomb threat that it evaluates under the provisions of § 108.303 and determines that the bomb threat is neither specific nor credible, it need not refer the bomb threat to the airport operator. However, if the aircraft operator refers a threat to the airport operator or if the airport operator receives a threat directly or by other means, the airport operator is obligated to act under the provisions of § 107.307.

The FAA also agrees with the commenter's request to delete the opening phrase "As described in the security program" from § 107.307(a). Since the implementing details of almost all requirements appearing in part 107 are placed in the FAA-approved security program, the insertion of the subject language in § 107.307(a) is unnecessary.

Part 139—Certification and Operations: Land Airports Serving Certain Aircraft Operators

Section 139.325 Airport Emergency Plan

The FAA proposed to add a new section, § 107.307, to require the airport operator to establish procedures to evaluate and respond to threats of sabotage, aircraft piracy, and other unlawful interference to civil aviation operations. Existing part 107 lacks a specific requirement for airport operators to respond to threats of such criminal activity. Instead, part 139, Certification and Operations: Land Airports Serving Certain Aircraft Operators, requires airport operators to be prepared to respond to an actual incident of sabotage, hijack, and other emergencies by developing and testing an airport emergency plan under § 139.325. These emergency procedures are sometimes incorporated in the security program verbatim, and generally speak to emergency services responses.

The FAA believes that emergency response procedures to such incidents such as bombing or hijacking, should remain in the part 139 airport emergency plan. An expedited response to emergency situations is critical, and response procedures to any emergency should be limited to one document to minimize delays and confusion.

To promote coordination of the procedures to implement the requirements of part 107 and part 139, the FAA proposed to amend § 139.325 to ensure that emergency response procedures to hijack and sabotage incidents contained in the airport emergency plan are consistent with the approved security program.

Comments: One commenter recommends removing the requirement to have the airport operator to obtain two approvals for its security program (FAA Security Division and FAA Airports Division). Another commenter recommends excluding all emergency plans dealing with security, stating that security emergency plans belong in part 107 only. Another commenter states that the consensus of the airport community is to remove any cross-reference between part 107 and 139.

One commenter states that part 139 does not have protection under the non-disclosure rules.

FAA response: Nothing in this rule requires the airport operator to obtain two approvals for its security program. The changes to § 139.325 require the airport operator to ensure consistency between the operator security program required under part 107 and its airport emergency plan under part 139. The purpose here is to prevent confusion and contradictory program language that would hamper rather than facilitate any response to an actual emergency situation at the airport.

The FAA disagrees with the recommendation to exclude all emergency plans dealing with security. The security program under part 107 is intended primarily to detail how the airport operator will prevent or respond to emergency situations. The airport emergency plan focuses on the emergency services response to a situation that has already occurred. Since the emergency plan deals primarily with emergency medical services, fire and rescue services, etc., the concerns are unique to that program and are properly included in that plan. The FAA recognizes some areas of overlap, but the programs and their purposes are distinct enough that the FAA believes they deserve their own separate document with review by the FAA specialists versed in their respective fields of expertise.

In response to the comment about protection under the non-disclosure rules, any sensitive security information as defined in part 191 that may be contained in the emergency plan must be protected in accordance with that regulation.

Summary of Economic Comments

This section will summarize the economic comments and the FAA's responses. A detailed discussion of these comments and responses is contained in the full evaluation in the docket for this proposed rule. A total of 66 commenters raised economic issues.

General comments: Two commenters believed that the numbering and ordering of several sections changed since the analysis was originally done.

One commenter could not understand why the FAA avoided any cost estimation for the effects of §§ 107.31 and 108.33.

One commenter notes that the NPRM's economic summary states that the proposed rule "is not a significant rulemaking action," and so asks, then why are we doing it?

One commenter objected to the FAA using 1994 FAA forecasts for a document that was not published until 1998.

One commenter believes that the proposed regulations would have an impact on international trade.

Two commenters believe that the costs of these regulations will result in yet another unfunded mandate.

FAA response: No specific examples were given of how the scope had changed. One commenter did submit a chart, which purported to show these differences. In this chart, most of the differences were explained in terms such as "not the same," "increased scope," or "potential reduced flexibility". Without specific examples, the FAA cannot respond to this commenter's concerns.

The FAA has provided cost estimates for §§ 107.31 and 108.33 in the analysis for the "Unescorted Access" final rule.

The Office of Management and Budget (OMB) and the Department of Transportation (DOT) have specific definitions for "significant" rulemaking actions that include certain cost and/or policy criteria. The fact that this rulemaking does not meet these criteria does not mean that this rulemaking action is irrelevant.

Even in the best of times, given the limited resources within the FAA and DOT, it is often normal for there to be a delay between the time that the analysis is done and published.

Unlike air carriers, airports are not in competition with their foreign counterparts.

As required by Congress, the FAA has examined these regulations in light of the Unfunded Mandates Reform Act of 1995 and found that this Act does not apply.

Comments on the assumptions used in the analysis: Two commenters questioned the assumption that the number of airports and their distribution into airport types would not change for the 10 year span of the analysis.

Four commenters believe that using data from many different years, such as 1989, 1991, 1992, and 1994 is inappropriate for a 10-year projection to 2009.

Two commenters were uncomfortable that data was used from an analysis dealing with testing for alcohol usage.

Two commenters believe that the number of badged staff used in the NPRM analysis were incorrect.

One commenter stated that the assumption that all identification media will be magnetic stripe is unrealistic.

One commenter believed that the FAA's assumption that it would take 1 hour to reissue a card assumed no queuing and thus was too low.

One commenter claimed that the discount and price deflator numbers needed clarification and standardization.

One commenter objects to the FAA grouping airports into Types A, B, and C airports, which he believes have little or no apparent correlation to the existing categorization of airports.

One commenter was not comfortable with the difference in the costs of new identification badges at different airports.

FAA response: Since no one can accurately predict the number of airports and how the distribution by size and type for any year in the future, the FAA will not modify these assumptions.

The cost data that the FAA uses is not in one place; instead, it must be gleaned from several different sources. All wage rates were adjusted to 1994 dollars in the NPRM, and 1998 dollars for the Final Rule.

The data gleaned from this analysis applied to GSC's.

The data was obtained from the 1994 survey. Since neither commenter provided different data, the FAA will continue to use the data obtained from the survey.

Since the vast majority are magnetic stripe, cost estimates based on this assumption are expected to be close to the actual amount.

Based on information from industry, the FAA bases its estimate of 1 hour to reissue a card.

According to OMB, the FAA applies a discount factor of 7% to calculate the present value of costs. The GDP implicit price deflators are used to convert costs in different year dollars to the same year dollars.

These airport types track with the security provisions that are in place in the current § 107.3.

The differences in the costs of the badges between the different airports are based in the differences in the wage rates at these airports and in the complexity of the badges needed.

Section 107.3—Definitions

Comments: One commenter believes that the FAA's assertion that changes in definition would not result in any incremental costs is incorrect.

FAA response: This section's purpose is to define the words and terms that will be used later on in the document. When each of these new words and terms are used operationally (in latter sections), they are costed out then.

Section 107.5—Airport Security Coordinator

Comments: One commenter was not comfortable with the FAA's assumption that since the GSC's attrition rate is 5%, the ASC's attrition rate must be the same.

One commenter, in looking at the FAA's costs estimates for additional ASC responsibilities says that the additional ASC duties would need to be transferred to other personnel; the FAA did not cost out the hiring, training, and wages of these additional personnel.

FAA response: Concerning the attrition rates, the commenter offers no other data for the FAA to use, so the FAA will continue to use the 5% attrition rate.

The FAA has no way of knowing if ASC's would need to transfer any of these responsibilities and who they would be reassigned to.

Section 107.9—Falsification

Comments: One commenter does not accept the FAA's belief that there would be few cases that statements or documents would be falsified, and hence, cost would be minor.

FAA response: In the analysis, the FAA specifically invited comments on the number of instances of falsifications that airports have experienced. However, no commenter submitted anything different.

Section 107.11—Security Responsibilities of Persons

Comments: One commenter noted that the FAA assertion that "the cost of administering a compliance program would only be incurred by airports currently without a program" was wrong, as existing compliance programs have administrative costs.

One commenter further states that he does not believe that an ASC and a clerk could develop or modify the challenge program in 8 hours.

FAA response: The FAA made a misstatement here and meant to say that "the *additional* cost of administering a compliance program * * *."

The FAA agrees with the commenter and is using a figure of 40 hours per each of these employees in the development or modification of the challenge program.

Section 107.103—Content

Comments: Two commenters were not comfortable with the FAA assumption that it would take 15 minutes to assemble each of the elements required by the new section § 107.103.

One commenter believes that the 10-year estimate of $49,200 for administrative costs to change the descriptions in the ASP averages out to $10.69 per airport annually, clearly too low.

FAA response: The FAA agrees and increased the amount of time from 15 to 60 minutes in the final rule analysis.

The FAA is increasing the amount of time required to make these administrative changes, so these costs will rise. In addition, many of the administrative changes will only occur in the first year of implementation.

Section 107.107—Changed Conditions Affecting Security

Comments: One commenter objected to the proposed rule's requirement for airports to report to the FAA any operational changes within a 2-hour period.

Two commenters were confused as to how the FAA's requirement that the Agency be informed of new conditions in 2 hours could lead to cost savings.

FAA response: The FAA has removed the 2-hour time frame from the final rule; the new requirements are that the airport must notify the FAA within 6 hours, or within the time specified in the security program.

The cost savings do not come from these proposed requirements but from new rules that would relieve the airport from formally amending its security program for a condition under 60 days.

Section 107.111—Exclusive Area Agreements

Comments: One commenter does not understand how the FAA's analysis could state that individual costs on the transfer of exclusive use agreements from airports to air carriers will balance out.

FAA response: This analysis looks at any incremental costs. If the airport was doing "X" and now the aircraft operator is doing "X", to include total aircraft operator costs without looking at total airport savings would be erroneous.

Section 107.201—Security of the Secured Area and Section 107.203—Security of the AOA

Comments: Fourteen commenters make copious arguments against many of the requirements and costs in proposed §§ 107.201 and 107.203. The FAA has modified this section in the final rule, so these comments are not pertinent.

Three commenters believe that adding signage requirements for all doors would increase the cost significantly.

FAA response: If airports change the boundaries of areas to be secured, they will be required to post new signs within these areas. New signs will need to be posted once, not repeatedly and only if the boundaries have been modified.

Section 107.207—Employment History, Verification, and Criminal History Records Checks

Comments: Two commenters questioned the FAA's assertion that it would take $363 to secure a door, as noted in the calculations of proposed § 107.205(f), claiming that the costs of new infrastructure to existing systems would be higher.

One commenter questions whether parts of proposed §§ 107.209 and 107.205 (the NPRM's §§ 107.211 and 107.207) don't contradict each other. He points out that former restricts badge issuance to only 1 per person while the latter allows for the issuance of secondary media.

One commenter was uncomfortable with the FAA's assumption that each employee would forget their access media card on average one time per year.

One commenter objected to the FAA's assertion that employee absences result in supervisors drawing from a labor pool which ensures against employee no-shows; with the exception of reserve flight crews, no airport or air carrier operates with stand-by personnel.

One commenter believes that since there are references to vehicle identification systems in both proposed § 107.205 and in existing part 139, this would lead to two systems that are equally expensive, access control systems.

FAA response: The requirements of proposed § 107.205(f) are not in the final rule. The commenter is confusing the temporary badges discussed by proposed §§ 107.205 (access) and § 107.209 (identification). For the former, the airport may issue a second access media to someone who forgets to bring it to work. For the latter, the airport may issue a second identification media if the employee has more than one job at the airport.

The FAA agrees with the commenter that in the new analysis, the FAA bases costs on the assumption that each employee would forget their access media on average three times a year.

The commenter is correct and such language has been removed from the final rule analysis.

The FAA is not requiring vehicle identification in the final rule.

Section 107.211—Training

Comments: One commenter could not understand the big differences between the costs of personnel and vehicle identification systems.

One commenter believes that applying the challenge procedures to both types of secured areas but having two-tiered training and identification requirements is confusing and costly.

Four commenters believe that having expiration dates on badges, which cause the need to reaudit and revalidate the system, causes great expense and does not augment security.

Six commenters believe that a vehicle identification system would be very expensive.

One commenter objects to an audit that would compare airport records to airline and airport tenant files. Another commenter objected to what it believed was a second yearly audit to compare airport records to airline and airport tenant files.

One commenter could not understand why escort programs "would not entail costs to airport operators because it codifies a program that is currently in place at all airports in their ASP."

FAA response: A major reason for this cost differential between personnel and vehicle identification systems is that former involves personnel salary time and picture identification costs; there are no such requirements for vehicle identification. However, the FAA is not requiring vehicle identification in the final rule.

The fact that a challenge system is needed in both areas does not obviate the need to maintain a two-tiered training system.

There are good reasons why an expiration date is needed on identification badges. A person's appearance changes over time. In addition, if an individual losses their identification, anyone would be able to use that badge in the SIDA, perhaps without the picture being carefully viewed by other persons in the area.

Information from the survey indicated that a vehicle identification system at a large airport costs about $4,700 to set up an identification system and $2,300 and $12,100 to audit and revalidate the system, respectively.

The FAA believes that both commenters misread the proposed regulations as there is no such requirement.

Since the FAA is only costing out the new or incremental costs imposed by this proposed regulation, moving a portion of the existing requirements from the ASP to the regulation does not impose any incremental costs.

Section 107.215—Law Enforcement Personnel

Comments: Two commenters were uncomfortable with the FAA using survey data to project cost savings based on the use of plainclothesmen.

FAA response: The FAA has revisited this issue and now believes that there will not be any costing savings.

Section 107.221—Records of Law Enforcement Response

Comments: One commenter notes that the NPRM's § 107.219 (now § 107.221) doubles the requirement for maintaining records, from 90 to 180 days, and wonders why.

FAA response: With regard to the need for 180 days, the FAA stated in the NPRM's Preamble: "often times, the current 90-day requirement is insufficient for investigation and enforcement purposes."

Section 107.301—Contingency Plan

Comments: One commenter points out that each airport was required to incorporate the contingency measures into their airport security program several years ago. By shifting this information to the new airport security program, this would involve costs to each airport.

FAA response: The FAA agrees that these contingency measures have existed in each airport operator's security program and believes that they should now be part of the public rule rather than the private rulemaking. In costing out the proposed provisions, the FAA is looking at the incremental change that these changes would impose on the airport. Given that airports already have these contingency provisions, no airport would have to establish one.

Paperwork Reduction Act

Information collection requirements pertaining to this final rule have been approved by the Office of Management and Budget (OMB) for one year under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB control number 2120–0656. Comments

were received on the NPRM publication and are discussed earlier in this preamble.

The FAA is committed to provide the industry with the most current, accurate, and relevant cost impact figures possible. In order not to impede the timely issuance of the regulation, it is our intent to provide updated information on the issues currently contained in the rule, and to solicit additional data from the industry and general public in support of OMB's renewal under the current Paperwork Reduction Act clearance.

The FAA has carefully evaluated the likely incremental burdens of the changes to part 107, and OMB has approved these estimates for a limited period under OMB 2120–0656. However, the FAA recognizes that the rule is codifying many existing practices and procedures, and that the newly codified part 107 will also bring about evolutionary changes of its own. As part of its review of the existing paperwork burden required every 3 years, FAA is now planning a thorough review as part of that renewal clearance of OMB 2120–0075, which expires May 31, 2001. This will also allow the airports and the FAA an opportunity to evaluate how best to implement the changes, and to minimize any new burdens.

It is important to note that the figures contained in the previous clearance for part 107 [OMB #2120–0075], which reflect an estimated annual impact of 75,414 hours of impact, have not changed significantly for a number of years. Those numbers are to a considerable degree based upon long-standing and probably outdated assumptions, and do not fully reflect growth in the demands on airports since that time. Overall traffic at U.S. airports has increased by one-third since 1990, with a concomitant increase in terminal facilities and related demands on security support activities and law enforcement personnel. This includes large demands such as those imposed by the implementation of access controls under § 107.14 in 1989.

During the intervening years, updates of the information collection burden have not kept pace. Amendments have been addressed piecemeal due to periodic security exigencies and legislative requirements. However, a single comprehensive review of the economic impacts of the entire program as an integrated whole has not been possible until this comprehensive rewrite of the regulations. It is our goal to address the informational deficit through additional data gathering and analysis in support of the upcoming May 31, 2001 OMB renewal process.

The current FAA submittal, which estimates approximately 512,000 total annual hours of impact on the industry, must be viewed in a significantly different context from the previous estimates: The FAA will be examining both the old and new regulation in order to validate ongoing burdens and seek to eliminate duplication.

The core provisions of the new regulation have been adopted from current industry practice. Specifically, under the existing regulation, the goals of some security functions are set forth as general mandates. At the same time, the regulation requires the airport operator to accomplish those mandates through language in nonpublic FAA-approved airport security programs. For example, for many years, existing § 107.13 has required airport operators to control access to and movement on certain areas of airports. The implementing details were to be set forth in the security programs. It is the common practice under part 107, to perform this task, in large part, through the use of personal identification (ID) systems. Yet, the existing regulation does not specify the use of such systems; hence, the associated burdens were never adequately reflected. However, the revised part 107 specifically requires the use of ID in certain areas. So, the burdens associated with these systems, while already in place, must be reflected as though totally new. As a result, some of the hours attributed to this new rule are already being expended, so the new burden could actually be less than 512,000 hours. In addition, since the use of such systems has been common industry practice for many years, there exists a considerable amount of industry experience in their implementation. This will allow the FAA to reflect a more valid estimate of impact based on greatly improved data.

Based on extensive comments to the FAA, some costly requirements, such as the access control time and date requirements have been removed from the existing rule, and some NPRM provisions were dropped, such as vehicle IDs and some name changes of the security areas.

Some hours of estimated impact are not really added hours of burden. This regulation simply codifies many existing practices. If anything, the standardization has a strong potential to reduce the collective impact of the rule on both the FAA and the airports.

It is FAA's intent to issue the rule immediately under an interim OMB clearance in order to allow airports to initiate the necessary revisions to their airport security programs. Simultaneously, FAA will initiate the development of an effort to gather updated data to further refine the estimates. These will be submitted to OMB early in 2001 in support of a final clearance under the Paperwork Reduction Act.

As provided for by the Paperwork Reduction Act, it should be noted that an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The assigned control number for the collection of information associated with this rule is 2120–0656.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is PAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. This proposal is consistent with the ICAO security standards.

Regulatory Evaluation Summary

This rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979) but is not considered to have a significant economic impact under Executive Order 12866.

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended March 1996, requires agencies to analyze the economic effects of regulatory changes on small entities. Third, OMB directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that the rule will generate benefits that justify its costs. The rule will not have a significant impact on a substantial number of small entities. The rule will not constitute a barrier to international trade and does not contain Federal intergovernmental or private sector mandates. The full analyses performed in response to the above requirements are contained in the docket and are summarized below.

The FAA analyzed the expected costs of this regulatory proposal for a 10-year period (2000 through 2009). As required by OMB, the present value of this cost stream was calculated using a discount

factor of 7 percent. All costs in this analysis are expressed in 1998 dollars.

The FAA has determined that implementing the final rule changes will affect airport owners; in addition, § 107.307 will impose additional costs on the CASFO representatives.

Currently, there are 458 airports in the U.S. aviation system that have an airport security program approved by the FAA; the contents of these programs, their approval, and the amendment process are key components of part 107. All airport security programs cover many of the same requirements and concerns. However, due to the different physical layouts and security requirements of each airport, each airport's security program will have some unique features. Accordingly, it is important to note there is not a single airport security program, but instead, many programs that have many common elements.

Many of the changes to parts 107 and 139 simply change definitions or make minor word changes. These changes will not result in any incremental costs and will not be covered in this summary. Nine sections will increase costs and two sections will result in cost savings. The changes to security will affect virtually all airports in the system. The analysis assumes no change in the number of airports over the next 10 years.

Section 107.5, entitled "Airport Security Coordinator" increases the responsibilities of the ASC. Under this rule, the ASC, or in certain cases the airport operators or their designees, must review materials and security functions for effectiveness and compliance and take corrective action immediately for each instance of non-compliance with this part and notify the FAA of the instances and any corrective measures taken. The ASC must also be trained in accordance with the FAA-approved security program. The estimated cost resulting from these changes total $10.8 million (net present value, $7.6 million).

Section 107.7, entitled, "Inspection Authority" (amending the current § 107.27), requires each airport operator to provide the FAA with evidence of compliance with part 107 and its ASP, including copies of records. The airport may be required to send the FAA selected records; for this analysis, the FAA assumes that airports will need to furnish 5% of these reports to the FAA. For this analysis, the FAA assumes that all airports file quarterly. Ten-year costs for these increased records sum to $37,900 (present value, $26,300).

Section 107.103, entitled "Content" (amending the current § 107.3) expands the documentation requirements for the airport security programs. The estimated administrative costs will be approximately $420,000 (present value, $330,000).

Section 107.107, entitled "Changed conditions affecting security" involves notification costs. All airports are required to notify the FAA to certain changes in airport security. This rule will increase the number of airport security changes of which the FAA needs to be aware and will relieve airports of having to modify their airport security program for a changed security condition under 60 days. The net results of these changes will be an estimated $4.3 million in savings (present value, $3.0 million).

Section 107.201, entitled "Security of the secured area" defines the requirements for the most critical security portions of the airport. The intent is to better define the areas of the airport in which the security interest is the most critical and where security measures should be the most stringent. This will entail additional requirements, such as changing warning notices and signs for this area. Most current employees will probably need additional one-time training to educate them as to these new changes. Due to the reclassification and redesignation of the secured area, the FAA believes that 5 percent of all airport employees will no longer need to be issued access media and will no longer need to be trained for access to this area, nor will they need access media. The net result is that these revisions will save an estimated $28.6 million (present value, $15.3 million).

Section 107.203, entitled "Security of the air operations area" establishes the means used to control access and movement on the AOA; such access and movement is held to the same standards as controlling access and movement in the secured areas. However, the regulation on the AOA will still entail additional costs including providing information to all employees with access to the AOA and changing warning notices and signs for this area. These revisions will cost an estimated $10.2 million (present value, $9.5 million).

Section 107.207, entitled "Access control systems" enhances the existing performance standards for access controls by allowing the issuance of a secondary access medium to individuals. The secondary access media program gives airport operators an option, in addition to using either existing airport escort programs or denying employees access without their original cards, both of which can be very costly. An airport operator opting to use a secondary access media will incur additional costs, including development costs, annual computer time, card manufacturing costs, and card storage costs. A few airports currently escort all employees who do not have their access cards, resulting in lost productivity; costs involved with escorting are covered in § 107.211. Most others deny entry to employees without access cards; they are either sent home to retrieve the card or not allowed to work for the day, so that employee's supervisor needs to spend time reassigning employees. The FAA based its costs by assuming that half the airports adopt the secondary access media and the other half use the current two options. The total 10-year costs for this section total $75.5 million (net present value, $52.7 million).

Section 107.211, entitled "Identification systems" requires airports to implement an identification system if they do not have one, and require identification systems to meet certain standards. Such standards will require airports to audit their identification systems once a year and revalidate their identification systems when a certain percentage of the currently issued and active identification media become unaccountable for personnel systems. This section also will require airport operators to implement a challenge program in the secured area and SIDA. The purpose of the challenge program is to improve each airport operator's ability to limit unauthorized incursions in the secured area; the rule requires all airports to make modifications to their present challenge programs. In addition, there will be cost savings from those airports that will no longer use their escort program for employees who forget their access media (as discussed in § 107.207). The total cost of this section will be $7.2 million (present value, $9.2 million).

Section 107.221, entitled "Records of law enforcement response" requires that records be maintained pursuant to a schedule in the airport security program and increases the time an airport must maintain records from 90 days to 180 days. Airports will still be required to report all deadly weapon activity, arrests, and threats against civil aviation. The additional recordkeeping and maintenance costs will total $17.8 million (present value, $12.2 million).

Section 107.307, entitled "Incident management," will require that airports incorporate certain procedures into their airport security programs for responding to threats of sabotage, aircraft piracy, and other unlawful acts against civil aviation. This section will also impose

costs upon the FAA; FAA representatives will have to review and approve airport incident threat response procedures and ensure coordination of such procedures with their counterparts in airport safety. Ten-year costs are estimated to be approximately $2.1 million (present value, $1.5 million).

Section 139.325 is amended to require each airport to ensure that the instructions for each airport emergency plan are consistent with its airport security program. This action will entail costs for each airport. The FAA assumes that the ASC and a clerk will each need to spend 2 hours in 2000 and 1 hour in each subsequent year to ensure consistency. Total costs over 10 years equal $270,000 (present value, $200,000).

The 10-year total cost of this rule is estimated to be $92.2 million (present value, $75.4 million).

The rules to amend parts 107 and 108 are intended to enhance aviation safety for U.S. airport operators and aircraft operators in ways that are not currently addressed. The benefits of the rules will be a strengthening of both airport and air carrier security by adding to their effectiveness. Security is achieved through an intricate set of interdependent requirements.

It would be extremely difficult to determine to what extent an averted terrorist incident can be credited to either airport or aircraft security. Accordingly, the benefits from the rules for parts 107 (airport operators) and 108 (aircraft operators) have been combined in this benefit-cost analysis. These benefits are comprised of the criminal and terrorist incidents that these rules are intended to prevent; hence, these benefits will be contrasted against the costs of the changes to parts 107 and 108. The combined costs of part 107 and 108 total $131.3 million (present value, $104.1 million) over 10 years.

Terrorism can occur anytime and anywhere in the United States. Members of foreign terrorist groups, representatives from state sponsors of terrorism, and radical fundamentalist elements from many nations are present in the United States. In addition, Americans are joining terrorist groups. The activities of some of these individuals and groups go beyond fund raising. These activities now include recruiting other persons (both foreign and U.S.) for terrorist activities and training them to use weapons and make bombs. These extremists operate in small groups and can act without guidance or support from state sponsors. This makes it difficult to identify them or to anticipate and counter their activities. The following discussion outlines some of the concrete evidence of the increasing terrorist threat within the United States and to domestic aviation.

Investigation into the February 1993, attack on the World Trade Center (WTC) uncovered a foreign terrorist threat in the United States that is more serious than previously known. The WTC investigation disclosed that Ramzi Yousef had arrived in the United States in September 1992, and had presented himself to immigration officials as an Iraqi dissident-seeking asylum. Yousef and a group of radicals in the United States then spent the next 5 months planning the bombing of the WTC and other acts of terrorism in the United States. Yousef returned to Pakistan on the evening of February 26, 1993, the same day that the WTC bombing took place. By August 1994, Yousef had conceived a plan to bomb as many as 12 U.S. airliners flying between East Asian cities and the United States.

Yousef and his co-conspirators tested the type of explosive devices to be used in the aircraft bombings and demonstrated the group's ability to assemble such a device in a public place, in the December 1994, bombing of a Manila theater. Later the same month, the capability to get an explosive device past airport screening procedures and detonate it aboard an aircraft also was successfully tested when a bomb was placed by Yousef aboard the first leg of Philippine Airlines Flight 424 from Manila to Tokyo. The device detonated during the second leg of the flight, after Yousef had deplaned at an intermediate stop in the Philippine city of Cebu.

Preparations for executing the plan were progressing rapidly. However, the airliner-bombing plot was discovered in January 1995, by chance after a fire led Philippine police to the Manila apartment where the explosive devices were being assembled. Homemade explosives, batteries, timers, electronic components, and a notebook full of instructions for building bombs were discovered. Subsequent investigations of computer files taken from the apartment revealed the plan, in which five terrorists were to have placed explosive devices aboard United, Northwest, and Delta airline flights. It is likely that thousands of passengers would have been killed if the plot had been successfully carried out.

Yousef and his co-conspirators were arrested and convicted in the bombing of Philippine Airlines flight 424 and in the conspiracy to bomb U.S. airliners. Yousef was sentenced to life imprisonment for his role in the Manila plot. Yousef also was convicted and sentenced to 240 years for the WTC bombing. However, there are continuing concerns about the possibility that other conspirators remain at large.

The fact that Ramzi Yousef was responsible for both the WTC bombing and the plot to bomb as many as 12 U.S. air carrier aircraft shows that: (1) Foreign terrorists are able to operate in the U.S. and (2) foreign terrorists are capable of building and artfully concealing improvised explosive devices that pose a serious challenge to aviation security. Civil aviation's prominence as a prospective target is clearly illustrated by the circumstances of the 1995 Yousef conspiracy.

The bombing of a Federal office building in Oklahoma City, Oklahoma, shows the potential for terrorism from domestic groups. While the specific motivation that led to the Oklahoma City bombing would not translate into a threat to civil aviation, the fact that domestic elements have shown a willingness to carry out attacks resulting in indiscriminate destruction is worrisome. At a minimum, the possibility that a future plot hatched by domestic elements could include civil aircraft among possible targets must be taken into consideration. Thus, an increasing threat to civil aviation from both foreign sources and potential domestic ones exists and needs to be prevented and/or countered.

That both the international and domestic threats have increased is undeniable. While it is extremely difficult to quantify this increase in threat, the overall threat can be roughly estimated by recognizing the following:

- U.S. aircraft and American passengers are representatives of the United States, and therefore, are targets;
- Up to 12 airplanes could have been destroyed and thousands of passengers killed in the actual plot described above;
- These plots came close to being carried out; it was only through a fortunate discovery and then extra tight security after the discovery of the plot that these incidents were thwarted;
- It is just as easy for international terrorists to operate within the United States as domestic terrorists, as evidenced by the World Trade Center bombing; therefore,
- Based on these facts, the increased threat to domestic aviation could be seen as equivalent to some portion of 12 Class I Explosions on U.S. airplanes. (The FAA defines Class I Explosions as incidents that involve the loss of an entire aircraft and incur a large number of fatalities.)

In 1996, both Congress and the White House Commission on Aviation Safety

and Security recommended further specific actions to increase civil aviation security. The Commission stated that it believed that the threat against civil aviation was changing and growing, and recommended that the Federal government commit greater resources to improving civil aviation security. President Clinton, in July 1996, declared that the threat of both foreign and domestic terrorism to aviation was a national threat. The U.S. Congress recognized this growing threat in the Federal Aviation Reauthorization Act of 1996 by: (1) authorizing money for the purchase of specific anti-terrorist equipment and the hiring of extra civil aviation security personnel; and (2) requiring the FAA to promulgate additional security-related regulations.

In the absence of increased protection for the U.S. domestic passenger air transportation system, it is conceivable that the system would be targeted for future acts of terrorism. If even one such act were successful, the traveling public would demand immediate increased security. Providing immediate protection on an ad hoc emergency basis would result in major inconveniences, costs, and delays to air travelers that may substantially exceed those imposed by the planned and measured steps contained in these rules.

Based on the above statement, the FAA concludes that these rules set forth a better method to provide increased security at the present time. The FAA considered to the limited extent possible, the benefits of these rules in reducing the costs associated with terrorist acts. The following analysis describes alternative assumptions regarding the number of terrorist acts prevented and potential market disruptions averted that result in these rules' benefits to be at least equal to these rules' costs. This is intended to allow the reader to judge the likelihood of benefits of these rules equaling or exceeding their cost.

The cost of a catastrophic terrorist act can be estimated in terms of lives lost, property damage, decreased public utilization of air transportation, etc. Terrorists acts can result in the complete destruction of an aircraft with the loss of all on board. The FAA considers a Boeing 737 as representative of a typical airplane flown domestically. The fair market value of a Boeing 737 is $16.5 million, and the typical 737 airplane has 113 seats. It flies with an average load factor of 64.7%, which translates into 73 passengers per flight; the airplane will also have 3 pilots and 3 flight attendants.

In order to provide a benchmark comparison of the expected safety benefits of rulemaking actions with estimated costs in dollars; a minimum of $2.7 million is used as the value of avoiding an aviation fatality (based on the willingness to pay approach for avoiding a fatality). In these computations, the present value of each incident was calculated using the current discount rate of 7 percent. Applying this value, the total fatality loss of a single Boeing 737 is represented by a cost $210.6 million (78 × $2.7 million). The safety related costs of a single domestic terrorist act on civil aviation also includes property damage as well as investigative and legal costs, so that the total cost sums to $271.2 million (present value, $190.5 million).

Since the cost of a Class I Explosion on a large domestic airplane is approximately $272 million, coupled with the relative low cost of compliance ($131 million), this rule (and the rule for part 108) will need to prevent one Class I Explosion over the next 10 years in order for quantified benefits to exceed costs. In view of the recent history of terrorist incidents in the United States, a potential catastrophic loss of at least this magnitude is considered to be plausible in the absence of this rule.

The FAA also used the same set of benefits in two proposed rulemakings, *Security of Checked Baggage on Flights Within the United States* and *Certification of Screening Companies*. All of these rulemakings have the same goal—to significantly increase the protection of U.S. citizens and other citizens traveling on U.S. domestic air carrier flights from acts of terrorism as well as increase protection for those operating aircraft. Because the combined discounted costs of all of these rules exceeds $190.9 million, the cost of one Class I Explosion, the FAA calculated the economic impact and the potential averted market disruption sufficient, in combination with safety benefits, to justify all these rulemakings.

Certainly the primary concern of the FAA is preventing loss of life, but there are other considerations as well. Another large economic impact is related to decreased airline travel following a terrorist event. A study performed for the FAA by Pailen-Johnson Associates, Inc., *An Econometric Model of the Impact of Terrorism on U.S. Air Carrier North Atlantic Operations*, indicated that it takes about 9 to 10 months for passenger traffic to return to the pre-incident level after a single event. Such a reduction occurred immediately following the destruction of Pan Am Flight 103 over Lockerbie, Scotland in December 1988. In general, 1988 enplanements were above 1987's. There was a dramatic fall-off in enplanement in the first 3 months of 1989 immediately following the Pan Am 103 tragedy, and it took until November 1989, for enplanements to approximate the 1987 and 1988 levels. Statistics show that there was an almost 20 percent reduction in 1989 in expected enplanements caused by the destruction of Pan Am 103 by terrorists.

The estimated effect of a successful terrorist act on the domestic market has not been studied. Although there are important differences between international and domestic travel (such as the availability of alternative destinations and means of travel), the FAA believes that the traffic loss associated with international terrorist acts is representative of the potential domestic disruption.

There is a social cost associated with travel disruptions and cancellations caused by terrorist events. The cost is composed of several elements. First is the loss associated with passengers opting not to fly—the value of the flight to the passenger (consumer surplus) in the absence of increased security risk and the profit that would be earned by the airline (producer surplus). Even if a passenger opts to travel by air, the additional risk may reduce the associated consumer surplus. Second, passengers who cancel plane trips would not purchase other goods and services normally associated with the trip, such as meals, lodging, and car rental, which would also result in losses of related consumer and producer surplus. Finally, although spending on air travel would decrease, pleasure and business travelers may substitute spending on other goods and services (which produces some value) for the foregone air trips. Economic theory suggests that the sum of the several societal value impacts associated with canceled flights would be a net loss. As a corollary, prevention of market disruption (preservation of consumer and producer welfare) through increased security created by these rules is a benefit.

The FAA is not able to estimate the actual net societal cost of travel disruptions and the corollary benefit gained by preventing the disruptions. However, there is a basis for judging the likelihood of attaining benefits by averting market disruption sufficient, in combination with safety benefits, to justify the rule. The discounted cost of these four rulemakings is $2.3 billion, while the discounted benefits for each Class I Explosion averted comes to $190.9 million. Hence, if one Class I Explosion is averted, the present value of losses due to market disruption must at least equal $2.1 billion ($2.3 billion

less $190.9 million—one Class I Explosion). If two Class I Explosions are averted, the present value of losses due to market disruption must at least equal $1.9 billion ($2.3 billion less $381.8 million—two Class I Explosions).

The value of market loss averted is the product of the number of foregone trips and the average market loss per trip (combination of all impacts on consumer and producer surplus). If one uses an average ticket price of $160 as a surrogate of the combined loss, preservation of a minimum of 13.3 million lost trips would be suffered, in combination with the safety benefits of one averted Class I Explosion, for the benefits of these rulemakings to equal costs. This represents less than 5 percent of annual domestic trips (the traffic loss caused by Pan Am 103 on trans-Atlantic routes was 20 percent). Calculations can be made on the minimum number of averted lost trips needed if the net value loss was only 75 percent of the ticket price or exceeded the ticket price by 25 percent. If total market disruption cost was $130 or $200 per trip, a minimum retention of 16.3 and 10.6 million lost trips, respectively, would need to occur for the benefits to equal the costs of these rulemakings, assuming one Class I Explosion would be prevented. The FAA also calculated the economic impact and the potential averted market disruption sufficient, in combination with safety benefits, to justify all four rulemakings given anywhere from two to four Class I Explosions prevented. These values can be seen in the full economic analysis contained in the docket.

Based on changes in the domestic security risk, the White House Commission recommendation, recent Congressional mandates, and the known reaction of Americans to any air carrier disaster, the FAA believes that pro-active regulation is warranted to prevent terrorist acts (such as Class I Explosions) before they occur.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For this rule, the small entity group is considered to be part 107 airports (Standard Industrial Classification Code [SIC] 4581—Airports, Flying Fields, and Airport Terminal Services). The FAA's small entity size standards criterion define a small airport as one owned by a county, city, town, or other jurisdiction having a population of 49,999 or less. If two or more towns, cities, or counties operate an airport jointly, the population size of each is totaled to determine whether that airport is categorized as a small entity. In addition, all privately owned, public-use airports are considered small. The FAA has identified a total of 129 airports that will be considered small entities pursuant to this rule. These 129 airports break down into 31 airports subject to § 107.103(a), 90 airports subject to § 107.103(b), and 8 airports subject to § 107.103(c).

The FAA examined the revenue base for all part 139 small airports. The most reliable measure of income was tax revenues; these averaged out to $2.4 million at the 34th percentile of all small airports subject to part 139. One percent of the 1998 annual revenue for all small airports at the 34th percentile is $24,000 in 1998 dollars. Many part 139 small airports do not have security programs; only those airports that have scheduled service are eligible for such a program. These airports have a larger tax base, greater aviation traffic activity, and overall generate larger tax revenues than airports without scheduled service. Accordingly, the annual tax revenue for airports subject to part 107 is larger than $2.4 million. Moreover, airports with scheduled service earn additional revenues from retail vendor sales, car rental leasing, and fixed-base operator activities. Adding these commercial proceeds to tax revenues boosts the average annual income for these small airports above $2.4 million. Thus, 1 percent of the 1998 annual median revenue for airports impacted by this rule is greater than $24,000 in 1998 dollars.

The FAA has estimated the 10-year and annualized cost impact on each of the small entities. Over 10 years, these regulations will cost each airport subject to §§ 107.103(a), (b), and (c) an estimated $53,000, $34,100, and $31,900, respectively. The annualized costs for these airports are $6,400, $3,400, and $3,200, respectively. These costs are not considered burdensome because they are well below the aforementioned $24,000. Furthermore, as revealed by the above analysis, the revenues and earnings for small airports receiving scheduled traffic is greater than $2.4 million annually. Accordingly, the FAA has determined that the rule will not have a significant economic impact.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Statement

In accordance with the OMB memorandum dated March 1983, Federal agencies engaged in rulemaking activities are required to assess the effects of regulatory changes on international trade. This rule will affect all airport owners that have a FAA-approved security program in accord with part 107. Unlike domestic air carriers that compete with foreign air carriers, domestic airports are not in competition with foreign airports. For this reason, a trade impact assessment is not applicable.

Federalism Implications

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. Most airports subject to this rule are owned, operated, or regulated by a local governmental body (such as a city or county government), which in turn is incorporated by, and derives its authority from, a State. This rule has minimal direct effect on the States, and does not alter the relationship between the airport operators and the FAA that is established in the FAA's statute. The annual costs of compliance with this rule are very low compared with the resources available to the airports. Further, before issuing the NPRM, the FAA consulted with representatives of the airports through the Aviation Security Advisory Committee. Accordingly, the FAA has determined that this action will not have a

substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any 1 year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental mandates or private sector mandates.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) P.L. 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

Distribution/Derivation Tables

The following distribution table is provided to illustrate how the current regulation relates to the revised part 107, and the derivation table identifies how the revised part 107 relates to the current rule.

DISTRIBUTION TABLE

Old section	New section
107.1(a)(1)–(4)	107.1(a)(1)–(4)
107.1(b)(1)–(4)	107.3, which adds eight new unnumbered definitions
107.1(b)(5)	Removed
107.1(b)(6)	Removed
107.2(a)–(c)	107.9(a)–(c)
107.3(a)(1)–(3)	107.101(a)(1)–(3)
107.3(b)	107.103(a)
107.3(b)(1) and (2)	107.103(a)(4)(i)–(ii)
107.3(b)(3)	107.103(a)(20)
107.3(b)(4)	107.103(a)(4)(iii)
107.3(b)(5)	107.111(b)(2)–(3)
107.3(b)(6)	107.103(a)(19)
107.3(b)(7)	107.103(a)(12)
107.3(b)(8)	107.103(a)(11)
107.3(b)(9)	107.103(a)(13)
107.3(c)	107.103(d)
107.3(d) and (e)	107.101(b) and (c)
107.3(f)(1)–(3)	107.103(c)(2)–(4)
107.3(g)(1)–(3)	107.103(b)(2)–(4)
107.5(a)	107.105(a)
107.5(b) and (c)	107.105(a)(1) and (2)
107.5(d) and (e)	107.105(a)(3)
107.7(a)(1)	107.107(a)(3)
107.7(a)(2)	107.107(a)(1)
107.7(a)(3)	107.103(a)(19)
107.7(a)(4)	107.107(b)
107.7(a)(5)	107.107(a)(1)
107.7(b)(1)	107.107(b)(1)
107.7(b)(2)	107.107(c) and (d)
107.9(a) and (b)	107.105(b)(1) and (2)
107.9(c)(1)and (2)	107.105(b)(3)
107.9(d)	107.105(b)(4)
107.9(e) and (f)	107.105(b)(5)
107.11(a)	107.105(c)
107.11(b) and (c)	107.105(c)(1) and (2)
107.11(d) and (e)	107.105(c)(3)
107.11(f)	107.105(d)
107.13(a)	107.203(a)
107.13(a)(1)	107.203(b)(1)
107.13(a)(2)	107.203(b)
107.13(a)(3)	107.203(b)(2)
107.13(b)(1) and (2)	107.111(b)(1)–(3)
107.14(a)	107.207(a)(1)–(3)
107.14(b)	107.207(b)
107.14(c) and (d)	Removed
107.15(a)(1)	107.215(a) and (a)(1)
107.15(a)(2)	107.215(a)(2)
107.15(b)	107.215(b)
107.17(a)–(c)(2)	107.217(a)–(c)(2)
107.17(d)(1)–(4)	107.217(c)(3)(i)–(iv)
107.19	107.219
107.20 and 107.21	Moved to Part 108
107.23(a)	107.221(a)
107.23(a)(2)	107.221(a)(2)
107.23(a)(3)	107.7(b)
107.23(b)	107.221(c)
107.25(a)	107.3
107.25(b) and (e)	107.213(b) and (c)
107.25(c) and (d)	Removed
107.25(e)(1) and (2)	107.213(c)(2) and (3)
107.25(e)(3)–(5)	107.213(c)(5) and (6)
107.25(f)	107.211(a)(3)
107.25(g)	107.213(d)
107.27	107.7(b)
107.29	107.5 (expanded)
107.31	107.209 (unchanged)

DERIVATION TABLE

New section	Old section
107.1(a)(1)–(4)	107.1(a)(1)–(4)
107.1(a)(5)	New
107.1(b)	New
107.3	107.1, plus eight new unnumbered definitions
107.5	107.29
107.5(b)(3)–(6), (c), and (d).	New
107.7, (a), (a)(1) and (2), (c) and (d).	New
107.7(b)	107.27
107.9(a)–(c)	107.2(a)–(c)
107.11(a), (a)(1), (a)(2) and (b).	New
107.101(a)(1)–(3)	107.3(a)(1)–(3)
107.101(a)(4)	New
107.101(a)(5)	107.3(a)(4)
107.101(a)(5)	107.3(a)(4)
107.101(b) and (c)	107.3(d) and (e)
107.103(a)	107.3(b)
107.103(a)(1)	New
107.103(a)(2)	New—Reserved
107.103(a)(3), (a)(3)(i)–(v).	New
107.103(a)(4)(i) and (ii).	107.3(b)(1) and (2)
107.103(a)(4)(iii)	107.3(b)(4)
107.103(a)(11)	107.3(b)(8)
107.103(a)(12)	107.3(b)(7)
107.103(a)(13)	107.3(b)(9)
107.103(a)(14)–(18)	New
107.103(a)(19)	107.3(b)(6)
107.103(a)(20)	107.3(b)(3)
107.103(a)(21)	New
107.103(b)	107.3(g)
107.103(b)(1)	New
107.103(b)(2)–(4)	107.3(g)(1)–(3)
107.103(b)(5)–(8)	New
107.103(c)(1)	New
107.103(c)(2)–(4)	107.3(f)(1)–(3)
107.103(c)(5)–(7)	New
107.103(d)	107.3(c)
107.105(a)	107.5(a)
107.105(a)(1) and (2)	107.5(b) and (c)
107.105(a)(3)	107.5(d) and (e)
107.105(b)(1) and (2)	107.9(a) and (b)
107.105(b)(3)	107.9(c)(1) and (2)
107.105(b)(4)	107.9(d)
107.105(b)(5)	107.9(e) and (f)
107.105(c)	107.11(a)
107.105(c)(1)–(3)	107.11(a), (c) and (d)
107.105(d)	107.11(f)
107.107(a)(1)	107.7(a)(2)

DERIVATION TABLE—Continued

New section	Old section
107.107(a)(2)	New
107.107(a)(3)	107.7(a)(1)
107.107(b)	107.7(b)
107.107(c) and (d)	107.7(b)(2) plus new language
107.109	New
107.111(a)	New
107.111(b) and (b)(1)	107.3(b)(5)
107.111(c)	New
107.113(a)–(d)	New
107.201(a), (b) and (b)(1).	107.14(a)
107.201(b)(2)–(7)	New
107.203(a)	107.13(a)
107.203(b)(1)	107.13(a)(1)
107.203(b)(2)	107.13(a)(3)
107.203(b)(3) and (4)	New
107.205(b)(2) and (3)	New
107.207	107.13 and 107.14
107.207(a)(1)–(3)	107.14(a)
107.207(b)	107.14(b)
107.207(c)(1)–(e)(5)	New
107.209	107.31
107.211(a)(1)(i)–(iv)	New
107.211(a)(3)(i)–(vi),(e).	New
107.213(b) and (c)	107.25(b)–(e)
107.213(b)(1)	New
107.213(b)(2)	107.25(e)(1)
107.213(b)(4)	New
107.213(c)(5) and (6)	107.25(e)(3)–(5)
107.213(c)(1)	New
107.213(c)(2) and (3)	107.25(e)(1) and (2)
107.213(c)(4)	New
107.213(c)(5) and (6)	107.25(e)(3)–(5)
107.213(d)	107.25(g)
107.213(e)	New
107.215(a)	107.15(a)
107.215(a)(1)	107.15(a) and (a)(1)
107.215(a)(2)	107.15(a)(2)
107.215(b)	107.15(b)
107.217(a)–(c)(2)	107.17(a)–(c)(2)
107.217(c)(3)(i)–(iv)	107.17(d)(1)–(4)
107.217(d)	New
107.219	107.19
107.221(a)(1) and (2)	107.23(a)(1) and (2)
107.221(c)	107.23(b)
107.221(d)	New
107.301(a) and (b)	New
107.303(a)–(f)(2)	New
107.305	New
107.307(a)–(d)	New

List of Subjects

14 CFR Part 107

Airports, Arms and munitions, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 139

Air carriers, Airports, Aviation safety.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14, Code of Federal Regulations as follows:

1. Part 107 is revised to read as follows:

PART 107—AIRPORT SECURITY

Subpart A—General

Sec.
107.1 Applicability.
107.3 Definitions.
107.5 Airport security coordinator.
107.7 Inspection authority.
107.9 Falsification.
107.11 Security responsibilities of employees and other persons.

Subpart B—Airport Security Program

107.101 General requirements.
107.103 Content.
107.105 Approval and amendments.
107.107 Changed conditions affecting security.
107.109 Alternate means of compliance.
107.111 Exclusive area agreements.
107.113 Airport tenant security programs.

Subpart C—Operations

107.201 Security of the secured area.
107.203 Security of the air operations area (AOA).
107.205 Security of the security identification display area (SIDA).
107.207 Access control systems.
107.209 Employment history, verification, and criminal history records checks.
107.211 Identification systems.
107.213 Training.
107.215 Law enforcement support.
107.217 Law enforcement personnel.
107.219 Supplementing law enforcement personnel.
107.221 Records of law enforcement response.

Subpart D—Contingency Measures

107.301 Contingency plan.
107.303 Security Directives and Information Circulars.
107.305 Public advisories.
107.307 Incident management.

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44706, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

Subpart A—General

§ 107.1 Applicability.

(a) This part describes aviation security rules governing:

(1) The operation of each airport regularly serving aircraft operations required to be under a security program under part 108 of this chapter.

(2) The operation of each airport regularly serving foreign air carrier operations required to be under a security program under § 129.25 of this chapter.

(3) Each person who is in, or entering, a secured area, air operations area, security identification display area, or sterile area described in this part and part 108 of this chapter.

(4) Each person who files an application or makes entries into any record or report that is kept, made, or used to show compliance under this part, or to exercise any privileges under this part.

(5) Each airport operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular issued by the Assistant Administrator for Civil Aviation Security.

(b) Except as provided in § 107.105, the authority of the Administrator under this part is also exercised by the Assistant Administrator for Civil Aviation Security and the Deputy Assistant Administrator for Civil Aviation Security, and any individual formally designated to act in their capacity. The authority of the Assistant Administrator, including matters under § 107.105, may be further delegated.

§ 107.3 Definitions.

Terms defined in part 108 of this chapter apply to this part. For purposes of this part, part 108 of this chapter, and security programs under these parts, the following definitions also apply:

Air operations area (AOA) means a portion of an airport, specified in the airport security program, in which security measures specified in this part are carried out. This area includes aircraft movement areas, aircraft parking areas, loading ramps, and safety areas, for use by aircraft regulated under part 108 or § 129.25 of this chapter, and any adjacent areas (such as general aviation areas) that are not separated by adequate security systems, measures, or procedures. This area does not include the secured area.

Airport operator means a person that operates an airport serving an aircraft operator or a foreign air carrier required to have a security program under part 108 or § 129.25 of this chapter.

Airport security program means an airport operator's security program required under § 107.101 and approved by the Administrator.

Airport tenant means any person, other than an aircraft operator or foreign air carrier that has a security program under part 108 or § 129.25 of this chapter, that has an agreement with the airport operator to conduct business on airport property.

Airport tenant security program means the agreement between the airport operator and an airport tenant that specifies the measures by which the tenant will perform security functions under § 107.113.

Assistant Administrator means the FAA Assistant Administrator for Civil Aviation Security as described in 49 U.S.C. 44932.

Escort means to accompany or monitor the activities of an individual

who does not have unescorted access authority into or within a secured area or SIDA.

Exclusive area means any portion of a secured area, AOA, or SIDA, including individual access points, for which an aircraft operator or foreign air carrier that has a security program under part 108 or § 129.25 of this chapter has assumed responsibility under § 107.111.

Exclusive area agreement means an agreement between the airport operator and an aircraft operator or a foreign air carrier that has a security program under part 108 or § 129.25 of this chapter that permits such an aircraft operator or foreign air carrier to assume responsibility for specified security measures in accordance with § 107.111.

Secured area means a portion of an airport, specified in the airport security program, in which certain security measures specified in this part are carried out. This area is where aircraft operators and foreign air carriers that have a security program under part 108 or § 129.25 of this chapter enplane and deplane passengers and sort and load baggage and any adjacent areas that are not separated by adequate security systems, measures, or procedures.

Security Identification Display Area (SIDA) means a portion of an airport, specified in the airport security program, in which security measures specified in this part are carried out. This area includes the secured area and may include other areas of the airport.

Unescorted access authority means the authority granted to individuals by an airport operator, aircraft operator, foreign air carrier, or airport tenant authorized under this part or parts 108 or 129 of this chapter to gain entry to, and be present without an escort in secured areas and SIDA's.

§ 107.5 Airport security coordinator.

(a) Each airport operator shall designate one or more Airport Security Coordinator(s) (ASC) in its security program.

(b) The airport operator shall ensure that one or more ASC's:

(1) Serve as the airport operator's primary and immediate contact for security-related activities and communications with the Administrator. Any individual designated as an ASC may perform other duties in addition to those described in this paragraph (b)(1).

(2) Is available to the Administrator on a 24-hour basis.

(3) Review with sufficient frequency all security-related functions to ensure that all are effective and in compliance with this part, its security program, and applicable Security Directives.

(4) Immediately initiate corrective action for any instance of non-compliance with this part, its security program, and applicable Security Directives.

(5) Review and control the results of employment history, verification, and criminal history records checks required under § 107.209.

(6) Serve as the contact to receive notification from individuals applying for unescorted access of their intent to seek correction of their criminal history record with the FBI.

(c) After July 17, 2003, no airport operator may use, nor may it designate any person as, an ASC unless that individual has completed subject matter training, as specified in its security program, to prepare the individual to assume the duties of the position. The airport operator shall maintain ASC training documentation until at least 180 days after the withdrawal of a individual's designation as an ASC.

(d) An individual's satisfactory completion of initial ASC training required under paragraph (c) of this section satisfies that requirement for all future ASC designations for that individual, except for site specific information, unless there has been a two or more year break in service as an active and designated ASC.

§ 107.7 Inspection authority.

(a) For purposes of security inspections, each airport operator shall allow Special Agents designated by the Administrator, at any time or place, to make any inspections or tests, including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or other airport tenants with—

(1) This part, parts 108, 109, 129, and 191 of this chapter and any security program approved under those parts; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of the Administrator, each airport operator shall provide evidence of compliance with this part and its airport security program, including copies of records.

(c) The Administrator may enter and be present within secured areas, AOA's, and SIDA's, without access media or identification media issued or approved by an airport operator or aircraft operator, in order to conduct investigations, inspect, test compliance, or perform other such duties as the Administrator may direct.

(d) At the request of the Administrator and upon the completion of SIDA training as required in a security program, each airport operator promptly shall issue to a FAA special agent access and identification media to provide a FAA special agent with unescorted access to, and movement within, secured areas, AOA's, and SIDA's.

§ 107.9 Falsification.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application for any security program, access medium, or identification medium, or any amendment thereto, under this part.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compliance with this part, or exercise any privileges under this part.

(c) Any reproduction or alteration, for fraudulent purpose, of any report, record, security program, access medium, or identification medium issued under this part.

§ 107.11 Security responsibilities of employees and other persons.

(a) No person may:

(1) Tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure implemented under this part.

(2) Enter, or be present within, a secured area, AOA, SIDA or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in, such areas.

(3) Use, allow to be used, or cause to be used, any airport-issued or airport-approved access medium or identification medium that authorizes the access, presence, or movement of persons or vehicles in secured areas, AOA's, or SIDA's in any other manner than that for which it was issued by the appropriate authority under this part, or part 108 or part 129 of this chapter.

(b) The provisions of paragraph (a) of this section do not apply to conducting inspections or tests to determine compliance with this part or 49 U.S.C. Subtitle VII authorized by:

(1) The Administrator, or

(2) The airport operator, aircraft operator, or foreign air carrier, when acting in accordance with the procedures described in a security program approved by the Administrator.

Subpart B—Airport Security Program

§ 107.101 General requirements.

(a) No person may operate an airport subject to this part unless it adopts and carries out a security program that—

(1) Provides for the safety and security of persons and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence, aircraft piracy, and the introduction of deadly or dangerous weapon, explosive, or incendiary onto an aircraft;

(2) Is in writing and is signed by the airport operator or any person to whom the airport operator has delegated authority in this matter;

(3) Includes the applicable items listed in § 107.103;

(4) Includes an index organized in the same subject area sequence as § 107.103; and

(5) Has been approved by the Administrator.

(b) The airport operator shall maintain one current and complete copy of its security program and provide a copy to the Administrator upon request.

(c) Each airport operator shall—

(1) Restrict the distribution, disclosure, and availability of sensitive security information (SSI), as defined in part 191 of this chapter, to persons with a need to know; and

(2) Refer all requests for SSI by other persons to the Administrator.

§ 107.103 Content.

(a) Except as otherwise approved by the Administrator, each airport operator regularly serving operations of an aircraft operator or foreign air carrier described in §§ 108.101(a)(1) or 129.25(b)(1) of this chapter, shall include in its security program the following:

(1) The name, means of contact, duties, and training requirements of the ASC required under § 107.5.

(2) [Reserved]

(3) A description of the secured areas, including—

(i) A description and map detailing boundaries and pertinent features;

(ii) Each activity or entity on, or adjacent to, a secured area that affects security;

(iii) Systems, measures, and procedures used to perform the access control functions required under § 107.201(b)(1);

(iv) Procedures to control movement within the secured area, including identification media required under § 107.201(b)(3); and

(v) A description of the notification signs required under § 107.201(b)(6).

(4) A description of the AOA, including—

(i) A description and map detailing boundaries, and pertinent features;

(ii) Each activity or entity on, or adjacent to, an AOA that affects security;

(iii) Systems, measures, and procedures used to perform the access control functions required under § 107.203(b)(1);

(iv) Procedures to control movement within the AOA, including identification media as appropriate; and

(v) A description of the notification signs required under § 107.203(b)(4).

(5) A description of the SIDA's, including—

(i) A description and map detailing boundaries and pertinent features; and

(ii) Each activity or entity on, or adjacent to, a SIDA.

(6) A description of the sterile areas, including—

(i) A diagram with dimensions detailing boundaries and pertinent features;

(ii) Access controls to be used when the passenger-screening checkpoint is non-operational and the entity responsible for that access control; and

(iii) Systems, measures, and procedures used to control access as specified in § 107.207.

(7) Procedures used to comply with § 107.209 regarding employment history, verification, and criminal history records checks.

(8) A description of the personnel identification systems as described in § 107.211.

(9) Escort procedures in accordance with § 107.211(e).

(10) Challenge procedures in accordance with § 107.211(d).

(11) Training programs required under §§ 107.213 and 107.217(c)(2), if applicable.

(12) A description of law enforcement support used to comply with § 107.215(a).

(13) A system for maintaining the records described in § 107.221.

(14) The procedures and a description of facilities and equipment used to support aircraft operator or foreign air carrier screening functions of §§ 108.201 or 129.25 of this chapter.

(15) A contingency plan required under § 107.301.

(16) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(17) Procedures for posting of public advisories as specified in § 107.305.

(18) Incident management procedures used to comply with § 107.307.

(19) Alternate security procedures, if any, that the airport operator intends to use in the event of natural disasters, and other emergency or unusual conditions.

(20) Each exclusive area agreement as specified in § 107.111.

(21) Each airport tenant security program as specified in § 107.113.

(b) Except as otherwise approved by the Administrator, each airport regularly serving operations of an aircraft operator or foreign air carrier described in §§ 108.101(a)(2) or (b), or 129.25(b)(2) or (b)(3) of this chapter, shall include in its security program a description of the following:

(1) Name, means of contact, duties, and training requirements of the ASC, as required under § 107.5.

(2) A description of the law enforcement support used to comply with § 107.215(a).

(3) Training program for law enforcement personnel required under § 107.217(c)(2), if applicable.

(4) A system for maintaining the records described in § 107.221.

(5) The contingency plan required under § 107.301.

(6) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(7) Procedures for public advisories as specified in § 107.305.

(8) Incident management procedures used to comply with § 107.307.

(c) Except as otherwise approved by the Administrator, each airport regularly serving operations of an aircraft operator or foreign air carrier described in §§ 108.101(c) or 129.25(b)(4) of this chapter, shall include in its security program a description of the following:

(1) Name, means of contact, duties, and training requirements of the ASC as required under § 107.5.

(2) A description of the law enforcement support used to comply with § 107.215(b).

(3) Training program for law enforcement personnel required under § 107.217(c)(2), if applicable.

(4) A system for maintaining the records described in § 107.221.

(5) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(6) Procedures for public advisories as specified in § 107.305.

(7) Incident management procedures used to comply with § 107.307.

(d) The airport operator may comply with paragraphs (a), (b), and (c) of this section by including in its security program, as an appendix, any document that contains the information required by paragraphs (a), (b), and (c) of this section. The appendix shall be referenced in the corresponding section(s) of the security program.

§ 107.105 Approval and amendments.

(a) *Initial approval of security program.* Unless otherwise authorized by the Assistant Administrator, each airport operator required to have a security program under this part shall submit its initial proposed security program to the Assistant Administrator for approval at least 90 days before the date any aircraft operator or foreign air carrier required to have a security program under §§ 108.101 or 129.25 of this chapter is expected to begin operations. Such requests will be processed as follows:

(1) The Assistant Administrator, within 30 days after receiving the proposed security program, will either approve the program or give the airport operator written notice to modify the program to comply with the applicable requirements of this part.

(2) The airport operator may either submit a modified security program to the Assistant Administrator for approval, or petition the Administrator to reconsider the notice to modify within 30 days of receiving a notice to modify. A petition for reconsideration must be filed with the Assistant Administrator.

(3) The Assistant Administrator, upon receipt of a petition for reconsideration, either amends or withdraws the notice, or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to withdraw or amend the notice to modify, or by affirming the notice to modify.

(b) *Amendment requested by an airport operator.* Except as provided in § 107.107(c), an airport operator may submit a request to the Assistant Administrator to amend its security program, as follows:

(1) The request for an amendment must be filed with the Assistant Administrator at least 45 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the Assistant Administrator.

(2) Within 30 days after receiving a proposed amendment, the Assistant Administrator, in writing, either approves or denies the request to amend.

(3) An amendment to a security program may be approved if the Assistant Administrator determines that safety and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(4) Within 30 days after receiving a denial, the airport operator may petition the Administrator to reconsider the denial.

(5) Upon receipt of a petition for reconsideration, the Assistant Administrator either approves the request to amend or transmits the petition within 30 days of receipt, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to approve the amendment or affirm the denial.

(c) *Amendment by the FAA.* If safety and the public interest require an amendment, the Assistant Administrator may amend a security program as follows:

(1) The Assistant Administrator sends to the airport operator a notice, in writing, of the proposed amendment, fixing a period of not less than 30 days within which the airport operator may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the Assistant Administrator notifies the airport operator of any amendment adopted or rescinds the notice. If the amendment is adopted, it becomes effective not less than 30 days after the airport operator receives the notice of amendment, unless the airport operator petitions the Administrator to reconsider no later than 15 days before the effective date of the amendment. The airport operator shall send the petition for reconsideration to the Assistant Administrator. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the Assistant Administrator either amends or withdraws the notice, or transmits the petition, together with any pertinent information to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to withdraw or amend the amendment, or by affirming the amendment.

(d) *Emergency Amendments.* Notwithstanding paragraph (c) of this section, if the Assistant Administrator finds that there is an emergency requiring immediate action with respect to safety and security in air transportation or in air commerce that makes procedures in this section contrary to the public interest, the Assistant Administrator may issue an amendment, effective without stay on the date the airport operator receives the notice of it. In such a case, the Assistant Administrator shall incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The airport operator may file a petition for reconsideration under paragraph (c) of this section; however, this does not stay the effective date of the emergency amendment (EA).

§ 107.107 Changed conditions affecting security.

(a) After approval of the security program, each airport operator shall notify the Administrator when changes have occurred to the—

(1) Systems, measures, procedures, training, area descriptions, or staffing, described in the security program;

(2) Operations of an aircraft operator or foreign air carrier that would require modifications to the security program as required under § 107.103; or

(3) Layout or physical structure of any area under the control of the airport operator, airport tenant, aircraft operator, or foreign air carrier used to support the screening process, access, presence, or movement control functions required under parts 107, 108, or 129 of this chapter.

(b) Each airport operator shall notify the Administrator no more than 6 hours after the discovery of any changed condition described in paragraph (a) of this section, or within the time specified in its security program, of the discovery of any changed condition described in paragraph (a) of this section. The airport operator shall inform the Administrator of each interim measure being taken to maintain adequate security until an appropriate amendment to the security program is approved. Each interim measure must be acceptable to the Administrator.

(c) For changed conditions expected to be less than 60 days duration, each airport operator shall forward the information required in paragraph (b) of this section in writing to the Administrator within 72 hours of the original notification of the change condition(s). The Administrator will notify the airport operator of the disposition of the notification in writing. If approved by the Administrator, this written notification becomes a part of the airport security program for the duration of the changed condition(s).

(d) For changed conditions expected to be 60 days or more duration, each airport operator shall forward the information required in paragraph (b) of this section in the form of a proposed amendment to the airport operator's security program, as required under § 107.105. The request for an amendment shall be made within 30

days of the discovery of the changed condition(s). The Administrator will respond to the request in accordance with § 107.105.

§ 107.109 Alternate means of compliance.

If in the Administrator's judgment, the overall safety and security of the airport, and aircraft operator or foreign air carrier operations are not diminished, the Administrator may approve a security program that provides for the use of alternate measures. Such a program may be considered only for an operator of an airport at which service by aircraft operators or foreign air carriers under §§ 108.101 or 129.25 of this chapter is determined by the Administrator to be seasonal or infrequent.

§ 107.111 Exclusive area agreements.

(a) The Administrator may approve an amendment to an airport security program under which an aircraft operator or foreign air carrier that has a security program under part 108 or part 129 of this chapter assumes responsibility for specified security measures for all or portions of the secured area, AOA, or SIDA, as provided in §§ 107.201, 107.203, or 107.205. The assumption of responsibility must be exclusive to one aircraft operator or foreign air carrier, and shared responsibility among aircraft operators or foreign air carriers is not permitted for an exclusive area.

(b) An exclusive area agreement shall be in writing, signed by the airport operator and aircraft operator or foreign air carrier, and maintained in the airport security program. This agreement shall contain the following:

(1) A description, a map, and, where appropriate, a diagram of the boundaries and pertinent features of each area, including individual access points, over which the aircraft operator or foreign air carrier will exercise exclusive security responsibility.

(2) A description of the systems, measures, and procedures used by the aircraft operator or foreign air carrier to comply with §§ 107.201, 107.203, or 107.205, as appropriate.

(3) Procedures by which the aircraft operator or foreign air carrier will immediately notify the airport operator and provide for alternative security measures when there are changed conditions as described in § 107.107(a).

(c) Any exclusive area agreements in effect on November 14, 2001 shall meet the requirements of this section and § 108.227 no later than November 14, 2002.

§ 107.113 Airport tenant security programs.

(a) The Administrator may approve an airport tenant security program as follows:

(1) The tenant must assume responsibility for specified security systems, measures, or procedures of the secured area, AOA, or SIDA as provided in §§ 107.201, 107.203, and 107.205.

(2) The tenant may only assume responsibility for employment verification as provided in § 107.209.

(3) The tenant may not assume responsibility for law enforcement support under § 107.215.

(4) The tenant must assume the responsibility within the tenant's leased areas or areas designated for the tenant's exclusive use. A tenant may not assume responsibility under a tenant security program for the airport passenger terminal.

(5) Responsibility must be exclusive to one tenant, and shared responsibility among tenants is not permitted.

(6) The Administrator must find that the tenant is able and willing to carry out the airport tenant security program.

(b) An airport tenant security program shall be in writing, signed by the airport operator and the airport tenant, and maintained in the airport security program. The airport tenant security program shall include the following:

(1) A description and a map of the boundaries and pertinent features of each area over which the airport tenant will exercise security responsibilities.

(2) A description of the systems, measures, and procedures the airport tenant has assumed.

(3) Systems, measures, and procedures by which the airport operator will monitor and audit the tenant's compliance with the security program.

(4) Monetary and other penalties to which the tenant may be subject if it fails to carry out the airport tenant security program.

(5) Circumstances under which the airport operator will terminate the airport tenant security program for cause.

(6) A provision acknowledging that the tenant is subject to inspection by the Administrator in accordance with § 107.7.

(7) A provision acknowledging that individuals who carry out the tenant security program are contracted to or acting for the airport operator and are required to protect sensitive information in accordance with part 191 of this chapter, and may be subject to civil penalties for failing to protect sensitive security information.

(8) Procedures by which the tenant will immediately notify the airport operator of and provide for alternative security measures for changed conditions as described in § 107.107(a).

(c) If the Administrator has approved an airport tenant security program, the airport operator may not be found to be in violation of a requirement of this part in any case in which the airport operator demonstrates that:

(1) The tenant or an employee, permittee, or invitee of the tenant, is responsible for such violation; and

(2) The airport operator has complied with all measures in its security program to ensure the tenant has complied with the airport tenant security program.

(d) The Administrator may amend or terminate an airport tenant security program in accordance with § 107.105.

Subpart C—Operations

§ 107.201 Security of the secured area.

(a) Each airport operator required to have a security program under § 107.103(a) shall establish at least one secured area.

(b) Each airport operator required to establish a secured area shall prevent and detect the unauthorized entry, presence, and movement of individuals and ground vehicles into and within the secured area by doing the following:

(1) Establish and carry out systems, measures, or procedures for controlling entry to secured areas of the airport in accordance with § 107.207.

(2) Provide for detection of, and response to, each unauthorized presence or movement in, or attempted entry to, the secured area by an individual whose access is not authorized in accordance with its security program.

(3) Establish and carry out a personnel identification system described under § 107.211.

(4) Subject each individual to employment history verification as described in § 107.209 before authorizing unescorted access to a secured area.

(5) Train each individual before granting unescorted access to the secured area, as required in § 107.213(b).

(6) Post signs at secured area access points and on the perimeter that provide warning of the prohibition against unauthorized entry. Signs shall be posted by each airport operator in accordance with its security program not later than November 14, 2003.

§ 107.203 Security of the air operations area (AOA).

(a) Each airport operator required to have a security program under § 107.103(a) shall establish an AOA,

unless the entire area is designated as a secured area.

(b) Each airport operator required to establish an AOA shall prevent and detect the unauthorized entry, presence, and movement of individuals and ground vehicles into or within the AOA by doing the following:

(1) Establish and carry out systems, measures, or procedures for controlling entry to the AOA of the airport in accordance with § 107.207.

(2) Provide for detection of, and response to, each unauthorized presence or movement in, or attempted entry to, the AOA by an individual whose access is not authorized in accordance with its security program.

(3) Provide security information as described in § 107.213(c) to each individual with unescorted access to the AOA.

(4) Post signs on AOA access points and perimeters that provide warning of the prohibition against unauthorized entry to the AOA. Signs shall be posted by each airport operator in accordance with its security program not later than November 14, 2003.

(5) If approved by the Administrator, the airport operator may designate all or portions of its AOA as a SIDA, or may use another personnel identification system, as part of its means of meeting the requirements of this section. If it uses another personnel identification system, the media must be clearly distinguishable from those used in the secured area and SIDA.

§ 107.205 Security of the security identification display area (SIDA).

(a) Each airport operator required to have a security program under § 107.103(a) shall establish at least one SIDA. Each secured area must be a SIDA. Other areas of the airport may be SIDA's.

(b) Each airport operator required to establish a SIDA shall establish and carry out measures to prevent the unauthorized presence and movement of individuals in the SIDA and shall do the following:

(1) Establish and carry out a personnel identification system described under § 107.211.

(2) Subject each individual to employment history verification as described in § 107.209 before authorizing unescorted access to a SIDA.

(3) Train each individual before granting unescorted access to the SIDA, as required in § 107.213(b).

§ 107.207 Access control systems.

(a) *Secured area.* Except as provided in paragraph (b) of this section, the systems, measures, or procedures for controlling entry to the secured area required under § 107.201(b)(1) shall—

(1) Ensure that only those individuals authorized to have unescorted access to the secured area are able to gain entry;

(2) Ensure that an individual is immediately denied entry to a secured area when that person's access authority for that area is withdrawn; and

(3) Provide a means to differentiate between individuals authorized to have access to an entire secured area and individuals authorized access to only a particular portion of a secured area.

(b) *Alternative systems.* The Administrator may approve an amendment to a security program that provides alternative systems, measures, or procedures that provide an overall level of security equal to that which would be provided by the systems, measures, or procedures described in paragraph (a) of this section.

(c) *Air operations area.* The systems, measures, or procedures for controlling entry to the AOA required under § 107.203(b)(1) shall incorporate accountability procedures to maintain their integrity.

(d) *Secondary access media.* An airport operator may issue a second access medium to an individual who has unescorted access to secured areas or the AOA, but is temporarily not in possession of the original access medium, if the airport operator follows measures and procedures in the security program that—

(1) Verifies the authorization of the individual to have unescorted access to secured areas or AOAs;

(2) Restricts the time period of entry with the second access medium;

(3) Retrieves the second access medium when expired;

(4) Deactivates or invalidates the original access medium until the individual returns the second access medium; and

(5) Provides that any second access media that is also used as identification media meet the criteria of § 107.211(b).

§ 107.209 Employment history, verification, and criminal history records checks.

(a) *Scope.* The following persons are within the scope of this section:

(1) All airport operators, airport users, and individuals currently having unescorted access to a SIDA.

(2) All individuals seeking authorization for, or seeking the authority to authorize others to have, unescorted access to the SIDA.

(3) Each airport user and aircraft operator making a certification to an airport operator pursuant to paragraph (n) of this section, made on or after January 31, 1996. An airport user, for the purposes of this section only, is any person making a certification under this section other than an aircraft operator subject to § 108.229 of this chapter.

(b) *Employment history investigations required.* Except as provided in paragraph (m) of this section, each airport operator must ensure that no individual is granted authorization for, or is granted authority to authorize others to have, unescorted access to the SIDA unless the following requirements are met:

(1) The individual has satisfactorily undergone Part 1 of an employment history investigation. Part 1 consists of a review of the previous 10 years of employment history and verification of the 5 employment years preceding the date the appropriate investigation is initiated as provided in paragraph (c) of this section; and

(2) If required by paragraph (c)(5) of this section, the individual must then satisfy Part 2 of the employment history investigation. Part 2 is the process to determine if the individual has a criminal record. To satisfy Part 2 of the investigation the criminal record check must not disclose that the individual has been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years ending on the date of such investigation, of any of the crimes listed as follows:

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation, 49 U.S.C. 46306;

(ii) Interference with air navigation, 49 U.S.C. 46308;

(iii) Improper transportation of a hazardous material, 49 U.S.C. 46312;

(iv) Aircraft piracy, 49 U.S.C. 46502;

(v) Interference with flightcrew members or flight attendants, 49 U.S.C. 46504;

(vi) Commission of certain crimes aboard aircraft in flight, 49 U.S.C. 46506;

(vii) Carrying a weapon or explosive aboard aircraft, 49 U.S.C. 46505;

(viii) Conveying false information and threats, 49 U.S.C. 49 46507;

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States, 49 U.S.C. 46502(b);

(x) Lighting violations involving transporting controlled substances, 49 U.S.C. 46315;

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements, 49 U.S.C. 46314;

(xii) Destruction of an aircraft or aircraft facility, 18 U.S.C. 32;

(xiii) Murder;

(xiv) Assault with intent to murder;
(xv) Espionage;
(xvi) Sedition;
(xvii) Kidnapping or hostage taking;
(xviii) Treason;
(xix) Rape or aggravated sexual abuse;
(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;
(xxi) Extortion;
(xxii) Armed robbery;
(xxiii) Distribution of, or intent to distribute, a controlled substance;
(xxiv) Felony arson; or
(xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts; and

(3) If an individual admits to a conviction, or to having been found not guilty by reason of insanity, in any jurisdiction within the preceding 10 years of a crime listed in (b)(2) of this section, the investigative process shall end and the individual shall not be granted unescorted access or assigned to any functions listed in (a)(3) of this section.

(c) *Investigative steps.* Part 1 of the employment history investigation must be completed on all persons listed in paragraph (a) of this section. If required by paragraph (c)(5) of this section, Part 2 of the employment history investigation must also be completed on all persons listed in paragraph (a) of this section.

(1) The individual must provide the following information on an application form:

(i) The individual's full name, including any aliases or nicknames.

(ii) The dates, names, phone numbers, and addresses of previous employers, with explanations for any gaps in employment of more than 12 consecutive months, during the previous 10-year period.

(iii) Any convictions during the previous 10-year period of the crimes listed in paragraph (b)(2) of this section.

(2) The airport operator or the airport user must include on the application form a notification that the individual will be subject to an employment history verification and possibly a criminal records check.

(3) The airport operator or the airport user must verify the identity of the individual through the presentation of two forms of identification, one of which must bear the individual's photograph.

(4) The airport operator or the airport user must verify the information on the most recent 5 years of employment history required under paragraph (c)(1)(ii) of this section. Information must be verified in writing, by documentation, by telephone, or in person.

(5) If one or more of the conditions (triggers) listed in paragraphs (c)(5)(i) through (c)(5)(iv) of this section exist, the employment history investigation must not be considered complete unless Part 2 is accomplished. Only the airport operator may initiate Part 2 for airport users under this section. Part 2 consists of a comparison of the individual's fingerprints against the fingerprint files of known criminals maintained by the Federal Bureau of Investigation (FBI). The comparison of the individual's fingerprints must be processed through the FAA. The airport operator may request a check of the individual's fingerprint-based criminal record only if one or more of the following conditions exist:

(i) The individual does not satisfactorily account for a period of unemployment of 12 consecutive months or more during the previous 10-year period.

(ii) The individual is unable to support statements made on the application form.

(iii) There are significant inconsistencies in the information provided on the application.

(iv) Information becomes available to the airport operator or the airport user during the investigation indicating a possible conviction for one of the crimes listed in paragraph (b)(2) of this section.

(d) *Individual notification.* Prior to commencing the criminal records check, the airport operator must notify the affected individual and identify the ASC as a contact for follow-up. An individual, who chooses not to submit fingerprints, after having met a requirement for Part 2 of the employment investigation, may not be granted unescorted access privilege.

(e) *Fingerprint processing.* If a fingerprint comparison is necessary under paragraph (c)(5) of this section to complete the employment history investigation the airport operator must collect and process fingerprints in the following manner:

(1) One set of legible and classifiable fingerprints must be recorded on fingerprint cards approved by the FBI, and distributed by the FAA for this purpose.

(2) The fingerprints must be obtained from the individual under direct observation by the airport operator or a law enforcement officer. Individuals submitting their fingerprints may not take possession of their fingerprint card after they have been fingerprinted.

(3) The identity of the individual must be verified at the time fingerprints are obtained. The individual must present two forms of identification, one of which must bear the individual's photograph.

(4) The fingerprint card must be forwarded to the FAA at the location specified by the Administrator.

(5) Fees for the processing of the criminal record checks are due upon application. Airport operators must submit payment through corporate check, cashier's check, or money order made payable to "U.S. FAA," at the designated rate for each fingerprint card. Combined payment for multiple applications is acceptable. The designated rate for processing the fingerprint cards is available from the local FAA security office.

(f) *Determination of arrest status.* In conducting the criminal record checks required by this section, the airport operator must not consider the employment history investigation complete unless it investigates arrest information for the crimes listed in paragraph (b)(2) of this section for which no disposition has been recorded and makes a determination that the arrest did not result in a disqualifying conviction.

(g) *Availability and correction of FBI records and notification of disqualification.* (1) At the time Part 2 is initiated and the fingerprints are collected, the airport operator must notify the individual that a copy of the criminal record received from the FBI will be made available to the individual if requested in writing. When requested in writing, the airport operator must make available to the individual a copy of any criminal record received from the FBI.

(2) Prior to making a final decision to deny authorization to an individual described in paragraph (a) of this section, the airport operator must advise the individual that the FBI criminal record discloses information that would disqualify him/her from receiving unescorted access and provide the individual with a copy of the FBI record if it has been requested.

(3) The airport operator must notify an individual that a final decision has been made to grant or deny authority for unescorted access.

(h) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his/her record before any final decision is made, subject to the following conditions:

(1) Within 30 days after being advised that the criminal record received from the FBI discloses disqualifying information, the individual must notify the airport operator, in writing, of his/

her intent to correct any information believed to be inaccurate.

(i) Upon notification by an individual that the record has been corrected, the airport operator must obtain a copy of the revised FBI record prior to making a final determination.

(ii) [Reserved]

(2) If no notification is received within 30 days, the airport operator may make a final determination.

(i) *Limits on dissemination of results.* Criminal record information provided by the FBI must be used solely for the purposes of this section, and no person may disseminate the results of a criminal record check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

(2) Airport officials with a need to know; and

(3) Others designated by the Administrator.

(j) *Employment status while awaiting criminal record checks.* Individuals who have submitted their fingerprints and are awaiting FBI results may perform work within the SIDA when under escort by someone who has unescorted SIDA access privileges.

(k) *Recordkeeping.* (1) Except when the airport operator has received a certification under paragraph (n)(1) of this section, the airport operator must physically maintain and control the Part 1 employment history investigation file until 180 days after the termination of the individual's authority for unescorted access. The Part 1, employment history investigation file, must consist of the following:

(i) The application;

(ii) The employment verification information obtained by the employer;

(iii) The names of those from whom the employment verification information was obtained;

(iv) The date and the method of how the contact was made; and

(v) Any other information as required by the Administrator.

(2) The airport operator must physically maintain, control and when appropriate destroy Part 2, the criminal record, for each individual for whom a fingerprint comparison has been completed. Part 2 must be maintained for 180 days after the termination of the individual's authority for unescorted access. Only direct airport operator employees may carry out this criminal record file responsibility. The Part 2 criminal record file must consist of the following:

(i) The criminal record received from the FBI as a result of an individual's fingerprint comparison; or

(ii) Information that the check was completed and no record exists.

(3) The files required by this section must be maintained in a manner that is acceptable to the Administrator and in a manner that protects the confidentiality of the individual.

(l) *Continuing responsibilities.* (1) Any individual authorized to have unescorted access privileges or who may authorize others to have unescorted access, who is subsequently convicted of any of the crimes listed in paragraph (b)(2) of this section must, within 24 hours, report the conviction to the airport operator and surrender the SIDA access medium to the issuer.

(2) If information becomes available to the airport operator or the airport user indicating that an individual with unescorted access has a possible conviction for one of the disqualifying crimes in paragraph (b)(2) of this section, the airport operator must determine the status of the conviction. If a disqualifying conviction is confirmed the airport operator must withdraw any authority granted under this section.

(m) *Exceptions.* Notwithstanding the requirements of this section, an airport operator may authorize the following individuals to have unescorted access, or to authorize others to have unescorted access to the SIDA:

(1) An employee of the Federal government or a state or local government (including a law enforcement officer (LEO)) who, as a condition of employment, has been subjected to an employment investigation which includes a criminal record check.

(2) A crewmember of a foreign air carrier covered by an alternate security arrangement in the foreign air carrier's approved security program.

(3) An individual who has been continuously employed in a position requiring unescorted access by another airport operator, airport user or aircraft operator.

(4) Those persons who have received access to a U.S. Customs secured area prior to November 24, 1998.

(n) *Investigations by aircraft operators and airport users.* An airport operator is in compliance with its obligation under paragraph (b) of this section, as applicable, when the airport operator accepts for each individual seeking unescorted access one of the following:

(1) Certification from an aircraft operator subject to § 108.229 of this chapter indicating it has complied with § 108.229 of this chapter for the aircraft operator's employees and contractors seeking unescorted access; or

(2) Certification from an airport user indicating it has complied with and will continue to comply with the provisions listed in paragraph (p) of this section. The certification must include the name of each individual for whom the airport user has conducted an employment history investigation.

(o) *Airport operator responsibility.* The airport operator must:

(1) Prior to the acceptance of a certification from the airport user, the airport operator must conduct a preliminary review of the file for each individual listed on the certification to determine that Part 1 has been completed;

(2) Designate the ASC, in the security program, to be responsible for reviewing the results of the airport employees' and airport users' employment history investigations and for destroying the criminal record files when their maintenance is no longer required by paragraph (k)(2) of this section;

(3) Designate the ASC, in the security program, to serve as the contact to receive notification from individuals applying for unescorted access of their intent to seek correction of their FBI criminal record; and

(4) Audit the employment history investigations performed by the airport operator in accordance with this section and those investigations conducted by the airport users made by certification under paragraph (n)(2) of this section. The audit program must be set forth in the airport security program.

(p) *Airport user responsibility.* (1) The airport user is responsible for reporting to the airport operator information, as it becomes available, which indicates an individual with unescorted access may have a conviction for one of the disqualifying crimes in paragraph (b)(2) of this section.

(2) If the airport user offers certification to the airport operator under paragraph (n)(2) of this section, the airport user must for each individual for whom a certification is made:

(i) Conduct the employment history investigation, Part 1, in compliance with paragraph (c) of this section. The airport user must report to the airport operator if one of the conditions in paragraph (c)(5) of this section exist;

(ii) Maintain and control Part 1 of the employment history investigation file in compliance with paragraph (k) of this section, unless the airport operator decides to maintain and control Part 1 of the employment history investigation file;

(iii) Provide the airport operator and the FAA with access to each completed Part 1 employee history investigative

file of those individuals listed on the certification; and

(iv) Provide either the name or title of the individual acting as custodian of the files, and the address of the location and the phone number at the location where the investigative files are maintained.

§ 107.211 Identification systems.

(a) *Personnel identification system.* The personnel identification system under §§ 107.201(b)(3) and 107.205(b)(1) shall include the following:

(1) Personnel identification media that—

(i) Convey a full-face image, full name, employer, and identification number of the individual to whom the identification medium is issued;

(ii) Indicate clearly the scope of the individual's access and movement privileges;

(iii) Indicate clearly an expiration date; and

(iv) Are of sufficient size and appearance as to be readily observable for challenge purposes.

(2) Procedures to ensure that each individual in the secured area or SIDA continuously displays the identification medium issued to that individual on the outermost garment above waist level, or is under escort.

(3) Procedures to ensure accountability through the following:

(i) Retrieving expired identification media and media of persons who no longer have unescorted access authority.

(ii) Reporting lost or stolen identification media.

(iii) Securing unissued identification media stock and supplies.

(iv) Auditing the system at a minimum of once a year or sooner, as necessary, to ensure the integrity and accountability of all identification media.

(v) As specified in the security program, revalidate the identification system or reissue identification media if a portion of all issued, unexpired identification media are lost, stolen, or otherwise unaccounted for, including identification media that are combined with access media.

(vi) Ensure that only one identification medium is issued to an individual at a time, except for personnel who are employed with more than one company and require additional identification media to carry out employment duties. A replacement identification medium may only be issued if an individual declares in writing that the medium has been lost, stolen, or destroyed.

(b) *Temporary identification media.* Each airport operator may issue personnel identification media in accordance with its security program to persons whose duties are expected to be temporary. The temporary identification media system shall include procedures and methods to—

(1) Retrieve temporary identification media;

(2) Authorize the use of a temporary media for a limited time only;

(3) Ensure that temporary media are distinct from other identification media and clearly display an expiration date; and

(4) Ensure that any identification media also being used as an access media meet the criteria of § 107.207(d).

(c) *Airport-approved identification media.* The Administrator may approve an amendment to the airport security program that provides for the use of identification media meeting the criteria of this section that are issued by entities other than the airport operator, as described in the security program.

(d) *Challenge program.* Each airport operator shall establish and carry out a challenge program that requires each individual who has authorized unescorted access to secured areas and SIDA's to ascertain the authority of any individual who is not displaying an identification medium authorizing the individual to be present in the area. The challenge program shall include procedures to challenge individuals not displaying airport approved identification media. The procedure must—

(1) Apply uniformly in secured areas, SIDAs, and exclusive areas;

(2) Describe how to challenge an individual directly or report any individual not visibly displaying an authorized identification medium, including procedures to notify the appropriate authority; and

(3) Describe support of challenge procedures, including law enforcement and any other responses to reports of individuals not displaying authorized identification media.

(e) *Escorting.* Each airport operator shall establish and implement procedures for escorting individuals who do not have unescorted access authority to a secured area or SIDA that—

(1) Ensure that only individuals with unescorted access authority are permitted to escort;

(2) Ensure that the escorted individuals are continuously accompanied or monitored while within the secured area or SIDA in a manner sufficient to identify whether the escorted individual is engaged in activities other than those for which escorted access was granted, and to take action in accordance with the airport security program;

(3) Identify what action is to be taken by the escort, or other authorized individual, should individuals under escort engage in activities other than those for which access was granted;

(4) Prescribe law enforcement support for escort procedures; and

(5) Ensure that individuals escorted into a sterile area without being screened under § 108.201 of this chapter remain under escort until they exit the sterile area, or submit to screening pursuant to § 108.201 or part 129 of this chapter.

(f) *Effective date.* The identification systems described in this section shall be implemented by each airport operator not later than November 14, 2003.

§ 107.213 Training.

(a) Each airport operator shall ensure that individuals performing security-related functions for the airport operator are briefed on the provisions of this part, Security Directives, and Information Circulars, and the security program, to the extent that such individuals need to know in order to perform their duties.

(b) An airport operator may not authorize any individual unescorted access to the secured area or SIDA, except as provided in § 107.7, unless that individual has successfully completed training in accordance with the FAA-approved curriculum specified in the security program. This curriculum must detail the methods of instruction, provide attendees with an opportunity to ask questions, and include at least the following topics—

(1) The unescorted access authority of the individual to enter and be present in various areas of the airport;

(2) Control, use, and display of airport-approved access and identification media;

(3) Escort and challenge procedures and the law enforcement support for these procedures;

(4) Security responsibilities as specified in § 107.11;

(5) Restrictions on divulging sensitive security information as described in part 191 of this chapter; and

(6) Any other topics specified in the security program.

(c) An airport operator may not authorize any individual unescorted access to the AOA, except as provided in § 107.7, unless that individual has been provided information in accordance with the security program, including—

(1) The unescorted access authority of tbe individual to enter and be present in various areas of the airport;

(2) Control, use, and display of airport-approved access and identification media, if appropriate;

(3) Escort and challenge procedures and the law enforcement support for these procedures, where applicable;

(4) Security responsibilities as specified in § 107.11;

(5) Restrictions on divulging sensitive security information as described in part 191 of this chapter; and

(6) Any other topics specified in the security program.

(d) Each airport operator shall maintain a record of all training and information given to each individual under paragraphs (b) and (c) of this section for 180 days after the termination of that person's unescorted access authority.

(e) As to persons with unescorted access to the SIDA on November 14, 2001, training on responsibility under § 107.11 can be provided by making relevant security information available.

(f) Training described in paragraph (c) of this section shall be implemented by each airport operator not later than November 14, 2002.

§ 107.215 Law enforcement support.

(a) In accordance with § 107.217, each airport operator required to have a security program under § 107.103(a) or (b) shall provide:

(1) Law enforcement personnel in the number and manner adequate to support its security program.

(2) Uniformed law enforcement personnel in the number and manner adequate to support each system for screening persons and accessible property required under § § 108.201 or 129.25 of this chapter.

(b) Each airport required to have a security program under § 107.103(c) shall ensure that:

(1) Law enforcement personnel are available and committed to respond to an incident in support of a civil aviation security program when requested by an aircraft operator or foreign air carrier that has a security program under part 108 or § 129.25 of this chapter.

(2) The procedures by which to request law enforcement support are provided to each aircraft operator or foreign air carrier that has a security program under part 108 or § 129.25 of this chapter.

§ 107.217 Law enforcement personnel.

(a) Each airport operator shall ensure that law enforcement personnel used to meet the requirements of § 107.215, meet the following qualifications while on duty at the airport—

(1) Have arrest authority described in paragraph (b) of this section;

(2) Are identifiable by appropriate indicia of authority;

(3) Are armed with a firearm and authorized to use it; and

(4) Have completed a training program that meets the requirements of paragraphs (c) and (d) of this section.

(b) Each airport operator shall ensure that each individual used to meet the requirements of § 107.215 have the authority to arrest, with or without a warrant, while on duty at the airport for the following violations of the criminal laws of the State and local jurisdictions in which the airport is located—

(1) A crime committed in the presence of the individual; and

(2) A felony, when the individual has reason to believe that the suspect has committed it.

(c) The training program required by paragraph (a)(4) of this section shall—

(1) Meet the training standard for law enforcement officers prescribed by either the State or local jurisdiction in which the airport is located for law enforcement officers performing comparable functions.

(2) Specify and require training standards for private law enforcement personnel acceptable to the Administrator, if the State and local jurisdictions in which the airport is located do not prescribe training standards for private law enforcement personnel that meets the standards in paragraph (a) of this section.

(3) Include training in—

(i) The use of firearms;

(ii) The courteous and efficient treatment of persons subject to inspection, detention, search, arrest, and other aviation security activities;

(iii) The responsibilities of law enforcement personnel under the security program; and

(iv) Any other subject the Administrator determines is necessary.

(d) Each airport operator shall document the training program required by paragraph (a)(4) of this section and maintain documentation of training at a location specified in the security program until 180 days after the departure or removal of each person providing law enforcement support at the airport.

§ 107.219 Supplementing law enforcement personnel.

(a) When the Administrator decides, after being notified by an airport operator as prescribed in this section, that not enough qualified State, local, and private law enforcement personnel are available to carry out the requirements of § 107.215, the Administrator may authorize the airport operator to use, on a reimbursable basis, personnel employed by the Administrator, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality to supplement State, local, and private law enforcement personnel.

(b) Each request for the use of Federal personnel must be submitted to the Administrator and include the following information:

(1) The number of passengers enplaned at the airport during the preceding calendar year and the current calendar year as of the date of the request.

(2) The anticipated risk of criminal violence, sabotage, aircraft piracy, and other unlawful interference to civil aviation operations.

(3) A copy of that portion of the security program which describes the law enforcement support necessary to comply with § 107.215.

(4) The availability of law enforcement personnel who meet the requirements of § 107.217, including a description of the airport operator's efforts to obtain law enforcement support from State, local, and private agencies and the responses of those agencies.

(5) The airport operator's estimate of the number of Federal personnel needed to supplement available law enforcement personnel and the period of time for which they are needed.

(6) A statement acknowledging responsibility for providing reimbursement for the cost of providing Federal personnel.

(7) Any other information the Administrator considers necessary.

(c) In response to a request submitted in accordance with this section, the Administrator may authorize, on a reimbursable basis, the use of personnel employed by a Federal agency, with the consent of the head of that agency.

§ 107.221 Records of law enforcement response.

(a) Each airport operator shall ensure that—

(1) A record is made of each law enforcement action taken in furtherance of this part; and

(2) The record is maintained for a minimum of 180 days.

(b) Data developed in response to paragraph (a) of this section must include at least the following:

(1) The number and type of deadly or dangerous weapon, explosives, or incendiaries discovered during any passenger-screening process, and the method of detection of each.

(2) The number of acts and attempted acts of aircraft piracy.

(3) The number of bomb threats received, real and simulated bombs found, and actual detonations on the airport.

(4) The number of arrests, including—

(i) Name, address, and the immediate disposition of each individual arrested;

(ii) Type of deadly or dangerous weapon, explosive, or incendiary confiscated, as appropriate; and

(iii) Identification of the aircraft operators or foreign air carriers on which the individual arrested was, or was scheduled to be, a passenger or which screened that individual, as appropriate.

Subpart D—Contingency Measures

§ 107.301 Contingency plan.

(a) Each airport operator required to have a security program under § 107.103(a) and (b) shall adopt a contingency plan and shall:

(1) Implement its contingency plan when directed by the Administrator.

(2) Conduct reviews and exercises of its contingency plan as specified in the security program with all persons having responsibilities under the plan.

(3) Ensure that all parties involved know their responsibilities and that all information contained in the plan is current.

(b) The Administrator may approve alternative implementation measures, reviews, and exercises to the contingency plan which will provide an overall level of security equal to the contingency plan under 107.301(a).

§ 107.303 Security Directives and Information Circulars.

(a) The Administrator may issue an Information Circular to notify airport operators of security concerns. When the Administrator determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, the Administrator issues a Security Directive setting forth mandatory measures.

(b) Each airport operator shall comply with each Security Directive issued to the airport operator within the time prescribed in the Security Directive.

(c) Each airport operator that receives a Security Directive shall—

(1) Within the time prescribed in the Security Directive, verbally acknowledge receipt of the Security Directive to the Administrator.

(2) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(d) In the event that the airport operator is unable to implement the measures in the Security Directive, the airport operator shall submit proposed alternative measures and the basis for submitting the alternative measures to the Administrator for approval. The airport operator shall submit the proposed alternative measures within the time prescribed in the Security Directive. The airport operator shall implement any alternative measures approved by the Administrator.

(e) Each airport operator that receives a Security Directive may comment on the Security.Directive by submitting data, views, or arguments in writing to the Administrator. The Administrator may amend the Security Directive based on comments received. Submission of a comment does not delay the effective date of the Security Directive.

(f) Each airport operator that receives a Security Directive or an Information Circular and each person who receives information from a Security Directive or an Information Circular shall:

(1) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with an operational need-to-know.

(2) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those who have an operational need to know without the prior written consent of the Administrator.

§ 107.305 Public advisories.

When advised by the Administrator, each airport operator shall prominently display and maintain in public areas information concerning foreign airports that, in the judgment of the Secretary of Transportation, do not maintain and administer effective security measures. This information shall be posted in the manner specified in the security program and for such a period of time determined by the Secretary of Transportation.

§ 107.307 Incident management.

(a) Each airport operator shall establish procedures to evaluate bomb threats, threats of sabotage, aircraft piracy, and other unlawful interference to civil aviation operations.

(b) Immediately upon direct or referred receipt of a threat of any of the incidents described in paragraph (a) of this section, each airport operator shall—

(1) Evaluate the threat in accordance with its security program;

(2) Initiate appropriate action as specified in the Airport Emergency Plan under § 139.325 of this chapter; and

(3) Immediately notify the Administrator of acts, or suspected acts, of unlawful interference to civil aviation operations, including specific bomb threats to aircraft and airport facilities.

(c) Airport operators required to have a security program under § 107.103(c) but not subject to part 139 of this chapter, shall develop emergency response procedures to incidents of threats identified in paragraph (a) of this section.

(d) To ensure that all parties know their responsibilities and that all procedures are current, at least once every 12 calendar months each airport operator shall review the procedures required in paragraphs (a) and (b) of this section with all persons having responsibilities for such procedures.

PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

2. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C. 106 (g), 40113, 44701–44706, 44709, 44719.

3. Section 139.325 is amended by redesignating paragraph (h) as paragraph (i) and adding new paragraph (h) to read as follows:

§ 139.325 Airport emergency plan.

* * * * *

(h) Each airport subject to part 107 of this chapter, Airport Security, shall ensure that instructions for response to paragraphs (b)(2) and (b)(6) of this section in the airport emergency plan are consistent with its approved security program.

* * * * *

Issued in Washington, DC, on July 2, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–16994 Filed 7–10–01; 10:32 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 108
Aircraft Operator Security; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. FAA–2001–8725; Formerly Docket No. 28978; Amendment No. 108–18]

RIN 2120–AD45

Aircraft Operator Security

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the existing airplane operator security rule. It revises the applicability section, definitions, and terms; reorganizes this part into subparts containing related requirements; and incorporates some requirements already implemented in the air carrier standard security program. Specifically, this final rule increases the number of aircraft operators that must have security programs, to include all that enplane from or deplane into a sterile area and certain helicopter operators. This final rule expands the training requirements for aircraft operator security personnel. Further, this final rule clarifies the procedures for carriage of prisoners under the control of armed law enforcement officers, procedures for carriage of weapons by law enforcement officers, and procedures for aircraft operators to comment on security directives issued by the FAA. This rule requires aircraft operators to participate in the airport sponsored contingency exercise or its equivalent. As part 108 applies to operators of rotorcraft as well as fixed-wing aircraft, this final rule changes the title of this part from "Airplane Operator Security" to "Aircraft Operator Security." This final rule contains changes that are intended to enhance security for the traveling public, and aircraft operators.

EFFECTIVE DATE: This rule is effective November 14, 2001. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of November 14, 2001.

FOR FURTHER INFORMATION CONTACT: Linda Valencia, Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone 202–267–3413.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register's** web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail *us 9–AWA–SBREFA@faa.gov*.

Background

This final rule updates the overall regulatory structure for aircraft operator security. It is issued in conjunction with a companion rule revising 14 CFR part 107, Airport Security, published in today's issue of the **Federal Register**. This final rule is the result of a multi-year effort involving the FAA, airports and aircraft operators, and the Aviation Security Advisory Committee (ASAC). ASAC is a federal advisory committee sanctioned to develop recommendations for improvement of methods, equipment, and procedures to improve civil aviation security. The FAA invited ASAC to comment on the underlying issues, and potential solutions associated with the revision of part 108.

Several measures contained in this final rule have been previously implemented via amendments to the air carrier standard security program. These revisions are considered to be consistent with several of the recommendations of the White House Commission on Aviation Safety and Security and with the security mandates of the Federal Aviation Reauthorization Act of 1996 (Pub. L. 104–264) signed on October 9, 1996.

Terrorism

The terrorist threat level in the United States over the next decade will remain at least as high as it is at present and, indeed, will probably rise. This judgement is based on consideration of a number of factors.

First, there are numerous unresolved conflicts across the globe, many of which show no sign of early resolution. While many of these do not involve the United States directly, the status of the United States as sole superpower means that parties to the conflict are prone to decry either US involvement or lack of involvement.

Second, since the United States is variously perceived as a supporter of unpopular regimes, an enemy of Islam, and an exponent of imperialism (whether political, economic, or cultural), any number of terrorist groups view the United States interests as fundamentally inimical to their own, and thus see attacks against US interests as justifiable, even meritorious.

Third, the expanding geographical range of terrorist activity is increasingly evident. Members of foreign terrorist groups, representatives from state sponsors of terrorism, and radical fundamentalist elements are present in the United States. The activities of some of these individuals and groups go beyond fund-raising to recruiting other persons (both foreign and US citizens) for terrorist-related activities that may include obtaining and training with weapons, providing safehaven for fugitives, and making bombs. A few foreign terrorist groups have supporters inside the United States who could be used to support terrorism.

Fourth, the vulnerabilities of the critical national infrastructure of the United States may prove inviting to foreign and domestic terrorists wishing to inflict damage on the US economy.

Fifth, although it remains to be seen what lessons terrorists will draw from the World Trade Center bombing in 1993 and the Oklahoma City bombing in 1995, a particularly worrisome development is the increasing

willingness on the part of various terrorists to carry out attacks intended to bring about indiscriminate casualties.

Finally, the phenomenon of ad hoc or non-traditional terrorists groups (such as the group responsible for the World Trade Center bombing) has become a primary concern to law enforcement. Difficulties exist in denying entry of such individuals (who are not members of any known terrorist group) into the United States, recognizing or identifying them as terrorists once they are here, or anticipating the timing or targets of their attacks.

With respect specifically to the threat to civil aviation in the United States, it must be seen in the context of the broader threat. The events in Asia in early 1995, showed that the terrorists persisted in planning to attack aviation even when there were other targets identifiable with the United States in the area and even when they knew that the security measures protecting aviation had been strengthened. Publicity about problems with US domestic civil aviation security measures increases the potential for attacks here. Civil aviation targets may be chosen by terrorists even if alternative, and (in their view) softer targets are available, especially since an attack on aviation seizes the public's imagination to a degree equaled by few other types of attack.

General Discussion of the Rule

On August 1, 1997 (62 FR 41730), the FAA published Notice 97–12 to revise part 108. Notice 97–12 proposed and requested comments by December 1, 1997.

Concurrent with the issuance of Notice 97–12, the FAA issued Notice 97–13 to revise part 107 on Airport Security (62 FR 41760; August 1, 1997), and held two public meetings. The first public meeting was held in Washington, DC on October 15, 1997, and the second was held on October 22, 1997, in Fort Worth, Texas.

On April 21, 1998, the FAA reopened the comment period and announced two public meetings on Notice 97–13 and Notice 97–12 (63 FR 19691, April 21, 1998). The public meetings were held on May 21, 1998, in Washington, DC, and on June 4, 1998, in Nashville, TN.

As of June 26, 1998, the closing of the second comment period, 160 comments were received addressing Notice 97–12. A majority of the comments were from law enforcement officers addressing the carriage of firearms onboard the aircraft. Comments were also received from specific aircraft operators, local airports, Transport Canada, State departments of transportation (DOT's), American Association of Airport Executives (AAAE), Airport Council International—North America (ACI–NA), Allied Pilots Association (APA), Air Transport Association (ATA), National Air Carrier Association (NACA), Regional Airline Association (RAA), Cargo Airline Association (CAA), Air Line Pilots Association (ALPA), and Helicopter Association International (HAI). The comments mostly address clarification of terms, carriage of weapons onboard the aircraft by law enforcement officers, transporting passengers under armed escort, and security operations. Generally, commenters suggest that the cost estimates to develop a security program were underestimated, however, no cost estimates were provided. A detailed discussion of the comments appears under "Section by Section Analysis."

On Tuesday, August 10, 1999, the FAA reopened the comment period to allow the public to submit additional comments on the compliance program proposed in Notice 97–12 (§ 108.103(b)(11) and (c)(6), 64 FR 43322). After considering all the written comments on the compliance program issue, the FAA will consider the need for amending part 108.

The revision of part 108 comprehensively updates the aircraft operator security regulations to more efficiently and effectively address terrorist and other criminal threats to civil aviation. This action incorporates both procedures currently in the air carrier standard security program and new security procedures, in a manner that is intended to allow regulated entities and individuals to understand their responsibilities more readily. Lastly, the revision incorporates certain new measures that provide for security enhancements.

Airport security programs required by part 107 also have been amended extensively since 1985. The FAA is revising part 107, which governs airport security, concurrently with this part. All references to part 107 in this preamble are intended to refer to part 107 as published in today's issue of the **Federal Register**.

The revisions of part 108 and part 107 represent a comprehensive approach toward upgrading the security requirements of the civil aviation system. The intent of these revisions is to foster consistency and standardization throughout the national civil aviation security program. Where possible, the revisions of parts 107 and 108 contain nearly identical language to enhance, clarify, or require new security measures for implementation by both aircraft and airport operators.

Significant changes between the final rule include the following: (1) Increases the number of aircraft operators who must have security programs; (2) Moves some sections from current 14 CFR part 107; (3) Clarifies procedures allowing law enforcement officers to fly armed; (4) Clarifies procedures for transporting prisoners under armed escort; (5) Holds individuals accountable for certain violations; (6) Acknowledges administrative procedures for a formal comment period for security directives.

The changes are discussed in more detail in the Section-by-Section Analysis below.

Section-by-Section Analysis

Title and Organization of Revised Part 108

In this final rule, the FAA revises existing § 108.1 through § 108.33, and adds several new sections. Also, the FAA reorganized some of the material in Notice 97–12 resulting in additional sections addressing specific requirements. These changes are discussed in more detail below. The title "Airplane Operator Security" has been changed to "Aircraft Operator Security," as this part applies to operators of rotorcraft as well as fixed-wing aircraft. All references to "airplane" in this part are changed to "aircraft."

Subpart A—General

Section 108.1 Applicability

Proposal: The FAA proposed, in § 108.1(a)(1), to extend the application of part 108 to certain private charter operations, helicopter operations, and all-cargo carriers.

Comments: The FAA received comments identified as applicable to § 108.1, the comments appear to be directed toward the content of security programs. Accordingly, the FAA has chosen to place those comments and the FAA's response to them in the analysis section for § 108.101.

The ASAC Part 108 Working Group supports permitting helicopter operators to voluntarily participate in a security program. The Part 108 Working Group notes that some helicopter activities place operators in direct contact with large domestic flag carrier operations. When this occurs, helicopter passengers disembark into the secure areas of terminals. The recommendation by the Part 108 Working Group is to allow the expeditious handling of such passengers through secure areas without diminishing the security of the sterile area. In order to do so, the helicopter operators would require an FAA-approved security program.

FAA response: The FAA continues to believe that this action will enhance the security of the sterile area by minimizing the opportunity for transfer or introduction of dangerous or deadly weapons into the sterile area by unscreened persons disembarking from private charter or helicopter operations into the sterile area.

The FAA concurs with the opinion of the Part 108 Working Group. All aircraft operators that enter the secured areas, enplane from or deplane into a sterile area, or use screening checkpoints, impact the security of all operations, and should have written and approved security programs.

Accordingly, the final rule will extend the applicability of § 108.1 to private charter operations and, under certain specified conditions, will require helicopter operations to adopt and implement a security program.

Section 108.3 Definitions

Proposal: In Notice 97–12, the FAA proposed to add commonly used terms and to update current terms used in part 108. The FAA also proposed to make the definitions in proposed part 107 apply to part 108 as well.

The FAA proposed to add the following definitions: "accepted security program," "approved security program," "Assistant Administrator," and "principal security inspector." The FAA proposed to revise the following definitions: "passenger-seating configuration," "private charter," "public charter," "scheduled passenger operations," and "sterile area."

Comments: Alaska Airlines (AS), American Airlines (AA), United Parcel Service Airline (UPS), Cargo Airline Association (CAA), Air Transport Association of America (ATA), Regional Airline Association (RAA), and the National Air Carrier Association (NACA) recommend that terms applicable to airport or aircraft operating areas should be defined in both parts 108 and 107, instead of only being in part 107. In addition, AS, AA, Northwest Airlines (NW), Federal Express (FedEx), RAA, CAA, UPS, and ATA are in strong opposition to the replacement of several terms as proposed in part 107. All of the organizations indicated above recommend retention of the current terms for secured area and SIDA, since they are understood and used daily by regulated parties and the FAA.

The FAA also received several comments offering definitions for "public charter," "private charter," and "person."

FAA response: The FAA has decided to keep the definitions in the most applicable part, with cross references showing that the terms apply to other parts as well. Although it would be convenient for users to have definitions repeated in each part, there is a risk that the definitions would become inconsistent over time, as each part is amended from time to time. Further, it is the FAA's experience that aircraft operators generally provide written guidance to their personnel, not simply copies of part 108. Operators can easily include in their guidance pertinent portions of part 107, as well as parts 1, 109, 129, and 191 as needed.

The FAA's decision regarding definitions as applied to the airport environment are contained in the final rule for part 107.

In this final rule, the FAA has made several editorial changes to the definitions. The definitions for "accepted security program" and "approved security program" have been removed and replaced with a single term, "aircraft operator security program." For the purposes of this final rule, the definition of "accepted security programs" will be unnecessary because the references to part 129 have been removed. The only security programs which will be discussed in this final rule are those that have been approved by the Administrator under part 108.

In the current part 108, the term "Director of Civil Aviation Security" is used to refer to the official who oversees civil aviation security operations and approves air carrier security programs. Under the internal FAA reorganization, the current title of this position is "Associate Administrator for Civil Aviation Security;" however, the statute refers to the "Assistant Administrator for Civil Aviation Security." As such, paragraph (b) of this section will use the title "Assistant Administrator for Civil Aviation Security." In addition, paragraph (b) will clarify that the Deputy Assistant Administrator for Civil Aviation Security, or any individual formally designated as Acting Assistant Administrator or Acting Deputy Administrator, could act in the capacity of the Assistant Administrator. In addition, the duties of the Assistant Administrator could be further delegated.

With regard to the proposed term "principal security inspector," it has been determined that it would be best to use the general term "Administrator" rather than to name specific positions held by various employees working on behalf of the Administrator. As a result of that decision, the term "principal security inspector" has been removed.

The FAA considered the definitions offered by the commenters for "public charter" and "rivate charter" and determined that they did not meet FAA security needs. The FAA has determined the need to retain the proposed definitions for "public charter" and "private charter," but is correcting an editorial mistake in the NPRM that gave the definition for "public charter" as the definition for the term "private charter." The definitions in part 108 are based on the different security issues present when all passengers are affiliated (private charters) and when passengers may have little or no affiliation with each other (public charter). The definitions suggested by the commenters are based more on economic concerns.

Although commenters offered other definitions for the term "person," the definition for "person" is contained in 14 CFR part 1, and applies to all FAA regulations. The term as used in this part is in concert with that definition and as such, this final rule will not introduce a new definition for the term "person."

The term "scheduled passenger operations" has been rewritten for clarity with no change from the intent of the current regulation.

Notice 97–12 proposed to define "sterile area" as "a portion of an airport defined in the airport security program to which access generally is controlled by either the inspection of persons and property in accordance with an approved or accepted security program required under § 108.105 of this part or § 129.25 of this chapter, or an access control system meeting the requirements of § 107.207 of this chapter."

The final rule simplifies this definition, by describing the function of the sterile area. It is defined as "a portion of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which access generally is controlled by an aircraft operator or foreign air carrier through the screening of persons and property in accordance with a security program." The reason the sterile area is needed, is to provide access to aircraft by passengers. Its use permits the screening of passengers well before the boarding of the aircraft, both in time and distance, so that screening can be accomplished more efficiently. In most cases, persons other than passengers may enter the sterile area, but sometimes such access is limited for security or crowd control purposes. The means by which access is controlled is not part of the definition, but is set out in § 108.201 and the security program.

The current rule refers to "certificate holders." Notice 97–12 proposed to

change this term to "air carriers," because there are many different kinds of certificate holders under FAA regulations, including airport operators (part 139). After further consideration, the term "air carrier" in part 108 is being changed to "aircraft operator." There are some aircraft operators that will be required to hold security programs under part 108 that do not hold "air carrier operating certificates," rather they hold "operating certificates" under part 119. For instance, those operators engaging in intrastate air transportation are not considered part of the air transportation industry, and are not required to hold air carrier operating certificates under part 119. However, they are required to screen their passengers in accordance with 49 U.S.C. 44901, and are required to hold a certificate under part 119.

In addition, some private charter operations may be conducted by those operators holding operating certificates, not air carrier operating certificates. Section 108.101 will require them to adopt a security program if they use a sterile area to enplane or deplane passengers, in order to protect the integrity of the sterile area.

Accordingly, "aircraft operator" is defined in § 108.3 as "a holder of an air carrier operating certificate or an operating certificate under part 119 of this chapter that conducts operations described in § 108.101." This definition makes it clear that general aviation operators are not under part 108.

Two definitions that were not included in the NPRM, but will be added to the final rule are "checked baggage" and "cargo." These terms will be added to help the reader understand two amended sections, which are numbered and entitled § 108.203, "Acceptance and screening of checked baggage," and § 108.205, "Acceptance and screening of cargo." The current rule also provides that one kind of private charter involves "civil or military air movements." In Notice 97–12, this distinction was proposed to be termed "civil or military air transportation." This final rule will use the term "air movements." Air transportation has a particular meaning in the statute, and involves holding out to the public. Private charters may not involve holding out to the public and, therefore, to avoid confusion, the term will remain "air movement."

Further, Notices 97–12 and 97–13 proposed the use of the terms "explosive, incendiary, deadly or dangerous weapon, or destructive substance" in describing what items may not be permitted in sterile areas or onboard aircraft (see e.g., proposed §§ 107.101 and 108.201(b)). Some commenters request clarification of these terms, and question the meaning of the term "destructive substance." They state that the term could be read as including various hazardous materials that are subject to extensive regulation under the Hazardous Materials Regulations (HMR), 49 CFR part 172, and that the terms "explosive" and "incendiary" are sufficient.

The FAA has decided not to use the term "destructive substance" as proposed. The term "destructive substance" is used in the statute, 49 USC 44902, however, the FAA believes the term is confusing and that its use would not add any benefits to this final rule. Aircraft operators will not be responsible for searching for substances other than by the means set forth in their security program, or any security directives that may be issued.

Section 108.5 Inspection Authority

Proposal: Notice 97–12 proposed to add a section on the inspection authority of the FAA. The authority of the Administrator to inspect for compliance with statutory and regulatory requirements is granted in 49 U.S.C. 40113. Proposed § 108.5(a) stated that the air carrier must allow the FAA to make inspections at any time or place to determine compliance with this rule, the statute, and the air carrier security program. This paragraph was largely based on § 119.59, which provides that the FAA may inspect air carriers and commercial operators for compliance with safety rules.

Proposed § 108.5(b) included the requirement found in current § 108.27 that on the request of the FAA, the air carrier must provide evidence of compliance with the rules and with its own security program. Proposed § 108.5(c) would have required air carriers to issue to any FAA Special Agent access and identification media to permit unescorted access to, and movement within, any exclusive area for which the air carrier has taken responsibility.

Comments: American Airlines, FedEx, UPS, and ATA believe the scope of proposed § 108.5(a) and (c) is too broad and could subject air carriers to unreasonable and frequent intrusions by FAA personnel, that off-airport inspections such as at corporate headquarters should not be permitted, and that unannounced inspections could result in unnecessary disruption. American Airlines states that the FAA should provide written notice of inspections so that management can observe and take immediate corrective action if needed. Continental Airlines (CO) states that the section should refer to inspections "at any reasonable time or place." It notes that some inspections would be at corporate headquarters, which are closed during some hours. Northwest Airlines (NW) requests that the rule be modified to ensure air carriers are protected from unreasonable intrusion into their private corporate areas of business. Alaska Airlines states that not all FAA Special Agents are trained in dangerous goods, cargo security, and passenger security. Alaska Airlines also notes that the proposal did not address the timeframe of issuing the media. Alaska Airlines asks whether the special agents would have safety training in ramp safety. United Express states that the inspections should be performed only by FAA personnel trained to perform such inspections. Trans World Airlines states that there should be limitations to ensure air carrier operations are not unnecessarily interrupted. The RAA states that the proposal is written too broadly and should apply only to FAA inspectors trained in security inspections and states that non-security related surveillance should not be included in the security regulations.

FAA response: This section is intended to accomplish several important tasks. Paragraphs (a), (b), and (c) will provide information about the FAA's authority, which has existed since 1928, to conduct inspections and tests. Paragraphs (a) and (b) also will set forth affirmative duties on the aircraft operator to cooperate with and allow the inspections and tests, and its failure to do so could result in enforcement action against the aircraft operator. Paragraph (d) will require the aircraft operator to issue access and identification media to FAA special agents, which will assist them in carrying out their inspection duties.

The FAA agrees with the commenters that the FAA is required to conduct its investigations and tests in a reasonable manner, but does not believe that the words "reasonable" should be added to the regulation. The wording is similar to that used in a number of other FAA rules that have existed for years, including § 119.59 (aircraft operators and commercial operators), § 141.21 (pilot schools), § 145.23 (repair stations), and § 147.43 (aviation maintenance technician schools). The wording of these rules has not caused significant problems in the past. The FAA does not anticipate any change in its inspection procedures based on this new rule.

This new section will provide a basis for enforcement action in the event that an aircraft operator fails to allow the Administrator to conduct inspections

and tests as required under this section. While the Administrator has always had authority to conduct inspections and tests, there were not many options that the Administrator could take if the aircraft operator obstructed the inspection. This rule allows the FAA to take administrative action or civil penalty action if the aircraft operator fails to allow the inspection or test, or otherwise does not comply with the section.

As to the location of inspections, the FAA must be able to inspect each location at which regulated activity is being carried out. Regulated activity under part 108 is conducted primarily at airports, but there are other locations that the FAA must inspect. For example, off-airport baggage check-in locations such as hotels or cruise ships are subject to FAA inspection. In addition, some aircraft operators maintain required records of employment history, verification, and criminal history records checks (§ 108.229) at their corporate offices. These required records are periodically inspected by FAA Special Agents. It is FAA practice to make arrangements for a records review ahead of time, and to schedule the inspection for normal business hours, to ensure that aircraft operator personnel are available to assist and that the inspection does not cause undue disruption.

As to the timing of inspections, the FAA is aware of the need not to unduly interfere with operations. Often inspections are announced ahead of time to ensure that aircraft operator personnel are available to observe and assist. However, many inspections and tests can only be done effectively if unannounced, to determine whether the aircraft operator is in compliance when it does not know the FAA may be inspecting. Further, the FAA must sometimes inspect and test during peak traffic periods at the airport to ensure that even during the busiest times aircraft operators are in compliance with the security requirements. These peak periods are when the largest portion of the traveling public is being protected by the security procedures.

Regarding FAA personnel, the FAA takes care to only authorize trained personnel to conduct inspections. These individuals receive training (both classroom and on-the-job) on ramp safety and procedures, in addition to the training they receive on technical security requirements.

Several changes have been made in the final rule. Proposed § 108.5(a) referred to determining the compliance of the airport operator, aircraft operator, foreign air carrier operator, and other airport tenants. The final rule also will list the compliance of indirect air carriers, which must have security programs under part 109. Indirect air carriers have important security responsibilities, and the FAA must be able to inspect and test for their compliance. An inspection of an aircraft operator's cargo facility, for instance, reveals information about the compliance of both the aircraft operator being inspected and any indirect air carrier that has transferred cargo to that aircraft operator.

Section 108.5 only provides for inspection by the FAA. Unlike the Notice, it does not refer to inspection by other Federal government entities. The FAA has no authority to grant or to deny inspection authority to another agency. The section was changed to avoid any appearance that the FAA was purporting to grant such authority.

Proposed § 108.5(a)(1) and (2) referred to determining compliance with the aircraft operator security program and with part 108. The final rule in § 108.5(a)(1) also lists compliance with parts 107 (airport operators), 109 (indirect air carriers), 129 (foreign air carrier operations), and 191 (sensitive security information), and any security programs under those parts. In any given area of an airport, there may be duties which aircraft operators, airport operators, and the others must carry out. If a Special Agent is in an aircraft operator's exclusive area, for instance, he/she might also be inspecting access doors that are controlled, in whole or part, by the airport operator. This section will clarify that the Special Agent may be inspecting for compliance with one or all of these parts or security programs.

New § 108.5(a)(2) refers to 49 U.S.C. Subtitle VII. That subtitle, Aviation Programs, contains much of the enabling legislation for the FAA. Most of these provisions were in the Federal Aviation Act of 1958, as amended (49 U.S.C. appx. 1301 *et al.*), before that Act was recodified in 1994.

Proposed § 108.5(a)(3) referred to determining compliance with 49 CFR part 172, which provides requirements under the Hazardous Materials Transportation Act. This reference has been removed from the final rule. The FAA will continue to have authority to inspect for compliance with Hazardous Materials Regulations, but its authority is based on a different statute than that for civil aviation security. Part 108 is devoted to civil aviation security issues. To avoid misunderstanding, reference to hazardous materials inspections will be deleted.

Proposed § 108.5(a) referred to the Administrator making inspections and tests, and § 108.5(b) referred to the aircraft operator providing evidence of compliance to the Administrator. The final rule will add the clarification that these requirements include the FAA making copies of records or the aircraft operator providing copies. Obtaining copies of records is an inherent part of the FAA inspecting compliance with safety and security requirements. It is necessary to preserve the records for further review by the FAA, and on occasion, use as evidence. This situation is true for all FAA inspections, including those conducted by FAA Aviation Safety Inspectors (who look at compliance with operational and airworthiness rules) and FAA Special Agents. Often, the copying is done at the aircraft operator's or airport operator's office with their permission. Sometimes other arrangements are made, such as the FAA temporarily removing the records to copy them at a FAA office or a commercial service. The FAA has rarely encountered difficulty on this point, but includes these explicit statements in the final rule to avoid misunderstandings in the future.

This section refers to copying of records, not just documents. Records may be kept in a number of formats, such as paper, microfilm, and electronic. The FAA Special Agent may request copies of records in any of these formats, usually requesting that paper copies be made of the records. If another format is used more easily by the Special Agent, he/she may request records in that format.

New § 108.5(c) will state that FAA personnel may gain access to the SIDA and other controlled areas without holding access or identification media issued by the airport or aircraft operator, when it is necessary to conduct an inspection or investigation. This authority is not new. The FAA agrees that in most circumstances, FAA personnel should comply with the access and identification requirements in place at the airport, and it has been FAA practice to require that, when practicable, FAA personnel first obtain local media before conducting inspections. However, there are times when the FAA cannot adequately inspect and test compliance if its employees first obtain access and ID media from the airport or aircraft operator. The act of obtaining such media may provide an opportunity for the FAA representative to be recognized by personnel at the airport, thereby reducing or negating the value of the inspection. The FAA has in the past, and will continue, to make

unannounced, anonymous tests by entering the SIDA or other areas without first having obtained such media. Such tests are conducted under very controlled conditions, using personnel who are trained in safety and security. The FAA's Special Agents carry their FAA credentials for immediate display if they are challenged in order to establish their authority to conduct such inspections. FAA Special Agents only inspect without local ID's when obtaining local media before the inspection would greatly reduce, or even negate, the purpose of the inspection. In other circumstances, the FAA representatives have the appropriate access and/or ID media.

Notice 97–12 proposed in § 108.5(c) (§ 108.5(d) in the final rule) to require aircraft operators to issue identification and access media to FAA Special Agents upon their request and when they present FAA credentials issued by the Administrator. These media give Special Agents unescorted access to, and movement within, exclusive areas controlled by the aircraft operator. These exclusive areas may include portions of the airport secured area, SIDA, and AOA. While the FAA has the authority to inspect without local media, the FAA agrees that it is in the interest of security for all persons in the controlled areas to have locally issued or approved access and identification media. An undue number of different media makes the challenge system more difficult to carry out, and reduces the effectiveness of the challenge system. Therefore, the FAA's practice is for its agents to obtain local media when practicable. While the FAA rarely has had difficulty with the local authorities, there have been times when local authorities have resisted providing the media. This paragraph makes it clear that the aircraft operator is obligated to issue such media.

The FAA recognizes and concurs with the concerns that the number of people given unescorted access to the secured areas, SIDA's, and AOA's should be limited to those with a need to be there. For this reason, this particular provision is limited to FAA Special Agents. Other persons with inspection authority for other FAA programs may obtain limited access to perform their duties. Flight Standards Inspectors, for instance, may use their FAA Form 8000–39 to enable them to go to the aircraft that they intend to inspect or on which they intend to give a flight check. This authority is not the kind that Special Agents need to fully inspect secured areas, AOA's, and SIDA's. Therefore, this paragraph requires the aircraft operator only to give identification and access media to those individuals identified by the Administrator's Special Agent credentials.

The proposed rule stated that the media would be issued on request of the FAA Special Agent and presentation of his or her credentials. The final rule states that the media shall be issued upon request by the Administrator. As some commenters note, not all FAA Special Agents have duties and the type of training to conduct inspections at the airport, therefore, those agents do not need local media. The Administrator will provide the airport or aircraft operator with the names of Special Agents who require media.

The final rule states that the media shall be issued "promptly." The FAA expects that the media will be issued without undue delay, generally within a similar timeframe that media are issued to airport, aircraft operator, and contractor employees who need the media. The particular procedures will be worked out at each airport with its FAA field office.

The FAA recognizes that, in most cases, it is important not to give unescorted access to those who have not had the specialized SIDA training required at that location. While all FAA Special Agents with the appropriate credentials have been given general training in access to and movement within the affected areas, each location has different layouts, ID media, and other systems. Accordingly, the final rule will provide that media are not issued to Special Agents until they complete the appropriate training, as stated in a security program. This practice will ensure that the agent is familiar with the procedures in place at that location, and will fully support the airport operator's and aircraft operator's training programs. Considering that the aircraft operator's procedures will be in an exclusive area agreement for the specific airport, the special procedures for issuing local media may be in either the airport or aircraft operator security program. These procedures will indicate when the training is given, including provisions for emergencies. In case of emergency, Special Agents may need the media without undergoing the full local SIDA training.

Section 108.7 Falsification

Proposal: The FAA proposed § 108.7 with no changes from the current § 108.4. The current section was adopted on November 27, 1996.

Comments: There were no comments on this section.

FAA response: Section 108.7 is not changed.

Section 108.9 Security Responsibilities of Employees and Other Persons

Proposal: The FAA proposed to prohibit persons from tampering or interfering with, compromising, or modifying any security system, or carrying a deadly or dangerous weapon, explosive, or incendiary into sterile areas, secured areas, or operations area.

Notice 97–12 proposed in § 108.9(b) to prohibit any deadly or dangerous weapons, explosives, incendiaries, or other destructive substances on or about the individual's person or accessible property when entering secured areas or the air operations areas of an airport governed by part 107. Proposed § 108.9(d) provided that this requirement would not apply to certain law enforcement personnel and other authorized persons.

Also proposed was the continuation of the current § 107.25(f) provision that no person could allow to be used or cause to be used any airport-approved access medium or identification medium that authorized access for a person or vehicle in any area controlled for security purposes in any other manner than that for which it was issued.

Comments: Denver International Airport, AS, AA, CO, ATA, and RAA, recommend incorporating specific parts of the law that identify penalties. American Airlines, FedEx, UPS, ATA, and RAA support the concept but request a clear distinction between the individual's actions and the air carrier's actions and want a distinction between intentional and unintentional noncompliance. American Airlines, FedEx, ATA, NACA, and RAA recommend that any FAA action could be in addition to or in lieu of any action by the air carrier against its employee or contractor. Three commenters suggest that language be incorporated to prevent testing of security operations by unauthorized persons or those who present false credentials. United Express, AA, ATA, FedEx, and RAA, oppose re-screening of employees entering the sterile area, who have access clearance from the airport to enter secured areas. Alaska Airlines, AA, ATA, UPS, and RAA recommend removal of the reference to "other destructive substance."

FAA response: In response to the comment to place civil penalties into the final rule, the FAA recommends that those seeking more information on this topic, refer to part 13. Potential penalties are addressed in part 13, which are not normally added to each part of Title 14.

Regarding the distinction between individual's actions and the aircraft operator's actions, it is not possible to state in the rule as to when enforcement action may be taken against just the individual, just the aircraft operator, or both. Aircraft operators are responsible for carrying out part 108 and their security program, which largely is done by making sure their employees, contractors, and agents carry them out. When an individual fails to do so, in each case the FAA will have to examine the facts and circumstances, and the parties' responsibilities under the statute, the regulations, and the security program, to determine what charges, if any, to bring against which persons. As to whether any FAA action would be in addition to, or in lieu of, any action by the aircraft operator, this determination also depends on the facts of each case.

The rule does not distinguish between intentional and unintentional noncompliance. However, it seems likely that in most cases, if a person violated § 108.9 the act would be intentional. If it appears that the violation was not intentional, the FAA would consider whether no enforcement action, or a mitigated penalty, was warranted.

The FAA considered whether to prohibit unauthorized testing of any security system. Such a blanket prohibition would be unduly broad, however, considering the uncertainty of what might be meant by "testing" the system. Section 108.9 does, in fact, prohibit some actions that persons might take to test the system that would unduly interfere with the proper operation of an air carrier. Deliberately entering a secured area without proper access or identification media would be a violation, for instance, whether the person was testing the system or had another reason for doing so.

As to the proposed prohibition of weapons in the secured areas or AOA in § 108.9(b), the FAA has determined that airport operators under § 107.11 are able to handle such occurrences through their local laws that control the presence of weapons and other deadly items on airport property. The law enforcement personnel who respond to incidents as described in the airport operator's security program, enforce such local laws. Therefore, proposed § 108.9(b) is not adopted. While the FAA will not take action at this time, it will continue to assess the need for any future comprehensive security enhancements regarding weapons and other destructive substances that may be detrimental to the flying public.

Section 108.9(d) (proposed § 108.9(c)), provides that this section does not apply to the FAA, or to aircraft operators, airport operators, or foreign air carriers while conducting inspections in accordance with their security program. These entities are expected to check their own compliance with the regulations by testing the system. However, not every breach by an employee can be characterized properly as an inspection. The security program will set out a regulated party's plan for conducting such inspections, including who may do them.

The FAA has also determined that proposed § 108.9(d), which indicates subsection (b) would not apply to persons authorized by the Federal government or the airport operator to carry weapons and other dangerous items on airport property, will also not be adopted. The FAA believes the local laws adequately address and recognize various persons who may have a need and the authority to carry weapons while on airport property. The FAA will also continue to assess these issues and address them as deemed appropriate in the future.

Subpart B—Security Program

Section 108.101 Adoption and Implementation

Proposal: In §§ 108.1 and 108.101, Notice 97–12 proposed to extend the application of part 108 to private charter and helicopter operations, as well as those air carriers that voluntarily hold security programs.

Current part 108 applies only to airplane operators, and therefore, does not apply to helicopter operators, which are specifically excluded under current § 108.1(b) and do not hold security programs. Current § 108.5(a) makes part 108 applicable to scheduled and public charter operators only, not private charters. Section 108.5, paragraphs (a)(1) and (a)(2) require a full security program to be carried out for operations with more than 60 seats and for operations with any size airplane deplaning through a sterile area. Passengers enplaning from or deplaning into sterile areas from private charters and helicopter operations currently are subject to the security program requirements of other air carriers responsible for the security of that sterile area. In such a case, the helicopter operator or private charter does not take responsibility for the security of that sterile area under a security program.

Current § 108.5(a)(3) requires some security procedures to be carried out for scheduled passenger and public charter operations with more than 30 but less than 61 seats, and requires the rest of the security program to be carried out if the FAA advises them that a threat exists. This practice is commonly called a "partial program," because only part of the program routinely is carried out. Section 108.5(b) states that other certificate holders that have an approved security program shall carry out that program (commonly called a "voluntary program"). Because the definition of "certificate holder" in current § 108.3 includes only passenger operations, some commenters have questioned the current practice of certain all-cargo carriers adopting a security program under part 108.

Notice 97–12 proposed not limiting part 108 to airplane operations, but to apply the same security requirements to all aircraft depending on passenger seating configuration and kind of operation. It proposed in § 108.101(a)(1) and (2) to require a full security program for scheduled and public charter operations with more than 60 seats, and for scheduled passenger and public charter operations with any size aircraft when enplaning from or deplaning into a sterile area. It proposed in § 108.101(a)(3) to require a full security program to be carried out for private charter operations when passengers are enplaned from or deplaned into a sterile area.

Notice 97–12 proposed in § 108.101(a)(4) to require a partial program for certain other scheduled, public charter, and private charter operations that do not enplane from or deplane into a sterile area. The operations include a private charter operation with an aircraft having a passenger seating configuration of more than 30 seats, a scheduled passenger or public charter operation with a passenger seating configuration of 31 to 60 seats, and a scheduled passenger, public charter, or private charter operation with a passenger seating configuration of less than 61 seats engaged in operations to, from, or outside of the United States.

In § 108.101(b), Notice 97–12 proposed that each air carrier that has a security program for other operations, shall carry out that program. Because part 108 would not use the term "certificate holder" and would not otherwise omit all-cargo operations from part 108, this paragraph would clarify that all-cargo operations may be under a security program.

Comments: American Airlines, CO, NW, TWA, United Express (Great Lakes Aviation), UPS, ATA, RAA, and NACA state that private charter operations should not be subject to part 108 requirements. They note that there is no history of such operations creating a

security problem. American Airlines, ATA, and TWA indicate that, if the FAA decides to regulate private charter operations under part 108, the only security requirement that is justified is the screening of passengers who deplane into a sterile area. The Regional Airline Association, UPS, and Era Aviation state that only screening of passengers who enplane from or deplane into a sterile area is justified. Continental Airlines does not object to screening passengers who enplane through a sterile area, but wishes to deplane private charter passengers into a sterile concourse. The NACA states that private charters should be able to escort passengers through the sterile area as an alternative to screening, and that there should be portions of the airport outside of the sterile area available for private charter enplaning and deplaning.

The City and County of Denver supports requiring private charter operations to have security programs, noting that an unscreened individual could deposit contraband for pick-up by another person or could return later himself or herself. This commenter states, "with all of the technological advances and equipment being deployed, why would a private charter be allowed to compromise security?"

American Airlines, United Express, ATA, and RAA state (in their comments on proposed § 108.9(b)) that the rules should not be interpreted to prevent "reverse screening," that is, screening upon deplaning at major airports as opposed to before boarding small commuter aircraft.

Northwest Airlines opposes applying part 108 to helicopter operations. The Helicopter Association International (HAI) supports permitting rotorcraft operators who want to interline with larger air carriers the ability to hold a part 108 security program and enplane from and deplane into a sterile area. The HAI also states that airports should have a place outside of the sterile area where rotorcraft may operate.

The United Parcel Service, FedEx, AA, RAA, ATA, and the Cargo Airline Association (CAA) support allowing other air carriers to voluntarily adopt a security program. The United Parcel Service, FedEx, and CAA would like the FAA to clarify that the air carrier operating under a voluntary program is required to comply with its particular program, not with the entire regulation. Federal Express also requests clarification that the primary objective of such programs is to protect large passenger aircraft and the passengers on them. Some commenters suggest that including voluntary programs in § 108.1 without a specific note that not all of part 108 applies to them, may imply that they must comply with the entire regulation.

The NACA recommends additional options for those aircraft operators conducting wet leases.

FAA response: Section 108.101(a)(1) in this final rule will maintain the current requirement in § 108.5(a)(1) that all scheduled passenger and public charter operations using aircraft with a passenger seating configuration of more than 60 seats have and carry out a full security program. Section 108.101(a)(2), as proposed, requires a full program for scheduled passenger and public charter operations using aircraft with a passenger-seating configuration of less than 61 seats when passengers are enplaned from or deplaned into a sterile area. The FAA believes that preserving the integrity of the sterile area is critical for maintaining civil aviation security. Few additional security measures are applied to persons or property once they are in the sterile area. The FAA has determined, therefore, that it is essential that all persons who enter the sterile area be subject to security procedures, either by inspection of their person and property or by another means, such as verifying their status as an authorized aircraft operator employee or airport employee.

The FAA recognizes that the passengers in private charter operations have an affinity with each other, such as being on the same sports team and likely present little danger to one another. Permitting the passengers of private charter operations to enter the sterile area without being screened would compromise the sterile area. Screening persons entering the sterile area are intended not only to discover weapons, explosives, and incendiaries on individuals who intend to use them in a criminal manner, but also to find weapons carried by individuals with no criminal intent who forget they are carrying them. Each year at screening checkpoints, many weapons carried by such persons are prevented from entering the sterile area. If these weapons were brought into the sterile area, there is a risk that they could be used inappropriately by that person, or taken by another person and used. Any prohibited item that is introduced into the sterile area could be transferred to a scheduled or public charter flight. In addition, as Denver notes, an unscreened person on a private charter intentionally could transfer a weapon to another person, creating a danger to flights other than his or her own flight. For these reasons, the FAA continues to believe that all persons who enter the sterile area must be subject to security procedures.

Further, the FAA believes that aircraft operators that place passengers in the sterile area should be responsible for screening these passengers. Under part 108, this task is accomplished by the operator holding and carrying out a security program.

Accordingly, this final rule will require that all aircraft operators that enplane or deplane passengers through sterile areas, will be required to adopt and carry out a security program for those operations, regardless of the size or type of aircraft, or whether the flight is a scheduled, public charter, or private charter.

As to the type of aircraft being used, the FAA has found no reason to believe that there is any difference in the risk to air transportation depending on whether helicopters or airplanes are being operated. By changing the rule from applying to airplane operators to applying to aircraft operators, helicopter operators will be required to adopt and carry out a security program under the same circumstances as airplane operators. This practice will ensure that all operators of aircraft of the same passenger seating capacity and kind of operation maintain similar levels of security. Further, removing the exclusion of helicopters from part 108 that is in current § 108.1(b) may assist helicopter operators to transfer passengers, checked baggage, and cargo to other aircraft operators, because they can carry out the necessary security procedures.

After further evaluation, the FAA has determined that there is no need to require security procedures for private charters other than as needed to protect a sterile area. As noted, private charters, by definition, involve groups of passengers who are closely affiliated, and present little danger to one another. The FAA agrees with the commenters that further regulation of private charters is not warranted because there is insufficient evidence that these passengers pose a danger to air transportation. The final rule in § 108.101(b) requires private charter operators to have a security program ("Private Charter Program") only if they enplane from or deplane into a sterile area. In that case, they need to carry out only the requirements related to protecting the sterile area.

Section 108.101(c)(2) will require scheduled and public charter operations using aircraft of less than 61 seats that operate to, from, or outside of the United States, and do not enplane from or deplane into a sterile area, to hold a "Partial Program." The Partial Program

requires the aircraft operator to carry out portions of the security program for all operations and to carry out the remainder when the FAA informs the operator that a threat exists. Because the performance, including flight range, of such aircraft has increased and the potential threat to U.S. interests outside of the country has increased since part 108 was adopted, some additional security measures should be carried out for such operations.

The rule language will be amended for all Partial Programs. Section 108.101(c)(1)–(2) of the final rule will address operations to which this applies. These operations include scheduled passenger or public charter that do not enplane from or deplane into a sterile area, when such an operation either (1) involves an aircraft having a passenger seating capacity of more than 30 and less than 61 seats, or (2) involves an aircraft having a passenger seating configuration of less than 61 seats and is engaged in operations to, from, or outside of the United States (or both). The security measures that must be carried out by such operations are included in § 108.101(d). Section 108.101(d) will require the affected aircraft operators to comply with the requirements regarding security coordinators, law enforcement personnel, carriage of accessible weapons, carriage of prisoners, carriage of Federal Air Marshals, training, the contingency plan, bomb and air piracy threats, and security directives and information circulars. Section 108.101(d)(2) will require the aircraft operator to perform any other security measures that the FAA has approved upon request. This situation permits the aircraft operator to assume additional security responsibilities, such as exclusive areas. Section 108.101(d)(3) will require that aircraft operators implement the remainder of the security program requirements when the FAA informs them that a threat to that operation exists.

The FAA agrees that the final rule should not prohibit reverse screening. The FAA did not propose that reverse screening be eliminated. There are some operations that do no require screening for the flight itself, but the flight deplanes in a sterile area. This final rule will clarify that the operator of that flight must now have a security program. That program will include methods that the operator will use to ensure that passengers are not deplaned into the sterile area without having been screened.

The comments on providing other areas of the airport for enplaning and deplaning passengers, which would be located outside the sterile area, and the comments regarding special provisions for wet leases, are beyond the scope of Notice 97–12 and will not be addressed in this rulemaking.

Section 108.101(e) addresses "voluntary programs" for aircraft operators that are not required to have a security program but wish to have one to facilitate their operations. In response to comments, and after further evaluation, the final rule will provide further clarification. These programs will be referred to as "Limited Programs" in this final rule. The term "voluntary" might imply that the aircraft operator is not required to comply with the program. Although the aircraft operator is not required to adopt a "Limited Program," once one is adopted, the aircraft operator is required to comply with it.

Typically, holders of Limited Programs are all-cargo carriers that are not required to have a security program because they do not carry passengers and do not use sterile areas. However, all-cargo carriers may wish to have an exclusive area on an airport, taking responsibility for the security of that area, which would leave the airport operator with less direct responsibility under part 107 for that particular area. Or they may choose to carry out certain security measures to facilitate the transfer of cargo to passenger carriers. Acquiring a security program allows the all-cargo operator to receive Security Directives from the FAA, which directly impact their operations.

The introductory text of § 108.101(e) will clarify that the FAA *may* approve such programs; however, it is not required to do so. In each case, the FAA will evaluate all of the circumstances, including the security implications of the program and the ability of the aircraft operator to carry out the program, to determine whether security and the public interest warrant approval of the program. This introductory text also indicates that the FAA approves such programs only after a request by the aircraft operator. The FAA *requires* programs only for the aircraft operators included in § 108.101(a), (b), and (c), and cannot require an aircraft operator to hold a security program under § 108.101(e). This text also emphasizes that a security program may be approved for an aircraft operator that has a certificate under part 119. This provision is not intended to permit general aviation operators to have security programs under part 108. General aviation operators, if they are tenants on the airport and wish to have a security program, may request a tenant security program from the airport operator under part 107.

Section 108.101(e) will require that the aircraft operator shall carry out selected provisions of Subparts C and D, and § 108.305, as specified in its security program. This section also will require that the aircraft operator shall adopt and carry out a security program that meets the applicable requirements of § 108.103(c). This requirement emphasizes that the security program is used only to permit aircraft operators to take on existing security responsibilities that are set out in part 108. Voluntary programs are not used to impose completely new security responsibilities. In determining which sections to include, the FAA will consider which responsibilities the aircraft operator is accepting, and will include in the security program all necessary requirements. In all cases, the aircraft operator will be subject to Security Directives under § 108.305 that relate to the responsibilities that operator is accepting.

Section 108.101(e) states that each aircraft operator that has adopted a security program under this paragraph shall carry out that program. Such an aircraft operator is not obligated to carry out other portions of part 108 that are not included in its security program. If an aircraft operator were to fail to carry out its program, the full range of actions would be available, including counseling, administrative action (warning notices and letters of correction), and civil penalties. In extreme cases, the FAA could withdraw approval of the security program.

The FAA believes, as a result of this final rule, that there will be aircraft operators who will encounter for the first time a need to apply for and implement a security program under part 108. A short explanation of the relationship between their security program and this final rule follows. The FAA is required to prescribe rules, as needed, to protect persons and property on aircraft against acts of criminal violence and aircraft piracy, and to prescribe rules for screening passengers and property for dangerous weapons, explosives, and destructive substances (see 49 U.S.C. 44901 through 44904).

To carry out the provisions of the statute, the FAA has adopted rules requiring aircraft operators to carry out various duties for civil aviation security. Title 14, Code of Federal Regulations, contains part 108, which is directed specifically toward aircraft operators. The part contains general requirements for promoting civil aviation security.

Aircraft operators, as required by § 108.101, have a security program that

is approved by the Administrator, containing information that specifies how they are to perform their regulatory and statutory responsibilities.

The security program contains sensitive security information and is available only to persons with the need-to-know. Each aircraft operator's security program is a comprehensive document that details the full range of security procedures and measures that they are required to perform under part 108. The program includes procedures for screening of passengers, carry-on baggage, checked baggage, and cargo; using screening devices (such as X-ray systems and metal detectors); controlling access to aircraft and aircraft operator facilities; reporting and responding to bomb threats, hijackings, and weapons discovered during screening; reporting and protectifng bomb threat information; identifying special procedures required at airports with special security needs; and training and testing standards for crewmembers and security personnel.

Other security and information measures are contained in the Security Directives and Information Circulars, described in § 108.305. These sources address threats to civil aviation security as well as responsive measures to those threats. Additionally, these sources provide sensitive information concerning various security devices, such as metal detectors and X-ray machines.

The security program is far more detailed than the regulations, therefore, there will be items specifically addressed in detail that may be mentioned only in general terms in the rule language of part 108. The security program, once approved, has the force of law and is to be adhered to the same as the part 108 regulations.

In addition to including private charter and helicopter operations, this final rule now applies to all-cargo operations that adopt and implement security programs as described in § 108.101(e). Obtaining an approved security program permits these operators to enter into an exclusive area agreement with an airport operator in compliance with § 107.111.

Section 108.103 Form, Content, and Availability

Proposal: The FAA proposed in § 108.103 language describing the purpose of having air carrier security programs and described the requirements contained in § 108.101 for those security programs. The FAA also proposed the means by which the air carrier would acknowledge receipt from the FAA of either a security program or amendment.

Part of the proposed requirements included procedures and a curriculum to implement an individual accountability compliance program. The FAA proposed that the aircraft operator would have penalties imposed on persons who were not abiding with the security requirements. Penalties were to be levied per the standards contained within the air carrier's approved security program.

The FAA also proposed to require that the air carrier designate an Air Carrier Security Coordinator (ACSC) and indicate the means by which this person can be contacted on a 24-hour basis.

The proposal also contained language to permit the air carrier to have the necessary documents available for electronic transmission from another location or to have the necessary documents onboard the aircraft.

In the final rule, the sections pertaining to these requirements have been clarified.

Comments: The United Parcel Service, the Denver Airport, and ATA, agree that individuals should be held accountable, but strongly object to delegating enforcement authority to the air carrier. They prefer that the FAA take responsibility for such action.

Northwest Airlines (NW), United Express, UPS, RAA, and ATA, support the creation of the position of an ACSC, but oppose the 24-hour contact requirement, unless the air carrier is permitted to name an alternate person to be designated in the ACSC's absence. Northwest Airlines, UPS, and RAA, suggest the use of the air carrier operations centers, which are available on a 24-hour basis. The ATA recommends the designation of an individual at the corporate level, rather than at each station. Alaska Airlines (AS) asks whether an air carrier can have several ACSC's, and states that the duties and position are not defined.

Northwest Airlines and UPS state that the preamble acknowledges that the air carrier may have the necessary documents available for electronic transmission from another location or onboard the aircraft, but proposed §§ 108.103(c)(2) and (3) do not appear to include this allowance. The commenters believe that by using the word "accessible," the regulation will convey more clearly the intent of the requirement.

The ATA and RAA urge that the FAA contact corporate headquarters to obtain implementing instructions. Additionally, RAA and UPS believe that the wording in § 108.103(c)(2) could be interpreted as requiring an onsite copy of 14 CFR part 108.

FAA response: The FAA has reopened the comment period requesting additional comments on the issue of security compliance programs (64 FR 43322, August 10, 1999). The FAA has deleted the language in proposed § 108.103(b)(11) and (c)(6) regarding security compliance programs. However, the omission of security compliance programs from the final rule does not stop an aircraft operator from voluntarily adopting a compliance program at any time.

The requirements regarding security programs and amendments are contained in § 108.105.

In keeping with the changed language from "certificate holder" to "aircraft operator" the coordinator title has been changed to "Aircraft Operator Security Coordinator (AOSC)". Final rule language has been incorporated in § 108.215(a) to allow for the designation of an alternate when the AOSC is absent. Also, § 108.215(a) has been changed in the final rule to clarify that the AOSC, or any alternate, is to be designated at the corporate level, and shall serve as primary contact for security related activities and communications with the FAA.

Section 108.103(b) is intended to permit the aircraft operator to have the necessary documents available for electronic transmission from another location or the necessary documents onboard the aircraft. To require that aircraft operators have a copy of the security program accessible conveys the intent of the requirement. The FAA has amended § 108.103(b) to require that each aircraft operator maintain an original copy of their security program at its corporate office. In addition, a complete copy, or the pertinent portions, of the aircraft operators' approved security program, or appropriate implementing instructions, should be accessible at each airport served. An electronic version of the program is adequate. The security program instructions may be site specific, and should be accessible at each airport location. The FAA agrees to change the word "available" to "accessible" in the final rule.

The purpose of having the security program or instructions accessible at each airport served is to ensure that personnel at each airport have the instructions on how to accomplish their security duties. The FAA checks compliance with this requirement by asking to see the instructions while at different airports. Asking for the instructions from corporate

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headquarters would not adequately check for compliance with this rule.

Section 108.105 Approval and Amendments

Proposal: The FAA proposed to slightly modify the time elements regarding the approval and the obtaining of amendments for security programs. Further, the FAA proposed to place time elements on itself, which before had not been contained in the regulation. Additionally, it proposed to revise the procedures making the processes consistent for both parts 107 and 108. Codification of the existing practice of the Assistant Administrator for Civil Aviation Security approving security programs and amendments was also proposed. Time elements for the submission and disposition of amendments were also included in the proposal.

Comments: Northwest Airlines, UPS, FedEx, TWA, and ATA do not agree to increase the FAA timeframe for amendment approval from the current requirement of 15 days. One commenter, RAA, opposes any change in the current amendment process and states that proposed § 108.105(b)(1) and (2) appear to be inconsistent.

Two commenters, RAA and ATA, ask that the rule allow amendments to be approved for the air carrier and all similarly situated certificate holders.

FAA response: The FAA attempts to be realistic when determining timeframes needed to provide full consideration of all security issues. The FAA will process each amendment as quickly as possible. While it is the FAA's intent to meet the time elements listed within the regulation, it is incumbent on the FAA to take an appropriate amount of time to review all relevant issues affecting the requested amendment.

The final rule places in the regulation the existing practice of the Assistant Administrator for Civil Aviation Security, on behalf of the Administrator, issuing the approval for all security program amendments. In the final rules for parts 108 and 107, procedures for approval of security program amendments are identical.

The FAA believes there may be instances when proprietary information may be contained within the proposed amendment submitted by an aircraft operator. It is for this reason that the FAA has decided not to act on the recommendation submitted by the RAA and ATA. Section 108.105(b)(6) provides that any aircraft operator may submit a group proposal for an amendment that is on behalf of it and other aircraft operators that co-sign the amendment.

The FAA will establish internal procedures to periodically review amendments it initiates. The procedures will ensure that the amendment is in fact appropriately placed in the security program, as opposed to requiring an amendment to part 108. The FAA believes that the ASAC recommendation to include expiration dates on amendments, was directed toward the amendments issued by the FAA and not those amendments requested by aircraft operators. The FAA recognizes that there will be circumstances when information, due to its sensitivity, cannot be discussed in a public forum. In those instances, the amendment processes for security programs provide a means to impose and implement needed requirements.

The final rule will allow the FAA 45 days after receipt of a proposed amendment to approve or deny that amendment. The FAA maintains that the amendment process may take additional time if the proposed amendment is modified or denied.

In addition to retaining the 45-day submission requirement, the FAA will retain a 30-day timeframe for a FAA response to a proposed amendment. These timeframes do not address time requirements for emergency amendments issued by the FAA. The additional time required by the FAA is needed to complete the review process and to ensure a timely and efficient exchange of information. The exchange of information not only occurs between the FAA and the aircraft operator but between internal FAA offices as well. There are instances when threat analyses are needed, requiring additional time to process the requests. Therefore, the FAA has determined that it is necessary to retain the language as proposed in Notice 97–12.

The FAA has deleted the last sentence in proposed § 108.105(b)(1) because it is unnecessary and confusing.

Subpart C—Operations

Section 108.201 Screening of Persons and Accessible Property

Proposal: The FAA proposed that the title and section number of current § 108.9 "Screening of passengers and property" be changed to § 108.201, "Screening of persons and property, and acceptance of cargo." Air carriers currently are required to screen all persons entering a sterile area through a screening checkpoint. By changing the title, the FAA proposed to more accurately reflect that all persons, not just passengers, are required to be screened as they enter the sterile area through a screening checkpoint.

Further, to facilitate the transit of air carrier employees who have already been subjected to other security systems, the proposal provided that persons who are authorized unescorted access to a SIDA, may enter a sterile area from a public area using security procedures. These security procedures were proposed in § 107.207, "Access control systems" under Notice 97–13 that revised part 107.

Proposed § 108.201(b) would have required that the air carrier "detect and prevent" the carriage of any explosive, incendiary, deadly or dangerous weapon, or destructive substance on or about individuals or their accessible property aboard an aircraft or upon entry into a sterile area. This proposed language change was based on current procedures under the air carrier approved security programs which require that the air carrier "detect and prevent" or be subject to enforcement action.

The requirements proposed in § 108.201(d), (e), and (f) would transfer unchanged from current § 107.20 and § 107.21. These current sections require that an individual submit to screening of their person and property, and restrict the carriage of firearms into sterile areas to those persons required to carry the weapons in performance of their duties. Those persons who are required to carry weapons in performance of their duties are generally law enforcement officers traveling armed aboard aircraft, and persons specifically authorized to do so under an approved security program. Since control of the sterile area, and performance of screening are the air carriers' responsibilities, these requirements are more appropriate to part 108 than to part 107.

Proposed § 108.201(h) would have required that air carriers prevent the carriage of any explosive or incendiary onboard an aircraft. Although current security procedures applicable to the acceptance of cargo and checked baggage for transport onboard passenger aircraft are contained in the air carrier's standard security program, the basic requirement to apply security measures to cargo and checked baggage was not set out in detail in the current rule.

Comments: Trans World Airlines, RAA, and ATA oppose any modification of the requirement to screen passengers only. The RAA states that expanding the requirement to include all persons, could limit the air carrier's ability to provide access to the sterile area and may result in it having to limit access to sterile areas to ticketed passengers

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only (rather than to all persons) or to close a checkpoint when there are no departing flights.

Alaska Airlines, FedEx, UPS, United Express, CAA, RAA, and ATA state that the air carrier cannot "detect" introduction of deadly or dangerous items 100% of the time, they believe that "deter" should be substituted for "detect" in the General Requirements paragraph of § 108.201. Federal Express, UPS, NACA, ATA, and RAA oppose any modification of the FAA requirement to rescreen employees. The NACA suggests that the following language be added "* * * inspect each person entering a sterile area who does not have approved access media."

FAA response: The screening of all who wish to enter a sterile area has been in effect, under § 108.9 (c), for many years. All individuals, with limited exceptions, who enter the sterile area through the screening checkpoint must be screened.

Notice 97–12 proposed that each aircraft operator required to conduct screening, use the facilities, equipment, and procedures described in its security program to "prevent or detect" the carriage of any deadly or dangerous weapon, explosive, incendiary, or other destructive substance, on or about each person or the person's accessible property before boarding an aircraft or entering a sterile area. The current requirement in § 108.9(a) is to "prevent or deter." The FAA has decided to accept the commenters" suggestion so the language in § 108.201(a) remains "prevent or deter." Both phrases adequately reflect the overall intent that aircraft operators must use the measures in their security programs to keep deadly or dangerous weapons, explosives, or incendiaries off the aircraft and out of the sterile area. Further, the phrase "other destructive substances" has been removed from the list of prohibited items.

The FAA does not agree with the suggestion to exempt from screening any employee who has been issued an identification medium who is entering a sterile area at a screening checkpoint. The FAA attempted such a system in the past and found that the security checkpoint was not equipped to handle the increased workload of checking ID's of employees. The aircraft operator may seek to have an alternate entry point at which employees can enter without being screened, but where other security measures are carried out.

As discussed above in the General Discussion of the Rule, the requirements that appeared in § 108.201 of Notice 97–12 are now in separate sections. The sections that appear in the final rule are § 108.201, "Screening of persons and accessible property," § 108.203, "Acceptance and screening of checked baggage," and § 108.205, "Acceptance and screening of cargo." Requirements for acceptance and control of cargo and checked baggage that appeared in Notice 97–12 § 108.219, "Security of aircraft and facilities," now appear in either § 108.203, "Acceptance and screening of checked baggage," or § 108.205, "Acceptance and screening of cargo."

Section 108.203 Acceptance and Screening of Checked Baggage

Proposal: Under the proposal, these requirements were contained in §§ 108.201, 108.219(c), 108.213(b) and 108.225.

Comments: No comments were received.

FAA response: This section combines the requirements for checked baggage into one section. The language clarifies that although this section prohibits loaded firearms in checked baggage, as stated in § 108.203(d)(4), this section does not prohibit the carriage of ammunition in checked baggage or in the same container as a firearm. It also refers to the additional requirements governing carriage of ammunition on aircraft in title 49 CFR part 175. The regulation refers to preventing or deterring "unauthorized" explosives or incendiaries. Some explosives or incendiaries may be shipped if they are labeled and marked in accordance with the Hazardous Materials Regulations. Any other materials either improperly packaged, marked, or labeled, or otherwise not permitted to be carried aboard passenger aircraft are "unauthorized."

Section 108.205 Acceptance and Screening of Cargo

Proposal: This section combines the requirements for transport of cargo into one section. Under the proposal, these requirements were contained in §§ 108.201 and 108.219(c), (d) and (e). Although proposed § 108.201 addressed screening of persons and property and acceptance of cargo, no specific mention of cargo appears in this section, it is referred to instead as "property."

Comments: The United Parcel Service, ATA, CAA, and RAA believe that a threat does not exist to justify expanding the requirements to cargo acceptance at all locations. It is their belief that the requirements should only apply to cargo accepted at the ticket counter. The United Parcel Service and RAA believe that the improvements to the Air Carrier Standard Security Program (ACSSP) that the FAA Cargo Baseline Working Group suggested, are sufficient and that there is no need to expand the regulation.

FAA response: Cargo acceptance is addressed in the security programs; the acceptance is not just limited to the ticket counter but addresses all cargo that may be transported onboard an aircraft that is transporting passengers. The inclusion of a section on cargo in the regulation does not impose any further regulations beyond those currently in the security program. The FAA disagrees that the only security threat exists with cargo accepted at the ticket counters. The final rule addresses all cargo regardless of where it was accepted. The final rule does not expand cargo security requirements beyond those already existing in security programs.

Section 108.207 Use of Metal Detection Devices

Proposal: Metal detection devices (MDD's) (such as walk-through metal detectors) have long been an integral part of the passenger screening system. Testing, calibration, and operational requirements for MDD's are currently incorporated in the air carrier's security program. The FAA proposed a new section that would require the air carrier to use equipment that meets the calibration standard set by the FAA, and to conduct screening with MDD's in accordance with its approved security program. This section would not change the current security program requirements.

Comments: No comments were received.

FAA response: There are no changes to the final rule language, except that the section is renumbered from § 108.203 to § 108.207.

The aircraft operator shall apply the FAA calibration standard set by the FAA to conduct screening with metal detection devices in accordance with the operator's security program. This application applies to all domestic locations and at those locations outside of the United States where the aircraft operator has operational control of its screening process.

Section 108.209 Use of X-ray Systems

Proposal: In the proposal, current § 108.17 entitled "Use of X-ray systems" was renumbered as proposed § 108.205 and included under new Subpart C, "Operations." In proposed § 108.205, the FAA would update the technical standards for X-ray systems. The reference incorporating American Society for Testing and Materials (ASTM) Standard F–792–82 would be updated to reflect the current ASTM Standard, F–792–88 (re-approved with

an amendment in 1993). In addition, references to the Food and Drug Administration regulations governing cabinet X-ray systems manufactured before April 25, 1974, are no longer necessary and, therefore, would be deleted.

Under this proposal, application of § 108.205 would be extended to X-ray systems under the air carrier's operational control at airports outside the United States as currently required in security programs. The X-ray systems used for this purpose should meet the same standards as X-ray systems used to inspect baggage in the United States to ensure that the prescribed security measures are equally effective. The X-ray systems owned and/or operated by government authorities or government-mandated security companies at foreign airports and not under the operational control of the air carrier would not be subject to the proposed regulation.

Notice 97–12 proposed to delete the term "passengers" under § 108.205(e) and substitute the term "persons" recognizing that, during daily operations, passengers are not the only category of individuals who enter a sterile area through a screening checkpoint with an X-ray system.

Additionally, in Notice 97–12, the FAA proposed to omit the requirement that the air carrier issue an individual dosimeter to each operator of an X-ray system.

Comments: Alaska Airlines, TWA, RAA, and ATA support deleting the dosimeter requirement. Alaska Airlines questions whether some of the new X-ray equipment does or will subject the items to more than one milloroentgen. The commenter believes that this requirement will confuse the public as to when film should be removed from items to be X-rayed.

FAA response: There are no substantive changes to the final rule language, except that the section is renumbered from proposed § 108.205 to § 108.209 in the final rule.

Most X-ray systems in use today emit less than one milloroentgen of radiation. The requirement to post a sign suggesting removal of all kinds of film applies only in those few situations where the equipment in use does emit more than one milloroentgen. Further this requirement is not new; it is in current § 108.17(e).

The FAA is not aware of any incident in which a person received excessive radiation from X-ray machines used for screening under an FAA-approved program. Due to this safety record and encouraged by today's technology, which uses lower levels of radiation for this equipment, the final rule eliminates the need for dosimeters. Aircraft operators would still be required to comply with requirements of other Federal agencies or State governments regarding the use of dosimeters.

The final rule changes the reference from "carry-on bags" to "accessible property," which is consistent with § 108.201. At screening checkpoints, property that will be accessible in the sterile area or the aircraft or both are screened.

In the regulatory language, the FAA has removed the term "dangerous articles." Instead, the FAA has inserted the words "explosives, incendiaries, and deadly or dangerous weapons." The FAA believes the latter terms better describe the items for which the aircraft operators are carrying out the screening processes.

Section 108.211 Use of Explosives Detection Systems

Proposal: The FAA proposed renumbering current § 108.20 entitled "Use of Explosives Detection Systems" as § 108.207 and placing it in new Subpart C, "Operations."

Comments: No comments were received.

FAA response: In addition to the proposal, the FAA has added paragraph (b) due to the fact that explosive detection systems that use X-ray technology must comply with the requirements of § 108.209(e) regarding posting of signs. While this new paragraph clarifies the requirements for the use of explosive detection systems, it does not add any new compliance costs, since the requirement for posting signs where X-ray screening equipment is used has long been in the regulations. Further, manufacturers have already provided the required information on the machines. In the final rule, proposed § 108.207 is renumbered as § 108.211.

Section 108.213 Employment Standards for Screening Personnel

Proposal: The FAA proposed to renumber § 108.31 entitled, "Employment standards for screening personnel" to § 108.209 and place it in new Subpart C, "Operations." The proposal provided that, in the event the air carrier is unable to implement this section for screening functions outside the United States, the air carrier must notify the Administrator of those air carrier stations so affected, to facilitate resolution of compliance issues.

Comments: The Denver International Airport comments that the FAA standards should not preclude any local licensing requirements for security or guard personnel that are more stringent than the FAA requirements. They also state that security or guard personnel should be tested for the ability to speak English, by the FAA.

FAA response: In the final rule, proposed § 108.209 is renumbered as § 108.213 with no additional changes.

The FAA cannot categorically state that all local licensing requirements for security personnel either are or are not preempted by the Federal government and part 108. Each case must be decided on its facts and circumstances.

The aircraft operators are responsible for ensuring that personnel meet all requirements, including requirements as contained in this regulation. The FAA does not have the operational capability to test the large numbers of screeners who qualify each year.

Section 108.215 Security Coordinators

Proposal: Notice 97–12 proposed to consolidate §§ 108.10 and 108.29, describing the duties and responsibilities of the Ground Security Coordinator (GSC) and the In-flight Coordinator, into one section. The FAA also proposed that the air carrier designate an Air Carrier Security Coordinator to ensure that the FAA had a security official to contact, at the corporate level, whenever the need arises.

Existing regulations provide for the GSC to immediately initiate corrective action for noncompliance with security regulations. At foreign airports, the air carrier may not be performing all security measures and may be unable to take corrective action. Therefore, Notice 97–12 proposed that when a host government agency or contractor provides security measures, the air carrier would notify the Administrator for assistance in resolving noncompliance issues. The Administrator could then work with the host government to address the issues.

The FAA also proposed to omit the distinction made in reference to "direct employees" versus "contract employees."

Comments: The United Parcel Service, FedEx, RAA, and ATA, state that "daily" requirements for GSC's should be replaced with "routinely" and that the wording "departing flights" should be added because many air carriers have late arrivals with no departure activity.

FAA response: Due to the change of terminology from "air carrier" to "aircraft operator" the FAA has determined that the new title of the proposed position will be changed to Aircraft Operator Security Coordinator (AOSC).

The Section-by-Section Analysis of Notice 97–12 explained the intent that

the AOSC be appointed at the corporate level. This language has been added to § 108.215(a) and clarifies that the AOSC is to be designated at the corporate level and shall serve as the primary contact for security-related activities and communications with the FAA. The FAA agrees with the need for the availability of an alternate AOSC to act in the AOSC's absence. The final rule requires that the alternate also shall be designated at the corporate level.

The FAA agrees with the comment regarding departing flights in connection with GSC duties. Therefore, in § 108.215(b) the word "departure" was inserted after "domestic and international flight."

The FAA did not agree with the suggestion to change the frequency of performance for the GSC's duties. The commenter suggested that the frequency be changed from "daily" to "routinely". The FAA believes that the routine performance of these functions leaves the frequency up to the individual and would be open to misinterpretation; therefore, the language has not been changed.

It is inherent that the aircraft operator is responsible for managing any employees carrying out various security duties whether they are direct or contract employees. Therefore, the FAA omitted the distinction between "employee" and "contract employee."

Section 108.217 Law Enforcement Personnel

Proposal: As in the past, Notice 97–12 proposed that part 108 air carriers operating passenger service or public charter passenger operations at airports not governed under proposed § 107.217 would be required, in the absence of the part 107 airport providing law enforcement support, to provide law enforcement personnel in a manner adequate to support its security program.

Comments: Commenters suggest using the term "law enforcement officer" or "LEO," for consistency and providing a clear definition of "LEO." These commenters also recommend that the rule make a clear distinction between a LEO and private security. The ATA and RAA suggest exempting non-scheduled charter operations from the requirement for law enforcement personnel.

FAA response: The FAA agrees that the term "law enforcement officer" should be used consistently throughout part 108. However, due to the allowances which are made for part 107, the term "law enforcement personnel" must be used in § 108.217. This requirement is different than the requirements of §§ 108.219 and 108.221 for the carriage of weapons and the escorting of prisoners. In those sections, the person is referred to as a "law enforcement officer." In §§ 108.219 and 108.221, the FAA is referring to someone who is a Federal law enforcement officer or a full-time municipal, county, or State law enforcement officer who is the direct employee of a government entity. The FAA has the authority to establish such requirements for persons desiring to board the aircraft armed.

The FAA recognizes the authority of State and local governments to grant police-like privileges to persons other than commissioned law enforcement officers. The FAA is aware of at least one state that grants such powers to personnel of private security companies. The statute specifically provides that airports may meet their obligation to provide law enforcement support by providing for "qualified State, local, and private law enforcement personnel" (49 U.S.C. 44903(c)).

In light of this situation, the FAA must provide airport operators with the ability to use either commissioned law enforcement officers or any other persons who have been granted the authority set out in 49 U.S.C. 44903(c) and in § 107.217, by the State or local government, to react to specific situations as described in part 107.

Therefore, in both parts 107 and 108, the term "law enforcement personnel" is used to describe both the law enforcement officers and private persons who have been granted certain powers by the State or local government. An airport operator may use either type of personnel to meet the requirements of part 107. Training received by a security company employee, who is granted the appropriate authority by the State or local government, must be acceptable to the Administrator if the State or local jurisdiction does not prescribe training standards for them.

The FAA does not agree with the suggestion to exempt non-scheduled public charter operations from the requirement for law enforcement personnel. Depending on the size of aircraft used, the aircraft operator may need to screen passengers (§ 108.101(a)). Considering the incidents that can occur with screening (such as discovery of a weapon) it is important to have law enforcement support. For operators of smaller aircraft (§ 108.101(c)), it is important that employees know how to contact law enforcement support should that be needed (§ 108.217(a)(2)).

In the final rule, proposed § 108.211 is renumbered as § 108.217.

Section 108.219 Carriage of Accessible Weapons

Proposal: In Notice 97–12, § 108.213, the FAA proposed a revised procedure for carrying weapons in the cabin by authorized law enforcement officers. This proposal was intended to provide criteria for the carriage of firearms and to control the number of firearms in the cabin. The control of weapons topic was the impetus for the creation of the ASAC Carriage of Weapons Task Force in January 1992. The proposal was based on the Task Force recommendations where consensus was reached at the time the recommendations were developed. The proposed rule contained regulatory language specifically identifying the need for law enforcement officers to have their weapons available during a flight.

Comments: A majority of the comments responding to Notice 97–12 address the carriage of firearms onboard an aircraft. One commenter strongly supports restricting the carriage of firearms onboard aircraft by anyone. Many commenters strongly support allowing all Federal agents to carry their authorized firearms on aircraft.

The Allied Pilots Association (APA) and ALPA do not support changes that would modify proposed § 108.213(a)(2)(iv) to make it easier to board aircraft with firearms.

The most opposition to the restrictions came from U.S. Customs Service Agents. Many Customs agents, along with several other agents and officials from Federal agencies, recommend that all Federal agents authorized to carry firearms in the performance of their official duties be allowed to carry firearms onboard any aircraft. Furthermore, they believe that they should not be required to place firearms in checked baggage because of the greater risk of theft and consequent misuse of government-owned firearms.

Several commenters suggest that the FAA should not be in the position to restrict Federal LEOs from carrying their firearms onboard aircraft.

One commenter suggests that the proposed rule conflicts with 49 U.S.C. 46505. Another commenter notes that the authority to carry firearms is given to Federal agents by statute, therefore, it is inappropriate to limit by regulation.

One commenter proposes that Federal agents be allowed to carry their firearms in a locked container onboard or give their firearms to the captain prior to the flight. Another commenter opposes notifying ticket agents that LEOs are putting their firearms into the checked baggage system, which is not secure.

Another commenter suggests that armed LEO's should be advised of the identity of all other armed LEO's onboard a flight.

FAA response: Final rule § 108.219, which was proposed § 108.213, received a majority of the total comments addressing Notice 97–12. Final rule §§ 108.219–108.223 are revised, to some degree, based on comments received but continue to be structured largely from the recommendations of the Carriage of Weapons Task Force (CWTF) that has reviewed these issues since 1992.

The FAA has the authority and responsibility to ensure the safety and security of passengers within our national airspace system. The FAA has chosen, as one means of addressing that responsibility, to set controls on those persons who may carry a firearm in the cabin of an aircraft. The FAA has sought to meet the needs of law enforcement agencies.

One commenter suggests that the proposed rule conflicts with 49 U.S.C. 46505. Section 46505 provides for criminal penalties for persons who carry a concealed, accessible weapon. The criminal penalty does not apply to a law enforcement officer "authorized to carry arms in an official capacity." This exception applies when the officer, in the performance of his or her duties, has a need to have the firearm accessible as defined in part 108.

It is the goal of both the FAA and the aviation industry to have as few weapons as possible carried onboard a flight. The FAA is aware that on a daily basis across the United States armed law enforcement officers board passenger carrying aircraft. The FAA recognizes the need for law enforcement officers to fly armed while in the performance of their duties, but has revised the rules to state more clearly when to permit this practice.

There appears to be a general misunderstanding by many commenters on the criteria necessary for flying armed, as detailed in the Notice. Neither this final rule nor the Notice limits the carriage of firearms to Federal agents. Likewise, neither this final rule nor the Notice limit the carriage of firearms specifically to the FBI. Federal agents and State and local officers who meet the criteria for law enforcement designation, regardless of the employing agency, may be permitted to fly armed for those duties as listed in this final rule.

This final rule clarifies FAA's very specific employment criteria needed for recognition as a law enforcement officer. Having met those criteria, having met the standards for a need to fly armed, and having received FAA's training program, the officer may, when permitted by the aircraft operator, fly armed.

The Notice provided a list of circumstances under which LEOs would be considered to have a need to travel armed as determined by the employing law enforcement agency.

New § 108.219(a)(2) provides that the LEO must have a need to fly armed, as determined by the LEO's employing agency. Section 108.219(a)(2)(i) provides for an LEO to carry a weapon when he or she is on protective duty, for instance, assigned to a principal or advance team, or on travel required to be prepared to engage in a protective function. Section 108.219(a)(2)(ii) provides for the conduct of a hazardous surveillance operation.

New § 108.219(a)(2)(iii) provides for carriage of weapons by an LEO who is on official travel required to report to another location, armed and prepared for duty. This includes reasonable allowances for delays that may occur in travel.

New § 108.219(a)(2)(iv) accommodates the needs of Federal LEO's who need to be armed and available for duty when they are traveling, even when not on official travel. Because Federal LEO's have jurisdiction throughout the country, their employing agency may call on them to return to duty at any place and time. This need is based on an agency-wide directive or policy statement of the employing agency. Not all Federal LEO's are authorized to fly armed, particularly when they are not on official travel at that time. Under this rule, Federal LEO's will not fly armed on non-official travel except in accordance with an agency-wide policy governing that type of travel.

Under § 108.219(a)(2)(v), control of a prisoner, in accordance with § 108.221, or an armed LEO on a round trip ticket returning from escorting, or traveling to pick up, a prisoner also constitutes a need to fly armed.

Federal Air Marshals are specifically permitted to fly armed while on duty status, as stated in § 108.219(a)(2)(vi). Given the purpose of the FAA's Federal Air Marshals' program, it is evident that they have a need to fly armed.

Bondsmen and bounty hunters, and law enforcement officers while they are serving as bondsmen or bounty hunters, are not authorized to travel armed. Similarly, private security guards serving as body guards or providing other protective services are not authorized to travel armed. These persons either do not meet the requirements for a law enforcement officer in § 108.219(a)(1), or the standards for a need to fly armed in § 108.219(a)(2), or both.

The descriptions of a need to fly armed have been altered to accommodate the law enforcement community's concern that the proposed rule would have unduly limited their legitimate law enforcement functions. While this may permit many of the nation's LEO's to fly armed, it greatly defines and controls the carriage of weapons compared with the current rule. We note that law enforcement agencies view very seriously any LEO's inappropriate conduct with a weapon. We also note that portions of this new rule make the LEO directly responsible to the FAA for complying with the requirements, including those regarding use of alcohol and the location of the weapon. The failure of the LEO to comply with these requirements could lead to civil penalty action by the FAA. The FAA believes that the limits on the need to carry weapons, and the personal accountability of the LEO to both the FAA and the employing agency, provide appropriate controls on the carriage of weapons without unduly interfering with legitimate law enforcement functions.

As to some LEO's comments that they need to travel armed so they are prepared to assist the pilot if needed, history shows that the need for the use of deadly force on a flight is extremely rare. Some commenters note that the pilot may seek assistance to restrain an unruly passenger. The FAA believes that all law enforcement officers, due to their training, are uniquely qualified to assist when there is a need to restrain an individual.

Regarding the concern expressed for placing firearms in checked baggage and having them stolen and subsequently misused, the FAA acknowledges that concern. However, the aircraft operators are responsible for the security of all checked bags and the incidents of theft of firearms from checked bags is low.

The concern expressed about notifying the ticket agent of an unloaded firearm placed in checked baggage has been brought up previously to the FAA. Law enforcement officers were concerned about the "outside tagging" of baggage when an unloaded firearm was declared. The FAA requirement remains that firearms placed in checked baggage will be declared as unloaded at the time the bag is checked. The FAA believes that this issue has been cleared up with the passage of Public Law 103–159, also known as the Brady Handgun Violence Prevention Act. This law prohibits the aircraft operator from tagging or labeling, on the outside, any

luggage or baggage indicating there is a firearm inside the container.

The CWTF explored the issue of having lockers onboard the aircraft for the storage of firearms. The task force found it would create far more problems than it would resolve (such as, location to unload/reload the firearm, adequate number of lock boxes per aircraft, and modification of the aircraft to accommodate the lock boxes). Due to all of the concerns expressed, no recommendation was forwarded to the FAA regarding this issue.

The FAA reiterates that any passenger may, upon notification to the aircraft operator, place an unloaded firearm in checked baggage provided the firearm is checked in a hard-sided, locking container and that the presence of the unloaded firearm is declared at the time the bag is checked. These same criteria apply to flight deck and cabin crewmembers should they wish to carry a firearm onboard the aircraft.

In Notice 97–12 and in this final rule there is a requirement for the aircraft operator to notify all armed LEO's onboard of the presence of all other armed LEO's who are passengers on that flight. In the Notice the one exception was that the aircraft operator would not notify other LEO's of the presence of a FAM, rather the FAM would notify the other LEO's. After further consideration the FAA has determined that having the aircraft operator notify other LEO's of FAM's on the flight will enhance coordination for the safety of all concerned. Therefore, under this rule the aircraft operator will notify all LEO's of the presence of all other LEO's, including FAM's. The new rule also requires that the aircraft operator must not close the doors until the notification is complete under circumstances described in the security program.

In response to a suggestion that there should be recurrent training for law enforcement officers flying armed, the FAA agrees that this suggestion would be an enhancement to the program. However, since it was not addressed in the Notice and would create an increased requirement on law enforcement, it cannot be addressed in this final rule. The FAA will issue an Advisory Circular that addresses the training program for law enforcement officers flying armed and recurrent training also will be addressed.

Law enforcement officers who are not in uniform are required under new § 108.219(d) to keep their weapons concealed and out of view. This is to avoid creating concern among other passengers who may see the weapon and not realize the person is a LEO authorized to carry it. LEO's are given the option of either keeping the weapon on their person or in immediate reach. However, the FAA recognizes that there may be a few instances when an armed officer will be in uniform while traveling. Since uniformed law enforcement officers are conspicuous, the FAA has added the stipulation that if an armed officer is traveling in uniform, the officer must maintain the weapon on their person at all times while aboard the aircraft. Because the officer is in uniform, other passengers will immediately recognize the LEO as having authority to be armed. All other restrictions concerning an armed law enforcement officer and the weapon apply. There is no economic impact on the aircraft operator or the officer by this addition.

In new § 108.219(a)(1), the FAA uses the phrase "unless otherwise authorized by the Administrator." This phrase has been placed in the regulatory language to provide for those occasions when foreign officials may be traveling in the United States with their country's armed law enforcement or military personnel. In such cases, the carriage of weapons by these foreign officials will be handled in a manner in keeping with international protocol. Depending on the circumstances, the FAA or the U.S. State Department will be in contact with the aircraft operator when such needs arise.

Section 108.221 Carriage of Prisoners Under the Control of Armed Law Enforcement Officers

Proposal: In Notice 97–12 the FAA proposed § 108.215, "Carriage of passengers under the control of armed law enforcement escorts," to provide more detailed requirements for escorting prisoners in part 108. In the final rule proposed § 108.215 is renumbered as § 108.221.

Comments: The APA suggests creating two sections to distinguish between "prisoner" and "passenger." Several commenters recommend that all escorts (armed and unarmed) are trained and certified law enforcement officers and that this section should also apply to unarmed escorts. Another commenter recommends that the FAA establish a policy for restraints on prisoners.

One commenter suggests that the FAA develop regulations governing carriage of persons under escort by unarmed officers. Another commenter recommended that the FAA use consistent definitions to parallel definitions used by other agencies.

FAA response: The FAA finds no need to create two sections based on differences between the terms "prisoners" and "passengers." The FAA decided to use the term "prisoners" in the final rule, because it is more appropriate. We note that the word "prisoners" is used for any person who is under armed escort (except for voluntary protective escort) even though the escorting agency may use another term, such as "detainee." Additionally, the FAA determined that since all armed escorts must be trained and certified law enforcement officers the term used in this section must be "officers," rather than "escorts."

Paragraph (a) now more clearly states the applicability of this section, and expressly excludes some persons and situations. For instance, the Immigration and Naturalization Service (INS) escorts detainees, some of whom require armed escort and therefore are subject to § 108.221. Many INS detainees are not violent and are not charged with or convicted of a crime, however, and do not require an armed escort. In that case this section does not apply. The INS escort may be armed in connection with other duties, and if so would be subject to the requirements of § 108.219, but the deportee would not be in hand restraints or otherwise be subject to § 108.221.

With regard to the comment requesting the requirements for unarmed escorts, this issue was not addressed in the NPRM, and is beyond the scope of this rulemaking.

A change was made in the final rule regarding the use of restraints on prisoners. Hand restraints are required in the final rule; however, the FAA has determined that it is not necessary to require that each prisoner have these hand restraints attached to a locked waist restraint. While the final rule provides in § 108.221(g) a standard indicating the extent of the restraint, the FAA prefers to allow the aircraft operator and the law enforcement officers to work out the specifics of the types of hand restraints to use.

With respect to the comments about the proposed definitions for "high risk" and "low risk," the commenters offered no alternative definitions. The proposed definitions were created with input from the CWTF. After further consideration, however, it appears that the proposed definition of "high risk" may have been too stringent. It may have unduly limited the ability of law enforcement agencies to classify as "low risk" prisoners whom the agency believes, based on its review of the prisoners' histories and circumstances, do not warrant the more stringent limitations placed on high risk prisoners. Therefore the definition of "high risk prisoner" has been changed to mean both "exceptional" escape risk,

and charged with, or convicted of, a violent crime.

We have also added to paragraph (c)(2) that, if authorized by the FAA, more than one high risk prisoner may be carried on an aircraft. There are some circumstances where an aircraft operator and a law enforcement agency work out procedures to do so in a safe and secure manner. In such a case, new paragraph (d)(ii) requires that a minimum of at least one armed law enforcement officer for each prisoner and one additional armed law enforcement officer shall control the prisoners. This commonly is referred to as a "one-to-one plus one" escort. No other prisoners may be under the control of those armed law enforcement officers.

The FAA would like to clarify that the time restraints referred to in § 108.221 are for each segment of the trip. Therefore, if there are three flight "legs" required for the officer and the prisoner to reach their final destination, each "leg" must meet the appropriate time restraints as provided in this final rule.

New § 108.221(f)(1) refers to boarding a prisoner before, and deplaning the prisoner after, other passengers "when practicable." This refers, for instance, to when there are passengers already on the aircraft from a previous flight, or when passengers are remaining onboard for another flight.

Section 108.223 Transportation of Federal Air Marshals

Proposal: The FAA proposed in § 108.217 to prohibit divulging the identity, seating, and purpose of Federal Air Marshals (FAM's) to any person who does not have an operational need-to-know. The onboard flight crew will be informed of the presence of any FAM's on a designated flight. The FAM's are made aware of all other law enforcement personnel flying armed on that flight. However, proposed § 108.213 paragraphs (a)(6) and (a)(7), do not require that the air carrier notify persons flying armed of the FAM's presence. This section has been renumbered as § 108.223 in the final rule.

Comments: Alaska Airlines, NW, ATA and RAA recommend that all LEO's onboard be notified of all other armed LEO's including FAM's.

FAA response: Active flight crews are informed by both the aircraft operator and the FAM(s) of the presence of any FAM(s) onboard a flight. A FAM(s) is made aware by the aircraft operator of all other law enforcement personnel flying armed on a flight. When a FAM(s) is on a flight where an armed LEO is present, a FAM will personally contact the armed LEO.

The FAA recognizes the vital need for coordination with an armed LEO when both a FAM and a LEO are onboard the same flight. The aircraft operator will notify each LEO of the presence of each other LEO, including a FAM. In addition the FAM will personally contact the LEO to promote full coordination.

The final rule continues the current requirement that each aircraft operator shall assign the specific seat requested by a FAM who is on duty status. The rule clarifies that, if another LEO is assigned to that seat or requests that seat, the aircraft operator shall inform the FAM. The FAM will coordinate seat assignments with the other LEO. The FAA notes that, if it is necessary for the FAM and one or more LEO's to coordinate under this section, they will consider each other's statutory authority and responsibility in deciding appropriate seating assignments.

Additionally, in this final rule the FAA states the specific information requirements placed on armed law enforcement officers will not apply to FAM's.

Section 108.225 Security of Aircraft and Facilities

Proposal: The proposal renumbered current § 108.13 entitled "Security of Airplanes and Facilities" as § 108.219 and placed it under new Subpart C, Operations.

The proposal addressed the current requirement which prohibits unauthorized access to aircraft, and also proposed that the air carrier prevent access to any area it controls for security purposes. The proposal incorporated requirements contained within, and implemented via, the security program. Accordingly, it was proposed that the air carrier must prevent, rather than prohibit, access to areas controlled by the air carrier under an approved airport security program.

The proposal also included language requiring the air carrier to prevent access by unauthorized persons to baggage or cargo tendered for transport aboard a passenger aircraft.

The proposed language required the air carrier to be in compliance with proposed § 107.209(b) which regulates the issuance and control of airport-approved vehicle identification systems.

In the final rule, the security measures regarding checked baggage appear in § 108.203 and security measures regarding cargo appear in § 108.205. In the final rule, proposed § 108.219 is renumbered as § 108.225.

Comments: One commenter states that "safeguarded" cargo and checked baggage should be changed to "controlled cargo and checked baggage." United Express, RAA, UPS, and ATA stated that "off road" airline vehicles should not be required to display airport ID, just airline logos.

FAA response: The FAA traditionally uses, and has used, the word "control," or "controlled," relating to these measures, and has changed the word "safeguarded" to "controlled." However, the FAA has decided to place the requirements for handling checked baggage and cargo in separate sections. Therefore, proposed § 108.219 paragraphs (c), (d), and (e) have been moved to new §§ 108.203 "Acceptance and screening of checked baggage," and 108.205 "Acceptance and screening of cargo."

In Notice 97–12 § 108.219 was intended to impose similar requirements for both airport operators and aircraft operators regarding the responsibility for vehicles within certain areas of the airport. It was believed that this requirement would add to the overall security of the airport. Having reviewed the comments submitted for Notice 97–13, "Airport Security," the FAA agrees that the proposed vehicle identification requirements are not necessary at each airport. As discussed further in the final rule for part 107, the FAA is withdrawing this portion of the proposal.

In Notice 97–12, the proposed regulatory language in § 108.219 discussed identification and certification relative to the shipment of cargo aboard a passenger aircraft. The FAA has determined the requirements for cargo acceptance are better left to the security program where they are discussed in detail.

New § 108.225(c) requires a security inspection of an aircraft if access has not been controlled as provided in the security program, or as otherwise required in the security program. For instance, there are special requirements for inspecting aircraft on certain international flights.

Section 108.227 Exclusive Area Agreement

This section was not proposed in the regulatory language in Notice 97–12, however, exclusive areas were discussed in the preamble to Notice 97–12, and the security measures for exclusive areas were to be in the aircraft operator security program under proposed § 108.103 (b)(1). Exclusive area agreements were directly dealt with under proposed § 107.111 in Notice 97–13. The ability of the aircraft operator to obtain from an airport operator the responsibility for controlling certain

access has been previously provided in § 107.13 (b), and Notice 97–13 proposed further requirements.

This section was added to part 108 to directly provide reference to exclusive area agreements. Under this final rule the security measures for exclusive area agreements are placed in the airport operator's security program. The aircraft operator would be required to list in its security plan those locations at which the aircraft operator has an exclusive area agreement. The aircraft operator is required under this section to carry out its agreement.

This inclusion of § 108.227 in the final rule does not adversely impact any aircraft operator who may have entered into an agreement with the airport operator. The aircraft operator will make its copy of the agreement available for FAA inspection. The FAA is not requiring that the aircraft operator give notice to the FAA that the agreement has been terminated. The reason for this decision is because the airport operator will have a changed condition to its security program both when it enters into an agreement or terminates it, and therefore, the FAA will have received notice of these changes through the airport operator.

New § 108.227 (c) provides a compliance due date one year after the effective date of the rule for existing exclusive area agreements to meet the new § 107.111. This will give aircraft operators and airport operators time to change existing agreements to conform to the new rules. Any new agreements after the effective date, however, will have to meet the new rules.

Section 108.229 Employment History, Verification, and Criminal History Records Checks

Proposal: The FAA published a final rule (63 FR 51204; September 24, 1998) addressing employment history verifications on individuals seeking unescorted access to a SIDA and to individuals performing screening functions. The rulemaking was in progress at the time Notice 97–12 was issued and therefore not addressed.

FAA response: This final rule includes the Employment History, Verification and Criminal History Records Check final rule and corrects an oversight that appeared in that final rule (63 FR 51204). Section § 108.229(b)(3) clarifies that when an individual has admitted to a conviction of a disqualifying crime, the investigative process ends and the individual is denied unescorted access and/or the privilege of performing any screening functions. Although this was the obvious implication of the section and the preamble, it was not clearly stated in the rule.

The FAA also clarified § 108.229 by stating that the section only applies to "locations within the U.S."

This added language will not have an economic impact on the regulated parties.

The FAA receives numerous calls requesting clarification on the use of automated telephone systems that provide employment information. The FAA has contacted several of these companies and found that the information being provided comes directly from the past employer.

These telephone services provide employment information that may be used to partially satisfy 14 CFR 108.33 regarding the employment history of those individuals seeking certain positions at an airport. The automated services provide the employment dates and does so only if the person calling has the past employer's company identification number and the specifically assigned identification number of the individual whose employment information is sought.

The use of the specifically assigned numbers reflects a level of security is being provided to the information contained within the system. The security is viewed as a means to protect the information from unauthorized changes. Since this method of providing past employment information is the "current state of business" the FAA will accept this method as an adequate means to verify past employment dates when the telephone services have security measures in place.

Therefore, the FAA interpretation of § 108.33(c)(4) includes the use of those automated telephone services that require the use of special information to access an individual's employment history. No language change is deemed necessary for this final rule.

Section 108.231 Airport-approved and Exclusive Area Personnel Identification Systems

Proposal: Notice 97–12 proposed that air carriers establish and implement a personnel identification system mirroring the standards for accountability of airport-issued identification media. A personnel identification system was proposed for flight and cabin crewmembers. The proposed system provided for the following: issuance of identification media after satisfactory completion of employment history and verification checks; and control and accountability standards for identification media. Additionally, the system provided a means to readily identify the currency of the medium. A method for providing the periodic review and re-certification of the identification medium for renewal or forfeiture was also needed.

Comments: Federal Express states that this could require one crewmember to have between 50 and 100 badges. A few commenters note that this proposal will require the manufacture and re-issuance of thousands of ID's at a considerable cost. Federal Express, Northwest, United Express, ATA, UPS, and RAA oppose including expiration dates on ID's issued to crewmembers and state that this requirement would necessitate issuing new badges to personnel. Federal Express suggests that establishing control and accountability standards is more important than an ID expiration date. All of the commenters request that the FAA allow a two-year phase-in period if this measure is implemented. Denver Airport supports the accountability that this requirement would provide, and supports the use of expiration dates for air carriers.

Continental Airlines comments that the proposed rule does not address the need for air carrier ground staff to have identification media to meet the proposed requirements of this section. The need for ground crews who are permanently stationed at certain airports to have the appropriate media exists and is usually dictated by the airport.

FAA response: The title of this section has been changed to clarify that the same requirements apply to ID media issued for use in exclusive areas as those issued by aircraft operators to flight crews and others who need media at different airports.

The intent of this proposal was to ensure that aircraft operator ID systems that are used by those with unescorted access to the SIDA meet the same requirements as systems used by airport operators under part 107. The same ID medium would be accepted by numerous airports, so the aircraft operator would not issue more than one to each person.

In Notice 97–12, the FAA clearly indicated its intent to mirror the standards for accountability that exists for airport-issued identification media. The regulatory language did not provide the amount of detail contained in part 107. The FAA has chosen to clarify the details in this final rule and believes that there will be no increased economic impact by adding this clarifying language. The intent is to minimize the opportunity for a breach of aircraft operator security procedures while in the airport environment.

The FAA agrees that the new ID requirements may present a challenge to

some aircraft operators and crewmembers, but believes that the requirements are necessary to ensure accountability and to minimize the opportunity for a breach of aircraft operator security procedures. Internal controls and accountability measures taken by the aircraft operator relative to identification media will certainly enhance the current system. The FAA sees no reason that aircraft operators' ID media should have fewer safeguards than airport-issued ID media that are used in the same manner.

The proposal referred to ID media used by cabin and flight crew, and these are the majority of personnel who receive such media from aircraft operators. However, there may be other aircraft operator personnel who travel frequently to various airports and need the aircraft operator ID media that will be accepted by airports for use in the SIDA. Therefore, the rule refers to a personnel identification system. Aircraft operator personnel who work at only one airport typically receive the necessary ID medium from the airport operator.

The FAA agrees that a 2-year phase-in period is reasonable for this requirement, and has changed the final rule to allow aircraft operators to present a plan to reach full implementation of this requirement.

Section 108.233 Security Coordinators and Crewmembers, Training

Proposal: Section 108.225 contained in Notice 97–12 has been changed to § 108.233 in the final rule. The proposal was based on current § 108.23. This section governs security training and knowledge of flight crewmembers and security coordinators.

Comments: Federal Express, UPS, ATA, and RAA state that applicability to all "security related functions" in proposed § 108.225(c) is too broad. These commenters suggest that the phrase "appropriate to their job/classification" be incorporated for clarification.

FAA response: The reference to security-related functions in proposed § 108.225(c) was only applicable to ground security coordinators. Such persons have important duties, and should be fully trained in all security duties with which they are charged. However, the FAA has omitted proposed § 108.225(c) because it is unnecessary. That paragraph stated that the duty to train applied whether the person is a direct employee or a contract employee. It is inherent that the responsibility rests with the aircraft operator, regardless if the person assigned those duties is an employee or contract employee.

Section 108.235 Training and Knowledge for Persons With Security-Related Duties

Proposal: Section 108.227 contained in Notice 97–12 has been changed to § 108.235 in the final rule. These requirements are largely in current § 108.29(a)(1). As proposed, the section would expand personnel training requirements in part 108 to require air carriers to train any person performing security functions in accordance with the air carrier's standard security program, as well as continuing the current requirement that such persons have knowledge of these provisions. The FAA proposed that required security training be approved by the Administrator.

Comments: Federal Express, UPS, ATA, and RAA state that applicability to all "security related functions" in proposed § 108.227(a) and (e) is too broad. These commenters suggest that the phrase "appropriate to their job/classification," should be incorporated for clarification. This comment was provided in response to both proposed § § 108.225 and 108.227.

FAA response: The FAA requirements may periodically change via security program amendments or via the shorter notice of security directives. In either case, the requirements may involve anyone employed by the aircraft operator. In order to properly carry out any security-related function, the FAA believes that everyone, regardless of his or her primary job function for the aircraft operator, must be trained. The statement is broad for this reason. That training may not necessarily be formal classroom training, depending on the security duties involved. This rule leaves considerable latitude to the aircraft operator to determine what format the training will take.

The FAA does not agree that language addressing an individual's job or classification is needed. It seems plausible for an aircraft operator employee to have a security-related duty that is not clearly reflected in his or her formal job/classification position.

Subpart D

Section 108.301 Contingency Plan

Proposal: The FAA proposed in § 108.307 to require air carriers to adopt contingency measures in their security programs and implement them when directed by the Administrator. The FAA also proposed that air carriers test these contingency plans to ensure that all parties involved are aware of their responsibilities and that information contained in the plan is current. Furthermore, it was proposed to require air carriers to participate in any airport operator's sponsored exercise to ensure that they understand how to respond to incidents at each airport. Contingency plans contain security measures that can be immediately and flexibly applied to counter threats that arise quickly. The "lessons learned" from the Persian Gulf War threat, are a case-in-point on the need to retain this flexible response plan. Furthermore, it is an ICAO standard that the member states ensure that contingency plans are developed and tested.

Comments: Four commenters, TWA, UPS, ATA and RAA, state that contingency plans should be deleted entirely. Three of these four commenters state that the air carrier should not have to conduct and review exercises of its contingency plan if it participates in each airport operator's exercise. Two other commenters, AS and FedEx, support contingency plans, but do not think they should be addressed in the rule.

FAA response: The regulatory language pertaining to aircraft operator contingency plans has been moved to § 108.301 in the final rule.

The FAA will not delete this section, because it believes that contingency planning supports crisis management. The FAA and industry jointly developed the current contingency plan to ensure that the FAA, airport operators, and aircraft operators are able to respond on short notice to civil aviation threats. A well-exercised contingency plan ensures a timely response to these threats with temporary measures. The ASAC supported the codification of contingency plans.

The FAA has determined that individual testing, in isolation from the airport operator's testing, will not provide enough added benefit to offset the costs that might be incurred by the aircraft operator. Therefore, the FAA has decided not to include the proposed requirement for aircraft operators to independently conduct reviews and exercises of their contingency plans in the final rule. The final rule requires only that the aircraft operator participate in exercises sponsored by the airport. Such exercises are relatively low cost but ensure that the different entities understand their roles, know to whom to turn for assistance, and have current information, such as how to contact various agencies that may render assistance in an emergency.

Instead the details will be contained in the security program. The FAA has determined that it may be beneficial to

provide for reasonable alternatives, e.g., if measures were carried out in an actual event, to substitute elements of that incident for some portion or all of the exercises required within this section. What is determined to be a reasonable alternative will evolve as examples that come to the attention of the FAA on a case-by-case basis.

The FAA agrees with the commenters that in the interest of security, the security-sensitive details of the contingency plan cannot be included in a public regulation.

Section 108.303 Bomb or Air Piracy Threats

Proposal: Notice 97–12 proposed to expand the requirements in current § 108.19. To ensure proper coordination, the FAA proposed to include the existing air carrier security program requirement that the air carrier notify the airport operator immediately of a specific and credible bomb threat to its aircraft or ground facilities.

Additionally, the air carrier would be required to deplane all passengers from a specifically threatened aircraft to ensure their safety and a more effective search of the aircraft.

Comments: Several commenters submitted recommendations on how certain emergencies should be handled.

FAA response: The FAA will retain the proposed regulatory language in the final rule. The submitted comments are security specific and will not be addressed in this public rule.

Section 108.305 Security Directives and Information Circulars

Proposal: To ensure that Security Directives (SD) are received promptly, the FAA proposed to require air carriers to verbally acknowledge receipt of SD's immediately, and to follow up with written confirmation within 24 hours. The FAA also proposed that the air carrier submit to its Principal Security Inspectors (PSI) copies of written measures/implementing procedures issued to their stations. This latter requirement would assist the FAA in determining that the air carrier fully understands the security requirements in the SD and that the proposed implementation is correct.

Also proposed in Notice 97–12, within 72 hours after receipt of the SD, unless stated otherwise, the air carrier would give the FAA the implementation methods that are either in effect or will be in effect when the SD is implemented. In response, the FAA would either approve the air carrier's proposed alternative measures, or notify the air carrier to modify the alternative measures to comply with the requirements of the SD, within 48 hours after receiving proposed alternative measures.

Comments: Six commenters, AS, UPS, FedEx, United Express, RAA, and ATA, state that the requirement for submitting a written description within 72 hours of the issuance of a SD precludes the timely processing and implementation of this information. The commenters encourage the FAA to provide as much advance notice of potential SD issuance as possible. Additionally, the commenters support the sharing of threat information.

One commenter, RAA, strongly recommends a thorough briefing by the FAA to the affected carriers within an immediate timeframe of 12 to 24 hours after issuance of a SD, and urges the FAA to provide as much information on the threat as possible.

FAA response: Given that SD's are put in place when the FAA determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, fast and thorough implementation is extremely important. The FAA supports the communication between the aircraft operators and their FAA contacts and believes that this communication appears to be going well in most cases. The FAA currently makes every effort to provide as much advance notification as possible.

The FAA found that in some instances, aircraft operators that do not receive SD's in a timely manner lose valuable time. The current 24-hour notification period needs to be shortened. However, the FAA has determined that all time requirements will be contained within each individual Security Directive. Depending on the individual circumstance, different time periods for acknowledging receipt of a SD may be acceptable. The final rule does not require the acknowledgement be followed up in writing, however. The final rule also omits the proposal to require that for each SD the aircraft operator provide the written implementing procedures to the FAA. This practice is not necessary in each case. The FAA may request copies of these procedures, if needed.

New § 108.305(a) sets out the practice of issuing a SD based either on a specific threat against aviation, or on a threat assessment. There are times when there is a threat assessment, but it is not known whether the specific target may be aviation. At such times it may be necessary to order measures to ensure the security of the traveling public.

The FAA also inserted a new paragraph (e) to clarify that aircraft operators may comment on SD's by submitting written data, views, or arguments to the FAA. Currently, the process entails ongoing verbal communications with the Administrator, which will not be discouraged. However, the FAA has chosen to add the language in the final rule to make it clear that the written comments are also acceptable for stating the aircraft operator's views or arguments. Submission of a comment, however, will not delay the effective date of the SD. As in the past, the FAA expects to continue to receive, and act as appropriate, verbal comments on SD's when the exigencies of the situation warrant.

Paperwork Reduction Act

Information collection requirements pertaining to this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0655. No comments were received on this information collection submission. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. This final rule is consistent with the ICAO security standards. The ICAO standards do not differentiate security requirements by aircraft seating capacity and they require the screening of passengers for all international flights.

Regulatory Evaluation Summary

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended in May 1996, requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget (OMB) directs agencies to assess the effect of regulatory changes on international trade.

This rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979) but is not considered to have a significant economic impact under Executive Order 12866. This rule is a significant action because of public interest rather than on the basis of economic impacts. This rule is not expected to have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. In addition, this rule does not contain Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply. These analyses, available in the docket, are summarized below.

Costs

The total cost of compliance of this rule, over the next 10 years, is estimated to be $40 million (or $29 million, discounted, 7 percent) in 1998 dollars (rounded). Of the 29 sections amended by the rule, only five sections will result in cost impacts. The other 24 sections will not impose costs because they contain minor definitional, clarification, and procedural changes. They also will codify a number of existing practices as contained in the aircraft operator standard security program (AOSSP). Those sections that will potentially impose costs are discussed below.

Section 108.101—Adoption and Implementation

The rule changes to this section will increase the number of aircraft operators that must adopt and maintain security programs. Specifically, section 108.101 will require that the following types of aircraft operators adopt and implement security programs:

A Full Security Program

- Applies to any U.S. scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of more than 60 seats.
- Applies to any U.S. scheduled passenger or public charter passenger operation using an aircraft having a seating configuration of less than 61 passenger seats when passengers are enplaned from or deplaned into a sterile area.

A Partial Program

- Applies to any scheduled passenger or public charter operation with an aircraft having a passenger-seating configuration of more than 30 and less than 61 seats inclusive that does not enplane from or deplane into a sterile area.
- A scheduled passenger or public charter operation with an aircraft having a passenger-seating configuration of less than 61 seats engaged in operations to, from, or outside the United States that does not enplane from or deplane into a sterile area.

A Limited Program

- Applies to any other U.S. operator (such as an all-cargo carrier) holding a certificate under part 119 that chooses to have a security program. Such an operator shall carry out and meet the requirements of § 108.101(e).

A Private Charter Program

- Applies to any U.S. private charter operation (regardless of seating configuration) in which passengers are enplaned from or deplaned into a sterile area.

As the result of this rule, an estimated 51 existing operators will incur a potential cost of compliance of about $126,500 (or $91,700, discounted) over the next 10 years. Multiplying the one-time application cost of $239.50 and the recurring staff cost of $224 by the number of potentially impacted operators of 51 over the 10-year period derived this cost of about $126,500. Similarly, new applicants will also be impacted. This evaluation assumes that three to four new applicants will file for certification in this carrier or operator group annually. This action will result in an estimated potential cost of compliance of about $16,200 (or 11,400, discounted) over the next 10 years. This cost estimate of $16,200 was derived by multiplying the one-time application cost of $239.50 and the recurring staff cost of $224 by the number of potentially impacted new applicant operators of 35 (or 3 to 4 annually) over the 10-year period. Thus, the total potential cost of compliance (rounded) for this section is estimated to be about $142,700 ($126,500 + $16,200). Note: The cost estimates in this section and in each of the following sections may not add due to rounding.

Section 108.235—Training and Knowledge of Persons With Security-Related Duties

The FAA requires extensive training for personnel who perform extraordinary security procedures for aircraft operators under part 108, in accordance with their approved security programs. An instructor trained and approved by the Administrator will conduct security training. The potential incremental cost impact on this section is estimated to be about $14.1 million (or 10.6 million, discounted) over the next 10 years. This estimate of $14.1 million was derived in three steps. First, adding the cost of training employees ($4.7 million) to the cost for an instructor ($464,600) over the 10-year period derived in the Initial Aircraft Operator Training cost estimate of $5.2 million. Second, the cost estimate of $8.9 million for annual aircraft operator training requirements was derived by combining the employee training cost estimate ($8.1 million) with that for an instructor ($787,700) over the 10-year period. And last, both of these cost components were summed.

Section 108.301—Security Contingency Plan

This section will require aircraft operators to adopt contingency plans developed by the FAA to test them periodically in coordination with the respective airport operator testing of contingency plans. Based on the informed opinion of FAA security personnel, sixteen hours will be required for each test of the contingency plan each year; the new revisions to this section will impose an incremental cost of about $24 million (or $17 million, discounted) to operators over 10 years.

This estimate of $24 million to ensure conformity with airport plans was derived by a two-step process. The first step estimated the one-time cost for ensuring conformity by conducting aircraft operator initial review of contingency plans. In the first year (2000) only, cost for this step is estimated by multiplying the number of impacted aircraft operators (192) by the number of airports involved (25) by the number of hours of work required to review plan (16) by the hourly salary of aircraft operator security personnel ($28). For example, this computation will result in an estimated one-time compliance cost of $2,150,400 (192 × 25 × 16 × $28) for the initial review of contingency plans. And, the last step of ensuring conformity consists of testing the contingency plan. Over 10 years, cost estimation for this step represents multiplying the number of impacted aircraft operators (1,920 = 192 × 10) by the number of airports involved (25) by the number of hours of work required to test plan (16) by the hourly salary of aircraft operator security personnel ($28). For example, this computation will result in an estimated compliance cost estimate of $21,504,000 (1,920 × 25 × 16 × $28), over the 10-year period, for testing of contingency plans. Thus, the total compliance cost estimate for this section was derived by summing the two cost components ($23,654,400 = $2,150,400 + $21,504,000).

Section 108.303—Bomb or Air Piracy Threats

Aircraft operators follow a set of standard procedures, mandated by the FAA, in the event that an operation is threatened by an act of terrorism (bomb threat, hijacking, etc.). Currently, this does not always require that the aircraft be cleared of passengers in the event of a terrorist threat. The FAA amends these procedures to require that an operator deplane all passengers onboard a threatened aircraft so that the appropriate security personnel may conduct a security inspection.

As the result of the anticipated delay imposed during the inspection period and associated with complete deplaning and subsequent reboarding of passengers and crew, the potential incremental cost of compliance for this rule change to section 108.303 is estimated to be $1.2 million over the next 10 years (or 850,000, discounted).

Estimating and summing the estimates for three cost components over the next 10 years derived this figure of $1.2 million. The first component is Value of Time for Aircraft ($151,500 = 100 × 4.5 × $336.75). This estimate represents the number of credible threats (100 over 10 years) multiplied by the average number of hours an aircraft is down due to a threat (4.5) by the cost per hour of downtime ($336.75). The second component is Value of Flight Crew Time estimate ($80,640 = 448 × 4.5 × $40). This estimate represents the number of aircraft flight crew employees delayed by a threat (448 over 10 years) multiplied by the average number of hours delayed due to a threat (4.5) times the average flight crew employee salary cost per hour ($40.00). The third component is the Value of Passenger Time estimate ($979,000). This estimate represents the number of passengers delayed by a threat (7,770 over 10 years) multiplied by the average number of hours delayed due to a threat (4.5) times the passenger value of time per hour ($28).

Section 108.305—Security Directives and Information Circulars

This revision will require that all aircraft operators develop and implement standardized procedures to deal with security directives and information circulars issued by the FAA. The affected aircraft operator shall specify the method by which the measures in the security directive have been implemented by providing the FAA a copy of the written measures and implementation procedures when required by the Security Directive or upon request by the Administrator. The potential incremental cost of this rule change is estimated to be $666,200 (or $468,000, discounted). This cost estimate will be imposed, as the result of the staff time required processing and responding to a directive. Thus, aircraft operators receive on average 30 directives a year. This estimate of $666,200 to notify the FAA, including acknowledgment and forwarding of results, was derived by combining the cost estimates for Staff to Process Directives ($349,400) with that for phone calls and faxes ($316,800).

Benefits

The rules to amend parts 107 and 108 are intended to enhance aviation safety for U.S. airports and aircraft operators in ways that are not currently addressed. The benefits of the rules will be a strengthening of both airport and aircraft operator security by adding to their effectiveness. Security is achieved through an intricate set of interdependent requirements.

It would be difficult to separate out any one change or set of changes in the rules to amend part 107 or part 108 and identify the extent that change or set of changes will have on preventing a criminal or terrorist act in the future. Nevertheless, these changes in both rules are an integral part of the total program needed by the airport operator, the aircraft operators, and the FAA to thwart such incidents.

It will also be extremely difficult to determine to what extent an averted terrorist incident can be credited to either airport operator security or to aircraft operator security. Accordingly, the benefits from the rules for parts 107 (airport operators) and 108 (aircraft operators) have been combined in this benefit-cost analysis. These benefits are comprised of the criminal and terrorist incidents that these rules are intended to prevent; hence, these benefits will be contrasted against the costs of the changes to parts 107 and 108. As shown in Table 1, the combined costs (rounded) of parts 107 and 108 sum to about $131 million (or $104 million, discounted).

TABLE 1.—COST SUMMARY OF PARTS 107 AND 108 FINAL RULES

[1998 dollars, rounded]

	Total costs	Discounted costs
Cost of rule for Part 107	$91.5	$74.9
Cost of rule for Part 108	39.8	29.2
Total cost of rules	131.3	104.1

Source: U.S. DOT, FAA, APO–310, June 1999.

Since 1987, the FAA has initiated rulemaking and promulgated 11 security-related amendments that have amended both parts 107 and 108. The amendments in these two rules combined with the previous rulemakings add to the effectiveness of both parts to augment aspects of the total security system to help prevent further criminal and terrorist activities.

Terrorism can occur within the United States. Members of foreign terrorist groups, representatives from state sponsors of terrorism, and radical fundamentalist elements from many nations are present in the United States. In addition, Americans are joining terrorist groups. The activities of some these individuals and groups go beyond fund raising to recruiting other persons (both foreign and U.S.) for activities that include training with weapons and making bombs. These extremists operate in small groups and can act without guidance or support from state sponsors. This makes it difficult to identify them or to anticipate and counter their activities. The following discussion outlines some of the concrete evidence of the increasing terrorist threat within the United States and to domestic aviation.

Investigation into the February 1993 attack on the World Trade Center (WTC) uncovered a foreign terrorist threat in the United States that is more serious than previously known. The WTC investigation disclosed that Ramzi Yousef had arrived in the United States

in September 1992 and had presented himself to immigration officials as an Iraqi dissident, seeking asylum. Yousef and a group of radicals in the United States then spent the next 5 months planning the bombing of the WTC and other acts of terrorism in the United States. Yousef returned to Pakistan on the evening of February 26, 1993, the same day that the WTC bombing took place. Yousef traveled to the Philippines in early 1994 and by August of the same year had conceived a plan to bomb as many as twelve U.S. airliners flying between East Asian cities and the United States.

Yousef and co-conspirators Abdul Murad and Wali Khan tested the type of explosive devices to be used in the aircraft bombings and demonstrated the group's ability to assemble such a device in a public place, in the December 1994 bombing of a Manila theater. Later the same month, the capability to get an explosive device past airport screening procedures and detonate it aboard an aircraft also was successfully tested when a bomb was placed by Yousef aboard the first leg of Philippine Airlines Flight 424 from Manila to Tokyo. The device detonated during the second leg of the flight, after Yousef had deplaned at an intermediate stop in the Philippine city of Cebu.

Preparations for executing the plan were progressing rapidly. However, the airliner-bombing plot was discovered in January 1995 by chance after a fire led Philippine police to the Manila apartment where the explosive devices were being assembled. Homemade explosives, batteries, timers, electronic components, and a notebook full of instructions for building bombs were discovered. Subsequent investigations of computer files taken from the apartment revealed the plan, in which 5 terrorists were to have placed explosive devices aboard United, Northwest, and Delta airline flights. In each case, a similar technique was to be used. A terrorist would fly the first leg of a flight out of a city in East Asia, planting the device aboard the aircraft and then deplane at an intermediate stop. The explosive device would then destroy the aircraft, continuing on a subsequent leg of the flight to the United States. It is likely that thousands of passengers would have been killed if the plot had been successfully carried out.

Yousef, Murad and Khan were arrested and convicted in the bombing of Philippine Airlines flight 424 and in the conspiracy to bomb U.S. airliners. Yousef was sentenced to life imprisonment for his role in the Manila plot, while the two other co-conspirators have been convicted. Yousef also was convicted and sentenced to 240 years for the World Trade Center bombing. However, there are continuing concerns about the possibility that other conspirators remain at large. The airline-bombing plot, as described in the files of Yousef's laptop computer, would have had 5 participants. This suggests that, while Yousef, Murad, and Khan are in custody, there may be others at large with the knowledge and skills necessary to carry out similar plots against civil aviation.

The fact that Ramzi Yousef was responsible for both the WTC bombing and the plot to bomb as many as twelve United States aircraft shows that: (1) foreign terrorists are able to operate in the U.S. and (2) foreign terrorists are capable of building and artfully concealing improvised explosive devices that pose a serious challenge to aviation security. This, in turn, suggests that foreign terrorists conducting future attacks in the U.S. may choose civil aviation as a target. Civil aviation's prominence as a prospective target is clearly illustrated by the circumstances of the 1995 Yousef conspiracy.

The bombing of a Federal office building in Oklahoma City, Oklahoma shows the potential for terrorism from domestic groups. While the specific motivation that led to the Oklahoma City bombing would not translate into a threat to civil aviation, the fact that domestic elements have shown a willingness to carry out attacks resulting in indiscriminate destruction is worrisome. At a minimum, the possibility that a future plot hatched by domestic elements could include civil aircraft among possible targets must be taken into consideration. Thus, an increasing threat to civil aviation from both foreign sources and potential domestic ones exists and needs to be prevented and/or countered.

That both the international and domestic threats have increased is undeniable. While it is extremely difficult to quantify this increase in threat, the overall threat can be roughly estimated by recognizing the following:

- U.S. aircraft and American passengers are representatives of the United States, and therefore are targets;
- Up to 12 airplanes could have been destroyed and thousands of passengers killed in the actual plot described above;
- These plots came close to being carried out; it was only through a fortunate discovery and then extra tight security after the discovery of the plot that these incidents were thwarted;
- It is just as easy for international terrorists to operate within the United States as domestic terrorists, as evidenced by the World Trade Center bombing; therefore,
- Based on these facts, the increased threat to domestic aviation could be seen as equivalent to some portion of 12 Class I Explosions on U.S. airplanes. (The FAA defines Class I Explosions as incidents that involve the loss of an entire aircraft and incur a large number of fatalities.)

In 1996, both Congress and the White House Commission on Aviation Safety and Security (Commission) recommended further specific actions to increase civil aviation security. The Commission stated that it believes that the threat against civil aviation is changing and growing, and recommended that the Federal Government commit greater resources to improving civil aviation security. President Clinton, in July 1996, declared that the threat of both foreign and domestic terrorism to aviation is a national threat. The U.S. Congress recognized this growing threat in the Federal Aviation Reauthorization Act of 1996 by: (1) authorizing money for the purchase of specific anti-terrorist equipment and the hiring of extra civil aviation security personnel; and (2) requiring the FAA to promulgate additional security-related regulations.

In the absence of increased protection for the U.S. domestic passenger air transportation system, it is conceivable that the system would be targeted for future acts of terrorism. If even one such act were successful, the traveling public would demand immediate increased security. Providing immediate protection on an ad hoc emergency basis would result in major inconveniences, costs, and delays to air travelers that may substantially exceed those imposed by the planned and measured steps contained in these rules.

Based on the above statement, the FAA concludes that these rules set forth the best method to provide increased security at the present time. The FAA considered to the limited extent possible, the benefits of these rules in reducing the costs associated with terrorist acts. The following analysis describes alternative assumptions regarding the number of terrorist acts prevented and potential market disruptions averted that result in these rules' benefits to be at least equal to these rules' costs. This is intended to allow the reader to judge the likelihood of benefits of these rules equaling or exceeding their cost.

The cost of a catastrophic terrorist act can be estimated in terms of lives lost, property damage, decreased public utilization of air transportation, etc.

Terrorist acts can result in the complete destruction of an aircraft with the loss of all onboard. The FAA considers a Boeing 737 as representative of a typical airplane flown domestically. The fair market value of a Boeing 737 is $16.5 million, and the typical 737 airplane has 113 seats. It flies with an average load factor of about 65 percent, which translates into 73 passengers per flight; the airplane will also have 2 pilots and 3 flight attendants.

A terrorist catastrophic event could also result in fatalities on the ground. There were 11 such fatalities in the Pan Am 103 explosion and 15 in a collision of an AeroMexico airplane with a Piper PA–28 airplane over Cerritos, California in 1986. However, looking at the number of accidents including aircraft covered by these rules and the number of fatalities on the ground over the last 10 years, the average fatality was less than 0.5 persons per accident. Therefore, the FAA will not assume any ground fatalities in this analysis.

In order to provide a benchmark comparison of the expected safety benefits of rulemaking actions with estimated costs in dollars, a minimum of $2.7 million is used as the value of avoiding an aviation fatality (based on the willingness to pay approach for avoiding a fatality). In these computations, the present value of each incident was calculated using the current discount rate of 7 percent. Applying this value, the total fatality loss of a single Boeing 737 is represented by a cost of about $211 million (78 x $2.7 million). The discounted cost of these final rules is $104 million, while the discounted benefits for each Class I Explosion averted comes to about $191 million. Hence, if these rules prevent one Class I explosion, the benefits of these rules will exceed their costs. In view of the recent history of terrorist incidents in the United States, a potential catastrophic loss of at least this magnitude is considered to be plausible in the absence of this rule.

The FAA also used the same set of benefits in two proposed rulemakings, *Security of Checked Baggage on Flights Within the United States and Certification of Screening Companies;* all these rulemakings have the same goal—to significantly increase the protection to U.S. citizens and other citizens traveling on U.S. domestic aircraft operator flights from acts of terrorism as well as also increase protection for those operating aircraft. Because the combined discounted costs of all of these rules exceeds $191 million, the cost of one Class I Explosion, the FAA calculated the economic impact and the potential averted market disruption sufficient, in combination with safety benefits, to justify all these rulemakings.

Certainly, the primary concern of the FAA is preventing loss of life, but there are other considerations as well. Another large economic impact is related to decreased airline travel following a terrorist event. A study performed for the FAA indicated that it takes about 9 to 10 months for passenger traffic to return to the pre-incident level after a single event. Such a reduction occurred immediately following the destruction of Pan Am Flight 103 over Lockerbie, Scotland in December 1988.

In general, 1988 enplanements were above 1987's. There was a dramatic fall-off in enplanement in the first 3 months of 1989 immediately following the Pan Am 103 tragedy, and it took until November 1989 for enplanements to approximate their 1987 and 1988 levels. By 1990, enplanements were at the level they were in 1988. Trans-Atlantic enplanements increased, from 1985 to 1988, at an annual rate of 10.7 percent. Projecting this rate to 1989 would have yielded 1989 enplanements of 8.1 million, or 1.6 million more than Pan Am actually experienced. This represents almost a 20 percent reduction in expected enplanements caused by the destruction of Pan Am 103 by terrorists.

The estimated effect of a successful terrorist act on the domestic market has not been studied. Although there are important differences between international and domestic travel (such as the availability of alternative destinations and means of travel), the FAA believes that the traffic loss associated with international terrorist acts is representative of the potential domestic disruption.

There is a social cost associated with travel disruptions and cancellations caused by terrorist events. The cost is composed of several elements. First is the loss associated with passengers opting not to fly—the value of the flight to the passenger (consumer surplus) in the absence of increased security risk and the profit that would be earned by the airline (producer surplus). Even if a passenger opts to travel by air, the additional risk may reduce the associated consumer surplus. Second, passengers who cancel plane trips would not purchase other goods and services normally associated with the trip, such as meals, lodging, and car rental, which would also result in losses of related consumer and producer surplus. Finally, although spending on air travel would decrease, pleasure and business travelers may substitute spending on other goods and services (which produces some value) for the foregone air trips. Economic theory suggests that the summation of the several societal value impacts associated with canceled flights would be a net loss. As a corollary, prevention of market disruption (preservation of consumer and producer welfare) through increased security created by these rules is a benefit.

The FAA is unable to estimate the actual net societal cost of travel disruptions and the corollary benefit gained by preventing the disruptions. However, there is a basis for judging the likelihood of attaining benefits by averting market disruption sufficient, in combination with safety benefits, to justify the rule. The discounted cost of these four rulemakings is $2.3 billion, while the discounted benefits for each Class I Explosion averted comes to $191 million. Hence, if one Class I Explosion is averted, the present value of losses due to market disruption must at least equal $3.1 billion ($3.3 billion less $191 million—one Class I Explosion). If two Class I Explosions are averted, the present value of losses due to market disruption must at least equal $2.9 billion ($3.3 billion less $400 million—two Class I Explosions).

The value of market loss averted is the product of the number of foregone trips and the average market loss per trip (combination of all impacts on consumer and producer surplus). If one uses an average ticket price of $160 as a surrogate of the combined loss, preservation of a minimum of 13.3 million lost trips would be suffered, in combination with the safety benefits of one averted Class I Explosion, for the benefits of these rulemakings to equal costs. This represents less than 5 percent of annual domestic trips (the traffic loss caused by Pan Am 103 on trans-Atlantic routes was 20 percent). Calculations can be made on the minimum number of averted lost trips needed if the net value loss was only 75 percent of the ticket price or exceeded the ticket price by 25 percent. If total market disruption cost was $130 or $200 per trip, a minimum retention of 16.3 and 10.6 million lost trips, respectively, would need to occur for the benefits to equal the costs of these rulemakings, assuming one Class I Explosion would be prevented. The FAA requests comments on the potential size of market loss per trip and number of lost trips averted.

Table 2 presents combinations of the total number of trips not taken as a result of one to four Class I Explosions at alternative values per lost trip that would be sufficient to generate

monetary benefits in excess of the estimated costs of these rulemakings.

TABLE 2.—NUMBER OF TRIPS NOT TAKEN AS A RESULT OF ONE TO FOUR CLASS I EXPLOSIONS AVOIDED

[For Benefits to Equal Costs]

Number of Class I explosions avoided	Assumed net market loss per trip (in 1998 dollars)		
	$130 (in millions)	$160 (in millions)	$200 (in millions)
1	16.3	13.3	10.6
2	14.8	12.1	9.6
3	13.4	10.9	8.7
4	11.9	9.7	9.7

Source: FAA, APO–310, June 1999.

The FAA stresses that the range of trips discussed in Table 2 should be looked upon as examples and does not represent an explicit endorsement that these would be the exact number of trips that would actually be lost. As noted above, it is important to compare, to the limited extent possible, the cost of these rulemakings to some estimate of the benefit of increased security it will provide as that level of security relates to the threat level.

Based on changes in the domestic security risk, the White House Commission recommendation, recent Congressional mandates, and the known reaction of Americans to any aircraft operator disaster, the FAA believes that pro-active regulation is warranted to prevent terrorist acts (such as Class I Explosions) before they occur.

Comparison of Costs and Benefits

This rule, combined with the part 107 rule, will cost $131 million ($104 million, discounted) over 10 years. This cost needs to be compared to the possible tragedy that could occur if a bomb or some other incendiary device was to get onto an airplane and cause an explosion. Recent history not only points to Pan Am 103's explosion over Lockerbie, Scotland, but also the potential of up to 12 American airplanes being blown up in Asia in early 1995.

Since the cost of a Class I Explosion on a large domestic airplane is approximately $272 million, coupled with the relative low cost of compliance ($131 million), this rule (and the rule for part 107) will need to prevent one Class I Explosion over the next 10 years in order for quantified benefits to exceed costs. In view of the recent history of terrorist incidents in the United States, a potential catastrophic loss of at least this magnitude is considered to be plausible in the absence of this rule.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the proposed rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals or rules and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration has defined small business entities relating to aircraft operators (Standard Industrial Codes 4512 and 4522) required to comply with part 108 as entities comprising 1,500 or fewer employees. These small entities include: (1) Scheduled aircraft operators whose fleet consists primarily (if not entirely) of aircraft with more than 60 passenger seats, (2) Other scheduled aircraft operators whose fleet consists primarily (if not entirely) of aircraft with less than 60 passenger seats (e.g., commuter operators and small majors/nationals types), and (3) Unscheduled aircraft operators. Unscheduled operators include primarily air taxi and charter types. These types of operators generally operate aircraft with less than 60 passenger seats.

The final rule will potentially impact small U.S. aircraft operators engaged in charter services and selected helicopter operators. These aircraft operators are engaged in services under parts 121 and 135. An examination of small entities under each of these parts, by size of aircraft, will be discussed by each amended change to a section as follows. Multiplying them by a capital recovery factor of .14238 [10 years, 7 percent], has annualized the non-annual costs of the rule.

For purposes of this evaluation, a significant economic impact refers to one percent of the annual median revenue ($222,200, at the 50th percentile, in 1998 dollars) of the small part 121 scheduled aircraft operators subject to part 108 requirements. In addition, a significant economic impact on unscheduled part 135 operators (2,718) refers to one percent their annual median revenue ($5,700, at the 50th percentile). The FAA has identified small operators ranging from 51 to 2,930 that may be impacted by this definition. Three of the five following sections impose potential costs only on scheduled operators. And the other two following sections impose costs on both groups of scheduled and non-scheduled aircraft operators.

Section 108.101—Adoption and Implementation

The rule change to Section 108.101 will only affect estimated 51 small aircraft operators. This estimate of 51 includes: 15 non-scheduled domestic service operators with greater than 60 seats, 11 scheduled international service

operators with fewer than 31 seats, and 25 non-scheduled international service operators (including air taxi operations). The rule change to this section will impose an annualized cost of compliance estimate of $288 for each of the 51 aircraft operators. Employing two steps derived the estimate of $288: First, by dividing the discounted cost of compliance estimate for this section ($103,100) by the number of potentially impacted aircraft operators (51). This calculation results in a discounted 10-year per entity cost estimate of $2,022. And last, the cost estimate of $2,022 was multiplied by the 10-year (7%) capital recovery factor of 0.14238. This same procedure was used for each of the following sections. This section of the rule will primarily impact small non-scheduled operators (40).

Given the nature of their operations (namely, private charters) and the size of their aircraft, each of these aircraft operators is considered to be a small entity. That is, each of these operators is assumed to have less than 1,500 employees. This same assessment applies equally to each of those aircraft operators discussed in the following sections, unless otherwise stated.

Section 108.235—Training and Knowledge of Persons with Security-related Duties

The rule change to Section 108.235 will affect an estimated 2,930 small aircraft operators. This estimate of 2,930 includes: 74 scheduled operators with between 31 and 60 passenger seats, 131 scheduled operators with less than 31 passenger seats, 15 non-scheduled operators with more than 60 passenger seats, and 2,710 non-scheduled operators with less than 61 passenger seats. This rule change to section 108.235 will impose an annualized cost of compliance estimate of $517 for each of the 2,930 small aircraft operators. This section of the rule will primarily impact non-scheduled operators (2,725).

Section 108.301—Contingency Plans

The rule change to Section 108.301 will affect an estimated 172 (192 less 20 large aircraft operators) small U.S. aircraft operators. This will impose an annualized cost of compliance estimate of $12,691 for each of the 172 small operators that will be affected by this section. This section of the rule will only impact domestic scheduled aircraft operators, regardless of the size of their aircraft (172).

Section 108.303—Bomb or Piracy Threats

The rule change to Section 108.303 will affect all 172 small U.S. aircraft operators. This rule change to section 108.303 will impose an annualized cost of compliance estimate of $629 for each of the 172 small aircraft operators.

Section 108.305—Information Circulars

The rule change to Section 108.305 will affect an estimated 172 U.S. aircraft operators. This rule change to section will impose an annualized cost of compliance of $347 for each of the 172 small operators that will be affected by this section.

The total annualized cost of compliance for each of the scheduled operators is expected to be nearly $14,470 and about $800 for each of the non-scheduled operators. Since the total annualized cost of compliance of about $14,470 is less than the significant economic impact amount of $222,200, this rule will not impose a significant economic impact on a substantial number of scheduled small entities. Similarly, the rule is not expected to impose a significant economic impact on a substantial number of small non-scheduled operators, since the annualized cost of compliance (about $800) for each operator will not exceed the significant economic impact amount ($5,700). In view of the aforementioned cost impact discussion and pursuant to the Regulatory Flexibility Act [5 U.S.C. 605(b)], the FAA certifies with reasonable certainty that the final rule will not impose a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

In accordance with the Office of Management and Budget memorandum dated March 1983, federal agencies engaged in rulemaking activities are required to assess the effects of regulatory changes on international trade.

The rule will have no impact on the competitive posture of either U.S. aircraft operators doing business in foreign countries or foreign aircraft operators doing business in the United States. This assessment is based on the fact that the rule will not have a significant economic impact on any of the potentially impacted operators. Most of the requirements imposed by this rule are aimed at strengthening the requirements of aircraft operators with existing full and partial security programs. However, this rule will require scheduled passenger or public charter aircraft operators, with more than 60 passenger seats, to adopt and implement full security programs. In addition, this rule will require those scheduled passenger or public charter aircraft operators, with less than 61 passenger seats, to adopt and implement security programs prior to enplaning or deplaning passengers into sterile areas at airports. Private charter aircraft operators will have to comply with a similar requirement. Those aircraft operators who do not routinely deplane or enplane passengers into sterile areas at airports will be the least impacted by this rule. Such operators will only have a partial security program. When engaged in foreign travel, these operators usually fly from the U.S. to a foreign destination and return. These operators do not have aircraft based in foreign countries for flights to the U.S. and other foreign countries. Thus, neither domestic nor foreign aircraft operators will be affected disproportionately by these new requirements. These new requirements, therefore, will not cause a competitive trade disadvantage for U.S. aircraft operators operating overseas or for foreign aircraft operators operating in the United States.

Federalism Implications

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. There are two sections that have an impact on the States, § 108.219, Carriage of accessible weapons, and § 208.221, Carriage of prisoners under the control of armed law enforcement officers. State and local law enforcement officers at times have a need to travel armed and to escort prisoners. The FAA has consulted extensively with representatives of State and local law enforcement agencies. In 1992 the carriage of Weapons Task Force was created as a committee within the Aviation Security Advisory Committee. The Task Force includes representatives from Federal, State, and local law enforcement, as well as aircraft operators and airport operators. Since that time the Task Force has met on many occasions. Their work includes a model training program developed in 1994 for the carriage of weapons and escort of prisoners, which most Federal and State agencies now use to train their personnel. The proposals in Notice 97–12 were based largely on Task Force recommendations, and the FAA continues to consult with them on these issues. The rules as adopted require little change from the practices that have been in place since the mid 1990's.

Accordingly, the FAA has determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. In 1998 dollars, this estimate of $100 million translates into $105 million using the GDP implicit price deflators for 1995 and 1998. Section 204(a) of the Act, Title 2 of the United States Code 1534(a), requires the Federal agency to develop an effectiveness process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed or final rule "significant intergovernmental mandate." A significant intergovernmental mandate under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. For the purpose of this evaluation, this estimate expressed in 1998 dollars translates into $105 million. Section 203 of the Act, Title 2 of the United States Code 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity any affected small governments to provide input in the development of rules.

Based on the evaluation and impacts reported herein, the final rule is not expected to meet the $100 million per year cost threshold ($105 million, in 1998 dollars). Consequently, it would not impose a significant cost on or uniquely affect small governments. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to the final rule.

Environmental Analysis

Federal Aviation Administration Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

Distribution/Derivation Tables

The following distribution table is provided to illustrate how the current regulation relates to the revised part 108, and the derivation table identifies how the revised part 108 relates to the current rule.

DISTRIBUTION TABLE

Old Section	New Section
108.1(a)	108.1(a).
108.1(b)	Removed.
108.3	108.3.
108.4	108.7.
108.5(a)(1) and (2)	108.101(a)(1) and (2).
108.5(a)(3)	108.101(c)(1).
108.5(a)(4)	108.101(d)(3).
108.5(b)	108.101(d)(2) and (e).
108.7(a)	108.103(a).
108.7(b)	108.103(c).
108.7(c)	108.103(b).
108.9(a)	108.201(e).
108.9(b)	108.201(d) and 108.203(d).
108.9(c)	108.201(b).
108.9(d)	108.201(g).
108.10(a)(1)	108.215(b) and (c).
108.10(a)(2)	108.215(c).
108.10(b) and (c)	108.215(b) and (c).
108.11(a)	108.219(a)and (b).
108.11(a)(4)	108.223(e).
108.11(b)	108.219(a) and (b).
108.11(c) and (d)	108.203(e).
108.11(e)	108.219(c).
108.11(f)	Removed.
108.13 (introductory text).	108.225 (introductory text).
108.13(a)	108.225(b).
108.13(b) (first clause).	108.203.
108.13(b) (second clause).	Removed.
108.13(c)	108.203(c)(1) and 108.205(b)(1).
108.13(d)	108.225(c).
108.14(a)–(c)	108.223(b)–(d).
108.15(a) and (b)	108.217(a) and (b).
108.17(a)	108.209(a).
108.17(a)(1)	Removed.
108.17(a)(2) and (3)	108.209(a)(1) and (2).
108.17(a)(4)	Removed.
108.17(a)(5)	108.209(a)(3).
108.17(b)–(d)	108.209(b)–(d).
108.17(e)	108.211(b) and 108.209(e).
108.17(f)–(h)	108.209(f)–(h).
108.18(a)–(c)	108.305(b)–(d).
108.18(d)	108.305(f).
108.19(a) and (b)	108.303(a) and (b).
108.19(c)	108.303(d).
108.20	108.211(a).
108.21 introductory text.	108.221(a)(1).
108.21(a)(1)	108.219(a)(1).
108.21(a)(2)	108.221(e)(1).
108.21(a)(3)	108.221(d)(3).
108.21(a)(4)	Removed.
108.21(a)(5)	108.221(d)(1) and (2).
108.21(a)(6)(i)	Removed.
108.21(a)(6)(ii)	108.221(e)(3).
108.21(a)(7)	108.221(f).
108.21(a)(8)	108.221(f).
108.21(a)(8)	108.221(e)(4).
108.21(b)(1) and (2)	108.221(h).
108.21(b)(2) clause on LEOs.	108.219(c)(1).
108.21(c)	108.221(e)(5).
108.21(d)	108.219(c)(2).
108.21(e)	108.221(a)(2).
108.23(a)	108.233(a) and 108.235(a).
108.23(b)	108.233(b).
108.25(a)	108.105(a).
108.25(b) introductory clause.	108.105(c).
108.25(b)(1) and (2)	108.105(c).
108.25(b)(3)	108.105(d).
108.25(c)	108.105(b).
108.27	108.5(b).
108.29(a)(1)	108.235(b).
108.29(a)(2)	108.215(b).
108.29(b)	108.235(a).
108.31	108.213.
108.33	108.229.

DERIVATION TABLE

New Section	Old Section
108.1(a)(1)–(3)	108.1(a)(1)–(3).
108.1(a)(4)	108.1(a)(5).
108.1(a)(5)	108.1(a)(4).
108.1(b)	New.
108.3	108.3.
108.5(a)	New.
108.5(b)	108.27.
108.5(c)	New.
108.5(d)	New
108.7	1108.4.
108.9	New.
108.101(a)	108.5(a)(1) and (2).
108.101(b)	New.
108.101(c)(1)	108.5(a)(3).
108.101(c)(2)	New.
108.101(d)(1)	108.5(a)(3).
108.101(d)(2)	108.5(b).
108.101(d)(3)	108.5(a)(4).
108.101(e)	108.5(b).
108.103(a)	108.7(a).
108.103(b)	108.7(c).
108.103(c)	108.7(b).
108.105(a)	108.25(a).
108.105(b)	108.25(c).
108.105(c)	108.25(b)(1) and (2).
108.105(d)	108.25(b)(3).
108.201(a)	108.9(a).
108.201(b)	108.9(c).

DERIVATION TABLE—Continued

New Section	Old Section
108.201(c)	107.20.
108.201(d)	108.9(b).
108.201(e)(1)	108.9(a).
108.201(e)(2)	107.21.
108.201(f)(1)	107.21(b)(1).
108.201(f)(2)	108.11(a).
108.201(f)(3)	New.
108.201(g)	108.9(d).
108.203(a)	108.9(a).
108.203(b)	108.13(b), first clause.
108.203(c)	108.13(c).
108.203(d)	108.9(b).
108.203(e)	108.11(c) and (d).
108.203(f)	108.11(c).
108.203(g)	New.
108.205(a)	Intent of 108.9(a).
108.205(b)	108.13 introductory text, (b) first clause, and (c).
108.205(c)	108.9(b).
108.207	New.
108.209(a)	108.17(a).
108.209(a)(1) and (2)	108.17(a)(2) and (3).
108.209(a)(3)	108.17(a)(5).
108.209(b)–(h)	108.17(b)–(h).
108.211(a)	108.20.
108.211(b)	108.17(e).
108.213	108.31.
108.215(a)	New.
108.215(b)	108.10(a)(1) and 108.29(a)(2).
108.215(b)(1) and (2)	108.10(b).
108.215(c)	108.10(a)(2) and (c).
108.217(a) and (b)	108.15(a) and (b).
108.219(a)	108.11(a) and (b).
108.219(b)	108.11(a) and (b).
108.219(c)	108.11(e).
108.219(d)	New.
108.221(a)(1)	108.21(a).
108.221(a)(2)	108.21(e).
108.221(a)(3)	New.
108.221(b)	New.
108.221(c)	New
108.221(d)(1) and (2)	108.21(a)(5).
108.221(d)(3)	108.21(a)(3).
108.221(e)(1)	108.21(a)(2).
108.221(e)(2)	New.
108.221(e)(3)	108.21(a)(6)(ii).
108.221(e)(4)	108.21(a)(8).
108.221(e)(5)	108.21(c).
108.221(f)	108.21(7).
108.221(g)	New.
108.221(h)	108.21(b).
108.223(a)	108.11(a).
108.223(b)–(d)	108.14(a)–(c).
108.223(e)	108.11(a)(4).
108.223(f)	New.
108.223(g)	108.7(c)(4).
108.223(h)	New.
108.225 introductory text.	108.13 introductory text.
108.225(a)	New.
108.225(b)	108.13(a).
108.225(c)	108.13(d).
108.227	New.
108.229	108.33.
108.231	New.
108.233(a)	108.23(a).
108.233(b) and (c)	108.23(b).
108.235(a)	108.23(a).
108.235(b)	108.29(a)(1).

DERIVATION TABLE—Continued

New Section	Old Section
108.301	New.
108.303(a)(1) and (2)	108.19(a).
108.303(a)(3)	New.
108.303(b)	108.19(b).
108.303(c)	New.
108.303(d)	108.19(c).
108.305(a)	New.
108.305(b)–(d)	108.18(a)–(c).
108.305(e)	New
108.305(f)	108.18(d).

List of Subjects in 14 CFR Part 108

Air carrier, Aircraft, Airmen, Airports, Arms and munitions, Explosives, Incorporation by reference, Law enforcement officers, Reporting and recordkeeping requirements, Security measures, X-rays.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration revises 14 CFR part 108 to read as follows:

PART 108—AIRCRAFT OPERATOR SECURITY

Subpart A—General

Sec.
108.1 Applicability.
108.3 Definitions.
108.5 Inspection authority.
108.7 Falsification.
108.9 Security responsibilities of employees and other persons.

Subpart B—Security Program

108.101 Adoption and implementation.
108.103 Form, content, and availability.
108.105 Approval and amendments.

Subpart C—Operations

108.201 Screening of persons and accessible property.
108.203 Acceptance and screening of checked baggage.
108.205 Acceptance and screening of cargo.
108.207 Use of metal detection devices.
108.209 Use of X-ray systems.
108.211 Use of explosives detection systems.
108.213 Employment standards for screening personnel.
108.215 Security coordinators.
108.217 Law enforcement personnel.
108.219 Carriage of accessible weapons.
108.221 Carriage of prisoners under the control of armed law enforcement officers.
108.223 Transportation of Federal Air Marshals.
108.225 Security of aircraft and facilities.
108.227 Exclusive Area Agreement.
108.229 Employment history, verification, and criminal history records checks.
108.231 Airport-approved and exclusive area personnel identification systems.
108.233 Security coordinators and crewmembers, training.
108.235 Training and knowledge for persons with security-related duties.

Subpart D—Threat and Threat Response

108.301 Contingency plan.
108.303 Bomb or air piracy threats.
108.305 Security Directives and Information Circulars.

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44705, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

Subpart A—General

§ 108.1 Applicability.

(a) This part prescribes aviation security rules governing the following:

(1) The operations of aircraft operators holding operating certificates for scheduled passenger operations, public charter passenger operations, private charter passenger operations, and other aircraft operators adopting and obtaining approval of an aircraft operator security program.

(2) Each person aboard an aircraft operated by an aircraft operator described in paragraph (a)(1) of this section.

(3) Each person at an airport at which the operations described in paragraph (a) (1) of this section are conducted.

(4) Each person who files an application or makes entries into any record or report that is kept, made, or used to show compliance under this part, or to exercise any privileges under this part.

(5) Each aircraft operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular issued by the Assistant Administrator for Civil Aviation Security.

(b) Except as provided in § 108.105, the authority of the Administrator under this part is also exercised by the Assistant Administrator for Civil Aviation Security and the Deputy Assistant Administrator for Civil Aviation Security, and any individual formally designated to act in their capacity. The authority of the Assistant Administrator, including matters under § 108.105, may be further delegated.

§ 108.3 Definitions.

The definitions in part 107 of this chapter apply to this part. For purposes of this part, part 107 of this chapter, and security programs under parts 107 and 108 of this chapter, the following definitions also apply:

Aircraft operator means a holder of an air carrier operating certificate or an operating certificate under part 119 of this chapter that conducts operations described in § 108.101 (a), (b), (c), and (e).

Aircraft operator security program means a security program approved by the Administrator under this part.

Assistant Administrator means the FAA Assistant Administrator for Civil Aviation Security as described in 49 U.S.C. 44932.

Cargo means property tendered for air transportation accounted for on an air waybill. All accompanied commercial courier consignments, whether or not accounted for on an air waybill, are also classified as cargo. Aircraft operator security programs further define the term cargo.

Checked baggage means property tendered by or on behalf of a passenger and accepted by an aircraft operator for transport, which is inaccessible to passengers during flight. Accompanied commercial courier consignments are not classified as checked baggage.

Passenger seating configuration means the total maximum number of seats for which the aircraft is type certificated that can be made available for passenger use aboard a flight, regardless of the number of seats actually installed, and includes that seat in certain aircraft which may be used by a representative of the Administrator to conduct flight checks but is available for revenue purposes on other occasions.

Private charter means any aircraft operator flight—

(1) For which the charterer engages the total passenger capacity of the aircraft for the carriage of passengers; the passengers are invited by the charterer; the cost of the flight is borne entirely by the charterer and not directly or indirectly by any individual passenger; and the flight is not advertised to the public, in any way, to solicit passengers.

(2) For which the total passenger capacity of the aircraft is used for the purpose of civilian or military air movement conducted under contract with the Government of the United States or the government of a foreign country.

Public charter means any charter flight that is not a private charter.

Scheduled passenger operation means an air transportation operation (a flight) from identified air terminals at a set time, which is held out to the public and announced by timetable or schedule, published in a newspaper, magazine, or other advertising medium.

Sterile area means a portion of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by an aircraft operator or foreign air carrier through the screening of persons and property in accordance with a security program.

§ 108.5 Inspection authority.

(a) Each aircraft operator shall allow the Administrator, at any time or place, to make any inspections or tests, including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or other airport tenants with—

(1) This part, parts 107, 109, 129, and 191 of this chapter and any security program approved under those parts; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of the Administrator, each aircraft operator shall provide evidence of compliance with this part and its security program, including copies of records.

(c) The Administrator may enter and be present within secured areas, AOA's, and SIDA's without access media or identification media issued or approved by an airport operator or aircraft operator, in order to inspect or test compliance, or perform other such duties as the Administrator may direct.

(d) At the request of the Administrator and the completion of SIDA training as required in a security program, each aircraft operator shall promptly issue to a FAA Special Agent access and identification media to provide the FAA Special Agent with unescorted access to, and movement within, areas controlled by the aircraft operator under an exclusive area agreement.

§ 108.7 Falsification.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application for any security program, access medium, or identification medium, or any amendment thereto, under this part.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compliance with this part, or to exercise any privileges under this part.

(c) Any reproduction or alteration, for fraudulent purpose, of any report, record, security program, access medium, or identification medium issued under this part.

§ 108.9 Security responsibilities of employees and other persons.

(a) No person may tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure implemented under this part.

(b) No person may enter, or be present within, a secured area, AOA, SIDA, or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence in, such areas.

(c) No person may use, allow to be used, or cause to be used any airport-approved or aircraft operator-issued access medium or identification medium that authorizes the access, presence, or movement of persons or vehicles in secured areas, AOA's, or SIDA's, in any other manner than that for which it was issued by the appropriate authority under this part, or part 107 or part 129 of this chapter.

(d) The provisions of this section do not apply to persons authorized by an airport operator, aircraft operator, or foreign air carrier in accordance with its security program, or by the Administrator to conduct inspections for compliance with this part, part 107, or part 129 of this chapter, or 49 U.S.C. Subtitle VII, while they are conducting inspections.

Subpart B—Security Program

§ 108.101 Adoption and implementation.

(a) *Full program.* Each aircraft operator shall carry out Subparts C and D of this part and shall adopt and carry out a security program that meets the requirements of § 108.103 for any of the following operations:

(1) A scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of more than 60 seats.

(2) A scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of less than 61 seats when passengers are enplaned from or deplaned into a sterile area.

(b) *Private charter program.* Each aircraft operator shall carry out §§ 108.201, 108.207, 108.209, 108.213, 108.215, 108.217, 108.219, 108.229, 108.233, 108.235, 108.303, and 108.305 and shall adopt and carry out a security program that meets the applicable requirements of § 108.103 for any private charter operation in which passengers are enplaned from or deplaned into a sterile area.

(c) *Partial program—adoption.* Each aircraft operator shall carry out the requirements specified in paragraph (d) of this section for any of the following operations:

(1) A scheduled passenger or public charter passenger operation with an aircraft having a passenger-seating configuration of more than 30 and less than 61 seats that does not enplane from or deplane into a sterile area.

(2) A scheduled passenger or public charter passenger operation with an aircraft having a passenger-seating configuration of less than 61 seats engaged in operations to, from, or outside the United States that does not enplane from or deplane into a sterile area.

(d) *Partial program—content.* For operations described in paragraph (c) of this section, the aircraft operator shall carry out the following, and shall adopt and carry out a security program that meets the applicable requirements of § 108.103(c):

(1) The requirements of § § 108.215, 108.217, 108.219, 108.235, 108.301, 108.303, and 108.305.

(2) Such other provisions of Subparts C and D of this part as the Administrator has approved upon request.

(3) The remaining requirements of Subparts C and D of this part when the Administrator notifies the aircraft operator in writing that a security threat exists concerning that operation.

(e) *Limited program.* The Administrator may approve a security program after receiving a request by an aircraft operator, holding a certificate under part 119 of this chapter other than one identified in paragraphs (a), (b), or (c) of this section. The aircraft operator shall—

(1) Carry out selected provisions of Subparts C and D of this part,

(2) Carry out § 108.305, as specified in its security program, and

(3) Adopt and carry out a security program that meets the applicable requirements of § 108.103(c).

§ 108.103 Form, content, and availability.

(a) *General requirements.* Each security program shall:

(1) Provide for the safety of persons and property traveling on flights provided by the aircraft operator against acts of criminal violence and air piracy, and the introduction of explosives, incendiaries, or deadly or dangerous weapons aboard an aircraft.

(2) Be in writing and signed by the aircraft operator or any person delegated authority in this matter.

(3) Be approved by the Administrator.

(b) *Availability.* Each aircraft operator having a security program shall:

(1) Maintain an original copy of the security program at its corporate office.

(2) Have accessible a complete copy, or the pertinent portions of its security program, or appropriate implementing instructions, at each airport served. An electronic version of the program is adequate.

(3) Make a copy of the security program available for inspection upon request of the Administrator.

(4) Restrict the distribution, disclosure, and availability of information contained in the security program to persons with a need-to-know as described in part 191 of this chapter.

(5) Refer requests for such information by other persons to the Administrator.

(c) *Content.* The security program shall include, as specified for that aircraft operator in § 108.101, the following:

(1) The procedures and description of the facilities and equipment used to perform screening functions specified in § 108.201 regarding persons and their accessible property.

(2) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.203 regarding the acceptance and screening of checked baggage.

(3) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.205 regarding the acceptance and screening of cargo.

(4) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.207 regarding the use of metal detection devices.

(5) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.209 regarding the use of x-ray systems.

(6) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.211 regarding the use of explosives detection systems.

(7) The procedures used to comply with the requirements of § 108.213 regarding standards for screening personnel.

(8) The procedures used to comply with the requirements of § 108.215 regarding the responsibilities of security coordinators. The names of the Aircraft Operator Security Coordinator (AOSC) and any alternate, and the means for contacting the AOSC(s) on a 24-hour basis, as provided in § 108.215.

(9) The procedures used to comply with the requirements of § 108.217 regarding the requirements for law enforcement personnel.

(10) The procedures used to comply with the requirements of § 108.219 regarding carriage of accessible weapons.

(11) The procedures used to comply with the requirements of § 108.221 regarding carriage of prisoners under the control of armed law enforcement officers.

(12) The procedures used to comply with the requirements of § 108.223 regarding transportation of Federal Air Marshals.

(13) The procedures and description of the facilities and equipment used to perform the aircraft and facilities control function specified in § 108.225.

(14) The specific locations where the air carrier has entered into an exclusive area agreement under § 108.227.

(15) The procedures used to comply with the applicable requirements of § 108.229 regarding employment history investigations.

(16) The procedures used to comply with the requirements of § 108.231 regarding personnel identification systems.

(17) The procedures and syllabi used to accomplish the training required under § 108.233.

(18) The procedures and syllabi used to accomplish the training required under § 108.235.

(19) An aviation security contingency plan as specified under § 108.301.

(20) The procedures used to comply with the requirements of § 108.303 regarding bomb and air piracy threats.

§ 108.105 Approval and amendments.

(a) *Initial approval of security program.* Unless otherwise authorized by the Assistant Administrator, each aircraft operator required to have a security program under this part shall submit its proposed security program to the Assistant Administrator for approval at least 90 days before the date of intended passenger operations. The proposed security program shall meet the requirements applicable to its operation as described in § 108.101. Such requests will be processed as follows:

(1) The Assistant Administrator, within 30 days after receiving the proposed aircraft operator security program, will either approve the program or give the aircraft operator written notice to modify the program to comply with the applicable requirements of this part.

(2) The aircraft operator may either submit a modified security program to the Assistant Administrator for approval, or petition the Administrator to reconsider the notice to modify within 30 days of receiving a notice to modify. A petition for reconsideration shall be filed with the Assistant Administrator.

(3) The Assistant Administrator, upon receipt of a petition for reconsideration, either amends or withdraws the notice, or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either

directing the Assistant Administrator to withdraw or amend the notice to modify, or by affirming the notice to modify.

(b) *Amendment requested by an aircraft operator.* An aircraft operator may submit a request to the Assistant Administrator to amend its security program as follows:

(1) The request for an amendment shall be filed with the Assistant Administrator at least 45 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the Assistant Administrator.

(2) Within 30 days after receiving a proposed amendment, the Assistant Administrator, in writing, either approves or denies the request to amend.

(3) An amendment to an aircraft operator security program may be approved if the Assistant Administrator determines that safety and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(4) Within 30 days after receiving a denial, the aircraft operator may petition the Administrator to reconsider the denial. A petition for reconsideration shall be filed with the Assistant Administrator.

(5) Upon receipt of a petition for reconsideration, the Assistant Administrator either approves the request to amend or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to approve the amendment, or affirm the denial.

(6) Any aircraft operator may submit a group proposal for an amendment that is on behalf of it and other aircraft operators that co-sign the proposal.

(c) *Amendment by the FAA.* If safety and the public interest require an amendment, the Assistant Administrator may amend a security program as follows:

(1) The Assistant Administrator notifies the aircraft operator, in writing, of the proposed amendment, fixing a period of not less than 30 days within which the aircraft operator may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the Assistant Administrator notifies the aircraft operator of any amendment adopted or rescinds the notice. If the amendment is adopted, it becomes effective not less than 30 days after the aircraft operator receives the notice of amendment, unless the aircraft operator petitions the Administrator to reconsider no later than 15 days before the effective date of the amendment. The aircraft operator shall send the petition for reconsideration to the Assistant Administrator. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the Assistant Administrator either amends or withdraws the notice or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to withdraw or amend the amendment, or by affirming the amendment.

(d) *Emergency amendments.* If the Assistant Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes procedures in this section contrary to the public interest, the Assistant Administrator may issue an amendment, without the prior notice and comment procedures in paragraph (c) of this section, effective without stay on the date the aircraft operator receives notice of it. In such a case, the Assistant Administrator will incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The aircraft operator may file a petition for reconsideration under paragraph (c) of this section; however, this does not stay the effective date of the emergency amendment.

Subpart C—Operations

§ 108.201 Screening of persons and accessible property.

(a) *General requirements.* Each aircraft operator shall use the facilities, equipment, and procedures described in its security program to prevent or deter the carriage of any explosive, incendiary, or deadly or dangerous weapon on or about each individual's person or accessible property before boarding an aircraft or entering a sterile area.

(b) *Screening of persons and accessible property.* Except as provided in its security program, each aircraft operator shall use the procedures included, and the facilities and equipment described, in its security program for detecting explosives, incendiaries, and deadly or dangerous weapons to inspect each person entering a sterile area at each preboard screening checkpoint in the United States for which it is responsible, and to inspect all accessible property under that person's control.

(c) *Submission to screening.* No person may enter a sterile area without submitting to the screening of his or her person and accessible property in accordance with the procedures being applied to control access to that area under this section.

(d) *Refusal to transport.* Each aircraft operator shall deny entry into a sterile area and shall refuse to transport—

(1) Any person who does not consent to a search or inspection of his or her person in accordance with the screening system prescribed in this section; and

(2) Any property of any person who does not consent to a search or inspection of that property in accordance with the screening system prescribed by this section.

(e) *Explosive, incendiary, deadly or dangerous weapon: Prohibitions.* (1) Except as provided in §§ 108.219, 108.221, and 108.223, no aircraft operator may permit any person to have an explosive, incendiary, or deadly or dangerous weapon, on or about the individual's person or accessible property when onboard an aircraft.

(2) Except as provided in paragraph (f) of this section, no person may have an explosive, incendiary, or deadly or dangerous weapon, on or about the individual's person or accessible property—

(i) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area;

(ii) When entering or in a sterile area; or

(iii) When attempting to board or onboard an aircraft identified in § 108.101.

(f) *Explosive, incendiary, deadly or dangerous weapon: Exceptions.* The provisions of paragraph (d)(2) of this section with respect to firearms and weapons does not apply to the following:

(1) Law enforcement personnel required to carry a firearm or other weapons while in the performance of their duty at the airport.

(2) Persons authorized to carry a weapon in accordance with §§ 108.219, 108.221, 108.223, or 129.27.

(3) Persons authorized to carry a weapon in a sterile area under a security program.

(g) *Staffing.* Each aircraft operator shall staff its security screening checkpoints with supervisory and non-supervisory personnel in accordance with the standards specified in its security program.

§ 108.203 Acceptance and screening of checked baggage.

(a) *General requirements.* Each aircraft operator shall use the procedures, facilities, and equipment described in its security program to prevent or deter the carriage of unauthorized explosives or incendiaries on board aircraft in checked baggage.

(b) *Acceptance.* Each aircraft operator shall ensure that checked baggage carried in the aircraft is received by its authorized aircraft operator representative.

(c) *Control.* Each aircraft operator shall use the procedures in its security program to control checked baggage that it accepts for transport on an aircraft, in a manner that:

(1) Prevents the unauthorized carriage of any explosive or incendiary aboard the aircraft.

(2) Prevents access by persons other than an aircraft operator employee or its agent.

(d) *Refusal to transport.* Each aircraft operator shall refuse to transport any person's checked baggage or property if the person does not consent to a search or inspection of that checked baggage or property in accordance with paragraph (a) of this section.

(e) *Firearms in checked baggage.* No aircraft operator may knowingly permit any person to transport, nor may a person transport or offer for transport in checked baggage:

(1) Any loaded firearm(s);

(2) Any unloaded firearm(s) unless—

(i) The passenger declares to the aircraft operator, either orally or in writing before checking the baggage that any firearm carried in the baggage is unloaded;

(ii) The firearm is carried in a hard-sided container;

(iii) The container in which it is carried is locked, and only the person checking the baggage retains the key or combination; and

(iv) The baggage containing the firearm is carried in an area, other than the flightcrew compartment, that is inaccessible to passengers;

(3) Any unauthorized explosive or incendiary.

(f) *Loaded firearm.* For the purpose of this section, a loaded firearm means a firearm, which has a live round of ammunition, or any component thereof, in the chamber or cylinder or in a magazine inserted in the firearm.

(g) *Ammunition.* This section does not prohibit the carriage of ammunition in checked baggage or in the same container as a firearm. Title 49 CFR part 175 provides additional requirements governing carriage of ammunition on aircraft.

§ 108.205 Acceptance and screening of cargo.

(a) *General requirements.* Each aircraft operator shall use the procedures, facilities and equipment described in its security program to prevent or deter the carriage of unauthorized explosives or incendiaries on board a passenger aircraft in cargo.

(b) *Control.* Each aircraft operator shall use the procedures in its security program to control cargo that it accepts for transport on an aircraft in a manner that:

(1) Prevents the carriage of any unauthorized explosive or incendiary aboard the aircraft.

(2) Prevents access by persons other than an aircraft operator employee or its agent.

(c) *Refusal to transport.* Each aircraft operator shall refuse to transport any cargo if the shipper does not consent to a search or inspection of that cargo in accordance with paragraph (a) of this section.

§ 108.207 Use of metal detection devices.

(a) No aircraft operator may use a metal detection device within the United States or under the aircraft operator's operational control outside the United States to inspect persons, unless specifically authorized under a security program under this part. No aircraft operator may use such a device contrary to its security program.

(b) Metal detection devices shall meet the calibration standards established by the FAA.

§ 108.209 Use of X-ray systems.

(a) No aircraft operator may use any X-ray system within the United States or under the aircraft operator's operational control outside the United States to inspect accessible property or checked baggage, unless specifically authorized under a security program under this part. No aircraft operator may use such a system in a manner contrary to its security program. The Administrator authorizes aircraft operators to use X-ray systems for inspecting accessible property or checked baggage under a security program if the aircraft operator shows that—

(1) The system meets the standards for cabinet X-ray systems primarily for the inspection of baggage issued by the Food and Drug Administration (FDA) and published in 21 CFR 1020.40;

(2) A program for initial and recurrent training of operators of the system is established, which includes training in radiation safety, the efficient use of X-ray systems, and the identification of explosives, incendiaries, and deadly or dangerous weapons; and

(3) The system meets the imaging requirements set forth in its security program using the step wedge specified in American Society for Testing Materials (ASTM) Standard F792–88 (Reapproved 1993). This standard is incorporated by reference in paragraph (g) of this section.

(b) No aircraft operator may use any X-ray system unless, within the preceding 12 calendar months, a radiation survey is conducted that shows that the system meets the applicable performance standards in 21 CFR 1020.40.

(c) No aircraft operator may use any X-ray system after the system has been installed at a screening point or after the system has been moved unless a radiation survey is conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40. A radiation survey is not required for an X-ray system that is designed and constructed as a mobile unit and the aircraft operator shows that it can be moved without altering its performance.

(d) No aircraft operator may use any X-ray system that is not in full compliance with any defect notice or modification order issued for that system by the FDA, unless the FDA has advised the FAA that the defect or failure to comply does not create a significant risk of injury, including genetic injury, to any person.

(e) No aircraft operator may use any X-ray system to inspect accessible property or checked baggage unless a sign is posted in a conspicuous place at the screening checkpoint or where checked baggage is accepted which notifies individuals that such items are being inspected by an X-ray and advises them to remove all X-ray, scientific, and high-speed film from accessible property and checked baggage before inspection. This sign shall also advise individuals that they may request that an inspection be made of their photographic equipment and film packages without exposure to an X-ray system. If the X-ray system exposes any accessible property or checked baggage to more than one milliroentgen during the inspection, the aircraft operator shall post a sign that advises individuals to remove film of all kinds from their articles before inspection. If requested by individuals, their photographic equipment and film packages shall be inspected without exposure to an X-ray system.

(f) Each aircraft operator shall maintain at least one copy of the results of the most recent radiation survey conducted under paragraph (b) or (c) of this section and shall make it available

for inspection upon request by the Administrator at each of the following locations—

(1) The aircraft operator's principal business office; and

(2) The place where the X-ray system is in operation.

(g) The American Society for Testing and Materials (ASTM) Standard F792–88 (Reapproved 1993), "Standard Practice for Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas," was approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. ASTM Standard F792–88 may be examined at the Department of Transportation (DOT) Docket, 400 Seventh Street SW, Room Plaza 401, Washington, DC 20590, or on DOT's Docket Management System (DMS) web page at *http://dms.dot.gov/search* (under docket number FAA–2001–8725). Copies of the standard may be examined also at the Office of the Federal Register, 800 North Capitol St., NW, Suite 700, Washington, DC. In addition, ASTM Standard F792–88 (Reapproved 1993) may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(h) Each aircraft operator shall comply with the X-ray operator duty time limitations specified in its security program.

§ 108.211 Use of explosives detection systems.

(a) If the Administrator so requires by an amendment to an aircraft operator's security program, each aircraft operator required to conduct screening under a security program shall use an explosives detection system approved by the Administrator to screen checked baggage on international flights.

(b) No aircraft operator may use an explosives detection system that uses X-ray technology to inspect checked baggage unless a sign is posted in a conspicuous place where checked baggage is accepted, which notifies individuals that such items are being inspected by an explosives detection system and advises them to remove all X-ray, scientific, and high-speed film from checked baggage before inspection. This sign shall also advise individuals that they may request that an inspection be made of their photographic equipment and film packages without exposure to an explosives detection system. If the explosives detection system exposes any checked baggage to more than one milliroentgen during the inspection the aircraft operator shall post a sign which advises individuals to remove film of all kinds from their articles before inspection. If requested by individuals, their photographic equipment and film packages shall be inspected without exposure to an explosives detection system.

§ 108.213 Employment standards for screening personnel.

(a) No aircraft operator may use any person to perform any screening function, unless that person has:

(1) A high school diploma, a General Equivalency Diploma, or a combination of education and experience that the aircraft operator has determined to have equipped the person to perform the duties of the position.

(2) Basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the following standards:

(i) Screeners operating X-ray equipment shall be able to distinguish on the X-ray monitor the appropriate imaging standard specified in the aircraft operator's security program. Wherever the X-ray system displays colors, the operator shall be able to perceive each color;

(ii) Screeners operating any screening equipment shall be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies;

(iii) Screeners shall be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint environment;

(iv) Screeners performing physical searches or other related operations shall be able to efficiently and thoroughly manipulate and handle such baggage, containers, and other objects subject to security processing; and

(v) Screeners who perform pat-downs or hand-held metal detector searches of persons shall have sufficient dexterity and capability to thoroughly conduct those procedures over a person's entire body.

(3) The ability to read, speak, and write English well enough to—

(i) Carry out written and oral instructions regarding the proper performance of screening duties;

(ii) Read English language identification media, credentials, airline tickets, and labels on items normally encountered in the screening process;

(iii) Provide direction to and understand and answer questions from English-speaking persons undergoing screening; and

(iv) Write incident reports and statements and log entries into security records in the English language.

(4) Satisfactorily completed all initial, recurrent, and appropriate specialized training required by the aircraft operator's security program, except as provided in paragraph (b) of this section.

(b) The aircraft operator may use a person who has not completed the training required by paragraph (a)(4) of this section during the on-the-job portion of training to perform security functions provided that the person:

(1) Is closely supervised; and

(2) Does not make independent judgments as to whether persons or property may enter a sterile area or aircraft without further inspection.

(c) No aircraft operator shall use a person to perform a screening function after that person has failed an operational test related to that function until that person has successfully completed the remedial training specified in the aircraft operator's security program.

(d) Each aircraft operator shall ensure that a Ground Security Coordinator conducts and documents an annual evaluation of each person assigned screening duties and may continue that person's employment in a screening capacity only upon the determination by the Ground Security Coordinator that the person:

(1) Has not suffered a significant diminution of any physical ability required to perform a screening function since the last evaluation of those abilities;

(2) Has a satisfactory record of performance and attention to duty based on the standards and requirements in its security program; and

(3) Demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

(e) Paragraphs (a) through (d) of this section do not apply to those screening functions conducted outside the United States over which the aircraft operator does not have operational control. In the event the aircraft operator is unable to implement paragraphs (a) through (d) of this section for screening functions outside the United States, the aircraft operator shall notify the Administrator of those aircraft operator stations so affected.

(f) At locations outside the United States where the aircraft operator has operational control over a screening function, the aircraft operator may use screeners who do not meet the requirements of paragraph (a)(3) of this section, provided that at least one representative of the aircraft operator who has the ability to functionally read and speak English is present while the

aircraft operator's passengers are undergoing security screening.

§ 108.215 Security coordinators.

(a) *Aircraft Operator Security Coordinator.* Each aircraft operator shall designate and use an Aircraft Operator Security Coordinator (AOSC). The AOSC and any alternates shall be appointed at the corporate level and shall serve as the aircraft operator's primary contact for security-related activities and communications with the FAA, as set forth in the security program. Either the AOSC, or an alternate AOSC, shall be available on a 24-hour basis.

(b) *Ground Security Coordinator.* Each aircraft operator shall designate and use a Ground Security Coordinator for each domestic and international flight departure to carry out the Ground Security Coordinator duties specified in the aircraft operator's security program. The Ground Security Coordinator at each airport shall conduct the following daily:

(1) A review of all security-related functions for effectiveness and compliance with this part, the aircraft operator's security program, and applicable Security Directives.

(2) Immediate initiation of corrective action for each instance of noncompliance with this part, the aircraft operator's security program, and applicable Security Directives. At foreign airports where such security measures are provided by an agency or contractor of a host government, the aircraft operator shall notify the Administrator for assistance in resolving noncompliance issues.

(c) *In-flight Security Coordinator.* Each aircraft operator shall designate and use the pilot in command as the In-flight Security Coordinator for each domestic and international flight to perform duties specified in the aircraft operator's security program.

§ 108.217 Law enforcement personnel.

(a) The following applies to operations at airports within the United States not required to hold a security program under part 107 of this chapter:

(1) For operations described in § 108.101(a) each aircraft operator shall provide for law enforcement personnel meeting the qualifications and standards specified in §§ 107.215 and 107.217 of this chapter.

(2) For operations described in § 108.101(b) or (c) each aircraft operator shall—

(i) Arrange for law enforcement personnel meeting the qualifications and standards specified in § 107.217 of this chapter to be available to respond to an incident; and

(ii) Provide its employees, including crewmembers, current information regarding procedures for obtaining law enforcement assistance at that airport.

(b) The following applies to operations at airports required to hold security programs under part 107 of this chapter. For operations described in § 108.101(c), each aircraft operator shall—

(1) Arrange with the airport operator for law enforcement personnel meeting the qualifications and standards specified in § 107.217 of this chapter to be available to respond to incidents; and

(2) Provide its employees, including crewmembers, current information regarding procedures for obtaining law enforcement assistance at that airport.

§ 108.219 Carriage of accessible weapons.

(a) *Flights for which screening is conducted.* The provisions of § 108.201(e), with respect to accessible deadly or dangerous weapons, do not apply to a law enforcement officer (LEO) aboard a flight for which screening is required if the requirements of this section are met. This paragraph (a) does not apply to a Federal Air Marshal on duty status under § 108.223.

(1) Unless otherwise authorized by the Administrator, the armed LEO shall meet the following requirements:

(i) Be a Federal law enforcement officer or a full-time municipal, county, or state law enforcement officer who is a direct employee of a government agency.

(ii) Be sworn and commissioned to enforce criminal statutes or immigration statutes.

(iii) Be authorized by the employing agency to have the weapon in connection with assigned duties.

(iv) Has completed the training program "Law Enforcement Officers Flying Armed."

(2) In addition to the requirements of paragraph (a)(1) of this section, the armed LEO must have a need to have the weapon accessible from the time he or she would otherwise check the weapon until the time it would be claimed after deplaning. The need to have the weapon accessible shall be determined by the employing agency, department, or service and be based on one of the following:

(i) The provision of protective duty, for instance, assigned to a principal or advance team, or on travel required to be prepared to engage in a protective function.

(ii) The conduct of a hazardous surveillance operation.

(iii) On official travel required to report to another location, armed and prepared for duty.

(iv) Employed as a Federal LEO, whether or not on official travel, and armed in accordance with an agency-wide policy governing that type of travel established by the employing agency by directive or policy statement.

(v) Control of a prisoner, in accordance with § 108.221, or an armed LEO on a round trip ticket returning from escorting, or traveling to pick up, a prisoner.

(vi) FAA Federal Air Marshal on duty status.

(3) The armed LEO shall comply with the following notification requirements:

(i) All armed LEOs shall notify the aircraft operator of the flight(s) on which he or she needs to have the weapon accessible at least 1 hour, or in an emergency as soon as practicable, before departure.

(ii) Identify himself or herself to the aircraft operator by presenting credentials that include a clear full-face picture, the signature of the armed LEO, and the signature of the authorizing official of the agency, service, or department or the official seal of the agency, service, or department. A badge, shield, or similar device may not be used, or accepted, as the sole means of identification.

(iii) If the armed LEO is a State, county, or municipal law enforcement officer, he or she shall present an original letter of authority, signed by an authorizing official from his or her employing agency, service or department, confirming the need to travel armed and detailing the itinerary of the travel while armed.

(iv) If the armed LEO is an escort for a foreign official then this paragraph (a)(3) may be satisfied by a State Department notification.

(4) The aircraft operator shall do the following:

(i) Obtain information or documentation required in paragraphs (a)(3)(ii), (iii), and (iv) of this section.

(ii) Advise the armed LEO, before boarding, of the aircraft operator's procedures for carrying out this section.

(iii) Have the LEO confirm he/she has completed the training program "Law Enforcement Officers Flying Armed" as required by the FAA, unless otherwise authorized by the Administrator.

(iv) Ensure that the identity of the armed LEO is known to the appropriate personnel who are responsible for security during the boarding of the aircraft.

(v) Notify the pilot in command and other appropriate crewmembers, of the location of each armed LEO aboard the

aircraft. Notify any other armed LEO of the location of each armed LEO, including FAM's. Under circumstances described in the security program, the aircraft operator must not close the doors until the notification is complete.

(vi) Ensure that the information required in paragraphs (a)(3)(i) and (ii) of this section is furnished to the flight crew of each additional connecting flight by the Ground Security Coordinator or other designated agent at each location.

(b) *Flights for which screening is not conducted.* The provisions of § 108.201(e), with respect to accessible deadly or dangerous weapons, do not apply to a LEO aboard a flight for which screening is not required if the requirements of paragraphs (a)(1), (3), and (4) of this section are met.

(c) *Alcohol.* (1) No aircraft operator may serve any alcoholic beverage to an armed LEO.

(2) No armed LEO may:

(i) Consume any alcoholic beverage while aboard an aircraft operated by an aircraft operator.

(ii) Board an aircraft armed if they have consumed an alcoholic beverage within the previous 8 hours.

(d) *Location of weapon.* (1) Any person traveling aboard an aircraft while armed shall at all times keep their weapon:

(i) Concealed and out of view, either on their person or in immediate reach, if the armed LEO is not in uniform.

(ii) On their person, if the armed LEO is in uniform.

(2) No person may place a weapon in an overhead storage bin.

§ 108.221 Carriage of prisoners under the control of armed law enforcement officers.

(a) This section applies as follows:

(1) This section applies to the transport of prisoners under the escort of an armed law enforcement officer.

(2) This section does not apply to the carriage of passengers under voluntary protective escort.

(3) This section does not apply to the escort of non-violent detainees of the Immigration and Naturalization Service. This section does not apply to persons who may be traveling with a prisoner and armed escort, such as the family of a deportee who is under armed escort.

(b) For the purpose of this section:

(1) *High risk prisoner* means a prisoner who is an exceptional escape risk, as determined by the law enforcement agency, and charged with, or convicted of, a violent crime.

(2) *Low risk prisoner* means any prisoner who has not been designated as "high risk."

(c) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft for which screening is required unless, in addition to the requirements in § 108.219, the following requirements are met:

(1) The agency responsible for control of the prisoner has determined whether the prisoner is considered a high risk or a low risk.

(2) Unless otherwise authorized by the Administrator, no more than one high risk prisoner shall be carried on the aircraft.

(d) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft for which screening is required unless the following staffing requirements are met:

(1) A minimum of one armed law enforcement officer shall control a low risk prisoner on a flight that is scheduled for 4 hours or less. No more than two low risk prisoners may be carried under the control of any one armed law enforcement officer.

(2) A minimum of two armed law enforcement officers shall control a low risk prisoner on a flight that is scheduled for more than 4 hours. No more than two low risk prisoners may be carried under the control of any two armed law enforcement officers.

(3) For high-risk prisoners:

(i) For one high-risk prisoner on a flight: A minimum of two armed law enforcement officers shall control a high risk prisoner. No other prisoners may be under the control of those two armed law enforcement officers.

(ii) If the Administrator has authorized more than one high-risk prisoner to be on the flight under paragraph (c)(2) of this section, a minimum of at least one armed law enforcement officer for each prisoner and one additional armed law enforcement officer shall control the prisoners. No other prisoners may be under the control of those armed law enforcement officers.

(e) An armed law enforcement officer who is escorting a prisoner—

(1) Shall notify the aircraft operator at least 24 hours before the scheduled departure, or, if that is not possible as far in advance as possible of the following—

(i) The identity of the prisoner to be carried and the flight on which it is proposed to carry the prisoner; and

(ii) Whether or not the prisoner is considered to be a high risk or a low risk.

(2) Shall arrive at the check-in counter at least 1 hour before to the scheduled departure.

(3) Shall assure the aircraft operator, before departure, that each prisoner under the control of the officer(s) has been searched and does not have on or about his or her person or property anything that can be used as a deadly or dangerous weapon.

(4) Shall be seated between the prisoner and any aisle.

(5) Shall accompany the prisoner at all times, and keep the prisoner under control while aboard the aircraft.

(f) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft unless the following are met:

(1) When practicable, the prisoner shall be boarded before any other boarding passengers and deplaned after all other deplaning passengers.

(2) The prisoner shall be seated in a seat that is neither located in any passenger lounge area nor located next to or directly across from any exit and, when practicable, the aircraft operator should seat the prisoner in the rearmost seat of the passenger cabin.

(g) Each armed law enforcement officer escorting a prisoner and each aircraft operator shall ensure that the prisoner is restrained from full use of his or her hands by an appropriate device that provides for minimum movement of the prisoner's hands, and shall ensure that leg irons are not used.

(h) No aircraft operator may provide a prisoner under the control of a law enforcement officer—

(1) With food or beverage or metal eating utensils unless authorized to do so by the armed law enforcement officer.

(2) With any alcoholic beverage.

§ 108.223 Transportation of Federal Air Marshals.

(a) A Federal Air Marshal on duty status may have a deadly or dangerous weapon accessible while aboard an aircraft for which screening is required.

(b) Each aircraft operator shall carry Federal Air Marshals, in the number and manner specified by the Administrator, on each scheduled passenger operation, and public charter passenger operation designated by the Administrator.

(c) Each Federal Air Marshal shall be carried on a first priority basis and without charge while on duty, including positioning and repositioning flights. When a Federal Air Marshal is assigned to a scheduled flight that is canceled for any reason, the aircraft operator shall carry that Federal Air Marshal without charge on another flight as designated by the Administrator.

(d) Each aircraft operator shall assign the specific seat requested by a Federal Air Marshal who is on duty status. If another LEO is assigned to that seat or

requests that seat, the aircraft operator shall inform the Federal Air Marshal. The Federal Air Marshal will coordinate seat assignments with the other LEO.

(e) The Federal Air Marshal identifies himself or herself to the aircraft operator by presenting credentials that include a clear, full-face picture, the signature of the Federal Air Marshal, and the signature of the Administrator. A badge, shield, or similar device may not be used or accepted as the sole means of identification.

(f) The requirements of § 108.219(a) do not apply for a Federal Air Marshal on duty status.

(g) Each aircraft operator shall restrict any information concerning the presence, seating, names, and purpose of Federal Air Marshals at any station or on any flight to those persons with an operational need to know.

(h) Law enforcement officers authorized to carry a weapon during a flight will be contacted directly by a Federal Air Marshal who is on that same flight.

§ 108.225 Security of aircraft and facilities.

Each aircraft operator shall use the procedures included, and the facilities and equipment described, in its security program to perform the following control functions with respect to each aircraft operation:

(a) Prevent unauthorized access to areas controlled by the aircraft operator under an exclusive area agreement in accordance with § 107.111 of this chapter.

(b) Prevent unauthorized access to each aircraft.

(c) Conduct a security inspection of each aircraft before placing it into passenger operations if access has not been controlled in accordance with the aircraft operator security program and as otherwise required in the security program.

§ 108.227 Exclusive Area Agreement.

(a) An aircraft operator that has entered into an exclusive area agreement with an airport operator, under § 107.111 of this chapter shall carry out that exclusive area agreement.

(b) The aircraft operator shall list in its security program the locations at which it has entered into exclusive area agreements with an airport operator.

(c) The aircraft operator shall provide the exclusive area agreement to the Administrator upon request.

(d) Any exclusive area agreements in effect on November 14, 2001 shall meet the requirements of this section and § 107.111 of this chapter no later than November 14, 2002.

§ 108.229 Employment history, verification, and criminal history records checks.

(a) *Scope.* The following persons are within the scope of this section:

(1) Each employee or contractor employee covered under a certification made to an airport operator, pursuant to § 107.209(n)(1) of this chapter, made on or after November 24, 1998.

(2) Each individual issued aircraft operator identification media that one or more airports accept as airport approved media for unescorted access within a security identification display area (SIDA) as described in § 107.205 of this chapter.

(3) Each individual assigned, after November 24, 1998, to perform at locations within the United States the following functions:

(i) Screen passengers or property that will be carried in a cabin of an aircraft of an aircraft operator required to screen passengers under this part.

(ii) Serve as an immediate supervisor (checkpoint security supervisor (CSS)), or the next supervisory level (shift or site supervisor), to those individuals described in paragraph (a)(3)(i) of this section.

(b) *Employment history investigations required.* Each aircraft operator shall ensure that, for each individual described in paragraph (a) of this section, the following requirements are met:

(1) The individual has satisfactorily undergone Part 1 of an employment history investigation. Part 1 consists of a review of the previous 10-years of employment history and verification of the 5 employment years preceding the date the employment history investigation is initiated as provided in paragraph (c) of this section; and

(2) If required by paragraph (c)(5) of this section, the individual has satisfied Part 2 of the employment history investigation. Part 2 is the process to determine if the individual has a criminal record. To satisfy Part 2 of the investigation the criminal records check shall not disclose that the individual has been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years ending on the date of such investigation, of any of the crimes listed as follows:

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation, 49 U.S.C. 46306;

(ii) Interference with air navigation, 49 U.S.C. 46308;

(iii) Improper transportation of a hazardous material, 49 U.S.C. 46312;

(iv) Aircraft piracy, 49 U.S.C. 46502;

(v) Interference with flightcrew members or flight attendants, 49 U.S.C. 46504;

(vi) Commission of certain crimes aboard aircraft in flight, 49 U.S.C. 46506;

(vii) Carrying a weapon or explosive aboard aircraft, 49 U.S.C. 46505;

(viii) Conveying false information and threats, 49 U.S.C. 49 46507;

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States, 49 U.S.C. 46502(b);

(x) Lighting violations involving transporting controlled substances, 49 U.S.C. 46315;

(xi) Unlawful entry into an aircraft or airport area that serves aircraft operators or foreign air carriers contrary to established security requirements, 49 U.S.C. 46314;

(xii) Destruction of an aircraft or aircraft facility, 18 U.S.C. 32;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;

(xxii) Armed robbery;

(xxiii) Distribution of, or intent to distribute, a controlled substance;

(xxiv) Felony arson; or

(xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts.

(3) If an individual admits to a conviction, or to having been found not guilty by reason of insanity, in any jurisdiction within the preceding ten years of a crime listed in paragraph (b)(2) of this section, the investigative process shall end and the individual shall not be granted unescorted access or assigned to any functions listed in paragraph (a)(3) of this section.

(c) *Investigative steps.* Part 1 of the employment history investigations shall be completed on all persons described in paragraph (a) of this section. If required by paragraph (c)(5) of this section, Part 2 of the employment history investigation shall also be completed on all persons listed in paragraph (a) of this section.

(1) The individual shall provide the following information on an application:

(i) The individual's full name, including any aliases or nicknames;

(ii) The dates, names, phone numbers, and addresses of previous employers, with explanations for any gaps in employment of more than 12

consecutive months, during the previous 10-year period;

(iii) Any convictions during the previous 10-year period of the crimes listed in paragraph (b)(2) of this section.

(2) The aircraft operator shall include on the application form a notification that the individual will be subject to an employment history verification and possibly a criminal records check.

(3) The aircraft operator shall verify the identity of the individual through the presentation of two forms of identification, one of which shall bear the individual's photograph.

(4) The aircraft operator shall verify the information on the most recent 5 years of employment history required under paragraph (c)(1)(ii) of this section. Information shall be verified in writing, by documentation, by telephone, or in person.

(5) If one or more of the conditions (triggers) listed in paragraphs (c)(5)(i) through (iv) of this section exist, the employment history investigation shall not be considered complete unless Part 2 is accomplished. Only the aircraft operator may initiate Part 2. Part 2 consists of a comparison of the individual's fingerprints against the fingerprint files of known criminals maintained by the Federal Bureau of Investigation (FBI). The comparison of the individual's fingerprints shall be processed through the FAA. The aircraft operator may request a check of the individual's fingerprint-based criminal record only if one or more of the following conditions exist:

(i) The individual does not satisfactorily account for a period of unemployment of 12 consecutive months or more during the previous 10-year period.

(ii) The individual is unable to support statements made on the application form.

(iii) There are significant inconsistencies in the information provided on the application.

(iv) Information becomes available to the aircraft operator during the investigation indicating a possible conviction for one of the crimes listed in paragraph (b)(2) of this section.

(d) *Individual notification.* Prior to commencing the criminal records check, the aircraft operator shall notify the affected individuals and identify a point of contact for follow-up. An individual who chooses not to submit fingerprints may not be granted unescorted access privilege and may not be allowed to hold screener or screener supervisory positions.

(e) *Fingerprint processing.* If a fingerprint comparison is necessary under paragraph (c)(5) of this section to complete the employment history investigation the aircraft operator shall collect and process fingerprints in the following manner:

(1) One set of legible and classifiable fingerprints shall be recorded on fingerprint cards approved by the FBI and distributed by the FAA for this purpose.

(2) The fingerprints shall be obtained from the individual under direct observation by the aircraft operator or a law enforcement officer. Individuals submitting their fingerprints shall not take possession of their fingerprint card after they have been fingerprinted.

(3) The identity of the individual shall be verified at the time fingerprints are obtained. The individual shall present two forms of identification, one of which shall bear the individual's photograph.

(4) The fingerprint card shall be forwarded to FAA at the location specified by the Administrator.

(5) Fees for the processing of the criminal records checks are due upon application. Aircraft operators shall submit payment through corporate check, cashier's check, or money order made payable to "U.S. FAA," at the designated rate for each fingerprint card. Combined payment for multiple applications is acceptable. The designated rate for processing the fingerprint cards is available from the local FAA security office.

(f) *Determination of arrest status.* In conducting the criminal record checks required by this section, the aircraft operator shall not consider the employment history investigation complete unless it investigates arrest information for the crimes listed in paragraph (b)(2) of this section for which no disposition has been recorded and makes a determination that the arrest did not result in a disqualifying conviction.

(g) *Availability and correction of FBI records and notification of disqualification.* (1) At the time Part 2 is initiated and the fingerprints are collected, the aircraft operator shall notify the individual that a copy of the criminal record received from the FBI will be made available to the individual if requested in writing. When requested in writing, the aircraft operator shall make available to the individual a copy of any criminal record received from the FBI.

(2) Prior to making a final decision to deny authorization to an individual described in paragraph (a) of this section, the aircraft operator shall advise the individual that the FBI criminal record discloses information that would disqualify him/her from positions covered under this rule and provide him/her with a copy of their FBI record if requested.

(3) The aircraft operator shall notify an individual that a final decision has been made to forward or not forward a letter of certification for unescorted access to the airport operator, or to grant or deny the individual authority to perform screening functions listed under paragraph (a)(3) of this section.

(h) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his/her record before the aircraft operator makes any decision to withhold his/her name from a certification, or not grant authorization to perform screening functions subject to the following conditions:

(1) Within 30 days after being advised that the criminal record received from the FBI discloses disqualifying information, the individual shall notify the aircraft operator, in writing, of his/her intent to correct any information believed to be inaccurate.

(2) Upon notification by an individual that the record has been corrected, the aircraft operator shall obtain a copy of the revised FBI record prior to making a final determination.

(3) If no notification is received within 30 days, the aircraft operator may make a final determination.

(i) *Limits on dissemination of results.* Criminal record information provided by the FBI shall be used solely for the purposes of this section, and no person may disseminate the results of a criminal record check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

(2) Aircraft operator officials with a need to know; and

(3) Others designated by the Administrator.

(j) *Employment status while awaiting criminal record checks.* Individuals who have submitted their fingerprints and are awaiting FBI results may perform work details under the following conditions:

(1) Those seeking unescorted access to the SIDA shall be escorted by someone who has unescorted SIDA access privileges;

(2) Those applicants seeking positions covered under paragraph (a)(3)(i) of this section, may not exercise any independent judgments regarding those functions.

(k) *Recordkeeping.* (1) The aircraft operator shall physically maintain and control Part 1 employment history

investigation file until 180 days after the termination of the individual's authority for unescorted access or termination from positions covered under paragraph (a)(3) of this section. Part 1 of the employment history investigation, completed on screening personnel shall be maintained at the airport where they perform screening functions. Part 1 of the employment history investigation file shall consist of the following:

(i) The application;

(ii) The employment verification information obtained by the employer;

(iii) The names of those individuals from whom the employment verification information was obtained;

(iv) The date and the method of how the contact was made; and

(v) Any other information as required by the Administrator.

(2) The aircraft operator shall physically maintain, control, and when appropriate, destroy Part 2 the criminal record file, for each individual for whom a fingerprint comparison has been made. Part 2 shall be maintained for 180 days after the termination of the individual's authority for unescorted access or after the individual ceases to perform screening functions. Only direct aircraft operator employees may carry out Part 2 responsibilities. Part 2 shall consist of the following:

(i) The results of the record check; or

(ii) Certification from the aircraft operator that the check was completed and did not uncover a disqualifying conviction.

(3) The files required by this paragraph shall be maintained in a manner that is acceptable to the Administrator and in a manner that protects the confidentiality of the individual.

(l) *Continuing responsibilities.* (1) Any individual authorized to have unescorted access privilege to the SIDA or who performs functions covered under paragraph (a)(3) of this section, who is subsequently convicted of any of the crimes listed in paragraph (b)(2) of this section shall, within 24 hours, report the conviction to the aircraft operator and surrender the SIDA access medium or any employment related identification medium to the issuer.

(2) If information becomes available to the aircraft operator indicating that an individual has a possible conviction for one of the disqualifying crimes in paragraph (b)(2) of this section, the aircraft operator shall determine the status of the conviction and, if the conviction is confirmed:

(i) Immediately revoke access authorization for unescorted access to the SIDA; or

(ii) Immediately remove the individual from screening functions covered under paragraph (a)(3) of this section.

(m) *Aircraft operator responsibility.* The aircraft operator shall:

(1) Designate an individual(s) to be responsible for maintaining and controlling the employment history investigation for those whom the aircraft operator has made a certification to an airport operator under § 107.209(n)(1) of this chapter and for destroying the criminal record files when their maintenance is no longer required by paragraph (k)(2) of this section.

(2) Designate an individual(s) to maintain and control Part 1 of the employment history investigations of screeners whose files shall be maintained at the location or station where the screener is performing his or her duties.

(3) Designate an individual(s) to serve as the contact to receive notification from an individual applying for either unescorted access or those seeking to perform screening functions of his/her intent to seek correction of his/her criminal record with the FBI.

(4) Designate an individual(s) to maintain and control Part 2 of the employment history investigation file for all employees, contractors, or others who undergo a fingerprint comparison at the request of the aircraft operator.

(5) Audit the employment history investigations performed in accordance with this section. The audit process shall be set forth in the aircraft operator security program.

§ 108.231 Airport-approved and exclusive area personnel identification systems.

(a) Each aircraft operator shall establish and carry out a personnel identification system for identification media that are airport-approved, or identification media that are issued for use in an exclusive area. The system shall include the following:

(1) Personnel identification media that—

(i) Convey a full face image, full name, employer, and identification number of the individual to whom the identification medium is issued;

(ii) Indicate clearly the scope of the individual's access and movement privileges;

(iii) Indicate clearly an expiration date; and

(iv) Are of sufficient size and appearance as to be readily observable for challenge purposes.

(2) Procedures to ensure that each individual in the secured area or SIDA continuously displays the identification medium issued to that individual on the outermost garment above waist level, or is under escort.

(3) Procedures to ensure accountability through the following:

(i) Retrieving expired identification media.

(ii) Reporting lost or stolen identification media.

(iii) Securing unissued identification media stock and supplies.

(iv) Auditing the system at a minimum of once a year, or sooner, as necessary to ensure the integrity and accountability of all identification media.

(v) As specified in the aircraft operator security program, revalidate the identification system or reissue identification media if a portion of all issued, unexpired identification media are lost, stolen, or unretrieved, including identification media that are combined with access media.

(vi) Ensure that only one identification medium is issued to an individual at a time. A replacement identification medium may only be issued if an individual declares in writing that the medium has been lost or stolen.

(b) The aircraft operator may request approval of a temporary identification media system that meets the standards in § 107.211(b) of this chapter, or may arrange with the airport to use temporary airport identification media in accordance with that section.

(c) Each aircraft operator shall submit a plan to carry out this section to the Administrator no later than May 13, 2002. Each aircraft operator shall fully implement its plan no later than November 14, 2003.

§ 108.233 Security coordinators and crewmembers, training.

(a) No aircraft operator may use any person as a Ground Security Coordinator unless, within the preceding 12-calendar months, that person has satisfactorily completed the security training as specified in the aircraft operator's security program.

(b) No aircraft operator may use any person as an in-flight security coordinator or crewmember on any domestic or international flight unless, within the preceding 12-calendar months or within the time period specified in an Advanced Qualifications Program approved under SFAR 58, that person has satisfactorily completed the security training required by § 121.417(b)(3)(v) or § 135.331(b)(3)(v) of this chapter, and as specified in the aircraft operator's security program.

(c) With respect to training conducted under this section, whenever a person completes recurrent training within one

calendar month earlier, or one calendar month after the date it was required, that person is considered to have completed the training in the calendar month in which it was required.

§ 108.235 Training and knowledge for persons with security-related duties.

(a) No aircraft operator may use any direct or contractor employee to perform any security-related duties to meet the requirements of its security program unless that person has received training as specified in its security program including their individual responsibilities in § 108.9.

(b) Each aircraft operator shall ensure that individuals performing security-related duties for the aircraft operator have knowledge of the provisions of part 108, applicable Security Directives and Information Circulars, the approved airport security program applicable to their location, and the aircraft operator's security program to the extent that such individuals need to know in order to perform their duties.

Subpart D—Threat and Threat Response

§ 108.301 Contingency plan.

Each aircraft operator shall adopt a contingency plan and shall:

(a) Implement its contingency plan when directed by the Administrator.

(b) Ensure that all information contained in the plan is updated annually and that appropriate persons are notified of any changes.

(c) Participate in an airport operator-sponsored exercise of the airport contingency plan or its equivalent, as provided in its security program.

§ 108.303 Bomb or air piracy threats.

(a) *Flight: Notification.* Upon receipt of a specific and credible threat to the security of a flight, the aircraft operator shall—

(1) Immediately notify the ground and in-flight security coordinators of the threat, any evaluation thereof, and any measures to be applied;

(2) Ensure that the in-flight security coordinator notifies all crewmembers of the threat, any evaluation thereof, and any measures to be applied; and

(3) Immediately notify the appropriate airport operator.

(b) *Flight: Inspection.* Upon receipt of a specific and credible threat to the security of a flight, each aircraft operator shall attempt to determine whether or not any explosive or incendiary is present by doing the following:

(1) Conduct a security inspection on the ground before the next flight or, if the aircraft is in flight, immediately after its next landing.

(2) If the aircraft is on the ground, immediately deplane all passengers and submit that aircraft to a security search.

(3) If the aircraft is in flight, immediately advise the pilot in command of all pertinent information available so that necessary emergency action can be taken.

(c) *Ground Facility.* Upon receipt of a specific and credible threat to a specific ground facility at the airport, the aircraft operator shall:

(1) Immediately notify the appropriate airport operator.

(2) Inform all other aircraft operators and foreign air carriers at the threatened facility.

(3) Conduct a security inspection.

(d) *Notification.* Upon receipt of any bomb threat against the security of a flight or facility, or upon receiving information that an act or suspected act of air piracy has been committed, the aircraft operator also shall notify the Administrator. If the aircraft is in airspace under other than U.S. jurisdiction, the aircraft operator shall also notify the appropriate authorities of the State in whose territory the aircraft is located and, if the aircraft is in flight, the appropriate authorities of the State in whose territory the aircraft is to land. Notification of the appropriate air traffic controlling authority is sufficient action to meet this requirement.

§ 108.305 Security Directives and Information Circulars.

(a) The Administrator may issue an Information Circular to notify aircraft operators of security concerns. When the Administrator determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, the Administrator issues a Security Directive setting forth mandatory measures.

(b) Each aircraft operator required to have an approved aircraft operator security program shall comply with each Security Directive issued to the aircraft operator by the Administrator, within the time prescribed in the Security Directive for compliance.

(c) Each aircraft operator that receives a Security Directive shall—

(1) Within the time prescribed in the Security Directive, verbally acknowledge receipt of the Security Directive to the Administrator.

(2) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(d) In the event that the aircraft operator is unable to implement the measures in the Security Directive, the aircraft operator shall submit proposed alternative measures and the basis for submitting the alternative measures to the Administrator for approval. The aircraft operator shall submit the proposed alternative measures within the time prescribed in the Security Directive. The aircraft operator shall implement any alternative measures approved by the Administrator.

(e) Each aircraft operator that receives a Security Directive may comment on the Security Directive by submitting data, views, or arguments in writing to the Administrator. The Administrator may amend the Security Directive based on comments received. Submission of a comment does not delay the effective date of the Security Directive.

(f) Each aircraft operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular shall:

(1) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with an operational need-to-know.

(2) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those with an operational need-to-know without the prior written consent of the Administrator.

Issued in Washington, DC, on July 2, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–16995 Filed 7–10–01; 10:32 am]

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July 17, 2001

Part IV

Department of the Treasury

Customs Service

19 CFR Part 177
Administrative Rulings; Proposed Rule

DEPARTMENT OF THE TREASURY

CUSTOMS SERVICE

19 CFR Part 177

RIN 1515–AC56

Administrative Rulings

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed amendments to those provisions of the Customs Regulations that concern the issuance of administrative rulings and related written determinations and decisions on prospective and current transactions arising under the Customs and related laws. The proposed regulatory changes include amendments to Customs procedures in response to statutory changes made to the administrative ruling process by section 623 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, as well as organizational changes to clarify current administrative practice and otherwise improve the layout and readability of the present regulatory texts. The proposed changes involve principally the following areas: The issuance of rulings and other written advice on prospective transactions; the appeal of prospective rulings after issuance; the modification or revocation of prospective rulings or of protest review decisions or of treatment previously accorded by Customs to substantially identical transactions; the limitation of court decisions; the issuance, appeal, and modification or revocation of internal advice decisions on current transactions; and the treatment of requests for confidential treatment of business information submitted to Customs in connection with a request for written advice.

DATES: Comments must be received on or before September 17, 2001.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Elkins, Textiles Branch, Office of Regulations and Rulings (202–927–2380).

SUPPLEMENTARY INFORMATION:

Background

Part 177 of the Customs Regulations (19 CFR part 177) contains general provisions regarding the issuance of binding administrative rulings to importers and other interested persons with regard to prospective and current transactions arising under the Customs and related laws and also contains provisions covering the issuance of country-of-origin advisory rulings and final determinations relating to Government procurement. The provisions regarding binding rulings under the Customs and related laws, which constitute the primary focus of this document, are currently set forth in subpart A of part 177 and do not include rulings, determinations, or decisions under specific statutory authorities provided for elsewhere in the Customs Regulations (for example, in part 133 for enforcement actions regarding intellectual property rights, in part 174 for protests, and in part 181 for advance rulings under the North American Free Trade Agreement). The provisions regarding Government procurement country-of-origin advisory rulings and final determinations are set forth in Subpart B of Part 177 and are not dealt with in this document.

On December 8, 1993, the President signed into law the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057). Title VI of that Act contained provisions pertaining to Customs Modernization and thus is commonly referred to as the Customs Modernization Act or "Mod Act." The Mod Act included two statutory amendments that have particular relevance to the part 177 regulatory provisions.

Section 640 of the Mod Act amended section 502 of the Tariff Act of 1930, as amended (19 U.S.C. 1502), which, in paragraph (a), sets forth the authority of the Secretary of the Treasury to promulgate rules and regulations for the appraisement and classification of merchandise. The Mod Act amendment involved the insertion of the following parenthetical expression in the paragraph (a) text: "(including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned)."

Section 623 of the Mod Act extensively amended section 625 of the Tariff Act of 1930 as described above. The Mod Act amendment involved the following specific changes:

1. The then-existing text was designated as paragraph (a) and the following substantive changes were made within that text: the "120 days" time limit was replaced by "90 days"; and the reference to "any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision)" was replaced by a reference to "any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision."

2. A new paragraph (b) was added to provide that a person may appeal an adverse interpretive ruling, and any interpretation of any regulation prescribed to implement such ruling, to a higher level of authority within Customs for de novo review. The new paragraph (b) text further provides that, upon a reasonable showing of business necessity, the appeal must be considered and decided no later than 60 days following the date on which the appeal was filed.

3. A new paragraph (c) was added to require publication, in the *Customs Bulletin* and with opportunity for public comment, of a proposed interpretive ruling or decision which would modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days or which would have the effect of modifying the treatment previously accorded by Customs to substantially identical transactions. This new paragraph (c) text further provides: That interested parties must be given not less than 30 days after the date of publication to submit comments on the proposed ruling or decision; that, after consideration of any comments received, a final ruling or decision must be published in the *Customs Bulletin* within 30 days after the closing of the comment period; and that the final ruling or decision will become effective 60 days after the date of its publication.

4. A new paragraph (d) was added to provide that a decision that proposes to limit the application of a court decision must be published in the Customs Bulletin together with notice of opportunity for public comment prior to a final decision.

5. Finally, a new paragraph (e) was added to provide that the Secretary of the Treasury may make available in writing or through electronic media all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs laws and regulations, subject to any exemption from disclosure provided by the Freedom of Information Act (5 U.S.C. 552).

With regard to the amendment made by section 640 of the Mod Act, Customs does not believe that it is necessary to amend the existing part 177 regulatory texts to implement this statutory amendment. Rather, Customs believes that it would be sufficient, as a matter of editorial clarity, to expressly refer to 19 U.S.C. 1502 in the authority citation for part 177.

On the other hand, the amendment of section 625 effected by section 623 of the Mod Act clearly requires extensive modifications to the part 177 texts, particularly to reflect requirements and procedures for the appeal and modification or revocation of rulings and for the limitation of court decisions. In addition, Customs has performed a detailed, overall review of the existing provisions within subpart A of part 177 and has concluded as a result of that review that a number of additional organizational and editorial changes should be made in order to update and otherwise enhance the clarity, application, and organization of those regulatory texts. The proposed changes set forth in this document, other than those involving minor wording or other editorial changes, are discussed in more detail below.

Overview of Proposed Changes

The principal proposed organizational changes set forth in this document involve the following:

1. Present § 177.0 (Scope) would be eliminated and its terms would be included as part of a new § 177.1 (a general overview of the part) which, together with new § 177.2 (definitions) would comprise new subpart A (general provisions). These changes are primarily intended to better explain the purpose and content of part 177 and to facilitate the division of present subpart A as described below.

2. Present subpart B (country-of-origin advisory rulings and final determinations relating to Government procurement) would be redesignated as subpart E, and present subpart A would be divided into three new subparts B (advice on prospective transactions), C (internal advice procedure) and D (disclosure of confidential business information). The division of present subpart A is intended to achieve the following:

a. By treating the internal advice procedure (set forth at present in § 177.11) separately in subpart C, the contextual and procedural distinctions between that current transaction procedure and the prospective advice procedure under subpart B should be clearer; and

b. By covering the issue of confidential treatment of business information separately in subpart D, those provisions can be expanded to reflect current Treasury and Customs procedures and practice and can apply equally and without unnecessary repetition to information submitted to Customs either under subpart B or under subpart C.

The principal proposed changes set forth in this document involve the following: 1. The following proposed changes would address statutory changes made by section 623 of the Mod Act as mentioned above:

a. Inclusion of appeal provisions for adverse prospective rulings (§ 177.20) and adverse internal advice decisions (§ 177.33);

b. Inclusion of a provision (§ 177.21) covering the modification or revocation of prospective rulings, internal advice decisions, protest review decisions, and treatment previously accorded by Customs to substantially identical transactions; and

c. Inclusion of a provision (§ 177.23) regarding publication of decisions that propose to limit the application of court decisions.

2. It is proposed to eliminate the principle of detrimental reliance (which was a purely regulatory creation) from the part 177 texts because the Mod Act statutory amendments regarding the modification or revocation of rulings and previous treatment (including the provision for a delayed effective date) accomplish essentially the same purpose and therefore should be viewed as replacing it. However, some aspects of the detrimental reliance concept have been retained (see the discussion of § 177.21 below).

3. Except in the case of § 177.22 (established and uniform practice) where the regulatory text is directly based on 19 U.S.C. 1315(d), it is proposed to remove all references to "uniform practice" or "practice" from the part 177 texts, because the statutory and regulatory modification/revocation standards and the proposed regulatory provisions regarding third party reliance have rendered these provisions redundant or otherwise unnecessary.

4. It is proposed to eliminate the provision regarding inconsistent Customs decisions (present § 177.12) because other procedures (including the proposed modification/revocation and internal advice procedures as set forth in this document) would accomplish much of the same purpose. Moreover, elimination of this provision will avoid any potential conflict with those statutory modification/revocation publication and effective date provisions.

5. Under the proposed subpart B prospective transaction provisions:

a. General reference is made to prospective "advice" in order to accommodate not only binding rulings but also written advice in the form of non-binding information letters;

b. The concept of Customs-initiated prospective rulings has been clarified, and procedural safeguards have been included that provide (1) that the involved private person in most cases will be afforded a 30-day period in which to present his written views to Customs before issuance of the ruling and (2) that the ruling may not be prepared below the level of a Field National Import Specialist; and

c. The list of circumstances in which a prospective ruling will not be issued has been expanded. One of these circumstances would include a case in which the ruling requester has previously received a ruling on an identical or similar transaction and that previous ruling has been the subject of an appeal under § 177.20 or a modification or revocation under § 177.21. The purpose of this provision is to limit a ruling requester to no more than "two-bites-at-the-apple." It has been included by Customs as a matter of administrative necessity in order to set an appropriate limit to the number of times that a private party may avail himself of administrative ruling and related procedures involving the same issue.

6. Under the proposed subpart C internal advice provisions:

a. A Customs field office will have discretion in most cases on whether to seek internal advice except where the regulatory text specifically mandates, or specifically precludes, use of the procedure. Thus, as a general rule, an importer or other interested person will not have an absolute right to initiate the internal advice procedure;

b. Similar to the approach that has been used for applications for further review of protests under part 174 of the Customs Regulations (19 CFR part 174), one of several specific criteria would have to be met in order to request internal advice;

c. Similar to the approach followed for the issuance of prospective rulings under subpart B, the proposed text sets forth specific circumstances in which internal advice may not be requested, including where the interested person has already received a prospective ruling on the same issue (the two-bites-at-the-apple limitation would apply, and thus either an appeal of the ruling under subpart B or the allowing of an

application for further review of a protest under part 174 would constitute the permissible second bite); and

d. As in the case of Customs-initiated prospective rulings under subpart B, the importer or other interested person will have an opportunity to present his written views to Customs before issuance of the internal advice decision, even when the internal advice procedure is initiated within Customs rather than at the request of the interested person.

7. Under the proposed subpart D confidential treatment provisions:

a. A failure to request confidential treatment at the time the information is submitted to Customs will constitute a waiver of confidential treatment of that information, and no request for confidential treatment will be entertained by Customs if the information covered by the request was previously submitted to Customs without a request for confidential treatment;

b. A request for confidential treatment may cover any information submitted to Customs under subpart B or subpart C, including information submitted with an appeal or in connection with a Customs-initiated ruling or in connection with a request for internal advice initiated by Customs;

c. In the case of an appeal of a ruling or when a ruling or an internal advice request is initiated by an importer or other interested person, a failure of Customs and the submitting person to reach agreement on a request for confidential treatment either will cause Customs to close the case file without action (that is, without issuing the requested ruling or internal advice decision or appeal decision) or, if the information at issue is contained in a further submission, will cause Customs to proceed with the ruling or internal advice decision or appeal decision without considering the further submission. In either case the appeal or the ruling or internal advice request or the further submission normally will be returned to submitting person; and

d. A grant of confidential treatment generally would be valid for a period of 3 years and may be renewed for additional periods of up to 3 years each.

Section-by-Section Discussion of Proposed Changes

Subpart A (General Provisions)

Section 177.1

This section provides a general overview of part 177, in question-and-answer (Q&A) format, and includes the terms of present § 177.0 (scope) and present § 177.1(a)–(c) regarding general ruling practice, a general description of the structure and content of the Part, and more specific details regarding the operation of the prospective advice and internal advice programs under subparts B and C.

The Q&A format was chosen in order to make the provisions more accessible and understandable to the average reader, in particular for purposes of alerting the prospective reader up front as to what benefits part 177 may offer, without requiring the reader to read through all of the considerable technical detail that of necessity must be contained in the part. The information provided in this Q&A format is intended to complement, and not replace, the more detailed corresponding proposed regulatory provisions set forth later in the part. Accordingly, each reader is ultimately responsible for consulting the specific, detailed provision in question and therefore should not place sole reliance on a statement made in the Q&A text.

Section 177.2

This definitions section replaces present § 177.1(d) and applies only for purposes of subparts A through D (the country-of-origin Government procurement provisions in redesignated Subpart E include a separate definitions section).

This section includes new definitions of "National Commodity Specialist Division" and "person." These new definitions are self-explanatory.

The following changes are proposed for the definitions contained in present § 177.1(d):

1. The definition of "authorized agent" has been modified to specify only attorneys at law, licensed customs brokers, and any other persons who are not representing a principal under part 177 in regard to a matter that constitutes "customs business" as defined in 19 U.S.C. 1641(a)(2). Customs has reexamined the statutory definition of "customs business" and has concluded that requesting rulings and making representations under part 177 will, in the great majority of cases, involve matters that fall within the definition of "customs business" and that should be left to those classes of persons who are specially qualified (for attorneys by virtue of admission to the bar and for customs brokers by virtue of being licensed to transact customs business pursuant to 19 U.S.C. 1641 and 19 CFR part 111) to make those requests and representations. The third class of authorized agent mentioned in the proposed text recognizes, however, that there are some matters that arise under part 177 that do not constitute "customs business" and therefore should not be so restricted (for example, issues involving marine transactions or transportation of merchandise in bond—see 19 CFR 111.2(a)(2)(iii) and (iv)).

2. The definition of "Customs transaction" has been modified to more clearly distinguish between the three types of Customs transactions and to ensure that a "current" or a "completed" Customs transaction is not interpreted to include the filing of a ruling request under part 177.

3. The definition of "ruling" has been modified:

a. To include a reference to issuance by the National Commodity Specialist Division which is an organizational part of the Office of Regulations and Rulings but is physically separate from the Headquarters Office;

b. To refer to issuance under subpart B and subpart C to reflect the move of the internal advice procedure provisions to subpart C; and

c. To refer to the fact that a ruling may be issued in the absence of a specific request (Customs-initiated ruling).

Subpart B (Advice on Prospective Transactions)

Section 177.11

This section concerns the preparation and submission of ruling requests involving prospective Customs transactions and replaces present § 177.2. The following points are noted regarding the changes reflected in the proposed new text:

1. In paragraph (a):

a. Specific provision is made for submission of the request in the English language, because Customs does not have the resources needed to translate requests prepared in other languages; and

b. For purposes of submitting a ruling request to Customs, a clearer and more specific subject matter jurisdictional division between the National Commodity Specialist Division and the Headquarters Office has been provided.

2. In paragraph (b) which concerns the content of ruling requests:

a. Statements have been added to remind the reader that a ruling is issued on the facts presented and that a ruling based on inaccurate or incomplete information will not be applied to the transaction for which it was intended;

b. The requirement to identify the port where the prospective transaction will take place has been removed, because it is unnecessarily burdensome and has minimal legal relevance or utility;

c. The specifications for the description of specific types of

transactions for which rulings may be requested have been updated and otherwise revised, and specifications for additional types of transactions have been included, in order to provide more effective and precise guidance for the potential ruling requester;

d. The paragraph concerning samples submitted in connection with a ruling request has been modified to provide that samples will be returned only at the expense of the ruling requester and to provide that samples not returned or retained by Customs or consumed during examination will be disposed of according to law 90 days after disposition of the ruling request;

e. The paragraph requiring a statement concerning the existence of prior or current transactions has been revised to require submission of the statement in the form of a signed certification;

f. The paragraph regarding privileged or confidential information has been revised to provide that the ruling requester who wants confidential treatment of information must make a written request for that treatment when the information is submitted to Customs and in conformity with the provisions of Subpart D; and

g. A new paragraph has been added to require inclusion of a statement in the ruling request if the ruling requester wants to have a conference when issuance of an adverse ruling is contemplated.

3. Present paragraph (d), which concerns requests for immediate consideration, has been transferred, with textual changes, to new § 177.17 because it appears to relate more directly to the rulings issuance process. Of course, there is nothing that would preclude a ruling requester from including a request for expedited consideration in his ruling request, and Customs would consider it in accordance with the principles stated in new § 177.17.

Section 177.12

This section concerns nonconforming requests for rulings and replaces present § 177.3. The only changes of note involve (1) providing for closing the Customs file in the case of a nonconforming request sent to the Headquarters Office that is not brought into conformity within the prescribed period, (2) providing for the immediate return of the request to the requester and closing of the file without further action in the case of a nonconforming request sent to the National Commodity Specialist Division but without prejudice to resubmission, and (3) inclusion of a statement that if a ruling request is sent to the wrong office, there will be a delay in processing the request while it is forwarded to the correct office (but the request would not be treated as a nonconforming request under the section).

Section 177.13

This section concerns conferences on issues raised in ruling requests and replaces present § 177.4. The following points are noted regarding changes reflected in the proposed new text:

1. Conferences may be held only at the Headquarters Office and only in connection with rulings to be issued by that office. If a request for a conference (see proposed § 177.11(b)(9)) is made in a ruling request submitted to the National Commodity Specialist Division and an adverse ruling is contemplated and the matter cannot be resolved informally by the ruling requester and that office, the ruling request will be forwarded to the Headquarters Office for processing (forwarding to the Headquarters Office is simply intended to preserve the ruling requester's right to have a conference in the described circumstances).

2. Although a ruling requester will retain the right to have a conference if requested and provided that an adverse ruling is contemplated, under the revised text a conference also may be held whenever the Headquarters Office believes that a conference is necessary.

3. The paragraph regarding representation has been modified to clarify that while there is no restriction regarding who may accompany a ruling requester at a conference, only an "authorized agent" may appear at the conference in place of the ruling requester.

4. If additional information is to be provided after a conference, the new text prescribes a 30-day period (or longer period as may be specified by the Headquarters Office) for submission of that information.

Section 177.14

This section concerns changes in the status of transactions (in particular when a prospective transaction described in a ruling request becomes a current transaction or when the ruling requester learns that a summons involving the same issue has been filed in the Court of International Trade) and replaces present § 177.5. The text has been simplified to specify two basic circumstances in which a person must advise Customs of a change and the possible consequences for failing to do so.

Section 177.15

This section concerns the withdrawal of ruling requests and replaces present § 177.6. The text has been modified (1) to require that the withdrawal be in writing, (2) to refer to an exception under the new Subpart D texts to the normal rule that Customs will retain the ruling request and related materials in its file after a withdrawal, and (3) to more clearly state that Customs may issue a ruling on the matter on its own initiative notwithstanding the withdrawal if it is believed necessary for the sound administration of the Customs and related laws.

Section 177.16

This section specifies situations in which a ruling will not be issued and replaces present § 177.7. The list of situations has been significantly expanded and includes, among other things, the two-bites-at-the-apple principle discussed above in the overview of the changes to the prospective ruling provisions.

Section 177.17

This section concerns the issuance of rulings and replaces those portions of present § 177.8 that specifically concern the issuance process. Paragraph (a) covers the issuance of rulings in response to requests and includes, in paragraph (a)(3), a simplified text taken from present § 177.2(d) regarding the handling of requests for immediate consideration. It should also be noted that the provision in paragraph (a)(2) for issuance of ruling request responses by the National Commodity Specialist Division within 30 days is not intended to be mandatory because in some cases a longer period may be necessary. Paragraph (b) deals with the issuance of Customs-initiated rulings (as already discussed above in the overview of the changes to the prospective ruling provisions). It should be noted that an exception to the 30-day written submission period will apply to Customs-initiated rulings involving admissibility issues, because admissibility issues often involve time-sensitive enforcement considerations requiring immediate action on the part of Customs.

Section 177.18

This section sets forth the requirement of recipients to bring prospective rulings to the attention of Customs field offices and to use positions set forth in those rulings when completing entry documentation. It in effect replaces present § 177.8(a)(2).

Section 177.19

This section concerns the effect of prospective rulings and in effect replaces present § 177.9(a)–(c).

Section 177.20

This section sets forth procedures regarding the appeal of adverse prospective rulings issued under subpart B. This section is entirely new and implements the terms of 19 U.S.C. 1625(b) as added by section 623 of the Mod Act. The following points are noted regarding the proposed text which is otherwise self-explanatory:

1. Although the statute refers to the appeal of an adverse "interpretive" ruling, the proposed text refers to "prospective" rulings to ensure coverage of all rulings issued under subpart B.

2. Although the proposed text makes provision for conferences at the Headquarters Office, it differs from the initial prospective ruling procedure by providing for conferences not as a matter of right but rather only if the Headquarters Office believes that a conference is necessary.

3. An appeal under this section would constitute a second bite under the two-bites-at-the-apple principle discussed above.

4. With regard to rulings that are modified or revoked on appeal, the effective date provisions in paragraph (g)(4) of the proposed text must reflect a distinction between rulings that have been in effect for less than 60 days and those that have been in effect for 60 or more days because, in the latter case, the publication and effective date requirements of 19 U.S.C. 1625(c) and proposed new § 177.21 will control.

Section 177.21

This section implements the modification and revocation provisions of 19 U.S.C. 1625(c) as added by section 623 of the Mod Act and it also in effect replaces present § 177.9(d) and (e). The following points are noted regarding this proposed text:

1. The proposed text reflects a decision Customs has taken to use a prospective ruling as the means for carrying out a modification or revocation referred to in the statute or in the present regulatory text. Therefore, under the general statement in paragraph (a) of the proposed text a prospective ruling issued under subpart B of part 177 can (1) modify or revoke a previously issued prospective ruling, (2) modify or revoke a previously issued internal advice decision, (3) modify or revoke a holding or principle covered by a protest review decision issued previously under part 174, or (4) have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions. The following additional points are noted regarding the general content of this section:

a. The text reflects the statutory requirement of *Customs Bulletin* publication and thus ensures that the modification or revocation procedure will be controlled by the Headquarters Office;

b. The text refers to the modification or revocation of a "prospective" ruling (rather than an "interpretive" ruling) because, similar to the case of appeals under proposed § 177.20, this will ensure coverage of all rulings issued under subpart B; and

c. The text refers to the modification or revocation of a "holding or principle covered by" a protest review decision rather than using only the term "protest review decision" that appears in 19 U.S.C. 1625. Customs notes in this regard that protests and protest review decisions arise under a separate statutory and regulatory framework (19 U.S.C. 1514 and 1515 and 19 CFR part 174) and involve Customs decisions taken on current transactions. A previously issued protest review decision may already have resulted in an action (for example, reliquidation of an entry) that has become final and therefore is not technically susceptible to modification or revocation. On the other hand, a holding or principle reflected in a protest review decision can always be modified or revoked for purposes of applying the new position to prospective or current transactions.

Customs also notes that protests, by virtue of their separate statutory and regulatory framework, represent an exception to the rule that applies when a ruling issued under part 177 is modified or revoked pursuant to 19 U.S.C. 1625(c), because the statutory right to file a protest cannot be infringed by an action taken by Customs under another statutory authority. Therefore, when the same issue is involved in a pending protest and in a proposed modification or revocation under 19 U.S.C. 1625(c), Customs will first conclude the 19 U.S.C. 1625(c) procedure and then issue a decision on the protest consistent with the position taken in the modifying or revoking ruling unless the protestant is entitled to a different decision due to application of any procedural delay.

2. Paragraph (b) of the proposed text concerns the procedures for modifying or revoking prospective rulings, internal advice decisions, and holdings or principles covered by protest review decisions. The following points are noted regarding this text:

a. The text reflects the statutory distinction between rulings, etc. that have been in effect for less than 60 days and those that have been in effect for 60 or more days. In the latter case the text sets forth proposed and final action *Customs Bulletin* publication procedures. The modification and revocation procedures set forth in this paragraph reflect the procedures that Customs has followed under authority of the statute since the Mod Act provisions were enacted;

b. In addition to soliciting comments on the proposed modification or revocation, the notice of the proposed action invites members of the public who have received an affected ruling, etc., but who are not specifically identified in the notice, to advise Customs in writing of that fact during the prescribed 30-day comment period. The purpose of this provision is to give all affected ruling, etc. recipients an opportunity to come forward to Customs so that they would be notified in writing of the final action taken on the proposed modification or revocation. It should be noted that a failure to respond to this solicitation would have no effect on the ruling, etc. recipient's statutory and regulatory rights regarding the effective date of the final modification or revocation action, including his right to exercise the option of having application of the modification or revocation to his transactions commencing on the date of publication of the final notice of modification or revocation rather than only upon the close of the statutory 60-day delayed effective date period (see the discussion below regarding the paragraph (e) effective date provisions); and

c. The text makes it clear that a published final modifying or revoking notice applies to all existing rulings and decisions that involve substantially identical merchandise or issues, including rulings and decisions that are not specifically identified in that final notice.

3. Paragraph (c) of the proposed text sets forth the standards that apply to the issuance of a prospective ruling that has the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions. The following points are noted regarding the proposed text:

a. Paragraph (c)(1) includes a definition of the term "treatment," describes the general approach Customs will take in applying that definition to a specific situation, provides that a person may not claim as a treatment the treatment Customs accorded to

transactions of another person (because treatment is personal and thus not transferable), provides that the burden of proving the existence of a treatment is on the person claiming the treatment, and prescribes standards for evidence of previous treatment. In setting forth these regulatory standards, Customs has relied in part on the text of present § 177.9(e) which concerns the use of delayed effective dates in the case of ruling letters covering transactions or issues not previously the subject of ruling letters and which have the effect of modifying the treatment previously accorded by Customs to substantially identical transactions. Customs believes that use of the present regulatory standards in this new regulatory text is appropriate because, given the similarity in language, it seems clear that the present regulation served as the model for the subsequently enacted statutory text except that application of a delayed effective date is now mandated. However, in the definition of "treatment," the proposed regulatory text differs from the present regulatory standard in providing that Customs will give "no weight" (rather than "diminished weight") to transactions that Customs for facilitation purposes processes expeditiously and without examination or import specialist review. This proposed text is intended to reflect present Customs operational reality, that is, the fact that under selectivity and bypass and related procedures Customs simply does not intervene in the vast majority of the approximately 18 million formal entries filed annually (98 percent of which are filed electronically and over 60 percent of which do not require the presentation of invoices to Customs). Customs believes that it would be inappropriate to conclude, as a legal matter, that Customs accorded treatment to a transaction in those circumstances;

b. Paragraph (c)(2)(i) describes the normal circumstance in which Customs will publish in the *Customs Bulletin* a notice of intent to modify or revoke a treatment, that is, when Customs has reason to believe at the outset that the proposed prospective ruling would have that effect. In this case the regulatory text states that the notice will be published either separately or as part of a notice of a proposed modification or revocation of a ruling, etc. under paragraph (b), will solicit comments on the proposed modification or revocation, and will invite members of the public to advise Customs in writing if they have received the same treatment on substantially identical transactions (as in the case of rulings, etc., a failure to respond to the notice would not prejudice a treatment recipient's right to avail himself of the benefits of the effective date provisions under paragraph (e)). The text also provides for publication of a notice of final action on the proposed modification or revocation; and

c. Paragraph (c)(2)(ii) sets forth a second circumstance in which Customs might publish a notice of intent to modify or revoke a treatment, that is, when Customs issues a prospective ruling without being aware that it would have that effect but after issuance receives a written application from a person claiming previous treatment and requesting a delay in the effective date of the prospective ruling with respect to his transactions. In this case, if Customs agrees with the position of the person regarding the existence of the previous treatment: (1) the prospective ruling in effect would be void as regards the person who established that he had the previous treatment, and (2) Customs would continue the treatment previously accorded to that person's substantially identical transactions pending completion of the proposed modification or revocation and final action publication procedures prescribed in paragraph (c)(2)(i). The proposed text sets no time limit for submission of the written application.

Paragraph (c)(2)(ii) has been included in the section text because the statutory publication requirements regarding modification or revocation of a treatment merely require the existence of a treatment and thus do not require advance knowledge on the part of Customs regarding the existence of the treatment. This being the case, in the absence of publication of notice of a proposed modification or revocation of a ruling, etc. under paragraph (b) which would automatically solicit comments regarding existing treatments, a post-issuance mechanism must be provided whereby interested persons may inform Customs of the existence of treatments of which Customs is not otherwise aware (Customs does not keep the types of records that would enable Customs to determine routinely and independently that a treatment is being affected by a prospective ruling). As part of the general solicitation of public comments set forth in this document, Customs is interested in receiving comments on the approach proposed in this paragraph, including suggestions for any alternative approaches that commenters believe would be preferable.

4. Paragraph (d) sets forth exceptions to application of the notice requirements of paragraphs (b) and (c). The following is noted regarding the proposed text:

a. Paragraph (d)(1) sets forth a general statement and specific examples of circumstances in which Customs will not follow the paragraph (b) or paragraph (c) publication and issuance requirements. These circumstances generally involve modifications and revocations that result from governmental (legislative, judicial or administrative) decisions or other actions taken outside Customs or that result from publication procedures pursuant to other statutory authority. This paragraph has been included because it would be unreasonable, excessively burdensome, and unnecessary to require Customs to follow the paragraph (b) or paragraph (c) publication and issuance requirements with regard to matters as to which the public already has notice regarding their effect (by operation of law or otherwise) and with regard to changes that do not result from the exercise of discretionary decision-making authority on the part of Customs.

Paragraph (d)(1)(v) refers to the publication of a decision in the **Federal Register** as a result of a domestic interested party petition, which is a procedure that (similar to a protest) has its own statutory and regulatory framework (19 U.S.C. 1516 and 19 CFR part 175) and that (similar to the 19 U.S.C. 1625(c) procedure) provides for public notice and comment. This paragraph was included because Customs does not believe that sound administrative practice would be well served by repeating in a 19 U.S.C. 1625(c) procedure what was already accomplished in a 19 U.S.C. 1516 context. While cases that could potentially give rise to both statutory procedures will occur only infrequently, Customs has developed the following internal approach to avoid any possible conflict between the two procedures: (1) if Customs agrees with the position presented by a domestic interested party under 19 U.S.C. 1516, Customs will then attempt to determine whether there is an extant ruling, internal advice decision, protest review decision or treatment that is in conflict with that position and, if it is determined that a conflict exists, then Customs will initiate the 19 U.S.C. 1625(c) modification or revocation procedure; or (2) if the position of Customs differs from the position of the domestic interested party and that party contests the Customs position, the matter will be resolved in accordance with the 19 U.S.C. 1516 publication procedures. As part of the general solicitation of public comments contained in this document,

Customs is interested in receiving comments on the Customs position regarding this specific matter.

b. Paragraph (d)(2) sets forth three specific circumstances in which Customs will issue a modifying or revoking ruling but is not required to follow the paragraph (b) or paragraph (c) *Customs Bulletin* publication procedure. The reference to correction of a clerical error reflects the terms of 19 U.S.C. 1625(c)(1) and the reference to rulings issued under the NAFTA regulations reflects the fact that different standards apply to the modification or revocation of advance rulings under the NAFTA.

5. Paragraph (e) prescribes rules regarding the effective dates and application of modifications and revocations under § 177.21. The following is noted regarding the proposed text:

a. Paragraph (e)(1) covers the modification or revocation of prospective rulings, internal advice decisions, and holdings or principles covered by protest review decisions that have been in effect for less than 60 days. The proposed text provides for an effective date for the modifying or revoking ruling, and for its application to transactions, commencing on the date of issuance because the statutory *Customs Bulletin* publication and delayed effective date provisions do not apply in this case;

b. Paragraph (e)(2) covers the modification or revocation of prospective rulings, internal advice decisions, and holdings or principles covered by protest review decisions that have been in effect for 60 or more days. The proposed text provides that the modifying or revoking notice will be effective 60 days after publication of the final modifying or revoking notice in the *Customs Bulletin*, in keeping with the statutory delayed effective date provision which applies in this case. With regard to the application of the modifying or revoking notice to transactions, the proposed text states that it will apply to merchandise entered, or withdrawn from warehouse for consumption, and provided that liquidation of the entry in question has not become final, as follows: (1) sixty days after publication of the final modifying or revoking notice in the *Customs Bulletin*; or (2) at the option of the person whose goods are in question, commencing on the date of publication of the final modifying or revoking notice in the *Customs Bulletin*.

This proposal for alternatives in applying the modification or revocation to transactions is not specifically addressed in the delayed effective date language of the statute. However, Customs believes that Congress intended to protect importers and other persons who deal directly with Customs from the effect of unilateral decisions taken by Customs without prior notice. Thus, Customs believes that the proposal could have the following results: (1) It would allow the importer or other interested party to obtain a result earlier if the result reflected in the modifying or revoking notice is favorable to his position; (2) it would afford Customs more flexibility to apply the correct legal position at an earlier date (provided the importer or other interested person requests it); (3) it would reduce the need to resort to other administrative remedies (such as filing protests and applications for further review) at a later date; (4) by leaving the choice to the importer or other interested party who is always the best judge of what is in his interest, it would preserve the basic purpose behind the statutory delayed effective date provision; and (5) it is consistent with the principle that underlies the statutory obligation of an importer to exercise reasonable care when entering merchandise; and

c. Paragraph (e)(3) covers the modification or revocation of treatment previously accorded to substantially identical transactions. Because the statutory *Customs Bulletin* publication and delayed effective date provisions apply in this case, this paragraph follows the general approach taken in paragraph (e)(2) regarding the effective date of the modification or revocation and its application to transactions, but the text in regard to advancing the date of application refers to "a person who makes a valid claim regarding previous treatment." The additional observations regarding paragraph (e)(2) therefore also apply to this paragraph.

As part of the general solicitation of public comments set forth in this document, Customs would be interested in receiving specific comments regarding the suitability of the proposal in paragraphs (e)(2) and (e)(3) of this section to allow alternatives in applying a final modifying or revoking notice to transactions.

Section 177.22

This section concerns changes in established and uniform practices under 19 U.S.C. 1315(d) that result in a higher rate of duty or charge and is in part derived from present § 177.10(c). The following points are noted regarding the proposed new text:

1. Paragraph (a) sets forth traditional administrative and judicial principles regarding the meaning of an established and uniform practice and clarifies that the burden is on the importer to prove the existence of the practice except when Customs publishes a notice of a practice on its own initiative under paragraph (c). Similar to the approach taken in the definition of "treatment" in proposed § 177.21(c)(1) as discussed above, this paragraph (a) text provides that "treatment accorded by Customs" means an actual review of entries and does not include cases where Customs had no direct, active involvement in the liquidation of the entry.

2. Paragraph (b) concerns the procedures applicable to changes in established and uniform practices and is based both on the statute and on the present regulatory text.

3. Paragraph (c) concerns publication of notice of the existence of an established and uniform practice by Customs on its own initiative. Once Customs publishes the notice of that practice in the *Customs Bulletin*, the practice would become subject to the paragraph (b) change procedures.

Section 177.23

This section sets forth specific procedures for the limitation of court decisions. It implements 19 U.S.C. 1625(d) and in effect replaces present § 177.10(d). The terms of the proposed text are otherwise self-explanatory.

Section 177.24

This section concerns the availability of rulings to the public. It implements the terms of 19 U.S.C. 1625(a) and in effect replaces present § 177.10(a). The following points are noted regarding the proposed new text:

1. The text elaborates on the statutory language in referring to all "rulings" issued under Part 177 (rather than to only "interpretive rulings") to ensure maintenance of the broad availability of all part 177 rulings as has been the practice of Customs since adoption of the Mod Act statutory changes.

2. Although the reference to "rulings" would cover internal advice decisions issued under proposed new subpart C, it would not cover protest review decisions issued under part 174 of the regulations. Customs intends to address this matter in the context of a separate part 174 regulatory document.

3. An exception has been included for rulings already made available to the public by virtue of publication under proposed §§ 177.21, 177.22 and 177.23.

Subpart C (Internal Advice Procedure)

Section 177.31

This section concerns requests for advice by Customs offices in general and is based on the general statement contained in present § 177.11(a).

Section 177.32

This section sets forth the standards that apply to requests for advice on current transactions and in effect replaces present § 177.11(b). The following points are noted regarding the proposed text:

1. Paragraph (a) concerns requests for advice in circumstances in which a prospective ruling has been issued. The text corresponds to present § 177.11(b)(1). The following is noted regarding this proposed paragraph (a) text:

a. In cases involving requests initiated by Customs, the text provides that the importer or other interested person having an interest in the current transaction at issue will be given 30 days to make a written submission on the issue; and

b. In cases involving requests initiated by importers or other interested persons, the text provides that, so long as the matter meets the paragraph (c) standards for internal advice, the decision to request advice is solely at the discretion of the Customs office and will be made in writing within 30 days.

2. Paragraph (b) concerns requests for advice in circumstances in which a prospective ruling has not been issued. The text corresponds to present § 177.11(b)(2). The following is noted regarding this proposed paragraph (b) text:

a. In proposed paragraph (b)(1), the text follows proposed paragraph (a) regarding written submissions when requests are initiated by Customs and regarding the discretion of the Customs office to request advice. However, the text also contains an exception to that discretionary authority in cases involving differences in tariff treatment as provided in proposed paragraph (b)(2); and

b. Paragraph (b)(2) mandates that a Customs office request internal advice, subject to two conditions, when it learns that two or more Customs offices are applying different tariff results to the same merchandise. The text also provides that an importer of merchandise, as a function of the exercise of reasonable care, has an obligation to inform Customs when he files his entry if he knows that a "difference" situation exists regarding his importations. This provision is intended to foster uniformity in tariff application and in effect replaces present § 177.12 in this regard.

3. Paragraph (c) sets forth criteria for internal advice and has no specific counterpart in the present § 177.11 text. The following is noted regarding this proposed paragraph (c) text:

a. Proposed paragraph (c)(1) sets forth specific circumstances in which internal advice may be requested and is modeled on the criteria for further review of protests contained in present § 174.24 but with changes to reflect an internal advice context. It should be noted that these new criteria for internal advice do not permit the mere allegation of a fact by an importer or other interested person to establish that a criterion for internal advice has been met; and

b. Proposed paragraph (c)(2) lists specific circumstances in which internal advice may not be requested and is similar to proposed § 177.16 (which specifies when a prospective ruling under Subpart B will not be issued) but with changes to reflect an internal advice context. Thus, this proposed text incorporates, among other things, the two-bites-at-the-apple principle discussed above.

4. Paragraph (d) sets forth content standards for submissions or requests made by importers and other interested persons and in effect replaces present § 177.11(b)(3). The text has been modified to align on the language used in proposed § 177.11(b) for prospective ruling requests as regards conferences, requests for confidential treatment and, if the second criterion for internal advice is used, the certification as regards pending consideration and accuracy of the information provided.

5. Paragraph (e) concerns the initial review of statements submitted by importers and other interested persons and is based on present § 177.11(b)(4).

6. Paragraph (f) sets forth procedures regarding the submission and processing of requests for internal advice. The following is noted regarding this proposed paragraph (f) text:

a. Proposed paragraph (f)(1) requires the involved Customs office to submit the internal advice request to the National Commodity Specialist Division if the request involves a matter on which the National Commodity Specialist Division is allowed to issue a prospective ruling under proposed § 177.11(a)(1). The text also specifies three specific alternative actions that the National Commodity Specialist Division may take regarding the request (that is, in specific circumstances, return it to the requesting Customs office without decision, issue a decision to the requesting Customs office with a copy to the importer or other interested person, or forward the request to the Headquarters Office for consideration and decision) and the circumstances in which each of those actions may be taken;

b. Proposed paragraph (f)(2) requires the involved Customs office to submit the internal advice request directly to the Headquarters Office if the request involves a matter on which only the Headquarters Office may issue a prospective ruling under proposed § 177.11(a)(2). The text also specifies the manner in which the Headquarters Office will review an internal advice request and issue a decision and includes the terms of present § 177.11(b)(5) regarding circumstances in which the Headquarters Office may refuse to consider a request; and

c. Proposed paragraph (f)(3) concerns conferences on issues raised in internal advice requests and has no specific counterpart in present § 177.11. This proposed text is modeled on the conference provisions for prospective rulings set forth in proposed § 177.13.

7. Paragraph (g) concerns the effect of internal advice decisions. The following is noted regarding this proposed text:

a. Proposed paragraph (g)(1) sets forth a general statement regarding the effect and application of internal advice decisions and is derived from present § 177.11(b)(6). The proposed text differs from the present text in that it (1) does not refer only to decisions issued by the Headquarters Office (because internal advice decisions can also be issued by the National Commodity Specialist Division in some cases), (2) does not include the language regarding reconsideration of the decision (which Customs does not believe is necessary given the extent of the participation of the requesting office in the process), (3) clarifies that a decision will be applied by Customs to future transactions of the importer or other interested person involving circumstances that are substantially identical in all material respects (rather than only to the one specific current transaction that gave rise to the decision), and (4) includes exception language for cases in which a decision is subsequently modified or revoked; and

b. Proposed paragraph (g)(2) sets forth standards regarding the reliance on internal advice decisions by third parties. The text follows the approach taken in the case of prospective rulings under proposed § 177.19(c).

Section 177.33

This section sets forth procedures regarding the appeal of adverse internal advice decisions. The proposed text follows the proposed § 177.20 text regarding the appeal of adverse prospective rulings but with some wording changes necessary to reflect an internal advice context. Therefore, the principles reflected in the points noted above regarding proposed § 177.20 also apply to this proposed section.

Section 177.34

This section concerns the availability of internal advice decisions to the public and consists of a simple cross-reference to proposed § 177.24. It thus is consistent with the mandate of 19 U.S.C. 1625(a) and replaces present § 177.11(b)(7).

Subpart D (Disclosure of Confidential Business Information)

Section 177.41

This section sets forth detailed standards for the treatment of requests for confidential treatment of business information submitted to Customs under subpart B or subpart C. In addition to the general comments regarding subpart D made above, the following points are noted regarding the proposed text:

1. Paragraph (a) consists of a basic statement regarding (1) the position of Customs on the general availability to the public of information submitted to Customs under part 177 and (2) the right of a submitting person to request confidential treatment of information that he does not want to be disclosed to the public.

2. Paragraph (b) prescribes the standards for submitting requests for confidential treatment. The proposed text represents an elaboration of, and therefore in effect replaces, present § 177.2(b)(7) and is self-explanatory.

3. Paragraph (c) specifies the procedures Customs will follow in handling requests for confidential treatment made under proposed paragraph (b). It has no direct counterpart in the present part 177 texts. With regard to situations in which Customs and the requesting person cannot reach agreement on a request for confidential treatment, it should be noted that the proposed text does not provide for nonconsideration and return of a submission made in connection with a prospective ruling or internal advice request that is initiated by Customs. Rather, the text provides in this case that Customs will proceed with the prospective ruling or internal advice decision but will attempt to prepare a meaningful ruling or decision in such a way as to avoid disclosure of the information at issue. This provision was included in order to avoid a situation in which the issuance of a ruling that Customs deems to be necessary could be forestalled by an importer or other interested person simply by making a request for confidentiality. Customs believes that such a result must be avoided because it could seriously compromise the effectiveness of the Customs-initiated ruling procedure.

Section 177.42

This section provides for a time limitation on a grant of confidential treatment and is self-explanatory.

Section 177.43

This section sets forth the procedures for renewing a grant of confidential treatment and is self-explanatory.

Section 177.44

This section specifies the procedures that Customs and private parties must follow when a request for disclosure under the Freedom of Information Act (the FOIA, 5 U.S.C. 552) is made for business information submitted to Customs under subpart B or subpart C of part 177. It has no counterpart in the present part 177 texts. The proposed text reflects the so-called "reverse FOIA" principles that apply to Federal government agencies under Exemption 4 of the FOIA and is based on the provisions regarding disclosure of business information contained in § 1.6 of the Treasury Department Regulations (31 CFR 1.6).

Subpart E (Government Procurement; Country-of-Origin Determinations)

The only changes proposed for this subpart involve changes to section references within the texts to reflect the organizational changes and consequential renumbering of the sections within part 177.

Comments

Before adopting these proposed regulatory amendments as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. The administrative procedures reflected in the proposed regulatory amendments are designed to provide advance advice regarding the applicability of the Customs and related laws to planned import transactions and to assist in the proper application of those laws to current transactions, and direct involvement of the public in those administrative procedures is voluntary in nature. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Furthermore, this document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in these proposed regulations are in §§ 177.11, 177.14, 177.17, 177.18, 177.20, 177.21, 177.32, 177.33, 177.41, 177.43 and 177.55. The information to be collected is required in connection with the consideration of requests for, and issuance of, rulings or other written advice from Customs regarding the application of the Customs and related laws to current or future transactions, in connection with appeals and modifications or revocations of prior Customs rulings or treatments, or in connection with the issuance of country-of-origin advisory rulings and final determinations relating to Government procurement. Failure to provide the required information may preclude issuance of the requested advice by Customs or may preclude the application of the requested relief or other action by Customs. The likely respondents are individuals and business or other for-profit institutions, including partnerships, associations, and corporations, and their authorized agents.

Estimated total annual reporting and/or recordkeeping burden: 128,000 hours.

Estimated average annual burden per respondent/recordkeeper: 10 hours.

Estimated number or respondents and/or recordkeepers: 12,200.

Estimated annual number of responses: 1.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention:

Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the information collection burden; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start up costs and costs of operations, maintenance, and purchase of services to provide information.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 177

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Government procurement, Reporting and recordkeeping requirements, Rulings.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend Part 177 of the Customs Regulations (19 CFR Part 177) as set forth below:

PART 177—ADMINISTRATIVE RULINGS

1. The authority citation for Part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1502, 1624, 1625.

1a. Subpart A, consisting of § 177.0, is removed.

1b. Subpart B, consisting of §§ 177.21 through 177.31, is redesignated as subpart E, consisting of §§ 177.51 through 177.61.

1c. New subparts A through D are added to read as follows:

Subpart A—General Provisions

Sec.
177.1 Overview of the part 177 ruling and related processes.
177.2 Definitions.

Subpart B—Advice on Prospective Transactions

177.11 Preparation and submission of requests for prospective rulings.
177.12 Nonconforming requests.
177.13 Conferences on issues.
177.14 Change in status of transaction.
177.15 Withdrawal of requests.
177.16 Situations in which no prospective ruling will be issued.
177.17 Issuance of prospective rulings.
177.18 Requirement to bring rulings to the attention of field offices.
177.19 Effect of prospective rulings.
177.20 Appeal of prospective rulings.
177.21 Modification or revocation of prospective rulings, internal advice decisions, protest review decisions, and previous treatment of substantially identical transactions.
177.22 Established and uniform practice.
177.23 Limitation of court decisions.
177.24 Availability of rulings to the public.

Subpart C—Internal Advice Procedure

177.31 Requests for advice by Customs offices in general.
177.32 Requests for advice on current transactions.
177.33 Appeal of internal advice decisions on current transactions.
177.34 Availability of internal advice decisions to the public.

Subpart D—Disclosure of Confidential Business Information

177.41 Treatment of requests for confidentiality.
177.42 Time limitation.
177.43 Renewal of confidential treatment.
177.44 Disclosure pursuant to the FOIA.

Subpart A—General Provisions

§ 177.1 Overview of the part 177 ruling and related processes.

(a) *General*—(1) *What does part 177 cover?* This part covers:

(i) The issuance by Customs of written advice on future (prospective) Customs transactions and the procedures Customs will follow when limiting court decisions or when changing an established and uniform practice involving tariff treatment (subpart B of this part);

(ii) The issuance by Customs of written advice on current Customs transactions (subpart C of this part);

(iii) The treatment of requests for confidential treatment of business information submitted to Customs under subpart B or C of this part (subpart D of this part); and

(iv) The issuance of country-of-origin advisory rulings and final determinations relating to Government procurement (subpart E of this part).

(2) *What is a Customs transaction?* A Customs transaction is an importation or other action that involves the application of the Customs and related laws (see also the definition of "Customs transaction" in § 177.2).

(3) *What does part 177 not cover?* The provisions of this part do not apply to:

(i) Administrative rulings, determinations, or decisions requested or issued under procedures set forth in other parts within this chapter, including, but not limited to, those set forth in:

(A) Part 12 (relating to submissions of proof of admissibility of articles detained under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307));

(B) Part 103 (relating to disclosure of information in Customs files);

(C) Part 133 (certain enforcement actions relating to intellectual property rights);

(D) Subpart C of part 152 (relating to determinations concerning the dutiable value of merchandise by Customs field officers);

(E) Part 162 (relating to the calculation of loss of revenue in penalty cases);

(F) Part 171 (relating to fines, penalties, and forfeitures);

(G) Part 172 (relating to liquidated damages);

(H) Part 174 (relating to protests);

(I) Part 175 (relating to petitions filed by American manufacturers, producers, or wholesalers pursuant to section 516 of the Tariff Act of 1930, as amended);

(J) Part 181 (relating to the North American Free Trade Agreement); and

(K) Part 191 (relating to general and specific manufacturing drawback rulings); and

(ii) Other requests for decisions of an operational, administrative, or investigative nature.

(b) *Advice on prospective transactions under subpart B of this part.*

(1) *How does Customs provide written advice on prospective transactions?* Customs provides written advice on prospective Customs transactions under subpart B of this part through the issuance of rulings (see the definition of "ruling" in § 177.2) either in response to a request made under § 177.11 or in accordance with § 177.17(b).

(2) *What is the main purpose of a prospective ruling?* A ruling issued under subpart B of this part informs the recipient of the legal consequences of a Customs transaction (for example, the tariff classification and rate of duty that apply to an article to be imported into the United States from another country) before the transaction takes place.

(3) *Does a prospective ruling have specific legal significance and effect for*

Customs and the recipient? Yes. Issuance of a ruling under subpart B of this part means that Customs is legally bound by the conclusion reached in it. This guarantees that Customs will apply that result to the recipient's transaction once it becomes a current transaction by virtue of importation or other action (absent a subsequent modification or revocation or superseding legal event that has taken effect). For more information on this point, see § 177.19.

(4) *Does a prospective ruling impose any obligation on the recipient?* Yes. The ruling recipient must follow the result of the prospective ruling when entering the merchandise in question. A failure to do so could result in the assessment of a monetary penalty. For more information on this point, see § 177.18.

(5) *Who may request a prospective ruling?* A ruling regarding tariff classification may be requested under subpart B of this part by any person who is an importer of merchandise into, or an exporter of merchandise to, the United States. A ruling may be requested in a non-classification context under subpart B of this part by any person who has a direct and demonstrable interest in the question or questions presented under the Customs and related laws. An authorized agent (see the definition of "authorized agent" in § 177.2) may submit a ruling request on behalf of an importer or other interested person.

(6) *What matters may be the subject of a request for a prospective ruling?* A request for a ruling under subpart B of this part may cover any issue under the Customs and related laws that falls within the subject matter jurisdiction of the Headquarters Office or the National Commodity Specialist Division, including the following:

(i) Tariff classification under the Harmonized Tariff Schedule of the United States;
(ii) Country of origin determinations;
(iii) Country of origin marking;
(iv) Valuation;
(v) Entry procedures;
(vi) Customs brokers;
(vii) Drawback;
(viii) Duty-preference programs;
(ix) Duty-deferral programs;
(x) Transportation and conveyances; and
(xi) Intellectual property rights.

(7) *When will Customs not issue a prospective ruling?* Customs will not issue a prospective ruling in any of the circumstances described in § 177.16.

(8) *Does it matter whether the prospective ruling is issued by the Headquarters Office or by the National Commodity Specialist Division?* No. Regardless of which office issues the prospective ruling, Customs and the recipient must follow the conclusion reached in the ruling (unless it has been superseded, modified, or revoked and the supersession, modification or revocation has taken effect) and any person who is not the recipient of the prospective ruling may choose to rely on it when it is reasonable to do so. For more information on these points, see § 177.19.

(9) *Can Customs issue prospective rulings on its own initiative?* Yes. These rulings are referred to as Customs-initiated rulings and have the same legal effect as rulings issued under subpart B of this part in response to a request. For more information on Customs-initiated rulings, see § 177.17(b).

(10) *Does the recipient of a prospective ruling have any recourse under subpart B of this part if he disagrees with the result reached in the ruling?* Yes. The recipient may appeal the prospective ruling in accordance with § 177.20.

(11) *Are prospective rulings available for review and use by the general public after issuance?* All prospective rulings are made available to the general public after issuance (see § 177.24).

(12) *Can Customs modify or revoke a prospective ruling after issuance?* Yes. The procedures for modifying or revoking prospective rulings are set forth in § 177.21. A recipient of a prospective ruling that has been modified or revoked will receive actual or constructive notice of that fact. If Customs contemplates modifying or revoking a prospective ruling more than 60 calendar days after it was issued, the recipient of that ruling will be given an opportunity to comment on the contemplated action before Customs makes a final decision. Public notice with opportunity to comment will be published in the *Customs Bulletin*.

(13) *If a prospective ruling is modified or revoked, what are the consequences?* A prospective ruling that has been modified or revoked is no longer binding on Customs or the recipient and no longer has relevance for third parties and therefore should not be followed. See § 177.21 for more information on the modification or revocation of rulings.

(14) *If Customs has treated a person's transactions consistently in a certain way (for example, applied a specific tariff classification to imported merchandise) and then contemplates issuance of a prospective ruling that would change that treatment, will Customs provide the affected person with an opportunity to comment?* Yes. When Customs has reason to believe that a contemplated prospective ruling would have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions, notice of the intent to modify or revoke that treatment will be published and the affected person will have an opportunity to comment. See § 177.21 for more information on the modification or revocation of treatment previously accorded to transactions.

(15) *Will Customs issue a prospective rulings that is orally requested?* No. Customs will not issue a prospective ruling in response to an oral request. Oral opinions or advice of Customs personnel are not binding on Customs. However, oral inquiries may be made to Customs offices regarding existing rulings, the scope of existing rulings, the types of transactions with respect to which Customs will issue rulings, the scope of the rulings which may be issued, or the procedures to be followed in submitting ruling requests, as described in this part.

(16) *Will Customs issue a ruling in response to a current transaction?* Yes. This is referred to as the internal advice procedure. If a question arising in connection with a Customs transaction already before a Customs office (a current transaction) cannot be resolved by that office in accordance with existing principles and precedents, the Customs office may forward the question for advice under the internal advice procedure in accordance with subpart C of this part. See also paragraph (c) of this section.

(c) *Advice on current transactions under subpart C of this part.*

(1) *What is the internal advice procedure?* The internal advice procedure under subpart C of this part involves the issuance of advice by the National Commodity Specialist Division or by the Headquarters Office to a Customs field office regarding the application of the Customs and related laws to a specific Customs transaction that has already come before that Customs field office (a current transaction). A completed Customs transaction may not be the subject of the internal advice procedure.

(2) *How is the procedure started?* The internal advice procedure may be started by the Customs field office on its own initiative or as a result of a request for the procedure made by an importer or other interested person.

(3) *Does an importer or other interested person have a right to the internal advice procedure?* No. While an importer or other interested person may request that a Customs field office seek internal advice, submission of the

internal advice request is generally at the discretion of the Customs field office. However, there are some circumstances in which internal advice must be requested and some circumstances in which internal advice may not be requested. In addition, the procedure regarding further review of protests may be available. For more information on the standards for requesting internal advice, see § 177.32(a)–(c). For more information on the procedures for the further review of protests, see part 174 of this chapter.

(4) *Does an importer or other interested person have an opportunity to participate in the procedure?* Yes. An importer or other interested person who requests the internal advice procedure is required to present his views on the matter at issue in his written request (see § 177.32(d)). If the Customs field office starts the procedure on its own initiative, the importer or other interested person will be given an opportunity to present its written views on the matter. In addition, the importer or other interested person may ask for a conference with Customs to discuss the matter (see § 177.32(f)(3)).

(5) *How is the internal advice decision issued?* The internal advice decision is issued in writing to the Customs field office, and a copy of the decision is provided to the importer or other interested person at that time.

(6) *Does the importer or other interested person have any recourse under subpart C of this part if he disagrees with the result reached in the internal advice decision?* Yes. The recipient may appeal the decision in accordance with § 177.33.

(7) *What is the legal effect of an internal advice decision?* As in the case of a prospective ruling issued under subpart B of this part, an internal advice decision issued under subpart C of this part represents the official position of Customs regarding the transaction described in it. For more information on this point, see § 177.32(g)(1).

(8) *Are internal advice decisions available for review and use by the general public after issuance?* Internal advice decisions issued under subpart C of this part constitute rulings as that term is defined for purposes of that subpart. Accordingly, as in the case of prospective rulings issued under subpart B of this part, internal advice decisions are made available to the general public after issuance (see § 177.34).

(9) *What utility does an internal advice decision have for a person other than the importer or other interested person?* A person may rely on an internal advice decision issued on a current transaction of another person. For more information on this point, see § 177.32(g)(2).

(10) *Are there circumstances in which an internal advice decision should no longer be followed?* Yes. The modification and revocation procedures and requirements that apply to prospective rulings issued under subpart B of this part are also applicable to internal advice decisions issued under subpart C of this part. Accordingly, an internal advice decision that has been modified or revoked by operation of law or by a prospective ruling issued under § 177.21 no longer represents the official position of Customs and therefore should not be followed by the Customs field office or by the importer or other interested person or by third parties. See § 177.21 for more information on the modification or revocation of internal advice decisions.

§ 177.2 Definitions.

For purposes of subparts A through D of this part:

(a) An *authorized agent* is a person expressly authorized by a principal to act on his behalf and may be an attorney at law, a licensed customs broker (see part 111 of this chapter), or any person who is not an attorney at law or a licensed customs broker provided that the matter on which the person represents his principal under this part does not constitute "customs business" as defined in 19 U.S.C. 1641(a)(2). A ruling request submitted by an authorized agent must include a statement describing the authority under which the request is made. Any person appearing before Customs as an authorized agent in connection with a ruling request may be required to present evidence of his authority to represent the principal.

(b) The term *Customs and related laws* includes any provision of the Tariff Act of 1930, as amended (including the Harmonized Tariff Schedule of the United States), or the Customs Regulations, or any provision contained in other laws (including the navigation laws), regulations, treaties, orders, proclamations, or other agreements administered by Customs.

(c) A *Customs transaction* is an act or activity to which the Customs and related laws apply. There are three basic types of Customs transactions:

(1) A *prospective* Customs transaction is one that has not resulted in any arrival or in the filing of any entry or other document or in any other act to bring the transaction, or any part of it, under the jurisdiction of any Customs office;

(2) A *current* Customs transaction is one in which there has been an arrival or the filing of an entry or other document or any other act which brings the transaction, or any part of it, under the jurisdiction of any Customs office, other than the filing of a ruling request under this part or the filing of a request for other administrative action under a provision set forth elsewhere in this chapter; and

(3) A *completed* Customs transaction is one, other than a ruling issued under this part, which has been acted upon by a Customs office and with respect to which that office has issued a determination which is final in nature, but is (or was) subject to appeal, petition, protest, or other review, as provided in the applicable Customs and related laws and regulations.

(d) The term *Headquarters Office* means the Office of Regulations and Rulings located at Headquarters, United States Customs Service, Washington, DC.

(e) An *information letter* is a written statement issued by the Headquarters Office that does no more than call attention to a well-established interpretation or principle of the Customs and related laws, without applying it to a specific set of facts. If Customs believes that general information may be of some benefit to the person making the request, an information letter may be issued in response to a request for a ruling when:

(1) The request suggests that general information, rather than a ruling, is actually being sought;

(2) The request is incomplete or otherwise fails to meet the requirements for a ruling set forth in this part; or

(3) The ruling requested cannot be issued for any other reason.

(f) The *National Commodity Specialist Division* is a Customs office located in the port of New York that is an organizational part of the Customs Office of Regulations and Rulings and that includes among its functions the issuance of prospective rulings and internal advice decisions under this part.

(g) A *person* includes an individual, corporation, partnership, association, or other entity or group.

(h) A *ruling* is a written statement issued by the Headquarters Office or by the Customs National Commodity Specialist Division or by the appropriate field office of Customs as provided in subpart B or subpart C of this part that sets forth the official position of Customs on the interpretation and application of the provisions of the Customs and related laws under a specific set of facts. A ruling may be

issued in response to a specific request and be set forth in a letter addressed to the person making the request or his authorized agent. A ruling also may be issued in the form of a letter to a Customs field office or person in the absence of a specific request. Rulings provided for under subpart B of this part are generally prospective in nature. Rulings provided for under subpart C of this part generally relate to current transactions and consist of internal advice decisions issued to Customs offices.

Subpart B—Advice on Prospective Transactions

§ 177.11 Preparation and submission of requests for prospective rulings.

(a) *Form and address.* A request for a ruling on a prospective Customs transaction should be in the form of a signed letter written in the English language. Requests for prospective rulings must be submitted as follows:

(1) *To the National Commodity Specialist Division.* A request for a ruling involving a matter identified in paragraph (b)(3)(ii) or paragraph (b)(3)(iii) of this section, other than country of origin determinations involving duty-preference programs under General Notes 3(a)(iv) and 4 through 11, Harmonized Tariff Schedule of the United States (HTSUS), must be submitted to the Director, National Commodity Specialist Division, Office of Regulations and Rulings, United States Customs Service, 6 World Trade Center, New York, New York 10048; and

(2) *To the Headquarters Office.* A request for a ruling on country of origin involving duty-preference programs under General Notes 3(a)(iv) and 4 through 11, HTSUS, or on any matter identified in paragraphs (b)(3)(iv) through (b)(3)(vii) of this section, must be submitted to the Office of Regulations and Rulings, United States Customs Service, Washington, DC 20229.

(b) *Content*—(1) *General.* Each request for a ruling on a prospective Customs transaction must contain a complete statement of all facts and other information relating to the transaction. A ruling is issued on the basis of the facts presented to Customs. If an issued ruling was based on inaccurate or incomplete information regarding a material fact, it will not be applied to the transaction for which it was intended.

(2) *Names and addresses.* The ruling request must specify the names, addresses, and other appropriate identifying information of all interested parties.

(3) *Description of transaction*—(i) *General.* The Customs transaction to which the ruling request relates must be described in sufficient detail with all material and relevant facts to permit the proper interpretation and application of relevant Customs and related laws.

(ii) *Tariff classification rulings.* If the transaction involves the importation of an article for which a ruling is requested as to its proper classification under the provisions of the Harmonized Tariff Schedule of the United States, including special program provisions or other provisions under Chapter 98 or Chapter 99, the ruling request should include a full and complete description of the article, including the country of origin of the article and any of its components, if known, and any applicable descriptive details required to be included on an invoice for such article under § 141.89 of this chapter, a description of the manufacturing processes used to produce the article and the countries in which those processes took place, and information as to the article's principal use in the United States, its commercial, common, or technical designation, and, where the article is composed of two or more materials, the relative quantity (by weight and by volume) and value of each. The ruling request should also note, whenever germane, the purchase price of the article, and its approximate selling price in the United States. Individual requests for rulings may involve a maximum of five (5) merchandise items, all of which must be of the same class or kind.

(iii) *Country of origin and marking rulings*—(A) *Country of origin.* If the ruling request involves a determination of the country of origin of an article that incorporates processing operations and/or constituent materials attributable to more than one country (including the United States), the ruling request should include a full and complete description of:

(*1*) The article and/or material prior to the processing in each country, including its tariff classification, if known;

(*2*) Each processing operation performed in each country, the type of machinery used, and the time expended during the processing; and

(*3*) The article after the processing in each country, including its tariff classification, if known.

(B) *Marking issues not involving origin*—(*1*) *Manner of marking.* If the ruling request involves a determination of the acceptability of a manner of marking (for example, whether a proposed marking is sufficiently conspicuous or permanent), a sample of the article is generally required. However, if a sample is not available, a ruling will be issued on a submitted photograph if the photograph adequately demonstrates the proposed marking.

(*2*) *Request for marking exception.* If the ruling request involves the application of one or more exceptions from marking, all facts regarding the requested exception must be furnished. For example, a request involving a proposal to mark a container rather than the article contained therein should include: A complete description of the article and the container; a statement indicating whether or not the article will be repacked after importation; and a statement of how the article is to be used and to whom it is to be sold.

(iv) *Valuation rulings*—(A) *Required information.* Each request for a ruling on the proper method of valuation or on any other issue relating to the appraised value of imported merchandise under 19 U.S.C. 1401a should contain the following:

(*1*) A narrative description of the import transaction;

(*2*) A brief description of the imported merchandise;

(*3*) The names of all parties involved in any sale or sales of the imported merchandise, including the manufacturer, the seller (if different from the manufacturer), the purchaser, the importer, the consignee, and any intermediaries (for example, middlemen acting as buying agents, selling agents, or sellers), or, if the imported merchandise is not sold, a detailed description of the circumstances surrounding the import transaction and the parties involved;

(*4*) A detailed description of the roles of the various parties, including the intermediaries;

(*5*) A description of the relationship, if any, of the various parties;

(*6*) If a sale is involved, the terms of sale, the purchase price, and the method of payment;

(*7*) How, when, and where the merchandise will be shipped and the place from which it will be shipped (to the extent known, the expected movement of the merchandise from the place of manufacture to its ultimate destination in the United States should be described);

(*8*) A statement regarding whether or not any additional payments are made by the buyer to the seller or to a party related to the seller over and above the purchase price (and if so, a description of what each such payment is for);

(*9*) A statement regarding whether or not any assists, as described in subpart

E of part 152 of this chapter, were furnished;

(*10*) If there is more than one sale of the imported merchandise, the details concerning each sale;

(*11*) If the person requesting the ruling does not have any relevant information specified in this paragraph (b)(3)(iv)(A), a statement identifying that missing information; and

(*12*) Any additional information that is relevant to the particular issue presented (the provisions of subpart E of part 152 of this chapter should be consulted in order to determine what additional information might be relevant).

(B) *Documentary evidence.* Each request for a ruling on the proper method of valuation or on any other issue relating to the appraised value of imported merchandise under 19 U.S.C. 1401a should include copies of all relevant documents pertaining to the issue presented, including purchase orders, sales contracts, invoices, bills of lading, buying agency agreements, and royalty agreements (a ruling request involving the dutiability of royalty payments must include copies of any written royalty agreement pertaining to the payment of such royalties and any written supply agreement pertaining to the sale of the imported merchandise).

(v) *Rulings on entry procedures, Customs brokers, drawback, and duty-deferral programs*—(A) *Required information.* Each request for a ruling on entry procedures, issues concerning Customs brokers, drawback (other than applications for rulings under §§ 191.7 and 191.8 of this chapter), and duty-deferral programs (foreign trade zones, temporary importations under bond, and Customs bonded warehouses, including duty-free sales enterprises) should include the following:

(*1*) A complete statement of the specific statutory and regulatory provisions believed to be at issue, if known;

(*2*) Citations to the specific judicial and administrative decisions believed to address the issue involved in the transaction;

(*3*) A complete description of the transaction. The Customs ports at which the transaction is to occur should be identified. The anticipated time when the transaction will take place also should be stated;

(*4*) If the issue involves a transfer of merchandise, then each transfer must be described completely and each party to the transfer must be identified;

(*5*) If the issue involves the adequacy of records, those records must be described in detail, with particular emphasis on describing how the subject merchandise will be recorded and identifying the recordkeeper and where the records will be stored. If the records involve codes, the codes must be defined;

(*6*) If the ruling request involves information that is intended to be filed with Customs when the transaction occurs, the request must state whether the information is to be filed in documentary form or electronically;

(*7*) If the issue involves merchandise in a foreign trade zone, the intended zone status of the merchandise must be stated;

(*8*) If the issue involves the processing of merchandise, a complete description of the processing and of the merchandise at the start and end of the processing must be provided. The ruling request must describe how the merchandise at the end of the process differs in name, use, or characteristics from the merchandise at the start of the process. If the processing involves a chemical reaction or a mixture of chemicals, the chemical formulas must be provided; and

(*9*) If the issue involves commercial interchangeability of imported merchandise and merchandise to be substituted for that merchandise under 19 U.S.C. 1313(j)(2), the ruling request must include information on published governmental or industry standards, tariff classification, part numbers, and value for both the imported merchandise and the substituted merchandise. The request must include information as to whether, and if so how, these criteria are used as terms of sale or purchase of the merchandise.

(B) *Documentary evidence.* Each request for a ruling on entry procedures, issues concerning Customs brokers, drawback, and duty-deferral programs must include documentary evidence which illustrates the information required under paragraph (b)(3)(v)(A) of this section. For example:

(*1*) If the issue involves the sale or purchase of merchandise, documentary evidence would include a complete representative sample of the documents covering the sale or purchase;

(*2*) If the issue involves inventory procedures, documentary evidence would include a complete representative sample of the inventory records involved;

(*3*) If the issue involves the processing of merchandise, documentary evidence would include photographs or drawings of the merchandise at each stage of the process and may include flow charts, if appropriate; and

(*4*) If the issue involves the delivery of merchandise from a duty-free sales enterprise, documentary evidence would include a map or drawing to scale of the store location with respect to the international border and photographs showing the representative amount of traffic during business hours.

(vi) *Rulings on transportation and conveyances*—(A) *Required information.* Each request for a ruling involving transportation and conveyance issues should include the following:

(*1*) A complete statement of the specific statutory and regulatory provisions believed to be at issue;

(*2*) Citations to the specific judicial and administrative decisions believed to address the issue involved in the transaction;

(*3*) A complete description of the transaction. The Customs ports at which, or nearest to which, the transaction is to occur should be identified. The anticipated time when the transaction will take place also should be stated;

(*4*) If the issue involves a vessel, the ruling request must identify the vessel, its country of build, flag, and, if a vessel of the United States, any endorsements on the vessel's documentation;

(*5*) If the issue involves vessel or air cabotage, a complete itinerary must be provided (that is, the ruling request must describe the location of all points in any movement involved, as well as any activity which would occur at each point). If the issue involves passengers, there must be a general description of the types of passengers involved and of their relationship to the conveyance. If the issue involves merchandise, the merchandise must be described;

(*6*) If the issue involves a vehicle, the ruling request must identify the vehicle owner's principal base of operations;

(*7*) If the issue involves fisheries, the ruling request must identify all activities, locations, and species of fish involved; and

(*8*) If the issue involves instruments of international traffic, the ruling request must state the numbers of instruments that are expected to be used and must describe the instrument in detail, including how the instrument is suitable for, and capable of, reuse.

(B) *Documentary evidence.* Each request for a ruling on transportation and conveyance issues must include documentary evidence which illustrates the information required under paragraph (b)(3)(vi)(A) of this section. If the issue involves the movement of a conveyance, documentary evidence would include maps showing the movement. If the issue involves an instrument of international traffic, documentary evidence would includes

photographs or drawings of the instrument.

(vii) *Rulings related to intellectual property rights*—(A) *General.* If the transaction involves the importation of an article or articles for which a ruling is requested as to whether the proposed importation would infringe on a registered trademark or copyright or a recorded trade name, the ruling request should include a full and complete description of the article and a sample together with a description of the transaction to which the ruling request relates.

(B) *Gray market goods.* If the transaction involves the importation of a gray market article (as defined in § 133.23(a) of this chapter), in addition to the information specified in paragraph (b)(3)(vii)(A) of this section, the ruling request should include the country of origin of the article(s), the name(s) of the manufacturer(s), and, if known, a statement as to whether the trademark is owned outside of the United States by the U.S. trademark owner or by a parent, subsidiary, or other party otherwise subject to common ownership or control with the U.S. owner.

(4) *Samples.* Each request for a ruling regarding the status of an article under any Customs or related law affecting the importation or arrival of that article should be accompanied by photographs, drawings, or other pictorial representations of the article and, whenever possible, by a sample article, unless a precise description of the article is not essential to the ruling requested. Any article consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis. A sample submitted in connection with a request for a ruling becomes a part of the Customs file in the matter and will be retained until the ruling is issued or the ruling request is otherwise disposed of. If the return of the sample is desired, the ruling request should say so and should provide for a means of return that will entail no cost to Customs for packing materials and shipping fees. A sample should only be submitted with the understanding that all or a part of it may be damaged or consumed in the course of examination, testing, analysis, or other actions undertaken in connection with the ruling request. All samples not returned or retained by Customs for official government use or consumed in the course of examination, testing, or analysis will be donated to a charity, destroyed, or otherwise disposed of according to law 90 days after issuance of the ruling or other disposition of the ruling request.

(5) *Related documents.* If the question or questions presented in the ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document must be submitted with the request. (Original documents should not be submitted inasmuch as any documents or exhibits furnished with the ruling request become a part of the Customs file in the matter and cannot be returned except as otherwise provided in § 177.12 or § 177.41.) The relevant facts reflected in any documents submitted, and an explanation of their bearing on the question or questions presented, must be expressly set forth in the ruling request.

(6) *Prior or current transactions.* Each ruling request must contain, or provide as a signed attachment to the request, the following certification by a person having knowledge of the facts:

> I certify that, to the best of my knowledge and belief, and except as otherwise stated herein, the transaction described in this ruling request, or one similar, identical, or related to it, is not currently being considered by any Customs office and will not be pending before any Customs office by virtue of a request for a prospective ruling or a request for internal advice or a protest filed simultaneously with this request and is not pending before any other Federal agency or before any Federal court, and that, to the best of my knowledge and belief, all information provided in connection with this ruling request is accurate and complete.

(7) *Statement of position.* If the ruling request asks that a particular determination or conclusion be reached in the ruling letter, a statement must be included in the request setting forth the basis for that determination or conclusion, together with a citation of all relevant supporting authority.

(8) *Confidential information.* If the person submitting a ruling request wants Customs to accord confidential treatment to any information submitted in connection with the ruling request, a written request for that confidential treatment must be made when the information is submitted to Customs and must conform to the requirements of subpart D of this part.

(9) *Conferences.* If a person submitting a ruling request wants an opportunity to have a conference if issuance of an adverse ruling is contemplated (see § 177.13), a statement to that effect must be included in the ruling request.

(c) *Signing; instructions as to reply.* The ruling request must be signed by a person entitled to make the request, as provided in § 177.1(b)(5). A ruling requested by a principal or authorized agent may direct that the ruling letter be addressed to the other.

§ 177.12 Nonconforming requests.

(a) *Notice of nonconformity.* If a ruling request does not conform to the requirements of this subpart, the person submitting the ruling request will be so notified in writing, and the requirements that have not been met will be pointed out in the notice.

(1) *Request submitted to the Headquarters Office.* In the case of a nonconforming ruling request submitted to the Headquarters Office, the person will be given 30 calendar days from the date of the notice (or such longer period as the notice may provide) to supply any additional information requested in the notice or to otherwise conform the ruling request to the requirements referred to in the notice. The file pertaining to a nonconforming ruling request submitted to the Headquarters Office will be administratively closed if the ruling request is not brought into conformity with the provisions of this part within the period of time allowed.

(2) *Request submitted to the National Commodity Specialist Division.* In the case of a ruling request made to the Director, National Commodity Specialist Division, a failure to conform to the requirements of this part will result in the immediate return of the ruling request with the notice specifying the deficiencies, and the file pertaining to the nonconforming ruling request will be closed with no further action taken on the request but without prejudice to resubmission.

(b) *Submission to the wrong office.* If a ruling request is not submitted to the proper Customs office specified in § 177.11(a), Customs will not for that reason alone treat it as a nonconforming request under this section. However, there will be a delay in processing the request while it is forwarded to the proper office.

§ 177.13 Conferences on issues.

(a) *General.* Conferences on issues presented in ruling requests under this subpart will be held only in connection with rulings to be issued by the Headquarters Office and only in circumstances in which either the Headquarters Office contemplates issuance of a ruling adverse to the ruling requester's position or the Headquarters Office for any other reason believes that a conference is necessary. Conferences are scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the ruling request. Accordingly, the parties will not be bound by any

argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing. The conference will not conclude with the issuance of a ruling.

(b) *National Commodity Specialist Division rulings.* If a ruling request filed with the Director, National Commodity Specialist Division, reflects a desire for a conference and it is determined after review of the issue or issues raised that the proposed ruling will be adverse to the ruling requester's position, and if the different positions cannot be resolved through telephonic or other informal discussions between the ruling requester and the National Commodity Specialist Division, the case will be referred to the Headquarters Office for processing.

(c) *Time, place, and number of conferences.* If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. No more than one conference with respect to the matters set forth in a ruling request will be scheduled unless, in the opinion of the Headquarters Office, additional conferences are necessary.

(d) *Representation.* A person whose request for a conference has been granted may appear at the conference in person and may be accompanied by counsel or other representatives or, in lieu of a personal appearance, the person may designate an authorized agent to appear at the conference in his place.

(e) *Additional information presented at conference.* It will be the responsibility of the person submitting the ruling request to provide for inclusion in the Headquarters Office file in the matter a written record setting forth any and all additional documents, exhibits, or other information introduced during the conference to the extent that person considers the material relevant to the consideration of the ruling request. Any further documentation, exhibits, or other information to be submitted as a result of the conference must be submitted to the Headquarters Office within 30 calendar days following the conference or within any longer period as the Headquarters Office may authorize.

§ 177.14 Change in status of transaction.

Each person who submitted a ruling request in connection with a prospective Customs transaction must immediately advise in writing the Customs office in which the ruling request is pending when any transaction described in the ruling request becomes a current transaction or when the person subsequently learns that a summons has been filed in the U.S. Court of International Trade regarding the same issue as that involved in the ruling request. In addition, any person who is engaging in a current Customs transaction and who has knowledge that a ruling has been previously requested with respect to that transaction must advise the Customs field office in which the current transaction is occurring that a prospective ruling is pending concerning the matter. Failure to advise the Customs office in which the ruling request is pending or the Customs office in which the transaction is occurring may result in refusal to issue the ruling or, if a ruling was issued, revocation of the ruling.

§ 177.15 Withdrawal of requests.

Any request for a prospective ruling may be withdrawn in writing by the person submitting it at any time before the issuance of a ruling letter or any other final disposition of the request. When a withdrawal occurs and except as otherwise provided in subpart D of this part, all correspondence, documents, and exhibits submitted in connection with the ruling request will be retained in the Customs file and will not be returned. The mere withdrawal of a ruling request will not preclude Customs from issuing a ruling on its own initiative if Customs determines that it would be consistent with the sound administration of the Customs and related laws to do so (see § 177.17(b)).

§ 177.16 Situations in which no prospective ruling will be issued.

As a general rule, no prospective ruling will be issued under this subpart:

(a) In response to a ruling request which fails to comply with the provisions of this subpart;

(b) With regard to transactions or questions that are essentially hypothetical in nature or in any instance in which it otherwise appears contrary to the sound administration of the Customs and related laws to issue a ruling;

(c) With regard to a completed transaction;

(d) When confidentiality issues raised in a ruling request cannot be resolved (see subpart D of this part);

(e) When Customs determines that issuance of an information letter would be more appropriate;

(f) When the ruling requester has previously received a ruling involving an identical or similar transaction and:

(1) A decision on an appeal from that previous ruling has been issued under § 177.20; or

(2) A modification or revocation involving that previous ruling is pending or has been issued under § 177.21;

(g) If the issue involved is identical or similar to one that is the subject of a pending modification or revocation under § 177.21;

(h) An established and uniform practice involving an identical or similar transaction exists or is undergoing a change under § 177.22;

(i) A limitation of a court decision involving an identical or similar transaction is pending under § 177.23;

(j) A protest review decision involving an identical or similar transaction is pending under part 174 of this chapter; or

(k) If the ruling involves an issue pending before the United States Court of International Trade as a result of a summons filing or other action or which is pending before the United States Court of Appeals for the Federal Circuit or any court of appeal from that court. Litigation before any other court will not preclude the issuance of a ruling letter, provided neither the United States nor any of its agencies, officers or agents is named as a party to the action.

§ 177.17 Issuance of prospective rulings.

(a) *Rulings issued in response to a request*—(1) *General.* Customs will normally process requests for rulings on prospective Customs transactions in the order in which they are received and as expeditiously as possible. Additional time may be required for preparation of a ruling if a laboratory analysis of a sample is needed or if it is necessary to obtain additional information from another government agency.

(2) *Request processing by the National Commodity Specialist Division*—(i) *Issuance of rulings.* Requests for prospective rulings involving tariff classification or country of origin or marking that are submitted to the Director, National Commodity Specialist Division, in accordance with § 177.11(a) generally will be responded to within 30 calendar days of receipt except when a referral to the Headquarters Office occurs under paragraph (a)(2)(ii) of this section.

(ii) *Referral of requests to the Headquarters Office.* If the Director, National Commodity Specialist Division, believes that the issues or arguments presented are novel or complex, the ruling request may be referred to the Headquarters Office for response. In addition, if the ruling response contemplated by Customs would be adverse to the position advocated by the ruling requester and the ruling requester has requested a

conference in such a circumstance, the Director, National Commodity Specialist Division, will refer the ruling request to the Headquarters Office for response. In either case, Customs will in writing advise the person submitting the ruling request that it has been referred to the Headquarters Office.

(3) *Requests for immediate consideration.* A request that a particular matter be given consideration ahead of its regular order, if made in the ruling request or thereafter in accordance with the submission procedures set forth in § 177.11(a) and with a showing of a clear need for that treatment, will be given consideration as the particular circumstances warrant and permit. Ordinarily, no assurance can be given that a particular ruling request will be acted upon by the time requested.

(b) *Rulings initiated by Customs.* The Headquarters Office or the National Commodity Specialist Division may issue, or a Field National Import Specialist may prepare for issuance by a port director, other rulings on the initiative of Customs with respect to issues or transactions described or suggested by ruling requests submitted under the provisions of this part, or with respect to issues or transactions otherwise brought to its attention. If Customs contemplates issuance of a Customs-initiated ruling, the importer or other interested party to whom the ruling would be issued will be notified in writing and, except when the contemplated ruling involves a question of admissibility of merchandise (see § 151.16 of this chapter), will be afforded 30 calendar days to make a written submission setting forth its position on the issue involved in the contemplated ruling. If the person making the written submission wants Customs to accord confidential treatment to any information contained in the written submission, a request for that confidential treatment must be included in the written submission and must conform to the requirements of subpart D of this part. These Customs-initiated rulings will be made available to the general public as provided in § 177.24.

§ 177.18 Requirement to bring rulings to the attention of field offices.

Any person, or a successor in interest of that person, to whom a ruling has been issued under this part must abide by the following principles and procedures when engaging in a current Customs transaction that involves imported merchandise to which that ruling relates:

(a) The person must either attach a copy of the ruling to the documents filed with the appropriate Customs office in connection with the current transaction or otherwise include the ruling number in the information filed for the current transaction;

(b) Except as otherwise specifically provided elsewhere in this chapter, the person must use the position set forth by Customs in the ruling in completing any documentation in connection with any subsequent entry involving the issues addressed, and a failure to do so may result in a rejection of the entry and may result in the assessment of a monetary penalty for failure to exercise reasonable care. If the person wishes to challenge a Customs position reflected in a ruling, the appropriate course of action would be to appeal the ruling under § 177.20 or § 177.33 or to file a protest in accordance with part 174 of this chapter; and

(c) The person must immediately bring to the attention of the appropriate Customs field office a ruling received after the filing of entry documents or information. Depending on the circumstances, failure to do so may result in the imposition of such penalties as may be appropriate.

§ 177.19 Effect of prospective rulings.

(a) *General.* A prospective ruling represents the official position of Customs with respect to the particular transaction or issue described in it and is binding on Customs and the recipient until the ruling is modified or revoked as provided in § 177.21. Accordingly, so long as the ruling has not been modified or revoked (whether by Customs action or by operation of law), the principle of that ruling may be cited by the recipient of the ruling as authority in the disposition of transactions involving circumstances that are substantially identical in all material respects. Generally, a ruling is effective on the date of issuance and may be applied to all entries of merchandise which are unliquidated, or may be applied to other transactions on which Customs has not taken final action, on that date (see, however, §§ 177.21 and 177.22 regarding rulings which modify or revoke previous rulings or result in a change of an established and uniform practice). Notwithstanding the issuance of a ruling under this part, the admissibility of merchandise is determined at the time of entry or release.

(b) *Application to transactions*—(1) *Application of rulings in general.* Each prospective ruling is issued on the assumption that all of the information furnished in connection with it and incorporated in it, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling by a Customs field office to a current transaction to which it is purported to relate is subject to the verification of the facts incorporated in that ruling, a comparison of the described transaction and the current transaction, and the satisfaction of any conditions on which the ruling was based. If, in the opinion of any Customs field office by which the current transaction is under consideration or review, the ruling does not conform to the material facts of the current transaction or any conditions set forth in that ruling have not been satisfied, the ruling will not be applied to that current transaction. Otherwise, if the transaction described in the ruling and the current transaction are substantially identical in all material respects, and provided that any and all conditions set forth in the ruling have been satisfied, the ruling will be applied to the current transaction.

(2) *Tariff classification rulings.* Each prospective ruling setting forth the proper classification of an article under the provisions of the Harmonized Tariff Schedule of the United States will be applied not only to the prospective transaction covered by the ruling request but also to any current transactions involving either articles identical in all material respects to the sample submitted with the ruling request or articles whose description is identical in all material respects to the description set forth in the ruling.

(c) *Third party reliance on rulings.* A person engaging in a Customs transaction who has not received a ruling covering that transaction may rely on a prospective ruling issued to or on behalf of another person and made available to the public under § 177.24, and may assume that Customs will apply the principles of that ruling to his transaction, provided that Customs determines that the relevant facts and principles reflected in the ruling are materially the same as those involved in the transaction under consideration and provided that the ruling has not been modified or revoked by operation of law or by Customs action (see § 177.21). In addition, any person eligible to request a prospective ruling as provided in § 177.1(b)(5) may request under this subpart a ruling on a transaction believed to be similar to one covered by an already issued ruling.

§ 177.20 Appeal of prospective rulings.

(a) *Scope of appeal.* If the recipient of a prospective ruling issued under this subpart (other than a ruling issued

under § 177.21) believes that the ruling is adverse to his position on one or more substantive issues reflected in the ruling, that recipient, or his authorized agent, may pursue an administrative appeal of that ruling in accordance with the procedures set forth in this section. An appeal filed under this section must be limited to issues involving the construction of the law and will involve a *de novo* review of the ruling which is the subject of the appeal. The decision on appeal may correct an erroneous statement in the original ruling, may affirm the result reached in the original ruling, may modify or revoke the original ruling (see § 177.21), or may involve the issuance of a new ruling if new or additional facts are presented in the appeal.

(b) *Form and address.* The appeal must be in the form of a signed letter written in the English language and must be addressed to the Office of Regulations and Rulings, United States Customs Service, Washington, DC 20229. The words "Ruling Appeal" should appear in a conspicuous place on the face of the envelope containing the appeal letter.

(c) *Time of filing.* The appeal must be filed within 30 calendar days of the date of the adverse ruling. An appeal received by Customs after that 30-day appeal period will be rejected as untimely and will be returned to the person filing the appeal. The issues raised in a rejected appeal may be the subject of administrative review only under the internal advice procedure provided for in subpart C of this part or in connection with a valid protest filed under part 174 of this chapter.

(d) *Content.* Each appeal letter should include a copy of the ruling which is the subject of the appeal, must include the certification required under § 177.11(b)(6) appropriately modified to reflect an appeal context, and should include any other information, documents, samples or other materials submitted in connection with the original ruling request under § 177.11 which are not reflected in the ruling and which the person filing the appeal deems relevant to the issues raised in the appeal.

(e) *Current or completed transactions.* The filing of an appeal under this section will not result in a suspension of liquidation in the case of current transactions pending resolution of the appeal and will not extend or otherwise affect the period for filing a protest under part 174 of this chapter. However, if a person has filed a timely appeal under this section, he may protest under part 174 any liquidation that is consistent with the original ruling, and any resulting protest decision will reflect the decision on appeal under this section.

(f) *Confidential information.* If the person filing the appeal wants Customs to accord confidential treatment to any information submitted in connection with the appeal, a written request for that confidential treatment must be made when the information is submitted to Customs and must conform to the requirements of subpart D of this part.

(g) *Processing of appeals*—(1) *General.* Appeals of adverse rulings will normally be processed in the order they are received and as expeditiously as possible. The provisions of § 177.13 relating to conferences will apply to appeals under this section, except that a conference on an appeal under this section will not be granted as a matter of right but rather only if the Headquarters Office believes that a conference is necessary. If a conference is held, the Headquarters Office may require additional time to prepare the decision on appeal.

(2) *Requests for expedited consideration.* If a request that an appeal be given expedited consideration is made in the appeal letter with a reasonable showing of business necessity for that treatment, the appeal will be decided no later than 60 calendar days following the date on which the appeal is received by the Headquarters Office except when the publication requirements of § 177.21 are applicable (see paragraph (g)(4)(ii) of this section).

(3) *Issuance of decision.* Each appeal will be decided on the written record before Customs, that is, the record on the original appealed ruling plus the appeal letter submission and any submission made after a conference pursuant to § 177.13(e) and any other information that Customs determines to be relevant. The Headquarters Office will issue a written ruling on the appeal to the person who filed the appeal or to any other person designated for that purpose in the appeal letter.

(4) *Effective dates.* If the ruling on appeal affirms the result reflected in the original ruling, that original ruling will remain in effect for purposes of this subpart. If the Headquarters Office determines on appeal that the original ruling is in error in whole or in part or is otherwise not in accord with the current views of Customs, the ruling on appeal will modify or revoke the original ruling with regard to the issue or issues raised on appeal and will be given effect as follows:

(i) If the ruling on appeal is issued less than 60 calendar days after the effective date of the original ruling, the result reflected in the ruling on appeal will be effective on the date of the original ruling and will be applied to Customs transactions as set forth in § 177.19; or

(ii) If the ruling on appeal is issued 60 or more calendar days after the effective date of the original ruling, the ruling on appeal will constitute a modifying or revoking ruling and the publication and effective date requirements set forth in § 177.21 will apply.

§ 177.21 Modification or revocation of prospective rulings, internal advice decisions, protest review decisions, and previous treatment of substantially identical transactions.

(a) *General.* A prospective ruling issued under this subpart or an internal advice decision issued under subpart C of this part or a holding or principle covered by a protest review decision issued under part 174 of this chapter, if found to be in error or not in accord with the current views of Customs, may be modified or revoked by a prospective ruling issued under this subpart. In addition, a prospective ruling issued under this subpart may have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions. A modification or revocation under this section must be carried out in accordance with the notice procedures set forth in paragraph (b) or paragraph (c) of this section except as otherwise provided in paragraph (d) of this section, and the modification or revocation will take effect as provided in paragraph (e) of this section.

(b) *Prospective ruling, internal advice decision or protest review decision.* Customs may modify or revoke a prospective ruling or internal advice decision or holding or principle covered by a protest review decision that has been in effect for less than 60 calendar days by simply giving written notice of the modification or revocation to the person to whom the original ruling was issued or whose current transaction was the subject of the internal advice decision or, in the case of a protest review decision, to the person identified on the Customs Form 19 as the protestant or to any other person designated to receive notice of denial of a protest under § 174.30(b) of this chapter. However, when Customs contemplates the issuance of a prospective ruling that would modify or revoke a prospective ruling or internal advice decision or holding or principle covered by a protest review decision which has been in effect for 60 or more

calendar days, the following procedures will apply:

(1) *Publication of proposed action.* A notice proposing the modification or revocation and inviting public comment on the proposal will be published in the *Customs Bulletin.* The notice will refer to all previously issued prospective rulings or internal advice decisions or protest review decisions that Customs has identified as being the subject of the proposed action and will invite any member of the public who has received another prospective ruling or internal advice decision or protest review decision involving the issue that is the subject of the proposed action to advise Customs of that fact. Interested parties will have 30 calendar days from the date of publication of the notice to submit written comments on the proposed modification or revocation and to advise Customs in writing that they are recipients of an affected prospective ruling or internal advice decision or protest review decision that was not identified in the notice.

(2) *Notice of final action.* In the absence of extraordinary circumstances, within 30 calendar days after the close of the public comment period, any submitted comments will be considered and a final modifying or revoking notice or notice of other appropriate final action on the proposed modification or revocation will be published in the *Customs Bulletin.* In addition, a written decision will be issued to the person to whom the original prospective ruling was issued or whose current transaction was the subject of the internal advice decision or, in the case of a protest review decision, to the person identified on the Customs Form 19 as the protestant or to any other person designated to receive notice of denial of a protest under § 174.30(b) of this chapter. Publication of a final modifying or revoking notice in the *Customs Bulletin* will have the effect of modifying or revoking any prospective ruling or internal advice decision or holding or principle covered by a protest review decision that involves merchandise or an issue that is substantially identical in all material respects to the merchandise or issue that is the subject of the modification or revocation, including a prospective ruling or internal advice decision or holding or principle covered by a protest review decision that is not specifically identified in the final modifying or revoking notice.

(c) *Treatment previously accorded to substantially identical transactions*—(1) *General.* The issuance of a prospective ruling that has the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions must be in accordance with the procedures set forth in paragraph (c)(2) of this section. For purposes of this section:

(i) *Treatment* means a consistent pattern of decisions involving the classification of imported merchandise under the Harmonized Tariff Schedule of the United States as determined upon liquidation of the applicable entry or reconciliation during the 2-year period immediately prior to publication of the notice of proposed modification or revocation under this section. The determination of whether the requisite treatment occurred will be made by Customs on a case-by-case basis and will involve an assessment of all relevant factors. In particular, Customs will focus on the past transactions to determine whether there was an examination of the merchandise (where applicable) by Customs or the extent to which those transactions were otherwise reviewed by Customs to determine the proper application of the Customs laws and regulations. For purposes of establishing whether the requisite treatment occurred, Customs will give diminished weight to transactions involving small quantities or values, and Customs will give no weight whatsoever to informal entries and to other entries or transactions which Customs, in the interest of commercial facilitation and accommodation, processes expeditiously and without examination and/or import specialist review.

(ii) A person may not claim as a treatment the treatment that Customs accorded to transactions of another person; and

(iii) The burden of proof as regards the existence of the previous treatment is on the person claiming that treatment. The evidence of previous treatment by Customs must include a list of all substantially identical transactions by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each transaction (where applicable), the ports of entry, and the dates of final action by Customs.

(2) *Notice procedures*—(i) When Customs has reason to believe that a contemplated prospective ruling would have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions, notice of the intent to modify or revoke that treatment will be published in the *Customs Bulletin* either as a separate action or in connection with a proposed modification or revocation of a prospective ruling or internal advice decision or holding or principle covered by a protest review decision under paragraph (b)(1) of this section. The notice will give interested parties 30 calendar days from the date of publication of the notice to submit written comments on the proposed modification or revocation and will invite any member of the public whose substantially identical transactions have been accorded the same treatment to advise Customs in writing of that fact, supported by appropriate details regarding those transactions, within that 30-day period. Within 30 calendar days after the close of the public comment period, any submitted comments will be considered, notice of the final prospective ruling or other final action on the proposed modification or revocation will be published in the *Customs Bulletin,* and written confirmation of the applicability of a final modification or revocation will be provided to each person identified in the notice or during the public comment period as having had substantially identical transactions that were accorded the same treatment.

(ii) If Customs is not aware prior to issuance that a contemplated prospective ruling would have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions, the prospective ruling will be issued and generally will be effective as provided in § 177.19. However, Customs will, upon written application by a person claiming that the prospective ruling has the effect of modifying or revoking the treatment previously accorded by Customs to his substantially identical transactions, consider delaying the effective date of the prospective ruling with respect to that person, and continue the treatment previously accorded the substantially identical transactions, pending completion of the procedures set forth in paragraph (c)(2)(i) of this section.

(d) *Exceptions to notice requirements*—(1) *Publication and issuance not required.* The publication and issuance requirements set forth in paragraphs (b) and (c) of this section are inapplicable in circumstances in which a Customs position is modified, revoked or otherwise materially affected by operation of law or by publication pursuant to other legal authority or by other appropriate action taken by Customs in furtherance of an order, instruction or other policy decision of another governmental agency or entity pursuant to statutory or delegated authority. Such circumstances include, but are not limited to, the following:

(i) Adoption or amendment of a statutory provision, including any

change to the Harmonized Tariff Schedule of the United States;

(ii) Promulgation of a treaty or other international agreement under the foreign affairs function of the United States;

(iii) Issuance of a Presidential Proclamation or Executive Order, or issuance of a decision or policy determination pursuant to authority delegated by the President;

(iv) Subject to the provisions of § 152.16 of this chapter, the rendering of a judicial decision which has the effect of overturning the Customs position;

(v) Publication of a decision in the **Federal Register** as a result of a petition by a domestic interested party pursuant to 19 U.S.C. 1516 (see part 175 of this chapter);

(vi) Publication of an interim or final rule in the **Federal Register** in accordance with 5 U.S.C. 553;

(vii) Publication of a final interpretative rule in the **Federal Register** in accordance with 5 U.S.C. 553 following public notice and comment procedures; and

(viii) Publication of a final ruling in the **Federal Register** in accordance with 19 U.S.C. 1315(d) and § 177.22 of this part relating to change of established and uniform practice.

(2) *Publication not required.* In the following circumstances a final modifying or revoking ruling will be issued to the person entitled to it under paragraph (b) or (c) of this section but *Customs Bulletin* publication under paragraph (b) or (c) of this section is not required:

(i) The modifying ruling corrects a clerical error; or

(ii) The modifying or revoking ruling is directed to a ruling issued under subpart I of part 181 of this chapter relating to advance rulings under the North American Free Trade Agreement.

(e) *Effective date and application to transactions*—(1) *Rulings or decisions in effect for less than 60 days.* If a prospective ruling or internal advice decision or holding or principle covered by a protest review decision that is modified or revoked under this section had been in effect for less than 60 calendar days, the modifying or revoking ruling:

(i) Will be effective on its date of issuance with respect to the specific transaction covered by the modifying or revoking ruling: and

(ii) Will be applicable to merchandise entered, or withdrawn from warehouse for consumption, on and after its date of issuance.

(2) *Rulings or decisions in effect for 60 or more days.* If a prospective ruling or internal advice decision or holding or principle covered by a protest review decision that is modified or revoked under this section had been in effect for 60 or more calendar days, the modifying or revoking notice will, provided that liquidation of the entry in question has not become final, apply to merchandise entered, or withdrawn from warehouse for consumption:

(i) Sixty calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) of this section; or

(ii) At the option of any person with regard to that person's transaction, on and after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) of this section.

(3) *Previous treatment accorded to substantially identical transactions.* A final notice that modifies or revokes the treatment previously accorded by Customs to substantially identical transactions:

(i) Will be effective with respect to transactions that are substantially identical to the transaction described in the modifying or revoking notice 60 calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section; and

(ii) Provided that liquidation of the entry in question has not become final, will apply to merchandise entered, or withdrawn from warehouse for consumption:

(A) Sixty calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section; or

(B) At the option of a person who makes a valid claim regarding previous treatment, on and after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section.

§ 177.22 Established and uniform practice.

(a) *General.* In determining under this section that an established and uniform practice exists for purposes of 19 U.S.C. 1315(d):

(1) Only a practice regarding tariff classification under the Harmonized Tariff Schedule of the United States may be considered;

(2) The practice must involve 100 percent uniform treatment accorded by Customs through liquidations performed at multiple ports over an extended period of time. For purposes of this paragraph, "treatment accorded by Customs" means an actual review of entries and therefore does not include cases in which liquidation of an entry occurred without the direct, active involvement of Customs (for example, when liquidation took place by operation of law or involved bypass or automatic liquidation or similar procedures); and

(3) The burden of proof is on the importer except in a situation described in paragraph (c) of this section.

(b) *Change of established and uniform practice*—(1) *Publication.* Before the issuance of a ruling which has the effect of changing an established and uniform practice and which results in the imposition of a higher rate of duty or charge, notice that the established and uniform practice is under review will be published in the **Federal Register** and interested parties will be given an opportunity to make written submissions with respect to the correctness of the contemplated change. After the close of the public comment period, any submitted comments will be considered and a final ruling will be published in the **Federal Register**. The procedures set forth in this paragraph shall not apply with respect to a change of an established and uniform practice affecting the imposition of antidumping or countervailing duties.

(2) *Effective date.* A final ruling which changes an established and uniform practice under this section and results in the imposition of a higher rate of duty or charge will be effective with respect to merchandise entered, or withdrawn from warehouse for consumption, 30 calendar days after publication of that ruling in the **Federal Register**.

(c) *Notice of existence of an established and uniform practice.* Customs may, on its own initiative, publish in the **Federal Register** or *Customs Bulletin* a notice informing the public of the existence of an established and uniform practice. Once published, that established and uniform practice will be subject to the requirements and limitations set forth in paragraph (b) of this section.

§ 177.23 Limitation of court decisions.

(a) *General.* Subject to the notice and comment procedures set forth in paragraph (b) of this section, Customs may issue a decision that limits the application of a court decision to the specific article or issue under litigation, or to an article of a specific class or kind of merchandise that was the subject of the court decision, or to the particular circumstances or entries which were the subject of the court decision.

(b) *Publication procedures.* When Customs contemplates promulgation of a decision that would limit a court decision, a notice of the proposed

decision will be published in the *Customs Bulletin* for public comment. Interested parties will have 30 calendar days from the date of publication of the proposed decision to submit comments. After the close of the public comment period, any submitted comments will be considered and a final decision will be published in the *Customs Bulletin*.

(c) *Effective date.* A final limiting decision promulgated pursuant to this section will be effective upon publication of the decision in the *Customs Bulletin*.

§ 177.24 Availability of rulings to the public.

All rulings issued under this part, except those for which specific publication procedures are prescribed (see §§ 177.21, 177.22 and 177.23), will be published or made available for public inspection by electronic or other means within 90 calendar days after the date of issuance.

Subpart C—Internal Advice Procedure

§ 177.31 Requests for advice by Customs offices in general.

Advice or guidance as to the interpretation or proper application of the Customs and related laws with respect to a specific Customs transaction may be requested by Customs offices from the Headquarters Office or its designee at any time, whether the transaction is prospective, current, or completed. Advice as to the proper interpretation and application of the Customs and related laws with reference to a current transaction may be sought by a Customs office either on its own initiative or following a request made by an importer or other person having an interest in the transaction. Advice or guidance will be furnished by the Headquarters Office or its designee as a means of assisting Customs personnel in the orderly processing of Customs transactions under consideration by them and to ensure the consistent application of the Customs and related laws in the various Customs ports.

§ 177.32 Requests for advice on current transactions.

(a) *When a ruling has been issued—*(1) *Requests initiated by Customs.* If a ruling with respect to a prospective Customs transaction has been issued under subpart B of this part and the Customs office having jurisdiction over a current Customs transaction to which the ruling purports to relate believes that the ruling should be modified or revoked or for any other reason should not be applied to the current transaction, that office may, subject to the provisions of paragraph (c) of this section and in accordance with the procedures of paragraph (f) of this section, forward a request that the ruling be reconsidered or otherwise reviewed to determine its correctness or its applicability to the current transaction. The Customs office will notify the importer or other person having an interest in the current transaction, in writing, that it intends to refer the matter for internal advice. The written notice to the importer or other interested person will identify the specific issue to be reviewed under the internal advice procedure and will afford the importer or other interested person 30 calendar days to make a written submission on the issue, which should be provided to the Customs office issuing the notice, for inclusion with the request for internal advice.

(2) *Requests initiated by importers and others.* If a prospective ruling has been issued under subpart B of this part and the importer or other person having an interest in a current Customs transaction to which the ruling purports to relate disagrees with the Customs office having jurisdiction over the current transaction as to the correctness of the ruling or proper application of the ruling to the current transaction, the importer or other interested person may request in writing that the Customs office seek internal advice as to the correctness of the ruling or proper application of the ruling to the current transaction. Subject to the provisions of paragraph (c) of this section, a decision whether or not to seek internal advice in the circumstances outlined in this paragraph will be solely at the discretion of the Customs office, and the decision by that office will be made in writing within 30 calendar days of receipt of the written request from the importer or other interested person. If the Customs office agrees to seek internal advice, the request for internal advice will be submitted in accordance with paragraph (f) of this section.

(b) *When no ruling has been issued—*(1) *General.* Subject to the provisions of paragraph (c) of this section, internal advice may be sought by a Customs office with respect to a current Customs transaction to which no ruling issued under subpart A of this part purports to relate whenever there is a difference of opinion, including a difference of opinion involving two or more Customs offices, as to the interpretation or proper application of the Customs and related laws to the current transaction. This internal advice may be sought by the Customs office having jurisdiction over the current transaction either on its own initiative or in response to a written request from the importer or other person having an interest in the current transaction and will be submitted in accordance with paragraph (f) of this section. If the request for internal advice is initiated by the Customs office, that office will notify the importer or other interested person in writing that it intends to refer the matter for internal advice; the written notice will identify the specific issue to be reviewed under the internal advice procedure and will afford the importer or other interested person 30 calendar days to make a written submission on the issue, which should be provided to the Customs office issuing the notice, for inclusion with the request for internal advice. If the importer or other interested person submits a written request for the internal advice procedure, a decision whether or not to seek internal advice under this paragraph will be solely at the discretion of the Customs office except as otherwise provided in paragraph (b)(2) of this section; the decision will be made in writing within 30 calendar days of receipt of the written request from the importer or other interested person.

(2) *Differences in tariff application.* If an importer of merchandise knows that two or more Customs offices are allowing different tariff results for the same merchandise imported by that importer, that importer has an obligation, as a function of the exercise of reasonable care, to bring that fact to the attention of Customs in connection with the filing of his entry covering that merchandise. When it comes to the attention of a Customs office through an importer or by any other means that two or more Customs offices are applying different tariff results to the same merchandise, that Customs office must seek internal advice in accordance with paragraph (f) of this section if:

(i) The offices cannot reach agreement on the proper action to be taken with respect to the merchandise; and

(ii) The matter at issue otherwise meets the requirements for internal advice under this subpart.

(c) *Criteria for internal advice—*(1) *When internal advice may be requested.* Except as otherwise provided in paragraph (c)(2) of this section, when a Customs office would otherwise not accept the position presented by an importer or other interested person in connection with a current transaction, that office may request internal advice if:

(i) The importer or other interested person demonstrates that his position is entirely consistent in all material respects with:

(A) A ruling issued under subpart B of this part;

(B) An internal advice decision issued under this subpart;

(C) A protest review decision issued under part 174 of this chapter;

(D) A decision made at any port with respect to a transaction that is substantially identical in all material respects; or

(E) A decision of the United States Court of International Trade or the United States Court of Appeals for the Federal Circuit or any court of appeal from that court;

(ii) The importer or other interested person demonstrates that the current transaction involves questions of law or fact which have not been ruled upon by the Commissioner of Customs or his designee or by the United States Court of International Trade or the United States Court of Appeals for the Federal Circuit or any court of appeal from that court; or

(iii) The current transaction involves matters previously ruled upon by the Commissioner of Customs or his designee or by the United States Court of International Trade or the United States Court of Appeals for the Federal Circuit or any court of appeal from that court, but the importer or other interested person demonstrates that the current transaction involves facts or legal issues which were not considered at the time of the earlier ruling.

(2) *Circumstances in which internal advice may not be requested.* A Customs office may not request internal advice on a current transaction if one of the criteria set forth in paragraph (c)(1) of this section is not met or in any of the following circumstances:

(i) If the importer or other interested person requested that internal advice be sought and the internal advice request would have the effect of seeking reconsideration of either a ruling previously issued to that importer or other interested person under subpart B of this part or a protest review decision previously issued to that importer or other interested person under part 174 of this chapter;

(ii) When confidentiality issues raised in an internal advice submission cannot be resolved (see subpart D of this part);

(iii) When the issue involved is identical or similar to one that is the subject of a pending modification or revocation under § 177.21;

(iv) When an established and uniform practice involving an identical or similar transaction exists or is undergoing a change under § 177.22;

(v) When a limitation of a court decision involving an identical or similar transaction is pending under § 177.23;

(vi) When a protest review decision involving an identical or similar transaction is pending under part 174 of this chapter; or

(vii) When an identical or similar transaction is pending before the Court of International Trade or is on appeal from that court. For purposes of this paragraph, a transaction is "pending before the Court of International Trade" if a summons has been filed.

(d) *Content of submissions or requests by importers and others.* If an importer or other interested person makes a submission under paragraph (a)(1) or (b) of this section or requests that a Customs office seek internal advice under paragraph (a)(2) or (b) of this section, the written submission or request must contain a complete statement setting forth a description of the transaction, the specific questions presented, the applicable law, and an argument for the conclusions advocated. If the importer or other interested person wants Customs to accord confidential treatment to any information provided by him in connection with a request for internal advice under this section, a written request for that confidential treatment must be made when that information is provided to Customs and must conform to the requirements of subpart D of this part. If the importer or other interested person wants an opportunity to have a conference if issuance of an adverse decision is contemplated (see paragraph (f)(3) of this section), a statement to that effect must be included in the submission or request. In addition, where an importer or other interested person requests that a Customs office seek internal advice and relies upon the criterion set forth in paragraph (c)(1)(ii) of this section, the request must also contain, or provide as a signed attachment to the request, the following certification by a person having knowledge of the facts:

I certify that, to the best of my knowledge and belief, and except as otherwise stated herein, the transaction described in this request, or one similar, identical, or related to it, is not currently being considered by any other Customs office and will not be pending before any Customs office by virtue of a request for a prospective ruling or a request for internal advice or a protest filed simultaneously with this request and is not pending before any other Federal agency or before any Federal court, and that, to the best of my knowledge and belief, all information provided in connection with this request is accurate and complete.

(e) *Review of statements by importers and others.* Each written statement submitted by an importer or other interested person under paragraph (d) of this section will be reviewed by the Customs office to which it is submitted. In the event a difference of opinion exists as to the description of the transaction or as to the point or points at issue, the person submitting the statement will be so advised in writing. If agreement cannot be reached, the statement of the importer or other interested person, together with the written position of the Customs office, will be forwarded by the Customs office as a request for internal advice in accordance with paragraph (f) of this section.

(f) *Submission and processing of requests for internal advice—(1) Submission to, and decision by, the National Commodity Specialist Division.* If the request for internal advice on a current Customs transaction involves a matter on which the National Commodity Specialist Division may issue a prospective ruling (see § 177.11(a)(1)), the Customs office will submit the request to the Director, National Commodity Specialist Division, who will review the request to determine whether it meets the standards for internal advice set forth in paragraphs (c) and (d) of this section. At the conclusion of that review:

(i) If the request for internal advice is complete and meets the criteria for internal advice set forth in paragraph (c) of this section, the Director, National Commodity Specialist Division, will issue a written decision on the request to the submitting office within 30 calendar days of receipt of the request and will furnish a copy of the decision to the importer or other interested person, except in any of the following circumstances:

(A) The issue presented in the request involves a position of the submitting office that reflects a position already taken by the Director, National Commodity Specialist Division. In this case, the Director will return the request to the submitting office with instructions to handle the matter in accordance with that Customs position;

(B) The importer or other interested person has requested a conference in accordance with paragraph (f)(3) of this section and the Director, National Commodity Specialist Division, contemplates issuance of a decision adverse to the position of the importer or other person; or

(C) The Director, National Commodity Specialist Division, believes that the nature of the issue presented in the request requires consideration and decision by the Headquarters Office;

(ii) If the request for internal advice involves a circumstance described in paragraph (f)(1)(i)(B) or paragraph

(f)(1)(i)(C) of this section, the Director, National Commodity Specialist Division, will forward the request to the Headquarters Office for consideration and decision; or

(iii) The Director, National Commodity Specialist Division, will return the request for internal advice to the submitting office without taking any further action on it if the request does not contain sufficient information on which to base a decision or if the request does not meet the criteria for internal advice set forth in paragraph (c) of this section. The Director, National Commodity Specialist Division, will provide a written explanation of the reason the request is being returned without action.

(2) *Submission to, and decision by, the Headquarters Office.* If the request for internal advice on a current Customs transaction involves a matter on which only the Headquarters Office may issue a prospective ruling (see § 177.11(a)(2)), the Customs office will submit the request to the Headquarters Office. Following receipt of a request for internal advice submitted under this paragraph or forwarded under paragraph (f)(1)(ii) of this section, the Headquarters Office will review the request to determine whether it meets the standards for internal advice set forth in paragraphs (c) and (d) of this section. At the conclusion of that review, the Headquarters Office will issue a written decision on the request, including a refusal to furnish advice, to the submitting office and will furnish a copy of the decision to the importer or other interested person. The Headquarters Office may refuse to consider the questions presented to it in a request for internal advice whenever:

(i) The Headquarters Office determines that the period of time necessary to give adequate consideration to the questions presented would result in a withholding of action with respect to the transaction, or in any other situation that is inconsistent with the sound administration of the Customs and related laws; and

(ii) The questions presented can subsequently be raised by the importer or other interested party in the form of a protest filed under part 174 of this chapter.

(3) *Conferences on issues.* A request by the importer or other interested person for an opportunity to have a conference on an issue presented in a request for internal advice on a current Customs transaction will be granted only in connection with a decision to be issued by the Headquarters Office and only in circumstances in which the Headquarters Office contemplates issuance of a decision adverse to the position advocated by the importer or other interested person in the written submission or request prepared in accordance with paragraph (d) of this section. A conference held under this section will not conclude with the issuance of an internal advice decision and will be governed by the following principles and procedural requirements:

(i) A conference is scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the written submission or request of the importer or other interested person. Accordingly, the parties will not be bound by any argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing.

(ii) If a request for a conference is granted, the person making the request will be contacted to arrange a time and place for the conference. No more than one conference with respect to the matters set forth in a request for internal advice will be scheduled, unless, in the opinion of the Headquarters Office, additional conferences are necessary.

(iii) A person whose request for a conference has been granted may appear at the conference in person and may be accompanied by counsel or other representatives or, in lieu of a personal appearance, the person may designate an authorized agent to appear at the conference in his place.

(iv) It will be the responsibility of the person who requested the conference to provide for inclusion in the Headquarters Office file on the matter a written record setting forth any and all additional documents, exhibits, or other information introduced during the conference to the extent that person considers the material relevant to the consideration of the request for internal advice. Any further documentation, exhibits, or other information to be submitted as a result of the conference must be submitted to the Headquarters Office within 30 calendar days following the conference or within any longer period as the Headquarters Office may authorize.

(g) *Effect of internal advice decisions*—(1) *General.* Internal advice furnished by the Director, National Commodity Specialist Division, or by the Headquarters Office under this section represents the official position of Customs as to the interpretation and application of the Customs laws with reference to the facts of a specific transaction. Internal advice furnished under this section will be effective on the date of the written decision and will be applied by the Customs office in its disposition of the current transaction in question and in the disposition of future transactions of the importer or other interested person involving circumstances that are substantially identical in all material respects, provided that the decision has not been modified or revoked on appeal under § 177.33 or modified or revoked by a prospective ruling under § 177.21.

(2) *Third party reliance on internal advice decisions.* A person engaging in a Customs transaction who has not received a ruling covering that transaction may rely on an internal advice decision issued in connection with a Customs transaction of another person and made available to the public under § 177.24, and may assume that Customs will apply the principles of that internal advice decision to his transaction, provided that Customs determines that the relevant facts and principles reflected in the internal advice decision are materially the same as those involved in the transaction under consideration and provided that the internal advice decision has not been modified or revoked by operation of law or by Customs action (see § 177.21).

§ 177.33 Appeal of internal advice decisions on current transactions.

(a) *Scope of appeal.* If an importer or other interested person on whose current transaction an internal advice decision was issued under § 177.32 believes that the decision is adverse to his position on one or more substantive issues reflected in the decision, that person, or his authorized agent, may pursue an administrative appeal of that decision in accordance with the procedures set forth in this section. An appeal filed under this section must be limited to issues involving the construction of the law and will involve a *de novo* review of the decision which is the subject of the appeal. The decision on appeal may correct an erroneous statement in the original decision, may affirm the result reached in the original decision, may modify or revoke the original decision (see § 177.21), or may involve the issuance of a new decision if new or additional facts are presented in the appeal.

(b) *Form and address.* The appeal must be in the form of a signed letter written in the English language. In the case of an internal advice decision issued by the Headquarters Office, the appeal letter must be addressed to the Office of Regulations and Rulings, United States Customs Service, Washington, DC 20229. In the case of an internal advice decision issued by the

Director, National Commodity Specialist Division, the appeal letter must be addressed to the Director, National Commodity Specialist Division, Office of Regulations and Rulings, United States Customs Service, New York, New York 10048, who will forward the appeal letter, together with any comments as may be appropriate, to the Headquarters Office for processing. The words "Internal Advice Appeal" should appear in a conspicuous place on the face of the envelope containing the appeal letter.

(c) *Time of filing.* The appeal must be filed within 30 calendar days of the effective date of the adverse internal advice decision. An appeal received by Customs after that 30-day appeal period will be rejected as untimely and will be returned to the person filing the appeal. The issues raised in a rejected appeal may be the subject of administrative review only in connection with a valid protest filed under part 174 of this chapter.

(d) *Content.* Each appeal letter should include a copy of the internal advice decision which is the subject of the appeal and any other information, documents, samples or other materials submitted by the importer or other interested person in connection with the original request for internal advice under § 177.32 which are not reflected in the internal advice decision and which the person filing the appeal deems relevant to the issues raised in the appeal.

(e) *Current or completed transactions.* The filing of an appeal under this section will not result in a suspension of liquidation in the case of current transactions pending resolution of such appeal and will not extend or otherwise affect the period for filing a protest under part 174 of this chapter. However, if a person has filed a timely appeal under this section, he may protest under part 174 any liquidation that is consistent with the original decision, and any resulting protest decision will reflect the decision on appeal under this section.

(f) *Confidential information.* If the person filing the appeal wants Customs to accord confidential treatment to any information submitted in connection with the appeal, a written request for that confidential treatment must be made when the information is submitted to Customs and must conform to the requirements of subpart D of this part.

(g) *Processing of appeals*—(1) *General.* Appeals of adverse internal advice decisions will normally be processed in the order they are received and as expeditiously as possible. The provisions of § 177.32(f)(3) relating to conferences will apply to appeals under this section except that a conference on an appeal under this section will not be granted as a matter of right but rather only if the Headquarters Office believes that a conference is necessary. If a conference is held, the Headquarters Office may require additional time to prepare the decision on appeal.

(2) *Requests for expedited consideration.* If a request that an appeal be given expedited consideration is made in the appeal letter with a reasonable showing of business necessity for that treatment, the appeal will be decided no later than 60 calendar days following the date on which the appeal is filed with Customs except when the publication requirements of § 177.21 are applicable.

(3) *Issuance of decision.* Each appeal will be decided solely on the written record before Customs, that is, the record on the original appealed internal advice decision plus the appeal letter submission and any timely submission made after a conference and any other information that Customs determines to be relevant. The Headquarters Office will issue a written decision on the appeal to the person who filed the appeal or to any other person designated for that purpose in the appeal letter, and a copy of the appeal decision will be provided to the Customs field office and to the Director, National Commodity Specialist Division.

(4) *Effective dates.* If the decision on appeal affirms the result reflected in the original internal advice decision, that original decision will remain in effect for purposes of this subpart. If it is determined on appeal that the original internal advice decision is in error in whole or in part or is otherwise not in accord with the current views of Customs, the decision on appeal will be given effect as follows:

(i) If the decision on appeal is issued less than 60 calendar days after the effective date of the original internal advice decision, the decision on appeal will constitute a modification or revocation of the original internal advice decision with regard to the issue or issues raised on appeal and the result reflected in the decision on appeal will be applied to Customs transactions as follows:

(A) If final Customs action has not been taken on the current transaction that was the subject of the original internal advice decision, Customs will follow the decision on appeal in handling the current transaction; or

(B) If final Customs action has been taken on the current transaction that was the subject of the appeal, Customs will take the decision on appeal into account in considering a valid protest filed against that final action under part 174 of this chapter; or

(ii) If the decision on appeal is issued 60 or more calendar days after the effective date of the original internal advice decision, the original internal advice decision will be modified or revoked in accordance with the procedures set forth in § 177.21, and the decision on appeal will take effect on the effective date of the ruling that modifies or revokes the original internal advice decision (see § 177.21(e)).

§ 177.34 Availability of internal advice decisions to the public.

An internal advice decision issued under this subpart will be made available for public inspection in accordance with § 177.24.

Subpart D—Disclosure of Confidential Business Information

§ 177.41 Treatment of requests for confidentiality.

(a) *General availability of information.* Consistent with the basic principle of availability of information reflected in the Freedom of Information Act (the FOIA, 5 U.S.C. 552) and part 103 of this chapter, the general practice of Customs is to treat all information submitted under this part as a matter of public record that is available to the general public. However, a person who provides information to Customs in connection with a ruling or appeal under subpart B of this part, or who provides information to Customs in connection with an internal advice request or appeal under subpart C of this part, may in accordance with paragraph (b) of this section request that Customs accord confidential treatment to that information if the person does not want it to be disclosed to the public.

(b) *Submission of requests for confidential treatment.* A request for confidential treatment under this section must conform to the following standards:

(1) The request must be in writing and must relate to information that is alleged to constitute trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;

(2) The request must clearly identify the information that is the subject of the request;

(3) The request must set forth the reasons why the information should not be disclosed, including the reasons the

disclosure of the information would prejudice the competitive position of the interested person;

(4) The request must be supported by a signed statement by the interested person, or by an officer or authorized employee of an interested party company, certifying that the information in question is confidential commercial or financial information and is not already in the public domain; and

(5) A failure to request confidential treatment at the time the information in question is submitted to Customs will constitute a waiver of confidential treatment. Accordingly, a request for confidential treatment will not be entertained under this subpart if the information to which the request relates was submitted to Customs without a request for confidential treatment.

(c) *Disposition of requests for nondisclosure*—(1) *General.* An issue of confidentiality raised under paragraph (b) of this section will be resolved with reference to the principles that apply under Exemption 4 of the FOIA (5 U.S.C. 552(b)(4)) and under 31 CFR part 1 and under part 103 of this chapter. A request for a conference to discuss an issue of confidentiality will be granted only if Customs believes that a conference is necessary. Each issue of confidentiality must be resolved to the satisfaction of Customs and the person who submitted the information to Customs before Customs will consider the substance of the ruling request or submission or appeal which contains the information at issue, except in the case of information submitted in connection with a prospective ruling or request for internal advice that was initiated by Customs (see paragraph (c)(2)(ii) of this section). If the issue of confidentiality is resolved to the mutual satisfaction of Customs and the person who submitted the information at issue, Customs will grant the request for confidential treatment by written notice to the person who made that request. Customs will then resume consideration of the appropriate ruling or internal advice decision or decision on appeal in accordance with subpart B or subpart C of this part.

(2) *Failure to agree on confidential treatment*—(i) *Action not initiated by Customs.* In the case of a ruling request or request for internal advice that was made or initiated by an importer or other interested party, or in the case of an appeal of any ruling or internal advice decision, if an issue of confidentiality raised under paragraph (b) of this section cannot be resolved to the mutual satisfaction of Customs and the person who submitted the information to Customs, or if Customs determines for any other reason that there is not a sufficient basis for granting the request for confidential treatment, Customs will in writing notify the person that his request for confidential treatment is denied. In this case, no further submission will be accepted, and no conference will be held, on the issue of confidentiality after that notification. The person who submitted the information to Customs will be given 10 working days from the date of the notification letter to advise Customs in writing that he is withdrawing the ruling request or submission or appeal which contains the information at issue, and Customs will take one of the following actions:

(A) If the issue of confidentiality relates to information submitted with the original ruling request or submission or appeal and the person who made the ruling request or submission or filed the appeal either withdraws the ruling request or submission or appeal or fails to do so in writing within the prescribed 10-day period, Customs will close the case file without action. Customs also will return the ruling request or submission or appeal to the person who filed it unless a FOIA request for any of that information has been filed under paragraph (d) of this section; or

(B) If the issue of confidentiality relates only to information provided to Customs in a further submission which supplements a ruling request or submission or appeal and the person who made the original ruling request or submission or filed the appeal either withdraws the further submission or fails to do so in writing within the prescribed 10-day period, Customs will return the further submission to the person who made the original ruling request or submission or filed the appeal without considering it and will proceed with consideration of the ruling request or submision or appeal as originally submitted so long as it has not been withdrawn in accordance with paragraph (c)(2)(i)(A) of this section.

(ii) *Action initiated by Customs.* In the case of information contained in a submission made either in connection with a prospective ruling initiated by Customs under § 177.17(b) or in connection with a request for internal advice initiated by Customs under § 177.32(a)(1) or (b), if an issue of confidentiality raised under paragraph (b) of this section cannot be resolved to the mutual satisfaction of Customs and the person who submitted the information to Customs, or if Customs determines for any other reason that there is not a sufficient basis for granting the request for confidential treatment, Customs will in writing notify that person. Customs will proceed with the prospective ruling or internal advice decision notwithstanding the failure to reach agreement on the confidentiality issue but will attempt to prepare the prospective ruling or internal advice decision in such a way as to avoid disclosure of the information claimed to be confidential to the greatest extent practicable and consistent with the need to prepare meaningful rulings and decisions.

§ 177.42 Time limitation.

A grant of confidential treatment under this subpart will be valid for a period of 3 years or for any shorter period of time specified in the written notice provided under § 177.41(c)(1), after which time it will automatically expire by operation of law unless renewed under § 177.43. Even if a grant expires, the information given confidential treatment will only be disclosed to the public pursuant to the Freedom of Information Act.

§ 177.43 Renewal of confidential treatment.

A grant of confidential treatment under this subpart will be considered for renewal for one or more additional periods not to exceed 3 years for each renewal period if a written request for renewal is received by Customs during the 3-month period prior to the scheduled expiration date. A request received either prior to the start of that 3-month period or on or after the scheduled expiration date will be rejected as untimely, unless the requester shows good cause for the failure to make the request during that 3-month period. The request for renewal should be in the form of a letter and must contain a detailed explanation as to why the information continues to require confidential treatment. Customs will advise the requester in writing of the decision on the request for the extension.

§ 177.44 Disclosure pursuant to the FOIA.

(a) *General.* Business information provided to Customs as part of a ruling request or other written submission or appeal under subpart B of this part, or provided to Customs in connection with an internal advice request or appeal under subpart C of this part, may be the subject of a request for disclosure under the Freedom of Information Act (the FOIA, 5 U.S.C. 552) prior to resolution of a request for confidential treatment or subsequent to a grant of confidential treatment under § 177.41 or when no request for confidential treatment has been made or granted under § 177.41. In

any of these cases, the business information will not be disclosed pursuant to a FOIA request if, in the opinion of Customs, it falls within the scope of Exemption 4 of the FOIA.

(b) *Notice to ruling requester or submission filer or appellant and FOIA requester*—(1) *Notice to ruling requester or submission filer or appellant.* Except as otherwise provided in paragraph (f) of this section, Customs will provide a ruling requester or submission filer or appellant with prompt notice of receipt of a request under the FOIA encompassing his business information whenever the ruling requester or submission filer or appellant has in good faith designated the information as commercially or financially sensitive information (even if Customs previously did not grant a request for confidential treatment under § 177.41) or whenever Customs has reason to believe that disclosure of the information may result in commercial or financial injury to the ruling requester or submission filer or appellant. The notice will either describe the exact nature of the information requested or provide copies of the records or portions of records containing the information and will advise the ruling requester or submission filer or appellant of its right to file an objection to the requested disclosure in accordance with the procedures set forth in paragraph (c) of this section. Customs will also provide a copy of the FOIA request.

(2) *Notice to FOIA requester.* When notice is given to a ruling requester or submission filer or appellant under paragraph (b)(1) of this section, Customs will in writing notify the FOIA requester that the notice has been given to the ruling requester or submission filer or appellant. The notice will also advise the FOIA requester that a delay by Customs in responding to the request may be considered a denial of access to records and that the FOIA requester may proceed with an administrative appeal or seek judicial review, if appropriate, in accordance with the FOIA and any applicable regulations. The notice will invite the FOIA requester to agree to a voluntary extension of time so that Customs may review the ruling requester's or submission filer's or appellant's objection to disclosure.

(c) *Filing of objection to disclosure.* The ruling requester or submission filer or appellant may, within 10 working days of the date of the notice provided for in paragraph (b)(1) of this section, file with Customs a detailed statement of any objection to disclosure. The statement must specify all grounds for withholding any of the information under any exemption under paragraph (b) of the FOIA, and, in the case of Exemption 4, must demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential.

(d) *Notice of intent to disclose.* Customs will consider any objections filed by a ruling requester or submission filer or appellant under paragraph (c) of this section and any other specific grounds for nondisclosure prior to determining whether to disclose the information pursuant to the FOIA request. If Customs determines that disclosure should be made over the objections of the ruling requester or submission filer or appellant, Customs will provide to the ruling requester or submission filer or appellant a written notice of that determination. The notice, a copy of which will be provided to the FOIA requester, will include:

(1) A statement of the reasons the ruling requester's or submission filer's or appellant's objections to disclosure were not sustained;

(2) A general description of the information to be disclosed; and

(3) A specific date for disclosure which will be 10 working days after the date appearing on the notice.

(e) *Notice of FOIA lawsuit.* Whenever a FOIA requester brings suit seeking to compel disclosure of information provided to Customs as part of a ruling request or other written submission or appeal under subpart B of this part or provided to Customs in connection with an internal advice request or appeal under subpart C of this part, Customs will promptly provide written notification of the suit to the ruling requester or submission filer or appellant.

(f) *Exceptions to notice requirements.* The notice requirements of this section will not apply if:

(1) Customs has granted confidential treatment for the information under § 177.41 and intends to continue to honor that grant;

(2) Customs has otherwise determined, by application of Exemption 4 of the FOIA or pursuant to any other provision of law, that the information should not be disclosed;

(3) The information lawfully has been published or otherwise made available to the public; or

(4) Disclosure of the information is required by a provision of law other than the FOIA.

§ 177.52 [Amended]

2. In newly redesignated § 177.52, paragraph (b)(2) is amended by removing the reference "§ 177.25(a)" and adding, in its place, the reference "§ 177.55(a)".

§ 177.54 [Amended]

3. In newly redesignated § 177.54, the first sentence is amended by removing the reference "§ 177.23" and adding, in its place, the reference "§ 177.53".

§ 177.55 [Amended]

4. In newly redesignated § 177.55, paragraph (b)(1) is amended by removing the reference "§ 177.24" and adding, in its place, the reference "§ 177.54".

§ 177.57 [Amended]

5. In newly redesignated § 177.57, the first sentence is amended by removing the reference "§ 177.23" and adding, in its place, the reference "§ 177.53", and the second sentence is amended by removing the reference "§ 177.4" and adding, in its place, the reference "§ 177.13".

§ 177.58 [Amended]

6. In newly redesignated § 177.58, paragraph (c) is amended by removing the reference "§ 177.25(b)(5)" and adding, in its place, the reference "§ 177.55(b)(5)".

§ 177.60 [Amended]

7. In newly redesignated § 177.60, the first sentence is amended by removing the reference "§ 177.22(d)" and adding, in its place, the reference "§ 177.52(d)".

§ 177.61 [Amended]

8. In newly redesignated § 177.61, the last sentence is amended by removing the reference "§ 177.29" and adding, in its place, the reference "§ 177.59" and removing the reference "§ 177.30" and adding, in its place, the reference "§ 177.60".

Raymond W. Kelly,

Commissioner of Customs.

Approved: July 9, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

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LIST OF PUBLIC LAWS

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S. 657/P.L. 107–19

To authorize funding for the National 4-H Program Centennial Initiative. (July 10, 2001; 115 Stat. 153)

Last List July 9, 2001

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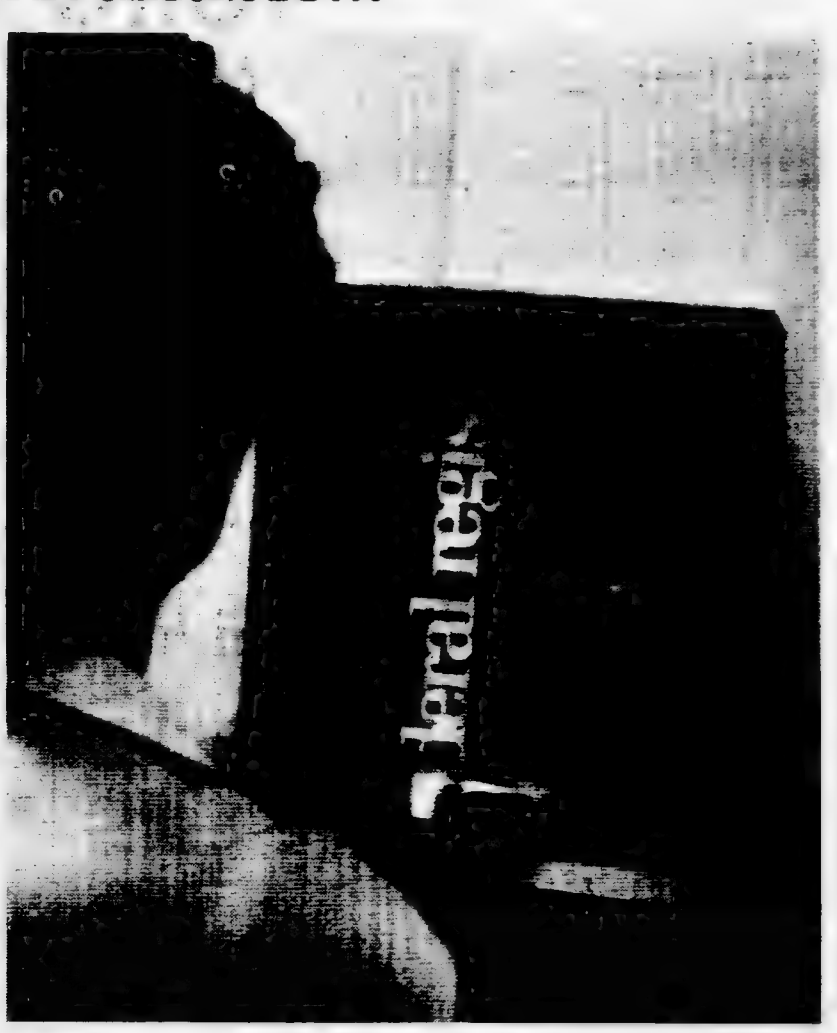

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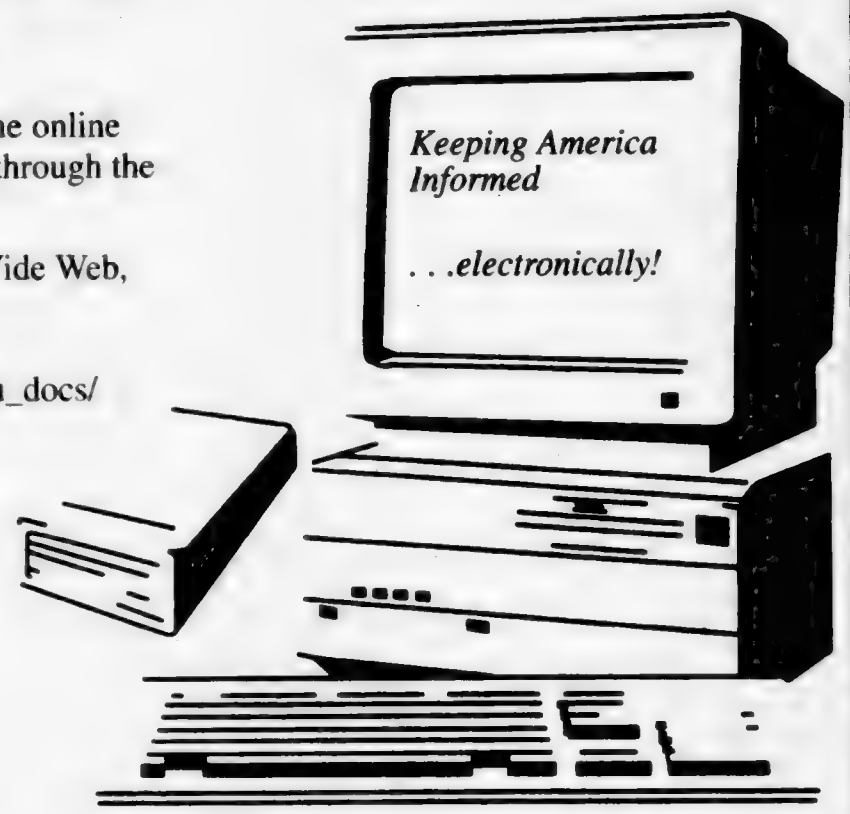

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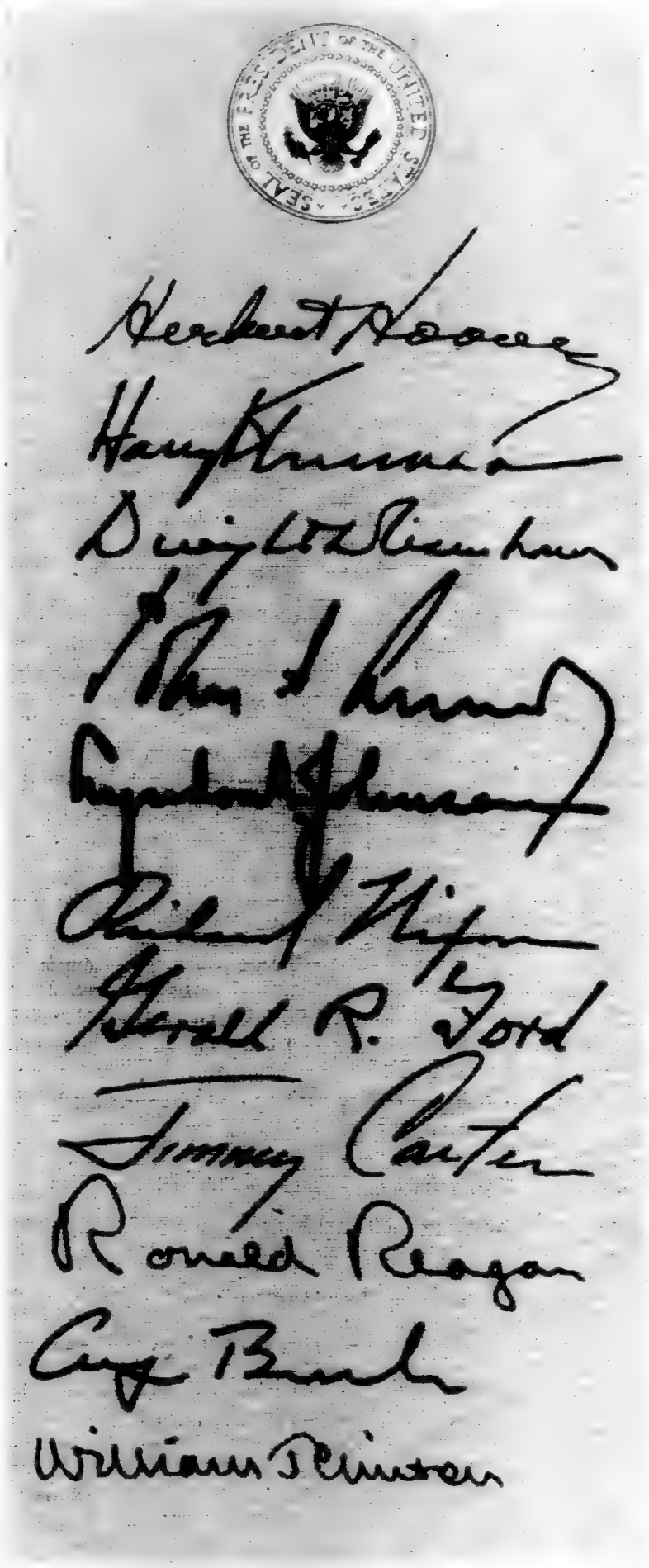

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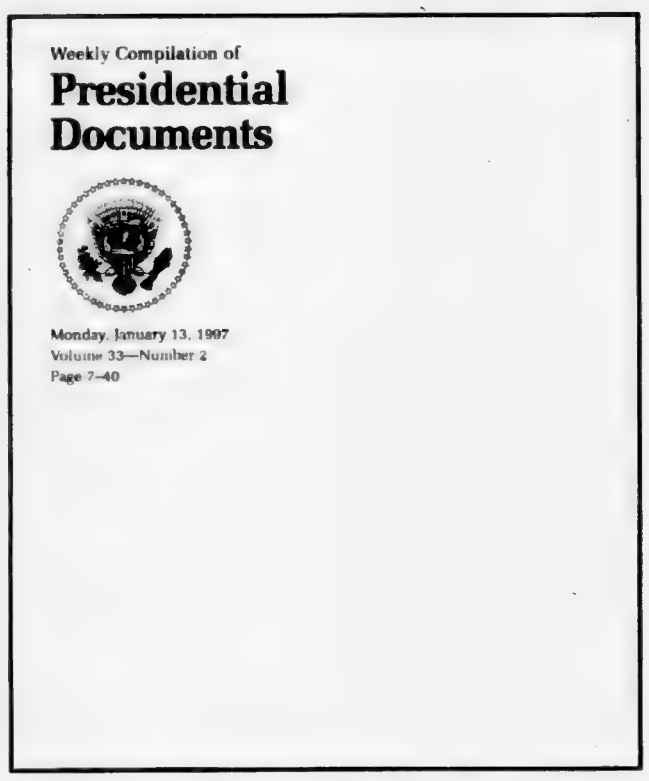

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 353

[Docket No. 99–030–2]

Accreditation Standards for Laboratory Seed Health Testing and Seed Crop Phytosanitary Inspection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the export certification regulations to provide specific standards under which non-government facilities may be accredited to perform laboratory seed testing and seed crop field inspection services to serve as the basis for the issuance of a Federal phytosanitary certificate, export certificate for processed plant products, or phytosanitary certificate for reexport. The accreditation standards for these laboratory testing and field inspection services were developed to provide the basis for non-government facilities to become accredited to perform the testing or inspection services that may be used as supporting documentation for the issuance of certificates for certain plants or plant products.

EFFECTIVE DATE: August 17, 2001. The incorporation by reference provided for by this rule is approved by the Director of the Federal Register as of August 17, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Narcy G. Klag, Program Manager, Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8262.

SUPPLEMENTARY INFORMATION:

Background

The export certification regulations contained in 7 CFR part 353 (referred to below as the regulations) set forth the procedures for obtaining certification for plants and plant products offered for export or reexport. Export certification is not required by the regulations; rather, it is provided by the Animal and Plant Health Inspection Service (APHIS) as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry. After assessing the condition of the plants or plant products intended for export relative to the receiving country's regulations, an inspector will issue an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), or an export certificate for processed plant products (PPQ Form 578), if warranted.

Since 1975, APHIS has participated with State governments in the Cooperative Phytosanitary Export Certification Program, which allows certain State and county officials, as well as APHIS officials, to issue phytosanitary certificates, phytosanitary certificates for reexport, or export certificates for processed plant products. Because the number of Federal inspectors is limited, the use of State and county inspectors is a considerable benefit to exporters of plants and plant products in terms of both time and convenience.

On June 20, 2000, we published in the **Federal Register** (65 FR 38218–38223, Docket No. 99–030–1) a proposal describing standards to be used to evaluate facilities for accreditation to perform laboratory seed testing and seed crop field inspection in accordance with 7 CFR part 353.

We solicited comments concerning our proposal for 60 days ending August 21, 2000. We received 28 comments by that date. They were from seed companies, seed industry associations, plant health associations, and individuals. All the commenters generally supported the proposed rule, although three commenters suggested certain specific changes to it. All issues raised by the commenters are discussed below.

Two commenters suggested that we should replace references to *seed crop field inspection* in the rule with the term *seed crop phytosanitary inspection* or a similar term, and clarify that this activity includes inspection of greenhouses or growth chambers where plants are grown for seed production as well as visual inspection of seed crops. The same commenters suggested that we replace references to *laboratory seed testing* with the term *laboratory seed health testing*. They stated that in both cases, the terms in the proposal did not unambiguously identify the purpose of the inspection and testing.

We agree, and have made the requested changes. We have also clarified in the discussion of the procedures for seed crop phytosanitary inspection in § 353.9(b)(2)(i) that this activity includes inspection of greenhouses or growth chambers where plants are grown for seed production, as well as visual inspection of seed crops.

One commenter suggested that the rule should specify that the activities performed by approved facilities include seed sampling for the purpose of laboratory seed health testing and visual inspection of seed just prior to export. We believe it is fairly clear in the rule that facilities that perform seed crop phytosanitary inspection and laboratory seed health testing may perform these activities as part of accomplishing the purpose of their inspection and testing. For example, the rule directs facilities to Reference Manual B for detailed procedures on seed sampling. However, we have added these two activities to § 353.9(b)(2)(i) as examples of functions facilities may perform.

Two commenters suggested, regarding the proposal's discussion of physical plant and equipment requirements for facilities, that a laboratory may need all the required equipment for full seed health testing but not for diagnostic activities in support of phytosanitary inspection, which often only requires a hand lens. They suggested that we change the rule to state that the accredited facility must "have access" to this equipment should it be necessary; i.e., make the equipment required test-dependent.

The intent of the proposed rule was to require facilities to have specified equipment only if it is needed to perform the tests for which the facility is accredited. Proposed § 353.9(b)(2) stated that a facility "must use the equipment required to conduct the laboratory testing or seed crop phytosanitary inspections for which it is accredited." To clarify this point, we are

changing that sentence in this final rule to read that a facility "must have access to all equipment required to conduct the laboratory testing or seed crop phytosanitary inspections for which it is accredited."

One commenter noted, regarding the proposal's discussion of serological testing, that some laboratories may use "field ready test kits" that do not require all the equipment listed in § 353.9(b)(2)(v).

We agree. Proposed § 353.9(b)(2)(v) stated regarding serological tests that "These tests require grinding, extraction, and sample purification equipment; fluorescent microscopes; plate readers; spectrophotometers; and the appropriate assay materials." We are adding to the end of that sentence the phrase "or appropriate equipment to use field ready test kits."

The same commenter also asked whether APHIS intended to prohibit field determinations, or to require field determinations to be confirmed by laboratory diagnostics. If laboratory confirmation is required, the commenter asked whether APHIS must accredit the laboratory providing the diagnostic confirmation.

APHIS intends to allow field determinations that are conducted in accordance with the procedures authorized by Reference Manual B. In the normal practice of field inspection, samples are routinely sent to a laboratory for identification or confirmation of a visual identification. It is not APHIS' intention to accredit these laboratories. However, the procedures to provide this laboratory support, including the identity and qualifications of the laboratory, must be detailed in the accredited facility's quality manual. A facility's procedures for confirming field inspections may be reviewed during the initial approval and periodic audits of the accredited facility.

Two comments addressed the proposed requirement in § 353.9(b)(4)(i) that "Evaluation of plant or tissue samples must be undertaken by a plant pathologist or by laboratory technicians under the supervision of a plant pathologist." These commenters noted that by using modern communications and computer technology, technicians may work "under the supervision of a plant pathologist" even if the pathologist is at a different location.

We agree, and have added the following phrase at the end of the sentence in § 353.9(b)(4)(i): "who may provide such supervision either on-site, or from a remote location."

One commenter suggested that the Association of Official Seed Analysts should be added to the National Seed Health System (NSHS) Working Group identified in Reference Manual A.

Membership in the NSHS Working Group is outside the scope of this rulemaking. This commenter should contact the current chair of the NSHS Seed Technical Working Group to address this issue.

One commenter addressed a sentence in the economic analysis section of the proposed rule that read: "It is expected that, like any business, seed testing laboratories will recoup these expenses by appropriate structuring of the fees they set for their services." This commenter noted that, in addition to laboratories, this is also true for non-laboratory accredited entities providing other phytosanitary inspection services.

We agree, and have modified the language in this final rule's economic analysis accordingly.

One commenter asked for APHIS to clarify whether only non-government entities are eligible to apply for accreditation under the rule. In particular, this commenter asked about the eligibility of public universities that administer seed certification units.

Even though most of the examples discussed in the proposed rule were private, non-government entities, the rule does not preclude accreditation of governmental agencies or other public institutions, including public universities. These agencies may apply for accreditation and, if eligible, will be accredited.

One commenter asked how APHIS will accept and protect confidential business information submitted by applicants for accreditation.

The regulations already in place at § 353.8(b)(5) state that "All information gathered during the course of a non-government facility's assessment and during the term of its accreditation will be treated by APHIS with the appropriate level of confidentiality, as set forth in the U.S. Department of Agriculture's administrative regulations in § 1.11 of this title." APHIS will protect the confidentiality of such information. To make sure that such information is clearly identified by the applicant, we are adding the following sentence to paragraph § 353.9(a) in the rule, which describes how to submit application material: "If there are portions of the application deemed to contain trade secret or confidential business information (CBI), each page of the application containing such information should be marked 'CBI Copy.'"

One commenter asked whether specific test methodologies and materials will be in Reference Manual B, or in a facility's quality manuals. As stated in the proposal, Reference Manual B will contain specific methodologies to conduct tests, field inspections, sampling, and related procedures. The facility's quality manual will document the quality system designed to ensure that the methodologies in Reference Manual B are followed, and will address matters such as purity of materials, and calibration of equipment, and so forth. Quality manuals may summarize or quote methodologies from Reference Manual B to the extent that facilities find it useful to do so.

One commenter asked whether APHIS accepts liability for incorrect diagnostics or field inspections carried out by accredited entities.

APHIS does not accept liability for inaccurate results. Once accredited, individual facilities retain the same liability for conducting tests that are inaccurate or fraudulent that they bore before becoming accredited. Facilities should be protected against liability if they follow the methodologies required by APHIS and report test and inspection results accordingly. If evidence accumulates that a particular methodology does not yield reliable results, APHIS may have to revise that methodology, but accredited facilities are only responsible for properly conducting and reporting the required procedures.

One commenter asked for details regarding how often Reference Manuals A and B will be revised, and when they will be incorporated by reference. These manuals are currently posted on the APHIS website (http://www.aphis.usda.gov/ppq/pim/accreditation) in the form in which they have been incorporated by reference by this final rule. We expect that the manuals, especially Reference Manual B, will require updating as new tests are added or as improved test and inspection methodologies are validated. APHIS intends to update the copies of the Reference Manuals on the website, and the copies incorporated by reference with the Office of the Federal Register, as needed, perhaps about twice per year.

One commenter noted that APHIS has stated that the Iowa State Seed Science Center will be used on the assessment team to evaluate and audit facilities applying for accreditation. This commenter stated that APHIS would need additional help to meet its evaluation workload in order to process all the applications from interested facilities, and stated that State governmental agencies could also be used to meet this need.

We agree that APHIS will likely need additional assistance to meet the workload involved in evaluating and auditing facilities. Since APHIS does not have the capability or expertise to provide the necessary testing and auditing, we will utilize selected public facilities to conduct these activities. The Iowa State Seed Science Center will be used as the initial "accreditation unit" under this system; however, it is anticipated that APHIS may need to utilize other organizations, including State agencies, to properly evaluate all the private facilities that wish to be accredited.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule will amend the export certification regulations to provide standards under which facilities may become accredited to perform laboratory seed health testing or inspection services that can serve as the basis for the issuance of Federal phytosanitary certificates for export, phytosanitary certificates for reexport, or export certificates for processed plant products. Accrediting such facilities is currently allowed under 7 CFR 353.8. The existing regulations provide a framework upon which accreditation programs could be established, but they do not, in and of themselves, entail any costs to APHIS or any facility. However, when facilities are accredited under the accreditation criteria contained in this rule for seed laboratories and field inspection facilities, that action will entail costs to both the entities being accredited and the accrediting body (i.e., APHIS). Those costs, and the benefits expected from the accreditation program, are summarized below and were fully evaluated in the economic analysis section of the previous final rule that established a program for accrediting facilities, published in the **Federal Register** on January 8, 1999 (64 FR 1098–1106, Docket No. 95–071–2).

The accreditation program is expected to be self-supporting, and any costs to APHIS should be recouped through accreditation fees. Costs for establishing each accredited facility will vary, depending on the range of activities for which a facility seeks accreditation, the initial cost of the APHIS preaccreditation assessment, the type and number of any proficiency tests that will have to be conducted, and the frequency with which post-accreditation evaluation activities such as check tests and site visits will have to be conducted. It is expected that, like any business, seed testing laboratories and other accredited facilities will recoup these expenses by appropriate structuring of the fees they set for their services.

The seed industry is expected to benefit from this action because domestic seed exporters routinely require the services of inspectors and agents in order to obtain the phytosanitary certification required by most, if not all, importing countries; benefits can be realized in terms of more timely certifications, which in turn can lead to reduced costs as well as increased U.S. exports.

The value of seed exported from the United States to other countries continues to grow rapidly, from $665 million in 1994–95 (July to June), to $705 million in 1995–96, to more than $800 million in 1996–97. There has been a concomitant rise in demand for laboratory testing and inspection services to meet other countries import requirements. The ability of Federal, State, and county testing and inspection services to meet this growing demand will be increasingly strained. Already there are instances in which the availability of accredited facilities would have prevented the loss of export sales.

For example, some seed export opportunities have been forfeited because the results of preharvest field inspections are usually not known until after harvest, due to the limited number and heavy workload of government laboratories available to perform seed testing. It is common for seed from several fields to be blended after harvest and before shipment. If the sample from one field is subsequently reported to contain an actionable pest, then none of the blended seed—which may have been harvested from as many as eight or nine fields—could be exported. In one case in which this occurred, the affected seed company lost foreign sales worth $250,000. Such losses are much less likely to occur if there is more timely reporting of preharvest inspections; accredited inspection facilities may be able to make such timely reports. In general, we expect that adding a number of non-government facilities providing testing and inspection services will allow the future demand for these services to be distributed among facilities in a manner that will readily adjust to fluctuations in the demand for these services, and will allow both government and non-government facilities to report results in a timely manner.

Overall, the economic benefits that should result from the availability of accredited non-governmental seed laboratories and field inspection facilities greatly exceed the costs. By providing access to services by accredited non-government facilities to support the issuance of phytosanitary certificates that many trading partners require as a condition of entry for U.S. goods, this action should greatly enhance export opportunities for U.S. producers. While this rule does not directly create or open any new markets for U.S. seed exports, it makes it easier for exporters to obtain necessary certification in a timely manner. This should result in U.S. companies obtaining more contracts in which delivery time is of the essence. While we do not have data to exactly estimate the value of such potential contracts, comments from seed companies suggest that their value may be on the order of $10 million per year.

We do not have detailed information on the number of small businesses engaged in exporting seeds or in testing seeds. Seed and bulb producers are combined in Standard Industrial Classification (SIC) 0181 with several other types of businesses, and seed testing laboratories are combined with other types of testing laboratories under SIC 8734. From the data available, there appear to be several hundred seed producers that may be small businesses, but very few of these engage directly in export. Instead, they sell seed to wholesale seed brokers who sell to export markets. None of these wholesale seed brokers appear to be small businesses. Several very large seed production companies are known to sell their products directly to export markets. With regard to seed testing laboratories, we estimate that a dozen or so laboratories, some of which are small businesses, will become accredited in accordance with this rule and will increase their revenue from inspection and testing services.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires

intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 353

Exports, Incorporation by reference, Plant diseases and pests, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 300 and 353 are amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, new paragraphs (c) and (d) are added to read as follows:

§ 300.1 Materials incorporated by reference.

* * * * *

(c) *Reference Manual A.* The *Reference Manual for Administration, Procedures, and Policies of the National Seed Health System*, which was published on February 25, 2000, by the National Seed Health System (NSHS), has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of Reference Manual A:

(1) Are available for inspection at the Office of the Federal Register Library, 800 North Capitol Street NW, Suite 700, Washington, DC, and the APHIS Library, U.S. Department of Agriculture, 4700 River Road, Riverdale, MD 20737; or

(2) May be obtained by writing to Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, and on the APHIS Web site at http://www.aphis.usda.gov/ppq/pim/accreditation.

(d) *Reference Manual B.* The *Reference Manual for Seed Health Testing and Phytosanitary Field Inspection Methods*, which was published on February 27, 2001, by the National Seed Health System (NSHS), has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of Reference Manual B:

(1) Are available for inspection at the Office of the Federal Register Library, 800 North Capitol Street NW, Suite 700, Washington, DC, and the APHIS Library, U.S. Department of Agriculture, 4700 River Road, Riverdale, MD 20737; or

(2) May be obtained by writing to Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, and on the A APHIS Web site at http://www.aphis.usda.gov/ppq/pim/accreditation.

PART 353—EXPORT CERTIFICATION

3. The authority citation for part 353 continues to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7718, 7751, and 7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. In § 353.1, definitions of *Reference Manual A* and *Reference Manual B* are added, in alphabetical order, to read as follows:

§ 353.1 Definitions.

* * * * *

Reference Manual A. The *Reference Manual for Administration, Procedures, and Policies of the National Seed Health System*, published by the National Seed Health System (NSHS). Reference Manual A describes the structure, administration, procedures, policies, and working practices of the NSHS and also contains relevant documentation, forms, and references for the NSHS. Reference Manual A is incorporated by reference at § 300.1 of this chapter, and is available by writing to Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, and on the APHIS Web site at http://www.aphis.usda.gov/ppq/pim/accreditation.

Reference Manual B. The *Reference Manual for Seed Health Testing and Phytosanitary Field Inspection Methods*, published by the National Seed Health System (NSHS). Reference Manual B contains the detailed seed health testing, seed sampling, and inspection procedures for the NSHS. Reference Manual B is incorporated by reference at § 300.1 of this chapter, and is available by writing to Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, and on the APHIS Web site at http://www.aphis.usda.gov/ppq/pim/accreditation.

* * * * *

§ 353.8 [Amended]

5. Section 353.8 is amended by adding a new sentence at the end of the section to read as follows: "(Approved by the Office of Management and Budget under control number 0579–0130)".

6. A new § 353.9 is added to read as follows:

§ 353.9 Standards for accreditation of non-government facilities to perform laboratory seed health testing and seed crop phytosanitary inspection.

(a) *Application for accreditation, certification of accreditation, and monitoring of accredited facilities.* A facility may apply to be accredited to perform laboratory seed health testing or seed crop phytosanitary inspection, or to renew such accreditation, by submitting an application in accordance with § 353.8(b)(2) of this part. If there are portions of the application deemed to contain trade secret or confidential business information (CBI), each page of the application containing such information should be marked "CBI Copy." The application must be accompanied by a copy of the facility's quality manual and a nonrefundable application fee of $1,000. The applicant must make additional deposits to cover the costs of gaining and maintaining accreditation into a trust fund established in accordance with § 353.8(c) of this part upon request by the Administrator.

(1) Upon determining that a facility is eligible for accreditation, the Administrator will issue the facility a certificate of accreditation. Accreditation will be for a period of 3 years from the date of issuance of the certificate of accreditation and may be renewed by submitting a new application and application fee in accordance with this paragraph.

(2) The Administrator may deny or withdraw accreditation in accordance with § 353.8(a)(2) of this part. A facility may appeal denial of accreditation in accordance with § 353.8(a)(2)(i) of this part, and may appeal withdrawal of

accreditation in accordance with § 353.8(a)(2)(ii) of this part.

(3) A facility that has been denied accreditation or had its accreditation withdrawn may not reapply within 60 days of the date the facility was notified in writing that accreditation was denied or withdrawn.

(4) After a facility is accredited, the facility must allow APHIS access to the facility and all of its equipment and records for the purpose of conducting unannounced audits to determine the facility's continuing eligibility for accreditation. Such audits will occur at least once a year and may be performed more frequently at the discretion of the Administrator.

(b) *Standards for accreditation.* A facility that, in accordance with § 353.8(b)(2) of this part, applies to be accredited to perform laboratory seed health testing or seed crop phytosanitary inspection will be evaluated for accreditation against these standards:

(1) *Physical plant.* The facility's physical plant (e.g., laboratory space, office space, greenhouses, vehicles, etc.) must:

(i) Have laboratory and office spaces enclosed by walls and locking doors to prevent unauthorized access;

(ii) Conform to all State and local zoning and other ordinances; and

(iii) Provide a work area that is dedicated to laboratory functions and has sufficient space to conduct the required tests and store the materials and samples required for the tests in a manner that prevents contamination by other samples in the laboratory and from other sources.

(2) The facility must have access to all equipment required to conduct the laboratory testing or seed crop phytosanitary inspections for which it is accredited. Specific test methodologies, materials, and the calibration and monitoring of the equipment must conform to Reference Manual B, which is incorporated by reference at § 300.1 of this chapter. The general requirements for each test category are as follows:

(i) *Seed crop phytosanitary inspections.* Seed crop phytosanitary inspection may also include related activities such as collection of seed samples for later laboratory testing, visual inspection of seed just prior to export, and inspection of greenhouses or growth chambers where plants are grown for seed production, as well as visual inspection of seed crops. In the field, inspectors must use accurate field maps, hand lenses, and secure containers for the collection, storage, and transportation of samples. Inspectors must have direct access to a laboratory that is fully equipped to carry out any necessary diagnostic tests needed for field samples.

(ii) *Direct visual examination.* Visual examination of seed requires a stereo microscope. Visual examination of tissue requires a compound light microscope. Visual examination of loosely attached or accompanying material requires a centrifuge and shaker.

(iii) *Incubation.* Required equipment includes incubation chambers, laminar flow hoods, media preparation equipment, scales, pH meters, distilled and sterile water, gas burners, an autoclave, and the appropriate media for the specified tests.

(iv) *Grow-out tests.* Grow-out tests require a greenhouse, growth chamber, or an outdoor quarantine location, and access to a laboratory that is fully equipped to carry out any required diagnostic tests.

(v) *Serological tests.* These tests require grinding, extraction, and sample purification equipment; fluorescent microscopes; plate readers; spectrophotometers; and the appropriate assay materials; or the appropriate equipment to use field ready test kits.

(vi) *DNA probes.* To conduct these tests, a laboratory must be equipped with polymerase chain reaction (PCR) equipment, including thermal cyclers, electrophoresis and gel blotting equipment, and the reagents and DNA polymerases necessary to conduct the PCR.

(3) *Methods of testing and inspection.* The facility must conduct its laboratory seed health testing and seed crop phytosanitary inspection procedures in accordance with Reference Manual B. The facility must have a quality manual documenting its quality system for laboratory seed health testing and seed crop phytosanitary inspection procedures. The quality system must follow the general guidelines described in ANSI/ASQC Q9001–1994, *American National Standard: Quality Systems-Model for Quality Assurance in Design, Development, Production, Installation and Servicing.* Acceptable models for quality systems for accredited facilities are also described in detail in Reference Manual A, which is incorporated by reference at § 300.1 of this chapter. The personnel who perform the testing and inspection services must comply with the quality manual, and management must enforce this compliance. The facility must maintain documented procedures for identification, collection, indexing, access, filing, storage, maintenance, and disposition of quality system records. The facility must maintain quality system records to demonstrate conformance to the quality manual and the effective operation of the quality system.

(4) *Personnel.* There must be a selection procedure and a training system to ensure technical competence of all staff members. The education, technical knowledge, and experience required to perform assigned test and inspection functions must be documented and clearly defined. In addition:

(i) Evaluation of plant or tissue samples must be undertaken by a plant pathologist or by laboratory technicians under the supervision of a plant pathologist, who may provide such supervision either on-site, or from a remote location. Where personnel are required to be trained at a facility to evaluate the particular types of plants or tissue samples handled by the facility, the training program must be evaluated by APHIS and determined to be effective.

(ii) All staff must have access to and be familiar with the reference materials, guides, and manuals required for the routine performance of the tests and inspections they conduct.

(Approved by the Office of Management and Budget under control number 0579–0130.)

Done in Washington, DC, this 11th day of July 2001.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17839 Filed 7–17–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–048–1]

Pine Shoot Beetle; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations by adding counties in Illinois, Indiana, Maine, Maryland, New York, Ohio, Pennsylvania, Vermont, and West Virginia to the list of quarantined areas. This action is necessary to prevent the spread of pine shoot beetle, a pest of pine products, into noninfested areas of the United States. We are also making nonsubstantive revisions to the entries

for Illinois, Indiana, Michigan, New York, and Ohio to address inconsistencies in the county listings and correct misspellings.

DATES: This interim rule is effective on July 18, 2001. We invite you to comment on this docket. We will consider all comments that we receive by September 17, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–048–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–048–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Jones, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a pest of pine trees that can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur. During "maturation feeding," young beetles tunnel into the center of pine shoots (usually of the current years growth), causing stunted and distorted growth in host trees. PSB is also a vector of several diseases of pine trees. Factors that may result in the establishment of PSB populations far from the location of the original host tree include: (1) Adults can fly at least 1 kilometer, and (2) infested trees and pine products are often transported long distances. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.), spruce (*Larix* spp.), and larch (*Picea* spp.) are not hosts of PSB.

Surveys conducted by State and Federal inspectors revealed 83 additional areas infested with PSB in 9 states (Illinois, Indiana, Maine, Maryland, New York, Ohio, Pennsylvania, Vermont, West Virginia). Copies of the surveys may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found.

In accordance with these criteria, we are designating De Witt, Macon, and Whiteside Counties, IL; Boone, Clinton, Johnson, Parke, Shelby, and Vermillion Counties, IN; Oxford County, ME; Frederick County, MD; Delaware, Otsego, and St. Lawrence Counties, NY; Butler, Champaign, Clark, Darke, Fairfield, Greene, Guernsey, Hamilton, Madison, Miami, Montgomery, Muskingum, Pickaway, Preble, Shelby, Vinton, and Warren Counties, OH; Huntingdon County, PA; Caledonia County, VT; and the remaining 50 counties in West Virginia, as quarantined areas, and we are adding them to the list of quarantined areas provided in § 301.50–3(c).

Miscellaneous

We are also making nonsubstantive revisions to § 301.50–3(c) to address inconsistencies in the county listings and correct misspellings in the entries for Illinois, Indiana, Michigan, New York, and Ohio.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent PSB from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.50–3 is amended as follows:

a. In paragraph (c), under Illinois, by adding new counties in alphabetical order and by revising the entries for Cook, Du Page, Iroquois, Kankakee, and Livingston.

b. In paragraph (c), under Indiana, by adding new counties in alphabetical order and by revising the entries for Benton, De Kalb, Delaware, Grant, Huntington, Miami, Tippecanoe, and White.

c. In paragraph (c), by adding a new entry for Maine.

d. In paragraph (c), under Maryland, by adding a new county in alphabetical order.

e. In paragraph (c), under Michigan, by revising the entries.

f. In paragraph (c), under New York, by revising the entries.

g. In paragraph (c), under Ohio, by adding new counties in alphabetical order and by revising the entries for Erie and Knox.

h. In paragraph (c), under Pennsylvania, by adding a new county in alphabetical order.

i. In paragraph (c), under Vermont, by adding a new county in alphabetical order.

j. In paragraph (c), under West Virginia, by revising the entries to include the entire State.

k. In paragraph (d), by revising the map.

§ 301.50–3 Quarantined areas.

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Illinois

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Cook County. The entire county.

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De Witt County. The entire county.

Du Page County. The entire county.

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Iroquois County. The entire county.

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Kankakee County. The entire county.

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Livingston County. The entire county.

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Macon County. The entire county.

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Whiteside County. The entire county.

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Indiana

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Benton County. The entire county.

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Boone County. The entire county.

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Clinton County. The entire county.

De Kalb County. The entire county.

Delaware County. The entire county.

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Grant County. The entire county.

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Huntington County. The entire county.

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Johnson County. The entire county.

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Miami County. The entire county.

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Parke County. The entire county.

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Shelby County. The entire county.

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Tippecanoe County. The entire county.

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Vermillion County. The entire county.

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White County. The entire county.

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Maine

Oxford County. The entire county.

Maryland

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Frederick County. The entire county.

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Michigan

Alcona County. The entire county.

Allegan County. The entire county.

Alpena County. The entire county.

Antrim County. The entire county.

Arenac County. The entire county.

Barry County. The entire county.

Bay County. The entire county.

Benzie County. The entire county.

Berrien County. The entire county.

Branch County. The entire county.

Calhoun County. The entire county.

Cass County. The entire county.

Charlevoix County. The entire county.

Cheboygan County. The entire county.

Chippewa County. The entire county.

Clare County. The entire county.

Clinton County. The entire county.

Crawford County. The entire county.

Delta County. The entire county.

Eaton County. The entire county.

Emmet County. The entire county.

Genesee County. The entire county.

Gladwin County. The entire county.

Grand Traverse County. The entire county.

Gratiot County. The entire county.

Hillsdale County. The entire county.

Huron County. The entire county.

Ingham County. The entire county.

Ionia County. The entire county.

Iosco County. The entire county.

Isabella County. The entire county.

Jackson County. The entire county.

Kalamazoo County. The entire county.

Kalkaska County. The entire county.

Kent County. The entire county.

Lake County. The entire county.

Lapeer County. The entire county.

Leelanau County. The entire county.

Lenawee County. The entire county.

Livingston County. The entire county.

Luce County. The entire county.

Mackinac County. The entire county.

Macomb County. The entire county.

Manistee County. The entire county.

Marquette County. The entire county.

Mason County. The entire county.

Mecosta County. The entire county.

Midland County. The entire county.

Missaukee County. The entire county.

Monroe County. The entire county.

Montcalm County. The entire county.

Montmorency County. The entire county.

Muskegon County. The entire county.

Newaygo County. The entire county.

Oakland County. The entire county.

Oceana County. The entire county.

Ogemaw County. The entire county.

Osceola County. The entire county.

Oscoda County. The entire county.

Otsego County. The entire county.

Ottawa County. The entire county.

Presque Isle County. The entire county.

Roscommon County. The entire county.

Saginaw County. The entire county.

St. Clair County. The entire county.

St. Joseph County. The entire county.

Sanilac County. The entire county.

Schoolcraft County. The entire county.

Shiawassee County. The entire county.

Tuscola County. The entire county.

Van Buren County. The entire county.

Washtenaw County. The entire county.

Wayne County. The entire county.

Wexford County. The entire county.

New York

Allegany County. The entire county.

Broome County. The entire county.

Cattaraugus County. The entire county.

Cayuga County. The entire county.
Chautauqua County. The entire county.
Chemung County. The entire county.
Chenango County. The entire county.
Cortland County. The entire county.
Delaware County. The entire county.
Erie County. The entire county.
Genesee County. The entire county.
Jefferson County. The entire county.
Lewis County. The entire county.
Livingston County. The entire county.
Madison County. The entire county.
Monroe County. The entire county.
Niagara County. The entire county.
Oneida County. The entire county.
Onondaga County. The entire county.
Ontario County. The entire county.
Orleans County. The entire county.
Oswego County. The entire county.
Otsego County. The entire county.
St. Lawrence County. The entire county.
Schuyler County. The entire county.
Seneca County. The entire county.
Steuben County. The entire county.
Tioga County. The entire county.
Tompkins County. The entire county.
Wayne County. The entire county.
Wyoming County. The entire county.
Yates County. The entire county.

Ohio

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Butler County. The entire county.

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Champaign County. The entire county.
Clark County. The entire county.

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Darke County. The entire county.

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Erie County. The entire county.
Fairfield County. The entire county.

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Greene County. The entire county.
Guernsey County. The entire county.
Hamilton County. The entire county.

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Knox County. The entire county.

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Madison County. The entire county.

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Miami County. The entire county.
Montgomery County. The entire county.

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Muskingum County. The entire county.

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Pickaway County. The entire county.

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Preble County. The entire county.

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Shelby County. The entire county.

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Vinton County. The entire county.
Warren County. The entire county.

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Pennsylvania

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Huntingdon County. The entire county.

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Vermont

Caledonia County. The entire county.

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West Virginia

The entire State.

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(d) * * *

Pine Shoot Beetle (Tomicus piniperda) Quarantine

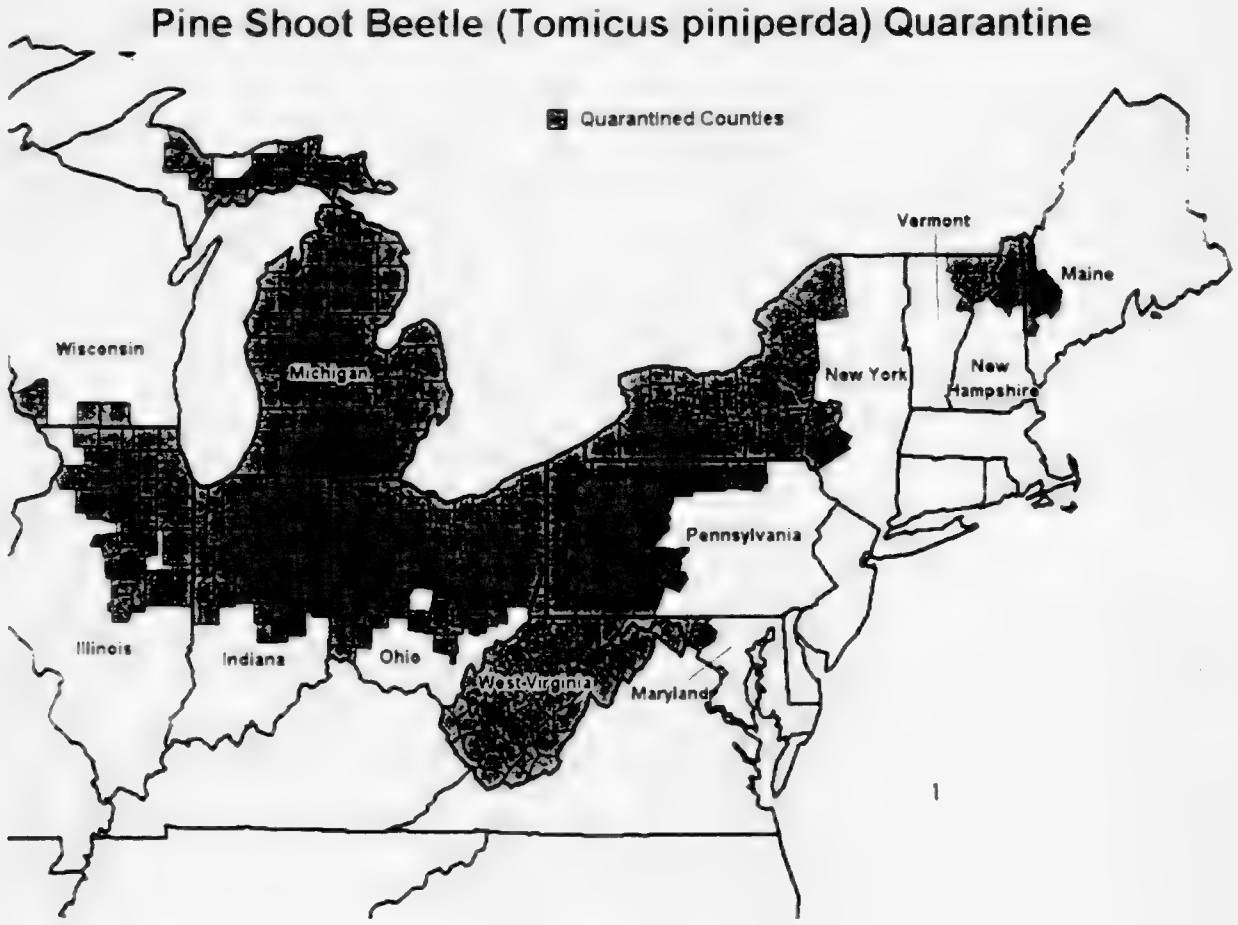

Cayuga County. The entire county.
Chautauqua County. The entire county.
Chemung County. The entire county.
Chenango County. The entire county.
Cortland County. The entire county.
Delaware County. The entire county.
Erie County. The entire county.
Genesee County. The entire county.
Jefferson County. The entire county.
Lewis County. The entire county.
Livingston County. The entire county.
Madison County. The entire county.
Monroe County. The entire county.
Niagara County. The entire county.
Oneida County. The entire county.
Onondaga County. The entire county.
Ontario County. The entire county.
Orleans County. The entire county.
Oswego County. The entire county.
Otsego County. The entire county.
St. Lawrence County. The entire county.
Schuyler County. The entire county.
Seneca County. The entire county.
Steuben County. The entire county.
Tioga County. The entire county.
Tompkins County. The entire county.
Wayne County. The entire county.
Wyoming County. The entire county.
Yates County. The entire county.

Ohio

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Butler County. The entire county.

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Champaign County. The entire county.
Clark County. The entire county.

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Darke County. The entire county.

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Erie County. The entire county.
Fairfield County. The entire county.

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Greene County. The entire county.
Guernsey County. The entire county.
Hamilton County. The entire county.

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Knox County. The entire county.

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Madison County. The entire county.

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Miami County. The entire county.
Montgomery County. The entire county.

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Muskingum County. The entire county.

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Pickaway County. The entire county.

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Preble County. The entire county.

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Shelby County. The entire county.

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Vinton County. The entire county.
Warren County. The entire county.

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Pennsylvania

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Huntingdon County. The entire county.

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Vermont

Caledonia County. The entire county.

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West Virginia

The entire State.

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Pine Shoot Beetle (Tomicus piniperda) Quarantine

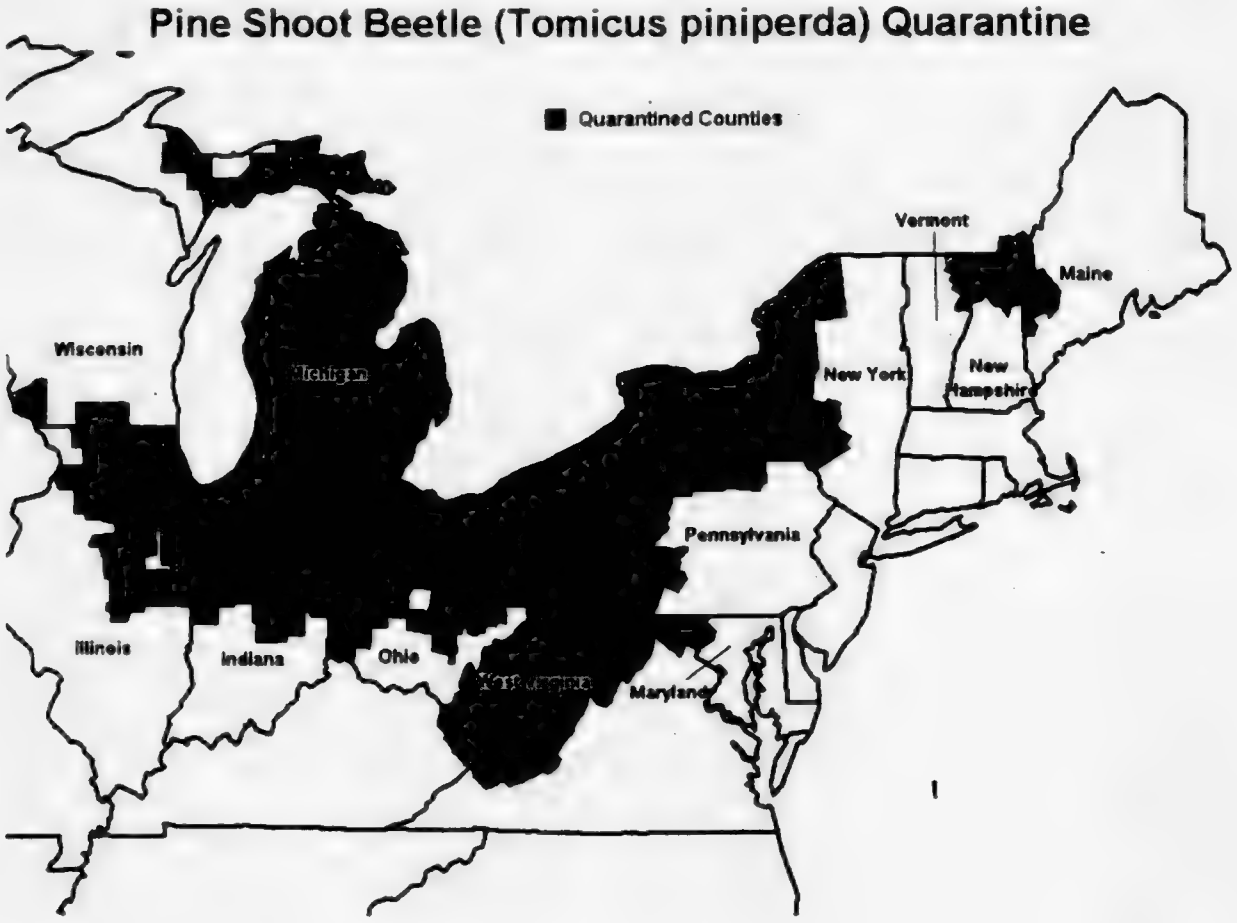

Done in Washington, DC, this 11th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17902 Filed 7–17–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1773

RIN 0572–AB66

Policy on Audits of RUS Borrowers; Management Letter

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of confirmation of direct final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice that comments were received regarding direct final rule, 7 CFR Part 1773, Policy on Audits of RUS Borrowers; Management Letter, and confirms the effective date of the direct final rule. This notice also serves to address the comments received.

DATES: The direct final rule published in the **Federal Register** on May 21, 2001 (66 FR 27829) is effective July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Annan, Chief, Technical Accounting and Auditing Staff, Program Accounting Services Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1523, Washington, DC 20250–1523. Telephone: 202–720–5227.

Background

Title 7 part 1773 implements the standard RUS security instrument provision requiring RUS electric and telecommunications borrowers to prepare and furnish to RUS, at least once during each 12-month period, a full and complete report of its financial condition, operations, and cash flows, in form and substance satisfactory to RUS; audited and certified by an independent Certified Public Accountant (CPA), satisfactory to RUS, and accompanied by a report of such audit, in form and substance satisfactory to RUS.

The Rural Utilities Service (RUS) published a direct final rule on May 21, 2001, at 66 FR 27829, in the **Federal Register** revising the requirements for the management letter. Section 1773.33(c) is revised to address continuing property records (CPRs) rather than the term plant records. In addition, the requirement that the CPA state whether the CPRs have been established, is expanded wherein the CPA must state that the CPRs are established, maintained on a current basis, and are reconciled to the general ledger plant accounts. The requirements for the CPA to determine that the borrower secured RUS approval for the sale of plant in § 1773(c)(5) is expanded to include the sale, lease, or transfer of assets secured under the mortgage and to state whether the proceeds were handled in conformance with RUS requirements.

The following requirements under § 1773.33 are eliminated: (1) The requirement for the CPA to determine that loan funds were deposited in banks designated in the loan documents; (2) a corresponding requirement in the telecommunications management letter; (3) the requirement for the CPA to determine that the borrower has complied with the RUS requirement for approval of any lease of a building or land, standard traffic settlement agreement, billing and collecting agreements, toll pooling arrangements, directory service agreements, and joint-use agreement; and (4) the requirement for the CPA to determine borrower compliance with the requirement to maintain a net plant to secured debt ratio or a funded reserve for certain loans wherein the maturity period exceeds the economic life of the plant facilities being financed.

Section 1773.33, Management Letter, specifies the minimum requirements for the CPA's management letter. RUS borrowers have increasingly diversified into other utility and nonutility related activities through the formation of subsidiary and affiliated companies. RUS has need of information on investments in these subsidiary and affiliated companies to assist in its efforts to monitor loan security issues and respond to claims of cross subsidization. A new requirement for the CPA to provide a detailed analysis of borrowers' investments is therefore being added to the management letter requirements. The CPA is required to disclose certain general and financial information regarding each of a borrower's investments in subsidiary and affiliated companies accounted for on the cost or equity basis. This information should readily available in the borrower's investment subsidiary records.

In previous versions of part 1773 the sample reports, financial statements, and management letters were contained in four appendices, two for electric borrowers and two for telecommunications borrowers. Beginning with this revision of part 1773, the appendices will no longer be codified in the Code of Federal Regulations. The appendices will be available in new RUS Bulletin 1773–1, which will contain all of 7 CFR part 1773 and the appendices. Appendix A will contain the sample reports, financial statements and management letter for electric borrowers while Appendix B will contain similar sample for telecommunications borrowers. The exhibits of the management letters, which are included in the appendices, are attached to this notice for information only. Publishing part 1773 in bulletin form will provide the RUS audit policy in a user-friendly format. A single copy of this publication will be provided to all RUS borrowers and certified public accounts approved to perform audits of RUS borrowers and will be available at http://www.usda.gov/rus/ruswide.htm.

RUS received three comments on this direct final rule from one party, Kiesling Associates LLP, Madison Wisconsin, which RUS deemed to be not adverse. All of the comments were regarding the requirement to include a supplemental schedule of each investment in subsidiary and affiliated companies in the management letter as required in § 1773.33(i). A summary of their comments and the responses follows:

Comments

Comment: Keisling stated that the audited financial statements of an RUS borrower already include disclosures of equity method investments and similar information is reported in Part G of the RUS Form 479. In addition, RUS requires the submission of supplemental schedules of financial condition and statement of operations for each subsidiary for consolidated financial statements. Kiesling also noted that Generally Accepted Auditing Standards (GAAP) also requires such disclosures.

Reply: The supplemental schedules containing the statement of financial condition and the statement of operations submitted with the audited consolidated financial statements contain only the information for the current and prior year for each subsidiary or affiliated company. However, if the investment is not considered material the supplemental statements are not required to be submitted with the consolidated financial statements. Only footnote disclosure would be required in such instances. The RUS requirement for the supplemental information regarding investments included in the management letter will provide a summary of the financial condition since inception for each individual

subsidiary or affiliated company. For this reason RUS does not consider this information to be duplicative of similar RUS or GAAP reporting requirements. The information submitted with the RUS Form 479 is in the aggregate for all subsidiary companies.

Comment: Keisling also commented that similar disclosure requirements for investments accounted for on the cost method should not be required as such investments are typically not of a material nature. And if such investments were material they would be properly disclosed in the footnotes to the audited financial statements.

Reply: While investments accounted for on the cost method may or may not be material, RUS' purpose for including similar disclosures for investments accounted for cost method is to provide a means for RUS to track the RUS borrowers' investments in rural infrastructure. When called upon to provide this information from Congressional and government oversight agencies, RUS has not been able to readily gather and summarize such data. The disclosure of all investments in subsidiary and affiliated companies, whether accounted for on the cost or equity method, will provide the appropriate information for such inquiries.

Confirmation of Effective Date

This is to confirm the effective date of July 5, 2001, of the direct final rule 7 CFR Part 1773, Policy on Audits of RUS Borrowers; Management Letter, published in the **Federal Register** on May 21, 2001, at 66 FR 27829.

Dated: July 12, 2001.

Blaine D. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 01–17933 Filed 7–17–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1773

RIN 0572–AB62

Policy on Audits of RUS Borrowers; Generally Accepted Government Auditing Standards (GAGAS)

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of confirmation of direct final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice that no adverse comments were received regarding the direct final rule 7 CFR part 1773, Policy on Audits of RUS Borrowers; Generally Accepted Government Auditing Standards (GAGAS), and confirms the effective date of the direct final rule.

DATES: The direct final rule published in the **Federal Register** on May 21, 2001 (66 FR 27833) is effective July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Annan, Chief, Technical Accounting and Auditing Staff, Program Accounting Services Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1523, Washington, DC 20250–1523. Telephone: 202–720–5227.

Background

The rule amends Part 1773 to incorporate two amendments to Generally Accepted Government Auditing Standards (GAGAS) adopted in 1999 by the General Accounting Office. Among other requirements the GAGAS amendments require the auditor to document in the working papers the basis for assessing risk when certain assertions are significantly dependent on computerized information systems; expands the requirements for the auditor's communication with the borrower; replaces the term irregularities with the term fraud; and requires the auditor to emphasize in the auditor's report the importance of the report on compliance and on internal control over financial reporting. In addition to the GAGAS amendments, this rule corrects errors and omissions in previous versions of Part 1773.

Confirmation of Effective Date

This is to confirm the effective date of July 5, 2001, of the direct final rule, 7 CFR Part 1773, Policy on Audits of RUS Borrowers; Generally Accepted Government Auditing Standards (GAGAS), published in the **Federal Register** on May 21, 2001, at 66 FR 27833.

Dated: July 12, 2001.

Blaine D. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 01–17932 Filed 7–17–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 560, 563, 566, and 584

[No. 2001–51]

RIN 1550–AB42

Liquidity

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is adopting as final an interim rule that removed the regulation that required a savings association to maintain an average daily balance of liquid assets of at least four percent of its liquidity base, and retained a provision requiring a savings association to maintain sufficient liquidity to ensure its safe and sound operation. The interim rule implemented the statutory repeal of the percentage liquidity requirement.

DATES: Effective July 18, 2001.

FOR FURTHER INFORMATION CONTACT: Josephine Battle, Program Analyst Trainee, Office of Corporate Governance and Controls, Office of Supervision Policy, (202) 906–6870; or Sally Warner Watts, Counsel (Banking and Finance), Regulations and Legislation Division, Office of Chief Counsel, (202) 906–7380, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Persons wishing to access any of these telephone numbers by text telephone (TTY) may call the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 1201 of the Financial Regulatory Relief and Economic Efficiency Act of 2000 (Pub. L. 106–569, 114 Stat. 2944) repealed the statutory liquidity requirement for savings associations. *See* section 6 of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1465 (1994). OTS published an interim rule implementing this repeal on March 15, 2001 (66 FR 15015). The interim rule removed part 566, which implemented the percentage of assets liquidity requirement of section 6 of the HOLA. The interim rule also moved a general requirement that each savings association must maintain sufficient liquidity to ensure safe and sound operations from part 566 to § 563.161 and made a few conforming changes.

Discussion of Comments

OTS received three public comments: one from a trade association and two from savings associations. The trade association strongly supported the interim rule, noting that the repeal of the percentage requirement will enable savings associations to manage their liquidity risk in a more efficient manner. It also supported the retention of a requirement that savings associations and their service corporations maintain sufficient liquidity to assure safe and sound operation. The trade association observed that it is not necessary to describe in a regulation the types of investments OTS will consider in measuring compliance with this requirement. It did request, however, that OTS make conforming changes to the Thrift Financial Report form and instructions. On February 26, 2001, OTS published the March 2001 Thrift Financial Report changes, which included removal of the entry for regulatory liquidity ratio, on its website.

The two savings associations also praised the elimination of the percentage requirement. However, they requested clarification of whether OTS considers available capacity to borrow from the Federal Home Loan Bank (with same-day access to advances) as a source of liquidity when evaluating whether an institution has "sufficient liquidity." OTS does consider the availability of access to borrowed money to meet liquidity needs in assessing the adequacy of a savings association's management of liquidity. See OTS Thrift Activities Handbook, Section 530, at pages 530.5 and 530.10 (November 1999). OTS also recognizes FHLB advances as a traditional source of such borrowings for savings associations. In addition, OTS acknowledges that the FHLB system has consistently played an important role in assisting the thrift industry to manage its short- and long-term liquidity needs. OTS Thrift Activities Handbook, at page 530.11. However, certain wholesale borrowings, including Federal Home Loan Bank advances, if not properly evaluated and prudently managed, may significantly increase an institution's sensitivity to interest rate and liquidity risks. Accordingly, savings associations should be fully informed of the risks of these borrowings before engaging in such transactions and should review these risks on an ongoing basis. See OTS Regulatory Bulletin 34, Examiner Guidance on Wholesale Borrowings (June 8, 2001).

Findings and Certifications

Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a significant regulatory action for the purposes of Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires OTS to prepare Regulatory Flexibility Analyses if the agency must publish a general notice of proposed rulemaking. 5 U.S.C. 603 and 604. In issuing the interim rule, OTS concluded, for good cause, that it was not necessary to publish a notice of proposed rulemaking. Accordingly, OTS concludes that the RFA does not require a final regulatory flexibility analysis of this rule.

Nevertheless, OTS has considered the likely impact of this rule and finds that the rule will not have a significant impact on a substantial number of small entities or create any additional burden on small entities under the RFA. The final rule imposes no new requirements and makes only burden reducing, clarifying, and technical conforming amendments to current OTS regulations.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMA) applies only when an agency issues a general notice of proposed rulemaking or when it publishes a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. In issuing the interim rule, OTS determined, for good cause, that it was not required to publish a proposed rule. Accordingly, OTS concludes that the UMA does not require OTS to conduct an unfunded mandates analysis of this final rule.

Moreover, OTS finds that this final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Rather, the rule imposes no new requirements and makes only burden reducing, clarifying, and technical conforming amendments to current OTS regulations. Accordingly, OTS has not prepared a budgetary impact statement for this rule or specifically addressed the regulatory alternatives considered.

Effective Date

For the reasons stated in the interim rule, published on March 15, 2001 (66 FR 15016–15017), OTS is making this final rule effective immediately.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 566

Liquidity, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision adopts as final, without change, the interim rule published on March 15, 2001 at 66 FR 15015, amending parts 506, 560, 563, 566, and 584 in Title 12, Chapter V, Code of Federal Regulations.

Dated: July 11, 2001.

Ellen Seidman,

Director.

[FR Doc. 01–17871 Filed 7–17–01; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 552

[No. 2001–52]

RIN 1550–AB46

Conversion From Stock Form Depository Institution to Federal Stock Association

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule amending the Office of Thrift Supervision's (OTS) regulation on conversions from stock form depository institutions to federal stock savings associations. The final rule clarifies that

the resulting federal stock savings association in such transactions succeeds to all the rights, property, and obligations of the converting institution. OTS did not receive any comments in response to either the direct final rule or the related notice of proposed rulemaking.

EFFECTIVE DATES: The direct final rule published on May 8, 2001 (66 FR 23153–155), is effective July 9, 2001.

FOR FURTHER INFORMATION CONTACT: Aaron B. Kahn, (202) 906–6263, Special Counsel, or Kevin A. Corcoran, (202) 906–6962, Assistant Chief Counsel, Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

Dated: July 11, 2001.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 01–17872 Filed 7–17–01; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM192, Special Conditions No. 25–181–SC]

Special Conditions: Raytheon Model Hawker 800XP Airplane; High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Raytheon Aircraft Company Model Hawker 800XP airplanes modified to incorporate the Collins Proline 21 avionics system. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a four tube active matrix liquid crystal display Electronic Flight Information System (EFIS) with an Engine Indicating System (EIS), autopilot with integral mach trim capability, new air data computers, and new Attitude and Heading Reference System (AHRS) with solid state sensors. The applicable airworthiness standards do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 6, 2001. Comments must be received on or before August 17, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM192, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM192. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM192." The postcard will be date stamped and returned to the commenter.

Background

On August 4, 1998, Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085, applied for a supplemental type certificate to modify Raytheon Aircraft Company Model Hawker 800XP airplanes listed on Type Certificate No. A21EA. The Model Hawker 800XP is a twin engine transport airplane. It has an executive interior and is capable of carrying two flight crewmembers and up to fifteen passengers. This model is powered by two aft mounted Allied Signal TFE 731–5BR engines. The modification incorporates the installation of the Rockwell Collins Proline 21 avionics system which includes a four tube active matrix liquid crystal display Electronic Flight Information System (EFIS) with an Engine Indicating System (EIS) that display critical flight parameters to the flightcrew. These systems can be susceptible to disruption to command and/or response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Raytheon must show that the Raytheon Model Hawker 800XP airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A21EA are as follows: the certification basis for the modified Raytheon Model Hawker 800XP airplane includes the British Civil Airworthiness Requirements (CAR) 10, and specific additional requirements of 14 CFR part 25, as listed in the Type Certificate Data Sheet (TCDS) No. A3EU.

If the Administrator finds that the applicable airworthiness regulations

(i.e., part 25) do not contain adequate or appropriate safety standards for the Raytheon Model Hawker 800XP airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Raytheon Model Hawker 800XP airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Raytheon apply for approval for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Raytheon Model Hawker 800XP airplane will incorporate the following novel or unusual design features: the Rockwell Collins Proline 21 avionics system which includes a four tube active matrix liquid crystal display Electronic Flight Information System (EFIS) with an Engine Indicating System (EIS) that display critical flight parameters to the flightcrew. These systems can be susceptible to disruption to command and/or response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionic/electronic and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon Model Hawker 800XP as modified by Raytheon. These special conditions require that new avionic/electronic and electrical systems, such as the AHRS and EFIS that perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1, or paragraph 2, below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

1. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Raytheon Model Hawker 800XP airplane modified

by the Raytheon Aircraft Company. Should Raytheon apply at a later date for approval of a design change to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Raytheon Model Hawker 800XP airplane modified by the Raytheon Aircraft Company. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Raytheon Model Hawker 800XP airplanes modified by:

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 6, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17961 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

RIN 2700–AC39

Space Shuttle

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This rule adds regulations concerning Small Self-Contained Payloads (SSCPs). NASA has established four classes of SSCP payloads, and has changed the definitions for Class II and Class III payloads. This rule creates a separate classification, Class IV, for international payload customers. International educational institutions may participate either through cooperative activities with domestic educational institutions as Class I payloads, or independently as Class IV payloads.

This revised rule ensures that NASA will continue to offer domestic educational institutions lower prices, relative to other users, for standard launch services for SSCP's. These domestic educational institutions are required to meet certain criteria and agree to certain provisions established by NASA. In addition, NASA is changing the pricing structure for a defined group of domestic educational institutions. The pricing structure for those domestic educational institutions (Class I) will be based on the payload user classification, payload weight and volume. Class I payloads may qualify for a further reduced standard flight price, depending on services required. Further details of the pricing structure will be available, once approved, on the web site: *http://www.wff.nasa.gov/~sspp/gas/gas.html*

In addition, with this revision, NASA has redefined the flight rotation process to incorporate the new classification, and to provide the domestic educational institutions a higher priority ranking opportunity in the flight scheduling process of manifesting Get Away Special (GAS) payloads.

DATES: Effective Date: This rule is effective September 17, 2001.

Comments Date: Written comments and opinions on this rule will be accepted until the close of business: August 17, 2001, and will be considered before the rule is made final.

ADDRESSES: Address all comments concerning this final rule to Lynda Cywanowicz, Space Operations Division, Office of Space Flight, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Lynda Cywanowicz, Space Operations Division, 202–358–1673.

SUPPLEMENTARY INFORMATION: NASA issued the original SSCP rule in 1980, 45 FR 73022 (Nov. 4, 1980). The rule established conditions of use, reimbursement procedures, and flight scheduling mechanisms for SSCP's flown on NASA's Space Transportation System (STS). The rule was needed to ensure equitable allocation of space in the SSCP program to three groups of users—educational, commercial and U.S. government.

The rule was first revised generally by NASA in 1991, 56 FR 47146 (Sept. 18, 1991). The rule was revised again in 1992, 57 FR 61794 (Dec. 29, 1992) creating 14 CFR 1214.10, "Special Policy on Use of Small Self-Contained Payloads (SSCP's) by Domestic Educational Institutions." The revision provided two different pricing structures; an increased standard flight price for commercial and international customers, while the original price remained for the domestic educational institutions. On April 23, 1999, the National Aeronautics and Space Administration revoked both 14 CFR 1214.9 and 1214.10.

The SSCP program is reissuing the regulation as revised herewith. These changes are being made in furtherance of NASA's commitment to education outreach.

Electronic Access and Filing

You may submit comments and data by sending electronic mail to *Lynda.Cywanowicz@hq.nasa.gov*. Submit comments in Microsoft Word file (xxx.doc), Text (xxx.txt) or Rich text format (xxx.rtf).

List of Subjects in 14 CFR Part 1214

Government employees, Government procurement, Security measures, Space transportation and exploration.

For the reasons stated in the preamble, the National Aeronautics and

Space Administration amends 14 CFR Part 1214 by adding subpart 1214.9 reading as follows:

Subpart 1214.9—Small Self-Contained Payloads (SSCPs)

Sec.

1214.900 What does this subpart cover?
1214.901 What is the relationship of this subpart with subparts 1214.1 and 1214.2?
1214.902 Definitions.
1214.903 What are the requirements concerning Launch Services Agreements (LSA)?
1214.904 What are the conditions of use for a SSCP?
1214.905 What is NASA's reimbursement policy?
1214.906 When will my payload be scheduled to fly?
1214.907 Will NASA re-fly my payload if something goes wrong (and it's not my fault)?
1214.908 Who gets rights to patents resulting from the payload or to the scientific/research data generated?
1214.909 What if my payload is damaged?
1214.910 What are the standard services NASA provides for my payload?
1214.911 Can I buy optional services for my payload from NASA?
1214.912 Are there special provisions for SSCP participants who already have a signed LSA governed by regulations in effect before April 23, 1999?

Authority: 42 U.S.C. 2473 and 2475.

§ 1214.900 What does this subpart cover?

This subpart sets forth the rules on Space Shuttle services that are provided by NASA to participants in the Small Self-Contained Payloads (SSCP's) Program. This subpart also includes NASA's policy for the use of SSCP's by domestic educational institutions. NASA's policy on SSCP's is to stimulate and encourage the use of space by a wide range of participants, particularly those associated with education.

§ 1214.901 What is the relationship of this subpart with subparts 1214.1 and 1214.2?

This subpart governs the provision of Space Shuttle services for SSCP's; subparts 1214.1 and 1214.2 are not applicable.

§ 1214.902 Definitions.

(a) *What is a SSCP?* SSCP's, otherwise known as Get Away Specials (GAS), are small (200 pounds or less and 5 cubic feet or less) scientific research and development payloads flown on a space-available basis in a NASA-supplied standard cylindrical container under the provisions of this subpart.

(b) *Who is a SSCP participant?* A SSCP participant is any individual or entity that meets the following criteria:

(1) Submits a letter requesting a SSCP flight opportunity (for an authorized representative of NASA, this is considered a "Letter of Intent") and includes a brief description of the proposed payload to the Shuttle Small Payload Projects Office (SSPPO), Goddard Space Flight Center, Wallops Flight Facility, National Aeronautics and Space Administration, Wallops Island, VA 23337.

(2) Any individual, entity or U.S. Government agency (other than NASA), shall also submit an earnest money deposit of $500 to pursue a SSCP flight opportunity.

(3) The party submitting the $500 earnest money deposit need not be the entity providing the payload. The party entering into the Launch Services Agreement (LSA) is responsible for payment of standard and optional service fees agreed upon in the signed LSA.

(4) The party signing the LSA may enter into a joint venture or other arrangement (sponsorship) with one or more parties to fly the payload in one NASA container. All participants involved in the project shall be identified in the signed LSA.

(c) *What are payload classes?* NASA determines the class for each payload based on the type of institution or organization providing or supplying the payload, as defined in the LSA. Classes of payloads are defined as follows:

(1) *Class I payloads* are payloads flown for scientific educational purposes by a recognized domestic educational institution. For a payload to qualify for flight as a Class I, "domestic educational institution payload":

(i) The applying institution must be a U.S. public or private nonprofit (Section 501(c)(3) of the Internal Revenue Code (26 U.S.C.)) educational institution, which may include universities, colleges, community colleges, elementary or secondary schools, or university-affiliated education research foundations. Entities other than Section 501(c)(3) domestic education institutions may sponsor a Class I, domestic education payload, providing the educational institution meets the criteria established for domestic educational institutions in this policy.

(ii) The payload must be certified, by an authorized official of the institution, to be part of an educational or research project that is principally for the benefit of students, rather than non-students, such as faculty, research staff or the sponsor. The certification shall include a brief explanation of the educational aspects of the payload project and how it principally benefits students.

(iii) Payload experiments should involve students in all phases of the project, including concept development, initial planning, design, conduct, and analysis of the results of the experiments.

(2) *Class II payloads* are payloads flown for the U.S. Government.

(3) *Class III payloads* are payloads flown for other U.S. commercial and private entities.

(4) *Class IV payloads* are payloads flown for international entities, whether they be educational institutions, government or industry. Class IV payloads are subject to the same existing U.S. laws and regulations as are domestic payloads. Class IV payloads are subject to review and approval by the NASA Office of External Relations. Only payloads whose use is exclusively for peaceful purposes are eligible for flight through the GAS Program.

(d) *What is an earnest money deposit?* An earnest money deposit is a non-refundable $500 down payment required for participation in the SSCP Program.

(e) *Why is the earnest money receipt (EMR) date important?* The earnest money receipt (EMR) date is the date NASA receives the earnest money deposit from a non-NASA participant or a "Letter of Intent" from a NASA participant. Upon receipt of the earnest money or "Letter of Intent", a payload identification number is assigned. The EMR date determines the payload's position in the flight assignment queue. To retain the EMR date, the terms defined in the Launch Services Agreement (LSA) must be met.

(f) *What is a LSA?* A Launch Services Agreement (LSA) is a binding contract that describes the governing terms and conditions for flight of an SSCP payload, including the price for standard and optional services. For more information on contents of the LSA, refer to § 1214.903.

(g) *What is a PAR?* A Payload Accommodations Requirements (PAR) document is the technical agreement, between NASA's SSCP Program and the parties designated in the LSA, which defines the unique information required for the preparation, flight and disposition of a GAS payload.

(h) *What is a PIP?* A Payload Integration Plan (PIP) defines the technical agreement between NASA's SSCP Program and the Space Shuttle Program Office at Johnson Space Center (JSC) and defines any Shuttle related optional service requirements.

(i) *What is the "queue"?* (1) The Flight Assignment Queue is the queue of payloads eligible to be manifested on a shuttle flight. To be eligible, the payload must meet the following criteria:

(i) A LSA has been signed within the requirements outlined in § 1214.903.

(ii) The requirements of the signed PAR and PIP have been met.

(iii) NASA has assessed the technical readiness of the payload and a Phase II Safety Data Package equivalent has been submitted, in accordance with the NSTS 1700.7, Safety Policy and Requirements for Payloads Using the STS and the NSTS 13830, Payload Safety Review and Data Submittal Requirement.

(2) Once a payload has met these criteria, it enters the queue with its position based on the EMR date.

(j) *What is the "Two-in-Twenty" rule?* The SSCP Program utilizes a flight assignment process in which no entity may receive more than two out of any twenty consecutive payload opportunities, as long as there are other payloads available for assignment.

(k) *What is a cancellation?* When the party signing the LSA fails to meet its obligations under the LSA, with no undue administrative delay on the part of NASA, the payload will be removed from participation in the SSCP Program with no refund of monies paid.

(l) *What are standard services?* Standard services provided to all SSCP's are listed in § 1214.910.

(m) *What are optional services?* Optional services are additional services requested by the SSCP participant and provided, at NASA's option. NASA may also determine the need for a specific optional service for a payload. Optional services require an additional cost to the participant and are identified and agreed upon in the LSA (refer to § 1214.911).

(n) *What is an undue administrative delay on the part of NASA?* An undue administrative delay is a delay caused by NASA's failure to perform its functions under the LSA in a reasonable time, as determined by NASA. Delays caused by the parties' inability to agree to the LSA terms and conditions are specifically excluded from this definition.

(o) *What is a "Letter of Intent"?* A "Letter of Intent" is written by an authorized NASA representative requesting participation in the SSCP Program. For more information on the "Letter of Intent", refer to § 1214.904(e).

§ 1214.903 What are the requirements concerning Launch Services Agreements (LSA)?

(a) Once the Earnest Money Deposit is received, the LSA shall designate:

(1) All participants involved in the project;

(2) The class of the payload;

(3) The general nature and purpose of the payload;

(5) The price for standard services to be provided;

(6) Any restrictions on the type of Shuttle flight appropriate for flying the payload;

(7) The payment schedule and the terms of cancellation;

(8) The optional services to be provided by NASA and the price of those services; and

(9) The means of compliance with the provisions of § 1214.908 regarding significant impact on public health, safety or welfare.

(b) A separate LSA shall be signed for each payload.

(c) The LSA must be signed within 12 months from the date of the letter forwarding the LSA to the SSCP participants for signature. If the LSA is not signed within the required time, the $500 earnest money deposit will be forfeited and the payload will be cancelled.

§ 1214.904 What are the conditions of use for a SSCP?

(a) The payload must be flown in a NASA-supplied standard container.

(b) The payload shall be used only to conduct experiments of a scientific research and development nature or scientific education purposes.

(c) All participants shall be required to furnish NASA with sufficient information to ensure Shuttle safety. NASA shall reserve the right to inspect and/or test all materials, components, and elements of the payload at any time, including sealed and commercially supplied payload elements.

(d) The party signing the LSA shall be required to furnish NASA with sufficient information to verify peaceful purposes and NASA's and the U.S. Government's continued compliance with law and the Government's obligations.

(e) NASA participants shall submit a "Letter of Intent", signed by an authorized NASA representative, to initiate the process of arranging for a SSCP flight. A NASA Center is required to seek sponsorship from a NASA Headquarters Program Office, identify that sponsoring code and obtain their concurrence in the "Letter of Intent".

(f) The NASA Administrator reserves the right to determine the acceptability of any SSCP participant and any payload, on a case-by-case basis. The NASA Administrator may reject any payload, which, in his/her opinion, would be contrary to the educational mission of this program or NASA's mission.

(g) To assure humane treatment, the Office of Biological and Physical Research at NASA Headquarters will review all experiments using live animals.

§ 1214.905 What is NASA's reimbursement policy?

(a) *Will I get my earnest money back if I cancel?* No, the earnest money is non-refundable, but is applied to the standard flight price if the LSA is signed within the required time. If the LSA is not signed within the required time, the $500 earnest money will be forfeited and the payload will be cancelled.

(b) *How will I reimburse NASA for services?*

(1) NASA shall be reimbursed an amount, which is the sum of the price for standard services and the price for optional services.

(2) All standard services shall be charged on a fixed-price basis. Prices are based on the payload classification, weight and volume.

(3) NASA shall be reimbursed in accordance with the reimbursement schedule specified in the signed LSA.

(c) When there is no undue administrative delay on the part of NASA, and the progress payments are not reimbursed to NASA within the allocated time provided in the LSA, all monies paid to date will be forfeited and the payload will be cancelled.

§ 1214.906 When will my payload be scheduled to fly?

(a) NASA shall not be obligated to perform any standard or optional services, including flight scheduling and placement of the payload on the STS, if the terms of the signed LSA have not been met.

(b) *How does the flight queue work?* Tentative flight assignments of payloads shall be made on a rotation basis using the rotation sequence of Class I, II, I, III, I, IV, I, II, etc. (refer to § 1214.902(d)). Rotation is maintained in a continuing sequence from mission to mission. Payloads must meet all other mission requirements to be assigned to the available space. If, at the time of a tentative flight assignment, there are no payloads in the current class of the continuing rotation that meet all the mission requirements, payloads of the next class in the rotation sequence shall be considered until a payload meeting the requirements is found available.

(c) *Are there reasons my payload would not be assigned to an available flight?* Payloads shall be assigned on the basis of their positions in the flight assignment queue within each class with the following exceptions:

(1) If the available flight does not meet the payload's requirements as defined in their signed PAR and LSA, the payload shall not be assigned to the flight but

shall retain its position in the flight assignment queue until a suitable flight becomes available.

(2) If the "Two-in-Twenty" rule applies to a payload, that payload shall not be assigned to the flight, but shall retain its position in the flight assignment queue (refer to § 1214.902 (k)).

(d) Once a payload has been given a tentative flight assignment, it shall not be removed from a flight as a result of another SSCP participants' subsequent signing of a LSA.

(e) NASA may reschedule a payload tentatively assigned to a flight as a result of other Shuttle operational considerations. Should this be necessary, rescheduling shall be done on a last-on, first-off basis.

(f) Payloads being re-flown pursuant to § 1214.907 and payloads rescheduled by NASA after tentative flight assignment shall have flight assignment priority, in that order, on subsequent flights over all other payloads including those already assigned to other flights.

(g) NASA shall determine the date for payload delivery to the launch site. Payment of launch fees, as defined in the signed LSA, is required before the payload delivery to launch site.

§ 1214.907 Will NASA re-fly my payload if something goes wrong (and it's not my fault)?

(a) NASA will provide a one-time re-flight of a payload at no additional charge for SSCP standard services, if all the following occur:

(1) Standard SSCP systems are not within nominal specifications, at the time of first turn-on of the payload in orbit, through no fault of the SSCP participant (including all its related entities).

(2) The payload's mission objectives are not achieved solely as a direct result of the conditions or events described in paragraph (a)(1) of this section; and

(3) The payload returns safely to Earth or a second (essentially identical) payload is provided for re-flight.

(b) A re-flight shall be provided with a dollar credit towards future optional SSCP services, or the party signing the LSA shall be refunded, for any unused optional SSCP services purchased and paid for on the Shuttle flight which entitles the payload to a re-flight.

(c) The two-in-twenty rule is not applicable to the re-flight of the payloads described in this section.

§ 1214.908 Who gets rights to patents resulting from the payload or to the scientific/research data generated?

(a) NASA will not acquire rights to inventions, patents, or proprietary data privately funded by SSCP participants, or arising out of activities for which NASA has been reimbursed under the policies set forth in this subpart. However, in certain instances in which the NASA Administrator has determined that activities may have a significant impact on the public health, safety, or welfare, NASA may obtain assurances from the participants that the results will be made available to the public on terms and conditions reasonable under the circumstances.

(b) NASA, unless otherwise agreed, will require all scientific or research data to be made publicly available without restriction of disclosure and use no later than one year after the Shuttle mission on which the payload was flown. Possible exceptions are:

(1) Those results comprising an invention for which patent protection has been or will in a reasonable time be sought; or

(2) Data disclosing an invention prior to applying for patent protection thereon.

§ 1214.909 What if my payload is damaged?

The flight price does not include a contingency or premium for damage that may be caused to a payload through the fault of the U.S. Government, its contractors, or other Space Shuttle users. The U.S. Government assumes no risk for damage or loss to the payload. The participants in the SSCP Program assume this risk and are free to purchase insurance protection against damage or loss to their payload. In the event the party signing the LSA permits a third party to use its SSCP flight opportunity, this third party will be required to agree to the terms of the cross-waiver of liability in the launch services agreement.

§ 1214.910 What are the standard services NASA provides for my payload?

The following are standard services provided for SSCP's:

(a) Flight in a NASA flight-qualified standard container.

(b) Use of a NASA shipping container.

(c) One "on" and one "off" signal provided on each of three NASA-provided inputs to the container.

(d) Choice of one standard NASA container atmosphere (vacuum, breathing air, inert gas, inert gas vented in space).

(e) Limited consultation on space systems provided by NASA at designated NASA centers.

(f) Standard NASA payload safety reviews at a designated NASA center. (Safety shall not be compromised. Unusually complex safety reviews or testing/analysis requires additional funding as an optional service.)

(g) Pre-integration storage of the payload at Kennedy Space Center (KSC).

(h) Limited access to the payload prior to integration.

(i) Installation of the payload in the container and removal of the payload from the container after flight.

(j) Installation of the container in the Shuttle and removal of the container from the Shuttle after flight.

(k) KSC launch.

(l) On-orbit payload operational time consistent with the primary Space Shuttle mission.

(m) Brief post-flight documentation of the Space Shuttle mission profile and payload operational times.

(n) Return of payload to the participant at the launch site.

§ 1214.911 Can I buy optional services for my payload from NASA?

(a) Optional services are available, and the price, terms, and conditions for such services shall be negotiated on a case-by-case basis and agreed upon in the LSA.

(b) Optional services could result in substantial additional charges and increased liability insurance requirements and/or affect NASA's ability to manifest the payload.

(c) NASA may, at its sole discretion, approve or deny the provision of requested optional services.

§ 1214.912 Are there special provisions for SSCP participants who already have a signed LSA governed by regulations in effect before April 23, 1999?

(a) Where there are participants with a signed LSA governed by the provisions of 14 CFR 1214.9 and 1214.10 in effect before April 23, 1999 (and contained in the 14 CFR, Part 1200 to end, edition revised as of January 1, 1999), and there will be new participants with a signed LSA governed by the provisions of this subpart 14 CFR 1214.9, the following provisions apply to the manifesting of payloads:

(1) Participants with a signed LSA may elect to sign a new LSA, and retain their Earnest Money Receipt date as defined in their original signed LSA. Once the new LSA is signed, the provisions of this subpart apply to those participants.

(2) Participants with a signed LSA who choose not to sign a new LSA will retain their Earnest Money Receipt date and their payload classification as defined in their original signed LSA, 14 CFR 1214.9 and 1214.10 in effect before April 23, 1999 and shall apply to their payload's participation in the SSCP program.

(3) Participants who do not have a signed LSA or have not met the terms of their signed LSA will be required to either sign a new LSA or their payload will be cancelled and all monies paid will be forfeited.

(b) The primary differences between the provisions in effect before April 23, 1999 and the provisions in this subpart are the payload classification and rotation sequence for manifesting payloads, as set forth in the following table:

The previous rotation sequence:	If you remain under the old signed LSA, your payload class will be:	If and when you sign a new LSA, your payload class will be:	The new rotation sequence:
Class II, Class I, Class II, Class III, Class II, Class I, etc.	Class I—Domestic Education Class II—Other U.S. and International Class III–U.S. Government	Class I—Domestic Education Class II—U.S. Government Class III—Other U.S. Class IV—International	Class I, Class II, Class I, Class III, Class I, Class IV, Class I, etc.

(c) Payloads will be offered tentative flight opportunities for each mission in the following sequence until the flight manifest is fulfilled:

(1) As defined in the provisions of 14 CFR 1214.9 and 1214.10 in effect before April 23, 1999, payloads with signed LSA's will be tentatively manifested utilizing the class rotation of II, I, II, III until this queue is exhausted;

(2) If the previous queue is exhausted and additional payloads are needed to fulfill the flight manifest, the new class rotation of I, II, I, III, I, IV, as defined in this subpart 1214.9, will then be used to tentatively manifest payloads with signed LSA's until the manifest is fulfilled.

(3) NASA participants are not required to sign a LSA and are considered a government class payload in both rotation sequences as defined in paragraphs (c)(1) and (2) of this section.

Dated: July 9, 2001.

Daniel S. Goldin,

Administrator.

[FR Doc. 01–17786 Filed 7–17–01; 8:45 am]

BILLING CODE 7501–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–01–076]

RIN 2115–AE46

Special Local Regulations for Marine Events; Sturgeon Bay Canal, Sturgeon Bay, Wisconsin

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations for the Sturgeon Bay Venetian Night Parade and Fireworks, an event to be held on the waters of the Sturgeon Bay Canal, Sturgeon Bay, Wisconsin. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Sturgeon Bay Canal, Sturgeon Bay, Wisconsin during the event.

DATES: This rule is effective from 8:20 p.m. to 10 p.m. on August 4, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CDG–09–01–076] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 S. Lincoln Memorial Drive, Milwaukee, Wisconsin 53207 from 7 a.m. to 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Timothy Sickler, Port Operations Chief, Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The phone number is (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application did not allow sufficient time for publication of an NPRM followed by a temporary final rule effective 30 days after publication. Any delay of the effective date of this rule would be contrary to the public interest by exposing the public to the known dangers associated with fireworks displays and the possible loss of life, injury, and damage to property.

Background and Purpose

On August 4, 2001 the Sturgeon Bay Yacht Club will sponsor a boat parade from 8:20 p.m. to 9:30 p.m., followed by a fireworks display from 9:30 p.m. to 10 p.m., on the waters of the Sturgeon Bay Canal, Sturgeon Bay, Wisconsin. The fireworks will be launched from a barge anchored in the Sturgeon Bay Canal. A fleet of spectator vessels is expected to gather near the event site to view the parade and aerial demonstration. To provide for the safety of spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the parade and fireworks display.

The regulated area for the parade will encompass the waters of Sturgeon Bay bounded by the following coordinates: from the point of origin at 44° 49′51″ N, 087°22′56″ W; southeast to 44°49′31″ N, 087°22′29″ W; northeast to 44°49′32″ N, 087°22′28″ W; southeast to 44°49′27″ N, 087°22′20″ W; northeast to 44°49′33″ N, 087°22′11″ W; northwest to 44°49′43″ N, 087°22′34″ W; northwest to 44°49′56″ N, 087°22′49″ W, and then returning southwest to the point of origin. These coordinates are based on North American Datum of 1983 (NAD 83).

The regulated area for the fireworks display will encompass the waters of Sturgeon Bay bounded by the arc of a circle with a 350-foot radius with its center in approximate position 44°49′34″ N, 087°22′25″ W, offshore of Sturgeon Bay Yacht Club, Sturgeon Bay, Wisconsin (NAD 83). The size of the zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the

regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Sturgeon Bay Canal, Sturgeon Bay, Wisconsin, during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the vicinity of Sturgeon Bay Canal, Sturgeon Bay, Wisconsin from 8:20 p.m. until 10 p.m. (CST) on August 4, 2001.

This regulated navigation area will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only a few hours on the day of the event and late in the day when vessel traffic is minimal. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative. The Patrol Commander for this event may be reached via marine band VHF–FM Channel 16. Before the effective period, we will issue maritime advisories widely available to users of the Sturgeon Bay Canal.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (See **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary section, § 100.35–T09–001, is added to read as follows:

§ 100.35–T09–001 Lake Michigan, Sturgeon Bay Canal, Sturgeon Bay, WI.

(a) *Sturgeon Bay Venetian Night Parade*—(1) *Regulated area.* The waters of Sturgeon Bay Canal bounded by the following coordinates: from the point of origin at 44°49′51″ N, 087°22′56″ W; southeast to 44°49′31″ N, 087°22′29″ W; northeast to 44°49′32″ N, 087°22′28″ W; southeast to 44°49′27″ N, 087°22′20″ W; northeast to 44°49′33″ N, 087°22′11″ W; northwest to 44°49′43″ N, 087°22′34″ W; northwest to 44°49′56″ N, 087°22′49″ W, and then southwest to the point of origin. These coordinates are based upon North American Datum of 1983 (NAD 83).

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Milwaukee.

(3) *Special local regulations.* (i) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person of vessel may enter or remain in the regulated area.

(ii) The operator of any vessel in the regulated area shall:

(A) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(B) Proceed as directed by any official patrol, including any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(4) *Effective times and dates.* From 8:20 p.m. (CST), until 9:30 p.m. (CST) on August 4, 2001.

(b) *Sturgeon Bay Venetian Nights Fireworks Display*—(1) *Regulated area.* The waters of Sturgeon Bay Canal bounded by the arc of a circle with a 350-foot radius with its center in approximate position 44°49′34″ N, 087°22′25″ W, offshore of Sturgeon Bay Yacht Club, Sturgeon Bay, Wisconsin. All geographic coordinates are North American Datum of 1983 (NAD 83).

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Milwaukee..

(3) *Special local regulations.* (i) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person of vessel may enter or remain in the regulated area.

(ii) The operator of any vessel in the regulated area shall:

(A) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(B) Proceed as directed by any official patrol, including any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(4) *Effective dates and times.* From 9:30 p.m. until 10 p.m. (CST) on August 4, 2001.

Dated: July 9, 2001.

J.D. Hull,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 01–17950 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Miami 01–074]

RIN 2115–AA97

Safety Zone; Fort Lauderdale, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Captain of the Port is establishing a temporary safety zone on the Atlantic Intracoastal Waterway under the Southeast 17th Street (State Road A1A) highway bridge in Fort Lauderdale, FL. This safety zone will be in effect for one hour on two different days during the demolition of the bascule piers for the old drawbridge across the waterway. This safety zone is needed to protect all vessels from potential safety hazards associated with the demolition of the bascule piers.

DATES: This regulation is effective from 3:30 p.m. on July 17, 2001 until 12:30 p.m. on July 24, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP Miami 01–074] and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Boudrow, at Coast Guard Marine Safety Office Miami, Florida, telephone: (305) 535–8701.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be contrary to public safety interests since immediate action is needed to minimize potential danger associated with the demolition of the bridge.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard Captain of the Port is establishing a temporary safety zone closing the Intracoastal Waterway at the 17th Street Causeway Bridge, mile marker 1065.9, in Fort Lauderdale, FL to all marine traffic. This closure has been requested by the Florida Department of Transportation in order to remove portions of the old draw bridge's bascule piers on either side of the waterway by contractors. The work includes the demolition of the existing bascule piers below the waterline. The Coast Guard has reviewed the planned scope of work and has determined that a safety zone and waterway closure are necessary to protect all vessels from potential safety hazards posed by demolition activities.

The safety zone will be in effect from approximately 3:30 p.m. until 4:30 p.m. on July 17, 2001 and from 11:30 a.m. until 12:30 p.m. on July 24, 2001. The closure of the waterway was scheduled during a period which will minimize the impact to the boating community. The Coast Guard will issue Broadcast Notice to Mariners to advise mariners of the scheduled closure. Boat traffic will be directed to Hillsboro Inlet and the Port of Palm Beach to the north and Port Everglades to the south as alternate routes. The closure will be strictly enforced by the Coast Guard, the Fort Lauderdale Police Marine Patrol and Florida Marine Patrol.

Regulatory Evaluation

This proposal is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040 February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation is necessary because the safety zone will

only be in effect for a brief time on two days.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic effect upon a substantial number of small entities. "Small entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the regulations will only be in effect for two short periods of time on two days. Further, the closure times will be publicized by broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5, 49 CFR 1.46.

2. Temporary § 165.T07–074 is added to read as follows:

§ 165.T07–074 Safety Zone; Fort Lauderdale, Florida

(a) *Regulated area.* All waters within 1000 feet on either side of the 17th Street Causeway Bridge, Mile Marker 1065.9, in Fort Lauderdale, Florida.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Dates.* This section is effective from 3:30 p.m. until 4:30 p.m. on July 17, 2001, and from 11:30 a.m. until 12:30 p.m. on July 24, 2001.

Dated: July 6, 2001.

L.J. Bowling,

Captain, U.S. Coast Guard, Captain of the Port, Miami, Florida.

[FR Doc. 01–17949 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN137–1a; FRL–7004–1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to particulate matter (PM) emissions regulations for Cerestar USA, Inc. (Cerestar). Cerestar is located in Lake County, Indiana. The Indiana Department of Environmental Management (IDEM) submitted the revised regulations on February 16, 2001, as amendments to its State Implementation Plan (SIP). The revisions include the elimination of 18 emission points, the addition of 39 new emission points, and a change in the way the short-term emission limits are expressed (from pounds of particulate matter per ton of product to grains per dry standard cubic feet). One of the revisions also changes the name of the facility listed in the rules from American Maize Products (AMAIZO) to Cerestar USA, Inc. These SIP revisions result in an overall decrease in allowed PM emissions of about 48 tons per year (tpy).

DATES: This rule is effective on September 17, 2001, unless EPA receives relevant adverse written comments by August 17, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matthew Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What Is the EPA Approving?

We are approving revisions to PM emissions regulations for Cerestar, located in Lake County, Indiana. IDEM submitted the revised regulations on February 16, 2001, as amendments to its SIP. Indiana held public hearings on the proposed rule revisions on April 13, 2000, and September 6, 2000.

The revisions include the elimination of 18 emission points, the addition of 39 new emission points, and a change in the way the short-term emission limits are expressed (from pounds of particulate matter per ton of product to grains per dry standard cubic foot). One of the revisions also changes the name of the facility listed in the rules from American Maize Products (AMAIZO) to Cerestar USA, Inc. These SIP revisions result in an overall decrease in allowed PM emissions of about 48 tpy.

II. What Are the Changes From Current Rules?

IDEM has submitted revisions to regulation 326 Indiana Administrative Code (IAC) 6–1–10.1. The current rule contains 72 emissions points. The revisions to the rule include the elimination of 18 emission points and the addition of 39 new emission points, due to plant modernization which has occurred since the adoption of the current rule. These SIP revisions result in an overall decrease in allowed PM emissions of about 48 tpy.

The revisions also change the way the short-term emission limits are expressed, from pounds of particulate matter per ton of product (lb/ton) to grains per dry standard cubic feet (gr/dscf). Because of variability in product moisture content, and therefore weight, gr/dscf is a more accurate way to determine emissions.

III. Analysis of Supporting Materials Provided by IDEM

The general criteria used by the EPA to evaluate such emissions trades, or "bubbles," under the Clean Air Act and applicable regulations are set out in the EPA's December 4, 1986, Emissions Trading Policy Statement (ETPS) (see 51 FR 43814). Emissions trades which result in an overall decrease in allowable emissions require a "Level II" modeling analysis under the ETPS to ensure that air quality will be protected. A Level II analysis must include emissions from the sources involved in the trade, and must demonstrate that the air quality impact of the trade does not exceed set significance levels.

However, since Cerestar is located in a PM nonattainment area, IDEM chose to go beyond the required Level II analysis and conduct a "Level III" modeling analysis. A Level III analysis is a full dispersion modeling analysis considering all sources affecting the trade's area of impact. For this analysis, IDEM performed a dispersion modeling analysis of PM concentrations attributable to Cerestar and other Lake County sources. IDEM used virtually the same inputs and procedures as the PM attainment plan for Lake County, Indiana that EPA approved in 1995, except that IDEM used ISC3, a more current dispersion model, as well as the revised emission rates for Cerestar. This analysis demonstrated that the revised plan was still adequate to attain and maintain the PM air quality standards in the vicinity.

EPA believes the modeling analysis submitted by IDEM satisfies applicable guidance. EPA approved most aspects of the analysis in 1995, and finds the use of an updated dispersion model and revised emission rates to be necessary and sufficient. EPA concurs with IDEM's conclusion from this analysis that the requested SIP revisions will continue to protect air quality in the area.

IV. What Are the Environmental Effects of This Action?

These SIP revisions will result in a decrease in allowable PM emissions of 48 tpy. In addition, air quality modeling analyses conducted by IDEM show that the requested SIP revisions should continue to protect air quality. Therefore, these SIP revisions should not have an adverse effect on air quality.

V. EPA Rulemaking Action

We are approving, through direct final rulemaking, revisions to PM emissions regulations for Cerestar, located in Lake County, Indiana. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse written comment by August 17, 2001.

Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action will be effective on September 17, 2001.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 17, 2001, unless EPA receives adverse written comments by August 17, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Particulate matter, Incorporation by reference, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: June 13, 2001.

Gail Ginsberg,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(141) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(141) On February 16, 2001 Indiana submitted revised particulate matter emissions regulations for Cerestar USA, Inc. The submittal amends 326 IAC 6–1–10.1, and includes the elimination of 18 emission points, the addition of 39 new emission points, and a change in the way the short-term emission limits are expressed (from pounds of particulate matter per ton of product to grains per dry standard cubic feet). The revision also changes the name of the facility listed in the rules from American Maize Products (Amaizo) to Cerestar USA, Inc.

(i) Incorporation by reference.

Emissions limits for Cerestar USA, Inc. in Lake County contained in Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, Section 10.1: Lake County PM_{10} emission requirements. Added at 24 In. Reg. 1308. Effective January 13, 2001.

[FR Doc. 01–17830 Filed 7–17–01; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

[Docket No. 90–23]

Tariffs and Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Proceeding Discontinued.

SUMMARY: The Federal Maritime Commission ("Commission") published a Final and an Interim Rule in this proceeding as a new Part 514 of Title 46 CFR, covering tariffs and service contracts filed into the Commission's electronic system. The Ocean Shipping Reform Act of 1998 became effective May 1, 1999, and eliminated public tariff filing with the Commission. Accordingly, Part 514 of Title 46 CFR was deleted. Therefore, this proceeding can be, and hereby is, discontinued.

DATES: This proceeding is discontinued July 18, 2001.

FOR FURTHER INFORMATION CONTACT: Bruce A. Dombrowski, Executive Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5800.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** on September 9, 1991 (56 FR 46044), proposing a new Part 514 of Title 46 CFR covering tariffs and service contracts filed into the Commission's Automated Tariff Filing and Information ("ATFI") System. After comments were considered by the Commission, a Final Rule was issued November 25, 1991 (56 FR 61164; December 2, 1991), and an Interim Rule was issued August 4, 1992 (57 FR 36248; August 12, 1992), implementing Part 514 and the ATFI System. These rules also incorporated all existing non-obsolete tariff regulations.

The Ocean Shipping Reform Act of 1998 became effective May 1, 1999, and eliminated public tariff filing with the Commission. ATFI ceased serving as the system for tariff and essential terms filing as of that date. The provisions of 46 CFR Part 514 were removed when the Commission adopted rules implementing the Ocean Shipping Reform Act of 1998 (64 FR 11186, March 8, 1999). Therefore, this proceeding is hereby discontinued.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–17874 Filed 7–17–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1601; MM Docket No. 01–68; RM–10087]

Radio Broadcasting Services; Bordelonville, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants the petition for rule making filed by Bramah Broadcasting proposing the allotment of Channel 280A to Bordelonville, LA, as the community's first local aural transmission service. See 66 FR 16900 (March 28, 2001). Channel 280A is allotted to Bordelonville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 31–06–18 North Latitude and 91–54–26 West Longitude.

DATES: Effective August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–68; adopted June 27, 2001 and released July 6, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Bordelonville, Channel 280A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17924 Filed 7–17–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1603; MM Docket No. 01–94; RM–10086]

Radio Broadcasting Services; Corinth, Scotia and Hudson Falls, New York

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition for rule making filed by Vox New York, LLC, licensee of Stations WHTR(FM), Corinth, New York, and WFFG–FM, Hudson Falls, New York, proposing the substitution of Channel 229A for Channel 228A at Corinth, New York, the reallotment of Channel 229A from Corinth to Scotia, New York, as the community's first local service, and the reallotment of Channel 296A from Hudson Falls, New York, to Corinth. See 66 FR 22499 (May 4, 2001). Channel 229A is reallotted from Corinth to Scotia at a site 9.9 kilometers (6.2 miles) northwest of the community at coordinates 42–54–27 NL, and 74–00–57 WL. Channel 296A is reallotted from Hudson Falls to Corinth at petitioner's licensed site 5 kilometers (3.1 miles) east of the community at coordinates 43–14–40 NL and 73–46–18 WL.

DATES: Effective August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–94 adopted June 27, 2001 and released July 6, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 228A at Corinth and adding Channel 296A at Corinth, by removing Channel 296A at Hudson Falls, and by adding Scotia, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17925 Filed 7–17–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 010326079–1170–02; I.D. 010301C]]

RIN 0648–AO96

Atlantic Highly Migratory Species (HMS); 2001 Atlantic Bluefin Tuna Quota Specifications and General Category Effort Controls

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final initial quota specifications and General category effort controls.

SUMMARY: NMFS announces the final initial quota specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quota and General category effort controls for the 2001 fishing year. The final initial quota specifications and General category effort controls are necessary to implement the 1998 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) as required by the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final initial quota specifications and General category effort controls are effective July 13, 2001, through May 31, 2002.

ADDRESSES: Copies of supporting documents, including the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), are available from the Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Pat Scida at 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of ICCAT. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the HMS FMP that was adopted and made available to the public in April 1999. The HMS FMP and its implementing regulations require that NMFS issue annual quota specifications and effort controls for the BFT fisheries. The final initial quota specifications allocate the total ICCAT-recommended quota (including the allocation of the unused portion of the dead discard allowance) among the several established fishing categories, carry over any unharvested quota in 2000 from a specific category to the same category for 2001, and are consistent with the BFT rebuilding program as set forth in the 1998 ICCAT recommendation and the HMS FMP. Further background information and rationale for these final initial quota specifications and General category effort controls were provided in the preamble to the proposed initial quota specifications and General category effort controls (66 FR 17520, April 2, 2001) and are not repeated here.

Changes From the Proposed Specifications

Based on consideration of comments received during the comment period, NMFS is reducing the number of restricted fishing days (RFDs) scheduled for the 2001 fishing year. The revised schedule is indicted in the section addressing effort controls. In addition, minor modifications have been made to the 2001 fishing year quotas based on revised landings for the 2000 fishing year.

Fishing Category Quotas

NMFS implements U.S. domestic quota allocations for the 2001 fishing year, beginning June 1, 2001, consistent with the HMS FMP and the 1,387-metric ton (mt) U.S. allocation. The percentage quota shares established in the HMS FMP for fishing years beginning June 1, 1999 are as follows (tonnage in parentheses corresponds to 1,387 mt total quota): General category: 47.1 percent (653.3 mt); Harpoon category: 3.9 percent (54.1 mt); Purse Seine category: 18.6 percent (258.0 mt); Angling category: 19.7 percent (273.2 mt); Longline category: 8.1 percent (112.3 mt); Trap category: 0.1 percent (1.4 mt); and Reserve: 2.5 percent (34.7 mt).

Based on these percentages and on quota adjustments resulting from overharvests or underharvests in the 2000 fishing year, the adjusted quotas for the 2000 fishing year are as follows: 609.3 mt for the Angling category; 666.7 mt for the General category; 55.0 mt for the Harpoon category; 193.2 mt for the Longline category; 3.9 mt for the Trap category; 255.6 mt for the Purse Seine category; and 42.5 mt for the Reserve.

The Angling category quota is subdivided as follows: School BFT--247.8 mt, with 134.3 mt to the northern area (north of 38°47′ N. lat.), 113.5 mt to the southern area (south of 38°47′ N. lat.), and 20.6 mt held in reserve; large school/small medium BFT--330.0 mt, with 171.1 mt to the northern area and 158.9 mt to the southern area; and large medium/giant BFT--10.9 mt, with 4.8 mt to the northern area and 6.1 mt to the southern area. NMFS proposed a rule (65 FR 76601; December 7, 2000) that would adjust the location of the Angling category north-south dividing line to 39° 18′ N. lat. and change the percentage quota allocations in the northern and southern areas. Should a final rule be issued to implement these changes during the 2001 fishing year, that final rule will also revise the 2001 Angling category subquotas contained in this document based on any changes made to the quota allocations for the northern and southern areas.

The Longline category is subdivided as follows: 24.9 mt to longline vessels landing BFT north of 34° N. latitude and 168.3 mt to longline vessels landing BFT south of 34° N. latitude.

General Category Effort Controls

For the 2001 fishing year, NMFS implements General category quota subdivisions as established in the HMS FMP, as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. Given the underharvest of the 2000 fishing year General category quota, these percentages are applied to the adjusted coastwide quota for the General category of 656.7 mt, with the remaining 10.0 mt being reserved for the New York Bight fishery. Therefore, coastwide, 394.0 mt

are available for the period beginning June 1 and ending August 31; 197.0 mt are available for the period beginning September 1 and ending September 30; and 65.7 mt are available for the period beginning October 1 and ending December 31.

The New York Bight set-aside area is the area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27′ W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47′ N. lat. When the coastwide General category fishery has been closed in any quota period, NMFS may publish notification in the **Federal Register** to make available up to 10 mt of the quota set aside for the New York Bight area. A

Attainment of the subquota in any quota period will result in a closure until the beginning of the following quota period. The subquota for the following quota period will be adjusted by any underharvest or overharvest in the previous quota period. Announcements of closures will be filed for publication with the Office of the **Federal Register**, stating the effective date of closure, and will be disseminated by the HMS Fax Network, the Atlantic Tunas Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line (978-281-9305 or 888-872-8862) to check the status of the fishery before leaving for a fishing trip.

Persons aboard vessels permitted in the General category are prohibited from fishing (including tag and release fishing) for BFT of all sizes on the following days in 2001: August 11, 12, and 13; September 2, 3, 5, 9, 10, 12, 16, 17, 19, 23, 24, 26, and 30; and October 1 and 3. Persons aboard vessels permitted in the Atlantic HMS Charter/Headboat category are prohibited from fishing for large medium and giant BFT under the General category quota on the indicated RFDs. These RFDs will improve distribution of fishing opportunities without increasing BFT mortality and are consistent with the objectives of the HMS FMP.

Comments and Responses

Quota Carryover Provisions

Comment: Some commenters stated there should be no changes to the current quota carryover provisions. The agency should address any excessive amounts of quota with inseason transfers. Some commenters stated the amount of quota proposed to be carried over in the Angling category due to underharvest of the quota for that category during the 2000 fishing year is very large. NMFS should use the inseason transfer criteria specified in the regulations to make the quota available to other users within the domestic fishery, specifically to the commercial categories, in which each fish landed is reported. Inseason quota transfers should also take place in the beginning of the season, or as early as possible, to avoid late season transfers that can prolonging the fishery late into the season when the weather is usually the worst. Other commenters stated that if a carryover cap was put into place it should be a high percentage of the initial quota allocation for that category. A few commenters stated that capping the amount of tonnage that may be carried over could be problematic as determining an appropriate cap level would be difficult and contentious. Thus, instead categories should be provided a reasonable opportunity to catch their quota. Some comments received stated that if a particular category's quota is not harvested, and this pattern repeats itself for a couple of years, this could have serious ramifications under the current carryover regulations. Some commenters stated that with the amount of quota available in the Angling category, increased mortality on a specific year class could have devastating effects on the overall rebuilding plan. One commenter pointed out that categories are not guaranteed the quota allocated to them, fishermen are provided an ample opportunity to catch that quota, there is no private ownership of the quota, and the agency must do what it believes is good for the fishery as a whole.

Response: For the 2001 fishing year NMFS has decided to continue the current system to address quota transfers, namely: (1) inseason quota transfers in accordance with HMS FMP transfer criteria and (2) end-of-the-year carryover provisions, to ensure all reasonable opportunities are provided for U.S. fishermen to harvest the available quota. NMFS recognizes the concerns regarding the excess build up of quota in any one category due to annual quota carry-overs, such as potential negative biological impacts, precedents for starting new unsustainable fisheries, etc., and NMFS will continue to monitor the fishery and take appropriate inseason action. In addition, NMFS may consider, in consultation with the HMS Advisory Panel, addressing excessive quota carry-overs through rulemaking.

Restricted Fishing Days

Comment: Some commenters stated that NMFS should remove RFDs from the June through August time period sub-quota while keeping the Sunday, Monday, Wednesday schedule for September, as well as the October through December, time period sub-quotas. Some commenters stated that over the past few seasons catch rates have been relatively low for much of the season and that RFDs have impeded fishermen from having a reasonable opportunity to land the quotas previously established for particular time periods. In addition many commenters stated that NMFS should use its ability to institute or "waive" RFDs during the season as necessary. Some commenters stated that NMFS should not implement October RFDs, especially beyond the first few days of October. October weather alone should dictate when fishermen make a trip and by not allowing fishermen a reasonable opportunity to catch the quota the agency runs the risk of not complying with ATCA. Some commenters stated that the RFD schedule should remain as it was last year to extend the season as long as possible.

Response: NMFS removes 25 RFDs from the schedule announced in the proposed specifications. The days removed are primarily in the June through August time-period subquota, except for a Japanese market holiday that takes place mid-August. NMFS also recognizes that the weather is unpredictable in the later portion of the season, particularly in the later half of October, and poor weather conditions may limit participation without the need for RFDs after the first week in October. Thus, the RFD schedule does not include RFDs after the first week of October. If it appears that catch rates are extremely high in the early portion of the season, NMFS may establish additional RFDs as deemed necessary to moderate the fishery and assist in attaining Optimum Yield.

2001 Fishing Year Quota Allocations

Comment: Many commenters stated that the Harpoon category should receive an increase in quota. This increase should be of an amount that would put the Harpoon category at approximately 10-12 percent of the General category quota for 2001. NMFS should use quota from either the unused portion of dead discard allowance, or the underharvest from the 2000 fishing year quota, or the quota from the Reserve, to boost the Harpoon quota this

season and then do either a framework action or an amendment to the HMS FMP to increase the Harpoon category quota over the long term.

Response: NMFS is allocating 55.0 mt to the Harpoon category, as proposed, based upon the annual quota allocation percentages and annual carryover provisions established in the HMS FMP. As appropriate, NMFS may use the authority to make inseason transfers from one category to another based on transfer criteria established in the HMS FMP. NMFS will closely monitor the season to determine the status of the Harpoon category and whether inseason transfers are warranted. In addition, NMFS may consider, in consultation with the HMS FMP, whether an amendment to the HMS FMP is appropriate.

Comment: Some commenters stated that the Longline category should not receive a carryover from a previous year because it is an incidental fishery. The unlanded quota from this category should be used to restore the Harpoon and Purse seine categories to their historical levels. Other commenters stated that target catch requirements in the Longline category have been too strict in the past and should be relaxed to allow a reasonable opportunity to harvest the category's quota before transferring that quota to one of the other categories.

Response: NMFS is implementing a Longline category quota of 193.2 mt based on annual carryover procedures established in the HMS FMP. The Longline incidental BFT quota and incidental target catch limits have been the subject of extensive public debate. NMFS published an Advance Notice of Proposed Rulemaking (ANPR) on November 17, 2000 requesting comment on this subject. At the recent HMS Advisory Panel meeting held in April, various options for revising the Longline limits were considered. NMFS intends to examine this issue comprehensively through subsequent rulemaking.

Comment: Some commenters stated that North Carolina (NC) should have its own General and Angling category set aside quotas. By not allowing NC a commercial fishery the agency is violating national standard 4. Other comments received stated historical fisheries must be restored before any new fisheries, such as a commercial handgear fishery in NC, are created.

Response: NMFS continues to believe that allowing new gear types and fisheries for BFT at this time would be inconsistent with rebuilding overfished stocks and preventing overfishing. Fishermen in the state of NC have the opportunity to fish recreationally under the Angling category bag limits and NMFS has the ability to open and close the Angling category to ensure reasonable fishing opportunities in all areas, including NC. Thus NMFS does not believe a set aside of Angling category quota is necessary for NC or any other area.

During FMP development, the issue of opening a new fishery and establishing a set-aside for a NC General category fishery was extensively discussed by the HMS Advisory panel (AP) and the public. However, the HMS AP did not reach consensus on whether or not to allow a new southern fishery. NMFS' position remains that allowing new gear types and fisheries for BFT would not be consistent with rebuilding overfished stocks and preventing overfishing at this time.

Specifications

Comment: Some commenters stated that the minimum size for a commercial BFT should be reduced to 65 inches (165 cm). Historically the Large school/Small medium size class were caught by General category vessels and were sold or retained for personal use. Once that changed, in 1991, there has been no fishery for that size class to speak of, thus the large amounts of unharvested quota. NMFS should reduce the commercial minimum size and alleviate some of this excess quota carryover.

Response: NMFS believes that the 73-inch (185 cm) commercial minimum size should be maintained. The current commercial minimum size limit was implemented in 1992, and was not adjusted in the HMS FMP, as it is consistent with the objectives of the HMS FMP and achieving optimum yield in the fishery. By lowering the commercial minimum size the number of BFT landed could increase, which may affect longterm rebuilding. Currently, all BFT less than 73 inches (185 cm) are allocated to the Angling category, and lowering the commercial minimum size to allow the sale of these fish by vessels in commercial permit categories would be a re-allocation of quota, which would have to be considered in a separate rulemaking.

Comment: Some commenters stated that NMFS should use multiple fish retention limits in the General category to assure that time period sub-quotas are harvested within their allotted time frame. Some commenters stated that multiple fish retention limits should be implemented early in the season, while others stated that they should be implemented in the end of the season. If NMFS were to consider allowing multiple catch in the General category, it should also reconsider allowing buyboats back into the fishery.

Response: NMFS has the authority to increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero to a maximum of three per vessel. NMFS may use this flexibility in the daily limit to provide fishermen a reasonable opportunity to achieve the General category quota. Starting the season with a multiple fish retention limit could work to the fishermen's disadvantage if the season has to be closed early in the fishing year. Starting at one large medium or giant BFT per day should provide the greatest opportunity for a longer season providing maximum fishing opportunities to the greatest number of fishery participants over the greatest geographic area. Buyboats were eliminated with the adoption of the HMS FMP in 1999, due to the lack of use and potential enforcement problems. Given the limited potential for use, there is no compelling reason to authorize buyboats in the BFT fishery at this time.

Comment: Commenters stated that the May 15 deadline to change categories should be changed. If fishermen are going to be held to this arbitrary date, so should the agency be held to a requirement to publish a final rule in a timely manner. The final rule should be available to fishermen before they are forced to make a business decision. Other commenters stated that as the new web-based permitting system fishermen can provide permits in real-time via computer or fax, the May 15 date should be adjusted to the end of May to allow the agency more time to publish a final rule.

Response: NMFS agrees that it should publish final specifications before the beginning of the fishing year. Part of the rationale for the adjustment of the fishing year from a calendar year to one that begins June 1 was to provide adequate time for the development of proposed and final specifications after the annual ICCAT meeting in November. The workload within the HMS Division this spring delayed publication of the proposed specifications. However, as the measures contained in the specifications do not change the status quo as presented in the HMS FMP (except for the addition of RFDs in October), NMFS believes that there was minimal, or no, impact on decisions regarding choice of permit categories. NMFS did, however, extend the deadline for permit category changes until May 31, 2001 due to technical problems with the permitting system.

Comment: NMFS should limit BFT commercial gear to rod and reel only.

Response: NMFS disagrees. Vessels using gear other than rod and reel gear, for example, harpoon and purse seine gear, have a long history of participation in the BFT fishery. Prohibiting the use of these gears in the Atlantic tuna fisheries is inconsistent with the objectives of the FMP. Bycatch concerns, for these gear types, are minimal and, in the case of purse seine gear, the number of vessels in the fishery is limited. Regarding pelagic longline gear, this gear is primarily used to target swordfish and other fish species. Prohibiting this gear in the Atlantic tunas fisheries could result in increased tuna discards, as BFT are occasionally caught incidentally on longline gear when fishing for swordfish and other tunas. In addition, longline gear is restricted in the BFT fisheries with strict target catch requirements for incidental catch retention. All permitted gear types in the commercial and recreational BFT fisheries are regulated and subject to the overall U.S. BFT quota.

Comment: The quota allocation percentage for school size BFT should be increased from its current level of eight percent. Other commenters suggested that this is an ICCAT issue that should be raised with the ICCAT Advisory Committee.

Response: This issue does not fall within the parameters of this rulemaking. This issue is more appropriately addressed by the ICCAT Advisory Committee in making a recommendation for a change in the ICCAT rebuilding program. Inseason Measures for the Recreational Fishery

Comment: Commenters stated that NMFS should create a third fishing area for the Angling category. Other commenters stated that, due to the amount of quota that is available for carryover from the 2000 fishing year, the retention limits should be liberalized to provide an ample opportunity to catch the quota. Commenters also stated that the season should be lengthened by having a number of sub-zones with unique retention limits depending on the time of the year. Finally, commenters stated that a different retention limit should be applied to inspected vessels based upon some ratio of the number of passengers onboard.

Response: NMFS intends to address the specific issue of Angling category catch limits and seasons through its existing regulatory authority for inseason adjustments to enhance fishing opportunities for Angling category participants coastwide. Comments regarding the appropriate distribution will be considered as NMFS makes any necessary inseason adjustments in separate actions.

Classification

These final initial quota specifications and General category effort controls are published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 et seq., and ATCA, 16 U.S.C. 971 et seq. The Assistant Administrator for Fisheries, NOAA, has determined that the quota specifications and the General category effort controls are consistent with the HMS FMP, the Magnuson-Stevens Act, ATCA, and the 1998 ICCAT BFT catch recommendation.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when these initial quota specifications and General category effort controls were proposed that, if adopted, they would not have a significant economic impact on a substantial number of small entities. No comments were received that would alter the basis for this certification. Accordingly, neither an Initial or Final Regulatory Flexibility Analysis was prepared.

These final initial quota specifications and General category effort controls have been determined to be not significant for purposes of Executive Order 12866.

These final initial specification are not expected to increase endangered species or marine mammal interaction rates. On June 8, 2001 NMFS issued a Biological Opinion (BO) after concluding formal consultation for the HMS fisheries under Section 7 of the Endangered Species Act. The BO concluded that the pelagic longline fishery is likely to jeopardize the continued existence of threatened or endangered species. Pelagic longline vessels are not permitted to direct fishing on BFT, and are allocated a quota only for incidental take of BFT while conducting a fishery for swordfish and other tunas. Consequently, these BFT specifications will not change fishing practices for longline vessels. NMFS plans on addressing the conclusions of the BO regarding the pelagic longline fishery through separate rulemaking. The BO concluded that the gears used in directed BFT fisheries (handgear and purse seines) may affect, but are not likely to adversely affect, threatened or endangered species. This final rule will not significantly alter current fishing practices and would not likely increase takes of listed species or interfere with the implementation of the reasonable and prudent alternative measures identified in the BO to reduce adverse impacts on protected resources.

The area in which this proposed action is planned has been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the Highly Migratory Species Division of the Office of Sustainable fisheries at NMFS. It is not anticipated that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

These specifications and effort controls are necessary to ensure that the United States' actions are consistent with its international obligations under ICCAT and, because the fishing season is underway, a delay of effectiveness is contrary to the public interest. Additionally, a delay in effectiveness is unnecessary because these specifications and effort controls impose no requirements with which fishermen need time to come into compliance. Therefore, NMFS has determined that there is good cause to waive the 30-day delay in the effective date normally required by 5 U.S.C. 553(d). NMFS will rapidly communicate these final specifications through the FAX network.

Dated: July 13, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17918 Filed 7–13–01; 4:03 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 138
Wednesday, July 18, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 318

[Docket No. 98–127–1]

Rambutan, Longan, and Litchi From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Hawaiian fruits and vegetables regulations to provide alternative treatments for rambutan, longan, and litchi moving interstate from Hawaii. This proposed action would facilitate the interstate movement of rambutan, longan, and litchi from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States. We are also proposing to consolidate and update the existing regulations governing the interstate movement of certain fruits from Hawaii in order to make them easier to understand.

DATES: We will consider all comments that we receive by September 17, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 98–127–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–127–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Donna L. West, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations, contained in 7 CFR 318.13 through 318.13–17 (referred to below as the regulations), govern, among other things, the interstate movement of fruits and vegetables from Hawaii. Regulation is necessary to prevent the spread of dangerous plant diseases and pests that exist in Hawaii, including the Mediterranean fruit fly (*Ceratitis capitata*), the melon fly (*Bactrocera cucurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*).

The regulations currently require specified fruits to undergo treatment as a condition of movement from Hawaii to other States. In some cases, the treatment schedules are set forth in the regulations, while in others, the regulations require that fruit be treated in accordance with a treatment listed in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at 7 CFR 300.1(a).

In this document, we are proposing to add several treatments to the PPQ Treatment Manual, provide alternative treatments for rambutan, longan, litchi, and several other fruits, remove specific treatment schedules from § 318.13–4b of the regulations, and consolidate several sections of the regulations into a revised § 318.13–4b. The proposed changes are described below, by commodity.

Bell Peppers, Eggplants, Pineapples (Other than Smooth Cayenne), Italian Squash, and Tomatoes

Under the current regulations in § 318.13–4b, bell peppers, eggplants, pineapples (other than smooth cayenne), Italian squash, and tomatoes may be moved interstate from Hawaii if, among other things, they are treated with the vapor heat treatment prescribed in the regulations. This treatment, which requires that fruits be treated with vapor heat at 110 °F for 8.75 hours, differs from the vapor heat treatment specified in the PPQ Treatment Manual for those fruits. The PPQ Treatment Manual specifies the following vapor heat treatment for bell peppers, eggplants, pineapples (other than smooth Cayenne), Italian squash, and tomatoes:

Vapor Heat Treatment for Ceratitis Capitata (Mediterranean Fruit fly), Bactrocera Dorsalis (Oriental Fruit fly), and Bactrocera Cucurbitae (Melon fly)

1. Raise temperature of article by saturated water vapor at 112 °F until approximate center of fruit reaches 112 °F within a time period designated by the PPQ officer.
2. Hold fruit temperature at 112 °F for 8.75 hours, then cool immediately. Pretreatment conditioning is optional and is the responsibility of the shipper.

The above treatment is preferable to the treatment listed in § 318.13–4b(a)(1) because research conducted by the Agricultural Research Service (ARS) has shown that certain pests of bell peppers, eggplants, pineapples (other than smooth cayenne), Italian squash, and tomatoes may not be eliminated by vapor heat treatment at less than 112 °F.

Therefore, we are proposing to remove the treatment in § 318.13–4b(a)(1) for bell peppers, eggplants, pineapples (other than smooth cayenne), Italian squash, and tomatoes and replace it with a requirement that those fruits be treated in accordance with the PPQ Treatment Manual, or any applicable treatment provided in the regulations. (Tomatoes may also be treated with methyl bromide in accordance with § 318.13–4c.)

In conjunction with this change, we would remove § 318.13–4b(e)(2), which explains that eggplants need to be properly conditioned in order to tolerate the required vapor heat treatment. Since the conditioning of eggplants is at the discretion of the shipper and is not required under the regulations, § 318.13–4b(e)(2) would not need to be included in the revised regulations.

Papaya

Under the current regulations in § 318.13–4b, papayas may be moved interstate from Hawaii if, among other things, they are treated with a vapor

heat treatment prescribed in §§ 318.13–4b(a)(1) or (a)(2). Paragraph (a)(1) requires that fruits be treated with vapor heat at 110 °F for 8.75 hours. Paragraph (a)(2) requires that fruits be treated with vapor heat until the approximate center of the fruit reaches 117 °F. This second option is referred to as a "quick run-up" treatment.

As is the case with bell peppers and the other fruits discussed above, the treatment in paragraph (a)(1) is no longer in use for papayas. The "quick run-up" vapor heat treatment provided in paragraph (a)(2) is the only vapor heat treatment currently being used in Hawaii to treat papayas. Therefore, we are proposing to remove the treatment listed in paragraph (a)(1) as a treatment for papayas, and, since the "quick run-up" treatment is not listed in the PPQ Treatment Manual, we would add it to the PPQ Treatment Manual, and remove it from the regulations in § 318.13–4b. The treatment is as follows:

Vapor Heat Treatment for *Ceratitis Capitata* (Mediterranean Fruit fly), *Bactrocera Dorsalis* (Oriental Fruit fly), and *Bactrocera Cucurbitae* (Melon fly)

1. Raise temperature of article by saturated water vapor at 117 °F until approximate center of fruit reaches 117 °F in a minimum time period of 4 hours.

In conjunction with this change, we would amend the regulations in § 318.13–4b to provide that papayas may be moved interstate from Hawaii if treated in accordance with the PPQ Treatment Manual, or any other applicable treatment provided in the regulations. (Papayas may also be treated with irradiation in accordance with § 318.13–4f.)

Further, we would also remove § 318.13–4b(e)(3), which explains that papayas need to be properly conditioned in order to tolerate the required vapor heat treatment. Since the conditioning of papayas is at the discretion of the shipper and is not required under the regulations, § 318.13–4b(e)(3) would not need to be included in the revised regulations.

Avocado and Carambola

Currently, the regulations in §§ 318.13–4d and 318.13–4h provide for the interstate movement of avocados and carambolas, respectively, from Hawaii if the fruits are treated for certain pests in accordance with the PPQ Treatment Manual. In order to streamline the regulations, we propose to remove the regulations in §§ 318.13–4d and 318.13–4h and add avocados and carambolas to the revised § 318.13–4b, which would list certain fruits that are eligible for movement from Hawaii if they are first treated in accordance with the PPQ Treatment Manual. Carambola could also be treated with irradiation in accordance with § 318.13–4.

Litchi

Under the current regulations in § 318.13–4e, litchi may be moved interstate from Hawaii to all States except Florida if, among other things, they are inspected for, and found free of, the litchi fruit moth (*Cryptophlebia* spp.) and are then treated for certain pests in accordance with the PPQ Treatment Manual, which calls for a hot water treatment. Litchi may also be moved interstate from Hawaii to all States except Florida if treated with irradiation in accordance with the regulations in § 318.13–4f. In both cases, the regulations specify that litchi may not be moved into Florida because one pest, the litchi rust mite (*Eriophyes litchi*), would not be easily detected by an inspector. Therefore, the entry of litchi from Hawaii into Florida, where most mainland litchi is grown, is prohibited as a precaution against the possible introduction of the litchi rust mite. Accordingly, the regulations require that cartons in which the litchi are packed be stamped "Not for importation into or distribution in FL."[1]

In order to streamline the regulations, we are proposing to remove the requirements in § 318.13–4e and add litchi to the revised § 318.13–4b, which would list fruits that are eligible for movement from Hawaii if they are first treated in accordance with the PPQ Treatment Manual or in accordance with any applicable treatment provided in the regulations. We would also add requirements to the revised § 318.13–4b to make it clear that litchi and any other fruits moving interstate from Hawaii under the regulations in § 318.13–4b must be inspected and found free of plant pests prior to treatment. Further, we would amend § 318.13–4b to state that litchi would not be eligible for movement into Florida, and cartons in which the litchi are packed would be required to be stamped "Not for movement into or distribution in FL."

Based on research and recommendations by ARS, we are also proposing to add a new vapor heat treatment, which is explained below, to the PPQ Treatment Manual for litchi moving interstate from Hawaii. Research conducted by ARS indicates that this treatment would provide probit 9 quarantine security (99.997 percent mortality or no more than 3 individuals surviving from an estimated treatment population of 100,000) against any potential infestations of Mediterranean fruit fly or Oriental fruit fly.

ARS has determined, however, that this new vapor heat treatment, like the existing hot water treatment, may not affect other pests that may be carried by litchi (i.e., the litchi rust mite). Because the litchi rust mite would not be easily detected by an inspector, the movement of vapor heat-treated litchi from Hawaii into Florida would, as is the case with hot water-treated litchi, be prohibited.

Other pests that may be carried by litchi could be easily detected by inspection. Therefore, we would require that prior to treatment, the litchi must be inspected for the presence of scales, mealybugs, thrips, and other plant pests. If the litchi are found free of such pests, the following vapor heat treatment would be applied under the supervision of an inspector of the Animal and Plant Health Inspection Service (APHIS):

1. The internal temperature of the fruits is to be raised to 117 °F (or above) until the fruit seed surface temperature (largest fruits) reaches 117 °F. The total run-up time (all sensors) must take at least 60 minutes.

2. Fruit is to be held at a temperature of 117 °F (or above) at 90 percent relative humidity or above for 20 minutes.

3. Fruit is to be hydrocooled under a cool water spray until probed fruit return to ambient temperature.

4. The inspector must perform a careful visual inspection of the treated fruit to confirm the absence of other live pest species of quarantine significance. If any of the following are found live, the inspector will reject the treatment: *Cryptophlebia illepida* (koa seedworm), *Cryptophlebia ombrodelta* (litchi fruit moth), *Epiphyas postvittana* (light brown apple moth), *Eriophyes litchi* (litchi rust mite).

This treatment would provide an alternative to the existing hot water treatment provided in the PPQ Treatment Manual and the irradiation treatment provided in § 318.13–4f.

Rambutan

Rambutan (*Nephelium lappaceum* L.) fruit is a recorded host of the Mediterranean fruit fly and Oriental fruit fly, among other pests, but is not a recorded host of melon fly. Currently, rambutan is only allowed to move interstate from Hawaii if it is treated with irradiation in accordance with the regulations in § 318.13–4f.

[1] The current regulations uses the term "importation" incorrectly. Products moving to the mainland from Hawaii are being "moved" in interstate commerce, and are not being "imported" into the United States. This proposed rule would amend the regulations to reflect the proper terminology.

Based on research and recommendations by ARS, we are proposing to add two treatments to the PPQ Treatment Manual for rambutan moving interstate from Hawaii. ARS research indicates that these high temperature forced air and vapor heat treatments, which are described below, would provide probit 9 quarantine security against any potential infestations of Mediterranean fruit fly or Oriental fruit fly.

Prior to treatment, the rambutan would have to be inspected for the presence of scales, mealybugs, thrips, and other plant pests. If the rambutan is found free of such pests, the following treatment would be applied using either high temperature forced air or vapor heat, under the supervision of an APHIS inspector:

1. The internal temperature of rambutan is to be raised by high temperature forced air or saturated water vapor to 117 °F (47.2 °C) during a period of 1 hour or longer.

2. Fruits are to be held at or above 117 °F (47.2 °C) or above for 20 minutes. (For vapor heat treatment, fruits must also be held at 90 percent relative humidity during the same 20 minutes).

3. Cooling the fruits is optional.

In conjunction with this change, we would also amend the regulations to say that rambutan may be moved interstate from Hawaii if treated in accordance with the PPQ Treatment Manual, or any applicable treatment provided in the regulations. These treatments would provide alternatives to the existing irradiation treatment for rambutan provided in § 318.13–4f.

Longan

Longan (*Dimocarpus longan* Lour.) fruit is a recorded host of the Mediterranean fruit fly and Oriental fruit fly, among other pests, but is not a recorded host for melon fly. Currently, longan is only allowed to move interstate from Hawaii to all States except Florida if it is treated with irradiation in accordance with the regulations in § 318.13–4f.

Based on research and recommendations by ARS, we are proposing to add a hot water treatment to the PPQ Treatment Manual for longan moving interstate from Hawaii. ARS research indicates that this treatment, which is described below, would provide probit 9 quarantine security against any potential infestations of Mediterranean fruit fly or Oriental fruit fly.

ARS has determined, however, that the hot water treatment may not affect other pests that may be carried by longan (i.e., the litchi rust mite). Because the litchi rust mite would not be easily detected by an inspector, the entry of longan from Hawaii into Florida, where most mainland longan and other hosts of the litchi rust mite are grown, would be prohibited and cartons in which longan from Hawaii are packed would be required to be stamped "Not for movement into or distribution in FL." This prohibition would be consistent with the requirement in § 318.13–4f that irradiated longan may not be moved into Florida due to the litchi rust mite.

Other pests that may be carried by longan could be easily detected by inspection. Therefore, we would require that prior to treatment, the longan must be inspected for the presence of scales, mealybugs, thrips, and other plant pests. If the longan are found free of such pests, the following treatment would be applied, under the supervision of an APHIS inspector:

1. Fruits must be at ambient temperature before treatment begins.

2. Fruits must be submerged at least 4 inches below the surface in a certified hot water immersion treatment tank.

3. Water must circulate constantly, and be kept at 120.2 °F (or above) for 20 minutes. Treatment time begins when the water temperature reaches at least 120.2 °F in all locations throughout the tank. Note: Temperatures exceeding 121.1 °F can cause phytotoxic damage.

4. Hydrocooling for 20 minutes at 75.2°F is recommended, though not required, to prevent injury to the fruit from the hot water immersion treatment.

In conjunction with this change, we would also amend the regulations to provide that longan may be moved interstate from Hawaii to all States except Florida if treated in accordance with the PPQ Treatment Manual, or any other applicable treatment provided in the regulations. This treatment would provide an alternative to the existing irradiation treatment for longan provided in § 318.13–4f.

Miscellaneous

We are also proposing to correct an error in § 318.13–2 of the regulations. Under paragraph (b) of that section, all species of the genus *Allium* may be moved from Hawaii in accordance with the regulations in the subpart. We are proposing to amend the regulations to provide that only Chinese chives (*Allium tuberosum*) and bulb forms of *Allium* spp. are eligible to move from Hawaii in accordance with the regulations. We are proposing this change because some species of the genus *Allium* (including leeks and some other species not typically shipped or otherwise traded in bulb form) are known to host a leaf miner (*Acrolepiopsis sapporensis*) that does not exist in the mainland United States and that may present a risk to mainland agriculture.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In this document, we are proposing to amend the Hawaiian fruits and vegetables regulations to provide for the interstate movement of rambutan, litchi, and longan from Hawaii after the fruit is treated, under certain conditions, for fruit flies. Under our proposal, those fruits would be allowed to move interstate from Hawaii if they are first inspected and then treated for pests using the following types of treatments:

Fruit	Treatments
Rambutan	High temperature forces air or vapor heat.
Litchi	Vapor heat.
Longan	Hot water.

This proposed action would facilitate the interstate movement of rambutan, longan, and litchi from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

The above fruits are already allowed to move interstate from Hawaii if treated with irradiation in accordance with the regulations in § 318.13–4f. Litchi may also be moved interstate from Hawaii if treated with hot water in accordance with the PPQ Treatment Manual; however, there are currently no hot water treatment facilities in use in Hawaii. Longan and litchi are not allowed to be moved into Florida due to the risk of introducing the litchi rust mite into areas in Florida where longan and litchi are commercially grown.

Providing alternative pest treatment methods for rambutan, litchi, and longan fruits from Hawaii is expected to stimulate growth of the industry and provide access to the larger mainland market.

Production of rambutan in Hawaii decreased from 264,300 pounds in 1997 to about 139,200 pounds in 1998. Rambutan farm prices increased from $2.71 per pound to $3.03 per pound during that period. There are approximately 50 farms in Hawaii that produce rambutan, and each of those farms can be considered to be small entities according to Small Business

Administration (SBA) criteria (i.e., a producer with less than $500,000 in annual sales).

In 1998, the United States produced approximately 2.3 million pounds of litchi, with Hawaii producing 157,000 pounds of litchi, valued at $309,000, during that same period. There are approximately 75 farms in Hawaii that produce litchi, and each is a small entity according to SBA criteria.

The United States produces approximately 1.4 million pounds of longan (mostly in Florida) annually, with a market value of approximately $767,000. Hawaii produced approximately 17,000 pounds of longan in 1998. Any producers of longan in Hawaii are likely to be small entities according to SBA criteria. However, given that Hawaii produces small volumes of longan, it is unlikely that a significant amount of longan would be moved interstate from Hawaii if this proposed rule is adopted.

Currently, there are nine treatment firms in Hawaii that perform the treatments required under the regulations. Four firms use the vapor heat treatment method, four use the dry heat or high temperature forced air method, and one uses the irradiation method. There are no hot water treatment facilities in operation in Hawaii.

Vapor heat and high temperature forced air treatments require between 4 and 6 hours of treatment. The cost of treatment ranges from 0.92 to 2.3 cents per pound (approximately $18.40 to $46.00 per ton with capital construction cost of about $0.9 million to $1.2 million), while irradiation requires about 40 minutes of treatment at a cost of approximately 0.93 to 1.58 cents per pound (approximately $18.60 to $31.60 per ton with capital construction cost of about $2.8 million to $3.8 million for a freestanding facility).

A hot water treatment tank fitted with four baskets costs about $75,000 and has a useful life of about 10 years. Using hot water treatment as an alternative would cost, taking into account the opportunity cost of capital, labor cost, and fuel cost, about $13.95 per ton. A hot water treatment tank fitted with four bins has capacity to treat about 8 tons of fruit per hour. Unless there is a large volume of fruit available for treatment, the equipment would likely be underutilized.

Producers would be able to utilize existing facilities in Hawaii to treat fruits under the conditions specified in this proposed rule. The proposed rule would likely result in increased revenue for the existing vapor heat and dry heat facilities in Hawaii. Additionally, growers in Hawaii would benefit from the increased opportunity for selling their products in a larger and more diverse market and from potential decreases in the cost of treating fruits. If producers respond by planting and harvesting more acreage of these fruits, both consumers and firms that provide treatment services are likely to benefit.

All of the treatment methods would be more economical for owners of facilities and sellers of fruits if the treatments are applied to larger shipments. Initial investment associated with the treatments considered here would depend on the number, capacity, and complexity of required facilities. Costs per pound of fruit treated can rise dramatically when capital-intensive facilities are operated at less than design capacity. This would happen when the commodity is not shipped year round, or when production decreases dramatically (as in the case of a freeze), or if trade patterns or the regulatory environment changes substantially. The effect of underutilized capital equipment on per-unit treatment costs tends to be greater the more expensive the initial capital investment. For example, a recent study estimated that operating strawberry irradiators at 25 percent of their annual throughput capacity can increase the cost of irradiating strawberries by 212 percent, from $0.034/lb treated (when plant is operated at 100 percent annual capacity) to $0.106/lb treated (when plant is operated at only 25 percent of capacity).

The economic effects of this proposed rule on mainland growers and prices on the mainland are not expected to be significant. However, mainland consumers of fresh rambutan, litchi, and longan would likely benefit from increased seasonal and regional availability and from the increased variety of fresh fruits, as well as from more stable prices.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No.10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Incorporation by reference, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, we propose to amend 7 CFR parts 300 and 318 as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, paragraph (a), the introductory text would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through [*date*], has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

3. The authority citation for part 318 would be revised to read as follows:

Authority: U.S.C. 7711, 7712, 7714, 7731, 7754, and 7756; 7 CFR 2.22, 2.80, and 371.3.

4. In § 318.13–2, paragraph (b), the entry for Allium spp. would be removed and the following entries would be added in its place:

§ 318.13–2 Regulated articles.

* * * * *

(b) * * *

Allium spp. (bulb only)
Allium tuberosum
* * * * *

5. Section 318.13–4b, would be revised to read as follows:

§ 318.13–4b Administrative instructions; conditions governing the interstate movement from Hawaii of certain fruits for which treatment is required.

(a) *General instructions.* Fruits listed in this section may only be moved interstate from Hawaii in accordance with this section or in accordance with other applicable sections in this subpart.

(b) *Eligible fruits.* The following fruits may be moved interstate from Hawaii if, prior to interstate movement, they are inspected for plant pests by an inspector and are then treated for fruit flies under the supervision of an inspector with a treatment prescribed in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter: Avocados, bell peppers, carambolas, eggplants, Italian squash, litchi, longan, papayas, pineapples (other than smooth cayenne), rambutan, and tomatoes.

(c) *Subsequent handling.* All handling of fruits subsequent to treatment in Hawaii must be carried out under the supervision of an inspector and according to the inspector's instructions.

(d) *Destination restrictions.* Litchi and longan that are moved interstate from Hawaii under this section may not be moved into Florida due to the litchi rust mite (*Eriophyes litchi*). Cartons used to carry such fruits must be stamped: "Not for movement into or distribution in FL."

(e) *Costs and charges.* All costs of treatment and any post-treatment safeguards prescribed by an inspector must be borne by the owner of the fruits or the owner's representative. The services of an inspector during regularly assigned hours of duty and at the usual place of duty are furnished by APHIS without charge.

(f) *Department not responsible for damages.* Treatments prescribed in the PPQ Treatment Manual are judged from experimental tests to be safe for use with the fruits listed in paragraph (b) of this section. However, the Department assumes no responsibility for any damage sustained through or in the course of the treatment, or because of safeguards required by an inspector.

§ 318.13–4d [Removed and reserved]

6. Section 318.13–4d would be removed and reserved.

§ 318.13–4e Removed and reserved]

7. Section 318.13–4e would be removed and reserved.

§ 318.13–4h Removed and reserved]

8. Section 318.13–4h would be removed and reserved.

Done in Washington, DC, this 11th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17803 Filed 7–17–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 211 and 212

[INS No. 2047–00]

RIN 1115–AF65

Entry Requirements for Citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule is designed to remedy two problems that have arisen in connection with section 141(a) of the Compact of Free Association between the United States of America and the Republic of the Marshall Islands and with the Federated States of Micronesia (48 U.S.C. 1910 note), and the Compact of Free Association between the United States of America and Palau (48 U.S.C. 1931, note) (Compacts, Compact countries). That section confers on citizens of the Compact countries certain privileges to enter the United States as *nonimmigrants,* subject, however, to several exceptions set forth in section 141(a)(3)(c) and section 143 of the Compacts.

This rule will clarify the entry requirements for citizens of the Compact countries who have been adopted by citizens or lawful permanent residents of the United States. The purpose of this aspect of the rule is to prevent the abuse of the entry privileges of section 141(a) of the Compacts as a means of circumventing statutory provisions designed to protect adopted children from abuse or exploitation.

In addition, this rule will correct an omission in the codification of section 141(a) of the Compacts in 8 CFR 212.1(d). That Codification inadvertently failed to include the exceptions to entry privileges of citizens of the Compact countries. By incorporating those exceptions in 8 CFR 212.1(d)(2), the rule will bring the Immigration and Naturalization Service (Service) regulations into compliance with the Compacts.

DATES: Written comments must be submitted on or before August 17, 2001.

ADDRESSES: Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2047–00 on your correspondence. Comments may also be submitted electronically to the Service at *insregs@usdoj.gov*. When submitting comments electronically please include INS No. 2047–00 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Michael Biggs, Assistant Director, Residence and Status Services, Office of Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Are the Entry Privileges of Citizens of the Compact Countries Under the Compacts, and How Does This Rule Affect Those Privileges?

The Compacts both provide in section 141(a), with certain exceptions discussed, *infra,* for the following privileges for most citizens of the Compact countries who seek to enter into the United States as *nonimmigrants.* Such citizens of the Compact countries may enter into the United States, lawfully engage in occupations, accept employment, and establish residence as *nonimmigrants* in the United States, its territories and possessions, without regard to section 212(a)(5)(A) (labor certification), (7)(A) (immigrant visa) and (B) (nonimmigrant visa) of the Immigration and Nationality Act (Act). (Previously sections 212(a)(14), (20) and (26) of the Act). This rule does not affect the existing Compact entry privileges.

The Service notes that sections 212(a)(7)(A) and (B) of the Act which are waived by section 141(a) of the Compacts contain not only visa requirements, but also a passport requirement. The waiver contained in section 141(a) of the Compacts therefore appears to include a waiver of the need to present a passport upon entry into the United States. However, practical

experience has shown that a passport or similar travel document is the only reliable means by which immigration officials can determine whether an alien is a citizen of a Compact country entitled to the privileges of section 141(a). Therefore, the Service requires that citizens of the Compact countries who seek to enter the United States as *nonimmigrants* under section 141(a) present a passport or similar travel document. This is necessary not in order to comply with the admission requirements of section 212 of the Act, but rather in order to establish entitlement to the privileges of section 141(a) of the Compacts.

What Is the Purpose of This Rule?

While this rule does not modify the substantive Compact rights of citizens of the Compact countries to enter the United States, the rule is designed to clarify the pertinent administrative regulations in two aspects. First, the rule makes it clear that citizens of the Compact countries who have been adopted by citizens or lawful permanent residents of the United States are coming to the United States presumptively to reside as *immigrants*. Therefore, they may not enter the United States as *nonimmigrants* under section 141(a), but must comply with the standard procedures for immigration, including immigrant visas. Procedures governing the immigration visas for adopted children are to be found in a 8 CFR 204.2 and 8 CFR 204.3.

Second, the rule codifies in 8 CFR 212.1(d)(2) the Compact limitations on the privileges of citizens of Compact countries to enter the United States as *nonimmigrants*. These limitations, found in sections 141(a)(3), (c) and 143 of the Compacts, were inadvertently omitted from 8 CFR 212.1(d) when that regulation was first issued.

These exceptions to the privileges of section 141(a) are briefly:

(i) Naturalized citizens of the Compact countries, unless they have been "actual residents" of the Compact country that had naturalized them and hold a "certificate of actual residence," as those terms are defined in section 461 of the Compacts (section 141(a)(3));

(ii) Citizens of a Compact country who have taken an affirmative step to retain or acquire the nationality or citizenship of another country (section 143(a) of the Compacts);

(iii) Citizens of a Compact country who are also citizens of another country, unless they renounce that other citizenship under oath (section 143(b) of the Compacts); and

(iv) Citizens of a Compact country who seek to obtain a residence status leading to naturalization (section 141(c) of the Compacts).

Why Is the Clarification Regarding Adopted Children Necessary?

The clarification of the entry status of citizens of the Compact countries adopted by citizens or lawful permanent residents of the United States is necessary because of a practice that has developed in Compact countries. Citizens and lawful permanent residents of the United States have adopted children who are citizens of the Republic of the Marshall Islands and brought them to the United States as *nonimmigrants* under section 141(a) of the Compacts.

This practice constitutes an improper use of the privileges under section 141(a) of the Compacts. Children who enter the United State after having been adopted abroad by citizens or lawful permanent residents of the United Stated do so presumptively in order to establish permanent residence, i.e. to *immigrate*, rather than to become temporary *nonimmigrant* visitors. Moreover, the practice of entering adopted children as *nonimmigrants* also puts those children at risk by bypassing measures designed to protect them, and jeopardizes their ability to become United States citizens.

Most adopted children immigrate pursuant to section 101(b)(1)(F) of the Act. United States citizens who adopt abroad a child as defined in section 101(b)(1)(F) of the Act must file a petition with the Service to classify the child as an immediate relative before obtaining an immigrant visa for the child. Section 101(b)(1)(F) of the Act requires that the Attorney General be satisfied that proper care will be furnished to the child if admitted to the United States. The Service therefore evaluates this petition to determine the ability of the prospective adoptive parents to provide a proper home environment for the child and their suitability as parents. These determinations are based primarily on a home study, which is a requirement of section 204(d) of the Act, and criminal background checks, and are essential to protect the child.

When adoptive parents bring a child into the United States purportedly as *nonimmigrants* under the Compacts they evade, as matter of law, the statutory mandates of section 101(b)(1)(F) and section 204(d) of the Act that alien children adopted abroad by United States citizens shall not be admitted to the United States unless the suitability of the adoptive parents has been determined. By the same token such adoptive parents deprive the child, as a matter of fact, of an important protection from abuse or exploitation.

Moreover, the admission of an adoptive child as a non-immigrant under section 141(a) of the Compacts jeopardizes the child's ability to become a citizen of the United States. Section 320 of the Act, as amended by section 101 of the Child Citizenship Act of October 30, 2000, Public Law 106–395, 114 Stat. 1631, effective February 27, 2001, which provides for the automatic naturalization of certain children born outside the United States, including adopted children, requires that the child reside in the United States, "pursuant to lawful admission for permanent residence." In other words, a child must enter the United States as an *immigrant*, in order to be eligible for automatic naturalization under section 320 of the Act.

The Compact countries have indicated that, without the clarification envisaged in the rule, they may no longer permit the adoption of their citizens and lawful permanent residents of the United States. For all these reasons, it is important to make certain that citizens of the Compact Countries who have been adopted by United States citizens are admitted to the United States as immigrants.

What Changes Is the Service Making to the Regulations?

1. Section 211.1(a) (immigrant visas) is revised to clarify that it covers children who are citizens of a Compact country who have been adopted by citizens or lawful permanent residents of the United States. Those children therefore must present an immigrant visa in order to enter the United States. This change is necessary to distinguish these children from citizens of the Compact countries who, under the Compacts, may enter into the United States as *nonimmigrants*.

2. Section 212.1(d) (documentary requirements for nonimmigrants) is revised to incorporative five exceptions to the current text of paragraph (d). Paragraph (d) is re-designated as paragraph (d)(1) and continues to permit citizens of the Compact countries to enter into the United States, lawfully engage in occupations, accept employment, and establish residence in the United States and its territories and possessions as *nonimmigrants*, exempt from the visa and labor certification requirements with the addition of the clause, "except as otherwise provided in paragraph (d)(2)."

3. A new paragraph (d)(2) spells out five exceptions to the basic principle embodied in paragraph (d)(1). Those citizens of the Compact countries who

come within those exceptions must comply with the standard procedures of the Act in order to enter into the United States.

These changes are necessary to implement the Compact provisions in the Code of Federal Regulations and to distinguish between those citizens of the Compact countries who are coming to the United States as *nonimmigrants* under the Compacts and those who must enter the United States as *immigrants* or under other provisions of the Act.

Thirty-Day Comment Period

The rule provides for a 30-day comment period rather than the 60-day comment period that is usually provided under Executive Order 12866. This will allow the Service to proceed with final rulemaking in a quicker manner so that the agency can expeditiously clarify the documentary requirements for adopted children from Compact countries. Without prompt clarification of the documentary requirements for an adoption of a child from the Compact countries, the Compact countries may no longer permit to the adoption of children by citizens and lawful permanent residents of the United States.

In addition, the expedition of the Service's rulemaking will control the orderly and proper admission of *nonimmigrants* from Compact countries into the United States. Currently, Service regulations are not in compliance with the Compacts, resulting in the potential for improper admissions into the United States. This occurs because the limitations of the Compact, found in sections 141(a)(3), (c) and 143 of the Compacts, were inadvertently omitted from 8 CFR 212.1(d) when that regulation was first issued.

Regulatory Flexibility Act

The Acting Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule primarily affects individuals, who are entering the United States as nonimmigrants under the Compacts, and those who are entering as intending immigrants. This rule does not affect small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Summary Impact Statement.

Executive Order 12988 Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting and recordkeeping requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

1. The authority citation for part 211 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1227; 8 CFR part 2.

2. In § 211.1, paragraph (a) introductory text is revised to read as follows:

§ 211.1 Visas.

(a) *General.* Except as provided in paragraph (b) of this section, each arriving alien applying for admission (or boarding the vessel or aircraft on which he or she arrives) into the United States for lawful permanent residence, or as a lawful permanent resident returning to an unrelinquished lawful permanent residence in the United States and all children who are citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, or Palau who have been adopted by citizens of the United States or by lawful permanent residents of the United States, must present one of the following:

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1187, 1225, 1226, 1227, 1228, 1252, sections 141, 143, and 461, of the Compacts with the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau, 48 U.S.C. 1901, note, and 1931, note, respectively; 8 CFR part 2.

4. In § 212.1, paragraph (d) is revised to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(d) *Citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau (Compact countries)*—(1) *General.* Except as provided in paragraph (d)(2) of this section, citizens of the Compact countries may enter into the United States, lawfully engage in occupations, accept employment, and establish residence as nonimmigrants in the United States and its territories and possessions without regard to section 212(a)(5)(A) (labor certification), (7)(A) (immigrant visa), and (B) (nonimmigrant visa) of the Act, provided that they possess a passport or similar travel document issued by the Compact country of which they are citizens in order to establish their entitlement to those privileges. This is pursuant to section 141(a), of the Compact between the United States of America and the Marshall Islands and the Federated States of Micronesia, 48 U.S.C. 1901, note, and of section 141(a), of the Compact between the United States of America and Palau, 48 U.S.C. 1931, note (Compacts).

(2) *Exceptions.* The following citizens of the Compact countries are not eligible for the privileges described in paragraph (d)(1) of this section and must follow standard procedures for obtaining immigrant or nonimmigrant visas, as appropriate, for entry into the United States, its territories and possessions:

(i) Children who are citizens of a Compact country who have been adopted by a United States citizen or a lawful permanent resident of the Untied States and are coming to the United States. This exception is based on sections 101(b)(1)(F) and 204(d) of the Act;

(ii) Naturalized citizens of the Compact countries, unless they have been actual residents in their country of naturalization for not less than 5 years after attaining naturalization and hold a certificate of actual residence from that country. This is pursuant to section 141(a)(3) of the Compacts. The terms "actual resident" and "certificate of actual residence" are defined in section 461 of the Compacts;

(iii) (A) Any citizen of the Republic of the Marshall Islands or of the Federated States of Micronesia who takes or has taken an affirmative step to preserve or acquire a nationality or a citizenship other than that of the Republic of the Marshall Islands or of the Federated States of Micronesia. This is pursuant to section 143(a) of the Compact with the Republic of the Marshall Islands and the Federated States of Micronesia;

(B) Any citizen of Palau who takes or has taken an affirmative step to preserve or acquire a nationality or a citizenship of another country. This is pursuant to section 143(a) of the Compact with Palau;

(iv) (A) Any citizen of the Republic of the Marshall Islands or of the Federated States of Micronesia having the privileges set forth in paragraph (d)(1) of this section who also possesses a nationality or a citizenship of a country other than that of the Republic of the Marshall Islands or the Federated States of Micronesia, and who has not renounced that additional nationality or citizenship under oath within 2 years after the effective date of the Compact (October 21, 1986, for the Republic of the Marshall Islands and November 3, 1986, for the Federated States of Micronesia), or within 6 months after becoming 21 years old, whichever is later. This is pursuant to section 143(b) of the Compact with the Republic of the Marshall Islands and the Federated States of Micronesia;

(B) Any citizen of Palau having the privileges set forth in paragraph (d)(1) of this section who also possesses the nationality or citizenship of another country and who has not renounced that additional nationality or citizenship under oath within 2 years after the effective date of the Compact with Palau (October 1, 1994), or within 6 months after becoming 21 years old, whichever is later. This is pursuant to section 143(b) of the Compact with Palau; and

(v) Citizens of the Compact countries who seek a residence status leading to naturalization. This is pursuant to section 141(c) of the Compacts.

* * * * *

Dated: July 13, 2001.

Kevin D. Rooney,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 01–17957 Filed 7–17–01; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–70]

Eric Joseph Epstein; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC or "Commission") is denying a petition for rulemaking (PRM–50–70) submitted by Eric Joseph Epstein. The petitioner requested that NRC amend its financial assurance requirements for decommissioning nuclear power reactors to: require uniform reporting and recordkeeping for all "proportional owners" of nuclear generating stations (defined by the petitioner as partial owners of nuclear generating stations who are not licensees), modify and strengthen current nuclear decommissioning accounting requirements for proportional owners, and order proportional owners to conduct prudency reviews to determine a balanced formula for decommissioning funding that includes not only ratepayers and taxpayers but shareholders and board members of rural electric cooperatives as well. The NRC is denying the petition because current regulations adequately address the first two requested actions and the NRC does not have the legal authority to require the third requested action.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter of denial to the petitioner are available for public inspection or copying in the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. These documents are also available at the NRC's rulemaking website at *http://ruleforum.llnl.gov*.

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1978, e-mail: *bjr@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

On May 12, 2000 (65 FR 30550), the NRC published a notice of receipt of a petition for rulemaking (PRM) filed by Eric Joseph Epstein. The petitioner requested that the NRC amend its financial assurance requirements for decommissioning nuclear power reactors to: (1) require uniform reporting and recordkeeping for all "proportional owners" of nuclear generating stations (defined by the petitioner as partial owners of nuclear generating stations who are not licensees); (2) modify and strengthen current nuclear decommissioning accounting requirements for proportional owners; and (3) order proportional owners to conduct prudency reviews to determine a balanced formula for decommissioning funding that includes not only ratepayers and taxpayers but

shareholders and/or board members of rural electric cooperatives as well. In addition, the petitioner raised several issues that, while related to his three general requests for rulemaking, were not explicitly part of the petitioner's requested remedies. These issues are discussed more fully below.

The petitioner submitted the petition because he believes the funding component for decommissioning provided by proportional owners of nuclear generating stations, including rural electric cooperatives (RECs), is "fatally flawed" and likely to contribute to inadequate funding.

The petitioner stated that proportional owners are not required to submit periodic cost projections, conduct site-specific studies, or coordinate with the power reactor licensee. Also, the petitioner stated that proportional owners are not mandated by the NRC to verify, report, or monitor recordkeeping relating to nuclear decommissioning funding mechanisms.

The petitioner believes it is grossly unfair and inequitable to require Federal taxpayers and State ratepayers to provide a financial safety net for the nuclear investments of proportional owners. The petitioner offers the following reasons to support his belief: (1) proportional owners, including RECs, aggressively supported construction, licensing, and operation of nuclear generating stations; (2) minority owners were fully cognizant that no commercial nuclear reactor had been decommissioned, and that a solution to nuclear waste disposal did not exist; (3) neither the utility industry, proportional owners, nor RECs have actively sponsored decommissioning research or sought good faith solutions to the permanent storage and isolation of low-level and high-level radioactive waste; and (4) proportional owners and RECs willfully pursued a financial investment in nuclear energy which they knew was fraught with huge uncertainties.

Public Comments on the Petition

The NRC received nine comments in response to the petition. Eight commenters, all of whom were licensees or groups representing licensees, addressed the three broad topic areas of the petition. The ninth set of comments was received from Thomas LaGuardia of TLG Services, Inc., an industry consultant which provides decommissioning cost estimates. TLG's comments did not respond to the petition itself, but identified 16 statements or groups of statements in the petition that questioned the reliability of TLG's estimation methods and results. TLG addressed those statements.

All eight commenters who addressed the specific requests of the petition recommended that the NRC deny all parts of the petition. Two of the commenters simply endorsed the position of one of the other commenters, the Nuclear Energy Institute (NEI). In general, the commenters provided similar arguments as to why the petition should be denied in its entirety. Further, TLG did not explicitly state that NRC should grant or deny the petition. However, given that TLG questioned many of the statements made by the petitioner to form his case, it appears that TLG finds the petition factually deficient. As described below, the NRC staff's evaluation of the petition agreed with the comments in most respects.

First, the petitioner requested the NRC to require uniform reporting and recordkeeping for all "proportional owners" of nuclear generating stations (defined by the petitioner as partial owners of nuclear generating stations who are not licensees). Several commenters noted that all entities with an ownership interest in a commercial nuclear power plant are NRC licensees. These consist of minority owners, and non-operating owners, including rural electric cooperatives. These owners are required to provide the NRC with reasonable decommissioning financial assurance.

The NRC staff has reached a conclusion similar to the commenters. All co-owners are required to be co-licensees, subject to all NRC regulations, including those with respect to decommissioning reporting. *See Public Service Company of Indiana, Inc.* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB–459, 7 NRC 179, 198–201 (1978). Thus, this issue is moot, because the remedy sought by the petitioner is already in place.

Second, the petitioner requested the NRC to modify and strengthen its nuclear decommissioning accounting requirements for proportional owners. The commenters noted, as stated above, that proportional owners are licensees and, as such, are required to provide assurance to the NRC of adequate decommissioning funding. Several commenters noted that after receiving the biennial decommissioning funding status reports, the NRC staff issued an assessment of the reports (SECY–99–170, July 1, 1999) which indicated that the licensees were accumulating sufficient funds for decommissioning. Further, the commenters noted the requirements of § 50.75 and § 50.82 provide that licensees are to submit up-to-date assessments of final decommissioning costs at or about 5 years prior to the projected end of operations, and a post shutdown decommissioning activities report (PSDAR) containing a cost estimate for decommissioning within 2 years after permanent cessation of operations.

As indicated in its conclusion on the petitioner's first issue, co-owners are already providing information on the status of their decommissioning funds. Based on the review of these status reports in 1999, the NRC concludes that the NRC's accounting requirements are currently sufficient to provide adequate protection of public health and safety.

Third, the petitioner requested the NRC to require proportional owners to conduct a prudency review to determine a balanced formula for decommissioning funding that includes not only ratepayers and taxpayers but shareholders and board members of rural electric cooperatives as well. All the licensees or groups of licensees who commented noted that NRC does not have the legal authority to require such action. The comments from Allegheny Electric Cooperative and PPL Susquehanna, LLC noted that a licencee's decommissioning funding [7590–01–P] prudency is under the jurisdiction of a State Public Utility Commission, the Federal Energy Regulatory Commission, or ratemaking authority of a municipal utility, a Rural Electric Cooperative, and other electric utility that establishes its own rates. Also, one commenter stated that any attempt by the NRC to impose or enforce these remedies would enmesh it in lengthy and substantial legal challenges.

The NRC concludes that the NRC does not have the authority to require co-owners to conduct prudency reviews. This is a rate-making issue beyond the NRC's jurisdiction.

The petitioner also raised other issues that, while not part of the three requested remedies, prompted responses by commenters. The first is the issue of non-radiological costs, about which the petitioner is concerned because NRC does not require licensees to provide estimates of such costs. Some commenters stated that the NRC has no authority to require licensees to return facilities to a "greenfield" condition because it is not a matter of radiological public health and safety. Thus, the commenters stated that the NRC has no programmatic need to obtain such data.

A second ancillary issue raised by the petitioner was that some nuclear power plants may not operate for the full terms of their licenses, resulting in premature shutdown of the plants. Some commenters stated that no licensee of a prematurely shut-down plant has ever

not been able to pay for its plant's decommissioning. Lastly, in response to the petitioner's position that premature shutdowns will occur, some commenters pointed out that a number of plants are in the process of applying for license renewals.

Next, the petitioner stated that proportional owners of power reactors should "be required to account for the possibility of increased spent fuel storage costs, in the event that a high level waste storage facility is unavailable." One commenter, NEI, quotes from a Department of Energy report that indicates that Yucca Mountain remains a viable site for spent fuel storage.[1]

The petitioner also raised two specific issues relating to Allegheny Electric Cooperative and PPL Susquehanna, LLC, namely issues relating to low-level waste disposal and the adequacy of Allegheny's decommissioning funding. Allegheny and Susquehanna submitted comments jointly. With respect to the first issue, they noted that minimum funding requirements for low-level waste disposal are addressed in "Report on Waste Burial Charges," NUREG–1307. With respect to the funding adequacy issue, Allegheny submitted its required report in March 1999 and in response to a request for clarification, resubmitted it in May of that year. After review of the resubmitted report, NRC had no follow-up concerns. In addition, Allegheny is a rural electric cooperative that sets its own rates. Therefore, Allegheny's current funding assurance method meets the NRC's requirements.

Reasons for Denial

In summary, the NRC is denying the petition for the following reasons:

1. With respect to the petitioner's first request to require uniform reporting and recordkeeping for all "proportional owners" of nuclear generating stations, the NRC finds this issue moot because the Commission requires all co-owners to be co-licensees. Therefore, under 10 CFR § 50.75, the co-owners are already required to comply with the reporting and recordkeeping requirements. In addition, as discussed below, the NRC has determined that all licensees, including co-owners, complied with section 50.75(f)(1) by submitting initial decommissioning status reports in March 1999. The NRC staff issued an assessment of the reports (SECY–99–170, July 1, 1999) which indicated that "* * * all power reactor licensees appear to be on track to fund decommissioning by the time that they permanantly shut down their units." As a result, the NRC finds no need to act on this portion of the petition and denies it.

2. The petitioner's second request was to have NRC modify and strengthen its nuclear decommissioning accounting requirements for proportional owners. As stated above, proportional owners are licensees and are, therefore, required by 10 CFR 50.75(f) to file a biennial decommissioning funding status report. The NRC staff has determined that licensees are complying with the reporting and recordkeeping requirements. As mentioned, the NRC staff issued a positive assessment of the reports (SECY–99–170, July 1, 1999). In addition, the requirements of § 50.75 and § 50.82 provide for licensees to submit up-to-date assessments of final decommissioning costs at or about 5 years prior to the projected end of operations, and a post shutdown decommissioning activities report (PSDAR) containing a cost estimate for decommissioning within 2 years after permanent cessation of operations. These requirements pertain to all licensees, including proportional owners. As a result, the NRC finds no need to act on this portion of the petition and denies it.

3. The petitioner's third request was for the NRC to require proportional owners to conduct prudency reviews. NRC does not have the legal authority to require such action under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any other Federal statute. Therefore, NRC also denies this portion of the petition.

As noted above in the comment section, the petitioner also raised several ancillary comments. The first was the issue of non-radiological costs. Given the NRC has no regulatory requirement that licensees return the facilities to "greenfield" condition, the NRC has no programmatic need to obtain such data. The petitioner's second ancillary item was the premature shutdown of nuclear power plants. NRC addressed this concern in earlier rulemaking published on June 19, 1996. See 61 FR 39278 (promulgating 10 CFR 50.82(c)). This rule provides that the NRC would address the status of decommissioning funding and schedule for the accumulating of any shortfall of funds for plants which did not operate for their full terms on a case-by-case basis. The third ancillary comment was to require proportional owners to account for increased spent fuel storage costs should a high level waste storage facility be unavailable. This issue has been addressed by the NRC in 10 CFR 50.54(bb) (originally adopted in the Waste Confidence Rulemaking), in which reactor licensees are required to "submit written notification to the Commission for its review and preliminary approval of the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor following permanent cessation of operation of the reactor until title to the irradiated fuel and possession of the fuel is transferred to the Secretary of Energy for its ultimate disposal in a repository."

Lastly, the petitioner discussed two issues relating specifically to Allegheny Electric Cooperative and PPL Susquehanna, LLC, viz. low-level waste disposal and the adequacy of Allegheny's decommissioning funding. The NRC addressed the minimum funding for waste disposal in NUREG–1307, Revision 9, which was just published in September 2000. Also, as the NRC has indicated in its review of biennial decommissioning funding status reports, "* * * all power reactor licensees appear to be on track to fund decommissioning by the time that they permanently shutdown their units." Therefore, the NRC has no indication that Allegheny's decommissioning funding is inadequate.

The petitioner has touched on many issues of concern to the public as the electric generation industry restructures itself as a result of rate deregulation. However, the NRC believes that the petitioner's concerns have been addressed in the 1998 decommissioning rulemaking, Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, completed on September 22, 1998 (63 FR 50465), as well as in the NRC's overall regulatory framework. Thus, the petitioner has not provided any new significant information that would cause NRC to grant any portion of the petition. Also, the petitioner has not raised any issues that were not considered in that rulemaking. For the foregoing reasons, the NRC concludes that this petition should be denied.

For reasons cited in this document, the Commission denies the petition.

Dated at Rockville, Maryland, this 13th day of July, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–17951 Filed 7–17–01; 8:45 am]

BILLING CODE 7590–01–P

[1] "Viability Assessment of a Repository at Yucca Mountain," U.S. Department of Energy (DOE–RW–0508), December 1998, page 36.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–58–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace H.P. 137 Mk1, Jetstream Series 200, and Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 98–13–03, which currently requires repetitive inspections of the main landing gear (MLG) hinge fittings, support angles, and attachment bolts on British Aerospace H.P. 137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes. This AD also requires eventual installation of improved design MLG hinge fittings as terminating action for the repetitive inspections of the hinge fittings and attachment bolts. This AD specifies repetitive inspections of the support angles for those airplanes with the approved design MLG hinge fittings installed. However, the applicability of AD 98–13–03 exempts those airplanes with the improved design MLG hinge fittings installed from the actions of the AD. The proposed AD would retain the requirements of AD 98–13–03 and would remove from the applicability the exemption of those airplanes with the improved design MLG hinge fittings installed. The actions specified by the proposed AD are intended to detect, correct, and prevent future fatigue cracking of the MLG, which could result in structural failure of the MLG and consequent loss of airplane control during takeoff, landing, or taxi operations.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before August 30, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–58–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on the Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clear, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–58–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action on the Main Landing Gear (MLG) Hinge Fittings, Support Angles, and Attachment Bolts on British Aerospace H.P. 137 Mk1, Jetstream Series 200, and Jetstream Model 3101 Airplanes to This Point?

On June 8, 1998, FAA issued AD 98–13–03, Amendment 39–10591 (63 FR 33532, June 19, 1998). This AD currently requires the following on the above-referenced airplanes:

—Repetitive inspections of the MLG hinge fitting, support angles, and attachment bolts, and repairing or replacing any part that is cracked; and

—Eventual installation of improved design MLG hinge fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), as terminating action for the repetitive inspections of the hinge fittings and attachment bolts. This AD specifies repetitive inspections of the support angles for those airplanes with the approved design MLG hinge fittings installed. However, the applicability of AD 98–13–03 exempts those airplanes with the improved design MLG hinge fittings installed from the actions of the AD.

Accomplishment of these actions is required in accordance with the following service information:

—British Aerospace Jetstream Mandatory Service Bulletin (MSB) No. 7/5, which includes procedures for inspecting the left and right main landing gear hinge attachment nuts to the auxiliary and aft spars for signs of relative movement between the nuts and hinge fitting on H.P. 137 MK1 and Jetstream series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision level	Date
2 and 4	Original Issue	March 31, 1982.

Pages	Revision level	Date
1 and 3	Revision 1	May 23, 1988.

—British Aerospace MSB No. 7/8, which includes procedures for inspecting the MLG hinge fitting for cracks, and repairing cracked hinge fittings on H.P. 137 MK1 and Jetstream series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8	Revision 2	January 6, 1983.
1, 3, and 4	Revision 3	May 23, 1988.

—Jetstream Alert Service Bulletin (ASB) 32–A–JA 850127, which includes procedures for inspecting the MLG hinge fitting and support angle for cracks on Jetstream Model 3101 airplanes. This ASB incorporates the following effective pages:

Pages	Revision level	Date
5 through 14	Original Issue	April 17, 1985.
1 through 4	Revision 2	November 11, 1994.

—Jetstream Service Bulletin (SB) 57–JM 5218 which includes procedures for installing improved design MLG hinge fittings, P/N 1379133B1 and 1379133B2 (Modification 5218), on H.P. 137 Mk1, Jetstream series 200, and certain Jetstream Model 3101 airplanes. This SB incorporates the following effective pages:

Pages	Revision level	Date
3, 5, 6, 7, 8, 9, 11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31.	Revision 1	September 29, 1987.
25 and 26	Revision 2	August 24, 1988.
10 and 20	Revision 3	January 29, 1990.
1, 2, 4, 13, 14, 15, and 16	Revision 4	October 31, 1990.

The actions of AD 98–13–03 are consistent with the FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections.

The alternative to installing improved design MLG hinge fittings would be to repetitively inspect this area for the life of the airplane.

What Has Happened Since AD 98–13–03 To Initiate This Action?

The applicability of AD 98–13–03 exempts those airplanes with the improved design MLG hinge fittings installed from the actions of the AD. The exemption of those airplanes with the improved design MLG hinge fittings installed should be removed and all affected airplanes should have the support angles repetitively inspected.

The FAA's Determination and Explanation of the Provisions of the Proposed AD. What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the information described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other British Aerospace H.P. 137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes of the same type design;

—The repetitive inspections of the MLG support angles should be accomplished on all affected airplanes, even those with the improved design MLG hinge fittings installed; and

—AD action should be taken in order to detect, correct, and prevent future fatigue cracking of the MLG, which could result in structural failure of the MLG and consequent loss of airplane control during takeoff, landing, or taxi operations.

What Would the Proposed AD Require?

This proposed AD would supersede AD 98–13–03 with a new AD that would:

—Retain the requirements of repetitively inspecting the main landing gear (MLG) hinge fittings, support angles, and attachment bolts and repairing any cracked part;

—Require eventual installation of improved design MLG hinge fittings as terminating action for the repetitive inspections of the hinge fittings and attachment bolts; and

—Require repetitive inspections of the MLG support angles on all affected airplanes, even those with the improved design MLG hinge fittings installed.

Accomplishment of the proposed actions would be required in accordance with the previously-referenced service information.

Cost Impact

How Many Airplanes Would the Proposed AD Impact?

We estimate that the proposed AD affects up to 236 airplanes in the U.S. registry.

What Would Be the Cost Impact of the Proposed AD on Owners/Operators of the Affected Airplanes?

The FAA estimates that the proposed AD would affect 71 airplanes in the U.S. registry. We estimate the following costs to accomplish the proposed actions:

	Labor cost	Parts cost	Per airplane cost	Fleet cost
Initial Inspection	61 workhours × $60 per hour = $3,660.	Not Applicable	$3,660 per airplane	71 airplanes × $3,660 = $259,860.
Hinge Fitting Installation	210 workhours × $60 per hour = $12,600.	British Aerospace will provide at no cost.	12,600 per airplane	71 airplanes × $12,600 = $894,600.
Repetitive Support Angle Inspections.	10 workhours × $60 per hour = $600 per inspection.	Not Applicable	600 per airplane per inspection.	71 airplanes × $600 = $42,600 per inspection.

The cost figures presented above are the same as those presented in AD 98–13–03. The only additional impact the proposed AD would have is the repetitive support angle inspections on those airplanes with improved design hinge installations at the effective date of AD 98–13–03.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–13–03, Amendment 39–10591 (63 FR 33532, June 19, 1998), and by adding a new AD to read as follows:

British Aerospace: Docket No. 2000–CE–58–AD; Supersedes AD 98–13–03, Amendment 39–10591.

(a) *What airplanes are affected by this AD?* This AD affects the following model and serial number airplanes that are certificated in any category:

Model Serial	Nos.
HP137 Mk1	All serial numbers.
Jetstream Series 200	All serial numbers.
Jetstream 3101	601 through 695.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by the AD are intended to detect, correct, and prevent future fatigue cracking of the main landing gear (MLG), which could result in structural failure of the MLG and consequent loss of airplane control during takeoff, landing, or taxi operations.

Note 1: The compliance times of this AD are presented in landings. If you do not keep the total number of landings, then you may multiply the total number of airplane hours time-in-service (TIS) by 0.75.

(d) *What actions must I accomplish to address this problem on the affected airplanes?* To address this problem, accomplish the following:

Action	Compliance	Procedures
(1) For the H.P. 137 Mk1 and Jetstream 200 series airplanes, accomplish the following if part number (P/N) 1379133B1 (or FAA-approved equivalent P/N) and P/N 1379133B2 (or FAA-approved equivalent P/N) MLG hinge fittings are not installed: (i) Inspect the MLG hinge attachment nuts to auxiliary and aft spars on both the left and right MLG for signs of fuel leakage or signs of relative movement between the nuts and hinge fitting. (ii) If any signs of fuel leakage or relative movement between the nuts and hinge fitting are found during any inspection required by paragraph (d)(1)(i) of this AD, resecure the MLG hinge fitting to auxiliary spar. (iii) You may terminate the above inspections when improved design MLG hinge fittings, P/N 1379133B1 and 1379133B2, are installed.	Inspect within the next 50 landings after June 8, 1998 (the effective date of AD 98–13–03) or within 200 landings TIS after the last inspection required by AD 98–13–03, whichever occurs later, and thereafter at intervals not to exceed 200 landings. Resecure the MLG hinge fitting prior to further flight after the applicable inspection.	Use the service information presented in paragraph (e)(1) of this AD.

Action	Compliance	Procedures
(2) For all airplanes regardless of the MLG hinge fitting installed, inspect the MLG hinge support angles for cracks. If any crack(s) is/are found in the support angles, replace the cracked MLG hinge fitting(s) with a P/N 1379133B1 (or FAA-approved equivalent P/N) or P/N 1379133B2 (or FAA-approved equivalent P/N) fitting.	Inspect upon accumulating 4,000 landings on the MLG fitting or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 400 hours TIS. Accomplish any necessary replacement prior to further flight after the inspection where the cracked support angle(s) is/are found.	Inspect in accordance with the service information presented in paragraph (e)(2) or (e)(3) of this AD, as applicable. Replace in accordance with the service information presented in paragraph (e)(4) of this AD.
(3) For all airplanes, install improved design MLG hinge fittings, P/N 1379133B1 (or FAA-approved equivalent P/N) and P/N 1379133B2 (or FAA-approved equivalent P/N). (i) Incorporating both P/N 1379133B1 (or FAA-approved equivalent P/N) and P/N 1379133B2 MLG (or FAA-approved equivalent P/N) hinge fittings terminates the repetitive inspection requirement of paragraphs (d)(1)(i) and (d)(1)(ii) of this AD. (ii) The repetitive inspections of the MLG support angles required by paragraph (d)(2) of this AD are still required.	Upon accumulating 20,000 landings on each MLG hinge fitting or within the next 50 landings after June 8, 1998 (the effective date of AD 98–13–03), whichever occurs later, unless already accomplished.	In accordance with the service information presented in paragraph (e)(4) of this AD.
(4) Do not install, on any affected airplane, MLG hinge fittings that are not P/N 1379133B1 (or FAA-approved equivalent P/N) or P/N 1379133B2 (or FAA-approved equivalent P/N).	As of the effective date of this AD	Not Applicable.

(e) *What service information applies to this AD?* You must accomplish the actions of this AD in accordance with the following service bulletins:

(1) British Aerospace Jetstream Mandatory Service Bulletin No. 7/5, which applies to the affected H.P. 137 MK1 and Jetstream series 200 airplanes and incorporates the following pages:

Pages	Revision level	Date
2 and 4	Original Issue	March 31, 1982.
1 and 3	Revision 1	May 23, 1988.

(2) British Aerospace Mandatory Service Bulletin No. 7/8, which applies to the affected H.P. 137 MK1 and Jetstream series 200 airplanes and incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8	Revision 2	January 6, 1983.
1, 3, and 4	Revision 3	May 23, 1988.

(3) Jetstream Alert Service Bulletin 32–A–JA 850127, which applies to the affected Jetstream Model 3101 airplanes and incorporates the following effective pages:

Pages	Revision level	Date
5 through 14	Original Issue	April 17, 1985.
1 through 4	Revision 2	November 11, 1994.

(4) Jetstream Service Bulletin 57–JM 5218, which applies to all of the affected airplanes and incorporates the following effective pages:

Pages	Revision level	Date
3, 5, 6, 7, 8, 9, 11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31.	Revision 1	September 29, 1987.
25 and 26	Revision 2	August 24, 1988.
10 and 20	Revision 3	January 29, 1990.
1, 2, 4, 13, 14, 15, and 16	Revision 4	October 31, 1990.

(f) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjustment of the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance approved in accordance with AD 98–13–03, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 671715. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(j) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 98–13–03, Amendment 39–10591.

Issued in Kansas City, Missouri, on July 11, 2001.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17866 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN137–1b; FRL–7003–9]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to particulate matter (PM) emissions regulations for Cerestar USA, Inc. (Cerestar). Cerestar is located in Lake County, Indiana. The Indiana Department of Environmental Management (IDEM) submitted the revised regulations on February 16, 2001, as amendments to its State Implementation Plan (SIP). The revisions include the elimination of 18 emission points, the addition of 39 new emission points, and a change in the way the short term emission limits are expressed (from pounds of particulate matter per ton of product to grains per dry standard cubic foot). The revision also changes the name of the facility listed in the rules from American Maize Products (AMAIZO) to Cerestar USA, Inc. These SIP revisions result in an overall decrease in allowed PM emissions of about 48 tons per year (tpy). An air quality modeling analysis conducted by IDEM shows that this SIP revision will not have an adverse effect on PM air quality.

DATES: EPA must receive written comments on this proposed rule by August 17, 2001.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matthew Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What action is EPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Action is EPA Taking Today?

We are proposing to approve revisions to particulate matter (PM) emissions regulations for Cerestar. Cerestar is located in Lake County, Indiana. IDEM submitted the revised regulations on February 16, 2001, as amendments to its SIP. The revisions include the elimination of 18 emission points, the addition of 39 new emission points, and a change in the way the short term emission limits are expressed (from pounds of particulate matter per ton of product to grains per dry standard cubic feet). The revision also changes the name of the facility listed in the rules from American Maize Products (AMAIZO) to Cerestar USA, Inc. These SIP revisions results in an overall decrease in allowed PM emissions of about 48 tpy.

II. Where Can I Find More Information about This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 13, 2001.

Gail Ginsberg,

Acting Regional Administrator, Region 5.

[FR Doc. 01–17831 Filed 7–17–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7012–7]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Western Pacific Railroad Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 9 announces its intent to delete the Western Pacific Railroad Superfund Site (Site) located in Oroville, California, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found

at Appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of California, through the California EPA Department of Toxic Substances Control (DTSC), have determined that all appropriate response actions under CERCLA, other than maintenance and five-year reviews, have been completed. Because the Site poses no significant threat to human health or the environment, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning the proposed deletion of this Site from the NPL must be submitted on or before August 17, 2001.

ADDRESSES: Written comments should be mailed to: Holly Hadlock, Remedial Project Manager, U.S. EPA, Region 9, SFD–3, 75 Hawthorne Street, San Francisco, CA 94105.

INFORMATION REPOSITORIES: Comprehensive information on this site is available through the Region 9 public docket which is available for viewing at the EPA Region 9 Superfund Records Center, 95 Hawthorne Street, Suite 403S, San Francisco, CA 94105, (415) 536–2000, Monday through Friday 8:00 a.m. to 4:30 p.m. The Deletion Docket is also available for viewing at the Butte County Library, 1820 Mitchell Street, Oroville, CA, 95966, (530) 538–7642, Tuesday and Wednesday 10:00 a.m. to 8:00 p.m., Thursday 2:00 to 6:00 p.m., Friday 10:00 a.m. to 5:00 p.m., and Saturday 12:00 to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Hadlock, Remedial Project Manager, U.S. EPA, Region 9, SFD–7–1, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–2244; or Jacqueline Lane, Community Involvement Coordinator, U.S. EPA, Region 9, SFD–3, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–2267 or (800) 231–3075.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 9 announces its intent to delete the Western Pacific Site in Oroville, Butte County, California, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of these sites. As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial action in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Western Pacific Railroad Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA in consultation with the state, shall consider whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release of hazardous substances poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and restricted exposure, EPA is required, by statute, to conduct a subsequent review of the site at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site: (1) EPA Region 9 issued a Record of Decision (ROD) on September 30, 1997, that selected the remedial action activities; (2) All appropriate response actions under CERCLA have been implemented as documented in the Final Close Out Report dated June 26, 2001; (3) DTSC has concurred with the proposed deletion; (4) a notice has been published in the local newspapers and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (5) all relevant documents have been made available in the local Site information repository.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this notice, Sec. 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this site, EPA's Regional Office will accept and evaluate public comments before making a final decision to delete. If comments are received, the Agency will prepare a Responsiveness Summary to address those comments. The Responsiveness Summary will be available for review in the Deletion Docket.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis of Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this site from the NPL.

Site Background and History

The Western Pacific Railroad Site occupies approximately 90 acres at the southern end of the City of Oroville in Butte County, California. The Western Pacific Railroad Company operated a fueling and maintenance yard at the Site from the 1880's until 1970. Activities at the Site included locomotive fueling, routine maintenance, and railcar repair such as welding, painting, fabricating, and machining of railcars.

In 1989 the State of California's Regional Water Quality Control Board

issued an Order requiring the current owner, Union Pacific Railroad (UPRR), to investigate an on-site waste pond and the Site groundwater. In 1989 the waste pond was excavated and backfilled with clean fill and a leaking underground storage tank in the Fueling Area was removed. This leaking tank was the source of a plume of groundwater contaminated with volatile organic chemicals (VOCs). EPA placed the Site on the NPL in 1990 due to concerns about groundwater that was contaminated with VOCs and the potential for these chemicals to reach a nearby public drinking water well. In 1991 UPRR dismantled the remaining fueling and maintenance structures on the Site. Currently UPRR uses the rail line on the property to run trains.

Response Actions

EPA made the decision in 1993 to initiate a time-critical removal to contain the VOC plume and prevent it from reaching the nearby downgradient public drinking water well. In August 1993, EPA issued an Action Memorandum with a streamlined risk evaluation selecting groundwater extraction and treatment to contain the contaminants of concern in the groundwater at the Site. That same month EPA and UPRR signed an Administrative Order on Consent, an agreement in which UPRR agreed to perform the groundwater cleanup required by EPA.

In 1994 UPRR installed a groundwater treatment system to pump and treat the VOC-contaminated groundwater. By July 1997 the level of VOCs dropped below the cleanup levels and in November 1999 the groundwater treatment system was turned off. Post-remedial groundwater sampling confirmed that the VOCs were below state and federal drinking water standards.

After the groundwater cleanup was started, UPRR, under a second Administrative Order on Consent, conducted a Remedial Investigation (RI) for the Site soils. The Remedial Investigation and Risk Assessment Report concluded that polycyclic aromatic hydrocarbons (PAHs) and arsenic were present in elevated levels in the top one foot of soil in one acre of the railyard. Because of the Site history and UPRR's future plans for the Site, the risk assessment evaluated the risks for industrial use only, not residential use. The risk assessment concluded that contamination in the Site soil presented an elevated risk to on-site workers and trespassers through dermal contact with soil contaminated with PAHs and arsenic.

The Feasibility Study (FS) evaluated remedial action alternatives for the contaminated soils in the area identified in the RI and Risk Assessment. The FS then provided a detailed analysis of alternatives: (1) Institutional controls only; (2) limited Fueling Area (1 acre) excavation and off-site disposal with institutional controls; and (3) entire Fueling Area (10 acres) excavation and off-site disposal with institutional controls.

Cleanup Standards

On September 30, 1997, EPA issued a Record of Decision (ROD) which selected the following remedy:

- Limited excavation and off-site disposal of approximately 1 acre of PAH-contaminated soil,
- Institutional control(s) that will limit the future use of the property to industrial use only; and
- Extraction and treatment of contaminated groundwater.

The ROD specified that the residual mean concentration for PAHs, converted and presented as benzo(a) pyrene equivalents (B(a)P), must be reduced to 0.41 mg/kg or less. The ROD also concluded that due to the collocation of PAHs and arsenic in soils, by excavating surface soils with PAHs above cleanup levels, all soils contaminated with arsenic at levels of potential concern would also be addressed.

The selected remedy called for the cleanup of the one acre at the Site with the highest levels of contamination. The contamination levels in the other nine acres in the Fueling Area were below action levels for industrial workers and trespassers. The groundwater cleanup, which had been initiated using EPA's removal authority, was incorporated into the ROD, with state and federal Maximum Contaminant Levels (MCLs) as the cleanup standards.

In 1998 UPRR excavated approximately 1,720 tons of contaminated soil, placed it in railcars, and shipped it for disposal to the ECDC Environmental landfill near Price, Utah. Post-excavation confirmation sampling was conducted twice at the site, in July and in December 1998. This sampling confirmed that the residual mean concentration level for PAHs as expressed as B(a)P equivalents was reduced to 0.41 mg/kg or less. The cumulative cancer risk from PAHs and arsenic in the Fueling Area soil was reduced to an excess cancer risk level of approximately 1×10^{-5} (one in one hundred thousand) for on-site workers, which is the level established in the ROD. Final groundwater sampling was conducted in July 2000, with all contaminants remaining below state and federal MCLs. On March 1, 2001, UPRR filed the Covenant to Restrict Use of Property for the Site with Butte County. This covenant prohibits the property's use for:

(a) A residence;
(b) A hospital for humans;
(c) A public or private school for persons under 21 years of age;
(d) A day care center; and
(e) Any other purpose involving residential occupancy on a 24-hour basis.

Operation and Maintenance

UPRR continues to own the property and run trains on its rail lines. Pursuant to the Administrative Order issued by EPA on June 17, 1998, site operation and maintenance to be performed by UPRR includes maintenance of the perimeter fence, informing EPA of any plans to remove contaminated soils during future construction activities, and informing EPA and DTSC of any transfer of property ownership.

Five-Year Review

CERCLA requires a five-year review of all sites with hazardous substances remaining above the health-based levels for unrestricted use of the Site. Since the cleanup of the Western Pacific Railroad Site utilized a restrictive covenant to limit the Site use, five-year reviews will be required at the Site to ensure that the remedy selected for the Site remains protective of human health and the environment. EPA plans to complete the first Five-Year Review prior to September 30, 2002.

Community Involvement

Community relations activities included the publication and distribution of several fact sheets, including the proposed cleanup plan, to local residents. EPA held a public meeting in July 1997 to discuss with the community the previously implemented removal action and the proposed remedial action. EPA received and addressed public comments in the Responsiveness Summary portion of the ROD dated September 30, 1997. A local information repository was established at the Butte County Library in Oroville.

Applicable Deletion Criteria/State Concurrence

All the completion requirements for this site have been met as described in the Final Close Out Report (FCOR) dated June 26, 2001. One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if "responsible parties or other parties have implemented all appropriate response actions required." EPA, with

the concurrence of the State of California through its Department of Toxic Substances Control in a letter dated June 21, 2001, believes that this criterion for deletion has been met. Consequently, EPA is proposing deletion of this site from the NPL. Documents supporting this action are available in the Deletion Docket.

Dated: July 6, 2001.

Jane Diamond,

Acting Regional Administrator, Region 9.

[FR Doc. 01–17832 Filed 7–17–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 520

[Docket No. 00–07]

Public Access Charges to Carrier Automated Tariffs and Tariff Systems Under the Ocean Shipping Reform Act of 1998

AGENCY: Federal Maritime Commission.

ACTION: Proceeding Discontinued.

SUMMARY: The Federal Maritime Commission ("Commission") published an Advance Notice of Proposed Rulemaking on May 16, 2000, seeking comments on the reasonableness of tariff access charges. The Commission determined not to promulgate regulations governing tariff access charges, but rather issued a Circular Letter on October 6, 2000, to provide guidance to common carriers, conferences and tariff publishers with respect to the issue of reasonable fees. Therefore, this proceeding is discontinued.

DATES: This proceeding is discontinued July 18, 2001.

FOR FURTHER INFORMATION CONTACT: Bruce A. Dombrowski, Executive Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5800.

SUPPLEMENTARY INFORMATION: An Advance Notice of Proposed Rulemaking was issued in this proceeding on May 16, 2000 (65 FR 31130), to address the issue of reasonable fees that may be assessed for accessing tariff systems. Based on comments received and existing circumstances, the Commission determined that promulgation of an actual Proposed Rule on this matter was not necessary. Instead the Commission directed the staff to issue a Circular Letter which provided guidance to common carriers, conferences and tariff publishers as to what costs the Commission believed should not be recovered in establishing tariff access fees. The Circular Letter was issued on October 6, 2000.

In view of the foregoing, this proceeding is hereby discontinued.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–17873 Filed 7–17–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1544; MM Docket No. 01–143, RM–10153]

Radio Broadcasting Services; Noblesville, Indianapolis, and Fishers, Indiana

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed by INDY LICO, licensee of Stations WGRL(FM), Noblesville, Indiana, and WGLD(FM), Indianapolis, Indiana proposing the reallotment of Channel 230A from Noblesville, Indiana, to Fishers, Indiana, and the modification of Station WGRL(FM)'s license to reflect the change of community, and the reallotment of Channel 283B from Indianapolis to Noblesville, Indiana, and the modification of Station WGLD(FM)'s license to reflect the change of community. Channel 230A can be reallotted from Noblesville to Fishers at petitioner's licensed site 7.1 kilometers (4.4 miles) north of the community at coordinates 40–00–55 NL, and 85–58–58 WL. Channel 283B can be reallotted from Indianapolis to Noblesville at petitioner's licensed site 26.9 kilometers (16.7 miles) southwest of the community at coordinates 39–50–25 NL and 86–10–34 WL.

DATES: Comments must be filed on or before August 20, 2001, and reply comments on or before September 4, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mark N. Lipp, Shook, Hardy & Bacon, LLP, 600 14th Street, NW., Suite 800, Washington, DC 20005 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–143 adopted June 20, 2001 and released June 29, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Channel 230A at Noblesville and adding Fishers, Channel 230A, by removing Channel 283B at Indianapolis and adding Channel 283B at Noblesville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17926 Filed 7–17–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1594; MM Docket No. 01–148; RM–10141]

Television Broadcasting Services; Campbellsville, Bardstown, Kentucky

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed by Louisville Communications, LLC ("petitioner"), requesting the reallotment of Television Channel 34 and Digital Television Channel 19 from Campbellsville to Bardstown, Kentucky as the community's first local transmission service. Petitioner is asked to provide additional information in support of the requested reallotment, specifically, an analysis of the Urbanized Areas involved using the Commission's relevant cases, and also provide adequate public interest reasons to justify removal of the community's sole local television service. TV Channel 34 can be reallotted from Campbellsville to Bardstown in compliance with the Commission's minimum distance separation requirements at the petitioner's licensed site, at coordinates 37–31–51 NL and 85–26–45 WL. DTV Channel 19 can be reallotted from Campbellsville to Bardstown in compliance with the Commission's minimum distance separation requirements at petitioner's requested site 25.6 kilometers (15.9 miles) northeast of the community at coordinates 37–56–54 NL and 84–14–4 WL.

DATES: Comments must be filed on or before August 27, 2001, and reply comments on or before September 11, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mark N. Lipp, Tamara Y. Brown, Shook, Hardy and Bacon, 600 14th Street, NW., Suite 800, Washington, DC 20005 (counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–148 adopted June 27, 2001, and released July 6, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Kentucky, is amended by removing Campbellsville, Channel 34, and adding Bardstown, Channel 34.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of DTV Allotments under Kentucky, is amended by removing Campbellsville, Channel 19 and adding Bardstown, Channel 19.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17923 Filed 7–17–01; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 66, No. 138
Wednesday, July 18, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Chippewa Creek Watershed, Medina County, Ohio

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Rules (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure III–A in the Chippewa Creek Watershed.

FOR FURTHER INFORMATION CONTACT: Kevin Brown; State Conservationist; Natural Resources Conservation Service; 200 North High Street, Room 522, Columbus, Ohio 43215; telephone 614–255–2500.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national effects on the human environment. As a result of these findings, Kevin Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is flood prevention. The action includes the rehabilitation of one floodwater-retarding dam. The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency; various Federal, state and local agencies; and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Kevin Brown.

No administrative action on implementation of the preferred alternative will be taken until 30 days after the date of this publication in the **Federal Register**.

Kevin Brown,
State Conservationist.

[FR Doc. 01–17900 Filed 7–17–01; 8:45 am]
BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rush Creek Watershed, Fairfield County, OH

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Rules (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation project for Floodwater Retarding Structure VII–C in the Rush Creek Watershed.

FOR FURTHER INFORMATION CONTACT: Kevin Brown; State Conservationist; Natural Resources Conservation Service; 200 North High Street, Room 522, Columbus, Ohio 43215; telephone 614–255–2500.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national effects on the human environment. As a result of these findings, Kevin Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is flood prevention. The action includes removing or relocating two residences and acquiring flowage easements on approximately 425 acres in the breach inundation area of the structure. The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency; various Federal, state and local agencies; and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Kevin Brown. No administrative action on implementation of the preferred alternative will be taken until 30 days after the date of this publication in the **Federal Register**.

Kevin Brown,
State Conservationist.

[FR Doc. 01–17901 Filed 7–17–01; 8:45 am]
BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Upper Hocking Watershed, Hunters Run Structure #8, Fairfield County, CH

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Rules (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure #8 in the Upper Hocking Watershed.

FOR FURTHER INFORMATION CONTACT: Kevin Brown; State Conservationist; Natural Resources Conservation Service; 200 North High Street, Room 522, Columbus, Ohio 43215; telephone 614–255–2500.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant

local, regional, or national effects on the human environment. As a result of these findings, Kevin Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The project purpose is flood prevention. The action includes the rehabilitation of one floodwater-retarding dam. The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency; various Federal, state and local agencies; and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Kevin Brown.

No administrative action on implementation of the preferred alternative will be taken until 30 days after the date of this publication in the **Federal Register**.

Kevin Brown,

State Conservationist.

[FR Doc. 01–17899 Filed 7–17–01; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2002 Economic Census Covering Information; Professional, Scientific, and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services (Except Public Administration) Sectors.

Form Number(s): Various.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,403,061 hours to be imposed in FY 2003.

Number of Respondents: 1,556,857.

Avg Hours Per Response: 54 minutes.

Needs and Uses: This economic census collection will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of more than 2.5 million establishments classified in the North American Industry Classification System (NAICS). The information sector comprises establishments engaged in the following processes: (a) Producing and distributing information and cultural products, (b) providing the means to transmit or distribute these products as well as data or communications, and (c) processing data. The professional, scientific, and technical services sector comprises establishments engaged in processes where human capital is the major input. These establishments make available the knowledge and skills of their employees, often on an assignment basis, where an individual or team is responsible for the delivery of service to a client. The management of companies and enterprises sector comprises two main types of establishments: (a) Those that hold the securities of (or other equity interest in) companies and enterprises; and (b) those (except government establishments) that administer, oversee, and manage other establishments of the company or enterprise. The administrative and support and waste management and remediation services sector comprises establishments performing routine support activities for the day-to-day operations of other organizations. These essential activities are of the type often undertaken in-house by establishments in many sectors of the economy. The educational services sector comprises establishments providing academic or technical instruction or educational support services such as student exchange programs and curriculum development. The health care and social assistance sector comprises establishments that provide health care and social assistance to individuals. The arts, entertainment, and recreation sector comprises establishments that operate facilities or provide services to meet varied cultural, entertainment, and recreational interests of their patrons. This sector includes (a) establishments that are involved in producing, promoting, or participating in live performances, events, or exhibits intended for public viewing; (b) establishments that preserve and exhibit objects and sites of historical, cultural, or educational interest; and (c) establishments that operate facilities or provide services that enable patrons to participate in recreational activities or pursue amusement, hobby, or leisure time interests. The other services, except public administration sector comprises establishments in one of the following subsectors: repair and maintenance; personal and laundry services; and religious, grantmaking, civic, and professional and other similar organizations. The public administration sector is out of scope to the economic census. The U. S. Census Bureau conducts the quinquennial census of governments and other current programs that measure the activities of government establishments.

The economic census will produce basic statistics by kind of business for number of establishments, receipts/revenue, payroll, and employment. It also will yield a variety of subject statistics, including sources of receipts or revenue, receipts by class of customer, and other industry-specific measures, such as exported services or personnel by occupation. Basic statistics will be summarized for the United States, states, and metropolitan areas, and counties; for places having 2,500 inhabitants or more; and for ZIP code areas. Tabulations of subject statistics also will present data for the United States and, in some cases, for states.

Affected Public: Businesses or other for-profit; Individuals or households; Not-for-profit institutions; State, local or Tribal Governments.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 and 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 13, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17963 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: NATO International Competitive Bidding (ICB) Bidders List Application.

Agency Form Number: ITA–4023P.

OMB Number: 0625–0055.

Type of Request: Regular Submission.

Estimated Burden: 40 hours.

Estimated Number of Respondents: 40.

Est. Avg. Hours Per Response: 1 hour.

Needs and Uses: Opportunities to bid for contracts under the NATO Security Investment Program (NSIP) are only open to firms of member NATO countries. NSIP procedures for international competitive bidding (AC/4–D/2261) require that each NATO country certify that their respective firms are eligible to bid such contracts. This is done through the issuance of a "Declaration of Eligibility." The U.S. Department of Commerce/ITA is the executive agency responsible for certifying U.S. firms. ITA–4023P is the application form used by USDOC/ITA to collect information needed to ascertain the eligibility of a U.S. firm. ITA reviews the application for completeness and accuracy and determines a company's eligibility based on its financial viability, technical capability, and security clearances with the Department of Defense.

Affected Public: Business or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: July 13, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17968 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: BISNIS Finance Link.

Agency Form Number: None.

OMB Number: 0625–0231.

Type of Request: Regular Submission.

Estimated Burden: 33 hours.

Estimated Number of Respondents: 200.

Est. Avg. Hours Per Response: 10 minutes.

Needs and Uses: The International Trade Administration's Business Information Service for the Newly Independent States offers business intelligence and counseling to U.S. companies seeking to export or invest in the countries of the former Soviet Union. One of the essential components of BISNIS's services is assisting companies in locating suitable financing for exports. Often, official sources, such as the Export-Import Bank of the United States, cannot handle all requests for a variety of reasons. FinanceLink is an internet-based service to facilitate contact between exporters and financing agencies. Exporters fill out a form giving relevant details about the desired transaction and submit it via Internet to BISNIS; BISNIS will, in turn, distribute the information collected to potential financing agencies. The intention is to provide a service that benefits both exporters and financing agencies.

Affected Public: Business or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: July 13, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17969 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No. 010712176–1176–01]

Notice of Receipt of Petition for Exemption from the Requirements of Section 7(a)(2) of the Endangered Species Act

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice.

SUMMARY: The Secretary of Commerce announces the receipt of a petition filed by Pacific Legal Foundation (PLF or Petitioner) requesting that the Klamath 2001 Operations Plan (Plan) be exempted from the requirements of section 7(a)(2) of the Endangered Species Act. Under Department of Commerce regulations implementing the Endangered Species Act, the Secretary is required to give the public prompt notice of the receipt of such a petition. The intended effect of this notice is to give such public notification.

DATES: The Secretary of Commerce or his designee will make a determination as to whether the petition for exemption meets the requirements for an application for such an exemption no later than July 15, 2001. If the Secretary of his designee determines that the petition meets the requirements for an application, the Secretary or his designee will conclude a threshold review no later than July 25, 2001.

ADDRESSES: Copes of the petition for exemption are available for inspection in Room 5876 of the Herbert C. Hoover Building, 14th St. and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Chief Counsel for Regulation, at (202) 482–4144.

SUPPLEMENTARY INFORMATION: On July 5, 2001, PLF filed a petition for exemption from the requirements of section 7(a)(2) of the Endangered Species Act for the Plan. PLF filed the petition on behalf of the Klamath Irrigation District in Oregon and the Tulelake Irrigation District in California. PLF asserts that the halting of delivery of water for irrigation pursuant to the Plan, aimed at protecting Coho salmon and two species of sucker fish, threatens certain

communities in California and Oregon and threatens other wildlife habitat.

Set forth below is a copy of the petition for exemption, without attachments:

David E. Haddock; Anne M. Hayes, M. Reed Hopper, Pacific Legal Foundation, 10360 Old Placerville Road, Suite 100, Sacramento, California 95827, Telephone: (916) 362–2833, Facsimile: (916) 362–2932, Attorneys for Klamath Irrigation District, and Tulelake Irrigation District.

Introduction

On April 6, 2001, the Untied States Bureau of Reclamation adopted the Klamath Project 2001 Operations Plan pursuant to Biological Opinions issued by the United States Fish and Wildlife Service on April 5, 2001, and the National Marine Fisheries Service on April 6, 2001. These Biological Opinions require that surface elevations of reservoirs in the Klamath Irrigation Project (Klamath Project or Project), and river flow because Iron Gate Dam, must be maintained at such high levels that water will not be made available to irrigators this year.

Until recently the Klamath Project had been operated chiefly for the purpose of making water available to irrigators, who paid for the construction of the project, and contracted with the United States for the delivery of water. In recent years, however, concern about impacts on endangered species has shifted the Project's focus away from irrigation in favor of environmental enhancement. This year, delivery of water for irrigation was halted because of questionable concerns about two species of sucker fish and the Coho salmon. As a result of these actions, other wildlife habitat is threatened, and area communities are being destroyed.

Because delivery water according to Project contracts is likely to have little detrimental impact on endangered species, and operating the Project to withhold water will destroy both wildlife habitat and human communities, applicants Klamath Irrigation District and Tulelake Irrigation District ask the Endangered Species Committee to exempt the operation of the Klamath Project from the water use restrictions imposed under the Endangered Species Act; the Klamath Project should be allowed to operate according to historical practice, as the Bureau of Reclamation proposed in this action.

The applicants for exemption are irrigation districts depend on water supplies from the Klamath Project. Applicants represent water users who hold the beneficial interests in water rights established at the turn of the last century and earlier. For almost 100 years, they and their ancestors have toiled to support their families and build their communities which are dependent on agriculture. They are entitled to Project water delivered through Project facilities pursuant to contracts with the U.S. Bureau of Reclamation ("Reclamation") and have done all they promised to do under those contracts. The United States has a duty under those contracts and reclamation law to preserve and protect the water supply for irrigation purposes.

The Klamath Project is a federal water project that lies within the Klamath River basin, straddling the border between Oregon and California. It was created pursuant to the Reclamation Act, enacted by Congress in 1902. The 1902 Act provided for federal financing of irrigation works, with the construction cost to be repaid over time by Project water users. Lands were made available to homesteaders who accepted the responsibility to undertake improvements and pay water changes. In May of 1905, the federal government specifically authorized the development of the Klamath Project pursuant to the 1902 Act.

The irrigable lands of the Klamath Project are in South-Central Oregon (62%) and North-Central California (38%). The Project provides full service water to approximately 240,000 acres of cropland. The total drainage area, including the Lost River and the Klamath River watershed above Keno, Oregon, is approximately 5,700 square miles. The Project consists of many dams, reservoirs, canals, tunnels, and pumping plants in both states. Various streams, springs, and other tributaries flow into upper Klamath Lake. Near the City of Klamath Falls, the lake's outlet is Link River, which eventually becomes Lake Ewauna and the Klamath River. After joining with numerous tributaries in California, the Klamath River discharges to the Pacific Ocean, at a point about 220 miles from Klamath Falls.

The Klamath Project delivers water under water rights that were originally obtained under state law. For example, with encouragement from the State of Oregon, the Untied States, acting through the U.S. Bureau of Reclamation, appropriated all the water of the Klamath River and its tributaries for use in the Project. Reclamation also acquired additional preexisting water right by purchase from private parties.

Lands within the Klamath Project have many different legal histories. Some landowners were issued certificates of Project water rights or had their own individual contracts with the government providing for delivery of water through project facilities in the early years of the Project. Many other landowners receive deliveries of Project water from various irrigation districts which, in turn, receive Project water pursuant to contracts with United States. The contracts also define the obligations of water users for repayment of construction costs and for reimbursement of operation charges for any facilities still operated by the Bureau of Reclamation. In many cases, irrigation districts have assumed full responsibility for operation and maintenance of federally constructed Project facilities.

Historically, the Klamath Project operated primarily to conserve and deliver water for irrigation use. However, in 1988, the shortnose sucker and the Lost River sucker, two species that live in Upper Klamath Lake, were designated as "endangered" under the Endangered Species Act. Since that time the U.S. Fish and Wildlife Service has scrutinized operation of the Klamath Project to ensure that operation of the Project does not jeopardize the continued existence of these species.

Under section 7(a)(2) of the Endangered Species Act, each federal agency is required to consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (for anadromous fish) to "insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of any endangered species or threatened species." Pursuant to this provision, the Bureau of Reclamation initiated consultation with these agencies as it has developed operating plans for the Project. As a result of section 7 consultation, in 1992 and 1994 the Fish and Wildlife Service issued Biological Opinions that required the Project to maintain minimum reservoir elevations to protect the suckers. These operating elevations were adopted by the Bureau of Reclamation.

In 1995, the Bureau of Reclamation announced that it would develop a plan for the long-term operation of the Project. Rather than adopt a long-term operating plan before the 1996 growing season, as was expected, the Bureau of Reclamation issued a series of interim one year operating plans. These plans contained new standards for maintaining lake levels and stream flow conditions. Under these new standards, the irrigators were eligible to receive only the water left over after new standards for holding and releasing water were satisfied. Although new standards were in force during these years, water deliveries were not reduced

because supply was sufficient. This changed in 2001.

On February 13, 2001, the Bureau of Reclamation released its Final Biological Assessment for proposed operation of the Klamath Project for 2001, and thereby initiated consultation with the Fish and Wildlife Service and the National Marine Fisheries Service under section 7 of the Endangered Species Act. This consultation concluded when the Services issued new Biological Opinions requiring that Reclamation maintain minimum flows and minimum reservoir elevations. On April 6, 2001, the Bureau of Reclamation released the Klamath Project 2001 Operations Plan adopting these standards, and, for the first time in the history of the Project, prohibited all water diversions for the irrigation of tens of thousands of acres of farmland. That prohibition on water diversions has created a crisis. It has subjected approximately 1,400 farms and many more families to potential economic ruin and caused damage to the very ecosystem the government was try to protect.

But this crisis is entirely of the government's making. Beginning almost a century ago, the United States enticed homesteaders to the Klamath area with promises of guaranteed water. In exchange for these homesteaders' agreement to pay the costs of building the very project in question here, the United States entered into binding contracts to provide water for irrigation in perpetuity. Later, the United States enacted the Endangered Species Act which, according to current federal policy, requires government agencies to withhold promised water for species preservation. Government officials oversee the Klamath Project, as they have since its construction.

Government biologists prepared the environmental assessment and the Biological Opinions that were applied to deprive exemption applicants of their water. The water users have done nothing to create or exacerbate the problem. They have merely irrigated their fields with water that the United States promised them. Without water, most fields are unplanted this year. Some perennial crops persist from prior years, but their demise is almost certain because of the lack of water from the Project. Unfortunately, the government has not remedied this situation, and restrictions on water use persist. Therefore applicants seek an exemption from these water use restrictions.

II. Application for Exemption

Under 50 CFR 451.02 (2001), an application for exemption to the Endangered Species Committee must include the following information.

1. Name, mailing address, and phone number, including the name and telephone number of an individual to be contacted regarding the application.

David E. Haddock, Pacific Legal Foundation, 10360 Old Placerville Road, Suite 100, Sacramento, CA 95827, *deh@pacificlegal.org*, Telephone: (916) 362–2833, Facsimile: (916) 362–2932.

2. A comprehensive description of the applicant's proposed action.

The general action at issue here is the Bureau of Reclamation's proposed operation of the Klamath Project in accordance with historical precedents. The Project supplies water to irrigation districts and other individual irrigators pursuant to contracts with the United States and established water rights. A comprehensive description of the proposed action can be found in the April 5, 2001, Biological Opinion for the suckers and bald eagle, attached as Appendix B.

3. A description of the permit or license sought from the federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial.

Exemption applicants are parties to contracts with the Bureau of Reclamation for the delivery of irrigation water from the Klamath Project. Since these contracts give exemption applicants "the right in perpetuity * * * to receive from the Klamath Project all water needed * * * for beneficial irrigation uses," in 1991 Reclamation initiated consultation with the U.S. Fish and Wildlife Service to ensure that fulfilling Reclamation's duties under this and other contracts would not jeopardize the continued existence of two endangered fishes, the Lost River sucker (Deltistes luxatus) and shortnose sucker (Chasmistes brevirostris).[1] As a result of this and additional consultation, Biological Opinions were issued by the U.S. Fish and Wildlife Service in 1992 and 1994 that permitted the continued operation of the Project under reasonable and prudent alternatives designed to avoid jeopardy to suckers. In December, 2000, Reclamation reinitiated consultation with the Fish and Wildlife Service on continuing operations of the Klamath Project.

In its final Biological Assessment dated February 13, 2001, Reclamation stated that it proposed "continuing operation of the Klamath Project to supply water to Project users and refuges." The Biological Opinion issued by the U.S. Fish and Wildlife Service on April 5, 2001, which required reservoir surface elevations so high as to eliminate water deliveries to Project contractors, grew out of this reinitiation of consultation that began in late 2000. Similar restrictions relating to minimum flows below Iron Gate Dam were imposed by the National Marine Fisheries Service in its Biological Opinion relating to the Coho salmon, released April 6, 2001.

On April 6, 2001, the Bureau of Reclamation formally denied Project contractors the water they are entitled to by formally adopting the Klamath Project 2001 Annual Operations Plan. While acknowledging that "Reclamation has contractual obligations to Project water users to provide water primarily for domestic and irrigation uses," the 2001 Operations Plan eliminated water deliveries by adopting the minimum reservoir elevation levels and minimum stream flows required by the Federal agencies' Biological Opinions.

4. A description of all permit(s), license(s), or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before it can proceed with the proposed action.

Exemption applicants are parties to contracts with the United States to receive Klamath Project water for beneficial irrigation uses in perpetuity. The present contracts have been in force for more than 40 years, are in effect now, and will continue to be in effect in future years. No other legal requirements need to be satisfied for exemption applications to receive water promised under the contracts. See water contracts attached at Appendix H and Appendix I.

5. A copy of the permit or license denial.

Exemption applicants were denied their right to receive water from the Klamath Project by operation of the Bureau of Reclamation's Klamath Project 2001 Operations Plan, issued April 6, 2001. The 2001 Operations Plan incorporated requirements of the Fish and Wildlife Service and National Marine Fisheries Service's Biological Opinions to eliminate water deliveries. See attached, Appendix E.

6. A copy of the biological assessment, if one was prepared.

See attached, Appendix A.

7. A copy of the Biological Opinion.

See attached, Appendix B.

8. A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the applicant.

As noted in Item 3 above, consultation was initiated by the Bureau of Reclamation in December, 2000. A Draft Biological Opinion for the suckers and the bald eagle was released by the

Fish and Wildlife Service on March 13, 2001. The Final Biological Opinion was prepared in a scant 23 days, and was released in final form on April 5, 2001, presumably to ensure that exemption applicants would receive no water in time for planting this year.

Consultation with the National Marine Fisheries Service was concluded on April 6, 2001, with the release of the Biological Opinion relating to the Coho salmon. A further description of the consultation process as it concerns the 2001 Operations Plan may be found in the attached April 5, 2001, Biological Opinion for the suckers and bald eagle, Section I, Page 1, entitled "Consultation History" (Appendix B), and the April 6, 2001, Biological Opinion for the Coho salmon at Page 1 (Appendix D).

9. A description of each alternative to the proposed action considered by the applicant, and to the extent that such information is available to the applicant, a description of each alternative to the proposed action considered by the federal agency.

As part of the proposed action presented in its Biological Assessment for the suckers, the Bureau of Reclamation incorporated both planned and ongoing provisions of the Fish and Wildlife Service's 1992 and 1994 Biological Opinions, including mitigation measures, Reasonable and Prudent Alternatives, Reasonable and Prudent Measures, and Incidental Take Statement terms and conditions. These measures are described in Reclamation's February 13, 2001, Biological Assessment, Section 13, entitled "Appendix 1 ESA Consultation Review," and in the Fish and Wildlife Service's April 5, 2001, Biological Opinion, Section I.1, entitled "Consultation History." These documents are attached to this application at Appendix A and Appendix B.

In addition to alternative proposed in prior Biological Opinions, the Fish and Wildlife Service has identified what it call "[a] reasonable and prudent alternative (with 8 elements)." This so-called alternative is fully described in Section III, Part 2, Page 143, of the April 5, 2001, Biological Opinion, beginning at Item 6.0. Although the alternative is described as having eight elements, the Biological Opinions lists only six: (1) Maintenance of Minimum Surface Elevations in Upper Klamath Lake; (2) Operation Plan for Low Water Year; (3) Adaptive Management through Water Quality Monitoring and Reporting; (4) Entrainment Reduction and Fish Passage at A-Canal and Link River Dam and Monitoring and Restoration of Sucker Habitats from Keno to Link River; (5) Management of UKL Water Quality Refuge Areas and Emergent Vegetation Habitats; and (6) Maintain Minimum Lake Levels in Clear Lake, Gerber Reservoir, and the Tule Lake Sump. The Biological Opinion for the Coho Salmon also presents a so-called Reasonable and Prudent Alternative that requires stream flows at higher than historical levels. See Appendix B.

10. A statement describing why the applicants' proposed action cannot be altered or modified to avoid violating section 7(a)(2) of the Act

As an initial matter, serious questions about the scientific conclusions of the Biological Opinions persist. As discussed below, it is doubtful that operating the Project according to historical practice would have any detrimental impact on the survival of the species. Consequently, it is not clear, despite the conclusions of the Fish and Wildlife Service and the National Marine Fisheries Service, that the proposed action would in fact violate section 7(a)(2).

Contracts with the United States entitle exemption applicants to receive irrigation water from the Klamath Project. However, the alternatives described in the Biological Opinions, which were adopted by the Bureau of Reclamation in its 2001 Operations Plan, set reservoir elevations and stream flows so high that they effectively prohibit water from being made available to exemption applicants in low water years, such as this year. Federal officials claim no water can be diverted for irrigation purposes without violating section 7(a)(2) of the Endangered Species Act.

11. A description of resources committed to the proposed action by the permit or license applicant subsequent to the initiation of consultation.

Klamath Project water has been used continuously for almost 100 years. Applicants, and others like them, commit significant resources each year, including this year, in anticipation of receiving water from the Klamath Project. To prepare for the growing season, exemption applicants must plow fields, purchase seed, pay rent on leased farmland, and hire labor. Some of this preparation has followed the initiation of consultation by the Bureau of Reclamation. Exemption applicants committed these resources because every year prior to 2001 the United States has honored its contractual obligation to make water available through the Project. Exemption applicants expected that the United States would honor its contractual duty in 2001 as well. But because the United States has failed to make water available, resources committed to preparing for the 2001 growing season have been wasted. As a result, literally hundreds of farms are facing the possibility of economic ruin.

12. A complete statement of the nature and the extent of the benefits of the proposed action.

Ordinary water use provided by the Klamath Project offers substantial environmental, economic and social benefits. For example, water from the Klamath Project supports one of the most important staging areas for migratory waterfowl on the Pacific Flyway. Over 430 documented species of wildlife, including the largest wintering concentration of bald eagles in the lower 48 states, depend in part upon water diversions from the Project, diversions that are no longer allowed. Through direct releases and agricultural runoff, the Klamath Project supplies water for the lower Klamath and Tulelake national wildlife refuges. Water used for agriculture also serves environmental values by providing food and habitat for waterfowl and other wildlife.

In addition, the Klamath Basin produces $100 million in hay, grains, and vegetables each year. The agricultural industry supported by the Klamath Project includes 1,400 farms totaling more than 210,000 acres. Klamath farms produce livestock, barley, oats, wheat, potatoes, sugar beets, and forage. Approximately 110,000 acres serve as forage, including forage for migrating waterfowl and other wildlife; 57,000 acres are planted in cereal crops; 16,000 acres in vegetables; 7,000 acres are planted in cereal crops; 16,000 acres in vegetables; 7,000 acres in miscellaneous field crops; 298 acres in seed crops; and 227 acres in nursery crops.

The Klamath investment in agriculture produces an additional $250 million in economic activity in the various agriculturally dependent communities throughout the region. Livestock herds, that are being liquidated as a result of the lack of water this year, are worth another $100 million in replacement costs.

This traditional use of the Klamath Project for irrigation and other purposes guards against the catastrophic destruction of the Klamath Basin and the families and farms in the region, including disastrous effects on the economy and environment. Klamath farming communities and a rural way of life are dependent on regular water diversions from the Klamath Project.

Without water, farms cannot operate, and farm workers will be unemployed. Without farmers to buy seed, supplies,

and equipment, the infrastructure of small businesses that support agriculture will collapse. In turn, restaurants, grocery stores, and other small community businesses will lose their customer base. Property values will plummet, loans will be in default, and county tax revenues will spiral downward.

The farmers and communities in the Klamath Basin have committed their livelihoods, their way of life, and the welfare of their families to cultivation of the region's agriculture, based on the water promised to them by the government through he Klamath Project.

Some individual farmers stand to lose nearly half a million dollars in potential income, based on resources that were long ago committed to farming the land. The predicament of David Cacka is typical of what is happening in the basin. Cacka runs a farming operation. He owns 80 acres of land and leases an additional 420 acres, some of which is owned by his father, some of which is owned by an elderly widow, and some of which is owned by other retired individuals. Each of Mr. Cacka's landlords depends for their livelihood on the rent he pays them. Cacka raises potatoes, grain, and alfalfa. He has one full-time employee and up to nine seasonal employees in his farming operation. Operating expenses for the farming business run as high as $400,000 per year, all of which is spent in the economy of the Klamath Basin. See Declaration of David Cacka in Support of Plaintiffs' Motion for Preliminary Injunction, Kandra v. United States, No. 01–6124–TC, 2001 U.S. Dist. LEXIS 6932 (D. Or. Apr. 30, 2001), attached at Appendix J.

Because of the loss of water due to the application of the Endangered Species Act to the Klamath Project, Cacka has had to leave idle farmland that has been in continuous production for 91 years. He will not have any employees, and will not be able to support the local businesses or contribute to the local economy. He and the other farmers in the Klamath Basin who depend upon water from the Klamath Project are facing economic hardship, if not outright ruin. Id.

Because the region developed and grew based on a century-old water rights agreement with the United States government, virtually the entire community has its resources committed to receiving its allocation of water from the Klamath Project, including schools, fire departments, libraries, parks, churches, community service organizations, and businesses, as well as county and city governments.

13. A complete discussion of why the benefits of the proposed action clearly outweigh the benefits of each considered alternative course of action.

The Biological Opinions, and the 2001 Operations Plan that was adopted pursuant to them, did not consider any alternative that would actually allow the exemption applicants to receive water. If such alternatives had been considered, they would have shown how recognizing exemption applicants' contractual right to receive water from the Project would have led to few impacts on imperiled species and would have served several other important interests. Because serious impacts on the suckers and coho would be unlikely, the benefits of making water available from the Klamath Project according to the terms of the contracts and according to historical practice, would clearly outweigh the benefits of eliminating water deliveries.

If operation of the Klamath Project according to historical practices would actually threaten to extirpate the species, requiring higher reservoir elevations would certainly provide an important benefit to be weighted. But there are legitimate reasons to doubt the validity of the Biological Opinions' conclusions. For example, fisheries biologist David Vogel, who has made significant contributions tot he understanding of the suckers at issue here, and was a principal contributor of information for the 1992 Biological Assessment on Long-Term Operations of the Klamath Project, has raised grave questions about the reliability of the Fish and Wildlife Service's scientific conclusions. Vogel testified before Congress recently about the scientific problems with the conclusions in the Biological Opinion for the two species of sucker fish.

As a scientist who has also provided comments on scientific analyses related to the Klamath Project, Vogel claims that in recent times it is "virtually impossible to comment and certainly impossible for the agencies to consider the comments objectively and meaningfully" because the time for submitting comments is too short. In this case, for example, the time between the issuance of the Draft Biological Opinion on March 13, 2001, and the issuance of the Final Biological Opinion on April 5, 2001, was only 6 days. The "overriding sense" Vogel has from this process is that "the goal is to dismiss what we have to offer."

More important, though, is that this flawed process leads to flawed results. Vogel raises serious questions abut the status of the suckers as endangered, and the value of higher Upper Klamath Lake elevations for their continued survival. For example, Vogel argues that within three years after the sucker listing it "became apparent that the assumptions concerning the status of the shortnose suckers and Lost River suckers in the Lost River/Clear Lake watershed were in error." Consequently, Vogel concludes, "[t]he species were either inappropriately listed as endangered because of incorrect or incomplete information or the species have rebounded to such a great extent that the fish no longer warrant the 'endangered' status." Moreover, Vogel argues that "artificially maintaining higher-than-historical lake elevations," as the Fish and Wildlife Service has required here, "is likely to be detrimental, not beneficial, for sucker populations." Accordingly to Vogel, the facts show that in past low water years, increased fish kills simply have not occurred at low reservoir elevations. See attached, Appendix F, for a complete transcript of the "Testimony of David A. Vogel Before the House Committee on Resources Oversight Field Hearing on Water Management and Endangered Species Issues in the Klamath Basin, June 16, 2001."

Vogel's concerns are merely examples of the scientific problems inherent in the Biological Opinions. Others abound. For example, there is no evidence that historical stream flows below Iron Gate Dam will have any detrimental effect on Coho salmon. With more study, and a truly objective scientific approach, it might be possible to arrive at a better understanding of the needs of these fish. Yet, at this point, the conclusions of the Biological Opinions are too questionable to accept in their fullness. But this is not all.

As discussed below, the 2001 Operations Plan threatens serious impacts to other critical wildlife resources, such as two federal wildlife refuges, and a major stopover for migratory waterfowl. Moreover, federal action, like this, that impairs the habitat of migratory birds and other species may violate international conventions. For example, the Convention on Biological Diversity, signed in 1992 by more than 160 nations, including the United States, obligates the United States to "[r]egulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use." See Appendix G. The United States must also "[p]romote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings." Id. By

depriving federal wildlife refuges and other wildlife resources of necessary water, the United States violates its commitments to the international community.

Also, the Fifth Amendment to the United States Constitution concludes: "[N]or shall private property be taken for public use, without just compensation." The purpose of that clause—as the oft-quoted language from *Armstrong* v. *United States*, 364 U.S. 40, 49 (1960), explains—is "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." It is well established that a right to use water is a compensable property right. See *United States* v. *State Water Resources Control Board*, 227 Cal. Rptr. 168. (Dist. Ct. App. 1986) (explaining that "once rights to use water acquired, they become vested property rights. As such they cannot be infringed by others or taken by governmental action without due process and just compensation."). This is so even when the right to use water is derived from contract. See *Tulare Lake Basin Water Storage District* v. *United States*, 49 Fed. Cl. 313 (2001) (finding liability under the Takings Clause of the Fifth Amendment where the United States interfered with contractual rights to receive and use water). By depriving exemption applications of the water to which they are contractually entitled, the United States not only violates the terms of applicable contracts, but it also takes exemption applicant's private property in violation of the Fifth Amendment.

The United States important public benefits when it keeps its commitments and follows fundamental principles; it engenders trust among its citizens. The benefits of the United States fulfilling its contractual obligations and following the U.S. Constitution, in this case by making water available, thereby protection struggling communities of people and wildlife, are incalculable. These public benefits outweigh the questionable benefits that will occur as a result of depriving exemption applicants of the water to which they are entitled.

14. A complete discussion of why none of the considered alternatives are reasonable and prudent.

Federal law requires that once a determination has been made that a proposed action will jeopardize the continued existence of the species, the consulting agency must propose "Reasonable and Prudent Alternatives" to the proposed action. The regulations define "reasonable and prudent alternatives" as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director believes would avoid the likehood of jeorpardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

50 CFR 402.02 (2001).

The greatest problem with so-called reasonable and prudent alternatives required by the Fish and Wildlife Service and the National Marine Fisheries Service is that they violate the first requirement, that alternatives be "consistent with the purpose of the underlying action." The purpose of the Klamath Project is, and has always been deliver irrigation water to Project contractors, who have contracted for delivery of the water, and have paid substantial sums to the United States in exchange for the right to receive it. Alternatives that look only to environmental protection, like those offered in the Biological Opinions, are not "consistent with the purpose of the underlying action." To the contrary, the alternative involved here are flatly inconsistent with the established irrigation purposes of the Klamath Project because they make the availability of water for irrigation secondary to other values.

Also, the requirements of the Biological Opinions may actually harm environmental values. The sucker Biological Opinion mandates Upper Klamath Lake surface elevations substantially higher than they have historically been, even in above-average water years. The difference between a full reservoir in wet years and the average low point in critically dry years is only about six feet. Yet the Biological Opinion sets a minimum Upper Klamath Lake elevation almost three feet higher that historic averages in critically dry years. As discussed more fully in Items 13 and 15, lower lake elevations are not likely to jeopardize the continued existence of the sucker fish. In fact, the unprecedented high elevation will hurt both wildlife and the environment by reducing foraging habitat for migratory birds and valuable wetlands. The higher elevation requirement will also result in increased sediment runoff and injure other protected species like the bald eagle.

Because the alternatives proposed are not consistent with the purposes of Klamath Project, and are not necessary for the ultimate protection of the fish, they do not fall within the definition of "reasonable and prudent alternatives" as provided in the regulations.

15. A complete statement explaining why the proposed action is in the public interest.

The public interest includes many things in addition to protecting imperiled wildlife. The public requires food and shelter, along with other aesthetic, educational, historical, recreational, and scientific values. In the Klamlath region, as in most of the Western United States these public interest values cannot be achieved without water. Water is necessary for all life, not just the life of endangered suckers. The proposed action would help satisfy these many public interests by providing this essential ingredient.

State law, which governs the use of water, finds specifically that the public interest includes other concerns beyond environmental protection. For example, "in acting upon applications to appropriate water," the California State Water Resources Control Board is required to consider the relative benefit to be derived from (1) all beneficial uses of the water concerned including, but not limited to, use for domestic, irrigation, municipal, industrial, preservation and enhancement of fish and wildlife, recreational, mining and power purposes, and any uses specified to be protected in any relevant water quality control plan.

Cal. Water Code section 1257. In-stream uses, such as higher flows for fish protection, are not favored over other uses in determining what would be serve the public interest. They are simply one factor to be considered. California courts, for example, have specifically rejected the notion that California is prohibited from favoring water uses such as irrigation, even where harm may result to fish and wildlife resources. The California Supreme Court explained:

As a matter of current and historical necessity, the Legislature, acting directly or through an authorized agency such as the Water Board, has the power to grant usufructuary licenses that will permit an appropriator to take water from flowing streams and use that water in a distant part of the state, even though this taking does not promote, and may unavoidably harm, the trust uses at the source stream. The population and economy of this state depend upon the appropriation of vast quantities of water for uses unrelated to in-stream trust values. California's Constitution, its statues, decisions, and commentators all emphasize the need to make efficient use of California's limited water resources: all recognize, at least

implicitly, that efficient use requires diverting water from in-stream uses. Now that the economy and population centers of this state have developed in reliance upon appropriate water, it would be disingenuous to hold that such appropriations are and have always been improper to the extent that they harm public trust uses. * * *

National Audubon Society v. *Superior Court of Alpine County*, 638 P.2d 709, 727–28 (Cal. 1983) (emphasis added; citations and footnote omitted). In short, according to statute, California must be able to balance competing water uses according to its own ideas about the public interest. Similar rules apply to Oregon water rights.

The States of California and Oregon permitted the United States to appropriate water for the Klamath Project with the understanding that such water would be distributed for irrigation. Thus, in this case, state water agencies have already exercised their authority to safeguard the public interest, have considered the water needs of fish and wildlife resources, and have nevertheless authorized the use of water for irrigation.

Beyond this, cutting off water to the basin will have injurious consequences to a wide array of wildlife in the region. The Klamath Basin is one of the most important staging areas for migratory waterfowl on the Pacific Flyway. Each year nearly three-quarters of all Pacific Flyway waterfowl stop in the Klamath Basin, including peak fall concentrations of over 2 million ducks, geese, and swans, and the largest wintering concentration of bald eagles in the lower 48 states. The wetlands and other resources upon which these birds depend require a regular supply of water from the Klamath Project. Some of the necessary water is delivered directly from the Project to federal wildlife refuges. Other important resources are supplied by agricultural runoff. But these sources have been cut off. As the region's 185 miles of canal ecosystem and 516 miles of drainage canal ecosystem are destroyed by government-imposed water prohibitions, the environment will suffer.

If Klamath Project water is not delivered as it has been in prior years, it will become extremely difficult to maintain the facilities used to divert and deliver water, along with the facilities used for draining runoff. This will reduce the availability of wildlife forage and valuable wetlands, not to mention increase the risks to public safety and property in the future due to hazards such as flooding. Irrigated land in the Tulelake area also supports large numbers and diversity of birds and other wildlife, including migratory waterfowl, raptors, deer, and antelope. These species feed on grain, alfalfa, and other crops grown in area farms. Irrigated farmland provides valuable wildlife habitat. Without irrigation water from the Project, once-productive farmland will not longer provide these important habitat values.

16. A complete explanation of why the action is of regional or national significance.

Agricultural production is one of America's greatest strengths. Americans spend a smaller percentage of income on food than residents of other nations. Forty-six percent of the world's soybeans are grown in the United States, 41% of corn. One-forth of the world's beef and nearly one-fifth of the world's grain, milk, and eggs are produced in the United States. About 17% of raw U.S. agricultural products are exported yearly, including 83 million metric tons of cereal grains, 1.6 billion pounds of poultry, and 1.4 million metric tons of fresh vegetables. Much of this abundance is produced using water from federal water projects such as the Klamath Project.

The Klamath Basin produces $100 million in hay, grains, and vegetables, with more than 1,400 farms totaling approximately 210,000 acres being supplied by the Klamath Project. Klamath farms produce livestock, barley, oats, wheat, potatoes, sugar beets, and forage. For example, 110,000 acres serve as forage, 57,000 acres are planted in cereal crops, 16,000 acres in vegetables, 7,000 acres in miscellaneous field crops, 298 acres in seed crops, and 227 acres in nursery crops.

The Klamath investment in agriculture produces an additional $250 million in economic activity in the various agriculturally dependent communities throughout the region. Livestock herds, that are being liquidated a result of the lack of water this year, are worth another $100 million in replacement costs.

The failure of the Klamath Project to deliver water to Project contractors threatens catastrophic destruction in the region. Without water, farms cannot operate, and farm workers will be unemployed, Without farmers to buy seed, supplies, and equipment, the infrastructure of small community businesses will lose their customer base. Property values will plummet, loans will be in default, and county tax revenues will spiral downward.

The farmers and communities in the Klamath Basin have committed their livelihoods, their way of life, and the welfare of their families to cultivation of the region's agriculture, based on the water promised to them by the government through the Klamath Project.

As noted above, some individual farmers, like David Cacka, stand to lose nearly half a million dollars in potential income, based on resources that were long ago committed to farming the land. This predicament is typical of what is happening in the basin.

Because the region developed and grew based on a century-old water rights agreement with the United States government, virtually the entire community has its resources committed to receiving its allocation of water from the Klamath Project. Directly or indirectly, availability of water from the Klamath Project is necessary for area schools, fire departments, libraries, parks, churches, community service organizations, and businesses, as well as county and city government.

Not only the region, but the nation as a whole, has an interest in preserving the Klamath Basin and averting disaster. The impact on the environment from lack of irrigation water is of tremendous regional and national significance. As a result of the Biological Opinions, displaced bald eagles will go elsewhere and battle for survival. Some likely will starve or die of exposure or disease. Others will have a harder time breeding successfully next spring.

The effects will be felt in employment, too, which has far-reaching consequences for the region and beyond. Steve Kandra, a third-generation farmer from Merrill in Klamath County has already had to lay off his work force: "I have been forced to lay off all of my employees, half of whom are Hispanic. Half of the students in our local public schools are Hispanic, most with parents who have jobs associated with agriculture. The Hispanic community would be a group severely impacted by the lack of irrigation water." See Declaration of Steven L. Kandra in Support of Plaintiffs' Motion for Preliminary Injunction, *Kandra* v. *United States* No. 01–6124–TC, 2001 U.S. Dist. LEXIS 6932 (D. Or. Apr. 30, 2001), attached at Appendix K. The failure to make water available will result in defaulted loans and lost farms. According to David Solem, manager of the Klamath Irrigation District, all of these types of impacts (social, cultural) are likely to occur, including impacts to ethnic communities and other local cultural attributes, loss of food, foraging and habitat for migratory waterfowl and other birds and wildlife that makes heavy use of farmland, soil erosion, air quality, impacts from soil erosion, infestations, future chemical

applications to control weeds and pests, and loss of fish and wildlife habitat in irrigation canals and drains.

See Declaration of David A. Solem in Support of Plaintiffs' Motion for Preliminary Injunction, *Kandra* v. *United States*, No. 01–6124–TC, 2001 U.S. Dist. LEXIS 6932 (D. Or. Apr. 30, 2001), attached at Appendix L.

According to Rick Woodley, Director of Klamath County Soil and Water Conservation District, denial of water will adversely affect the soil in the region, which will have dramatic regional significance.

Without normal crop production or establishment of cover crops on the bare soil, as it continues to dry, the entire Klamath Basin will see the full effect of life without water on the farmland. The loss of topsoil can never be recovered. The sedimentation (pollution) on the lakes, rivers, and streams of this basin, when rain does come, will have adverse effects to the very species this decision was designed to "protect."

Letter from Rick Woodley, Apr. 18, 2001, attached at Appendix M.

17. A complete discussion of mitigation and enhancement measures proposed to be undertaken if an exemption is granted.

The Bureau of Reclamation's February 13, 2001, Biological Assessment for the suckers incorporated planned and ongoing provisions from the 1992 and 1994 Biological Opinions that do not require unprecedented reservoir elevations. These measures are fully discussed in the Biological Assessment in Section 2.6, entitled "1992 and 1994 Biological Opinion Provisions," and in Section 13.0, entitled "Appendix 1 ESA Consultation Review." They encompass a wide range of substantial and effective mitigation and enhancement measures, including sucker toxicity studies, taxonomy projects, spawning enhancement, marsh restoration, watershed improvement, and many other measures. These measures may continue without prohibiting essential water diversions for irrigation and wildlife in the Klamath Basin.

III Conclusion

Delivering water according to Project contracts is likely to have little detrimental impact on endangered species. Yet operating the Project to withhold water, as the Fish and Wildlife Service and the National Marine Fisheries Service have required, will destroy both wildlife habitat and human communities. Exemption applicants therefore ask the Endangered Species Committee to exempt the operation of the Klamath Project from the onerous water user restrictions imposed under the Endangered Species Act. The Committee should allow the Klamath Project to operate according to historical practice, as the Bureau of Reclamation proposed.

July 2, 2001.

Respectfully submitted,

David E. Haddock, Anne M. Hayes, M. Reed Hopper,

By _____

David E. Haddock, Attorneys for Klamath Irrigation District and Tulelake Irrigation District.

1. On June 11, 1991, the United States Department of the Interior Agreement on Compliance with the Endangered Species Act entered into. The U.S. Fish and Wildlife Service considered the agreement to be a request for formal consultation pursuant to section 7 of the Endangered Species Act.

[End of Petition]

Section 451.02 of the Title 50, CFR requires the Secretary of Commerce or his designee to initially determine whether a petitioner is eligible to apply for an exemption, whether a petition is timely, and whether the petition presents all required information. If the Secretary or his designee determines that a petitioner is eligible to apply for an exemption and that the petition is timely and presents all required information, § 451.02(f)(3) of Title 50, CFR requires the Secretary or his designee to conduct a threshold review and make determinations in accordance with the requirements of § 452.03 of Title 50, CFR.

Michael A. Levitt

Assistant General Counsel for Legislation and Regulations.

[FR Doc. 01–17922 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Recruitment of Private-Sector Members

SUMMARY: The President's Export Council Subcommittee on Export Administration (PECSEA) advises the U.S. Government on matters and issues pertinent to implementation of the provisions of the Export Administration Act and the Export Administration Regulations, as amended, and related statutes and regulations. These issues relate to U.S. export controls as mandated by law for national security, foreign policy, non-proliferation, and short supply reasons. The PECSEA draws on the expertise of its members to provide advice and make recommendations on ways to minimize the possible adverse impact export controls may have on U.S. industry. The PECSEA provides the Government with direct input from representatives of the broad range of industries that are directly affected by export controls.

The PECSEA is composed of high-level industry and Government members representing diverse points of view on the concerns of the business community. PECSEA industry representatives are selected from firms producing a broad range of goods, software, and technologies presently controlled for national security, foreign policy, non-proliferation, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

PECSEA members are appointed by the Secretary of Commerce and serve at the Secretary's discretion. The membership reflects the Department's commitment to attaining balance and diversity. PECSEA members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to relevant classified information needed in formulating recommendations to the President and the U.S. Government. The PECSEA meets 4 to 6 times per year. Members of the Subcommittee will not be compensated for their services. The PECSEA is seeking private-sector members with senior export control expertise and direct experience in one or more of the following industries: Machine tools, semiconductors, commercial communication satellites, high performance computers, telecommunications, aircraft, pharmaceuticals, and chemicals. Please send a short biographical sketch on the individual who wishes to become a candidate. The material may be faxed to the number below.

Deadline: This request will be open on or before August 2, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482–2583. Materials may be faxed to (202) 482–3195, to the attention of Ms. Carpenter.

Dated: July 11, 2001.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 01–17870 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

SUMMARY: Six Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry and Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. Each TAC meets approximately 4 times per year. Members of the Committees will not be compensated for their services. The six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics—semiconductor section), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: the Export Administration Regulations (EAR) and procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Categories 3 (electronics—instrumentation section) and 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine technology), and 9 (propulsion systems, space vehicles, and related equipment).

To respond to this recruitment notice, please send a copy of your resume. Please use the fax number or e-mail address below.

Deadline: This Notice of Recruitment will be open for one year from its date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482–2583. Resumes may be faxed to her at (202) 482–3195 or e-mailed to her at LCarpent@bxa.doc.gov.

Dated: July 11, 2001.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 01–17869 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors and Instrumentation Technical Advisory Committee; Notice of Open Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on August 14, 2001, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Report on consideration to certify foreign availability assessment study presented by International Safety Instruments Association.
4. Discussion on SITAC proposal for change to Wassenaar Arrangement Dual-Use Control List.
5. Discussion of draft changes to Commerce Control List Category 6 (sensors and lasers).

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS:3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

For more information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: July 12, 2001.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 01–17868 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non-Alloy Steel Pipe From Mexico: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results in the antidumping duty administrative review of circular welded non-alloy steel pipe from Mexico.

EFFECTIVE DATE: July 18, 2001.

FOR FURTHER INFORMATION CONTACT: John Drury or Helen Kramer, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–0405, respectively.

Scope of the Review

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing

used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the United States as line pipe of a kind used for oil or gas pipelines is also not included in this order.

Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Amendment of Final Results

On April 30, 2001, the Department of Commerce (the Department) published the final results of its antidumping duty administrative review on circular welded non-alloy steel pipe from Mexico (66 FR 21311). This review covered one manufacturer/exporter of the subject merchandise, Tuberia Nacional S.A. de C.V. ("TUNA"). The period of review ("POR") is November 1, 1998 through October 31, 1999.

On April 24, 2001, we received a submission from Allied Tube and Conduit Corporation and Wheatland Tube Company (collectively, "Petitioners") alleging a clerical error in the final results of this antidumping duty administrative review. On April 23, we received a submission from TUNA alleging two clerical errors. Petitioners filed rebuttal comments on April 30, 2001. The clerical error allegation and rebuttal comments were filed in a timely fashion.

Comment 1: Petitioners state that the Department committed a coding error and inadvertently omitted some of the physical code characteristics in its model match instructions. By leaving some of the codes for various physical characteristics out of the model match hierarchy, petitioners believe that some sales observations reported by TUNA were not used for matching purposes. Petitioners urge that the Department place the proper physical code characteristics in the model match program.

Department's Position: After a review of petitioners' allegation, we agree with petitioners and have corrected our model match program. *See* Analysis Memorandum dated June XX, 2001 for the corrections.

Comment 2: Respondent TUNA claims that the Department made a clerical error in the calculation of the level of trade adjustment. Rather than increasing the prices for sales made at a different level of trade, TUNA asserts that the Department should have reduced these prices. TUNA states that the error is based on a misreading of the Pattern of Price Difference program run by the Department. TUNA urges that the Department change the programming language to correct this error.

Department's Position: We agree with respondent and have corrected the programming language in the margin calculation program. *See* Analysis Memorandum for the programming changes.

Comment 3: Respondent TUNA states that the Department made a clerical error with regard to matching sales and level of trade. According to TUNA, the Department matched sales in the United States to home market sales in an incorrect sequence. TUNA states that the Department's methodology first matched identical sales at the same level of trade, and then matched similar sales at the same level of trade. Only if matches were not found at the same level of trade did the methodology look for identical matches at the next level of trade. TUNA argues that the Department should match identical sales regardless of the level of trade before moving to similar matches.

Petitioners note that the question of segregation by level of trade prior to matching is a policy decision involving the Department's interpretation of the statute and regulations. Therefore, petitioners argue, the issue is not an "error in addition, subtraction, or other arithmetic function" under 19 CFR 351.224(f) and cannot be permitted as a clerical error change. With regard to the policy decision itself, petitioners state that while the Department is generally required to seek identical matches prior to using similar matches under 19 U.S.C. 1677(16), the Department does segregate sales before making comparisons. Petitioners cite to the Department's segregation of sales based on date of sale, and that the Department matches sales made within a contemporaneous month.

Department's Position: We agree with respondent that we made a clerical error in implementing our level of trade methodology; however, we disagree with respondent regarding the extent and nature of the error. In the Department's preliminary determination, we determined that EP sales in the United States all occurred at one level of trade. CEP sales, however, were determined to have occurred at a distinct level of trade. Consequently, we matched EP sales to identical or similar home market sales to the extent possible at the same level of trade. For CEP sales, we matched these to home market sales without distinguishing between home market levels of trade and granted a CEP offset. *See* Analysis Memorandum for the Preliminary Determination, November 29, 2000.

In the final determination, we determined that both EP and CEP sales in the United States were at the same level of trade. We also determined that there were two levels of trade in the home market, one of which was the same as the level of trade for both EP and CEP sales in the United States. Consequently, with regard to matching sales, we stated that "For sales to the United States, the Department attempted to match these sales to all home market sales which were assigned a level of trade of "1," and granted a level of trade adjustment if any U.S. sales matched to the second level of trade. We derived the level of trade adjustment by running a pattern of price comparison for sales in the home market." *See* Analysis Memorandum for the Final Determination, April 11, 2001 (page 4).

Our examination of the margin calculation program for the final determination indicates that the program did not follow the policy outlined in the Department's final determination analysis memorandum. While the Department correctly matched EP sales in the United States to identical or similar home market sales to the extent possible at the same level of trade, it continued the matching practice used in the preliminary determination and matched CEP sales in the United States to home market sales without distinguishing between the two home market levels of trade. The program should have accounted for CEP matches at different levels of trade, as stated in the final determination analysis memorandum.

19 CFR 351.224(f) states that a ministerial error is "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial." The failure of

the margin calculation program to carry out the Department's stated policy adopted in the final determination analysis memorandum is clearly an unintentional error. Therefore, we have corrected the margin calculation program so that both EP and CEP sales in the United States are compared to identical or similar home market sales to the extent possible at the same level of trade. *See* Analysis Memorandum for details of the programming changes.

Amended Final Results

As a result of our review and the correction of the ministerial errors described above, we have determined that the following margin exists:

CIRCULAR WELDED NON-ALLOY STEEL PIPE

Producer/Manufacturer/Exporter	Weighted-average margin (in percent)
Tuberia Nacional	2.92

The Department shall determine, and the U.S. Customs Service ("Customs") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR. The Department's decision applies to all entries of subject merchandise produced and exported by TUNA, entered, or withdrawn from warehouse, for consumption on or after November 1, 1998 and on or before October 31, 1999.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of circular welded non-alloy steel pipe entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for TUNA will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate, which is 36.62 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 10, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17973 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071101B]

Proposed Information Collection; Comment Request; Prohibited Species Donation Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 17, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, F/AKR2, P.O. BOX 21668, Juneau, AK 99802–1668 (phone 907–586–7008).

SUPPLEMENTARY INFORMATION:

I. Abstract

Certain incidental catch of fish cannot be retained by fishing vessels due to management controls, and such prohibited species are usually discarded. Under a NOAA program these fish may be donated to certain tax-exempt groups for distribution to needy individuals. Documentation is necessary to ensure that donations go to authorized parties for legitimate purposes.

II. Method of Collection

The information is submitted to respond to requirements set forth in a regulation. There are also documentation and labeling requirements.

III. Data

OMB Number: 0648–0316.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions, business and other for-profit organizations.
Estimated Number of Respondents: 79.
Estimated Time Per Response: 40 hours for an application, 40 hours for documentation by a distributor, 6 minutes for labeling and product tracking of a shipment by a vessel or processor, and 15 minutes to provide documentation on a vessel or processor.
Estimated Total Annual Burden Hours: 152.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17852 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071101E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Mackerel Stock Assessment Panel (MSAP).

DATES: This meeting will begin at 1:30 p.m. on Wednesday, August 1, 2001, and will conclude by 5 p.m. on Thursday, August 2, 2001.

ADDRESSES: The meeting will be held at the NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The MSAP will convene to review a stock assessment for cobia, *Rachycentron canadum*, in the Gulf and Atlantic area. The MSAP will consider available information from these analyses to determine the condition of the stocks and possible levels of acceptable biological catch (ABC) for the 2002–03 fishing year. The MSAP may also review estimates/proxies for maximum sustainable yield (MSY) and optimum yield (OY), as well as definitions of the overfishing and overfished condition. Finally, the MSAP will review management targets and rebuilding schedules, if needed.

Although non-emergency issues not contained in the agenda may come before the MSAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal MSAP action during this meeting. MSAP action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the MSAP agenda can be obtained by calling (813) 228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by July 25, 2001.

Dated: July 13 , 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17939 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070901D]

Permits; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of foreign/fishing application.

SUMMARY: NMFS publishes for public review and comment a summary of an application submitted by the Government of the Russian Federation requesting authorization to conduct fishing operations in the U.S. Exclusive Economic Zone (EEZ) in 2001 under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

ADDRESSES: Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910; and/or to the Regional Fishery Management Councils listed below:

Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01905, Phone (978) 465–0492, Fax (978) 465–3116;

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19904, Phone (302) 674–2331, Fax (302) 674–4136.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2276.

SUPPLEMENTARY INFORMATION: In accordance with a Memorandum of Understanding with the Secretary of State, NMFS publishes, for public review and comment, summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to fish in the U.S. EEZ under provisions of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*).

This document concerns the receipt of an application from the Government of the Russian Federation requesting authorization to conduct joint venture (JV) operations in 2001 in the Northwest Atlantic Ocean for Atlantic herring and Atlantic mackerel. The large stern trawler/processor PATROKL is identified as the Russian vessel that would receive Atlantic herring and Atlantic mackerel from U.S. vessels in JV operations. The application also requests that the Government of the Russian Federation be allocated 3,000 metric tons (mt) of Atlantic herring and 2,000 mt of Atlantic mackerel for harvest by the named vessel in 2001.

Dated: July 12, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17938 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of forthcoming meetings of the Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System (NCCS). The purpose of these meetings is to conduct a comprehensive and independent review of the NCCS positive measures to

assure authorized use of nuclear weapons when directed by the President while assuring against unauthorized or inadvertent use. This meeting will be closed to the public.

DATES: August 7–9, 2001.

ADDRESSES: National Security Agency, 9800 Savage Road, Fort Meade, MD 20755.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041, (703) 681–8681.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–17876 Filed 7–17–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for the Draft Programmatic Environmental Impact Statement for Ford Island Development, Pearl Harbor, HI

AGENCY: Department of the Navy, DOD.

ACTION: Announcement of public hearings.

SUMMARY: The Department of the Navy (Navy) has prepared and filed with the United States Environmental Protection Agency (EPA) a Draft Programmatic Environmental Impact Statement (PEIS) for Ford Island Development, Pearl Harbor, Hawaii. Two public hearings will be held to receive oral and written comments on the Draft PEIS in accordance with the National Environmental Policy Act of 1969 (NEPA), as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and request input as part of the Section 106 process of the National Historic Preservation Act of 1966, as implemented by the Advisory Council on Historic Preservation regulations (36 CFR Part 800). Federal, state, and local agencies and interested individuals are invited to be present or represented at the hearing.

DATES AND ADDRESSES: The first public hearing will be held on Wednesday, August 1, 2001, at 7 p.m. in the Aliamanu Intermediate School Cafeteria, 3271 Salt Lake Boulevard, Honolulu, HI. The second public hearing will be held on Thursday, August 2, 2001, at 7:00 p.m. in the Washington Middle School Cafeteria, 1633 South King Street, Honolulu, HI.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Uehara (Code PLN231), Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, STE 100, Pearl Harbor, HI 96860–3134, telephone (808) 471–9338, fax (808) 474–5909, E-Mail .

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(C) of NEPA, the Navy has prepared and filed with the EPA a Draft PEIS for development of Ford Island at Pearl Harbor, HI.

A Notice of Intent for this PEIS was published in the **Federal Register** on April 14, 2000 (65 FR 20141).

Two public scoping meetings were held in Honolulu, HI, on May 2, 2000, and on May 4, 2000.

The proposed action is to consolidate selected operations at Pearl Harbor by locating and relocating certain activities onto Ford Island. This proposed action will use special legislation (10 U.S.C. 2814) that permits the Navy to sell or lease underutilized Navy properties on Oahu and to use the proceeds (in cash or in kind) for construction and facilities maintenance on Ford Island. Other work will be accomplished through conventional means such as the Military Construction Program, Non-Appropriated Funds, and Family Housing Public-Private Venture. Under consideration are new construction and, as appropriate, adaptive reuse of existing structures on Ford Island, for up to 420 new family housing units, up to 250,000 square feet of administrative space, bachelor enlisted quarters for up to 1,000 personnel, and a consolidated training complex, as well as infrastructure improvements. Up to 75 acres on Ford Island are proposed for private sector opportunities through a lease agreement. Four other Navy-owned parcels are proposed for sale or lease in return for revenues or in-kind consideration: Navy property at the Waikele Branch of Naval Magazine Pearl Harbor; family housing and related property at the former Naval Air Station Barbers Point; family housing and related property at Iroquois Point/Puuloa Housing; and Halawa Landing property on Pearl Harbor main side.

The proposed action will make positive use of the available lands and historic buildings on Ford Island in order to achieve greater operational efficiency and provide improved housing and quality of life for sailors and their families. Specific objectives are to provide additional high-quality family housing and community support services in close proximity to the Pearl Harbor Naval Complex where sailors work, thereby reducing commuting distances and improving the quality of their lives, and reducing maintenance costs and congestion at Pearl Harbor main side by relocating certain activities to Ford Island and replacing obsolete facilities. Use of some portions of Ford Island is constrained by existing facilities, historic resources, and operational requirements.

Alternatives for different levels of intensity of land use on Ford Island are considered in the Draft PEIS: High Intensity; Medium Intensity; Low Intensity; and No Action. Each development alternative represents a different designed balance between Navy and private development activities on Ford Island, and each alternative, except the No Action Alternative, includes the sale or lease of Navy properties to support Ford Island development. The High Intensity alternative assumes a level of development on Ford Island that meets all Navy facilities requirements, combined with private development that maximizes mixed-use development. The Medium Intensity Alternative also meets Navy facilities requirements on Ford Island with private development representing a reasonably sized mixed-use development. The Low Intensity Alternative limits the development on Ford Island to Navy requirements only. The Draft PEIS also considers the No Action Alternative, which assumes no further development of Ford Island, no private development, and no sale or long-term lease of Navy properties.

No decision on the proposed action will be made until the NEPA process is completed. The decision will be announced when the Secretary of the Navy releases the Record of Decision.

The Draft PEIS has been distributed to various federal, state, and local agencies, elected officials, and special interest groups. The Draft PEIS is available for public review at the following public libraries:

—Hawaii State Library, 478 South King Street, Honolulu, HI
—Salt Lake/Moanalua Public Library, 3225 Salt Lake Boulevard, Honolulu, HI
—Aiea Public Library, 99–143 Moanalua Road, Aiea, HI
—Pearl City Public Library, 1138 Waimano Home Road, Pearl City, HI
—Waipahu Public Library, 94–275 Mokuola Street, Waipahu, HI
—Ewa Beach Public Library, 91–950 North Road, Ewa Beach, HI

The Navy will conduct two public hearings to receive oral and written comments concerning the Draft PEIS. The public hearings will begin with a brief presentation followed by a request for comments on the Draft PEIS. Federal, state, and local agencies, and interested parties are invited to be

present or represented at the hearings. Those who intend to speak will be asked to submit a speaker card (available at the door). Oral comments will be transcribed by a stenographer. To assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record in the study, with equal weight given to each. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to Naval Facilities Engineering Command, Pacific Division, 258 Makalapa Drive, STE 100, Pearl Harbor, Hawaii 96860–3134 (Attn: Mr. Stanley Uehara, Code PLN231). Written comments should be postmarked by August 27, 2001.

Dated: July 11, 2001.

T. J. Welsh,

Lieutenant Commander, Office of the Judge Advocate General, Federal Register Liaison Officer.

[FR Doc. 01–17905 Filed 7–17–01; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, July 25, 2001. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 9:30 a.m. Topics of discussion will include a report on the Watershed Advisory Council meeting of July 24, 2001; status of the Current Comprehensive Plan; status of PCB Point Source Discharge Monitoring; and summaries of the Toxics Advisory Committee meetings of June 28 and July 18, 2001. The conference also will include presentations on Sustainable Wastewater Management Within the Tri-State Middle Delaware Region and Cooperative Inter-Agency Development of a Delaware River Water Trail.

The subjects of the public hearing to be held during the 1:00 p.m. business meeting include, in addition to the dockets listed below, a resolution confirming the appointment of Acting General Counsel to the Commission.

The dockets scheduled for public hearing are as follows:

1. *North Wales Water Authority D–90–6 CP (Revision).* An application for the revision of a ground water withdrawal project to reallocate the existing 210 million gallons (mg)/30 days to 195 mg/30 days for the applicant's public water distribution system from Wells Nos. 1, 4B, 8, 9, 10, 11, 14, 17, 21, 22, 25, 31 and 34 in the Stockton, Lockatong and Brunswick Formations. The project is located in North Wales Borough, Upper Gwynedd, Lower Gwynedd, Whitpain, Upper Dublin and Montgomery Townships in Montgomery County; and New Britain Township in Bucks County, all in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Walnutport Authority D–90–87 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 8 mg/30 days of water to the applicant's public water distribution system from existing Wells Nos. 1 through 5 in the Martinsburg Formation. No increase in maximum allocation is proposed. The project is located in Walnutport Borough and Lehigh Township, Northampton County, Pennsylvania.

3. *Yardley Country Club D–2000–32.* An application for approval of a ground water withdrawal project to supply up to 15 mg/30 days of water to the applicant's golf course irrigation system from new Well No. 1 in the Stockton Formation and to limit the withdrawal from all sources to 15 mg/30 days. The project is located in Yardley Borough, Bucks County, Pennsylvania.

4. *Kimberton Golf Club D–2001–4.* An application for approval of a ground water withdrawal project to supply up to 4.2 mg/30 days of water to the applicant's golf course irrigation system from newly redeveloped Well No. PW–1. The project well is located in the Stockton Formation in East Vincent Township, Chester County in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Heritage Building Group D–2001–8.* An application for approval of a ground water withdrawal project to supply up to 6.5 mg/30 days of water to irrigate the applicant's Heritage Hills Golf Club from new Wells Nos. TW–1 and TW–2. The project is located in the Brunswick Formation in Limerick and Lower Pottsgrove Townships, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area.

6. *New Jersey Department of Corrections D–2001–22 CP.* An application to rerate the Bayside State Prison sewage treatment plant (STP) from 0.55 million gallons per day (mgd) to 0.61 mgd and continue to provide advanced secondary treatment. The STP serves only the correctional facilities and will continue to discharge through the existing outfall to Riggins Ditch, a tributary of Delaware Bay. The project is located just west of Delsea Drive (State Route 47) in Maurice River Township, Cumberland County, New Jersey.

7. *S.W.E.C, LLC D–2001–28.* An application to provide a non-utility electric power generator with an average of 8.5 mgd of water diverted via the USX Fairless Works intake on the Delaware River. USX's current surface water allocation is sufficient for supply of the project water demand. The proposed natural gas-fired combustion turbines and steam turbine generators are designed to produce 1,190 megawatts (MW) of electric power for the Pennsylvania-Jersey-Maryland (PJM) grid. The project will be constructed on a 45 acre site within the USX Industrial Park off Bordentown Road in Falls Township, Bucks County, Pennsylvania. Following average consumptive losses of 6.15 mgd to evaporation and drift, approximately 2.35 mgd of wastewater will be routed to the USX wastewater treatment facility prior to discharge to the Delaware River in Delaware River Basin Commission Water Quality Zone 2.

8. *Joyfoi Joint Venture D–2001–32.* An application to construct a 0.05 mgd tertiary level STP to serve a proposed adjacent shopping center and hotel located approximately 6,000 feet northeast of the intersection of State Route 3 and Providence Road in Newtown Township, Delaware County, Pennsylvania. Treated effluent will be discharged to an unnamed tributary of Crum Creek, locally known as Reese's Run.

9. *Village of Delhi D–2001–33 CP.* An application to upgrade and expand a 0.515 mgd secondary level STP to provide tertiary treatment of 0.815 mgd. The plant is located just south of State Route 10, about 1 mile west of State Route 28 in the Town of Delhi, Delaware County, New York. The project will continue to serve the residents of Delhi Village and will be rerated after the upgrade to receive and process the pretreated waste from two small industries, which will discontinue their own existing discharge. The STP effluent will continue to be discharged via the existing outfall to the West Branch Delaware River, about 22 river miles upstream from the Cannonsville Reservoir in Delaware River Basin Commission Water Quality Zone W1.

In addition to the public hearing, the Commission will address the following at its 1:00 p.m. business meeting: minutes of the June 6, 2001 business meeting; announcements; report on hydrologic conditions; reports by the Executive Director and Acting General Counsel; public dialogue; and resolutions (1) authorizing the continued procurement of services for the Commission's Estuary Model Peer Review Team; (2) authorizing the Executive Director to issue an RFP for sample collection and analysis to support the development of TMDLs for PCBs, chlorinated pesticides and metals in the Delaware Estuary; (3) approving an investment policy for the Commission; and (4) authorizing the Executive Director to contract with two asset management firms.

Documents relating to the dockets and other items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions. Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary, Pamela M. Bush, directly at 609–883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY) to discuss how the Commission may accommodate your needs.

July 10, 2001.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 01–17958 Filed 7–17–01; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 17, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 12, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Bilingual Education and Minority Language Affairs

Type of Review: New.

Title: Descriptive Study of Services to Limited English Proficient (LEP) Students.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 30,564; Burden Hours: 13,554.

Abstract: The study will provide data on the number and characteristics of LEP students, including LEP students with disabilities, and the instructional services they receive in public schools across the U.S. The findings will be used by federal, state, and local policy makers to inform decision-making concerning programs for LEP students and LEP students with disabilities. Data will be collected from public school district administrators and school staff.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–17898 Filed 7–17–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No: 84.349A]

Early Childhood Educator Professional Development Program Grants

AGENCY: Department of Education.

ACTION: Notice of special final competition procedures for fiscal year (FY) 2001 Early Childhood Educator Professional Development Program grants.

SUMMARY: On April 24, 2001, the Secretary published in the **Federal Register** (66 FR 20640–20644) a notice inviting applications for new awards and final procedures and requirements for a FY 2001 competition for Early Childhood Educator Professional Development Program grants. The application deadline under that notice was June 25, 2001, which was extended to July 2, 2001 for applicants in certain areas of Louisiana, Texas, and Florida that the President declared as disaster areas due to Tropical Storm Allison (June 26, 2001; 66 FR 33953–33954).

The notice inviting applications contained an absolute priority, competitive and invitational preferences, and selection criteria that apply to this competition. In addition, the notice indicated that 34 CFR part 75 of the Education Department General Administrative Regulations (EDGAR) applies to these grants, which includes

provisions in § 75.217 governing the Secretary's selection of applications for new awards.

Due to the unexpected receipt of over two hundred grant applications, the limited estimated number (10) of possible grant awards, and the importance of identifying the highest-quality early childhood educator professional development programs for replication from this large applicant pool, the Secretary announces special final competition procedures that will govern this competition and FY 2001 awards of these grants.

Competition Procedures. Except as stated below, the Secretary will follow the procedures in part 75 for selecting applications for new grants, including the procedures in § 75.217.

As indicated in § 75.217(a), the Secretary will select applications for new grants on the basis of the authorizing statute, the absolute priority, and the competitive preferences and selection criteria previously published in the **Federal Register** in the notice inviting applications. In selecting applications, the Secretary will use a two-tier process of review by experts who include persons who are not employees of the Federal Government.

In the first tier of review, panels of experts will evaluate eligible applications against the selection criteria published in the notice inviting applications. Depending upon the quality of the applications and their relative merit, the Secretary plans to select between approximately 30–50 of the highest-quality eligible applications that meet the absolute priority, based upon the points awarded under the selection criteria and competitive preferences during the first-tier review. Those applications then will qualify for a second-tier review.

In the second tier of review, a smaller number of panels comprised of experts who have specialized research-based knowledge about early childhood education, early literacy, and language development will review the applications that qualify for this tier of review. These specialized expert panels will evaluate the applications against the selection criteria published in the notice inviting applications. This second-tier review will be independent of the first-tier review. The Secretary will prepare a rank order of the applications in the second-tier review, based solely on the evaluation of their quality according to the selection criteria and their qualification for additional points under each of the competitive preferences.

The Secretary then will use the criteria in § 75.217(d) to determine the order in which the second group of applications will be selected for grants.

Waiver of Proposed Rulemaking: It is the Secretary's general practice, in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new program such as this one. In addition, section 553(b)(A) of the APA provides that procedural rules, such as those in this notice, are not subject to rulemaking. Because of the unanticipated need for special competition procedures and to ensure timely awards of these grant funds, the Secretary has decided to forego public comment with respect to these procedures in accordance with section 437(d)(1) of GEPA and section 553(b)(A) of the APA. These procedures will be applicable only to the FY 2001 competition.

FOR FURTHER INFORMATION CONTACT: Doris F. Sligh, Compensatory Education Programs, Office of Elementary and Secondary Education, 400 Maryland Avenue SW, Washington, DC 20202–6132. Telephone: (202) 260–0999, or via Internet: *Doris.Sligh@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. If you are an individual with a disability, you may obtain a copy of this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 6622 and Public Law No. 106–554.

Dated: July 12, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–17914 Filed 7–17–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

[Docket Nos. EA–244 and EA–245]

Application to Export Electric Energy; IDACORP Energy, L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: Idaho Power Company (IPC) and IDACORP Energy L.P. (IELP) jointly applied to transfer the authority to export electric energy from the United States to Canada and to Mexico, pursuant to section 202(e) of the Federal Power Act, from IPC to IELP.

DATES: Comments, protests or requests to intervene must be submitted on or before August 17, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 19, 2000, in Docket EA–222, and on March 30, 2001, in Docket EA–233, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized IPC to export electric energy from the U.S. to Canada and to Mexico, respectively, using a collection of international transmission facilities appropriate for third-party transmission of electric energy.

IDACORP, Inc. is a holding company of both IPC and IELP. The proposed request to transfer export authority is occasioned by a corporate reorganization of IDACORP, Inc., in which IPC will perform only public utility functions of owning and operating generating and transmission facilities while IELP will perform only power marketing functions. Since IPC

will no longer be performing power marketing functions, the subject applications request the transfer of the authority to export electric energy from IPC to IELP.

IELP will purchase the electric energy to be exported to Mexico and to Canada from electric utilities, Federal power marketing agencies, cogeneration and small power production facilities, and exempt wholesale generators within the United States.

In FE Docket EA–244, IELP proposes to arrange for the delivery of electric energy to Mexico over the international transmission facilities owned by San Diego Gas & Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico.

In FE Docket EA–245, IELP proposes to arrange for the delivery of electric energy to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by IELP, as more fully described in the applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the IELP application to transfer IPC's authority to export electric energy to Mexico should be clearly marked with Docket EA–244. Comments on the IELP application to transfer IPC's authority to export electric energy to Canada should be clearly marked with Docket EA–245. Additional copies are to be filed directly with Ms. Michelle I. K. Catherine, Manager, Contracts Administration, IDACORP Energy, L.P., Cottonwood Plaza, 350 North Mitchell Street, Boise, ID 83704 AND Mr. Jeffrey S. Burk, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Electricity Regulation" and then "Pending Procedures" from the options menus.

Issued in Washington, DC on July 12, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–17916 Filed 7–17–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, August 1, 2001, 9:00 a.m. to 6:00 p.m.; Thursday, August 2, 2001, 9:00 a.m. to 5:30 p.m.

ADDRESS: Princeton Plasma Physics Laboratory, Room LSB–318, James Forrestal Campus U.S. Route #1 North at Sayre Drive, Princeton, New Jersey 08543.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION: Purpose of the Meeting: The major purpose of this meeting is for the full committee to complete its work on the Theory Program review charge and the Burning Plasma Science charge. The committee will also receive briefings on the various elements of the Compact Stellarator program, and the ITER Canada proposal to host the International Thermonuclear Experimental Reactor (ITER).

Tentative Agenda

Wednesday, August 1, 2001

- DOE/Office of Fusion Energy Sciences (OFES) Perspective
- Report from the Theory Review Panel
- Office of Management and Budget Views on the National Research Council fusion report and on the National Energy Policy
- Presentations on the Compact Stellarator Program
- Tour of Princeton Plasma Physics Laboratory (PPPL) Facilities

Thursday, August 2, 2001

- Presentation from ITER Canada-Proposal to build the ITER Facility in Ontario
- Report from the Burning Plasma Science Panel
- Public Comments

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or albert.opdenaker@science.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; IE–190; Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on July 12, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–17915 Filed 7–17–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–025]

ANR Pipeline Company; Notice of Negotiated Rate Filing

July 10, 2001.

Take notice that on July 2, 2001, ANR Pipeline Company (ANR) tendered for filing and approval one Service Agreement between ANR and CoEnergy Trading Company pursuant to ANR's Rate Schedule FTS–1. ANR states that the Agreement contains a negotiated rate arrangement to be effective July 1, 2001. ANR requests that the Commission accept and approve the Agreement to be effective July 1, 2001.

ANR states that copies of the filing has been mailed to each of ANR's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17893 Filed 7–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–026]

ANR Pipeline Company; Notice of Negotiated Rate Filing

July 10, 2001.

Take notice that on July 2, 2001, ANR Pipeline Company (ANR) tendered for filing and approval three Service Agreements between ANR and Baltimore Gas and Electric Company pursuant to ANR's Rate Schedules FTS–1, FTS–2 and FSS. ANR states that the agreements contain a negotiated rate arrangement to be effective July 1, 2001. ANR requests that the Commission accept and approve the Agreements to be effective July 1, 2001.

ANR states that copies of the filing have been mailed to each of ANR's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17894 Filed 7–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–482–000]

Dominion Transmission, Inc.; Notice of Status Report and Request for Waiver

July 12, 2001.

Take notice that on July 9, 2001, Dominion Transmission Inc. (DTI) tendered for filing the First Revised Volume 2 tariff and First Revised Sheets Nos. 2–8 in DTI's Third Revised Volume 1 to reflect the corporate name change effective April 11, 2000.

DTI states that copies of this filing are being sent by first-class mail, postage prepaid, by DTI to DTI's customers listed in Original Volumes 2 and 2A. A copy of this letter and the Table of Contents changes to Third Revised Volume No. 1 are being sent to DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17892 Filed 7–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–397–000]

National Fuel Gas Supply Corporation; Notice of Application

July 12, 2001.

Take notice that on July 3, 2001, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed an abbreviated application in Docket No. CP01–397–000 pursuant to Section 7(c) of the Natural Gas Act, as amended, and Part 157 of the Commission's Rules and Regulations, requesting a certificate of public convenience and necessity to drill a new horizontal injection/withdrawal well at its Lawtons Storage Field. The well will be located in the Town of Collins, Erie County, New York. The application is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

National Fuel proposes to drill one new horizontal injection/withdrawal well, to be designated Well 7404, at its Lawtons Storage Field. The intent of this work is to replace the deliverability that has been lost due to an ongoing caving problem that bridges off the flow of gas. Well 7404 will be drilled vertically to approximately 1,925 feet, and then will be deviated to enter the storage formation horizontally at a true vertical depth (TVD) of approximately 2,420 feet. The well will be confined totally within the existing certificated storage boundary of the Lawtons Storage Field. National Fuel states that it would need to construct approximately 110 feet of 6-inch diameter well line to connect Well 7404 to the existing 6-inch diameter storage backbone line.

National Fuel states the horizontal well will enable more efficient use of the southern section of the Lawtons Storage Field, known as the Quaker Pool, and should adequately replace the flow rate lost at the wells with exposed shale. National Fuel estimates that the proposed project would cost $490,000.

Any questions regarding the application be directed to David W. Reitz, National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203, at (716) 857–7949, or at *reitzd@natfuel.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 2, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–17891 Filed 7–17–01; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2542–000, et al.]

Xcel Energy Services Inc., et al.; Electric Rate and Corporate Regulation Filings

July 12, 2001.

Take notice that the following filings have been made with the Commission:

1. Xcel Energy Services Inc.

[Docket No. ER01–2542–000]

Take notice that on July 9, 2001, Xcel Energy Services Inc., on behalf of Public Service Company of Colorado (PSCo), submitted for filing an interconnection agreement between PSCo and Enron North America, as agent for Fountain Valley Power, L.L.C.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. CalPeak Power-Border LLC

[Docket No. EG01–254–000]

Take notice that on July 9, 2001, CalPeak Power-Border LLC (Border) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. CalPeak Power-Vaca Dixon LLC

[Docket No. EG01–255–000]

Take notice that on July 9, 2001, CalPeak Power-Vaca Dixon LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. CalPeak Power-El Cajon LLC

[Docket No. EG01–256–000]

Take notice that on July 9, 2001, CalPeak Power—El Cajon LLC (El Cajon) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy accuracy of the application.

5. CalPeak Power-Mission LLC

[Docket No. EG01–257–000]

Take notice that on July 9, 2001, CalPeak Power-Mission LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. CalPeak Power-Enterprise LLC

[Docket No. EG01–258–000]

Take notice that on July 9, 2001, CalPeak Power-Enterprise LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. CalPeak Power-Panoche LLC

[Docket No. EG01–259–000]

Take notice that on July 9, 2001, CalPeak Power-Panoche LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. CalPeak Power-Midway LLC

[Docket No. EG01–260–000]

Take notice that on July 9, 2001, CalPeak Power-Midway LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. Central Maine Power Company

[Docket No. ER01–1851–001]

Please take notice that on July 6, 2001, Central Maine Power Company (CMP) tendered for filing the First Amendment to the Interconnection Agreement by and between CMP and Northeast Empire Limited Partnership #1, designated as CMP—FERC Electric Tariff, Fifth Revised, Volume No. 3, Service Agreement No. 129, and conformed to the requirements of Order 614.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. New York Independent System Operator, Inc.

[Docket No. ER01–1942–001]

Take notice that on July 9, 2001, the New York Independent System Operator, Inc. (NYISO) submitted its compliance filing in the above-captioned proceeding. The NYISO has served a copy of this filing upon all parties that are included on the Commission's official service list in this proceeding.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Company

[Docket No. ER01–2538–000]

Take notice that on July 9, 2001, Arizona Public Service Company (APS) tendered for filing a revised Exhibits for Citizens Utilities Company (Citizens) applicable under the APS–FERC Rate Schedule No. 225.

Copies of this filing have been served on Citizens and the Arizona Corporation Commission.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Michigan Electric Transmission Co.

[Docket No. ER01–2539–000]

Take notice that on July 9, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing an executed transmission service agreement with Sebewaing Light & Water Department (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The agreement has an effective date of June 8, 2001.

Copies of the filed agreement were served upon the Michigan Public Service Commission, ITC, and the Customer.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Public Service Corporation

[Docket No. ER01–2540–000]

Take notice that on July 9, 2001, Wisconsin Public Service Corporation (WPSC) filed a notice of termination for its W–3 Partial Requirements Load Pattern Tariff, FERC Electric Tariff, Original Volume No. 3 (the W–3 Tariff). WPSC no longer has any customers under the W–3 Tariff. WPSC requests that the notice of termination become effective on September 7, 2001, sixty days after the date of this filing. WPSC

has served this filing on the Public Service Commission of Wisconsin.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Northern Indiana Public Service Company

[Docket No. ER01–2541–000]

Take notice that on July 9, 2001, Northern Indiana Public Service Company (Northern Indiana) filed a generation interconnection agreement (Interconnection Agreement) with Whiting Clean Energy, Inc. (Whiting). Whiting owns and will operate a 550 MW gas-fired generation facility located in Whiting, Indiana, which is located within northern Indiana's Controlled Area. Northern Indiana has requested an effective date of July 9, 2001.

Copies of this filing have been sent to Whiting, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–17940 Filed 7–17–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7012–4]

Office of Air and Radiation-Immediate Office Environmental Internship Assistance Completion: Solicitation Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document solicits grant proposals from educational institutions and non-profit organizations to support the Office of Air and Radiation Immediate Office's Environmental Internship Program and explains the process for submitting such a proposal.

DATES: All applications should be received by September 30, 2001.

FOR FURTHER INFORMATION CONTACT: Linda Zarow, USEPA, Office of Air and Radiation, Immediate Office, Ariel Rios Building; 1200 Pennsylvania Avenue, NW.; Washington, DC 20004, mail code 6101A. Telephone (202) 564–7431; Fax (202) 501–1004; or e-mail: zarow.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

Contents by Section

I. Background/Purpose
II. Funding Issues
III. Eligibility
IV. Deadlines/Dates
V. Program Design
VI. Criteria/Scope
VII. Proposals/Application Format
VIII. How to Apply
IX. Where and When to Submit
X. Additional Considerations
XI. Pre-application Assistance

I. Background/Purpose

This document solicits grant proposals from educational institutions and non-profit organizations to support the Office of Air and Radiation's Immediate Office's Environmental Internship Program (hereinafter referred to as "program") that will provide undergraduate students with internships in various environmental positions. This intern program will provide students with work experience, orientation, mentoring, career development, and resume writing to reflect their environmental training positions. This program will enable students to prepare to become future leaders in the environmental field and to recognize and appropriately manage complex environmental problems. It will also provide students with an environmental consciousness to encourage them to pursue environmental careers and become environmentally conscious citizens.

II. Funding Issues

Subject to the availability of funds, EPA anticipates approximately $600,000 over a three year period, to be available for this program, including all direct and indirect costs. EPA expects to award one cooperative agreement for the full amount. Proposals may request funding with a total project cost of up to $200,000 per year with a duration of up to three years. This cooperative agreement is authorized under CAA section 103(b)(3) and no matching funds are required from the recipient. The Catalogue of Federal Domestic Assistance (FDA) is 66.606.

III. Eligibility

Organizations being targeted for this assistance agreement include educational institutions and not-for-profit organizations. CAA section 103 prohibits for-profit organizations from receiving grants from EPA. EPA reserves the right to reject all applications and make no awards.

IV. Deadlines/Dates

In order to efficiently manage the selection process, the Office of Air and Radiation requests that an "Intent to Apply" be submitted by August 13. These should be submitted to Linda Zarow; mail code 6101A; Room Number 5443K Ariel Rios North Building; Environmental Protection Agency; 1200 Pennsylvania Ave., NW.; Washington, D.C. 20460. (Please provide project title or subject and e-mail address.) E-mail address: Zarow.linda@epa.gov; Fax # 202/501–1004.

An "Intent to Apply" simply states, in the form of e-mail, letter, or fax, that your organization intends to submit a proposal to be received by the September 30, 2001 deadline for receipt of pre-proposals. Please provide your project title or subject and a return e-mail address. Submitting an "Intent to Apply" does not commit an organization to submit a pre-proposal. Only those submitting an "Intent to Apply" may submit a pre-proposal. To allow for efficient management of the competitive process, OAR is requesting organizations to submit an Intent to Apply no later than August 13, 2001.

V. Program Design

EPA anticipates student stipends should not exceed $4,500 per semester with a minimum of seven students per semester. Applicants should describe the following in detail:

• *Recruitment:* Describe your process for recruiting from a diverse population of students. Include a list of colleges/universities to be targeted for recruitment activities and describe how

your organization will ensure qualified students have access to internship materials.

• *Housing:* It is anticipated most interns will be from cities other than Washington, D.C. and, therefore, will require assistance in obtaining housing accessible to public transportation. Describe the type of housing assistance you will provide for interns.

• *Stipends:* Describe your process for tracking and payment of student stipends.

• *Tracking:* Describe your process for measuring the success of this program in encouraging students to pursue environmental careers.

• *Student Evaluation and Application Processing:* Describe your process for accepting, reviewing and evaluating student applications. At a minimum, the application process must evaluate potential interns on the basis of their computer skills, academic record, awards, and writing skills. Special consideration should be given to applicants that have scholarships or fellowships and work experience.

• *Internship Training Program:* Describe your protocol and procedures for managing an environmental internship program. At a minimum, the protocol and procedures should address college accreditation for students, supplemental training for interns and evaluation of student performance.

• *Student eligibility requirements for internships:* Students must be enrolled full-time in a four year accredited college or university. Full time students enrolled in a four year college or university must have achieved at least second semester sophomore standing, or have completed 45 credit hours of academic study. Students must have a grade point average of 2.8 or higher to meet eligibility for internships at EPA.

VI. Criteria/Scope

Review and Selection Process: Pre-proposals submitted to EPA headquarters will be evaluated using the criteria defined below. Pre-proposals will be reviewed in two phases—the screening phase and the evaluation phase. During the screening phase, proposals will be reviewed to be determined whether they meet the basic requirements of this solicitation. Only those pre-proposals that meet all of these basic requirements will enter the full evaluation phase of the review process. During the evaluation phase, proposals will be evaluated based upon the quality of their work plans, and how well their proposed programs meet the criterion outlined below. Reviewers conducting the screening and evaluation phases of the review process will include EPA officials and external environmental educators approved by EPA. At the conclusion of the evaluation phase, the reviewers will score work plans, on a one hundred point scale, based upon the system below:

Criterion	Maximum points per criterion
Effectiveness of overall work plan and recruitment time line, and reasonableness of costs contained in budget detail	30
Ability to recruit from a diverse population of students and schools	20
Ability to assist students in locating housing arrangements accessible to public transportation	20
Adequacy of student accreditation program and supplemental training	20
Ability to evaluate intern performance	10
Total Points Possible	100

VII. Proposals/Application Format

The pre-proposal should conform to the following outline:

1. Title
2. Applicant (Organization) and contact name, phone number, fax and e-mail address
3. Summary of funds requested by budget categories contained in SF–424
4. Project period: beginning and ending dates (for planning purposes, applicants should assume funds will be available in May 2002 to begin recruiting students for placement during Fall 2002)
5. Project work plan (including a description of all tasks, dates of completion, products and deliverables, and detailed budget and narrative)
6. Evaluation plan
7. Recruitment plan
8. Internship training program
9. Tracking plan
10. Report Schedule: Acknowledgment of quarterly report requirement (schedule established by EPA) and planned final report submission date
11. Budget (Please provide for the following categories):
    —Personnel
    —Fringe Benefits
    —Contractual Costs
    —Travel
    —Equipment
    —Supplies
    —Other
    —Total Direct Costs
    —Total Cost

VIII. How To Apply

Intents to Apply: Intents to Apply may take the form of an e-mail, letter or fax and should be sent to: Linda Zarow, Ariel Rios Building, 1200 Pennsylvania Ave. Rm. 5433, Washington DC 20004; mail code 6101A, fax (202) 501–1004.; email: zarow.linda@epa.gov. Please include organization name, contact, and phone number.

Pre-Proposals: A hard copy original and 6 copies of the pre-proposal should be submitted to Linda Zarow at the address stated above. The pre-proposal must be postmarked before midnight September 30, 2001. Courier or personally delivered applications must be brought to Room 5443K Ariel Rios North Building, 1200 Pennsylvania Avenue, NW., Washington DC 20004.

Submission of an Intent to Apply or a pre-proposal does not guarantee funding.

IX. Pre-Application Assistance

To ensure that every interested party has equal opportunity to gain any needed additional administrative information useful to the application process, OAR will schedule a conference call for those who have submitted an intent to apply. EPA will notify applicants submitting an Intent to Apply of the date, time and call in number for this pre-application discussion. Questions and answers from this conference call will be summarized and available by contacting Linda Zarow by e-mail (zarow.linda@epa.gov). Federal rules protecting applicants' equal access to information prohibit any other contact that would result in information given to some but not all applicants. Therefore, as much as it desires to encourage all interested applicants, EPA can give no other assistance prior to final submission of applications. Requests for information outside the context of this conference call cannot be answered. The content of the call is entirely dependent upon questions asked.

Dated: July 10, 2001.

Linda Zarow,

Program Analyst, Office of Air and Radiation.

[FR Doc. 01–17909 Filed 7–17–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

July 12, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 17, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Bobby Brown, Federal Communications Commission, Room 1–A739, 445 12th Street, SW, DC 20554 or via the Internet to *babrown@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Bobby Brown at 202–418–0539 or via the Internet at *babrown@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0211.

Title: Section 73.1943 Political File.

Form No.: Not applicable.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 16,597.

Estimated Time Per Response: 0.25 hour per request (each station is estimated to have 25 political broadcasts per year).

Frequency of Response: On occasion.

Total Annual Burden: 104,744 hours.

Total Annual Cost: 0.

Needs and Uses: Section 73.1943 requires licensees of broadcast stations to keep and permit public inspection of a complete record (political file) of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such request. The data is used by the public to assess money expended and time allotted to a political candidate and to ensure that equal access was afforded to other qualified candidates.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–17927 Filed 7–17–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 01–08]

The Impact of the Government Paperwork Elimination Act and the Electronic Signatures in Global and National Commerce Act

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Maritime Commission ("FMC" or "Commission") is issuing this Inquiry to solicit information and comments concerning the impact of the Government Paperwork Elimination Act and the Electronic Signatures in Global and National Commerce Act on all sectors of the U.S. ocean shipping industry. These comments will assist the Commission as it analyzes the use and acceptance of documents in electronic form, as well as other means of engaging in electronic transactions. The Commission plans to provide individuals or entities with the option to submit information or transact business with the Commission electronically, where practicable, and to maintain records electronically when practicable.

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications, August 17, 2001.

ADDRESS COMMENTS TO: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: *secretary@fmc.gov*.

FOR FURTHER INFORMATION CONTACT: Florence A. Carr, Deputy Executive Director, Office of the Executive Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5800, E-mail: *florence@fmc.gov*.

SUPPLEMENTARY INFORMATION: The Commission is seeking information and comments from interested parties regarding the impact of the Government Paperwork Elimination Act ("GPEA"), Public Law 105–277, and the Electronic Signatures in Global and National Commerce Act ("E–SIGN"), Public Law. 106–229, on all sectors of the U.S. ocean shipping industry.

GPEA provides that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. GPEA requires agencies, by October 21, 2003, to provide for (1) the option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) the use and acceptance of electronic signatures, when practicable. GPEA defines "electronic signature" as a method of signing an electronic message that (a) identifies and authenticates a particular person as the source of the electronic message; and (b) indicates such person's approval of the information contained in the electronic message. GPEA encourages Federal Government use of a range of electronic signature alternatives.

E–SIGN eliminates legal barriers to the use of electronic technology to form and sign contracts, collect and store documents, and send and receive notices and disclosures. E–SIGN provides that a contract, signature, or record may not be denied legal effect, validity or enforceability solely because it is in electronic form, and that a contract relating to such a transaction may not be denied legal effect, validity or enforceability solely because an electronic signature or electronic record was used in its formation, provided that, among other things, the parties agree to use or accept electronic records and or electronic signatures. Provisions in Federal and state statutes and agency regulations requiring the use of paper records and ink signatures in commercial, consumer, and business transactions have been superseded by E–SIGN as of October 1, 2000.

E–SIGN also preserves consumer protections for electronic commerce such as exist for paper-based transactions. The Act applies broadly to

federal and state statutes and regulations governing private sector (including business-to-business and business-to-consumer) activities. The Act generally covers legal requirements that information be disclosed in private transactions. It also requires that agencies generally allow private parties to retain records electronically. The Government may establish appropriate performance standards for accuracy, integrity, and accessibility of records retained electronically, to ensure that compliance with laws can be determined, taxpayers can be protected, and the agency mission's can be accomplished.

In order for the FMC to develop and implement procedures for the use and acceptance of documents in electronic form where practicable, as well as other means of engaging in electronic transactions, the agency must assess such factors as costs, benefits, risks, available technologies, confidentiality and security measures.

Therefore, the Commission is seeking public comment to assist in its assessment. The Attachment contains several questions which we ask respondents to answer. If you or your organization are required to complete and submit any of the following forms/ information collections to the FMC pursuant to 46 CFR Part 500 *et seq.*, the Commission would be especially interested in your responses to the questions in the Attachment.

- Form FMC–1 Organization Information
- Form FMC–18 Application for a License as an Ocean Transportation Intermediary
- Form FMC–48 Ocean Transportation Intermediary Bond
- Form FMC–67 Ocean Transportation Intermediary Insurance Form
- Form FMC–68 Ocean Transportation Intermediary Guaranty Form
- Form FMC–69 Ocean Transportation Intermediary Group Bond Form
- Form FMC–83 Service Contracts User Registration Form
- Form FMC–131 Application for Certificate of Financial Responsibility
- Form FMC–132A Passenger Vessel Surety Bond
- Form FMC–132B Passenger Vessel Surety Bond
- Form FMC–133 FMC Guaranty in Respect of Liability for Nonperformance Section 3 of the Act Pub. L. 89–777
- Form FMC–133B FMC Guaranty in Respect of Liability for Death or Injury Section 2 of the Act Pub. L. 89–777
- Form FMC–150 Information for Class A/B Agreements and Instructions
- Form FMC–152A Monitoring Reports for Class A Agreements
- Form FMC–152B Monitoring Reports for Class B Agreements
- Form FMC–152C Monitoring Reports for Class C Agreements
- Form FMC–151 Information for Class C Agreements and Instructions

The Commission encourages prospective commenters to address all relevant questions; however, there is no requirement that all questions be answered. Commenters are free to answer only those questions which they so choose.

In addition to availability in hard copy or by e-mail copy from the Commission's Secretary, the Notice of Inquiry ("NOI") questions will be made available on the Commission's website at *http://www.fmc.gov* in a downloadable text file. Comments may be submitted in hard copy or as an attachment to an e-mail. These e-mail attachments must be submitted in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications. For further information contact the Secretary at *Secretary@fmc.gov* or (202) 523–5725.

Now therefore, it is Ordered that Notice of this Inquiry be published in the **Federal Register**.

By the Commission.

Bryant L. VanBrakle,

Secretary.

Attachment—NOI Questions

Commenters should provide their organization's name and address, their category of organization (e.g., Vessel Operating Common Carrier, Shipper, Shippers' Association, Ocean Transportation Intermediaries), and a telephone number for the commenting official.

1. Please identify (by FMC form number) the forms/information collections which you or your organization are required to submit to the FMC. For each form identified please rate the sensitivity of the data and the transaction as either high, medium or low, using the following definitions for each.

High sensitivity—the data/transaction is of critical concern, may contain proprietary information, or consists of data files that require safeguarding.

Medium sensitivity—the data/transaction is an important concern but not necessarily paramount in the organization's priorities. This includes data whose release or distribution outside of the organization or the Commission must be controlled and protected against acts as malicious destruction, unauthorized alteration or disclosure.

Low sensitivity—some minimum level of security is required, but not the same level as the previous two categories, e.g., data files which have value to an originator only in their raw form, or data requiring safeguarding by the Privacy Act but which contain information that is nearly all in the public domain.

2. Are you or is your organization now using or planning to use any form of electronic signature technology as part of your business activities? If yes, briefly describe the context in which it is used or planned to be used and indicate how frequently it may be used.

3. Are you or is anyone in your organization familiar with Public Key Infrastructure ("PKI") and Automated Certificates of Electronic Signature? If yes, indicate whether you are using or planning to use PKI electronic signature certificates.

4. What benefits, if any, do you or your organization anticipate if the Commission establishes an electronic option for the forms/information collections you identified in question 1?

5. What additional risks to the data or the transaction, if any, do you or your organization anticipate should the Commission establish an electronic reporting option for the forms/ information collections you identified in question 1?

6. With respect to the forms/information collections you identified in response to question 1, what obstacles or barriers do you or your organization expect may impede the Commission's successful establishment of electronic options?

7. With respect to the forms/information collections you or your organization are required to provide to the FMC, which of the issues listed below pose the most concern for you should that same form/information collection be provided on an electronic platform (meaning you can access the form, complete it, sign it, and transmit the completed/signed document back to the FMC electronically)? Briefly explain.

a. *Confidentiality*—Ensuring that information can be read only by authorized entities, including possible encryption of information for privacy/confidentiality or security purposes.

b. *Integrity*—Ensuring that data is unchanged from its source and has not been accidentally or maliciously altered. This includes but is not limited to:

1. *Authentication*—Ensuring that transmissions and messages, and their originators, are authentic, and that a recipient is eligible to receive specific categories of information. This includes possibly having a third party verify that the content of a message has not been changed in transit, and that it is what it purports to be.

2. *Nonrepudiation*—Ensuring strong and substantial evidence is available to the sender of data that the data has been delivered (with the cooperation of the recipient), and to the recipient evidence of the senders's identity, sufficient to prevent either from successfully denying having sent or received the data. This includes the ability of a third party to verify the integrity and origin of the data. Technical nonrepudiation binds a user to a transaction in a fashion that provides important forensic evidence in the event of a later problem.

c. *Availability*—Ensuring that the information technology resources (system or data) are available on a timely basis to meet

mission/business requirements or to avoid substantial losses. Availability also includes ensuring that resources are used only for intended purposes.

8. Any other comments?

[FR Doc. 01–17875 Filed 7–17–01; 8:45 am]

BILLING CODE 5730–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 23, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 13, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–18004 Filed 7–13–01; 4:07 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01145]

Expansion of the Prevention of Mother to Child Transmission Program, Isoniazid Preventive Therapy Program, and Information, Education, and Communication Activities in the Republic of Botswana; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement with the Republic of Botswana Ministry of Health(MOH) for the expansion of the prevention of mother to child transmission program (PMTCT), the national rollout of the Isoniazid Preventive Therapy (IPT) program, and the development and expansion of the Information, Education, and Communication (IEC) campaign targeting HIV/AIDS and HIV/AIDS-related conditions in Botswana.

The purpose of this cooperative agreement is to improve and expand the Prevention of Mother to Child Transmission program activities in Botswana, rollout the National IPT program, and provide technical assistance to improve HIV laboratory diagnostic and monitoring capability, which will be accomplished through cooperation between CDC and the MOH of Botswana.

These collaborative activities could profoundly impact the scope and intensity of the implementation of the National AIDS Policy. Cooperative efforts could lead to greater access to counseling and testing services in all areas of the country, expansion of the IPT program throughout the nation, and significant improvements in HIV/AIDS education and promotion activities, and strengthened aspects of the public health infrastructure.

The U.S. Government seeks to reduce the impact of HIV/AIDS and related conditions in specific countries within sub-Saharan Africa, Asia, and the Americas through its Leadership and Investment in Fighting an Epidemic (LIFE) initiative. Through this program, CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of (1) HIV primary prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. Government agencies are already active. Botswana is one of these targeted countries.

To carry out its activities in these countries, CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic. CDC's program of technical assistance to Botswana focuses on several areas including scaling up promising prevention and care strategies, such as PMTCT and IPT, supporting behavior change communication projects, such as IEC activities, and other capacity building efforts.

Botswana is experiencing one of the world's most severe AIDS crises that looms as a disaster of unprecedented proportions. The global burden of HIV/AIDS in Botswana is the highest in sub-Saharan Africa, where 83 percent of the world's AIDS deaths have occurred, and where four-fifths of all HIV-positive women live. Despite a relative stabilization of infection rates in some countries in West Africa, the HIV/AIDS epidemic continues to grow at an alarming rate in Southern Africa. Like many countries in this region, Botswana has been disproportionately affected by the AIDS pandemic. Over 20 percent of the population are believed to be HIV positive and the Botswana National Aids Co-ordinating Agency's 2000 Sentinel Surveillance reports 38.5 percent HIV infection in participating pregnant women. Botswana estimates that as many as 25 babies a day are born with HIV: AIDS-related conditions are responsible for 10 percent of annual deaths, with women and adolescents particularly at risk. TB is by far the single leading cause of death among adults with AIDS in Botswana. Based on Sentinel surveys in 1999, an estimated 19 percent of the total population and 29 percent of the economically productive age group (15–49 years old) are living with HIV infection. The rate of TB infection in Botswana (537/100,000 in 1999) is one of the highest in the world.

Botswana has taken many positive steps to address the AIDS epidemic. The President has recognized HIV/AIDS as "the greatest challenge Botswana has faced" and has warned Botswana that HIV/AIDS "threatens the country with annihilation." The Botswana government pays for up to 80 percent of all HIV/AIDS activities in the country. This full-scale national response has

generated many examples of creative programming and international collaborations. The government of Botswana will be among the first African countries to launch a TB prevention program using Isoniazid Preventive Therapy (IPT) for HIV infected individuals. A Pilot program of IPT was implemented in October 2000 and planning for nation-wide implementation is underway. In 1999 the MOH launched a pilot project for PMTCT in Gaborone and Francistown which has also been approved for full scale implementation. Both programs face manpower needs and require large scale training efforts for health care workers.

The Botswana MOH and CDC collaboration was established in 1995 and is known as the "The BOTUSA Project" and is a successful example of MOH and international collaboration. BOTUSA is a strong supporter of the IPT program and is providing technical assistance, training for health care workers, supplying educational materials, and supporting program monitoring and evaluation. BOTUSA's collaboration includes support for the national PMTCT program through the provision of technical assistance, counseling space, equipment, and materials for prenatal clinics throughout the country.

However, despite the support of the government to fight the epidemic and the collaboration with international partners, the prevalence of HIV infection appears to have increased substantially in Botswana from 1997 to 2000 and the epidemic cannot yet be characterized as having stabilized. The capacity of the government to expand their pilot projects for prevention and extend the reach of their activities to the entire nation will have a substantial impact on the epidemic.

B. Eligible Applicants

Assistance will be provided only to the MOH of Botswana. No other applications are solicited.

The MOH is the only appropriate and qualified organization to fulfill the requirements set forth in this announcement because:

1. The MOH is uniquely positioned, in terms of constitutional authority, mandate and ability to oversee and safeguard public health, and to collect and analyze information and disseminate surveillance and health system performance reports related to the prevalence and incidence of HIV/AIDS, HIV/AIDS-related conditions and other health issues.

2. The MOH has in place the central, district, and community-based structures required to immediately engage in the activities listed in this announcement.

3. The MOH is directly responsible for the implementation, monitoring and evaluation of population-based HIV/AIDS prevention and care policies and services.

C. Availability of Funds

Approximately $500,000 is available in FY 2001, to fund this agreement. It is expected that the awards will begin on or about September 1, 2001 and will be made for a 12-month budget period within a project period of 5 years. Annual funding estimates may change.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in PMTCT cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Funds received will not be used for the direct purchase of drugs to treat active TB disease. No funds appropriated under this announcement shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services) for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exception:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Strengthen and support the PMTCT program in-country.

(1) Increase coverage and improve impact of promotion and education activities required to implement the PMTCT program in all health districts by the end of 2001 through the provision of an additional IEC Officer to be assigned to the PMTCT Programme.

(2) Upgrade capacity for monitoring and evaluation of the program and assure that uptake and awareness of the program is increasing through the provision of additional monitoring and evaluation staff to the PMTCT Programme

b. Funding to be administered by the Ministry of Health includes the provision of short term contracts for technical and support staff needed to enhance current pilot programs in IPT and PMTCT to a nation wide level and provide technical support to set up high quality laboratory monitoring and testing for HIV diagnosis and treatment. (For example, recipient may wish to engage time-limited contractors or consultants who would not become permanent staff unless positions were created and filled by the official Government of Botswana Department of Manpower.

c. Expand the IPT pilot program for HIV positive individuals to provide nationwide access.

d. Provide training to all relevant health workers nationwide on the technical aspects of program implementation. This will be

accomplished by the engaging of a National Training Coordinator and additional trainers to be placed in the Botswana National Tuberculosis Programme (BNTP) in the Epidemiology Unit.

e. Provide technical and support staff needed to expand current pilot programs in IPT and PMTCT to a nation wide level and provide technical support to set up high quality laboratory monitoring and testing for HIV diagnosis and treatment. For example, recipients may wish to engage contractors to conduct these activities.

f. Improve the laboratory capacity to provide monitoring and diagnostic testing for HIV positive individuals on anti-retroviral treatment and improve ability to determine eligibility and most effective timing of treatment and care options. The cooperative agreement may be accomplished through the limited renovation (within CDC policy guidelines and prior written approval) of buildings and property which will be provided by the Ministry of Health in Francistown, Serowe, and Maun which are the three largest population centers outside of Gaborone, the capital.

2. CDC Activities

a. Collaborate with MOH on designing and implementing the activities listed above, including but not limited to the provision of technical assistance to develop and implement program activities, quality assurance, data management, statistical analysis, and presentation of program methods and findings.

b. Provide guidance in the renovation of laboratory space in Francistown, Serowe, and Maun, technical assistance in the design and layout of the laboratory space, and provision of portable buildings through a support agreement to increase laboratory space in rural areas as needed.

c. Provide technical assistance in setting up and running a virology laboratory for diagnostic and monitoring purposes, type of equipment and laboratory tests for best quality of service, and quality assurance.

d. Collaborate with MOH and other relevant partners and agencies in the development activities; directly assist with voluntary counseling and testing services.

e. Monitor project and budget performance.

E. Application Content

Please use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections of this document to develop your application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and with unreduced font. Pages should be numbered, and a complete index to the application and any appendices must be included.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm. On or before August 15, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

G. Evaluation Criteria

Your application will be evaluated against the following criteria by an independent review group appointed by CDC.

1. Understanding of the Problem (20 points)

Extent to which the applicant demonstrates a clear and concise understanding of the nature of the problem described in the Purpose section of this announcement. This specifically includes description of the public health importance of the planned activities to be undertaken and realistic presentation of proposed objectives and projects.

2. Technical Approach (25 points)

The extent to which the applicant's proposal includes an overall design strategy, including measurable time lines, the extent to which the proposal addresses regular monitoring and evaluation, and the potential effectiveness of the proposed activities in meeting objectives.

3. Ability To Carry Out the Project (20 points)

The extent to which the applicant documents demonstrated capability to achieve the purpose of the project.

4. Personnel (20 points)

The extent to which professional personnel involved in this project are qualified, including evidence of experience in working with HIV/AIDS, opportunistic infections, and HIV/STD surveillance.

5. Plans for Administration and Management of Projects (15 points)

Adequacy of plans for administering the projects.

6. Budget (not scored)

The extent to which itemized budget for conducting the project, along with justification, is reasonable and consistent with stated objectives and planned program activities.

7. Protection of Human Subjects (not scored)

The extent to which the application adequately addresses the requirements of 45 CFR 46 for the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Written quarterly progress reports;

2. Financial status report, no more than 45 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

4. Annual audit of these CDC funds (program-specific audit) by a U.S. based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required, pre or post award, with the potential awardee in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the program contact and the Grants Management Specialist, identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement. Some of the more complex requirements have some additional information provided below:

AR–1 Human Subjects Requirements
AR–6 Patient Care
AR–14 Accounting System Requirements
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, (42 U.S.C. section 242l), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2782 e-mail: dpr7@cdc.gov.

For program technical assistance, contact: Ethleen S. Lloyd, Global AIDS Program (GAP), C/o U.S. Embassy Gaborone, 2170 Gaborone Place, Washington D.C. 20521, Telephone: 267–301–696, Fax: 267–373–117.

Dated: July 12, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 01–17910 Filed 7–17–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01173]

Notice of Availability of Funds; Expansion of Mother to Child HIV/AIDS Prevention Activities in the Republic of Kenya

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY)2001 funds for a cooperative agreement program for the expansion of HIV/AIDS Prevention Activities in the Republic of Kenya.

The purpose of the program is to promote the delivery of integrated and comprehensive services to prevent mother to child transmission (PMCT) of HIV infection, including counseling and testing of antenatal patients, the use of effective anti-retroviral drugs, appropriate feeding recommendations, and other maternal health services.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies and international organizations with a minimum of 2 years experience in providing integrated and comprehensive services to women at high risk of HIV infection or whom are HIV infected for the purpose of preventing mother to child transmission of HIV infection.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2001 to fund one award. It is expected that the award will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to three (3)years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be utilized only for the purposes and for the activities described and approved in the final award.

Antiretroviral Drugs

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in PMTCT cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under this cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Needle Exchange: No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under "Recipient Activities", and CDC will be responsible for the activities listed under "CDC Activities".

1. Recipient Activities

a. Identify appropriate health institutions and develop mechanisms for funding service activities.

(1) Work with the National AIDS/STD Control Program (NASCOP) and the Centers for Disease Control and Prevention—Kenya (CDC) to develop a plan for expansion of PMCT services so that model services are provided in at least one district in each province. This will include appropriate assessments of capacity, feasibility, and acceptability of PMCT in potential target districts;

(2) Assist Ministry of Health (MOH) staff in facilities and District or Provincial Health Offices in these selected districts in wishing to provide PMCT as part of their AIDS activities in preparing plans for training health workers, organizing manpower and services, and establishing plans for monitoring and evaluation of comprehensive PMCT services;

(3) Solicit proposals from local non governmental organizations (NGO) health facilities who wish to provide PMCT services as part of their AIDS prevention and/or care efforts, including church and faith-based health facilities, and other private facilities and provide funding through contracts to these organizations;

(4) Provide on-going technical assistance to such groups;

(5) Minimally upgrade facilities so that confidential counseling can take place within existing antenatal clinics and maternity units

b. Train Health Workers in PMCT

(1) Develop a training plan for selecting and training health workers at selected facilities in the specific skills and competencies required to deliver comprehensive PMCT services.

(2) Conduct or provide a contract to another organization which will conduct training in PMCT consistent with the Kenya national guidelines.

c. Provide Nevirapine, HIV, RPR test kits and other supplies needed to conduct on-site, confirmed, rapid HIV testing for purposes of providing PMCT.

(1) Procure HIV test kits and other supplies as needed for PMCT. Selection of test kits will be made on the basis of CDC recommendations and will be test kits approved for use in Kenya.

(2) Develop a system for the distribution and re-stocking of HIV test kits and consumables.

(3) Develop a system for additional testing of samples with discordant results, and for quality assurance testing.

d. Provide on-going support, monitoring, supervision, and evaluation of these sites

(1) Ensure that all PMCT sites are operating in accordance with the Kenya National PMCT guidelines and with all applicable local and international standards.

(2) Ensure that all funds disbursed for PMCT activities are properly used and accounted for, and train staff at PMCT sites receiving funds in proper accounting procedures according to federal regulations;

(3) Develop systems for routine monitoring and supervision of PMCT services, including a system for computerized record keeping in all districts, and provide central level analysis and reporting.

e. Public Information Campaign Regarding PMCT

(1) Develop and implement an marketing campaign designed to increase public awareness of the benefits of PMCT and the specific services offered at PMCT sites;

(2) Develop and implement a public awareness campaign and design services to encourage expectant parents to seek couple counseling regarding HIV status, including primary prevention for negative couples, specific counseling for discordant couples with ongoing counseling support and transmission prevention education, and appropriate information and referral for care for HIV infected couples;

(3) Ensure that all sites are appropriately advertised so that pregnant women and their families in the community know where they may receive PMCT services.

2. CDC Activities

a. CDC will collaborate with the recipient on designing and implementing the activities listed above, including but not limited to providing technical assistance to develop and implement program activities, quality assurances, data management, statistical analysis and presentations of program methods and findings.

b. Monitor project and budget performance and

c. Approve the selection of key personnel to be involved in the activities preformed under this cooperative agreement.

d. Rapid HIV Test kits may be provided in limited amounts for the purpose of this activity.

E. Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and 12 point font. Pages should be numbered and indexed. The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428) Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm

On or before August 17, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated postmark or obtain a legibly dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late: Applications which do not meet the criteria in 1. or 2. above will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Understanding of the Problem (15 percent)

The extent to which the applicant's proposal demonstrates a clear and concise understanding of the AIDS epidemic in Kenya and the role of PMCT as a prevention intervention and as an entry point to care for the family.

2. Technical and Programmatic Approach (30 percent)

The extent to which the applicant's proposal demonstrates an understanding of how to develop, promote, implement, monitor, and evaluate PMCT services offered in a variety of health facilities. This includes experience in providing counseling and testing of antenatal patients, the use of effective antiretroviral drugs, making appropriate feeding recommendations and providing other maternal health services.

3. Ability to Carry Out the Project (20 percent)

The extent to which the applicant documents demonstrated capability to achieve the purpose of the project, including grants management of U.S. donor funds. Experience should include working in developing African countries, familiarity with the resources and customs of the Republic of Kenya.

4. Personnel (20 percent)

The extent to which professional personnel involved in this project are qualified, including evidence of experience in working with HIV/AIDS in mothers and children in clinical settings, HIV counseling and testing, working with families and communities, with government and non-government health facilities, and specific knowledge or experience with PMCT.

5. Plans for Administration and Management of the Project (15 percent)

Adequacy of plans for administering the project.

6. Budget (Not scored, but evaluated)

The extent to which the itemized budget for conducting the project is reasonable and well justified. The applicant should include an analysis of the estimated cost per client served in the budget.

7. Protection of Human Subjects (not scored)

The extent to which the application adequately addresses the requirements of 45 CFR 46 for the protection of human subjects. (Not scored; however,

an application can be disapproved if the research risks is so inadequate and protection against risks is so inadequate as to make the entire application unacceptable.)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Semiannual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period;
3. Final financial and performance reports, no more than 90 days after the end of the project period and;
4. Obtain annual program specific audit by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with the International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment, pre or post award, may be required with the potential grantee, in order to review their business management and fiscal capabilities in handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–4 HIV/AIDS Confidentiality Provisions
AR–6 Patient Care
AR–10 Smoke-Free Workplace Requirements
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, (42 U.S.C. 2421), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Program Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Dorimar Rosado, Grants Management Specialist Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention 2920 Brandywine Road, Room 3000 MS–15 Atlanta, GA 30341–4146 Telephone number: (770) 488–2782 email address: dpr7@cdc.gov.

For program technical assistance, contact: Lawrence H. Marum, M.D., FAAP, MPH CDC LIFE Initiative, PO Box 30137, Nairobi Office: National AIDS/STD Control Programme (NASCOP) Phone: +254–72–721–781 or +254–2–729–549 Fax: +254–2–714–745 Email: Lmarum@nairobi.mimcom.net P.O. Box 30137 Nairobi, Kenya US Mail: Unit 64112 APO, AE 09831–4112

Dated: July 12, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

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BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01138]

Epidemiologic HIV/AIDS Research in African-American and Hispanic Men Who Have Sex With Men; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program to support research on the sociocultural, structural, psychological, and behavioral factors that promote HIV infection in African-American and Hispanic men who have sex with men (MSM).

The purpose of the research is to increase understanding of the manner in which these factors relate to the prevalence of HIV infection and incidence of recent infection in these populations. Additionally, under this program, it is expected that the investigators will use the data collected to begin to develop culturally-tailored intervention strategies, although the actual conduct of those interventions will not be part of this cooperative agreement. This announcement addresses goals of CDC's HIV prevention strategic plan through 2005.

Research Study

The program will support four sites to work collaboratively with each other and with CDC investigators in conducting a cross-sectional study that includes HIV testing and counseling. Two sites will be devoted to the recruitment and assessment of African-American MSM, and two sites will be devoted to the recruitment and assessment of Hispanic MSM. Applicants should indicate clearly whether their application pertains to Hispanics or African-Americans. At each site, it is expected that grantees will enroll a minimum of 500 MSM, including gay identified MSM, non-gay-identified MSM, and MSM who inject drugs.

Applicants should develop (1) sampling and recruitment strategies that ensure that the study includes a demographically diverse group of MSM, (2) culturally-sensitive measures of antecedent and outcome variables, including both quantitative and qualitative assessments, (3) a core set of measures that will facilitate ethnic and cultural comparisons, and (4) stringent safeguards for protecting confidentiality of participants.

In conducting the research, it is also expected that grantees will establish a partnership with at least one community-based organization (CBO) to consult on all aspects of conducting the study and to help link participants to prevention and medical services.

We invite applicants to develop protocols and assessment instruments that will increase understanding of a broad array of sociocultural, structural, psychological, and behavioral factors as they relate to HIV infection risk in African-American and Hispanic MSM. These factors may include, but are not limited to:

Cultural attitudes and values
Social and economic discrimination
Social and sexual networks
Acculturation and immigration
Family relations
Community involvement
Experience with and influence of correctional systems
Homophobia
Self-esteem
Resiliency
Religious Beliefs
Beliefs about HIV disease and its treatment
HIV testing history and perceived and actual barriers to testing
Bisexual practices

Drug use
Fluidity of risk behavior

Assessment of the prevalence of HIV infection and incidence of early infection is also a central component of the research. Understanding the risk factors associated with recent HIV seroconversion will inform the design of behavioral interventions. Grantees should be prepared to perform HIV testing of participants using both standard serologic assays and the detuned assay and provide culturally-tailored pre- and post-test counseling and referral to medical care, prevention services, and to other services (social, mental health, drug treatment) as needed. After sites are funded, but before research activities begin, grantees and CDC investigators will work collaboratively to refine the protocols so that they fit together as a whole and address the research issues in a scientifically rigorous manner.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $800,000 is expected to be available in FY 2001 to fund up to four awards. It is expected that the average award will be approximately $200,000 in the first year and will begin on September 30, 2001. The award will be made for a 12-month budget period, within a project period of up to four years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, satisfactory participant accrual, and the availability of funds. Increased funding may be available in years two and three after protocols are established and research has started.

Funding Preference

Funding decisions will attempt to achieve regional diversity of the two African-American MSM sites and the two Hispanic MSM sites (e.g., Northeast, South, Central, West). Funding decisions will also take into consideration geographical locations that afford ample numbers of MSM from which to sample and locations that provide the investigators with the opportunity to consult with CBOs in conducting the study.

D. Program Requirements

In conducting activities to achieve the purpose of these programs, the recipient will be responsible for the activities listed under Recipient Activities, and CDC will be responsible for conducting activities listed under CDC Activities:

1. Recipient Activities

Collaborate with other CDC-sponsored researchers, including developing and using common data collection instruments, specimen collection protocols, and data management procedures, as determined in post-award grantee planning conferences. Recipients will be required to pool data for analysis and publication. Recipients are also required to work collaboratively as a study group to:

a. Attend meeting(s) at CDC to develop collaborative research protocol.

b. Develop the research study protocols and standardized data collection forms across sites.

c. Identify, recruit, obtain informed consent from, and enroll an adequate number of study participants as determined by the study protocols and the program requirements.

d. Follow study participants as determined by the study protocols.

e. Establish procedures to maintain the rights and confidentiality of all study participants.

f. Perform laboratory tests (when appropriate) and data analysis as determined in the study protocols.

g. Collaborate and share data and specimens (when appropriate) with other collaborators to answer specific research questions.

h. Conduct data analysis with all collaborators.

i. Present and publish research findings.

j. Participate in biweekly conference calls with all collaborators.

k. Attend biannual meetings with other funded grantees.

2. CDC Activities

a. Provide technical assistance as needed in the design and conduct of the research.

b. Facilitate and assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. Assist as needed in designing a data management system.

d. Assist as needed in performance of selected laboratory tests.

e. Work collaboratively with investigators to help facilitate research activities across sites involved in the same research project.

f. Assist in the analysis of research information and the presentation and publication of research findings.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop your application. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Follow the directions for completing the application that are found in the Public Health Service (PHS) 398 kit.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

On or before August 30, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in 1. or 2. Above will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Applications will be ranked on a scale of 100 maximum points. Applications will be reviewed and evaluated based on the evidence submitted and the applicant's abilities to meet the following criteria:

1. Familiarity with and Access to Study Population (25 points)

a. Extent of the applicant's knowledge of issues faced by study population and experience in working with the population.

b. Existence of linkages to facilitate recruitment from and referral to programs providing services for the study population and letters of support.

c. Feasibility of plans to involve the study population, their advocates, or service providers in the development of research activities and to inform them of research results.

d. Evidence that plans for recruitment and outreach for study participants will include establishing partnerships with communities.

2. Description and Justification of a Research Plan (40 points)

a. Quality of the review of the scientific literature pertinent to the proposed study, including the theoretical basis for the investigation and relevance of research questions.

b. The originality of the research, including the extent to which it addresses important gaps in knowledge and has strong relevance for guiding behavioral interventions.

c. Applicant's understanding of the research objectives as evidenced by the quality of the proposed research plan and specific study design.

d. Feasibility of plan to sample, recruit, and enroll study participants in a culturally and linguistically appropriate manner. This includes plans for achieving a demographically diverse sample within the African-American or Hispanic MSM populations (including gay identified MSM, non-gay-identified MSM, and MSM who inject drugs), conducting multi-venue sampling, and demonstration of statistical power to address research questions.

e. Feasibility of plan for collecting both quantitative and qualitative research data.

f. Comprehensiveness of the plan to protect the rights and confidentiality of all participants.

g. Feasibility of plan for conducting HIV counseling and testing in a culturally-sensitive manner.

h. Feasibility of plan for collecting, testing, storing, and shipping blood specimens.

i. Thoroughness of statistical analysis plans, including data cleaning, management, and substantive analyses.

j. Extent to which study proposal demonstrates assurance of compliance with multisite research requirements (e.g., common protocol, data collection, and computer and data management systems).

k. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of ethnic and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

3. Demonstration of Staff's Capability to Conduct Research (20 points)

a. Applicant's ability to carry out the proposed research as demonstrated by the training, experience, and expertise of the principal investigator and the proposed research team and organizational setting, including demonstration of ability to collect, manage, and analyze accurate data in a timely manner.

b. Evidence of plan for establishing a partnership with at least one CBO to consult on all aspects of conducting the study and to link participants with prevention and medical services as needed.

c. Demonstration of epidemiologic, behavioral, clinical, laboratory, administrative, and management expertise needed to conduct the proposed research.

d. Demonstration that principal investigator and staff have experience working with the targeted population of study participants.

e. Demonstration that investigative team includes a staff member with expertise in qualitative data analysis.

4. Staffing, Facilities, and Time-Line (15 points)

a. Availability of qualified personnel with realistic and sufficient percentage-time commitments; clarity of the described duties and responsibilities of project personnel including clear lines of authority and supervisory capacity over the behavioral, epidemiologic, administrative, clinical, laboratory, data management, and statistical aspects of the research.

b. Adequacy of the facilities, equipment, data processing and analysis capacity, and systems for management of data security and participant confidentiality.

c. Adequacy of base staff to keep pace with anticipated workload.

d. Adequacy of time-line for conducting the research.

5. Other (not scored)

a. Budget: The extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized.

b. Human Subjects: Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? __Yes __No Comments:

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Annual progress reports;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

4. Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Send all reports to the Grants Management Specialist identified in section J ("Where to Obtain Additional Information") of this document.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(2)of the Public Health Service Act, (42 U.S.C. 241(a) and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.943.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Ann Cole, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement #01138, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Rd., Room 3000, Mailstop E–15, Atlanta, GA 30341, Telephone: (770) 488–2731, Email address: *zlr5@cdc.gov*.

For program technical assistance, contact: Jeff Efird, MPA, Deputy Chief, Epidemiology Branch, Division of HIV/AIDS Prevention Surveillance & Epidemiology, National Center for HIV, STD, TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–45, Atlanta, Georgia 30333, Telephone: (404) 639–6130, Email address: *jle1@cdc.gov*.

Dated: July 12, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–17912 Filed 7–17–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–215]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Note: For this submission, CMS is requesting public comments on the information requirements in the Final Rule published October 11, 2000 for "Additional DMEPOS Supplier Standards" only. CMS made an error in the last PRA submission whereas the "Surety Bond" requirements were referenced. Please be advised that all Surety Bond requirements have been removed and are not to be commented on at this time.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Information Collection Requirements Referenced in 42 CFR 424.57: Additional DMEPOS Supplier Standards; *Form No.:* CMS–R–215 (OMB# 0938–0717); *Use:* The respondents for these information collection requirements are suppliers of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS). CMS requires, upon request, documentation that the DMEPOS supplier has both advised beneficiaries that they may either rent or purchase inexpensive or routinely purchased equipment and discussed the purchase option for capped rental equipment. This criteria is necessary to determine if the supplier has met the supplier standards; *Frequency:* Annually, On occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 65,400; *Total Annual Responses:* 35,000; *Total Annual Hours:* 280,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, CMS–R–215, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 10, 2001.

Julie Brown,

Acting, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 01–17877 Filed 7–17–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1674]

Agency Information Collection Activities; Announcement of OMB Approval; Specific Requirements on Content and Format of Labeling; Geriatric Use Subsection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Specific Requirements on Content and Format of Labeling; Geriatric Use Subsection" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600

Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 2001 (66 FR 1142), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0370. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov.ohrms/dockets.

Dated: July 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17975 Filed 7–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1503]

Agency Information Collection Activities; Announcement of OMB Approval; Orphan Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled Orphan Drugs has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 1, 2001 (66 FR 21769), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0167. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17978 Filed 7–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0178]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Premarket Notification 510(k) Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 17, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Premarket Notification 510(k) Submissions (21 CFR Part 807) (OMB Control No. 0910–0120)—Extension

Section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) requires a person who intends to market a medical device to submit a premarket notification submission to FDA at least 90 days before proposing to begin the introduction, or delivery for introduction into interstate commerce, for commercial distribution of a device intended for human use. The definition of "person" has been expanded to include hospitals who reuse or remanufacture single-use medical devices. The estimated submissions below include those submitted by hospitals remanufacturing single-use medical devices.

Section 510(k) of the act allows for exemptions to the 510(k) submissions (i.e., a premarket notification submission would not be required if FDA determines that premarket notification is not necessary for the protection of the public health, and they are specifically exempted through the regulatory process). Under 21 CFR 807.85, "Exemption from premarket notification," a device is exempt from premarket notification if the device intended for introduction into commercial distribution is not generally available in finished form for purchase and is not offered through labeling and advertising by the manufacturer, importer, or distributor for commercial distribution. In addition, the device must meet one of the following conditions: (1) It is intended for use by a patient or dentist (or other specially qualified persons), or (2) it is intended solely for use by a physician or dentist and is not generally available to other physicians or dentists.

A commercial distributor who places a device into commercial distribution for the first time under their own name and a repackager who places their own name on a device, and does not change any other labeling or otherwise affect the device, shall be exempted from premarket notification if the device was legally in commercial distribution before May 28, 1976, or a premarket notification was submitted by another person.

The information collected in a premarket notification is used by the medical, scientific, and engineering staffs of FDA in making determinations as to whether or not devices can be allowed to enter the U.S. market. The premarket notification review process allows for scientific and/or medical review of devices, subject to section 510(k) of the act, to confirm that the new devices are as safe and as effective as legally marketed predicate devices. This review process, therefore, prevents potentially unsafe and/or ineffective devices, including those with fraudulent claims, from entering the U.S. market. This information will allow FDA to collect data to ensure that the use of the device will not present an unreasonable risk for the subject's rights. The respondents to this information

collection will primarily be medical device manufacturers and businesses.

FDA form 3514 was developed to assist respondents in organizing 510(k) data for submission to FDA. This form also assists respondents in organizing and submitting data for other FDA medical device programs such as premarket approval applications, investigational device exemptions, and humanitarian device exemptions.

In the **Federal Register** of April 30, 2001 (66 FR 21398), the agency requested comments on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section	Form No.	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
807.81 and 807.87 (part 807, subpart E)		4,000	1	4,000	80	320,000
	FDA 3514	2,000	1	2,000	.5	1,000
Total						321,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR section	No. of recordkeepers	Annual frequency of recordkeeping	Total annual records	Hours per recordkeeper	Total hours
807.93	2,000	10	20,000	0.5	10,000
Total					10,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based these estimates on conversations with industry and trade association representatives, and from internal review of the documents listed in tables 1 and 2 of this document. The total burden for using voluntary FDA form 3514 is estimated to be approximately 1,000 hours and has been included in this information collection. Once this information collection has been approved, the burden for FDA form 3514 will be reported and approved in each of the following OMB information collections: 0910–0078, investigational device exemption reports and records; 0910–0231, premarket approval of medical devices; and 0910–0332, medical devices, humanitarian devices.

Dated: July 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17977 Filed 7–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0359]

Program Priorities in the Center for Food Safety and Applied Nutrition; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments concerning the establishment of program priorities in the Center for Food Safety and Applied Nutrition (CFSAN) for fiscal year (FY) 2002. As part of its annual planning, budgeting, and resource allocation process, CFSAN is reviewing its programs to set priorities and establish work product expectations. This notice is being published to give the public an opportunity to provide input into the priority-setting process.

DATES: Submit written or electronic comments by September 17, 2001.

ADDRESSES: Submit written comments concerning this document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Donald J. Carrington, Center for Food Safety and Applied Nutrition (HFS–666), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–5290, e-mail: DCarring@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 9, 2001, CFSAN released a document entitled "2001 CFSAN Program Priorities." The document, a copy of which is available on CFSAN's Web page (www.cfsan.fda.gov), constitutes the Center's priority workplan for FY 2001, i.e., October 1, 2000, through September 30, 2001. (Copies are also available from the contact person listed above.) The 2001 workplan is based on input we received from our stakeholders (see 65 FR 39415, June 26, 2000), as well as input generated internally. Throughout the priority-setting process, we focused on one central question: "Where do we do the most good for consumers?"

The paramount theme for the FY 2001 workplan has been program continuity. We continue to place our highest emphasis on the food safety initiative, food additives, dietary supplements,

and food biotechnology. Outside of these priorities, the workplan identifies 10 other program areas and cross-cutting areas that need emphasis: (1) Nutrition, health claims and labeling; (2) chemical contaminants, pesticides and other hazards; (3) cosmetics; (4) preparing to move CFSAN offices and laboratories to a new facility in College Park, MD; (5) enhancing the science base; (6) international activities; (7) emerging areas (e.g., food allergens); (8) enhancing regulatory processes; (9) focused economic-based regulations; and (10) management initiatives.

The FY 2001 workplan contains two lists of activities in most major sections of the document—the "A" list and the "B" list. Our goal is to fully complete at least 90 percent of the "A" list activities. Activities on the "B" list are those we plan to make progress on, but may not complete before the end of the fiscal year. A new feature of the FY 2001 workplan has been "B" list items with an asterisk. These are the highest priority "B" list activities, most of which are 2-year projects that we are positioning to be on the "A" list the following year.

CFSAN intends to issue a progress report shortly on what program priority activities already have been completed to date in FY 2001.

CFSAN has responsibility for many important ongoing activities that are not identified in the workplan. For example, the Center's base programs in data collection, research, and enforcement are important and are ongoing. Rather, the workplan addresses primarily those initiatives representing something new or different that we need to address in 2001, as well as priority initiatives that are being continued from the 2000 workplan. In addition, the workplan does not address the myriad of unanticipated issues that often require a substantial investment of CFSAN resources (e.g., response to outbreaks of foodborne illness).

II. 2002 CFSAN Program Priorities

FDA is requesting comments concerning the establishment of program priorities in CFSAN for FY 2002. The input will be used to develop CFSAN's 2002 workplan. The workplan will set forth the Center's program priorities for October 1, 2001, through September 30, 2002. FDA intends to make the 2002 workplan available in the fall of 2001.

The format of the 2002 workplan will be similar to last year's workplan. FDA expects there will be considerable continuity and follow-through between the 2001 and 2002 workplans. For example, major documents published in early 2001 for public comment (e.g., biotechnology proposal; draft *Listeria* risk assessment) would likely be high priority for completion of final documents in FY 2002. Moreover, a number of goals inherently require a multi-year effort. For example, the Food Allergen Compliance Policy Guide issued in 2001 will need inspectional followup in 2002. FDA requests comments on other broad program areas that should continue to be a priority in FY 2002, or new areas that need to be initiated.

In addition, as noted above, the 2001 workplan highlights certain "B" list activities with an asterisk. Many of these are 2-year projects that we are positioning to be candidates for the "A" list next year. FDA requests comments on which "*B" and regular "B" list activities (i.e., those not designated with an asterisk) should be elevated to the "A" list for completion in 2002. Finally, as noted, FDA requests comments on new program areas or activities that should be added as a high priority for FY 2002.

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this notice by September 17, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 11, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17919 Filed 7–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 9, 2001, from 8:30 a.m. to 5 p.m., and on August 10, 2001, from 8:30 a.m. to 3 p.m.

Location: National Institutes of Health, Jack Masur Auditorium, Bldg. 10, 9000 Rockville Pike, Bethesda, MD.

Contact: Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, Woodmont II Bldg., 1451 Rockville Pike, Rockville, MD 20752, 419–259–6211, or Jaime Henriquez, 301–827–6803, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

Agenda: On August 9, 2001, in the morning, the committee will discuss new drug application (NDA) 21–272, Remodulin® (treprostinil sodium injection), United Therapeutics Corp., for the treatment of pulmonary hypertension. On August 9, 2001, in the afternoon, the committee will discuss NDA 21–321, Extraneal® (7.5 percent icodextrin) peritoneal dialysis solution, Baxter Healthcare Corp. On August 10, 2001, in the morning, the committee will discuss NDA 21–290, Tracleer® (bosentan tablets), Actelion, Ltd., for the treatment of pulmonary hypertension.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 2, 2001. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9 a.m. on each day. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 2, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 12, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–17921 Filed 7–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1555]

Guidance for Industry on Refusal of Inspection or Access to HACCP Records Pertaining to the Safe and Sanitary Processing of Fish and Fishery Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of guidance for industry entitled "Refusal of Inspection or Access to HACCP Records Pertaining to the Safe and Sanitary Processing of Fish and Fishery Products." This guidance sets forth the agency's interpretation of its Hazard Analysis Critical Control Point (HACCP) regulations for fish and fishery products as they pertain to the inspection of facilities and records. The agency is clarifying that a processor's refusal to allow FDA to inspect its processing facilities, or to provide HACCP records or plans to an inspector during an inspection, violates the regulations and thus may trigger a regulatory response by the agency. FDA determined that there was a need for clarification because some domestic firms questioned whether records can be made available after an inspection (rather than during) and some foreign firms canceled scheduled inspections by FDA, but offered to make records available for review. This guidance is for domestic processors and for foreign processors that export fish and fishery products to the United States.

DATES: Submit written comments on agency guidance documents at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Industry Activities Staff, Office of Constituent Operations, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington DC 20204. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Center for Food Safety and Applied Nutrition, (HFS–415) Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3150.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Refusal of Inspection or Access to HACCP Records Pertaining to the Safe and Sanitary Processing of Fish and Fishery Products." FDA seafood safety regulations require processors of fish and fishery products to operate preventive control systems for human food safety that incorporate the principles of HACCP (part 123 (21 CFR part 123)). The regulations further provide that fish and fishery products are adulterated under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(4)) if their processor fails to have and implement a HACCP plan when one is necessary, or otherwise fails to meet any of the requirements of the regulations, including allowing the official review of records (§ 123.6(g)). Processors must make their HACCP records and plans available "for official review and copying at reasonable times" (§ 123.9 (c)). This guidance, previously made available in draft for public comment, is intended to clarify that onsite inspection of a processing facility and concurrent review of HACCP records are essential elements of FDA's Seafood HACCP program as set forth at part 123. Thus, the failure to provide records and plans by a domestic or foreign processor during an inspection violates the regulation, even if a firm volunteers the documents after the inspection. FDA believes that violations of these provisions are significant.

In the **Federal Register** of November 14, 2000 (65 FR 68150) FDA published a notice announcing the availability of the draft version of this guidance and requested the submission of written comments by December 14, 2000. One comment was received in response to the draft guidance. That comment expressed concern that FDA is modifying the regulation so that offsite storage of HACCP records will no longer be permitted. FDA disagrees. This guidance does not change any provision of the regulation, but seeks to clarify those provisions dealing with inspections and records availability. The provision in question, § 123.9(b)(3), allows a processor to store records offsite under two circumstances: (1) The facility is closed for prolonged periods between seasonal packs, or (2) the facility is a processing vessel or remote site with limited storage capacity. However, 123.9(b)(3) requires that records be returned to the processing site immediately for official review upon demand (e.g., within 24 hours). As made clear by this requirement for immediate return, this provision does not contemplate that records would be made available for review offsite or after the inspection is completed. Thus, the guidance does not affect offsite storage of records under § 123.9(b)(3). The guidance addresses the circumstances in which processors want to submit HACCP records to FDA for review only after an onsite inspection has been conducted without access to records.

This guidance is being issued consistent with FDA's good guidance practices (21 CFR 10.115; 65 FR 56468, September 19, 2000). The guidance represents the agency's current thinking on refusal of inspection or access to HACCP records that pertain to the safe and sanitary processing of fish and fishery products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

II. Comments

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://vm.cfsan.fda.gov/dms/guidance.html.

Dated: July 11, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17920 Filed 7–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0297]

Medical Devices; Availability of Information Given to Advisory Committee Members in Connection with CDRH Open Public Panel Meetings; Draft Guidance for Industry and FDA Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Availability of Information Given to Advisory Committee Members in Connection with CDRH Open Public Panel Meetings; Draft Guidance for Industry and FDA Staff." This document provides guidance to the Center for Devices and Radiological Health (CDRH) staff and to industry whose device is the subject of an open advisory committee meeting. The Federal Advisory Committee Act (FACA) generally requires FDA to make available to the public the information given to panel members, except for material that is exempt under the Freedom of Information Act (FOIA). This draft guidance describes the process CDRH intends to follow when making this information publicly available. This draft guidance also describes how these materials should be assembled and timeframes for their availability. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments concerning this guidance by October 16, 2001.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled "Availability of Information Given to Advisory Committee Members in Connection with CDRH Open Public Panel Meetings; Draft Guidance for Industry and FDA Staff" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022.

SUPPLEMENTARY INFORMATION:

I. Background

FACA provides at section 10(b) that materials that are made available to an advisory committee in connection with an open advisory committee meeting shall also be made available to the public, if the materials are not exempt from disclosure under FOIA. This FACA provision is intended to facilitate meaningful public participation at such meetings. CDRH has now developed a process to make materials provided to advisory committee members in connection with open public meetings available for public disclosure, whenever practicable before or at the time of the meeting. This process also ensures that those materials exempt from disclosure under FOIA are protected. This draft guidance is designed to minimize the amount of time and resources spent in reviewing, redacting (the deletion of nondisclosable information), and publishing this information so that panel meetings can proceed when they are scheduled and in compliance with the requirements of FACA.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on the availability of information given to advisory committee members in connection with CDRH open public panel meetings. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statutes and regulations.

The agency has adopted good guidance practices (GGPs), and published the final rule, which set forth the agency's regulations for the development, issuance, and use of guidance documents (21 CFR 10.115; 65 FR 56468, September 19, 2000). This draft guidance document is issued as a level 1 guidance in accordance with the GGP regulations.

III. Electronic Access

In order to receive "Availability of Information Given to Advisory Committee Members in Connection with CDRH Open Public Panel Meetings; Draft Guidance for Industry and FDA Staff" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number 1341 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

IV. Comments

Interested persons may submit to Dockets Management Branch (address above) written or electronic comments regarding this draft guidance by October 16, 2001. Submit two copies of any comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and any received comment may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 2001.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 01–17976 Filed 7–17–01: 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–312 and HCFA–R–263]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Conflict of Interest and Ownership and Control Information;

Form No.: HCFA–R–312 (OMB# 0938–0795);

Use: This Conflict of Interest questionnaire is sent to all Medicare Fiscal Intermediaries (FIs) and Carriers to collect full and complete information on any entity's or individual's ownership interest (defined as a 5 per centum or more) in an organization that may present a potential conflict of interest in their role as a Medicare FI or Carrier. The information gathered is used to ensure that all potential, apparent and actual conflicts of interest involving Medicare contracts are appropriately mitigated and that employees of the contractors, including officers, directors, trustees and members of their immediate families, do not utilize their positions with the contractor for their own private business interest to the detriment of the Medicare program.;

Frequency: Annually;

Affected Public: Not-for-profit institutions, and Business or other for-profit;

Number of Respondents: 37;

Total Annual Responses: 37;

Total Annual Hours: 11,100.

(2)*Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: On Site Inspection for Durable Medical Equipment (DME) Supplier Location & Supporting Regulations in 42 CFR, 424.57;

Form Nos.: HCFA–R–263 (OMB# 0938–0749);

Use: To identify and implement measures to prevent fraud and abuse in the Medicare program. Controlling the entry of suppliers of durable medical equipment, prosthetics, orthotics, or supplies (DMEPOS) to Medicare has been identified as one of the most effective ways to prevent fraud and abuse. To meet this challenge, HCFA is moving forward with a plan to improve the quality of the process for enrolling and reenrolling DMEPOS suppliers into the Medicare program by enhancing procedures for verifying supplier information collected on the Form HCFA–855S (DMEPOS Supplier Enrollment Application, OMB Approval No. 0938–0685). This form will be used to complete information on DMEPOS suppliers' compliance with regulations found in 42 CFR 424.57.

Frequency: On occasion;

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government;

Number of Respondents: 20,000;

Total Annual Responses: 20,000;

Total Annual Hours: 10,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 19, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–17959 Filed 7–17–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Program Announcement for Delta State Rural Development Network Grants

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Notice of availability of funds; request for applications.

SUMMARY: The Office of Rural Health Policy (ORHP) in the Health Resources and Services Administration (HRSA) announces that applications are being accepted for grants for Delta State Rural Development Networks (DSRDN). One grant will be awarded in each of the eight States designated by Congress for inclusion in the service area of the Delta Regional Authority: Alabama, Arkansas, Illinois, Kentucky, Louisiana, Missouri, Mississippi and Tennessee. Public Law 104–299, enacted in 1996, authorizes the Rural Health Outreach, Network Development and Telemedicine Grant program. The Consolidated Appropriations Act, 2001, Public Law 106–554 includes, in the Rural Health Outreach appropriation line, funding for a special initiative. ORHP will use these special initiative funds to award grants to rural networks in the eight Delta States. Grants will be for a three-year project period, with annual renewal dependant on availability of funds and evaluation of grantee performance.

Application Requests, Dates and Addresses: The application form and guidance for this Grant Program are available at the ORHP web site address at *http://ruralhealth.hrsa.gov*. Applicants may request a hard copy of these materials from the HRSA Grants Application Center (GAC) at 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209; telephone number 1–877–477–2123. The GAC email address is *hrsagac@hrsa.gov*.

In order to be considered for competition, an original and one copy of the applications for this grant program must be received by August 15, 2001. To be considered submitted on time applications must be OFFICIALLY POSTMARKED BY 11:59 P.M. August 14, 2001. Postmarked means Official Post Office cancellation mark, Federal Express Shipping Receipt Form, United States Parcel Company receipt or other carrier that Officially records the pick-up or drop-off time of a package. PRIVATE POSTAGE METER CANCELLED PACKAGES WILL NOT BE ACCEPTED UNLESS THE PACKAGE ARRIVES ON OR BEFORE THE DUE DATE.

Applications must be mailed or delivered to: HRSA Grants Application Center (GAC), 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209.

Applications postmarked after the deadline date or sent to any address other than the address above will be returned to the applicant and not reviewed.

Funds Available: ORHP expects to award $5,431,000 among the eight States identified by the Delta Regional Authority as being in the Delta. These States are Alabama, Arkansas, Illinois, Kentucky, Louisiana, Missouri, Mississippi and Tennessee. Approximate State allocations are expected to be as follows: Alabama $398, 000; Arkansas $991,000; Illinois $424,000; Kentucky 503,000; Louisiana $768,000; Missouri $742,000; Mississippi $1,193,000; Tennessee $503,000. There are 205 designated rural counties in these Delta States including 15 in Alabama, 38 in Arkansas, 16 in Illinois, 19 in Kentucky, 29 in Louisiana, 28 in Missouri, 41 in Mississippi and 19 in Tennessee. To determine the amount of funding each DSRDN will receive, ORHP will consider the following factors: (1) The number of rural Delta counties in each State, and (2) The extent to which the DSRDN grant applicant justifies the amount of funds requested. (For the list of the eligible counties see Appendix I.)

FOR FURTHER INFORMATION CONTACT: Questions concerning programmatic aspects of the DSRDN grants may be directed to Dr. Marcia Brand, Director of the Office of Rural Health Policy, at 301–443–0835, or by email at *mbrand@hrsa.gov*.

SUPPLEMENTARY INFORMATION: *Program Objectives:* DSRDN will work closely with State Offices of Rural Health and other stakeholders to publicize to eligible communities and organizations the opportunities available through the DSRDNs. ORHP expects DSRDNs to award subcontracts to help local providers and organizations form a culturally appropriate Rural Health Outreach Network covering each designated rural Delta County. Subcontract guidelines can be found in the Program Guide, which is part of the application materials. Such networks may, with the consent of the participating counties, be designed along prevailing service area boundaries rather than county lines. These locally controlled networks will receive funds to enhance network development, assess health needs, plan projects and seek funding, which will focus on improved access to primary health care to the medically underserved such as the under and uninsured. As a demonstration of community support, it is encouraged that the networks receive the endorsement of the county Chief Executive(s) for the geographic area to be served. These subcontracts should account for approximately two-thirds of the DSRDN's first year budget, or approximately $17,700 per eligible county.

Eligible Applicants: To be eligible to receive a grant through this program, an entity shall be a rural public or private not-for-profit entity that is or represents a network or potential network that includes three or more health care providers or other entities that provide or support the delivery of health care services. The lead applicant for each State must be based in one of the 205 identified rural Delta counties. Except for the lead applicant, other network members may be for-profit entities and may be located in a rural or urban area. The DSRDN must have the capacity and expertise to work with all the counties in the State. Examples of organizations that could work together to form a DSRDN network would be rural hospitals, universities, AHECs, Emergency Medical Services offices, community health centers, private providers, county councils, county health departments, mental health organizations, Faith-based and other organizations that will contribute significantly to goals of the network.

Evaluation Criteria: Reviewers will rank review and rank applications based upon the following criteria.

1. Ability to make staff reliably available in person in the rural Mississippi Delta Counties of the State to be served. (20 points)
2. Capacity to manage multiple subcontracts totaling several hundred thousand dollars. (15 points)
3. Organizational experience in rural health (e.g., working with rural health providers, addressing health care needs of rural communities). (15 points)
4. Demonstrated successful experience in developing and strengthening community-based organizations. (15 points)
5. Organizational experience working in rural counties in the Mississippi River Delta Region. (15 points)
6. Expertise in planning and implementing community health improvement projects. (10 points)
7. Demonstrated success in implementing rural community health improvement projects. (10 points)

Funding Preferences

As provided in the law a funding preference will be awarded to any qualified organization that can demonstrate substantial inclusion of any one of the following:

A. The project includes a majority of the health care providers serving in the area or region to be served by the network participants. (The applicant must document the number of health care providers in the service area or region and the percentage of those providers that will be involved in the project.)

B. The project includes any Federally qualified health centers, rural health clinics, and local public health departments serving the area or region. The involvement must be more than a referral relationship with other providers in the area. The entity must be a full and active member of the network. A letter of commitment must demonstrate the organization's roles, responsibilities, and contribution of resources to the project.

C. The project includes outpatient mental health providers serving in the area or region. (The applicant must identify the mental health providers in the area and demonstrate their level of participation in the project.)

D. Appropriate social service providers, such as agencies on aging, school systems, and providers under the Women, Infants and Children (WIC) program that are working to improve access to care and the coordination of health care services in the service area or region. (The applicant must identify the social service providers in the area and demonstrate their level of participation in the project.)

Applicants receiving the preference will be placed in a more competitive position among the applications that can be funded. Applications that do not receive a funding preference will be given full and equitable consideration during the review process. However, all applications that request and are eligible to receive a funding preference will be funded before applications in the funding line that do not have a funding preference.

To receive a funding preference, you must request it. Further, you must identify the type of preference for which you are eligible and demonstrate your eligibility in your application.

Requirements for Cost Sharing or Matching: None.

Executive Order 12372

This grant program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs), a list of which will be included in the

application kit, as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. All SPOC recommendations should be submitted to Larry Poole, Office of Grants Management, Bureau of Primary Health Care, 4350 East West Highway, 11th Floor, Bethesda, Maryland 20814, (301) 594–4260. The due date for State process recommendations is 60 days after the application deadline of August 15, 2001, for the Delta State Rural Development Network Program for competing applications. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date. (See Part 148 of the PHS Grants Administration Manual, Intergovernmental Review of PHS Programs under Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

Public Health System Impact Statement

This program is subject to the Public Health System Reporting Requirements. Reporting requirements have been approved by the Office of Management and Budget—#0937–0195. Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

a. A copy of the face page of the application (SF 424)

b. An abstract of the project not to exceed one page, which provides:

(1) A description of the population to be served

(2) A summary of the services to be provided

(3) A description of the coordination planned with the appropriate State or local health agencies.

OMB Catalog of Federal Domestic Assistance Number: 93.912C

Dated: July 3, 2001.

Elizabeth M. Duke,

Acting Administrator.

Appendix I—Rural Delta Counties Eligible for the Delta State Rural Development Network Grant Program

Alabama Counties (15)

Barbour, Bullock, Choctaw, Clarke, Dallas, Greene, Hale, Lowndes, Macon, Marengo, Perry, Pickens, Sumter, Washington and Wilcox.

Arkansas Counties (38)

Arkansas, Ashley, Baxter, Bradley, Calhoun, Chicot, Clay, Cleveland, Craighead, Cross, Dallas, Desha, Drew, Fulton, Grant, Greene, Independence, Izard, Jackson, Lawrence, Lee, Lincoln, Marion, Mississippi, Monroe, Ouachita, Phillips, Poinsett, Prairie, Randolph, St. Francis, Searcy, Sharp, Stone, Union, Van Buren, White, Woodruff

Illinois Counties (16)

Alexander, Franklin, Gallatin, Hamilton, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Randolph, Saline, Union, White, Williamson

Kentucky Counties (19)

Ballard, Caldwell, Calloway, Carlisle, Crittenden, Fulton, Graves, Hickman, Hopkins, Livingston, Lyon, Marshall, McCracken, McLean, Muhlenberg, Todd, Trigg, Union, Webster

Louisiana Parishes (29)

Allen, Assumption, Avoyelles, Caldwell, Catahoula, Concordia, E. Carroll, E. Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Richland, St. Helena, Tangipahoa, Tensas, Union, Washington, W. Carroll, W. Feliciana, Winn

Mississippi Counties (41)

Adams, Amite, Attala, Benton, Bolivar, Carroll, Claiborne, Coahoma, Copiah, Covington, Franklin, Grenada, Holmes, Humphreys, Issaquena, Jefferson, Jefferson Davis, Lafayette, Lawrence, Leflore, Lincoln, Marion, Marshall, Montgomery, Panola, Pike, Quitman, Sharkey, Simpson, Sunflower, Tallahatchie, Tate, Tippah, Tunica, Union, Walthall, Warren, Washington, Wilkinson, Yalobusha, Yazoo

Missouri Counties (28)

Bollinger, Butler, Cape Girardeau, Carter, Dent, Douglas, Dunklin, Howell, Iron, Madison, Mississippi, New Madrid, Oregon, Ozark, Pemiscott, Perry, Phelps, Reynolds, Ripley, Ste. Genevieve, St. Francois, Scott, Shannon, Stoddard, Texas, Washington, Wayne, Wright

Tennessee Counties (19)

Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, McNairy, Madison, Obion, Weakley

[FR Doc. 01–17979 Filed 7–17–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: June 2001

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of June 2001, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ANDERSON, JOHN WARD INDIANAPOLIS, IN	07/19/01
BEVERLY ENTERPRISES-CALIFORNIA FORT SMITH, AR	06/01/01
CHAMPION, DARON DECATUR, GA	07/19/01
CHOPRA, AMARJIT S SUFFERN, NY	07/19/01
CREATIVE TUTORIAL, L L C ST LOUIS, MO	01/16/01
DE OCA, NORKA MONTES OPA LOCKA, FL	07/19/01
DEJOURNETT, MARY RENO, NV	07/19/01
ELLIOTT-WOODY, TERESA L W WARWICK, RI	07/19/01
ESCUDERO, DANIEL MIAMI, FL	07/19/01
GONZALEZ, ZORAIDA OR-TEGA DELTONA, FL	07/19/01
GREENFIELD, RONALD W WALL, NJ	07/21/00
HANNEMAN, DENISE D NEW LONDON, WI	07/19/01
HARTZELL, ROBERT SPRINGHILL, FL	07/19/01
HONAKER, MELISSA GALE WAPATO, WA	07/19/01

Subject, city, state	Effective date
HUERTA, EUSEBIO MIAMI, FL	04/19/01
IZQUIERDO, AMAURY FT LAUDERDALE, FL	07/19/01
KELLEY, MORRIS E COCOA BEACH, FL	09/21/00
LAUNSBY, MAVIS BROWNSVILLE, TX	07/19/01
LIMA, PATRICE LOUISE FRESNO, CA	07/19/01
LOPEZ, EDELBERTO MIAMI, FL	07/19/01
MARIANOVSKY, ZHANNA BROOKLYN, NY	07/19/01
OROPESA, DELIA MARIA MIAMI, FL	07/19/01
OTERO, NORMA L MIAMI, FL	07/19/01
RATER, STEPHEN W OREGON, WI	04/13/01
RIOS, JOSE ELIZABETH, NJ	07/19/01
SARANTIS, KOSMAS TARPON SPRINGS, FL	07/19/01
SIDDIQUI, SHOAIB HUSSAIN E HANOVER, NJ	07/19/01
STEYER, SHARON L WINTER PARK, FL	07/19/01
SUTHERLAND, JOHN MICHAEL COCOA BEACH, FL	09/21/00
VILLARREAL, CORINA KATHERINE VISALIA, CA	07/19/01
VIVANCO, CARIDAD MIAMI, FL	07/19/01
WEBB, STEPHANIE M ATLANTA, GA	07/19/01
ZIMMERMAN, RAYMOND PALM HARBOR, FL	07/19/01

FELONY CONVICTION FOR HEALTH CARE FRAUD

FERDOWS, DEAN CANOGA PARK, CA	07/19/01
VALENTINE, JULIE MARINA DEL REY, CA	07/19/01

FELONY CONTROL SUBSTANCE CONVICTION

BROWN, LEETHA W LEWIS VERSAILLES, KY	07/19/01
KRUSEN, DONNA INGLE ARLINGTON, TX	07/19/01
MULLINS, PHYLLIS ANN GULFPORT, MS	07/19/01
SHODA, DOROTHY ANN FORT WAYNE, IN	07/19/01
WORSENCROFT, NORALEE VIRGINIA BCH, VA	07/19/01

PATIENT ABUSE/NEGLECT CONVICTIONS

ALFORD, HERBERT W PAMPLICO, SC	07/19/01
BERRY, SANDRA SUE ROSHARON, TX	07/19/01
BLAIR, DARREL LAMONT NASHVILLE, TN	07/19/01
CAMERON, SHIRLEY JAUNICE WAVELAND, MS	07/19/01
CARPENTER, MILTON L GULFPORT, MS	07/19/01
CHANEY, KATTIE M HATTIESBURG, MS	07/19/01
CHRISTMAS, CHRISTOPHER COLUMBU BUNKIE, LA	07/19/01
COCKRELL, JOHNNIE SALEM, OR	07/19/01
CRANE, KONUTA HELEN CUSHING, OK	07/19/01
DENTON, STEPHEN L ATHENS, TN	07/19/01
ELLIOTT, MARY LOUISE FAIRHOPE, AL	07/19/01
HAYES, JOSEPH S JOHNSON CITY, TN	07/19/01
HAZELTON, CYNTHIA J EAU CLAIRE, WI	07/19/01
KAYDE, AVANELL MILWAUKEE, WI	07/19/01
KEITH, COWETA FAYE CRIPPLE CREEK, CO	07/19/01
MAGANA, NYTERIA YVETTE HERALD, CA	07/19/01
MCDOUGALL, PATRICIA L PLAINS, MT	07/19/01
MCDOWELL, DEBORAH CLARKSDALE, MS	07/19/01
MONTEITH, BARBARA MARIE CHRISTIANA, TN	07/19/01
MOORE, ELLIOTT BRUCE UTICA, NY	07/19/01
OREE, JERRY LOUIS COLUMBIA, SC	07/19/01
PAYTON, DARNELL DEKALB, MS	07/19/01
PETERSON, RICKY A KNOXVILLE, TN	07/19/01
PRICE, THOMAS D LAUREL, MS	07/19/01
ROSEN, STEPHEN CLARK RESEDA, CA	07/19/01
SANTANA, SUSAN RIVERHEAD, NY	07/19/01
SCHULTZ, JOHN P PLAIN, WI	07/19/01
SMITH, JENNIFER L MEMPHIS, TN	07/19/01
WILLIAMS, MARVIN RAY GLENMORA, LA	07/19/01

LICENSE REVOCATION/SUSPENSION/ SURRENDER

ALBERTSON, KELLY J OTTUMWA, IA	07/19/01
AMBERS, MARTIN WILLIAM VACAVILLE, CA	07/19/01
APARICIO, DANIEL ANGEL EL MONTE, CA	07/19/01
ARMENTROUT, TANNY J FOUNTAIN, CO	07/19/01
BANTA, KENNETH M DAYTON, KY	07/19/01
BAUMGART, TERRY D SAN PEDRO, CA	07/19/01
BECKWIN, JOSEPH AYER FAIRFIELD, AL	07/19/01
BERRIOS, GERALDINE G SYRACUSE, NY	07/19/01
BIRD, DELORES GAIL BAKER WILLIAMSBURG, KY	07/19/01
BOYD, MELINDA ANN MIDLAND, TX	07/19/01
BULLION, THOMAS C OXFORD, MS	07/19/01
BURNS, BRIAN THOMAS AUBURN, NY	07/19/01
BURNS, KATHLEEN M PORTLAND, OR	07/19/01
BUSI, JOHN L COLUMBUS, OH	07/19/01
BUTKOVSKY, CLAIRE LORRAINE LEXINGTON, KY	07/01/01
CAI, ZUO PING EL MONTE, CA	07/19/01
CARNEY, DEBORAH A ROCHESTER, NY	07/19/01
CHALLMAN, RONALD JAMES LOUISVILLE, KY	07/19/01
CHAROENKUL, CHOMYONG KULVANICH ARDSLEY, NY	07/19/01
CHRISTENSEN, CHRIS ARTHUR SILVERTON, ID	07/19/01
CHRISTMAS, DONNA GRINNELL, IA	07/19/01
CONDER-STONE, FRANCES D OWENSBORO, KY	07/19/01
DAILY, GALE WILLINGBORO, NJ	07/19/01
DAVIS, SUSAN ELIZABETH SCOTTSBORO, AL	07/19/01
DEAN, NANCY C HOUSTON, TX	07/19/01
DELAROSA, LISA G BONZA LOUISVILLE, KY	07/19/01
DIPRIMA, RICHARD MADISON, WI	07/19/01
EASTHAM, JUDITH ANN KERNERSVILLE, NC	07/19/01
EDEN, VALLIE D BLOOMINGTON, IN	07/19/01
FROST, DEVORAH C SAN ANTONIO, TX	07/19/01
GARDNER, JIMMY L ORANGEBURG, SC	07/19/01
GIRGIS, ALFRED LOS ANGELES, CA	07/19/01
GRESHAM, JOAN LESLIE JEMISON, AL	07/19/01
GRESSETT, PHILLIP D CHRISTOVAL, TX	07/19/01
GRIFFIN, CHELSEA LEA DAPHNE, AL	07/19/01
HAAS, WILLIAM L GRAND JUNCTION, CO	07/19/01
HAMPTON, VICTORIA L SMITH LOUISVILLE, KY	07/19/01
HARDRICK, CARRIE RUTH COTTONWOOD, AL	07/19/01
HARRIS, DONNA SUMRALL, MS	07/19/01
HAYYAT, SAMI MIDDLEBURY, VT	07/19/01
HENDERSON, RHUNDA FAYE SMITHVILLE, TX	07/19/01
HOWELL, JAMIE L SHOULDERS SHEPHERDSVILLE, KY	07/19/01

Subject, city, state	Effective date
JANSSEN, KENNETH MICHAEL TOW, TX	07/19/01
JENKINS, JUDITH GREFF SAN ANTONIO, TX	07/19/01
JEPPSON, NATHAN B W VALLEY CITY, UT	07/19/01
KOTTMAN, MICHELLE A CEDAR RAPIDS, IA	07/19/01
LAJEVIC, JAMES C BOULDER CITY, NV	07/19/01
LASSITER, MICHELLE SUE SUMMERDALE, AL	07/19/01
LEMOINE, JANA BERNADETTE AUSTIN, TX	07/19/01
LEWIS, RALPH JR PHILADELPHIA, MS	07/19/01
MANTLE, LISA DIANE BOGLE FANCY FARM, KY	07/19/01
MARX, OLIVEA A LOVELAND, CO	07/19/01
MATEJCEK, BEVERLY J DAY DAVENPORT, IA	07/19/01
MCKENZIE, JANIS ASHLAND, MS	07/19/01
MCNALLY, MARCY PHILADELPHIA, MS	07/19/01
MOORE, KENNETH G LEXINGTON, KY	07/19/01
MORRISON, CYNTHIA ITHACA, NY	07/19/01
NICHOLS, WILLIAM KEVIN PHILADELPHIA, MS	07/19/01
OWEN, EVELYN PIPES WALLS, MS	07/19/01
OWENS, CABE MICHAEL HOUSTON, TX	07/19/01
PANDLY, RAJENDRA P DENVER, CO	07/19/01
PEUGEOT, RENEE L BOEME, TX	07/19/01
PHAM, THUY DENNIS LANSDALE, PA	07/19/01
POLVICK, CHRISTY ANN WICKLIFFE, KY	07/19/01
PORTER, SENIETTA BECK ELGIN, IL	07/19/01
PRATHER, DENISE EUNICE, LA	07/19/01
PRECHTEL, ELAINE R JASPER, IN	07/19/01
PRITCHARD, DARCY L CASTORLAND, NY	07/19/01
PUGH, GINGER IRENE CORDOVA, AL	07/19/01
RAMSEY, LISA K MERCER, MO	07/19/01
RAVENELL, VENESSIA SAINT STEPHEN, SC	07/19/01
RAY, MARY E BATESVILLE, MS	07/19/01
REGENOLD, ALISA ANN LEROY, IL	07/19/01
RICCA, JUDITH D OCEAN SPRINGS, MS	07/19/01
RICHMOND, MARY RUTH PROVO, UT	07/19/01
RICKETTS, WILBERT GEORGE INDIANAPOLIS, IN	07/19/01
RILEY, KAYLA BOULDER, CO	07/19/01
ROLEY, THOMAS JUSTIN STOCKTON, CA	07/19/01
ROSE, MELODY R COLORADO SPRNGS, CO	07/19/01
ROUNTREE, WILLIAM DONALD LOUISVILLE, KY	07/19/01
SAMS, JOHN ELLIOT POLSON	07/19/01
COLUMBUS, MS	07/19/01
SANTIAGO, RUTH MARIE NEWARK, NJ	07/19/01
SATTERFIELD, REBECCA LYNN	07/19/01
DE SOTO, IL	07/19/01
SCHUSSLER, CHRISTINA MARIE	07/19/01
MUNCIE, IN	07/19/01
SCOLF, SHERRI ANN FIELDS BROOKSVILLE, KY	07/19/01
SCOTT, JANICE Y NASHVILLE, TN	07/19/01
SHOEMAKER, KIMBERLY COLLIE	07/19/01
LAKELAND, FL	07/19/01
SHOGREN, TERESA A MARSHALLTOWN, IA	07/19/01
SIMS, LOYD VANCLEAVE, MS	07/19/01
SLACK, EDWARD GEORGE SACRAMENTO, CA	07/19/01
SLONE, JEANETTA RISNER BULAN, KY	07/19/01
SMITH, GREGORY MARK SAN FRANCISCO, CA	07/19/01
SMITH, WANDA C CANON CITY, CO	07/19/01
STIR, DWAINE EDWARD PADUCAH, KY	07/19/01
STOFFEL, MARY BETH PATOKA, IL	07/19/01
STRANDER, LORALI H AMMON, ID	07/19/01
SUMCHAI, AHIMSA PORTER SAN FRANCISCO, CA	07/19/01
SWANSON, JULIA ANN GALESBURG, IL	07/19/01
TOYER, CEDRIC DEMETRIUS BIRMINGHAM, AL	07/19/01
TREMONTANA, NORMA CAROLYN ESTE PRATTVILLE, AL	07/19/01
VAUGHT, CORINNE NAMPA, ID	07/19/01
WARE, ROBERT DAKIN POPLARVILLE, MS	07/19/01
WEATHERMAN, SCOTT LOUISVILLE, KY	07/19/01
WELLS, JANET L ROY, UT	07/19/01
WHITWORTH, DAVID LEE LOUISVILLE, KY	07/19/01
WILLIAMS, CINDY SHARON PHOENIX, AZ	07/19/01
WOOD, JOANIE LYNN TALLADEGA, AL	07/19/01
WRIGHT, ROSCOE EMANUEL DETROIT, MI	07/19/01

FEDERAL/STATE EXCLUSION/ SUSPENSION

BARROS, CAMILO J	07/19/01
LINCOLNWOOD, IL	
HOLLAND, VICTORIA R WOODLAND HILLS, CA	07/19/01

FRAUD/KICKBACKS

GREENBERG, PATRICIA ST LOUIS, MO	01/16/01
IGBOKWE, ONYUWOMA NICHOLAS HOUSTON, TX	05/19/00
OLMO, JAIME ALBERTO HOUSTON, TX	05/19/00
OLMO, JAVIER A SUGARLAND, TX	05/19/00
SHELTON, SUSAN LEE PHOENIX, AZ	04/17/01
SUEN, SZE MING MILILANI, HI	02/23/01
SUEN, LURENA MILILANI, HI	02/23/01
VIDALES, ROSA I SUGARLAND, TX	05/19/00
WAHIAWA CLINIC, INC WAHIAWA, HI	02/23/01

OWNED/CONTROLLED BY CONVICTED EXCLUDED

A & A MEDICAL CENTER CORP MIAMI, FL	07/19/01
ADVANCED OPTICAL, INC TRENTON, NJ	07/19/01
BEST MEDICAL CARE, INC MIAMI, FL	07/19/01
NEXT LEVEL PERSONAL FITNESS SY OAKLAND, CA	07/19/01

DEFAULT ON HEAL LOAN

ALKAMSHEH, IBRAHIM DALLAS, TX	07/19/01
ARMITAGE, SHERRI A EDGELEY, ND	07/19/01
ASATO, THERESA T REDDING, CA	07/19/01
ASSEM, AHMAD H SAN JOSE, CA	07/19/01
BULLARD, DANIEL H ORLAND PARK, IL	07/19/01
DISALVO, CRISTINO G WILLIAMSPORT, PA	07/19/01
DRUCTOR, JAMES D PITTSBURGH, PA	07/19/01
EZZEH, MARY A GARLAND, TX	05/29/01
FINCH, JOHNNY L ELIZABETH CITY, NC	07/19/01
GREMONPREZ, JUDY A SPRINGFIELD, MO	07/19/01
HASSAPAKIS, CRAIG L MODESTO, CA	07/19/01
HAUKAAS, THOMAS F TAMPA, FL	07/19/01
ICHIUJI, ARNOLD T SALINAS, CA	07/19/01
INGALLS, JAMES ARDEN CARROLLTON, TX	07/19/01
JONES, YVONNE UPPER DARBY, PA	07/19/01
KAY, ROBERT J	07/19/01

Subject, city, state	Effective date
ELLICOTT CITY, MD	
KIRVEN, LISA D	07/19/01
BRONX, NY	
KUPSC, ROBERT	07/19/01
WEYMOUTH, MA	
LARNER, JEFFREY T	07/19/01
PITTSBURGH, PA	
LEE, STEVE YONGSIK	07/19/01
CLIFTON, NJ	
LEFKOWITZ, GERALD ALLEN	07/19/01
CHARLOTTE, NC	
LEVISON, ROBERT	07/19/01
PHOENIX, AZ	
LOCKHART, WALTER CORNELL JR	07/19/01
ANNAPOLIS, MD	
MADUFORD, ALOYSIUS C	07/19/01
YORK, PA	
NDUBISI, BONIFACE U	07/19/01
JACKSONVILLE, FL	
PERRY, MAURICE ANTHONY	07/19/01
RESEDA, CA	
POGUE, JOHN G	07/19/01
SHREVEPORT, LA	
SANDERS, BETHANNE L	07/19/01
CHEVY CHASE, MD	
STONE, DONALD KIM	07/19/01
CLEARWATER, FL	
STRANKMAN, NANCY ANN	07/19/01
TUCKER, GA	
STRICKLAND, JEFFREY LEE	07/19/01
NORCROSS, GA	
SUWANTAVEESRI, TATSANEE	07/19/01
MIDDLESEX, NJ	
TALBOT, LISA M	07/19/01
NEW BEDFORD, MA	
VAN NICE, DENNIS G	07/19/01
MIDLAND, TX	
WESSON, MICAH A	07/19/01
SHERMAN, TX	
WHITE, SHARON L	07/19/01
PALM HARBOR, FL	
WOODBERRY-WRIGHT, GERALDINE	07/19/01
HAMPTON, VA	
PEER REVIEW ORGANIZATION CASES	
GARDNER, BILLY L	04/17/87
HARPER, KS	

Dated: June 29, 2001.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 01–17878 Filed 7–17–01; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a Teleconference Meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council to be held in August 2001.

The meeting will include the review, discussion and evaluation of grant applications reviewed by IRGs. Therefore, the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, 10(d).

A summary of the meeting and roster of council members may be obtained from: Ms. Cynthia Graham, CSAT, National Advisory Council, Rockwall II Building, Suite 619, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8923.

Substantive program information may be obtained from the contact below whose name and telephone number are listed.

Committee Name: Center for Substance Abuse Treatment, National Advisory Council.

Meeting Date: August 15, 2001.

Place: Center for Substance Abuse Treatment, 5515 Security Lane, 6th Floor Conference Room, Suite 615, Rockville, MD 20852.

Type: CLOSED: August 15, 2001—2:00—4:00 p.m.

Contact: Cynthia Graham, M.S., Committee Management Officer, Telephone: (301) 443–8923, and FAX: (301) 480–6077.

Dated: July 12, 2001.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 01–17980 Filed 7–17–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare a Management Plan and Environmental Impact Statement for Bison and Elk at the National Elk Refuge and Grand Teton National Park in Teton County, Wyoming

AGENCY: Fish and Wildlife Service and National Park Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (FWS) and National Park Service (NPS), in cooperation with the USDA Animal and Plant Health Inspection Service (APHIS) and the Bridger-Teton National Forest (BTNF), are beginning to prepare a management plan and environmental impact statement (EIS) for management of bison and elk in the National Elk Refuge (NER) and Grand Teton National Park (GTNP) in Wyoming. Bison and elk utilizing these areas comprise a large portion of the "Jackson Bison and Elk Herds." The planning/EIS process will involve analysis of ecosystem level conditions and actions which affect management of bison and elk on the park and refuge and will develop herd management alternatives for accomplishing the goals, objectives, and purposes of the NER and GTNP. Since most bison and elk utilizing these areas at some time during the year also utilize other areas during other periods of the year, the planning process will involve all agencies having some authority over the same animals. The FWS and NPS are lead agencies and the USDA Forest Service and APHIS are cooperating agencies in the preparation of the EIS. The State of Wyoming has not yet determined its level of involvement in the project.

This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are herein solicited. Additional notices of information/document availability and requests for comments and participation will be published at appropriate times in the process

DATES: Written comments on the scope of issues should be received by the Jackson Bison and Elk Assistant Project Leader (see **ADDRESSES**, below) by August 24, 2001. Prescoping public meetings were held in Wyoming from February 10 through May 5, 2001. All project-related comments received by the project team prior to this notice (e.g. in prescoping) will be incorporated into the scoping record and considered in the process.

The project scoping meetings listed below have been scheduled. A project mailing list was begun with the prescoping process. Mailers advising of the meetings listed below, and all additional public meetings for the project, will be sent to all individuals and organizations on the project mailing list. Requests for addition to the mailing list can be made by correspondence to the assistant project leader (see **ADDRESSES**, below). Information related to all project meetings may be viewed at the project website via: <*http://bisonandelkplan.fws.gov/*>.

JACKSON BISON AND ELK MANAGEMENT PLAN/EIS SCOPING MEETINGS

Date	City	Location
Friday, July 20, 2001	Jackson, WY	Commissioners' Chamber (200 S. Willow)
Saturday, July 21, 2001	Rock Springs, WY	Holiday Inn (1675 Sunset Drive)
Monday, July 23, 2001	Idaho Falls, ID	Quality Inn (850 Lindsay Blvd.)
Tuesday, July 24, 2001	Bozeman, MT	Best Western Grantree (1325 N. 7th)
Wednesday, July 25, 2001	Sheridan, WY	Best Western Sheridan Center (612 N. Main)
Thursday, July 26, 2001	Casper, WY	Holiday Inn (300 W. "F" St.)
Friday, July 27, 2001	Riverton, WY	City Hall (816 N. Federal Blvd.)
Wednesday, August 1, 2001	Cheyenne, WY	Little America (2800 W. Lincolnway)
Thursday, August 2, 2001	Lakewood, CO	Denver Sheraton West (360 Union Blvd.)
Friday, August 3, 2001	Arlington, VA	Holiday Inn at Ballston (4610 N. Fairfax Dr.)

All meetings will be from 6:30 to 8:30pm.

This information will also be available on the website, sent to the mailing list, announced by local radio stations, and published in local newspapers.

ADDRESSES: Send written comments, and/or requests to be added to the mailing list, to Don DeLong, Assistant Project Leader, Jackson Bison and Elk Management Planning Office, PO Box 510, Jackson, Wyoming 83001, USA. Phone: 307–733–9212 extension 235, or via email to <bison/elk_planning@fws.gov>

FOR FURTHER INFORMATION CONTACT: The Assistant Project Leader listed above, or Dr. Dan E. Huff, Project Leader, US Fish and Wildlife Service, Region 6, Box 25486, Denver Federal Center, Denver, CO 80225, USA. Phone: 303–236–8145 extension 605.

SUPPLEMENTARY INFORMATION: Dan Huff and Don DeLong are primary authors of this document.

GTNP and the NER border one another and are located just north of Jackson, in northwestern Wyoming. Together with the BTNF, they make up most of the southern half of the Greater Yellowstone Ecosystem. The NER comprises about 25,000 acres and the GTNP, about 304,000 acres. The Jackson Bison and Elk Herds make up one of the largest concentrations of free-ranging ungulates in North America. Currently, these herds total approximately 600 bison and 14,000 elk. The herds migrate across several jurisdictional boundaries including GTNP and southern Yellowstone National Park, the BTNF, Bureau of Land Management resource areas, and state and private lands, before they over-winter on the BTNF and the NER. Because of the wide range of authorities and interests, including cooperative management by the State of Wyoming on most federal lands, the NPS and FWS are seeking a cooperative approach to management planning involving all of the associated federal and state agencies and a broad range of organized and private interests.

A management plan (Jackson Bison Herd Long Term Management Plan and Environmental Assessment) was developed by GTNP and the NER, in cooperation with and Wyoming Game and Fish Department and the BTNF, for the Jackson Bison Herd and finalized in September, 1996. A Record of Decision (ROD) for that document was approved in 1997. But, a lawsuit was brought by the Fund for Animals (FFA) in 1998 enjoining most federal management actions proposed in the 1996 plan. The court ruled that destruction of bison on federal lands for population control purposes could not be carried out until additional NEPA compliance was completed for those actions. The court also directed that additional NEPA compliance consider the effects of elk winter-feeding by the FWS on the NER, on the Jackson bison population.

The Refuge Improvement Act of 1997 requires that "Comprehensive Conservation Plans" (CCPs) be developed for all national wildlife refuges. For the NER, elk management, including winter-feeding would make up the most significant issue in that CCP. In order to coordinate the compliance required for NER and GTNP bison and elk management under NEPA itself, the FFA lawsuit, and the Refuge Improvement Act, and since many management actions for one affect both species, this planning/compliance process was proposed by GTNP and the NER, and directed by the DOI Assistant Secretary for Fish and Wildlife and Parks in 1999.

A series of prescoping public meetings was held on this project, prior to formal scoping, to share information and demonstrate interests in future desired conditions by the wide range of interests. Results of these meetings are available on the project WebPage. While formal identification of project scope, including issues to be addressed, will be carried out in the scoping process, information from the prescoping meetings make it likely that bison and elk population size, habitat impacts of bison and elk and habitat management, associated recreation (including hunting programs), winter-feeding, and disease management will all be addressed. These issues may be redefined, and additional issues are likely to be identified.

Estimated dates for milestones in this process are listed below. Any revised dates will be provided in newsletters to the project mailing list, in news releases, and at the website.

Situation Assessment (completed)—September 21, 2000;

Prescoping Meetings (completed)—February 10–May 5, 2001;

Notice of Intent" published in **Federal Register**—July 15, 2001;

Scoping Meetings—July 20–August 3, 2001;

Draft Plan/EIS available to the public—September 15, 2002;

Final Plan/EIS available to the public—September 15, 2003;

"Record of Decision" published in **Federal Register**—January 1, 2004.

Dated: July 17, 2001.

Duane K. McDermond,

Regional Chief, National Wildlife Refuge System.

[FR Doc. 01–17960 Filed 7–17–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Pursuant to Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that on July 6, 2001, a proposed Consent Decree in *United States* v. *Battery Properties, Inc.*, Civil Action No. 1–01–0009, was lodged with the United States District Court for the Middle District of Tennessee.

In this action the United States sought to recover response costs incurred by

the Environmental Protection Agency ("EPA") during the performance of a response action to address releases and threatened releases of hazardous substances at the Mallory Capacitor Co. Superfund Site ("Site") in Waynesboro, Wayne County, Tennessee. The Decree resolves the liability of Defendant Battery Properties, Inc. for the United States' past response costs, interim response costs, and future oversight costs. The Defendant will pay $39,149 to the Hazardous Substances Superfund in reimbursement of EPA's response costs at or in connection with the Site through September 30, 1999. The Defendant will pay all response costs incurred between October 1, 1999 and the date of entry of the consent decree. In addition, Defendant will pay EPA's future oversight costs incurred during Defendant's performance under EPA's March 4, 1992 Unilateral Administrative Order for Remedial Design and Remedial Action.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Battery Properties, Inc.*, DOJ Ref. 90–11–2–733/1.

The Consent Decree may be examined at the Office of the United States Attorney, Middle District of Tennessee, 110 Ninth Avenue, S., Suite A–961, Nashville, Tennessee 37203, and at EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington DC 20044–7611. In requesting a copy, please refer to *United States* v. *Battery Properties, Inc.*, Civ. No. 1–01–0009 (M.D. Tenn.), DOJ Ref. 90–11–2–733/1, and enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 01–17879 Filed 7–17–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Environment and Natural Resources Division; Notice of Lodging of Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Hartz Construction Co., Inc.*, Civ. No. 98–C–4785 (N.D. Ill.), was lodged with the United States District Court for the Northern District of Illinois on June 15, 2001. This proposed Consent Decree concerns a complaint filed by the United States of America against Hartz Construction Co., Inc., pursuant to section 309(b) and (d), and section 404(s), of the Clean Water Act, 33 U.S.C. 1319(b), (d), 1344(s), to obtain injunctive relief and impose civil penalties against the Defendant for unlawfully discharging dredged or fill materials into waters of the United States at two sites located in Cook County, Illinois, and for failing to comply with requests for information in accordance with Clean Water Act section 308(a), 33 U.S.C. 1318(a).

The proposed Consent Decree requires the Defendant to pay a civil penalty in the amount of $80,000, for its unauthorized discharges and for its noncompliance with requests for information. In addition, the Defendant has established an area within or adjacent to both of the sites for the purpose of creating waters of the United States to mitigate the loss of waters of the United States as alleged in the Complaint. The proposed Consent Decree further reflects the fact that the Defendant has represented that it has now fully and completely responded to the requests for information.

The Department of Justice will receive written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Attention: Joshua M. Levin, P.O. Box 23986, Washington, D.C. 20026–3986. Please refer to the matter of *United States* v. *Hartz Construction Co., Inc.*, DJ Reference No. 90–5–1–1–05007.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, IL 60604. In addition, the proposed Consent Decree may be viewed on the World Wide Web at http://www.usdoj.gov/enrd/enrd-home.html.

Scott A. Schachter,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 01–17880 Filed 7–17–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993: AAF Association, Inc.

Notice is hereby given that, on June 19, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Grass Valley Group, Beaverton, OR; NL Technology, North Andover, MA; Pandora International, Ltd., Northfleet, Kent, United Kingdom; and Warner Bros., Burbank, CA have been added as parties to this venture. Also, Sonic Foundry, Madison, WI has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 20, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 11, 2001 (66 FR 18799).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–17883 Filed 7–17–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993: Fire Sprinkler Manufacturers' Joint Research and Development Consortium

Notice is hereby given that, on January 31, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Fire Sprinkler Manufacturers' Joint Research and Development Consortium (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties are: Central Sprinkler, Inc., Exeter, NH; Firematic Sprinkler Services, Inc., Shrewsbury, MA; Gem Sprinkler Company, Exeter, NH; Globe Fire Sprinkler Corporation, Standish, MI; Kidde Fire Fighting USA, Exton, PA; National Fire Sprinkler Association, Inc., Patterson, NY; The Reliable Automatic Sprinkler Company, Inc., Mount Vernon, NY; Star Sprinkler, Inc., Exeter, NH; Tyco Flow Control, Exeter, NH; Tyden Group, Grand Rapids, MI; Victaulic Fire Safety Company, LLC, Easton, PA; and The Viking Corporation, Hastings, MI.

The general area of planned activity is to collect, exchange and analyze research information to determine, in conjunction with the U.S. Consumer Product Safety Commission or such other agency as may be deemed an interested party, whether listing and approval test standards, as well as installation and maintenance standards, relating to fire sprinklers need to be revised and, if necessary, to develop and recommend changes to such standards.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–17884 Filed 7–17–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—GENRAC, LLC

Notice is hereby given that, on April 5, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), GENRAC, LLC has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties are: GENRAC, LLC, Oak Ridge, TN; Abgenix, Inc., Freemont, CA; and CJ America, Inc., Fort Lee, NJ.

The general area of planned activity is to provide a mechanism for members to utilize the multidisciplinary research and development capabilities of Oak Ridge National Laboratory and the University of Tennessee in order to participate in defined research and development programs in basic functional genomics technology and techniques and to share in the knowledge and benefits of intellectual property developed therefrom.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–17882 Filed 7–17–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (IPACT–II)

The notice on behalf of International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 ("IPACT–II") published in the **Federal Register** on Thursday, August 17, 2000 (65 FR 50218) is retracted and replaced by the following:

Notice is hereby given that, on July 6, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 ("IPACT–II") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in name of some of its members.

The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Astra AB is now known as AstraZeneca AB, Sodertalje, Sweden; Rhone-Poulenc Rorer Pharmaceuticals, Inc., is now known as Aventis Pharmaceuticals Products, Inc., Collegeville, PA; and Fisons plc, is now known as Fisons Ltd., Holmes Chapel, England, United Kingdom.

No other changes have been made in either the membership or planned activity of IPACT–II. Membership in this joint research project remains open, and IPACT–II intends to file additional written notification disclosing all changes in membership.

On February 21, 1991, IPACT–II filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 2, 1991 (56 FR 13489).

The last notification was filed with the Department on March 6, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1997 (62 FR 15939).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–17881 Filed 7–17–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized,

collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed revision of the Report of Construction Contractor's Wage Rates (WD–10).

DATES: Written comments must be submitted to the office listed in the addressee section below no later than September 17, 2001.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

The Davis-Bacon Act provides that every government contract in excess of $2,000 which involves the employment of mechanics and/or laborers, contain a provision stating the minimum wages to be paid, which are based on the prevailing wage rate in the area for corresponding classes of mechanics and laborers employed on similar projects. Further, Section 1.3 of 29 CFR part I provides that the Wage and Hour Administrator will conduct a continuing program for the obtaining and compiling of wage rate information for the purpose of making wage determinations.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Wage and Hour Division seeks the approval of the revision of the currently approved information collection WD–10. The form has been revised in format to allow information to fit on legal size paper (8½ x 14). Instructions have been provided on a second page. The WD–10 form has been revised to be user friendly and machine readable. Electronic imaging of WD–10 forms will expedite data transfer from hard copy to the supporting database. The form redesign is necessary for character recognition software to work effectively. An electronic WD–10 form is being developed which mirrors the paper form and will make it easier for respondents to provide information. The revision of the paper WD–10 and electronic submission of Form WD–10 will expedite data transfer to the supporting database. The use of the electronic WD–10 will expedite the survey process to allow more accurate and timely wage determinations. It is anticipated that completion and electronic submission capability of the WD–10 over the Internet will occur in 2002.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: Report of Construction Contractor's Wage Rates.

OMB Number: 1215–0046.

Agency Number: WD–10.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Total Respondents: 37,500.

Total Responses: 75,000.

Time per Response: 20 minutes.

Estimated Total Burden Hours: 25,000.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 25, 2001.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 01–17970 Filed 7–17–01; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF DEFENSE

Department of the Army

Mississippi River Commission; Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission, Defense.

TIME AND DATE: 3:30 p.m., August 13, 2001.

PLACE: On board MISSISSIPPI V at Riverside Park Dock, LaCrosse, WI.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting the Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within St. Paul District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 3:30 p.m., August 15, 2001.

PLACE: On board MISSISSIPPI V at Keokuk/Hubingers Landing, Keokuk, IA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting the Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within Rock Island District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 8:30 a.m., August 17, 2001.

PLACE: On board MISSISSIPPI V at City Front, St. Louis, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting the Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within St. Louis District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 8:30 a.m., August 20, 2001.

PLACE: On board MISSISSIPPI V at Mud Island Park Landing, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting the Corps of Engineers

and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within Memphis District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 8:30 a.m., August 21, 2001.

PLACE: On board MISSISSIPPI V at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting the Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within Vicksburg District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 8:30 a.m., August 23, 2001.

PLACE: On board MISSISSIPPI V at City Front, Morgan City, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting the Corps of Engineers and Commission and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within New Orleans District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–18012 Filed 7–13–01; 4:22 pm]

BILLING CODE 3710–GX–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for the Creation of a Toolbox for Individual Artists

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to one (1) award of a Cooperative Agreement to compile a Toolbox is intended to assist individual artists in carrying out the business aspects of their careers. Toolbox topics will include financial management, law, marketing, and insurance, and the Toolbox will contain sample forms, checklists, references, and procedures. Completion of the project is contemplated in one year. Those interested in receiving the Solicitation package should reference Program Solicitation PS 01–02 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored. It is anticipated that the Program Solicitation will also be posted on the Endowment's Web site at http://www.arts.gov.

DATES: Program Solicitation PS 01–02 is scheduled for release approximately August 6, 2001 with proposals due on September 4, 2001.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506 (202)/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements.

[FR Doc. 01–17885 Filed 7–17–01; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board Panel

[Docket No. 50–213–OLA ASLBP No. 01–787–02–OLA]

Before Administrative Judges: Ann Marshall Young, Chair, Dr. Peter S. Lam, Thomas D. Murphy; In the Matter of Connecticut Yankee Atomic Power Company (Haddam Neck Plant); Notice of Hearing

July 12, 2001.

This proceeding concerns a license amendment application of Connecticut Yankee Atomic Power Company (CYAPCO), seeking to add a new license condition to approve a License Termination Plan (LTP) for its Haddam Neck Plant pursuant to 10 CFR 50.82(a)(9), (10), and allow CYAPCO to make changes to the approved LTP without prior NRC approval if certain criteria specified in the license condition are met. After a public meeting held October 17, 2000, NRC Staff proposed to determine that the amendment request involves no significant hazards consideration under 10 CFR 50.92(c), and provided notice of this finding and of the opportunity for a hearing with regard to the amendment request. 65 FR 77913 (Dec. 13, 2000). In response to this notice, the Citizens Awareness Network (CAN) and the Connecticut Department of Public Utility Control (CDPUC) filed requests for hearing dated January 11 and 17, 2001, respectively. On January 31, 2001, an Atomic Safety and Licensing Board, consisting of the members listed above, was established to preside over this proceeding. 66 FR 9111 (Feb. 6, 2001).

Notice is hereby given that, by Memorandum and Order dated July 9, 2001, the Board granted Petitioners CAN and CDPUC a hearing, after holding oral argument in a series of prehearing conferences on the contentions and arguments of the Petitioners, CYAPCO and the NRC Staff. In this Memorandum and Order, the Board found that both CAN and CDPUC have standing to proceed, and admitted contentions relating to adequacy of the site characterization, scope of work required to meet the requirements of the rules, dose calculations, and water contamination.

This proceeding will be conducted under the Commission's hearing procedures set forth in 10 CFR part 2, subpart G. During the course of the proceeding, the Board may conduct additional oral argument as provided in 10 CFR 2.755, hold additional prehearing conferences pursuant to 10 CFR 2.752, and conduct an evidentiary hearing in accordance with 10 CFR 2.750–.751. The time and place of these sessions will be announced in Licensing Board Orders. Except as limited by the parameters of telephone conferences (which will in any event be transcribed), members of the public are invited to attend any such sessions.

Additionally, as provided in 10 CFR 2.715(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in the proceeding. Persons wishing to submit a written limited appearance statement should send it to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff. A copy of the statement should also be served on the Chairman of the Atomic Safety and Licensing Board. At a later date, the Board will entertain oral limited appearance statements at a location or locations in the vicinity of the Haddam Neck Plant, which is located

approximately 21 miles southeast of Hartford, Connecticut, on the east bank of the Connecticut River. Notice of these oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room.

Documents related to this proceeding are available electronically through the Agencywide Documents access and Management System (ADAMS), with access to the public through the NRC's Internet Web site (Public Electronic Reading Room Link, *http://www.nrc.gov/NRC/ADAMS/index.html*). The NRC Public Documents Room (PDR) and many public libraries have terminals for public access to the Internet. Documents that may relate to this proceeding that are dated earlier than December 1, 1999, are available in microfiche form (with print form available on one-day recall) for public inspection at the PDR, Room 0–1 F21, NRC One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

Dated: July 12, 2001.

For the Atomic Safety and Licensing Board.

Ann Marshall Young,

Chair, Administrative Judge.

[FR Doc. 01–17952 Filed 7–17–01; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

PSEG Nuclear, LLC, Hope Creek Generating Station; Exemption

1.0 Background

The PSEG Nuclear LLC (PSEG or the licensee) is the holder of Facility Operating License No. NPF–57 which authorizes operation of the Hope Creek Generating Station (HCGS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling water reactor located in Salem County in New Jersey.

2.0 Request/Action

Title 10 of the Code of Federal Regulations, part 50, appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, appendix G, states that "[t]he appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." In addition, Appendix G of 10 CFR part 50 specifies that the requirements for these limits "must be at least as conservative as limits obtained by following the methods of analysis and the margins of safety of Appendix G of Section XI of the ASME Code [American Society of Mechanical Engineers Boiler and Pressure Vessel Code]."

By letter dated December 1, 2000, as supplemented by letters dated February 12, May 7, and May 14, 2001, PSEG submitted a license amendment request to increase the HCGS core thermal power level by 1.4 percent. The amendment request included proposed P–T limit curves for the HCGS RPV. As part of the same submittal, PSEG requested an exemption from specific requirements of 10 CFR 50.60(a) and Appendix G. The proposed exemption would allow the use of ASME Code Cases N–588, "Alternative to Reference Flaw Orientation of Appendix G for Circumferential Welds in Reactor Vessels, Section XI, Division 1," and N–640, "Alternative Reference Fracture Toughness for Development of P–T Limit Curves for ASME Section XI, Division 1," as alternative methods for complying with the fracture toughness requirements in 10 CFR Part 50, Appendix G. The proposed amendment relies, in part, on the requested exemption since the proposed P–T limit curves for the HCGS RPV were developed based on the use of Code Cases N–588 and N–640. Pursuant to 10 CFR 50.60(b), proposed alternatives to the requirements in Appendices G and H of 10 CFR Part 50 may be used by licensees when the Commission grants an exemption under 10 CFR 50.12.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The licensee's application states that the proposed exemption meets the special circumstances provisions in 10 CFR 50.12(a)(2)(ii), which states that "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

As previously discussed, the licensee has requested an exemption to use ASME Code Cases N–588 and N–640 as alternative methods for complying with the fracture toughness requirements in 10 CFR Part 50, Appendix G. The underlying purpose of 10 CFR part 50, appendix G, is to protect the integrity of the reactor coolant pressure boundary in nuclear power plants. This is accomplished through these regulations that, in part, specify fracture toughness requirements for ferritic materials of the reactor coolant pressure boundary. The staff's review related to each of the Code Cases is discussed below.

Code Case N–588

Code Case N–588 amends the provisions of the 1989 Edition of ASME Section XI, Appendix G, by permitting the postulation of a circumferentially oriented reference flaw as the limiting flaw in an RPV circumferential weld for the purpose of establishing RPV P–T limits. The 1989 Edition of ASME Section XI, Appendix G, would require that such a reference flaw be postulated as an axially oriented flaw in the circumferential weld.

The licensee addressed the technical justification for this exemption by citing industry experience and aspects of RPV fabrication which support the postulation of circumferentially oriented flaws for these welds. The reference flaw is a postulated flaw that accounts for the possibility of a prior existing defect that may have gone undetected during the fabrication process. Postulating the ASME Section XI, Appendix G reference flaw in a circumferential weld is physically unrealistic and overly conservative, because the length of the flaw is 1.5 times the vessel wall thickness, which is much longer than the width of the circumferential weld. Industry experience with the repair of weld indications found during preservice inspection, inservice nondestructive examinations, and data taken from destructive examination of actual vessel welds confirms that any remaining defects are small, laminar in nature, and do not cross transverse to the weld bead. Therefore, any postulated defects introduced during the fabrication process, and not detected during subsequent nondestructive examinations, would only be expected to be oriented in the direction of weld fabrication. ASME Code Case N–588 also provides appropriate procedures for determining the stress intensity factors for use in developing RPV P–T limits in accordance with ASME Code, Section XI, Appendix G, procedures. The procedures allowed by ASME Code Case

N–588 are conservative and provide a margin of safety in the development of RPV P–T operating and pressure test limits that will prevent nonductile fracture of the vessel.

The staff concurs with the licensee's conclusion that the postulation of an axially oriented flaw on a circumferential RPV weld is a level of conservatism that is not required to establish P–T limits to protect the reactor coolant system pressure boundary from failure during hydrostatic testing, heatup, and cooldown. Based on the manufacturing processes used to fabricate RPVs for U.S. facilities, it is reasonable to conclude that, if a significant defect were to exist in a circumferential weld, it would lie in the plane of the welding direction. The use of stress magnification factors which account for this difference in flaw orientation (i.e., account for a factor of approximately two in the difference in the applied pressure stress between the axial and circumferential directions) is acceptable.

The staff also notes that, Code Case N–588, Section 2214.3, includes changes to the methodology for determining the thermal stress intensity, KIT, which was incorporated into Section XI of the ASME Code after the 1989 Edition. The staff has reviewed the basis for these changes in the KIT methodology in detail. The staff accepts that the modifications made to the KIT methodology in Section 2214.3 of Code Case N–588 result in a determination of KIT that is consistent with the methodology found in the 1989 Edition of ASME Code Section XI, Appendix G, and that the use of equivalent KIT values for axial and circumferential flaws is acceptable.

Application of ASME Code Case N–588 when determining P–T operating limit curves per ASME Code, Section XI, appendix G, provides appropriate procedures for determining limiting maximum postulated defects and considering those defects in developing the P–T limits. This application of the code case maintains that margin of safety originally contemplated when ASME Code Section XI, appendix G was developed.

Based on the above considerations, the staff concludes that use of Code Case N–588 for development of the HCGS RPV P–T limit curves will meet the underlying purpose of Appendix G of 10 CFR part 50 with respect to protecting the integrity of the reactor coolant pressure boundary. In this case, since strict compliance with the requirements of 10 CFR 50.60(a) and 10 CFR part 50, appendix G, is not necessary to serve the overall intent of the regulations, the staff also concludes that application of Code Case N–588 for the HCGS meets the special circumstances provisions in 10 CFR 50.12(a)(2)(ii), for granting exemptions to the regulations.

Code Case N–640

Code Case N–640 amends the provisions of ASME Section XI, Appendix G, by permitting the use of the K_{Ic} equation as found in Appendix A in ASME Section XI, in lieu of the K_{Ia} equation as found in Appendix G in ASME Section XI. Use of the K_{Ic} equation in determining the lower bound fracture toughness in the development of the P–T operating limits curve is more technically correct than the use of the K_{Ia} equation since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The staff has required use of the initial conservatism of the K_{Ia} equation since 1974 when the equation was codified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{Ia} equation is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, P–T curves based on the K_{Ic} equation will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations.

Based on the above considerations, the staff concludes that use of Code Case N–640 for development of the HCGS RPV P–T limit curves will meet the underlying purpose of appendix G of 10 CFR part 50 with respect to protecting the integrity of the reactor coolant pressure boundary. In this case, since strict compliance with the requirements of 10 CFR 50.60(a) and 10 CFR part 50, appendix G, is not necessary to serve the overall intent of the regulations, the staff also concludes that application of Code Case N–640 for the HCGS meets the special circumstances provisions in 10 CFR 50.12(a)(2)(ii), for granting exemptions to the regulations.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants PSEG Nuclear LLC an exemption from the requirements of 10 CFR 50.60(a) and 10 CFR part 50, appendix G, for HCGS.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 33717).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th day of July 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–17954 Filed 7–17–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland. The meeting will provide an opportunity for discussion on the revised draft Chapter 3 entitled, "Integrated Safety Analysis" of NUREG–1520, Standard Review Plan (SRP) for the Review of a License Application for a Fuel Cycle Facility. The March 30, 2001, draft Chapter 3 can be found in both a "clean" and marked-up version in the NRC Public Electronic Reading Room under "Recently Released Documents, April 3, 2001". It can also be found on the Internet at the following website: *http://techconf.llnl.gov/cgi-bin/library?source=*&library=Part_70_lib.*

The web site can also be reached by the following method:

1. Go the main NRC web site at: *http://www.nrc.gov.*
2. Scroll down to the bottom of that page and click on the word "Rulemaking."
3. Scroll down on the Rulemaking page until the words "Technical Conference" appear. Click on those words.
4. On the page titled "Welcome to the NRC Technical Conference Forum," click on the link "Conference" or "Technical Conferences".
5. Scroll down to the topic "Draft Standard Review Plan and Guidance on Amendment to 10 CFR part 70."
6. Select "Document Library".

Purpose: This meeting will provide an opportunity to discuss comments on the staff's revised draft Chapter 3 and its appendix.

DATES: The meeting is scheduled for Tuesday, August 2, 2001, from 1:30 p.m. to 4:00 p.m. The meeting is open to the public.

ADDRESSES: Two White Flint North, 11545 Rockville Pike, Room T–10A1, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Yawar H. Faraz, Senior Project Manager, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–8113, e-mail *yhf@nrc.gov*.

Dated at Rockville, Maryland this 11th day of July, 2001.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Acting Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–17953 Filed 7–17–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a regulatory guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Draft Regulatory Guide DG–1110 is a proposed Revision 1 of Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis." DG–1110 is being developed to provide guidance to licensees on methods acceptable to the NRC staff for assessing the nature and impact of licensing basis changes when the licensee chooses to support, or is requested by the NRC staff to support, such changes with risk information.

A proposed Revision 1 of Chapter 19, "Use of Probabilistic Risk Assessment in Plant-Specific, Risk-Informed Decisionmaking: General Guidance," of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," is being issued for public comment as a companion document. Chapter 19 of the Standard Review Plan will be used by the NRC staff for evaluating licensee submittals that use the guidance in Regulatory Guide 1.174 on risk-informed decisionmaking that uses probabilistic risk assessment.

This draft guide and draft standard review plan chapter have not received complete staff approval and do not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by September 17, 2001.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *cag@nrc.gov*. For information about the draft guide and the related standard review plan chapter, contact Ms. M.T. Drouin at (301) 415–6675; e-mail mxd@nrc.gov.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of this draft regulatory guide are available on the NRC's web site <*www.nrc.gov*> in the Reference Library under Regulatory Guides. Electronic copies are also available in NRC's Public Electronic Reading Room at the same web site; DG–1110 is under ADAMS Accession Number ML011770102. Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; email *pdr@nrc>gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *distribution@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 27th day of June 2001.

For the Nuclear Regulatory Commission.

Mark A. Cunningham,

Branch Chief, Probabilistic Risk Analysis Branch, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 01–17955 Filed 7–17–01; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: July 26, 2001 at 8:30 a.m.

PLACE: Commission conference room, 1333 H Street, NW., Suite 300, Washington, DC, 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: Discussion and vote on the Postal Rate Commission's fiscal year 2002 budget.

CONTACT PERSON FOR MORE INFORMATION: Steven W. Williams, acting secretary, Postal Rate Commission, 202–789–6840.

Dated: July 16, 2001.

Steven W. Williams,

Acting Secretary.

[FR Doc. 01–18110 Filed 7–16–01; 2:09 pm]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25061; 812–11616]

CDC IXIS Asset Management Advisers, L.P., et al.; Notice of Application

July 12, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(c) and 17(b) of

the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act, under section 6(c) for an exemption from sections 12(d)(3) and 17(e) of the Act and rule 17e–1 under the Act, and under section 10(f) of the Act for an exemption from section 10(f).

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in certain underwritings. The transactions would be between the broker-dealer and a portion of the investment company's portfolio not advised by the adviser affiliated with that broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate in which an affiliated person of one of the investment advisers is a principal underwriter. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by a broker-dealer, which is an affiliated person of an investment adviser to another portion, subject to the limits in rule 12d3–1 under the Act.

APPLICANTS: CDC IXIS Asset Management Advisers, L.P. (formerly known as Nvest Funds Management, L.P.) ("NFM") and CDC Nvest Funds Trust I ("Trust").

FILING DATES: The application was filed on May 25, 1999, and amended on March 5, 2001 and June 28, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 6, 2001, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 399 Boylston Street, 6th Floor, Boston, MA 02116, Attn: John E. Pelletier; copy to: Ryan C. Larrenaga, Esq., Ropes & Gray, One International Place, Boston, MA 02110–2624.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Branch Chief, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company with twelve series, four of which are advised by NFM and three or more investment subadvisers (the "Star Funds").[1]

2. NFM is registered under the Investment Advisers Act of 1940 ("Advisers Act") and provides investment advisory and administrative services to the Trust. The assets of the Star Funds are allocated by NFM among multiple subadvisers ("Subadvisers"). Each Subadviser has discretion to purchase and sell securities for a discrete segment of a Star Fund's assets in accordance with that Star Fund's objectives and the Subadviser's own investment style and strategies. The subadvisory fees paid to each Subadviser are either paid by NFM or, if paid directly to the Subadviser by the Trust, reduce the management fee received by NFM from the Trust by the amount of the subadvisory fee.

3. The requested relief would permit: (a) any broker-dealer that itself serves as Subadviser (either directly or through a separate operating division) or is an affiliated person of a Subadviser (an "Affiliated Subadviser") to a Multi-Segment Fund (as defined below) (an "Affiliated Broker-Dealer") to engage in principal transactions with a portion of the Multi-Segment Fund that is advised by another Subadviser that is not an affiliated person of the Affiliated Broker-Dealer or the Affiliated Subadvisor (each such portion, an "Unaffiliated Segment"); (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Segment, and the Unaffiliated Segment to utilize such brokerage services, without complying with rule 17e–1(b) and (c) under the Act; (c) an Unaffiliated Segment to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser or a person of which an Affiliated Subadviser is an affiliated person ("Affiliated Underwriter"); (d) a portion of the Star Fund advised by an Affiliated Subadviser ("Affiliated Segment") to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3 except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Segment with purchases by an Unaffiliated Segment; and (e) an Unaffiliated Segment to acquire securities issued by an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser engaged in securities-related activities ("Securities Affiliate") within the limits of rule 12d3–1. The requested relief would apply only if the Affiliated Broker-Dealer is not an affiliated person or an affiliated person of an affiliated person of NFM, the Subadviser making the investment decision with respect to the Unaffiliated Portion ("Unaffiliated Subadviser"), a principal underwriter, promoter, or an officer, trustee, or employee of the Multi-Managed Portfolio engaging in the transaction.

4. Applicants request that the exemptive relief apply to the Trust or any existing or future registered open-end management investment company or series thereof advised by (a) NFM or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with NFM and (b) at least one other investment adviser registered under the Advisers Act or exempt from such registration (the Star Funds and such investment companies or series thereof, each a "Multi-Segment Fund" or "Fund"). The relief also would apply to any existing or future entity that serves as an Affiliated Subadviser, Affiliated Broker-Dealer, or Affiliated Underwriter to a Multi-Segment Fund. Any investment company that currently intends to rely on the order is named as an applicant. NFM will take steps designed to ensure that any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

[1] Specifically, the Star Funds are the CDC Nvest Star Advisers Fund, the CDC Nvest Star Worldwide Fund, the CDC Nvest Star Small Cap Fund and the CDC Nvest Star Value Fund.

Applicants' Legal Analysis

A. Principal Transactions between an Unaffiliated Segment and an Affiliated Broker-Dealer

1. Section 17(a) of the Act generally prohibits sales or purchases of securities or other property between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated person of an affiliated person, promoter, or principal underwriter. Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Subadviser would be an affiliated person of a Fund, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser, and thus an affiliated person of an affiliated person ("second-tier affiliate") of a Fund, including the Unaffiliated Segment. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Segment of a Multi-Segment Fund with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

2. Applicants seek relief under sections 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a) because an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Segment solely because an Affiliated Subadviser is the Subadviser to another portion of the same Fund. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Subadviser) is an affiliated person or a second-tier affiliate of NFM, the Unaffiliated Subadviser making the investment decision, any principal underwriter or promoter of the Fund, or any officer, director or employee of the Fund.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser purchases securities on behalf of an Unaffiliated Segment in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addition, applicants state that Subadvisers are paid on the basis of a percentage of the value of the assets allocated to their management. The execution of a transaction to the disadvantage of the Unaffiliated Segment would disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated Segment. Applicants further submit that NFM's power to dismiss Subadvisers or to change the portion of a Multi-Segment Fund allocated to each Subadviser reinforces a Subadviser's incentive to maximize the investment performance of its own portion of the Fund.

5. Applicants state that each Subadviser's contract assigns it responsibility to manage a discrete portion of the Multi-Segment Fund. Each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants represent that NFM does not dictate brokerage allocation or investment decisions to any Fund advised by a Subadviser, or have the contractual right to do so. Applicants contend that, in managing a discrete portion of a Multi-Segment Fund, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Fund, since each Unaffiliated Subadviser is required to manage the Unaffiliated Segment in accordance with the investment objectives and related investment policies of the Fund as described in its registration statement. Applicants also assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Fund achieving best price and execution on its principal transactions, while giving rise to none of the abuses that the Act was designed to prevent.

B. Payment of Brokerage Compensation by an Unaffiliated Segment to an Affiliated Broker-Dealer

1. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the "usual and customary broker's commission" for purposes of section 17(e)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e–1(c) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Subadviser to another portion of the Multi-Segment Fund) or a second-tier affiliate of an Unaffiliated Segment and thus subject to section 17(e). Applicants request an exemption under section 6(c) from section 17(e) and rule 17e–1 to the extent necessary to permit an Unaffiliated Segment to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business in connection with the sale of securities to or by such Unaffiliated Segment, without complying with the requirements of rule 17e–1(b) and (c). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Segment solely because an Affiliated Subadviser is the Subadviser to another portion of the same Multi-Segment Fund. The relief would not apply if the Affiliated Broker-Dealer (except by virtue of

serving as Subadviser) is an affiliated person or a second-tier affiliate of NFM, the Unaffiliated Subadviser to the Unaffiliated Segment of the Multi-Segment Fund, any principal underwriter or promoter of the Fund, or any officer, director or employee of the Fund.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c). Applicants assert that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Segment it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair as required by rule 17e–1(a). Applicants also note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Segment.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or an affiliated person of any of those persons. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Subadviser, although under contract to manage only a distinct portion of a Multi-Segment Fund, is considered an investment adviser to the entire Fund. As a result, applicants believe that all purchases of securities by an Unaffiliated Segment from an underwriting syndicate a principal underwriter of which is an Affiliated Underwriter would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit an Unaffiliated Segment to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Fund. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as Subadviser) is an affiliated person or a second-tier affiliate of NFM, the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Segment of the Multi-Segment Fund, any principal underwriter or promoter of the Fund, or any officer, director, or employee of the Fund. Applicants also seek relief from section 10(f) to permit an Affiliated Segment to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Segment with purchases by an Unaffiliated Segment.

4. Applicants state that section 10(f) was adopted in response to concerns about the "dumping" of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Multi-Segment Funds because a decision by an Unaffiliated Subadviser to purchase securities from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for "dumping." In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

D. Purchases of Securities of Securities Affiliates by an Unaffiliated Segment.

1. Section 12(d)(3) of the Act, in relevant part, generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting (collectively, "securities-related activities"). Rule 12d3–1 under the Act exempts certain transactions from the prohibitions of section 12(d)(3) if specified conditions are met. One of these conditions, paragraph (c) of rule 12d3–1, generally provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person of the investment company's investment adviser, promoter, or principal underwriter.

2. Applicants state that each Subadviser is considered to be an affiliated person of an entire Multi-Segment Fund. Accordingly, a Securities Affiliate is either an affiliated person (as Subadviser to another portion of the Multi-Segment Fund) or a second-tier affiliate of an Unaffiliated Segment. Thus, an Unaffiliated Segment may not purchase securities of a Securities Affiliate in reliance on rule 12d3–1 because of paragraph (c). Applicants request relief under section 6(c) from section 12(d)(3) to permit an Unaffiliated Segment of a Multi-Segment Fund to acquire securities of a Securities Affiliate within the limits of rule 12d3–1. The requested exemption would apply only where a Securities Affiliate is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Segment within the meaning of rule 12d3–1(c) solely because an Affiliated Subadviser is the Subadviser to another portion of the same Multi-Segment Fund.

3. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3–1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Portion. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment decisions for the assets allocated to its portion of the Multi-Segment Fund. Further, applicants submit that prohibiting the Unaffiliated Portions from purchasing securities issued by Securities Affiliates could harm the interests of a Fund's shareholders by preventing the Unaffiliated Subadviser from achieving optimal investment results.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Multi-Segment Fund relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser and will be

operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, Affiliated Underwriter or Securities Affiliate (except by virtue of serving as Subadviser to a discrete portion of a Multi-Segment Fund) will be an affiliated person or a second-tier affiliated of NFM, any Unaffiliated Subadviser, or any principal underwriter, promoter, officer, director, or employee of a Multi-Segment Fund.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadvisers concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Segment during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Segment with purchases by an Unaffiliated Segment.

6. With respect to purchases by an Unaffiliated Segment of securities issued by a Securities Affiliate, the conditions of rule 12d3–1 will be satisfied except for paragraph (c) to the extent such paragraph is applicable solely because such issuer is an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17887 Filed 7–17–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25062; 812–12184]

Apex Municipal Fund, Inc., et al.; Notice of Application

July 12, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(D)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order to permit (a) certain registered investment companies to pay an affiliated lending agent a fee based on a share of the revenue derived from securities lending activities; (b) the registered investment companies and certain affiliated institutional accounts to use cash collateral from securities lending transactions and/or uninvested cash to purchase shares of affiliated money market funds or affiliated private investment companies; (c) the registered investment companies to lend portfolio securities to affiliated broker-dealers; and (d) the registered investment companies to engage in certain purchase and sale transactions with each other.

Applicants: Apex Municipal Fund, Inc., The Asset Program, Inc., CBA Money Fund, CMA Government Securities Fund, CMA Money Fund, CMA Multi-State Municipal Series Trust, CMA Tax-Exempt Fund, CMA Treasury Fund, The Corporate Fund Accumulation Program, Inc., Corporate High Yield Fund II, Inc., Corporate High Yield Fund III, Inc., Corporate High Yield Fund, Inc., Debt Strategies Fund, Inc., Financial Institutions Series Trust—Summit Cash Reserves Fund, Global Financial Services Master Trust, Master Basic Value Trust, Master Equity Income Fund, Master Focus Twenty Trust, Master Internet Strategies Trust, Master Large Cap Series Trust, Master Mid Cap Growth Trust, Master Premier Growth Trust, Master Senior Floating Rate Trust, Master Small Cap Value Trust, Master U.S. High Yield Fund Trust, Mercury Global Holdings, Inc., Mercury Index Funds, Inc., Mercury QA Equity Series, Inc., Mercury QA Strategy Series, Inc., Merrill Lynch Arizona Municipal Bond Fund, Merrill Lynch Arkansas Municipal Bond Fund, Merrill Lynch Balanced Capital Fund, Inc., Merrill Lynch Bond Fund, Inc., Merrill Lynch California Insured Municipal Bond Fund, Merrill Lynch California Limited Maturity Municipal Bond Fund, Merrill Lynch California Municipal Bond Fund, Merrill Lynch Colorado Municipal Bond Fund, Merrill Lynch Connecticut Municipal Bond Fund, Merrill Lynch Developing Capital Markets Fund, Inc., Merrill Lynch Disciplined Equity Fund, Inc., Merrill Lynch Dragon Fund, Inc., Merrill Lynch Emerging Markets Debt Fund, Inc., Merrill Lynch Eurofund, Merrill Lynch Florida Limited Maturity Municipal Bond Fund, Merrill Lynch Florida Municipal Bond Fund, Merrill Lynch Focus Value Fund, Inc., Merrill Lynch Fundamental Growth Fund, Inc., Merrill Lynch Funds for Institutions Series, Merrill Lynch Global Allocation Fund, Inc., Merrill Lynch Global Bond Fund for Investment and Retirement, Merrill Lynch Global Growth Fund, Inc., Merrill Lynch Global Small Cap Fund, Inc., Merrill Lynch Global Technology Fund, Inc., Merrill Lynch Global Value Fund, Inc., Merrill Lynch Growth Fund, Merrill Lynch Healthcare Fund, Inc., Merrill Lynch High Income Municipal Bond Fund, Inc., Merrill Lynch Index Funds, Inc., Merrill Lynch Intermediate Term Fund of Merrill Lynch Municipal Series Trust, Merrill Lynch International Equity Fund, Merrill Lynch Latin America Fund, Inc., Merrill Lynch Maryland Municipal Bond Fund, Merrill Lynch Massachusetts Municipal Bond Fund, Merrill Lynch Michigan Municipal Bond Fund, Merrill Lynch Minnesota Municipal Bond Fund, Merrill Lynch Municipal Bond Fund, Inc., Merrill Lynch Municipal Strategy Fund, Inc., Merrill Lynch Natural Resources Trust, Merrill Lynch New Jersey Municipal Bond Fund, Merrill Lynch New Mexico Municipal Bond Fund, Merrill Lynch New York Municipal Bond Fund, Merrill Lynch North Carolina Municipal Bond Fund, Merrill Lynch Ohio Municipal Bond Fund, Merrill Lynch Oregon Municipal Bond Fund, Merrill Lynch Pacific Fund, Inc., Merrill Lynch Pennsylvania Municipal Bond Fund, Merrill Lynch Ready Assets Trust, Merrill Lynch Real Estate Fund, Inc., Merrill Lynch Retirement Reserves Money Fund of Merrill Lynch Retirement Series Trust, Merrill Lynch Senior Floating Rate Fund, Inc., Merrill Lynch Series Fund, Inc., Merrill Lynch Short-Term Global Income Fund, Inc., Merrill Lynch Short-Term U.S. Government Fund, Inc., Merrill Lynch Texas Municipal Bond Fund, Merrill Lynch U.S. Government Mortgage Fund, Merrill Lynch U.S. Government Mortgage Fund, Merrill Lynch U.S. Treasury Money Fund, Merrill Lynch USA Government Reserves, Merrill Lynch Utility and Telecommunications Fund, Inc., Merrill Lynch Variable Series Funds, Inc., Merrill Lynch World Income Fund, Inc., MuniAssets Fund, Inc., The Municipal Fund Accumulation Program, Inc., MuniEnhanced Fund, Inc., MuniHoldings California Insured Fund, Inc., MuniHoldings Florida Insured Fund, MuniHoldings Fund, Inc., MuniHoldings Fund II, Inc., MuniHoldings Insured Fund II, Inc., MuniHoldings Insured Fund, Inc., MuniHoldings Michigan Insured Fund II, Inc., MuniHoldings New Jersey Insured Fund, Inc., MuniHoldings New York Insured Fund, Inc., MuniInsured

Fund, Inc., MuniVest Fund, Inc., MuniVest Fund II, Inc., MuniYield Arizona Fund, Inc., MuniYield California Fund, Inc., MuniYield California Insured Fund II, Inc., MuniYield California Insured Fund, Inc., MuniYield Florida Fund, MuniYield Florida Insured Fund, MuniYield Fund, Inc., MuniYield Insured Fund, Inc., MuniYield Michigan Fund, Inc., MuniYield Michigan Insured Fund, Inc., MuniYield New Jersey Fund, Inc., MuniYield New Jersey Insured Fund, Inc., MuniYield New York Insured Fund, Inc., MuniYield Pennsylvania Insured Fund, MuniYield Quality Fund II, Inc., MuniYield Quality Fund, Inc., Quantitative Master Series Trust, Senior High Income Portfolio, Inc., Somerset Exchange Fund, and The S&P 500® Protected Equity Fund, Inc. (each a "Fund"); Merrill Lynch Investment Managers, L.P. ("MLIM"), Fund Asset Management, L.P. ("FAM"), and Merrill Lynch Asset Management U.K. Limited ("MLAM UK") (each an "Adviser"); QA Advisers LLC ("QALLC"); and Merrill Lynch & Co., Inc., ("ML & Co."), Merrill Lynch Pierce, Fenner & Smith Incorporated, Merrill Lynch Government Securities, Inc., and Merrill Lynch International (each an "Affiliated Broker-Dealer").

Filing Date: The application was filed on July 20, 2000 and amended on July 6, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 2, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicants, c/o MLIM, L.P., P.O. Box 9011, Princeton, New Jersey 08543–9011.

FOR FURTHER INFORMATION CONTACT: Sara Crovitz, Senior Counsel, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0101 (telephone (202) 942–8090).

Applicants' Representations

1. Each of the Funds is either an open-end or closed-end management investment company registered under the Act. Several of the Funds are comprised of multiple series. Certain of the Funds are "master funds" in a "master-feeder structure." Fifteen of the Funds are money market funds that comply with the requirements of rule 2a–7 under the Act ("Money Market Funds"). Each of the Funds is advised by either MLIM or FAM, and certain of the Funds are subadvised by MLAM U.K.

2. ML & Co. is a holding company incorporated in Delaware that provides investment, financing, insurance, and related services through its subsidiaries. Each of the Advisers is a wholly owned subsidiary of ML & Co. and is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Each of the Affiliated Broker-Dealers is a subsidiary of ML & Co.

3. QALLC (also referred to as "Lending Agent") is a Delaware limited liability company of which MLIM is the sole member and is registered as an investment adviser under the Advisers Act. QALLC will serve as lending agent in a securities lending program ("Lending Program") for certain Funds ("Lending Funds") and institutional clients of entities controlled by or under common control with ML & Co. ("Institutional Clients"). Institutional Clients may include qualified employee benefit plans, trusts, corporate cash accounts, unregistered funds (including those exempted from the definition of investment company by sections 3(c)(1) or 3(c)(7) of the Act), Taft-Hartley plans, foundations, endowments and bank collective investment trusts. QALLC also will form a private investment company ("New Fund"), for which it will serve as managing member. New Fund will serve as an investment option for the cash collateral and/or uninvested cash of Funds and Institutional Clients. New Fund will not register under the Act in reliance on the exemption from the definition of investment company provided by section 3(c)(7).

4. Applicants request that the order also apply to (a) any other registered investment company or series thereof that currently is or in the future may be advised or sub-advised (subject to the condition set forth below) by any of the Advisers or any other entity controlling, controlled by, or under common control with any of the Advisers or ML & Co. (each Adviser or entity, and "Advisory Entity"); (b) any other registered investment advisers that currently are or in the future may be controlling, controlled by, or under common control with any of the Advisers or ML & Co.; (c) any other broker-dealers now or in the future controlling, controlled by, or under common control with ML & Co.; and (d) any other unregistered fund organized to receive cash collateral and uninvested cash that may be managed by QALLC or any entity controlling, controlled by, or under common control with QALLC and/or ML & Co.[1] A Fund that is subadvised, but not advised, by an Advisory Entity may rely on the order, provided that the Advisory Entity manages the Cash Balances (as defined below) and that any relief granted from the provisions of sections 12(d)(1)(A) and (B) of the Act shall be available only if the Fund is in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Money Market Fund in which the Fund invests Cash Balances.

5. Each Lending Fund has the ability to increase its income by participating in the Lending Program, under which it may lend portfolio securities to broker-dealers, including Affiliated Broker-Dealers, or institutional investors deemed by its Adviser to be of good standing. Each Lending Fund will participate in the Lending Program subject to securities lending guidelines adopted by the Fund's board of directors/trustees ("Board"), including by a majority of the directors/trustees who are not interested persons within the meaning of section 2(a)(19) of the Act ("Disinterested Directors"). The agreements governing any loans will require that the loans be continuously secured by collateral equal at all times in value to at least the market value of the securities loaned. Collateral for such loans may include cash)"Cash Collateral") or other collateral, such as U.S. Government securities.

6. Under the Lending Program, the Lending Agent will be responsible for soliciting borrowers for each Lending

[1] All registered investment companies, unregistered investment vehicles, and investment advisers that currently intend to rely on the order are named as applicants. Any future Funds, unregistered investment vehicles, broker-dealers and investment advisers that rely on the requested relief will do so only in compliance with the terms and conditions of the application.

Fund's securities, monitoring daily the value of the loaned securities and collateral, and requesting that borrowers add to the collateral when required by the loan arrangements.[2] The Lending Agent may manage Cash Collateral only in accordance with specific parameters provided by the Lending Fund's Adviser. These guidelines include permissible investment of the Cash Collateral as well as a list of eligible types of investments.

7. When a securities loan is collateralized with Cash Collateral, the Lending Fund will receive a portion of the return earned on the investment of the Cash Collateral. Depending on the arrangements negotiated with the borrower by the Lending Agent, the Lending Fund may pay the borrower a rate of interest for use of the Cash Collateral. When the collateral is not Cash Collateral, the Lending Agent will negotiate a lending fee to be paid by the borrower to the Lending Fund. For its services to the Lending Funds, the Lending Agent will receive fees based on a share of the revenue generated from the securities lending transactions.

8. Funds may have uninvested cash ("Uninvested Cash") that comes from a variety of sources, including dividend or interest payments, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of portfolio securities to meet anticipated redemptions, as well as new monies received from investors.

9. Applicants propose that Funds ("Investing Funds") and Institutional Clients invest Cash Collateral and Uninvested Cash (together, "Cash Balances") in shares of Money Market funds or New fund. At least one series of New Fund in which the Investing Funds invest will operate as a money market portfolio that complies with the requirements of rule 2a–7 under the Act. Another series will invest in high quality securities with relatively short maturities, but which will not necessarily comply with all of the investment restrictions of rule 2a–7.[3] Series of New Fund in which the Investing Funds invest will offer daily redemption of shares at current net asset value per share. New Fund will not impose any sales load or redemption or distribution fees on any series in which the Investing Funds invest. QALLC will not charge any investment advisory fee with respect to shares of any series of New Fund owned by an Investing Fund.

10. Applicants request an order to permit (a) Lending Funds to pay the Lending Agent a fee based on a share of the revenue derived from securities lending activities; (b) Investing Funds and Institutional Clients to invest Cash Balances in Money Market Funds and/or New Fund; (c) Lending Funds to lend portfolio securities to Affiliated Broker-Dealers; and (d) Investing Funds to engage in certain transactions with each other.

Applicant's Legal Analysis

A. Payment of Lending Agent Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the Commission considers whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

2. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person, and if the other person is an investment company, the investment adviser. The Advisers, as investment advisers to the Lending Funds, are affiliated persons of the Lending Funds. Applicants state that because the Lending Agent and the Advisers are under the common control of ML & Co., the Lending Agent may be deemed an affiliated person of the Advisers, and an affiliated person of an affiliated person ("second-tier affiliate") of the Lending Funds. Accordingly, applicants request an order under section 17(d) and rule 17d–1 to permit each Lending Fund to pay and the Lending Agent to accept lending agent fees that are based on a share of the proceeds derived by the Lending Funds from the loans of portfolio securities.

3. Applicants propose that each Lending Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with the Lending Agent will meet the standards of rule 17d–1:

(a) In connection with the initial approval of QALLC as Lending Agent for the Lending Funds, and implementation of the proposed fee arrangement, a majority of the Board of each Lending Fund (including a majority of the Disinterested Directors) will determine that: (i) the contract with QALLC is in the best interest of the Lending Fund and its shareholders; (ii) the services to be performed by QALLC are appropriate for the Lending Fund; (iii) the nature and quality of the services provided by QALLC are at least equal to those provided by others offering the same or similar services; and (iv) the fees for QALLC's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality;

(b) In connection with the approval of QALLC as Lending Agent for the Lending Funds and the initial implementation of the proposed fee arrangement, the Board of each Lending Fund will review competing quotations with respect to lending agency fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above;

(c) Each Lending Fund's contract with QALLC for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested Directors) makes the findings referred to in paragraph (a) above.

(d) The Board, including a majority of Disinterested Directors, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were conducted in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures for continuing appropriateness; and

(e) Each Lending Fund will (i) maintain and preserve permanently and in an easily accessible place a written copy of the procedures and conditions described in the application and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Lending Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting

[2] The personnel who will provide day-to-day lending agency services to the Lending Funds do not and will not provide investment advisory services to the Lending Funds, or participate in any way in the selection of the portfolio securities or other aspects of the management of the Lending Funds.

[3] An Investing Fund can invest Cash Collateral, but not Uninvested Cash, in a series of New Fund that does not comply with rule 2a–7.

forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which a determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

B. Investment of Cash Balances in Money Market Funds and New Fund

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors.

2. Applicants request an exemption under section 12(d)(1)(J) to permit each Investing Fund to use Cash Balances to acquire shares of one or more Money Market Funds in excess of the limits imposed by section 12(d)(1)(A), and the Money Market Funds to sell their securities to the Investing Funds in excess of the percentage limitations in section 12(d)(1)(B).[4] Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to address. Applicants state that the arrangement will not result in an inappropriate layering of fees because the Money Market Funds will not charge a sales load, redemption fee, distribution fee adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers Inc. Conduct rules ("NASD Conduct Rules"), or if such shares are subject to any such fees, the respective Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund. In addition, before approving or renewing any advisory contract, the Board, including a majority of the Disinterested Directors, will consider the extent to which the advisory fees charged to an Investing Fund by its Adviser should be reduced or waived to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. If a Money Market Fund offers more than one class of shares, each Investing Fund will invest its Cash Balances only in the class with the lowest expense ratio at the time of investment. Applicants also represent that no Money Market Fund whose shares are acquired by an Investing Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A).

3. Sections 17(a)(1) and (2) of the Act prohibit an affiliated person of a registered investment company, or any second-tier affiliate, acting as principal, from selling any security to, or purchasing any security from, the registered investment company. As noted above, section 2(a)(3) defines an affiliated person of another person to include persons that are under common control. Applicants state that because the Advisers may be deemed to control the Funds and because QALLC may be deemed to control New Fund, the Funds and New Fund may be deemed to be affiliated persons, or second-tier affiliates. In addition, section 2(a)(3) defines an affiliated person of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person. To the extent that an Investing Fund owns 5% or more of the voting securities of a Money Market Fund or New Fund, applicants state that the Money Market Fund or New Fund could be an affiliated person of the Investing Fund. Accordingly, applicant state that section 17(a) would prohibit the sale of shares of the Money Market Fund or New Fund to an Investing Fund, and the redemption of such shares by the Money Market Fund or New Fund from the Investing Fund.

4. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Investing Funds to use Cash Balances to purchase shares of the Money Market Funds or a series of New Fund and to permit the redemption of the shares. Applicants maintain that the terms of the proposed transaction are reasonable and fair because the Investing Funds will purchase and sell shares of the Money Market Fund or New Fund on the same terms and on the same basis as other shareholders. Applicants assert that the proposed transactions comply with each Investing Funds' investment restrictions and policies. Applicants state that Investing Funds that comply with the requirements of rule 2a–7 under the Act will only invest in a series of New Fund complying with the provisions of rule 2a–7. Applicants further state that investment of Cash Collateral in new Fund and the Money Market Funds will be conducted in accordance with the securities lending guidelines of the Commission's staff. Applicants also state that New Fund will comply with the major substantive provisions of the Act, including the prohibitions against affiliated transactions, leveraging and issuing senior securities, and rights of redemption.

6. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. In addition to the potential affiliations described above, applicants state that Institutional Clients also may be deemed affiliated persons of the Money Market Funds or New Fund because the Institutional Clients may be advised by Advisers or may own 5% or more of the outstanding voting securities of a Money Market Fund or a series of New Fund. Applicants state that the Investing Funds and Institutional Clients (by purchasing and redeeming shares of New Fund or a Money Fund), the

[4] No exemptive relief is sought from the provisions of section 12(d)(1)(A) and (B) with respect to any investments in a Money Market Fund by (a) any Fund that is subadvised (but not advised) by an Advisory Entity and that is not in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Money Market Fund, and (b) any Institutional Client that is a section 3(c)(1) or 3(c)(7) entity.

Advisers (by managing the assets of the Investing Funds and certain Institutional Clients), QALLC (by acting as investment adviser to New Fund and as Lending Agent), New Fund (by selling shares to and redeeming shares from the Investing Funds), and each Money Market Fund (by selling shares to and redeeming shares from the Investing Funds and Institutional Clients) may be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) and rule 17d–1 to permit the described transactions relating to investments of Cash Balances in the New Fund and Money Market Funds. For the reasons discussed above, applicants believe that the proposed transactions meet the standards of rule 17d–1

C. Lending to Affiliated Broker-Dealers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company or an affiliated person of such a person, acting as principal, to borrow money or other property from the registered investment company. Applicants state that because an Affiliated Broker-Dealer would be under common control with the Advisers, an Affiliated Broker-Dearler may be considered an affiliated person, or a second-tier affiliate, of a Lending Fund. Applicants state that section 17(a)(3) would prohibit Affiliated Broker-Dealers from borrowing securities from Lending Funds.

2. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3), and under section 17(d) and rule 17d–1 to permit Lending Funds to lend portfolio securities to Affiliated Broker-Dealers.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Lending Fund will be made with a spread that is no longer than that applied to comparable loans to unaffiliated broker-dealers.[5] In this regard, applicants state that at least 50% of the loans made by the Lending Funds, on an aggregate basis, will be made to unaffiliated borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by the Board of each Lending Fund, including a majority of the Disinterested Directors, and all transactions with Affiliated Broker-Dealers will be reviewed periodically by an officer of the Lending fund. The Board, including a majority of the Disinterested Directors, also will review detailed quarterly compliance reports on all lending activity.

D. Interfund Transactions

1. Applicants state that the Funds currently rely on rule 17a–7 under the Act to engage in purchase and sale transactions of certain securities ("Interfund Transactions"). Rule 17a–7 excepts from the prohibitions of section 17(a) the purchase or sale of certain securities between registered investment companies that are affiliated persons, or second-tier affiliates, of each other or between a registered investment company and a person that is an affiliated person of such company (or a second-tier affiliate) solely by reason of having a common investment adviser or affiliated investment advisers, common officers, and/or common directors. Applicants state that the Funds may become affiliated persons of each other by virtue of an Investing Fund owning 5% or more of the outstanding voting securities of a Money Market Fund or a series of New Fund. Thus, applicants state that certain Funds may not be able to rely on rule 17a–7 to effect Interfund Transactions.

2. Applicants request an order under sections 6(c) and 17(b) to permit the Interfund Transactions. Applicants state that the Funds will comply with rule 17a–7 under the Act in all respects, other than the requirement that the participants be affiliated solely by reason of having a common investment adviser or affiliated investment advisers, common officers, and/or common directors. Applicants state that the additional affiliation created under sections 2(a)(3)(A) and (B) by the investment of Cash Balances does not affect the other protections provided by rule 17a–7, including the integrity of the pricing mechanism employed and oversight by each Fund's Board.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

A. General

1. New Fund will be advised by QALLC or an entity controlling, controlled by, or under common control with QALLC and/or ML & Co. Each Fund will be advised and/or subadvised by an Advisory Entity. A Fund that is subadvised, but not advised, by an Advisory Entity may rely on the order, provided that the Advisory Entity manages the Cash Balances and that any relief granted from the provisions of sections 12(d)(1)(A) and (B) of the Act shall be available only if the Fund is in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Money Market Fund in which the Fund invests Cash Balances.

2. The Lending Program of each Lending fund will comply with all present and future applicable Commission and staff positions regarding securities lending agreements.

3. Before a Lending Fund may participate in the Lending Program, a majority of the Board (including a majority of the Disinterested Directors) of the Lending Fund will approve the Lending Fund's participation in the Lending Program. The Board of each Lending Fund will evaluate the Lending Program and its results no less frequently than annually and a majority of the Board (including a majority of the Disinterested Directors) will determine that investing Cash Collateral in any of the Money Market Funds is in the best interests of the shareholders of the Lending Fund.

4. Each investing Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds and New Fund only to the extent that the Investing Fund's aggregate investment of such Uninvested Cash in the Money Market Funds and New Fund does not exceed 25% of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund will be treated as a separate investment company.

B. Investment of Cash Balances in New Fund

1. A majority of the Board of an Investing Fund (including a majority of the Disinterested Directors), will initially and at least annually thereafter determine that the investment of Cash Balances in shares of New Fund is in the best interest of the shareholders of the Investing Fund.

2. QALLC will not charge any advisory fees with respect to a class or series of shares of New Fund in which any Investing Fund may invest.

3. Investment in shares of any series of New Fund by a particular Investing Fund will be consistent with that Investing Fund's investment objectives and policies.

[5] A "spread" is the compensation earned by a Lending Fund from a securities loan, which compensation is in the form either of a lending fee payable by the borrower to the Lending Fund (when non-cash collateral is posted) or the excess retained by the Lending Fund over a rebate rate payable by the Lending Fund to the borrower (when cash collateral is posted and then invested by the Lending Fund).

4. An Investing Fund's Cash Balances will be invested in a particular investment series of New Fund only if that investment series invests solely in the types of instruments that the Investing Fund has authorized for the investment of its Cash Balances.

5. Any investment series of New Fund that uses the penny rounding method of valuation as defined in rule 2a–7 under the Act will comply with rule 2a–7 under the Act. With respect to such series, New Fund (through QALLC as the managing member) will adopt and monitor the procedures described in rule 2a–7(c)(8) under the Act and QALLC will take such other actions as are required to be taken pursuant to such procedures. An Investing Fund may purchase shares of an investment series of New Fund using the penny rounding method of valuation only if QALLC determines on an ongoing basis that such investment series is in compliance with rule 2a–7. QALLC will preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which such determination was made. This record will be subject to examination by the Commission and the staff.

6. An Investing Fund that complies with the requirements of rule 2a–7 under the Act will not invest its Cash Balances in an investment series of New Fund that does not comply with the requirements of rule 2a–7.

7. New Fund will comply as to each investment series in which any Investing Fund invests with the requirements, other than to the extent of transactions described in the application, of sections 17(a), (d) and (e) and 18 of the Act as if New Fund were a registered open-end investment company. With respect to all redemption requests made by an Investing Fund, New Fund will comply with section 22(e) of the Act. QALLC shall, as managing member, adopt procedures designed to ensure that any such series of New Fund complies with sections 17(a), (d) and (e), 18, and 22(e) of the Act. QALLC will also periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii) and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and the staff.

8. The net asset value per share of each series of New Fund in which the Investing Funds may invest will be determined separately for each series by dividing the value of the assets belonging to that series, less the liabilities of that series, by the number of shares of New Fund outstanding with respect to that series.

9. The shares of New Fund in which the Investing Funds may invest will not be subject to a sales load, redemption fee, any asset-based sales charge or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

10. Each Investing Fund will purchase and redeem shares of New Fund on the same basis as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis as other shareholders investing in the same series of New Fund (except that QALLC will not charge any investment advisory fee with respect to shares owned by an Investing Fund). A separate account will be established in the shareholder records of New Fund for the account of each applicable Investing Fund.

11. New Fund will not acquire any securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

C. Investment of Cash Balances in Money Market Funds

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), or if the shares are subject to any such fee, the respective Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of the fees incurred by the Investing Fund.

2. Prior to reliance on this order, an Investing Fund will hold a meeting of the Board for the purpose of voting on the advisory contract under section 15 of the Act. Before approving or renewing any advisory contract for an Investing Fund, the Board, including a majority of the Disinterested Directors, taking into account all relevant factors, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of the Uninvested Cash being invested in the Money Market Fund. In connection with this consideration, the Adviser will provide the Investing Fund's Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Fund. The minute books of the Investing Fund will record fully the Board's considerations in approving the advisory contract, including the consideration relating to the fees referred to above.

3. Investment of Cash Balances in shares of the Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectuses and statements of additional information. Money Market Funds will not acquire shares of any investment company that does not comply with the requirements of rule 2a–7.

4. No Money Market Fund whose shares are acquired by an Investing Fund shall acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

D. The Lending Exemption

1. The Lending Funds, on an aggregate basis, will make at least 50% of their portfolio securities loans to unaffiliated borrowers.

2. A Lending Fund will not make any loan to an Affiliated Broker-Dealer unless the income attributable to such loan fully covers the transaction costs incurred in making such loan.

3. (a) All loans will be made with spreads no lower than those set forth in a schedule of spreads which will be established and may be modified from time to time by each Lending Fund's Board and by a majority of the Disinterested Directors ("Schedule of Spreads").

(b) The Schedule of Spreads will set forth rates of compensation to the Lending Fund that are reasonable and fair and that are determined in light of those considerations set forth in the application.

(c) The Schedule of Spreads will be uniformly applied to all borrowers of the Lending Fund's portfolio securities, and will specify the lowest allowable spread with respect to a loan of securities to any borrower.

(d) If a security is loaned to an unaffiliated borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

(e) The Lending Fund's Lending Program will be monitored on a daily basis by an officer of the Lending Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to the Lending Fund's Board, including a majority of the Disinterested Directors.

4. The total value of the securities loaned to any one broker-dealer on the approved list of borrowers of securities from a Lending Fund will be in accordance with a schedule to be approved by the Board of each Lending Fund, but in no event will the total value of the securities loaned to any one Affiliated Broker-Dealer exceed 10% of the net assets of such Lending Fund, computed at market value.

5. The Boards of the Lending Funds, including a majority of the Disinterested Directors, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of this order if granted and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

6. The Lending Funds will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) which are followed in lending securities and shall maintain and preserve for a period of not less than six years from the end of the fiscal years in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of securities loaned, the face amount of the securities loaned, the fee received (or the rebate rate remitted), the identity of the borrower, the terms of the loan and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable, and that the procedures followed in making such loan were in accordance with the procedures and other undertakings set forth herein.

E. Interfund Transactions

1. To engage in Interfund Transactions, the Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or second-tier affiliates) of each other solely by reason of having a common investment adviser, or investment advisers that are affiliated persons of each other, common officers, and/or common directors, solely because the Funds might become affiliated persons within the meaning of section 2(a)(3)(A) and (B) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17928 Filed 7–17–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44538; File No. SR–Amex–2001–37]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Reinstatement for 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

July 11, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 4, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to reinstate for 90 days its pilot program relating to facilitation cross transactions, described in detail in part II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reinstatement for 90 days its pilot program, which expired on May 28, 2001, relating to member firm facilitation cross transactions. Revised Commentary .02(d) to Amex Rule 950(d), approved by the Commission on June 2, 2000,[3] established a pilot program to allow facilitation cross transactions in equity options.[4] The pilot program entitles a floor broker to, under certain conditions, cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any customer orders on the specialist's book, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer

[3] *See* Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000). The pilot program was subsequently extended twice. *See* Securities Exchange Act Release Nos. 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000), and 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001).

[4] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that with a contra side order from the firm's proprietary account.

provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor brokers has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the number firm's crossing rights have been exercised.[5] However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transactions.

In the year since the pilot program began, the Exchange has found it to be generally successful. The Exchange seeks to reinstate the pilot program for 90 days, pending consideration of a related proposed rule change it has filed with Commission[6] concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

In order to allow the pilot program to be reinstated without significant interruption, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, this proposal, pursuant to Section 19(b)(2) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5) of the Act[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Amex–2001–37 and should be submitted by August 8, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In its original approval of the pilot program,[11] the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[12] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[13] and the reinstatement of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with Sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will allow the pilot program to be reinstated while revisions are being considered, and does not raise any new regulatory issues.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved on an accelerated basis as a pilot program through October 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret McFarland,

Deputy Secretary.

[FR Doc. 01–17889 Filed 7–17–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44544; File No. SR–ISE–2001–04]

Self Regulatory Organizations; International Securities Exchange LLC; Order Granting Approval to Proposed Rule Change Relating To its Disciplinary Procedures

July 12, 2001.

On February 6, 2001, the International Securities Exchange LLC ("ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make certain changes to its

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[5] Amex trading floor practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seeks to codify specialist allocation practices. See Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

[6] *See* File No. SR–Amex–00–49, available for inspection at the Commission's Public Reference Room.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See supra*, note 3.

[12] 15 U.S.C. 78f(b)(5) and (b)(8).

[13] *See, e.g.*, Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[14] 17 CFR 200.30–3(a)(12).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

disciplinary rule and procedures. These changes are intended to reflect and facilitate the "hybrid" regulatory scheme resulting from the ISE's regulatory services agreement with NASD Regulation, Inc. ("NASDR") pursuant to which, among other things, NASDR provides services related to conducting regulatory investigations and disciplinary actions.

The proposed rule change was published for comment in the **Federal Register** on May 29, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Sections 6(b)(6) and 6(b)(7) of the Act, respectively,[6] in that the proposed rule change satisfies the requirements that an Exchange's rule: (1) Provide that its members and persons associated with its members shall be appropriately disciplined for violation of the Exchange Act, the rules and regulations thereunder, or the rules of the exchange; and (2) provides a fair procedure for the disciplinary of members and persons associated with members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–ISE–2001–04) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17929 Filed 7–17–01; 8:45 am]

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[3] See Securities Exchange Act Release No. 44327 (May 18, 2001), 66 FR 29188.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(6)–(7).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44550; File No. SR–NSCC–2001–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Processing Commission Payments

July 12, 2001.

On April 27, 2001, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NSCC–2001–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on May 29, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The purpose of the filing is to further standardize and automate NSCC's processing of commission payments to non-clearing members. In accordance with NSCC Rule 16, NSCC's Commission Bill Service currently permits non-clearing members entitled to a credit to receive their monthly commission bill payments either electronically by Automated Clearing House ("ACH") wire transfer or manually by check. At present, slightly less than 50% of NSCC's approximate 350 non-clearing members receive their commission bill payments by check. Such manual distributions are made on the floors of the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX"). The proposed rule change will require all non-clearing members to execute appropriate ACH documentation and to receive their credit payments by ACH wire transfer.

In the event a non-clearing member does not pay an amount it owes to NSCC, the rule is being changed to explicitly permit NSCC to set-off any future commission bill credits to which the non-clearing member is entitled.

Subject to Commission approval, NSCC will implement the proposed rule changes on July 13, 2001. Any non-clearing member that has not executed the appropriate ACH wire transfer documentation will not receive any credit payments until it does.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44330 (May 29, 2001), 66 FR 29192.

II. Discussion

Section 17A(b)(3)(F)[3] of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system. The proposed rule change allows NSCC to require non-clearing members to receive their monthly commission payments by wire transfer rather than by check. By electronically transferring such funds, NSCC can further standardize and automate its processing systems which is consistent with NSCC's obligation to remove impediments to and perfect the mechanism of the national system for clearance and settlement. Therefore, the Commission finds that NSCC's proposed rule change is consistent with its obligations under section 17A(b)(3)(F) of the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2001–08) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17931 Filed 7–17–01; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44539; No. SR–NYSE–2001–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 13 on XPress Quote Parameters

July 11, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 13, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to NYSE Rule 13.30 to decrease the minimum number of shares for XPress order and quotes and to decrease the time that a published bid or offer must remain at the same price to be XPress eligible. The text of the proposed rule change is set forth below. Additions are in italics. Deletions are in brackets.

Rule 13 Definitions of Orders

Supplementary Material

* * * * *

.30 The minimum number of shares for an XPress order is [25,000] *15,000* shares. The published bid or offer must be at the same price for no less than [25,000] *15,000* shares for at least [30] *15* seconds in order to be indicated as an XPress Quote.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its continuing efforts to enhance participation in its auction market, the Exchange created a new type of order, known as an XPress Order, which was approved by the Commission in December 2000.[3] The Exchange believes that this order type responds to the needs of market participants for "clean executions when entering large-size orders in response to bids and offers which have been displayed for a minimum time period.

An XPress order is defined as an order of a specified minimum size which is to be executed against a displayed XPress quote, or at an improved price, if obtainable. In order to be indicated as an XPress quote, a published bid or offer must be for no less than the specified minimum share size at the same price for no less than 30 seconds. The minimum size for XPress orders and XPress quotes initially has been set at 25,000 shares.

In filing SR–NYSE–99–24, the Exchange discussed decreasing the minimum size and time thresholds for XPress orders and quotations within six months after the initial implementation of the XPress product. At this time, and in accordance with this previously expressed intention, the Exchange proposes to amend NYSE Rule 13.30 to:

(i) Reduce the minimum size of an XPress quote from 25,000 shares to 15,000 shares;

(ii) Reduce the time period for designation as an XPress quote from 30 seconds to 15 seconds; and

(iii) Reduce the minimum size of an XPress order from 25,000 shares to 15,000 shares.

The Exchange believes that these reductions in the size and time thresholds are appropriate in order to expand the availability of the XPress product.

2. Statutory Basis

The Exchange believes the basis for this proposed rule change is the requirement under Section 6(b)(5) of the Act[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, the Exchange believes that the XPress system is consistent with Section 11A(a)(1)(C)(i) of the Act[5] in that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the economically efficient execution of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–2001–14 and should be submitted by August 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17890 Filed 7–17–01; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 43763 (December 21, 2000) 65 FR 83120 (December 29, 2000).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78k–1(a)(1)(C)(i).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44537; File No. SR–PHLX–2001–36]

Self Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Revise the Fine Schedule for Options Floor Procedure Advices

July 11, 2001.

On May 17, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Fine Schedule for Options Floor Procedure Advices. The Phlx amended the proposal on May 29, 2001.

The proposed rule change, as amended, was published for comment in the **Federal Register** on June 5, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] because it will help prevent fraudulent and manipulative acts and practices, as well as promote just and equitable principles of trade. The Commission finds the proposal is consistent with Section 6(b)(6) of the Act,[7] because the proposal provides a mechanism for the appropriate discipline for violations of certain rules and regulations.

In addition, the Commission finds the proposal is consistent with Section 6(b)(7) of the Act[8] because the proposal provides a fair procedure for the disciplining of members and persons associated with members. The Commission also finds the proposal is consistent with Section 6(b)(8) of the Act,[9] in that it furthers the statutory goal of providing a fair procedure for disciplining the Phlx's members and associated persons. Finally, the Commission finds the proposal is consistent with Securities Exchange Act Rule 19d–1(c)(2)[10] that governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Phlx's minor rule violation enforcement and reporting plan. The Commission believes that the violation of any self-regulatory organizations' rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the minor rule violation enforcement and reporting plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Phlx will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under its plan, on plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PHLX–2001–36), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17888 Filed 7–17–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44366 (May 29, 2001), 66 FR 30258.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78f(b)(7).

[9] 15 U.S.C. 78f(b)(8).

[10] 17 CFR 240.19d–1(c)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44543; File No. SR–Phlx–2001–26]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Relating to ROT Vocalization Requirements for Options Quotations

July 12, 2001.

I. Introduction

On March 5, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add an express vocalization requirement for Phlx Registered Options Traders ("ROTs") whose quotation for a particular option series is different from the disseminated quote. The **Federal Register** published the proposed rule change for comment on June 6, 2001.[3] The Commission received no comments on the proposed rule change. This order approves the proposal.

II. Description of Proposal

The Phlx proposes to amend Commentary .01 to Phlx Rule 1080 to clarify that the quote disseminated by the Exchange's Auto-Quote system[4] or by a specialist's proprietary system that interfaces with the Exchange's Automated Options Market, which electronically prices options, is deemed to be the quote of all ROTs[5] in the crowd unless the ROT has vocalized a different quote in a clear and audible manner with sufficient time for the specialist to take action to update the quote, if necessary.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 44369 (May 30, 2001), 66 FR 30496.

[4] Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations.

[5] A ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade options for his own account. *See* Phlx Rule 1014(b).

[6] The ROT must vocalize a different quote before an order enters the system. If an ROT believes that he or she has been unfairly allocated a portion of the order, he or she can challenge the allocation pursuant to Phlx Rule 124. Telephone call between Rick Rudolph, Counsel, Phlx, Terri Evans, Special Counsel, Division of Market Regulation ("Division"), Commission, and Sonia Patton, Staff Attorney, Division, Commission (May 24, 2001).

On September 11, 2000, the Commission issued an order[7] that requires four of the five options exchanges, including the Phlx to adopt new, or amend existing, rules to include any practice or procedure, not currently authorized by rule, whereby market makers determine by agreement the spreads or option prices at which they will trade any option, or the allocation of orders in that option.[8] The Exchange believes that the proposed rule change is responsive to, and compliant with, the Order.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission believes that the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanisms of a free and open market by clarifying that quotes on the Exchange are deemed to be the quotes for all ROTs in the crowd unless the ROT vocalizes a different quote.[11] Further, the Commission believes that this requirement is consistent with the Quote Rule[12] that is now applicable to the options exchanges, including the Phlx.[13] Under the proposed rule change, ROTs would be required to execute orders at the disseminated price, unless the ROT to vocalized a different quote in a clear and audible manner with sufficient time for the specialist to update the quote, if necessary. The Commission notes that an ROT that believes that he or she has been unfairly allocated a portion of an order may challenge the allocation pursuant to Phlx Rule 124. The Commission believes that these procedures are reasonable and should permit the Exchange to function smoothly.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–2001–26) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17930 Filed 7–17–01; 8:45 am]

BILLING CODE 8010–01–M

[7] *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000)("Order").

[8] *See* Section IV.B.j. of the Order.

[9] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this proposal, the Commission is not making any finding regarding the method by which quotes on the Exchange are derived in the first place.

[12] 17 CFR 240.11Ac1–1.

[13] *See* Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before September 17, 2001.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Mary Sprague, Financial Specialist, Office of the Chief Financial Officer, Small Business Administration, 409 3rd Street, SW., Suite 6000, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mary Sprague, Financial Specialist, (202) 205–7536 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Transaction Report on Loans Serviced by Lenders.

Form No: 172.

Description of Respondents: Small Business Administration Participating Lenders.

Annual Responses: 25,284.

Annual Burden: 4,214.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–17945 Filed 7–17–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before August 17, 2001. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Application for Pool of Guaranteed Internet Certificates.

Form No: 1454.

Frequency: On Occasion.

Description of Respondents: SBA Loan Pool Assemblers.

Annual Responses: 475.

Annual Burden: 1,425.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–17897 Filed 7–17–01; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3348, Amdt. 3]

State of Louisiana

In accordance with a notice received from the Federal Emergency Management Agency, dated July 10, 2001, the above-numbered Declaration is hereby amended to include East Feliciana, Saint Helena and West Baton Rouge Parishes in the State of Louisiana as disaster areas caused by Tropical Storm Allison occurring on June 5, 2001 and continuing through June 22, 2001.

In addition, applications for economic injury loans from small businesses located in Wilkinson County in the State of Mississippi may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 10, 2001, and for loans for economic injury is March 11, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 12, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–17946 Filed 7–17–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3341]

State of Minnesota; Amendment #7

In accordance with a notice received from the Federal Emergency Management Agency, dated July 3, 2001, the above-numbered Declaration is hereby amended to close the incident period for this disaster effective July 3, 2001.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 31, 2001 and for economic injury the deadline is February 15, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 12, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–17896 Filed 7–17–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3720]

Bureau for International Narcotics & Law Enforcement Affairs; Office of Anti-Crime Programs

SUMMARY: The Office of Anti-Crime Programs (INL/C) is seeking proposals from qualified U.S. Organizations and Institutions with relevant capability and experience to conduct a program in civic education on crime and corruption for a two year period. Current plans are to award a Cooperative Agreement for $400,000 to initiate the Civic Education Program (CEP) in three countries (El Salvador, Nigeria and Peru), with the understanding that additional program funds and target countries may be added on a case-by-case basis.

Application packages are due Wednesday, August 15, 2001. Interested applicants may obtain detailed application instructions from the following web site: www.statebuy.gov; click on grant opportunities.

For questions, please contact: Linda Gower, Grants Officer, INL/RM/MS, Department of State, Navy Hill South, 2430 E. Street, NW, Washington, DC 20520 Tel. 202–776–8774.

Dated: July 11, 2001.

Linda G. Gower,

Acting Chief, Management Systems Division, Department of State.

[FR Doc. 01–17974 Filed 7–17–01; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF TRANSPORTATION

[Docket OST–2001–10144]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on two consumer complaint forms. One complaint form concerns accessibility problems experienced by a passenger with a disability in air travel and the other complaint form concerns alleged discrimination on the basis of race, ethnicity, national origin, religion, sex or sexual orientation by an airline.

DATES: Comments are due August 17, 2001. Interested persons are invited to submit comments regarding this proposal.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Office of the General Counsel, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, 202–366–9342 (voice), (202) 755–7687 (TTY), 202–366–7132 (fax), or *blane.workie@ost.dot.gov* (email). Arrangements to receive this notice in an alternative format may be made by contacting the above named individual.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Transportation (DOT) has submitted to OMB, for emergency processing, an information collection package with respect to the two proposed complaint forms concerning air travel service problems.

The Department will use the complaint forms for the collection of information from person(s) who wish to file complaints to the Department regarding accessibility of airline service and alleged discrimination by an airline. The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Department has requested emergency clearance of the collection of information, as described below, with approval being sought by August 15, 2001.

(1) Title of the Information Collection Proposal

Complaint Concerning Accessibility of Airline Service (Passengers with Disabilities); Complaint Alleging Discrimination by an Airline Based on Race, Ethnicity, National Origin, Religion, Sex, or Sexual Orientation.

(2) Summary of the Collection of Information

Each respondent (claimant) would be asked to submit the following information:

1. Name, address, and telephone number of passenger or contact person, if other than the passenger.
2. Name of the airline or company about which person(s) is complaining.
3. Date(s) of the alleged violation (i.e. flight date).
4. Flight number, if known.
5. Origin and destination cities of trip.
6. Brief description of the alleged violation and prohibited bases of the complaint.
7. Brief description of efforts to resolve the complaint through airline staff.
8. Information as to whether complainant has or will file a claim with a court or another agency.

(3) Description of the Need for the Information and Its Proposed Use

The complaint forms provide information to make the public aware of their rights. Additionally, the complaint form concerning accessibility of airline service makes it easier and provides a less burdensome way for person(s) to file a complaint under the Air Carrier Access Act (ACAA) and 14 CFR part 382, our implementing regulation. The ACAA prohibits discrimination against passengers with disabilities by air carriers in providing air transportation service. The complaint form concerning allegations of discrimination by an airline make it easier and less burdensome for person(s) who wish to file a complaint under various federal statues, particularly 49 U.S.C. 40127, prohibiting U.S. and foreign air carriers from subjecting any air traveler to discrimination on the bases of race, color, national origin, religion, sex or ancestry.

The completion of the complaint forms is entirely voluntarily. Many consumers prefer completing the complaint forms to drafting a letter or email because it tends to take less time. An additional benefit of the complaint forms is that the forms specifically ask questions about the type of information that is needed to conduct an investigation. The information in the complaint forms will be used to contact complainants and for conducting investigations.

The forms are written in plain English; are user-friendly; take less time to complete than a letter or email; and enhance the quality and clarity of information collected that is required to investigate alleged complaints of discrimination.

(4) Description of the Likely Respondents, and Proposed Frequency of the Response to the Collection of Information:

The likely respondents will be consumers who wish to file complaints of discrimination. The Department of Transportation presently receives approximately 675 disability complaints a year and 75 discrimination complaints a year. Assuming that 5% of complainants will use the complaint forms, the estimated number of respondents is 38. The proposed frequency of the response to the collection of information is annually.

(5) Estimate of the Total Reporting Burden That Will Result From the Collection of Information:

Number of respondents: 38
Total annual responses: 38
Total burden hours: 19 (@ 30 minutes per response).

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Issued this 13th day of July, 2001, at Washington, DC.

Michael A. Robinson,

Clearance Officer, Department of Transportation.

[FR Doc. 01–17941 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Department of Transportation's (DOT) intention to request the extension of a previously approved collection.

DATES: Comments on this notice must be received by August 17, 2001, to: Attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Allan Ladd Hakes, US Department of Transportation (M–62), (202)366–4268, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Office of the Secretary

Title: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

OMB Control Number: 2105–0531.

Affected Public: Schools, hospitals, and other nonprofit organizations receiving Federal financial assistance from the Department of Transportation (DOT).

Annual Estimated Burden: 10,500.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on July 13, 2001.

Michael Robinson,

Information Resource Management, United States Department of Transportation.

[FR Doc. 01–17942 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Three Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the FAA invites public comment on 3 current public information collections which will be submitted to OMB for renewal.

DATES: Comments must be submitted on or before September 17, 2001.

ADDRESSES: Comments may be mailed or delivered to FAA, at the following address: Ms. Judy Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Avenue, S.W., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street, at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on any of the current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of collection. Also note, that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

Following are short synopses of the 3 information collection activities which will be submitted to OMB for requests for renewal:

1. 2120–0034, Medical Standards and Certification. This information for the medical certification of airmen is collected under the authority of 49 U.S.C. 440113, 44701, 44501, 44702,

44709, 45303, and 80111. The airmen medical certification program is implemented by Title 14, CFR parts 61 and 67. Using four forms to collect information the FAA determines if applicants are medically qualified to perform the duties associated with the class of airman medical certificate sought. The applicants are persons desiring medical certificates. The estimated total burden hours are 900,000 hours annually.

2. 2120–0593, Commuter Operations and General Certification and Operations Requirements. This request for clearance reflects requirements necessary under 14 CFR parts 135, 121 and 125 to comply with part 119. The FAA will use the information it collects and reviews to insure compliance and adherence to regulations and if necessary take enforcement action on violator of the regulations. The current estimated burden is 8,803 hours annually.

3. 2120–0656, Airport Security, part 107. 14 CFR part 107, Airport Security, implements the provisions of the Pubic Law 103–272 and the Aviation Security Improvement Act that relate to security of persons and property at airports operating in commercial air transportation. Airport security programs are needed to ensure protection of persons and property in air transportation against acts of criminal violence to ensure passenger screening procedures are effective and that information is available to comply with Congressional reporting requirements. The affected public is an estimated 465 Regulated Airport Operators. The current estimated annual burden is 512,426 hours annually.

Issued in Washington, DC on July 12, 2001.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 01–17962 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Iron County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation corridor in Iron County, Utah.

FOR FURTHER INFORMATION CONTACT: Gregory Punske, P.E., Project Development Engineer, FHWA, Utah Division, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118–1847, Telephone: (801) 963–0182.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Utah Department of Transportation (UDOT) and Iron County will prepare an Environmental Impact Statement (EIS) for a proposed transportation corridor in Iron County between the North Kanarraville Interchange (Exit 51) at I–15 (southern terminus) and State Route (SR) 56 (northern terminus) a distance of approximately 9.7 km (6 miles).

The proposed transportation corridor is considered necessary to reduce out-of-direction travel; to improve accessibility for residents, commercial vehicles, and emergency service providers to this area of Iron County; and provide a transportation network to support planned growth and economic development in Iron County and Cedar City for the next 20 years.

Alternatives under consideration include a no-build and five build alternatives. All build alternatives consist of a new four-lane roadway on new alignment and extend northward from I–15 to SR–56. The difference between the build alternatives is where they connect to SR 56.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public meeting will be held in Cedar City in August 2001. In addition, a public hearing will be held. Public Notice will be given of the time and place of the meeting and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 12, 2001.

William R. Gedris,

Structural/Environmental Engineer.

[FR Doc. 01–17913 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Scioto County, OH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Scioto County, Ohio.

FOR FURTHER INFORMATION, CONTACT: Andreas Garnes, Rural Programs Engineer, Federal Highway Administration, 200 N. High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6856.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation, will prepare an Environmental Impact Statement (EIS) for a proposal to improve transportation in the United States Route 23 and United State Route 52 (US 23/US 52) corridor by locating a freeway route from the vicinity of Lucasville being the northern terminus to the vicinity of Sciotoville being the southern terminus via the preferred alternative study area identified in the Feasibility Study Report dated April 2001. A transportation investment is considered necessary to improve the regional transportation network by providing an improved travel corridor; to reduce anticipated congestion on US 23/US 52 from projected traffic volumes; to improve safety; and to support existing industry and future development through improved access to southern Ohio. Alternatives under consideration include: (1) Taking no action; (2) building a modern five-lane rural arterial utilizing existing roadways within the Airport Bypass Study Area as defined in the September 2000 Feasibility Study Report; and (3) constructing a roadway on a new alignment bypassing the City of Portsmouth within the Airport Bypass Study Area.

US 23/US 52 through the study area contain physical limitations that contribute to several transportation problems. These problems include high traffic volumes and the diversion of through traffic to local roadways. These

inadequacies lead to safety problems, reduced levels of service, and transportation inefficiencies.

The proposed improvement of US 23/US 52 would meet the intent of the Appalachian Regional Commission, as well as the goals of Access Ohio, of improving mobility along this macro corridor in order to encourage economic development. The US 23/US 52 corridor is part of Appalachian Corridor B and a larger roadway network connecting Columbus, Ohio to Asheville, North Carolina. With US 23 upgrades either completed or under construction south of Ohio, the only gaps remaining in this route will be in Ohio. Substantial transportation improvements in the study area could close an important "missing link" in the overall corridor.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the project area. These are currently anticipated for Summer of 2002 and Winter of 2003. In addition, a hearing will be held in conjunction with the Draft EIS in late 2003. Public notice will be given of the exact time and place of the meetings and hearing to be held for the project. The Draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues relating to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be sent to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 9, 2001.

Andreas Garnes,

Rural Programs Engineer, Federal Highway Administration, Columbus, Ohio

[FR Doc. 01–17886 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2001–10138]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BANANA WIND.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 17, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10138. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: BANANA WIND. Owner: Greg D. Smith.

(2) Size, capacity and tonnage of vessel. According to the applicant: "51-foot; 52,000 lb.; pursuant to 46 USC 14502; maximum 12 passengers"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Private day and evening sailing charters-Great Lakes; specifically Lake Erie, Detroit River, Lake St. Clair-St. Clair River, and Lake Huron (throughout the months of May through September), inland waterways and intercoastal from Lake Erie to Florida, and Tampa Bay south to Miami, Florida, including the Keys (throughout the months of October through May).

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1979. Place of construction: Taiwan, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This waiver will have no impact on other commercial passenger vessels. Sailing charters in the Great Lakes area are few and far between. It is felt there will be little to no impact in any area as this will be a single boat in operation by myself."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This waiver will have no impact on U.S. shipyards"

Dated: July 13, 2001.

By Order of the Maritime Administrator.
Joel C. Richard,
Secretary Maritime Administration.
[FR Doc. 01–17947 Filed 7–17–01; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2001–10139]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HABITAT IV TWO.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 17, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10139. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: HABITAT IV TWO. Owner: Keltner Farris.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Measures as 37.7′ length, 13′ width, 8.2′ depth * * * with tonnage as 26 gross tons and 21 net tons * * *"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Intended use for this vessel is to do Custom Charter Cruises–providing accommodations for overnight lodging, while sightseeing, and/or personalized fishing/hunting expeditions, with capacity of 4–6 passengers plus 2 crew. We would plan on viewing Alaska's Southeast Region from Dixion Ent. to Kodiak, Alaska."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1980. Place of construction: Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Since, these will be Custom Cruises, we have found very few similar operating vessels in this market at present * * * similar vessels operating or purpose to operate in the same market is unlikely at this time; therefore would have no unduly adverse effect on market impact or vessel operators * * *"

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Granting, this waiver will not have a negative impact on U.S. shipyards, since this was built in 1980 by East Coast builder * * * ."

Dated: July 13, 2001.
By Order of the Maritime Administrator.
Joel C. Richard,
Secretary Maritime Administration.
[FR Doc. 01–17948 Filed 7–17–01; 8:45 am]
BILLING CODE 4910–81–P

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Federal Register

Wednesday,
July 18, 2001

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 13, 61, 91, et al.
Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13, 61, 91, 119, 125, 135, and 142

[Docket No. FAA–2001–10047; Notice No. 01–08]

[RIN 2120–AH06]

Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to update and revise the regulations governing operations by aircraft in fractional ownership programs. This action is undertaken because the FAA has determined that current regulations do not adequately define fractional ownership programs and do not clearly allocate responsibility and authority for safety and compliance with the regulations. The proposed revisions would define fractional ownership programs and their various participants, allocate responsibility and authority for safety of flight operations for purposes of compliance with the regulations, and ensure that fractional ownership program aircraft operations maintain a high level of safety. Elements of this proposal would provide in certain of the regulations applicable to fractional ownership programs a level of safety equivalent to certain regulations that apply to on-demand operators. Changes are also proposed to some regulations that apply to on-demand operators meeting certain criteria to permit these operators an alternate means of compliance for certain commercial operations.

DATES: Comments must be received on or before October 16, 2001.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2001–XXXXX at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov/*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Katherine Hakala Perfetti, Flight Standards Service (AFS–200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3760, email: *katherine.perfetti@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. [FAA–2000–XXXX.]" The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

You may download an electronic copy of this document, using a modem and suitable communications software, from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339), the Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512–1661), or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: (800) 322–2722 or (202) 267–5948).

Internet users may reach the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the GPO's web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History and Background

In 1986, Executive Jet Aviation, Inc. created a new program that offered to aircraft owners increased flexibility in the ownership and operation of aircraft by individuals and corporations. This program used existing aircraft acquisition concepts, including shared aircraft ownership, and provided for the management of the aircraft by an aircraft management company. The aircraft owners participating in the program agreed not only to share their aircraft with others having an ownership interest in that aircraft, but also to lease their aircraft to other owners in the program. The aircraft owners used the common management company to maintain the aircraft and administer the leasing of the aircraft among the owners. An FAA regional determination allowed this "fractional ownership" program to operate under 14 CFR part 91.

Since that time, the number of companies offering fractional ownership programs has grown. During the 1990s this growth was substantial and sustained. As of early 2000, the leading fractional ownership programs managed approximately 465 aircraft on behalf of 3,446 shareowners. Growth in fractional ownership programs is expected to increase.

While the vast majority of these programs are conducted under 14 CFR part 91, some are conducted under 14 CFR part 135. Of those operating under part 91, the FAA believes that most follow the "best practices" of corporate

aviation. FAA and NTSB accident data for U.S.-registered turbine-powered aircraft during the ten-year period from 1987–1998 demonstrates that fractional ownership aircraft operations are very safe.

As fractional ownership programs have grown in size, complexity and number, there has been considerable controversy within the aviation community as to their appropriate regulatory structure. Additionally, the FAA has had evolving concerns regarding issues of accountability and responsibility for compliance. Consequently, the FAA has continued its analysis of the appropriate regulatory environment for these programs.

Fractional Ownership Aviation Rulemaking Committee

In October of 1999, the FAA convened a special aviation rulemaking committee, the Fractional Ownership Aviation Rulemaking Committee (FOARC), pursuant to the Administrator's authority under 49 U.S.C. 106(p)(5), to address the issues surrounding the regulation of fractional ownership program operations. Pursuant to the order of October 6, 1999 that established the FOARC, the committee's objective was to "propose such revisions to the Federal Aviation Regulations and associated guidance material as may be appropriate with respect to fractional ownership programs."

The FOARC was composed of 27 members selected by the FAA as representative of the various constituencies interested in regulation of fractional ownership program operations. Designated advisors and counsel assisted the FOARC.

FOARC members represented on-demand charter operators, fractional ownership program managers and owners, aircraft manufacturers, corporate flight departments, traditional aircraft management companies, aircraft financing and insurance companies, and industry trade associations. Representatives of the FAA, the U.S. Department of Transportation and foreign civil aviation authorities were also included.

The FOARC met for nine days in November and December 1999. Within the FOARC's meeting schedule, two days were set aside for public hearings to provide the public an opportunity to comment or present positions on this issue. Notice of these public meetings was provided in the **Federal Register** and through the media. The FAA reviewed and considered all material presented by participants at the public meetings. The FOARC presented its initial recommendations to the FAA on February 23, 2000. The order that established the FOARC was further extended to allow continued discussions with the committee and to reconvene the committee to discuss issues and to provide further input following FAA internal review of the FOARC's recommendations.

Early in its deliberations, the members of the FOARC agreed that the committee would attempt to reach consensus recommendations and that, absent consensus, majority and minority reports would be provided to the FAA. In the end, the members of the FOARC reached unanimous consensus on all the committee's recommendations, including those with respect to changes in both parts 91 and 135. Those recommendations, delivered to the FAA in the form of the FOARC's final proposed NPRM, are the basis of this NPRM.

General Discussion of the Proposal

Operational Control and Regulatory Responsibility

Safety is the shared responsibility of the entire aviation community. The FAA's objective is to ensure the appropriate level of safety for aircraft operations. Prior to the introduction of fractional ownership programs, the regulations recognized differing levels of operational control and regulatory responsibility among persons traveling by air, and provided levels of oversight intended to maintain an appropriate level of safety in view of these differences.

Airline passengers exercise no control over and bear no responsibility for the airworthiness or operation of the aircraft aboard which they are flown. Because the traveling public has no control over, or responsibility for, airline safety-of-flight issues, the FAA has determined that an appropriate level of public safety is provided by imposing on scheduled airline service very stringent regulations and oversight under part 121 and part 135.

Passengers who are transported by part 135 on-demand operators or by part 121 supplemental operators bear no responsibility for the operation of the aircraft aboard which they are flown. On-demand or supplemental air charter passengers negotiate the point and time of origin and destination of the flight, and may have the ability (subject to the pilot's supervening authority) to direct or redirect the flight. Under these circumstances, the FAA has determined that the appropriate level of public safety is provided by imposing stringent regulations and oversight under part 121 or part 135.

Aircraft owners flying aboard aircraft they own or lease exercise full control over and bear full responsibility for the airworthiness and operation of their aircraft. Under these circumstances, the FAA has determined that the appropriate level of public safety is provided by imposing general operating and flight regulations and oversight under part 91.

These policies and differing levels of responsibility were reflected in the development of part 91, subpart D, subsequently subpart F, which governs much of business aviation today. On July 25, 1972, the FAA promulgated Amendment 91–101 to 14 CFR part 91 (37 FR 14758, July 25, 1972). This Amendment added to part 91 a new subpart D, applicable to large and turbojet-powered multiengine aircraft. Subpart D was the predecessor to the current subpart F of part 91 (54 FR 34314, Aug. 18, 1989). Section 91.181 of subpart D was the predecessor of current § 91.501 (54 FR 34314).

In creating the new subpart, the FAA continued its longstanding policy that individuals and corporations may operate their aircraft under part 91 and included these operations as the cornerstone of the new subpart. This policy is currently embodied in § 91.501(b)(4), which allows a person to operate his or her aircraft "for his personal transportation, or the transportation of his guests when no charge, assessment, or fee is made for the transportation," and in § 91.501(b)(5), which allows for the "[c]arriage of officials, employees, guests, and property of a company on an airplane operated by that company * * * when the carriage is within the scope of, and incidental to, the business of the company * * *"

In preserving these uses under part 91, the FAA chose to focus on the commercial (on-demand charter) or non-commercial (business or personal) motive a company or individual has in operating an aircraft, rather than on the form of the arrangements that led to the acquisition of the aircraft interest. In proposing the new subpart, the FAA pointed out that, "in order to augment or more fully utilize their fleets, many corporate aircraft operators entered into agreements for the loan, exchange, or sharing of their aircraft" (36 FR 19509). The FAA permitted such arrangements to continue under the new subpart, and specifically allowed for even more complex arrangements, such as time-sharing arrangements, interchange agreements, and joint ownership arrangements. In explaining its

determination that such arrangements do not affect which part of the regulations the aircraft should operate under, the FAA stated in the preamble to the final rule (37 FR 14758):

"[T]he decision to proceed with the upgrading of part 91 for large and turbine-powered multiengine airplanes is an important threshold step in the FAA policy to remove, to the extent possible, those differences in the safety standards that [are] primarily economic in nature and result in unnecessary restrictions or limitations on aircraft operators. In accordance with that policy, the need for different or additional safety standards for corporate operations should be resolved on the basis of safety, rather than economics or juristic semantics. Safetywise, we have determined that neither the relationship of the corporations nor the type of compensation received for the services rendered should be relevant or controlling under the standards of the new subpart D for the various corporate kinds of operations that do not involve common carriage.

"In order to make this change in policy clear to all interested persons, § 91.181(b) includes a list of the kinds of operations that may be conducted under subpart D. In addition, § 91.181(c) of subpart D expressly provides that charges covering the normal operating expenses of the aircraft and the salary of the crew may be made under a time sharing or interchange agreement as defined in that section. This policy also applies to a corporation regardless of its relationship, if any, to the corporation for which the carriage is conducted. Accordingly, the application of subpart D to a corporate operator will no longer be dependent on whether that operator is a parent or subsidiary corporation or a member of a conglomerate. It should be noted, however, that if a corporation is established solely for the purpose of providing transportation to the parent corporation, a subsidiary or other corporation, the foregoing policy does not apply. In that case, the primary business of the corporation operating the airplane is transportation and the carriage of persons or goods for any other corporation, for a fee or charge of any kind, would require the corporation operating the airplane to hold a commercial operator certificate under part 121 or 135, as appropriate."

This statement of the intent of subpart D highlights the importance of identifying, in the context of shared aircraft ownership and use arrangements, the person in operational control of the aircraft at any given time. Historically, this information has been used to determine whether an operation may be conducted under part 91 with adequate assurance of public safety, or must be conducted under the requirements of on-demand air passenger service under part 135. This statement also highlights the longstanding ability of aircraft owners to purchase aviation expertise for the purpose of managing, maintaining or otherwise aiding the operation of the aircraft they operate under part 91.

Current § 91.501 authorizes, under part 91, operations involving the personal use of aircraft (§ 91.501(b)(4)), the use of aircraft within the same corporate group (§ 91.501(b)(5)), and the use of time sharing agreements (§ 91.501(c)(1)), interchange agreements (§ 91.501(c)(2)), and joint ownership agreements (§ 91.501(c)(3)) within or outside of the same corporate group (§ 91.501(b)(6)).

FOARC Discussions and Consensus

It is within the context of the operational control and regulatory responsibility discussion above that the FOARC considered the regulation of fractional ownership programs. During these deliberations, the FOARC determined that fractional owners flying aboard fractionally-owned aircraft contractually acknowledge substantial control over and bear substantial responsibility for the airworthiness and operation of their aircraft. Like whole aircraft owners, fractional owners can initiate, conduct, redirect and terminate a flight. Fractional owners also operate their aircraft under part 91 only for themselves and their guests and may not offer transportation for hire to the general public unless they do so under part 135 or part 121. Additionally, the FOARC noted that both fractional owners and whole aircraft owners have other shared characteristics that relate at least in part to safety: (1) They conduct research so that they can be assured that they will select the right aircraft and realize an adequate return from their capital investment; (2) they possess an interest in an aircraft acquired through a significant capital investment; (3) they purchase aviation expertise for the purpose of managing, maintaining or otherwise aiding the operation of the aircraft they operate under part 91, including the option to select flight crews; and (4) they bear the risk of loss or damage to the aircraft and the risk of diminution of value of the aircraft. On-demand charter passengers, on the other hand, do not assume any of these risks and responsibilities nor do they have any significant financial investment in the chartered aircraft.

Based on its analysis of fractional ownership program arrangements, the FOARC concluded that fractional owners flying aboard fractionally-owned and operated aircraft share more of their regulatory characteristics with the owners of non-commercially operated aircraft than with passengers using on-demand operators. Consequently, the FOARC concluded that fractional ownership programs are properly regulated under part 91 of the Federal Aviation Regulations. Fractional owners operating under part 91 are engaged in non-commercial operations and, as such, may not offer air transportation services (common carriage), air commerce services for compensation, chargeback, or hire without appropriate air carrier certification and appropriate economic authority, although fractional owners may be compensated to the extent permitted under applicable existing sections of part 91.

Fractional owners differ from a majority of whole business or personal aircraft owners in that (1) fractionally-owned aircraft typically have multiple owners, (2) their aircraft's availability is a component of a pooled fleet under a dry lease exchange program with the other fractional owners, (3) the owners of a fractionally-owned aircraft agree to use the services of a single company to manage their aircraft, and (4) all owners agree to a uniform aircraft configuration. With the exception of item 3 above, these characteristics also constitute the differences between fractional ownership programs and situations where aircraft are managed by traditional aircraft management companies. The FOARC concluded that these distinctions, unique among general aviation operations, suggest the need for definition and appropriate regulation under part 91.

To clearly define the safety responsibilities of fractional owners and fractional ownership program managers under the regulations, the FOARC recommended that a new subpart K of 14 CFR part 91 be established to regulate fractional ownership programs. Proposed subpart K further establishes a clear regulatory infrastructure for fractional owners to exercise their operational control responsibilities, including the responsibility for the operation and airworthiness of program aircraft. It also specifies a fractional aircraft program manager's obligations with respect to its provision of aircraft management services related to the airworthiness and operation of fractional ownership program aircraft.

The FOARC recommended that proposed subpart K of part 91 should apply only to fractional ownership program aircraft and not to other business aircraft arrangements including traditional flight departments, the use of management companies providing aviation expertise, flying clubs, partnerships or other ownership forms such as joint ownership. These types of operations do not meet the new definitions of "fractional ownership program," and components of those programs, set forth in proposed subpart

K. These definitions clearly delineate the differences between fractional ownership program requirements, other types of ownership and traditional management arrangements. A fractional ownership program manager may elect to conduct its programs under part 121 or part 135, instead of proposed subpart K of part 91, if such operations comply with the certification requirements of part 119 and the operating requirements of part 121 or 135, as appropriate. Part 119 certification to operate under part 121 or 135 would allow the program manager to provide air transportation services to the general public, and not be limited to providing fractional ownership program management services only to fractional owners and their guests.

Most fractional ownership program operations today are conducted in accordance with industry best practices that exceed part 91 requirements. These practices have resulted in an excellent safety record. The FOARC recommended that many of those best practices, together with new requirements, be codified in proposed subpart K. The FOARC recognized that the regulatory requirements proposed in subpart K impose a significant new regulatory standard upon all current and future fractional owners and program managers. The FOARC believed that this standard was necessary in the public interest to maintain this level of public safety for fractional ownership program operations.

The FOARC concluded that certain changes to part 135 are required. As the FOARC evaluated existing best practices in the industry and parallel provisions of parts 119, 121 and 135 in developing proposed subpart K, the FOARC determined that certain provisions of proposed subpart K provide a level of safety equivalent to the parallel provisions of part 135. Corresponding amendments are proposed to the pertinent sections of part 135 to permit an alternative means of compliance for on-demand operators under these sections of part 135, as appropriate. These changes also reflect improvements in technology and the ability to operate safely as proven by the operating experience of business aircraft operators, including fractional owners.

The FOARC recommended that, if this proposal is adopted, the FAA work closely with the affected parties and the industry to develop guidance and to implement the changes proposed to parts 91 and 135. The FOARC also recommended that the FAA commit sufficient resources to implement these changes.

The FOARC recommended that the FAA establish a national point of contact for fractional ownership operational and airworthiness issues to ensure standardization of the implementation process and policy application. The FOARC recommended that the FAA should put procedures in place to ensure that fractional ownership program managers also are subject to FAA oversight and surveillance equal to that experienced by part 135 or part 121 operators. The FOARC also recommended that approvals for fractional ownership program operations (such as MELs, RVSM, manual reviews and maintenance programs) be conducted through a process similar to part 135 and/or part 121 processes and procedures, as appropriate.

The FOARC recommended that the FAA provide equivalent assistance to part 135 operators endeavoring to meet the revised part 135 regulations. Finally, the FOARC recommended that the FAA conduct appropriate training and ensure that any internal administrative changes, necessary for on-going oversight of compliance with these regulations, are made. The consensus achieved by the FOARC was contingent upon the FAA's commitment to fully implement the FAA inspection and oversight requirement of part 91, subpart K to the degree currently employed in part 135 operations.

The FAA agrees with the FOARC recommendations and is publishing this NPRM to reflect those recommendations. The FAA believes that this proposed rule, if adopted, will satisfy FAA concerns regarding fractional owners' and fractional ownership program managers' accountability and responsibility for compliance with these proposed regulations, particularly with respect to operational control issues. The FAA believes that the proposals pertaining to crewmember training, experience, rest and duty will provide an appropriate level of safety for these kinds of operations. The FAA further agrees that implementation of this proposed rule will require the development of guidance material, inspector training, inspector assignment, and oversight and surveillance policies. The FAA intends to invite industry to assist in the development of the implementation strategy and documents. Further, the FAA agrees that oversight and surveillance policies, and approval processes, need to be modified appropriate to these operations and consistent with the recommendations of the FOARC.

The FAA intends to implement this proposed rule, if adopted, within a fifteen month compliance period using a phased-in compliance schedule which would allow continued operations under existing part 91 while incrementally transitioning to the new regulatory requirements. The FAA invites comments on this compliance proposal.

Section-by-Section Analysis

14 CFR Part 13

Section 13.19 Certificate and Management Specifications Action

One aspect of this proposal would be the creation of a requirement for all persons conducting operations under proposed subpart K or furnishing fractional ownership program management services to do so under management specifications issued by the FAA. Provisions are included in § 91.1017 for amending the management specifications. However, because the management specifications are a prerequisite to all program operations, the FOARC believed that a suspension or revocation of those management specifications would affect program operations to the same extent that a certificate suspension or revocation would affect the operations of certificated entities. For that reason, FOARC recommended amending § 13.19 to ensure that the suspension or revocation of management specifications would be handled like analogous certificate actions, and that the users of the management specifications would be afforded similar procedural protections, including the right to appeal any suspension or revocation to the National Transportation Safety Board.

The FAA recognizes that proposed § 13.19 would require a statutory amendment to authorize the proposed process. However, the FAA believes that the treatment of the revocation or suspension of management specifications should be similar to the analogous treatment of certificates. The FAA seeks comments to determine whether such a process would be appropriate if the statutory authority existed. The FAA also seeks comments on whether these proposed amendments can be effectively implemented without the right to appeal any suspension or revocation to the National Transportation Safety Board. After review of the comments, the FAA will consider whether it is necessary to seek this legislative authority.

14 CFR Part 61

Section 61.57 Recent Flight Experience: Pilot in Command

In the course of examining the details of fractional ownership and on-demand charter operations, the FOARC found differences in pilot requirements between proposed subpart K and part 135, one of which relates to the night currency requirement. In response to operator safety concerns, the FAA amended § 61.57(e) on April 30, 1999 to provide an alternate means of compliance for meeting FAA's night currency requirement. The new alternative allowed operators to maintain currency by using both the aircraft and part 142 approved training programs.

The applicability of the alternative was unclear, however, because in order to qualify for the alternate means of compliance, a pilot must "operate more than one type of aircraft." Under this definition, operators were uncertain how to determine if a pilot "operated" more than one type of aircraft.

The proposed change to § 61.57(e) would clarify the existing alternative and provide a second alternate means of compliance for pilots of turbine-powered aircraft that require more than one pilot and that meet additional experience requirements. The first alternative allows pilots to maintain night currency through the performance of three takeoffs and landings to a full stop over a 6 calendar month period. The second alternative allows pilots to maintain night currency through the performance of 6 takeoffs and landings to a full stop in a simulator training program approved under part 142 of this chapter. The FAA believes these alternatives provide an equivalent level of safety for night flying operations.

14 CFR Part 91

Section 91.501 Applicability

A number of proposed changes are necessary to conform existing regulations to the proposed subpart K and for other technical purposes. Several substantive changes to § 91.501 regarding the applicability of subpart F to fractional ownership program aircraft are being proposed. They are discussed below.

Current § 91.501(a) limits the applicability of the exceptions-to-certification options and other requirements of subpart F to large airplanes and multiengine turbine-powered airplanes of U.S. registry. Small airplanes and other aircraft regardless of size (e.g., helicopters and single-engine turbine-powered airplanes) require exemption authority to operate under current subpart F. Such authority has been routinely granted to members of the National Business Aviation Association (NBAA) by Exemption No. 1637, first issued on October 23, 1972, and has been renewed periodically. Individual exemptions also have been granted to non-NBAA members operating these aircraft.

Proposed § 91.501(a) would extend the applicability of subpart F to all aircraft in a fractional ownership program regardless of size, type or the number of engines without the need for exemption authority so long as these fractional ownership program aircraft are operating under proposed subpart K.

In addition, proposed § 91.501(b)(10) would be added to the types of operations permitted by current section 91.501(b)(1)–(9) and would clarify that fractional ownership program aircraft operated by a fractional owner may engage in any of those types of operations, such as personal use of aircraft (§ 91.501(b)(4)), use of aircraft within the same corporate group (§ 91.501(b)(5)), and use of time sharing and interchange agreements (§ 91.501 (c)(1)–(2)) so long as any compensation is limited to amounts permitted by § 91.501(b) for the type of operation being conducted, and such operations otherwise comply with the applicable rules of subpart F and proposed subpart K. Thus proposed § 91.501 would place fractional owners on an equal footing with other owners utilizing the exception-to-certification options currently available in § 91.501(b) or by exemption to § 91.501(b). Flights operated by a fractional ownership program manager for administrative purposes, such as training, ferrying, positioning, maintenance, or demonstration purposes without carrying passengers or cargo for compensation or hire, except as permitted for demonstration flights under Section 91.501(b)(3), would be permitted to be operated under subparts A through J of part 91, as applicable, rather than under subpart K of part 91.

Sections 91.509 and 135.167 Overwater Operations

The proven reliability of turbine engines provides safety justification for amending §§ 91.509 and 135.167 to allow pressurized turbine-powered aircraft which are operated for thirty minutes or no more than 100 nautical miles from the nearest shore, whichever is greater, above 25,000 feet to operate without life raft and related equipment requirements. A person operating a flight planned for an altitude above 25,000 feet may deviate below that altitude in the interest of safety without violating the requirements of these sections.

In reviewing the overwater equipment requirements of § 91.509, members of the FOARC noted that some FAA offices interpret the "30 minutes or 100 nautical miles" standard to mean that whichever measure is less is the one that applies. Given the speed of pressurized turbine-powered aircraft and the flight levels at which they operate, the difference between 30 minutes and 100 nautical miles could be substantial. The FOARC recommended that if an aircraft can operate at high speed and high altitude, they should be given the option of meeting either standard, i.e., typically the 30 minute standard, weather conditions permitting. Section 91.509 would be revised to make it clear that the additional overwater equipment requirements do not apply to pressurized turbine-powered aircraft that plan to operate at an altitude greater than 25,000 feet if the flight does not proceed "more than 30 minutes or 100 nautical miles from the nearest shore, whichever is greater."

The FOARC believed that the same requirement should apply to on-demand operations under § 135.167. Although the overwater equipment requirements for such operations apply when the flight will proceed more than 50 nautical miles from the nearest shore, they are often operated with equipment substantially similar to the equipment in the fractional aircraft programs. Accordingly, an exception is proposed for § 135.167 identical to that in the proposed revision to § 91.509.

Sections 91.1001 Through 91.1007 Defining Fractional Ownership

Since proposed subpart K would establish new regulatory requirements to fractional ownership programs, program managers and owners, it is important that these terms be clearly defined. Proposed §§ 91.1001 through 91.1007 would do so, relying in substantial part on industry guidelines developed early in 1999. If an aircraft ownership arrangement does not fit within these definitions, it may well fit within one or more of the existing operating models in part 91, subpart F, i.e., an interchange, joint ownership or a time share. In these circumstances proposed subpart K would not apply.

Proposed § 91.1001(b)(1) states five requirements for a fractional ownership program:

1. A designated program manager;
2. One or more owners per fractional ownership program aircraft, with at least one aircraft having multiple owners;

3. Possession of a fractional ownership interest in one or more program aircraft by each fractional owner consisting of a minimum fractional ownership interest of at least one-sixteenth (1/16) for a subsonic, fixed-wing or powered-lift fractional ownership program aircraft or at least one-thirty-second (1/32) for a rotorcraft fractional ownership program aircraft;

4. A dry lease aircraft exchange agreement among all the owners; and

5. Multi-year program agreements.

These five characteristics, when present in a program, distinguish a fractional ownership program from other arrangements that involve aircraft multiple ownership.

The core of the definition of a fractional ownership program is the concept of a "minimum fractional ownership interest." In setting a minimum fractional ownership interest, and throughout proposed subpart K, the FOARC sought to prevent potential abuse by persons who might try to offer air charter transportation under the guise of a fractional ownership program. For example, it was noted that a 1/1000 interest in a used light piston single-engine airplane might be sold profitably for a very small dollar amount, entitling the purchaser thereof to an "ownership" interest equivalent to a few hours of occupied flight time in the aircraft, with pilot provided. The FOARC determined and the FAA agrees that aviation safety would be compromised if persons were permitted to offer what would amount to air charter services under proposed subpart K, thereby evading the important safety and supervision requirements of part 135 applicable to such service. Therefore, ownership interests that meet all the other criteria of fractional ownership but are less than the minimum ownership interest would not be eligible to operate under subpart K.

The FOARC concluded that a minimum fractional ownership interest of one sixteenth (1/16) of a subsonic, fixed-wing or powered-lift fractional ownership program aircraft, or one thirty-second (1/32) of a rotorcraft, would constitute a sufficient ownership interest to deter possible abuse.

In addition, the FOARC discussed the ownership of supersonic business aircraft. However, since no supersonic business aircraft exist today, the FOARC recommended that specific regulatory language addressing the operations of supersonic business aircraft not be developed until such aircraft are available.

As to rotorcraft, it was determined that abuse would be sufficiently deterred by setting the minimum fractional ownership interest at one thirty-second (1/32). Although rotorcraft offer unique vertical take-off and landing capabilities, require much smaller prepared landing and take-off surfaces, and are able to operate to and from unprepared sites more effectively than airplanes, the cruising speeds, range, and passenger capacity of business rotorcraft are small compared to those of comparably priced business airplanes. Moreover, while business airplanes that participate in fractional ownership programs are expected to operate frequently between airports separated by significant distances—often measured in thousands of miles—rotorcraft that participate in fractional ownership programs are not expected to operate outside of a range of, at most, a few hundred miles. In light of these factors, the FOARC determined that a smaller minimum fractional ownership interest would impose an equivalent burden on the ownership of rotorcraft as that imposed on airplane operations under subpart K.

Proposed § 91.1001(b)(6) would define fractional ownership program aircraft. A fractional ownership program aircraft would be an aircraft in which a fractional owner has a minimum ownership interest, as the term has been defined in § 91.1001(b)(3), and is included in a dry-lease aircraft exchange. Aircraft which are owned at least in part by a fractional ownership program manager meeting the definition of "fractional owner" under paragraph (b)(5) of proposed § 91.1001, and which meet the conditions set forth in paragraph (b)(6) of that section, would be considered to be fractional ownership program aircraft. In the situation where a fractional owner is operating an aircraft in a fractional ownership program managed by an affiliate (as discussed below) of the owner's program manager, "fractional ownership program aircraft" means the aircraft which is in the program managed by the affiliate of the owner's program manager and is being operated by the owner.

In at least one existing fractional ownership program, the multi-year program agreements permit a fractional owner not only to use the aircraft in the program which the owner has joined, but also aircraft in a different program which is managed by a manager affiliated with the owner's program manager. The program agreements make clear that for purposes of such flights the affiliate program manager has the flight-related responsibilities of the program manager. The FOARC members wanted to permit this type of operation under subpart K so long as an appropriate definition of "affiliate of a program manager" could be developed and agreed to. Proposed § 91.1001(b)(9) would define an "affiliate of a program manager" for the purposes of determining whether the owner's program and the program managed by the affiliate of the owner's program manager are related closely enough to permit the owners to use (i) the program management services provided by the affiliate of the owner's program manager, and (ii) aircraft in the program managed by the affiliate of the owner's program manager. The FOARC members were concerned about the possible consequences if fractional ownership programs could be franchised and the owners in the resulting franchise programs were allowed to use aircraft in any of the franchised programs. The FOARC members believed that there should be a sufficient common influence in the related programs to ensure that the programs adhere to similar safety practices. The FOARC members further desired to preclude the possibility that large networks of fractionally-owned aircraft could be established among unrelated programs where there is not a sufficient common influence to ensure that the programs are administered safely. In the FOARC's view, this common influence is most likely to be evidenced by a significant commitment by the manager of one program (or the manager's parent, affiliate or subsidiary) to the financing and/or strategic decision making of the other program or programs. The definition creates a presumption that where both a 40% equity interest and 40% of the voting power of a program manager is held by another program manager, or its parent, affiliate, or subsidiary, the companies are related closely enough to permit owners in each related program to use the aircraft in the other program or programs.

Because this definition creates only a presumption, the FAA would be free to find that there is a sufficient nexus between programs to justify owners in one program to use aircraft in another related program even when the equity or voting interest in a program manager owned by the other program manager (or its parent, affiliate, or subsidiary) is less than 40%. In such cases, the FAA would expect the program manager(s) to shoulder the burden of showing that a sufficient nexus existed between the programs to justify owners in one program using aircraft in another related program

in cases where the 40% equity and voting interest requirement is met. In this case, the burden would be on the FAA to show that a sufficient nexus did not exist between the programs to justify owners in one program using aircraft in another related program.

The test for determination of an affiliate of a program manager under proposed § 91.1001(b)(9) should not be confused with other tests of corporate control or with control in the sense of operational control. For instance, under the § 91.1001(b)(9) test, more than one company may be in "control" of a program manager. So long as the appropriate common influence exists between the programs, the owners in each program may use the aircraft in the other related program or programs. Likewise, the 40% equity and voting interest requirements are unrelated to the operational control requirements applying to owners and program managers. The test applies only for purposes of defining an affiliate of a program manager and does not affect the determination of what entity is in operational control of a flight. When a fractional owner is operating an aircraft in a fractional ownership program managed by an affiliate of the owner's program manager, the references in proposed subpart K to the flight-related responsibilities of the program manager apply to the affiliate of the owner's program manager rather than to the owner's program manager. Thus, for that particular flight, it is the affiliate of the program manager that is responsible for carrying out the flight-related responsibilities of the program manager under subpart K. The FAA invites comments on the affiliate program concept and regulatory language, specifically,

(1) Whether the definition adequately defines an affiliate program,

(2) Whether the contractual multi-year program agreements and dry lease exchange arrangements are sufficiently detailed to ensure owners have legal possession, custody and use of an aircraft when using aircraft from an affiliate company, and

(3) Additional input to assist the FAA to develop guidance and oversight of this area.

Proposed § 91.1003 specifies the terms of the mandatory contract between the program fractional owners and the program manager. The contract must ensure that each owner has the right to inspect and to conduct audits of the program manager. This is the practice in most, if not all fractional ownership programs today. It is not the intention of proposed subsection 91.1003(b) to require a program manager to provide to the owner the manager's financial records or records pertaining to the confidential movements of other owners.

Proposed § 91.1005 prohibits a fractional owner from receiving any compensation other than that permitted by §§ 91.321 and 91.501. Proposed § 91.1005 also makes it clear that the total hours flown by a fractional owner may not exceed the total hours associated with that fractional owner's share of ownership, consistent with current industry practice. Any hours in excess of that ownership share must be flown under part 121 or 135.

The purpose of § 91.1005 is to prevent the use of sham fractional ownership programs to avoid the air carrier requirements of parts 121 and 135. A sham program would be one that only requires an owner to make a small capital outlay or pay unreasonably small fees in relation to the value of the aircraft that the owner actually will use in the program. For example, if an owner could buy into a program by purchasing a fractional interest in smaller aircraft with the intent of using only the program's larger aircraft, the program would be a sham and would not be considered a fractional ownership program under subpart K.

Proposed § 91.1007 requires a fractional owner to be notified in advance, when possible, that a charter aircraft will be substituted for a fractional ownership program aircraft on a flight. This reflects the current fractional ownership program practice.

Sections 91.1009 Through 91.1013 Clarification of Operational Control Issues

It is important to clarify the concept of "operational control" in the context of fractional ownership programs. The FAA in the past has held that when more than one entity has some involvement in the operation of an aircraft, the entity which has "operational control" is the "operator" for purposes of legal responsibility for the safe operation of the flight and compliance with the regulations with respect to the flight. The traditional criteria applied by the FAA in determining who has operational control have focused on which entity makes certain decisions related to the flight, particularly decisions that bear on the safety of the flight and thus require an adequate level of aviation expertise.

While the FOARC felt that it was important for the FAA to continue to hold the entity in operational control of a flight responsible for the safe operation of the flight and compliance with the regulations with respect to the flight, the FOARC also felt that traditional notions of "operational control" are not obviously useful in the situations where owners of business aircraft do not possess aviation safety-related expertise and thus contract with an expert to provide such expertise (as is often the case in fractional ownership programs as well as in the case of wholly-owned business aircraft).

It was the view of the FOARC that, in the context of fractional ownership programs, safety is best served by the FAA applying a definition of operational control specific to these programs, clarifying the regulatory compliance implications of operational control for all participants, and ensuring that those in operational control of fractional ownership program flights clearly understand and acknowledge the responsibilities attendant to that operational control.

Proposed § 91.1009 clarifies current law and policy by providing that the fractional owner is in operational control whenever the owner has directed that a fractional ownership program aircraft carry passengers or property designated by that owner and the aircraft is in fact carrying those passengers or property. This section requires, as a condition to the owner being considered to be in operational control, that the owner have the rights and be subject to the limitations set forth in proposed § 91.1003 through 91.1013. These proposed sections are intended to ensure that the owner: (1) Has the ability to obtain adequate information to determine that the program is being conducted safely, (2) does not engage in commercial operations without the appropriate authority, (3) has advance notice when a chartered aircraft is substituted for a fractional ownership program aircraft on a flight for the owner, and (4) is fully aware of the responsibilities and implications of the owner being in operational control.

The owner, as the entity in operational control, remains responsible for the safe operation of the flight and compliance with the regulations with respect to the flight under this definition. The FOARC concluded, in the context of fractional ownership programs, that safety is best served by placing additional responsibility for safety decisions on the expert fractional ownership program manager who is subject to direct FAA safety regulation under proposed subpart K. Under this proposal, the fractional ownership program manager is jointly and severally responsible with the owner for the safe operation of the flight and for

compliance with the Federal Aviation Regulations affecting that flight. Consequently, regulatory responsibility for the safe operation of a fractional ownership program aircraft is shared with equal and concurrent force, and with equal exposure to FAA enforcement, between the fractional owner operating the fractional ownership program aircraft and the fractional ownership program manager.

Proposed § 91.1011 specifies the regulatory compliance implications of fractional owners being in operational control. It provides that when a fractional owner is in operational control of a flight, that owner is responsible for compliance with all applicable regulations pertaining to that flight. The section acknowledges that the owner may delegate some or all of the tasks associated with regulatory compliance to the program manager and may rely on the program manager's expertise. Nevertheless, the section specifies that, in the event of such a delegation, the owner, as the entity in operational control, remains responsible for compliance. Since the program manager also has responsibilities for ensuring compliance under proposed subpart K and other proposed revisions to part 91, this regulatory structure provides to the FAA the option of taking enforcement action against the program manager, the owner in operational control of the pertinent flight, or both.

Proposed § 91.1013 requires the program manager to brief each fractional owner on the owner's operational control responsibilities, and requires the owner to review and sign an acknowledgement of fractional owner's operational control responsibilities. The acknowledgement must state that the owner is in operational control of any fractional ownership program aircraft being used to carry persons or property designated by the owner. It must further state that when the owner is in operational control, the owner is: (1) Responsible for compliance with the management specifications and all regulations applicable to the flight, even when the owner has contracted with the program manager to carry out tasks related to compliance, (2) exposed to FAA enforcement action for any noncompliance, and (3) exposed to significant liability risk in the event of any personal injury or death resulting from the flight. The acknowledgement form must further state that the owner has read, understands, and accepts the operational control responsibilities described in the acknowledgement, and understands that program flights over which the owner has operational control will be operated under part 91 rules rather than the part 121 or 135 rules that apply to commercial or air carrier operations. The acknowledgment also must state that the owner understands that the failure of either the program fractional owners or the program manager to comply with the regulations may result in enforcement action.

Sections 91.1014 Through 91.1035, 91.1047, 91.1109 Through 91.1115 and 135.21 Responsibility of Fractional Ownership Program Managers

One of the major concerns leading to formation of the FOARC was whether, and to what extent, fractional ownership program managers properly were subject to FAA surveillance and enforcement under the existing regulations when conducting program operations. The information developed by the FOARC indicated that most program managers agree that they should be subject to FAA surveillance and enforcement and voluntarily have adopted as standard practices systems and procedures that are intended to facilitate FAA surveillance and enforcement. The FOARC recommended that it would be prudent to conform part 91, subpart K to the existing industry practices and to the extent consistent with those practices, parts 119 and 135.

Proposed §§ 91.1014 and 91.1109 through 91.1115 would make it clear that the fractional ownership program manager, in addition to the owners, is responsible for the airworthiness and safe operation of fractional ownership program aircraft. Under the proposed sections, the program manager is subject to both the surveillance and enforcement authority of the FAA. This responsibility is not predicated on operational control, which remains with the owner. Rather, it is based on the fractional ownership program manager's status as a provider of certain program management services, the proper delivery of which is critical to aviation safety. The program manager's status in this regard is similar to that of a repair station.

Subpart K imposes on fractional ownership programs certain maintenance requirements, including requirements for initial and annual recurrent training of maintenance personnel. For purposes of complying with the initial and annual recurrent training requirements of § 91.1111, the FAA intends to permit on-the-job training, where appropriate.

The FOARC recommended that management specifications be issued to fractional ownership program managers. The issuance of management specifications that detail program managers' practices and procedures, and that state the program managers' authorized deviations and exemptions, would facilitate the oversight activities of the Flight Standards District Offices. The program manager, the fractional aircraft owners, and flight crew and ground and maintenance personnel would be responsible for compliance with the management specifications. The management specifications would include the registration number and serial number for each program aircraft. A current listing of names and addresses of each fractional owner must be available at the program manager's principal base of operations for FAA review. The management specifications must be available at the program manager's principal base of operations for owner and FAA review.

Accordingly, proposed § 91.1015 requires each fractional ownership program manager to hold management specifications and describes the content and application of the management specifications. The list of owners required by § 91.1015(a) may be considered proprietary. Section 91.1015(b) authorizes the program manager to keep this list at its principal base of operation or another location referenced in its management specifications. This list, in addition to the management specifications, must be made available for inspection by the Administrator.

Proposed §§ 91.1017 and 91.1019 describe the procedures for amending management specifications and for tests and inspections. The FAA intends to work with program managers and part 135 operators to develop procedures to allow expedited changes to management and operations specifications, such as adding aircraft that are substantially similar to aircraft currently approved for operation, through use of the Automated Operations Specification Subsystem.

Proposed § 91.1021 adds a requirement for the program manager to establish an internal safety reporting procedure and procedures to respond to aviation accidents or incidents.

Each fractional ownership program manager is required by proposed §§ 91.1023 and 91.1025 to create and maintain a "program operating manual." Proposed § 91.1023 further requires each fractional ownership program aircraft to have aboard the program operating manual. A similar amendment of § 135.21 is proposed to require a manual setting forth the certificate holder's flight procedures and policies aboard each aircraft.

Recordkeeping requirements are the responsibility of the program manager under proposed § 91.1027. Proposed § 91.1027 would authorize program

managers that also hold a certificate to operate under part 121 or 135 to use records they maintain under those parts to satisfy the equivalent requirements and recordkeeping provisions of §§ 91.1027 and § 91.1113. Thus, program managers that hold an air carrier certificate or operating certificate would not be required to keep separate records for equivalent regulatory requirements to satisfy the independent obligations imposed by subpart K and part 121 or 135.

Proposed §§ 91.1029 through 91.1035 would require the program manager to establish an aircraft scheduling system to designate a pilot in command and second in command for each program flight, to provide all designated operating information to the pilot to carry aboard the aircraft and to ensure that a detailed pre-flight passenger briefing is conducted prior to the operation of a fractional ownership program aircraft on a program flight. Each pre-flight passenger briefing under proposed § 91.1035 must include the name of the program manager or other person operating that flight and whether the flight is a program flight or a commercial operation. The briefing requirements of this section are used in lieu of the briefing requirements of § 91.519 when the aircraft is operated in a fractional ownership operation.

Sections 91.1025, 91.1037, 135.23, 135.385 and 135.387 The "60% Rule"

Section 135.385 prohibits an air carrier subject to that section from taking off for a destination airport unless the Airplane Flight Manual indicates that the airplane at normal loads is capable of a full stop landing at that airport within 60% of the effective length of the runway. There is no similar requirement in part 91 applicable to general aviation operations. As a consequence of the so-called "60% rule," on-demand operators may not operate into many airports that are safely served by business jets under part 91.

The 60% rule reflects the inability to predict airplane landing performance that existed during the 1930s and 1940s. During this period, performance variations existed among airplanes of the same model produced by the same manufacturer, and these differences were often significant. Maintenance regulations and mechanic training relied extensively on an individual mechanic's capabilities, compared to today's development of approved airplane repair manuals. Replacement of parts and components occurred upon failure, and failures occurred more often when compared to today's operations. Modern pilot training is far more sophisticated, and emergency training is performed in simulators that have far greater capabilities than existed in previous decades. The physics of stopping an airplane are better understood today. Airport designs have been largely standardized, and pavement standards have been developed. Moreover, weather forecasts of wind or precipitation are far more accurate than in the past.

In the former environment, the Civil Aeronautics Board (CAB), which regulated all commercial operations at the time, felt it necessary to institute the 60% rule to compensate for the many unknown or unpredictable factors affecting airplane-landing distances. In 1958, the CAB was petitioned to modify the 60% rule. In issuing an update in July of 1958 to CAR SR–422, the CAB stated:

> Strong representation has been made to the Board to the effect that the numerical factors applicable to the aforementioned rules are too high and should be reduced pending further experience. The Board considers that it would not be in the public interest to reduce any of these factors until such time as further experience indicates that they are in fact overly conservative. Realizing, however, that the issues are of considerable importance in prescribing a practical level of performance, the Board stands ready to reconsider the relevant provisions of this regulation at such time as substantiating information is received.

No review of the 60% rule has been conducted in the intervening four decades.

In the interim, the FAA has continually improved its guidelines regarding the accuracy and reliability of published airplane performance data. First adopted in 1964, FAR 25.21, "Airworthiness Standards: Transport Category Airplanes," states that each flight certification requirement must be demonstrated "by systematic investigation of each probable combination of weight and center of gravity." Additional guidance is published in AC 25–7, "Flight Test Guide For Certification Of Transport Category Airplanes." This Advisory Circular states that "[w]here variation in the parameter on which a tolerance is allowed will have an effect on the results of the test, the results should be corrected to the most critical value of the parameter within the operating envelope being approved."

With regard to determining landing distance for an Airplane Flight Manual (AFM), AC 25–7 also states, "[m]ore (flight) tests will be necessary if the distribution of the data does not give sufficient confidence in the parametric correlation. Past experience has shown that 40 landings would establish a satisfactory confidence level without further analysis."

The following table indicates some of the landing distance factors that contribute to safe aircraft operations and are required for aircraft certification under current FAA regulations but were not required when the FAA instituted the 60% rule.

Manufacturer's requirements	Result	Added safety margin
Airborne Distance. Engines must be set to the high side of the flight idle trim band.	During landing at flight idle, engines will contribute the maximum amount of forward thrust when the throttles are in the flight idle position.	Actual landing distance will be shorter than calculated landing distance.
Airborne Distance. Steep approaches and high touchdown sink rates, formerly considered "traditional", are "no longer considered acceptable".	Actual glideslope must be within −2.5 degrees to −3.5 degrees. Touchdown sink rates must be 8 feet per second or lower.	Actual landing distance will be shorter than calculated landing distance.
Airborne Distance. If derived, data must show an upper bound to the Part 25 zero-wind airborne distances achieved in past certifications and minimum speed (V_{REF}) loss.	The only time a manufacturer may approximate landing distance using a standard (FAA approved) equation is when data from past certifications is consistent and "clustered".	Actual landing distance will be shorter than calculated landing distance.
Airborne Distance. If derived, touchdown speed is assumed to be V_{REF} −3 knots.	Most touchdowns are at V_{REF} −5 knots	Actual landing distance will be shorter than calculated landing distance.

Manufacturer's requirements	Result	Added safety margin
Airborne Distance. If a manufacturer includes data from steeper approaches and higher touchdown rates in a parametric analysis, the most the air distance (or speed) from 50 feet can be reduced is ten percent. (The max. allowed glideslope is −3.5 degrees and the max. touchdown rate is 8 feet per second.).	Somewhat steeper approaches over the threshold, or slightly higher touchdown rates, will reduce landing distances more than is predicted in the AFM.	Actual landing distance will be shorter than calculated landing distance.
Landing Distance. Wheel brake assemblies must be at the fully worn limit of their allowable wear range.	In practice, wheel brake assemblies are most likely to be above the fully worn limit.	Actual landing distance will be shorter than calculated landing distance.
Landing Time Delays. It is assumed that the pilot delays activating the first deceleration device (brakes etc.) until at least one second after touchdown.	This is a conservative estimate of pilot reaction time.	Actual landing distance will be shorter than calculated landing distance.
Landing Time Delays. It is assumed that the pilot delays activating the second deceleration device (brakes etc.) until at least one second after activating the first deceleration device.	This is a conservative estimate of pilot reaction time.	Actual landing distance will be shorter than calculated landing distance.

Business jets have operated in an identical environment as aircraft operated in part 135 on demand operations, but without the 60% rule, for many years. If the rule were necessary for this type of operation, business jets operated under part 91 should have a higher rate of runway overshoot events than on-demand operators under part 135. However, such a difference has not been observed. Aviation safety data indicate that the landing accident rates under part 91 and 135 during the previous twelve-year period were nearly identical. A report prepared by Robert E. Breiling Associates of Boca Raton, Florida concluded, "it would appear that the 40% safety factor in present use for FAR 135 is excessive. A factor based on actual aircraft performance on contaminated runways with the inclusion of a 10% to 20% safety factor would be more appropriate."

Since the 1940s, when the 60% rule was first instituted, there have been significant advances in the accuracy of aircraft performance data and substantial technological improvements in aircraft stopping-system engineering and design. Consequently, the FOARC recommended changing the landing distance limitations requirement of part 135 to 85% for eligible on-demand operators. Over forty years of operating experience indicates this proposed rule would provide an appropriate margin of safety and, additionally, would subject both fractional ownership aircraft operations and eligible on-demand air charter flights to the same requirements. Proposed §§ 91.1025, 91.1037, 135.23, 135.385 and 135.387 would accomplish this in two ways. First, the full stop landing distance would be increased to 85% of the effective runway length for both the destination and alternate airports, consistent with the recommendations of the FOARC. Second, a fractional ownership program manager or an eligible on-demand operator would be allowed to include a Destination Airport Analysis procedure in its operating manual. This procedure, which would be reviewed and approved by the FAA using standards identical to those imposed on on-demand operators under amended § 135.23, would allow the 85% stopping distance requirement to be exceeded if appropriate planning in the circumstances indicated that there would be no compromise of safety and an alternate airport is selected. The FAA invites comments on the criteria contained in §§ 135.23 and 91.1025 for approval of a destination airport analysis. These options would be available only to fractional ownership program managers, who do not have any runway stopping requirement today, and to eligible on-demand operators who meet the flight crew experience, pilot operating limitations and pairing requirements of proposed §§ 91.1053 and 91.1055.

These proposed changes would ensure that the current best practices of fractional ownership program managers continue, while applying those same best practices to on-demand operators with equivalent crew training and experience requirements. The result would be a substantial expansion of the opportunities for on-demand operators without any compromise of safety. The table below, prepared for the FOARC by the General Aviation Manufacturers Association (GAMA), shows the effect of changing the landing distance for popular business aircraft types.

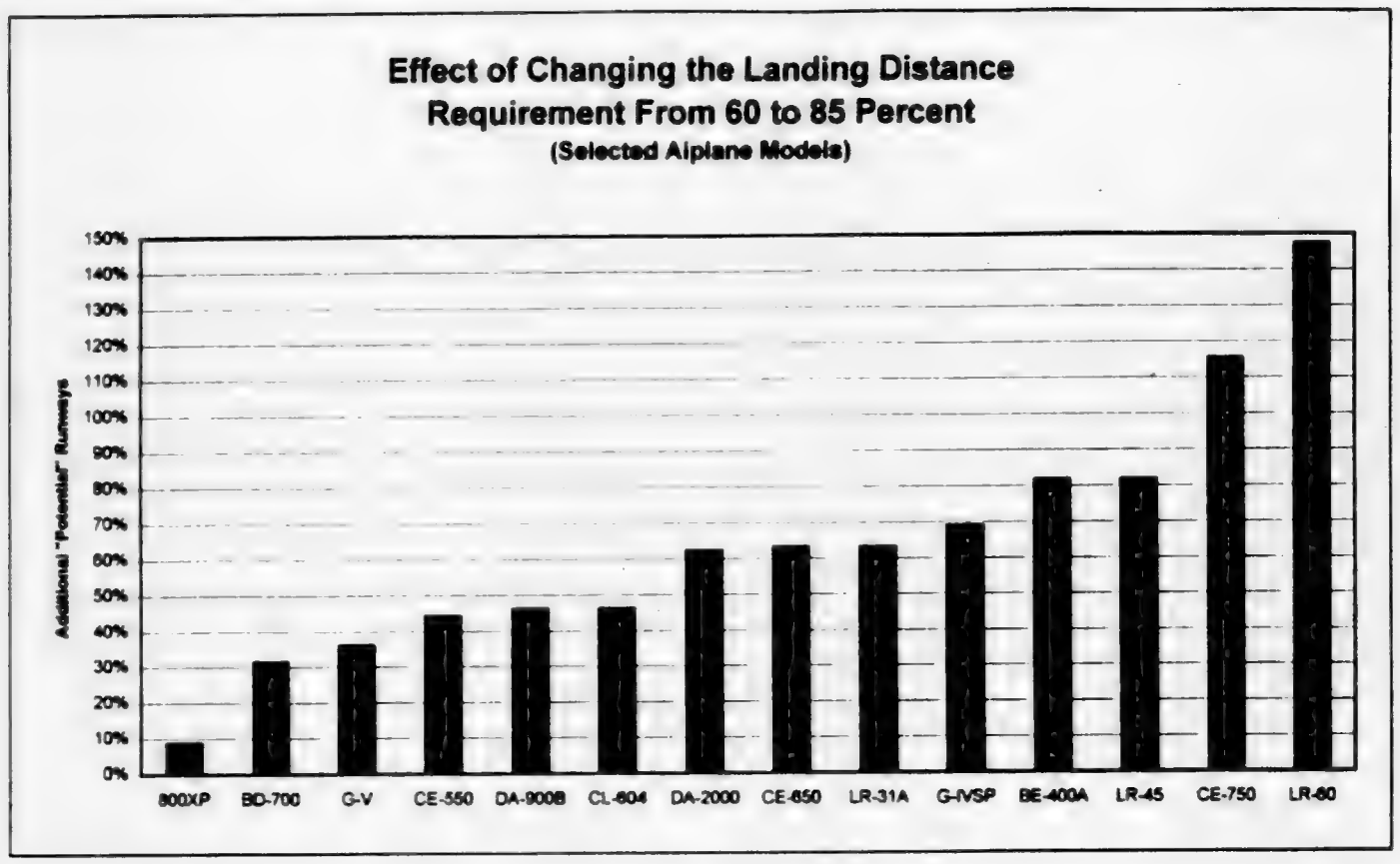

The most critical impact of the proposed rule is at airports with a single-runway. The table below, also prepared by GAMA for the FOARC, presents examples of single-airport runways where the proposed rule would allow part 135 operations previously restricted by the 60% rule.

Example of single-runway airport	Runway length	Example of airplanes excluded solely by the 60% rule	Example of airplanes excluded solely by an 85% rule
Meigs Field, IL	3,899	BE–400A, BE–800XP, CE–550, CE–650, CE–750, CL–604, DA–900B, DA–2000, GIVSP, LR–31A, LR–45, LR–60.	Lear 60.
Bonifay, FL	4,014	BE–400A, CE–650, CE–750, DA–2000, GIVSP, LR–31A, LR–45, LR–60	None.
Los Angeles, CA (Whitman)	4,120	BE–400A, CE–650, CE–750, DA–2000, GIVSP, LR–45, LR–60	None.
Covington, GA	4,203	BE–400A, CE–750, DA–2000, GIVSP, LR–45, LR–60	None.
Hilton Head, SC	4,300	BE–400A, CE–750, G–IVSP, LR–45, LR–60	None.
Glaskow, KY	4,586	BE–400A, CE–750, LR–45, LR–60	None.
Washington Court House, OH	5,100	LR–60	None.

Sections 91.1039, 135.1 and 135.225 IFR Takeoff, Approach and Landing Minimums

IFR Destination Airport Weather Reporting

Section 135.225(a) prohibits an air carrier subject to that section from initiating an instrument approach at a destination airport unless that airport has a weather reporting facility on the field. Part 91 does not impose a similar restriction on general aviation aircraft. The majority of U.S. airports used by general aviation aircraft do not have on-field weather reporting facilities, relying instead on the facilities at nearby airports.

The FAA has considered several petitions for exemption from the requirement of § 135.225(a). In most cases these petitions were denied, in part, because the petitioners failed to identify how their circumstances were different from the general class of regulated persons in order to justify relief by exemption. In a pending petition for rulemaking, the National Air Transportation Association, on behalf of its part 135 on-demand air charter membership, has asked for relief from the requirement subject to certain operational limitations.

Following extensive discussion of the regulation, the FOARC concluded that the public can best be served, and an equivalent level of safety maintained, by permitting an alternative means of compliance with the destination airport weather reporting facility requirements under part 135, and applying the same provision in part 91, subpart K. This alternative requires the destination airport to have approved weather reporting or, if weather reporting is not available at the destination airport, then an alternate airport must be selected that does have weather reporting. Both the destination and the alternate airport, if required, must have a current local altimeter setting or a current alternate altimeter setting provided by the facility designated on the approach chart for that airport. Fractional ownership program aircraft operated under part 91 have successfully and safely operated under conditions and circumstances similar to those experienced by part 135

operators. The FOARC examined available safety information, finding no evidence that safety has been compromised in part 91 fractional operations when an approved weather reporting facility is not available at a destination airport.

The FAA is proposing that "eligible on-demand charter operators" be permitted to use an alternative means of compliance with the weather reporting requirement. The alternative means of compliance requires a weather report from a weather reporting facility at either the destination or an alternate airport and a current local altimeter setting for the destination and alternate airport. To ensure an equivalent level of safety, only "eligible on-demand operators," as defined in proposed § 135.1(b), may use this alternative means of compliance. "Eligible on-demand operators" would be those which meet the flight crew experience, pilot operating limitations and pairing requirements of proposed §§ 91.1053 and 91.1055.

An alternative means of compliance with § 135.225(a) would benefit the public in that numerous communities would be able to gain access to air transportation via air charter operations to and from local airports that presently do not have an approved weather reporting facility. The benefits of air charter include emergency medical transportation, disaster relief, transportation of critical materials and personnel, and various economic benefits.

IFR Takeoff Minimums

Currently, operators under part 91 may take off with zero visibility and ceiling. The best practices of many corporate operators have shown that a visibility requirement of approximately 600 feet, as determined by the pilot in command, provides a practical method for improving take off safety. Pilots can determine runway visibility by taxiing the length of the runway and using runway markings and lights as distance references.

Sections 91.1041 and 135.145 Aircraft Proving Tests

The FOARC recommended that when a fractional ownership program first includes in its fleet an aircraft for which two pilots are required under the type certification requirements, or when such a program first includes in its fleet a turbojet airplane, a 25-hour proving test requirement similar to the one in existing § 135.145 should apply. However, the FOARC noted that § 135.145(a) has been interpreted by the FAA to require proving tests whenever a new type of aircraft is added, even if that aircraft type is similar to existing aircraft in the operator's fleet. For several reasons, FOARC believed that the current proving test requirements of § 135.145, as interpreted, are excessive, and that a narrowing of these requirements would not adversely affect aviation safety.

First, the demonstrated historical safety of business aviation operations under part 91, which does not require proving tests, indicates that new aircraft types may be safely introduced in some circumstances without proving tests. Further, with respect to more complex types of aircraft utilization, e.g., those involving more complex systems of aircraft release and aircraft and personnel scheduling, the value of proving tests is primarily to demonstrate that satisfactory support systems are in place to facilitate the safe operation of the aircraft. The FOARC observed, however, that these support systems largely function independently of the aircraft make or design and do not require additional proving tests each time a different aircraft make or dissimilar aircraft design is introduced. Finally, the FOARC noted that the FAA retains its authority to inspect many aspects of early operations of new types of aircraft even when proving tests are not required, and that this broad authority applies to both simple and complex types of aircraft utilization.

For these reasons, the FOARC recommended that proving tests be required for fractional ownership programs only for the initial operations of aircraft that fundamentally differ from aircraft already in a program's fleet. Recognizing that these reasons applied equally to part 135 operations, the FOARC recommended applying the narrowed proving test requirements to both fractional ownership program operations and part 135 operations. Accordingly, under proposed § 91.1041 and proposed amendment to § 135.145(a), proving tests would be required both for fractional ownership program aircraft and for part 135 aircraft only before the initial use of either an aircraft for which two pilots are required under the aircraft type certification requirements or a turbojet powered airplane.

Section 91.1045 Additional Equipment Requirements

The FOARC recommended that a fractional ownership program aircraft on a program flight must be equipped with a cockpit voice recorder, flight recorder, ground proximity warning system, terrain awareness warning system, airborne thunderstorm detection equipment or airborne weather radar, and a traffic alert and collision avoidance system to the extent that such equipment would be required if that aircraft were operating under part 121 or 135. This conforms to the existing best practices of fractional ownership program managers and is consistent with maintaining an equivalent level of safety. Proposed § 91.1045 would extend these requirements to fractional ownership program aircraft, with the same accompanying applicability requirements as to size and type of aircraft currently applied to aircraft operated under part 121 or 135.

Sections 91.1047, 135.251 and 135.255 Drug and Alcohol Misuse Programs and Required Maintenance

Proposed § 91.1047(a) requires fractional ownership program managers to implement drug and alcohol misuse education programs for flight crew, flight instructors, flight attendants, and maintenance personnel who are the direct employees of the program manager. Proposed § 91.1047(b) requires fractional ownership program managers who employ flight crew, flight instructor, flight attendants, or maintenance personnel indirectly, through contractors, to verify that each indirect employee has completed a drug and alcohol misuse education program.

Although the FOARC did not support federally mandated testing programs for fractional ownership programs, the FOARC recognized the widespread voluntary implementation by industry of company testing programs. The FOARC unanimously recommended that fractional ownership program managers be required to disclose to owners and prospective owners the scope of the program manager's company drug and alcohol testing program, if any, and to compare it with the scope of federally mandated programs for air carriers. The FOARC believes that this disclosure requirement is necessary to permit the public to make educated decisions among the various air transportation and purchase options available in the marketplace. The FOARC stated that its intent was that this disclosure requirement, regarding prospective owners, would be satisfied if the required detailed disclosure is provided to a prospective owner sufficiently in advance of a share purchase to permit meaningful review.

Although proposed subpart K does not contain a federally mandated alcohol or drug testing requirement, nothing in proposed subpart K is intended to prevent a fractional ownership program manager from voluntarily implementing a company

drug or alcohol testing program, consistent with applicable federal and state law that is separate and distinct from a federally mandated program required by Appendices I and J to part 121. Fractional ownership program managers can satisfy the requirements of § 91.1047(a) and (b) by implementing drug and alcohol misuse and education programs modeled on air carrier programs, or by developing their own company programs. However, they cannot hold themselves as testing under the authority of the federally mandated drug and alcohol program (e.g., they cannot advise individuals that the company program is federally mandated nor can they use the federal drug and alcohol custody and control forms). The requirements of § 91.1047(a) and (b) are satisfied if the subject employee has completed the training required under an air carrier drug and alcohol program, regardless of whether that program is operated by the fractional ownership program manager, an affiliated or related company, a subcontractor of the fractional ownership program manager or an unrelated company.

During the course of the FOARC's deliberations on this subject, representatives of on-demand operators pointed out an issue in the comparable part 135 requirements. When emergency maintenance is required, such as a tire change, existing part 135 does not allow such maintenance to be performed at an airport that does not have available a maintenance provider properly enrolled and subject to the provisions of an FAA-approved drug and alcohol misuse program. Accordingly, the FOARC recommended that the drug and alcohol misuse program requirements in both part 91, subpart K and part 135 should provide an exception for emergency maintenance, provided that the FAA is advised in writing within 10 days after such an event. The emergency maintenance exception is limited to maintenance that is not scheduled and is made necessary by an aircraft condition that is not discovered prior to the departure for that location. Further, the airport must be one at which there are no available maintenance personnel subject to the drug and alcohol testing requirements of Appendices I and J of part 121. Finally, the part 135 exception would apply only to on-demand charter flights, flights that operate on a non-scheduled basis to diverse airports. The added requirement that all such emergency maintenance be reported to the Drug Abatement Program Division within ten days of its occurrence discourages abuse of this exception. This exception is set forth in proposed §§ 91.1047(d), 135.251(c) and 135.255(c).

Sections 91.1049 Through 91.1107, 135.291, 135.321, 135.324, and 142.1 Personnel Requirements; Flight, Duty and Rest Time Requirements; and Testing and Training

The requirements relating to the qualifications, testing and training of crewmembers and flight, duty and rest time received considerable attention from the FOARC. Using previously developed industry guidelines and best practices as a starting point the FOARC recommended that proposed subpart K should include a comprehensive set of requirements intended to ensure that fractional ownership program managers continue to maintain a high level of safety. Those requirements are set forth in proposed §§ 91.1049 through 91.1107. These sections establish new requirements for part 91 fractional ownership operations and reflect the unique characteristics of those operations.

Proposed § 91.1049(b) and (d) would require each program manager to staff, at a minimum, with three pilots per fractional ownership program aircraft and to operate with at least two qualified pilots on a flight when passengers are onboard. Proposed § 91.1053(a) would require that each pilot of a program aircraft holds, in addition to applicable type ratings, an airline transport pilot rating (for multi-engine turbine-powered fixed-wing or powered lift aircraft) or a commercial pilot rating (for all other aircraft). The three pilots per aircraft staffing requirement, the two pilots per aircraft operating requirement and the ratings requirement are based on the best practices of business aviation and are in substantial part responsible for the excellent safety record of that segment of general aviation. These requirements ensure that fully qualified and rested crews always are available and are onboard every passenger flight.

The FOARC recognized that these requirements could impose an unnecessary burden on some operators of smaller equipment. Accordingly, proposed § 91.1049(b) and (d) would allow the Administrator to make exceptions, as necessary, and proposed § 91.1053(b) would allow the Administrator to grant deviations based on the size and scope of the operation or the type of aircraft operated. The intent of these provisions is to retain a high safety standard but to permit reasonable exceptions as justified by the facts of individual situations.

Proposed § 91.1051 would require a fractional ownership program pilot safety background check.

Proposed § 91.1055 would establish operating limitations and pairing requirements. For example, a second in command with fewer than 100 hours of flight time flying for the program manager in that type of aircraft could not make a takeoff or landing in the designated situations where safety might be compromised.

Proposed § 91.1057 through 91.1061 would establish flight, duty and rest time requirements for pilots flying fractional ownership program aircraft on program flights. A comprehensive set of flight, duty and rest time requirements is proposed by the FOARC. The FOARC believes that the proposed flight crew duty and rest requirements are adequate to prevent undue fatigue, ensure the safety of fractional ownership program aircraft operations, and provide for these operations a degree of rest equivalent to or greater than that provided under regulations applicable to air carriers. For example, by defining standby status as a type of duty, proposed § 91.1057 establishes a requirement that exceeds the requirements imposed on air carriers under either part 121 or part 135. Similarly, proposed § 91.1057 would not only define reserve status, but would also require pilot acceptance of reserve status and require a minimum of ten hours of uninterrupted rest prior to entering that reserve status. Again, these provisions exceed the requirements currently imposed on air carriers.

The FOARC believes that the requirements of proposed § 91.1059 also equal or exceed virtually all air carrier requirements. The sole exception is where flight time exceeds ten hours, with total duty time less than sixteen hours. In this case, part 135 would require sixteen hours of rest, while proposed § 91.1059 would require a rest period equal to the total hours on duty. The FOARC believed that the stringent requirements that, in many cases, exceeded those imposed on air carriers created, in the context of the fractional ownership operating environment, a level of safety sufficient to justify the regulations.

The duty and rest regulations proposed by the FOARC in this NPRM apply only in the context of fractional ownership programs.

The proposed limitations are displayed in chart form consistent with the concept of "plain language" regulation. Because of concerns about Circadian rhythm patterns, minimum rest periods are established for east/west

flights that cross five or more time zones.

Proposed § 91.1057:

(1) Defines a duty period,

(2) Addresses "Multi-time Zone" flying,

(3) Defines "Standby" status as duty,

(4) Defines "Reserve Status" as not being duty but requires pilot acceptance and a minimum of 10 hours uninterrupted rest prior to entering reserve status,

(5) Defines "Extension of Normal Duty" as an increase in the period of duty due to circumstances beyond the control of the program manager or flight crewmember (such as adverse weather) that are not known at the time of departure and that prevent the flightcrew from reaching the destination within the planned flight time,

(6) Defines "Planned Expanded Duty" as the planned maximum flight and duty time and minimum rest that may be scheduled for long-range aircraft capable of exceeding 10 hours of flight unless the flightcrew is augmented by a third pilot,

(7) Restricts a program manager from assigning duty during a rest period,

(8) Requires that "time spent in transportation not local in nature" not be part of any rest period,

(9) Requires a minimum of 10 consecutive hours of rest during the 24-hour period that precedes that planned completion time of a duty assignment, and

(10) Requires 13 rest periods in each calendar quarter.

Since the FOARC presented its proposal to the FAA, a great deal of thinking has gone on in the aviation industry and the FAA regarding the flight and duty time issue. For example, a part 135 on-demand air charter industry task force has developed a concept paper proposing a new flight and duty time regulatory structure for that segment of the industry. The FAA is also considering several different approaches.

One approach may be that part 91, subpart K flight, duty and rest requirements would be governed by the same flight, duty and rest rules that the part 135 on demand industry has to meet, i.e., sections 135.267 and 135.269.

Another approach might be to establish different flight, duty and rest standards for part 91, subpart K operators than the standards that would apply to the part 135 on demand industry.

The FAA is open to different ideas regarding how to structure the flight and duty time portion of the proposed rule, and therefore solicits comments not only on the flight, duty and rest rules proposed in the NPRM, but also other possible regulatory structures, such as the one developed by the part 135 on-demand air charter industry task force. The FAA is presenting this proposal as it was proposed by the FOARC. The FAA may decide to adopt this proposal, substantially revise the proposal, or propose a completely new approach in a subsequent rulemaking. The FAA invites comments on the following provisions of this proposal:

(1) Whether this proposal is appropriate for a single pilot operation permitted under the deviation provision contained in proposed section 91.1049.

(2) Whether the FAA would be justified in promulgating different flight, duty, and rest requirements for this segment of the industry as compared to the requirements that apply to those operators subject to the requirements of 14 CFR parts 121 and 135.

(3) Whether the reserve status definition contained in this proposal is adequate and would provide sufficient opportunity for rest outside of a flight crewmember's normal sleep cycle before that person is called to perform a flight assignment that could extend up to the proposed duty time limits in this proposal and whether this proposal should even contain a reserve status definition.

(4) Whether duty limitations and rest requirements should be provided for flight attendants.

Proposed §§ 91.1063 through 91.1107 set forth the testing and training requirements for fractional ownership program flight crews. The requirements reflect the existing best practices of fractional ownership program managers and are tailored to reflect certain training and testing requirements of part 135. If authorized by the Administrator, a program manager may use the applicable training and testing requirements of subparts N and O of part 121. This reflects a similar provision currently available in part 135. Many program managers are also certificated as air carriers, and the same pilots and aircraft are used to support both operations. Where the training and testing program elements are the same for both the fractional program and a part 121 or 135 operation, the program manager may be authorized to use the applicable training and testing provisions of the part 121 or 135 program to meet the training and testing requirements of subpart K. Where there are differences in the training and testing provisions of these programs, the flight crewmember must be trained and tested with respect to those differences. Similarly, where the training and testing program elements are the same for different fractional programs, the fractional ownership program manager may be authorized to use the applicable training and testing provisions of the other approved fractional training program to meet the training and testing requirements of subpart K, so long as the flight crewmember is trained and tested with respect to those differences.

The requirement in section 91.1073 to conduct annually at least one "flight training session" in an approved simulator may be satisfied by conducting the flight training portion of any training session otherwise required by subpart K of part 91 in an approved simulator. There would be no specific amount of simulator time necessary to satisfy this requirement.

Minor corrections were made in sections 135.291, 135.321 and 135.324 to change the term "provide" to "conduct", in reference to the conduct of training by part 142 training centers. Sections 91.1063 and 91.1075 permit training center personnel authorized under part 142 to conduct training, testing, and checking for fractional ownership programs. Conforming changes were made to section 142.1.

14 CFR Part 119

Section 119.1 and 125.1 Applicability

Section 119.1 and 125.1 would be amended to include a reference to part 91, subpart K to make it clear that parts 119 and 125 are not applicable to administrative flights conducted by the program manager or flights conducted by fractional owners using fractional ownership program aircraft. This would make it clear that operations of fractional ownership program aircraft having more than 20 seats or a maximum payload capacity of 6,000 pounds or more may be conducted under part 91, subpart K without the need for part 125 certification or a deviation from part 125, which is warranted based on the equivalent level of safety provided in subpart K for aircraft utilized in fractional ownership programs.

14 CFR Part 135

Section 135.247 Pilot Qualifications: Recent Experience

On April 30, 1999, the FAA amended § 61.57 to provide an alternate means of compliance for pilots of type-rated aircraft to maintain night recency of experience. The FOARC recommended that due to the similar nature of operations and aircraft used, pilots used for on-demand part 135 operations also should be able to maintain night recency of experience using this alternate means of compliance.

Paperwork Reduction Act

The proposed amendment to 14 CFR part 91 contains information collection requirements. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the information collection requirements associated with this rule are being submitted to the Office of Management and Budget (OMB) for review. Following is a summary of the information requirement that was sent to OMB.

This rule proposes new regulations governing fractional ownership operations and revisions to certain sections of part 135 on demand operations. This proposed rule would require fractional ownership aircraft program managers, aircraft owners, and certain air carriers to provide information to determine if they are operating in accordance with the minimum safety standards of these proposed regulations. The burden is required for application for operating authority, pilot record keeping, management specifications, contractual requirements, manual and training program development and approvals, and other reporting and record keeping items. The total paperwork burden is estimated at approximately 178,400 hours annually.

The FAA considers comments by the public on the proposed collection of information in order to:

a. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

b. Evaluate the accuracy of the agency' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

c. Enhance the quality, utility, and clarity of the information to be collected; and

d. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments on the proposed information collection requirements should be submitted to the rulemaking docket at the address indicated in the **ADDRESSES** section of this notice.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after it is approved by the Office of Management and Budget.

Regulatory Evaluation Summary

Overview

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the Federal Aviation Administration (FAA) has determined that the proposed rule (1) has benefits that do justify its costs, is significant as defined in the Executive Order, and is significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will not constitute a barrier to international trade; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses are available in the docket and are summarized below.

Background

The FAA proposes to develop new regulations for fractional aircraft ownership programs. The proposed rule, if adopted, would create a new subpart K within part 91 of Title 14, Code of Federal Regulations (14 CFR) and make significant changes to 14 CFR part 135. The proposed rule would establish new requirements and revisions in a variety of areas, including crew training, pilot qualifications, pilot rest, flight time and duty time limits, landing distance performance, operating limitations, program operating manuals, and administrative requirements. The codification of rules under part 91, subpart K for this segment of aviation, which previously had been regulated like corporate aviation, is in response to a significant increase in the number of fractional aircraft ownership operations and some concerns pertaining to who has responsibility for operational control. The proposed requirements are based primarily on corporate aviation "best practices." Many of these practices, while not currently mandated by part 91 regulations, are used by most fractional aircraft ownership program entities.

Except for the statutory amendment relating to management specifications, discussed above, the proposed rule is consistent with the FAA's authority to regulate fractional aircraft ownership programs under Title 49 of the United States Code. Exercise of this authority, as implemented by the proposed regulation, is intended to regulate and ensure aviation safety. Specifically, the FAA is committed to providing an aerospace system that efficiently meets the needs of users.

The proposed rule is expected to impose a total estimated cost of approximately $22.6 million (undiscounted) in 1999 dollars on fractional operations and the FAA over the 15-year period from 2002 to 2016. Fractional aircraft ownership operations are expected to incur approximately 91 percent of these total costs, or $20.5 million (undiscounted), complying with the regulatory requirements. Only eligible fractional aircraft ownership program managers and the fractional aircraft owners (fractional aircraft ownership entities) who would be subject to the proposed part 91, subpart K requirements would incur compliance costs. The FAA is expected to incur the remaining 9 percent of the total estimated cost, or approximately $2.1 million (undiscounted), administering the proposed rule.

Fractional Aircraft Ownership Operations Compliance Costs

Certain sections of the proposed rule are expected to impose compliance costs on fractional aircraft ownership operations. These compliance costs are summarized below.

Section 91.519, Passenger Briefing, and Section 91.1035, Passenger Awareness

A fractional aircraft ownership program entity operating under part 91, subpart K would incur costs of $100 for every aircraft to comply with the proposed requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations collectively would incur compliance costs of approximately $61,000.

Section 91.1003, Management Contract Between Owner and Program Manager

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs represented by attorney fees of $500 and mailing expenses of $20 for each shareholder to comply with the requirement of the proposed rule. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations (operating under part 91, subpart K) collectively would incur compliance costs of approximately $143,000.

Section 91.1015, Management Specifications

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of $120,000 in the first year of operation and $6,000 annually in subsequent years to comply with this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively would incur compliance costs of approximately $2.1 million.

Section 91.1017, Amending Program Manager's Management Specifications

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of $150 annually to comply with this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively would incur compliance costs of approximately $19,400.

Section 91.1019, Conducting Tests and Inspections

A fractional aircraft ownership program entity operating under part 91, subpart K would incur recordkeeping costs to comply with this requirement. These costs are captured in § 91.1027. Additional costs to accommodate an inspection or test would be negligible and are estimated to be zero.

Section 91.1023, Program Operating Manual Requirements

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of $10,000 in the first year of operation only. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would incur compliance costs of $120,000.

Section 91.1027, Recordkeeping[1]

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of $5,000 in the first year of operation only. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would incur compliance costs of $60,000.

Section 91.1033, Operating Information Required

A fractional aircraft ownership program entity operating under part 91, subpart K would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

Section 91.1037, Large Transport Category Airplanes: Turbine Engine Powered: Limitations: Destination and Alternate Airports

There are insufficient data to estimate the opportunities available to fractional aircraft ownership program entities and the associated positive impact on revenues. The FAA solicits information to resolve this matter.

Section 91.1039, IFR Takeoff, Approach, and Landing Minimums

A fractional aircraft ownership program entity operating under part 91, subpart K would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

Section 91.1041, Aircraft Proving Tests[2]

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of $9,000 for proving tests per aircraft. One-third of each entities existing fleet in the first year of operation and one-third of all new aircraft acquired in subsequent years of operation would require proving tests. (The number of new aircraft in subsequent years of operation is the difference between the subject year and the previous year.) Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would incur compliance costs of approximately $1.6 million.

Section 91.1045, Additional Equipment Requirements

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of $150,000 for 30 percent of the year 2002 fleet only, as subsequent aircraft would be appropriately equipped voluntarily by the manufacturer consistent with regulatory requirements and evolving technology. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively would incur compliance costs of approximately $13.9 million.

Section 91.1047, Drug and Alcohol Misuse Program

A fractional aircraft ownership program entity operating under part 91, subpart K would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

Section 91.1051, Pilot Safety Background Check

A fractional aircraft ownership program entity operating under part 91, subpart K would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

Section 91.1057, Flight, Duty, and Rest Time Requirements

A fractional aircraft ownership program entity operating under part 91, subpart K would incur recordkeeping costs to comply with this requirement. These costs are captured in the analysis of § 91.1027.

Section 91.1061, Augmented Flight Crews

A fractional aircraft ownership program entity operating under part 91, subpart K would incur recordkeeping costs to comply with this requirement. These costs are captured in the analysis of § 91.1027.[3]

[1] Captures recordkeeping compliance costs attributable to §§ 91.1057 and 91.1061.

[2] Estimated by Phaneuf Associates Incorporated based on information developed by the Federal Aviation Administration, Office of Aviation Policy and Plans contained in the report title Final Regulatory Evaluation and International Trade Impact Assessment, Commuter Operations and General Certification and Operations Requirements, Final Rule (14 CFR Parts 119, 121, 125, 127, and 135), October 17, 1995.

[3] Operating costs associated with augmenting flight crews, such as salaries, training, drug and alcohol misuse program, and other administrative program costs are captured under the specific requirements addressing these areas.

Section 91.1063 Through 91.1107, Various Training

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of $200,000 in the first year of operation only. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would incur compliance costs of $2.4 million.

Section 91.1115, Minimum Equipment Lists and Letters of Authorization

A fractional aircraft ownership program entity operating under part 91, subpart K would incur costs of $5,000 in the first year of operation only to comply with this requirement. Negligible compliance costs would be incurred in subsequent years of operation and are estimated as to be zero. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations collectively would incur compliance costs of $60,000.

Section 135.21, Operating Requirements: Commuter and On-Demand Operations: Applicability

A fractional aircraft ownership program entity operating under part 135 would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

Section 135.23, Operating Requirements: Commuter and On-Demand Operations: Applicability

There are insufficient data to estimate the cost to a fractional aircraft ownership program entity to comply with this requirement. The FAA solicits information to resolve this matter.

Federal Aviation Administration Costs

The current FAA workforce would be sufficient to perform the monitoring and surveillance activities associated with administering the requirements of the proposed rule. However, the FAA would need to develop a training course and associated instructional materials to educate its inspectors and supervisors in their responsibilities to administer the proposed rule. Accordingly, the FAA estimates that it would incur $700,000 in the first year to appropriately train its workforce and would incur $50,000 in subsequent years for refresher training. Additionally, the FAA would incur $653,000 in the first year to prepare and implement management specifications for the requirements in the proposed rule. Over the 15-year period from 2002 to 2016, the FAA would incur costs of approximately $2.1 million to administer the requirements of the proposed rule.

Benefits

Most fractional aircraft ownership program operations today are conducted in accordance with industry best practices that exceed part 91 requirements. It is the consensus of the FAA and fractional aircraft ownership program entities that these practices have resulted in an excellent safety record. The FAA has determined that the proposed rule is necessary to maintain the level of safety of these operations. The FAA has further determined that the preservation of the current safety levels justifies the costs of this rule.

Other Impacts of the Proposed Rule

Cost savings and revenue-increasing business opportunities that may be realized by fractional aircraft ownership program entities and on-demand air charter operations as a result of the proposed rule. These impacts are summarized below.

Section 61.57, Exceptions, and Section 135.247, Pilot Qualifications: Recent Experience

A fractional aircraft ownership program entity operating under either part 91, subpart K or part 135 would realize annual cost savings of $3,000 per pilot as a result of complying with the proposed requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would realize cost savings of approximately $149.5 million.

Section 91.509, Survival Equipment for Over-Water Operations, and Section 135.167, Emergency Equipment: Extended Over-Water Operations

A fractional aircraft ownership program entity operating under either part 91, subpart K or part 135 would realize cost savings of approximately $3,500 per trip. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations collectively would realize cost savings of $252.6 million.

Section 135.145, Aircraft Proving Tests

A fractional aircraft ownership program entity operating under part 135 would realize cost savings of $35,000 per proving test complying with this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (under part 135) collectively would realize cost savings of approximately $9.4 million.

Section 135.225, IFR: Takeoff, Approach, and Landing

A fractional aircraft ownership program entity operating under part 135 would realize $35,000 annually in revenue as a result of this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (operating under part 135) collectively would realize approximately $1.5 million in revenue.

Section 135.251, Testing for Prohibited Drugs

This proposal would represent a narrowly defined exception and is expected to be exercised only occasionally. Accordingly, there are insufficient data to estimate the potential additions to fractional aircraft ownership program revenue that may result from this section of the proposed rule. The FAA solicits information to resolve this matter.

Section 135.255, Testing for Alcohol

This proposal would represent a narrowly defined exception and is expected to be exercised only occasionally. Accordingly, there are insufficient data to estimate the potential additions to fractional aircraft ownership program revenue that may result from this section of the proposed rule. The FAA solicits information to resolve this matter.

Section 135.385, Large Category Airplanes: Turbine Engine Powered: Landing Limitations: Destination Airports, and Section 135.387, Large Category Airplanes: Turbine Engine Powered: Landing Limitations: Alternate Airports

A fractional aircraft ownership program entity operating under part 135 would realize $40,000 annually in increased revenues as a result of this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations collectively would realize approximately $1.7 million in revenue.

Summary of Costs and Benefits

The total costs of the proposed rule are approximately $22.6 million (undiscounted 1999 dollars). Fractional aircraft ownership program entities would incur approximately 91 percent of these costs, while the FAA would incur approximately 9 percent of the total costs. Fractional aircraft ownership program entities would realize approximately $413 million in cost savings and $1.7 million in potential additional revenue. The public is expected to benefit from enhanced aviation safety directly attributable to the proposed rule. These costs are summarized in Table S–1.

TABLE S–1.—SUMMARY OF COSTS AND BENEFITS
[In 1999 Dollars]

Category	Undiscounted	Discounted [a]
Fractional Aircraft Ownership Program Operations Compliance Costs for Entities Operating Under:		
Part 91, subpart K	$20,514,870	$17,756,346
Part 135	0	0
Total	20,514,870	1,673,153
FAA Administrative Costs	2,053,000	1,673,153
Total Costs	22,567,870	19,429,499
Potential Costs Savings to Fractional Aircraft Ownership Program Entities Operating Under:		
Part 91, subpart K	116,286,000	66,389,038
Part 135	296,676,000	171,104,030
Total	412,962,000	237,493,068
Potential Revenue Opportunities to Fractional Aircraft Ownership Program Entities Operating Under:		
Part 91, subpart K	0	0
Part 135	1,720,000	975,551
Total	1,720,000	975,551

[a] Discounted at 7 percent over a 15-year period from 2002 to 2016.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that the proposed rule would potentially impact 12 small businesses, and for the purposes of this analysis, has assumed all these firms would operate under subpart K of part 91, imposing on an entity average compliance costs of approximately $1.7 million over the 15-year period (in 1999 dollars). The annualized compliance cost to each small business would be approximately $157,000 (in 1999 dollars) which the current operators have stated would be voluntarily incurred. Furthermore, 6 of these 12 entities would be new entrants. The FAA has determined that the proposed rule would potentially impose on each new (small business) entrant an average compliance cost of approximately $655,100 over the 15-year period (in 1999 dollars). The annualized compliance cost to each new entrant is approximately $69,500 (in 1999 dollars). The FAA does not have information on the revenues of these small entrants but based on information about one of the current operators, the FAA estimates that a program aircraft generates approximately $4.6 million in revenues. If a new entrant has two aircraft, the cost that this proposed rule would impose on it is less than one percent of the approximate revenues generated by those two aircraft. Hence, the FAA has determined that the estimated compliance costs expected to be incurred by existing fractional aircraft ownership programs and new entrants over the 15-year period would be marginal. Therefore, the proposed rule would not result in a significant economic impact to a substantial number of small entities. The FAA invites comments on the validity of all data, assumptions, and assertions, and any related potential impacts.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would impose the same costs on domestic entities and on international entities and thus has a neutral trade impact.

Unfunded Mandates Act of 1995 Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice

of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, dated August 4, 1999, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Compatibility With ICAO Standards

In keeping with the U.S. obligation under the Convention of International Civil Aviation, it is the FAA's policy to comply with the Standards and Recommended Practices of the International Civil Aviation Organization (ICAO) to the maximum extent practicable. ICAO does not specifically address fractional ownership. However, in view of the FAA's conclusion that fractional ownership program operations conducted in conformity with proposed subpart K of 14 CFR part 91 are general aviation activities, this proposed rule is not expected to conflict with ICAO international standards applicable to international general aviation operations.

Environmental Analysis

FAA Order 1050.1D defines the FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with the FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Pub. L. 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 13

Administrative practice and procedure, Investigations, Law enforcement, Penalties.

14 CFR Part 61

Aircraft, Airmen, Recreation and recreation areas, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Airworthiness directives and standards, Aviation safety, Safety.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Airplanes, Airworthiness, Airmen, Rotorcraft, Aviation safety, Safety.

14 CFR Part 142

Training center.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 13, 61, 91, 119, 125, 135 and 142 of Title 14, Code of Federal Regulations (14 CFR parts 13, 61, 91, 119, 125, 135, and 142) as follows:

PART 13—INVESTIGATION AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46110, 46301–46316, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

2. Amend § 13.19 by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) and revising them, and by adding a new paragraph (c) to read as follows:

§ 13.19 Certificate and management specifications action.

* * * * *

(c) If, as a result of any inspection, examination, or other investigation of a fractional ownership program manager managing a fractional ownership program operating under the authority of subpart K of part 91 of this chapter, the Administrator determines that the public interest and safety in air commerce requires it, the Administrator may issue an order suspending or revoking all or part of the management specifications previously issued to the program manager under subpart K of part 91 of this chapter. This authority is also exercised by the Chief Counsel; the Assistant Chief Counsel, Enforcement; the Assistant Chief Counsel, Regulations; the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; each Regional Counsel; and the Aeronautical Center Counsel.

(d)(1) Before issuing an order under paragraph (b) or (c) of this section, the Chief Counsel; the Assistant Chief Counsel, Enforcement; the Assistant Chief Counsel, Regulations; the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; each Regional Counsel; or the Aeronautical Center Counsel advises the certificate holder or management specifications holder of the charges or other reasons upon which the Administrator bases the proposed action and, except in an emergency, allows the holder to answer any charges and to be heard as to why the certificate should not be amended, suspended, or revoked, or in the case of management specifications, why the management specifications should not be suspended or revoked. The holder may, by checking the appropriate box on the form that is sent to the holder with the notice of proposed certificate action, elect to—

(i) Admit the charges and surrender his or her certificate or management specifications;

(ii) Answer the charges in writing;

(iii) Request that an order be issued in accordance with the notice of proposed certificate action or notice of proposed management specifications action so that the certificate holder may appeal to the National Transportation Safety Board, if the charges concerning a matter under Title VI of the FA Act;

(iv) Request an opportunity to be heard in an informal conference with the FAA counsel; or

(v) Request a hearing in accordance with Subpart D of this part if the charges concern a matter under Title V of the FA Act.

(2) Except as provided in § 13.35(b), unless the certificate holder or

management specifications holder returns the form and, where required, an answer or motion, with a postmark of not later than 15 days after the date of receipt of the notice, the order of the Administrator is issued as proposed. If the certificate holder or management specifications holder has requested an informal conference with the FAA counsel and the charges concern a matter under Title V of the FA Act, the holder may after that conference also request a formal hearing in writing with a postmark of not later than 10 days after the close of the conference. After considering any information submitted by the certificate holder or management specifications holder, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Regional Counsel concerned, or the Aeronautical Center Counsel (as to matters under Title V of the FA Act) issues the order of the Administrator, except that if the holder has made a valid request for a formal hearing on a matter under Title V of the FA Act initially or after an informal conference, Subpart D of this part governs further proceedings.

(e) Any person whose certificate or management specifications is affected by an order issued under this section may appeal to the National Transportation Safety Board. If the certificate holder or management specifications holder files an appeal with the Board, the Administrator's order is stayed unless the Administrator advises the Board that an emergency exists and safety in air commerce requires that the order become effective immediately. If the Board is so advised, the order remains effective and the Board shall finally dispose of the appeal within 60 days after the date of the advice. This paragraph does not apply to any person whose Certificate of Aircraft Registration is affected by an order issued under this section.

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

3. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

4. Amend § 61.57 by revising paragraph (e)(3) as follows:

Subpart A—General

§ 61.57(e) Exceptions.

* * * * *

(3) Paragraph (b) of this section does not apply to a pilot in command of a turbine-powered airplane that requires more than one pilot crewmember, provided that pilot has complied with the requirements of paragraph (e)(3)(i) or (ii) of this section:

(i) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) That pilot has accomplished and logged at least 3 takeoffs and 3 landings to a full stop, as the sole manipulator of the flight controls, in a turbine-powered airplane that requires more than one pilot crewmember. The pilot must have performed the takeoffs and landings during the period beginning 1 hour after sunset and ending 1 hour before sunrise within the preceding 6 calendar months prior to the month of the flight.

(ii) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) Within the preceding 12 calendar months prior to the month of the flight, the pilot must have completed a training program that is approved under part 142 of this chapter. The approved training program must have required and the pilot must have performed, at least 6 takeoffs and 6 landings to a full stop as the sole manipulator of the controls in a flight simulator that is representative of a turbine-powered airplane that requires more than one pilot crewmember. The flight simulator's visual system must have been adjusted to represent the period beginning 1 hour after sunset and ending 1 hour before sunrise.

PART 91—GENERAL OPERATING AND FLIGHT RULES

5. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

6. Amend § 91.415 by revising paragraphs (a) and (c) as follows:

Subpart E—Maintenance, Preventive Maintenance, and Alterations

§ 91.415 Changes to aircraft inspection programs.

(a) Whenever the Administrator finds that revisions to an approved aircraft inspection program under § 91.409(f)(4) or § 91.1109 are necessary for the continued adequacy of the program, the owner or operator shall, after notification by the Administrator, make any changes in the program found to be necessary by the Administrator.

* * * * *

(c) The petition must be filed with the Director, Flight Standards Service within 30 days after the certificate holder or fractional ownership program manager receives the notice.

* * * * *

Subpart F—Large and Turbine-Powered Multiengine Airplanes and Fractional Ownership Program Aircraft

7. Amend § 91.501 by revising paragraph (a), republishing the introductory text of paragraph (b) and adding paragraph (b)(10) to read as follows:

§ 91.501 Applicability.

(a) This subpart prescribes operating rules, in addition to those prescribed in other subparts of this part, governing the operation of large airplanes of U.S. registry, turbojet-powered multiengine civil airplanes of U.S. registry, and fractional ownership program aircraft of U.S. registry that are operating under subpart K of this part in operations not involving common carriage. The operating rules in this subpart do not apply to those aircraft when they are required to be operated under parts 121,

125, 129, 135, and 137 of this chapter. (Section 91.409 prescribes an inspection program for large and for turbine-powered (turbojet and turboprop) multiengine airplanes and turbine-powered rotorcraft of U.S. registry when they are operated under this part or part 129 or 137.)

(b) Operations that may be conducted under the rules in this subpart instead of those in parts 121, 129, 135, and 137 of this chapter when common carriage is not involved, include—

* * * * *

(10) Any operation identified in paragraphs (b)(1) through (b)(9) of this section when conducted—

(i) By a fractional ownership program manager, or

(ii) By a fractional owner in a fractional ownership program aircraft operated under subpart K of this part.

* * * * *

8. Amend § 91.509 by revising paragraphs (b) introductory text, (c), (d) and (e) and adding paragraph (f) to read as follows:

§ 91.509 Survival equipment for overwater operations.

* * * * *

(b) Except as provided in paragraph (c) of this section, no person may take off an airplane for flight over water more than 30 minutes flying time or 100 nautical miles from the nearest shore unless it has on board the following survival equipment:

* * * * *

(c) For a pressurized turbine-powered aircraft operating at an altitude greater than 25,000 feet, a person may elect not to comply with the equipment requirements in § 91.509(b)(2) through (5) of this part provided that the flight does not proceed more than 30 minutes or 100 nautical miles from the nearest shore, whichever is greater.

(d) The required liferafts, life preservers, and signaling devices must be installed in conspicuously marked locations and easily accessible in the event of a ditching without appreciable time for preparatory procedures.

(e) A survival kit, appropriately equipped for the route to be flown, must be attached to each required liferaft.

(f) As used in this section, the term shore means that area of the land adjacent to the water which is above the high water mark and excludes land areas which are intermittently under water.

9. Amend § 91.519 by adding paragraph (d) as follows:

§ 91.519 Passenger briefing.

* * * * *

(d) For operations under subpart K of this part, the passenger briefing requirements of § 91.1035 apply.

10. Add subpart K to part 91 of title 14 Code of Federal Regulations to read as follows:

Subpart K—Fractional Ownership Operations

Sec.

91.1001 Applicability.
91.1003 Management contract between owner and program manager.
91.1005 Owner's use of program aircraft.
91.1007 Advance notice of non-program aircraft substitution.
91.1009 Clarification of when owner is in operational control.
91.1011 Implications of owner being in operational control.
91.1013 Owner's understanding and acknowledgement of operational control responsibilities.
91.1014 Manager's responsibility for ensuring compliance.
91.1015 Management specifications.
91.1017 Amending program manager's management specifications.
91.1019 Conducting tests and inspections.
91.1021 Internal safety reporting.
91.1023 Program operating manual requirements.
91.1025 Program operating manual contents.
91.1027 Recordkeeping.
91.1029 Flight scheduling and locating requirements.
91.1031 Pilot in command or second in command: Designation required.
91.1033 Operating information required.
91.1035 Passenger awareness.
91.1037 Large transport category aircraft: Turbine engine powered; limitations; destination airports and alternate airports.
91.1039 IFR takeoff, approach and landing minimums.
91.1041 Aircraft proving tests.
91.1043 [Reserved].
91.1045 Additional equipment requirements.
91.1047 Drug and alcohol misuse program.
91.1049 Personnel.
91.1051 Pilot safety background check.
91.1053 Flight crew experience.
91.1055 Pilot operating limitations and pairing requirement.
91.1057 Flight, duty and rest time requirements.
91.1059 Flight time limitations and rest requirements: One or two pilot crews.
91.1061 Augmented flight crews.
91.1063 Testing and training: Applicability and terms used.
91.1065 Initial and recurrent pilot testing requirements.
91.1067 Initial and recurrent flight attendant crewmember testing requirements.
91.1069 Flight crew: Instrument proficiency check requirements.
91.1071 Crewmember: Tests and checks, grace provisions, training to accepted standards.
91.1073 Training program: General.
91.1075 Training program: Special rules.
91.1077 Training program and revision: Initial and final approval.
91.1079 Training program: Curriculum.
91.1081 Crewmember training requirements.
91.1083 Crewmember emergency training.
91.1085 Hazardous materials recognition training.
91.1087 Approval of aircraft simulators and other training devices.
91.1089 Qualifications: Check pilot (aircraft) and check pilot (simulator).
91.1091 Qualifications: Flight instructors (aircraft) and flight instructors (simulator).
91.1093 Initial and transition training and checking: Check pilot (aircraft), check pilot (simulator).
91.1095 Initial and transition training and checking: Flight instructors (aircraft), flight instructors (simulator).
91.1097 Pilot and flight attendant crewmember training programs.
91.1099 Crewmember initial and recurrent training requirements.
91.1101 Pilots: Initial, transition, and upgrade ground training.
91.1103 Pilots: Initial, transition, upgrade, and differences flight training.
91.1105 Flight attendants: Initial and transition ground training.
91.1107 Recurrent training.
91.1109 Aircraft maintenance: Inspection program.
91.1111 Maintenance training.
91.1113 Maintenance recordkeeping.
91.1115 Minimum equipment lists and letters of authorization.

§ 91.1001 Applicability.

(a) This subpart prescribes rules, in addition to those prescribed in other subparts of this part, governing—

(1) The operation of a fractional ownership program aircraft in a fractional ownership program; and

(2) The operation by a fractional owner of a program aircraft included in a fractional ownership program managed by an affiliate of the manager of the program to which the owner belongs.

(b) As used in this part—

(1) A *fractional ownership program or program* means any system of aircraft exchange involving two or more airworthy aircraft that consists of all of the following elements:

(i) The provision for fractional ownership program management services by a single fractional ownership program manager on behalf of the fractional owners;

(ii) One or more fractional owners per program aircraft, with at least one program aircraft having more than one owner;

(iii) Possession of at least a minimum fractional ownership interest in one or more program aircraft by each fractional owner;

(iv) A dry-lease aircraft exchange arrangement among all of the fractional owners; and

(v) Multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

(2) A *dry-lease aircraft exchange* means an arrangement, documented by the written program agreements, under which the program aircraft are available, on an as needed basis without crew, to each fractional owner.

(3) A *fractional ownership interest* means the ownership of an interest or holding of a multi-year leasehold interest and/or a multi-year leasehold interest that is convertible into an ownership interest in a program aircraft.

(4) A *minimum fractional ownership interest* means—

(i) A fractional ownership interest equal to, or greater than, one-sixteenth (1/16) of at least one subsonic, fixed-wing or powered-lift program aircraft; or

(ii) A fractional ownership interest equal to, or greater than, one-thirty-second (1/32) of at least one rotorcraft program aircraft.

(5) A *fractional owner* or *owner* means an individual or entity which possesses a minimum fractional ownership interest in a program aircraft and which has entered into the applicable program agreements; provided, however, that in the case of the flight operations described in paragraph (b)(6)(ii) of this section, and solely for purposes of requirements pertaining to those flight operations, the fractional owner operating the aircraft shall be deemed to be a fractional owner in the program managed by the affiliate.

(6) A *fractional ownership program aircraft* or *program aircraft* means:

(i) An aircraft in which a fractional owner has a minimal fractional ownership interest and which has been included in the dry-lease aircraft exchange pursuant to the program agreements, or

(ii) In the case of a fractional owner from one program operating an aircraft in a different fractional ownership program managed by an affiliate of the operating owner's program manager, the aircraft being operated by the fractional owner, so long as the aircraft is:

(A) Included in the fractional ownership program managed by the affiliate of the operating owner's program manager, and

(B) included in the operating owner's program's dry-lease aircraft exchange pursuant to the program agreements of the operating owner's program.

(7) *Fractional ownership program management services* or *program management services* mean administrative and aviation support services furnished in accordance with the applicable requirements of this subpart or offered by the program manager to the fractional owners, including, at a minimum, the establishment and implementation of program safety guidelines, and the coordination of the following:

(i) The scheduling of the program aircraft and crews;

(ii) Program aircraft maintenance;

(iii) Crew training for crews employed, furnished or contracted by the program manager or the fractional owner;

(iv) Satisfaction of recordkeeping requirements; and

(v) Development and use of a program operations manual and maintenance program manual.

(8) *A fractional ownership program manager* or *program manager* means the entity that offers fractional ownership program management services to fractional owners, and is designated in the multi-year program agreements referenced in paragraph (b)(1)(v) of this section to fulfill the requirements of this chapter applicable to the manager of the program containing the aircraft being flown. When a fractional owner is operating an aircraft in a fractional ownership program managed by an affiliate of the owner's program manager, the references in this subpart to the flight-related responsibilities of the program manager apply, with respect to that particular flight, to the affiliate of the owner's program manager rather than to the owner's program manager.

(9) *Affiliate of a program manager* means a manager which, directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, another program manager. The holding of at least forty percent (40%) of the equity and forty percent (40%) of the voting power of an entity shall be presumed to constitute control for purposes of determining an affiliation under this subpart.

§ 91.1003 Management contract between owner and program manager.

Each owner shall have a contract with the program manager that—

(a) Requires the program manager to ensure that the program conforms to all applicable requirements of this chapter.

(b) Provides the owner the right to inspect, or have a designee of the owner inspect, the records of the program manager pertaining to the operational safety of the program, including all program log books and maintenance records.

(c) Provides the owner the reasonable right to audit, or have a designee of the owner audit, the operational safety aspects of the program, including all program log books and maintenance records.

(d) Designates the program manager as the owner's agent solely to receive service of notices pertaining to the program that the FAA seeks to provide to owners and authorizes the FAA to send such notices to the program manager solely in its capacity as the agent of the owner for such service.

§ 91.1005 Owner's use of program aircraft.

(a) Except as provided in paragraph (b) of this section, no owner may engage in the carriage of persons or property as a common carrier for compensation or hire using program aircraft unless the owner possesses an appropriate FAA air carrier or operating certificate and appropriate economic authority from the Department of Transportation, and such operations are conducted under part 121 or 135 of this Title, as applicable.

(b) Notwithstanding any other requirement of this subpart, an owner may receive compensation as is permitted by § 91.321 or § 91.501 for the owner's operation of a program aircraft.

(c) During the term of the multi-year program agreements under which a fractional owner has obtained a minimum fractional ownership interest in a program aircraft, the flight hours used during that term by the owner on program aircraft shall not exceed the total hours associated with the fractional owner's share of ownership.

§ 91.1007 Advance notice of non-program aircraft substitution.

The program manager shall make an effort to notify a fractional owner prior to the flight when a non-program aircraft is substituted for a program aircraft for the use of the fractional owner. Notification shall include the name of the person providing the non-program aircraft.

§ 91.1009 Clarification of when owner is in operational control.

(a) The owner is in operational control of a program flight when the owner—

(1) Has the rights and is subject to the limitations set forth in §§ 91.1003 through 91.1013;

(2) Has directed that a program aircraft carry passengers or property designated by that owner; and

(3) The aircraft is carrying those passengers or property.

(b) The owner is not in operational control of a flight in the following circumstances:

(1) A program aircraft is used for a flight for administrative purposes such as demonstration, positioning, ferrying, maintenance, or crew training, and no passengers or property designated by such owner are being carried; or

(2) The aircraft being used for the flight is being operated under part 121 or 135 of this chapter.

§ 91.1011 Implications of owner being in operational control.

Each owner in operational control of a program flight shall be responsible for complying with all applicable requirements of this chapter, including those related to airworthiness and operations in connection with the flight. Each owner may delegate some or all of the performance of the tasks associated with carrying out this responsibility to the program manager, and may rely on the program manager for aviation expertise and program management services. When the owner delegates performance of tasks to the program manager or relies on the program manager's expertise, the owner and the program manager shall be responsible to the FAA for compliance.

§ 91.1013 Owner's understanding and acknowledgement of operational control responsibilities.

(a) Upon the signing of an initial program management services contract, or a renewal or extension of a program management services contract, the program manager shall brief the owner on the owner's operational control responsibilities, and the owner shall review and sign an acknowledgement of the fractional owner's operational control responsibilities. The acknowledgement shall be included with the program management services contract. The acknowledgement shall state that the owner is in operational control of the aircraft used and is aware of that person's operational control responsibilities in the program when the operation of a program aircraft for the owner will be conducted as a non-commercial operation under part 91.

(1) The acknowledgement also shall state that:

(i) The owner has responsibility for compliance with the management specifications and all applicable regulations;

(ii) The owner may be exposed to enforcement actions for any noncompliance; and

(iii) The owner may be exposed to significant liability risk in the event of a flight-related occurrence that causes personal injury or property damage.

(2) The owner's signature on the acknowledgement will serve as the owner's affirmation that the owner has read, understands, and accepts the operational control responsibilities described in the acknowledgement.

(b) Each program manager shall ensure that the owner and owner's representatives have access to the acknowledgements for such owner's program aircraft. Each program manager shall ensure that the FAA has access to the acknowledgements for all program aircraft.

§ 91.1014 Manager's responsibility for ensuring compliance.

The fractional ownership program manager shall ensure that its program management services are sufficient to ensure owner compliance with all applicable sections of this part in program operations where a fractional owner has operational control.

§ 91.1015 Management specifications.

(a) Each person conducting operations under this subpart or furnishing fractional ownership program management services to fractional owners shall do so in accordance with management specifications issued by the Administrator to the fractional ownership program manager under this subpart. Management specifications shall include:

(1) The current list of all fractional owners and types of aircraft, registration markings and serial numbers;

(2) The authorizations, limitations, and certain procedures under which these operations are to be conducted,

(3) Certain other procedures under which each class and size of aircraft is to be operated;

(4) Authorization for an inspection program approved under § 91.1109, including the type of aircraft, the registration markings and serial numbers of each aircraft to be operated under the program. No person may conduct any program operation using any aircraft not listed.

(5) Time limitations, or standards for determining time limitations, for overhauls, inspections, and checks for airframes, engines, propellers, rotors, appliances, and emergency equipment of aircraft.

(6) The specific location of the program manager's principal base of operations and, if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the program manager and the name and mailing address of the program manager's agent for service;

(7) Other business names the program manager may use;

(8) Authorization for the method of controlling weight and balance of aircraft;

(9) Any authorized deviation and exemption granted from any requirement of this chapter; and

(10) Any other information the Administrator determines is necessary.

(b) The program manager may keep the current list of all fractional owners required by paragraph (a)(1) of this section, at its principal base of operation or other location approved by the Administrator and referenced in its management specifications. Each program manager shall make this list of owners available for inspection by the Administrator.

(c) Management specifications issued under this subpart are effective unless—

(1) The management specifications are amended as provided in § 91.1017 of this part; or

(2) The Administrator suspends or revokes the management specifications, in which case, the provisions of § 13.19 shall apply.

(d) At least 30 days before it proposes to establish or change the location of its principal base of operations, its main operations base, or its main maintenance base, a program manager must provide written notification to the Flight Standards District Office which issued the program manager's management specifications.

(e) Each program manager shall maintain a complete and separate set of its management specifications at its principal base of operations, or at a place approved by the Administrator, and shall make its management specifications available for inspection by the Administrator and the fractional owner(s) to whom the program manager furnishes its services for review and audit.

(f) Each program manager shall insert pertinent excerpts of its management specifications, or references thereto, in its program manual and shall—

(1) Clearly identify each such excerpt as a part of its management specifications; and

(2) State that compliance with each management specifications requirement is mandatory.

(g) Each program manager shall keep each of its employees and other persons who perform duties material to its operations informed of the provisions of its management specifications that apply to that employee's or person's duties and responsibilities.

§ 91.1017 Amending program manager's management specifications.

(a) The Administrator may amend any management specifications issued under this subpart if—

(1) The Administrator determines that safety and the public interest require the amendment of any management specifications; or

(2) The program manager applies for the amendment of any management specifications, and the Administrator determines that safety and the public interest allows the amendment.

(b) Except as provided in paragraph (e) of this section, when the Administrator initiates an amendment of a program manager's management specifications, the following procedure applies:

(1) The Flight Standards District Office that issued the program manager's management specifications shall notify the program manager in writing of the proposed amendment.

(2) The Flight Standards District Office which issued the program manager's management specifications shall set a reasonable period (but not less than 7 days) within which the program manager may submit written information, views, and arguments on the amendment.

(3) After considering all material presented, the Flight Standards District Office that issued the program manager's management specifications shall notify the program manager of—

(i) The adoption of the proposed amendment,

(ii) The partial adoption of the proposed amendment, or

(iii) The withdrawal of the proposed amendment.

(4) If the Flight Standards District Office which issued the program manager's management specifications issues an amendment of the management specifications, it becomes effective not less than 30 days after the program manager receives notice of it unless—

(i) The Flight Standards District Office which issued the program manager's management specifications finds under paragraph (e) of this section that there is an emergency requiring immediate action with respect to safety; or

(ii) The program manager petitions for reconsideration of the amendment under paragraph (d) of this section.

(c) When the program manager applies for an amendment to its management specifications, the following procedure applies:

(1) The program manager must file an application to amend its management specifications—

(i) At least 90 days before the date proposed by the applicant for the amendment to become effective, unless a shorter time is approved, in cases of mergers; acquisitions of operational assets that require an additional showing of safety (e.g., proving tests); resumption of operations following a suspension of operations as a result of bankruptcy actions.

(ii) At least 15 days before the date proposed by the applicant for the amendment to become effective in all other cases.

(2) The application must be submitted to the Flight Standards District Office that issued the program manager's management specifications in a form and manner prescribed by the Administrator.

(3) After considering all material presented, the Flight Standards District Office that issued the program manager's management specifications shall notify the program manager of—

(i) The adoption of the applied for amendment;

(ii) The partial adoption of the applied for amendment; or

(iii) The denial of the applied for amendment. The program manager may petition for reconsideration of a denial under paragraph (d) of this section.

(4) If the Flight Standards District Office which issued the program manager's management specifications approves the amendment, following coordination with the program manager regarding its implementation, the amendment is effective on the date the Administrator approves it.

(d) When a program manager seeks reconsideration of a decision of the Flight Standards District Office that issued the program manager's management specifications concerning the amendment of management specifications, the following procedure applies:

(1) The program manager must petition for reconsideration of that decision within 30 days of the date that the program manager receives a notice of denial of the amendment of its management specifications, or of the date it receives notice of an FAA-initiated amendment of its management specifications, whichever circumstance applies.

(2) The program manager must address its petition to the Director, Flight Standards Service.

(3) A petition for reconsideration, if filed within the 30-day period, suspends the effectiveness of any amendment issued by the Flight Standards District Office which issued the program manager's management specifications unless that District Office has found, under paragraph (e) of this section, that an emergency exists requiring immediate action with respect to safety.

(4) If a petition for reconsideration is not filed within 30 days, the procedures of paragraph (c) of this section apply.

(e) If the Flight Standards District Office which issued the program manager's management specifications finds that an emergency exists requiring immediate action with respect to safety that makes the procedures set out in this section impracticable or contrary to the public interest—

(1) The District Office amends the management specifications and makes the amendment effective on the day the program manager receives notice of it; and

(2) In the notice to the program manager, the District Office shall articulate the reasons for its finding that an emergency exists requiring immediate action with respect to safety or that makes it impracticable or contrary to the public interest to stay the effectiveness of the amendment.

§ 91.1019 Conducting tests and inspections.

(a) At any time or place, the Administrator may conduct an inspection or test, other than enroute inspections, to determine whether a program manager under this subpart is complying with title 49 of the United States Code, applicable regulations, and the program manager's management specifications.

(b) The program manager must—

(1) Make available to the Administrator at the program manager's principal base of operations the program manager's management specifications; and

(2) Allow the Administrator to make any test or inspection, other than enroute inspections, to determine compliance respecting any matter stated in paragraph (a) of this section.

(c) Each employee of, or person used by, the program manager who is responsible for maintaining the program manager's records must make those records available to the Administrator.

(d) The Administrator may determine a program manager's continued eligibility to hold its management specifications on any grounds listed in paragraph (a) of this section, or any other appropriate grounds.

(e) Failure by any program manager to make available to the Administrator upon request, the management specifications, or any required record, document, or report is grounds for suspension of all or any part of the program manager's management specifications.

§ 91.1021 Internal safety reporting.

(a) Each program manager shall establish an internal anonymous safety reporting procedure that fosters an environment of safety without any potential for retribution.

(b) Each program manager shall establish procedures to respond to an aviation incident/accident.

§ 91.1023 Program operating manual requirements.

(a) Each program manager shall prepare and keep current a program operating manual setting forth procedures and policies acceptable to the Administrator. This manual shall be used by each program manager's management, flight, ground, and maintenance personnel in conducting its operations. However, the Administrator may authorize a deviation from this paragraph if the Administrator finds that, because of the limited size of the operation, part of the manual is not necessary for guidance of management, flight, ground, or maintenance personnel.

(b) Each program manager shall maintain at least one copy of the manual at its principal base of operations.

(c) No manual may be contrary to any applicable U.S. regulations, foreign regulations applicable to the program operations in foreign countries, or the program manager's management specifications.

(d) A copy of the manual, or appropriate portions of the manual (and changes and additions) shall be made available to maintenance and ground operations personnel by the program manager and furnished to—

(1) Its flight crewmembers; and

(2) Representatives of the Administrator assigned to the program manager.

(e) Each employee of the program manager to whom a manual or appropriate portions of it are furnished under paragraph (d)(1) of this section shall keep it up to date with the changes and additions furnished to them.

(f) Except as provided in paragraph (h) of this section, the appropriate parts of the manual shall be carried on each aircraft when away from the principal operations base. The appropriate parts must be available for use by ground or flight personnel.

(g) For the purpose of complying with paragraph (d) of this section, a program manager may furnish the persons listed therein with all or part of its manual in printed form or other form, acceptable to the Administrator, that is retrievable in the English language. If the program manager furnishes all or part of the manual in other than printed form, it shall ensure there is a compatible reading device available to those persons that provides a legible image of the maintenance information and instructions, or a system that is able to retrieve the maintenance information and instructions in the English language.

(h) If aircraft inspections or maintenance are conducted at specified stations where the approved inspection program operations manual is available, the program manager is not required to ensure that the program operating manual is carried aboard the aircraft enroute to those stations.

§ 91.1025 Program operating manual contents.

Each program operating manual must have the date of the last revision on each revised page. Unless otherwise authorized by the Administrator, the manual shall include the following:

(a) Procedures for ensuring compliance with aircraft weight and balance limitations;

(b) Copies of the program manager's management specifications or appropriate extracted information, including area of operations authorized, category and class of aircraft authorized, crew complements, and types of operations authorized;

(c) Procedures for complying with accident notification requirements;

(d) Procedures for ensuring that the pilot in command knows that required airworthiness inspections have been made and that the aircraft has been approved for return to service in compliance with applicable maintenance requirements;

(e) Procedures for reporting and recording mechanical irregularities that come to the attention of the pilot in command before, during, and after completion of a flight;

(f) Procedures to be followed by the pilot in command for determining that mechanical irregularities or defects reported for previous flights have been corrected or that correction of certain mechanical irregularities or defects have been deferred;

(g) Procedures to be followed by the pilot in command to obtain maintenance, preventive maintenance, and servicing of the aircraft at a place where previous arrangements have not been made by the program manager or owner, when the pilot is authorized to so act for the operator;

(h) Procedures under § 91.213 for the release of, and continuation of flight if any item of equipment required for the particular type of operation becomes inoperative or unserviceable en route;

(i) Procedures for refueling aircraft, eliminating fuel contamination, protecting from fire (including electrostatic protection), and supervising and protecting passengers during refueling;

(j) Procedures to be followed by the pilot in command in the briefing under § 91.1035.

(k) Procedures for ensuring compliance with emergency procedures, including a list of the functions assigned each category of required crewmembers in connection with an emergency and emergency evacuation duties;

(l) The approved aircraft inspection program, when applicable;

(m) Procedures for the evacuation of persons who may need the assistance of another person to move expeditiously to an exit if an emergency occurs;

(n) Procedures for performance planning that take into account take off, landing and enroute conditions;

(o) At the program manager's election for reduced runway operating length requirements under § 91.1037, an approved Destination Airport Analysis establishing procedures for establishing runway safety margins at destination airports beyond those otherwise permitted by § 91.1037, taking into account the following factors as supported by published aircraft performance data supplied by the aircraft manufacturer for the appropriate runway conditions—

(1) Pilot qualifications and experience;

(2) Aircraft performance data to include normal, abnormal and emergency procedures as supplied by the aircraft manufacturer;

(3) Airport facilities and topography;

(4) Runway conditions (including contamination);

(5) Airport or area weather reporting;

(6) Appropriate additional runway safety margins, if required; and

(7) Other criteria that affect aircraft performance.

(p) A suitable system (which may include a coded or electronic system) that provides for preservation and retrieval of maintenance recordkeeping information required by § 91.1113 in a manner acceptable to the Administrator that provides—

(1) A description (or reference to date acceptable to the Administrator) of the work performed:

(2) The name of the person performing the work if the work is performed by a person outside the organization of the program manager; and

(3) The name or other positive identification of the individual approving the work.

(q) Flight locating and scheduling procedures; and

(r) Other procedures and policy instructions regarding program operations that are issued by the program manager or required by the Administrator.

§ 91.1027 Recordkeeping.

(a) Each program manager shall keep at its principal business office or at other places approved by the Administrator, and shall make available for inspection by the Administrator the following:

(1) The program manager's management specifications;

(2) A current list of the aircraft used or available for use in operations under this subpart, the operations for which each is equipped (e.g., MNPS, RNP5/10, RVSM, etc.), and the owners of each aircraft;

(3) An individual record of each pilot used in operations under this subpart, including the following information:

(i) The full name of the pilot.

(ii) The pilot certificate (by type and number) and ratings that the pilot holds.

(iii) The pilot's aeronautical experience in sufficient detail to determine the pilot's qualifications to pilot aircraft in operations under this subpart.

(iv) The pilot's current duties and the date of the pilot's assignment to those duties.

(v) The effective date and class of the medical certificate that the pilot holds.

(vi) The date and result of each of the initial and recurrent competency tests and proficiency checks required by this subpart and the type of aircraft flown during that test or check.

(vii) The pilot's flight time in sufficient detail to determine compliance with the flight time limitations of this subpart.

(viii) The pilot's check pilot authorization, if any.

(ix) Any action taken concerning the pilot's release from employment for physical or professional disqualification.

(x) The date of the completion of the initial phase and each recurrent phase of the training required by this subpart; and

(4) An individual record for each flight attendant used in operations under this subpart, including the following information:

(i) The full name of the flight attendant, and

(ii) The date and result of training required by § 91.1063, as applicable.

(b) Each program manager must keep each record required by paragraph (a)(2) of this section for at least 6 months, and must keep each record required by paragraphs (a)(3) and (a)(4) of this section for at least 12 months. When an employee is no longer employed or affiliated with the program manager or fractional owner, each record required by paragraphs (a)(3) and (a)(4) of this section shall be retained for at least 12 months.

(c) Each program manager shall be responsible for the preparation and accuracy of a load manifest in duplicate containing information concerning the loading of the aircraft. The manifest shall be prepared before each takeoff and shall include—

(1) The number of passengers;

(2) The total weight of the loaded aircraft;

(3) The maximum allowable takeoff weight for that flight;

(4) The center of gravity limits;

(5) The center of gravity of the loaded aircraft, except that the actual center of gravity need not be computed if the aircraft is loaded according to a loading schedule or other approved method that ensures that the center of gravity of the loaded aircraft is within approved limits. In those cases, an entry shall be made on the manifest indicating that the center of gravity is within limits according to a loading schedule or other approved method;

(6) The registration number of the aircraft or flight number;

(7) The origin and destination; and

(8) Identification of crewmembers and their crew position assignments.

(d) The pilot in command of the aircraft for which a load manifest must be prepared shall carry a copy of the completed load manifest in the aircraft to its destination. The program manager shall keep copies of completed load manifest for at least 30 days at its principal operations base, or at another location used by it and approved by the Administrator.

(e) Each program manager shall be responsible for providing a written document that states the name of the entity having operational control on that flight and the part of this chapter under which the flight is operated. The pilot in command of the aircraft shall carry a copy of the document in the aircraft to its destination. The program manager shall keep a copy of the document for at least 30 days at its principal operations base, or at another location used by it and approved by the Administrator.

(f) Records may be kept either in paper or other form acceptable to the Administrator.

(g) Program managers that are also certificated to operate under part 121 or 135 may satisfy the recordkeeping requirements of this section and of § 91.1113 with records maintained to fulfil equivalent obligations under part 121 or 135.

§ 91.1029 Flight scheduling and locating requirements.

(a) Each program manager shall establish and use a system to schedule and release program aircraft.

(b) Except as provided in paragraph (d) of this section, each program manager shall have procedures established for locating each flight, for which a flight plan is not filed, that—

(1) Provide the program manager with at least the information required to be included in a VFR flight plan;

(2) Provide for timely notification of an FAA facility or search and rescue facility, if an aircraft is overdue or missing; and

(3) Provide the program manager with the location, date, and estimated time for reestablishing radio or telephone communications, if the flight will operate in an area where communications cannot be maintained.

(c) Flight locating information shall be retained at the program manager's principal base of operations, or at other places designated by the program manager in the flight locating procedures, until the completion of the flight.

(d) The flight locating requirements of paragraph (b) of this section shall not apply to a flight for which a FAA flight plan has been filed and the flight plan is canceled within 25 nautical miles of the destination airport.

§ 91.1031 Pilot in command or second in command: Designation required.

(a) Each program manager shall designate a—

(1) Pilot in command for each program flight; and

(2) Second in command for each program flight requiring two pilots.

(b) The pilot in command, as designated by the program manager, shall remain the pilot in command at all times during that flight.

§ 91.1033 Operating information required.

(a) Each program manager shall, for all program operations, provide the following materials, in current and appropriate form, accessible to the pilot at the pilot station, and the pilot shall use them—

(1) A cockpit checklist;

(2) For multiengine aircraft or for aircraft with retractable landing gear, an emergency cockpit checklist containing the procedures required by paragraph (c) of this section, as appropriate;

(3) At least one set of pertinent aeronautical charts; and

(4) For IFR operations, at least one set of pertinent navigational enroute, terminal area, and approach and letdown charts.

(b) Each cockpit checklist required by paragraph (a)(1) of this section shall contain the following procedures:

(1) Before starting engines;

(2) Before takeoff;

(3) Cruise;
(4) Before landing;
(5) After landing; and
(6) Stopping engines.

(c) Each emergency cockpit checklist required by paragraph (a)(2) of this section must contain the following procedures, as appropriate:

(1) Emergency operation of fuel, hydraulic, electrical, and mechanical systems.

(2) Emergency operation of instruments and controls.

(3) Engine inoperative procedures.

(4) Any other emergency procedures necessary for safety.

§ 91.1035 Passenger awareness.

(a) Prior to each takeoff the pilot in command of an aircraft carrying passengers on a program flight, shall ensure that all passengers have been orally briefed on—

(1) Smoking: Each passenger shall be briefed on when, where, and under what conditions smoking is prohibited. This briefing shall include a statement, as appropriate, that the regulations require passenger compliance with lighted passenger information signs and no smoking placards, prohibit smoking in lavatories, and require compliance with crewmember instructions with regard to these items;

(2) Use of safety belts, shoulder harnesses, and child restraint systems: Each passenger shall be briefed on when, where and under what conditions it is necessary to have his or her safety belt and, if installed, his or her shoulder harness fastened about him or her, and if a child is being transported, the appropriate use of child restraint systems, if available. This briefing shall include a statement, as appropriate, that the regulations require passenger compliance with the lighted passenger information sign and/or crewmember instructions with regard to these items;

(3) The placement of seat backs in an upright position before takeoff and landing;

(4) Location and means for opening the passenger entry door and emergency exits;

(5) Location of survival equipment;

(6) Ditching procedures and the use of flotation equipment required under § 91.509 for a flight over water;

(7) The normal and emergency use of oxygen installed in the aircraft; and

(8) Location and operation of fire extinguishers.

(b) Prior to each takeoff, the pilot in command of an aircraft carrying passengers on a program flight shall ensure that each person who may need the assistance of another person to move expeditiously to an exit if an emergency occurs and that person's attendant, if any, has received a briefing as to the procedures to be followed if an evacuation occurs. This paragraph does not apply to a person who has been given a briefing before a previous leg of a flight in the same aircraft.

(c) Prior to each takeoff, the pilot in command shall advise the passengers of the name of the entity in operational control of the flight and whether the flight is conducted as a program flight or a commercial operation under part 121 or 135 of the regulations.

(d) The oral briefing required by paragraphs (a), (b), and (c) of this section shall be given by the pilot in command or another crewmember.

(e) The oral briefing required by paragraph (a) of this section may be delivered by means of an approved recording playback device that is audible to each passenger under normal noise levels.

(f) The oral briefing required by paragraph (a) of this section shall be supplemented by printed cards that must be carried in the aircraft in locations convenient for the use of each passenger. The cards shall—

(1) Be appropriate for the aircraft on which they are to be used;

(2) Contain a diagram of, and method of operating, the emergency exits; and

(3) Contain other instructions necessary for the use of emergency equipment on board the aircraft.

(g) The briefing required by paragraphs (a), (b) and (c) of this section do not apply if passengers have been briefed before a previous leg of a flight in the same aircraft.

§ 91.1037 Large transport category airplanes: Turbine engine powered; Limitations; Destination and alternate airports.

(a) No program manager or any other person may permit a turbine engine powered large transport category airplane on a program flight to take off at a weight at which (allowing for normal consumption of fuel and oil in flight to the destination or alternate airport) the weight of the airplane on arrival would exceed the landing weight in the Airplane Flight Manual for the elevation of the destination or alternate airport and the ambient temperature anticipated at the time of landing.

(b) Except as provided in paragraph (c) of this section, no program manager or any other person may permit a turbine engine powered large transport category airplane on a program flight to take off unless, its weight on arrival, allowing for normal consumption of fuel and oil in flight (in accordance with the landing distance in the Airplane Flight Manual for the elevation of the destination airport and the wind conditions anticipated there at the time of landing), would allow a full stop landing at the intended destination airport within 85 percent of the effective length of each runway described below from a point 50 feet above the intersection of the obstruction clearance plane and the runway. For the purpose of determining the allowable landing weight at the destination airport, the following is assumed:

(1) The airplane is landed on the most favorable runway and in the most favorable direction, in still air.

(2) The airplane is landed on the most suitable runway considering the probable wind velocity and direction and the ground handling characteristics of that airplane, and considering other conditions such as landing aids and terrain.

(c) A program manager or other person flying a turbine engine powered large transport category airplane on a program flight may permit that airplane to take off at a weight in excess of that allowed by the runway margin in paragraph (b) of this section if such operation is permitted by an approved Destination Airport Analysis in that person's program operating manual and an alternate airport meeting the criteria of paragraph (d) of this section is selected.

(d) A program manager or other person may select an airport as an alternate airport for a turbine engine powered large transport category airplane if (based on the assumptions in paragraph (b) of this section) that airplane, at the weight anticipated at the time of arrival, can be brought to a full stop landing within 85 percent of the effective length of the runway from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

(e) Unless, based on a showing of actual operating landing techniques on wet runways, a shorter landing distance (but never less than that required by paragraph (b) of this section) has been approved for a specific type and model airplane and included in the Airplane Flight Manual, no person may take off a turbojet airplane when the appropriate weather reports or forecasts, or any combination of them, indicate that the runways at the destination or alternate airport may be wet or slippery at the estimated time of arrival unless the effective runway length at the destination airport is at least 115 percent of the runway length required under paragraph (b) of this section.

§ 91.1039 IFR takeoff, approach and landing minimums.

(a) No pilot on a program aircraft operating a program flight may begin an instrument approach procedure to an airport unless—

(1) Either that airport or the alternate airport has a weather reporting facility operated by the U.S. National Weather Service, a source approved by the U.S. National Weather Service, or a source approved by the Administrator; and

(2) The latest weather report issued by the weather reporting facility includes a current local altimeter setting for the destination airport. If no local altimeter setting is available at the destination airport, the pilot may use the current alternate altimeter setting provided by the facility designated on the approach chart for the destination airport.

(b) For flight planning purposes, if the destination airport does not have a weather reporting facility described in paragraph (a)(1) of this section, the pilot must designate as an alternate an airport that has a weather reporting facility meeting that criteria.

(c) The MDA or DH and visibility landing minimums prescribed in part 97 of this chapter or in the program manager's management specifications are increased by 100 feet and ½ mile respectively, but not to exceed the ceiling and visibility minimums for that airport when used as an alternate airport, for each pilot in command of a turbine-powered aircraft who has not served at least 100 hours as pilot in command in that type of aircraft.

(d) No person may take off an aircraft under IFR from an airport where weather conditions are at or above takeoff minimums but are below authorized IFR landing minimums unless there is an alternate airport within one (1) hour's flying time (at normal cruising speed, in still air) of the airport of departure.

(e) Each pilot making an IFR takeoff or approach and landing at an airport shall comply with applicable instrument approach procedures and take off and landing weather minimums prescribed by the authority having jurisdiction over the airport. In addition, no pilot may, at that airport take off when the visibility is less than 600 feet in the latest weather report issued by a weather reporting facility operated by the U.S. National Weather Service, a source approved by the U.S. National Weather Service, or a source approved by the Administrator, or, in the absence of such a weather reporting facility, as determined by the pilot in command, and the pilot in command shall have ensured that this visibility is maintainable for the entire length of the runway.

§ 91.1041 Aircraft proving tests.

(a) No program manager may permit the operation of an aircraft for which two pilots are required by the type certification requirements of this chapter for operations under VFR, if it has not previously proved such an aircraft in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of enroute airports as determined by the Administrator.

(b) No program manager may permit the operation of a turbojet airplane if it has not previously proved the same or another turbojet airplane in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of enroute airports as determined by the Administrator.

(c) No program manager may carry passengers in an aircraft during proving tests, except those needed to make the tests and those designated by the Administrator to observe the tests. However, pilot flight training may be conducted during the proving tests.

(d) The Administrator may authorize deviations from this section if the Administrator finds that special circumstances make full compliance with this section unnecessary.

§ 91.1043 [Reserved]

§ 91.1045 Additional equipment requirements.

No person may operate a program aircraft on a program flight unless the aircraft is equipped with the following—

(a) A cockpit voice recorder conforming to § 121.359 or § 135.151 of this chapter as applicable to the aircraft specified therein.

(b) A flight recorder conforming to § 121.343, § 121.344 or § 135.152 of this chapter as applicable to the aircraft specified therein.

(c) A ground proximity warning system conforming to § 121.360 or § 135.153 of this chapter as applicable to the aircraft specified therein.

(d) A terrain awareness and warning system conforming to § 121.354 or § 135.154 of this chapter as applicable to the aircraft specified therein.

(e) A traffic alert and collision avoidance system conforming to § 121.356 or § 135.180 of this chapter as applicable to the aircraft specified therein.

(f) Either:

(1) Airborne thunderstorm detection equipment conforming to § 135.173 of this chapter as applicable to the aircraft specified in that section; or

(2) Airborne weather radar conforming to § 121.357 or § 135.175 of this chapter as applicable to the aircraft specified in that section.

§ 91.1047 Drug and alcohol misuse program.

(a) Each program manager shall provide each direct employee performing flight crew member, flight attendant, flight instructor, or aircraft maintenance duties with drug and alcohol misuse education.

(b) No program manager may use any contract employee to perform flight crew member, flight attendant, flight instructor, or aircraft maintenance duties for the program manager unless that contract employee has been provided with drug and alcohol misuse education.

(c) Program managers shall disclose to their owners and prospective owners the existence or absence of a drug and alcohol misuse education program and/or a company testing program. If the program manager has implemented a testing program, the program manager's disclosure shall include the following:

(1) Information on the substances that they test for, e.g., alcohol and a list of the drugs;

(2) The persons tested, the types of tests, e.g., pre-employment, random, reasonable cause/suspicion, post accident, return to duty and follow-up; and

(3) The degree to which the program manager's company testing program is consistent with or not consistent with the federally mandated drug and alcohol misuse prevention program on these points.

(d) If a program aircraft is operated on a program flight into an airport at which no maintenance personnel are available that are subject to the requirements of paragraphs (a) or (b) of this section and emergency maintenance is required, the program manager may use persons not meeting the requirements of paragraphs (a) or (b) of this section to provide such emergency maintenance. A program

manager shall notify the Drug Abatement Program Division, AAM–800, 800 Independence Avenue, SW., Washington, DC 20591 in writing within 10 days after being provided emergency maintenance in accordance with this paragraph. A program manager shall retain copies of all such written notifications for two years.

(e) For purposes of this section, emergency maintenance means maintenance which—

(1) is not scheduled, and

(2) is made necessary by an aircraft condition not discovered prior to the departure for that location.

(f) Notwithstanding paragraphs (a) and (b) of this section, drug and alcohol misuse education conducted under an FAA-approved drug and alcohol misuse prevention program may be used to satisfy these requirements.

§ 91.1049 Personnel.

(a) Each program manager and each fractional owner shall use in program operations on program aircraft flight crews meeting § 91.1053 criteria and qualified under the appropriate regulations. The program manager shall provide oversight of those crews.

(b) Unless otherwise authorized by the Administrator, each program manager shall employ at least three (3) pilots per program aircraft. Additional flight crew staffing shall be determined based on the following factors, at a minimum:

(1) Number of program aircraft.

(2) Program manager flight, duty, and rest time considerations, and in all cases within the limits set forth in §§ 91.1057 through 91.1061 of this part.

(3) Vacations.

(4) Operational efficiencies.

(5) Training.

(c) Each program manager shall publish pilot and flight attendant duty schedules sufficiently in advance to follow the flight, duty, and rest time limits in §§ 91.1057 through 91.1061 of this part in program operations.

(d) Unless otherwise authorized by the Administrator, when any program aircraft is flown in program operations with passengers onboard, the crew shall consist of at least two (2) qualified pilots employed or contracted by the program manager or the fractional owner.

(e) The program manager shall ensure that trained and qualified scheduling or flight release personnel are on duty to schedule and release program aircraft during all hours that such aircraft are available for program operations.

§ 91.1051 Pilot safety background check.

Within 90 days of an individual beginning service as a pilot, the program manager shall request the following information:

(a) FAA records pertaining to—

(1) Current pilot certificates and associated type ratings.

(2) Current medical certificates.

(3) Summaries of legal enforcement actions resulting in a finding by the Administrator of a violation.

(b) Records from all previous employers during the five years preceding the date of the employment application where the applicant worked as a pilot. If any of these firms are in bankruptcy, the records shall be requested from the trustees in bankruptcy for those employees. If the previous employer is no longer in business, a documented good faith effort shall be made to obtain the records. Records from previous employers shall include, as applicable—

(1) Crew member records.

(2) Drug testing—collection, testing, and rehabilitation records pertaining to the individual.

(3) Alcohol misuse prevention program records pertaining to the individual.

(4) The applicant's individual record that includes certifications, ratings, aeronautical experience, effective date and class of the medical certificate, etc.

(c) Motor vehicle driving record of the pilot candidate from the National Driver Register (NDR) database from the chief driver licensing official of the state.

§ 91.1053 Flight crew experience.

(a) No program manager or owner may use any person, nor may any person serve, as a pilot in command or second in command of a program aircraft, or as a flight attendant on a program aircraft, in program operations under this subpart unless that person has met the applicable requirements of part 61 of this chapter and has the following experience and ratings:

(1) Total flight time for all pilots:

(i) Pilot in command—A minimum of 1,500 hours.

(ii) Second in command—A minimum of 500 hours.

(2) For multi-engine turbine-powered fixed-wing and powered-lift aircraft, the following FAA certification and ratings requirements:

(i) Pilot in command—Airline transport pilot and applicable type ratings

(ii) Second in command—Commercial pilot and instrument ratings

(iii) Flight attendant (if required or used)—Appropriately trained personnel

(3) For all other aircraft, the following FAA certification and rating requirements:

(i) Pilot in command—Commercial pilot and instrument ratings

(ii) Second in command—Commercial pilot and instrument ratings

(iii) Flight attendant (if required or used)—appropriately trained personnel

(b) The Administrator may authorize deviations from paragraph (a) of this section if the Flight Standards District Office which issued the program manager's management specifications finds that the crewmember has comparable experience, and can effectively perform the functions associated with the position in accordance with the requirements of this chapter. Grants of deviation under this paragraph may be granted after consideration of the size and scope of the operation, the qualifications of the intended personnel and the circumstances set forth in § 91.1055(b)(1)–(3). The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph.

§ 91.1055 Pilot operating limitations and pairing requirement.

(a) If the second in command of a fixed-wing program aircraft has fewer than 100 hours of flight time as second in command flying for the program manager in the type aircraft being flown, and the pilot in command is not an appropriately qualified check pilot, the pilot in command shall make all takeoffs and landings in any of the following situations:

(1) The prevailing visibility for the airport is at or below ¾ mile.

(2) The runway visual range for the runway to be used is at or below 4,000 feet.

(3) The runway to be used has water, snow, slush or similar contamination that may adversely affect aircraft performance.

(4) The braking action on the runway to be used is reported to be less than "good."

(5) The crosswind component for the runway to be used is in excess of 15 knots.

(6) Windshear is reported in the vicinity of the airport.

(7) Any other condition in which the pilot in command determines it to be prudent to exercise the pilot in command's authority.

(b) No program manager may release a program flight under this subpart unless, for that type aircraft, either the pilot in command or the second in command has at least 75 hours of program flight time, either as pilot in command or second in command. The Administrator may, upon application by the program manager, authorize deviations from the requirements of this paragraph by an appropriate

amendment to the management specifications in any of the following circumstances:

(1) A newly authorized program manager does not employ any pilots who meet the minimum requirements of this paragraph.

(2) An existing program manager adds to its fleet a new category and class aircraft not used before in its operation.

(3) An existing program manager establishes a new base to which it assigns pilots who will be required to become qualified on the aircraft operated from that base.

(c) No flight crew may be assigned in any capacity in a program operation to more than two (2) aircraft types that require a separate type rating.

§ 91.1057 Flight, duty and rest time requirements.

(a) For purposes of this subpart—

Augmented flight crew means at least three (3) pilots.

Calendar day means the period of elapsed time, using Coordinated Universal Time or local time that begins at midnight and ends 24 hours later at the next midnight.

Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the program manager. The time is calculated using either Coordinated Universal Time or local time to reflect the total elapsed time.

Extension of normal duty means an increase in the period of duty due to circumstances beyond the control of the program manager or flight crewmember (such as adverse weather) that are not known at the time of departure and that prevent the flightcrew from reaching the destination within the planned flight time.

Multi-time zone flight means a continuous east or west flight crossing five (5) or more time zones that is not north of 60 degrees north latitude or south of 60 degrees south latitude.

Planned expanded duty means the planned maximum flight and duty time and minimum rest time that may be scheduled for long-range aircraft capable of exceeding 10 hours of flight unless the flightcrew is augmented by a third pilot.

Reserve status means that status in which a flight crew member, by arrangement with the program manager: Holds himself or herself fit to fly to the extent that this is within the control of the flight crew member; remains within a reasonable response time of the aircraft as agreed between the flight crew member and the program manager; and maintains a ready means whereby the flight crew member may be contacted by the program manager. Reserve status is not part of any duty period. A flight crew member on reserve status who is called to duty may perform a normal duty period under § 91.1059 or § 91.1061 if, following the flight crew member's last duty period, the flight crew member received the minimum rest before duty required by § 91.1059 or § 91.1061, respectively, before entering reserve status.

Rest period means a period of time required pursuant to this subpart that is free of all responsibility for work or duty prior to the commencement of, or following completion of, a duty period, and during which the flight crew member cannot be required to receive contact from the program manager for purposes of program operations.

Standby means that portion of a duty period during which a flight crew member is subject to the control of the program manager and holds himself or herself in a condition of readiness to undertake a flight.

(b) A program manager may assign a flight crewmember and a flight crewmember may accept an assignment for program flight time only when the applicable requirements of this section are met.

(c) No program manager may assign any flight crewmember to any program duty during any required rest period.

(d) Time spent in transportation, not local in character, that a program manager requires of a flight crewmember and provides to transport the crewmember to an airport at which he is to serve on a flight as a crewmember, or from an airport at which he was relieved from duty to return to his home station, is not considered part of a rest period.

(e) A flight crewmember may continue a flight assignment if the flights to which he is assigned normally terminate within the limitations, but due to circumstances beyond the control of the program manager or flight crewmember (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the planned flight time.

(f) Each flight assignment shall provide for at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the assignment.

(g) The program manager shall provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours each in each calendar quarter.

(h) Any extension of planned duty or flight time shall be approved by the program manager with the concurrence of the flight crew but in no event may exceed the maximum time limits set forth in §§ 91.1059 and 91.1061 of this part, as applicable.

(i) A flight crew member on standby status may decline to undertake flight activities if, in the flight crew member's determination, to do so would not be consistent with the standard of safe operation required under this subpart, this part, and applicable provisions of this title.

§ 91.1059 Flight time limitations and rest requirements: One or two pilot crews.

(a) No program manager may assign any flight crewmember, and no flight crewmember may accept an assignment, for flight time as a member of a one- or two-pilot crew if that crewmember's total flight time in all commercial flying will exceed—

(1) 500 hours in any calendar quarter;

(2) 800 hours in any two consecutive calendar quarters; or

(3) 1,400 hours in any calendar year.

(b) Except as provided in paragraph (c) of this section, during any 24 consecutive hours the total flight time of the assigned flight, when added to any commercial flying by that flight crewmember, may not exceed—

(1) 8 hours for a flight crew consisting of one pilot; or (2) 10 hours for a flight crew consisting of two pilots qualified under this subpart for the operation being conducted.

(c) No program manager may assign any flight crewmember, and no flight crewmember may accept an assignment, if that crewmember's flight time or duty time will exceed, or rest time will be less than—

	Normal duty	Extension of normal duty	Planned expanded duty
(1) Minimum Rest Before Duty	10 Hours	10 Hours	10 Hours.
(2) Duty Time	Up to 14 Hours	Exceeding 14 Hours up to 16 Hours.	Exceeding 14 Hours up to 16 Hours.
(3) Flight Time	Up to 10 Hours	Exceeding 10 Hours up to 12 Hours.	Up to 12 Hours.

	Normal duty	Extension of normal duty	Planned expanded duty
(4) Minimum After Duty Rest	10 Hours	12 Hours	Equal to Duty Time but never less than 10 Hours.
(5) Minimum After Duty Rest Period for Multi-Time Zone Flights.	14 Hours	18 Hours	24 Hours.

§ 91.1061 Augmented flight crews.

No program manager may assign any flight crewmember, and no flight crewmember may accept an assignment, if that crewmember's flight time or duty time will exceed, or rest time will be less than—

	Normal duty	Planned expanded duty
(a) Minimum Rest Before Duty	10 Hours	10 Hours.
(b) Duty Time	14 Hours–16 Hours	16 Hours–18 Hours.
(c) Flight Time	Up to 12 Hours	Up to 16 Hours.
(d) Minimum After Duty Rest	12 Hours	18 Hours.
(e) Minimum After Duty Rest Period for Multi-Time Zone Flights.	18 hours	24 hours.

§ 91.1063 Testing and training: Applicability and terms used.

(a) Sections 91.1065 through 91.1107 of this part:

(1) Prescribe the tests and checks required for pilots and flight attendant crewmembers and for the approval of check pilots in operations under this subpart;

(2) Prescribe the requirements for establishing and maintaining an approved training program for crewmembers, check pilot and instructors, and other operations personnel employed or used by the program manager in program operations;

(3) Prescribe the requirements for the qualification, approval and use of aircraft simulators and flight training devices in the conduct of an approved training program; and

(4) Permits training center personnel authorized under part 142 of this chapter who meet the requirements of § 91.1075 to conduct training, testing and checking under contract or other arrangements to those persons subject to the requirements of this subpart.

(b) If authorized by the Administrator, a program manager may comply with the applicable sections of subparts N and O of part 121 instead of §§ 91.1065 through 1107, except for the operating experience requirements of § 121.434 of this chapter.

(c) If authorized by the Administrator, a program manager may use the applicable training and testing requirements of subparts G and H of part 135 or the applicable sections of subparts N and O of part 121 to meet the training and testing requirements of this subpart.

(d) For the purposes of this subpart, the following terms and definitions apply:

(1) *Initial training.* The training required for crewmembers who have not qualified and served in the same capacity on an aircraft.

(2) *Transition training.* The training required for crewmembers who have qualified and served in the same capacity on another aircraft.

(3) *Upgrade training.* The training required for crewmembers who have qualified and served as second in command on a particular aircraft type, before they serve as pilot in command on that aircraft.

(4) *Differences training.* The training required for crewmembers who have qualified and served on a particular type aircraft, when the Administrator finds differences training is necessary before a crewmember serves in the same capacity on a particular variation of that aircraft.

(5) *Recurrent training.* The training required for crewmembers to remain adequately trained and currently proficient for each aircraft crewmember position, and type of operation in which the crewmember serves.

(6) *In flight.* The maneuvers, procedures, or functions that shall be conducted in the aircraft.

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that conducts training, testing, and checking under contract or other arrangement to program managers subject to the requirements of this subpart.

(8) *Requalification training.* The training required for crewmembers previously trained and qualified, but who have become unqualified due to not having met within the required period the—

(i) Recurrent pilot testing requirements of § 91.1107;

(ii) Instrument proficiency check requirements of § 91.1069.

§ 91.1065 Initial and recurrent pilot testing requirements.

(a) No program manager or owner may use a pilot, nor may any person serve as a pilot, unless, since the beginning of the 12th calendar month before that service, that pilot has passed a written or oral test, given by the Administrator or an authorized check pilot, on that pilot's knowledge in the following areas—

(1) The appropriate provisions of parts 61 and 91 of this chapter and the management specifications and the operating manual of the program manager;

(2) For each type of aircraft to be flown by the pilot, the aircraft powerplant, major components and systems, major appliances, performance and operating limitations, standard and emergency operating procedures, and the contents of the accepted operating manual or equivalent, as applicable;

(3) For each type of aircraft to be flown by the pilot, the method of determining compliance with weight and balance limitations for takeoff, landing and enroute operations;

(4) Navigation and use of air navigation aids appropriate to the operation or pilot authorization, including, when applicable, instrument approach facilities and procedures;

(5) Air traffic control procedures, including IFR procedures when applicable;

(6) Meteorology in general, including the principles of frontal systems, icing, fog, thunderstorms, and windshear, and, if appropriate for the operation of the program manager, high altitude weather;

(7) Procedures for—

(i) Recognizing and avoiding severe weather situations;

(ii) Escaping from severe weather situations, in case of inadvertent encounters, including low-altitude windshear (except that rotorcraft aircraft pilots are not required to be tested on escaping from low-altitude windshear); and

(iii) Operating in or near thunderstorms (including best penetration altitudes), turbulent air (including clear air turbulence), icing, hail, and other potentially hazardous meteorological conditions; and

(8) New equipment, procedures, or techniques, as appropriate.

(b) No program manager or owner may use a pilot, nor may any person serve as a pilot, in any aircraft unless, since the beginning of the 12th calendar month before that service, that pilot has passed a competency check given by the Administrator or an authorized check pilot in that class of aircraft, if single-engine aircraft other than turbojet, or that type of aircraft, if rotorcraft, multiengine aircraft, or turbojet airplane, to determine the pilot's competence in practical skills and techniques in that aircraft or class of aircraft. The extent of the competency check shall be determined by the Administrator or authorized check pilot conducting the competency check. The competency check may include any of the maneuvers and procedures currently required for the original issuance of the particular pilot certificate required for the operations authorized and appropriate to the category, class and type of aircraft involved. For the purposes of this paragraph, type, as to an airplane, means any one of a group of airplanes determined by the Administrator to have a similar means of propulsion, the same manufacturer, and no significantly different handling or flight characteristics. For the purposes of this paragraph, type, as to a rotorcraft, means a basic make and model.

(c) The instrument proficiency check required by § 91.1069 may be substituted for the competency check required by this section for the type of aircraft used in the check.

(d) For the purpose of this subpart, competent performance of a procedure or maneuver by a person to be used as a pilot requires that the pilot be the obvious master of the aircraft, with the successful outcome of the maneuver never in doubt.

(e) The Administrator or authorized check pilot certifies the competency of each pilot who passes the knowledge or flight check in the program manager's pilot records.

(f) All or portions of a required competency check may be given in an aircraft simulator or other appropriate training device, if approved by the Administrator.

§ 91.1067 Initial and recurrent flight attendant crewmember testing requirements.

No program manager or owner may use a flight attendant crewmember, nor may any person serve as a flight attendant crewmember unless, since the beginning of the 12th calendar month before that service, the program manager has determined by appropriate initial and recurrent testing that the person is knowledgeable and competent in the following areas as appropriate to assigned duties and responsibilities—

(a) Authority of the pilot in command;

(b) Passenger handling, including procedures to be followed in handling deranged persons or other persons whose conduct might jeopardize safety;

(c) Crewmember assignments, functions, and responsibilities during ditching and evacuation of persons who may need the assistance of another person to move expeditiously to an exit in an emergency;

(d) Briefing of passengers;

(e) Location and operation of portable fire extinguishers and other items of emergency equipment;

(f) Proper use of cabin equipment and controls;

(g) Location and operation of passenger oxygen equipment;

(h) Location and operation of all normal and emergency exits, including evacuation chutes and escape ropes; and

(i) Seating of persons who may need assistance of another person to move rapidly to an exit in an emergency as prescribed by the program manager's operations manual.

§ 91.1069 Flight crew: Instrument proficiency check requirements.

(a) No program manager or owner may use a pilot, nor may any person serve, as a pilot in command of an aircraft under IFR unless, since the beginning of the 6th calendar month before that service, that pilot has passed an instrument proficiency check under this section administered by the Administrator or an authorized check pilot.

(b) No program manager or owner may use a pilot, nor may any person serve, as a second command pilot of an aircraft under IFR unless, since the beginning of the 12th calendar month before that service, that pilot has passed an instrument proficiency check under this section administered by the Administrator or an authorized check pilot.

(c) No pilot may use any type of precision instrument approach procedure under IFR unless, since the beginning of the 6th calendar month before that use, the pilot satisfactorily demonstrated that type of approach procedure. No pilot may use any type of nonprecision approach procedure under IFR unless, since the beginning of the 6th calendar month before that use, the pilot has satisfactorily demonstrated either that type of approach procedure or any other two different types of nonprecision approach procedures. The instrument approach procedure or procedures shall include at least one straight-in approach, one circling approach, and one missed approach. Each type of approach procedure demonstrated shall be conducted to published minimums for that procedure.

(d) The instrument proficiency checks required by paragraphs (a) and (b) of this section consists of an oral or written equipment test and a flight check under simulated or actual IFR conditions. The equipment test includes questions on emergency procedures, engine operation, fuel and lubrication systems, power settings, stall speeds, best engine-out speed, propeller and supercharger operations, and hydraulic, mechanical, and electrical systems, as appropriate. The flight check includes navigation by instruments, recovery from simulated emergencies, and standard instrument approaches involving navigational facilities which that pilot is to be authorized to use.

(e) Each pilot taking the instrument proficiency check shall show that standard of competence required by § 91.1065(d).

(1) The instrument proficiency check must—

(i) For a pilot in command of an aircraft, include the procedures and maneuvers for an airline transport pilot certificate in the particular type of aircraft, if appropriate; and

(ii) For a pilot in command of a rotorcraft or a second in command of any aircraft include the procedures and maneuvers for a commercial pilot certificate with an instrument rating and, if required, for the appropriate type rating.

(2) The instrument proficiency check must be given by an authorized check pilot or by the Administrator.

(f) If the pilot is assigned to pilot only one type of aircraft, that pilot shall take the instrument proficiency check required by paragraph (a) of this section in that type of aircraft.

(g) If the pilot in command is assigned to pilot more than one type of aircraft, that pilot shall take the instrument proficiency check required by paragraph (a) of this section in each type of aircraft

to which that pilot is assigned, in rotation, but not more than one flight check during each period described in paragraph (a) of this section.

(h) If the pilot in command is assigned to pilot both single-engine and multiengine aircraft, that pilot shall initially take the instrument proficiency check required by paragraph (a) of this section in a multiengine aircraft, and each succeeding check alternately in single-engine and multiengine aircraft, but not more than one flight check during each period described in paragraph (a) of this section.

(i) All or portions of a required flight check may be given in an aircraft simulator or other appropriate training device, if approved by the Administrator.

§ 91.1071 Crewmember: Tests and checks, grace provisions, training to accepted standards.

(a) If a crewmember who is required to take a test or a flight check under this subpart, completes the test or flight check in the calendar month before or after the calendar month in which it is required, that crewmember is considered to have completed the test or check in the calendar month in which it is required.

(b) If a pilot being checked under this subpart fails any of the required maneuvers, the person giving the check may give additional training to the pilot during the course of the check. In addition to repeating the maneuvers failed, the person giving the check may require the pilot being checked to repeat any other maneuvers that are necessary to determine the pilot's proficiency. If the pilot being checked is unable to demonstrate satisfactory performance to the person conducting the check, the program manager may not use the pilot, nor may the pilot serve, as a flight crewmember in operations under this subpart until the pilot has satisfactorily completed the check.

§ 91.1073 Training program: General.

(a) Each program manager shall have a training program and shall:

(1) Establish, obtain the appropriate initial and final approval of, and provide a training program that meets this subpart and that ensures that each crewmember, including each flight attendant if the program manager uses a flight attendant crewmember, flight instructor, check pilot, and each person assigned duties for the carriage and handling of hazardous materials (as defined in 49 CFR 171.8) is adequately trained to perform these assigned duties.

(2) Provide adequate ground and flight training facilities and properly qualified ground instructors for the training required by this subpart.

(3) Provide and keep current for each aircraft type used and, if applicable, the particular variations within the aircraft type, appropriate training material, examinations, forms, instructions, and procedures for use in conducting the training and checks required by this subpart.

(4) Provide enough flight instructors, check pilots, and simulator instructors to conduct required flight training and flight checks, and simulator training courses allowed under this subpart.

(b) Whenever a crewmember who is required to take recurrent training under this subpart completes the training in the calendar month before, or the calendar month after, the month in which that training is required, the crewmember is considered to have completed it in the calendar month in which it was required.

(c) Each instructor, supervisor, or check pilot who is responsible for a particular ground training subject, segment of flight training, course of training, flight check, or competence check under this subpart shall certify as to the proficiency and knowledge of the crewmember, flight instructor, or check pilot concerned upon completion of that training or check. That certification must be made a part of the crewmember's record. When the certification required by this paragraph is made by an entry in a computerized recordkeeping system, the certifying instructor, supervisor, or check pilot, shall be identified with that entry. However, the signature of the certifying instructor, supervisor, or check pilot, is not required for computerized entries.

(d) Training subjects that apply to more than one aircraft or crewmember position and that have been satisfactorily completed during previous training while employed by the program manager for another aircraft or another crewmember position, need not be repeated during subsequent training other than recurrent training.

(e) Aircraft simulators and other training devices may be used in the program manager's training program if approved by the Administrator.

(f) Each program manager shall be responsible for establishing safe and efficient crew management practices for all phases of flight in program operations including cockpit resource management training for all crew members used in program operations.

(g) If an aircraft simulator has been approved by the Administrator for use in the program manager's training program, the program manager shall ensure that each pilot annually completes at least one flight training session in an approved simulator for at least one program aircraft. The training session may be the flight training portion of any of the pilot training or check requirements of this subpart, including the initial, transition, upgrade, requalification, differences, or recurrent training, or the accomplishment of a competency check or instrument proficiency check. If there is no approved simulator for that aircraft type in operation, then all flight training and checking must be accomplished in the aircraft.

§ 91.1075 Training program: Special rules.

(a) Other than the program manager, only another program manager operating under this subpart or a training center certificated under part 142 of this chapter is eligible under this subpart to conduct training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

(b) A program manager may contract with, or otherwise arrange to use the services of, a training center certificated under part 142 of this chapter to conduct training, testing, and checking required by this subpart only if the training center—

(1) Holds applicable training specifications issued under part 142 of this chapter;

(2) Has facilities, training equipment, and courseware meeting the applicable requirements of part 142 of this chapter;

(3) Has approved curriculums, curriculum segments, and portions of curriculum segments applicable for use in training courses required by this subpart; and

(4) Has sufficient instructors and check pilots qualified under the applicable requirements of §§ 91.1089 through 91.1095 to conduct training, testing, and checking to persons subject to the requirements of this subpart.

§ 91.1077 Training program and revision: Initial and final approval.

(a) To obtain initial and final approval of a training program, or a revision to an approved training program, each program manager must submit to the Administrator—

(1) An outline of the proposed or revised curriculum, that provides enough information for a preliminary evaluation of the proposed training program or revision; and

(2) Additional relevant information that may be requested by the Administrator.

(b) If the proposed training program or revision complies with this subpart, the Administrator grants initial approval in

writing after which the program manager may conduct the training under that program. The Administrator then evaluates the effectiveness of the training program and advises the program manager of deficiencies, if any, that must be corrected.

(c) The Administrator grants final approval of the proposed training program or revision if the program manager shows that the training conducted under the initial approval in paragraph (b) of this section ensures that each person who successfully completes the training is adequately trained to perform that person's assigned duties.

(d) Whenever the Administrator finds that revisions are necessary for the continued adequacy of a training program that has been granted final approval, the program manager shall, after notification by the Administrator, make any changes in the program that are found necessary by the Administrator. Within 30 days after the program manager receives the notice, it may file a petition to reconsider the notice with the Administrator. The filing of a petition to reconsider stays the notice pending a decision by the Administrator. However, if the Administrator finds that there is an emergency that requires immediate action in the interest of safety, the Administrator may, upon a statement of the reasons, require a change effective without stay.

§ 91.1079 Training program: Curriculum.

(a) Each program manager must prepare and keep current a written training program curriculum for each type of aircraft for each crewmember required for that type aircraft. The curriculum must include ground and flight training required by this subpart.

(b) Each training program curriculum must include the following:

(1) A list of principal ground training subjects, including emergency training subjects, that are provided.

(2) A list of all the training devices, mockups, systems trainers, procedures trainers, or other training aids that the program manager will use.

(3) Detailed descriptions or pictorial displays of the approved normal, abnormal, and emergency maneuvers, procedures and functions that will be performed during each flight training phase or flight check, indicating those maneuvers, procedures and functions that are to be performed during the inflight portions of flight training and flight checks.

§ 91.1081 Crewmember training requirements.

(a) Each program manager must include in its training program the following initial and transition ground training as appropriate to the particular assignment of the crewmember:

(1) Basic indoctrination ground training for newly hired crewmembers including instruction in at least the—

(i) Duties and responsibilities of crewmembers as applicable;

(ii) Appropriate provisions of this chapter;

(iii) Contents of the program manager's management specifications (not required for flight attendants); and

(iv) Appropriate portions of the program manager's operating manual.

(2) The initial and transition ground training in §§ 91.1101 and 91.1105, as applicable.

(3) Emergency training in § 91.1083.

(b) Each training program shall provide the initial and transition flight training in § 91.1103, as applicable.

(c) Each training program must provide recurrent ground and flight training as provided in § 91.1107.

(d) Upgrade training in §§ 91.1101 and 91.1103 for a particular type aircraft may be included in the training program for crewmembers who have qualified and served as second in command on that aircraft.

(e) In addition to initial, transition, upgrade and recurrent training, each training program must provide ground and flight training, instruction, and practice necessary to ensure that each crewmember—

(1) Remains adequately trained and currently proficient for each aircraft, crewmember position, and type of operation in which the crewmember serves; and

(2) Qualifies in new equipment, facilities, procedures, and techniques, including modifications to aircraft.

§ 91.1083 Crewmember emergency training.

(a) Each training program shall provide emergency training under this section for each aircraft type, model, and configuration, each crewmember, and each kind of operation conducted, as appropriate for each crewmember and the program manager.

(b) Emergency training must provide the following:

(1) Instruction in emergency assignments and procedures, including coordination among crewmembers.

(2) Individual instruction in the location, function, and operation of emergency equipment including—

(i) Equipment used in ditching and evacuation;

(ii) First aid equipment and its proper use; and

(iii) Portable fire extinguishers, with emphasis on the type of extinguisher to be used on different classes of fires.

(3) Instruction in the handling of emergency situations including—

(i) Rapid decompression;

(ii) Fire in flight or on the surface and smoke control procedures with emphasis on electrical equipment and related circuit breakers found in cabin areas;

(iii) Ditching and evacuation;

(iv) Illness, injury, or other abnormal situations involving passengers or crewmembers; and

(v) Hijacking and other unusual situations.

(4) Review of the program manager's previous aircraft accidents and incidents involving actual emergency situations.

(c) Each crewmember must perform at least the following emergency drills, using the proper emergency equipment and procedures, unless the Administrator finds that, for a particular drill, the crewmember can be adequately trained by demonstration:

(1) Ditching, if applicable.

(2) Emergency evacuation.

(3) Fire extinguishing and smoke control.

(4) Operation and use of emergency exits, including deployment and use of evacuation chutes, if applicable.

(5) Use of crew and passenger oxygen.

(6) Removal of life rafts from the aircraft, inflation of the life rafts, use of life lines, and boarding of passengers and crew, if applicable.

(7) Donning and inflation of life vests and the use of other individual flotation devices, if applicable.

(d) Crewmembers who serve in operations above 25,000 feet must receive instruction in the following:

(1) Respiration.

(2) Hypoxia.

(3) Duration of consciousness without supplemental oxygen at altitude.

(4) Gas expansion.

(5) Gas bubble formation.

(6) Physical phenomena and incidents of decompression.

§ 91.1085 Hazardous materials recognition training.

No program manager may use any pilot to perform, and no pilot may perform, any assigned duties and responsibilities for the handling or carriage of hazardous materials (as defined in 49 CFR 171.8), unless that pilot has received training in the recognition of hazardous materials.

§ 91.1087 Approval of aircraft simulators and other training devices.

(a) Training courses using aircraft simulators and other training devices may be included in the program manager's training program if approved by the Administrator.

(b) Each aircraft simulator and other training device that is used in a training course or in checks required under this subpart must meet the following requirements:

(1) It must be specifically approved for—

(i) The program manager; and

(ii) The particular maneuver, procedure, or crewmember function involved.

(2) It must maintain the performance, functional, and other characteristics that are required for approval.

(3) Additionally, for aircraft simulators, it must be—

(i) Approved for the type aircraft and, if applicable, the particular variation within type for which the training or check is being conducted; and

(ii) Modified to conform with any modification to the aircraft being simulated that changes the performance, functional, or other characteristics required for approval.

(c) A particular aircraft simulator or other training device may be used by more than one program manager.

(d) In granting initial and final approval of training programs or revisions to them, the Administrator considers the training devices, methods, and procedures listed in the program manager's curriculum under § 91.1079.

§ 91.1089 Qualifications: Check pilots (aircraft) and check pilots (simulator).

(a) For the purposes of this section and § 91.1093:

(1) A check pilot (aircraft) is a person who is qualified to conduct flight checks in an aircraft, in a flight simulator, or in a flight training device for a particular type aircraft.

(2) A check pilot (simulator) is a person who is qualified to conduct flight checks, but only in a flight simulator, in a flight training device, or both, for a particular type aircraft.

(3) Check pilots (aircraft) and check pilots (simulator) are those check pilots who perform the functions described in §§ 91.1073(a)(4) and (c).

(b) No program manager may use a person, nor may any person serve as a check pilot (aircraft) in a training program established under this subpart unless, with respect to the aircraft type involved, that person—

(1) Holds the pilot certificates and ratings required to serve as a pilot in command in operations under this subpart;

(2) Has satisfactorily completed the training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart;

(4) Has satisfactorily completed the applicable training requirements of § 91.1093;

(5) Holds at least a Class III medical certificate unless serving as a required crewmember, in which case holds a Class I or Class II medical certificate as appropriate; and

(6) Has been approved by the Administrator for the check pilot duties involved.

(c) No program manager may use a person, nor may any person serve as a check pilot (simulator) in a training program established under this subpart unless, with respect to the aircraft type involved, that person meets the provisions of paragraph (b) of this section, or—

(1) Holds the applicable pilot certificates and ratings, except medical certificate, required to serve as a pilot in command in operations under this subpart;

(2) Has satisfactorily completed the appropriate training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the appropriate proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart;

(4) Has satisfactorily completed the applicable training requirements of § 91.1093; and

(5) Has been approved by the Administrator for the check pilot (simulator) duties involved.

(d) Completion of the requirements in paragraphs (b)(2), (3), and (4) or (c)(2), (3), and (4) of this section, as applicable, shall be entered in the individual's training record maintained by the program manager.

(e) A check pilot who does not hold an appropriate medical certificate may function as a check pilot (simulator), but may not serve as a flightcrew member in operations under this subpart.

(f) A check pilot (simulator) must accomplish the following—

(1) Fly at least two flight segments as a required crewmember for the type, class, or category aircraft involved within the 12-month period preceding the performance of any check pilot duty in a flight simulator; or

(2) Satisfactorily complete an approved line-observation program within the period prescribed by that program and that shall precede the performance of any check pilot duty in a flight simulator.

(g) The flight segments or line-observation program required in paragraph (f) of this section are considered to be completed in the month required if completed in the calendar month before or the calendar month after the month in which they are due.

§ 91.1091 Qualifications: Flight instructors (aircraft) and flight instructors (simulator).

(a) For the purposes of this section and § 91.1095:

(1) A flight instructor (aircraft) is a person who is qualified to instruct in an aircraft, in a flight simulator, or in a flight training device for a particular type, class, or category aircraft.

(2) A flight instructor (simulator) is a person who is qualified to instruct in a flight simulator, in a flight training device, or in both, for a particular type, class, or category aircraft.

(3) Flight instructors (aircraft) and flight instructors (simulator) are those instructors who perform the functions described in § 91.1073(a)(4) and (c).

(b) No program manager may use a person, nor may any person serve as a flight instructor (aircraft) in a training program established under this subpart unless, with respect to the type, class, or category aircraft involved, that person—

(1) Holds the pilot certificates and ratings required to serve as a pilot in command in operations under this subpart or part 121 or 135;

(2) Has satisfactorily completed the training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart;

(4) Has satisfactorily completed the applicable training requirements of § 91.1095; and

(5) Holds at least a Class III medical certificate.

(c) No program manager may use a person, nor may any person serve as a flight instructor (simulator) in a training program established under this subpart, unless, with respect to the type, class, or category aircraft involved, that person meets the provisions of paragraph (b) of this section, or—

(1) Holds the pilot certificates and ratings, except medical certificate, required to serve as a pilot in command in operations under this subpart or part 121 or 135;

(2) Has satisfactorily completed the appropriate training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the appropriate proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart; and

(4) Has satisfactorily completed the applicable training requirements of § 91.1095.

(d) Completion of the requirements in paragraphs (b)(2), (3), and (4) or (c)(2), (3), and (4) of this section, as applicable, shall be entered in the individual's training record maintained by the program manager.

(e) A pilot who does not hold a medical certificate may function as a flight instructor in an aircraft if functioning as a non-required crewmember, but may not serve as a flightcrew member in operations under this subpart.

(f) A flight instructor (simulator) must accomplish the following—

(1) Fly at least two flight segments as a required crewmember for the type, class, or category aircraft involved within the 12-month period preceding the performance of any flight instructor duty in a flight simulator; or

(2) Satisfactorily complete an approved line-observation program within the period prescribed by that program and that must precede the performance of any check pilot duty in a flight simulator.

(g) The flight segments or line-observation program required in paragraph (f) of this section are considered completed in the month required if completed in the calendar month before, or in the calendar month after, the month in which they are due.

§ 91.1093 Initial and transition training and checking: Check pilot (aircraft), check pilot (simulator).

(a) No program manager may use a person nor may any person serve as a check pilot unless—

(1) That person has satisfactorily completed initial or transition check pilot training; and

(2) Within the preceding 24 calendar months, that person satisfactorily conducts a proficiency or competency check under the observation of an FAA inspector or an aircrew designated examiner employed by the program manager. The observation check may be accomplished in part or in full in an aircraft, in a flight simulator, or in a flight training device.

(b) The observation check required by paragraph (a)(2) of this section is considered to have been completed in the month required if completed in the calendar month before or the calendar month after the month in which it is due.

(c) The initial ground training for check pilots must include the following:

(1) Check pilot duties, functions, and responsibilities.

(2) The applicable provisions of the Code of Federal Regulations and the program manager's policies and procedures.

(3) The applicable methods, procedures, and techniques for conducting the required checks.

(4) Proper evaluation of student performance including the detection of—

(i) Improper and insufficient training; and

(ii) Personal characteristics of an applicant that could adversely affect safety.

(5) The corrective action in the case of unsatisfactory checks.

(6) The approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures in the aircraft.

(d) The transition ground training for a check pilot must include the approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures applicable to the aircraft to which the check pilot is in transition.

(e) The initial and transition flight training for a check pilot (aircraft) must include the following—

(1) The safety measures for emergency situations that are likely to develop during a check;

(2) The potential results of improper, untimely, or nonexecution of safety measures during a check;

(3) Training and practice in conducting flight checks from the left and right pilot seats in the required normal, abnormal, and emergency procedures to ensure competence to conduct the pilot flight checks required by this subpart; and

(4) The safety measures to be taken from either pilot seat for emergency situations that are likely to develop during checking.

(f) The requirements of paragraph (e) of this section may be accomplished in full or in part in flight, in a flight simulator, or in a flight training device, as appropriate.

(g) The initial and transition flight training for a check pilot (simulator) must include the following:

(1) Training and practice in conducting flight checks in the required normal, abnormal, and emergency procedures to ensure competence to conduct the flight checks required by this subpart. This training and practice must be accomplished in a flight simulator or in a flight training device.

(2) Training in the operation of flight simulators, flight training devices, or both, to ensure competence to conduct the flight checks required by this subpart.

§ 91.1095 Initial and transition training and checking: Flight instructors (aircraft), flight instructors (simulator).

(a) No program manager may use a person nor may any person serve as a flight instructor unless—

(1) That person has satisfactorily completed initial or transition flight instructor training; and

(2) Within the preceding 24 calendar months, that person satisfactorily conducts instruction under the observation of an FAA inspector, a program manager check pilot, or an aircrew designated examiner employed by the program manager. The observation check may be accomplished in part or in full in an aircraft, in a flight simulator, or in a flight training device.

(b) The observation check required by paragraph (a)(2) of this section is considered to have been completed in the month required if completed in the calendar month before, or the calendar month after, the month in which it is due.

(c) The initial ground training for flight instructors shall include the following:

(1) Flight instructor duties, functions, and responsibilities.

(2) The applicable Code of Federal Regulations and the program manager's policies and procedures.

(3) The applicable methods, procedures, and techniques for conducting flight instruction.

(4) Proper evaluation of student performance including the detection of—

(i) Improper and insufficient training; and

(ii) Personal characteristics of an applicant that could adversely affect safety.

(5) The corrective action in the case of unsatisfactory training progress.

(6) The approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures in the aircraft.

(7) Except for holders of a flight instructor certificate—

(i) The fundamental principles of the teaching-learning process;

(ii) Teaching methods and procedures; and

(iii) The instructor-student relationship.

(d) The transition ground training for flight instructors must include the approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures applicable to the type, class, or category aircraft to which the flight instructor is in transition.

(e) The initial and transition flight training for flight instructors (aircraft) must include the following—

(1) The safety measures for emergency situations that are likely to develop during instruction;

(2) The potential results of improper or untimely safety measures during instruction;

(3) Training and practice from the left and right pilot seats in the required normal, abnormal, and emergency maneuvers to ensure competence to conduct the flight instruction required by this subpart; and

(4) The safety measures to be taken from either the left or right pilot seat for emergency situations that are likely to develop during instruction.

(f) The requirements of paragraph (e) of this section may be accomplished in full or in part in flight, in a flight simulator, or in a flight training device, as appropriate.

(g) The initial and transition flight training for a flight instructor (simulator) must include the following:

(1) Training and practice in the required normal, abnormal, and emergency procedures to ensure competence to conduct the flight instruction required by this subpart. These maneuvers and procedures must be accomplished in full or in part in a flight simulator or in a flight training device.

(2) Training in the operation of flight simulators, flight training devices, or both, to ensure competence to conduct the flight instruction required by this subpart.

§ 91.1097 Pilot and flight attendant crewmember training programs.

(a) Each program manager shall establish and maintain an approved pilot training program, and each program manager who uses a flight attendant crewmember shall establish and maintain an approved flight attendant training program, that is appropriate to the operations to which each pilot and flight attendant is to be assigned, and will ensure that they are adequately trained to meet the applicable knowledge and practical testing requirements of §§ 91.1065 through 91.1071. However, the Administrator may authorize a deviation from this section if the Administrator finds that, because of the limited size and scope of the operation, safety will allow a deviation from these requirements.

(b) Each program manager required to have a training program by paragraph (a) of this section shall include in that program ground and flight training curriculums for—

(1) Initial training;

(2) Transition training;

(3) Upgrade training;

(4) Differences training;

(5) Recurrent training; and

(6) Requalification training.

(c) Each program manager required to have a training program by paragraph (a) of this section shall provide current and appropriate study materials for use by each required pilot and flight attendant.

(d) The program manager shall furnish copies of the pilot and flight attendant crewmember training program, and all changes and additions, to the assigned representative of the Administrator. If the program manager uses training facilities of other persons, a copy of those training programs or appropriate portions used for those facilities shall also be furnished. Curricula that follow FAA published curricula may be cited by reference in the copy of the training program furnished to the representative of the Administrator and need not be furnished with the program.

§ 91.1099 Crewmember initial and recurrent training requirements.

No program manager may use a person, nor may any person serve, as a crewmember in operations under this subpart unless that crewmember has completed the appropriate initial or recurrent training phase of the training program appropriate to the type of operation in which the crewmember is to serve since the beginning of the 12th calendar month before that service.

§ 91.1101 Pilots: Initial, transition, and upgrade ground training.

Initial, transition, and upgrade ground training for pilots must include instruction in at least the following, as applicable to their duties:

(a) General subjects—

(1) The program manager's flight locating procedures;

(2) Principles and methods for determining weight and balance, and runway limitations for takeoff and landing;

(3) Enough meteorology to ensure a practical knowledge of weather phenomena, including the principles of frontal systems, icing, fog, thunderstorms, windshear and, if appropriate, high altitude weather situations;

(4) Air traffic control systems, procedures, and phraseology;

(5) Navigation and the use of navigational aids, including instrument approach procedures;

(6) Normal and emergency communication procedures;

(7) Visual cues before and during descent below DH or MDA; and

(8) Other instructions necessary to ensure the pilot's competence.

(b) For each aircraft type—

(1) A general description;

(2) Performance characteristics;

(3) Engines and propellers;

(4) Major components;

(5) Major aircraft systems (i.e., flight controls, electrical, and hydraulic), other systems, as appropriate, principles of normal, abnormal, and emergency operations, appropriate procedures and limitations;

(6) Knowledge and procedures for—

(i) Recognizing and avoiding severe weather situations;

(ii) Escaping from severe weather situations, in case of inadvertent encounters, including low-altitude windshear (except that rotorcraft pilots are not required to be trained in escaping from low-altitude windshear);

(iii) Operating in or near thunderstorms (including best penetration altitudes), turbulent air (including clear air turbulence), inflight icing, hail, and other potentially hazardous meteorological conditions; and

(iv) Operating airplanes during ground icing conditions, (i.e., any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft), if the program manager expects to authorize takeoffs in ground icing conditions, including:

(A) The use of holdover times when using deicing/anti-icing fluids;

(B) Airplane deicing/anti-icing procedures, including inspection and check procedures and responsibilities;

(C) Communications;

(D) Airplane surface contamination (i.e., adherence of frost, ice, or snow) and critical area identification, and knowledge of how contamination adversely affects airplane performance and flight characteristics;

(E) Types and characteristics of deicing/anti-icing fluids, if used by the program manager;

(F) Cold weather preflight inspection procedures;

(G) Techniques for recognizing contamination on the airplane;

(7) Operating limitations;

(8) Fuel consumption and cruise control;

(9) Flight planning;

(10) Each normal and emergency procedure; and

(11) The approved manual.

§ 91.1103 Pilots: Initial, transition, upgrade, requalification, and differences flight training.

(a) Initial, transition, upgrade, requalification, and differences training for pilots must include flight and practice in each of the maneuvers and procedures contained in each of the curriculums which are a part of the approved training program.

(b) The maneuvers and procedures required by paragraph (a) of this section must be performed in flight, except to the extent that certain maneuvers and procedures may be performed in an aircraft simulator, or an appropriate training device, as allowed by this subpart.

(c) If the program manager's approved training program includes a course of training using an aircraft simulator or other training device, each pilot must successfully complete—

(1) Training and practice in the simulator or training device in at least the maneuvers and procedures in this subpart that are capable of being performed in the aircraft simulator or training device; and

(2) A flight check in the aircraft or a check in the simulator or training device to the level of proficiency of a pilot in command or second in command, as applicable, in at least the maneuvers and procedures that are capable of being performed in an aircraft simulator or training device.

§ 91.1105 Flight attendants: Initial and transition ground training.

Initial and transition ground training for flight attendants must include instruction in at least the following—

(a) General subjects—

(1) The authority of the pilot in command; and

(2) Passenger handling, including procedures to be followed in handling deranged persons or other persons whose conduct might jeopardize safety.

(b) For each aircraft type—

(1) A general description of the aircraft emphasizing physical characteristics that may have a bearing on ditching, evacuation, and inflight emergency procedures and on other related duties;

(2) The use of both the public address system and the means of communicating with other flight crewmembers, including emergency means in the case of attempted hijacking or other unusual situations; and

(3) Proper use of electrical galley equipment and the controls for cabin heat and ventilation.

§ 91.1107 Recurrent training.

(a) Each program manager must ensure that each crewmember receives recurrent training and is adequately trained and currently proficient for the type aircraft and crewmember position involved.

(b) Recurrent ground training for crewmembers must include at least the following:

(1) A quiz or other review to determine the crewmember's knowledge of the aircraft and crewmember position involved.

(2) Instruction as necessary in the subjects required for initial ground training by this subpart, as appropriate, including low-altitude windshear training and training on operating during ground icing conditions, as prescribed in § 91.1097 and described in § 91.1101, and emergency training.

(c) Recurrent flight training for pilots must include, at least, flight training in the maneuvers or procedures in this subpart, except that satisfactory completion of the check required by § 91.1065 within the preceding 12 calendar months may be substituted for recurrent flight training.

§ 91.1109 Aircraft maintenance: Inspection program.

Each operator or program manager of a program aircraft must establish an aircraft inspection program and ensure the aircraft is inspected in accordance with that inspection program.

(a) The inspection program must be in writing and include at least the following information:

(1) Instructions and procedures for the conduct of inspections for the particular make and model aircraft, including necessary tests and checks. The instructions and procedures must set forth in detail the parts and areas of the airframe, engines, propellers, rotors, and appliances, including survival and emergency equipment required to be inspected.

(2) A schedule for performing the inspections that must be performed under the inspection program expressed in terms of the time in service, calendar time, number of system operations, or any combination thereof.

(3) The name and address of the person responsible for scheduling the inspections required by the inspection program. A copy of the inspection program must be made available to the person performing inspections on the aircraft and, upon request, to the Administrator.

(b) Each person desiring to establish or change an approved inspection program under this section must submit the inspection program for approval to the local FAA Flight Standards district office having jurisdiction over the area in which the aircraft is based. The inspection program must be derived from one of the following programs:

(1) An inspection program currently recommended by the manufacturer of the aircraft, aircraft engines, propellers, appliances, and survival and emergency equipment;

(2) An inspection program that is part of a continuous airworthiness maintenance program currently in use by a person holding an air carrier or operating certificate issued under part 119 of this chapter and operating that make and model aircraft under part 121 or 135 of this chapter;

(3) An aircraft inspection program approved under § 135.419 of this chapter and currently in use under part 135 of this chapter by a person holding a certificate issued under part 119 of this chapter; or

(4) An aircraft inspection program approved under § 125.247 of this chapter and currently in use under part 125 of this chapter by a person holding a certificate issued under part 125 of this chapter.

(c) The Administrator may require revision of the inspection program approved under this section in accordance with the provisions of § 91.415.

§ 91.1111 Maintenance training.

The program manager shall ensure that all personnel who are employed by the program manager or fractional owner and responsible for maintenance related to program aircraft undergo appropriate initial and annual recurrent training and are competent to perform those duties.

§ 91.1113 Maintenance recordkeeping.

Each fractional ownership program manager shall keep (using the system specified in the manual required in § 91.1025) the records specified in § 91.417(a) for the periods specified in § 91.417(b).

§ 91.1115 Minimum equipment lists and letters of authorization.

Any Minimum Equipment Lists, Letters of Authorization, Dispatch Deviation Guides, Deferred Discrepancy Lists or any other approvals covering the program aircraft will be issued to,

and in the sole name of, the program manager on behalf of the fractional owners collectively. No Minimum Equipment Lists, Letters of Authorization, Dispatch Deviation Guides, and Deferred Discrepancy Lists shall be affected by any change in ownership of a program aircraft, as long as the aircraft remains a program aircraft in the program identified on the respective approval.

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

11. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

Subpart A—General

12. Amend § 119.1 by revising paragraph (d) to read as follows:

§ 119.1 Applicability.

* * * * *

(d) This part does not govern operations conducted under part 91, subpart K (when common carriage is not involved) nor does it govern operations conducted under part 129, 133, 137, or 139 of this chapter.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

13. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

Subpart A—General

14. Amend § 125.1 by revising paragraphs (b)(4) and (5) and by adding paragraphs (b)(6) and (b)(7) as follows:

§ 125.1 Applicability.

* * * * *

(b) * * *

(4) They are being operated under part 91 by an operator certificated to operate those airplanes under the rules of parts 121, 135, or 137 of this chapter, they are being operated under the applicable rules of part 121 or part 135 of this chapter by an applicant for a certificate under part 119 of this chapter or they are being operated by a foreign air carrier or a foreign person engaged in common carriage solely outside the United States under part 91 of this chapter;

(5) They are being operated under a deviation authority issued under § 125.3 of this chapter;

(6) They are being operated under part 91, subpart K by a fractional owner as defined in § 91.1001; or

(7) They are being operated by a fractional ownership program manager as defined in § 91.1001, for training, ferrying, positioning, maintenance, or demonstration purposes under part 91 and without carrying passengers or cargo for compensation or hire except as permitted for demonstration flights under § 91.501(b)(3).

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

15. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

Subpart A—General

16. Amend § 135.1 by adding paragraph (b) to read as follows:

§ 135.1 Applicability.

* * * * *

(b) For the purpose of §§ 135.23, 135.225 and 135.385, eligible on-demand operator means an on-demand operator that meets the flight crew experience, pilot operating limitations and pairing requirements of §§ 91.1053 and 91.1055.

17. Amend § 135.21 by revising paragraphs (f) and (g) and adding paragraph (h) to read as follows:

§ 135.21 Manual requirements.

* * * * *

(f) Except as provided in paragraph (h) of this section, each certificate holder shall carry appropriate parts of the manual on each aircraft when away from the principal operations base. The appropriate parts must be available for use by ground or flight personnel.

(g) For the purpose of complying with paragraph (d) of this section, a certificate holder may furnish the persons listed therein with all or part of its manual in printed form or other form, acceptable to the Administrator, that is retrievable in the English language. If the certificate holder furnishes all or part of the manual in other than printed form, it shall ensure there is a compatible reading device available to those persons that provides a legible image of the information and instructions, or a system that is able to retrieve the information and instructions in the English language.

(h) If a certificate holder conducts aircraft inspections or maintenance at specified stations where it keeps the approved inspection program manual, it is not required to carry the manual aboard the aircraft en route to those stations.

18. Amend § 135.23 by revising paragraph (r) and adding paragraph (s) to read as follows:

§ 135.23 Manual contents.

* * * * *

(r) If required by § 135.385, an approved Destination Airport Analysis establishing procedures for establishing runway safety margins at destination airports, taking into account the following factors as supported by published aircraft performance data supplied by the aircraft manufacturer for the appropriate runway conditions—

(1) Pilot qualifications and experience;

(2) Aircraft performance data to include normal, abnormal and emergency procedures as supplied by the aircraft manufacturer;

(3) Airport facilities and topography;

(4) Runway conditions (including contamination);

(5) Airport or area weather reporting;

(6) Appropriate additional runway safety margins, if required; and

(7) Other criteria affecting aircraft performance.

(s) Other procedures and policy instructions regarding the certificate holder's operations issued by the certificate holder.

Subpart C—Aircraft and Equipment

19. Revise § 135.145 to read as follows:

§ 135.145 Aircraft proving tests.

(a) No certificate holder may operate an aircraft for which two pilots are required by this chapter for operations under VFR, if it has not previously proved such an aircraft in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of enroute airports as determined by the Administrator.

(b) No certificate holder may operate a turbojet airplane if it has not previously proved the same or another

turbojet airplane in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of enroute airports as determined by the Administrator.

(c) The Administrator may authorize deviations from this section if the Administrator finds that special circumstances make full compliance with this section unnecessary.

20. Amend § 135.167 by revising paragraph (a) introductory text and adding paragraph (d) to read as follows:

§ 135.167 Emergency equipment: Extended overwater operations.

(a) Except as provided in paragraph (d) of this section, no person may operate an aircraft in extended overwater operations unless it carries, installed in conspicuously marked locations easily accessible to the occupants if a ditching occurs, the following equipment:

* * * * *

(d) For a pressurized turbine-powered aircraft operating at an altitude greater than 25,000 feet, a person may elect not to comply with the equipment requirements in § 135.167(a)(2), (b) and (c) of this part provided that the flight does not proceed more than 30 minutes flying time or 100 nautical miles from the nearest shore, whichever is greater.

Subpart D—VFR/IFR Operating Limitations and Weather Requirements

21. Amend § 135.225 by revising paragraph (a) introductory text, redesignating paragraphs (b) through (h) as paragraphs (c) through (i), adding new paragraph (b), and revising redesignated paragraphs (d) and (h) to read as follows:

§ 135.225 IFR: Takeoff, approach and landing minimums.

(a) Except to the extent permitted by paragraph (b) of this section, no pilot may begin an instrument approach procedure to an airport unless—

* * * * *

(b) A pilot employed by an eligible on-demand operator may begin an instrument approach procedure to an airport if—

(1) Either that airport or the alternate airport has a weather reporting facility operated by the U.S. National Weather Service, a source approved by the U.S. National Weather Service, or a source approved by the Administrator; and

(2) The latest weather report issued by the weather reporting facility includes a current local altimeter setting for the destination airport. If no local altimeter setting for the destination airport is available, the pilot may use the current altimeter setting provided by the facility designated on the approach chart for the destination airport.

(3) For flight planning purposes, if the destination airport does not have a weather reporting facility described in paragraph (b)(1) of this section, the pilot must designate as an alternate an airport that has a weather reporting facility meeting that criteria.

* * * * *

(d) If a pilot has begun the final approach segment of an instrument approach to an airport under paragraph (c) of this section and a later weather report indicating below minimum conditions is received after the aircraft is—

* * * * *

(h) Except as provided in paragraph (i) of this section, if takeoff minimums are not prescribed in part 97 of this chapter for the takeoff airport, no pilot may takeoff an aircraft under IFR when the weather conditions reported by the facility described in paragraph (a)(1) of this section are less than that prescribed in part 91 of this chapter or in the certificate holder's operations specifications.

* * * * *

Subpart E—Flight Crewmember Requirements

22. Amend § 135.247 by adding paragraph (a)(3) to read as follows:

§ 135.247 Pilot qualifications: Recent experience.

(a) * * *

(3) Paragraph (a)(2) of this section does not apply to a pilot in command of a turbine-powered airplane that requires more than one pilot crewmember, provided that pilot has complied with the requirements of paragraph (a)(3)(i) or (ii) of this section:

(i) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) That pilot has accomplished and logged at least 3 takeoffs and 3 landings to a full stop, as the sole manipulator of the flight controls, in a turbine-powered airplane that requires more than one pilot crewmember. The pilot must have performed the takeoffs and landings during the period beginning 1 hour after sunset and ending 1 hour before sunrise within the preceding 6 calendar months prior to the month of the flight.

(ii) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) Within the preceding 12 calendar months prior to the month of the flight, the pilot must have completed a training program that is approved under part 142 of this chapter. The approved training program must have required and the pilot must have performed, at least 6 takeoffs and 6 landings to a full stop as the sole manipulator of the controls in a flight simulator that is representative of a turbine-powered airplane that requires more than one pilot crewmember. The flight simulator's visual system must have been adjusted to represent the period beginning 1 hour after sunset and ending 1 hour before sunrise.

23. Amend § 135.251 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 135.251 Testing for prohibited drugs.

* * * * *

(b) Except as provided in paragraph (c) of this section, no certificate holder or operator may use any contractor to perform a function listed in appendix I

to part 121 of this chapter unless that contractor tests each employee performing such a function for the certificate holder or operator in accordance with that appendix.

(c) If a certificate holder conducts an on-demand operation into an airport at which no maintenance providers are available that are subject to the requirements of appendix I to part 121 and emergency maintenance is required, the certificate holder may use persons not meeting the requirements of paragraph (b) of this section to provide such emergency maintenance. A certificate holder shall give written notification of the emergency maintenance to the Drug Abatement Program Division, AAM–800, 800 Independence Avenue, Washington, DC, 20591, within 10 days after being provided same in accordance with this paragraph. A certificate holder shall retain copies of all such written notifications for two years.

(d) For purposes of this section, emergency maintenance means maintenance which—

(1) Is not scheduled, and

(2) Is made necessary by an aircraft condition not discovered prior to the departure for that location.

24. Amend § 135.255 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 135.255 Testing for alcohol.

* * * * *

(b) Except as provided in paragraph (c) of this section, no certificate holder or operator shall use any person who meets the definition of "covered employee" in appendix J to part 121 to perform a safety-sensitive function listed in that appendix unless such person is subject to testing for alcohol misuse in accordance with the provisions of appendix J.

(c) If a certificate holder conducts an on-demand operation into an airport at which no maintenance providers are available that are subject to the requirements of appendix J to part 121 and emergency maintenance is required, the certificate holder may use persons not meeting the requirements of paragraph (b) of this section to provide such emergency maintenance. A certificate holder shall give written notification of the emergency maintenance to the Drug Abatement Program Division, AAM–800, 800 Independence Avenue, Washington, DC, 20591, within 10 days after being provided same in accordance with this paragraph. A certificate holder shall retain copies of all such written notifications for two years.

(d) For purposes of this section, emergency maintenance means maintenance which—

(1) Is not scheduled, and

(2) Is made necessary by an aircraft condition not discovered prior to the departure for that location.

Subpart G—Crewmember Testing Requirements

25. Revise § 135.291 paragraph (b) to read as follows:

* * * * *

(b) Permits training center personnel authorized under part 142 of this chapter who meet the requirements of sections 135.337 and 135.339 to conduct training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

Subpart H—Training

26. Amend § 135.321 by revising paragraph (b)(7) to read as follows:

§ 135.321 Applicability and terms used.

* * * * *

(b) * * *

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that conducts training, testing, and checking under contract or other arrangement to certificate holders subject to the requirements of this part.

* * * * *

27. Amend § 135.324 by revising paragraphs (a) and (b) introductory to read as follows:

§ 135.324 Training program: Special rules.

(a) Other than the certificate holder, only another certificate holder certificated under this part or a training center certificated under part 142 of this chapter is eligible under this subpart to conduct training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

(b) A certificate holder may contract with, or otherwise arrange to use the services of, a training center certificated under part 142 of this chapter to conduct training, testing, and checking required by this part only if the training center—

* * * * *

Subpart I—Airplane Performance Operating Limitations

28. Amend § 135.385 by revising paragraph (b) and adding paragraphs (f) and (g) to read as follows:

§ 135.365 Large transport category airplanes: Turbine engine powered: Landing limitations: Destination airports.

* * * * *

(b) Except as provided in paragraph (c), (d), (e), (f), or (g) of this section, no person operating a turbine engine powered large transport category airplane may take off that airplane unless its weight on arrival, allowing for normal consumption of fuel and oil in flight (in accordance with the landing distance in the Airplane Flight Manual for the elevation of the destination airport and the wind conditions anticipated there at the time of landing), would allow a full stop landing at the intended destination airport within 60 percent of the effective length of each runway described below from a point 50 feet above the intersection of the obstruction clearance plane and the runway. For the purpose of determining the allowable landing weight at the destination airport the following is assumed:

* * * * *

(f) Eligible on-demand operators flying a turbine engine powered large transport category airplane on an on-demand flight may not take off that airplane unless, on arrival at its destination or alternate airport, the airplane is able to come to a full stop landing within 85 percent of the effective length of the runway, from a point 50 feet above the intersection of the obstruction plane and the runway, considering the runway elevation, airplane weight, ambient temperature and wind conditions anticipated upon arrival at that airport. The computation of landing weight and stopping distance must be done in accordance with the Airplane Flight Manual for that airplane, assuming:

(1) The airplane is landed on the most favorable runway and in the most favorable direction, in still air.

(2) The airplane is landed on the most suitable runway considering the probable wind velocity and direction and the ground handling characteristics of the airplane, and considering other conditions such as landing aids and terrain.

(g) Eligible on-demand operators flying a turbine engine powered large transport category airplane on an on-demand flight may take off that airplane at a weight in excess of that allowed by the runway margin in paragraph (f) of this section if such operation is permitted by an approved Destination Airport Analysis in that person's operations manual and an alternate airport meeting the criteria of § 135.387(b) is selected.

29. Revise § 135.387 to read as follows:

§ 135.387 Large transport category airplanes: Turbine engine powered: Landing limitations: Alternate airports.

(a) No person may select an airport as an alternate airport for a turbine engine powered large transport category airplane unless (based on the assumptions in § 135.385(b)) that airplane, at the weight anticipated at the time of arrival, can be brought to a full stop landing within 70 percent of the effective length of the runway for turbo-propeller-powered airplanes and 60 percent of the effective length of the runway for turbojet airplanes, from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

(b) Eligible on-demand operators may select an airport as an alternate airport for a turbine engine powered large transport category airplane if (based on the assumptions in § 135.385(f)) that airplane, at the weight anticipated at the time of arrival, can be brought to a full stop landing within 85 percent of the effective length of the runway from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

PART 142—TRAINING CENTERS

The authority citation for part 142 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45103, 45301–45302.

Subpart A—General

30. Amend § 142.1 by revising paragraph (a), republishing paragraph (b) introductory text, revising paragraphs (b)(1), (b)(4) and (b)(5)and adding paragraph (b)(6) asset forth below, and by removing paragraph (c):

§ 142.1 Applicability.

(a) This subpart prescribes the requirements governing the certification and operation of aviation training centers. Except as provided in paragraph (b) of this section, this part provides an alternative means to accomplish training required by parts 61, 63, 91, 121, 125, 127, 135, or 137 of this chapter.

(b) Certification under this part is not required for training that is—

(1) Approved under the provisions of parts 63, 91, 121, 127, 135, and 137;

* * * * *

(4) Conducted by a part 121 certificate holder for another part 121 certificate holder;

(5) Conducted by a part 135 certificate holder for another part 135 certificate holder; or

(6) Conducted by a part 91 fractional ownership program manager for another part 91 fractional ownership program manager.

Issued in Washington, DC, on June 28, 2001.

Nicholas A. Sabatini,

Director, Office of Flight Standards.

[FR Doc. 01–17503 Filed 7–11–01; 2:14 pm]

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Federal Register

Wednesday,
July 18, 2001

Part III

Department of Health and Human Services

Centers for Medicare and Medicaid Services

Emergency Clearance; Public Information Collection Requirements Submitted to the Office of Management and Budget; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10046]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event and possible public harm.

The new Administration plans to implement the Medicare-Endorsed Rx Discount Card Initiative by November 1, 2001 and wants to include this in the Fall beneficiary education campaign. In order to meet this date, we need immediate review and approval of collection.

CMS is requesting OMB review and approval of this collection by July 20, 2001, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by July 19, 2001.

Type of Information Collection Request: New collection; *Title of Information Collection:* Medicare Endorsed Rx Discount Card Initiative; *Form No.:* CMS–10046 (OMB# 0938–XXXX); *Use:* CMS is soliciting applications from prescription discount card programs so that it may endorse qualifying programs for Medicare beneficiaries. CMS, on its Web site, the consortium, and the endorsed programs, on request, will make information available for Medicare beneficiaries to use to compare the programs for possible enrollment in one of them; *Frequency:* Annually, Semi-annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 15 (estimated); *Total Annual Responses:* 15 (estimated); *Total Annual Hours:* 2,700.

Background

The Centers for Medicare & Medicaid Services (CMS) is seeking applications from qualified entities interested in entering into a Medicare endorsement agreement for their prescription discount card program. The general purpose of this Medicare endorsement agreement will be to publicize information that allows Medicare beneficiaries to compare prescription drug discount cards, assist Medicare beneficiaries in understanding and accessing private market methods for securing discounts on the purchase of prescription drugs, and raise beneficiary awareness of prescription drug discount card programs available in the commercial market. Around 73% of Medicare beneficiaries have drug coverage at any given time—but only 45% have uninterrupted coverage for 2 consecutive years. We expect this initiative will help beneficiaries, particularly those who lack prescription drug coverage, understand how drug discount card programs can lower beneficiary out-of-pocket prescription drug expenses. This effort is not, in any way, an offer of a Medicare-reimbursed drug benefit.

Readers can find the application for this initiative attached to this notice and on the Web site listed below. This notice is subject to OMB approval.

We have submitted a copy of this notice to OMB for its review of these information collections. This notice will be published in the **Federal Register**.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. The application will also be posted on *http://www.hcfa.gov/news/pr2001/pr010712_s.htm*.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and record keeping requirements must be received by the designees referenced below, by July 19, 2001:

Centers for Medicare & Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–0207, Attn: John P. Burke III, CMS–10046

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Phone: (202) 395–4650, Fax Number: (202) 395–6974, Attn: Allison Eydt, CMS Desk Officer.

Dated: July 17, 2001.

Julie Brown,

Acting CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

Medicare-Endorsed Rx Discount Card Initiative

Notice of Application

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1.0 Introduction

The Centers for Medicare & Medicaid Services (CMS) is seeking applications from qualified entities interested in entering into a Medicare endorsement agreement. Applications are to be submitted according to the process described in this Notice under "Applicant Instructions."

The general purpose of such agreements will be to publicize information that allows Medicare beneficiaries to compare prescription drug discount cards; assist Medicare beneficiaries in understanding and accessing private market methods for securing discounts on the purchase of prescription drugs; and to raise beneficiary awareness of prescription drug discount card programs available in the commercial market.

Model language of the endorsement agreement can be found in Section 7.0. Qualifying applicants will be required to sign such an agreement.

Around 73% of Medicare beneficiaries have drug coverage at any given time—but only 45% have uninterrupted coverage for 2 consecutive years. We expect this initiative will help beneficiaries, particularly those who lack prescription drug coverage, understand how drug discount card programs can lower beneficiary out-of-pocket prescription drug expenses. This effort is not, in any way, an offer of a Medicare-reimbursed drug benefit.

Objectives

The objectives of this initiative are to:

- Provide a mechanism for Medicare beneficiaries to gain access to the effective tools widely used by prescription benefit managers in private health insurance plans to get lower drug prices and higher-quality pharmaceutical care.
- Publicize information (including drug-specific prices, formularies, and networks) that allows Medicare beneficiaries to compare prescription drug discount cards and choose the best card for them.
- Educate Medicare beneficiaries about private market methods for securing discounts on the purchase of prescription drugs.
- Enhance participation of seniors in discount systems, increasing the leverage and ability of these plans to negotiate discounts for seniors.
- Endorse qualified private sector prescription drug discount cards based on experience, customer service, discounts and access, and permit endorsed organizations to market their programs as Medicare-endorsed.
- Provide Medicare beneficiaries a low ($25 maximum) or no-cost opportunity to enroll in a Medicare-endorsed prescription drug discount program.

To meet these objectives, CMS plans to endorse prescription drug discount card programs that meet qualification criteria, and to permit successful applicants to market and label their programs as "Medicare-endorsed." Medicare's endorsement will be based on meeting qualifications related to experience, customer service, discounts and access. The endorsement will be for 14 months. Announcements of the Medicare-endorsed discount card programs will begin in the Fall of 2001, with the first endorsement cycle being effective on November 1, 2001 through December 31, 2002.

CMS believes the Medicare endorsement will facilitate educating beneficiaries about discount card programs. "Medicare" is an extremely valuable and highly regarded program for nearly 40 million Medicare beneficiaries. Medicare focus groups indicate that virtually all seniors recognize the name "Medicare". Medicare's name recognition is so strong that it is unlikely to be duplicated in the commercial market.

CMS is committed to educating Medicare beneficiaries about the endorsed discount card programs, at the time the endorsements are announced and as part of ongoing education efforts thereafter. CMS anticipates that there will be national media attention when the Medicare-endorsed discount card programs are announced in the Fall of 2001. Throughout the Fall, CMS will provide information to the public about the discount card programs. On an ongoing basis, CMS plans to highlight the Medicare-endorsed discount card programs in Medicare publications and in the pre-enrollment package received by all beneficiaries upon eligibility for Medicare. CMS plans to provide descriptive information for each Medicare-endorsed prescription drug discount card program on the Medicare Web site (http://*www.medicare.gov*) beginning in October 2001. The information posted will include a basic card program description, the date on which Medicare beneficiaries may begin to enroll, the date the beneficiaries have access to discounts (if different from the beneficiaries' enrollment date), and the phone numbers of the endorsed card programs. In addition, general information will be available to Medicare beneficiaries through the toll-free information line (1–800–MEDICARE). CMS plans to educate beneficiary and consumer groups, health care providers, States and other interested groups about the discount programs.

As a result of the CMS endorsement, Medicare name recognition, and plans to educate Medicare beneficiaries about these discount card programs, we anticipate that successful applicants will have increased visibility for their discount drug card programs, which will lead to greater enrollment by Medicare beneficiaries. We expect that the formulary/network/education attributes of the program, coupled with exclusive enrollment, will provide card sponsors the necessary market leverage to negotiate significant and competitive drug manufacturer rebates. These rebates could be used to lower drug prices for program enrollees or shared with retail pharmacies.

Program Overview

CMS has established a set of qualifications commonly used in the marketplace that are more fully explained in Section 3.0 of this Notice. All applicants that meet or exceed these qualifications will be Medicare-endorsed. These qualifications are intended to provide Medicare beneficiaries with access to discount card programs with national or regional capabilities and discounts on at least one brand and/or generic prescription drug in each therapeutic class. In addition, the Applicant's organization must be a non-governmental entity and must demonstrate relevant experience, a

high level of customer service, and size sufficient to handle the anticipated volume. Key aspects of each Medicare-endorsed discount card program shall include the ability to:

- Enroll all Medicare beneficiaries wishing to participate, recognizing that the discount card programs do not supplant drug coverage under an insured product. CMS' educational materials will address the differences between discount programs and insured products;
- Provide a discount on at least one brand and/or generic prescription drug in each therapeutic class;
- Offer a national or regional pharmacy network, providing strong retail access. CMS also strongly encourages applicants to include a mail-order service as part of their program;
- Charge no fees to CMS;
- Charge an enrollment fee of no more than $25 per beneficiary to fund enrollment administration expenses. The enrollment fee, if any, is assessed on initial enrollment in a particular card program only. No additional (e.g., annual) fees may be required for beneficiaries to maintain their enrollment in that card program;
- Provide customer service to participating beneficiaries, including enrollment and toll-free telephone customer service help;
- Verify (through consortium described below) that enrolled applicants are not already participating in another Medicare-endorsed drug discount card program. Beneficiaries will be permitted to enroll in only one Medicare-endorsed drug discount program at a time. Allowing enrollment in only one program better pools beneficiary market power to secure deeper discounts. Beneficiaries may disenroll from an organization and enroll in another program on a semi-annual basis; and
- Agree to participate in, fund, and abide by the guidelines of a private consortium with other Medicare-endorsed discount card programs to perform administrative functions, as defined in Section 7.2. The consortium's activities will include the operation of a system to verify enrollment exclusivity and the review of marketing materials used by each program.

The consortium will also make available comparative information on each Medicare-endorsed drug discount card program. Information will be available on the consortium's Web site and in hard copy.

- Beginning no later than November 1, 2002, the comparative information will include drug/dose-specific prices (inclusive of discount and dispensing fee) for a sufficient number of drugs to allow beneficiaries to make an informed choice.
- Prior to November 1, 2002, the comparative information will include average discounts (expressed as a percentage off Average Wholesale Price, or AWP) for the most commonly used drugs, as determined by the consortium, for each Medicare-endorsed program.

Applicants are required to limit participation in their Medicare-endorsed discount card program to Medicare beneficiaries. CMS will not provide data or assistance to verify Medicare eligibility. Successful applicants will be responsible for verifying Medicare beneficiary eligibility.

Discount card programs may choose to enroll groups of beneficiaries (including Medicare+Choice plan members, Medigap enrollees, and beneficiaries with employer-sponsored retiree health insurance).

Applicants are expected to fund the cost of administering the discount card program. Consortium members will decide how to assess fees on member organizations for start-up and ongoing operations of the consortium. The Federal government shall not be charged for enrollment, administration, participation, or any other cost associated with a discount program.

Applicants are encouraged to negotiate with drug manufacturers for rebates. Applicants may retain any manufacturer rebates or other fees associated with the discount program, but are encouraged to pass a portion of these on to enrollees or retail pharmacies. Discount programs will not be expected to share rebates with Medicare, nor disclose this revenue information to CMS.

Successful applicants will be expected to administer and market their discount card program, and educate Medicare beneficiaries about the program. In order to secure deeper discounts for beneficiaries, Medicare-endorsed discount card programs could use formularies, patient education, pharmacy networks, mail order, and other commonly used tools.

Programs are expected to begin accepting enrollment as of November 1, 2001, and must begin providing discounts no later than January 1, 2002.

CMS encourages applicants and the consortium to develop features that could further add value through improved discounts to Medicare beneficiaries, customer service, reporting/analysis, educational or other efforts (e.g., drug interaction analysis).

Discount card programs must have in place a mechanism to ensure that beneficiaries may elect not to receive non-prescription drug related marketing material from Medicare-endorsed programs (e.g., material related to other services provided by the same organization). The sharing of beneficiary information must comply with applicable State and Federal privacy laws, as well as the privacy regulations established under the authority of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Organizations that offer discounts on items or services other than prescription drugs may continue to offer them; however, Medicare's endorsement will not extend to such items and services. Organizations must disclose these features to beneficiaries, and provide them an opportunity to decline participation related to them.

Although this notice refers to the initiative's requirements to be implemented after the first year of operation, the Medicare endorsements granted under this notice will be valid only from November 1, 2001 through December 31, 2002. Thereafter, CMS will review organizations' qualifications for endorsement annually.

2.0 Applicant Instructions

2.1 Intent to Respond and Pre-Application Conference

- CMS will hold a Pre-application Conference on July 23, 2001 for all interested Applicants. The purpose of this conference is to give Applicants an opportunity to ask questions and to provide individual comments concerning this Notice. Based on the results of this conference, CMS may provide additional clarification in consideration of the individual suggestions of potential applicants. CMS may also modify the qualifications in Section 2.2 below after the pre-application conference.
- Any modifications made to the scope of the initiative as a result of comments received during the pre-application conference will be published on the CMS Web site www.hcfa.gov on or about July 27, 2001.
- In order to receive additional information about the Pre-Application Conference and for future correspondence, potential Applicants are asked to indicate their intention to respond to this Notice by July 20, 2001.
- Your intent to respond should indicate your primary contact, and include your contact's:

—Direct telephone number;
—Fax number;
—E-mail address; and,
—Mailing address.

• The intent to respond should be in writing and sent to: Ron Deacon, Email: *rdeacon@cms.hss.gov*, Phone: (410) 786–6622, Fax: (410) 786–1048.

2.2 Approach to Application, Qualifications, and Evaluation

• Applicants are expected to submit sufficiently comprehensive information to support their application. The application should be prepared in four parts:

Part I: Proposed Prescription Drug Discount Card Program. Provide a description of how you meet the qualifications described in Section 3.0.

Part II: Implementation Approach. Describe your implementation approach as requested in Section 4.0.

Part III: Administrative Capabilities. Describe your administrative capabilities as requested in Section 5.0.

Part IV: Certification. Submit the signed certification found in Section 6.0.

• Incomplete applications will not be evaluated.

• CMS reserves the right to request clarifications or corrections to a submitted application and to reject any and all applications.

• Applicants are advised that their application will become part of the official agreement file.

• This Notice does not commit CMS to pay any cost for the preparation and submission of an application.

• CMS reserves the right to amend or cancel this Notice.

Evaluation

Part I of the application will contain the information necessary for CMS to determine whether the proposed discount card program meets the qualifications outlined in the table below. This Part will also contain the responses to the questions raised in Section 3.0. These responses will be the basis of a Pass/Fail evaluation of whether each of the qualifications is met. A proposed discount card program that successfully meets all qualifications will be endorsed.

Summary of Qualifications

Category	Qualifications
Organization	—At least 5 years United States private sector experience in pharmacy benefit management or discount card industries, with demonstrated financial soundness (see section 3.1.1). —*National Program:* Currently manages at least 2 million covered lives in an insured pharmacy benefit or a drug discount program. Covered lives are discrete individuals who have signed enrollment agreements or paid an enrollment fee or insurance premiums (see section 3.1.2). —*Regional Program:* Currently manages at least 1 million covered lives in an insured pharmacy benefit or a drug discount program and serves a contiguous, multi-state area similar to CMS regions (see section 3.1.2). —Agrees to participate in, abide by the guidelines of, and fund a private consortium with other Medicare-endorsed discount cards for (1) reviewing marketing materials, (2) assuring enrollment exclusivity, and (3) making available via Web site and hard copy (for each Medicare-endorsed discount card program) prices of the most common drugs in each therapeutic class included in the discount card program (see section 3.1.3). —Has written privacy policies that comply with all consumer protection and State and Federal privacy laws (including applicable privacy regulations promulgated under HIPAA) (see section 3.1.4). —Complies with all other applicable Federal and State laws (see section 3.1.4).
Customer Service	—Charges an enrollment fee of no more than $25 to beneficiaries (see section 3.2.1). —Discloses in customer appropriate printed material (may additionally make electronic disclosure) to interested Medicare beneficiaries (prior to enrollment and after enrollment upon request) a detailed description of the program that includes participating pharmacies, enrollment fees (if any), drugs included, and their discounts (see section 3.2.1). —Enrolls all Medicare beneficiaries wishing to participate. Provide beneficiaries the option of enrolling by paper, telephone, fax or Internet (see section 3.2.1). —Provides a mechanism for beneficiaries to decline receiving marketing material (e.g., material related to other services offered by the organization) (see section 3.2.1). —Provides customer appropriate beneficiary and pharmacy services consistent with industry standards, including toll-free telephone help during normal business hours (see section 3.2.2). —Reports to CMS twice annually the number of Medicare beneficiaries enrolled in and disenrolled from the Medicare-endorsed Discount Card Program (see section 3.2.3).
Discounts and Access	—No later than January 1, 2002, provides a discount on at least one brand and/or generic prescription drug in each therapeutic class (see sections 3.3.2 and 3.3.3). —Guarantees participating Medicare beneficiaries receive (at the point of sale) the lower of the discounted price available through the program or price the pharmacy would charge a "cash" paying customer (commonly called the Usual & Customary price) (see section 3.3.3). —Agrees to make available to the consortium information on discounts offered. In the first year, the information will include the average discount off the AWP for the most commonly used drugs, as determined by the consortium. In the second year and beyond, the information will include prices to the consumer of commonly prescribed drugs (see sections 3.1.3, 3.3.2, and 3.3.3). —Maintains a national or regional contracted pharmacy network consistent with industry practice in member travel distance and access to network pharmacies. Applicants are strongly encouraged to offer a mail order option in addition to their contracted pharmacy network (see section 3.3.1).

2.3 Application Format

• In preparing your application, please repeat each question followed by your response. Provide complete answers, and detail the opportunities and value your organization and discount card program offer to Medicare beneficiaries, in a clear, concise manner. All information requested is important and will be considered. If you have additional information you would like to provide, please include it as an appendix to your application, and cross reference its relation to the information requested.

• Applicants should deliver one (1) original and nine (9) copies of the written application with one (1) diskette copy of the application in Microsoft Office format to the following address

by 5:00 EDT, August 27, 2001. Centers for Medicare & Medicaid Services (CMS), Center for Beneficiary Choices, Attn: Ron Deacon, 410–786–6622, 7500 Security Boulevard, Mail Stop C4–17–27, Baltimore, Maryland 21244–1850.

• All copies and the original application should be in 3-ring binders. Tab indexing should be used to identify all major sections of the application.

• Page size should be 8½ by 11 inches and the pages should be numbered. Type size should not be less than 12 point with a space and a half between lines.

2.4 Important Dates

Date	Milestone
July 20, 2001	Notification of Intent to Apply.
July 23, 2001	Pre-Application Conference.
On or about July 27, 2001.	Any clarifications about the scope of the initiative published on CMS Web site (www.hcfa.gov).
Aug. 27, 2001 ...	Applications Due.
Sept. 14, 2001 ..	Begin Announcements of Endorsements
Sept. 21, 2001 ..	Begin submission of marketing material for review.
Nov. 1, 2001	Successful Applicants Permitted to Begin Marketing and Enrolling Participants in "Medicare-Endorsed" Discount Card program(s).

2.5 Applicant Inquiries

• It would be helpful if questions regarding this Notice or requests for additional information were submitted prior to the Pre-Application Conference to be held on July 23, 2001. Any modifications or clarifications made to the scope of the initiative as a result of comments received during the pre-application conference will be published on the CMS Web site http://*www.hcfa.gov* on or about July 27, 2001.

• Contact the following to submit your questions and requests via e-mail or fax before the conference: Centers for Medicare & Medicaid Services, Center for Beneficiary Choices, Attn: Ron Deacon, Phone: 410–786–6622, Fax: 410–786–1048, E-mail: *rdeacon@cms.hhs.gov*.

2.6 Withdrawal of an Application

• An applicant may withdraw an application at anytime before the agreement (Section 7.0) becomes effective, by submitting a written notification for its withdrawal to the CMS contact noted above.

• For the purpose of selecting applicants for Medicare endorsement, CMS will not accept any amendments, revisions, or alterations to applications after the due date of August 27, 2001 unless requested by CMS.

2.7 Information Available From CMS

• In order for Applicants to prepare their applications, CMS will provide the following information upon request:

CMS will provide aggregate data on counts of Medicare beneficiaries by zip code. The "Annual Zip Code Enrollment File" is a public use file and contains aggregated aged and disabled enrollment data by age range, race, and gender within zip code. The file is usually produced in April and reflects enrollment as of July 1 of the previous year. This file has been edited to protect the privacy of beneficiaries. For purposes of the new privacy regulations, Applicants will also be required to complete a Data Use Agreement (DUA) which is appended as Attachment A to this Notice. There is an expedited process in place to review and approve DUAs for enrollment data and information should be available within 1 week after request. The data will be on a cartridge.

Upon request, CMS will also provide drug utilization data from the Medicare Current Beneficiary Survey. The data will be on a CD in ASCII format. The file will include a random sample of unnamed, non-identifiable, non-institutionalized Medicare beneficiaries. For each unidentified individual, the file includes: prescription drug utilization information (e.g., drug name, dosage, number of prescriptions), date of birth, gender and prescription drug insurance coverage status (e.g., no drug coverage, or covered through a payer such as Medicaid, a Medicare+Choice organization, Medigap, or employer-sponsored retiree plan). The data is self-reported by beneficiaries. The attached DUA can also be used for this information.

• To obtain the above information, please submit a signed and completed DUA to: Ron Deacon, Centers for Medicare & Medicaid Services (CMS), Center for Beneficiary Choices, 7500 Security Boulevard, Mail Stop C4–17–27, Baltimore, Maryland 21244–1850, Phone: 410–786–6622, Fax: 410–786–1048. (Original document must also be mailed to CMS.)

• Please call the above contact if you have any questions concerning the data.

2.8 Protection of Confidential Commercial Information

• If any information within a submitted application (or attachments thereto) is labeled by the applicant as a trade secret or privileged or confidential information, and constitutes a trade secret or privileged or confidential information (as such terms are interpreted under the Freedom of Information Act and applicable case law), then such information will be protected from release by CMS under 5 U.S.C. § 552(b)(4).

2.9 Certification Instructions

Pursuant to the Certification Statement in Section 6.0, any changes to the information furnished in this application must be reported to:

Prior to Endorsement Announcement: Centers for Medicare & Medicaid Services (CMS), Center for Beneficiary Choices, Attention: Ron Deacon, 7500 Security Boulevard, Mail Stop C4–17–27, Baltimore, Maryland 21244–1850.

After Endorsement Announcement: Centers for Medicare & Medicaid Services (CMS), Center for Beneficiary Choices, Attention: Christopher Eisenberg, 7500 Security Boulevard, Mail Stop C4–23–07, Baltimore, Maryland 21244–1850.

3.0 Proposed Prescription Drug Discount Card Program

• Please respond to the following questions regarding your qualifications. You may submit additional information that demonstrates your ability to meet and/or exceed the summary of qualifications found in Section 2.0.

3.1 Your Organization

3.1.1 Experience and Financial Soundness

• Provide a brief summary of the history, structure, and ownership of your organization. Include a chart showing the structure of the organization's ownership, subsidiaries and business affiliations.

• Provide the most recent audited financial statements (including auditor's opinions and related footnotes) for your organization or its parent firm (if applicable).

• Report financial ratings given to your organization for the past five years.

• List past or pending investigations and legal actions brought against your organization (and the parent firm if applicable) by any financial institution, government agency (local, State, or Federal) or private organization over the past five years. If directly related to prescription drug services, provide a brief explanation including the following: (1) Circumstances; (2) Status (pending or closed); and (3) If closed, provide details as to resolution and any monetary damages.

3.1.2 Business Volumes

• Complete the following table. If your organization underwent significant change in 2000, or you expect 2001 to have substantially different business volumes please comment and provide your 2001 projected business volumes (in addition to your business volumes for 2000).

2000 Business Volumes

Metric	Insured pharmacy benefits*		Drug discount card programs	
	Retail	Mail	Retail	Mail
Covered lives**				
Senior lives (if available)				
Claims processed or number of discounted prescriptions				
Drug spending managed			N/A	N/A

*Exclusive of any drug discount card programs.
**Covered lives are discrete individuals who have signed enrollment agreements or paid an enrollment fee or an insurance premium.

• Please provide a description of your current clients including the number of covered lives and percentage who are seniors. Covered lives are discrete individuals who have signed enrollment agreements or paid an enrollment fee or paid insurance premiums.

• Please indicate if your proposed discount card program is a retail store only program or a retail store and mail order program.

• Please indicate if your program is national or regional. The CMS Web site where discount card program information will be posted searches by zip code and State. Provide enough information to clearly identify areas that you serve among the following: Each of the 50 States, Washington, D.C., Guam, and each of the U.S. territories.

3.1.3 Participation in and Funding of Consortium

• Describe how your organization anticipates working with the consortium (described in Sections 1 and 2, and in section 7.2) to ensure that the functions of the consortium are performed.

• Describe your organization's ideas for the development, implementation, and financing of the consortium. Assuming it is responsible for marketing review, enrollment exclusivity, and dissemination of comparative pricing data, discuss the level and extent of your organization's financial contribution to the initial and ongoing operation of the consortium.

• Describe your organization's capability and process for supporting the activities of the consortium and providing information on discounts offered. In the first year, the information will include the average discount off the AWP for the most commonly used drugs. In the second year and beyond, the information will include prices to the consumer of commonly prescribed drugs.

3.1.4 Compliance With Federal and State Laws

• Indicate compliance with Federal and State laws applicable to the conduct of your proposed discount card program (e.g., applicable regulations under HIPAA, State privacy laws, State licensure, and consumer protection laws).

3.2 Customer Service

3.2.1 Enrollment and Eligibility

• Describe the information about your discount card program that will be provided to Medicare beneficiaries prior to enrolling.

• Indicate whether your organization will charge an enrollment fee, and if so, the fee amount to offset enrollment administration costs.

• Programs are expected to begin accepting enrollment as of November 1, 2001. Describe your organization's abilities (e.g., paper, fax, phone, Internet) and process for enrolling Medicare beneficiaries in your proposed discount card program, and for maintaining this information (e.g., address changes, participant withdrawals).

• Will Medicare beneficiaries be able to enroll in your discount card program at the point-of-service (e.g., retail pharmacy)?

• What information would be collected from Medicare beneficiaries at the time of enrollment in your discount card program? What of this information would be required for enrollment? (See Section 7.6. for confidentiality requirements.)

• Upon your receipt of enrollment information, how long is required before a Medicare beneficiary can use the discount card program? Is this guaranteed? If so, what mechanisms do you have to monitor and enforce this guarantee?

• What mechanisms do you have to monitor and enforce the restriction that enrollment is limited to Medicare beneficiaries?

• Explain the information members receive after enrolling in your discount card program, including program updates (e.g., listing of participating pharmacies, drugs included, discount amounts, how to obtain discounts, etc.)

—How soon after enrollment will they receive this information? How is the information provided (Applicant must have a system to provide notification by mail, but may provide option to beneficiaries for electronic notification.)?

• Describe how you will ensure that beneficiaries may decline receiving marketing material regarding your program or regarding additional services offered by your organization.

• Describe whether it will service Guam and the U.S. territories.

3.2.2 Customer Service—Education and Information Services

In all of the following areas please describe how your organization meets or exceeds industry standards:

• The capabilities of your call center, including:

—Peak and average call volumes, per week, and number of customer service representatives.

• Your ability and experience providing customer service and call center support to seniors, people with disabilities, and non-English-speaking beneficiaries.

• The level of toll-free support you will provide Medicare beneficiaries and pharmacies participating in your discount card program. Include your:

—Forecast call volume and handle time for Medicare beneficiaries;
—Hours of operation;
—Average speed of answer; and
—Abandonment rate.

• Explain in detail how your customer service function would respond to the following:

—Questions concerning differences between the Medicare-endorsed discount card program, other discount programs and prescription drug insurance;
—Discount card program inquiries, prior to enrollment;
—Problems in the enrollment process;
—Questions concerning drug costs;
—Lost or stolen ID cards;
—Mail service questions, issues and concerns (if applicable);
—Pharmacy questions.

• Describe your organization's experience and processes for managing customer complaints and grievances, and the processes your organization expects to have in place for Medicare beneficiaries under your discount card program.

3.2.3 Reporting

• Describe the standard report your organization will submit twice a year on the number of Medicare beneficiaries enrolled and disenrolled. Provide sample report format.

• Describe any additional standard reports your organization will provide CMS, at no charge. Provide sample report formats.

3.3 Access and Discounts

3.3.1 Pharmacy Access

Retail Pharmacy

• Using GeoAccess or a similar methodology, demonstrate that the contracted pharmacies participating in your proposed Medicare-endorsed discount card program meet standards consistent with industry practice for member travel distance and access to contracted network pharmacies. Provide the total number of pharmacies participating in your discount card program's network. A zip code data file is available on cartridge from CMS upon request and acceptance by CMS of the attached DUA (Attachment A).

• For the geographic area you propose to serve, please provide the number of Medicare beneficiaries within varying travel distances to contracted network pharmacies (i.e., within 5 and 10 miles).

• Please describe the nature of your network pharmacy contracts. Do your network pharmacy contracts explicitly cover discount card programs? Are they in compliance with all applicable state laws?

Mail Order (If Applicable)

• If your discount card program includes mail service, please provide a detailed description of this service, including:

—Turnaround time;
—Process for Medicare beneficiaries to use the mail service, including paperwork to be completed, any Internet and payment methods, and average processing time;
—Process for resolving the problems commonly found with mail pharmacies (e.g., lost prescription, lost medication);

3.3.2 Drugs Included

• Comment on the drugs your discount card program includes (including at least one drug in each therapeutic class). Please indicate which, if any, of the attached list of drugs commonly used by Medicare beneficiaries (Attachment B), your program will include.

3.3.3 Discounts

• Describe the discount you will provide to Medicare beneficiaries participating in your discount card program (a discount must be provided on at least one brand and/or generic prescription drug in each therapeutic class). Please indicate the average discount level (by brand and generic, by retail and mail order), and the maximum range for each category.

• Your discount should reflect network discounts, manufacturer rebates, dispensing fees and any revenue sources available to you net of your need to fund your administrative costs from these sources.

—Your pricing should be reported as a discount off average wholesale price (AWP), as reported by FirstDatabank, and be consistent with industry standards for reimbursing network pharmacies dispensing covered drugs to qualified members.
—Your discount must include all dispensing fees and other fees (if applicable).

• Describe any dispensing or other fees (if applicable).

• If your discount card program features maximum allowable cost (MAC) pricing, provide the AWP discount equivalent. For those drugs not receiving MAC pricing, provide the AWP discount.

• How does your program guarantee that Medicare beneficiaries will receive (at point of sale) the lower of the discounted price available through the program or the price the pharmacy would charge a cash paying customer?

• Explain how your organization enforces and monitors the pricing discount.

3.4 Additional Discounts and Services

• CMS encourages applicants to offer better pricing to those Medicare beneficiaries willing to restrict drug choice to preferred brands or generics, fill prescriptions through a narrower pharmacy network, or use mail order pharmacy service. Organizations are encouraged to negotiate rebates with drug manufacturers. Medicare-endorsed organizations are not expected to share rebates or other revenues received with Medicare, but are encouraged to share the rebates with beneficiaries or retail pharmacies. Provide a description of your program's features in these areas including drugs included, discounts offered, scope of contracted pharmacy network, mechanism for sharing rebates with enrollees and pharmacies, and other features.

• Describe additional services that your organization offers with its proposed discount card program that significantly increases its value. Areas for consideration include:

—Approach to marketing and promoting your card program;
—Clinical services such as drug utilization review (DUR) that would help minimize inappropriate dosing, drug-drug interaction, drug-allergy interaction or similar situations;
—Educational material provided to participating Medicare beneficiaries that address medications, diseases, or wellness;
—Value added reporting to CMS or Medicare beneficiaries that could include the cost savings realized by Medicare beneficiaries participating in your card program.

• Describe discounts on other services (e.g., dental, vision) that will be offered to Medicare beneficiaries, if any.

—Describe how Medicare beneficiaries could decline to receive these additional services or marketing related to them.
—Would there be an additional fee related to these services? What is the annual fee for these services, if any, for 2001 and 2002?
—How will you assure that use of the Medicare name is not applied to these additional services?

4.0 Approach

• Please describe your approach to implementing your proposed discount card program:

Include a work plan and schedule in Microsoft Office format or similar software.

5.0 Administrative Capabilities

• The Medicare endorsement is effective on November 1, 2001. Specify the date on which Medicare beneficiaries may enroll in your discount card program, (should it be

endorsed); what date potential enrollees may call the organization for more information about the Medicare-endorsed discount card program; what phone number beneficiaries should call for more information about your program; and on what date Medicare beneficiaries can expect to begin receiving discounts on prescription drugs, if earlier than January 1, 2002;

- Provide the number of Medicare beneficiaries you expect to enroll in your discount card program at 1 month, 6 months, and 12 months.
- Describe how your operations and service levels will change to accommodate Medicare beneficiary volume and to meet your proposed service levels. Include in your description the expected impact on your customer service functions (e.g., enrollment call center support, participant communications, etc.)
- Include a list of names and proposed duties of the key personnel that will be assigned to this program, including but not limited to, the account manager and customer service manager. Provide resumes for these people that include work history, education, background, and industry accomplishments.
- Provide contact information for 3 of your largest clients including reference name, title, phone and fax, company name and address, years as a client, and a brief description of the services you have provided.

6.0 Certification

6.1 Prohibition of Misuse of Symbols, Emblems, or Names in Reference to Social Security or Medicare

42 U.S.C. 1320b–10 prohibits the misuse of the Medicare name or emblem. In general, it authorizes the Inspector General of the Department of Health and Human Services to impose penalties on any person who misuses the term Medicare, the symbols, emblems, or names of Social Security, the Centers for Medicare & Medicaid Services, Health and Human Services, Medicare (or other similar government entities), or the letters CMS, HHS, HCFA, DHHS or other similar letters in a manner which the person knows or should know gives the false impression that it is approved, endorsed, or authorized by CMS.

Offenders are subject to fines of up to $5,000 per violation or in the case of a broadcast or telecast violation, $25,000.

6.2 Penalties for Falsifying Information on the Medicare-Endorsed Rx Discount Card Initiative Application

18 U.S.C. 1001 authorizes criminal penalties against an individual who in any matter within the jurisdiction of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

Individual offenders are subject to fines of up to $250,000 and imprisonment for up to five years. Offenders that are organizations are subject to fines of up to $500,000. 18 U.S.C. 3571. Section 3571(d) also authorizes fines of up to twice the gross gain derived by the offender if it is greater than the amount specifically authorized by the sentencing statute.

6.3 Certification Statement

I, the undersigned, certify to the following:

(1.) I have read the contents of the completed application and the information contained herein is true, correct, and complete. If I become aware that any information in this application is not true, correct, or complete, I agree to notify the Centers for Medicare & Medicaid Services (CMS).

(2.) I authorize CMS to verify the information contained herein. I agree to notify CMS in writing of any changes in this application prior to such change or within 30 days of the effective date of such change. I understand that a change CMS deems to be major may require a new application and may result in termination of endorsement.

(3.) I agree that if my program meets the minimum qualifications and is Medicare-endorsed, I will abide by the requirements contained in Section 7.0 of this Notice and provide the services outlined in my application.

(4.) Neither I, nor owner, director, officer, or employee of the company or other organization on whose behalf I am signing this certification statement, or any contractor retained by the company or any of the aforementioned persons, currently is subject to sanction under the Medicare or Medicaid program, or debarred, suspended or excluded under any other Federal agency or program, or otherwise prohibited from providing services to CMS or other Federal Agency.

(5.) I understand that in accordance with 18 U.S.C. 1001, any omission, misrepresentation or falsification of any information contained in this application or contained in any communication supplying information to CMS to complete or clarify this application may be punishable by criminal, civil, or other administrative actions including revocation of endorsement, fines, and/or imprisonment under Federal law.

(6.) I further certify that I am an authorized representative, officer, chief executive officer, or general partner of the business organization that is applying for the endorsement.

Authorized Representative Name (printed)

Title

Authorized Representative Signature

Date (MM/DD/YY)

7.0 Model Agreement

[Qualified Applicant] agrees that, if Medicare-endorsed, the Applicant meets the requirements listed herein. [Qualified Applicant] agrees to implement a prescription drug discount card program as described in its application and as approved by CMS. Further, [Qualified Applicant] agrees to implement a prescription drug discount card program in accordance with the Objectives and Program Overview described in Section 1.0 (Introduction) of the Notice of Application entitled "Medicare-Endorsed Rx Discount Card Initiative".

7.1 Beneficiary Information

[Qualified Applicant] agrees to develop marketing materials and customer service strategies that incorporate educational information appropriate for a Medicare population regarding accessing market-based strategies (e.g., role of formularies, network pharmacies, and mail order pharmacy, if applicable) for purchasing prescription drugs.

7.2 Consortium

- [Qualified Applicant] agrees to participate in, abide by the guidelines of, and fund a HIPAA-compliant consortium with other Medicare-endorsed discount card programs. The consortium must comply with the privacy regulations promulgated under HIPAA upon the date of compliance specified in those regulations, as well as any applicable State privacy laws. The [Qualified Applicant] agrees to collaborate with other qualifying applicants to design and implement the consortium so that it can perform the administrative functions identified below.
- Provide a system to ensure that Medicare beneficiaries are enrolled in only one Medicare-endorsed discount card program at a time (actual enrollment will be conducted by

individual discount card programs). The consortium must assure enrollment exclusivity no later than December 31, 2001. The system could be enhanced after that date to more efficiently perform this function.

• Make available information regarding average discounts (expressed as a percentage off Average Wholesale Price or AWP) for the most commonly-used drugs as designated by the consortium for each Medicare-endorsed discount card program as close to November 1, 2001 as possible. (A CMS-produced list of commonly-used drugs is provided as Attachment B for reference only.) The consortium will publish this discount information on the Web site of the consortium and make available hardcopies to beneficiaries, upon request.

• Beginning no later than November 1, 2002, make available comparative information on each Medicare-endorsed drug discount card program that will include drug/dose-specific prices (inclusive of discount and dispensing fee) for a sufficient number of drugs to allow beneficiaries to make an informed choice, formularies, and networks. The prices to be made available are the prices the beneficiary would pay at a retail store and/or mail order program, including the discount and dispensing fee. [Qualified Applicant] agrees to provide all the necessary information regarding its discount card program, for comparison purposes, to the consortium no later than September 1, 2002.

• Review marketing material used by Medicare-endorsed discount card programs based on guidance provided by CMS. The consortium agrees to work with CMS to assure adherence to CMS marketing material review guidance. The consortium should be prepared to assume review of all marketing materials from CMS beginning September 1, 2002. Marketing materials will be reviewed to ensure that they convey accurate information, and are delivering pharmacy benefit management services (e.g., drug/drug interactions) promised, consistent with guidelines established by the CMS. [Qualified Applicant] agrees to provide all marketing materials to the consortium for review no later than September 1, 2002.

7.3 Enrollment System

[Qualified Applicant] shall assure that any Medicare beneficiary wishing to enroll is permitted to do so consistent with any eligibility criteria specified in [Qualified Applicant's] application and approved by CMS.

A beneficiary who enrolls in an Rx discount card program shall not enroll in another Medicare-endorsed card programs while enrolled. Beneficiaries who provide no disenrollment notice to the Applicant shall have their enrollment renewed following rules established by the Medicare-endorsed card program in its CMS approved application for endorsement, provided the Rx discount card program continues to be endorsed. Medicare beneficiaries may enroll in an alternative Medicare-endorsed discount card program if they are disenrolled or their card program withdraws or is terminated.

[Qualified Applicant] may charge an enrollment fee (not to exceed $25 per beneficiary) only upon enrollment. [Qualified Applicant] shall not require its Rx discount card program enrollees to pay annual or other fees to maintain their enrollment.

A beneficiary who enrolls in an Rx discount card program shall have the opportunity to select another card only twice a year, with a new election to be effective January 1 or July 1 of each year, whichever date immediately follows a beneficiary's provision of notice of a new election. A beneficiary enrolling in a second card program during the year must pay any enrollment fee charged by the second program. Beneficiaries who are not enrolled in a card program may enroll at any time.

[Qualified Applicant] shall notify Medicare beneficiaries enrolled in its card program, if they are disenrolled from the discount card program according to the rules established in its CMS approved application. The notification shall indicate that the beneficiary may enroll in an alternative Medicare-endorsed discount card program.

7.4 Marketing Strategy

7.4.1 Marketing Material

Marketing material includes any informational materials targeted to Medicare beneficiaries that promote a Medicare-endorsed Rx discount card program, inform Medicare beneficiaries that they may enroll or remain enrolled in a Medicare-endorsed prescription discount card program, and explain the features of the program, including rules that apply to enrollees. Examples of marketing materials include, but are not limited to, general audience materials, membership communication materials, communications to enrollees announcing changes in discount rates, and information relating to withdrawal and termination.

7.4.2 Marketing Material Review

Through August 31, 2002, [Qualified Applicant] shall submit Medicare-endorsed Rx discount card program materials to CMS for review 30 days prior to distribution to beneficiaries. CMS shall review marketing materials, communicate any required revisions in writing, and approve a final version during the thirty day period. [Qualified Applicant] may distribute marketing materials to Medicare beneficiaries after they have been approved. [Qualified Applicant's] use of the "Medicare" name shall be restricted to inclusion in those marketing materials that [Qualified Applicant] has submitted to CMS for review.

[Qualified Applicant] shall ensure that its Medicare-endorsed Rx discount card program marketing materials provide Medicare beneficiaries an adequate description of the rules for participation in the card program, including discounts and restrictions, if any, on enrollees' access to contracted network pharmacies through the program, and any other information necessary for Medicare beneficiaries to make a decision about enrollment. All marketing materials shall include a statement that the discount card program is endorsed by Medicare but is not a Medicare benefit and that [Qualified Applicant] is not a Medicare contractor. All marketing materials shall also include a statement that the discount card program is not intended to replace prescription drug benefits obtained through participation in any insurance plan, including a Medicare+Choice plan, Medigap policy, Medicaid, or employer retiree group plan. The text of all written marketing materials must be printed with a 12-point font size or larger.

7.4.3 Marketing Activities

[Qualified Applicant] shall not engage in activities that could mislead Medicare beneficiaries, or intentionally misrepresent the [Qualified Applicant] or the Medicare-endorsed Rx discount card program it offers. [Qualified Applicant] shall not solicit door-to-door to Medicare beneficiaries.

[Qualified Applicant] shall ensure that its marketing activities include marketing to beneficiaries with disabilities, beneficiaries with End-Stage Renal Disease (ESRD), and beneficiaries age 65 and over. The Applicant shall not employ discount card program names that suggest that it is not available to all Medicare beneficiaries (e.g., both beneficiaries who qualify based on disability status and those who are 65 and over).

7.5 Internal Performance Monitoring

[Qualified Applicant] shall establish internal performance monitoring for

verification of the discount, enrollment operations, customer service, network pharmacy and mail order operations (if applicable), as specified in the approved application for endorsement.

7.6 Confidentiality Requirements

[Qualified Applicant] shall abide by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information, including applicable privacy regulations promulgated under HIPAA. The [Qualified Applicant] shall safeguard the privacy of any information that identifies a particular enrollee and shall ensure that medical information is released only in accordance with applicable Federal or State law or regulations, or pursuant to court orders or subpoenas, including [Qualified Applicants] work with the consortium. Further, [Qualified Applicant] shall put in place a mechanism to ensure that beneficiaries may elect not to receive non-prescription drug related marketing material from Medicare-endorsed programs (e.g., material related to other services provided by the same organization).

7.7 Term of Agreement

Qualified applicants awarded Medicare endorsement under this Notice shall offer a Medicare-endorsed Rx discount card program for up to 14 months (November 1, 2001 to December 31, 2002), effective the date stated in the selection notification letter CMS sends to successful applicants.

CMS may terminate the endorsement at any time.

In the event of termination of the endorsement, [Qualified Applicant] shall notify its Medicare beneficiary enrollees that they may enroll in an alternative Medicare-endorsed discount card program within 10 days of receiving notice of termination.

Attachment A—Agreement for Use of Centers for Medicare & Medicaid Services (CMS) Beneficiary Encrypted Files

In order to ensure the confidence of the American public regarding the confidentiality of information collected and maintained by the Federal government, CMS expects the requestors and recipients of its data to agree to observe the following conditions and to comply with these requirements. These requirements apply to the use of the file(s) released or any data derived from such file(s).

This agreement pertains to the release of the following CMS data:

Filename(s)

Annual Zip Code Enrollment File (latest available)
Medicare Current Beneficiary Survey Prescription Drug Utilization

(Requestor Name—First and Last)

(Company/Organization)

(Street Address)

(City, State, and ZIP Code)

(Phone Number—Including Area Code)

The User represents and warrants, and in furnishing the data file(s) specified. CMS relies upon such representation and warranty, that such data file(s) will be used for the following purpose(s).

Preparation of an Application for "Medicare-Endorsed Rx Discount Card Program"

The user represents and warrants further that the facts and statements made in any project plan submitted to CMS for each purpose are complete and accurate.

A. The Requestor shall make no attempt to identify any specific individual whose record is included in the file(s). No attempt will be made to unencrypt any person-level data in the file(s).

B. The parties mutually agree that the aforesaid file(s) (and/or any derivative file(s) may be retained by the User until December 31, 2001, hereinafter known as the "retention date."

C. The requestor shall not disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data covered by this Agreement.

D. The requestor shall not disclose any aggregations of data from the file(s) covered by this agreement without express written authorization from CMS.

E. Absent express written authorization from CMS, the Requestor shall make no attempt to link records included in the file(s) to any other beneficiary-specific source of information.

F. The Requestor shall neither publish nor release any information that is derived from the file(s) and that could reasonably be expected to permit deduction of a beneficiary's identity.

G. Appropriate administrative, technical, procedural, and physical safeguards shall be established by the Recipient to protect the confidentiality of the data and to prevent unauthorized access to it. The safeguards shall provide a level of security that is at least comparable to the level of security referred to in OMB Circular No. A–130, Appendix III—*Security of Federal Automated Information Systems* which sets forth guidelines for security plans for automated information systems in Federal agencies.

H. In the event the Requestor makes an unauthorized disclosure of these data, CMS may impose any or all of the following measures: (1) request a formal response to an allegation of an unauthorized disclosure, (2) require the submission of a corrective action plan formulated to implement steps to be taken to alleviate the possibility of any future unauthorized disclosure; (3) require the return of the data; and/or (4) sanction against further release of CMS data to the organization/requestor in question.

I. The Requestor acknowledges that criminal penalties under section 1106(a) of the Social Security Act (42 U.S.C. 1306(a)), including possible imprisonment, may apply with respect to any disclosure of information in the file(s) that is inconsistent with the terms of the agreement. The Requestor further acknowledges that criminal penalties under the Privacy Act (5 U.S.C. 552a(I)(3)) may apply if it is determined that the Requestor, or any individual employed or affiliated therewith, knowingly and willfully obtained the file(s) under false pretenses.

1.
(Requestor name and title—typed or printed)

2.
(Signature) (Date)

3.
(Typed or printed name of custodian of files, if different)

4.
(Signature) (Date)

5.
(Typed or printed name/agency/telephone number of Federal representative)

6.
(Signature) (Date)

Attachment B—Prescription Drugs Commonly Used by Medicare Beneficiaries

The following list of drugs is based on an analysis of the 1998 Medicare Current Beneficiary Survey. Drugs are self-reported by beneficiary. List includes the top100 drugs based on utilization and spending, yielding a total of 129 drugs.

Accupril, Albuterol, Allopurinol, Alprazolam, Amitriptidine, Amoxicillan, Aricept, Atenolol, Atrovent, Axid, Azmacort, Biaxin, Buspar, Capoten, Captopril, Cardizem, Cardizem CD, Cardura, Casodex, Cephalexin, Cimetidine, Cipro, Claritin, Clozaril, Conjugated Estrogens, Cordarone, Coumadin, Cozaar, Darvocet-N, Daypro, Depakote, Diazepam, Digoxin, Dilacor XR, Dilantin

Diltiazem, Doxipin, Dyamide, Dypyridamole, Folic Acid, Fosamax, Furosemide, Gemfibrozil, Glucophage, Glucotrol, Glyburide, Hctz, Hydrocodone, Hydrocodone/APAP, Hytrin, Ibuprofen, Imdur, Indapamide, Ipratropium Bromide, Isosorbide DN, K-Dur, Klor-Con, Lanoxin, Lasix, Lescol, Lipitor, Lopressor, Lorazepam, Lotensin, Lotrel, Meclizine, Methotrexate, Metoprolol, Mevacor, Miacalcin, Monopril, Naproxen, Neoral, Neurontin, Nitro-Dur, Nitroglycerin, Nitrostat, Norvasc, Paxil, Pepcid Potassium, Potassium Chloride, Pravachol, Prednisone, Premarin, Prevacid, Prilosec, Prinivil, Procardia, Procardia XL, Prograf, Propoxy-N/APAP, Propoxyphene, Propranolol, Propulsid, Proscar, Proventil, Prozac, Ranitidine, Relafen, Rezulin, Risperdal, Serevent, Sinemet, Synthroid, Tagamet, Tamoxifen, Tenormin, Theo-Phylline, Ticlid, Timoptic, Tomazepam, Toprol XL, Tramodone, Trental, Triamterene/HCTZ, Ultram, Vasotec, Verapamil, Voltaren, Xalatan, Xanax, Zantac, Zestril, Ziac, Zithromax, Zocor, Zoloft, Zyprexa

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S. 657/P.L. 107–19
To authorize funding for the National 4-H Program Centennial Initiative. (July 10, 2001; 115 Stat. 153)
Last List July 9, 2001

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Rules and Regulations

Federal Register
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Thursday, July 19, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–063–1]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations by adding Archer and Baylor Counties in Texas to the list of regulated areas. This action is precipitated by the detection of bunted kernels in samples taken from bins of wheat grain stored in Baylor County and harvested in Archer and Baylor Counties. This action will help prevent the spread of Karnal bunt into noninfected areas of the United States.

DATES: This interim rule was effective July 13, 2001. We invite you to comment on this docket. We will consider all comments that we receive by September 17, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–063–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 01–063–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Spaide, Director for Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road, Unit 98, Riverdale, MD 20737–1231; (301) 734–7819.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the planting of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations).

Regulated Areas

The regulations in § 301.89–3(e) provide that we will classify a field or area as a regulated area when it is:

- A field planted with seed from a lot found to contain a bunted wheat kernel;
- A distinct definable area that contains at least one field that was found during a survey to contain a bunted wheat kernel. The distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the areas's proximity to a field found during survey to contain a bunted kernel; or
- A distinct definable area that contains at least one field that was found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel. The distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of that area's proximity to a field that has been associated with grain at a handling facility containing a bunted kernel.

The boundaries of distinct definable areas are determined using the criteria in paragraphs (b) through (d) of § 301.89–3, which provide for the regulation of less than an entire State, the inclusion of noninfected acreage in a regulated area, and the temporary designation of nonregulated areas as regulated areas. Paragraph (c) of § 301.89–3 states that the Administrator may include noninfected acreage within a regulated area due to its proximity to an infestation or inseparability from the infected locality for regulatory purposes, as determined by:

- Projections of the spread of Karnal bunt along the periphery of the infestation;
- The availability of natural habitats and host materials within the noninfected acreage that are suitable for establishment and survival of Karnal bunt; and
- The necessity of including noninfected acreage within the regulated area in order to establish readily identifiable boundaries.

The regulations at § 301.89–3(f) set the boundaries for regulated areas in Arizona, California, New Mexico, and Texas. Certain regulated areas in Arizona, California, and Texas include noninfected acreage that functions as a buffer zone to guard against the spread of Karnal bunt.

When we include noninfected acreage in a regulated area for one or more of the reasons previously listed, the noninfected acreage, along with the rest of the acreage in the regulated area, is intensively surveyed. Negative results from surveys of the noninfected acreage provide assurance that all infected acreage is within the regulated area. In effect, the noninfected acreage serves as a buffer zone between fields or areas associated with a bunted kernel and areas outside of the regulated area.

In this document, we are adding Archer and Baylor Counties, in their entirety, to the list of regulated areas in

Texas. This action is necessary due to the detection of bunted wheat kernels in samples taken from bins of wheat grain stored in Baylor County. The wheat grain was harvested in Archer and Baylor Counties. Until APHIS completes its detection and delimiting surveys, the entirety of each county will be designated as a regulated area in order to include all fields that have a reasonable possibility of being infected.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent Karnal bunt from spreading to noninfected areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 533 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.89–3, paragraph (f), under the heading for "Texas", add two new entries in alphabetical order to read as follows:

§ 301.89–3 Regulated areas.

* * * * *

(f) * * *

Texas

Archer County. The entire county.

Baylor County. The entire county.

* * * * *

Done in Washington, DC. this 13th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–18071 Filed 7–18–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 24

RIN: 1512–AB78

[T.D. ATF–458]

Implementation of Public Law 105–34, Section 1417, Related to the Use of Additional Ameliorating Material in Certain Wines (98R–89P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury Decision, final rule.

SUMMARY: This final rule implements one of the provisions of the Taxpayer Relief Act of 1997. In accordance with the law, ATF is amending the regulations to extend the amelioration and sweetening limitations so that wines made exclusively from any fruit (excluding grapes) or berry with a fixed acid content of 20 or more parts per thousand are entitled to a volume of up to 60 percent ameliorating material. To provide agreement with the IRC, the regulations are changed to raise the maximum limit on alcohol content derived from fermentation from 13 percent to 14 percent in ameliorated fruit (excluding grape) and citrus wines.

EFFECTIVE DATE: These regulations are retroactive to April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, New York 14202–2301, (716) 551–4048.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements one of the provisions of the Taxpayer Relief Act of 1997, Public Law 105–34 ("the Act"). Section 1417 of the Act amended section 5384(b)(2)(D) of the Internal Revenue Code of 1986 by striking "loganberries, currants, or gooseberries," and inserting "any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction to such fruit or berry)." Section 5384 relates to wines other than grape wines.

Previous Regulation for Amelioration of Fruit and Berries

Before enactment of the Act, the amelioration and sweetening limitations of 26 U.S.C. 5384 (b)(2)(D) could only be used for wines produced exclusively from loganberries, currants, or

gooseberries. For wine produced exclusively from loganberries, currants, or gooseberries, the volume of ameliorating material added to juice or wine may not have exceeded 60 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp). If the starting fixed acid level was or exceeded 12.5 grams per liter, a maximum of 1,500 gallons of ameliorating material may have been added to each 1,000 gallons of wine or juice.

Section 1417 of Public Law 105–34 now extends the amelioration and sweetening limitations so that wines made from any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry) is entitled to a volume of up to 60 percent ameliorating material. These provisions do not apply to grape wine, only to fruit or berry wine.

T.D. ATF–403 and Notice No. 868

On September 13, 1999, ATF issued a temporary rule, T. D. ATF–403 (64 FR 50252), to implement section 1417 of Public Law 105–34. In accordance with the law, the regulations were amended to extend the amelioration and sweetening limitations so that a wine made from any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry) is entitled to a volume of up to 60 percent ameliorating material. These provisions do not apply to grape wine, only to fruit or berry wine. On the same day, ATF also issued Notice No. 868 (64 FR 50265) inviting comments on the temporary rule.

Comment Received in Response to Notice No. 868

ATF received one letter of comment, from E. & J. Gallo Winery (Gallo), in response to Notice No. 868. Gallo's comments addressed four separate issues raised by the rulemaking, issues discussed in detail below.

• Gallo noted that in the temporary regulations at 27 CFR 4.21(e), ATF deleted the reference to the maximum ameliorating limit of 35% for other fruit (those having a normal acidity of less than 20 parts or more per thousand). Gallo pointed out that Public Law 105–34 did not change this limit and its deletion from the regulation could cause confusion. Upon reviewing this section of the regulations, we concur that the deletion of this reference to the 35 percent limit is unnecessary and could be confusing. Accordingly, the phrase "and in the case of other fruit wines, not more than 35 percent" will be added back to § 4.21(e).

• In its second point, Gallo commented that § 4.21(d), the standard of identity for citrus wines, should be amended to reflect the new amelioration and sweetening limits granted by Public Law 105–34. The law amended section 5384(b)(2)(D) of the IRC by striking "loganberries, currants, or gooseberries," and inserting "any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction to such fruit or berry)." We note that § 4.21(d) states that citrus wines may be ameliorated and sweetened in accordance with section 5384 of the IRC. Also, while section 5383 of the IRC contains separate amelioration and sweetening provisions for grape wines, the IRC does not contain separate provisions for citrus wines. We therefore agree with Gallo that the new amelioration and sweetening limits apply to citrus wines. Accordingly, § 4.21(d) is being amended so that citrus wines with a fixed acid content of 20 parts or more per thousand are entitled to a volume of up to 60 percent ameliorating material.

• In its review of Notice 868, Gallo also noted an inconsistency between the regulation of amelioration in 26 U.S.C. 5384(a) and part 4. 26 U.S.C. 5384(a), states "To natural wine made from berries or fruit other than grapes, pure dry sugar or liquid sugar may be added to the juice in the fermenter, or to the wine after fermentation; but only if such wine has not more than 14 percent alcohol by volume after complete fermentation, or after complete fermentation and sweetening * * *" Gallo contrasted this with § 4.21(d)(1)(i) and (e)(1)(i), the standards of identity for citrus and fruit wines respectively, which both state "* * * but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13% alcohol by volume * * *".

A review of the legislative history of section 5384 revealed that its current limitation of 14 percent is the result of Public Law 90–619 of 1968. Prior to this amendment, section 5384 read as follows: "* * * but only if such wine has less than 14 percent alcohol by volume after complete fermentation, or after complete fermentation and sweetening * * *". In contrast, the limitation of 13 percent in § 4.21 was in place prior to 1968 and was not changed to agree with the amendments implemented by Public Law 90–619.

ATF agrees that part 4 should be corrected to be consistent with section 5384 of the IRC. We are therefore amending § 4.21(d)(1)(i) and (e)(1)(i) by raising the maximum limit on alcohol content derived from fermentation from 13 percent to 14 percent in ameliorated wines.

• In its final point, Gallo commented that the temporary regulations at § 24.178(b)(4) contain an apparent error. The words "or wine" were omitted in the following sentence, with the omission shown in italics: "For wine produced from any fruit (excluding grapes)*,*or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry), the volume of ameliorating material added to juice or wine may not exceed 60 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp)." As this omission was indeed a typographical error, the words "or wine" will be added back to § 24.178(b)(4).

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The rule merely conforms the regulations to changes in the law made by the Taxpayer Relief Act of 1997. Also, this regulation will not impose any recordkeeping or reporting requirements. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Administrative Procedure Act

The effective date limitation in 5 U.S.C. 553(d) does not apply to this Treasury Decision as it merely implements a section of the law which was effective April 1, 1998, and it does not differ substantively from the temporary rule (T.D. ATF–403) published September 13, 1999.

Drafting Information

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade Practices, Wine.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Vinegar, Warehouses, Wine.

Authority and Issuance

Accordingly, Chapter I of title 27, Code of Federal Regulations is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

Par. 2. Section 4.21 is amended by revising the provisos in paragraphs (d)(1)(i) and (e)(1)(i) to read as follows:

§ 4.21 The standards of identity.

* * * * *

(d) Class 4; citrus wine.

(1)(i) * * * *Provided,* That a domestic product may be ameliorated or sweetened in accordance with the provisions of 26 U.S.C. 5384 and any product other than domestic may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 percent, or in the case of products produced from citrus fruit having a normal acidity of 20 parts or more per thousand, not more than 60 percent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 14 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or a total solids content or more than 22 grams per 100 cubic centimeters.

* * * * *

(e) *Class 5:* fruit wine.

(1)(i) * * * *Provided,* That a domestic product may be ameliorated or sweetened in accordance with the provisions of 26 U.S.C. 5384 and any product other than domestic may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of dry sugar and water solution as will increase the volume of the resulting product, in the case of wines produced from any fruit or berry other than grapes, having a normal acidity of 20 parts or more per thousand, not more than 60 percent, and in the case of other fruit wines, not more than 35%, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 14 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or a total solids content of more than 22 grams per 100 cubic centimeters.

* * * * *

Par. 3. Section 4.22 is amended by revising the proviso in paragraph (b)(5) to read as follows:

§ 4.22 Blends, cellar treatment, alteration of class or type.

* * * * *

(b) * * *

(5) * * * *Provided,* That the class or type thereof shall not be deemed to be altered where such wine (other than grape wine) is derived from fruit, or other agricultural products, having a high normal acidity, if the total solids content is not more than 22 grams per 100 cubic centimeters, and the content of natural acid is not less than 7.5 parts per thousand and where such wine is derived exclusively from fruit, or other agricultural products, the normal acidity of which is 20 parts or more per thousand, if the volume of the resulting product has been increased not more than 60 percent by the addition of sugar and water solution, for the sole purpose of correcting natural deficiencies due to such acidity, and (except in the case of such wine when produced from fruit or berries other than grapes) there is stated as part of the class and type designation the phrase "Made with over 35 percent sugar solution."

PART 24—WINE

Paragraph 1. The authority citation for 27 CFR Part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 24.178 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 24.178 Amelioration.

* * * * *

(b) * * *

(3) For all wine, except for wine described in paragraph (b)(4) of this section, the volume of ameliorating material added to juice or wine may not exceed 35 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp). Where the starting fixed acid level is or exceeds 7.69 grams per liter, a maximum of 538.4 gallons of ameliorating material may be added to each 1,000 gallons of wine or juice.

(4) For wine produced from any fruit (excluding grapes) or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry), the volume of ameliorating material added to juice or wine may not exceed 60 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp). If the starting fixed acid level is or exceeds 12.5 grams per liter, a maximum of 1,500 gallons of ameliorating material may be added to each 1,000 gallons of wine or juice. (26 U.S.C. 5383, 5384).

* * * * *

Signed: June 14, 2001.

Bradley A. Buckles,

Director.

Approved: June 28, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 01–17936 Filed 7–18–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–01–073]

Drawbridge Operation Regulations; State Road 84 Bridge, South Fork of the New River, Mile 4.4, Fort Lauderdale, Broward County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the State Road 84 bridge across the South Fork of the New River, Fort Lauderdale, Florida. This deviation allows the drawbridge owner or

operator to not open the bridge for a period of time. This temporary deviation is required to allow the bridge owner to safely complete repairs of the bridge.

DATES: This deviation is effective from August 2, 2001 to August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The State Road 84 bridge across the South Fork of the New River at Fort Lauderdale, Broward County, Florida is a single leaf bridge with a vertical clearance of 21 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 40 feet. On June 20, 2001, the Florida Department of Transportation, the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR 117.315(b) which requires the draw of the State Road 84 bridge, mile 4.4 at Fort Lauderdale, to open on signal if at least 24 hours notice is given. This temporary deviation will allow the bridge owner to complete necessary repairs to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.315(b) for the purpose of repair completion of the drawbridge. Under this deviation, the State Road 84 bridge need not open from August 2, 2001 through August 9, 2001. Additionally, from August 10 to August 20, 2001, the bridge need not open except in the event of heavy weather with an opening schedule broadcast locally during this period.

Dated: July 9, 2001.

Greg E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 01–17997 Filed 7–18–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–01–053]

RIN 2115–AE47

Drawbridge Operation Regulations: Miami River, Miami, Dade County, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is permanently changing the operating regulations of all drawbridges on the Miami River, from the mouth to and including the N.W. 27th Avenue bridge, mile 3.7, Miami, FL. This rule will allow the bridge owner or operator to open the bridge on signal for all Federal holidays, in addition to the six listed in the current regulation.

DATES: This rule is effective August 20, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket [CGD07–01–053] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, FL 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 10, 2001, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations: Miami River, Miami, Dade County, FL in the **Federal Register**. (66 FR 1923). We did not receive any letters commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

The current rule governing the Miami River Drawbridges, from the mouth to and including the N.W. 27th Avenue bridge, mile 3.7, is inconsistent with current bridge operating practices on Federal holidays. The current regulation was written when there were only six Federal holidays. That regulation states that the bridge can open on signal during those six holidays listed in the regulation. This rule will change the bridge operating regulations to include all Federal holidays and will reduce confusion of which Federal holidays apply.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). This rule only changes the bridge operating schedule to include all Federal holidays instead of only some Federal holidays.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this final rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule would not have a significant economic impact on a substantial number of small entities because the rule only slightly alters the current bridge operating schedule.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that, under, Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.305 is revised to read as follows:

§ 117.305 Miami River.

The draw of each bridge from the mouth to and including N.W. 27th Avenue bridge, mile 3.7 at Miami, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draws need not be opened for the passage of vessels. Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

Dated: July 2, 2001.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 01–17996 Filed 7–18–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–090]

Safety Zone: Captain of the Port Detroit Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Detroit Zone during August 2001. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

DATES: 33 CFR 165.907 (a)(22) and (a)(23) will be implemented from 9 p.m. through 11:59 p.m. (EST) on August 11, 2001.

FOR FURTHER INFORMATION CONTACT: Ensign Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, (313) 568–9580.

SUPPLEMENTARY INFORMATION: The Coast Guard is implementing two permanent safety zones in 33 CFR 165.907 (published May 21, 2001, in the **Federal Register**, 66 FR 27868), for fireworks displays in the Captain of the Port Detroit Zone during August 2001. The following safety zones are in effect for fireworks displays occurring in the month of August 2001:

(1) *Maritime Day Fireworks, Marine City, MI.* Location: All waters of the St. Clair River within a 300-yard radius of the fireworks barge in approximate position 42°43′ N, 082°29′ W, about 500 yards east of Marine City, St. Clair River on August 11, 2001 from 9 p.m. to 11:59 p.m.

(2) *Venetian Festival Boat Parade & Fireworks, St. Clair Shores, MI.* Location: All waters of Lake St. Clair within a 300-yard radius of the fireworks barge in approximate position 42°28′N, 082°52′ W, about 600 yards off Jefferson Beach Marina, Lake St. Clair on August 11, 2001 from 9 p.m. to 11:59 p.m. In order to ensure the safety of spectators and transiting vessels, this safety zone will be in effect for the duration of the event. Vessels may not enter the safety zone without permission from Captain of the Port Detroit Zone. If you would like permission, contact the person listed in **FOR FURTHER INFORMATION CONTACT.** Spectator vessels may anchor outside the safety zone but are cautioned not to block a navigable channel.

Dated: July 10, 2001.

B.P. Hall,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 01–17998 Filed 7–18–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–083]

RIN 2115–AA97

Safety Zone; Oswego Harbor, Oswego, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of Oswego Harbor. The safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with fireworks displays. This safety zone is intended to restrict vessel traffic from a portion of Lake Ontario and Oswego Harbor, New York.

DATES: This rule is effective from 9:30 p.m. until 10 p.m. on July 28, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–01–083 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant David Flaherty, U. S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203. The telephone number is (716) 843–9574.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule that would be effective before the necessary date. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property. The Coast Guard has not received any complaints or negative comments with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure safety of vessels, spectators, and participants for the Oswego Harborfest fireworks display. The safety zone consists of all navigable waters of Oswego Harbor within an 800 foot radius around the fireworks barge located at 43°28′0″ N, 076°31′9″ W. All geographic coordinates are North American Datum of 1983 (NAD 83). Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander and may be contacted via VHF/FM Marine Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (see **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subject in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–970 is added to read as follows:

§ 165.T09–970 Safety Zone; Oswego Harbor, Oswego, NY.

(a) *Location.* The following area is a temporary safety zone: all waters of Oswego Harbor within an 800-foot radius around the fireworks barge located at 43°28′0″ N, 076°31′9″ W. All geographic coordinates are North American Datum of 1983 (NAD83).

(b) *Effective time and date.* This rule is effective from 9:30 p.m. until 10 p.m. (local) on July 28, 2001. The designated Patrol Commander on scene may be contacted on VHF–FM Channel 16.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo, or the designated Patrol Commander.

Dated: July 5, 2001.

S.D. Hardy,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 01–18109 Filed 7–18–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–084]

RIN 2115–AA97

Safety Zone; Presque Isle Bay, Erie, Pennsylvania

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the navigable waters in Presque Isle Bay. The safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with fireworks displays. This safety zone is intended to restrict vessel traffic from a portion of Presque Isle Bay, Erie, Pennsylvania.

DATES: This rule is effective from 9:30 p.m. through 10:30 p.m. on August 19, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–01–084 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant David Flaherty, U. S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203. The telephone number is (716) 843–9574.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule that would be effective before the necessary date. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property. The Coast Guard has not received any complaints or negative comments with regard to this event

Background and Purpose

A temporary safety zone is necessary to ensure safety of vessels, spectators, and participants for the We Love Erie Days fireworks display. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander and may be contacted via VHF/FM Marine Channel 16.

The safety zone will encompass all navigable waters of Presque Isle Bay within an 800-foot arc of the fireworks launch platform located at the end of Dobbins Landing in position 42°08′19″ N, 080°05′30″ W. These coordinates are based upon North American Datum 1983 (NAD 83).

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of

the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (see **ADDRESSES**.)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subject in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–969 is added to read as follows:

§ 165.T09–969 Safety Zone; Presque Isle Bay, Erie, PA.

(a) *Location:* The following area is a temporary safety zone: all navigable waters of Presque Isle Bay within an 800-foot arc around the fireworks launch platform located at the end of Dobbins Landing in approximate position 42°08′19″ N, 080°05′30″ W (NAD 83).

(b) *Effective time and date.* This section is effective from 9:30 p.m. until 10:30 p.m. (local) on August 19, 2001.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo, or the designated Patrol Commander.

Dated: July 5, 2001.

S. D. Hardy,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 01–18108 Filed 7–18–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–014]

RIN 2115–AA97

Safety Zone; Rochester Harborfest Fireworks Display, Genesee River, Rochester, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone, encompassing the navigable waters of Rochester Harbor and the Genesee River in Rochester, New York. This rule is necessary to protect participants, vessels, and spectators from the hazards associated with the storage, preparation, and launching of fireworks. The rule is intended to restrict vessel traffic from a portion of the waters of Rochester Harbor and the Genesee River, Rochester, New York.

DATES: This rule is effective from 9 p.m. until 11 p.m. (EST) on August 11, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–01–014 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant David Flaherty, U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203. The phone number is (716) 843–9574.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule. Publication of an NPRM and delay of the effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property.

Background and Purpose

This safety zone is being established to ensure the safety of vessels, spectators and participants. All persons and vessels shall comply with the instructions of the Captain of the Port Buffalo or the designated on scene patrol personnel. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or the designated Patrol Commander. The designated Patrol Commander may be contacted via VHF/FM Marine Channel 16.

Regulatory Evaluation

This temporary rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulation Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not review it under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in a portion of Rochester Harbor from 9 p.m. to 11 p.m. (EST) on August 11, 2001.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only two hours late in the day when vessel traffic is low. Vessel traffic may enter or transit through the safety zone with the permission of Captain of the Port Buffalo or the designated Patrol Commander..Before the effective period, we will issue maritime advisories, widely available to users of the harbor.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (See **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Indian Tribal Governments

This temporary final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–945 is added to read as follows:

§ 165.T09–945 Safety Zone; Rochester Harborfest Fireworks Display, Genesee River, Rochester, New York.

(a) *Location.* The following area is a temporary safety zone: all waters of Rochester Harbor and the Genesee River encompassed by an area 300-yards around the fireworks barge moored/anchored in approximate position: 43°15.8′ N 077°36.0′ W. These coordinates are based on North American Datum 1983 (NAD 83).

(b) *Effective time and date.* This section is effective from 9 p.m. through 11 p.m. (EST) on August 11, 2001.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Captain of the Port Buffalo or the designated on scene patrol personnel. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or the designated Patrol Commander. Coast Guard patrol personnel include commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed. The Captain of the Port Buffalo or the designated Patrol Commander may be contacted via VHF Channel 16.

Dated: June 21, 2001.

S.D. Hardy,

Commander, U.S. Coast Guard Captain of the Port Buffalo.

[FR Doc. 01–18107 Filed 7–18–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–010]

RIN 2115–AA97

Safety Zone; Niagara River, Tonawanda, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone. The safety zone encompasses the navigable waters on the Niagara River in Tonawanda, New York. The action is necessary to protect participants and non-participants within the immediate area from the hazards associated with fireworks displays.

DATES: This rule is effective from 9:30 p.m. until 10:30 p.m. on July 22, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–010] and are available for inspection of copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, NY 14203, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant David Flaherty, U. S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, NY. The telephone number is (716) 843–9574.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule that would be effective before the necessary date. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property. The Coast Guard has not received any complaints or negative comments with regard to this event.

Background and Purpose

A temporary safety zone is required to ensure safety of vessels and participants. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Buffalo or the designated Patrol Commander. The designated Patrol Commander on scene may be contacted on Marine VHF Channel 16.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and government jurisdictions with populations less than 50,000. For the same reasons set forth in the above regulatory evaluations, the Coast Guard certifies under section 605 (b) of the Regulatory Flexibility Act (5 U.S.C.601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effectiveness and participate in the rulemaking process. If your small business or organization is affected by this rule, and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This event is being conducted in concurrence with local authorities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. This temporary final rule would not impose an unfunded mandate.

Taking of Private Property

This temporary final rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–940 is added to read as follows:

§ 165.T09–940 Safety Zone: Niagara River, Tonawanda, NY.

(a) *Location.* The following area is a temporary safety zone: The waters of the Niagara River within 300 yards of a fireworks barge moored/anchored with its center in approximate position 43 01′ 52″ N, 078 53′ 16″ W. All coordinates in this section reference 1983 North American Datum (NAD83).

(b) *Effective time and date.* This regulation is effective from 9:30 p.m. until 10:30 p.m. (local) July 22, 2001.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is

prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or the designated Patrol Commander.

Dated: June 21, 2001.

S.D. Hardy,

Commander, U.S. Coast Guard Captain of the Port Buffalo, NY.

[FR Doc. 01–18106 Filed 7–18–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 217–0285; FRL–6995–7]

Final Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on September 28, 2000. This limited approval and limited disapproval action will incorporate Rules 2020 and 2201 of San Joaquin Valley Unified Air Pollution District (District) into the federally approved SIP.

The intended effect of finalizing this limited approval is to strengthen the federally approved SIP by incorporating these rules and by satisfying Federal requirements for an approvable nonattainment area New Source Review (NSR) SIP for the District. While strengthening the SIP, however, this SIP revision contains deficiencies which the District must correct before EPA can grant full approval under section 110(k)(3). Thus, EPA is finalizing simultaneous limited approval and limited disapproval as a revision to the California SIP under provisions of the Act regarding EPA action on SIP submittals, and general rulemaking authority.

DATES: This action is effective on August 20, 2001.

ADDRESSES: Copies of the state submittal and other supporting information used in developing the final action are available for public inspection (Docket Numbers NSRR 00–13–CA and NSRR 00–16–CA) at EPA's Region IX office during normal business hours. Copies of the District Rules and submittal are also available at the following locations: San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg Avenue, Fresno, California 93726. California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Ed Pike, Permits Office, (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; by telephone at (415) 744–1211; or by email at Pike.Ed@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What Action Is EPA Finalizing?

EPA is finalizing a limited approval and limited disapproval of revisions to the California SIP for District Rules 2020 and 2201. This final action replaces previous New Source Review and Permit Exemption Rules in the following SIPs: Fresno County, a portion of Kern County, [1] Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, and Tulare County. Please see the Technical Support Document for a complete list of the Rules that will be replaced.

Rule 2020 was adopted by the San Joaquin Valley Unified Air Pollution Control District on September 17, 1998, and submitted to EPA by the California Air Resources Board (CARB) on October 27, 1998. Rule 2201 was adopted by the District on August 20, 1998 and submitted to EPA by CARB on September 29, 1998. This proposed limited approval and limited disapproval does not include sections 5.9 and 6.0 of Rule 2201, which specify requirements for sources that request permit modifications that also meet title V requirements. The title V requirements in Rule 2201 (based on a prior version of Rule 2201) were given interim approval as part of the District's title V operating permits program in EPA's April 24, 1996 rulemaking on that program (see 60 FR 55517 and 61 FR 18083). The District has not submitted any substantive changes to the title V sections of Rule 2201 since that approval.

[1] See the Technical Support Document and 64 FR 51493 for more background information on the District and its jurisdiction.

II. Background

The background of this action is more lengthy than our usual consideration of SIP rules. Initially, on September 23, 1999, EPA proposed to grant full approval of Rules 2201 and 2020 and requested public comment (64 FR 51493). On October 25, 1999, EPA received a comment (as explained in the "Response to Comments" section below) from the California Unions for Reliable Energy ("CURE") contending that full approval of a provision of Rule 2201 would be inconsistent with federal law. After we evaluated the comment, we determined that finalizing full approval of Rule 2201 would be inappropriate, but we also determined that full disapproval would be inappropriate because Rules 2201 and 2020 overall will strengthen the SIP.

EPA, instead, proposed on September 28, 2000, to grant Rules 2201 and 2020 limited approval and limited disapproval (65 FR 58252). In our September 28, 2000, proposal, EPA stated that we would respond to the comments submitted on both proposals (i.e. the proposal to grant full approval in September 1999 and subsequent proposal to grant limited approval and limited disapproval in September 2000) when taking final action. In that proposed limited approval and limited disapproval, EPA concluded that including Rules 2020 and 2201 would generally strengthen the SIP. However, EPA also identified the following deficiencies in District Rules 2020 and 2201 preventing full approval. (See the September 28, 2000, proposal at 65 FR 58252 for an additional description of the necessary corrections to these two rules).

1. The District must remove the agricultural exemption from District Rule 2020.

2. The District must revise Rule 2201 to provide a mandatory and enforceable remedy to cure any annual shortfall and, in the future, prevent shortfalls in the District's New Source Review Offset Equivalency Tracking System.

3. The District must revise Rule 2201 to ensure that all sources meet the Lowest Achievable Emission Rate (LAER) [2] if they are allowed to make a significant increase in their actual emission rate.

[2] Please note that many California Districts use the term "Best Available Control Technology" with a definition equivalent to LAER—please see the TSD for additional information on the District's definition of BACT.

III. Public Comments and EPA Response

As noted above, we provided a 30-day public comment period on our September 23, 1999, proposal to grant full approval of Rules 2201 and 2020. EPA received comments from California Utilities for Reliable Energy ("CURE") and Enron North America Corporation. EPA also provided a 30-day public comment period on its September 28, 2000, proposal to grant limited approval and limited disapproval. EPA received additional comments from CURE, and comments from the Sierra Club. The comments on our most recent proposal and our responses appear below. (EPA has provided responses to earlier comments in a separate Technical Support Document.)

CURE Comment #1

CURE's comment on EPA's September 2000 proposed limited approval and limited disapproval contends that the District's Offset Equivalency Tracking System (which aggregates and tracks Emission Reduction Credits, or ERCs, on an annual basis) is inconsistent with federal law. CURE asserts that federal law requires a demonstration that every ERC is surplus to all other requirements of the SIP before it can be used as a valid offset. The District's annual Offset Equivalency Tracking System will demonstrate that ERCs (which may have been used previously during the year to offset emissions increases) are surplus to other requirements only at the end of each year (on a 3 year rolling average).

EPA Response to Comment Regarding Tracking System

EPA's August 30, 1999, Technical Support Document (TSD) for its proposed full approval of Rules 2201 and 2020 discussed in detail the statutory offset requirements in the Clean Air Act and the reasons the District's Offset Equivalency Tracking System, combined with the requirement for a mandatory and enforceable remedy for any shortfall, complies with the Act. Generally, the Offset Equivalency Tracking System allows the District to demonstrate annually (at the end of each year) that it has required sufficient offsets that meet all federal offset requirements. EPA has also agreed that the District may include the prior two years' data (for a total of three years) to demonstrate equivalency, as long as the demonstration is still conducted annually. During each of the first two years of the tracking system, the District must either provide a demonstration using only the data collected since the beginning of the tracking system, or review all prior permitting actions during the prior year or two to create a three-year rolling average.

EPA's 1999 TSD explains that on a case-by-case basis the District's ERCs do not meet all federal requirements.[3] Primarily, the District does not require an individual ERC to be "surplus at the time of use." See, e.g., *In Re: Operating Permit Formaldehyde Plant Borden Chemical, Inc.*, Petition No. 6–01–1 (Adm'r Dec. 21, 2000) ("*Borden Order*"), at page 18 ("Under Clean Air Act section 173(c)(2), ERCs must be surplus at the time they are used as offsets."); Memorandum From John Seitz to David Howekamp Re: Response to Request for Guidance on Use of Pre-1990 ERC's and Adjusting for RACT at Time of Use "*Seitz Memo*"), at p. 2 ("At a minimum, States must ensure a RACT level of reductions on an area basis for all applicable RACT requirements *at time of ERC use* [footnote omitted] (e.g., at the time of NSR permit issuance).") In contrast, the District evaluates whether ERCs are surplus to other legal requirements at the time a source submits an application to generate an ERC—not when the ERC is used. During the time between the initial application to generate the ERC and application to use an ERC, new legal requirements can become effective. Those new requirements affect whether the ERC, or a portion of the ERC, is surplus.

CURE's comment does not oppose EPA's conclusion that ERCs must be surplus at the time of use. Rather, CURE's comment challenges EPA's conclusion that an annual equivalency demonstration satisfies section 173 of the Clean Air Act. CURE contends that the Act requires the District to demonstrate that an ERC meets all federal requirements before any permit relying on that ERC may be issued.

EPA does not believe that our approval of the District's Offset Equivalency Tracking System allows the District to violate any federal requirement. The District must demonstrate compliance with all federal requirements, but only requires a demonstration of compliance on an aggregate basis at the end of each year (on a 3 year rolling average). Thus, The District must demonstrate that in the aggregate the ERCs it allowed to be used met or exceeded the surplus requirements and all other federal requirements. We have concluded that the Act allows EPA discretion to approve an annual demonstration of equivalency (in the aggregate) with the federal requirements, based in part on the express language in section 173(c)(1)(A), stating:

> by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained, such that *total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities and from the proposed source will be sufficiently less than total emissions from existing sources* (as determined in accordance with the regulations under this paragraph) prior to the application for such permit to construct or modify so as to represent when considered together with the plan provisions required under section 7502 of this title) reasonable further progress (as defined in section 7501 of this title); (emphasis added)

The Seitz Memo, referenced above, discusses in part the circumstances under which a state could use ERCs generated before 1990. The Seitz Memo concluded that such ERCs could be used if the state could "show that the magnitude of pre-1990 ERC's (in total tonnage) was included in the growth factor" and explicitly listed in attainment plan inventories as such. Seitz Memo , at p. 1. When the Seitz Memo further considered whether ERCs were required to be surplus at the time of use, EPA stated that "States must ensure a RACT level of reductions on an area basis for all applicable RACT requirements *at the time of ERC use* [footnote omitted] (e.g. at the time of NSR permit issuance)." Seitz Memo at p. 2. EPA's reasoning that we can approve the District's annual aggregate offset equivalency demonstration under the Act is further strengthened by our approval of the RECLAIM Trading Program for implementation of both RACT and NSR in the South Coast Air Quality Management District, based in part on an offset tracking system that operates on an aggregate basis (61 FR 64292).

Further support for EPA's determination that it can allow the District to demonstrate equivalency on an annual basis rather than for each permit lies in the fact that the Clean Air Act generally establishes pollution

[3] As explained in the TSD, the District must include a number of situations in the offset tracking system that will be used to determine equivalency. Rule 2201 differs from federal requirements because it does not ensure that sources provide offsets that are surplus of all regulatory requirements at the time of use, rather than when an application to generate offsets is filed. In addition, Rule 2201 allows some sources to determine offset applicability and quantities based on potential to emit. It also does not require that new major sources offset their full permitted emissions, as they are required to offset only the quantity of emissions that exceed the District offset trigger. Please see EPA's Technical Support Document (TSD) for additional information on the potential offset shortfalls in the District regulation that must be included in the offset tracking system, as well as an explanation of situations when sources are expected to provide more valid credits under the District regulations than under federal offset requirements.

limitations on an annual basis for purposes of permit issuance. For example, section 182(c) defines major sources in serious ozone non-attainment areas based on the tons per year of pollutants emitted, and section 182(c)(10) relies on this definition to specify the quantity of ERCs that are required. In addition, although ERCs must be "enforceable" at the time of permit issuance, the language of section 173(c)(1) requires that an ERC be "in effect" when a major stationary source is ready to commence operations. As a practical matter, there is generally a lengthy time between when a source is permitted and when it commences operations, providing the District with time to conduct the equivalency demonstration.

The District will demonstrate annually that the offsets issued during the year are surplus to emission reductions required under the Clean Air Act and the State Implementation Plan. This demonstration does not change any of the requirements in the Clean Air Act for ERCs to be creditable. It is an accounting exercise allowing the District to demonstrate yearly that sufficient creditable offsets have been provided on an aggregate basis. EPA believes that it is reasonable to interpret section 173, as discussed in the August 26, 1994 memo and Borden Order, to allow approval of an annual equivalency demonstration.

CURE Comment #2

CURE also commented that EPA should clarify that the District's tracking system applies only to ozone precursors.

EPA Response to Comment Regarding Types of Pollutants Covered by Tracking System

EPA disagrees with CURE because we believe that Clean Air Act section 173 allows approval of an aggregate offset tracking system for pollutants other than ozone precursors to demonstrate that "surplus" requirements are met. Although the August 26, 1994 memo only specifically considered ozone precursor emissions, the reasoning underlying the memo was not limited to one pollutant. Therefore, EPA believes it is appropriate to extend the reasoning in the August 26, 1994 memo to pollutants contributing to nonattainment with National Ambient Air Quality Standards for particulate matter under 10 microns in diameter, including precursors such as sulfur oxides, provided the facts and science concerning other emissions are sufficiently similar to the science that was considered for ozone precursors.

For instance, we believe that PM_{10} precursors in the San Joaquin Valley are similar to ozone precursors in several ways. These precursors must react with other compounds in the atmosphere before forming PM_{10}, and continue to react over time and distance as they encounter other pollutants in the atmosphere and different meteorological conditions.[4] Therefore, they tend to have a Regional basis, rather than a localized basis, because they are generally dispersed outside of a localized area before reacting to form PM_{10} and can appropriately be included in the aggregate system for demonstrating compliance with EPA offset requirements. In addition, the District rule prohibits any individual source from causing or making worse a violation of an Ambient Air Quality Standard (section 4.14.2). Sources must perform modeling using EPA-approved modeling guidelines (section 4.14.2) to verify that the stationary source will not cause or contribute to an Ambient Air Quality Standard (except for certain non-major sources that are below the public notice thresholds). These air quality and modeling requirements include PM_{10} and PM_{10} precursors (in addition to other pollutants).

In addition, the District has certified to EPA (see December 7, 1999 letter from Seyed Sadredin to Matt Haber) that the directly emitted PM_{10} from stationary sources is only about 0.22% of the inventory of directly-emitted PM_{10}. For this reason, the exact location of an individual stationary source either generating or using offsets of directly-emitted PM_{10} is unlikely to directly create or worsen a localized PM_{10} non-attainment problem in the San Joaquin Valley. (Please note that the District must ensure, via the offset tracking system, that an amount of "surplus" PM_{10} and PM_{10} precursor offsets are provided in the District that are at least equal to the amount required under federal NSR requirements.) Instead, stationary sources are more likely to emit precursors that contribute to an area-wide problem and are appropriately regulated in the aggregate for the purposes of the offset tracking system.

Further, the District does not expect to adopt any new stationary source control measures for directly-emitted PM_{10} and believes that existing ERCs are surplus of existing SIP requirements. Therefore, it is extremely unlikely that the District will need to make any special showing in its annual equivalency demonstration that the offsets being used for directly emitted PM_{10} are surplus. In other words, all of the existing and generated offsets that could be used for a new source of directly-emitted PM_{10} should already be surplus to SIP rule requirements. Therefore, EPA believes that demonstrating, via the offset tracking system, that sufficient PM_{10} offsets are obtained on a program-wide basis will not cause or worsen any local air quality violation in the San Joaquin Valley.

CURE Comment #3

CURE commented favorably on (1) EPA's decision not to finalize a full approval of District Rule 2201 and (2) the decision to repropose the action as a limited disapproval based on the District's failure to include in Rule 2201 a specific and mandatory remedy for any shortfall in the annual equivalency system.

EPA Response

EPA agrees with this comment and is finalizing the requirement supported by the commentor.

Sierra Club Comment

The Sierra Club commented that it supports EPA's proposed limited approval and limited disapproval. In particular, the Sierra Club supports the disapproval of the blanket exemption for agricultural sources, and comments that large agricultural facilities must be required to comply with Clean Air Act standards to achieve clean air goals in the San Joaquin Valley.

EPA Response

EPA agrees with this comment and is finalizing the requirement supported by the commentor.

IV. EPA Final Action and Required Corrections to District Rules 2020 and 2201

For the reasons explained above, the comments submitted on our September 28, 2000 proposal have not changed our evaluation of the rules as described in our proposed limited approval and limited disapproval. EPA is, therefore, finalizing its limited approval and limited disapproval of District Rules 2020 and 2201. Our final action is a limited approval and limited disapproval because the Rules contain deficiencies and are not fully consistent with Clean Air Act requirements, EPA regulations and EPA policy. The District must revise Rule 2020 and 2201 to address the following deficiencies, as described in our September 28, 2000 proposal:

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[4] For example, see Meng Zhaoyue and John H. Seinfeld, "Time scales to achieve atmospheric gas-aerosol equilibrium for volatile species", Atmospheric Environment, Volume 30, Issue 16, August 1996, Pages 2889–2900.

1. The District must remove the agricultural exemption from District Rule 2020.

2. The District must revise Rule 2201 to provide a mandatory and enforceable remedy to cure any annual shortfall and prevent future shortfalls in the District's New Source Review Offset Equivalency Tracking System. This remedy must take effect automatically if the District does not demonstrate equivalency each year. For instance, the District has suggested requiring that major sources and title I modifications meet federal offset requirements, including using credits that are surplus at time of use and using EPA requirements for calculating offset baselines and quantities.

3. The District must revise Rule 2201 to ensure that all sources install LAER if they are allowed to make a significant increase in their actual emission rate. (See 65 FR 58252 for additional information.) For instance, the District could adopt a rule amendment requiring that these sources comply with LAER.

Because these rule deficiencies are inappropriate for inclusion in the SIP, EPA cannot grant full approval of these rules under section 110(k)(3). Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA is granting final limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The final approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is finalizing limited approval and limited disapproval of District rules under sections 110(k)(3) and 301(a) of the CAA. It should be noted that the rules covered by this final rulemaking have been already been adopted by the District. EPA's final limited disapproval action does not prevent the District or EPA from enforcing these rules. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The District will have 18 months from the effective date of this final action to correct the deficiencies delineated by EPA in section IV above, to avoid federal sanctions. See section 179(b) of the CAA. The District's failure to correct the deficiencies will also trigger the Federal implementation plan requirements under 110(c).

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 25, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(260)(i)(B) and (c)(266)(i)(B)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(260) * * *

(i) * * *

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 2020 adopted on September 17, 1998.

* * * * *

(266) * * *

(i) * * *

(B) * * *

(*3*) Rule 2201 adopted on August 20, 1998.

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[FR Doc. 01–17705 Filed 7–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6997–8]

RIN 2060–AI34

National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections.

SUMMARY: Under the Clean Air Act (CAA), EPA promulgated the national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills on January 12, 2001. The promulgated rule requires new and existing major sources to control emissions of hazardous air pollutants (HAP) to the level reflecting application of the maximum achievable control technology. The technical corrections in this action will not change the standards established by the rule or the level of health protection it provides.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections consisting largely of correcting typographical errors and other misprints and correcting minor errors in the rule's effective dates, are noncontroversial, and do not substantively change the requirements of the rule. In addition, there has already been full opportunity to comment on all of the provisions in this Notice. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B) (see also the final sentence of section 307(d)(1) of the Clean Air Act, 42 U.S.C. section 7607(d)(1), indicating that the good cause provisions of the Administrative Procedure Act continue to apply to this type of rulemaking under the Clean Air Act).

Section 553(d)(3) allows an agency, upon a finding of good cause, to make a rule effective immediately. Because today's changes do not substantively change the requirements of the rule, we find good cause to make these technical corrections effective immediately.

EFFECTIVE DATE: July 19, 2001.

ADDRESSES: Docket No. A–94–67 contains the supporting information for the original NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical mills and this action. The docket is located at the U.S. EPA in room M–1500, Waterside Mall (ground floor), 401 M Street SW., Washington, DC 20460, and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Telander, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5427, facsimile number (919) 541–5600, electronic mail address telander.jeff@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action are those kraft, soda, sulfite, and stand-alone semichemical pulp mills with chemical recovery processes that involve the combustion of spent pulping liquor. Categories and entities potentially regulated by this action include:

Category	SIC code	NAICS code	Examples of regulated entities
Industry	2611, 2621, 2631	32211, 32212, 32213	Kraft, soda, sulfite, and stand-alone semichemical pulp mills.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action.

To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.860 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's document will also be available on the WWW

through the Technology Transfer Network (TTN). Following the signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed or final rules at http://www.epa.gov/ttn/oarpg/t3pfpr.html. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

I. Background

The EPA, under 40 CFR part 63, subpart MM, promulgated the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills on January 12, 2001 (66 FR 3180). The final rule includes emissions limits, as well as monitoring, performance testing, recordkeeping, and reporting requirements.

II. Summary of Corrections

Today's changes are described below for the convenience of the reader.

Citation	Change
§ 63.863(a)	Change the compliance date for existing affected sources to March 13, 2004.
§ 63.863(b)	Change the startup date, after which new affected sources must comply immediately upon startup, to March 13, 2001.
§ 63.865(a)	Reduce the number of referenced paragraphs from "(a)(1) through (4)" to "(a)(1) and (2)" to reflect the elimination of paragraphs (a)(3) and (4).
§ 63.865(a)(3), (a)(4), (b)(5), and (b)(6).	Remove paragraphs (a)(3) and (4) from § 63.865(a) and revise and redesignate them as new paragraphs § 63.865(b)(5) and (6) so that these requirements will no longer be limited under § 63.865(a) to existing sources using the PM bubble compliance alternative.
§ 63.865(b)	Change the reference from "63.862(a)" to "§ 63.862(a) or (b)" so as to include the new source standards under § 63.862(b). Also, increase the number of referenced paragraphs from "(b)(1) through (4)" to "(b)(1) through (6)" to reflect the addition of paragraphs (b)(5) and (6).
§ 63.865(b)(2)	Change the reference from "paragraph (a)(1) or (2) of § 63.862" to "paragraph (a) or (b) of § 63.862" so as to include the new source standards under § 63.862(b).
§ 63.865(b)(4)	Revise Equation 8 so that the numerator and denominator of the oxygen correction factor are reversed to yield: $Q_{corr} = Q_{meas} \times (21 - Y)/(21 \times X)$. Also, reorder the definition of terms for Equation 8 to place "Y" before "X."
§ 63.865(c)	Add a reference to Methods 1 through 4 to the reference to Method 308 because those four test methods are also needed.
	Because Methods 1 through 4 are also being referenced, clarify that the sampling time and sample volume apply to each Method 308 run.
§ 63.865(d)	Add a reference to Methods 1 through 4 to the reference to Method 25A because those four test methods are also needed. Because Methods 1 through 4 are also being referenced, clarify that the sampling time and sample volume apply to each Method 25A run.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51736, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget (OMB). Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (63 FR 67249, November 6, 2000). This action does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA is not proposing/adopting any voluntary consensus standards in this action.

This technical correction action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing these technical corrections, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of these technical corrections in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the Executive Order. These technical corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This

determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of July 19, 2001. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Pulp and paper mills.

Dated: June 8, 2001.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

2. Section 63.863 is amended by revising paragraph (a) and (b) to read as follows:

§ 63.863 Compliance dates.

(a) The owner or operator of an existing affected source or process unit must comply with the requirements in this subpart no later than March 13, 2004.

(b) The owner or operator of a new affected source that has an initial startup date after March 13, 2001 must comply with the requirements in this subpart immediately upon startup of the affected source, except as specified in § 63.6(b).

* * * * *

3. Section 63.865 is amended by:

a. Revising paragraph (a) introductory text;

b. Removing paragraphs (a)(3) and (4);

c. Revising paragraphs (b) introductory text, (b)(2), and (b)(4);

d. Adding paragraphs (b)(5) and (6);

e. Revising paragraph (c) introductory text; and

f. Revising paragraph (d) introductory text.

The revisions and additions read as follows:

§ 63.865 Performance test requirements and test methods.

(a) The owner or operator of a process unit seeking to comply with a PM emission limit under § 63.862(a)(1)(ii)(A) must use the procedures in paragraphs (a)(1) and (2) of this section:

* * * * *

(b) The owner or operator seeking to determine compliance with § 63.862(a) or (b) must use the procedures in paragraphs (b)(1) through (6) of this section.

* * * * *

(2) For sources complying with paragraph (a) or (b) of § 63.862, the PM concentration must be corrected to the appropriate oxygen concentration using Equation 7 of this section as follows:

$$C_{corr} = Cmeas \times (21 - X)/(21 - Y) \quad \text{(Eq. 7)}$$

Where:

C_{corr} = the measured concentration corrected for oxygen, g/dscm (gr/dscf).

C_{meas} = the measured concentration uncorrected for oxygen, g/dscm (gr/dscf).

X = the corrected volumetric oxygen concentration (8 percent for kraft or soda recovery furnaces and sulfite combustion units and 10 percent for kraft or soda lime kilns).

Y = the measured average volumetric oxygen concentration.

* * * * *

(4) For purposes of complying with of § 63.862(a)(1)(ii)(A), the volumetric gas flow rate must be corrected to the appropriate oxygen concentration using Equation 8 of this section as follows:

$$Q_{corr} = Qmeas \times (21 - Y)/(21 - X) \quad \text{(Eq. 8)}$$

Where:

Q_{corr} = the measured volumetric gas flow rate corrected for oxygen, dscm/min (dscf/min).

Q_{meas} = the measured volumetric gas flow rate uncorrected for oxygen, dscm/min (dscf/min).

Y = the measured average volumetric oxygen concentration.

X = the corrected volumetric oxygen concentration (8 percent for kraft or soda recovery furnaces and 10 percent for kraft or soda lime kilns).

(5) For purposes of selecting sampling port location and number of traverse points, determining stack gas velocity and volumetric flow rate, conducting gas analysis, and determining moisture content of stack gas, Methods 1 through 4 in appendix A of 40 CFR part 60 must be used.

(6) Process data measured during the performance test must be used to determine the black liquor solids firing rate on a dry basis and the CaO production rate.

(c) The owner or operator seeking to determine compliance with the gaseous organic HAP standard in § 63.862(c)(1) without using an NDCE recovery furnace equipped with a dry ESP system must use Method 308 in appendix A of this part, as well as Methods 1 through 4 in appendix A of part 60 of this chapter. The sampling time and sample volume for each Method 308 run must be at least 60 minutes and 0.014 dscm (0.50 dscf), respectively.

* * * * *

(d) The owner or operator seeking to determine compliance with the gaseous organic HAP standards in § 63.862(c)(2) for semichemical combustion units must use Method 25A, as well as Methods 1 through 4, in appendix A of part 60 of this chapter. The sampling time for each Method 25A run must be at least 60 minutes.

* * * * *

[FR Doc. 01–17559 Filed 7–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301146 FRL–6793–8]

RIN 2070–AB78

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective July 19, 2001. Objections and requests for hearings, identified by docket control number OPP–301146, must be received by EPA on or before August 20, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by

mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301146 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: See the listing below for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9366.

Pesticide	CFR cite	Contact person/e-mail address
Avermectin	40 CFR 180.449	Beth Edwards/edwards.beth@epa.gov
Paraquat Dimethomorph Propamocarb hydrochloride Cymoxanil	40 CFR 180.205 40 CFR 180.493 40 CFR 180.499 40 CFR 180.503	Libby Pemberton/pemberton.libby@epa.gov
Fenbuconazole	40 CFR 180.480	Shaja R. Brothers/brothers.shaja@epa.gov
Fluroxypyr 1-Methylheptyl Ester	40 CFR 180.535	Andrew Ertman/ertman.andrew@epa.gov
Ethalfluralin Propiconazole Myclobutanil Tebuconazole Tebufenozide Imazamox Tetraconazole	40 CFR 180.416 40 CFR 180.434 40 CFR 180.443 40 CFR 180.474 40 CFR 180.482 40 CFR 180.508 40 CFR 180.557	Barbara Madden/madden.barbara@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_0 0.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301146. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each chemical/commodity listed below. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA

assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended until the date listed below. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on these pesticides indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

1. *Paraquat.* EPA has authorized under FIFRA section 18 the use of paraquat on green peas grown for seed and dry peas for control of weeds in Idaho, North Dakota, and Oregon. This regulation extends a time-limited tolerance for residues of the herbicide/desiccant/defoliant paraquat (1,1'-dimethyl-4,4'-bipyridinium-ion) derived from application of either the bis (methyl sulfate) or the dichloride salt (both calculated as the cation) in or on dry peas at 0.3 parts per million (ppm) for an additional 25t month–period. This tolerance will expire and is revoked on December 31, 2003. A time-limited tolerance was originally published in the **Federal Register**on August 29, 1997 (62 FR 45748) (FRL–5739–8).

2. *Ethalfluralin.* EPA has authorized under FIFRA section 18 the use of ethalfluralin on canola for control of kochia in Montana, Minnesota, and North Dakota. This regulation extends a time-limited tolerance for residues of the herbicide ethalfluralin *N*-ethyl- *N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine in or on canola at 0.05 ppm for an additional 2–year period. This tolerance will expire and is revoked on Decmber 31, 2003. A time-limited tolerance was originally published in the **Federal Register** on December 17, 1997 (62 FR 66008) (FRL–5756–4).

3. *Propiconazole.* EPA has authorized under FIFRA section 18 the use of propiconazole on: cranberries for control of cottonball disease in Washington and Wisconsin; and dry beans for the control of rust in Minnesota and North Dakota. This regulation extends time-limited tolerances for combined residues of the fungicide propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolite determined as 2,4-dichlorobenzoic acid in or on cranberries at 1.0 ppm, dry beans at 0.5 ppm, dry bean forage at 8 ppm, and dry bean hay at 8 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2003. A time-limited tolerance for cranberries was originally published in the **Federal Register** on April 11, 1997 (62 FR 17710) (FRL–5600–5). Time-limited tolerances for dry beans, dry bean forage and dry bean hay were originally published in the **Federal Register** on June 13, 1997 (62 FR 32224) (FRL–5718–8).

4. *Myclobutanil.* EPA has authorized under FIFRA section 18 the use of myclobutanil on hops for control of powdery mildew in Idaho, Oregon and Washington; on artichokes to control powdery mildew in California; and on peppers (bell and non-bell) to control powdery mildew in Califonia and New Mexico. This regulation extends a time-limited tolerance for residues of the fungicide myclobutanil in or on hop cones, dried at 5.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2003. A time-limited tolerance was originally published in the **Federal Register** on July 10, 1998 (63 FR 37289) (FRL–5798-6). This regulation also extends time-limited tolerances for residues of myclobutanil in or on artichoke at 1.0 ppm and peppers (bell and non-bell) at 1.0 ppm for an additional 11–month period. These tolerances will expire and are revoked on June 30, 2003. Time-limited tolerances were originally published in the **Federal Register** on September 16, 1998 (63 FR 49472) (FRL–6025–1).

5. *Avermectin.* EPA has authorized under FIFRA section 18 the use of avermectin on basil for control of leafminers in California. This regulation extends a time-limited tolerance for residues of the miticide avermectin B1 and its delta–8,9–isomer in or on basil at 0.05 ppm for an additional 2–years and 5–months. This tolerance will expire and is revoked on December 31, 2003. A time-limited tolerance was originally published in the **Federal Register** on August 19, 1997 (62 FR 1466) (FRL–5737–1).

6. *Tebuconazole.* EPA has authorized under FIFRA section 18 the use of tebuconazole on hops for control of powdery mildew in Idaho, Oregon and Washington. This regulation extends a time-limited tolerance for residues of the fungicide tebuconazole; alpha-[2-(4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol in or on hops at 4.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2003. A time-limited tolerance was originally published in the **Federal Register** on December 2, 1998 (63 FR 66449) (FRL–6036–3).

7. *Fenbuconazole.* EPA has authorized under FIFRA section 18 the use of (alpha-[2-4-chlorophenyl)-ethyl]alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile on grapefruit for control of greasy spot in Florida. This regulation extends time-limited tolerances for combined residues of the fungicide (alpha-[2-4-chlorophenyl)-ethyl]alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile and its metabolites cis-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3H-furanone and trans-5(4-chlorophenyl)dihydro-3-phenyl-3-(1H1,2,4-triazole-1-ylmethyl-2-3H-furanone in or on whole grapefruit at 0.5 ppm, dried grapefruit pulp at 4.0 ppm, grapefruit oil at 35 ppm, and meat and meat by products of cattle, goats, hogs, horses, and sheep at 0.1 ppm for an additional 2–years period. These tolerances will expire and are revoked on December 31,2003. Time-limited tolerances were originally published in the **Federal Register** on July 26, 2000 (65 FR 45920) (FRL–6596–6).

8. *Tebufenozide.* EPA has authorized under FIFRA section 18 the use of tebufenozide on: grapes for the control of grape leaffolder and omnivorous leafroller in California; and longan and lychee for control of Lychee webworm in Florida. This regulation extends time-limited tolerances for residues of the insecticide tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide in or on grapes at 3 ppm and lychee and longan at 1.0 ppm for an additional 2–year period. These tolerances will expire and are

revoked on December 31, 2003. A time-limited tolerance was originally published for grapes in the **Federal Register** on July 6, 2000 (65 FR 41594) (FRL–6590–1). Time-limited tolerances were originally published for longan and lychee in the **Federal Register** on March 17, 1999 (64 FR 13088) (FRL–6065–2).

9. *Dimethomorph*. EPA has authorized under FIFRA section 18 the use of dimethomorph on squash, cantaloupe, watermelon, and cucumber for control of phytophthora capsici in Delaware, Illinois, Michigan, and Wisconsin. This regulation extends time-limited tolerances for residues of the fungicide dimethomorph in or on squash, cantaloupe, watermelon, and cucumber at 1.0 ppm for an additional 2–year, 3–month period. These tolerances will expire and are revoked on December 31, 2003. Time-limited tolerances were originally published in the **Federal Register** on February 18, 1998 (63 FR 8134) (FRL–5767–8).

10. *Propamocarb hydrochloride*. EPA has authorized under FIFRA section 18 the use of propamocarb hydrochloride on tomatoes for control of late blight in California. This regulation extends a time-limited tolerance for residues of the fungicide propamocarb hydrochloride in or on tomatoes, tomato puree and tomato paste at 0.5, 1.0, and 3.0 ppm, respectively, for an additional 25+ months. This tolerance will expire and is revoked on December 31, 2003. Time-limited tolerances were originally published in the **Federal Register** on May 16, 1997 (62 FR 26960) (FRL–5717–5).

11. *Cymoxanil*. EPA has authorized under FIFRA section 18 the use of cymoxanil on hops for control of downy mildew in Oregon. This regulation extends a time-limited tolerance for residues of the fungicide cymoxanil in or on dried hops at 1.0 ppm for an additional 25+–months. These tolerances will expire and are revoked on December 31, 2003. Time-limited tolerances were originally published in the **Federal Register** on December 2, 1998 (63 FR 66459) (FRL–6038–5).

12. *Imazamox*. EPA has authori- d under FIFRA section 18 the use of imazamox on dry bean for control of various weeds in Wisconsin, Montana, Nebraska, Wyoming, Colorado, Minnesota and North Dakota. This regulation extends a time-limited tolerance for residues of the herbicide imazamox, 2-[4,5-dihydro-4-methyl-4-(1methylethyl)-5-oxo-1H-imidazol-2-yl]-5-methoxymethyl-3-pyridine-carboxylic acid, applied as the free acid or ammonium salt in or on dry beans at 0.05 ppm for an additional 2–year, 5–month period. This tolerance will expire and is revoked on December 31, 2003. A time-limited tolerance was originally published on July 14, 1999 (64 FR 37855) (FRL–6086–5).

13. *Fluroxypyr 1-methylheptyl ester*. EPA has authorized under FIFRA section 18 the use of fluroxypyr 1-methylheptyl ester on field corn and sweet corn for control of volunteer potatoes in Washington, Oregon, Idaho, and Wisconsin. This regulation extends time-limited tolerances for residues of the herbicide fluroxypyr 1-methylheptyl ester ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid, 1-methylheptyl ester and it's metabolite fluroxypyr in or on corn, sweet, K + CWHR at 0.05 ppm; corn, sweet, forage at 2.0 ppm; corn, sweet, stover at 2.5 ppm; corn, field, grain at 0.05 ppm; corn, field, forage at 2.0 ppm; corn, field, stover at 2.5 ppm for an additional 2–year, 1–month period. These tolerances will expire and are revoked on December 31, 2003. Time-limited tolerances were originally published in the **Federal Register** on August 5, 1998 (63 FR 41727) (FRL–6018–4).

14. *Tetraconazole*. EPA has authorized under FIFRA section 18 the use of tetraconazole on sugarbeets for control of cercospora leafspot in Michigan, Montana, Colorado, Nebraska, and Wyoming. This regulation extends time-limited tolerances for residues of the fungicide tetraconazole (+/-)-2-(2,4-dichlorophenyl)-3-(1H-1,2,4-triazol-1-yl) propyl 1, 1,2,2-tetrafluoroethyl ether in or on sugarbeets, and sugarbeet-related commodities, and for secondary residues of triazole on animal commodities from livestock fed sugarbeet by-products at 0.10 ppm on sugarbeet, 6.0 ppm in sugarbeet top, 0.20 ppm in sugarbeet dried pulp, 0.30 ppm in sugarbeet molasses, 0.050 ppm in milk, 0.030 ppm in cattle, meat and meat byproducts except kidney and liver, 0.20 ppm in kidney, 6.0 ppm in liver, and 0.60 ppm in fat for an additional 2–years. These tolerances will expire and are revoked on December 31, 2003. Time-limited tolerances were originally published in the **Federal Register** on December 6, 1999 (64 FR 68046) (FRL–6384–1).

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301146 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 20, 2001.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27).

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you

must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim&epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301146, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket&epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established under FFDCA section 408(l)(6) in response to an exemption under FIFRA section 18, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final

rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 29,2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.205 [Amended]

2. In § 180.205, in the table to paragraph (b), amend the entry for peas (dry) by revising the expiration/revocation date " 11/15/01" to read "12/31/03."

§ 180.416 [Amended]

3. In § 180.416, in the table to paragraph (b), amend the entry for canola by revising the expiration/revocation date "12/31/01" to read "12/31/03."

§ 180.434 [Amended]

4. In § 180.434, in the table to paragraph (b), amend the entries for cranberries; dry beans; dry bean forage; and dry bean hay by revising the expiration/revocation date "12/31/01" to read "12/31/03."

§ 180.443 [Amended]

5. In § 180.443, in the table to paragraph (b), amend the entries for hop cones, dried by revising the expiration/revocation date "12/31/01" to read "12/31/03" and amend the entries for artichoke and peppers (bell and non-bell) by revising the expiration/revocation date "7/31/02" to read "6/30/03."

§ 180.449 [Amended]

6. In § 180.449, in the table to paragraph (b), amend the entry for basil by revising the expiration/revocation date "7/31/01" to read "12/31/03."

§ 180.474 [Amended]

7. In § 180.474, in the table to paragraph (b), amend the entry for hops by revising the expiration/revocation date "12/31/01" to read "12/31/03."

8. In § 180.480, the table to paragraph (b), by revising the following entries:

§ 180.480 Fenbuconazole; tolerance for residues.

* * * * *

(b)* * *

Commodity	Parts per million	Expiration/revocation Date
*	*	*
Cattle mbyp	0.01	12/31/03
Cattle meat	0.01	12/31/03
*	*	*
Goats, mbyp	0.01	12/31/03
Goats, meat	0.01	12/31/03
Grapefruit ..	0.5	12/31/03
Grapefruit pulp, dried	4.0	12/31/03
Grapefruit oil	35	12/31/03
*	*	*
Hogs, mbyp	0.01	12/31/03
Hogs, meat	0.01	12/31/03
*	*	*
Horses, mybp	0.01	12/31/03
Horses, meat	0.01	12/31/03
*	*	*
Sheeps, mybp	0.01	12/31/03
Sheeps, meat	0.01	12/31/03

* * * * *

§ 180.482 [Amended]

9. In § 180.482, in the table to paragraph (b), amend the entries for grapes; longan; and lychee by revising the expiration/revocation date "12/31/01" to read "12/31/03"

§ 180.493 [Amended]

10. In § 180.493, in the table to paragraph (b), amend the entries for cantaloupe; cucumber; squash; and watermelon by revising the expiration/revocation date "9/30/01" to read "12/31/03."

§ 180.499 [Amended]

11. In § 180.499, in the table to paragraph (b), amend the entries for tomatoes; tomato paste; and tomato puree by revising the expiration/revocation date "11/15/01" to read "12/31/03."

§ 180.503 [Amended]

12. In § 180.503, in the table to paragraph (b), amend the entries for hops, dried, by revising the expiration/revocation date "10/15/01" to read "12/31/03."

§ 180.508 [Amended]

13. In § 180.508, in the table to paragraph (b), amend the entry for beans, dry by revising the expiration/revocation date "7/15/01" to read "12/31/03."

14. In § 180.535, the table to paragraph (b), is revised to read as follows:

§ 180.535 Fluroxypyr 1-methylheptyl ester; tolerances for residues.

* * * * *

(b)* * *

Commodity	Parts per million	Expiration/revocation date
Corn, field, forage	2.0	12/31/03
Corn, field, grain	0.05	12/31/03
Corn, field, stover	2.5	12/31/03
Corn, sweet, forage	2.0	12/31/03
Corn,sweet, K + CWHR ...	0.05	12/31/03
Corn, sweet, stover	2.5	12/31/03

* * * * *

15. In § 180.557, the table to paragraph (b), is revised to read as follows:

§ 180.557 Tetraconazole; tolerances for residues.

* * * * *

(b)* * *

Commodity	Parts per million	Expiration/revocation date
Beet, sugar, dried pulp	0.20	12/31/03
Beet, sugar, molasses	0.30	12/31/03
Beet, sugar, roots	0.10	12/31/03
Beet, sugar, tops	6.0	12/31/03
Cattle, fat ..	0.60	12/31/03
Cattle, kidney	0.20	12/31/03
Cattle, liver	6.0	12/31/03
Cattle, meat	0.030	12/31/03

Commodity	Parts per million	Expiration/revocation date
Cattle, meat by-products; except kidney and liver	0.030	12/31/03
Milk	0.050	12/31/03

* * * * *

[FR Doc. 01–18099 Filed 7–18–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1595; MM Docket No. 99–358; RM–9783 & RM–9838]

Radio Broadcasting Services; Burnet, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 240A to Burnet, Texas, in response to a petition filed by Elgin FM Limited Partnership. *See* 64 FR 73463, December 30, 1999. The coordinates for Channel 240A at Burnet are 30–51–05 NL and 98–17–35 WL. There is a site restriction 12.1 kilometers (7.5 miles) northwest of the community. Concurrence of the Mexican government has been received for this allotment. The counterproposal filed by Evant Radio Company (RM–9838) for Evant, Texas, has been withdrawn. The counterproposal filed by Buchanan Radioworks for an allotment at Buchanan Dam, Texas, has been dismissed. With this action, this proceeding is terminated. A filing window for Channel 204A at Burnet will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–358, adopted June 27, 2001, and released July 6, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 240A at Burnet.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–18053 Filed 7–18–01; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. 062001A]

Exemption to No-entry Zone around Bogoslof Island, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of authorized exemption to the no-entry zone around Bogoslof Island, Alaska.

SUMMARY: Pursuant to regulations that establish protections for Steller sea lions, the Administrator, Alaska Region, NMFS, authorized a one-time exemption to the 3–nautical mile (nm) no-entry zone around Bogoslof Island for the sole purpose of retracing, to the extent practicable, the 1899 Harriman Alaska Expedition. These regulations allow an exemption to the no-entry zone provided that the activity is authorized by the Administrator, Alaska Region, NMFS, and if the activity will not have a significant adverse affect on Steller sea lions, the activity has been conducted historically or traditionally in the buffer zone, and there is no readily available and acceptable alternative site for the activity.

SUPPLEMENTARY INFORMATION: On April 6, 2001, the Alaska Regional Office, NMFS received a letter that introduced the project, "The 1899 Harriman Alaska Expedition Retraced: A Century of Change", and requested that NMFS allow the M/V Clipper Odyssey to visit Bogoslof Island, Alaska, including a landing. The original Harriman Expedition visited Bogoslof Island on July 8, 1899, and the current expedition is expected to be near Bogoslof Island in mid-August of 2001.

The Steller sea lion population throughout western Alaska has declined by 80 percent during the past 3 decades, and the decline continues, especially for the pup, juvenile and subadult components of the sea lion population. Due to the continuing decline, NMFS has prohibited the landing on this, and other significant rookeries in the Bering Sea and Aleutian Islands, and prohibited the entry of any vessel, with exceptions, within 3 nm of the rookeries, since the species was listed as threatened under the Endangered Species Act in 1990 (55 FR 12645, April 5, 1990). In 1997 the western population was reclassified as endangered due to the continued decline in numbers, especially among pups and subadults (62 FR 24345, May 5, 1997). Pup counts on some rookeries have declined by greater than 40 percent during the past decade. Steller sea lion population trends on Bogoslof Island are consistent with those of the rest of the sea lion's range.

The Administrator, Alaska Region, may authorize an exemption to the prohibition to enter buffer zones around rookeries provided that the activity will not have a significant adverse affect on Steller sea lions, the activity has been conducted historically or traditionally in the buffer zone, and there is no readily available and acceptable alternative site for the activity (50 CFR 223.202 (b)(5)). There is no indication that a one-time entry into the buffer zone around Bogoslof Island (but not landing on the island) would have a significant adverse affect on Steller sea lions. Further, given that the purpose of this activity is to retrace an expedition that has historical significance to the State of Alaska, a one-time pass by the island is consistent with the intent of the historical aspects of the "Harriman Expedition Retraced" and does not increase the likelihood of a significant impact to the endangered sea lions that currently occupy the island. However, the expedition anticipates being in the Bogoslof Island area during the Steller sea lion and northern fur seal pupping season, and landing on the island could

have a significant adverse impact on successful reproduction or pup-rearing.

In a letter dated June 22, 2001, the Administrator, Alaska Region, granted an exemption to the prohibitions on entering the no-entry area around Bogoslof Island so the expedition may make a one-time pass through the no-entry zone for the sole purpose of retracing, to the extent practicable, the historic Harriman Expedition. Condition of this exemption include (1) a prohibition to land on the island, (2) the expedition vessel is not allowed to operate within 1 nm of any point on the rookery, and (3) no one is allowed to enter within 500m of any point on the rookery by any means, such as an inflatable vessel. All other provisions of 50 CFR 223.202 apply.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: July 13, 2001.

Donald R. Knowles,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–18103 Filed 7–18–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 071301A]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker and Rougheye Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of shortraker and rougheye rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of shortraker and rougheye rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the shortraker and rougheye rockfish 2001 total allowable catch (TAC) in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 15, 2001, until 2400 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2001 TAC allocation of shortraker and rougheye rockfish for the Central Regulatory Area was established as 930 metric tons (mt) by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the shortraker and rougheye rockfish TAC in the Central Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of shortraker and rougheye rockfish in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent overharvesting the allocation of the shortraker and rougheye rockfish TAC in the Central Regulatory Area of the GOA constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent overharvesting the allocation of the shortraker and rougheye rockfish TAC for the Central Regulatory Area of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 et seq.

Dated: July 13, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17985 Filed 7–13–01; 4:03 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 071301B]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish by Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of sablefish by vessels using trawl gear in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the sablefish 2001 total allowable catch (TAC) assigned to trawl gear in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 16, 2001, until 2400 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2001 TAC allocation of sablefish assigned to trawl gear for the Central Regulatory Area was established as 1,082 metric tons (mt) by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

In accordance with § 679.20 (d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of sablefish by vessels using trawl gear in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21 (b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent overharvesting the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent overharvesting the allocation of the sablefish TAC assigned to trawl gear for the Central Regulatory Area of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553 (d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 13, 2001.

Bruce C. Morehead

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17986 Filed 7–13–01; 4:03 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 139
Thursday, July 19, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 01–16]

RIN 1557–AB98

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1112]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AC50

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket No. 2001–49]

RIN 1550–AB48

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Joint advance notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, and OTS (collectively, "we" or "the agencies") are beginning a review of our Community Reinvestment Act (CRA) regulations. This advance notice of proposed rulemaking (ANPR) seeks public comment on a wide range of questions as part of our review. We also welcome comments discussing other aspects of the CRA regulations and suggesting ways to improve the efficacy of the regulations.

DATES: Comments must be received by October 17, 2001.

ADDRESSES: *OCC:* Please direct your comments to: Docket No. 01–16, Communications Division, Public Information Room, Mailstop 1–5, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. You can inspect and photocopy all comments received at that address. In addition, you may send comments by facsimile transmission to fax number (202) 874–4448, or by electronic mail to regs.comments@occ.treas.gov.

Board: Comments should refer to Docket No. R–1112 and should be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside those hours. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: Mail: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Facsimile: Send facsimile transmissions to fax number (202) 898–3838.

Electronic: Comments may be submitted to the FDIC electronically over the Internet at http://www.fdic.gov/regulations/laws/publiccomments/index.html. The FDIC has included a page on its web site to facilitate the submission of electronic comments in response to this ANPR concerning the CRA regulations (the EPC site). The EPC site provides an alternative to the written letter and may be a more convenient way for you to submit your comments or suggestions concerning the ANPR to the FDIC. If you submit comments through the EPC site, your comments will receive the same consideration that they would receive if submitted in hard copy to the FDIC's street address. Like comments or suggestions submitted in hard copy to the FDIC's street address, EPC site comments will be made available in their entirety (including the commenter's name and address if the commenter chooses to provide them) for public inspection. The FDIC, however, will not use an individual's name or any other personal identifier of an individual to retrieve records or information submitted through the EPC site. You will be able to view the ANPR directly on the EPC site and provide written comments and suggestions in the spaces provided.

You may also electronically mail comments to comments@fdic.gov.

Public Inspection: Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9:00 a.m. and 4:30 p.m. on business days.

OTS: Mail: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2001–49.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention Docket No. 2001–49.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention: Docket No. 2001–49.

E-Mail: Send e-mails to regs.comments@ots.treas.gov, Attention Docket No. 2001–49 and include your name and telephone number.

Public Inspection: Comments and the related index will be posted on the OTS Internet Site at http://www.ots.treas.gov. In addition, you may inspect comments at the Public Reference Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the material you will be requesting will assist us in serving you.) Appointments will be scheduled on business days

between 10:00 a.m. and 4:00 p.m. In most cases, appointments will be available the next business day following the date a request is received.

FOR FURTHER INFORMATION CONTACT:

OCC: Karen Tucker, National Bank Examiner, Community and Consumer Policy Division, (202) 874–4428; Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; or Patrick Tierney, Attorney, Legislative & Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: William T. Coffey, Senior Review Examiner, (202) 452–3946; Catherine M.J. Gates, Oversight Team Leader, (202) 452–3946; or Kathleen C. Ryan, Senior Attorney, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Deanna Caldwell, Senior Policy Analyst, (202) 942–3366; Stephanie Caputo, Fair Lending Specialist (202) 942–3413; or Robert Mooney, Assistant Director, (202) 942–3378, Division of Compliance and Consumer Affairs; or Ann Johnson, Counsel, Legal Division, (202) 898–3573, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Celeste Anderson, Policy Analyst, Compliance Policy, (202) 906–7990; Theresa A. Stark, Project Manager, Compliance Policy, (202) 906–7054; or Richard Bennett, Counsel (Banking and Finance), (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Introduction

The Federal financial supervisory agencies are jointly undertaking a review of our CRA regulations, in fulfillment of our commitment to do so when we adopted the current regulations in 1995. See 60 FR 22156, 22177 (May 4, 1995). This ANPR marks the beginning of our assessment of the effectiveness of the regulations in achieving their original goals of (1) emphasizing in examinations an institution's actual performance in, rather than its process for, addressing CRA responsibilities; (2) promoting consistency in evaluations; and (3) eliminating unnecessary burden. Any regulatory changes that we determine to be necessary to improve the regulations' effectiveness will be made in a rulemaking after completion of this review.

With our initiation of this comprehensive review of the regulations, we seek to determine whether, and if so, how, the regulations should be amended to better evaluate financial institutions' performance under the CRA, consistent with the authority, mandate, and intent of the statute. We encourage comments from the industry and the public on all aspects of this ANPR, as well as other concerns regarding the regulations that may not be represented, in order to ensure a full discussion of the issues.

Background

In 1977, Congress enacted the CRA to encourage federally insured banks and thrifts to help meet the credit needs of their entire communities, including low-and moderate-income neighborhoods, consistent with safe and sound banking practices. 12 U.S.C. 2901 *et seq.* In the CRA, Congress determined that:

(1) Regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business;

(2) The convenience and needs of communities include the need for credit services as well as deposit services; and

(3) Regulated financial institutions have continuing and affirmative obligation[s] to help meet the credit needs of the local communities in which they are chartered. (12 U.S.C. 2901(a).) Further, Congress directed the agencies to assess an institution's record of meeting the credit needs of its entire community, and to consider that record when acting on an application for a deposit facility.

In 1993, we initiated a reform of our CRA regulations. The goal of the reform was to develop revised rules that would clarify how we would evaluate the performance of the institutions we supervise. It also was our goal to develop a new system of evaluating financial institutions' records with respect to CRA that would focus primarily on objective, performance-based assessment standards that minimize compliance burden while stimulating improved performance.

After holding seven public hearings and publishing two proposed rules, we jointly issued final rules (the "regulations") on May 4, 1995 (60 FR 22156). See 12 CFR 25, 228, 345, and 563e, implementing 12 U.S.C. 2901 *et seq.* We published related clarifying documents on December 20, 1995 (60 FR 66048) and May 10, 1996 (61 FR 21362). To assist financial institutions and the public, we have also provided interpretive guidance about the regulations in the form of questions and answers published in the **Federal Register**. *See* 65 FR 25088 (April 28, 2000).

Under the regulations, the agencies evaluate a financial institution through a performance-based examination, the scope of which is determined by the institution's size and business strategy. Large, retail-oriented institutions are examined using the lending, investment, and service tests. Small institutions are examined using a streamlined small institution test. Wholesale and limited purpose institutions are examined under a community development test. And, finally, all institutions have the option of being evaluated under a strategic plan. No matter which evaluation method is used, each institution's performance is evaluated in a "performance context" that examiners factor into their CRA evaluations. The performance context includes consideration of factors such as each institution's business strategy and constraints, as well as the needs of, and opportunities afforded by, the communities served.

As stated, our goal was to make CRA examinations more objective and performance-based. To this end, the regulations require large institutions to collect, report, and disclose data on small business, small farm and community development loans, as well as limited data about home mortgage lending outside metropolitan statistical areas (MSAs), if the institution is subject to the Home Mortgage Disclosure Act (HMDA).

Issues for Comment

A fundamental issue for consideration is whether any change to the regulations would be beneficial or is warranted. Industry representatives, community and consumer organization representatives, members of Congress, and the public have discussed the regulations with the agencies over the years, e.g., during examinations, in the application process, at conferences, and at other meetings. Some suggest that the regulations work reasonably well and that little or no change is necessary. Others suggest that more extensive changes may be needed to reflect the significant changes in the delivery of services and expansion of products offered by financial institutions as a result of new technologies and financial modernization legislation. Still others advise that regulatory changes are inherently burdensome, so the benefit of any change should be weighed against the cost of effecting the change.

The following discussion identifies some of the issues that may warrant our review. The discussion is by no means exhaustive of all the issues that could be raised or the viewpoints that could be expressed. Commenters are invited to respond to the questions presented and to offer comments or suggestions on any other issues related to the CRA regulations, including developments in the industry that may impact how we evaluate CRA performance in the future. The agencies also welcome suggestions on what, if any, other steps we might undertake instead of, or in addition to, revising the regulations.

1. Large Retail Institutions: Lending, Investment, and Service Tests

Large retail institutions are subject to the lending, investment, and service tests. These tests primarily consider such things as the number and dollar amount of loans, qualified investments, and services, and the location and recipients of these activities. The tests also call for qualitative consideration of an institution's activities, including whether, and to what extent, loans, investments, and services are responsive to community credit needs; whether and to what extent they are innovative, flexible, or complex activities; and, in the case of investments, the degree to which the investments are not routinely provided by private investors. Thus, the regulations attempt to temper their reliance on quantitative factors by requiring examiners to evaluate qualitative factors, because not all activities of the same numerical magnitude have equal impact or entail the same relative importance when undertaken by different institutions in different communities.

Nonetheless, because the tests first consider the number and dollar amount of loans, investments, or services, some are of the opinion that CRA evaluations have become simply a "numbers game." They question whether the regulations strike the right balance between evaluation of the quantity and quality of CRA activities. They suggest, for example, that the regulations provide too little consideration for an institution's focus on smaller projects " whether or not "innovative" " that are particularly difficult to carry out, but are especially meaningful and responsive to the institution's community.

Institutions' CRA ratings reflect the principle that lending is the primary vehicle for meeting a community's credit needs. In the 1995 preamble to the regulations, the agencies published a ratings matrix for examiners to use when evaluating large retail institutions under the lending, investment, and service tests. Under this matrix, it is impossible for an institution to achieve a "satisfactory" rating overall unless it receives at least a "low satisfactory" rating on the lending test. The agencies continue to use this ratings matrix.

With respect to the emphasis placed on each category of an institution's activities, some question whether lending should be emphasized more than investments and services. They assert that a CRA evaluation should allow for adjustment of this emphasis in a manner that more nearly corresponds with the activities of the institution and the particular needs of its community. For example, they assert, if an institution does not significantly engage in retail lending and, therefore, makes few loans, the lending test should not receive more emphasis than the investment and service tests for that institution's CRA evaluation.

Others contend, however, that lending should always be stressed, because they believe that deposits derived from communities should be reinvested in those communities through loans. Still others assert that lending should be the *only* basis upon which institutions are evaluated.

Finally, with respect to the three tests, some have argued that an institution's record of providing services should be given more emphasis than it currently is given. Others assert that providing services is not relevant to assessing whether an institution is meeting the credit needs of its community.

• Do the regulations strike the appropriate balance between quantitative and qualitative measures, and among lending, investments, and services? If so, why? If not, how should the regulations be revised?

A. *Lending test.* The agencies evaluate an institution's lending performance by considering the number and amount of loans originated or purchased by the institution in its assessment area; the geographic distribution of its lending; characteristics, such as income level, of its borrowers; its community development lending; and its use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies in a safe and sound manner.

One aspect of the lending test that some have raised with the agencies is that the regulations allow equal consideration for loan originations and purchases. Some assert that only loan originations should be considered in an institution's evaluation. Supporters of this position maintain that consideration of loan purchases does not encourage institutions to increase capital in their communities. Rather, they believe equal consideration may prompt institutions to buy and sell the same loans repeatedly to influence their CRA ratings. On the other hand, some contend that loan purchases free up capital to the selling institution, thus enabling it to make additional loans. Still others argue that both purchases and originations should be considered, but originations should be weighted more heavily because they require more involvement by the institution with the borrower.

A related issue focuses on how the agencies should treat secondary market activity. The regulations currently capture purchased loans under the lending test and purchased asset-backed securities under the investment test. Some find this distinction to be artificial, and propose that purchased loans and purchased asset-backed securities should be captured under the same test, although they differ on which test should be used.

In addition, some are concerned that the regulations generally seem to provide consideration of loans without regard to whether the lending activities are appropriate. They recommend that a CRA examination also should include consideration of whether certain loans contain harmful or abusive terms and, therefore, do not help to meet community credit needs.

• Does the lending test effectively assess an institution's record of helping to meet the credit needs of its entire community? If so, why? If not, how should the regulations be revised?

B. *Investment test.* The agencies evaluate large retail institutions' performance under the investment test based on the dollar amount of qualified investments, their innovativeness or complexity, their responsiveness to credit and community development needs, and the degree to which they are not routinely provided by private investors. The agencies included the investment test in CRA evaluations in recognition that investments, as well as loans, can help meet credit needs.

With respect to whether it is appropriate to evaluate institutions' investment activities, some suggest that investments by financial institutions are invaluable in helping to meet the credit needs of the institutions' communities, particularly in low- and moderate-income areas. Still others assert that the agencies should only consider investment activities to augment institutions' CRA ratings. In their view, although investments may help an institution to meet the credit needs of its community, particularly in low- and moderate-income areas, CRA ratings should be based primarily on lending

activity. Others state, however, that it is inappropriate for the agencies to evaluate investments under the CRA as a means of meeting credit needs.

The availability of qualified investments has also been an issue of concern to some. Although some have observed that since the regulations went into effect, the market of available CRA-related investments has grown and continues to grow, others assert that appropriate investment opportunities may not be available in their communities. Further, some of the retail institutions subject to the investment test have indicated that, in some cases, it has been difficult to compete for investment opportunities, particularly against much larger institutions.

In addition, some have raised concerns that the innovative and complex elements of the investment test lead to a constant demand to change programs, even where existing programs are successful, just to maximize CRA consideration. Others have asked the agencies to reduce the uncertainty of how investments will be evaluated in an examination.

• Does the investment test effectively assess an institution's record of helping to meet the credit needs of its entire community? If so, why? If not, how should the regulations be revised?

C. *Service test.* Under the service test, the agencies consider an institution's branch distribution among geographies of different income levels, its record of opening and closing branches, particularly in low- and moderate-income geographies, the availability and effectiveness of alternative systems for delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals, and the range of services provided in geographies of all income levels, as well as the extent to which those services are tailored to meet the needs of those geographies. The agencies also consider the extent to which the institution provides community development services and the innovativeness and responsiveness of those community development services.

The criteria for evaluating retail services have led to discussion on the test's effectiveness. Some argue that the service test depends too heavily on the provision of brick and mortar banking services, particularly when one considers that many services are now provided by telephone, mail or electronically. Others assert that brick and mortar banking facilities should be weighted heavily because they are necessary, especially in low- and moderate-income neighborhoods where consumers may not have access to electronic banking services. These issues have led some to propose that the evaluation should consider not only the delivery method and type of service, but also the effectiveness of the delivery method, i.e., the extent to which low- and moderate-income persons actually use the services offered. In addition, some have suggested that the test should provide more consideration for flexible and innovative deposit accounts.

As for community development services, such as providing technical assistance on financial matters to nonprofit organizations serving low- and moderate-income housing needs, some suggest that these services are not given adequate consideration. In particular, they state that community development services are often a critical component of delivering or supporting activities considered under the lending test. Some also argue, however, that there is no incentive for an institution to engage in what might be labor intensive endeavors because community development services are only a small component of its overall evaluation. Others suggest that community development services should be evaluated within the context of other community development activities, such as lending and investments, because evaluating them separately could result in artificial designations and may not give adequate consideration to the integral relationship among the activities. Still others suggest that the community development and retail services components should be combined. *See* related discussion in 1.D.

• Does the service test effectively assess an institution's record of helping to meet the credit needs of its entire community? If so, why? If not, how should the regulations be revised?

D. *Community development activities of large retail institutions.* Under the regulations, "community development" means affordable housing (including multifamily rental housing) for low- or moderate-income individuals; community services targeted to low- or moderate-income individuals; activities that promote economic development by financing small businesses and farms; and activities that revitalize or stabilize low- or moderate-income geographies.

The definition of "community development" has spurred discussion since the regulations were published. Some assert that the definition of "community development" is not broad enough to cover the full range of activities that should receive favorable consideration. For example, some indicate that many projects intended to revitalize or stabilize rural communities do not qualify under the current regulatory definition of community development because they are not located in low- or moderate-income geographies, as defined in the regulations. Others assert that the definition does not adequately value activities benefiting communities or projects involving persons with a mix of incomes.

Issues also have arisen with respect to the geographic location of an institution's community development activities. For large retail institutions, the agencies consider community development activities in their assessment areas or a broader statewide or regional area that includes their assessment areas. Some suggest that large retail institutions should receive full consideration for community development activities anywhere they are conducted, as long as the institutions have adequately addressed the needs of their assessment areas. They contend that such consideration should be similar to the consideration of community development activities given wholesale and limited purpose institutions that are evaluated under the community development test. Others express concern, however, that if retail institutions are given the opportunity to receive consideration for community development activities outside their assessment areas and the broader statewide or regional areas that include their assessment areas, such an opportunity may be interpreted as a requirement to serve these areas. Still others argue that allowing activities further afield to receive consideration would diminish institutions' incentives to serve their own communities.

As discussed above, the community development loans, qualified investments, and community development services of large retail institutions are considered separately under the lending, investment, and service tests, respectively. Some suggest this evaluation method leads institutions to be overly concerned with whether they have "enough" of each activity. They argue that all community development activities, whether loans, investments or services, should be evaluated in one separate test, rather than in the existing three tests. Under such a test, an institution would receive consideration for community development loans, investments, and services needed in its community, based on the opportunities that exist and the ability of the institution to respond.

• Are the definitions of "community development" and related terms

appropriate? If so, why? If not, how should the regulations be changed?

• Are the provisions relating to community development activities by institutions that are subject to the lending, investment, and service tests effective in assessing those institutions' performance in helping to meet the credit needs of their entire communities? If so, why? If not, how should the regulations be revised?

2. Small Institutions: The Streamlined Small Institution Evaluation

A "small institution" is defined as an institution with total assets of less than $250 million that is independent or is affiliated with a holding company with total bank and thrift assets of less than $1 billion as of the two preceding year ends. Some suggest that the asset thresholds for being considered a small institution are too low. Others assert that holding company assets are irrelevant—if a bank has less than $250 million in assets, it should be considered small even if it is affiliated with a large holding company. Still others suggest that holding company assets are relevant only if the holding company provides support for CRA activities or otherwise directs the CRA activities of an institution.

Small institutions are evaluated under a streamlined test that focuses primarily on lending. When evaluating a small institution, an agency considers its loan-to-deposit ratio; the percentage of loans in its assessment areas; its record of lending to borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of its loans; and its record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

The small institution performance standards generally have been favorably received. Some, however, express concerns that the small institution assessment method does not provide for adequate consideration of non-lending-related investments, retail-related services, or community development services. Others assert that the small institution performance standards do not adequately consider the activities small institutions are performing in their communities, particularly in highly competitive markets. Others say that the standards do not create a sufficient incentive for small institutions to seek out and make investments, provide new services, or strive for higher ratings. Some also argue that institutions evaluated under the streamlined method should not be eligible for an "outstanding" rating based on their lending activities alone—that a small institution should be engaged in making investments and providing services in order to receive a rating higher than satisfactory.

• Do the provisions relating to asset size and holding company affiliation provide a reasonable and sufficient standard for defining "small institutions" that are eligible for the streamlined small institution evaluation test? If so, why? If not, how should the regulations be revised?

• Are the small institution performance standards effective in evaluating such institutions' CRA performance? If so, why? If not, how should the regulations be revised?

3. Limited Purpose and Wholesale Institutions: The Community Development Test

The community development test is the evaluation method used for limited purpose and wholesale institutions. A limited purpose institution offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and must request and receive designation as a limited purpose institution from its regulatory agency. A wholesale institution is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and similarly must obtain a designation as a wholesale institution.

Some question whether the definitions of limited purpose and wholesale institutions are appropriate. For example, they ask whether the definition of limited purpose should be expanded to a limited extent to capture retail institutions that offer more than a narrow product line on a regional or national basis.

Under the community development test, the agencies consider the number and amount of community development loans, qualified investments, or community development services; the use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and the institution's responsiveness to credit and community development needs. Wholesale and limited purpose institutions may receive consideration for community development activities outside of their assessment areas (or a broader statewide or regional area that includes their assessment areas) as long as they have adequately addressed the needs of their assessment areas.

Some question whether the community development test for wholesale and limited purpose institutions is as rigorous as the lending, investment, and service tests are for large retail institutions. Others suggest that the community development test may be an appropriate test not only for limited purpose and wholesale institutions, but also for other types of institutions, such as branchless institutions that provide a broad range of retail services nationwide by telephone, mail, or electronically. Still others assert that the community development test may be an appropriate test for any retail institution.

• Are the definitions of "wholesale institutions" and "limited purpose institution" appropriate? If so, why? If not, how should the regulations be revised?

• Does the community development test provide a reasonable and sufficient standard for assessing wholesale and limited purpose institutions? If so, why? If not, how should the regulations be revised?

• Would the community development test provide a reasonable and sufficient standard for assessing the CRA record of other insured depository institutions, including retail institutions? If so, why and which ones, and how should the regulations be revised? If not, why not?

4. Strategic Plan

The agencies developed the strategic plan option to provide institutions with more flexibility and certainty regarding what aspects of their performance will be evaluated and what quantitative and qualitative measures will be applied. To exercise this option, an institution must informally seek suggestions from the public while developing its plan, solicit formal public comment on its plan, and submit the plan to its regulatory agency (along with any written comments received from the public and an explanation of any changes made to the plan in response to those public comments).

To be approved by an agency, a CRA strategic plan must have measurable goals and address how the institution plans to meet the credit needs of its assessment area, in particular, low- and moderate-income geographies and individuals, through lending, investments, and services, as appropriate. Although strategic plans should generally emphasize lending goals, the rule allows institutions the flexibility to choose a different emphasis, as necessary, given their business strategy and the needs of their community.

Strategic plans must contain goals that, if met, would constitute "satisfactory" performance. An

institution may also include goals that would constitute "outstanding" performance. Upon examination, an institution that substantially achieves its goals under its approved plan will receive the rating attributed to those goals in its plan.

Only a few institutions have used the strategic plan option. These institutions indicate that they prefer the certainty provided by having a strategic plan. On the other hand, others have said that they have chosen not to pursue this option because of concern about the public nature of the process and the plan itself, including concern that their competitors might obtain information about their business strategy. Some indicate that they have found it difficult to develop a strategic plan with measurable goals. These concerns have led some to suggest that the strategic plan option should be reformed, while others suggest that it should be eliminated.

Some suggest that a strategic plan allows non-traditional institutions, such as institutions that provide a wide range of products nationwide via the Internet or through other non-branch-based delivery systems, to set performance goals that better reflect the markets they serve. Some suggest that a strategic plan should be mandatory for certain non-traditional institutions, particularly an institution for which the vast majority of retail lending activity occurs outside of its assessment area as defined by the regulation. Others suggest that the strategic plan option could be used to blend existing assessment methods for different business lines within one institution, for example, in the context of a bank with a retail branch network in one part of the country and wholesale operations in another, or an Internet presence nationally.

• Does the strategic plan option provide an effective alternative method of evaluation for financial institutions? If so, why? If not, how should the regulations be revised?

5. Performance Context

The regulations provide that an institution's performance under the tests and standards is evaluated in the context of information about the institution, its community, its competitors, and its peers. Such information may include, among other things, demographic data about the institution's assessment areas; the institution's product offerings and business strategy; lending, investment, and service opportunities in its assessment areas; any institutional capacity and constraints; and information about the institution's past performance and the performance of similarly situated lenders.

Some assert that performance context provides a means to evaluate the qualitative impact of an institution's activities in a community, striking the right balance between the quantity and quality of an institution's activity. The appropriate information helps to assess the responsiveness of an institution's activities to community credit needs. Performance context may also provide insight into whether an activity involving a lower dollar amount could meet community needs to a greater extent than an activity with a higher dollar amount, but with less innovation, complexity, or impact on the community.

Others assert that consideration of a performance context may create uncertainty about what activities will be considered and how they will be weighted during a CRA examination. They contend that more specific and quantifiable measures are needed to understand CRA evaluations more fully, despite the quantitative and qualitative factors outlined in the regulations and interagency guidance.

On the other hand, others have raised concerns that prescribing performance ratios for institutions would result in rigid performance requirements, and thereby eliminate the advantages of a performance context analysis. They maintain that the performance context provides examiners with the latitude needed to conduct a meaningful evaluation. They contend this latitude is important given the different types of institutions and communities, and the wide variety of business, market, economic, and other factors that can affect an institution's ability to respond to community credit needs.

• Are the provisions on performance context effective in appropriately shaping the quantitative and qualitative evaluation of an institution's record of helping to meet the credit needs of its entire community? If so, why? If not, how should the regulations be revised?

6. Assessment Areas

The regulations contain guidelines for institutions to use in defining their assessment areas. The assessment area is the geographic area in which the agencies will evaluate an institution's record of meeting the credit needs of its community. The regulations provide that an institution's assessment area should consist generally of one or more metropolitan statistical areas or one or more contiguous political subdivisions, and include geographies where the institution has its main office, branches, and deposit-taking ATMs, as well as surrounding geographies where the institution has originated or purchased a substantial portion of its loans. An institution may adjust the boundaries of its assessment area to include only the portion of a political subdivision that it can reasonably expect to serve. However, an institution's assessment area may not reflect illegal discrimination and may not arbitrarily exclude low- or moderate-income geographies, taking into account the institution's size and financial condition.

Some indicate that the assessment area delineation in the regulations has proven appropriate for most institutions. They assert that assessment areas are appropriately limited to the geographic areas around an institution's main office, branches, and deposit-taking ATMs. They contend that this is an appropriate and practical way to give focus to an institution's responsibility to help meet the credit needs of its community. Further, they contend that an institution is most familiar with the areas in which it is physically located and is in the best position to help meet credit needs in those areas. Still others are concerned about setting expectations on where institutions should be conducting their business if assessment areas were to include areas in which the institutions are not physically located.

On the other hand, some assert that the regulations' designation of assessment areas " based upon the location of the main office, branches, and deposit-taking ATMs of an institution—ignores a variety of deposit acquisition and credit distribution channels used by an increasing number of institutions to serve the retail public, often reaching widely dispersed markets. They argue that these channels should be considered part of an institution's "community." Others suggest that the regulations' approach to assessment area may create a disincentive for institutions to engage in community development activities in low- and moderate-income communities and rural areas where they have no physical presence and which are not part of their assessment areas.

To address these and other concerns, some recommend that institutions be required to delineate geographically defined assessment areas wherever they deliver retail banking services, whether or not they have physical deposit-gathering branches or ATMs in each locale. Others suggest that the assessment area should not be limited to metropolitan statistical areas (MSAs), but that the regulations should allow statewide and even national assessment areas. Some others suggest that

assessment areas without a geographical delimitation should be allowed, such as one based on a type of customer—similar to the way an institution that predominantly serves military personnel is permitted by the statute to delineate its entire deposit customer base as its assessment area. Finally, some propose that the agencies should create a distinct evaluation method with respect to the assessment area for institutions that gather deposits and deliver products and services without using deposit-taking branches or ATMs, for example, those institutions that use the Internet almost exclusively to gather deposits and deliver products.

• Do the provisions on assessment areas, which are tied to geographies surrounding physical deposit-gathering facilities, provide a reasonable and sufficient standard for designating the communities within which the institution's activities will be evaluated during an examination? If so, why? If not, how should the regulations be revised?

7. Activities of Affiliates

Under the lending, investment, and service tests and the community development test, an institution may elect to have activities of its affiliates considered as part of its own record of performance. An "affiliate" is defined as any company that controls, is controlled by, or is under common control with another company. Subsidiaries of financial institutions are considered affiliates under this definition.

Some assert that activities of affiliates, and in particular, subsidiaries of a financial institution, should always be considered in an institution's CRA evaluation. They contend that, because the regulations provide for consideration of affiliates' activities only at an institution's option, some institutions may book loans, make investments, and provide services for low- and moderate-income persons primarily in the institution, while offering other products and services more predominantly targeted to middle- and upper-income persons in their affiliates or by lending through consortia. Thus, they argue, institutions may be using their affiliates' activities to manipulate their CRA ratings. Others contend that if institutions can opt for consideration of affiliates' activities to enhance their CRA performance, their CRA performance should also be affected if their affiliates engage in abusive lending activities.

Others suggest that affiliate activities should be required to have a direct impact on an institution's assessment area. Still others assert that only the activities of an insured depository institution should be considered in its CRA evaluation. Affiliate activities should be irrelevant, they argue, when rating an institution's CRA performance and should not be considered, even at the option of the institution. On the other hand, others have indicated that the current treatment of affiliate activities is appropriate because the CRA applies only to insured depository institutions.

• Are the provisions on affiliate activities, which permit consideration of an institution's affiliates' activities at the option of the institution, effective in evaluating the performance of the institution in helping to meet the credit needs of its entire community, and consistent with the CRA statute? If so, why? If not, how should the regulations be revised?

8. Data Collection and Maintenance of Public Files

The regulations require large institutions to collect and report data on small business, small farm and community development lending, as well as limited data about home mortgage lending outside MSAs, if the institutions are subject to HMDA. The data requirements were designed to avoid undue data collection, reporting, and disclosure burden by: (1) Conforming data requirements to the extent possible with data already collected under HMDA, call reports, and thrift financial reports; (2) limiting data reporting to large institutions; and (3) making reporting of certain types of data optional.

Some question the agencies' authority to require collection and reporting of data under the CRA regulations. Others express concerns about the limitations of the data collected and reported. For example, small business and small farm data are aggregated at the census tract level, while community development loans are aggregated at the institution level. Still others question whether the collected and reported data are sufficiently detailed to be of use. Some also suggest that investment data, as well as data on lending, are necessary to properly evaluate institutions' performance under CRA.

Some indicate that collection of the required data and maintenance of a public file is burdensome and that very few interested parties ask to see the public files. However, others assert that institutions' public files provide valuable information for the public to use to monitor the extent to which they serve their communities.

• Are the data collection and reporting and public file requirements effective and efficient approaches for assessing an institution's CRA performance while minimizing burden? If so, why? If not, how should the regulations be revised?

Conclusion

With this ANPR, we seek input to assist us in determining whether and, if so, how the CRA regulations should be revised. We welcome comments on all aspects of the CRA regulations and encourage all interested parties to provide their views. Hearing from parties with diverse viewpoints will help us to determine the most appropriate way to approach the review of the regulations.

Executive Order 12866

OCC and OTS: The agencies do not know now whether they will propose changes to the CRA rules and, if so, whether these changes will constitute a significant regulatory action under the Executive Order. This ANPR neither establishes nor proposes any regulatory requirements. OCC and OTS have submitted a notice of planned regulatory action to OMB for review. Because this ANPR does not contain a specific proposal, information is not available with which to prepare an economic analysis. OCC and OTS will prepare a preliminary analysis if they proceed with a proposed rule that constitutes a significant regulatory action.

Accordingly, we solicit comment, information, and data on the potential effects on the economy of any changes to the CRA rule that the commenter may recommend. We will carefully consider the costs and benefits associated with this rulemaking.

Dated: July 11, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency.

Dated: July 12, 2001.

Jennifer J. Johnson,

Secretary of the Board, Board of Governors of the Federal Reserve System.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 10th day of July, 2001.

Robert E. Feldman,

Executive Secretary.

Dated: July 10, 2001.

Ellen Seidman,

Director, Office of Thrift Supervision.

[FR Doc. 01–18033 Filed 7–18–01; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 924]

RIN 1512–AC29

Proposed Addition of New Grape Variety Names for American Wines (2000R–322P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco, and Firearms (ATF) is proposing to add four new names to the list of prime grape variety names for use in designating American wines: Albariño, Alvarinho, Black Corinth, and Fiano.

DATES: Written comments must be received by September 17, 2001.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 924).

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, NY, 14202–2301; Telephone (716) 551–4048.

SUPPLEMENTARY INFORMATION:

1. Background

Under the Federal Alcohol Administration Act (27 U.S.C. § 201 *et seq.*) (FAA Act), wine labels must provide "the consumer with adequate information as to the identity and quality" of the product. The FAA Act also requires that the information appearing on wine labels not mislead the consumer.

To help carry out these statutory requirements, ATF has issued regulations, including those that designate grape varieties. Under 27 CFR § 4.23(b) and (c), a wine bottler may use a grape variety name as the designation of a wine if not less than 75 percent of the wine (51 percent in the case of wine made from *Vitis labrusca* grapes) is derived from that grape variety. Under § 4.23(d), a bottler may use two or more grape variety names as the designation of a wine if all of the grapes used to make the wine are of the labeled varieties, and if the percentage of the wine derived from each grape variety is shown on the label.

Treasury Decision ATF–370 (61 FR 522), January 8, 1996, adopted a list of grape variety names that ATF has determined to be appropriate for use in designating American wines. The list of prime grape names and their synonyms appears at § 4.91, while additional alternative grape names temporarily authorized for use are listed at § 4.92. ATF believes the listing of approved grape variety names for American wines will help standardize wine label terminology, provide important information about the wine, and prevent consumer confusion.

ATF has received petitions proposing that new grape variety names be listed in § 4.91. Under § 4.93 any interested person may petition ATF to include additional grape varieties in the list of prime grape names. Information with a petition should provide evidence of the following:

- Acceptance of the new grape variety;
- The validity of the name for identifying the grape variety;
- That the variety is used or will be used in winemaking; and
- That the variety is grown and used in the United States.

For the approval of names of new grape varieties, the petition may include:

- A reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization;
- A reference to a plant patent, if patented; and
- Information about the commercial potential of the variety, such as the acreage planted and its location or market studies.

Section 4.93 also places certain eligibility restrictions on the approval of grape variety names. A name will not be approved:

- If it has previously been used for a different grape variety;
- If it contains a term or name found to be misleading under § 4.39; or
- If a name of a new grape variety contains the term "Riesling."

The Director reserves the authority to disapprove the name of a new grape variety developed in the United States if the name contains words of geographical significance, place names, or foreign words which are misleading under § 4.39.

2. Petitions

Petition for Albariño/Alvarinho

Havens Wine Cellars in Napa, California, has petitioned ATF proposing the addition of the name "Albariño" to the list of prime grape names approved for the designation of American wines. Albariño, a white *Vitis vinifera* grape, has been grown for centuries in Spain and Portugal, but is relatively new to the United States. In Portugal, the grape is known by the name "Alvarinho."

The petitioners state that Albariño has long been recognized in Europe and in academic communities. As evidence of this, the petitioners submitted the following supporting documents provided by Professor Carole Meredith of the Viticulture and Enology Department at the University of California at Davis (UC Davis):

- European Union Regulation 3201/90: This regulation permits the use of the name "Albariño" on labels of Spanish wines, and the name "Alvarinho" on labels of Portuguese wines.
- Two scientific papers from the *American Journal of Enology and Viticulture:* "Effects of Grapevine Leafroll-Associated Virus 3 on the Physiology and Must of Vitis vinifera L. cv. Albariño Following Contamination in the Field," published in Volume 50, 1999, discusses a study conducted on Albariño grape vines, and "Contribution of Saccharomyces and Non-Saccharomyces Populations to the Production of Some Components of Albariño Wine Aroma," published in Volume 47, 1996, describes a study conducted on Albariño musts.
- "The Genetic Resources of Vitis": This listing of international grape variety names and synonyms, published in 1988 by the German Federal Grape Breeding Institute, lists Alvarinho as the prime name for the grape varietal with Albariño as a synonym.
- An abstract for an article from the *Journal of the American Society for Horticultural Science:* "Molecular marker analysis of Vitis vinifera 'Albariño' and some similar grapevine cultivars," published September 1998, describes a DNA analysis conducted on Albariño grapevines.

The petitioner also submitted several wine literature articles, from sources such as Wine Spectator and Wine Today, which mention Albariño/Alvarinho wine.

ATF contacted Professor Meredith and asked her if the name "Alvarinho" should be added to the list as a synonym of Albariño. She replied that both names are well established in Europe and are equally valid names for the grape. She stated that because the grape is relatively new to the U.S., she didn't know which name is most commonly used by U.S. winemakers.

She noted that UC Davis has an example of the grapevine in its collection and uses the name "Alvarinho", most likely because the plant originally came from Portugal.

Havens Wine Cellar reports that it has 2½ acres of Albariño in production, with the first crop picked in 1999. They also presented evidence that at least two other California wineries are also growing Albariño. ATF knows of a Virginia winery that is also growing the grape. The petitioner comments that American consumers are looking for new and exciting varietals and Albariño fills this niche.

Based on the evidence presented by the petitioner, ATF proposes the addition of this grape to the list of American grape variety names. Since the evidence indicates that both names are equally valid, ATF proposes to add the names "Albariño" and "Alvarinho" to § 4.91 as prime names and as synonyms.

Petition for Black Corinth

Hallcrest Vineyards in Felton, California, has petitioned ATF to include the grape variety Black Corinth on the list of prime grape names approved for the designation of American wines. Black Corinth grapes are widely grown in California, where the vast majority of them are dried into raisins and marketed under the name "Zante Currant."

As evidence of the grape's acceptance and use in California, Hallcrest Vineyards submitted the following statistical reports issued by the State of California:

- Final Grape Crush Report for the 1999 crop, issued by the California Department of Food and Agriculture.
- California Grape Acreage report for 1999, issued by the California Agricultural Statistics Service, in cooperation with the U.S. Department of Agriculture.

Both reports include statistical tables with the data broken down by grape varietal, including Black Corinth. According to Table 2 of the Grape Acreage report, there were 2,384 standing acres of Black Corinth planted in California in 1999. The petitioner states these tables are clear evidence that the grape is grown in California and is recognized by the California Department of Food and Agriculture.

Other documentation of the grape includes The Oxford Companion to Wine (Jancis Robinson, Oxford University Press, 1999), which states that Black Corinth is one of the most commonly used grape varieties in the world raisin industry, and has on occasion been used in winemaking. The Office International de la Vigne et du Vin, an international association for wine, officially recognizes the names "Black Corinth" and "Zante Currant" for the grape.

Hallcrest Vineyards states it has made a fruity, blush dessert wine from the Black Corinth grape. ATF is aware of at least one other winery using the grape to produce a table wine. Because the evidence satisfies the requirements of § 4.93, ATF proposes to add Black Corinth to the list of prime grape names in § 4.91. Because ATF feels that the name "Zante Currant" may mislead the consumer into thinking the wine is made from currants and not grapes, it is not proposing the name as a synonym. ATF, however, welcomes comments on this issue.

Petition for Fiano

United Distillers and Vintners North America, Inc. (UDV) has petitioned ATF for the addition of the name "Fiano" to the list of prime grape names approved for the designation of American wines. UDV owns three wineries in California—Beaulieu Vineyards, Glenn Ellen Carneros Winery, and Blossom Hill.

Fiano is a white varietal, long grown in the Campania region of Italy where it is used to produce the Denominazione di Origine Controllata wine Fiano di Avellino. According to information submitted by the petitioner, Fiano is an old grape with a history that can be traced back to the ancient Romans. An order for Fiano wine was placed in the register of the Holy Roman Emperor Frederick II (1215–1250), and Charles d'Anjou (1227–1285) was known to have planted 16,000 Fiano vines. Reference sources referring to the Fiano grape include The New Sotheby's Wine Encyclopedia (Tom Stevenson, DK Publishing, Inc., 1997) and The Oxford Companion to Wine (Jancis Robinson, Oxford University Press, 1999).

As evidence of the grape's use in the U.S., UDV has submitted a price list from Herrick Grapevines in St. Helena, California, listing Fiano in the grapevine inventory. According to this inventory, the Fiano was planted in 1997 and was obtained from Duarte Nursery in Modesto, California. UDV further states that Beaulieu Vineyard has produced two vintages of Fiano wine, and it has submitted evidence that at least three other California vineyards and one New York vineyard are also growing Fiano. The petitioner submitted a letter from Monterey Pacific, one of the California growers, stating that they've had five years of experience with Fiano, and find it to be a grape with distinctive varietal character.

Based on the evidence presented in the petition, ATF is proposing the Fiano grape for inclusion in § 4.91.

3. Public Participation

Who May Comment on This Notice?

ATF requests comments from all interested parties. We will carefully consider all comments we receive on or before the closing date. We will also carefully consider comments we receive after that date if it is practical to do so, but we cannot assure consideration for late comments. ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand.

Can I Review Comments Received?

Copies of the petitions and written comments in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Office of Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We may also disclose the name of any person who submits a comment. A copy of this notice and all comments will be available for public inspection during normal business hours at: ATF Reference Library, Office of Liaison and Public Information, Room 6300, 650 Massachusetts Avenue, NW., Washington, DC 20226.

How do I Send Facsimile Comments?

You may submit comments of not more than three pages by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be 8½″ × 11″ in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-mail) Comments?

You may submit comments by e-mail by sending the comments to *nprm@atfhq.atf.treas.gov*. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on not more than three pages size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet web site at http://www.atf.treas.gov/alcohol/rules/index.htm.

3. Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation will permit the use of new grape varietal names. No negative impact on small entities is expected. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

4. Drafting Information

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Authority and Issuance

Accordingly, 27 CFR part 4, Labeling and Advertising of Wine, is amended as follows:

PART 4—[AMENDED]

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Para. 2. Section 4.91 is amended by republishing the introductory text and by adding the names "Albariño", "Alvarinho", "Black Corinth", and "Fiano" in alphabetical order, to the list of prime grape names, to read as follows:

§ 4.91 List of approved prime names.

The following grape variety names have been approved by the Director for use as type designations for American wines. When more than one name may be used to identify a single variety of grape, the synonym is shown in parentheses following the prime name. Grape variety names may appear on labels of wine in upper or in lower case, and may be spelled with or without the hyphens or diacritic marks indicated in the following list.

Albariño (Alvarinho)

* * * * *

Alvarinho (Albariño)

* * * * *

Black Corinth

* * * * *

Fiano

* * * * *

Signed: May 24, 2001.

Bradley A. Buckles,

Director.

Approved: June 22, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 01–17935 Filed 7–18–01; 8:45 am]

BILLING CODE 4810–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC–82

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Document Incorporated by Reference—American Petroleum Institute's Specification 2C for Offshore Cranes

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: MMS is proposing to incorporate by reference the Fifth Edition of the American Petroleum Institute's Specification for Offshore Cranes (API Spec 2C) into its regulations. MMS is proposing this action to establish a minimum design standard for new cranes installed on fixed platforms on the Outer Continental Shelf (OCS) and to require all existing cranes installed on OCS fixed platforms to be equipped with anti-two block safety devices. This proposed rule would ensure that OCS lessees use the best available and safest technologies for the design and construction of cranes used on the OCS.

DATES: We will consider all comments we receive by October 17, 2001. We will begin reviewing comments then and may not fully consider comments we receive after October 17, 2001.

ADDRESSES: Mail or hand-carry comments (three copies) to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team (RPT). If you wish to e-mail comments, the RPT's e-mail address is: rules.comments@mms.gov. Reference API Spec 2C in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

Mail or hand-carry comments with respect to the information collection burden of the proposed rule to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Desk Officer for the Department of the Interior (OMB control number 1010–NEW); 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wilbon Rhome, Industrial Specialist, Operations Analysis Branch, at (703) 787–1587 or Fax (703) 787–1555.

SUPPLEMENTARY INFORMATION: We use standards, specifications, and recommended practices developed by standard-setting organizations and the oil and gas industry as a means of establishing requirements for activities on the OCS. This practice, known as incorporation by reference, allows us to incorporate the provisions of technical standards into the regulations. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, then has the force and effect of law. We hold operators/lessees accountable for complying with the documents incorporated by reference in our regulations. We currently incorporate by reference 85 private sector consensus standards into the offshore operating regulations.

The regulations at 1 CFR part 51 govern how we and other Federal

agencies incorporate various documents by reference. Agencies may only incorporate by reference through publication in the **Federal Register**. Agencies must also gain approval from the Director of the **Federal Register** for each publication incorporated by reference. Incorporation by reference of a document or publication is limited to the specific edition, supplement, or addendum cited in the regulations.

Crane Standards

The primary reason MMS is proposing to incorporate by reference API Spec 2C into its regulations is to establish detailed requirements for the design and construction of pedestal-mounted cranes for new and existing OCS fixed platforms.

API Spec 2C will:

a. Provide a uniform method of establishing rated loads for cranes.

b. Require lessees to equip all new and existing cranes installed on OCS fixed platforms with anti-two block safety devices.

c. Ensure that OCS lessees use the best available and safest technologies for design and construction of cranes for installation in the OCS.

We believe API Spec 2C will be an excellent companion document to API Recommended Practice 2D, a document incorporated into MMS regulations, which deals with the operation and maintenance of offshore cranes. API Spec 2C includes minimum requirements for equipment, materials, manufacturing procedures, and testing (both design and operational) that are not covered in API RP 2D. Incorporating API Spec 2C into the regulations would address a safety gap in our regulations and improve crane safety on the OCS.

The anti-two block safety device is installed on a crane to protect hoist ropes, structural components, and machinery from damage, that might occur when two sheave groups (e.g., load block and boom head) come into contact as the hoist cable is drawn in. This situation is dangerous because: (1) The load block can detach from the load line, falling and causing serious injury or possible loss of life or considerable property damage, or (2) the load block can be pulled through the boom head, putting the crane operator at risk. There are several forms of anti-two block protection that are available to the oil and gas industry. One such form of protection is the control override device used to stall the hoist drums where damage or loss of control would be the result. Other forms of protection are audible or visual proximity warning devices. These anti-two block safety devices may be used in addition to the control override device, or used independently of the control override device.

In the past, MMS has encouraged industry to equip all cranes operating on OCS fixed platforms with an anti-two block safety device regardless of age or specific use of the crane. MMS now believes that anti-two block safety devices must be used on all cranes installed on OCS fixed platforms. We are convinced that retrofitting existing cranes with the anti-two block safety devices will benefit the industry by increasing safety and reducing or eliminating crane incidents on the OCS. Industry shares our concern as evidenced by a recent safety alert issued by the International Association of Drilling Contractors, stating that anti-two block safety devices should be installed on all cranes because "Having a safety device like this ensures that everything is in place to prevent a problem. The anti-two block safety devices for the crane boom is a protection device as is the crown protection device on the rig's drawworks. Both are very important to working safely."

It should be noted that the proposed regulation requiring the retrofitting of existing cranes would provide a 1-year transition period. This would allow the industry adequate time to implement this change without causing undue hardships.

Recordkeeping Requirements

With the incorporation of API Spec 2C, we would include additional recordkeeping requirements in § 250.108, consistent with the specification. Current regulations require you to keep at the OCS facility for at least 2 years the inspection, testing, and maintenance records of cranes and other material-handling equipment. The proposed regulations expand this to include maintaining records on the design and construction of cranes, including installation records for any anti-two block safety devices. We are also requiring that all records on cranes be retained for the life of the crane at the fixed offshore platform, rather than a minimum of 2 years.

This proposed rule also updates § 250.108 to specifically include retaining training records on rigger personnel, as well as those for crane operators. This is consistent with the API Recommended Practice 2D, Fourth Edition, which is already incorporated by reference in our regulations under § 250.198.

We specifically solicit comments on the following questions:

(a) Will the addition of API Spec 2C to MMS's documents incorporated by reference increase safety and safe operations on the OCS?

(b) Are there other standards for offshore cranes that may be appropriate for MMS to incorporate as part of MMS's regulations?

(c) When should MMS require all cranes on OCS fixed platforms to be fully compliant with API Spec 2C?

(d) Is a 1-year transition period enough time for industry to comply with the change proposed in § 250.108(c)?

(e) Should MMS establish a requirement similar to the U.S. Coast Guard (USCG), which requires cranes to be installed according to an approved crane plan and inspected and load tested by an Agency-approved third party when the crane is installed?

(f) Should MMS require all new cranes for installation on OCS fixed platforms to have an API monogram on the nameplate of the crane as evidence of certification of the anti-two block safety device?

(g) Should a rental crane that is installed on OCS fixed platforms be considered a new crane and, therefore, be required to be fully compliant with API Spec 2C?

(h) Should MMS limit the type of anti-two block devices that are acceptable? What are the known failure rates of the different types?

(i) Should MMS consider an additional cost factor for retrofitting existing cranes with the anti-two block safety device (e.g., an associated cost for the amount of time a crane is expected to be out-of-service while it is being retrofitted)?

Procedural Matters

The specifications in the API Spec 2C document we propose to incorporate by reference are currently widely accepted industry standards. The USCG has already incorporated API Spec 2C into its regulations. All cranes manufactured after 1983 came equipped with the anti-two block safety devices, and most earlier model cranes have been retrofitted with the anti-two block safety devices. Therefore, this regulation's impact on the entire oil and gas offshore industry is minor.

Public Comment Procedure

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law.

There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety. We will summarize written responses to this notice and address them in the preamble of the final rule. All comments will become a matter of public record.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The major purpose for this proposed rule is to establish a minimum design standard for new cranes installed on fixed platforms on the OCS, and to address an increase in accidents for those cranes that are not equipped with anti-two block safety devices. This rule also proposes to require lessees to equip all existing cranes installed on OCS fixed platforms with anti-two block safety devices. Since API Spec 2C has already been accepted as an industry standard in most of the offshore community, including the USCG, the impact of this regulation on the entire industry is minor. Therefore, the associated costs to equip the remaining cranes, not previously retrofitted, with anti-two block safety devices will be minor. Based on our experience and information in MMS's Technical Information Management System, we estimate that about 5 percent (or a total of not more than 200) of the 4,000 cranes located on the OCS will need to be retrofitted with the anti-two block safety device. We estimate that this will cost approximately $4,000 per retrofit, for a total cost of $800,000.

(2) This proposed rule will not create inconsistencies with other agencies' actions. This rule will not affect how lessees or operators interact with other agencies.

(3) This proposed rule will not affect entitlements, grants, user fees, loan programs, or their recipients. The rule only deals with the proposed action to incorporate by reference the API Spec 2C into our regulations.

(4) This proposed rule will not raise novel legal or policy issues. The proposed rule does involve a new policy issue, to require the lessees to equip all new and existing cranes installed on fixed platforms with anti-two block safety devices, but this new policy decision is not "novel." The proposed rule simply addresses recognized gaps in our safety regulations. These minimum requirements are generally accepted practices that are included in API documents.

Regulatory Flexibility (RF) Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the RF Act (5 U.S.C. 601 *et seq.*). An RF Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

The provisions of this rule will not have a significant economic effect on lessees and operators, including those that are classified as small businesses. The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Offshore lessees/operators are classified under SBA's North American Industry Classification System (NAICS) code 211111 (Crude Petroleum and Natural Gas Extraction) and NAICS 213111 code (Drilling Oil and Gas Wells). We estimate approximately 130 companies will be affected by this rulemaking. According to SBA criteria, 39 companies are large firms, leaving up to 91 companies (70 percent) that may qualify as small firms with fewer than 500 employees.

We estimate that about 5 percent of the 4,000 cranes (200) located on the OCS need to be retrofitted with anti-two block safety devices. Retrofitting an existing crane with an anti-two block system would cost approximately $4,000. As 70 percent of the businesses operating on the OCS are small business firms, a corresponding 70 percent of the 200 cranes to be retrofitted would most likely impact small entities. The cost to small entities to retrofit these 140 cranes with anti-two block safety devices to comply with this standard is estimated to be $560,000 (140 x $4,000 = $560,000.) This does not constitute a significant impact upon a substantial number of small entities, and the safety benefits should far outweigh the cost of retrofitting. It should be noted that this would be a one-time cost during the initial period of implementation and will not be a recurring expense.

This proposed rule applies to all lessees and operating companies that operate cranes on OCS fixed platforms. Incorporation of this new document into MMS regulations will:

(1) Increase safety.

(2) Provide the oil and gas industry with uniform guidelines and detailed requirements for design and construction of pedestal-mounted cranes for OCS fixed platforms.

(3) Provide for consistency with other regulatory agencies such as the USCG.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The proposed rule will not cause any significant costs to lessees or operators. The only costs will be the purchase of the API Spec 2C document, minor revisions to company operating procedures, and the installation of an anti-two block device on cranes installed on OCS fixed platforms that do not already have this safety device. These costs should be approximately $800,000 for the entire industry.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule applies to lessees and contractors operating cranes on OCS fixed platforms.

Paperwork Reduction Act (PRA) of 1995

The proposed rule requires information collection, and an information collection request (form

OMB 83–I) has been submitted to OMB for review and approval under section 3507(d) of the PRA.

The title of the collection of information for this proposed rule is "Proposed Rulemaking, 30 CFR 250, Subpart A—Crane Requirements." Potential respondents are approximately 130 Federal OCS lessees and operators. Responses to this collection of information are mandatory. The frequency of response is on occasion. This collection does not include proprietary information or questions of a sensitive nature.

Current regulations at § 250.108 include recordkeeping requirements for the testing, inspection, and maintenance of cranes installed on fixed platforms on the OCS. They also include recordkeeping requirements to document training of crane operators. The proposed rule expands the current recordkeeping requirements to include records on crane design, construction, and retrofitting. Records on training of rigger personnel, as well as crane operators, will also be required. The type of recordkeeping addressed in the proposed rule is most likely a usual and customary business practice, and the burden to make the records available for MMS review would be minimal. We estimate an additional 2 hours per respondent each year for the expanded recordkeeping requirements, for a total of 260 annual burden hours. MMS uses the information to determine that crane operations are safe and that crane operators and rigger personnel meet the physical qualifications and have completed appropriate training.

As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden in the proposed rule. You may submit your comments directly to the Office of Information and Regulatory Affairs, OMB. Send a copy of your comments to MMS. Refer to the **ADDRESSES** section for mailing instructions. MMS will summarize written comments and address them in the final rule preamble. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by August 20, 2001. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

a. We specifically solicit comments on the following questions:

(1) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(2) Are the estimates of the burden hours of the proposed collection reasonable?

(3) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(4) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

b. In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information. We have not identified any and solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) The total capital and startup cost component, and (2) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; well control simulators, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practice.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments because it concerns the manufacturing requirements for specific equipment used in offshore oil and gas activities. The rule only affects manufacturers and users of such equipment. This rule does not impose costs on State or localities, as it only affects manufacturers and users of specific equipment used in offshore oil and gas activities.

Takings Implication Assessment (Executive Order 12630)

According to Executive Order 12630, this rule does not have significant Takings implications. A Takings Implication Assessment is not required.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Unfunded Mandates Reform Act (UMRA) of 1995

This rule does not impose an unfunded mandate on State, local, and tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Government-to-Government Relationship With Tribes

According to the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have determined that there are no effects from this action on federally recognized Indian tribes.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: June 26, 2001.

Piet deWitt,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Mangement Service proposes to amend 30 CFR Part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. In § 250.108, the following changes are made:

A. Revise paragraph (a) as set forth below.

B. Redesignate paragraph (b) as paragraph (e).

C. Add new paragraphs (b), (c), (d), and (f) as set forth below.

§ 250.108 What requirements must I follow for cranes and other material-handling equipment?

(a) If you operate a crane installed on a fixed offshore platform, you must follow the American Petroleum Institute's Recommended Practice for Operation and Maintenance of Offshore Cranes (API RP 2D).

(b) If you install a new crane on a fixed offshore platform, the new crane must meet the requirements detailed in the American Petroleum Institute's Specification for Offshore Cranes (API Spec 2C).

(c) You must equip a crane, installed on a fixed offshore platform before [Date 30 days after the date of publication of the final rule], with an anti-two block safety device by [Date 1 Year and 30 days after the date of publication of the final rule].

(d) You must maintain records specific to a crane or the operation of a crane installed on a fixed offshore platform, as follows:

(1) Keep the qualification records of the crane operator and all rigger personnel at the fixed offshore platform for at least 4 years; and

(2) Keep all design, construction, inspection, maintenance, and testing records, including installation records for any anti-two block safety devices, for the life of the crane at the fixed offshore platform.

* * * * *

(f) For information on all standards mentioned in this section, see § 250.198.

3. In § 250.198, the following document incorporated by reference is added to the table in paragraph (e) in alphanumerical order.

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of documents	Incorporated by reference at
* * *	* *
API Spec 2C, Specification for Offshore Cranes, Fifth Edition, April 1, 1995, API Stock No. G02C05	§ 250.108(a), (b).
* * *	* *

[FR Doc. 01–18022 Filed 7–18–01; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–01–056]

RIN 2115–AE47

Drawbridge Operation Regulations: Snake Creek Drawbridge, Islamorada, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of the Snake Creek drawbridge (US 1) connecting Windley Key with Plantation Key at Islamorada, Florida. This rule would allow the drawbridge to open on signal except that from 7 a.m. until 6 p.m., the draw can open on the hour and half-hour. This action is intended to improve the movement of vehicular traffic while not unreasonably interfering with the movement of vessel traffic.

DATES: Comments and related material must reach the Coast Guard on or before September 17, 2001.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 406, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–01–056] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 406, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Bridge Branch, 909 SE 1st Ave, Miami, FL 33130, telephone number 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–01–056], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE 1st Ave, Room 406, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Snake Creek bascule bridge is a two lane narrow undivided arterial roadway, which is the only roadway into and out of the Florida Keys and is already severely congested due to insufficient capacity. Existing operating schedule is on demand and can be found at 33 CFR 117.5. The proposed rule will allow the bridge owner to open the bridge on the hour and half hour during the heavy vehicle traffic period from 7 a.m. until 6 p.m.

Discussion of Proposed Rule

The proposed rule allows the bridge to open on signal except that from 7 a.m. until 6 p.m. the bridge can open on the hour and half-hour. This should aid in the movement of traffic across the bridge, while not unreasonably interfering with the movement of vessel traffic through the draw.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not

reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit under the Snake Creek bridge during the hours of 7 a.m. to 6 p.m. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the number of openings that occur during the proposed period of additional regulations is less than twice per hour and the maximum waiting time will be 30 minutes.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.331 is added to read as follows:

§ 117.331 Snake Creek.

The draw of the Snake Creek bridge at Islamorada, shall open on signal, except that from 7 a.m. to 6 p.m. the draw need open only on the hour and the half-hour. Public vessels of the United States and vessels in distress shall be passed through the draw as soon as possible.

Dated: July 2, 2001.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 01–17995 Filed 7–18–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH–FRL–7015–4]

RIN 2040–AB75

National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's action proposes and requests comment on a range of MCL options for the drinking water standard for arsenic. In particular, EPA is requesting comment on whether the data and technical analyses associated with the arsenic rule published in the January 22, 2001, **Federal Register** (66 FR 6976) as well as any new information that may be available would support setting the enforceable arsenic standard, or Maximum Contaminant Level (MCL), at 3 micrograms per liter (μg/L) (the feasible level), 5 μg/L (the level proposed in June 2000), 10 μg/L (the level published in the January 2001 rule), or 20 μg/L.

To assist commenters, today's document provides a brief summary of the principal data and technical analyses that accompanied the January 2001 arsenic rule and solicits comment on key issues associated with this information and analyses. In providing comment on these issues, commenters should focus on the preamble, technical support documents, and record associated with the January 2001 rule (not the June 2000 proposal (65 FR 38888)) because EPA made many changes to the analyses supporting the January decisions in response to public comment on the June 2000 proposal. In developing comments, commenters may also wish to consider information EPA plans to have in a notice in the fall of 2001, which will request comment on the results of the additional analyses of key scientific, technical and economic elements of the rule. The comment period for today's notice ends October 31, 2001, because the Agency expects this comment period to overlap with the fall 2001 notice's comment period on the scientific, cost, and benefits reviews.

On May 22, 2001, EPA published in the **Federal Register** (66 FR 6976) a final rule delaying the effective date of the arsenic rule until February 22, 2002, in order to conduct reviews of the science and costing analyses. Additional information about these reviews as well as a review of the benefits analysis for the January 22, 2001, rule are provided in today's document. EPA expects the results of these reviews to be available within the comment period for today's proposal.

This proposal does not affect the clarifications to compliance and new source contaminants monitoring regulations also issued on January 22, 2001, (66 FR 6976), for inorganic, volatile organic, and synthetic organic contaminants. Those regulations go into effect on January 22, 2004, as provided in the January 22, 2001, final rule.

DATES: Your comments on a range of arsenic MCLs from 3 μg/L to 20 μg/L must be in writing and either postmarked or received by EPA's Water Docket by October 31, 2001.

ADDRESSES: You may mail your written comments to the W–99–16–VI Arsenic Comments Clerk, Water Docket (MC–4101); U.S. EPA; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460. Comments may be hand delivered (*e.g.*, courier or overnight delivery service) to EPA's Water Docket, located at 401 M Street, SW.; East Tower Basement Room 57; in Washington, DC; between 9 a.m. and 3:30 p.m. Eastern Time, Monday through Friday. Comments may be submitted electronically to *ow-docket@epa.gov*. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing and docket review.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, phone: (800) 426–4791 or (703) 285–1093, e-mail: *hotline-sdwa@epa.gov* for general information, meeting information, and copies of arsenic regulations and support documents. For inquiries about the on-going cost of compliance review, contact: Mr. Amit Kapadia, (202) 260–1688, e-mail: *kapadia.amit@epa.gov*. For all other questions about this document, contact Irene Dooley, (202) 260–9531, e-mail: *dooley.irene@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities

A public water system (PWS), as defined in 40 CFR 141.2, provides water to the public for human consumption through pipes or other constructed conveyances, if such system has "at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year." A public water system is either a community water system (CWS) or a non-community water system (NCWS). A community water system, as defined in § 141.2, is "a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents." The definition in § 141.2 for a non-transient non-community water system (NTNCWS) is "a public water system that is not a [CWS] and that regularly serves at least 25 of the same persons over 6 months per year." EPA has an inventory totaling over 54,000 CWSs and approximately 20,000 NTNCWSs nationwide. Entities potentially regulated by this action are CWSs and NTNCWSs. The following table provides examples of the regulated entities under this rule.

TABLE OF REGULATED ENTITIES

Category	Examples of potentially regulated entities
Industry	Privately owned/operated community water supply systems using ground water, surface water, or mixed ground water and surface water.
State, State, Tribal, and Local Government.	State, Tribal, or local government-owned/operated water supply systems using ground water, surface water, or mixed ground water and surface water.
Federal Government.	Federally owned/operated community water supply systems using ground water, surface water, or mixed ground water and surface water.

The table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.11 and 141.62 as revised by the January 22, 2001 (66 FR 6976) arsenic rule.

Additional Information for Commenters

No facsimiles (faxes), compressed or zipped files will be accepted, and comments must be submitted in writing. In providing comment on these issues, commenters should focus on the preamble, technical support documents, and record associated with the January 2001 arsenic in drinking water regulation (not the June 2000 proposal (65 FR 38888)). EPA addressed comments prepared for the June 2000 proposed rule in the response-to-comments document in the docket for W–99–16–III and summarized responses

to the major comments in the preamble of the January 2001 regulation. Please submit an original and three copies of your comments and enclosures (including references) and identify your submission by the docket number W–99–16–VI. To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that comments cite, where possible, the question(s) or sections and page numbers in the document or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope.

EPA uses WordPerfect as its standard software, so electronic submissions (including 3.5 inch floppy disks) must be submitted in WordPerfect 8 (or older version) or ASCII file format (unless four hard copies are also submitted). Comments submitted in other electronic formats (*e.g.*, Word, pdf, Excel, and compressed or zipped files) must also be submitted as hard copies. For purposes of dating dual hard copy/electronic copy submissions, the date of the electronic copy will be recorded as the date submitted. Please indicate that you are sending hard copies so the Docket can link your two submissions rather than log in two sets of your comments. Electronic comments on this document may be filed online at many Federal Depository Libraries.

The Agency's response-to-comments document for W–99–16–VI will address the comments received for this proposal, and this document will be made available in the docket. Since the comment period ends October 31, 2001, the response-to-comment document will not be completed until sometime later in the fall of 2001. To facilitate development of a response-to-comments document, EPA appreciates receiving an electronic version in addition to the original and three copies for large submissions (*e.g.*, over 10 pages). The Agency does not send out individual replies to respond to those who submit comments.

Availability of Docket

For an appointment to review the docket for this rulemaking, call (202) 260–3027 between 9 a.m. and 3:30 p.m. Eastern Time, Monday through Friday and refer to Docket W–99–16–VI. Every user is entitled to 100 free pages, and after that the Docket charges 15 cents a page. Users are invoiced after they copy $25, which is 267 photocopied pages. The Safe Drinking Water Hotline can provide some hard copies of some of the supporting documentation and some electronically, phone: (800) 426–4791 or (703) 285–1093, e-mail: *hotline-sdwa@epa.gov*. EPA's arsenic-in-drinking-water web page contains links to the arsenic **Federal Register** notices and other supporting material at *www.epa.gov/safewater/arsenic.html*.

Abbreviations Used in This Proposed Rule

>—greater than
<—less than
§—section
µg—micrograms, one millionth of a gram (3.5×10^{-8} ounce, 0.000000035 oz.)
µg/L—micrograms per liter, same as parts per billion (ppb)
AES—Atomic emission spectroscopy
ARBRP—Arsenic Rule Benefits Review Panel of SAB
AWWARF—American Water Works Association Research Foundation
BAT—Best available technology
CCR—Consumer Confidence Report
CFR—Code of Federal Regulations
CWS—Community water system
DWSRF—Drinking Water State Revolving Fund
EA—Economic analysis
EO—Executive Order
EPA—U.S. Environmental Protection Agency
ERDDAA—Environmental Research, Development, and Demonstration Authorization Act, SAB
FACA—Federal Advisory Committee Act
FR—**Federal Register**
FRFA—Final regulatory flexibility analysis
FSIS—Federalism summary impact statement
GW—Ground water
ICP—Inductively coupled plasma
ICR—Information Collection Request
ISCV—Intra-system coefficient of variation
IRFA—Initial regulatory flexibility analysis
ISCV—Intra-system coefficients of variation
L—Liter, also referred to as lower case "l" in older citations
MCL—Maximum contaminant level
MCLG—Maximum contaminant level goal
mg—milligrams, one thousandth of a gram, 1 mg = 1,000 µg
mg/L—milligrams per liter
NAS—National Academy of Sciences
NCWS—Non-community water system
NDWAC—National Drinking Water Advisory Council, EPA FACA group
NODA—Notice of Data Availability
NPDWR—National primary drinking water regulation
NRC—National Research Council, the operating arm of NAS
NTNCWS—Non-transient non-community water system
NTTAA—National Technology Transfer and Advancement Act
OMB—Office of Management and Budget
P.L.—Public Law
PNR—Public Notification Rule
POTW—Publicly owned treatment works, wastewater treatment
POU—Point-of-use treatment devices
PRA—Paperwork Reduction Act
PWS—Public water systems
REF—Relative exposure factors
RFA—Regulatory Flexibility Act
RUS—Rural Utilities Service
SAB—Science Advisory Board
SBA—Small Business Administration
SBAR—Small Business Advocacy Review
SBREFA—Small Business Regulatory Enforcement Fairness Act
SDWA—Safe Drinking Water Act
SW—Surface water
UMRA—Unfunded Mandates Reform Act
U.S.—United States
USGS—U.S. Geological Survey
VSL—Value of statistical life
WTP—Willingness to pay

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I. Background and History Preceding This Document

A. What Is in the Arsenic Rule Published on January 22, 2001?

1. Summary of Arsenic Regulation

In the Monday, January 22, 2001, **Federal Register** (EPA 2001a), EPA issued regulations revising the arsenic drinking water standard and clarifying compliance and new-source contaminants monitoring provisions (66 FR 6976). The Agency established a health-based, non-enforceable Maximum Contaminant Level Goal (MCLG) for arsenic of zero milligrams per liter (mg/L) in § 141.15(b) and an enforceable Maximum Contaminant Level (MCL) for arsenic of 0.01 mg/L (*i.e.*, 10 micrograms per liter (µg/L)) for both community water systems (CWSs) and non-transient non-community water systems (NTNCWSs) in § 141.62(b)(16). (Although EPA lists drinking water standards in Title 40 of the Code of Federal Regulations (40 CFR) in units of mg/L, except where noted, the Agency will refer to arsenic concentrations in µg/L in this preamble.) As part of the arsenic regulation, EPA also listed the approved analytical methods to measure compliance (§ 141.23(k)(1)), as well as the best available technologies (BAT) (§ 141.62(b)), small system technologies that could achieve compliance with the MCL (§ 141.62(d)), consumer confidence report requirements for CWSs, and public notification requirements for PWSs for the new MCL. Because the Agency identified affordable technologies for small systems, the rule did not list any small system variance technologies under § 1412(b)(15)(A) of the Safe Drinking Water Act (SDWA).

All but one of the five existing arsenic analytical technologies can be used for compliance determinations. As noted in the June 2000 proposal (65 FR 38888 at 38913) and January 2001 rule (66 FR 6976 at 6988), inductively coupled plasma (ICP)—atomic emission spectroscopy (AES) methods in EPA Method 200.7 and Standard Methods 3120 B have unacceptably high detection limits (see footnote 15 to table in § 141.23(k)(1); 66 FR 6976 at 7062).

EPA established an effective date of March 23, 2001, and a compliance date (§ 141.6(j)) for the arsenic regulation of January 23, 2006, five years after issuance for all systems. However, the consumer confidence reporting requirements for arsenic listed in § 141.6(j) had a March 23, 2001 compliance date.

EPA intended to issue a small entity implementation or compliance guide shortly after issuing the rule (66 FR 6976 at 7033). However, because of the on-going reviews, the Agency believes that it is premature to distribute small entity guidance at this time.

2. Changes to the Consumer Confidence Report (CCR) for Arsenic

On August 19, 1998, EPA issued part 141 subpart O, the final rule requiring community water systems to provide annual water quality report to their customers (63 FR 44512; EPA, 1998a). Reports are now due by July 1 for the preceding calendar year (§ 141.152(a)). Any time arsenic is detected, the report must list the MCL (50 µg/L), the MCLG (none), and the highest level used to determine compliance and the range of detected levels, according to §§ 141.153(d)(4)(i), (ii), and (iv), respectively. Section 141.153(d)(6) requires the CCR to identify MCL violations, steps taken to address violations, and potential health effects using the language in appendix A of subpart O. In addition, using the authority of section 1414(c)(4)(B)(vi) of SDWA (63 FR 44512 at 44514), systems that detect arsenic between 25 µg/L and 50 µg/L are also required to provide an informational statement (§ 141.154(b)).

As published, the arsenic rule would make two reporting changes for systems detecting arsenic below 50 µg/L that would affect the CCR due by July 1, 2002, for calendar year 2001 (66 FR 6976 at 6991). First, CWSs would be required to include a revised informational statement (§ 141.154(b)) about arsenic when detected from 5 µg/L to 10 µg/L. In the arsenic rule, the Agency retained § 141.154(b) reporting requirements because the MCL is higher than the technologically feasible MCL (66 FR 6976 at 6991). Second, as proposed in § 141.154(b) and finalized in § 141.154(f), systems detecting from 10 µg/L to 50 µg/L would also provide the arsenic health language in appendix A to subpart O (§ 141.154(f)), even though systems are in compliance with the 50 µg/L MCL through January 22, 2006. (January 23, 2006, is the effective date for the MCL of 10 µg/L (§ 141.60(b)(4)).) As explained in section I.C.4, the current 9-month extension of the effective date until February 22, 2002, affects the CCR requirements of the January 2001 rule for calendar year 2001 reports.

3. Changes to Public Notification for Arsenic

On May 4, 2000, EPA issued the final Public Notification Rule (PNR) to revise the minimum requirements that public water systems must meet for public notification of violations of EPA's drinking water standards (65 FR 25982; EPA, 2000b). Systems must begin to comply with the revised PNR regulations on October 31, 2000 (if they are in jurisdictions where the program is directly implemented by EPA, such as Wyoming and many Tribes), or on the date that a primacy State/Tribe adopts the new requirements (no later than May 6, 2002).

The January 2001 arsenic rule would require CWSs and NTNCWSs to provide a Tier 2 public notice for arsenic MCL violations (> 10 µg/L) and to provide a Tier 3 public notice for violations of the monitoring and testing procedure requirements. In addition, public water systems must give notice for all violations when operating under a variance or exemption and for violating conditions of the variance or exemption. The arsenic regulation (66 FR 6976) amended the PNR, subpart Q of part

141, for purposes of compliance starting January 23, 2006 (§ 141.6(j); 66 FR 6976 at 7061).

4. Arsenic Rule's Effect on State/Tribal Primacy Programs

States must submit applications for revised primacy no later than 2 years after promulgation of a new standard unless the State requests and is granted an additional 2-year extension. Interim primacy enforcement authority (§ 142.12(e)) allows States to implement and enforce drinking water regulations once State regulations are effective and the State has submitted a complete and final primacy revision application.

In the arsenic rule, EPA reduced requirements for submitting revisions for existing regulated contaminants (§§ 142.16(e) and (j)), so that information required in § 142.16(e) is not required for States revising the MCL for arsenic. In addition, revisions to § 142.16(j) clarified that States may inform the Agency in their applications of any changes to their existing monitoring plans and waiver procedures. These regulations are effective for purpose of compliance on January 22, 2004 (§ 141.6(k); 66 FR 6976 at 7061).

Currently, the Navajo Nation is the only federally recognized Indian Tribe with primacy to enforce drinking water regulations. EPA Regions implement the rules for all other Tribes under section 1451(a)(1) of SDWA. Tribes must submit a primacy application (§ 142.76) to have oversight for the inorganic contaminants (*i.e.*, the Phase II/V rule) to obtain the authority for the revised arsenic MCL. Tribes with primacy for drinking water programs are eligible for grants and contract assistance (section1451(a)(3) of SDWA). Tribes are also eligible for grants under the Drinking Water State Revolving Fund Tribal set-aside grant program authorized by section 1452(i) of SDWA for public water system expenditures.

EPA is aware of the practical implications of the ongoing reviews and delayed effective date on States and Tribes in terms of primacy and other requirements. EPA will consult with States and interested Tribes before addressing the effects on State primacy in future **Federal Register** notices.

B. What Did EPA's Administrator Announce on March 20, 2001?

On March 20, 2001, the Administrator announced in a press release that EPA would delay the effective date for the arsenic rule 60 days. That extension was in accordance with the White House (WH) memorandum of January 20, 2001, entitled "Regulatory Review Plan," which was published in the **Federal Register** (WH 2001) on January 24, 2001 (66 FR 7702). The January 20, 2001, memorandum from Andrew Card, Assistant to the President and Chief of Staff, communicated the President's plan to ensure that his appointees had the opportunity to review new regulations "at the outset of his Administration" in order to avoid "costly, burdensome, or unnecessary regulation * * *." For regulations that had been published in the **Federal Register**, but were not yet in effect, the memorandum requested departments and agencies to postpone their effective dates for 60 days. In order to provide safe and affordable drinking water, the Administrator announced plans to seek independent reviews of the science behind the arsenic standard and the cost estimates used to develop the rule.

C. How Has the Effective Date of the Arsenic Rule Changed?

1. March 23, 2001 **Federal Register** 60-Day Delay Notice

On March 23, 2001 (EPA 2001b), the **Federal Register** published EPA's 60-day delay of the effective date for the arsenic regulation (66 FR 16134), in accordance with the White House memorandum, "Regulatory Review Plan" (66 FR 7702). The delay changed the effective date for the arsenic regulation from March 23, 2001, to May 22, 2001, including the dates for compliance with the consumer confidence reporting requirements for § 141.154(b) and (f) that were specifically linked to the new arsenic regulation.

2. April 23, 2001 **Federal Register** 9-Month Extension Proposal

On April 23, 2001 (EPA 2001c), EPA proposed (66 FR 20580) to extend the effective date for the arsenic rule from May 22, 2001, to February 22, 2002, in order to obtain independent reviews of the science, cost, and benefit analyses used to support the arsenic in drinking water regulation. The notice outlined the process for the science and cost reviews.

3. May 22, 2001 **Federal Register** February 22, 2002 Effective Date

After reviewing the comments received on the 9-month proposed delay of the effective date, the Agency issued a final rule (EPA 2001f) on May 22, 2001 (66 FR 28342), delaying the final effective date until February 22, 2001, so the Agency could proceed as planned with the proposed reviews and opportunities for additional public comment. EPA identified mechanisms for reviewing the science and cost estimates in the notice and provided responses to comments in the preamble (66 FR 28342 at 28345) that are in the response-to-comment document for docket W–99–16–IV (EPA 2001).

4. Effect on CCR for Calendar Year 2001

The final rule for the 9-month delay (66 FR 28342 at 28350) also changed the § 141.6(j) compliance date to February 22, 2002, for the new arsenic consumer confidence reporting requirements in §§ 141.165(b) and (f). The delay will affect some systems that send out calendar year 2001 reports. CWSs that send out calendar year 2001 reports prior to February 22, 2002 must comply with the old arsenic CCR requirements (those in effect prior to the January 2001 rule). CWSs that send their reports after February 22, 2002, will have to comply with the new arsenic CCR requirements. In light of the current analyses being conducted on aspects of the arsenic rule, the Agency plans to address CCR reporting issues and options in the fall 2001 notice.

D. With What Regulatory Standard for Arsenic Must Systems Comply Now?

In the process of extending the effective date for the arsenic rule, EPA has not changed the compliance date for the MCL issued in the January 2001 rule. Until January 23, 2006, the MCL for arsenic is 50 µg/L, which only applies to CWSs (§§ 141.11(a) and (b)), and there is no MCLG for arsenic (§ 141.51(b)).

II. EPA's Plans to Review Parts of the Arsenic Rule

A. What Is the Purpose of Today's Action and What Happens Now?

The January 22, 2001, rule established an MCLG of 0 µg/L and an MCL of 10 µg/L for arsenic and explained in detail the rationale for this decision. However, because of concerns raised by some stakeholders concerning the arsenic in drinking water regulation, especially small community systems that may bear a high cost burden to comply with the new standard, EPA has decided to request further comment on the arsenic standard set in the January 22, 2001, drinking water rule.

As a result, today EPA proposes and requests stakeholder input on a range of MCL options for arsenic from 3 µg/L to 20 µg/L. In developing comments, commenters should refer to the information provided in the January 22, 2001, arsenic rule, the background documents supporting that rule, the notice and request for comment on the scientific, technical, and benefits

reviews that EPA plans to publish in the fall of 2001, and any new (post-January 2001) information commenters wish to provide. EPA is accepting comments until October 31, 2001, on today's notice to facilitate commenters' ability to examine the most current information. The Agency also anticipates that the comment period for the notice summarizing the fall 2001 reviews will overlap with today's comment period, thereby allowing commenters to provide a single set of comments covering both today's notice and the expected fall 2001 notice, if they wish.

EPA is also undertaking additional analyses on science, cost, and benefits issues, as explained in section II.B., and expects these analyses to be completed in August 2001. Once the analyses are completed, EPA will consider this new information and provide for an additional opportunity for public comment on the new analyses along with EPA's preliminary conclusion about whether the January 2001 arsenic rule should be revised, and if so, what the revised standard should be. EPA will consider the public comments, as well as the record for the arsenic rule for this reconsideration, and issue a final decision on whether to revise the January 2001 rule. In particular, EPA is considering whether to retain the revised MCL of 10 μg/L or replace it with another standard—specifically, 3 μg/L (the feasible level), 5 μg/L (the level proposed in June 2000) or 20 μg/L (another alternative considered in the June 2000 proposal). If EPA does decide to revise the January 2001 rule, EPA will issue a new revised rule.

B. What Approach Will EPA Use To Review the Science, Costs, and Benefits of the Rule?

1. Overview

EPA understands and appreciates that the question of setting a final arsenic in drinking water standard is a controversial one for several reasons. From an economic standpoint, the new regulation can be expected to have significant impacts on a number of drinking water utilities, especially those serving less than 10,000 people in areas of high naturally occurring arsenic. Stakeholders have an understandable desire to ensure that any new regulation be based on accurate and reliable compliance cost estimates. Stakeholders also want to be confident that the health risks associated with a new standard have been appropriately evaluated and are based on the best available science.

The Agency is committed to safe and affordable drinking water for all Americans. At the same time, we want to be sure that the conclusions about arsenic in the rule are supported by the best available science and policy decisions based on thorough cost-benefit considerations. The Agency is therefore moving rapidly to review arsenic research and national cost and benefit estimates related to the arsenic standard so that communities that need to reduce arsenic in drinking water can proceed with confidence that the new standard is based on sound science and accurate cost-benefit estimates. Independent review of the science, cost, and benefits analysis behind the arsenic in drinking water standard will help resolve questions that have arisen about the health basis and costs and benefits of reducing arsenic in drinking water.

EPA's criteria for conducting the reviews will be to ensure that reviewers are recognized experts in their fields and are as impartial and objective as possible; that the reviews can be completed in August 2001; and that the results of the reviews are made available for public comment. EPA plans to utilize the mechanisms for the reviews described in the following section.

EPA does not plan to seek outside, expert review of its approaches for estimating occurrence or determining the availability of analytical methods and their capabilities but is requesting further public comment on these aspects of the January 2001 rule.

2. Approach to Review of Health Science

Under a cooperative agreement with EPA, on May 21 the National Academy of Sciences (NAS) convened a subcommittee of the National Research Council's (NRC) Committee on Toxicology to prepare a report updating the scientific analyses, uncertainties, findings and recommendations of the report "Arsenic in Drinking Water (NRC 1999)." NAS posts information about the arsenic study, including project scope, the subcommittee membership and biographies, meetings, and meeting summaries of the closed sessions (NRC 2001a and NRC 2001b) in the website *www.nationalacademies.org* under Current Projects (the short cut to the direct NRC arsenic project address, *www4.nas.edu/cp.nsf/af89ea56d4264b948525639b0043e7c7/7ae42f9d0397214b85256a3100711f15?OpenDocument*, is available from *www.epa.gov/safewater/ arsenic.html*). Information on NRC's committee process is also available on the NAS website under Frequently Asked Questions at *www.nationalacademies.org/ about/faq4.html*. Specifically, the subcommittee is reviewing relevant toxicological and health-effects studies published and data developed since the 1999 NRC report, including the toxicological risk-related analyses performed by EPA in support of its regulatory decision-making for arsenic in drinking water and the health effects discussion in EPA's SAB December 2000 report entitled, "Arsenic Proposed Drinking Water Regulation: A Science Advisory Board Review of Certain Elements of the Proposal (EPA 2000f)." The subcommittee is addressing only scientific topics relevant to toxicological risk and health effects of arsenic.

The subcommittee will meet approximately three times to discuss and evaluate issues and will produce a consensus report in August 2001. On May 21, the NRC subcommittee heard presentations from EPA, the Small Business Administration, a consultant for Albuquerque, researchers, industry, environmental and other interested or affected parties. At the open session meeting on June 20, the committee heard from EPA's Administrator. The draft consensus report will undergo the established NRC peer review process before NRC issues the final report that is available to the public. In addition, EPA will make the NRC's report available to the general public and request comment on its recommendations as part of a notice this fall.

3. Approach To Review of Cost of Compliance Estimates

The National Drinking Water Advisory Council (NDWAC) is chartered under the Federal Advisory Committee Act (FACA) to advise, consult with, and make recommendations to EPA. The Agency asked the NDWAC, and the Council agreed to convene a panel of nationally recognized technical experts to review the cost of compliance estimates associated with the regulatory options that were considered in the proposed rule and discussed in the January 2001 rule. On May 4, 2001 (EPA 2001d), EPA requested nominations for the working group (66 FR 22551). In particular, the working group is reviewing the costing methodologies, assumptions, and information underlying the system-size as well as the aggregated national estimate of system costs underlying the January 2001 arsenic in drinking water rule. As a part of this review, the group is evaluating significant alternative costing approaches or critiques where there is adequate information upon which to evaluate the basis for such alternate estimates or approaches.

The working group first met May 29–30, 2001, as announced in the May 22,

2001, **Federal Register** (EPA 2001f). Working group members have been asked to attend a series of meetings (June 28–29 in Denver, Colorado; July 9–10 in Phoenix, Arizona; and July 19–20 in Washington, DC) over the summer of 2001 (June 15, 2001 **Federal Register**, EPA 2001h), participate in discussion of key issues and assumptions at these meetings, and review work products of the working group. The working group will make a recommendation to the full NDWAC based on its review of the national cost estimates. The NDWAC, will in turn, make a recommendation to EPA. All NDWAC working group meetings and full NDWAC meetings are open to the public, and meeting information is posted on the calendar accessible from *www.epa.gov/safewater*. EPA posts the working group member list and meeting summaries at *http://www.epa.gov/safewater/ndwac/council.html*. The report of the working group and the final recommendations of the NDWAC will be made available for public review and comment.

4. Approach To Review of Benefits Estimates

The EPA Science Advisory Board (SAB), which also is chartered under the FACA, was established in 1978 by the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA) (42 U.S.C. 4365), to provide such scientific advice as may be requested by the Administrator. At the request of the Agency the SAB has convened a panel, the Arsenic Rule Benefits Review Panel (ARBRP), to review the Agency's analysis of quantified and unquantified benefits associated with the arsenic drinking water rule. The Agency has asked this panel of nationally recognized technical experts to review the Agency's analysis of quantified and unquantified arsenic benefits analysis as required by SDWA, and evaluate whether the components, methodology, criteria and estimates reflected in EPA's benefits analysis are reasonable and appropriate in light of: (1) The SAB's benefits transfer report (EPA 2000d; available on the SAB Website at *www.epa.gov/sab/eeacf013.pdf*); (2) EPA's Guidelines for Preparing Economic Analyses (EPA 20001; *www.epa.gov/economics*); (3) relevant requirements of the Safe Drinking Water Act (SDWA; *www.epa.gov/safewater/sdwa/sdwa.html*); (4) NDWAC recommendations to EPA on benefits (unpublished October 29, 1998, Benefits Working Group Report to the National Drinking Water Advisory Council; EPA 1998b); and (5) recent literature.

Panel members have been asked to attend one or more meetings over the summer of 2001, participate in discussion of key issues and assumptions at these meetings, and review the previously described documents and literature. The first meeting of the ARBRP will be on July 19–20, in Washington, D.C. (EPA 2001i). To ensure that the SAB's recommendations are fully considered in decision making, the Agency has asked for a report to be made available to the Administrator in August 2001 to coincide with the findings and recommendations from independent reviews of the health effects by NRC and costs by NDWAC. All ARBRP meetings are open to the public and time will be allotted for presentations by the public. Meeting information is posted on the calendar accessible from *www.epa.gov/safewater*. The report of the ARBRP and the final recommendations of the SAB will be made available for public review and comment.

C. How Did EPA Assess the Occurrence of Arsenic?

1. Summary of Arsenic Occurrence Analysis

EPA's occurrence estimates were a fundamental building block in cost of compliance estimates as well as its benefits estimates. To develop this occurrence estimate, EPA used arsenic compliance monitoring data consisting of almost 77,000 observations from 25 States to estimate the distribution of arsenic in finished drinking water in public water systems (PWS) in the U.S. These States voluntarily submitted the data from public water systems. Figure V–1 in the June 2000 proposed rule (65 FR 38888 at 38906) is a map of the 25 States from which EPA used data to estimate occurrence. These States are distributed throughout the U.S., with at least one located in each of the seven geographic regions that the Agency used in its analysis (EPA 2000h). Ten other States (Florida, Idaho, Iowa, Louisiana, Pennsylvania, South Dakota, Maryland, Nebraska, Vermont, and West Virginia) submitted compliance monitoring data, but those data were not complete enough to estimate State occurrence (66 FR 6976 at 7029). EPA lists the database parameters used to derive its national occurrence estimate in Appendix D–2 of the occurrence document (EPA 2000h).

In order to estimate a national occurrence distribution of arsenic, EPA began with individual water systems and built up estimates for States, regions, and the nation. For each PWS in its database, the Agency estimated the mean arsenic concentration over time in finished water. (Although MCL compliance is determined by computing a running annual average of quarterly samples, EPA elected to characterize arsenic occurrence in each system in terms of the mean arsenic concentration over time, rather than by a set of running averages; for the benefits estimates, the long-term mean is preferable, because health risks are determined by mean exposure to arsenic over time; for the cost estimates, the approach used may not accurately predict costs in all cases, since some systems with a long-term average below the standard might still exceed it during some compliance cycles.) Next, the Agency collected the system mean estimates into State distributions, then merged the State distributions into regional and finally, national distributions. The regions used in the analysis are shown in Figure V–1 in the June 2000 proposed rule (65 FR 38888 at 38906). In combining the regional distributions into a national distribution, the Agency weighted each region by the total number of systems in the region, not just the number of systems in the States in its database. This procedure has the same effect as assigning the regional distributions to the 25 States for which there are no observations in the database.

EPA estimated separate arsenic occurrence distributions for community water systems (CWS) and non-transient, non-community water systems (NTNCWS), and for systems with ground water (GW) and surface water (SW) sources. Systems identified as having ground water under the influence of surface water were treated as surface water systems. Table III.C–1 (66 FR 6976 at 6996) shows the Agency had data from 17 States for ground water NTNCWS, compared to 25 States for CWS, so there are, on average, fewer States with NTNCWS data in each region. Moreover there is no data about NTNCWS from any States in the Southeast region (Alabama, Florida, Georgia, Mississippi, and Tennessee). EPA therefore used the occurrence distribution for ground water CWS as a surrogate for ground water NTNCWS in the Southeast. For surface water NTNCWS, EPA used the occurrence estimates from surface water CWS, because the characteristics of source water for NTNCWS are expected to be similar to source water for CWS, and there is a larger CWS data set to draw from.

Table III.C–5 of the January 2001 rule (66 FR 6976 at 6998) shows EPA's estimated arsenic occurrence distributions for the U.S. The results are comparable to those of two other arsenic

occurrence studies: the National Arsenic Occurrence Survey (Frey and Edwards, 1997) and USGS (2000).

In addition to the distributions of system means, EPA estimated nationwide intra-system coefficients of variation (ISCV). For a given water system, the ISCV quantifies the variation of mean arsenic levels at the system's entry points to the distribution system (i.e., sampling points of individual wells and treatment points) around the overall system mean. EPA estimated separate ISCVs for ground water CWS, surface water CWS, and ground water NTNCWS. Each of these ISCVs was assumed to be constant throughout the U.S. EPA used the estimated ISCVs as part of its cost simulation model summarized today in section II.E.

Since the completion of its occurrence analysis for the arsenic rule (EPA 2000h), EPA has received additional occurrence data from one State, North Carolina. More occurrence data from other States may become available in the future.

2. Request for Occurrence Comments

Some stakeholders expressed concern that EPA estimated nationwide occurrence using data from only 25 States, and that the national occurrence estimate was therefore not as reliable as it should have been. Many commenters provided occurrence data about their individual system, which could not be used in the statistical approach. Some commenters suggested that EPA should either request data from all States, or else augment its data set with data from other sources. As noted in EPA's Response-to-Comments document for the January 2001 rule, EPA's occurrence estimates are based on finished water data from States for which data of adequate quality in the range of interest (3–20 µg/L) were available. EPA requests comment on the assumptions, data, methodologies, and results of its occurrence analysis, as well as any new occurrence data that commenters believe EPA should consider in its occurrence assessment. EPA also requests comment on whether it is appropriate to use long-term averages as a proxy for compliance in computing costs for various levels of the standard.

D. How did EPA Evaluate the Health Risks of Arsenic in Drinking Water?

1. Summary of Health Risk Elements

Arsenic ingestion at various levels has been linked to a variety of health effects, both cancerous and non-cancerous. These health effects include cancer of the bladder, lungs, skin, kidney, nasal passages, liver, and prostate. Arsenic ingestion has also been associated with cardiovascular, pulmonary, immunological, neurological, endocrine, and reproductive and developmental effects. In almost all cases, the drinking water levels at which these associations have been found are higher than the current 50 µg/L standard and the levels typically found in U.S. drinking water. Extrapolating these associations down to levels of regulatory interest (i.e., less than 50 µg/L) entails uncertainty and there has been debate among stakeholders over the appropriate methodology for doing so. Of all the studies noted in the report issued by the National Research Council (NRC 1999) and literature reviewed by EPA, the Agency believes that those studies focusing on bladder and lung cancer provide the best basis to quantify dose response relationships and extrapolate these relationships down to the levels of regulatory interest. Therefore, the Agency based its assessment of the quantifiable health risk reduction benefits on the risks of arsenic-induced bladder and lung cancers.

The Agency's approach for the health risk quantitative analysis includes five components. First, EPA developed relative exposure factor (REF) distributions, where the life-long REFs indicate the sensitivity of exposure of an individual relative to the sensitivity of exposure of an "average" person weighing 70 kilograms and consuming approximately 2 liters of water per day. These REFs incorporate data from the recent EPA water consumption study (EPA 2000a) with age, sex, and weight data. Second, EPA calculated arsenic occurrence distributions for the population exposed to arsenic levels above 3 µg/L. Third, EPA chose risk distributions for bladder and lung cancer for the analysis from Morales et al. (2000), a peer-reviewed article published in July 2000, which presented additional analyses of bladder cancer risks as well as estimates of lung and liver cancer risks for the same Taiwanese population analyzed in the NRC report. EPA summarized and analyzed the new information from the Morales et al. (2000) article in a Notice of Data Availability (NODA) (EPA 2000e) published on October 20, 2000 (65 FR 63027). Although the data used were the same as used by the NRC to analyze bladder cancer risk in their 1999 publication, Morales et al. (2000) considered more dose-response models and evaluated how well they fit the Taiwanese data, for both bladder cancer risk and lung cancer risk. Fourth, EPA developed estimates of the projected bladder and lung cancer risks faced by exposed populations using Monte-Carlo simulations, bringing together the relative exposure factor, occurrence, and risk distributions. These simulations resulted in upper-bound estimates of the actual risks faced by U.S. populations exposed to arsenic concentrations at or above 3 µg/L in their drinking water. Finally, EPA identified three significant sources of uncertainty and made adjustments to address one of these to derive alternate, lower risk estimates that reflect exposure to arsenic in cooking water and in food in Taiwan. EPA also recognized and considered qualitatively two other sources of uncertainty (e.g., the shape of the dose response curve at low exposure levels and the different health and nutritional status of the Taiwanese study population relative to the typical U.S. population) that it was not able to quantify (see page 7021 of the January 22, 2001 rule) that might also lead to lower risk estimates if it were possible to account for them quantitatively. EPA also indicated, in the preamble to the January 2001 rule, that it believed that its health risk analysis comprised a plausible range of likely risk associated with various concentrations of arsenic in drinking water. This analysis is described in more detail at pages 7001–7009 and 7020–7021 of the January 22, 2001, rule. Finally, EPA considered the non-monetizable benefits associated with avoiding certain adverse health impacts known to be caused by arsenic at higher concentrations, which also may be associated with low level concentrations, which included other nonquantified cancer endpoints and adverse cardiovascular, pulmonary, immunological, neurological, endocrine, reproductive, and developmental effects. EPA listed reductions in these health effects as unquantified benefits in Tables III.E–3 and III.E–7 that listed the monetizable benefits. In moving off the feasible MCL of 3 µg/L, EPA considered the costs and benefits, including the unquantified benefits (66 FR 6976 at 7022 and 7023).

2. Request for Comment on Health Issues

EPA has asked the National Academy of Sciences (NAS) to update the findings and recommendations of the NRC report, Arsenic in Drinking Water (NRC 1999), based on new studies and analyses, including EPA's risk analyses. EPA recognizes that there are a number of uncertainties inherent in its risk analysis that reflect the state of existing science, available research, and the difficulties associated with applying epidemiological data from one

population to another. The NAS, in its 1999 NRC report, and the Science Advisory Board, in its 2000 report (EPA 2000f), highlighted a number of key issues, as have stakeholders who have participated in the arsenic rule development process. EPA requests comment and any additional data that may be available in the following areas:

(1) Are the data from the southwestern Taiwanese studies presented in the NRC report still the most appropriate data set for the dose-response assessment and risk estimation? What are the uncertainties in the data on which the risk estimates are based, and what is the likely effect of these uncertainties on the quantitative risk estimates?

(2) Did EPA's analyses of U.S. risk provide appropriate adjustments for population differences, including factors such as diet, health status, life style (*e.g.*, smoking, cooking water use), when extrapolating from the Taiwanese study population to the U.S. population? Is it possible and appropriate for EPA to make additional quantitative adjustments to account for such differences using existing data?

(3) Part of EPA's analysis requires the determination of an arsenic level that is projected to cause an adverse effect in one per cent of the population (ED_{01}). Is the dose-response analysis conducted by EPA, as well as any available more recent data, adequate for estimating an ED_{01}?

(4) Did EPA's analysis appropriately consider and characterize the available data on mode of action of arsenic, the dose-response information, and the information on uncertainties, when assessing the public health impacts?

(5) Are EPA's risk estimates at 3, 5, 10, and 20 µg/L consistent with available scientific information, including information from new studies?

(6) What is known or can be inferred about the latency period between exposure to arsenic in drinking water and increased incidence of cancer based on existing research?

E. How Did EPA Calculate the National Costs of Compliance With the Arsenic in Drinking Water Rule?

1. Summary of Cost Elements of January 22, 2001 Rule and Record

EPA listed the national cost estimate for the January 22, 2001, rule in Table III.E.1 (66 FR 6976 at 7010). (This information is discussed at greater length in the Technology and Cost document (EPA 2000i) in the record for the January 22, 2001, rule.) The table presented national cost estimates for the MCL of 10 µg/L and the other three options considered in the proposed rule published on June 22, 2000. Treatment costs represent the vast majority of the total national costs for all four MCL options. For the MCL of 10 µg/L, the treatment costs are estimated to be $169.6 million per year using a 3% discount rate and $193 million per year using a 7% discount rate.

In summary, EPA developed the cost of compliance estimate for the arsenic in drinking water rule as follows. The treatment costs were derived using occurrence data, treatment train unit costs, and decision trees. The occurrence data provide the number of systems that would need to install treatment in each size category. The treatment train unit cost estimates provide a measure of how much a technology will cost to install. Decision trees vary by system size and are used as a prediction of the treatment technology trains that facilities would likely install to comply with the options considered for the revised arsenic standard. An analysis of the available treatment trains for arsenic removal and the unit costs for the 13 treatment trains (listed in Exhibits A–7 through A–22 in EPA 2000g) used in the national cost estimate are described in the December 2000 document entitled "Technologies and Cost for the Removal of Arsenic in Drinking Water" (EPA 2000i). The decision tree and a description of the model used to calculate the national cost estimate are described in the December 2000 document entitled Arsenic in Drinking Water Rule Economic Analysis (EPA 2000g).

Many of the comments EPA received on the June 2000 proposed rule were on the national cost estimate and the available treatment technologies. EPA reviewed these comments and comments from the Drinking Water Committee of EPA's Science Advisory Board. The January 2001 rule incorporates a number of changes based on these comments, which are discussed in detail in sections V.F and V.G of the preamble (66 FR 6976 at 7034) and are discussed more extensively, in the Technology and Cost document (EPA 2000i). The major changes are summarized in today's document.

EPA received many comments on the proposed rule stating that the Agency did not adequately consider problems with waste generation and disposal when evaluating which technologies would be most appropriately used for achieving compliance. Prior to issuing the arsenic rule, EPA re-examined the 25 treatment trains considered for the proposed rule. The Agency eliminated five treatment trains due to concerns about hazardous waste. The ability to discharge brine streams to publicly owned treatment works (POTWs) was another issue related to waste generation and disposal. Comments indicated that potential increases in total dissolved solids and technically based local limits at the POTW would limit the discharge of brines to POTWs. EPA eliminated brine discharge to POTWs from activated alumina processes as a Best Available Technology due to the arsenic concentration in the brine. EPA also significantly reduced the use of anion exchange with POTW discharge in the decision tree for the January 2001 rule. These issues are discussed in greater detail on pages 7036–7038 of the January 2001 preamble.

The national cost estimate generated a large number of stakeholder comments. Many of these comments stated that EPA underestimated the costs for implementing the proposed rule. Many of these comments referred to the report "Cost Implications of a Lower Arsenic MCL" as the basis for their comments. This report (Frey et al. 2000a) was published by the American Water Works Association Research Foundation (AWWARF) in May 2000. The national cost estimates in the AWWARF report were updated in October 2000 (Frey et al. 2000b). For the MCL of 10 µg/L, the October 2000 Update lists a national compliance cost estimate of $345 million per year with no sensitivity considerations (lower bound) and $585 million per year with sensitivity considerations (upper bound). (These upper and lower bound estimates result from different assumptions about cost model input variables.) EPA reviewed the May 2000 AWWARF report and the October 2000 update and summarized factors in the report in detail on pages 7040–7041 of the January 2001 preamble that EPA identified as being key reasons for the differences in cost estimates. These factors include differences in flow rate assumptions, unit costs, and national estimates for arsenic occurrence. The Arsenic Response-to-Comments Document (EPA 2000j) also includes more detail on EPA's review of the national cost estimates in "Cost Implications of a Lower Arsenic MCL."

In commenting on the proposed rule, the SAB also expressed concern that the Agency's cost estimates appeared low. The SAB identified two concerns in particular: (1) The assumptions regarding disposal options for brine and other residuals (see discussion in section II. E. 1. of the revision EPA made to address these concerns); and (2)

whether the technologies identified as BAT have been implemented or optimized for arsenic removal at the treatment plant scale, and whether doing so would reduce their effectiveness for the other purpose for which they have been designed, in which case compliance costs could be underestimated.

A Working Group of the National Drinking Water Advisory Council (NDWAC) is reviewing the costing methodologies, assumptions, and information underlying the system-size as well as the aggregated national estimate of system costs of the arsenic rule. As a part of this review, the Working Group is also evaluating significant alternative costing approaches where there is adequate information upon which to evaluate the basis for the alternate estimates or approaches, including the AWWARF cost reports. The group may identify and comment on additional factors affecting these cost estimates (*e.g.*, number of entry points to the distribution system) in addition to those discussed in the January 2001 rule. The NDWAC Working Group will make a recommendation to the full NDWAC based on their review of the national cost estimates.

2. List of Cost Issues and Request for Comments

Specific questions related to the cost of compliance analysis for the arsenic rule on which EPA is interested in receiving public comment include the following:

(1) Did EPA use appropriate "baseline" assumptions (*e.g.*, occurrence, co-occurring contaminants, affected systems, entry points, design and average flows, availability of land, in-place treatment)? If not, how could these assumptions be improved and what data would support such revised assumptions?

(2) Did EPA identify an appropriate set of treatment "trains" and make appropriate assumptions about the costs of technologies included in those treatment trains as a part of the process of developing national cost estimates? Has EPA identified restrictions that may limit or eliminate treatment technology and residuals management combinations, including the application of treatment technologies to arsenic on a large scale, and integration of arsenic removal with other treatment plant objectives? If not, how could these assumptions and inputs be improved?

(3) Did EPA use an appropriate "decision tree" for the final rule? If not, how can that decision tree be improved?

F. How Did EPA Calculate the Benefits of the Arsenic Rule?

1. Summary of the January 22, 2001, Benefits Assessment

Of the various health effects linked to arsenic ingestion, in the January 2001 rule EPA prepared a quantitative assessment of lung and bladder cancer. Other health effects and possible non-health benefits that EPA was unable to quantify were considered qualitatively as required by SDWA, and as discussed in the January 2001 rule.

The process by which EPA analyzed the benefits of reduced bladder and lung cancer cases for the arsenic rule involved several steps. These steps included the calculation of risk reductions, calculation of the number of cancer cases avoided, monetization of avoided bladder and lung cancer cases, qualitative analysis of non-quantifiable benefits, and a sensitivity analysis of benefits estimates to examine the impacts of discounting over a latency period and accounting for other adjustments such as voluntariness and controllability.

Using the risk estimate calculations described in section II.C. of today's notice, EPA calculated the number of bladder and lung cancer cases avoided for CWSs and NTNCWSs (see Table III.D–3, 66 FR 6976 at 7009). Note that EPA derived separate cancer risks for NTNCWSs, as summarized in the preamble to the June 2000 proposal (pages 38952–38956) and described in section 5.3.3 of the Economic Analysis (EPA 2000g). The lower- and upper-bound risk estimates were applied to the exposed population to generate cases avoided for Community Water Systems (CWS) serving fewer than 1 million customers. Since the Agency had arsenic occurrence information for very large systems (those serving greater than one million customers), their system-specific arsenic distributions could be directly computed and cases avoided calculated from these distributions (appendix b.2 in EPA 2000g). In the proposal and January 2001 rule, EPA adjusted the number of bladder cancer cases avoided to reflect a possible lower mortality rate in Taiwan (a lower death rate would increase the number of estimated Taiwanese cases to include more non-fatal cancers) than was assumed in the risk assessment process, which is described in section 5.4.1 of the Arsenic Economic Analysis (EPA 2000g). The Agency adjusted the upper-bound U.S. cancer cases avoided to assume an 80% mortality rate for bladder cancer and 100% fatality for lung cancer in Taiwan. The Agency then divided the U.S. cases avoided into morbidity (non-fatal) and premature fatality cases based on U.S. mortality rates of 26% for bladder cancer and 88% for lung cancer.

In order to monetize the benefits from bladder and lung cancer cases avoided, the Agency used two different values. First, a Value of Statistical Life (VSL) estimate was applied to those cancer cases that result in a mortality. As noted, EPA assumed a 26% mortality rate for bladder cancer and an 88% mortality rate for lung cancer. The current VSL value used by the Agency is $6.1 million, in 1999 dollars (66 FR 6976 at 7012). VSL does not refer to the value of an identifiable life, but rather to the value of small reductions in mortality risks in a population. A "statistical" life is thus the sum of small individual risk reductions across an entire exposed population and is not the value for saving a particular individual's life.

Second, EPA used a Willingness to Pay (WTP) value (66 FR 6976 at 7012) to monetize the cancer cases that do not result in a mortality. A WTP value for avoiding a non-fatal cancer is currently not available; therefore the Agency used a WTP estimate to reduce a case of chronic bronchitis as a proxy. The mean value of this WTP estimate is $607,000 in 1999 dollars. A complete discussion of the VSL and WTP values and how they are calculated can be found in Chapter 5 of the Arsenic Economic Analysis (EPA 2000g).

There are also a number of non-quantifiable benefits that EPA considered in its analysis of the benefits for the arsenic rule. Chief among these are certain health impacts identified in various studies involving arsenic levels greater than 50 µg/L. To date, the extent to which these impacts occur at levels below 50 µg/L has not been determined. These additional health effects include other cancers such as skin, kidney, nasal passage, liver, and prostate cancers and non-cancer endpoints such as cardiovascular, pulmonary, immunological, neurological, and endocrine impacts. These health effects and the relevant studies linking these health effects to arsenic in drinking water are discussed in section III.D of the preamble to the rule (66 FR 6976 at 7000). Table III.E–3 in the preamble to the rule (66 FR 6976 at 7012) shows the estimated benefits from reducing arsenic in drinking water for arsenic levels of 3, 5, 10, and 20 µg/L. This table also includes a listing of the potential non-quantifiable benefits associated with reducing arsenic in drinking water.

The Agency also provided a sensitivity analysis on benefits estimates in the rule to examine the impacts of

discounting over a latency period and adjustments for income growth and the nature of the risk (the extent to which the risk is voluntary and controllable). In a July 2000 letter, the EEAC of the SAB recommended that benefits estimates for environmental regulations include adjustments for latency and for income growth in the primary analysis, while adjustments for other factors, such as the extent to which risk is voluntary or controllable, be addressed in a sensitivity analysis. For the arsenic rule, the Agency chose to address all of these factors in a sensitivity analysis because it lacked quantitative data on cancer latency periods associated with arsenic exposure in drinking water. The sensitivity analysis used a range of latencies from 5 to 20 years and discount rates of 3 and 7%. It also adjusted for income growth and included a 7% increase in valuation to account for the lack of voluntariness and controllability of risk. The sensitivity analysis showed that the adjustments to monetized benefits could range from a 10% increase (accounting for income growth only) to a 70% decrease (accounting for income growth, latency, and voluntariness/ controllability). The sensitivity analysis did not provide estimates accounting only for latency and income growth. Tables III.E–5 and III.E–6 in the January 2001 preamble illustrate the sensitivity of monetized benefits estimates to different assumptions for latency period duration, discount rate, rate of income growth, and inclusion of a voluntariness and controllability factor. A more detailed description of this analysis is shown in section III.E.2.b of the preamble to the rule (66 FR 6976 at 7012) and Chapter 5 of the Arsenic Economic Analysis (EPA 2000g).

2. List of Key Benefit Analysis Issues

Significant issues associated with the benefits analysis for the arsenic in drinking water rule addressed topics such as the timing of health benefits accrual (latency) and the Agency's consideration of non-quantifiable benefits in its regulatory decision-making process. The Agency requests comments on these and related issues in the following summary.

Specific issues related to the benefits analysis for the arsenic rule include:

a. Discounting benefits over a cancer latency period. The SAB has recommended that EPA should discount its monetized benefits over a cancer latency period (EPA 2000d). A latency period is generally defined as the time between exposure to an environmental carcinogen and the resulting cancer fatality. Precise information on the latency period for most cancers is generally unavailable, but latency periods can be significant. The latency period may also be defined in several different ways. This period can be defined as the time between exposure and the resulting fatality or the time between exposure and onset or diagnosis of the cancer. This definition does not consider the time between exposure and early adverse changes at the cellular level in the body (*i.e.*, before clinical expression of cancer). Definition of the latency period can have a significant impact on the length of time over which benefits are discounted, especially for cancer illnesses where the period of morbidity (*e.g.*, non-fatal illness) is lengthy. EPA has specifically requested the National Academy of Sciences, in their review of the health risks of arsenic in drinking water, to examine this issue in more detail and discuss what is known or can be inferred about the latency period between exposure to arsenic in drinking water and increased incidence of cancer based on existing research.

b. Consideration of non-quantifiable benefits in the regulatory decision-making process. Some stakeholders have argued that EPA did not fully consider the non-quantifiable benefits in its decision-making process for the arsenic rule and that EPA should have performed sensitivity analyses to characterize the potential magnitude of these benefits. Other stakeholders have argued that EPA placed too much emphasis on non-quantifiable benefits in the choice of the arsenic MCL. EPA requests comment on how to handle non-quantifiable benefits in its selection of a final arsenic MCL.

3. Request for Comments on Benefits

(1) How should total benefits and costs and incremental benefits and costs be addressed in the rule in analyzing regulatory alternatives to ensure appropriate consideration by decision makers and the public?

(2) How should latency be addressed in the benefits estimates for the final rule when existing literature does not provide specific quantitative estimates of latency periods associated with exposure to arsenic in drinking water?

(3) Should reduction/elimination of exposure be evaluated as a separate benefits category, in addition to or in conjunction with mortality and morbidity reduction?

(4) How should health endpoints (other than bladder and lung cancer) be addressed in EPA's analysis, when existing literature does not provide specific quantification, to ensure appropriate consideration by decision makers and the public?

(5) How should uncertainties be addressed in EPA's analysis to ensure appropriate consideration by decision makers and the public?

G. What Process Is EPA Planning for Review of Financial, Technical, and Planning Tools for Small Systems?

1. Small System Review Process

As part of its overall review of the arsenic rule, EPA wishes to reassess the financial, technical, and planning tools available to help small systems achieve compliance. SDWA provides special consideration for small systems in a number of areas and also created the Drinking Water State Revolving Fund (DWSRF) to help systems, including small systems, comply with the provisions of the Act. The DWSRF provides low interest loans, and allows forgiveness of principal for communities identified by the States as disadvantaged. The Agency believes that State capacity development strategies offer a useful framework within which to address small system issues. The Agency seeks comment to help it reassess the financial, technical, and planning tools available to small systems and determine what, if any, additional steps the Agency should take to facilitate compliance with a revised arsenic standard.

2. List of Small System Issues

a. Affordability, availability of financial assistance, and treatment technology. Extensive concerns have been raised regarding the ability of households served by small systems to afford compliance with a revised arsenic standard. In the January 2001 rule, the Agency attempted to address many of these concerns. The preamble of the January 2001 rule emphasized the framework established by SDWA to consider affordability and the tools available to help address affordability concerns. These tools include financial assistance; and extended compliance time frames through exemptions. SDWA also provides for small system variances, but EPA determined in the January 2001 rule that affordable small system compliance technologies are available for all categories of system size, so this option is not available for the new arsenic standard published in the January 2001 rule.

The January 2001 preamble points out that about $1 billion/year is being made available to large and small systems through the Drinking Water State Revolving Fund (DWSRF), and about $780 million/year is being made

available through the water and waste disposal program of the Rural Utilities Service (RUS) of the Department of Agriculture. EPA also noted that almost one quarter of the DWSRF loans have been made to systems States classified as disadvantaged (66 FR 6796 at 7020).

Treatment technology is another issue around which small system concerns have clustered. The major concern voiced in this regard has been that small systems may not be able to apply the lower cost compliance technologies identified by EPA. The most significant issue relates to the application of Point-of-Use (POU) technology. Under the arsenic rule, EPA has designated POU technology as an affordable compliance technology. The Agency recognizes that application of POU technology for compliance is not presently a common practice and water systems would face a number of challenges in implementing such an approach. EPA's probability decision trees (Exhibits A–7 through A–22 in the Economic Analysis (EPA 2000g)) assigned POU technologies to approximately 5% of systems serving fewer than 500 in the decision tree. The Agency believes that customers may be quite supportive of a POU solution once they understand the cost-savings it offers based upon pilot studies and information that EPA has analyzed.

b. SDWA Capacity Development Framework. SDWA recognized that small systems would find it more challenging than large systems to achieve the public health protection goals of the Act. In amending SDWA in 1996, Congress found that effective protection of public health requires water systems with adequate managerial, technical, and financial capacity. Congress further found that compliance with the requirements of SDWA continues to be a concern at public water systems experiencing technical and financial limitations; and Federal, State, and local governments need more resources and more effective authority to attain the objectives of SDWA. In response to these findings, Congress included in the amendments a number of provisions designed to help EPA and the States address the needs of small systems, including, for the first time, the State Revolving Loan Fund for assisting drinking water systems in complying with standards.

These provisions included new flexibility for EPA in setting standards and compliance time frames; explicit authority to allow Point-of-Use technologies for compliance; broader and more flexible authority for issuing exemptions to provide systems with additional time to comply; small system variances in cases where EPA determines that affordable small system compliance technologies are not available; and financial assistance through a new drinking water State revolving fund. In order to help focus these and other tools on helping systems develop managerial, technical, and financial capacity, Congress created a strong incentive for States to develop a "capacity development strategy." States were given broad flexibility in designing their strategy, but were required to consider a number of issues including how they would use the authority and resources of SDWA or other means to assist systems in complying with regulations and to encourage the development of partnerships between systems to enhance their capacity.

All States have developed strategies consistent with the SDWA framework. EPA believes that implementation of a revised arsenic standard will be the first major test of these strategies. SDWA clearly anticipated that systems would need to enhance their technical, financial, and managerial capacity in order to achieve the public health protection objectives of the law. The extensive concerns which have been voiced about systems ability to meet a revised arsenic standard serve to confirm the need for such enhancements.

Successful implementation of a revised standard will require that States focus on developing system capacity by fully utilizing the flexibilities available under SDWA. In particular, the Agency believes that appropriate use of these three provisions will be essential:

(1) DWSRF assistance, including principal forgiveness for disadvantaged communities and set-aside funds to assist systems through a State's capacity development strategy.

(2) Exemptions to allow additional time for systems that demonstrate the need for such time to achieve compliance. Such systems of any size can be granted an additional 3 years beyond the compliance date for the revised MCL to achieve compliance, while systems serving <3300 persons can be granted up to 6 additional years beyond that date. This extra time can be used to obtain financial assistance or undertake restructuring or other changes to achieve compliance.

(3) Application of Point-of-Use (POU) technology.

States may wish to utilize their capacity development strategy as a framework within which to plan the most effective utilization of all of the tools available. In addition to the SDWA provisions discussed previously, another important tool is financial assistance available through the United States Department of Agriculture's Rural Utilities Service.

3. Request for Small Systems Comment

EPA invites comments on all aspects of small system compliance with a revised arsenic standard. In particular, the Agency seeks comment on the following issues:

(1) What additional guidance, information, or other assistance, if any, do States need to help them develop and apply system-level affordability criteria (for prioritizing use of drinking water revolving funds in a State; and for determining whether or not to grant exemptions)?

(2) Will exemptions allowing needy systems additional time to achieve compliance be a useful tool? What guidance, information, or other assistance, if any, should EPA make available to States and or systems relative to exemptions?

(3) To what extent can systems lower their compliance costs or enhance their ability to comply by forming partnerships with other systems or otherwise restructuring their operations? What barriers (physical and/or institutional) exist to the formation of these partnerships? What guidance, information, or other assistance, if any, should EPA make available to States and or systems to assist in the formation of system-level partnerships?

(4) What challenges or barriers exist to adoption of POU technology? What do EPA and or the States need to do to facilitate application of POU technology?

(5) What additional guidance, information, or other assistance do States need to help them refine their capacity development strategies to facilitate compliance with a revised arsenic standard?

III. Process To Be Employed After Technical Reviews and Public Comment

A. How Will EPA Notify the Public of Results of the Technical Reviews and the Nature of the Public Comments?

As previously noted, the findings of the expert review panels will be made publicly available. In addition, EPA will publish a notice with a summary of these findings for public comment. The purpose of the notice will be to provide EPA's perspective on the findings of the review of the costs, benefits, and science underlying the arsenic rule. In addition, the notice will summarize comments received on this proposal and EPA's perspective on those comments. Finally, the notice will provide an indication of how the Agency plans to synthesize this

new information with respect to final decisions on the arsenic in drinking water rule. EPA expects that the notice will be published in the Fall of 2001.

B. What Process Will EPA Use To Make Final Decisions on the Rule?

The process of making final decisions on the arsenic in drinking water regulation will involve legal, regulatory, policy, and scientific considerations. The results of the expert panels' reviews and public comment will be significant and important sources of information that will be fully considered by the Agency as it makes a final decision. In making a final decision, EPA will also exercise judgment and discretion based on the record and all applicable legal, regulatory, and policy requirements. EPA expects to make a final decision on how to proceed with the arsenic rule by February 22, 2001, after considering the reviews and public comments.

IV. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, [58 **Federal Register** 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the January 22, 2001, rule is a "significant regulatory action" because it will have annual costs of more than $100 million. Because this proposal is an extension of a rulemaking published on January 22, 2001 (66 FR 6976), and is based on the record for that rulemaking, EPA has complied with this Executive Order through the economic analyses prepared for the January 22, 2001, rulemaking. Those analyses were reviewed by OMB. In addition, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record for W–99–16–VI.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment (5 U.S.C. 601(3)–(5)). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA) Chief of Counsel for Advocacy.

For the purposes of assessing the impacts of today's rule on all three categories of small entities, EPA considered small entities to be systems serving 10,000 or fewer customers. In accordance with the RFA requirements, EPA proposed using this alternative definition for all three categories of small entities in the **Federal Register** (63 FR 7605 at 7620; February 13, 1998), requested public comment and consulted with SBA regarding the alternative definition as it relates to small businesses. In the preamble to the final Consumer Confidence Reports (CCR) regulation (63 FR 4511; August 19, 1998), EPA stated its intent to establish this alternative definition for regulatory flexibility assessments under the RFA for all drinking water regulations and has thus used it in this proposed rulemaking.

As noted in the previous section, this proposal is an extension of, and relies on the record of, a previous rulemaking concerning the same regulatory options. In accordance with section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the original proposed rule, published in the **Federal Register** on June 22, 2000 (EPA 2000b), and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the regulated small entities in accordance with section 609(b) of the RFA. A detailed discussion of the Panel's advice and recommendations is found in the Panel Report (EPA 1999). The June 2000 proposed rule presented a summary of the Panel's recommendations (65 FR 38888 at 38963).

As required by section 604 of the RFA, EPA also prepared a final regulatory flexibility analysis (FRFA) for the January 2001 rule (EPA 2001a). The FRFA and the January 2001 arsenic rule's preamble (66 FR 6976 at 7047) addressed the issues raised by public comments on the IRFA, which was part of the regulatory impact analysis for the proposed rule (65 FR 38888 at 38962; EPA 2000b). The FRFA (EPA 2000j) is available for review in the docket. The previous analyses encompass all of the options proposed again today, and as a result, EPA is relying on those analyses for compliance with the RFA for this proposal.

C. Unfunded Mandates Reform Act (UMRA) of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, Tribal, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the

UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the January 22, 2001, rule contains a Federal mandate that may result in expenditures of $100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any one year. Because today's proposal is an extension of the January 2001 arsenic rulemaking and discusses only those options which were fully analyzed in the previous rulemaking, EPA is relying on the record of the January, 2001 rule to provide the analyses required by UMRA. A detailed description of this analysis is presented in EPA's Economic Analysis of the arsenic rule (EPA 2000g) which is included in the Office of Water docket for the arsenic rule, and summarized in the January 2001 preamble (66 FR 6976 at 7049). Through targeting mailing of this notice to entities on the arsenic mailing list, we will continue to solicit State, local, and Tribal access and dialog on the arsenic rule. EPA will also develop a small government agency plan.

D. Paperwork Reduction Act (PRA)

The information collection requirements in this proposed rule were previously submitted for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. As noted in previous sections, today's proposal is an extension of a previous rulemaking which analyzed the same options presented today. As a result, EPA is relying on the PRA analyses prepared for the January 2001 rulemaking and its proposal for compliance with the PRA for this rule. OMB has already reviewed and approved the information collection request (ICR) in the previous rulemaking and assigned OMB control number 2040–0231. This action does not impose any additional information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA's analysis of the NTTAA's application to this rulemaking is described in the June 22, 2000, proposal at 65 FR 38971–38972 and the January 22, 2001, preamble at 66 FR 7051. EPA requests comment on this analysis.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agencies' missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice related issues concerning the potential impacts of this action and consulted with minority and low-income stakeholders.

In the preamble to the June 2000 proposal (65 FR 38888 at 38972), EPA noted arsenic concerns raised during the March 12, 1998, environmental justice stakeholder meeting. The issues raised included confusion over units of measure of test results (*i.e.*, ppb and µg/L), effects on sensitive subpopulations (*e.g.*, incidence of diabetes in Tribal communities), infeasibility of regional consolidation, affordable treatments for small systems, increased access to funding, considering regional needs in standard setting, more training, and protection of low income communities. The Agency took these issues into consideration during the development of the January 2001 arsenic rule and the response-to-comments document. The public is invited to comment on EPA's analysis of environmental justice as it relates to today's proposal (which was discussed in the June 2000 proposal and January 2001 rule) and to recommend additional methods to address environmental justice concerns with the approach for treating arsenic in drinking water.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885; April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe that the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. Nonetheless, EPA evaluated the environmental health and safety effects of arsenic in drinking water on children as part of the January 2001 rule and its proposal. The public is invited to submit or identify any new peer-reviewed studies and data that assess results of early life exposure to arsenic via ingestion.

H. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255; August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, imposes substantial direct compliance costs, and is not required by statute (unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation). EPA also may not issue a regulation that has federalism implications and that preempts State

law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation. If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

EPA has concluded that this proposed rule will have federalism implications; these are the same federalism implications discussed and analyzed in the June 2000 and January 2001 arsenic rules. EPA provided the Office of Management and Budget (OMB) with a federalism summary impact statement (FSIS) in the preamble to the proposed and final rules. EPA provided the FSIS on page 7052 of the January 2001 rule (66 FR 6976).

I. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249; November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and the Indian tribes."

This proposed rule may have tribal implications. It may have substantial direct compliance costs on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and the Indian tribes, as specified in Executive Order 13175. As a result of administrative review of the regulation published on January 22, 2001, the Environmental Protection Agency (EPA) is requesting additional comments on the regulatory options via this proposal. In developing the January 2001 rule, EPA consulted with Tribal governments to permit them to have meaningful and timely input into its development, as described in the preamble (66 FR 6976 at 7052). In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

J. Consultations With the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services

In accordance with sections 1412 (d) and (e) of SDWA, the Agency discussed or submitted possible arsenic rule requirements to the Science Advisory Board, National Drinking Water Advisory Council (NDWAC), and to the Secretary of Health and Human Services and requested comment from the Science Advisory Board on the arsenic rule, as described in the January 2001 preamble (66 FR 6976 at 7053). In addition, the April 23, 2001 proposed rule (66 FR 20580) outlines the additional consultations planned with NDWAC. EPA will continue contacts with the Department of Health and Human Services during the arsenic rule review process.

K. Likely Effect of Compliance With the Arsenic Rule on the Technical, Financial, and Managerial Capacity of Public Water Systems

Section 1420(d)(3) of SDWA as amended requires that, in promulgating a National Primary Drinking Water Regulation (NPDWR), the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems. EPA provided the analysis performed to fulfill this statutory obligation for the January 2001 rule (EPA 2000a). During this reconsideration process, EPA will review the capacity issues further.

L. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355; May 22, 2001), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action."

We have not prepared a Statement of Energy Effects for this proposed rule because this rule is not a significant energy action, as defined in Executive Order 13211. While this rule is a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

V. References

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List of Subjects in 40 CFR Parts 141 and 142

Environmental protection, Chemicals, Indian lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: July 13, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–18093 Filed 7–18–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; DA 01–1555]

Provision of Improved Telecommunications Relay Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document solicits additional comment on the provision of improved Telecommunications Relay Service (TRS). Title IV of the Americans with Disabilities Act (ADA) requires the Commission to promulgate regulations on TRS, to make available to Americans with hearing or speech disabilities telecommunications services that are functionally equivalent to those available to individuals without disabilities.

DATES: Comments are due on or before July 30, 2001 and reply comments are due on or before August 6, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, (202) 418–2247 (voice), (202) 418–7898 (TTY). This document is available to individuals with disabilities requiring accessible formats (electronic ASCII text, Braille, large print, and audio) by contacting Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or by sending an email to *access@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau is issuing this document to seek comment on WorldCom's Petition and additional issues associated with IP Relay. Comments already submitted in response to WorldCom's petition will be

considered in this docket. All comments shall reference the docket number of this proceeding. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the docket number of this proceeding. Parties who choose to file by paper must file an original and four copies of each filing with the Commission's Secretary (Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington DC 20554) and a diskette copy to the Commission's copy contractor (International Transcription Service, Inc. (ITS), CY–B400, Federal Communications Commission, 445 12th Street, SW., Washington DC 20554). In addition, parties must submit a paper copy and diskette to Dana Jackson, Disabilities Rights Office, Consumer Information Bureau, Federal Communications Commission, Room 4–C746, 445 12th Street, SW., Washington DC 20554. Filings and comments are also available for inspection and copying during business hours in the Reference Information Center, Federal Communications Commission, Room CY–A257, 445 12th Street, SW., Washington DC or may be purchased from ITS. Pursuant to 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Synopsis

In its *First Report and Order* on TRS, (56 FR 36729, August 1, 1991) the Commission established minimum operational, technical, and functional standards to fulfill this mandate. Last year, the Commission released additional minimal standards to supplement these earlier standards. Specifically, in its *Improved TRS Order and FNPRM*, (65 FR 38490, June 21, 2000) the Commission both expanded the scope of eligible services that would be classified to receive reimbursement as relay services, and established new criteria for relay providers to improve the quality of relay services. Among other things, the *Improved TRS Order and FNPRM* added speech-to-speech (STS) and interstate Spanish relay as required relay offerings, and permitted the recovery of video relay service (VRS) costs through the interstate TRS funding mechanism. The Order encouraged, but did not require the provision of VRS at the present time. On December 22, 2000, WorldCom filed a Petition for Clarification of the *Improved TRS Order and FNPRM* (Petition) seeking clarification that its connection to TRS via the Internet (IP Relay) is eligible for reimbursement from the Interstate TRS Fund. On May 8, 2001, representatives from WorldCom met with Commission staff to further discuss WorldCom's petition. *See, Ex parte* letter from Larry Fenster, WorldCom, to Magalie Salas, Secretary, Federal Communications Commission, dated May 9, 2001. Additionally, on May 18, 2000, representatives from Communications Services for the Deaf made a presentation to Commission staff on its for a similar IP-based relay service. *See, Ex parte* letter from Philip W. Bravin, Communications Services for the Deaf, to Magalie Salas, Secretary, Federal Communications Commission, dated May 23, 2001. Although the information gathered at these meetings, together with the formal comments submitted in response to both the *Improved TRS Order and FNPRM* and the informal comments submitted in response to the WorldCom petition have provided the Commission with basic information about IP Relay, it has become clear that additional information is needed before the Commission can issue a final order on this subject.

Consumer Information Bureau.

Karen Peltz Strauss,

Deputy Chief.

[FR Doc. 01–18054 Filed 7–18–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 01–1578, MM Docket No. 01–144, RM–10142]

Radio Broadcasting Services; Snyder, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Charles Crawford requesting the allotment of Channel 237C3 at Snyder, Texas. The coordinates for Channel 237C3 at Snyder are 32–42–25 and 101–05–36. There is a site restriction 17.2 kilometers (10.7 miles) west of the community.

DATES: Comments must be filed on or before August 27, 2001, and reply comments on or before September 11, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205; Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–144, adopted June 27, 2001, and released July 6, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 237C3 at Snyder.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–18050 Filed 7–18–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1593; MM Docket No. 01–147; RM–10162]

Radio Broadcasting Services; George West, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Katherine Pyeatt, requesting the allotment of Channel 292A to George West, Texas, as that community's third local FM transmission service. This proposal requires a site restriction 12.7 kilometers (7.9 miles) west of the community at coordinates 28–20–33 NL and 98–14–45 WL. Additionally, as George West, Texas, is located within 320 kilometers (199 miles) of U.S.-Mexico border, concurrence of the Mexican government to this proposal is required.

DATES: Comments must be filed on or before August 27, 2001, and reply comments on or before September 11, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 01–147, adopted June 27, 2001, and released July 6, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 292A, George West, Texas.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–18051 Filed 7–18–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1602; MM Docket No. 01–149; RM–10173]

Radio Broadcasting Services; Savoy, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on the proposed allotment of Channel 297A to Savoy, Texas, as that community's first local aural transmission service. Coordinates used for this proposal are 33–42–58 NL and 96–24–09 WL.

DATES: Comments must be filed on or before August 27, 2001, and reply comments on or before September 11, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: The Office of Dan J. Alpert; 2120 N. 21st Road; Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–149, adopted June 27, 2001, and released July 6, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Savoy, Channel 297A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–18052 Filed 7–18–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 070901B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP), and the cumulative impacts would be within the scope of earlier analyses on the FMP. However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs in response to the application that would allow up to 20 vessels to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the northeastern United States. Such fishing operations would continue the collection of data on bycatch of regulated multispecies and would provide information to NMFS and the New England Fishery Management Council regarding whether or not the fishery may be made an exempted fishery under the Northeast Multispecies regulations. The Massachusetts Division of Marine Fisheries (MADMF) has submitted an application for EFPs for commercial otter trawl vessels using the raised footrope trawl. The EFPs would allow the federally permitted vessels to fish with the modified otter trawl with mesh less than the minimum mesh size within a portion of the Gulf of Maine/Georges Bank Regulated Mesh Area. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this notification must be received at the appropriate address or fax number (see **ADDRESSES**) on or before August 3, 2001.

ADDRESSES: Written comments should be sent to Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Raised Footrope Trawl EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288.

SUPPLEMENTARY INFORMATION: MADMF submitted a proposal on May 18, 2001, for EFPs for up to 20 vessels to fish with a modified small-mesh otter trawl for silver hake (*Merluccius bilinearis*) in a portion of the Gulf of Maine/Georges Bank Regulated Mesh Area. The proposed experiment is a continuation of an experimental fishery conducted in 1999 and 2000 to gather information on bycatch retained by the modified otter trawl in the requested area. The experiment proposes to continue the collection of data to determine whether or not the fishery has a level of bycatch of regulated multispecies that would enable the fishery to be determined an exempted fishery under the criteria set forth in the FMP. Based on the outcome of this EFP, this action may lead to future rulemaking.

The study would occur from September 1 through December 30, 2001, and take place east of Cape Cod in an area defined by the following coordinates:

Area Point	N. Latitude	W. Longitude
RFT1	42°14.05′	70°08.80′
RFT2	42°09.20′	69°47.80′
RFT3	41°54.85′	69°35.20′
RFT4	41°41.50′	69°32.85′
RFT5	41°39.00′	69°44.30′
RFT6	41°45.60′	69°51.80′
RFT7	41°52.30′	69°52.55′
RFT8	41°55.50′	69°53.45′

The maximum number of vessels participating in the experiment at a given time would be 20 with an estimated total number of trips at approximately 200. The gear to be used during the experiment is a modified small-mesh otter trawl called the "raised footrope trawl." The gear uses modifications of the float configuration, headrope, footrope, and sweep to keep the mouth of the net from fishing on the bottom and retaining bottom-dwelling species such as flounders, monkfish, skates, lobster, and crabs. Participating vessels would also be subject to a minimum mesh size of 2.5 inches (6.35 cm) in the codend and would be allowed to retain a maximum of 7,500 lb (3,402 kg) of silver hake and offshore hake (*Merluccius albidus*) with nets of mesh size between 2.5 inches (6.35 cm) and 3 inches (7.62 cm), and a maximum of 30,000 lb (13,608 kg) of silver hake and offshore hake with nets of mesh size 3 inches (7.62 cm) and above. The possession limits are to ensure that the conservation goals for whiting are preserved. Vessels may be required to carry onboard observers as requested by MADMF and/or NMFS. Onboard observers will be trained in the protocols of the experiment by MADMF and/or NMFS.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 13, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–18105 Filed 7–18–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 071001F]

RIN 0648–AO51

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 11 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the Gulf of Mexico (Amendment 11) to NMFS for review, approval, and implementation. Amendment 11 would require all shrimp vessels harvesting shrimp in the Gulf of Mexico exclusive economic zone (EEZ) to obtain an annually renewable Federal shrimp vessel permit from NMFS and would prohibit the use of traps in the royal red shrimp fishery of the Gulf of Mexico. Written comments are requested from the public.

DATES: Written comments must be received on or before September 17, 2001.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–522–5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of Amendment 11, which includes an Environmental Assessment, a Regulatory Impact Review, and an Initial Regulatory Flexibility Analysis are available from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266. phone: 813–228–2815; fax: 813–833–1844.

Written comments regarding the collection-of-information (e.g., permits) requirements contained in this document may be submitted to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Dr. Steven Branstetter, 727–570–5305; fax 727–570–5583; e-mail: *steve.branstetter&noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit any fishery management plan (FMP) or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a document in the **Federal Register** stating that the FMP or amendment is available for public review and comment.

The shrimp fishery is the largest fishery in terms of numbers of fishing vessels and participants in the Gulf of Mexico, but is one of the few federally managed fisheries with no fishing permit requirement. Currently, there are limited data available to estimate the number of shrimp fishing vessels and fishing effort expended by those vessels in the Gulf of Mexico EEZ. Amendment 11 would require all shrimp vessels harvesting shrimp in the Gulf of Mexico EEZ to obtain an annually renewable Federal shrimp vessel permit from NMFS. In proposing this action, the Council concluded that information collected via a Federal permit system would aid in the formulation of sound management measures for the shrimp fishery and for those finfish fisheries that are impacted because of the bycatch and bycatch mortality attributable to the shrimp fishery.

Royal red shrimp have been a small component of the Gulf of Mexico shrimp fishery since the early 1960s, traditionally being fished by vessels using modified shrimp trawls at depths exceeding 100 fathoms (183 meters). The Council concluded that allowing trap gear to be used in this fishery would likely lead to gear conflicts and could lead to overfishing. At the Council's request, NMFS implemented an emergency interim rule prohibiting the use of trap gear in the royal red shrimp fishery within the EEZ of the Gulf of Mexico that was promulgated on September 19, 2000 (65 FR 56500), and was extended until September 14, 2001 (66 FR 14862, March 14, 2001).

A proposed rule that would implement measures contained in Amendment 11 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by September 17, 2001, whether specifically directed to the FMP or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 11. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 11 or its proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 13, 2001.

Bruce C. Morehead

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–18104 Filed 7–18–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622 and 640

[I.D. 020801A]

RIN 0648–AN83

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment to the Fishery Management Plans of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Gulf Council) has submitted for review, approval, and implementation under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) those measures of its Generic Amendment Addressing the Establishment of the Tortugas Marine Reserves in the Fishery Management Plans of the Gulf of Mexico (Generic Tortugas Amendment) that would amend the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic and the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic. The Generic Tortugas Amendment would establish two marine reserves in the exclusive economic zone in the vicinity of the Dry Tortugas, FL. Within the marine reserves, fishing for any species and anchoring by fishing vessels would be prohibited. The intended effect is to protect and conserve important marine resources. NMFS previously approved those measures of the Generic Tortugas Amendment that amend the Gulf Council's other fishery management plans (FMPs).

DATES: Written comments must be received on or before September 17, 2001.

ADDRESSES: Written comments on the subject measures of the Generic Tortugas Amendment must be sent to Michael Barnette, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or the Internet.

Requests for copies of the Generic Tortugas Amendment, which includes a regulatory impact review and a final supplemental environmental impact statement, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266; phone: 813–228–2815; fax: 813–225–7015; e-mail: gulf.council&noaa.gov.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, NMFS; phone: 727–570–5305; fax: 727–570–5583; e-mail: Michael.Barnette&noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf Council previously submitted its Generic Tortugas Amendment to NMFS for Secretarial review, approval, and implementation. A notice of its availability for public comment was published in the **Federal Register** on March 7, 2001 (66 FR 13692). On June 6, 2001, NMFS approved those management measures in the Generic Tortugas Amendment that amend the following FMPs: Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico; Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico; Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico; Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico; and Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico.

The amendment's proposed management measures that would amend the two FMPs prepared jointly (joint FMPs) by the Gulf Council and the South Atlantic Fishery Management Council (South Atlantic Council), namely the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic and the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, had yet to be adopted by the South Atlantic Council. Therefore, those amendment measures proposed for amending the two joint FMPs were not eligible for Secretarial review and approval under the Magnuson-Stevens Act at the time the Gulf Council first submitted the amendment to NMFS for Secretarial review.

At its meeting of June 18-23, 2001, the South Atlantic Council adopted the amendment's proposed management measures that would amend the two joint FMPs. Based on this action by the South Atlantic Council, NMFS has determined that the amendment's measures that would amend the two joint FMPs have been properly submitted for Secretarial review by the Gulf Council and can now be reviewed and, if approved, implemented. Accordingly, NMFS is publishing this notice of availability of these amendment measures for public comment.

To date, NMFS has not published a proposed rule for the Generic Tortugas Amendment. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the Generic Tortugas Amendment, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment. The proposed rule will include amendment measures approved by NMFS on June 6, 2001, for the following FMPs: Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico; Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico; Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico; Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico; and Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. The proposed rule will also include those proposed management measures for amending the two joint FMPs that are the subject of this notice. These latter measures would amend the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic and the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic.

Considerable background information on the Generic Tortugas Amendment is contained in the original notice of availability published March 7, 2001 (66 FR 13692) and is not repeated here. Under the Generic Tortugas Amendment, the Gulf Council proposes that the marine reserves be established for a period of at least 10 years, during which the ecological benefits of the reserves will be evaluated. The prohibition on fishing and anchoring of fishing vessels should minimize human disturbances in the Tortugas reserves and help to restore and maintain their ecological integrity, including a full assemblage of fish, coral, and other benthic invertebrates. The reserves will also create a reference or baseline area for studying human impacts on coral reef ecosystems.

Comments received by September 17, 2001, whether specifically directed to those management measures in the Generic Tortugas Amendment that would amend the joint FMPs or to the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve those measures amending the joint FMPs. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the Generic Tortugas Amendment (under both the current and previous Secretarial review periods) or the proposed rule during their respective comment periods will be addressed in the preamble of the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 12, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17937 Filed 7–18–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 139
Thursday, July 19, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Rural Housing Service, et al.

Request for Reinstatement of a Previously Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies' intention to request reinstatement of a previously approved information collection in support of the Agencies' use of supervised bank accounts (SBA).

DATES: Comments on this notice must be received by September 17, 2001 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: James E. Vollmer, Senior Loan Specialist, Multi-Family Housing Portfolio Management Division, RHS, STOP 0782, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–0782. Telephone: (202) 720–1060.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1902–A, Supervised Bank Accounts.

OMB Number: 0575–0158.

Type of Request: Reinstatement of information collection.

Abstract: The Agencies extend financial assistance to applicants that do not qualify for loans under commercial rates and terms.

The Agencies use SBAs as a temporary mechanism to (1) ensure correct disbursement and expenditure of all funds designated for a project; (2) help a borrower properly manage its financial affairs; and (3) ensure that the Government's security is protected adequately from fraud, waste, and abuse.

SBAs are mandatory for Multi-Family Housing (MFH) reserve accounts. The MFH funds must be kept in the SBA for the full term of a loan. Any funds withdrawn for disbursement for an authorized purpose require a countersignature from an Agency official.

This regulation prescribes the policies and responsibilities for the use of SBAs. In carrying out their mission as a supervised credit Agency, this regulation authorizes the use of supervised accounts for the disbursement of funds. The use may be necessitated to disburse Government funds consistent with the various stages of any development (construction) work actually achieved. On limited occasions, a supervised account is used to provide temporary credit counseling and oversight of those being assisted who demonstrate an inability to handle their financial affairs responsibly. Another use is for depositing multi-housing reserve account funds in a manner requiring Agency co-signature for withdrawals. Multi-housing reserve account funds are held in a sinking fund for the future capital improvement needs for apartment projects. Supervised accounts are established to ensure Government security is adequately protected against fraud, waste, and abuse.

The legislative authority for requiring the use of supervised accounts is contained in Section 339 of the Consolidated Farm and Rural Development Act (CON ACT), as amended (7 U.S.C. 1989), and Section 510 of the Housing Act of 1949, as amended (42 U.S.C. 1480). These provisions authorize the Secretary of Agriculture to make such rules and regulations as deemed necessary to carry out the responsibilities and duties the Government is charged with administering.

Estimate of Burden: Public reporting burden for this information collection is estimated to average .42 hours per response.

Respondents: The primary respondents are small businesses.

Estimated Number of Respondents: 20,000.

Estimated Number of Responses per Respondent: 3.1.

Estimated Number of Responses: 62,000.

Estimated Total Annual Burden on Respondents: 26,040 hours.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

July 11, 2001.

John W. Williams,

Acting Administrator, Farm Service Agency.

July 12, 2001.

Blaine D. Stockton,

Acting Administrator, Rural Utilities Service.

July 12, 2001.

James C. Alsop,

Acting Administrator, Rural Housing Service.

July 13, 2001.

William F. Hagy III,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 01–18064 Filed 7–18–01; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 32–2001]

Foreign-Trade Zone 15—Kansas City, MO, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 15, requesting authority to expand its zone in the Kansas City, Missouri, area, adjacent to the Kansas City, Missouri, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 6, 2001.

FTZ 15 was approved on March 23, 1973 (Board Order 93, 38 FR 8622, 4/4/73) and expanded on October 25, 1974 (Board Order 102, 39 FR 39487, 11/7/74); February 28, 1996 (Board Order 804, 61 FR 9676, 3/11/96); May 31, 1996 (Board Order 824, 61 FR 29529, 6/11/96); December 8, 1997 (Board Order 934, 62 FR 65654, 12/15/97); October 19, 1998 (Board Order 1004, 63 FR 59761, 11/5/98); January 8, 1999 (Board Order 1016, 64 FR 3064, 1/20/99) and, June 17, 1999 (Board Order 1042, 64 FR 34188, 6/25/99). The zone project includes 8 general-purpose sites in the Kansas City, Missouri, port of entry area: *Site 1* (250,000 sq. ft.)—Midland International Corp. warehouse, 1690 North Topping, Kansas City; *Site 2* (2,815,000 sq. ft.)—Hunt Midwest surface/underground warehouse complex, 8300 N.E. Underground Drive, Kansas City; *Site 3* (10,000 acres)—Kansas City International Airport complex, Kansas City; *Site 4* (416 acres)—Surface/underground business park (Carefree Industrial Park), 1600 N.M–291 Highway, Sugar Creek; *Site 5* (5.75 million sq. ft.)—CARMAR Underground Business Park and Surface Industrial Park (1,000 acres) located at No. 1 Civil War Road, Carthage; *Site 6* (28,000 sq. ft., 11 acres)—Laser Light Technologies, Inc., Hermann Industrial Park, 5 Danuser Drive, Hermann; *Site 7* (1,750 acres)—Richards-Gebaur Memorial Airport Industrial Park complex, 1540 Maxwell, Kansas City; and *Site 8* (169 acres, 3 parcels)-*Site 8a* (60,000 sq. ft., 4 acres)—warehouse facility of Midwest Quality Glove, Inc., 835 Industrial Road, Chillicothe; *Site 8b* (11 acres)—Chillicothe-Brunswick Rail Yard, Washington Street, Chillicothe; and *Site 8c* (50,000 sq. ft., 154 acres)—Chillicothe Industrial Park, Corporate Road, Chillicothe.

The applicant is now requesting authority to further expand the general-purpose zone to include two additional sites (50 acres) in St. Joseph, Missouri: *Proposed Site 9* (200,000 sq. ft., 25 acres)—public storage facility at 2307 Alabama, St. Joseph; and, *Proposed Site 10* (169,000 sq. ft., 25 acres)—public storage facility at 2326 Lower Lake Road, St. Joseph. Some 900,000 sq. ft. of additional warehouse space is planned for the two sites. Both sites will be operated by Pony Express Warehousing, Inc. They are owned by two related companies, L & A Development, L.L.C. and Lower Lake Road, L.L.C. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 17, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 2, 2001).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, International Trade Administration, Export Assistance Center, 2345 Grand Boulevard, Suite 650, Kansas City, MO 64108

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: July 9, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–18120 Filed 7–18–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and partial rescission of antidumping duty administrative review.

SUMMARY: On January 9, 2001, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cased pencils (pencils) from the People's Republic of China (PRC). *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China*, 66 FR 1638 (January 9, 2001). This review covers a manufacturer/exporter of the subject merchandise (China First Pencil Co., Ltd.) and a manufacturer of the subject merchandise (Three Star Stationary Co., Ltd.). In its March 16, 2000, response to the Department's questionnaire, Three Star stated that it did not export pencils to the United States during the POR. In addition, as described in the preliminary results, we rescinded the review for one respondent and did not receive questionnaire responses from 30 named respondents. The period of review (POR) is December 1, 1998, through November 30, 1999.

Based on our analysis of the comments received, our final results remain unchanged from the preliminary results.

EFFECTIVE DATE: July 19, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4474.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless

otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

On January 9, 2001, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on pencils from the PRC. *See Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China, 66 FR 1638 (January 9, 2001).*

China First Pencil Co., Ltd. (CFP) and Three Star Stationary Co., Ltd. (Three Star) (respondents), and the Pencil Section of the Writing Instrument Manufacturers Association, Sanford Corporation, Dixon-Ticonderoga Corporation, Tennessee Pencil Company, Musgrave Pencil Company, Moon Products, Inc., General Pencil Company, and Aakron Rule, Inc., (petitioners) filed case briefs on March 2, 2001 and rebuttal briefs on March 14, and 15, 2001 respectively. Rose Art Industries, Inc., a U.S. importer of the subject merchandise during the POR, filed a case brief on March 1, 2001.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States ("HTSUS"). Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.

Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Final Partial Rescission

We are rescinding this review with respect to Three Star because the Department verified that Three Star did not export pencils to the United States during the POR.

Period of Review

The POR is December 1, 1998 to November 30, 1999.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("Decision Memorandum") from Bernard T. Carreau, Deputy Assistant Secretary, Important Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Record Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the International Trade Administration's Web site at www.ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made no changes to our preliminary results.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period December 1, 1998 through November 30, 1999:

Exporter/manufacturer	Margin (percent)
China First Pencil Co., Ltd	53.65
PRC Wide-Rate	53.65

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will continue to be 53.65 percent; and (4) the cash-deposit rate for non-PRC exporters will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 771(i) of the Act.

Dated: July 9, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comments

1. Whether the Department Should Continue to Base the Dumping Margin on Total Adverse Facts Available.
2. Whether China First Pencil Co., Ltd. (CFP) and Three Star Stationery Industry Co., Ltd. (Three Star) Should be Treated as a Single Entity for Antidumping Purposes.
3. Whether to Calculate a Dumping Margin for Sales to the U.S. Importer, Rose Art Industries, Inc. (Rose Art), regardless of whether adverse facts available are applied to all other sales.
4. Whether to Use American Basswood Prices or Indonesian Slat Prices to Value Chinese Lindenwood.
5. Whether to Use Sales Commissions and Bank Charges in Calculating a Dumping Margin.
6. Whether to Use Indonesian Surrogate Values to Calculate the Dumping Margin.

[FR Doc. 01–18119 Filed 7–18–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware From Mexico: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 19, 2001.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor at (202) 482–4007, or Katherine Johnson at (202) 482–4929, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the fourteenth administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico, which covers the period December 1, 1999, through November 30, 2000.

Applicable Statute: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to 19 C.F.R. Part 351 (April 2000).

SUPPLEMENTARY INFORMATION: Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The Department finds that it is not practicable to complete the preliminary results in this fourteenth administrative review of porcelain-on-steel cookware from Mexico within this time limit because we must request additional information and clarification of submitted data from the respondents.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the preliminary results of this review until November 5, 2001.

Dated: July 12, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–18121 Filed 7–18–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804]

Certain Preserved Mushrooms from Chile: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 19, 2001.

FOR FURTHER INFORMATION CONTACT: Sophie Castro at (202) 482–0588, or David J. Goldberger at (202) 482–4136, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on certain preserved mushrooms from Chile, which covers the period December 1, 1999, through November 30, 2000.

APPLICABLE STATUTE: Unless otherwise indicated, all citations to th Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to 19 CFR Part 351 (April 2000).

SUPPLEMENTARY INFORMATION: Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The Department finds that it is not practicable to complete the preliminary results in this administrative review of certain preserved mushrooms from Chile within this time limit because we must request additional information and clarifications of submitted data from the respondent as well as deal with administrative resource constraints.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the preliminary results of this review until November 15, 2001.

Dated: July 13, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–18122 Filed 7–18–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813, A–560–802, A–570–851]

Certain Preserved Mushrooms From India, Indonesia, and the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: July 19, 2001.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929, or David J. Goldberger at (202) 482–4136, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative reviews of the antidumping duty order on certain preserved mushrooms from India, Indonesia, and the People's Republic of China, which cover the period February 1, 2000, through January 31, 2001.

Applicable Statute: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to 19 CFR Part 351 (April 2000).

SUPPLEMENTARY INFORMATION: Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary

determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The Department finds that it is not practicable to complete the preliminary results in these administrative reviews of certain preserved mushrooms from India, Indonesia, and the People's Republic of China within this time limit because we must request additional information and clarifications of submitted data from the respondents as well as deal with administrative resource constraints.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the preliminary results of these reviews until February 28, 2002.

Dated: July 13, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–18123 Filed 7–18–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Recision of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of recision of antidumping duty administrative review.

EFFECTIVE DATE: July 19, 2001.

SUMMARY: On June 19, 2001, the Department of Commerce (the Department) published in the **Federal Register** (66 FR 32934) a notice announcing the initiation of an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey, covering the period May 1, 2000 through April 30, 2001, and one manufacturer/exporter of the subject merchandise, the Borusan Group. We are now rescinding this review as a result of the respondent's withdrawal of its request for an administrative review.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or David Layton at (202) 482–0371, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute And Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Background

On May 31, 2001, the Borusan Group, in accordance with 19 CFR 351.213(b), requested an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. On June 19, 2001, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of this order for the period May 1, 2000 through April 30, 2001 (66 FR 32934, June 19, 2001). On June 20, 2001, the Borusan Group withdrew its request for this review.

Recision of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. The Borusan Group withdrew its request for review within the 90-day period. Accordingly, this review is rescinded. This determination is issued and published in accordance with section 751 of the Act (19 U.S.C. 1675) and 19 CFR 351.213(d)(4).

July 12, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–18124 Filed 7–18–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062701B]

Marine Mammals: Environmental Assessment on Allocating Gray Whales to the Makah Tribe for the years 2001 and 2002

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of an Environmental Assessment (EA) that examines the environmental consequences of issuing the International Whaling Commission (IWC) quota for gray whales to the Makah Tribe for the years 2001 and 2002. NMFS has identified a preferred alternative in the EA that will grant the Makah Tribe the IWC quota of five whales per year with restrictions that would allow a limited hunt on the gray whale summer feeding aggregation.

ADDRESSES: Copies of the EA may be obtained over the Internet at http://www.nmfs.noaa.gov/prot—res/prot—res.html under "New Arrivals." Copies of the EA may also be requested by writing to Gale Heim, NOAA/NMFS, Office of Protected Resources, 13th Floor, 1315 East-West Hwy, Silver Spring, MD 20910. Mark the outside of the envelope with "Request for Makah EA." Copies of the EA may also be obtained by contacting Gale Heim at 301/713–2322.

FOR FURTHER INFORMATION CONTACT: Cathy Campbell or Chris Yates, 301-713–2322.

SUPPLEMENTARY INFORMATION: Prior to the 1997 Annual International Whaling Commission (IWC) Meeting, NMFS formally analyzed the environmental impacts of a decision to support or not support whaling, and to determine whether an annual subsistence quota of up to five Eastern Pacific gray whales would significantly affect the quality of the human environment. A draft EA was distributed for public comment on August 22, 1997. After reviewing and addressing the comments received, NMFS issued a final EA and Finding of No Significant Impact on October 17, 1997.

At its 1997 annual meeting, the IWC approved a quota of 620 gray whales for an aboriginal subsistence harvest during the years 1998 through 2002. The basis for the quota was a joint request by the Russian Federation (for a total of 600

whales) and the United States (for a total of 20 whales). In 1998 and 1999, NOAA granted an allocation of up to five whales a year to the Makah Indian Tribe, whose subsistence and ceremonial needs had been the foundation of the U.S. request to the IWC.

U.S. Congressman Jack Metcalf, Breach Marine Protection, and several other plaintiffs brought a lawsuit, *Metcalf* v. *Daley*, in October 1997, alleging that the U.S. Government had violated the National Environmental Policy Act (NEPA), the Whaling Convention Act, and other statutes. In September 1998, the U.S. District Court for the Western District of Washington ruled in favor of the U.S. Government on all issues.

On June 9, 2000, the Ninth Circuit Court of Appeals overturned one aspect of that decision, ruling that the 1997 EA should have been completed before the U.S. and the Makah Tribe entered into a cooperative agreement. That agreement had provided that, if the Tribe prepared an adequate needs statement documenting a cultural and subsistence need to harvest gray whales, NOAA would request a quota of gray whales from the IWC. Two judges on a three-judge panel held that the timing of the EA, which was completed after the 1996 agreement was signed and before the 1997 annual meeting of the IWC, may have predisposed the preparers to find that the whaling proposal would not significantly affect the environment. The Court ordered NOAA to set aside that finding and comply with NEPA under circumstances that would ensure an objective evaluation of the environmental consequences of the gray whale harvest.

Following the Court action, NOAA rescinded its cooperative agreement with the Makah Tribe on August 11, 2000. NOAA subsequently set the gray whale quota for 2000 (65 FR 75186, December 1, 2000) and 2001 (65 FR 14862, March 14, 2001) at zero, pending completion of its NEPA analysis.

NEPA requires that Federal agencies conduct an environmental analysis of their actions to determine if the actions may affect the environment. Accordingly, NMFS prepared a draft EA, published on January 12, 2001, conducted a public hearing in Seattle, WA on February 1, 2001, and held a 30-day public comment period to allow for public input on the Draft EA. This final EA explores the environmental consequences of four alternatives: (1) grant Makah Tribe the IWC quota with restrictions that allow a limited hunt on the pacific coast feeding aggregation; (2) grant Makah Tribe the IWC quota with restrictions to target hunt on migrating whales (similar to the 1999 regime); (3) grant Makah Tribe the IWC quota without time-area restrictions; and (4) (no action) - do not grant Makah Tribe the IWC quota. NMFS has identified the preferred alternative as alternative 1, which will grant the Makah Tribe the IWC quota of five whales per year with restrictions that would allow a limited hunt on the gray whale summer feeding aggregation.

This EA was prepared in accordance with NEPA and implementing regulations at 40 CFR parts 1500 through 1508 and NOAA guidelines concerning implementation of NEPA found in NOAA Administrative Order 216-6.

Dated: July 13, 2001.

Don Knowles,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01-18005 Filed 7-16-01; 10:34 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070201B]

Marine Mammals; File No. 116-1477

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that SeaWorld, Inc., 7007 Sea World Drive, Orlando, FL 32821-8097 (Principal Investigator: Dudley Wigdahl, SeaWorld of Texas) has been issued an amendment to scientific research and enhancement Permit No. 116-1477 to take Hawaiian monk seals, *Monachus schauinslandi*, for scientific research purposes.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following office(s): see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, 301/713-2289.

SUPPLEMENTARY INFORMATION: On May 21, 2001, notice was published in the **Federal Register** (66 FR 27941) that a request for an amendment to scientific research and enhancement Permit No. 116-1477, to take Hawaiian monk seals, *Monachus schauinslandi*, had been submitted by the above-named organization. The requested amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217-227).

Issuance of this permit amendment, as required by the ESA, was based on a finding that such permit amendment (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

The permit amendment and related documents are available for review in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 713-0376;

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213; phone (562) 980-4001; fax (562) 980-4018;

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432; phone (727) 570-5301; fax (727) 570-5320; and

Protected Species Program Manager, Pacific Islands Area Office, 1601 Kapiolani Blvd., Room 1110, Honolulu, HI 96814-4700; phone (808) 973-2935; fax (808) 973-2941.

Dated: July 13, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01-18102 Filed 7-18-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01–16]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36 (b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 01–16 with attached transmittal, policy justification, and Sensitivity of Technology.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 JUN 2001
In reply refer to:
I-01/006649

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-16 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and service estimated to cost $2.4 billion. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

G.R. Keltz

A.R. KELTZ
DEPUTY DIRECTOR

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 01-16

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Republic of Korea**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$1.9 billion
Other	$ .5 billion
TOTAL	$2.4 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Thirty-six AH-64D Apache attack helicopters; 14 spare T-700-GE-701C engines; 85 M299 HELLFIRE launchers; 410 AGM-114L1 and 576 AGM-114K1 HELLFIRE II laser guided missiles; 40 AGM-114 training and 40 AGM-114 dummy missiles; 310 STINGER Block 1 missiles; two spare Modernized Targeting Acquisition and Designation Systems; 16 AN/APG-78 Longbow Fire Control Radar; 39 AN/ARC-210 SINCGARS radios with HAVE QUICK; 23,904 2.75 rockets, M130 chaff dispensers; spare and repair parts, communications equipment, support equipment, simulators, quality assurance teams, tools and test sets, chaff dispensers, Integrated Helmet and Display Sight Systems, 30mm cartridges, electronic equipment, test facility spares, publications, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support.**

(iv) **Military Department: Army (YVS, YVT, OFQ, KZJ, KWW, and BQS)**

(v) **Prior Related Cases, if any: FMS case JAJ - $404 million - Cancelled**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress: 26 JUN 2001**

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Republic of Korea - AH-64D Apache Helicopters

The Republic of Korea Government (ROKG) has requested the possible sale of 36 AH-64D Apache attack helicopters; 14 spare T-700-GE -701C engines; 85 M299 HELLFIRE launchers; 410 AGM-114L1 and 576 AGM-114K1 HELLFIRE II laser guided missiles; 40 AGM-114 training and 40 AGM-114 dummy missiles; 310 STINGER Block 1 missiles; two spare Modernized Targeting Acquisition and Designation Systems; 16 AN/APG-78 Longbow Fire Control Radar; 39 AN/ARC-210 SINCGARS radios with HAVE QUICK; 23,904 2.75 rockets, M130 chaff dispensers; spare and repair parts, communications equipment, support equipment, simulators, quality assurance teams, tools and test sets, chaff dispensers, Integrated Helmet and Display Sight Systems, 30mm cartridges, electronic equipment, test facility spares, publications, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $2.4 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

Korea desires these articles to fulfill their strategic commitments for self-defense and self-reliance. The proposed sale will upgrade its anti-armor day/night missile capability, provide for the defense of vital installations and provide close air support for the military ground forces. Korea will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Boeing Company in Mesa, Arizona; Lockheed Martin Electronics and Missiles in Orlando, Florida; Lockheed Martin Federal Systems in Owego, New York; General Electric in Lynn, Massachusetts; and Longbow LLC in Orlando, Florida. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this sale will require the assignment of several U.S. Government Quality Assurance Teams to Korea for one month to assist in the delivery and deployment of the missiles. There will be up to 15 U.S. Government representatives for two-week intervals twice annually to participate in program management and technical reviews. Five contractor representatives will serve as technical representatives for a period of three years following initial deployment. Contractor representatives representing varying technical skills and disciplines will be required to provide in-country support for an extended period of time. The specific requirements for this support will be established during program definition between representatives of the United States Government and the purchaser.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

The ROKG is also considering a competing bid for 36 Super Cobra helicopters.

Transmittal No. 01-16

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

Classified Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AH-64D Apache Attack Helicopter includes the following classified or sensitive components:

a. AN/APG-78 Longbow Fire Control Radar (FCR) is an active fire control radar system providing detection, location, classification and prioritization of targets to be prosecuted by the Longbow HELLFIRE Modular Missile System or handed over to other on-board sensor systems. This enables the Apache helicopter to detect and fire upon targets in visual conditions that preclude the use of visual or infrared imaging systems. Hardware is Unclassified, releasable technical manuals for operation and organic level maintenance are Unclassified. The data, including operational software, proposed for release will not, in itself, facilitate reverse engineering.

b. AN/APR-48A Radar Frequency Interferometer (RFI) is part of the AN/APG-78 FCR. It passively detects, locates in azimuth, and identifies radar emitters and sends the emitter identification and location to either the FCR or to the Apache Weapons Processor for display to the aircrew. Emitter information can also be used to cue the FCR, as well as for making decisions on FCR target prioritization. Hardware is classified Confidential when the User Data Module (UDM) is attached to the RFI Processor Assembly, Unclassified when the UDM is absent. Releasable technical manuals for operation and organic level maintenance are Unclassified. The data, including operational software, proposed for release will not facilitate reverse engineering.

c. The Modernized Target Acquisition and Designation Sight/Pilot Night Vision Sensor (TADS/PNVS) with Optical Improvements (OIP) system provides day, night, limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), television, and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware is Unclassified. Technical manuals for authorized maintenance levels are Unclassified. Reverse engineering is not a major concern.

d. The AGM-114K1 and AGM-114L1 HELLFIRE air-to-surface laser missile hardware and documentation are unclassified. Missile performance parameters and characteristics, including susceptibility to countermeasures, are classified up to Secret and considered very sensitive. Missile hardware is considered sensitive and knowledge of the warhead timing mechanism would be useful in development of countermeasures. Technology contained within the missile is sensitive and Unclassified. The sensitivity of the system is primarily in the software programs which enable the missile to operate in a countermeasures environment. Training, maintenance, operations and related documentation are unclassified and not considered sensitive.

e. The Stinger Block I missile, Platform Launch, was specifically designed to counter the threat of high speed, maneuvering aircraft, advanced helicopters and UAVs/RVS.

The Stinger Weapon System affords a quick reaction, fire and forget capability not available with conventional defense systems. Stinger utilizes a passive IR/UV seeker and proportional navigational guidance, which allows the gunner to acquire, track and engage targets at any aspect. The materiel is classified Confidential and the releasable technical manuals are Restricted.

f. AN/ALQ-144A(V)3 Infrared Countermeasure Set - an active, continuous operating, omni-directional, electrically fired infrared jammer system designed to confuse or decoy threat IR missile systems, in conjunction with low reflective paint and engine suppressors. Hardware is classified Confidential. Technical manuals for authorized maintenance levels are classified Secret. Reverse engineering and development of counter-countermeasures are concerns if the hardware and releasable technical data were compromised.

g. M130 Chaff-flare Dispenser - a multi-purpose system which dispenses decoys to confuse threat radar and missile IR seekers. Radar cross section and frequency coverage are sensitive elements. Hardware is Unclassified. Technical publications for authorized maintenance levels are Unclassified. Aircraft optimization is the critical element; reverse engineering is not a major concern.

h. AN/APR-39A(V)4 Radar Signal Detecting Set - provides warning of a radar directed air defense threat to permit appropriate countermeasures. It is programmed with appropriate threat data. Hardware is classified Confidential. Technical manuals for the maintenance levels are classified Confidential. Technical performance data is classified Secret.

i. AN/ALQ-136(V)5 Radar Jammer Countermeasure Sets - an omni-directional radar jammer which provides protection against threat radar detecting devices. Equipment is programmed with appropriate threat data provided by purchasing country. Hardware is classified Confidential. Releasable technical manuals for the maintenance are classified Secret; releasable technical performance data is classified Secret. Technology involved in design, manufacturing and testing of the jammer is sensitive. Reverse engineering is a primary concern.

j. The Suite of Integrated Radio Frequency Countermeasures (SIRFC)/Suite of Integrated Infrared Countermeasures detects, identifies, and counters multiple, simultaneous, modern surface and airborne threat radars. SIRFC combines both radar warning and electronic countermeasures, and also provides full-threat radar warning frequency coverage including millimeter wave, while countering pulse, pulse doppler, continuous wave, and pulse compression threats.

k. AN/AVR-2A(V) Laser Warning Set is a passive laser warning system which receives, processes and displays threat information resulting from aircraft illumination by lasers, on the multi-functional display. The hardware is classified Confidential. Technical manuals for operation and maintenance levels are classified Secret.

l. AN/ARC-210 SINCGAR radio with HAVE QUICK II is a voice communications radio system and considered unclassified without HAVE QUICK II. HAVE QUICK II employs cryptographic technology which is classified Secret. Classified elements include operating characteristics, parameters, technical data, and keying material.

m. AN/APX-100 Identify Friend or Foe (IFF) Mode IV is Classified. Software is classified Confidential. Classified elements of the IFF system include operating characteristics, parameters, and technical data.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 01–18062 Filed 7–18–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01–17]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 01–17 with attached transmittal, policy justification, and Sensitivity of Technology.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 JUN 2001
In reply refer to:
I-01/006650

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-17 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and service estimated to cost $1.6 billion. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 01-17

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Republic of Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$1.3 billion
Other	$ .3 billion
TOTAL	$1.6 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Thirty-six AH-1Z Super Cobra helicopters, 14 spare T-700-GE-701C engines, 72 SIDEWINDER launchers, 85 M299 HELLFIRE launchers, 100 AIM-9X SIDEWINDER missiles, 576 AGM-114K1 HELLFIRE air-to-surface laser missiles, 40 AGM-114 training and 40 AGM-114 dummy missiles, 39 AN/ARC-210 SINCGARS radios with HAVE QUICK, 400 2.75 inch rockets, M130 chaff dispensers, 20mm cannons and rounds, rockets, spare and repair parts, communications equipment, support equipment, tools and test sets, supply support, publications, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support.

(iv) Military Department: Navy (SDK) and Army (YWA)

(v) Prior Related Cases, if any: FMS case YII - $215 million - Cancelled

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 26 JUN 2001

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Republic of Korea - AH-1 Cobra Attack Helicopters

The Republic of Korea Government (ROKG) has requested the possible sale of 36 AH-1Z Super Cobra helicopters, 14 spare T-700-GE-701C engines, 72 SIDEWINDER launchers, 85 M299 HELLFIRE launchers, 100 AIM-9X SIDEWINDER missiles, 576 AGM-114K1 HELLFIRE air-to-surface laser missiles, 40 AGM-114 training and 40 AGM-114 dummy missiles, 39 AN/ARC-210 SINCGARS radios with HAVE QUICK, 2.75 inch rockets, M130 chaff dispensers, 20mm cannons and rounds, rockets, spare and repair parts, communications equipment, support equipment, tools and test sets, supply support, publications, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $1.6 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

Korea desires these articles to fulfill their strategic commitments for self-defense and self-reliance. The proposed sale will upgrade its anti-armor day/night missile capability, provide for the defense of vital installations and provide close air support for the military ground forces. Korea, which already has Cobra helicopters in its inventory, will have no difficulty absorbing these helicopters.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Bell Helicopter Textron, Incorporated in Hurst, Texas and Lockheed Martin in Orlando, Florida. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this sale will require the assignment of three contractor technical representatives for three years during initial delivery and system check out of the Cobra helicopters.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

The ROKG is also considering a competing bid for 36 Apache attack helicopters.

Transmittal No. 01-17

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AH-1Z Super Cobra helicopter is unclassified. Sensitive and/or classified (up to Secret) elements of the AH-1Z Super Cobra helicopter include hardware, accessories, components, and associated software for the following:

a. The external view of the AIM-9X SIDEWINDER missile is Unclassified and not sensitive. The AIM-9X features a high off bore-sight seeker, enhanced countermeasure rejection capability, improved acquisition range and the ability to integrate with aircraft sensors e.g. radar and Helmet Mounted Cueing System. The Seeker/Guidance and Control Section and the Target Detector are Confidential and contain sensitive state-of-the-art technology. Specifically, the infrared seeker sensitivity is a significant improvement over the previous AIM-9 variants.

b. Manuals and technical documents for the AIM-9X that are necessary or operational use and organizational maintenance have portions classified up to Secret. Performance and operating logic of the counter-countermeasures circuits are Secret. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and similar critical information.

c. The AGM-114K1 HELLFIRE air-to-surface laser missile hardware and documentation are unclassified. Missile performance parameters and characteristics, including susceptibility to countermeasures, are classified up to Secret and considered very sensitive. Missile hardware is considered sensitive and knowledge of the warhead timing mechanism would be useful in development of countermeasures. Technology contained within the missile is sensitive and Unclassified. The sensitivity of the system is primarily in the software programs which enable the missile to operate in a countermeasures environment. Training, maintenance, operations and related documentation are unclassified and not considered sensitive.

d. AN/APX-100 Identify Friend or Foe (IFF) Mode IV is Classified. Software is classified Confidential. Classified elements of the IFF system include operating characteristics, parameters, and technical data.

e. M130 Chaff-flare Dispenser - a multi-purpose system which dispenses decoys to confuse threat radar and missile IR seekers. Radar cross section and frequency coverage are sensitive elements. Hardware is Unclassified. Technical publications for authorized maintenance levels are Unclassified. Aircraft optimization is the critical element; reverse engineering is not a major concern.

g. AN/ALQ-144A(V)3 Infrared Countermeasure Set - an active, continuous operating, omni-directional, electrically fired infrared jammer system designed to confuse or decoy threat IR missile systems, in conjunction with low reflective paint and engine suppressors. Hardware is classified Confidential. Technical manuals for authorized

maintenance levels are classified Secret. Reverse engineering and development of counter-countermeasures are concerns if the hardware and releasable technical data were compromised.

h. AN/APR-39A(V)4 Radar Signal Detecting Set - provides warning of a radar directed air defense threat to permit appropriate countermeasures. It is programmed with appropriate threat data. Hardware is classified Confidential. Technical manuals for the maintenance levels are classified Confidential. Technical performance data is classified Secret.

i. AN/AVR-2A(V) Laser Warning Set is a passive laser warning system which receives, processes and displays threat information resulting from aircraft illumination by lasers, on the multi-functional display. The hardware is classified Confidential. Technical manuals for operation and maintenance levels are classified Secret.

j. Target Sight System (TSS) provides targeting forward looking, visible light TV, and designating and ranging laser functions to provide strike targeting and terminal guidance for precision/non-precision weapons. The TSS provides stand-off weapons with the capability to attack land and ship targets under day/night or adverse weather conditions and provides both automatic and manual tracking of targets. The TSS is classified Secret due to vulnerability to countermeasures and counter-countermeasures capability.

k. AN/ARC-210 SINCGAR radio with HAVE QUICK II is a voice communications radio system and considered unclassified without HAVE QUICK II. HAVE QUICK II employs cryptographic technology which is classified Secret. Classified elements include operating characteristics, parameters, technical data, and keying material.

l. AAR-47(V)2 Missile Warning Receiver System is an aircraft mounted missile warning system. The system is passive and consists of four sensors (receiving antennas) and two other black box Weapons Replaceable Assemblies. The sensors are UV detectors: when a sensor detects a "missile launch", it sends the appropriate signal to the aircraft's central EW processor which then displays the missile alert to the aircrew and can, if selected, control the dispensing of the appropriate countermeasures. The four sensors can also detect laser energy.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 01–18063 Filed 7–18–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: August 8, 2001 from 0830 a.m to 1730 p.m. and August 9, 2001 from 0830 a.m to 1655 p.m.

Place: National Rural Electric Cooperative Association (NRECA), 4301 Wilson Boulevard, Conference Center Room 1, Arlington, VA 22203

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

Dated: July 12, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–18060 Filed 7–18–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Announcement of Interface Control Working Group (ICWG) Meeting for New L2 and L5 Signal Structures

AGENCY: Department of the Air Force, DoD.

ACTION: Notice, Interested parties may submit requests to attend and participate in this ICWG meeting.

SUMMARY: An interface control working group (ICWG) meeting for resolving issues related to ICD–GPS–705 and to ICD–GPS–200 changes is scheduled for July 26–27, 2001. ICD–GPS–705 describes the new civilian GPS signal (L5C) on the L5 frequency (1176.45 MHz). The changes for the civilian signal (L2C) on the L2 frequency (1227.60 MHz) are described in a draft proposed interface revision notice to ICD–GPS–200. Meeting location is to be determined (TBD) and will be based on the number of respondents. A further message to participants will be sent by July 19, 2001. A previous announcement requested the submission of comments regarding these signal descriptions. Comments are due by July 17, 2001. The first day of the meeting will be devoted to discussions of L5 issues. The agenda for the second day is TBD. A final agenda for both days will be sent by July 19, 2001. Submit suggested agenda items to cmdm@losangeles.af.mil. Please respond by July 17, 2001, and include the number of people that will be attending from your organization.

ADDRESSES: Submit meeting attendance requests to SMC/CZER, 2420 Vela Way, Suite 1467, El Segundo CA 90245–4659, ATTN: 1st Lt Reginald C. Victoria, or to ARINC, Inc., 2250 E. Imperial Highway, Suite 450, El Segundo CA 90245–3509, ATTN: Dr. R. Slattery. Submit e-mail requests to *cmdm@losangeles.af.mil*, or to *rhonda.slattery@arinc.com*. Comments may also be sent by fax to (310) 363–6387 or (310) 322–4474.

DATES: The suspense for meeting attendance requests is July 17, 2001. The memo distribution suspense for the meeting location memo is July 19, 2001. The date of the ICWG meeting is July 26–27, 2001.

FOR FURTHER INFORMATION CONTACT: Capt Eric Y. Moore, Configuration Management Processes Coordinator, (310) 363–5117, or 1st Lt Reginald C. Victoria, ICD–GPS–705 Point of Contact, (310) 363–6329, Dr. Rhonda Slattery, ARINC ICD–GPS–705 POC, (310) 726–1654. Addresses above.

SUPPLEMENTARY INFORMATION: The civilian and military communities use the Global Positioning System, which employs a constellation of 24 satellites to provide continuously transmitted signals to enable appropriately configured GPS user equipment to produce accurate position, navigation and time information.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–18077 Filed 7–18–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Revision of MTMC Freight Traffic Rules Publication No. 1B, Item 70, Entitled "Capacity Loads"

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC) as the Department of Defense (DOD) Traffic Manager for surface and surface intermodal traffic management services (DTR vol. 2, pgs 201–13 through 201–14) hereby modifies the text of the existing item entitled "Capacity Load" in the MFTRP 1B item 70. The purpose of this change is to streamline and clarify the application of capacity load by motor carriers doing business with DOD shippers.

DATES: This change is effective September 1, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Lord at (757) 878–8547 or via e-mail at *lords@mtmc.army.mil*.

SUPPLEMENTARY INFORMATION: A notice proposing this change was published in the **Federal Register**, 66 FR 14359, Monday, March 12, 2001. In response to this notice, a total of three (3) comments were received. A summary of the comments and MTMC's responses are as follows:

Comment one (1): Elimination of Double-Type van trailers will prevent carriers' from receiving sufficient revenue when hauling light and bulky freight.

Response one (1): MTMC recognizes the important role that less-than-truckload (LTL) carriers play in the Defense Transportation System (DTS) and in no-way intends to harm that section of the industry. It must also be recognized that equipment AV1 and AY1 also know as "Pups" are not the conveyance of choice for shipments which are light and bulky. Larger equipment is required and should be requested. MTMC will therefore add paragraph 5b to item 70 which states, "This rule also does not apply to charges based on rate qualifiers: AA1, AF1, AY1, AY2, AV1, AZ1, and AG4. However, when a consignor inadvertently tenders a shipment that exceeds 20,000 pounds or 28 linear feet of loading space on the above listed equipment, the carrier is entitled to bill the consignor using a minimum weight of 20,000 pounds or actual weight whichever is greater. The carrier may not substitute a vehicle that is smaller than what is requested by the consignor."

Comment two (2): Commenter took exception to proposed paragraph 1. Where it states, "In order for a shipment to be classified as a capacity load, the BoL must be annotated as "Vehicle Fully Loaded" with an authorized person (e.g., Transportation Officer, Transportation Assistant, etc.), having full knowledge of the shipment, initialing the BoL at the time of pick-up."

Response two (2): MTMC has determined that it is in the best interest of the Government for only authorized personnel with knowledge of the shipment to adjust costing factors on a Bill of Lading (BoL). MTMC also recognizes that contractor personnel operate many facilities. Therefore, paragraph 1 of the item has been altered to state, "In order for a shipment to be classified as a capacity load, the BoL must be annotated as "Vehicle Fully Loaded" with an authorized Government representative (e.g. Transportation Officer, Transportation Assistant, authorized contractor personnel, etc.), having full knowledge of the shipment, initialing the BoL at the time of pick-up."

Comment three (3): The removal of wording from paragraph 1(B) "because of the necessity for segregation or separation from other freight requires the entire vehicle" creates a situation where carriers will lose revenue from loss of loading space.

Response three (3): After careful review, MTMC concurs with comment and the paragraph in question has been restored to original text.

Comment four (4): Addressed paragraph 3 "it is the carrier's responsibility to efficiently load (e.g.

stacking items when appropriate, etc.) on the vehicle provided." Commenter asserted the proposed wording is open to interpretation and dispute and provides no true guidance.

Response four (4): Most DoD facilities are shipper load, but ultimately it is the carriers' responsibility to ensure the safe and efficient loading of the freight. The placement of this text in the Capacity Load rule addresses an infrequent practice of spreading the freight throughout the vehicle in order to qualify for a truckload rate.

The complete text of Item 70 will read as follows:

Capacity Load (Item 70):

1. A shipment is considered a *capacity* load (also known as "*loaded to full visible capacity*", "*loaded to capacity*") when it occupies the full visible capacity of a vehicle, as defined in paragraph 2 below. In order for a shipment to be classified as a capacity load, the BoL must be annotated as "Vehicle Fully Loaded" with an authorized Government representative (e.g., Transportation Officer, Transportation Assistant, authorized contractor personnel, etc.), having full knowledge of the shipment, initialing the BoL at the time of pick-up. Shipments are to be considered as capacity loads if:

a. The shipment occupies 90% of the cargo carrying capacity of the vehicle; or

b. Because of unusual shape or dimensions, or because of the necessity for segregation or separation from other freight, requires the entire vehicle: or

c. Fills a vehicle so that no additional article, equivalent in size to the largest piece tendered, can be loaded in or on the vehicle.

2. For the purposes of this ITEM, a "vehicle" is defined as:

a. A van trailer of not less than forty (40) feet in length and not less than 2,700 cubic feet capacity; or

b. An open top trailer of not less than forty (40) feet in length, or

c. A flatbed trailer of not less than forty (40) feet in length.

3. Under no circumstances shall a carrier bill a shipment as a capacity load if the equipment requested by the shipper, or provided by the carrier, fails to meet the definitions shown in paragraph 2 above. Additionally, it is the carrier's responsibility to ensure the safe and efficient loading of freight (e.g., stacking items when appropriate, etc.) on the vehicle provided.

4. a.The charge for each vehicle loaded to full visible capacity will be based on either the truckload charge, when Rate Qualifiers PL and PM are used; or the highest truckload minimum weight (or actual weight if in excess of the applicable minimum weight) and accompanying truckload rate applicable to the equipment ordered and loaded. Under no circumstances will a line-haul charge be calculated using a minimum weight greater than 45,000 lbs.

b. Shipments rated using line-haul charges based upon Rate Qualifier PQ (MTMC Class 100 Rates) will be calculated using the greater of the actual weight or 40,000 lbs.

Note: All over-dimensional or overweight shipments, as defined in ITEM *415* and ITEM *416*, respectively, are subject to the Spot Bid provisions of ITEM *18*, paragraph 7.

5. a. This rule does not apply to charges based on rate qualifiers: DH (Per CWT per Dromedary Shipment), DL (Per Dromedary Service Shipment), DZ (Per CWT Per Mile Per Dromedary Shipment), PG (Per Gallon), ST (Per Short Ton), MV (Per Mile Per Vehicle Used), PV (Per Vehicle), and PY (Per Gallon Per Mile). Additionally, this rule does not apply to equipment types: AD (Dromedary Box without mechanical restraining devices), AD6 (Dromedary Box with mechanical restraining devices), A10 (410 Dromedary Box without mechanical restraining devices), A16 (410 Dromedary Box with mechanical restraining devices), or A20 (Motor Vehicle Transport Trailer). In the event that additional dromedary rate qualifiers and/or dromedary equipment codes are developed, this rule shall not apply to them as well.

b. This rule also does not apply to charges based on equipment types: AA1, AF1, AY1, AY2, AV1, AZ1, and AG4. However, when a consignor inadvertently tenders a shipment that exceeds 20,000 pounds or 28 linear feet of loading space on the above listed equipment, the carrier is entitled to bill the consignor using a minimum weight of 20,000 pounds or actual weight whichever is greater. The carrier may not substitute a vehicle that is smaller than what is requested by the consignor.

6. The application of capacity load will in no way restrict the carrier from adding additional freight to the equipment and should not be interpreted as a request for Exclusive Use of the vehicle.

Regulatory Flexibility Act: This change is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Paperwork Reduction Act: The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.*, does not apply because no information collection requirement or recordkeeping responsibilities are imposed on offerors, contractors, or members of the public.

Edward Brown, Jr.,

Assistant Deputy Chief of Staff, CONUS Traffic Management.

[FR Doc. 01–18014 Filed 7–18–01; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Anthrax Vaccines

AGENCY: U.S. Army Medical Research and Material Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial No. 09/350,729 entitled "Anthrax Vaccines" and filed July 9, 1999. Foreign rights are also available (PCT/US99/15568). This patent application has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Using the nontoxic PA protein from B. anthracis, a method and composition for use in inducing an immune response which is protective against anthrax in subjects is described.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–18011 Filed 7–18–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exlcusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Differentially Acting OP Detoxifying Sponges

AGENCY: U.S. Army Medical Research and Material Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial No. 09/559,396 entitled "Differentially Acting OP Detoxifying Sponges" filed April 26, 2000. Foreign rights are also available (PCT/US00/11070). This patent application has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A material comprising a porous support and a plurality of enzymes for the removal, decontamination or neutralization of hazardous chemicals such as OP compounds is disclosed. The material may be used on a variety of surfaces, including natural, synthetic, and biological surfaces such as skin and other delicate membranes. Also disclosed is a process of making the material, kits and various methods of reactivation devices for reactivating the enzymatic activity of the material.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–18006 Filed 7–18–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Immobilized Enzymes as Biosensors for Chemical Toxins

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/558,511 entitled "Immobilized Enzymes as Biosensors for Chemical Toxins" filed April 26, 2000. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Methods, compositions and materials useful in the detection of organophosphorus and organosulfur compounds are disclosed. In particular. biosensors wherein a porous or a non-porous support having any enzyme immobilized upon or within are disclosed. The biosensors exhibit enzymatic stability at extreme temperatures and/or denaturing conditions, and similar kinetic characteristics of the soluble form of the enzymes utilized. The enzyme does not leach from the porous or non-porous support and the material retains enzymatic activity after prolonged storage. Differential biosensors are also disclosed.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–18010 Filed 7–18–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Monoclonal Antibodies to Cholesteral and Methods

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent 4,885,256 entitled "Monoclonal Antibodies to Cholesteral and Methods" issued December 5, 1989. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Monoclonal antibodies which demonstrate specific reactivity to cholesterol and methods for the detection of high levels of cholesterol by contacting biological specimens containing cholesterol with the monoclonal antibodies and measuring the formation of antigen-antibody complexes by immunosorbent assay.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–18008 Filed 7–18–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning a Rapid Method to Make OP Detoxifying Sponges Composed of Multiple Immobilized Enzymes of Cholinesterases and OP Hydrolases and Oximes as Reactivators

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/558,512 entitled "A Rapid Method to Make OP Detoxifying Sponges Composed of Multiple Immobilized Enzymes of Cholinesterases and OP Hydrolases and Oximes as Reactivators" filed April 26, 2000. Foreign rights are also available (PCT/US00/11070). This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A material comprising a porous support and a plurality of enzymes for the removal, decontamination or neutralization of hazardous chemicals such as OP compounds is disclosed. The material may be used on a variety of surfaces, including natural, synthetic, and biological surfaces such as skin and other delicate membranes. Also disclosed is a process of making the material, kits and various methods and reactivation devices for reactivating the enzymatic activity of the material.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–18009 Filed 7–18–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Compositions for Use To Deactivate Organophosphates

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent 5,695,750 entitled "Compositions for Use to Deactivate Organophosphates" issued December 9, 1997. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A method of detoxifying organophosphates using mutant cholinesterase which resists aging. The addition of oximes to the cholinesterase further retards aging of the cholinesterase.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–18007 Filed 7–18–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DOD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act, is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between the Department of the Treasury and DoD that their records are being matched by computer. The record subjects are delinquent debtors of the Bureau of the Public Debt., Department of the Treasury, who are current or former Federal employees receiving any Federal salary or benefit payments and who are indebted or delinquent in their repayment of debts to the United States Government under certain programs administered by the Public Debt.

DATES: This proposed action will become effective August 20, 2001 and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the Department of the Treasury and the Defense Manpower Data Center (DMDC) have concluded an agreement to conduct a computer matching program. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal Government so that the Bureau can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between the Department of the Treasury and DMDC is available to the public upon request. Requests should be submitted to the address caption above or to the Debt Collection Officer, Bureau of Public Debt, Hintgen Building, Room 114, P.O. Box 1328, Parkersburg, WV 26106–1328.

Set forth below is the notice of the establishment of the computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on July 10, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 13, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF THE TREASURY/BUREAU OF PUBLIC DEBT, AND THE DEFENSE MANPOWER DATA CENTER, DEPARTMENT OF DEFENSE FOR DEBT COLLECTION

A. PARTICIPATING AGENCIES:

Participants in this computer matching program are the Bureau of Public Debt, Department of the Treasury and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). The Bureau of Public Debt is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient or matching agency, i.e., the agency that actually performs the computer matching.

B. PURPOSE OF THE MATCH:

The purpose of the match is to identify and locate any matched Federal personnel, employed, serving or retired, who owe delinquent debts to the Federal Government under certain programs administered by the Bureau of Public Debt. The Bureau will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982, as amended, when voluntary payment is not forthcoming. These collection efforts will include requests by the Bureau of the military service/employing agency in the case of military personnel (either active, reserve, or retired) and current non-postal civilian employees, and to the Office of Personnel Management in the case of retired non-postal civilian employees to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. AUTHORITY FOR CONDUCTING THE MATCH:

The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001); 31 U.S.C. chapter 37, subchapter I (General) and subchapter II (Claims of the United States Government); 31 U.S.C. 3711, Collection and Compromise; 31 U.S.C. 3716, Administrative Offset; 5 U.S.C. 5514, Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 135, Under Secretary of Defense (Comptroller); Section 101(1) of Executive order 12731; 31 CFR chapter IX, Federal Claims Collection Standards; 5 CFR 550.1101–550.1108 Collection by Offset from Indebted Government Employees (OPM); 31 CFR part 5, subparts B & D (Department of Treasury).

D. RECORDS TO BE MATCHED:

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, from which records will be disclosed for the purpose of this computer match are as follows:

1. The Bureau of Public Debt will use personal data from the following record systems for the match:

a. Record system identified as Treasury/BPD.001, entitled 'Human Resources and Administrative Records,' last published in the **Federal Register** at 66 FR 28222, May 22, 2001.

b. Record system identified as Treasury/BPD.002, entitled 'United States Savings-Type Securities,' last published in the **Federal Register** at 66 FR 28224, May 22, 2001.

c. Record system identified as Treasury/BPD.003 entitled 'United States Securities (other than Savings-type Securities),' last published in the **Federal Register** at 66 FR 28227, May 22, 2001.

d. Record system identified as Treasury/DO.002, entitled "Treasury Integrated Management Information Systems (TIMIS),' last published in the **Federal Register** at 63 FR 69719, December 17, 1998.

e. Record system identified as Treasury/DO.210, entitled 'Treasury Integrated Financial Management and Revenue System,' last published in the **Federal Register** at 63 FR 69741, December 17, 1998.

f. Record system identified as Treasury/DO.211 entitled 'Telephone Call Detail Records,' last published in the **Federal Register** at 63 FR 69743, December 17, 1998.

2. DOD will use personal data from the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Database,' last published in the **Federal Register** at 64 FR 42101, August 3, 1999.

E. DESCRIPTION OF COMPUTER MATCHING PROGRAM:

The Bureau of Public Debt, as the source agency, will provide DMDC with an electronic file which contains the names of delinquent debtors in programs the Bureau administers. Upon receipt of the electronic file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the Bureau's file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB and the Treasury Department, consists of employment records of non-postal Federal employees and military members, active and retired. The 'hits' or matches will be furnished to the Bureau. The Bureau is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with the Bureau's source file and for resolving any discrepancies or inconsistencies on an individual basis. The Bureau will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The electronic file provided by the Bureau of Public Debt will contain data elements of the debtor's name, SSN, internal account numbers and the total amount owed for each debtor on approximately 3400 delinquent debtors. The electronic file provided by DMDC will contain an individual's name, SSN, military service or employing agency and current work or home address.

The DMDC computer database file contains approximately 4.8 million records of active duty and retired military members, including Reserve and Guard, and approximately 3.1 million records of active and retired non-postal Federal civilian employees.

F. INCLUSIVE DATES OF THE MATCHING PROGRAM:

This computer matching program is subject to review by the Office of Management and Budget and Congress. If the mandatory 30 day period for public comment has expired and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange of data at a mutually agreeable time on an annual basis. By agreement between the Department of the Treasury and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. ADDRESS FOR RECEIPT OF PUBLIC COMMENTS OR INQUIRIES:

Director, Defense Privacy Office, 1941 Jefferson Davis Highway, suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 01–18061 Filed 7–18–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement (EIS) on an Application for a Department of the Army Permit Under Section 404 of the Clean Water Act by Alcoa Inc. for Construction and Operation of the Three Oaks Surface Lignite Mine in Lee and Bastrop Counties, TX

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Fort Worth District (USACE), intends to prepare an Environmental Impact Statement (EIS) to assess the environmental, social, and economic effects of issuance of a Department of the Army permit under Section 404 of the Clean Water Act for discharges of dredged and fill material into waters of the United States associated with the proposed construction and operation of a surface lignite mine. In the EIS, the USACE will assess potential impacts associated with a range of alternatives.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about the proposed action and EIS, please contact Ms. Jennifer Walker, Regulatory Project Manager, by letter at Regulatory Branch, CESWF–PER–R, U.S. Army Corps of Engineers, P.O. Box 17300, Fort Worth, Texas 76102–Texas 76102–0300 or by telephone at (817) 978–7547.

SUPPLEMENTARY INFORMATION:

1. Description of the Proposed Project: The applicant, Alcoa, Inc. (Alcoa), proposes to construct and operate the Three Oaks Lignite Mine in Lee and Bastrop Counties, Texas. The Three Oaks Mine lands are in the Brazos and Colorado River basins in east central Texas. The mine would be located to recover lignite from the Wilcox lignite belt, and would be located adjacent to the Alcoa Sandow Mine, which lies immediately to the Northeast of the proposed mine near Rockdale, in Milam and Lee Counties, Texas. The Sandow Mine has been operated by Alcoa since the early 1950s.

Alcoa currently intends to supply approximately 6 million tons per year of lignite to electric power generation plants owned by Alcoa and TXU that supply power to the Alcoa Rockdale Aluminum Smelter. A portion of the electricity generated by TXU is distributed over the TXU electric grid. At a rate of 6 million tons per year, Alcoa estimates that the proposed mine contains over 30 years of lignite fuel for these purposes.

Based upon current mining technologies and costs and the current rate of mining, the Sandow Mine will reach the end of its useful life in approximately five years. The primary purpose of Alcoa's proposed Three Oaks Mine is to continue to provide to provide a long-term source of energy to allow the continued operation of Alcoa's Rockdale aluminum smelter. Alcoa has stated that, to serve this purpose, the energy source must meet the following criteria: (1) Generate, or be used to generate, sufficient amounts of electricity, (2) be delivered to the smelter at a total cost that is stable, predictable, and low enough to sustain the economic viability of the smelter, (3) be available on a secure, firm, and continuous basis over a 30 year period, and (4) be available for use when the existing Sandow Mine is no longer a source of economically-recoverable lignite reserves (five years).

The USACE has received an application for a Department of the Army permit under Section 404 of the Clean Water Act from Alcoa to construct and operate the proposed mine. In accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) the USACE has determined that issuance of such a permit may have a significant impact on the quality of the human environment and, therefore, requires the preparation of an EIS.

2. Alternatives: Alternatives available to the USACE are to: (1) Issue the Department of the Army permit; (2) issue the Department of the Army permit with special conditions; or (3) deny the Department of the Army permit. Alternatives available to Alcoa include: (1) Constructing and operating the new Three Oaks Mine as proposed by Alcoa; (2) constucting and operating the new Three Oaks Mine as proposed by Alcoa, with modifications; (3) developing or acquiring other energy sources, including purchasing power from the electrical grid, converting the existing power plants to utilize western coal, or converting to the use of natural gas; or (4) no action.

3. Scoping and Public Involvement Process: A public meeting (open house format) to gather information on the scope of the EIS, including the issues to be addressed in detail in the document will be conducted on August 21, 2001, form 3 to 9 p.m at the American Legion Hall located oin the south side of U.S. Highway 77, one mile south of U.S. Highway 290, in Giddings, Texas.

4. Significant Issues: Issues to be given significant analysis in the EIS are likely to include, but will not be limited to: The effects of mining activities on the mine's neighbors and nearby communities; streams, wetlands, surface water quantity and quality, groundwater quantity and quality, geologic resources, vegetation, fish and wildlife, threatened and endangered species, soils, prime farmland, noise, light, aesthetics, historic and pre-historic cultural resources, socioeconomics, land use, public roads, and air quality.

5. Cooperating Agencies: At this time, no other federal or state agencies are expected to be cooperating agencies in preparation of the EIS. However, numerous federal and state agencies, including the U.S. Office of Surface Mining, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Railroad Commission of Texas, the Texas Natural Resource Conservation Commission, the Texas Parks and Wildlife Department are expected to be involved in the preparation of, and provide comments on, the EIS.

6. Additional Review and Consultation: Compliance with other federal and state requirements that will be addressed in the EIS include, but will not be limited to, state water quality certification under Section 401 of the Clean Water Act, compliance with the Railroad Commission of Texas regulations regarding surface coal mining, protection of water quality under the Texas Pollutant Discharge Elimination System, protection of air quality under the Texas Air Quality Act, protection of endangered and threatened species under Section 7 of the Endangered Species Act, and protection of cultural resources under Section 106 of the National Historic Preservation Act.

7. Availability of the Draft EIS: The Draft EIS is projected to be available by April 2002. A public hearing will be conducted following the release of the Draft EIS.

Dated: July 12, 2001.

Gordon M. Wells,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 01–18013 Filed 7–18–01; 8:45 am]

BILLING CODE 3710–20–M

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on December 26, 2000, an arbitration panel rendered a decision in the matter of *California Department of Rehabilitation* v. *General Services Administration (Docket No. R–S/99–1).* This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(b) upon receipt of a complaint filed by petitioner, the California Department of Rehabilitation.

FOR FURTHER INFORMATION: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document:

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

SUPPLEMENTARY INFORMATION: Pursuant to section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged improper termination by the General Services Administration (GSA) of a vending permit held by the California Department of Rehabilitation, the State licensing agency (SLA), at the Roybal Building in Los Angeles, California, pursuant to the provisions of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395.

A summary of the facts is as follows: On August 3, 1993, the SLA and GSA entered into a permit agreement to establish a vending facility, including vending machines, at the Roybal Building, 255 East Temple Street, Los Angeles, California. The SLA assigned a permanent vendor to this location with the participation and approval of GSA.

Initially the services provided at the Roybal building consisted primarily of vending machines, but in 1996 GSA remodeled its lobby area to construct a larger facility that provided customers with coffee and various other food items. After completing the remodeling of the vending facility, GSA cancelled the 1993 permit and issued a new permit to the SLA to operate the remodeled facility in the lobby. It was the position of GSA that the newer remodeled facility constituted a new facility that warranted the SLA to conduct a selection process for a vendor to manage the remodeled facility.

Conversely, the SLA took the position that GSA had no right to cancel the 1993 vending permit and that the remodeled facility was not a new facility within the meaning of State rules and regulations that would provide for a new vendor selection process.

The SLA alleged that the real issue focused on GSA's complaint that the vendor, who had been providing service prior to the remodeling of the vending facility, was considered by GSA to be unqualified and unacceptable to manage the remodeled vending facility. The SLA further alleged that GSA demanded that the SLA initiate a selection process for a new vendor to manage the remodeled vending facility only after the facility had been remodeled.

Following the cancellation of the 1993 permit and the SLA's refusal to place another vendor at the facility, GSA awarded a contract to a private concessionaire to operate the Roybal vending facility.

Arbitration Panel Decision

The panel, after considering all of the evidence, ruled that GSA violated the Act and implementing regulations. GSA had no authority to unilaterally cancel the vending permit agreement signed in 1993 between itself and the SLA, since there was no evidence of noncompliance by the SLA with its terms. GSA's issuance of a new permit in 1996 was simply an updated version of the original permit agreement between GSA and the SLA in 1993.

The panel further stated that the new 1996 permit, which essentially upgraded the 1993 permit, obligated GSA to provide a vending facility at the Roybal Building to the SLA so that it could place a qualified blind vendor pursuant to the Act. Additionally, the SLA's original blind vendor had the right to continue to operate the relocated vending facility.

The violations of the Act and the regulations by GSA caused both the SLA and the blind vendor to suffer damages. The damages to the SLA include loss of revenue generated from the blind vendor, which amounts to 6 percent of the net proceeds of the blind vendor. The SLA is also entitled to a fair market rental for its equipment during the time it was being used by GSA.

Finally, the panel instructed GSA that it had 30 days from the date of the panel's decision to provide the SLA with evidence of the blind vendor's lack of qualifications to operate the Roybal Building vending facility; otherwise, GSA would be liable for damages to the blind vendor. The panel ruled that the damages would be the difference between what he had been able to earn and what the private concessionaire earned during the transition period when the SLA was not managing the Roybal Building vending facility, plus interest.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: July 16, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

[FR Doc. 01–18072 Filed 7–18–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Friday, August 3, 2001—3:30 p.m.–9 p.m.

Saturday, August 4, 2001—8 a.m.–4 p.m.

ADDRESSES: Rothchild's, 8807 Kingston Pike, Knoxville, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Annual Retreat To Plan the FY 2002 Workplan

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes

Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on July 16, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–18057 Filed 7–18–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATE: Thursday, August 2, 2001—6 p.m. to 9:30 p.m.

ADDRESSES: Broomfield City Hall, One DesCombes Drive, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Quarterly update by the Colorado Department of Public Health and Environment
2. Final recommendation on Environmental Restoration Rocky Flats Cleanup Agreement (RFCA) Standard Operating Protocol (RSOP) document for the Board's review and approval
3. Second part of Board recommendation development and ongoing educational discussion regarding the Radionuclide Soil Action Level Review
4. Other Board business may be conducted as necessary

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 9 a.m. to 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on July 16, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–18058 Filed 7–18–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2074–000]

Calhoun Power Company I, LLC; Notice of Issuance of Order

July 13, 2001.

Calhoun Power Company I, LLC (Calhoun) filed with the Commission, in the above-docketed proceeding, a proposed tariff under which Calhoun will engage in the sale of wholesale electric capacity, energy, and certain ancillary services at market-based rates, and a long-term service agreement with Alabama Power Company. Calhoun's filing also requested certain waivers and authorizations. In particular, Calhoun requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Calhoun. On July 12, 2001, the Commission issued an order that accepted the tariff for sales of capacity and energy at market-based rates (Order), in the above-docketed proceeding.

The Commission's July 12, 2001 Order granted Calhoun's request for blanket approval under part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Calhoun should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Paragraph

(2) above, Calhoun is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Calhoun, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Calhoun's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 13, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC. 20426. The Order may also be viewed on the on the web at http://www.ferc.gov using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers

Secretary.

[FR Doc. 01–18023 Filed 7–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–483–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

July 13, 2001.

Take notice that on July 10, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective August 10, 2001.

Natural states that these sheets were filed to revise several rate schedules and the General Terms and Conditions of Natural's Tariff by making minor updates in four areas by: (1) Making a minor change to Natural's provision for scheduling interruptible services, (2) eliminating from Natural's service request procedures in various rate schedules certain data elements which are no longer relevant, (3) revising the information which may be kept confidential in a capacity release to reflect the Federal Energy Regulatory Commission's transactional posting requirements and (4) correcting several tariff sheets by eliminating duplicative language and an outdated section reference.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–18032 Filed 7–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2536–000]

New York Independent System Operator, Inc.; Notice of Filing

July 13, 2001.

Take notice that the New York Independent System Operator, Inc. (NYISO) on July 6, 2001 tendered for filing proposed revisions to Sections 5.9–5.16 of its Market Administration and Control Area Services Tariff. The NYISO requests an effective date of 60 days after this filing (September 4, 2001). Take further notice that the NYISO has requested on behalf of the Market Participants that the Commission determine the appropriate translation from Installed Capacity to Unforced Capacity of the $105 cap applicable to In-City generators subject to market power mitigation measures previously adopted by the Commission.

Copies of this filing were served upon all persons who have executed Service Agreements under the ISO Market Services Tariff and all parties included on the service list for Docket No. ER98–3169–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests regarding translation of the $105 cap should be filed on or before July 20, 2001. All such motions and protests regarding proposed revisions to Sections 5.9–5.16 should be filed on or before July 27, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–18027 Filed 7–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–153–001]

Tuscarora Gas Transmission Company; Notice of Amendment

July 13, 2001.

Take notice that on July 6, 2001, Tuscarora Gas Transmission Company (Tuscarora), 1575 Delucchi Lane, Suite

225, Reno, Nevada 89520–3057, filed in Docket No. CP01–153–001, an amendment to its initial application for a certificate of public convenience and necessity filed in Docket No. CP01–153–000. With this amendment, Tuscarora is requesting authority to install, own, operate and maintain a booster unit rated at 637 horsepower and appurtenant facilities as part of Tuscarora's 2002 Expansion Project, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Tuscarora states that it is also filing modified Transportation Service Agreements between Tuscarora and Southwest Gas Corporation as described more fully in the amendment.

Tuscarora states that it filed the initial application for the 2002 Expansion Project on April 12, 2001 for authorization to construct, install, own, operate and maintain facilities necessary to render up to 95,912 dekatherms per day (Dth/d) of firm transportation service to four Expansion Shippers: Sierra Pacific Power Company, Southwest Gas Corporation, Duke Energy North America, L.L.C., and Morgan Stanley Capital Group Inc.

Tuscarora states that this amendment will not affect the total capacity under contract for the 2002 Expansion Project, nor the showing of market need reflected in the initial application. According to Tuscarora, the booster unit proposed in this amendment will be located within the new Paiute Interconnect Meter Station proposed as part of the 2002 Expansion Project and will not require additional land acquisition or ground disturbance. Tuscarora states that since the cost of the booster unit is estimated to be approximately $770,000, the proposed facilities will not affect the overall cost/revenue analysis. According to Tuscarora, this amendment will not affect the total capacity created by the 2002 Expansion Project or the construction schedule proposed in the April 12, 2001 application. Tuscarora states that it proposes to install the booster unit simultaneously with other facilities proposed in the 2002 Expansion Project, commencing in or about April 2002 to meet the first of its Expansion Shippers' in-service dates of November 1, 2002.

Any questions regarding this amendment should be directed to Terry Wolverton, Tuscarora Gas Transmission Company, 1575 Delucchi Lane, Suite 225, P.O. Box 30057, Reno, Nevada 89520–3057, call (775) 834–4292, or fax (775) 834–3886.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 3, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–18026 Filed 7–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF00–2012–001, et al.]

U.S. Department of Energy, *et al.*; Electric Rate and Corporate Regulation Filings

July 13, 2001.

Take notice that the following filings have been made with the Commission:

1. U.S. Department of Energy Bonneville Power Administration

[Docket No. EF00–2012–001]

Take notice that on June 29, 2001, the Bonneville Power Administration (BPA) tendered for filing with the Federal

Energy Regulatory Commission (Commission) proposed supplemental wholesale power rate adjustments pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(a)(2).

BPA seeks interim approval of its proposed rates effective October 1, 2001, pursuant to the Commission's regulation 300.20, 18 CFR 300.20. Pursuant to Commission's regulation 300.21, 18 CFR 300.21, BPA seeks interim approval and final confirmation of the proposed rates for the periods set forth in this notice.

BPA requests approval effective October 1, 2001, through September 30, 2006, for the following proposed wholesale power rates: PF–02 Priority Firm Power Rate, RL–02 Residential Load Firm Power Rate, NR–02 New Resource Firm Power Rate, IP–02 Industrial Firm Power Rate, including the IPTAC, and NF–02 Nonfirm Energy Rate. In addition, BPA requests approval of the adjusted General Rate Schedule Provisions (GRSPs) for the period October 1, 2001, through September 30, 2006. The GRSPs apply to the 2002 wholesale power rates. BPA requests approval of the methodology used to calculate the rate for the Slice product sold under the PF rate schedule for the period October 1, 2001, through September 30, 2011.

Comment date: August 3, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Jackson County Power, LLC

[Docket No. EG01–261–000]

Take notice that on July 11, 2001, Jackson County Power, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The applicant is a limited liability company organized under the laws of the State of Delaware that is engaged directly and exclusively in developing, owning, and operating a gas-fired 1,072 MW combined cycle power plant in Jackson County, Ohio, six miles south of Jackson, Ohio, which will be an eligible facility.

Comment date: August 5, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. PPL Large Scale Distributed Generation II, LLC

[Docket No. EG01–262–000]

Take notice that on July 12, 2001, PPL Large Scale Distributed Generation II, LLC (the Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Delaware limited liability company that will lease one or more "eligible facilities", as defined under PUHCA, including facilities to be located in Arizona, Pennsylvania and Illinois, which it will lease from Large Scale Distributed Generation II Statutory Trust.

Comment date: August 3, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Large Scale Distributed Generation II Statutory Trust

[Docket No. EG01–263–000]

Take notice that on July 12, 2001, Large Scale Distributed Generation II Statutory Trust (the Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Connecticut statutory trust that will own one or more "eligible facilities", as defined under PUHCA, including facilities to be located in Arizona, Pennsylvania and Illinois, which it will lease to PPL Large Scale Distributed Generation II, LLC.

Comment date: August 3, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Cleco Power LLC

[Docket No. ER01–1099–005]

Take notice that Cleco Power LLC (Cleco Power), on July 10, 2001, tendered for filing a substitute original Rate Schedule 12. On June 23, 2001, Cleco Utility's Rate Schedule 15 was canceled and refiled as Cleco Power Rate Schedule 12. Appendix C was inadvertently omitted from Cleco Power's Rate Schedule 12; accordingly, Cleco Power filed a substitute original Rate Schedule 12 that includes Appendix C.

Comment date: July 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Michigan Electric Transmission Company

[Docket No. ER01–2126–001]

Take notice that on July 9, 2001, Michigan Electric Transmission Company tendered for filing an amendment to its original filing in this docket in response to a deficiency letter dated July 2, 2001.

Copies of the filing were served upon FERC Staff and those on the official service list in this proceeding.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Exelon Generation Company, LLC

[Docket No. ER01–2549–000]

Take notice that on July 10, 2001, Exelon Generation Company, LLC (Exelon Generation) submitted for filing with the Federal Energy Regulatory Commission (FERC or the Commission) a service agreement for wholesale power sales transactions between Exelon Generation and WPS Energy Services, Inc. under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff, Original Volume No. 1.

Exelon Generation requests that the Service Agreement be accepted for filing effective as of April 1, 2001.

Comment date: July 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Deseret Generation and Transmission Co-operative, Inc.

[Docket No. ER01–2550–000]

Take notice that on July 10, 2001, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing an executed Confirmation Agreement for a firm power sale between Deseret and Utah Associated Municipal Power Systems (UAMPS). This Confirmation Agreement is filed pursuant to the Western Systems Power Pool Agreement regarding a long-term power purchase and sale transaction. Deseret requests an effective date of July 1, 2001.

Comment date: July 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Cincinnati Gas & Electric Company

[Docket No. ER01–2551–000]

Take notice that on July 10, 2001, Cincinnati Gas & Electric Company (CG&E) submitted an application for reclassification of its transmission and distribution facilities as required by the Ohio Public Utilities Commission. In accordance with the seven-factor test established by the Commission in Order No. 888, CG&E proposes to designate all of its directly-owned Ohio facilities

operated at 69 kV and above as FERC-jurisdictional transmission facilities and to designate all of its remaining Ohio facilities as state-jurisdictional distribution facilities. The sole purpose of this application is to facilitate unbundled retail transmission in the state of Ohio. CG&E does not seek in this application to adjust its service rates.

Comment date: July 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Central Maine Power Company

[Docket No. ER01–2552–000]

Take notice that Central Maine Power Company (CMP), on July 10, 2001, tendered for filing pursuant to Section 205 of the Federal Power Act (FPA) of the Federal Energy Regulatory Commission (Commission or FERC), an Amendment to System Contract Entitlement Agreement (Amendment) between CMP and Engage Energy America LLC (Engage) and, in compliance with Order No. 614, FERC Stats. & Regs. 31,096 (2000), a First Revised System Contract Entitlement Agreement between CMP and Engage (First Revised Agreement), revised pursuant to the Amendment.

CMP respectfully requests that the Commission accept the Amendment and the First Revised Agreement effective as of June 26, 2001, without modification or condition, and grant waiver of any and all requirements, including the Commission's notice requirements for good cause, for both agreements to become effective. Copies of this filing have been served on Engage and the State of Maine Public Utilities Commission.

Comment date: July 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Lakefield Junction, L.P.

[Docket No. ER01–2553–000]

Take notice that on July 10, 2001, Lakefield Junction, L.P. tendered for filing under its market-based rate tariff a long-term service agreement with Great River Energy.

Comment date: July 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER01–2556–000]

Take notice that Northeast Utilities Service Company (NUSCO), on July 9, 2001, tendered for filing, Service Agreement to provide Firm Point-To-Point Transmission Service to Select Energy Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9. NUSCO states that a copy of this filing has been mailed to Select Energy Inc.

NUSCO requests that the Service Agreement become effective September 1, 2001.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER01–2557–000]

Take notice that on July 9, 2001, Northeast Utilities Service Company (NUSCO), on tendered for filing, Service Agreement to provide Non-Firm Point-To-Point Transmission Service to Select Energy Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9. NUSCO states that a copy of this filing has been mailed to Select Energy Inc.

NUSCO requests that the Service Agreement become effective September 1, 2001.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Golden Spread Electric Cooperative, Inc.

[Docket No. ER01–2558–000]

Take notice that on July 10, 2001, Golden Spread Electric Cooperative, Inc. (Golden Spread) tendered for filing with the Commission an Informational Filing to Rate Schedule No. 35. The Informational Filing updates the formulary fixed costs associated with replacement energy sales by Golden Spread to the customer, Southwestern Public Service Company (Southwestern). Golden Spread has also submitted the filing in an Order No. 614 compliant format. A copy of this filing has been served upon Southwestern.

Comment date: July 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. ISO New England Inc.

[Docket No. ER01–2559–000]

Take notice that on July 10, 2001, ISO New England Inc., submitted as a Section 205 filing in the above Docket a new proposal for eliminating the external contract floor price, effective September 1, 2001.

Comment date: July 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Western Resources, Inc.

[Docket No. ER01–2570–000]

Take notice that on July 10, 2001, Western Resources, Inc. (Western Resources) tendered for filing a Service Agreement between Western Resources and the cities of Burlingame, Clay Center, Ellinwood, Herington, Holton, Larned, Minneapolis, Osage City, Sabetha, Stafford, Sterling and Wamego, Kansas (Cities). Western Resources states that the purpose of these agreements is to permit the Cities to take service under Western Resources' Market Based Power Sales Tariff on file with the Commission. This agreement is proposed to be effective June 15, 2001.

Copies of the filing were served upon the Kansas Corporation Commission and the Cities.

Comment date: July 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Duke Energy Corporation/Duke Energy Fossil-Hydro, LLC/Duke Energy Nuclear, LLC

[Docket No. EL01–101–000]

Take notice that on July 10, 2001, Duke Energy Corporation d/b/a Duke Power (Duke Power), Duke Energy Fossil-Hydro, LLC (Duke Fossil) and Duke Energy Nuclear, LLC (Duke Nuclear) filed a petition with the Commission for a declaratory order (i) disclaiming jurisdiction under Sections 201(e) and 205 of the Federal Power Act (FPA) over Duke Fossil and Duke Nuclear with respect to the day-to-day operation and maintenance services each will provide to Duke Power pursuant to operation and maintenance agreements related to generation facilities owned by Duke Power; (ii) disclaiming jurisdiction under Section 203 of the FPA over Duke Power's delegation to Duke Fossil and Duke Nuclear of day-to-day operation and maintenance responsibilities under the respective operation and maintenance agreements to the extent such activities may apply to FPA jurisdictional facilities under Part II of the FPA (FPA Jurisdictional Facilitates); and (iii) that Duke Fossil does not need to become a co-licensee on the hydro-electric licenses issued to Duke Power under Part I of the FPA with respect to the hydro-electric facilities owned or leased by Duke Power that Duke Fossil may operate and maintain under the operation and maintenance agreement.

Comment date: August 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–18069 Filed 7–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP00–40–000, –001, and –002]

Florida Gas Transmission Company; Notice of Availability of the Final Environmental Impact Statement for the Proposed FGT Phase V Expansion Project

July 13, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) to assess the environmental impact associated with the construction of facilities proposed by Florida Gas Transmission Company (FGT) and referred to in this final EIS as the FGT Phase V Expansion Project in the above-referenced docket.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the FGT Phase V Expansion Project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The final EIS evaluates alternatives to the proposal, including system alternatives, route alternatives, and route variations.

The final EIS assesses the potential environmental effects of the construction and operation of the proposed facilities in Mississippi, Alabama, and Florida.

The purpose of the FGT Phase V Expansion Project is to transport up to 112,487 million cubic feet per day of natural gas on an annual basis to seven electric generation customers and others in Florida. Three of these customers, representing 94 percent of proposed transportation capacity, are in the process of developing and constructing additional gas-fired electric generating capacity to serve the growing market for electricity in Florida. FGT estimates the total cost of its Phase V Expansion Project at $452 million.

FGT proposes to construct and operate an interstate natural gas pipeline and associated aboveground facilities under Section 7(c) of the Natural Gas Act (NGA) and Title 18, CFR, Part 157. FGT proposes to expand its existing 5,225-mile-long natural gas pipeline transmission system by the construction of approximately 165.8 miles of pipeline loops and laterals, 132,615 horsepower of additional compression at nine existing and three new compressor stations, and other associated auxiliary facilities in various locations in Mississippi, Alabama, and Florida.

In addition, FGT proposes to acquire from Koch Gateway Pipeline Company (KGPC) an interest in KGPC's Mobile Bay Lateral that would give FGT the rights to about 50 percent of the available capacity on that system. Concurrent with FGT's filing, KGPC filed an application in Docket No. CP00–39–000 for approval to abandon by sale to FGT the interest in its Mobile Bay Lateral. However, the environmental analysis of this action qualifies as a categorical exclusion and is not included in the EIS.

The final EIS has been placed in the public files of the FERC and is available for public inspection at:

Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the final EIS have been mailed to Federal, state and local agencies, public interest groups, individuals who have requested the final EIS, newspapers, and parties to this proceeding.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing the National Environmental Policy Act, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of an final EIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the final EIS is published, allowing both periods to run concurrently. The Commission decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.gov) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 01–18025 Filed 7–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11428–000; Michigan]

Municipal Dam Hydro Project; Notice of Availability of Draft Environmental Assessment

July 13, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Municipal Dam Hydroelectric Project, located on the Pine River in Gratiot County, Michigan, and has prepared a Draft Environmental Assessment (DEA) for the project.

Copies of the DEA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The DEA may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link,

select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Any comments (an original and 8 copies) should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. For further information, contact Susan O'Brien at (202) 219–2840 or *susan.obrien@ferc.fed.us*.

David P. Boergers,

Secretary.

[FR Doc. 01–18028 Filed 7–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

July 13, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12054–000.

c. *Date filed:* June 18, 2001, supplemented July 10, 2001.

d. *Applicant:* David R. Croft

e. *Name of Project:* Camptonville Pow-Our House Project

f. *Location:* Would utilize the existing Our House and Log Cabin Diversion Dams and Lohman and Camptonville Tunnels of Yuba County Water Agency's Yuba River Project No. 2246, on the Middle Fork Yuba River and Oregon Creek, and would locate two new developments on Willow Creek, within the Tahoe National Forest in Yuba and Sierra Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Ms. Ellen D. McCarthy, 4715 Lofty Grove, Oceanside, CA 92056, (760) 941–6618.

i. *FERC Contact:* James Hunter, (202) 219–2839.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12054–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of six units of development; all of the described project works are proposed. (1) The unit at Our House Diversion Dam would consist of a 48-inch-diameter, 500-foot-long penstock connecting to the dam outlet, a powerhouse containing a 1,775-kW generating unit, and a 1.5-mile-long transmission line. (2) The unit at the Lohman Tunnel outlet would consist of a turbine placed in the outlet, a powerhouse above the outlet containing a 628-kW generating unit, and a 0.5-mile-long transmission line. (3) The unit at the Log Cabin Diversion Dam would consist of a 24-inch-diameter, 500-foot-long penstock connecting to the dam outlet, a powerhouse containing a 325-kW generating unit, and a 0.5-mile-long transmission line. (4) The unit at the Camptonville Tunnel outlet would consist of a turbine placed in the outlet, a powerhouse above the outlet containing an 800-kW generating unit, and a 1.0-mile-long transmission line. (5) The unit on Lower Willow Creek would consist of a four-foot-high concrete weir at elevation 2,300 feet, a 24-inch-diameter, 1,600-foot-long penstock connecting to a powerhouse containing a 1,810-kW generating unit, and a 1.0-mile-long transmission line. (6) The unit on Upper Willow Creek would consist of an existing 50-foot-high, 100-foot-long concrete debris dam at elevation 2,640 feet, a 18-inch-diameter, 100-foot-long penstock connecting to a powerhouse containing a 603-kW generating unit, and a 200-foot-long transmission line. The project would have an annual generation of 39.5 GWh, the market for which has not been determined.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding.

Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–18029 Filed 7–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

July 13, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12060–000.

c. *Date filed:* July 2, 2001.

d. *Applicant:* Mark R. Frederick.

e. *Name of Project:* Auburn PG&E Wise Canal Power Project.

f. *Location:* Would utilize the existing Wise Canal and Rock Creek Lake of Pacific Gas & Electric Company's Drum-Spaulding Project No. 2310, in Placer County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Mark R. Frederick, 17825 Crother Hills Road, Meadow Vista, CA 95722, (530) 887–1984.

i. *FERC Contact:* James Hunter, (202) 219–2839.

j. *Deadline for filing motions to intervene, protests, and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12060–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project, using Pacific Gas & Electric Company's existing Wise Canal and Rock Creek Lake, would consist of: (1) A proposed intake structure at an existing holding pond on the canal, (2) a proposed 800-foot-long, 8-foot-diameter penstock, (3) a proposed powerhouse containing a 900-kilowatt generating unit, (4) a proposed draft tube emptying into the lake, (5) a proposed 200-foot-long transmission line, and (6) appurtenant facilities. The project would have an annual generation of 7.8 GWh that would be sold to Pacific Gas & Electric Company or a power distributor.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued,

does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–18030 Filed 7–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

July 13, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12069–000.

c. *Date filed:* July 6, 2001.

d. *Applicant:* Mark R. Frederick.

e. *Name of Project:* Rock Creek Lake Outlet Power Project.

f. *Location:* Would utilize the existing Rock Creek Lake and Wise Canal of Pacific Gas & Electric Company's Drum-Spaulding Project No. 2310, in Placer County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Mark R. Frederick, 17825 Crother Hills Road, Meadow Vista, CA 95722, (530) 887–1984.

i. *FERC Contact:* James Hunter, (202) 219–2839.

j. *Deadline for filing motions to intervene, protests, and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12069–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project, using Pacific Gas & Electric Company's existing Rock Creek Lake and Wise Canal, would consist of: (1) a proposed gated intake attached to the existing outfall conduit from the lake, (2) a proposed 100-foot-long, 6-foot-diameter penstock, (3) a proposed powerhouse containing a 600-kilowatt generating unit, (4) a proposed tailrace emptying into the canal, (5) a proposed connection to an overhead transmission line, and (6) appurtenant facilities. The project would have an annual generation of 5.2 GWh that would be sold to Pacific Gas & Electric Company or a power distributor.

l. Copies of this filing are on file with the Commission and are available for public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include

an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–18031 Filed 7–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

July 13, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Exempt

1. Project No. 2835–005; 07–03–01; Jack Hannula.
2. Project No. 2016; 07–05–01; Allyson Brooks.
3. CP00–412–000; 07–12–01; David Swearingen.
4. Project No. 2055; 07–11–01; John Sullivan.
5. DO01–2–000; 07–13–01; Dean Schnitzler.

David P. Boergers,

Secretary.

[FR Doc. 01–18024 Filed 7–18–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7014–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Compliance Assistance Surveys for the Marina, Metal Finishing, Construction Site, and Auto Salvage Yard Sectors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Compliance Assistance Surveys for the Marina, Metal Finishing, Construction Site, and Auto Salvage Yard Sectors (EPA ICR Number 2021.01). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 20, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 2021.01 to the following addresses: Sandy Farmer, U.S.

Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at Farmer.Sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 2021.01. For technical questions about the ICR contact Lynn Vendinello on (202) 564–7066.

SUPPLEMENTARY INFORMATION:

Title: Compliance Assistance Surveys for the Marina, Metal Finishing, Construction Site, and Auto Salvage Yard Sectors (EPA ICR Number 2021.01). This is a new collection.

Abstract: EPA's Office of Compliance (OC) is interested in testing methods for collecting outcome data from their compliance assistance efforts. OC is planning to conduct surveys to three sectors to compare two survey methodologies: mailed surveys using the "total design method" and surveys conducted as on-site visits. EPA will also use the survey results to evaluate the impact of compliance assistance activities on facilities in these sectors. These surveys will support OC in collecting statistically valid compliance assistance outcome data needed to present the impacts of compliance assistance for Government Performance and Results Act (GPRA) reporting purposes. OC is interested in conducting the surveys for sectors in three stages of analysis/activity: (1) A sector for which OC is beginning a compliance assistance effort (marinas); (2) a sector for which OC/EPA have conducted several compliance assistance activities (metal finishing); and (3) a sector for which OC doesn't have sufficient information to determine compliance assistance needs (either construction sites or auto salvage yards).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 23, 2001 (66 FR 16223). EPA received two written comments; one from the Automotive Recyclers Association and the other from the Institute of Scrap Recycling Industries. EPA also met with and received comment from Christian Richter of The Policy Group which represents the Association of Electroplaters and Surface Finishers, National Association of Metal Finishers, and Metal Finishers Suppliers Association.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 1 hour per response for the mailed surveys in each sector and 4 hours per response for the site visit surveys in each sector. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Marina, Metal Finishing, Construction Site, and Auto Salvage Yard Sectors.

Estimated Number of Respondents: 700.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 1,900 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2021.01 in any correspondence.

Dated: July 10, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–18096 Filed 7–18–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7013–2]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed Settlement Agreement, which was filed with the United States Court of Appeals for the District of Columbia Circuit by the United States Environmental Protection Agency ("EPA") on June 29, 2001, to address a lawsuit filed by the Clean Air Implementation Project and the National Environmental Development Association's Clean Air Regulatory Project (collectively referred to as the "Project"). The Project filed a petition for review pursuant to section 307(b) of the Act, 42 U.S.C. 7607(b), challenging EPA's policy, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunction, Startup and Shutdown," ("1999 Policy"), which is dated September 20, 1999. *Clean Air Implementation Project* v. *EPA*, No. 99–1470 (D.C. Cir.). The 1999 Policy clarifies the types of provisions addressing emissions in excess of applicable emission limits that EPA believes may appropriately be approved as part of a state implementation plan ("SIP").

DATES: Written comments on the proposed Settlement Agreement must be received by August 20, 2001.

ADDRESSES: Written comments should be sent to Jan M. Tierney, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC. 20460. Copies of the proposed Settlement Agreement are available from Phyllis J. Cochran, (202) 564–5566. A copy of the proposed Settlement Agreement was filed with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on June 29, 2001.

SUPPLEMENTARY INFORMATION: The Project alleges that EPA's issuance of the 1999 Policy was arbitrary and capricious and in excess of EPA's statutory authority. EPA issued the 1999 Policy to clarify issues that had arisen since the Agency's pronouncement on the same issues in 1982 and 1983 in two memoranda issued by Kathleen Bennett, who at that time was the Assistant

Administrator for Air, Noise and Radiation.

The proposed Settlement Agreement provides for the Project to dismiss its challenge if EPA issues a brief memorandum clarifying certain issues in the 1999 Policy and if that brief memorandum is substantially similar to what is set forth as Attachment A to the proposed Settlement Agreement. In general, the brief memorandum would provide that the 1999 Policy was intended to provide the parameters for EPA review of future SIP submissions and was not intended to be legally dispositive when interpreting existing approved SIPs in the context of enforcement proceedings.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Settlement Agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Settlement Agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the proposed Settlement Agreement will be final.

Dated: July 9, 2001.

John T. Hannon,

Acting Associate General Counsel.

[FR Doc. 01–17908 Filed 7–18–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7014–6]

Notice of Public Meetings; Extension of Intel Project XL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that Intel and EPA plan to continue their innovative partnership under the Excellence and Leadership Program (XL) through renewal of an existing agreement. Because the Intel XL Project is based on strong stakeholder involvement, Intel and EPA are announcing a series of public meetings at which extension of the Intel XL Project will be discussed. Intel and EPA are inviting public participation at those meetings for those people interested in the Intel XL Project, or the XL Program in general. Public participation is also encouraged via the internet.

DATES AND ADDRESSES: All public meetings will be held at the Chandler Public Library, City Council Chamber, 2nd Floor, 222 E. Commonwealth Ave., Chandler, Arizona at 6:30 p.m. Meetings will be held on the following dates:
July 24, 2001
August 21, 2001
September 18, 2001
October 16, 2001
November 13, 2001

FOR FURTHER INFORMATION CONTACT: Colleen McKaughan, Associate Director, Air Division (AIR–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105; Telephone: (520) 498–0118; Email:mckaughan.colleen@epa.gov.

SUPPLEMENTARY INFORMATION: In March of 1995, EPA announced a new environmental program called Project XL, or Excellence and Leadership. The purpose of this program is to work with interested companies, state and local agencies, and communities to develop innovative approaches for addressing environmental issues. Among the qualifications for an XL Project, a company's innovative ideas must provide better environmental performance compared to compliance with both current and future regulations, produce cost savings, and significantly involve the community.

Intel Corporation was an early volunteer for this program and sponsor of one of the first eight projects selected by EPA in November 1995. Intel convened a stakeholder team made up of representatives of EPA, the Gila River Indian Community, the State of Arizona, Maricopa County, the City of Chandler, and four members of the public. The stakeholder team developed a project that provided operational flexibility for Intel while providing greater environmental protection to the community. The details of the project are spelled out in the Final Project Agreement (FPA) dated November 19, 1996 (available on EPA's website at *http://www.epa.gov/ProjectXL/intel/index.htm* and Intel's website at *http://www.intel.com/intel/other/ehs/projectxl*). The FPA was signed by the stakeholders, and has been implemented successfully as a pilot project over the last 5 years.

Intel and EPA would like to extend the Intel XL Project for another 5 years, based on the successful pilot program. This extension is also supported by the stakeholders, most of whom have participated in the project's implementation over the past 5 years. In order to extend the project, the FPA and Intel's operating permit need to be renewed. Intel and EPA would like to invite the public to participate in the discussions related to these renewals.

There are several ways to participate. People can attend the meetings which are listed in this notice, or they can participate through the internet. Comments can be posted to the Intel website at http://www.alt-path.com/ocotillo. If you wish to speak to someone in person regarding participating in this effort, you may also contact Colleen McKaughan of EPA at: 520–498–0118 or mckaughan.colleen@epa.gov.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 12, 2001.

Elizabeth A. Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. 01–18095 Filed 7–18–01; 8:45 am]

BILLING CODE 6560–50–U

EVIRONMENTAL PROTECTION AGENCY

[OPP–34225G; FRL–6791–9]

Diazinon; Products Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's cancellation order for the product and use cancellations as requested by three companies (Drexel Chemical Co., Aventis Environmental Science and Gowan Co., hereafter collectively referred to as the "MUP Registrants") that hold the registrations of pesticide manufacturing-use and end-use products (MUPs and EUPs) containing the active ingredient diazinon and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a May 30, 2001, notice of receipt of the three companies' requests for cancellations and amendments of their diazinon product registrations to terminate all indoor uses and certain agricultural uses. In the May 30, 2001 notice, EPA indicated that it would issue an order confirming the voluntary product and use registration cancellations unless the Agency received any substantive comment within the comment period that would merit its further review of these requests. The Agency received comments on outdoor non-agricultural uses. This notice addresses these comments, which do not effect the

Agency's decision to grant the MUP registrant's request. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order. This notice also announces EPA's amendment to a cancellation order that was issued on April 24, 2001 and published in the **Federal Register** on May 2, 2001. The order is amended to include an existing stock provisions for products bearing instructions for any of the canceled agricultural uses.

DATES: The cancellations are effective July 19, 2001.

FOR FURTHER INFORMATION CONTACT: By mail: Ben Chambliss, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8174; fax number: (703) 308–7042; e-mail address: chambliss.ben@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use diazinon products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the **Federal Register**—Environmental Documents. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment for diazinon, go to the Home Page for the Office of Pesticide Programs or go directly to http://www.epa.gov/pesticides/op/diazinon.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34225G. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

In separate letters dated February 20, 2001, for Aventis Environmental Science, March 6, 2001, for Drexel Chemical Company and April 26, 2001, for Gowan Company, manufacturers of MUPs and registrants of EUPs containing diazinon, requested cancellation of all indoor and certain agricultural uses from their diazinon products to reduce the potential exposure to children associated with diazinon containing products. The letters, with the exception of the letter from Aventis, also requested that EPA cancel their registrations for the manufacturing-use pesticide products containing diazinon, conditioned upon issuance of replacement registrations which do not allow their use in formulation of end-use products for the deleted uses, and which includes expiration of the registration for outdoor non-agricultural uses. The letter from Aventis Environmental Science, requested cancellation of its MUPs without issuance of replacement registrations. EPA has acted on the requests and issued new registrations in March and May 2001. In addition, these companies have asked EPA to cancel or amend their registrations for end-use products containing diazinon consistent with the use cancellation request. The uses for which termination was requested are identified in the following List 1.

List 1. — Uses Requested for Termination

Indoor uses. Pet collars, or inside any structure or vehicle, vessel, or aircraft or any enclosed area, and/or on any contents therein (except mushroom houses), including food/feed handling establishments. greenhouses, schools, residences, museums, sports facilities, stores, warehouses, and hospitals.

Agricultural uses. Alfalfa, bananas, Bermuda grass, dried beans, dried peas, celery, red chicory (radicchio), citrus, clover, coffee, cotton, cowpeas, cucumbers, dandelions, forestry (ground squirrel/rodent burrow dust stations for public health use), kiwi, lespedeza, parsley, parsnips, pastures, peppers, potatoes (Irish and sweet), sheep, sorghum, squash (winter and summer), rangeland, Swiss chard, tobacco, and turnips.

Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA announced the Agency's receipt of these requests from the MUP registrants by a **Federal Register** notice published on May 30, 2001 (66 FR 29310) (FRL–6785–2). In that notice, EPA provided a 30–day comment period. The registrants requested that the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(C). EPA also approved the replacement registrations for the registrants' diazinon manufacturing-use products in March and May 2001.

Before the May 30th publication of the 6(f) notice announcing the diazinon product and use cancellation requests, EPA received many comments from growers, as well as the U.S. Department of Agriculture, expressing that the use of diazinon pesticide products is vital for many of the agricultural uses identified in List 1 of this notice. According to the comments, there is a nationwide need for the application of diazinon products on spinach, strawberries, and tomatoes.

There are also needs for the application of diazinon products on certain crops in certain states. These needs are identified in the following Table 1.

TABLE 1. — SPECIFIC REGIONAL NEED FOR DIAZINON END-USE PRODUCTS

Crop	Use Area(s)
Bananas	Hawaii
Celery	Texas

TABLE 1. — SPECIFIC REGIONAL NEED FOR DIAZINON END-USE PRODUCTS—Continued

Crop	Use Area(s)
Cucumbers	Texas
Ground squirrel/ rodent burrow dust stations for public health use	California
Parsley	Texas and California
Parsnips	Texas and Oregon
Peas, succulent	Texas and Maryland
Peppers	Texas and California
Potatoes, Irish	Texas, Washington and Michigan
Potatoes, sweet	Texas
Squash, summer and winter	Texas and California
Swiss Chard	Texas
Turnips, root	Texas and Oregon
Turnips, tops	Texas and Oregon

In response to these comments, the MUP Registrants agreed to maintain on their diazinon product registrations the use on spinach, strawberries and tomatoes. EPA's assessment of risks associated with the use of diazinon products concluded that all acute and chronic dietary risk estimates are below the Agency's level of concern. EPA's assessment considered all currently registered uses, including the agricultural uses identified in List 1. There may also be adequate data to support the tolerances for spinach, strawberries and tomatoes. EPA is currently reviewing residue data for these crops recently provided by the registrant to determine their acceptability. Accordingly, pursuant to FIFRA section 3(c)(7)(A), EPA approved the amendments of the MUP Registrants' replacement manufacturing-use product registrations to permit formulation and reformulation into products bearing instructions for spinach, strawberries and tomatoes. As amended, the approved replacement registrations for the MUP Registrants diazinon manufacturing-use products permit formulation and reformulation into products bearing instructions only for the agricultural uses identified in the following List 2.

List 2. — Agricultural Uses in Technical Registrants' Replacement Manufacturing-Use Product Registrations

Almonds, apples, apricots, beans (seed treatment only) except soybeans, beets, blackberries, blueberries, boysenberries, broccoli, cattle (non-lactating; ear tags only), Chinese broccoli, Brussels sprouts, cabbage, Chinese cabbage (bok choy and napa), cantaloupes, carrots, Casaba melons, cauliflower, cherries, collards, field corn (seed treatment only), sweet corn (including seed treatment), cranberries, Crenshaw melons, dewberries, endive (escarole), ginseng, grapes, honeydew melons, hops, kale, lettuce, lima beans (seed treatment only), loganberries, melons, muskmelons, mustard greens, Chinese mustard, nectarines, onions, peaches, pears, peas (seed treatment only), Persian melons, pineapples, plums, prunes, radishes, Chinese radishes, raspberries, rutabagas, spinach, strawberries, sugar beets, tomatoes, walnuts, watercress (Hawaii only), and watermelons.

Similarly, in today's cancellation order, EPA is approving the registrants' requested cancellations and amendments of the diazinon end-use products registrations, to terminate all uses identified in List 1 except spinach, strawberries and tomatoes. The individual states identified in Table 1 of this notice, may wish to issue special-local-need registrations under FIFRA section 24(c) for diazinon end-use products to address the specific agricultural needs in their states respectively, as identified in Table 1.

EPA also received two comments asking that EPA cancel the outdoor non-agricultural uses of diazinon products now rather than in 2004. In assessing outdoor non-agricultural uses of diazinon products, EPA has considered many factors, including:

1. The risks and the benefits associated with such uses.

2. The phasing out over the next 3 years of the production of diazinon technical products that can be formulated or reformulated into products labeled for outdoor non-agricultural uses.

3. The possibility of and potential impacts from any litigation that may result from a proceeding by EPA to cancel these uses.

Based on its consideration of all of these factors, EPA currently is not contemplating initiating a regulatory proceeding to cancel these uses.

B. Requests for Voluntary Cancellation of Manufacturing Use Products

Pursuant to FIFRA section 6(f)(1)(A), the registrants submitted requests for voluntary cancellation of the registrations for their diazinon manufacturing-use products, conditioned upon EPA's issuance of replacement registrations for these products which do not allow their formulation or reformulation into products bearing instructions for indoor use or certain agricultural uses, as identified in List 1 of this notice. The product registrations for which cancellations were requested are identified in the following Table 2.

TABLE 2. — MANUFACTURING-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Aventis Environmental Science	432–1094	Pyrenone Diazinon
Aqueous Base Science	432–1130	Pyrenone Diazinon S.E.C.
Gowan Company	10163–212	Gowan Diazinon Technical
Drexel Chemical Co.	19713–104	Diazinon Technical

As mentioned in Unit II.A of this notice, EPA received comments requesting that the Agency continues to permit the use of diazinon products on certain agricultural sites that the MUP Registrants had proposed to cancel. In response to these comments, pursuant to FIFRA section 3(c)(7)(A), EPA approved the MUP Registrants' amendments of the replacement registrations for their diazinon manufacturing-use products to permit formulation and reformulation of these replacement manufacturing use products into products bearing instructions for spinach, strawberries, and tomatoes, because there appears to be a nationwide need for the use of diazinon products on these crops. The individual states identified in Table 1 above, may wish to issue special-local-need registrations under FIFRA section 24(c) for diazinon end-use products to meet the specific agricultural needs in their states, as identified in Table 1. Because the concerns expressed in the comments have been addressed, EPA is issuing an order in this notice canceling the registrations identified in Table 2, as requested by the MUP Registrants.

C. Requests for Voluntary Cancellation of End-Use Products

In addition to requesting voluntary cancellation of its diazinon manufacturing-use product registrations, Syngenta also submitted requests for voluntary cancellation of the registrations for its diazinon end-use products that are registered primarily for indoor use. These end-use product registrations for which cancellation was requested are identified in the following Table 3.

TABLE 3. — END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Syngenta Crop Protection, Inc.	100–463	D.Z.N. DIAZINON 4E Insecticide
	100–785	Evict Indoor/Outdoor WBC
Aventis Environmental Science	432–907	Ford's Diazinon 4E Insecticide
	432–979	Pyrenone Diazinon Residual Concentrate Insecticide
	432–987	Pyrenone Diazinon Residual Spray Insecticide
	432–1062	Roach and Ant Spray Aqueous
	432–1108	Pyrenone Diazinon W.B.
	432–1114	Pyrenone Diazinon Water Based Pressurized Spray
	432–1119	Pyrenone Diazinon Water Based Pressurized Spray II

EPA did not receive any comments expressing a need for diazinon products for indoor use. Accordingly, EPA is issuing an order in this notice canceling the registrations identified in Table 3, as requested by Syngenta and Aventis.

D. Requests for Voluntary Amendments of End-Use Product Registrations to Terminate Certain Uses

Pursuant to section 6(f)(1)(A) of FIFRA, the Technical Registrants submitted requests to amend a number of their diazinon end-use product registrations to terminate the uses identified in List 1 of this notice. The registrations for which amendments to terminate uses were requested are identified in the following Table 4.

TABLE 4. — END-USE PRODUCT REGISTRATIONS REQUESTS FOR AMENDMENTS TO TERMINATE USES

Company	Reg. No.	Product
Drexel Chemical Co	19713–91	Diazinon Insecticide
	19713–92	D–264 4E Diazinon Insecticide
	19713–95	D–264 14G
	19713–145	D–264 Captan Seed Protection
	19713–263	DIAZINON 5G
	19713–264	DIAZINON 2G
	19713–317	Bug Spray (SP)
	19713–492	Diazinon 50 WP

As mentioned in Unit II.A of this notice, EPA received comments requesting that the Agency continue to permit the use of diazinon products on certain agricultural sites that the Technical Registrants had proposed to cancel. In response to these comments, the Technical Registrants have agreed to retain the use on spinach, strawberries, and tomatoes on their current diazinon end-use product registrations. The individual states identified in Table 1, may also wish to issue special-local-need registrations under FIFRA section 24(c) for diazinon end-use products to meet the specific agricultural needs in their states, as identified in Table 1. Accordingly, EPA is issuing an order in this notice approving the amendments of the registrations identified in Table 4 to terminate all uses identified in List 1 except spinach, strawberries, and tomatoes.

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested diazinon product registration cancellations and amendments to terminate all indoor uses and certain agricultural uses, as identified in List 1 of this notice, except spinach, strawberries, and tomatoes. Accordingly, the Agency orders that the diazinon manufacturing use product registrations identified in Table 2 of this notice, and the diazinon end-use product registrations identified in Table 3 of this notice, are hereby canceled. The Agency also orders that all of the uses identified in List 1, except spinach, strawberries, and tomatoes, are hereby canceled from all end-use product registrations identified in Table 4. Any distribution, sale, or use of existing stocks of the products identified in Tables 2–4 in a manner inconsistent with the terms of this order or the existing stock provisions in Unit IV of this notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation. The existing stocks provisions of this cancellation order are as follows:

1. *Distribution or sale of manufacturing-use products.* Distribution or sale by any person of the existing stocks of any product identified in Table 2 of this notice, will not be lawful under FIFRA after July 19, 2001, except for the purpose of returns for relabeling consistent with the Technical Registrants' cancellation request letters and the memorandum of agreement (MOA), shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal.

2. *Use of manufacturing-use products to formulate for indoor use.* Use by any person of the existing stocks of any product identified in Table 2 of this notice, for formulation or reformulation into any product that bears instructions for indoor use will not be lawful under FIFRA after July 19, 2001. All other uses of such products may continue until the existing stocks are exhausted, provided that such use does not violate any existing stocks provision of this cancellation order and is in accordance with the existing labeling of that product.

3. *Use of manufacturing-use products to formulate for agricultural use.* Use by any person of the existing stocks of any product identified in Table 2 of this notice, for formulation or reformulation into any product bearing instructions for the agricultural uses identified in List 1 of this notice, except spinach, strawberries and tomatoes, will not be lawful under FIFRA after the date of publication of this **Federal Register** notice. All other uses of such products may continue until the existing stocks are exhausted, provided that such use does not violate any existing stocks provision of this cancellation order and is in accordance with the existing labeling of that product.

4. *Sale or distribution of indoor end-use products by MUP registrants.* Sale or distribution by the MUP registrants of the existing stocks of any product identified in Table 3 or Table 4 of this notice that bear instructions for indoor use will not be lawful under FIFRA after July 19, 2001, except for the purposes of returns for relabeling consistent with the Technical Registrants' cancellation request letters and the MOA, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal.

5. *Retail and other sale or distribution of indoor end-use products.* Sale or distribution by any person of the existing stocks of any product identified in Table 3 or Table 4 of this notice that bear instructions for indoor use will not be lawful under FIFRA after December 31, 2002, except for the purpose of returns for relabeling consistent with the Technical Registrants' cancellation request letters and the MOA, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal.

6. *Distribution or sale of diazinon end-use products bearing directions for use on agricultural crops.* Sale and distribution by the registrant of end-use products bearing directions for use on any of the canceled agricultural crops will be unlawful 1–year after the effective date of this cancellation order. Persons other than the registrant may continue to sell existing stocks after the effective date of the cancellation order.

V. Amendment to April 24, 2001 Cancellation Order (66 FR 21967 (May 2, 2001))

Pursuant to sections 6(f) and 6(a)(1) of FIFRA, EPA hereby amends its cancellation order that was issued on April 24, 2001 and published in the May 2, 2001 issue of the **Federal Register**. The order is hereby amended to include in section IV of the order the following existing stocks provision.

Distribution and sale of end-use products bearing instructions for use on agricultural crops. The distribution or sale of the existing stocks by the registrant of any product listed in Table 3 or 4 that bears instructions for any of the agricultural uses identified in List 1, except spinach, strawberries and tomatoes, will not be lawful under FIFRA 1–year after the effective date of the cancellation order. Persons other than the registrants may continue to sell or distribute the existing stocks listed in Table 3 or 4 that bears instructions for any of the agricultural uses identified in List 1 after the effective date of the cancellation order.

List of Subjects

Environmental protection, Memorandum of Agreement, Pesticides and pests.

Dated: July 3, 2001.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–18097 Filed 7–18–01; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1033; FRL–6793–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1033, must be received on or before August 20, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1033 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dan Peacock, Insecticide-Rodenticide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5407; e-mail address: peacock.dan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations." "Regulation and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1033. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall

#2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1033 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1033. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 2001

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summaries of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Crop Protection, Inc.

PP 8F4984, 8F5031, 0F6141

EPA has received pesticide petitions (8F4984, 8F5031, 0F6141) from Syngenta Crop Protection, Inc., PO Box 18300 Greensboro, NC 27419–8300 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of pymetrozine in or on the raw agricultural commodities cotton gin byproducts at 3.0 parts per million (ppm), cottonseed at 0.4 ppm, cucurbit vegetables at 0.1 ppm, hops at 5.0 ppm, fruiting vegetables at 0.2 ppm, leafy vegetables (except Brassica) at 6.0 ppm, head and stem Brassica vegetables at 2.0 ppm, leafy Brassica greens at 5.0 ppm and pecans at 0.02 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of pymetrozine in plants is understood for the purposes of the proposed tolerances. Studies in rice, tomatoes, cotton and potatoes gave similar results. The metabolic pathways have demonstrated that pymetrozine, per se, is the residue of concern for tolerance setting purposes.

2. *Analytical method.* Syngenta has submitted an analytical method (AG–643) for the determination of pymetrozine in crop substrates. The limit of detection (LOD) for the analytical method is 1.0 ng and the limit of quantification (LOQ) is 0.02 ppm. Samples are extracted, purified with solid-phase and liquid-liquid partitions and analyzed by high performance liquid chromotography (HPLC). Analytical method has undergone independent laboratory validation. The

pymetrozine Analytical Method AG–643 is proposed as the tolerance enforcement method. Syngenta has also submitted an analytical method (AG–647) for the determination of the major crop metabolite of pymetrozine, GS–23199. GS–23199 is considered a marker for metabolite residues. This metabolite is not proposed as part of the tolerance expression. Samples are extracted, purified with solid-phase and/or liquid-liquid partitions and analyzed by HPLC.

3. *Magnitude of residues.* Residue data were generated for pymetrozine for tolerance setting and dietary exposure estimates. Data were also generated for a major metabolite, GS–23199. Adequate residue trials were performed for pymetrozine on the uses proposed in this notice of filing.

B. Toxicological Profile

1. *Acute toxicity.* Pymetrozine has low acute toxicity. The oral LD_{50} in rats is > 5,820 milligrams/kilogram(mg/kg) for males and females, combined. The rat dermal LD_{50} is > 2,000 mg/kg and the rat inhalation LC_{50} is > 1.8 milligrams/liter(mg/L) air. Pymetrozine is not a skin sensitizer in guinea pigs and does not produce dermal irritation in rabbits. It produces minimal eye irritation in rabbits. End-use water-dispersible granule formulations of pymetrozine have similar low acute toxicity profiles.

2. *Genotoxicity.* Pymetrozine did not induce point mutations in bacteria (Ames assay in *Salmonella typhimurium* and *Escherichia coli*) or in cultured mammalian cells (Chinese hamster V79) and was not genotoxic in an *in vitro* unscheduled DNA synthesis assay in rat hepatocytes. Chromosome aberrations were not observed in an *in vitro* test using Chinese hamster ovary cells and there were no clastogenic or aneugenic effects on mouse bone marrow cells in an *in vivo* mouse micronucleus test. These studies show that pymetrozine is not mutagenic or genotoxic.

3. *Reproductive and developmental toxicity.* In a teratology study in rats, pymetrozine caused decreased body weights and food consumption in females given 100 and 300 mg/kg/day during gestation. This maternal toxicity was accompanied by fetal skeletal anomalies and variations consistent with delayed ossification. The no-observed-adverse-effect level (NOAEL) for maternal and fetal effects in rats was 30 mg/kg/day. In a rabbit teratology study, maternal death, reduced body weight gain and food consumption were observed at 125 mg/kg/day (highest dose tested). Embryo- and feto-toxicity (abortion in one female and total resorptions in two females) accompanied maternal toxicity. Body weight and food consumption decreases, early resorptions and postimplantation losses were also observed in maternal rabbits given 75 mg/kg/day. There was an increased incidence of fetal skeletal anomalies and variations at these maternally toxic doses. The NOAEL for maternal and fetal effects in rabbits was 10 mg/kg/day. Pymetrozine is not teratogenic in rats or rabbits. In a two generation reproduction study in rats, parental body weights and food consumption were decreased, liver and spleen weights were reduced and histopathological changes in liver, spleen and pituitary were observed at approximately 110–440 mg/kg/day (highest dose tested). Liver hypertrophy was observed in a few parental males at approximately 10–40 mg/kg/day. Reproductive parameters were not affected by treatment with pymetrozine. The NOAEL for reproductive toxicity is approximately 110–440 mg/kg/day. The NOAEL for toxicity to adults and pups is approximately 1–4 mg/kg/day.

4. *Subchronic toxicity.* Pymetrozine was evaluated in 13–week subchronic toxicity studies in rats, dogs and mice. Liver, kidneys, thymus and spleen were identified as target organs. The NOAEL was 33 mg/kg/day in rats and 3 mg/kg/day in dogs. In mice, increased liver weights and microscopical changes in the liver were observed at all doses tested. The NOAEL in mice was <198 mg/kg/day. No dermal irritation or systemic toxicity occurred in a 28–day repeated dose dermal toxicity study with pymetrozine in rats given 1,000 mg/kg/day. Minimum direct dermal absorption (1.1%) of pymetrozine was detected in rats over a 21 hour period of dermal exposure. Maximum radioactivity left on or in the skin at the application site and considered for potential absorption was 11.9%.

5. *Chronic toxicity.* Based on chronic toxicity studies in the dog and rat, a reference dose (RfD) of 0.0057 mg/kg/day is proposed for pymetrozine. This RfD is based on a NOAEL of 0.57 mg/kg/day established in the chronic dog study and an uncertainty factor of 100 to account for interspecies extrapolation and interspecies variability. Minor changes in blood chemistry parameters, including higher plasma cholesterol and phospholipid levels, were observed in the dog at the lowest-observed-adverse-effect level (LOAEL) of 5.3 mg/kg/day. The NOAEL established in the rat chronic toxicity study was 3.7 mg/kg/day and was based on reduced body weight gain and food consumption, hematology and blood chemistry changes, liver pathology and biliary cysts.

The carcinogenic potential of pymetrozine has been evaluated in rats and mice. A liver tumor response was observed in male and female mice and female rats at high doses exceeding the maximum tolerated dose. These liver tumors correlated with reversible biochemical (induction of liver metabolizing enzymes) and morphological (hepatocyte and smooth endoplasmic reticulum proliferation) changes and a reversible saturation of metabolic processes. EPA has assigned a cancer classification of "likely" to pymetrozine and calculated a Q1* value. However, Syngenta believes that the mechanism of action leading to liver tumors at maximum tolerated doses is a non-genotoxic threshold event and should be regulated as such.

6. *Animal metabolism.* The metabolism of pymetrozine in the rat is well understood. Metabolism involves oxidation of substituent groups of the triazine ring yielding ketones and carboxylic acids. Hydrolysis of the enamino bridge between rings results in products that are further metabolized. The metabolic pathways in animals and plants are similar.

7. *Metabolite toxicology.* The residue of concern for tolerance setting purposes is the parent compound. Metabolites of pymetrozine are considered to be of equal or lesser toxicity than the parent.

8. *Endocrine disruption.* Pymetrozine does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that pymetrozine has any effect on endocrine function in developmental and reproduction studies. Furthermore, histological investigation of endocrine organs in chronic dog, rat and mouse studies did not indicate that the endocrine system is targeted by pymetrozine.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* A tier 3 chronic analysis was conducted for pymetrozine using average (mean) field trial residues for the following crops and crop groups: cotton, pecans, hops, cucurbits, fruiting vegetables, tuberous and corm, Brassica leafy vegetables and leafy vegetables. The average field trial values were adjusted for the percent of crop-treated and residue values for processed commodities were calculated by applying processing factors (either default or empirically-derived) to average field trial values of the raw agricultural commodity. Secondary residues in animal commodities were not included in the exposure assessment since a three-level dairy feeding study

in lactating livestock showed no residues at any of the feeding levels and the highest feeding level (10 ppm) was at least 10–fold higher than what would be expected in treated feed. Exposure was evaluated using the Dietary Exposure Evaluation Model (DEEM®) and food consumption information from USDA's 1994–96 Continuing Survey of Food Intake by Individuals (CSFII). Dietary exposure for the general population was 0.5% of the chronic reference dose (cRfD) of 0.0038 mg/kg/day based on a no-observed-adverse-effect level (NOAEL) of 0.38 mg/kg/day from a chronic feeding study in rats and a 100X uncertainty factor. Exposure to the U.S. population for each season, each region and for all ethnic groups in the DEEM® were also compared to the cRfD of 0.0038 mg/kg/day and ranged from 0.4–0.9%. Exposure to all male subpopulations and seniors (55+ years old) ranged between 0.4–0.5% of the cRfD (0.0038 mg/kg/day). Chronic dietary exposure to females, infants and children was compared to a chronic population adjusted dose (cPAD) of 0.0013 mg/kg/day based on the NOAEL of 0.38 mg/kg/day (described above) and a 300X uncertainty factor. The chronic dietary exposure results for the most sensitive female population subgroup, females (13+ years and nursing), was 2.2% of the cPAD. The most sensitive population containing children exclusively was children (1–6 years old) with an exposure of 2.5% of the cPAD. Lifetime cancer risk to pymetrozine was evaluated by comparing exposure to a Q* value of 0.0119. The assessment was conducted as for the chronic assessment described above. Lifetime risk for the U.S. population was 2.24×10^{-7}. The most sensitive adult population was females (13+, nursing) with a lifetime risk of 3.46×10^{-7}. These exposure estimates are conservative since field trial residues were utilized and do not reflect residue reductions expected in normal food commerce, storage or food preparation. Therefore, these results show that there is more than a reasonable certainty of no harm resulting from chronic exposure through the consumption of pymetrozine-treated commodities.

A tier 3 probabilistic acute dietary analysis was conducted with a full distribution of residues for each commodity described above. Each residue distribution was adjusted for percent of crop treated by adding zeroes to the distribution to account for the percent of crop not treated. This acute assessment was conducted using the DEEM® software and food consumption information from USDA's 1994–96 CSFII. Processing factors were used to adjust average field trial values for processed (blended) commodities and were obtained either empirically or from default values. EPA has required that exposure to females (13+ years old) be compared to a NOAEL of 10 mg/kg/day based on a rabbit developmental study and a 300X uncertainty factor. Acute exposure to the most sensitive female subpopulation, females (13–50 years old), was 1.61% of the acute population adjusted-dose (aPAD) of 0.033 mg/kg/day (300X uncertainty factor). For the U.S. population and infants and children, exposures were compared to a lowest-observed-adverse-effect level (LOAEL) of 125 mg/kg/day from an acute neurotoxicity study in rats. Uncertainty factors of 300X and 900X were applied to the LOAEL for the general population and infants and children subgroups, respectively. Acute exposure for the U.S. population was 0.13% of the aPAD of 0.42 mg/kg body weight/day (300X uncertainty factor). For the infants and children populations, the most sensitive population subgroup was non-nursing infants with an exposure of 1.77% of the aPAD of 0.14 mg/kg/day (900X-uncertainty factor). These results show a very large margin of safety associated with the consumption of pymetrozine-treated commodities and even under conservative assumptions all populations receive less than 2% of the acute population adjusted dose.

ii. *Drinking water.* The acute drinking water exposure to pymetrozine was evaluated based on the crops above using EPA's surface water Tier 1 model (GENEEC). Hops with 3 applications at 0.1875 lb ai/acre was the highest contributor at 4.27 ppb. Using the current aPAD of 0.033 mg/kg for females 13+, the margin of exposure percent (MOE%) of risk cup anticipated is 0.43%. For children the aPAD of 0.14 mg/kg yields an MOE% of risk cup of 0.30%.

Hops was also the highest contributor to surface water exposure at 0.31 ppb. Using the current cPAD of 0.0013 mg/kg/day (for females and children) the surface water exposure results in an MOE% of risk cup of 2.38% for children. Using a Q* of 0.0119 the risk to a typical 70 kg adult drinking 2 liters of water per day would be estimated at 1.05×10^{-7}.

2. *Non-dietary exposure.* Pymetrozine is registered on ornamentals and exposure could occur through post-application re-entry to treated plants. Syngenta believes that risks due to short-term, intermediate-term or chronic exposure are either not applicable or insignificant.

D. Cumulative Effects

The potential for cumulative effects of pymetrozine and other substances that have a common mechanism of toxicity has also been considered. Pymetrozine belongs to a new chemical class known as pyridine azomethines and exhibits a unique mode of action. There is no reliable information to indicate that toxic effects produced by pymetrozine would be cumulative with those of any other chemical including another pesticide. Therefore, Syngenta believes it is appropriate to consider only the potential risks of pymetrozine in an aggregate risk assessment.

E. Safety Determination

1. *U.S. population.* Using the exposure assumptions and the proposed RfD described above, the aggregate exposure to pymetrozine will utilize 0.5% of the RfD for the U.S. population. The RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. EPA generally has no concern for exposures below 100 percent of the RfD. In addition, Lifetime cancer risk for the U.S. population was 2.24×10^{-7}, which is below the level of EPA concern. Therefore, Syngenta concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pymetrozine residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of pymetrozine, data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat have been considered.

In a teratology study in rats, developmental toxicity anomalies and variations associated were observed only at maternally toxic doses. Similarly, in a rabbit teratology study, effects were observed only at maternally toxic doses. The NOAELs in the rat and rabbit teratology studies were 30 and 10 mg/kg/day, respectively. In the two-generation rat reproduction study, there were no effects on reproductive parameters. Offspring body weights were slightly reduced and eye opening was slightly delayed at dose levels producing parental toxicity. The NOAEL for parental and offspring toxicity was approximately 1–4 mg/kg/day.

FFDCA section 408 provides that EPA shall apply an additional 10–fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a

different margin of safety will be safe for infants and children. EPA has added an additional 3–fold factor to the acute dietary risk assessment for infants and children due to the lack of a NOAEL in the critical study. An additional 3–fold factor is also needed due to the uncertainty resulting from the data gap for the developmental neurotoxicity study in rats. This latter safety factor is applicable to the following subgroup populations: Females 13–50; infants, children (1–6 years old), and children (7–12 years old) for all risk assessment scenarios for acute and chronic dietary and residential scenarios. No greater additional factor is needed because, using the exposure assumptions described above, the percent of the pymetrozine chronic PAD that will be utilized by the most exposed sub-population (children, 1–6 years old) is 2.5%. Therefore, based on the completeness and reliability of the toxicity database, Syngenta concludes that there is reasonable certainty that no harm will result to infants and children from exposure to pymetrozine residues.

F. International Tolerances

There are no established European (CODEX), Canadian, or Mexican Maximum Residue Limits (MRLs) for pymetrozine. There are provisional MRLs in Germany for hops (10 ppm) and potatoes (0.02 ppm). The European Union is currently evaluating a proposed tolerance of 5 ppm on hops. At this time, international harmonization of residue levels is not an issue.

[FR Doc. 01–18098 Filed 7–18–01; 8:45 a.m.]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Public Meeting on Other Financing Institutions and Alternative Funding Mechanisms

ACTION: Notice of meeting; additional information.

SUMMARY: On July 5, 2001, the Farm Credit Administration (FCA) published a notice announcing a public meeting in Des Moines, Iowa on August 3, 2001 about (1) The funding and discount relationship between other financing institutions (OFIs) and Farm Credit System (FCS or System) banks, and (2) other partnerships between FCS and non-System institutions that would increase the availability of agricultural and rural credit. This notice provides the public with more information about the time, place, and procedures for requesting to speak and submit testimony at the public meeting.

DATES: The public meeting will begin at 8:30 a.m. Central Daylight Time on August 3, 2001 in Des Moines, Iowa.

ADDRESSES: The FCA will hold the public meeting at the Embassy Suites Hotel on the River, 101 East Locust Street, Des Moines, Iowa, 50309 (515) 244–1700. You may submit requests to appear and present testimony for the public meeting by electronic mail to *reg-comm@fca.gov* or through the Pending Regulations section of our Web site at *www.fca.gov*. You may also send your request in writing to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, or by facsimile transmission to (703) 734–5785.

FOR FURTHER INFORMATION CONTACT:

Dennis Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,
or
Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On July 5, 2001, we published a notice in the **Federal Register** that the FCA would hold a public meeting about OFIs and other partnerships between System and non-System institutions that increase funding for agriculture and rural America. *See* 66 FR 35429. Our earlier notice told you we would publish the name and address of the meeting facility on our Web site and in the **Federal Register** at least 15 days before the date of the public meeting. This notice informs you of the exact location and time of the public meeting.

I. Request To Present Testimony

As noted in our original Notice of Public Meeting, any interested party wishing to present testimony at the meeting may submit a request to the FCA at one of the addresses we listed at the outset of this notice. You may also identify yourself and your intent to speak the day of the public meeting. In order to provide the most opportunity for interested parties to present their views, we encourage you to testify as part of a panel. A request to speak should provide the name, address and telephone number of the person wishing to testify and the general nature of the testimony. Once we receive your request to testify, we may assign you to a panel and notify you when you are scheduled to speak. As time permits, following any panel presentations, we may accept individual testimony. Also, if time permits, at the end of the public meeting, additional parties who were not scheduled to speak may be invited to provide their thoughts and comments on questions posed in this notice.

II. Written Comments and Testimony

As addressed in our original Notice of Public Meeting, we intend to include all comments in our official public record. For this reason, we ask you to provide us with a written statement or detailed summary of your oral testimony by the close of the public meeting. We also ask, if possible, that you send us an electronic version of your oral testimony before August 3, 2001. If you are not invited to testify because of time constraints, you may give us a written statement, which we will place in the record.

Written copies of the testimony along with a recorded transcript of the proceedings will be included with a recorded transcript of the proceedings will be included in our rulemaking files. We encourage you to bring extra copies of your written statement (we suggest 50 copies) for distribution to the press and other interested parties attending the public meeting.

The FCA Board will accept written comments, in support of or in rebuttal to testimony presented at the public meeting or comments submitted for the record. The comment period for such additional comments will end 30 days following the date of this public meeting. The comments, as well as all documents and testimony received by the FCA as part of the public meeting process, will be available for public inspection at the FCA's offices Office of Policy and Analysis in McLean, Virginia.

Dated: July 16, 2001.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 01–18056 Filed 7–18–01; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 10, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden

invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 20, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0655.

Title: Requests for Waivers of Regulatory and Application Fees Predicated on Allegations of Financial Hardship.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, businesses or other for-profit.

Number of Respondents: 240.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 240 hours.

Total Annual Cost: $3,200.

Needs and Uses: Pursuant to 47 U.S.C. 159, the FCC is required to collect annual regulatory fees from its licensees and permittees. Licensees and permittees may request waivers of the annual regulatory and application fees on grounds of financial hardship. The subject orders lists the types of documents or financial reports which are ordinarily maintained as business records or can be easily assembled, which may be submitted to support claims of financial hardship. The information is used by the FCC to determine if a party is entitled to the waiver.

OMB Control No.: 3060–0502.

Title: Section 73.1942, Candidate Rates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 11,878 respondents; 296,950 responses.

Estimated Time Per Response: .5–20 hours.

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, and on occasion reporting requirement.

Total Annual Burden: 671,107 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 73.1942 requires broadcast licensees to disclose station practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time. It also requires licensees to calculate the lowest unit charge and periodically review advertising records. The disclosure would allow candidates to determine that they are receiving the same charge as the most favored advertiser. The review of advertising records determines whether compliance with this section requires that candidates receive rebates or credits.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–17987 Filed 7–18–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

July 12, 2001.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

A. OMB Control No.: 3060–0853.

Expiration Date: December 31, 2001.

Title: Receipt of Service Confirmation Form, and Adjustment of Funding Commitment, and Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection.

Form No.: FCC Form 486, FCC Form 500, and FCC Form 479.

Respondents: Not for profit institutions; business or other for-profit.

Estimated Annual Burden: 40,000 respondents; 15.37 hours per response (avg.); 615,000 total annual burden hours (for all collections approved under this control number).

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; third party disclosure.

Description: In a Report and Order issued in CC Docket No. 96–45, (FCC 01–120), released April 5, 2001, the Commission adopted rules to implement the Children's Internet Protection Act (CIPA). Congress included CIPA as part of the Consolidated Appropriations Act, 2001. Sections 1721 *et seq.* of CIPA provide that schools and libraries that have computers with Internet access must certify that they have in place certain Internet safety policies and technology protection measures in order to be eligible under section 254(h) of the Communications Act of 1934, as amended (the Act), to receive discounted Internet access, Internet services, and internal connection services. CIPA also requires that our rules implementing the statute be in effect by April 20, 2001. Specifically, in order to receive discounts for Internet access and internal connections services under the universal service support mechanism, school and library authorities must certify that they are enforcing a policy of Internet safety that includes measures to block or filter Internet access for both minors and adults to certain visual depictions. A school administrative authority must certify that its policy of Internet safety includes monitoring the online activities of minors. In order to receive discounts, school and library authorities must also certify that they had adopted and implemented an Internet safety

policy addressing (i) access by minors to inappropriate matter on the Internet and World Wide Web; (ii) the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications; (iii) unauthorized access; (iv) unauthorized disclosure, use, and dissemination of personal information regarding minors; and (v) measures designed to restrict minors' access to materials harmful to minors. For this funding year, schools and libraries must certify by October 28, 2001 that they have the policies and technology measures in place, or that they are undertaking such actions, including any necessary procurement procedures, to put them in place for the following funding year. Schools and libraries shall make the necessary certification in FCC Form 486, Receipt of Service Confirmation Form, which has been modified to incorporate procedures pursuant to CIPA. In cases involving consortia (or certain similar entities), the consortium leader will certify that it has received the certification required by CIPA from individual consortium members. All members the consortium must submit signed certifications to the billed entity of each consortium on a new form, FCC Form 479, Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act: The Billed Entity will be required to retain copies of the signed and completed FCC Form 479. See 47 CFR Section 54.520. The Commission did not modify FCC Form 500. The forms and instructions may be obtained at the SLD website, *http://www.sl.universalservice.org/*, or by contacting the SLD Client Service Bureau at 888–203–8100. Obligation to respond: Mandatory.

B. OMB Control No.: 3060–0774.

Expiration Date: June 30, 2004.

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96–45 (47 CFR Sections 36.611 and 36.612 and 47 CFR Part 54).

Form No.: N/A.

Respondents: Not for profit institutions; business or other for-profit; State, Local or Tribal Government.

Estimated Annual Burden: 5,554,651 respondents; .33 hours per response (avg.); 1,853,807 total annual burden hours (for all collections approved under this control number).

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Quarterly; Annually; Third Party Disclosure; Recordkeeping.

Description: Congress directed the Commission to implement a new set of universal service support mechanisms that are explicit and sufficient to advance the universal service principles enumerated in 47 U.S.C. 254 and other such principles as the Commission believes are necessary and appropriate for the protection of the public interest, convenience and necessity, and are consistent with the Communications Act of 1934, as amended. Part 54 promulgates the rules and requirements to preserve and advance universal service. The collections are necessary to implement Section 254.

a. 47 CFR 36.611(a) & 36.612—Submission and updating information to the National Exchange Carrier Association. (No. of respondents: 1340; hours per response: 20 hours; total annual response: 26,900 hours).

b. 47 CFR 54.101(c)—Demonstration of exceptional circumstances. (No. of respondents: 50; hours per response: 2 hours; total annual burden: 100 hours).

c. 47 CFR 54.201(a)(2)—Submission of eligibility criteria. (No. of respondents: 100; hours per response: 4 hours; total annual burden: 400 hours).

d. 47 CFR 54.201(b)–(c)—Submission of eligibility criteria. (No. of respondents: 3400; ours per response: 1 hour; total annual burden: 3400 hours).

e. 47 CFR 54.201(d)(2)—Advertisement of services and charges. (No. of respondents: 1300; hours per response: 50 hours; total annual hours: 65,000).

f. 47 CFR 54.205(a)—Advance notice of relinquishment of universal service. (No. of respondents: 100; hours per response: .5 hours; total annual burden: 50 hours).

g. 47 CFR 54.207(c)(1)—Submission of proposal for redefining a rural service area. (No. of respondents: 50; hours per response: 5 hours per study area or 125 hours per state; total annual burden: 6250 hours).

h. 47 CFR 54.301—Local Switching support. See OMB control number 3060–0814.

i. 47 CFR 54.307—Reporting of expenses and number of lines served. (No. of respondents: 1300; hours per response: 2 hours to report lines and 4 hours to prepare cost study; total annual burden: 5400 hours).

j. 47 CFR 54.309—Petition for waiver. (No. of respondents: 51; hours per response: 4 hours; total annual burden: 204 hours).

k. 47 CFR 54.311—Petition for waiver. (No. of respondents: 51; hours per response: 4 hours; total annual burden: 204 hours).

l. 47 CFR 54.401(b)(1)–(2)—Submission of disconnection waiver request. (No. of respondents: 50; hours per response: 2 hours; total annual burden; 100 hours).

m. 47 CFR 54.401(d)—Lifeline certification and plans. (No. of respondents: 1300; hours per response: 1 hour; total annual burden: 1300 hours).

n. 47 CFR 54.403—Certifications Required by 47 CFR 54.403. (No. of respondents: 170,187; hours per response: .33 hours; total annual burden: 56,729 hours).

o. 47 CFR 54.405 and 54.411—Carrier Publicizing of Lifeline and Link Up Services. (No. of respondents: 2414; hours per response: 50 hours; total annual burden; 120,700 hours).

p. 47 CFR 54.407(c)—Lifeline record keeping. (No. of respondents: 1300; hours per response: 80 hours; total annual burden: 104,000 hours).

q. 47 CFR 54.409 and § 54.415—Consumer qualification for Lifeline. (No. of respondents: 5.5 million; hours per response: .08 hours; total annual burden: 440,000 hours).

r. 47 CFR 54.409(c)—Consumer notification of Lifeline discontinuance. (No. of respondents: 550,000; hours per response: .08 hours; total annual burden: 44,000 hours).

s. 47 CFR 54.413(b)—Link Up record keeping. (No. of respondents: 1300; hours per response: 80 hours; total annual burden: 104,000 hours).

t. 47 CFR 54.501(d)(3) & 54.516—Schools and libraries record keeping. (No. of respondents: 53,400; hours per response: 80 hours; total annual burden: 372,000 hours).

u. 47 CFR 54.504(b)–(d), 54.505(b)(1), (2), 54.507(d) & 54.509(a)—Description of services requested and certification. See also OMB control number 3060–0806.

v. 47 CFR 54.519—State telecommunications networks. (No. of respondents: 50; hours per response: 4 hours; total annual burden: 200 hours).

w. 47 CFR 54.601(b)(4) & 54.609—(No. of respondents: 3400; hours per response: 100 hours; total annual burden: 340,000 hours).

x. 47 CFR 54.601(b)(3) & 54.619—Shared facility record keeping. (No. of respondents: 15,400; hours per response: 40 hours for 3400 telecommunications carriers and 2 hours for 12,000 health care providers; total annual burden: 160,000 hours).

y. 47 CFR 54.607(b)(1)–(2)—Submission of proposed rural rate. (No. of respondents: 50; hours per response: 3 hours; total annual burden: 150 hours).

z. 47 CFR 54.603(b)(1), 54.615(c)–(d), & 54.623(d)—Description of services requested and certification. See also OMB control number 3060–0804.

aa. 47 CFR 54.619(d)—Submission of rural health care report (No. of respondent: 1; hours per response: 40 hours; total annual burden: 40 hours).

bb. 47 CFR 54.701(f)(1) & (f)(2)—Submission of annual report & CAM. (No. of respondents: 1; hours per response: 40 hours; total annual burden: 40 hours).

cc. 47 CFR 54.701(g)—Submission of quarterly report. (No. of respondents: 1; hours per response: 10 hours; total annual burden: 40 hours).

dd. 47 CFR 54.707—Submission of state commission designation. (No. of respondents: 3400; hours per response: .25 hours; total annual burden: 850 hours).

ee. Obligation to notify underlying carrier. (No. of respondents: 1700; hours per response: 1 hour; total annual burden: 1700 hours).

ff. Demonstrâtion of Reasonable Steps. (No. of respondents: 50; hours per response: 1 hour; total annual burden: 50 hours).

All the requirements contained herein are necessary to implement the congressional mandate for universal service. These reporting requirements are necessary to calculate the contribution amount owed by each telecommunications carrier or to verify that particular carriers and other respondents are eligible to receive universal service support. The recordkeeping requirements should not be burdensome since most businesses ordinarily retain these types of documents. Obligation to respond: Mandatory.

Public reporting burden for the collections of information are as noted above. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–18055 Filed 7–18–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–102; DA 01–1628]

Petition for Waiver of E911 Phase II Rules; Comments Invited

AGENCY: Federal Communications Commission.

ACTION: Solicitation of comments.

SUMMARY: The document invites comment on a Petition for Waiver (Petition) of the Commission's E911 Phase II rule filed July 6, 2001, by Cingular Wireless LLC (Cingular). Current Phase II rules require wireless carriers to begin to deploy the capability to identify the precise location of wireless 911 calls beginning on October 1, 2001, provided that certain conditions are met. This capability is called Phase II Automatic Location Identification (ALI). The Phase II rules establish deployment schedules and set accuracy and reliability requirements for both handset-based and network-based ALI technologies.

Cingular requested a waiver of Phase II rules to permit it to deploy a hybrid network and handset-base technology called Enhanced Observed Time Difference of Arrival (E–OTD) throughout its Global System for Mobil Communications (GSM) air interface network and a switch-based technology, similar to Mobile-Assisted Network Location System for its Time Division Multiple Access network.

The full text of the petition is available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. Pursuant to 47 CFR 1.1200(a), this proceeding is designated as a "permit but disclose" proceeding and subject to § 1.1206 of the Commission's Rules. Presentations to or from Commission decision making personnel are permissible, provided that *ex parte* presentations are disclosed pursuant 47 CFR 1.1206(b).

Interested parties may file comments responding to the Petition on or before July 31, 2001, and reply comments on or before August 10, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.hmtl*. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number of this proceeding.

Parties may also submit an electronic comment by Interest e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form<your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.

DATES: Comments are due on or before July 31, 2001, and reply comments are due on or before August,10, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. A copy should also be sent to Jennifer Salhus, Room 3A–131, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus, 202–418–1310.

Federal Communications Commission

Thomas J. Sugrue,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 01–18128 Filed 7–18–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–102; DA 01–1650]

Petition for Waiver of E911 Phase II Rules; Comments Invited

AGENCY: Federal Communications Commission.

ACTION: Solicitation of comments.

SUMMARY: The document invites comment on a Petition for Waiver (Petition) of the Commission's E911 Phase II rules, filed June 22, 2001, by Corr Wireless Communications, LLC (Corr). Current Phase II rules require wireless carriers to provide the precise location of wireless 911 calls to Public Safety Answering Points (PSAPs), a technological capability known as Automatic Location Identification (ALI). The rules permit wireless carriers to "phase-in" either a network-based or handset-based ALI technology. Handset-based solutions may be gradually phased in beginning October 1, 2001. Carriers employing network solutions are required to provide Phase II service to 50 percent of the PSAP's coverage area or population on October 1, 2001, or within six months of a PSAP request, whichever is later, and 100 percent of the PSAP's coverage area or population within a year thereafter.

Corr requested a temporary waiver of the Commission's Phase II rules to permit the carrier to deploy its network solution in conformity with its proposed graduated implementation schedule. Corr indicates that the Commission's six-month implementation deadline applicable to network-based solutions has been triggered by recent PSAP requests in its service area. According to Corr, the network solution is prohibitively expensive and a graduated

implementation schedule is warranted to ease the economic burden on the carrier. Under Corr's proposed schedule, it will immediately order and install the switch-related infrastructure necessary to provide Phase II service. Thereafter, Corr proposes to provide service to the top 35 percent (measured by 911 service) of the cell sites of any requesting jurisdiction within 9 months of receiving a request, and 50 percent and 75 percent of cell sites within 12 months and 18 months, respectively.

The full text of the petition is available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. Pursuant to 47 CFR 1.1200(a), this proceeding is designated as a "permit but disclose" proceeding and subject to § 1.1206 of the Commission's Rules. Presentations to or from Commission decision making personnel are permissible, provided that *ex parte* presentations are disclosed pursuant 47 CFR 1.1206(b).

Interested parties may file comments responding to the Petition on or before July 26, 2001, and reply comments on or before August 6, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.hmtl.* Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number of this proceeding. Parties may also submit an electronic comment by Interest e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form<your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.

DATES: Comments are due on or before July 26, 2001, and reply comments are due on or before August 6, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. A copy should also be sent to Steven Rangel, Room 8A–831, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Daniel Grosh and Steven Rangel, 202–418–1310.

Federal Communications Commission

Thomas J. Sugrue,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 01–18129 Filed 7–18–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE & TIME: *Tuesday, July 24, 2001 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, July 26, 2001. *Meeting open to the public.*

This meeting has been cancelled.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–18250 Filed 7–17–01; 3:29 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
692F	A.R. Savage & Son, Inc., 1803 Eastport Drive, Tampa, FL 33605	May 4, 2001.
4088F	Able Freight Services, Inc., 801 W. Hyde Park Blvd., Inglewood, CA 90302	May 10, 2001.
10873N	Ameripack Services, Inc., 7301 NW 41st Street, Miami, FL 33166	April 22, 2001.
4268F	J & S Universal Services, Inc., dba Patrick & Rosenfeld Shipping Corp., 4453 NW 97th Avenue, Miami, FL 33178.	March 22, 2001.
3964F	Logistic Excel Corporation, 1521 West Magnolia, Suite B, Burbank, CA 91506	April 27, 2001.
2468F	USA Cargo Services Co., 1343 Terrell Mill Road, Suite 200, Marietta, GA 30067–9472.	June 22, 2001.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–17992 Filed 7–18–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

LICENSE NUMBER: 777NF

NAME: A.W. Fenton Company, Inc.

ADDRESS: 21500 Aerospace Parkway, Brook Park, OH 44142–1071.

DATE REVOKED: June 4, 2001.

REASON: Surrendered license voluntarily.

LICENSE NUMBER: 11082NF.

NAME: NASCO Maritime Inc.
ADDRESS: 9432 Bellanca Avenue, Los Angeles, CA 90045.
DATE REVOKED: June 7, 2001.
REASON: Failed to maintain valid bonds.

LICENSE NUMBER: 2247F.
NAME: Sina International Forwarders, Inc.
ADDRESS: 9432 Bellanca Avenue, Los Angeles, CA 90045.
DATE REVOKED: June 7, 2001.
REASON: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–17991 Filed 7–18–01; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 2, 2001.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. John D. Doherty and Joseph R. Doherty, Somerville, Massachusetts; to acquire more than 10 percent of the voting shares of Central Bancorp, Inc., Somerville, Massachusetts.

B. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Janet M. Williams, individually, as trustee of the B. Anthony Williams Trust, and as executor of the estate of B. Anthony Williams, and Janet M. Williams, Lynn Williams Cowan, Beth Leah Ellingerwood, Brooke Allison Williams, Dana Love Williams, Margaret Constance Ellingwood, James Whittaker Ellingwood, and the B. Anthony Williams Trust; all members of the Williams Family acting in concert, all of Wilmington, Ohio; to retain voting shares of NB&T Financial Group, Inc., Wilmington, Ohio, and thereby indirectly retain shares of National Bank & Trust Company, Wilmington, Ohio.

Board of Governors of the Federal Reserve System, July 13, 2001.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 01–17989 Filed 7–18–00; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. MB-MidCity, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of MB Financial, Inc., Chicago, Illinois; Manufacturers National Corporation, Chicago, Illinois; Manufacturers Bank, Chicago, Illinois; MidCity Financial Corporation, Chicago, Illinois; Abrams Centre Bancshares, Inc., Dallas, Texas; Abrams Centre National Bank, Dallas, Texas; Union Bank and Trust Company, Oklahoma City, Oklahoma; First National Bank of Elmhurst, Elmhurst, Illinois, First National Bank of Morton Grove, Morton Grove, Illinois; and The Mid-City National Bank of Chicago, Chicago, Illinois.

In connection with this application, Applicant also has applied to acquire Summit MFR Leasing LLC, Cincinnati, Ohio, and Sentry Lease Equity Pool 2000-1, LLC, Salt Lake City, Utah, and thereby engage in leasing personal or real property, pursuant to § 225.28(b)(3) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. BNP Paribas, Paris, France; to acquire 100 percent of the voting shares of BancWest Corporation, Honolulu, Hawaii, and thereby indirectly acquire Bank of the West, San Francisco, California, and First Hawaiian Bank, Honolulu, Hawaii.

Board of Governors of the Federal Reserve System, July 13, 2001.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 01–17990 Filed 7–18–00; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Rules of Organization

AGENCY: Board of Governors of the Federal Reserve System.
ACTION: Revision of rules of organization.

SUMMARY: The Secretary of the Board has approved technical corrections to the Board's Rules of Organization to reflect organizational changes. The revisions will bring descriptions of the functions of central and field organizations up to date.

DATES: The revised Rules of Organization are effective August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Robert deV. Frierson, Associate Secretary of the Board (202/452–3711), Office of the Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board's Rules of Organization is an uncodified regulation issued as required by section 552(a)(1) of the Freedom of Information Act, 5 U.S.C. 552(a)(1), and is revised to read as follows:

Section 1—Basis and Scope

These rules are issued by the Board of Governors of the Federal Reserve System ("the Board") pursuant to the requirement of section 552 of title 5 of the United States Code that each agency shall publish in the **Federal Register** a description of its central and field organization.

Section 2—Composition, Location, and Public Information

(a) *Members, Chairman, Vice Chairman.* The Board consists of seven members appointed by the President, by and with the advice and consent of the Senate, for 14-year terms. The members of the Board are required by law to devote their entire time to the business of the Board. One member is designated by the President as Chairman and one as Vice Chairman, to serve in those positions for terms of four years. At meetings, the Chairman presides or, in the Chairman's absence, the Vice Chairman presides. In the absence of the Chairman and Vice Chairman, the member of the Board present with the longest service acts as Chairman. The Chairman of the Board, subject to its supervision, is its active executive officer. The Board meets regularly to consider matters related to monetary and credit policies, its regulatory and supervisory duties under various statutes, and administrative and other questions related to its responsibilities.

(b) *Location and business hours.* The principal offices of the Board are at 20th Street and Constitution Avenue, NW., Washington, DC 20551. The public entrance is at 20th and C Streets, NW. The Board's regular business hours are from 8:45 a.m. to 5:15 p.m. each weekday, but its business hours may be changed from time to time.

(c) *Public information.* Public information about the Board and its actions may be obtained from the Freedom of Information Office at the principal offices of the Board during regular business hours or from the Board's Internet site at www.federalreserve.gov. Requests for information or submissions to the Board may be sent to the Secretary of the Board at its principal offices.

Section 3—Central Organization

The Board's central organization consists of the members of the Board and the following offices, divisions, and officials:

(a) *Office of Board Members* consists of the members of the Board, and assistants and special assistants to the Board assigned to public affairs and congressional liaison.

(b) *Division of Monetary Affairs,* headed by a director, is responsible for planning and coordinating programs, memoranda, and analyses and presenting decision-making options in areas of monetary and closely related financial policies. Responsibilities are carried out through various staff activities, including preparation of position papers and other documents on monetary policy issues such as open market, discount, and reserve requirement policy; coordination of analysis of regulatory and statistical issues closely related to monetary policy, including publication and interpretation of a variety of statistical series on money, reserves, and interest rates; and liaison with the trading desk at the Federal Reserve Bank of New York in connection with open market operations and market developments.

(c) *Office of Staff Director for Management,* who reports to members of the Board, is responsible for the planning and coordination of Board operations and the management of Board resources. The Staff Director exercises authority over Board divisions in the areas of strategic planning, budgeting and financial management, human resources management, information technology, facilities management, and continuity of operations and exercises line authority over the divisions of Management, Information Technology, and Support Services. The Staff Director also oversees the Board's work with the Office of Management and Budget, the General Accounting Office, the Congressional Budget Office, and other federal agencies.

(d) *Management Division,* currently headed by the Staff Director for Management, is responsible for supporting strategic planning and providing support to the Board in the areas of finance, human resources, and equal employment opportunity. The division is also responsible for maintaining the Board's management policies and procedures.

(e) *Office of the Secretary,* headed by the Secretary of the Board, coordinates and handles items requiring Board action, including actions under delegated authority; prepares agendas for Board meetings; implements actions taken at Board meetings; prepares, circulates, and indexes minutes of the Board; publishes the *Federal Reserve Regulatory Service* and related manuals; oversees the selection of Federal Reserve Bank and Branch directors; provides liaison at the staff level with the Federal Advisory Council, the Thrift Institutions Advisory Council, and other groups; makes arrangements for Board and System conferences at the Board; maintains custody of, and provides reference service in connection with, official records of the Board; handles correspondence and requests from the public for records; secures passports and visas for official travel of System personnel; and provides relief secretarial services.

(f) *Legal Division,* headed by the General Counsel, advises the Board in carrying out its statutory and regulatory responsibilities by preparing Board decisions, regulations, rules, instructions, and legal interpretations of statutes and regulations administered by the Board; represents the Board in civil litigation and administrative proceedings; assists other divisions in fulfilling their responsibilities in such areas as contracting, fiscal agency activities, Federal Reserve Bank matters, labor law, personnel, and supervisory enforcement matters; and prepares testimony or comments on proposed legislation.

(g) *Division of Research and Statistics,* headed by a director, provides the Board and the Federal Open Market Committee with the economic analysis and information needed for current operations, for the formulation of monetary and credit policies, and for the exercise of responsibilities regarding bank regulation; prepares, publishes, and interprets a variety of statistical series in the financial and nonfinancial fields; and conducts basic research related to the effects of monetary policy on economic activity and prices and to the effects of financial regulation on the structure and functioning of financial markets.

(h) *Division of International Finance,* headed by a director, provides the Board, the Federal Open Market Committee, and other System officials with assessments of current international economic and financial developments. Staff members analyze major economic and financial developments abroad, issues connected with exchange-market developments, international financial flows and their implications, the international monetary and financial systems and their evolution, and the balance-of-payments adjustment process. The division provides economic data and analyses for public release. It also works with the Chairman and other Board members in their roles as members of various

interagency bodies dealing with international economic policy issues.

(i) *Division of Reserve Bank Operations and Payment Systems,* headed by a director, advises and assists the Board in its oversight of Reserve Banks as providers of financial services to depository institutions, the Department of the Treasury, and other government agencies. This oversight includes assessment of the future direction of the Reserve Banks' operations and services, the implementation of major initiatives, and ongoing operations. The division evaluates the efficiency and effectiveness of, and the adequacy of controls over, Reserve Bank financial and fiscal agency services, and most Reserve Bank support functions, such as information technology, human resources, financial and cost accounting, operating and capital budgeting, facilities management, and internal audit. The division prescribes accounting principles, standards, and related requirements to be followed by the Reserve Banks. In addition, it coordinates the printing and distribution of Federal Reserve notes.

The division recommends to the Board policies and regulations to foster the integrity and efficiency of the U.S. payment system; works closely with other central banks, the private sector, international organizations, and other interested parties to improve the payment system more broadly; and conducts research on various payments issues. It also coordinates with the Department of the Treasury and other government agencies to facilitate the System's role as fiscal agent to the United States.

(j) *Division of Banking Supervision and Regulation,* headed by a director, coordinates the System's supervision of banks and bank holding companies and oversees and evaluates the Reserve Banks' examination procedures; exercises general supervision of the banking, fiduciary, and information technology activities of state member banks, bank holding companies and their nonbank subsidiaries, and other financial entities supervised by the Board; administers laws, regulations, and supervisory policies relating to state member banks, bank holding companies, financial holding companies, nonbank subsidiaries, Edge and agreement corporations, foreign banks with domestic operations, and persons related to those institutions; supervises various foreign banking activities of member banks and foreign banking organizations; processes and presents to the Board applications filed under the Bank Holding Company Act of 1956, the Bank Merger Act, the Federal Reserve Act, and various other related statutes; coordinates supervisory activities with other regulators, such as the Securities and Exchange Commission and state insurance authorities, as required by the Gramm-Leach-Bliley Act; and advises the Board about developments in banking and in bank supervisory policies and procedures.

(k) *Division of Consumer and Community Affairs,* headed by a director, administers consumer affairs legislation for which the Board has responsibility. Its functions include drafting regulations that implement the Truth in Lending Act, the Equal Credit Opportunity Act, the Community Reinvestment Act, the Home Mortgage Disclosure Act, the Fair Credit Billing Act, the Home Ownership and Equity Protection Act, the Consumer Leasing Act, the Electronic Fund Transfer Act, the Fair Credit Reporting Act, and the Federal Trade Commission Improvements Act. It oversees policy development and monitors the System's examination and enforcement activities regarding compliance by state member banks with these laws and with the Fair Debt Collection Practices Act, the Fair Housing Act, the Flood Disaster Protection Act, and the Real Estate Settlement Procedures Act, as well as Regulation Q (Interest on Deposits). The division also administers the System's consumer complaint program; reviews bank and bank holding company applications with respect to community reinvestment and consumer compliance matters; oversees the community affairs programs of the Reserve Banks, which provide information, education, and technical assistance regarding community development lending and other matters; conducts consumer research; and develops educational initiatives as an alternative or an adjunct to regulation.

(l) *Division of Support Services,* headed by a director, manages the operation of all support programs necessary for the Board to conduct its daily business. These programs include building and office services, facilities management, and logistical and administrative operations. The division is also responsible for the management and operation of the personnel security program for the System; environmental safety plans and programs under applicable environmental protection laws and the Occupational Safety and Health Act; and the development and implementation of strategic plans for major capital replacements, acquisitions, and renovations.

(m) *Division of Information Technology,* headed by a director, is responsible for the overall planning, acquisition, implementation, operation, and maintenance of the Board's automation and telecommunications equipment, operating and data base systems software, and other hardware and software required at the Board; information security; mainframe linkage to distributed processing; and the Board's Internet site. The division is also responsible for the design, development, and implementation of applications software; for the collection, processing, and maintenance of statistical and regulatory data provided by commercial banks, bank holding companies, other financial institutions, and Federal Reserve Banks; and for the provision of technical consulting services related to automation activities in other Board divisions and offices.

(n) *Office of Inspector General* is required by the Inspector General Act of 1978, as amended, to conduct and supervise independent and objective audits, investigations, and other reviews of Board programs and operations; promote economy, efficiency, and effectiveness within the Board; prevent and detect fraud, waste, and mismanagement in the Board's programs and operations; review and make recommendations regarding possible improvements to existing and proposed legislation and regulations related to Board programs and operations; and keep the Chairman and Congress fully and currently informed of problems.

In addition, the Federal Deposit Insurance Act, as amended, requires the Office of Inspector General to review the failure of any financial institution supervised by the Board that results in a material loss to deposit insurance funds and to produce, within six months of the loss, a report that includes possible suggestions for improvement in the Board's banking supervision practices. Through an agreement with the Inspectors General for the other federal financial institutions regulatory agencies, the Board's Office of Inspector General will also investigate any material loss to deposit insurance funds caused by the failure of any financial institution supervised by one of these agencies if that institution is a subsidiary of a Board-regulated holding company.

(o) *Other personnel.* The Board does not employ administrative law judges or hearing officers as regular members of its staff. However, in accordance with applicable law and in individual cases, the Board obtains and uses administrative law judges and hearing

officers, whose functions are separated from investigative and prosecuting functions of the staff.

Section 4—Field Organization

(a) *Federal Reserve Banks.* The United States is divided into 12 Federal Reserve Districts. A Federal Reserve Bank is located in one city in each Federal Reserve District. Ten of the Federal Reserve Banks have one or more Branches in other cities, and in some Districts there are offices or facilities with specialized functions. Each Federal Reserve Bank is a separate legal entity, created pursuant to the Federal Reserve Act and operating under the general supervision of the Board. The locations of the 12 Federal Reserve Banks and the 25 Federal Reserve Branches are shown in the appendix. Each Federal Reserve Bank, in addition to its other duties, carries out local functions for the Board pursuant to instructions of the Board, and in many matters acts as the Board's field representative in the Bank's District. Each Reserve Bank assists in the regional administration of the Board's regulations and policies, keeps the Board informed of local conditions, and recommends actions it thinks appropriate in particular cases. In general, persons concerned with Federal Reserve matters should deal in the first instance with the Federal Reserve Bank of the appropriate District or a Branch thereof, and the Board requests all persons to follow this procedure.

(b) *Federal Reserve agents.* Each Federal Reserve Bank has nine directors, three of whom are appointed by the Board. One of the directors appointed by the Board is designated by the Board as chairman of the board of directors of the Bank and as Federal Reserve agent. This director acts as the Board's official representative and maintains a local office of the Board on the premises of the Federal Reserve Bank.

Section 5—Delegations of Authority

The Board does not delegate any of its functions relating to rulemaking or pertaining principally to monetary or credit policies or involving any questions of general policy. However, the Board delegates certain of its supervisory and other functions prescribed by statute or Board regulation to its members or employees or to the Federal Reserve Banks as provided in its Rules Regarding Delegation of Authority (12 CFR 265) and in specific Board actions. In addition, the Board delegates to the Federal Reserve Banks certain functions not provided for by statute or Board regulation, including authority to extend the time within which certain transactions may be consummated.

Appendix—Federal Reserve Banks

*Boston**

600 Atlantic Avenue, Boston, Massachusetts 02106

*New York**

33 Liberty Street (Federal Reserve P.O. Station), New York, New York 10045

Buffalo Branch
160 Delaware Avenue, Buffalo, New York 14202 (P.O. Box 961, Buffalo 14240–0961)

Philadelphia

Ten Independence Mall, Philadelphia, Pennsylvania 19106 (P.O. Box 66, Philadelphia 19105)

*Cleveland**

1455 East Sixth Street, Cleveland, Ohio 44114 (P.O. Box 6387, Cleveland 44101)

Cincinnati Branch
150 East Fourth Street, Cincinnati, Ohio 45202 (P.O. Box 999, Cincinnati 45201–0999)

Pittsburgh Branch
717 Grant Street, Pittsburgh, Pennsylvania 15219 (P.O. Box 867, Pittsburgh 15230)

*Richmond**

701 East Byrd Street, Richmond, Virginia 23219 (P.O. Box 27622, Richmond 23261)

Baltimore Branch
502 S. Sharp Street, Baltimore, Maryland 21201 (P.O. Box 1378, Baltimore 21203)

Charlotte Branch
530 East Trade Street, Charlotte, North Carolina 28202 (P.O. Box 30248, Charlotte 28230)

Atlanta

1000 Peachtree Street N.E., Atlanta, Georgia 30309–4470

Birmingham Branch
524 Liberty Parkway, Birmingham, Alabama 35242

Jacksonville Branch
800 Water Street, Jacksonville, Florida 32204 (P.O. Box 929, Jacksonville 32231–0044)

Miami Branch
9100 Northwest 36th Street, Miami, Florida 33178 (P.O. Box 520847, Miami 33152–0847)

Nashville Branch
301 Eighth Avenue, North, Nashville, Tennessee 37203 (P.O. Box 4407, Nashville 37203–4407)

New Orleans Branch
525 St. Charles Avenue, New Orleans, Louisiana 70130 (P.O. Box 61630, New Orleans 70161–1630)

* Additional offices of these Banks are located at Lewiston, Maine 04240; Windsor Locks, Connecticut 06096; East Rutherford, New Jersey 07073; Utica at Oriskany, New York 13424; Columbus Ohio 43216; Columbia, South Carolina 29210; Charleston, West Virginia 25328; Des Moines, Iowa 50306; Indianapolis, Indiana 46206; Milwaukee, Wisconsin 53201; and Peoria, Illinois 61601.

*Chicago**

230 South LaSalle Street, Chicago, Illinois 60604 (P.O. Box 834, Chicago 60690–0834)

Detroit Branch
160 W. Fort Street, Detroit, Michigan 48226 (P.O. Box 1059, Detroit 48231)

St. Louis

411 Locust Street, St. Louis, Missouri 63102 (P.O. Box 442, St. Louis 63166)

Little Rock Branch
325 West Capitol Avenue, Little Rock, Arkansas 72201 (P.O. Box 1261, Little Rock 72203–1261)

Louisville Branch
410 South Fifth Street, Louisville, Kentucky 40202 (P.O. Box 32710, Louisville 40232–2710)

Memphis Branch
200 North Main Street, Memphis, Tennessee 38103 (P.O. Box 407, Memphis 38101–0407)

Minneapolis

90 Hennepin Avenue, Minneapolis, Minnesota 55401 (P.O. Box 291, Minneapolis 55480–0291)

Helena Branch
100 Neill Avenue, Helena, Montana 59601

Kansas City

925 Grand Blvd., Kansas City, Missouri 64198

Denver Branch
1020 16th Street, Denver, Colorado 80202 (Terminal Annex-P.O. Box 5228, Denver 80217)

Oklahoma City Branch
226 Dean A. McGee Avenue (P.O. Box 25129), Oklahoma City, Oklahoma 73125

Omaha Branch
2201 Farnam Street, Omaha, Nebraska 68102 (P.O. Box 3958, Omaha 68103)

Dallas

2200 North Pearl Street, Dallas, Texas 75201–2272 (P.O. Box 655906, Dallas 75265–5906)

El Paso Branch
301 East Main Street, El Paso, Texas 79901–1326 (P.O. Box 100, El Paso 79999–0100)

Houston Branch 1701 San Jacinto Street, Houston, Texas 77002–8215 (P.O. Box 2578, Houston 77252–2578)

San Antonio Branch
126 East Nueva Street, San Antonio, Texas 78204 (P.O. Box 1471, San Antonio 78295–1471)

San Francisco

101 Market Street, San Francisco, California 94105 (P.O. Box 7702, San Francisco 94120)

Los Angeles Branch
950 South Grand Avenue, Los Angeles, California 90015 (Terminal Annex-P.O. Box 2077, Los Angeles 90051)

Portland Branch
915 S.W. Stark Street, Portland, Oregon 97025 (P.O. Box 3436, Portland 97208)

Salt Lake City Branch

120 South State Street, Salt Lake City, Utah 84111 (P.O. Box 30780, Salt Lake City 84125)
Seattle Branch

1015 Second Avenue, Seattle, Washington 98104 (P.O. Box 3567, Seattle 98124)
Phoenix Processing Center

1550 N. 47th Avenue, Phoenix, Arizona 85043

Boundaries of Federal Reserve Districts

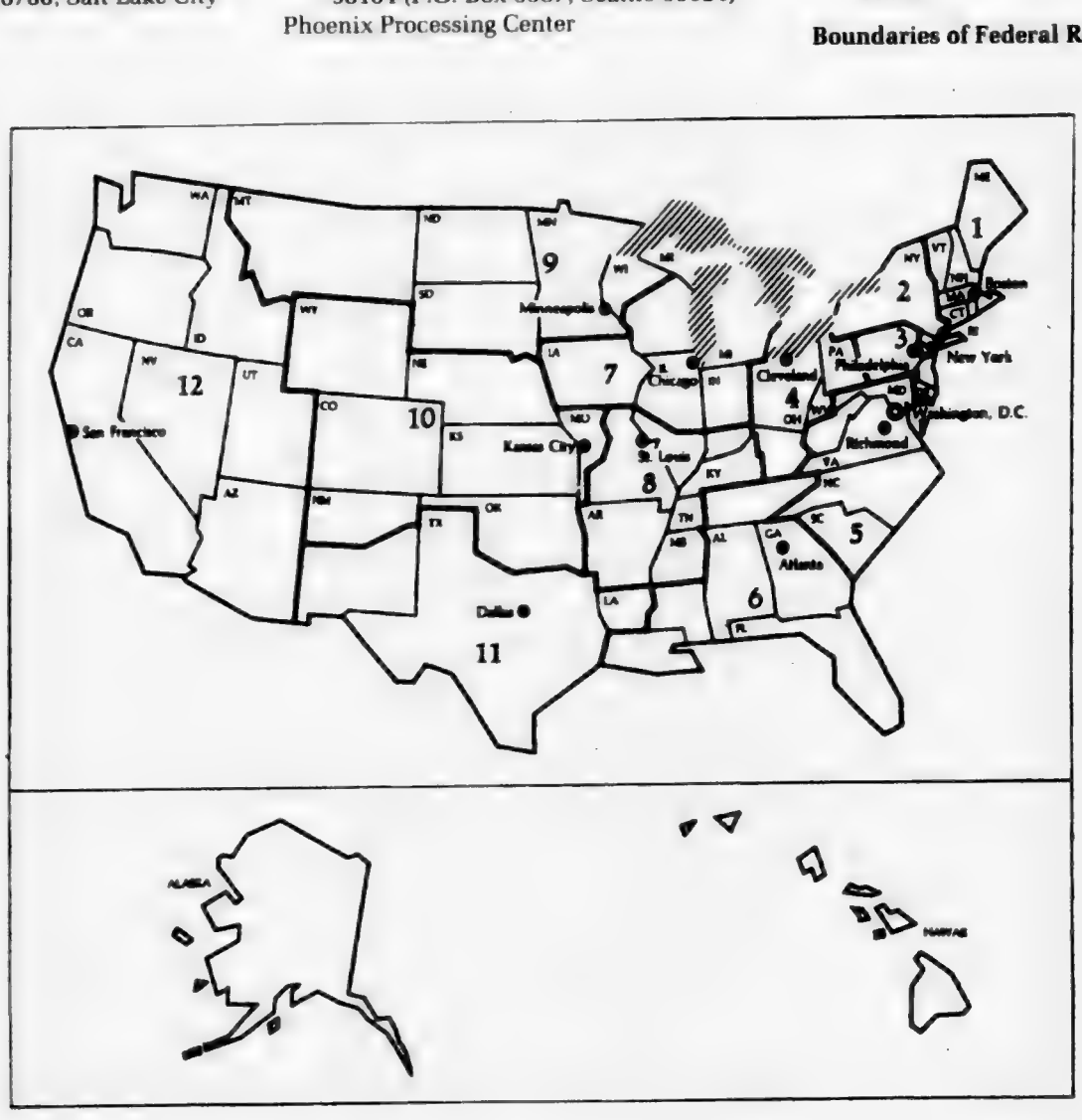

Legend

— Boundaries of Federal Reserve Districts

● Board of Governors of the Federal Reserve System

● Federal Reserve Bank Cities

By order, approved pursuant to authority delegated by the Board, effective July 12, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–17895 Filed 7–18–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10 a.m. (EDT), July 17, 2001.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Involvement of Board in a civil action.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 17, 2001.

Salomon Gomez,

Associate General Counsel, Federal Retirement Thrift Investment Board.

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BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health and Science; Office of Minority Health; Availability of Funds for a Cooperative Agreement for the HIV/AIDS Regional Resource Network Program

AGENCY: Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice of availability of funds and request for applications for a cooperative agreement for the HIV/AIDS regional resource network program.

Program Title: HIV/AIDS Regional Resource Network Program.

OMB Catalog of Federal Domestic Assistance: The OMB Catalog of Federal

Domestic Assistance number for the HIV/AIDS Regional Resource Network Cooperative Agreement Program is 93.004.

Authority: This program is authorized under section 1707(e)(1) of the Public Health Service Act, as amended.

Purpose: The purpose of the HIV/AIDS Regional Resource Network Program is to increase the capacity of community-based organizations (CBOs), including small, minority CBOs, serving communities of color to provide prevention and early intervention services for poor, minority communities disproportionately impacted by HIV/AIDS and STDs. The program's goals are to:

- Facilitate the involvement of CBOs, including minority CBOs, serving communities of color in federal regional HIV/AIDS initiatives, planning, and networking; and
- Provide training and technical assistance to CBOs, including minority CBOs, serving communities of color to build their capacity to serve racial and ethnic minority communities with a high incidence of HIV.

The program is intended to demonstrate that by involving CBOs, including minority CBOs, serving communities of color in federal regional planning and networking efforts, the coordination, comprehensiveness, and quality of HIV/AIDS services to minority communities will be improved.

Eligible Applicants: Private, nonprofit organizations are eligible to apply for this cooperative agreement.

Note: Public organizations, universities and institutions of higher education are not eligible to apply for this cooperative agreement.

Organizations are not eligible to receive awards from more than one Office of Minority Health (OMH) program concurrently as the grant recipient. An organization may submit only one proposal under this announcement.

Availability of Funds: Approximately $1.2 million is expected to be available for one competitive award in FY 2001 for a 12-month period. Support may be requested for a total project period not to exceed 3 years.

The applicant chosen through the competitive review process:

- Will begin the HIV/AIDS Regional Resource Network Program on September 30, 2001.
- Will be able to apply for a noncompeting continuation award of up to $1.2 million for each of two additional years. After Year 1, funding is based on:

a. The amount of money available; and

b. Success or progress in meeting project objectives.

Note: For the noncompeting continuation awards, the grantee must submit continuation applications, written reports, and continue to meet the established program guidelines.

Use of Cooperative Agreement Funds: Budgets of up to $1.2 million total costs (direct and indirect) per year may be requested to cover costs of:

- Personnel.
- Consultants.
- Supplies.
- Equipment.
- Grant related travel.
- Other grant related costs.

Funds *may not* be used for:

- Medical treatment.
- Construction.
- Building alterations or renovations.

Note: All budget requests must be fully justified in terms of the proposed objectives and activities and include a computational explanation of how costs were determined.

Background

The mission of the Office of Minority Health (OMH) is to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help to address health disparities and gaps. The role of OMH is to serve as the focal point within HHS for service demonstrations, coalition and partnership building, and related efforts to address the health needs of racial and ethnic minorities. In keeping with this mission, the HIV/AIDS Regional Resource Network Program is to assist in addressing the HIV/AIDS issues facing minority communities disproportionately impacted by the epidemic.

In FY 1999, the Office of Public Health and Science, Office of Population Affairs, launched the HIV/AIDS Regional Resource Network Program as a two year program to conduct training and technical assistance activities for the purpose of increasing the capacity of small CBOs to provide prevention and early intervention services in poor, minority communities disproportionately impacted by HIV/AIDS, sexually transmitted diseases, and unwanted pregnancies. A demonstration project was developed to focus on improving the coordination, comprehensiveness, and quality of HIV/AIDS service provision by bringing CBOs serving communities of color into federal regional planning and networking efforts. Training and technical assistance was provided to high-risk communities to facilitate local and regional planning and prevention efforts, and create mechanisms for closer working relationships with federal regional offices. Regional Resource Consultants were placed in 5 of the HHS Regional Offices (New York, Atlanta, Dallas, Chicago, and San Francisco) to identify and network with HIV/AIDS organizations and agencies within their regions, to develop a regional directory of HIV/AIDS service organizations, and to oversee the distribution of capacity-building awards. In this FY 2001 cooperative agreement announcement, OMH is building on the efforts of the last two years and expanding the project to include all 10 HHS Regions.

Project Requirements:

The applicant must propose a model program to be carried out within each of the 10 HHS Regions that addresses the following goals:

- Facilitate the involvement of CBOs, including minority CBOs, serving communities of color in federal regional HIV/AIDS initiatives, planning, and networking; and
- Provide training and technical assistance to CBOs, including minority CBOs, serving communities of color to build their capacity to serve racial and ethnic minority communities with high incidence of HIV.

Note: A listing of the 10 HHS Regions and the Regional Health Administrator contacts is provided in the application kit.

Program Activities: In conducting activities to achieve the purpose of this cooperative agreement program, the grantee will be responsible for carrying out the activities listed under

1. Grantee Activities. The ten HHS Regional Offices and the OMH will be responsible for the activities listed under 2. HHS Regional Office Activities and 3. OMH Activities.

1. Grantee Activities:

a. Collaborate onsite with the 10 HHS Regional Offices to carry out the goals and activities of the cooperative agreement program. Such collaboration is to include assignment and supervision of a Regional Resource Consultant (RRC) in each regional office. The grantee is encouraged to involve the HHS Regional Offices in the selection of the RRCs;

b. Identify CBOs, including minority CBOs, serving communities of color which provide support and ancillary services to individuals and families affected and infected by HIV/AIDS;

c. Identify the training and technical assistance needs of these organizations and link them with appropriate HHS resources;

d. Establish networking relationships between the HHS Regional Offices and the CBOs and foster closer collaboration between these CBOs and federal, state and local governments;

e. Provide limited capacity building funds to eligible CBOs (NOTE: 40% of total cooperative agreement funds must be allocated for CBO capacity building awards);

f. Maintain regional resource directories of CBOs, including minority CBOs, serving communities of color that work with racial and ethnic communities in the area of HIV/AIDS programs or services; and

g. Develop a technical assistance/skills-building manual for use by targeted and other organizations serving communities of color to enhance their skills to serve racial and ethnic minority communities with high incidence of HIV.

2. HHS Regional Offices Activities:

a. Assist in the identification and selection of RRCs and provide in-kind support to the RRCs including office space, telephone usage, and Internet access;

b. Designate a federal employee in the regional office where the RRC is placed to oversee the consultant's activities (NOTE: Supervision of the RRCs is the responsibility of the grantee);

c. Participate in the review of regional capacity-building awards to eligible CBOs; and

d. Assist the RRCs in expanding their networking and planning relationships to include identifying tribal resources, coordinating efforts with HHS crisis response teams, and working with local and state prison systems to implement HIV screening, prevention, and treatment programs.

3. OMH Activities:

a. Provide assistance in the development of project methodologies and analysis as needed;

b. Provide assistance with linkages to federal agencies for technical assistance, training and other resources; and

c. Establish an Advisory Committee composed of members from HHS including the Regional Offices to make recommendations and provide advice and guidance in the implementation of program objectives.

Application Kit

- For this cooperative agreement, Form PHS 5161–1 (Revised July 2000 and approved by OMB under Control Number 0937–0189) must be used.
- An applicant is advised to pay close attention to the specific program guidelines and general instructions provided in the application kit.
- To get an application kit, write to: Ms. Karen Campbell, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852.

Or call Karen Campbell at (301) 443–8441.

Where To Send Applications

Send the original and 2 copies of the complete grant application to: Ms. Karen Campbell, Grants Management Officer, Division of Management, Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852.

Application Deadline

To receive consideration, grant applications must be received by the OMH Grants Management Office by August 20, 2001. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

How to Get Help

In addition to contacting Karen Campbell for application kits, she may also be contacted for technical assistance on budget and business aspects of the application. For further explanations and answers to questions on programmatic aspects, contact: Ms. Cynthia H. Amis, Director, Division of Program Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852.

Or call: Cynthia Amis at (301) 594–0769.

For additional assistance contact the OMH Regional Minority Health Consultants listed in the grant application kit.

For health information contact the OMH Resource Center at 1–800–444–6472.

Review of Applications

- Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive, or nonconforming to the announcement will be returned without comment.
- An organization may submit no more than one proposal under this announcement.
- Organizations submitting more than one proposal will be deemed ineligible. The proposals will be returned without comment.
- Accepted applications will be reviewed for technical merit in accordance with PHS policies.
- Applications will be evaluated by an Objective Review Committee. Committee members are chosen for their expertise in minority health, their experience in technical assistance and capacity development, and their understanding of the unique health problems and related issues confronted by racial and ethnic minorities in the United States.

Application Review Criteria

The technical review of applications will consider the following 5 generic factors (including Background, Objectives, Methodology, Evaluation, and Management Plan), listed below in descending order of priority.

Factor 1: Methodology (35%)

- Appropriateness of proposed approach for regional collaboration including any established organizational linkages for providing training and technical assistance related to HIV/AIDS.
- Appropriateness of specific activities for providing training and technical assistance related to HIV/AIDS and capacity development.
- Logic and sequencing of the planned approaches in relation to the provision of HIV/AIDS training and technical assistance.

Factor 2: Evaluation (20%)

- Thoroughness, feasibility, and appropriateness of the evaluation design, data collection, and analysis procedures.
- Clear intent and plans to document the activities and their outcomes.
- Clear indication that the project will result in a model that can be replicated.

Factor 3: Background (15%)

- Established level of cultural competence and sensitivity to the issues of minority populations disproportionately impacted by HIV/AIDS.
- Expertise and understanding of HIV/AIDS prevention and treatment service delivery systems especially as related to HIV/AIDS care among minority populations.
- Demonstrated access to targeted organizations and experience in

working with CBOs, including minority CBOs, serving communities of color.

• Demonstrated experience in networking, planning, and implementing activities at a regional level.

• Demonstrated outcomes of past similar efforts/activities with the target population.

Factor 4: Objectives (15%)

• Merit of the objectives.

• Relevance to the program purpose and stated problem.

• Attainability in the stated time frames.

Factor 5: Management Plan (15%)

• Demonstrated knowledge/skills in organizational management, diversification of fiscal base, and organizational development; and ability to mobilize a strong training and technical assistance capacity onsite.

• Ability to plan and coordinate efforts at a regional level.

• Capability to manage and evaluate the project as determined by:

a. The qualifications of proposed staff or requirements for "to be hired" staff.

b. Staff level of effort.

c. Management experience of the applicant.

d. Clarity of the applicant's organizational chart.

Award Criteria

Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health of the Office of Minority Health, and will take under consideration the recommendations and ratings of the Objective Review Committee.

Reporting and Other Requirements

General Reporting Requirements

A successful applicant under this notice will submit: (1) progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the OMH, in accordance with provisions of the general regulations which apply under 45 CFR Part 74.51–74.52.

Public Health System Reporting Requirements

This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424); and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served; (2) a summary of the services to be provided; and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OMH.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit available under this notice will contain a list of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the OMH Grants Management Officer.

The OMH does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See "Intergovernmental Review of Federal Programs" Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

Additional Background Information

Disproportionate Effect of HIV/AIDS on Minorities

Statistics indicate that although advances have been made in the treatment of HIV/AIDS, this epidemic continues as a significant threat to the public health of the United States. Despite showing a decline in the past few years, HIV/AIDS remains a disproportionate threat to minorities. According to the CDC HIV/AIDS Surveillance Report December 1999 Year-end Edition (Vol. 11—Number 2), during the 1990s the epidemic shifted steadily toward a growing proportion of AIDS cases in African-Americans and Hispanics. In absolute numbers, African-Americans have outnumbered whites in new AIDS diagnoses and deaths since 1996 and the number of persons living with AIDS since 1998. While African-Americans and Hispanics respectively represent approximately 13% and 10% of the U.S. population, approximately 37% of the more than 733,000 reported total AIDS cases in 1999 were African-American and 18% are Hispanic.

In 1999, more African-Americans were reported with AIDS than any other racial/ethnic group. Of the total HIV infection cases reported through December 1999, 52% (64,299) were reported among African-Americans, 38% (46,277) were reported among whites, and 8% (9,296) were reported among Hispanics. Among women and children with AIDS, African-Americans have been especially affected, representing 63% of all women reported with AIDS in 1999 and 65% of reported pediatric AIDS cases in 1999. During 1999, the rate of new AIDS cases per 100,000 population in the U.S. was 84.2 among African-Americans, 34.6 among Hispanics, 9.0 among whites, 11.3 among American Indians/Alaska Natives, and 1.4 among Asians/Pacific Islanders.

The recent CDC Morbidity and Mortality Weekly Report (June 1, 2001/ Volume 50, Number 21) describes the changes in the characteristics of persons with AIDS since 1981 with the greatest impact of the epidemic among men who have sex with men (MSM) and among racial/ethnic minorities. The report presents data on the number and percentage of persons with AIDS by race/ethnicity since the first AIDS cases were reported in the U.S. in June 1981. These data show overall increases in AIDS cases among minority populations from 1981 to 2000: African-Americans (25.5% to 44.9%); Hispanics (14% to 19.7%); Asian/Pacific Islanders (0.6% to 0.8%), and American Indians/Alaska Natives (0.1% to 0.4%). In contrast, the data show a decrease in AIDS cases among whites (59.7% to 34%) for the same period. The report also points to a resurgent HIV epidemic among men who have sex with men (MSM), particularly among young minority males. The prevalence of HIV infection was higher among African-Americans

(14.1%), Hispanics (6.9%), and American Indians/Alaska Natives (6.7%) than among whites (3.3%) and Asian/Pacific Islanders (3%).

Healthy People 2010: The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led national activity announced in January 2000 to eliminate health disparities and improve years and quality of life. HIV/AIDS is one focus area of Healthy People 2010. More information may be found on the Healthy People 2010 web site: *http://www.health.gov/healthypeople*, and copies of the document may be downloaded. Copies of the *Healthy People 2010: Volumes I and II* can be purchased by calling (202) 512–1800 (cost $70.00 for printed version; $19.00 for CD–ROM). Another reference is the *Healthy People 2010 Review-1998–99*. For 1 free copy of the *Healthy People 2010 Review-1998–99*, contact: The National Center for Health Statistics, Division of Data Services, 6525 Belcrest Road, Room 1064, Hyattsville, MD 20782, or telephone at (301) 458–4636.

Ask for HHS Publication No. (PHS) 99–1256. This document may also be downloaded from the NCHS web site: http://www.cdc.gov/nchs.

Definitions

For purposes of this cooperative agreement announcement, the following definitions are provided:

Community-Based Organization—Private, nonprofit organizations *and* public organizations that are representative of communities or significant segments of communities where the control and decision-making powers are located at the community level.

Minority Community-Based Organization—Private nonprofit community-based organizations or local affiliates of national organizations that have a governing board composed of 51 percent or more racial/ethnic minority members and a significant number of minorities employed in key program positions.

Minority Populations—

- American Indian or Alaska Native.
- Asian.
- Black or African American.
- Hispanic or Latino.
- Native Hawaiian or Other Pacific Islander.

(Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997.)

Dated: July 13, 2001.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 01–18070 Filed 7–18–01; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetic Testing

Pursuant to Public Law 92–463, notice is hearby given of the tenth meeting of the Secretary's Advisory Committee on Genetic Testing (SACGT), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to 4:30 p.m. on August 17, 2001 at the National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892. The meeting will be open to the public with attendance limited to space available.

The Committee will discuss two major topics: (1) The outcomes and discussion of an outreach meeting convened by the Data Work Group on a proposed pre-market review template, post-market data collection efforts, and proposed Q & A for genetic tests for health providers; and (2) issues related to genetics education for health professionals, including a presentation from the National Coalition for Health Professional Education in Genetics. Time will be provided for public comment and interested individuals should notify the contact person listed below.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGT to advise and make recommendations to the Secretary through the Assistant Secretary for Health on all aspects of the development and use of genetic tests. The SACGT is directed to (1) recommended policies and procedures for the safe and effective incorporation of genetic technologies into health care; (2) assess the effectiveness of existing and future measures for oversight of genetic tests; and (3) identify research needs related to the Committee's purview.

The draft meeting agenda and other information about SACGT will be available at the following web site: *http://www4.od.nih.gov/oba/sacgt.htm* Individuals who wish to provide public comments or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGT Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or E-mail at *sc112c@nih.gov*. The SACGT office is located at 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892.

Dated: July 9, 2001.

Sarah Carr,

Executive Secretary, SACGT.

[FR Doc. 01–18042 Filed 7–18–01; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01190]

Human Immunodeficiency Virus (HIV) Prevention Intervention Research Studies—Prevention for HIV-Positive Persons; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for the prevention for HIV-positive persons. This program addresses the "Healthy People 2010" focus area of HIV.

The purpose of the activity is to generate effective prevention service models designed for HIV-infected persons, to be delivered at HIV care settings.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Title 2 of the United States Code, chapter 26, section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that

engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $750,000 is available in FY 2001 to fund approximately three to five awards. It is expected that the average award will be $250,000, ranging from $150,000 to $350,000. It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

1. Use of Funds

Funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to supplant State or local funds available for HIV Prevention. Funds may not be used to provide direct medical care.

2. Funding Preferences

Preference will be given to applicants with geographic and population risk group diversity.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop the prevention intervention, research study protocol and data collection forms.

b. Plan and conduct project activities such as, enrolling care sites into comparison (or control) and intervention groups; implementing the prevention intervention; and collecting and analyzing data to evaluate the prevention intervention.

c. Where necessary, build and maintain a coalition to adequately implement the program and research design.

d. Where appropriate, obtain the participation of state and local professional associations and healthcare providers and institutions in serving, diagnosing, or providing treatment and care for persons with HIV/AIDS.

e. Promote the adoption of effective prevention services for HIV-infected persons in care settings other than those participating in the study by: (1) Providing data and ongoing assistance to community planning groups; (2) disseminating data through publications and presentations.

f. Participate in project planning and implementation meetings with other collaborators, when appropriate.

g. Establish procedures to maintain the rights and confidentiality of all study participants.

h. Identify, recruit, obtain informed consent from participants (when appropriate), and enroll an adequate number of study participants as determined by study protocol and the program requirements. The protocol must be submitted to the local Institutional Review Boards (IRB) for approval.

i. Share data and specimens (when appropriate) with other collaborators to answer specific research questions.

j. Participate in multi-site data analysis and presentation and publication of research findings with collaborators, when appropriate.

2. CDC Activities

a. Provide technical assistance, as needed, in refining the proposed intervention.

b. As needed, assist in designing a data management system and data analysis and dissemination of findings.

c. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to follow them in laying out your program plan. The narrative should be no more than 25 pages double-spaced, printed on one side, with one inch margins, and unreduced font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Submit the original and five copies of PHS form 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm

On or before August 27, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late: Applications which do not meet the criteria in 1. or 2. above will not be considered and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an objective review group appointed by CDC.

1. Background, Understanding of Problem and Objectives (10 Points)

To the extent to which the applicant—

a. Demonstrates knowledge of literature pertinent to the proposed program and its goals. Demonstrates an understanding of how prevention models developed for high-risk individuals should be adapted, as suggested by theory or research, to customize the service for HIV infected persons. (5 points)

b. Provides a compelling argument for justifying the care setting in which program will be implemented (patient load, lack of available prevention services, etc.). In addition, provide information on high HIV prevalence and incidence, and opportunities for evaluating prevention services designed for HIV infected persons in various HIV care settings. (5 points)

2. Demonstrating the Quality of Proposed Prevention Program (15 Points)

To the extent to which the applicant—

a. Demonstrates adequacy of proposed program to address the purpose stated in the background section: Reduction in unprotected sex and/or needle sharing with HIV negative partners and partners of unknown status. (Disclosure of serostatus and adherence to therapy are acceptable but not required as additional outcomes). (8 points)

b. Presents a program which adequately incorporates into the prevention model organizational and personnel factors which accelerate adoption and proper implementation by

the care organizations specified in the application. (7 points)

3. Demonstrating the Appropriateness of Research Design To Evaluate the Proposed Program (30 points):

To the extent to which the applicant—

a. Presents an overall research design which can generate reasonably certain conclusions about the effects of the proposed program; and which includes appropriate design elements such as: Outcome measures taken at pre-intervention, post-intervention and follow-up; process measures; control or comparison group(s). (10 points)

b. Presents reliable and valid measures to gauge effectiveness at three levels: Organizational adoption (ability and willingness of the service organization to provide sustained support); adoption by care personnel (acceptance and use by the individual service providers); reduction in risk behaviors by clients. (10 points)

c. In addition, applications will be evaluated on the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (10 points)

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

4. Demonstrating the Ability To Implement the Intervention and the Research Design (45 Points)

a. Demonstrates the extent to which the applicant has the necessary skills and resources needed for both program and research design implementation. In cases where a collaboration is necessary between different organizations, demonstrates the ability to put together the collaboration necessary for adequately implementing the program and the research design. Demonstrates the degree of commitment from non-lead organizations to the project and explains how the lead organization intends to maintain this commitment. Letters of support from all collaborating organizations are the required minimum. (10 points)

b. Identifies the technical assistance and training needs required for the proper implementation of the prevention service and the research protocol, and presents a plan that ensures that these needs will be met. (5 points)

c. Specifies methods for careful verification that the proposed intervention is actually being implemented. (5 points)

d. Specifies a plan for tracking participants and ensuring successful follow-up. (5 points)

e. Presents a plan for carrying out the program and research activities. (5 points)

f. Demonstrates experience and expertise in conducting similar prevention programs and research. (15 points)

6. Budget (Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intent of the announcement.

7. Human Subjects (Not Scored)

Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks are so inadequate as to make the entire application unacceptable.)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original and two copies of:

1. Annual progress reports to be submitted with subsequent continuation applications;

2. Financial status report, no more than 90 days after the end of the budget period;

3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act sections 317 (42 U.S.C. 241(a) and 247b); 301 (42 U.S.C. 241); and 311 (42 U.S.C. 243), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documentation, business management technical assistance may be obtained from: James Masone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Mailstop E–15, Atlanta, GA 30341–4146 Telephone: (770) 488–2736, Email address: zft2@cdc.gov.

For program technical assistance, contact: Cassandra Walker, MPH, Acting Deputy Chief, Prevention Services Research Branch, Division of HIV/AIDS Prevention, Surveillance & Epidemiology, National Center for HIV, STD, TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E–46, Atlanta, GA 30333, Telephone: (404) 639–6191, Email address: cwalker5@cdc.gov.

Dated: July 13, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18049 Filed 7–18–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee C—Basic & Preclinical.

Date: July 31–August 2, 2001.

Time: 4 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Michael B. Small, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18037 Filed 7–18–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: July 31, 2001.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18035 Filed 7–18–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, July 18, 2001.

Date: July 18, 2001.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Divison of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20891, (301) 496–1485.

This notice is being published less than 15 days prior to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93–209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18036 Filed 7–18–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: July 18, 2001.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 12, 2001.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 01–18038 Filed 7–18–01; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.
The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.
Date: July 30, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Hameed Khan, PhD, Scientific Review Administratorator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 12, 2001.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 01–18040 Filed 7–18–01; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.
The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel "Cooperative Multicenter Research Network To Test Glucose Sensors in Children with Type 1 Diabetes Mellitus.
Date: August 10, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz Carlton Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.
(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 12, 2001.
LaVerene Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 01–18041 Filed 7–18–01; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.
The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
Name of Committee: National Library of Medicine Special Emphasis Panel Site Visit.
Date: July 29–31, 2001.
Time: July 29, 2001, 8:30 p.m. to 11 p.m.
Agenda: To review and evaluate grant applications.
Place: Best Western Inn Towner, 2424 University Avenue, Madison, WI 53705.
Time: July 30, 2001, 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Best Western Inn Towner, 2424 University Avenue, Madison, WI 53705.
Time: July 31, 2001, 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Best Western Inn Towner, 2424 University Avenue, Madison, WI 53705.
Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18039 Filed 7–18–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–10]

Announcement of Funding Awards for Fiscal Year 2000 Research and Technology Unsolicited Proposals

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2000 Research and Technology unsolicited proposals. The purpose of this document is to announce the names and addresses of the organizations that have been awarded cooperative agreements based on their submission of unsolicited proposals for research funding.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The VA/HUD and Independent Agencies Appropriation Act of 2000 (Pub. L. 106–74) provided $45,000,000 in Research and Technology funds for contracts, grants and necessary expenses of programs and studies relating to housing and urban problems. HUD's Office of Policy Development and Research administers the Research and Technology funds. The majority of HUD's Research and Technology funding is awarded through competitive solicitations. The unsolicited proposal is another method used by HUD to fund research and development. An unsolicited proposal is submitted to support an idea, method or approach by individuals and organizations solely on the proposer's initiative. Funding of unsolicited proposals is considered a noncompetitive action. An unsolicited proposal demonstrates a unique and innovative concept or a unique capability of the submitter, offers a concept or service not otherwise available to the Government and does not resemble the substance of a pending competitive action. All unsolicited proposals and the resulting award of cooperative agreements include substantial cost sharing on the part of the submitter/awardee.

The Catalog of Federal Domestic Assistance for this program is 14.506

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of FY2000 Awardees for Cooperative Agreements

Fulton Montgomery Community College, Anna D. Weitz, 2805 State Hwy. 67, Johnson, NY 12095–3790, Grant #H–21250CA, "Revitalization through Technology and Education-Based Institution", Total Amount $100,000, Date Awarded 09/29/00.

University Consortium for Geographic Information Science, Susan Jampoler, Spinks Ferry Road, Leesburg, VA 20176–5631, Grant #H–21260CA, "Global Urban Quality", Total Amount $240,000, Date Awarded 09/25/00.

Canisius College, Dr. Marion Meyers, 2001 Main St. Buffalo, NY 14208, Grant #H–21264CA, "State of the Cities Data Systems (SOCDS) Improvements-Government Finances Data", Total Amount $134,065, Date Awarded 09/06/00.

National League of Cities Institute, Emily Stem, 1301 Pennsylvania Avenue, NW., Washington, DC 20004, Grant #H–21218CA, "Municipalities in Transition: A Panel Study for Economic Demographic and other Transition in Urban Areas", Total Amount $98,657, Date Awarded 06/30/00.

Carnegie Mellon University, Susan Burkett, Office of Sponsored Research, 5000 Forbes Avenue Cyert Hall 102, Pittsburgh, PA 15213, Grant #H–21252CA, "Inter and Intra Metropolitan Migration", Total Amount $130,418, Date Awarded 07/27/00.

Manpower Demonstration Research Corporation, Judith M. Gueron, 16 East 34 Street, New York, NY 10016–4326, Grant #H–21042CA, "Jobs Plus Community Revitalization Initiative for Public Housing Families", Total Amount $1,700,000, Date Awarded 04/01/00.

American Planning Association, Frank S. So, 122 South Michigan Avenue, Suite 1600, Chicago, IL 60603–6107, Grant #H–21213CA, "Regional Approaches to Affordable Housing", Total Amount $185,000, Date Awarded 04/03/00.

PolicyLink, Angela Glover Blackwell, 1010 Broadway, Oakland, CA, Grant #H–21271CA, "National Community Equity Mechanisms (CEM)", Total Amount $60,000, Date Awarded 09/29/00.

Urban Land Institute, Rachelle Levitt, 1025 Thomas Jefferson Street, NW., Suite 500 West, Washington, DC 20007–5201, Grant #H–21270CA, "Implementing Solutions to Barriers to Urban Infill", Total Amount $350,000, Date Awarded 09/27/00.

Lincoln Institute of Land Policy, Carolyn Ruhe, 113 Brattle Street, Cambridge, MA 02138, Grant #H–21210CA, "A National Symposium on Land Market Monitoring", Total Amount $25,000, Date Awarded 04/06/00.

Partners For Livable Communities, Sue Coppa, 1429 21st Street, NW., Washington, DC 20036, Grant #H–21206CA, "Crossing the Line, Bridging the Divide", Total Amount $25,000, Date Awarded 11/01/99.

Manufactured Housing Research Alliance, Emanuel Levy, 220 West 93rd Street, 11th Floor, New York, NY 10025, Grant #H–21212CA, "Manufactured Housing Cooperative Research", Total Amount $500,000, Date Awarded 07/05/00.

The Urban Institute, Avis Vidal, 2100 M. Street, NW., Washington, DC 20037, Grant #H–21214CA, "The Role of Faith-Based Organization in Community Development", Total Amount $16,022, Date Awarded 05/25/00.

National Hispanic Housing Coalition, Ruth Pagani, 318 Fourth Street, NE., Washington, DC 20002, Grant #H–21235CA, "A Study of the Determinants of Hispanic Participation in Federally-Funded Housing Programs", Total Amount $125,000, Date Awarded 06/21/00.

Urban Land Institute, Rachelle Levitt, 1025 Thomas Jefferson Street, NW., Suite 500 West, Washington, DC 20007–2501, Grant #H–21203CA, "Overcoming Obstacles to Infill Housing Development", Total Amount $45,000, Date Awarded 09/27/00.

National Trust For Historic Preservation, Richard Moe, 1785 Massachusetts Avenue, NW., Washington, DC 20036, Grant #H–21274CA, "Open Space Co-Oping"

Total Amount $182,680, Date Awarded 9/29/00.

National Governors' Association Center for Best Practice, Raymond Scheppach, 444 North Capitol St. NW., Suite 267, Washington, DC 20001–1512, Grant #H–21290CA, "Where Do We Grow From Here?", Total Amount $200,000, Date Awarded 09/29/00.

U.S.-Mexico Chamber of Commerce, Albert C. Zapanta, 1300 Pennsylvania Avenue, NW., Suite 270, Washington, DC 20004–3021, Grant #H–21251CA, "HUD and Business Roundtable on the Southwest Borders", Total Amount $50,364, Date Awarded 08/17/00.

The Regents of the University of California, Bobbie M. Velasquez, University of California-San Diego, 9500 Gilman Drive, Mail Code 0934, La Jolla, CA 92093–0934, Grant #H–21240CA, "California-Baja California Border Conference", Total Amount $33,391, Date Awarded 09/26/00.

Philadelphia Housing Authority, Carl Greene, 12 South 23rd Street, Philadelphia, PA 19103, Grant #H–21273CA, "Impact of Tenant Based Section 8 and Housing Voucher Concentrations on Real Estate Market Values in the City of Philadelphia", Total Amount $50,000, Date Awarded 09/26/00.

Woodrow Wilson International Center for Scholars, Dean W. Anderson, One Woodrow Wilson Plaza, 1300 Pennsylvania Avenue, NW, Washington, DC 20004–3027, Grant #H–21239CA, "The International Research Monitor", Total Amount $100,000, Date Awarded 09/27/00.

National Coalition for Asian Pacific American Community Development, Christopher Kui, Chairman, 108–110 Norfolk Street, New York, NY 10002, Grant #H–21234SG, "API Housing and Community Needs Study", Total Amount $10,000, Date Awarded 5/22/00.

NAHB Research Center, Lisa K. Bowles, 400 Prince Georges Boulevard, Upper Marlboro, MD 20772, Grant #H–21205CA, "ToolBase Services: The Building Industry's Information Infrastructure", Total Amount $749,966, Date Awarded 03/01/00.

NAHB Research Center, Lisa K. Bowles, 400 Prince George's Boulevard, Upper Marlboro, MD 207742–8731, Grant #H–21217CA, "Planning and Designing of Research Homes", Total Amount $500,000, Date Awarded 06/27/00.

NAHB Research Center, Lisa K. Bowles, 400 Prince George's Boulevard, Upper Marlboro, MD 20772–8731, Grant #H–21216CA, "Innovative Structural Materials and Design Research for Residential Construction", Total Amount $250,000, Date Awarded 06/20/00.

The American Society of Civil Engineers/Institute For Business & Home Safety, Thomas R. McLane, 1801 Alexander Bell Drive, Reston, VA 20192–4400, Grant #H–21211CA, "America's Ten Most Wanted", Total Amount $24,500, Date Awarded 07/09/00.

North America Steel Framing Alliance, Donald R. Moody, 1726 M Street, NW., Suite 601, Washington, DC 20036–4523, Grant #H–21248CA, "Corrosion of Galvanized Fasteners Used in Cold-Formed Steel Framing", Total Amount $37,400, Date Awarded 09/26/00.

North America Steel Framing Alliance, Donald R. Moody, 1726 M Street, NW., Suite 601, Washington, DC 20036–4523, Grant #H–21247CA, "Prescriptive Details for Hybrid Cold-Formed Steel/Wood Framing", Total Amount $124,493, Date Awarded 09/26/00.

Dated: July 12, 2001.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 01–18076 Filed 7–18–01; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–37]

Announcement of Funding Awards for the Rural Housing and Economic Development Program; Fiscal Year 2001

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Super Notice of Funding Availability (SuperNOFA) for the Rural Housing and Economic Development Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Jackie W. Mitchell, Director, Office of Rural Housing and Economic Development, Office of Economic Development, Office of Community Planning and Development, 451 7th Street, SW, Washington, DC 20410; telephone (202) 708–2290 (this is not a toll-free number). Hearing-and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, call Community Connections at 1–800–998–9999 or visit the HUD Website at *http://www.hud.gov*.

SUPPLEMENTARY INFORMATION: The Rural Housing and Economic Development program was authorized by the Department of Veteran's Affairs, Housing and Urban Development and Independent Agencies Appropriations Act of 1999. The competition was announced in the SuperNOFA published February 26, 2001 (66 FR 12187). Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

The Rural Housing and Economic Development Program is designed to build capacity at the State and local level for rural housing and economic development and to support innovative housing and economic development activities in rural areas. Eligible applicants are local rural non-profit organizations, community development corporations, Indian tribes, and State housing finance agencies. The funds made available under this program will be awarded competitively, through a selection process conducted by HUD in consultation with the United States Department of Agriculture (USDA).

Prior to the rating and ranking of this year's applications, Butler County Rural Electric Cooperative in Allison, Iowa was awarded $600,000 as a result of a funding error during the previous year's funding. For the Fiscal Year 2001 competition, a total of $24,042,487 was awarded to 111 projects nationwide.

The Catalog of Federal Domestic Assistance number for this program is 14.250.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A to this document.

Dated: July 13, 2001.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

Appendix A

FY 2001 Rural Housing and Economic Development Competitive Grants

Applicant	State	City	Grant
Alabama Rural Heritage Foundation, Inc	AL	Thomaston	$400,000
Alabama Mayors Corporation for Economic, Cultural and Educational Development	AL	Birmingham	398,768
South East Alabama Self-Help Association, Inc	AL	Tuskegee	148,797
United Presbyterians of Wilcox County, Inc	AL	Catherine	150,000
Ciunerkiuvik Corporation	AK	Saint Marys	50,000
Tingit-Halda Regional Housing Authority	AK	Juneau	70,658
Bee Hoogan Shelter Foundation, Inc	AZ	Fort Defiance	150,000
Chicanos Por La Causa Tucson	AZ	Tucson	400,000
PPEP Microbusiness and Housing Development Corp	AZ	Tucson	400,000
United Housing and Educational Development	AZ	Tucson	150,000
Yavapai-Apache Nation	AZ	Camp Verde	140,788
Yavapai-Apache Nation	AZ	Camp Verde	399,788
North Fork Community Development Corporation	CA	North Fork	150,000
Self Help Enterprises	CA	Visalia	400,000
Walking Shield American Indian Society, Inc	CA	Tustin	400,000
Colorado Rural Housing Development Corporation	CO	Westminster	100,000
Region 10 League for Economic Assistance & Planning, Inc	CO	Montrose	100,000
Southwest Community Resources, Inc	CO	Durango	49,350
Everglades Community Association, Inc	FL	Florida City	400,000
Homes in Partnership, Inc	FL	Apopka	150,000
Housing Development Corporation of Macon County	GA	Montezuma	150,000
Southwest Georgia Housing Development Corporation	GA	Cuthbert	110,425
Southwest Georgia United Empowerment Zone, Inc	GA	Cordele	149,400
Sapelo Island Cultural & Revitalization Society	GA	Sapelo Island	149,100
Na'alehu Theatre	HI	Na'alehu	89,780
Coeur d'Alene Tribe	ID	Worley	150,000
Downtown Hays Development Corporation	KS	Hays	100,000
Original Town of Liberal Revitalization, Inc	KS	Liberal	150,000
Kentucky Mountain Housing Development Corporation, Inc	KY	Manchester	100,000
Low Income Housing Coalition of Floyd County	KY	Prestonsburg	125,505
Louisiana Department of Economic Development	LA	Baton Rouge	400,000
Northlake Community Development Corporation	LA	Hammond	150,000
Project 2000, Inc	LA	Hammond	75,000
Eastern Maine Development Corporation	ME	Bangor	100,000
Penobscot Indian Nation	ME	Old Town	399,581
Red Lake Housing Authority	MN	Red Lake	400,000
Energy Related Homes of Mississippi, Inc	MS	Jackson	150,000
Mississippi Action for Community Education, Inc	MS	Greenville	150,000
Mississippi Home Corporation	MS	Jackson	323,388
Quitman County Development Organization	MS	Marks	150,000
Southeastern Development Opportunities, Inc	MS	Shelby	120,450
Action for Eastern Montana, Inc	MT	Glendive	149,939
Blackfeet Tribe	MT	Browning	150,000
Confederated Salish & Kootenai Tribes	MT	Pablo	400,000
Fort Belknap Indian Community	MT	Harlem	400,000
Fort Belknap Indian Community	MT	Harlem	150,000
Heritage Institute	MT	Glasgow	399,731
Heritage Institute	MT	Glasgow	149,284
Ktunaxa Community Development Corporation	MT	Elmo	128,139
Santee Sioux Tribe	NE	Niobrara	150,000
West Central Nebraska Development District, Inc	NE	Ogallala	90,000
Women's Rural Entrepreneurial Network—WREN	NH	Bethlehem	100,000
Fallon Paiute-Shoshone Tribal Housing Department	NV	Fallon	400,000
Fallon Paiute-Shoshone Tribal Housing Department	NV	Fallon	150,000
New Mexico Mortgage Finance Agency	NM	Albuquerque	400,000
Eastern Plains Housing Development Corporation	NM	Clovis	150,000
Community Action Agency of SNM, Inc	NM	Las Cruces	400,000
Community Action Agency of SNM, Inc	NM	Las Cruces	150,000
Mesilla Valley Economic Development Alliance	NM	Las Cruces	400,000
Mesilla Valley Economic Development Alliance	NM	Las Cruces	150,000
Pojoaque Housing Corporation	NM	Santa Fe	150,000
San Juan Pueblo	NM	San Juan Pueblo	150,000
Zuni Indian Tribe	NM	Zuni	150,000
Northwestern Housing Enterprises, Incorporated	NC	Boone	150,000
Community Developers of Beaufort-Hyde, Inc	NC	Belhaven	150,000
Native Way Opportunity, Community Development Corporation, Inc	NC	Hollister	149,560
The Way Station	OH	Columbiana	149,230
WSOS Community Action Commission	OH	Fremont	50,000
Jackson-Vinton Community Action, Inc	OH	Wellston	150,000
Housing Authority of the Choctaw Nation of Oklahoma	OK	Hugo	400,000

Applicant	State	City	Grant
Housing Authority of the Choctaw Nation of Oklahoma	OK	Hugo	150,000
Langston Community Development Corporation	OK	Langston	150,000
Alabama-Quassarte Tribal Town	OK	Muskogee	59,920
Pawnee Nation of Oklahoma	OK	Pawnee	399,700
Morning Star Foundation of the Pawnee Nation, Inc	OK	Sand Springs	150,000
Cherokee Nation	OK	Tahlequah	400,000
International Bio Oxidative Medicine Foundation	OR	Grants Pass	150,000
Confederated Tribes of the Umatilla Indian Reservation	OR	Pendleton	400,000
Lawyers' Campaign for Equal Justice	OR	Portland	100,000
Redevelopment Authority of Fayette County	PA	Uniontown	400,000
Ceiba Housing and Economic Development Corporation	PR	Ceiba	150,000
Williamsburg Enterprise Community Commission, Inc	SC	Kingstree	95,900
Oglala Sioux Tribe Partnership	SD	Pine Ridge	400,000
Oglala Sioux Tribe Partnership	SD	Pine Ridge	100,000
Oti Kaga, Inc	SD	Eagle Butte	100,000
Sicangu Wicoti Awanyakape Corporation	SD	Rosebud	400,000
Legal Aid of Central Texas, Inc	TX	Austin	150,000
Community Development Corporation of Brownsville	TX	Brownsville	400,000
Neighborhood Housing Service of Dimmit County, Inc	TX	Carrizo Springs	400,000
El Paso Collaborative For Community & Economic Development	TX	El Paso	400,000
South Plains Community Action Association, Inc	TX	Levelland	150,000
Walker-Montgomery Community Development Corporation	TX	New Waverly	150,000
Organizacion Progresiva De San Elizario	TX	San Elizario	150,000
Center for Economic Opportunities	TX	San Juan	400,000
Futuro Communities, Inc	TX	Uvalde	99,956
Navajo Utah Commission	UT	Montezuma Creek	400,000
Surry Community Development and Housing Corporation	VA	Surry	130,300
Gilman Housing Trust, Inc	VT	Newport	150,000
Lummi Indian Nation	WA	Bellingham	400,000
Port Gamble S'Klallam Housing Authority	WA	Kingston	137,968
Upper Valley Mend	WA	Leavenworth	150,000
North Columbia Action Council	WA	Moses Lake	150,000
Confederated Tribes of the Colville Reservation	WA	Nespelem	400,000
Willapa Community Development Association	WA	Raymond	150,000
The Jamestown S'Klallam Tribe	WA	Sequim	400,000
Office of Rural and Farmworker Housing	WA	Yakima	150,000
Impact Seven, Inc	WI	Almena	400,000
Ho-Chunk Nation	WI	Black River Falls	400,000
Ho-Chunk Nation	WI	Black River Falls	102,082
Mid-Ohio Valley Regional Council	WV	Parkersburg	50,000
Northern Arapaho Tribe	WY	Ethete	150,000

[FR Doc. 01–18075 Filed 7–18–01; 8:45 am]
BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colusa Basin Drainage District's Integrated Resources Management Program for Flood Control in the Colusa Basin in Glenn, Colusa, and Yolo Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Final Programmatic Environmental Impact Statement/Final Programmatic Environmental Impact Report (Final PEIS/PEIR).

SUMMARY: Pursuant to the National Environmental Policy Act and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the Colusa Basin Drainage District (District) have prepared a joint Final PEIS/PEIR for the Integrated Resources Management Program for Flood Control in the Colusa Basin (Program). The Program is comprised of three elements: Construction of a series of flood detention dams and basins on selected ephemeral streams that cause flooding in the Basin; implementation of several upland, riparian, and wetland environmental restoration measures that will help reduce soil erosion and sedimentation and restore degraded habitat; and development of a water supply that could be used for environmental purposes. The Final PEIS/PEIR describes and presents the potential environmental effects of the three Program elements. Notice of the Draft Programmatic Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR) was published in the **Federal Register** on June 2, 2000 (65 FR 35392). The public hearing was held on August 9, 2000. The written comment period ended August 25, 2000. The Final PEIS/PEIR contains responses to all comments received and changes made to the text of the DEIS/DEIR as a result of those comments.

DATES: Reclamation will not make a decision on the proposed action until 30 days after release of the Final PEIS/PEIR. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: Copies of the Final PEIS/PEIR may be requested from Ms. Gaye Lopez, Colusa Basin Drainage District, at 530–795–3038, or Mr. Russ Smith, Reclamation, at 530–275–1554.

See Supplementary Information section for locations where copies of the Final PEIS/PEIR are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ms. Gaye Lopez, Colusa Basin Drainage District, at 530–795–3038, or Mr. Russ Smith, Reclamation, at 530–275–1554.

SUPPLEMENTARY INFORMATION: The Program encompasses an area of about 1,036,000 acres within the Basin, extending from Orland in the north to Knights Landing in the south, and includes lands in Glenn, Colusa, and Yolo Counties. The Sacramento River and Coastal Range foothills form its eastern and western boundaries, respectively. Within this area, the District encompasses about 650,000 acres.

The proposed action is to construct flood detention dams and basins on certain ephemeral streams in the foothills west of the Basin that cause the greatest flood damage. Reclamation and the District also propose to implement approximately 10,000 acres of environmental restoration measures to help restore degraded upland, riparian, and wetland habitats in the project area. In addition, the detention basins could provide a water supply that could be used for environmental purposes.

The goal of the Program is to substantially reduce flood damages and restore upland, riparian, and wetland habitats that have been historically degraded in the Colusa Basin. In addition to a No Program Alternative, which involves the continued use of the existing Colusa Basin Drain for drainage management and inadequate flood flow conveyance, six program alternatives are examined. Alternatives la, 2a, and 3a include the proposed construction of 14, 8, and 5 foothill flood detention dams and reservoirs, respectively, and about 10,000 acres of upland, riparian, and wetland restoration measures in the Colusa Basin. Alternatives lb, 2b, and 3b include all the elements of Alternatives la, 2a, and 3a, respectively, and would also be operated to provide a water supply that could be used for environmental purposes, including the dedication of some reservoir space for water storage.

Copies of the Final PEIS/PEIR are available for public inspection at the following locations:

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6 and Kipling, Denver CO 80225; telephone: 303–445–2064
- Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento CA 95825–1898; telephone: 916–978–5100
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington DC 20240–0001
- Sacramento State University Library, 6000 J Street, Sacramento CA 95521
- Princeton Public Library, P.O. Box 97, Princeton CA 95970–0097
- Elk Creek Library, Box 163, Elk Creek CA 95939–0163
- Bayliss Library, Rd 39 and West Bayliss, Bayliss CA 95943
- Willows City Library, 201 N. Lassen Street, Willows CA 95988
- Yolo County Library, 373 N. College, Woodland CA 95695
- Grimes Library, P.O. Box 275, Grimes CA 95950
- Orland City Library, 333 Mill Street, Orland CA 95963
- Shasta College Library, 1065 Old Oregon Trail, Redding, CA 96099
- Arbuckle Library, 7th & King, Arbuckle, CA 95912
- Butte Community College Library, 3536 Butte Campus Drive, Oroville, CA 95965
- Campus Library, Humboldt State University, Arcata, CA 95521
- Esparto Branch Library, 17155 Yolo Avenue, Esparto, CA 95627
- Willows Public Library, 201 North Lassen Street, Willows, CA 94988
- Shields Library, University of California-Davis, Davis, CA 95616

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: June 29, 2001.

Lowell F. Ploss,

Deputy Regional Director.

[FR Doc. 01–18044 Filed 7–18–01; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Renewal of Sacramento River Settlement Contracts, Central Valley Project, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental document (environmental assessment or environmental impact statement) and notice of public meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Reclamation (Reclamation) proposes to prepare an environmental document to evaluate alternatives for renewal of long-term contracts with the entities and individuals asserting rights to divert water from the natural flow of the Sacramento River. These entities and individuals, known as the Sacramento River settlement contractors, typically receive both non-Central Valley Project water, referred to as base supply, and supplemental water from the Central Valley Project, referred to as Project water. The current contracts expire in 2004, and the proposed renewals would extend for at least 25 years.

At present it is not clear whether the scope of the action and anticipated project impacts will require preparation of an environmental impact statement (EIS) instead of an environmental assessment (EA). However, to ensure the timely and appropriate level of NEPA compliance and to limit potential future delays to the project schedule, Reclamation is proceeding as if the project impacts would require preparation of an EA. Reclamation will re-evaluate the need for an EIS after obtaining written and oral comments on the project scope, alternatives and environmental impacts, and after Reclamation's evaluation of potential impacts of the proposed project. Reclamation will publish a notice of change if a decision is made to prepare an EIS rather than an EA. However, the scoping process to be conducted will suffice for either course of action.

There are no known Indian Trust Asset or environmental justice issues associated with the proposed action.

DATES: Three scoping meetings will be held to solicit comments from interested parties to assist in determining the scope of the environmental analysis and to identify the significant issues related to this proposed action. The meeting dates are:

- Monday, August 6, 2001, 1 to 4 p.m., Tracy, California
- Tuesday, August 7, 2001, 1 to 4 p.m., Concord, California
- Wednesday, August 8, 2001, 1 to 4 p.m., Red Bluff, California

Written comments on the scope of the environmental document should be mailed to Reclamation at the address below by August 27, 2001.

ADDRESSES: The meeting locations are as follows:

- Tracy at Veterans of Foreign Wars, 430 West Grant Line Road
- Concord at Hilton Hotel, 1970 Diamond Boulevard

- Red Bluff at Red Bluff Community/ Senior Center, 1500 South Jackson Street

Written comments on the scope of the environmental document should be sent to Buford Holt, Environmental Specialist, Bureau of Reclamation, Northern California Area Office, 16349 Shasta Dam Boulevard, Shasta Lake, CA 96019.

FOR FURTHER INFORMATION CONTACT: Buford Holt at the above address, by telephone at (530) 275–1554, or e-mail at bholt@mp.usbr.gov.

SUPPLEMENTARY INFORMATION: The Central Valley Project (CVP) was first authorized as a Federal project in 1935 and includes facilities on the Trinity River, Sacramento River, American River, Sacramento-San Joaquin Delta, San Joaquin River, Stanislaus River and offstream storage and conveyance facilities associated with the San Luis Reservoir and Delta Mendota Canal. Construction of dams on the Sacramento River and the Trinity River substantially modified the flows of the Sacramento River. Prior to construction of the CVP, individuals and entities along the Sacramento River were diverting water for irrigation and municipal and industrial uses under various claims of right. In order to settle the controversy over assertions of water rights, the United States, acting through the Bureau of Reclamation, negotiated contracts that provided for agreement on diversion of water and CVP water service. The term of these Sacramento River settlement contracts was not to exceed 40 years and the contracts expire on March 31, 2004. The settlement contracts provide for renewal which must be accomplished prior to March 31, 2004.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Special Services

Persons requiring any special services should contact Sammie Cervantes at (916) 978–5104. Please notify Ms. Cervantes as far in advance of the particular meeting as possible, but no later than 3 working days prior to the meeting to enable Reclamation to secure the services. If a request cannot be honored, the requester will be notified.

Dated: June 29, 2001.

Laura Allen,

Deputy Regional Environmental Officer.

[FR Doc. 01–18043 Filed 7–18–01; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–459]

Certain Garage Door Operators Including Components Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 15, 2001, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of The Chamberlain Group, Inc. of Elmhurst, Illinois. Supplements to the complaint were filed on June 21 and July 9, 2001. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain garage door operators including components thereof by reason of infringement of claims 1–8 of U.S. Letters Patent Re. 35,364 and claims 5–30 of U.S. Letters Patent Re. 36,703. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's ADD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at http://www.usitc.gov. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

FOR FURTHER INFORMATION CONTACT: David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2001).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 13, 2001, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain garage door operators including components thereof by reason of infringement of claims 1–8 of U.S. Letters Patent Re. 35,364 or claims 5–30 of U.S. Letters Patent Re. 36,703 and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—The Chamberlain Group, Inc., 845 Larch Avenue, Elmhurst, Illinois 60126–1196.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Linear Corporation, 2055 Corte Del Nogal, Carlsbad, California 92009–1498

Napoleon Spring Works, Inc., 111 Weires Drive, Archbold, Ohio 43502

Lynx Industries, Inc., 111 Weires Drive, Archbold, Ohio 43502

Innovative Home Products, Inc., 2400 East Lincoln Street, Birmingham, Michigan 48009–7126

Wayne-Dalton Corporation, One Door Drive, P.O. Box 67, Mt. Hope, Ohio 44660

Guardian Access Corporation, No. 1, Pei Yuan 2. Rd., Chung Li City, Taiwan

(c) David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: July 16, 2001.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–18126 Filed 7–18–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–448]

Certain Oscillating Sprinklers, Sprinkler Components, and Nozzles; Notice of Commission Determination Not To Review an Initial Determination Adding a Respondent to the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) of the presiding administrative law judge ("ALJ") in the above-captioned investigation adding Dayco Products Inc. ("Dayco") as a respondent to the investigation.

FOR FURTHER INFORMATION CONTACT: Laurent de Winter, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–708–5452. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-Line) at http://dockets.usitc.gov/eol.public. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain oscillating sprinklers, sprinkler components, and nozzles, on February 9, 2001 66 FR 9721. On June 4, 2001, complainant L.R. Nelson Corporation moved, pursuant to Commission rule 210.14(b), to amend the complaint and notice of investigation to add Dayco Products, Inc. ("Dayco") as a respondent in this investigation with respect to infringement of U.S. Letters Patent 6,036,117.

On June 14, 2001, the presiding administrative law judge (ALJ) (Judge Luckern) issued an ID (Order No. 9) (copy attached) adding Dayco as a respondent to the investigation. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission rule 210.42 (19 CFR 210.42).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

By order of the Commission.

Issued: July 16, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–18125 Filed 7–18–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–444]

Certain Semiconductor Light Emitting Devices, Components Thereof, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Withdrawal of the Complaint

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting a motion to terminate the above-captioned investigation based on withdrawal of the complaint.

FOR FURTHER INFORMATION: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3152.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 9, 2001, based on a complaint by Rohm Co. Ltd. ("Rohm") alleging that respondents Nichia Corporation and Nichia American Corporation ("Nichia") violated section 337 of the Tariff Act of 1930 by importing, selling for importation, or selling within the United States after importation certain semiconductor light emitting devices, components thereof, and products containing same that infringe certain claims of U.S. Letters Patent Nos. 6,084,899 and 6,115,399.

On April 27, 2001, complainant Rohm filed a motion pursuant to rule 210.21(a) to terminate the investigation on the basis of withdrawal of the complaint. On May 9, 2001, the Nichia respondents

filed a response to Rohm's motion to terminate the investigation. Nichia did not oppose the motion to terminate, but requested that the ALJ terminate the investigation "with prejudice" in view of a Nichia's motion for sanctions against Rohm for abuse of Commission process. The Commission investigative attorney supported Rohm's motion to terminate the investigation.

On June 27, 2001, the presiding ALJ issued an ID granting Rohm's motion to terminate the investigation, but denying Nichia's request to terminate the investigation "with prejudice."

None of the parties filed a petition to review the subject ID. The Commission subsequently determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42. Copies of the subject ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http:/www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

Issued: July 16, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–18100 Filed 7–18–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act ("CAA")

Consistent with the policy set forth in the Department of Justice regulations at 28 CFR 50.7, notice is hereby given that on July 12, 2001, a proposed Consent Decree was lodged with the United States District Court for the Southern District of Illinois, in *United States and State of Illinois* v. *Clark Refining and Marketing, Inc.*, Civil Action No. 99–87 (GPM). The proposed Consent Decree settles claims asserted by the United States on behalf of the U.S. Environmental Protection Agency, and the State of Illinois, pursuant to section 113(b) of the Clean Air Act, 42 U.S.C. 9613(b), and the federally enforceable State Implementation Plan ("SIP"), in connection with operation of the Clark Refining (now The Premcor Refining Group Inc.) petroleum refinery in Hartford, Illinois.

The Consent Decree requires Premcor to pay $2 million in civil penalties for alleged violation of the Prevention of Significant Deterioration requirements in Part C of the CAA and the implementing regulations at 40 CFR 52.21, as well as violations of SIP emission limits at the refinery's fluid catalytic cracking unit ("FCCU"). The proposed Decree also requires Premcor to install a wet gas scrubber on its FCCU, to control emissions of sulfur dioxide and particulate matter. Additional pollution control measures in the decree include a program that will result in installation of low-NO_X or ultra low-NO_X burners at selected heaters and boilers at the Hartford refinery.

The Department of Justice will receive written comments relating to the proposed consent Decree for thirty (30) days from the date of publication of this notice. Comments should be directed to the Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Clark Refining and Marketing, Inc.*, DOJ Reference # 90–5–2–1–2032.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Illinois, 9 Executive Drive, Suite 300, Fairview Heights, Illinois 62208 (contact William E. Coonan, (618) 628–3700), and at the offices of the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Brian Barwick, (312) 886–6620. Copies may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. In requesting copies, please refer to the case name and DOJ reference number an enclose a check in the amount of $9.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–18079 Filed 7–18–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with 28 CFR 50.7, 38 FR 19029, notice is hereby given that on June 28, 2001, a Consent Decree was lodged with the United States District Court for the District of Massachusetts in *United States* v. *National Railroad Passenger Corporation* Civil Action No. 01–11121–RWZ. A complaint in the action was also filed simultaneously with the lodging of the Consent Decree. In the complaint the United States, on behalf of the U.S. Environmental Protection Agency (EPA), alleges that the defendant National Railroad Passenger Corporation (Amtrak) violated the Clean Water Act, 33 U.S.C. 1251, *et seq.*, at nine Amtrak facilities in Massachusetts, Connecticut and Rhode Island. The violations involve EPA requirements for control of storm water discharges; requirements of Amtrak's pollutant discharge permits; pretreatment requirements; Spill Prevention Control and Countermeasure requirements; and a small oil spill into navigable waters. The consent decree requires Amtrak to pay a cash penalty of $500,000, and implement two Supplemental Environmental Projects at a cost of $900,000. The consent decree also requires Amtrak to comply with relevant environmental laws at the nine identified facilities, and to also conduct a multi-media compliance audit for each of its 51 facilities nation-wide. Amtrak is also required to implement a comprehensive Environmental Management System involving the entire company.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *National Railroad Passenger Corporation*, D.J. Ref. 90–5–1–1–06798.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 9200, 1 Courthouse Way, Boston, Massachusetts 02110, and at the Region I office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts 02114. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please enclose a

check (there is a 25 cent per page reproduction cost) in the amount of $37.75 payable to the "Consent Decree Library."

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 01–18078 Filed 7–18–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on July 11, 2001, the United States lodged a proposed Second Amendment to the Consent Decree with the United States District Court for the Northern District of Illinois, Western Division, in *United States, et al.* v. *City of Rockford, Illinois,* Civil No. 98C50026 (N.D. Ill.), under the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.* The proposed Second Amendment to the Consent Decree modifies the Amended Consent Decree entered by the United States District Court for the Northern District of Illinois on or about January 13, 1999, which resolved certain claims of the United States and the State of Illinois against the City of Rockford, Illinois, under sections 106(a) and 107(a) of CERCLA, 42 U.S.C. 9606(a) and 9607(a), pertaining to the Southeast Rockford Groundwater Contamination (the "Site") located in Rockford, Winnebago County, Illinois, In that Amended Consent Decree, the City of Rockford reaffirmed the terms and conditions of the original Consent Decree entered by the Court on or about April 9, 1998, to perform the remedial action selected by U.S. EPA in its September 30, 1995, Record of Decision and to reimburse certain costs incurred by Plaintiffs at the Site. The Amended Consent Decree resolved additional claims of the Plaintiffs against the City of Rockford, and resolved potential claims of the Plaintiffs against certain Covenant Beneficiaries. As specified in the Amended Consent Decree, the City of Rockford and Covenant Beneficiaries received covenants not to sue and contribution protection.

The Second Amendment to the Consent Decree adds 11 parties who will participate in the settlement by paying an aggregate sum of $142,001.59 to the City of Rockford to be paid to the Plaintiffs, to reimburse certain costs incurred by the Plaintiffs at the Site, and by executing and transmitting Covenant Beneficiary Forms. The settlement resolves potential claims of the Plaintiffs against these added Covenant Beneficiaries, who will receive the covenants not to sue and contribution protection provided to such parties in the Amended Consent Decree. All other provisions of the Amended Consent Decree and original Consent Decree not modified by the Second Amendment to the consent Decree remain in full force and effect.

The Department of Justice also provides notice that under section 7003(d) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973(d), the public may request an opportunity for a public meeting at which time they may offer comment. The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Second Amendment to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States et al.* v. *City of Rockford, Illinois,* Civil No. 98C50026 (N.D. Ill.), and DOJ Reference No. 90–11–3–945.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Northern District of Illinois, Western Division, 308 West State St., Suite 300, Rockford, Illinois 61101 (815–987–4444); and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact: Thomas Turner (312) 886–6613). A copy of the proposed Second Amendment to the Consent Decree may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $3.00 for the consent decree and one appendix only (12 pages at 25 cents per page reproduction costs), or $19.50 for the consent decree, appendix and 11 covenant beneficiary forms (78 pages), made payable to the Consent Decree Library.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–18081 Filed 7–18–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed consent decree, in *United States* v. *State of Wisconsin, et al.,* Civil No. 01–C–0394–S (W.D. Wisc.), was lodged with the United States District Court for the Western District of Wisconsin on July 10, 2001, pertaining to the Refuse Hideaway Landfill Superfund Site located in the Town of Middleton, Dane County, Wisconsin (the "Site"). The proposed consent decree would resolve the United States' civil claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against the Settling Defendants: The State of Wisconsin, 3 transporters and 157 generators, including 8 municipalities. The proposed consent decree also resolves claims against 4 Settling Federal Agencies.

Under the proposed consent decree, the State of Wisconsin, as Settling Performing Party, is obligated to finance and perform the completion of the remedial action at the Site and conduct long term operation and maintenance ("O&M") at the Site, as specified in the U.S. Environmental Protection Agency's ("FPA's") Record of Decision ("ROD"), issued June 28, 1995, as modified under an Explanation of Significant Differences ("ESD"), issued September 30, 1998, at an estimated net present value of $1.3 million. The remaining 160 Settling Defendants would be obligated to pay approximately $3.5 million to the United States and State of Wisconsin. The United States would receive $793,895 in reimbursement of past response costs and future response costs at the Site, and the State would receive the balance of the payments to be used for financing the State's future response work at the Site and for reimbursement of the State's past response costs incurred in connection with the Site. In addition, the United States, on behalf of the 4 Settling Federal Agencies, would pay $32,845 to the Superfund in reimbursement of past response costs and premium payments for future response costs incurred and to be incurred at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed

consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *State of Wisconsin, et al.*, Civil No. 01–C–0394–S (W.D. Wisc.), and DOJ Reference No. 90–11–2–1184.

The proposed consent decree maybe examined at: (1) The Office of the United States Attorney for the Western District of Wisconsin, 660 West Washington Avenue, Suite 200, Madison, Wisconsin 53703, (608–264–5158); and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact: Jacqueline Kline (312–886–7167)). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $18.00 for the consent decree only (72 pages, at 25 cents per page reproduction costs), or $110.50 for the consent decree and all appendices (442 pages), made payable to the Consent Decree Library.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–18080 Filed 7–18–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.: Financial Agent Secure Transaction (FAST) Project

Notice is hereby given that, on June 28, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Financial Services Technology Consortium, Inc.: Financial Agent Secure Transaction (FAST) Project has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties are American Bankers Association, Washington, DC; BAI, Chicago, IL; Bank of America, Richmond, VA; Certicom Corp., Hayward, CA; Chase Manhattan Bank, Hicksville, NY; Citibank N.A., New York, NY; Experian, Orange, CA; Federal Reserve Bank of Boston, Boston, MA; First Union National Bank, Charlotte, NC; Hewlett-Packard Company, Cambridge, MA; Huntington National Bank, Columbus, OH; NACHA, Herndon, VA; National Center for Manufacturing Sciences, Inc., Ann Arbor, MI; National Institute of Standards and Technology, Gaithersburg, MD; Star Systems, Inc., Reston, VA; Unisys Corporation, Burlington, MA; and Wells Fargo Services & Company, Minneapolis, MN.

The nature and objectives of the venture are research and development activities concerning an economically viable architecture/framework/protocol for entities, unknown to each other and possessing no common authentication mechanism, to securely conduct transactions over the Internet by leveraging the relationship each has with its respective financial institution, electronic commerce and other on-line business and personal financial transactions.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 01–18083 Filed 7–18–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—J Consortium, Inc.

Notice is hereby given that, on April 16, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), J Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Praxis Critical System, Bath, United Kingdom; IONA Technologies, Waltham, Ma; BoldFont, Davis, CA; Micro Design Online, San Jose, CA; Muhammad Amir (individual member), Sindh, Pakistan; Kutsal Baser (individual member), Bishkek, Kyrgyzstan; Burhan A. Sh. (individual member), Lahore, Pakistan; Olivier Chamley (individual member), Pessac, France; Eric Dorion (individual member), Val-Belair, Quebec, Canada; Johann Gruber (individual member), Vienna, Austria; Samantha Gunasena (individual member), Thudella, Jaela, West Provence, Sri Lanka; Jmchen, Hangzhou, Zhejiang, People's Republic of China; Ouma Konyino, Maseo, Kenya; Dip.Ing. Kurt Layer, Unterpremstaetten, Austria; Jukka Peltoa, Espoo, Finland; Gerd Loos (individual member), Hamburg, Germany; Sharath Gowd R, (individual member), Banglore, Karnataka, India; David Sawyer (individual member), Wolcott, CT; Deepak Shah, Bangalore, Karnataka, India; Swamynathan Sivasubramaniyan, Aurora, CO; Virkram M P, Bangalore, Karnataka, India; Wangzhi, Hangzhou, Zhejiang, People's Republic of China; Amir Wasim (individual member), Lahore, Pakistan; and Brian Leslie Williams (individual member), Singapore, Singapore have been added as parties to this venture. Also, EIBA, Brussels, Belgium has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and J Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On August 9, 1999, J Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 21, 2000 (65 FR 15175).

The last notification was filed with the Department on January 19, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13970).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–18084 Filed 7–18–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Management Service Providers Association, Inc.

Notice is hereby given that, on May 15, 2001, pursuant to section 6(a) of the

National Cooperative Research and Production Act of 1993, 15 U.S.C. *et seq.* ("The Act"), Management Services Providers Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AimNet Solutions, Inc., Norwalk CT; Applicant, Seattle, WA; CoreFuzion, Inc., Santa Clara, CA; Eccord Systems Ltd., San Jose, CA; Hitachi Electronics Services Co., Ltd., Yokohama, Japan, hub information technology limited, Sydney, New South Wales, Australia; ISP Co., Ltd., Kangriam-ku, Seoul, Republic of Korea; IT Guardian, Kooloon, Hong Kong—China; Iworld Holdings Limited, Seoul, Republic of Korea; NetEffect Corporation, Atlanta, GA; Omegon, Inc., Somerset, NJ; Progress Software Corporation, Bedford, MA; RedSiren, Pittsburgh, PA; SaskTel—QuantumLynx, Regina, Saskatchewan, Canada; SPS Gensys, Reeusijk, Netherlands; and Totality Corporation, San Francisco, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Management Services Providers Association, Inc. intends to file additional written notification disclosing all changes in membership.

On October 20, 2000, Management Services Providers Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 24, 2000 (65 FR 70613).

The last notification was filed with the Department on February 5, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13970).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–18085 Filed 7–18–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microcontaminant Reduction Venture

Notice is hereby given that, on June 13, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("Act"), the Microcontaminant Reduction Venture ("the Venture") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature an objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties are Vulcan Materials Company, Birmingham, AL; and KMG Bernuth, Inc., Houston, TX.

The nature and objectives of the venture are to develop cost effective methods for reduction of microcontaminants such as dioxins, furans, and hexachlorobenzene in the pentachlorophenol manufactured by the participants.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–18086 Filed 7–18–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on December 20, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Didactics, Inc., Alexandria, VA; Opticore, Inc., Troy, MI; and VE Technologies, Inc., Blacksburg, VA have been added as parties to this venture. Also CAMotion, Inc., Atlanta, GA; TRW Broadband Communication Network, Carson, CA; Alberta Research Council, Edmonton, Alberta, Canada; Independent Lubricant Manufacturers Association, Alexandria, VA; and State Board of Technical Colleges, St. Paul, MN have been dropped as parties to this venture. In addition, Advanced Manufacturing Sciences (IAMS) has changed its name to TechSolve, Inc., Ann Arbor, MI.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on July 19, 2000. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–18082 Filed 7–18–01; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Sunshine Act Meeting; Notice

AGENCY: U. S. National Commission on Libraries and Information Science

ACTION: Notice of meeting.

SUMMARY: The U.S. National Commission on Libraries and Information Science is holding an open business meeting to discuss administrative matters and NCLIS international projects.

DATE AND TIME: NCLIS Business Meeting—August 21, 2001, 3:30 p.m. to 5:30 p.m., Boston, Massachusetts.

ADDRESS: Meeting location—Boston Public Library, Mezzanine Conference Room (MCR), 700 Boylston Street, Copley Square, Boston, Massachusetts 02116.

STATUS: Open meeting.

FOR FURTHER INFORMATION CONTACT: Rosalie Vlach, Director, Legislative and Public Affairs, U.S. National Commission on Libraries and Information Science, 1110 Vermont

Avenue, NW., Suite 820, Washington, DC 20005, e-mail *rvlach@nclis.gov*, fax 202–606–9203 or telephone 202–606 9200.

SUPPLEMENTARY INFORMATION:

The Commission will discuss administrative matters and NCLIS international projects, including:

- International application of the results of the NCLIS study, A Comprehensive Assessment of Public Information Dissemination;
- Preparation for the International Leadership Conference on Information Literacy;
- NCLIS activities with the European Union;
- Transfer of the NCLIS Survey of U.S. Participation in International Organizations and Activities Which Address Major Library and Information Science Policy Issues to the School of Library Science, University of Pittsburgh; and
- Transfer of Sister Libraries: A White House Millennium Council Project to the United Nations Associated Libraries.

The meeting is open to the public, subject to space availability. To make special arrangements for physically challenged persons, contact Rosalie Vlach, Director, Legislative and Public Affairs, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005, e-mail *rvlach@nclis.gov*, fax 202–606–9203 or telephone 202–606–9200.

Dated: July 11, 2001.

Judith C. Russell,

NCLIS Deputy Director.

[FR Doc. 01–18185 Filed 7–17–01; 2:13 pm]

BILLING CODE 7527–$$–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–089]

NASA Advisory Council, Minority Business Resource Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: Thursday, August 23, 2001, 9 a.m. to 4 p.m., and Friday, August 24, 2001, 9 a.m. to 12 noon.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 9H40, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, Room 9K70, 300 E Street, SW., Washington, DC 20546–0001, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview of NASA
—Welcoming of new MBRAC members
—Purpose of MBRAC Committee
—Travel Procedures
—Goals for MBRAC V
—Public Comment
—Overview of NASA's Small Business Program
—MBRAC's Impact on NASA
—Status of Open Committee Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 12, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–18045 Filed 7–18–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–090]

U.S. Centennial of Flight Commission; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces the first meeting of the First Flight Centennial Federal Advisory Board. The Advisory Board will offer counsel to the U.S. Centennial of Flight Commission as the Commission develops support for activities involving the public in the celebration of the 100th anniversary of powered flight, December 17, 2003.

DATES: Thursday, August 9, 2001, 9 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW, Room 9H40 (PRC), Washington, DC 20546. Attendees must check in at the Security Desk to be cleared to the 9th floor conference room.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Farmarco, Code ZC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Welcome
—Brief Remarks
—Introductions
—Legislative Intent/Content
—Role of the Advisory Board & Meeting Objectives
—Presentations by Major Centennial Organizations
—General Discussion
—Closing Remarks
—Adjourn

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 13, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–18046 Filed 7–18–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting/ Conference Call

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting/ conference call for a working group of NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

INTERNATIONAL WATCH: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's Foreign Policy Team on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

WORK GROUP: International Convention on the Human Rights of People with Disabilities.

DATE AND TIME: September 6, 2001, 12 p.m.–1 p.m. EDT

FOR INTERNATIONAL WATCH INFORMATION, CONTACT: Kathleen A. Blank, Attorney/ Program Specialist, NCD, 1331 F Street NW., Suite 1050, Washington, DC 20004; 202–272–2004 (Voice), 202–272–

2074 (TTY), 202–272–2022 (Fax), kblank@ncd.gov (e-mail).

AGENCY MISSION: NCD is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of the severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

OPEN MEETINGS/CONFERENCE CALLS: This advisory committee meeting/conference call of NCD will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference call at the NCD office. Those interested in joining this conference call should contact the appropriate staff member listed above.

Records will be kept of all International Watch meetings/ conference calls and will be available after the meeting for public inspection at NCD.

Signed in Washington, DC, on July 16, 2001.

Ethel D. Briggs,

Executive Director.

[FR Doc. 01–18059 Filed 7–18–01; 8:45 am]

BILLING CODE 6820–MA–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25063; 812–12232]

Morgan Grenfell Investment Trust et al., Notice of Application

July 13, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from section 12(d)(1)(G)(i)(II) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit funds of funds relying on section 12(d)(1)(G) of the Act to invest in securities and other financial instruments.

APPLICANTS: Morgan Grenfell Investment Trust ("MG Trust"), BT Investment Portfolios ("BT Trust") (collectively "the Trusts"), Deutsche Asset Management, Inc. ("DeAM, Inc.") and Deutsche Asset Management Investment Services Limited ("DeAMIS") (together with DeAM, Inc., the "Adviser").

FILING DATES: The application was filed on August 21, 2000, and amended on June 29, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 7, 2001 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants, c/o Christopher P. Harvey, Esq. and Susan M. Tobin, Esq., Hale and Dorr LLP, 60 State Street, Boston MA 02109.

FOR FURTHER INFORMATION CONTACT: Lidian Pereira, Senior Counsel, at (202) 942–0524 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representation

1. The MG Trust is registered under the Act as an open-end management investment company and is organized as a Delaware business trust. The MG Trust consists of fifteen investment portfolios, including Emerging Markets Debt Fund ("Emerging Markets Debt"), Global Fixed Income Fund ("Global Fixed Income"), High Yield Bond Fund ("High Yield Bond") and Total Return Bond Fund ("Total Return Bond"). The BT Trust is registered under the Act as an open-end management investment company and is organized as a New York trust. The BT Trust is part of a master-feeder structure in which BT Trust is the master portfolio and certain series of BT Investment Funds, an open-management investment company registered under the Act, among others, are feeders in a corresponding portfolio of BT Trust. The BT Trust consists of ten investment portfolio, including PreservationPlus Income Portfolio ("PreservationPlus").

2. DeAM, Inc. and DeAMIS are each registered as an investment adviser under the Investment Advisers Act of 1940, and are under the common control of Deutsche Bank AG. DeAM, Inc. serves as investment adviser for High Yield Bond, Total Return Markets Debt and Global Fixed Income. Applicants request that the relief also apply to any existing or future registered open-end management investment company or series thereof advised by DeAM, Inc., De AMIS or any entity controlling, controlled by, or under common control with DeAM, Inc. or DeAMIS (together with Global Fixed Income, Total Return Bond and PreservationPlus, the "Upper Tier Funds") that wishes to invest in a registered open-management investment company or series thereof that is advised by DeAM, Inc., DeAMIS or any entity controlling, controlled by or under common control with DeAM, Inc. and DeAMIS and is part of the same "group of investment companies" (as defined in section 12(d)(1(G)(ii) of the Act) as the investing Upper Tier Fund (together with High Yield Bond and Emerging Markets Debt, the "Underlying Funds").[1]

3. Total Return Bond is a series of the Trust that seeks total return. To achieve this objective, Total Return Bond proposes to invest in shares of High Yield Bond and Emerging Markets Debt while also investing in other securities and financial instruments, including fixed income securities, futures, options, forward currency transactions and other derivative investments ("Other Securities").[2] Similarly, Global Fixed Income seeks total return and proposes to invest in shares of High Yield Bond and Emerging Markets Debt while also investing in Other Securities. PreservationPlus seeks a high level of current income while seeking to maintain a stable value per share.

[1] All existing entities that currently intend to rely on the order are named as applicants. Any Upper Tier fund and any Underlying Fund that may rely on this order in the future will do so only in accordance with the terms and conditions of the application.

[2] These investments will not include shares of any registered investments companies that are not in the same group of investment companies as the Upper Tier Funds.

PreservationPlus proposes to invest in shares of High Yield Bond while also investing in Other Securities. High Yield Bond seeks high current income and, as a secondary objective, capital appreciation by investing primarily in U.S. dollar-denominated high yield bonds of U.S. and foreign issuers. Emerging Markets Debt seeks total return by investing primarily in high yield bonds of issuers in countries with new or emerging securities markets.

4. Applicants state that in the event an Underlying Fund is organized in a master-feeder structure, the Upper Tier Fund would not invest in shares of the feeder fund, but in interests of the master portfolio. In all such cases, the master portfolio would be part of the same group of investment companies (as defined in Section 12(d)(1)(G)(ii) of the Act) as the Upper Tier Fund. Such master portfolio is included in the term Underlying Fund.

Applicant's Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open end-investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F)(G). Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that an Upper Tier Fund's investments will include shares of one or more Underlying Funds as well as Other Securities.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants requests an order under section 12(d)(1)(J) exempting them from section 12(d)(1)(G)(i)(II). Applicants assert that permitting Total Return Bond and other Upper Tier Funds to invest in the Underlying Funds and Other Securities as described in the application would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before approving any advisory contract under section 15 of the Act, the board of trustees of each of the MG Trust (on behalf of Total Return Bond and Global Fixed Income) and the BT Trust (on behalf of PreservationPlus) or other Upper Tier Fund, including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act, will find that advisory fees, if any, charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract. Such finding, and the basis upon which it was made, will be recorded fully in the minute books of Total Return Bond, Global Fixed Income, PreservationPlus or other Upper Tier Fund.

2. Applicants will comply with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts Global Fixed Income, Total Return Bond, PreservationPlus or other Upper Tier Fund from investing in Other Securities as described in this application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–18003 Filed 7–18–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44552; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Approving Request To Extend Temporary Effectiveness of Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., the Pacific Exchange, Inc. and the Boston, Chicago, Philadelphia, and Cincinnati Stock, Exchanges

July 13, 2001.

I. Introduction

On July 11, 2001, the Cincinnati Stock Exchange, Inc. ("CSE") on behalf of itself and the National Association of Securities Dealers, Inc. ("NASD"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (hereinafter referred to as the "Participants") [1] submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposal to extend the operation of the Plan [2] for Nasdaq/National Market ("Nasdaq/NM") securities traded on an exchange on an unlisted or listed basis.[3] The July 2001

[1] The CSE was elected as chair of the Operating Committee for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities and for Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Plan") by the Participants.

[2] *See* letter from Jeffrey T. Brown, Vice President Regulation and General Counsel, CSE, to Jonathan G. Katz, Secretary, Commission, dated July 11, 2001 ("July 2001 Extension Request"). The signatories to the Plan are the Participants for purposes of this release; however, the BSE joined the Plan as a "limited participant" and reports quotation information and transaction reports only in Nasdaq/National Market securities listed on the BSE. Originally, the American Stock Exchange Inc. ("Amex") was a Participant but withdrew its participation form the Plan in August 1994.

[3] Section 12 of the Securities Exchange Act of 1934 ("Act") generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges ("UTP") under certain circumstances. For example, Section 12(f) of the

Extension Request would extend the effectiveness of the Plan through August 20, 2001 and also would extend certain exemptive relief as described below. The July 2001 Extension Request does not seek permanent approval of the Plan because the Participants currently are negotiating certain amendments to the Plan for which they will seek approval in the future.[4]

II. Background

The Plan governs the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq/NM securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.[5] The Commission originally approved the Plan on a pilot basis on June 26, 1990.[6] The parties did not begin trading until July 12, 1993, accordingly, the pilot period commenced on July 12, 1993. The Plan has since been in operation on an extended pilot basis.[7]

III. Description of the Plan

The Plan provides for the collection from Plan Participants, and the consolidation and dissemination to vendors, subscribers and others, of quotation and transaction information in "eligible securities."[8] The Plan contains various provisions concerning its operation, including: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of ensuring Promptness, Accuracy and Completeness of Transaction Reports; terms and Conditions of Access; Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer ("BBO"); Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.[9]

IV. Exemptive Relief

In conjunction with the Plan, on a temporary basis, the Commission granted an exemption to vendors from Rule 11Ac1–2[10] under the Act regarding the calculation of the BBO[11] and granted the BSE an exemption from the provision of Rule 11Aa3–1[12] under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. In the July 2001 Extension Request, the Participants ask that the Commission grant an extension of the exemptive relief described above to vendors until the BBO calculation issue is fully resolved. In addition, in the July 2001 Extension Request, the participants request that the Commission grant an extension of the exemptive relief described above to the BSE until August 20, 2001.

V. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. The Commission continues to solicit comment regarding the BBO calculation, the trade-through rule and any issues presented by changes occurring in the market place. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposal that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by August 9, 2001.

VI. Discussion

The Commission finds that an extension of temporary approval of the operation of the Plan, as amended, through August 20, 2001, is appropriate and in furtherance of Section 11A[13] of the Act.[14] The Commission had previously stated that a revised Plan must be filed with the Commission by July 19, 2001, or the Commission will amend the Plan directly.[15] The

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Act, among other things, permits exchanges to trade certain securities that are traded over-the-counter ("OTC/UTP"), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of the Section 12(f) requirement, *see* November 1995 Extension Order, *infra* note 7.

[4] In accordance with the Commission's statements in its order approving the establishment of the Nasdaq Order Display Facility and Order Collector Facility ("SuperMontage"), the Participants represent that they are revising the Plan. *See* Securities Exchange Act Release No. 438653 (January 19, 2001) 66 FR 8020 (January 26, 2001). Further in the July 2001 Extension Request, the Participants represented that a 12th amendment to the Plan ("Interim Plan") has been unanimously approved by all Participants. However, due to scheduling limitations of certain Participants' Board meetings, the proposed Interim Plan could not be submitted to the Commission prior to the July 19, 2001 deadline. The Participants represent that they will endeavor to submit the Interim Plan by July 19, 2001.

[5] *See* Section 12(f)(2) of the Act, 15 U.S.C. 781(f)(2).

[6] *See* Securities Exchange Act Release No. 28146, 55 FR 27917 (July 6, 1990) ("1990 Plan Approval Order").

[7] *See* Securities Exchange Act Release Nos. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); 35221 (January 11, 1995)), 60 FR 3886 (January 19, 1995); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995) ("November 1995 Extension Order"); 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); 38794 (June 30, 1997) 62 FR 36586 (July 8, 1997); 39505 (December 31, 1997) 63 FR 1515 (January 9, 1998); 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998); 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) ("May 1999 Approval Order"); 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000); 43005 (June 30, 2000), 65 FR 42411 (July 10, 2000); 44099 (March 23, 2001), 66 FR 17457 (March 30, 2001); and 44348 (May 24, 2001), 66 FR 29610 (May 31, 2001).

[8] The Plan defines "eligible security" as any Nasdaq/NM security as to which unlisted trading privileges have been granted to a national securities exchange pursuant to Section 12(f) of the Act or that is listed on a national securities exchange. On May 12, 1999, in response to a request from the CHX, the Commission expanded the number of eligible Nasdaq/NM securities that may be traded by the CHX pursuant to the Plan from 500 to 1000. *See* May 1999 Approval Order, *supra* note 7. On November 9, 2000, the Commission noticed and requested comment on a proposal by the PCX to expand the maximum number of securities eligible to trade to include all Nasdaq/NM securities. *See* Securities Exchange Act Release No. 43545, 65 FR 69581 (November 17, 2000).

[9] The full text of the Plan, as well as a "Concept Paper" describing the requirements of the Plan, are contained in the original filing, which is available for inspection and copying in the Commission's public reference room.

[10] 17 CFR 240.11Ac1–2.

[11] Rule 11Ac1–2 under the Act requires that the best bid or best offer be computed on a price/size/time algorithm in certain circumstances. Specifically, Rule 11Ac1–2 under the Act provides that "in the event two or more reporting market centers make available identical bids or offers for a reported security, the best bid or offer * * * shall be computed by ranking all such identical bids or offers * * * first by size * * * Then by time." The exemption permits vendors to display the BBO for Nasdaq securities subject to the Plan on a price/time/size basis.

[12] 17 CFR 11Aa3–1.

[13] 15 U.S.C. 78k–1.

[14] In approving this extension, the Commission has considered the extension's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[15] *See supra* note 4. The Commission notes that the SuperMontage order stated the Participants were directed to produce a revised plan by July 19, 2001. The Commission, however, provided for a 3-month extension of the July 19, 2001 deadline if requested by the Participants for good cause. The

Continued

Participants represent in their proposal that they have unanimously approved an Interim Plan, and are in the process of getting the requisite Boards' signatures for submission of the proposed Interim Plan to the Commission. Further, the Participants represent that they will make a concerted effort to submit the proposed Interim Plan that would include a process for selecting an alternative securities information processor by July 19, 2001. In light of the current negotiations regarding the existing Plan and the representations of the Participants in their request to the Commission, the Commission approves the requested extension of the Plan until August 20, 2001.

The Commission notes that the revised Plan must provide for either (1) a fully viable alternative exclusive securities information processor ("SIP") for all Nasdaq securities, or (2) a fully viable alternative non-exclusive SIP in the event that the Plan does not provide for an exclusive SIP. If the revised Plan provides for an exclusive consolidating SIP, a function currently performed by Nasdaq, the Commission believes that, to avoid conflicts of interest, there should be a presumption that a Plan Participant, and in particular Nasdaq, should not operate such exclusive consolidating SIP. The presumption may be overcome if: (1) The Plan processor is chosen on the basis of bona fide competitive bidding and the Participant submits the successful bid; and (2) any decision to award a contract to a Plan Participant, and any ensuing review or renewal of such contract, is made without that Plan participant's direct or indirect voting participation. If a Plan Participant is chosen to operate such exclusive SIP, the Commission believes there should be a further presumption that the Participant-operated exclusive SIP shall operate completely separate from any order matching facility operated by that Participant and that any order matching facility operated by that Participant must interact with the plan-operated SIP on the same terms and conditions as any other market center trading Nasdaq-listed securities. Further, the Commission will expect the NASD to provide direct or indirect access to the alternative SIP, whether exclusive or non-exclusive, by any of its members that qualify, and to disseminate transaction information and individually identified quotation information for these members through the SIP.

Furthermore, the revised Plan should be open to all SROs, and the Plan should share governance of all matters subject to the Plan equitably among the SRO Participants. The Plan also should provide for sharing of market data revenues among SRO Participants. Finally, the Plan should provide a role for participation in decision making to non-SROs that have direct or indirect access to the alternative SIP provided by the NASD. The Commission expects the parties to continue to negotiate in good faith on the above matters [16] as well as any other issues that arise during Plan negotiations.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1–2 [17] under the Act until the earlier of August 20, 2001, or until such time as the calculation methodology of the BBO is based on a mutual agreement among the Participants approved by the Commission. The Commission further finds that it is appropriate to extend the exemptive relief from Rule 11Aa3–1 [18] under the Act to the BSE through August 20, 2001. The Commission believes that the temporary extensions of the exemptive relief provided to vendors and the BSE, respectively, are consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f) [19] and 11A [20] of the Act and in Rules 11Aa3–1 [21] and 11Aa3–2 [22] thereunder.

VII. Conclusion

It is Therefore Ordered, pursuant to Sections 12(f) [23] and 11A [24] of the Act and paragraph (c)(2) of Rule 11Aa3–2 [25] thereunder, that the Participants' request to extend the effectiveness of the Plan, as amended, for Nasdaq/NM securities traded on an exchange on an unlisted or listed basis through August 20, 2001, and certain exemptive relief through August 20, 2001, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18067 Filed 7–18–01; 8:45 am]

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Commission recognizes that the Participants have been meeting to discuss the alternatives for a new plan.

[16] *See also* discussion in the SuperMontage order, *supra* note 4.

[17] 17 CFR 24011Ac1–2.

[18] 17 CFR 240.11Aa3–1.

[19] 15 U.S.C. 78*l*(f).

[20] 15 U.S.C. 78k–1.

[21] 17 CFR 240.11Aa3–1.

[22] 17 CFR 240.11Aa3–2.

[23] 15 U.S.C. 78*l*(f).

[24] 15 U.S.C. 78k–1.

[25] 17 CFR 240.11Aa3–2(c)(2).

[26] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release 34–44553; File No. 600–23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Approving an Extension of Temporary Registration as a Clearing Agency

July 13, 2001.

The Securities and Exchange Commission ("Commission") is publishing this notice and order to solicit comments from interested persons and to extend the Government Securities Clearing Corporation's ("GSCC") temporary registration as a clearing agency through December 31, 2001. On May 24, 1988, pursuant to Sections 17A(b) and 19(a) of the Act [1] and Rule 17Ab2–1 promulgated thereunder,[2] the Commission granted GSCC registration as a clearing agency on a temporary basis for a period of three yrars.[3] The Commission subsequently has extended GSCC's registration through July 31, 2001.[4]

The Commission today is extending GSCC's temporary registration as a clearing agency in order that GSCC may continue to act as a clearing agency while the Commission seeks comment on granting GSCC permanent registration as a clearing agency. The Commission expects to publish notice requesting comments on permanent registration as a clearing agency during the third quarter of this year.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or

[1] 15 U.S.C. 78q–1(b) and 78s(a).

[2] 17 CFR 240.17Ab2–1.

[3] Securities Exchange Act release No. 25740 (May 24, 1988), 53 FR 19639.

[4] Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 R 19639; 29236 (May 24, 1991), 56 FR 24852; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; 42335 (January 12, 2000), 65 FR 3509; 43089 (July 28, 2000), 65 FR 48032; and 43900 (January 29, 2001), 66 FR 8988.

instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the Act.[5] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 fifth Street, NW., Washington, DC 20549–0609. Copies of the application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. All submissions should refer to File No. 600–23 and should be submitted by August 9, 2001.

It is therefore ordered that GSCC's temporary registration as a clearing agency (File No. 600–23) be and hereby is extended through December 31, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18066 Filed 7–18–01; 8:45 am]

BILLING CODE 8010–01–01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44554; File No. SR–NYSE–2001–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Closed End Fund Listing Fees

July 13, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] ("Act") and Rule 19b-4 thereunder,[2] notice is hereby given that on July 6, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to cap the total listing fees payable by any one family of closed-end funds, with respect to new or additional listings in 2001, once the family has paid 2001 fees aggregating at least $1,250,00.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Most closed end investment companies, or closed end funds, that are listed on the Exchange are sponsored by one of a number of companies that specialize in this area. Many of these are household names such as Morgan Stanley Van Kampen; Nuveen; or Merrill Lynch Asset Management, to name the three with the largest number of closed end funds listed on the NYSE. The Exchange is actively engaged in reviewing the listing fees that we charge to closed end funds, and will likely propose a maximum that will apply to the aggregate of initial and annual fees paid by all the funds affiliated with a particular fund sponsor, or "family." While Exchange management has not completed this review and is not yet ready to put forward a definitive proposal, it is far enough along to consider it appropriate to put in place a maximum that will apply for the remainder of this year, so that fund families can be confident that additional listings this year will not incur fees beyond the level at which we anticipate a cap will be enacted.

Accordingly, from and after the effective date of this proposal, no fund family will be required to pay any additional listing fees with respect to new or additional listings in 2001 once the family has paid 2001 fees aggregating at least $1,250,000. A family that has paid aggregate fees in excess of that amount prior to the effective date hereof will not receive a refund, but will not be required to pay any additional fees with respect to this year beyond what it has paid to that date.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[3] that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and subparagraph (f)(6) of Rule 19b–4 thereunder.[5]

The Commission notes that under Rule 19b–4(f)(6)(iii),[6] the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange requested that the Commission designate that the proposed rule change does not become operative for 15 days after the date of its filing so that the benefits of the proposed rule change are available to closed end funds more quickly. The Commission believes that designating the operative date of the proposal for 15 days after the date of the proposal's filing is consistent with the protection of investors and the public interest.[7]

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the

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[5] 15 U.S.C. 78s(a)(1).

[6] 17 CFR 200.30–3(a)(16).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] 17 CFR 240.19b–4(f)(6).

[7] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the SR–NYSE–2001–19 and should be submitted by August 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18065 Filed 7–18–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44551; File No. SR–PCX–2001–14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to Generic Listing Standards Applicable to the Listing and Trading of Investment Company Units and Portfolio Depositary Receipts Pursuant to Rule 19b–4(e) Under the Securities Exchange Act of 1934

July 12, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 1, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. On June 19, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On July 12, 2001, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its listing requirements for ICUs and PDRs to permit its wholly-owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation") to list and trade, or trade pursuant to unlisted trading privileges "UTP"), certain products of ICUs (PCXE Rule 5) or PDRs (PCXE Rule 8) pursuant to Rule 19b–4(e) under the Act.[5] The Exchange also proposes a related amendment to PCXE's minimum price variation rule (PCXE Rule 7, Commentary .05).[6] The text of the proposed rule change is available upon request from the Office of the Secretary, the Commission, or the PCX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's current rules for the initial and continued listing of ICUs and PDRs are set forth in PCXE Rules 5.2(j)(3)[7] and 8.100,[8] respectively.[9] The exchange proposes to amend these rules by adopting generic listing requirements to provide standards that permit the trading, whether by listing or pursuant to unlisted trading privileges ("UTP"),[10] of various ICUs and PDRs products pursuant to Rule 19b–4(e) under the Act.[11] The Exchange believes that the Commission's approval of the proposed generic listing requirements for ICUs and PDRs will allow PCXE to begin trading qualifying products without the need for notice and comment and commission approval. The Exchange further believes that application of Rule 19b–4(e) to these securities potentially reduces the time frame for bringing these securities to the market and thus enhances investors' opportunities.

The Commission has previously approved requests by the American Stock Exchange LLC ("Amex"), Chicago Stock Exchange, Inc. ("CHX") and the Chicago Board Options Exchange, Inc. ("CBOE") to provide generic standards to list and trade ICUs and PDRs.[12] The Exchange believes that

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Peter D. Bloom, Director, Regulatory Projects, Regulatory Policy, PCX, to Lisa N. Jones, Attorney, Division of Market Regulation ("Division"), Commission (June 18, 2001) ("Amendment No. 1"). Amendment No. 1, among other things, revises the proposal to: (1) Modify the initial listing requirement of the minimum number of Units, that may be outstanding at commencemnt of trading to 100,000 Units, consistent with the other exchanges; (2) amend the proposed rule text language relating to minimum price variations for Investment Company Units ("Units") and Portfolio Depositary Receipts ("PDRs"); and (3) amend proposed rule text and adds cross-references for clarification purposes.

[4] *See* Letter from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, to Lisa N. Jones, Attorney, Division, Commission (July 12, 2001) ("Amendment No. 2"). Amendment No. 2 corrects typographical errors to the proposed rule text.

[5] 17 CFR 240.19b–4(e). Rule 19b–4(e) permits self-regulatory organizations ("SROs") to list and trade new derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b). *See* Securities Exchange Act Release No. 40761 (December 8, 1998) 63 FR 70952 (December 22, 1998).

[6] *See* note 3, *supra*.

[7] The Exchange's definition of "Unit" for ICUs is contained in PCXE Rule 5.1(b)(5).

[8] the Exchange's definition of a "PDR" is contained in PCXE Rule 8.100(a).

[9] *See* Securities Exchange Act Release No. 39461 (December 17, 1997), 62 FR 67674 (December 29, 1997) (approving SR–PCX–97–35 relating to listing and trading criteria for PDRs) and Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (approving SR–PCX–98–29 relating to listing and trading criteria for ICUs).

[10] *See* 17 CFR 240.12f–5.

[11] *See* note 4, *supra*.

[12] *See* Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (approving SR–Amex–00–14 relating to the generic listing standards for PDRs and Index Fund Shares); Securities Exchange Act Release No. 42975 (June 22, 2000), 65 FR 40712 (June 30, 2000) (approving SR–CHX–00–14 relating to generic listing standards for ICUs and PDRs); and Securities Exchange Act Release No. 44046 (March 7, 2001), 66 FR 15152

the proposed generic listing requirements for ICUs and PDRs are substantially similar to the listing requirements at the Amex, CHX and CBOE.

Criteria for Initial and Continued Listing and Trading. The Exchange is proposing to implement generic listing requirements that are intended to ensure that a substantial portion of the weight of an index or portfolio underling ICUs or PDRs is composed of securities with substantial market capitalization and trading volume. The Exchange proposed to amend its current listing standards for a series of ICUs or PDRs, contained in PCXE Rules 5.2(j)(3) and 8.100, respectively, to provide standards that permit the listing and trading, or trading pursuant to UTP, of various ICUs or PDRs products, pursuant to Rule 19b–4(e) under the listing requirements as described below.

Upon the initial listing of a serious ICUs or PDRs, the Exchange proposes that the component stocks contained in the aggregate account for at least 90% of the weight of the underlying index or portfolio must have a minimum market value of at least $75 million. In addition, the component stocks representing at least 90% of the weight of the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares. The most heavily weighted component stock in an underlying index or portfolio cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot together exceed 65% of the weight of the index or portfolio must include a minimum of 13 stocks,[13] and all securities in an underlying index or portfolio must be listed on a national securities exchange or the Nasdaq Stock Market (including, the Nasdaq SmallCap Market). Furthermore, the Exchange proposes that any series of ICUs or PDRs traded pursuant to generic listing requirements must meet these eligibility criteria as the date of initial deposit of securities and cash into the trust or fund.

Under the proposed amendments to PCXE Rules 5.2(j)(3) (for ICUs) and 8.100 (for PDRs), the underlying index or portfolio must be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index 8is maintained by a broker-dealer, the broker-dealer must erect a "fire-wall" around the personnel who have access to information concerning changes and adjustments to the index or portfolio, and the index must be calculated by a third party who is not a broker-dealer.

The hours during which ICUs transactions may be made on the Exchange are 6:30 a.m. (Pacific Time ("PT") until 1:30 p.m. (PT) for each series of Units. The hours during which PDRs transactions may be made on the Exchange are 6:30 (PT) until 1:30 p.m. (PT) for each series of PDRs.

The current index value must be disseminated every 15 seconds over the Consolidated Tape Association's Network, as well as an estimate of the net asset value per share of each series of ICUs or PDRs.[14] Additionally, the Reporting Authority must disseminate for each series of ICUs or PDRs an estimate, updated every 15 seconds, of the value of a share of each series. This estimate may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

A series of ICUs or PDRs will be registered in book-entry form through the Depository Trust Company. A minimum of 100,000 shares of a series of ICUs or PDRs is required to be outstanding at the time trading begins. The Exchange represents that it believes that this minimum number is sufficient to establish a liquid Exchange market at the start of trading. The minimum price variation for quoting and entry of orders in a series of ICUs or PDRs will be $0.01.

PCXE Rules Applicable to Trading of ICUs and PDRs. The Exchange proposes to trade ICUs and PDRs pursuant to the PCXE's existing equity trading rules. Specifically, all series of ICUs and PDRs listed under Rule 19b–4(e) will be subject to PCXE's general dealing and settlement rules, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable PCXE equity rules and procedures will also apply, including, among others, rules governing the Intermarket Trading System, priority of orders, operational and regulatory trading halts, and responsibilities of specialists.

The Exchange will implement written surveillance procedures for the ICUs and PDRs that it trades pursuant to Rule 19b–4(e). The Exchange intends to use its existing surveillance technology and procedures adopted for PDRs[15] to conduct surveillance of trading activity in series of ICUs or PDRs. The Exchange believes these procedures will effectively monitor the trading activity in ICU or PDR products so as to ensure full compliance with Exchange rules and the federal securities laws. In addition, the Exchange will comply with the recordkeeping requirements of Rule 19b–4(e),[16] and will file Form 19b–4(e) for each series of ICUs or PDRs within five business days of commencement of trading.

Notice to Members and Member Organizations.[17] The Exchange proposes to issue and distribute an information circular to its members and member organizations for each series of ICUs or PDRs to be listed pursuant to Rule 19b–4(e). The circular will describe the special characteristics of the securities and will inform members or member organizations of any obligation to deliver a written product description prospectus, as applicable, to purchasers of ICUs or PDRs. In addition, the circular will inform members or member organizations that all series of ICUs and PDRs listed under Rule 19b–4(e) will be subject to Exchange procedures and rules comparable to those applied to existing products.

Disclosure to Customers. The proposed rule amendment requires members and member organizations to provide purchasers of a series of ICUs with a product description of the terms and characteristics of such securities in a form approved by the Corporation or prepared by the open-end management investment company issuing the securities, not later than the time a confirmation of the first transaction in such series is delivered to the

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(March 15, 2001) (approving SR–CBOE–00–51 relating to generic listing standards for Index Portfolio Shares ("ISPs") and Index Portfolio Receipts ("IPRs")).

[13] Thirteen stocks is the minimum number to permit qualification as a regulated investment company under Subchapter M of the Internal Revenue Code. Under Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company the securities of a single issuer can account for no more than 25% of a fund's total assets, and at least 50% of a fund's total assets and must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5% of the fund's total assets.

[14] The PCX notes the information described in this section will be disseminated by or through the primary exchange or another entity working with that exchange.

[15] PCXE currently trades, pursuant to unlisted trading privileges, PDRs based on the S&P 500 Index, the S&P MidCap 400 Index, and the Nasdaq-100 Index.

[16] 17 CFR 240.19b–4(e).

[17] Under PCX Equities, Inc. rules, the terms "ETP Holder," "Equity ASAP Holder" and "ETP Firm" have status as a "member" of the PCX as that term is defined in Section 3 of the Act. Therefore, for purposes of this rule filing notice, the terms "member" and "member organization" are synonymous with the terms ETP Holder, Equity ASAP Holder and ETP Firm, if applicable.

purchaser.[18] This requirement applies only if the particular series has been granted relief from the prospectus delivery requirements of Section 24(d) of the Investment Company Act of 1940,[19] and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. In addition, members and member organizations are required to include the product description with any sales materials relating to a series of ICUs that are provided to the public. Any other written materials provided to customers by a member or member organization referring to a series of ICUs must include a statement relating to the product description, in substantially the form set forth in the proposed amendment to PCXE Rule 5.2(j)(3).

The Exchange also proposes to amend PCXE Rule 8.100(c) to clarify that the disclosure provisions of this subparagraph are only applicable to a series of PDRs if, among other things, that series is not subject to prospectus delivery requirements under the Securities Act of 1933.[20] In addition, the Exchange proposes to amend PCXE Rule 8.100(c) to provide that the descriptive disclosure document required by this Rule must be in a form approved by the Exchange or prepared by the unit investment trust issuing the subject PDRs.[21]

The proposal also provides that a member or member organization carrying an omnibus account for a non-ETP Holder, non-Equity ASAP Holder, or non-ETP Firm is required to inform such non-ETP Holder, non-Equity ASAP Holder, or non-ETP Firm that execution of an order to purchase a series of ICUs for such account will be deemed to constitute agreement by the non-member to make such product description available to its customers on the same terms as are directly applicable to members and member organizations under the proposed amendment to PCXE Rule 5.2(j)(3). The proposal also requires that a member or member organization must provide a prospectus for a particular series of ICUs upon the customer's request.

Definition of Reporting Authority. The Exchange proposes to adopt proposed PCXE Rule 5.1(b)(16) that defines the term "Reporting Authority." This definition was adapted from PCXE Rule 8.100(a)(2) and is intended to ensure uniformity in the use of this term in the rules pertaining to both ICUs and PDRs.

Moreover, under proposed PCXE Rule 5.2(j)(3)(D), specific limitations of liability are provided to protect the Exchange, index proprietors, calculators and vendors. The proposed rules also state that there are no express or implied warranties with respect to ICUs. The Exchange represents that these provisions are based on similar provisions already contained in the rules of the Exchange regarding PDRs.[22]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[23] of the Act, in general, and furthers the objectives of Section (b)(5),[24] in particular, in that it is designed to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2001–14 and should be submitted by August 9, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[25] Specifically, the Commission finds that the PCX proposal to establish generic listing standards to permit the listing and trading of ICUs and PDRs pursuant to Rule 19b–4(e) furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under Section 19(b) of the Act. Thus, by establishing generic listing standards, the proposal should reduce the Exchange's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market more quickly. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[26]

In general, ICUs represent an interest in a registered investment company that holds securities based on, or representing an interest in, an index or portfolio of securities. The Exchange currently trades a number of securities pursuant to UTP under its ICU and PDR listing standards.[27]

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[18] The Exchange notes that the current PCXE Rule 8.100 relating to the listing and trading of PDRs already requires its ETP Holders, Equity ASAP Holders and ETP Firms to provide all purchasers of a series of PDRs a written description of the terms and characteristics of such securities, in a form approved by the Corporation. *See* PCXE Rule 8.100(c).

[19] 15 U.S.C. 80a–24(d).

[20] *Id.*

[21] PCXE Rule 8.100(c) currently states that the descriptive disclosure document required by this Rule must be in a form approved by the Corporation only.

[22] *See* PCXE Rule 8.100(f).

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(5).

[26] *Id.* In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] *See* note 11, *supra*. These listing standards are similar to those maintained by other exchanges. *See, e.g.*, Amex Rules 1000 (Portfolio Depositary Receipts) and 1000A (Index Fund Shares).

PDRs, in contrast, represent interests in a unit investment trust that holds securities, which comprise an index or portfolio. Each trust is intended to provide investors with an instrument that closely tracks the underlying securities index or portfolio, that trades like a share of common stock, and that pays holders a periodic cash payment proportionate to the dividends paid, on the underlying portfolio of securities, less certain expenses, as described in the applicable trust prospectus.

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class.[28]

As noted above, the Commission has previously approved PCX rules that permit the listing and trading of ICUs and PDRs. In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the PCX rules that govern their trading. Moreover, the Exchange has separately filed proposed rule changes pursuant to Rule 19b–4 for each of the series of ICUs or PDRs currently trading on the Exchange.

The Commission's approval of the proposed generic listing standards for these securities will allow those series of PDRs and ICUs that satisfy those standards to start trading under Rule 19b–4(e), without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for bringing these securities to the market or for permitting the trading of these securities pursuant to UTP, and thus enhances investors' opportunities. The Commission notes that while the proposal reduces the Exchange's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission previously concluded that PDRs and ICUs trading under the existing Exchange rules would allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transactions costs for trading a portfolio of securities.[29] The Commission believes, for the reasons set forth below, that the product classes that satisfy the proposed generic standards for PDRs and ICUs should produce the same benefits to investors.

The Commission also finds that the proposal contains adequate rules and procedures to govern the trading of PDRs and ICUs under Rule 19b–4(e). All series of PDRs and ICUs listed under the generic standards will be subject to the full panoply of PCXE rules and procedures that now govern the trading of existing PDRs and ICUs on the Exchange or pursuant to UTP. Accordingly, any new series of PDRs and ICUs listed and traded under Rule 19b–4(e) will be subject to PCXE rules governing the trading of equity securities, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.

In addition, the Exchange has developed specific listing criteria for series of PDRs or ICUs qualifying for Rule 19b–4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. Specifically, the proposed generic listing standards require that a minimum of 100,000 shares of a series of PDRs or ICUs is outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid Exchange market at the commencement of trading.

The Commission believes that the proposed generic listing standards ensure that the securities composing the indexes and portfolios underlying the ICUs and PDRs are well capitalized and actively traded. These capitalization and liquidity criteria serve to prevent fraudulent or manipulative acts and are therefore consistent with Section 6(b)(5) of the Act.

In addition, as previously noted, all series of PDRs and ICUs listed or traded under the generic standards will be subject to the Exchange's existing continuing listing criteria. This requirement allows the PCX to consider the suspension of trading and the delisting of a series if an event occurs that makes further dealings in such securities inadvisable. The Commission believes that this will give the PCX flexibility to delist PDRs or ICUs if circumstances warrant such action.

Furthermore, the Commission finds that the Exchange's proposal to trade ICUs or PDRs in minimum price variations of $0.01 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations, all of which benefit the investor. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the PDRs or ICUs, thereby protecting customers and the public interest consistent with Section 6(b)(5) of the Act.[30]

The Commission believes that the hours of trading proposed for both ICUs and PDRs transactions are reasonable. In addition, the Exchange represents that the Reporting Authority will disseminate for each series of PDRs or ICUs an estimate, updated every 15 seconds, of the value of a share of each series. The Exchange further represents that the information that is reported will be disseminated by or through the primary exchange or another entity working with that exchange, when the PCX trades one of these products pursuant to UTP. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each series.

The Exchange has developed surveillance procedures for PDRs and ICUs listed under the generic standards that incorporate and rely upon existing PCX surveillance procedures governing PDRs, ICUs, and equities traded on PCXE. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading PDRs and ICUs under the generic standards. Accordingly, the Commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[31] The Exchange represents that it will file Form 19b–4(e) with the Commission within five business days of commencement of trading a series under the generic standards, and will comply

[28] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[29] *See* Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (approving SR–Amex–00–14); Securities Exchange Act Release No. 42542 (March 17, 2000), 65 FR 16437 (March 28, 2000) (noticing SR–Amex–00–14).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78f(b)(5).

with all Rule 19b–4(e) recordkeeping requirements.

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which a product such as PDRs or ICUs is based. The proposal requires that, in such circumstances, the broker-dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index and that the index value be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

Finally, the Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading PDRs and ICUs. Members and member organizations will be required to provide to all purchasers of ICUs or PDRs a written description of the terms and characteristics of these securities, to include their product description in sales materials provided to customers or the public, to include a specific statement relating to the availability of the description in other types of materials distributed to customers or the public, and to provide a copy of the prospectus, when requested by a customer. The proposal also requires a member or member organization carrying an omnibus account for a non-ETP Holder, non-Equity ASAP Holder, or non-ETP Firm, to notify the non-ETP Holder, non-Equity ASAP Holder, or non-ETP Firm that execution of an order to purchase an ICU or PDR constitutes an agreement by the non-member to provide the product description to its customers.

The Commission also notes that upon the initial listing, or trading pursuant to UTP, of any PDRs or ICUs under the generic standards, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and highlight the characteristics of purchases in a particular series of PDRs or ICUs. The circular also will inform members of these securities. The Commission believes that these requirements ensure adequate disclosure to investor about the terms and characteristics of a particular series and is consistent with section 6(b)(5) of the Act.[32]

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act. The Commission notes that the proposed rule change is based on the generic listing standards in Amex Rule 1000 *et seq.* (PDRs) and 1000A *et seq.* (Index Fund Shares), which the Commission previously approved after soliciting public comment on the proposal pursuant to Section 19(b)(1) of the Act.[33] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the Amex filing. Accordingly, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by these new instruments by trading them as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[34] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[35] that the proposed rule change (SR–PCX–2001–14) and Amendment Nos. 1 and 2 thereto, are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18068 Filed 7–18–01; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During Week Ending July 6, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–10051.
Date Filed: July 3, 2001.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0834 dated July 3, 2001
Mail Vote 131—Resolution 010f
Special Passenger Amending Resolution (remove certain exceptional cost increases adopted at the February/November, 2000 meetings)
Intended effective date: July 15, 2001

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–18113 Filed 7–18–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Application for Certificates of Public Convenience and Necessity

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the week ending July 6, 2001. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–10052.
Date Filed: July 3, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 24, 2001.
Description: Application of DHL Airways, Inc., pursuant to 49 U.S.C. 41102 and subpart B, requesting a renewal and an amendment of its certificate of public convenience and necessity for Route 725, Segments 1 through 6, to provide scheduled foreign air transportation of property and mail between points in the United States and points in Mexico.

Docket Number: OST–2001–10068.
Date Filed: July 6, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 27, 2001.
Description: Application of Amerijet International, Inc., pursuant to 49 U.S.C.

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[32] 15 U.S.C. 78f(b)(5).

[33] *See* note 28 *supra*. The Commission notes that the PCX proposal is also based on the generic listing standards at the CHX and the CBOE. *See* note 11, *supra*.

[34] 15 U.S.C. 78s(b)(5).

[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

Section 41102 and Subpart B, requesting a renewal and an amendment of its certificate of public convenience and necessity for Route 570, Segment 1 through 4, to provide scheduled foreign air transportation of property and mail between points in the United States and points in Mexico for a five-year period. Amerijet also requests that its certificate authority be amended to include the terminal point Fort Lauderdale, in addition to, or as an alternative to Miami.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–18114 Filed 7–18–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the Baltimore-Washington Maglev Proposal

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: FRA is issuing this notice to advise the public that FRA will prepare an environmental impact statement (EIS) for the Baltimore-Washington Maglev proposal linking the Camden Yards area in Baltimore, MD and Baltimore-Washington International Airport (BWI) with Union Station in Washington, DC; to solicit public and agency input into the development of the EIS; and, to advise the public that outreach activities conducted by the program participants will be considered in the preparation of the EIS.

FOR FURTHER INFORMATION CONTACT: Mr. Suhair Alkhatib, Maryland Mass Transit Administration, William Donald Schaefer Tower, 6 St. Paul Street, Baltimore, MD 21202–1614, Telephone: (410) 767–3751, email: *salkhatib@mdot.state.md.us* or Michael Saunders, Federal Railroad Administration, 628–2 Hebron Avenue, Suite 303, Glastonbury, CT 06033–5007, Telephone: (860) 659–6714, email: *Michael.Saunders@fhwa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FRA prepared a programmatic EIS (PEIS) to address the selection process and the potential for significant environmental impact from the maglev deployment program authorized in Section 1218 (23 U.S.C. 322) of the Transportation Equity Act for the 21st Century (TEA 21). The notice of availability of the final PEIS was published in the **Federal Register** on May 4, 2001. In addition, the Maryland Mass Transit Administration prepared an environmental assessment for the Maryland project in February, 2000 which was used by the FRA to assist the agency in preparing the PEIS. The PEIS is available on the FRA website at: *http://www.fra.dot.gov/s/env/maglev/MagPEIS.htm*.

The Secretary of Transportation, consistent with FRA's Maglev Deployment Program regulation (49 CFR Part 268), selected two locations (including this proposal) for further analysis and the development of a site specific EIS. This could lead to the selection of a single project for Federal capital assistance for construction, depending on the appropriation of funds by the U.S. Congress.

The FRA, in cooperation with the Maryland Mass Transit Administration, will prepare a site-specific EIS on a proposal to build a Maglev project linking downtown Baltimore to BWI Airport and Union Station in Washington DC. The FRA, in cooperation with the Port Authority of Allegheny County, Pennsylvania, will also prepare a site-specific EIS for the other location selected for further analysis and development.

It is anticipated that the EIS will consider alternatives including: (1) yaking no action, and (2) various alignment and station locations from downtown Baltimore to BWI Airport and Union Station in Washington, DC, and possibly a Capital Beltway station.

Scoping and Comments

FRA encourages broad participation in the EIS process and review of the resulting environmental documents. Comments and suggestions related to the project and potential environmental concerns are invited from all interested agencies and the public at large to ensure that the full range of issues related to the proposed action and all reasonable alternatives are addressed and all significant issues are identified. The public will be invited to participate in the scoping process, review the Draft EIS, and provide input at public meetings. Letters describing the proposed scope of the EIS and soliciting comments will be sent to appropriate Federal, State and local agencies, elected officials, community organizations, and to private organizations and citizens who have previously expressed interest in this proposal. Several public meetings to be advertised in the local media will be held in the project area regarding this proposal. Release of the Draft EIS for public comment and public meetings and hearings will be announced as those dates are established.

Comments or questions concerning this notice of intent and the EIS should be directed to the FRA or the Maryland Mass Transit Administration at the addresses noted above.

Issued in Washington DC on: July 13, 2001.

Arrigo P. Mongini,

Deputy Associate Administrator for Railroad Development, Federal Railroad Administration.

[FR Doc. 01–18111 Filed 7–18–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for Pennsylvania Maglev Proposal

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: FRA is issuing this notice to advise the public that FRA will prepare an environmental impact statement (EIS) for the Pennsylvania Maglev proposal linking Pittsburgh International Airport to Pittsburgh and its eastern suburbs in Allegheny and Westmoreland Counties; to solicit public and agency input into the development of the EIS; and, to advise the public that outreach activities conducted by the program participants will be considered in the preparation of the EIS.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce W. Ahern, Port Authority of Allegheny County, 2235 Beaver Avenue, Pittsburgh, PA 15233–1080, Telephone: (412) 237–6121, email *Bahern@PortAuthority.org* or Michael Saunders, Federal Railroad Administration, 628–2 Hebron Avenue, Suite 303, Glastonbury, CT 06033–5007, Telephone: (860) 659–6714, email *Michael.Saunders@fhwa.dot.gov*

SUPPLEMENTARY INFORMATION:

Background

The FRA prepared a programmatic EIS (PEIS) to address the selection process and the potential for significant environmental impact from the maglev deployment program authorized in Section 1218 (23 U.S.C. 322) of the Transportation Equity Act for the 21st Century (TEA 21). The notice of availability of the final PEIS was published in the **Federal Register** on

May 4, 2001. In addition, the Port Authority of Allegheny County prepared an environmental assessment for the Pennsylvania project in February, 2000 which was used by the FRA to assist the agency in preparing the PEIS. The PEIS is available on the FRA website at: *http://www.fra.dot.gov/s/env/maglev/MagPEIS.htm.*

The Secretary of Transportation, consistent with FRA's Maglev Deployment Program regulation (49 CFR part 268), selected two locations (including this proposal) for further analysis and the development of a site specific EIS. This could lead to the selection of a single project for Federal capital assistance for construction, depending on the appropriation of funds by the U.S. Congress.

The FRA, in cooperation with the Port Authority of Allegheny County, will prepare a site-specific EIS on a proposal to build a Maglev project linking Pittsburgh International Airport to Pittsburgh and its eastern suburbs. The FRA, in cooperation with the Maryland Mass Transit Administration, will also prepare a site-specific EIS for the other location selected for further analysis and development.

It is anticipated that the EIS will consider alternatives including: (1) Taking no action, and (2) various alignment and station locations from the airport to downtown Pittsburgh and the eastern suburbs of Monroeville and Greensburg.

Scoping and Comments

FRA encourages broad participation in the EIS process and review of the resulting environmental documents. Comments and suggestions related to the project and potential environmental concerns are invited from all interested agencies and the public at large to ensure that the full range of issues related to the proposed action and all reasonable alternatives are addressed and all significant issues are identified. The public will be invited to participate in the scoping process, review the draft EIS, and provide input at public meetings. Letters describing the proposed scope of the EIS and soliciting comments will be sent to appropriate Federal, State and local agencies, elected officials, community organizations, and to private organizations and citizens who have previously expressed interest in this proposal. Several public meetings to be advertised in the local media will be held in the project area regarding this proposal. Release of the draft EIS for public comment and public meetings and hearings will be announced as those dates are established.

Comments or questions concerning this notice of intent and the EIS should be directed to the FRA or the Port Authority of Allegheny County at the addresses noted above.

Issued in Washington DC on: July 13, 2001.

Arrigo P. Mongini,

Deputy Associate Administrator for Railroad Development, Federal Railroad Administration.

[FR Doc. 01–18112 Filed 7–18–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9947]

Notice of Receipt of Petition for Decision that Nonconforming 2000–2001 Mercedes Benz S500 and S600 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000–2001 Mercedes Benz S500 and S600 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000–2001 Mercedes Benz S500 and S600 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is August 20, 2001.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 2000–2001 Mercedes Benz S500 and S600 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2000–2001 Mercedes Benz S500 and S600 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2000–2001 Mercedes Benz S500 and S600 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2000–2001 Mercedes Benz S500 and S600 passenger cars, as originally manufactured for sale in Europe, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000–2001 Mercedes Benz S500 and S600 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials,* as well as 49 CFR Part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of the word "Brake" for the international ECE warning symbol on the markings for the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour. The petitioner states that the entire instrument cluster will be replaced with a U.S.-model component.

Standard No. 108 Lamps, *Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lamps, (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lamps and (c) installation of U.S.-model high-mounted stop light assembly (if necessary).

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off on vehicles that are not already so equipped.

Standard No. 201 *Occupant Protection in Interior Impact:* Inspect each vehicle and replace any non-U.S. model parts with U.S. model parts.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) inspection of all vehicles and replacement of the driver's and passenger's side air bags, knee bolsters, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. The front and rear outboard designated seating positions have combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton.

Standard No. 214 *Side Impact Protection:* Inspect vehicles and replace any non-complying part with U.S. model parts.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 13, 2001.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 01–17994 Filed 7–18–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination; Highlands Insurance Company, Highland Underwriters Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 22 to the Treasury Department Circular 570; 2000 Revision, published June 30, 2000 at 65 FR 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificates of Authority issued by the Treasury to the above named Companies, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable sureties on Federal bonds is terminated effective today.

The Companies were last listed as an acceptable sureties on Federal bonds at 65 FR 40886, June 30, 2000.

With respect to any bonds, including continuous bonds, currently in force with above listed Companies, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financing Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 30, 2001.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 01–18101 Filed 7–18–01; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–43–92]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–43–92 (TD 8619), Direct Rollovers and 20-Percent Withholding Upon Eligible Rollover Distributions From Qualified Plans (§§ 1.401(a)(31)–1, 1.402(c)–2, 1.402(f)–1, 1.403(b)–2, and 31.3405(c)–1).

DATES: Written comments should be received on or before September 17, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Direct Rollovers and 20-Percent Withholding Upon Eligible Rollover Distributions From Qualified Plans.

OMB Number: 1545–1341.

Regulation Project Number: EE–43–92.

Abstract: This regulation implements the provisions of the Unemployment Compensation Amendments of 1992 (Pub. L. 102–318), which impose mandatory 20 percent income tax withholding upon the taxable portion of certain distributions from a qualified pension plan or a tax-sheltered annuity that can be rolled over tax-free to another eligible retirement plan unless such amounts are transferred directly to such other plan in a "direct rollover" transaction. These provisions also require qualified pension plans and tax-sheltered annuities to offer their participants the option to elect to make "direct rollovers" of their distributions and to provide distributees with a written explanation of the tax laws regarding their distributions and their option to elect such a rollover.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 10,323,926.

Estimated Time Per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 2,129,669.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 16, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–18127 Filed 7–18–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0060]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to process beneficiaries claims for payment of insurance proceeds.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 17, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0060" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Claim For Government Life Insurance Policy, VA Form Letter 29–764.

b. Claim For One Sum Payment (Government Life Insurance), VA Form 29–4125.

c. Claim For Monthly Payments (National Service Life Insurance), VA Form 29–4125a.

d. Claim For One Sum Payment (Govt. Life Insurance All Prefixes), VA Form 29–4125b.

e. Claim For Monthly Payments (United States Government. Life Insurance, (USGLI)), VA Form 29–4125k.

OMB Control Number: 2900–0060.

Type of Review: Extension of a currently approved collection.

Abstract: VA forms and form letter are used by beneficiaries to apply for proceeds of Government Insurance policies. The collected information is used by VA to process beneficiaries claim for payment of insurance proceeds.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,938 hours.

a. FL 29–764—100 hours.
b. VA Form 29–4125—8,200 hours.
c. VA Form 29–4125a—463 hours.
d. VA Form 29–4125b—50 hours.
e. VA Form 4125k—125 hours.

Estimated average burden per respondent:

a. FL 29–764—6 minutes.
b. VA Form 29–4125—6 minutes.
c. VA Form 29–4125a—15 minutes.
d. VA Form 29–4125b—6 minutes.
e. VA Form 4125k—15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 85,850.

a. FL 29–764—1,000.
b. VA Form 29–4125—82,000.
c. VA Form 29–4125a—1,850.
d. VA From 29–4125b—500.
e. VA Form 4125k—500.

Dated: June 28, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–17999 Filed 7–18–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0586]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 20, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0586" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–75, Technical Industry Standards.

OMB Control Number: 2900–0586.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VAAR clause 852.211–75, Technical Industry Standards, requires that items offered for sale to VA under solicitation conform to certain technical industry standards, such as Underwriters Laboratory (UL) or the National Fire Protection Association and that the contractor furnish evidence to VA that the items meet that requirement. The evidence is normally in the form of a tag or seal affixed to the item, such as the UL tag on an electrical cord or a tag on a fire-rated door. This requires no additional effort on the part of the contractor, as items come from the factory with tags already in place, as part of the manufacturer's standard manufacturing operation. Occasionally, for items not already meeting standards or for items not previously tested, a contractor will have to furnish a certificate from an acceptable laboratory certifying that the items furnished have been tested in accordance with, and conform to, specified standards. Only firms whose products have not previously been tested to ensure the products meet industry standards required under solicitation will be required to submit a separate certificate. The information will be used to ensure that items being purchased meet minimum safety standards and to protect VA employees, VA beneficiaries and the public.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 11, 2001, at page 18853.

Affected Public: Business or other for profit, individuals or households, and not-for-profit institutions.

Estimated Annual Burden: 50 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 100.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0586" in any correspondence.

Dated: June 28, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–18000 Filed 7–18–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0593]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before August 20, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0593" in any correspondence.

SUPPLEMENTARY INFORMATION: *Title:* Veterans Affairs Acquisition Regulation (VAAR) Provision 852.214–70, Caution to Bidders " Bid Envelopes.

OMB Control Number: 2900–0593.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VAAR Provision 852.214–70, Caution to Bidders " Bid Envelopes, advises bidders that it is their responsibility to ensure that their bid price cannot be ascertained by anyone prior to bid opening. It also advises bidders to identify their bids by showing the invitation number and bid opening date on the outside of the bid envelope. The Government often furnished a blank bid envelope or a label for use by bidders/offers to identify their bids. The bidder is advised to fill in the required information. This information requested from bidders is needed by the Government to identify bid envelopes from other mail or packages received without having to open the envelopes or packages and possibly exposing bid prices before bid opening. The information will be used to identify which parcels or envelopes are bids and which are other routine mail. The information is also needed to help ensure that bids are delivered to the proper bid opening room on time and prior to bid opening.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 27, 2001, at pages 16704–16705.

Affected Public: Business or other for profit, individuals or households, and not-for-profit institutions.

Estimated Annual Burden: 960 hours.

Estimated Average Burden Per Respondent: 10 seconds.

Frequency of Response: On occasion.

Estimated Number of Respondents: 346,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0593" in any correspondence.

Dated: June 28, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–18001 Filed 7–18–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Public Law 94–409 that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held at the Crown Plaza Hotel, 1001 14th Street, NW., Washington, DC on July 31 through August 1, 2001.

The sessions on July 31, and August 1, 2001, are scheduled to begin at 8:30 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the July 31 session from 8:30 a.m. to 9 a.m. for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On July 31 from 9 a.m. through August 1, 2001, the meeting is closed during which the Board will be reviewed research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under sections 10(d) of Public Law 92–463 as amended by section 5(c) of Public Law 94–409.

Those who plan to attend the open session should write to Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420 (Phone: 202–408–3684) at least five days before the meeting.

Dated: July 5, 2001.

By Direction of the Secretary.

Ronald R. Aument,

Acting Committee Management Officer.

[FR Doc. 01–18002 Filed 7–18–01; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Thursday,
July 19, 2001

Part II

General Services Administration

41 CFR Parts 101–6 and 102–3
Federal Advisory Committee Management; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–6 and 102–3

[FPMR Amendment A–57]

RIN 3090–AG49

Federal Advisory Committee Management

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising Federal Property Management Regulations (FPMR) coverage on Federal advisory committee management and moving it into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand. This action is necessary due to legislative and policy changes that have occurred, and judicial decisions that have been issued since the regulation was last updated. It is based also on suggestions for improvement from other Federal agencies and interested parties, and clarifies how the regulation applies or does not apply to certain situations.

EFFECTIVE DATE: August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Charles F. Howton, Deputy Director, Committee Management Secretariat (202) 273–3561, or electronically at the following Internet address: *charles.howton@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

GSA's authority for administering the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. (also referred to as "the Act"), is contained in section 7 of the Act and Executive Order 12024 (42 FR 61445; 3 CFR 1977 Comp., p. 158). Under Executive Order 12024, the President delegated to the Administrator of General Services all of the functions vested in the President by the Act. GSA's responsibilities for administering the Act have been delegated to the Associate Administrator for Governmentwide Policy and to the Director of the Committee Management Secretariat.

In a previous issue of the **Federal Register** (62 FR 31550, June 10, 1997), GSA published an Advance Notice of Proposed Rulemaking (ANPRM) and requested comments. Additional comments were requested from the Interagency Committee on Federal Advisory Committee Management. GSA requested comments on: (1) Suggested issues to address; (2) specific recommendations about changes needed in the current Federal Advisory Committee Management subpart; (3) examples of situations where FACA was either a useful tool or a hindrance to public involvement; and (4) GSA's intent to include illustrative examples and principles. On January 14, 2000, GSA published a proposed rule in the **Federal Register** (65 FR 2504) and requested comments over a 60-day period ending on March 14, 2000. All comments received were considered in drafting this final rule.

This final rule provides administrative and interpretive guidelines and management controls for Federal agencies to implement the provisions of the Act, and is intended to improve the management and operation of Federal advisory committees in the executive branch.

B. Discussion of Comments

Twenty-six commenters responded to the invitation for comments, including twenty commenters from the executive branch and six commenters from non-Federal sources. Of the twenty comments received from executive branch sources, three comments were submitted by subcomponents of a Federal department or agency. A total of fifty-nine specific issues or recommendations were identified, of which seven were either fully supportive of the proposed rule or concerned typographical errors. GSA addressed the disposition of the remaining fifty-two issues or recommendations as follows:

The Final Rule Should Include More Guidance Relating to the Management of Advisory Committees, Including the Impact of Other Statutes and Issues on Day-to-Day Operations

Several commenters provided suggestions regarding the addition of guidance on issues that, although not addressed by the Act, likely would improve the management of advisory committees. For example, one commenter suggested that the final rule include a provision to encourage agencies to streamline their internal processes and procedures in order to expedite the establishment of advisory committees. Other commenters requested that GSA: (1) Provide more detailed provisions on the compensation of advisory committee members and staff, and experts and consultants; (2) expand the range of information required to be listed in an advisory committee's charter to include the nature and disposition of records; and (3) incorporate new regulatory requirements for increasing access to advisory committee information, such as providing meeting notices, minutes, and reports via the Internet.

In response to these recommendations, GSA expanded the number of examples included within the final rule to illustrate how other statutes or issues potentially could affect the effective management of advisory committees.

In addition, GSA reorganized the examples and other guidance into appendices to avoid any ambiguity between actions required by the Act and the final rule, and actions that are suggested only within an implementing framework of "best practices." In the final rule, a "Key Points and Principles" appendix appears at the end of each subpart to which it relates.

In applying the "best practices" offered in the appendices, users of the final rule should continue to examine the extent to which other factors, including agency-specific statutory provisions and internal agency procedures, may affect a specific advisory committee or program. Although GSA believes that the examples contained in the appendices to the final rule represent the circumstances most commonly encountered during the day-to-day management of advisory committees, the listing is not exhaustive and must be supplemented based upon the unique requirements of the user.

Provide Additional Guidance Regarding What Advisory Committees and Their Subcommittees Must Do To Comply With the Act

Many commenters expressed concern over language contained in the preamble to the proposed rule relating to coverage of subcommittees under the Act. The preamble to the proposed rule noted that:

> The applicability of the procedural requirements contained in FACA and this proposed rule to subcommittees of advisory committees has been clarified. GSA's current FACA regulation does not make clear that subcommittees reporting to a parent committee are not subject to FACA. Indeed, the regulation states just the opposite, providing that "[s]ubcommittees that do not function independently of the full or parent advisory committee" are subject to all requirements of FACA except the requirement for a charter. (See 41 CFR 101–6.1007(b)(3).) This provision is problematic for two reasons. First, it applies FACA more broadly than the statute itself requires. Second, it essentially creates a special type

of advisory committee that is subject to some, but not all of FACA's requirements, which has no foundation in the statute. Under FACA, a group is either an advisory committee subject to all of the statutory requirements, or it is not an advisory committee, and therefore not subject to any of its requirements. Because a subcommittee which reports to a parent committee is not an "advisory committee" under FACA, there is no legal basis for applying any of FACA's requirements to such a subcommittee.

In evaluating the comments received, GSA notes that there were no objections to the exclusions contained in § 102–3.185 of the proposed rule (now § 102–3.160 of the final rule), relating to "What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?" The exclusions in § 102–3.160 of the final rule continue to cover the types of activities routinely performed by subcommittees. By this reasoning GSA sought to bring into harmony these activities with those provisions in the proposed rule differentiating subcommittees reporting to a parent advisory committee from those reporting directly to a Federal officer or agency.

However, the preamble to the proposed rule did not explain and describe adequately the legal framework for GSA's decision to differentiate subcommittees that report only to a parent advisory committee more clearly from advisory committees that report directly to a Federal officer or agency. The Act defines the term "advisory committee" as "any committee, * * * or any subcommittee or other subgroup thereof which is established or utilized by the President or an agency in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government". Under this definition, a subcommittee is an "advisory committee" subject to the Act if it provides advice to the President or a Federal officer or agency. Most subcommittees, however, report only to a parent advisory committee and it is the parent committee that is normally responsible for providing advice or recommendations to the Government. In this conventional scenario, the subcommittee is not subject to the Act because it is not providing advice to the Government.

Case law supports this conclusion. In *National Anti-Hunger Coalition* v. *Executive Committee*, 557 F.Supp. 524 (D.D.C.), *aff'd*, 711 F.2d 1071 (D.C. Cir. 1983), the question presented was whether the Act applied to task forces reporting to the Executive Committee of the President's Private Sector Survey on Cost Control in the Federal Government. The task forces had no authority to make recommendations to agencies or to the President. Instead, their function was to do the "preliminary work of the survey, including fact-gathering, statistical evaluations, and the formulation of preliminary reports." (557 F.Supp. at 526). Although it was undisputed that the Executive Committee was subject to the Act, the court held that the Act did not apply to the task forces under the following reasoning:

> There is no question that the task forces are intimately involved in the gathering of information about federal programs and the formulation of possible recommendations for consideration of the Committee. That is not enough to render them subject to the FACA. The Act itself applies only to committees "established or utilized by" the President or an agency "in the interest of obtaining advice or recommendations for the President or one or more agencies." The Act does not cover groups performing staff functions such as those performed by the so-called task forces. (557 F.Supp. at 529). (See also *Association of American Physicians and Surgeons* v. *Clinton*, 997 F.2d 898, 911–913 (D.C. Cir. 1993).)

GSA believes that as a result of this decision, subcommittees that report to a parent advisory committee generally are not subject to the Act. GSA also believes that subcommittees whose advice or recommendations are provided directly to a Federal officer or agency are subject to the Act. However, GSA further believes that this decision does not shield those subcommittees from coverage under the Act whose advice or recommendations are not subject to deliberation by their parent advisory committees.

From this reasoning, it is not permissible for parent advisory committees simply to "rubber-stamp" the advice or recommendations of their subcommittees, thereby depriving the public of its opportunity to know about, and participate contemporaneously in, an advisory committee's deliberations. Agencies are cautioned to avoid excluding the public from attending any meeting where a subcommittee develops advice or recommendations that are not expected to be reviewed and considered by the parent advisory committee before being submitted to a Federal officer or agency. These exclusions may run counter to the provisions of the Act that require contemporaneous access to the advisory committee deliberative process.

To address these issues more clearly, GSA strengthened language in the final rule by: (1) Adding a new § 102–3.35 that outlines policies relating to subcommittees; (2) clarifying language in § 102–3.145 relating to subcommittee meetings; and (3) clarifying the examples contained in Appendix A to Subpart C.

Correct and Clarify the Definition of "Utilized"

Nine commenters recommended that GSA revise its definition of the term, "utilized" to conform to governing case law.

As noted by some of the commenters, the definition of the term "utilized" in § 102–3.30 of the proposed rule inadvertently misstated the applicable legal test. The proposed rule stated that a committee is "utilized within the meaning of the Act when the President or a Federal agency exercises actual management and control over its operation." This construction would require an agency both to have management of the committee and to exercise control over the committee before the committee can be deemed "utilized." The proper statement of the "utilized" test is whether an agency either has management of the committee *or*, in some fashion other than management, exercises control over the committee.

The controlling legal authority is *Washington Legal Foundation* v. *U. . Sentencing Commission*, 17 F.3d 1446 (D.C. Cir. 1994). In that case, the appeals court gave structure to the U.S. Supreme Court's prior decision interpreting the term "utilized." (See *Public Citizen* v. *Department of Justice*, 491 U.S. 440 (1989).) The appeals court ruled that the word "*utilized*" indicates "*something along the lines of actual management or control of the advisory committee*." (17 F.3d at 1450). The operative criterion for determining whether a committee has sufficiently close ties to an agency in order to render it "utilized" is whether the agency has either *management* of the committee or exerts some other type of *control*, but not necessarily both.

Similarly, § 102–3.50(b) of the proposed rule (now § 102–3.185(b) of the final rule) used the phrase "actual management and control" with regard to section 15 of the Act. In explaining the relationship between Federal agencies and the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA) covered by section 15 of the Act, § 102–3.50(b) of the proposed rule states that "[a]gencies must not manage or control the specific procedures adopted by each academy." However, committees covered by section 15 of the Act must be under *both* the actual management *and* the control of the academies, not that of a Federal agency. In this instance, the use of the conjunctive

word "and" is appropriate and indicates that the academies cannot relinquish *either* management or control of their committees to Federal agencies.

Accordingly, GSA revised the language contained in the final rule by changing *management and control* to *management or control* in the definition of the term "utilized," now in § 102–3.25 of the final rule, and in those instances in which it appears in the "Key Points and Principles" guidance in the appendices to the final rule.

Clarify the Application of the Act to Agency Interactions With the Public

Several commenters noted that Federal agencies are increasingly reliant on local communities, individual citizens, and interested parties to obtain information, advice, or recommendations on which to base decisions. They expressed concerns that: (1) Uncertainty about the scope of the Act creates a disincentive for Federal officers and agencies wishing to engage in public outreach; (2) the requirements of the Act are being interpreted differently within and among agencies; and (3) GSA's current regulations do not adequately differentiate between those groups and activities covered by the Act and others that are not. (See 41 CFR 101–6.10.)

GSA recognizes that the broad definition in the Act of an "advisory committee" might be interpreted to extend coverage by the Act to any gathering or two or more persons from whom the President or other Federal officers or agencies seek advice or recommendations. However, in the cases discussed above, the courts have rejected such a broad reading of "advisory committee." GSA believes that the sections in the final rule on definitions and on groups not covered by the Act, §§ 102–3.25 and 102–3.40, respectively, clarify the limits of the coverage by, or scope of, the Act when applied together.

Within this group of comments, GSA noted a consistent theme related to the need for more information regarding public participation tools and techniques that would allow for more collaboration that is not subject to the Act. Although advisory committees support Federal decisions in a variety of situations, GSA believes that the ability of agencies to interact with the public in numerous other ways is particularly important because advisory committees are only one method for agencies to obtain the views of the public for their programs. Federal agencies may engage in continuous collaboration using diverse, but complimentary, tools, techniques, and methods. Whether or not a selected approach includes the use of advisory committees, the potential or perceived applicability of the Act must not prevent constructive collaboration from taking place. Agencies are encouraged to contact GSA concerning not only the use of Federal advisory committees, but also for information about alternative forms of public involvement.

In GSA's view, agencies have broad latitude to consult with the public using many different approaches that are not subject to the Act. Public consultation formats that generally fall outside of the scope of the Act include public meetings, information exchange forums, meetings initiated with or by non-governmental organizations, Federal participation on groups that are not established or utilized by the Government, and certain work products generated by contractors as a result of consultation with the public.

While FACA is not a public participation statute, it directly affects how the executive branch is held accountable for the use and management of Federal advisory committees as a major means of obtaining public involvement. Within this context, agencies wishing to consult with private individuals, non-governmental organizations, or with the public at large through other assemblages often must consider whether or not the Act applies to a given situation.

The number and range of scenarios presented by the commenters underscore the importance of presenting a clearer understanding of how advisory committees are established by Federal agencies or how the Government's relationship with groups not established within the meaning of the Act may nevertheless become subject to the Act if they are *utilized*. Based upon the comments received, the circumstances under which advisory committees are *established* within the executive branch appear to be well understood. Accordingly, GSA retained the language contained in § 102–3.30 of the proposed rule in § 102–3.25 of the final rule and throughout subpart B.

However, as noted in the above discussion of the proposed rule's treatment of the term "utilized," agencies must determine whether or not their relationship with a group created by non-Federal entities constitutes *actual management or control* within the meaning of the Act. To help agencies make this determination, GSA has included within the final rule several new examples illustrating the application of the *actual management or control* test to different situations. These additions are contained in the "Key Points and Principles" guidance in Appendix A to Subpart A.

Explain the Relationship Between Committees Established by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) and the Act

The Federal Advisory Committee Act Amendments of 1997, Public Law 105–153, December 17, 1997, established separate procedures for committees that are managed and controlled by NAS or NAPA. Subpart E of the final rule contains implementing instructions for the new section 15 of FACA.

Clarify the Distinction Between Advisory Committees Subject to the Act and Operational Committees Not Covered by the Act

Five commenters suggested that further guidance in the final rule is necessary to assist agencies in differentiating an operational committee not covered by the Act from one that performs primarily advisory functions and is, therefore, subject to the Act. GSA added guidance within Appendix A to Subpart A listing those characteristics generally associated with committees having primarily operational, as opposed to advisory, functions.

Clarify the Applicability of the Act to Advisory Committee Meetings Conducted Through Electronic Means

Four commenters supported GSA's language contained in the proposed rule extending the definition of "committee meeting" to meetings conducted in whole or part through electronic means. However, two commenters suggested additional clarifications, which GSA has adopted.

First, GSA slightly modified the definition of "committee meeting" contained in § 102–3.25 of the final rule to include a "gathering" of advisory committee members whether in person or through electronic means. This change was made to highlight coverage by the Act of both physical and "virtual" meetings conducted by such means as a teleconference, videoconference, the Internet, or other electronic medium.

Second, GSA amended the language contained in § 102–3.140 of the final rule to provide for adequate public access to advisory committee meetings that are conducted in whole or part through electronic means. This change complements existing policy covering advisory committee meetings that are held within a physical setting, such as a conference room, by ensuring that agencies adequately plan for public

participation by adding additional capability (such as a designated number of public call-in lines for a teleconference) to ensure access to committee deliberations.

Provide Additional Guidance on Balanced Representation and Selection of Members

One commenter expressed concern that the proposed rule did not contain sufficient guidance on balanced representation and the selection of members. GSA recognizes that the guidance contained in the proposed rule is limited to the language of the Act, but believes that the provisions of section 5(c) of the Act are broad enough to allow for agency discretion in determining advisory committee representation and membership relative to applicable statutes, Executive orders, and the needs of the agency responsible for the advisory committee.

However, GSA added a list of possible considerations within Appendix A to Subpart B that, while not comprehensive or universally applicable, may help in developing a plan for balancing an advisory committee's membership.

Emphasize the Importance of Maximizing an Advisory Committee's Independent Judgment

Five commenters offered various suggestions to address the requirement contained in section 5(b)(3) of the Act, which is intended to ensure that the work products of an advisory committee reflect the group's independent judgment.

Included among these suggestions were recommendations from the U.S. Office of Government Ethics (OGE) that GSA modify the language contained in § 102–3.155 of the proposed rule (now contained in Appendix A to Subpart C of the final rule) to clarify the applicability of conflict of interest statutes and other Federal ethics rules to advisory committee members. GSA adopted all of OGE's suggestions.

The remaining suggestions received concerned the appointment of advisory committee members, including a recommended change to § 102–3.155 of the proposed rule (now Appendix A to Subpart C) to clarify that: (1) An agency may appoint a member to an advisory committee based upon the recommendation of an organization to be represented; and (2) recommendations from an advisory committee may be a part of an agency's process to nominate new members. GSA adopted these changes and suggestions.

Provide Additional Guidance on the Management of Federal Records

GSA received suggestions from the National Archives and Records Administration (NARA) regarding three areas where additional guidance on records management issues could be useful. Specifically, NARA recommended that § 102–3.190 of the proposed rule: (1) Be expanded to include all recordkeeping requirements specified by the Act, not just those relating to advisory committee minutes; (2) include a statement that records should be scheduled for disposition before actual termination of the advisory committee; and (3) with regard to information that must be included within an advisory committee's charter, include a determination as to whether its records fall within the Presidential Records Act, 44 U.S.C. Chap 22.

GSA addressed these recommendations by expanding § 102–3.200 of the proposed rule (now Appendix A to Subpart D) to include additional guidance relating to records management and to highlight the applicability and importance of Federal recordkeeping statutes and policies to advisory committee operations. GSA decided to include this guidance within this appendix because the Act generally is silent on records management issues, with the exception of the responsibilities of the CommitteeManagement Officer (CMO) in section 8(b)(2) of the Act.

Pursuant to the National Archives and Records Administration Act, 44 U.S.C.Chap. 21, the Archivist of the United States is responsible for records management in the Federal Government, including the issuance of regulations and guidance for records retention and disposition. The Archivist, working in conjunction with the agencies" Records Management Officers, also is responsible for identifying records that are appropriate for transfer to the permanent Archives of the United States and those that must be processed in accordance with the Presidential Records Act.

Strengthen Provisions Relating to the Public's Access to Advisory Committee Records

Two commenters suggested that the final rule contain more explicit guidance regarding the public's access to committee records under section 10(b) of the Act. In particular, the commenters recommended adding language describing the circumstances under which records may be withheld pursuant to the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552.

GSA believes that timely access to advisory committee records is an important element of the public access provisions of the Act and, therefore, agrees with these suggestions. GSA further believes that there are two separate, but equally important issues related to the availability of advisory committee records under section 10(b) of FACA: (1) The extent to which records may be protected from disclosure under FOIA; and (2) the extent to which agencies may require that requests for non-exempt records be processed under the request and review process established by section 552(a)(3) of FOIA.

Section 10(b) of the Act provides that:

> Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

The purpose of section 10(b) of the Act is to provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend advisory committee meetings, ensures that interested parties have a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. Records covered by the exemptions set forth in section 552(b) of FOIA generally may be withheld. However, it should be noted that FOIA Exemption 5 generally cannot be used to withhold documents reflecting an advisory committee's internal deliberations.

An opinion of the Office of Legal Counsel, U.S. Department of Justice, 12 Op. O.L.C. 73, April 29, 1988, entitled "Disclosure of Advisory Committee Deliberative Materials," concludes that FOIA Exemption 5 "is not generally applicable to materials prepared by or for an advisory committee, but that it does extend to protect privileged documents delivered from the agency to an advisory committee." The opinion further states that:

> This construction gives meaning to exemption 5 without vitiating Congress' enumeration of deliberative documents such as working papers and drafts as subject to disclosure. It is also supported by a close reading of exemption 5 itself. Because by its terms exemption 5 protects only inter-agency and intra-agency documents and because an advisory committee is not an agency, documents do not receive the protection of exemption 5 by virtue of the fact that they are prepared by an advisory committee. On

the other hand, documents prepared by an agency do not lose the protection of exemption 5 by virtue of the fact that they are delivered to an advisory committee.

In determining whether or not such records fall within these narrow exclusions, the OLC opinion provides that consideration should be given to determining whether or not section 10(b) of FACA is applicable in the first instance. As noted in the OLC opinion:

> Section 10(b) itself applies only to materials made available to or prepared for or by an advisory committee established by statute or reorganization plan or established or utilized by the President or an agency. 5 U.S.C. app. I, 3(2), 10(b). Accordingly, in determining whether a document is to be disclosed the first issue is not whether it is subject to an exemption under 5 U.S.C. 552 but whether it meets this threshold definition.

In explaining this threshold determination of whether particular records are subject to the section 10(b) disclosure requirement, the OLC opinion states that:

> The courts and this Office have construed the concept of advisory committees established or utilized by the President or an agency to preclude section 10(b)'s application to the work prepared by a staff member of an advisory committee or a staffing entity within an advisory committee, such as an independent task force limited to gathering information, or a subcommittee of the advisory committee that is not itself established or utilized by the President or agency, so long as the material was not used by the committee as a whole.

Although advisory committee records may be withheld under the provisions of FOIA if there is a *reasonable expectation* that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA.

In *Food Chemical News* v. *Department of Health and Human Services*, 980 F.2d 1468, 299 U.S. App. DC 25, the appeals court held that:

> Under section 10(b) of FACA an agency is generally obligated to make available for public inspection and copying all materials that were made available to or prepared for or by an advisory committee. Except with respect to those materials that the agency reasonably claims to be exempt from disclosure pursuant to FOIA, a member of the public need not request disclosure in order for FACA 10(b) materials to be made available. Thus, whenever practicable, all 10(b) materials must be available for public inspection and copying before or on the date of the advisory committee meeting to which they apply.

Accordingly, GSA included language within § 102–3.170 of the final rule describing the policy to be followed in implementing section 10(b) of the Act, and included additional guidance in Appendix A to Subpart D concerning the applicability of FOIA to records covered by section 10(b) of FACA.

Improve the Organization of the Final Rule

During the course of evaluating comments received from all sources, GSA conducted a review of the proposed rule's general organization and structure for the purpose of achieving greater clarity and consistency in presentation. This effort led to a number of changes, such as redesignating the "Key Points and Principles" sections following each subpart as appendices. Other changes were made throughout the final rule to improve alignment between section headings and the material that follows. Similar changes were made within the appendices in order to improve the linkage between the examples or questions and the corresponding guidance.

In addition, GSA reorganized the final rule to redesignate subpart B as subpart E to improve the flow of information distinguishing Federal advisory committees subject to the Act from those committees created by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) which, if not *utilized* by the executive branch, are not subject to the Act's provisions. Section numbers previously assigned in the proposed rule affected by the redesignation of subpart B as subpart E, subpart C as subpart B, subpart D as subpart C, and subpart E as subpart D have been changed accordingly.

C. Technical and Procedural Comments

The final rule incorporates several technical and procedural recommendations made by a range of commenters, particularly in the following sections or appendices:

Section/Appendix	Modification
102–3.60	Specific procedures for consulting with the Secretariat have been eliminated. GSA will issue separate guidance to agencies covering the administration of the consultation requirement.
Appendix A to Subpart B	Addition of guidance relating to the achievement of "balanced" advisory committee membership.
Appendix A to Subpart B	Addition of guidance covering the legal duration of the charter of an advisory committee required by statute where Congress authorizes the advisory committee for a period exceeding two years.
Appendix A to Subpart C	Addition of guidance addressing the designation of an alternate Designated Federal Officer (DFO).
102–3.130	All references to compensation limits imposed by the Act have been updated, and references to alternative similar agency compensation systems other than the General Schedule have been included.
102–3.130	All references to the word, "handicapped," have been replaced with the phrase, "with disabilities."
Appendix A to Subpart D	Addition of guidance regarding activities that are not subject to the notice and open meeting requirements of the Act.
102–3.165	The requirement for the completion of advisory committee meeting minutes now requires the DFO to ensure certification within the time limit specified.

D. Consultation With Other Federal Agencies

Pursuant to section 7(d) of the Act, the guidelines contained in this final rule with respect to uniform fair rates of compensation for comparable services of members and staff of, and experts and consultants to advisory committees have been established after consultation with the U.S. Office of Personnel Management (OPM).

Although not required by the Act, the guidelines contained in this final rule that refer to the applicability of conflict of interest statutes and other Federal ethics rules to advisory committee members have been established after consultation with the U.S. Office of Government Ethics (OGE).

Although not required by the Act, the guidelines contained in this final rule that relate to the management of advisory committee records have been established after consultation with the National Archives and Records Administration (NARA).

E. Executive Order 12866

GSA has determined that this final rule is a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

F. Regulatory Flexibility Act

GSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule does not impact small entities and applies only to Federal officers and agencies.

G. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

H. Small Business Regulatory Enforcement Fairness Act

This final rule is being submitted for Congressional review as prescribed under 5 U.S.C. 801.

List of Subjects in 41 CFR Parts 101–6 and 102–3

Advisory committees, Government property management.

Dated: July 5, 2001.

Stephen A. Perry,

Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

PART 101–6—MISCELLANEOUS REGULATIONS

1. Subpart 101–6.10 is revised to read as follows:

Subpart 101–6.10—Federal Advisory Committee Management

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR, 1977 Comp., p. 158.

§ 101–6.1001 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For Federal advisory committee management information previously contained in this subpart, see FMR part 102–3 (41 CFR part 102–3).

CHAPTER 102—[AMENDED]

2. Part 102–3 is added to subchapter A of chapter 102 to read as follows:

PART 102–3—FEDERAL ADVISORY COMMITTEE MANAGEMENT

Subpart A—What Policies Apply To Advisory Committees Established Within the Executive Branch?

Sec.

102–3.5 What does this subpart cover and how does it apply?
102–3.10 What is the purpose of the Federal Advisory Committee Act?
102–3.15 Who are the intended users of this part?
102–3.20 How does this part meet the needs of its audience?
102–3.25 What definitions apply to this part?
102–3.30 What policies govern the use of advisory committees?
102–3.35 What policies govern the use of subcommittees?
102–3.40 What types of committees or groups are not covered by the Act and this part?
Appendix A to Subpart A of Part 102–3—Key Points and Principles

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, and Terminated?

102–3.45 What does this subpart cover and how does it apply?
102–3.50 What are the authorities for establishing advisory committees?
102–3.55 What rules apply to the duration of an advisory committee?
102–3.60 What procedures are required to establish, renew, or reestablish a discretionary advisory committee?
102–3.65 What are the public notification requirements for discretionary advisory committees?
102–3.70 What are the charter filing requirements?
102–3.75 What information must be included in the charter of an advisory committee?
102–3.80 How are minor charter amendments accomplished?
102–3.85 How are major charter amendments accomplished?
Appendix A to Subpart B of Part 102–3—Key Points and Principles

Subpart C—How Are Advisory Committees Managed?

102–3.90 What does this subpart cover and how does it apply?
102–3.95 What principles apply to the management of advisory committees?
102–3.100 What are the responsibilities and functions of GSA?
102–3.105 What are the responsibilities of an agency head?
102–3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?
102–3.115 What are the responsibilities and functions of an agency Committee Management Officer (CMO)?
102–3.120 What are the responsibilities and functions of a Designated Federal Officer (DFO)?
102–3.125 How should agencies consider the roles of advisory committee members and staff?
102–3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members, staff, and experts and consultants?
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Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

102–3.135 What does this subpart cover and how does it apply?
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102–3.150 How are advisory committee meetings announced to the public?
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Subpart E—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

102–3.180 What does this subpart cover and how does it apply?
102–3.185 What does this subpart require agencies to do?
Appendix A to Subpart E of Part 102–3—Key Points and Principles

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR, 1977 Comp., p. 158.

Subpart A—What Policies Apply to Advisory Committees Established Within the Executive Branch?

§ 102–3.5 What does this subpart cover and how does it apply?

This subpart provides the policy framework that must be used by agency heads in applying the Federal Advisory Committee Act (FACA), as amended (or "the Act"), 5 U.S.C., App., to advisory committees they establish and operate. In addition to listing key definitions underlying the interpretation of the Act, this subpart establishes the scope and applicability of the Act, and outlines specific exclusions from its coverage.

§ 102–3.10 What is the purpose of the Federal Advisory Committee Act?

FACA governs the establishment, operation, and termination of advisory committees within the executive branch of the Federal Government. The Act defines what constitutes a Federal advisory committee and provides general procedures for the executive branch to follow for the operation of these advisory committees. In addition, the Act is designed to assure that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees.

§ 102–3.15 Who are the intended users of this part?

(a) The primary users of this Federal Advisory Committee Management part are:

(1) Executive branch officials and others outside Government currently involved with an established advisory committee;

(2) Executive branch officials who seek to establish or utilize an advisory committee;

(3) Executive branch officials and others outside Government who have decided to pursue, or who are already engaged in, a form of public involvement or consultation and want to avoid inadvertently violating the Act; and

(4) Field personnel of Federal agencies who are increasingly involved with the public as part of their efforts to increase collaboration and improve customer service.

(b) Other types of end-users of this part include individuals and organizations outside of the executive branch who seek to understand and interpret the Act, or are seeking additional guidance.

§ 102–3.20 How does this part meet the needs of its audience?

This Federal Advisory Committee Management part meets the general and specific needs of its audience by addressing the following issues and related topics:

(a) *Scope and applicability.* This part provides guidance on the threshold issue of what constitutes an advisory committee and clarifies the limits of coverage by the Act for the benefit of the intended users of this part.

(b) *Policies and guidelines.* This part defines the policies, establishes minimum requirements, and provides guidance to Federal officers and agencies for the establishment, operation, administration, and duration of advisory committees subject to the Act. This includes reporting requirements that keep Congress and the public informed of the number, purpose, membership, activities, benefits, and costs of these advisory committees. These requirements form the basis for implementing the Act at both the agency and Governmentwide levels.

(c) *Examples and principles.* This part provides summary-level key points and principles at the end of each subpart that provide more clarification on the role of Federal advisory committees in the larger context of public involvement in Federal decisions and activities. This includes a discussion of the applicability of the Act to different decisionmaking scenarios.

§ 102–3.25 What definitions apply to this part?

The following definitions apply to this Federal Advisory Committee Management part:

Act means the Federal Advisory Committee Act, as amended, 5 U.S.C., App.

Administrator means the Administrator of General Services.

Advisory committee subject to the Act, except as specifically exempted by the Act or by other statutes, or as not covered by this part, means any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations for the President or on issues or policies within the scope of an agency official's responsibilities.

Agency has the same meaning as in 5 U.S.C. 551(1).

Committee Management Officer ("CMO"), means the individual designated by the agency head to implement the provisions of section 8(b) of the Act and any delegated responsibilities of the agency head under the Act.

Committee Management Secretariat ("Secretariat"), means the organization established pursuant to section 7(a) of the Act, which is responsible for all matters relating to advisory committees, and carries out the responsibilities of the Administrator under the Act and Executive Order 12024 (3 CFR, 1977 Comp., p. 158).

Committee meeting means any gathering of advisory committee members (whether in person or through electronic means) held with the approval of an agency for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations.

Committee member means an individual who serves by appointment or invitation on an advisory committee or subcommittee.

Committee staff means any Federal employee, private individual, or other party (whether under contract or not) who is not a committee member, and who serves in a support capacity to an advisory committee or subcommittee.

Designated Federal Officer ("DFO"), means an individual designated by the agency head, for each advisory committee for which the agency head is responsible, to implement the provisions of sections 10(e) and (f) of the Act and any advisory committee procedures of the agency under the control and supervision of the CMO.

Discretionary advisory committee means any advisory committee that is established under the authority of an agency head or authorized by statute. An advisory committee referenced in general (non-specific) authorizing language or Congressional committee report language is discretionary, and its establishment or termination is within the legal discretion of an agency head.

Independent Presidential advisory committee means any Presidential advisory committee not assigned by the Congress in law, or by President or the President's delegate, to an agency for administrative and other support.

Non-discretionary advisory committee means any advisory committee either required by statute or by Presidential directive. A *non-discretionary advisory committee* required by statute generally is identified specifically in a statute by name, purpose, or functions, and its establishment or termination is beyond the legal discretion of an agency head.

Presidential advisory committee means any advisory committee authorized by the Congress or directed by the President to advise the President.

Subcommittee means a group, generally not subject to the Act, that reports to an advisory committee and not directly to a Federal officer or

agency, whether or not its members are drawn in whole or in part from the parent advisory committee.

Utilized for the purposes of the Act, does not have its ordinary meaning. A committee that is not established by the Federal Government is *utilized* within the meaning of the Act when the President or a Federal office or agency exercises actual management or control over its operation.

§ 102–3.30 What policies govern the use of advisory committees?

The policies to be followed by Federal departments and agencies in establishing and operating advisory committees consistent with the Act are as follows:

(a) *Determination of need in the public interest.* A discretionary advisory committee may be established only when it is essential to the conduct of agency business and when the information to be obtained is not already available through another advisory committee or source within the Federal Government. Reasons for deciding that an advisory committee is needed may include whether:

(1) Advisory committee deliberations will result in the creation or elimination of (or change in) regulations, policies, or guidelines affecting agency business;

(2) The advisory committee will make recommendations resulting in significant improvements in service or reductions in cost; or

(3) The advisory committee's recommendations will provide an important additional perspective or viewpoint affecting agency operations.

(b) *Termination.* An advisory committee must be terminated when:

(1) The stated objectives of the committee have been accomplished;

(2) The subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's functions by another entity;

(3) The agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government;

(4) In the case of a discretionary advisory committee, upon the expiration of a period not to exceed two years, unless renewed;

(5) In the case of a non-discretionary advisory committee required by Presidential directive, upon the expiration of a period not to exceed two years, unless renewed by authority of the President; or

(6) In the case of a non-discretionary advisory committee required by statute, upon the expiration of the time explicitly specified in the statute, or implied by operation of the statute.

(c) *Balanced membership.* An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.

(d) *Open meetings.* Advisory committee meetings must be open to the public except where a closed or partially-closed meeting has been determined proper and consistent with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure.

(e) *Advisory functions only.* The function of advisory committees is advisory only, unless specifically provided by statute or Presidential directive.

§ 102–3.35 What policies govern the use of subcommittees?

(a) In general, the requirements of the Act and the policies of this Federal Advisory Committee Management part do not apply to subcommittees of advisory committees that report to a parent advisory committee and not directly to a Federal officer or agency. However, this section does not preclude an agency from applying any provision of the Act and this part to any subcommittee of an advisory committee in any particular instance.

(b) The creation and operation of subcommittees must be approved by the agency establishing the parent advisory committee.

§ 102–3.40 What types of committees or groups are not covered by the Act and this part?

The following are examples of committees or groups that are not covered by the Act or this Federal Advisory Committee Management part:

(a) *Committees created by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA).* Any committee created by NAS or NAPA in accordance with section 15 of the Act, except as otherwise covered by subpart E of this part;

(b) *Advisory committees of the Central Intelligence Agency and the Federal Reserve System.* Any advisory committee established or utilized by the Central Intelligence Agency or the Federal Reserve System;

(c) *Committees exempted by statute.* Any committee specifically exempted from the Act by law;

(d) *Committees not actually managed or controlled by the executive branch.* Any committee or group created by non-Federal entities (such as a contractor or private organization), provided that these committees or groups are not actually managed or controlled by the executive branch;

(e) *Groups assembled to provide individual advice.* Any group that meets with a Federal official(s), including a public meeting, where advice is sought from the attendees on an individual basis and not from the group as a whole;

(f) *Groups assembled to exchange facts or information.* Any group that meets with a Federal official(s) for the purpose of exchanging facts or information;

(g) *Intergovernmental committees.* Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local and tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities. However, the purpose of such a committee must be solely to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), OMB Memorandum M–95–20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405–0002);

(h) *Intragovernmental committees.* Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government;

(i) *Local civic groups.* Any local civic group whose primary function is that of rendering a public service with respect to a Federal program;

(j) *Groups established to advise State or local officials.* Any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies; and

(k) *Operational committees.* Any committee established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy. A committee designated operational may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether a committee is primarily operational. If so, it does not fall under

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the requirements of the Act and this part.

Appendix A to Subpart A of Part 102–3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART A

Key points and principles	Section(s)	Question(s)	Guidance
I. FACA applies to advisory committees that are either "established" or "utilized" by an agency.	102–3.25, 102–3.40(d), 102–3.40(f)	1. A local citizens group wants to meet with a Federal official(s) to help improve the condition of a forest's trails and quality of concessions. May the Government meet with the group without chartering the group under the Act? 2. May an agency official attend meetings of external groups where advice may be offered to the Government during the course of discussions? 3. May an agency official participate in meetings of groups or organizations as a member without chartering the group under the Act? 4. Is the Act applicable to meetings between agency officials and their contractors, licensees, or other "private sector program partners?"	A. The answer to questions 1, 2, and 3 is yes, if the agency does not either "establish" or "utilize" (exercise "actual management or control" over) the group. (i) Although there is no precise legal definition of "actual management or control," the following factors may be used by an agency to determine whether or not a group is "utilized" within the meaning of the Act: (a) Does the agency manage or control the group's membership or otherwise determine its composition? (b) Does the agency manage or control the group's agenda? (c) Does the agency fund the group's activities? (ii) Answering "yes" to any or all of questions 1, 2, or 3 does not automatically mean the group is "utilized" within the meaning of the Act. However, an agency may need to reconsider the status of the group under the Act if the relationship in question essentially is indistinguishable from an advisory committee established by the agency. B. The answer to question 4 is no. Agencies often meet with contractors and licensees, individually and as a group, to discuss specific matters involving a contract's solicitation, issuance, and implementation, or an agency's efforts to ensure compliance with its regulations. Such interactions are not subject to the Act because these groups are not "established" or "utilized" for the purpose of obtaining advice or recommendations.
II. The development of consensus among all or some of the attendees at a public meeting or similar forum does not automatically invoke FACA.	102–3.25, 102–3.40(d), 102–3.40(f)	1. If, during a public meeting of the "town hall" type called by an agency, it appears that the audience is achieving consensus, or a common point of view, is this an indication that the meeting is subject to the Act and must be stopped?	A. No, the public meeting need not be stopped. (i) A group must either be "established" or "utilized" by the executive branch in order for the Act to apply. (ii) Public meetings represent a chance for individuals to voice their opinions and/or share information. In that sense, agencies do not either "establish" the assemblage of individuals as an advisory committee or "utilize" the attendees as an advisory committee because there are no elements of either "management" or "control" present or intended.

APPENDIX A TO SUBPART A—Continued

Key points and principles	Section(s)	Question(s)	Guidance
III. Meetings between a Federal official(s) and a collection of individuals where advice is sought from the attendees on an individual basis are not subject to the Act.	102–3.40(e)	1. May an agency official meet with a number of persons collectively to obtain their individual views without violating the Act? 2. Does the concept of an "individual" apply only to "natural persons?"	A. The answer to questions 1 and 2 is yes. The Act applies only where a group is established or utilized to provide advice or recommendations "as a group." (i) A mere assemblage or collection of individuals where the attendees are providing individual advice is not acting "as a group" under the Act. (ii) In this respect, "individual" is not limited to "natural persons." Where the group consists of representatives of various existing organizations, each representative individually may provide advice on behalf of that person's organization without violating the Act, if those organizations themselves are not "managed or controlled" by the agency.
IV. Meetings between Federal, State, local, and tribal elected officials are not subject to the Act.	102–3.40(g)	1. Is the exclusion from the Act covering elected officials of State, local, and tribal governments acting in their official capacities also applicable to associations of State officials?	A. Yes. The scope of activities covered by the exclusion from the Act for intergovernmental activities should be construed broadly to facilitateFederal/State/local/tribal discussions on shared intergovernmental program responsibilities or administration. Pursuant to a Presidential delegation, the Office of Management and Budget (OMB) issued guidelines for this exemption, authorized by section 204(b) of the Unfunded Mandates Reform Act of 1995, 2U.S.C. 1534(b). (See OMB Memorandum M–95–20, dated September 21, 1995, published at 60 FR 50651 (September 29, 1995), and which is available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW, Washington, DC 20405–0002).
V. Advisory committees established under the Act may perform advisory functions only, unless authorized to perform "operational" duties by the Congress or by Presidential directive.	102–3.30(e), 102–3.40(k)	1. Are "operational committees" subject to the Act, even if they may engage in some advisory activities?	A. No, so long as the operational functions performed by the committee constitute the "primary" mission of the committee. Only committees established or utilized by the executive branch in the interest of obtaining advice or recommendations are subject to the Act. However, without specific authorization by the Congress or direction by the President, Federal functions (decisionmaking or operations) cannot be delegated to, or assumed by, non-Federal individuals or entities.

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APPENDIX A TO SUBPART A—Continued

Key points and principles	Section(s)	Question(s)	Guidance
VI. Committees authorized by the Congress in law or by Presidential directive to perform primarily "operational" functions are not subject to the Act.	102–3.40(k)	1. What characteristics are common to "operational committees?" 2. A committee created by the Congress by statute is responsible, for example, for developing plans and events to commemorate the contributions of wildlife to the enjoyment of the Nation's parks. Part of the committee's role includes providing advice to certain Federal agencies as may be necessary to coordinate these events. Is this committee subject to FACA?	A. In answer to question 1, non-advisory, or "operational" committees generally have the following characteristics: (i) Specific functions and/or authorities provided by the Congress in law or by Presidential directive; (ii) The ability to make and implement traditionally Governmental decisions; and (iii) The authority to perform specific tasks to implement a Federal program. B. Agencies are responsible for determining whether or not a committee primarily provides advice or recommendations and is, therefore, subject to the Act, or is primarily "operational" and not covered by FACA. C. The answer to question 2 is no. The committee is not subject to the Act because: (i) Its functions are to plan and implement specific tasks; (ii) The committee has been granted the express authority by the Congress to perform its statutorily required functions; and (iii) Its incidental role of providing advice to other Federal agencies is secondary to its primarily operational role of planning and implementing specific tasks and performing statutory functions.

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, and Terminated?

§ 102–3.45 What does this subpart cover and how does it apply?

Requirements for establishing and terminating advisory committees vary depending on the establishing entity and the source of authority for the advisory committee. This subpart covers the procedures associated with the establishment, renewal, reestablishment, and termination of advisory committees. These procedures include consulting with the Secretariat, preparing and filing an advisory committee charter, publishing notice in the **Federal Register**, and amending an advisory committee charter.

§ 102–3.50 What are the authorities for establishing advisory committees?

FACA identifies four sources of authority for establishing an advisory committee:

(a) *Required by statute.* By law where the Congress establishes an advisory committee, or specifically directs the President or an agency to establish it (*non-discretionary*);

(b) *Presidential authority.* By Executive order of the President or other Presidential directive (*non-discretionary*);

(c) *Authorized by statute.* By law where the Congress authorizes, but does not direct the President or an agency to establish it (*discretionary*); or

(d) *Agency authority.* By an agency under general authority in title 5 of the United States Code or under other general agency-authorizing statutes (*discretionary*).

§ 102–3.55 What rules apply to the duration of an advisory committee?

(a) An advisory committee automatically terminates two years after its date of establishment unless:

(1) The statutory authority used to establish the advisory committee provides a different duration;

(2) The President or agency head determines that the advisory committee has fulfilled the purpose for which it was established and terminates the advisory committee earlier;

(3) The President or agency head determines that the advisory committee is no longer carrying out the purpose for which it was established and terminates the advisory committee earlier; or

(4) The President or agency head renews the committee not later than two years after its date of establishment in accordance with § 102–3.60. If an advisory committee needed by the President or an agency terminates because it was not renewed in a timely manner, or if the advisory committee has been terminated under the provisions of § 102–3.30(b), it can be reestablished in accordance with § 102–3.60.

(b) When an advisory committee terminates, the agency shall notify the Secretariat of the effective date of the termination.

§ 102–3.60 What procedures are required to establish, renew, or reestablish a discretionary advisory committee?

(a) *Consult with the Secretariat.* Before establishing, renewing, or reestablishing a discretionary advisory committee and filing the charter as addressed later in § 102–3.70, the agency head must consult with the Secretariat. As part of this consultation, agency heads are encouraged to engage in constructive dialogue with the Secretariat. With a full understanding of the background and purpose behind the proposed advisory committee, the Secretariat may share its knowledge and experience with the agency on how best to make use of the proposed advisory committee, suggest alternate methods of attaining its purpose that the agency may wish to consider, or inform the agency of a pre-existing advisory committee performing similar functions.

(b) *Include required information in the consultation.* Consultations covering the establishment, renewal, and reestablishment of advisory committees must, as a minimum, contain the following information:

(1) *Explanation of need.* An explanation stating why the advisory committee is essential to the conduct of agency business and in the public interest;

(2) *Lack of duplication of resources.* An explanation stating why the advisory committee's functions cannot be performed by the agency, another existing committee, or other means such as a public hearing; and

(3) *Fairly balanced membership.* A description of the agency's plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee. Advisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.

§ 102–3.65 What are the public notification requirements for discretionary advisory committees?

A notice to the public in the **Federal Register** is required when a discretionary advisory committee is established, renewed, or reestablished.

(a) *Procedure.* Upon receiving notice from the Secretariat that its review is complete in accordance with § 102–3.60(a), the agency must publish a notice in the **Federal Register** announcing that the advisory committee is being established, renewed, or reestablished. For the establishment of a new advisory committee, the notice also must describe the nature and purpose of the advisory committee and affirm that the advisory committee is necessary and in the public interest.

(b) *Time required for notices.* Notices of establishment and reestablishment of advisory committees must appear at least 15 calendar days before the charter is filed, except that the Secretariat may approve less than 15 calendar days when requested by the agency for good cause. This requirement for advance notice does not apply to advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

§ 102–3.70 What are the charter filing requirements?

No advisory committee may meet or take any action until a charter has been filed by the Committee Management Officer (CMO) designated in accordance with section 8(b) of the Act, or by another agency official designated by the agency head.

(a) *Requirement for discretionary advisory committees.* To establish, renew, or reestablish a discretionary advisory committee, a charter must be filed with:

(1) The agency head;

(2) The standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency, the date of filing with which constitutes the official date of establishment for the advisory committee;

(3) The Library of Congress, Anglo-American Acquisitions Division, Government Documents Section, Federal Advisory Committee Desk, 101 Independence Avenue, SE., Washington, DC 20540–4172; and

(4) The Secretariat, indicating the date the charter was filed in accordance with paragraph (a)(2) of this section.

(b) *Requirement for non-discretionary advisory committees.* Charter filing requirements for non-discretionary advisory committees are the same as those in paragraph (a) of this section, except the date of establishment for a Presidential advisory committee is the date the charter is filed with the Secretariat.

(c) *Requirement for subcommittees that report directly to the Government.* Subcommittees that report directly to a Federal officer or agency must comply with this subpart and include in a charter the information required by § 102–3.75.

§ 102–3.75 What information must be included in the charter of an advisory committee?

(a) *Purpose and contents of an advisory committee charter.* An advisory committee charter is intended to provide a description of an advisory committee's mission, goals, and objectives. It also provides a basis for evaluating an advisory committee's progress and effectiveness. The charter must contain the following information:

(1) The advisory committee's official designation;

(2) The objectives and the scope of the advisory committee's activity;

(3) The period of time necessary to carry out the advisory committee's purpose(s);

(4) The agency or Federal officer to whom the advisory committee reports;

(5) The agency responsible for providing the necessary support to the advisory committee;

(6) A description of the duties for which the advisory committee is responsible and specification of the authority for any non-advisory functions;

(7) The estimated annual costs to operate the advisory committee in dollars and person years;

(8) The estimated number and frequency of the advisory committee's meetings;

(9) The planned termination date, if less than two years from the date of establishment of the advisory committee;

(10) The name of the President's delegate, agency, or organization responsible for fulfilling the reporting requirements of section 6(b) of the Act, if appropriate; and

(11) The date the charter is filed in accordance with § 102–3.70.

(b) The provisions of paragraphs (a)(1) through (11) of this section apply to all subcommittees that report directly to a Federal officer or agency.

§ 102–3.80 How are minor charter amendments accomplished?

(a) *Responsibility and limitation.* The agency head is responsible for amending the charter of an advisory committee. Amendments may be either minor or major. The procedures for making changes and filing amended charters will depend upon the authority basis for the advisory committee. Amending any existing advisory committee charter does not constitute renewal of the advisory committee under § 102–3.60.

(b) *Procedures for minor amendments.* To make a minor amendment to an advisory committee charter, such as changing the name of the advisory committee or modifying the estimated number or frequency of meetings, the following procedures must be followed:

(1) *Non-discretionary advisory committees.* The agency head must ensure that any minor technical changes made to current charters are consistent with the relevant authority. When the Congress by law, or the President by Executive order, changes the authorizing language that has been the basis for establishing an advisory committee, the agency head or the chairperson of an independent Presidential advisory committee must amend those sections of the current charter affected by the new statute or Executive order, and file the amended charter as specified in § 102–3.70.

(2) *Discretionary advisory committees.* The charter of a discretionary advisory committee may be amended when an agency head determines that technical provisions of a filed charter are inaccurate, or specific provisions have changed or become obsolete with the passing of time, and that these amendments will not alter the advisory committee's objectives and scope

substantially. The agency must amend the charter language as necessary and file the amended charter as specified in § 102–3.70.

§ 102–3.85 How are major charter amendments accomplished?

Procedures for making major amendments to advisory committee charters, such as substantial changes in objectives and scope, duties, and estimated costs, are the same as in § 102–3.80, except that for discretionary advisory committees an agency must:

(a) Consult with the Secretariat on the amended language, and explain the purpose of the changes and why they are necessary; and

(b) File the amended charter as specified in § 102–3.70.

APPENDIX A TO SUBPART B

Key points and principles	Section(s)	Question(s)	Guidance
I. Agency heads must consult with the Secretariat prior to establishing a discretionary advisory committee.	102–3.60, 102–3.115	1. Can an agency head delegate to the Committee Management Officer (CMO) responsibility for consulting with the Secretariat regarding the establishment, renewal, or reestablishment of discretionary advisory committees?	A. Yes. Many administrative functions performed to implement the Act may be delegated. However, those functions related to approving the final establishment, renewal, or reestablishment of discretionary advisory committees are reserved for the agency head. Each agency CMO should assure that their internal processes for managing advisory committees include appropriate certifications by the agency head.
II. Agency heads are responsible for complying with the Act, including determining which discretionary advisory committees should be established and renewed.	102–3.60(a), 102–3.105	1. Who retains final authority for establishing or renewing a discretionary advisory committee?	A. Although agency heads retain final authority for establishing or renewing discretionary advisory committees, these decisions should be consistent with § 102–3.105(e) and reflect consultation with the Secretariat under § 102–3.60(a).
III. An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.	102–3.30(c), 102–3.60(b)(3) ..	1. What factors should be considered in achieving a "balanced" advisory committee membership?	A. The composition of an advisory committee's membership will depend upon several factors, including: (i) The advisory committee's mission; (ii) The geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations; (iii) The types of specific perspectives required, for example, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors; (iv) The need to obtain divergent points of view on the issues before the advisory committee; and (v) The relevance of State, local, or tribal governments to the development of the advisory committee's recommendations.
IV. Charters for advisory committees required by statute must be filed every two years regardless of the duration provided in the statute.	102–3.70(b)	1. If an advisory committee's duration exceeds two years, must a charter be filed with the Congress and GSA every two years?	A. Yes. Section 14(b)(2) of the Act provides that: Any advisory committee established by an Act of Congress shall file a charter upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

Appendix A to Subpart B of Part 102–3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

Subpart C—How Are Advisory Committees Managed?

§ 102–3.90 What does this subpart cover and how does it apply?

This subpart outlines specific responsibilities and functions to be carried out by the General Services Administration (GSA), the agency head, the Committee Management Officer (CMO), and the Designated Federal Officer (DFO) under the Act.

§ 102–3.95 What principles apply to the management of advisory committees?

Agencies are encouraged to apply the following principles to the management of their advisory committees:

(a) *Provide adequate support.* Before establishing an advisory committee, agencies should identify requirements and assure that adequate resources are available to support anticipated activities. Considerations related to support include office space, necessary supplies and equipment, Federal staff support, and access to key decisionmakers.

(b) *Focus on mission.* Advisory committee members and staff should be fully aware of the advisory committee's mission, limitations, if any, on its duties, and the agency's goals and objectives. In general, the more specific an advisory committee's tasks and the more focused its activities are, the higher the likelihood will be that the advisory committee will fulfill its mission.

(c) *Follow plans and procedures.* Advisory committee members and their agency sponsors should work together to assure that a plan and necessary procedures covering implementation are in place to support an advisory committee's mission. In particular, agencies should be clear regarding what functions an advisory committee can perform legally and those that it cannot perform.

(d) *Practice openness.* In addition to achieving the minimum standards of public access established by the Act and this part, agencies should seek to be as inclusive as possible. For example, agencies may wish to explore the use of the Internet to post advisory committee information and seek broader input from the public.

(e) *Seek feedback.* Agencies continually should seek feedback from advisory committee members and the public regarding the effectiveness of the advisory committee's activities. At regular intervals, agencies should communicate to the members how their advice has affected agency programs and decisionmaking.

§ 102–3.100 What are the responsibilities and functions of GSA?

(a) Under section 7 of the Act, the General Services Administration (GSA) prepares regulations on Federal advisory committees to be prescribed by the Administrator of General Services, issues other administrative guidelines and management controls for advisory committees, and assists other agencies in implementing and interpreting the Act. Responsibility for these activities has been delegated by the Administrator to the GSA Committee Management Secretariat.

(b) The Secretariat carries out its responsibilities by:

(1) Conducting an annual comprehensive review of Governmentwide advisory committee accomplishments, costs, benefits, and other indicators to measure performance;

(2) Developing and distributing Governmentwide training regarding the Act and related statutes and principles;

(3) Supporting the Interagency Committee on Federal Advisory Committee Management in its efforts to improve compliance with the Act;

(4) Designing and maintaining a Governmentwide shared Internet-based system to facilitate collection and use of information required by the Act;

(5) Identifying performance measures that may be used to evaluate advisory committee accomplishments; and

(6) Providing recommendations for transmittal by the Administrator to the Congress and the President regarding proposals to improve accomplishment of the objectives of the Act.

§ 102–3.105 What are the responsibilities of an agency head?

The head of each agency that establishes or utilizes one or more advisory committees must:

(a) Comply with the Act and this Federal Advisory Committee Management part;

(b) Issue administrative guidelines and management controls that apply to all of the agency's advisory committees subject to the Act;

(c) Designate a Committee Management Officer (CMO);

(d) Provide a written determination stating the reasons for closing any advisory committee meeting to the public, in whole or in part, in accordance with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure;

(e) Review, at least annually, the need to continue each existing advisory committee, consistent with the public interest and the purpose or functions of each advisory committee;

(f) Determine that rates of compensation for members (if they are paid for their services) and staff of, and experts and consultants to advisory committees are justified and that levels of agency support are adequate;

(g) Develop procedures to assure that the advice or recommendations of advisory committees will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(h) Assure that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes, regulations issued by the U.S. Office of Government Ethics (OGE) including any supplemental agency requirements, and other Federal ethics rules;

(i) Designate a Designated Federal Officer (DFO) for each advisory committee and its subcommittees; and

(j) Provide the opportunity for reasonable participation by the public in advisory committee activities, subject to § 102–3.140 and the agency's guidelines.

§ 102–3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?

The chairperson of an independent Presidential advisory committee must:

(a) Comply with the Act and this Federal Advisory Committee Management part;

(b) Consult with the Secretariat concerning the designation of a Committee Management Officer (CMO) and Designated Federal Officer (DFO); and

(c) Consult with the Secretariat in advance regarding any proposal to close any meeting in whole or in part.

§ 102–3.115 What are the responsibilities and functions of an agency Committee Management Officer (CMO)?

In addition to implementing the provisions of section 8(b) of the Act, the CMO will carry out all responsibilities delegated by the agency head. The CMO also should ensure that sections 10(b), 12(a), and 13 of the Act are implemented by the agency to provide for appropriate recordkeeping. Records to be kept by the CMO include, but are not limited to:

(a) *Charter and membership documentation.* A set of filed charters for each advisory committee and membership lists for each advisory committee and subcommittee;

(b) *Annual comprehensive review.* Copies of the information provided as the agency's portion of the annual comprehensive review of Federal advisory committees, prepared according to § 102–3.175(b);

(c) *Agency guidelines.* Agency guidelines maintained and updated on committee management operations and procedures; and

(d) *Closed meeting determinations.* Agency determinations to close or partially close advisory committee meetings required by § 102–3.105.

§ 102–3.120 What are the responsibilities and functions of a Designated Federal Officer (DFO)?

The agency head or, in the case of an independent Presidential advisory committee, the Secretariat, must designate a Federal officer or employee who must be either full-time or permanent part-time, to be the DFO for each advisory committee and its subcommittees, who must:

(a) Approve or call the meeting of the advisory committee or subcommittee;

(b) Approve the agenda, except that this requirement does not apply to a Presidential advisory committee;

(c) Attend the meetings;

(d) Adjourn any meeting when he or she determines it to be in the public interest; and

(e) Chair the meeting when so directed by the agency head.

§ 102–3.125 How should agencies consider the roles of advisory committee members and staff?

FACA does not assign any specific responsibilities to members of advisory

committees and staff, although both perform critical roles in achieving the goals and objectives assigned to advisory committees. Agency heads, Committee Management Officers (CMOs), and Designated Federal Officers (DFOs) should consider the distinctions between these roles and how they relate to each other in the development of agency guidelines implementing the Act and this Federal Advisory Committee Management part. In general, these guidelines should reflect:

(a) *Clear operating procedures.* Clear operating procedures should provide for the conduct of advisory committee meetings and other activities, and specify the relationship among the advisory committee members, the DFO, and advisory committee or agency staff;

(b) *Agency operating policies.* In addition to compliance with the Act, advisory committee members and staff may be required to adhere to additional agency operating policies; and

(c) *Other applicable statutes.* Other agency-specific statutes and regulations may affect the agency's advisory committees directly or indirectly. Agencies should ensure that advisory committee members and staff understand these requirements.

§ 102–3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members, staff, and experts and consultants?

In developing guidelines to implement the Act and this Federal Advisory Committee Management part at the agency level, agency heads must address the following issues concerning advisory committee member and staff appointments, and considerations with respect to uniform fair rates of compensation for comparable services, or expense reimbursement of members, staff, and experts and consultants:

(a) *Appointment and terms of advisory committee members.* Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority.

(b) *Compensation guidelines.* Each agency head must establish uniform compensation guidelines for members and staff of, and experts and consultants to an advisory committee.

(c) *Compensation of advisory committee members not required.* Nothing in this subpart requires an agency head to provide compensation to any member of an advisory committee, unless otherwise required by a specific statute.

(d) *Compensation of advisory committee members.* When an agency has authority to set pay administratively for advisory committee members, it may establish appropriate rates of pay (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h)), not to exceed the rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate expressly is allowed by another statute. However, the agency head personally must authorize a rate of basic pay in excess of the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332, or alternative similar agency compensation system. This maximum rate includes any applicable locality payment under 5 U.S.C. 5304. The agency may pay advisory committee members on either an hourly or a daily rate basis. The agency may not provide additional compensation in any form, such as bonuses or premium pay.

(e) *Compensation of staff.* When an agency has authority to set pay administratively for advisory committee staff, it may establish appropriate rates of pay (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h)), not to exceed the rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate expressly is allowed by another statute. However, the agency head personally must authorize a rate of basic pay in excess of the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332, or alternative similar agency compensation system. This maximum rate includes any applicable locality payment under 5 U.S.C. 5304. The agency must pay advisory committee staff on an hourly rate basis. The agency may provide additional compensation, such as bonuses or premium pay, so long as aggregate compensation paid in a calendar year does not exceed the rate for level IV of the Executive Schedule, with appropriate proration for a partial calendar year.

(f) *Other compensation considerations.* In establishing rates of pay for advisory committee members and staff, the agency must comply with any applicable statutes, Executive orders, regulations, or administrative guidelines. In determining an appropriate rate of basic pay for advisory committee members and staff, an agency must give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned, and the qualifications required for the work involved. The agency also should take into account the rates of pay applicable to Federal employees who have duties that are similar in terms of difficulty and responsibility. An agency may establish rates of pay for advisory committee staff based on the pay these persons would receive if they were covered by the General Schedule in 5 U.S.C. Chapter 51 and Chapter 53, subchapter III, or by an alternative similar agency compensation system.

(g) *Compensation of experts and consultants.* Whether or not an agency has other authority to appoint and compensate advisory committee members or staff, it also may employ experts and consultants under 5 U.S.C. 3109 to perform work for an advisory committee. Compensation of experts and consultants may not exceed the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332 (that is, the GS–15, step 10 rate, excluding locality pay or any other supplement), unless a higher rate expressly is allowed by another statute. The appointment and compensation of experts and consultants by an agency must be in conformance with applicable regulations issued by the U. S. Office of Personnel Management (OPM) (See 5 CFR part 304.).

(h) *Federal employees assigned to an advisory committee.* Any advisory committee member or staff person who is a Federal employee when assigned duties to an advisory committee remains covered during the assignment by the compensation system that currently applies to that employee, unless that person's current Federal appointment is terminated. Any staff person who is a Federal employee must serve with the knowledge of the Designated Federal Officer (DFO) for the advisory committee to which that person is assigned duties, and the approval of the employee's direct supervisor.

(i) *Other appointment considerations.* An individual who is appointed as an advisory committee member or staff person immediately following termination of another Federal appointment with a full-time work schedule may receive compensation at the rate applicable to the former appointment, if otherwise allowed by applicable law (without regard to the limitations on pay established in paragraphs (d) and (e) of this section). Any advisory committee staff person who is not a current Federal employee serving under an assignment must be appointed in accordance with applicable agency procedures, and in consultation with the DFO and the

members of the advisory committee involved.

(j) *Gratuitous services.* In the absence of any special limitations applicable to a specific agency, nothing in this subpart prevents an agency from accepting the gratuitous services of an advisory committee member or staff person who is not a Federal employee, or expert or consultant, who agrees in advance and in writing to serve without compensation.

(k) *Travel expenses.* Advisory committee members and staff, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed reimbursement for travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, for persons employed intermittently in the Government service.

(l) Services for advisory committee members with disabilities. While performing advisory committee duties, an advisory committee member with disabilities may be provided services by a personal assistant for employees with disabilities, if the member qualifies as an individual with disabilities as provided in section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, and does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being a Federal employee.

Appendix A to Subpart C of Part 102–3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART C

Key points and principles	Section	Question(s)	Guidance
I. FACA does not specify the manner in which advisory committee members and staff must be appointed.	102–3.105, 102–3.130(a)	1. Does the appointment of an advisory committee member necessarily result in a lengthy process?	A. No. Each agency head may specify those policies and procedures, consistent with the Act and this part, or other specific authorizing statute, governing the appointment of advisory committee members and staff. B. Some factors that affect how long the appointment process takes include: (i) Solicitation of nominations; (ii) Conflict of interest clearances; (iii) Security or background evaluations; (iv) Availability of candidates; and (v) Other statutory or administrative requirements. C. In addition, the extent to which agency heads have delegated responsibility for selecting members varies from agency to agency and may become an important factor in the time it takes to finalize the advisory committee's membership.
II. Agency heads retain the final authority for selecting advisory committee members, unless otherwise provided for by a specific statute or Presidential directive.	102–3.130(a)	1. Can an agency head select for membership on an advisory committee from among nominations submitted by an organization? 2. If so, can different persons represent the organization at different meetings?	A. The answer to question 1 is yes. Organizations may propose for membership individuals to represent them on an advisory committee. However, the agency head establishing the advisory committee, or other appointing authority, retains the final authority for selecting all members. B. The answer to question 2 also is yes. Alternates may represent an appointed member with the approval of the establishing agency, where the agency head is the appointing authority.
III. An agency may compensate advisory committee members and staff, and also employ experts and consultants.	102–3.130(d), 102–3.130(e), 102–3.130(g).	1. May members and staff be compensated for their service or duties on an advisory committee? 2. Are the guidelines the same for compensating both members and staff? 3. May experts and consultants be employed to perform other advisory committee work?	A. The answer to question 1 is yes. (i) However, FACA limits compensation for advisory committee members and staff to the rate for level IV of the Executive Schedule, unless higher rates expressly are allowed by other statutes. (ii) Although FACA provides for compensation guidelines, the Act does not require an agency to compensate its advisory committee members.

APPENDIX A TO SUBPART C—Continued

Key points and principles	Section	Question(s)	Guidance
			B. The answer to question 2 is no. The guidelines for compensating members and staff are similar, but not identical. For example, the differences are that: (i) An agency "may" pay members on either an hourly or a daily rate basis, and "may not" provide additional compensation in any form, such as bonuses or premium pay; while (ii) An agency "must" pay staff on an hourly rate basis only, and "may" provide additional compensation, so long as aggregate compensation paid in a calendar year does not exceed the rate for level IV of the Executive Schedule, with appropriate proration for a partial calendar year. C. The answer to question 3 is yes. Other work not part of the duties of advisory committee members or staff may be performed by experts and consultants. For additional guidance on the employment of experts and consultants, agencies should consult the applicable regulations issued by the U. S. Office of Personnel Management (OPM). (See 5 CFR part 304.)
IV. Agency heads are responsible for ensuring that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes and other Federal ethics rules..	102–3.105(h)	1. Are all advisory committee members subject to conflict of interest statutes and other Federal ethics rules? 2. Who should be consulted for guidance on the proper application of Federal ethics rules to advisory committee members?	A. The answer to question 1 is no. Whether an advisory committee member is subject to Federal ethics rules is dependent on the member's status. The determination of a member's status on an advisory committee is largely a personnel classification matter for the appointing agency. Most advisory committee members will serve either as a "representative" or a "special Government employee" (SGE), based on the role the member will play. In general, SGEs are covered by regulations issued by the U. S. Office of Government Ethics (OGE) and certain conflict of interest statutes,while representatives are not subject to these ethics requirements. B. The answer to question 2 is the agency's Designated Agency Ethics Official (DAEO), who should be consulted prior to appointing members to an advisory committee in order to apply Federal ethics rules properly.
V. An agency head may delegate responsibility for appointing a Committee Management Officer (CMO) or Designated Federal Officer (DFO); however, there may be only one CMO for each agency..	102–3.105(c), 102–3.105(i)	1. Must an agency's CMO and each advisory committee DFO be appointed by the agency head?	A. The answer to question 1 is no. The agency head may delegate responsibility for appointing the CMO and DFOs. However, these appointments, including alternate selections, should be documented consistent with the agency's policies and procedures.

APPENDIX A TO SUBPART C—Continued

Key points and principles	Section	Question(s)	Guidance
		2. May an agency have more than one CMO?	B. The answer to question 2 also is no. The functions of the CMO are specified in the Act and include oversight responsibility for all advisory committees within the agency. Accordingly, only one CMO may be appointed to perform these functions. The agency may, however, create additional positions, including those in its subcomponents, which are subordinate to the CMO's agencywide responsibilities and functions.
VI. FACA is the principal statute pertaining to advisory committees. However, other statutes may impact their use and operations..	102–3.125(c)	1. Do other statutes or regulations affect the way an agency carries out its advisory committee management program?	A. Yes. While the Act provides a general framework for managing advisory committees Governmentwide, other factors may affect how advisory committees are managed. These include: (i) The statutory or Presidential authority used to establish an advisory committee; (ii) A statutory limitation placed on an agency regarding its annual expenditures for advisory committees; (iii) Presidential or agency management directives; (iv) The applicability of conflict of interest statutes and other Federal ethics rules; (v) Agency regulations affecting advisory committees; and (vi) Other requirements imposed by statute or regulation on an agency or its programs, such as those governing the employment of experts and consultants or the management of Federal records.

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

§ 102–3.135 What does this subpart cover and how does it apply?

This subpart establishes policies and procedures relating to meetings and other activities undertaken by advisory committees and their subcommittees. This subpart also outlines what records must be kept by Federal agencies and what other documentation, including advisory committee minutes and reports, must be prepared and made available to the public.

§ 102–3.140 What policies apply to advisory committee meetings?

The agency head, or the chairperson of an independent Presidential advisory committee, must ensure that:

(a) Each advisory committee meeting is held at a reasonable time and in a manner or place reasonably accessible to the public, to include facilities that are readily accessible to and usable by persons with disabilities, consistent with the goals of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794;

(b) The meeting room or other forum selected is sufficient to accommodate advisory committee members, advisory committee or agency staff, and a reasonable number of interested members of the public;

(c) Any member of the public is permitted to file a written statement with the advisory committee;

(d) Any member of the public may speak to or otherwise address the advisory committee if the agency's guidelines so permit; and

(e) Any advisory committee meeting conducted in whole or part by a teleconference, videoconference, the Internet, or other electronic medium meets the requirements of this subpart.

§ 102–3.145 What policies apply to subcommittee meetings?

If a subcommittee makes recommendations directly to a Federal officer or agency, or if its recommendations will be adopted by the parent advisory committee without further deliberations by the parent advisory committee, then the subcommittee's meetings must be conducted in accordance with all openness requirements of this subpart.

§ 102–3.150 How are advisory committee meetings announced to the public?

(a) A notice in the **Federal Register** must be published at least 15 calendar days prior to an advisory committee meeting, which includes:

(1) The name of the advisory committee (or subcommittee, if applicable);

(2) The time, date, place, and purpose of the meeting;

(3) A summary of the agenda, and/or topics to be discussed;

(4) A statement whether all or part of the meeting is open to the public or closed; if the meeting is closed state the reasons why, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure; and

(5) The name and telephone number of the Designated Federal Officer (DFO) or other responsible agency official who may be contacted for additional information concerning the meeting.

(b) In exceptional circumstances, the agency or an independent Presidential advisory committee may give less than 15 calendar days notice, provided that the reasons for doing so are included in the advisory committee meeting notice published in the **Federal Register**.

§ 102–3.155 How are advisory committee meetings closed to the public?

To close all or part of an advisory committee meeting, the Designated Federal Officer (DFO) must:

(a) *Obtain prior approval.* Submit a request to the agency head, or in the case of an independent Presidential

advisory committee, the Secretariat, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), that justify the closure. The request must provide the agency head or the Secretariat sufficient time (generally, 30 calendar days) to review the matter in order to make a determination before publication of the meeting notice required by § 102–3.150.

(b) *Seek General Counsel review.* The General Counsel of the agency or, in the case of an independent Presidential advisory committee, the General Counsel of GSA should review all requests to close meetings.

(c) *Obtain agency determination.* If the agency head, or in the case of an independent Presidential advisory committee, the Secretariat, finds that the request is consistent with the provisions in the Government in the Sunshine Act and FACA, the appropriate agency official must issue a determination that all or part of the meeting be closed.

(d) *Assure public access to determination.* The agency head or the chairperson of an independent Presidential advisory committee must make a copy of the determination available to the public upon request.

§ 102–3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?

The following activities of an advisory committee are excluded from the procedural requirements contained in this subpart:

(a) *Preparatory work.* Meetings of two or more advisory committee or subcommittee members convened solely to gather information, conduct research, or analyze relevant issues and facts in preparation for a meeting of the advisory committee, or to draft position papers for deliberation by the advisory committee; and

(b) *Administrative work.* Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the advisory committee or to receive administrative information from a Federal officer or agency.

§ 102–3.165 How are advisory committee meetings documented?

(a) The agency head or, in the case of an independent Presidential advisory committee, the chairperson must ensure that detailed minutes of each advisory committee meeting, including one that is closed or partially closed to the public, are kept. The chairperson of each advisory committee must certify the accuracy of all minutes of advisory committee meetings.

(b) The minutes must include:

(1) The time, date, and place of the advisory committee meeting;

(2) A list of the persons who were present at the meeting, including advisory committee members and staff, agency employees, and members of the public who presented oral or written statements;

(3) An accurate description of each matter discussed and the resolution, if any, made by the advisory committee regarding such matter; and

(4) Copies of each report or other document received, issued, or approved by the advisory committee at the meeting.

(c) The Designated Federal Officer (DFO) must ensure that minutes are certified within 90 calendar days of the meeting to which they relate.

§ 102–3.170 How does an interested party obtain access to advisory committee records?

Timely access to advisory committee records is an important element of the public access requirements of the Act. Section 10(b) of the Act provides for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. Although advisory committee records may be withheld under the provisions of the Freedom of Information Act (FOIA), as amended, if there is a *reasonable expectation* that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA.

§ 102–3.175 What are the reporting and recordkeeping requirements for an advisory committee?

(a) *Presidential advisory committee follow-up report.* Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report required by section 6(b) of the Act must be prepared and transmitted to the Congress detailing the disposition of the advisory committee's recommendations. The Secretariat shall assure that these reports are prepared and transmitted to the Congress as directed by the President, either by the President's delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated in the charter of the Presidential advisory committee pursuant to § 102–3.75(a)(10). In performing this function, GSA may solicit the assistance of the President's delegate, the Office of Management and Budget (OMB), or the responsible agency Committee Management Officer (CMO), as appropriate. Reports shall be consistent with specific guidance provided periodically by the Secretariat.

(b) *Annual comprehensive review of Federal advisory committees.* To conduct an annual comprehensive review of each advisory committee as specified in section 7(b) of the Act, GSA requires Federal agencies to report information on each advisory committee for which a charter has been filed in accordance with § 102–3.70, and which is in existence during any part of a Federal fiscal year. Committee Management Officers (CMOs), Designated Federal Officers (DFOs), and other responsible agency officials will provide this information by data filed electronically with GSA on a fiscal year basis, using a Governmentwide shared Internet-based system that GSA maintains. This information shall be consistent with specific guidance provided periodically by the Secretariat. The preparation of these electronic submissions by agencies has been assigned interagency report control number (IRCN) 0304–GSA–AN.

(c) *Annual report of closed or partially-closed meetings.* In accordance with section 10(d) of the Act, advisory committees holding closed or partially-closed meetings must issue reports at least annually, setting forth a summary of activities and such related matters as would be informative to the public consistent with the policy of 5 U.S.C. 552(b).

(d) *Advisory committee reports.* Subject to 5 U.S.C. 552, 8 copies of each report made by an advisory committee, including any report of closed or partially-closed meetings as specified in paragraph (c) of this section and, where appropriate, background papers prepared by experts or consultants, must be filed with the Library of Congress as required by section 13 of the Act for public inspection and use at the location specified § 102–3.70(a)(3).

(e) *Advisory committee records.* Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Upon termination of the advisory committee, the records must be processed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29–33, and regulations issued by the National Archives and Records Administration (NARA) (see 36 CFR parts 1220, 1222, 1228, and 1234),

or in accordance with the Presidential Records Act (PRA), 44 U.S.C. Chapter 22.

Appendix A to Subpart D of Part 102–3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART D

Key points and principles	Section(s)	Question(s)	Guidance
I. With some exceptions, advisory committee meetings are open to the public.	102–3.140, 102–3.145(a), 102–3.155.	1. Must all advisory committee and subcommittee meetings be open to the public?	A. No. Advisory committee meetings may be closed when appropriate, in accordance with the exemption(s) for closure contained in the Government in the Sunshine Act, 5 U.S.C. 552b(c). (i) Subcommittees that report to a parent advisory committee, and not directly to a Federal officer or agency, are not required to open their meetings to the public or comply with the procedures in the Act for announcing meetings. (ii) However, agencies are cautioned to avoid excluding the public from attending any meeting where a subcommittee develops advice or recommendations that are not expected to be reviewed and considered by the parent advisory committee before being submitted to a Federal officer or agency. These exclusions may run counter to the provisions of the Act requiring contemporaneous access to the advisory committee deliberative process.
II. Notices must be published in the **Federal Register** announcing advisory committee meetings.	102–3.150	1. Can agencies publish a single **Federal Register** notice announcing multiple advisory committee meetings?	A. Yes, agencies may publish a single notice announcing multiple meetings so long as these notices contain all of the information required by § 102–3.150. (i) "Blanket notices" should not announce meetings so far in advance as to prevent the public from adequately being informed of an advisory committee's schedule. (ii) An agency's Office of General Counsel should be consulted where these notices include meetings that are either closed or partially closed to the public.

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APPENDIX A TO SUBPART D—Continued

Key points and principles	Section(s)	Question(s)	Guidance
III. Although certain advisory committee records may be withheld under the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552, agencies may not require the use of FOIA procedures for records available under section 10(b) of FACA.	102–3.170	1. May an agency require the use of its internal FOIA procedures for access to advisory committee records that are not exempt from release under FOIA?	A. No. Section 10(b) of FACA provides that: Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist. (i) The purpose of section 10(b) of the Act is to provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend advisory committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. (ii) Although advisory committee records may be withheld under the provisions of FOIA if there is a reasonable expectation that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for nonexempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA. (iii) Records covered by the exemptions set forth in section 552(b) of FOIA may be withheld. An opinion of the Office of Legal Counsel (OLC), U.S. Department of Justice concludes that: FACA requires disclosure of written advisory committee documents, including predecisional materials such as drafts, working papers, and studies. The disclosure exemption available to agencies under exemption 5 of FOIA for predecisional documents and other privileged materials is narrowly limited in the context of FACA to privileged "inter-agency or intra-agency" documents prepared by an agency and transmitted to an advisory committee. The language of the FACA statute and its legislative history support this restrictive application of exemption 5 to requests for public access to advisory committee documents. Moreover, since an advisory committee is not itself an agency, this construction is supported by the express language of exemption 5 which applies only to inter-agency or intra-agency materials. (iv) Agencies first should determine, however, whether or not records being sought by the public fall within the scope of FACA in general, and section 10(b) of the Act in particular, prior to applying the available exemptions under FOIA. (See OLC Opinion 12 Op. O.L.C. 73, dated April 29, 1988, which is available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405–0002.)

APPENDIX A TO SUBPART D—Continued

Key points and principles	Section(s)	Question(s)	Guidance
IV. Advisory committee records must be managed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29–33, and regulations issued by the National Archives and Records Administration (NARA) (see 36 CFR parts 1220, 1222, 1228, and 1234), or the Presidential Records Act (PRA), 44 U.S.C. Chapter 22.	102–175(e)	1. How must advisory committee records be treated and preserved?	A. In order to ensure proper records management, the Committee Management Officer (CMO), Designated Federal Officer (DFO), or other representative of the advisory committee, in coordination with the agency's Records Management Officer, should clarify upon the establishment of the advisory committee whether its records will be managed in accordance with the FRA or the PRA. B. Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Responsible agency officials are encouraged to contact their agency's Records Management Officer or NARA as soon as possible after the establishment of the advisory committee to receive guidance on how to establish effective records management practices. Upon termination of the advisory committee, the records must be processed in accordance with the FRA and regulations issued by NARA, or in accordance with the PRA. C. The CMO, DFO, or other representative of an advisory committee governed by the FRA, in coordination with the agency's Records Management Officer, must contact NARA in sufficient time to review the process for submitting any necessary disposition schedules of the advisory committee's records upon termination. In order to ensure the proper disposition of the advisory committee's records, disposition schedules need to be submitted to NARA no later than 6 months before the termination of the advisory committee. D. For Presidential advisory committees governed by the PRA, the CMO, DFO, or other representative of the advisory committee should consult with the White House Counsel on the preservation of any records subject to the PRA, and may also confer with NARA officials.

Subpart E—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

§ 102–3.180 What does this subpart cover and how does it apply?

This subpart provides guidance to agencies on compliance with section 15 of the Act. Section 15 establishes requirements that apply only in connection with a funding or other written agreement involving an agency's use of advice or recommendations provided to the agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA), if such advice or recommendations were developed by use of a committee created by either academy. For purposes of this subpart, NAS also includes the National Academy of Engineering, the Institute of Medicine, and the National Research Council. Except with respect to NAS committees that were the subject of judicial actions filed before December 17, 1997, no part of the Act other than section 15 applies to any committee created by NAS or NAPA.

§ 102–3.185 What does this subpart require agencies to do?

(a) *Section 15 requirements.* An agency may not use any advice or recommendation provided to an agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) under an agreement between the agency and an academy, if such advice or recommendation was developed by use of a committee created by either academy, unless:

(1) The committee was not subject to any actual management or control by an agency or officer of the Federal Government; and

(2) In the case of NAS, the academy certifies that it has complied substantially with the requirements of section 15(b) of the Act; or

(3) In the case of NAPA, the academy certifies that it has complied substantially with the requirements of sections 15(b) (1), (2), and (5) of the Act.

(b) *No agency management or control.* Agencies must not manage or control the specific procedures adopted by each academy to comply with the requirements of section 15 of the Act that are applicable to that academy. In addition, however, any committee created and used by an academy in the development of any advice or recommendation to be provided by the

academy to an agency must be subject to both actual management and control by that academy and not by the agency.

(c) *Funding agreements.* Agencies may enter into contracts, grants, and cooperative agreements with NAS or NAPA that are consistent with the requirements of this subpart to obtain advice or recommendations from such academy. These funding agreements require, and agencies may rely upon, a written certification by an authorized representative of the academy provided to the agency upon delivery to the agency of each report containing advice or recommendations required under the agreement that:

(1) The academy has adopted policies and procedures that comply with the applicable requirements of section 15 of the Act; and

(2) To the best of the authorized representative's knowledge and belief, these policies and procedures substantially have been complied with in performing the work required under the agreement.

Appendix A to Subpart E of Part 102–3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART E

Key points and principles	Section(s)	Question(s)	Guidance
I. Section 15 of the Act allows the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA) to adopt separate procedures for complying with FACA.	102–3.185(a)	1. May agencies rely upon an academy certification regarding compliance with section 15 of the Act if different policies and procedures are adopted by NAS and NAPA?	A. Yes. NAS and NAPA are completely separate organizations. Each is independently chartered by the Congress for different purposes, and Congress has recognized that the two organizations are structured and operate differently. Agencies should defer to the discretion of each academy to adopt policies and procedures that will enable it to comply substantially with the provisions of section 15 of the Act that apply to that academy.
II. Section 15 of the Act allows agencies to enter into funding agreements with NAS and NAPA without the academies' committees being "managed" or "controlled".	102–3.185(c)	1. Can an agency enter into a funding agreement with an academy which provides for the preparation of one or more academy reports containing advice or recommendations to the agency, to be developed by the academy by use of a committee created by the academy, without subjecting an academy to "actual management or control" by the agency?	A. Yes, if the members of the committee are selected by the academy and if the committee's meetings, deliberations, and the preparation of reports are all controlled by the academy. Under these circumstances, neither the existence of the funding agreement nor the fact that it contemplates use by the academy of an academy committee would constitute actual management or control of the committee by the agency.

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July 19, 2001

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Process for Exempting Quarantine and Preshipment Applications of Methyl Bromide; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7014–5]

RIN 2060–A142

Protection of Stratospheric Ozone: Process for Exempting Quarantine and Preshipment Applications of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: With this rulemaking, EPA is taking interim final action to amend the accelerated phaseout regulations that govern the production, import, export, transformation and destruction of substances that deplete the ozone layer under the authority of Title VI of the Clean Air Act Amendments of 1990 (CAA or the Act). Today's amendments incorporate an exemption permitted under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and required by recent changes in Title VI of the CAA. Specifically, EPA is creating a temporary exemption, through December 31, 2002, from the consumption and production phaseout for quantities of Class I, Group VI controlled substances (methyl bromide) that are used for quarantine and preshipment. Following public comment, EPA intends to issue a final action to extend this exemption beyond December 31, 2002. EPA is also actively pursuing a separate notice and comment rulemaking, with stakeholder involvement, to establish methyl bromide exemptions for critical uses and emergency uses beyond the phaseout of production and import on January 1, 2005.

DATES: This rule is effective July 19, 2001 and the additions to 40 CFR Part 82 will remain in effect through December 31, 2002. The provisions and requirements established in today's rule apply to the entire 2001 and 2002 calendar years (control periods). EPA will consider all written comments received by October 12, 2001 to determine whether any changes are necessary prior to issuing a final action to extend this exemption beyond December 31, 2002.

ADDRESSES: Should you have comments that are directly related to this rulemaking please submit them in duplicate (two copies) to: Air Docket No. A–2000–24, U.S. Environmental Protection Agency, Mail Code 6102, 1200 Pennsylvania Ave., NW., Washington, DC, 20460. In addition, should you have comments that are separately related to a different issue than those raised by this rulemaking you may send them directly to U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Materials relevant to this rulemaking are contained in Docket No. A–2000–24. The Docket is located in room M–1500, First Floor, Waterside Mall at 401 M Street, SW., Washington, DC 20460. The materials may be inspected from 8:30 am until 5:30 pm Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tom Land, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 202–564–9185.

SUPPLEMENTARY INFORMATION: EPA is taking this action as an interim final rule without prior proposal and public comment because EPA finds that the good cause exemption from the notice-and-comment rulemaking requirement of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, applies here. Section 307(d) of the Clean Air Act (CAA) states that in the case of any rule to which section 307(d) applies, notice of proposed rulemaking must be published in the **Federal Register** (CAA307(d)(3)). The promulgation or revision of regulations under title VI of the CAA is generally subject to section 307(d). However, section 307(d) does not apply to any rule referred to in subparagraphs (A) or (B) of section 553(b) of the APA. Section 553(b)(B) of the APA, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and comment public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment.

EPA has determined that there is good cause for making today's rule an interim final rule without prior proposal and opportunity for comment because we view these revisions as protecting commodity trade from the adverse impacts of quarantine pest infestations, as well as protecting the supply of imported fruits and vegetables available to the general public. Without the creation of the exemption by this rule, quantities of methyl bromide used for quarantine and preshipment would be counted against the production and consumption allowances already limited by prior rulemaking (65 FR 70795), which for 2001 constitute 50% of the baseline. Having to compete for non-exempt methyl bromide, without today's exemption, fumigators at U.S. ports might not be able to meet U.S. requirements to treat imported commodities (under the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) requirements). This could jeopardize the supplies of these commodities for U.S. consumers because in the absence of required treatments ships would be turned away. Alternatively, the absence of today's exemption could increase the risk of an outbreak of a quarantine pest within the United States because shipments are typically unloaded onto the docks in preparation for fumigation with methyl bromide. Unloading containers at the docks could occur prior to a realization that methyl bromide is unavailable at the port and thereby jeopardize U.S. commodities with a quarantine pest infestation. If an infestation of a quarantine pest occurs, the amount of methyl bromide used could greatly increase. For example, when the port of Houston was infested with the Mediterranean snail, a fumigator who typically uses 40,000–50,000 pounds a year, used 21,000 pounds in 7½ weeks to treat this outbreak of a quarantine pest. In addition, exporters might not be able to ship U.S. commodities overseas because they would not be able to meet foreign import requirements without today's exemption. Thus, notice and public procedure are impracticable and contrary to the public interest. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Nonetheless, EPA is providing 90 days for submission of public comments following today's action. EPA will consider all written comments submitted in the allotted time period to determine if any change is warranted prior to taking final action that would extend this exemption beyond December 31, 2002. The phaseout program operates in control periods that correspond to calendar years. EPA believes that the exemption should correspond to whole control periods, i.e., entire calendar years. EPA does not believe it will be possible to take final action before the end of the 2001 control period. Because the Agency is providing a 90-day comment period and wants to ensure there is sufficient time to carefully review comments and consider other approaches, and to simplify the administrative implementation for affected entities, today's exemption is effective through December 31, 2002.

Section 553(d) of the APA generally provides that rules may not take effect

earlier than 30 days after they are published in the **Federal Register**. However, APA section 553(d) excepts from this provision any action that grants or recognizes an exemption or relieves a restriction. Since today's action grants an exemption from the phaseout of production and import of methyl bromide, EPA is making this action effective immediately to ensure the availability of methyl bromide for quarantine and preshipment through December 31, 2002.

EPA emphasizes that this rule is intended only to address the basic implementation of the methyl bromide quarantine and preshipment exemptions according to the definitions agreed upon by the Montreal Protocol Parties. Any deviations from the Protocol Parties' definitions are constrained by the Protocol and the Clean Air Act, and therefore are not addressed in today's rulemaking.

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Entities potentially regulated by this action are those associated with methyl bromide that is used for quarantine and preshipment applications. In addition, this action potentially regulates entities importing and exporting methyl bromide. Potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers, Importers and Exporters of methyl bromide. Distributors of methyl bromide used for quarantine and preshipment. Applicators of methyl bromide used for quarantine and preshipment. Commodity Owners or Shippers of Goods that request the quarantine or preshipment application of methyl bromide in accordance with treatments, official controls or requirements.

Table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc. is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR 82, Subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. What Is the Background of the Phaseout Regulations for Ozone-Depleting Substances?

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances were promulgated by the Environmental Protection Agency (EPA or the Agency) in the **Federal Register** on December 20, 1994 (59 FR 65478), May 10, 1995 (60 FR 24970), August 4, 1998 (63 FR 41625), and October 5, 1998 (63 FR 53290). The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol).[1] The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 21, 1988. Congress then enacted, and President Bush signed into law, the Clean Air Act Amendments of 1990 (CAA or the Act) that included Title VI on Stratospheric Ozone Protection.

Today's action amends the existing EPA regulations published under Title VI of the CAA that govern the production and consumption of ozone-depleting substances. Today's action establishes an exemption from the methyl bromide production and import reduction and phaseout schedule for quantities to be used for quarantine and preshipment applications. Today's amendments are intended to implement requirements of the Protocol and the CAA, including amendments to Title VI as created by Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) (Section 604(d)(5) of the Clean Air Act).

The requirements contained in the final rules published in the **Federal Register** on December 20, 1994 and May 10, 1995 establish an Allowance Program. The Allowance Program and its history are described in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 10, 1994 (59 FR 56276). The control and the phaseout of production and consumption of ozone-depleting substances, as required under the Protocol and CAA, are accomplished through the Allowance Program.

In developing the Allowance Program, EPA collected information on the amounts of ozone-depleting substances produced, imported, exported, transformed and destroyed within the United States for specific baseline years

[1] Several revisions to the original 1988 rule were issued on the following dates: February 9, 1989 (54 FR 6376), April 3, 1989 (54 FR 13502), July 5, 1989 (54 FR 28062), July 12, 1989 (54 FR 29337), February 13, 1990 (55 FR 5005), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812) July 30, 1992 (57 FR 33754), December 10, 1993 (58 FR 65018).

for specific chemicals. This information was used to establish the U.S. production and consumption ceilings for these chemicals. The data were also used to assign company-specific production and import rights to companies that were in most cases producing or importing during the specific year of data collection. For methyl bromide, 1991 was the baseline year used to establish the ceiling and assign company-specific production and import rights. Production or import rights are called "allowances." Production allowances and consumption allowances continue to exist for only one specific class I controlled ozone-depleting substance—methyl bromide. All other production or consumption of class I controlled substances is prohibited under the Protocol and the CAA, save for a few narrow exemptions. For methyl bromide the remaining schedule for the phaseout of production and consumption allowances is as follows: 50 percent reduction of baseline beginning January 29, 2001, 70 percent reduction of baseline beginning January 1, 2003, and a 100 percent reduction of baseline beginning January 1, 2005, with narrow exemptions for critical uses and emergencies, as well as for quarantine and preshipment uses.

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the "use" of a controlled substance, but rather is defined as the formula: Consumption = production + imports − exports, of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under these regulations, unless otherwise precluded under separate regulations.

The specific names and chemical formulas for the controlled ozone-depleting substances in Groups of class I controlled substances are in Appendix A and Appendix F in Subpart A of 40 CFR Part 82. The specific names and chemical formulas for the class II controlled ozone-depleting substances are in Appendix B and Appendix F in Subpart A.

II. What Is Methyl Bromide?

Methyl bromide is used in the United States and throughout the world as a fumigant to control a variety of pests in many different situations. Methyl bromide is an odorless, colorless, toxic gas. Methyl bromide is a broad spectrum pesticide, which is used as a fumigant to control a variety of pests, such as insects, weeds, rodents, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide can be found in the proposed rule published in the **Federal Register** on March 18, 1993 (58 FR 15014) and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018). Information on methyl bromide can be found at the following sites of the World Wide Web: *www.epa.gov/ozone/mbr/mbrqu.html* and *www.teap.org* or by contacting the Stratospheric Ozone Protection Hotline at 1–800–296–1996.

III. What Are Examples of Quarantine and Preshipment Uses of Methyl Bromide?

An example of a quarantine use of methyl bromide is the fumigation of commodities such as rice and spices that are subject to infestation by a specific and officially recognized quarantine pest, such as the khapra beetle (Trogoderma granarium Everts). The purpose of quarantine fumigation is to prevent the introduction of specific quarantine pest(s) into a defined geographical area, such as an importing country. An example of a preshipment use of methyl bromide is the application to wheat because of official phytosanitary requirements at the shipment destination. In 1998, the Methyl Bromide Technical Options Committee (MBTOC), a sub-group under the independent advisory body of the Technical and Economic Assessment Panel (TEAP) to the Montreal Protocol, published an assessment that gives further details about uses of methyl bromide and possible alternatives and substitutes for controlling pests.

IV. What Is the Legal Authority for Exempting Production and Consumption of Methyl Bromide for Quarantine and Preshipment Applications?

In Article 2H of the Montreal Protocol, which establishes the phaseout schedule for methyl bromide for developed countries, paragraph 6 states that, "[t]he calculated levels of consumption and production under this Article shall not include the amounts used by the Party for quarantine and pre-shipment applications." EPA notes that paragraph 6, of Article 2H indicates that the exemption is to exclude from the U.S.'s calculation of methyl bromide consumption and production the amounts used by the U.S. for quarantine and preshipment applications. In addition, Article 7 of the Protocol was recently amended regarding methyl bromide and now requires each Party to report on, "the annual amount used for quarantine and preshipment applications." Beyond the critical uses allowed in Article 2H, Paragraph 5, quarantine and preshipment uses are the only exemptions explicitly allowed for under the Montreal Protocol.

The recent amendments to Title VI of the Clean Air Act regarding methyl bromide include a new provision on "Sanitation and Food Protection," which is related to the Protocol exemption for quarantine and preshipment. This new Section 604(d)(5) of Title VI of the CAA, on Sanitation and Food Protection, was added by Section 764(b) of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105–277). This new Section 604(d)(5) says, "To the extent consistent with the Montreal Protocol's quarantine and preshipment provisions, the Administrator shall exempt the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State (or political subdivision thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements or with any international, Federal, State or local sanitation or food protection standard." Prior to Congressional passage of Section 604(d)(5), the CAA did not provide authority for creating such an exemption to the methyl bromide phaseout schedule. Therefore, by today's interim final regulation, EPA is implementing the express language provided in Article 2H, paragraph 6, of the Protocol under the authority provided by section 604(d)(5) of the CAA. EPA is also acting in a manner consistent with, and to fulfill the obligations of, section 614(b) of the CAA. Section 614(b) of the CAA states that, "[t]his title as added by the Clean Air Act Amendments of 1990 shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern."

At a July 1999 meeting with the Methyl Bromide Industry Panel, EPA received a legal memorandum from their counsel regarding the definition of quarantine and preshipment and the recent amendment adding Section

604(d)(5) to the Clean Air Act. The argument made in the Methyl Bromide Industry Panel's legal memorandum is that the introductory phrase ("to the extent consistent with the Montreal Protocol's quarantine and pre-shipment provisions") in Section 604(d)(5) of the Clean Air Act does not require EPA to make its regulations consistent with the "preshipment" and "quarantine" definitions in Decision VII/5 and Decision XI/12 of the Parties to the Protocol. The issue raised by the Methyl Bromide Industry Panel's legal memorandum is whether the reference to the "Montreal Protocol's quarantine and preshipment provisions," in Section 604(d)(5) refers only to the single provision found in Article 2H, paragraph 6 of the Protocol (which provides that the "calculated levels of consumption and production under this Article shall not include the amounts used by the Party for quarantine and preshipment applications") or also refers to Decision VI/11, Decision VII/5, Decision XI/12, and Decision XI/13 of the Parties. The Methyl Bromide Industry Panel's legal memorandum also notes that Section 602 of the CAA defines the Montreal Protocol as, The Montreal Protocol on Substances that Deplete the Ozone Layer and its amendments and adjustments without specific reference to Decisions by the Parties to the Protocol.

The provisions of the Vienna Convention on the Law of Treaties (VCLT), 8 International Legal Materials 679 (1969), that concern treaty interpretation generally reflect customary international law. Article 31 of the VCLT sets forth the general rule of treaty interpretation. Paragraph 1 of Article 31 provides that a treaty "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." Paragraph 3 of Article 31 of the VCLT states, "[t]here shall be taken into account, together with any context: * * * (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions." Decisions VI/11, VII/5, XI/12 and XI/13 constitute subsequent consensus agreements among the Parties to the Montreal Protocol (including the United States) regarding the interpretation and application of the quarantine and preshipment provision of Article 2H. Therefore, it is appropriate for EPA, when determining what is consistent with the "Montreal Protocol's quarantine and preshipment provisions," to take into account Decisions VI/11, VII/5, XI/12, and XI/13.

Furthermore, in amending the CAA, Congress specifically cited the plural "quarantine and preshipment provisions." If Congress intended for this phrase to be limited to the single provision in the Protocol referencing quarantine and preshipment in Article 2H, and not the subsequent Decisions between the Parties regarding interpretation or application of the treaty, Congress would have presumably directed the Agency to be consistent with the singular provision.

Precedents within the current regulations (40 CFR Part 82) demonstrate that the United States has routinely considered Decisions that clarify and interpret obligations under the Montreal Protocol to be authoritative and that such Decisions of the Parties are currently implemented through regulations under the CAA. For example, the United States' current regulatory definition of a "controlled substance" is based on a Decision by the Parties (Decision IV/12) that clarifies Article 1, paragraph 4 of the Protocol.

In another example, the current process in the United States for implementing the Protocol's essential-use exemption relies on Decisions by the Parties for the specific definition of what is an "essential use." In the process of preparing the United States' annual nomination, the U.S. relies on Decision IV/25 to evaluate applications that are submitted by U.S. entities who are requesting an essential-use exemption. In addition, the U.S. government considers whether the information that will be provided in the national nomination is in accordance with Decision VIII/10, as well as whether it is in accordance with the conditions to be applied in providing an exemption under Decision VI/9, Decision VII/28, and Decision VIII/9. Consideration of these Decisions by the U.S. government is important because the U.S. nomination is reviewed by the Protocol's TEAP, who then makes recommendations to the Parties based on the Decisions. The essential-use exemptions nominated by the U.S. government are ultimately considered and authorized by the Parties in the context of these Decisions. The control measures in Article 2 of the Protocol allow for essential-use exemptions (for the production and consumption of controlled substances beyond phaseout dates). However, the Parties' interpretation of the phrase "essential use" and their agreements regarding the application of this exemption appear in Decisions.

Finally, EPA is in the process of developing regulations that would implement Decision IX/7 of the Parties by allowing an exemption for "emergency methyl bromide use." Decision IX/7 reflects an agreement among the Parties to the Protocol regarding the interpretation and application of the critical-use exemption provided for in Article 2H(5) of the Protocol. Decision IX/7 directs the Ozone Secretariat and the TEAP to "evaluate the [emergency] use according to the "critical methyl bromide use" criteria and present this information to the next meeting of the Parties for review * * *"

The examples above illustrate how U.S. regulations incorporate Decisions by the Parties to the Protocol. Other precedents for incorporating Decisions by the Protocol Parties into current U.S. regulations can be found in 40 CFR Part 82, Subpart A.

V. What Is the Definition of Quarantine and Preshipment Applications?

In today's action, EPA is defining quarantine and preshipment applications as agreed by the Parties to the Montreal Protocol. The Parties to the Protocol agreed to the following definition of "quarantine applications" in Decision VII/5: "quarantine applications, with respect to methyl bromide, are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (i) Official control is that performed by, or authorized by, a national plant, animal or environmental protection or health authority; (ii) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled."

The Parties to the Protocol first agreed to the following definition for preshipment applications of methyl bromide in Decisions VI/11 and VII/5: "preshipment applications are those treatments applied directly preceding and in relation to export, to meet the phytosanitary or sanitary requirements of the importing country or existing phytosanitary or sanitary requirements of the exporting country." At the 11th Meeting of the Parties in December 1999, the Parties further clarified the intent of the term preshipment, by agreeing to the following definition in Decision XI/12: "* * * preshipment applications are those non-quarantine applications within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting

country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority."

With today's action, EPA is defining quarantine applications and preshipment applications, for implementing the exemption to the methyl bromide production and consumption phaseout schedule mandated by the new section 604(d)(5) of the CAA and in a manner consistent with section 614(b) of the CAA, as follows:

Quarantine applications, with respect to class I, Group VI controlled substances, are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (i) Official control is that performed by, or authorized by, a national plant, animal or environmental protection or health authority; (ii) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.

Preshipment applications, with respect to class I, Group VI controlled substances, are those non-quarantine applications within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority.

As specified in the above definitions, which mirror exactly those specified by the Protocol, a quarantine application of methyl bromide must be "performed by, or authorized by, a national plant, animal or environmental protection, or health authority." In addition, as delineated in the above definition, quarantine applications must be directed at quarantine pests. Today's definition of preshipment applications is limited to applications "to meet the official requirements of the importing country or existing official requirements of the exporting country." The definition of preshipment applications specifies that the phrase "official requirements" means "those which are performed by, or authorized by, a national plant, animal, environmental, health, or stored product authority."

A. Are There Clarifications Regarding Trade Within the U.S.?

The Technical and Economic Assessment Panel (TEAP) provided the Parties to the Protocol with analyses and clarifications of the definition of "quarantine applications," recommending that Decision VII/5 be interpreted to include officially required treatments for intra-country trade within the territory of the Party. Therefore, for purposes of today's regulation, "quarantine applications" include inter-state and inter-county treatments required to control quarantine pests. This is consistent with the Montreal Protocol and reconciles the language with Section 604(d)(5) of the CAA on Sanitation and Food Protection, which refers to international, Federal, state and local requirements. In recognizing official state, county, tribal, and local quarantine requirements, EPA interprets the definition of quarantine applications such that intra-country quarantine treatments required by state, county, tribal, and local plant, animal, environmental, or health government authorities constitute official control.

In contrast to the definition of quarantine applications, which accommodates intra-country trade, the Protocol definition of preshipment applications is specific to trade between countries because of the phrase "applications within 21 days prior to export." Therefore, for purposes of today's regulation, the exemption for preshipment applications is limited to the movement of goods from the U.S. to another country, and does not include movement of goods within the U.S.

B. Are There Additional Qualifiers Associated With the Definition of Preshipment Applications?

In 1998, the TEAP provided interim explanatory notes to assist the Parties in the consistent implementation of the exemption for preshipment applications, highlighting that preshipment applications are "* * * not intended to cover informal or purely contractual or commercial arrangements not required under official regulations." (April 1998 TEAP Report, page 145). The definition of "preshipment applications" focuses on applications "to meet the official requirements of the importing country or existing official requirements of the exporting country." The definition of preshipment applications specifies that the phrase "official requirements" means "those which are performed by, or authorized by, a national plant, animal, environmental, health, or stored product authority."

The definition of preshipment applications in Decision XI/12 contains the phrase "existing official requirements of the exporting country," (emphasis added), which implies the need to establish a cutoff date when a preshipment requirement is existing. With today's action, however, for the interim period through December 31, 2002, EPA will interpret the word "existing" to mean simply that the preshipment requirement must be in existence at the time of the specific treatment. It is important to note that the exporting country referred to in the phrase is the United States.

EPA is seeking comments on ways to interpret the term "existing" in the preshipment applications definition for development of the final version of this regulation. Options for interpreting the term "existing official requirements" might be to exempt official preshipment requirements of the exporting country that were: (1) In effect prior to the date the Parties to the Protocol adopted Decision XI/12, which was December 3, 1999, (2) in effect at the time this interim final rule is published in the **Federal Register**, (3) in place at the time the final rule on the quarantine and preshipment exemption is published in the **Federal Register**, (4) existing at the time of the methyl bromide application (since it would be an "existing" requirement of the exporting country upon going into effect). EPA seeks comments on these possible interpretations of the phrase "existing official requirements of the exporting country."

For the interim period through December 31, 2002, EPA will also interpret the phrase "to meet the * * * official requirements of the exporting country" as exempting methyl bromide used to fumigate a commodity when it is to meet a United States food sanitation requirement and the fumigation occurs within 21 days prior to export from the United States. For example, today's action considers methyl bromide used to meet food sanitation requirements of the U.S. government (such as requirements for food in interstate commerce under the Federal Food Drug and Cosmetic Act, as monitored by the Food and Drug Administration) to be exempt under the definition of preshipment applications for the interim period through December 31, 2002, when the methyl bromide is applied within the 21 days prior to export to a foreign country. EPA is seeking comments on this interpretation of the definition of "preshipment applications."

It should be noted that if an importing country were to establish a new official requirement for the preshipment application of methyl bromide, nothing in this rule would prevent a U.S. exporter from using methyl bromide to meet the new requirement of the importing country.

C. Are There Additional Qualifiers Associated With the Definition of Quarantine Applications?

With today's action, EPA is establishing that for the interim period through December 31, 2002, the exemption for quarantine applications will apply when methyl bromide is among a list of treatments or official control options for quarantine pests or if methyl bromide is required for an emergency U.S. quarantine application. Under Section 3, Section 18, and Section 24a of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA is notified of emergency quarantine applications of methyl bromide in accordance with specific requirements published under FIFRA. In addition, for the interim period (through December 31, 2002), methyl bromide will be exempted for quarantine applications on U.S. commodities for export when the foreign country simply has a broad performance-based quarantine requirement. In other words, today's action exempts methyl bromide in situations when the foreign country's regulations require a certification that U.S. commodities be exported free of quarantine pests. EPA understands that both USDA/APHIS and State agencies issue "phytosanitary certificates" that accompany U.S. commodities exported to foreign countries. These phytosanitary certificates are often required by importing foreign countries to ensure that U.S. exports are free of quarantine pests. To the extent that methyl bromide is used by a U.S. exporter to meet a foreign quarantine requirement, then the phytosanitary certificates (PPQ Form 577, PPQ Form 578, and PPQ Form 579) issued by USDA/APHIS or an authorized State agency will be an additional means for EPA to cross-check quarantine applications of methyl bromide under today's exemption. However, EPA is not exempting methyl bromide used for non-quarantine applications, even if the U.S. exporter must obtain a phytosanitary certificate for the export of the commodity. Today's exemption applies to the use of methyl bromide to meet a foreign quarantine requirement when a phytosanitary certificate is issued for a U.S. exported commodity. If PPQ Forms or other types of certificates are issued for commodities meeting state or local quarantine requirements then methyl bromide used in these cases is considered exempt under today's action.

To assist in development of the final version of this regulation, EPA is seeking comments on the variety of ways of interpreting the methyl bromide exemption for quarantine applications. One approach would be to limit the exemption to cases when regulations list methyl bromide as the unique treatment or control for specific quarantine pests.

A second approach would be to apply the exemption in cases when methyl bromide is among a list of treatment or control options for quarantine pests. Presumably, currently existing quarantine regulations that include methyl bromide among a list of treatment or control options indicate that other treatments or controls on the list can be used to address the quarantine pest(s).

A third approach would be to apply the exemption in cases when methyl bromide is required for an emergency quarantine application.

A fourth approach would be to apply the exemption to quarantine applications when there is a broad performance-based quarantine requirement. This would be a situation when the regulations require that a commodity be exported/imported free of quarantine pests. The Agency understands that many importing countries have quarantine regulations which broadly require commodities to be free of quarantine pests without specifying the types of treatments or controls. EPA seeks comment on these various ways of interpreting the exemption for quarantine applications.

Combinations of the above approaches for applying the exemption for quarantine applications, including combinations where the exemption is applied differently depending on whether a commodity is being imported into, moved within, or exported from the U.S., are possible as demonstrated by the conditions established with today's action for the interim period through December 31, 2002 (first paragraph in V.C. above). Today's action exempts methyl bromide for imports when methyl bromide is among a list of treatments or official control options for quarantine pests or if methyl bromide is required for an emergency U.S. quarantine application, and exempts methyl bromide for exported U.S. commodities when the foreign country simply has a broad performance-based quarantine requirement. Another possible combination of the above approaches would be to institute the exemption for treatments of commodities being imported into the U.S., or moved within U.S., when the quarantine regulations uniquely list methyl bromide as the treatment/control option, while at the same time exempting methyl bromide for the export of U.S. commodities when the foreign quarantine requirement lists methyl bromide among a list of treatment/control options. In this latter example for exports, the exemption might apply only in cases when a phytosanitary certificate is issued for a U.S. commodity to meet the foreign quarantine requirement and methyl bromide is among the list of treatment/control options. EPA is seeking comments on the approaches above and possible combinations of these as demonstrated by the conditions established with today's action for the interim period through December 31, 2002.

The Agency intends to consider prior Decisions by the Parties to the Protocol, such as paragraph (c) of Decision VII/5 which states, "[i]n applying these definitions, all countries are urged to refrain from use of methyl bromide and to use non-ozone-depleting technologies wherever possible." Further, the Parties to the Protocol agreed in Decision XI/13, "to request the Parties to review their national plant, animal, environmental, health and stored product regulations with a view to removing the requirement for use of methyl bromide for quarantine and preshipment where technically and economically feasible alternatives exist." The need to have incentives for people to switch to non-ozone-depleting methods for controlling quarantine pests will also be included in development of the final version of this regulation and EPA is seeking comments on this issue.

EPA is interested in comments addressing the effect of each of these potential approaches on methyl bromide use. EPA recognizes that the price of methyl bromide will play a key role in determining uses, especially where alternatives are available. Basic economic principles of supply and demand suggest that the price of methyl bromide is likely to increase during the phaseout period as supply is constrained. A question remains as to whether this increase will also be seen in the price of quantities of methyl bromide exempted for quarantine and preshipment applications, or whether the exempted methyl bromide for quarantine and preshipment applications will be priced differently than non-exempt quantities. We are interested in comments that address the merits of relying on a potential price increase for methyl bromide exempted for quarantine and preshipment applications—at least over the initial phaseout period—as a way of governing its use for these purposes.

D. How Do the Definitions of Quarantine and Preshipment Aplications Apply to Food Sanitation?

With today's action, for the interim period through December 31, 2002, the exemption of methyl bromide for quarantine applications will not apply to preventative treatments to meet food sanitation standards. Please note that if the methyl bromide use were to occur within 21 days prior to export to another country it would be exempted under the definition of "preshipment applications" if it was to meet the official requirements of the importing country or existing official requirements of the exporting country (see discussion in Part V.B. above).

Some U.S. industries have stated that not having methyl bromide for the preventative treatment of their commodities against non-quarantine pests could jeopardize their ability to bring the commodity to market because they would not be able to meet food sanitation standards. EPA is aware that alternative treatments may be technically and economically available for many industries currently using methyl bromide to maintain food sanitation or meet food sanitation standards.

For those industries facing food sanitation challenges, production of methyl bromide will continue until the 2005 phaseout, albeit in limited quantities. For the period beyond the 2005 phaseout, these industries, as well as others, will be able to apply for a "critical-use" exemption for continued production and/or import of methyl bromide. Consistent with the Protocol, Parties can apply for a critical-use exemption beyond the 2005 phaseout for specific uses where there are no technically and economically feasible alternatives. Although the critical-use exemption is not available until after 2005, EPA has initiated a separate process with stakeholder input to develop a critical-use exemption. In 2002, a separate **Federal Register** notice will be published asking for people to submit specific information to substantiate requests for a critical-use exemption. However, at this time no decisions have yet been made regarding what uses will be exempted as "critical."

EPA understands that certain industries often use methyl bromide as a prophylactic treatment for periodic quality control fumigations associated with food sanitation. Stored commodities, such as dried fruits, nuts, and cocoa beans, as well as grain mills and pasta manufacturing facilities are often fumigated periodically with methyl bromide to prevent populations of pests, such as insects and rodents, from increasing to a point where they would adversely affect food quality. Fumigations with methyl bromide of stored commodities, or food-processing facilities, as preventative measures to maintain food sanitation are directed at controlling populations of pests that are generally endemic to the U.S. and are not designed or intended to "prevent the introduction, establishment and/or spread of quarantine pests." Congress directed EPA to create an exemption, "consistent with the Montreal Protocol's quarantine and preshipment provisions." The quarantine definition from Decision VII/5 of the Protocol stresses that exempt applications of methyl bromide are "to prevent the introduction, establishment and/or spread of quarantine pests (including diseases)." This focus on "quarantine pests" seems to be the core of the definition and establishes the limit on exempted quarantine applications.

The definition of preshipment applications from Decision XI/12 includes a time constraint of "21 days prior to export," which establishes the limit on the exempted preshipment uses. Thus, the periodic prophylactic fumigation of a commodity, or, the prophylactic fumigation of a food-processing facility which is not to meet quarantine requirements and which is outside of the 21 days prior to export would not be exempt under the Protocol's definition of quarantine applications or preshipment applications.

The Agency is seeking comments on the prophylactic uses of methyl bromide to meet food sanitation standards. The Agency intends to use this information to assist in development of the critical-use exemption process as discussed above.

E. How Do These Definitions Apply to "Propagative Material"?

The use of methyl bromide to fumigate the soil for growing propagative material, such as strawberry propagative rhizomes, differs from many quarantine applications of methyl bromide. In the specific example of quarantine treatment of strawberry propagative material that was brought to EPA's attention, Japanese regulations require that the underground portions of the imported propagative rhizomes (of the strawberry planting stock) be certified to have been grown in soil that is free of quarantine pests. To meet this Japanese quarantine requirement, and other similar quarantine requirements, U.S. nurseries fumigate the soil with methyl bromide to raise strawberry propagative material. Methyl bromide is used to fumigate the soil before each transplanting (a number of times over 3–5 years) because Japanese requirements dictate that soil in which the strawberry propagative rhizomes are grown be free of quarantine pests. EPA is unaware of how much methyl bromide is used in the growing of strawberry propagative material in the U.S. to meet this or other foreign or domestic quarantine requirements and seeks comments on this specific quarantine application. In addition, the Agency is seeking similar information on other types of plants for planting for which methyl bromide is used as a pre-plant treatment (soil treatment) to ensure propagative materials meet quarantine requirements.

With today's action, for the interim period through December 31, 2002, the exemption for quarantine applications applies to methyl bromide used for growing propagative material, such as strawberry rhizomes, if the methyl bromide is being used to grow propagative material to meet official quarantine requirements of the destination to which it will be shipped. To ensure that the use of methyl bromide for propagative material is consistent with the Protocol's quarantine provisions, applicators availing themselves of the exemption during the interim period must maintain records of each methyl bromide application. These records must certify that the methyl bromide treatments are being undertaken to meet quarantine requirements of the intended destination country for the specific propagative material.

Monitoring methyl bromide used for propagative materials will be a large challenge. The propagative materials may be grown in close proximity to crops that do not qualify for the quarantine and preshipment exemption. EPA believes that it may be difficult to ensure that farmers growing propagative material in a small nursery in the corner of their acreage were meeting the requirements associated with the quarantine exemption—that the methyl bromide purchased under the exemption for the nursery was only used for the propagative material—and growers were not using the methyl bromide for fumigation of their larger acreage where the actual crop was being grown (*i.e.*, strawberry fruit versus propagative material). Monitoring for such an abuse of the exempted methyl bromide may be difficult because both uses would be soil fumigations on the same farm—in adjoining fields.

Another difficulty in compliance monitoring may be caused by the 3–5 year time horizon for growing

strawberry propagative materials. The growing cycle for strawberry propagative materials necessitates soil fumigation with methyl bromide several times over a 3–5 year period to protect the specific germplasm (genetic material) that is desired by the Japanese, or others, as well as to allow the grower to certify that the underground portions of the propagative plants are free of quarantine pests. A system is needed to document and ensure the validity of claims by farmers that they are using exempted methyl bromide over the 3–5 years to grow strawberry seedlings for export to meet Japanese or other quarantine requirements. However, EPA recognizes that some farmers will legitimately justify using exempted methyl bromide to meet Japanese or other quarantine requirements for strawberry seedlings, yet due to economic or market conditions these farmers will not send the seedlings to Japan or another destination that has a relevant quarantine requirement. To address this compliance monitoring challenge, the Agency is seeking comments on establishing a recordkeeping requirement for quarantine applications that involve the use of methyl bromide in soil fumigation for the growth of propagative material. EPA is also seeking comments on whether the U.S. growers of propagative materials, in general, should be required to report periodically on methyl bromide used to meet quarantine requirements.

The use of exempted methyl bromide to grow propagative material that the grower planned to ship to a destination with a propagative material quarantine requirement, but which the grower ultimately shipped to a destination without such a requirement, may raise compliance issues for the United States' obligations under the Protocol. EPA is seeking comments on the necessity of, and the nature of, possible compensatory measures. If methyl bromide is used to grow propagative material with the intention of meeting a quarantine requirement of a particular importing country or domestic location, but in the end is sent instead to a destination without a quarantine requirement for the propagative material, the use of the methyl bromide is not exempt under the Protocol. Rather, the quantity used would count against the United States' cap for domestic methyl bromide consumption (currently limited to 50% of baseline for 2001). The U.S. could exceed its control obligations under the Protocol if all U.S. production and consumption allowances for methyl bromide were expended in a particular control period (calendar year) and some methyl bromide in the same control period was mistakenly exempted for quarantine applications when, in fact, the propagative material was sent to a place without quarantine requirements. EPA is seeking comments on several possible options for rectifying this potential situation of non-compliance.

Under the first approach, a person who uses exempted methyl bromide to meet a propagative material quarantine requirement, and who ultimately changes the material's destination to one without a quarantine requirement, would be required to buy an equivalent amount of production allowances for any ozone-depleting substance, on an ozone-depleting potential (ODP) basis, and retire those allowances. In other words, the allowances could not be expended for new production in accordance with Subpart A of 40 CFR Part 82. For example, if a person used 1,000 kilograms of exempted methyl bromide on strawberry propagative material to meet the quarantine requirement of the intended destination but delivered the propagative material to a destination without a quarantine requirement, that person would be required to purchase the ODP equivalent of 1,000 kilograms of methyl bromide production allowances to compensate for the United States' exceeding the methyl bromide production cap.

A second approach would be for the person to destroy an amount of ozone-depleting substances that is equivalent on an ODP basis. Thus, the person would be required to purchase and destroy quantities of existing stocks of ozone-depleting substances, rather than being required to purchase and retire allowances, as in the first approach.

A third approach would require the person to purchase, and store, a quantity of non-exempt methyl bromide equivalent to the quantity of exempt methyl bromide used in the growing of propagative material. This stored (banked) quantity of non-exempt methyl bromide would be insurance against the need to compensate for the United States' specific methyl bromide compliance obligations of zero production after the phaseout, or in the case when all production and consumption allowances had been expended for the particular control period prior to the phaseout. If, in this third option, the propagative material was in fact sent to a destination with a quarantine requirement for that particular propagative material, the person could then sell or use the quantity of non-exempt methyl bromide that was being stored as "insurance". However, if the propagative material was ultimately sent to a destination without a quarantine requirement and compensatory measures were needed to ensure the United States meets its compliance obligations under the Protocol, the person holding the stored quantity of non-exempt methyl bromide would be required to pay for its destruction. This option addresses issues of the long time horizon between methyl bromide use and the shipment of the propagative material, as well as the United States' specific methyl bromide compliance obligations under the Protocol both before and after the phaseout.

EPA is seeking comments regarding compliance and enforcement issues related to soil uses of methyl bromide for propagative material to meet quarantine requirements, in general, as well as the specific approaches described above. In addition, the Agency is seeking information on existing certification programs and recordkeeping requirements associated with the pre-plant soil use of methyl bromide for growing propagative material to meet quarantine requirements. EPA is seeking comments on the possible recordkeeping and reporting aspects of the specific approaches described above for rectifying possible non-compliance. Resolving these compliance monitoring and enforcement issues will be important not only to ensure U.S. compliance with obligations under the Protocol but also to maintain a level playing field for all growers in each particular commodity market.

F. How Do These Definitions Apply to In-Transit Applications?

With today's action, for the interim period through December 31, 2002, quantities of methyl bromide used to control quarantine pests on commodities in-transit to the U.S. or traveling within the U.S. are exempt when the use is to meet a quarantine, official control requirement that lists methyl bromide (see discussion in Part V.C. above). Quantities of methyl bromide used to control quarantine pests on commodities that are in-transit from the U.S. to another country, to meet the importing country's quarantine requirements, are also exempt. However, for the interim period, the in-transit application of methyl bromide after a shipment leaves the United States is not an exempt preshipment application because the application would not occur "within 21 days prior to export" from the United States (emphasis added). As above, it should

be noted that for purposes of today's regulation, the word "export" is interpreted to mean the departure of a commodity from the United States or another foreign country.

EPA is seeking comments on the extent of the practice of fumigating commodities for non-quarantine purposes while in-transit.

VI. What Is the Process for Exempting Methyl Bromide for Use in Quarantine and Preshipment Applications?

With this action, EPA is establishing a process to exempt methyl bromide used for quarantine and preshipment applications from the Allowance Program's control measures that phase out production and consumption of methyl bromide (described in Part I. Background above). Today's action exempts quantities of methyl bromide used for quarantine and preshipment applications from the production and consumption reduction steps through December 31, 2002. The final version of this rule will address the exemption for quantities of methyl bromide used for quarantine and preshipment applications for the period that includes the remaining reduction steps and the eventual phaseout of production and consumption under the Montreal Protocol and Clean Air Act.

EPA is creating a flexible process for exempting production and consumption of methyl bromide for quarantine and preshipment applications that is responsive to demands arising when commodities need to be protected from infestations by quarantine pests and when commodities need to be protected immediately prior to shipment in accordance with official requirements. Today's action includes a certification and reporting procedure under authority of the Clean Air Act (CAA) that exempts production and consumption of methyl bromide for quarantine and preshipment applications from the reduction steps through December 31, 2002.

A. Are Producer and Importer Quarterly Reports and Recordkeeping Changing?

Producers and importers must distinguish between quantities of methyl bromide produced or imported for quarantine and preshipment applications and quantities produced or imported for other categories, such as transformation, when submitting quarterly reports that are otherwise currently required under § 82.13. As with quantities for transformation, the quantities of methyl bromide produced or imported for quarantine and preshipment applications are exempt, and are not counted against a company's production allowances and consumption allowances. In other words, the quantity reported specifically for quarantine and preshipment applications by the producer or importer will not be counted when determining the production allowances and consumption allowances expended during the quarter. The production allowances and consumption allowances held by each U.S. company at the beginning of the year, in accordance with § 82.5, § 82.6 and § 82.7, establish the U.S. limit on the amount of production and consumption of methyl bromide for all non-exempted uses in accordance with obligations under the Montreal Protocol. The relationship between each company's baseline production allowances and baseline consumption allowances and the reduction steps in these allowances is in accordance with the control measures under the Montreal Protocol and the Clean Air Act as described in Part I of today's rule and in the direct final rule published in the **Federal Register** on November 28, 2000 (65 FR 70795).

Methyl bromide produced or imported and specifically designated for quarantine and preshipment applications will not be counted as net production or net import for the purposes of the Allowance Program. Net production or net import represents the number of production allowances and consumption allowances expended by a company. Currently, producers and importers provide information on the gross quantity of methyl bromide produced or imported in a quarter. In the same quarterly report, producers and importers indicate the quantity specifically designated for transformation and the quantity specifically designated for destruction which are exempt from the reduction steps and phaseout. These quantities for transformation and for destruction are subtracted from the gross quantity in order to calculate a company's net production or net import. With today's action, producers and importers must also provide information on the quantity of methyl bromide designated solely for quarantine and preshipment applications. This quantity of methyl bromide solely for quarantine and preshipment applications is exempt and producers and importers should also subtract it from the gross quantity in order to calculate net production or net import. Finally, domestic purchasers (distributors or customers) must provide producers and importers with certifications of the quantities being purchased that are designated solely for quarantine and preshipment applications (discussion of requirements for foreign purchasers appears below in Part VI.D). Certifications from distributors will attest that the material will be sold only for quarantine and preshipment applications, and certifications from applicators purchasing directly from a producer or importer will attest that the material will be used only for quarantine and preshipment applications.

In developing today's regulation, EPA initially considered a system of refunding allowances to producers and importers based on amounts of methyl bromide certified as having been purchased solely for quarantine and preshipment applications reported to the Agency by distributors. However, EPA decided a process of refunding allowances would be time-consuming and would likely impede the commercial availability of methyl bromide. EPA also believes a process of refunding allowances to producers and importers based on certification of purchases solely for quarantine and preshipment applications would be more burdensome to implement for both the industry and the Agency. With this action, EPA is simply exempting through December 31, 2002, methyl bromide production and import for quarantine and preshipment applications from the requirement to expend allowances, as is currently done for methyl bromide for transformation or destruction.

In developing today's action, EPA also considered another option for exempting methyl bromide for quarantine and preshipment applications. EPA considered a procedure that would allow the Agency to follow specific quantities of quarantine or preshipment methyl bromide through the chain of commerce (similar to a RCRA hazardous waste manifest) but rejected this option as being overly burdensome with little additional benefit. The option of a manifest system to track quarantine and preshipment quantities through the market would have relied on methyl bromide's regulation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). As a FIFRA regulated substance, cylinders of methyl bromide are marked with unique registration numbers and labels that prescribe the use of the substance. Although EPA is not tracking cylinders by registration number through the chain of commerce, the Agency is still working with industry on a possible change to the FIFRA label (see Part VI.E below) which would reflect requirements of this rulemaking under CAA authority. If the

FIFRA label on methyl bromide is changed in the future to create a unique product solely for quarantine and preshipment applications, in accordance with the provisions of the Protocol and CAA, then EPA believes identifying material that is exempt because it is designated explicitly for quarantine and preshipment applications will be facilitated.

B. Are Methyl Bromide Applicators Required To Report?

Today's action includes a certification requirement for purchases of methyl bromide by applicators. Applicators must submit a certification to the seller of the methyl bromide when they want to purchase a specific quantity of methyl bromide explicitly for quarantine and preshipment applications. The applicator will certify that the quantity purchased will be used solely for quarantine and preshipment applications. The applicator must send the certification to the company selling the methyl bromide before the seller ships the cylinders of methyl bromide (*i.e.*, certification before shipment).

With today's action, for the interim period through December 31, 2002, the distributor must send a Quarantine and Preshipment Certification Form to any person who places an order for a quantity of methyl bromide that is explicitly and solely for quarantine and preshipment applications as defined in today's action. The applicator, upon receiving the form, must check the box indicating that the particular quantity being ordered is solely for quarantine and preshipment applications as defined on the form (the definition above in Part V) and will neither be sold nor used for any other purpose. The applicator must sign the form certifying, under penalty of law, that the quantity of methyl bromide purchased will be used solely for quarantine and preshipment applications in accordance with the definitions. The applicator must return the completed and signed form to the distributor. The distributor retains the certification form in order to compile data that they will submit to EPA on the quantity of methyl bromide purchased under the exemption for quarantine and preshipment applications. The certification form ensures that quantities of methyl bromide produced or imported under the exemption for quarantine and preshipment applications are used only in accordance with the strict requirements of the exemption. It is important to note that the applicator will also be able to purchase non-exempt methyl bromide until the phaseout date for methyl bromide.

Today's interim rule does not require the distributor to send a Certification Form for every methyl bromide purchase " instead, distributors are only required to send a Certification Form when an applicator wants to purchase a quantity solely for quarantine and preshipment applications. However, the distributor of methyl bromide may want to send the Certification Form to customers (applicators) for every methyl bromide quantity before the actual purchase and shipment of the material. Doing so would allow the distributor and the applicator to distinctly track the quantities of exempt and non-exempt methyl bromide. To assist in developing the final rule, EPA is seeking comments on the merits and burdens associated this type of shipment-by-shipment certification method as compared to the approach outlined in today's rule. EPA is also interested in comments addressing the implications of a FIFRA label for exempt quantitites of methyl bromide (as discussed in Part VI.E. below).

For quarantine applications, the applicator must collect documentation citing the regulatory requirement or other official requirement that justifies the use of methyl bromide. Acceptable documentation for a quarantine application includes the forms provided directly to the applicator by an official from a national plant, animal, environmental protection or health authority requesting the treatment of commodities to control quarantine pests. In the absence of official documentation from a plant, animal, environmental protection or health authority, the commodity owner, shipper or their agent must provide a letter to the methyl bromide applicator requesting the use of methyl bromide that explicitly cites the regulation requiring a quarantine treatment or quarantine official control. Likewise, the applicator must collect documentation citing the official requirement calling for a preshipment application. The commodity owner, shipper or their agent must provide a letter to the methyl bromide applicator requesting the use of methyl bromide that explicitly cites the official requirement for a preshipment application. The letter that the commodity owner, shipper or their agent presents to the applicator must include the following statement: "I certify knowledge of the requirements associated with the exempted quarantine and preshipment applications published in 40 CFR part 82, including the requirement that this letter cite the treatments or official controls for quarantine applications or the official requirements for preshipment requirements." Both the commodity owner, shipper or their agent and the applicator must maintain this letter for three years in accordance with current recordkeeping requirements in 40 CFR part 82, subpart A. Neither the applicator nor the commodity owner, shipper or their agent are required to submit the letter to EPA. EPA is seeking comments on these procedures, for purposes of developing the final rule.

C. Are Distributors Required To Report?

With today's action, for the interim period through December 31, 2002, EPA is requiring that a person who distributes methyl bromide to applicators (the distributor) compile all the information from applicator certifications (as described in Part VI.B, above) on an annual basis and submit the summary data to EPA. If certifications were signed by applicators at the time the specific quantity of methyl bromide was ordered, in accordance with the procedures described above in VI.B. but the signature of the certification was before date of today's publication, then the distributor can consider those quantities exempt and should include them in the annual report to EPA. In other words, if certifications were signed contemporaneously with an order for a quantity of methyl bromide solely for quarantine and preshipment applications, the distributor should include this quantity in their annual report to EPA, as long as the certifications were signed within the 2001 or 2002 control periods (calendar years).

In development of the final version of this regulation, EPA is seeking comments on whether annual, bi-annual or quarterly reporting of this information would be easier to manage for the distributors of methyl bromide. Companies responsible for reporting on other ozone-depleting substances have clearly expressed their preference for quarterly reporting because it reduces the burden of an end-of-year crunch to compile twelve months of data. Regardless of the reporting periodicity, the distributor must compile all certifications received during the period to obtain the total quantity that purchasers certified to be for quarantine and preshipment applications. The collection of information on the quantity of methyl bromide sold and certified for quarantine and preshipment applications is needed so that the U.S. can respond to a recent amendment to the Protocol. The amendment, to which the Parties agreed

at their Eleventh Meeting in Beijing in 1999, adds a provision to Article 7 (Reporting of Data), requiring Parties to submit information on the amounts of methyl bromide used for quarantine and preshipment applications. Reporting by the distributors will allow a comparison between the quantities of methyl bromide sold and certified for quarantine and preshipment applications with the amount of methyl bromide produced and imported for quarantine and preshipment applications, as reported in the producers'/importers' report as described in Part VI.A above.

D. What About Reporting of Methyl Bromide Exported for Quarantine and Preshipment Applications?

EPA considered many options for collecting information on the quantity of methyl bromide produced in the U.S. and then exported for quarantine and preshipment applications. With today's action, producers and others that export methyl bromide must report the total quantity of methyl bromide explicitly exported to individual foreign countries for quarantine and preshipment applications on a quarterly basis. Currently, producers and exporters distinguish other exempted quantities of methyl bromide explicitly exported for transformation or destruction. For each export of methyl bromide for quarantine and preshipment applications, as for exports for transformation or destruction, the exporter must obtain a certification from the foreign person (entity) importing the methyl bromide stating that the material will be used only for quarantine and preshipment applications. These certifications must be submitted with the quarterly reports. These certifications will then be shared with the appropriate foreign government officials in the importing country and the compiled data will be shared with UNEP advisory bodies to the Protocol. Certifications must accompany the reporting on quantities exported for quarantine and preshipment applications because of a concern that the U.S., as one of the largest worldwide producers of methyl bromide, could potentially contribute to the creation of a loophole for non-exempt uses of methyl bromide around the globe. EPA feels it will be important to closely monitor and track production of methyl bromide that is exported for quarantine and preshipment applications because these uses are exempt from Protocol control measures.

EPA considered linking periodic reporting on the quantity of methyl bromide exported for quarantine and preshipment applications with a system for refunding allowances. EPA also considered the option of establishing a ceiling on the export of exempted methyl bromide for quarantine and preshipment applications according to historical export levels. EPA considered this option because the U.S. is one of the largest global producers of methyl bromide and EPA is concerned that exempted production of methyl bromide for quarantine and preshipment exports might become a loophole if those exempted quantities were to be used by other Parties for non-quarantine or non-preshipment applications. At this time, EPA has no indication that abuse of the quarantine and preshipment exemption will occur, but the Agency will monitor the situation closely. For development of the final version of the rule, EPA is seeking comments on today's recordkeeping and reporting requirements and other variations for monitoring quantities of methyl bromide produced in the U.S. and exported for quarantine and preshipment applications.

E. Will There Be a FIFRA Pesticide Label Change?

In parallel with today's action, EPA's Office of Pesticide Programs is working with the Methyl Bromide Industry Panel to develop a registration and label change for methyl bromide products under authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The proposed registration/label change under FIFRA would create unique methyl bromide products solely and specifically for quarantine and preshipment applications. A registration/label change would designate individual cylinders of methyl bromide specifically for quarantine and preshipment applications and it would be illegal to use the material in these cylinders for other uses. Under an approved registration/label change there would be unique registration numbers for the new labels that would accompany each cylinder through the chain of commerce from producers or importers to the end-user (the applicator). As currently required under FIFRA, establishments would report total quantities of methyl bromide under this new quarantine and preshipment registration/label to EPA's Office of Pesticide Programs on an annual basis. Following a change in the FIFRA authorized registration/label, as well as today's final action, it will be possible for the Agency to reconcile the total quantity of methyl bromide certified to be solely for quarantine and preshipment applications under procedures described Part VI.B and VI.C above, the total quantity of methyl bromide produced or imported for quarantine and preshipment applications under today's Part VI.A above, and the annual FIFRA establishment reports on methyl bromide, which reference specific products by registration number.

VII. What Are Other Considerations and Situations on Which EPA Is Seeking Comment?

EPA is seeking comments on the following paragraphs that describe possible variations on the exemption that have not been incorporated into today's action and therefore are not effective during the interim period (through December 31, 2002). To assist in developing the final version of the regulation, EPA is seeking comments regarding the items described below. In addition, EPA will consider comments and questions regarding aspects of today's action that are effective for the interim period. If a person has a question about whether a certain aspect of today's interim action applies to their situation, EPA is encouraging the submission of written questions accompanied by a detailed description of how methyl bromide relates to the person's particular enterprise. The Agency will consider questions about whether aspects of today's interim action apply in the context of EPA's regular process for issuing written determinations.

A. What Are Considerations on Which the Agency Is Seeking Comment Regarding Definitions Under the International Plant Protection Convention (IPPC)?

Under the International Standards for Phytosanitary Measures (ISPMs) adopted by members of the International Plant Protection Convention (IPPC) on April 22, 2001, the definition of "official control" is different than the definition that was agreed to by the Parties to the Montreal Protocol. The IPPC definition of the phrase "official control" is, "the active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or the management of regulated non-quarantine pests." The IPPC glossary of phytosanitary terms defines "official" as "established, authorized or performed by a National Plant Protection Organization (NPPO)." In the United States, the NPPO is the USDA Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ) Program.

Further, under the ISPMs adopted by the IPPC, the phrase "regulated non-quarantine pests" is defined as, "a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of the importing contacting party." Because the IPPC definition of "regulated non-quarantine pest" refers to "plants for planting," the phytosanitary measure is limited to propagative materials, such as strawberry seedlings. Although the IPPC's definition of "official control" includes regulated non-quarantine pests, it should be noted that the Montreal Protocol does not include these regulated non-quarantine pests. In 1998, the TEAP explicitly laid out the differences between the IPPC's and the Montreal Protocol's definitions of "official control" for consideration by the Parties. The Parties rejected making any changes to the Protocol's definition of "official control" even when presented with the IPPC language. EPA is seeking comments on possible changes to EPA's interpretation of the phrase "official control" as used in today's exemption, for purposes of the final rule.

B. What Are considerations on Which the Agency Is Seeking Comment Regarding Prophylactic Fumigation of U.S. Exports When the Fumigation Is Not Mandated by Import Regulations?

U.S. businesses sometimes use methyl bromide against non-quarantine pests for a commodity that is being exported because it is known that the importing country will treat with methyl bromide at the port of entry if the detected level of these non-quarantine pests during port-of-entry inspection exceeds that country's standards. Some U.S. exporters give their commodities a prophylactic treatment in the U.S. to prevent a much more damaging treatment in the receiving country that could occur if non-quarantine pests were found; possibly reducing the quality of the commodity. In cases where an official foreign Party requirement is specific to quarantine pests, or there is a general performance-based quarantine requirement, the use of methyl bromide under the exemption for quarantine applications would be appropriate. In addition, fumigation with methyl bromide to meet U.S. government non-quarantine pest requirements within 21 days prior to export of the commodity would also be exempt under the definition of preshipment applications. However, EPA is seeking comments that would clarify the scope of the prophylactic use of methyl bromide described in this section, where the official foreign Party requirement is *not* specific to quarantine pests.

C. What Are Considerations on Which the Agency Is Seeking Comment Regarding the Exclusion of Specific Quarantine and Preshipment Applications From the Exemption at Some Future Time?

The Parties to the Protocol in Decision XI/13 request Parties to "review their national plant, animal, environmental, health and stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and preshipment where technically and economically feasible alternatives exist." The reason for a review process would be to limit the production and import of methyl bromide to only those cases where no other "technologically and economically feasible alternatives exist." Through time, it is likely that the use of methyl bromide will be less and less necessary for quarantine and preshipment applications. When technically and economically feasible alternatives to methyl bromide are available, a process could be devised that would allow the U.S. to limit the use of this ozone-depleting substance while taking into account the need to protect international trade. In the years beyond the methyl bromide production and consumption phaseout, there will continue to be an exemption for quarantine and preshipment applications but there may no longer be price pressures for moving away from these quarantine and preshipment uses of methyl bromide. Therefore, the Parties to the Protocol emphasize the importance of reviewing quarantine and preshipment applications and identifying when technically and economically feasible alternatives exist, and removing these applications from the exemption.

One option for implementing a review process would be to establish a procedure for excluding specific quarantine and preshipment applications from the exemption when EPA determines by notice and comment rulemaking that alternatives are in significant international use for the specific applications. Such a process would allow U.S. users of methyl bromide for quarantine and preshipment applications to make the case that although alternative(s) are in significant international use, the specific circumstances of their U.S. applications are unique (e.g., the alternatives are not feasible or commercially available in the U.S.) and continue to warrant the use of methyl bromide.

Other options for implementing a review process include: (1) Immediately prior to the 2005 methyl bromide phaseout, reviewing and listing all quarantine and preshipment applications that would be exempt beyond the phaseout through notice and comment rulemaking asking for justifications for continued use, (2) eliminating the exemption for quarantine and preshipment applications after the phaseout and asking users to apply for critical-use exemptions where no technically or economically feasible alternatives exist, and (3) conducting periodic reviews (i.e., 3 or 5 years) for listing through notice and comment rulemaking the specific quarantine and preshipment applications that would be exempt because there were no technically or economically feasible alternatives. EPA seeks comments on these and any other potential processes for reviewing the exemption for quarantine and preshipment applications, where technically and economically feasible alternatives exist.

As an alternative to a formal review process, EPA might rely on market prices to guide methyl bromide use. The effectiveness of this price mechanism is to some extent dependent on the behavior of methyl bromide prices over the phasedown period, and particularly on whether a separate market evolves for the pure grade of methyl bromide needed for quarantine and preshipment uses. Basic economic supply and demand principles suggest that the price of methyl bromide is likely to increase during the phaseout period, thereby providing incentives for the development and use of alternatives. Following the phaseout period after January 1, 2005, we expect the price of methyl bromide exempted for quarantine and preshipment applications (and other exemptions that may be established in the future) to likely be determined by the cost of manufacturing those quantities and not by further decreases in supply. We are interested in comments on this view. We are especially interested in comments addressing: (1) The likely behavior of the price of exempt and non-exempt quantities of methyl bromide during the phaseout; (2) the likely behavior of the price of exempt methyl bromide after the phaseout, (3) the impact on these prices of establishing a FIFRA label explicitly for the methyl bromide exempt for quarantine and preshipment applications, (4) the possible impact of

other Federal actions that would influence pricing of methyl bromide, and (5) the value of a price mechanism in assuring that methyl bromide is directed toward those uses where there are no alternatives and/or where it provides the greatest value.

D. What Are Considerations on Which the Agency Is Seeking Comment Regarding National Security Fumigations?

EPA is seeking comments on the possible need for methyl bromide to meet special national security quarantine requirements. The Agency understands that it might be necessary to treat military or other U.S. government property with methyl bromide for import to eliminate possible contamination with biological weapons. EPA is seeking comments on whether a national security quarantine situation could arise that would require a specific exemption. In considering this question, commenters should be aware that prior to the phaseout date some methyl bromide will still be produced without use restrictions, and after the phaseout date, methyl bromide would be available under the emergency use exemption consistent with Decision IX/7 as agreed by the Parties to the Protocol.

VIII. What Are the Steps To Conform the U.S. Methyl Bromide Phaseout Schedule and Exemptions to the Montreal Protocol and the Amended Clean Air Act?

During stakeholder meetings, and in the proposal and final rules that established the 25 percent reduction in methyl bromide baseline allowances beginning in 1999 (64 FR 9290, 64 FR 29240), EPA described its intention to follow with separate rulemakings that would include the additional phaseout steps for methyl bromide and establish additional exemptions in accordance with the Protocol and the CAA. The rule establishing the remaining reduction and phaseout schedule for methyl bromide was published November 28, 2000 (65 FR 70795). The reduction and phaseout schedule is listed above at the end of Part I.

After the phaseout on January 1, 2005, critical-use exemptions are permitted under the Montreal Protocol and the Clean Air Act when nominated by the United States and approved by the Parties. In addition, an emergency use exemption of no more than 20 metric tonnes is available after the phaseout on January 1, 2005. EPA, in consultation with the U.S. Department of Agriculture, is in the process of developing a rulemaking to establish the emergency-use and critical-use exemptions. In 2001, EPA initiated stakeholder meetings to develop rulemaking that will establish the process for an emergency use exemption and the process for critical-use exemptions, which will be designed to ensure the U.S. meets its obligations under the Montreal Protocol consistent with statutory requirements in the Clean Air Act. In 2002, a separate **Federal Register** notice will be published asking for people to submit specific information to substantiate requests for a critical-use exemption. However, at this time no decisions have yet been made regarding what uses will be exempted as "critical." Sometime in advance of 2005, EPA will establish a process for an emergecny use exemption through notice and comment rulemaking.

IX. Administrative Requirements

A. Unfunded Mandates Reform Act

Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as explained in the Supplementary Information section of this rulemaking, it is not subject to section 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as explained in the **SUPPLEMENTARY INFORMATION** section of this rulemaking, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant" regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations on the original rule submitted to them will be documented in the public record.

D. Applicability of E.O. 13045—Children's Health Protection

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This is not such a rule, and therefore E.O. 13045 does not apply.

E. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule for six (6) months under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and the emergency approval provisions of 5 CFR 1320.13. The OMB control number is 2060–0170.

Today's action also serves as the first notice of a request for comment on an extension of today's approval. EPA will follow this action with a second notice in the **Federal Register** regarding

today's information collection. EPA is soliciting comments on specific aspects of the information collection as described below. Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Comments must be submitted on or before September 17, 2001. Copies of material supporting this ICR notice are available free of charge from the Stratospheric Ozone Protection Hotline at 1–800–296–1996 between the hours of 10 am and 4 pm Eastern Standard Time or may be received electronically by sending an e-mail to land.tom@epa.gov. For further information contact, Tom Land, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202)–564–9185, or facsimile (202)–565–2155.

The EPA would like to solicit comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Office of Management and Budget (OMB) previously approved the information collection requirements contained in the final rule promulgated on August 4, 1998, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.18).

In relation to the expected benefits of today's exemption from the phaseout schedule for methyl bromide, this action is adding additional reporting and recordkeeping requirements. This action increases the information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action adds reporting by distributors of methyl bromide regarding the total quantity sold that is certified to be solely for quarantine and preshipment applications. This action also requires applicators of methyl bromide to certify that specified quantities purchased will be used solely for quarantine and preshipment applications. Producers and importers of methyl bromide must include additional information in existing quarterly reports. In addition, producers that export and third-party exporters must submit additional information regarding quantities of methyl bromide exported for quarantine and preshipment applications. Today's action also includes recordkeeping requirements associated with the reporting listed above and an additional recordkeeping requirement for commodity owners or shippers who must formally request methyl bromide use citing the treatment, official control or official requirement for the quarantine and preshipment application.

The information collection under this action is designed to implement the exemption in paragraph 5 under article 2H of the Montreal Protocol for quantities of methyl bromide used for quarantine and preshipment applications as well as the exemption under 604(d)(5) of the CAA. The information collection under this rule is authorized under sections 603(b) and 603(d) of the Clean Air Act Amendments of 1990 (CAA). This information collection is conducted to meet U.S. obligations under Article 7, Reporting Requirements, of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol); and to carry out the requirements of Title VI of the CAA, including sections 603 and 614.

The reporting requirements included in this rule are intended to:

(1) Allow exempted production and import for a specific exemption and the consequent tracking of that production and import;

(2) Respond to industry comments on the functioning of the program to streamline reporting and eliminate administrative inefficiencies;

(3) Satisfy U.S. obligations under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7;

(4) Fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act Amendments of 1990 (CAA) for reporting and monitoring;

(5) Provide information to report to Congress on the production, use and consumption of class I controlled substances as statutorily required in Section 603(d) of Title VI of the CAA.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B, and will be disclosed only to the extent, and by means of the procedures, set forth in that subpart. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

The information collection requirements for this action have an estimated reporting burden averaging 1.38 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing the collection of information.

The estimate includes the time needed to comply with EPA's reporting requirements, as well as that used for the completion of the reports.

Collection activity	No. of respondents	Responses/ respondent	Total responses	Hours per response	Total hours
Producers and Importers Report	4	4	16	1	16
Exporters Report	2	4	8	8	64
Applicator Certification	15	6	90	0.5	45
Distributor Report	15	1	15	16	240
Commodity Owner, Shipper or Agent Recordkeeping	500	10	500	1	500

Collection activity	No. of respondents	Responses/ respondent	Total responses	Hours per response	Total hours
Total Burden Hrs					865

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

F. Executive Order 13132 (Federalism):

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not in any way restrict States from continuing to operate their plant, animal, environmental, health or stored product protection programs associated with quarantine and preshipment applications. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On January 1, 2001, EO 13084 was superseded by EO 13175. However, this rule was developed during the period when EO 13084 was still in force, and so tribal considerations were addressed under EO 13084. Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies or matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any enforceable duties on communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 13211 (Energy Effects)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

X. Congressional Review

A. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 19, 2001.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Methyl Bromide, Quarantine, Preshipment, Ozone layer.

Dated: July 11, 2001.

Christine Todd Whitman,

Administrator.

For reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for subpart 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.3 is amended by adding new definitions in alphabetical order for the terms, "Applicator", "Commodity owner, shipper or their agent", "Distributor of methyl bromide", "Preshipment applications", and "Quarantine applications".

§ 82.3 Definitions.

As used in this subpart, the term:

Applicator means the person who applies methyl bromide.

* * * * *

Commodity owner, shipper or their agent means the person requesting that an applicator use methyl bromide for quarantine or preshipment applications.

* * * * *

Distributor of methyl bromide means the person directly selling a class I, Group VI controlled substance to an applicator.

* * * * *

Preshipment applications, with respect to class I, Group VI controlled substances, are those non-quarantine applications applied within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority.

* * * * *

Quarantine applications, with respect to class I, Group VI controlled substances, are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where:

(1) Official control is that performed by, or authorized by, a national plant, animal or environmental protection or health authority;

(2) Quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.

* * * * *

3. Section 82.4 is amended by redesignating paragraph (a) as (a)(1) and republishing the text, adding paragraph (a)(2), redesignating paragraph (c) as (c)(1) and republishing the text, adding paragraph (c)(2), redesignating paragraph (k) as (k)(1) and republishing the text, and adding paragraph (k)(2) as follows:

§ 82.4 Prohibitions.

(a)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, no person may produce, at any time in any control period, (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of unexpended production allowances or unexpended Article 5 allowances for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

(2) From January 1, 2001 through December 31, 2002, production of class I, Group VI controlled substances is not subject to the prohibitions in paragraph (a)(1) of this section if it is solely for quarantine or preshipment applications as defined in this Subpart.

* * * * *

(c)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, no person may produce or (except for transhipments, heels or used controlled substances) import, at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended consumption allowances held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production or importation (other than transhipments, heels or used controlled substances) constitutes a separate violation of this subpart.

(2) From January 1, 2001 through December 31, 2002, production and import of class I, Group VI controlled substances is not subject to the prohibitions in paragraph (c)(1) of this section if it is solely for quarantine or preshipment applications as defined in this Subpart.

* * * * *

(k)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, a person may not use production allowances to produce a quantity of a class I controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, prior to January 1, 1996, for all class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, only consumption allowances are required to import, with the exception of transhipments, heels, used controlled substances. Effective January 1, 1996, for all Groups of class I controlled substances, except Group VI, only essential-use allowances or exemptions are required to import class I controlled substances, with the exception of transhipments, heels and used controlled substances.

(2) Notwithstanding paragraph (k)(1) of this section, from January 1, 2001 through December 31, 2002, for class I, Group VI controlled substances, consumption allowances are not required to import quantities solely for quarantine or preshipment applications as defined in this Subpart.

* * * * *

4. Section 82.13 is amended by:

a. Adding paragraphs (f)(2)(xvii) through (f)(2)(xix), and (f)(3)(xiii) through (f)(3)(xv),

b. Adding paragraphs (g)(1)(xvii) through (g)(1)(xix), and (g)(4)(xv) through (g)(4)(xvii),

c. Revising paragraph (h),

(d). Adding paragraphs (aa), (bb), and (cc).

The revisions and additions read as follows:

§ 82.13 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(2) * * *

(xvii) For class I, Group VI controlled substances, dated records of the quantity of controlled substances produced for quarantine and preshipment applications and quantity sold for quarantine and preshipment applications;

(xviii) Written certifications that quantities of class I, Group VI controlled substances produced solely for quarantine and preshipment applications were purchased by distributors or applicators to be used only for quarantine and preshipment applications in accordance with the definitions in this Subpart; and

(xix) Written verifications from a U.S. purchaser that class I, Group VI controlled substances produced solely for quarantine and preshipment applications, if exported, will be exported solely for quarantine and preshipment applications upon receipt of a certification in accordance with the definitions of this Subpart and requirements in paragraph (h) of this section.

(3) * * *

(xiii) The amount of class I, Group VI controlled substances sold or transferred during the quarter to a person other than the producer solely for quarantine and preshipment applications;

(xiv) A list of the quantities of class I, Group VI controlled substance produced by the producer and exported by the producer and/or by other U.S. companies, to a Party to the Protocol that will be used solely for quarantine and preshipment applications and therefore were not produced expending production or consumption allowances; and

(xv) For quarantine and preshipment applications of class I, Group VI controlled substances in the United States or by a person of another Party, one copy of a certification that the material will be used only for quarantine and preshipment applications in accordance with the definitions in this Subpart from each recipient of the material and a list of additional quantities shipped to that same person for the quarter.

* * * * *

(g) * * *

(1) * * *

(xvii) For class I, Group VI controlled substances, dated records of the quantity of controlled substances imported for quarantine and preshipment applications and quantity sold for quarantine and preshipment applications;

(xviii) Written certifications that quantities of class I, Group VI controlled substances imported solely for quarantine and preshipment applications were purchased by distributors or applicators to be used only for quarantine and preshipment applications in accordance with the definitions in this Subpart; and

(xix) Written verifications from a U.S. purchaser that class I, Group VI controlled substances imported solely for quarantine and preshipment applications, if exported, will be exported solely for quarantine and preshipment applications upon receipt of a certification in accordance with the definitions of this Subpart and requirements in paragraph (h) of this section.

* * * * *

(4) * * *

(xv) The amount of class I, Group VI controlled substance sold or transferred during the quarter to a person other than the importer solely for quarantine and preshipment applications;

(xvi) A list of the quantities of class I, Group VI controlled substance exported by the importer and or by other U.S. companies, to a Party to the Protocol that will be used solely for quarantine and preshipment applications and therefore were not imported expending consumption allowances; and

(xvii) For quarantine and preshipment applications of class I, Group VI controlled substances in the United States or by a person of another Party, one copy of a certification that the material will be used only for quarantine and preshipment applications in accordance with the definitions in this Subpart from each recipient of the material and a list of additional quantities shipped to that same person for the quarter.

(h) *Reporting Requirements—Exporters.*

(1) For any exports of class I controlled substances (except Group VI) not reported under § 82.10 of this subpart (additional consumption allowances), or under paragraph (f)(3) of this section (reporting for producers of controlled substances), the exporter who exported a class I controlled substance (except Group VI) must submit to the Administrator the following information within 45 days after the end of the control period in which the unreported exports left the United States:

(i) The names and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employee Identification Number;

(iii) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance is used, recycled or reclaimed;

(iv) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(v) The country to which the controlled substances were exported;

(vi) The amount exported to each Article 5 country;

(vii) The commodity code of the controlled substance shipped; and

(viii) The invoice or sales agreement containing language similar to the Internal Revenue Service Certificate that the purchaser or recipient of imported controlled substances intends to transform those substances, or destruction verifications (as in paragraph(k) of this section) showing that the purchaser or recipient intends to destroy the controlled substances.

(2) For any exports of class I, Group VI controlled substances not reported under § 82.10 of this subpart (additional consumption allowances), or under paragraph (f)(3) of this section (reporting for producers of controlled substances), the exporter who exported a class I, Group VI controlled substance must submit to the Administrator the following information within 45 days after the end of each quarter in which the unreported exports left the United States:

(i) The names and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employee Identification Number;

(iii) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance is used, recycled or reclaimed;

(iv) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(v) The country to which the controlled substances were exported;

(vi) The amount exported to each Article 5 country;

(vii) The commodity code of the controlled substance shipped; and

(viii) The invoice or sales agreement containing language similar to the Internal Revenue Service Certificate that the purchaser or recipient of imported controlled substances intends to transform those substances, the

destruction verifications (as in paragraph (k) of this section) showing that the purchaser or recipient intends to destroy the controlled substances, or the certification that the purchaser or recipient and the eventual applicator will only use the material for quarantine and preshipment applications in accordance with the definitions in this Subpart.

* * * * *

(aa) Every distributor of methyl bromide (class I, Group VI controlled substances) who purchases or receives a quantity produced or imported solely for quarantine or preshipment applications under the exemptions in this Subpart must comply with recordkeeping and reporting requirements specified in this paragraph (aa) of this section.

(1) Every distributor of methyl bromide must certify to the producer or importer that quantities received that were produced or imported solely for quarantine and preshipment applications under the exemptions in this Subpart will be used only for quarantine applications or preshipment applications in accordance with the definitions in this Subpart.

(2) Every distributor of a quantity of methyl bromide that was produced or imported solely for quarantine or preshipment applications under the exemptions in this Subpart must receive from an applicator a certification of the quantity of class I, Group VI controlled substances ordered, prior to delivery of the quantity, stating that the quantity will be used solely for quarantine or preshipment applications in accordance with definitions in this Subpart.

(3) Every distributor of methyl bromide who receives a certification from an applicator that the quantity ordered and delivered will be used solely for quarantine and preshipment applications in accordance with definitions in this Subpart must maintain the certifications as records for 3 years.

(4) Every distributor of methyl bromide who receives a certification from an applicator that the quantity ordered and delivered will be used solely for quarantine and preshipment applications in accordance with definitions in this Subpart must report to the Administrator within 45 days after the end of the control period, the total quantity delivered for which certifications were received that stated the class I, Group VI controlled substance would be used solely for quarantine and preshipment applications in accordance with definitions in this Subpart.

(bb) Every applicator of class I, Group VI controlled substances who purchases or receives a quantity produced or imported solely for quarantine and preshipment applications under the exemptions in this Subpart must comply with recordkeeping and reporting requirements specified in this paragraph (bb) of this section.

(1) Recordkeeping—Applicators. Every applicator of class I, Group VI controlled substances produced or imported solely for quarantine and preshipment applications under the exemptions of this Subpart must maintain, for every application, a document from the commodity owner, shipper or their agent requesting the use of class I, Group VI controlled substances citing the regulatory requirement that justifies its use in accordance with definitions in this Subpart. These documents shall be retained for 3 years.

(2) Reporting—Applicators. Every applicator of class I, Group VI controlled substances who purchases or receives a quantity of class I, Group VI controlled substance that was produced or imported solely for quarantine and preshipment applications under the exemptions in this Subpart shall provide the distributor of the methyl bromide, prior to shipment of the class I, Group VI controlled substance, with a certification that the quantity of controlled substances will be used only for quarantine and preshipment applications as defined in this Subpart.

(cc) Every commodity owner, shipper or their agent requesting an applicator to use a quantity of class I, Group VI controlled substance that was produced or imported solely for quarantine and preshipment applications under the exemptions of this Subpart must maintain a record for 3 years, for each request, certifying knowledge of the requirements associated with the exemption for quarantine and preshipment applications in this Subpart and citing the regulatory requirement that justifies the use of the class I, Group VI controlled substance in accordance with definitions in this Subpart.

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Thursday,
July 19, 2001

Part IV

Environmental Protection Agency

40 CFR Parts 152 and 174
Plant-Incorporated Protectants; Final Rules and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152 and 174

[OPP–300369B; FRL–6057–7]

RIN 2070–AC02

Regulations Under the Federal Insecticide, Fungicide, and Rodenticide Act for Plant-Incorporated Protectants (Formerly Plant-Pesticides)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The substances plants produce for protection against pests, and the genetic material necessary to produce these substances, are pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), if humans intend to use these substances for "preventing, repelling or mitigating any pest." In this rule, EPA finalizes certain of the proposed rules published in 1994, 1996, and 1997. Specifically, EPA changes the name of this type of pesticide from "plant-pesticide" to "plant-incorporated protectant"; clarifies the relationship between plants and plant-incorporated protectants under FIFRA; exempts from FIFRA requirements plant-incorporated protectants derived through conventional breeding from sexually compatible plants; and establishes a new part in the Code of Federal Regulations (CFR) specifically for plant-incorporated protectants. Procedures are also set forth for Confidential Business Information (CBI); any claim of confidentiality must be substantiated when the claim is made. This rule will benefit the public by ensuring that public health and the environment are adequately protected while reducing burden on the regulated community, thereby potentially reducing costs for consumers.

DATES: This rule is effective September 17, 2001.

FOR FURTHER INFORMATION CONTACT: Philip Hutton, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8260; e-mail address: hutton.phil@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a person or company involved with agricultural biotechnology that may develop and market plant-incorporated protectants. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Pesticide manufacturers	32532	Establishments primarily engaged in the formulation and preparation of agricultural and household pest control chemicals
Seed companies	111	Establishments primarily engaged in growing crops, plants, vines, or trees and their seeds
Colleges, universities, and professional schools	611310	Establishments of higher learning which are engaged in development and marketing of plant-incorporated protectants
Establishments involved in research and development in the life sciences	54171	Establishments primarily engaged in conducting research in the physical, engineering, or life sciences, such as agriculture and biotechnology

This table is not intended to be exhaustive, but rather provides a guide for readers regarding the types of entities potentially affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the provisions in 40 CFR part 174. If you have any questions regarding applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations", "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about EPA's program for biopesticides go directly to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/biopesticides.

2. *In person.* The Agency has established an official record for this action under the docket control number OPP–300369B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Record Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Under What Authority Is EPA Issuing The Rule?

A. FIFRA

This rule is promulgated under the authority of FIFRA section 3 and section 25(a) and (b) (7 U.S.C. 136a and 136w(a) and (b)) and FFDCA section 346a and 371.

FIFRA section 3(a) provides, with some exceptions, that no person may distribute or sell in the United States any pesticide that is not registered

under the Act (7 U.S.C. 136a(a)). FIFRA section 2(u) defines "pesticide" as: "(1) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer" (7 U.S.C. 136(u)). Under FIFRA section 2(t), the term "pest" includes "(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism" with certain exceptions (7 U.S.C. 136(t)).

Although FIFRA requires the registration of most pesticides, it also authorizes the regulation of unregistered pesticides. FIFRA section 3(a) provides that, to the extent necessary to prevent unreasonable adverse effects on the environment, the Administrator may limit the distribution, sale, or use of any pesticide that is not registered under section 3 of FIFRA, or subject to an experimental use permit under section 5 of FIFRA, or subject to an emergency exemption under section 18 of FIFRA (7 U.S.C. 136a(a)). Pesticides that are "not registered" include pesticides that are exempt from FIFRA requirements under section 25(b).

Before EPA may register a pesticide under FIFRA, the applicant must show that the pesticide "when used in accordance with widespread and commonly recognized practice, . . . will not generally cause unreasonable adverse effects on the environment" (7 U.S.C. 136a(c)(5)). The term "environment" includes "water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these" (7 U.S.C. 136(j)). FIFRA section 2(bb) defines the term "unreasonable adverse effects on the environment" to mean: "(1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or (2) a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the Federal Food, Drug, and Cosmetic Act" (7 U.S.C. 136(bb)).

When EPA published its proposed rules and policy for plant-incorporated protectants in 1994, the FIFRA definition of "unreasonable adverse effects" contained only the first criterion of unreasonable risk to man or the environment. Subsequently, Congress enacted the Food Quality Protection Act (FQPA) in 1996, and expanded the FIFRA definition of "unreasonable adverse effects on the environment" by adding the second criterion of consistency with the standard under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (Public Law 104–170 (August 3, 1996)). As a result of this change, a pesticide must meet both criteria of the unreasonable adverse effects test to qualify for registration. In the case of a pesticide whose use would not result in residues in or on food, the second criterion would not apply. Once a pesticide has been registered, it may be sold and distributed in the United States.

Section 25(b)(2) of FIFRA allows EPA to exempt, by regulation, any pesticide from some or all of the requirements of FIFRA, if the pesticide is of a character which is unnecessary to be subject to FIFRA in order to carry out the purposes of that Act (7 U.S.C. 136w(b)(2)). EPA interprets FIFRA section 25(b)(2) to authorize EPA to exempt a pesticide or category of pesticides that EPA determines poses a low probability of risk to the environment, and that is not likely to cause unreasonable adverse effects to the environment even in the absence of regulatory oversight under FIFRA.

To determine whether a pesticide qualifies for an exemption under section 25(b)(2), EPA evaluates both the potential risks and benefits of the use of the pesticide. In evaluating a pesticide under the first exemption criterion, whether use of the pesticide poses a low probability of risk to the environment, EPA considers the extent of the potential risks caused by use of the pesticide to the environment, including humans and other animals, plants, water, air and land. Potential risks to humans include dietary risks as well as non-dietary risks such as those resulting from occupational or residential exposure to the pesticide. EPA uses the FFDCA section 408 standard in evaluating dietary risks as discussed in Unit II.B. EPA will not exempt pesticides under section 25(b)(2) that fail the low probability of risk criterion.

In evaluating a pesticide under the second exemption criterion, whether the use of the pesticide is likely to cause unreasonable adverse effects on the environment even in the absence of regulatory oversight under FIFRA, EPA balances all the potential risks to human health, including any dietary risks (see Unit II.B. for a discussion of the relationship between this finding and section 408 of the FFDCA), and risks to the remainder of the environment from use of the pesticide against the potential benefits associated with its use. In balancing risks and benefits, EPA considers the economic, social, and environmental costs and benefits of the use of the pesticide. If the pesticide meets both exemption criteria, EPA may exempt the pesticide from regulation under FIFRA section 25(b)(2).

B. Relationship of FIFRA Exemptions to the FFDCA Section 408 Standard

Under FFDCA section 408(a), a pesticide chemical residue in or on food is not safe unless EPA has issued either: A tolerance for the residue and the residue is within the tolerance limits, or an exemption from the requirement of a tolerance for the residue (21 U.S.C. 346a(a)(1)). FFDCA section 408 authorizes EPA to determine a residue is safe and exempt from the requirement of a tolerance if the Administrator ". . . has determined that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information" (21 U.S.C. 346a(c)(2)(A)). Section 408 of the FFDCA also directs EPA to specifically consider harm that may result to infants and children as a result of pesticide chemical residues. For additional discussion of this standard, see the exemptions from the FFDCA requirement of a tolerance published elsewhere in this issue of the **Federal Register** (i.e., exemptions for residues of plant-incorporated protectants derived through conventional breeding from a plant sexually compatible with the recipient plant, and residues of nucleic acids that are part of a plant-incorporated protectant).

EPA uses the FFDCA section 408 safety standard in evaluating whether a pesticide used in food meets the two FIFRA exemption criteria with respect to human dietary risk. A pesticide in food qualifies under the first FIFRA exemption criterion of low probability of human dietary risk if it meets the FFDCA section 408 standard for an exemption from the requirement of a tolerance. Such a pesticide also meets the second FIFRA exemption criterion of no likely unreasonable adverse effects, with respect to human dietary risks only, if the risks resulting from use of that pesticide are consistent with the FFDCA section 408 exemption standard, and the potential benefits of use outweigh any human health risk even in the absence of regulatory oversight.

A determination that a pesticide chemical meets the safety standard of section 408(c) of the FFDCA may also be relevant to whether a pesticide qualifies for a FIFRA section 25(b)(2) exemption with respect to human health risks arising from other routes of exposure. In

determining whether a pesticide chemical residue is safe, EPA must consider "available information regarding the aggregate exposure levels of consumers . . . to the pesticide chemical residue and to other related substances, including dietary exposure under the tolerance and all other tolerances in effect for the pesticide chemical residue, and exposures from other non-occupational sources." (21 U.S.C. section 346a(b)(2)(D)(vi)). Consequently, a finding that a pesticide qualifies for a tolerance exemption could also demonstrate that the pesticide chemical meets the first exemption criterion of low probability of risk with respect to human health risks arising from other non-occupational routes of exposure. Such a pesticide also meets the second FIFRA exemption criterion of no likely unreasonable adverse effects, with respect to human health risks arising from all non-occupational exposures, if the risks resulting from use of that pesticide are consistent with the FFDCA section 408 exemption standard, and the potential benefits of use outweigh any human health risk even in the absence of regulatory oversight.

However, FIFRA does not provide for exemption of a pesticide in food based solely upon consistency with the FFDCA section 408 exemption standard. At a minimum, EPA also must evaluate risks arising from occupational exposure to humans and determine that such risks meet both exemption criteria. In addition, EPA must evaluate the risks to the environment from the pesticide and determine both that the pesticide poses only a low probability of environmental risks, and that use of the pesticide is not likely to cause any unreasonable adverse effects on the remainder of the environment in the absence of regulation under FIFRA.

III. What is the Background for this Rule?

This final rule establishes certain basic parameters of EPA's regulatory program under FIFRA for plant-incorporated protectants. In this rule, EPA defines the scope of products subject to FIFRA jurisdiction, and identifies the category of products over which it will exert regulatory oversight. EPA also establishes certain fundamental definitions to clarify what will be subject to regulation as a plant-incorporated protectant. The rule also finalizes certain regulatory procedures specific to plant-incorporated protectants. This document also provides some guidance on the way in which the Agency intends to interpret the existing regulations for these products until it is able to establish additional regulations specific to plant-incorporated protectants.

Specifically, the rule clarifies that plants used as biological control agents remain exempt from FIFRA requirements, but that plant-incorporated protectants are not. Second, the rule exempts plant-incorporated protectants derived through conventional breeding from sexually compatible plants. Third, this final rule establishes a new 40 CFR part 174, specifically for plant-incorporated protectants; any additional regulations specific to plant-incorporated protectants will be codified in 40 CFR part 174. The final rule also imposes a requirement at § 174.71, that any person producing an otherwise exempt plant-incorporated protectant for sale and distribution, who obtains any information regarding adverse effects of this otherwise exempt plant-incorporated protectant on human health or the environment report that information to EPA. Finally, the rule includes a provision that any claim of confidentiality must be made at the time of submission and substantiated at the time the claim is made.

A. What Is a Plant-Incorporated Protectant?

Plants have evolved, and thus naturally possess, various mechanisms to resist pests. The mechanisms of resistance can be varied, including, for example, structural characteristics of the plant, the production of metabolites that have toxic properties, biochemical cascades resulting in localized necrosis of plant tissue, or the production of specific toxic substances in response to pest attack. Humans have for approximately 10,000 years selected and bred certain plants as sources of, for example, food, feed, and fiber, and a frequently selected characteristic was the ability to resist pests. More recently, humans have developed scientific techniques by which traits from any living organism, including an ability to resist pests, can be introduced into a plant. When humans intend to use substances involved in these mechanisms in plants for "preventing, destroying, repelling or mitigating any pest," the substances are pesticides under the FIFRA definition of pesticide, regardless of whether the pesticidal capability evolved in the plants or was introduced by breeding or through the techniques of modern biotechnology.

The genetic material necessary for the production of such a pesticidal substance also meets the FIFRA statutory definition of a pesticide. Such genetic material is introduced into a plant with the intent of ultimately producing a pesticidal effect even though the genetic material may not, itself, directly affect pests. The pesticidal substance, along with the genetic material necessary to produce it, produced and used in living plants, is designated a "plant-incorporated protectant" by EPA.

Plant-incorporated protectants are primarily distinguished from other types of pesticides because they are intended to be produced and used in the living plant. This difference in use pattern dictates in some instances differences in approach. For example, because the plant-incorporated protectant is produced by the plant itself and used in the living plant, exposure considerations in risk assessments may be different, although as noted in Unit VII.D.2., the risk assessment framework used for other types of pesticides can be used for plant-incorporated protectants.

B. Does the Rule Have Any Relevance to Other Types of Pesticides?

Nonviable plant tissues, organs, or parts that are used as pesticides, will not be subject to the provisions of this rule, which will be codified in regulations at 40 CFR part 174. Rather, such pesticides are subject to the regulations found in 40 CFR parts 150 through 173 and 40 CFR parts 177 through 180. An example of this type of pesticide would be the powder, produced by drying and grinding cayenne peppers, dusted on plants to protect them from pests.

Substances that are isolated from a plant's tissues and then applied to plants for pest control will not be subject to the regulations in 40 CFR part 174. Rather these types of pesticides in formulations such as those for foliar application are subject to regulations found in 40 CFR parts 150 through 173 and 40 CFR parts 177 through 180. An example of this type of pesticide would be pyrethrum isolated from chrysanthemum plants, formulated with other ingredients for foliar application, and sprayed on other plants for pest control.

Substances that are synthesized will not be subject to the regulations in 40 CFR part 174. Such pesticides are subject to regulations found in 40 CFR parts 150 through 173 and 40 CFR parts 177 through 180. An example of this type of pesticide is the herbicide, atrazine.

C. What is the History of this Rule?

This rule is an additional step in fully implementing the "Coordinated Framework for Regulation of

Biotechnology" of the United States of America which was published in the **Federal Register** by the Office of Science and Technology Policy (OSTP) on June 26, 1986 (51 FR 23302).

EPA sponsored, or cosponsored with other Federal agencies, three conferences dealing with plant related issues: On October 19–21, 1987, a meeting on "Genetically Engineered Plants: Regulatory Considerations" at Cornell University, Ithaca, New York; on September 8–9, 1988, a "Transgenic Plant Conference" in Annapolis, Maryland; on November 6–7, 1990, a conference on "Pesticidal Transgenic Plants: Product Development, Risk Assessment, and Data Needs" in Annapolis, Maryland. Information from these conferences has been incorporated as appropriate in development of this rule.

In developing its approach to plant-incorporated protectants, EPA requested advice from two scientific advisory groups at three meetings. On December 18, 1992, a Subpanel of the FIFRA Scientific Advisory Panel (SAP) was convened to review a draft proposed policy statement and to answer a series of scientific questions concerned primarily with EPA's proposed exemptions under FIFRA. On July 13, 1993, a Subcommittee of the EPA Biotechnology Science Advisory Committee (BSAC) was convened to address a series of scientific questions concerned primarily with EPA's proposed exemptions under the FFDCA. On January 21, 1994, a joint meeting of the Subpanel of the SAP and the BSAC Subcommittee was convened to address a series of scientific questions on approaches to plant-pesticides under both FIFRA and FFDCA. Advice from these scientific advisory groups was considered in finalizing this rule.

EPA published in the November 23, 1994, **Federal Register** a package of five separate documents (59 FR 60496, 60519, 60535, 60542 and 60545) (FRL–4755–2, FRL–4755–3, FRL–4755–4, and FRL–4755–8) which described EPA's policy and proposals for plant-pesticides (now called plant-incorporated protectants) under FIFRA and FFDCA. On July 22, 1996, EPA published a supplemental document in the **Federal Register** (61 FR 37891) (FRL–5387–4) on one aspect of its November 23, 1994, **Federal Register** documents; i.e., how the concept of inert ingredient related to plant-pesticides.

In August of 1996, Congress enacted the FQPA which amended FFDCA and FIFRA. On May 16, 1997, EPA published in the **Federal Register** supplemental documents (62 FR 27132, 27142, 27149) (FRL–5716–6, FRL–5716–7, FRL–5717–2) to provide the public with an opportunity to comment on EPA's analysis of how certain FQPA amendments to FFDCA and FIFRA apply to the proposed exemptions from the FFDCA requirement of a tolerance for two categories of residues relevant to this final rule.

On April 23, 1999, EPA published a supplemental document in the **Federal Register** (64 FR 19958) (FRL–6077–6) soliciting comment on whether to change the name of this type of pesticide.

The documents and reports of the meetings described in this unit are available in the official record for this rule as described in Unit VIII.

D. Other Federal Agencies

EPA is the Federal agency primarily responsible for the regulation ofpesticides. In fulfilling this mission, EPA works closely with the U.S. Department of Agriculture (USDA) which has responsibilities under the Plant Protection Act (PPA), and the U.S. Food and Drug Administration (FDA) which has responsibilities under the FFDCA. EPA, USDA, and FDA consult and exchange information when such consultation is helpful in resolving safety questions. The three agencies also strive for consistency between programs following one of the basic tenets of the Coordinated Framework for Regulation of Biotechnology (51 FR 23302, June 26, 1986); i.e., that the agencies composing the Framework adopt consistent approaches, to the extent permitted by the respective statutory authorities. A consistent approach between agencies is easier for the regulated community to understand. It is also more likely to conserve resources as submitters would more likely be able to use data developed for one agency to meet requirements posed by another agency for the same or similar products.

1. *USDA*. USDA has authority to prevent the introduction and dissemination of plant pests under the PPA. Before introducing into the environment a plant that is regulated under either of these statutes, approval must be obtained from the USDA/Animal Plant Health Inspection Service (APHIS) unless the plant is exempt from USDA/APHIS regulation. The USDA regulations use genetic engineering as a criterion for determining the scope of its regulations (Refs. 1, 2, and 3).

EPA recognizes that there is a potential for duplicative oversight with respect to certain issues that may arise in plant-incorporated protectant decisions. For example, some of the plant-incorporated protectants not exempted by EPA are also subject to APHIS/USDA requirements under the PPA. The potential for most plants containing plant-incorporated protectants to pose weediness concerns is directly considered by USDA/APHIS under PPA. In its reviews of Petitions for Determination of Nonregulated Status under regulations at 7 CFR part 340, the potential for weediness, for displacement of native species, and potential consequences of gene transfer are evaluated by USDA/APHIS. EPA and USDA/APHIS will continue to consult and collaborate when reviews of any plant-incorporated protectant indicates reason for concern over any of these issues. Weediness is generally thought to be due to a multiplicity of factors. The Agencies will work to coordinate their analyses of these factors in accordance with their respective expertise and jurisdiction. EPA's focus in considering these issues is on the statutory determination on unreasonable adverse effects the Agency must make with respect to pesticides, rather than on the engineered plant itself. In particular, these plant-related issues may potentially impact use patterns of pesticides, which are of relevance to the Agency. EPA and USDA/APHIS will work together to avoid potential duplication and inconsistencies.

2. *FDA*. FDA is the primary U.S. agency responsible forensuring the safety of commercial food and food additives. FDA's authority under FFDCA extends to any nonpesticidal substance that may be introduced into a new plant variety and that is expected to become a component of food. Pursuant to FFDCA and the reorganization that created EPA, pesticides as defined by FIFRA are subject to EPA's regulatory authority under FFDCA. Recently, FDA announced its intent to propose a pre-market notification scheme for foods derived from plants modified through the use of modern biotechnology.

IV. What Are the Key Features of the Proposed Rule?

The development of this rule consists of a proposed rule that appeared in the November 23, 1994, **Federal Register** and four supplemental documents affecting the final form of the rule (59 FR 60496, 60519, 60535, 60542, and 60545); a supplemental document that appeared in the July 22, 1996, **Federal Register** (61 FR 37891), two supplemental documents that appeared in the May 16, 1997, **Federal Register** (62 FR 27132, 27142), and a supplemental document that appeared in the April 23, 1999, **Federal Register** (64 FR 19958).

A. What Are the Key Features of the November 23, 1994, **Federal Register***?*

In the November 23, 1994, **Federal Register** document (59 FR 60519), EPA proposed to: first, clarify how the exemption at 40 CFR 152.20 relates to plants used as biological control agents and to plant-incorporated protectants; second, exempt under FIFRA section 25(b)(2), plant-incorporated protectants that are derived from plants closely related to the recipient plant, except for a requirement that sellers or distributors of an otherwise exempt plant-incorporated protectant submit to EPA any information they may obtain regarding potential unreasonable adverse effects caused by an exempt plant-incorporated protectant; and third, establish new part 40 CFR part 174 specifically for plant-incorporated protectants. This document also contained a proposed rule on substantiation of any claim of confidentiality at the time the claim was made.

1. *Clarification of exemption at 40 CFR 152.20; status of plants used as biological control agents with regard to FIFRA requirements.* In the November 23, 1994, **Federal Register** document, EPA proposed to amend 40 CFR 152.20 to clarify that plants used as biological control agents are exempt from FIFRA requirements under section 25(b)(1). The proposed amendment at 40 CFR 152.20 would also indicate that this exemption does not apply to plant-incorporated protectants and would refer the reader to 40 CFR part 174 for regulations, including a listing of exemptions, on plant-incorporated protectants.

2. *Proposed exemption of plant-incorporated protectants derived from plants closely related to the recipient plant.* In 1994, EPA described three options for defining when a plant-incorporated protectant would be exempt because it is derived from plants closely related to the recipient plant. EPA proposed to exempt plant-incorporated protectants derived from plants closely related to the recipient plant based on the rationale that the probability of new exposures from this group of plant-incorporated protectants is very low. Option 1, the Agency's preferred option, used sexual compatibility, including hybridization achieved by wide and bridging crosses, as a measure of relatedness between plants. Under this option, plant-incorporated protectants would be exempt from all FIFRA requirements, except for the adverse effects reporting requirement, if the genetic material that leads to the production of the pesticidal substance is derived from plants that are sexually compatible with the recipient plant and has never been derived from a source that is not sexually compatible with the recipient plant. Recipient plant was described as the plant into which the plant-incorporated protectant is introduced and in which the plant-incorporated protectant is produced. Sexually compatible, when referring to plants, was described as capable of forming a viable zygote through the fusion of two gametes including the use of bridging or wide crosses between plants.

Option 2 would utilize the rank of genus as the taxonomic standard for describing closely related plants such that plant-incorporated protectants derived from plants classified in the same genus as the recipient plant would be exempt from all FIFRA requirements, except for the adverse effects reporting requirement. Taxonomy is a system of orderly classification of organisms according to their presumed natural relationships. Taxonomy reflects current scientific observations about phenotypic, and to a certain extent, genotypic, similarities between organisms.

Option 3, also an alternative option, would utilize both the taxonomic rank of genus and sexual compatibility to describe closely related plants. This option would exempt from all FIFRA requirements, except for the adverse effects reporting requirement, plant-incorporated protectants derived from plants classified in the same genus as the recipient plant, as well as plant-incorporated protectants derived from plants sexually compatible with the recipient plant. Under Options 1 and 3, plant-incorporated protectants derived from plants sexually compatible with the recipient plant would be exempt even if the source and recipient plants are classified in different genera.

None of the options offered by the EPA were intended to exempt a plant-incorporated protectant that has been modified so that it is significantly different functionally from the plant-incorporated protectant as it occurs in the source organism (59 FR 60524).

i. *Associated definitions.* In 1994, pertinent definitions associated with the proposed exemptions included:

"Bridging crosses between plants" would be the utilization of an intermediate plant in a cross to produce a viable zygote between the intermediate plant and a first plant, in order to cross the plant resulting from that zygote with a third plant that would not otherwise be able to produce viable zygotes from the fusion of its gametes with those of the first plant. The result of the bridging cross is the mixing of genetic material of the first and third plant through the formation of an intermediate zygote.

"Wide crosses between plants" would be to facilitate the formation of viable zygotes through the use of surgical alteration of the plant pistil, bud pollination, mentor pollen, immunosuppressants, *in vitro* fertilization, pre-pollination and post-pollination hormone treatments, manipulation of chromosome numbers, embryo culture, or ovary and ovule cultures, or any other technique that the Administrator determines meets this definition.

In 1994, EPA also presented a definition for plant-pesticide, now termed plant-incorporated protectant, and definitions of active and inert ingredient for plant-pesticides.

"Plant-pesticide" was defined as a pesticidal substance that is produced in a living plant and the genetic material necessary for the production of the substance, where the substance is intended for use in the living plant.

"Active ingredient," when referring to plant-incorporated protectants only, was defined as a pesticidal substance that is produced in a living plant and the genetic material necessary for the production of the substance, where the substance is intended for use in the living plant.

"Genetic material necessary for the production" was defined as: Genetic material that encodes for a pesticidal substance or leads to the production of a pesticidal substance and regulatory regions. It does not include noncoding, nonexpressed nucleotide sequences.

"Inert ingredient," when referring to plant-incorporated protectants only, was defined as any substance, such as a selectable marker, other than the active ingredient, and the genetic material necessary for the production of the substance, that is intentionally introduced into a living plant along with the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient.

"Living plant" was defined as a plant that is alive, including periods of dormancy, and all viable plant parts/organs involved in the plant's life cycle.

"Noncoding, nonexpressed nucleotide sequences" were defined as the nucleotide sequences that are not transcribed and are not involved in gene expression. Examples of noncoding, nonexpressed nucleotide sequences include linkers, adapters, homopolymers, and sequences of restriction enzyme recognition sites.

ii. *Potential exemption criterion based on process.* The Agency also requested

in the 1994 **Federal Register** document (50 FR 60514, 60530), comment on the utility of an exemption criterion based on the process (e.g., rDNA) used to introduce the plant-incorporated protectant into a plant. In this approach, plant-incorporated protectants developed through techniques other than those of modern biotechnology would be exempted, e.g., those developed through conventional plant breeding would be exempted. Categories of those plant-incorporated protectants that were not exempted could subsequently be considered for exemption on the basis of risk potential.

iii. *Reporting of unreasonable adverse effects for exempted plant-incorporated protectants.* In 1994, EPA proposed to require, under FIFRA section 3(a), that any person who sells or distributes any otherwise exempt plant-incorporated protectant, who obtains any information regarding potential unreasonable adverse effects on human health or the environment, must within 30 days of receipt of such information submit the information to EPA. This provision was proposed to enable the Agency to address unforeseeable events from use of otherwise exempt plant-incorporated protectants. (This reporting requirement is referred to, in this preamble, as the "adverse effects reporting requirement.")

3. *Proposed new 40 CFR part 174.* In the November 23, 1994, **Federal Register** document, EPA proposed to establish a new part in the CFR, 40 CFR part 174, specifically for plant-incorporated protectants. Establishment of a new part would allow the Agency to consolidate regulations specifically applicable to plant-incorporated protectants in one part of the CFR. EPA believed such a consolidation would be appropriate and justified because of the characteristics that distinguish plant-incorporated protectants from other types of pesticides. The proposed consolidation was expected to benefit the public by providing greater focus, enhanced clarity, and ease of use, because all the regulations specific for plant-incorporated protectants would be in one part of title 40. The proposed 40 CFR part 174 would include, for example, definitions that are generally applicable throughout part 174, exemptions from FIFRA regulation, and a subpart for tolerances and exemptions from the requirement of a tolerance published under FFDCA section 408 for residues of plant-incorporated protectants.

4. *Proposed rule regarding upfront substantiation of confidential business information.* EPA proposed in 1994 that any claim of confidentiality would have to be made at the time of submission and substantiated at the time the claim is made.

B. What Issues Were Discussed in the Supplemental **Federal Register** *Documents?*

Subsequent to publication of the November 23, 1994 **Federal Register** document (59 FR 60519), EPA published four supplemental documents relevant to this document. These supplemental documents are described below.

1. *July 22, 1996.* On July 22, 1996, EPA published a supplemental document in the **Federal Register** (61 FR 37891) on one aspect of its November 23, 1994, **Federal Register** documents; i.e., how the concept of inert ingredient related to plant-incorporated protectants. In 1994, EPA stated that an inert ingredient for plant-incorporated protectants would be "any substance, such as a selectable marker, other than the active ingredient, and the genetic material necessary for the production of the substance, that is intentionally introduced into a living plant along with the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient." However, additional information caused EPA to request further public comment on its treatment of inert ingredients, including whether there should be inert ingredients for plant-incorporated protectants.

2. *May 16, 1997.* In August of 1996, Congress enacted the FQPA which amended the FFDCA and FIFRA. On May 16, 1997, EPA published in the **Federal Register** two supplemental documents (62 FR 27132, 27142) to provide the public with an opportunity to comment on EPA's analysis of how certain FQPA amendments to FFDCA and FIFRA affect the proposed tolerance exemptions, and thus, to the proposed exemption of certain plant-incorporated protectants from FIFRA requirements. These supplemental documents are discussed in detail in companion documents published elsewhere in this issue of the **Federal Register** addressing tolerance exemptions for pesticide chemical residues derived through conventional breeding from sexually compatible plants and residues of nucleic acids that are part of a plant-incorporated protectant.

3. *April 23, 1999.* In response to the request that EPA consider another name for this type of pesticide, the Agency published in the April 23, 1999 **Federal Register** (64 FR 19958) a document requesting comment on the advisability of substituting an alternative name for the term "plant-pesticide," and requesting appropriate alternative names for this class of pesticides. EPA also specifically requested comment on whether the alternative name, "plant-expressed protectants," would be an acceptable name for this category of pesticides. EPA noted that if the Agency changed the name of the pesticides termed, "plant-pesticides," the change would only affect the name. It would not affect the status of the pesticidal substance or the genetic material necessary to produce it. The Agency also noted that even with a different name, these would still be pesticides under FIFRA section 2(u), and a change of name would not affect any regulatory requirements.

V. What are the Key Features of this Final Rule?

In this final rule, EPA, first, clarifies that plants used as biological control agents remain exempt from FIFRA requirements, as well as clarifying the relationship between plants and plant-incorporated protectants; second, issues an exemption for a category of plant-incorporated protectants; and third, establishes a new 40 CFR part 174, specifically for plant-incorporated protectants. This rule also imposes a requirement at 40 CFR 174.71 that any person producing, for sale and distribution an otherwise exempt plant-incorporated protectant, who obtains any information regarding adverse effects of this otherwise exempt plant-incorporated protectant on human health or the environment, report that information to EPA. Finally, the rule includes a provision that any claim of confidentiality must be made at the time of submission and substantiated at the time the claim is made.

A. Clarification of Exemption at 40 CFR 152.20; Status of Plants Used as Biological Control Agents with Regard to FIFRA Requirements

This final rule amends 40 CFR 152.20 to clarify that plants used as biological control agents remain exempt from FIFRA regulation, but plant-incorporated protectants will be subject to the requirements of FIFRA unless otherwise exempted. The final rule also refers the reader to 40 CFR part 174 for regulations, including a list of exemptions, on plant-incorporated protectants.

B. Exemption of Plant-Incorporated Protectants Derived Through Conventional Breeding from Sexually Compatible Plants

This rule exempts from all FIFRA requirements, except for the adverse effects reporting requirements at 40 CFR

174.71, plant-incorporated protectants that are derived through conventional breeding from sexually compatible plants. The exempt plant-incorporated protectants represent a subcategory of the plant-incorporated protectants described in Option 1 in the November 23, 1994, **Federal Register** document (59 FR 60522). (EPA is seeking additional comment in a supplemental document published elsewhere in this issue of the **Federal Register** on whether all plant-incorporated protectants derived from plants sexually compatible with the recipient plant should be exempt from FIFRA requirements, regardless of how they are introduced into the recipient plant.)

The following language appears in 40 CFR 174.25 to describe this subcategory:

A plant-incorporated protectant is exempt if all of the following conditions are met:

(a) The genetic material that encodes the pesticidal substance or leads to the production of the pesticidal substance is from a plant that is sexually compatible with the recipient plant.

(b) The genetic material has never been derived from a source that is not sexually compatible with the recipient plant.

The following language addressing inert ingredients in plants derived through conventional breeding from sexually compatible plants is added to 40 CFR 174.485, subpart X:

An inert ingredient, and residues of the inert ingredient, are exempt if all of the following conditions are met:

(a) The genetic material that encodes the inert ingredient or leads to the production of the inert ingredient is derived from a plant sexually compatible with the recipient food plant.

(b) The genetic material has never been derived from a source that is not sexually compatible with the recipient food plant.

(c) The resides of the inert ingredient are not present in food from the plant at levels that are injurious or deleterious to human health.

1. *Associated definitions.* Pertinent definitions associated with the exemption include:

"Bridging crosses between plants" means the utilization of an intermediate plant in a cross to produce a viable zygote between the intermediate plant and a first plant, in order to cross the plant resulting from that zygote with a third plant that would not otherwise be able to produce viable zygotes from the fusion of its gametes with those of the first plant. The result of the bridging cross is the mixing of genetic material of the first and third plant through the formation of an intermediate zygote.

"Cell fusion" means the fusion *in vitro* of two or more cells or protoplasts.

"Conventional breeding of plants" means the creation of progeny through either: The union of gametes, i.e., syngamy, brought together through processes such as pollination, including bridging crosses between plants and wide crosses; or vegetative reproduction. It does not include use of any one of the following technologies: Recombinant DNA; other techniques wherein the genetic material is extracted from an organism and introduced into the genome of the recipient plant through, for example, micro-injection, macro-injection, micro-encapsulation; or cell fusion.

"Genome" means the sum of the heritable genetic material in the plant, including genetic material in the nucleus and organelles.

"Recombinant DNA" means the genetic material has been manipulated *in vitro* through the use of restriction endonucleases and/or other enzymes that aid in modifying genetic material, and subsequently introduced into the genome of the plant.

"Sexually compatible," when referring to plants, means a viable zygote is formed only through the union of two gametes through conventional breeding.

"Source" means the donor of the genetic material that encodes a pesticidal substance or leads to the production of a pesticidal substance.

"Vegetative reproduction" means: In seed plants, reproduction by apomixis; and in other plants, reproduction by vegetative spores, fragmentation, or division of the somatic body.

"Wide crosses" means to facilitate the formation of viable zygotes through the use of surgical alteration of the plant pistil, bud pollination, mentor pollen, immunosuppressants, *in vitro* fertilization, pre-pollination and post-pollination hormone treatments, manipulation of chromosome numbers, embryo culture, or ovary and ovule cultures.

Pertinent associated definitions in 40 CFR 174.3, several of which are discussed in Unit VII.B.8., include:

"Active ingredient" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance.

"Genetic material necessary for the production" means both: Genetic material that encodes a substance or leads to the production of a substance, and regulatory regions. It does not include noncoding, nonexpressed nucleotide sequences.

"Inert ingredient" means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided the genetic material is intentionally introduced into a living plant in addition to the active ingredient.

"Living plant" means a plant, plant organ, or plant part that is alive, viable or dormant. Examples of plant parts include, but are not limited to, seeds, fruits, leaves, roots, stems, flowers and pollen.

"Noncoding, nonexpressed nucleotide sequences" means the sequences are not transcribed and are not involved in gene expression. Examples of noncoding, nonexpressed nucleotide sequences include, but are not limited to, linkers, adaptors, homopolymers, and sequences of restriction recognition sites.

"Pesticidal substance" means a substance that is intended to be produced and used in a living plant, or in the produce thereof, for a pesticidal purpose during any part of a plant's life cycle (e.g., in the embryo, seed, seedling, mature plant).

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. It also contains any inert ingredient contained in the plant, or produce thereof.

"Produce thereof," when used with respect to plants containing plant-incorporated protectants only, means a product of a living plant containing a plant-incorporated protectant, where the pesticidal substance is intended to serve a pesticidal purpose after the product has been separated from the living plant. Examples of such products include, but are not limited to, agricultural produce, grains and lumber. Products such as raw agricultural commodities bearing pesticide chemical residues are not "produce thereof" when the residues are not intended to serve a pesticidal purpose in the produce.

"Recipient plant" means the living plant in which the plant-incorporated protectant is intended to be produced and used.

Other definitions, relevant for plant-incorporated protectants only, can be found at 40 CFR 174.3. In this final rule, "plant" means an organism classified using the 5-kingdom classification system of Whittaker (Ref. 1) in the kingdom, Plantae. Therefore, the term "plant" includes, but is not limited to, bryophytes such as mosses, pteridophytes such as ferns,

gymnosperms such as conifers, and angiosperms such as most major crop plants.

2. *Reporting of adverse effects for exempted plant-incorporated protectants.* This document publishes a requirement under FIFRA section 3(a) that any person who produces, for sale or distribution an otherwise exempt plant-incorporated protectant, who obtains any information regarding adverse effects on human health or the environment alleged to have been caused by the plant-incorporated protectant, must submit such information to EPA. EPA must receive the report within 30 calendar days of receipt of such information. The language of the requirement is set forth at 40 CFR 174.71, subpart D.

C. Establishment of 40 CFR Part 174

This final rule establishes a new 40 CFR part 174, specifically for plant-incorporated protectants. Subpart A sets forth definitions specific for plant-incorporated protectants, including definitions that are generally applicable throughout part 174. Subpart A also contains procedures for confidential business information. Exemptions from FIFRA are contained in subpart B. Subpart D sets forth the unreasonable adverse effects reporting requirement at § 174.71. A subpart W is established for tolerances and exemptions from the requirement of a tolerance published for residues of plant-incorporated protectants under FFDCA section 408. Subpart X lists the inert ingredients that may be used with plant-incorporated protectants that are exempt from FIFRA and FFDCA requirements.

D. Upfront Substantiation of Confidential Business Information

Procedures for confidential business information are set forth at 40 CFR part 174, subpart A. The rule requires that any claim of confidentiality must accompany the information at the time the information is submitted to EPA, and must be substantiated at the time the claim is made.

VI. How Do the Proposed Rule and Final Rule Differ?

This final rule is adopted with several changes from the 1994**Federal Register** proposed rule. As discussed in the supplemental document published in the April 23, 1999 **Federal Register** (64 FR 19958), EPA has changed the name of this type of pesticide from "plant-pesticide" to "plant-incorporated protectant" for reasons described at Unit VII.B.2. A second significant change is due to the 1996 FQPA amendment to FIFRA. Because of this amendment, and as discussed in supplemental documents published in the May 16, 1997, **Federal Register** (62 FR 27133, 27143, 27150), "a pesticide used in or on food that does not meet the FFDCA section 408 safety standard also would pose an unreasonable adverse effect under FIFRA and would not qualify for an exemption from the requirements of FIFRA under FIFRA section 25(b)(2)." EPA revises the language at 40 CFR 174.21 to add the general qualification that a plant-incorporated protectant used in a food plant can be exempt from FIFRA requirements only if residues of the plant-incorporated protectant in or on food or feed qualify for an exemption from the requirement of a tolerance under FFDCA section 408. (See Unit II. and Unit VII.D.1.iv. for additional discussion). EPA has also determined it will adopt the definition of inert ingredient it proposed for plant-incorporated protectants in 1994 and includes language at 40 CFR 174.21, subpart X, to implement this decision.

EPA in this rule finalizes only a portion of the exemptions it proposed in 1994; specifically, the Agency exempts plant-incorporated protectants derived through conventional breeding from plants sexually compatible with the recipient plant. EPA has received comments that raised significant questions on its 1994 proposed rule, and the Agency is currently considering how to address these questions. In a supplemental document published elsewhere in this issue of the **Federal Register** EPA solicits additional public comment on the various options it is considering to respond to the comments it has already received.

EPA has also narrowed the adverse effects reporting requirement at 40 CFR 174.71 so that only persons who produce plant-incorporated protectants for sale and distribution are responsible for submitting information to EPA concerning adverse effects on human health or the environment caused by the otherwise exempt plant-incorporated protectant. EPA narrowed this requirement in response to comments suggesting that the proposed language could lead to the submission of information that was not relevant to EPA's primary concern of adverse effects caused by the plant-incorporated protectant.

Some modifications, primarily for clarity, or clarification, have also been made to the language of the exemption and associated definitions. These modifications are discussed in this document. Discussion of these modifications can also be found in the documents (Ref. 2) summarizing public comments and EPA response on issues associated with plant-incorporated protectants which can be found in the record for this rule as described in Unit VIII.

VII. Discussion of Final Rule and Public Comments

In this unit, EPA discusses the final rule and summarizes comments it received on the November 23, 1994, **Federal Register** documents. EPA reviewed and considered all comments received on the documents published in the November 23, 1994, **Federal Register** and prepared detailed responses to these comments. These can be found at appropriate points in this preamble, and in the Agency's summary of public comments and EPA's response on issues associated with plant-incorporated protectants (Ref. 2), which is located in the official record for the rule as described in Unit VIII.

A. From Whom Did EPA Receive Comment?

In response to the package of documents published in the **Federal Register** in 1994, EPA received letters from industry, academia, professional and trade associations, government agencies, state regulatory authorities, public interest groups, and private citizens. Some of the commenters sent separate letters for each of the five dockets associated with the 1994 **Federal Register** documents. Other commenters sent a single letter addressed to all five dockets.

On July 22, 1996, EPA published in the **Federal Register** (61 FR 37891) a supplemental document seeking additional comment on how it should view the concept of inert ingredient with regard to plant-incorporated protectants. EPA received comments in response to that supplemental document. On May 16, 1997, EPA published in the **Federal Register** (62 FR 27132, 27142, 27149) supplemental documents to provide the public an opportunity to comment on EPA's analysis of how certain amendments to FFDCA and FIFRA by the FQPA apply to EPA's proposed exemptions under FIFRA for plant-incorporated protectants derived from closely related plants, and proposed exemptions under FFDCA for residues of these plant-incorporated protectants and received comment. On April 23, 1999, EPA published in the **Federal Register** (61 FR 19958) a supplemental document on whether to rename this type of pesticide. EPA received comments on that supplemental document. Copies of all comments received are available in the official record for the rule as described in Unit VIII.

EPA also received comments after the comment period for the rule had closed. Eleven scientific societies sent a report entitled "Appropriate oversight of plants with inherited traits for resistance to pests" (Ref. 3). The National Academy of Sciences produced a report entitled "Genetically modified pest-protected plants: Science and regulation" (Ref. 4). These comments did not raise issues beyond those that had been raised by comments submitted during the comment period for the rule. Therefore, EPA has not included these comments as part of this rulemaking, and will not respond to them in this action.

B. What Are the Major Comments on EPA's Approach?

More comments supported EPA's approach than opposed it. Comments on EPA's approach to plant-incorporated protectants can be categorized as follows. In general, those comments supporting EPA's approach agree that FIFRA gives EPA the authority to regulate substances that plants produce for protection against pests if humans intend to use these substances for preventing, destroying, repelling or mitigating any pest. Second, the commenters believe an approach that regulates the substance while exempting the plant from regulation is appropriate. Some comments, while in general supporting the approach, had reservations about the definition of plant-incorporated protectant, and definitions directly associated with the definition of plant-incorporated protectant. Others, while recognizing EPA's authority under FIFRA, thought an approach to regulation based on whether genetic engineering, e.g., recombinant DNA (rDNA), was used to introduce genetic material for pesticidal purposes into plants, better addressed risk and public concerns. These commenters urged EPA to implement such an approach.

Those comments opposing EPA's approach can in general be described as: First, those opposed to designating plant defense substances as pesticides, including those that believe that FIFRA should only apply to chemical pesticides; second, those who urged a more narrow definition of plant-incorporated protectant; third, those who believe that use of non-governmental peer review and standards of practice accepted in the plant breeding industry are adequate and EPA oversight is unnecessary; and fourth, those who believe that EPA's approach discriminates against rDNA technology and that any discrimination against rDNA technology is unscientific. There also appears to be some confusion evidenced in comments concerning the concept of "intent" in the FIFRA section 2 definition of pesticide. Some comments expressed concern that the term, "pesticide," has a negative connotation with the public. Some of these commenters requested that, at a minimum, plant defense substances not be given the name "plant-pesticide."

1. *How can plant defense substances be pesticides?* EPA received seven comments that expressed concern with the designation of defense substances produced by plants as pesticides. Most of these comments stated that it was inappropriate to consider plant defense substances to be pesticides and questioned the Agency's determination that plant defense substances are pesticides.

FIFRA section 2(u) defines "pesticide" to include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. Plant defense substances are clearly pesticides under the FIFRA section 2 definition of pesticide when humans intend to use them "for preventing, destroying, repelling, or mitigating any pest" regardless of how the pesticidal capabilities were introduced into the plant (e.g., whether by traditional breeding or through the techniques of modern biotechnology). The suggestion that substances, or mixtures of substances, in plants that humans intentionally use for preventing, destroying, repelling, or mitigating a pest, should not be considered pesticides is not tenable. If the substances were isolated from the plant and sold as pesticides, no one would argue that they were pesticides. Clearly, substances in plants that humans intend to use for preventing, destroying, repelling or mitigating a pest meet the FIFRA section 2 definition of pesticide and Congress has specifically made EPA responsible for regulating pesticides under FIFRA and FFDCA section 408.

2. *Why is EPA giving these pesticides a different name?* EPA recognizes the unique use pattern of these pesticides, which are produced and used in the living plant. Thus, in the November 23, 1994, **Federal Register** (59 FR 60496), EPA suggested giving these types of pesticides a unique name, "plant-pesticides," in order to distinguish them from chemical, microbial, or biochemical pesticides. EPA believes a unique name for this type of pesticides benefits the public by providing the means to more readily identify regulations specific to this type of pesticide in the CFR.

In response to the request that EPA consider another name, the Agency published in the April 23, 1999, issue of the **Federal Register** (64 FR 19958) a document requesting comment on the advisability of substituting an alternative name for the term "plant-pesticide," and requesting appropriate alternative names for this type of pesticide. EPA also specifically requested comment on whether the alternative name, "plant-expressed protectants," would be an acceptable name for this type of pesticide. EPA noted that if the Agency changed the name of such pesticides, the change would only affect the name. It would not affect the status of the pesticidal substance or the genetic material necessary to produce it. Even with a different name, these would still be pesticides under FIFRA section 2(u). Similarly, a change of name would not affect any regulatory requirements.

In response to the April 23, 1999, **Federal Register** supplemental document, EPA received 60 comments. Of these 60 comments, eight comments supported the name "plant-expressed protectants." These commenters argued that the term "plant-pesticide" is inappropriate and inaccurate because in standard English it means "pest killer," and many of the pest-resistance mechanisms enhanced by genetic modification do not kill pests in any way, but rather make the crop plants undesirable to pests or not vulnerable to pest attack. These commenters also argued that if plants are labeled as pesticides, a negative connotation could attach to plants. Such plants might be poorly received by the public, and the public perception of a promising branch of science could be tarnished. These commenters also expressed concern that such negative perceptions might lead to labeling requirements or nontariff trade barriers.

Seven comments offered other alternative names without comment on the merit of changing the name. Examples of such names include: Endocides, endogenous bio-control (ebc, or endobio, or endob), enhanced plant protectant, plant protection agent, plant defense agent, plantocides, plendocides, pliocides, intrinsic plant biocontrol agent, intrinsic floral protectant, expressogen, floral defense agent (fda), floral protectant, and gene-transferred protectants.

Eight comments opposed a change of name. These comments, for the most part, thought the name "plant-pesticide" appropriate. Some of these commenters argued that the term "plant-pesticide" succinctly explains the meaning of the term, i.e., pesticidal

substances introduced into plants. Others arguing for retention of the name "plant-pesticide" stated that the term "pesticide" does not necessarily have a negative connotation. Several of these commenters asked why the Agency would propose to fix something that is not broken. Several commenters arguing against a change of name stated that EPA should be transparent in its actions, and a pesticide should be called a pesticide. One commenter argued that the term "plant-pesticide" has been used by EPA since the early 1990s. It has become a term of art and it would be confusing to change the name. Other commenters stated that if EPA changes the name "plant-pesticide" to a more euphemistic name to satisfy one interest group, other interest groups will soon be urging it to change the names of other types of pesticide products to have better marketing potential. These commenters argued against setting such a precedent. Others feared that it would make EPA's effort to control unregistered pesticides more difficult.

Four comments offered alternative names such as Franken-plants, Frankenstein pesticides, Pandora pesticides, products-of-sexual-abuse, alien pesticides, or foreign pesticides.

Among the commenters opposed to a renaming, some also specifically opposed the term "plant-expressed protectants". Those opposed to the name "plant-expressed protectants" stated that the name obscures the legal issues and attempts to mislead the public into believing that these pesticides are not pesticides at all.

After reviewing all comments, EPA decided to change the name of this category of pesticides from "plant-pesticides" to "plant-incorporated protectants." From comments EPA has received both in the comment period on the 1999 supplemental document discussing the possibility of changing the name, and over the years since the 1994 proposed rule was issued, the Agency concludes that many people are not aware of, or do not understand, the FIFRA definition of pesticide. For example, some comments argued that the term "plant-pesticide" is inappropriate and inaccurate because it means "pest killer" and many pest-resistance mechanisms do not kill pests but rather make the plant undesirable or not vulnerable to pest attack. EPA notes that the term "pesticide" in FIFRA section 2 means, in part, "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest." A pest-resistance mechanism that makes the plant undesirable or not vulnerable to pest attack falls within the definition of pesticide because such mechanisms "prevent" or "repel" a pest. EPA recognizes that the term "protectant" may better describe for the general public pesticides in plants that function by preventing, repelling or mitigating a pest because the term encompasses these concepts, in addition to the concept of destroying a pest. A number of suggested names received in response to the April 23, 1999, **Federal Register**, document utilized the word "protectant."

In addition, the name "plant-pesticide" appears in some instances to have led some people to believe the Agency is regulating plants, despite the Agency's numerous statements that EPA would not regulate the plant per se, but rather substances within the plant when these were used for pesticidal purposes. EPA recognizes that the name "plant-pesticide" may have contributed to this confusion, as some people may interpret the term "plant-pesticide" to mean a "plant that acts like a pesticide." EPA believes the adjective "plant-incorporated" more accurately conveys the sense that these pesticides are produced and used in the plant. EPA will therefore utilize this adjective in concert with the term "protectant" to describe this type of pesticide. EPA chose the adjective "plant-incorporated" rather than the adjective "plant-expressed," because the word "expressed" represents a technical term of art, and in this instance it appeared preferable to use the term "incorporated" which also encompasses a meaning found in the common English dictionary (Ref . 5), i.e., "joined or combined into a single unit or whole". The term "plant-incorporated" may thus be better understood by the general public than the term "plant-expressed."

EPA discounted names received in comments that focus inaccurately on pesticides introduced into plants through genetic modification, e.g., gene-transferred protectants. Names focusing on those pesticides introduced into the plant through the techniques of genetic engineering are too limited, in that such names do not describe the full range of this type of pesticide. This rule addresses pesticides that can be present in a plant because they evolved in the plant, were moved between plants through mating, or were introduced into plants through the techniques of modern biotechnology (e.g., rDNA).

With regard to the concern that other interest groups will soon urge the Agency to change the names of other types of pesticide products to have better marketing potential, EPA recognizes that this may indeed be the case. Indeed, one commenter on the April 23, 1999 **Federal Register** document supplied lengthy comments supporting a name change, and indicating that in the future his organization will suggest that EPA initiate a rulemaking to adopt other terms to describe other products which are regulated under FIFRA. EPA will evaluate each such request on its own merits.

It is not clear to EPA how changing the name of this type of pesticide would affect the Agency's ability to control unregistered pesticides. The comment did not provide a description of how this might occur. As previously stated, the name of the product does not affect the manner in which it is sold or intended to be used, which determines whether a product falls within EPA's jurisdiction under FIFRA.

3. *Does FIFRA apply to pesticides other than traditional pesticides?* EPA does not agree with the contention that FIFRA was meant to regulate only chemical pesticides, such as those extracted from plants or synthesized by petroleum chemistry. The definition of pesticide in FIFRA section 2(u) is not, and has never been, limited to chemical pesticides. Indeed, FIFRA section 2(u) specifically states that a pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant or desiccant or a nitrogen stabilizer. Pesticides other than chemical pesticides have been, and continue to be, registered under FIFRA. The first microbial pesticide was registered in 1948 and other biological substances, e.g., pheromones, have been regulated by EPA as pesticides since 1979. Moreover, in 1975, the Committee on Agriculture of the House of Representatives during the debate on the bill (House Report 8841) to extend FIFRA, as amended, for one year, specifically rejected a proposed amendment that would have excluded from the definition of pesticide "biological parasites, living organisms and predators of pests" other than microorganisms such as bacteria, fungi or viruses (Ref. 6). Congress again acknowledged in 1996 that the term "pesticide" is not limited to chemicals when it enacted FIFRA section 3(c)(10)(B) and established expedited review for both "biological and conventional pesticides" (7 U.S.C. 136a(c)(10)(B)). Plant-incorporated protectants, microbial pesticides, biochemicals and semiochemicals (e.g., pheromones) are included under the rubric of biological pesticides.

EPA also does not agree with the implication that risks associated with

pesticide use stem only from the use of chemical pesticides. While EPA believes that as a pesticide class, biological pesticides are more likely to present lower levels of risk, there are certainly chemical pesticides that also fall into the category of "safer pesticides." There may also be biological pesticides, including some plant-incorporated protectants, that could present higher levels of risk.

4. *Why has EPA not implemented a narrower definition of plant-incorporated protectant?* Some comments urged EPA to adopt a more narrow definition of plant-incorporated protectant. These comments include those who urged EPA to define plant-incorporated protectants to be only those pesticidal substances that are introduced into plants from sources outside the plant kingdom, and those who urged the Agency to utilize toxicity to define a plant-incorporated protectant.

FIFRA section 2 defines pesticide broadly as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant or a nitrogen stabilizer (7 U.S.C. 136 (u)). The FIFRA section 2 definition of pesticide does not make any reference to conditions such as origin nor the level or kind of toxicity that a product must exhibit in order to be considered a pesticide. Instead of defining a substance either in or out of FIFRA based on its toxicity or origin, FIFRA section 25(b) authorizes EPA to exempt pesticides from FIFRA requirements. In the actions it takes today, EPA exempts plant-incorporated protectants derived through conventional breeding from sexually compatible plants. These actions significantly reduce the number of plant-incorporated protectants subject to FIFRA requirements, although they have no effect on the FIFRA section 2 definition of pesticide.

5. *How do substances produced and used in living plants meet the intent standard in the FIFRA definition of pesticide?* EPA received comments indicating some confusion may exist in the broader community regarding the concept of "intent" in the FIFRA section 2(u) definition of pesticide, and in how this concept applies to plant-incorporated protectants. One comment, for example, argued that plant defense substances should not be pesticides and stated that by "strict interpretation of the FIFRA definition of pesticide, substances produced by plants that provide protection against pests and disease cannot be considered pesticides because plants do not 'intend' nor 'produce to protect themselves.'" The commenter went on to state that "this argument would certainly be correct for wild plants because only natural selection has been involved in stabilization of the character. This argument would also hold for many cases of cultivars improved through breeding programs because many times breeders select for the best yielding plants without specific regard to specific disease or pest; thus there is no intent."

A key statutory element in the FIFRA definition of pesticide is whether a human "intends" that a substance or mixture of substances be used for destroying, preventing, repelling, or mitigating a pest. Just as EPA does not evaluate whether a granule of a traditional chemical pesticide "intends" to function as a pesticide in determining whether a substance is a pesticide, the Agency did not base its determination that plant-incorporated protectants are pesticides on the belief that a plant "intends" to prevent, destroy, repel, or mitigate a pest. Rather, EPA considers the actions of the humans selling, distributing, or using the substance. To the extent a human relies on a plant's existing pest control properties, the human demonstrates pesticidal intent; if he or she uses, or sells a plant knowing that it typically produces a pesticidal substance he or she "intends" for it to be produced. For example, EPA considers that a clear human intent is present when a seller or distributor claims, states, or implies (by labeling or advertising or otherwise) that a substance or organism, either by itself or in combination with other substances or organisms, can or should be used as a pesticide. An example of this would be a company advertising that the cotton seed it is selling would produce cotton plants expressing an insecticidal protein effective against lepidopteran pests. Another example of intent would be a company advertising that a certain variety of squash resists fungal disease.

Yet a third example of a situation where a human displays a pesticidal intent involves a person who sells or distributes a product with actual or constructive knowledge that the product will be used, or is intended to be used, for a pesticidal purpose (see 40 CFR 152.15). EPA considers that the person introducing genetic material encoding a pesticidal substance into a plant displays such an intent. For example, the Bt delta-endotoxin is a well-known insecticidal protein with no other known function; introduction of such a protein into a plant displays a clear pesticidal intent.

Another example of such intent is the use of a name for the product which includes the name of a substance commonly recognized as having pesticidal properties. Such a product will be recognized as a pesticide because the targeted consumer would recognize from the product name that the product contains a pesticide.

A substance in a plant evolving in the wild in response to natural selection is not subject to FIFRA until a human intends the substance to be sold, distributed in commerce, or used to prevent, destroy, repel, or mitigate a pest. Similarly, a cultivar selected, sold and distributed with reference only to yield considerations, without exhibiting any indicia of intent for the cultivar to be used as a pesticide, does not contain substance(s) meeting the FIFRA section 2(u) definition of pesticide. EPA would not treat such a cultivar, or a substance within it, as a pesticide until a human exhibits the requisite intent that the substance(s) or cultivar be used for preventing, destroying, repelling or mitigating a pest.

6. *Why does EPA have a role to play, in light of peer review and existing standards of practice in the plant breeding industry?* Some commenters opposed to EPA's approach argued that use of non-governmental peer review and standards of practice accepted in plant breeding are adequate. As discussed in Unit VII.A.5., whether a substance is a pesticide under the FIFRA section 2 definition depends on the intent of those selling or distributing it. Once something falls within the FIFRA definition of a pesticide, it must generally be registered before it can be sold or distributed in the United States, unless EPA can make the requisite findings to exempt it. For some plant-incorporated protectants, EPA believes that there are circumstances where it is necessary that the Agency employ its statutory authorities to ensure use will not cause unreasonable adverse effects on the environment, and/or ensure that residues of the plant-incorporated protectant can be safely consumed. Some plant-incorporated protectants may be isolated from novel sources (e.g., scorpions, frogs, microorganisms), and may present novel, unknown and/or unfamiliar, toxicological profiles. For example, most of the plant-incorporated protectants reviewed to date by EPA have been insecticidal proteins isolated from microbial sources. These insecticidal proteins are regulated by EPA when they are formulated to be sprayed/dusted on plants. Many of the risk considerations associated with use of the insecticidal proteins in the sprayed/dusted product are present

when the proteins are formulated as a plant-incorporated protectant, even though the route of exposure may be different for the different formulations.

There are also substances that occur naturally in plants, including major crop plants, that can cause toxic effects when present at high concentrations or when presented in novel exposures (Refs. 7 and 8). As these substances could be used as plant-incorporated protectants, EPA believes it is important for the Agency to be able to employ its statutory authorities to ensure use will not cause unreasonable adverse effects on the environment.

EPA, nonetheless, recognizes that plant breeding in the United States has a good record of providing a safe food supply and that plant breeders employ accepted standards of practice to maintain this record. This good record provides support to the Agency's determination that it can exempt plant-incorporated protectants derived through conventional breeding from sexually compatible plants from almost all regulatory oversight, relying only on the post-market reporting of adverse effects. EPA believes that the clarification in this rule that the Agency will not regulate plants per se, in conjunction with the exemption it is issuing today, limits EPA's regulatory role in conventional plant breeding and ensures that the Agency does not unnecessarily supplant the self-regulating aspects of plant breeding.

Some comments that in general otherwise supported EPA's approach, encouraged EPA to ensure that pest resistant crops derived by conventional plant breeding are not subjected to unnecessary regulation. As explained above, EPA believes that its clarification that it would not regulate plants per se, and the exemption it is issuing today, limit EPA's regulatory role in conventional plant breeding and ensures that the Agency does not subject pest-resistant crops derived by conventional breeding to unnecessary regulation.

7. *What were the comments on regulatory procedures?* One comment recommended that, before EPA's regulations are finalized, EPA address issues such as labeling, and field testing and seed production. Another comment recommended that the Agency develop guidelines, in conjunction with the scientific community and industry, to help those who are developing products from these new technologies to determine the factors and situations that might merit regulation by the EPA.

Subsequent to publication of the 1994 **Federal Register** documents, EPA under existing regulations in 40 CFR parts 152 through 173 and 40 CFR parts 177 through 180, took several actions with regard to plant-incorporated protectants. EPA issued, for example, a number of EUPs for field testing of plant-incorporated protectants, exemptions from the requirement of a tolerance for residues of plant-incorporated protectants, and registrations for plant-incorporated protectants.

Together, these actions show how EPA to date has approached labeling, field testing, large scale planting for seed increase, and data needs for evaluating plant-incorporated protectants. In the future, EPA anticipates proposing additional regulations for plant-incorporated protectants that would tailor existing regulations for pesticides so that the procedures would better fit the characteristics of plant-incorporated protectants. Until such regulations can be issued, EPA will continue to apply the regulations in 40 CFR parts 152 through 173 and 40 CFR parts 177 through 180 to plant-incorporated protectants, unless superceded by the regulations published in 40 CFR part 174.

i. *How has EPA approached labeling?* One commenter asked whether labels are expected to appear on bags of seed, and, if so, what information should be on the label. Labeling is generally required by FIFRA for pesticides. Labeling includes both written material accompanying the pesticides and labels on or attached to the pesticide, its container, or wrapper (7 U.S.C. 136 (p)). In its 1994 policy statement for plant-incorporated protectants, EPA attempted to provide the broad outlines of how it would approach labeling. The Agency recognized in the 1994 **Federal Register** policy statement (59 FR 60510) that certain types of labeling which are appropriate for chemical pesticides will not be practical for plant-incorporated protectants. In issuing registrations for plant-incorporated protectants, EPA has followed the labeling regulations at 40 CFR part 156. Under current procedures for plant-incorporated protectants, the pesticide label is held by the producer or the producer's agent(s) and is attached to seed sent to seed propagators. The actual pesticide label requires that informational material must be provided to the farmer with bags of seed sold to farmers. The informational material should indicate that the seed contains a registered plant-incorporated protectant, and its primary purpose is to prevent needless spraying of chemical pesticides. The informational material also conveys any other information pertinent to the grower on the registration and use of the plant-incorporated protectant. Recognizing that the regulations at 40 CFR part 156 were written for chemical pesticides, EPA intends in the future to propose at 40 CFR part 174, labeling requirements specifically tailored for plant-incorporated protectants. No label of any type is required for the plant-incorporated protectants exempted in new 40 CFR part 174.

ii. *How has EPA approached seed increase?* One commenter noted that to produce seed for sale, companies will need to plant significant acreage to generate commercial quantities of seed. The commenter asked how such developmental work will be carried out, as such work does not fall under the traditional usage of an Experimental Use Permit (EUP), because an EUP is granted for generation of data to support registration. Since 1994, EPA issued three "seed increase" registrations. Seed increase registrations were issued to allow producers to grow seed for commercial sale, and were limited to seed increase activities. Most registrants, however, currently obtain a registration prior to beginning seed increase activities sufficiently large to produce seed for commercial sale and distribution.

iii. *What is EPA doing in terms of guidance?* With regard to the comment that the Agency develop guidelines to help those who are developing products from these new technologies, EPA, in its November 23, 1994 **Federal Register** policy statement (59 FR 60511), attempted to provide a general perspective on information needs for plant-incorporated protectants. The Agency in the future intends to establish data requirements specific to plant-incorporated protectants through a public notice and comment process. In establishing these testing requirements, EPA will propose the tests it believes are appropriate, indicating the circumstances when each study would be required, conditionally required, or not required. These proposed requirements will be widely available for public comment and will be reviewed in a public meeting of the FIFRA SAP. Amendments can be made to the proposed guidelines as part of the notice and comment process. EPA has already begun this process with the public meetings on December 8, 1999, February 29, 2000 and June 7, 2000 of the FIFRA SAP on data requirements for product identity, human health and non-target organism effects of proteineous plant-incorporated protectants.

8. *What comments were received on the definitions?* Some commenters who supported EPA's approach thought the

plant-incorporated protectant definitions and other associated definitions appropriate. Other comments, while in general supporting the approach, expressed reservations about the definitions. These comments focused primarily on three issues: First, whether the "genetic material necessary for the production" should be part of the plant-incorporated protectant definitions; second, clarification of how this term is to be interpreted in several specific circumstances, e.g., with regard to multiple copies of a gene; and, third, what the term "living" was intended to signify in the definitions, particularly with regard to regulation of plant-incorporated protectants intended for post-harvest pest control.

i. *Why is EPA including genetic material in the plant-incorporated protectant definitions?* EPA received several comments on including "genetic material necessary for the production" in the plant-incorporated protectant definitions. Some comments supported inclusion. Other commenters opposed including genetic material in the definitions for various reasons: First, that inclusion of genetic material in the definition runs counter to the traditional definition of pesticide. Second, commenters disagreed with the presumption that the presence in a plant of genetic material necessary for producing a pesticidal substance indicates a pesticidal intent since the genetic material will still be in the plant when there is no longer any "pesticidal intent," e.g., once a crop has been harvested and regenerative material no longer used for future plantings. Third, commenters argued that including the genetic material necessary for the production in the plant-incorporated protectant definitions is not necessary for EPA to be able to request data on the genetic material. Fourth, commenters asserted that including genetic material in the definitions results in EPA effectively regulating the whole plant because genetic material is found in all parts of the plant. Fifth, commenters alleged that inclusion of the genetic material in the definitions makes EPA's approach inconsistent with policies of the Food and Drug Administration (FDA). Sixth, the comments raised arguments that inclusion of genetic material in the definitions would add an unnecessary layer of complexity to the regulatory process. One commenter suggested that EPA should, on the basis of the above listed considerations, reevaluate EPA's inclusion of the genetic material in the plant-incorporated protectant definitions. The comment suggested that if the Agency concludes that "genetic material" must remain in the plant-incorporated protectant definitions, it should be an inert ingredient, not part of the definition of active ingredient.

Based on several considerations, EPA has determined that the "genetic material necessary for the production" will continue to be part of the plant-incorporated protectant definitions. First, the conclusion that such genetic material is part of a plant-incorporated protectant is consistent with FIFRA which defines "pesticide" broadly, and encompasses both single substances and mixtures of substances intended for preventing, destroying, repelling or mitigating a pest. The genetic material and the substance it encodes for are such a mixture. In this instance, the genetic material is introduced into the plant with the intent to cause a pesticidal effect; i.e., with the intent that the substance(s) produced from this genetic template will ultimately result in a pesticidal effect. Thus, the genetic material, as well as the pesticidal substance, are introduced with the intention of obtaining a pesticidal benefit. Both the genetic material and the pesticidal substance meet the FIFRA statutory definition of pesticide. Second, including the genetic material in the definitions permits EPA to address plant-incorporated protectants during stages of the plant's life cycle or in plant parts (e.g., in pollen or seed) where the pesticidal substance itself is not produced or is produced in amounts below the limits of detection. EPA believes that including the genetic material in the definitions maintains regulatory continuity during such periods in a plant's life cycle and has concluded that this regulatory continuity is important for comprehensively addressing potential risks associated with plant-incorporated protectants within a cohesive and rational regulatory policy. Third, inclusion of the genetic material in the definitions allows the Agency to more readily verify the presence of the plant-incorporated protectant in the plant or plant material because, in many instances, it may be more difficult technically to assay for the substance than it is to assay for the genetic material. Fourth, inclusion of genetic material in the definitions allows EPA to address the spread of the pesticidal substance in the environment through the spread of the genetic material necessary for the production of the pesticidal substance.

a. *Why is inclusion of genetic material in the definition consistent with the traditional use of the term pesticide?* Many of the commenters that disagreed with the inclusion of genetic material in the plant-incorporated protectant definitions argued that including the genetic material runs counter to the traditional use of the term, "pesticide."

EPA finds that inclusion of the genetic material in the plant-incorporated protectant definitions is consistent with FIFRA. FIFRA section 2(u) defines the term "pesticide" broadly to include "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest" (7 U.S.C. 136 (u)). Section 2(u) defines a pesticide in terms of the intent of humans to exert a deleterious effect upon pests. It does not limit pesticides to substances that directly cause such a deleterious effect (7 U.S.C. 136 (u)). Indeed, EPA has registered chemical substances that do not directly have pesticidal effects but which, when applied to plants, are transformed into the substance having the actual pesticidal effect.

Consistent with FIFRA section 2(u), EPA has concluded that the genetic material necessary for the production of a pesticidal substance, intentionally introduced into a plant, meets the FIFRA statutory definition of a pesticide. Such material is introduced into a plant with the intent of ultimately producing a pesticidal effect even though the genetic material may not itself directly affect pests. The commenter did not identify any specific instances of past Agency usage that would conflict with this conclusion, and EPA is not aware of any.

b. *Why is the genetic material part of the active ingredient definition?* EPA does not agree with the comment suggesting that the genetic material be considered an inert ingredient and not part of the active ingredient. In deciding to include the genetic material necessary for the production of a pesticidal substance in the definition of active ingredient, the Agency considered the statutory definitions of inert and active ingredients. Based on these definitions, EPA concluded that the genetic material necessary for the production of a pesticide fit more closely within the section 2(a) definition of "active ingredient." Section 2(a) defines an active ingredient as, among other things "the ingredient which will prevent, destroy, repel, or mitigate any pest" (7 U.S.C. 136(a)(1)). The genetic material is a necessary component of the ability of the plant-incorporated protectant to prevent, destroy, repel or mitigate a pest, as without the genetic material the plant cannot produce the pesticidal substance (See also, 7 U.S.C. section 136(a)(2)). Moreover, the genetic material was inserted with the intention

of obtaining a pesticidal effect: the expression of a substance that will prevent, destroy, repel, mitigate any pest. Consequently, EPA will not define the genetic material necessary for the production of a pesticidal substance as an inert ingredient, as suggested by comment.

c. *How does including genetic material in the definitions relate to EPA's ability to request data?* EPA received comment stating that the Agency has the authority to require all relevant data for a plant-incorporated protectant, including data related to the genetic material, regardless of whether the genetic material is part of the definitions. The same comment noted that deleting the phrase "genetic material necessary for the production" from the definitions will not prevent EPA from addressing salient issues related to the spread of genetic material in the environment, or to the levels of the pesticidal substance present in the plant.

EPA agrees that it has broad authority under FIFRA to gather and review data/information on any aspect of a pesticide product or its use in the environment, including data on fate in the environment. However, if a particular aspect of a plant-incorporated protectant is not part of the active or inert ingredient definition for plant-incorporated protectants, it is part of the plant and this rule clarifies that the plant is exempt under FIFRA section 25(b)(1) from FIFRA requirements (40 CFR 152.20). Thus, data gathering considerations are not the primary reason the Agency is including the genetic material in the definitions.

The comment also stated, with regard to EPA's argument that including the genetic material in the definitions permits the Agency to address plant-incorporated protectants during stages of the plant's life cycle where the pesticidal substance itself is not produced, that EPA has the authority to address pesticides at various stages of the product's life cycle, in soil, water and food without including the genetic material in the definitions. EPA agrees that it has the authority to control pesticide residues and the metabolites and degradates of pesticides in the environment and in food. However, as previously noted, unless the genetic material is part of the plant-incorporated protectant, it will be exempt under 40 CFR 152.20. The Agency also believes that in certain circumstances for technical reasons it is easier to identify the presence of the genetic material than the pesticidal substance, and considered this in deciding whether to include the genetic material in the definitions.

d. *Is inclusion of the genetic material in the definitions a disincentive to developers?* The comment provided no specific reason why inclusion of genetic material in the definitions would hinder product development or increase costs. EPA has registered eleven plant-incorporated protectants to date, and including the genetic material in the definitions does not appear to have discouraged companies from developing plant-incorporated protectants.

e. *Is inclusion of the genetic material in the definitions consistent with the assumption of "intent"?* One commenter opposed EPA's proposal to include the genetic material necessary for production of the pesticidal substance in the definitions of active ingredient and plant-incorporated protectant on the grounds that it is inconsistent with EPA's longstanding implementation of FIFRA, as well as the statute. Specifically, the commenter disagreed with EPA's statement that the genetic material "is introduced into the plant with the intent that it will ultimately result in a pesticidal effect," alleging that this equates the presence of genetic material with pesticidal intent, and fails to acknowledge that a substance can have both pesticidal and non-pesticidal uses, depending on how the substance is intended to be used. The commenter contended that "once the crop has been harvested and regenerative material removed for future plantings, any genetic material that remains in the food, feed, or other product no longer is accompanied by any 'pesticidal intent.'"

EPA disagrees that its decision to include the genetic material in its definitions of a plant-incorporated protectant and active ingredient fails to adequately recognize the role "intent" plays under FIFRA, or that its decision necessarily equates the presence of genetic material with pesticidal intent. The commenter appears to have misunderstood EPA's statements on this issue, and their implications with respect to EPA's regulation of such substances under FIFRA.

As a preliminary matter, EPA believes that including the genetic material necessary to produce a pesticidal substance in the plant-incorporated protectant definitions is consistent with key statutory definitions, as explained at length in Unit VII.B.8.i. FIFRA section 2(u), defines pesticide to include "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest" (7 U.S.C. 136(u)). Under FIFRA, a substance is a pesticide if it is intended to be used for a pesticidal purpose. And as EPA has previously explained, substances that are sold or distributed with the intent that they "prevent, destroy, repel, or mitigate any pest" fall within the FIFRA section 2(u) definition of a pesticide. In the absence of other facts indicating a contrary intent, EPA believes that it is reasonable to presume that the introduction into a plant of genetic material that produces, or is intended to produce, a pesticidal substance is clear evidence of a pesticidal purpose. EPA's interpretation is based on the fact that without the genetic material, the pesticidal substance, the substance that will actually "prevent, destroy, repel, or mitigate any pest," cannot be produced by the plant. The sole reason the genetic material is inserted into the plant is to ensure that the pesticidal substance is produced. This is fully consistent with EPA's approach to traditional chemical pesticides (see, 40 CFR 152.15(b)).

However, regulation of the genetic material necessary for the production of a pesticidal substance as an active ingredient or a plant-incorporated protectant in one plant does not mean that some portion of the genetic material cannot be used for another purpose without being subject to FIFRA. At no time has EPA stated that, for example, once a particular promoter is used as part of the construct inserted to produce a pesticidal substance in a plant, thereafter, irrespective of the rest of the genetic construct that is inserted, EPA will always consider insertion of the promoter to demonstrate pesticidal intent. Rather, EPA's statement was intended to clarify that, in the absence of indicia indicating a contrary intent, because the purpose of the introduced genetic material is to produce a pesticidal substance, the insertion of the genetic material will be taken as evidence of a pesticidal intent, and the resulting product will be considered a pesticide under FIFRA. In Unit VII.B.5., EPA discusses in some detail, examples of actions that the Agency interprets as indicia of a pesticidal intent. Clarity on this point is of particular concern with respect to these products because the plant in which the plant-incorporated protectant is contained will remain exempt, and anything that is not part of the plant-incorporated protectant will therefore not be regulated by the Agency under FIFRA.

Thus, EPA agrees with the commenter that under some circumstances the pesticidal intent would cease after harvest, and under such circumstances, the sale of the produce as food or feed would be subject to the FFDCA, rather than FIFRA. The mere presence of such genetic material in the produce will not

cause EPA to treat the produce as a pesticide, absent any indicia of intent to sell, distribute in commerce, or use the produce itself as a pesticide, any more than the presence of traditional pesticide chemical residues renders a food bearing those residues a pesticide. However, if the produce is intended to be used, sold or distributed as containing a plant-incorporated protectant, EPA will regulate it as such. To clarify this, EPA has revised the definition of plant-incorporated protectant, and included a definition of the term "produce thereof," to specifically exclude the products of a plant-incorporated protectant merely bearing "pesticide chemical residues," such as the genetic material, from the definition of a plant incorporated protectant, when the plant-incorporated protectant in the produce is not intended to provide post-harvest control. EPA provides further discussion of its treatment of products that are intended to provide post-harvest control in Unit VII.B.8.iii., and the associated response to comments document (Ref. 2).

The question of pesticidal intent arises in making the determination that the substance being sold or distributed in commerce is a pesticide that must be registered under FIFRA, or whose use is subject to regulation under section 3(a), and for which a tolerance must be granted under section 408 of the FFDCA to permit food or feed bearing the residues of that substance to be introduced into interstate commerce. Unless the Agency is attempting to regulate the produce as a pesticide, the issue of post-harvest control is irrelevant. Thus, as explained in the preceding paragraph, the issue of post-harvest control is essentially irrelevant to EPA's interpretation that the introduction of genetic material into a plant that is expected to ultimately produce a pesticidal effect provides evidence of pesticidal intent, absent any other indicia to the contrary.

In addition, EPA offered in 1994 several reasons in support of its decision to include the genetic material necessary to produce the pesticidal substance, as well as the pesticidal substance, in the definition of a plant-pesticide (59 FR 60521). None of them rested on an assumption that evidence of a pesticidal intent would always be present after harvest.

This approach is fully consistent with the Agency's approach to traditional chemical pesticides. For example, the Agency follows the fate of traditional chemical pesticides in the soil after the harvest of the crop and during rotational crop plantings, even when there is no intent to "prevent, destroy, repel, or mitigate any pest" after harvest or during later plantings. This allows EPA, as required by FIFRA, to ensure that a pesticide "when used in accordance with widespread and commonly recognized practice, . . . will not generally cause unreasonable adverse effects on the environment" (see 7 U.S.C. sections 136a(c)(5) and 136d). This requirement applies even when the intent of preventing, destroying, repelling or mitigating a pest is no longer evident; for example, as part of its regulation of pesticides EPA considers whether pesticide residues or metabolites can migrate into groundwater, even though there is no intention of obtaining a pesticidal effect from the presence of these substances in groundwater.

f. *How does the genetic material in the definitions relate to the whole plant?* Comments disagreeing with the inclusion of the genetic material in the definitions also argued that including the genetic material "calls into question EPA's assertion that it has no intention of regulating the plant, since the 'genetic material' will be present in all parts of the plant and in products derived from the plant."

EPA does not believe that including the genetic material in the definitions calls into question EPA's assertion that it has no intention of regulating the plant. The comment did not explain how regulation of the genetic material would lead to regulation of the whole plant, nor how regulation of genetic material would result in a different outcome in this regard from regulation only of the substance produced from the genetic material. EPA clarifies in this document that plants used as biological control agents are exempt at 40 CFR 152.20. As a result, EPA is not regulating plants or varieties of plants. Rather, the Agency regulates the plant-incorporated protectant (i.e., the pesticidal substance, the genetic material necessary for the production of the pesticidal substance, and any inert ingredient) for use in a particular type of plant (e.g., cotton). To date, EPA has registered several plant-incorporated protectants, and all have been registered for use in the crop, rather than plant variety by plant variety. Moreover, changes to a plant that are unrelated to the plant-incorporated protectant would not be regulated by EPA, but by the United State Department of Agriculture (USDA) and the FDA. For example, changing the color of Bt cotton with the intent of marketing undyed but nonetheless colored cotton would be evaluated by the USDA and FDA (if the cottonseed were to be processed for meal or oil in food or feed uses), even though EPA would evaluate and regulate the effects of the pesticide, Bt.

g. *Is inclusion of the genetic material in the definitions consistent with FDA policy?* One comment suggested that inclusion of the genetic material in the definition of plant-incorporated protectant makes EPA's approach inconsistent with FDA's 1992 Statement of Policy for Foods Derived from New Plant Varieties (57 FR 22984). The comment stated that in its 1992 policy, FDA recognized that genetic material is present in the cells of every living organism and as a result should be presumed to be "generally recognized as safe."

EPA disagrees that its approach is inconsistent with the 1992 policy issued by FDA. EPA is publishing elsewhere in this issue of the **Federal Register** an exemption from the FFDCA section 408 requirement of a tolerance, for residues in or on food or feed of nucleic acids that are part of a plant-incorporated protectant. This exemption from FFDCA section 408 requirements applies to the genetic material necessary for the production of a pesticidal substance. Part of the rationale supporting EPA's FFDCA exemption is that nucleic acids are ubiquitous in nature and have always been present in human food and domestic animal feed and have been consumed without harm. This rationale is consistent with FDA's rationale which considers genetic material in food to be "Generally Recognized as Safe" (GRAS). EPA believes its approach under FFDCA is consistent with FDA's approach under FFDCA. FIFRA does not automatically exempt substances FDA has classified as GRAS. Instead, FIFRA requires entities who wish to sell or distribute a pesticide to either register the pesticide or seek an exemption from FIFRA requirements prior to such use. For example, garlic used as a pesticide, was registered until EPA exempted it at 40 CFR 152.25(g) as a minimum risk pesticide. Any person may petition EPA to establish an exemption pursuant to FIFRA section 25(b) and FFDCA section 408(d). EPA will make every effort to expedite its review of such petitions.

h. *Does inclusion of the genetic material in the definitions create an overly complex regulatory process?* One comment stated that inclusion of the genetic material in the definitions will result in regulatory uncertainty. The commenter did not explain how inclusion of the genetic material in the definitions would lead to such uncertainty, and EPA assumes that this commenter's uncertainty is related to issues posed by the following questions.

Are all the genes in the vector used to transform the plant covered by the definition? If fragments of a gene are present in the plant, but do not encode a pesticidal substance, are the fragments covered by the definition? Would a producer need to provide EPA with the number of copies of the genes that are introduced into the plant? Would the number of copies be a consideration in the registration process, e.g., in determining when a separate, distinct registration is required? How would changes in regulatory regions affect the status of a registered product; for example, would a new registration be required for a change in a promoter?

EPA does not believe that inclusion of the genetic material in the definitions will lead to an unnecessary layer of complexity in the regulatory process. Because the questions posed by the commenter relate to how EPA views the phrase, genetic material necessary for the production of the pesticidal substance, EPA responds in Unit VII.B.8.ii. to the specific questions posed with regard to the genetic material.

ii. *How is the phrase "genetic material necessary for the production" to be interpreted?* EPA's analysis of, and response to, the specific questions posed with regard to the genetic material follows. While conceptually parts of this analysis could apply to exempt as well as non-exempt plant-incorporated protectants, the analysis has practical relevance only for those plant-incorporated protectants that are not exempt from FIFRA requirements and are, or are to be, regulated. For example, the discussion in Unit VII.B.8.ii. on the Confidential Statement of Formula is only relevant to registered plant-incorporated protectants.

a. *How does EPA view genetic material introduced into the plant but not expressed in the plant?* One of the questions posed by comment was whether all the genetic material in a vector used to transform a plant is considered to be part of a plant-incorporated protectant, even if some of the genetic material on the vector is not expressed in the plant and does not play a role in regulation of expression of the pesticidal substance in the plant. A second question concerned the status of gene fragments that do not express a pesticidal substance.

EPA does not intend that all genetic material present in the genetic insert (e.g., in a vector) introduced into the plant must be considered part of the plant-incorporated protectant. EPA defines the term, "genetic material necessary for the production" to mean "genetic material that encodes a pesticidal substance or leads to the production of a pesticidal substance and regulatory regions." To more fully describe how EPA interprets this language, two scenarios are discussed.

The first scenario involves sequences that do not function as regulatory regions in the plant bnt do so in other organisms (e.g., in bacteria). For example, quantities of the genetic material intended to be introduced into a plant are often prepared through fermentation of bacteria containing the desired genetic material on pieces of genetic material called plasmids. To prepare the genetic material, large quantities of bacteria are grown and the plasmids they contain are isolated for subsequent introduction into plant cells. One specific segment of genetic material in these plasmids, called an origin of replication, controls the replication of the plasmids in the bacterium. Even though these origins of replication only function as regulatory regions in bacteria, for technical reasons, they are sometimes part of the genetic material introduced into the plant along with the genetic material that encodes for, or leads to the production of a pesticidal substance. These plasmid origins of replication would not be considered part of the plant-incorporated protectant, because they do not encode for a pesticidal substance nor do they lead to production of the pesticidal substance in the plant, i.e., they do not function as regulatory regions in the plant. Genetic material necessary for vector maintenance/transfer in an intermediate host system (e.g., bacteria) and having no function in the plant would not be considered part of a plant-incorporated protectant. Sequences that function as regulatory regions in one organism (e.g., bacteria), but not in the plant are not "genetic material necessary for the production of the pesticidal substance" in the context of a plant-incorporated protectant. These sequences are not used in a living plant, or in the produce thereof.

Under the second scenario, a plant-incorporated protectant is introduced into a plant, but, because of constraints such as the plant's genetic background, or the point of insertion in the plant's genome, or accidents of insertion in which an incomplete copy of a gene is inserted or a regulatory element is lost, the pesticidal substance is never produced from the genetic material. In the absence of pesticidal claims, or other indicia of intent, the genetic material would not be considered part of a plant-incorporated protectant. If, however, in subsequent generations, the previously silent genetic material produces the pesticidal substance, and pesticidal claims or other indicia of pesticidal intent are present, the previously silent genetic material would be considered, along with the pesticidal substance, a plant-incorporated protectant.

b. *Will EPA need to know how many copies of a gene are introduced into a plant?* One commenter questioned whether a registrant would need to provide EPA with the number of copies of the genes that are introduced into the plant when seeking a registration, and whether a change in the number of copies present in the plant would trigger a new registration action.

The number of copies of the gene(s) introduced into the plant for the production of the pesticidal substance will not necessarily be a factor in EPA's determination of whether a new registration is needed. However, the amount of the pesticidal substance (i.e., levels of expression) in various plant tissues may be important for an assessment of potential exposure, and levels of expression may, in some cases, be related to number of gene copies. Thus, while, in general, changes in gene copy number would not automatically require an amendment to the registration, such information may, on occasion, be important in identification and management of risk. Currently, the Confidential Statement of Formula, containing information that must be submitted with each application for registration, describes either the range of levels of pesticidal substance(s) expected to be expressed in the plant, or a maximum level expected to be produced by the plant. Should the level of the pesticidal substance(s) be increased beyond, or decreased below, the range or the maximum level described in the Confidential Statement of Formula, EPA believes that the registrant would generally be required to submit an application for an amended registration pursuant to 40 CFR 152.44, as the risk assessment performed for levels listed in the Confidential Statement of Formula may not be relevant for the new levels. EPA may, in certain cases, waive this requirement, as described in 40 CFR 152.44(b)(1), or permit an applicant to modify a registration by notification or non-notification, in accordance with 40 CFR 152.46. Registrants are therefore encouraged to consult with the Agency in such cases. Distribution or sale of products containing levels beyond those described in the Confidential Statement of Formula may constitute an unlawful act under FIFRA section 12. This approach for plant-incorporated protectants is consistent with the Agency's approach for more traditional

pesticides (e.g., pesticides synthesized through petroleum chemistry) with regard to pesticide levels as described in the Confidential Statement of Formula.

c. *Will EPA need to know about changes in regulatory regions?* One commenter questioned whether changes in regulatory regions would affect the status of a registered product. For example, would a new registration be required if one promoter is substituted for another in an already registered plant-incorporated protectant?

Regulatory regions such as promoters are part of the definition of "genetic material necessary for the production" of a pesticidal substance. EPA does not anticipate that a new registration, or an amendment to the existing registration, would always be required with each modification to a regulatory region. However, EPA believes that in general, an application for an amended registration would need to be submitted pursuant to 40 CFR 152.44. Because the Agency has the discretion to waive this requirement, or to permit an applicant to modify a registration by notification or non-notification, registrants are encouraged to consult with the Agency to determine whether the Confidential Statement of Formula would need to be modified and consequently a new registration or an amendment to the existing registration would be required. In some cases a modification to a regulatory region could result in a new formulation, a new use, or a new active ingredient. For example, a change in a regulatory region could result in the pesticidal substance being expressed in a different plant tissue than where the pesticidal substance had been expressed for the original registration. In the assessment for the original registration, risk might only have been evaluated for production of the pesticidal substance in the leaves of the plant. With the change in promotor, the pesticidal substance could now be produced in the fruit, and risk would have to be evaluated for production of the pesticidal substance in the fruit. Evaluations to assess the potential for risk associated with such changes typically occur in a new registration action or an action amending an existing registration.

d. *How will EPA view enzymatic pathways?* Several commenters asked whether EPA would regulate genetic material encoding enzymatic pathways leading to the production of a pesticidal substance. Another comment noted that it "is not clear from either the definition of active or an inert ingredient how or whether EPA intends to regulate novel gene products, and the genetic material necessary for their production, that represents substances such as enzymes, precursors, or intermediates in biosynthetic pathways that lead to the production of a pesticidal substance."

With regard to the genetic material necessary for the production of the enzymes that are part of a pathway anabolizing the pesticidal substance, this genetic material is necessary for the production of the pesticidal substance, and thus, it is part of the plant-incorporated protectant.

With regard to the enzymes, precursors, or intermediates in biosynthetic pathways necessary for anabolizing the pesticidal substance, EPA at this time considers them to be part of the plant-incorporated protectant because the substance is intended to "ensure the presence of the active ingredient"—i.e., it is an inert ingredient. Given that it is theoretically possible that at least some of these substances could be associated with greater potential for adverse effects than the actual substance acting as a pesticide (e.g., precursors could be more toxic to a nontarget species than the actual pesticidal substance), EPA has at this time adopted a prudent course. As the Agency gains greater experience, it may reconsider how it treats enzymes, precursors or intermediates in anabolic pathways introduced with the express purpose of producing a pesticidal effect.

iii. *What comments were received on the word "living" in the plant-incorporated protectant definitions?* Several comments suggested that the word "living" be deleted from the definition of plant-incorporated protectant because inclusion of that word in the definition of plant-incorporated protectant confused the status of pesticidal substances used for protection against pests post-harvest. For post-harvest control, a pesticidal substance may be produced in the plant during the growth portion of its life cycle, not for protection of the growing plant against pests, but for use during the post-harvest stage, e.g., to protect the seed or fruit during storage. Another comment asked for clarification of the status of exudates and materials that are active in intercellular spaces and/or apoplasts in light of the clause "for use in the living plant."

a. *What does the word "living" signify in the plant-incorporated protectant definitions?* EPA believes it is important to include the word, "living" in the definitions to distinguish plant-incorporated protectants from other types of pesticides. A pesticide is a plant-incorporated protectant only if the pesticide is intended to be produced and used *in situ* in the plant.

The characteristic of being produced *in situ* and used in the living plant makes plant-incorporated protectants unique, particularly with regard to exposure considerations. Exposure considerations for plant-incorporated protectants will be dependent to a large part on the biological characteristics of the living plant in which the plant-incorporated protectant is produced and used. For example, if a plant can outcross with nearby relatives, the potential for spread and increase in the environment of that plant-incorporated protectant through the spread of pollen must be evaluated.

Inclusion of the word "living" in these definitions serves to distinguish plant-incorporated protectants from other types of pesticides. For example, it distinguishes plant-incorporated protectants from pesticides like pyrethrum isolated from chrysanthemums and applied to other plants, or pesticides such as the powder, produced by drying and grinding cayenne peppers, dusted on plants with the intent of preventing, destroying, repelling or mitigating a pest. A pesticide that consists of a dead plant or a portion of a dead plant that is intended to be used to control pests is currently regulated under FIFRA as subject to 40 CFR parts 153 through 173 and 40 CFR parts 177 through 180. An example of such a pesticide is pyrethrum, isolated from a plant and applied topically to other plants.

Because of the importance of distinguishing plant-incorporated protectants from other types of pesticides, EPA will retain the term "living" in the definitions of plant-incorporated protectant and active ingredient. However, EPA agrees with the commenter that a pesticidal substance produced in the plant during the growth portion of its life cycle, not for protection of the growing plant against pests, but for use during the post-harvest stage, would still be for a pesticidal activity that should be treated by EPA as a plant-incorporated protectant and thus subject to 40 CFR part 174. EPA believes the 1994 **Federal Register** documents (59 FR 60496, 60519, 60535, 60542 and 60545) clearly indicates that this was EPA's intent. However, because EPA does not believe it appropriate to delete the term "living" from the definition of plant-incorporated protectant, the Agency clarifies its intent regarding post-harvest control by including the phrase, "or in the produce thereof," in the definition of plant-incorporated protectant.

To reinforce the distinction between plant-incorporated protectants and other types of pesticides, the word "living" is

also added to the definition of recipient plant. Similarly, to emphasize that a plant-incorporated protectant is a pesticide produced and used *in situ* in a plant, a definition of "pesticidal substance" is added at 40 CFR 174.3 and 40 CFR 152.3.

To further clarify how EPA views a plant-incorporated protectant when the pesticidal substance is produced, or used, in perhaps only part of a plant's life cycle, EPA is including the phrase, "during any part of the living plant's life cycle," in the definition of pesticidal substance. This phrase clarifies that, if a pesticidal substance is intended to be produced and used for preventing, destroying, repelling or mitigating a pest at any time in a plant's life cycle, the pesticidal substance and the genetic material necessary for the production of the pesticidal substance are considered a plant-incorporated protectant, even if the substance is not continually produced at detectable levels throughout all parts of the plant's life cycle, or intended to be used in every part of a plant's life cycle for preventing, destroying, repelling or mitigating a pest. For example, the pesticidal substance may not be produced in the seedling but is produced in the tissues of the mature plant for preventing, destroying, repelling or mitigating a pest. In this situation, the seedling would be considered to contain a plant-incorporated protectant, because the pesticidal substance is produced and used during at least one stage of the plant's life cycle. Further, the genetic material necessary for the production of the pesticidal substance, which itself falls within the definition of pesticide under FIFRA section 2(u), and is defined as part of the plant-incorporated protectant in this rulemaking, would be present during all phases of the plant's life cycle. Depending on the biology of the plant, the life cycle could include, for example, a seed, an embryo, a seedling, a mature or senescent plant.

EPA has broad authority to regulate a pesticide. For example, the Agency follows the fate of substances applied as pesticides in the soil after the harvest of the crop and during rotational crop plantings. This allows EPA, as required by FIFRA, to ensure that a pesticide does not cause unreasonable adverse effects even when the intent of preventing, destroying, repelling or mitigating a pest is not evident.

A plant's life cycle is considered to be one generation, such as a seed to seedling to a mature plant and back to a seed for sexually reproducing plant species, and a vegetative propagule to adult plant to vegetative propagule for plants reproducing asexually. As in the common understanding of the term (Ref. 5), a propagule is the part of an organism that may be disseminated and reproduce the organism.

b. *How does EPA view exudates and materials that are active in intercellular spaces and/or apoplasts?* One commenter requested clarification on the status of exudates and materials that are active in intercellular spaces and/or apoplasts. An apoplast is a cell wall continuum of a plant (Ref. 9). Materials that are active in intercellular spaces are those active between the cells of the plant (Ref. 9). Apoplasts and intercellular spaces are within the living plant. An exudate is composed of substances that were within a plant and were exuded from the plant, within one of the commonly understood meanings of the word exude; i.e.,"to give off gradually through pores" (Ref. 5). EPA views apoplasts, intercellular spaces and exudates as properly being part of a living plant as described in the 1994 **Federal Register** document (e.g., see 59 FR 60534). EPA believes that this view of a living plant as the sum of its parts is evident in the preamble discussions of the November 23, 1994 policy (59 FR 60496) and proposed rule (59 FR 60519). In order to ensure that this view of the living plant is clear to the regulated community, EPA is adding at 40 CFR 174.3 a definition for the phrase, "in a living plant," which is part of the definition of "plant-incorporated protectant." The definition of "in a living plant" is intended to clarify that, for plant-incorporated protectants, the pesticidal substance is part of a plant-incorporated protectant when it is inside the living plant, on the surface of the living plant or an exudate given off gradually as part of a naturally occurring process by a living plant (Ref. 10). The term "in a living plant" is defined at 40 CFR 174.3 to mean "inside the living plant, on the surface of the living plant, or as an exudate from the living plant." For the purposes of this rule, EPA defines an "exudate" as "a substance gradually discharged or secreted across intact cellular membranes or cell walls and present in the intercellular spaces or on the exterior surfaces of the plant." EPA believes these actions address the commenter's request for clarification.

Sap or other material that is collected through mechanical means from a plant (e.g., sap exuded from a gash resulting from intentional wounding in the bark of a tree) by a human and sold or distributed as a pesticide does not fall within the definition of "exudate" because it was not given off gradually as part of a naturally occurring process from the plant. Rather it results from the wounding of the plant. Materials such as maple syrup may meet the definition of "produce thereof" if a substance within the syrup is intended to serve a pesticidal purpose by protecting the syrup after it has been collected from the tree. However, sap collected by mechanical means sold or distributed as a pesticide to protect some other produce or thing would be subject to regulations found in 40 CFR parts 150 through 173 and 40 CFR parts 177 through 180, rather than 40 CFR part 174.

iv. *What other modifications have been introduced into the definitions?* EPA, for purposes of clarity, introduces two other modifications to the plant-incorporated protectant definitions. First, EPA modifies the definition of "plant-incorporated protectant" for greater clarity, to include the concept of intention to use in a living plant as well as to be produced in a living plant, and to include the concept of the produce thereof, for similar reasons as discussed in Unit VII.B.8.iii.a. "Produce thereof" is defined to mean, when used with respect to plants containing plant-incorporated protectants only, a product of a living plant containing a plant-incorporated protectant, where the pesticidal substance is intended to serve a pesticidal purpose after the product has been separated from the living plant. Examples of such products include, but are not limited to, agricultural produce, grains and lumber. Products such as raw agricultural commodities bearing pesticide chemical residues, are not "produce thereof" when the residues are not intended to serve a pesticidal purpose in the produce.

Second, the definition of living plant at 40 CFR 174.3 and 40 CFR 152.3 is revised to read:

Living plant means a plant, plant organ or plant part that is alive, viable or dormant. Examples of plant parts include, but are not limited to, seeds, fruits, leaves, roots, stems, flowers and pollen.

v. *What is an inert ingredient for this type of pesticide?* EPA originally proposed to define inert ingredients for plant-incorporated protectants as "any substance, such as a selectable marker, other than the active ingredient, and the genetic material necessary for the production of the substance, that is intentionally introduced into a living plant along with the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient" (59 FR 60521).

In this section, EPA focuses on selectable markers. EPA discusses other inert ingredients in Unit VIII.B.8.ii.d. Therefore, throughout this discussion,

EPA uses the phrases "substances used to confirm or ensure the presence of a plant-incorporated protectant in a plant" and "selectable markers" interchangeably. Selectable markers are genetic material introduced into the plant or plant cells concomitant with the genetic material that confers the desired trait (e.g., a pesticidal trait). A selectable marker provides a means of distinguishing and selecting plants or plant cells that have successfully incorporated the genetic material conferring the desired trait from the vast majority of plants or plant cells that have not. For example, the selectable marker may endow the recipient cell with the ability to resist a lethal agent and the selection process may depend upon the cells that acquired the introduced genetic material being resistant to the lethal agent. When the cells are exposed to the lethal agent, the cells that did not incorporate the genetic material are killed, while the cells that did incorporate the introduced genetic material survive. When the researcher uses the toxic agent to select those cells that can resist the lethal agent, the researcher also selects the cells that acquired the desired trait (e.g., a pesticidal trait).

In response to its proposed rule in 1994, EPA received several comments suggesting that plant-incorporated protectant inert ingredients that had been reviewed by FDA should be exempt from EPA review. One commenter, noting that the 1992 FDA policy statement (57 FR 22984) addresses the relevant food safety issues associated with selectable markers, suggested these should only be reviewed by FDA. Other commenters suggested that the genetic material necessary for the production of the pesticidal substance be defined as an inert ingredient for plant-incorporated protectant, along with selectable markers, rather than as an active ingredient. Yet other commenters suggested that EPA broaden its original proposed rule to include "a substance used to assist in the identification of plants or plant cells containing the active ingredient." Another commenter suggested that marker genes and their products should be considered active ingredients in order to ensure some type of "safety review" of the marker genes. Another commenter urged EPA to make clear that plant-incorporated protectant inert ingredients are excluded from EPA's "new inerts" policy (52 FR 13305, April 22, 1987) which requires testing and EPA approval of inerts not already on the Agency's approved inerts list.

During development of the final rule, EPA reconsidered its 1994 proposed rule and published a supplemental document on July 22, 1996 in the **Federal Register** (61 FR 37891), discussing the Agency's treatment of inert ingredients. In the supplemental document, EPA discussed several considerations that argued against treating selectable markers as inert ingredients, including: the unique nature of plant-incorporated protectants and substances such as selectable markers; the function of selectable markers in plants; and the effects of selectable markers on the performance of the plant-incorporated protectant. The Agency pointed out that substances such as selectable markers are intentionally introduced into plants to aid in the selection of plants or plant cells that contain the desired genetic material necessary for producing the plant-incorporated protectant and consequently are typically introduced into the plant at the same time as the active ingredient (61 FR 37892–37893, July 22, 1996). Because the requisite intent to include such substances in the pesticide product is present in the use of selectable markers in plant-incorporated protectants, the markers would be considered to be an inert ingredient under the Agency's traditional interpretation of that term. But EPA also noted that selectable markers do not have pesticidal properties themselves, are not necessary for the plant-incorporated protectant to function in the plant and are usually used only once in the early stages of product development, and are of no use in modifying or enhancing the pesticidal activity of the plant-incorporated protectant. EPA also speculated that the marker genes could be lost from the plant during subsequent breeding with no effect on the active ingredient, and provided the public an additional opportunity to comment on how such substances should be viewed under FIFRA (61 FR 37893, July 22, 1996).

Many of the comments EPA received in response to the supplemental document recommended that selectable markers not be considered inert ingredients. Several of these commenters supported their recommendation by noting that it would reduce the "potential for duplication with reviews by the FDA," which already reviews the food and feed safety of selectable markers. One commenter, who supported a decision not to consider all selectable markers as inert ingredients, nevertheless noted that the commenter was "particularly concerned about adverse environmental impacts of such substances on non-target organisms, particularly salmon or members of aquatic ecosystems upon which their survival depends." Another commenter, while concurring that EPA should not regulate selectable markers as inert ingredients, suggested that EPA explore in greater detail the ramifications of using herbicide tolerant traits as selectable markers. This commenter was concerned that potentially widespread use of herbicide resistance traits as selectable markers "may tempt unscrupulous farmers to apply the herbicide to crop plants in the field, even though the herbicide is not registered for use with the crop plant."

To determine how to proceed, the Agency considered the comments received in response to both its original proposed rule and the supplemental document, and the degree to which they addressed the considerations laid out in the supplemental document. This included comments on the Agency's treatment of individual selectable markers, as well as the Agency's overall approach to inert ingredients. None of the comments, however, provided information or analyses that definitively resolved the question one way or another.

Although the majority of commenters supported a decision not to treat selectable markers as inert ingredients, most of these comments appeared to be based on concerns over the potential for duplicative oversight between EPA and FDA. In addition, several comments received in response to both notices raised human health and environmental safety issues surrounding certain selectable markers, such as genes coding for herbicide or antibiotic resistance, and supported some government oversight to ensure that a "safety review" was conducted.

With respect to the potential for duplicative oversight, EPA acknowledges that some degree of overlapping jurisdiction with FDA currently exists in that both agencies share responsibility for evaluating different aspects of a selectable marker. As previously explained, both agencies have agreed that EPA will address under its regulatory jurisdiction the food safety issues associated with the pesticide, including selectable markers. Any food safety questions beyond those associated with the pesticide, such as those raised by unexpected or unintentional compositional changes, are under FDA's jurisdiction (57 FR 22984 and 59 FR 60514).

Bearing in mind the concerns with respect to duplicative review, EPA considered whether relinquishing

jurisdiction to FDA would best address the health and safety concerns raised. Although many of the issues with respect to the safety of the food or the development of antibiotic resistance are within FDA's traditional purview and expertise, the issues with respect to impact on non-target organisms and ecosystems are ones with which EPA has greater experience in regulating under FIFRA. And given EPA's longstanding expertise in considering food safety concerns under the FFDCA, it was determined that on balance, the totality of the concerns could be better addressed by regulating under both FIFRA and the FFDCA than by regulating under the FFDCA alone. These considerations thus weighed in favor of considering selectable markers to be inert ingredients in a plant-incorporated protectant. Moreover, EPA and FDA can work together to minimize the impacts arising from any overlap in jurisdiction, and will coordinate extensively towards that end.

As EPA explained in the 1996 supplemental document, FIFRA and FFDCA contain only general definitions of the relevant terms. FIFRA section 2(u) defines a "pesticide" as any substance or mixture of substances intended "for preventing, destroying, repelling, or mitigating any pest" or "for use as a plant regulator, defoliant, or desiccant" or "any nitrogen stabilizer (7 U.S.C. 136(u))." An "active ingredient" is defined as "in the case of a pesticide other than a plant regulator, defoliant, desiccant, or nitrogen stabilizer, an ingredient which will prevent, destroy, repel, or mitigate any pest" (7 U.S.C. 136(a)). FIFRA defines "inert ingredient" to mean "an ingredient which is not active" (7 U.S.C. 136(m)). Under the FFDCA, a substance is a "pesticide chemical" if it is "a pesticide within the meaning of [FIFRA], including all active and inert ingredients of such pesticide" (21 U.S.C. 321(q)(1)).

Although the statutory definitions provide some guidance, they do not definitively resolve whether the Agency should define substances intentionally introduced into the plant with the active ingredients as inert ingredients. EPA's current pesticide regulations, along with EPA's past practice and interpretation of those regulations, however, although not specifically addressing selectable markers, do provide considerable insight into the issue of inert ingredients. EPA's longstanding regulatory definition of "inert ingredient" includes as an inert "any substance (or group of structurally similar substances if designated by the Agency), other than an active ingredient, which is intentionally included in a pesticide product" (40 CFR 152.3(m); see also 40 CFR 158.153(f)). A "pesticide product" is defined by regulation to be "a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold" (40 CFR 152.3(t)).

These definitions capture as inert ingredients, all those substances that are intentionally included in the pesticide product that are not active. Further, EPA has consistently interpreted these definitions to include substances that serve no useful purpose in the product. The Agency has never required that inert ingredients have pesticidal properties themselves, nor has the Agency required that inert ingredients modify or enhance the pesticidal activity of the pesticide although inert ingredients are often used for at least one of these purposes. In fact, the Agency has indicated on several occasions that inert ingredients are generally not "pesticidally active" (See, e.g., Inert Ingredients in Pesticide Products; Policy Statement, (52 FR 13305, April 22, 1987); see also Pesticide Registration Procedures; Pesticide Data Requirements, (53 FR 15952, 15963, May 4, 1988)). Thus, the essential criterion that the Agency has used to determine whether an ingredient is an "inert" is the intent of the producer to include the substance in the pesticide product.

In the case of plant-incorporated protectants, the Agency has emphasized in both the 1994 proposed rule and the 1996 supplemental document that substances "such as selectable markers are intentionally introduced into plants" (61 FR 37892–37893; see also 57 FR 60521). In the 1996 supplemental document, the Agency pointed out that substances such as selectable markers are intentionally introduced into plants to aid in the selection of plants or plant cells that contain the desired genetic material necessary for producing the plant-incorporated protectant and consequently are typically introduced into the plant at the same time as the active ingredient (61 FR 37892–37893). Because the requisite intent to include such substances in the pesticide product is present in the use of selectable markers in plant-incorporated protectants, the markers would be considered to be an inert ingredient under the Agency's traditional interpretation of that term. No commenters provided information or analyses that would contradict this interpretation or that would lend support to the other considerations laid out in the 1996 notice arguing against treating these markers as inert ingredients.

Moreover, since the 1994 proposed rule and 1996 supplemental document, EPA has had experience with selectable markers in the registration of several plant-incorporated protectants that is relevant to the considerations presented in the 1996 supplemental document. For example, contrary to the speculation in the 1996 document, some selectable markers are not used only once, i.e., to distinguish the cells transformed with the pesticidal trait from those that had not acquired the trait. Rather, the ability to resist the lethal agent is being used during the breeding process to develop commercially viable lines as a phenotypic identifier to select progeny plant lines having the desired pesticidal trait. In such cases, the role played by the selectable marker is somewhat different than was considered in 1996. In addition, in the interim, EPA has become aware of other substances that could be used as selectable markers, e.g., green fluorescent protein (Ref. 11), and while EPA can make some prediction about the potential interactions with and effects on the pesticidal substance of currently used selectable markers, e.g., antibiotic and herbicide resistance, it cannot do so for selectable markers that may be developed and used in the future.

In light of this experience, and in light of the concerns raised by some of the commenters regarding safety issues associated with the use of selectable markers, the Agency believes it prudent to consider these substances to be inert ingredients and to continue to assess their safety. EPA believes that these considerations outweigh the considerations discussed in the 1996 supplemental document, arguing against treating such substances as inert ingredients. Moreover, to ensure that health and safety issues are addressed by the Agency with the greatest technical expertise without duplicative oversight, EPA and FDA will work closely to address areas of potentially overlapping jurisdiction, and to share expertise in reviews. Consequently, for these reasons, as well as for the reasons outlined in the 1994 proposed rule, the Agency has determined that it will adopt the definition it proposed in 1994 with minor modification.

One comment asked whether EPA intended to treat the enzymes leading to the production of the pesticidal substance as inert ingredients. As noted in Unit VII.D.8.ii.d., EPA will consider the enzymes, precursors, or intermediates in biosynthetic pathways necessary for anabolizing the pesticidal

substance to be an inert ingredient of the plant-incorporated protectant.

One comment suggested that in "anticipation of inerts that would be introduced to perform other nonpesticidal functions, the restrictive language should be removed and the relationship to the active ingredient characterized as intentionally introduced into a living plant in association with the active ingredient." EPA disagrees. The commenter's suggested language is so broad that it would cover introduced genetic sequences that EPA considers to be appropriately within USDA's or FDA's sphere, e.g., modifications to the starch content of a potato. As noted in the preceding paragraph, EPA anticipates that as it gains experience, it may change its view of what is appropriately an inert ingredient for plant-incorporated protectants, although the Agency does not anticipate that it would subsume in its definition all modifications affecting substances that have traditionally been in USDA's or FDA's purview. EPA acknowledges that any modification of the definition of inert ingredient for plant-incorporated protectant would be made through rulemaking.

With regard to the comment urging EPA to make clear that plant-incorporated protectant inert ingredients are excluded from EPA's "new inerts" policy (52 FR 13305), EPA has created 40 CFR part 174, subpart X, specifically for inert ingredients for plant-incorporated protectants. Inert ingredients in 40 CFR part 174, subpart X, are not part of EPA's "new inerts" policy (52 FR 13305) per se; however EPA's approach for plant-incorporated protectants is consistent with the policy.

Several commenters requested that EPA consider the genetic material necessary for the production of the pesticidal substance to be an inert ingredient. For reasons described in Unit VII.B.8.i., EPA will not consider this genetic material to be part of the inert ingredient.

C. Clarification of Exemption at 40 CFR 152.20; Status of Plants Used as Biological Control Agents with Regard to FIFRA Requirements

Most comments supported EPA's proposal to clarify that, although plants used as biological control agents will remain exempt under 40 CFR 152.20, plant-incorporated protectants will not fall within that exemption, but will be subject to FIFRA requirements, including the regulations codified at 40 CFR part 174. However, some commenters argued that the ability to resist pests is a characteristic of the plant and should not for regulatory purposes be separated from the plant itself. Another comment opposed exempting plants from FIFRA requirements and argued that the definition of biological control agent at 40 CFR 152.3 does not apply to plants. This commenter argued that the definition at § 152.3 was meant to apply to classical biological control agents—predaceous and parasitic arthropods—whose sole use is to control pests. The commenter further argued that plants cannot be considered classical biological control agents because the primary use of plants is not pest control but yield of a product; pest control for plants is merely an attribute which helps to achieve yield.

With regard to the comment concerning "classical biocontrol agents," EPA recognizes that classical biocontrol generally involves the use of one organism such as a predaceous or parasitic arthropod to protect another organism such as a plant (Refs. 10 and 12). Plants were not specifically addressed in the regulation EPA published in the June 2, 1982, **Federal Register** document (47 FR 23928) that exempted, under FIFRA section 25(b)(1), most biological control agents from the requirements of FIFRA. There are, however, circumstances in which plants are used as "classical" biological control agents analogous to the use of predaceous and parasitic arthropods to protect other organisms. For example, organic gardeners use living plants, such as marigolds, chrysanthemums and geraniums, in their gardens with the intent of protecting other plants, such as vegetable plants. This type of plant for this type of use clearly meets the 40 CFR 152.3 definition of biological control agent because it is a "living organism applied to or introduced into the environment that is intended to function as a pesticide against another organism declared to be a pest by the Administrator."

Plants, when humans intentionally use them for preventing, destroying, repelling or mitigating a pest, meet the FIFRA section 2(u) definition of pesticide, and thus are pesticides. A living plant that is intended to have a pesticidal effect meets the definition at 40 CFR 152.3 of biological control agent because it is a "living organism applied to or introduced into the environment that is intended to function as a pesticide against another organism declared to be a pest by the Administrator." In 1994, EPA advised the public that the Agency considered plants that protect themselves against pests to fall within the definition of biological control agents (59 FR 60496). This statement created some uncertainty regarding the regulatory status of such plants under FIFRA, in part because such plants were not explicitly addressed in the preamble to either the proposed or final rule establishing the exemption at 40 CFR 152.20 (46 FR 18, 322, March 24, 1981; 47 FR 23928, June 2, 1982). Today's action clarifies the status of such plants. The plants themselves will remain exempt, but EPA will continue to regulate the pesticidal substances in such plants under FIFRA and the FFDCA, even when they are intended to be used in the exempt plants.

Moreover, the commenter fails to provide any meaningful distinction between "predaceous and parasitic arthropods whose sole use is to control pests" and plant-incorporated protectants. All agricultural use pesticides are, in some sense, applied to crops to increase yields, or to otherwise obtain the maximum profit from the crop. It has been EPA's experience that farmers do not apply pesticides simply to kill insects without also intending to affect yield, or to otherwise protect or increase a crop's profitability.

EPA also disagrees with the comment that, for regulatory purposes, a characteristic of the plant should not be separated from the plant itself. EPA believes that its decision to regulate plant-incorporated protectants, while exempting the plants themselves is an appropriate regulatory approach because it allows the Agency to focus its oversight on the "pesticidal" characteristics of the plant, and any associated risks. In addition, this approach is consistent with the Agency's long-standing regulation under FIFRA.

Under existing regulations, although the plant itself is exempt from FIFRA requirements, substances that are extracted from plants and used as pesticides are not similarly exempted. For example, chrysanthemums produce pyrethrum, a substance that has insecticidal activity. Chrysanthemums that produce pyrethrum are exempt from regulation when used as biological control agents (i.e., living chrysanthemums), but pyrethrum itself as the pesticidal substance, is not exempt when it is extracted from chrysanthemum plants and applied to other plants as a pesticide. This distinction is reasonable in light of the potential for increased and unique exposures due to large-scale application of extracted pyrethrum to plants that do not naturally produce it. The use of extracted pyrethrum as an insecticide can involve exposure to the pesticide over large acreage, whereas the exposure

associated with pyrethrum produced by living chrysanthemum plants would not be expected to reach such proportions. In addition, application of pyrethrum beyond the environment in which it is naturally produced (i.e., beyond the living chrysanthemum plant) could result in new or unique exposures of nontarget organisms, including humans.

With the development of modern biotechnology, the number of such plants sold with the intention that the pesticidal substances in the plant function while in the plant, rather than extracting the pesticidal substance from the plant, have dramatically increased. But of greater regulatory significance, with these techniques, a plant can be endowed with properties that were previously not possible; for example, the ability to produce pyrethrum can be given to a crop plant such as corn. Different exposure considerations would exist for pyrethrum in corn than for pyrethrum in chrysanthemums. Given that millions of acres are planted to corn in the US, some of the exposure considerations of pyrethrum in corn might be more analogous to the considerations for exposure from sprayed pyrethrum than to considerations for pyrethrum in chrysanthemums.

Similarly, potato, cotton and corn plants have recently been engineered to produce the endotoxin from the bacterium, *Bacillus thuringiensis* (Bt). EPA assessed the risk of these Bt-based plant-incorporated protectants in a manner consistent with EPA's treatment of Bt in other formulations. Bt is regulated under FIFRA when formulated in products to be dusted/sprayed on plants for protection against pests. Many of the risk considerations evaluated for Bt used as a plant-incorporated protectant are the same considerations evaluated for Bt sprayed or dusted on plants as a pesticide.

In this final rule, EPA clarifies that plants that humans use with the intention of controlling pests will remain exempt from FIFRA requirements pursuant to the exemption at 40 CFR 152.20, but that the pesticidal substances, and inert ingredients contained in the plants, remain subject to the requirements of FIFRA, as codified at 40 CFR part 174. The regulatory text at § 152.20 is also modified to make clear that the exemption for plants used as biological control agents applies to living plants and does not apply to plants or plant parts that have, for example, been dried or processed for use as pesticides. An example of this latter type of pesticide would be the powder, produced by drying and grinding cayenne peppers, dusted on plants with the intent that it would protect the plants against disease. This type of pesticide does not meet the definition of biological control agent and is not exempted at § 152.20. Processed plants or plant parts used as pesticides are currently subject to the regulations at 40 CFR parts 150 through 173 and 40 CFR parts 177 through 180.

EPA believes it is appropriate to exempt the living plant from FIFRA requirements. The Agency believes its focus on the plant-incorporated protectant rather than on the plant allows it to ensure a low probability of risk to humans and the environment, while imposing a minimum burden on the development of plants containing novel plant-incorporated protectants and conserving limited Agency resources. Had EPA chosen to regulate the plant, it would have issued registrations for plant varieties. By focusing on plant-incorporated protectants, in contrast, EPA can issue a registration for use of the plant-incorporated protectant within a larger grouping, such as a crop. This allows the Agency to focus its resources on evaluating the pesticidal properties of the plant, rather than on other properties of the plant. EPA believes that the clarification in this rule today that it will not regulate plants per se, and the exemption it is issuing today in another section of this document, and in a companion document published elsewhere in this issue of the **Federal Register**, limit EPA's effect on plant breeding and allow most aspects of plant breeding to be pursued without EPA regulation.

However, EPA also believes it is appropriate to exclude certain plant-incorporated protectants from the exemption at 40 CFR 152.20. Section 25(b) requires the Agency to support its determination that a class of pesticides meet the standard for an exemption. EPA's assessment supporting the 1982 exemption did not encompass all of the plant-incorporated protectants being developed and marketed today, and the Agency could not rely on those assessments to support such an exemption. As noted above, with modern biotechnology, a plant can be endowed with properties that were not possible in 1982, and different exposure and hazard considerations would exist for such plants. Nor could the Agency develop sufficient evidence to maintain a categorical exemption for all plant-incorporated protectants, given all of the possible genetic modifications that can be achieved with these techniques, even if the Agency were inclined to do so. As an initial matter, Agency could not anticipate all potential modifications, let alone develop a risk assessment for all potential intended, and unintended, effects from such modifications.

EPA is exempting those plant-incorporated protectants for which the Agency can support the necessary findings, based on the available scientific evidence and the Agency's technical expertise. For example, the exemptions established in another section of this document, and in a companion document published elsewhere in this issue of the **Federal Register**, encompass the chrysanthemum discussed above, as long as it meets the exemption criteria, even though it contains a plant-incorporated protectant. As the Agency's base of knowledge and experience increases, exemptions for additional categories of plant-incorporated protectants may be warranted. But until then, the Agency believes that a case-by-case review of plant-incorporated protectants not specifically exempted in this rule, is necessary to ensure that such products can be sold and used without generally posing unreasonable adverse effects on the environment. Case-by-case review will also allow the Agency to increase the available body of scientific knowledge and experience to determine whether additional exemptions are warranted. In addition, any person may petition EPA to establish an exemption pursuant to FIFRA section 25(b) and FFDCA section 408(d). EPA encourages additional exemptions when supported by scientific data and will make every effort to expedite its review of such petitions, consistent with the requirements of these sections.

D. Exemption of Plant-Incorporated Protectants Derived Through Conventional Breeding from Sexually Compatible Plants

This rule exempts from FIFRA requirements, except for the adverse effects reporting requirements at 40 CFR 174.71, plant-incorporated protectants derived through conventional breeding from sexually compatible plants.

In 1994, EPA proposed to exempt from all FIFRA requirements, except for the adverse effects reporting requirements now at 40 CFR 174.71, a category of plant-incorporated protectants based on the premise that new exposures would be unlikely if the genetic material leading to the production of the plant-incorporated protectant is derived from a plant closely related to the recipient plant. EPA offered three options for defining plant-incorporated protectants derived from plants closely related to the recipient plant. All of the options were

based on the concept of source organism and the phylogenetic relatedness of the genetic donor and recipient. None of the three options was based on the process by which a plant-incorporated protectant was introduced into the recipient plant. Option 1, based upon sexual compatibility, was EPA's preferred option (59 FR 60534). Under this option, plant-incorporated protectants derived from plants sexually compatible with the recipient plant would be exempt from FIFRA regulation. Options 2 and 3 used taxonomy (genus) to define closely related plants, either exclusively (Option 2) or in conjunction with sexual compatibility (Option 3). The Agency also requested comment on the utility of an exemption criterion based on the process (e.g., rDNA) used to introduce the plant-incorporated protectant into a plant (59 FR 60514 and 60530). This approach was discussed by the SAP Subpanel and BSAC Subcommittee at the joint meeting of these scientific advisory groups held on January 21, 1994. In this approach, plant-incorporated protectants developed through techniques other than those of modern biotechnology would be exempted, e.g., those developed through conventional plant breeding would be exempted. Categories of those plant-incorporated protectants that were not exempted by this criterion could subsequently be considered for exemption on the basis of risk potential.

The joint subcommittee/subpanel report recommended such a "process-based" approach on the following three considerations. First, the National Institutes of Health Guidelines for Research Involving Recombinant DNA Molecules established a precedent that has worked well. Second, although new techniques, such as rDNA, are more precise than conventional plant breeding, it is possible to make with rDNA novel genetic modifications never before possible. The novel combinations possible with modern genetic techniques create uncertainties about how the gene will function and how its products may affect the plant's phenotype and its impact upon the environment and human health. Third, establishing rDNA methodologies as a criterion for oversight may give the public more confidence that risk potential is being evaluated. As a result, approved products may move to the marketplace more easily (Ref. 15).

The majority of the comments on the proposed exemption based on the degree of relatedness between the donor and recipient plants favored the option based on sexual compatibility between the donor and recipient plants (preferred option in the November 23, 1994 **Federal Register** document (59 FR 60533)). The Agency did not receive any comments that favored the option based on taxonomy, Option 2. Although several comments favored the option that relied on both taxonomy and sexual compatibility, Option 3, EPA also received comments that expressed reservations about using taxonomy to describe a close degree of relatedness for regulatory purposes.

EPA received numerous comments supporting an approach based on process, i.e., that those plant-incorporated protectants introduced by rDNA would be regulated. The arguments advanced by these commenters can be represented by the comment that:

> genetic engineering (particularly recombinant DNA [rDNA] methodologies), represent a fundamental technical advance over traditional plant breeding in the ability to manipulate plants genetically. Genes which code for production of plant-pesticides can be readily turned 'on' or 'off' to dramatically increase the existing levels of plant-pesticides within plants, turning plants into pesticide factories and delivery systems. . . . given the fact that rDNA technologies represent such a fundamental technical advance over plant breeding, and given that plant-pesticides are by their very nature toxic substances, all plant-pesticides produced via rDNA methodologies should undergo some form of review under both FIFRA and FFDCA . . . . (Ref. 13).

Several letters described quantitative changes in the levels of plant-incorporated protectants as specific instances in which the commenter believed risk would be better addressed by an approach based on process.

Some comments urging regulation based on whether rDNA had been used to introduce the plant-incorporated protectant supported exempting conventional breeding. One commenter, for example, stated that pesticidal products that "are introduced by traditional breeding pose generally low risk and should be exempt" (Ref. 14).

Based on the advice of the BSAC and SAP at the joint meeting held January 21, 1994, and the comments received in response to the November 23, 1994 **Federal Register** document, EPA has determined that it is appropriate to issue a limited exemption for those plant-incorporated protectants derived through conventional breeding from plants sexually compatible with the recipient plant. In a companion document published elsewhere in this issue of the **Federal Register**, EPA solicits public comment on alternate options for the category of plant-incorporated protectants derived through modern biotechnology, e.g., rDNA techniques, from plants sexually compatible with the recipient plant. The Agency is considering these options in response to the public comment received on its earlier proposals. One of these options would establish notification procedures, and as the public has not had an opportunity to comment on either the procedures themselves, or the criteria on which EPA would base its regulatory decisions, the Agency believes it is appropriate to seek additional public comment prior to adopting a particular option. In addition, as these alternatives would distinguish between categories of plant-incorporated protectants based solely on the processes by which they are derived, the public will also have an opportunity to present additional comments on whether this is an appropriate distinction for regulatory purposes.

1. *What is the language of the exemption?* In this action, EPA is exempting only a subgroup of the category it proposed to exempt in 1994, those plant-incorporated protectants derived through conventional breeding from sexually compatible plants.

i. *Why is sexual compatibility an appropriate standard?* EPA believes sexual compatibility is an appropriate standard because sexually compatible plants share a common pool of genetic material, even though there may be some variability among plants in sexually compatible populations. Sexual compatibility, the ability to produce viable offspring, is only possible in nature for plants that possess many traits in common. Traits, and the genetic material encoding them, can be passed through sexually compatible plant populations by hybridization, and the mixing of genetic material that occurs through this process of mating tends to a situation where the members of sexually compatible population have similar traits and similar genetic material. This is particularly true with crop plants where generations of selection and breeding have tended to decrease the total genetic variability in many agronomic species. Sexually compatible thus presents a natural grouping of plants which can be readily described and used as a regulatory standard, and about which a large amount of information exists in the scientific literature. This information can be used in assessing risk.

Using sexual compatibility as a standard affords a clear delineation of whether a plant-incorporated protectant meets the conditions of the exemption. In most cases, whether two plants are sexually compatible is known; thus, testing to determine whether the plants

are sexually compatible is not likely to be necessary. If, in rare cases, it is not known whether two plants are sexually compatible, the means of determining sexual compatibility is straightforward and simple. Sexual compatibility is empirically demonstrable. EPA believes that the criterion of sexual compatibility provides a high level of regulatory clarity and the greatest ease of implementation, while at the same time presenting the lowest probability of novel dietary exposure. This standard allows the public, industry, and EPA to easily and readily identify those plant-incorporated protectants that meet the criterion of being derived from plants closely related to the recipient plant.

a. *Why is sexual compatibility limited to conventional breeding?* As explained in a companion document published elsewhere in this issue of the **Federal Register**, EPA is soliciting additional comment on the various options it is considering in response to the significant comments it has received raising issues specific to plant-incorporated protectants derived through genetic engineering. Because none of the comments raised significant issues relative to plant-incorporated protectants derived through conventional breeding, the Agency is finalizing its proposals with respect to this subgroup of products. Therefore, EPA includes in the definition of sexually compatible at 40 CFR 174.3 the clause "through conventional breeding." EPA also provides a definition of conventional breeding that equates it to the creation of progeny through either: The union of gametes, i.e., syngamy, brought together through processes such as pollination, including bridging crosses between plants and wide crosses; or vegetative reproduction. Conventional breeding does not include use of any of the following technologies: Recombinant DNA; other techniques wherein the genetic material is extracted from an organism and introduced into the genome of the recipient plant through, for example, micro-injection, macro-injection, micro-encapsulation; or cell fusion. EPA believes that this definition addresses the recommendation of the SAP/BSAC at the January 21, 1994 joint meeting that "the Agency define methodologies in a way that clearly delineates to the scientific community and the public what is and is not included in the regulatory scope" (Ref. 15).

In the 1994 proposed rule (59 FR 60524) EPA states that its proposed rule is based on "experience with the exposure of human populations to crops developed through the breeding process, i.e., crops developed through 100 years of scientific breeding among sexually compatible plant populations using Mendelian genetics." In its 1994 proposed rule, EPA calls this type of breeding, "traditional breeding" (see e.g., 59 FR 60519). When the Agency determined that it would exempt a subgroup of plant-incorporated protectants in the sexually compatible grouping while allowing additional comment on how EPA should treat those plant-incorporated protectants introduced into the plant through the techniques of modern biotechnology, EPA chose to describe the exempt group in the most straightforward manner; i.e., those derived through breeding. Recognizing that many consider the modern techniques of biotechnology as simply an extension of breeding techniques, EPA determined that an adjective was needed to modify the word "breeding" to adequately describe the exempt group. Although the Agency used the word "traditional" in its 1994 proposed rule, EPA chose the word "conventional" to describe this type of breeding in this rule because the SAP/BSAC in their report of the January 21, 1994, joint meeting used the adjective "conventional" in its advice to EPA (Ref. 15), and the word "conventional" might more readily connote techniques such as wide crosses.

b. *Why is conventional breeding described by processes such as pollination and vegetative reproduction?* One comment received on the 1994 proposed rule suggested that there is ambiguity in the proposed regulatory language at 40 CFR 174.5(a) in the November 23, 1994, **Federal Register** document (59 FR 60535) about whether plant-incorporated protectants that are "native" to a food crop would meet the criteria of exemption.

Because of the use of the word "food" in the comment, it was not clear whether the comment is directed toward EPA's proposed exemption under FIFRA or that under FFDCA for residues of plant-incorporated protectants derived from sexually compatible plants. EPA assumes this comment is directed at both exemptions, and that the commenter's suggestion is that EPA ensure that the regulatory language exempts from FIFRA requirements, those plant-incorporated protectants that normally occur in a plant (i.e., are "native" to the plant) and will be used in that plant. For example, if corn normally produced a plant-incorporated protectant, the regulatory text should be clear that the plant-incorporated protectant would be exempt when produced and used in corn. EPA believes inclusion of the word "pollination" as an example of a process leading to syngamy in the definition of conventional breeding addresses this concern. Pollination, the transfer of pollen from an anther to a stigma (Ref. 9), is the process through which traditional breeding with most angiosperms, i.e., most major crop plants, occurs (see e.g., 59 FR 60537) (Ref. 9). Inclusion of the word "pollination" in the definition emphasizes that plant-incorporated protectants that occur naturally in a plant growing from a viable zygote that arises by the mating in conventional breeding of one corn variety with another, or the mating of a corn plant with a corn plant of the same variety are exempt.

EPA recognizes that this same concern of ambiguity also applies to plant-incorporated protectants in plants that are propagated vegetatively. EPA believes inclusion of the phrase "vegetative reproduction" in the definition of conventional breeding addresses this concern. The language of the exemption for plant-incorporated protectants derived through conventional breeding from plants sexually compatible with the recipient plant specifically exempts plant-incorporated protectants in plants reproduced vegetatively. For example, plant-incorporated protectants in a plant propagated only vegetatively, (e.g., bananas), are exempt. Also exempt are plant-incorporated protectants in a plant propagated primarily vegetatively (e.g., potatoes), as long as, under conditions of reproduction through hybridization, the plant donating the genetic material is sexually compatible with the recipient plant as defined in at 40 CFR 174.3, and the other conditions described at subpart B, in particular 40 CFR 174.25, are met. Inclusion of the term vegetative reproduction in the definition of conventional breeding reflects EPA's statement in the 1994 proposed rule (59 FR 60524) on the status of crop plant varieties propagated vegetatively.

c. *Will wide and bridging crosses be part of the definition of conventional breeding?* In this final rule, EPA is implementing a definition of "sexually compatible" that includes wide and bridging crosses. In this final rule, wide crosses means to facilitate the formation of viable zygotes through the use of surgical alteration of the plant pistil, bud pollination, mentor pollen, immunosuppressants, *in vitro* fertilization, pre-pollination and post-pollination hormone treatments, manipulation of chromosome numbers, embryo culture or ovary and ovule cultures.

Generations of artificial hybridizations through these techniques have taken place in the well-established practices of plant breeding (Ref. 7). Wide crosses have been in the past, and are currently, commonly used to expand the plant gene pool for varietal improvement (Ref. 7), and a history of safe use has been associated with plant varieties developed through the use of wide cross techniques (Ref. 7). A fairly high degree of relatedness between the parental plants is indicated when a wide cross produces a viable zygote. This high degree of relatedness indicates a low probability of new exposures.

The definition of "bridging crosses between plants" is intended to convey the concept that an intermediate plant could be used in a cross to move traits from a source plant into a desired recipient plant. The intermediate plant can form viable zygotes with both the source and recipient plants, whereas the source and recipient plant cannot form viable zygotes. The intermediate plant serves as a bridge for gene flow between the two incompatible plants. The result of the bridging cross is the mixing of genetic material of the first and third plant through the formation of an intermediate zygote. No comments were received on the proposed definition of bridging crosses between plants, also part of the definition of conventional breeding for sexually compatible. EPA is adopting this definition as proposed.

d. *Will cell or protoplast fusion be part of the definition of wide crosses?* EPA received one comment suggesting that protoplast fusion should be included in the definition of wide crosses between plants. In the technique of protoplast fusion, protoplasts are made in the laboratory through the removal of the cell walls of somatic cells. A somatic cell is a type of cell that forms plant vegetative tissues and organs and is distinguished from a germ cell which undergoes meiosis to produce reproductive tissues (e.g., pollen and egg cells). In the technique of protoplast fusion, protoplasts are made from the somatic tissue of two different plants. The membranes of the different protoplasts are then fused together mechanically through processes such as treatment with polyethylene glycol, producing a hybrid somatic cell with a genetic make-up resulting from the combination and sorting of the two plant genomes. The somatic hybrid cell is then grown on specialized media into a mature plant.

In support of the request, the commenter argued that the hybridization of somatic cells has a history of use to artificially induce sexual compatibility. The commenter argued that movement of genetic material by this means has historically been considered safe.

EPA did not, in its 1994 proposed rule include protoplast fusion in the definition of wide crosses between plants, nor did it perform an analysis of the potential for new exposures when protoplast fusion is used to perform wide crosses between plants. The commenter did not provide such information in response to the 1994 proposed rule nor the 1997 supplemental document. EPA does not believe information currently in the record supports inclusion of protoplast fusion in the definition of wide crosses. Therefore, EPA does not in this rule include protoplast fusion in the definition of wide crosses, and specifically excludes cell fusion from the definition of conventional breeding. However, EPA requests comment on whether protoplast fusion should be included in the definition of wide crosses in a supplemental document published elsewhere in this issue of the **Federal Register**. EPA would welcome submission of information on protoplast fusion. If the Agency obtains sufficient information demonstrating a low probability of risk, EPA may initiate notice-and-comment rulemaking under FIFRA section 25(b) and FFDCA section 408 to include protoplast fusion in the definition of wide crosses between plants.

e. *"Recombinant DNA" and genetic material "extracted from an organism and introduced into the genome of the recipient plant."* As explained previously, EPA restricted this exemption to conventionally bred plant-incorporated protectants while the Agency solicits additional comment on the alternatives it is considering in response to the comments received on the 1994 proposal. Thus, in order to fully describe which plant-incorporated protectants are exempt under this exemption, EPA includes limiting phases. EPA in the 1994 **Federal Register** document (59 FR 60529) discussion of the advice of the SAP and BSAC at the January 21, 1994 meeting on the use of a process-based criterion to define a category of plant-incorporated protectants that would be subject to review, stated that the Agency would define such a process-based criterion in the following way: "The genetic material that encodes for the pesticidal substance or leads to the production of the pesticidal substance is extracted from an organism and introduced into the genome of the recipient plant or is synthesized *in vitro* and introduced into the genome of the recipient plant." In this action, EPA uses the language it put forth in the 1994 **Federal Register** document (59 FR 60529) to fashion two of the exclusions from the conventional breeding definition at 40 CFR 174.3. One exclusion is for techniques involving genetic material that has been extracted from the source and introduced into a recipient plant. Processes such as micro-injection, macro-injection and micro-encapsulation would be excluded from the conventional breeding exemption because they are used to introduce such extracted genetic material into the recipient plant. These processes have been included in the definition as examples to assist in understanding the concept.

The second exclusion from the conventional breeding exemption uses the term "recombinant DNA" to represent the concept of "extracted from an organism. . ., synthesized *in vitro* and introduced into the genome of the recipient plant." To provide greater technical accuracy, EPA provides a definition at 40 CFR 174.3 for recombinant DNA as follows:

Recombinant DNA means the genetic material has been manipulated *in vitro* through the use of restriction endonucleases and/or other enzymes that aid in modifying genetic material, and subsequently introduced into the genome of the plant.

ii. *Why is the concept of "functionally modified from the source" important and how does the definition of conventional breeding address it?* In the November 23,1994 **Federal Register** document (59 FR 60524), EPA explained that in proposing the exemptions the Agency did not intend to exempt a plant-incorporated protectant that is significantly different in structure or function from a plant-incoorporated protectant as it occurs in the source. EPA believed this limitation was appropriate because rearrangements or modifications of the genetic sequence encoding a pesticidal substance made through the use of techniques such as rDNA could, for example, result in a plant-incorporated protectant with significantly different functions from the functions in the source plant. For example, if the pesticidal substance is an enzyme, it could be modified so that it acts on a different substrate in the recipient plant than it did in the source plant (Refs. 7 and 16). Such a significantly modified plant-incorporated protectant would not necessarily present risks similar to the substance prior to modification, nor would the base of experience on which EPA relies for support of the exemption necessarily be relevant. If the genetic material encoding the pesticidal

substance has been modified in such a way that the pesticidal substance functions differently in the recipient plant than it did in the source plant, the analysis performed to determine that the plant-incorporated protectant poses a low probability of risk to the environment and is not likely to cause unreasonable adverse effects to the environment even in the absence of regulatory oversight under FIFRA, would not apply.

In this final rule, this concern is addressed by the limitation placed on the definition of sexually compatible. Under this definition, plant-incorporated protectants derived from plants sexually compatible with the recipient plant are only exempt if they are introduced into the plant through conventional breeding as defined at 40 CFR 174.3. The types of changes discussed above (Refs. 7 and 16) that can be made through modern molecular techniques, are very unlikely to be made through conventional breeding as defined at § 174.3, and plant-incorporated protectants modified through modern molecular techniques are not eligible for this exemption.

iii. *Why is the phrase "never derived from source not sexually compatible with recipient plant" important?* EPA discussed the relevance of this phrase to the exemption in the November 23, 1994 **Federal Register** document (59 FR 60523). The phrase, "has never been derived from a source that is not sexually compatible with the recipient plant," which is part of the language of the exemption at 40 CFR 174.25, was meant to clearly indicate that a plant-incorporated protectant would not qualify for the exemption if the genetic material introduced into a recipient plant is from a sexually incompatible source and then this recipient plant subsequently used to move the introduced genetic material into plants sexually compatible with this first recipient plant. For example, the exemption does not extend to a situation where the genetic material encoding the *Bacillus thuringiensis* delta endotoxin is introduced into wheat, and the endotoxin-producing wheat is subsequently hybridized with rye using wide cross techniques to produce triticale. The endotoxin produced in the triticale would not be eligible for the exemption because the genetic material encoding the endotoxin originated from a bacterium, a source that is not sexually compatible with the original recipient plant (wheat in this example).

EPA received a comment that suggested that the Agency delete this phrase from the regulatory text and instead include a period of time after which a plant-incorporated protectant would be treated as part of a plant's "accessible" gene pool. EPA does not accept the suggestion to delete this phrase from the regulatory text, and continues to include this language in the final rule at 40 CFR 174.25. EPA will not implement the commenter's suggestion that a gene, derived from a phylogenetically distant source and successfully used in a crop, be treated after a period of time as though it had become part of the crop's gene pool (i.e., equivalent to a gene that had evolved in a sexually compatible population of plants). The commenter does not suggest what an appropriate period of time would be, nor how this would correlate with the potential for new exposures or low probability of risk. Without additional information, it is difficult for EPA to make a finding that there is a low probability of risk, or to assess the likelihood of unreasonable adverse effects as required by FIFRA section 25(b).

iv. *What other general qualifications apply to exemptions and how do these qualifications apply to plant-incorporated protectants derived through conventional breeding from sexually compatible plants?* EPA at 40 CFR 174.21 lists general qualifications that must be met in order to qualify for an exemption from FIFRA requirements. These include qualifications relating to plant-incorporated protectants intended to be produced and used in a crop to be used as food, and to inert ingredients.

a. *Plant-incorporated protectants in a crop used as food.* As noted in Unit II., the FQPA in 1996 modified the FIFRA definition of "unreasonable adverse effects on the environment" by adding a criterion requiring consistency with the standard under FFDCA section 408 (Public Law 104–170 (August 3, 1996)). EPA includes at 40 CFR 174.21 a general qualification that clearly states this requirement in the context of conditions necessary for the exemption of plant-incorporated protectants.

To understand how the status of a plant-incorporated protectant under FFDCA affects the status of the plant-incorporated protectant under FIFRA, the following must be considered: first, is the plant-incorporated protectant in a crop used as food; second, are the residues of the pesticidal substance and the residues of the genetic material of that plant-incorporated protectant exempt from FFDCA section 408?

Is the plant-incorporated protectant in a crop used as food? In order to exempt a plant-incorporated protectant from regulation under FIFRA, EPA must determine that the plant-incorporated protectant poses a low probability of risk, and will not cause unreasonable adverse effects on the environment even in the absence of regulatory oversight. How a plant-incorporated protectant can meet these standards differs somewhat depending on whether or not residues of the plant-incorporated protectant are in food. As noted in Unit II., as a practical matter a plant-incorporated protectant in food cannot be exempted from FIFRA requirements unless an exemption from the FFDCA section 408 requirement of a tolerance has been issued for the residues of the plant-incorporated protectant in food.

If a plant-incorporated protectant is used in a crop used for food, unless there will be no residues in the food, the FFDCA section 408 requirements must be considered when determining whether the plant-incorporated protectant can be exempted from FIFRA requirements. To be exempted from FIFRA requirements, exemptions from the FFDCA requirement of a tolerance must exist for all of the residues of the plant-incorporated protectant. In accordance with the statutory definition of a "pesticide chemical residue," EPA anticipates that in most cases the residues of a plant-incorporated protectant will consist of the pesticidal substance, the genetic material necessary to produce the pesticidal substance, any substance that might function as an inert ingredient as defined for plant-incorporated protectants (e.g., selectable marker), and the genetic material necessary for production of the inert ingredient (21 U.S.C. 321(q)).

If a plant-incorporated protectant is not used in a crop used for food (e.g., the plant-incorporated protectant is produced and used in a plant in a species used only for ornamental purposes), the FFDCA section 408 requirements do not need to be considered when determining whether the plant-incorporated protectant can be exempted from FIFRA requirements.

If the plant-incorporated protectant is used in a crop used as food, are the residues of the pesticidal substance exempt from FFDCA section 408? In a companion document published elsewhere in this issue of the **Federal Register**, EPA exempts from the requirement of a tolerance residues of the pesticidal substance portion of plant-incorporated protectants produced through conventional breeding from sexually compatible plants, and the residues of any substance used to confirm or ensure the presence of the active ingredient. The basis for this exemption is the determination that there is a reasonable certainty that no

harm will result from aggregate exposure to these residues. Thus, the answer to this question is yes for plant-incorporated protectants derived through conventional breeding from sexually compatible plants, with the limitation that the exemption does not apply when the residues are present in food at levels that are injurious or deleterious to human health. (For a detailed discussion of this limitation, see the companion document published elsewhere in this issue of the **Federal Register**.)

If the plant-incorporated protectant is used in a crop used as food, are the residues of nucleic acids that are part of a plant-incorporated protectant exempt from FFDCA section 408? The answer to this question is yes. In a companion document published elsewhere in this issue of the **Federal Register**, EPA exempts from the requirement of a tolerance residues of nucleic acids that are part of a plant-incorporated protectant because there is a reasonable certainty that no harm will result from aggregate exposure to these residues.

What is the status under FIFRA of plant-incorporated protectants derived through conventional breeding from sexually compatible plants in light of FFDCA requirements? Because of actions EPA takes in this document, and in two companion documents published elsewhere in this issue of the **Federal Register** under FFDCA section 408, plant-incorporated protectants derived through conventional breeding from plants sexually compatible with the recipient plant are exempt, whether or not they are in food, from all FIFRA requirements, except for the reporting requirements at 40 CFR 174.71.

b. *Inert ingredients.* EPA also includes at 40 CFR 174.21 a general qualification that describes how inert ingredients relate to the exemptions at 40 CFR part 174, subpart B.

With regard to how this general qualification applies to the exemption of plant-incorporated protectants derived through conventional breeding from sexually compatible plants, the preamble discussion in the 1994 **Federal Register** document (59 FR 60523) of the rationale supporting the proposal to exempt these plant-incorporated protectants extends to any substance that is derived from plants sexually compatible with the recipient plant, including substances such as a selectable marker, used to confirm or ensure the presence of the active ingredient. EPA's analysis in Units VII.D.3. and VII.D.4., applies equally to all the substances that normally characterize a population of sexually compatible plants, including inert ingredients, as long as these are derived through conventional breeding from plants sexually compatible with the recipient plant, and have never been derived from a source that is not sexually compatible with the recipient plant. An example of such an inert ingredient in sexually compatible plant populations could be tightly linked traits such as unusual leaf pigmentation always found with a pest resistance trait.

EPA includes in this final rule language at 40 CFR part 174, subpart X, to ensure that readers understand that any inert ingredient, and the genetic material necessary to produce it, that occurs naturally in a plant or is introduced through conventional breeding, is exempt when used with a plant-incorporated protectant derived through conventional breeding from a plant sexually compatible with the recipient plant. EPA believes this interpretation is a logical implication of the preamble discussion in the 1994 proposed rule (59 FR 60538).

Because the Agency recognizes that a substance with potential for adverse effects (i.e., a toxicant) could theoretically be used as a selectable marker, or inert ingredient, EPA places the same limiting condition on residues of the inert substance in food as is placed on residues of the pesticidal substance portion of the active ingredient; i.e., the residues of the substance portion of a selectable marker, or inert ingredient, do not qualify for the exemption if they are present in food from the plant at levels that are injurious or deleterious to human health.

Additional findings and conclusions supporting this exemption may be found in the companion document published elsewhere in this issue of the**Federal Register** entitled "Exemption from the Requirement of a Tolerance under the Federal Food, Drug, and Cosmetic Act for Residues Derived Through Conventional Breeding from Sexually Compatible Plants of Plant-Incorporated Protectants."

The regulatory text of new 40 CFR 174.485, which is entitled "Inert ingredients from sexually compatible plant," can be found in the regulatory text of this document.

Under section 408(g) of the FFDCA, as amended by the Food Quality Protection Act (FQPA), any person may file an objection to any aspect of this subpart X regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA. EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(e) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(e), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days. For more details on filing objections or requesting hearings pursuant to regulations promulgated under the FFDCA, see the discussion in the companion document published elsewhere in this issue of the **Federal Register** (under "Objections and Hearing Requests").

v. *What were the other potential approaches to scope of exemption?* In the November 23, 1994 **Federal Register** document (59 FR 60523), EPA discussed the merits of two approaches using taxonomy, in whole (Option 2) or in part (Option 3), as a standard for describing closely related plants, and received comment on use of such a criterion. EPA also received a comment suggesting that the criterion of sequence homology be used to limit the concept of sexual compatibility.

a. *Taxonomy.* Two commenters expressed reservation about using a taxonomic standard for describing closely related plants. They pointed out that taxonomic categories, and the relationship of a given plant species to a given taxon, may be transient since taxonomic classification may change as information accrues. EPA noted in the discussion of Option 2 and Option 3 in the 1994 **Federal Register** document (59 FR 60524) that a taxonomy-based standard may be artificial: classification of plants in different taxonomic genera is not fixed and could change over time and between scientific authorities. Taxonomy reflects current observations about phenotypic, and to some extent, genotypic, differences between organisms. Currently, some plant genera are narrowly defined; for other plant genera, membership is based on broader criteria. These differences in classification criteria may lead to different probabilities between genera that new exposures may occur when genetic material from one species in a genus is introduced into another species in the genus. In recent years new tools have become available to taxonomists, allowing them to better clarify phylogenetic relationships among organisms. New information,

particularly that obtained through the use of new genetic tools, concerning organisms' properties and relationships may in the future alter current taxonomic designations. In light of these advances, EPA anticipates there may be some reorganizations among the Plantae, and that these reclassifications will better reflect the relationships among plants, and the probability of new exposures in intrageneric crosses.

The possibility that taxonomic classification may change as information accrues adds an extra layer of complexity to any regulations based on a taxonomic standard, and EPA probably would not be able to structure an exemption to accommodate for potential changes in classification. The possibility of reclassification also creates some uncertainty within the regulated community about the future status of a product.

In addition, taxonomy may be a more artificial standard than sexual compatibility as a predictor of different environmental exposures of a plant-incorporated protectant, particularly for unmanaged or semi-managed plants. Isolation, adaptation to unique environments, and low natural rates of gene flow characterize many natural populations. For these types of plants, a taxonomic standard may not be as appropriate as a standard based on sexual compatibility with regard to novel exposures to plant-incorporated protectants. At the January 21, 1994, joint meeting of the Subpanel of the SAP and the BSAC Subcommittee, the scientific advisory groups questioned whether the reasoning supporting use of a standard based on sexual compatibility supported equally well a standard based on taxonomy for semi-managed plants (e.g., trees). They indicated it probably did not for the reasons cited in this paragraph (Ref. 15).

b. *Sequence homology.* The suggested criterion of sequence homology would base relatedness on the degree of sequence homology between the source and recipient plant. Sequence homology refers to the extent that the sequence of deoxynucleotides in two pieces of genetic material are the same (Ref. 17). A deoxynucleotide is made up of a sugar, a phosphate, and one of four purine or pyrimidine bases (adenine, cytosine, guanine, thymine). The sugars and phosphates of the deoxynucleotides are covalently linked by phosphodiester bonds to form the "backbone" of the deoxynucleotide polymer (DNA). One base is attached to each sugar in the sugar-phosphate backbone. The extent to which two pieces of genetic material have the same base sequence is often described in terms of percent homology, with 100% homology meaning the pieces of genetic material have an identical sequence. The Agency believes that, in general, DNA sequence homology is a less straight-forward standard for regulatory purposes than a standard such as sexual compatibility. Sexual compatibility is known in most cases, and if it is not, it is less burdensome and simpler to demonstrate than is relatedness based on DNA sequence homology. Use of homology as a criterion presents the following complex issues. First, where should homology be assessed? For example, how many genes of the source and recipient plants should be compared to determine the degree of homology? All the genes of both plants? A few genes? If only a few, which genes? Second, what degree of homology would be sufficient to indicate a high degree of relafedness? Third, under what conditions should homology be measured? Fourth, appropriate test procedures would need to be developed and validated in order to set a standard procedure for measuring homology. All of these issues would need to be resolved, and converted into regulatory text, in order to develop an exemption standard based on DNA sequence homology.

2. *How did EPA assess this category of plant-incorporated protectants?* Typically, in assessing a pesticide for environmental risk, EPA uses the information requirements generated pursuant to 40 CFR part 158 to evaluate the potential effect of the pesticide on birds, mammals, freshwater fish and invertebrates, estuarine and marine animals, and nontarget plants and insects (e.g., predators, parasites and honey bees). For most pesticides, this information is generated using animal models. To address these same questions for the plant-incorporated protectants that are the subject of this exemption, EPA was able to rely on the large and varied information base available in the public scientific literature.

Generally, when EPA assesses the risks caused by the use of a pesticide, it considers both the potential hazard that the pesticide poses to the environment and the potential for exposure to the pesticide due to its use. For most pesticides (e.g., chemical pesticides), EPA's risk evaluation relies on data generated by testing in laboratories using representative animal models to estimate risk end-points. Other information, including product analysis data and information generated by use of mathematical models, are used to develop exposure estimates. Exposure and hazard estimates are combined to quantify the potential risk associated with the pesticide's use. The data requirements describing the types of information to be generated and other guidance for assessing risk is detailed in 40 CFR part 158.

The questions posed as part of the risk assessment in evaluating most pesticides (e.g., chemical pesticides) can also be posed for the plant-incorporated protectants that are exempted in today's action, and 40 CFR part 158 can be used as guidance. EPA adopted an approach for evaluating the potential risks of plant-incorporated protectants exempted by this final rule, that is consistent with the unique characteristics of pesticides produced and used in a living plant, and the scientific knowledge and experience accumulated on these substances.

To address the hazard endpoints described in 40 CFR part 158 for the plant-incorporated protectants that are the subject of this exemption, EPA relied on a very large body of information developed through systematic scientific study that exists in the public literature (Ref. 18). This literature was developed through many decades of testing and observation. EPA thus could rely on this information and did not need to rely only on animal model testing to assess risk. EPA was also able to rely on information in the literature in evaluating the potential for exposure to the plant-incorporated protectants that are the subject of this exemption. Plant-incorporated protectants are produced within the living plant and the pesticidal substance is used *in situ* in the plant and this affects the exposure paradigm.

3. *On what basis did EPA determine that plant-incorporated protectants derived through conventional breeding from sexually compatible plants present a low probability of risk?* EPA considered several factors in determining whether plant-incorporated protectants derived through conventional breeding from sexually compatible plants could be exempted from FIFRA requirements. These include: First, the large body of knowledge that currently exists on plants in sexually compatible populations derived through conventional breeding; second, the potential for novel exposures; third, the potential for quantitative changes in the levels of substances normally found in plants in sexually compatible populations that might cause adverse effects; and, fourth outcrossing of the

ability to produce these substances to wild or weedy relatives. To support its conclusions that this category of plant-incorporated protectants present a low probability of risk, EPA also relied on the analyses laid out in the tolerance exemptions published elsewhere in companion documents in this issue of the **Federal Register**. Rather than reiterate all of these analyses here, EPA refers readers to the detailed discussions in those documents. EPA believes that the conclusions reached for plant-incorporated protectants derived through conventional breeding from sexually compatible plants also apply for other substances that might be considered part of the pesticide product (e.g., inert ingredients) for these plant-incorporated protectants.

i. *Large body of knowledge and experience exists.* In the issue paper entitled "FIFRA: Benefit and Environmental Risk Considerations for Inherent Plant-Pesticides," (Ref. 18) EPA describes a large part of the information base on nontarget plants, insects, birds, mammals and other herbivores the Agency utilizes for its evaluation of the potential effects of the plant-incorporated protectants that are the subject of this exemption (Ref. 18). In addition, EPA uses the large literature on the effect on humans of consumption of food from plants in sexually compatible populations developed through conventional breeding generated from epidemiological studies, nutritional assessments, animal model testing and biochemical studies (Refs. 7, 8, 19, 20, 21, 22, 23, 24, 25, 26, and 27) to draw conclusions on the potential risk for animal non-targets, including birds and fish, which might consume food or feed containing plant-incorporated protectants that are the subject of this exemption. Just as testing in animal models can supply information that is extrapolated to conclusions on the effect of a substance on humans, so too can information and conclusions drawn in the dietary risk assessment on the effects on humans be extrapolated to predict effects on non-human mammals and other animals in an assessment of environmental risk. In addition, there is a long history of hundreds, if not thousands of years, of humans using foods containing the plant-incorporated protectants that are the subject of this exemption as feed for domesticated and other animals, including birds and fish (Ref. 28, for example). EPA relies on these experiences and the large literature generated by a century of systematic studies of the constituents of food (Refs. 7, 8, and 18) to assess the plant-incorporated protectants that are the subject of this exemption.

EPA also took into account scientific knowledge from a number of disciplines including plant genetics, plant physiology, phytopathology, entomology, biochemistry, microbial ecology, ecology and plant breeding. From these disciplines, EPA considered, for example, information on plant metabolism, the production of substances that may have a pesticidal effect, and conditions that may limit the production of such substances (Refs. 9, 17, 18, 29, and 30). The Agency also used experimental data derived from the science of phytopathology to characterize the pest resistance mechanisms in plants (Ref. 29).

ii. *Low potential for novel exposures.* Humans and the environment are currently being, and have been for long periods of time, exposed to plants containing the plant-incorporated protectants that are the subject of this exemption. Based on the knowledge base described above in Unit VII.D.2., current conditions of exposure pose a low probability of risk.

Sexually compatible plants share a common pool of genetic material, even though there may be some variability among plants in sexually compatible populations. Sexual compatibility, the ability to produce viable offspring, is only possible in nature for organisms that possess many traits in common. Traits, and the genetic material encoding them, can be passed through a sexually compatible plant population by mating, and the mixing of genetic material that occurs through mating tends to a situation where the members of a sexually compatible population have similar traits and similar genetic material. Thus, movement through conventional breeding of genetic material encoding pesticidal substances between plants in a sexually compatible population is unlikely to result in exposure of organisms that associate with a plant in that population to plant-incorporated protectants that they, and their ancestors, had not been exposed to previously. If a population of plants normally possesses a pesticidal substance, organisms that come into contact with some plants in that population have likely been exposed to that substance in the past, perhaps over long periods of time. These past exposures, particularly if they occur over long periods of time, may lead to a degree of adaptation, or tolerance, in the population of organisms exposed to the pesticidal substance (Ref. 9). The potential for novel, or significantly different environmental exposures to occur in such a situation, would be low.

Further, the potential for exposure to plant-incorporated protectants is in general lower than for other types of pesticides, because plant-incorporated protectants are produced within the living plant and used *in situ* in the plant. Most other pesticides must be applied to the plant, or near the plant. Because a plant-incorporated protectant is produced and used within the plant, physiological constraints limit the amount of pesticidal substance produced by the plant. Because the plant-incorporated protectant is within the plant, the routes by which other organisms may be exposed to the plant-incorporated protectant may be more limited, e.g., dietary exposure is likely to be the predominant route of exposure. Because plant-incorporated protectants are produced and used in the living plant, actual physical contact with the plant or plant parts will, in general, be necessary for exposure to occur. In addition, the plant-incorporated protectants exempted by this final rule are part of the metabolic cycles of plants. They, thus, are biotic and are subject to the processes of biodegradation and decay that all biotic materials undergo (Ref. 31). Biotic materials are broken down to constituent parts through the enzymatic processes of living organisms, and these constituent parts used as building blocks to make other biotic substances. Furthermore, the plant-incorporated protectants that are exempted in this action are biodegradable to their constituent elements through catabolism by living organisms. Because of their biodegradable nature, these plant-incorporated protectants do not bioaccumulate (bioaccumulation occurs when a substance is taken into the body through processes such as eating, and as the body is unable to either break the substance down or eliminate it, the substance accumulates in the tissues) or biomagnify (biomagnification occurs when a substance bioaccumulates in the bodies of organisms lower in the food chain, and as predators higher in the food chain consume organisms lower in the food chain, more and more of the substance accumulates in the bodies of organisms higher in the food chain) in the tissues of living organisms as do substances, such as dioxin (Ref. 32). Because of these characteristics, the potential for new exposures to occur, beyond direct physical exposures to the plant or plant parts, is limited for plant-incorporated protectants derived through conventional breeding from sexually compatible plants.

EPA received a comment raising the concern that "wild-type or

conventionally bred plants in new environments attract, repel or otherwise influence biota surrounding them." In response, EPA would first point out that as described in Unit VII.B.5., a key statutory element in the FIFRA definition of pesticide is whether a human "intends" that a substance or mixture of substances be used for destroying, preventing, repelling or mitigating a pest. A plant introduced into the United States with reference only to its ornamental beauty or its food value, without regard to ability to resist pests, does not contain substance(s) meeting the FIFRA section 2(u) definition of pesticide until a human intends the substance(s) be used for preventing, destroying, repelling or mitigating a pest. Substances within a plant introduced into the United States with pesticidal claims are pesticides within the FIFRA section 2(u) definition. However, as pointed out by the commenter, these substances would be exempt from FIFRA requirements if derived through conventional breeding from sexually compatible plants even though they present a potential for novel environmental exposure. EPA believes this is appropriate. When EPA proposed to exempt plant-incorporated protectants derived from sexually compatible plants from FIFRA requirements, EPA recognized that most crop plants, including all major crop plants, were not native to the United States. The risk assessment the Agency performed and its analysis of risks versus benefits as prescribed by FIFRA, led it to propose the exemption based on a determination that the benefits of use of agricultural crops already in the United States outweigh the low probability of risk. The Agency also anticipated that the probability that nonindigenous plants representing wide-spread exposure being commercially introduced into the United States with pesticidal claims in the future was low (Ref. 7). EPA also considered that the adverse effects reporting requirement it was placing on the exemption would serve to alert the Agency should any environmental or human health risk be identified with such plants. In addition, EPA considered whether new dietary exposures could occur with such plants. EPA concluded that for any such plant introduced into the United States for food use, there will likely be in the country of origin, a history of experience with the dietary use of the plant or parts of the plant, even if a similar history does not exist in the United States at the time of the introduction. In performing its analysis of dietary risk, EPA found no basis for assuming that the dietary effects of any plant-incorporated protectant residues in such a food from such a plant would differ for the United States population from that of the source country. Moreover, EPA believes that the limitation in the tolerance exemption for residues of the pesticidal substance portion of plant-incorporated protectants derived through conventional breeding from plants sexually compatible with the recipient plant will allow EPA and FDA to act expeditiously should any substances meeting the FIFRA section 2 definition of pesticide be identified as problematic.

iii. *Low potential for significant increases in levels of plant-incorporated protectants.* EPA has evaluated whether there are likely to be quantitative changes in levels of plant-incorporated protectants derived through conventional breeding from sexually compatible plants, such that adverse effects on the environment might occur. EPA has determined that the probability of such an event is low because the highest levels of pesticidal substances likely to be attained with plant-incorporated protectants in this group are not likely to result overall in significantly different environmental exposure levels. This analysis was presented in an EPA issue paper, entitled: "Benefit and Environmental Risk Considerations for Inherent Plant-Pesticides" (Ref. 18) located in the record for this rule as described in Unit VIII. A summary of the analysis is presented here.

EPA first considered whether an increase in the levels of substances, including plant-incorporated protectants, that plants normally produce is likely to exceed the ranges normally found within and between plant varieties and uncultivated plants. The level of production of such substances normally varies among sexually compatible plants because of differences in potential to express a substance and environmental conditions. Indeed, variation is seen even among plants in the same variety because of differences such as weather and soil condition. For example, one report (Ref. 7) has shown an 8.3-fold variation in the amount of ascorbic acid in turnip greens depending on the degree of exposure to light. Such variation could also characterize natural variation in the levels of a plant-incorporated protectant and variation in exposure for organisms that associate with the plant. Nontarget organisms, such as birds and insect pollinators, that associate with plants have been, and are currently being exposed to the range of levels of plant-incorporated protectants being expressed by plants within sexually compatible populations. This exemption will not affect these exposure patterns.

EPA also considered the extent to which any substance can be increased in highly managed plants without unwanted effects on other, desirable characteristics of the plant such as yield or palatability of fruit. In general, breeders balance all of these characteristics in developing marketable plant varieties. Plants have, as do all organisms, only a limited capacity to express a particular trait without a drain on energy reserves. Greatly increased levels of a plant-incorporated protectant would, in general, only be accomplished at the expense of the expression of other, agriculturally desirable traits (Ref. 18).

EPA anticipates that for the majority of agricultural plants, levels of expression of substances such as plant-incorporated protectants will continue to fall within currently observed ranges of expression; EPA does not anticipate that variations in the level of a plant-incorporated protectant that is normally a component of a plant and derived through conventional breeding from plants sexually compatible with the recipient plant would lead to a significantly different spectrum of exposure to a plant-incorporated protectant. Moreover, EPA believes that the history of familiarity with agricultural plants in sexually compatible populations, and thus with the likely progeny of genetic exchanges between plants in such populations, and the procedures currently employed in plant breeding to screen out undesirable traits also support this conclusion.

Comments on quantitative changes and on the potential for plants consumed *in toto* or in part as food to produce injurious or deleterious effects have, however, caused EPA to reconsider its approach under FFDCA to pesticidal substances derived through conventional breeding from sexually compatible plants. To address concerns raised in comment on the possibility that certain substances normally present in plants in sexually compatible populations may in rare circumstances be present in food at levels that are hazardous, EPA places a condition on the exemption under FFDCA section 408 for pesticidal substances derived through conventional breeding from sexually compatible plants. Eligibility for exemption is based on the condition that the residues of the pesticidal substance not be present in food from the plant at levels that are injurious or

deleterious to human health. If the residues of the plant-incorporated protectant do not meet this criterion, they are not exempt from the requirement of a tolerance. Because the residues would not qualify for the exemption and no tolerance would have been established, any food containing such residues would be "adulterated" pursuant to section 402(a)(2)(A) of the FFDCA and subject to seizure (21 U.S.C. 342 (a)(2)(A)). As noted in Unit II., the status of a plant-incorporated protectant under FFDCA can affect its status under FIFRA.

EPA also considered issues of variation in levels of plant-incorporated protectants and exposure of nontarget organisms to such plant-incorporated protectants for plants in semi-managed systems (e.g., trees) (Ref. 18). EPA anticipates that for such plants, levels of expression of substances such as plant-incorporated protectants will continue to fall within currently observed ranges of expression. EPA does not anticipate that variations in the level of a plant-incorporated protectant in these plants would lead to a significantly different spectrum of exposure to a plant-incorporated protectant. It is not anticipated that the levels of plant-incorporated protectants in these plants would significantly exceed existing expression ranges of their free-living relatives (Ref. 18).

One commenter worried that because levels of substances in plants vary in response to environmental conditions, the legal status of a plant-incorporated protectant could change from exempt to non-exempt as the levels of pesticidal substances fluctuate. While it is possible, particularly in light of the condition placed on the exemption from the requirement of tolerance, that the legal status of a plant-incorporated protectant could change from exempt to non-exempt, EPA anticipates this will occur only very rarely, if at all. In its assessment, EPA considered the probability of variations in levels of plant-incorporated protectants derived through conventional breeding from sexually compatible plants presenting risk. EPA concluded that although variations will occur in response to environmental conditions, in the range of levels likely to occur they pose a low probability of risk from quantitatively different exposures. EPA's conclusion that it is unlikely that variation due to environmental conditions, or to breeding decisions, would result in risk from quantitatively different exposures is reflected in the Agency's reliance on the post marketing monitoring afforded by the adverse effects reporting requirement at 40 CFR 174.71.

iv. *Low potential for weediness from outcrossing from plants derived through conventional breeding to wild relatives.* A question directly affecting the exposure component of the risk assessment that has no equivalent in the assessment of more traditional pesticides (e.g., chemical pesticides) must be posed for plant-incorporated protectants. Because plant-incorporated protectants are produced and used in the living plant, the possibility that the ability to produce a plant-incorporated protectant may be transferred by outcrossing and hybridization from the crop plant to a cultivated, wild or weedy relative was considered for the plant-incorporated protectants exempted in this action. A large volume of information is available in the public literature (Ref. 33) on this possibility for plant-incorporated protectants derived through conventional breeding from sexually compatible plants. EPA's issue paper entitled "Risk Considerations for Outcrossing and Hybridization" describes in part the information base used to address this aspect of the assessment (Ref. 33).

One of the considerations evaluated for this exemption was whether a capacity to express higher levels of pesticidal substances could be transmitted to wild relatives through outcrossing of the genetic material necessary for the production of the pesticidal substance. A second and more important consideration is whether such an outcrossing event, could in turn, increase weediness of the wild relative. EPA believes that the potential for weediness to increase in wild relatives through the transfer of the genetic material for the pesticidal substance from a crop plant is low for the following reasons.

First, there are several factors which govern whether gene flow occurs between crops and their wild relatives (Ref. 34). Genetic barriers can prevent hybrids from forming, render them sterile, or reduce the fertility of hybrids, and, thus, restrict their contribution to subsequent generations. The strength of genetic barriers is correlated to degree of evolutionary relatedness between the crop and wild relatives (Ref. 34). Space is an effective barrier to hybridization. The wild relatives of corn with which it can hybridize, are restricted to Mexico and Central America. There is no danger of hybridization in other regions (Ref. 34). Time of flowering can prevent hybridization when there is no overlap in the time of flowering of cultivated and wild forms (Ref. 34). The breeding system of the crop plays an important role. For some species (e.g., peanut), the flowers do not ordinarily open, and self-pollination may be very near 100% (Ref. 34). The ploidy level may differ between a crop and its relatives, and differences in ploidy levels can severely reduce the likelihood that the cultivated plant and wild relative will form fertile hybrids (Ref. 34). Some varieties of certain crop species, such as banana, are sterile, and thus are incapable of hybridizing not only with members of other species, but also of their own species (Ref. 34). For some crops in the United States, the probability of gene transfer and hybridization with the wild relative is zero, while for other crops, despite the variety of potential barriers to and selection against hybridization, it is possible.

Second, in general, wild members of sexually compatible populations tend to already possess higher levels of resistance to pests and disease than do the cultivated members of those populations (Ref. 18). Wild members of sexually compatible plant populations also tend to express a greater range of levels of inherent plant defense compounds than do cultivated plants, including production of higher levels of substances that could potentially be used as plant-incorporated protectants (Ref. 18). Indeed, during the past 100 years, it has been common practice to cross crop plants with sexually compatible wild relatives, since these wild relatives usually have higher levels of resistance to a pest, in order to develop crop varieties with improved resistance to the pest. For example, wild species of tomatoes have been used, in conventional plant breeding, as a source of increased resistance to economically important diseases in tomato (Ref. 7).

EPA anticipates that for the majority of agricultural and semi-managed plants, levels of expression of substances such as plant-incorporated protectants, within plants in sexually compatible populations, will continue to fall within currently observed ranges of expression. EPA does not anticipate that variations in the levels of substances such as plant-incorporated protectants, that are normally components of a plant would lead to a significantly different range of expression as a result of this exemption (Ref. 18). Thus, even should a crop plant containing a plant-incorporated protectant in this exempt category hybridize with a wild relative, it is unlikely that the range of expression of the plant-incorporated protectant by the wild relative will be substantially increased by acquisition of the trait from the crop plant.

4. *On what basis did EPA determine that these plant-incorporated protectants are not likely to present*

unreasonable adverse effects to the environment even in the absence of oversight? As explained in Unit II., a pesticide chemical meets the standard for a FIFRA 25(b) exemption if the risks resulting from use of that pesticide are consistent with the FFDCA section 408 exemption standard, and the potential benefits of use outweigh any human health or environmental risks even in the absence of regulatory oversight. EPA considered several factors in determining whether the exempted plant-incorporated protectants are not likely to cause an unreasonable adverse effects to the environment. These include consideration of the potential for dietary, both non-occupational and occupational human health risks, and environmental risks. Also considered was whether the language of the exemption clearly describes for the regulated community what plant-incorporated protectants are exempt; how the scope of the exemption under FIFRA relates to a companion exemption from the FFDCA requirement of a tolerance for residues of these plant-incorporated protectants; and general benefits to society, growers, consumers and the environment.

Some of these considerations were analyzed in detail in the tolerance exemptions published elsewhere in companion documents in this issue of the **Federal Register**. Rather than reiterate the analyses here, the Agency has, in this section, limited its discussion of the human health risks addressed in great detail in those documents to the remaining risks for which the probability is so low that, notwithstanding their existance, the residues meet the section 408(c) standard. The standard for granting an exemption under section 408(c) requires a "reasonable certainty of no harm," not absolute certainty. EPA can make the safety finding required under FFDCA section 408(c) based on an extremely low probability or risks; a demonstration of "no risk" is not required.

i. *Dietary risk considerations.* EPA has determined that there is a reasonable certainty that no harm will result from aggregate exposure to residues of the plant-incorporated protectants that are the subject of this exemption. For a full explanation of the factual bases for this determination, readers are referred to EPA's assessment of human dietary risks in the tolerance exemptions published elsewhere in companion documents in this **Federal Register**, and to related documents in the record for the rule as described at Unit VIII.

In addition, the Agency evaluated the remaining dietary risks that pose a negligible probability of causing adverse effects. As explained throughout this preamble, and in associated rules, EPA believes that the likelihood of dietary risks associated with the residues of plant- incorporated protectants that are the subject of this exemption are extremely low. However, it is possible that, notwithstanding the best efforts of plant breeders, a toxicant could enter the food supply at levels that could cause adverse effects. Because of the conditions of the exemption, such food would no longer qualify for the exemption, and would be subject to seizure. Thus, the extent of the harm is anticipated to be extremely low.

ii. *Occupational and non-occupational risk to humans.* Plant-incorporated protectants are likely to present a limited exposure to humans. In most cases, the predominant, if not the only, exposure route will be dietary. Significant respiratory and dermal exposures are unlikely because the substances are in the plant tissue and thus are found either within the plant or in close proximity to the plant. Although a potential for non-dietary exposure (e.g., dermal and inhalation) in occupational settings may exist, EPA expects such exposure to be negligible and thus human health risks to be negligible.

a. *Dermal exposure.* Plant-incorporated protectants derived through conventional breeding from sexually compatible plants may in some cases be present in sap or other exudates from the plant or the produce and thus may present some limited opportunity for dermal exposure to persons coming physically into contact with the plant or raw agricultural food from the plant. Farmers and food handlers (e.g., individuals harvesting produce by hand, preparing food for sale, or stocking produce bins in grocery stores) or floral workers, are those most likely to experience dermal contact with the substances on an occupational basis. Although contact dermatitis is fairly common in such workers (Refs. 35 and 36), these dermal reactions are generally mild, of a self-limiting nature or self-diagnosed, and treated.

Most of the substances that could be the subject of this exemption are unlikely to pass through the skin to affect other organ systems (Refs. 36 and 37). For those substances which possess to some degree properties that allow some penetration of the skin, the potential amounts passing through the upper layer of the skin (epidermis) are negligible or the substances do not present adverse effects (Ref. 36).

A group of substances that might be plant-incorporated protectants, if humans intend to use them as pesticides, with the ability to present an effect on dermal exposure in the occupational setting beyond a mild contact dermatitis are the psoralens. These substances occur naturally in a wide range of plants but occur in the highest concentrations in celery, dill and parsley (Refs. 8 and 36). Psoralens can be phototoxic to the skin in conjunction with sunlight (UV light). Due to their relative solubility in oils, psoralens can penetrate into the skin cells, where they intercalate into the genetic material of the skin cell (Ref. 8). Subsequent exposure to sunlight (UV light) causes the genetic material to "cross link", affecting the ability of the cell to further process its genetic material. This may result in skin blisters and rashes. This UV-dependent phototoxicity has also been implicated in mutations that may lead to skin cancer (Ref. 8). In spite of the potential for this type of adverse effect with the psoralens, there are few reported incidents of this type of problem for substances derived through conventional breeding from sexually compatible plants. There is one reported incident in the 1980's where a celery variety with high levels of psoralen caused rashes and dermatitis in produce handlers (Ref. 7). The problem was identified and the variety removed from the market.

b. *Inhalation exposure.* Plant-incorporated protectants derived through conventional breeding from sexually compatible plants may in some cases be present in pollen and some individuals (e.g., those working on farms in nurseries or other plant-growing areas) may be exposed, through inhalation, to wind-blown pollen. When present in pollen, the pesticidal substance is likely to be integrated into the tissue of the pollen grain. Pollen grains are solid, insoluble particles of sufficiently large diameter that they are filtered out in the nasopharynx or in the upper respiratory tract (Refs. 36 and 38). This exemption will not change current exposures nor affect strategies for dealing with plant-incorporated protectants that are the subject of the exemption (Refs. 36 and 38).

iii. *Environmental considerations.* EPA examined, in Unit VII.D.3., the potential for environmental effects from the plant-incorporated protectants that are exempted by this action. The Agency has determined on the basis of its analysis that the probability of novel exposures to nontarget organisms and to the surrounding ecosystems are low. EPA's analyses indicate that the risks of outcrossing with wild relatives are also anticipated to be low. Similarly, EPA's

analyses indicate that the risks of groundwater, or surface water, contamination from these products are extremely low. EPA has thus concluded that potential risks of environmental effects are not significant.

iv. *Exemption criteria provide high degree of regulatory clarity.* EPA believes that using sexual compatibility coupled with the process by which the plant-incorporated protectant is introduced into a plant as a standard affords the most clear description of whether a plant-incorporated protectant is exempt. Most plants have some form of sexual reproduction characterized by the formation of gametes from haploid germ cells, although some do not (Ref. 9). The definition of conventional breeding at 40 CFR 174.3 provides for this latter category of plants, which reproduce vegetatively. Plants reproduce either by sexual processes or vegetative reproduction, and the limitations posed by these natural barriers limits the transfer of genetic material to plants within a sexually compatible population. These barriers can also be effectively used to establish scope within regulations for plants.

In most cases, whether two plants are sexually compatible is known; thus, testing to determine whether the plants are sexually compatible is not likely to be necessary. If, in some cases, it is not known whether two plants are sexually compatible, the means of determining sexual compatibility is straightforward and simple. Sexual compatibility is empirically demonstrable. EPA believes that a standard based on sexual compatibility provides a high level of regulatory clarity and great ease of implementation. This standard allows the public, industry, and EPA to easily and readily identify those plant-incorporated protectants that are exempt.

v. *Exemption criteria create similar scopes under FIFRA and FFDCA section 408.* When EPA proposed its exemptions in 1994, one of its goals was to create as similar a scope of exemption under FIFRA and the section of FFDCA dealing with pesticides as possible, given the differences in mandate and structure of the two statutes. EPA believed that because it utilized the two authorities in concert to regulate pesticides, similar exemptions under the two statutes would be desirable. Such an approach would be simpler for the regulated community to understand and for EPA to administer.

In considering dietary risk under FFDCA section 408, EPA concluded that a standard based on sexual compatibility exempts those plant-incorporated protectants for which there is a reasonable certainty that no harm will result from aggregate exposure. EPA, in a companion document published elsewhere in this issue of the **Federal Register**, exempts from the FFDCA section 408 requirement of a tolerance, residues of pesticidal substances derived through conventional breeding from sexually compatible plants. The information supporting that exemption was generated on food from plants in sexually compatible populations developed through conventional breeding.

vi. *No undue burden.* The standard provided by criteria based on sexual compatibility creates a similar exemption under FFDCA and FIFRA, while at the same time implementing the standard with a high degree of regulatory clarity. Implementing a standard with a high degree of regulatory clarity that also creates similar exemptions under FFDCA and FIFRA results in less burden on producers. In addition, EPA believes that implementation of the exemption described in this document, and the exemptions under FFDCA section 408 published elsewhere in companion documents in this issue of the **Federal Register**, and the clarification that plants used as biological control agents are exempt from FIFRA requirements, minimize the burden of producers/developers while appropriately addressing risk.

One comment questioned the cost of EPA's proposed exemptions (59 FR 60519), appearing to believe that research scientists and industry would have to notify and consult with EPA in order to qualify for exemption. This final rule does not require producers to notify or consult with EPA, or present data to the Agency in order to qualify for exemption. The producer would determine whether a particular plant-incorporated protectant meets the exemption criteria. EPA expects that a producer will not have to create additional information specifically to determine if a product is exempt, because producers will already have such information from the ordinary course of product development. There is no requirement to notify EPA associated with the exemption, and no costs can be ascribed to such a notification process.

Some comments offered general observations that costs would curb the development of crop varieties. EPA believes that the clarification that it will not regulate plants per se, and the exemptions it is publishing in this document and in companion documents in this issue of the **Federal Register**, limit EPA's effect on plant breeding and allow most aspects of plant breeding to be pursued without EPA regulation.

Some comments suggested that costs would inhibit the development of alternatives to chemical pesticides. EPA has been, and continues to be, committed to the development of safer pesticides, many of which are biological pesticides, as possible alternatives to more toxic pesticides. The Agency believes the actions it takes with regard to plant-incorporated protectants encourage public confidence in the safety of plants and foods from plants, developed using traditional and modern techniques of biotechnology. The Agency believes that consumer acceptance is key to the success of agricultural products, and that consumer acceptance is strongly influenced by confidence that regulatory agencies have ensured the public safety.

vii. *Benefits.* The benefits to society associated with exemption from FIFRA requirements of this category of plant-incorporated protectants include general benefits to society from the practices of horticulture and of agriculture in producing the food supply and other plant based products (e.g., fiber, lumber), and economic benefits to growers, and the environment.

a. *General benefits to society.* Agriculture based on conventional breeding allows much of the current world population of 6 billion humans to feed itself. Development of higher yielding varieties through conventional breeding in sexually compatible crop plant populations has been an important means of feeding a growing human population (Refs. 39 and 40). For example, it has been estimated that the development of new varieties of plants in sexually compatible populations through conventional breeding accounts for about 80% of the increase in corn yields from 1930 to 1980 and more than half of the increase in soybean yields since 1920 (Refs. 41, 42, and 43). Similarly, genetic improvements of plants in sexually compatible populations through conventional breeding have been estimated to account for half the increase in wheat yields from 1954 to 1979, almost two-fifths of the increase in sorghum yields from 1950 to 1980 (Refs. 44, 45, and 46). This exemption of plant-incorporated protectants derived through conventional breeding from sexually compatible plants will allow the type of genetic modifications leading to these types of yield gains to continue with very minimal regulatory requirements.

b. *Growers.* Growers who use plant-incorporated protectants derived through conventional breeding from sexually compatible plants should be

able to maintain or increase their productivity. Use of these plant-incorporated protectants could translate into lower grower costs because growers will use fewer inputs. Growers should be able to reduce the amount and type of chemical pesticides applied to a crop. Chemical costs, energy costs (e.g., use of tractor) and labor expenditures will be lower if the number of chemical pesticide applications decrease (Refs. 47, 48, and 49). This category of plant-incorporated protectants may also offer economic benefits to growers in circumstances where traditional pesticides may not be as effective. For example, because plant-incorporated protectants are produced and used in plants, they may be more useful for combating pests that act systemically (e.g., stalk borers) than are some traditional pesticides sprayed on the plant.

c. *Consumers.* Lower food prices for consumers are anticipated through use of plant-incorporated protectants derived through conventional breeding from sexually compatible plants, because the use of these plant-incorporated protectants may contribute to, or help maintain, yield increases. If yields increase, the supply of food should also increase. Consumer purchasing power could potentially increase with the decrease in food prices.

d. *Environment.* Environmental benefits associated with the use of plant-incorporated protectants derived through conventional breeding from sexually compatible plants include reduction in the use of chemical pesticides. These chemical pesticides may not be environmentally benign (Refs. 47, 48, and 49). Assuming that growers reduce the number and type of chemical pesticide applications, field workers would have reduced exposure. Other problems associated with chemical pesticide use such as spray drift to other crops or plants, exposure of nontarget species, groundwater contamination and spills could also be reduced.

In addition, breeding programs that develop varieties with, for example, increased yield, better resistance to pests, and better nutritional quality, could be part of an approach to agriculture that would decrease some of the impacts of agriculture on the environment while continuing to supply food to the growing human population. For example, breeding programs that increase crop yields could reduce some of the future impacts of agriculture by decreasing the amount of additional land that would have to be brought into agricultural production to feed the growing human population. The exemption described in this document would allow breeding activities among plants in sexually compatible populations through conventional breeding to continue while imposing minimal burden.

Finally, by exempting those plant-incorporated protectants unlikely to result in novel exposures, EPA is concentrating its regulatory efforts on those plant-incorporated protectants about which less certainty exists with regard to the risk that would result from the use of the plant-incorporated protectant. EPA would, for example, focus its efforts on plant-incorporated protectants such as the toxin from a spider. This toxin is targeted for the insect prey of the spider mite. Plants are not known to produce this toxin in nature or in cultivation. If this toxin were to enter the gene pool of a plant, organisms that associate with the plant and that had never previously been exposed to the toxin could now be exposed. Prior to the introduction of the toxin into these plants, only the insect prey of the spider would potentially be exposed to the toxin. If plants could now express the toxin, a different or larger group of organisms could be exposed to it, possibly resulting in adverse effects to these organisms. For example, if the toxin is found in pollen, pollinators could be exposed to the toxin. By concentrating its regulatory efforts in this way, EPA more efficiently uses its own resources.

viii. *Reporting of adverse effects for exempted plant-incorporated protectants.* EPA has decided to adopt its proposed reporting requirement for otherwise exempt plant-incorporated protectants. Under 40 CFR 174.71, anyone who produced an otherwise exempt plant-incorporated protectant will be required to report any adverse effects associated with the testing or use of the exempted plant-incorporated protectant. Failure to comply with 40 CFR 174.71 would be an unlawful act under FIFRA section 12(a) and could result in monetary penalties pursuant to FIFRA section 14.

As discussed throughout this preamble, EPA's analysis of the potential risks has led it to conclude that the plant-incorporated protectants that are the subject of this exemption present a low probability of risk. But the Agency cannot rule out completely the possibility of adverse effects to human health or the environment from the testing and use of this large category of exempted plant-incorporated protectants. The Agency cannot foresee all potential adverse effects to human health and the environment that may potentially arise for testing and use of specific plant-incorporated protectants. This is compounded by the fact that the exemption is broad, covering literally thousands of potential substances, some of which have the potential to be toxic (Ref. 8, for example). The reporting requirement is meant to address such unforeseeable events resulting from the use of these pesticides.

After weighing the remaining low probability of potential risks against the potential benefits of the plant-incorporated protectants within this category, EPA determined that the risks outweighed the benefits in the complete absence of regulatory oversight. Even though the potential benefits are very high, and the likelihood of risks are estimated to be low, the nature of the potential hazard, a toxicant(s) in the food supply, is extremely significant. Moreover, these products present issues not seen with traditional pesticides: the potential for spread of the plant's genetic material. Because plants can reproduce sexually and/or asexually, the ability to produce the plant-incorporated protectant could spread through the agro- or natural ecosystems, particularly if wild relatives acquire the ability to produce the plant-incorporated protectant through successful hybridization. In addition, the extremely large category of substances that will be exempt itself adds some degree of uncertainty to the Agency's finding. EPA continues to believe that such risks are likely to be extremely rare. However, these considerations would outweigh even the benefits of the plant-incorporated protectants that are the subject of this exemption in the absence of regulatory oversight.

However, as discussed in Unit VII.D.5., EPA does not believe that these risks justify requiring these products to be subject to the full degree of regulatory oversight under FIFRA. Rather, taking into account the very low probability of the risks, EPA believes that the post-market requirement to report adverse effects, when taken with the condition of the FFDCA exemption limiting the level of toxicants, represents a sufficient degree of oversight to allow the Agency to determine that the benefits outweigh the risks. The reporting requirement at 40 CFR 174.71 is a means of ensuring that EPA and FDA can address any potential hazard, and that the Agency's data base with respect to such products is as complete as possible. The costs of reporting are low for the regulated community, being calculated at $669.00 per notification, with EPA anticipating three adverse effects reports in 20 years,

but, as noted in the preceding paragraph, among other benefits, it will provide a mechanism that will allow EPA and FDA to react quickly to address the hazard, in the unlikely event it should arise. (See the Economic Assessment for this rule (Ref. 50)). Therefore, to ensure that there will be no unreasonable adverse effects on the environment from the plant-incorporated protectants that are the subject of this exemption, EPA is including in this final rule the reporting requirement codified at 40 CFR 174.71.

a. *Comments on the reporting requirement.* The majority of comments supported the Agency's proposal. Two of these comments noted that traditionally bred plants are monitored, both formally and informally, for desirable properties, as well as for pests and disease, and suggested that the Agency include a "sunset clause" in the requirement.

One comment disagreed with the adverse effects reporting requirement and pointed out that the language of the proposed rule has the potential of bringing in numerous reports of effects that are not due to the plant-incorporated protectant.

EPA carefully examined the comments it received on the proposed adverse effects reporting requirement, including comments received from other Federal agencies during the review process for this rule. In establishing this reporting requirement EPA took into account the need to target the requirement so that to the extent possible the Agency would not receive numerous reports of effects that are not due to the plant-incorporated protectant. On the other hand, guidance on what to report that is too specific would be counterproductive given that the purpose of the requirement is to be able to monitor for unforeseen events. EPA balanced all of these considerations in developing its final adverse effects reporting requirement at 40 CFR 174.71.

EPA will not adopt a "sunset clause" for this requirement, i.e., a clause that would designate a period of time after which information regarding adverse effects would no longer need to be reported to EPA. EPA appreciates that plant breeders monitor for properties such as yield, nutrients and resistance to pests. However, EPA does not have adequate information on which to base such a clause. The commenters do not define the parameters of the suggested "sunset clause." In addition, records would probably have to be kept to know when reports would no longer be required for a particular plant-incorporated protectant, adding an additional level of complexity to the requirement. Finally, EPA believes that adverse effects reporting for otherwise exempt plant-incorporated protectants should be the responsibility of persons who produce plant-incorporated protectants for sale or distribution. Plant breeders are not necessarily involved in sale and distribution activities, and thus their access to information that an adverse effect may have occurred may be limited.

With regard to the concern expressed with respect to over-reporting, EPA recognizes that the proposed regulatory text (59 FR 60535) could have led to the submission of information that was not relevant to EPA's primary concern of adverse effects caused by the plant-incorporated protectant. In addition, the proposed requirement would have applied to some persons who would not necessarily be in a position to know if adverse effects had occurred. Therefore, EPA has revised the language of the regulatory text at 40 CFR 174.71 of the final rule to clarify that the Agency's intention is to provide a mechanism for reporting information on adverse effects related to a plant-incorporated protectant in a plant, and that only persons who "produce" plant-incorporated protectants for sale and distribution are responsible for submitting information to EPA. This requirement applies to the person who manufactures, for sale or distribution, a plant-incorporated protectant. It does not apply, for example, to researchers performing field experiments, nor to breeders making crosses among plant varieties with the goal of developing new plant varieties, nor to a person who only sells propagative materials (e.g., seed) to farmers without producing the propagative materials themselves.

During interagency discussion on this final rule, the question was posed of whether the commonly observed phenomenon of emergence of resistance in a pest population to one variety of plant, which necessitates the replacement of that one variety by another variety of the same crop plant, would be considered reportable by EPA under 40 CFR 174.71. EPA recognizes that this phenomenon occurs continually in agriculture and is one of the primary reasons that conventional plant breeding programs were instituted and continue to be needed by farmers. Plant breeders must continually develop plant varieties to counter the evolution in pest populations of the ability to be able to successfully attack a previously resistant variety. EPA, when it evaluated plants in sexually compatible populations for potential exemption from the requirements of FIFRA, took this phenomenon into account. Although in some instances, e.g., for Bt plant-incorporated protectants, the evolution of resistance to a pesticide in pest populations is of concern (Ref. 51), based on the history of plant breeding, adaptation between pest and plants in populations of sexually compatible plants derived through conventional breeding should not trigger adverse effects reporting under § 174.71.

b. *Guidance on adverse effects reporting.* To further address the comment that this requirement may lead to over-reporting, EPA has clarified both the procedures for reporting and the types of incidents that must be reported to meet the reporting requirement at 40 CFR 174.71. The text at 40 CFR 174.71 describes the conditions under which reporting should occur, the information which, if available, should be provided in the report, and where the reports should be directed at the EPA. In addition, EPA intends to develop specific guidance to provide further assistance to avoid confusion and unnecessary reporting. For example, the guidance would reiterate that this final rule does not require researchers to notify or consult with EPA, unless they are selling or distributing the plant-incorporated protectant to the public. As indicated previously, producers who sell or distribute an otherwise exempt plant-incorporated protectant must only notify EPA if they have information on actual adverse effects. Furthermore, this final rule does not require anyone, including researchers, to maintain any records.

EPA, in developing the adverse effects reporting requirement at 40 CFR 174.71 for otherwise exempt plant-incorporated protectants, was cognizant that in rare circumstances unanticipated effects may occur with a plant-incorporated protectant. For example, although the Agency judges it highly unlikely, it is possible that a celery variety expressing, for pesticidal purposes, high enough levels of psoralen, to cause dermatitis in humans, could arrive on the market. A celery variety expressing such levels emerged from the varietal development programs once in the past 50 years (Ref. 7). It is to enable the Federal government to address quickly circumstances of this magnitude that EPA implements the reporting requirement at § 174.71 for otherwise exempt plant-incorporated protectants.

If the producer believes the effect is due to consumption of a food but is unsure whether the effect was due to a plant-incorporated protectant, the incident must still be reported to EPA. While reports on human health would be made to EPA, EPA will share such reports with FDA, and EPA and FDA

will make a determination of whether any action is necessary to protect the public health, and if so, what constitutes appropriate action.

c. *Relationship of 40 CFR 174.71 reporting requirement to other reporting requirements.* The reporting requirements imposed upon registrants under FIFRA section 6(a)(2) for registered pesticides (including registered plant-incorporated protectants), and under 40 CFR 152.50(f)(3) for applicants for a registration are not affected by this provision. Nor would either 6(a)(2) or 40 CFR 152.50(f)(3) apply to those who would be subject to 40 CFR 174.71.

5. *Statutory finding.* EPA concludes that plant-incorporated protectants, derived through conventional breeding from plants sexually compatible with the recipient plant, as described at 40 CFR 174.25, warrant exemption under FIFRA section 25(b) because these substances are of a character that is unnecessary to be subject to FIFRA in order to carry out the purposes of the Act. EPA makes this finding with respect to both active and inert ingredients derived through conventional breeding from sexually compatible plants.

As discussed above, EPA has determined that plant incorporated protectants derived through conventional breeding from sexually compatible plants, pose a low probability of risk to humans and the environment. As explained in this preamble, and in the tolerance exemptions for the residues of such plant-incorporated protectants published elsewhere in this issue of the **Federal Register**, EPA has determined that there is a reasonable certainty that no harm will result from aggregate exposure to the residues of such products, including all anticipated dietary residues and all other exposures for which there is reliable information. EPA has also determined that these pesticide products pose a low probability of non-dietary risks to humans and the environment. The Agency bases these conclusions on information from the fields of plant genetics, plant physiology, phytopathology, microbial ecology, ecology, biochemistry, and plant breeding, supplemented by the hundreds, if not thousands, of years of experience growing and consuming plants that contain the substances that are the subject of this exemption, and by Agency knowledge of horticultural and agricultural practices.

EPA has also determined that the use of plant-incorporated protectants is not likely to cause unreasonable adverse effects on the environment in the absence of regulatory oversight other than the adverse effects reporting requirement at 40 CFR 174.71.

The remaining low probability of risks, both dietary and non-dietary human risk, as well as all environmental risks, were weighed against the potential benefits to determine whether, these remaining risks outweigh the benefits in the absence of regulatory oversight. Despite the very low level of remaining risks, and the significant potential benefits, EPA concluded that the balance between the two was extremely close. This was based on several considerations. First, the action at issue is an exemption, which could complicate EPA's ability to respond in the unlikely event a problem should arise. Moreover, the nature of the potential risks of these products themselves present particular regulatory challenges. Both the nature of the possible hazards and the exposure considerations presented by the potential for the plant's genetic material to spread to wild relatives, weigh heavily in any risk benefit balance. In addition, because it is an exemption, EPA bears the burden of both adducing the necessary evidence to support the rulemaking, and ensuring that the facts continue to support the exemption over time. Given the breadth of the exemption, EPA believed that it could not ensure over time that it could continue to support a finding that the benefits outweigh the risks in the complete absence of regulatory oversight.

But EPA does not believe that the potential risks outweigh the benefits to a degree that would warrant the pre-market approval system of registration. As described throughout this preamble, even though the nature of the risks are substantial, the probability of the risks is slight. In general, EPA believes that, given the probability of the potential risks there would be a minimal societal benefit in imposing the full degree of pre-market and post-market oversight associated with FIFRA registration. Rather, EPA believes that the imposition of the adverse effects reporting requirement, when taken with the other conditions of the FIFRA and FFDCA exemptions, tips the balance of the risks and benefits. The reporting requirement will allow the Agency to ensure that the exempted plant-incorporated protectants will continue to meet the conditions of the exemption, and will provide a mechanism to monitor the effects of this class of products. Further, because the exemption is expressly conditioned on the levels of the pesticidal substance remaining at levels that will not be injurious or deleterious to human health, EPA and FDA will be able to address the risk presented by a particular plant-incorporated protectant should a toxicant or high levels of a toxicant occur in the food supply, without the need to revoke the exemption. This permits some continuing degree of post-market oversight analogous to that provided through the registration process.

E. Establishment of 40 CFR Part 174

EPA received three comments addressing the establishment of new 40 CFR part 174. All of the comments supported the Agency's proposed rule.

As proposed in the 1994 **Federal Register** document, EPA establishes a new 40 CFR part 174. The new part will consolidate regulations specifically applicable to plant-incorporated protectants into one part of the CFR. EPA believes that establishment of a new part specifically for plant-incorporated protectants is appropriate and justified because of the characteristics that distinguish plant-incorporated protectants from other types of pesticides. This consolidation is expected to benefit the public by providing greater focus, enhanced clarity and ease of use. The regulatory requirements found in 40 CFR part 174 apply to plant-incorporated protectants only. Regulations in 40 CFR part 174 supersede other pesticide regulations found in 40 CFR parts 150 through 173 and 40 CFR parts 177 through 180 when these regulations conflict with a regulation in 40 CFR part 174. Unless otherwise superseded by 40 CFR part 174, the regulations in 40 CFR parts 150 through 173 apply to plant-incorporated protectants.

In this final rule, EPA establishes subparts in 40 CFR part 174 to contain either regulations EPA is implementing through this rule, or regulations EPA may implement in the future, tailored to apply specifically to plant-incorporated protectants. EPA has numbered and organized 40 CFR part 174 somewhat differently in this final rule than proposed in the November 23, 1994, **Federal Register** document (59 FR 60533), in part to provide greater flexibility for including future regulations at 40 CFR part 174, and for greater ease of use.

In 40 CFR part 174, subpart A, "General Provisions," § 174.1 describes the scope and purpose of part 174. For clarification, some revisions have been made to the language of proposed § 174.1 as it appeared in proposed subpart A of the November 23, 1994, **Federal Register** document (59 FR 60534). Subpart A also contains at

§ 174.3 the definitions relevant to plant-incorporated protectants. As described elsewhere in this document, some definitions proposed at § 174.3 in the November 23, 1994, **Federal Register** document (59 FR 60534) were revised for clarity, to limit the exemption, and to accommodate the change of name of this type of pesticide from "plant-pesticide" to "plant-incorporated protectant." Subpart A also describes at § 174.9 procedures for dealing with confidential business information (CBI) claims for plant-incorporated protectants.

Subpart B is established in 40 CFR part 174 and describes at § 174.21 "General qualifications for exemptions." The exemption promulgated with this final rule is described at § 174.25, "Plant-incorporated protectant derived from sexually compatible plant." The proposed rule in the November 23, 1994, **Federal Register** document (59 FR 60535) described the proposed exemption in proposed subpart A at § 174.5. The exemption has been described in a separate subpart B, in the final rule, to facilitate ease of use and ability to easily expand the list of exemptions.

Subpart D is established in 40 CFR part 174 for monitoring and recordkeeping requirements and sets forth requirements for submission of information regarding adverse effects caused by otherwise exempted plant-incorporated protectants. In the November 23, 1994, **Federal Register** document (59 FR 60535) the proposed language describing this proposed reporting requirement appeared at proposed 40 CFR 174.7. A subpart D has been established and the adverse effects reporting requirement has been placed at § 174.71 in subpart D to establish a distinct subpart for monitoring and recordkeeping requirements. The establishment of this subpart should facilitate ease of use by the regulated community.

Subpart C is established and reserved in 40 CFR part 174 for registration procedures and requirements. Similarly, subparts E through V are established and reserved in 40 CFR part 174 for regulations addressing other activities associated with plant-incorporated protectants; e.g., labeling, data requirements and experimental use permits. It is anticipated that future rulemakings will address these activities specifically for plant-incorporated protectants, and that the final regulations for these activities will be placed in these subparts.

Subpart W is established in 40 CFR part 174 to contain tolerances and exemptions from the requirement of a tolerance for plant-incorporated protectants under FFDCA section 408. Because 40 CFR part 174 did not exist at the time of the publication of the proposals to exempt certain categories of residues of plant-incorporated protectants (59 FR 60535, 60542, 60545) from the FFDCA requirement of a tolerance, the proposals were presented as amendments to 40 CFR part 180. With the establishment of 40 CFR part 174 through this final rule, the exemptions from the requirement of a tolerance published in companion documents elsewhere in this issue of the **Federal Register** are listed at 40 CFR 174.475, "Nucleic acids that are part of a plant-incorporated protectant; exemption from the requirement of a tolerance", and at § 174.479, "Pesticidal substance derived from sexually compatible plant; exemption from the requirement of a tolerance". Tolerances or exemptions from the requirement of a tolerance issued for plant-incorporated protectants prior to establishment of 40 CFR part 174 and thus currently listed at 40 CFR part 180 will be moved in the near future to 40 CFR part 174, subpart W. It is anticipated that establishment of subpart W in 40 CFR part 174 will facilitate ease of the use of the CFR for the general community, particularly those manufacturing and using plant-incorporated protectants.

A subpart X is established in 40 CFR part 174 and titled "List of Approved Inert Ingredients." At § 174.485 EPA, EPA lists inert ingredients from sexually compatible plants.

F. Upfront Substantiation of Confidential Business Information

EPA continues to believe that substantiation of CBI claims for plant-incorporated protectants at the time of submission of information to the Agency will help to ensure a timely response to submissions for plant-incorporated protectants, further the public's right to access information and, consistent with FIFRA, protect confidential business information. EPA has concluded that up-front substantiation of CBI claims does not invalidate or jeopardize legitimate CBI claims. The Agency recognizes that the regulated community has a legitimate and legally cognizable interest in protecting trade secrets and other CBI. EPA has concluded that the requirement at 40 CFR 174.9 in the final rule allows the Agency to respond to requests for access to information, provide (where appropriate) expurgated copies of submissions and a rationale for any exclusions, and where necessary, make final determinations with respect to the validity of CBI claims without delaying regulatory action while CBI claims are being substantiated.

The release of information prior to registration is controlled in part by the Freedom of Information Act (FOIA), 5 U.S.C. 552, and section 10 of FIFRA (7 U.S.C. 136h). FOIA requires Federal agencies to provide the public with copies of agency records upon request, but contains exemptions from disclosure. Among those exemptions is one for "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552(b)(4)). FIFRA section 10(b) requires protection of the same class of information. However, section 10(d)(1) limits confidentiality protection for safety and efficacy data (unless disclosure of such data in turn would disclose manufacturing or quality control processes, the method for detecting any deliberately added inert ingredient, or the identity or percentage quality of any deliberately added inert ingredient) for registered or previously registered pesticides (7 U.S.C. 136h(d)(1)). Even these excepted categories must meet the section 10(b) requirements in order to be protected. Section 3(c)(2)(A) of FIFRA provides for disclosure of certain non-confidential data 30 days after registration (7 U.S.C. 136a(c)(2)(A)).

The Agency received five comments that address the proposed requirement for up-front substantiation of CBI. Four commenters agreed with the provision. These commenters generally agreed that up-front substantiation of CBI claims will help to both ensure that the public has adequate access to information and provide timely responses to the regulated community.

One commenter disagreed with the provision for up-front substantiation of CBI. The commenter suggested that data developers would suffer substantial harm to their competitive position if data were released prematurely and asserted that EPA does not have the authority to release data to the public prior to a registration decision.

After considering these comments, EPA continues to believe that up-front substantiation of CBI claims is warranted and includes such a provision at 40 CFR 174.9. The commenter incorrectly implies that § 174.9 authorizes release of information entitled to confidential protection. All § 174.9 does is accelerate the process for determining whether information claimed as confidential is, in fact, entitled to protection under FIFRA section 10(b). Congress did not provide for absolute protection of pesticide information prior to registration; rather, it required the Agency to protect that

information which lies within the ambit of section 10(b) (7 U.S.C. 136h).

The proposed rule contained a provision that substantiations that themselves were claimed as confidential would be presumptively treated as CBI by the Agency and would not be disclosed except where ordered by a Federal court, in accordance with 40 CFR 2.205(c) (part of EPA's general confidentiality regulations at 40 CFR part 2, subpart B). This proposed provision would not have changed EPA's practice in any way; it merely echoed the pre-existing agency-wide treatment of CBI substantiations. Recently, however, the Agency proposed to amend 40 CFR 2.205(c), to eliminate the automatic protection of CBI substantiations that are themselves claimed confidential (65 FR 52684, August 30, 2000). EPA believes that such treatment of substantiations is no longer necessary to support the original purpose of the regulation, i.e., encouraging businesses to provide sufficient information to support their claims. Because the Agency is contemplating removing § 2.205(c) and because the proposed provision in 40 CFR 174.9 merely echoes the existing more general provision in § 2.205(c), the § 174.9 provision is not included in this final rule.

VIII. Documents in the Official Record

As indicated in Unit I.B.2., the official record for this rule has been established under the docket control number OPP–300369B, the public version of which is available for inspection as specified in Unit I.B.2.

A. References

The following books, articles, and reports were used in preparing this final rule and are cited in this document by the number indicated.

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B. Additional Information

The official record for this rulemaking includes:

The docket identified by the docket control number OPP–300370 for the document entitled "Proposed Policy: Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act" (59 FR 60496)(FRL–4755–2).

The docket identified by the docket control number OPP–300369 for the document entitled "Plant-Pesticides Subject to the Federal Insecticide, Fungicide and Rodenticide Act; Proposed Rule" (59 FR 60519, November 23, 1994)(FRL–4755–3).

The docket identified by the docket control number OPP–300368 for the document entitled "Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act" (59 FR 60535, November 23, 1994)(FRL–4758–8).

The docket identified by the docket control number OPP–300371 for the document entitled "Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Nucleic Acids Produced in Plants" (59 FR 60542, November 23, 1994)(FRL–4755–5).

The docket identified by the docket control number OPP–300370A for the document entitled "Plant-Pesticide Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act; Reopening of Comment Period" (61 FR 37891, July 22, 1996)(FRL–5387–4).

The docket identified by the docket control number OPP–300368A for the document entitled "Plant-Pesticides; Supplemental Notice of Proposed Rulemaking" (62 FR 27132, May 16, 1997)(FRL–5717–2).

The docket identified by the docket control number OPP–300371A for the document entitled "Plant-Pesticides; Nucleic Acids; Supplemental Notice of Proposed Rulemaking" (62 FR 27142, May 16, 1997)(FRL–5716–7).

The docket identified by the docket control number OPP–30069A for the document entitled "Plant-Pesticides, Supplemental Notice of Availability of Information" (64 FR 19958, April 23, 1999)(FRL–6077–6).

The docket identified by the docket control number OPP–300368B for the companion document entitled "Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Residues Derived Through Conventional Breeding From Sexually Compatible Plants of Plant-Incorporated Protectants (Formerly Plant-Pesticides)" (FRL–6057–6) published elsewhere in this issue of the **Federal Register**.

The docket identified by the docket control number OPP–300371B for the companion document entitled "Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Residues of Nucleic Acids that are Part of Plant-

Incorporated Protectants (Formerly Plant-Pesticides)" (FRL–6057–5) published elsewhere in this issue of the **Federal Register**.

The docket identified by the docket control number OPP–300370B for the document entitled "Plant-Incorporated Protectants; Supplemental Notice of Availability" (FRL–6760–4).

The docket identified by the docket control number OPP–300369B for this document [FRL–6057–7].

Also include in the official record are:

1. Public comments submitted in response to the proposals and supplemental documents cited in the above paragraph.

2. Reports of all meetings of the Biotechnology Science Advisory Committee and the FIFRA Science Advisory Panel pertaining to the development of this final rule.

3. The Economic Analysis for this final rule, and supporting documents (Ref. 50).

4. Support documents and reports.

5. Records of all communications between EPA personnel and persons outside EPA pertaining to the final rule. (This does not include any inter-agency and intra-agency memoranda, unless specifically noted in the Indices of the dockets).

6. Published literature that is cited in this document.

7. The response to comments documents pertaining to the development of this final rule (Ref. 2).

IX. Statutory Review Requirements

In accordance with FIFRA section 25(a), this proposed rule was submitted to the FIFRA Scientific Advisory Panel, the Secretary of Agriculture (USDA), and appropriate Congressional Committees. The Scientific Advisory Panel waived its review of this final rule. Any changes made in response to comments received from USDA have been documented in the public version of the official record, along with any other comments received during the inter-agency review under Executive Order 12866.

X. Regulatory Assessment

A. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this is a "significant regulatory action" because it may raise potentially novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Therefore, this action was submitted to OMB for review, and any comments or changes made during that review have been documented in the public version of the official record for this rulemaking.

EPA has prepared an economic analysis of the impacts related to this final action, which evaluates the direct costs of regulating certain types of plant-incorporated protectants and exempting one specific type of plant-incorporated protectants from FIFRA requirements (40 CFR part 174) and discusses the non-quantifiable benefits of this action. Direct compliance costs include cost estimates for the requirements to substantiate CBI when the claim is made and adverse effects reporting for otherwise exempt plant-incorporated protectants. This economic analysis is contained in a document entitled "Economic Analysis: Regulations for Plant-Incorporated Protectants Under the Federal Insecticide, Fungicide, and Rodenticide Act," hereinafter "the EA." This document is available as a part of the public version of the official record for this rulemaking (Ref. 50) and is briefly summarized here. (See Unit I. for instructions on obtaining support documents).

The EA presents the potential costs and benefits associated with the various requirements considered by the Agency during the development of the final action. This rule may impose direct compliance costs of $2.4 million in year 1 and $7.9 million in year 10. The benefits include the non-quantifiable benefits of assurance of protection of the environment, a more certain regulatory climate for industry, and reassurance to the public of the safety of these products. As such, the Agency believes that the potential annual costs associated with the exemption is minimal.

The Agency's EA at the time of proposed rule in 1994 estimated and compared the costs and benefits associated with four options, ranging from implementation of regulating few types of plant-incorporated protectants with exemptions of several types of plant-incorporated protectants, through implementation of increasing numbers of types of plant-incorporated protectants regulated and decreasing the exemptions. The EA for the final rule calculates the direct compliance costs associated with four similar options. The methodology employed in both the proposed EA and the final EA is the same. The costs of each of the four options in the final EA are lower than the costs of the four options in the EA for the proposed rule. This can, in general, be attributed to an agreement between EPA and USDA that costs for data generation would not be "double counted", i.e., if USDA required certain data, EPA would not count the costs of that data in its EA. Based on the Agency's experience over the past several years, EPA also lowered its estimate of the probability when more expensive, higher tiered testing would for required. The Agency also increased its estimates of projected number of plant-incorporated protectants submitted annually for registration.

This rule will also generate a wide range of non-monetized benefits for the public, the firms involved with agricultural biotechnology, the environment, nontarget organisms, and states. These benefits include greater certainty in the regulated community of the status of their plant- incorporated protectant. Because EPA issued a proposal to exempt several broad categories of plant-incorporated protectants in 1994, some uncertainty may exist in industry regarding the status of many plant-incorporated protectants under FIFRA and this uncertainty may also be a cost on industry. The final rule will clarify the status of one category of plant-incorporated protectants and thereby eliminate some of this uncertainty. With this action, firms developing and testing plant-incorporated protectants can plan ahead for timely product development and commercialization, which should, in turn, attract investors to the agricultural biotechnology sector. States will benefit by having a set of standardized Federal regulations that will be more easily conveyed, interpreted, and enforced. In addition, through this rule, EPA can help reassure the public of the safety of these types of products; registrants of plant-incorporated protectants can expend the considerable resources on research and development of products which may not be accepted by the public if EPA cannot assure their safety. Industry thus benefits by a reduction of uncertainty about the acceptability of their products and by greater market acceptance of the products.

B. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U. S. C. 601 *et seq.*), the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the economic analysis for this rule (Ref. 50), and is briefly summarized here.

For the purpose of analyzing the potential impacts of this rule on small entities, EPA used the definition for

small entities that is found in section 601 of the RFA. Under section 601, "small entity" is defined as: (1) A small business that meets Small Business Administration (SBA) size standards codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This rule is not expected to adversely impact small local governments. EPA's analysis, therefore, assesses the potential impacts on small not-for-profit organizations (i.e., universities with $5 million or less in annual revenues under the SBA size standard for SIC 8221), and small businesses i.e., small pesticides and agricultural chemical producers with 500 or less employees under SBA size standard for SIC 2879.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact on [...] small entities." 5 U.S.C. sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effects on all of the small entities subject to the rule.

The aggregate potential impacts of the rule are expected to be minimal on small pesticide and other chemical manufacturers. Seed companies were not evaluated separately because the data available indicate that most seed companies have been purchased by larger, parent companies, many of which are pesticide manufacturers. The anticipated impact on universities, colleges, and professional schools cannot be determined. It appears that a majority of universities and colleges that would be expected to develop and research plant-incorporated protectants would not be small. Since small R&D firms lack the expertise and resources to produce, sell and manufacture plant-incorporated protectants, the burden of registration will not fall on specialized R&D firms. The Agency anticipates that many of the R&D firms with specialized expertise in this area will either work with or be purchased by larger firms with the expertise and financial resources to produce, sell, and/or distribute viable plant-incorporated protectants.

Information relating to this determination will be provided to the Chief Counsel for Advocacy of the SBA upon request.

C. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, and included on the related collection instrument.

The information collection requirements contained in this final rule have been submitted to OMB for review and approval under the PRA in accordance with the procedures at 5 CFR 1320.11. The burden and costs related to the information collection requirements contained in this rule are described in an Information Collection Request (ICR) identified as EPA ICR No. 1693.02, which has been included in the public version of the official record described in Unit I.B.2., and is available electronically as described in Unit I.B.1., at http://www.epa.gov/opperid1/icr.htm, or by e-mailing a request to farmer.sandy@epa.gov. You may also request a copy by mail from Sandy Farmer, Collection Strategies Division, U.S. Environmental Protection Agency (Mail Code 2822), 1200 Pennsylvania Ave. NW., Washington, DC 20460, or by calling (202) 260–2740.

As defined by the PRA and 5 CFR 1320.3(b), "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed for rule familiarization and to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The information collection requirements contained in this rule include up-front substantiation for claims of CBI for plant-incorporated protectant activities (e.g., EUP submissions, registration applications, tolerance requests, and adverse effects reporting), and for adverse effects reporting for the otherwise exempt plant-incorporated protectants. The annual respondent burden associated with the CBI substantiation and averse effects reporting for exempted plant-incorporated protectants is estimated to average 352 hours per submission, with a potential individual respondent burden of 25 hours for each CBI substantiation required, and 7.8 hours for each adverse effects reporting event. The annual respondent burden associated with the CBI substantiation for those plant-incorporated protectants that are not exempted by this rule is estimated to be 595 hours.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local or tribal governments, in the aggregate, or on the private sector in any one year. The analysis of the costs associated with this action are described in Unit X.A.

The UMRA requirements in sections 202, 204, and 205 do not apply to this rule, because this action does not contain any "Federal mandates" or impose any "enforceable duty" on State/Tribal, or local governments or on the private sector. The requirements in section 203 do not apply because this rule does not contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications, because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132. The primary result of this action is to exempt certain pesticides from most FIFRA requirements. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Orders 13084 and 13175

This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), do not apply to this rule. Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001, revokes Executive Order 13084 as of that date. EPA developed this rulemaking, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. For the same reasons stated for Executive Order 13084, the requirements of Executive Order 13175 do not apply to this rule either.

G. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 11, 1994), entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency is required to consider the potential for differential impacts on sensitive subpopulations. EPA considered available information on the sensitivities of subgroups as pertains to the exemptions. EPA concluded that no subgroup would be differentially affected. (See also the exemptions from the FFDCA section 408 requirement of a tolerance for residues of nucleic acids that are part of a plant-incorporated protectant and residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants published elsewhere in companion documents in this issue of the **Federal Register**).

H. Executive Order 13045

Executive Order 13045, entitled: *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this rule because it is not economically significant as defined in section 3(f) of Executive Order 12866, and because the Agency does not have reason to believe that the environmental health or safety risks addressed by this action present disproportionate risks to children. The Agency has determined that the plant-incorporated protectants exempted in the rule pose only a low probability of risk to human health, including the health of infants and children, and that there is a reasonable certainty no harm will result to infants and children from aggregate exposure to residues of these plant-incorporated protectants in food. Existing information suggests there are no disproportionate effects on infants or children from dietary or other exposures. EPA's assessment and the results of its assessment for infants and children are contained in Unit IX.B.10. of companion documents published elsewhere in this issue of the **Federal Register** exempting from the FFDCA section 408 requirement of a tolerance, residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants, and residues of nucleic acids that are part of a plant-incorporated protectant.

I. Voluntary Consensus Standards

This rule does not involve a regulatory action that would require the Agency to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.). that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards when the NTTAA directs the Agency to do so.

J. Executive Order 12630

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

K. Executive Order 12988

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

L. FIFRA section 25(a)(2)(b)

FIFRA section 25(a)(2)(b), requires that the Administrator of EPA consider such factors as ". . . the effect of the regulation on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. . ." when issuing regulations under section 25 (7 U.S.C. 136w(a)(2)(B). The total direct compliance costs for the rule were estimated to be $2.4 in year 1 and $7.9 in year 10. Based on the 1997 Agricultural Census, total U.S. crop production was valued at $98 billion. The impact of these requirements will not have a significant impact on U.S. crop production or prices. The compliance costs of the rule will affect those who plan to register, manufacture and sell plant-incorporated protectants. This rule is expected to have a minimal impact on pesticide and other chemical manufacturers who in turn will sell the plant-incorporated protectants to agricultural producers. Factors, other than this rule, that occur as a result of the production of genetically altered products (i.e., consumer acceptance and the international market desire to separately market genetically altered products in the market) may affect agricultural producers and international markets. This rule may provide some benefits to the agricultural industry by helping to ensure the public on the safety of these products and positively affect consumer acceptance.

M. Executive Order 13211

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U. S. Senate, the U. S. House of Representatives and Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 152 and 174

Environmental protection, Administrative practice and procedures, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 12, 2001.

Christine T. Whitman,

Administrator.

Therefore, 40 CFR chapter I is amended as follows:

1. By amending part 152 as follows:

PART 152—[AMENDED]

a. The authority citation for part 152 continues to read as follows:

Authority: 7 U.S.C. 136–136y; subpart U is also issued under 31 U.S.C. 9701.

b. § 152.1 is revised to read as follows:

§ 152.1 Scope.

Except as provided in part 174, part 152 sets forth procedures, requirements, and criteria concerning the registration and reregistration of pesticide products under FIFRA sec. 3, and for associated regulatory activities affecting registration. These latter regulatory activities include data compensation and exclusive use (subpart E), and the classification of pesticide uses (subpart I). Part 152 also sets forth procedures, requirements, and criteria applicable to plant-incorporated protectants. Unless specifically superceded by part 174, the regulations in part 152 apply to plant-incorporated protectants.

c. In § 152.3, by removing the paragraph designations, alphabetizing the terms, alphabetically inserting the new definitions listed below, and revising the definitions for "active ingredient" and "inert ingredient" to read as follows:

§ 152.3 Definitions.

* * * * *

Active ingredient means any substance (or group of structurally similar substances if specified by the Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of FIFRA sec. 2(a), except as provided in § 174.3 of this chapter.

* * * * *

Genetic material necessary for the production means both: Genetic material that encodes a substance or leads to the production of a substance, and regulatory regions. It does not include noncoding, nonexpressed nucleotide sequences.

In a living plant means inside the living plant, on the surface of the livingplant, or as an exudate from the living plant.

Inert ingredient means any substance (or group of structurally similar substances if designated by the Agency), other than an active ingredient, which is intentionally included in a pesticide product, except as provided by § 174.3 of this chapter.

* * * * *

Living plant means a plant, plant organ, or plant part that is alive, viable, ordormant. Examples of plant parts include, but are not limited to, seeds, fruits, leaves, roots, stems,flowers, and pollen.

* * * * *

Noncoding, nonexpressed nucleotide sequences means the nucleotidesequences are not transcribed and are not involved in gene expression. Examples of noncoding,nonexpressed nucleotide sequences include, but are not limited to, linkers, adapters, homopolymers, and sequences ofrestriction enzyme recognition sites.

* * * * *

Pesticidal substance, when referring to a plant-incorporatedprotectant only, means a substance that is intended to be produced and used in a living plant, or inthe produce thereof, for a pesticidal purpose during any part of a plant's life cyle (e.g., in theembryo, seed, seedling, mature plant).

Plant-incorporated protectant means a pesticidal substance that isintended to be produced and used in a living plant, or in the produce thereof, and the geneticmaterial necessary for production of such a pesticidal substance. It also includes any inertingredient contained in the plant, or produce thereof.

Produce thereof, when referring to plant-incorporated protectantsonly, means a product of a living plant containing a plant-incorporated protectant, where thepesticidal substance is intended to serve a pesticidal purpose after the product has been separatedfrom the living plant. Examples of such products include, but are not limited to, agriculturalproduce, grains, and lumber. Products such as raw agricultural commodities bearing pesticidechemical residues are not "produce thereof" when the residues are not intended to serve apesticidal purpose in the produce.

Regulatory region means genetic material that controls theexpression of the genetic material that encodes a pesticidal substance or leads to the production ofa pesticidal substance. Examples of regulatory regions include, but are not limited to, promoters, enhancers, andterminators.

* * * * *

d. In § 152.20, by revising paragraph (a)(1) and adding paragraph (a)(4)to read as follows:

§ 152.20 Exemptions for pesticidesregulated by another Federal agency.

* * * * *

(a) * * *

(1) Except as provided by paragraphs (a)(3) and (a)(4) of this section, all biologicalcontrol agents are exempt from FIFRA requirements.

* * * * *

(4) All living plants intended for use as biological control agents are exempt from therequirements of FIFRA. However, plant-incorporated protectants are not exempt pursuant to thissection. Regulations, including exemptions, for plant-incorporated protectants are addressed inpart 174 of this chapter.

* * * * *

2. By adding a new part 174 to read as follows:

PART 174—PROCEDURES AND REQUIREMENTS FORPLANT-INCORPORATED PROTECTANTS

Subpart A—General Provisions

Sec.

174.1 Scope and purpose.
174.3 Definitions.
174.9 Confidential business information claims for plant-incorporated protectant submissions.

Subpart B—Exemptions

174.21 General qualifications for exemptions.
174.25 Plant-incorporated protectant from sexually compatibleplant.

Subpart C—Registration Procedures and Requirements [Reserved]

Subpart D—Monitoring and Recordkeeping

174.71 Submission of information regarding adverse effects.

Subparts E—F [Reserved]

Subpart G—Labeling Requirements [Reserved]

Subpart H—Data Requirements [Reserved]

Subpart I—[Reserved]

Subpart J—Good Laboratory Practices [Reserved]

Subpart K—Export Requirements [Reserved]

Subparts L—T [Reserved]

Subpart U—Experimental Use Permits [Reserved]

Subpart V—[Reserved]

Subpart W—Tolerances and Tolerance Exemptions

174.451 Scope and purpose.

Subparts X—List of Approved Inert Ingredients

174.480 Scope and purpose.
174.485 Inert ingredients from sexually compatible plant.

Subpart Y—Z [Reserved]

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 346a and 371.

Subpart A—General Provisions

§ 174.1 Scope and purpose.

The characteristics of plant-incorporated protectants such as their production and use inplants, their biological properties, and their ability to spread and increase in quantity in theenvironment distinguish them from traditional chemical pesticides. Therefore, plant-incorporatedprotectants are subject to some different regulatory requirements and procedures than traditionalchemical pesticides. This part sets forth regulatory requirements, criteria, and proceduresapplicable to plant-incorporated protectants under FIFRA and FFDCA. When applied toplant-incorporated protectants, the definitions and regulations in this part supercede theregulations found in parts 150 through 180 of this chapter to the extent that the regulationsconflict. Unless otherwise superceded by this part, the regulations in parts 150 through 180 of thischapter apply to plant-incorporated protectants.

§ 174.3 Definitions.

Terms used in this part have the same meaning as in FIFRA. In addition, the following termshave the meaning set forth in this section.

*Active ingredient*means a pesticidal substance that is intended to be produced and used in a living plant, or in theproduce thereof, and the genetic material necessary for the production of such a pesticidalsubstance.

Administrator means the Administrator of the United States EnvironmentalProtection Agency or his/her delegate.

Bridging crosses between plants means the utilization of anintermediate plant in a cross to produce a viable zygote between the intermediate plant and a firstplant, in order to cross the plant resulting from that zygote with a third plant that would nototherwise be able to produce viable zygotes from the fusion of its gametes with those of the firstplant. The result of the bridging cross is the mixing of genetic material of the first and third plantthrough the formation of an intermediate zygote.

Cell fusion means the fusion *in vitro* of two ormore cells or protoplasts.

Conventional breeding of plants means the creation of progenythrough either: The union of gametes, i.e., syngamy, brought together through processes such aspollination, including bridging crosses between plants and wide crosses, or vegetative reproduction. It does not include use of any of the following technologies: Recombinant DNA;other techniques wherein the genetic material is extracted from an organism and introduced intothe genome of the recipient plant through, for example, micro-injection, macro-injection, micro-encapsulation; or cell fusion.

EPA means the United States Environmental Protection Agency.

Exudate means a substance gradually discharged or secreted acrossintact cellular membranes or cell walls and present in the intercellular spaces or on the exteriorsurfaces of the plant.

FFDCA means the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321*et seq.*).

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act, asamended (7 U.S.C. 136 *et seq.*).

Food includes articles used for food or drink by humans or otheranimals.

Food plant means a plant which either in part or *intoto*, is used as food.

Genetic material necessary for the production means both: Genetic material that encodes a substance or leads to the production of a substance; and regulatory regions. It does not include noncoding, nonexpressed nucleotide sequences.

Genome means the sum of the heritable genetic material in the plant, including genetic material in the nucleus and organelles.

In a living plant means inside the living plant, on the surface of the livingplant, or as an exudate from the living plant.

Inert ingredient, means any substance, such as a selectable marker, other than the active ingredient, where thesubstance is used to confirm or ensure the presence of the active ingredient, and includes the geneticmaterial necessary for the production of the substance, provided that genetic material isintentionally introduced into a living plant in addition to the active ingredient.

Living plant means a plant, plant organ, or plant part that is alive, viable, ordormant. Examples of plant parts include, but are not limited to, seeds, fruits, leaves, roots, stems,flowers, and pollen.

Noncoding, nonexpressed nucleotide sequences means the nucleotidesequences are not transcribed and are not involved in gene expression. Examples of noncoding,nonexpressed nucleotide sequences include, but are not limited to, linkers, adapters, homopolymers, and sequences ofrestriction enzyme recognition sites.

Nucleic acids means ribosides or deoxyribosides of adenine, thymine,guanine, cytosine, and uracil; polymers of the deoxyribose-5'-monophosphates of thymine,cytosine, guanine, and adenine linked by successive 3'-5' phosphodiester bonds (also known asdeoxyribonucleic acid); and polymers of the ribose-5'-monophosphates of uracil, cytosine, guanine, and adenine linked by successive 3'-5' phosphodiester bonds (also known as ribonucleic acid).The term does not apply to nucleic acid analogues (e.g., dideoxycytidine), or polymers containingnucleic acid analogues.

Pesticidal substance, means a substance that is intended to be produced and used in a living plant, orin the produce thereof, for a pesticidal purpose, during any part of a plant's life cyle (e.g., in theembryo, seed, seedling, mature plant).

Plant, for plant-incorporated protectants, means an organismclassified using the 5-kingdom classification system of Whittaker in the kingdom Plantae. Thisincludes, but is not limited to, bryophytes such as mosses, pteridophytes such as ferns,gymnosperms such as conifers, and angiosperms such as most major crop plants.

Plant-incorporated protectant means a pesticidal substance that is intendedto be produced and used in a living plant, or in the produce thereof, and the genetic materialnecessary for production of such a pesticidal substance. It also includes any inert ingredientcontained in the plant, or produce thereof.

Produce thereof, when used with respect to plants containing plant-incorporated protectants only, means a product of a living plant containing a plant-incorporatedprotectant, where the pesticidal substance is intended to serve a pesticidal purpose after theproduct has been separated from the living plant. Examples of such products include, but are notlimited to, agricultural produce, grains, and lumber. Products such as raw agriculturalcommoditiesbearing pesticide chemical residues are not "produce thereof" when the residues are not intendedto serve a pesticidal purpose in the produce.

Recipient plant means the living plant in which theplant-incorporated protectant is intended to be produced and used.

Recombinant DNA means the genetic material has been manipulated*in vitro* through the use of restriction endonucleases and/or other enzymes that aid in modifyinggenetic material, and subsequently introduced into the genome of the plant.

Regulatory region means genetic material that controls theexpression of the genetic material that encodes a pesticidal substance or leads to the production ofa pesticidal substance. Examples of regulatory regions include, but are not limited to, promoters, enhancers, andterminators.

Sexually compatible, when referring to plants, means a viable zygoteis formed only through the union of two gametes through conventional breeding.

Source means the donor of the genetic material that encodes apesticidal substance or leads to the production of a pesticidal substance.

Vegetative reproduction means either:

(1) In seed plants, reproduction by apomixis, or

(2) In other plants, reproduction by fragmentation, or division of the somatic body.

Wide crosses means to facilitate the formation of viable zygotesthrough the use of surgical alteration of the plant pistil, bud pollination, mentor pollen,immunosuppressants, *in vitro* fertilization, pre-pollination and post-pollination hormone treatments,manipulation of chromosome numbers, embryo culture, or ovary and ovule cultures.

§ 174.9 Confidential businessinformation claims for plant-incorporated protectant submissions.

Although it is strongly recommended that the submitter minimize the amount of dataand other information claimed as Confidential Business Information (CBI), a submitter may asserta claim of confidentiality for all or part of the information submitted to EPA in a submission for aplant-incorporated protectant. (See part 2, subpart B of this chapter.) To assert such a claim, thesubmitter must comply with all of the following procedures:

(a) Any claim of confidentiality must accompany the information at the time theinformation is submitted to EPA. Failure to assert a claim at that time constitutes a waiver ofconfidentiality for the information submitted, and the information may be made available to thepublic, subject to section 10(g) of FIFRA, with no further notice to the submitter.

(b) Any claim of confidentiality must be accompanied, at the time the claim is made,by comments substantiating the claim and explaining why the submitter believes that theinformation should not be disclosed. The submitter must address each of the points listed in§ 2.204(e)(4) of this chapter in the substantiation. EPA will consider incomplete allplant-incorporated protectant submissions containing information claimed as CBI that are notaccompanied by substantiation, and will suspend any applicable review of such submissionsuntil the required substantiation is provided.

Subpart B—Exemptions

§ 174.21 General qualifications forexemptions.

A plant-incorporated protectant is exempt from the requirements of FIFRA, other than therequirements of § 174.71, if it meets all of the following criteria:

(a) The plant-incorporated protectant meets the criteria listed in at least one of thesections in § § 174.25 through 174.50.

(b) When the plant-incorporated protectant is intended to be produced and used in acrop used as food, the residues of the plant-incorporated protectant are either exempted from therequirement of a tolerance under FFDCA (as amended, 21 U.S.C. 321 *et seq.*) ascodified at § § 174.475 through 174.479, or no tolerance wouldotherwise be required for the plant-incorporated protectant.

(c) Any inert ingredient that is part of the plant-incorporated protectant is on the listcodified at § § 174.485 through 174.490.Plant-incorporated protectants that are not exempt from the requirements of FIFRA under thissubpart are subject to all the requirements of FIFRA.

§ 174.25 Plant-incorporated protectantfrom sexually compatible plant.

A plant-incorporated protectant is exempt if all of the following conditions are met:

(a) The genetic material that encodes the pesticidal substance or leads to theproduction of the pesticidal substance is from a plant that is sexually compatible with the recipientplant.

(b) The genetic material has never been derived from a source that is not sexuallycompatible with the recipient plant.

Subpart C—Registration Procedures and Requirements [Reserved]

Subpart D—Monitoring and Recordkeeping

§ 174.71 Submission of informationregarding adverse effects.

(a) Any person who produces, for sale or distribution, a plant-incorporated protectantexempt under subpart B of this part, who obtains any information regarding adverse effects onhuman health or the environment alleged to have been caused by the plant-incorporated protectantmust submit such information to EPA. This requirement does not apply to any person who does not produce a plant-incorporated protectant exempt under supart B of this part. This may include, for example, researchers performing field experiments, breeders making crosses among plant varieties with the goal of developing new plant varieties, or a person who only sells propagative materials (e.g., seed) to farmers without producing the propagative materials themselves. EPA must receive the report within 30 calendar days of thedate the producer first possesses or knows of the information.

(b) Adverse effects on human health or the environment for purposes of plant-incorporated protectant means at a minimum information about incidents affecting humans orother nontarget organisms where both:

(1) The producer is aware, or has been informed, that a person or nontarget organismallegedly suffered a toxic or adverse effect due to exposure to (e.g., ingestion of) a plant-incorporated protectant.

(2) The producer has or could reasonably obtain information concerning where theincident occurred.

(c) All of the following information, if available, must be included in a report.

(1) Name of reporter, address, and telephone number.

(2) Name, address, and telephone of contact person (if different than reporter).

(3) Description of incident.
(4) Date producer became aware of incident.
(5) Date of incident.
(6) Location of incident.
(d) Mail reports and questions to: Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 or deliver reports and questions to: Crystal Mall #2, Room 910, 1921 Jefferson Davis Hwy., Arlington, VA.

Subparts E—F [Reserved]

Subpart G—Labeling [Reserved]

Subpart H—Data Requirements [Reserved]

Subpart I—[Reserved]

Subpart J—Good Laboratory Practices [Reserved]

Subpart K—Export Requirements [Reserved]

Subparts L—T [Reserved]

Subpart U—Experimental Use Permits [Reserved]

Subpart V—[Reserved]

Subpart W–Tolerances and Tolerance Exemptions

§ 174.451 Scope and purpose.

This subpart lists the tolerances and exemptions from the requirement of a tolerancefor residues of plant-incorporated protectants in or on raw agricultural commodities, in food, andin animal feeds.

Subpart X—List of Approved Inert Ingredients

§ 174.480 Scope and purpose.

This subpart lists the inert ingredients that have been exempted from FIFRA andFFDCA section 408 requirements and may be used in a plant-incorporated protectant listed insubpart B of this part.

§ 174.485 Inert ingredients from sexually compatible plant.

An inert ingredient, and residues of the inert ingredient, are exempt if all of the following conditions are met:
(a) The genetic material that encodes the inert ingredient or leads to the production of the inert ingredient is derived from a plant sexually compatible with the recipient food plant.
(b) The genetic material has never been derived from a source that is not sexually compatible with the recipient food plant.
(c) The residues of the inert ingredient are not present in food from the plant at levels that are injurious or deleterious to human health.

Subparts Y—Z [Reserved]

[FR Doc. 01–17981 Filed 7–16–01; 11:42 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[OPP–300371B; FRL–6057–5]

RIN 2070–AC02

Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Residues of Nucleic Acids that are Part of Plant-Incorporated Protectants (Formerly Plant-Pesticides)

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: The substances plants produce for protection against pests, and the genetic material necessary to produce these substances, are pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), if humans intend to use these substances for "preventing, destroying, repelling or mitigating any pest." These substances, produced and used in living plants, along with the genetic material necessary to produce them, are also "chemical pesticide residues" under the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA calls these substances along with the genetic material necessary to produce them, "plant-incorporated protectants." In this final rule, EPA exempts from the FFDCA section 408 requirement of a tolerance, residues of nucleic acids that are part of a plant-incorporated protectant. Nucleic acids are ubiquitous in all forms of life, have always been present in human and domestic animal food and are not known to cause any adverse health effects when consumed as part of food. EPA believes there is a reasonable certainty that no harm will result from aggregate exposure to residues of nucleic acids that are part of a plant-incorporated protectant.

DATES: This regulation is effective September 17, 2001. Objections and requests for hearings must be received by EPA on or before September 17, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by regular mail, electronically, or in person. Follow the detailed instructions for the regular mail and in person methods in Unit II. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: By mail: Philip Hutton, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs (7511C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone number: (703) 308–8260; e-mail address: hutton.phil@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Document Apply to Me?

You may be potentially affected by this action if you are a person or company involved with agricultural biotechnology that may develop and market plant-incorporated protectants. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Pesticide manufacturers	32532	Establishments primarily engaged in the formulation and preparation of agricultural and household pest control chemicals
Seed companies	111	Establishments primarily engaged in growing crops, plants, vines, or trees and their seeds

Categories	NAICS codes	Examples of potentially affected entities
Colleges, universities, and professional schools	611310	Establishments of higher learning which are engaged in development and marketing of plant-incorporated protectants
Establishments involved in research and development in the life sciences	54171	Establishments primarily engaged in conducting research in the physical, engineering, or life sciences, such as agriculture and biotechnology

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAIC) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicable provisions of 40 CFR part 174. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the EPA's program for biopesticides go directly to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/biopesticides.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300371B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the Food Quality Protection Act (FQPA), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(e) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300371B in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 17, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the

Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit II., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300371B, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

III. Under What Authority is EPA Issuing this Final Rule?

This exemption from the requirement of a tolerance is being issued under the authority of section 408(c) of the FFDCA (21 U.S.C. 346a(c)). Under FFDCA section 408, EPA regulates pesticide chemical residues by establishing tolerances limiting the amounts of residues that may be present in or on food, or by establishing exemptions from the requirement of a tolerance for such residues. Food includes articles used for food or drink by humans or other animals. A food containing pesticide residues may not be moved in interstate commerce without an appropriate tolerance or an exemption from the requirement of a tolerance.

Section 408 of the FFDCA applies to all "pesticide chemical residues" which are defined as residues of either a "pesticide chemical" or "any other added substance that is present on or in a commodity or food primarily as a result of the metabolism or other degradation of a pesticide chemical" (21 U.S.C. 321(q)(2)). The FFDCA defines "pesticide chemical" as: "any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, including all active and inert ingredients of such pesticide." (21 U.S.C. 321(q)(1)). FIFRA section 2(u) defines "pesticide" as: "(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer" (7 U.S.C. 136(u)). Under FIFRA section 2(t), the term "pest" includes "(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism" with certain exceptions (7 U.S.C. 136(t)).

Under FFDCA section 408(c), EPA can establish an exemption from the requirement of a tolerance for a "pesticide chemical residue" only if EPA determines that granting such an exemption is "safe" (21 U.S.C. 346a(c)(2)(A)(i)). The FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information" (21 U.S.C. 346a(c)(2)(A)(ii)). This includes exposure through drinking water, and residential and other indoor uses, but does not include occupational exposure. In establishing an exemption from the requirement of a tolerance, FFDCA section 408(c) does not authorize EPA to consider potential benefits associated with use of the pesticide chemical in determining whether the pesticide chemical may be exempted.

FFDCA section 408 requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue" (21 U.S.C. 346a(b)(2)(C)(ii)(I) and (c)(2)(B)). FFDCA section 408(b)(2)(D) specifies other general factors EPA must consider in establishing an exemption. FFDCA section 408(c)(3) prohibits an exemption unless there is either a practical method for detecting and measuring levels of pesticide chemical residue in or on food or there is no need for such a method, requiring EPA to state the reason for this determination (21 U.S.C. 346a(c)(3)).

IV. Context

A. What Role Does this Final Exemption Play in EPA's Approach toPlant-Incorporated Protectants?

The substances plants produce for protection against pests are pesticides under the FIFRA definition of pesticide, if humans intend to use these substances for "preventing, destroying, repelling or mitigating any pest." These substances, produced and used in living plants, along with the genetic material necessary to produce them, are designated "plant-incorporated protectants" by EPA.

To understand the pivotal role this exemption plays in EPA's approach to plant-incorporated protectants, the two following considerations must be understood. First, the role nucleic acids

play in the concept of plant-incorporated protectant and how this exemption from the FFDCA requirement of a tolerance relates to this role. Second, how this exemption relates to the exemption from the FFDCA requirement of a tolerance published elsewhere in a companion document in this issue of the **Federal Register** for residues of the substance portion of plant-incorporated protectants derived through conventional breeding from sexually compatible plants.

1. *What role do nucleic acids play in the concept of plant- incorporated protectant and how does this role relate to this exemption?* The genetic material necessary for the production of a pesticidal substance is included in the definition of plant-incorporated protectant because the genetic material meets, in and of itself, the FIFRA section 2 definition of pesticide. A thorough discussion of why the genetic material is included in the definition of plant-incorporated protectant can be found in a companion document published elsewhere in this issue of the **Federal Register** on FIFRA regulations for plant-incorporated protectants.

As noted in Unit III., section 408 of FFDCA applies to residues of pesticides in or on food or feed. (Hereafter, EPA will use the term "in food" in the preamble to represent the concept of "in or on food or feed.") Under section 408 of the FFDCA, the term residue is applied broadly to include residues of the pesticide itself and residues that are present in the food as a result of the metabolism or other degradation of the pesticide. EPA anticipates that for plant-incorporated protectants, the residues will consist of the pesticidal substance and any inert ingredient as defined for plant-incorporated protectants (e.g., any selectable marker), and the genetic material necessary for production of the pesticidal substance and any inert ingredient. In instances where the pesticidal substance is a nucleic acid (e.g., satellite RNA from plant viruses), EPA anticipates these residues will be the nucleic acid functioning as the pesticidal substance and the nucleic acid comprising the genetic material necessary for the production of the pesticidal substance (as well as any inert ingredient and the genetic material necessary to produce the inert ingredient). For anti-sense technology, EPA anticipates that these residues will consist of the the anti-sense RNA, and the DNA encoding the anti-sense RNA (as well as any inert ingredient and the genetic material necessary to produce the inert ingredient).

In developing its approach to plant-incorporated protectants, EPA recognized that nucleic acids are ubiquitous in all forms of life, including food plants. There is a long history of consumption by humans of nucleic acids in food and the Agency knows of no instance where nucleic acids have been associated with any toxic effects related to the consumption of food. It is therefore appropriate to exempt residues of nucleic acids that are part of a plant-incorporated protectant from the FFDCA section 408 requirement of a tolerance.

For EPA to exempt any residue of a pesticide, including any residue of a plant-incorporated protectant, from regulation under FFDCA section 408(e), EPA must find that there is a reasonable certainty that no harm will result from aggregate exposure to the residues, including all anticipated dietary exposures and all other exposures, for which there is realiable information. EPA is exempting in this action residues of nucleic acids that are part of plant-incorporated protectant active and inert ingredients, because it has determined that there is a reasonable certainty that no harm will result from aggregate exposure to the residues, including all anticipated dietary exposures and all other exposures for which there is reliable information. This exemption from the requirement of a tolerance applies to the nucleic acid portion of all plant-incorporated protectants.

2. *How does this exemption relate to the exemption from the FFDCA requirement of a tolerance for the substance portion of plant-incorporated protectants derived through conventional breeding from sexually compatible plants?* This exemption can be paired with EPA's decision, published elsewhere in a companion document in this issue of the **Federal Register**, to exempt residues of pesticide chemical residues derived through conventional breeding from sexually compatible plants.

Because of these actions, all residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants are exempt from FFDCA section 408 requirements.

B. Does this Final Rule Have Any Relevance to Other Types of Pesticides?

Nonviable plant tissues, organs or parts that are used as pesticides, will not be covered by this exemption. Residues of such pesticides are subject to the regulations found in 40 CFR parts 177 through 180 rather than 40 CFR part 174. An example of this type of pesticide would be the powder, produced by drying and grinding cayenne pepper, dusted on plants to protect them from pests.

Residues of substances that are isolated from a plant's tissues and then applied to plants and/or to food for pest control will not be covered by this exemption. Residues of these types of pesticides in formulations such as those for foliar application are subject to regulations found in 40 CFR parts 177 through 180 rather than 40 CFR part 174. An example of this type of pesticide would be pyrethrum isolated from chrysanthemum plants, formulated with other ingredients for foliar application, and sprayed onto other plants for pest control.

Residues of substances that are synthesized will not be covered by this exemption. Residues of such pesticides are subject to regulations found in 40 CFR parts 177 through 180 rather than 40 CFR part 174. An example of this type of pesticide is the herbicide atrazine.

C. What is the History of this Final Rule?

This final rule is an additional step in fully implementing the "Coordinated Framework for Regulation of Biotechnology" of the United States of America which was published in the **Federal Register** by the Office of Science and Technology Policy (OSTP) on June 26, 1986 (51 FR 23302).

EPA sponsored, or cosponsored with other Federal agencies, three conferences dealing with plant related issues: On October 19–21, 1987, a meeting on "Genetically Engineered Plants: Regulatory Considerations" at Cornell University, Ithaca, New York; on September 8-9, 1988, a "Transgenic Plant Conference" in Annapolis, Maryland; on November 6–7, 1990, a conference on "Pesticidal Transgenic Plants: Product Development, Risk Assessment, and Data Needs" in Annapolis, Maryland. Information from these conferences has been incorporated as appropriate in development of this final rule.

In developing its approach to plant-incorporated protectants, EPA requested the advice of two scientific advisory groups in three meetings. On December 18, 1992, pursuant to section 25 of FIFRA, a subpanel of the FIFRA Scientific Advisory Panel (SAP) was convened to review a draft policy on plant-pesticides (now called plant-incorporated protectants) and to respond to a series of questions posed by the Agency primarily on EPA's approach under FIFRA. On July 13, 1993, EPA requested the advice of a subcommittee of the EPA Biotechnology Science Advisory Committee (BSAC) on a series of scientific questions dealing with approaches to plant-pesticides under FFDCA. On January 21, 1994, a

joint meeting of the subpanel of the SAP and the BSAC Subcommittee was held and EPA asked advice on EPA's approach to plant-pesticides under both statutes. Advice from these scientific advisory groups was considered in finalizing this final rule.

EPA published in the November 23, 1994 **Federal Register**, a package of five separate documents (59 FR 60496, 60519, 60535, 60542 and 60545) (FRL–4755–2, FRL–4755–3, FRL–4755–4, FRL–4755–5, FRL–4755–8) which described EPA's policy and proposals for plant-pesticides under FIFRA and FFDCA.

On July 22, 1996, EPA published a supplemental document in the **Federal Register** (61 FR 37891) (FRL–5387–4) on one aspect of its November 23, 1994, **Federal Register** document, i.e., how the concept of inert ingredient related to plant-pesticides.

In August of 1996, Congress enacted the FQPA which amended FFDCA and FIFRA. On May 16, 1997, EPA published in the **Federal Register** a supplemental document (62 FR 27132) (FRL–5717–2) to provide the public with an opportunity to comment on EPA's analysis of how certain FQPA amendments to FFDCA and FIFRA apply to the proposed exemption from the requirement of a tolerance for residues of nucleic acids that are part of a plant-pesticide.

On April 23, 1999, EPA published a supplemental document (64 FR 19958) (FRL–6077–6) in the **Federal Register** soliciting comment on whether to change the name of this type of pesticide.

The documents and the reports of the meetings described above are available in the official record for the rulemaking as described in Unit X.

V. What are the Key Features of the Proposed Exemption?

The development of this exemption consists of a proposed rule that appeared in the November 23, 1994, **Federal Register** (59 FR 60542) and two supplemental documents; one document that appeared in the July 22, 1996, **Federal Register** (61 FR 37891) and a second document that appeared in the May 16, 1997, **Federal Register** (62 FR 27142).

A. November 23, 1994, Federal Register *Proposed Rule*

In the November 23, 1994, **Federal Register** document, EPA proposed at 40 CFR 180.1138 to exempt residues of nucleic acids that are part of a plant-pesticide (now called a plant-incorporated protectant) from the requirement of a tolerance (59 FR 60542). Specifically, EPA proposed that "residues of nucleic acids produced in living plants as part of a plant-pesticide active or inert ingredient, including both deoxyribonucleic and ribonucleic acids," would be exempt from the requirement of a tolerance. "Nucleic acids" were described as "ribosides or deoxyribosides of adenine, thymine, guanine, cytosine, and uracil and the polymers of these ribosides and deoxyribosides and does not apply to nucleic acid analogues."

"Active ingredient," when referring to plant-incorporated protectants only, was described as "a pesticidal substance that is produced in a living plant and the genetic material necessary for the production of the substance, where the substance is intended for use in the living plant."

"Inert ingredient," when referring to plant-incorporated protectants only, was described as "any substance, such as a selectable marker, other than the active ingredient, and the genetic material necessary for the production of the substance, that is intentionally introduced into a living plant along with the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient."

The proposal to exempt nucleic acids that are part of a plant-incorporated protectant from the requirement of a tolerance was based on the ubiquity of nucleic acids in human and domestic animal food and the consumption of food containing nucleic acids without observed adverse health effects. Nucleic acids are widespread in foods and as part of a balanced diet, do not have toxic or pathogenic effects on animals or humans.

EPA also addressed in the proposal the status of nucleic acids used in anti-sense technology. In the proposal, EPA stated its belief that nucleic acids involved in this technology would qualify for the proposed exemption. The rationale used in the proposal to support exemption of naturally-occurring nucleic acids applies to nucleic acids used in anti-sense technology, as the anti-sense RNA and DNA are composed of the same naturally-occurring nucleic acids commonly found in living cells (ribosides or deoxyribosides of cytosine, guanine, adenine, thymine, and uracil).

In 1994, the Agency clearly stated that it was not proposing to exempt nucleic acid analogues from the requirement of a food tolerance. Certain nucleic acid analogues are being developed as therapeutic agents for human diseases (e.g., dideoxycytidine) and nucleic acid analogues could conceivably be developed and used as pesticides. These analogues are not naturally-occurring and those used as therapeutic agents frequently have significant toxicity associated with their use. The intent of EPA's 1994 proposal was to exempt only the naturally-occurring nucleic acids (ribosides or deoxyribosides of cytosine, guanine, adenine, uracil, and thymine) and polymers of such substances commonly found in living cells that serve as the mechanism of encoding traits associated with pesticidal substances produced by plants. The risk assessment supporting exemption for naturally-occurring nucleic acids does not support exemption of nucleic acid analogues (e.g., dideoxycytidine), or polymers containing such analogues.

B. What Issues Were Discussed in the Supplemental Documents?

1. *July 22, 1996.* On July 22, 1996, EPA published a supplemental document in the **Federal Register** (61 FR 37891) on one aspect of its November 23, 1994, **Federal Register** document, i.e., how the concept of inert ingredient related to plant-incorporated protectants.

2. *May 16, 1997.* In August of 1996, FFDCA and FIFRA were amended by the FQPA. On May 16, 1997, EPA published in the **Federal Register**, a supplemental document (62 FR 27142) to provide the public with an opportunity to comment on EPA's analysis of how certain FQPA amendments to FFDCA and FIFRA affect the proposed exemption from the requirement of a tolerance for residues of nucleic acids that are part of a plant-incorporated protectant.

EPA stated in the May 16 document its belief that most of the substantive factors that the FFDCA now requires EPA to consider in evaluating pesticides were considered when it proposed the exemption (59 FR 60542, November 23, 1994). EPA, thus, in the supplemental document, specifically sought comment only on its evaluation of the requirements imposed by FQPA that the Agency had not addressed in the proposal. EPA sought comment on the following five considerations. First, EPA's conclusion that there are no substances outside of the food supply that may have a cumulative toxic effect with residues of nucleic acids produced in plants as part of a plant-incorporated protectant. Second, EPA's conclusion that there are no additional substances outside the food supply that are related, via a common mechanism of toxicity, to residues of nucleic acids produced in plants as part of a plant-incorporated protectant, for which EPA must consider exposure in aggregate with

nucleic acids. Third, commenters who possess information on nucleic acids causing estrogenic effects were requested to send such information to EPA. Fourth, EPA described in greater detail the rationale supporting the statement made in the 1994 **Federal Register** document (59 FR at 60513) that "plant-pesticides are likely to present a limited exposure of pesticidal substances to humans. In most cases, the predominant, if not the only route of exposure will be dietary. Significant respiratory and dermal exposures will be unlikely." No comments were received on this statement during the first comment period for the proposal. The public was given the opportunity to comment on EPA's more detailed rationale supporting the statement. Fifth, EPA also described in greater detail how the rationale presented in the 1994 **Federal Register** document (59 FR at 60538, November 23, 1994) concerning the safety for human consumption of food containing residues of nucleic acids produced in plants as part of a plant-incorporated protectant applies to infants and children. The public was given the opportunity to comment on EPA's more detailed rationale addressing infants and children as part of the larger human population.

VI. What are the Key Features of the Final Rule?

In this final rule, EPA exempts residues of nucleic acids that are part of a plant-incorporated protectant. The following language is added to 40 CFR 174.475:

> Residues of nucleic acids that are part of a plant-incorporated protectant are exempt from the requirement of a tolerance.

Definitions at 40 CFR 174.3 relevant to the language at 40 CFR 174.475 include:

"Nucleic acids" means ribosides or deoxyribosides of adenine, thymine, guanine, cytosine and uracil; polymers of the deoxyribose-5'-monophosphates of thymine, cytosine, guanine, and adenine linked by successive 3'-5'-phosphodiester bonds (also known as deoxyribonucleic acid); and polymers of the ribose-5'-monophosphates of uracil, cytosine, guanine and adenine linked by successive 3'-5'-phosphodiester bonds (also known as ribonucleic acid). The term does not apply to nucleic acid analogues (e.g., dideoxycytidine), or polymers containing nucleic acid analogues.

Other definitions, relevant for plant-incorporated protectants only, can be found at 40 CFR 174.3 and are discussed in a companion document on FIFRA regulations published elsewhere in this issue of the **Federal Register**.

In this final rule, "plant" means an organism classified using the 5-kingdom classification system of Whittaker (Ref. 1) in the kingdom, Plantae. Therefore, the term "plant" includes, but is not limited to, bryophytes such as mosses, pteridophytes such as ferns, gymnosperms such as conifers, and angiosperms such as most major crop plants.

This exemption applies to the residues of genetic material necessary for the production of pesticidal substances in living plants, to residues of the genetic material necessary to produce any inert ingredient, to residues of nucleic acids used as the pesticidal substance (e.g., satellite RNA from plant viruses), and to residues of nucleic acids used in anti-sense technology. This exemption applies to naturally-occurring nucleic acids regardless of the sequence of the nucleic acid, the source of the sequence, or the function (e.g., template for a protein, or a regulatory element such as a promotor) the sequence encodes.

This final rule exempts only naturally-occurring nucleic acids, i.e., ribosides or deoxyribosides of adenine, guanine, cytosine, thymine, and uracil; polymers of the deoxyribose-5'-monophosphates of thymine, cytosine, guanine, and adenine linked by successive 3'-5'-phosphodiester bonds (also known as deoxyribonucleic acid); and polymers of the ribose-5'-monophosphates of uracil, cytosine, guanine and adenine linked by successive 3'-5'-phosphodiester bonds (also known as ribonucleic acid). It does not apply to nucleic acid analogues (e.g., didioxycytidine) or polymers containing nucleic acid analogues.

VII. How Do the Proposed Rule and Final Rule Differ?

This exemption from the requirement of a tolerance is adopted with a few changes from the proposed rule published in 1994 (59 FR 60545). EPA has changed the name of this type of pesticide from "plant-pesticide" to "plant-incorporated protectant," as described in the companion document on FIFRA regulations for plant-incorporated protectants published elsewhere in this issue of the **Federal Register**.

Some modifications have been made to the text of the exemption and to associated definitions, for purposes of clarification. The definition of the term "nucleic acids" was modified to provide greater technical clarity; this modification does not change the scope of the exemption. These modifications are discussed in this document. A discussion of modifications to other relevant definitions, including an analysis of comments on those definitions, can be found in a companion document published elsewhere in this issue of the **Federal Register** on FIFRA regulations for plant-incorporated protectants.

When EPA proposed this exemption at 40 CFR 180.1138 from the requirement of a tolerance in 1994, it also stated its intention (59 FR at 60520) to establish a new 40 CFR part 174 specifically for plant-incorporated protectants. This new 40 CFR part 174 is being established in a companion document published elsewhere in this issue of the **Federal Register**. EPA adds this exemption from the requirement of a tolerance in § 174.475, subpart W, rather than adding it to 40 CFR part 180 as proposed.

VIII. Discussion of Final Rule and Public Comments

In this unit, EPA discusses the final rule and summarizes the comments it received on the November 23, 1994, proposed rule and subsequent supplemental documents. EPA reviewed and considered all comments received on the proposed rule and the supplemental documents and prepared detailed responses to these comments, which can be found at appropriate points in this preamble in its discussion of the final rule and the statutory finding.

In addition to being addressed in this preamble, comments are also addressed in the Agency's summary of public comments and EPA's response on issues associated with plant-incorporated protectants (Ref. 2).

A. From Whom Did EPA Receive Comment?

In response to the package of documents published in the **Federal Register** in 1994, EPA received letters from industry, academia, professional and trade associations, government agencies, state regulatory authorities, public interest groups and private citizens. Some of the commenters sent separate letters for each of the five dockets associated with the 1994 **Federal Register** documents. Other commenters sent a single letter addressing all five dockets. On July 22, 1996, EPA published a supplemental document seeking comment on the concept of inert ingredient with regard to plant-incorporated protectants. EPA received comments on this supplemental document. On May 16, 1997, EPA published a supplemental document to provide the public an

opportunity to comment on EPA's analysis of how certain amendments to FFDCA and FIFRA by the FQPA affected this proposed exemption. EPA received comments on the supplemental document. Copies of all comments received are available in the official record for this final rule as described in Unit X.

B. Exemption of Residues of Nucleic Acids that are Part of a Plant-Incorporated Protectant

On November 23, 1994 (59 FR 60542), EPA proposed to exempt from the FFDCA requirement of a tolerance, residues of nucleic acids (i.e., deoxyribonucleic acid and ribonucleic acid) produced in plants as part of a plant-incorporated protectant active or inert ingredient.

During the comment period for the 1994 proposal, EPA received 17 comments. Almost all of these comments supported the proposed exemption. Commenters agreed that nucleic acids are abundant in all plants and that humans have been and are routinely exposed to large amounts of nucleic acids as a normal part of their diet. One commenter stated that EPA's proposed exemption from the requirement of a tolerance for nucleic acids is consistent with the position of the Food and Drug Administration (FDA) with regard to nucleic acids.

In response to the July 22, 1996, supplemental document, EPA received 14 comments on the concept of inert ingredient with regard to plant-incorporated protectants. None of these comments addressed the issue of inert ingredient with regard to this exemption. (Comments on other aspects of the concept of inert ingredient are discussed in a companion document published elsewhere in this issue of the **Federal Register** on FIFRA regulations for plant-incorporated protectants).

In response to the May 16, 1997, supplemental document, EPA received four comments. All four comments supported the exemption. One of the four commenters indicated they knew of no information on substances, having cumulative effects or common mechanisms of toxicity with residues of nucleic acids, that would have a bearing on this exemption from the requirement of a tolerance. No comments were received on the other considerations raised by EPA in the supplemental document.

C. What is the Language of the Exemption?

No comments on the language of the proposed exemption were received. EPA modified the language of the proposed exemption and the proposed definition of nucleic acids, however, for greater clarity. In this unit, EPA discusses those changes. EPA also discusses what "nucleic acids" means in the context of this exemption, and how EPA's decision on inert ingredients for plant-incorporated protectants affects this exemption.

1. *What does the term "nucleic acid" mean?* Genetic material, including genetic material necessary for the production of the pesticidal substance, is composed of nucleic acids. Chemically, there are two types of nucleic acids: Deoxyribonucleic acid (DNA) and ribonucleic acid (RNA) (Ref. 3). DNA is a polymer of purine and pyrimidine base deoxyribonucleoside monophosphates (also called deoxynucleotides) that are commonly referred to by the names of purine and pyrimidine bases: Adenine (A), cytosine (C), guanine (G), and thymine (T). A deoxynucleotide is made up of a sugar, a phosphate, and one of the four bases. In the DNA polymer, the sugars and phosphates of the deoxynucleotides are hooked together to form the "backbone." One base is attached to each sugar in the sugar-phosphate backbone. RNA polymers are formed of similar linkages. RNA is a polymer of purine and pyrimidine base riboside monophosphates (also called nucleotides). The RNA nucleotides are also referred to by their base names: Adenine (A), cytosine (C), guanine (G), and uracil (U). In the RNA polymer, the sugar and phosphate moieties are also hooked together to form a backbone, with one base attached to each sugar moiety in the backbone. The information encoded in nucleic acids (either DNA or RNA) is determined by the sequence in which the bases are attached to the sugar-phosphate backbone (Ref. 3, 4). Nucleic acids encode all of the information necessary for the functioning of an organism. When a nucleic acid encoding a pesticidal substance is stably integrated into a plant, that plant and its progeny will, in most cases, have the potential to produce the pesticidal substance.

The "nucleic acids" of this exemption refer to the nucleic acids encoding the information for making polypeptides (proteins) which are the pesticidal substances or inert ingredients (e.g., selectable markers), or alternatively, encoding for proteins necessary for making (anabolizing) these substances. There may also be instances wherein nucleic acids may serve as the pesticidal substance. For example, satellite RNA of plant viruses may be used in strategies to control viral diseases in plants. In this situation, the RNA may be the pesticidal substance intended to control the pest. This exemption also applies to such RNA. This exemption for nucleic acids also applies to the DNA and RNA used in "anti-sense" technology, when this technology is used for pest resistance in plants. "Anti-sense" technology is used to block the production of a targeted enzyme or cellular component. In this technology, a segment of DNA encoding an RNA complementary (anti-sense) to the RNA necessary to produce the targeted enzyme or cellular component is introduced into the plant. For example, a company might wish to shut down an enzyme essential for pathogenesis by an agent that can cause disease in plants. To do so, the company would introduce into the genetic material of the plant, DNA encoding the anti-sense version of the RNA necessary to produce the targeted enzyme. The anti-sense version would bind to the normal version of the RNA necessary to produce the targeted enzyme. The normal ("sense") version of the RNA would then no longer be available for processing in the cell, and, thus, the enzyme necessary for pathogenesis would not be produced. Because the essential enzyme cannot be produced, the disease-causing agent is not able to carry out one of the functions necessary for pathogenesis.

2. *What modifications were made to the language of the exemption?* In 1994, EPA proposed that residues of "nucleic acids produced in living plants as part of a plant-pesticide active or inert ingredient, including both deoxyribonucleic and ribonucleic acids, are exempt from the requirement of a tolerance." In this final rule, EPA removes from the language of the exemption the phrase "produced in living plants" as this concept is part of the definition of plant-incorporated protectant. EPA was concerned that use of the phrase in the language of the exemption might cause some confusion because of this redundancy of concept. EPA also removed from the language of the proposed exemption, the phrase "including both deoxyribonucleic and ribonucleic acids," also because of redundancy as the phrase appears in the definition of nucleic acids. Finally, EPA spelled out for greater technical clarity in the definition at 40 CFR 174.3 what substances are included in the concept of "nucleic acids" for plant-incorporated protectants, and what substances are excluded from the concept.

3. *How does the concept of inert ingredient relate to this exemption?* In the November 23, 1994, **Federal Register** document, EPA stated that an inert ingredient for plant-incorporated

protectants would be "any substance, such as a selectable marker, other than the active ingredient, and the genetic material necessary for the production of the substance, that is intentionally introduced into a living plant along with the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient" (59 FR 60521). In a companion document published elsewhere in this issue of the **Federal Register**, EPA describes its consideration of inert ingredients in light of existing regulations and comments received in response to both the November 23, 1994, **Federal Register** document (59 FR 60534) and the 1996 supplemental document (61 FR 37891, July 22, 1996) discussing the Agency's treatment of selectable markers as inert ingredients for plant-incorporated protectants. In the companion document published elsewhere in this **Federal Register**, EPA describes its determination that it will apply the concept of inert ingredients to plant-incorporated protectants consistent with the 1994 proposal.

The preamble discussion in the 1994 **Federal Register** document (59 FR at 60544) of the rationale supporting the proposed rule to exempt residues of nucleic acids from the requirement of a tolerance addressed the nucleic acids necessary to produce any substance, such as a selectable marker, used to confirm or ensure the presence of the active ingredient. The exemption at 40 CFR 174.475 contains language indicating the exempt status of residues of the genetic material necessary for the production such substances.

IX. Statutory Finding

A. What Methodology Did EPA Use to Assess these Residues?

For most pesticides (e.g., chemical pesticides), EPA's dietary risk evaluation relies on data generated by testing in laboratories using representative animal models to estimate acute, subchronic, or chronic hazard end-points (e.g., acute toxicity, carcinogenicity, developmental toxicity). Conclusions from animal models are used to assess dose-response and describe such endpoints for potential human hazard. Other information, including residue data and information generated by use of mathematical models, are used to develop human exposure estimates. These exposure and hazard components are combined to quantify the potential risk associated with the pesticide's use. Uncertainty factors are often used in the risk assessment to account for extrapolation from animal models to human toxicity and from limited studies using humans to the larger population. The data requirements describing the types of information to be generated and other guidance for assessing dietary risk are detailed in 40 CFR part 158.

The questions posed as part of the risk assessment in evaluating residues of most pesticides (e.g., chemical pesticides) can also be posed for pesticide chemical residues that are the subject of this exemption, and 40 CFR part 158 can be used as guidance in evaluating these substances for hazard end-points (including, for example, acute toxicity, carcinogenicity, and developmental toxicity). To address the hazard endpoints described in 40 CFR part 158 for residues of nucleic acids that are part of a plant-incorporated protectant, EPA relied on a very large body of information found for the most part in the public scientific literature. A very large body of experience with actual human dietary consumption, over hundreds if not thousands of years, exists for the substances that are the subject of this exemption. And thus, a large and varied amount of information developed through systematic scientific study exists in the literature that can be used for assessing the risk of exempting nucleic acids. For example, there are numerous epidemiological studies on humans on foods containing nucleic acids (Refs. 5, 6, 7, 8, 9, 10, 11, 12, and 13), as well as a large literature on constituents of food from plants accumulated by a century of systematic study (Ref. 4).

EPA also considered other information in the literature in evaluating the potential for exposure to residues of nucleic acids that are part of a plant-incorporated protectant. Plant-incorporated protectants are produced within the living plant itself and the pesticidal substance is used *in situ* in a living plant to protect against pests, in contrast to most other pesticides which must be applied to the plant or the area around the plant (Ref. 14). Because a plant-incorporated protectant is produced and used within the plant, physiological constraints limit the amount of residue produced by the plant (Ref. 14). Because a plant-incorporated protectant is within the plant, routes by which other organisms may be exposed to the plant-incorporated protectant may be more limited; e.g., dietary exposure is likely to be the predominant route of exposure.

EPA relied on data in the area of plant genetics to provide information and knowledge on the genetic material that is necessary for the production of the pesticidal substances (Ref. 3). The Agency used experimental data derived from the science of phytopathology to characterize the disease and pest resistance mechanisms known to occur in plants (Ref. 15). EPA also considered information from the field of plant physiology regarding plant metabolism, particularly the metabolism of nucleic acids in plants (Refs. 3 and 17). EPA also used information from the fields of biochemistry, microbial ecology and ecology (Refs. 3, 15, 17, and 21).

For this exemption, EPA's risk assessment was based primarily on information in the publically available scientific literature as well as through experience with breeding and growing agricultural plants, and preparing and consuming food from such plants. Such food contains nucleic acids, as nucleic acids are ubiquitous in nature and in the food supply (Ref. 4). In exempting residues in food of nucleic acids that are part of a plant-incorporated protectant from the requirement of a tolerance, EPA considered health risks to the general population, including infants and children. Infants and children have always and currently consume food containing nucleic acids. There is no evidence that nucleic acids, as components of food, present a different level of dietary risk for infants and children than they would for the adult population. EPA's risk assessment also included subgroups as part of the general population, (i.e., differences in diet due to the influence of culture), and allowed for consumption pattern differences of such subgroups.

EPA believes human experience in consuming food containing nucleic acids combined with the numerous epidemiological and other studies and the knowledge of plant genetics, plant physiology, phytopathology, microbial ecology, ecology, biochemistry and plant breeding are the appropriate considerations in evaluating the potential risks of residues of nucleic acids that are part of a plant-incorporated protectant. All of these bases of knowledge and experience were integral to EPA's assessment of exposures and hazards associated with residues of nucleic acids that are part of a plant-incorporated protectant.

B. What Factors Has EPA Considered in Making the Findings Required by 408(c) of the FFDCA?

FFDCA section 408(c)(2)(B) requires EPA to consider several factors in determining whether to exempt a pesticide from the requirement of a tolerance. Information relevant to EPA's consideration of these factors with regard to this exemption is contained in this document, as well as in other

documents in the record for this final rule as described in Unit X.

1. *Validity, completeness and reliability of available data.* As noted in Unit IX.A., EPA's risk assessment was based primarily on an analysis of human experience with breeding and growing agricultural plants, and preparing and consuming food from such plants, and associated epidemiological studies, nutritional assessments with human volunteers and animal model testing (Refs. 5, 6, 7, 8, 9, 10, 11, 12, 13). EPA combined this information with knowledge from the disciplines of plant genetics, plant physiology, phytopathology, microbial ecology, ecology, biochemistry and plant breeding (Refs. 3, 15, 17, and 21, for example) to evaluate the potential risks of residues of nucleic acids that are part of a plant-incorporated protectant. EPA considered the validity, completeness and reliability of all available information. EPA concluded that this information was valid, complete and reliable, and adequately addressed the issues of hazard and exposure with regard to residues of nucleic acids in food.

2. *Nature of toxic effect.* EPA considered the nature of any toxic effects shown by this information to be caused by residues of nucleic acids that are part of a plant-incorporated protectant active or inert ingredient. Nucleic acids are widespread in foods (Ref. 4) and are not associated with toxic effects on animals or humans (Ref. 4, 18). Neither nucleic acids nor the substances of which nucleic acids are composed are known to be acute toxicants, but like proteins and other normal constituents of food, may cause indirect, adverse metabolic effects if consumed exclusively at high doses over a long period of time in the absence of a balanced diet. A person consuming food from plants containing residues of nucleic acids would not be consuming nucleic acids exclusively, and nucleic acids do not occur at these high doses in food plants. Consumption of nucleic acids in food has not been associated with any toxic effects (Ref. 18). Thus, because the residues of nucleic acids that are part of a plant-incorporated protectant are no different than other nucleic acids, including those that have been safely consumed, consumption of food containing residues of nucleic acids that are part of a plant-incorporated protectant are not expected to present a toxic effect. Simiarly, the nucleic acids in food from plants have not been associated with pathogenic effects on humans or other animals (Ref. 16), and residues in food of nucleic acids that are part of a plant-incorporated protectant are not expected to have pathogenic effects on humans or other animals.

3. *Relationship of studies to humans.* EPA considered the available information concerning the relationship of this information on nucleic acids in foods to human risk. The effect of nucleic acids on humans was assessed in light of the known presence of nucleic acids in all foods (Refs. 3 and 4) and the long history of human consumption of plant food containing nucleic acids, i.e., food derived from crop plants and from animals that consume forage and other crops containing nucleic acids. The epidemiological studies supply data generated on humans and thus are directly applicable to humans. Information from the disciplines of plant genetics, plant physiology, phytopathology, microbial ecology, ecology, biochemistry (including studies on the constituents of food) and plant breeding can be used to predict effects on humans. Nucleic acids in foods do not have a toxic effect and cause no adverse effects to humans. Because information on human consumption of food containing nucleic acids was available and adequately addressed the issues of hazard and exposure, EPA relied primarily on the epidemiological and other information generated directly from humans rather than relying on data generated in the laboratory through animal testing.

4. *Dietary consumption patterns.* EPA considered the available information on the varying dietary consumption patterns of consumers and major identifiable consumer subgroups as it pertains to residues of nucleic acids that are part of a plant-incorporated protectant in food. Issuance of this exemption from the requirement of a tolerance is not expected to alter the current consumption pattern of nucleic acids by consumers or major identifiable consumer subgroups. Nucleic acids are ubiquitous in all living organisms and in the food supply; thus, no subgroup is likely to receive a greater exposure nor a different exposure than any other subgroup.

5. *Available information concerning cumulative effects of the pesticide chemical residue and other substances that have a common mechanism of toxicity.* EPA has examined the available information as described in Unit IX.A. and Unit IX.B.1., on the cumulative effect of residues in food of nucleic acids that are part of a plant-incorporated protectant, and other substances that may have a common mechanism of toxicity. Nucleic acids are widespread in food (Ref. 4) and have not been associated with direct toxic effects to animals or humans (Ref. 18). Because nucleic acids in foods have no human toxicity, no cumulative effects can be identified for residues of nucleic acids that are part of a plant-incorporated protectant. The FQPA also directs the Agency to examine whether there are other substances that have a common mechanism of toxicity with nucleic acids that are part of a plant-incorporated protectant. Based on available information which indicates that nucleic acids in food have no human toxicity, EPA is not aware of any other substances that might have a common mechanism of human toxicity with residues of nucleic acids that are part of a plant-incorporated protectant.

The four comments EPA received on the May 16, 1997, supplemental document all supported the exemption. One of the four commenters indicated they knew of no information on substances, having cumulative effects or common mechanisms of toxicity with residues of nucleic acids, that would have a bearing on the exemption from the requirement of a tolerance.

EPA is not aware of any substances outside of the food supply that may have a common mechanism of toxicity with nucleic acids that are part of a plant-incorporated protectant since nucleic acids in food are not toxic. EPA has identified nucleic acid analogues (e.g., dideoxycytidine, zidovudine, dideoxyinosine) as substances having some level of toxicity (Ref. 19, 20). However, the mechanisms of toxicity of such analogues are not cumulative with that of residues of naturally-occurring nucleic acids.

6. *Aggregate exposure of consumers including non-occupational exposures.* EPA considered the available information on the aggregate exposure level of consumers to residues of nucleic acids that are part of a plant-incorporated protectant and to other related substances including nucleic acids that are not part of a plant-incorporated protectant. This included a consideration of exposures from dietary sources as well as from other non-occupational sources. Plant-incorporated protectants and their residues are likely to present a limited exposure to humans.

Nucleic acids produced in living plants are part of the metabolic cycles of plants. They are biotic and thus subject to the processes of biodegradation and decay that all biotic materials undergo (Ref. 21). Biotic materials are broken down to constituent parts through the enzymatic processes of living organisms, and these constituent parts used as the building

blocks to make other biotic substances. Because of these characteristics, the potential for exposures to the residues to occur, beyond direct physical exposure to the plant, is limited.

The residues that are the subject of this exemption are biodegradable to their constituent elements through catabolism by living organisms (Ref. 21). Because of their biodegradable nature, residues of nucleic acids do not bioaccumulate (bioaccumulation occurs when a substance is taken into the body through processes such as eating, and as the body is unable to either break the substance down or eliminate it, the substance accumulates in the tissues) or biomagnify in the tissues of living organisms (biomagnification occurs when a substance bioaccumulates in the bodies of organisms lower in the food chain, and as predators higher in the food chain consume organisms lower in the food chain, more and more of the substance accumulates in the bodies of organisms higher in the food chain). Humans ingesting the nucleic acids in food are likely to quickly degrade them and use their constituent elements as nutrients.

In most cases, the predominant exposure route will be dietary. Exposure through other routes is unlikely because the substances are in the plant tissue and thus are found either within the plant or in close proximity to the plant. This is particularly true for residues of nucleic acids that are part of a plant-incorporated protectant, because large polymers are susceptible to rapid degradation. EPA expects non-dietary exposure (i.e., non-food oral, dermal and inhalation) in non-occupational settings to be negligible.

i. *Dietary exposure.* EPA considered dietary exposure to nucleic acids that are part of a plant-incorporated protectant. Nucleic acids are widespread in foods (Ref. 4), and all foods consumed by humans contain nucleic acids. As nucleic acids are ubiquitous in food, EPA concluded that all humans are exposed to nucleic acids throughout their lives as part of their diet. As described in Unit IX.A. and Unit IX.B.1., a large base of experience exists, including information on human dietary exposure, for foods that undoubtedly contain nucleic acids. Nucleic acids in food are not toxic and there is no evidence that consumption of nucleic acids in food leads to any harm.

ii. *Dermal exposure.* Residues of nucleic acids that are part of a plant-incorporated protectant may in some cases be present in sap or other exudates from the plant or the food, and, thus, may present some limited opportunity for dermal exposure to persons coming physically into contact with the plant or raw agricultural food from the plant. Individuals preparing meals are those most likely to experience dermal contact with the residues on a non-occupational basis. However, on a per person basis, the potential amounts involved in these exposures are likely to be negligible in comparison to potential exposure through the dietary route. Moreover, nucleic acids as they occur in food are unlikely to cross the barrier provided by the skin (Refs. 22 and 23). This is particularly true for residues of nucleic acids that are part of a plant-incorporated protectant as these nucleic acids, for the most part, exist in the plant as polymers (Refs. 22 and 23).

iii. *Inhalation exposure.* Residues of nucleic acids that are part of a plant-incorporated protectant may be present in pollen, and some individuals (e.g., those near enough to farms, nurseries or other plant-growing areas to be exposed to wind-blown pollen, or visiting such areas) may be exposed, through inhalation, to the pollen. On a per person basis, the potential amounts of pollen involved in these exposures are likely to be negligible in comparison to potential exposure through the dietary route. It is unlikely that exposure to the pollen is equivalent to exposure to residues of nucleic acids that are part of a plant-incorporated protectant. In pollen, residues of nucleic acids will likely be integrated into the tissue of the pollen grain. Pollen grains are solid, insoluble particles of sufficiently large diameter that they are filtered out in the nasopharynx or in the upper respiratory tract (Refs. 23 and 24). Pollen grains containing residues that are the subject of this exemption are unlikely to cross the barrier provided by the mucous membrane of the respiratory tract (Refs. 23 and 24) and thus exposure through this route is not likely to be additive to dietary exposure of nucleic acids (Refs. 23 and 24).

iv. *Drinking water.* EPA also evaluated potential non-occupational exposures in drinking water. Residues of nucleic acids that are part of a plant-incorporated protectant are produced inside the plant itself. Nucleic acids, and residues of nucleic acids, are an integral part of the living tissue of the plant. When the plant dies or a part is removed from the plant, microorganisms colonizing the tissue immediately begin to degrade it, using the components of the plant tissue (including residues of nucleic acids that are part of a plant-incorporated protectant) as building blocks for making their own cellular components or for fueling their own metabolisms (Ref. 21). Nucleic acids that are part of a plant-incorporated protectant are subject to the same processes of biodegradation and decay that all biotic materials undergo (Ref. 21) . This turnover of biotic materials in nature through a process of biodegradation occurs fairly rapidly. In addition, nucleic acids are, for the most part, highly unstable outside of the cellular environment and are usually very quickly broken down (Refs. 3 and 21). Because of the very rapid turnover of these residues, even if they reach surface waters (e.g., through plant parts falling into bodies of water), they are unlikely to present anything other than a very negligible exposure in drinking water drawn either from surface or ground water sources.

v. *Residential exposure.* EPA is not aware of any residential uses of plant-incorporated protectants that might result in exposure to residues of nucleic acids that are part of a plant-incorporated protectant.

7. *Sensitivities of subgroups.* EPA considered available information on the sensitivities of subgroups as it pertains to residues of nucleic acids that are part of a plant-incorporated protectant. As nucleic acids are ubiquitous in food, are not known to cause any adverse health effects when consumed in food and are not toxic, EPA does not expect that one subgroup would be more sensitive than another to residues of nucleic acids that are part of a plant-incorporated protectant.

8. *Estrogenic or other endocrine effects.* Based on available information concerning their structure and mode of action, plus the fact that nucleic acids are ubiquitous in foods and have no known adverse effects when consumed as part of the diet, EPA does not expect residues of nucleic acids that are part of a plant-incorporated protectant to cause estrogenic or other endocrine effects. No comment was received indicating that nucleic acids might have estrogenic or other endocrine effects in response to the specific request for such information in the May 16, 1997, supplemental document (62 FR 27142). If EPA becomes aware of a potential for estrogenic or endocrine effects from exposure to nucleic acids that are part of a plant-incorporated protectant, the Agency will reexamine this tolerance exemption in light of that information.

9. *Safety factors.* EPA did not rely solely on available animal data in reaching its determination that residues of nucleic acids that are part of a plant-incorporated protectant can be exempted from the requirement of a tolerance. There is a long history of safe human consumption of nucleic acids in

food derived from plants and from animals that consume forage and other crops (e.g., corn and other grains) containing nucleic acids. EPA thus was able to rely on epidemiological studies on humans (Refs. 5, 6, 7, 8, 9, 10, 11, 12, and 13) and a century of systematic scientific study of the constituents of food available in the public literature (Ref. 4). EPA also relied on knowledge in plant genetics, plant physiology, phytopathology, microbial ecology, ecology, biochemistry and plant breeding. EPA believes that long-term evidence of human consumption and the associated information base (Refs. 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13), with a more limited reliance on animal experimentation data, are the appropriate information base for this exemption. Because the EPA was able to rely on data from humans, the Agency concluded that a safety factor designed to account for uncertainties in extrapolating from animal data would not be necessary. Because the available epidemiological and other information generated on humans was based on studies employing very large numbers of individuals, the Agency concluded that aten-fold safety factor to account for uncertainties in analyzing the human data would not be necessary.

10. *Infants and children.* EPA considered available information on consumption patterns of infants and children, including special sensitivity, cumulative effects of residues of nucleic acids that are part of a plant-incorporated protectant with other substances that may have a common mechanism of toxicity with these residues, and the need for a margin of safety for infants and children.

i. *Dietary consumption patterns.* EPA considered available information on the dietary consumption pattern of infants and children as it pertains to residues in food of nucleic acids that are part of a plant-incorporated protectant. The range of foods consumed by infants and children is in general more limited than the range of foods consumed by adults. Most newborns rely on milk products for nutrition, although some infants are fed soy-based products. Infants begin as early as four months of age to consume specific types of solid foods. Subsequent to four months of age, apart from processing to facilitate swallowing, the diets of infants begin to be based on foods consumed by the general adult population albeit in different proportions. As infants and children mature, more and more of the foods normally consumed by adults become part of their diets, and the relative proportions of the different types of food consumed changes to more closely resemble an adult diet. All foods consumed by infants and children, including milk and soy-based products, contain nucleic acids as do all foods consumed by adults. Since nucleic acids are ubiquitous in food, from the products infants consume after birth through the changing diets children consume as they mature, EPA concluded that infants and children have been, and are, exposed to nucleic acids as part of their diet. Although the diets of humans change from infancy through childhood and into adulthood, there is no evidence that such changes are likely to result in disproportionately high consumption of residues of nucleic acids, among infants and children in comparison to the general population. Nucleic acids in food are not toxic and there is no evidence that exposure to nucleic acids in food, including changes in exposure because of changes in the relative proportions of the different types of food consumed from infancy through childhood and into adulthood, leads to any harm.

ii. *Special susceptibility.* EPA considered available information on the potential for special susceptibility of infants and children, including pre-natal and post-natal toxicity, to residues of nucleic acids that are part of a plant-incorporated protectant. Nucleic acids in food are not toxic and there is no scientific evidence that nucleic acids as a component of food would have a different effect on children, in light of neurological differences between infants and children and adults, than they would on the adult population.

iii. *Cumulative effects of residues with other substances with a common mechanism of toxicity.* EPA examined the available information on the cumulative effect of residues of nucleic acids that are part of a plant-incorporated protectant as well as other substances in food that may have a common mechanism of toxicity. The Agency's consideration of the effects of the residues of nucleic acids that are part of a plant-incorporated protectant on the general population also included consideration of effects on infants and children. Nucleic acids are not toxic when consumed as part of the diet, and EPA is not aware of substances that might have a common mechanism of toxicity with nucleic acids. There is no evidence indicating that adverse effects on infants and children due to aggregate exposure to residues of nucleic acids and other substances could occur.

iv. *Margin of safety.* In determining whether the residues of nucleic acids that are part of a plant-incorporated protectant are safe, FFDCA section 408(b)(2)(C) directs EPA to apply a tenfold margin of safety for the residues and other sources of exposure to infants and children to account for potential prenatal and postnatal toxicity and completeness of data on threshold effects with respect to exposure and toxicity to infants and children, unless a different margin will be safe. For residues of nucleic acids that are part of a plant-incorporated protectant, EPA has determined that a tenfold margin of safety is not necessary to protect infants and children. EPA reaches this determination based on reliable, valid and complete information. As noted in other sections of Unit IX., EPA based its assessment of exposure and toxicity upon the long history of safe human consumption of food containing nucleic acids from plants, and other animals that consume plants containing nucleic acids, and other substances in food that may have a common mechanism of toxicity (Ref. 4), and associated epidemiological and other studies (Refs. 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13). EPA also relied upon information from the disciplines of plant genetics, plant physiology, phytopathology, microbial ecology, ecology, biochemistry and plant breeding. Based on all of this information, EPA concludes that nucleic acids in food are not toxic and may be safely consumed, including by infants and children. There is no evidence that exposure to nucleic acids in food, including changes in exposure because of differences in the relative proportions of the different types of food consumed from infancy through childhood and into adulthood, leads to any harm. Thus, on the basis of valid, complete and reliable information, EPA has concluded that nucleic acids in food are safe for infants and children, and that a margin of safety need not be applied for residues in food of nucleic acids that are part of a plant-incorporated protectant.

11. *Analytical methods.* EPA has decided that even though methodology exists to detect and measure the amount of nucleic acids in food and to detect and measure the residues of nucleic acids that are part of a plant-incorporated protectant (Ref. 4), there is no need to employ a practical method for detecting and measuring the levels of such residues. The effect of nucleic acids on humans was assessed in light of the known presence of nucleic acids in all foods (Refs. 3 and 4), the long history of safe human consumption of plant food containing nucleic acids, i.e., food derived from crop plants and from animals that consume forage and other crops containing nucleic acids, and associated epidemiological and other studies (Refs. 4, 5, 6, 7, 8, 9, 10, 11, 12,

and 13). EPA combined this information with knowledge from the disciplines of plant genetics, plant physiology, phytopathology, microbial ecology, ecology, biochemistry and plant breeding. Nucleic acids in foods do not have a toxic effect and cause no adverse effects to humans. There is no reason to believe that nucleic acids that are part of a plant-incorporated protectant would behave any differently than all of the other nucleic acids in food. There is a reasonable certainty that no harm will result from exposure to any amount of residues of nucleic acids that are part of a plant-incorporated protectant in food. Because these residues may be present in food at any level without causing harm, EPA has concluded that an analytical method is not required for detecting and measuring the levels in food of the residues of nucleic acids that are part of a plant-incorporated protectant. EPA consulted with the Department of Health and Human Services (DHHS) in developing the proposed exemption and in issuing this final rule for residues of nucleic acids that are part of a plant-incorporated protectant.

C. Determination of Safety for United States Population, and Infants and Children

Based on the information discussed in this document and that discussed in the 1994 **Federal Register** documents and the supplemental documents and the record as described in Unit X., EPA concludes that there is a reasonable certainty that no harm will result to the United States population in general, and to infants and children in the United States, from aggregate exposure to residues of nucleic acids that are part of a plant-incorporated protectant, including all anticipated dietary exposures and all other exposures for which there is reliable information. Under this exemption from the requirement for a tolerance, EPA exempts residues of nucleic acids that are part of a plant-incorporated protectant. Nucleic acids are normally a component of food from plants. Extensive use and experience show the safety of foods containing nucleic acids. The many years of human experience with the growing, preparing and consuming food from plants containing nucleic acids and information generated through years of study of the food supply (Refs. 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13), indicate that adverse effects due to aggregate exposure through the dietary, non-food oral, dermal and inhalation routes are highly unlikely.

X. Documents in the Official Record

As indicated in Unit I.B.2., the official record for this final rule has been established under docket control number OPP–300371B, the public version of which is available for inspection as specified in Unit I.B.2.

A. References

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B. Additional Information

The complete official record for this rulemaking includes:

The docket identified by the docket control number OPP–300370 for the document entitled "Proposed Policy; Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act" (59 FR 60496, November 23, 1994) (FRL–4755–2).

The docket identified by the docket control number OPP–300369 for the document entitled "Plant-Pesticides Subject to the Federal Insecticide, Fungicide and Rodenticide Act; Proposed Rule" (59 FR 60519, November 23, 1994) (FRL–4755–3).

The docket identified by the docket control number OPP–300368 for the document entitled "Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act" (59 FR 60535, November 23, 1994) (FRL–4758–8).

The docket identified by the docket control number OPP–300371 for the document entitled "Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Nucleic Acids Produced in Plants" (59 FR 60542, November 23, 1994) (FRL–4755–5).

The docket identified by the docket control number OPP–300367 for the document entitled "Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Viral Coat Protein Produced in Plants" (59 FR 60545, November 23, 1994) (FRL–4755–4).

The docket identified by the docket control number OPP–300370A for the document entitled "Plant-Pesticide Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act; Reopening of Comment Period" (61 FR 37891, July 22, 1996) (FRL–5387–4).

The docket identified by the docket control number OPP–300368A for the document entitled "Plant-Pesticides; Supplemental Notice of Proposed Rulemaking" (62 FR 27132, May 16, 1997) (FRL–5717–2).

The docket identified by the docket control number OPP–300371A for the document entitled "Plant-Pesticides; Nucleic Acids; Supplemental Notice of Proposed Rulemaking" (62 FR 27142, May 16, 1997) (FRL–5716–7).

The docket identified by the docket control number OPP–300367A for the document entitled "Plant-Pesticides; Viral Coat Proteins; Supplemental Notice of Proposed Rulemaking" (62 FR 27149 May 16, 1997) (FRL–5716–6).

The docket identified by the docket control number OPP–30069A for the document entitled "Plant-Pesticides, Supplemental Notice of Availability of Information" (64 FR 19958 April 23, 1999) (FRL–6077–6).

The docket identified by the docket control number OPP–300368B for the companion document entitled "Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Residues Derived Through Conventional Breeding From Sexually Compatible Plants of Plant-Incorporated Protectants (Formerly Plant-Pesticides)" (FRL–6057–6) published elsewhere in this issue of the **Federal Register**.

The docket identified by the docket control number OPP–300369B for the document entitled "Regulations Under the Federal Insecticide, Fungicide, and Rodenticide Act for Plant-Incorporated Protectants (Formerly Plant-Pesticides)" (FRL–6057–7) published elsewhere in this issue of the **Federal Register**, and the docket identified by the docket control number OPP–300370B for the document entitled "Plant-Incorporated Protectants; Supplemental Notice of Availability of Information" (FRL–6760–4).

Also included in the complete official public record are:

1. Public comments submitted in response to the proposals and supplemental documents cited in the above paragraph.

2. Reports of all meetings of the Biotechnology Science Advisory Committee and the FIFRA Science Advisory Panel pertaining to the development of this final rule.

3. The Economic Analysis (EA) on FIFRA regulations for plant-incorporated protectants, and documents supporting the EA (Ref. 25).

4. Support documents and reports.

5. Records of all communications between EPA personnel and persons outside EPA pertaining to the final rule. (This does not include any inter-agency and intra-agency memoranda, unless specifically noted in the Indices of the dockets).

6. Published literature that is cited in this document.

7. The response to comments document pertaining to the development of this final rule (Ref. 2).

XI. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408 and does not impose any other regulatory requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

This action does not impose any enforceable duty or contain any unfunded mandate, and will not otherwise significantly or uniquely affect small governments as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).This rule does not significantly or uniquely affect the communities of Indian trial governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with*

Indian Tribal Governments (63 FR 27655, May 19, 1998), do not apply to this rule. Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001, revokes Executive Order 13084 as of that date. EPA developed this rulemaking, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. For the same reasons stated for Executive Order 13084, the requirements of Executive Order 13175 do not apply to this rule either. For the same reasons, this rule does not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). This rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The Agency's determination is based on the fact that an exemption from the requirement of a tolerance under FFDCA section 408, such as that contained in this rule, will not adversely affect any small businesses. Additional information about the Agency's determination may be found in the small entity impact analysis prepared as part of the economic analysis for the FIFRA rulemaking, which is available in the public version of the official record (Ref. 25). The Agency has also previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a general matter, that there is no adverse economic impact associated with these actions. See 46 FR 24950, May 4, 1981.

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

XII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Plants, Reporting and recordkeeping requirements.

Dated: July 12, 2001.

Christine T. Whitman,

Administrator.

Therefore, 40 CFR chapter I is amended as follows:

PART 174—[AMENDED]

1. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136–136y and 21 U.S.C. 346a and 371.

2. Section 174.475 is added to subpart W to read as follows:

§ 174.475 Nucleic acids that are part of a plant-incorporated protectant; exemption from the requirement of a tolerance.

Residues of nucleic acids that are part of a plant-incorporated protectant are exempt from the requirement of a tolerance.

[FR Doc. 01–17982 Filed 7–16–01; 11:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[OPP–300368B; FRL–6057–6]

RIN 2070–AC02

Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Residues Derived Through Conventional Breeding From Sexually Compatible Plants of Plant-Incorporated Protectants (Formerly Plant-Pesticides)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The substances plants produce for protection against pests, and the genetic material necessary to produce these substances, are pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), if humans intend to use these substances for "preventing, destroying, repelling or mitigating any pest." These substances, produced and used in living plants, along with the genetic material necessary to produce them, are also "pesticide chemical residues" under the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA calls these substances, along with the genetic material necessary to produce them, plant-incorporated protectants. In this final rule, EPA exempts from the FFDCA section 408 requirement of a tolerance, residues of the pesticidal substance portion and residues of any inert ingredient of any plant-incorporated protectant derived through conventional breeding from a plant sexually compatible with the recipient food plant. EPA has determined that there is a reasonable certainty that no harm will result from aggregate exposure to these residues.

DATES: This rule is effective September 17, 2001. Objections and requests for hearings must be received by EPA on or before September 17, 2001.

ADDRESSES: Objections and hearing requests may be submitted by regular mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit II. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: By mail: Philip Hutton, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460; telephone number: (703)

308–8260; e-mail address: hutton.phil@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Document Apply to Me?

You may be potentially affected by this action if you are a person or company involved with agricultural biotechnology that may develop and market plant-incorporated protectants. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Pesticide manufacturers	32532	Establishments primarily engaged in the formulation and preparation of agricultural and household pest control chemicals
Seed companies	111	Establishments primarily engaged in growing crops, plants, vines, or trees and their seeds
Colleges, universities, and professional schools	611310	Establishments of higher learning which are engaged in development and marketing of plant-incorporated protectants
Establishments involved in research and development in the life sciences	54171	Establishments primarily engaged in conducting research in the physical, engineering, or life sciences, such as agriculture and biotechnology

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAIC) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicable provisions of part 174 in title 40 of the Code of Federal Regulations (CFR). If you should have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information , Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the**Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the EPA's program for biopesticides go directly to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/biopesticides.

2. *In person.* The Agency has established an official record for this action under the docket control number OPP–300368B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Record Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the Food Quality Protection Act (FQPA), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA,

you must identify docket control number OPP–300368B in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 17, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public version of the official record without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit II., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300368B, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

III. Under What Authority Is EPA Issuing this Final Rule?

This exemption from the requirement of a tolerance is being issued under the authority of section 408(c) of the FFDCA (21 U.S.C. 346a(c)). Under FFDCA section 408, EPA regulates pesticide chemical residues by establishing tolerances limiting the amounts of residues that may be present in or on food, or by establishing exemptions from the requirement of a tolerance for such residues. Food includes articles used for food or drink by humans or other animals. A food containing pesticide residues may not be moved in interstate commerce without an appropriate tolerance or an exemption from the requirement of a tolerance.

Section 408 of the FFDCA applies to all "pesticide chemical residues " which are defined as residues of either a "pesticide chemical" or "any other added substance that is present on or in a commodity or food primarily as a result of the metabolism or other degradation of a pesticide chemical" (21 U.S.C. 321(q)(2)). The FFDCA defines "pesticide chemical" as: "any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, including all active and inert ingredients of such pesticide." (21 U.S.C. 321(q)(1)). FIFRA section 2(u) defines "pesticide" as: "(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer" (7 U.S.C. 136(u)). Under FIFRA section 2(t), the term "pest" includes "(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism" with certain exceptions (7 U.S.C. 136(t)).

Under FFDCA section 408(c), EPA can establish an exemption from the requirement of a tolerance for a "pesticide chemical residue" only if EPA determines that granting such an exemption is "safe" (21 U.S.C. 346a(c)(2)(A)(i)). The FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information" (21 U.S.C. 346a(c)(2)(A)(ii)). This includes exposure through drinking water, and residential and other indoor uses, but does not include occupational exposure. In establishing an exemption from the requirement of a tolerance, FFDCA section 408(c) does not authorize EPA to consider potential benefits associated with use of the pesticide chemical in determining whether the pesticide chemical may be exempted.

FFDCA section 408 requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption and to "ensure that there is a reasonable certainty that no harm will

result to infants and children from aggregate exposure to the pesticide chemical residue" (21 U.S.C. 346a(b)(2)(C)(ii)(I)) and (c)(2)(B)). FFDCA section 408(b)(2)(D) specifies other general factors EPA must consider in establishing an exemption (21 U.S.C. 346a(b)(2)(D)). FFDCA section 408(c)(3) prohibits an exemption unless there is either a practical method for detecting and measuring levels of pesticide chemical residue in or on food or there is no need for such a method, requiring EPA to state the reason for this determination (21 U.S.C. 346a(c)(3)).

IV. Context

A. What Role Does this Exemption Play in EPA's Approach to Plant-Incorporated Protectants?

The substances plants produce for protection against pests are pesticides under the FIFRA definition of pesticide, if humans intend to use these substances for "preventing, destroying, repelling or mitigating any pest." These substances, produced and used in living plants, along with the genetic material necessary to produce them, are designated "plant-incorporated protectants" by EPA.

To understand the role this exemption plays in EPA's approach to plant-incorporated protectants, the following two considerations must be understood. First, what constitutes the residues of plant-incorporated protectants derived through conventional breeding from plants sexually compatible with the recipient plant and why EPA is exempting them from the requirement of a tolerance. Second, how this exemption from the FFDCA requirement of a tolerance for residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants relates to the exemption from the FFDCA requirement of a tolerance published elsewhere in this issue of the **Federal Register** for residues of nucleic acids that are part of a plant-incorporated protectant.

1. *What constitutes the residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants and why is EPA exempting them?* In developing its approach to plant-incorporated protectants, EPA took into account the properties of pesticidal and other substances produced and used in plants. In particular, EPA recognized that plants have evolved, and thus naturally possess, various mechanisms to resist pests. The mechanisms of resistance can be varied, including, for example, structural characteristics of the plant, the production of general metabolites that have toxic properties, or the production of specific toxic substances in response to pest attack. In breeding plant varieties, humans have frequently intentionally used these mechanisms to create varieties with varying abilities to prevent, destroy, repel or mitigate pests. Based on human experience in breeding, growing, preparing, and consuming food from such plant varieties and the large and varied information developed through systematic scientific study available in the literature, EPA recognized that residues of many plant-incorporated protectants, in or on food or feed, would qualify for exemption from regulation under FFDCA section 408. (Hereafter, EPA will use the term "in food" to represent the concept of "in or on food or feed" in this preamble).

For EPA to exempt any residue of a pesticide, including any residue of a plant-incorporated protectant, EPA must find that there is a reasonable certainty that no harm will result from aggregate exposure to the residue, including all anticipated dietary exposures and all other exposures for which there is reliable information. EPA takes this action today with regard to residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants because it has determined that there is a reasonable certainty that no harm will result from aggregate exposure to the residues, including all anticipated dietary exposures and all other exposures for which there is reliable information.

Under FFDCA section 408, the term residue is defined broadly to include residues of the active and inert ingredients of the pesticide itself and residues that are present in the food as a result of the metabolism or other degradation of the pesticide (21 U.S.C. 321(q)). For plant-incorporated protectants derived through conventional breeding from sexually compatible plants, EPA anticipates the residues will consist of the pesticidal substance and the genetic material necessary for production of the pesticidal substance, and any substance that might function as an inert ingredient as defined for plant-incorporated protectants (e.g., any selectable marker), and the genetic material necessary for production of the inert ingredient.

This action exempts from the requirement of a tolerance under FFDCA section 408, residues of the pesticidal substance portion of plant-incorporated protectants derived through conventional breeding from plants sexually compatible with the recipient plant, and residues of any inert ingredient introduced through conventional breeding from plants sexually compatible with the recipient plant. For plant-incorporated protectants, the recipient plant is the living plant that receives the genetic material necessary to produce the pesticidal substance and in which the plant-incorporated protectant is intended to be produced and used.

2. *How does this exemption relate to the exemption from the FFDCA requirement of a tolerance for residues of nucleic acids?* This exemption can be paired with EPA's tolerance exemption for residues of nucleic acids that are part of a plant-incorporated protectant, published elsewhere in a companion document in this issue of the **Federal Register**. That exemption applies to residues of the genetic material portion of all plant-incorporated protectants, and, thus, also applies to residues of the genetic material necessary for the production of the pesticidal substance portion of plant-incorporated protectants derived through conventional breeding from sexually compatible plants, and the residues of the genetic material necessary for the production of any inert ingredient introduced through conventional breeding from plants sexually compatible with the recipient plant. Because of these actions, all residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants are exempt from FFDCA section 408 requirements.

B. Does this Final Rule Have Any Relevance to Other Types of Pesticides?

Nonviable plant tissues, organs or parts that are used as pesticides, will not be covered by this exemption. Residues of such pesticides are subject to the regulations found in 40 CFR parts 177 through 180 rather than 40 CFR part 174. An example of this type of pesticide would be the powder, produced by drying and grinding cayenne pepper, dusted on plants to protect them from pests.

Residues of substances that are isolated from a plant's tissues and then applied to plants and/or to food for pest control will not be covered by this exemption. Residues of these types of pesticides in formulations such as those for foliar application are subject to regulations found in 40 CFR parts 177 through 180 rather than 40 CFR part 174. An example of this type of pesticide would be pyrethrum isolated from chrysanthemum plants, formulated with other ingredients for foliar application, and sprayed onto other plants for pest control.

Residues of substances that are synthesized will not be covered by this exemption. Residues of such pesticides are subject to regulations found in 40 CFR parts 177 through 180 rather than 40 CFR part 174. An example of this type of pesticide is the herbicide, atrazine.

C. What Is the History of this Final Rule?

This final rule is an additional step in fully implementing the "Coordinated Framework for Regulation of Biotechnology" of the United States of America which was published in the **Federal Register** by the Office of Science and Technology Policy (OSTP) on June 26, 1986 (51 FR 23302).

EPA sponsored, or co-sponsored with other Federal agencies, three conferences dealing with plant related issues: On October 19–21, 1987, a meeting on"Genetically Engineered Plants: Regulatory Considerations" at Cornell University, Ithaca, New York; on September 8–9, 1988, a "Transgenic Plant Conference" in Annapolis, Maryland; on November 6–7, 1990, a conference on "Pesticidal Transgenic Plants: Product Development, Risk Assessment, and Data Needs" in Annapolis, Maryland. Information from these conferences has been incorporated as appropriate in development of this final rule.

In developing its approach to plant-incorporated protectants, EPA requested the advice of two scientific advisory groups at three meetings. On December 18, 1992, pursuant to section 25 of FIFRA, a subpanel of the FIFRA Scientific Advisory Panel (SAP) was convened to review a draft policy on plant-pesticides (now called plant-incorporated protectants) and to respond to a series of questions posed by the Agency, primarily on EPA's approach under FIFRA. On July 13, 1993, EPA requested the advice of a subcommittee of the EPA Biotechnology Science Advisory Committee (BSAC) on a series of scientific questions dealing with EPA's approach to plant-pesticides under FFDCA. On January 21, 1994, a joint meeting of the subpanel of the SAP and the BSAC subcommittee was held and EPA asked advice on approaches to plant-pesticides under both FIFRA and FFDCA. Advice from these scientific advisory groups was considered in finalizing this rule.

EPA published in the November 23, 1994, **Federal Register** a package of five separate documents (59 FR 60496, 60519, 60535, 60542, 60545) (FRL–4755–2, FRL–4755–3, FRL–4755–4, FRL–4755–5, FRL–4755–8) which described EPA's policy and proposals for plant-pesticides under FIFRA and FFDCA. Included in that package was a proposal to exempt from the FFDCA requirement of a tolerance, residues of the pesticidal substance portion of plant-pesticides derived from closely related plants.

On July 22, 1996, EPA published a supplemental document in the **Federal Register** (61 FR 27891) (FRL–5387–4) on one aspect of its November 23, 1994, **Federal Register** documents; i.e., how the concept of inert ingredient related to plant-pesticides.

In August of 1996, Congress enacted the FQPA which amended the FFDCA and FIFRA. On May 16, 1997, EPA published in the **Federal Register** a supplemental document (62 FR 27132) (FRL–5717–2) to provide the public with an opportunity to comment on EPA's analysis of how certain FQPA amendments to the FFDCA and FIFRA apply to the proposed tolerance exemption for pesticide chemical residues derived from closely related plants.

On April 23, 1999, EPA published a supplemental document (64 FR 19958) (FRL–6077–6) in the **Federal Register** soliciting comment on whether to change the name of this type of pesticide.

The documents and the reports of the meetings described above are available in the record for the rulemaking for plant-incorporated protectants as described in Unit X.

V. What are the Key Features of the Proposed Exemption?

The development of this exemption consists of a proposed rule which appeared in the November 23, 1994, **Federal Register** (59 FR 60535), and two supplemental documents; one document that appeared on July 22, 1996, in the **Federal Register** (61 FR 37891), and a second that appeared in the May 16, 1997, **Federal Register** (62 FR 27132).

A. November 23, 1994, **Federal Register** *Proposed Rule*

In the 1994 **Federal Register** document (59 FR 60535, November 23, 1994), EPA proposed to exempt residues of a category of plant-pesticides it believed would qualify for an exemption. The proposed exemption was based upon the premise that new dietary exposures would not likely arise for these residues if the genetic material leading to the production of the pesticide chemical residues is derived from a plant that is closely related to the recipient plant; i.e., if the plant that is the donor of the genetic material is closely related to the plant receiving the genetic material.

In the 1994 **Federal Register** document, EPA presented two options for describing a standard based on the relatedness of plants. Option 1, the Agency's preferred option proposed at 40 CFR 180.1137(a), used sexual compatibility as a measure of relatedness between plants. Under this option, residues of a pesticidal substance produced in a living plant as part of a plant-pesticide would be exempt from the requirement of a tolerance if the genetic material that encodes for the pesticidal substance or leads to the production of the pesticidal substance is derived from a plant that is sexually compatible with the recipient plant and has never been derived from a source that is not sexually compatible with the recipient plant.

Option 2 would utilize the rank of genus as the taxonomic standard for describing closely related plants, as well as sexual compatibility. This option would exempt residues of a pesticidal substance derived from a plant classified in the same genus as the recipient plant, as well as residues of a pesticidal substance derived from a plant sexually compatible with the recipient plant. Under both Options 1 and 2, residues of the pesticidal substance derived from plants sexually compatible with the recipient plant would be exempt, even if the source and recipient plants are classified in different genera.

EPA proposed that "sexually compatible," when referring to plants, would mean "capable of forming a viable zygote through the fusion of two gametes, including the use of bridging and/or wide crosses between plants." EPA proposed that "bridging crosses between plants" would mean the "utilization of an intermediate plant in a cross between the intermediate plant and the first plant, in order to cross the plant resulting from that zygote with a third plant that would not otherwise be able to produce viable zygotes from the fusion of its gametes with those of the first plant. The result of the bridging cross is the mixing of the first and third plant through the formation of an intermediate zygote." EPA proposed that "wide crosses between plants" would mean "to facilitate the formation of viable zygotes through the use of surgical alteration of the plant pistil, bud pollination, mentor pollen, immunosuppression, *in vitro* fertilization, pre-pollination and post-pollination hormone treatments, manipulation of chromosome numbers, embryo culture, or ovary and ovule cultures or any other technique that the Administrator determines meets this definition."

Neither of the options was intended to exempt residues of a pesticidal substance that is significantly different functionally from the pesticidal substance as it occurs in the source plant.

The Agency also requested comment on the utility of an exemption criterion based on the process (e.g., rDNA) used to introduce the plant-incorporated protectant into a plant (59 FR at 60514, 60540, 60541). This approach was discussed by the SAP Subpanel and BSAC Subcommittee at the joint meeting of these scientific advisory groups held on January 21, 1994. In this approach, residues of plant-incorporated protectants developed through techniques other than those of modern biotechnology would be exempted, e.g., residues of those plant-incorporated protectants developed through conventional plant breeding would be exempted. Residues of those plant-incorporated protectants that were not exempted could subsequently be considered for exemption on the basis of risk potential.

The joint Subcommittee/Subpanel report justified such an approach on the following three considerations. First, the National Institutes of Health Guidelines for Research Involving Recombinant DNA Molecules established a precedent that has worked well. Second, although new techniques, such as rDNA are more precise than conventional plant breeding, it is possible to make with rDNA novel genetic modifications never before possible. The novel combinations possible with modern genetic techniques create uncertainties about how the gene will function and how its products may affect the plant's phenotype and its impact upon the environment and human health. Third, establishing rDNA methodologies as a criterion for oversight may give the public more confidence that risk potential is being evaluated. As a result, approved products may move to the marketplace more easily (Ref. 6).

B. What Issues Were Discussed in the Supplemental Documents?

Subsequent to publication of the November 23, 1994 **Federal Register** document (59 FR 60535), EPA published two supplemental documents directly relevant to this exemption: one on July 22, 1996 (61 FR 37891), and another on May 16, 1997 (62 FR 27132).

1. *July 22, 1996.* The July 22, 1996, supplemental document (61 FR 37891) discussed how the concept of inert ingredient related to plant-pesticides.

2. *May 16, 1997.* In August of 1996, the FFDCA and FIFRA were amended by the FQPA. On May 16, 1997, EPA published in the **Federal Register**, a supplemental document (62 FR 27132) to provide the public with an opportunity to comment on EPA's analysis of how certain FQPA amendments to the FFDCA and FIFRA affect this proposed exemption.

EPA stated in the May 16, 1997, supplemental document its belief that most of the substantive factors the FFDCA now requires EPA to consider when evaluating pesticide residues were considered when the Agency proposed the exemption in 1994. EPA, thus, in the supplemental document, specifically sought comment only on its evaluation of the requirements imposed by FQPA that the Agency had not addressed in the proposed rule. EPA sought comment on the following five considerations. First, whether there are substances, outside of the food supply, sharing a common mechanism of toxicity with residues of pesticidal substances derived from sexually compatible plants. Commenters were asked to submit information on the cumulative effects of such substances and the pesticidal substances that were the subject of the proposed exemption (59 FR 60535). Second, whether there are substances, outside of the food supply, related via a common mechanism of toxicity to such residues to which humans might be exposed through non-occupational routes of exposure. Commenters were asked to describe routes through which such exposure might occur, including exposure to major identifiable subgroups of human populations (e.g., infants and children). Commenters were requested, if such routes were identified, to provide information on the nature and levels of expected exposures. Comments were also sought on these two issues with regard to Option 2, the alternative option for describing closely related plants (described in Unit V.A.). Third, commenters who possess information on substances occurring in food from plants that may have estrogenic effects and may be used as plant-incorporated protectants were requested to send such information to EPA. Fourth, EPA described in greater detail the rationale supporting the statement made in the 1994 **Federal Register** document (59 FR at 60513) that "plant-pesticides are likely to present a limited exposure of pesticidal substances to humans. In most cases, the predominant, if not the only, route of exposure will be dietary. Significant respiratory and dermal exposures will be unlikely." No comments were received on this statement during the first comment period for the proposed rule. The public was given the opportunity to comment on EPA's more detailed rationale supporting the statement. Fifth, EPA also described in greater detail how the rationale presented in the 1994 **Federal Register** document (59 FR at 60538) concerning the safety for human consumption of food from plants that meet the sexually compatible standard applies to infants and children. The public was given the opportunity to comment on the more detailed rationale specifically addressing infants and children as part of the larger human population.

VI. What are the Key Features of this Final Rule?

In this final rule, EPA exempts residues of the pesticidal substance and inert ingredient portion of plant-incorporated protectants derived through conventional breeding from plants sexually compatible with the recipient plant. The following language is added to 40 CFR 174.479:

> Residues of a pesticidal substance that is part of a plant-incorporated protectant from a sexually compatible plant are exempt from the requirement of a tolerance if all the following conditions are met:
>
> (a) The genetic material that encodes for the pesticidal substance or leads to the production of the pesticidal substance is from a plant that is sexually compatible with the recipient food plant.
>
> (b) The genetic material has never been derived from a source that is not sexually compatible with the recipient food plant.
>
> (c) The residues of the pesticidal substance are not present in food from the plant at levels that are injurious or deleterious to human health.

Pertinent associated definitions in 40 CFR 174.3 are discussed in greater detail in a companion document published elsewhere in this issue of the **Federal Register** on FIFRA regulations for plant-incorporated protectants.

In this final rule, plant means an organism classified using the 5-kingdom classification system of Whittaker (Ref. 1) in the kingdom, Plantae. Therefore, the term "plant" includes, but is not limited to, bryophytes such as mosses, pteridophytes such as ferns, gymnosperms such as conifers, and angiosperms such as most major crop plants.

Also included in the regulatory text at § 174.485, subpart X, is an exemption for residues of inert ingredients in plants derived through conventional breeding from sexually compatible plants.

VII. How Do the Proposed Rule and Final Rule Differ?

This exemption from the requirement of a tolerance is adopted with several

changes from the proposed rule published in 1994 (59 FR 60535, November 23, 1994). EPA has changed the name of this type of pesticide from "plant-pesticide" to "plant-incorporated protectant" as described in the companion document on FIFRA regulations for plant-incorporated protectants published elsewhere in this issue of the **Federal Register**. EPA exempts at this time only a subgroup of the category it proposed to exempt in 1994: Residues of pesticidal substances and inert ingredients derived through conventional breeding from plants sexually compatible with the recipient plant. In a companion document published elsewhere in this issue of the **Federal Register**, EPA solicits additional comment on alternative options for the plant-incorporated protectants derived through modern biotechnology, e.g., recombinant DNA techniques, from plants sexually compatible with the recipient plant.

In response to concerns expressed in comments and to make EPA's approach more consistent with the policy of the Food and Drug Administration (FDA), EPA has added a condition to the exemption that addresses levels of substances that are injurious or deleterious to human health in food from plants in sexually compatible populations. A few other modifications have been made to the text of the exemptions, for purposes of clarification. A discussion of modifications to other relevant definitions, including an analysis of comments on those definitions, can be found in a companion document published elsewhere in this issue of the **Federal Register** on FIFRA regulations for plant-incorporated protectants. Discussion of all modifications can be found in the documents summarizing public comments and EPA responses on issues associated with plant-incorporated protectants (Ref. 2) located in the record for this rule as described in Unit X.

When EPA proposed the exemption in 1994 at 40 CFR 180.1137(a), it also stated its intention (59 FR at 60520) to establish a new 40 CFR part 174 specifically for plant-incorporated. This new 40 CFR part 174 is being established in a companion document published elsewhere in this issue of the **Federal Register**. EPA adds this tolerance exemption to 40 CFR 174.479, subpart W, rather than adding it to 40 CFR part 180 as proposed.

VIII. Discussion of Final Rule and Public Comments

In this unit, EPA discusses the final rule and summarizes the comments it received on the November 23, 1994 proposed rule and the May 16, 1997 supplemental document. EPA reviewed and considered all comments received on the proposed rule and supplemental document and prepared detailed responses to these comments. These responses can be found at appropriate points in this preamble and in the Agency's summary of public comments and EPA's response on issues associated with plant-incorporated protectants (Ref. 2).

A. From Whom Did EPA Receive Comments?

In response to the package of documents published in the **Federal Register** in 1994, EPA received letters from industry, academia, professional and trade associations, government agencies, state regulatory authorities, public interest groups and private citizens. Some of the commenters sent separate letters for each of the five dockets associated with the 1994 **Federal Register** documents. Other commenters sent a single letter addressing all five dockets. EPA received comments on the July 22, 1996, supplemental document, and on the May 16, 1997, supplemental document, which provided the public an opportunity to comment on EPA's analysis of how certain amendments to the FFDCA and FIFRA by FQPA affected this proposed exemption. Copies of all comments received are available in the record for this rule as described in Unit X.

B. Exemption of Residues of Plant-Incorporated Protectants Derived Through Conventional Breeding from Sexually Compatible Plants

On November 23, 1994 (59 FR 60535), EPA proposed to exempt from the FFDCA requirement of a tolerance, all residues of a category of plant-incorporated protectants based on the premise that new dietary exposures would be unlikely if the genetic material leading to the production of the plant-incorporated protectant is derived from a plant closely related to the recipient plant. EPA offered two options for defining plant-incorporated protectants derived from plants closely related to the recipient plant. The options were somewhat different approaches to describing a high degree of relatedness between the genetic donor and the recipient plant. Neither of the options was based on the process by which a plant-incorporated protectant was introduced into the recipient plant. Option 1, based upon sexual compatibility, was EPA's preferred option (59 FR 60542). Option 2, used taxonomy (genus) in conjunction with sexual compatibility to define closely related plants. The Agency also requested comment on the utility of an exemption criterion based on the process (e.g., rDNA) used to introduce the plant-incorporated protectant into a plant (59 at FR 60514, 60540, 60541).

During the comment period for the 1994 proposed rule, EPA received 19 comments addressing the options for describing pesticidal substances derived from closely related plants. Nine of these comments supported Option 1 and generally agreed that the sexual compatibility standard is reasonable and adequately addresses food safety issues. Three comments favored Option 2, with one of these comments arguing that species belonging to the same genus are closely related and thus have a high degree of biochemical similarity even though they may not be sexually compatible. The commenter also cited the history of safe use of foods from plant varieties developed through plant breeding. EPA also received comments expressing serious reservations about using, for this exemption, a taxonomic standard for describing closely related plants (i.e., Option 2), because taxonomic categories, and the relationship of a given plant species to a given taxon, may be transient since taxonomic categories may change as information accrues. Others expressed concern that dietary risk may be presented by such a standard.

EPA received 37 comments on the use of the process by which the genetic material is introduced into the plant as an exemption criterion. Twenty of these comments supported an approach based on process, i.e., that those plant-incorporated protectants introduced by rDNA would be regulated. The arguments advanced by these commenters can be represented by the comment that:

> Genetic engineering (particularly recombinant DNA [rDNA] methodologies), represents a fundamental technical advance over traditional plant breeding in the ability to manipulate plants genetically. Genes which code for production of plant-pesticides can be readily turned 'on' or 'off' to dramatically increase the existing levels of plant-pesticides within plants, turning plants into pesticide factories and delivery systems. . . . given the fact that rDNA technologies represent such a fundamental technical advance over plant breeding, and given that plant-pesticides are by their very nature toxic substances, all plant-pesticides produced via rDNA methodologies should undergo some form of review under both FIFRA and FFDCA . . . (Ref. 3).

Several letters described quantitative changes in the levels of plant-incorporated protectants as specific

instances in which the commenter believed risk would be better addressed by an approach based on process. One of these commenters did not agree with EPA's analysis that levels of the plant-incorporated protectants (and thus of their residues) are likely to fall, in the vast majority of cases, within ranges currently found in safely consumed food from plants. Another of these commenters urged EPA to modify the proposed exemption so that the Agency would be notified if levels of pesticidal substances are "deliberately increased through the introduction or modification of promoters or other noncoding regulatory sequences or there is reason to believe that levels of a plant-pesticide in food or feed derived from a particular crop will be increased by an order of magnitude or more" (Ref. 3).

In response to the May 16, 1997, supplemental document, EPA received six comments. Five comments supported exemption of residues of plant-incorporated protectants derived from sexually compatible plants, with four comments addressing specific questions posed by EPA. One commenter, however, opposed any exemption that did not take into account quantitative changes in the levels of these residues, stating that "current knowledge is certainly inadequate to sanction greatly increased levels of these substances" in food (Ref. 4).

Some comments urging regulation based on whether rDNA had been used to introduced the plant-incorporated protectant, supported exempting conventional breeding. One commenter, for example, stated "that a long record of experience with the products of natural evolution and traditional breeding shows that they typically do not present new dietary exposures and should be exempt from tolerance requirements" (Ref. 5).

Based on the advice of the BSAC and SAP at the joint meeting held January 21, 1994, and the comments received in response to the November 23, 1994 **Federal Register** document, EPA has determined that it is appropriate at this time to exempt from the FFDCA tolerance requirement those residues of the pesticidal substance portion of plant-incorporated protectants, as well as any inert ingredients derived through conventional breeding from plants sexually compatible with the recipient plant. In a companion document published elsewhere in this issue of the **Federal Register**, EPA solicits public comment on alternative options for the category of residues of pesticidal substances derived through the techniques of modern biotechnology, e.g., recombinant DNA, from plants sexually compatible with the recipient plant. The Agency is considering these options in response to public comment on its earlier proposals. One of these options would establish notification procedures, and as the public has not had an opportunity to comment on either the procedures themselves, or the criteria on which EPA would base its regulatory decisions, the Agency believes it would be appropriate to seek additional public comment prior to adopting a particular option. In addition, as these alternatives would distinguish between categories of residues of plant-incorporated protectants based solely on the processes by which they are derived, the public will also have an opportunity to present comments on whether this is an appropriate distinction for regulatory purposes.

C. What is the Language of the Exemption?

In this final rule, EPA is, at 40 CFR 174.479, exempting only a subgroup of the category of residues it proposed to exempt in 1994, pesticide chemical residues derived through conventional breeding from plants sexually compatible with the recipient plant. EPA discusses the language of the exemption as it applies to this subcategory.

1. *Why is sexual compatibility an appropriate standard?* EPA believes that sexual compatibility is an appropriate standard because sexually compatible plants share a common pool of genetic material, even though there may be some variability among plants in sexually compatible populations. Sexual compatibility, the ability to produce viable offspring, is only possible in nature for plants that possess many traits in common. Traits, and the genetic material encoding them, can be passed through sexually compatible plant populations by hybridization, and the mixing of genetic material that occurs through this process of mating tends to a situation where the members of sexually compatible population have similar traits and similar genetic material. This is particularly true with crop plants where generations of selection and breeding have tended to increase the homogeneity of traits used to produce agriculturally important cultivars. Sexual compatibility thus presents a natural grouping of plants which can be readily described and used as a regulatory standard, and about which a large amount of information exists in the scientific literature. This information can be used in assessing risk.

Using sexual compatibility as a standard affords a clear delineation of whether the residues of a plant-incorporated protectant meet the conditions of the exemption. In most cases, whether two plants are sexually compatible is known; thus, testing to determine whether the plants are sexually compatible is not likely to be necessary. If, in rare cases, it is not known whether two plants are sexually compatible, the means of determining sexual compatibility is straightforward and simple. Sexual compatibility is empirically demonstrable. EPA believes that the criterion of sexual compatibility provides a high level of regulatory clarity and the greatest ease of implementation, while at the same time presenting the lowest probability of novel dietary exposure. This standard allows the public, industry, and EPA to easily and readily identify those plant-incorporated protectants that meet the criterion of being derived from plants closely related to the recipient plant.

i. *Why is sexual compatibility limited to conventional breeding?* As explained in a companion document published elsewhere in this issue of the **Federal Register**, EPA is soliciting additional comment on the various options it is considering in response to the significant comments it has received raising issues specific to plant-incorporated protectants derived through genetic engineering. Because none of the comments raised significant issues relative to pesticide chemical residues of plant-incorporated protectants derived through conventional breeding, the Agency is finalizing its proposals with respect to residues of this subgroup of products. In a final rule under FIFRA described elsewhere in a companion document in this issue of the **Federal Register**, EPA includes in the definition of sexually compatible at 40 CFR 174.3 the clause "through conventional breeding." EPA also provides a definition of conventional breeding that equates it to the creation of progeny through either: The union of gametes, i.e., syngamy, brought together through processes such as pollination, including bridging crosses between plants and wide crosses; or vegetative reproduction. Conventional breeding does not include use of any of the following technologies: Recombinant DNA; other techniques wherein the genetic material is extracted from an organism and introduced into the genome of the recipient plant through, for example, micro-injection, macro-injection, micro-encapsulation; or cell fusion. EPA believes that this

definition addresses the recommendation of the SAP/BSAC that "the Agency define methodologies in a way that clearly delineates to the scientific community and the public what is and is not included in the regulatory scope" (Ref. 6).

In the 1994 proposed rule (59 FR at 60538) and in the 1997 supplemental document (62 FR at 27135), EPA states that its proposed rule is based on "experience with the exposure of human populations to crops developed through the breeding process, i.e., crops developed through 50 to 100 years of scientific breeding among sexually compatible plant populations using Mendelian genetics." In its 1994 proposed rule, EPA calls this type of breeding, "traditional breeding" (see e.g., 59 FR 60519). When the Agency determined that it would exempt a subgroup of residues of the sexually compatible grouping, while allowing additional comment on how the Agency should treat the residues of those plant-incorporated protectants introduced into the plant through the techniques of modern biotechnology, EPA chose to describe the exempt group of residues in the most straightforward manner, as those derived through breeding in sexually compatible populations. Recognizing that many consider the modern techniques of biotechnology as simply an extension of breeding techniques, EPA determined that an adjective was needed to modify the word "breeding" to adequately describe the exempt group. Although the Agency used the word "traditional" in its 1994 proposed rule, EPA chose the word "conventional" to describe this type of breeding in this rule because the SAP/BSAC in the report of their January 21, 1994 joint meeting used the adjective "conventional" in its advice to EPA (Ref. 6), and the word "conventional" might more readily connote techniques such as wide crosses.

ii. *Why is conventional breeding described by processes such as pollination and vegetative reproduction?* One comment received on the 1994 proposed rule suggested that there is ambiguity in the proposed regulatory language at 40 CFR 174.5(a) in the November 23, 1994, **Federal Register** document (59 FR 60535). The commenter indicated the perceived ambiguity could lead to questions about whether plant-incorporated protectants that are "native" to a food crop would meet the criteria of exemption.

Because of the use of the word "food" in the comment, it was not clear whether the comment is directed toward EPA's proposed exemption under FIFRA or that under the FFDCA for residues of plant-incorporated protectants derived from plants sexually compatible with the recipient plant. EPA assumes this comment is directed at both exemptions, and that the commenter's suggestion is that EPA ensure that the regulatory language exempts from the FFDCA tolerance requirements, residues of those plant-incorporated protectants that normally occur in a plant (i.e., are "native" to the plant) and will be used in that plant. For example, if corn normally produced a plant-incorporated protectant, the regulatory text should be clear that the residues of the plant-incorporated protectant would be exempt when produced and used in corn. EPA believes inclusion of the word "pollination" as an example of a process leading to syngamy in the definition of conventional breeding addresses this concern. EPA believes the word "pollination" is appropriate because pollination is the process through which traditional breeding occurs (see e.g., 59 FR 60537) (Ref. 7). Inclusion of the word "pollination" in the definition emphasizes that plant-incorporated protectants that occur naturally in a plant growing from a viable zygote that arises by the mating in conventional breeding of one corn variety with another, or the mating of a corn plant with a corn plant of the same variety, are exempt.

EPA recognizes that this same concern also applies to plant-incorporated protectants in plants that are propagated vegetatively. EPA believes inclusion of the phrase "vegetative reproduction" in the definition of conventional breeding addresses this concern. The language of the exemption for pesticide chemical residues derived through conventional breeding from sexually compatible plants specifically exempts residues in plants reproduced vegetatively. For example, residues of a plant-incorporated protectant in a plant propagated only vegetatively, (e.g., bananas), are exempt. Also exempt are residues of a plant-incorporated protectant in a plant propagated primarily vegetatively (e.g., potatoes), as long as, under conditions of reproduction through hybridization, the plant donating the genetic material is sexually compatible with the recipient plant as defined in at 40 CFR 174.3, and the other conditions described at 40 CFR 174.479 are met. Inclusion of this term in the definition of conventional breeding reflects EPA's statement in the 1994 proposed rule (59 FR 60524) on the status of crop plant varieties propagated vegetatively.

iii. *Will wide and bridging crosses be part of the definition of conventional breeding?* In the final rule under FIFRA described elsewhere in a companion document in this issue of the **Federal Register**, EPA defines "conventional breeding" to include wide and bridging crosses. These definitions are also important to this FFDCA tolerance exemption, and thus, EPA discusses them in this preamble.

In the final rule, wide crosses include use of surgical alteration of the plant pistil, bud pollination, mentor pollen, immunosuppressants, *in vitro* fertilization, pre-pollination and post-pollination hormone treatments, manipulation of chromosome numbers, embryo culture or ovary and ovule cultures. Generations of artificial hybridizations through these techniques have taken place in the well-established practices of plant breeding (Ref. 8). Wide crosses, have been in the past and are currently, commonly used to expand the plant gene pool for varietal improvement, and a history of safe use has been associated with plant varieties developed through the use of wide cross techniques (Ref. 8). A fairly high degree of relatedness between the parental plants is indicated when a wide cross produces a viable zygote. This high degree of relatedness indicates a low probability of new exposures. Agricultural plants safely consumed as food have been developed in the past 100 years utilizing wide crosses in the breeding process.

The definition of "bridging crosses between plants" is intended to convey the concept that an intermediate plants could be used in a cross to move traits from a source plant into a desired recipient plant. The intermediate plant can form viable zygotes with both the source and recipient plants, whereas the source and recipient plant cannot form viable zygotes. The intermediate plant serves as a bridge for gene flow between the two incompatible plants. The result of the bridging cross is the mixing of genetic material of the first and third plant through the formation of an intermediate zygote. No comments were received on the proposed definition of bridging crosses between plants, also part of the definition of conventional breeding for sexually compatible. EPA is adopting this definition as proposed.

iv. *Will cell or protoplast fusion be part of the definition of wide crosses?* EPA received one comment suggesting that protoplast fusion should be included in the definition of wide crosses between plants. That request was made in the context of the proposal to exempt plant-incorporated protectants derived from plants sexually

compatible with the recipient plant from FIFRA requirements, but as the definition of wide crosses is also relevant for this FFDCA exemption, EPA will discuss that comment in this preamble.

In the technique of protoplast fusion, protoplasts are made in the laboratory through the removal of the cell walls of somatic cells. A somatic cell is a type of cell that forms plant vegetative tissues and organs and is distinguished from a germ cell which undergoes meiosis to produce reproductive tissues (e.g., pollen and egg cells). In the technique of protoplast fusion, protoplast are made from the somatic tissues of two different plants. The membranes of the different protoplasts are then fused together mechanically through processes such as treatment with polyethylene glycol, producing a hybrid somatic cell with a genetic make-up resulting from the combination and sorting of the two plant genomes. The somatic hybrid cell is then grown on specialized media into a mature plant.

In support of the request, the commenter argued that the hybridization of somatic cells (i.e., protoplast fusion) has a history of use to artificially induce sexual compatibility. The commenter argued that movement of genetic material by this means has historically been considered safe.

EPA did not, in its 1994 proposed rule include protoplast fusion in the definition of wide crosses between plants, nor did it perform an analysis of the potential for new dietary exposures when protoplast fusion is used to perform wide crosses between plants. The commenter did not provide such information in response to the 1994 proposed rule nor the 1997 supplemental document. EPA does not believe information currently in the record supports inclusion of protoplast fusion in the definition of wide crosses. Therefore, EPA does not include protoplast fusion in the definition of wide crosses and specifically excludes cell fusion from the definition of conventional breeding. However, EPA requests comment on whether protoplast fusion should be included in the definition of wide crosses in a supplemental document published elsewhere in this issue of the **Federal Register**. EPA would welcome submission of information on protoplast fusion. If the Agency obtains sufficient information demonstrating a low probability of risk, EPA may initiate notice-and-comment rulemaking under FIFRA section 25(b) and FFDCA section 408 to include protoplast fusion in the definition of wide crosses between plants.

v. *"Recombinant DNA" and genetic material "extracted from an organism and introduced into the genome of the recipient plant."* As explained previously, EPA restricted this exemption to conventionally bred plant-incorporated protectants while the Agency solicits additional comment on the alternatives it is considering in response to the comments received on the 1994 proposal. Thus, in order to fully describe which plant-incorporated protectants are exempt under this exemption, EPA includes limiting phrases. EPA in the 1994 **Federal Register** document (59 FR 60541, November 23, 1994) discussion of the advice of the joint SAP/BSAC at the January 21, 1994 meeting on the use of a process-based criterion to define a category of plant-incorporated protectants that would be subject to review, stated that the Agency would define such a process-based criterion in the following way: "The genetic material that encodes for the pesticidal substance or leads to the production of the pesticidal substance is extracted from an organism and introduced into the genome of the recipient plant or is synthesized *in vitro* and introduced into the genome of the recipient plant." EPA in this action uses the language it put forth in the 1994 **Federal Register** to fashion two of the exclusions from the conventional breeding definition at 40 CFR 174.3. One exclusion is for techniques involving the direct introduction into an organism of genetic material extracted from the source and introduced into a recipient plant. Processes such as micro-injection, macro-injection and micro-encapsulation would be excluded from the conventional breeding definition because they are used to introduce such extracted genetic material into the recipient plant. These processes have been included in the definition as examples to assist in understanding the concept.

The second exclusion from the conventional breeding definition uses the term "recombinant DNA" to represent the concept of "extracted from an organism. . ., synthesized *in vitro* and introduced into the genome of the recipient plant." To provide greater technical accuracy, EPA provides a definition at 40 CFR 174.3 for recombinant DNA as follows: "Recombinant DNA means the genetic material has been manipulated *in vitro* through the use of restriction endonucleases and/or other enzymes that aid in modifying genetic material, and subsequently introduced into the genome of the plant."

2. *Why is the concept of "functionally modified from the source" important and how does the definition of conventional breeding address it?* In the November 23, 1994 **Federal Register** document (59 FR at 60539), EPA explained that in proposing the exemptions the Agency did not intend to exempt residues of a pesticidal substance that is significantly different functionally, from the pesticidal substance as it occurs in the source plant. EPA believed this limitation is appropriate because rearrangements or modifications of the genetic sequence encoding a pesticidal substance made through the use of techniques such as rDNA could, for example, result in a plant-incorporated protectant, and/or residues of such a plant-incorporated protectant, with significantly different functions from the function in the source plant. For example, if the pesticidal substance is an enzyme, it could be modified so that it acts on a different substrate in the recipient plant than it did in the source plant (Refs. 8 and 9). Residues of such a significantly modified pesticidal substance would not necessarily present risks similar to the substance prior to modification, nor would the base of experience on which EPA relies for support of the exemption necessarily be relevant. If the genetic material encoding the pesticidal substance has been modified in such a way that the pesticidal substance functions differently in the recipient plant than it did in the source plant, the analysis performed to determine that there is a reasonable certainty that no harm will result from aggregate exposure to the residues of the plant-incorporated protectant, would not apply.

In this final rule, this concern is addressed by the limitation placed on the definition of sexually compatible. Under this definition, residues of pesticidal substances from sexually compatible plants are only exempt if the genetic material is introduced into the plant through conventional breeding as defined at 40 CFR 174.3. The types of changes discussed above (Refs. 8 and 9) that can be made through modern molecular techniques, are very unlikely to be made through conventional breeding as defined at § 174.3, and residues of plant-incorporated protectants modified through modern molecular techniques are not eligible for today's exemption.

3. *Why is the phrase "never derived from source not sexually compatible with recipient plant" important?* EPA discussed the relevance of this phrase to the proposed exemption in the November 23, 1994 **Federal Register**

document (59 FR 60539). The phrase, "has never been derived from a source that is not sexually compatible with the recipient plant," was included in the proposed regulatory text to clearly indicate that pesticide chemical residues of a plant-incorporated protectant would not qualify for the exemption if the genetic material is introduced into a recipient plant from a sexually incompatible source and then subsequently introduced from this recipient plant into other plants sexually compatible with the recipient plant. For example, the exemption does not extend to a situation where the genetic material encoding the *Bacillus thuringiensis* delta endotoxin is introduced into wheat, and the endotoxin-producing wheat is subsequently hybridized with rye using wide cross techniques to produce triticale. The residues of the endotoxin produced in the triticale would not be eligible for the exemption because the genetic material encoding the endotoxin originated from a bacterium, a source that is not sexually compatible with the original recipient plant (wheat in this example).

One commenter suggested that the Agency delete this phrase from the regulatory text and instead include a period of time after which a plant-incorporated protectant would be treated as part of a plant's "accessible" gene pool. EPA disagrees and will continue to include this language in the final rule at 40 CFR 174.479. Further, EPA disagrees with the commenter's suggestion that a gene, derived from a phylogenetically distant source and successfully used in a crop, be treated after a period of time as though it had become part of the crop's gene pool (i.e., equivalent to a gene that had evolved in a sexually compatible population of plants). The commenter does not suggest what an appropriate period of time would be nor how this would correlate with the potential for dietary exposures. Without additional information, EPA cannot find that there is a "reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue" as required by FFDCA section 408(c).

4. *Why is EPA placing a condition on the exemption limiting the levels of pesticidal substances?* To address concerns raised in comment on its original proposal concerning the possibility that certain substances normally present in plants in sexually compatible populations may in rare circumstances be present in food at levels that are hazardous, EPA is limiting this exemption by requiring that the residues of the pesticidal substance not be present in food from the plant at levels that are injurious or deleterious to human health. EPA is including at 40 CFR 174.479, the following condition to the language of the exemption: "(c) The residues of the pesticidal substance are not present in food from the plant at levels that are injurious or deleterious to human health."

If the residues of the plant-incorporated protectant do not meet this criterion, they are not exempt from the requirement of a tolerance, nor would a tolerance have been established for them. A food containing residues of a pesticide may not be moved in interstate commerce without either an appropriate tolerance or an exemption from the requirement of a tolerance. Should such an occurrence be identified, the condition will allow expeditious removal of the offending food from the market. EPA does not believe that such an occurrence will result *a priori* in a reevaluation of the categorical exemption for pesticidal substances derived through conventional breeding from sexually compatible plants under FFDCA section 408 because any problem will likely be associated with a single variety.

Producers who wish to increase the levels of pesticidal substances in plants in sexually compatible populations beyond the ranges of levels generally seen in plant varieties currently on the market and known to produce food safe for consumption are strongly encouraged to consult with EPA to determine whether their plant-incorporated protectant is eligible for the exemption from the requirement of a tolerance, or whether a tolerance, and therefore, a registration is necessary. Based on the record compiled for this rulemaking on the historical safety of food from plants in sexually compatible populations, as described in Unit IX.A. and Unit IX.B.1., EPA believes that such a circumstance, will be extremely unlikely for residues derived through conventional breeding from plants sexually compatible with the recipient plant.

This condition makes EPA's approach to plant-incorporated protectants more consistent with FDA's regulatory approach, and allows the agencies to act more expeditiously in the rare circumstance that a risk associated with higher levels of substances normally part of a plant in a sexually compatible population is identified in food.

This condition, in conjunction with the reporting requirement at 40 CFR 174.71, is conceptually similar to the suggestion of one commenter that the Agency be notified if levels of pesticidal substances are significantly increased. EPA disagrees, however, with the commenter's suggestion that notification be required only when levels of pesticidal substances are increased by 10 fold. There is natural variability in levels of expression in a plant of any substance, including plant-incorporated protectants, influenced by factors such as genetic composition, soil composition, climate and weather. Humans are currently being exposed to variation in the food they consume. The commenter did not provide information to support the suggestion that a 10-fold increase would represent an unacceptable risk, and broad adoption of such a standard would be arbitrary. The variations normally seen in food from plants, such as the 20-fold variation for ascorbic acid in muskmelon depending on variety planted, and the variation in the levels of carotene in carrots which can range from none detectable to 370 mg/100 g tissue depending on the variety (Ref. 8), are greater than the 10-fold increase suggested by comment. Other examples can be offered where the variation falls within a more narrow range, for example, one researcher (Ref. 8) reported that depending on maturity of the fruit, the level of ascorbic acid in tomato can range from 2.7 mg/100 g tissue to 7.6 mg/100 g tissue, a 2.8-fold variation. The conditions on the exemption at § 174.479 and reporting requirement at § 174.71, on the other hand, have no numerical standards. Nevertheless, the Agency believes that the adverse effects reporting requirement will allow the Agency to monitor for any rare instances in which significant increases in levels of plant-incorporated protectants might present a hazard, and that the condition at § 174.479 will allow EPA and FDA to act expeditiously. (The adverse effects reporting requirement is described in a companion document published elsewhere in this issue of the **Federal Register** on FIFRA regulations for plant-incorporated protectants).

The historical safety of the food supply as described by the record EPA has compiled for this exemption, the reporting requirement imposed as a condition of the FIFRA exemption, taken in conjunction with the strong likelihood that manufacturers and companies will choose to consult with EPA rather risk seizure of their food by FDA, cause EPA to believe that the condition placed on the exemption sufficiently address the commenters' concerns.

5. *Why does 40 CFR 174.479 include language limiting the recipient to food plants?* In the preamble to the 1994

proposed rule (see e.g., 59 FR 60537), EPA discussed the premise for this exemption; that "new dietary exposures would not likely arise for plant-pesticides produced in recipient food plants if the genetic material leading to the production of the pesticidal substance is derived from closely related plants." In addition, the BSAC in its report on the July 13, 1993 meeting (Ref. 10) emphasized to the Agency that the focus of an exemption should be on plant-incorporated protectants in food plants. They suggested that "plant-pesticides in plants commonly consumed by humans as food be exempt as long as the plant's genetic material is derived from related plants within the same family that have contributed traits to the food plant through the mechanism of sexual recombination (including wide crosses and embryo rescue)" (59 FR 60540). In this final rule, EPA has revised § 174.479 to clearly state that the recipient plant must be a food plant by including the phrase "recipient food plant" in the regulatory text at § 174.479(a) and (b). In the final rule, EPA has revised the definition of "food plant" proposed in the 1994 proposed rule at 40 CFR 180.1137 (59 FR at 60542) to read: "Food plant means a plant which, either in part or in toto, is used as food". EPA includes this definition at 40 CFR 174.3. EPA also includes at § 174.3 the definition of food found in the FFDCA. Thus, for these regulations for plant-incorporated protectants: Food includes articles used for food or drink by humans or other animals.

6. *What is the status of substances within sexually compatible plant populations that might be used as inert ingredients?* In a companion document published elsewhere in this issue of the **Federal Register**, EPA describes its consideration of inert ingredients in light of existing regulations and comments received in response to both the November 23, 1994 **Federal Register** document (59 FR 60534) and a 1996 supplemental document (61 FR 37891) discussing the Agency's treatment of selectable markers as inert ingredients for plant-incorporated protectants. In the companion document published elsewhere in this **Federal Register** on FIFRA regulations, EPA describes its determination that it will apply the concept of inert ingredients to plant-incorporated protectants consistent with the 1994 proposal.

The preamble discussion in the 1994 **Federal Register** document (59 FR at 60523) of the rationale supporting the proposal to exempt plant-incorporated protectants derived from sexually compatible plants extends to any substance that is derived from plants sexually compatible with the recipient plant, including substances such as a selectable marker, used to confirm or ensure the presence of the active ingredient. EPA's analysis in Unit IX., applies equally to all the substances that normally are found in a population of sexually compatible plants, including inert ingredients as long as these are derived through conventional breeding from plants sexually compatible with the recipient plant, and have never been derived from a source that is not sexually compatible with the recipient plant. An example of such an inert ingredient in sexually compatible populations could be tightly linked traits, such as unusual leaf pigmentation always found with a pest resistance trait.

EPA includes these residues at 40 CFR part 174, subpart X, to ensure that readers understand that any trait used as a selectable marker, and the genetic material necessary to produce it, that occurs normally in a plant sexually compatible with the recipient plant or is introduced through conventional breeding, is exempt from the FFDCA section 408 requirement of a tolerance, as well as FIFRA requirements on inert ingredients when used with a plant-incorporated protectant derived through conventional breeding from a plant sexually compatible with the recipient plant. EPA believes this interpretation is a logical implication of the preamble discussion in the 1994 proposed rule (59 FR at 60538).

Because the Agency recognizes that a substance described in Unit IX.B.2. (i.e., a toxicant) could theoretically be used as an inert ingredient, EPA places the same limiting condition on residues of the inert ingredient in food as is placed on residues of the pesticidal substance portion of the active ingredient; i.e., the residues of the inert ingredient do not qualify for the exemption if they are present in food from the plant at levels that are injurious or deleterious to human health.

Discussion supporting this exemption can also be found in a companion document published elsewhere in this issue of the **Federal Register** on FIFRA regulations for plant-incorporated protectants. Regulatory text has been established at 40 CFR 174.485, subpart X, which is entitled "Inert ingredients from sexually compatible plant," in a companion document on FIFRA regulations for plant-incorporated protectants published elsewhere in this issue of the **Federal Register**.

D. What Were the Other Potential Approaches to the Scope of Exemption?

In the November 23, 1994 **Federal Register** document (59 FR 60537), EPA discussed the merits of an approach using taxonomy, along with sexual compatibility (Option 2), as a standard for describing closely related plants, and received comment on use of such a criterion. EPA also received a comment, made in the context of the FIFRA regulations, suggesting that the criterion of sequence homology be used to limit the concept of sexual compatibility. In light of the relevance of this comment to this FFDCA exemption, EPA discusses this suggestion, as well as the comments on taxonomy, here. EPA also discusses a comment suggesting that EPA consider extending the exemption, on a case-by-case basis, to residues of plant-incorporated protectants derived from plants unrelated to the recipient plant, and a suggestion that exemptions should be based on a documented history of safe use.

1. *Taxonomy.* Two commenters expressed reservation about using a taxonomic standard for describing closely related plants. They pointed out that taxonomic categories, and the relationship of a given plant species to a given taxon, may be transient since taxonomic classification may change as information accrues. EPA agrees. In the 1994 **Federal Register** document, EPA noted (59 FR at 60524) that a taxonomy-based standard (e.g., Option 2) may be artificial: classification of plants in different taxonomic genera is not fixed and could change over time and between scientific authorities. Taxonomy reflects current observations about phenotypic, and to some extent, genotypic, differences between organisms. Currently, some plant genera are narrowly defined; for other plant genera, membership is based on broader criteria. These differences in classification criteria may lead to different probabilities between genera that new exposures may occur when genetic material from one species in a genus is introduced into another species in the genus. In recent years new tools have become available to taxonomists, allowing them to better clarify phylogenetic relationships among organisms. New information, particularly that obtained through the use of new genetic tools, concerning organisms' properties and relationships may in the future alter current taxonomic designations. In light of these advances, EPA anticipates there may be some reorganizations among the Plantae, and that these reclassifications will better reflect the relationships

among plants, and the probability of new exposures in intrageneric crosses.

The possibility that taxonomic classification may change as information accrues would add an extra layer of complexity to any regulations based on a taxonomic standard, and EPA probably would not be able to structure an exemption to accommodate for potential changes in classification. The possibility of reclassification also creates some uncertainty within the regulated community about the future status of a product.

Furthermore, under the FFDCA, an exemption must be examined specifically within the context of the food supply and dietary consumption. Although some species in a genus might be food plants, others in that genus might not. Moreover, in a genus containing food plants, there may be such barriers to hybridization that some of the non-food species in that genus would never have contributed to the food supply. Thus, there may be no experience with the potential dietary risks associated with such non-food species. In addition, knowledge of whether substances such as naturally-occurring toxicants are present is, in general, more limited for all the plant species constituting a genus than it is for species used to produce the major food crops. Consequently, there is a greater degree of uncertainty in any finding applicable to all potential members of taxonomic categories. The large body of information supporting this exemption was generated for food crops in sexually compatible populations (Refs. 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19, for example). Overall, the base of dietary experience is not as broad or as deep for populations of plants described by the taxonomic standard of genus as it is for populations of plants described by sexual compatibility. EPA does not believe it possesses sufficient information at this time to allow the Agency to issue an exemption based on taxonomy.

2. *Sequence homology.* EPA received one comment suggesting that an additional criterion be used to limit the concept of sexual compatibility. While this suggestion was made in the context of a comment made on the proposal to exempt plant-incorporated protectants derived from plants sexually compatible with the recipient plant from FIFRA requirements, EPA discusses that suggestion here because of its relevance to EPA's decision to exempt residues of pesticidal substances derived through conventional breeding from plants sexually compatible with the recipient plant. The suggested criterion of sequence homology would base relatedness on the degree of sequence homology between the source and recipient plant. Sequence homology refers to the extent that the sequence of deoxynucleotides in two pieces of genetic material are the same. A deoxynucleotide is made up of a sugar, a phosphate, and one of four purine or pyrimidine bases (adenine, cytosine, guanine, thymine). The sugars and phosphates of the deoxynucleotides are covalently linked by phosphodiester bonds to form the "backbone" of the deoxynucleotide polymer (DNA). One base is attached to each sugar in the sugar-phosphate backbone. The information encoded in the genetic material is determined by the sequence in which the bases are attached to the sugar-phosphate backbone. The extent to which two pieces of genetic material have the same base sequence is often described in terms of percent homology, with 100% homology meaning the pieces of genetic material have an identical sequence. The Agency currently believes that DNA sequence homology is a less straightforward standard for regulatory purposes than a standard such as sexual compatibility. Sexual compatibility is known in most cases, and if it is not, it is less burdensome and simpler to demonstrate than is relatedness based on DNA sequence homology. Use of homology as a criterion presents the following complex issues. First, where should homology be assessed? For example, how many genes of the source and recipient plants should be compared to determine the degree of homology? All the genes of both plants? A few genes? If only a few, which genes? Second, what degree of homology would be sufficient to indicate a high degree of relatedness? Third, under what conditions should homology be measured? Fourth, appropriate test procedures would need to be developed and validated in order to set a standard procedure for measuring homology. All of these issues would need to be resolved, and converted into regulatory text, in order to develop an exemption standard based on DNA sequence homology.

3. *Other potential exemptions suggested by comment.* One comment suggested that EPA consider extending the exemption, on a case-by-case basis, to residues of the pesticidal substance portion of plant-incorporated protectants derived from plants unrelated to the recipient plant: "Should a gene be taken from a commonly consumed food plant and inserted into another commonly used food plant, and the trait is expressed at approximately the same (or lower) level, an exemption would be warranted." A second commenter proposed that exemptions should be based on a documented history of safe use.

With regard to the suggestion that EPA consider extending exemptions on a case-by-case basis to residues of pesticidal substances of plant-incorporated protectants derived from plants unrelated to the recipient plant, the Agency has the option to exempt residues of pesticides from the requirement of a tolerance on a case-by-case basis provided that the residues meet the exemption standard in FFDCA section 408(c). In addition, any person may petition EPA to establish a tolerance exemption pursuant to section 408(d). Section 408(d)(2)(A) establishes the minimum requirements for such a petition. As additional information becomes available, EPA will consider, in future, exempting from the FFDCA requirement of a tolerance, residues of plant-incorporated protectants derived from plants unrelated to the recipient plant when these can be shown to meet the FFDCA section 408 safety standard. EPA also has the option of exempting residues of plant-incorporated protectants based on a history of safe use where there is sufficient information to meet the FFDCA section 408(c) test.

IX. Statutory Finding

A. What Methodology Did EPA Use to Assess these Residues?

For most pesticides (e.g., chemical pesticides), EPA's dietary risk evaluation relies on data generated by testing in laboratories using representative animal models to estimate acute, subchronic or chronic hazard end-points (e.g., acute toxicity, carcinogenicity, developmental toxicity). Conclusions from animal models are used to assess dose-response and describe such endpoints for potential human hazard. Other information, including residue data and information generated by use of mathematical models, are used to develop human exposure estimates. These exposure and hazard components are combined to quantify the potential risk associated with the pesticide's use. Uncertainty factors are often used in the risk assessment to account for extrapolation from animal models to human toxicity and from limited studies using humans to the larger population. The data requirements describing the types of information to be generated and other guidance for assessing dietary risk are detailed in 40 CFR part 158.

The questions posed as part of the risk assessment in evaluating residues of

most pesticides (e.g., chemical pesticides) can also be posed for the pesticide chemical residues that are the subject of this exemption, and 40 CFR part 158 can be used as guidance in evaluating these residues for hazard end-points (including, for example, acute toxicity, carcinogenicity, and developmental toxicity). To address the hazard endpoints described in 40 CFR part 158 for residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants, EPA relied on a very large body of information found, for the most part, in the public scientific literature. In performing the assessment for this exemption from the requirement of a tolerance, EPA did not need to rely as much on information generated from animal models as it would in assessing other pesticides (e.g., chemical pesticides). A very large body of experience with actual human dietary consumption over hundreds, if not thousands, of years exists for the substances that are the subject of this exemption. And thus, a large and varied amount of information developed through systematic scientific study exists in the literature, and can be used for assessing the risk of exempting these residues. Numerous epidemiological studies on humans show the health benefits of consuming foods containing residues of the plant-incorporated protectants that are the subject of this exemption (Refs. 11, 12, 13, 14, 15, 16, 17, 18, and 19). The epidemiological studies in particular provide information on the effects of chronic exposure of a far longer term than is possible with animal model experimentation, given the large differences in life span between humans and most animals used in animal model testing. The results of many nutritional assessment studies using human volunteers are available on the effects of either whole foods from plants in sexually compatible populations or isolated constituents from food from such plants (Refs. 11, 12, 13, 14, 15, 16, 17, 18, and 19). Studies have also been performed using animal models to test the effects of either whole foods from crops in sexually compatible populations or constituents from food from such crops (Refs. 11, 12, 13, 14 15, 16, 17, 18, and 19). There is a large literature on constituents of food from plants in sexually compatible populations accumulated by a century of systematic study (Ref. 8), and EPA also used these sources of information.

EPA also considered other information in the literature in evaluating the potential for exposure to residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants. Plant-incorporated protectants are produced within the living plant itself and the pesticidal substance is used *in situ* in a living plant to protect against pests, in contrast to most other pesticides which must be applied to the plant (Ref. 20). Because a plant-incorporated protectant is produced and used within the plant, physiological constraints limit the amounts of residues produced by the plant (Ref. 20). Because the plant-incorporated protectant is within the plant, routes by which other organisms may be exposed to the plant-incorporated protectant may be more limited, e.g., dietary exposure is likely to be the predominant route of exposure.

EPA used experimental data derived from the science of phytopathology to characterize the disease and pest resistance mechanisms known to occur in plants (Ref. 21). EPA also considered information from the field of plant physiology regarding plant metabolism, the production of substances that may have pesticidal effects, and conditions that may limit the plant's production of such substances (Refs. 7 and 20). This information also provided a basis for EPA's estimation of the physiological limitations to production in plants of substances that may be pesticidal and thus to production of their residues. EPA also used information from the fields of biochemistry, microbial ecology, and ecology (Refs. 7, 21, and 37).

EPA's conclusion that the vast majority of plant varieties developed by conventional breeding in sexually compatible populations produce foods that are safe for human consumption is based on this information and the historical consumption of crops since the prehistorical origins of agriculture. EPA also considered its knowledge of the practices that plant breeders routinely employ in selecting and developing plant varieties in sexually compatible plant populations, such as chemical analyses, taste-testing, and visual analyses, and that such practices have historically proven reliable for ensuring the safety of food from such plants (Refs. 8 and 22). EPA also considered that appropriate processing procedures are widely known and are routinely used by consumers in preparation of food containing residues that are the subject of this exemption, including those foods which require specific processing and/or preparation steps to avoid dietary problems.

Residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants were evaluated for dietary risk within the context of the food supply and dietary consumption patterns. In performing its assessment, the Agency considered that the diet includes all of the food items that are customarily eaten by human populations or subpopulations as part of a normal diet. (EPA did not consider that the normal diet includes plants or plant parts consumed in times of deprivation, for religious reasons, in substance abuse or by misidentification. The information base on which EPA relied in performing its risk assessment (Refs. 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19, for example) did not address such plants.)

EPA considered health risks to the general population, including infants and children. Children, and to some extent infants, have always and currently consume food containing residues that are the subject of this exemption. EPA's risk assessment also included subgroups as part of the general population, (i.e., differences in diet due to the influence of culture), and allowed for consumption pattern differences of such subgroups. The consumption of food plants is part of a balanced and varied diet.

EPA believes that the numerous epidemiological and nutritional assessment studies found in the literature of human experience in consuming food containing residues that are the subject of this exemption, combined with information generated from animal model testing and biochemical studies and knowledge from the disciplines of plant genetics, plant physiology, phytopathology, microbial ecology, ecology, biochemistry, and plant breeding form the appropriate information base for evaluating the potential risks of such residues.

B. What Factors Has EPA Considered in Making the Findings Required by 408(c) of the FFDCA?

FFDCA section 408(c)(2)(B) requires EPA to consider several factors in determining whether to exempt a pesticide from the requirement of a tolerance (21 U.S.C. 346a(c)(2)(B)). Information relevant to EPA's consideration of these factors with regard to this exemption of the pesticide chemical residues of a plant-incorporated protectant derived through conventional breeding from sexually compatible plants, is contained in this document, as well as in other

documents in the record for this rule as described in Unit X.

The preamble discussion in the 1994 **Federal Register** document (59 FR at 60538), and in the May 16, 1997, supplemental document (62 FR 27132), of the rationale supporting the proposal to exempt residues of plant-incorporated protectants derived from sexually compatible plants extends to any substance that is normally a component of a population of sexually compatible plants. It thus, applies to any substance, such as a selectable marker, used to confirm or ensure the presence of the active ingredient, that is also derived from plants sexually compatible with the recipient plant. EPA's analysis in Unit IX., applies equally to all the substances that are normally a component of a population of sexually compatible plants, including inert ingredients as long as these are derived through conventional breeding from plants sexually compatible with the recipient plant, and have never been derived from a source that is not sexually compatible with the recipient plant.

1. *Validity, completeness and reliability of available data.* As described in Unit IX.A., EPA's risk assessment for residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants was based primarily on an analysis of the long human experience with breeding and growing agricultural plants and preparing and consuming food from such plants, and associated epidemiological studies, nutritional assessments with human volunteers and animal model testing (Refs. 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19). EPA combined this information with knowledge from the disciplines of plant genetics, plant physiology, phytopathology, microbial ecology, ecology, biochemistry (including studies on the constituents of food), and plant breeding to evaluate the potential risks of pesticide chemical residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants. EPA considered the validity, completeness and reliability of the available information on human consumption of food containing substances that are the subject of this exemption including epidemiological studies, nutritional assessments with human volunteers and animal model testing, as well as information from the disciplines of plant genetics, plant physiology, phytopathology, microbial ecology, ecology, biochemistry (including studies on the constituents of food) and plant breeding. EPA concluded that this information was valid, complete and reliable, and adequately addressed the issues of hazard and exposure with regard to residues in food of plant-incorporated protectants derived through conventional breeding from sexually compatible plants.

2. *Nature of toxic effect.* In light of comments raising concern about possible adverse effects from increases in the levels of substances that naturally occur at low levels in food from plants, EPA considered the nature of toxic effects shown by the data described in Unit IX.B.1., above to be caused by substances that might potentially be residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants, should these substances be used as pesticides (i.e., if humans intend to use these substances for preventing, repelling or mitigating any pest) and present at high levels. The examination led EPA to conclude that as the vast majority of substances in plants are not toxic, any of these nontoxic substances, should they be used as plant-incorporated protectants, would not present toxic effects. EPA has identified 21 substances of plant origin that are in foods that could be considered part of a normal diet and could potentially present toxic effects if present at high levels (Ref. 8). (The normal diet does not include plants, or parts of plants, consumed in times of deprivation, for religious reasons, in substance abuse, or by misidentification. The normal diet is considered to be balanced and varied and include food from a variety of sources.) This analysis is based on an accumulation of millennia of human experience and a century of systematic scientific study of food constituents (Ref. 8). The conclusion of the analysis described in Unit IX.B.2., for these 21 substances indicates that they are either: Beyond the scope of the exemption; in foods that are not part of the normal diet of the United States population; and/or, millennia of human experience and use have given rise to procedures, on the part of the plant breeder, the food processor and/or the consumer, that combined with the condition determining eligibility for this exemption, adequately address the risk posed by these substances.

These 21 substances, of the hundreds of thousands of plant-produced substances in food, represent less than one-tenth of 1% of the total number of constituents of food (Ref. 8). Of these 21 substances, seven (acetylandromedol, andromedol, anhydroandromedol, desacetylpireistoxin B, gelsamine, tutin, hyenanchin) are in honey, being "pass-through" contaminants of honey introduced by bees collecting pollen from rhododendron, azalea, yellow jasmine, or the tutu tree. (The substances from the tutu tree, tutin and hyenanchin, can cause delirium and convulsions). Similarly, four (cicutoxin, coiinine, methylconiine, conhydrine) of the 21 substances capable of causing toxic effects in the normal diet are pass-through contaminants in the milk of cows that have consumed water hemlock or hemlock. These substances are nervous system stimulants. None of the plant sources of these 11 pass-through contaminants are used or intended to be used as food plants and thus this section 408 exemption does not apply to them. Another of the 21 substances in the normal diet identified as potentially causing toxic effects is nitrate. Exposure to excessive amounts of nitrates can cause methemoglobinemia, a condition in which some portion of the hemoglobin molecules become incapable of binding oxygen. Levels of nitrates high enough to cause such effects can be found in spinach and other green, leafy vegetables subjected to intensive application of high-nitrate fertilizers. Nitrates that enter the plant through uptake of fertilizer applied intensively are not "produced" by the plant per se, i.e., they are not biosynthesized by the plant. This exemption is not relevant to such nitrates. The toxic effect presented by high levels of nitrates is generally addressed in agriculture by use of proper fertilization practices.

Of the 21 substances originally identified (Ref. 8), nine of these (solanine, linamarin, lotaustralin, cucurbitacin, vicine, convicine, hypoglycin A, sparteine, beta-N-oxalylamino-L-alanine) are biosynthesized by plants that could be used as food in a normal diet somewhere in the world, and, thus, if used by humans for pesticidal purposes, could potentially be pesticide chemical residues derived through conventional breeding from sexually compatible plants. Three of these nine substances (sparteine, hypoglycin A, beta-N-oxalylamino-L-alanine) are found in food not customarily consumed as part of the normal diet in the United States. Their risks appear to be well known locally where plants containing such substances are consumed, and native methods of processing exist to reduce the potential for toxic effects (Ref. 22).

Sparteine is a quinolizidine alkaloid found in the lupines. The lupines are forage or range crops, but can also be cultivated for feed and have some limited use in human food, primarily as

a "traditional" grain used by indigenous cultures in South America and the Mediterranean. The presence in the plant of the quinolizidine alkaloids appears to protect the plant against fungal infection. Reduction of the levels of quinolizidine alkaloids in the plant can result in increased levels of potentially more hazardous mycotoxins. Toxic effects from consumption of food containing higher levels of sparteine include breathing problems, weakness and loss of motor control (Ref. 22, 23). These alkaloids can be removed by cooking, or by rinsing for several days (Ref. 22, 24).

Beta-N-oxalylamino-L-alanine is found in the seeds of the chickling vetch. It is a neurotoxin that can cause spastic paralysis, probably by interfering with the action of the neurotransmitter, glutamate (Ref. 22, 25). Reported cases of toxicity are mostly confined to the Indian subcontinent. Most of the toxin can be leached out by soaking the seeds in hot water for several minutes, followed by cooking.

Hypoglycin A is an amino acid analogue found in the immature ackee fruit that can result in severe hypoglycemia and vomiting. Ackee fruit is primarily consumed in Africa and Jamaica (Ref. 22). The primary method of dealing with the potential adverse effect presented by hypoglycin A is avoidance of (i.e., not consuming) immature ackee fruit.

Of the remaining six substances, two (vicine and convicine) affect a small subpopulation of the United States population. Vicine and convicine are found in the fava bean. Exposure of individuals with the Mediterranean form of an inherited deficiency of the enzyme, glucose-6-phosphate dehydrogenase (G6PD), to these substances in the fava bean can result in an hemolytic anemia. The anemia is manageable (Ref. 26). Physicians attempt to prevent hemolytic episodes by warning patients with the Mediterranean form of G6PD deficiency about the risks of consuming fava beans (Ref. 27). Thus, the primary strategy employed by persons with this G6PD deficiency with regard to food is avoidance of (i.e., not consuming) foods containing fava beans. Drying the beans or exposing them to sunlight reduces the potential for hemolytic episodes (Ref. 22).

Several strategies, including breeding for varieties that produce low levels of the substances and monitoring, as well as general knowledge in the population, reduce the potential for toxic effects to occur with the remaining four toxicants (cucurbitacin, linamarin, lotastralin, solanine). Cucurbitacins are naturally present in edible squash and cucumbers at very low levels. Cucurbitacins are purgatives and impart a bitter taste to the fruit. Cucurbitacins if consumed at extremely high concentrations may cause stomach aches or cramps (Refs. 22 and 28). On rare occasions, in producing seed for cultivated varieties, pollen from a wild relative may contaminate the seed plot, resulting in seeds that may produce higher levels of cucurbitacin. Breeding isolation is employed by seed producers to ensure that such contamination does not occur (Refs. 7 and 22).

Linamarin and lotaustralin (also called phaseolutin) are cyanogenic glycosides (Refs. 8 and 22) biosynthesized by cassava and lima beans. When the plant tissue is damaged, enzymes are released that act on the cyanogenic glycoside to produce hydrogen cyanide. The toxicity of cyanide is due to its ready reaction with the iron atom of the enzyme, cytochrome oxidase. The ability of the cell to utilize oxygen is inhibited by formation of the cytochrome oxidase-cyanide complex. Toxic effects associated with cyanide include neurological disorders, breathing difficulties, and thyroid enlargement (Ref. 22). The lima bean varieties on the United States market today were bred and are monitored to ensure that they produce very low levels of cyanogenic glycosides (Refs. 22 and 29). Imported lima beans are monitored to ensure only low levels of cyanogenic glycosides (Refs. 22 and 29). Similarly, cassava used in the United States today comes from varieties that were bred and are monitored to ensure that they produce very low levels of cyanogenic glycosides. Populations outside of the United States (e.g., Africa) that consume cassava from varieties that produce higher levels of cyanogenic glycoalkaloids are aware of the risk associated with this food and use native methods of processing (peeling, chopping and grinding in running water, also boiling and fermentation) to reduce the cyanogenic glycoside content. Cases of toxicity are observed primarily in these populations when the cassava is eaten without adequate processing, because a scarcity of other food items causes individuals to risk consuming inadequately processed cassava to ease their hunger (Ref. 26). There are also ongoing breeding and monitoring efforts to assist these populations to reduce the cyanogenic glycoside content in cassava varieties grown in their countries.

The glycoalkaloids collectively referred to in this document as solanine are biosynthesized by potatoes, and to some extent eggplant and peppers. A related glycoalkaloid, tomatine, can be found in green tomatoes. The solanines are membrane disruptors. Some members of the class have been shown *in vitro* and through intraperitoneal and intravenous injection to be weak to moderate cholinesterase inhibitors (Ref. 30). While solanine poisoning is very rare, in large doses solanine can cause gastrointestinal tract irritation, including moderate nausea, vomiting and diarrhea, as well as headaches, drowsiness, sweating, changes in blood pressure and heart rate, and edema (Ref. 22). Solanine imparts a bitter taste to the tuber, and at high concentrations solanine can leave a persistent irritation and burning sensation on the tongue (Ref. 22). Potato varieties are bred and monitored in the United States to ensure that they produce only low levels of solanine (Refs. 22 and 31). Monitoring for these glycoalkaloids also occurs during the grading and shipping of potatoes. Peeling or removing any damaged portion of the potato is the best way to reduce solanine levels. In an undamaged, unsprouted potato, thirty to eighty percent of the solanine is found in, and directly under, the skin. Cooking, e.g., boiling in steam or water or deep frying in oil at 170 degrees, may lower solanine concentrations (Refs. 22 and 32).

For the reasons described in the preceding paragraphs, EPA does not believe that this exemption would result in levels in food of residues of these four substances significantly different from those observed in food currently safely consumed. That there have been few instances in the United States of toxic effects on humans due to substances normally found in food from plants in sexually compatible populations in the past 50 years, despite the hundreds of food plant varieties from sexually compatible plant populations going onto the market each year (Ref. 8), supports a conclusion that the probability of risk is low even for the few substances discussed in this Unit. As an added protection, EPA has placed a condition limiting the exemption to residues present in food from the plants at levels that are not injurious or deleterious to human health.

3. *Relationship of studies to humans.* EPA considered the available information concerning the relationship to human risk of this information on residues in food of plant-incorporated protectants derived through conventional breeding from sexually compatible plants. The effect of these residues on humans was assessed in light of the long history of human

consumption of food derived from plants, and from products such as meat and milk from animals that consume forage and other crops (e.g., corn and other grains), containing residues that are the subject of this exemption, and associated epidemiological studies, nutritional assessments with human volunteers and animal model testing (Refs. 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19). The epidemiological studies and nutritional assessments performed with human volunteers supply data generated on humans and, thus, directly applicable to humans. Information from animal model testing as well as information from the disciplines of plant genetics, plant physiology, phytopathology, microbial ecology, ecology, biochemistry (including studies on the constituents of food) and plant breeding were also used to predict effects on humans. Because information on human consumption of food derived from plants comprising sexually compatible populations was available and adequately addressed the issues of hazard and exposure for residues that are the subject of this exemption, the Agency relied primarily on the epidemiological and other information generated directly from humans rather than relying on data generated in the laboratory through animal testing.

4. *Dietary consumption patterns.* EPA considered the available information on the varying dietary consumption patterns of consumers and major identifiable consumer subgroups as it pertains to residues that are the subject of this exemption. The consumption of food from plants is part of a balanced and varied diet (Ref. 33). Humans have been consuming food containing substances that may be residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants and thus, all consumers, and all major identifiable consumer subgroups, are, and have been, exposed to the substances that are the subject of this exemption. It is not anticipated that publication of this exemption from the requirement of a tolerance will affect current consumption patterns of food from crop plants by consumers or major identifiable consumer subgroups, and thus no differences in exposure patterns are anticipated.

5. *Available information concerning cumulative effects of the pesticide chemical residue and other substances that have a common mechanism of toxicity.* EPA examined available information on the cumulative effect of residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants, as well as other substances present in food that may have a common mechanism of toxicity with such residues.

i. *What information is available on the cumulative effects of the residues that are the subject of this exemption?* A large amount of information exists for the residues that are the subject of this exemption. The extensive information described in Unit IX.A. and Unit IX.B.1., e.g., epidemiological studies, nutritional assessment studies and animal model testing (Refs. 11, 12, 13, 14, 15, 16, 17, 18, and 19) indicates a very low probability of harm. The few substances occurring naturally in food from plants that EPA has identified as being problematic are discussed in Unit IX.B.2. A discussion of the variation in the levels of substances that may be pesticide chemical residues and may occur naturally among the plants of a sexually compatible population, and the potential consequences of that variation are discussed in Unit IX.B.6.

If information becomes available that indicates its analysis of cumulative effects in Unit IX.B.5., is no longer consistent with the FFDCA exemption standard for residues of a pesticidal substance in this category, EPA will consider the validity of the new information and may act to amend this tolerance exemption.

ii. *Are there substances that occur naturally in food that may share a common mechanism of toxicity with residues that are the subject of this exemption?* Because of the conditions of this exemption, i.e., the genetic material leading to the production of the plant-incorporated protectant is derived through conventional breeding from plants sexually compatible with the recipient plant, the potential for new dietary exposures is low. Thus, EPA considered the effects of all the substances in food from plants when it addressed the safety of food from plants in sexually compatible populations, including those that occur naturally in plants along with the substances that are the subject of this exemption. Food from plants has hundreds of thousands of constituents, and EPA cannot rule out the possibility that in the foods humans consume, common mechanisms of action might exist between some of these substances and the various residues that are the subject of this exemption. For example, the word "solanine" generically refers to a group of related steroid glycoalkaloids that naturally occur in plants in the nightshade family such as potatoes, eggplant, peppers and green tomatoes. EPA's analysis considered the effects of these substances in food from plants cumulatively when it addressed the safety of food from plants in sexually compatible populations.

Food from plants in sexually compatible populations is being safely consumed by humans either directly, or indirectly in products such as meat and milk that are derived from animals that consume forage and other crops (e.g., corn and other grains). The history of safe consumption and the information base described in Unit IX.A. and Unit IX.B.1. indicates that any cumulative effects between substances in food that may have a common mechanism with residues that are the subject of this exemption present a very low probability of harm. The analysis made in this preamble in Unit IX.B.6., concerning potential increases in levels of residues apply equally to constituents of food that may have a common mechanism of action with residues that are the subject of this exemption. Variations in the levels of these substances are not expected to be any different than those currently observed in conventional breeding. Experience has shown that food from crop plants in sexually compatible populations is safe for human consumption and/or appropriate processing procedures are widely known and routinely used by processors and consumers in preparing food from such sources. Should EPA in the future identify substances with a common mechanism of toxicity with the residues that are the subject of this exemption, both FIFRA and the FFDCA give the Agency adequate authority to take appropriate action to address any risks these substances may present to human health. Should substances in food that may share a common mechanism of toxicity with residues that are the subject of this exemption present cumulative effects resulting in food safety concerns, the condition limiting this exemption at 40 CFR 174.479 and the requirement to report adverse effects at § 174.71 will provide a mechanism to monitor the effects of this class of products and allow the EPA and FDA to act expeditiously.

iii. *Are there substances that do not occur naturally in food that may share a common mechanism of toxicity with residues that are the subject of this exemption?* EPA examined two groups of substances to determine whether these substances have a common mechanism of toxicity with residues that could be the subject of this exemption.

a. *Do the organophophate and carbamate pesticides have a common mechanism of toxicity with the naturally occurring toxicants solanine?* EPA examined certain of the

organophosphate and carbamate pesticides and the naturally-occurring toxicants, solanine (described in Unit IX.B.2.). EPA examined these substances because many members of these two classes of pesticides inhibit the cholinesterase enzymes (Refs. 30 and 34), and some *in vitro* and intraperitoneal and intravenous injection studies have shown that some of the glycoalkaloids comprising the solanines also can inhibit these enzymes (Refs. 22 and 30). The solanines have also been shown to disrupt cell membranes (Ref. 30).

EPA examined available information generated both *in vitro* and through *in vivo* animal studies on solanine. EPA gave greater weight in its analysis to information generated by animal studies where the animals were exposed through oral ingestion, as such studies are far more likely to provide physiologically significant information. Animal studies performed with the solanines administered to the animals in similar manner that plant-incorporated protectants would be presented in the diet (i.e., through ingestion) show that death could not be attributed to cholinesterase inhibition and its neurotoxic consequences but was due to severe gastrointestinal necrosis from cell membrane disruption (Ref. 35).

Given this information, EPA has concluded that available information is insufficient to create a presumption of the existence of a common mechanism of toxicity between solanine and the organophosphate and carbamate pesticides (Ref. 36), particularly as animal studies suggest the solanines, when used as plant-incorporated protectants, lead to the endpoint of death through membrane disruption.

b. *Do microorganisms have metabolic pathways in common with plants?* One commenter, in response to the May 16, 1997, supplemental document, suggested that some microorganisms may have some metabolic pathways in common with plants, although the commenter was of the opinion that this is not likely to be problematic. EPA agrees that this route of exposure to any substances that may be related to residues that are the subject of this exemption is unlikely to be problematic, and notes that possession of the same metabolic pathways does not equate to expression of the same characteristics. Raw plant foods commonly contain hundreds to several million microorganisms per gram (Ref. 8). Some of these microorganisms are commensals of the plant, others come from the natural environment of the plant (e.g., soil, water, air, other plants). Such microorganisms are routinely consumed with raw agricultural produce. Certain microorganisms are deliberately consumed routinely in high numbers by humans with no ill effects (e.g., Marmite based on a yeast, natto based on the bacterium *Bacillus* subtilis, yogurt made with bacteria of the genus *Lactobacillus*, cheese made with the fungus *Penicillium roquefortii*). This base of experience with actual human consumption indicates that should such microbes have any metabolic pathways in common with foodstuffs from plants, the cumulative effect of substances from these pathways with residues that are the subject of this exemption, presents a very low probability of harm.

c. *Are there any other substances?* EPA cannot rule out the possibility that there may be other substances outside of the food supply that may have a common mechanism of toxicity with the residues that are the subject of this exemption, although it is not aware of any other such substances. Should EPA in future identify substances with a common mechanism of toxicity other than those found in food plants, both FIFRA and the FFDCA give the Agency adequate authority to take appropriate action.

6. *Aggregate exposures of consumers including non-occupational exposures.* EPA considered the available information on the aggregate exposure level of consumers to the residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants, including exposure to these substances in plants when they are not intended to be used as plant-incorporated protectants (i.e., when humans are not intending to use the substance for a pesticidal purpose). This evaluation included a consideration of exposures from dietary sources as well as from other non-occupational sources. Plant-incorporated protectants and their residues are likely to present a limited exposure to humans. In most cases, the predominant, if not the only, exposure route will be dietary. Exposure through other routes is likely to be negligible because the substances are in the plant tissue and thus are found either within the plant or in close proximity to the plant.

In addition, the substances evolved by populations of sexually compatible plants are part of the metabolic cycles of these plants. These substances are biotic and are subject to the processes of biodegradation and decay that all biotic materials undergo (Ref. 37). Biotic materials are broken down to constituent parts through the enzymatic processes of living organisms, and these constituent parts used as the building blocks to make other biotic substances.

Because of their biodegradable nature, the residues that are the subject of this exemption do not bioaccumulate (bioaccumulation occurs when a substance is taken into the body through processes such as eating, and as the body is unable to either break the substance down or eliminate it, the substance accumulates in the tissues) or biomagnify in the tissues of living organisms (biomagnification occurs when a substance bioaccumulates in the bodies of organisms lower in the food chain, and as predators higher in the food chain consume organisms lower in the food chain, more and more of the substance accumulates in the bodies of organisms higher in the food chain) as do such long-lived persistent substances such as DDT (Ref. 38). Humans ingesting the substances that are the subject of this exemption are likely to quickly degrade them and use their constituent elements as nutrients. Because of these characteristics, the potential for exposures to the residues to occur, beyond direct physical exposure to, or consumption of, the plant, is limited. This also contributes to EPA's conclusion that non-dietary exposure (i.e., non-food oral, dermal and inhalation) in non-occupational settings is likely to be negligible.

i. *Dietary exposures?* As described in Unit IX.A. and Unit IX.B.1., a large base of experience exists, including information on human dietary exposure, for the residues exempted by this action. Moreover, dietary exposures other than those for which a large base of information exists, are unlikely to result from this exemption for residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants. Plants in a sexually compatible population are likely to have similar genetic information and have many traits in common. Generations of directed breeding to produce improved crops for cultivation have tended to increase the relatedness, and reduce the genetic variability, of populations of agricultural crop plants (Ref. 6). Sexually compatible plants share a common pool of genetic material, and movement of genetic material encoding pesticidal substances between plants in a sexually compatible population through conventional breeding is unlikely to result in exposure of humans consuming food from such plants to residues to which no humans previously has been exposed and to which the information base underlying this exemption cannot be applied. The SAP Subpanel and the BSAC

Subcommittee at the joint meeting held on January 21, 1994, supported this conclusion and noted that genetic mapping of the genomes of both wild and crop plants reinforce the thesis that plants in sexually compatible populations are likely to possess similar genetic information (Ref. 6). It is likely that substances that are the subject of this exemption are present at low concentrations in the edible parts of plants, and that such substances have long been part of the human diet. There is no evidence at present in the many studies performed on the relationship of diet to health that food from plants in sexually compatible populations, properly handled, has any significant adverse health effect (Refs. 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19).

The primary exposure consideration associated with the substances that are the subject of this exemption is whether the substances, identified in Unit IX.B.2. as toxic at higher concentrations, are likely to be present in food from plants in sexually compatible populations at such concentrations. EPA carefully examined whether there are variations, within and among food plant varieties in sexually compatible plant populations, in levels of plant-incorporated protectants and thus in the residues that are the subject of this exemption from the FFDCA requirement of a tolerance (Ref. 20). The amount of any substance produced by plants normally varies among members of a sexually compatible plant population because of the effects of conditions such as genetic constitution and environment (e.g., weather) (Refs. 8 and 20). Indeed, such variation is observed among plants of the same variety. For example, one researcher (Ref. 8) has shown a 20-fold variation in the amount of ascorbic acid (3 to 61 mg/100g tissue) in different varieties of muskmelon. Because such variation is ubiquitous in populations, differences in the levels of exposure to substances in plants are likely when humans consume food from plants, including differences in exposure to residues that are the subject of this exemption. Such variation is a natural phenomenon common to all plants, however, in controlled food production the variation in the substances identified in Unit IX.B.2. is limited (Ref. 22).

EPA also examined whether the levels of substances any variety within a sexually compatible population could produce are likely to exceed the range of low concentrations found in crop plant varieties safely consumed. For the following reasons, the Agency concluded that such occurrences were unlikely. First, there are several constraints on the extent to which expression of any substance can be increased in highly managed food crop plants without unwanted effects on other, desirable characteristics of the plant such as yield or palatability. In general, breeders balance a number of characteristics (e.g., yield, palatability, height, uniformity of seed drop) in developing marketable plant varieties. Solanine and cucurbitacin, for example, affect palatability as they taste bitter to humans.

Moreover, in conventional breeding, plant breeders assess the new cultivar for food safety, based in part on knowledge of and familiarity with the characteristics of agricultural plants in sexually compatible populations (Ref. 22). EPA's assessment of the likelihood of breeders ensuring that plants developed through conventional breeding will continue to be safe for consumption is supported by the record of safety of the food products from plants in sexually compatible populations. Although hundreds of new varieties come on the market each year, within the past 50 years, conventional plant breeding of plants in sexually compatible populations has recorded very few instances of plant varieties causing food safety problems. The two identified instances (Ref. 8), high psoralen expressing celery that in the 1980s caused dermatitis in grocery employees and the Lenape potato in the late 1960s with increased glycoalkaloid levels, involved increases in the level of known toxicants (which may or may not be plant-incorporated protectants depending on whether humans intend to use these substances for preventing, destroying, repelling or mitigating any pest). In both cases, the problem was identified and the appropriate measures taken to protect the public health. In the case of the Lenape potato, food processors in routine screening detected the high levels of solanine and the potatoes were removed from the market before exposure of consumers (Ref. 8). In contrast to these few problematic occurrences, there are many studies indicating the health benefits of consuming plant foods that likely contain residues that are the subject of this exemption (Refs. 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19).

A second exposure consideration is whether this exemption will affect the ability of individuals with food sensitivities to manage these sensitivities. To protect themselves, individuals with food sensitivities generally avoid the food, and related foods, that cause them problems (Ref. 39). This exemption will not affect the efficacy of this strategy of avoidance, because the exemption will not affect the ability of individuals to recognize and avoid foods that cause them problems (Refs. 27, 39, and 40). For example, the ability of persons who have the Mediterranean form of the inherited G6PD deficiency to deal with their disease by avoiding (i.e., not consuming) fava beans or foods made with fava beans will not be affected. The substances in fava beans that can cause hemolytic anemias in such persons will be exempt only if they are moved through conventional breeding among fava bean plants and plant varieties sexually compatible with fava beans; a population of plants in which such substances normally occur, and the food of which individuals with the inherited G6PD deficiency avoid (Ref. 27). Similarly, the efficacy of the strategy of avoidance will not be affected for individuals suffering from food allergy (Ref. 39) or enteropathies such as celiac disease (gluten-sensitive enteropathy) (Ref. 40). Moreover, the efficacy of the monitoring, processing, and preparation methodology which humans are familiar with and have been adequate in the past to produce food safe for consumption will not be affected by publication of the exemption, e.g., the monitoring procedures for solanine used in the breeding and marketing of potatoes.

EPA believes the history of familiarity with agricultural plants in sexually compatible populations, and thus with the likely progeny of genetic exchanges between plants in such populations (Ref. 8), and the procedures currently employed in plant breeding to screen out undesirable traits in such populations, support a tolerance exemption for residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants. However, to ensure that the Agency can act expeditiously should any rare instances of risk arise, EPA is placing at 40 CFR 174.479 a condition on this exemption from the requirement of a tolerance limiting the concentrations in food of substances such as toxicants that may be injurious or deleterious to human health. EPA is also implementing an adverse effects reporting requirement at § 174.71 that will serve to alert the Agency to any such rare instances of risk.

One comment received in response to the May 16, 1997, supplemental document (62 FR 27132), suggested that plant extracts might be used in some pharmaceutical preparations. The commenter did not provide any examples of these types of situations, nor any information on such extracts. Without such additional information, it

is difficult to determine whether the extracts would contain substances related to residues that are the subject of this exemption. However, even if such related substances are present in some pharmaceutical preparations, on a per person basis, the potential amounts involved in these exposures are likely to be a negligible contribution to aggregate exposure. The commenter also was of the opinion that such uses are not likely to be problematic.

ii. *Dermal exposure.* With regard to the dermal route of exposure, residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants may in some cases be present in sap or other exudates from the plant or the food and thus may present some limited opportunity for dermal exposure to persons coming physically into contact with the plant or raw agricultural food from the plant. Individuals preparing meals are those most likely to experience dermal contact with the substances on a non-occupational basis. Although contact dermatitis can occur from such exposure (Refs. 41 and 42), these reactions are generally mild, of a self-limiting nature or self-diagnosed and treated.

Most of the substances that could be the subject of this exemption are unlikely to pass through the skin to affect other organ systems (Refs. 41, 42, and 43). For those substances which possess to some degree properties that allow some penetration of the skin, the potential amounts of such exposures, on a per person basis, are likely to be a negligible contribution to aggregate exposure, or do not present adverse effects.

There are a few substances with the ability to present an effect on dermal exposure on a non-occupation basis, that might be residues of plant-incorporated protectants, if humans intend to use these substances as pesticides. For example, one substance present in a food (condiment) Americans might use in preparing meals and identified as a potential skin irritant (Refs. 8 and 22) is the phenolic, capsaicin, found in cayenne pepper. Capsaicin is used medically in a topically applied cream, which facilitates passage of the capsaicin across the barrier of the outer layer of the skin, at concentrations of 0.025 to 0.075% capsaicin. The cream is applied up to four times daily for pain control and treatment of psoriasis (Refs. 22 and 44). Cayenne pepper can be used liberally in the diet. Currently, cayenne pepper is exempt from the requirement of tolerance when it is used on food crops (40 CFR 180.1165). Acute toxicity through the oral route has been examined in several animal species, and it is estimated that the lethal dietary dose for a 150 pound individual is 2.2 kilograms (Refs. 22 and 45). Given the low toxicity of capsaicin, even if capsaicin should penetrate through the barrier of the skin, aggregate exposure through the dermal and dietary routes is not anticipated to present harm.

A second substance examined because of known effects beyond mild dermatitis with dermal exposure are the psoralens. These substances occur naturally in a wide range of plants but occur in the highest concentrations in celery, dill and parsley (Refs. 22 and 41). Psoralens can be phototoxic to the skin in conjunction with sunlight (UV light). Due to their relative solubility in oils, psoralens can penetrate into the skin cells, where they intercalate into the genetic material of the skin cell (Refs. 22 and 41). Subsequent exposure to sunlight (UV light) causes the genetic material to "cross link," affecting the ability of the cell to further process its genetic material. This may result in skin blisters and rashes. This UV-dependent phototoxicity has also been implicated in mutations that may lead to skin cancer (Refs. 22 and 41). In spite of the potential for this type of adverse effect with the psoralens, there are few reported incidents for substances derived through conventional breeding from sexually compatible plants (Ref. 8).

Psoralens (supervised and in small doses) are also used in the treatment of a variety of skin diseases, including vitiligo and psoriasis (Ref. 22), primarily through topical application.

The primary route through which humans in general are exposed to psoralens is dietary, and the psoralens are not toxic when ingested. Given the low oral toxicity, the supervised use of psoralen in medicine, the low concentrations of psoralen in celery, dill and parsley currently on the market, and the condition EPA has placed on this exemption limiting the amount of substances in food that may have an injurious or deleterious effect on human health, EPA finds that for psoralen, were this substance to be used as a plant-incorporated protectants derived through conventional breeding from sexually compatible plants, there is a reasonable certainty that no harm will result from aggregate exposure.

Those few substances from food plants discussed in Unit IX.B.2., which might be present in foods Americans might use in preparing meals and which at higher concentrations can cause adverse effects, do so when ingested (Refs. 22, 26, 29, and 31). Substances that are the subject of this exemption are unlikely to pass through the skin to affect target organs. For those substances which possess to some degree properties that allow some penetration of the skin, the potential amounts of such exposures, on a per person basis, are likely to be negligible in comparison to potential exposure through the dietary route, or do not cause adverse effects. Dermal exposures are, thus, unlikely to contribute significantly to aggregate exposure.

One comment received in response to the May 16, 1997, supplemental document (62 FR 27132) suggested that plant extracts might be used in some cosmetic preparations. The commenter was of the opinion that such uses are not likely to be problematic. The commenter did not provide any examples of these types of extracts, nor any information on the source or composition of such extracts. Without such additional information, it is difficult to determine whether the extracts would contain substances related to residues that are the subject of this exemption. EPA is aware that some floral extracts are used in perfumes, e.g., lavender, jasmine, rose. However, lavender, jasmine and rose are not generally consumed as staple foods, although parts of these plants can be brewed into teas or tisane. The amounts ingested through the tisane or by passing through the skin from perfumes is likely to be very small. Further, EPA is not aware of any reports of adverse effects from use of these flowers in tisane or perfumes. Even if such substances are present in some cosmetic preparations, on a per person basis, the potential amounts involved in these exposures are likely to be negligible.

EPA is also aware of other extracts used in perfumes from plants consumed as food, e.g., carrot, fennel, garlic, lemon. Even if such substances are present in some cosmetic preparations, on a per person basis, the potential amounts involved in these exposures are likely to be a negligible contribution to potential exposure through the dietary route.

iii. *Inhalation exposure.* With regard to exposure through inhalation, residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants may in some cases be present in pollen and some individuals (e.g., those living or working near enough to farms, nurseries or other plant-growing areas to be exposed towind-blown pollen, or visiting such areas) may be exposed, through inhalation, to the pollen. On a per person basis, the potential amounts of pollen involved in these exposures are likely to be negligible in comparison

to potential exposure through the dietary route. Residues of the pesticidal substance will not in every case be present in the pollen. When present in pollen, the residues are likely to be integrated into the tissue of the pollen grain. Pollen grains are solid, insoluble particles of sufficiently large diameter that they are filtered out in the nasopharynx or in the upper respiratory tract (Refs. 41 and 46). This exemption will not change current exposures nor affect strategies for dealing with residues that are the subject of the exemption. (Ref. 41).

iv. *Drinking water.* EPA also evaluated potential non-occupational exposures in drinking water. The substances in plants or parts of plants, including residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants, are produced and used inside the living plant itself. The residues are part of the living tissue of the plant. When the plant dies or a part is removed from the plant, microorganisms colonizing the tissue immediately begin to degrade it, using the components of the tissue (including any residues that are the subject of this exemption in the tissue) as building blocks for making their own cellular components or for fueling their own metabolisms. The residues that EPA is exempting in this action, including those identified at Unit IX.B.2., as toxic at higher concentrations, are subject to the same processes of biodegradation and decay that all biotic materials undergo. This turnover of biotic materials in nature through a process of biodegradation occurs fairly rapidly (Ref. 37). There is no indication that naturally-occurring plant biotic materials, including the residues that are the subject of this exemption, are resistant to biodegradation. Because of the fairly rapid turnover of these residues, even if they reach surface waters (through pollen dispersal or parts of the plants (leaves, fruits etc.) falling into bodies of water), they are unlikely to present anything other than a negligible exposure in drinking water drawn either from surface or ground water sources.

v. *Residential exposure.* EPA is not aware of any residential uses of plant-incorporated protectants that might result in exposure to residues that are the subject of this exemption.

7. *Sensitivities of subgroups.* EPA considered available information on the sensitivities of subgroups as it pertains to residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants. In performing its assessment, the Agency considered that the diet includes all of the food items that are customarily eaten by human populations or subpopulations. As discussed in this preamble, this exemption will not affect the current pattern of exposure to residues that are the subject of this exemption. Individuals recognize and are familiar with the plant-derived food they consume, and, based on prior experience with food, individuals avoid consuming foods containing substances they know, either through personal experience or through acquired knowledge, cause them problems (Refs. 8, 39, and 40). Because the exposure pattern will not be affected by publication of this exemption, the efficacy of the current strategy whereby sensitive individuals recognize and avoid foods known to cause them problems will not be affected by this exemption (Ref. 39, 40). For example, the ability of persons who have the Mediterranean form of the inherited G6PD deficiency to deal with their disease by avoiding (i.e., not consuming) fava beans will not be affected. Thus, no subgroup should be adversely affected by the exemption.

8. *Estrogenic or other endocrine effects.* While there is some information on estrogenic effects from exposure to certain pesticides, the data are limited. It is known that certain food plants (e.g., soybeans) contain estrogen mimics, termed phytoestrogens. Such phytoestrogens are currently being consumed by humans in food derived from plants and are part of the extensive history of safe human consumption of food from plants. Although no information was submitted to EPA on this issue despite the Agency specifically soliciting it in the May 16, 1997, supplemental document (62 FR 27132), EPA cannot rule out the possibility that such phytoestrogens could be used as plant-incorporated protectants. Potential exposure of humans via consumption of plant tissue to phytoestrogens exerting estrogenic effects and used as plant-incorporated protectants may need to be considered as EPA examines the issue of endocrine disruptors. If dietary exposure to phytoestrogens (that are also plant-incorporated protectants) is discovered to be a significant factor, the Agency will re-examine this exemption from the requirement of a tolerance in light of that information.

9. *Safety factors.* EPA did not rely solely on available animal data in reaching its determination that residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants can be exempted from the requirement of a tolerance. There is a long history of safe human consumption of food containing residues that are the subject of this exemption, and of food derived from animals that consume forage and other crops containing these residues (e.g., corn and other grains). EPA thus was able to rely on epidemiological studies on humans, nutritional assessments with human volunteers and animal model testing generated through a century of systematic scientific study and available in the public literature (Refs. 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19). EPA also relied on knowledge from the disciplines of plant genetics, plant physiology, phytopathology, microbial ecology, ecology, biochemistry (including studies on plant constituents) and plant breeding. EPA believes that long-term evidence of human consumption and the large base of scientific data generated by epidemiological studies on humans and nutritional assessments with human volunteers, with a more limited reliance on animal experimentation data, is the appropriate information for evaluating whether residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants warrant exemption. Because EPA was able to rely on data from humans, the Agency concluded that a safety factor designed to account for uncertainties in extrapolating from animal data would not be necessary. In addition, because the available epidemiological and other information generated on humans was based on studies employing very large numbers of individuals, the Agency concluded that a ten-fold safety factor to account for uncertainties in analyzing the human data would not be necessary.

10. *Infants and children.* EPA considered available information on consumption patterns of infants and children, including special sensitivity, cumulative effects of residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants with other substances that may have a common mechanism of toxicity with these residues, and the need for a margin of safety for infants and children.

i. *Dietary consumption patterns.* EPA considered available information on the dietary consumption pattern of infants and children as pertains to residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants. The range of foods consumed by infants and children is in general more limited than the range of foods consumed by adults. Most newborns rely on milk products for nutrition, although some infants are fed

soy-based products. Soy-based products may contain residues that are the subject of this exemption. Infants begin as early as four months of age to consume specific types of solid foods from plants that may contain residues that are the subject of this exemption. Subsequent to four months of age, apart from processing to facilitate swallowing, the diets of infants begin to be based on foods consumed by the general adult population albeit in different proportions. As infants and children mature, more and more of the foods normally consumed by adults become part of their diets and the relative proportions of the different types of food consumed changes to more closely resemble an adult diet. The substances that are the subject of this exemption occur in the normal diet. They have been consumed by infants and children over very long periods of time and currently are being consumed by infants and children. Exposure as part of a normal diet to these substances is highly unlikely to lead to harm to infants and children. As the diets of humans change from infancy through childhood and into adulthood, there is some possibility that the amount of the substances that are the subject of this exemption being consumed may change with those consuming the greatest amounts of food of plant origin receiving the highest exposure to substances that are the subject of this exemption. There is no evidence that such changes are likely to result in disproportionately high consumption of these residues in comparison to the general population. The evidence strongly suggests that consumption of foods containing the substances that are the subject of this exemption, including changes in exposure because of changes in the relative proportions of the different types of food consumed from infancy through childhood and into adulthood, is highly unlikely to lead to any harm.

ii. *Special susceptibility.* EPA considered available information on the potential for special susceptibility of infants and children, including prenatal and postnatal toxicity, to residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants. The substances that are the subject of this exemption occur in the normal diet, and there is no evidence that exposure to such residues, as components of food, present a different level of dietary risk for infants and children, in light of neurological differences between infants and children and adults, than they would present for the adult population.

iii. *Cumulative effects of residues with other substances with a common mechanism of toxicity.* EPA examined the available information on the cumulative effect of residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants as well as other substances in food that may have a common mechanism of toxicity with these residues. The Agency's consideration of the effects of the residues that are the subject of this exemption, and other substances that have a common mechanism of toxicity, in Unit IX.B.5. and Unit IX.B.6., included consideration of effects on infants and children.

iv. *Margin of safety.* In determining whether the residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants are safe, FFDCA section 408(b)(2)(C) directs EPA in the case of threshold effects to apply a tenfold margin of safety for the residues and other sources of exposure to infants and children to account for potential prenatal and postnatal toxicity and completeness of data effects with respect to exposure and toxicity to infants and children, unless a different margin will be safe (21 U.S.C. 346a(b)(2)(C)). For residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants, EPA has determined that a tenfold margin of safety is not necessary to protect infants and children. EPA reaches this determination based on valid, complete and reliable information. EPA based its assessment of exposure and toxicity upon the information base described in Unit IX.A. and Unit IX.B.1. (Refs. 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19) that arose through the long history of human consumption of food containing substances which are the subject of this exemption, and other animals that consume plants containing these substances, and other substances in food that may have a common mechanism of toxicity (Ref. 8). EPA also relied upon knowledge from the disciplines of plant genetics, plant physiology, phytopathology, microbial ecology, ecology, biochemistry (including the constituents of food) and plant breeding. Based on all of this information, EPA concludes that it is unlikely that consumption of food containing residues that are the subject of this exemption, including changes in exposure because of changes in the relative proportions of the different types of food consumed from infancy through childhood and into adulthood, would lead to any harm. Thus, EPA has concluded that consumption of food containing residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants is safe for infants and children, and that a margin of safety need not be applied for these residues in food.

11. *Analytical methods.* EPA has decided that there is no need to employ a practical method for detecting and measuring the levels of most of the substances in plants that might be used as plant-incorporated protectants and thus might be residues of plant-incorporated protectants derived through conventional breeding from sexually compatible plants. It is not anticipated that these substances would cause adverse effects. EPA has identified nine substances of plant origin that are found in plants that are part of the normal American diet and if present at high levels can present toxic effects. These are discussed in Unit IX.B.2. Practical methods exist for detecting and measuring the concentration of these substances in food (Ref. 22). EPA consulted with the Department of Health and Human Services (DHHS) in developing the proposed exemption and in issuing this final rule.

C. Determination of Safety for United States Population, and Infants and Children

Based on the information discussed in this document today and that discussed in the 1994 **Federal Register** documents and the supplemental documents and the associated record as described in Unit X., EPA concludes that there is a reasonable certainty that no harm will result to the United States population in general, and infants and children in the United States, from aggregate exposure to any residues of the pesticidal substance portion, or inert ingredients, of plant-incorporated protectants derived through conventional breeding from plants sexually compatible with the recipient plant, including all anticipated dietary exposures and all other exposures for which there is reliable information. This finding is based on extensive use and experience, and the large associated literature on epidemiological studies, nutritional assessments with human volunteers and animal model testing of foods from plant varieties developed by moving traits among plants in sexually compatible populations. This information shows that adverse effects due to aggregate exposure through the dietary, non-food oral, dermal and inhalation routes are highly unlikely for pesticidal substances, or inert ingredients, derived through

conventional breeding from plants sexually compatible with the recipient plant. And in the unlikely event such adverse effects do occur, EPA has implemented mechanisms to ensure that it will be notified, and that FDA will be able to seize the adulterated food; i.e., the adverse effects reporting requirement at 40 CFR 174.71 and the condition limiting this exemption at § 174.479.

X. Documents in the Official Record

As indicated in Unit I.B.2., the official record for this rule has been established under docket control number OPP–300368B, the public version of which is available for inspection as specified in Unit I.B.2.

A. References

The following books, articles and reports were used in preparing this final rule and were cited in this document by the number indicated:

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B. Additional Information

The complete official record for this rulemaking includes:

The docket identified by the docket control number OPP–300370 for the document entitled "Proposed Policy: Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act" (59 FR 60496, November 23, 1994) (FRL–4755–2).

The docket identified by the docket control number OPP–300369 for the document entitled "Plant-Pesticides Subject to the Federal Insecticide, Fungicide and Rodenticide Act; Proposed Rule" (59 FR 60519, November 23, 1994) (FRL–4755–3).

The docket identified by the docket control number OPP–300368 for the document entitled "Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act" (59 FR 60535, November 23, 1994) (FRL–4758–8).

The docket identified by the docket control number OPP–300371 for the document entitled "Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Nucleic Acids Produced in Plants" (59 FR 60542, November 23, 1994) (FRL–4755–5).

The docket identified by the docket control number OPP–300367 for the document entitled "Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Viral Coat Proteins Produced in Plants" (59 FR 60545, November 23, 1994) (FRL–4755–4).

The docket identified by the docket control number OPP–300370A for the document entitled "Plant-Pesticide Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act; Reopening of Comment Period" (61 FR 37891, July 22, 1996) (FRL–5387–4).

The docket identified by the docket control number OPP–300368A for the document entitled "Plant-Pesticides; Supplemental Notice of Proposed Rulemaking" (62 FR 27132, May 16, 1997) (FRL–5717–2).

The docket identified by the docket control number OPP–300371A for the document entitled "Plant-Pesticides; Nucleic Acids; Supplemental Notice of Proposed Rulemaking" (62 FR 27142, May 16, 1997) (FRL–5716–7).

The docket identified by the docket control number OPP–300367A for the document entitled "Plant-Pesticides; Viral Coat Proteins; Supplemental Notice of Proposed Rulemaking" (62 FR 27149, May 16, 1997) (FRL–5716–6).

The docket identified by the docket control number OPP–30069A for the document entitled "Plant-Pesticides, Supplemental Notice of Availability of Information" (64 FR 19958, April 23, 1999) (FRL–6077–6).

The docket identified by the docket control number OPP–300371B for the companion document entitled "Exemption from the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Residues of Nucleic Acids that are Part of Plant-Incorporated Protectants (Formerly Plant-Pesticides)" (FRL–6057–5) published elsewhere in this issue of the **Federal Register**.

The docket identified by the docket control number OPP–300369B for the document entitled "Regulations Under the Federal Insecticide, Fungicide, and Rodenticide Act for Plant-Incorporated Protectants (Formerly Plant-Pesticides)" (FRL–6057–7)published elsewhere in this issue of the **Federal Register**.

The docket identified by the docket control number OPP–300368B for this document (FRL–6057–6).

Also include in the complete official public record are:

1. Public comments submitted in response to the proposals and supplemental documents cited in this Unit X.B.

2. Reports of all meetings of the Biotechnology Science Advisory Committee and the FIFRA Science Advisory Panel pertaining to the development of this final rule.

3. The Economic Analysis (EA) for the final rule on FIFRA regulations for plant-incorporated protectants, and documents supporting the EA (Ref. 47).

4. Support documents and reports.

5. Records of all communications between EPA personnel and persons outside EPA pertaining to the final rule. (This does not include any inter-agency and intra-agency memoranda, unless specifically noted in the Indices of the dockets).

6. Published literature that is cited in this document.

7. The response to comments document pertaining to the development of this final rule (Ref. 2).

XI. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408 and does not impose any other regulatory requirements. As such, The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive

Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

This action does not impose any enforceable duty or contain any unfunded mandate, and will not otherwise significantly or uniquely affect small governments as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). This rule does not significantly or uniquely affect the communities of Indian trial governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), do not apply to this rule. Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001, revokes Executive Order 13084 as of that date. EPA developed this rulemaking, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. For the same reasons stated for Executive Order 13084, the requirements of Executive Order 13175 do not apply to this rule either. For the same reasons, this rule does not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). This rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The Agency's determination is based on the fact that an exemption from the requirement of a tolerance under FFDCA section 408, such as that contained in this rule, will not adversely affect any small businesses. Additional information about the Agency's determination may be found in the small entity impact analysis prepared as part of the economic analysis for the FIFRA rulemaking, which is available in the public version of the official record under OPP–300368B (Ref. 47). The Agency has also previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a general matter, that there is no adverse economic impact associated with these actions. See 46 FR 24950, May 4, 1981.

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

XII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Plants, Reporting and recordkeeping requirements.

Dated: July 12, 2001.

Christine T. Whitman,

Administrator.

Therefore, 40 CFR chapter I is amended as follows:

PART 174—[AMENDED]

1. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136–136y and 21 U.S.C. 346a and 371.

2. Section 174.479 is added to subpart W to read as follows:

§ 174.479 Pesticidal substance from sexually compatible plant; exemption from the requirement of a tolerance.

Residues of a pesticidal substance that is part of a plant-incorporated protectant from a sexually compatible plant are exempt from the requirement of a tolerance if all the following conditions are met:

(a) The genetic material that encodes for the pesticidal substance or leads to the production of the pesticidal substance is from a plant that is sexually compatible with the recipient food plant.

(b) The genetic material has never been derived from a source that is not sexually compatible with the recipient food plant.

(c) The residues of the pesticidal substance are not present in food from the plant at levels that are injurious or deleterious to human health.

[FR Doc. 01–17983 Filed 7–16–01; 11:42 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[OPP–300370B; FRL–6760–4]

RIN 2070–AC02

Plant-Incorporated Protectants (Formerly Plant-Pesticides), Supplemental Proposal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposal; notice of data availability.

SUMMARY: EPA solicits additional comment on the exemptions it proposed in 1994 for plant-incorporated protectants. Specifically, EPA solicits comment on two alternative regulatory approaches to plant-incorporated protectants derived from plants sexually compatible with the recipient plant that the Agency is considering in response to comments received on the 1994 proposal. EPA requests comment on the issues raised by commenters in response to EPA's 1994 proposed exemptions for plant-incorporated protectants derived from sexually compatible plants, as well as on any new issues presented by the proposed regulatory alternatives. The Agency is requesting comment on whether a distinction made on the basis of process is appropriate. EPA is also providing notice that it has placed the report issued by the National Academy of Sciences (NAS) entitled "Genetically Modified Plants: Science and Regulation" in the dockets for the rulemakings relating to certain proposals on plant-incorporated protectants under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). With this supplemental document, EPA has reopened the comment period for these particular 1994 proposals to allow the public an opportunity to comment on the information, analyses, and conclusions in the NAS report pertaining to plant-incorporated protectants that act primarily by affecting the plant or are based on viral coat proteins, as well as on specific questions posed by the Agency.

DATES: Comments, identified by docket control number OPP–300370B, must be received on or before August 20, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–300370B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip Hutton, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8260; e-mail address: hutton.phil&epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a person or company involved with agricultural biotechnology that may develop and market plant-incorporated protectants. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Pesticide manufacturers	32532	Establishments primarily engaged in the formulation and preparation of agricultural and household pest control chemicals
Seed companies	111	Establishments primarily engaged in growing crops, plants, vines, or trees and their seeds
Colleges, universities, and professional schools	611310	Establishments of higher learning which are engaged in development and marketing of plant-incorporated protectants
Establishments involved in research and development in the life sciences	54171	Establishments primarily engaged in conducting research in the physical, engineering, or life sciences, such as agriculture and biotechnology

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the provisions in 40 CFR part 174. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300370B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well

as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–300370B in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket&epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–300370B. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. Statutory Authority

Section 2(u) of FIFRA (7 U.S.C. 136 *et seq.*) defines "pesticide" as: "(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer . . . " (7 U.S.C. 136(u)). Under FIFRA section 2(t), the term "pest" includes "(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism" with certain exceptions (7 U.S.C. 136(t)).

The substances plants produce for protection against pests are pesticides under the FIFRA definition of pesticide, if humans intend to use these substances for "preventing, destroying, repelling or mitigating any pest," regardless of whether the pesticidal capability evolved in the plants, or were introduced through traditional breeding or through the techniques of modern genetic engineering (e.g., recombinant DNA (rDNA)). These substances, produced and used in living plants, along with the genetic material necessary to produce them, are called "plant-incorporated protectants" by EPA.

FIFRA section 3 provides, with certain limited exceptions, that no person may sell or distribute in the United States, any pesticide that is not registered under the Act (7 U.S.C. 136a (a)). Before a product may be registered as a pesticide under FIFRA, it must be shown that "when used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment" (7 U.S.C. 136a (c)(5)). A pesticide causes "unreasonable adverse effects on the environment" if it causes "(1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or (2) a human dietary risk from residues that result from use of a pesticide in or on any food inconsistent with the standard under section 408 of the Federal Food, Drug, and Cosmetic Act. . ." (7 U.S.C. 136(bb)).

EPA is authorized to promulgate regulations under section 3(a), "[t]o the extent necessary to prevent unreasonable adverse effects on the environment, [that] limit the distribution, sale, or use in any State of any pesticide that is not registered under this Act and that is not the subject of an experimental use permit under section 5 or an emergency exemption under section 18" (7 U.S.C. 136a(a)).

A person may, however, sell and distribute an unregistered pesticide if EPA exempts the pesticide pursuant to FIFRA section 25(b)(2). FIFRA section 25(b)(2) authorizes EPA to exempt, by regulation, any pesticide of a character that is unnecessary to be subject to FIFRA in order to carry out the purposes of the Act (7 U.S.C. 136w(b)(2)).

Section 408 of the FFDCA applies to all "pesticide chemical residues" which are defined as residues of either a "pesticide chemical" or "any other added substance that is present on or in a commodity or food primarily as a

result of the metabolism or other degradation of a pesticide chemical" (21 U.S.C. 321(q)(2)). The FFDCA defines "pesticide chemical" as: "any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, including all active and inert ingredients of such pesticide" (21 U.S.C. 321(q)(1)).

B. Other Federal Agencies

EPA is the Federal agency primarily responsible for the regulation of pesticides. In fulfilling this mission, EPA works closely with the U.S. Department of Agriculture (USDA) which has responsibilities under the Plant Protection Act (PPA), and the U.S. Food and Drug Administration (FDA) which has responsibilities under the FFDCA. EPA, USDA, and FDA consult and exchange information when such consultation is helpful in resolving safety questions. The three agencies also strive for consistency between programs following one of the basic tenets of the Coordinated Framework for Regulation of Biotechnology (51 FR 23302, June 26, 1986); i.e., that the agencies composing the Framework adopt consistent approaches, to the extent permitted by the respective statutory authorities. A consistent approach between agencies is easier for the regulated community to understand. It is also more likely to conserve resources as submitters would more likely be able to use data developed for one agency to meet requirements posed by another agency for the same or similar products.

1. *USDA.* USDA has authority to prevent the introduction and dissemination of plant pests under the PPA. Before introducing into the environment a plant that is regulated under either of these statutes, approval must be obtained from the USDA/Animal Plant Health Inspection Service (APHIS) unless the plant is exempt from USDA/APHIS regulation. The USDA regulations use genetic engineering as a criterion for determining the scope of its regulations (Refs. 1, 2, and 3).

EPA recognizes that there is a potential for duplicative oversight with respect to certain issues that may arise in plant-incorporated protectant decisions. For example, some of the plant-incorporated protectants not exempted by EPA are also subject to APHIS/USDA requirements under the PPA. The potential for most plants containing plant-incorporated protectants to pose weediness concerns is directly considered by USDA/APHIS under PPA. In its reviews of Petitions for Determination of Nonregulated Status under regulations at 7 CFR part 340, the potential for weediness, for displacement of native species, and potential consequences of gene transfer are evaluated by USDA/APHIS. EPA and USDA/APHIS will continue to consult and collaborate when reviews of any plant-incorporated protectant indicates reason for concern over any of these issues. Weediness is generally thought to be due to a multiplicity of factors. The Agencies will work to coordinate their analyses of these factors in accordance with their respective expertise and jurisdiction. EPA's focus in considering these issues is on the statutory determination on unreasonable adverse effects the Agency must make with respect to pesticides, rather than on the engineered plant itself. In particular, these plant-related issues may potentially impact use patterns of pesticides, which are of relevance to the Agency. EPA and USDA/APHIS will work together to avoid potential duplication and inconsistencies.

2. *FDA.* FDA is the primary U.S. agency responsible for ensuring the safety of commercial food and food additives. FDA's authority under FFDCA extends to any nonpesticidal substance that may be introduced into a new plant variety and that is expected to become a component of food. Pursuant to FFDCA and the reorganization that created EPA, pesticides as defined by FIFRA are subject to EPA's regulatory authority under FFDCA. Recently, FDA announced its intent to propose a pre-market notification scheme for foods derived from plants modified through the use of modern biotechnology.

III. Proposed Alternative Regulatory Approaches to Plant-Incorporated Protectants Derived Through Genetic Engineering from Sexually Compatible Plants

In this Unit, EPA describes the two alternative regulatory approaches the Agency is considering to address the issues raised in comment for this class of plant-incorporated protectants. EPA solicits public comment on any new issues presented by the proposed regulatory alternatives as well as on the issues raised in comment on the 1994 proposal. The Agency intends to consider public comments and make final determinations to complete these other rulemakings within 9 to 12 months after the close of the comment period for the supplemental proposal, which is currently set at 30 days. Until the Agency takes a final action on these other exemptions, the Agency intends to maintain its current practices on regulation of plant-incorporated protectants.

A. History

The plant-incorporated protectants that a plant population has evolved, and thus naturally possesses, can be varied, including, for example, structural characteristics of the plant, the production of general metabolites that have toxic properties, biochemical cascades resulting in localized necrosis of plant tissue, or the production of specific toxic substances in response to pest attack. The plant-incorporated protectants that characterize a particular plant population can be shared among the members of the population by the process of sexual hybridization. There is a large base of human experience in selective breeding of plants within sexually compatible populations using conventional hybridization techniques. There is much experience growing such plants, and preparing and consuming food from plants in such populations. Based on this experience and the information base generated through scientific study of such plants and their constituents, and on knowledge in plant genetics, plant physiology, phytopathology, microbial ecology, ecology, plant breeding and biochemistry, EPA proposed in 1994 to exempt plant-incorporated protectants that plants normally possess and are moved between closely related plants. EPA's preferred approach to describing for regulatory purposes this category of plant-incorporated protectants used the criterion of sexual compatibility, including hybridization achieved by wide and bridging crosses.

1. *1994 Proposal.* Plants that are sexually compatible form viable zygotes through the fusion of gametes in sexual hybridization. In the **Federal Register** of November 23, 1994 (59 FR 60519), EPA proposed that plant-pesticides (now plant-incorporated protectants) would be exempt from all FIFRA requirements, except for an adverse effects reporting requirement, if the genetic material that leads to the production of the pesticidal substance is derived from plants that are sexually compatible with the recipient plant and has never been derived from a source that is not sexually compatible with the recipient plant. EPA proposed in 1994 that this exemption for "sexually compatible" plant-incorporated protectants would apply regardless of how a plant-incorporated protectant came to be in the plant; e.g., whether they evolved naturally in the plant, or were introduced through traditional breeding or the techniques of genetic engineering, as long as the donor and recipient plant are sexually compatible. EPA's proposal to exempt plant-incorporated protectants from

sexually compatible plants subsumed plant-incorporated protectants in plants propagated vegetatively. In 1994, EPA also published companion proposals under section 408 of the FFDCA that would exempt all residues of plant-incorporated protectants derived from plants sexually compatible with the recipient plant (59 FR 60535, 60542). EPA caveated the 1994 proposals by noting that the Agency did not intend to exempt a plant-incorporated protectant that has been modified so that it is significantly different functionally from the plant-incorporated protectant as it occurs in the source organism (59 FR at 60524). In 1994, EPA also offered for comment two alternative proposed approaches based in whole or in part on taxonomy. All three of these approaches were based on the premise that closely related plants, whether described by sexual compatibility or taxonomy, were unlikely to present novel exposures.

In the 1994 proposals, sexually compatible, when referring to plants, was described as capable of forming a viable zygote through the fusion of two gametes including the use of bridging or wide crosses between plants. Basically this described the traditional breeding techniques of controlled pollination among plants expressing desired traits, seed collection and selection of the resulting progeny for enhanced combinations.

In the 1994 proposals, "bridging crosses between plants" were defined as the utilization of an intermediate plant in a cross to produce a viable zygote between the intermediate plant and a first plant, in order to cross the plant resulting from that zygote with a third plant that would not otherwise be able to produce viable zygotes from the fusion of its gametes with those of the first plant. The result of the bridging cross is the mixing of genetic material of the first and third plant through the formation of an intermediate zygote. In the 1994 proposal, "wide crosses between plants" would be to facilitate the formation of viable zygotes through the use of surgical alteration of the plant pistil, bud pollination, mentor pollen, immunosuppressants, *in vitro* fertilization, pre- and post-pollination hormone treatments, manipulation of chromosome numbers, embryo culture, or ovary and ovule cultures, or any other technique that the Administrator determines meets this definition.

The Agency also requested in the 1994 **Federal Register**, comment on an exemption criterion based on the process (e.g., rDNA) used to introduce the plant-incorporated protectant into a plant (50 FR at 60514 and 60530). In this approach, plant-incorporated protectants developed through techniques other than those of modern genetic engineering (e.g., rDNA) would be exempted, i.e., those developed through conventional plant breeding would be exempted. Categories of those plant-incorporated protectants that were not exempted could subsequently be considered for exemption on the basis of risk potential. The FIFRA Scientific Advisory Panel (SAP) and the Biotechnology Science Advisory Committee at a joint meeting on January 21, 1994, considered the utility of such an approach, and supported use of a criterion based on rDNA methodologies, based on: the success of the National Institutes of Health Guidelines for Research Involving Recombinant DNA Molecules (e.g., see 59 FR 34496, July 5, 1994); uncertainties about how a gene will function in the new genetic background; and to build public confidence in the products of genetic engineering. The joint meeting report also recommended that further exemptions . . .should be used in conjunction with the criterion based on methodology. The SAP specifically recommended that "[f]or example, when rDNA methodologies are used to exchange genes between sexually compatible crop plants, the products would be exempt from additional regulation" (Ref. 4 at 10).

2. *Public comments.* In response to its November 23, 1994 **Federal Register** request for comment on the proposal to exempt plant-incorporated protectants derived from plants sexually compatible with the recipient plant (59 FR at 60533), EPA received 52 comments addressing the issue of scope of exemption. These comments presented a broad range of views. Twenty-seven comments discussed the merits of EPA's 1994 preferred approach; i.e., the exemption proposal based on sexual compatibility between the donor and recipient plants. The majority of these comments favored such an approach, although some commenters favored EPA's alternative proposed approach based in part on taxonomy (Option 3). Others among the 27 comments expressed reservation about the rationale underlying the preferred and alternative approaches, i.e., relatedness among plants being equated to potential for novel exposures. For example, one comment stated that while superficially attractive, EPA's preferred approach was flawed in that it did not consider nontarget exposure by the introduction of a plant into an ecosystem in which it did not evolve.

EPA also received 35 comments on the propriety of relying on the process by which the genetic material is introduced into the plant as a criterion for defining the scope of EPA's regulatory oversight. Twenty of these comments supported an approach based on process, i.e., that those plant-incorporated protectants introduced by rDNA would be regulated, while conventional breeding would be exempt. These comments urged the Agency not to exempt plant-incorporated protectants introduced into the recipient plant by the processes of genetic engineering, regardless of whether they were derived from plants sexually compatible with the recipient plant. The comments focused on a common concern, which can be represented by the following excerpt:

> Genetic engineering (particularly recombinant DNA [rDNA] methodologies), represents a fundamental technical advance over traditional plant breeding in the ability to manipulate plants genetically. . . . given the fact that rDNA technologies represent such a fundamental technical advance over plant breeding, and given that plant-pesticides are by their very nature toxic substances, all plant-pesticides produced via rDNA methodologies should undergo some form of review under both FIFRA and FFDCA. . . (Ref. 5).

3. *Current status.* In companion documents published elsewhere today in this issue of the **Federal Register**, EPA exempts plant-incorporated protectants derived through conventional breeding from sexually compatible plants. In that document, EPA describes conventional breeding as the creation of progeny through either: The union of gametes, i.e., syngamy, brought together through processes such as pollination, including bridging crosses between plants and wide crosses; or vegetative reproduction. Conventional breeding does not include use of the techniques of genetic engineering. It does not include use of: Recombinant DNA; other techniques wherein the genetic material is extracted from an organism and introduced into the genome of the recipient plant through, for example, micro-injection, macro-injection, micro-encapsulation; or cell fusion.

In this supplemental document, EPA specifically requests comment on two proposed alternative regulatory approaches for plant-incorporated protectants derived through genetic engineering (e.g., rDNA) from plants sexually compatible with the recipient plant.

B. Description of Alternative Proposals

Under the first alternative, all plant-incorporated protectants derived from plants sexually compatible with the recipient plant would be exempt

regardless of the technique used to introduce the plant-incorporated protectant into the plant. Under the second alternative, EPA would establish a notification process that would implement a screening procedure to determine whether a plant-incorporated protectant derived through genetic engineering from a plant sexually compatible with the recipient plant qualified for exemption.

1. *Exemption of all plant-incorporated protectants derived from plants sexually compatible with recipient plant.* EPA will review comment on this supplemental proposal, and reevaluate risk in light of recent information and the comments. If EPA concludes that all plant-incorporated protectants derived from plants sexually compatible with the recipient plant meet the criteria for an exemption from all FIFRA requirements, except for the adverse effects reporting requirement at 40 CFR 174.71, and the requirements of a tolerance under section 408 of the FFDCA for the residues of such plant-incorporated protectants, the following language would be substituted in the regulatory text at 40 CFR part 174.

i. *FIFRA.* The following language would be substituted at 40 CFR 174.25:

§ 174.25 Plant-incorporated protectant from sexually compatible plant.

A plant-incorporated protectant is exempt if all of the following conditions are met:

(a) The genetic material that encodes the pesticidal substance or leads to the production of the pesticidal substance is derived from a plant that is sexually compatible with the recipient plant.

(b) The genetic material that encodes the pesticidal substance or leads to the production of the pesticidal substance has never been derived from a source that is not sexually compatible with the recipient plant.

(c) The active ingredient has not been functionally modified from the source.

Sexually compatible, when referring to plants, would mean capable of forming a viable zygote through the union of two gametes, including the use of bridging crosses or wide crosses between plants. Sexually compatible would include the recombination that occurs in hybridization between sexually compatible plants, e.g., the formation of a viable zygote by the pollination of one corn plant with another. It would also include plant-incorporated protectants that normally occur in the plant, when such plants are propagated vegetatively, e.g., banana.

Functionally modified from the source, when referring to plant-incorporated protectants only, would mean the genetic material that encodes a pesticidal substance or leads to the production of a pesticidal substance, has been modified in such a way that the pesticidal substance produced from the genetic material in the recipient plant is functionally different than the pesticidal substance produced in the source. In the 1994 proposal (59 FR at 60524), EPA explained that in proposing the exemptions the Agency did not intend to exempt plant-incorporated protectants that are significantly different in function from the plant-incorporated protectant as it occurs in the source. EPA believes this limitation would be appropriate because rearrangements or modifications of the genetic sequence encoding a pesticidal substance could, for example, result in a plant-incorporated protectant with significantly different functions from the function in the source plant. For example, if the pesticidal substance is an enzyme, it could be modified so that it acts on a different substrate in the recipient plant than it did in the source plant (Refs. 6 and 7). Such a significantly modified plant-incorporated protectant would not be eligible for the exemption because it would not present risks similar to the substance prior to modification, nor would the base of experience on which EPA relies for support of the exemption necessarily be relevant. If the genetic material encoding the pesticidal substance has been modified in such a way that the pesticidal substance functions differently in the recipient plant than it did in the source plant, the analysis performed to determine that the plant-incorporated protectant poses a low probability of risk to the environment and is not likely to cause unreasonable adverse effects to the environment even in the absence of regulatory oversight under FIFRA, would not apply. EPA does not intend that the concept of functionally modified from the source would apply to modifications, in the sequence of the genetic material portion of the plant-incorporated protectant, that may be needed to achieve correct expression, but which have no significant effect on the specificity or function of the pesticidal substance.

In order to clearly indicate in the regulatory text that significantly modified plant-incorporated protectants would not be covered by this exemption, EPA would include a statement that the exemption does not apply to a plant-incorporated protectant that has been functionally modified from the source, and a definition of functionally modified from the source at § 174.3 as follows:

Functionally modified from the source, when referring to plant-incorporated protectants only, means the genetic material that encodes a pesticidal substance or leads to the production of a pesticidal substance has been modified in such a way that the pesticidal substance produced from the genetic material in the recipient plant is functionally different than the pesticidal substance produced in the source.

The definition of "bridging crosses between plants" would continue to read as follows:

Bridging crosses between plants means the utilization of an intermediate plant in a cross to produce a viable zygote between the intermediate plant and a first plant, in order to cross the plant resulting from that zygote with a third plant that would not otherwise be able to produce viable zygotes from the fusion of its gametes with those of the first plant. The result of the bridging cross is the mixing of genetic material of the first and third plant through the formation of an intermediate zygote.

EPA is also considering whether to modify the definition of "wide cross" by including "protoplast fusion." In part, this will depend on the comment received in response to this proposal (see Unit III.D.6.), and on whether EPA receives information demonstrating that novel exposures would be unlikely even with such an expanded definition.

"Genetic material that encodes for a pesticidal substance" or leads to the production of a pesticidal substance does not include regulatory regions or noncoding, nonexpressed nucleiotide sequences.

ii. *FFDCA section 408.* To exempt all residues of the pesticidal substance portion of plant-incorporated protectants derived from plants sexually compatible with the recipient plant, regardless of the method by which the plant-incorporated protectant is introduced into the plant, EPA would substitute the following language at 40 CFR 174.479:

§ 174.479 Pesticidal substance from sexually compatible plant; exemption from the requirement of a tolerance.

Residues of a pesticidal substance that is part of a plant-incorporated protectant derived from a sexually compatible plant are exempt from the requirement of a tolerance if all the following conditions are met:

(a) The genetic material that encodes for the pesticidal substance or leads to the production of the pesticidal substance is derived from a plant that is sexually compatible with the recipient food plant.

(b) The genetic material that encodes for the pesticidal substance or leads to the production of the pesticidal substance has never been derived from a source that is not sexually compatible with the recipient plant.

(c) The active ingredient has not been functionally modified from the source.

(d) The residues of the pesticidal substance are not present in food from the plant at levels that are injurious or deleterious to human health.

2. *Case-by-case review of eligibility for exemption through notification process.* EPA also requests comment on a notification process that would implement a screening procedure for plant-incorporated protectants derived through genetic engineering from plants sexually compatible with the recipient plant.

Under this alternative to registration, as part of the final rule EPA would establish criteria to determine whether a plant-incorporated protectant derived through genetic engineering from plants sexually compatible with the recipient plant is "substantially equivalent" to a plant-incorporated protectant that could have been derived through conventional breeding from plants sexually compatible with the recipient plant. Anyone intending to sell or distribute a plant-incorporated protectant could submit a notification to EPA seeking a determination that a plant-incorporated protectant qualified for this exemption, accompanied by an analysis demonstrating that the plant-incorporated protectant derived through genetic engineering from plants sexually compatible with the recipient plant is substantially equivalent to a plant-incorporated protectant derived through conventional breeding from sexually compatible plants. The Agency would review the submission and evaluate it against the regulatory criteria to determine whether the plant-incorporated protectant met the criteria for an exemption. At the end of this process, the submitter would receive a letter describing EPA's conclusion. If EPA determines that the plant-incorporated protectant met the criteria, it would be exempt from further regulation under FIFRA, except for the adverse effects reporting requirement at 40 CFR 174.71. However, if EPA determines that the plant-incorporated protectant is not substantially equivalent to a plant-incorporated protectant derived through conventional breeding from sexually compatible plants, a registration would be required prior to its sale or distribution, as well as, if residues of the plant-incorporated protectant are in or on food or feed, a tolerance exemption.

This proposed alternative would be an intermediate measure between exemption of the plant-incorporated protectant and registration, and would ensure that those plant-incorporated protectants derived through genetic engineering from plants sexually compatible with the recipient plant are as safe as those derived through conventional breeding. It would allow the Agency to conduct a case-by-case review of these products to address those endpoints with which the commenters expressed the greatest concern over the strength of the Agency's factual basis for exempting the group as a whole. This notification procedure would, however, impose a lower degree of oversight than the standard requirements of pesticide registration. For example, such "substantially equivalent" plant-incorporated protectants would only be subject to the adverse effects reporting requirements at 40 CFR 174.71; unlike registered pesticides, manufacturers would not be required to obtain establishment numbers or submit section 7 production reports. Moreover, the plant-incorporated protectants would not be required to bear FIFRA labels. Nor would the Agency envision requiring the submission of the standard battery of toxicity testing currently required under 40 CFR part 158; rather, only data relevant to a determination of substantial equivalence would be required to be submitted.

Any person who sells or distributes in commerce a plant-incorporated protectant derived through genetic engineering without having obtained either a determination of equivalence or a registration would violate FIFRA section 12(a)(1)(A). Products sold or distributed in commerce in violation of section 12 are subject to seizure, pursuant to FIFRA section 13. In addition, any person selling or distributing such products are subject to the penalties provided in FIFRA section 14.

This option would only exempt a plant-incorporated protectant from the registration requirements under FIFRA. If the plant-incorporated protectant was intended to be used in a food plant, resulting in pesticide chemical residues, a tolerance exemption would need to be established, prior to the introduction of the food in commerce. Without a tolerance exemption, any food bearing residues of the plant-incorporated protectant would be adulterated, pursuant to section 402(a)(2)(B) of FFDCA, and subject to seizure by FDA. An application for an exemption from the tolerance requirement could be submitted concomitantly with the submission for exemption from FIFRA registration requirements.

i. *Criteria for determining substantial equivalence.* Currently, EPA believes that the following considerations could be developed into criteria relevant to determining whether a plant-incorporated protectant is substantially equivalent to a plant-incorporated protectant that could have been derived through conventional breeding from sexually compatible plants.

a. The source of the gene of interest is a plant sexually compatible with the recipient plant, and the active ingredient has not been functionally modified from the source.

b. Any pesticidal substance is not present at deleterious or injurious levels.

c. The plant-incorporated protectant has the same tissue expression pattern, including levels of expression, observed in varieties of the recipient plant currently in widespread agricultural use or consumed by the U.S. population.

d. Any inert ingredient is on the list of approved inert ingredients at subpart X of 40 CFR part 174.

Prior to adopting criteria in any final rule, EPA would seek the advice of its SAP on criteria appropriate for evaluating whether a plant-incorporated protectant derived through genetic engineering from plants sexually compatible with the recipient plant is substantially equivalent to a plant-incorporated protectant that could have been derived through conventional breeding from sexually compatible plants.

ii. *Where to submit notification.* By mail, written notifications would be submitted to: Document Processing Desk (7504C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person, deliver requests to: Environmental Protection Agency, Crystal Mall #2, Room 258, Document Processing Desk, 1921 Jefferson Davis Hwy., Arlington, VA. In order to expedite processing, the request must be marked "Attention: Plant-Incorporated Protectant Notification Review."

iii. *Contents of notification.* The notification could include, for example:

a. Name and address of requester and name, address, e-mail address, and telephone number of a person who may be contacted for further information.

b. Data or information relating to a determination that the specific plant-incorporated protectant and any inert ingredient(s) are substantially equivalent to a plant-incorporated protectant derived through conventional breeding from sexually compatible plants. Such information could include:

- A detailed description of the introduced genetic material, including certification that the organism(s) that is the source of the genetic material encoding the pesticidal substance is a plant that is sexually compatible with the recipient plant.
- The source of any selectable markers.
- The product(s) of the genetic material, and whether and how the

products (both active and inert ingredients) are expected to affect the behavior of the recipient plant.

• Information on all regulatory sequences including those affecting specificity of tissue expression and information on the level of expression of the structural genes.

• Stability of the introduced genetic material.

c. Any other information the requester might consider relevant.

iv. *CBI.* To assert a claim of confidentiality, the requester would have to comply with the applicable procedures in 40 CFR 174.9. Section 174.9(a) states that failure to assert a claim of confidentiality at the time the information is submitted to EPA will be considered a waiver of confidentiality for the information submitted, and the information may be made available to the public, subject to section 10(g) of FIFRA, with no further notice to the submitter.

v. *EPA review.* EPA would review and evaluate notifications as expeditiously as possible. If the request received by EPA is complete (e.g., no additional information is required by EPA or submitted by the requester as supplemental information, or no amendment to the request made), EPA would complete its evaluation in between 150 and 180 days of receipt of the request. EPA may require additional information from the submitter in order to assess the equivalence of the plant-incorporated protectant derived through genetic engineering to a plant-incorporated protectant derived through conventional breeding from sexually compatible plants. Should EPA require additional information or the requestor submit supplemental information, more than 150 to 180 days may be required to complete the assessment. At the conclusion of the review, EPA will supply a letter to the submitter describing the Agency's evaluation and determination.

The submitter may supplement, amend, or withdraw his or her notification in writing, without EPA approval, at any time prior to EPA's determination. The withdrawal of a request shall be without prejudice to the resubmission of the notification at a later date.

C. Request for Comment on Proposed Alternative Regulatory Approaches

EPA requests comment on the following issues for the proposed alternatives described in Unit III.B. EPA requests that respondents comment on the proposed alternative proposals, and include consideration of the issues described in Unit III.D. in their comments on Unit III.C.

1. *Distinction between proposed approaches.* The two proposed regulatory alternatives distinguish between plant-incorporated protectants on the basis of the process by which the plant-incorporated protectant has been introduced into the plant. EPA requests comment on whether a distinction based on the process of genetic modification is justified in light of the state of the science, including the specific questions and risk concerns raised by the comments received in response to the Agency's 1994 proposal, and briefly described in Unit III.D.

Given the issues described in Unit III.D. with respect to plant-incorporated protectants derived through genetic engineering from plants sexually compatible with the recipient plant, are such products sufficiently analogous to plant-incorporated protectants derived from conventional breeding that the Agency can rely on the factual basis, described in companion documents published elsewhere in this issue of the **Federal Register** for plant-incorporated protectants derived through conventional breeding, to support the exemption in the proposed regulatory alternative described in Unit III.B.1.

2. *Notification process.* EPA requests comment on the utility of a notification process for determining whether a plant-incorporated protectant derived through genetic engineering from plants sexually compatible with the recipient plant is equivalent to a plant-incorporated protectant derived through conventional breeding from sexually compatible plants. EPA is particularly interested in comments addressing whether this level of regulatory oversight is necessary to address the potential risks from plant-incorporated protectants derived through genetic engineering from plants sexually compatible with the recipient plant, and whether this level of oversight would adequately address the safety questions surrounding these products. Can the factual basis, described in companion documents published elsewhere in this issue of the **Federal Register** for plant-incorporated protectants derived through conventional breeding, be used on a case-by-case basis to support exemption in the proposed regulatory alternative described in Unit III.B.2.

EPA requests comment on the criteria described in Unit III.B.2.i. for evaluating "substantial equivalence." For example, EPA requests comment on whether reliance on plants currently in widespread agricultural use, or consumed by the U.S. population is an appropriate standard, or whether it would be more appropriate to compare the resulting plant-incorporated protectant to its parental organisms. The Agency would welcome any information or data that might be of assistance in developing proposed criteria for use in its potential notification process. EPA would particularly welcome comment on whether the criteria described in Unit III.B.2.i., would capture all of the potential pleiotropic effects of concern with respect to this subgroup of plant-incorporated protectants. In light of the fact that FDA is proposing to review all genetically engineered foods for possible effects resulting from the point of insertion, EPA requests comment on whether there is any need for EPA to also examine this endpoint. The Agency is concerned that the final criteria not prevent it from examining all possible parameters of interest, but also recognizes the need for determinate criteria for this option to function effectively.

EPA requests comment on whether the potential information needs described in Unit III.B.2.iii. are adequate for demonstrating substantial equivalence with plant-incorporated protectants derived through conventional breeding from sexually compatible plants. EPA solicits comment on whether there are any additional types of information that might be useful for demonstrating substantial equivalence.

3. *Variant of notification process for broader group of plant-incorporated protectants.* Some components in plants are widely distributed across the plant kingdom and thus may be found in many plant populations, some of which are not sexually compatible with each other. EPA requests comment on whether a notification process similar to one described in Unit III.B.2. could be developed for plant-incorporated protectants from outside the gene pool of the recipient plant, but nonetheless equivalent to those that evolved within the gene pool of the recipient plant.

EPA notes that to develop a notification process for such plant-incorporated protectants, EPA must first develop criteria to describe such plant-incorporated protectants. EPA would seek the advice of its SAP in developing proposed criteria. Some of the factors EPA might ask the SAP to consider in developing criteria for proteinaceous substances include amino acid sequence homology, post-translational processing, structure, stability, receptor/ligand specificity, substrate specificity and equivalence of reaction products. For non-proteinaceous plant-incorporated protectants, the chemical composition

and structure of the introduced plant-incorporated protectant could be compared with the plant-incorporated protectants that are normally components of the recipient plant. This information on composition and structure could then be related to the function of the introduced plant-incorporated protectant. Other factors that might also be considered in this determination include:

i. When during the plant's life cycle the pesticidal substance is produced.

ii. In which part of the plant (e.g., leaves, roots, fruit) the pesticidal substance is produced.

iii. The levels at which it is produced.

EPA would welcome any information or data that might be of assistance in developing proposed criteria for use in this variant of a potential notification process.

D. Request for Comment on Risk Issues

Several risk issues have been raised for plant-incorporated protectants derived through genetic engineering from plants sexually compatible with the recipient plant. EPA requests comment on these issues, described in this unit, in the context of the two proposed alternative regulatory approaches described in Unit III.B.

1. *Levels of toxicants*? Some comments described toxic substances naturally occurring in plants in sexually compatible populations, and expressed concern that EPA's 1994 proposal to exempt all plant-incorporated protectants derived from sexually compatible plants did not include consideration of the potential for risk associated with increases in levels of such substances. These comments implied that such increases are more likely to occur with plant-incorporated protectants derived through genetic engineering from sexually compatible plants. One commenter stated, for example, that use of "artificial regulators (regardless of source) may allow genes to escape natural dampening mechanisms and to be produced at extremely high levels not found in naturally occurring or traditionally bred plants. Artificial promotors may also result in toxins being produced in tissues where they are not ordinarily produced, or in some cases in every cell of the plant" (Ref. 8). Another commenter stated that "EPA appears to be ignoring a basic axiom of toxicology, e.g., the dose makes the poison" (Ref. 5).

In a companion document published elsewhere in this issue of the **Federal Register**, EPA, recognizing that increases in levels of toxicants can occur in conventional breeding as well as in varieties developed through genetic engineering, imposed a condition on the exemption at 40 CFR 174.479 to address this concern. In order to allow EPA and FDA to act expeditiously, should a rare instance of levels high enough to render food injurious or deleterious occur, residues of the pesticidal substances derived through conventional breeding from sexually compatible plants qualify for exemption from the tolerance requirement only if the "residues of the pesticidal substance are not present in food from the plant at levels that are injurious or deleterious to human health."

EPA requests comment on whether, in the context of food and FFDCA section 408 requirements, such a limitation is sufficient to address the same concern for residues of pesticidal substances derived through genetic engineering from plants sexually compatible with the recipient plant, should EPA exempt this later subgroup, as described in Unit III.B.1.

EPA also requests comment on whether, in the context of FIFRA requirements, this condition would be sufficient to address the concerns that have been raised with respect to potential effects on nontarget organisms for plant-incorporated protectants derived through genetic engineering from plants sexually compatible with the recipient plant.

EPA requests comment on whether such a limitation is meaningful for those plant-incorporated protectants not in plants used for food or feed (e.g., trees), given that deleterious or injurious substances in such semi-managed plants naturally tend to greater ranges of expression than seen in crop plants, including higher ranges of expression (Ref. 9).

Commenters also discussed the potential for changes in promotors or other regulatory elements to affect tissue specific expression of toxicants, i.e., where previously a toxicant was expressed only in trace amounts in the edible part of the plant, a new promotor might result in high levels of expression in the edible part. EPA requests comment on whether such events are more likely to occur with plants-incorporated protectants derived through genetic engineering than with those derived through conventional breeding from sexually compatible plants. EPA also requests comment on whether the condition placed on the tolerance exemption at 40 CFR 174.479, that the "residues of the pesticidal substance are not present in food from the plant at levels that are injurious or deleterious to human health" are adequate to address this concern for plant-incorporated protectants derived through genetic engineering from plants sexually compatible with the recipient plant in the context of FFDCA section 408. Is this condition sufficient to address the concern for FIFRA?

2. *Potential for production of a novel toxicant*? In developing the final rule published elsewhere in this issue of the **Federal Register** in companion documents, EPA also considered the possibility that expression of a transgenic protein could result in the plant producing a toxicant not observed in either of the parent species. An example of this would be the case of somatic hybrids between *Solanum brevidans* and *S. tuberosum* producing the toxicant, demissine, not found in either parental line. *Laurila et al.* (Ref. 10) advanced the hypothesis that the hydrogenase enzyme of *S. brevidans* produced the toxicant by hydrogenating solanine, a compound that is found in *S. tuberosum* but not in *S. brevidans*. Portions of the metabolic pathways necessary to produce this substance apparently existed in the parental species, and the mingling of the genetic material resulted in a complete pathway for production of demissine. This example suggests that novel metabolic pathways could be created in a plant through the introduction of a single gene, should other components of the pathway already be present in the plant. EPA requests comment on whether there is any difference in the probability of this occurring in plants in sexually compatible populations into which the plant-incorporated protectant was introduced by genetic engineering as compared to conventional breeding.

3. *Consequences of transfer of ability to produce higher levels of a plant-incorporated protectant to wild or weedy relatives?* EPA also received comments on the potential for a food crop or other commercial plant engineered to produce unusually high levels of a plant-incorporated protectants to "interbreed with a wild, weedy relative which in turn would become very resistant to certain insect pests. The wild relative, now free from certain pest damage, could increase in number and either become a much worse pest itself or disrupt an ecosystem. . ." (Ref. 5). Gene flow from crop plants to wild relatives has been observed in plants developed through conventional breeding in sexually compatible populations (Refs. 11 and 12). It has not yet been established whether gene flow into feral populations, from either genetic engineered or conventionally bred plants, can endow wild relative

populations with a selective advantage that might enhance their potential for weediness.

Given that wild relatives of crop plants are likely to already possess traits similar to those in related crop plants, and express these traits at a higher range of levels than crop plants, what is the probability that outcrossing of the ability to express such traits at high levels from crop plants to wild or weedy relatives, would give the wild relatives a competitive advantage?

EPA also requests comment on whether this phenomenon could result in significantly different consequences when comparing gene flow between plant-incorporated protectants derived through genetic engineering from sexually compatible plants as compared to plant-incorporated protectants derived through conventional breeding from sexually compatible plants.

4. *Does use of antibiotic or herbicide resistance or other selectable markers present risk?* Because genetic engineering techniques are so precise, a gene can be excised from the source organism without unwanted, extraneous genetic material. The precise gene can then be introduced into the recipient organism. However, there can be other genetic information on the construct used to introduce the desired gene, and although this genetic information may also be precise, it may not be part of the gene pool of the recipient plant, e.g., genes for herbicide resistance used as a selectable marker. In a companion document published elsewhere in this issue of the **Federal Register**, EPA describes its determination that the Agency will adopt the definition of inert ingredient it proposed in 1994. An inert ingredient for plant-incorporated protectants is "any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient." In that same companion document, EPA also describes the qualification that a plant-incorporated protectant can only be exempt if the inert ingredient(s) used with an exempt active ingredient is on the list of approved inert ingredients at subpart X of 40 CFR part 174.

EPA anticipates that a plant-incorporated protectant qualifying for exemption under the proposed regulatory alternative described in Unit III.B.1. would be composed of an active ingredient derived through genetic engineering from a plant sexually compatible with the recipient plant and an ingredient on the approved list at subpart X of 40 CFR part 174. In light of this assumption, and given that the inserted structural gene of interest (for EPA's purposes, the gene encoding the pesticidal substance) is taken from the same gene pool in which it normally exists, EPA requests comment on whether, even if the structural gene of interest in the inert ingredient is derived from a source not sexually compatible with the recipient plant, the plant-incorporated protectant can still be considered to be "substantially equivalent" to a plant-incorporated protectant that could have been derived through conventional breeding. Specifically, EPA requests comment on whether the risks associated with such plant-incorporated protectants derived through genetic engineering are any greater that the risks associated with plant-incorporated protectants derived through conventional breeding.

5. *Should protoplast fusion be included in the definition of wide cross?* EPA requests comment on whether protoplast fusion should be added to the definition of wide crosses. In the official comment period for the November 23, 1994 **Federal Register**, EPA received one comment that suggested protoplast fusion should be included among the techniques listed in the definition of wide crosses between plants. A protoplast is made in the laboratory through the removal of the cell walls of somatic cells. A somatic cell is a type of cell that forms plant vegetative tissues and organs and is distinguished from a germ cell which undergoes meiosis to produce reproductive tissues (e.g., pollen and egg cells). In the technique of protoplast fusion, protoplasts from two different plants are fused together, producing a hybrid somatic cell with a genetic makeup resulting from the combination and sorting of the two plant genomes. The hybrid somatic cell is grown on specialized media into a mature plant. In support of the request, the commenter argued that the hybridization of somatic cells (i.e., protoplast fusion) has a history of use to artificially induce sexual compatibility. For the most part, the more closely related the plants donating the protoplasts used for the fusion, the more likely a viable hybrid will be obtained. Currently, in a companion document published elsewhere in this issue of the **Federal Register**, EPA specifically excludes cell fusion from the definition of conventional breeding, with cell fusion defined as "the fusion *in vitro* of two or more cells or protoplasts."

EPA requests comment on whether protoplast (or cell) fusion, or alternatively, some subgroup of fusions (e.g., intraspecific or intrageneric), should be included in the definition of wide crosses in light of the following dietary and environmental considerations. First, in the example provided in Unit III.D.2. describing the potential for creation of new toxicants, dimissine arose through the fusion of protoplasts of *S. tuberosum* and *S. brevidans*. Second, the FDA in its 1992 "Statement of Policy: Foods Derived from New Plant Varieties" (57 FR 22984, May 29, 1992) expresses a concern that protoplast fusion might confer on food from the host plant the allergenic properties of food from the donor plant.

IV. Notice of Data Availability and Request for Comment

In April 2000, the NAS released a report entitled "Genetically Modified Pest-Protected Plants: Science and Regulation" (Ref. 13). Prepared by an expert committee, this report examined the proposals offered by EPA in the November 23, 1994, **Federal Register** (59 FR 60496). This report recommended that EPA reconsider the Agency's proposed exemptions, raising a number of questions, primarily with respect the Agency's factual support for the exemptions. EPA requests comment on the information, analyses, and conclusions contained in the NAS report only with respect to those portions of its original proposals that remain pending. EPA is not soliciting comments on any issues beyond those raised specifically by the information contained in the NAS report; for example, the NAS report raised no issues with respect to the Agency's analyses of the human health risks associated with viral coat proteins. Any comments submitted on such issues will be treated as having been submitted after the close of the comment period, as the Agency has twice solicited comment on these issues, in 1994 and 1997.

The NAS report presents a number of competing considerations without necessarily providing the Agency with a ready basis for resolving these issues. For example, the report (Ref. 13 at 44-46) states:

> The 1987 NAS report noted that the risks associated with rDNA-engineered organisms are "the same in kind" as those associated with unmodified organisms and organisms modified by other methods. The committee agrees with that statement for pest-protected plants in that both transgenic and conventional plants may pose certain risks and the resulting plant phenotypes are often similar. Transgenic breeding techniques can be used to obtain the same resistance

phenotype as conventional methods (for example resistance to microbial pathogens, nematodes, and insects). Because both methods have the potential to produce organisms of high or low risk, the committee agrees that the properties of a genetically modified organism should be the focus of risk assessments, not the process by which it was produced (point 3).

In this regard, the committee found that:

There is no strict dichotomy between or new categories of the health and environmental risks that might be posed by transgenic and conventional pest-protected plants.

The committee recognizes that the magnitude of the risk varies on a product by product basis. The committee also agrees with points 1 and 2 in the sense that the potential hazards and risks associated with the organisms produced by conventional and transgenic methods fall into the same general categories. As this report discusses, toxicity, allergenicity, effects of gene flow, development of resistant pests, and effects on non-target species are concerns for both conventional and transgenic pest-protected plants.

The committee agrees with the 1987 NAS principles in that the magnitude of quantitative risk does not depend on the genetic-modification process. It depends on the new genes that are expressed in the plant. End points of risk (such as illness in humans and declines in nontarget species) can be the same regardless of whether a specific new gene was transferred by conventional or transgenic methods. For example, if the same alkaloid gene is transferred by sexual hybridization or *Agrobacterium*-mediated insertion, the risk should be similar. If a gene coding for a novel trait is transferred by transgenic methods, but cannot be transferred by conventional methods, it is the expressed trait that requires scrutiny, not the method of transfer.

Yet by contrast, on page 128, the report states:

The committee recognizes the realistic limitations of overseeing the pesticidal substances in conventional pest-protected plants and, given their history of safe use, recognizes that there are practical reasons for exempting those substances. However, the committee questions the scientific basis used by EPA for this exemption because no strict dichotomy or new categories appear to exist between the risks to health and the environment that might be posed by conventional and transgenic pest-protected plant products (section 2.2.1).

The categorical exemption also applies to transgenic pest-protected plant products that contain transgenes from sexually compatible species, and the committee questions the scientific basis for this exemption as well, specifically because the genes and gene products can be expressed at concentrations far greater than the concentrations at which they are naturally expressed (sections 2.4.1 and 2.5.2). Even though the risks of many transgenic pest-protected plants containing genes from sexually compatible species are expected to be low and would justify exemption, lack of experience with these products and public concern over genetic engineering suggest that a blanket exemption for them is inadvisable.

EPA requests comment on how to best reconcile these competing considerations.

V. Proposed Alternative Regulatory Approaches to Plant-Incorporated Protectants Based on Viral Coat Proteins

This Unit solicits additional comment on the two alternative regulatory approaches the Agency discussed in greater detail in the 1994 proposal (59 FR 60496, e.g., see 60525 through 60528). EPA solicits additional public comment on these alternatives in light of the issues raised by the NAS report, as well as on the issues raised by commenters on the 1994 proposal. The Agency intends to consider public comments and make final determinations to complete these other rulemakings within 9 to 12 months after the close of the comment period for the supplemental proposal, which is currently set at 30 days. Until the Agency takes a final action on these other exemptions, the Agency intends to maintain its current practices on regulation of plant-incorporated protectants.

A. History

Coat proteins are those substances that viruses produce to encapsulate and protect the nucleic acids comprising their genetic material. When the genetic material encoding the information for making the coat protein of a plant virus is introduced into a plant's genome, the plant becomes resistant to infection by the virus donating the genetic material for the coat protein (and frequently to viruses closely related to the donor virus) (Refs. 14 and 15). This resistance is termed viral coat protein mediated-resistance or vcp-mediated resistance (Refs. 14 and 15). Coat proteins from plant viruses intended to be produced and used in living plants for vcp-mediated resistance to viral disease, along with the genetic material necessary to produce the coat proteins, are plant-incorporated protectants.

1. *1994 Proposal.* In the 1994 proposal, EPA proposed to exempt from all FIFRA requirements, except for the adverse effects reporting requirement at § 174.71, all plant-incorporated protectants based on coat proteins from plant viruses (Option 1) (59 FR at 60525). EPA also described an alternative option (Option 2) offering a more limited exemption (59 FR 60526). Under this alternative option, the exemption would be limited to those plant-incorporated protectants based on coat proteins from plant viruses that would have the least potential to confer selective advantage on free-living wild plant relatives of the plants containing these plant-incorporated protectants. Under Option 2, a coat protein would be exempt if:

The pesticidal substance is a coat protein from a plant virus and the genetic material necessary to produce the coat protein has been introduced into a plant's genome, and the plant has at least one of the following characteristics:

(1) The plant has no wild relatives in the United States with which it can successfully exchange genetic material, i.e., corn, tomato, potato, soybean, or any other plant species that EPA has determined has no sexually compatible wild relatives in the United States.

(2) It has been demonstrated to EPA that the plant is incapable of successful genetic exchange with any existing wild relatives (e.g., through male sterility, self-pollination).

(3) If the plant can successfully exchange genetic material with wild relatives, it has been empirically demonstrated to EPA that existing wild relatives are resistant or tolerant to the virus from which the coat protein is derived or that no selective pressure is exerted by the virus in natural populations.

2. *Public comments.* In response to its November 23, 1994 **Federal Register** request for comment on the proposal to exempt plant-incorporated protectants based on the coat proteins of plant viruses, EPA received 65 comments. Many of the comments supported Option 1. Some of the comments supported adoption of Option 2. In the opinion of these commenters, Option 2 appropriately addresses concerns about the potential effects of outcrossing of plant-incorporated protectants based on coat proteins from plant viruses from crop plants to wild or weedy relatives. These comments pointed out that there is scientific evidence indicating that crops may transfer traits to wild relatives, and that many crops grown in the United States have wild relatives that are either native or have been introduced. These comments questioned the adequacy of available data to evaluate the probability that outcrossing of plant-incorporated protectants based on coat proteins from plant viruses could confer a selective advantage on wild or weedy relatives of crop plants. Approximately one-third of the comments opposed the exemption of plant-incorporated protectants based on coat proteins from plant viruses. Most of these comments offered no explanation for their opposition. Those who explained their opposition cited among their concerns, a potential for creation of more aggressive weeds and disturbance to centers of diversity

3. *Current status.* The Agency received scientific information both from commenters supporting Option 1 and commenters supporting Option 2. In this supplemental document, EPA requests additional public comment on the proposed alternative approaches discussed in the 1994 **Federal Register** and the risk considerations associated with weediness raised in comment. EPA will consider all comments received on this proposal, including comments received in response to the original proposal in 1994, and any comments received in response to this supplemental document, in arriving at a decision on how to proceed.

B. Description of Proposed Modification to Language of Proposed Exemption

Were EPA to implement either of the two options proposed in 1994, it would modify the language to clearly state that plant-incorporated protectants that are significantly different in structure or function from the plant-incorporated protectant as it occurs in the source would not be exempt.

In the 1994 proposal (59 FR at 60524), EPA explained that the Agency did not intend to exempt plant-incorporated protectants that are significantly different in structure or function from the plant-incorporated protectant as it occurs in the source. EPA believes this limitation is appropriate for coat proteins from plant viruses because rearrangements or modifications of the genetic sequence encoding a pesticidal substance could, for example, result in a plant-incorporated protectant with significantly different functions from the function in the source plant. For example, if the pesticidal substance is an enzyme, it could be modified so that it acts on a different substrate in the recipient plant than it did in the source plant (Refs. 6 and 7). Such a significantly modified plant-incorporated protectant would not be eligible for the exemption. It would not necessarily present risks similar to the substance prior to modification, nor would the base of experience on which EPA relies for support of the exemption necessarily be relevant.

Should EPA implement either Option 1 or Option 2, the Agency would include a statement that the exemption does not apply to a plant-incorporated protectant functionally modified from the source.

C. Request for Comment

The NAS report recommends that the:

> EPA should not categorically exempt viral coat proteins from regulation under FIFRA. Rather, EPA should adopt an approach, such as the Agency's alternative proposal. . ., that allows the agency to consider the gene transfer risks associated with the introduction of viral coat proteins to plants. (Ref. 13 at 132)

The NAS bases its recommendation primarily on a lack of information on the effects of the transfer of genes conferring pest resistance from crop plants to weedy or wild relatives.

EPA solicits any additional information that might assist the Agency in determining whether it should implement Option 1, i.e., exempt all plant-incorporated protectants based on viral coat proteins, or Option 2, i.e., an approach that allows the Agency to evaluate the gene transfer risks associated with the introduction of viral coat proteins to each candidate plant. In addition, in light of the fact that USDA reviews potential plant-pest related issues relative to viral coat proteins, EPA requests comment on whether there is any need for EPA to also examine this endpoint.

EPA solicits comment on whether outcrossing of plant-incorporated protectants based on coat proteins from plant viruses could confer a selective advantage on wild or weedy relatives of crop plants, and if so, which crop plants. EPA would be particularly interested in receiving data on this issue.

EPA specifically requests comment on whether acquired virus-resistance could, for example: (1) Allow a wild plant to increase its range or population density; and/or (2) permit a plant's population density to increase so that the plant dominates a community where it was far less common before acquisition of the trait.

As a condition of the exemption, EPA could require applicants for the exemption to submit studies or generate data on the gene transfer risks associated with the candidate plant-incorporated protectant. Alternatively, EPA could require some degree of monitoring beyond that which would be required by the adverse effects reporting requirement. EPA requests comment on whether either of these approaches is necessary to address the concerns raised by the NAS and the commenters, or whether sufficient data currently exists to evaluate the gene transfer risks presented by the class of products that would be covered under either Option 1 or 2.

VI. Proposal on Plant-Incorporated Protectants that Act Primarily by Affecting the Plant

In this Unit, EPA solicits additional public comment on this proposed exemption and on the scientific issues raised by the NAS report (Ref. 13) and in comments received on the 1994 proposal. The Agency intends to consider public comments and make final determinations to complete these other rulemakings within 9 to 12 months after the close of the comment period for the supplemental proposal, which is currently set at 30 days. Until the Agency takes a final action on these other exemptions, the Agency intends to maintain its current practices on regulation of plant-incorporated protectants.

A. History

In the 1994 proposal (59 FR at 60525), EPA stated that one of the Agency's primary goals in regulating pesticides is to control the potential for adverse effects of pesticides on nontarget organisms. EPA reasoned that an important component in the evaluation of this potential is the way in which the pesticidal substance acts on the target pest since it would also likely affect nontarget organisms through the same mechanism. EPA further reasoned that some plant-incorporated protectants could act through mechanisms that are less likely to be directly toxic. The Agency stated a belief that although it is possible for these substances to adversely affect nontarget organisms, in most cases, they would pose significantly lower levels of environmental risk than plant-incorporated protectants with a generalized toxic mechanism of action. EPA identified those plant-incorporated protectants it thought would act in this manner as those that act primarily by affecting the plant so that the pest is inhibited from attaching to the plant, penetrating the plant's surface, or invading the plant's tissue.

1. *1994 Proposal.* In the November 23, 1994 **Federal Register**, EPA proposed to exempt from all FIFRA requirements, except for the adverse effects reporting requirement at 40 CFR 174.71, plant-incorporated protectants that act primarily by affecting the plant. The proposed regulatory text presented criteria to define mechanisms of action that exert the pesticidal action primarily by affecting the plant. The proposed language reads as follows:

> The pesticidal substance acts primarily by affecting the plant so that the target pest is inhibited from attaching to the plant, penetrating the plant, or invading the plant's tissue in at least one of the following ways:
>
> (i) The pesticidal substance acts as a barrier to attachment of the pest to the host plant, a structural barrier to penetration of the pest into the host plant, or a structural barrier to spread of the pest in the host plant, for example, through the production of wax or lignin, or length of trichomes (plant hairs).

(ii) The pesticidal substance acts in the host plant to inactivate or resist toxins or other disease-causing substances produced by the target pest.

(iii) The pesticidal substance acts by creating a deficiency of a plant nutrient or chemical component essential for pest growth on/in the host plant.

In the 1994 **Federal Register** document, EPA also indicated that it was considering extending this exemption to include substances such as plant hormones, because plant hormones act within the plant to "primarily affect the plant" and do not act directly on a target pest (59 FR at 60525, 60531). EPA requested public comment on whether plant hormones should be included in the exemption for plant-incorporated protectants that act primarily by affecting the plant.

2. *Public comments.* EPA received 23 comments that addressed this proposed exemption. A majority of comments supported the exemption of plant-incorporated protectants that act primarily by affecting the plant. The comments opposing the exemption primarily expressed concern about the potential for outcrossing of the trait from crop plants to wild relatives to increase weediness in the wild relatives. These concerns were variously described as concerns that outcrossing of these plant-incorporated protectants to wild relatives might result in the following outcomes: First, produce hardier plants that become weeds in agro-ecosystems; second, produce hardier plants that displace less hardy types; or, third, adversely impact nontarget organisms that depend for their survival on interactions with wild plants. Some comments urged EPA, in order to address the concerns, to adopt an approach that would subject a plant-incorporated protectant to regulation based on whether the plant-incorporated protectant was introduced into the recipient plant through use of rDNA or other techniques of modern biotechnology.

Fourteen comments responded to EPA's request for comment on whether to exempt plant hormones because they act primarily by affecting the plant. Most comments favored the exemption of plant hormones, stating that plant hormones act within the plant to affect the plant's behavior and do not have a toxic mode of action. A few comments favored exemption of plant hormones except when there is clear indication of unreasonable adverse effects to the plants as can occur in some plant diseases mediated by microorganisms. The comments disagreeing with the exemption expressed concern that outcrossing of plant hormones from crop plants to wild relatives might confer competitive advantage on the wild relatives.

3. *Current status.* In this supplemental document, EPA requests additional public comment on this proposed exemption and several risk issues raised in comment. EPA will consider all comments received on this proposal in arriving at a determination, including comments received in response to the original proposal in 1994, and any comments in response to this supplemental document.

B. Proposed Modification to Language of Proposed Exemption

The Agency is considering whether to modify the language of the proposed exemption as follows:

1. *Hypersensitive response.* Some comments suggested the hypersensitive response in plants would fall within the definition of a plant-incorporated protectant that functions by primarily affecting the plant. EPA understands the hypersensitive response to involve compounds that initiate, potentiate, or enhance hypersensitive or hypersensitive-type responses that result in area-specific necrosis in response to microbial invasion of plant tissue, thus limiting spread of the pathogen within the plant. EPA believes that the criteria of this exemption as proposed in 1994 would include substances involved in the hypersensitive response. EPA requests comment on whether, for regulatory clarity, the Agency should add language to the regulatory text at 40 CFR part 174 to clearly show that substances involved in hypersensitive or hypersensitive-type responses are exempt. That language would read as follows:

(iv) By initiating, potentiating, or enhancing hypersensitive or hypersensitive-type responses that, in response to invasion by a phytopathogen, results in necrosis of specific areas of plant tissue thereby limiting the spread of the pathogen in or on the plant.

2. *Functionally modified from the source.* As described in Unit V.B., in proposing the exemptions the Agency did not intend to exempt plant-incorporated protectants that are significantly different in structure or function from the plant-incorporated protectant as it occurs in the source (59 FR at 60524). The discussion at Unit III.B.i. and Unit V.B., applies equally to this proposed exemption for plant-incorporated protectants that act primarily by affecting the plant. In order to clearly indicate in the regulatory text that significantly modified plant-incorporated protectants would not be covered by this exemption, EPA would include a statement in this exemption that it does not apply to a plant-incorporated protectant that has been functionally modified from the source.

To this end, the following language would be added to the proposed exemption:

A plant-incorporated protectant acts primarily by affecting the plant if the plant-incorporated protectant has not been functionally modified from the source and the pesticidal substance:

(1) . . . .

The proposed definition of "functionally modified from the source" as described at Unit III.B.i., would also apply to this proposed language.

3. *Plant hormones.* Plant hormones are substances produced by plants that play a major role in the regulation of plant growth by either accelerating or retarding, through physiological action, the rate of growth or rate of maturation of the plant, or the produce thereof (Ref. 16). Known classes of plant hormones occurring naturally in plants are auxins, cytokinins, ethylene, abscisic acid, and gibberellins. Plant hormones are active in the living plant in very small quantities.

Were EPA to add specific language to this proposed exemption indicating that plant hormones act primarily by affecting the plant, the Agency would also add a definition of plant hormone in the context of plant-incorporated protectants at § 174.3 as follows:

Plant hormone, when referring to plant-incorporated protectants only, would mean naturally occurring auxins, cytokinins, ethylene, abscisic acid, and gibberellins, produced and used in a living plant, or in the produce thereof.

C. Request for Comment

1. *Hypersensitive response.* EPA solicits comment on whether the substances involved in the hypersensitive response meet the proposed criteria and act primarily by affecting the plant. EPA requests comment on whether the language it proposes in this supplemental document adequately describes substances involved in the hypersensitive response.

2. *Functionally modified from the source.* EPA solicits comment on whether the language it has proposed adequately addresses its concern that the genetic material not be functionally modified from the source. EPA solicits comment on whether this language effectively ensures that the genetic material may not be so modified that it has a significantly different specificity or function in the recipient plant than it did in the source plant, yet permits modifications that may be needed to

achieve correct expression, but which have no significant effect on the specificity or function of the pesticidal substance.

3. *Plant hormones.* EPA solicits comment on whether the proposed definition of plant hormone appropriately describes this group of plant substances, and whether these substances act primarily by affecting the plant.

EPA solicits comment on whether plant hormones present a low probability of risk, particularly in light of the NAS report statement that plant hormones "often cause multiple changes in plants, including changes in secondary metabolites that might be toxic" (Ref. 13 at 133).

EPA also specifically solicits comment on the NAS statement that "there is a need to consider separately the impact of plant hormones on nontarget species and the potential for the genes that code for these substances to move to feral populations of weedy relatives of the crop, where they could increase recipient plants' fitness" (Ref. 13 at 133). In light of this NAS statement, EPA specifically solicits information supporting the broad exemption that EPA proposed in 1994 for plant-incorporated protectants that act by primarily affecting the plant. EPA also requests comment on whether there are subgroups within this category of plant-incorporated protectants for which information exists supporting a finding that the products present a low probability of risk. Commenters are encouraged to submit such information to the Agency.

EPA also solicits comment on the comment received in response to the 1994 proposal that favored exemption of plant hormones except when there is clear indication of unreasonable adverse effects to the plants as can occur in some plant diseases mediated by microorganisms (Ref. 17, for example). The Agency cannot determine the direct relevance that these pathogenic effects would have to this specific exemption, and requests additional information.

4. *Are there subgroups of this category meeting the FFDCA section 408(c) exemption standard?* A plant-incorporated protectant in or on food cannot be exempted from FIFRA requirements unless an exemption from the FFDCA section 408 requirement of a tolerance has been issued for the residues of the plant-incorporated protectant in or on food. If a plant-incorporated protectant is not used in a crop used as food (e.g., the plant-incorporated protectant is produced and used in an ornamental plant), the FFDCA section 408 requirements do not need to be considered when determining whether the plant-incorporated protectant can be exempted from FIFRA requirements. However, if a plant-incorporated protectant is used in a crop used as food (e.g., the plant-incorporated protectant is produced and used in corn), the FFDCA section 408 requirements must be considered when determining whether the plant-incorporated protectant can be exempted from FIFRA requirements. To be considered for full exemption from FIFRA requirements, exemptions from the FFDCA requirement of a tolerance must exist for all of the residues. (See Unit VII.D.1.iv. of the companion document published elsewhere in this issue of the **Federal Register** on regulations for plant-incorporated protectants under FIFRA for additional details).

When EPA proposed in 1994 to exempt from FIFRA requirements plant-incorporated protectants that act primarily by affecting the plant, it did not, because of the broad range and variety of plant-incorporated protectants comprising this category, propose a companion proposal exempting residues of the substance portion of plant-incorporated protectants in this category from the FFDCA section 408 requirement of a tolerance. The Agency would also be interested in comments that describe subgroups of plant-incorporated protectants in this category that would meet the FFDCA section 408(c) standard for an exemption. EPA will treat such comments as a petition for a tolerance exemption pursuant to FFDCA section 408(d); commenters therefore are encouraged to review sections 408(b)(2), (c) and (d) in preparing their comments.

VII. Documents in the Official Record

As indicated in Unit I.B.2., the official record for this supplemental proposal has been established under docket control number OPP–300370B, the public version of which is available for inspection as specified in Unit I.B.2.

A. References

The following books, articles, and reports were used in preparing this supplemental proposal and were cited in this document by the number indicated:

1. USDA/APHIS. 1987. Plant pests; Introduction of genetically engineered organisms or products; Final rule. (52 FR 22891, June 16, 1987).

2. USDA/APHIS. 1993. Genetically engineered organisms and products; Notification procedures for the introduction of certain regulated articles; and petition for nonregulated status; Final rule. (58 FR 17044, March 31, 1993).

3. USDA/APHIS. 1997. Genetically engineered organisms and products; Simplification of requirements and procedures for genetically engineered organisms. (62 FR 23945, May 2, 1997).

4. EPA. Joint meeting of the EPA Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (SAP), Subpanel on Plant-pesticides and the EPA Biotechnology Science Advisory Committee (BSAC), Subcommittee on Plant-Pesticides. January 21, 1994. Final report.

5. Hansen, M. and J. Halloran. In a letter dated February 22, 1995 on docket numbers OPP–300367 through 300371.

6. International Food Biotechnology Council. 1990. Biotechnologies and food; Assuring the safety of foods produced by genetic modification. *Regulatory Toxicology and Pharmacology*. Vol. 12. Academic Press. New York, New York.

7. Wilks, H. M., A. Cortes, D. C. Emery, D. J. Halsall, A. R. Clarke, and J. J. Holbrook. 1992. Opportunities and limits in creating new enzymes. *Enzyme Engineering XI*. Edited by D.S. Clark and D. A. Estell. Annals of the New York Academy of Sciences. Vol. 672. The New York Academy of Sciences. New York, New York.

8. Rissler, J. and M. Mellon. In a letter dated January 23, 1995, on docket control numbers OPP–300367 through OPP–300371.

9. EPA issue paper. 1994. FIFRA: Benefit and environmental risk considerations for inherent plant-pesticides.

10. Laurila, J., I. Lasko, J. P. T. Valkonen, R. Hiltunen, and E. Pehu. 1996. Formation of parental type and novel glycoalkaloids in somatic hybrids between Solanum brevidans and S. tuberosum. *Plant Science*. 118:145–155.

11. Linder, C. R. Long-Term Introgression of Crop Genes into Wild Sunflower Populations. *Theoretical Applied Genetics*. 87:339–347. 1998.

12. Goldburg, R. In a letter dated February 6, 1995, on docket control number OPP–300370.

13. National Research Council. 2000. Genetically Modified Pest-Protected Plants: Science and Regulation. (Prepublication copy). National Academy Press. Washington DC.

14. Cook, R. J. and C. O. Qualset. 1996. (Eds) Appropriate oversight for plants with inherited traits for resistance to pests. Institute of Food Technologists. http://www.Info&ift.org.

15. EPA. 2000. Economic analysis of the plant-incorporated protectant regulations under the Federal

Insecticide, Fungicide, and Rodenticide Act.

16. EPA. 2000. Summary of public comments and EPA response on issues associated with plant-incorporated protectants for dockets listed in OPP–300368, OPP–300368A, OPP–300369, OPP–300369A, OPP–300370, OPP–300370A, OPP–300371, and OPP–300371A.

B. Additional Information

The following additional sources of information are included in the complete official record for this rulemaking:

The docket identified by the docket control number OPP–300370 for the document entitled "Proposed Policy: Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act" (59 FR 60496) (FRL–4755–2).

The docket identified by the docket control number OPP–300369 for the document entitled "Plant-Pesticides Subject to the Federal Insecticide, Fungicide and Rodenticide Act; Proposed Rule" (59 FR 60519 November 23, 1994) (FRL–4755–3).

The docket identified by the docket control number OPP–300368 for the document entitled "Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act" (59 FR 60535 November 23, 1994) (FRL–4758–8).

The docket identified by the docket control number OPP–300371 for the document entitled "Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Nucleic Acids Produced in Plants" (59 FR 60542, November 23, 1994) (FRL–4755–5).

The docket identified by the docket control number OPP–300370A for the document entitled "Plant-Pesticide Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act; Reopening of Comment Period" (61 FR 37891, July 22, 1996) (FRL–5387–4).

The docket identified by the docket control number OPP–300368A for the document entitled "Plant-Pesticides; Supplemental Notice of Proposed Rulemaking" (62 FR 27132, May 16, 1997) (FRL–5717–2).

The docket identified by the docket control number OPP–300371A for the document entitled "Plant-Pesticides; Nucleic Acids; Supplemental Notice of Proposed Rulemaking" (62 FR 27142, May 16, 1997) (FRL–5716–7).

The docket identified by the docket control number OPP–30069A for the document entitled "Plant-Pesticides, Supplemental Notice of Availability of Information" (64 FR 19958, April 23, 1999) (FRL–6077–6).

The docket identified by the docket control number OPP–300368B for the companion document entitled "Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Residues Derived From Sexually Compatible Plants of Plant-Incorporated Protectants (Formerly Plant–Pesticides)" (FRL–6057–6) published elsewhere in this issue of the **Federal Register**.

The docket identified by the docket control number OPP–300371B for the companion document entitled "Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Residues of Nucleic Acids that are Part of Plant-Incorporated Protectants (Formerly Plant-Pesticides)" (FRL–6057–5) published elsewhere in this issue of the **Federal Register**.

The docket identified by the docket control number OPP–300369B for the document entitled "Regulations Under the Federal Insecticide, Fungicide, and Rodenticide Act for Plant-Incorporated Protectants (Formerly Plant-Pesticides)" (FRL–6057–7) published elsewhere in this issue of the **Federal Register**.

The docket identified by the docket control number OPP–300370B for this document (FRL–6760–4).

Also included in the complete official record for this document are:

1. Public comments submitted in response to the proposals and supplemental documents cited in the Unit III.B. In addition, comments received subsequent to the close of the comment period for the 1994 proposal have been included in the record for this supplemental proposal. This includes a report entitled "Appropriate Oversight for Plants with Inherited Traits for Resistance to Pests" (Ref. 14), as well as the NAS report (Ref. 13).

2. Reports of all meetings of the Biotechnology Science Advisory Committee and the FIFRA Science Advisory Panel pertaining to the development of the final rule for plant-incorporated protectants published in companion documents elsewhere in this issue of the **Federal Register**.

3. The Economic Analysis of the final rule for plant-incorporated protectants published in companion documents elsewhere in this issue of the **Federal Register** (Ref. 15) and supporting documents.

4. Support documents and reports.

5. Records of all communications between EPA personnel and persons outside EPA pertaining to this supplemental proposal. (This does not include any inter- and intra-agency memoranda, unless specifically noted in the Indices of the dockets).

6. Published literature that is cited in this document.

7. The response to comments documents pertaining to actions taken by the Agency on dockets OPP–300368, OPP–300368A, OPP–300369, OPP–300369A, OPP–300370, OPP–300370A, OPP–300371, and OPP–300371A (Ref. 16).

VIII. Regulatory Assessment Requirements

This action merely announces the availability of and requests comments on additional data and/or information related to a proposed rule that previously published in the **Federal Register** of November 23, 1994 (59 FR 60519). As such, the regulatory assessment requirements imposed on rulemakings do not apply to this supplemental proposal. Nevertheless, since there have been several revisions to the regulatory assessment mandates that are imposed on rulemakings, the Agency welcomes your comments on the following determinations.

Should the Agency finalize an exemption under FFDCA section 408, and not impose any other requirements, such an action would not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), nor would it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Such an action would only directly affect growers, food processors, food handlers and food retailers, not States. It would not impose any enforceable duty or contain any unfunded mandate, and would not otherwise significantly or uniquely affect small governments as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). It would not require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998). Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November

6, 2000), which took effect on January 6, 2001, revokes Executive Order 13084 as of that date. EPA developed this rulemaking, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. EPA does not expect its analysis to change, and will fully comply with the requirements of Executive Order 13175 before promulgating any final rules. For the same reasons, EPA does not expect these proposed actions to have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Such an action would not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

Such an action would not require a regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), because an exemption from the requirement of a tolerance under FFDCA section 408 would not adversely affect any small entities.

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

For information about the applicability of the regulatory assessment requirements to the previously published proposed rule, please refer to the discussion in Unit XI. of that document (59 FR at 60533).

List of Subjects in 40 CFR Part 174

Environmental protection, Agricultural commodities, Pesticides and pests, Plants.

Dated: July 12, 2001.

Christine T. Whitman,

Administrator.

[FR Doc. 01–17984 Filed 7–16–01; 11:42 am]

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July 19, 2001

Part V

Department of Education

Office of Elementary and Secondary Education and the Office of Vocational and Adult Education; Smaller Learning Communities Grant Program; Notice

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education and the Office of Vocational and Adult Education—Smaller Learning Communities Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed priorities, application requirements, and selection criteria for fiscal year 2001.

SUMMARY: The Acting Deputy Assistant Secretary for Elementary and Secondary Education and the Deputy Assistant Secretary for Vocational and Adult Education announce proposed priorities, application requirements, and selection criteria for the Smaller Learning Communities (SLC) grant program for fiscal year FY 2001.

Estimated Available Funds:
$125,000,000

Note: The Secretary is authorized to reserve $7,500,000 from these funds for peer review, evaluation, technical assistance, outreach, and product dissemination activities. These activities are designed to support the local grants, evaluate the success of the program, and help ensure the dissemination and replication of best practices to schools nationwide.

DATES: We must receive your comments by August 20, 2001.

ADDRESSES: All comments concerning these proposed priorities, application requirements, and selection criteria should be addressed to Diane Austin, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW, Room 5C149, Washington, DC 20202. Comments may be sent through the Internet at: *smallerlearningcommunities@ed.gov*. You must include the term "Smaller Learning Communities Grant Program" in the subject line of your electronic message.

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Diane Austin, Smaller Learning Communities Grant Program, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5C149, Washington, DC 20202–6200, (202) 260–1280. Fax: (202) 260–8969. Email: *smallerlearningcommunities@ed.gov*. You may also visit our website at: *www.ed.gov/offices/OESE/SLCP*. Individuals who use the telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

Note: This notice does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the final priorities, application requirements, and selection criteria. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

SUPPLEMENTARY INFORMATION:

Background

The Smaller Learning Communities grant program is authorized under section 10105 of part A of title X of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 8005). Title X, Part A authorizes the Secretary to support nationally significant programs and projects to: (1) Improve the quality of education; (2) assist all students in meeting challenging State content standards; and (3) contribute to achieving National Education Goals.

The purpose of the Smaller Learning Communities Program is to support the implementation or expansion of small, safe, and successful learning environments in large high schools through competitive grants to local educational agencies (LEAs). LEAs may apply on behalf of large high schools, including large high schools funded by the Bureau of Indian Affairs (BIA schools). For the purposes of this program, a large high school is defined as a school that includes grades 11 and 12 and enrolls at least 1,000 students in grades 9 and above.

Strategies for recasting large schools as a set of small learning communities are included in the Conference Report for the Consolidated Appropriations Act, 2000 [Pub. L. 106–113, H.R. Conference Report No. 106–479, at 1240(1999)]. Such strategies include:

(1) Establishing small learning clusters, "houses," career academies, magnet schools, or other approaches to creating schools within schools;

(2) Block scheduling;

(3) Personal adult advocates, teacher advisory systems, and other mentoring strategies;

(4) Reducing teaching loads; and

(5) Other innovations designed to create a more personalized high school experience for students and improve student achievement.

In FY 2000, Congress appropriated $45 million for the SLC program, of which the Department awarded $42.3 million in support of 149 grants to LEAs. The Secretary awarded 84 one-year planning grants and 65 three-year implementation grants. A total of 349 schools, serving over 450,000 students, benefited during the first year of the program. The Secretary reserved the remaining $2,250,000 to fund national leadership activities.

Congress appropriated $125 million for this program in fiscal year 2001. The Administration is not requesting funds for the Smaller Learning Communities program in fiscal year 2002. Rather, the Administration is proposing a new Choice and Innovation State Grants program under which States and LEAs would have greater flexibility in using funds for activities, such as the creation of smaller learning communities, that will lend to educational reform and improvement.

The Secretary intends to share program information and provide grant-writing technical assistance on an as needed basis. Potential applicants are encouraged to review the Frequently Asked Questions section of the program's website at: *www.ed.gov/offices/OESE/SLCP*. Written questions may be submitted through the Internet at: *smallerlearningcommunities@ed.gov*. Details on any other outreach activities will be included as part of the final application package and posted on the program's website at the address listed above.

Priorities

The goal of the Smaller Learning Communities program is to ensure that high schools are safe, nurturing, and effective environments where all students feel known, supported, and motivated to succeed in post secondary education and chosen careers. The proposed priorities authorize the Department to give preference to those applicants that have the greatest need and the capacity to create more personalized learning environments.

Competitive Priorities

Under 34 CFR 75.105(c)(2)(i), the Secretary proposes to give preference to applications that meet one or both of the following two competitive priorities. Where applicable, these points would be in addition to any points the application earns under the selection criteria for this year's grant competition.

Proposed Competitive Priority 1—Low-Performing Schools

The Secretary proposes to award up to five (5) additional points to applicants that provide a comprehensive action plan for turning around low-performing schools in their district. Low-performing schools can be identified by local and State educational agencies under section 1116 of the Elementary and Secondary Education Act. In addition, for the purposes of this program, States and LEAs that have their own established criteria for identifying low-performing schools may use those criteria to meet the competitive priority.

To receive any points under this competitive priority, LEAs, applying on behalf of a low-performing school(s), must provide evidence of their schools' designation. The applicant's plan must reflect its understanding of the research on effective strategies for turning around low-performing schools and describe how the research has been incorporated into its plan for creating a smaller learning community. The application must also both include (1) a plan to build partnerships with technical assistance providers, foundations, or other organizations engaged in turning around low-performing schools; and (2) document how the applicant will use other resources, particularly other Federal resources, in its efforts to improve student achievement.

Proposed Competitive Priority 2—Current Planning Grantees

The Secretary proposes to give preference to applicants that are recipients of planning grants awarded in program year 2000 if they provide evidence of the completion of an SLC implementation plan. LEAs awarded planning grants must produce viable implementation plans. In the case of otherwise evenly scored applicants, the competitive preference shall be the deciding factor.

Application Requirements

A discussion of each proposed requirement follows:

A. Eligible Schools

We propose that to be considered for funding, LEAs must include the name(s) of the eligible school(s) and the number of students enrolled in each school. Enrollment must be based upon data from the current school year or data from the most recently completed school year. LEAs applying on behalf of schools that are being constructed and do not have an active student enrollment at the time of application are not eligible under this program.

Rationale

While the legislation clearly addresses the requirements for eligibility, it does not require LEAs to identify specifically the schools that will benefit from a grant. We propose that each applicant include enrollment data supporting the eligibility of each school. This will enable the Department to determine if each school identified in an application meets the proposed definition of a large high school.

B. Types of Grants

Since the Administration is not requesting funds for the Smaller Learning Communities program in fiscal year 2002, the Secretary proposes to award only implementation grants under this year's competition. LEAs that have a developed plan in place are encouraged to apply for an implementation grant. Further, LEAs with schools that have existing smaller learning communities may apply for an implementation grant if they wish to expand their SLC efforts. Implementation grants will be funded for a three-year project period.

Note: Understanding the unique complexities of implementing a "transformational" program requiring changes in the nature of instruction and school culture that impacts the physical design, organization, curriculum, and teacher preparation, the Secretary anticipates awarding the entire grant amount for implementation projects at the time of the initial award. This will provide the applicant with the capacity to carry out effectively the comprehensive long-term activities involved in model development, documentation, evaluation, and dissemination of products and practices developed through the Federal grant.

C. Award Ranges

For a three-year implementation grant, the Secretary proposes that LEAs may request, on behalf of a single school, $250,000 to $500,000 per project. LEAs applying on behalf of a group of eligible schools may request up to $2,500,000 per implementation grant. As this program is designed to finance direct student services and local redesign and improvement efforts, districts must stay within the minimum and maximum school allocations when determining their group award request. Therefore, in order to ensure sufficient implementation funds at the local level, LEAs may not request funds for more than 10 schools under a group application.

The chart below provides ranges for award requests under the implementation grant:

Number of schools in LEA application	Award ranges
One School	$250,000–$500,000
Two Schools	500,000–1,000,000
Three Schools	750,000–1,500,000
Four Schools	1,000,000–2,000,000
Five Schools	1,250,000–2,500,000
Six Schools	1,500,000–2,500,000
Seven Schools	1,750,000–2,500,000
Eight Schools	2,000,000–2,500,000
Nine Schools	2,250,000–2,500,000
Ten Schools	2,500,000

To ensure maximum flexibility and competitiveness, LEAs may submit multiple applications targeting distinct schools within each application. Schools that benefited from FY 2000 implementation awards are not eligible to receive additional support under this competition. The total amount an LEA may receive through any combination of awards made under this program may not exceed 5 million.

Rationale

By establishing grant award ranges and maximum LEA award amounts, the Department will be able to fund a much larger number of grants, ensure maximum geographic distribution, and encourage implementation of a diverse range of SLC strategies. The proposed minimum and maximum award amounts should provide sufficient funding for direct services to students and for school-based implementation activities. The Department determined these amounts in consultation with other Federal programs and private organizations with experience in developing and implementing SLCs. Applicants must be fully committed and prepared to undertake the activities described in the application.

D. Page Limit for the Application Narrative

We strongly recommend that applicants limit the narrative section of the application to the equivalent of no more than 25 double-spaced pages using the following standards:

(1) A page is 8.5″ x 11″, on one side only;

(2) The page limit includes all narrative, titles, headings, footnotes, quotations, references, and captions, as well as charts, tables, figures, and graphs. Charts, tables, figures, and graphs may be single-spaced;

(3) The font should be 11-point or larger;

(4) The page limit does not apply to the Application for Federal Education Assistance Form (424); the Budget information Form (ED 524) and attached itemization of costs; any other required or supplementary application forms and

attachments to those forms; the assurances and certifications; or the table of contents and the one page abstract which should precede the narrative section and provide a short description of the project; evidence of competitive priorities; or appendices;

(5) Appendices used should relate directly to the selection criteria and project activities. Pages should be numbered.

Rationale

In previous competitions successful applicants have demonstrated that they can successfully describe their programs within this page limit.

E. Reporting Requirements and Expected Outcomes

We propose that to be eligible for an implementation grant, applicants must describe in their proposals for funding their:

(a) Project objectives;

(b) Measures of student outcomes and performance; and

(c) Indicators to gauge progress toward meeting project objectives.

In addition, the Secretary proposes to require that applicants for implementation grants have, or will have, a data collection system with the capacity to produce annual performance reports throughout the project period of the grant. These reports will document the grantee's yearly progress toward expected project objectives. The Secretary will use these reports to measure the success of the grantee's project, as well as the effects of the Department of Education's Smaller Learning Communities grant program nationwide.

We also propose that applicants submit initial baseline data for each student outcome measure described below. Baseline data should come from either the current or previous school year. Applicants should report this data as part of their narrative in accordance with the evaluation selection criteria. Upon notification of award, grantees will be required to submit student outcome data for three years preceding the baseline year.

Required student outcome measures include:

I. Student Achievement.

(a) The number of students scoring at each proficiency level for each subject measured by a State or district assessment in grades 9–12; and

(b) The number of students taking the SAT and ACT, and their average scores.

II. Academic Rigor and Student Retention.

(a) The number of students who take courses for which they receive both high school and college credit;

(b) The number of students completing high school; and

(c) The overall reported average daily attendance for October.

III. School Climate.

(a) The number of incidents of student violence, and of alcohol and drug use;

(b) The number of expulsions, suspensions, or other serious disciplinary actions; and

(c) The number of students involved in extracurricular activities.

Note: Percentages may be used in place of number of students where appropriate.

F. Definitions

(a) Definitions in EDGAR—Definitions defined in 34 CFR 77.1 are applicable to this program.

(b) Other definitions—The Secretary proposes that the following definitions also apply to this program:

BIA school is a school operated or supported by the Bureau of Indian Affairs.

A *group of schools* is two or more schools that each meet the definition of a large high school.

A *large high school* is an entity that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above.

A *low-performing school* is a school identified by local and State educational agencies under section 1116 of the Elementary and Secondary Education Act. Under current law, any Title I school that has not made "adequate yearly progress" over two consecutive years is identified by its LEA for improvement. In addition, for the purpose of this program, States and LEAs that have established criteria for identifying such schools may use their criteria to meet the competitive priority preference.

Selection Criteria

The Secretary proposes that the following selection criteria be used to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in the parentheses. There are not specific point totals for the subcategories within each criterion.

The Secretary proposes utilizing a peer review process in which peer review panels will evaluate the applications using the selection criteria and the associated point values. The Secretary intends to base final funding decisions on the panel review ranking of applications and an acceptable geographic balance between urban and rural grantees.

Implementation Grants

(a) *Need for the project.* (25 points)

In determining the need for the proposed project, the Secretary considers the following factors:

(1) The description and documentation of the targeted schools' need for the services provided and the need for the activities carried out by the proposed project consistent with the social and educational problems and issues generally associated with the impersonal nature of large high schools. Need may consider factors such as: Enrollment; attendance and drop-out rates; incidents of violence, drug and alcohol use, and disciplinary actions; percentage of students who pass graduation exams or local assessments, enroll in advanced level courses, register for college entrance exams, and matriculate into postsecondary institutions or training; percentage of students who have limited English proficiency, who are migrant youth, who come from low-income families, or are otherwise disadvantaged; the applicant's fiscal capacity to fund programs described here without Federal assistance; or other local need factors as described by the applicant.

(2) The nature and magnitude of specific gaps or weaknesses and the extent to which those weaknesses in services, infrastructure, or opportunities have been identified by the applicant and will be addressed by the proposed project.

(b) *Foundation for implementation.* (15 points)

In determining the quality of the implementation plan for the proposed project, the Secretary considers the extent to which the application:

(1) Documents the involvement and support of stakeholders both within the school community (e.g., administrators, staff, students, and parents) and within the greater community (e.g. representatives of institutions of higher education, employers, workforce investment boards, youth councils, and community-based organizations).

(2) Provides clear evidence of teacher involvement and support, particularly of those teachers who will be affected directly by the implementation plan.

(3) Uses research-based findings and outside technical assistance in the proposed restructuring and in determining appropriate strategy(ies) to be implemented.

(c) *Feasibility and soundness of the plan.* (35 points)

In determining the quality of the proposed project, the Secretary considers the extent to which:

(1) The goals and objectives of the smaller learning communities

correspond to identified needs and are written in terms of student outcomes, including academic achievement.

(2) The curriculum and instructional practices within each smaller learning community are aligned with its goals, theme, and emphases, where they exist.

(3) The proposed smaller learning communities intervention(s) will benefit all students in the school and enable them to reach challenging State content standards and performance standards, ensuring their successful completion of high school and preparation for postsecondary education or a career.

(4) Professional development activities offered to teachers, non-instructional school staff, and others are aligned with smaller learning community goals.

(5) The applicant provides a rationale for—

- Identifying grade levels and ages of students to be served by the smaller learning community; and
- The methods and timetable for placing students in the smaller learning community. *Note:* Students are not to be placed according to ability, performance, or any other measure of merit. The Department expects that all students will benefit from the SLC intervention.

(6) The management plan appears capable of achieving the objectives of the proposed project on time and within budget, including:

- The past experience, training, and clearly defined responsibilities of personnel who have key roles in carrying out the project; and
- The timelines and milestones for accomplishing project tasks.

(d) *Quality of the project evaluation.* (15 points)

In determining the quality of the evaluation to be conducted of the proposed project, the Secretary considers whether the applicant has designed an effective method for:

(1) Collecting student performance data, including:

- Required annual performance reports;
- Baseline data (refer to "Reporting Requirements and Expected Outcomes"), and data for three years preceding the baseline (the latter due upon award); and
- Monitoring and understanding changes in student outcomes for continuous improvement.

(2) Describing, on an annual basis, the progress towards implementing smaller learning communities and implementing related program changes undertaken to make the smaller learning communities safe and successful. This information will be reported in the Annual Performance Report.

(3) Disseminating best practices and products designed under this grant.

(e) *Adequacy of resources.* (10 points)

In determining the adequacy of resources for the proposed project, the Secretary considers the extent to which:

(1) State, local, foundation, and other Federal funds will be used to support the implementation of the plan.

(2) The applicant will limit equipment, administrative costs, and other purchases in order to maximize the amount spent on delivery of services to students.

(3) The applicant demonstrates a commitment to sustaining the project beyond the period covered by the Federal grant.

Paperwork Reduction Act of 1995

This notice contains information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this notice to OMB for its review.

The time required to complete this information collection is estimated to average sixty-five (65) hours per response, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Lauren Wittenberg. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this notice of proposed priorities, requirements, and selection criteria between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local government for coordination and review of proposed Federal assistance.

In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

We invite you to submit comments regarding these proposed priorities, proposed selection criteria, and proposed application requirements. To ensure that your comments have the maximum effect in developing the Secretary's final notice of priorities, application requirements, and selection criteria we urge that you clearly identify the specific section of this notice that each of your comments addresses and arrange your comments in the same order as the sections appear in the notice.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities, selection criteria, application requirements, and guidance. Please let us know of any further opportunities that we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 5C141, 400 Maryland Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week excluding Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or

print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities and proposed selection criteria. If you would like to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://access.gpo.gov/nara/index.html*.

(Catalogue of Federal Assistance Number: 84.215L Smaller Learning Communities Grant Program)

Program Authority: 20 U.S.C. 6661 *et seq.*

Dated: July 13, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

Robert D. Muller,

Deputy Assistant Secretary for Vocational and Adult Education.

[FR Doc. 01–18073 Filed 7–18–01; 8:45 am]

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July 19, 2001

Part VI

Department of Housing and Urban Development

Notice Inviting Applications: Third Round Designation of Seven Urban Empowerment Zones; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4663–N–02]

Notice Inviting Applications: Third Round Designation of Seven Urban Empowerment Zones

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice inviting applications.

SUMMARY: The Community Renewal Tax Relief Act of 2000 authorizes the designation of nine Round III Empowerment Zones (EZs). Seven of the Round III EZs are to be designated in urban areas by the Secretary of HUD. The remaining two Round III EZs are to be designated in rural areas by the Secretary of Agriculture. This Notice invites applications for designation of nominated areas as Empowerment Zones. The designation of the new Empowerment Zones will be made in accordance with the designation process described in this Notice.

Application Due Date: Completed applications (one original and 2 copies) must be submitted no later than September 28, 2001. See below for specific procedures governing the form of application submission (e.g., mailed application or hand delivery). No facsimile (FAX) applications will be accepted for consideration by HUD.

Delivered Applications. Completed applications (one original and two copies) must be submitted no later than 5:00 p.m. eastern time, on September 28, 2001. Up until 5:00 p.m. on the deadline date, completed applications will be accepted at the address and room number specified below.

Mailed Applications. Applications will be considered timely if postmarked on or before September 28, 2001.

Applications Sent by Overnight Delivery. Overnight delivery items will be considered filed on time if received on or before September 28, 2001.

Electronic Submission of Application Information

Information submitted electronically using the RC/EZ On-Line Application System must be submitted not later than 5 pm, Eastern Time on September 28, 2001. This is done by hitting the "Submit" button at each appropriate location in the software. The system will not be available after the deadline.

ADDRESSES: *Address for submitting applications.* Completed paper applications (one original and two copies) should be submitted to: Department of Housing and Urban Development, Office of Community Planning and Development, c/o Processing and Control Unit, Room 7255, 451 7th Street, SW, Washington, DC 20410, by mail or hand delivery.

For Application and Other Materials. For a copy of the EZ Round III Application Guidebook, which includes the Nomination Forms and the EZ Round III rule at 24 CFR part 598 (which also implemented EZ Round II), please call the Community Connections Information Clearinghouse at (800) 998–9999. Round III publications are also available on the HUD web site at: http://www.hud.gov/offices/cpd/ezec. Requests for application materials should be made immediately to insure sufficient time for application preparation. Hearing-or speech-impaired persons should use the Federal Information Relay Service telephone number, (800) 877–8339, to obtain application materials.

The Round III publications consist of:

- Urban Application Guide for Empowerment Zones Round III (Application Guide and Nomination forms);
- The Round II and Round III Rule at 24 CFR part 598;
- Tax Incentive Guide for Businesses in Renewal Communities, Empowerment Zones and Enterprise Communities; and
- Federal Programs Guide.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Lisa Hill, Empowerment Zone/Enterprise Community Initiative, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7130, Washington, DC 20410, (202) 708–6339. Hearing-or speech-impaired individuals may call (800) 877–8339 (the Federal Information Relay Service—TTY).

SUPPLEMENTARY INFORMATION:

I. Summary

A. Purpose and Authority

The Community Renewal Tax Relief Act of 2000 (CRTR Act) authorizes, among other things, the designation of nine Round III Empowerment Zones (EZs). Seven of the Round III EZs are to be designated in urban areas by the Secretary of HUD. The remaining two Round III EZs are to be designated in rural areas by the Secretary of Agriculture. The CRTR Act also conforms and enhances the tax incentives for Round I and Round II EZs, and makes the new Round III EZs eligible for these incentives. The availability of the tax incentives is extended to December 31, 2009 for all EZs.

Section 111 of the CRTR Act adds a new subsection (h), which authorizes the designation of nine additional EZs, to section 1391 of Subchapter U of Chapter 1 of the Internal Revenue Code of 1986. Subchapter U governs the designation and treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas, and provided authorization by separate legislative enactments for the designation of Round I EZs in 1993, and Round II EZs in 1997.

HUD promulgated Round I EZ regulations at 24 CFR part 597 in 1994, and Round II EZ regulations at 24 CFR part 598 in 1998. Separate Round I and Round II regulations were issued because although many of the Round I and II submission requirements, such as the strategic plan, were similar, there were some differences in the authorizing statutes for each Round. For example, the legislation authorizing the Round II designations changed the eligibility and selection criteria from the Round I requirements. Two specific changes in the Round II eligibility criteria were an increase in the size of zones and elimination of the requirement that at least half of the nominated area consist of census tracts with poverty rates of 35 percent. Round II designations were also permitted to except up to three "developable sites"—parcels that may be developed for commercial or industrial purposes—from satisfying the two poverty rate criteria that otherwise would be applicable, but the size of the area given this special poverty rate treatment was restricted to a total of 2,000 acres.

Unlike the differences in Round I and Round II, the eligibility and selection criteria for the Round III EZs are the same as the criteria that applied to the Round II EZs. HUD, therefore, implemented Round III by making only conforming changes to include references to Round III in part 598. The regulation at 24 CFR part 598 will apply for Round III designations for urban areas as it did for Round II, and this Notice Inviting Applications for Round III urban EZ designation uses the same procedures as the Round II notice published on April 16, 1998 (63 FR 19162), with only the distribution of point values adjusted to reflect HUD's experience in administering the program. The designation of rural areas as EZs will continue to be implemented separately by the Department of Agriculture.

B. Available Resources

The tax benefits that apply to EZs are the following: Tax-exempt bond financing, Empowerment Zone

employment tax credit, welfare-to-work tax credit, work opportunity tax credit, roll over capital gain from the sale or exchange of any "original zone asset" where assets are used to purchase a "replacement zone asset," environmental cleanup cost deduction ("brownfields" tax incentive), and up to $35,000 of additional section 179 (accelerated depreciation) expensing.

II. Application Preparation

A. Notice of Intent To Participate

Applicants should submit a Notice of Intent to Participate form as soon as possible. The Notice should be submitted on the form provided in the EZ Application Guide or on HUD's RC/EZ On-Line Application System. Instructions for gaining access to the system appear on HUD's web page at: www.hud.gov/offices/cpd/ezec. Submission of the Notice of Intent to Participate is not mandatory, but it will ensure that an applicant receives updated information. The Notice of Intent to Participate may be mailed, or submitted by facsimile (FAX). The address for submitting the Notice of Intent to Participate is: U.S. Department of Housing and Urban Development, Ms. Lisa Hill, EZ/EC Team, Room 7130, 451 Seventh St., SW, Washington, D.C. 20410.

The facsimile number is (202) 708–3363 or (202) 401–7615.

B. Application Requirements

1. The application must include an original and two copies of the items listed below. To facilitate review, please submit applications in such a form that they can be taken apart. Loose leaf binders are preferable.

2. The application submitted on behalf of a nominated urban area shall include:

a. Nomination Form Parts I through IV, with the required certifications and written assurances, including assurances that the nominating governments will administer the Empowerment Zone program in a manner which affirmatively furthers fair housing on the bases of race, color, national origin, religion, sex, disability, and familial status (presence of children);

b. A strategic plan which meets the requirements of the 24 CFR part 598, especially the content specified in § 598.215 of the rule; and

c. 1990 census maps showing:

(i) The boundaries of the local government(s); and

(ii) The boundaries of the nominated area, including developable sites, if any.

3. Preferably, the Strategic Plan will contain no more than 75 pages excluding attachments.

4. The application should contain only the necessary documentation. Appendices or additional information extraneous to evaluation components will not be reviewed. Examples of such extraneous information include: Meeting sign-in sheets, and copies of applications for other programs or funds.

C. Strategic Plan Requirements

The Strategic Plan shall conform to the requirements set forth in 24 CFR 598.215, and the criteria stated in this Notice. Requirements set forth in 24 CFR part 598 will be used in the evaluation process.

III. Designation Process

A. General

HUD will accept for processing those nominations meeting the submission deadline stated in this Notice, and the Eligibility Requirements listed in Subpart B of 24 CFR part 598. Nominating procedures are described in Subpart C of 24 CFR part 598.

B. Exceptions

The Secretary may waive a non-statutory provision of 24 CFR part 598 for good cause where it is determined that the application of the provision would result in undue hardship to the applicant.

C. Application Review

A threshold review will be conducted to ensure the application requirements in Section II.B. of this Notice are satisfied, and the applicant meets the eligibility requirements listed below. Applications determined eligible will receive a technical review under the rating factors described in Section IV of this Notice. Specific maximum point scores for each rating factor are listed in Section IV. Applications will be evaluated against the rating factors, then placed in rank order. Evaluation and ranking of applications will be made relative to other applications received.

To review and rate applications, the Department may establish panels including employees of other Federal agencies to obtain certain expertise and outside points of view.

1. Eligibility Requirements

a. To be considered for designation, a nominated urban area, with the exception of areas described below in the Special Rules, must meet all of the eligibility requirements of 24 CFR 598.100.

The only sources of census data that will be used in determining the eligibility of an area are: The 1990 Decennial Census, and information published by the Bureau of Census and the Bureau of Labor Statistics. The boundary of an urban area nominated for designation as an Empowerment Zone must coincide with the boundaries of census tracts. Census tract means a census tract as the term is used by the Bureau of the Census, or, if and only if census tracts are not defined for the area, a block numbering area.

b. A nominated urban area, with the exception of areas described below in the Special Rules, must demonstrate poverty, unemployment and general distress, as described in 24 CFR 598.110. In addition, each nominated area must satisfy the specific poverty rate criteria in 24 CFR 598.115.

c. *Special Rules.* (i) A nominated area in Alaska or Hawaii is deemed to satisfy the criteria of distress, size, and poverty rate detailed in 24 CFR 598.100(b), (c), (d), and (f), and § 598.110 if, for each census tract or block numbering area within the nominated area, 20 percent or more of the families have income that is 50 percent or less of the statewide median family income (as determined under section 143 of the Internal Revenue Code).

(ii) An area within an Indian reservation (as defined in section 168(j)(6) of the Internal Revenue Code) may be included in an area nominated as an Empowerment Zone by State and local governments. An area completely within an Indian reservation may be nominated by the reservation governing body, and in that case, the area is treated as if it also were nominated by a State and a local government. Where two or more governing bodies have joint jurisdiction over an Indian reservation, the nomination of a reservation area must be a joint nomination.

(iii) Any urban area nominated by an Economic Development Corporation chartered by the State in which it is located or by the District of Columbia shall be treated as nominated by a State and a local government.

2. Technical Review

a. *General.* The technical review will evaluate the quality of the application against the following rating factors:

(i) Quality of the Strategic Plan; and

(ii) Quality of the Commitments made in connection with the Strategic Plan.

The criteria against which HUD will measure these factors, and the maximum points that will be awarded for each factor are described below in Section IV. An application may receive up to 100 total points.

b. *Corrections to Deficient Applications.* HUD will notify an applicant in writing, or by FAX, of any technical deficiencies in the application, and HUD will maintain a log of such communications.

The notification will specify the date by which HUD must receive the applicant's correction of all technical deficiencies, which shall be within 14 calendar days from the date of HUD's notification. If the fourteenth day falls on a Saturday, Sunday, or holiday, the correction must be received by HUD on the next business day. The date and time of receipt of corrections by HUD shall be determined in the same way as the receipt of the application.

Technical deficiencies relate to items that:

(i) Are not necessary for HUD review under the rating factors; and

(ii) Would not improve the substantive quality of the proposal. Examples of technical deficiencies would be a failure to submit proper certifications or failure to submit an application containing an original signature by an authorized official.

If any of the items identified in HUD's written notification of technical deficiencies are not corrected and submitted within the correction period, the application will be ineligible for further consideration.

c. *Clarification of Application and Request for Additional Information.* The Department may contact an applicant to obtain clarification of information submitted in an application. Clarification may include, for example, a request for an applicant to submit additional information to ensure HUD's understanding of the terms of a submitted application. In obtaining clarifying information, the Department may contact an applicant by telephone or in person. The Department will conduct all requests for clarification from an applicant according to uniform procedures and will document all requests.

In addition, the Department reserves the right to conduct independent site inspections of proposed EZ/EC sites to accurately rate and rank an applicant's application under the selection criteria provided in this Notice. Should HUD decide to conduct site visits, it will visit sites according to uniform procedures. The Department will document site visit findings.

HUD employees involved in the review of applications and the making of designation decisions will refrain from providing advance information to any person (other than an authorized employee of HUD) concerning designation decisions, or from otherwise giving any applicant an unfair competitive advantage.

D. Designation Announcements

Designations will be made before January 1, 2002. The nominated urban areas designated as Empowerment Zones will be published in the **Federal Register**.

IV. Designation Rating Factors

In choosing among nominated areas eligible for designation, HUD will consider the following factors:

- Quality of the Strategic Plan; and
- Quality of Commitments made in connection with the Strategic Plan.

The following chart identifies the points that will be assigned to each rating factor. The criteria HUD will use to rate the applications on the factors follow the chart.

RATING FACTORS

	Points
Strategic plan	
Vision/Values	5
Community Assessment	5
Goals/Strategies	10
Implementation Plan	
Projects & Programs	10
Tax Incentive Utilization Plan	30
Developable Sites (optional)	
Governance Plan	5
Community Performance Assessment	5
Strategic Planning Process	5
Total	75
Quality of Commitments	
Resources leveraged and documented	25
Total	100

A. Quality of the Strategic Plan (Maximum Points: 75)

The strategic plan must be developed in accordance with four key principles, described in 24 CFR 598.215: Strategic vision for change, community-based partnerships, economic opportunity, and sustainable community development. The elements required in the strategic plan reflect the key principles. Innovation and creativity are encouraged in fulfilling all elements of the plan.

1. Vision and Values (Maximum Points: 5)

This process should articulate a vision for the future and include a graphic representation for the future physical appearances, land use patterns, and qualities of the community. To improve the quality of the visioning process, the community should reach out to local citizens and encourage participation in the visioning process. Explain how the vision creates economic opportunity, encourages self-sufficiency, and promotes sustainable community development. HUD will consider the extent to which this element:

a. States a clear vision for the future;

b. Develops the foundation upon which the goals are established and specific projects and programs are based;

c. Demonstrates collaboration of the community's diverse stakeholders in arriving at its vision and values statement;

d. Provides an effective vision for the community's long-term transformation; and

e. Exhibits innovation and creativity.

2. Community Assessment (Maximum Points: 5)

a. *Assessment of problems and opportunities:* In order to be considered for Empowerment Zone status the nominated area must be one of pervasive poverty, unemployment and general distress as prescribed by 24 CFR 598.110. The general rule is that 90% of the area's census tracts must have a poverty rate of at least 25%. In addition to meeting the minimum criteria for designation, a full account of community and regional assets and problems should be made. Baseline data should be collected to which outcomes can be compared and success measured. One important area to document is the state of local infrastructure. This includes housing, roads, transportation, water, sewer, solid waste, sidewalks, street lights, drainage, open space, and bandwidth. The state of local services is also crucial such as schools, police, fire, child care, health care, and other social services. The state of human and economic development should be documented, and barriers noted.

b. *Resource analysis:* An assessment of the resources available to the community should be made, including potential resources outside the nominated area, to address identified problems and needs and maximize opportunities that exist within the community. Such resources may include financial, technical, human, cultural, educational, leadership, volunteerism, communications, transportation and commerce centers, rail and mass transit linkages, redevelopable land, public space, infrastructure, and other community and regional assets that form the basis for the formulation and implementation of the strategic plan. (2000 acres of

developable sites outside the zone can be included.)

3. Goals (Maximum Points: 10)

This element describes the comprehensive set of goals to be achieved over the program period, along with the strategies that will be used. In evaluating this element, HUD will consider the extent to which:

a. The goals serve as the framework for specific strategies;

b. The strategies proposed to achieve the strategic plan goals have been effectively described, and demonstrate the link between the goals and proposed projects and programs; and

c. The goals are designed to move the community toward its desired future.

d. *Strategies:* Applicants will be asked to describe how the local plan will be coordinated with regional planning and regional growth management. The plan should include a strategy for re-development with minimal displacement of local residents, and if displacement occurs, how it will be mitigated. Strategies should include how land use and urban design will utilize transportation hubs, incorporate mixed and flexible land use, promote the development of economically mixed and geographically dispersed affordable housing, encourage community land trusts, and promote urban green parks. A strategy is recommended for remodeling and rehabilitation of existing buildings, including modifying existing building, fire, historical preservation, and zoning code requirements if necessary. The plan should explain a process for evaluating the fiscal impact of every project, including a measurement of costs and impacts, compared to revenues and benefits to the community.

4. Implementation Plan (Maximum Points: 55)

This element contains a detailed plan of how the community will implement its strategic plan. The components of the Implementation Plan are: Projects and Programs, Tax Incentive Utilization Plan, a Governance Plan, Community Performance Assessment, and the Strategic Planning Process. These components must provide detailed information for the first 2 years of designation.

a. *Projects and Programs (maximum points: 10).* Due to the lack of grant funding in Round III, this category receives less weight than in Round II, since project will result largely from marketing of tax incentives, and leveraged commitments. Zones should detail how they will leverage local and State funds for specific projects. This element describes the specific projects and programs to be implemented during the first two years of the designation. Timelines and budgets must be provided for the 2-year plan. HUD will evaluate this component considering the extent to which:

(i) The narrative clearly outlines the specific projects and programs that will be implemented, including use of any developable sites, and demonstrates that the projects and programs will result in the achievement of the community's goals;

(ii) Proposed timelines for implementing identified projects and programs are appropriate for the 2-year plan;

(iii) The lead implementing entities are identified;

(iv) Innovative partnerships that ensure maximum community participation and project sustainability are identified;

(v) Proposed budgets are identified for each project or program, and costs and sources of funding are realistic;

(vi) Baselines and proposed measurable outputs and outcomes are provided; and

(vii) The component exhibits innovation and creativity.

b. *Tax Incentive Utilization Plan (maximum points: 30).* This element addresses a significant aspect of the EZ initiative—the use of the business tax incentives available to designated Empowerment Zones to support economic revitalization. EZs need to provide a strong marketing and technical assistance plan to encourage businesses to take advantage of these benefits. If the applicant includes developable sites, this element must include a statement of how developable sites will maximize the use of tax incentives. In evaluating this element, HUD will consider the extent to which the plan:

(i) Provides an effective strategy for integrating the new business tax incentives into the nominated area's business development efforts. The Round III business tax incentives include: Tax-Exempt Bond Financing, Empowerment Zone Employment Tax Credit, Increased Section 179 Deduction, Welfare-to-Work Credit, Environmental Cleanup Cost Deduction (i.e. "Brownfields Tax Incentive"), and the Work Opportunity Tax Credit. For a description of the tax incentives see the Round III publication, "Tax Incentive Guide for Businesses in Renewal Communities, Empowerment Zones and Enterprise Communities."

(ii) Addresses the involvement of all appropriate segments of the community and the extent to which their participation will maximize the use of the business tax incentives;

(iii) Provides a realistic strategy for marketing the incentives; and

(iv) Exhibits innovation and creativity.

c. *Governance Plan (Maximum Points: 5).* This element describes how the strategic plan will be implemented. A leadership development program should be included here, as leadership is extremely important to the success of EZs. Other capacity building plans could be included here as well. A plan for mediation of disputes should also be included. HUD will evaluate the extent to which:

(i) The proposed lead implementing entity, has or will have, the legal status and authority to receive and administer Federal funds;

(ii) The Governance Plan demonstrates that both the lead implementing entity and other key organizations participating in the implementation of the strategic plan have the capacity to implement the plan;

(iii) The proposed composition of governance boards, advisory boards, commissions or similar bodies that will manage strategic plan implementation is representative of the EZ area. The representation of residents and businesses, and the method of selecting members of such boards should provide a clear picture of the use of partnerships;

(iv) The relationships between the governance structure created and local governments, and other major community or regional organizations, such as a metropolitan planning organization, will strengthen the implementation of the strategic plan;

(v) The Governance Plan includes methods by which stakeholders within the Zone will be kept informed about Zone activities and progress in implementing the strategic plan, including an explanation of how the Governance Board will conduct its meetings in accordance with applicable open meetings acts. The community should utilize modern communication techniques and incorporate the Internet in order to enhance the communication and access to information among all stakeholders and participants;

(vi) The Governance Plan will ensure continuing community and grassroots participation in the implementation of the strategic plan and the governance of the Zone's activities; and

(vii) The plan exhibits innovation and creativity.

d. *Community Performance Assessment (maximum points: 5)* This element examines the methods the

community will use to assess its own performance in implementing the strategic plan, and the process it will use to continually review the plan and amend it as appropriate. This information is crucial to the continuing development of the EZ initiative, by learning from what works. It is crucial to measure outcomes as well as outputs. Comparing outcomes to baselines and benchmarks developed in the community assessment will provide a more objective measure of success. In evaluating community performance assessment, HUD will consider:

(i) The process the applicant will use to periodically evaluate its performance;

(ii) The process the applicant will use to modify its strategic plan based on the results obtained in (i);

(iii) The participation of stakeholders in (i) and (ii) above.

5. Strategic Planning Process Documentation (Maximum Points: 5).

This element provides a description of the process the community used to select the boundaries of the proposed Empowerment Zone, including any developable sites, and the process used to prepare the strategic plan. In evaluating this element, HUD will consider the extent to which the documentation:

a. Fully explains how the community participated in choosing the area, including any developable sites; and how the area ultimately nominated was selected over other areas considered;

b. Indicates the specific groups, organizations, and individuals that participated in the production of the plan, describes the history of these groups in the community, and describes their role in creating the plan;

c. Explains how participants were selected and provides evidence that the participants, taken as a whole, broadly represent the racial, cultural, gender and economic diversity of the community; and

d. Identifies two or three topics addressed in the plan that caused the most serious disagreements among participants, and a description of how those disagreements were resolved.

B. Quality of Commitments Made in Connection With the Strategic Plan (Maximum Points: 25)

In 24 CFR 598.210, nominated areas are required to provide written assurances that the Strategic Plan will be implemented. In addition to the certification, it is essential that HUD is able to evaluate the breadth and quality of such commitments.

1. Resources Leveraged (Maximum Points: 10)

In evaluating this element, HUD will consider the extent to which the applicant has leveraged resources, such as funding and/or in-kind services from governmental entities, business, faith-based organizations, non-profit organizations, foundations, educational institutions, and other entities to implement the strategic plan.

2. Resource Commitments Documented (Maximum Points: 15).

The applicant must provide evidence of public and private sector commitments by including letters of commitment, memoranda of understanding or agreement, or other documentation indicating the nature of the participation and the financial and non-financial resources to be contributed. The letters or agreements must be signed by an official of the organization able to make such commitments.

3. Besides the leveraging of finances, EZs need to leverage many different types of commitments including tax and regulatory relief from other levels of government. This could include waivers or reductions in development fees including permit, license, inspection, impact, and utility connection fees. It could also include state and local abatements of taxes on wages, income, sales, personal property, and building improvements. Additional tax and regulatory incentives can be added to the marketing plan for the Tax Incentive Utilization Plan. This section should cover the resources that will be committed to perform cost-benefit studies, and to ensure coordination with regional growth management.

V. Period of Designation

The designation period will commence on the date of designation and will continue until December 31, 2009, except:

1. When the nominating entities have specified an earlier date; or

2. When the designation is revoked by the Secretary.

VI. Findings and Certifications

A. Information Collection Requirements

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget and assigned control number 2506–0148. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

B. Catalog

The Catalog of Federal Domestic Assistance Program number assigned to this program is 14.244.

C. Environmental Impact

This Notice provides for EZ designations under, and does not alter the environmental requirements of, 24 CFR part 598. Accordingly, under 24 CFR 50.19(c)(5), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). The environmental review provisions of part 598 are set out in § 598.405.

D. Documentation and Public Access Policy

HUD will ensure that documentation and other information regarding each application submitted pursuant to this Notice are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

Dated: July 12, 2001.

Donna M. Abbenante,

Acting General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 01–18074 Filed 7–18–01; 8:45 am]

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S. 657/P.L. 107–19

To authorize funding for the National 4-H Program Centennial Initiative. (July 10, 2001; 115 Stat. 153)

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 575

RIN 3206–AJ08

Recruitment and Relocation Bonuses and Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to provide agencies with greater flexibility to use recruitment and relocation bonuses and retention allowances. These regulations will allow agencies to pay recruitment and relocation bonuses and retention allowances to prevailing rate (wage) employees.

DATES: These final regulations will become effective on July 20, 2001.

FOR FURTHER INFORMATION CONTACT: Jeanne Jacobson, (202) 606–2858; FAX: (202) 606–0824; email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: On January 19, 2001, the Office of Personnel Management (OPM) published proposed regulations to amend the recruitment and relocation bonus and retention allowance regulations in 5 CFR part 575, subparts A, B, and C, to provide agencies with additional flexibility to use these incentives (66 FR 5491). The proposed regulations would allow agencies to grant a retention allowance to a current employee likely to leave for other Federal employment under certain limited circumstances. The proposed regulations also would allow agencies to pay recruitment and relocation bonuses and retention allowances to an employee in a prevailing rate (wage) position, as defined in 5 U.S.C. 5342(a)(3).

These final regulations contain only those provisions from the proposed regulations that allow agencies to pay recruitment and relocation bonuses and retention allowances to prevailing rate (wage) employees. Comments received from Federal agencies strongly support the proposal to allow the payment of recruitment and relocation bonuses and retention allowances to wage employees. One agency asked that OPM issue the final regulations implementing this authority as quickly as possible so that it may use these incentives immediately to help address critical recruitment and retention problems. In response to these concerns, we are issuing final regulations to allow agencies to use recruitment, relocation, and retention payments immediately for prevailing rate (wage) positions.

We received many comments on our proposal to allow agencies to grant a retention allowance to a current employee likely to leave for other Federal employment under certain circumstances. The commenters raised various issues concerning the criteria for paying a retention allowance in these circumstances, and additional time is needed to consider these issues.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make these regulations effective in less than 30 days. In their comments to OPM, agencies expressed an urgent need to use the recruitment and relocation bonus and retention allowance authorities as soon as possible to help address serious problems in recruiting and retaining prevailing rate (wage) employees. Since use of the recruitment and relocation bonus and retention allowance authorities is discretionary, waiving the 30-day delay in the effective date of these regulations will not place an administrative burden on any Federal agency.

List of Subjects in 5 CFR Part 575

Government employees, Wages.

Office of Personnel Management
Steven R. Cohen,
Acting Director.

Accordingly, OPM is amending part 575 of title 5, Code of Federal Regulations, as follows:

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

1. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

Subpart A—Recruitment Bonuses

2. In § 575.102, paragraph (a)(5) is amended by removing "or"; paragraph (a)(6) is amended by removing "." and inserting in its place "; or"; and a new paragraph (a)(7) is added to read as follows:

§ 575.102 Delegation of authority.

(a) * * *

(7) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3).

* * * * *

Subpart B—Relocation Bonuses

3. In § 575.202, paragraph (a)(5) is amended by removing "or"; paragraph (a)(6) is amended by removing "." and inserting in its place "; or"; and a new paragraph (a)(7) is added to read as follows:

§ 575.202 Delegation of authority.

(a) * * *

(7) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3).

* * * * *

Subpart C—Retention Allowances

4. In § 575.302, paragraph (a)(5) is amended by removing "or"; paragraph (a)(6) is amended by removing "." and inserting in its place "; or"; and a new paragraph (a)(7) is added to read as follows:

§ 575.302 Delegation of authority.

(a) * * *

(7) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3).

* * * * *

[FR Doc. 01–18034 Filed 7–19–01; 8:45 am]
BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–330–AD; Amendment 39–12336; AD 2001–15–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Powered By Pratt & Whitney JT9D–3 and –7 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections and torque checks of the hanger fittings and strut forward bulkhead of the forward engine mount and adjacent support structure, and corrective actions, if necessary. The existing AD also provides for optional terminating action for the repetitive inspections and checks. This amendment requires certain new repetitive torque checks and the previously optional terminating action. The actions specified by this AD are intended to prevent loose fasteners and associated damage to the hanger fittings and bulkhead of the forward engine mount, which could result in separation of the engine from the airplane.

DATES: Effective August 24, 2001.

The incorporation by reference of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 6, 2000 (65 FR 69862, November 21, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–23–16, amendment 39–11988 (65 FR 69862, November 21, 2000), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on February 15, 2001 (66 FR 10387). The action proposed to continue to require repetitive inspections and torque checks of the hanger fittings and strut forward bulkhead of the forward engine mount and adjacent support structure, and corrective actions, if necessary. The action also proposed to mandate certain new repetitive torque checks and the previously optional terminating action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Eliminate Repetitive Inspections/Checks and Terminating Action

One commenter states that, if the initial torque check shows no loose fastener is installed, the repetitive inspections/checks and terminating action should not be required. The commenter's rationale for this request is that the cause of the loose fasteners is incorrect grip length of fasteners installed during a strut and wing modification.

The FAA infers that the commenter is stating that, if the fastener is not loose at the time of the initial inspection, it will not become loose later, and is requesting that we remove these requirements from this AD. The FAA does not concur. If the wrong grip-length of fastener is installed, damage of the fastener thread run-out may have occurred during initial installation of the fastener due to shanking of the fastener. This could lead to a problem with the durability of the fastener. No change to the final rule is necessary in this regard.

Reduce Torque Values for Loose Fastener Check

One commenter requests that the FAA revise the proposed rule to reduce the torque values for the loose fastener check to the minimum value. As an example, the commenter refers to the torque value of 250 inch-pounds for the NAS6706 fastener listed in Table 1 of Figure 3 of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000. The commenter states that this value should be 220 inch-pounds because that is the minimum installation torque required.

The FAA does not concur with the commenter's request. The difference in torque value to which the commenter refers is very small. If an operator determines that a fastener is NOT loose at a torque value of 220 inch-pounds but IS loose at a torque value of 250 inch-pounds, the operator may apply for an alternative method of compliance according to the provisions of paragraph (d) of this AD. No change to the final rule is necessary in this regard.

Clarify Instructions for Torque Check

One commenter requests that the FAA clarify how the torque check should be accomplished. The commenter specifically asks whether or not the fastener head should be retained if torque is applied to the nut end.

The FAA does not concur that any further clarification on this issue is necessary. The applicable service bulletin specifies that the torque check is intended to test whether the fastener rotates. The fastener head should not be retained because, if it is retained, it may be impossible to determine whether the fastener rotated before reaching the specified torque in Figure 3 of the service bulletin. No change to the final rule is necessary in this regard.

Explanation of Change to Alternative Method of Compliance (AMOC) Paragraph

Since the issuance of the proposed rule, the FAA has approved AMOCs for AD 2000–23–16. AMOCs approved previously in accordance with AD 2000–23–16 are considered acceptable for compliance with corresponding actions in this AD. Accordingly, a new paragraph (d)(2) has been added to this final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 366 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA

estimates that 115 airplanes of U.S. registry will be affected by this AD.

The detailed visual inspections that are currently required by AD 2000–23–16 take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections currently required by the existing AD on U.S. operators is estimated to be $55,200, or $480 per airplane, per inspection.

The torque checks that are currently required by AD 2000–23–16 take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the torque checks currently required by the existing AD on U.S. operators is estimated to be $165,600, or $1,440 per airplane, per check.

The new torque checks required by this AD also will take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this torque check on U.S. operators is estimated to be $55,200, or $480 per airplane, per check.

The terminating action required by this AD will take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $300 per airplane. Based on these figures, the cost impact of the terminating action required by this AD on U.S. operators is estimated to be $200,100, or $1,740 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11988 (65 FR 80301, December 21, 2000), and by adding a new airworthiness directive (AD), amendment 39–12336, to read as follows:

2001–15–02 Boeing: Amendment 39–12336. Docket 2000–NM–330–AD. Supersedes AD 2000–23–16, Amendment 39–11988.

Applicability: Model 747 series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000; except Model 747 series airplanes having serial numbers 21048 and 20887.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loose fasteners and associated damage to the hanger fittings and strut forward bulkhead of the forward engine mount, which could result in separation of the engine from the airplane, accomplish the following:

Restatement of Requirements of AD 2000–23–16

Repetitive Inspections/Checks

(a) Within 60 days after December 6, 2000 (the effective date of AD 2000–23–16, amendment 39–11988): Perform a detailed visual inspection and torque check as specified in Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000, to detect loose fasteners and associated damage to the hanger fittings and bulkhead of the forward engine mount, in accordance with Figure 1 of the alert service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no loose fastener or associated damage is detected, repeat the inspections/checks thereafter at the applicable intervals specified in Figure 1 of the alert service bulletin until accomplishment of the terminating action specified in paragraph (c) of this AD.

Note 3: Where there are differences between the AD and the alert service bulletin, the AD prevails.

Corrective Actions

(2) If any loose fastener or associated damage is detected, before further flight, perform the applicable corrective actions (torque check, rework or replacement of fittings), as specified in Figure 1 of the alert service bulletin. Repeat the inspections/checks thereafter at the applicable intervals specified in Figure 1 of the alert service bulletin until accomplishment of the terminating action specified in paragraph (c) of this AD. Where the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain corrective actions (rework or replacement of fittings), this AD requires such rework and/or replacement to be done in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company designated engineering representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

New Requirements of this AD

Repetitive Checks/ Inspections/Corrective Actions

(b) Within 18 months after the effective date of this AD: Do the torque check specified in Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000, to detect loose fasteners of the hanger fittings of the forward engine mount.

(1) If no loose fastener is detected, repeat the torque check thereafter at intervals not to exceed 1,200 flight cycles or 18 months, whichever occurs first, until accomplishment of the terminating action specified in paragraph (c) of this AD.

(2) If any loose fastener is detected, before further flight, perform the applicable corrective actions as specified in Figure 4, Figure 5, or Part 6, as applicable, of the Accomplishment Instructions of the alert service bulletin.

(i) If Figure 4 or Figure 5 of the Accomplishment Instructions of the alert service bulletin is used to do the corrective actions for the fitting; thereafter, repeat the detailed visual inspection required by paragraph (a) of this AD at the applicable intervals specified in Figure 1 of the alert service bulletin, and repeat the torque check for that fitting at intervals not to exceed 180 flight cycles. Accomplish the terminating action for that fitting as specified in Part 6 of the Accomplishment Instructions of the alert service bulletin within 18 months after finding any loose fastener or 60 months after the effective date of this AD, whichever occurs first.

(ii) If Part 6 of the Accomplishment Instructions of the alert service bulletin is used to do the corrective actions for the fitting, this constitutes terminating action for the repetitive inspections/checks for that fitting only.

(3) If any associated damage is found, before further flight, repair in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. If any damage to any fitting is found, before further flight, do the applicable corrective actions specified in Part 4 or Part 5 of the Accomplishment Instructions of the alert service bulletin; this constitutes terminating action for the repetitive inspections/checks for that fitting only.

(4) If any loose fastener is detected during any repeat inspection/check specified in paragraph (b)(2)(i) of this AD, before further flight, accomplish the terminating action for that fitting as specified in Part 6 of the Accomplishment Instructions of the alert service bulletin.

Terminating Action

(c) Within 60 months after the effective date of this AD: Accomplish all actions in the terminating action specified in Part 6 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000. Accomplishment of this paragraph constitutes terminating action for the repetitive inspections/checks required by paragraphs (a) and (b) of this AD. Where the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain corrective actions (rework or replacement of fittings), this AD requires such rework and/or replacement to be done in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Note 4: Installation of two BACW10BP*APU washers on Group A fasteners accomplished during modification in accordance with Boeing Service Bulletin 747–54A2159, dated November 3, 1994, Revision 1, dated June 1, 1995, or Revision 2, dated March 14, 1996; and pin or bolt protrusion as specified in the 747 Structural Repair Manual, Chapter 51–30–02 (both referenced in Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000); is considered acceptable for compliance with the terminating action specified in paragraph (c) of this AD.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–23–16, amendment 39–11988, are approved as alternative methods of compliance for corresponding actions in this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (a)(2), (b)(3), and (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000. The incorporation by reference of that document was approved previously by the Director of the Federal Register as of December 6, 2000 (65 FR 69862, November 21, 2000). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on August 24, 2001.

Issued in Renton, Washington, on July 13, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–18138 Filed 7–19–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8955]

RIN 1545–A075

Foreign Trusts That Have U.S. Beneficiaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 679 of the Internal Revenue Code relating to transfers of property by U.S. persons to foreign trusts having one or more United States beneficiaries. The final regulations affect United States persons who transfer property to foreign trusts.

DATES: *Effective Date:* These regulations are effective July 20, 2001.

Applicability Date: For dates of applicability, see § 1.679–7.

FOR FURTHER INFORMATION CONTACT: Willard W. Yates at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2000, the IRS and Treasury published a notice of proposed rulemaking (REG–209038–89) in the **Federal Register** (65 FR 48185) inviting comments relating to the treatment of U.S. persons who transfer property to foreign trusts that have one or more U.S. beneficiaries. Comments responding to the notice of proposed rulemaking were received and a public hearing was held on November 8, 2000. After consideration of all of the comments, the proposed regulations are adopted as revised by this Treasury decision. The revisions are discussed below.

Explanation of Provisions

Comments Relating to § 1.679–2: Trusts Treated as Having a U.S. Beneficiary

A. Benefit to a U.S. Person

Under § 1.679–2(a)(1) of the proposed regulations, a foreign trust that has received property from a U.S. transferor is treated as having a U.S. beneficiary unless during the taxable year of the U.S. transferor both of the following tests are satisfied: (i) No part of the income or corpus of the trust may be paid or accumulated to or for the benefit of, either directly or indirectly, a U.S. person; and (ii) if the trust is terminated at any time during the taxable year, no part of the income or corpus of the trust could be paid to or for the benefit of, either directly or indirectly, a U.S. person.

Section 1.679–2(a)(2)(i) of the proposed regulations provides that, for purposes of applying these tests, income or corpus is considered to be paid or accumulated to or for the benefit of a U.S. person during a taxable year of the U.S. transferor if during that year, directly or indirectly, income may be distributed to, or accumulated for the benefit of a U.S. person, or corpus may be distributed to, or held for the future benefit of, a U.S. person. This determination is made without regard to whether income or corpus is actually distributed to a U.S. person during that year, and without regard to whether a U.S. person's interest in the trust income or corpus is contingent on a future event. The proposed regulations provide a narrow exception with respect to certain contingent beneficiaries whose interests in the trust are so remote as to be negligible.

One commenter suggests that § 1.679–2(a)(2) of the proposed regulations (specifically, *Example 5* of § 1.679–2(a)(2)(iii)) is overly broad. The commenter suggests that a foreign trust should not be treated as having a U.S. beneficiary where the trust's only asset consists of stock of a foreign corporation, the trust will terminate one year after the death of a U.S. transferor, whereupon distributions of corpus or income may be made to a U.S. person, and the trust receives no income from the corporation during the term of its existence. The commenter argues that because the foreign trust receives no income from the foreign corporation during the trust's existence, the U.S. person's status as a beneficiary provides the U.S. person with nothing of value and, therefore, the foreign trust should not be treated as having a U.S. beneficiary.

The commenter's argument overlooks the clear legislative intent underlying section 679 that a foreign trust will be treated as having a U.S. beneficiary even in situations where there exists only the possibility of distribution of income or corpus to or the accumulation of corpus for the benefit of a U.S. person. H.R. Rep. No. 658, 94th Cong., 1st Sess., at 210 (1975). The fact that a foreign trust holds an asset, such as the stock of a foreign corporation, that produces no income during the term of the trust's existence is of no import for purposes of determining whether the trust will be treated as having a U.S. beneficiary. The determining factor in such a situation is that the trust holds corpus for the future benefit of a U.S. person, regardless of whether the corpus consists of stock with respect to which no dividends have been paid or some other asset that produces no current income. Accordingly, the final regulations adopt the rule of the proposed regulations.

B. Records and Documents

Section 1.679–2(a)(4) of the proposed regulations provides that a trust may be treated as having a U.S. beneficiary by reference, inter alia, to written and oral agreements and understandings not contained in the trust document, and to whether the terms of the trust instrument are actually or reasonably expected to be disregarded by the parties to the trust. A commenter states that this rule creates new and unclear rules for purposes of determining whether an arrangement constitutes a trust for Federal income tax purposes.

The determination as to whether an arrangement will be treated as a trust is made pursuant to the rules set forth in § 301.7701–4 of the regulations. The regulations under section 679 address only the determination of whether a foreign trust will be treated as having a U.S. beneficiary. The final regulations are not intended to provide factors in addition to the rules of § 301.7701–4 for purposes of determining whether an arrangement constitutes a trust for Federal income tax purposes.

C. Trusts Acquiring a U.S. Beneficiary

The proposed regulations anticipate situations where the beneficiary of a foreign trust may change. Section 1.679–2(c)(1) of the proposed regulations provides that if a foreign trust is not treated as having a U.S. beneficiary (within the meaning of § 1.679–2(a)) but subsequently is treated as having a U.S. beneficiary, the U.S. transferor is treated as having additional income in the first taxable year of the U.S. transferor in which the trust is treated as having a U.S. beneficiary. The amount of the additional income is equal to the trust's undistributed net income, as defined in section 665(a), at the end of the U.S. transferor's immediately preceding taxable year and is subject to the rules of section 668, providing for an interest charge on accumulation distributions from foreign trusts.

A commenter suggests that the rule treating the U.S. transferor as having additional income in the first year the foreign trust acquires the U.S. beneficiary exceeds the authority of section 679, noting that in most cases the transferor will not have received any income from the trust.

Section 1.679–2(c)(1) of the proposed regulations follows closely the legislative history underlying section 679 regarding the U.S. transferor's recognition of additional income. The legislative history provides that the amount of the additional income shall be the foreign trust's undistributed net income, i.e., accumulated income that would be taxable to a beneficiary upon distribution, as of the close of the immediately preceding taxable year. H.R. Rep. No. 658, 94th Cong., 1st Sess., at 211, Fn. 13 (1975). In short, the legislative history provides that the U.S. transferor's additional income shall receive the same treatment as accumulation distributions to beneficiaries of a foreign trust. Accumulated income distributions to beneficiaries of foreign trusts are subject to the interest charge provided for in section 668. Accordingly, the provision for additional income in § 1.679–2(c)(1) of the final regulations, as well as the application of the interest charge provided for in section 668, are necessary to carry out the legislative purpose of section 679. The rule of the proposed regulations is adopted by the final regulations without change.

Comments Relating to § 1.679–3: Transfers

A. Indirect Transfers—Principal Purpose of Tax Avoidance

Section 1.679–3(a) of the proposed regulations broadly defines the term *transfer* as any direct, indirect, or constructive transfer by a U.S. person to a foreign trust. Section 1.679–3(c) of the proposed regulations provides rules for determining when there is an indirect transfer. Under § 1.679–3(c)(1) of the proposed regulations, a transfer to a foreign trust by any person to whom a U.S. person transfers property (referred to as an intermediary) is treated as an indirect transfer by a U.S. person if the transfer is made pursuant to a plan one of the principal purposes of which is the avoidance of U.S. tax. Section 1.679–

3(c)(2) of the proposed regulations deems a transfer to have been made pursuant to such a plan if certain conditions are present.

The deemed-principal-purpose test of § 1.679–3(c)(2) of the proposed regulations is similar to the deemed-principal-purpose test in § 1.643(h)–1(a) of the regulations, which concerns distributions from foreign trusts to U.S. persons through intermediaries, except that the presumption in the proposed regulations applies without regard to the period of time between the transfer from the U.S. person to the intermediary and from the intermediary to the foreign trust. In contrast, the deemed-principal-purpose test of § 1.643(h)–1(a)(2)(ii) applies only if property is distributed to the U.S. person during the period beginning 24 months before and ending 24 months after the intermediary's receipt of property from the foreign trust. A commenter suggests that a similar time limit should be provided in § 1.679–3(c)(2) with respect to outbound transfers.

In the context of section 643(h), Treasury and the IRS weighed the potential for abuse in that area against the possible adverse effect that the deemed-principal-purpose test could have on legitimate transactions, and concluded that a time limitation in § 1.643(h)–1(a)(2) was appropriate. However, Treasury and the IRS believe the potential for abuse is greater in the case of outbound transfers to foreign trusts than in the case of inbound trust distributions to U.S. beneficiaries. Congress enacted section 679 in order to prevent the tax-free accumulation of income earned by foreign trusts over long periods of time that provided foreign trusts with an unwarranted advantage over domestic trusts. H.R. Rep. No. 658, 94th Cong., 1st Sess., at 207 (1975). Providing for a time limitation to the application of § 1.679–3(c) could allow for easy circumvention of Congress' purpose in enacting section 679. Treasury and the IRS recognize that some transfers that were not intended to avoid U.S. tax may come within the presumption in the absence of a specific time limit. However, under such circumstances § 1.679–3(c)(2)(ii) provides taxpayers with a way to rebut the application of the deemed-principal-purpose test. Therefore, the final regulations do not include a time limitation to the application of § 1.679–3(c)(2)(i).

B. Indirect Transfers—Corporate Distributions

One commenter asked about the application of the indirect transfer rules set forth in § 1.679–3(c) of the proposed regulations to successive corporate distributions up a chain of wholly-owned corporations to an ultimate shareholder that is a foreign trust. The commenter expressed concern that, if one of the lower-tier corporations were a domestic corporation, § 1.679–3(c) of the proposed regulations could potentially treat the distributions as an indirect transfer from the domestic corporation to the foreign trust that would be subject to the general rule of § 1.679–1.

Even if the distributions were characterized as an indirect transfer from a domestic corporation to a foreign trust under § 1.679–3(c), the indirect transfer would generally be treated as a transfer for fair market value under the final sentence of § 1.679–4(b)(1) and would therefore be excepted from the general rule of § 1.679–1 pursuant to § 1.679–4(a)(4). Therefore, no special rules have been added to the final regulations to address this situation.

C. Transfers to Entities Owned by Foreign Trusts

Section 1.679–3(f) of the proposed regulations provides specific rules regarding transfers by a U.S. person to an entity owned by a foreign trust if the U.S. person is related to the foreign trust. The transfer is treated as a transfer from the U.S. person to the foreign trust, followed by a transfer from the foreign trust to the entity owned by the foreign trust, unless the U.S. person demonstrates to the satisfaction of the Commissioner that the transfer to the entity is properly attributable to the U.S. person's ownership interest in the entity. A commenter noted potential conflicts with this rule and judicial doctrines concerning constructive corporate distributions.

Section 1.679–3(f) is not intended to override judicial doctrines concerning constructive corporate distributions. For example, if judicial doctrines would recharacterize a direct transfer of property by a domestic corporation to an entity owned by a foreign trust as a constructive dividend of the property to the domestic corporation's shareholder followed by a constructive transfer of the property by that shareholder to the foreign trust and a constructive contribution by the foreign trust to the entity owned by the foreign trust, then those judicial doctrines would apply (and § 1.679–3(f) would not apply) to the transaction.

Comments Relating to § 1.679–4: Exceptions to General Rule—Transfers to Trusts Described in Section 501(c)(3)

Section 1.679–4(a)(3) of the proposed regulations provides an exception to the general rule of § 1.679–1 for transfers to a foreign trust that has already received a ruling or determination letter from the IRS recognizing the trust's tax exempt status under section 501(c)(3), provided that the letter has been neither revoked nor modified. Commenters questioned the requirement that a foreign trust obtain a ruling or determination letter from the IRS recognizing the trust's tax exempt status under section 501(c)(3). They assert that the requirement may interfere with a U.S. person's ability to make contributions to a foreign charitable entity that may not be familiar with U.S. tax laws and may not have any reason to obtain a determination letter from the IRS. They suggest that the final regulations require only that the U.S. transferor disclose to the IRS, at such time and in such manner as the IRS may provide, that the transfer has been made and that the transferor believes the transferee is an organization described in section 501(c)(3).

In response to commenters' concerns, the final regulations eliminate the requirement that the foreign trust receive a ruling or determination letter from the IRS recognizing the trust's tax-exempt status under section 501(c)(3). The final regulations provide instead that the general rule of § 1.679–1 does not apply to any transfer of property to a foreign trust that is described in section 501(c)(3). However, taxpayers should be aware that, under Notice 97–34 (1997–1 C.B. 422), the U.S. transferor has a reporting obligation on Form 3520 with respect to such a transfer, unless the foreign trust has received a ruling or determination letter from the IRS recognizing the trust's tax exempt status under section 501(c)(3). Moreover, if the IRS subsequently determines that the foreign trust is not described in section 501(c)(3), the exception will not apply for any taxable year of the U.S. transferor, and the U.S. transferor may be subject to interest and penalties, if applicable.

Clarification Regarding Section 958

The final regulations clarify the language of § 1.958–1(b) of the proposed regulations with respect to persons who are treated as owners under sections 671 through 679 of any portion of a foreign trust that includes the stock of a foreign corporation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section

553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these final regulations is Willard W. Yates of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.679–1 also issued under 26 U.S.C. 643(a)(7) and 679(d).

Section 1.679–2 also issued under 26 U.S.C. 643(a)(7) and679(d).,

Section 1.679–3 also issued under 26 U.S.C. 643(a)(7) and 679(d).

Section 1.679–4 also issued under 26 U.S.C. 643(a)(7), 679(a)(3) and 679(d).

Section 1.679–5 also issued under 26 U.S.C. 643(a)(7) and 679(d).

Section 1.679–6 also issued under 26 U.S.C. 643(a)(7) and 679(d).

* * *

Par. 2. Sections 1.679–0, 1.679–1, 1.679–2, 1.679–3, 1.679–4, 1.679–5, 1.679–6, and 1.679–7 are added under the undesignated center heading "Grantors and Others Treated as Substantial Owners" to read as follows:

§ 1.679–0 Outline of major topics.

This section lists the major paragraphs contained in §§ 1.679–1 through 1.679–7 as follows:

§ 1.679–1 U.S. transferor treated as owner of foreign trust.

(a) In general.
(b) Interaction with sections 673 through 678.
(c) Definitions.
(1) U.S. transferor.
(2) U.S. person.
(3) Foreign trust.
(4) Property.
(5) Related person.
(6) Obligation.
(d) Examples.

§ 1.679–2 Trusts treated as having a U.S. beneficiary.

(a) Existence of U.S. beneficiary.
(1) In general.
(2) Benefit to a U.S. person
(i) In general.
(ii) Certain unexpected beneficiaries.
(iii) Examples.
(3) Changes in beneficiary's status.
(i) In general.
(ii) Examples.
(4) General rules.
(i) Records and documents.
(ii) Additional factors.
(iii) Examples.
(b) Indirect U.S. beneficiaries.
(1) Certain foreign entities.
(2) Other indirect beneficiaries.
(3) Examples.
(c) Treatment of U.S. transferor upon foreign trust's acquisition or loss of U.S. beneficiary.
(1) Trusts acquiring a U.S. beneficiary.
(2) Trusts ceasing to have a U.S. beneficiary.
(3) Examples.

§ 1.679–3 Transfers.

(a) In general.
(b) Transfers by certain trusts.
(1) In general.
(2) Example.
(c) Indirect transfers.
(1) Principal purpose of tax avoidance.
(2) Principal purpose of tax avoidance deemed to exist.
(3) Effect of disregarding intermediary.
(i) In general.
(ii) Special rule.
(iii) Effect on intermediary.
(4) Related parties.
(5) Examples.
(d) Constructive transfers.
(1) In general.
(2) Examples.
(e) Guarantee of trust obligations.
(1) In general.
(2) Amount transferred.
(3) Principal repayments.
(4) Guarantee.
(5) Examples.
(f) Transfers to entities owned by a foreign trust.
(1) General rule.
(2) Examples.

§ 1.679–4 Exceptions to general rule.

(a) In general.
(b) Transfers for fair market value.
(1) In general.
(2) Special rule.
(i) Transfers for partial consideration.
(ii) Example.
(c) Certain obligations not taken into account.
(d) Qualified obligations.
(1) In general.
(2) Additional loans.
(3) Obligations that cease to be qualified.
(4) Transfers resulting from failed qualified obligations.
(5) Renegotiated loans.
(6) Principal repayments.
(7) Examples.

§ 1.679–5 Pre-immigration trusts.

(a) In general.
(b) Special rules.
(1) Change in grantor trust status.
(2) Treatment of undistributed income.
(c) Examples.

§ 1.679–6 Outbound migrations of domestic trusts.

(a) In general.
(b) Amount deemed transferred.
(c) Example.

§ 1.679–7 Effective dates.

(a) In general.
(b) Special rules.

§ 1.679–1 U.S. transferor treated as owner of foreign trust.

(a) *In general.* A U.S. transferor who transfers property to a foreign trust is treated as the owner of the portion of the trust attributable to the property transferred if there is a U.S. beneficiary of any portion of the trust, unless an exception in § 1.679–4 applies to the transfer.

(b) *Interaction with sections 673 through 678.* The rules of this section apply without regard to whether the U.S. transferor retains any power or interest described in sections 673 through 677. If a U.S. transferor would be treated as the owner of a portion of a foreign trust pursuant to the rules of this section and another person would be treated as the owner of the same portion of the trust pursuant to section 678, then the U.S. transferor is treated as the owner and the other person is not treated as the owner.

(c) *Definitions.* The following definitions apply for purposes of this section and §§ 1.679–2 through 1.679–7:

(1) *U.S. transferor.* The term *U.S. transferor* means any U.S. person who makes a transfer (as defined in § 1.679–3) of property to a foreign trust.

(2) *U.S. person.* The term *U.S. person* means a United States person as defined in section 7701(a)(30), a nonresident alien individual who elects under section 6013(g) to be treated as a resident of the United States, and an individual who is a dual resident taxpayer within the meaning of § 301.7701(b)–7(a) of this chapter.

(3) *Foreign trust.* Section 7701(a)(31)(B) defines the term *foreign*

trust. See also § 301.7701–7 of this chapter.

(4) *Property*. The term *property* means any property including cash.

(5) *Related person*. A person is a *related person* if, without regard to the transfer at issue, the person is—

(i) A grantor of any portion of the trust (within the meaning of § 1.671–2(e)(1));

(ii) An owner of any portion of the trust under sections 671 through 679;

(iii) A beneficiary of the trust; or

(iv) A person who is related (within the meaning of section 643(i)(2)(B)) to any grantor, owner or beneficiary of the trust.

(6) *Obligation*. The term *obligation* means any bond, note, debenture, certificate, bill receivable, account receivable, note receivable, open account, or other evidence of indebtedness, and, to the extent not previously described, any annuity contract.

(d) *Examples*. The following examples illustrate the rules of paragraph (a) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s father, who is a resident alien, *D* is *A*'s uncle, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Interaction with section 678. *A* creates and funds *FT*. *FT* may provide for the education of *B* by paying for books, tuition, room and board. In addition, *C* has the power to vest the trust corpus or income in himself within the meaning of section 678(a)(1). Under paragraph (b) of this section, *A* is treated as the owner of the portion of *FT* attributable to the property transferred to *FT* by *A* and *C* is not treated as the owner thereof.

Example 2. U.S. person treated as owner of a portion of FT. *D* creates and funds *FT* for the benefit of *B*. *D* retains a power described in section 676 and § 1.672(f)–3(a)(1). *A* transfers property to *FT*. Under sections 676 and 672(f), *D* is treated as the owner of the portion of *FT* attributable to the property transferred by *D*. Under paragraph (a) of this section, *A* is treated as the owner of the portion of *FT* attributable to the property transferred by *A*.

§ 1.679–2 Trusts treated as having a U.S. beneficiary.

(a) *Existence of U.S. beneficiary*—(1) *In general*. The determination of whether a foreign trust has a U.S. beneficiary is made on an annual basis. A foreign trust is treated as having a U.S. beneficiary unless during the taxable year of the U.S. transferor—

(i) No part of the income or corpus of the trust may be paid or accumulated to or for the benefit of, directly or indirectly, a U.S. person; and

(ii) If the trust is terminated at any time during the taxable year, no part of the income or corpus of the trust could be paid to or for the benefit of, directly or indirectly, a U.S. person.

(2) *Benefit to a U.S. person*—(i) *In general*. For purposes of paragraph (a)(1) of this section, income or corpus may be paid or accumulated to or for the benefit of a U.S. person during a taxable year of the U.S. transferor if during that year, directly or indirectly, income may be distributed to, or accumulated for the benefit of, a U.S. person, or corpus may be distributed to, or held for the future benefit of, a U.S. person. This determination is made without regard to whether income or corpus is actually distributed to a U.S. person during that year, and without regard to whether a U.S. person's interest in the trust income or corpus is contingent on a future event.

(ii) *Certain unexpected beneficiaries*. Notwithstanding paragraph (a)(2)(i) of this section, for purposes of paragraph (a)(1) of this section, a person who is not named as a beneficiary and is not a member of a class of beneficiaries as defined under the trust instrument is not taken into consideration if the U.S. transferor demonstrates to the satisfaction of the Commissioner that the person's contingent interest in the trust is so remote as to be negligible. The preceding sentence does not apply with respect to persons to whom distributions could be made pursuant to a grant of discretion to the trustee or any other person. A class of beneficiaries generally does not include heirs who will benefit from the trust under the laws of intestate succession in the event that the named beneficiaries (or members of the named class) have all deceased (whether or not stated as a named class in the trust instrument).

(iii) *Examples*. The following examples illustrate the rules of paragraphs (a)(1) and (2) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s daughter, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Distribution of income to U.S. person. *A* transfers property to *FT*. The trust instrument provides that all trust income is to be distributed currently to *B*. Under paragraph (a)(1) of this section, *FT* is treated as having a U.S. beneficiary.

Example 2. Income accumulation for the benefit of a U.S. person. In 2001, *A* transfers property to *FT*. The trust instrument provides that from 2001 through 2010, the trustee of *FT* may distribute trust income to *C* or may accumulate the trust income. The trust instrument further provides that in 2011, the trust will terminate and the trustee may distribute the trust assets to either or both of *B* and *C*, in the trustee's discretion. If the trust terminates unexpectedly prior to 2011, all trust assets must be distributed to *C*. Because it is possible that income may be accumulated in each year, and that the accumulated income ultimately may be distributed to *B*, a U.S. person, under paragraph (a)(1) of this section *FT* is treated as having a U.S. beneficiary during each of *A*'s tax years from 2001 through 2011. This result applies even though no U.S. person may receive distributions from the trust during the tax years 2001 through 2010.

Example 3. Corpus held for the benefit of a U.S. person. The facts are the same as in Example 2, except that from 2001 through 2011, all trust income must be distributed to *C*. In 2011, the trust will terminate and the trustee may distribute the trust corpus to either or both of *B* and *C*, in the trustee's discretion. If the trust terminates unexpectedly prior to 2011, all trust corpus must be distributed to *C*. Because during each of *A*'s tax years from 2001 through 2011 trust corpus is held for possible future distribution to *B*, a U.S. person, under paragraph (a)(1) of this section *FT* is treated as having a U.S. beneficiary during each of those years. This result applies even though no U.S. person may receive distributions from the trust during the tax years 2001 through 2010.

Example 4. Distribution upon U.S. transferor's death. *A* transfers property to *FT*. The trust instrument provides that all trust income must be distributed currently to *C* and, upon *A*'s death, the trust will terminate and the trustee may distribute the trust corpus to either or both of *B* and *C*. Because *B* may receive a distribution of corpus upon the termination of *FT*, and *FT* could terminate in any year, *FT* is treated as having a U.S. beneficiary in the year of the transfer and in subsequent years.

Example 5. Distribution after U.S. transferor's death. The facts are the same as in *Example 4*, except the trust instrument provides that the trust will not terminate until the year following *A*'s death. Upon termination, the trustee may distribute the trust assets to either or both of *B* and *C*, in the trustee's discretion. All trust assets are invested in the stock of *X*, a foreign corporation, and *X* makes no distributions to *FT*. Although no U.S. person may receive a distribution until the year after *A*'s death, and *FT* has no realized income during any year of its existence, during each year in which *A* is living corpus may be held for future distribution to *B*, a U.S. person. Thus, under paragraph (a)(1) of this section *FT* is treated as having a U.S. beneficiary during each of *A*'s tax years from 2001 through the year of *A*'s death.

Example 6. Constructive benefit to U.S. person. *A* transfers property to *FT*. The trust instrument provides that no income or corpus may be paid directly to a U.S. person. However, the trust instrument provides that trust corpus may be used to satisfy *B*'s legal obligations to a third party by making a payment directly to the third party. Under paragraphs (a)(1) and (2) of this section, *FT* is treated as having a U.S. beneficiary.

Example 7. U.S. person with negligible contingent interest. *A* transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *C*, and upon *C*'s death, all corpus is to be

distributed to whomever of *C*'s three children is then living. All of *C*'s children are nonresident aliens. Under the laws of intestate succession that would apply to *FT*, if all of *C*'s children are deceased at the time of *C*'s death, the corpus would be distributed to *A*'s heirs. *A*'s living relatives at the time of the transfer consist solely of two brothers and two nieces, all of whom are nonresident aliens, and two first cousins, one of whom, *E*, is a U.S. citizen. Although it is possible under certain circumstances that *E* could receive a corpus distribution under the applicable laws of intestate succession, for each year the trust is in existence *A* is able to demonstrate to the satisfaction of the Commissioner under paragraph (a)(2)(ii) of this section that *E*'s contingent interest in *FT* is so remote as to be negligible. Provided that paragraph (a)(4) of this section does not require a different result, *FT* is not treated as having a U.S. beneficiary.

Example 8. U.S. person with non-negligible contingent interest. *A* transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *D*, *A*'s uncle, who is a nonresident alien, and upon *A*'s death, the corpus is to be distributed to *D* if he is then living. Under the laws of intestate succession that would apply to *FT*, *B* and *C* would share equally in the trust corpus if *D* is not living at the time of *A*'s death. *A* is unable to demonstrate to the satisfaction of the Commissioner that *B*'s contingent interest in the trust is so remote as to be negligible. Under paragraph (a)(2)(ii) of this section, *FT* is treated as having a U.S. beneficiary as of the year of the transfer.

Example 9. U.S. person as member of class of beneficiaries. *A* transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *D*, *A*'s uncle, who is a nonresident alien, and upon *A*'s death, the corpus is to be distributed to *D* if he is then living. If *D* is not then living, the corpus is to be distributed to *D*'s descendants. *D*'s grandson, *E*, is a resident alien. Under paragraph (a)(2)(ii) of this section, *FT* is treated as having a U.S. beneficiary as of the year of the transfer.

Example 10. Trustee's discretion in choosing beneficiaries. *A* transfers property to *FT*. The trust instrument provides that the trustee may distribute income and corpus to, or accumulate income for the benefit of, any person who is pursuing the academic study of ancient Greek, in the trustee's discretion. Because it is possible that a U.S. person will receive distributions of income or corpus, or will have income accumulated for his benefit, *FT* is treated as having a U.S. beneficiary. This result applies even if, during a tax year, no distributions or accumulations are actually made to or for the benefit of a U.S. person. *A* may not invoke paragraph (a)(2)(ii) of this section because a U.S. person could benefit pursuant to a grant of discretion in the trust instrument.

Example 11. Appointment of remainder beneficiary. *A* transfers property to *FT*. The trust instrument provides that the trustee may distribute current income to *C*, or may accumulate income, and, upon termination of the trust, trust assets are to be distributed to *C*. However, the trust instrument further provides that *D*, *A*'s uncle, may appoint a different remainder beneficiary. Because it is possible that a U.S. person could be named as the remainder beneficiary, and because corpus could be held in each year for the future benefit of that U.S. person, *FT* is treated as having a U.S. beneficiary for each year.

Example 12. Trust not treated as having a U.S. beneficiary. *A* transfers property to *FT*. The trust instrument provides that the trustee may distribute income and corpus to, or accumulate income for the benefit of *C*. Upon termination of the trust, all income and corpus must be distributed to *C*. Assume that paragraph (a)(4) of this section is not applicable under the facts and circumstances and that *A* establishes to the satisfaction of the Commissioner under paragraph (a)(2)(ii) of this section that no U.S. persons are reasonably expected to benefit from the trust. Because no part of the income or corpus of the trust may be paid or accumulated to or for the benefit of, either directly or indirectly, a U.S. person, and if the trust is terminated no part of the income or corpus of the trust could be paid to or for the benefit of, either directly or indirectly, a U.S. person, *FT* is not treated as having a U.S. beneficiary.

Example 13. U.S. beneficiary becomes non-U.S. person. In 2001, *A* transfers property to *FT*. The trust instrument provides that, as long as *B* remains a U.S. resident, no distributions of income or corpus may be made from the trust to *B*. The trust instrument further provides that if *B* becomes a nonresident alien, distributions of income (including previously accumulated income) and corpus may be made to him. If *B* remains a U.S. resident at the time of *FT*'s termination, all accumulated income and corpus is to be distributed to *C*. In 2007, *B* becomes a nonresident alien and remains so thereafter. Because income may be accumulated during the years 2001 through 2007 for the benefit of a person who is a U.S. person during those years, *FT* is treated as having a U.S. beneficiary under paragraph (a)(1) of this section during each of those years. This result applies even though *B* cannot receive distributions from *FT* during the years he is a resident alien and even though *B* might remain a resident alien who is not entitled to any distribution from *FT*. Provided that paragraph (a)(4) of this section does not require a different result and that *A* establishes to the satisfaction of the Commissioner under paragraph (a)(2)(ii) of this section that no other U.S. persons are reasonably expected to benefit from the trust, *FT* is not treated as having a U.S. beneficiary under paragraph (a)(1) of this section during tax years after 2007.

(3) *Changes in beneficiary's status*—(i) *In general.* For purposes of paragraph (a)(1) of this section, the possibility that a person that is not a U.S. person could become a U.S. person will not cause that person to be treated as a U.S. person for purposes of paragraph (a)(1) of this section until the tax year of the U.S. transferor in which that individual actually becomes a U.S. person. However, if a person who is not a U.S. person becomes a U.S. person for the first time more than 5 years after the date of a transfer to the foreign trust by a U.S. transferor, that person is not treated as a U.S. person for purposes of applying paragraph (a)(1) of this section with respect to that transfer.

(ii) *Examples.* The following examples illustrate the rules of paragraph (a)(3) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s daughter, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Non-U.S. beneficiary becomes U.S. person. In 2001, *A* transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *C* and that, upon the termination of *FT*, all corpus is to be distributed to *C*. Assume that paragraph (a)(4) of this section is not applicable under the facts and circumstances and that A establishes to the satisfaction of the Commissioner under paragraph (a)(2)(ii) of this section that no U.S. persons are reasonably expected to benefit from the trust. Under paragraph (a)(3)(i) of this section, *FT* is not treated as having a U.S. beneficiary during the tax years of *A* in which *C* remains a nonresident alien. If *C* first becomes a resident alien in 2004, *FT* is treated as having a U.S. beneficiary commencing in that year under paragraph (a)(3) of this section. See paragraph (c) of this section regarding the treatment of *A* upon *FT*'s acquisition of a U.S. beneficiary.

Example 2. Non-U.S. beneficiary becomes U.S. person more than 5 years after transfer. The facts are the same as in *Example 1*, except *C* first becomes a resident alien in 2007. *FT* is treated as not having a U.S. beneficiary under paragraph (a)(3)(i) of this section with respect to the property transfer by *A*. However, if *C* had previously been a U.S. person during any prior period, the 5-year exception in paragraph (a)(3)(i) of this section would not apply in 2007 because it would not have been the first time *C* became a U.S. person.

(4) *General rules*—(i) *Records and documents.* Even if, based on the terms of the trust instrument, a foreign trust is not treated as having a U.S. beneficiary within the meaning of paragraph (a)(1) of this section, the trust may nevertheless be treated as having a U.S. beneficiary pursuant to paragraph (a)(1) of this section based on the following—

(A) All written and oral agreements and understandings relating to the trust;

(B) Memoranda or letters of wishes;

(C) All records that relate to the actual distribution of income and corpus; and

(D) All other documents that relate to the trust, whether or not of any purported legal effect.

(ii) *Additional factors.* For purposes of determining whether a foreign trust is treated as having a U.S. beneficiary within the meaning of paragraph (a)(1) of this section, the following additional factors are taken into account—

(A) If the terms of the trust instrument allow the trust to be amended to benefit a U.S. person, all potential benefits that could be provided to a U.S. person pursuant to an amendment must be taken into account;

(B) If the terms of the trust instrument do not allow the trust to be amended to benefit a U.S. person, but the law applicable to a foreign trust may require payments or accumulations of income or corpus to or for the benefit of a U.S. person (by judicial reformation or otherwise), all potential benefits that could be provided to a U.S. person pursuant to the law must be taken into account, unless the U.S. transferor demonstrates to the satisfaction of the Commissioner that the law is not reasonably expected to be applied or invoked under the facts and circumstances; and

(C) If the parties to the trust ignore the terms of the trust instrument, or if it is reasonably expected that they will do so, all benefits that have been, or are reasonably expected to be, provided to a U.S. person must be taken into account.

(iii) *Examples.* The following examples illustrate the rules of paragraph (a)(4) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s daughter, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Amendment pursuant to local law. *A* creates and funds *FT* for the benefit of *C*. The terms of *FT* (which, according to the trust instrument, cannot be amended) provide that no part of the income or corpus of *FT* may be paid or accumulated during the taxable year to or for the benefit of any U.S. person, either during the existence of *FT* or at the time of its termination. However, pursuant to the applicable foreign law, FT can be amended to provide for additional beneficiaries, and there is an oral understanding between *A* and the trustee that *B* can be added as a beneficiary. Under paragraphs (a)(1) and (a)(4)(ii)(B) of this section, *FT* is treated as having a U.S. beneficiary.

Example 2. Actions in violation of the terms of the trust. *A* transfers property to *FT*. The trust instrument provides that no U.S. person can receive income or corpus from *FT* during the term of the trust or at the termination of *FT*. Notwithstanding the terms of the trust instrument, a letter of wishes directs the trustee of *FT* to provide for the educational needs of *B*, who is about to begin college. The letter of wishes contains a disclaimer to the effect that its contents are only suggestions and recommendations and that the trustee is at all times bound by the terms of the trust as set forth in the trust instrument. Under paragraphs (a)(1) and (a)(4)(ii)(C) of this section, *FT* is treated as having a U.S. beneficiary.

(b) *Indirect U.S. beneficiaries*—(1) *Certain foreign entities.* For purposes of paragraph (a)(1) of this section, an amount is treated as paid or accumulated to or for the benefit of a U.S. person if the amount is paid to or accumulated for the benefit of—

(i) A controlled foreign corporation, as defined in section 957(a);

(ii) A foreign partnership, if a U.S. person is a partner of such partnership; or

(iii) A foreign trust or estate, if such trust or estate has a U.S. beneficiary (within the meaning of paragraph (a)(1) of this section).

(2) *Other indirect beneficiaries.* For purposes of paragraph (a)(1) of this section, an amount is treated as paid or accumulated to or for the benefit of a U.S. person if the amount is paid to or accumulated for the benefit of a U.S. person through an intermediary, such as an agent or nominee, or by any other means where a U.S. person may obtain an actual or constructive benefit.

(3) *Examples.* The following examples illustrate the rules of this paragraph (b). Unless otherwise noted, A is a resident alien. B is A's son and is a resident alien. FT is a foreign trust. The examples are as follows:

Example 1. Trust benefitting foreign corporation. *A* transfers property to *FT*. The beneficiary of *FT* is *FC*, a foreign corporation. *FC* has outstanding solely 100 shares of common stock. *B* owns 49 shares of the *FC* stock and *FC2*, also a foreign corporation, owns the remaining 51 shares. *FC2* has outstanding solely 100 shares of common stock. *B* owns 49 shares of *FC2* and nonresident alien individuals own the remaining 51 *FC2* shares. *FC* is a controlled foreign corporation (as defined in section 957(a), after the application of section 958(a)(2)). Under paragraphs (a)(1) and (b)(1)(i) of this section, *FT* is treated as having a U.S. beneficiary.

Example 2. Trust benefitting another trust. *A* transfers property to *FT*. The terms of *FT* permit current distributions of income to *B*. *A* transfers property to another foreign trust, *FT2*. The terms of *FT2* provide that no U.S. person can benefit either as to income or corpus, but permit current distributions of income to *FT*. Under paragraph (a)(1) of this section, *FT* is treated as having a U.S. beneficiary and, under paragraphs (a)(1) and (b)(1)(iii) of this section, *FT2* is treated as having a U.S. beneficiary.

Example 3. Trust benefitting another trust after transferor's death. *A* transfers property to *FT*. The terms of *FT* require that all income from *FT* be accumulated during *A*'s lifetime. In the year following *A*'s death, a share of *FT* is to be distributed to *FT2*, another foreign trust, for the benefit of *B*. Under paragraphs (a)(1) and (b)(1)(iii) of this section, *FT* is treated as having a U.S. beneficiary beginning with the year of *A*'s transfer of property to *FT*.

Example 4. Indirect benefit through use of debit card. *A* transfers property to FT. The trust instrument provides that no U.S. person can benefit either as to income or corpus. However, *FT* maintains an account with *FB*, a foreign bank, and *FB* issues a debit card to *B* against the account maintained by *FT* and *B* is allowed to make withdrawals. Under paragraphs (a)(1) and (b)(2) of this section, *FT* is treated as having a U.S. beneficiary.

Example 5. Other indirect benefit. *A* transfers property to *FT*. *FT* is administered by *FTC*, a foreign trust company. *FTC* forms *IBC*, an international business corporation formed under the laws of a foreign jurisdiction. *IBC* is the beneficiary of *FT*. *IBC* maintains an account with *FB*, a foreign bank. *FB* issues a debit card to *B* against the account maintained by *IBC* and *B* is allowed to make withdrawals. Under paragraphs (a)(1) and (b)(2) of this section, *FT* is treated as having a U.S. beneficiary.

(c) *Treatment of U.S. transferor upon foreign trust's acquisition or loss of U.S. beneficiary*—(1) *Trusts acquiring a U.S. beneficiary.* If a foreign trust to which a U.S. transferor has transferred property is not treated as having a U.S. beneficiary (within the meaning of paragraph (a) of this section) for any taxable year of the U.S. transferor, but the trust is treated as having a U.S. beneficiary (within the meaning of paragraph (a) of this section) in any subsequent taxable year, the U.S. transferor is treated as having additional income in the first such taxable year of the U.S. transferor in which the trust is treated as having a U.S. beneficiary. The amount of the additional income is equal to the trust's undistributed net income, as defined in section 665(a), at the end of the U.S. transferor's immediately preceding taxable year and is subject to the rules of section 668, providing for an interest charge on accumulation distributions from foreign trusts.

(2) *Trusts ceasing to have a U.S. beneficiary.* If, for any taxable year of a U.S. transferor, a foreign trust that has received a transfer of property from the U.S. transferor ceases to be treated as having a U.S. beneficiary, the U.S. transferor ceases to be treated as the owner of the portion of the trust attributable to the transfer beginning in the first taxable year following the last taxable year of the U.S. transferor during which the trust was treated as having a U.S. beneficiary (unless the U.S. transferor is treated as an owner thereof pursuant to sections 673 through 677). The U.S. transferor is treated as making a transfer of property to the foreign trust on the first day of the first taxable year following the last taxable year of the U.S. transferor during which the trust was treated as having a U.S. beneficiary. The amount of the property deemed to be transferred to the trust is the portion of the trust attributable to the prior

transfer to which paragraph (a)(1) of this section applied. For rules regarding the recognition of gain on transfers to foreign trusts, see section 684.

(3) *Examples.* The rules of this paragraph (c) are illustrated by the following examples. *A* is a resident alien, *B* is *A's* son, and *FT* is a foreign trust. The examples are as follows:

Example 1. Trust acquiring U.S. beneficiary. (i) In 2001, *A* transfers stock with a fair market value of $100,000 to *FT*. The stock has an adjusted basis of $50,000 at the time of the transfer. The trust instrument provides that income may be paid currently to, or accumulated for the benefit of, *B* and that, upon the termination of the trust, all income and corpus is to be distributed to *B*. At the time of the transfer, *B* is a nonresident alien. *A* is not treated as the owner of any portion of FT under sections 673 through 677. *FT* accumulates a total of $30,000 of income during the taxable years 2001 through 2003. In 2004, *B* moves to the United States and becomes a resident alien. Assume paragraph (a)(4) of this section is not applicable under the facts and circumstances.

(ii) Under paragraph (c)(1) of this section, *A* is treated as receiving an accumulation distribution in the amount of $30,000 in 2004 and immediately transferring that amount back to the trust. The accumulation distribution is subject to the rules of section 668, providing for an interest charge on accumulation distributions.

(iii) Under paragraphs (a)(1) and (3) of this section, beginning in 2005, *A* is treated as the owner of the portion of *FT* attributable to the stock transferred by *A* to *FT* in 2001 (which includes the portion attributable to the accumulated income deemed to be retransferred in 2004).

Example 2. Trust ceasing to have U.S. beneficiary. (i) The facts are the same as in *Example 1*. In 2008, B becomes a nonresident alien. On the date B becomes a nonresident alien, the stock transferred by A to *FT* in 2001 has a fair market value of $125,000 and an adjusted basis of $50,000.

(ii) Under paragraph (c)(2) of this section, beginning in 2009, *FT* is not treated as having a U.S. beneficiary, and *A* is not treated as the owner of the portion of the trust attributable to the prior transfer of stock. For rules regarding the recognition of gain on the termination of ownership status, see section 684.

§ 1.679–3 Transfers.

(a) *In general.* A transfer means a direct, indirect, or constructive transfer.

(b) *Transfers by certain trusts*—(1) *In general.* If any portion of a trust is treated as owned by a U.S. person, a transfer of property from that portion of the trust to a foreign trust is treated as a transfer from the owner of that portion to the foreign trust.

(2) *Example.* The following example illustrates this paragraph (b):

Example. In 2001, *A*, a U.S. citizen, creates and funds *DT*, a domestic trust. *A* has the power to revest absolutely in himself the title to the property in *DT* and is treated as the owner of *DT* pursuant to section 676. In 2004, *DT* transfers property to *FT*, a foreign trust. *A* is treated as having transferred the property to *FT* in 2004 for purposes of this section.

(c) *Indirect transfers*—(1) *Principal purpose of tax avoidance.* A transfer to a foreign trust by any person (intermediary) to whom a U.S. person transfers property is treated as an indirect transfer by a U.S. person to the foreign trust if such transfer is made pursuant to a plan one of the principal purposes of which is the avoidance of United States tax.

(2) *Principal purpose of tax avoidance deemed to exist.* For purposes of paragraph (c)(1) of this section, a transfer is deemed to have been made pursuant to a plan one of the principal purposes of which was the avoidance of United States tax if—

(i) The U.S. person is related (within the meaning of paragraph (c)(4) of this section) to a beneficiary of the foreign trust, or has another relationship with a beneficiary of the foreign trust that establishes a reasonable basis for concluding that the U.S. transferor would make a transfer to the foreign trust; and

(ii) The U.S. person cannot demonstrate to the satisfaction of the Commissioner that—

(A) The intermediary has a relationship with a beneficiary of the foreign trust that establishes a reasonable basis for concluding that the intermediary would make a transfer to the foreign trust;

(B) The intermediary acted independently of the U.S. person;

(C) The intermediary is not an agent of the U.S. person under generally applicable United States agency principles; and

(D) The intermediary timely complied with the reporting requirements of section 6048, if applicable.

(3) *Effect of disregarding intermediary*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, if a transfer is treated as an indirect transfer pursuant to paragraph (c)(1) of this section, then the intermediary is treated as an agent of the U.S. person, and the property is treated as transferred to the foreign trust by the U.S. person in the year the property is transferred, or made available, by the intermediary to the foreign trust. The fair market value of the property transferred is determined as of the date of the transfer by the intermediary to the foreign trust.

(ii) *Special rule.* If the Commissioner determines, or if the taxpayer can demonstrate to the satisfaction of the Commissioner, that the intermediary is an agent of the foreign trust under generally applicable United States agency principles, the property will be treated as transferred to the foreign trust in the year the U.S. person transfers the property to the intermediary. The fair market value of the property transferred will be determined as of the date of the transfer by the U.S. person to the intermediary.

(iii) *Effect on intermediary.* If a transfer of property is treated as an indirect transfer under paragraph (c)(1) of this section, the intermediary is not treated as having transferred the property to the foreign trust.

(4) *Related parties.* For purposes of this paragraph (c), a U.S. transferor is treated as related to a U.S. beneficiary of a foreign trust if the U.S. transferor and the beneficiary are related for purposes of section 643(i)(2)(B), with the following modifications—

(i) For purposes of applying section 267 (other than section 267(f)) and section 707(b)(1), "at least 10 percent" is used instead of "more than 50 percent" each place it appears; and

(ii) The principles of section 267(b)(10), using "at least 10 percent" instead of "more than 50 percent," apply to determine whether two corporations are related.

(5) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

Example 1. Principal purpose of tax avoidance. *A*, a U.S. citizen, creates and funds *FT*, a foreign trust, for the benefit of *A's* children, who are U.S. citizens. In 2004, *A* decides to transfer an additional 1000X to the foreign trust. Pursuant to a plan with a principal purpose of avoiding the application of section 679, A transfers 1000X to *I*, a foreign person. *I* subsequently transfers 1000X to *FT*. Under paragraph (c)(1) of this section, *A* is treated as having made a transfer of 1000X to *FT*.

Example 2. U.S. person unable to demonstrate that intermediary acted independently. *A*, a U.S. citizen, creates and funds *FT*, a foreign trust, for the benefit of *A's* children, who are U.S. citizens. On July 1, 2004, *A* transfers XYZ stock to *D*, *A's* uncle, who is a nonresident alien. *D* immediately sells the XYZ stock and uses the proceeds to purchase ABC stock. On January 1, 2007, *D* transfers the ABC stock to *FT*. *A* is unable to demonstrate to the satisfaction of the Commissioner, pursuant to paragraph (c)(2) of this section, that *D* acted independently of *A* in making the transfer to *FT*. Under paragraph (c)(1) of this section, *A* is treated as having transferred the ABC stock to FT. Under paragraph (c)(3) of this section, *D* is treated as an agent of *A*, and the transfer is deemed to have been made on January 1, 2007.

Example 3. Indirect loan to foreign trust. *A*, a U.S. citizen, previously created and funded *FT*, a foreign trust, for the benefit of

A's children, who are U.S. citizens. On July 1, 2004, *A* deposits 500X with *FB*, a foreign bank. On January 1, 2005, *FB* loans 450X to *FT*. *A* is unable to demonstrate to the satisfaction of the Commissioner, pursuant to paragraph (c)(2) of this section, that *FB* has a relationship with *FT* that establishes a reasonable basis for concluding that *FB* would make a loan to *FT* or that *FB* acted independently of *A* in making the loan. Under paragraph (c)(1) of this section, *A* is deemed to have transferred 450X directly to *FT* on January 1, 2005. Under paragraph (c)(3) of this section, *FB* is treated as an agent of *A*. For possible exceptions with respect to qualified obligations of the trust, and the treatment of principal repayments with respect to obligations of the trust that are not qualified obligations, see § 1.679–4.

Example 4. Loan to foreign trust prior to deposit of funds in foreign bank. The facts are the same as in *Example 3*, except that *A* makes the 500X deposit with *FB* on January 2, 2005, the day after *FB* makes the loan to *FT*. The result is the same as in *Example 3*.

(d) *Constructive transfers*—(1) *In general.* For purposes of paragraph (a) of this section, a constructive transfer includes any assumption or satisfaction of a foreign trust's obligation to a third party.

(2) *Examples.* The rules of this paragraph (d) are illustrated by the following examples. In each example, *A* is a U.S. citizen and *FT* is a foreign trust. The examples are as follows:

Example 1. Payment of debt of foreign trust. FT owes 1000X to *Y*, an unrelated foreign corporation, for the performance of services by *Y* for *FT*. In satisfaction of *FT*'s liability to *Y*, *A* transfers to *Y* property with a fair market value of 1000X. Under paragraph (d)(1) of this section, *A* is treated as having made a constructive transfer of the property to *FT*.

Example 2. Assumption of liability of foreign trust. FT owes 1000X to *Y*, an unrelated foreign corporation, for the performance of services by *Y* for *FT*. *A* assumes *FT*'s liability to pay *Y*. Under paragraph (d)(1) of this section, *A* is treated as having made a constructive transfer of property with a fair market value of 1000X to *FT*.

(e) *Guarantee of trust obligations*—(1) *In general.* If a foreign trust borrows money or other property from any person who is not a related person (within the meaning of § 1.679–1(c)(5)) with respect to the trust (lender) and a U.S. person (U.S. guarantor) that is a related person with respect to the trust guarantees (within the meaning of paragraph (e)(4) of this section) the foreign trust's obligation, the U.S. guarantor is treated for purposes of this section as a U.S. transferor that has made a transfer to the trust on the date of the guarantee in an amount determined under paragraph (e)(2) of this section. To the extent this paragraph causes the U.S. guarantor to be treated as having made a transfer to the trust, a lender that is a U.S. person shall not be treated as having transferred that amount to the foreign trust.

(2) *Amount transferred.* The amount deemed transferred by a U.S. guarantor described in paragraph (e)(1) of this section is the guaranteed portion of the adjusted issue price of the obligation (within the meaning of § 1.1275–1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of § 1.1273–1(c)).

(3) *Principal repayments.* If a U.S. person is treated under this paragraph (e) as having made a transfer by reason of the guarantee of an obligation, payments of principal to the lender by the foreign trust with respect to the obligation are taken into account on and after the date of the payment in determining the portion of the trust attributable to the property deemed transferred by the U.S. guarantor.

(4) *Guarantee.* For purposes of this section, the term guarantee—

(i) Includes any arrangement under which a person, directly or indirectly, assures, on a conditional or unconditional basis, the payment of another's obligation;

(ii) Encompasses any form of credit support, and includes a commitment to make a capital contribution to the debtor or otherwise maintain its financial viability; and

(iii) Includes an arrangement reflected in a comfort letter, regardless of whether the arrangement gives rise to a legally enforceable obligation. If an arrangement is contingent upon the occurrence of an event, in determining whether the arrangement is a guarantee, it is assumed that the event has occurred.

(5) *Examples.* The rules of this paragraph (e) are illustrated by the following examples. In all of the examples, A is a U.S. resident and FT is a foreign trust. The examples are as follows:

Example 1. Foreign lender. X, a foreign corporation, loans 1000X of cash to *FT* in exchange for *FT*'s obligation to repay the loan. *A* guarantees the repayment of 600X of *FT*'s obligation. Under paragraph (e)(2) of this section, *A* is treated as having transferred 600X to *FT*.

Example 2. Unrelated U.S. lender. The facts are the same as in *Example 1*, except *X* is a U.S. person that is not a related person within the meaning of § 1.679–1(c)(5). The result is the same as in *Example 1*.

(f) *Transfers to entities owned by a foreign trust*—(1) *General rule.* If a U.S. person is a related person (as defined in § 1.679–1(c)(5)) with respect to a foreign trust, any transfer of property by the U.S. person to an entity in which the foreign trust holds an ownership interest is treated as a transfer of such property by the U.S. person to the foreign trust followed by a transfer of the property from the foreign trust to the entity owned by the foreign trust, unless the U.S. person demonstrates to the satisfaction of the Commissioner that the transfer to the entity is properly attributable to the U.S. person's ownership interest in the entity.

(2) *Examples.* The rules of this paragraph (f) are illustrated by the following examples. In all of the examples, *A* is a U.S. citizen, *FT* is a foreign trust, and *FC* is a foreign corporation. The examples are as follows:

Example 1. Transfer treated as transfer to trust. A creates and funds *FT*, which is treated as having a U.S. beneficiary under § 1.679–2. *FT* owns all of the outstanding stock of *FC*. *A* transfers property directly to *FC*. Because *FT* is the sole shareholder of *FC*, *A* is unable to demonstrate to the satisfaction of the Commissioner that the transfer is properly attributable to *A*'s ownership interest in *FC*. Accordingly, under this paragraph (f), *A* is treated as having transferred the property to *FT*, followed by a transfer of such property by *FT* to *FC*. Under § 1.679–1(a), *A* is treated as the owner of the portion of *FT* attributable to the property treated as transferred directly to *FT*. Under § 1.367(a)–1T(c)(4)(ii), the transfer of property by *FT* to *FC* is treated as a transfer of the property by *A* to *FC*.

Example 2. Transfer treated as transfer to trust. The facts are the same as in *Example 1*, except that *FT* is not treated as having a U.S. beneficiary under § 1.679–2. Under this paragraph (f), *A* is treated as having transferred the property to *FT*, followed by a transfer of such property by *FT* to *FC*. *A* is not treated as the owner of *FT* for purposes of § 1.679–1(a). For rules regarding the recognition of gain on the transfer, see section 684.

Example 3. Transfer not treated as transfer to trust. A creates and funds *FT*. *FC* has outstanding solely 100 shares of common stock. *FT* owns 50 shares of *FC* stock, and *A* owns the remaining 50 shares. On July 1, 2001, *FT* and *A* each transfer 1000X to *FC*. *A* is able to demonstrate to the satisfaction of the Commissioner that *A*'s transfer to *FC* is properly attributable to *A*'s ownership interest in *FC*. Accordingly, under this paragraph (f), *A*'s transfer to *FC* is not treated as a transfer to *FT*.

§ 1.679–4 Exceptions to general rule.

(a) *In general.* Section 1.679–1 does not apply to—

(1) Any transfer of property to a foreign trust by reason of the death of the transferor;

(2) Any transfer of property to a foreign trust described in sections 402(b), 404(a)(4), or 404A;

(3) Any transfer of property to a foreign trust described in section 501(c)(3) (without regard to the requirements of section 508(a)); and

(4) Any transfer of property to a foreign trust to the extent the transfer is for fair market value.

(b) *Transfers for fair market value*—(1) *In general.* For purposes of this section, a transfer is for fair market value only to the extent of the value of property received from the trust, services rendered by the trust, or the right to use property of the trust. For example, rents, royalties, interest, and compensation paid to a trust are transfers for fair market value only to the extent that the payments reflect an arm's length price for the use of the property of, or for the services rendered by, the trust. For purposes of this determination, an interest in the trust is not property received from the trust. For purposes of this section, a distribution to a trust with respect to an interest held by such trust in an entity other than a trust or an interest in certain investment trusts described in § 301.7701–4(c) of this chapter, liquidating trusts described in § 301.7701–4(d) of this chapter, or environmental remediation trusts described in § 301.7701–4(e) of this chapter is considered to be a transfer for fair market value.

(2) *Special rule*—(i) *Transfers for partial consideration.* For purposes of this section, if a person transfers property to a foreign trust in exchange for property having a fair market value that is less than the fair market value of the property transferred, the exception in paragraph (a)(4) of this section applies only to the extent of the fair market value of the property received.

(ii) *Example.* This paragraph (b) is illustrated by the following example:

Example. A, a U.S. citizen, transfers property that has a fair market value of 1000X to *FT*, a foreign trust, in exchange for 600X of cash. Under this paragraph (b), § 1.679–1 applies with respect to the transfer of 400X (1000X less 600X) to *FT*.

(c) *Certain obligations not taken into account.* Solely for purposes of this section, in determining whether a transfer by a U.S. transferor that is a related person (as defined in § 1.679–1(c)(5)) with respect to the foreign trust is for fair market value, any obligation (as defined in § 1.679–1(c)(6)) of the trust or a related person (as defined in § 1.679–1(c)(5)) that is not a qualified obligation within the meaning of paragraph (d)(1) of this section shall not be taken into account.

(d) *Qualified obligations*—(1) *In general.* For purposes of this section, an obligation is treated as a qualified obligation only if—

(i) The obligation is reduced to writing by an express written agreement;

(ii) The term of the obligation does not exceed five years (for purposes of determining the term of an obligation, the obligation's maturity date is the last possible date that the obligation can be outstanding under the terms of the obligation);

(iii) All payments on the obligation are denominated in U.S. dollars;

(iv) The yield to maturity is not less than 100 percent of the applicable Federal rate and not greater that 130 percent of the applicable Federal rate (the applicable Federal rate for an obligation is the applicable Federal rate in effect under section 1274(d) for the day on which the obligation is issued, as published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter));

(v) The U.S. transferor extends the period for assessment of any income or transfer tax attributable to the transfer and any consequential income tax changes for each year that the obligation is outstanding, to a date not earlier than three years after the maturity date of the obligation (this extension is not necessary if the maturity date of the obligation does not extend beyond the end of the U.S. transferor's taxable year for the year of the transfer and is paid within such period); when properly executed and filed, such an agreement is deemed to be consented to for purposes of § 301.6501(c)–1(d) of this chapter; and

(vi) The U.S. transferor reports the status of the loan, including principal and interest payments, on Form 3520 for every year that the loan is outstanding.

(2) *Additional loans.* If, while the original obligation is outstanding, the U.S. transferor or a person related to the trust (within the meaning of § 1.679–1(c)(5)) directly or indirectly obtains another obligation issued by the trust, or if the U.S. transferor directly or indirectly obtains another obligation issued by a person related to the trust, the original obligation is deemed to have the maturity date of any such subsequent obligation in determining whether the term of the original obligation exceeds the specified 5-year term. In addition, a series of obligations issued and repaid by the trust (or a person related to the trust) is treated as a single obligation if the transactions giving rise to the obligations are structured with a principal purpose to avoid the application of this provision.

(3) *Obligations that cease to be qualified.* If an obligation treated as a qualified obligation subsequently fails to be a qualified obligation (e.g., renegotiation of the terms of the obligation causes the term of the obligation to exceed five years), the U.S. transferor is treated as making a transfer to the trust in an amount equal to the original obligation's adjusted issue price (within the meaning of § 1.1275–1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of § 1.1273–1(c)) as of the date of the subsequent event that causes the obligation to no longer be a qualified obligation. If the maturity date is extended beyond five years by reason of the issuance of a subsequent obligation by the trust (or person related to the trust), the amount of the transfer will not exceed the issue price of the subsequent obligation. The subsequent obligation is separately tested to determine if it is a qualified obligation.

(4) *Transfers resulting from failed qualified obligations.* In general, a transfer resulting from a failed qualified obligation is deemed to occur on the date of the subsequent event that causes the obligation to no longer be a qualified obligation. However, based on all of the facts and circumstances, the Commissioner may deem a transfer to have occurred on any date on or after the issue date of the original obligation. For example, if at the time the original obligation was issued, the transferor knew or had reason to know that the obligation would not be repaid, the Commissioner could deem the transfer to have occurred on the issue date of the original obligation.

(5) *Renegotiated loans.* Any loan that is renegotiated, extended, or revised is treated as a new loan, and any transfer of funds to a foreign trust after such renegotiation, extension, or revision under a pre-existing loan agreement is treated as a transfer subject to this section.

(6) *Principal repayments.* The payment of principal with respect to any obligation that is not treated as a qualified obligation under this paragraph is taken into account on and after the date of the payment in determining the portion of the trust attributable to the property transferred.

(7) *Examples.* The rules of this paragraph (d) are illustrated by the following examples. In the examples, *A* and *B* are U.S. residents and *FT* is a foreign trust. The examples are as follows:

Example 1. Demand loan. A transfers 500X to *FT* in exchange for a demand note that permits *A* to require repayment by *FT* at any time. *A* is a related person (as defined in § 1.679–1(c)(5)) with respect to *FT*. Because *FT's* obligation to *A* could remain outstanding for more than five years, the obligation is not a qualified obligation within the meaning of paragraph (d) of this section and, pursuant to paragraph (c) of this section, it is not taken into account for purposes of

determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section. Accordingly, § 1.679–1 applies with respect to the full 500X transfer to *FT*.

Example 2. Private annuity. *A* transfers 4000X to *FT* in exchange for an annuity from the foreign trust that will pay *A* 100X per year for the rest of *A*'s life. *A* is a related person (as defined in § 1.679–1(c)(5)) with respect to *FT*. Because *FT*'s obligation to *A* could remain outstanding for more than five years, the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section and, pursuant to paragraph (c) of this section, it is not taken into account for purposes of determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section. Accordingly, § 1.679–1 applies with respect to the full 4000X transfer to *FT*.

Example 3. Loan to unrelated foreign trust. *B* transfers 1000X to *FT* in exchange for an obligation of the trust. The term of the obligation is fifteen years. *B* is not a related person (as defined in § 1.679–1(c)(5)) with respect to *FT*. Because *B* is not a related person, the fair market value of the obligation received by *B* is taken into account for purposes of determining whether *B*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section, even though the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section.

Example 4. Transfer for an obligation with term in excess of 5 years. *A* transfers property that has a fair market value of 5000X to *FT* in exchange for an obligation of the trust. The term of the obligation is ten years. *A* is a related person (as defined in § 1.679–1(c)(5)) with respect to *FT*. Because the term of the obligation is greater than five years, the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section and, pursuant to paragraph (c) of this section, it is not taken into account for purposes of determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section. Accordingly, § 1.679–1 applies with respect to the full 5000X transfer to *FT*.

Example 5. Transfer for a qualified obligation. The facts are the same as in *Example 4*, except that the term of the obligation is 3 years. Assuming the other requirements of paragraph (d)(1) of this section are satisfied, the obligation is a qualified obligation and its adjusted issue price is taken into account for purposes of determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section.

Example 6. Effect of subsequent obligation on original obligation. *A* transfers property that has a fair market value of 1000X to *FT* in exchange for an obligation that satisfies the requirements of paragraph (d)(1) of this section. *A* is a related person (as defined in § 1.679–1(c)(5)) with respect to *FT*. Two years later, *A* transfers an additional 2000X to *FT* and receives another obligation from *FT* that has a maturity date four years from the date that the second obligation was issued. Under paragraph (d)(2) of this section, the original obligation is deemed to have the maturity date of the second obligation. Under paragraph (a) of this section, *A* is treated as having made a transfer in an amount equal to the original obligation's adjusted issue price (within the meaning of § 1.1275–1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of § 1.1273–1(c)) as of the date of issuance of the second obligation. The second obligation is tested separately to determine whether it is a qualified obligation for purposes of applying paragraph (a) of this section to the second transfer.

§ 1.679–5 Pre-immigration trusts.

(a) *In general.* If a nonresident alien individual becomes a U.S. person and the individual has a residency starting date (as determined under section 7701(b)(2)(A)) within 5 years after directly or indirectly transferring property to a foreign trust (the original transfer), the individual is treated as having transferred to the trust on the residency starting date an amount equal to the portion of the trust attributable to the property transferred by the individual in the original transfer.

(b) *Special rules*—(1) *Change in grantor trust status.* For purposes of paragraph (a) of this section, if a nonresident alien individual who is treated as owning any portion of a trust under the provisions of subpart E of part I of subchapter J, chapter 1 of the Internal Revenue Code, subsequently ceases to be so treated, the individual is treated as having made the original transfer to the foreign trust immediately before the trust ceases to be treated as owned by the individual.

(2) *Treatment of undistributed income.* For purposes of paragraph (a) of this section, the property deemed transferred to the foreign trust on the residency starting date includes undistributed net income, as defined in section 665(a), attributable to the property deemed transferred. Undistributed net income for periods before the individual's residency starting date is taken into account only for purposes of determining the amount of the property deemed transferred.

(c) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. Nonresident alien becomes resident alien. On January 1, 2002, *A*, a nonresident alien individual, transfers property to a foreign trust, *FT*. On January 1, 2006, *A* becomes a resident of the United States within the meaning of section 7701(b)(1)(A) and has a residency starting date of January 1, 2006, within the meaning of section 7701(b)(2)(A). Under paragraph (a) of this section, *A* is treated as a U.S. transferor and is deemed to transfer the property to *FT* on January 1, 2006. Under paragraph (b)(2) of this section, the property deemed transferred to *FT* on January 1, 2006, includes the undistributed net income of the trust, as defined in section 665(a), attributable to the property originally transferred.

Example 2. Nonresident alien loses power to revest property. On January 1, 2002, *A*, a nonresident alien individual, transfers property to a foreign trust, *FT*. *A* has the power to revest absolutely in himself the title to such property transferred and is treated as the owner of the trust pursuant to sections 676 and 672(f). On January 1, 2008, the terms of *FT* are amended to remove *A*'s power to revest in himself title to the property transferred, and *A* ceases to be treated as the owner of *FT*. On January 1, 2010, *A* becomes a resident of the United States. Under paragraph (b)(1) of this section, for purposes of paragraph (a) of this section *A* is treated as having originally transferred the property to *FT* on January 1, 2008. Because this date is within five years of *A*'s residency starting date, *A* is deemed to have made a transfer to the foreign trust on January 1, 2010, his residency starting date. Under paragraph (b)(2) of this section, the property deemed transferred to the foreign trust on January 1, 2010, includes the undistributed net income of the trust, as defined in section 665(a), attributable to the property deemed transferred.

§ 1.679–6 Outbound migrations of domestic trusts.

(a) *In general.* Subject to the provisions of paragraph (b) of this section, if an individual who is a U.S. person transfers property to a trust that is not a foreign trust, and such trust becomes a foreign trust while the U.S. person is alive, the U.S. individual is treated as a U.S. transferor and is deemed to transfer the property to a foreign trust on the date the domestic trust becomes a foreign trust.

(b) *Amount deemed transferred.* For purposes of paragraph (a) of this section, the property deemed transferred to the trust when it becomes a foreign trust includes undistributed net income, as defined in section 665(a), attributable to the property previously transferred. Undistributed net income for periods prior to the migration is taken into account only for purposes of determining the portion of the trust that is attributable to the property transferred by the U.S. person.

(c) *Example.* The following example illustrates the rules of this section. For purposes of the example, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, and *DT* is a domestic trust. The example is as follows:

Example. Outbound migration of domestic trust. On January 1, 2002, *A* transfers property to *DT*, for the benefit of *B*. On January 1, 2003, *DT* acquires a foreign trustee who has the power to determine whether and when distributions will be made to *B*. Under section 7701(a)(30)(E) and § 301.7701–7(d)(ii)(A) of this chapter, *DT* becomes a

foreign trust on January 1, 2003. Under paragraph (a) of this section, *A* is treated as transferring property to a foreign trust on January 1, 2003. Under paragraph (b) of this section, the property deemed transferred to the trust when it becomes a foreign trust includes undistributed net income, as defined in section 665(a), attributable to the property deemed transferred.

§ 1.679–7 Effective dates.

(a) *In general.* Except as provided in paragraph (b) of this section, the rules of §§ 1.679–1, 1.679–2, 1.679–3, and 1.679–4 apply with respect to transfers after August 7, 2000.

(b) *Special rules.* (1) The rules of § 1.679–4(c) and (d) apply to an obligation issued after February 6, 1995, whether or not in accordance with a pre-existing arrangement or understanding. For purposes of the rules of § 1.679–4(c) and (d), if an obligation issued on or before February 6, 1995, is modified after that date, and the modification is a significant modification within the meaning of § 1.1001–3, the obligation is treated as if it were issued on the date of the modification. However, the penalty provided in section 6677 applies only to a failure to report transfers in exchange for obligations issued after August 20, 1996.

(2) The rules of § 1.679–5 apply to persons whose residency starting date is after August 7, 2000.

(3) The rules of § 1.679–6 apply to trusts that become foreign trusts after August 7, 2000.

Par. 3. In § 1.958–1, the first sentence of paragraph (b) is revised to read as follows:

§ 1.958–1 Direct and indirect ownership of stock.

* * * * *

(b) * * * For purposes of paragraph (a)(2) of this section, stock owned, directly or indirectly, by or for a foreign corporation, foreign partnership, foreign trust (within the meaning of section 7701(a)(31)) described in sections 671 through 679, or other foreign trust or foreign estate (within the meaning of section 7701(a)(31)) shall be considered as being owned proportionately by its shareholders, partners, grantors or other persons treated as owners under sections 671 through 679 of any portion of the trust that includes the stock, or beneficiaries, respectively. * * *

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§ 1.958–2 [Amended]

Par. 4. In § 1.958–2, paragraph (c)(1)(ii)(*b*) is amended by removing the language "678" and adding "679" in its place.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved: July 9, 2001.

Mark Weinberger,
Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8956]

RIN 1545–AY25

Recognition of Gain on Certain Transfers to Certain Foreign Trusts and Estates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 684 of the Internal Revenue Code relating to recognition of gain on certain transfers to certain foreign trusts and estates. The regulations affect United States persons who transfer property to foreign trusts and estates.

DATES: *Effective Date:* These regulations are effective July 20, 2001.

Applicability Date: These regulations are applicable to transfers of property to foreign trusts and foreign estates after August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Karen A. Rennie-Quarrie, (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations relating to the Income Tax Regulations (CFR part 1) under section 684 of the Internal Revenue Code (Code). On August 7, 2000, Treasury and the IRS published a notice of proposed rulemaking (REG–108522–00) in the **Federal Register** (65 FR 48198) under section 684 of the Code relating to gain recognition on transfers of property by U.S. persons to foreign trusts and estates. Comments responding to the notice of proposed rulemaking were received and a public hearing was held on November 8, 2000. After consideration of all comments, the proposed regulations are adopted as final regulations as revised by this Treasury decision.

Explanation of Provisions

I. Comments and Changes to § 1.684–1: Recognition of Gain on Transfers to Certain Foreign Trusts and Estates

Under the proposed regulations, a U.S. person who transfers property to a foreign trust or estate generally must recognize gain immediately even if deferral might otherwise be permitted under another provision of the Code.

One commenter questioned the authority for the conclusion in § 1.684–1(d) *Example 4* that a U.S. person must recognize gain immediately upon the transfer of appreciated property to a foreign trust in exchange for a private annuity. The general rule in section 684(a) provides, in part, that the transfer to the foreign trust is treated as a sale or exchange for an amount equal to the fair market value of the property transferred and the transferor must recognize the gain in the property, except as provided in regulations. The language of section 684(a) does not provide for any deferral of this gain. Moreover, the legislative history of former section 1491 (the predecessor of section 684 regarding transfers of property by U.S. persons to foreign trusts) makes it clear that Congress did not look favorably upon deferral in the context of transfers to foreign trusts in exchange for private annuities: "The committee believes that any policy in favor of permitting deferral of tax in private annuity transactions should not apply to a private annuity transaction with a foreign trust." S. Rep. No. 94–938, at 217, n.5 (1976). Therefore, Treasury and the IRS do not believe it would be appropriate to adopt regulations that would permit deferral in such a case. The final regulations retain *Example 4* without modification.

II. Comments and Changes to § 1.684–2: Transfers

The proposed regulations define the term *transfer* broadly to mean any direct, indirect, or constructive transfer. Section 1.684–2(e) of the proposed regulations provides that if any portion of a foreign trust is treated as owned by a U.S. person and such portion ceases to be treated as owned by such U.S. person, the U.S. person is treated as having transferred the assets of such portion to a foreign trust immediately before the trust is no longer treated as owned by the U.S. person. Section 1.684–2(e)(2) *Example 2* illustrates this rule in the case of the death of the grantor.

One commenter questioned the authority for the position that death is a transfer to which section 684 applies. Section 684(a) expressly applies to "*any*

transfer of property by a United States person to a foreign estate or trust" (emphasis added). Section 679 also generally applies to transfers of property by U.S. persons to foreign trusts. In the case of section 679, however, section 679(a)(2)(A) specifically excepts transfers by reason of death from the application of the general rule of section 679. This exception implies that Congress believed that, unless otherwise excepted, a transfer by reason of death would be a transfer to which section 679 applied. Because Congress provided no exception in section 684 for transfers by reason of death, it follows that section 684 applies to such transfers. Additional support for this conclusion is found in the information reporting rules in section 6048(a)(3)(A)(ii), which provides that a "reportable event" includes "the transfer of any money or property (directly or indirectly) to a foreign trust by a United States person, *including a transfer by reason of death*" (emphasis added). Although section 684 generally applies to transfers by reason of death, § 1.684–3(c) provides an exception to the general rule of gain recognition in the case of certain transfers at death.

One commenter requested guidance concerning a transfer of property by a domestic trust (that is not treated as owned by another person) to a foreign trust as a result of the testamentary exercise of a limited power of appointment with respect to the domestic trust. Treasury and the IRS believe that, under general principles regarding limited powers of appointment, the domestic trust, and not the holder of the limited power of appointment, is the transferor of the property. Accordingly, the domestic trust must recognize gain under the general rule of § 1.684–1(a) unless an exception applies. The final regulations do not include any special rules for such transfers.

One commenter asked about the interaction of § 1.684–2(d) and § 1.684–2(e) in the context of an actual transfer of property from a foreign trust that is treated as owned by a U.S. person to either a foreign charitable organization or a U.S. charity. Under § 1.684–2(d) of the proposed regulations, if any portion of a trust is treated as owned by a U.S. person, a transfer of property from that portion of the trust to a foreign trust is treated as a transfer from the owner. Under § 1.684–2(e) of the proposed regulations, if a portion of a foreign trust that is treated as owned by a U.S. person ceases to be treated as owned by the U.S. person, the U.S. person is treated as having transferred the assets of that portion of the trust to a foreign trust immediately before such portion is no longer treated as owned by the U.S. person.

The commenter noted that § 1.684–2(e) of the proposed regulation could be read to apply in situations where a portion of a foreign trust ceases to be treated as owned by a U.S. person because of an actual transfer of property from the trust. The final regulations clarify that § 1.684–2(e) does not apply (and that § 1.684–2(d) may apply) when any portion of a trust ceases to be owned by a U.S. person by reason of an actual transfer of property from the trust. As a result, the general rule of gain recognition under § 1.684–1(a) would not apply to an actual transfer by a foreign trust that is treated as owned by a U.S. person to a foreign charitable trust that meets the requirements of § 1.684–3(b), or to a U.S. charity, even if the transfer causes the portion of the trust to cease to be owned by the U.S. person.

III. Comments and Changes to § 1.684–3: Exceptions to the General Rule of Gain Recognition

Section 1.684–3(a) of the proposed regulations provides that a U.S. person who transfers property to a foreign trust is not required to recognize gain on the transfer to the extent that any person is treated as the owner of the trust under section 671. One commenter questioned whether the term *any person* includes foreign persons. Although not specifically addressed in the final regulations, it is understood that the term *any person* includes foreign as well as U.S. persons.

Section 1.684–3(b) of the proposed regulations provides an exception for transfers to a foreign trust that has already received a ruling or determination letter from the IRS recognizing the trust's tax exempt status under section 501(c)(3), provided that the letter has been neither revoked nor modified. Commenters questioned the requirement that a foreign trust obtain a ruling or determination letter from the IRS recognizing the trust's tax exempt status under section 501(c)(3). They assert that the requirement may interfere with a U.S. person's ability to make contributions to a foreign charitable entity that may not be familiar with U.S. tax laws and may not have any reason to obtain a determination letter from the IRS. They suggest that the final regulations require only that the U.S. transferor disclose to the IRS, at such time and in such manner as the IRS may provide, that the transfer has been made and that the U.S. transferor believes the transferee is an organization described in section 501(c)(3).

In response to commenters' concerns, the final regulations eliminate the requirement that the foreign trust receive a ruling or determination letter from the IRS recognizing the trust's tax exempt status under section 501(c)(3). The final regulations provide, instead, that the general rule of gain recognition does not apply to any transfer of property to a foreign trust that is described in section 501(c)(3) (without regard to the requirements of section 508(a)). However, taxpayers should be aware that, under Notice 97–34 (1997–1 C.B. 422), the U.S. transferor has a reporting obligation on Form 3520 with respect to such a transfer, unless the foreign trust has received a ruling or determination letter from the IRS recognizing the trust's tax exempt status under section 501(c)(3). Moreover, if the IRS subsequently determines that the foreign trust is not described in section 501(c)(3), the exception will not apply and the U.S. transferor will be required to recognize gain as of the time of the original transfer, and may be subject to interest and penalties, if applicable.

Section 1.684–3(c) of the proposed regulations provides an exception for transfers of property by reason of the death of the U.S. transferor if both of the following requirements are satisfied: (1) The property is included in the U.S. transferor's gross estate for Federal estate tax purposes, and (2) the basis of the property in the hands of the foreign trust is determined under section 1014(a). One commenter questioned whether section 684 would apply in the case of an individual who is a U.S. person for income tax purposes, but a non-domiciliary for estate tax purposes, with the result that the property of the individual would be entitled to a step-up in basis, but would not be included in the individual's gross estate. The final regulations eliminate the requirement that the property be included in the U.S. transferor's gross estate and allow the exception to apply as long as the basis of the property in the hands of the foreign trust is determined under section 1014(a).

Another commenter requested that the final regulations confirm that section 1032 applies to provide for nonrecognition of gain on issuer stock transferred to a foreign trust. The commenter noted that under former section 1491, no excise tax was imposed on a transfer of stock by a foreign corporation to a foreign trust if the corporation was not required to recognize gain on the transfer under section 1032. See Notice 97–18 (1997–1 C.B. 389, Sec. II.A.1). In response to this comment, § 1.684–3(e) of the final regulations provides a new exception

for transfers of stock (including treasury stock) by a domestic corporation to a foreign trust if the domestic corporation is not required to recognize gain on the transfer under section 1032.

Commenters also suggested that contributions by U.S. persons to foreign compensatory trusts described in sections 402(b), 404(a)(4), or 404A should be exempt from gain recognition under section 684. Treasury and the IRS have considered the proposed exception but do not believe it is consistent with the intended purpose of section 684. Accordingly, the final regulations do not include an exception for transfers to foreign compensatory trusts. However, the exception for transfers of stock to which section 1032 would apply may be available in appropriate cases for transfers of stock of a domestic parent company to a foreign compensatory trust set up by a foreign subsidiary.

Another commenter requested an exception for transfers of life insurance contracts to foreign trusts. The commenter noted that the proceeds of life insurance contracts do not generally give rise to any taxable gain if held by a U.S. individual or trust. Congress has recognized that life insurance contracts might be used to effectuate inappropriate outbound transfers of property. As part of the repeal of section 1491 in 1997, Congress enacted section 1035(c), which provides regulatory authority to deny the nonrecognition treatment given to exchanges of life insurance contracts under section 1035(a) where the exchange has the effect of transferring property to any person other than a U.S. person. Public Law 105–34, § 1131(b)[(c)](1). Because of the potential for abuse and the lack of a compelling reason for creating an exception for offshore transfers of life insurance contracts, Treasury and the IRS have concluded that such an exception is not warranted.

IV. Comments and Changes to § 1.684–4: Outbound Migration of Domestic Trusts

Section 1.684–4 of the proposed regulation provides that if a U.S. person transfers property to a domestic trust and, for any reason, the domestic trust becomes a foreign trust, the domestic trust will be deemed to have transferred all of its assets to a foreign trust and the domestic trust must immediately recognize gain. The proposed regulations do, however, incorporate the relief for inadvertent migrations that is set forth in § 301.7701–7(d)(2).

One commenter suggested that the final regulations should extend the inadvertent migration rules of § 301.7701–7(d)(2) to apply to § 301.7701–7(f), which deals with the election by certain trusts to remain domestic trusts. Under § 301.7701–7(d)(2), in the event of an inadvertent change in any person that has the power to make a substantial decision of the trust that would cause the domestic or foreign residency of the trust to change (e.g., an inadvertent change from a U.S. trustee to a foreign trustee by reason of the U.S. trustee's death), the trust is allowed 12 months to make necessary changes to avoid a change in the trust's residency (e.g., the replacement of the foreign successor trustee with a U.S. successor trustee). The commenter suggests that a trust with an election in force under § 301.7701–7(d)(2) should be allowed a similar amount of time to make necessary changes if a U.S. trustee is inadvertently replaced by a foreign trustee.

The final regulations do not include such a rule. Under § 301.7701–7(f), a trust generally can elect to remain a domestic trust if it was in existence on August 20, 1996, and it was treated as a domestic trust on August 19, 1996. Section 301.7701–7(f)(4)(ii) provides that such an election terminates if subsequent changes are made to the trust that result in the trust no longer having any reasonable basis for being treated as a domestic trust under section 7701(a)(30) prior to its amendment by the Small Business Job Protection Act of 1996 (SBJP Act), Pub. L. 104–188, 110 Stat. 1755. Whereas the "control test" of section 7701(a)(30)(E)(ii), as enacted by the SBJP Act, contains a relatively bright-line test for purposes of determining a trust's status, thereby necessitating the inadvertent migration rule of § 301.7701–7(d)(2), the determination of domestic or foreign status prior to the SBJP Act was governed by less objective criteria.

Under pre-SBJP Act law, an inadvertent short-term replacement of a domestic trustee by a foreign trustee would not necessarily cause a change in the trust's status. Accordingly, a specific inadvertent migration rule for § 301.7701–7(f) is not appropriate. Instead, as set forth in § 301.7701–7(f)(4)(ii), an election under § 301.7701–7(f) will not be terminated unless the trust has no reasonable basis for being treated as a domestic trust under pre-SBJP Act law.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Karen A. Rennie-Quarrie of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.684–1 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684–2 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684–3 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684–4 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684–5 also issued under 26 U.S.C. 643(a)(7) and 684(a). * * *

Par. 2. Sections 1.684–1, 1.684–2, 1.684–3, 1.684–4 and 1.684–5 are added under the undesignated centerheading "Miscellaneous" to read as follows:

§ 1.684–1 Recognition of gain on transfers to certain foreign trusts and estates.

(a) *Immediate recognition of gain*—(1) *In general.* Any U.S. person who transfers property to a foreign trust or foreign estate shall be required to recognize gain at the time of the transfer equal to the excess of the fair market value of the property transferred over the adjusted basis (for purposes of determining gain) of such property in the hands of the U.S. transferor unless an exception applies under the provisions of § 1.684–3. The amount of

gain recognized is determined on an asset-by-asset basis.

(2) *No recognition of loss.* Under this section a U.S. person may not recognize loss on the transfer of an asset to a foreign trust or foreign estate. A U.S. person may not offset gain realized on the transfer of an appreciated asset to a foreign trust or foreign estate by a loss realized on the transfer of a depreciated asset to the foreign trust or foreign estate.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *U.S. person.* The term *U.S. person* means a United States person as defined in section 7701(a)(30), and includes a nonresident alien individual who elects under section 6013(g) to be treated as a resident of the United States.

(2) *U.S. transferor.* The term *U.S. transferor* means any U.S. person who makes a transfer (as defined in § 1.684–2) of property to a foreign trust or foreign estate.

(3) *Foreign trust.* Section 7701(a)(31)(B) defines foreign trust. See also § 301.7701–7 of this chapter.

(4) *Foreign estate.* Section 7701(a)(31)(A) defines foreign estate.

(c) *Reporting requirements.* A U.S. person who transfers property to a foreign trust or foreign estate must comply with the reporting requirements under section 6048.

(d) *Examples.* The following examples illustrate the rules of this section. In all examples, *A* is a U.S. person and *FT* is a foreign trust. The examples are as follows:

Example 1. Transfer to foreign trust. *A* transfers property that has a fair market value of 1000X to *FT*. *A*'s adjusted basis in the property is 400X. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT*. Under paragraph (a)(1) of this section, *A* recognizes gain at the time of the transfer equal to 600X.

Example 2. Transfer of multiple properties. *A* transfers property Q, with a fair market value of 1000X, and property R, with a fair market value of 2000X, to *FT*. At the time of the transfer, *A*'s adjusted basis in property Q is 700X, and *A*'s adjusted basis in property R is 2200X. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT*. Under paragraph (a)(1) of this section, *A* recognizes the 300X of gain attributable to property Q. Under paragraph (a)(2) of this section, *A* does not recognize the 200X of loss attributable to property R, and may not offset that loss against the gain attributable to property Q.

Example 3. Transfer for less than fair market value. *A* transfers property that has a fair market value of 1000X to *FT* in exchange for 400X of cash. *A*'s adjusted basis in the property is 200X. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT*. Under paragraph (a)(1) of this section, *A* recognizes gain at the time of the transfer equal to 800X.

Example 4. Exchange of property for private annuity. *A* transfers property that has a fair market value of 1000X to *FT* in exchange for *FT*'s obligation to pay A 50X per year for the rest of *A*'s life. *A*'s adjusted basis in the property is 100X. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT*. *A* is required to recognize gain equal to 900X immediately upon transfer of the property to the trust. This result applies even though *A* might otherwise have been allowed to defer recognition of gain under another provision of the Internal Revenue Code.

Example 5. Transfer of property to related foreign trust in exchange for qualified obligation. *A* transfers property that has a fair market value of 1000X to *FT* in exchange for *FT*'s obligation to make payments to *A* during the next four years. *FT* is related to *A* as defined in § 1.679–1(c)(5). The obligation is treated as a qualified obligation within the meaning of § 1.679–4(d), and no person is treated as owning any portion of *FT*. *A*'s adjusted basis in the property is 100X. *A* is required to recognize gain equal to 900X immediately upon transfer of the property to the trust. This result applies even though *A* might otherwise have been allowed to defer recognition of gain under another provision of the Internal Revenue Code. Section 1.684–3(d) provides rules relating to transfers for fair market value to unrelated foreign trusts.

§ 1.684–2 Transfers.

(a) *In general.* A transfer means a direct, indirect, or constructive transfer.

(b) *Indirect transfers*—(1) *In general.* Section 1.679–3(c) shall apply to determine if a transfer to a foreign trust or foreign estate, by any person, is treated as an indirect transfer by a U.S. person to the foreign trust or foreign estate.

(2) *Examples.* The following examples illustrate the rules of this paragraph (b). In all examples, *A* is a U.S. citizen, *FT* is a foreign trust, and *I* is *A*'s uncle, who is a nonresident alien. The examples are as follows:

Example 1. Principal purpose of tax avoidance. *A* creates and funds *FT* for the benefit of *A*'s cousin, who is a nonresident alien. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT*. In 2004, *A* decides to transfer additional property with a fair market value of 1000X and an adjusted basis of 600X to *FT*. Pursuant to a plan with a principal purpose of avoiding the application of section 684, *A* transfers the property to *I*. *I* subsequently transfers the property to *FT*. Under paragraph (b) of this section and § 1.679–3(c), *A* is treated as having transferred the property to *FT*.

Example 2. U.S. person unable to demonstrate that intermediary acted independently. *A* creates and funds *FT* for the benefit of *A*'s cousin, who is a nonresident alien. *FT* has no U.S. beneficiary within the meaning of § 1.679–2, and no person is treated as owning any portion of *FT*. On July 1, 2004, *A* transfers property with a fair market value of 1000X and an adjusted basis of 300X to *I*, a foreign person. On January 1, 2007, at a time when the fair market value of the property is 1100X, *I* transfers the property to *FT*. *A* is unable to demonstrate to the satisfaction of the Commissioner, under § 1.679–3(c)(2)(ii), that *I* acted independently of *A* in making the transfer to *FT*. Under paragraph (b) of this section and § 1.679–3(c), *A* is treated as having transferred the property to *FT*. Under paragraph (b) of this section and § 1.679–3(c)(3), *I* is treated as an agent of *A*, and the transfer is deemed to have been made on January 1, 2007. Under § 1.684–1(a), *A* recognizes gain equal to 800X on that date.

(c) *Constructive transfers.* Section 1.679–3(d) shall apply to determine if a transfer to a foreign trust or foreign estate is treated as a constructive transfer by a U.S. person to the foreign trust or foreign estate.

(d) *Transfers by certain trusts*—(1) *In general.* If any portion of a trust is treated as owned by a U.S. person, a transfer of property from that portion of the trust to a foreign trust is treated as a transfer from the owner of that portion to the foreign trust.

(2) *Examples.* The following examples illustrate the rules of this paragraph (d). In all examples, *A* is a U.S. person, *DT* is a domestic trust, and *FT* is a foreign trust. The examples are as follows:

Example 1. Transfer by a domestic trust. On January 1, 2001, *A* transfers property which has a fair market value of 1000X and an adjusted basis of 200X to *DT*. *A* retains the power to revoke *DT*. On January 1, 2003, *DT* transfers property which has a fair market value of 500X and an adjusted basis of 100X to *FT*. At the time of the transfer, *FT* has no U.S. beneficiary as defined in § 1.679–2 and no person is treated as owning any portion of *FT*. *A* is treated as having transferred the property to *FT* and is required to recognize gain of 400X, under § 1.684–1, at the time of the transfer by *DT* to *FT*.

Example 2. Transfer by a foreign trust. On January 1, 2001, *A* transfers property which has a fair market value of 1000X and an adjusted basis of 200X to *FT1*. At the time of the transfer, *FT1* has a U.S. beneficiary as defined in § 1.679–2 and *A* is treated as the owner of *FT1* under section 679. On January 1, 2003, *FT1* transfers property which has a fair market value of 500X and an adjusted basis of 100X to *FT2*. At the time of the transfer, *FT2* has no U.S. beneficiary as defined in § 1.679–2 and no person is treated as owning any portion of *FT2*. *A* is treated as having transferred the property to *FT2* and is required to recognize gain of 400X, under § 1.684–1, at the time of the transfer by *FT1* to *FT2*.

(e) *Deemed transfers when foreign trust no longer treated as owned by a U.S. person*—(1) *In general.* If any portion of a foreign trust is treated as

owned by a U.S. person under subpart E of part I of subchapter J, chapter 1 of the Internal Revenue Code, and such portion ceases to be treated as owned by that person under such subpart (other than by reason of an actual transfer of property from the trust to which § 1.684–2(d) applies), the U.S. person shall be treated as having transferred, immediately before (but on the same date that) the trust is no longer treated as owned by that U.S. person, the assets of such portion to a foreign trust.

(2) *Examples.* The following examples illustrate the rules of this paragraph (e). In all examples, *A* is a U.S. citizen and *FT* is a foreign trust. The examples are as follows:

Example 1. Loss of U.S. beneficiary.—(i) On January 1, 2001, *A* transfers property, which has a fair market value of 1000X and an adjusted basis of 400X, to *FT*. At the time of the transfer, *FT* has a U.S. beneficiary within the meaning of § 1.679–2, and *A* is treated as owning *FT* under section 679. Under § 1.684–3(a), § 1.684–1 does not cause *A* to recognize gain at the time of the transfer.

(ii) On July 1, 2003, *FT* ceases to have a U.S. beneficiary as defined in § 1.679–2(c) and as of that date neither *A* nor any other person is treated as owning any portion of *FT*. Pursuant to § 1.679–2(c)(2), if *FT* ceases to be treated as having a U.S. beneficiary, *A* will cease to be treated as owner of *FT* beginning on the first day of the first taxable year following the last taxable year in which there was a U.S. beneficiary. Thus, on January 1, 2004, *A* ceases to be treated as owner of *FT*. On that date, the fair market value of the property is 1200X and the adjusted basis is 350X. Under paragraph (e)(1) of this section, *A* is treated as having transferred the property to *FT* on January 1, 2004, and must recognize 850X of gain at that time under § 1.684–1.

Example 2. Death of grantor. (i) The initial facts are the same as in paragraph (i) of *Example 1*.

(ii) On July 1, 2003, *A* dies, and as of that date no other person is treated as the owner of *FT*. On that date, the fair market value of the property is 1200X, and its adjusted basis equals 350X. Under paragraph (e)(1) of this section, *A* is treated as having transferred the property to *FT* immediately before his death, and generally is required to recognize 850X of gain at that time under § 1.684–1. However, an exception may apply under § 1.684–3(c).

Example 3. Release of a power. (i) On January 1, 2001, *A* transfers property that has a fair market value of 500X and an adjusted basis of 200X to *FT*. At the time of the transfer, *FT* does not have a U.S. beneficiary within the meaning of § 1.679–2. However, *A* retains the power to revoke the trust. *A* is treated as the owner of the trust under section 676 and, therefore, under § 1.684–3(a), *A* is not required to recognize gain under § 1.684–1 at the time of the transfer.

(ii) On January 1, 2007, *A* releases the power to revoke the trust and, as of that date, neither *A* nor any other person is treated as owning any portion of *FT*. On that date, the fair market value of the property is 900X, and its adjusted basis is 200X. Under paragraph (e)(1) of this section, *A* is treated as having transferred the property to *FT* on January 1, 2007, and must recognize 700X of gain at that time.

(f) *Transfers to entities owned by a foreign trust.* Section 1.679–3(f) provides rules that apply with respect to transfers of property by a U.S. person to an entity in which a foreign trust holds an ownership interest.

§ 1.684–3 Exceptions to general rule of gain recognition.

(a) *Transfers to grantor trusts.* The general rule of gain recognition under § 1.684–1 shall not apply to any transfer of property by a U.S. person to a foreign trust to the extent that any person is treated as the owner of the trust under section 671. Section 1.684–2(e) provides rules regarding a subsequent change in the status of the trust.

(b) *Transfers to charitable trusts.* The general rule of gain recognition under § 1.684–1 shall not apply to any transfer of property to a foreign trust that is described in section 501(c)(3) (without regard to the requirements of section 508(a)).

(c) *Certain transfers at death.* The general rule of gain recognition under § 1.684–1 shall not apply to any transfer of property by reason of death of the U.S. transferor if the basis of the property in the hands of the foreign trust is determined under section 1014(a).

(d) *Transfers for fair market value to unrelated trusts.* The general rule of gain recognition under § 1.684–1 shall not apply to any transfer of property for fair market value to a foreign trust that is not a related foreign trust as defined in § 1.679–1(c)(5). Section 1.671–2(e)(2)(ii) defines fair market value.

(e) *Transfers to which section 1032 applies.* The general rule of gain recognition under § 1.684–1 shall not apply to any transfer of stock (including treasury stock) by a domestic corporation to a foreign trust if the domestic corporation is not required to recognize gain on the transfer under section 1032.

(f) *Certain distributions to trusts.* For purposes of this section, a transfer does not include a distribution to a trust with respect to an interest held by such trust in an entity other than a trust or an interest in certain investment trusts described in § 301.7701–4(c) of this chapter, liquidating trusts described in § 301.7701–4(d) of this chapter, or environmental remediation trusts described in § 301.7701–4(e) of this chapter.

(g) *Examples.* The following examples illustrate the rules of this section. In all examples, *A* is a U.S. citizen and *FT* is a foreign trust. The examples are as follows:

Example 1. Transfer to owner trust. In 2001, *A* transfers property which has a fair market value of 1000X and an adjusted basis equal to 400X to *FT*. At the time of the transfer, *FT* has a U.S. beneficiary within the meaning of § 1.679–2, and *A* is treated as owning *FT* under section 679. Under paragraph (a) of this section, § 1.684–1 does not cause *A* to recognize gain at the time of the transfer. See § 1.684–2(e) for rules that may require *A* to recognize gain if the trust is no longer owned by *A*.

Example 2. Transfer of property at death: Basis determined under section 1014(a). (i) The initial facts are the same as *Example 1*.

(ii) *A* dies on July 1, 2004. The fair market value at *A*'s death of all property transferred to *FT* by *A* is 1500X. The basis in the property is 400X. *A* retained the power to revoke *FT*, thus, the value of all property owned by *FT* at *A*'s death is includible in *A*'s gross estate for U.S. estate tax purposes. Pursuant to paragraph (c) of this section, *A* is not required to recognize gain under § 1.684–1 because the basis of the property in the hands of the foreign trust is determined under section 1014(a).

Example 3. Transfer of property at death: Basis not determined under section 1014(a).

(i) The initial facts are the same as *Example 1*.

(ii) *A* dies on July 1, 2004. The fair market value at *A*'s death of all property transferred to *FT* by *A* is 1500X. The basis in the property is 400X. *A* retains no power over *FT*, and *FT*'s basis in the property transferred is not determined under section 1014(a). Under § 1.684–2(e)(1), *A* is treated as having transferred the property to *FT* immediately before his death, and must recognize 1100X of gain at that time under § 1.684–1.

Example 4. Transfer of property for fair market value to an unrelated foreign trust. A sells a house with a fair market value of 1000X to *FT* in exchange for a 30-year note issued by *FT*. *A* is not related to *FT* as defined in § 1.679–1(c)(5). *FT* is not treated as owned by any person. Pursuant to paragraph (d) of this section, *A* is not required to recognize gain under § 1.684–1.

§ 1.684–4 Outbound migrations of domestic trusts.

(a) *In general.* If a U.S. person transfers property to a domestic trust, and such trust becomes a foreign trust, and neither trust is treated as owned by any person under subpart E of part I of subchapter J, chapter 1 of the Internal Revenue Code, the trust shall be treated for purposes of this section as having transferred all of its assets to a foreign trust and the trust is required to recognize gain on the transfer under § 1.684–1(a). The trust must also comply with the rules of section 6048.

(b) *Date of transfer.* The transfer described in this section shall be deemed to occur immediately before, but on the same date that, the trust

meets the definition of a foreign trust set forth in section 7701(a)(31)(B).

(c) *Inadvertent migrations.* In the event of an inadvertent migration, as defined in § 301.7701–7(d)(2) of this chapter, a trust may avoid the application of this section by complying with the procedures set forth in § 301.7701–7(d)(2) of this chapter.

(d) *Examples.* The following examples illustrate the rules of this section. In all examples, *A* is a U.S. citizen, *B* is a U.S. citizen, *C* is a nonresident alien, and *T* is a trust. The examples are as follows:

Example 1. Migration of domestic trust with U.S. beneficiaries. A transfers property which has a fair market value of 1000X and an adjusted basis equal to 400X to *T*, a domestic trust, for the benefit of *A*'s children who are also U.S. citizens. *B* is the trustee of *T*. On January 1, 2001, while *A* is still alive, *B* resigns as trustee and *C* becomes successor trustee under the terms of the trust. Pursuant to § 301.7701–7(d) of this chapter, *T* becomes a foreign trust. *T* has U.S. beneficiaries within the meaning of § 1.679–2 and *A* is, therefore, treated as owning *FT* under section 679. Pursuant to § 1.684–3(a), neither *A* nor *T* is required to recognize gain at the time of the migration. Section 1.684–2(e) provides rules that may require *A* to recognize gain upon a subsequent change in the status of the trust.

Example 2. Migration of domestic trust with no U.S. beneficiaries. A transfers property which has a fair market value of 1000X and an adjusted basis equal to 400X to *T*, a domestic trust for the benefit of *A*'s mother who is not a citizen or resident of the United States. *T* is not treated as owned by another person. *B* is the trustee of *T*. On January 1, 2001, while *A* is still alive, *B* resigns as trustee and *C* becomes successor trustee under the terms of the trust. Pursuant to § 301.7701–7(d) of this chapter, *T* becomes a foreign trust, *FT*. *FT* has no U.S. beneficiaries within the meaning of § 1.679–2 and no person is treated as owning any portion of *FT*. *T* is required to recognize gain of 600X on January 1, 2001. Paragraph (c) of this section provides rules with respect to an inadvertent migration of a domestic trust.

§ 1.684–5 Effective date.

Sections 1.684–1 through 1.684–4 apply to transfers of property to foreign trusts and foreign estates after August 7, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 9, 2001.

Mark Weinberger,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 01–17972 Filed 7–19–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Parts 0 and 27

[A.G. Order No. 2492–2001]

Office of the Inspector General

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Department's organizational regulations to revise the description of the functions and responsibilities of the Office of the Inspector General. The amendments concern the jurisdiction of the Office of the Inspector General to investigate allegations of misconduct by employees of the Federal bureau of Investigation and Drug Enforcement Administration. This rule also makes conforming changes to the Department's existing regulations concerning the investigation of whistleblower disclosures made by employees of the FBI.

EFFECTIVE DATE: July 11, 2001.

FOR FURTHER INFORMATION CONTACT: Kevin R. Jones, Deputy Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice, Washington, DC 20530, (202) 514–4604.

SUPPLEMENTARY INFORMATION: The Attorney General is amending current Department of Justice regulations, in Part 0, Subpart E–4 of title 28, Code of Federal Regulations, describing the jurisdiction and functions of the Office of the Inspector General (OIG). Currently, evidence and non-frivolous allegations of serious misconduct by employees of the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) must be reported to the FBI Office of Professional Responsibility (FBI–OPR) and the DEA Office of Professional Responsibility (DEA–OPR), respectively. The OIG refers to FBI–OPR and DEA–OPR allegations of misconduct within their respective jurisdictions for appropriate action. The OIG refers to the Department's Office of Professional Responsibility (OPR) allegations of serious misconduct (1) by Department attorneys relating to the exercise of their authority to investigate, litigate, or provide legal advice; and (2) by Department law enforcement personnel relating to (or in connection with) allegations of misconduct by a Department attorney that relate to the exercise of the attorney's authority to investigate, litigate, or provide legal advice. At the request of the Inspector General, the Deputy Attorney General may assign to the OIG a matter within the jurisdiction of FBI–OPR, DEA–OPR, or DOJ–OPR.

Pursuant to these amendments, all evidence and non-frivolous allegations of criminal wrongdoing and serious administrative misconduct by Department of Justice employees shall be reported to the OIG except for those allegations concerning serious misconduct by Department attorneys or investigators that are within the jurisdiction of OPR. With respect to evidence and non-frivolous allegations of criminal wrongdoing and serious administrative misconduct by employees of the FBI and DEA, the OIG will determine whether it will investigate such allegations or whether they will be investigated by FBI–OPR or DEA–OPR.

This rule also makes changes to the Department's existing regulations in 28 CFR 27.1(b) with respect to the investigations of whistleblower disclosures made by employees of the FBI, in order to conform with the provisions of Part 0, Subpart E–4, as amended, regarding the authority of the OIG. In addition, this rule makes a technical change to § 27.4 to reflect recent change in name of the Office of Attorney Personnel Management to the Office of Attorney Recruitment and Management.

Certifications and Determinations

Administrative Procedure Act

This rule relates to matters of agency management or personnel, and is therefore exempt from the usual requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2). Moreover, to the extent that rulemaking procedures are otherwise applicable, the Department finds that this is exempt from the requirements of prior notice and comment as a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A). Similarly, the effective date of the rule need not be delayed for 30 days after publication because the rule is not a "substantive rule." *See* 5 U.S.C. 553(d); 5 U.S.C. 552(a)(1)(D).

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. It is a rule relating to agency management or personnel and is therefore excluded from the scope of a covered "rule" for purposes of Chapter 8 of Title 5, U.S.C. *See* 5 U.S.C. 804(3)(B). Moreover, to the extent that this rule would be

considered to be a rule of agency organization, procedure, or practice, it is excluded from the scope of a covered "rule" pursuant to 5 U.S.C. 804(3)(C). The amendments relate to the Attorney General's determination with respect to how Department of Justice components shall handle certain matters within the authority of the Attorney General as head of the Department of Justice, and the Department has determined that this rule does not substantially affect the rights or obligations of non-agency parties.

Accordingly, because this action is not a covered "rule," it is exempt from the requirement for the Department to submit a report to each House of Congress and to the Comptroller General before this rule can take effect, as provided in 5 U.S.C. 801(a)(1).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review. The Department of Justice has determined that this is not a "significant regulatory action" under section 3(f) of Executive Order 12866, and that it relates to a matter of agency organization, management, or personnel. See Executive Order 12866, section 3(d)(3). Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects

28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

28 CFR Part 27

Government Employees, Justice Department, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, Part 0, Subpart E–4, and Part 27 of title 28 of the Code of Federal Regulations, are amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation of part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Paragraph (a) of section 0.29c is revised to read as follows:

§ 0.29c Reporting allegations of employee misconduct.

(a) *Reporting to the OIG.* Evidence and non-frivolous allegations of criminal wrongdoing or serious administrative misconduct by Department employees shall be reported to the OIG, or to a supervisor or a Department component's internal affairs office for referral to the OIG, except as provided in paragraph (b) of this section.

* * * * *

3. Paragraph (c) of § 0.29c is amended by adding the words "by the OIG" between the words "reported" and "to".

4. Paragraph (d) of § 0.29c is amended by adding the words "by the OIG" between the words "reported" and "to".

5. In § 0.29d, paragraph (a) is revised to read as follows:

§ 0.29d Whistleblower protection for FBI employees.

(a) *Protected disclosures by FBI employees.* Disclosures of information by an FBI employee that the employee reasonably believes evidences a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety are protected disclosures when they are reported as provided in § 27.1 of this chapter. Any office or official (other than the OIG or DOJ–OPR) receiving a protected disclosure shall promptly report such disclosure to the OIG or DOJ–OPR. The OIG or DOJ–OPR may refer such allegations to FBI–OPR for investigation unless the Deputy Attorney General determines that such referral shall not be made.

* * * * *

6. Section 0.29e is amended by:

a. Revising paragraphs (a)(1), (a)(2), (a)(3), and (a)(5);

b. Amending the introductory text in paragraph (a)(6) by removing "another internal investigative component" and by adding in its place "DOJ–OPR";

c. Amending paragraph (a)(6)(i) by removing "the component" and by adding in its place "DOJ–OPR";

d. Amending paragraph (a)(7) by removing "the other investigative component" and by adding in its place "DOJ–OPR"; to read as follows:

§ 29e Relationship to other departmental units.

(a) * * *

(1) The OIG refers to DOJ–OPR allegations of misconduct within DOJ–OPR's jurisdiction and may refer to another component the investigation of an allegation of misconduct on the part of an employee of that component;

(2) The OIG may refer to a Department component's internal affairs office allegations of misconduct within that office's jurisdiction or may investigate such allegations on its own;

(3) DOJ–OPR refers to the OIG allegations involving misconduct by Department attorneys or investigators that do not relate to the exercise of an attorney's authority to investigate, litigate, or provide legal advice.

(4) * * *

(5) All Department components report to the OIG all non-frivolous allegations of criminal wrongdoing and serious administrative misconduct involving any of their employees except allegations involving Department attorneys and investigators that relate to an attorney's authority to litigate, investigate, or provide legal advice.

* * * * *

§ 0.29h Specific authorities of the Inspector General.

7. Paragraph (a) of section 0.29h is amended by removing "the" between "to" and "administration" and by adding in its place "criminal wrongdoing and administrative

misconduct of Department employees and".

PART 27—WHISTLEBLOWER PROTECTION FOR FEDERAL BUREAU OF INVESTIGATION EMPOYEES

8. The authority citation for part 27 continues to read as follows:

Authority: 5 U.S.C. 301, 3151; 28 U.S.C. 509, 510, 515–519; President's Memorandum to the Attorney General, Delegation of Responsibilities Concerning FBI Employees Under the Civil Service Reform Act of 1978, 3 CFR p. 284 (1997).

9. In § 27.1, paragraph (b) is revised to read as follows:

§ 27.1 Making a protected disclosure.

* * * * *

(b) Any office or official (other than the OIG or OPR) receiving a protected disclosure shall promptly report such disclosure to the OIG or OPR for investigation. The OIG and OPR shall proceed in accordance with procedures establishing their respective jurisdiction. The OIG or OPR may refer such allegations to FBI–OPR for investigation unless the Deputy Attorney General determines that such referral shall not be made.

§ 27.4 Corrective action and other relief; Director, Office of Attorney Recruitment and Management.

10. In § 27.4, the heading is revised to read as shown above.

11. In § 27.4, paragraph (a) is amended by removing "Attorney Personnel Management" and by adding in its place "Attorney Recruitment and Management".

Dated: July 11, 2001.

John Ashcroft,

Attorney General.

[FR Doc. 01–18087 Filed 7–19–01; 8:45 am]

BILLING CODE 4410–AR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 123–1123a; FRL–7015–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP). EPA is approving a revision to Missouri rule "Control of Emissions From Industrial Surface Coating Operations." This revision will ensure consistency between the state and Federally approved rules, and ensure Federal enforceability of the state's air program rule revision pursuant to section 110 of the Clean Air Act.

EFFECTIVE DATE: This direct final rule will be effective September 18, 2001 unless EPA receives adverse comments by August 20, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we, us, or our" is used, we mean EPA.

This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this notice?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by us. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by us under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgations of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

What Is Being Addressed in This Notice?

The state of Missouri has requested that EPA approve as a revision to the Missouri SIP recently adopted revisions to rule 10 CSR 10–5.330, "Control of Emissions From Industrial Surface Coating Operations." This rule is

applicable in the St. Louis nonattainment area.

This rule was revised to delete conditions for aerospace manufacture and rework facilities which are also contained in rule 10 CSR 10–5.295, "Control of Emissions From Aerospace Manufacture and Rework Facilities." This revision eliminates duplicate requirements for these facilities, but does not relax any applicable requirements.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR section 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, Appendix V. In addition, as explained above and in more detail in the technical support document which is part of this notice, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

EPA is processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 29, 2001.

William Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 5 by revising the entry for "10–5.330" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *		*	*	*
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
* * * * *		*	*	*
10–5.330	Control of Emissions From Industrial Surface Coating Operations.	12/30/00	7/20/01 66 FR 37906	
* * * * *		*	*	*

* * * * *

[FR Doc. 01–18089 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 119–1119a; FRL–7015–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the state of Missouri. This approval pertains to revisions to a rule which controls emissions from aluminum foil rolling sources in the St. Louis, Missouri, nonattainment area. The effect of this approval is to ensure Federal enforceability of the state air program rules and to maintain consistency between the state-adopted rules and the approved SIP.

DATES: This direct final rule will be effective on September 18, 2001 unless EPA receives adverse comments by August 20, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?
What Is the Federal Approval Process for a SIP?
What Does Federal Approval of a State Regulation Mean to Me?
What Is Being Addressed in this Document?
Have the Requirements for Approval of a SIP Revision Been Met?
What Action Is EPA Taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

On October 25, 2000, we received a request from the Missouri Department of Natural Resources to approve as a SIP revision amendments to rule 10 CSR 10–5.451, "Control of Emissions From Aluminum Foil Rolling."

This rule specifies operating procedures, materials requirements, and control equipment specifications for the reduction of volatile organic compounds from aluminum foil rolling mills in the St. Louis ozone nonattainment area. There is only one source subject to this rule.

Revisions to the rule were minor. References to the final boiling point of the rolling lubricants in sections (3)(A)(1)(B) and (3)(A)(2)(B) were revised for clarification. Section (5)(A) was revised to refer to the most current American Society for Testing and Materials test method, and to add clarifying language regarding the emissions standards to which the test method applies. A minor typographical correction was made to section (3)(A)(2)(A).

This rule was adopted by the Missouri Air Conservation Commission and became state effective on September 30, 2000.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are processing this action as a final action because the revisions make routine changes to the existing rules, which are noncontroversial. Therefore, we do not anticipate any adverse comments.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 29, 2001.

William Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 5 by revising the entry for "10–5.451" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
	Missouri Department of Natural Resources			
* * * * *			*	*
	Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area			
* * * * *			*	*
10–5.451	Control of Emissions From Aluminum Foil Rolling	09/30/00	7/20/01 66 FR 37908	.....
* * * * *			*	*

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[FR Doc. 01–18091 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA168–4109a; FRL–7013–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Control of VOCs From Wood Furniture Manufacturing, Surface Coating Processes and Other Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP) submitted on October 4, 2000 by the Pennsylvania Department of Environmental Protection (DEP). The revisions include the adoption of new VOC regulations for wood furniture manufacturing operations. These revisions also add new definitions, and amend or delete certain existing definitions for terms used in regulations pertaining to volatile organic compound (VOC) sources. The revisions also clarify the requirements Pennsylvania's surface coating regulations. Lastly, the revisions include minor amendments to Pennsylvania's regulations pertaining to sampling and testing methods. EPA is approving these revisions to the Commonwealth of Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on September 18, 2001 without further notice, unless EPA receives adverse written comment by August 20, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning & Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182 or Ellen Wentworth, (215) 814–2034, at the EPA Region III address above, or by e-mail at *quinto.rose@epa.gov* or *wentworth.ellen@epa.gov*

SUPPLEMENTARY INFORMATION:

I. Description of the SIP Revision and EPA's Action

The information in this section is organized as follows:

A. What Action Is EPA Taking Today?
B. What Are the Provisions of the New and Revised Regulations?
C. Why Is EPA Approving These SIP Revisions?
D. What Is the Process for EPA Approval?

A. What Action Is EPA Taking Today?

EPA is approving revisions to the Commonwealth of Pennsylvania SIP which were submitted on October 4, 2000 by the Pennsylvania DEP. These SIP revisions amend 25 PA Code, Chapter 121, General Provisions, section 121.1, Definitions, to include the addition of new definitions, and the revision or deletion of certain existing definitions used in Chapter 129.

We are also approving revisions to 25 PA Code, Chapter 129, Standards for Sources, to add new sections, 129.101–129.107, Wood Furniture Manufacturing Operations, which establish presumptive reasonably available control technology (RACT) for wood manufacturing operations.

We are also approving revisions to 25 PA Code, Chapter 129, Standards for Sources, section 129.52, Surface Coating Processes, which clarifies which wood furniture manufacturing facilities are subject to section 129.52 and sections 129.101–129.107.

Finally, we are approving revisions to 25 PA Code, Chapter 139, Sampling and Testing, section 139.4, References, to reflect the correct name and address for the Pennsylvania Department of Environmental Protection and the Bureau of Air Quality, and section 139.14, Emissions of VOCs, to require that the test methods and procedures for the content of total volatiles, solids and exempt solvents be equivalent to those found at subsection 139.4(1) and (5).

B. What Are the New and Revised Regulations?

Chapter 121, General Provisions—Additions, Revisions, Deletions to Section 121.1, Definitions

This SIP revision adds definitions and revises or deletes certain existing definitions to Chapter 121, General Provisions, section 121.1 Definitions, for terms used in the substantive provisions of Chapter 129, Pennsylvania's regulations which contain VOC emission standards.

Additional definitions are provided for the following: Adhesive, Alternative method, As applied, As Supplied, Basecoat, CPDS—Certified Product Data Sheet, Coating, Coating solids or solids, Compliant coating, Continuous coater, Conventional air spray, Cosmetic

specialty coatings, Enamel, Equivalent method, MSDS—Material Safety Data Sheet, Nonpermanent final finish, Normally closed container, Pollution prevention, Sealer, Stain, Strippable spray booth coating, Substrate, Thinner, Touch-up and repair, Wash-off operations, Waterborne coating, Wood furniture, Wood furniture component, and Wood furniture manufacturing operations.

The following definitions have been deleted to eliminate inconsistencies between definitions for the existing surface coating requirements in section 129.52, and the newly adopted presumptive RACT requirements for wood furniture manufacturing operations in sections 129.101–129.107: Clear sealers, Opaque ground coats and enamels, Other coatings, Semitransparent spray stains, and Semitransparent wiping and glazing stains.

These amendments also include revisions to the following existing definitions: Dip coating, Miscellaneous metal parts and products, Process, Surface coating process, Topcoat, VOC-volatile organic compound, and Washcoat.

Chapter 129, Standard for Sources—Revisions to Section 129.52, Surface Coating Processes

The amendments to section 129.52, Surface Coating Processes, serve to clarify and simplify existing requirements for surface coating processes. Summaries of the revised portions of section 129.52 are listed below.

Subsection 129.52(b)(1)—The amendments delete the existing language requiring adjustment to a standard solvent density and a solids basis. This adjustment is incorporated into revisions relating to allowable content of VOCs in surface coatings by process.

Subsection 129.52(b)(1)(i)—This amendment adds an equation for calculating the VOC content of the "as applied" coating on the basis of weight of VOC per volume of coating solids.

Subsection 129.52(b)(1)(ii)—This amendment adds an equation for calculating the VOC content of dip coatings on a 30-day rolling average basis. The methodology for calculating the VOC content includes the gallons of thinner added to the coating in the process over any consecutive 30-day period to replace evaporated solvent.

Subsection 129.52(b)(1)(iii)—This amendment adds an equation for calculating the VOC content on the basis of weight of VOC per weight of coatings solids.

Subsection 129.52(b)(1)(iv)—The equation for dip-coating operations has been deleted because it would have established more stringent requirements than the Federal Control Technique Guideline (CTG) for Wood Furniture Manufacturing Operations. Paragraph (v) has been renumbered.

Subsection 129.52(b)2—The existing equation for calculating the percentage of emission reductions needed for compliance purposes when using control equipment has been deleted. A new equation has been added for calculating the overall efficiency of the control system based on the new units of measurement in the regulation, which is the weight of VOC per volume of solids and weight of VOC per weight of solids.

Subsection 129.52(c)—This amendment deletes the existing list of required records and adds record keeping requirements that are appropriate to the required methods used to evaluate compliance as specified in the Source Testing Manual.

Subsection 129.52(f)—Amendments to this subsection add terms that are consistent with the "roller coating," and "cosmetic specialty coatings" definitions specified in section 121.1, Definitions.

Subsection 129.52(g)—This amendment moves the existing requirement for maintaining records for two years from section 129.52(c) to section 129.52(g) to emphasize and add clarity to the amendments.

Subsection 129.52(h)—This amendment adds an exemption from VOC emission limitations for small quantities of coatings used for determination of product quality and commercial acceptance, touch-up and repair, and other small quantity coatings. This subsection requires the facility owner or operator to submit a written request to the Department to exempt quantities of coating which do not exceed 50 gallons a year for a single coating, and a total of 200 gallons each year for all coatings combined for the facility. The Department's written approval must be obtained prior to the use of the exempted coatings.

Chapter 129, Section 129.91, Control of Major Sources of NO_X and VOCs—Revisions to Section 129.91 Subsection(a)

The amendment to subsection(a) clarifies the RACT requirements applicable to wood furniture manufacturing facilities subject to section 129.52, Category 11 (relating to surface coating processes) and sections 129.101–129.107 (wood furniture and manufacturing operations).

Chapter 129, Standards for Sources—Addition of Sections 129.101–129.107, Wood Furniture Manufacturing Operations

This SIP revision adds sections 129.101–107, Wood Furniture Manufacturing Operations, to 25 PA Code, Chapter 129, Standards for Sources, establishing requirements to control VOC emissions from wood furniture manufacturing operations including wood furniture finishing, cleaning, and wash-off operations. These regulations are based upon EPA's CTG for the control of VOCs from wood furniture manufacturing operations and establish presumptive RACT requirements for certain wood manufacturing operations. Summary of the provisions of the new regulations are provided below.

Section 129.101, General Provisions and Applicability

Subsection 129.101(a) states that sections 129.101–129.107 apply to each wood furniture manufacturing facility located in a Pennsylvania county located in the northeast ozone transport region or in a county classified as severe, serious, moderate or marginal nonattainment for ozone, and which emits or has the potential to emit (PTE) 25 tons or more per year of VOCs from wood furniture manufacturing operations. The most stringent VOC emission limits will apply to a wood furniture manufacturing operation that meets the applicable threshold limits for both section 129.52, relating to surface coating processes, and sections 129.101–129.107.

Subsection 129.101(b) requires the owner or operator of an existing wood furniture manufacturing facility subject to the conditions of subsection (a) above to comply with the requirements of the new regulations within one year from the effective date of the final rulemaking. This compliance deadline does not apply to facilities which have RACT determinations approved by EPA as SIP revisions prior to June 10, 2000.

Subsection 129.101(c) provides a compliance deadline for the owner or operator of an existing wood furniture manufacturing facility which increases its actual emissions or PTE to 25 tons per year or more of VOCs from wood furniture manufacturing operations to comply with this section and sections 129.102–129.107. Within one (1) year after increasing actual VOC emissions or the PTE to 25 tons per year or more, the owner or operator of the affected facility must comply with sections 129.101–129.107, except for those facilities which have RACT determinations

approved by EPA as SIP revisions prior to June 10, 2000.

Subsection 129.101(d) establishes a compliance date for existing facilities that install new sources. New sources installed at an existing facility must meet, at a minimum, the VOC emission standards of section 129.102 upon installation of the new source. This provision does not exempt a new source(s) installed at an existing facility from applicable new source review requirements.

Subsection 129.101(e) describes the interface between the existing surface coating requirements in section 129.52, Surface Coating Processes, and the presumptive RACT requirements for wood furniture manufacturing. If actual or potential VOC emissions would subject the facility to both sections 129.52 and 129.101–129.107, the owner or operator would only have to demonstrate compliance with the most stringent emissions limitations.

Subsection 129.101(f) describes the exemptions from the VOC emission limits in section 129.102. The limits in this section do not apply to a coating used exclusively for determining product quality and commercial acceptance, touch-up and repair, and other small quantity coatings, if the quantity of coating does not exceed 50 gallons per year for a single coating, and a total of 200 gallons per year for all coatings combined for the facility. The owner or operator of the facility must submit a written request to the Department which must be approved prior to the use of the coatings.

Section 129.102. Emission Standard

This section includes the emission limits of VOCs for wood furniture manufacturing sealers, topcoats, and strippable spray booth coatings that are actually used for coating the substrate, and the methodology for compliance.

Section 129.103. Work Practice Standards

This section establishes work practice standards to reduce VOC emissions from wood furniture manufacturing operations. The work practice standards include the development of a work practice implementation plan and operator training program, a leak inspection and maintenance plan, and a cleaning and wash-off solvent accounting system.

Subsection 129.103(a) requires the owner or operator of a facility subject to the requirements in sections 129.101–129.107 to develop and maintain a written work practice implementation plan no later than 60 days after the compliance date specified in section 129.101(b) or (c). The work practice implementation plan must include an operator training program, spray booth cleaning requirements, storage requirements, and application equipment requirements. The owner or operator of the facility must comply with each provision of the work practice implementation plan. The written plan must be available for inspection by the Department. If the Department determines that the work practice implementation plan does not adequately address the criteria specified in subsections 129.103(b)–(j), the owner or operator must revise the plan.

Subsection 129.103(b) describes the elements of the operator training program. A copy of the required operator training program must be maintained with the work practice implementation plan. All new and existing personnel, including contract personnel, who are involved in coating, cleaning or wash-off operations, or implementation of the requirements in sections 129.101–129.107, must complete the operator training program according to the dates specified in this subsection.

Subsection 129.103(c) lists the requirements for the leak inspection and maintenance plan including inspection schedules, inspection documentation methods, and repair and maintenance time frames.

Subsection 129.103(d) describes the requirements pertaining to the cleaning and wash-off solvent accounting system. A solvent accounting form must be developed for recording information pertaining to the solvents used in cleaning and wash-off operations.

Subsection 129.103(e) provides work practices for spray booth cleaning. The owners or operators of a facility may not use compounds containing more than 8.0 percent by weight of VOC for cleaning spray booth components other than conveyors, continuous coaters and their enclosures, or metal filters, unless the spray booth is being refurbished. When a spray booth is being refurbished, no more than one gallon of organic solvent can be used to prepare the booth prior to applying the new strippable booth coating. The strippable booth coating shall contain no more than 0.8 lb VOC/lb solids (0.8 kg VOC/kg solids), as applied.

Section 129.03(f) pertains to storage requirements. It requires the owner or operator of a facility to use normally closed containers for storing coating, cleaning and wash-off materials.

Subsection 129.103(g) describes the work practice standards for application equipment and limits the use of conventional air spray guns. The use of conventional air spray guns is prohibited if the conventional air spray guns are not used in accordance with the procedures in subsection 129.103(g)(1)–(6).

Subsection 129.103(h) describes the work practice standards used for line cleaning solvent. The solvent used for line cleaning must be pumped or drained into a normally closed container.

Subsection 129.103(i) describes the work practice standards for the solvent used to clean spray guns. The solvent used to clean spray guns must be collected into a normally closed container.

Subsection 129.103(j) describes the work practice standards for the control of emissions from wash-off operations. The emissions from wash-off operations must be controlled by using normally closed containers for the wash-off operations, and by tilting or rotating the part to drain as much of the solvent off as possible.

Section 129.104, Compliance Procedures and Monitoring Requirements

This section describes compliance procedures and monitoring requirements used to demonstrate compliance with the presumptive RACT regulations for wood furniture manufacturing operations. The owner or operator of a facility subject to the emission standards of section 129.102 must demonstrate compliance through the use of compliant coatings, add-on control devices, an emissions-averaging approach, or a combination of these compliance methods. When a combination of compliance options is selected, the owner or operator must demonstrate compliance with each applicable compliance technique.

Subsection 129.104(a) describes the methods and procedures an owner or operator of the facility must used to demonstrate compliance with the VOC emission standards in section 129.102 (relating to emission standards). The owner or operator must maintain a Certified Product Data Sheet (CPDS) for each coating that is subject to the VOC emission limits and maintain records which demonstrate that each coating, as applied, meets the applicable VOC emission limit. When a control system is used to meet the VOC emission limits, the overall control efficiency must be calculated using the equations in subsection 129.104(a)(2).

Subsection 129.104(b) describes the requirements for initial compliance.

Subsection 129.104(b)(1) requires the owners or operators of a facility demonstrating compliance through the

use of compliant coatings to submit an initial compliance status report in accordance with subsection 129.106(a) specifying whether compliant sealers, topcoats and strippable spray booth coatings are being used by the facility.

Subsection 129.104(b)(2) explains the initial compliance requirements for facilities using a continuous coater to apply sealers, topcoats, or both. To demonstrate initial compliance, the owners or operators are required to submit an initial compliance status report. The report must specify either that compliant sealers, topcoats, or both, as determined by the VOC content of the coating in the reservoir and as calculated from records, are being used, or that compliant sealers, topcoats, or both, as determined by the VOC content of the coating in the reservoir are being used, and the viscosity of the coating in the reservoir is being monitored.

Subsection 129.104(b)(3) requires users of control systems to include the operating parameter values to be monitored for the capture device, and the results of the initial performance testing, in the initial compliance report. The procedures and test methods must meet the requirements specified in Chapter 139 (relating to sampling and testing).

Subsection 129.104(b)(4) requires that an owner or operator of a facility subject to the work practice standards of section 129.103 submit an initial compliance status report as required by subsection 129.106(a).

Subsection 129.104(c) pertains to continuous compliance demonstrations, and requires the owner or operator of a facility subject to the presumptive RACT requirements to submit a compliance certification in writing to the Department with the semiannual report required under subsection 129.106(b).

Subsection 129.104(c)(1) requires facilities that use compliant coatings to demonstrate continuous compliance to maintain records and prove that the coatings used in their operations are compliant coatings. The compliance certification must also state that compliant sealers, topcoats, or both, and strippable spray booth coatings have been used each day in the semiannual reporting period and must identify the days of noncompliance and the reasons for noncompliance.

Subsection 129.104(c)(2) explains the continuous compliance requirements for facilities using continuous coaters to apply sealers, topcoats, or both. The compliance certification submitted to the Department must include a statement that compliant sealers, topcoats, or both have been used each day in the semiannual reporting period. If the facility has not been in continuous compliance, the certification must include the days of noncompliance, and the reason for noncompliance.

Subsection 129.104(c)(3) specifies the requirements for facilities that demonstrate continuous compliance by using a control system. Owners or operators of affected sources are required to install, calibrate, maintain and operate monitoring equipment that has been approved, in writing, by the Department. If the facility is using a control system that is not described in section 129.104, approval by the Department must be obtained prior to using the control system. The request for approval of the control system must include the following: a description of the system, test data verifying the performance of the system, the appropriate operating parameter values that will be monitored, and the monitoring device that will be used to demonstrate continuous compliance with the standard. The compliance certification for the control system must specify that the control system has not been operated at a daily average value greater than or less than (as appropriate) the operating parameter value for each day in the semiannual reporting period. If the operating parameter value is not in compliance, the certification must identify the days of noncompliance and the reason for noncompliance.

Subsection 129.104(c)(4) requires that each owner or operator of a facility that is subject to the work practice standards of section 129.103 demonstrate continuous compliance by following the work practice implementation plan. The compliance certification must state that the work practice implementation plan is being followed, or should otherwise identify the periods of noncompliance with the work practice standards and the reasons for noncompliance.

Subsection 129.104(d) requires compliance certifications to be signed by a responsible official of the company. In addition to the certification requirements of this section, the certification must state that based on information and inquiry, the statements and information in the document are true, accurate and complete.

Section 129.105, Record keeping Requirements

This section establishes record keeping requirements for wood furniture manufacturing operations. The owners or operators of affected facilities must keep adequate records to demonstrate compliance with the requirements in sections 129.101–129.107. The records must be maintained for at least 5 years. This section also includes specific record keeping requirements for facilities using compliant coatings, continuous coaters, control systems, or a combination of these methods. The record keeping requirements of subsections (a), (b), and (c) are to include the following:

(1) A certified product data for each coating and strippable spray booth coating.

(2) Records of the VOC content of the as applied coating. lbs VOC/lb solids (kg VOC/kg solids), of each coating and strippable spray booth coating, and copies of data sheets documenting how the as applied values were determined. Owners or operators applying sealers, topcoats or both, using continuous coaters must also keep records of solvent and coating additions to the continuous coater reservoir and viscosity measurements.

Subsection 129.105(d) prescribes additional record keeping requirements for control systems which include copies of the calculations to support the equivalency of using a control system and records of the daily average value of each continuously monitored parameter for each operating day. If all recorded values for a monitored parameter are within the range established during the initial performance test, the owner or operator may record that all values were within the range rather than calculating and recording an average for that day.

Subsection 129.105(e) specifies that a copy of the work practice implementation plan and all records associated with meeting the requirements of that plan must be maintained on site. The records kept for the work implementation plan must also satisfy the record keeping requirements for applicable provisions of the work practice implementation plan including the operator training program, the leak inspection and maintenance plan, the cleaning and wash-off solvent accounting system, and restrictions on the use of conventional air spray guns.

Subsection 129.105(f) requires the owner or operator of a facility that complies with section 129.103 or section 129.104(a)(1) to maintain a copy of the compliance certifications submitted in accordance with section 129.106(a) and the semiannual reports required by section 129.106(b).

Subsection 129.105(g) requires the owner or operator of a facility to maintain a copy of the other information submitted with the initial status report required under 129.106(a) and the semiannual reports required by section 129.106(b).

Section 129.106, Reporting Requirements

This section establishes reporting requirements for wood furniture manufacturing operations subject to the presumptive RACT requirements of sections 129.101–129.107.

Subsection 129.106(a) requires owners or operators of affected facilities to submit an initial compliance report to the Department no later than 60 days after the compliance date specified in section 129.101(b) and (c). The report must include the items required under section 129.104(b).

Subsection 129.106(b) requires the submittal of semiannual reports certifying compliance for the previous 6 months of wood furniture manufacturing operations. The first report should be submitted to the Department within 30 calendar days after the end of the first six-month period following the compliance date. Subsequent reports must be submitted within 30 calendar days after the end of each six-month period following the first report. Each semiannual report must include the information required by section 129.104(c) and (d), a statement of whether the facility was in compliance or noncompliance and, if the facility was in noncompliance, the measures taken to bring the facility into compliance.

Section 129.107, Special Provisions for Facilities Using an Emission Averaging Approach

This section allows the owners or operators of manufacturing operations to comply with the VOC emission limitations by averaging emissions across wood furniture finishing lines using the emissions averaging approach. The wood furniture manufacturing operation may use stains, basecoats, washcoats, sealers, and topcoats in any emissions averaging program that meets the equivalency requirements in section 129.51(a). The facility may use other coatings for its emissions averaging program if the averaging approach meets the equivalency requirements. The emissions averaging program submitted to the Department for approval prior to use must include a summary of the reasons why the facility would like to comply with the emission limitations through an equivalency determination using emissions averaging procedures. The program summary must also include an explanation of how averaging can be used to meet the emission limitations and a description of the types of coatings that will be included in the facility's emissions averaging program. An additional 10% reduction in emissions is required under subsection (b) for affected facilities using the emissions averaging approach.

Subsection 129.107(c) requires the owner or operator of the facility to submit a written summary to the Department explaining why the emissions averaging program should be used to demonstrate compliance. The written summary must also explain how emissions averaging can be used to meet the emissions limitations.

Subsection 129.107(d) requires the owner or operator of the facility to describe the types of coatings that will be included in the emissions averaging program. Coatings used in an averaging program may include basecoats, sealers, stains, topcoats, and washcoats. Coatings in the emissions averaging program cannot be applied using a continuous coater unless the amount of coating used is determined on a daily basis.

Subsection 129.107(e) specifies that the baseline for each coating included in the emissions averaging program shall be the lower of the actual or allowable emission rate as of the effective date of these regulations. The baseline emission rate for the facility may not be higher than what was presumed in the 1990 emissions inventory for the facility unless the Department has accounted for the increase in emissions as growth.

Subsection 129.107(f) provides that the quantification procedures used in the emissions averaging program must demonstrate that the facility's actual emissions are less than the allowable emissions.

Subsection 129.107(g) requires that the emissions averaging program submitted to the Department include monitoring, record keeping and reporting procedures that will allow Department inspectors or owners or operators of facilities using an averaging approach to determine the facility's compliance status on a daily basis. The monitoring, record keeping and reporting procedures must also include methods for determining required data when monitoring, record keeping and reporting violations result in missing, inadequate or erroneous monitoring and record keeping.

Chapter 139, Sampling and Testing, Subchapter A. Sampling and Testing Methods and Procedures—Revisions to Section 139.4, References, and 139.14, Emissions of VOCs

Section 139.4, References—The revisions to this section reflect the name change from the Pennsylvania Department of Environmental Resources to the Pennsylvania Department of Environmental Protection, and the name change from the Bureau of Air Quality Control to the Bureau of Air Quality.

Section 139.14, Emissions of VOCs—The amendments to this section require that the test methods and procedures for the content of total volatiles, solids and exempt solvents be equivalent to those listed in section 139.4(1), Standards of Performance for New Stationary Sources, and 139.4(5), Source Testing Manual.

C. Why Is EPA Approving These SIP Revisions?

Section 183(a) of the Clean Air Act (CAA) requires the EPA Administrator to issue control techniques guidelines (CTG)s for 11 categories of stationary sources of VOCs. On May 20, 1996, the EPA published a CTG document for control of VOCs from wood furniture finishing, cleaning and washoff operations (61 FR 25223 (May 20, 1996). This CTG established a "presumptive norm" RACT for the control of VOCs for wood furniture manufacturing facilities located in marginal, moderate, serious, and severe ozone nonattainment areas or ozone transport regions, that emit or have the PTE 25 tons per year or more of VOCs. The CTG and model rule for wood furniture manufacturing operations were developed by the EPA after reaching consensus among representatives from the environmental community, the wood furniture industry, and state permitting agencies. On September 27, 1996, EPA published an addendum to the CTG which specified dates for the adoption and implementation of the standards. EPA is approving the addition of sections 129.101–129.107, Wood Furniture Manufacturing Operations to 25 PA Code, Chapter 129 because this addition implements the Federal presumptive RACT requirements for wood furniture manufacturing operations established in EPA's CTG for wood furniture manufacturing operations as mandated by Section 182 of the CAA.

EPA is approving the additions, deletions, and revisions to definitions in Chapter 121, section 121.1, Definitions, because they are terms used in the substantive sections of Chapter 129 and satisfy all applicable Federal requirements and policies.

The revisions to section 129.52, relating to surface coating processes, are the fourth in a series of changes implementing the Commonwealth's Regulatory Basics Initiative (RBI) and Executive Order 1996–1. As part of the Commonwealth's RBI, the Pennsylvania DEP was tasked to review the Commonwealth's existing regulations and identify those that were more

stringent than Federal requirements, were obsolete, redundant, or no longer necessary. EPA is approving the revisions to section 129.52, Surface Coating Processes, because they clarify the existing requirements for surface coating processes.

The amendment to section 129.91, *Control of Major Sources of NO_X and VOCs* subsection (a) is approved since it will serve to clarify the relationship between the existing case-by-case RACT requirements and the newly adopted presumptive RACT requirements for wood furniture manufacturing operations.

The revisions to Chapter 139, sections 139.4 and 139.14 are approved since they were also identified during the Commonwealth's Regulatory Basics Initiative. As stated previously, the revision to section 139.4 corrects the name for the Department, and the revision to section 139.14 adds several applicable terms.

D. What Is the Process for EPA Approval of This Action?

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 18, 2001 without further notice unless EPA receives adverse comment by August 20, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. Final Action

EPA is approving the revisions to the Commonwealth of Pennsylvania SIP submitted by the Pennsylvania DEP on October 4, 2000. The revisions amend Chapter 121, General Provisions, section 121.1, Definitions; Chapter 129, Standards for Sources, section 129.52, Surface Coating Processes; Chapter 129, Standards for Sources, section 129.91, Control of Major Sources of NO_X and VOCs, subsection (a); add sections 129.101–129.107, Wood Furniture Manufacturing Operations to Chapter 129, Standards for Sources; and amend Chapter 139, Sampling and Testing, sections 139.4 and 139.14. i

III. What Are the Administrative Requirements?

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed. Reg. 28355 May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 2001. Filing a petition for reconsideration by the Administrator of this final rule approving revisions to Pennsylvania's volatile organic compounds regulations, and the adoption of new regulations for wood furniture manufacturing operations does

not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: July 5, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(152) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(152) Revisions to the Commonwealth of Pennsylvania Regulations pertaining to certain VOC regulations submitted on October 4, 2000 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of October 4, 2000 from the Pennsylvania Department of Environmental Protection transmitting the revisions to VOC regulations.

(B) Revisions to 25 PA Code, effective June 10, 2000.

(*1*) Additions, Deletions and Revisions to Chapter 121, General Provisions, section 121.1, Definitions.

(*2*) Revisions to Chapter 129, Standards for Sources, Sources of VOC, section 129.52, Surface Coating Processes.

(*3*) Revision to Chapter 129, Standards for Sources, section 129.91, Control of Major Sources of NO_X and VOCs, subsection (a).

(*4*) Addition to Chapter 129, Standards for Sources of sections 129.101–129.107, Wood Furniture Manufacturing Operations.

(*5*) Revisions to Chapter 139, Sampling and Testing, section 139.4, References, and section 139.14, Emissions of VOCs.

(ii) Additional Material.—Remainder of October 4, 2000 submittal.

[FR Doc. 01–18186 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD118–3073a; FRL–7014–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions From Organic Chemical Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions tó the Maryland State Implementation Plan (SIP). These revisions establish reasonable available control technology (RACT) to limit volatile organic compound (VOC) emissions from organic chemical production. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on September 18, 2001 without further notice, unless EPA receives adverse written comment by August 20, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mail Code 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov* or Carol Febbo, (215) 814–2076, or by e-mail at *febbo.carol@epa.gov* or at the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

On February 5, 2001, the State of Maryland submitted formal revisions to its SIP. These revisions, submitted by the Maryland Department of the Environment (MDE), consist of amendments to COMAR 26.11.19 *Volatile Organic Compounds from Specific Processes* to add a new regulation, COMAR 26.11.19.30 *Control of Volatile Organic Compounds from Organic Chemical Production.*

II. Summary of the SIP Revision

The Code of Maryland Regulations 26.11.19.30 *Control of Volatile Organic Compounds from Organic Chemical Production* establishes RACT to control VOCs from organic chemical production sources located throughout the State of Maryland. The subsections of the regulation are described below.

Subsections A. and B. Definitions and Terms Defined

These sections establish definitions for the terms "back-up control device," "chemical intermediate," "control device," "organic chemical production installation," and "product condenser."

Subsection C. Applicability

In general, the regulations apply to a person who owns or operates an organic chemical production installation at a premise that, on any day, has actual uncontrolled VOC emissions of 20 pounds or more per day. However, there are organic chemical production facilities to which COMAR 26.11.19.30 does not apply. It does not apply to an organic chemical production installation that is subject to provisions of the Federal Hazardous Organic NESHAPs (National Emission Standards for Hazardous Air Pollutants). See 40 CFR part 63, subparts F, G, H. Nor does it apply to any process or installation that is otherwise subject to regulations under COMAR 26.11.19 *Volatile Organic Compounds from Specific Processes* except for COMAR 26.11.19.01, 26.11.19 .02, and 26.11.19.16.

Subsection D. General Requirements

(1) A person who owns or operates an installation at a premise that has total uncontrolled VOC emissions of 100 pounds or more per day shall duct each process vent and exhaust line from any installation with actual emissions of 20 pounds or more per day, into a control device that has a VOC destruction or removal efficiency of at least 90 percent, overall.

(2) A person who owns or operates an installation at a premise that has total uncontrolled VOC emissions of 20 pounds or more per day but less than 100 pounds per day shall prepare a manual that identifies good operating practices and procedures designed to minimize VOC emissions from the premises.

(3) The good operating practices and procedures required in subsection D(2) shall be implemented by March 30, 2001, and the manual be made available to MDE upon request.

(4) A person who complies with subsection D(1) and later cannot achieve compliance because of an unavoidable outage or malfunction of the primary control device shall either:

(a) Discontinue operation until the primary control device is returned to proper service; or

(b) Use a back-up control device that is approved by MDE.

(5) The back-up control device under subsection D(4)(b) may not be used more than 10 percent of the annual operating time of the affected installation during any calendar year unless a longer period is approved by MDE.

Subsection E. Demonstration of Compliance

(1) Compliance shall be demonstrated using the applicable VOC test methods specified in COMAR 26.11.01.04C or other test method approved by MDE.

(2) A product condenser that is part of an organic chemical installation is not considered a control device.

EPA concurs with the MDE that COMAR 26.11.19.30 *Control of Volatile Organic Compounds from Organic Chemical Production* establishes RACT to control VOCs from organic chemical production sources located throughout the State of Maryland, and will result in significant enforceable VOC emission reductions. EPA has determined that COMAR 26.11.19.30 is approvable as a SIP revision.

III. Final Action

EPA is approving the SIP revisions submitted by MDE on February 5, 2001 to establish RACT to control VOC emissions from organic chemical production. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 18, 2001 without further notice unless EPA receives adverse comment by August 20, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (see 66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to revisions to the Maryland SIP establishing requirements for the control of VOC emissions from organic chemical production, must be filed in the United States Court of

Appeals for the appropriate circuit by September 18, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and record keeping requirements.

Dated: July 9, 2001.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(162) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(162) Revisions to the Maryland State Implementation Plan submitted on February 5, 2001 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) A letter dated February 5, 2001 from the Maryland Department of the Environment transmitting revisions to the Maryland State Implementation Plan, consisting of the addition of COMAR 26.11.19.30 *Control of Volatile Organic Compounds from Organic Chemical Production.*

(B) Addition of new COMAR 26.11.19.30 *Control of Volatile Organic Compounds from Organic Chemical Production*, adopted by the Secretary of the Environment on December 6, 2000 and effective on January 8, 2001, including the following:

(*1*) addition of new COMAR 26.11.19.30 A. Definitions.

(*2*) addition of new COMAR 26.11.19.30 B. Terms Defined.

(*3*) addition of new COMAR 26.11.19.30.C. Applicability.

(*4*) addition of new COMAR 26.11.19.30.D. General Requirements.

(*5*) addition of new COMAR 26.11.19.30.E. Demonstration of Compliance.

(ii) Additional Materials—Remainder of the February 5, 2001 submittal.

[FR Doc. 01–18190 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 130–1130a; FRL–7016–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) pertaining to the rescission of four area specific particulate matter process weight rate rules. Rescission of these rules, which have been replaced by one statewide rule, will simplify the SIP and ensure consistency between the Federally approved SIP and the state rules.

DATES: This direct final rule will be effective September 18, 2001 unless EPA receives adverse comments by August 20, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this action?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

In an effort to simplify its state rules and to ensure statewide consistency, the state of Missouri has consolidated its four area specific particulate matter process weight rate rules into one, equivalent, statewide rule, 10 CSR 10–6.400, "Restriction of Emission of Particulate Matter From Industrial Processes." We approved this statewide rule in the Missouri SIP on April 4, 2001 (65 FR 17811).

Since the area specific rules are now redundant, the state has requested that we rescind these rules from the Federally approved SIP. The rules being rescinded are:

- 10 CSR 10–2.030, Restriction of Emission of Particulate Matter From Industrial Processes
- 10 CSR 10–3.050, Restriction of Emission of Particulate Matter From Industrial Processes
- 10 CSR 10–4.030, Restriction of Emission of Particulate Matter From Industrial Processes
- 10 CSR 10–5.050, Restriction of Emission of Particulate Matter From Industrial Processes

These rules pertain to the Kansas City, out state, Springfield, and St. Louis areas, respectively.

Rescinding these rules from the SIP will simplify the SIP and ensure consistency between the state rules and the Federally approved SIP rules.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR Part 51, Appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are processing this action as a direct final action because the revision makes a routine change to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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Dated: June 29, 2001.

William Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

§ 52.1320 [Amended]

2. In § 52.1320(c) the table is amended by:

e. Removing the entry under Chapter 2 for 10–2.030;

f. Removing the entry under Chapter 3 for 10–3.050;

g. Removing the entry under Chapter 4 for 10–4.030;

h. Removing the entry under Chapter 5 for 10–5.050.

[FR Doc. 01–18188 Filed 7–19–01; 8:45 am]

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Proposed Rules

Federal Register
Vol. 66, No. 140
Friday, July 20, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 00–075–1]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. The proposed changes were voted on and approved by the voting delegates at the Plan's 2000 Millennial Plan Conference. These changes would keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 18, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–075–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–075–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 200, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (NPIP, also referred to below as "the Plan") is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all plan programs is voluntary, but flocks, hatcheries, and dealers must qualify as "U.S. Pullorum-Typhoid Clean" before participating in any other Plan program. Also, the regulations in 9 CFR part 82, subpart C, which provide for certain testing, restrictions on movement, and other restrictions on certain chickens, eggs, and other articles due to the presence of *Salmonella enteritidis*, prohibit hatching eggs or newly hatched chicks from egg-type chicken breeding flocks from being moved interstate unless they are classified "U.S. S. Enteritidis Monitored" under the Plan or have met equivalent requirements for *S. enteritidis* control, in accordance with 9 CFR 145.23(d), under official supervision.

The Plan identifies States, flocks, hatcheries, and dealers that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 145 and 147 (referred to below as the regulations) contain the provisions of the Plan. The Animal and Plant Health Inspection Service (APHIS or the Service) of the U.S. Department of Agriculture (USDA or the Department) amends these provisions from time to time to incorporate new scientific information and technologies within the Plan.

The proposed amendments discussed in this document are consistent with the recommendations approved by the voting delegates to the National Plan Conference that was held from June 29 to July 1, 2000. Participants in the 2000 National Plan Conferences represented flockowners, breeders, hatcherymen, and Official State Agencies from all cooperating States. The proposed amendments are discussed in greater detail below.

Discussion

Definitions

We are proposing to add a new definition to § 145.1. We would define *public exhibition* as "a public show of poultry." The regulations in §§ 145.23(b)(3)(vii), 145.33(b)(3)(vii), and 145.53(b)(3)(vii) require that all poultry, including exhibition, exotic, and game birds, but excluding waterfowl, going to public exhibition either come from U.S. Pullorum-Typhoid Clean or equivalent flocks or have a negative pullorum-typhoid test within 90 days prior to going to public exhibition. Given the presence of that requirement in the regulations, the voting delegates at the 2000 Plan Conference believed it would be useful to define what is meant by the term "public exhibition."

Debarment Procedures

We are proposing to make two changes to § 145.13, "Debarment from participation." First, we would amend the first sentence of the section to provide that the notice given by the Official State Agency to a Plan participant of apparent noncompliance would be in writing. The section currently calls for participants to be notified of their apparent noncompliance; requiring that notice to be in writing would serve to establish a record that the notification had indeed been provided. Second, § 145.13 currently refers to "§§ 50.21 through 50.28–14 and §§ 50.30 through 50.33 of the rules of practice in 7 CFR part 50." In 1995, 7 CFR part 50 was revised and the sections cited in § 145.13 were redesignated; therefore, we are proposing to remove the specific section citations mentioned in the previous sentence and replace them with a reference to 7 CFR part 50.

Authorized Laboratories

We are also proposing to add a new paragraph (e) to § 145.2 to make it clear that the Plan's authorized laboratories will follow the laboratory protocols outlined in part 147 when determining the status of a participating flock with respect to an official Plan classification. While there may be alternative tests available in some cases for Plan diseases, we believe that it is necessary for the purposes of consistency within the Plan, and to maintain the credibility of the Plan's programs, to explicitly require the use of the official tests described in part 147 when determining the status of a flock with respect to an official Plan classification.

Hatcheries

Paragraph (a) of § 145.6 contains minimum requirements with respect to sanitation practices in participating hatcheries. Those provisions were established in 1971 and have been amended once, in 1984. To bring the provisions of § 145.6 up to date, we are proposing to revise that paragraph as follows:

- Egg room walls, ceilings, floors, air filters, drains, and humidifiers should be cleaned and disinfected at least two times per week. Cleaning and disinfection procedures should be as outlined in § 147.24.
- Incubator room walls, ceilings, floors, doors, fan grills, vents, and ducts should be cleaned and disinfected after each set or transfer. Incubator rooms should not be used for storage. Plenums should be cleaned at least weekly. Egg trays and buggies should be cleaned and disinfected after each transfer. Cleaning and disinfection procedures should be as outlined in § 147.24.
- Hatcher walls, ceilings, floors, doors, fans, vents, and ducts should be cleaned and disinfected after each hatch. Hatcher rooms should be cleaned and disinfected after each hatch and should not be used for storage. Plenums should be cleaned after each hatch. Cleaning and disinfection procedures should be as outlined in § 147.24.
- Chick/poult processing equipment and rooms should be thoroughly cleaned and disinfected after each hatch. Chick/poult boxes should be cleaned and disinfected before being reused. Vaccination equipment should be cleaned and disinfected after each use. Cleaning and disinfection procedures should be as outlined in § 147.24.
- Hatchery residue, such as chick/poult down, eggshells, infertile eggs, and dead germs, should be disposed of promptly and in a manner satisfactory to the Official State Agency.
- The entire hatchery should be kept in a neat, orderly condition and cleaned and disinfected after each hatch.
- Effective insect and rodent control programs should be implemented.

The procedures and practices described above are routinely observed in the industry today and are considered to be essential to the maintenance of proper hatchery sanitation. Our proposed changes, therefore, would bring the provisions of the Plan in line with the current practices observed throughout the industry.

Blood Testing

Section 145.14, "Blood testing," currently states, among other things, that ostrich, emu, rhea, and cassowary candidates for official Plan classifications must be blood tested when at least 12 months of age or upon reaching sexual maturity, depending on the species and at the discretion of the Official State Agency. In this document, we are proposing to amend that provision to state that ostrich, emu, rhea, and cassowary candidates are to be blood tested when more than 12 months of age. This proposed change would make the blood testing provisions for ostrich, emu, rhea, and cassowary candidates consistent with the provisions for other species of birds in § 145.14 by simply providing the minimum age at which the birds may be tested. As ostriches, emus, rheas, and cassowaries typically reach sexual maturity somewhere between 18 months to 3 years of age, depending on the species, this proposed change would not prevent an Official State Agency from taking sexual maturity into account when determining the appropriate testing age.

Also in § 145.14, we would amend footnote 1 in § 145.14(a) to provide the current address of the APHIS staff that can provide the criteria and procedures for Department approval of antigens and reagents. That staff has been relocated from Riverdale, MD, to Ames, IA.

Paragraph (a)(9)(ii) of § 145.14 requires that serum samples that produce positive reactions for pullorum-typhoid on the microagglutination test be retested at an authorized laboratory in accordance with the microagglutination test procedures set forth in § 147.5. If the reaction to the retest is positive in dilutions of 1:40 or greater, additional examination must be performed on the bird from which the serum sample was drawn and its flock. The procedures for the microagglutination test found in § 147.5, however, refer to the use of a 1:20 dilution for the microagglutination test, not the 1:40 dilution cited in § 145.14. It is the 1:40 dilution that is correct; therefore, we are proposing to amend paragraphs (c) and (d) of § 147.5 so that they refer to the correct dilution. This proposed change would also necessitate amending § 147.5(d)(2) to replace a reference to 10-microliter serum sample with a reference to a 5-microliter serum sample.

U.S. S. Enteritidis Clean, Egg-Type Chickens

We are proposing to amend § 145.23(d) to change the name of the program described in that paragraph from "U.S. S. Enteritidis Monitored" to "U.S. S. Enteritidis Clean." Virtually all of the egg-type chicken breeders in the Plan participate in the current U.S. S. Enteritidis Monitored program, and the incidence of *Salmonella enteritidis* (SE) in their flocks is extremely low. Because the monitoring and prevention elements of this program have been so effective, the program has become oriented more toward maintaining the freedom of flocks from SE. Our proposed change to the name of the program would reflect this new focus and provide a measure of credit to the flockowners who have been integral to the program's success.. As part of this proposed change, we would remove the illustrative design for the U.S. S. Enteritidis Monitored classification in § 145.10(1), as that design would no longer be necessary. A reference to § 145.23(d) would be added to § 145.10(m), which contains the illustrative design for the current U.S. S. Enteritidis Clean classification for meat-type chickens.

Within § 145.23(d), paragraph (d)(iv) calls for participating flocks to be maintained in compliance with §§ 147.21, 147.24(a), and 147.26, which relate to flock sanitation and good management practices. In this document, we are proposing to amend § 145.23(d)(iv) to also state that rodents and other pests should be effectively controlled. Rodents have been found to be a reservoir of *Salmonella*, particularly SE, so reducing or eliminating the presence of rodents and other pests from areas where flocks are kept would help to maintain the flocks' freedom from *Salmonella*.

Paragraph (d)(vi) of § 145.23 currently provides that a federally licensed SE bacterin may be used in multiplier breeding flocks that have been bacteriologically examined and found negative for SE. Because some *Salmonella* vaccines may cause positive reactions to pullorum-typhoid tests administered to a flock, we are proposing to amend § 145.23(d)(vi) to allow flockowners to delay vaccination until after the flock has been tested for

pullorum-typhoid testing as described in § 145.23(d)(1)(vii). We would retain the current option of keeping a sample of 350 birds unvaccinated until the flock reaches 4 months of age and has been tested in accordance with § 145.23(d)(1)(vii) and found negative. We would, however, amend that option to specify that the birds in the flock must have been vaccinated using an injectable bacterin or live vaccine that does not spread. Currently, the regulations in § 145.23(d)(vi) do not differentiate between the use of vaccines or bacterins that may spread to other birds and those that do not.

U.S. M. Gallisepticum Clean, Meat-Type Chickens

The regulations in § 145.33(c)(2) currently require participants handling U.S. M. Gallisepticum Clean products (i.e., poultry breeding stock, hatching eggs, baby poultry, and started poultry) to keep those products separate from other products that are not classified U.S. M. Gallisepticum Clean. While that paragraph directs that the products be kept separate, it offers no specific guidance as to how that should be accomplished. In this document, we are proposing to amend § 145.33(c)(2) to state that the necessary separation can be achieved through the use of separate hatchers and incubators, separate hatch days, and the hatchery sanitation and biosecurity procedures detailed in §§ 147.22, 147.23, and 147.24. The steps taken by the Plan participant would be subject to the review and approval of the Official State Agency to ensure that they are being implemented in a manner that adequately protects the integrity of the M. Gallisepticum Clean products.

U.S. S. Enteritidis Clean, Meat-Type Chickens

Paragraph (h)(1)(i) of § 145.33 provides, in part, that a meat-type chicken breeding flock may be eligible for the U.S. S. Enteritidis Clean classification if the flock originated from a U.S. S. Enteritidis Clean flock or if meconium from the chicks in the flock and a sample of chicks that died within 7 days after hatching have been examined bacteriologically for SE at an authorized laboratory and any group D *Salmonella* samples have been serotyped. We are proposing to amend those criteria that pertain to eligibility based on testing to state that a flock may be eligible if any one of the following samples has been examined bacteriologically for SE at an authorized laboratory and any group D *Salmonella* samples have been serotyped:

- A 25-gram sample of meconium from the chicks in the flock collected and cultured as described in proposed § 147.12(a)(5) (current § 147.18—the proposed redesignation of this section is discussed later in this document); or
- A sample of chick papers collected and cultured as described in § 147.12(c); or
- A sample of 10 chicks that died within 7 days after hatching.

These proposed changes would clarify the provisions of § 145.33 (h)(1)(i) by specifying the size of the meconium sample that must be collected and cultured and the number of dead chicks that must be examined and by providing a reference to the applicable meconium collection and culturing procedures found in existing § 147.18 (which, as noted above and discussed later in this document, we would redesignate as § 147.12(a)(5)). This proposed change would also provide for the use of chick paper culturing conducted in accordance with existing § 147.12(c) as an additional means of qualifying a flock for the U.S. S. Enteritidis Clean classification. We believe that any one of these three methods would provide an accurate assessment of the SE status of a flock seeking to qualify for this classification.

In addition to the proposed changes described above, we are also proposing to make several other changes to the provisions regarding the U.S. S. Enteritidis Clean classification for meat-type chickens. First, the introductory text of § 145.33(h) currently states, in part, that the classification is intended for primary meat-type breeders. (A *primary breeding flock* is currently defined in § 145.1 as "[a] flock composed of one or more generations that is maintained for the purpose of establishing, continuing, or improving parent lines.") As we believe that this classification could be beneficial and feasible in any meat-type chicken breeding flock, and not just primary breeding flocks, we would remove the word "primary" from the introductory text of § 145.33(h).

Second, § 145.33(h)(1)(iv) currently provides that environmental samples must be collected by an Authorized Agent (i.e., a person designated by the Official State Agency). In order to allow others to assist the Authorized Agent and thus reduce the time required for the collection of samples in some cases, we are proposing to amend § 145.33(h)(1)(iv) to provide that the environmental samples may also be collected under the supervision of an Authorized Agent.

Third, § 145.33(h)(1)(vi) currently provides that hatching eggs produced by a flock must be collected as quickly as possible, handled as described in § 147.22, and sanitized or fumigated. In this document, we are proposing to remove the reference to sanitizing and fumigation, as § 147.22 already describes hatching egg sanitation procedures and standard industry practice no longer includes fumigation of hatching eggs.

Finally, § 145.33(h)(3) currently provides that 25 randomly selected live birds from the flock must be bacteriologically examined for SE as described in § 147.11 if SE is isolated from an environmental sample collected from the flock. In this document, we are proposing to add the option of examining 500 cloacal swabs collected in accordance with existing § 147.12(a)(2) in addition to, or in place of, the examination of 25 live birds. The regulations currently provide for the use of cloacal swab examination in other situations, and we believe that this procedure would provide Plan participants with an effective primary or supplemental means of assessing the SE status of a flock following the isolation of SE in an environmental sample.

Rules of Practice

Sections 145.24, 145.34, 145.44, and 145.54 all currently provide conditions that must be met for a State to attain "clean State" status under specific Plan disease classifications. There are currently a total of nine separate "clean State" classifications (one in § 145.24, two in § 145.34, five in § 145.44, and one in § 145.54). In each case, the regulations provide that the Service will revoke a State's "clean State" classification if any of the prescribed conditions are discontinued, but will not do so until it has conducted an investigation and the Official State Agency has been given an opportunity for a hearing. In only two of the nine cases—i.e., § 145.44(d)(2) and (e)(2)—do the regulations specify that the hearing will be held in accordance with rules of practice adopted by the Administrator. Because the adoption of rules of practice by the Administrator is necessary in all cases prior to such administrative hearings, we are proposing to amend §§ 145.24, 145.34, 145.44, and 145.54 to specify that hearings regarding the revocation of a State's "clean State" classification will be held in accordance with rules of practice adopted by the Administrator.

U.S. Approved

Under § 145.53(a), a breeding flock may be classified as U.S. Approved if all birds in the flock observed by Authorized Agents or State Inspectors are found to conform with the criteria for the breed represented, as contained

in the Standard of Perfection published by the American Poultry Association, Inc. (APA) or the breeder's specifications for the stock represented in the flock, and such specifications are on file with the Official State Agency. It takes a great deal of training to become an official APA judge for the various waterfowl, exhibition poultry, and game bird breeds represented in the Plan, and most State NPIP organizations do not have people trained in those standards of perfection. The U.S. Approved classification has already been removed from provisions regarding the classification of egg-type chicken breeding flocks (§ 145.23), meat-type chicken breeding flocks (§ 145.33), and turkey breeding flocks (§ 145.43). Given that it appears that there is no longer the necessary support in place to maintain the U.S. Approved classification for waterfowl, exhibition poultry, and game bird breeding flocks, we are proposing to remove the U.S. Approved classification from § 145.53. As part of this proposed change, we would also remove the illustrative design for the U.S. Approved classification from § 145.10(a), as there would no longer be a corresponding classification for the design in the provisions of the Plan.

Testing for Antibodies to Avian Mycoplasma

Paragraph (e)(2) of § 147.7 provides a procedure to test for antibodies to avian mycoplasma by hemagglutination inhibition (HI). The test uses the constant antigen, titered-sera method for measuring antibodies to *M. gallisepticum*, *M. synoviae*, or *M. meleagridis*. The second-to-last and last sentences of § 147.7(e)(2)(ii)(B) currently state "[t]he desired endpoint is 4 HA [i.e., hemagglutination] units. The well containing the 1:4 dilution should give a complete HA while the 1:8 dilution should show less than complete HA." These two sentences appear to have been included in error, as they apply to the HA titer of the diluted antigen used in the test, and not to the HA titer of the stock antigen, which is the focus of the step being described. The dilution of the stock antigen is described in the paragraph that follows, i.e., § 147.7(e)(2)(ii)(C). Therefore, because they do not apply to the step being described, we are proposing to remove the final two sentences of § 147.7(e)(2)(ii)(B).

Bacteriological Examination of Salmonella

Paragraph (a) of § 147.11 describes the laboratory procedure recommended for the bacteriological examination of *Salmonella* in egg- and meat-type chickens, waterfowl, exhibition poultry, and game birds. In this document, we are proposing to amend those procedures by:

- Restricting the scope of the paragraph to the examination of cultures collected from birds (and modifying illustration 1 accordingly) and moving the provisions of current § 147.11(a) relating to the examination of environmental cultures, including illustration 2, to § 147.12;
- Removing the recommended non-selective enrichment step;
- Increasing the sample size of pullorum-typhoid reactor birds from "at least four birds" to "up to 25 birds;"
- Modifying sample collection and pooling recommendations;
- Offering specific suggestions for plating media; and
- Recommending delayed secondary enrichment in cases where the initial selective enrichment procedure yields negative results.

These proposed changes, which have been incorporated into the revised procedure set forth in revised § 147.11(a) at the end of this document, were recommended by the NPIP's Salmonella Technical Committee and are intended to provide a more effective and scientifically valid procedure for the identification of *Salmonella* in egg- and meat-type chickens, waterfowl, exhibition poultry, and game birds. As part of this proposed change, we would also update the literature citation contained in footnote 7 to § 147.11(a)(1) so that it refers to the most recent edition of the publication cited.

Collection, Isolation, and Identification of Salmonella

Section 147.12 currently describes procedures for collecting environmental samples and cloacal swabs for bacteriological examination. In this document, we are proposing to expand the scope of that section to include procedures for collection, isolation, and identification of *Salmonella* from environmental samples, cloacal swabs, chick box papers, and meconium samples, and we would revise the title of the section to reflect this broader scope.

The procedure for sampling in broth found in § 147.12(a)(1)(i) currently states that authorized laboratories will provide capped tubes containing Hajna or Mueller-Kauffmann tetrathionate brilliant green sterile enrichment broth for each sample. Because other types of sterile enrichment broth are now available, we are proposing to remove the reference to Hajna or Mueller-Kauffmann tetrathionate brilliant green enrichment broths in order to provide for the use by authorized laboratories of other appropriate sterile enrichment broths.

The provisions regarding the use of drag swabs found in § 147.12(a)(3) currently refer to exposing gauze pads to the surface of floor litter and nest box areas and provide instructions for the assembly of drag swabs using gauze pads. Commercially made sponges designed for use in drag swabs are now available, so we are proposing to amend the introductory text of § 147.12(a)(3) to provide for the use of either gauze pads or commercially available sponges as a component of a drag swab sampler.

Paragraph (a)(3)(iv) of § 147.12 describes the procedure for collecting samples from nest boxes. The sampling procedure described in that paragraph entails wiping down assorted locations in about 10 percent of the total nesting area, then sealing the sample in a sterile bag for submission to an authorized laboratory. We have determined that this procedure could also be used for collecting samples from an egg belt, which is another environment from which *Salmonella* could be isolated. Therefore, we are proposing to amend § 147.12(a)(3)(iv) to provide for the use of the described sampling technique on both nest boxes and egg belts.

Paragraph (c) of § 147.12 provides instructions for collecting samples from chick box papers. We are proposing to move the provisions of § 147.12(c) to § 147.12(a)(4) in order to place it among the other provisions of § 147.12 regarding the collection of samples. In moving those provisions, we would also add to the introductory text of the paragraph a reminder to Plan participants that it is important that the paper be removed from the chick box before the box is placed in the brooding house. This would help to maintain the integrity of the sample taken from the chick box papers by preventing the potential introduction of contaminants from the brooding house. We would also add a new paragraph (a)(4)(iii) that would provide that the laboratory to which the collected samples or chick box papers are sent must follow the procedure set forth in proposed § 147.12(a)(5) (current § 147.18) for testing chick meconium for *Salmonella*.

As noted earlier in this document in the discussion of the proposed changes to § 147.11, we are proposing to move the provisions of § 147.11(a) regarding the examination of environmental cultures, including illustration 2, into § 147.12; those provisions would become new § 147.12(b). In addition, we are also proposing to move the provisions of current § 147.18, which provides a procedure for testing chick

meconium for *Salmonella*, into § 147.12 as new paragraph (a)(5). We believe that this proposed relocation of those provisions would result in the regulations becoming more focused, with § 147.11 concentrating on procedures for culturing pullorum-typhoid reactors and birds from SE-positive environments and § 147.12 concentrating on procedures for culturing environmental samples, chick papers, and meconium. As a result of these proposed moves, it would be necessary for § 147.12(a)(5)(vi) (current § 147.18(f)) to direct that the processing of suspect *Salmonella* colonies from chick meconium samples be conducted in accordance with § 147.12(b), rather than § 147.11.

Proposed new § 147.12(b) would provide two different enrichment procedures, i.e., tetrathionate enrichment with delayed secondary enrichment and pre-enrichment followed by selective enrichment. These culturing procedures for environmental and other samples, which have been drawn from the combined bird/environment culturing procedures found in current § 147.11(a), are set forth in proposed § 147.12(b) at the end of this document. Illustration 2, which would be revised to reflect the more specific procedures, would be placed at the end of the new paragraph.

Hatching Egg and Hatchery Sanitation

We are proposing to revise § 147.22, "Hatching egg sanitation," to reflect changes in industry practice and update the language used in the section. The revised section would reflect the discontinuance of egg fumigation as a routine measure and would include a recommendation for cleaning and disinfecting vehicles used for transporting eggs and chicks or poults, but would otherwise not differ substantively from existing § 147.22.

Similarly, we are also proposing to revise § 147.23, "Hatchery sanitation," to reflect changes in industry practice and update the language used in the section. As is the case with our proposed revision of § 147.22, revised § 147.23 would reflect the discontinuance of egg fumigation as a routine measure. This revised section would also recommend the use of new chick papers, in addition to clean or new boxes, for the distribution of day-old chicks, poults, or other newly hatched poultry. Otherwise, revised § 147.23 would not differ substantively from existing § 147.23.

Cleaning and Disinfecting

We are proposing to update § 147.24, which describes recommended procedures for cleaning and disinfecting structures and equipment used by Plan participants. We would reorganize the provisions of the section so that paragraph (a) would deal with poultry houses, paragraph (b) with hatchers and hatchery rooms, and paragraph (c) with delivery trucks and their drivers and helpers. In each paragraph, we would expand upon the recommendations provided in current § 147.24 in order to provide more specific guidance regarding cleaning and disinfection procedures. Specifically, in § 147.24(a), we would revise paragraph (a)(1) to recommend the following:

- Remove all live "escaped" and dead birds from the building;
- Blow dust from equipment and other exposed surfaces;
- Empty the residual feed from the feed system and feed pans and remove it from the building;
- Disassemble feeding equipment and dump and scrape as needed to remove any and all feed cake and residue. Clean up spilled feed around the tank and clean out the tank; and
- Rinse down and wash out the inside of the feed tank to decontaminate the surfaces and allow to dry.

We would also amend paragraph (a)(3) to include recommendations for washing down the entire inside surfaces of the building and all the installed equipment such as curtains, ventilation ducts and openings, fans, fan housings and shutters, feeding equipment, watering equipment, etc., and using high pressure and high volume water spray to soak into and remove the dirt to decontaminate the building.

We would amend paragraph (b) to recommend the use of cleaning agents and sanitizers that are registered by the U.S. Environmental Protection Agency as germicidal, fungicidal, pseudomonocidal, and tuberculocidal. We would also recommend:

- Removing loose organic debris by sweeping, scraping, vacuuming, brushing, or scrubbing, or by hosing surfaces with high pressure water;
- Using hot water (at least 140 °F) for cleaning hatching trays and chick separator equipment;
- Using a cleaner/sanitizer that can penetrate protein and fatty deposits and allowing the chemical to cling to treated surfaces at least 10 minutes before rinsing off, then manually scrubbing any remaining deposits of organic material until they are removed; and
- Applying disinfectant to the cleaned walls and using a clean and sanitized squeegee to remove excess water, working down from ceilings to walls to floors and being careful not to recontaminate cleaned areas.

Because current paragraph (c) applies to the cleaning of hatchery equipment, we would move that paragraph into paragraph (b), which, as noted above, applies to the cleaning and disinfection of hatchers and hatchery rooms.

Finally, we would establish a new paragraph (c), which would provide recommendations regarding the disinfection of delivery trucks and biosecurity practices for truck drivers and their helpers. Specifically, we would recommend that truck tires be thoroughly sprayed with disinfectant before the truck leaves the main road and enters the farm driveway, and that drivers and helpers observe the following practices:

- Put on sturdy, disposable plastic boots or clean rubber boots before getting out of the truck cab. Put on a clean smock or coveralls and a hairnet before entering the poultry house.
- After loading eggs or unloading chicks/poults, remove the dirty smock/coveralls and place in a plastic garbage bag before loading in the truck. Be sure to keep clean coveralls separate from dirty ones.
- Reenter the cab of the truck and remove boots before placing feet onto floorboards. Remove hairnet and leave with disposable boots on farm.
- Sanitize hands using appropriate hand sanitizer.
- Return to the hatchery or go to the next farm and repeat the process.

These proposed amendments to § 147.24, which were recommended by the NPIP Cleaning and Disinfection Technical Committee, would serve to reinforce the existing provisions of the section and thus increase the effectiveness of the cleaning and disinfection measures applied to poultry houses, hatchers and hatchery rooms, and delivery trucks and the biosecurity practices observed by personnel entering the farm, thus reducing the risk that participating flocks and products would be exposed to disease.

Fumigation

Section 147.25 currently refers to fumigation as "an essential part of a sanitation program." As noted previously, fumigation is no longer used routinely within the poultry industry. Therefore, we are proposing to amend § 147.25 so that the section simply states that fumigation may be used for sanitizing eggs and hatchery equipment or rooms as part of a sanitation program, thus deemphasizing the role of fumigation.

Isolation, Sanitation, and Good Management Practices

Section 147.26 describes procedures for establishing isolation and maintaining sanitation and good management practices for the control of *Salmonella* and *Mycoplasma* infections. In this document, we are proposing to amend § 147.26 as follows:

- We would amend paragraph (a)(1) to specify that the conditions under which visitors may be allowed must minimize the introduction of *Salmonella* and *Mycoplasma*, and not simply "insure sanitation" as currently provided.
- We would combine paragraphs (a)(2) and (a)(3), which require breeder farms to be kept free of market birds and other domesticated fowl, respectively.
- We would amend the requirement in paragraph (a)(4) that requires dead birds to be disposed of by burning, deep burial, or burial in special disposal pits. Because some of those methods may be prohibited in some areas, we would amend that requirement to simply state that dead birds are to be disposed of by locally approved methods.
- We would amend paragraph (b)(5) to require that a rodent control program be established. That paragraph currently requires only that the rodent population and other pests be kept in control without requiring an active program for that purpose.

These proposed changes were recommended by a committee of scientists appointed to review § 147.26 by the Plan's General Conference Committee and would serve to update the provisions of that section.

General Conference Committee

Paragraph (b) of § 147.43 describes the procedures for the nomination and election of regional committee members to serve on the General Conference Committee (GCC). In order to broaden the pool of potential nominees, we are proposing to amend § 147.43(b) to add provisions for the solicitation of nominees. Under these proposed provisions, the process for soliciting nominations for regional committee members would include, but not be limited to:

- Advertisements in at least two industry journals, such as the newsletters of the American Association of Avian Pathologists, the National Chicken Council, the United Egg Producers, and the National Turkey Federation;
- A **Federal Register** announcement; and
- Special inquiries for nominations from universities or colleges with minority/disability enrollments and faculty members in poultry science or veterinary science.

Further, in order to promote a more diverse pool of nominees, we would require that at least one nominee from each region be from an underrepresented group, e.g., minorities, women, or persons with disabilities. These proposed changes are intended to increase awareness of GCC membership opportunities by providing for the active solicitation of nominations from industry, scientific, and university or college groups.

Miscellaneous

In addition to the proposed changes described above, we are also proposing to make several nonsubstantive editorial changes to improve clarity and correct erroneous citations to several sections within the regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The proposed changes contained in this document are based on the recommendations of representatives of member States, hatcheries, dealers, flockowners, and breeders who took part in the Plan's 2000 National Plan Conference. The proposed changes would amend the Plan and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. The proposed changes were voted on and approved by the voting delegates at the Plan's 2000 National Plan Conference. These changes would keep the provisions of the plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

The plan serves as a "seal of approval" for eggs and poultry producers in the sense that tests and procedures recommended by the Plan are considered optimal for the industry. In all cases, the changes proposed in this document have been generated by the industry itself with the goal of reducing disease risk and increasing product marketability. Because participation in the plan is voluntary, individuals are likely to remain in the program as long as the costs of implementing the program are lower than the added benefits they receive from the program.

The proposed changes contained in this document generally either update testing procedures and sanitation guidelines or revise NPIP's administrative operations, with the aim of better safeguarding the health of the Nation's poultry industry. The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. We do not expect that the changes proposed in this document would result in significant economic effects on small entities.

The Small Business Administration defines size standards for industries using the North American Industry Classification System (NAICS). Under this system, a firm classified within "Chicken Egg Production" (NAICS code 112310) is considered small if its annual receipts are $9 million or less. For firms classified within "Broilers and Other Meat Type Chicken Production" (NAICS code 112320), the small-entity criterion is annual receipts of $750,000 or less.

The egg and poultry industries are highly integrated vertically, with most production owned or under contract to large-scale processing and marketing firms.[1] For example, broilers for Tyson Foods, the world's largest producer, came in 1999 from 6,060 farms (98 percent under contract), and its eggs came from breeder flocks on 1,388 farms.[2]

In 1997, an average of 303,604,000 egg-producing layers produced 77,532 million eggs.[3] The number of egg-producing farms and their size distribution is not known, but it is reasonable to assume that some of them may be small entities, operating either independently or under contract.

Also in 1997, there were 13,458 farms that sold layers, pullets, and pullet chicks, and 23,937 farms that sold broilers and other meat-type chickens.[4] Regarding the latter, a farm would need to produce about 275,000 broilers a year in order to reach annual sales of at least $500,000, according to Census of Agriculture and other National Agricultural Statistics Service (NASS)

[1] The broiler industry, in particular, is heavily concentrated. Tyson Foods had weekly sales of ready-to-cook chicken that averaged 154.3 million pounds in 1999. The 10 largest broiler companies accounted for 429.6 million pounds per week in 1999, approximately half of the Nation's production (WATT PoultyUSA, January 2000).

[2] WATT Poultry USA, January 2000.

[3] "Chickens and Eggs, Final Estimates 1994–97," USDA/NASS, December 1998."

[4] 1997 Census of Agriculture.

data.[5] By this measure, about one-half of broiler farms can be considered small.[6]

Clearly, some of the poultry and egg-producing farms that would be affected by this proposed rule are small. However, the procedural and administrative changes proposed are not expected to have a significant economic impact on any entities, either large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR parts 145 and 147 as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for part 145 would be revised to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.4.

2. In § 145.1, a definition of *public exhibition* would be added, in alphabetical order, to read as follows:

[5] In 1997, the average liveweight equivalent price of broiler was $0.377 per pound, and the average weght was 4.835 pounds. Thus, the average price received per broiler was $1.82.

[6] The 1997 Censur of Agriculture indicates that 52 percent of broiler-producing farms sold at lest 200,000 broilers.

§ 145.1 Definitions.

* * * * *

Public exhibition. A public show of poultry.

* * * * *

3. In § 145.2, a new paragraph (e) would be added to read as follows:

§ 145.2 Administration.

* * * * *

(e) An authorized laboratory of the National Poultry Improvement Plan will follow the laboratory protocols outlined in part 147 of this chapter when determining the status of a participating flock with respect to an official Plan classification.

* * * * *

4. Section 145.6 would be amended as follows:

a. By revising paragraph (a).

b. In paragraph (b), by removing the word "which" and adding the word "that" in its place.

c. In paragraph (c), by removing the word "shall" and adding the word "should" in its place.

d. In paragraph (d), in both the first and second sentences, by removing the word "shall" and adding the word "should" in its place.

§ 145.6 Specific provisions for participating hatcheries.

(a) Hatcheries must be kept in sanitary condition, acceptable to the Official State Agency. The procedures outlined in §§ 147.22 through 147.25 of this chapter will be considered as a guide in determining compliance with this provision. The minimum requirements with respect to sanitation include the following:

(1) Egg room walls, ceilings, floors, air filters, drains, and humidifiers should be cleaned and disinfected at least two times per week. Cleaning and disinfection procedures should be as outlined in § 147.24 of this chapter.

(2) Incubator room walls, ceilings, floors, doors, fan grills, vents, and ducts should be cleaned and disinfected after each set or transfer. Incubator rooms should not be used for storage. Plenums should be cleaned at least weekly. Egg trays and buggies should be cleaned and disinfected after each transfer. Cleaning and disinfection procedures should be as outlined in § 147.24 of this chapter.

(3) Hatcher walls, ceilings, floors, doors, fans, vents, and ducts should be cleaned and disinfected after each hatch. Hatcher rooms should be cleaned and disinfected after each hatch and should not be used for storage. Plenums should be cleaned after each hatch. Cleaning and disinfection procedures should be as outlined in § 147.24 of this chapter.

(4) Chick/poult processing equipment and rooms should be thoroughly cleaned and disinfected after each hatch. Chick/poult boxes should be cleaned and disinfected before being reused. Vaccination equipment should be cleaned and disinfected after each use. Cleaning and disinfection procedures should be as outlined in § 147.24 of this chapter.

(5) Hatchery residue, such as chick/poult down, eggshells, infertile eggs, and dead germs, should be disposed of promptly and in a manner satisfactory to the Official State Agency.

(6) The entire hatchery should be kept in a neat, orderly condition and cleaned and disinfected after each hatch.

(7) Effective insect and rodent control programs should be implemented.

* * * * *

§ 145.10 [Amended]

5. In § 145.10, paragraphs (a) and (l) would be removed and reserved and paragraph (m) would be amended by adding the words "§ 145.23(d) and" immediately after the word "See".

§ 145.13 [Amended]

6. In § 145.13, the introductory text of the section would be amended as follows:

a. In the first sentence, by adding the words "in writing" immediately after the words "are notified".

b. In the sixth sentence, by removing the words "§§ 50.21 through 50.28–14 and §§ 50.30 through 50.33 of".

c. In the seventh sentence, by removing the citation "7 CFR 50.2(e),(g),(h), and (l)" and adding the citation "7 CFR 50.10" in its place.

7. Section 145.14 would be amended as follows:

a. In the introductory text of the section, by revising the first sentence.

b. In paragraph (a)(1), footnote 1, by removing the words "Veterinary Biologics, 4700 River Road, Unit 148, Riverdale, Maryland 20737–1237" and adding the words "Center for Veterinary Biologics, 510 South 17th Street, Suite 104, Ames IA 50010–8197" in their place.

§ 145.14 Blood testing.

Poultry must be more than 4 months of age when blood tested for an official classification: *Provided*, That turkey candidates under subpart D of this part may be blood tested at more than 12 weeks of age; game bird candidates under subpart E of this part may be blood tested when more than 4 months of age or upon reaching sexual maturity, whichever comes first; and ostrich, emu, rhea, and cassowary candidates under subpart F of this part may be blood

tested when more than 12 months of age. * * *

* * * * *

8. Section 145.23, would be amended as follows:

a. In paragraph (d), by revising the introductory text.

b. In paragraph (d)(1)(i), by removing the word "Monitored" and adding the word "Clean" in its place.

c. By revising paragraphs (d)(1)(iv) and (d)(1)(vi).

§ 145.23 Terminology and classification; flocks and products.

* * * * *

(d) *U.S. S. Enteritidis Clean.* This classification is intended for egg-type breeders wishing to assure their customers that the hatching eggs and chicks produced are certified free of *Salmonella enteritidis.*

(1) * * *

* * * * *

(iv) The flock is maintained in compliance with §§ 147.21, 147.24(a), and 147.26 of this chapter. Rodents and other pests should be effectively controlled;

* * * * *

(vi) If a *Salmonella* vaccine is used that causes positive reactions with pullorum-typhoid antigen, one of the following options must be utilized:

(A) Administer the vaccine after the pullorum-typhoid testing is done as described in paragraph (d)(1)(vii) of this section.

(B) If an injectable bacterin or live vaccine that does not spread is used, keep a sample of 350 birds unvaccinated and banded for identification until the flock reaches at least 4 months of age. Following negative serological and bacteriological examinations as described in paragraph (d)(1)(vii) of this section, vaccinate the banded, non-vaccinated birds.

* * * * *

§ 145.24 [Amended]

9. In § 145.24, paragraph (a)(2), at the end of the last sentence, the words "in accordance with rules of practice adopted by the Administrator" would be added immediately after the word "hearing".

10. Section 145.33 would be amended as follows:

a. By revising paragraph (c)(2).

b. In paragraph (h), the introductory text, by removing the word "primary".

c. By revising paragraph (h)(1)(i).

d. In paragraph (h)(1)(iv), by adding the words "or under the supervision of" immediately after the word "by".

e. By revising paragraph (h)(1)(vi).

f. In paragraph (h)(3), the first sentence, by removing the word "in" immediately before the words "paragraph (h)(1)(iv)" and by adding the words "and/or 500 cloacal swabs collected in accordance with § 147.12(a)(2) of this chapter" immediately before the word "must".

§ 145.33 Terminology and classification; flocks and products.

* * * * *

(c) * * *

(2) A participant handling U.S. M. Gallisepticum Clean products must keep these products separate from other products through the use of separate hatchers and incubators, separate hatch days, and proper hatchery sanitation and biosecurity (see §§ 147.22, 147.23, and 147.24) in a manner satisfactory to the Official State Agency: *Provided,* That U.S. M. Gallisepticum Clean chicks from primary breeding flocks must be produced in incubators and hatchers in which only eggs from flocks qualified under paragraph (c)(1)(i) of this section are set.

* * * * *

(h) * * *

(1) * * *

(i) The flock originated from a U.S. S. Enteritidis Clean flock, or one of the following samples has been examined bacteriologically for *S. enteritidis* at an authorized laboratory and any group D *Salmonella* samples have been serotyped:

(A) A 25-gram sample of meconium from the chicks in the flock collected and cultured as described in § 147.12(a)(5) of this chapter; or

(B) A sample of chick papers collected and cultured as described in § 147.12(c) of this chapter; or

(C) A sample of 10 chicks that died within 7 days after hatching.

* * * * *

(vi) Hatching eggs produced by the flock are collected as quickly as possible and are handled as described in § 147.22 of this chapter.

* * * * *

§ 145.34 [Amended]

11. In § 145.34, paragraphs (a)(2) and (b)(2) would each be amended by adding the words "in accordance with rules of practice adopted by the Administrator" immediately after the word "hearing".

§ 145.44 [Amended]

12. In § 145.44, paragraphs (a)(2), (b)(2), and (c)(2) would be each amended by adding the words "in accordance with rules of practice adopted by the Administrator" immediately after the word "hearing".

§ 145.53 [Amended]

13. In § 145.53, paragraph (a) would be removed and reserved.

§ 145.54 [Amended]

14. In § 145.54, paragraph (a)(2) would be amended by adding the words "in accordance with rules of practice adopted by the Administrator" immediately after the word "hearing".

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

15. The authority citation for part 147 would be revised to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.4.

§ 147.5 [Amended]

16. Section 147.5 would be amended as follows:

a. In paragraph (c), by removing the numbers "1:20" and adding the numbers "1:40" in their place.

b. In paragraph (d), the introductory text, by removing the numbers "1:20" and adding the numbers "1:40" in their place.

c. In paragraph (d)(2), by removing the words "10 microliters (0.01 cc.)" and adding the words "5 microliters (0.005 cc.)" in their place.

§ 147.7 [Amended]

17. In § 147.7, paragraph (e)(2)(ii)(B) would be amended by removing the third and fourth sentences.

18. In § 147.11, paragraph (a) would be revised to read as follows:

§ 147.11 Laboratory procedure recommended for the bacteriological examination of Salmonella.

(a) *For egg-and meat-type chickens, waterfowl, exhibition poultry, and game birds.* All reactors to the Pullorum-Typhoid tests, up to 25 birds, and birds from *Salmonella enteritidis* (SE) positive environments should be cultured in accordance with both the direct (paragraph (a)(1)of this section) and selective enrichment (paragraph (a)(2) of this section) procedures described in this section. Careful aseptic technique should be used when collecting all tissue samples.

(1) Direct culture (refer to illustration 1 to this section). Grossly normal or diseased liver, heart, pericardial sac, spleen, lung, kidney, peritoneum, gallbladder, oviduct, misshapen ova or testes, inflamed or unabsorbed yolk sac, and other visibly pathological tissues where purulent, necrotic, or proliferative lesions are seen (including cysts, abscesses, hypopyon, and inflamed serosal surfaces) should be sampled for direct culture using either

flamed wire loops or sterile swabs. Since some strains may not dependably survive and grow in certain selective media, inoculate non-selective plates (such as blood or nutrient agar) and selective plates (such as MacConkey [MAC] and brilliant green novobiocin [BGN] for pullorum-typhoid and MAC, BGN, and xylose-lysine-tergitol 4 [XLT 4] for SE). After inoculating the plates, pool the swabs from the various organs into a tube of non-selective broth (such as nutrient or brain-heart infusion). Refer to illustration 1 for recommended bacteriological recovery and identification procedures.[7] Proceed immediately with collection of organs and tissues for selective enrichment culture.

(2) Selective enrichment culture (refer to illustration 1 to this section). Collect and culture organ samples separately from intestinal samples, with intestinal tissues collected last to prevent cross-contamination. Samples from the following organs or sites should be collected for culture in selective enrichment broth:

(i) Heart (apex, pericardial sac, and contents if present);

(ii) Liver (portions exhibiting lesions or, in grossly normal organs, the drained gallbladder and adjacent liver tissues);

(iii) Ovary-Testes (entire inactive ovary or testes, but if ovary is active, include any atypical ova);

(iv) Oviduct (if active, include any debris and dehydrated ova);

(v) Kidneys and spleen; and

(vi) Other visibly pathological sites where purulent, necrotic, or proliferative lesions are seen.

(3) From each bird, aseptically collect 10 to 15 grams of each organ or site listed in paragraph (a)(2) of this section. Mince, grind, or blend and place in a sterile plastic bag. All the organs or sites listed in paragraph (a)(2) of this section from the same bird may be pooled into one bag. Do not pool samples from more than one bird. Add sufficient tetrathionate enrichment broth to give a 1:10 (sample to enrichment) ratio. Follow the procedure outlined in illustration 1 for the isolation and identification of *Salmonella*.

(4) From each bird, aseptically collect 10 to 15 grams of each of the following parts of the digestive tract: Crop wall, duodenum, jejunum (including remnant of yolk sac), both ceca, cecal tonsils, and rectum-cloaca. Mince, grind, or blend tissues and pool them into a sterile plastic bag. Do not pool tissues from different birds into the same sample. Add sufficient tetrathionate enrichment broth to give a 1:10 (sample to enrichment) ratio. Follow the procedure outlined in illustration 1 for the isolation and identification of *Salmonella*.

(5) After selective enrichment, inoculate selective plates (such as MAC and BGN for pullorum-typhoid and MAC, BGN, and XLT 4) for SE. Inoculate three to five *Salmonella*-suspect colonies from plates into triple sugar iron (TSI) and lysine iron agar (LIA) slants. Screen colonies by serological (i.e., serogroup) and biochemical procedures (e.g., the Analytical Profile Index for Enterobacteriaceae [API]) as shown in illustration 1. As a supplement to screening three to five *Salmonella*-suspect colonies on TSI and LIA slants, a group D colony lift assay may be utilized to signal the presence of hard-to-detect group D *Salmonella* colonies on agar plates.

(6) If the initial selective enrichment is negative for *Salmonella*, a delayed secondary enrichment (DSE) procedure is used. Leave the tetrathionate-enriched sample at room temperature for 5 to 7 days. Transfer 1 mL of the culture into 10 mL of fresh tetrathionate enrichment broth, incubate at 37 °C for 20 to 24 hours, and plate as before.

(7) Serogroup all isolates identified as salmonellae and serotype all serogroup D1 isolates. Phage-type all SE isolates.

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[7] Biochemical identification charts may be obtained from "A Laboratory Manual for the Isolation and Identification of Avian Pathogens," chapter 2, Salmonellosis. Fourth edition, 1998, American Association of Avian Pathologists, Inc., Kennett Square, PA 19348.

Illustration 1.—Procedure for culturing Pullorum-Typhoid reactors and birds from SE-positive environments.

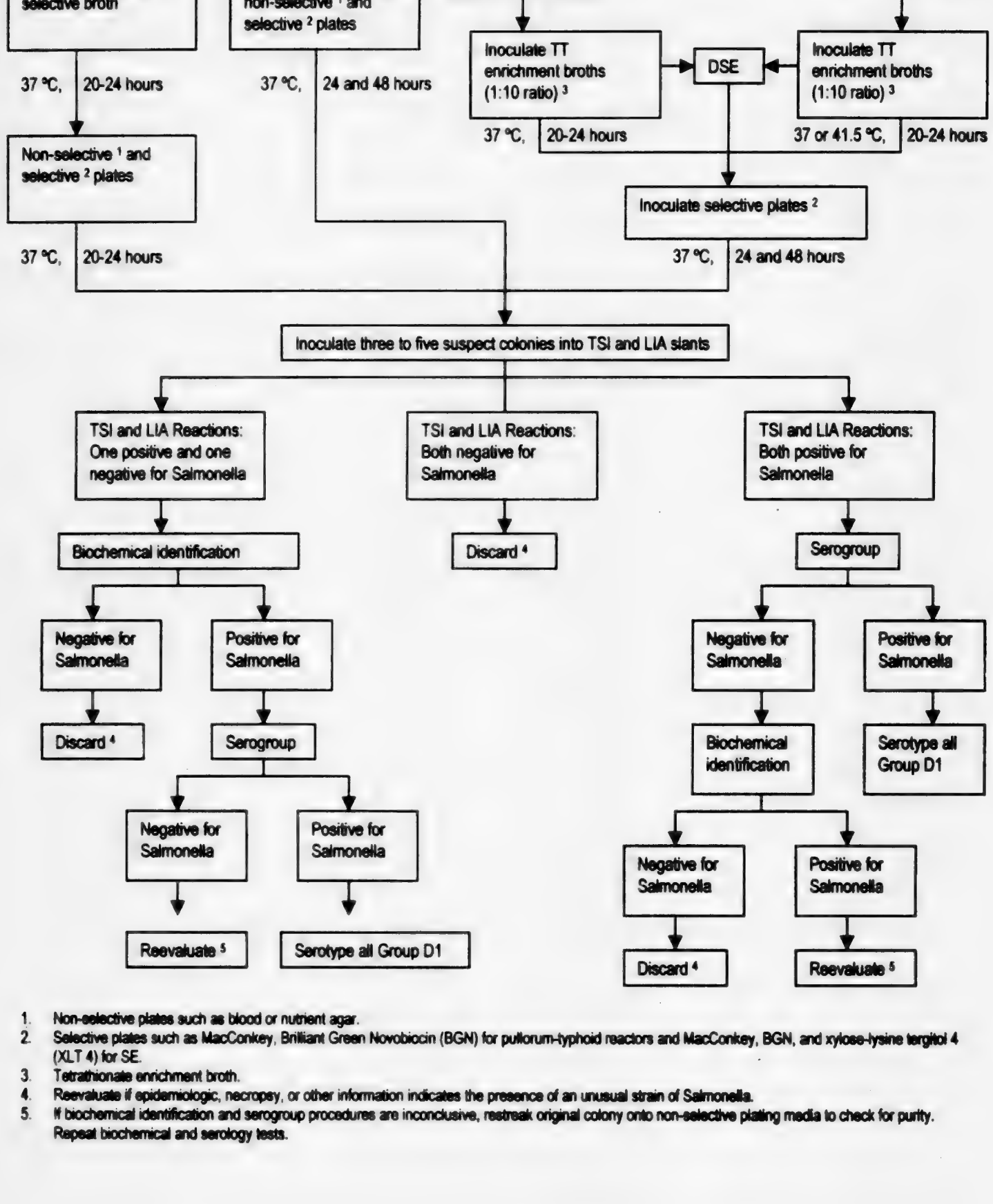

1. Non-selective plates such as blood or nutrient agar.
2. Selective plates such as MacConkey, Brilliant Green Novobiocin (BGN) for pullorum-typhoid reactors and MacConkey, BGN, and xylose-lysine tergitol 4 (XLT 4) for SE.
3. Tetrathionate enrichment broth.
4. Reevaluate if epidemiologic, necropsy, or other information indicates the presence of an unusual strain of Salmonella.
5. If biochemical identification and serogroup procedures are inconclusive, restreak original colony onto non-selective plating media to check for purity. Repeat biochemical and serology tests.

* * * * *

19. Section 147.12 would be amended as follows:

a. By revising the section heading.

b. In paragraph (a), the introductory text, by removing the word "shall" and adding the word "should" in its place.

c. In paragraph (a)(1)(i), by removing the words "(Hajna or Mueller-Kauffmann Tetrathionate Brilliant Green)".

d. In paragraph (a)(3), the introductory text, by adding the words "(or commercially available sponges designed for this purpose)" immediately before the words ", a key component".

e. In paragraph (a)(3)(ii), by removing the words "paragraph (a)(1)" and adding the words "paragraph (a)(3)(i)" in their place.

f. In paragraph (a)(3)(iv), by revising the first two sentences.

g. By adding new paragraphs (a)(4) and (a)(5).

h. By removing paragraph (c), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b).

§ 147.12 Procedures for collection, isolation, and identification of Salmonella from environmental samples, cloacal swabs, chick box papers, and meconium samples.

* * * * *

(a) * * *

(3) * * *

(iv) Nest box or egg belt sampling technique. Collect nest box or egg belt samples by using two 3-by-3 inch sterile gauze pads premoistened with double-strength skim milk and wiping the pads over assorted locations in about 10 percent of the total nesting area or the egg belt. * * *

* * * * *

(4) *Chick box papers.* Samples from chick box papers may be bacteriologically examined for the presence of *Salmonella*. The Plan participant may collect the samples in accordance with paragraph (a)(4)(i) of this section or submit chick box papers directly to a laboratory in accordance with paragraph (a)(4)(ii) of this section. It is important that the paper be removed from the chick box before the box is placed in the brooding house.

(i) Instructions for collecting samples from chick box papers:

(A) Collect 1 chick box paper for each 10 boxes of chicks placed in a house and lay the papers on a clean surface.

(B) Clean your hands and put on latex gloves. Do not apply disinfectant to the gloves. Change gloves after collecting samples from 10 chick box papers or any time a glove is torn.

(C) Saturate a sterile 3-by-3 inch gauze pad with double-strength skim milk (see footnote 12 to this section) and rub the pad across the surface of five chick box papers. Rub the pad over at least 75 percent of each paper and use sufficient pressure to rub any dry meconium off the paper. Pouring a small amount of double-strength skim milk (1 to 2 tablespoons) on each paper will make it easier to collect samples.

(D) After collecting samples from 10 chick box papers, place the two gauze pads used to collect the samples (i.e., one pad per 5 chick box papers) into an 18 oz. Whirl-Pak bag and add 1 to 2 tablespoons of double-strength skim milk.

(E) Promptly refrigerate the Whirl-Pak bags containing the samples and transport them, on ice or otherwise refrigerated, to a laboratory within 48 hours of collection. The samples may be frozen for longer storage if the Plan participant is unable to transport them to a laboratory within 48 hours.

(ii) The Plan participant may send chick box papers directly to a laboratory, where samples may be collected as described in paragraph (a)(4)(i) of this section. To send chick box papers directly to a laboratory:

(A) Collect 1 chick box paper for each 10 boxes of chicks placed in a house and place the chick papers immediately into large plastic bags and seal the bags.

(B) Place the plastic bags containing the chick box papers in a clean box and transport them within 48 hours to a laboratory. The plastic bags do not require refrigeration.

(iii) The laboratory must follow the procedure set forth in paragraph (a)(5) of this section for testing chick meconium for *Salmonella*.

(5) *Chick meconium testing procedure for Salmonella.*

(i) Record the date, source, and flock destination on the "Meconium Worksheet."

(ii) Shake each plastic bag of meconium until a uniform consistency is achieved.

(iii) Transfer a 25 gm sample of meconium to a sterile container. Add 225 mL of a preenrichment broth to each sample (this is a 1:10 dilution), mix gently, and incubate at 37 °C for 18–24 hours.

(iv) Enrich the sample with selective enrichment broth for 24 hours at 42 °C.

(v) Streak the enriched sample onto brilliant green novobiocin (BGN) agar and xylose-lysine-tergitol 4 (XLT4) agar.

(vi) Incubate both plates at 37 °C for 24 hours and process suspect *Salmonella* colonies according to paragraph (b) of this section.

(b) *Isolation and identification of Salmonella.* Either of the two enrichment procedures in this paragraph may be used.

(1) Tetathionate enrichment with delayed secondary enrichment (DSE):

(i) Add tetrathionate enrichment broth to the sample to give a 1:10 (sample to enrichment) ratio. Incubate the sample at 37 or 41.5 °C for 20 to 24 hours as shown in illustration 2.

(ii) After selective enrichment, inoculate selective plates (such as BGN and XLT4). Incubate the plates at 37 °C for 20 to 24 hours. Inoculate three to five *Salmonella*-suspect colonies from the plates into triple sugar iron (TSI) and lysine iron agar (LIA) slants. Incubate the slants at 37 °C for 20 to 24 hours. Screen colonies by serological (i.e., serogroup) and biochemical (*e.g.*, API) procedures as shown in illustration 2. As a supplement to screening three to five *Salmonella*-suspect colonies on TSI and LIA slants, a group D colony lift assay may be utilized to signal the presence of hard-to-detect group D *Salmonella* colonies on agar plates.

(iii) If the initial selective enrichment is negative for *Salmonella*, use a DSE procedure. Leave the original tetrathionate-enriched sample at room temperature for 5 to 7 days. Transfer 1 mL of the culture into 10mL of fresh tetrathionate enrichment broth, incubate at 37 °C for 20 to 24 hours, and plate as in paragraph (b)(1)(ii) of this section.

(iv) Serogroup all isolates identified as *Salmonella* and serotype all serogroup D isolates. Phage-type all *Salmonella enteritidis* isolates.

(2) Pre-enrichment followed by selective enrichment. (See illustration 2.)

Illustration 2.—Culture procedures for environmental samples, chick papers, or meconium.

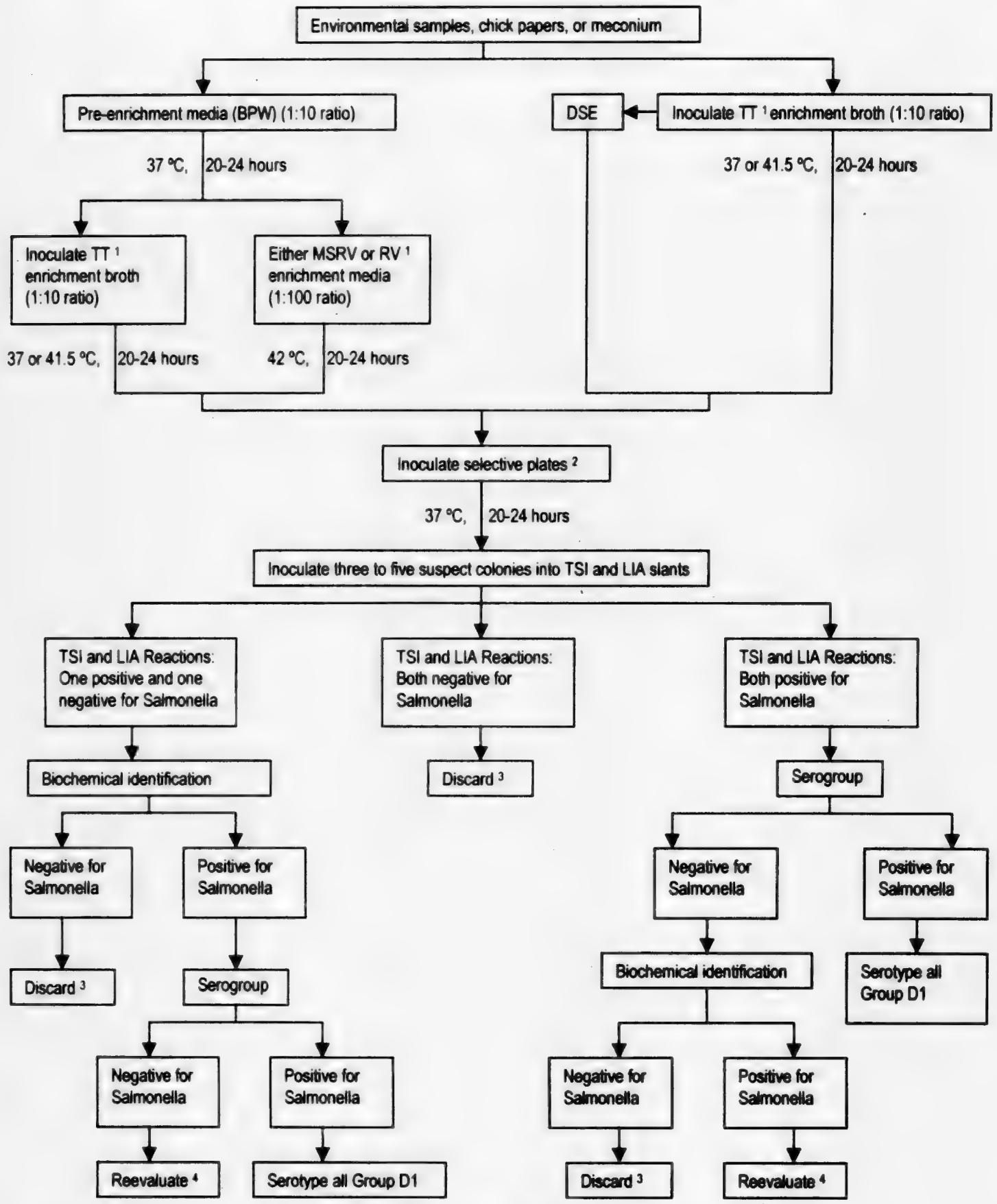

1. Tetrathionate enrichment broth, e.g., Rappaport-Vassiliades (RV) or modified semisolid RV (MSRV).
2. Selective plates such as brilliant Green Novobiocin (BGN) or xylose-lysine tergitol 4 (XLT4).
3. Reevaluate if epidemiologic, necropsy, or other information indicates the presence of an unusual strain of Salmonella.
4. If biochemical identification and serogroup procedures are inconclusive, restreak original colony onto non-selective plating media to check for purity. Repeat biochemical and serology tests.

* * * * *

§ 147.18 [Removed]

20. Section 147.18 would be removed.

21. Section 147.22 would be revised to read as follows:

§ 147.22 Hatching egg sanitation.

Hatching eggs should be collected from the nests at frequent intervals and, to aid in the prevention of contamination with disease-causing organisms, the following practices should be observed:

(a) Cleaned and disinfected containers, such as egg flats, should be used in collecting the nest eggs for hatching. Egg handlers should thoroughly wash their hands with soap and water prior to and after egg collection. Clean outer garments should be worn.

(b) Dirty eggs should not be used for hatching purposes and should be collected in a separate container from the nest eggs. Slightly soiled nest eggs may be gently dry cleaned by hand.

(c) Hatching eggs should be stored in a designated egg room under conditions that will minimize egg sweating. The egg room walls, ceiling, floor, door, heater, and humidifier should be cleaned and disinfected after every egg pickup. Cleaning and disinfection procedures should be as outlined in § 147.24.

(d) The egg processing area should be cleaned and disinfected daily.

(e) Effective rodent and insect control programs should be implemented.

(f) The egg processing building or area should be designed, located, and constructed of such materials as to assure that proper egg sanitation procedures can be carried out, and that the building itself can be easily, effectively, and routinely sanitized.

(g) All vehicles used for transporting eggs or chicks/poults should be cleaned and disinfected after use. Cleaning and disinfection procedures should be as outlined in § 147.24.

22. Section 147.23 would be revised to read as follows:

§ 147.23 Hatchery sanitation.

An effective program for the prevention and control of Salmonella and other infections should include the following measures:

(a) An effective hatchery sanitation program should be designed and implemented.

(b) The hatchery building should be arranged so that separate rooms are provided for each of the four operations: Egg receiving, incubation and hatching, chick/poult processing, and egg tray and hatching basket washing. Traffic and airflow patterns in the hatchery should be from clean areas to dirty areas (i.e., from egg room to chick/poult processing rooms) and should avoid tracking from dirty areas back into clean areas.

(c) The hatchery rooms, and tables, racks, and other equipment in them should be thoroughly cleaned and disinfected frequently. All hatchery wastes and offal should be burned or otherwise properly disposed of, and the containers used to remove such materials should be cleaned and sanitized after each use.

(d) The hatching compartments of incubators, including the hatching trays, should be thoroughly cleaned and disinfected after each hatch.

(e) Only clean eggs should be used for hatching purposes.

(f) Only new or cleaned and disinfected egg cases should be used for transportation of hatching eggs. Soiled egg case fillers should be destroyed.

(g) Day-old chicks, poults, or other newly hatched poultry should be distributed in clean, new boxes and new chick papers. All crates and vehicles used for transporting birds should be cleaned and disinfected after each use.

23. Section 147.24 would be amended as follows:

a. In paragraph (a), the introductory text, by removing the words ", hatchery rooms and delivery trucks".

b. By revising paragraphs (a)(1) and (a)(3).

c. In paragraph (b), the introductory text, by adding the words "and hatchery rooms" immediately after the word "hatchers".

d. By revising paragraph (b)(1).

e. In paragraph (b)(3), by removing the word "sanitized" and adding the word "disinfected" in its place.

f. By redesignating paragraph (c) as paragraph (b)(4) and adding a new paragraph (c).

§ 147.24 Cleaning and disinfecting.

* * * * *

(a) * * *

(1) Remove all live "escaped" and dead birds from the building. Blow dust from equipment and other exposed surfaces. Empty the residual feed from the feed system and feed pans and remove it from the building. Disassemble feeding equipment and dump and scrape as needed to remove any and all feed cake and residue. Clean up spilled feed around the tank and clean out the tank. Rinse down and wash out the inside of the feed tank to decontaminate the surfaces and allow to dry.

* * * * *

(3) Wash down the entire inside surfaces of the building and all the installed equipment such as curtains, ventilation ducts and openings, fans, fan housings and shutters, feeding equipment, watering equipment, etc. Use high pressure and high volume water spray (for example 200 pounds per square inch and 10 gallons per minute or more) to soak into and remove the dirt to decontaminate the building. Scrub the walls, floors, and equipment with a hot soapy water solution. Rinse to remove soap.

* * * * *

(b) * * *

(1) Use cleaning agents and sanitizers that are registered by the U.S. Environmental Protection Agency as germicidal, fungicidal, pseudomonocidal, and tuberculocidal. Use manufacturer's recommended dilution. Remove loose organic debris by sweeping, scraping, vacuuming, brushing, or scrubbing, or by hosing surface with high pressure water (for example 200 pounds per square inch and 10 gallons per minute or more). Remove trays and all controls and fans for separate cleaning. Use hot water (minimum water temperature of 140 °F) for cleaning hatching trays and chick separator equipment. Thoroughly wet the ceiling, walls, and floors with a stream of water, then scrub with a hard bristle brush. Use a cleaner/sanitizer that can penetrate protein and fatty deposits. Allow the chemical to cling to treated surfaces at least 10 minutes before rinsing off. Manually scrub any remaining deposits of organic material until they are removed. Rinse until there is no longer any deposit on the walls, particularly near the fan opening, and apply disinfectant. Use a clean and sanitized squeegee to remove excess water, working down from ceilings to walls to floors and being careful not to recontaminate cleaned areas.

* * * * *

(c) The egg and chick/poult delivery truck drivers and helpers should use the following good biosecurity practices while picking up eggs or delivering chicks/poults:

(1) Spray truck tires thoroughly with disinfectant before leaving the main road and entering the farm driveway.

(2) Put on sturdy, disposable plastic boots or clean rubber boots before getting out of the truck cab. Put on a clean smock or coveralls and a hairnet before entering the poultry house.

(3) After loading eggs or unloading chicks/poults, remove the dirty smock/coveralls and place into plastic garbage bag before loading in the truck. Be sure to keep clean coveralls separate from dirty ones.

(4) Reenter the cab of the truck and remove boots before placing feet onto floorboards. Remove hairnet and leave with disposable boots on farm.

(5) Sanitize hands using appropriate hand sanitizer.

(6) Return to the hatchery or go to the next farm and repeat the process.

§ 147.25 [Amended]

24. Section 147.25 would be amended by removing the words "as an essential" and adding the words "or rooms as a" in their place.

25. Section 147.26 would be amended as follows:

a. By revising paragraph (a).

b. In paragraph (b)(5), by removing the word "Keep" and adding the words "Establish a rodent control program to keep" in its place.

c. By removing paragraph (b)(10) and redesignating paragraphs (b)(11) through (b)(15) as paragraphs (b)(10) through (b)(14), respectively.

§ 147.26 Procedures for establishing isolation and maintaining sanitation and good management practices for the control of Salmonella and Mycoplasma infections.

(a) The following procedures are required for participation under the U.S. Sanitation Monitored, U.S. M. Gallisepticum Clean, U.S. M. Synoviae Clean, U.S. S. Enteritidis Monitored, and U.S. S. Enteritidis Clean classifications:

(1) Allow no visitors except under controlled conditions to minimize the introduction of *Salmonella* and *Mycoplasma*. Such conditions must be approved by the Official State Agency and the Service;

(2) Maintain breeder flocks on farms free from market birds and other domesticated fowl. Follow proper isolation procedures as approved by the Official State Agency;

(3) Dispose of all dead birds by locally approved methods.

* * * * *

26. In § 147.43, paragraph (b) would be revised to read as follows:

§ 147.43 General Conference Committee.

* * * * *

(b) The regional committee members and their alternates will be elected by the official delegates of their respective regions, and the member-at-large will be elected by all official delegates. There must be at least two nominees for each position, the voting will be by secret ballot, and the results will be recorded. At least one nominee from each region must be from an underrepresented group (minorities, women, or persons with disabilities). The process for soliciting nominations for regional committee members will include, but not be limited to: Advertisements in at least two industry journals, such as the newsletters of the American Association of Avian Pathologists, the National Chicken Council, the United Egg Producers, and the National Turkey Federation; a **Federal Register** announcement; and special inquiries for nominations from universities or colleges with minority/disability enrollments and faculty members in poultry science or veterinary science.

* * * * *

Done in Washington, DC, this 11th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17805 Filed 7–19–01; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

RIN 3038–AB73

Listing Standards and Conditions for Trading Security Futures Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") proposes Rules 41.21 through 41.25 under the Commodity Exchange Act ("CEA").[1] These proposed rules relate to new statutory provisions enacted by the Commodity Futures Modernization Act of 2000 ("CFMA")[2] that specify listing standards and conditions for trading of security futures products. These proposed rules also establish requirements related to the reporting of data, trading halts, position limits, and special provisions relating to contract design of cash-settled security futures products and the physical delivery of security futures products.

DATES: Comments must be received on or before August 20, 2001.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to 202–418–5521, or by e-mail to secretary@cftc.gov. Reference should be made to "Listing Standards and Conditions for Security Futures."

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Acting Director, Division of Economic Analysis; Thomas M. Leahy, Jr., Financial Instruments Unit Chief, Division of Economic Analysis; or Gabrielle A. Sudik, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, D.C. 20581. Telephone: 202–418–5000. E-mail: (RShilts@cftc.gov), (TLeahy@cftc.gov), or (GSudik@cftc.gov).

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission today proposes for public comment new rules 41.21 through 41.25 under part 41, 17 CFR part 41, under the Commodity Exchange Act as amended by the Commodity Futures Modernization Act of 2000 (7 U.S.C. 1 *et seq.*, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763).

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I. Background

On December 21, 2000, the CFMA was signed into law. Among other things, the CFMA lifted the ban on single stock and narrow-based stock index futures ("security futures").[3] In addition, the CFMA established a framework for the joint regulation of security futures products[4] by the CFTC and the Securities and Exchange Commission ("SEC").[5]

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[1] 7 U.S.C. 1 *et seq.*

[2] Pub. L. 106–554, 114 Stat. 2763. The text of the CFMA may be accessed on the Internet at http://agriculture.house.gov/txt5660.pdf.

[3] *See* section 251(a) of the CFMA. This trading previously had been prohibited by section 2(a)(1)(B)(v) of the CEA.

[4] The term "security futures product" is defined in section 1a(32) of the CEA and section 3(a)(56) of the Exchange Act to mean "a security future or any put, call, straddle, option, or privilege on any security future." The term "security future" is defined in section 1a(31) of the CEA and section 3(a)(55)(A) of the Exchange Act to include futures contracts on individual securities and on narrow-based security indexes: The term "narrow-based security index" is defined in section 1a(25) of the CEA and section 3(a)(55)(B) of the Exchange Act. Because the CFMA also provides that options on security futures cannot be traded until at least December 21, 2003, security futures are the only security futures product that may be available for trading until that date.

[5] The CFMA also prescribes the dates on which security futures trading can commence.

Prior to enactment of the CFMA, the Shad-Johnson Accord ("Accord")[6] governed trading in contracts of sale for future delivery ("futures contracts" or "futures") on securities and security indexes. Negotiated by the Chairmen of the SEC and the CFTC in 1982 and signed into law in 1983, the Accord permitted futures exchanges to offer futures contracts on security indexes if the contracts satisfied certain statutory criteria: (1) The contract had to be cash-settled; (2) the contract could not be readily susceptible to manipulation; and (3) the underlying securities had to measure and reflect the entire market or a substantial segment of the market, *i.e.*, it was a "broad-based" security index. The Accord prohibited any futures on security indexes that did not meet these criteria.[7]

In addition to repealing the prohibition on certain types of security futures, the CFMA amended the CEA and the Securities Exchange Act of 1934 ("Exchange Act") by adding a definition of "narrow-based security index." Futures contracts on security indexes that are narrow-based security indexes will be jointly regulated by the CFTC and the SEC under the framework established by the CFMA. Section 2(a)(1)(D) of the CEA and section 6(h) of the Exchange Act establish listing standards and conditions for entities wishing to list and trade security futures products.

It is important that the listing standards and conditions in the CEA and the Exchange Act be easily understood and applied by boards of trade. The rules proposed today address issues related to these standards and establish uniform requirements related to position limits, as well as provisions to minimize the potential for manipulation and disruption to the futures markets and underlying securities markets. Additional conditions related to trading halts and acceptable procedures for cash settlement will be addressed in a future joint rulemaking by the Commission and the SEC.

Specifically, principal-to-principal transactions between institutions cannot commence until August 21, 2001 and retail transactions cannot commence until December 21, 2001. Both starting dates are conditioned upon the registration of a futures association as a national securities association under the Exchange Act. Section 202(a) of the CFMA; Section 6(g)(5) of the Exchange Act.

[6] The Accord was codified in the Securities Act Amendments of 1982, which amended section 2 of the Securities Act of 1933, section 3 of the Securities Exchange Act of 1934, and section 2(a)(1)(B) of the Commodity Exchange Act.

[7] *See id.*

II. Section-by-Section Analysis

Purpose and Scope

Section 251 of the CFMA amends section 2 of the CEA by providing that in order for a board of trade to list security futures products, the security futures products and the securities underlying the security futures products must meet a number of standards and conditions termed "listing standards." Boards of trade may list for trading only security futures products that conform to the conditions and criteria specified in section 2(a)(1)(D)(i) of the CEA, which, among other criteria, requires that security futures products not be readily susceptible to manipulation. Except as otherwise provided in a rule, regulation or order, the underlying security or securities must be registered pursuant to section 12 of the Exchange Act and must be based upon common stock or such other equity securities as the Commission and the SEC jointly determine appropriate. These listing standards also relate to rules regarding settlement; who may deal in security futures products; prohibitions on dual trading; the prevention of price manipulation; and rules governing surveillance, audit trails, trading halts, and margin requirements. These proposed rules would implement these provisions of the CFMA and enumerate certain requirements and conditions for listing and trading security futures products.

Furthermore, section 6(h)(2) of the Exchange Act, as amended by section 206 of the CFMA, provides that security futures products must conform to listing standards that the national securities exchange or national securities association registered under section 15A of the Exchange Act ("exchange or association") files with the SEC under section 19(b) of the Exchange Act. Section 6(h)(2) of the Exchange Act also requires that a national securities exchange or national securities association meet the requirements of section 2(a)(1)(D)(i) of the CEA. In addition, section 6(h)(3)(C) of the Exchange Act imposes the additional requirement that the exchange or association's listing standards for security futures products must be no less restrictive than comparable listing standards for security options. The SEC may issue guidance for boards of trade as to the listing standards that would satisfy this requirement.

Security futures products may be traded on any board of trade that is designated as a contract market by the Commission pursuant to section 5 of the CEA or that is registered with the Commission as a derivatives transaction execution facility ("DTF") pursuant to section 5a of the CEA. In addition, section 5f(a) of the CEA permits certain entities that are otherwise regulated by the SEC to be designated contract markets for the limited purpose of trading security futures products. Specifically, any board of trade that is registered with the SEC as a national securities exchange pursuant to section 6(a) of the Exchange Act, is registered with the SEC as a national securities association pursuant to section 15A(a) of the Exchange Act, or is an alternative trading system ("ATS") as defined by section 1a(1) of the CEA shall be a designated contract market in security futures products if certain conditions are met.[8]

Section 41.21 Requirements for Underlying Securities

Paragraph (a) of proposed section 41.21 addresses security futures products based on a single security. Paragraph (a) implements the requirements of sections 2(a)(1)(D)(i)(I) and (III) of the CEA[9] by providing that a security futures product based on a single security may be traded if, except as otherwise provided by a rule, regulation or order, the security is registered pursuant to section 12 of the Exchange Act and the security is common stock or other equity security as the Commission and the SEC determine appropriate. Furthermore, security futures products must conform to other regulations issued by the SEC, in accordance with section 6(h) of the Exchange Act, as amended by section 206 of the CFMA.

Paragraph (b) of proposed section 41.21 addresses security futures products based on two or more securities. Subsection (b) implements a substantive provision of section 1a of the CEA, as amended by section 101 of the CFMA, by providing that a futures contract based on an index comprised of two or more securities may be traded as a security futures product if: (1) The index meets the narrow-based security index definition found in section 1a(25)

[8] *See* 66 FR 29517–23 (May 31, 2001). In that notice, the Commission proposed new regulations that would provide notice procedures for a national securities exchange, a national securities association, or an alternative trading system to become a designated contract market in security futures products. By registering with the Commission, a national securities exchange, a national securities association, or an alternative trading system is, by definition, a designated contract market for purposes of trading security futures products. Hence, references in the proposed rules to designated contract markets include notice-registered contract markets, except where otherwise noted.

[9] Section 251 of the CFMA added subparagraph (D) to section 2(a)(1) of the CEA.

of the CEA; [10] (2) the securities are registered pursuant to section 12 of the Exchange Act; (3) the securities are common stock or other equity securities as the Commission and the SEC determine appropriate; and (4) the securities meet the listing standards required by the SEC pursuant to section 6(h) of the Exchange Act.

Paragraph (c) of proposed section 41.21 is reserved for rulemaking pursuant to section 2(a)(1)(D)(v) of the CEA, which allows the Commission and the SEC to jointly modify the criteria of sections 2(a)(1)(D)(i)(I) and 2(a)(1)(D)(i)(III) of the CEA.

Section 41.22 Required Certifications

Section 2(a)(1)(D)(vii) of the CEA makes it unlawful for a designated contract market or registered derivatives transaction execution facility to list for trading or execution a security futures product unless it has provided the Commission with a certification that the security futures product and the board of trade meet specified requirements. Accordingly, as discussed below, paragraphs (b) through (j) of proposed section 41.22 require designated contract markets and registered derivatives transaction execution facilities to certify that they meet the specified requirements of section 2(a)(1)(D)(vii) of the CEA. In addition, paragraph (a) of proposed § 41.22 requires a designated contract market or registered derivatives transaction execution facility to certify that the security or securities underlying a security futures product meet the requirements of proposed rule 41.21, including the requirement that the securities underlying a security futures product conform to the listings standards filed with the SEC under section 19(b) of the Exchange Act, as discussed above.

Section 2(a)(1)(D)(i)(II) of the CEA provides that, if a security futures product is not cash-settled, the designated contract market or registered derivatives transaction execution facility must have arrangements with a clearing agency registered with the SEC for the payment and delivery of the securities underlying the security futures product. Paragraph (b) of proposed § 41.22 implements this provision by requiring a certification that the designated contract market or registered derivatives transaction execution facility will comply with this requirement.

Section 2(a)(1)(D)(i)(V) of the CEA provides that only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Exchange Act (including notice-registered brokers or dealers) [11] may solicit, accept orders for, or otherwise deal in any transaction in or in connection with security futures products. Paragraph (d) of proposed § 41.22 implements this provision by requiring a certification that only these entities and persons, except to the extent otherwise permitted under the Exchange Act and the rules and regulations thereunder, may accept orders for or otherwise deal in security futures products.

Section 2(a)(1)(D)(i)(VI) of the CEA provides that security futures products must be subject to the prohibition against dual trading in section 4j of the CEA or section 11(a) of the Exchange Act. Paragraph (e) of proposed § 41.22 implements this requirement by requiring a designated contract market or registered derivatives transaction execution facility to prohibit dual trading in accordance with proposed section 41.27.

Notice designated contract markets are exempt from the provisions of section 4j of the CEA by virtue of section 5f(b)(1)(B). A notice designated contract market therefore does not need to certify that it is acting in accordance with proposed rule 41.27. However, it should be noted that notice designated contract markets are still bound by the prohibition against dual trading under section 11(a) of the Exchange Act and any accompanying rules and regulations.

Section 2(a)(1)(D)(i)(VII) of the CEA requires that designated contract markets and registered derivatives transaction execution facilities maintain procedures to prevent manipulation of the price of security futures products, any underlying security, an option on such security, or an option on a group or index including such security. Paragraph (f) of proposed § 41.22 requires a certification that trading in the security futures product will not be readily susceptible to manipulation of the price of such security futures product or of the price of any underlying security or securities or any option thereon.

Section 2(a)(1)(D)(i)(VIII) of the CEA requires designated contract markets and registered derivatives transaction execution facilities on which security futures products are traded to coordinate surveillance with markets that trade the underlying security or any related security, in order to detect manipulation and insider trading. This requirement is proposed to be implemented by paragraph (g) of proposed § 41.22, which requires that a board of trade certify that it is a member of the Intermarket Surveillance Group (the "ISG").

The Intermarket Surveillance Group was created under the auspices of the SEC in 1983 as a forum to ensure that national securities exchanges and national securities associations adequately share surveillance information and coordinate inquiries and investigations designed to address potential intermarket manipulations and trading abuses. All national securities exchanges and national securities associations are full members of the ISG. Full members routinely share a great deal of surveillance and investigatory information, and this framework has proven to be an essential mechanism to ensure that there is adequate information sharing and investigatory coordination for potential intermarket manipulations and trading abuses.

In view of the growth of stock index futures contracts, since 1987, several futures exchanges and non-U.S. exchanges and associations have been affiliate members of the ISG. Affiliate members are required to share information on a more limited basis with the ISG.

To ensure that boards of trade have procedures in place for the coordinated surveillance required by section 2(a)(1)(D)(i)(VIII) of the CEA, the Commission believes that it is essential that all boards of trade that trade security futures products be full members of the ISG. In view of this proposed requirement and recognizing the essential role played by the ISG, as noted above, the Commission also believes that the ISG should grant full memberships to all boards of trade that trade security futures products upon a

[10] Section 1a(25) of the CEA defines a narrow-based security index as an index: (i) that is comprised of nine or fewer component securities; (ii) in which a component security comprises more than 30 percent of the index's weighting; (iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or (iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50 million or, in the case of an index with 15 or more component securities, $30 million.

[11] Section 4f of the CEA, as amended by section 252(b) of the CFMA, allows brokers and dealers registered with the SEC to register with the Commission as futures commission merchants or introducing brokers so long as they adhere to certain requirements regarding transactions in connection with security futures products.

good-faith showing that such entities meet the criteria for full membership.[12]

Section 2(a)(1)(D)(i)(IX) of the CEA requires that designated contract markets and registered derivatives transaction execution facilities on which security futures products are traded have audit trails in place to facilitate the coordinated surveillance required by subclause (VIII). Paragraph (h) of proposed § 41.22 implements this requirement. The Commission believes that the audit trails already in place on designated contract markets can serve this purpose. Based on future developments of markets for security futures products, modifications may be appropriate.

Section 2(a)(1)(D)(i)(X) of the CEA requires that designated contract markets and registered derivatives transaction execution facilities have in place procedures to coordinate trading halts between boards of trade. Paragraph (i) of proposed § 41.22 requires a board of trade to certify that it has such procedures in place.

Alternative trading systems, national securities associations registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchanges registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which an alternative trading system is a member do not need to make certifications under paragraphs (g), (h), and (i) of this section, as provided by sections 2(a)(1)(D)(i)(VIII)–(X).

Section 2(a)(1)(D)(i)(XI) of the CEA requires that the margin requirements for security futures products comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Exchange Act. Paragraph (j) of proposed § 41.22 implements this section by requiring a certification of compliance with the margin requirements currently being drafted in a separate rulemaking.[13]

Section 41.23 Listing of Security Futures Products for Trading

Section 2(a)(1)(D)(vii) of the CEA prescribes that a designated contract market or registered derivatives transaction execution facility must provide the Commission with a certification of compliance with section 2(a)(1)(D)(i) of the CEA before trading or executing a security futures product. Paragraph (a) of proposed § 41.23 implements this requirement by describing the documents that must be filed with the Commission, including documents and certifications required by proposed §§ 41.22 and 41.25.

Paragraph (b) of proposed § 41.23 prescribes the procedures for voluntary submission by designated contract markets or registered derivatives transaction execution facilities of security futures products for Commission approval, as permitted by section 5c(c)(2) of the CEA. Notice designated contract markets would not be permitted to request Commission approval of security futures products, since they are exempt from the provisions of 5c of the CEA by virtue of section 5f(b)(1)(D) of the CEA.

Section 41.24 Rule Amendments Relating to Security Futures Products

Section 5c(c)(1) of the CEA, as enacted by section 113 of the CFMA, provides that a registered entity may implement a rule or rule amendment by certifying that the new rule or rule amendment complies with the CEA.[14] Paragraph (a) of proposed § 41.24 requires designated contract markets (including notice designated contract markets) and registered derivatives clearing organizations to file with the Commission any rule or rule amendment. Designated contract markets pursuant to section 5 of the CEA and registered derivatives clearing organizations pursuant to section 5b of the CEA (but not notice designated clearing organizations), must follow the procedures for self-certification of rules and rule amendments relating to security futures contained in proposed § 41.24(a)(4).

Paragraph (b) of proposed § 41.24 would mandate that the procedures of paragraph (a) also apply to the self-certification of rules relating to security futures products by registered derivatives transaction execution facilities, notwithstanding proposed § 37.7.

Paragraph (c) of proposed § 41.24 would allow a designated contract market, registered derivatives transaction execution facility, or registered derivatives clearing organization to submit rules for Commission approval, as permitted by section 5c(c)(2) of the CEA. However, notice designated contract markets would not be permitted to request Commission approval of rules, since section 5f of the CEA exempts these entities from section 5c(c)(2) of the CEA.

Section 41.25 Additional Conditions for Trading Security Futures Products

Section 2(a)(1)(D)(i)(VII) of the CEA requires that trading in a security futures product not be readily susceptible to manipulation of the price of the security futures product, the price of any underlying security, option on such security, or option on a group or index of including such securities. Proposed § 41.25 establishes requirements in this regard related to data reporting, trading halts, position limits, and certain contract design features. Paragraph (a) of proposed § 41.25 establishes requirements that are common to all security futures products, while paragraphs (b) and (c) establish requirements for cash-settled and physical delivery contracts, respectively.

Paragraph (a)(1) of proposed § 41.25 requires designated contract markets and registered derivatives transaction execution facilities to comply with part 16 of the Commission's regulations regarding the daily reporting of market data. Paragraph (a)(2) is reserved for the establishment of rules providing for regulatory halts for trading in security futures products, which will be addressed in a separate rulemaking. Paragraph (a)(3) requires designated contract markets and registered derivatives transaction execution facilities to establish speculative position limits or position accountability rules for security futures products, generally based on the average daily trading volume of the underlying security during the most recent six-month period.

Specifically, the Commission is proposing to require boards of trade to adopt speculative position limit or position accountability rules for listed security futures. The level of the position limit and whether a position limit is required depends upon the trading activity and capitalization of the security or securities underlying the security future. The speculative position limit level adopted by a board of trade should be consistent with the obligation in section 2(a)(1)(D)(i)(VII) of the CEA that the designated contract market or registered derivatives transaction execution facility maintain procedures to prevent manipulation of the price of the security futures product and the underlying security or securities.

The position limit levels proposed in this rule are set at levels comparable to the limits that currently apply to

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[12] The Commission understands that the SEC concurs with the Commission's belief regarding the requirement that boards of trade trading security futures become full ISG members and that such boards of trade be granted full ISG membership.

[13] The proposed rules regarding margin requirements will be published in the near future. Once the margin requirement rules are published, the final version of these rules will note the part and section wherein margin requirements can be found.

[14] Section 1a(29) of the CEA defines registered entities as designated contract markets, registered derivatives transaction execution facilities, registered derivatives clearing organizations, and notice-designated contract markets.

options on individual securities. However, the proposed position limit requirements for security futures differ from individual security option position limit rules in several ways. In this regard, the proposed limits would only apply to an expiring security futures contract during its five last trading days. The Commission believes that it is during that time period that the potential for manipulation based on an extraordinarily large futures position would most likely occur. Further, for security futures contracts based on a security that has an average daily trading volume greater than 20 million shares, the Commission believes that the threat of manipulation is sufficiently reduced such that an exchange could substitute a position accountability rule for a fixed position limit. Under such a rule, a trader holding a position in a security future that exceeded a threshold level determined by the exchange (e.g., no more than 22,500 contracts of 100 shares) would agree to provide information to the exchange regarding that position and consent to halt increasing the position if requested by the exchange.

Paragraph (b) of proposed § 41.25 relates to security futures products that are cash settled. This paragraph provides that the cash-settlement provisions of security futures products must be reliable and acceptable, reflect the price of the underlying security or securities, and not be readily susceptible to manipulation. Paragraph (b) is in part reserved for specific rules relating to special requirements regarding the cash-settlement price, which will be addressed in a separate rulemaking.

Paragraph (c) of proposed § 41.25 relates to security futures products that are settled by actual delivery of the underlying security or securities. This paragraph provides that a board of trade must effect physical delivery through a clearing agency registered pursuant to section 17A of the Exchange Act. This provision implements section 2(a)(1)(D)(i)(II) of the CEA, which requires that, if a security futures product is not cash settled, the board of trade on which the product is traded must have arrangements in place with such a clearing agency for payment and delivery of the underlying securities.

III. Request for Comments

The Commission solicits comments on all aspects of Proposed Rules 41.21 through 41.25 under the CEA. In particular, do the proposed filing and certification procedures represent effective and reasonable ways to ensure that the requirements of the CEA and the Exchange Act are satisfied? In addition, the Commission seeks comments on whether the proposed position limit provisions are appropriate to deter manipulation in security futures products, and whether it is desirable to establish the applicable position limit levels based on average daily trading volume and capitalization of the underlying securities. The Commission also seeks comment on whether any potential manipulation of security futures products is more likely to occur at contract expiration than at other times. Commenters are welcome to offer their views on any other matter raised by the proposed rules.

IV. Costs and Benefits of the Proposed Rules

Section 15 of the CEA requires the Commission to consider the costs and benefits of its action before issuing a new regulation.[15] The Commission understands that, by its terms, section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Nor does it require that each proposed rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15 simply requires the Commission to "consider the costs and benefits" of its action.

Section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The proposed rules constitute one part of a package of related rule provisions. The rules provide guidance and establish procedures for trading facilities in order to facilitate compliance with governing laws related to security futures products.

The Commission has considered the costs and benefits of the proposed rules as a totality, in light of the specific areas of concern identified in section 15. The proposed rules should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets or on the risk management practices of trading facilities or others. The proposed rules also should have no material effect on the protection of market participants and the public and should not impact the efficiency and competition of the markets.

Accordingly, the Commission has determined to propose the rules discussed above. The Commission invites public comment on the application of the cost-benefit provision of section 15 of the CEA in regard to the proposed rules. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposed rules.

V. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA") of 1995 (44 U.S.C. 3501 *et seq.*) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking contains information collection requirements within the meaning of the PRA. The Commission has submitted a copy of this part to the Office of Management and Budget (OMB) for its review in accordance with 44 U.S.C. 3507(d).

Collection of Information: Part 41, Relating to Security Futures Products, OMB Control Number 3038–XXXX.

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number. The Commission is currently requesting a control number for this information collection from OMB.

As noted above, the CFMA lifted the ban on trading single stock and narrow-based stock index futures and established a framework for the joint regulation of these products by the Commission and the SEC. In addition, the CFMA amended the CEA and the Exchange Act by adding a definition of "narrow-based security index," which establishes an objective test of whether a security index is narrow-based.[16] Futures contracts on security indexes that meet the statutory definition are jointly regulated by the Commission and the SEC. Futures contracts on indexes that do not meet the statutory definition

[15] 7 U.S.C. 19.

[16] See section 1a(25)(A) of the CEA and section 3(a)(55)(B) of the Exchange Act.

remain under the sole jurisdiction of the Commission.

The effect of proposed rules 41.22, 41.23, 41.24, and 41.25 will be to increase the burden previously submitted to OMB by 750 hours resulting from the preparation of materials to be filed with the Commission in connection with the listing of security futures products by designated contract markets and registered derivatives transaction execution facilities.

The estimated burden of proposed rules 41.22, 41.23, 41.24, and 41.25 was calculated as follows:

Estimated number of respondents: 15.
Total annual responses: 50.
Estimated average number of hours per response: 1.
Estimated total number of hours of annual burden: 750.

This annual reporting burden represents an increase of 750 hours as a result of the proposed new rules.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235 New Executive Building, Washington, DC 20503, Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the Commission from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.[17] The rules adopted herein would affect contract markets and other trading facilities. The Commission has previously established certain definitions of "small entities" to be used in evaluating the impact of its rules on small entities in accordance with the RFA.[18] In its previous determinations, the Commission has concluded that contract markets are not small entities for the purpose of the RFA.[19] The Commission has also recently proposed determining that the other trading facilities subject to its jurisdiction, for reasons similar to those applicable to contract markets, would not be small entities for purposes of the RFA.[20]

Accordingly, the Commission does not expect the rules, as proposed herein, to have a significant economic impact on a substantial number of small entities. Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on this finding and on its proposed determination that trading facilities such as registered derivatives transaction execution facilities are not small entities for purposes of the RFA.

VI. Statutory Authority

The Commission has the authority to propose these rules pursuant to sections 1a, 2(a)(1)(D), and 5c(c) of the CEA, [7 U.S.C. 1a, 2(a)(1)(D), and 7a–2(c)].

List of Subjects in 17 CFR Part 41

Security futures products.

Text of Proposed Rules

In accordance with the foregoing, Title 17, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

[17] 5 U.S.C. 601 *et seq.*
[18] *See* 47 FR 18618–21 (April 30, 1982).
[19] *See id.* at 18619 (discussing contract markets).
[20] *See* 66 FR 14262, 14268 (March 9, 2001).

PART 41—SECURITY FUTURES PRODUCTS

1. The authority citation for Part 41 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 1a(25), 2(a), 6j, 7a–2(c) and 12a(5).

2. Subpart C is proposed to be added to read as follows:

Subpart C—Requirements and Standards for Security Futures Products

Sec.
41.21 Requirements for underlying securities.
41.22 Required certifications.
41.23 Listing of security futures products for trading.
41.24 Rule amendments to security futures products.
41.25 Additional conditions for trading security futures products.

Subpart C—Requirements and Standards for Listing Security Futures Products

§ 41.21 Requirements for underlying securities.

(a) *Security futures products based on a single security.* A security future is eligible to be traded only if the security underlying the security future is:

(1) A security registered pursuant to section 12 of the Securities Exchange Act of 1934;

(2) The security is:

(i) Common stock, or

(ii) Such other equity security as the Commission and the SEC jointly deem appropriate; and,

(3) The security conforms with the listing standards that the designated contract market or registered derivatives transaction execution facility has filed with the SEC under section 19(b) of the Securities Exchange Act of 1934.

(b) *Security futures product based on two or more securities.* An index of two or more securities is eligible to be traded as a security future only if:

(1) The index is a narrow-based security index as defined in section 1a(25) of the Act;

(2) The securities in the index are registered pursuant to section 12 of the Securities Exchange Act of 1934;

(3) The securities in the index are:

(i) Common stock, or

(ii) Such other equity securities as the Commission and the SEC jointly deem appropriate; and,

(4) The index conforms with the listing standards that the designated contract market or registered derivatives transaction execution facility has filed with the SEC under section 19(b) of the Securities Exchange Act of 1934.

(c) [Reserved for future rulemaking regarding exemptions to the listing

standards set forth in paragraphs (a) and (b) of this section.]

§ 41.22 Required certifications.

It shall be unlawful for a designated contract market or registered derivatives transaction execution facility to list for trading or execution a security futures product unless the designated contract market or registered derivatives transaction execution facility has provided the Commission with a certification that the specific security futures product or products and the designated contract market or registered derivatives transaction execution facility meet, as applicable, the following criteria:

(a) The underlying security or securities satisfy the requirements of § 41.21;

(b) If the security futures product is not cash settled, arrangements are in place with a clearing agency registered pursuant to section 17A of the Securities Exchange Act of 1934 for the payment and delivery of the securities underlying the security futures product;

(c) [Reserved for common clearing following compliance date];

(d) Only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 and the rules and regulations thereunder, will solicit, accept any order for, or otherwise deal in any transaction in or in connection with security futures products;

(e) If the board of trade is a designated contract market pursuant to section 5 of the Act or is a registered derivatives transaction execution facility pursuant to section 5a of the Act, dual trading in these security futures products is restricted in accordance with § 41.27;

(f) Trading in the security futures products is not readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities, consistent with the conditions for trading of § 41.25;

(g) The board of trade is a member of the Intermarket Surveillance Group. A board of trade that is an alternative trading system, national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member, does not need to make this certification;

(h) An audit trail is in place to facilitate coordinated surveillance among the board of trade, any market on which any security underlying a security futures product is traded, and any market on which any related security is traded. A board of trade that is an alternative trading system, national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member, does not need to make this certification;

(i) Procedures are in place to coordinate regulatory trading halts between the board of trade and markets on which any security underlying the security futures product is traded and other markets on which any related security is traded. A board of trade that is an alternative trading system, national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member, does not need to make this certification; and

(j) The margin requirements for the security futures product will comply with the provisions specified in rule [XX].[1]

§ 41.23 Listing of security futures products for trading.

(a) *Initial listing of products for trading.* To list new security futures products for trading, a designated contract market or registered derivatives transaction execution facility shall submit to the Commission at its Washington, D.C. headquarters, either in electronic or hard-copy form, to be received by the Commission no later than the day prior to the initiation of trading, a filing that:

(1) Is labeled "Listing of Security Futures Product;'

(2) Includes a copy of the product's rules, including its terms and conditions;

(3) Includes the certifications required by § 41.22;

(4) Includes a certification that the terms and conditions of the contract comply with the additional conditions for trading of § 41.25; and

(5) If the board of trade is a designated contract market pursuant to section 5 of the Act or a registered derivatives transaction execution facility pursuant to section 5a of the Act, it includes a certification that the security futures product complies with the Act and rules thereunder.

(b) *Voluntary submission of security futures products for Commission approval.* A designated contract market or registered derivatives transaction execution facility may request that the Commission approve any security futures product under the procedures of § 40.5 of this chapter, provided however that the registered entity shall include the certification required by § 41.22 with its submission under § 40.5 of this chapter. Notice designated contract markets may not request Commission approval of security futures products.

§ 41.24 Rule amendments to security futures products.

(a) *Self-certification of rules and rule amendments by designated contract markets and registered derivatives clearing organizations.* A designated contract market or registered derivatives clearing organization may implement any new rule or rule amendment relating to a security futures product by submitting to the Commission at its Washington, DC headquarters, either in electronic or hard-copy form, to be received by the Commission no later than the day prior to the implementation of the rule or rule amendment, a filing that

(1) Is labeled "Security Futures Product Rule Submission";

(2) Includes a copy of the new rule or rule amendment;

(3) Includes a certification that the designated contract market or registered derivatives clearing organization has filed the rule or rule amendment with the Securities and Exchange Commission, if such a filing is required; and

(4) If the board of trade is a designated contract market pursuant to section 5 of the Act or is a registered derivatives clearing organization pursuant to section 5b of the Act, it includes the documents and certifications required to be filed with the Commission pursuant to § 40.6 of this chapter, including a certification that the security futures product complies with the Act and rules thereunder.

(b) *Self-certification of rules by registered derivatives transaction execution facilities.* Notwithstanding

[1] As noted in the preamble, the cross-reference to the margin requirement rule will be inserted in the final rules when those proposed rules are published.

§ 37.7 of this chapter, a registered derivatives transaction execution facility may only implement a new rule or rule amendment relating to a security futures product if the registered derivatives transaction execution facility has certified the rule or rule amendment pursuant to the procedures of paragraph (a) of this section.

(c) *Voluntary submission of rules for Commission review and approval.* A designated contract market, registered derivatives transaction execution facility, or a registered derivatives clearing organization clearing security futures products may request that the Commission approve any rule or proposed rule or rule amendment relating to a security futures product under the procedures of § 40.5 of this chapter, provided however that the registered entity shall include the certifications required by § 41.22 with its submission under § 40.5 of this chapter. Notice designated contract markets may not request Commission approval of rules.

§ 41.25 Additional conditions for trading for security futures products.

(a) *Common provisions.*—(1) *Reporting of data.* The designated contract market or registered derivatives transaction execution facility shall comply with chapter 16 of this title requiring the daily reporting of market data.

(2) *Regulatory Trading Halts.* [Reserved for contemporaneous rulemaking.]

(3) *Speculative Position Limits.* The designated contract market or registered derivatives transaction execution facility shall have rules in place establishing position limits or position accountability procedures for the expiring futures contract month. The designated contract market or registered derivatives transaction execution facility shall,

(i) Adopt a net position limit no greater than 13,500 (100-share) contracts applicable to positions held during the last five trading days of an expiring contract month; except where,

(A) For security futures products where, for the most recent six-month period, the average daily trading volume in the underlying security exceeds 20 million shares, or exceeds 15 million shares and there are more than 40 million shares of the underlying security outstanding, the designated contract market or registered derivatives transaction execution facility may adopt a net position limit no greater than 22,500 (100-share) contracts applicable to positions held during the last five trading days of an expiring contract month; or

(B) For security futures products where, for the most recent six-month period, the average daily trading volume in the underlying security exceeds 20 million shares and there are more than 40 million shares of the underlying security outstanding, the designated contract market or registered derivatives transaction execution facility may adopt a position accountability rule. Upon request by the designated contract market or registered derivatives transaction execution facility, traders who hold net positions greater than 22,500 (100-share) contracts, or such lower level specified by exchange rules, must provide information to the exchange and consent to halt increasing their positions when so ordered by the exchange.

(ii) For a security futures product comprised of more than one security, to be eligible for paragraphs (a)(3)(i)(A) and (a)(3)(i)(B) of this section, the average daily trading volume required must apply to the least liquid security in the index.

(iii) Exchanges may approve exemptions from these position limits pursuant to rules that are consistent with § 150.3 of this chapter.

(b) *Special requirements for cash-settled contracts.* For cash-settled security futures products, the cash-settlement price must be reliable and acceptable, be reflective of prices in the underlying securities market and be not readily susceptible to manipulation. To meet these requirements, the designated contract market or registered derivatives transaction execution facility must have rules providing that: [Reserved for contemporaneous rulemaking.]

(c) *Special requirements for physical delivery contracts.* For security futures products settled by actual delivery of the underlying security or securities, payment and delivery of the underlying security or securities must be effected through a clearing agency that is registered pursuant to section 17A of the Securities Exchange Act of 1934.

Issued in Washington, DC, on July 12 , 2001, by the Commission.

Jean A. Webb,

Secretary.

[FR Doc. 01–17904 Filed 7–19–01; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 235–2001]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice currently exempts the following system of records from subsection (d) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2): Controlled Substances Act Nonpublic Records (JUSTICE/JMD–002). This proposed rule makes changes to reflect the current statutory authority, as well as the primary reason for exempting the system.

DATES: Submit any comments by August 20, 2001.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, 1400 National Place Building, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: The system notice for "Controlled Substances Act Nonpublic Records (JUSTICE/JMD–002)" is being published in full text in the Notice section of today's **Federal Register.**

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR Part 16 as follows:

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend § 16.76 by revising paragraph (b)(1) as follows:

§ 16.76 Exemption of Justice Management Division.

* * * * *

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Access to and use of the nonpublic records maintained in this system are restricted by law. Section 3607(b) of Title 18 U.S.C. (enacted as part of the Sentencing Reform Act of 1984, Public Law 98–473, Chapter II) provides that the sole purpose of these records shall be for use by the courts in determining whether a person found guilty of

violating section 404 of the Controlled Substances Act qualifies:

(i) For the disposition available under 18 U.S.C. 3607(a) to persons with no prior conviction under a Federal or State law relating to controlled substances, or

(ii) For an order, under 18 U.S.C. 3607(c), expunging all official records (except the nonpublic records to be retained by the Department of Justice) of the arrest and any subsequent criminal proceedings relating to the offense.

* * * * *

Dated: July 13, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

[FR Doc. 01–18155 Filed 7–19–01; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AK66

Special Monthly Compensation for Women Veterans Who Lose a Breast as a Result of a Service-Connected Disability

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of special monthly compensation for a woman veteran who loses one or both breasts as a result of service-connected disability. The intended effect of this amendment is to implement legislation authorizing VA to provide this benefit.

DATES: Comments must be received by VA on or before August 20, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK66." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 1114(k) of title 38, United States Code, provides a list of service-connected disabilities for which Congress has authorized a special benefit to be paid, independent of any other compensation provided under section 1114 for schedular disability rated under 38 CFR part 4, VA's Schedule for Rating Disabilities. This additional compensation is commonly referred to as special monthly compensation "k" or SMC "k." Section 302 of the Veterans Benefits and Health Care Improvement Act of 2000, Public Law 106–419, 114 Stat. 1822, amended section 1114(k) by making anatomical loss of one or both breasts (including loss by mastectomy) by a woman veteran a condition warranting this special monthly compensation.

The provisions governing special monthly compensation under 38 U.S.C. 1114(k) are codified in title 38 of the Code of Federal Regulations under paragraph (a) of § 3.350, which is titled "Special monthly compensation ratings." Paragraph (a) currently states that special monthly compensation under 38 U.S.C. 1114(k) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, or complete organic aphonia with constant inability to communicate by speech. In order to implement Public Law 106–419, we propose to remove "or" preceding "complete organic aphonia" in this paragraph and to add following "speech" the phrase "or, in the case of a woman veteran, the anatomical loss of one or both breasts (including loss by mastectomy)."

We also propose to add new paragraph (7) under paragraph (a) to define "anatomical loss of a breast" for purposes of this benefit. Consistent with the assignment of special monthly compensation for certain other losses, for example, for loss of use of a foot, only when there is complete, but not partial, peroneal nerve paralysis, we propose to require that there be complete loss of breast tissue in order to qualify for this benefit. Therefore "anatomical loss of a breast" would exist when there is complete surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury). Various types of breast surgery—radical mastectomy, modified radical mastectomy, simple (or total) mastectomy, and wide local excision (including partial mastectomy, lumpectomy, tylectomy, segmentectomy, and quadrantectomy)—are defined under diagnostic code 7626 (breast surgery) in 38 CFR 4.116. Radical mastectomy, modified radical mastectomy, and simple (or total) mastectomy would be the equivalent of "anatomical loss of a breast" because they entail complete removal of breast tissue, but wide local excision, defined as removal of a portion of the breast tissue, would not be because it involves less than complete removal of breast tissue. We therefore propose that paragraph (7) state that "anatomical loss of a breast" exists when there is complete surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury) and that as defined in 38 CFR 4.116, radical mastectomy, modified radical mastectomy, and simple (or total) mastectomy result in anatomical loss of a breast, but wide local excision, with or without significant alteration of size or form, does not.

The exclusion of wide local excision, which can range from undetectable removal of a small amount of breast tissue up to any extent of breast surgery less than a simple (total) mastectomy, would eliminate the need to attempt to define how much removal of breast tissue less than complete removal would qualify for the benefit. There is no standard or feasible way to define such partial removal of breast tissue, so proposing that nothing short of total mastectomy (or equivalent loss of breast tissue due to injury) will qualify as anatomical loss of a breast would ensure consistency in assigning this benefit.

In addition, as we have done for other conditions that warrant special monthly compensation listed in 38 CFR 4.116, the section of the rating schedule that addresses gynecological conditions and disorders of the breast, we propose to annotate all evaluations under diagnostic code 7626 (breast surgery) except for zero percent (which is assigned for wide local excision) with a reference to a footnote instructing raters to review for entitlement to Special Monthly Compensation. The footnote, which is in the current regulation, reads: "Review for entitlement to special monthly compensation under § 3.350 of this chapter." We also propose to amend an existing note at the beginning of § 4.116, which now reads in part, "When evaluating any claim involving loss or loss of use of one or more creative organs, refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special

monthly compensation," to include a reference to anatomical loss of one or both breasts. These provisions will promote consideration of the new provision by raters.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance program number for this benefit.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

38 CFR Part 4

Disability benefits, Pension, Individuals with disabilities, Veterans.

Approved: July 12, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.350, paragraph (a) introductory text, the first sentence is revised; and a new paragraph (a)(7) is added immediately following the authority citation for paragraph (a)(6), to read as follows:

§ 3.350 Special monthly compensation ratings.

* * * * *

(a) * * * Special monthly compensation under 38 U.S.C. 1114(k) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, complete organic aphonia with constant inability to communicate by speech or, in the case of a woman veteran, the anatomical loss of one or both breasts (including loss by mastectomy). * * *

* * * * *

(7) Anatomical loss of a breast exists when there is complete surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury). As defined in 38 CFR 4.116, radical mastectomy, modified radical mastectomy, and simple (or total) mastectomy result in anatomical loss of a breast, but wide local excision, with or without significant alteration of size or form, does not.

(Authority: 38 U.S.C. 501, 1114(k))

* * * * *

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

3. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

4. Section 4.116, Note 2 is amended by removing "one or more creative organs," and adding, in it place, "one or more creative organs or anatomical loss of one or both breasts,".

5. Diagnostic code 7626 in 38 CFR 4.116 is revised to read as follows:

§ 4.116 Schedule of ratings—gynecological conditions and disorders of the breast.

	Rating
* * * * *	
7626 Breast, surgery of:	
Following radical mastectomy:	
Both	[1] 80
One	[1] 50
Following modified radical mastectomy:	
Both	[1] 60
One	[1] 40
Following simple mastectomy or wide local excisio with significant alteration of size or form:	
Both	[1] 50
One	[1] 30
Following wide local excision without significant alteration of size or form:	
Both or one	0

Note: For VA purposes:

[1] *Radical mastectomy* means removal of the entire breast, underlying pectoral muscles, and regional lymph nodes up to the coracoclavicular ligament.

[2] *Modified radical mastectomy* means removal of the entire breast and axillary lymph nodes (in continuity with the breast). Pectoral muscles are left intact.

[3] *Simple (or total) mastectomy* means removal of all of the breast tissue, nipple, and a small portion of the overlying skin, but lymph nodes and muscles are left intact.

[4] *Wide local excision* (including partial mastectomy, lumpectomy, tylectomy, segmentectomy, and quadrantectomy) means removal of a portion of the breast tissue.

* * * * *

[FR Doc. 01–18207 Filed 7–19–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 123–1123; FRL–7016–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action.

SUMMARY: EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP). EPA is approving a revision to Missouri rule "Control of Emissions From Industrial Surface Coating Operations." This revision will ensure consistency between the state and Federally approved rules, and ensure Federal enforceability of the state's air program rule revision pursuant to section 110 of the Clean Air Act.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in

commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received in writing by August 20, 2001.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: June 29, 2001.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 01–18090 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 119–1119; FRL–7015–7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri. This approval pertains to revisions to a rule which controls emissions from aluminum foil rolling sources in the St. Louis, Missouri, nonattainment area. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received in writing by August 20, 2001.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: June 29, 2001.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 01–18092 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA168–4109b; FRL–7013–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Control of VOCs from Wood Furniture Manufacturing, Surface Coating Processes and Other Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The revisions include the adoption of new VOC regulations for wood furniture manufacturing operations. These revisions also add new definitions, and amend or delete certain existing definitions for terms used in regulations pertaining to volatile organic compound (VOC) sources. The revisions also clarify the requirements Pennsylvania's surface coating regulations. Lastly, the revisions include minor amendments to Pennsylvania's regulations pertaining to sampling and testing methods. the addition, revision or deletion of terms used in regulations pertaining to volatile organic compound (VOC) sources, and to amend certain VOC surface coating regulations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by August 20, 2001.

ADDRESSES: Written comments should be addressed to David Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182 or Ellen Wentworth, (215) 814–2034 at the EPA Region III address above, or by e-mail at *quinto.rose@epa.gov* or *wentworth.ellen@epa.gov*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: July 5, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 01–18187 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD118–3073b; FRL–7013–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions From Organic Chemical Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Maryland State Implementation Plan (SIP). The revisions establish reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from organic chemical production. EPA is proposing to approve these revisions in accordance with the requirements of the Clean Air Act (CAA). In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 20, 2001.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mail Code 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov* or Carol Febbo, (215) 814–2076, or by e-mail at *febbo.carol@epa.gov* or at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: July 9, 2001.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 01–18191 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 130–1130; FRL–7016–3]

Approval and Promulgation of Implementation Plans; State of Missouri.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of rescinding four redundant particulate matter process weight rate rules. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received in writing by August 20, 2001.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: June 29, 2001.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 01–18189 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 96–262; FCC 01–166]

Access Charge Reform

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: In this document, the Federal Communications Commission (Commission) considered whether it should terminate its inquiry into the assessment of a presubscribed interexchange carrier charge (PICC) on the special access lines provided by price cap local exchange carriers (LECs) to interexchange carriers and others. Since the Commission began this inquiry, several developments caused the Commission to conclude that it was no longer necessary to consider permitting these LECs to assess PICCs on their special access lines. Accordingly, in this document the Commission terminated its inquiry into the assessment of such charges but it declared that this docket shall remain open for other purposes.

DATES: The inquiry instituted in the proposed rule published June 6, 1997, at 62 FR 31040 is terminated as of July 20, 2001 with respect to the Commission's proposal to permit price cap LECs to assess a PICC on their special access lines.

FOR FURTHER INFORMATION CONTACT: Richard Lerner, Deputy Chief, Competitive Pricing Division, at (202) 418–1520, or Allen A. Barna, General Attorney, Competitive Pricing Division, at (202) 418–1536. The address is Competitive Pricing Division, Common Carrier Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 96–262, FCC 01–166, Access Charge Reform, adopted May 17, 2001, and released on May 21, 2001. The full text of this document is available for public inspection Monday

through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC 20554. The complete text of the document may be purchased from the Commission's duplicating contractor, ITS, Inc., at 1231 20th Street NW, Washington, DC 20036 (202–857–3800). This Order contains no new or modified information collections subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

Synopsis of the Order

In the Further Notice of Proposed Rulemaking[1] included in *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, First Report and Order*, in CC Docket Nos. 96–262, 94–1, 91–213, 95–72, 12 FCC Rcd 15982, 16155 (1997), 62 FR 31868 (June 11, 1997) (*First Report and Order*), *aff'd, Southwestern Bell Telephone Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998), the Commission tentatively concluded that it should permit price cap LECs to assess a PICC on their special access lines to enable them to recover some of the common line costs assigned to the federal jurisdiction that they incur in providing switched access service to residential and single line business lines. Commenters unanimously opposed that proposal. In this Order, the Commission declined to permit the assessment of such special access PICCs and terminated its inquiry into such an assessment.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the *First Report and Order* included an Initial Regulatory Flexibility Analysis (IRFA) with reference to the Further Notice of Proposed Rulemaking found therein. *First Report and Order*, 12 FCC Rcd at 16170–16172. In the IRFA, the Commission noted that there were thirteen incumbent price cap LECs at that time, that it had limited to those LECs the scope of its proposal to permit the assessment of PICCs on special access lines, and that it had tentatively concluded that each of those LECs had more than 1500 employees and, therefore, that none was a small entity. *First Report and Order*, 12 FCC Rcd at 16171–16172. The Commission sought public comment on its special access PICC proposal, its tentative conclusions, and the related IRFA. No comments were received concerning the conclusion that those price cap carriers were not small entities, the limitation of the special access PICC proposal to such carriers, or the related provisions of the IRFA.

As of April 30 of this year, four Regional Bell Operating Companies and eight other LECs were subject to price cap regulation. *See Material to be Filed in Support of 2001 Annual Access Tariff Filings, Tariff Review Plans*, DA 01–1105 (Com.Car.Bur., Comp. Pricing Div., Apr. 30, 2001), para. 3. While one or more of these eight other LECs may have less than 1500 employees, the Order will not have a significant economic impact on those LECs or any other small entities for the reasons set forth in the following paragraph. This Final Regulatory Flexibility Analysis conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 801(a)(1)(A).

Under the RFA, there will not be a significant economic impact on a substantial number of small entities resulting from this Order. As explained above, this Order simply terminates the Commission's inquiry into whether it should permit price cap LECs to assess PICCs on their special access lines to enable them to recover some of their common line costs. Because this Order does not require or otherwise authorize any change in the provision of access services or the recovery of common line costs by these carriers, there will not be any significant economic impact on these carriers or on any of their customers including small entities. The Commission will send a copy of this Order, including this final certification, to Congress pursuant to the SBREFA, *see* 5 U.S.C. 801 (a)(1)(A), and another copy to the Chief Counsel for Advocacy of the Small Business Administration, *see* 5 U.S.C. 605(b).

Ordering Clause

Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–209, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, and 403, that the inquiry initiated in CC Docket No. 96–262 into the assessment by price cap carriers of a presubscribed interexchange carrier charge on their special access lines is hereby TERMINATED but that this docket shall REMAIN OPEN for other purposes.

List of Subjects in 47 CFR Part 1

Communications common carriers, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–17499 Filed 7–19–01; 8:45 am]

BILLING CODE 6712–01–P

[1] See proposed rule published at 62 FR 31040 (June 6, 1997).

Notices

Federal Register
Vol. 66, No. 140
Friday, July 20, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Foreign Agricultural Service (FAS) intends to request an extension for a currently approved information collection procedure for entry of specialty sugars into the United States as described in 7 CFR Part 2011.

DATES: Comments should be received on or before September 18, 2001, to be assured of consideration.

ADDRESSES: Mail or deliver comments to Richard J. Blabey, Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, 1400 Independence Ave., SW., Washington, DC 20250–1021, (202) 720–2916.

FOR FURTHER INFORMATION CONTACT: Richard J. Blabey, at the address above, or telephone at (202) 720–2916, or e-mail at *Blabey@fas.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Specialty Sugar Import Certificates.

OMB Number: 0551–0025.

Expiration Date of Approval: September 30, 2001.

Type of Request: Extension of a currently approved information collection.

Abstract: The quota system established by Presidential Proclamation 4941 of May 5, 1982, prevented the importation of certain sugars used for specialized purposes which originated in countries which did not have quota allocations. Therefore, the regulation at 15 CFR part 2011 (Allocation of Tariff-Rate Quota on Imported Sugars, Syrups and Molasses, subpart B—Specialty Sugar) established terms and conditions under which certificates are issued permitting U.S. importers holding certificates to enter specialty sugars from specialty sugar source countries under the sugar tariff-rate quotas (TRQ). Nothing in this subpart affects the ability to enter specialty sugars at the over-TRQ duty rates. Applicants for certificates for the import of specialty sugars must supply the information required by 15 CFR 2011.205 to be eligible to receive a specialty sugar certificate. The specific information required on an application must be collected from those who wish to participate in the program in order to grant specialty sugar certificates, ensure that imported specialty sugar does not disrupt the current domestic sugar program, and administer the issuance of the certificates effectively.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Importers.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 60 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Request for Comments

The public is invited to submit comments and suggestions to the above address regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of the information technology, or any other aspect of this collection of information. Comments on the issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice and Request for Comments, but must be submitted no later than 60 days from the date of publication to be assured of consideration. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

Signed at Washington, DC, on July 5, 2001.

Mattie R. Sharpless,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 01–18141 Filed 7–19–01; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

South Mississippi Electric Power Association; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold a public meeting and prepare an environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations for Implementing the National Environmental Policy Act (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR part 1794), proposes to prepare an Environmental Assessment related to possible financing assistance to South Mississippi Electric Power Association related to the construction and operation of 475 megawatts of simple cycle, combustion turbine electric generation plants in Mississippi.

Meeting Information: RUS and South Mississippi Electric Power Association will conduct a public meeting on Thursday, August 9, 2001, from 7:00 p.m. until 9:00 p.m. at the headquarters of South Mississippi Electric Power Association, located at 7037 US Highway 49, Hattiesburg, Mississippi.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives of RUS and South Mississippi Electric Power Association will be available at the public meeting to discuss RUS' environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written

comments. Written comments will be accepted for 30 days after the public scoping meeting.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Engineering and Environmental Staff, Rural Utilities Service, at (202) 720–0468. Mr. Quigel's E-mail address is bquigel@rus.usda.gov. Information is also available from Joey Ward of South Mississippi Electric Power Association at (601) 268–2083. Mr. Ward's E-mail address is jward@smepa.com.

SUPPLEMENTARY INFORMATION: South Mississippi Electric Power Association proposes to construct three GE LM6000 combustion turbines with a nameplate rating of 47 megawatts each at a site approximately 2 miles south of Sylvarena in Smith County, Mississippi, three GE 7EAs with a nameplate rating of 83.5 megawatts each at a site located approximately 6 miles east of Silver Creek, in Jefferson Davis County, Mississippi, and one GE 7EA at its existing Moselle Generating Plant which is located approximately 1 mile north of Moselle in Jones County, Mississippi.

Alternatives considered by RUS and South Mississippi Electric Power Association include: (a) No action, (b) purchased power, (c) load management and conservation of energy, (d) renewable energy, (e) combined cycle, and (f) various site locations.

An alternatives evaluation and siting study for the projects was submitted to RUS by South Mississippi Electric Power Association. The alternatives evaluation and siting study are available for public review at RUS in Room 2242, 1400 Independence Avenue, SW, Washington, DC, and at the headquarters of South Mississippi Electric Power Association, 7037 US Highway 49, Hattiesburg, Mississippi. This document will also be available at the Prentiss Public Library, Prentiss, Mississippi; the Evon A. Ford Library, 208 Spring Street, Taylorsville, Mississippi; the Floyd A. Robinson Memorial Library, 150 Main Street, Raleigh, Mississippi; the Laurel-Jones Library, 530 Commerce Street, Laurel, Mississippi; and Ellisville Public Library, 110 Court Street, Ellisville, Mississippi.

From information provided in the alternatives evaluation and site selection study, input that may be provided by government agencies, private organizations, and the public, South Mississippi Electric Power Association will have prepared an environmental analysis to be submitted to RUS for review. RUS will use the environmental analysis to determine the significance of the impacts of the projects and may adopt it as its environmental assessment of the projects. RUS' environmental assessment of the projects will be available for review and comment for 30 days.

Should RUS determine, based on the environmental assessment of the project, that the impacts of the construction and operation of the projects will not have a significant environmental impact, it will prepare a finding of no significant impact. Public notification of a finding of no significant impact will be published in the **Federal Register** and in newspapers with a circulation in the areas where the projects are proposed to be located.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by Council on Environmental Quality and RUS environmental policies and procedures.

Dated: July 12, 2001.

Glendon D. Deal,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 01–17934 Filed 7–19–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

[I.D. 071701A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Dr. Nancy Foster Scholarship Program.

Form Number(s): CD–346.

OMB Approval Number: 0648–0432.

Type of Request: Regular submission.

Burden Hours: 3,517.

Number of Respondents: 2,000.

Average Hours Per Response: 4.75 hours for an application, 45 minutes for a letter of recommendation, 90 minutes for an annual report, 5 minutes for a "no concurrent work" statement, 45 minutes for a CD–346, and 1 hour for a biography/photograph submission.

Needs and Uses: The Dr. Nancy Foster Scholarship Program recognizes outstanding scholarship by providing financial support to graduate students pursuing masters and doctoral degrees in the areas of marine biology, oceanography, and maritime archaeology. Applicants must submit information that allows NOAA to make scholarship selections and those applicants selected to receive scholarships must submit additional information that enables NOAA to arrange funding and track their academic progress.

Affected Public: Individuals or households.

Frequency: One-time, annual.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 13, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–18203 Filed 7–19–01; 8:45 am]

BILLING CODE 3510–JT–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071701B]

Submission for OMB Review; Comment Request

AGENCY: National Oceanic and Atmospheric Administration (NOAA)

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Southeast Region Logbook Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648-0016.

Type of Request: Regular submission.

Burden Hours: 1,400.

Number of Respondents: 350.

Average Hours Per Response: 10 minutes per trip form, 30 minutes per annual form

Needs and Uses: Participants in the Atlantic snapper-grouper and mackerel

fisheries in the Southeast Region are currently required to submit catch and effort logbooks for their fishing trips. The NMFS proposes that fishermen also be required to submit information about dockside prices, trip operating costs, and annual fixed costs. The data will be used in analyses of the economic effects of proposed regulations.

Affected Public: Business and other for-profit organizations.

Frequency: By trip, annual.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897. Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 13, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–18204 Filed 7–19–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062701C]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits.

SUMMARY: NMFS has received applications for Endangered Species Act (ESA) scientific research permits from: Bureau of Land Management (BLM) in Eugene, OR; Cascade General, Inc. (CGI) in Portland, OR; Western Washington University (WWU) in Bellingham, WA; Lower Willamette Group (LWG) in Portland, OR; Northwest Fisheries Science Center (NWFSC), NMFS in Seattle, WA; Weyerhaeuser in Federal Way, WA; King County Department of Transportation (KCDOT) in King County, WA; City of Bellingham, WA; Oregon State University (OSU) in Corvallis, OR; Oregon Metallurgical Corporation (OREMET) in Portland, OR; United States Forest Service (USFS) in Corvallis, OR; Port Blakely Tree Farms (PBF) in Tenino, WA; and United States Fish and Wildlife Service (USFWS) in Vancouver, WA.

DATES: Comments or requests for a public hearing on any of the new applications or the modification request must be received no later than 5 p.m. Pacific daylight time on August 20, 2001.

ADDRESSES: Written comments on the applications should be sent to Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (503/230–5400). Comments may also be sent via fax to 503/230–5435. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Cherelle Blazer, Portland, OR, phone: 503/231–2001, fax: 503/230–5435, e-mail: *Cherelle.Blazer@noaa.gov*.

SUPPLEMENTARY INFORMATION: The following ESA-listed evolutionary significant units (ESUs) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened Snake River (SR) fall-run, Threatened SR spring/summer-run, Endangered Upper Columbia River (UCR), Threatened Upper Willamette River (UWR), Threatened Lower Columbia River (LCR), Threatened Puget Sound (PS)

Steelhead (*O. mykiss*): Threatened Snake River Basin (SRB), Endangered UCR, Threatened Middle Columbia River (MCR), Threatened LCR, Threatened UWR

Chum salmon (*O. keta*): Threatened Columbia River (CR)

Sockeye salmon (*O. nerka*): Endangered SR

New Applications Received

BLM is seeking a 5–year permit (1256) to take adult and juvenile UWR chinook salmon and OC coho salmon in Wolf Creek, Siuslaw River, Esmond Creek Basin, North Creek, Pugh Creek, Bierce Creek, Siuslaw River mainstem, and Upper Lake Creek in OR. The purposes of the study are to: (1) collect data on fish abundance and presence, adult escapement, and habitat needs prior to stream enhancement; (2) evaluate habitat restoration projects, migration time, non-salmon species presence and smoltification size; and (3) perform watershed analysis. The study will benefit UWR chinook salmon and OC coho salmon by determining changes in fish habitat due to management projects as compared to natural fluctuation. BLM proposes to observe fish by snorkeling during habitat and spawning surveys, and capture (using backpack electrofishing, seining, dipnetting, and rotary trapping), handle, and release juvenile and adult salmonids. Some fish will be marked with a subcutaneous injection of colored dye using Panjet needles. BLM also requests juvenile fish indirect mortality associated with the study.

CGI is seeking a 3–year permit (1326) to take adult and juvenile UWR chinook salmon, LCR chinook salmon, UWR steelhead, and LCR steelhead associated with scientific research to be conducted at Swan Island in the Portland Harbor located in the lower Willamette River. The purpose of this study is to test a freshwater air screen for use in preventing or minimizing fish entry onto a floating dry dock facility. The research will benefit listed species by determining their presence and testing new methods of moving fish away from dry dock areas during operations thus providing useful information for protecting listed species at dry dock facilities. CGI proposes to capture (using boat electrofishing and intake porthole nets), anesthetize, identify, measure, check for marks, weigh, and release juvenile salmonids. Adult fish that may be encountered will not be netted. CGI also requests juvenile fish indirect mortality associated with the study.

WWU is seeking a 5–year permit (1327) to take adult and juvenile UWR chinook salmon and UWR steelhead on the Willamette and McKenzie Rivers. The purpose of this study is to identify and rank sources of stress in the watershed, create a valid process for differentiation between anthropogenic and natural impacts on streams used as receiving waters associated with pulp and paper mill operation, and make an ecological risk assessment specifically aimed at point-non-point source pollution in the Upper Willamette-Lower McKenzie watershed. The study will benefit UWR chinook salmon and UWR steelhead recovery through ecological assessment and stressor identification in the watershed. WWU proposes to capture (using boat electrofishing), identify, and release juvenile fish. No attempt will be made to net or capture adult listed fish. WWU also requests juvenile fish indirect mortality associated with the study.

LWG is seeking a 4–year permit (1328) to take adult and juvenile UWR chinook salmon, LCR chinook salmon, UWR steelhead, and LCR steelhead during scientific research efforts on the Lower Willamette River. The purpose of

the study is to investigate juvenile salmon residence time and distribution and use the data to determine potential exposure of listed fish to contaminated sediment associated with an EPA superfund project. The study will benefit threatened species in the Portland harbor by generating population distribution information that can be used to design a remediation program to minimize sediment impacts, and aid management of future development and conservation of valuable fish habitat. LWG proposes to capture (using boat electrofishing), handle, anesthetize, measure, check for marks and tags, and release juvenile salmonids. Adult fish that may be encountered will not be netted. LWG also requests juvenile fish indirect mortality associated with the study.

NWFSC is seeking a 5–year permit (1329) to take juvenile SR fall-run chinook salmon, SR spring/summer-run chinook salmon, UCR chinook salmon, UWR chinook salmon, LCR chinook salmon, SRB steelhead, UCR steelhead, MCR steelhead, UWR steelhead, LCR steelhead, CR chum salmon, and SR sockeye salmon in the Lower Columbia River estuary. The purpose of the study is to determine the presence and abundance of fall and spring chinook salmon, coho salmon, and chum salmon in the estuary and Lower Columbia River; determine the relationship between juvenile salmon and Lower Columbia River estuarine habitat; and obtain information about flow change, sediment input, and habitat availability for the development of a numerical model. The study will benefit listed salmonids by serving as the basis for estuarine restoration and preservation plans for endangered salmonid stocks. The NWFSC proposes to place beach seines at eight sampling sites near the Astoria Bridge and trapnets in four sites in Cathlamet Bay. NWFSC proposes to capture, anesthetize, scan for tags, measure, weigh, and release juvenile salmonids. Monthly up to ten fish of each species at each of the twelve sampling sites are proposed to be sacrificed for stomach content, scale, and otolith analysis.

Weyerhaeuser is seeking a 5–year permit (1330) to take juvenile LCR steelhead in Harrington Creek in the Toutle River Basin, WA. The purpose of the study is to increase understanding of the relationship between aquatic organisms and their habitat, determine how forest management and restoration influence the aquatic ecosystem, and produce reliable scientific data for the development of effective forest management practices that better protect aquatic resources. This research will benefit listed salmonids through data on the natural habitat recovery process and by identification of the consequences of various stressors to listed species. Weyerhaeuser proposes to observe fish during snorkeling surveys, capture (using backpack electrofishing), anesthetize, identify, measure, weigh, and release fish for data collection including water typing and population surveys. Weyerhaeuser also requests indirect mortality associated with this activity.

KCDOT is seeking a 5–year permit (1331) to take juvenile PS chinook salmon associated with road maintenance activities to be conducted in multiple river basins in WA. KCDOT proposes to temporary exclude aquatic life from maintenance/construction areas in addition to evaluating the effectiveness of stream, culvert replacement, wetlands, and riparian habitat projects. Maintenance activities are to replace or upgrade stream crossing to allow fish passage. The activities will benefit PS chinook salmon by providing and improving access into previously inaccessible stream reaches for all life stages. The road maintenance activities may also include habitat improvements such as riparian plantings and in-stream habitat structures. KCDOT proposes to capture (using backpack electrofishing, seines, fry traps, and dipnets), handle, and release juvenile PS chinook salmon. KCDOT also requests indirect mortality associated with the study.

The City of Bellingham is seeking a 3–year permit (1332) to take juvenile PS chinook salmon associated with scientific research to be conducted in the Nooksack River Basin of Whatcom County, WA. The purpose of the study is to gather information to prepare a Habitat Conservation Plan (HCP) addressing their diversion activities in the Nooksack River Basin. The proposed study will provide three types of information to help determine how flow volumes in the river affect the availability of habitat used by listed salmonids: (1) Fish distribution in the project area; (2) periodicity of fish occurrence in the project area; and (3) habitat use in the project area. The research will benefit PS chinook salmon by providing scientifically-sound, site-specific data that will enable the City of Bellingham to develop an HCP addressing water withdrawal operations and habitat conservation measures that will minimize or avoid incidental take of listed species. The City of Bellingham proposes to capture (using beach seines and fyke nets), handle, and release juvenile PS chinook salmon. The City of Bellingham also requests indirect mortality associated with the study.

OSU is seeking a 3–year permit (1333) to take adult and juvenile UWR chinook salmon, LCR chinook salmon, UWR steelhead, and LCR steelhead in the Willamette River, McKenzie River, and the Columbia River. The purpose of the study is to evaluate floodplain and riparian restoration, test the effectiveness of new assessment tools for conservation planning, and improve aquatic habitat. The study will benefit listed salmonids by helping to determine the actions needed to restore of ecological processes in salmon and steelhead habitat. OSU proposes to capture (using boat electrofishing), identify, measure, examine for abnormalities, and release juvenile fish. Adult fish that may be encountered will not be netted. OSU also requests juvenile fish indirect mortality associated with the study.

OREMET is seeking a 3–year permit (1334) to take juvenile UWR chinook salmon and UWR steelhead in the Calapooia River and Oak Creek tributaries to the Willamette River. The purpose of the study is to evaluate stream health and occurrence of juvenile listed salmonids in areas downstream from a titanium plant and to determine the effectiveness of wastewater treatment. The benefit of the study on listed salmonids is the continued treatment of effluent which provides a consistent perennial flow of water in Oak Creek. OREMET proposes to use backpack electrofishing to capture fish which will then be measured, identified, and released.

USFS is seeking a 5–year permit (1335) to take adult and juvenile CR chum salmon in three tributaries of the Columbia River in Washington state. The purpose of the study is to assess watershed conditions and limiting factors, and determine watershed health under the Northwest Forest Plan. The activities will benefit listed fish by providing the USFS with information to improve forest management. USFS proposes to capture (using backpack electrofishing), anesthetize, measure, and release fish. USFS also requests juvenile fish indirect mortality associated with the research.

PBF is seeking a 2–year permit (1336) to take juvenile UWR chinook salmon, UWR steelhead, LCR chinook salmon, LCR steelhead, and OC coho salmon in various lakes, rivers, and creeks in the Willamette and Columbia River systems and Oregon coastal drainages. The purpose of the study is to evaluate factors limiting fish distribution in streams owned by PBF and to determine water quality. Data collected will benefit

listed fish by being used to conserve and restore critical habitat. PBF proposes to capture (using backpack electrofishing and dipnetting), handle, and release juvenile fish.

OSU is seeking a 2–year permit (1337) to take adult and juvenile UWR chinook salmon and UWR steelhead in Rickreall Creek, OR. The purpose of the study is to assess the seasonal composition and distribution of fishes and determine associations of all life stages of fish with available habitat, level of disturbance, and hydrological patterns. The study will benefit listed salmonids by generating data that will aid in improved creek management. OSU proposes to capture (using dipnetting, beach seining, fyke and hoop netting, backpack electrofishing, angling, and trammel netting), handle, and release adult and juvenile fish. OSU also requests juvenile fish indirect mortality associated with the research.

USFWS is seeking a 5–year permit (1338) to take adult and juvenile LCR chinook salmon, LCR steelhead, and CR chum salmon in Hardy Springs, Hamilton Springs, and the mainstem Columbia River. The purposes of the study are to: (1) examine factors limiting chum salmon production, (2) enhance and restore chum salmon production, (3) evaluate nearby tributaries for restoration, and (4) evaluate the relationship between mainstem Columbia River and tributary chum salmon populations. The study will benefit listed chum salmon by providing information on their freshwater life history that can be used in Columbia River water management and recovery planning. Adult listed fish are proposed to be captured (by seine, weir, or tangle net), anesthetized, bio-sampled, marked with a jaw tag or opercle punch, radio tagged, and released. Juvenile listed fish are proposed to be captured (by fyke net, weir, or screw trap), marked using a photonic dye injector or Bismark Brown Y, and released. USFWS also requests adult and juvenile fish indirect mortality associated with the study.

Dated: July 16, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–18205 Filed 7–19–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071201B]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits.

SUMMARY: NMFS has received applications for Endangered Species Act (ESA) scientific research permits from the Columbia River Inter-Tribal Fish Commission at Portland, OR (CRITFC); Oregon State University at Corvallis, OR (OSU); the Shoshone-Bannock Tribes at Fort Hall, ID (SBT); Gary Thorgaard of the School of Biological Sciences, Washington State University at Pullman, WA (WSU); the Thompson Creek Mining Company at Challis, ID (TCM); and has received an application from the Oregon Department of Environmental Quality at Portland, OR (ODEQ) for modification 1 to scientific research permit 1205.

DATES: Comments or requests for a public hearing on any of the new applications or the modification request must be received no later than 5 p.m. Pacific daylight time on August 20, 2001.

ADDRESSES: Written comments and requests for copies of the permit applications should be sent to Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (503/230–5400). Comments may also be sent via fax to 503/230–5435. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Robert Koch, Portland, OR, phone: 503–230–5424, Fax: 503–230–5435, e-mail: *robert.koch@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Chinook salmon (*O. tshawytscha*): threatened, naturally produced and artificially propagated, Snake River (SnR) spring/summer; threatened SnR fall.

Steelhead (*O. mykiss*): threatened SnR, threatened middle Columbia River (MCR).

Sockeye salmon (*Oncorhynchus nerka*): endangered Snake River (SnR).

New Applications Received

CRITFC requests a 5–year permit (1339) for annual takes of adult, threatened, SnR steelhead and adult, threatened, SnR spring/summer chinook salmon associated with scientific research to be conducted in the following tributaries of the Imnaha River in OR: Cow, Lightning, Horse, Big Sheep, Camp, Little Sheep, Freezeout, Grouse, Crazyman, and Gumboot Creeks. The purpose of the research is to acquire information on the status (escapement abundance, genetic structure, life history traits) of steelhead in the Imnaha River Basin. The research will benefit the ESA-listed species by providing information that fisheries managers can use to determine if recovery actions are increasing wild and natural Snake River salmonid populations. Establishing baseline information on steelhead population status in the Imnaha River Basin will aid in guiding future management actions. ESA-listed adult salmon and steelhead are proposed to be collected using temporary/portable picket weirs. Non-target species that are collected (chinook salmon) are proposed to be measured and released. ESA-listed adult steelhead that are collected are proposed to be sampled for biological information, sampled for fin tissues and scales, marked with opercular punches, tagged with Tyvek disc tags, and released or examined for opercular punches and Tyvek disc tags, sampled for biological information, and released. ESA-listed adult fish indirect mortalities associated with the research are also requested. ESA-listed adult fish carcasses are also proposed to be collected and sampled for tissues and/or scales and biological information.

OSU requests a 1–year permit (1340) for takes of adult and juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; adult and juvenile, threatened, SnR steelhead; and adult and juvenile, threatened, MCR steelhead associated with research to be conducted in tributaries of the Imnaha River, the Snake River, Joseph Creek, the Grande Ronde River, and the John Day River in OR. The research is designed to determine how salmonid fishes respond to riparian diversity and how riparian diversity changes over time. The research will build a framework for designing riparian restoration programs in northeast

Oregon. The researchers will survey both in-stream and riparian zone characteristics where riparian litter, terrestrial insects, aquatic insects, and fish will be quantified. ESA-listed adult and juvenile salmon and steelhead are proposed to be observed/harassed during snorkel surveys. In addition, ESA-listed adult and juvenile steelhead are proposed to be captured with hook-and-line with barbless flies, sampled for biological information, sampled for stomach contents, and released. Any ESA-listed juvenile chinook salmon captured using hook-and-line will be immediately released. ESA-listed fish indirect mortalities associated with the research are also requested.

SBT requests a 5–year permit (1341) for annual takes of juvenile, endangered, SnR sockeye salmon associated with a study designed to evaluate the annual sockeye salmon smolt emigration from Pettit and Alturas Lakes in ID. The information is needed to estimate overwinter survival, downstream migration survival, and downstream migration timing. The research will also allow SBT researchers to evaluate various release strategies and to calculate smolt-to-adult return rates. The proposed research will benefit the species by providing managers with information on the relative success of the Pettit and Alturas Lakes sockeye salmon reintroduction program. The research will also provide information that resource managers can use to make decisions on future releases of sockeye salmon from the Idaho Department of Fish and Game's captive broodstock program in areas where sockeye salmon have been extirpated. Sockeye salmon smolts are proposed to be captured using a rotary screw trap on Alturas Lake Creek and a weir on Pettit Lake Creek. After being captured, the ESA-listed sockeye salmon juveniles are proposed to be sampled for biological information and released or tagged with passive integrated transponders and released. In addition, to determine trap efficiencies, a portion of the ESA-listed juvenile sockeye salmon to be captured are proposed to be marked with a small cut on the caudal fin, released upstream of the traps, captured at the traps a second time, inspected for the caudal fin mark, and released. Juvenile, threatened, naturally produced, SnR spring/summer chinook salmon are also proposed to be captured at the Alturas Lake location, sampled for biological information, and released during the research effort directed at sockeye salmon. ESA-listed juvenile fish indirect mortalities associated with the research are also requested. Takes of ESA-listed species associated with SBT's research activities were previously authorized under scientific research permit 998 which expired on December 31, 2000.

Gary Thorgaard of the School of Biological Sciences, WSU requests a 3–year permit (1342) for a research project involving the use of small quantities of sperm collected from adult, threatened, SnR spring/summer chinook salmon and adult, threatened, SnR steelhead. The objective of the research is to assess the impact of hatchery rearing on the genetic makeup of salmonid fishes, which may in turn influence their behavior, physiology, and ability to survive in nature. The research seeks to determine the extent to which wild and hatchery salmon and steelhead may differ in their behavioral and physiological responses. If differences are detected, it is possible that hatchery rearing methods could be adjusted to reduce those differences over time by altering selection patterns in the hatcheries. Hybrid fish are proposed to be produced in a laboratory setting using ESA-listed fish sperm and eggs acquired from non-listed hatchery fish. The hybrid fish are proposed to be reared to the parr life stage; subjected to standardized tests designed to analyze the behavioral, physiological, and genetic changes that occur during domestication; and euthanized at the completion of the experiment. The behavioral and physiological traits of the hybrid fish will then be compared to those of hatchery fish produced using the same eggs. Dr. Thorgaard proposes to acquire the ESA-listed fish sperm to be used for the experiment from Nez Perce Tribe biologists, who are authorized to collect male gametes from ESA-listed salmon and steelhead for cryopreservation purposes under a separate authorization issued to the Columbia River Inter-Tribal Fish Commission.

TCM requests a 5–year permit (1343) for annual takes of juvenile, threatened, naturally produced, SnR spring/summer chinook salmon and juvenile, threatened, SnR steelhead associated with research designed to monitor the aquatic fish populations in the Thompson Creek and Squaw Creek drainages in the vicinity of Thompson Creek Mine. Thompson Creek Mine is a large, open pit molybdenum mine operation located in the Salmon River subbasin, Custer County, Idaho. The mine currently discharges runoff into Thompson and Squaw Creeks, tributaries to the Salmon River. Annual biological monitoring is proposed to determine the effects of mine operations on the aquatic life in Thompson and Squaw Creeks. The monitoring is required by the Idaho Department of Environmental Quality and the U.S. Environmental Protection Agency under a National Pollutant Discharge Elimination System permit. The biomonitoring project will benefit all aquatic species, including chinook salmon and steelhead, in that annual monitoring will detect any adverse impacts to the aquatic species as a result of mining operations. ESA-listed juvenile salmon and steelhead are proposed to be observed/harassed during snorkel surveys. ESA-listed juvenile fish are also proposed to be captured using electrofishing, sampled for biological information, and released. ESA-listed juvenile fish indirect mortalities associated with the research are also requested.

Modification Request Received

ODEQ requests modification 1 to scientific research permit 1205. Permit 1205 authorizes ODEQ an annual take of juvenile, threatened, Southern Oregon/Northern California Coast coho salmon (*Oncorhynchus kisutch*) associated with research designed to assess the condition of randomly selected streams in southwestern Oregon. The research involves collecting samples or data on a range of parameters including benthic macroinvertebrates, periphyton, non-native and invasive riparian plant species, chemical water quality, bacteriological water quality, stream habitat condition, fish and amphibian assemblages, and water temperature. ODEQ's research is coordinated with the U.S. Environmental Protection Agency and is mandated by the Clean Water Act. For modification 1, ODEQ requests annual takes of ESA-listed Snake River salmon and steelhead juveniles associated with an expansion of the research effort to the Snake River Basin. ESA-listed juvenile salmon and steelhead are proposed to be captured using electrofishing, examined, measured, and released. ESA-listed juvenile fish indirect mortalities are also requested. Modification 1 is requested to be valid for the duration of the permit which expires on December 31, 2002.

Dated: July 16, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–18206 Filed 7–19–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

July 17, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 20, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 66 FR 2412, published on January 11, 2001.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 17, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 8, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Cambodia and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on July 20, 2001, you are directed to adjust the limits for the following categories, as provided for in the agreement between the Governments of the United States and Cambodia:

Category	Adjusted twelve-month limit [1]
331/631	990,093 dozen pairs.
334/634	208,852 dozen.
335/635	83,989 dozen.
338/339	3,071,350 dozen.
340/640	969,105 dozen.
345	121,461 dozen.
347/348/647/648	3,685,620 dozen.
352/652	494,833 dozen.
438	100,127 dozen.
445/446	129,043 dozen.
638/639	1,105,686 dozen.
645/646	260,743 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
J. Hayden Boyd,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–18184 Filed 7–19–01; 8:45 a.m.

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 20, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC. 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 16, 2001.

William Burrow,

Acting Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Application for Ability to Benefit Testing Approval.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 150,090.

Burden Hours: 77,040.

Abstract: The Secretary will publish a list of approved tests which can be used by postsecondary educational institutions to establish the ability to benefit for a student who does not have a high school diploma or its equivalent for Student Financial Assistance Programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–18147 Filed 7–19–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–147–B and EA–148–B]

Applications to Export Electric Energy; Aquila Energy Marketing Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: Under separate applications, Aquila Energy Marketing Corporation ("AEM") has applied for renewal of its authority to transmit electric energy from the United States to Mexico and to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 6, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 19, 1997, in Docket EA–147, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized AEM to transmit electric energy from the United States to Mexico using the international electric transmission facilities of San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico. That two-year authorization was renewed on August 11, 1999, in Docket EA–147–A and will expire on August 11, 2001.

On August 13, 1997, in Docket EA–148, FE authorized AEM to transmit electric energy from the United States to Canada using the international electric transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, Detroit Edison, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. That two-year authorization was renewed on August 11, 1999, in Docket EA–148–A and will expire on August 11, 2001. On July 5, 2001, AEM filed applications with FE for renewal of both export authorizations for a term of two years or such other term as DOE may deem appropriate. DOE will consider renewal of the authorization for a period of five years.

DOE notes that the circumstances described in these applications are virtually identical to those for which export authority had previously been granted in FE Orders EA–147 and EA–148. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Dockets EA–147 and EA–148 proceedings.

In its applications, AEM requested expedited processing of this renewal application so that there would be no gap in its authority to export and it may continue exporting electric energy to Canada and to Mexico without interruption. Accordingly, DOE has shortened the comment period to 15 days.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the AEM application to export electric energy to Mexico should be clearly marked with Docket EA–147–B. Comments on the AEM application to export electric energy to Canada should be clearly marked with Docket EA–148–B. Additional copies are to be filed directly with David Stevenson, Aquila Energy Marketing Corporation, 1100 Walnut Street, Suite 3300, Kansas City, Missouri 64106 AND Kathryn A. Flaherty, Attorney for Aquila Energy Marketing Corporation, Blackwell Sanders Peper Martin, 13710 FNB Parkway, Suite 200, Omaha, Nebraska 68154.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Electricity Regulation," then "Pending Procedures" from the options menus.

Issued in Washington, DC, on July 16, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–18165 Filed 7–19–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–484–000]

Aera Energy LLC, Amoco Production et al.; Complainants v. El Paso Natural Gas Company; Respondent; Notice of Complaint

July 16, 2001.

Take notice that on July 13, 2001, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission) 18 CFR 385.206, Aera Energy LLC, Amoco Production Company, BP Energy Company, Burlington Resources Oil & Gas Company LP, Conoco Inc., Coral Energy Resources LP, ONEOK Energy Marketing & Trading Company, L.P., Pacific Gas and Electric Company, Panda Gila River L.P., Public Utilities Commission of the State of California, Southern California Edison Company, Southern California Gas Company and Texaco Natural Gas Inc. (Joint Complainants) filed a complaint under Section 5 of the Natural Gas Act, against El Paso Natural Gas Company (El Paso).

Complainants allege that El Paso's over-selling of firm capacity in conjunction with unlimited growth of demands by its "full requirements" customers, results in unjust, unreasonable and unduly discriminatory services on the El Paso system, in violation of Sections 5 and 7 of the Natural Gas Act, the Commission's regulations thereunder, and El Paso's obligations under the 1996 rate case settlement.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before August 2, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before August 2, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–18146 Filed 7–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1685–001, et al.]

Portland General Electric Company, et al.; Electric Rate and Corporate Regulation Filings

July 16, 2001.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. ER01–1685–001]

Take notice that on July 11, 2001, Portland General Electric Company (PGE) filed substitute tariff sheets in its Open Access Transmission Tariff in compliance with the Commission's June 1, 2001 order in the above-referenced docket. Portland General Electric Co., 95 FERC 61,341 (2001). PGE requests that the Commission make the revised tariff sheets effective as of April 2, 2001.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Oklahoma

[Docket No. ER01–1790–001]

Take notice that on July 11, 2001, Public Service Company of Oklahoma (PSO) tendered for filing in compliance with the Commission's letter order of June 12, 2001, a Supplement to the Interconnection Agreement with Calpine Oneta Power, L.P. AEP requests an effective date of June 12, 2001. Copies of PSO's filing has been served upon the Calpine and the Oklahoma Corporation Commission.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Gray County Wind Energy, LLC

[Docket No. ER01–1972–001]

Take notice that on July 11, 2001, Gray County Wind Energy, LLC (Gray County) tendered for filing designations for two long term power purchase agreements and revised tariff sheets to Gray County's FERC Electric Tariff, Original Volume No.1 in compliance with the Letter Order issued on July 3, 2001 in this Docket No. ER01–1972–000. The tariff revision incorporates a prohibition on power purchases from any affiliated public utility with a franchised service territory absent a rate filing under Section 205 of the Federal Power Act.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, (Allegheny Power)

[Docket No. ER00–2309–002]

Take notice that on July 10, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (AE Supply), The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed First Revised Sheet No. 7 to AE Supply's First Revised Rate Schedule FERC No. 3 in accordance with the Commission's Order of July 2, 2001 at Docket No. ER00–2309–001, 96 FERC 61,002 (2001).

Copies of the filing have been provided to the customer, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission and the West Virginia Public Service Commission.

Comment date: July 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Pro-Energy Development LLC

[Docket No. ER01–2463–000]

Take notice that on June 29, 2001, Pro Energy Development LLC petitioned the Commission for acceptance of Pro Energy Development LLC Rate Schedule FERC No. 1; the granting of certain blanket approvals; including the authority to sell electricity at market based rates and the waiver of certain Commission regulations.

Pro Energy Development LLC intends to engage in wholesale electric power and energy purchases and sales as a marketer. Pro Energy Development LLC is not in the business of generating or transmitting electric power.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. American Transmission Company LLC

[Docket No. ER01–2560–000]

Take notice that on July 11, 2001, American Transmission Company LLC (ATCLLC) tendered for filing a Firm and Non-Firm Point-to-Point Service Agreement between ATCLLC and Calpine Energy Services, L.P. ATCLLC requests an effective date of June 29, 2001.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Empire Limited Partnership #2

[Docket No. ER01–2561–000]

Take notice that Northeast Empire Limited Partnership #2 (NELP#2), on July 11, 2001, tendered for filing an application for approval of market-based rate schedules to sell capacity, energy and ancillary services to WPS Energy Services, Inc. pursuant to Section 205 of the Federal Power Act.

NELP#2 requests that the Commission accept these Rate Schedules for filing by August 10, 2001.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Competitive Energy Services, LLC

[Docket No. ER01–2562–000]

Take notice that on July 11, 2001, Competitive Energy Services, LLC (CES) petitioned the Commission for acceptance of CES Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

CES intends to engage in wholesale electric power and energy purchases and sales as a marketer. CES is not in the business of generating or transmitting electric power.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Jackson County Power, LLC

[Docket No. ER01–2563–000]

Take notice that on July 11, 2001, Jackson County Power, LLC (Jackson County), an electric power developer organized under the laws of Delaware, petitioned the Commission for acceptance of its market-based rate tariff, waiver of certain requirements under Subparts B and C of Part 35 of the Commission's regulations, and preapproval of transactions under Part 34 of the regulations. Jackson County is developing an 1,072 MW (summer rated) gas fired generating facility in Jackson County, Ohio, six miles south of Jackson, Ohio.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER01–2564–000]

Take notice that on July 11, 2001, the Arizona Public Service Company tendered for filing proposed revisions to Arizona Public Service Company's fuel adjustment clause contained in certain wholesale power agreements on file with the Commission.

A copy of this filing has been served on all parties on the service list.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER01–2565–000]

Take notice that on July 11, 2001, Kentucky Power Company tendered for filing a letter agreement with Foothills Generating, L.L.C. AEP requests an effective date of June 20, 2001. Copies of Kentucky Power Company's filing has been served upon the Kentucky Public Service Commission.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of New Mexico

[Docket No. ER01–2566–000]

Take notice that on July 11, 2001, Public Service Company of New Mexico (PNM) submitted for filing an executed copy of a Wholesale Requirements Power Sale and Services Agreement (Agreement) dated June 29, 2001 (the requested effective date for the Agreement), between PNM and Texas-New Mexico Power Company (TNMP). The Agreement, which runs from July 1, 2001 through December 31, 2006, and which is being filed as a Service Agreement under PNM's FERC Electric Tariff, First Revised Volume No. 3. Beginning January 1, 2003, and through the remainder of the Agreement, PNM will be TNMP's sole provider of resources to serve its New Mexico retail load requirements. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of this filing have been served upon TNMP and the New Mexico Public Regulation Commission.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. PPL Large Scale Distributed Generation II, LLC.

[Docket No. EL01–102–000]

Take notice that on July 12, 2001, PPL Large Scale Distributed Generation II, LLC (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission) a petition for declaratory order disclaiming jurisdiction.

The Applicant intends to develop certain electric generating facilities to be located in Illinois, Arizona and Pennsylvania. Applicant is seeking a disclaimer of jurisdiction in connection with a lease financing involving those facilities.

Comment date: August 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Midwest Energy, Inc.

[Docket No. ER01–2461–000]

Take notice that on June 28, 2001, Midwest Energy, Inc. (Midwest) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Transaction Service Agreement between Midwest and City of Colby, Kansas.

Midwest states that the agreement was served on the Kansas Corporation Commission.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated By the California Independent System Operator Corporation and the California Power Exchange, Respondents

[Docket No. EL00–95–040]

Investigation of Practices of the California Independent System Operator and the California Power Exchange

[Docket No. EL00–98–038]

Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services In the Western Systems Coordinating Council

[Docket No. EL01–68–003]

Take notice that on July 10, 2001, the California Independent System Operator Corporation (ISO) tendered for filing changes to the ISO Tariff to comply with the Commission's June 19, 2001, order in the above-captioned proceeding, San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, et al., 95 FERC ¶61,418 (2001). The ISO also tendered for filing changes to the ISO Tariff to comply with the Commission's May 25, 2001, order in the above-captioned proceeding, San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, et al., 95 FERC ¶61,275 (2001) and to reflect the rejection of Amendment No. 31 to the ISO Tariff in the Commission's November 1, 2000, order in the above-captioned proceeding, San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, et al., 93 FERC ¶61,121 (2000). The ISO states that this filing has been served upon all parties in this proceeding.

Comment date: August 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docketi" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,
Secretary.
[FR Doc. 01–18145 Filed 7–19–01; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7013–1]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed Partial Consent Decree, which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency ("EPA") on June 29, 2001, to address a lawsuit filed by the Natural Resources Defense Council, Environmental Defense Fund, Conservation Law Foundation, Clean Air Council, Natural Resources Council of Maine, and Sierra Club (collectively referred to as "NRDC"). This lawsuit, which was filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), claims EPA failed to meet a mandatory deadline under section 110(c) of the Act, 42 U.S.C. 7410(c), to promulgate federal implementation plans ("FIPs") establishing attainment demonstrations for certain ozone nonattainment areas classified as serious or severe and located in the eastern part of the United States and to impose sanctions in those areas. *NRDC* v. *EPA*, No. 1:99CV02976 (D.D.C.).

DATES: Written comments on the proposed consent decree must be received by August 20, 2001.

ADDRESSES: Written comments should be sent to Jan M. Tierney, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Copies of the proposed Partial Consent Decree are available from Phyllis J. Cochran, (202) 564–5566. A copy of the proposed Partial Consent Decree was lodged with the Clerk of the United States District Court for the District of Columbia on June 29, 2001.

SUPPLEMENTARY INFORMATION: In its complaint, NRDC alleges that EPA has a mandatory duty to promulgate FIPs and impose sanctions on 13 nonattainment areas located in 14 States and the District of Columbia. On June 12, 2000, EPA and NRDC filed with the court a Partial Consent Decree that addressed 9 of the 13 areas ("June 2000 Decree"). *See also* 64 FR 71453 (Dec. 21, 1999) (notice under 113(g) of Partial Consent Decree). At that time, three of the areas that were the subject of NRDC's complaint were not subject to the 1-hour ozone standard pursuant to a determination by EPA under 40 CFR 50.9(b) that the areas had attained the 1-hour standard and that the 1-hour standard no longer applied. *See* 64 FR 30911 (June 9, 1999). These three areas are the Boston-Lawrence-Worcester nonattainment area, located in Massachusetts and New Hampshire; the Portsmouth-Dover-Rochester nonattainment area, located in New Hampshire; and the Providence nonattainment area, Rhode Island. However, at the time the June 2000 Decree was entered by the court, EPA had proposed to reinstate the applicability of the 1-hour standard, including designations, in those areas. 64 FR 57424 (Oct. 25, 1999) (preamble language) and 64 FR 60477 (Nov. 5, 1999) (regulatory text). Paragraph 5a of the June 2000 Decree provided that the parties agreed to stay the case with respect to those three areas and provided that the stay would expire if any of certain events occurred, including a final action by EPA reinstating the 1-hour standard and the associated 1-hour designations in those areas. On July 20, 2000, EPA took final action reinstating the 1-hour standard and the associated designations in all areas for which EPA had previously determined that standard did not apply. Subsequently, the parties negotiated the proposed Partial Consent Decree to address NRDC's claims for these three areas.

The three areas addressed in the proposed Partial Consent Decree are all currently designated nonattainment but, based on monitoring data from 1998–2000, have air quality meeting the 1-hour standard. The proposed Partial Consent Decree provides that EPA will promulgate a full attainment demonstration FIP for each area if a violation of the 1-hour ozone standard occurs in the future in that area. See paragraphs 2 and 3. For the Boston and Portsmouth areas, EPA's obligation to propose a FIP would ripen in September of the year following the year in which the violation occurs and EPA's obligation to finalize a FIP would ripen 9 months later—the following June. Because EPA currently does not have an attainment demonstration submission for the Providence area, the proposed Partial Consent Decree provides an additional six months for EPA to propose a FIP. Thus, EPA's obligation to propose a FIP for Providence would ripen in March of the second year following the violation and EPA's obligation to finalize a FIP would ripen 9 months later—in December of that same year.

Paragraph 4 of the proposed Partial Consent Decree sets forth the three circumstances under which EPA's obligation to propose or promulgate a FIP will be extinguished: (1) The date that EPA fully approves an attainment demonstration SIP for an area; (2) the date EPA redesignates an area from nonattainment to attainment; or (3) once EPA has approved a SIP or promulgated a FIP under the NO_X SIP Call for each upwind state for an area, the latest source compliance date in an approved SIP or promulgated FIP.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Partial Consent Decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Partial Consent Decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the final Partial Consent Decree will be entered with the court and will establish deadlines for promulgation of FIPs consistent with the conditions of the Partial Consent Decree.

Dated: July 9, 2001.

John T. Hannon,

Acting Associate General Counsel.

[FR Doc. 01–18196 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6620–2]

Environmental Impact Statements and Regulations: Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities AT (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–E65056–FL Rating LO, Ocklawaha River Restoration Project, Continued Occupation of Florida National Forest Lands, Portions of Kirkpatrick Dam, Rodman Reservoir and Eureka Lock and Dam in Conjunction with Partial Restoration of the Ocklawaha River, Operation and Maintenance, Permit Issuance and Implementation, Marion and Putnam Counties, FL.

Summary: EPA has not identified any potential environmental impacts requiring substantive changes to the proposal. The temporary impacts caused by the release of nutrients should not be a factor in delaying project implementation.

ERP No. D–AFS–J65343–MT Rating EC2, North Elkhorns Vegetation Project, Elkhorn Wildlife Management Unit, Implementation, Strawberry Butte Area, Helena National Forest, Jefferson County MT.

Summary: EPA expressed environmental concerns with the limited range of alternatives evaluated and asked for additional explanation and additional alternatives analysis. Of the two action alternatives presented EPA favored logging during winter on snow to reduce erosion and sediment transport. EPA requests that the final EIS provide information regarding impacts to wetlands and air quality impacts to fully assess and mitigate all potential impacts.

ERP No. D–AFS–L65382–ID Rating NS, Meadow Face Stewardship Pilot Project, Implementation, Nez Perce National Forest, Clearwater Ranger District, Idaho County, ID.

Summary: EPA Region 10 used a screening tool to conduct a limited review of this action. Based upon this screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. D–BLM–K65340–NV Rating EC2, Reno Clay Plant Project, Construct and Operate an Open-Pit Clay Mine and Ore Processing Facility, Plan-of-Operations, Oil-Dri Corporation of Nevada, Hungry Valley, Washoe County, NV.

Summary: EPA expressed concerns regarding potential impacts to air and water quality, soils, vegetation, wildlife, and cultural resources; and recommended that the FEIS include additional information regarding these impacts, mitigation measures to reduce or offset impacts, and bonding.

ERP No. D–FRC–C05147–NY Rating EC2, Upper Hudson River Hydroelectric Project, Relicensing the E.J. West Project (FERC–No. 2318–002), Stewart Bridge Project (FERC–No. 2047–004), Hudson River Project (FERC–No. 2482–014) and Feeder Dam Hydroelectric Project (FERC–No. 2554–003), Saratoga, Fulton and Hamilton Counties, NY.

Summary: EPA expressed concerns regarding potential impacts to aquatic resources and wetlands. EPA also requested additional information on alternatives and the consultation process with tribal nations.

ERP No. D–HUD–K81026–CA Rating EC2, West Hollywood Gateway Project, Constructing from Santa Monica Boulevard, Romaine Street LaBrea Avenue and Formosa Avenue, Public/Private Partnership, City of West Hollywood, Los Angeles County, CA.

Summary: EPA expressed concerns, and requested additional information regarding: impacts to traffic and air quality in the region, proposed traffic mitigation measures and environmental justice impacts.

ERP No. D–USA–E11049–KY Rating EC1, U.S. Army Armor Center and Fort Knox Northern Training Complex, Construction and Operation of a Multi-Purpose Digital Training Ranger and a Series of Maneuver Areas, Drop and Landing Zones, Fort Knox, KY.

Summary: Environmental concerns result from off- and on-post impacts attendant to the increased intensity/duration of proposed training upgrades. Army will have to work with local entities to mitigate adverse effects on encroaching residential/commercial development.

ERP No. D2–AFS–J65143–00 Rating E02, Flat Canyon Federal Coal Lease Tract (UTU–77114), Application for Leasing, Manit-La Sal National Forest, Ferron-Price Ranger District, Sanpete and Emery Counties, UT.

Summary: EPA expressed environmental objections with the proposed coal mine expansion which is expected to adversely impact current water quality problems of high salinity, phosphorus and effluent toxicity. Depending on the selected discharge location, the expansion may expand the area of water quality problems into a relatively pristine watershed. Subsidence from the underground mine may also adversely affect fen wetlands and riparian habitat.

Final EISs

ERP No. F–AFS–F61020–MN Boundary Waters Canoe Area Wilderness Fuel Treatment, Implementation, Superior National Forest, Cook, Lake and St. Louis, MN.

Summary: The USFS addressed EPA's concerns in a clearly written FEIS. EPA concurs with the USFS selection of Modified Alternative B in implementing controlled burns in the blowdown area to reduce the risk of wildfires and protect public safety.

ERP No. F–AFS–J65324–WY State of Wyoming School Section 16 T.12N., R.83W., 6th P.M., Issuing a Forest Road Special-Use-Permit for Access, Medicine Bow-Routt National Forests, Brush Creek/Hayden Ranger District, Carbon County, WY.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–K65230–CA Fuels Reduction for Community Protection Phase 1 Project on the Six Rivers National Forest, Proposes to Reduce Fuels High Severity Burned Stands, Lower Trinity Ranger District, Humboldt and Trinity Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–K65359–00 Northern Sierra Amendment to the Toiyabe Land and Resource Management, To Unify and Revise Management Direction, Humboldt-Toiyabe National Forest, Carson Ranger District, Stanislaus National Forest, Lake Tahoe Basin Management Unit, Douglas and Washoe Counties, NV and Alpine and Toulomne Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65370–OR South Bend Weigh and Safety Station Establishment, Special Use Permit for Construction, Maintenance and Operation, Deschute National Forest Lands along US 97 near the Newberry

National Volcanic Monument, Deschutes County, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–K65209–00 Death Valley National Park General Management Plan, Implementation, Mojave Desert, Inyo and San Bernardino Counties, CA and Nye and Esmeralda Counties, NV.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–K65212–CA Mojave National Preserve General Management Plan, Implementation, San Bernardino County, CA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: July 17, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–18201 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6620–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency

Office of FederalActivities, General Information (202)564–7167 OR www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements filed July 9, 2001 Through July 13, 2001 pursuant to 40 CFR 1506.9.

EIS No. 010252, Final EIS, USA, AZ, Yuma Proving Ground Multipurpose Installation, Diversification of Mission and Changes to Land Use, NPDES General Permit and COE Section 404 Permit, Yuma and La Pas Counties, AZ, Wait Period Ends: August 20, 2001, Contact: Junior D. Kerns (520) 328–2148.

EIS No. 010254, Draft EIS, AFS, MT, Gold/Boulder/Sullivan (GBS), Implementation of Timber Harvest and Associated Activities Prescribed Burning, Kootenai National Forest, Rexford Ranger District, Lincoln County, MT, Comment Period Ends: September 4, 2001, Contact: Ron Komac (406) 296–2536.

EIS No. 010255, Final EIS, FRC, FL, MS, AL, Florida Gas Transmission (FGT) Phase V Expansion Project, FGT Natural Gas Pipeline and Associated Above Ground Facilities, Construction and Operation, Approvals and Permit Issuance, Several Counties of FL, AL and MS , Wait Period Ends: August 20, 2001, Contact: David Boergers (202) 208–2088.

EIS No. 010256, Draft EIS, COE, NJ, New Jersey Shore Protection Study, To Determine a Feasible Hurricane and Storm Damage Reduction Plan, between Manasquan Inlet to Barnegat Inlet, Boroughs of Point Pleasant Beach, Bay Head, Mantoloking Lavallette, Seaside Heights and Seaside Park, and Townships of Buck, Dover and Berkeley, NJ, Comment Period Ends: September 4, 2001, Contact: Beth Brandreth (215) 656–6558.

EIS No. 010258, Final EIS, GSA, DC, Bureau of Alcohol, Tobacco and Firearms National Headquarters Building, Site Acquisition, Design and Construction, Washington, D.C., Wait Period Ends: August 27, 2001, Contact: Dawud Abdur-Rahman (202) 260–3368.

EIS No. 010259, Draft EIS, GSA, MD, Suitland Federal Center, Construction and Operation of a 226-acre Federal Employment Center, Programmatic Development Plan and Phase I Implementation, Prince George's County, MD, Comment Period Ends: September 4, 2001, Contact: Jag Bhargava (202) 708–6944.

EIS No. 010260, SECOND FINAL SUPPLE, DOE, SC, Savannah River Site Salt Processing Alternatives, Evaluation for Separating High-Activity and Low-Activity Fractions of Liquid High-Level Radio-active Waste and Potential Environmental Impacts of Alternatives to the In-Tank-Precipitation Process (ITP), Aiken and Barnwell Counties, SC, Wait Period Ends: August 20, 2001, Contact: Andrew R. Grainger (800) 881–7292. This document is available on the Internet at tis.eh.doe.gov/nepa/docs/docs.htm.

EIS No. 010261, FINAL EIS, IBR, CA, Colusa Basin Drainage District, Developing an Integrated Resource Management Program for the Control of Flooding, Glenn, Colusa and Yolo Counties, CA, Wait Period Ends: August 20, 2001, Contact: Russ Smith (530) 275–1554.

Amended Notices

EIS No. 010153, Draft Supplement, BLM, MT, Zortman and Landusky Mines Reclamation Plan, Modifications and Mine Life Extensions, Updated Information To Analyze Additional Reclamation Alternatives, Approval of Mine Operation, Mine Reclamation and COE Section 404 Permit, Little Rocky Mountains, Philip County, MT, Comment Period Ends: August 9, 2001, Contact: Scott Haight (406) 538–1930. Revision of FR Notice Published on 5/11/2001: CEQ Review Period Ending on 7/9/2001 has been Extended to 8/9/2001.

EIS No. 010188, DRAFT EIS, AFS, MT, Burned Area Recovery, Proposal to Reduce Fuels, Improve Watershed Conditions and Reforest Burned Lands, Sula, Darby, West Fork and Stevensville Ranger Districts, Bitterroot National Forest, Ravalli County, MT , Comment Period Ends: July 31, 2001, Contact: Craig Bobzien (406) 363–7100. Revision of FR Notice Published on 6/1/2001: CEQ Review Period Ending 7/16/2001 has been Extended to 7/31/2001.

Dated: July 17, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–18202 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7015–5]

Integrated Risk Information System (IRIS); Notice; Request for Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; administrative changes in the Integrated Risk Information System.

SUMMARY: IRIS is an EPA data base that contains EPA scientific consensus positions on human health effects that may result from chronic exposure to chemical substances in the environment. In this action, EPA is announcing an upcoming change to the location and phone number of EPA's contractor-operated IRIS hotline and publically-accessible records center, and a redesign of the IRIS web site, available for public view and comment.

DATES: Comments should be submitted by September 18, 2001.

ADDRESSES: Comments on the redesigned web site should be made to the IRIS webmaster via the questionnaire on line at *www.epa.gov/iris/whatsnew.htm*. Comments on the web site may also be mailed to the IRIS Submission Desk, c/o Courtney R. Johnson, U.S. Environmental Protection Agency, (8601D), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information on the IRIS program, contact Amy Mills (Mail Code 8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or call

(202) 564–3204, or send electronic mail inquiries to *mills.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

IRIS is an EPA data base containing Agency consensus scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to chemical substances found in the environment. IRIS currently provides health effects information on over 500 specific chemical substances. A companion **Federal Register** notice today provides additional background on the IRIS program and data base, and requests public comment on which substances to add or update.

EPA has provided outreach to facilitate the use and understanding of the data base. These efforts include a telephone hotline (513–569–7254) which provides answers to public inquiries about access to IRIS, the content of specific IRIS health assessments, and risk assessment methodologies. EPA also operates a reading room (located in EPA's Andrew W. Breidenbach Environmental Research Center, 26 West Martin Luther King Dr., Cincinnati, OH) where the public may, by appointment, view background files supporting IRIS assessments. Further, EPA provides IRIS on the Internet for public access at *www.epa.gov/iris*.

Today's Actions

(1) EPA is moving the hotline function and reading room to the Washington, DC area. The hotline will be accessed via a new phone number, fax number, and email address. This information will be shown on the IRIS web site (*www.epa.gov/iris*) no later than September 30, 2001. The address of the new reading room will be provided concurrently on the IRIS web site.

(2) In response to user requests, EPA has undertaken a redesign of the IRIS web site. This change does not involve a change to the scientific content of IRIS; rather, it presents the data base in a more easily navigable and searchable format. The new redesign will be available by August 1, 2001, for public view and comment for 60 days. It will be accessible from the IRIS web site at www.epa.gov/iris. EPA invites IRIS users to visit the new site and provide feedback to several questions posted. After the test period ends and all comments are considered, EPA plans to replace the current web site with the redesigned site.

Dated: July 10, 2001.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 01–18197 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7015–6]

Integrated Risk Information System (IRIS); Notice; Request for Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for information on needs for health assessments on EPA's Integrated Risk Information System.

SUMMARY: IRIS is an EPA data base that contains EPA scientific consensus positions on human health effects that may result from chronic exposure to chemical substances in the environment. On February 22, 2001, EPA announced the 2001 IRIS agenda and solicited scientific information from the public for consideration in assessing health effects from specific chemical substances. Today, EPA is requesting information from the public to define needs for new and revised health assessments on IRIS in 2002–2005.

DATES: Information should be submitted by September 18, 2001.

ADDRESSES: Please send information in response to this notice to the IRIS Submission Desk, c/o Courtney R. Johnson, National Center for Environmental Assessment (8601D), U.S. Environmental Protection Agency, Washington, DC 20460. Alternatively, you may submit your response electronically to *IRIS.desk@epa.gov*. Electronic information must be submitted in WordPerfect or as an ASCII file. Information will also be accepted on 3.5" floppy disks. All information in electronic form must be identified as an IRIS Submission.

FOR FURTHER INFORMATION CONTACT: For general information on the IRIS program, contact Amy Mills, National Center for Environmental Assessment (Mail Code 8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or call (202) 564–3204, or send electronic mail inquiries to *mills.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

IRIS is an EPA data base containing Agency consensus scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to chemical substances found in the environment. IRIS currently provides health effects information on over 500 specific chemical substances.

IRIS contains substance-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, *i.e.*, hazard identification and dose-response evaluation. Combined with specific situational exposure assessment information, the summary health hazard information in IRIS may be used as a source in evaluating potential public health risks from environmental contaminants.

History of the IRIS Program

EPA began the IRIS program in 1985 to build consensus opinions across the Agency on the potential health effects of chemical substances of concern to Program Offices and Regional Offices. The IRIS program has continually provided toxicity values and carcinogenicity assessments for the hazard and dose-response components of risk assessment. IRIS information has been used by Agency regulatory offices and in site-specific risk assessments. States and other organizations have also chosen to adopt IRIS information in their risk-based decision-making.

In response to public interest in access to IRIS, EPA released IRIS to the public in 1988(53 FR 20162). In 1993, EPA requested public comment on peer review procedures for IRIS health assessments and on public involvement in IRIS assessment development and review (58 FR 11490). In 1995, EPA initiated the IRIS Pilot, whereby various improvements were tested including procedures for peer review, public involvement, and consensus review. Many of these procedures were then adopted for the permanent IRIS program (61 FR 14570). In 1996, EPA provided access to IRIS on EPA's Internet site, enabling easier access for the Agency and the public. In 1997, EPA made the Internet site the official repository for IRIS.

Between 1998 and 2001, EPA has implemented numerous improvements identified in the IRIS Pilot, including publishing an annual **Federal Register** document announcing the IRIS agenda for the year, and requesting scientific information from the public to consider in new assessments. During this period, EPA also initiated evaluations or re-evaluations of over 100 chemicals for the IRIS program. As the use and demand for the IRIS data base continues

to grow, EPA plans to continue updating older assessments and adding new ones.

Process for Building and Updating IRIS

EPA will continue building and updating the IRIS data base in 2002. The Agency recognizes that many of the assessments on IRIS may need updating to incorporate new scientific information and methodologies. Further, many additional substances may be candidates for adding to IRIS. However, due to limited resources in the Agency to address the spectrum of needs, EPA develops an annual list of priority substances for assessment development. Substances are chosen for one or more of the following reasons: (1) Agency statutory, regulatory, or program implementation need; (2) new scientific information or methodology is available that might significantly change current IRIS information; (3) interest to other levels of government or the public; and (4) most of the scientific assessment work has been completed while meeting other Agency requirements and only a modest additional effort will be needed to complete the review and documentation for IRIS. The annual agenda is then refined based on available staff and other resources to carry out the assessments.

Purpose of the Needs Assessment

EPA is responding to the U.S. Senate request that EPA solicit public input in defining needs for new and updated specific chemical substances on the IRIS data base. Senate Report 106–410 specifically states,

> The committee requests that EPA conduct needs assessments with public input to determine the need for increasing [this] annual rate of updates to existing IRIS files during 2002–2005, as well as the need to add new IRIS files for chemicals not now included.

Information submitted in response to this **Federal Register** document will be used to help plan the IRIS agenda for 2002–2005. Specifically, the Agency is seeking information addressing the following questions:

1. How do you/your organization use IRIS? What actions or decisions are based on information in IRIS?

2. What additional chemical substance assessments do you need on IRIS? For each, why is this assessment needed?

3. For existing chemical substance assessments on IRIS, which do you think are in greatest need of scientific update? What is the basis for identifying these assessments for update (*e.g.*, newer study available, newer methodology to apply)?

4. What additional types of substance-specific Agency consensus information would you like to have on IRIS? For example, EPA is considering adding consensus health assessments for exposures of less than chronic duration, such as acute and possibly other subchronic exposures. Would these new types of information be of value to you? If so, how important would this information be to you in comparison to having updated information on chronic health effects?

5. EPA is currently testing collaborative efforts with external parties on the development of assessments for IRIS (66 FR 11165). The purpose is to involve the scientific knowledge and capability of organizations outside of EPA to improve the quality of IRIS supporting documents. External parties may include other government agencies, industries, universities, professional organizations, and other non-governmental organizations. EPA will evaluate the efficiency of the process and quality of documents produced to determine if the collaborative program should be expanded. Do you favor EPA's collaboration with external parties as a means of developing assessments for IRIS? If so, how could this collaboration be conducted?

EPA will compile the information received from the public in response to this notice along with internal EPA assessments of need, and develop a summary document that will be available for viewing on the IRIS web site. EPA expects to complete the summary document in December 2001.

Dated: July 10, 2001.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 01–18198 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7015–4]

Beaches Environmental Assessment and Coastal Health Act; Announcement of Public Forums for Draft National Beach Guidance and Grant Performance Criteria for Recreation Waters

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing five public forums to assist the public in their review of the draft National Beach Guidance and Grant Performance Criteria for Recreation Waters and in preparing comments. EPA has developed and is requesting public comments on the draft Guidance, and the document describes specific performance criteria for grant applicants to meet to be awarded grants.

Beaches Environmental Assessment and Coastal Health Act (BEACH Act) signed into law on October 10, 2000, amends the Clean Water Act (CWA), to reduce the risk of disease to users of the Nation's recreational waters. The BEACH Act authorizes the EPA to publish performance criteria for monitoring and assessment of coastal recreation waters and the prompt notification of exceeding applicable water quality standards. The BEACH Act also requires EPA to develop the criteria in cooperation with appropriate Federal, State, tribal, and local officials and provide public notice and an opportunity for comment.

EPA is now encouraging all Federal, State, and local environmental and health officials, environmental organizations, and the public to attend the public forums and submit comments on the Guidance.

DATES: See **SUPPLEMENTARY INFORMATION** for dates of public forums.

ADDRESSES: A copy of the document can also be obtained by downloading the file located at *www.epa.gov/waterscience/beaches/grants* on the Internet. See **SUPPLEMENTAL INFORMATION** for locations of public forums.

FOR FURTHER INFORMATION CONTACT: Mimi Dannel, 202–260–1897.

SUPPLEMENTARY INFORMATION:

I. Guidance Document

What Is the Statutory Authority for the Guidance Document?

The statutory authority for BEACH Guidance Document is section 406(b) of the Clean Water Act as amended by the BEACH Act, Pub. L. No. 106–284, 114 Stat. 970 (2000). It provides in part: "The Administrator must publish performance criteria for monitoring and assessment of coastal recreation waters and the prompt notification of exceeding applicable water quality standards."

What Are the Major Components of the Guidance Document?

The document contains five chapters and accompanying appendices which provide both guidance and grant performance criteria. Chapter 1 explains the legislation and human health concerns with microbial contamination of recreation waters. Chapter 2 describes

the nine grant performance criteria. Chapter 3 introduces the risk-based beach evaluation and classification process to prioritize waters. Chapter 4 describes beach monitoring and beach assessment for sampling and detecting bacteria, and Chapter 5 explains the public notification and risk communication to inform the public about risks when swimming in bacterially polluted water.

How Can I Obtain a Copy of the Document?

A copy of the document can also be obtained by downloading the file located at *www.epa.gov/waterscience/beaches/grants* on the Internet.

II. Public Forums

What Is the Purpose of the Public Forums?

The public forums will assist the stakeholders and the public in their review of the draft Guidance and in preparing comments to submit to EPA.

Will Formal Comments on the Guidance Be Taken at the Public Forums?

No. The public forums are not intended to be a mechanism to submit formal comments, but rather an information session instructing how to submit comments. EPA will later announce in the **Federal Register** the availability of the document, and will at that time announce a formal comment period.

Who Should Attend?

All levels of beach water quality managers and public health officials, as well as the general public should attend.

How Do I Register for the Public Forums?

The public forums are free, but registration is requested/appreciated due to seating. To register for the public forums, visit *www.epa.gov/waterscience/beaches/meeting.html* on the Internet.

When and Where Will the Public Forums Be Held?

The dates and cities of the public forums are:

1. July 31, 2001, 8:30 a.m. to 5:00 p.m., Wilmington, DE, Wyndham Garden Hotel, 700 King St.,Wilmington, DE 19801; (302) 655–0400, 1–800–996–3426.

2. August 3, 2001, 8:30 a.m. to 5:00 p.m., San Diego, CA, Town and Country Resort & Convention Center, 500 Hotel Circle N., San Diego, CA 92108; (619) 291–7131, 1–800–772–8527.3. August 21, 2001, 8:30 a.m. to 5:00 p.m., Jacksonville, FL, Radisson Riverwalk Hotel, 1515 Prudential Drive, Jacksonville, FL 32207; (904) 396–5100, 1–800–333–3333.

4. August 23, 2001, 8:30 a.m. to 5:00 p.m., New Orleans, LA, Le Meridien New Orleans, 614 Canal Street, New Orleans, LA 70130–9946; (504) 525–6500, 1–800–543–4300.

5. August 23, 2001, 8:30 a.m. to 5:00 p.m., Chicago, IL, The Ambassador West, 1300 N State Pkwy, Chicago, IL 60610; (312) 787–3700, 1–800–996–3426.

Dated: July 13, 2001.

Louise P. Wise,

Acting Director, Office of Science and Technology.

[FR Doc. 01–18195 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30119; FRL–6789–7]

Triphenyltin Hydroxide (TPTH); Notice of Final Determination for Termination of the TPTH Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In a **Federal Register** notice published October 20, 2000, EPA proposed to terminate the special review of the pesticide active ingredient triphenyltin hydroxide (TPTH) based on the determination that the benefits of use outweigh the risks. The Agency solicited public comments for a 30–day period. There were no comments submitted, and the Agency believes that the benefits of TPTH use continue to outweigh the risks. Thus, with this notice, EPA is announcing that it has terminated the TPTH Special Review.

DATES: This decision is effective on August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Wilhelmena Livingston, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8025; fax number: (703) 308–8005; e-mail address: livingston.wilhelmena@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This action may be of particular interest to pesticide registrants with registered products which contain TPTH as an active ingredient, or to agricultural producers or mixers, loaders, or applicators using products containing TPTH as an active ingredient. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, related documents for TPTH may be accessed through the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/reregistration/status.htm .

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30119. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period,and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Response to Comments Submitted on EPA's Proposed Determination to Terminate Special Review

No comments were received during the 30–day public comment period.

III. EPA's Decision Regarding the Special Review

Special Review is a decisionmaking process designed to help EPA determine whether the Agency should initiate formal procedures, such as involuntary cancellation or suspension of a pesticide registration or the imposition of modified terms and conditions of registration because use of the pesticide may cause unreasonable adverse effects on the environment (40 CFR 154.1(a)). This notice concludes EPA's administrative special review of the risks and benefits of TPTH, which was initiated in the **Federal Register** notice of January 9, 1985 (50 FR 1107). In the October 20, 2000 **Federal Register** notice (65 FR 204) (FRL–6496–3), EPA announced its intent to terminate the TPTH Special Review. As stated in that document, based on its risk and benefits assessments, EPA has concluded that the benefits provided from the continued existing uses of TPTH outweigh the risks. There were no comments received in response to the October 20, 2000, proposal to terminate the TPTH Special Review. Accordingly, for the reasons set forth in the October 20, 2000 notice, EPA is announcing that it has terminated the TPTH Special Review.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 11, 2001.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 01–18200 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7015–1]

Methods for Assessing the Chronic Toxicity of Marine and Estuarine Sediment-Associated Contaminants With the Amphipod Leptocheirus plumulosus—First Edition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Methods for Assessing the Chronic Toxicity of Marine and Estuarine Sediment-associated Contaminants with the Amphipod *Leptocheirus plumulosus*—First Edition.

SUMMARY: The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) are publishing a technical manual that describes procedures for testing an estuarine organism in the laboratory to evaluate the potential toxicity of contaminants in whole sediments. This document supplements (but does not replace) procedures originally published in 1994 (EPA/600/6–94/025), for measuring acute sediment toxicity in marine and estuarine sediments. This document includes a new method for evaluating sublethal effects of sediment-associated contaminants utilizing long-term sediment exposures.

Availability of Document

Copies of the complete document, titled Methods for Assessing the Chronic Toxicity of Marine and Estuarine Sediment-associated Contaminants with the Amphipod *Leptocheirus plumulosus*—First Edition (EPA/600/R–01/020) can be obtained from the National Service Center for Environmental Publications, P.O. Box 42419, Cincinnati, OH., 45242 by phone at 1–800–490–9198 or on their web site at *www.epa.gov/ncepihom/orderpub.html*. A pdf version of this document will be made available to be viewed or downloaded from the Office of Science and Technology's home page on the Internet at *www.epa.gov/OST*.

FOR FURTHER INFORMATION CONTACT: D. Scott Ireland, EPA, Standards and Health Protection Division (4305), Office of Science and Technology, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or call (202) 260–6091; fax (202) 260–9830; or e-mail *ireland.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

BACKGROUND INFORMATION Sediment contamination is a widespread environmental problem that can potentially pose a threat to a variety of aquatic ecosystems. Sediment functions as a reservoir for common contaminants such as pesticides, herbicides, polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons (PAHs), and metals such as lead, mercury, and arsenic.

This technical manual describes procedures for testing an estuarine organism in the laboratory to evaluate the potential toxicity of contaminants in whole sediments. Sediments may be collected from the field or spiked with compounds in the laboratory. Toxicity methods are outlined for the estuarine amphipod, *Leptocheirus plumulosus*. Toxicity tests with this amphipod are conducted for 28 days in 1–L chambers containing 175 mL of sediment and abut 725 mL of overlying water. Overlying water is renewed three times per week and test organisms are fed during the toxicity tests. The endpoints of the 28 day test with *L. plumulosus* are survival, growth, and reproduction. This 28 day sediment toxicity test with *L. plumulosus* is recommended for use with sediment with varying levels of salinity from oligohaline to fully marine environments (from 1‰ to 35‰ salinity). The long-term sediment exposures with *L. plumulosus* are started with neonate (newborn) amphipods. After termination of the 28 day sediment exposure, the offspring are counted and the dry-weight or length of the adult amphipods is measured. The use of this uniform sediment testing procedure is expected to increase data accuracy and precision, facilitate test replication, and increase the comparative value of test results. This method provides a basis for consistent cross-program decision making within the EPA. Each EPA program will, however, retain the flexibility of deciding when and how to use this test and whether identified risks would trigger actions. This method also provides a consistent testing protocol for other Federal agencies, States, and Tribes. This technical manual has no immediate or direct regulatory consequence. It does not impose legally binding requirements, and may not apply to a particular situation depending on the circumstances. The EPA or USACE may change this technical manual in the future.

This technical manual has been subjected to review by EPA's National Health and Environmental Effects Research Laboratory and Office of Science and Technology and approved for publication. Mention of trade names or commercial products does not constitute endorsement by the Agency or recommendation for use.

Dated: July 3, 2001.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 01–18194 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00646A; FRL–6769–1]

Pesticides; Final Guidance for Pesticide Registrants on PesticideResistance Management Labeling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency is announcing the availability of a final Pesticide Registration Notice PR-Notice titled "Guidance for Pesticide Registrants on Pesticide Resistance Management Labeling." This PR-Notice was issued by the Agency on June 19, 2001, and is identified as PR-Notice 2001-OPP–00646A. PR-Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular PR-Notice provides guidance to registrants concerning voluntary pesticide resistance management labeling based on mode/target site of action for pesticide products that are intended for general agricultural use. If adopted on a voluntary basis by registrants, this effort will help reduce the development of pesticide resistance based on mode/target site of action and lead to better environmental protection. This approach is the result of a joint effort of the U.S. and Canada under the North American Free Trade Agreement (NAFTA). The guidance provides an opportunity for consistency in resistance management labeling being considered for approval in any or all of the countries involved in NAFTA. This PR-Notice includes guidance to registrants concerning schemes of classification of pesticides according to their mode/target site of action (Appendices I–III), a recommended standard presentation and format for showing group identification symbols on end-use product labels, and examples of resistance management labeling statements.

FOR FURTHER INFORMATION CONTACT: Sharlene R. Matten (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0514; fax number: (703) 308–7026; e-mail address: matten.sharlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are required to register pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice,consult the person listed under **FOR FURTHER INFORMATIONCONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and the PR Notice from the Office of Pesticide Programs Home Page at http://www.epa.gov/pesticides/. You can also go directly to the listings from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register** —Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/ or go directly to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides, and select "PR Notices".

2. *Fax-on-demand.* You may request a faxed copy of thePesticide Registration (PR) Notice titled "Pesticide Resistance Management Labeling," by using a faxphone to call (202) 401–0527 and selecting item (6138). You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00646A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes thedocuments that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Guidance Does this PR Notice Provide?

The United States Environmental Protection Agency (EPA) and PestManagement Regulatory Agency of Canada (PMRA) are committed to long-term pest resistance management through pesticide resistance management and alternative pest management strategies. Under the auspices of the North American Free Trade Agreement (NAFTA), the U.S. and Canada have joined together to develop and publish guidelines for purely voluntary pesticide resistance management labeling for implementation in North America. The development of these guidelines is part of the activities of the Risk Reduction Subcommittee of the NAFTA Technical Working Group on Pesticides. A more nearly uniform approach across North America can help reduce the development of pesticide resistance and support joint registration decisions by providing consistency in resistance management labeling being considered for approval in any or all of the NAFTA countries. To implement this NAFTA initiative, the Office of Pesticide Programs (OPP) of EPA has developed a Pesticide Registration (PR) Notice describing the voluntary pesticide resistance management labeling guidelines based on mode/target site of action for agricultural uses of herbicides, fungicides, bactericides, insecticides, and acaricides. Mode/target site of action refers to the biochemical mechanism by which the pesticide acts on the pest and should not be interpreted to imply that these chemicals share a common mechanism for purposes of cumulative human health risk assessment under the Federal Food Drug and Cosmetic Act (see EPA's document "Guidance for identifying pesticide chemicals and other substances that have a common mechanism of toxicity" located at http://www.epa.gov/fedrgstr/EPA-PEST/1999/February/Day-05/6055.pdf).

The final PR Notice describes schemes of classification of pesticides according to their mode/target site of action (Appendices I–III) provides a recommended standard presentation and format for showing group identification symbols on end-use

product labels, and provides examples of resistance management labeling. EPA believes that this approach to resistance management is sound and would be highly beneficial to pesticide manufacturers and pesticide users. EPA is hopeful that registrants will embrace this approach and work with EPA to implement it for all relevant products. EPA believes this approach is an important element of international harmonization.

B. PR Notices are Guidance Documents

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision-makers and to pesticide registrants. This notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may always assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation. For the matters covered by this particular PR Notice, EPA also does not expect to require that any registrant adopt the labeling set forth here as part of any individual licensing decision or action. However, if any registrant seeks to use the language set forth here in the manner and circumstances described here, EPA does generally expect to find such language acceptable in any licensing proceeding.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 19, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs

[FR Doc. 01–18199 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7016–2]

Proposed CERCLA Administrative Cost Recovery Settlement; Budd Brothers, d/b/a/ Century 21 Paint, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Century 21 Paint, Inc. site in Mahoning County, Austintown, Ohio with the following settling party: Budd Brothers, d/b/a Century 21 Paint, Inc. The settlement requires the settling party to pay $120,000 to the Hazardous Substance Superfund. The conditions of the Agreement may be summarized as follows: Within 30 days of the effective date of this Agreement, the settling party will make an initial down payment of $50,000. The settling party agrees to pay the outstanding balance of $70,000 in three (3) equal installments, plus accrued interest on the unpaid balance, over a period of eighteen (18) months. The interest rate on the outstanding balance shall be the interest rate established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. 9607(a). The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. EPA Records Center Room 714, 77 West Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before August 20, 2001.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Records Center Room 714, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from the Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604. Comments should reference the Century 21 Paint, Inc. site in Mahoning County, Austintown, Ohio and EPA Docket No. V–W–01–C–650 and should be addressed to Ms. Joanna Glowacki, Associate Regional Counsel, U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Joanna Glowacki, Associate Regional Counsel, U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604, at (312) 353–3757.

Dated: July 3, 2001.

William E. Muno,

Director, Superfund Division, Region 5, Environmental Protection Agency.

[FR Doc. 01–18192 Filed 7–19–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 01–1647]

The Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice; comments requested.

SUMMARY: In this document, the Commission invites interested parties to update the record pertaining to petitions for reconsideration filed with respect to the rules the Commission adopted in the *Universal Service First Report and Order*.

DATES: Comments are due on or before August 20, 2001. Reply comments are due on or before September 4, 2001.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Sheryl Todd, Management Analyst, or Richard Smith, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On May 8, 1997, the Commission released the *Universal Service First Report and Order*, 62 FR 32862, May 8, 1997, as required by the 1996 Telecommunications Act. Many parties filed petitions for reconsideration of that order. Since then, there has been substantial litigation concerning many of the rules adopted in the *Universal Service First Report and Order*. As a result, many of the issues raised in the petitions for reconsideration may no longer remain in dispute.

The Commission has refrained from considering many of the petitions for reconsideration of the rules adopted in the *Universal Service First Report and Order* until most of the litigated issues were resolved. Now that issues in dispute have narrowed, the Commission will proceed to address petitions for reconsideration relating to rules that are not the subject of pending litigation.

Because these petitions were filed several years ago, the passage of time and intervening developments may have

rendered the records developed by those petitions stale. For example, in addition to the litigation mentioned, the Commission has issued several orders on reconsideration of the *Universal Service First Report and Order*. Moreover, some issues raised in petitions for reconsideration may have become moot or irrelevant in light of intervening events.

For these reasons, the Bureau requests that parties that filed petitions for reconsideration of the *Universal Service First Report and Order* in 1997 now file a supplemental notice indicating which of such issues they still wish to be reconsidered. In addition, parties may refresh the record with any new information or arguments they believe to be relevant to deciding such issues. To the extent parties do not indicate an intent to pursue their respective petitions for reconsideration, the Commission will deem such petitions withdrawn and they will be dismissed. The refreshed record will enable the Commission to undertake appropriate reconsideration of its universal service rules.

Pursuant to §§ 1.415 an 1.419 of the Commission's rules, interested parties may file comments as follows: Comments are due August 20, 2001, and reply comments are due September 4, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of the electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12 Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–A422, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc. 1231 20th Street, NW., Washington, DC 20037.

Pursuant to § 1.1206 of the Commission's Rules, this proceeding will continue to be conducted as a permit-but-disclose proceeding in which *ex-parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Katherine L. Schroder,

Division Chief, Accounting Policy Division.

[FR Doc. 01–18159 Filed 7–19–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 2001.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Gideon Bankshares Company, Dexter, Missouri; to engage *de novo* through its subsidiary, First Commercial Investment Center, Dexter, Missouri, in retail securities brokerage activities, pursuant to § 225.28(b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, July 17, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–18179 Filed 7–19–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. *HHS Procurement:* Solicitations and Contracts—0990–0115—Extension—This clearance request covers the general information collection requirements of the procurement process such as technical proposals and statements of work. Respondents: State, local or Tribal governments, businesses or other for-profit, non-profit institutions, small businesses. Annual Number of Respondents: 4,269; Frequency of Response: one time; Average Burden per Response: 231.03 hours; Total Burden: 986,280.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designed above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC 20201. Written comments should be received within 30 days of this notice.

Dated: June 19, 2001.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 01–18135 Filed 7–19–01; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Announcement of Tribal Consultation With American Indian/Alaskan Native Tribal Representatives

The Department of Health and Human Services policy on consultation with American Indian/Alaska Native (AI/AN) Governments and Organizations calls for each Operating Division to convene a meeting with AI/AN Tribal Representatives.

In accordance with Departmental policy on Tribal Consultation with AI/AN Governments and Organizations, the Administration on Aging will be hosting a one-day session to give AI/AN Tribal Representatives and their Title VI Director an opportunity to discuss Indian elder issues related to (1) infrastructure; (2) long term care; and (3) the Older Americans Act Regulations. Participants will have an opportunity to present their recommendations to the Assistant Secretary for Aging.

This Tribal Listening Session will be held from 9 am to 4 pm on August 15, 2001 at: Department of Health and Human Services; Hubert Humphrey Building; 200 Independence Avenue, SW., Washington, DC 20201.

A final agenda will be distributed at the meeting.

To register and for additional information please contact: M. Yvonne Jackson, Ph.D., Director, Office for American Indian, Alaskan Native and Native Hawaiian Programs, Administration on Aging, 330 Independence Ave., SW., Washington, DC 20201, (202) 619–2713, Email: *Yvonne.Jackson@aoa.gov.*

In accordance with the provisions of the Americans with Disabilities Act (ADA), it is requested that any special assistance requirements be requested within seventy-two (72) hours of the scheduled Tribal Listening Session.

Purpose: In accordance with Departmental policy on consultation with (AI/AN) Governments and Organizations, AoA will host this meeting to give AI/AN Tribal Representatives an opportunity to discuss the above-mentioned areas and develop recommendations to present to the Assistant Secretary for Aging.

Date and Time: August 15, 2001, 9 am–4 pm est.

Matters to be Discussed: The agenda will include opening remarks and breakout sessions to discuss Infrastructure and Long Term Care, a general session to share results from the breakout sessions, open mike to discuss the Older Americans Act Regulations and closing remarks.

If you are unable to attend but wish to provide comments or Tribal Resolutions, these may be faxed to M. Yvonne Jackson's attention at (202) 260–1012.

Dated: July 16, 2001.

Norman L. Thompson,

Acting Principal Deputy Assistant Secretary for Aging.

[FR Doc. 01–18136 Filed 7–19–01; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01147]

Cooperative Agreement With the World Health Organization/Regional Office for Africa (WHO/AFRO); Notice of the Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), National Center for HIV/STD/TB Prevention (NCHSTP), announces the availability of funds for fiscal year (FY) 2001 for a sole source cooperative agreement with the World Health Organization/Regional Office for Africa (WHO/AFRO).

The purpose of this agreement is to help support implementation of the Leadership and Investment in Fighting an Epidemic (LIFE) Initiative, a United States Government program that seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia and the Americas. CDC, through the LIFE Initiative, focuses on strengthening the capacity of national AIDS control programs in the areas of (1) HIV primary prevention, (2) HIV care, support, and treatment, and (3) capacity and infrastructure development, especially for surveillance. Countries targeted represent those with the most severe epidemic and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. government agencies are already active. An updated list of partner countries for the CDC-LIFE Initiative is available at *http://www.cdc.gov/nchstp/od/gap/default.htm.*

This agreement supports a framework of interventions, grounded in a series of goals and objectives consistent with those established for the international community by the Joint United Nations Programme on AIDS (UNAIDS) in support of the International Partnership Against AIDS in Africa (IPAA).

According to recent estimates from UNAIDS and WHO, 36.4 million adults and children were living with HIV by the end of 2000. Of the total estimate, approximately 25.3 million (69 percent of the total world-wide) adults and children were living with AIDS in sub-Saharan Africa alone. As a key partner in the U.S. Government's LIFE Initiative, CDC, through its Global AIDS Program (GAP), is working in a collaborative manner with national governments, USAID and other Federal agencies, and other international donor agency partners to develop programs of assistance to address the HIV/AIDS epidemic in LIFE Initiative countries. CDC is establishing partnership and support relationships primarily with national governments in highly affected countries, and with a number of other partner organizations to support country-level action.

B. Eligible Applicants

Assistance will be provided only to the World Health Organization/Regional Office for Africa (WHO/AFRO) in support of LIFE Initiative activities in sub-Saharan Africa. No other applications will be solicited.

WHO's Regional Office for Africa is the most appropriate and qualified agency to conduct a specific set of activities supportive of CDC's LIFE Initiative-related assistance to countries in sub-Saharan Africa because:

1. WHO/AFRO covers the region of the world most heavily impacted by the HIV/AIDS epidemic and is both chartered and uniquely positioned to assist national AIDS control programs and other partners to strengthen national health sector responses to HIV/AIDS.

2. WHO, through its regional office, is a leading partner within the International Partnership Against HIV/AIDS (IPAA) in Africa, an international umbrella effort to increase support and visibility for a multi-lateral emergency response to the AIDS epidemic in Africa. The LIFE Initiative is a key supporter of the IPAA.

3. Through decisions and resolutions of the WHO Regional Committee for Africa, the WHO Executive Board and the World Health Assembly, WHO/AFRO's Regional Programme on AIDS (RPA) has been called upon to accelerate its support to the regional

response. The Strategic Plan for Scaling Up WHO/AFRO's Support to Countries outlines RPA's planned approaches to accelerating support to countries. Planned approaches are all within the context of the IPAA and consistent with the overall spirit of the LIFE Initiative.

4. The focus of action for CDC's requested support from WHO/AFRO is in regional policy setting, information sharing and regional-level aggregation and interpretation of health data related to surveillance, prevention and care for HIV/AIDS within the region. In this sense, WHO/AFRO is unique in that it is the sole health sector policy-setting organization that includes all sub-Saharan African countries as member countries within one organization. WHO also maintains a network of country offices and WHO Coordinating Centres to serve as critical links for ensuring country access to available technical resources, information and coordination.

C. Availability of Funds

Approximately $1,000,000 is available in FY 2001 to fund this project. It is anticipated that the award will begin on or about September 30, 2001 and will be made for a 12-month budget period within a project period of up to five years. Annual funding estimates may vary and are subject to change.Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Use of Funds

General Use

Funds may be used for: (a) Establishing strategies, policies and guidelines for health sector responses to the HIV/AIDS epidemic in Africa in areas such as surveillance, laboratory, care and prevention. (b) Conducting meetings and other relevant activities that contribute to the development, dissemination and evaluation of strategies, policies and guidelines. (c) Aggregating and disseminating information, strategies, policies, guidelines and training materials pertinent to HIV/AIDS and HIV-related conditions, including internet-based and other tools for efficient cataloguing and disseminating such information, and support for increasing national capacities to retrieve such information from such systems. (d) Building capacity within Ministries of Health, National AIDS Councils, and similar key national institutions. (e) Supporting key networks within the region to lead evidence-based, improved health sector practices relevant to HIV/AIDS in Africa (such as international networks within Africa to provide training in HIV quality of care on a national or subregional basis).

General Non-Use

Funds received from this announcement will not be used for capital expenditures such as the purchase of off-road and multi-passenger vehicles, large volume (greater than 50) purchase of computers and data storage systems, space renovations and other significant improvements to physical environments where activities are carried out.

Specific Non-Use

Funds received from this announcement will not be used for the direct treatment of established HIV infection, occupational exposures, and non-occupational exposures and will not be used for the direct purchase of equipment and reagents to conduct hospital-based laboratory monitoring for patient care or confirmatory tests. Funds will not be used for staff positions within CDC or WHO country offices.

Antiretroviral Drugs

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in PMTCT cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Needle Exchange

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address (*http://www.cdc.gov*). Scroll down the page, then click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Dorimar Rosado, Grants Management Specialist, Centers for Disease Control and Prevention (CDC), Procurement and Grants Office, Room 3000, 2920 Brandywine Road, Mailstop E–15, Atlanta, GA 30341–4146, Telephone: 770–488–2782, E-mail: *dpr7@cdc.gov*.

For program technical assistance, contact: Michael St. Louis, Global AIDS Program (GAP), Zimbabwe Country Team, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 38 Samora Machel Ave., 2nd Floor, Harare, Zimbabwe, Telephone number: 263–11–613–193, Email address: *stlouism@zimcdc.co.zw*.

Dated: July 16, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18158 Filed 7–19–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01187]

Human Immunodeficiency Virus (HIV) Prevention Intervention Research Studies—Routinely Recommending HIV and Sexually Transmitted Disease (STD) Counseling and Testing in Ambulatory Care Clinics and Emergency Rooms; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001

funds for a cooperative agreement program to reduce HIV incidence through prevention intervention research studies that routinely recommend HIV and STD counseling and testing in ambulatory care clinics and emergency rooms. This program addresses the "Healthy People 2010" focus area of HIV.

The purpose of this activity is to study the outcome of routinely recommending HIV counseling and testing and STD screening in ambulatory care clinics and emergency rooms.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, small, minority, women-owned businesses.

Note: Title 2 of the United States Code, chapter 26, section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $600,000 is available in FY 2001 to fund approximately two to three awards. It is expected that the average award will be $200,000, ranging from $150,000 to $250,000. It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to supplant State or local funds available for HIV Prevention. Funds may not be used to provide direct medical care or prevention case management.

Funding Preference

Funding preference may be given to achieve geographical diversity.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Review existing information, research study protocols, and data collection forms to build on existing knowledge and to establish the basis for the application.

b. Develop a research protocol and plans for conducting this research, with appropriate participation of State and local health departments, hospitals and other public and private organizations; professional associations, community groups and organizations, especially those with a racial and ethnic minority membership and focus; HIV/AIDS service organizations; and organizations that serve persons with HIV disease, STD, or AIDS.

c. Establish procedures to maintain the rights and confidentiality of all study participants. Prior to implementation, this study must be submitted to the local and CDC Institutional Review Boards (IRBs) for review and approval or deferral. The IRB review at each cooperating institution will be done by an Office for Human Research Protections (OHRP)-approved IRB with either a single, multiple, or federal-wide project assurance.

d. Identify, recruit, obtain informed consent (when appropriate), enroll, and follow an adequate number of study participants as determined by study protocol and the program requirements.

e. Perform testing for chlamydia, gonorrhea and HIV.

f. Perform data analysis as determined in the study protocol.

g. Disseminate the findings.

2. CDC Activities

a. Provide technical assistance, if requested, in the design and conduct of the research.

b. The CDC IRB will review and approve each protocol initially and on at least an annual basis until the research project is completed.

c. As needed, assist in designing a data management system and data analysis.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to follow them in laying out your program plan. The narrative should be no more than 25 pages double-spaced, printed on one side, with one inch margins, and unreduced font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

On or before August 30, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the Special Emphasis Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late: Applications which do not meet the criteria in 1. or 2. above will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Objectives (10 points):

To the degree to which the applicant includes: (1) A detailed review of the scientific literature pertinent to testing in ambulatory care clinics and emergency rooms; (2) clearly stated goals and objectives for the research; and (3) a description of how the intervention would impact HIV and STD prevention in the community.

2. Site Selection (15 points)

The extent to which the application includes a description of: (1) The

current magnitude and characteristics of the HIV epidemic; (2) STD disease burden; (3) the number of persons served by the clinics; and (4) the expected number of newly-identified HIV infections that will be detected. Letters of support from cooperating organizations should be included which clearly describe the nature and extent of such cooperation.

3. Methods (30 points)

To the extent the application describes the potential intervention and how it might impact on HIV and STD incidence in the study area. It should specify potential barriers to implementing the intervention and how they will be overcome. The methods for assessing the increase in number of persons tested, as well as the number of infected persons identified and successfully referred for treatment, should also be addressed. In addition, applications will be evaluated on the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

4. Research Capacity (20 points)

The extent to which the application describes the capacity and experience of the research team which includes curriculum vitae and position descriptions for key staff. The percentage-time commitments, duties, and responsibilities of project personnel and involvement of state and local health department personnel should be sufficient to operationalize the proposed methodology. Letters of support from key collaborators, community groups, State and local health departments, should be included. The letters of support must include a brief description of the specific support to be provided, and should be limited to three pages each. The application should document that there is sufficient space available in the ambulatory care clinic or emergency room for the addition of the testing program. The application should also provide evidence that at least 500 persons per year visit the ambulatory care facility or emergency room, many of whom may be HIV-infected and who do not know they are HIV-infected. The application should demonstrate the applicant's ability to do testing for chlamydia, gonorrhea, and HIV, either in house or through contractual services.

5. Sustainability of the intervention (15 points)

Strength of plans, time-lines, and objectives for how project will be sustained.

6. Evaluation Plan (10 points)

Appropriateness and comprehensiveness of: (a) The schedule for accomplishing the activities of the research; (b) an evaluation plan that identifies methods and instruments for evaluating progress in implementing the research objectives; and (c) a proposal to complete and submit for publication, a report of research findings.

7. Budget (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intent of the announcement.

8. Human Subjects (not scored)

Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks are so inadequate as to make the entire application unacceptable.)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original and two copies of:

1. Annual progress reports to be submitted with subsequent continuation applications;

2. Financial status report, no more than 90 days after the end of the budget period;

3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I and Attachment II of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act sections 317 (42 U.S.C. 241(a) and 247b); 301 (42 U.S.C. 241); and 311 (42 U.S.C. 243), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address *http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documentation, business management technical assistance may be obtained from: Brenda Hayes, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Mailstop E–15, Atlanta, GA 30341–4146, Telephone: (770) 488–2741, Email address: *bkh4@cdc.gov*

For program technical assistance, contact: Cassandra Walker, MPH, Acting Deputy Chief Prevention Services Research Branch, Division of HIV/AIDS Prevention, Surveillance & Epidemiology National Center for HIV, STD, TB Prevention Centers for Disease Control and Prevention 1600 Clifton Road, Mailstop E–46, Atlanta, GA 30333, Telephone Number: (404) 639–6191, Email address: *cwalker5@cdc.gov*

Dated: July 13, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18047 Filed 7–19–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01168]

Human Immunodeficiency Virus (HIV) Prevention Intervention Research Studies—Social and Environmental Interventions to Prevent HIV; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for social and environmental interventions to prevent HIV. This program addresses the "Healthy People 2010" focus area of Human Immunodeficiency Virus (HIV).

The purpose of the program is to design and implement social and environmental interventions to reduce the risk of HIV transmission.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, small, minority, women-owned businesses.

Note: Title 2 of the United States Code, chapter 26, section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $400,000 is available in FY 2001 to fund approximately two awards. It is expected that the average award will be $200,000, ranging from $150,000 to $250,000.

It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to supplant State or local funds available for HIV Prevention. Funds may not be used to provide direct medical care or prevention case management.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2.(CDC Activities).

1. Recipient Activities

a. Develop a research protocol and plans for conducting this research with appropriate participation of State and local health departments; professional associations, community groups and organizations, especially those with a racial and ethnic minority membership and focus; HIV/AIDS service organizations; and organizations that serve persons increased risk of HIV/AIDS.

b. Promote the development and evaluation of social and environmental interventions for HIV prevention by providing data and ongoing assistance to community planning groups; by disseminating data through publications and presentations; by participating in project planning and implementation meetings; and by reporting ways in which the data have been used to promote public health.

c. Establish procedures to maintain the rights and confidentiality of all study participants. Prior to implementation, this study must be submitted to the local and CDC Institutional Review Boards (IRBs) for review and approval or deferral.

d. Review existing information, research study protocols, and data collection forms.

e. In collaboration with the community, identify opportunities and needs for interventions; assess the acceptability and feasibility of identified interventions; estimate the potential effectiveness of the interventions in preventing infection and disease.

f. Implement the intervention and assess process outcomes.

g. Identify, recruit, obtain informed consent (when appropriate), enroll, and follow an adequate number of study participants as determined by study protocol and the program requirements.

h. Perform data analysis as determined in the study protocol.

2. CDC Activities

a. Provide technical assistance, as needed, in the design and conduct of the research.

b. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. As needed, assist in designing a data management system.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to follow them in laying out your program plan. The narrative should be no more than 25 pages double-spaced, printed on one side, with one inch margins, and unreduced font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before August 30, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date;

2. Sent on or before the deadline date and received in time for submission to the Special Emphasis Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late: Applications which do not meet the criteria in 1. or 2. above will not be considered and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Objectives (10 points)

The extent to which the application includes a detailed review of the scientific literature pertinent to the study being proposed, with evidence for the relationship of social and environmental factors to the incidence of HIV. This literature review and a review of conditions in the study community should suggest specific research questions that will guide the research. The extent to which the goals and objectives for the research are clearly stated along with how the intervention would impact one of the underlying factors determining HIV incidence in the community.

2. Site Selection (15 points)

The extent to which the application includes a description of the size and characteristics of the communities proposed for study. The extent to which the application describes the prevalence and estimated incidence of HIV infection in the study community. Includes age, gender, race/ethnicity, and HIV-risks of persons with HIV in the community where the intervention will be implemented; describes the likely acceptability of the intervention by persons in the community. Letters of support from cooperating organizations should be included which detail the nature and extent of such cooperation.

3. Methods (45 points)

Appropriateness of methods for implementing and evaluating the social and environmental interventions to reduce HIV incidence and assessing the potential impact of the intervention within a community or geographic area.

The extent to which the application describes the social-environmental issue that the recipient wants to address, how the potential intervention will influence the issue, and how the intervention might impact on HIV incidence in the study area.

The extent to which the application specifies potential barriers to implementing the intervention and how barriers will be overcome. The potential impact on HIV reduction should be clear. The intervention should be new and sustainable in the future without ongoing CDC funding.

In addition, applications will be evaluated on the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

4. Research Capacity (20 points)

The extent to which the application describes the capacity and experience of the research team and includes curriculum vitaes and position descriptions for key staff and project participants. The percentage-time commitments, duties, and responsibilities of project personnel should be sufficient to operationalize the proposed methodology.

5. Evaluation Plan (10 points)

The extent to which the application includes time-phased and measurable objectives. The proposed report of research findings should document the process of identifying and implementing the intervention and the acceptability and estimated impact within the community.

6. Budget (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intent of the announcement.

7. Human Subjects (not scored)

The extent to which the application adequately addresses the requirements of 45 CFR part 46 for the protection of human subjects. (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original and two copies of:

1. Annual progress reports to be submitted with subsequent continuation applications;
2. Financial status report, no more than 90 days after the end of the budget period;
3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act sections 317 (42 U.S.C. 241(a) and 247b); 301 (42 U.S.C. 241); and 311 (42 U.S.C. 243), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address *http://www.cdc.gov* Click on "Funding' then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documentation, business management technical

assistance may be obtained from:James Masone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Mailstop E–15, Atlanta, GA 30341–4146, Telephone: (770) 488–2736, Email address: *zft2@cdc.gov*

For program technical assistance, contact: Cassandra Walker, MPH, Acting Deputy Chief, Prevention Services Research Branch, Division of HIV/AIDS Prevention, Surveillance & Epidemiology, National Center for HIV, STD, TB Prevention Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E–46 Atlanta, GA 30333 Telephone Number: (404) 639–6191Email address: *cwalker5@cdc.gov*

Dated: July 13, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18048 Filed 7–19–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01171]

Expansion of HIV/AIDS Prevention Activities in the Republic of Kenya by Promoting the Establishment of "Free-Standing" or "Stand-Alone" Sites Which Deliver Volunteer Counseling and Testing Services; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY)2001 funds for a cooperative agreement program for the expansion of HIV/AIDS Prevention Activities in the Republic of Kenya.

The purpose of the program is to Promote the establishment of "free-standing" or "stand-alone" sites which deliver voluntary counseling and testing (VCT) services to the Kenyan public in support of the Kenyan CDC Country Plan for HIV/AIDS prevention.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies and international organizations with a minimum of 2 years of experience in managing funds and delivering volunteer counseling and testing(VCT)service in developing countries in Africa.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $1.0 million is available in FY 2001, to fund one award. A similar amount will be available each year during the period of the project. It is expected that the award will begin on or about September 30, 2001 and will be made for a 12-month budget period with a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

All services provided under this announcement will be free to the individuals obtaining the service. The grantee will not collect any fee(s) in association with the services provided.

Antiretroviral Drugs

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in PMTCT cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested).

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Needle Exchange

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug. Funds received from this announcement may not be used for the following: The purchase of machines and reagents to conduct laboratory monitoring for patient care

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under "Recipient Activities", and CDC will be responsible for the activities listed under "CDC Activities"

Recipient Activities

1. Developing and establishing stand-alone VCT sites in key urban areas of Kenya.

a. Identify key urban locations and sites in Kenya appropriate for stand-alone VCT sites, and develop a phased plan for establishment of up to twenty (20) sites by the end of three years.

b. Identify and select local partners (such as but not limited to Non-Government Organizations, NGOs) with the capacity to manage and deliver VCT services at stand-alone sites. (For Example: This may involve selecting one national organization or several regional or local organizations. If necessary, it may involve assisting in the formation of a Kenyan NGO with the specific mandate to provide VCT services, similar to the Ugandan NGO, the AIDS Information Center, which was set up by a consortium of Ugandan and international organizations.)

c. Develop and implement a specific model for service delivery to be uniformly implemented at all sites. This should include hours of operation during evening and weekend hours. Provision of integrated reproductive and HIV related health services at these sites, such as family planning services, the detection and treatment of other sexually transmitted diseases, and TB education and screening is desirable. In addition, on-going services for VCT clients, such as "Post-Test Clubs" and referral networks for care, should be included in the proposal.

d. Free services should be considered for proposal, however, a minimal fee may be charged with fees generated being utilized to further market VCT services.

e. Develop and implement a plan for the recruitment, employment, training, and supervision of staff to provide VCT services at free-standing sites, including both counseling and testing services to be performed on-site.

f. Ensure that all sites are appropriately advertised

2. Assist other NGOs wishing to provide VCT as part of their AIDS activities.

a. Solicit proposals from NGOs who wish to provide VCT services as part of their AIDS prevention and/or care efforts, including such groups as KICOSHEP, KAPC, church and faith-based organizations, and others.

b. Provide funding through "contracts" to these organizations. All contracts over $15,000 will require approval by in-country CDC staff.

c. Provide on-going technical assistance to such groups.

d. Foster a network of VCT sites for continuing education, sharing of resident technical expertise and lessons learned.

3. Provide HIV test kits and other supplies needed to conduct on-site, confirmed, rapid HIV testing for VCT purposes.

a. Procure HIV test kits and other supplies as needed. Selection of test kits will be made on the basis of CDC recommendations and will require test kits approved for use in Kenya.

b. Develop a system for the distribution and re-stocking of HIV test kits and consumables.

c. Develop a system for additional testing of samples with discordant results, and for quality assurance testing.

4. Develop mobile VCT services for sites not appropriate for a permanent VCT center.

a. Propose a strategy and specific plan for mobile VCT services in rural areas and other locations which do not justify a full-time VCT center.

b. Implement mobile VCT services in year two. This activity may require the procurement of vans or mobile-home type vehicles which would have room for a small laboratory and at least two counseling rooms.

5. Provide on-going support, monitoring, supervision, and evaluation of these sites

a. Ensure that all VCT sites are operating in accordance with the Kenya National VCT guidelines and with all applicable local and international standards.

b. Ensure that all funds disbursed for VCT activities are properly used and accounted for, and train staff at VCT sites in proper accounting procedures.

c. Develop systems for routine monitoring and supervision of VCT services, including a system for computerized record keeping at all sites, and central level analysis and reporting.

d. Propose, develop and implement a methodology for the evaluation of stand-alone VCT sites in Kenya.

CDC Activities

1. CDC will collaborate with the recipient on designing and implementing the activities listed above, including but not limited to providing technical assistance to develop and implement program activities, quality assurances, data management, statistical analysis and presentations of program methods and findings.

2. Monitor project and budget performance.

3. Approve the selection of key personnel to be involved in the activities preformed under this cooperative agreement.

4. Rapid HIV Test kits may be provided in limited amounts for the purpose of this activity.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and 12 point font. All pages should be numbered and indexed. The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

On or before August 17, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated postmark or obtain a legibly dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late: Applications which do not meet the criteria in 1. or 2. above will be returned to the applicant.

G. Evaluation Criteria

Application

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Understanding of the Problem (15 percent)

The extent to which the applicant's proposal demonstrates a clear and concise understanding of the AIDS epidemic in Kenya and the role of VCT as a prevention intervention and as an entry point to care.

2. Technical and Programmatic Approach (30 percent)

The extent to which the applicant's proposal demonstrates an understanding of how to develop, promote, implement, monitor, and evaluate VCT services offered outside of traditional medical settings.

3. Ability to Carry Out the Project (20 percent)

The extent to which the applicant documents demonstrated capability to achieve the purpose of the project.

4. Personnel (20 percent)

The extent to which professional personnel involved in this project are qualified, including evidence of experience in working with HIV/AIDS and specifically with VCT in stand-alone settings.

5. Plans for Administration and Management of the Project (15 percent)

The extent to which the plan, objectives, and methods described meet the program objectives and the adequacy of described evaluation methodology meets the plans of the project.

6. Budget (Not scored, but evaluated)

The extent to which the itemized budget for conducting the project is reasonable and well justified. The percentage of the budget going for direct VCT services will be assessed and considered. The applicant should include an analysis in the budget of the cost per client served.

7. Human Subjects (Not Scored)

The extent to which the application adequately addresses the requirements of 45 CFR 46 for the protection of human subjects. (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Semi-annual progress reports;
2. Financial status report, no more than 90 days after the end of each year's budget period; and
3. Final financial and performance reports, no more than 90 days after the end of the total five year project period.
4. Awardee is required to obtain annual program specific audit of these CDC funds by a US-based audit firm with international branches and current licensure/authority in country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required with the potential awardee, pre or post award, in order to review their business management and fiscal capabilities regarding their handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–4 HIV/AIDS Confidentiality Provisions
AR–6 Patient Care
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, [42 U.S.C. 242l], as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements." To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Program Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2782, Email address: *dpr7@cdc.gov*.

For program technical assistance, contact: Elizabeth Marum, Ph.D., Technical Advisor in HIV/AIDS, Center for Disease Control and Prevention (CDC), Nairobi, Kenya, Telephone: 254–2–713–008 (office),254–072–727–933 (mobile), 254–2–714–745 (fax), Email: *emarum@kisian.mimcom.net*, Local mailing address: P.O. Box 30137, Nairobi, Kenya, U.S. Mailing address: Unit 64112,APO AE 09831–4112.

Dated: July 16, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18156 Filed 7–19–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01166]

Division of International Health/Global AIDS Program; Strengthening Masters of Public Health Program in Zimbabwe; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program with the University of Zimbabwe, Department of Community Medicine (UZ/DCM) to strengthen the Masters of Public Health (MPH) Program and to mobilize MPH faculty and students to more comprehensively address the HIV/AIDS (Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome) epidemic in Zimbabwe. This program addresses the "Healthy People 2010" focus area Public Health Infrastructure.

The objectives of this program are: (1) Development and implementation of a plan to increase capacity to train applied epidemiologists in MPH and related programs, and (2) to create a focus for monitoring and evaluation of response to the HIV/AIDS epidemic within the University, and to increase the quality and quantity of teaching, program evaluation projects and support services to the Ministry of Health and Child Welfare (MOHCW) and the National AIDS Council (NAC), and related HIV/AIDS initiatives within the University. The objectives are intended to be mutually reinforcing, with the resources allocated for HIV/AIDS monitoring and evaluation efforts providing training and related professional opportunities for students and faculty, and the expanded student and faculty base contributing to the expanded human resources needed for an effective response to HIV/AIDS in Zimbabwe and in the region.

The increased capacity of the MPH training program would enhance the Zimbabwe-CDC (ZimCDC) AIDS Project's vision of "Capacity building and technology transfer focused on public sector human resources" and the Division of International Health/EPO's mission of "Working with partners to strengthen capacity of countries around the world to improve public health". This would be accomplished through a collaborative project between the ZimCDC, the UZ/DCM, and the Division of International Health (DIH), Epidemiology Program Office. The UZ MPH Program will be a cornerstone of the capacity building vision in the region. Through a cooperative agreement, CDC will provide core support to the UZ/DCM to increase the size of the training program in applied epidemiology and management for national personnel, and support related measures to simultaneously train district level personnel. CDC will also provide core support to an UZ/DCM-based Center for Monitoring and Evaluating the Response to HIV/AIDS.

B. Eligible Applicants

Assistance will be provided only to the University of Zimbabwe, with the assistance targeted to the University's School of Medicine, Department of Community Medicine. No other applications are solicited.

The UZ/DCM MPH program is an applied epidemiology training program founded in 1993 through a collaborative effort between the MOHCW and the UZ/DCM. Currently, with 10 trainees per

year, the program is supported by the Rockefeller Foundation and the MOHCW. In the eight years of its operation, the MPH program has trained approximately 40 personnel and currently has 15 trainees in their two-year course. It has recently been tasked to train up to 300 district health team members in health information for district management over 2 years leading to a Certificate in Health Information for District Management (CHIDM).

The UZ/DCM MPH program is the only MPH program in the country. The purpose of this agreement is to build upon the success of the program and allow it to expand without compromising the quality of the training.

There is urgency to putting this award in place. Zimbabwe is among the countries in the world most affected by HIV/AIDS: HIV prevalence is estimated to be at least 27 percent, there has been 10-fold increase in the number of TB cases, and up to 35 percent of the children may be orphaned by AIDS at the end of this decade. At the same time, the public health response to the epidemic in Zimbabwe is inadequate due in part to insufficient manpower in the Zimbabwe public health system. This training program will enable Zimbabwe to develop and place epidemiologists who are better equipped to address epidemics.

C. Availability of Funds

Approximately $500,000 is available in FY 2001 to fund one award. It is expected that this level of funding will be available each year. It is expected that the awards will begin on or about September 2001 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change, based on performance and the availability of funds.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."To obtain additional business management information, contact:Mattie Jackson, Grants Management Specialist,Grants Management Branch,Procurement and Grants Office, 2920 Brandywine Road, Room 3000,Atlanta, GA 30341–4146,Telephone: (770) 488–2696,Email: mij3@cdc.gov.

For program technical assistance, contact:

Dr. Peter Nsuguba, Epidemiologist,Epidemiology Program Office,Division of International Health,Centers for Disease Control and Prevention, 2877 Brandywine Road, Room 4507,Atlanta, GA 30314–4146,Telephone: (770) 488–8334,Email: pcn0@cdc.gov

or

Mark Fussell,Zimbabwe-CDC AIDS Project Team, 38 Samora Machel Avenue, 2nd Floor,Harare, Zimbabwe,Office: 263–11–613194,Email: fussellm@aimcdc.co.zw.

Dated: July 16, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC)

[FR Doc. 01–18157 Filed 7–19–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: TANF Time Limits Questionnaire.

OMB No: New Collection.

Description: The imposition of federally imposed time limits on the receipt of cash assistance under the Temporary Assistance to Needy Families (TANF) program was a central and major part of welfare reform. The earliest that TANF recipients could be affected by the 60-month federal limit will be in the last quarter of 2001. The purpose of the TANF Time Limits project is to document what is known about this important element of welfare reform as the period for TANF re-authorization approaches. The proposed survey instrument is intended to obtain "real-time" information from those states in which TANF recipients could have reached the 60 month limit on receipt of federally funded assistance in the last quarter of calendar year 2001. The instrument is designed to gather preliminary information about the number of families accumulating 60 months of benefits, the outcomes for such families (*e.g.*, cases closed, benefits extended with Federal funds, benefits extended with State funds), and the policies and practices of states to work with families approaching or reaching the federal time limit.

Respondents: The primary respondents for the questionnaire are those States that implemented TANF before February 1997. States that implemented TANF later may also be surveyed.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses	Average burden hours per response	Total burden hours
TANF time limits	35	1	8	280
Estimated Total Annual Burden Hours				280

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 16, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–18134 Filed 7–19–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP) Model Plan.

OMB No.: 0970–0075.

Description: States, including the District of Columbia, Tribes, tribal organizations and territories applying for LIHEAP block grant funds must submit an annual application (Model Plan) that meets the LIHEAP statutory and regulatory requirements prior to receiving Federal funds. A detailed application must be submitted every 3 years. Abbreviated applications may be submitted in alternate years. There have been minor changes in the Model Plan for clarity. There have been no substantive changes.

Respondents: State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Model Plan	65	1	1	65
Abbreviated Model Plan	115	1	.33	38
Estimated Total Annual Burden Hours				103

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 16, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–18167 Filed 7–19–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–484R]

Agency Information Collection Activities; Announcement of OMB Approval; Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishments Registration and Listing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishments Registration and Listing" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 19, 2001 (66 FR 5447), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0469. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18131 Filed 7–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1567]

Agency Information Collection Activities; Announcement of OMB Approval; Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 2, 2000 (65 FR 65858), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0045. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18132 Filed 7–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1666]

Agency Information Collection Activities; Announcement of OMB Approval; Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 3, 2001 (66 FR 372), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0305. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18133 Filed 7–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0063]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Devices; Current Good Manufacturing Practice (CGMP), Quality System (QS) Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Medical Devices; Current Good Manufacturing Practice (CGMP), Quality System (QS) Regulation" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the**Federal Register** of May 31, 2001 (66 FR 29577), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0073. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 16, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18160 Filed 7–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0176]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Good Laboratory Practices (GLP) Regulations for Nonclinical Laboratory Studies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 20, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Good Laboratory Practices (GLP) Regulations for Nonclinical Laboratory Studies—(21 CFR Part 58)—(OMB Control Number 0910–0119)—Extension

Sections 409, 505, 512, and 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 355, 360b, and 360e) and related statutes require manufacturers of food additives, human drugs and biological products, animal drugs, and medical devices to demonstrate the safety and utility of their product by submitting applications to FDA for research or marketing permits. Such applications contain, among other important items, full reports of all studies done to demonstrate product safety in man and/or other animals. In order to ensure adequate quality control for these studies and to provide an adequate degree of consumer protection, the agency issued the GLP regulations. The regulations specify minimum standards for the proper conduct of safety testing and contain sections on facilities, personnel, equipment, standard operating procedures (SOPs), test and control articles, quality assurance, protocol and conduct of a safety study, records and reports, and laboratory disqualification.

The GLP regulations contain requirements for the reporting of the results of quality assurance unit inspections, test and control article characterization, testing of mixtures of test and control articles with carriers, and an overall interpretation of nonclinical laboratory studies. The GLP regulations also contain recordkeeping requirements relating to the conduct of safety studies. Such records include: (1) Personnel job descriptions and summaries of training and experience; (2) master schedules, protocols and amendments thereto, inspection reports, and SOPs; (3) equipment inspection, maintenance, calibration, and testing records; (4) documentation of feed and water analyses and animal treatments; (5) test article accountability records; and (6) study documentation and raw data.

The information collected under GLP regulations is generally gathered by testing facilities routinely engaged in conducting toxicological studies and is used as part of an application for a research or marketing permit that is voluntarily submitted to FDA by persons desiring to market new products. The facilities that collect this information are typically operated by large entities, e.g., contract laboratories, sponsors of FDA-regulated products, universities, or government agencies. Failure to include the information in a filing to FDA would mean that agency scientific experts could not make a valid determination of product safety. FDA receives, reviews, and approves hundreds of new product applications each year based on information received. The recordkeeping requirements are necessary to document the proper conduct of a safety study, to assure the quality and integrity of the resulting final report, and to provide adequate proof of the safety of regulated products. FDA conducts onsite audits of records and reports, during its inspections of testing laboratories, to verify reliability of results submitted in applications.

In the **Federal Register** of April 30, 2001 (66 FR 21396), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Responses	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
58.35(b)(7)	300	60.25	18,075	1	18,075
58.185	300	60.25	18,075	27.65	499,774
Total					517,849

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
58.29(b)	300	20	6,000	.21	1,260
58.35(b)(1) through (b)(6) and (c)	300	270.76	81,228	3.36	279,926
58.63(b) and (c)	300	60	18,000	.09	1,620
58.81(a) through (c)	300	301.8	90,540	.14	12,676
58.90(c) and (g)	300	62.7	18,810	.13	2,445
58.105(a) and (b)	300	5	1,500	11.8	17,700
58.107(d)	300	1	300	4.25	1,275

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
58.113(a)	300	15.33	4,599	6.8	31,273
58.120	300	15.38	4,614	32.7	150,878
58.195	300	251.5	75,450	3.9	294,255
Total					793,308

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18130 Filed 7–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain device panels of the Medical Devices Advisory Committee, the National Mammography Quality Assurance Advisory Committee, the Device Good Manufacturing Practice Advisory Committee, and the Technical Electronic Products Radiation Safety Standards Committee in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and those that will or may occur through August 31, 2002.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae for the device panels should be sent to Nancy J. Pluhowski, Advisory Panel Coordinator, Office of Device Evaluation (HFZ–400), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, e-mail: NJP@CDRH.FDA.GOV.

All nominations and curricula vitae for the National Mammography Quality Assurance Advisory Committee, excluding consumer representatives, should be sent to Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850.

All nominations and curricula vitae for industry representatives and government representatives for the Device Good Manufacturing Practice Advisory Committee should be sent to Sharon Kalokerinos, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850.

All nominations and curricula vitae for government representatives and industry representatives for the Technical Electronic Product Radiation Safety Standards Committee should be sent to Orhan Suleiman, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850.

All nominations and curricula vitae for consumer representatives for the National Mammography Quality Assurance Advisory Committee, and general public representatives for the Device Good Manufacturing Practice Advisory Committee and the Technical Electronic Product Radiation Safety Standards Committee should be sent to Maureen Hess, Office of Consumer Affairs (HFE–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, e-mail: MHESS@OC.FDA.GOV.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Walker, Center for Devices and Radiological Health (HFZ–17), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114, e-mail: KLW@CDRH.FDA.GOV.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for vacancies listed below.

1. *Anesthesiology and Respiratory Therapy Devices Panel*: Two vacancies occurring November 30, 2001; anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilatory support, pharmacology, physiology, or the effects and complications of anesthesia.

2. *Circulatory System Devices Panel*: Two vacancies immediately; interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.

3. *Dental Products Panel*: Two vacancies immediately; dentists who have expertise in the areas of lasers, temporomandibular joint implants and/or endodontics; or experts in tissue engineering and/or bone physiology relative to the oral and maxillofacial area.

4. *Ear, Nose, and Throat Devices Panel*: Three vacancies occurring October 31, 2001; otologists, neurotologists, audiologists, hearing scientists, and electrophysiologists.

5. *Gastroenterology and Urology Devices Panel*: Three vacancies occurring December 31, 2001; urologists, gastroenterologists, and biostatisticians.

6. *General and Plastic Surgery Devices Panel*: Three vacancies immediately, three vacancies occurring August 31, 2002; general surgeons, plastic surgeons, biomaterials experts, laser experts, wound healing experts or endoscopic surgery experts.

7. *General Hospital and Personal Use Devices Panel*: Four vacancies immediately, three vacancies occurring December 31, 2001; internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, biomedical engineers or microbiologists/infection control practitioners or experts.

8. *Immunology Devices Panel*: One vacancy occurring February 28, 2002; persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.

9. *Medical Devices Dispute Resolution Panel*: One vacancy immediately;

experts with broad, cross-cutting scientific, clinical, analytical or mediation skills.

10. *Microbiology Devices Panel*: Two vacancies occurring February 28, 2002; infectious disease clinicians, e.g., pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, mycologists; clinical microbiologists; clinical microbiology laboratory directors, and clinical virologists with expertise in clinical diagnosis and in vitro diagnostic assays, e.g., hepatologists; molecular biologists.

11. *Neurological Devices Panel*: Three vacancies occurring November 30, 2001; neurosurgeons (cerebrovascular and pediatric), neurologists (pain management and movement disorders), interventional neuroradiologists, or biostatisticians.

12. *Obstetrics and Gynecology Devices Panel*: Two vacancies occurring January 31, 2002; experts in perinatology, embryology, reproductive endocrinology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, and contraception; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; and experts in gynecology in the older patient.

13. *Orthopaedic and Rehabilitation Devices Panel*: Five vacancies immediately; doctors of medicine or philosophy with experience in tissue engineering, calcification or biomaterials; orthopedic surgeons experienced with prosthetic ligament devices, joint implants, or spinal instrumentation; physical therapists experienced in spinal cord injuries, neurophysiology, electrotherapy, and joint biomechanics; rheumatologists; or biomedical engineers.

14. *Radiological Devices Panel*: One vacancy immediately, two vacancies occurring January 31, 2002; physicians and scientists with expertise in nuclear medicine, diagnostic or therapeutic radiology, radiation physics, mammography, thermography, transillumination, hyperthermia cancer therapy, bone densitometry, magnetic resonance imaging, computed tomography, ultrasound imaging, statistical analysis, digital imaging and image processing, or computer-aided detection and diagnosis.

15. *National Mammography Quality Assurance Advisory Committee*: Four vacancies occurring January 31, 2002; two shall include physicians, practitioners, and other health professionals whose clinical practice, research specialization, or professional expertise include a significant focus on mammography; and two shall include consumer representatives from among national breast cancer or consumer health organizations with expertise in mammography.

16. *Device Good Manufacturing Practice Advisory Committee*: Three vacancies occurring May 31, 2002; one government representative, one industry representative, and one general public representative.

17. *Technical Electronic Product Radiation Safety Standards Committee*: Five vacancies occurring December 31, 2001, two government representatives, one industry representative, and two general public representatives.

Functions

Medical Devices Advisory Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in a number of activities to fulfill the functions the Federal Food, Drug, and Cosmetic Act (the act) envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the act; advises on the necessity to ban a device; and responds to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between the FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and agency guidance and policies. The panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or agency decisions or actions.

National Mammography Quality Assurance Advisory Committee

The functions of the committee are to advise FDA on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities; (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and (9) determining the costs and benefits of compliance with these requirements.

Device Good Manufacturing Practice Advisory Committee

The functions of the committee are to review proposed regulations for promulgation regarding good manufacturing practices governing the methods used in, and the facilities and controls used for manufacture, packaging, storage, installation, and servicing of devices, and make recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines developed to assist the medical device industry in meeting the good manufacturing practice requirements, and provides advice with regard to any petition submitted by a

manufacturer for an exemption or variance from good manufacturing practice regulations.

Section 520 of the act (21 U.S.C. 360(j)), as amended, provides that the Device Good Manufacturing Practice Advisory Committee shall be composed of nine members as follows: (1) Three of the members shall be appointed from persons who are officers or employees of any Federal, State, or local government; (2) two shall be representatives of interests of the device manufacturing industry; (3) two shall be representatives of the interests of physicians and other health professionals; and (4) two shall be representatives of the interests of the general public.

Technical Electronic Product Radiation Safety Standards Committee

The function of the committee is to provide advice and consultation on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Section 534(f) of the act (21 U.S.C. 360kk(f)), as amended by the Safe Medical Devices Act of 1990 provides that the Technical Electronic Product Radiation Safety Standards Committee include five members from governmental agencies, including State or Federal Governments, five members from the affected industries, and five members from the general public, of which at least one shall be a representative of organized labor.

Qualifications

Panels of the Medical Devices Advisory Committee

Persons nominated for membership on the panels shall have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are shown above. The term of office is up to 4 years, depending on the appointment date.

National Mammography Quality Assurance Advisory Committee

Persons nominated for membership should be physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise include a significant focus on mammography and individuals identified with consumer interests. Prior experience on Federal public advisory committees in the same or similar subject areas will also be considered relevant professional expertise. The particular needs are shown above. The term of office is up to 4 years, depending on the appointment date.

Device Good Manufacturing Practice Advisory Committee

Persons nominated for membership as a government representative or health professional should have knowledge of or expertise in any one or more of the following areas: Quality assurance concerning the design, manufacture, and use of medical devices. To be eligible for selection as a representative of the general public or industry, nominees should possess appropriate qualifications to understand and contribute to the committee's work. The particular needs are shown above. The term of office is up to 4 years, depending on the appointment date.

Technical Electronic Product Radiation Safety Standards Committee

Persons nominated must be technically qualified by training and experience in one or more fields of science or engineering applicable to electronic product radiation safety. The particular needs are shown above. The term of office is up to 4 years, depending on the appointment date.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory panels or advisory committees. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

Consumer/General Public Representatives

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee or panel to represent consumer interests as identified in this notice. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Selection of members representing consumer interests is conducted through procedures that include use of a consortium of consumer organizations that has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Nominations shall include a complete curriculum vita of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or in any advisory committee. The term of office is up to 4 years, depending on the appointment date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: July 16, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–18161 Filed 7–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Children's Hospitals Graduate Medical Education (CHGME) Payment Program: Final Methodology for Determination of FTE Resident Count, Treatment of New Children's Teaching Hospitals, and Calculation of Indirect Medical Education Payment

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final notice.

SUMMARY: This notice sets forth final methodology for determining full time equivalent (FTE) resident count, treatment of new children's teaching hospitals, and calculation of indirect medical education (IME) payments for the Children's Hospitals Graduate Medical Education (CHGME) Payment program, authorized by section 340E of the Public Health Service Act (42 U.S.C. 256e), amended by Pub. L. 106–310, The Children's Health Act, 2000. In compliance with the Paperwork Reduction Act of 1995, the Department obtained Office of Management and Budget (OMB) approval of the data collections required and imposed on the public (OMB No. 0915–0247).

FOR FURTHER INFORMATION CONTACT: Ayah E. Johnson, Graduate Medical Education Branch, Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–1058 or e-mail address *ChildrensHospitalGME@hrsa.gov*.

SUPPLEMENTARY INFORMATION: The CHGME program, as authorized by section 340E of the Public Health Service (PHS) Act (the Act) (42 U.S.C. 256e), provides funds to children's hospitals to address disparity in the level of Federal funding for children's hospitals that results from Medicare funding for graduate medical education (GME). Pub. L. 106–310 amended the CHGME statute to continue the program until Federal Fiscal Year (FFY) 2005.

On March 1, 2001, the Secretary published a notice in the **Federal Register** (66 FR 12940) establishing final rules for eligibility, funding criteria, payment methodology and performance measures for the CHGME program. That notice also sought public comments on proposals for (1) The criteria for determining full time equivalent (FTE) resident count; (2) the treatment of new children's teaching hospitals with respect to resident count; and (3) the methodology for IME payments. During the comment period, the Department received comments from seventeen interested parties, including hospitals, hospital and professional associations, Medicare consulting companies, and law firms.

The Secretary thanks the respondents for the quality and thoroughness of their comments. As a result of these comments, the Department has made revisions and clarifications in this final notice. The comments and Department's responses to the comments, and the final rules are set forth below.

General Comments

Several respondents recommended that the CHGME program follow Medicare's rules as closely as possible: (1) Because these rules are well defined and are known to those children's hospitals that file Medicare cost reports (MCR); and (2) to conform to Congress' intent to provide funds to children's hospitals to address disparity in the level of Federal funding for children's hospitals that results from Medicare funding for graduate medical education. The respondents indicated that the Department should make exceptions to compliance with policy following Medicare principles only in those instances in which the unique characteristics of children's hospitals render the application of Medicare principles impossible or undesirable, and it should explain the specific rationale for each exception.

In the implementation of the CHGME program, the Department has incorporated applicable Medicare rules and regulations. However, it is important to recognize that fundamental differences exist between the Medicare and CHGME programs that make certain Medicare rules and regulations inapplicable to the CHGME program. For instance:

(1) The CHGME program includes children's hospitals that span the spectrum of pediatric patient care, including acute, rehabilitation, oncology, orthopedics, and long term care;

(2) The CHGME program includes resident training that occurs in all areas of the hospital complex for both DME and IME;

(3) The CHGME program is bound to the FFY in which appropriated funds must be distributed without the opportunity to reconcile funding across FFYs;

(4) The Medicare GME payments are associated with treatment of Medicare patients;

(5) The Medicare patient population is primarily non-pediatric; and

(6) The Medicare program monies come from a trust fund.

Determining FTE Resident Counts Beginning in FFY 2001

With the exception of some revisions for clarification, the criteria for determining FTE resident counts beginning in FFY 2001 are unchanged from those proposed in the March **Federal Register** notice. Beginning in FFY 2001, for hospitals, that report residents to Medicare, there will be an order of priority for acceptance of resident counts submitted to the CHGME program:

(1) For the most recent cost report periods ending on or before December 31, 1996, a hospital must report the latest settled FTE resident count or a "preliminary" fiscal intermediary (FI) determined resident count. All preliminary FI determined counts must be determined according to HCFA and Medicare criteria. Hospitals may not use the "preliminary" numbers that were used for the FFY 2000 CHGME program unless those FTE resident counts have since become finalized or are validated according to HCFA and Medicare standards.

(2) For settled cost reports in other years, the CHGME program will accept the latest settled cost report. If a settled cost report has been reopened, the CHGME program will accept the latest settled count or, if available, the most recent "preliminary" FI determined FTE count.

(3) For unsettled cost reports, the CHGME program will accept in order of priority:

(a) The most recent preliminary FI determined FTE resident count prior to the application deadline; if not available, then

(b) The amended filed FTE resident count; if not available then

(c) The as filed FTE resident count.

For hospitals that do not report residents to Medicare (i.e., file low or no utilization cost reports) but have been operating a residency training program and participated in the CHGME program in FFY 2000, the calculation of FTE resident counts remains unchanged from the FFY 2000 application. Unlike the FFY 2000 applications, however, beginning in FFY 2001, the CHGME program requires hospitals to report FTE resident counts based on the hospital cost reporting period rather than on the FFY. In the June 19, 2000, **Federal Register** notice the Department provided examples of how these hospitals could determine FTE resident counts for the 1996 cap year and the 3-year rolling average. The CHGME program will accept this methodology for the 1996, 1998 and 1999 cost reporting periods.

If these hospitals wish to revise their FTE resident counts for these cost reporting periods, they must submit a detailed explanation of the revision with supporting documentation. The supporting documentation must be in compliance with HCFA/Medicare standards used to determine FTE resident counts (e.g., rotation schedules).

Beginning with the cost report period ending in 2000, these hospitals will be required to use the methodology described in 42 CFR 413.86(f)(2) to determine FTE resident counts; that is, to measure the amount of time that a resident works during the cost report period based on the number of days. In addition, these hospitals will continue to be required to apply Medicare standards for documenting the residents to be counted and calculating their FTE time for purposes of determining an FTE resident count.

Hospitals which did not report residents to Medicare and did not participate in the CHGME program in FFY 2000, although they were training residents at that time, are required to use the methodology described in 42 CFR 413.86(f)(2) to determine their FTE resident count for their cap year and 3-year rolling average. Like all hospitals which do not report residents to Medicare, they will be required to apply Medicare standards for documenting the calculating of their FTE resident counts.

Some hospitals have filed a combination of full, low utilization, and no utilization cost reports. For these hospitals, the Department requires that they file the actual FTE resident counts reported for those cost report periods where an E–3, Part IV worksheet has been filed. For those cost report periods where a low or no utilization cost report period was used, the hospitals should recreate their FTE resident count using the methodology referenced above.

Several respondents recommended that resident counts used for distribution of funds after FFY 2002 for all hospitals be based on Medicare cost reporting data. The respondents indicated that such a change should include sufficient time to resolve any technical issues that arise for hospitals that did not report residents in 1996 for determination of their resident cap. They noted that, while in the short term, it is necessary and appropriate to accommodate those hospitals that did not report residents to Medicare, it is important over the longer term for consistency and equity in the resident counting methodology that all eligible hospitals file resident counts on their Medicare cost reports.

The Department does not have the option of requiring resident counts used for distribution of funds to be based on Medicare cost reporting data since section 340E(e)(1) of the CHGME statute requires that:

> * * * interim payments to each individual hospital shall be based on the number of residents reported in the hospital's most recently filed Medicare cost report prior to the application date for the Federal fiscal year for which the interim payment amounts are established. In the case of a hospital that does not report residents on a Medicare cost report, such interim payments shall be based on the number of residents trained during the hospital's most recently completed Medicare cost report filing period.

Several respondents requested that HRSA clarify or define a "preliminary FI determined resident count" and indicated that some FIs may not provide a "preliminary FI determined resident count" prior to the formal resettlement of the revised cost report.

To clarify, a "preliminary FI determined resident count" with respect to a settled cost report that has been reopened is any resident count that the FI has determined during the normal course of cost report review (e.g., audit) prior to formal resettlement of the cost report. For example, if the FI and the hospital have negotiated the FTE resident count but not yet completed the paperwork to officially settle the reopened cost report, the hospital can submit the negotiated FTE resident count as a statement written by the FI describing the negotiated FTE resident count as "preliminary" to the completion of the resettlement paperwork. The CHGME program will not accept any FTE resident counts from amended reopened cost reports unless the FI submits it to the CHGME program as a valid "preliminary" FTE resident count.

For cost reports that have never been settled, a "preliminary" FTE resident count issued by an FI would be any resident count the FI has generated during the normal course of cost report review (e.g., desk review) prior to settlement of the cost report.

In some cases during the FFY 2000 CHGME application process, FIs issued "preliminary" numbers for FTE resident counts for some of the children's hospitals. Hospitals may not use these "preliminary" numbers for the FFY 2001 or future CHGME program application unless those FTE resident counts have since become finalized or are validated according to HCFA and Medicare standards through the normal course of business.

Regarding the use of Medicare standards in issuing "preliminary" FTE resident counts, one respondent indicated it was unaware of Medicare standards and that individual intermediary standards are not published.

HCFA provides numerous manuals for FIs and hospitals which outline the standards and definitions used in preparation and review of Medicare cost reports. These manuals are available electronically on the Internet at *http://www.hcfa.gov* and for purchase through the National Technical Information Service (NTIS) Clearinghouse. If hospitals have questions or concerns about their FI's interpretation/application of these standards, they should communicate with their FI or HCFA Regional Offices.

Several respondents raised the issue of applying a written agreement for purposes of training residents between a hospital and a non-hospital site retrospectively in order to count FTE residents rotating through those non-hospital sites.

As stated in the March 1, 2001 **Federal Register** notice, all resident training in non-hospital sites may be included in the FTE resident count as long as the hospital and non-hospital site are in compliance with 42 CFR 413.86(f)(3) and (4).

New Children's Teaching Hospitals

The Department is making final the definition of "new children's teaching hospitals" as proposed in the March 1 **Federal Register** notice. For purpose of the CHGME program, a "new children's teaching hospital" is a hospital which:

1. Has its own Medicare provider number as a children's hospital described in Sec. 1886(d)(1)(B)(iii) of the Social Security Act but did not train residents until it began training residents from an already existing program, less than three cost report periods prior to the FFY in which CHGME payments are being made; and

2. Has historically participated in a residency training program (e.g., a pediatric department within a larger teaching hospital) and subsequently receives its own Medicare provider number as a children's hospital described in Sec. 1886(d)(1)(B)(iii) of the Social Security Act.

"New children's teaching hospitals" are distinct from those teaching hospitals that are participating in a new medical residency training program defined under 42 CFR 413.86(g)(12). Medicare regulations at 42 CFR 413.86(g)(6)(i) and (7) set forth criteria for applying the caps and rolling averages in these teaching hospitals with new medical residency training programs.

Establishing the Cap for New Children's Teaching Hospitals

Unlike children's hospitals that can receive adjustments to their caps for new residency training programs according to 42 CFR 413.86(g)(6), "new children's teaching hospitals" are treated like all other hospitals that have trained residents for 3 years after the first program began training residents,

as explained in 42 CFR 413.86(g)(6)(i)(C). According to 42 CFR 413.86(g)(4), the hospital's FTE resident cap is based on the unweighted FTE resident count from the most recently completed cost report period ending on or before December 31, 1996. Since "new children's teaching hospitals" would not have trained residents during the most recent Medicare cost reporting period ending on or before December 31, 1996, they would have a cap of zero.

To provide an adjustment to the cap of zero, the CHGME program will allow these hospitals to add FTE residents to their cap based on the following-described Medicare regulations:

1. The formation of a new residency program within the first 3 years after the first program begins training residents as described in 42 CFR 413.86(g)(6); or

2. The execution of an affiliation agreement for an aggregate cap, as set forth in 42 CFR 413.86(g)(4) and 63 FR 26338, published in the **Federal Register** on May 12, 1998, with the following exceptions:

a. A "new children's teaching hospital" participating in the CHGME program for the first year must establish an effective date of the agreement for the purposes of the CHGME program. For the first year, unless otherwise specified, the Department will use as the effective date of the affiliation agreement for an aggregate cap the date that the hospital becomes eligible for the CHGME program. This effective date will only apply to the CHGME program. A hospital must also have an effective date of July 1 for the Medicare program. Subsequent to the first year of the affiliation agreement, the effective date must comply with the above cited **Federal Register** final rule which specifies an effective date of July 1 for all affiliation agreements. The CHGME program allows this exception because hospitals must meet eligibility criteria and have their caps determined prior to the CHGME application deadline. If the CHGME program application deadline occurs before July 1, some hospitals would have a cap of zero and thus be excluded from receiving funds. By deviating from the prescribed Medicare final rule, the CHGME program will not place some hospitals in this position.

b. Unlike the Medicare program, for the first year, the CHGME program will not prorate the cap based on the effective date of the cap. Instead, the full value of the cap as determined by the affiliation agreement will be used.

Establishing FTE Resident Counts for New Children's Teaching Hospitals

In general, the FTE resident count from each hospital reflects the residents trained during the Medicare cost report period, limited by the cap (the unweighted allopathic and osteopathic FTE resident count from the most recent cost report period ending on or before December 31, 1996). Payments to each hospital are based on the average of the FTE resident count for the most recent Medicare cost report and the prior two cost reports (3-year rolling average), subject to funds available for DME and IME, respectively.

For establishing FTE resident counts, "new children's teaching hospitals" are divided into two categories: (1) Those training residents from an existing residency program that received and will continue to receive funds under the CHGME program; and (2) those training residents from an existing residency program that has never received funds under the CHGME program (i.e., residents that have not previously been claimed for payment under the CHGME program).

"New Children's Teaching Hospitals" Training Residents Previously Claimed For Payment Under the CHGME Program: FTE Resident Count

The Department requires "new children's teaching hospitals" training residents who were originally trained in a program that received and will continue to receive funds under the CHGME program to wait until they have completed a medicare cost report period before applying for payments from the CHGME program. The CHGME program would have provided payment to the hospital originally training the residents, prior to the completion of a Medicare cost report period by the new children's teaching hospital, and would not want to pay two hospitals for training the same residents.

These "new children's teaching hospitals" must apply the 3-year rolling average according to Medicare regulations at 42 CFR 413.86(g)(5). Over a 3-year period, the "new children's teaching hospital" will gradually increase its number of FTE residents that can be claimed on the CHGME application as the children's hospital that originally trained those FTE residents gradually decreases its resident count.

"New Children's Teaching Hospitals" Training Residents Not Previously Claimed for Payment Under the CHGME Program

Since payments under the CHGME program are based on FTE resident counts from a completed cost report filing period, "new children's teaching hospitals" training residents never previously claimed for CHGME payment that have not completed a cost report filing period at the time of the CHGME program application would not have an FTE resident count for a full Medicare cost reporting period to report to the program. These "new children's teaching hospitals" must submit a partial-year FTE resident count in their initial applications to the CHGME program according to the following methodology:

a. Divide the number of FTE residents trained during the period from the day the children's hospital becomes eligible for the CHGME program to the CHGME application deadline by the number of days during this period to produce the average number of FTEs per day.

b. Multiply the average number of FTEs per day by the number of days the hospital will train residents during the FFY in which payments are being made.

The concept of converting a partial period into a full cost report period is found in the Medicare regulations at 42 CFR 413.86(g)(4) and (e)(5)(ii). Since the CHGME program is paying hospitals for training residents during the FFY for which payments are being made, the Department will convert a partial training period to reflect the amount of time the hospital will train residents during the FFY for which payments are being made. Although this methodology delineates the method by which partial-year residents are counted, it is important to note that all counts are subjected to the cap set by the affiliation agreement.

After the initial application year, payments to "new children's teaching hospitals" training residents never previously claimed for CHGME payment will be based on the actual FTE resident count from the most recently completed Medicare cost report period. Once these hospitals have completed three Medicare cost report periods, the 3-year rolling average will apply.

Under Medicare, hospitals training residents that are not in a new residency program, as defined in 42 CFR 413.86(g)(12), are subjected to the 3-year rolling average. For example, under Medicare, in the first year these hospitals would calculate the 3-year rolling average as follows: [FTE resident count for current year + 0 (FTE residents for prior cost report period) + 0 (FTE residents per penultimate cost report period)] divided by three (3).

One purpose of this Medicare policy is to avoid paying two hospitals for the same residents. Over the course of 3 years the hospital which was originally training the residents "rolls down" its FTE resident count and the hospital which is assuming training "rolls up" its FTE resident count.

The rationale adopted by the CHGME program in deviating from this Medicare policy is that, for the "new children's teaching hospitals" training residents that were never previously claimed for CHGME payment, the issue of double payment for residents is not relevant since the program is not currently paying for them. Therefore, to treat all hospitals participating in the CHGME program equitably, the Department will not impose a 3-year rolling average on the FTE residents counts until these "new children's teaching hospitals" have completed three cost reporting periods.

Determining Indirect Medical Education (IME) Payments to Hospitals

The March **Federal Register** notice invited comments on the proposed methodology for calculating IME payments organized by: (1) The purpose and use of payments under the program, (2) case mix, (3) number of FTE residents, (4) teaching intensity factor, (5) patient volume, (6) outpatient services, and (7) determination of payments. A discussion of the comments received and the Department's responses follows.

Purpose and Use of IME Payments

The CHGME statute requires the Secretary to make payments to children's hospitals for IME associated with operating approved graduate medical residency training programs for each of fiscal years 2000 through 2005. Section 340E(b)(1)(B) describes IME payments as covering "expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs." Section 340E(d)(2) of the Act requires the Secretary to determine IME payments by considering:

1. Variations in case mix among children's hospitals; and
2. The hospitals' number of FTE residents in approved training programs.

The Department utilized the broadest interpretation of this legislative mandate to determine that IME payments determined for purposes of the CHGME program should reflect the indirect costs of GME as defined by statute throughout the entire hospital complex, similar to the allowances for the calculation of DME payments unlike Medicare which limits IME payment adjustments to certain areas of the hospital.

Determination of Case Mix

The determination of case mix is unchanged from that set forth in the March notice. Beginning in FFY 2001, all applicant hospitals must submit a case mix index (CMI), based on the discharges from the most recently completed cost reporting period, using HCFA–DRG Version 17 with the appropriate HCFA Version 17 weights reported to the ten-thousandth decimal place. All DRGs must be included in the calculation of this CMI. In subsequent years, the version of the HCFA–DRG, to be used by hospitals, will be updated annually. To determine which version of the HCFA–DRG grouper and weights hospitals will use in completing an application to the CHGME program, the following methodology will be used:

1. Based on the application deadline, the year end of the most recently completed cost reporting period will be determined for the majority of applicant hospitals.
2. The version of the HCFA–DRG grouper and weights used to calculate the CMI for the FFY corresponding to the year end of the most recently completed cost reporting period for the majority of applicant hospitals will be used to calculate the CMI.

If a children's hospital eligible to participate in the CHGME program has not completed a Medicare cost reporting period prior to submission of an application to the CHGME program, it would base its CMI on discharges from the day it became eligible fo the CHGME program until the CHGME application deadline.

Several respondents requested that DRG 391 be excluded from the calculation of CMI beginning in FFY 2000. These respondents argued that, as only a few hospitals participating in the CHGME program would actually use this DRG code, related to treatment of normal or healthy newborns, the exclusion of this DRG would assist in creating equity among the hospitals in the program.

The Department will include all DRGs in the calculation of its CMI because the activity of all areas of the hospital complex and the severity of illness among the inpatient population that the hospital serves need to be reflected in the hospital's CMI in order to treat all hospitals equitably. The IME payment is meant to reflect the resources used to treat the more severely ill patients in children's hospitals.

Several respondents suggested alterntive methodologies for calculating CMI, including the Resource-Based Relative Value Scale (RBRVS) or the All Patient Refined (APR)–DRGs and APR–DRG relative weights. In addition, several respondents supported the Department's exploration of developing a CMI methodology that is more reflective of the resource intensity of pediatric care.

The Department continues to recognize that the current CMI may not be reflective of the relative resource utilization in children's hospitals, particularly those providing specialized services, such as rehabilitation and will continue to investigate the feasibility of developing a CMI that is more reflective of the relative resource utilization experienced by children's hospitals. The Department anticipates that this effort will be multi-year. Any analyses and resulting recommendations would be published in subsequent **Federal Register** publications.

Determining the Number of FTE Residents for IME Payments

The criteria for determining FTE residents for IME payments is different from those proposed. In the March 1, 2001 **Federal Register** notice, the Secretary proposed to determine FTE resident counts for IME payment calculation using the "caps and rolling averages" consistent with Medicare regulation 42 CFR 412.105(f) with the exception of 42 CFR 412.105(f)(1)(ii)(A). The Department's final criteria for determining the FTE resident count for IME payments include all areas of the hospital complex as specified in 42 CFR 413.86(f)(1), the regulations used to determine FTE resident counts for DME. Time spent by residents on required research is also included if it is part of the resiency program and the resident carries out the research in either: (1) The children's hospital (clinical or bench research); or (2) in a nonhospital site where the research involves direct patient care and the salaries of both the resident and supervising faculty are paid by the children's hospital. Since the FTE resident count used to calculate both DME and IME payments will reflect residents rotating through all areas of the hospital complex, the unweighted FTE resident count is the same for the DME and IME (MCR worksheet E–3, Part IV, line 3.05).

The criteria used by the Department for hospitals reporting FTE resident counts will be the same for IME as they are for DME (see description in previous section). "New children's teaching hospitals" that have not completed a cost report period would use a partial-year FTE resident count methodology similar to the methodology used to determine FTE resident counts for DME payments (see previous section).

The calculation of FTE resident counts remains unchanged from the FFY 2000 application for hospitals that do not report residents to Medicare, have been operating a residency training

program and participated in the CHGME program in FFY 2000. Unlike the FFY 2000 applications, however, beginning in FFY 2001, the CHGME program requires hospitals to report FTE resident counts based on hospital cost reporting period rather than on FFY. In the June 19, 2000 **Federal Register** notice the Department provided examples of how these hospitals could determine FTE resident counts for the 1996 cap year and the 3-year rolling average. The CHGME program will accept this methodology for the 1996, 1998 and 1999 cost reporting periods.

If these hospitals wish to revise their FTE resident counts for these cost reporting periods, they must submit a detailed explanation of the revision with supporting documentation that is in compliance with HCFA/Medicare standards used to determine FTE resident counts (*e.g.*, rotation schedules).

Beginning with the cost report period ending in 2000, these hospitals will be required to use the methodology described in 42 CFR 413.86(f)(2), without application of the weighting factors described in 42 CFR 413.86(g)(1), (2), and (3), to determine total unweighted FTE resident counts. Medicare measures the amount of time based on the number of days during the cost reporting period that a resident works. In addition these hospitals will be required to apply Medicare standards for documenting the counting of residents and calculation of their FTE time for purposes of determining an FTE resident count.

Hospitals which did not report residents to Medicare and did not participate in the CHGME program in FFY 2000 although they were training residents at that time are required to use the methodology described in 42 CFR 413.86(f)(2), without application of the weighting factors described in 42 CFR 413.86(g)(1), (2), and (3), to determine their FTE resident count for their cap and 3-year rolling average. Like all hospitals not reporting residents to Medicare, they will be required to apply Medicare standards for documenting the calculating of their FTE resident counts.

Some hospitals file a combination of full, low utilization, and no utilization cost reports. For these hospitals, the Department requires that they file the actual FTE resident counts reported for those cost report periods where an E–3, Part IV worksheet has been filed. For those cost report periods where a low or no utilization cost report period was used, the hospitals should recreate their FTE resident count using the methodology described above.

Caps and Rolling Average

Beginning with FY 2001, the Secretary will apply the "caps and rolling averages", consistent with the Medicare regulatory section 42 CFR 412.105(f), with the exception of 42 CFR 412.105(f)(1)(ii). In place of this subsection, the Department will use the criteria of 42 CFR 413.86(f)(1), which define FTE counts for DME.

The Department received a variety of comments on application of the cap and rolling averages to calculating IME payments. Several respondents recommended that the Department postpone the application of the cap and rolling averages to the FTE resident count for calculating IME payments until after the FFY 2002 application deadline so hospitals which reported residents to Medicare for the cap year (most recently completed cost reporting period ending on or before December 31, 1996) would have adequate time to resolve any outstanding issues with their FIs related to this cost reporting period. Other respondents suggested that the Department not apply the caps and rolling average to the IME at all, as the CHGME statute does not require it.

The Department will apply the cap and rolling average to the calculation of IME payments beginning with FFY 2001 in order to comply as closely as possible with Medicare rules and regulations. The Secretary maintains that hospitals which report residents on Medicare cost reports have been aware of an FTE cap as early as their 1998-cost report and assumes that these hospitals are reporting an accurate FTE cap number.

In addition to the above comments, two respondents argued that if the Department were to implement the cap and rolling averages on the FTE resident count used in the IME payments, then the cap should be based on the unweighted FTE resident count from the most recently completed cost reporting period ending on or before December 31, 2000, to correspond with the initial year of the CHGME program, FFY 2000. The basis for their argument was that previously, children's hospitals did not receive IME payments and that, in some cases, the hospitals may have added residency programs after the cap year that could not be counted toward the cap on residents. In addition, there was a misunderstanding that hospitals that did not report residents on Medicare cost reports could base their unweighted FTE resident cap on a year other than the most recently completed cost reporting period ending on or before December 31, 1996.

To clarify the policy regarding the year upon which the unweighted FTE resident count is based, all hospitals must use the most recently completed cost report period ending on or before December 31, 1996, to determine the unweighted FTE resident count that would be used as the cap for calculating of IME payments. This standard definition applies to all hospitals participating in the CHGME program regardless of whether or not they report residents on their Medicare cost reports. If a hospital certifies in its application that it has based its cap on the most recent cost reporting period ending on or before December 31, 1996, and subsequent to a CHGME program review/audit, it is discovered that a more recent cost reporting period was used to determine the cap, that hospital would be subject to prosecution by the Federal Government as it would have committed fraud.

Teaching Intensity Factor

In the March notice, the Department invited comments on:

1. The proposed continuation of the use of the Medicare residents-to-bed ratio (IRB)-based teaching intensity factor in the calculation of IME payments. The CHGME program would use the most current PPS IRB in its calculation of IME payments;

2. Application of a cap on the IRB ratio, similar to the cap applied by the Medicare program, 42 CFR 412.105(a)(1), whereby the ratio may not exceed the ratio for the hospital's most recent prior cost reporting period. Application of this cap will not be initiated until FFY 2002 due to the proposed change in the definition of bed count;

3. Suggestions on alternative teaching intensity factors, such as the Medicare resident-to-average daily census (RADC)-based teaching intensity factor (2.8 percent per 0.1 percent increase in RADC ratio) or any other analytically justified teaching intensity factor; and

4. The proposed definition of "bed count" to be used in calculating the Medicare IRB teaching intensity factor—the sum of all available beds per day in the most recently completed cost report filing period, including beds and bassinets in the healthy newborn nursery, divided by the number of days in that period. If a children's hospital eligible to participate in the CHGME program has not completed a Medicare cost report period prior to submission of an application to CHGME program, it would base its "bed count" on the sum of all available beds per day, including beds and bassinets in the healthy newborn nursery, in the period from the day it became eligible for the CHGME program until the CHGME application

deadline, divided by the number of days in that period.

Teaching Intensity Factor

Beginning in FFY 2001, the Department will use the IRB ratio to determine IME payments. The Department will use the same teaching intensity factor that is used by the Medicare Inpatient PPS in calculating its operating IME adjustment for the FFY in which payments are being made.

One respondent encouraged the use of the resident-to-average daily census (RADC) ratio in factoring in teaching intensity, because the RADC ratio measures actual utilization that occurs in the inpatient unit and thus provides a more realistic measure of intensity. Three respondents supported using the Medicare methodology of computing the number of residents per available bed, as consistency with Medicare is desirable without a compelling reason to depart from the Medicare formula.

The Department intends to continue to assess various teaching intensity factors and formulas designed to capture the IME costs associated with caring for more severely ill patients in a children's hospital.

A Cap on the IRB Ratio

To comply as closely as possible with Medicare rules and regulations, beginning in FFY 2002, the Department will apply a cap on the IRB ratio, similar to the cap applied by the Medicare program pursuant to regulations at 42 CFR 412.105(a)(1), whereby the ratio may not exceed the ratio for the hospital's most recent prior cost reporting period. For those hospitals whose IRB ratio changes, there will be a one-year delay in the implementation of the revised IRB.

Beds To Be Included in Calculation of Bed Count

Beginning in FFY 2001, a bed is defined, for the purposes of the CHGME program, as an adult or pediatric bed, including beds or bassinets assigned to healthy newborns, available for lodging inpatients, including beds in intensive care units, coronary care units, neonatal intensive care units, short stay units, and other special care inpatient hospital units. Beds in the following locations are excluded from the definition: Labor rooms, post-anesthesia or post-operative recovery rooms, outpatient areas, emergency rooms, ancillary departments, nurses' and other staff residences, and other such areas as are regularly maintained and utilized for purposes other than inpatient lodging.

Beginning in FFY 2001, children's hospitals will calculate bed count to be used in calculation of the teaching intensity factor used to determine IME payments using the following methodology: The sum of all available inpatient beds per day within the hospital complex in the most recently completed cost report filing period divided by the number of days in that period. If a children's hospital, eligible to participate in the CHGME program, has not completed a Medicare cost reporting period prior to submission of an application to the CHGME program, it calculates its "bed count" using a prorated number. The prorated number is based on the sum of all available inpatient beds per day within the hospital complex in the period from the day it became eligible for the CHGME program until the CHGME application deadline, divided by the number of days during that period.

To be considered an available bed, a bed must be permanently maintained for lodging inpatients. It must be available for use and housed in patient rooms or wards (i.e., not in corridors or temporary beds). Thus, beds in a completely or partially closed wing of the facility are considered available only if the hospital put the beds into use when they are needed. The term "available beds" as used for the purpose of counting beds is not intended to capture the day-to-day fluctuations in patient rooms and wards being used. Rather, the count is intended to capture changes in the size of a facility as beds are added to or taken out of service.

Several respondents recommended that the count of available beds used in the intensity factor exclude beds/bassinets used in the "well-baby" nursery as this would be consistent with the Medicare policy. In addition, other respondents indicated that the exclusion or inclusion of short stay or observation beds should not be each individual hospital's determination—it should be program-wide policy consistent with Medicare policy.

The Medicare definition and regulations on counting beds are inapplicable to the CHGME program due to the fundamental differences between the two programs. Therefore, the Department has defined "bed" to best carry out the purpose of the CHGME program.

Although, traditionally, Medicare has excluded beds and bassinets used in the "well-baby" nursery, it is the understanding of the CHGME program that this is primarily due to the fact that beds and discharges from the "well-baby" nursery have not been factored into the calculation of Medicare payments because there is no Medicare utilization attributable to this part of the hospital. As all areas of the hospital complex are included in the determination of IME payments for the CHGME program, the Department feels that this includes all relevant available inpatient beds that are utilized within the hospital as defined above.

In addition, if the Department were to follow Medicare policy, as stated in Medicare program manual HCFA Pub. 15–1 S. 2405.3.G, on the definition of beds to be included in the bed count, beds in hospital-based skilled nursing facilities or in any inpatient area(s) of the facility not certified as an acute care hospital (e.g., long term care beds) or beds in excluded units (e.g., rehabilitation, psychiatric) would need to be excluded from the definition of beds used by the CHGME program in addition to the exclusion of beds/bassinets in the "well-baby" nursery. Because the hospitals participating in the CHGME program are not limited to acute care hospitals and the Medicare definition of bed count refers only to acute care beds, the Department believes that the inclusion of all of these beds would be an equitable treatment of all hospitals participating in the CHGME program.

The Department has followed the Medicare policy as closely as possible (see definition above) regarding the inclusion or exclusion of short stay or observation beds. Hospitals participating in the CHGME program must certify the accuracy of the numbers reported on their applications. Hospitals reporting bed counts that include other than inpatient beds are subject to prosecution for fraud by the Federal Government.

Patient Volume

As set forth in the March notice, the Department will use inpatient discharges for the hospital's most recently completed Medicare cost report filing period as the measure of patient volume for IME payments. The hospital should include all inpatient discharges from all parts of the hospital complex.

If a children's hospital eligible to participate in the CHGME program has not completed a Medicare cost report period prior to submission of an application to the CHGME program, its patient volume will be calculated by the following methodology:

a. Divide the number of inpatient discharges from the date the hospital became eligible to the CHGME application deadline by the number of days during this period to produce the average number of discharges per day.

b. Multiply the average number of discharges per day by the number of days the hospital will provide inpatient

care as a hospital eligible to participate in the CHGME program during the FFY in which payments are being made.

One respondent comment that accounting for discharges in the IME payment formula is unnecessary, since it is not a factor for Medicare, and that volume would be reflected by the number of residents in the interns and residents to bed (IRB) ratio.

The Department disagrees with this comment. Since the Medicare IME adjustment is an increase in the PPS payment based on a single discharge, the number of discharges is a critical factor in determining how much IME adjustment a hospital receives from HCFA upon settlement of the cost report by Medicare. For the CHGME program, volume, as determined by the number of discharges, is one of the measures of resource utilization in the children's hospitals.

The FTE resident count in the IRB ratio reflects teaching intensity, not patient volume. The Department assumes that the respondent believes that a hospital with more residents would see a larger volume of inpatients; however, since residents rotating through the outpatient parts of the hospital are included in the FTE resident count, a hospital could have few discharges and a large number of residents.

Outpatient Services

Several respondents were in support of the Department's proposed development of a factor to indicate the resources associated with training in outpatient settings. They suggested that this factor include the development of a case mix index that is more reflective of the relative resource utilization experienced by children's hospitals in both an inpatient and outpatient setting. Other respondents were not in favor of the Department pursuing this avenue of investigation and encouraged the Department to rely on the work being done by HCFA in this area.

Currently HCFA does not have an IME adjustment factor for the outpatient PPS; however, it is collecting data to determine if there is a need for such an adjustment. The CHGME program will consider HCFA's research in addition to pursuing the issue independently.

Determination of IME Payments

Beginning in FFY 2001, the Department will use the following formula for calculating IME payments:

$$\text{IME Pay}_i = Z_{ime} * \frac{\text{NoD}_i * \text{CMI}_i * (\text{WI}_i * .711 + .289) * \text{IME}}{\sum_{i=1}^{m} \text{NoD}_i * \text{CMI}_i * (\text{WI}_i * .711 + .289) * \text{IME}}$$

The following variables will be used in the formula to determine IME payments:

NoD = number of discharges for hospital

CMI = average case mix index for hospital

WI = area wage index for hospital

IME = IME adjustment/teaching intensity factor for hospital. Currently, the teaching intensity factor is: $1.6((1+\text{residents}_i\text{-to-beds}_i \text{ ratio})^{.405} - 1)$

Z_{ime} = total dollars available for CHGME program IME payments

IME Pay = total IME payments to hospital

i = individual hospital

m = total number of hospitals participating in the CHGME program

residents = average number of unweighted FTE residents in the most recently completed cost reporting period and the prior two cost reporting periods with application of the cap.

beds = sum of all available beds, including beds and bassinets in the healthy newborn nursery, in the most recently completed cost report filing period, divided by the number of days in that period.

This formula differs from that published in the March notice in that it omits the adjustment factor for hospitals with average lengths of stay greater than 30 days.

Hospitals With Average Length of Stay Greater Than 30 Days

In the March notice, the Department proposed to apply an adjustment factor in the calculation of IME payments for children's hospitals with average lengths of stay greater than or equal to 30 days. These hospitals provide a variety of services, including rehabilitative services, that requires their patients to remain as inpatients for a prolonged period of time. The Department found that the FFY 2000 formula for determining CHGME IME payments may have disadvantaged these hospitals.

Since the length of stay is a major factor in determining the relative costliness of an inpatient stay, the Department proposed an adjustment factor based on the average length of stay (ALOS) to more adequately reflect the relative costliness of patients treated by the children's hospitals with significantly long lengths of stay. For hospitals with ALOS greater than or equal to 30 days, the adjustment factor proposed was the ALOS for the individual hospital divided by the average ALOS for all hospitals with ALOS less than 30 days.

Several respondents supported the principle of adjusting the IME payments for those children's hospitals with average lengths of stay greater than or equal to 30 days as these hospitals are demonstrably different from all other children's hospitals. They noted that it is important that hospitals providing the types of services that require prolonged inpatient lengths of stay (e.g., rehabilitation) not be penalized for providing such services, as length of stay is a major factor in the relative costliness of an inpatient stay. However, the respondents indicated that the aggregate impact of an adjustment would be minimal, since it would involve only a very few small hospitals, and among them, they collectively train only a very few residents. These respondents recommended that HRSA make available the analysis underlying this particular adjustment and seek further comment before making the adjustment final and implementing it.

The Department will postpone the implementation of an adjustment factor based on ALOS to the IME payment formula until it conducts additional analyses. These analyses and subsequent proposed recommendations related to the IME payment formula will be published in a future **Federal Register** notice.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act (RFA of 1980), if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives of costs, of benefits, of

incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department has determined that the only burden this action will impose on children's hospitals is the resources required to submit an application to the CHGME program. Therefore, in accordance with the RFA and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this action will have a significant impact on a substantial number of small entities in that this action will provide significant funding to eligible children's hospitals. However, since this action will not impose a significant burden on a substantial number of small entities, we have not examined any alternatives for reducing the burden on children's hospitals. The Secretary has also determined that this action does not meet criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy of Federal expenditures.

We have determined that the proposed rule is not a "major rule" within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, the proposed rule will not have effects on State, local and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Further, Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this action under the threshold criteria of Executive Order 13132, Federalism, and, therefore, have determined that this action would not have substantial direct effects on the rights, roles, and responsibilities of States.

Paperwork Reduction Act of 1995

In accordance with section 3507(a) of the Paperwork Reduction Act (PRA) of 1995, the Department is required to solicit public comments, and receive final Office of Management and Budget (OMB) approval, on collections of information. As indicated, in order to implement the Children's Hospital Graduate Medical Education Payment Program (CHGME), certain information is required as set forth in this notice in order to determine eligibility for payment and amount of payment. In accordance with the PRA, we have received final OMB approval on our proposed collection of information (OMB No. 0915–0247).

Collection of information: The Children's Hospitals Graduate Medical Education Payment Program.

Description: Data is collected on the number of full-time equivalent residents in applicant children's hospital training programs to determine the amount of direct and indirect medical education payments to participating children's hospitals. Indirect medical education payments will also be derived from a formula that requires the reporting of case mix index information from participating children's hospitals. Hospitals will be requested to submit such information in an annual application.

Description of Respondents: Children's hospitals operating approved graduate medical residency training programs.

Estimated Annual Reporting: The estimated average annual reporting for this data collection is approximately 150 hours per hospital. The estimated annual burden is as follows:

Form name	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
HRSA–99–1					
(Annual)	54	1	54	99.9	5,395
(Reconciliation)	54	1	54	8	432
HRSA–99–2 (IME)	54	1	54	14	756
HRSA–99–4					
(Required GPRA tables)	54	1	54	28	1,512
Total	54	1	54		8,095

National Health Objectives for the Year 2000

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, and its successor, Healthy People 2010. These are Department-led efforts to set priorities for national attention. The CHGME program is related to the priority area 1 (Access to Quality Health Services) in Healthy People 2010, which is available online at *http://www.health.gov/healthypeople*.

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between Department education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Depaertment strongly encourages all award recipients to provide a smoke-free workplace and promote abstinence from all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

This program is not subject to the Public Health Systems Reporting Requirements.

Dated: June 7, 2001.

Elizabeth M. Duke,

Acting Administrator.

Dated: July 17, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–18166 Filed 7–19–01; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Rural Health Outreach and Rural Health Network Development Program

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy (ORHP) announces that fiscal year 2002 funds may be available for grants under the Rural Health Outreach and Network Development Program.

Two kinds of projects will be funded under this announcement: (1) Rural Health Outreach Grants for the development of networks to expand service delivery systems in rural areas where support is provided for the actual delivery of new services or enhancement of existing services.

(2) Rural Health Network Development Grants for the planning and development of vertically integrated networks in rural areas where the emphasis is placed not on the actual delivery of services, but on efforts to restructure the delivery system in rural communities. Funds are appropriated for these grants under Public Law 104–208. The grants are authorized by section 330A of the Public Health Service Act as amended by the Health Centers Consolidation Act of 1996, Public Law 104–299.

Applicants and Network members may not apply for both the Rural Health Outreach Grant Program and the Rural Health Network Development Grant Program. Except for current and former one-year Network grantees, current and former grantees cannot reapply for either grant program for FY 2002 funding.

National Health Objectives for the Year 2010: The Health Resources & Services Administration (HRSA) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a Public Health Service (PHS) national activity for setting priority areas. The Rural Health Outreach program is related to the priority areas for health promotion, health protection and preventive services. Potential applicants may receive a copy of Healthy People 2010 (Stock No. 017–001–00547–9) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238). The cost for the full document in hard copy is $70.

The document can also be read online in several different formats such as: HTML, Microsoft Word, Adobe Acrobat Reader Portal Document File or Rich Text Format. The document file can be found on the Internet at: *http://www.health.gov/healthypeople/Document/tableofcontents.htm.*

Amount and Duration of Grant Awards: Grant awards under this notice will be limited to a total amount of $200,000 (direct and indirect costs) per grantee, per year.

Applications for smaller amounts are encouraged. Applicants may propose project periods for up to three years, but the duration of projects is contingent upon the availability of funds. It is expected that the average grant award will be approximately $180,000 for the first year. Award date for grants will be May 1, 2002. However, applicants are advised that continued funding of grants beyond the one-year period covered by this announcement is contingent upon the appropriation of funds for the program and assessment of grantee performance. No project will be supported for more than three years.

Application Deadlines: Applications for the programs must be received by the close of business on September 28, 2001 for the Rural Health Outreach Program and October 5, 2001 for the Rural Health Network Development Program. Completed applications must be sent to The HRSA Grants Application Center (GAC), 1815 North Fort Myers Drive, Suite 300, Arlington, VA 22209.

Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants must obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service in lieu of a postmark. Private metered postmarks are not acceptable as proof of timely mailing. Late applications will not be reviewed.

The standard application form and general instructions for completing applications (Form PHS–5161–1, Revised 7/00) have been approved by the Office of Management and Budget. To receive an application kit, contact The HRSA GAC, toll-free at, 1–877/477–2123 or write them at 1815 North Fort Myers Drive, and Suite 300, Arlington, VA 22209. To order an application kit for either program, you must identify the program citing the following program names and CFDA numbers: Rural Health Outreach Program, 93.912A; Rural Health Network Development Program, 93.912B. If you are unable to connect to one of these toll-free numbers please call Lilly Smetana, 301/443–6884, in the Office of Rural Health Policy.

FOR FURTHER INFORMATION CONTACT: Information or technical assistance regarding business, budget, or financial issues should be directed to the Office of Grants Management, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East West Highway, 11th Floor, Bethesda, Maryland 20814, 301/594–4260 as follows:

Staff	Phone	States
Cheryl Armstead	301–594–4261	AK, ID, NH, OR, WA.
Inge Cooper	301–594–4236	CT, KS, WV.
Kathy Cummings	301–594–0823	DE, PA.
Mary Douglas	301–594–4232	FL, KY, NV, NE, Virgin Islands.
Donna Marx	301–594–4245	IA, MN, MO, WI.
Joyce Monk	301–594–4252	NY, Puerto Rico, VT.
Cathy Neher	301–594–4268	MA, ME, NJ.
Carol Odum	301–594–4254	CA.
Tonya Randall	301–594–4259	AZ, DC, OH, TN, RI.
Joyce Sagami	301–594–4253	AR, LA, OK, TX.
Angela Stokes	301–594–4257	MD, NM, VA.
Martha Teague	301–594–4258	AL, NC, SC.
Carolyn Testerman	301–594–4244	IL, MI, IN, Pacific Islands.
Kim Whitfield	301–594–4255	CO, MT, ND, SD, UT, WY.
Anifa Williams	301–594–5242	HI, MS.
Stephanie Young	301–594–1246	GA.

Requests for technical or programmatic information on this announcement should be directed to Lilly Smetana of the Office of Rural Health Policy, Room 9A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0835.

SUPPLEMENTARY INFORMATION: The two categories of grants offered under this program are the Rural Health Outreach Grants and Rural Health Network Development Grants. These programs have the common purposes "* * *to coordinate, restrain the cost of, and improve the quality of essential health care services, including preventive and emergency services, through the development of integrated health care delivery systems or networks in rural areas and regions." The two types of grants available through this announcement are different approaches to achieve the same goals.

Rural Health Outreach Grants

These grants will support the development of health service delivery systems in rural areas that lack basic services. Grants will be awarded to support the actual delivery of new services through networks comprised of at least three separately owned organizations. They may also be awarded to support activities that will expand access to or increase utilization of existing services. Programs in health prevention, health education, quality improvement, emergency care and other services may be supported through the program. Applicants may propose projects to address the needs of a wide range of rural population groups including the poor, the elderly, adolescents, rural minority populations, pregnant women and children, populations with special health care needs, etc. Projects should be responsive to the special cultural and linguistic needs of specific populations. The grants may not be used to support planning activities.

A central goal of the Rural Outreach Grants is to better coordinate services through the development of new service delivery systems. In furtherance of this goal, participation in the program requires the formation of a service delivery network of three or more health care organizations, or a combination of three or more health care and social service organizations. At least one of the entities must be a health care service delivery organization. Individual members of the Rural Outreach Grant network might include such entities as physicians, hospitals, public health agencies, emergency care providers, mental health centers, Faith-based services, Rural Health Clinics, social service agencies, health professions schools, other educational institutions, community and migrant health centers, civic organizations, dental providers, etc. There must be a memorandum of agreement or other arrangements to ensure effective collaboration among members of the service delivery network. Although applicants for the program must be nonprofit or public entities, other network members may be for-profit organizations.

The roles and responsibilities of each member of a Rural Outreach Grant network must be clearly defined and each must contribute significantly to the goals of the project. The local community must be involved in the project and committed to the goals of the network.

Applicants are encouraged to develop projects to address specific areas of need in their communities. Need should be established through a formal needs assessments, comparison of local data against State and national information and/or by population specific demographic data.

The following are *examples* of project areas that can be supported through this program:

(1) Projects that bring ambulatory and mental health care to unserved or underserved rural areas or populations. The HRSA has a special priority to establish primary care programs along the U.S./Mexican border.

(2) Projects that provide, or make possible the provision, of emergency medical services within rural areas that lack these services.

(3) The creation of new integrated networks of providers to deliver ambulatory care when such networks appear likely to improve access to health care or its quality.

(4) Projects that provide services that enable rural populations to better utilize existing health services, including those involving the use of community outreach workers.

(5) Projects that provide training for health care professionals and workers, including community outreach workers, when such training may be demonstrated to be likely to lead to higher quality services or more accessible services in rural areas.

(6) Projects that enhance the health and safety of farmers, farm families, and migrant and seasonal farm workers through direct services.

(7) Projects that address the needs of rural minority populations.

(8) Projects that train rural people in disease prevention and health promotion, when such training addresses critical needs of the area.

(9) Projects on adolescent health and on school-based programs.

(10) Projects from Faith based organizations that provide health services to members of the community.

The focus areas listed above are examples only. All projects must address the demonstrated needs of the community.

Review Considerations

Applications for the Rural Health Outreach Grant Program will be evaluated on the basis of the following criteria:

Criterion and Maximum Points

(1) Need for the Project and the Network (25 Points)

A. Description of Need (15 points)
   1. Unmet Health Needs of the Target Population
   2. Access Barriers to Needed Services
   3. Description and Map of the Service Area
   4. Relevant Services Available in or Near the Service Area

B. Description of Network Capability (10 Points)
   1. Applicant Management Information
   2. Management Review Form
   3. Identification and Credentials of Network Members
   4. History of Network Development and Collaborative Activities
   5. Letters of Commitment from Network Members

(2) Description of the Program to Meet the Needs (25 Points)

A. Description of the Planning Process (10 Points)
   1. Role of the Network in Planning
   2. Role of the Community in Planning
   3. Models that Work

B. Project Plan (15 Points)
   1. Goals, Strategies, Activities, Responsible Agents and Completion Milestones

(3) Project Management and Network and Community Involvement (25 Points)

A. Responsibilities of the Applicant and Network Members(10 Points)
   1. Plans for Network Governance
   2. Plans for Network Communication and Coordination
   3. Description and Chart of Organization and Lines of Authority

B. Community Support and Involvement in Project (10 Points)
   1. Financial (including documentation)
   2. In-Kind (including documentation)
   3. Letters from Community Leaders

(4) Budget (10 Points)

A. Budget Information (5 Points)

1. Instructions for filling out Standard Form 424A

B. Budget Justification Narrative (5 Points)

(5) Personnel

A. Biographical Sketches (2 Points)
B. Position Descriptions (3 Points)

(6) Evaluation Plan and Dissemination Strategies

A. Strategy for Measuring Progress and Results (8 Points)
1. Measuring and Utilizing Progress and Results.

B. Strategies for Disseminating Information About the Project (2 Points)
1. Identify strategies to publicize your project to the community.
2. Identify strategies to educate appropriate State and national organizations about your project.
3. Potential of Project to be Replicated in Other Communities

(7) Sustainability Plan

Strategies for Continuing the Program after Grant Support Ends

Note to current and former Rural Health Outreach Grantees: Current and former Rural Health Outreach Grantees may not apply for FY 2002 funds regardless of the type of proposed project or services to be delivered.

Rural Health Network Development Grants

These grants will support the development of integrated health care networks in rural areas or regions of the country as mechanisms for strengthening rural health care delivery systems. The grants will support network activities that demonstrate intent to move from shared and collaborative activities to integration of functions across network members. Networks may be vertically integrated, meaning they consist of different types of providers (e.g., hospital, health department, rural health clinic, community health center) or horizontally integrated networks meaning they are composed of only one type of provider (e.g., hospitals only). These integrated networks entail more formal relationships among the members than the networks envisioned for the Rural Outreach Grants. Also, the activities supported by these grants do not involve the actual delivery of services. Instead, it is expected that these activities will be aimed at moving the networks from sharing and collaborating to integrating functions across members. This integration of functions decreases fragmentation of service delivery across members and achieves certain efficiencies and economies of scale among them. Together, these outcomes help strengthen the network members and the rural health care system as a whole.

Like the outreach networks, rural health networks supported under these grants must be composed of three or more health care providers or other entities that provide or support the delivery of health care services. At least three of the network members must be separately owned. While social service providers may be part of a network, the grants will not support networks for the exclusive provision of social services. The members of a network must have a strong existing commitment to the network's goals and objectives and some history of prior collaboration and accomplishment before applying for the grant. Unlike the Rural Outreach Grants, the program will not support projects where the members have never collaborated in the past.

Although applicants for the program must be nonprofit or public entities, profit-making organizations may be members of a network. The network must address how its work benefits the local community served by the network members.

Review Considerations

Applications for the Rural Network Development Grant Program will be evaluated on the basis of the following criteria:

Criterion and Maximum Points

(1) Statement of Need and Appropriateness of Funding (15 Points)

A. The applicant demonstrates the need for Federal funding to support network activities by describing the environment in which the network has developed and the appropriateness of applying for Federal funding at this point. The applicant utilizes appropriate data sources in their analysis of the environment in which the network is functioning.

B. The applicant identifies the network members and explains why these are the appropriate collaborators and why other key groups are not included.

C. The applicant describes the value of the network to its members and how the network will provide value to the community.

(2) Evidence of Prior Collaborative History and Readiness for Integration Funding (25 Points)

A. The applicant describes prior collaborative history and accomplishments among a majority of network members.

B. The applicant provides a Memorandum of Agreement, bylaws, letter of incorporation etc. that demonstrates commitment on the part of all network members.

C. The applicant describes the level of commitment of network members including allocation of time, personnel, cash, and other in-kind contributions.

D. The applicant provides a map that shows the location of network members, the geographic area that will be served by the network and any other information that will help reviewers visualize and understand the scope of the proposed project. The applicant includes an organizational chart for the network showing each member of the network and the relationships between members. The applicant fills out and includes the Management Review Form provided in the application packet.

E. The applicant has an interim network leader in place and describes any known candidates for the permanent network leader position. The applicant provides a position description for the network leader job that outlines desirable skills and qualities. Position descriptions are provided for other key staff positions to be filled. Short biographical sketches that suggest the qualifications necessary to perform assigned work are provided for already hired key network staff.

F. The applicant describes a governance structure for the network that has effective, independent governing bodies and leadership. Providers of care and lay consumers of care are represented on the Board.

(3) Statement of Project and Budget (35 Points)

A. The applicant describes specific goals, objectives, activities, and expected outputs and outcomes that align with the intent of the Network Development Grant Program.

B. The applicant provides a matrix that carefully integrates goals, objectives, activities, output and outcome measures, and anticipated outputs and outcomes. The matrix outlines the individual responsible for carrying out each activity and includes a timeline for all three years of the project.

C. The applicant provides an accompanying narrative that describes the overall project, the marketing strategy, the management strategy, the financial management strategy, and addresses sustainability.

D. The applicant discusses how this application relates to other community and State-level grant applications and awards like the Community Access Program, the Robert Wood Johnson

Foundation's Networking for Rural Health Program, and the Medicare Rural Hospital Flexibility Program.

E. The applicant provides required budget forms, a budget worksheet, and budget narrative that are appropriate and adequate to accomplish the goals, objectives, activities, and expected outputs and outcomes as described in the matrix and project narrative. The budget is reasonable and allocates Federal funds for allowable purposes. All network members contribute to each year of the budget and their joint contributions total at least 20 percent of the budget for each grant year.

(4) Evaluation (10 points)

A. The applicant proposes appropriate output and outcome measures for the goals, objectives, and activities described in the project matrix and narrative.

B. The applicant explains any assumptions made in developing the project matrix and outlines anticipated outputs and outcomes.

C. The applicant describes the process by which data for these measures will be collected and analyzed.

D. The applicant describes a continuous self-evaluation plan that will measure, monitor, and improve the network's execution to ensure progress toward identified goals and objectives.

E. The applicant describes an approach for evaluating the network's progress against its proposed outputs and outcomes following the three-year grant period.

(5) Sustainability (15 Points)

A. The authorizing language for this program requires that grants awarded shall be used "for the * * * development of integrated, self-sustaining health care networks." In response, the applicant includes a plan for sustainability in the business plan provided under the "Statement of Project and Budget" Section.

B. The applicant's sustainability plan includes a discussion of methods for future income generation like member dues, maximizing reimbursement opportunities, recruiting new members, producing and marketing new products to members and others, and pursuing further grant opportunities.

Note to current and former Rural Health Network Development Grantees: Other than current or former one-year Network Development Grantees, current and former grantees may not reapply for grant funds. Current and former one-year grantees may apply for up to two additional years of funding.

Eligibility Requirements

The primary grant recipient, which is an organization that is or represents a network of three or more separately owned organizations, must be a public or nonprofit private entity that meets one of the three requirements stated below.

(1) The applicant organization must be located in a rural area or in a rural zip code of an urban county (list included in the application materials) and all services must be provided in a rural county. If the applicant is owned by or affiliated with an urban entity or health system the rural component may still apply as long as the rural entity can directly receive and administer the grant funds in the rural area. The rural entity must be in complete control of the planning, program management and financial management of the project. The urban parent organization must assure the Federal Office of Rural Health Policy in writing that, for this project, they will exert no control over or demand collaboration with the rural entity. The urban parent may, at the request of the rural entity, assist with direct service delivery or provide health care personnel who would not otherwise be available. Other network members may be urban entities.

(2) The applicant organization exists exclusively to provide services to migrant and seasonal farmworkers in rural areas and is supported under Section 330(g) of the Public Health Service Act. These organizations are eligible regardless of the urban or rural location of the administrative headquarters.

(3) The applicant is a Native American Tribal or quasi-Tribal entity for services delivered on reservation or Federally recognized Tribal lands.

Note To Former Applicants: The list of rural areas by State and county has been updated and is included in the application packet.

In addition to the above criteria, applicants must be capable of receiving the grant funds directly and must have the capability to manage the project. Project Management means that applicants must be able to exercise administrative and program direction over the grant project; must be responsible for hiring and managing the project staff; must have the administrative and accounting capabilities to manage the grant funds; and must have some permanent staff at the time the application is submitted. Further, applicants must have an Employer Identification Number from the Internal Revenue Service and other proof of organizational viability that may be requested by the Grants Management Office.

Applicants from the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territories of the Virgin Islands, Guam, American Samoa, the Compact of Free Association Jurisdiction of the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia are eligible to apply.

Applications that do not meet the requirements stated above will not be Reviewed.

Preference Points

Approved applications for both programs that are awarded a funding preference will be placed in a more competitive position in ranking all applications that fall within the funding range. The funding range is the threshold score that determines the cutoff point for funding in a given fiscal year determined by available funds. Applications that do not address funding preferences will be given full and equitable consideration during the review process but will not be funded until all the applications that do receive the preference and fall within the funding line are funded.

To receive a preference, applicants *must request* a preference and identify the type of preference they are eligible for in the application. Approved applications that fall within the funding range and that are awarded a funding preference will be considered for funding before applications with no funding preference requested or identified.

As provided in the law, a preference will be awarded to any qualified applicant that demonstrates substantial inclusion of any one of the following in the proposed project:

(1) A majority of the healthcare providers serving in the area or region to be served by the network. The applicant must document the number of health care providers in the service area or region and the percentage of those providers that will be involved in the project. Data or documents to authenticate the claim must be included in the application;

(2) Any federally qualified health centers, rural health clinics, and local public health departments serving in the area or region. (The applicant must demonstrate the involvement of one or more of these health care facilities operating in the area or region to be served by the project. The involvement must be more than a referral relationship. The entity must be a full

and active member of the network, and the letter of commitment must demonstrate the organizations' roles, responsibilities, and contribution of resources to the project.);

(3) Outpatient mental health providers serving in the area or region. (This guideline mirrors the previous guideline and the applicant must demonstrate the same level of participation for the mental health providers serving in the area or region.); or

(4) Appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infants, and children program, to improve access to and coordination of health care services. This guideline also mirrors the previous guideline. As above, the applicant must demonstrate the same level of participation for the social service providers and related health agencies. These organizations must be intimately connected to the purpose of the grant program. The applicant must demonstrate how the inclusion of any of these entities will improve access to and coordination of health care services.)

Geographic Considerations

The HRSA hopes to achieve a geographic balance in making new awards under this announcement. Therefore, HRSA will consider geographic coverage when deciding which approved applications to fund.

Other Information

Applicants for both types of grants must demonstrate that at least 50 percent of the funds awarded will be spent in rural areas or for the benefit of rural communities. Grant funds may not be used for purchase, construction or renovation of real property. The grants will not support projects that are solely for the purchase of equipment or vehicles.

Applicants should demonstrate participation in the cost of grant supported projects. Cost participation may be in cash or in-kind. In-kind contributions might include donated staff time, donated space or equipment, donated vehicles, or other non-cash resources.

Applicants are advised that the entire application may not exceed 70 pages in length including the project and budget narratives, face page, all forms, appendices, attachments and letters of support. Each page of the application must be numbered consecutively. All applications must be computer generated or typewritten in print measuring at least 12 characters (in scalable or regular font) per inch and legible. Margins must be no less than 1 inch on the top and 1/2 inch on the bottom and left and right sides.

In order to allow the Office of Rural Health Policy to plan for the objective review process, applicants are encouraged to notify the Office in writing of their intent to apply and the program they are applying for. This notification serves to inform the Office of anticipated numbers of applications, which may be submitted. The address is Lilly Smetana, Office of Rural Health Policy, Health Resources and Services Administration, Parklawn Building, Room 9A–55, Rockville, Md., 20857, or Fax# 301/443–2803. If notification is offered, it should be received no later that September 21, 2001.

Technical Assistance Workshops

Four (4) Technical Assistance sessions for prospective applicants for the Rural Health Outreach and Rural Health Network Development programs will be held in late July and early August.

The sessions will be held as follows:

July 23, 2001—Minneapolis, MN
July 25, 2001—Las Vegas, NV
July 31, 2001—Jackson, MS
August 2, 2001—Pittsburgh, PA

Two technical assistance conference calls will also be held in August. Verification for the dates and places of the Technical Assistance workshops and calls will appear in the application documents and on our web site—*www.ruralhealth.hrsa.gov*.

Smoke-Free Workplaces

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Impact Statement

This program is subject to the Public Health System Reporting Requirements. The Office of Management and Budget—# 0937–0195, has approved reporting requirements. Under these requirements, the community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

a. A copy of the face page of the application (SF 424)

b. An abstract of the project not to exceed one page, which provides:

(1) A description of the population to be served

(2) A summary of the services to be provided

(3) A description of the coordination planned with the appropriate State or local health agencies.

Executive Order 12372

This grant program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate State and local officials as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which will be included in the application kit, as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. All SPOC recommendations should be submitted to Lawrence R. Poole, Director, Office of Grants Management, Bureau of Primary Health Care, 4350 East West Highway, 11th Floor, Bethesda, Maryland 20814, (301) 594–4235. The due date for State process recommendations is 60 days after the application deadline of September 28, 2001 for competing applications for the Outreach Program and October 5, 2001 for the Network Program. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date. (See Part 148 of the PHS Grants Administration Manual, Intergovernmental Review of PHS Programs under Executive Order 12372, and 45 CFR Part 100 for a description of the review process and requirements.

Paperwork Reduction Act

If the methods proposed for the project evaluation should fall under the purview of the Paperwork Reduction Act of 1995, OMB approval will be sought for proposed data collection activities.

State Offices of Rural Health

Applicants are *required* to notify their State Office of Rural Health (or other appropriate State entity) of their intent to apply for this grant program and to consult with such agency regarding the content of the application. The State Office can provide information and technical assistance. A list of State Offices of Rural Health is included with the application kit.

OMB Catalog of Federal Domestic Assistance Number is: 93.912 A for the Rural Health Outreach Program; 93.912 B for the Rural Health Network Development Program.

Dated: July 17, 2001.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 01–18181 Filed 7–19–01; 8:45 am]

BILLING CODE 4165–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Refugee Resettlement Program; Availability of Formula Allocation Funding for FY 2001 Targeted Assistance Grants for Services to Refugees in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of availability of formula allocation funding for FY 2001 targeted assistance grants to States for services to refugees in local areas of high need.

SUMMARY: This notice announces the availability of funds and award procedures for FY 2001 targeted assistance grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of public assistance, and where specific needs exist for supplementation of currently available resources.

This notice continues the eligibility of those 50 counties located in 29 States that previously qualified for and received targeted assistance program (TAP) grants beginning in FY 1999 as a result of the three-year qualification process. The FY 2001 TAP formula allocations are based on the same formula as in FY 1999, updated to reflect arrivals during the five-year period from FY 1996 through FY 2000. The final notice reflects an adjustment in final allocations to States as a result of additional arrival data.

DATES: The closing date for submission of applications is August 20, 2001. See Part VIII of this notice for more information on submitting applications. Applications postmarked after the closing date will be classified as late.

ANNOUNCEMENT AVAILABILITY: This notice is published on the ORR website at: *www.acf.dhhs.gov/programs/orr*

FOR FURTHER INFORMATION CONTACT: Gayle Smith, Director, Division of Refugee Self-Sufficiency, (202) 205–3590; email:gsmith@acf.dhhs.gov.

SUPPLEMENTARY INFORMATION: A notice of proposed allocations to States of FY 2001 funds for targeted assistance was published in the **Federal Register** on April 27, 2001 (66 FR 21229).

I. Purpose and Scope

This notice announces the availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

The Office of Refugee Resettlement (ORR) has available $49,477,000 in FY 2001 funds for the targeted assistance program (TAP) as part of the FY 2001 appropriation for the Department of Health and Human Services (Consolidated Appropriations Act, 2001, as enacted into law by section 1(a)(1) of Pub. L. No. 106–554).

The Director of the Office of Refugee Resettlement (ORR) will use the $49,477,000 in targeted assistance funds as follows:

- $44,529,300 will be allocated to States under the five-year population formula, as set forth in this notice.
- $4,947,700 (10 percent of the total) will be used to award discretionary grants to States under separate continuation grant awards.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), which provides that targeted assistance grants shall be made available "(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity."

II. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. No. 99–605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513).

III. Use of Funds

Targeted assistance funding must be used to assist refugee families to achieve economic independence in accordance with regulations at 45 CFR Part 400. The term "refugee" includes persons who meet all requirements of 45 CFR 400.43 (as amended by 65 FR 15409 (March 22, 2000)) and 45 CFR 401.2 (Cuban and Haitian entrants). In addition to the statutory requirement that TAP funds be used "primarily for the purpose of facilitating refugee employment" (section 412(c)(2)(B)(i)), funds awarded under this program are intended to help fulfill the Congressional intent that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" (section 412(a)(1)(B)(i) of the INA). Therefore, in accordance with 45 CFR 400.313, targeted assistance funds must be used primarily for employability services designed to enable refugees to obtain

jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Under 45 CFR 400.316, a State may provide the same scope of services under targeted assistance as may be provided to refugees under 45 CFR 400.154 and 45 CFR 400.155, with the exception of 45 CFR 400.155(h). Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

States may not provide services funded under this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (five years). Specifically, States may not provide citizenship preparation services to refugees who have been in the United States for more than 60 months (five years) using targeted assistance funds.

In accordance with 45 CFR 400.314, States are required to provide targeted assistance services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) Refugees who are cash assistance recipients, particularly long-term recipients; (b) unemployed refugees who are not receiving cash assistance; and (c) employed refugees in need of services to retain employment or to attain economic independence.

In accordance with 45 CFR 400.317, if targeted assistance funds are used for the provision of English language training, such training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities.

Refugees who are participating in TAP-funded or social services-funded employment services or have accepted employment are eligible for child care services. For an employed refugee, TAP-funded child care should be limited to one year after the refugee becomes employed. States and counties, however, are expected to use child care funding from other publicly funded mainstream programs as a prior resource and are encouraged to work with service providers to assure maximum access to other publicly funded resources for child care.

Reflecting section 412(a)(1)(A)(iv) of the INA, States must "ensure that women have the same opportunities as men to participate in training and instruction." In addition, in accordance with 45 CFR 400.317, targeted assistance services must be provided, to the maximum extent feasible, in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women.

In accordance with 45 CFR 400.317, targeted assistance services must be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background, to the maximum extent feasible. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. Services funded under this notice must be refugee-specific services that are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job-skills training, on-the-job training, or English language training, however, need not be refugee-specific.

Finally, in order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR strongly encourages States and counties to promote and give special consideration to the provision of services through coalitions of refugee service organizations, such as coalitions of Mutual Assistance Associations (MAAs), voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

The award of funds to States under this notice will be contingent upon the completeness of a State's application as described in section VIII below.

IV. Discussion of Comments Received

ORR did not receive any comments in response to the notice of proposed FY 2001 allocations to States for targeted assistance.

V. Eligible Grantees

Eligible grantees are those agencies of State governments that are responsible for the refugee program under 45 CFR 400.5 in States containing counties that qualify for FY 2001 targeted assistance awards. Replacement designees must also adhere to the regulations at Subpart L of 45 CFR part 400 regarding formula allocation grants for targeted assistance, if the State authorized the replacement designee appointed by the Director to act as its agent in applying for and receiving targeted assistance funds. If a State withdraws from all or part of the program components with the prior approval of the Director and a Wilson/Fish alternative program (section 412(e)(7) of the Immigration and Nationality Act) is approved to provide the program components relinquished by the State, the Wilson/Fish grantee may apply for and receive targeted assistance in lieu of the State.

The Director of ORR determined the eligibility of counties for inclusion in the FY 2001 targeted assistance program on the basis of the method described in section VI of this notice.

The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States that have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency will submit a single application on behalf of all county governments that are qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county is permitted, but not required, to determine the allocation amount for each qualified county within the State. However, if a State chooses to determine county allocations differently from those set forth in the final notice, in accordance with 45 CFR 400.319, the FY 2001 allocations proposed by the State must be based on the State's population of refugees who arrived in the U.S. during the most recent five-year period. A State may use welfare data as an additional factor in the allocation of its targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. In addition, if a State chooses to allocate its FY 2001 targeted assistance funds in a manner different from the formula set forth in this final notice, the FY 2001 allocations and methodology proposed by the State must be included in the State's application for ORR review and approval.

Applications submitted in response to this final notice are not subject to

review by State and area-wide clearinghouses under Executive Order 12372, "Intergovernmental Review of Federal Programs."

VI. Qualification and Allocation

A. Qualification

The Director of ORR will determine the qualification of counties for targeted assistance once every three years, as stated in the FY 1999 notice of proposed availability of targeted assistance allocations to States which was published in the **Federal Register** on March 10, 1999 (64 FR 11927). Since ORR determined the qualification of counties for targeted assistance in FY 1999, those qualifying counties determined eligible in FY 1999 and listed in this notice as qualified to apply for FY 2001 TAP funding will remain qualified for TAP funding through FY 2001 on the basis of the most current five-year refugee/entrant arrival data. ORR does not plan to consider the eligibility of additional counties for TAP funding until FY 2002, when ORR will again review data on all counties that could potentially qualify for TAP funds.

B. Allocation Formula

Of the funds available for FY 2001 for targeted assistance, $44,529,300 will be allocated by formula to States for qualified counties based on the initial placements of refugees, Amerasians, entrants (including Havana parolees), and Kurdish asylees in these counties during the five-year period from FY 1996 through FY 2000 (October 1, 1995–September 30, 2000). These data are available in the ORR Refugee Data System.

The arrival data used as the basis for targeted assistance formula allocations do not take asylees or secondary migrants who have received services into account. We are unable to include secondary migrants in the 5-year population because secondary migration is not currently tracked at the county level. We are unable to include asylees, except for Kurdish asylees who were processed on Guam, because information from the Immigration and Naturalization Service (INS) and the Executive Office of Immigration Review (EOIR) on grants of asylum are available by zip code of the asylee. Unfortunately, zip code assignments do not correspond to county designations. Many zip codes cross county lines and in some cases, State lines. Therefore, based on available data, ORR is currently unable to credit numbers of asylees to counties.

ORR plans to remedy this by revising the ORR–11 and seeking OMB approval to capture numbers of asylees and secondary migrants accessing services at the county level. This revision to the ORR–11 will allow States to report on numbers of asylees and secondary migrants receiving services at the county level. ORR will adjust the targeted assistance 5-year population based on these data.

States are advised that ORR expects that these revisions to the ORR–11, once implemented, will require States to track asylees and secondary migrants who receive services by name, social security number, alien registration number, county of initial residence/resettlement, and county of current residence in order to transmit this information to ORR in the future.

With regard to Havana parolees, in the absence of reliable data on the State-by-State resettlement of this population, we are crediting 49,507 Havana parolees who arrived in the U.S. during the past 5 years according to the Immigration and Naturalization Service (INS) using the following methodology. For FY 1999 and FY 2000, we credited the qualifying counties with Havana parolees according to arrival numbers supplied to us by the Parolee Orientation Program funded by the International Affairs Office of the INS. For FY 1996 through 1998, the Havana parolees for each qualifying county in Florida are based on actual arrival data submitted by the State of Florida; Havana parolees credited to qualifying counties in other States were prorated based on the counties' proportion of the three-year (FY 1996 through FY 1998) entrant population in the U.S.

VII. Allocations

Table 1 lists the qualifying counties; the number of refugee (column 3) and entrant (column 4) arrivals in those counties during the five-year period from October 1, 1994—September 30, 1999; the number of Havana parolees (column 5) credited to each county during this period, the total number of arrivals; and the final amount of each county's allocation based on its five-year arrival population.

Note 1.: —Table 1. Final Targeted Assistance Allocations By County: FY 2001 is attached. Table 2.—State totals for final FY 2001 targeted assistance allocations is attached.

VIII. Application and Implementation Process

States that are currently operating under approved management plans for their FY 1999 targeted assistance program and wish to continue to do so for their FY 2001 grants may provide the following in lieu of resubmitting the full currently approved plan:

The State's application for FY 2001 funding shall provide:

- Assurance that the State's current management plan for the administration of the targeted assistance program, as approved by ORR in FY 1999, will continue to be in full force and effect for the FY 2001 targeted assistance program, subject to any additional assurances or revisions required by this notice which are not reflected in the current plan. Any proposed modifications to the approved plan will be identified in the application and are subject to ORR review and approval, e.g., if the State assumes local administration of the program or if the State chooses to determine county allocations differently. Any proposed changes must address and reference all appropriate portions of the FY 1999 application content requirements to ensure complete incorporation in the State's management plan.
- A line item budget and justification for State administrative costs limited to a maximum of five percent of the total award to the State. Each total budget period funding amount requested must be necessary, reasonable, and allocable to the project.
- Targeted assistance performance goals as described under Section IX.

IX. Results or Benefits Expected

The applicant describes in quantifiable terms the results and benefits to be derived. For example, all applicants must establish targeted assistance proposed performance goals for each of the six ORR performance outcome measures for each targeted assistance county's proposed service contract(s) or sub-grants for the next contracting cycle. Proposed performance goals must be included in the application for each performance measure. The six ORR performance measures are: entered employments, cash assistance reductions due to employment, cash assistance terminations due to employment, 90-day employment retentions, average wage at placement, and job placements with available health benefits. Targeted assistance program activity and progress achieved toward meeting performance outcome goals are to be reported quarterly on the ORR–6, the "Quarterly Performance Report."

X. Reporting Requirements

States will be required to submit quarterly reports on the outcomes of the targeted assistance program, using the same format that States use for reporting on refugee social services formula grants: Schedule A and Schedule C, pages 1 and 2 of the ORR–6 Quarterly

Performance Report form (OMB #0970–0036). States are also required to file the Financial Status Report (SF–269) semi-annually.

XI. The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The following information collections are included in this notice of final allocations: OMB Control No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD) which expires 12/31/2003, and OMB Control No. 0970–0036, ORR Quarterly Performance Report (QPR) which expires 7/31/02. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.584

Dated: July 13, 2001.

Carmel Clay-Thompson,

Acting Director, Office of Refugee Resettlement.

TABLE 1.—FINAL TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 2001

County	State	Refugees[1]	Entrants	Havana parolees[2]	Total arrivals FY 1996—2000	Total FY 2001 final allocation
1 Maricopa County	Arizona	9,674	685	401	10,760	$1,407.140
2 Fresono County	California	968	2	1	971	126,982
3 Los Angeles County	California	13,149	124	380	13,653	1,785,447
4 Orange County	California	4,713	12	23	4,748	620,874
5 Sacramento County	California	10,652	2	6	10,660	1,394,032
6 San Diego County	California	5,826	141	280	6,247	816,885
7 San Francisco	California	5,028	13	33	5,074	663,479
8 Santa Clara County	California	6,317	43	31	6,391	835,776
9 Yolo County	California	1,224	0	3	1,227	160,399
10 Denver County	Colorado	2,795	0	5	2,800	366,100
11 District of Columbia	District of Columbia	2,941	5	14	2,960	387,106
12 Broward County	Florida	617	1,285	1,274	3,176	415,331
13 Dade County	Florida	7,012	14,460	40,333	61,805	8,082,345
14 Duval County	Florida	4,641	18	59	4,718	616,981
15 Hillsborough County	Florida	1,605	329	1,312	3,246	424,485
16 DeKalb County	Georgia	8,685	10	8	8,703	1,138,061
17 Fulton County	Georgia	4,644	84	134	4,862	635,810
18 Cook/Kane	Illinois	14,730	182	272	15,184	1,985,637
19 Polk County	Iowa	3,571	1	2	3,574	467,378
20 Jefferson County[3]	Kentucky	3,765	1,576	487	5,828	762,152
21 Hampden Coutny	Massachusetts	2,295	9	5	2,309	301,900
22 Suffolk County	Massachusetts	4,154	57	49	4,260	557,120
23 Ingham County	Michigan	1,911	718	227	2,856	373,515
24 Kent County	Michigan	3,125	190	29	3,344	437,299
25 Hennepin County	Minnesota	7,891	5	4	7,900	1,033,036
26 Ramsey County	Minnesota	1,680	2	5	1,687	220,627
27 City of St. Louis	Missouri	9,429	1	1	9,431	1,233,244
28 Lancaster County	Nebraska	2,302	34	20	2,356	308,098
29 Clark County[4]	Nevada	1,761	1,163	698	3,622	473,655
30 Hudson County	New Jersey	787	257	868	1,912	250,035
31 Bernalilo County	New Mexico	880	695	647	2,222	290,575
32 Monroe County	New York	2,526	643	358	3,527	461,232
33 New York	New York	32,361	355	481	33,197	4,341,227
34 Oneida County	New York	4,781	0	0	4,781	625,219
35 Guilford County	North Carolina	2,508	5	15	2,528	330,591
36 Cass County	North Dakota	2,043	0	2	2,045	267,428
37 Cuyahoga County	Ohio	3,335	6	7	3,348	437,833
38 Mulnomah	Oregon	11,076	734	317	12,127	1,585,841
39 Erie County	Pennsylvania	1,989	0	0	1,989	260,105
40 Philadelphia County	Pennsylvania	4,200	26	39	4,265	557,691
41 Minnehaha County[5]	South Dakota	1,729	0	0	1,729	226,104
42 Davidson County	Tennessee	3,180	54	45	3,279	428,754
43 Dallas/Tarrant	Texas	10,636	333	406	11,375	1,487,516
44 Harris County	Texas	8,039	508	118	8,665	1,133,104
45 Davis/Salt Lake	Utah	5,569	1	3	5,573	728,727
46 Fairfax County	Virginia	3,285	4	9	3,298	431,297
48 City of Richmond	Virginia	2,403	39	59	2,501	327,100
8 King/Snohomish	Washington	12,529	41	34	12,604	1,648,260
49 Pierce County	Washington	1,982	3	5	1,990	260,251
50 Spokane County	Washington	3,207	0	1	3,208	419,516
Total		266,150	24,855	49,507	340,512	44,529,300

[1] Includes refugees, Amerasian immigrants from Vietnam, and Kurdish asylees from Iraq. Does not include other asylees or secondary migrants.

[2] For FY 1999 and FY 2000, the Havana parolees for all counties are based on actual data. Fro previous years, the Havana parolees of Florida counties are based on actual data, while parolees from other counties are prorated based on each county's proportion of the three-year (FY 1996–1998) entrant population.

[3] The allocation for Jefferson County, Kentucky will be awarded to the Kentucky Wilson/Fish project.
[4] The allocation for Clark County, Nevada will be awarded to the Nevada Wilson/Fish project.
[5] The allocation for Minnehaha County, South Dakota will be awarded to the South Dakota Wilson/Fish project.

TABLE 2.—FINAL TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 2001

State	Total FY 2001 allocation
Arizona	$1,407,140
California	6,403,874
Colorado	366,100
District of Columbia	387,106
Florida	9,539,142
Georgia	1,773,871
Illinois	1,985,637
Iowa	467,378
Kentucky	762,152
Massachusetts	859,020
Michigan	810,814
Minnesota	1,253,663
Missouri	1,233,244
Nebraska	308,098
Nevada	473,655
New Jersey	250,035
New Mexico	290,575
New York	5,427,678
North Carolina	330,591
North Dakota	267,428
Ohio	437,833
Oregon	1,585,841
Pennsylvania	817,796
South Dakota	226,104
Tennessee	428,754
Texas	2,620,620
Utah	728,727
Virginia	758,397
Washington	2,328,027
Total	44,529,300

[FR Doc. 01–18142 Filed 7–19–01; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–29]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs,or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: DOT: Mr. Rugene Spruill, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW., Room 2310, Washington, DC 20590; (202) 366–4246; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: July 12, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Suitable/Available Properties

Land (by State)

Alaska

05.5 acres

Harding Lake Recreation Site, Richardson Highway
Salcha Co: AK 99714–
landholding Agency: GSA
Property Number: 54200130001
Status: Underutilized
Comment: No utilities, zoned for outdoor recreation
GSA Number: 9–D–AK–761
Summary of Suitable/Available Properties
Total number of Properties = 1

Unsuitable Properties

Buildings (by State)

Alabama

Federal Building
999 West Main Street
Centre Co: Cherokee AL 35960–
Landholding Agency: GSA
Property Number: 54200130003
Status: Excess
Reason: Within airport runway clear zone
GSA Number: 4–G–AL–770

California

Bldg. 36
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130001
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 60, 61, 64, 65
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130002
Status: Unutilized
Reason: Extensive deterioration
Bldg. 171
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130003
Status: Unutilized
Reason: Extensive deterioration
Bldg. 278
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130004
Status: Unutilized
Reason: Extensive deterioration
Bldg. 351
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130005
Status Unutilized
Reason: Extensive deterioration
Bldg. 130
Naval Station
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200130006
Status: Excess
Reason: Extensive deterioration
Bldg. 415
Naval Station
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200130007
Status: Excess
Reason: Extensive deterioration
Structure 20104
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200130008
Status: Excess
Reason: Extensive deterioration
Structure 31424
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200130009
Status: Excess
Reason: Extensive deterioration
Structure 31592
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200130010
Status: Excess
Reason: Extensive deterioration
Facility 26
Naval Weapons Station
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77200130011
Status: Unutilized
Reason: Secured Area
Bldg. 114
Naval Air Facility
El Centro Co: Imperial CA 92243–
Landholding Agency: Navy
Property Number: 77200130016
Status: Unutilized
Reason: Extensive deterioration
Bldg. 375
Naval Air Facility
El Centro Co: Imperial CA 92243–
Landholding Agency: Navy
Property Number: 77200130017
Status: Unutilized
Reason: Extensive deterioration
Bldg. 376
Naval Air Facility
El Centro Co: Imperial CA 92243–
Landholding Agency: Navy
Property Number: 77200130018
Status: Unutilized
Reason: Extensive deterioration

District of Columbia

Bldg. A–065
Naval District—Anacostia
Washington Co: DC 20374–
Landholding Agency: Navy
Property Number: 77200130019
Status: Unutilized
Reason: Extensive deterioration

Florida

Bldg. 172
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200130012
Status: Unutilized
Reason: Extensive deterioration

Maryland

Bldg. 105
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200130020
Status: Excess
Reason: Extensive deterioration
Bldg. 117A
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200130021
Status: Excess
Reason: Extensive deterioration
Bldg. 117
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200130022
Status: Excess
Reason: Extensive deterioration
Bldg. 405
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200130023
Status: Excess
Reason: Extensive deterioration
Bldg. 454
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200130024
Status: Excess
Reason: Extensive deterioration

Michigan

Station/boathouse Bldg
USCG Harbor Beach Station
Harbor Beach Co: Huron MI 48441–
Landholding Agency: DOT
Property Number: 87200130001
Status: Unutilized
Reason: Floodway, Extensive deterioration

New Jersey

Nike Battery Site 41/43
Lot 17 Williamstown Chews Landing Road
Gloucester Co: Camden NJ
Location: Village of Sicklerville
Landholding Agency: GSA
Property Number: 54200130002
Status: Excess
Reason: Extensive deterioration
GSA Number: 1–GR–NJ–0537

Land (by State)

Puerto Rico

330 acres
Naval Radio Transmitter Facility
Aguada Co: PR 00602–
Landholding Agency: Navy
Property Number: 77200130013
Status: Underutilized
Reasons: Floodway
Secured Area

242 acres
Naval Radio Transmitter Facility
Salinas Co: PR 00751–
Landholding Agency: Navy
Property Number: 77200130014
Status: Underutilized
Reasons: Floodway
Secured Area

408 acres
Naval Radio Transmitter Facility
Isabela Co: PR 00662–
Landholding Agency: Navy
Property Number: 77200130015
Status: Underutilized
Reasons: Secured Area

[FR Doc. 01–18021 Filed 7–19–01; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 234–2001]

Privacy Act of 1974; System of Records

The Department of Justice proposes to modify the Controlled Substances Act Nonpublic Records System, JUSTICE/JMD–002. The primary purpose for establishing the system of records was to retain a nonpublic record as required by former section 404(b) of Public Law 91–513, the Controlled Substances Act, solely for use by the Federal courts in determining in subsequent proceedings, whether a person found guilty of violating that Act qualified for dismissal and discharge or for an expungement order under certain of the Act's provisions. That provision was removed from the Controlled Substances Act by the Sentencing Reform Act of 1984, Public Law 98–473, Title II, and incorporated in substantially identical form into a newly enacted provision of the criminal code, 18 U.S.C. 3607(b).

The Department now proposes to modify the system to reflect the appropriate authority for maintenance of the system. The routine use section of the system notice has been modified to delete unnecessary routine use disclosures.

In addition, the Department is revising the "System Location" and "System Manager and Address" sections to reflect a move of the system.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given 30 days in which to comment on the proposed routine uses. Any comments must be submitted in writing to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 by (30 days from publication of this notice).

As required by 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) implementing regulations, the Department of Justice has provided a report on the proposed changes to OMB and the Congress.

A modified system description is set forth below.

Dated: June 18, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

JUSTICE/JMD–002

SYSTEM NAME:

Controlled Substances Act Nonpubic Records.

SYSTEM LOCATION:

U.S. Department of Justice, Justice Management Division, Information Management and Security Staff, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons found guilty for the first time of violating section 404 of the Controlled Substances Act (21 U.S.C. 844), i.e., persons who knowingly or intentionally possessed a controlled substance, except as authorized by the Act, whose cases have been in subject of a disposition under 18 U.S.C. 3607(a) or an order of expungement under 18 U.S.C. 3607(c).

CATEGORIES OF RECORDS IN THE SYSTEM:

Arrest records of law enforcement agencies, which include personal data, photographs, fingerprints, copies of court orders and Form OBD–140 (18 U.S.C. 3607).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained in accordance with Public Law 98–473, Chapter II, the sentencing Reform Act of 1984 (18 U.S.C. 3607).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are retained by the Department of Justice and are available only to a Federal court upon that court's issuance of an order demanding such records solely for the purpose of use by said court in determining whether or not a person found guilty of an offense under section 404 of the Controlled Substances Act (21 U.S.C. 844) qualifies for the disposition provided in 18 U.S.C. 3607(a) or the expungement provided in 18 U.S.C. 3607(c).

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

Subject to approval by the Attorney General or the President under 44 U.S.C. 2906, a record from this system of records may be disclosed to the National Archives and Records Administration (NARA) as part of a records management inspection conducted under the authority of 44 U.S.C. 2904.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE: RECORDS ARE STORED IN A LOCKED ROOM.

RETRIEVABILITY: RECORDS ARE INDEXED BY THE NAME OF THE OFFENDER.

SAFEGUARDS:

Access to these records is restricted to the Departmental Records Officer and Assistant Director, Information Security and Records Management, information Management and Security Staff, Justice Management Division.

RETENTION AND DISPOSAL:

Records are retained in accordance with records retention and disposal schedules approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Information Management and Security Staff, Justice Management Division, U.S. Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Same as the System Manager.

RECORD ACCESS PROCEDURES:

Same as the System Manger.

CONTESTING RECORD PROCEDURES:

Same as the system manager.

RECORD SOURCE CATEGORIES:

Law enforcement agencies and Federal courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted the system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(c) and (e) and have been published in the **Federal Register.** A proposed rule which update the justification for the exemption is being published in today's **Federal Register.**

[FR Doc. 01–16142 Filed 7–19–01; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 10, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or by E-Mail King-Darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Lauren Wittenberg, OMB Desk Officer VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Veterans' Employment and Training Service (VETS).

Title: VETS–300 Cost Accounting Report and Manager's Report.

OMB Number: 1293–0NEW.

Affected Public: State, Local, or Tribal Government.

Frequency: Quarterly.

Report	Number of respondents	Frequency	Annual responses	Average time per responses (hours)	Burden hours
VETS–300	53	Quarterly (Plus 1 final)	265	1.00	265
Manager's Report	1,200	Quarterly	4,800	4.00	19,200
Total	1,253		5,065	5.00	19,465

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The VETS–300 Cost Accounting Report provides data on State public employment program expenditures. VETS uses this data for program budgeting and administration purposes and to meet mandated reporting requirements to the President and Congress. Title 38 U.S.C. requires that local employment services provide report not less than quarterly to the Director for Veterans' Employment and Training for the State regarding compliance with Federal law and regulations with respect to special services and priorities for eligible veterans and eligible persons.

Currently, this information is collected by the Employment and Training Administration under OMB control number 1205–0240 which expires September 30, 2001. The information in the VETS–300 AND Manager's Report will no longer be collected under the currently assigned OMB control number. VETS is requesting that OMB approve the continued collection of this information under a new OMB control number.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–18150 Filed 7–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Solicitation for Grant Application (SGA 01–06); Customized Employment Grants

AGENCY: Office of Disability Employment Policy (ODEP), Department of Labor.

ACTION: Notice of applicability of funds and Solicitation for Grant Applications (SGA).

SUMMARY: The U.S. Department of Labor (DOL or the Department), Office of Disability Employment Policy (ODEP) announces the availability of $3.5 million to award up to seven competitive grants for strategic planning and implementation activities designed to improve the employment and career advancement of people with disabilities through enhanced availability and provision of customized employment services through the new One-Stop delivery system established under the Workforce Investment Act of 1998 (WIA) (Public Law 105–220, 29 U.S.C. 2801 *et seq.*).

This Customized Employment Grant program will provide funds to selected Local Workforce Investment Boards (Local Boards), which will be the lead entity in a consortium/partnership of public and private entities, to build the capacity in local One-Stop Centers to provide customized employment services to those persons with disabilities who may not now be regularly targeted for services by the One-Stop Center system. Grants funded under this program will also provide a vehicle for Local Boards to systemically review their policy and practices in terms of service to persons with disabilities, and to incorporate new and innovative practices, as appropriate.

Grants are for a one-year period and may be renewed for a period of up to four additional years at varying funding levels (see Section V) depending upon the availability of funds and the efficacy of the project activities. All forms necessary to prepare an application are included in this SGA.

DATES: One (1) ink-signed original, complete grant application plus three (3) copies of the Technical Proposal and three (3) copies of the Cost Proposal must be submitted to the U.S. Department of Labor, Procurement Services Center, Attention Grant Officer, Reference SGA 01–06, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. EST, August 20, 2001. Hand-delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Grant applications must be hand delivered or mailed to U.S. Department of Labor, Procurement Services Center, Attention: Grant Officer, Reference SGA 01–06, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. Applicants must verify delivery to this office directly through their delivery service and as soon as possible.

FOR FURTHER INFORMATION, CONTACT: Applications will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. Questions about this solicitation may be sent to Cassandra Willis, at the following Internet address: *willis-cassandra@dol.gov.*

Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Procurement Services Center after 4:45 p.m. EST, August 20, 2001, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 20, 2001;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, before August 20, 2001.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise place impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will *not* be accepted.

SUPPLEMENTARY INFORMATION:

I. Authority

Consolidated Appropriations Act, 2001, Public Law 106–554, 114 STAT 2763A–10, 29 U.S.C. 557(b).

II. Background

The President's New Freedom Initiative is designed to increase the number of people with disabilities who enter, reenter, and remain in the workforce. It is dedicated to increasing investment in and access to assistive technologies, a quality education, and increasing the integration of Americans with disabilities into the workforce and community life.

The Workforce Investment Act of 1998 (WIA) provides the infrastructure for streamlining services and securing employment through the One-Stop delivery system. WIA requires multiple programs and agencies (including state Vocational Rehabilitation agencies) to: (a) Form partnerships in this effort; (b) share expertise and coordinate resources; and, provide services to assist people in gaining and retaining employment. The One-Stop Career Centers which comprise this system are in a position to expand employment opportunities for people with disabilities, thus ensuring that the intent of the New Freedom Initiative is accomplished.

Under WIA, collaboration with multiple required partners [1] is intended to create a coordinated and streamlined system for the customer seeking employment. It is essential to involve additional states or local programs as partners with the One-Stop Center to enable many people with disabilities to have an increased opportunity for and choice in employment. These additional programs include, but are not limited to, state programs for Mental Retardation, Medicaid, Mental Health and Transportation; State Councils for Developmental Disabilities; state assistive technology programs, Small Business Development Centers and secondary education programs. While not required partners under WIA, these programs have expertise and/or resources that can contribute to expanding the employment and business opportunities for people with disabilities. In addition, community colleges, University Centers for Excellence in Developmental Disabilities, business incubators, lending institutions, foundations, faith-based organizations, and other state or local programs may also be critical partners. These agencies and programs may not be informed about the potential for coordinating resources and expertise with Local Boards and One-Stop Centers in order to increase employment, choice and wages for people with disabilities.

In addition, One-Stop Centers may elect to become employment networks under the Ticket-to-Work Program (42 U.S.C. 1320b–19), thus making it more likely that they will require expertise in customized employment strategies in order to successfully facilitate employment for people with disabilities who are recipients of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). Ticket-to-Work is providing increased employment opportunities for people with disabilities who receive SSI and/or SSDI benefits by addressing some of the major barriers encountered by these individuals as they attempt to gain or regain employment. Approximately eight million people with disabilities receive SSI and/or SSDI benefits. According to the U.S. General Accounting Office, less than one percent of these individuals leave the rolls each year as a result of paid employment. Of those who do leave, about one-third return within three years. The Ticket-to-Work program provides a variety of work incentives, including, greater choices of needed employment services, the continuation of Medicare eligibility for SSDI recipients and, at state option, health coverage under the Medicaid program to certain workers with disabilities, either by permitting them to purchase Medicaid coverage or by extending Medicaid eligibility to them without charge. As a result, there is unprecedented opportunity for these individuals to enter, or return to the workforce. Increasing numbers of individuals with disabilities will be approaching their local One-Stop Centers for assistance.

Many strategies exist for securing integrated, competitive employment for people with disabilities, including people who previously might have been considered "nonfeasible" for employment, and people who have been segregated in institutions, nursing homes, and day activity programs. Many

[1] Some of the required partners are adult education and literacy activities under Title II of WIA; post-secondary vocational education activities under the Carl Perkins Act (20 U.S.C. 2301 *et seq.*); vocational rehabilitation programs authorized under title V of the Workforce Investment Act; welfare-to-work programs; veterans employment and training activities, community services block grant employment and training activities; U.S. Department of Housing and Urban Development employment and training activities, and activities authorized under Title V of the Older Americans Act (WIA sec. 121(b), 29 USCA 2841(b), 20 CFR 662.200).

exemplary practices and promising strategies have emerged through decades of research and demonstration projects, and through other public and private activities promoting increased choice and self-determination for people with disabilities. These include approaches such as supported employment; supported entrepreneurship; individualized job development; job carving and restructuring; use of personal agents (including individuals with disabilities and family members); development of micro-boards, micro-enterprises, cooperatives and small businesses; and use of personal budgets and other forms of individualized funding that provide choice and control to the person and promote self-determination. These and other innovations hold the promise of dramatically increasing both employment and wages for people with disabilities, in part by increasing their choices for integrated, competitive employment, business ownership, micro-enterprise development, entrepreneurship, and other employment options that were previously seldom available.

The Presidential Task Force on Employment of Adults with Disabilities, which includes membership from eighteen Federal agencies, has conducted multiple activities relating to increasing employment for people with disabilities, including people who are SSI and/or SSDI beneficiaries, people who are in nursing homes, institutions, facility-based employment, day activity programs and other segregated settings where they are either not working or are earning less than minimum wage. A major result of these activities was the identification of the need for a sustained and coordinated initiative to build professional competency within One-Stop Centers and their partners, including providers and employers, about the use of customized employment strategies. Other findings include the need to: (1) Effectively expand the availability of personal agents, job development expertise, and other strategies for achieving customized employment for people with disabilities; (2) increase the number of eligible training providers who can provide customized employment assistance; (3) provide information, technical assistance, training and strategic planning that focuses on integrating customized employment strategies into the workforce investment system; (4) coordinate all necessary employment and related supports from WIA partners and other essential programs that are not required partners under WIA; and, (5) research and demonstrate alternative methods of determining effective performance by the workforce investment system in terms of service to people with disabilities.

In response to these findings ODEP will pursue a two-pronged approach:

1. Awarding these strategic planning and implementation grants for customized employment to develop and/or expand the capacity of local workforce systems to provide meaningful and effective opportunity through One-Stops for all persons with disabilities; and

2. Establishing a national technical assistance and training initiative to help increase the capacity of the workforce investment system to serve people with disabilities.

The combination of these activities will substantially contribute to achieving the goals of the President's New Freedom Initiative.

This SGA is designed to address the first of these activities. Establishing the supporting national technical assistance initiative is being implemented under a separate solicitation, and is expected to be in operation in time to assist the planning and implementation activities of grants funded under this solicitation.

The U.S. Department of Labor also offers Work Incentive Grants designed to enhance service delivery throughout the National One-Stop delivery system for people with disabilities. Recognizing that the One-Stop system generally has limited capacity to serve people with disabilities in the comprehensive nature envisioned under the WIA, the Work Incentive Grant program has multiple goals which include but are not limited to:

1. Establishing the capacity for coordinated, seamless service delivery to this client group for the many programs and services which typically impact their entry or retention in the workforce;

2. Increasing the availability of assistive technology in One-Stop Centers;

3. Ensuring the availability of trained One-Stop staff to serve people with disabilities;

4. Assuring outreach and marketing of One-Stop services to the disability community; and

5. Establishing or expanding linkages with public and private providers of this client group.

Twenty-three Work Incentive Grants were awarded in FY 2000 and another Solicitation for Grant Applications will be announced in the summer of 2001 as a continuing and on-going process of building the One-Stop infrastructure to most effectively meet the needs of customers with disabilities. The Work Incentive Grants are complementary yet distinct from the Customized Employment demonstration grants offered in this SGA. The Work Incentive Grants support systemic change through capacity building of the One-Stop infrastructure, whereas these Customized Employment Grants will serve as models of comprehensive service delivery which extends beyond WIA programs and services for individuals with disabilities who are the most disenfranchised under current service delivery systems.

This SGA is designed to develop comprehensive models of direct service delivery in the context of a One-Stop setting for individuals with disabilities with the greatest barriers to employment, many of whom have never been employed, are limited to subsidized employment, or may be considered unable to be employed. The CustomizedEmployment grants will involve cutting edge approaches such as use of customized employment strategies and active involvement of essential programs of both mandated and non-mandated partners of the workforce system.

III. Purpose

The purpose of this initiative is to maximize the capacity of, and outcomes from, One-Stop Centers and their partners to effectively serve people with disabilities through customized employment strategies, and to integrate those strategies into the policy and practice of the One-Stop and its partners in order to increase employment, choice and wages for people with disabilities.

For purposes of this solicitation the Department has chosen to specifically target the development and provision of customized employment to those people with disabilities identified in this section. However, the Department expects that once capacity for using customized employment strategies is developed or enhanced, the One-Stop Centers and their partners can expand use of these strategies to other groups of people with (and without) disabilities.

For purposes of this solicitation, the target groups are people with disabilities who are either unemployed or under-employed and are:

1. Receiving Supplementary Security Income (SSI) and/or Social Security Disability Insurance (SSDI); or

2. Participating in day programs (such as day habilitation, day activity or day health programs) or participating in facility-based or community employment and earning less than minimum wage; or

3. Participating in segregated employment and choosing to move to integrated, competitive employment; or

4. Awaiting employment services and supports following a move from a residential facility, or as part of a plan to move into a community under the Supreme Court decision in *Olmstead* v. *L.C. by Zimring*, 527 U.S. 581(1999); or

5. Transitioning from, or preparing to transition from, secondary school under a transition plan under part B of the Individuals with Disabilities EducationAct, as amended (20 U.S.C. 1400 *et seq.*), and who, without access to customized employment strategies, would likely be referred to one of the environments identified in (2), (3)or (4) above, but who prefers integrated, competitive employment or self-employment.

For purposes of this solicitation, customized employment means individualizing the employment relationship between employees and employers in ways that meet the needs of both. It is based on an individualized determination of the strengths, needs, and interests of the person with a disability, and is also designed to meet the specific needs of the employer. It may include employment developed through job carving, self-employment or entrepreneurial initiatives, or other job development or restructuring strategies that result in job responsibilities being customized and individually negotiated to fit the needs of individuals with a disability. Customized employment assumes the provision of reasonable accommodations and supports necessary for the individual to perform the functions of a job that is individually negotiated and developed.

IV. Statement of Work

Eligible applicants for these grants are Local Workforce Investment Boards (LocalBoards) under the Workforce Investment Act. The Local Board may enter into numerous partnerships with other public and private entities, consistent with the proposed activities of the grant.

Grantees must implement training and staff development activities and demonstration projects designed to develop organizational capacity to serve people with disabilities in One-Stop Centers. These projects must develop professional competency in customized employment strategies and serve targeted people with disabilities. Workforce investment system partners and other non-required but essential programs must be included in this effort. Grantees must integrate customized employment strategies with the existing services available through the One-Stop Center and its partners, including through demonstrating alternative methods of measuring performance within the Once-Stop environment. The result of these efforts will be an increase in employment, choice and wages for people with disabilities through the use of customized employment, and the systemic evaluation and modification, as appropriate, of policies and practices to ensure that customized employment strategies are systemically included in the services available through the One-Stop Center.

Grantees must demonstrate collaborative activities across relevant stakeholder groups, including both required and non-required One-Stop partners, persons with disabilities, their parents and other family members, advocates, employers, community rehabilitation agencies, and others as appropriate.[2] Grantees must:

1. Develop professional competency and capacity for implementing a variety of innovative and promising practices through customized employment;

2. Mobilize needed services and supports;

3. Implement systems change demonstrations; and,

4. Implement other initiatives to ensure that these innovations and promising practices become part of the menu of services available through the workforce investment system.

Grantees must develop employment opportunities in a variety of jobs or industries and at a variety of levels, including self-employment and entrepreneurship, based on the strengths, needs and desires of the individual with a disability. They must organize services and supports in ways that provide informed choice and promote self-determination. In addition, grantees must establish employer involvement; track and respond to customer service and satisfaction for both persons with disabilities and employers; and provide services, including follow-up services to ensure job retention and career development.

It is expected that each grantee will become a "model" for both the state and the Nation in terms of demonstrating effective linkages and strategies through the One-StopCenter system. These models will demonstrate successful strategies for customized employment for people with disabilities which result in increased employment and wages.

[2] These partners may become a subgroup or an advisory group of the Local Board. They may be specifically charged with coordinating funding, resources and expertise in order to increase customized employment for people with disabilities in the community.

Each grantee must also review policy and practice as it relates to people with disabilities, including researching alternative methods for performance accountability that are relevant to the characteristics of this population.

Grantees must pursue the following objectives:

1. Develop and implement strategic planning and implementation activities across the One-Stop required partner programs as identified in the Workforce Investment Act, (WIA sec. 121(b), 29 USCA, 2841(b)(such as Vocational Rehabilitation and others as appropriate) as well as other essential programs (such as Medicaid, Medicare, Mental Health,Transportation, Small Business Development Centers, State Councils on Developmental Disabilities, community colleges, benefits counseling and assistance programs, lending and financial institutions), whose expertise, services, and/or funds could contribute to employment services and supports needed by people with disabilities in order to secure customized employment.

2. Develop local and statewide policy initiatives to ensure that customized employment and multiple innovative strategies and promising practices become part of the menu of services available to people with disabilities including investigating alternative methods for performance accountability that consider the characteristics of the population.

3. Develop and document the increased capacity of the One-Stop system, including WIA required partners, community providers of employment services, and other essential programs, to provide customized employment for persons with disabilities. Such capacity includes enhancing collaboration between required WIA partners and building new collaborative initiatives with other essential programs.

4. Develop and document the capacity of the One-Stop system to increase the wages of people with disabilities who are currently working at less than minimum wage through the use of customized employment strategies.

5. Develop an increased understanding by One-Stop Centers' staff about health care, work incentives, benefits planning, "tickets" and other provisions under the Ticket-to-Work and Work Incentives ImprovementAct of 1999 (42 USC 1320b–19 *et seq.*); and document increased use of these programs by the One-Stop Center and its partner programs to secure customized employment for recipients of SSI and/or SSDI who are entering the workforce or returning to work.

6. Demonstrate and document the increasing use of resources from a number of system partners and other essential programs, including providing individual budgets (e.g., individual training accounts/contractual services; tickets; vouchers; and other sources of individualized funding or personal funding accounts) for persons with disabilities to obtain customized employment.

7. Develop and leverage linkages with other state and local initiatives that provide services and supports for people with disabilities (including, but not limited to, state systems change efforts which promote systems improvement and comprehensive coordination; initiatives involving health care; benefits planning and assistance; housing; transportation; education; supported employment; small business development; technology-related assistance; initiatives of private foundations; and faith-based programs and others as appropriate).

8. Educate relevant stakeholders, including state and local policymakers and systems personnel, about needed changes in policy and practice in order to increase customized employment and wages for people with disabilities. Organize education activities to enable customized employment and personalized supports to become available and used in local communities, including (as appropriate) activities necessary to secure adoption of the Medicaid buy-in in the state.

9. Collaborate with the national technical assistance cooperative agreement funded by the ODEP to provide assistance and training on increasing employment for adults with disabilities.

10. Identify and pursue other activities, as appropriate, to achieving the goals of these grants.

Funds must be used in a flexible manner, as determined appropriate by input from stakeholders and identified needs, so long as requirements for outcome and evaluation data and other requirements of Federal statutes, regulations, administrative requirements and OMB circulars and the requirements delineated in this SGA are met. Activities may include, the following possibilities:

1. Necessary staffing across agencies to implement grantee activities and otherwise demonstrate effective partnerships and interactions necessary to effectively leverage resources and expertise from partnering systems and programs.

2. Outreach to relevant stakeholders.

3. Strategic planning.

4. Demonstration activities which provide methods to increase the employment of people with disabilities that are designed for systemic inclusion (including but not limited to demonstrating the use of individual training accounts or contractual services, tickets, and individual budgeting initiatives; economic stimulus activities including low-interest loans for person-centered micro-boards focused on increasing economic prosperity for specific individuals with disabilities; entrepreneurial employment initiatives that are consumer-owned or operated; demonstrations of innovation and cutting-edge strategies providing personal control, choice and customized assistance resulting in employment, including business ownership, micro-enterprise development or development of cooperatives for persons with disabilities; and other supports needed by specific individuals with disabilities to increase choice and wages in employment).

5. Other activities necessary to address needs and achieve goals identified through strategic planning and implementation, including collection of necessary data and evaluation.

6. Collaboration with the education system, parents and families to ensure transition of young people with disabilities from school to customized employment or training, and documentation of the outcomes of such efforts.

7. Training and education activities (including training regarding Medicaid buy-in provisions and other policy implications for increasing employment through state activities) designed to further the goal of increasing customized employment for persons with disabilities. These training activities include the education of One-Stop and partner personnel; state systems personnel and policymakers; developing and disseminating educational information and materials; and otherwise promoting policy and practice to increase the wide spread community-based use of customized employment strategies and personalized supports.

8. Researching and demonstrating alternative methods of measuring WIA performance outcomes that consider the various characteristics of people with disabilities and developing demonstrations of performance measures that document new methods for measuring program effectiveness; and coordinating the availability of and access to assistive technology

9. Establishing connections to and collaborating with other entities, including employers, lending and financial institutions, foundations, faith-based organizations, institutions of higher education, consumer and family organizations, small business development centers and others, as appropriate, to further customized employment opportunities for persons with disabilities in local communities.

10. Educating the media and the general public about successful strategies for and the benefits of securing employment for people with disabilities. This will assist in obtaining long-term support for continuation of grantee activities following completion of funding.

11. Increasing the availability of personal agents and job development personnel offering customized services through customer-controlled approaches that result in customized employment (including demonstrating effectiveness of paying family members and/or other individuals with disabilities to serve as personal agents when selected by the individual with a disability to assist in negotiating and implementing employment plans and services.)

12. Assisting community providers of segregated employment services to develop integrated, competitive options for individuals with disabilities, including implementation of conversion and other organizational change initiatives conducted with segregated provider programs that wish to change their services to integrated employment.

Upon the award of a grant, grantees must begin a strategic planning and implementation process that will address multiple components of needed change. Planning, implementation and ongoing evaluation for continuous improvement are expected to be implemented from year one in recognition that dynamic planning will occur and evolve over time. By the end of year five, it is expected that a more long-term strategic plan will be in place for expanding the availability and provision of customized employment, and for systemically revising policy and practices consistent with this goal. All grantees must provide a detailed management plan for project goals, objectives and activities.

All grantees must collect and provide to the DOL information on the individuals with disabilities served under this grant and who secure employment through use of customized strategies (including information on types of jobs, wages and benefits secured by specific individuals with disabilities, and other areas addressed

through the linkages and networks facilitated by grant activities).

All grantees must agree to cooperate with an independent evaluation to be conducted by the Department of Labor. DOL will arrange for and conduct this independent evaluation of the outcomes, impacts, and accomplishments of each funded grant. Grantees must agree to make available records on all parts of grant activity, including participant employment and wage data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the Department. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the grantee for grant implementation.

V. Funding Availability

The Department of Labor anticipates awarding up to seven grants with a range of between $400,000 and $750,000 each. These awards will be for a one-year period and may be renewed annually for up to four additional years for a total of five years depending upon the availability of funds and the efficacy of the grant activities, established through independent reviews conducted by the Department of Labor or its designee. Proposals must include budgetary information for a five-year period. The funding for Years Four and Five will be at successively lower levels, with funding during Year Four at 80 percent of third-year funds and during Year Five at 60 percent. Grantees are expected to use this grant as seed money to develop other public and private resources in order to ensure sustainability of grant activities following completion of the funding period.

Funds must not be used for modifying buildings or equipment for physical or communication accessibility, although the strategic planning should address how resources will be leveraged for such purposes from other sources, as appropriate.

VI. Eligible Applicants

Eligible applicants for these grants are restricted to Local Workforce InvestmentBoards (Local Boards) as established under the Workforce Investment Act (WIA sec.117,29 USCA 2832.) The Local Board may coordinate numerous partnerships with other public and private entities, consistent with proposed activities of the grant and applicable administrative requirements.

The U.S. Department of Labor encourages Local Boards to join with otherState/local entities and public/private non-profit organizations. Such entities and organizations could include state programs for Vocational Rehabilitation, Mental Health,Medicaid, Mental Retardation, Housing and/or Transportation; State Councils on Developmental Disabilities; Protection and Advocacy Programs; University Centers for Excellence in Developmental Disabilities; institutions of higher education; Centers for Independent Living (CIL's); disability advocacy and provider organizations; organizations of parents; federally-funded disability grant entities; Small Business Development Centers; cooperatives and micro-enterprises; lending and financial institutions; training programs; media and marketing agencies; employers; foundations; community and faith-based programs; and other organizations or programs which provide or support services and/or advocacy for people with disabilities. Letters of support and commitment from these programs must be included in the Appendix of the proposal.

Indian and Native American Tribal entities, or consortia of Tribes, may apply for these grants. These grants could involve coordination of services and enhancement to a One-Stop system approach for people with disabilities in a specific Indian community or covering multiple Tribal entities which may cut across multiple States and/or workforce investment areas. Grants to Indian and Native American tribal grantees are treated differently because of sovereignty and self-governance established under the Indian Self-Determination and Education Assistance Act allowing for the government to government relationship between the Federal and Tribal Governments.

Please Note That Eligible Applicants Must Not be Classified Under the Internal Revenue Code as 501 (c)(4) Entity. See 26 U.S.C.506(c)(4). According to Section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in Section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

VII. Application Contents

There are three required Parts and an Appendix of the application. Requirements for each Part are provided in this application package, as are all required forms.

Part I—Project Financial Plan (Budget).

Part II—Executive Summary.

Part III—Project Narrative.

Appendices—Letters of Commitment/Support, Resumes, etc.

General Requirements—Three copies and an original of the proposal must be submitted, one of which must contain an original signature. Proposals must be submitted by the applicant only. Page limits do not apply to the Project Financial Plan or the Appendices (assurances, resumes, bibliography or references as appropriate, and letters of support.) A font size of at least twelve (12) point is required throughout.

Part I—Project Financial Plan (Budget)

To be considered, applications must include a detailed financial plan which identifies by line item the budget plan designed to achieve the goals of this grant. TheProject Financial Plan must contain the SF–424, Application for Federal Assistance,(Appendix A) and an SF–424A Budget Information Sheet (Appendix B).

The Project Financial Plan (Budget) must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided.Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent and be able to bind the responsible financial and administrative entity for a grant should that application result in an award.

Part II—Executive Summary

The application must contain an Executive Summary limited to no more than two (2) single-spaced, single-sided pages. Each application must provide a grant synopsis which identifies the following:

1. The applicant;
2. The consortium partners; the organizations or systems they represent; and their role in grant implementation;
3 . Data on people with disabilities in the area, including, to the extent it is available, information about the target group for this solicitation and other data relevant to the proposed grant;
4. The geographic service area of the Local Board;
5. The planned period of performance (projected annually through a five year cycle, assuming grant renewals awards);
6. The actions already taken by the One-Stop system in the local area to address the needs of people with disabilities, including activities related to increasing availability of customized employment and leveraging resources and expertise across non-required partners of the One-Stop Centers;
7. A brief statement of the goals of the proposal and how they will be achieved; and,

8. Assurances of commitment in support of this proposal from the fiscal agent and all partner agencies.

Part III—Project Narrative

The Grant Narrative should provide complete information on how the applicant will address the requirements of this SGA and is limited to no more than 75 double-spaced, single-sided, numbered pages (not including Appendices).

Each application must provide, in response to the objectives of this SGA, a comprehensive strategy and implementation plan for developing capacity and providing customized employment through the One Stop system.

Appendix—Letters of Support and/or Commitment, Resumes

VIII. Evaluation Criteria/Selection

A. Evaluation Criteria

The Project Narrative should address the following evaluation element:

1. Statement of Need (10 Points)

Applicants must include in their proposed plan the following items.

a. The current employment circumstances facing people with disabilities in the area to be served, including barriers, facilitators, and resources, systems and activities that could be leveraged to address needed changes.

b. The number of persons with disabilities in the area who fit the other requirements of the defined target group of persons with disabilities who may be served under this grant.

c. Related issues that need to be addressed in order to develop and/or enhance capacity of the One-Stop system to use customized employment strategies to increase employment, choice and wages for persons with disabilities, including the contribution the proposed grant will make to influence systemic changes in the local workforce system.

2. Comprehensive Strategy for Strategic Planning and Implementation to Build Capacity for Customized Employment (25 points)

Applicants must include in their proposed plan the following items:

a. The technical plan to implement the purpose and objectives of thisSGA to enhance the capacity of the workforce investment system to increase employment, choice and wages for persons with disabilities through the use of customized employment strategies and to ensure that such strategies are systemically included in the policy and practice of the One-Stop Center(s);

b. The provision of necessary programmatic and physical access, including assistive technology, and compliance with section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), [as amended by the FY 2001 appropriation for military construction, Pub. L. No. 106–246(July 13, 2000)] in order to ensure access to persons with disabilities;

c. The plan for developing, implementing and expanding the availability and use of customized employment strategies throughout the WIA system of required partners and non-required programs;

d. The plan for how the expertise of the State Vocational Rehabilitation program will be used;

e. The plan to involve appropriate private entities, including but not limited to community-based organizations and faith-based organizations, as appropriate;

f. The plan for reaching people with disabilities and their families, including their involvement in grant design and implementation;

g. The plan for gaining support and assistance of area employers;

h. The plan for meeting the needs of individuals with disabilities from diverse cultures and/or ethnic groups;

i. The plan for expanding the use of customized employment strategies over time to:

1. All groups of persons with disabilities targeted under this solicitation; and

2. Other groups of individuals with disabilities (such as individuals who are receiving TANF benefits) following completion of the grant;

j. The plan for leveraging resources over time in order to ensure grant sustainability upon completion of funding, including the plan for implementing grant activities during years four and five at 80% and 60% funding, respectively; and

k. The plan for responding to the measures by which program success will be evaluated.

3. Collaboration and Coordination (15 Points)

Applicants must include in their proposed plan the following items:

a. Demonstrations of support and commitment from key organizations and individuals who advocate through or on behalf of persons with disabilities to participate in this effort;

b. Demonstrations of support and commitment from One-Stop partners and non-required but essential programs;

c. Demonstrations of support from area employers and employer organizations and evidence of their interest in participating in this effort.

d. Demonstrations of support from persons with disabilities and their families for implementation of the proposed activities; and,

e. A commitment to cooperate with ODEP's planned technical assistance initiative in a joint effort to develop capacity and disseminate promising practices so that the national workforce system can profit from this experience.

4. Quality of Grant Personnel (15 Points)

Applicants must include in their proposed plan the following items:

a. The names and qualifications of staff and related technical experts and consultants to support the objectives of this project for grantee and key sub-contractors and consultants. A resume of key staff and consultants must be included in the Appendix and must clearly indicate qualifications of each individual for designated role in project implementation.

b. The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been under-represented based on race, color, national origin, gender, age or disability.

5. Management Plan (10 Points)

Applicants must include in their proposed plan the following items:

a. The adequacy of the management plan to achieve the objectives of the proposed grant on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing grant activities;

b. The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed grant;

c. The extent to which the time commitments of key grant personnel are appropriate and adequate to meet the objectives of the proposed grant;

d. How the applicant will insure that customized employment strategies become a part of the menu of services available in the local community.

6. Evaluation and Continuous Improvement (15 Points)

Applicants must include in their proposed plan the following items:

a. All grantees must agree to participate in the independent evaluation outlined in Section IV of this SGA.

b. In addition, all grantees must implement ongoing evaluation of grant activities in order to determine

effectiveness of implementation efforts for continuous improvement of the grant. In determining the quality of the evaluation for continuous improvement, the Department considers the following:

1. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives and outcomes of the proposed grant;
2. The extent to which the methods of evaluation and continuous improvement are appropriate to the context within which the grant operates;
3. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the grant and will produce quantitative and qualitative data to the extent possible (including data on wages, wage changes, benefits, types of jobs, customer satisfaction, resources leveraged from partner programs, systemic changes implemented to sustain grant over time); and
4. The extent to which the evaluation will provide guidance about effective strategies suitable for replication in other settings.

7. Adequacy of Resources and Budget (10 Points)

Applicants must include in their proposed plan the following items:

a. The adequacy of support for grant implementation, including facilities, equipment, supplies, and other resources;
b. The extent to which the budget is adequate to support the proposed grant.

B. Selection Criteria

Acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements andOMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ODEP's award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

A panel will objectively rate each complete application against the criteria described in this SGA. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF 424 form (see Appendix A), which constitutes a binding offer. The GrantOfficer may consider the availability of funds and any information that is available and will make final award decisions based on what is most advantageous to the Government, considering factors such as:

1. Findings of the grant technical evaluation panel;
2. Geographic distribution of the competitive applications; and,
3. The Project's Financial Plan.

IX. Reporting

The Department of Labor is responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement, the grant agreement and other applicable administrative requirements. Applicants should assume that Department staff or their designees will conduct at least one on-site project review. In addition, all grantees will be expected to provide information on individuals with disabilities securing employment through use of customized strategies (including information on types of jobs, wages and benefits secured by specific individuals with disabilities, and other areas addressed through the linkages and networks facilitated by project activities).

Grantees will be required to submit periodic financial and participation reports under the Customized Employment grant program. Specifically the following reports will be required:

1. Monthly progress reports, during initial start-up and implementation of the project (approximately six months), and quarterly reports thereafter. It is estimated that the monthly report will take five hours to prepare during the first six months of the grant. The quarterly report is estimated to take ten hours during the remainder of the grant. The final report is estimated to take 20 hours. The Department will work with the grantee to identify the requirements of the various reports, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction.
2. Standard Form 269, Financial Status Report Form, on a quarterly basis;
3. Final Project Report, including an assessment of project performance and outcomes achieved. This report will be submitted in hard copy and on electronic disk using a format and instructions which will be provided by the Department. A draft of the final report is due to the Department 45 days before the termination of the grant.

DOL will arrange for and conduct an independent evaluation of the outcomes, impacts, and accomplishments of each funded project. Grantees must agree to make available records on all parts of project activity, including participant employment and wage data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the Department. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the grantee for project implementation.

X. Administration Provisions

A. Administrative Standards and Provisions

The grant awarded under this SGA shall be subject to the following:

29 CFR Part 95—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, etc.
29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements
29 CFR Part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments

B. Allowable Cost

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and Local Government—OMB Circular A–87
Nonprofit Organizations—OMB Circular A–122
Profit-making Commercial Firms—48 CFR Part 31

Profit will *not* be considered an allowable cost in any case.

Signed at Washington, DC this 17th day of July, 2001.

Daniel P. Murphy,

Grant Officer.

Appendix A. Application for Federal Assistance, Form SF 424
Appendix B. Budget Information Sheet, Form SF 424A
Appendix C. Assurances and Certifications Signature Page

Instructions for the SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for

reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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INSTRUCTIONS FOR THE SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and weather budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

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BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-102

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(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.

[FR Doc. 01–18209 Filed 7–19–01; 8:45 am]
BILLING CODE 4510–23–C

DEPARTMENT OF LABOR

Solicitation for Grant Application (SGA 01–08); High School/High Tech Start-up Grants

AGENCY: Office on Disability Employment Policy, Department of Labor.

ACTION: Notice of applicability of funds and solicitation for grant applications (SGA).

SUMMARY: The U.S. Department of Labor (DOL), Office of Disability Employment Policy (ODEP) announces the availability of $400,000 to award eight competitive grants in the amount of $50,000 each. This Solicitation for Grant Application (SGA) invites proposals from eligible candidates which include: not-for-profit organizations established under section 501(c)(3) of the Internal Revenue Code; public secondary educational institutions; Job Corps centers (no fee/profit allowed); local government entities; or Local Workforce Investment Boards. Grants will be awarded for a one-year period and may be renewed with an additional optional grant for a second year at $25,000. After these two years of support, it is anticipated that High School/High Tech (HS/HT) programs will sustain themselves with the support of other resources.

The purpose of these grants is to fund the start-up of new demonstration High School/High Tech program sites. ODEP was recently established to provide disability policy guidance to the Department of Labor and its agencies. This new office absorbed the former President's Committee on Employment of People with Disabilities (PCEPD) and its existing demonstration projects, including HS/HT. Under this SGA, these new HS/HT sites must be developed by, or in partnership with, any program that has received Workforce Investment Act of 1998 (WIA) funds to serve youth. The goal of these grants is to begin and to operate a HS/HT site for youths with disabilities either in partnership with, or led by, a WIA youth program.

HS/HT is a series of nationally established model programs designed to provide young people with disabilities with an opportunity to explore their interest in pursuing further education leading to technology-related careers. These locally directed and supported programs serve either in-school or out-of-school youth with disabilities in a year long program of corporate site visits, mentoring, job shadowing, guest speakers, after school activities and paid summer internships. This SGA is designed to demonstrate both the merits and techniques of bringing the High School/High Tech program into an alignment and full partnership with WIA's youth-related programs.

DATES: One (1) ink-signed original, complete grant application plus three (3) copies of the Technical Proposal and three (3) copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Procurement Services Center, Attention Grant Officer, Reference SGA 01–08, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. est, August 20, 2001. Hand-delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Grant applications must be hand delivered or mailed to U.S. Department of Labor, Procurement Services Center, Attention: Grant Officer, Reference SGA 01–08, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. Applicants must verify delivery to this office directly through their delivery service and as soon as possible.

FOR FURTHER INFORMATION, CONTACT: Applications will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. Questions concerning this solicitation may be sent to Cassandra Willis at the following Internet address: willis-cassandra@dol.gov.

Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Procurement Services Center after 4:45 p.m. EST, August 20, 2001, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 20, 2001;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to August 20, 2001.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise place impression(not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will *not* be accepted.

SUPPLEMENTARY INFORMATION:

I. Authority

Consolidated Appropriations Act, 2001, Public Law 106–554, 114 STAT 2763A–10, 29 USC 557(b).

II. Background

The U.S. Department of Labor's new Office of Disability Employment Policy (ODEP), the sponsoring agency of this SGA, was formed under the authority of the DOL's fiscal year 2001 appropriations, and by a supporting Executive Order transferring the assets of the former President's Committee on Employment of People with Disabilities (PCEPD) to this new DOL office. ODEP operates a number of programs which are designed to assist with the employment and training of persons with disabilities, including youths with disabilities.

The current expectations of both public education and workforce development systems, as well as employers, parents and young people with disabilities often fail to over look the potential that young people with disabilities have for jobs and careers in technology-related occupations. As a result, youths with disabilities are seldom afforded post-secondary preparation and educational opportunities leading to internships and placements in technology-related careers. This is significant of potential when we realize that: (1) People with disabilities have already demonstrated that they can be successful in these occupations; (2) technology jobs represent an ever increasing segment of the workforce; and, (3) many current school-to-careers initiatives do not always meaningfully include students with disabilities.

The Workforce Investment Act (WIA) youth-focused programs and activities hold tremendous potential to support career development activities for young people with disabilities. High School/High Tech (HS/HT) is an existing program that has proven effective at getting high school aged youth with disabilities interested in technology careers. By linking these two existing programs, students with disabilities will have the opportunity to participate in meaningful school-to-career initiatives.

HS/HT programs currently operate in 60 communities, across the nation. As HS/HT is a community-based partnership, different entities run the local HS/HT operations across the country. Current HS/HT operators

include non-profits (Goodwill Industries, Centers for Independent Living, United Cerebral Palsy Affiliates, National Urban League, NAACP, and others) and school districts. Funding for the sites is managed locally. Therefore, funding comes from a variety of local, state, and national resources.

HS/HT graduates with disabilities demonstrate at least a doubling of postsecondary education achievements. In some HS/HT programs, as many as 70% of their HS/HT graduates move on to postsecondary education. HS/HT clearly enhances expectations, educational achievements and eventual employment outcomes for a population who, without this intervention, is far more likely to move onto the Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) rolls than to find competitive employment in technology related occupations. As a community-based program, the HS/HT program works within community systems to help coordinate the delivery of education and transition services to students with disabilities. Locally based HS/HT programs represent community-based partnerships of stakeholders that include employers, educators, consumers, family members, workforce system agencies, and rehabilitation professionals. The HS/HT program offers local WIA programs proven techniques for developing improved systems and employment outcomes for young people with disabilities.

The goals of HS/HT match WIA's youth programming themes of employment preparation, educational achievement, support, and leadership. The HS/HT model includes eight of the ten WIA required youth programming elements:

1. Summer employment opportunities;
2. Work experience;
3. Occupational skills training;
4. Tutoring;
5. Support services;
6. Adult mentoring;
7. Comprehensive guidance; and
8. Leadership development, as described in WIA, sec. 129 (c).

Nonetheless, WIA and HS/HT programs have different areas of expertise. By linking these two programs, youth who are often under served and misunderstood will receive effective and appropriate services.

Under a separate SGA, applications are being sought for a proposed WIA Disability Technical Assistance Consortium for Youth. Among its responsibilities will be to provide technical assistance support to the new HS/HT demonstrations, proposed to be initially funded under this SGA, as well as to support the broader HS/HT network of programs, helping to integrate them into existing WIA youth programs. Ultimately, it is envisioned that the HS/HT Program will become one more model program helping national WIA youth initiatives better serve youth with disabilities.

III. Purpose

The purpose of this SGA is to create new HS/HT programs that will coordinate their operations with WIA youth programs that will demonstrate how they can be mutually supportive and reach a common goal.

ODEP operates a number of programs that are designed to assist with the employment and training of persons with disabilities, including youth with disabilities. One of ODEP's key youth programs is the High School/High Tech (HS/HT) program.

The High School/High Tech programs work with community systems to coordinate the delivery of educational and transitional services to youths with disabilities. Local High School/High Tech programs represent partnerships of local, state and national stakeholders that include employers, educators, rehabilitation professionals, consumers, and parents. The High School/High Tech Program works to provide universities and community colleges with future students and to provide high tech businesses with qualified potential candidates with disabilities.

As a community-based, work-based, and school-based program, High School/High Tech is designed to provide opportunities for students with disabilities to explore careers in technology related occupations. HS/HT students across the nation learn first-hand what it's like to work in high tech environments. Site visits, mentoring, job/career shadowing, and paid summer internships all provide students with the opportunities to learn more about careers in science, engineering and technology-related fields. HS/HT students also work on developing career goals. In localities where a HS/HT program is in place, 20 percent to 70 percent of the program participants go on to post-secondary education. The national average for the population, without this intervention, is six percent to nine percent (American Council on Education, 1999).

To learn about the structure and operations of the High School/High Tech Program, consult the High School/High Tech Program Guide at: *http://www.dol.gov/dol/odep/public/pubs/hsht00/toc.htm*.

IV. Statement of Work

The Project Narrative, of the grant application must provide complete information on how the applicant will address the requirements of this SGA outlined here. All grantees must:

1. Establish either leadership from, or a strong working relationship with a WIA youth-related entity or program (area Youth Councils, Job Corps Centers, Youth Opportunity Grantees, WIA Formula-Funded Youth Programs, WIA Native American programs or WIA Migrant Worker programs), in partnership with other community partners (e.g., area disability organizations, state or local committees on employment of people with disabilities, centers for independent living, special education, vocational rehabilitation, interested employers) in the establishment and operation of a HS/HT program for their locality;
2. Identify how the HS/HT model can provide WIA youth-related programs with a program model designed to improve the continuing (post-secondary) education and employment outcomes for high school age young people with disabilities;
3. Identify how the HS/HT model can deliver WIA's youth program themes and required elements to young people with disabilities;
4. Describe a plan to serve 10–30 young people with disabilities annually, by providing the core elements of a HS/HT program (corporate site visits, mentioning, job shadowing, relevant guest speakers, after school activities and paid summer internships);
5. Document their willingness to cooperate with ODEP and its technical assistance efforts to provide information and advice to other WIA youth programs on the how the HS/HT model can be replicated;
6. Describe plans to report demographic characteristics of program participants, types of programming activities and program outcomes (post-secondary education and employment) of youth with disabilities served through HS/HT;
7. Describe the strategy for gaining the support of area employers, people with disabilities and their family members;
8. Identify the potential and confirmed sources of funds or in-kind/goods and services and estimated dollar values; and,
9. Describe how the needs of individuals with disabilities from diverse cultures and/or ethnic groups will be addressed.

V. Funding Availability

The period of performance will be 12 months from the date of execution by

the Government. The grant may be renewed with an additional optional grant for a second 12 months at $25,000. After these two years of support, it is anticipated that HS/HT programs will sustain themselves with the support of other resources.

VI. Eligible Applicants

All non-profit organizations and agencies, including faith-based organizations, capable of starting and successfully operating a High School/High Tech program, in alignment with a WIA youth program, are eligible. This includes not-for-profit organizations, established under Section 501(c)(3) of the Internal Revenue Code, secondary and post-secondary educational institutions, a Job Corps center (no fee/profit allowed), an entity of local government, or a local Workforce Investment Board.

Please Note That Eligible Grant Applicants Must Not be Classified Under the Internal Revenue Code as a 501(c)(4) Entity. See 26 U.S.C. 506(c)(4). According to Section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in Section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

VII. Application Contents

There are three required sections of the application. Requirements for each are provided in this application package.

Section I—Executive Summary
Section II—Project Narrative
Section III—Budget Information

General Requirements—Three copies and an original of the proposal must be submitted, one of which must contain an original signature. Proposals must be submitted by the applicant only.

Application—Section I; Executive Summary

Limited to no more than two single spaced, single sided pages, each application must provide an executive summary, which identifies the following:

1. The type of organization the applicant represents;
2. WIA-related leadership/partnership arrangement;
3. Any additional consortium partners and the type of organization they represent;
4. The geographic service area;
5. The service area, whether an area within or a whole local workforce investment area, or, more than one workforce investment area; and
6. The planned period of performance (projected annually through a two year cycle, assuming grant renewal award).

Application—Section II; Project Narrative

The Project Narrative format shall be no more than 20 double spaced, single sided, numbered pages. Each Project Narrative should meet the statement of work outlined in section IV above.

Application—Section III; Budget Information

Applications must also include a detailed financial plan which identifies by line item the budget plan designed to achieve the goals of this grant. The Financial Proposal must contain the SF–424, Application for Federal Assistance, (Appendix A) and Budget Information Sheet SF–424A (Appendix B).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent the responsible financial and administrative entity for a grant should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

VIII. Evaluation Criteria/Selection

A. Evaluation Criteria

The application must include appropriate information of the type described below.

1. Significance of the Proposed Project (15 Points)

In evaluating the significance of the proposed project, the Department will consider the following factors:

a. The current employment issues/circumstances facing young people with disabilities in the area to be served.

b. The numbers of young persons with disabilities in the area to be served who are in special education, general education or out of school who are expected to be served by under this grant.

c. The related issues that need to be addressed in order to better serve youth with disabilities in selected WIA youth entities and programs (area Youth Councils, Job Corps Centers, Youth Opportunity Grantees, WIA Formula-Funded Youth Programs, WIA Native American or WIA Migrant Worker programs) and how this proposed HS/HT program can help impact these issues.

2. Quality of the Proposed Project (30 Points)

In evaluating the quality of the proposed project, the Department will consider the following factors:

a. The plan for cooperation with WIA youth programs (Local Boards, including their Youth Councils, Job Corps Centers, Youth Opportunity Grantees, WIA Youth Formula-Funded Programs, WIA Native American or WIA Migrant Worker programs) in partnership with other community partners (e.g., area disability organizations, state or local committee on employment of people with disabilities, centers for independent living, special education, vocational rehabilitation, interested employers, and family groups) in the establishment and operation of a HS/HT program for their locality.

b. How the HS/HT program will provide selected WIA youth-related programs with a program model responding to WIA's youth themes and elements, to improve the continuing (post-secondary) education and employment outcomes for high school age young people with disabilities.

c. The plan for recruiting and serving 10–30 young people with disabilities, for each of the possible two years of funding, with the core elements of a HS/HT program (corporate site visits, mentioning, job shadowing, relevant guest speakers, after school activities and paid summer internships).

d. The plan for tracking the demographic characteristics of program participants, types of programming activities conducted as well as HS/HT participant outcomes. These include:

1. Numbers of youths with disabilities placed in competitive employment, including paid internships;
2. Numbers of youths with disabilities who continue with post secondary education; and,
3. Comparative data on local youths with disabilities not served in the HS/HT program.

e. The plan for tracking progress in developing WIA partnerships; using related resources (WIA Youth Programs); regional and national leadership activities to help WIA Youth programs consider the HS/HT model in their area; and, assessing the overall impact of the model HS/HT program on a broader community response to the employment and training needs of youths with disabilities in the community.

3. Collaboration and Coordination (20 Points)

In evaluating the collaboration and coordination of the proposed project,

the Department will consider the following factors:

a. Statement(s) of support and leadership from one or more of your area's Youth Council, Job Corps Centers, Youth Opportunity Grant Programs, WIA Formula Funded Youth Programs, WIA Native American or WIA Migrant Worker program.

b. Support from key community organizations, especially special education (Individualized Education Plan—IEP coordination, where applicable) and vocational rehabilitation organizations.

c. Support from area employers, people with disabilities and family members.

d. Demonstrated financial commitment from community or state partners.

4. Innovations and Model Services (20 Points)

In evaluating the innovations and model services of the proposed project, the Department will consider the following factors:

a. Strategies to cooperate in ODEP's technical assistance efforts providing information and advice to other WIA youth programs on the how the HS/HT model can be replicated by them in their communities.

b. The plan for sustaining the HS/HT program beyond the one or two year start-up grant by connecting it with an area WIA youth program.

c. The strategy for meeting the needs of youth with disabilities from diverse cultures and/or ethic groups. (Note: the NAAC P, National Urban League, and La Raza all operate at least one model HS/HT program dedicated to serving minority youth with disabilities, hence a potential exists to connect with your area's affiliate of these organizations).

5. Demonstrated Capability of the Organizations (15 Points)

In evaluating the demonstrated capability of the organization(s) involved in proposed project, the Department will consider the following factors.

a. The names and qualifications of staff and related technical experts to support the objectives of this SGA.

b. Examples of prior successes in serving youths with disabilities.

B. Selection Criteria

Acceptance of a proposal and an award of federal funds to sponsor any program(s) is not a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements and OMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require that all procurement transaction shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

A panel will objectively rate each complete application against the criteria described in this SGA. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF 424 form (see Appendix A), which constitutes a binding offer. The Grant Officer may consider the availability of funds and any information that is available and will make final award decisions based on what is most advantageous to the government, considering factors such as:

A. Findings of the grant technical evaluation panel; and,

B. Geographic distribution of the competitive applications.

IX. Reporting

Grantees are required to provide typed reports to DOL/ODEP or its designee on the status of their program on a quarterly basis by March 30, June 30, September 30, and December 31, for a one year period. It is estimated that the quarterly report will take five hours to complete.

The grantee must also furnish a separate financial report to ODEP on the quarterly basis mentioned above.

X. Administration Provisions

A. Administrative Standards and Provisions

Grantees are strongly encouraged to read these regulations before submitting a proposal. The grant awarded under this SGA shall be subject to the following, as applicable:

29 CFR part 95—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, etc.

29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements.

29 CFR part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

B. Allowable Cost

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and Local Government—OMB Circular A–87

Nonprofit Organizations—OMB Circular A–122

Profit-making Commercial Firms—48 CFR Part 31

Profit will not be considered an allowable cost in any case.

Signed at Washington, DC this 17th day of July, 2001.

Daniel P. Murphy,

Grant Officer.

Appendix A. Application for Federal Assistance, Form SF 424

Appendix B. Budget Information Sheet, Form SF 424A

Appendix C. Assurances and Certifications Signature Page

INSTRUCTIONS FOR THE SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required face sheet for preapplication submitted for federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and entry:

1. Self-explanatory.

2. Date application submitted to federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable),

If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, countries, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. The question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt includes delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application).

BILLING CODE 4510-23-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

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Instructions for the SF–424a

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Column number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or substract this amount from the total project amount, Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation of a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter the totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)—(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16—19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)—(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

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OMB Approval No. 0348-0044
BUDGET INFORMATION - Non-Construction Programs

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

[FR Doc. 01–18208 Filed 7–19–01; 8:45 am]
BILLING CODE 4510–23–C

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June and July, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated;

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,000; American Nickeloid Co., Walnutport, PA
TA–W–39,008; Camrose Technologies, LLC, Ada, OK
TA–W–38,832; Decatur Casting, Decatur, IN
TA–W–39,989; Trico Steel Co., Decatur, AL
TA–W–39,094; Antec Corp., Network Powering and Enclosures, El Paso, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,456; Huck Fasteners, Altoona, PA
TA–W–39,145; Marathon Oil Co., Regional Office, Tyler, TX
TA–W–38,645; Texel USA. Inc., Henderson, NC
TA–W–38,954; Omicron Industries, Inc., El Paso, TX
TA–W–39,159; & Al; Anderson Electrical Products, Aluminum Casting Dept., Elkton, TN and Anderson Electrical Products, Aluminum Finishing & Inspection Dept, Elkton, TN
TA–W–39,426; Donna Lynn Fashions, Inc., Bronx, NY
TA–W–39,427; Lori Lynn Fashions, Inc., Bronx, NY
TA–W–39,428; Giordano Fashions, Limited, Woodside, NY

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

TA–W–39,490; Sagebrush Corp., Caledonia, MN
TA–W–39,468; Veco Alaska,Inc., Anchorage, AK

The investigation revealed that criteria (1) has not been met. A significant number of proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–39,119; Wire Maid Manufacturing Limited, Schofield, WI

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for

TA–W–39,464; Corning Frequency Control, Mt Holy Springs, PA

Affirmative Determination for Worker Adjustment Assistance

The following certification have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,250; Pilkington Libbey-Owens-Ford,North America OE Automotive, Sherman, TX: June 24, 2001.
TA–W–38,938 & A, B; Fruit of The Loom, Winfield Cotton Mill, Winfield, AL, Aliceville Cotton Mill, Aliceville, Al and Martin Mills, Inc., St. Martinville, LA: March 5, 2000.
TA–W–39,289; Shieldalloy Metallurgical Corp., Newfield, NJ: April 23, 2000.
TA–W–39,124; United Foundries, Youngstown, OH: April 16, 2000.
TA–W–39,421; Dunbrooke Industries, Inc., Canton, SD: May 17, 2000.
TA–W–39,496; Master Products Manufacturing Co., Martin Yale Industries, Inc., Los Angeles, CA: June 1, 2000.
TA–W–39,300 & A; Nokia, Inc., Nokia Mobile Phones, Alliance Gateway and Temporary Workers of Remedy Intelligent Staffing, Forth Worth TX and Nokia, Inc., Nokia Mobile Phones, Trinity Bouldvand and Temporary Workers of Remedy Intelligent Staffing, Forth Worth, TX: May 7, 2000.
TA–W–39,239; D'Clase Cutting Services L.C., Medley, FL: April 26, 2000.
TA–W–38,957; Nu-Kote International, Franklin, TN: March 20, 2000.
TA–W–39,196; J.C. Viramontes, Inc., d/b/a/ International Garment Processors, El Paso, TX: May 30, 2000.
TA–W–38,754; Westpoint Stevens, Inc., Rosemary Plants, Roanoke Rapids, NC: February 15, 2000.
TA–W–39,170; Standard Corp., Manufacturing Group, Lugoff, SC: April 10, 2000.
TA–W–39,912; Co-Steel, Perth Amboy, NJ: February 20, 2001.
TA–W–39,195; Tyco Electronics, Harrisonburg, VA: May 7, 2000.
TA–W–39,369; Hager Hinge Co., Greenville, MS: May 16, 2000.
TA–W–39,018; Alamac Knit Fabrics, Inc., Lumberton, NC: May 26, 2001.
TA–W–39,018A & B; Alamac Knit Fabrics, Inc., New York, NY and Los Angeles, CA: March 30, 2000.
TA–W–39,402 & A; Phelps Dodge Corp., Chino Mines Co., Hurley, NM: June 4, 2000 and Santa Rita, NM: May 12, 2001.
TA–W–38,840; Globe Manufacturing Corp., Spandex Operations, Fall River, MA: February 12, 2000.
TA–W–38,994; Irwin Manufacturing Corp., Ocilla, GA: March 26, 2000.
TA–W–39,270; Bemis Co., Inc., Vancouver, WA: May 3, 2000.
TA–W–39,204; A–1 Manufacturing, Inc., Brilliant, AL: April 16, 2000.
TA–W–39,353; Double Springs Corp., Double Springs, AL: May 14, 2000.
TA–W–38,927; Cascade Steel, McMinnville, OR: March 19, 2000.
TA–W–38,936; Fruit of The Loom, Greenville Manufacturing, Greenville, MS: March 5, 2000.
TA–W–39,231; Saturn Electronics and Engineering, Inc., Marks, MS: April 17, 2000.
TA–W–39,293; Innovo, Inc., Innovo Group, Inc., Knoxville, TN: May 2, 2000.
TA–W–39,562; ADC Mersum US, Inc., South Hackensack, NJ: June 13, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section

250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June and July, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determination NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04717; Omicron Industries, Inc., El Paso, TX

NAFTA–TAA–04949; Z Z Logging, Inc., Mt. Hood, OR

NAFTA–TAA–04947; Huck Fasteners, Altoona, PA

NAFTA–TAA–04910; Shieldalloy Metallurgical Corp., Newfield, NJ

NAFTA–TAA–04582; Pangborn Corp., Hagerstown, MD

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

NAFTA–TAA–05016; Sagebrush Corp., Caledonia, MN

The investigation revealed that criteria (2) and (4) have not been met. Sales or production, or both, did not decline during the relevant period as required for certification. There was no shift in production from the subject firm to Canada or Mexico.

NAFTA–TAA–04923; Corning Frequency Control, Mt. Holy Springs, PA

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04791; Southwire Co., Arkansas Plant, Osceola, AR: April 12, 2000.

NAFTA–TAA–04798; Tyco Electronics, Shewsbury Molding Plant, Shrewsbury, PA: April 20, 2000.

NAFTA–TAA–04905 & A; Anderson Electrical Products, Aluminum Casting Department Elkton, TN and Aluminum Finishing and Inspection Department, Elkton, TN: April 6, 2000.

NAFTA–TAA–04864; Bemis Co., Inc., Vancouver, WA: May 3, 2000.

NAFTA–TAA–05020; D'Clase Cutting Services L.C., Medley, FL: May 22, 2000.

NAFTA–TAA–04998; BASF Corp., NLD Div., Rensselaer, NY: May 21, 2000.

NAFTA–TAA–04950; Pilkington Libbey-Owens-Ford, North American OE Automotive, Sherman, TX: June 24, 2001.

NAFTA–TAA–04748; Antec Corp., Network Powering and Enclosures, El Paso, TX: March 28, 2000.

NAFTA–TAA–04989; Master Products Manufacturing Company, Martin Yale Industries, Inc., Los Angeles, CA: June 1, 2000.

NAFTA–TAA–05010; ADC Mersum US, Inc., South Hackensack, NJ: June 13, 2000.

NAFTA–TAA–04839; Emerson Electric Company, White-Rodgers Div., Affton, MO: April 11, 2000.

NAFTA–TAA–04971; Martin Mills, Inc., A Div. of Fruit of The Loom, St. Martinville, LA: May 8, 2000.

NAFTA–TAA–04695; J.C. Viramontes, Inc., d/b/a International Garment Processors, El Paso, TX: May 30, 2000.

I hereby certify that the aforementioned determinations were issued during the month of June and July, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–18151 Filed 7–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,052]

Bechtel Jacobs LLC, Piketon, Ohio; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 16, 2001, in response to a worker petition which was filed by PACE Union Local 5–689 on behalf of workers at Bechtel Jacobs LLC, Piketon, Ohio. The workers are involved in activities related to fabricating uranium enriched nuclear fuel.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 10th day of July, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–18152 Filed 7–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to

paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than July 30, 2001.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than July 30, 2001.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 10th day of July 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Lucent Technologeis—Agere Systems (IBEW).	Reading, PA	06/05/2001	NAFTA–4,954	Opteolectronic devices.
Agere Systems (IBEW)	Allentown, PA	06/06/2001	NAFTA–4,955	Opteolectronic devices.
Tyco Kendall Healthcare (Wkrs)	Chatsworth, CA	05/30/2001	NAFTA–4,956	Medical equipment and supplies.
Nortel Networks (Wkrs)	Simi Valley, CA	05/22/2001	NAFTA–4,957	Research, development and engineering.
Philips Display Components (Wkrs)	Ottawa, OH	06/07/2001	NAFTA–4,958	TV tubes.
Coastcast Corporation (Co.)	Rancho Dominguea, CA.	06/05/2001	NAFTA–4,959	Steel golf club heads.
Durr Robotics—Behr Systems (Wkrs)	Auburn Hills, MI	05/14/2001	NAFTA–4,960	Booths, feather dusters & feather rolls.
Steiger Lumber (Co.)	Bessemer, MI	05/23/2001	NAFTA–4,961	Hardwood boards.
Ogemaw Firge (UAW)	West Branch, MI	05/15/2001	NAFTA–4,962	Forged components for auto.
Monticello Manufacturing (Co.)	Monticello, KY	06/05/2001	NAFTA–4,963	Men's and ladies shirts and blouses.
Rockwell Collins (Co.)	Pomona, CA	06/05/2001	NAFTA–4,964	In flight entertainment systems.
Hibbing Taconite (Wkrs)	Hibbing, MN	06/06/2001	NAFTA–4,965	Taconite ore pellets.
Penn companies (The) (Co.)	St. Peters, MO	06/05/2001	NAFTA–4,966	Emboridered emblems.
Mrs. Alison's Cookies (Wkrs)	St. Louis, MO	06/04/2001	NAFTA–4,967	Baked goods (sweets).
Thomson Multimedia (Co.)	Dunmore, PA	06/05/2001	NAFTA–4,968	Color tv picture tubes.
Symbol Technologies	Holtsville, NY	06/04/2001	NAFTA–4,969	Radio product.
Erie County Technical School (AFT)	Erie, PA	06/06/2001	NAFTA–4,970	Teachers.
Martin Mills (Co.)	St. Martinville, LA	06/07/2001	NAFTA–4,971	Wearing apparel.
Besser (IBB)	Alpena, MI	06/07/2001	NAFTA–4,972	Concrete requipment & machinery.
Imperial Home Decor (Wkrs)	Knox, TN	06/13/2001	NAFTA–4,973	Wallpaper.
Winky Textiles (Co.)	New York, NY	06/04/2001	NAFTA–4,974	Textiles.
ABB Power T and D Company (Wkrs)	Jefferson City, MO	06/05/2001	NAFTA–4,975	Transformers.
Eaton Corporation (Wkrs)	Shenandoah, IA	05/24/2001	NAFTA–4,976	Heavy duty truck transmissions.
Perlos of Texas (Wkrs)	Ft. Worth, TX	06/11/2001	NAFTA–4,977	Mobile phones.
Industrial Seaming (Co.)	Granite Falls, NC	06/11/2001	NAFTA–4,978	Sewing crib sheets.
Johnson Controls (Co.)	Taylor, MI	06/12/2001	NAFTA–4,979	Automobile seats.
Lomac (ICWUC)	Muskegon, MI	06/12/2001	NAFTA–4,980	Chemicals mixing and blending.
Oneal Steel Weldment (Wkrs)	Roanoke, VA	06/11/2001	NAFTA–4,981	Steel parts.
Future Knits (Co.)	Pineville, NC	06/12/2001	NAFTA–4,982	T-shirts.
Flextronics Enclosures (Co.)	Chambersburg, PA	06/12/2001	NAFTA–4,983	Outdoor enclosures.
Domco—Tarkett (Wkrs)	Whitehall, PA	06/06/2001	NAFTA–4,984	Sheet vinyl flooring.
Winona ( )	Nashville, IN	06/06/2001	NAFTA–4,985	
Thos. Iseri Produce (Co.)	Ontario, OR	06/13/2001	NAFTA–4,986	Produce.
Tennessee Machine and Hosiery (Co.)	Danridge, TN	06/15/2001	NAFTA–4,987	Men's and boy's athletic socks.
California Cedar Products (Co.)	Roseburg, OR	06/11/2001	NAFTA–4,988	Commerical lumber.
Master Products Mfg. (Wkrs)	Los Angeles, CA	06/13/2001	NAFTA–4,989	Paper punches.
Mayflower Manufacturing (UNITE)	Old Forge, PA	06/14/2001	NAFTA–4,990	Men's, boy's dress & casual slacks.
Triple A Trouser (UNITE)	Scranton, PA	06/14/2001	NAFTA–4,991	Men's and boy's dress & casual slacks.
Teledyne Electronics Technologies (Co.)	Hawthorne, CA	06/13/2001	NAFTA–4,992	Electro mechanical relays.
Allegheny Ludlum Steel (Co.)	Pittsburgh, PA	06/19/2001	NAFTA–4,993	Cold rolled grain oriented electrical.
Invensys Systems (Co.)	Foxboro, MA	06/15/2001	NAFTA–4,994	Printed circuit board.
Elder Manufacturing (UNITE)	Dexter, MO	06/19/2001	NAFTA–4,995	Parochial school uniforms.
Honeywell (Wkrs)	St. Louis Park, MN	05/02/2001	NAFTA–4,996	Circuits.
American Apparel (Wkrs)	Lena, MS	06/12/2001	NAFTA–4,997	Garments.
BASF Corporation (Co.)	Rensselaer, NY	06/11/2001	NAFTA–4,998	Organic chemical dyes.
Pete's Cutting Services 807 (Wkrs)	Hialeal, FL	06/12/2001	NAFTA–4,999	Clothing.
Weyerhaeuser (AWPPW)	Springfield, OR	06/12/2001	NAFTA–5,000	Paper.
Louisiana Pacific (Wkrs)	Rogue River, OR	06/18/2001	NAFTA–5,001	Veneer.
Redwing Shoes (Wkrs)	Danville, KY	06/18/2001	NAFTA–5,002	Leather shoes.
FCI Electronics (Wkrs)	Mt. Union, PA	06/18/2001	NAFTA–5,003	Components for computers.
DeLong Sportwear (Wkrs)	Jefferson, OR	06/19/2001	NAFTA–5,004	Textiles—wool cloth.
California Manufacturing (UNITE)	St. Louis, MO	06/19/2001	NAFTA–5,005	Light winter jackets.

APPENDIX—Continued

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Weyerhaeuser (WPPW)	Longview, WA	06/19/2001	NAFTA–5,006	Uncoated free sheet paper rolls.
Sola Optical (Co.)	Petaluma, CA	06/18/2001	NAFTA–5,007	Optical lens for prescription eyewear.
Tyco Electronics (Wkrs)	Menlo Park, CA	06/15/2001	NAFTA–5,008	Passive fiber optic.
Quaker Oats Company (The) (RWDSU)	St. Joseph, MO	06/19/2001	NAFTA–5,009	Oatmeal, instant grits, pancake mix.
ADC Mersum US (Co.)	South Hackensack, NJ.	06/19/2001	NAFTA–5,0010	Remote access for telecom.
Plystar (Wkrs)	Columbia, GA	06/19/2001	NAFTA–5,011	Vacuum seal bags.
Trans Apparel Group (UNITE)	Michigan City, IN	06/18/2001	NAFTA–5,012	Men's slacks.
Outboard Marine (Wkrs)	Delawan, WI	06/20/2001	NAFTA–5,013	Electronic circuit boards.
Thomaston Mills (Co.)	Thomaston, GA	06/20/2001	NAFTA–5,014	Sheets, pillowcases and comforters.
Phantom—Glendale (Wkrs)	Wilkesboro, NC	06/25/2001	NAFTA–5,015	Ladies intimate apparel.
Sagebrush (Wkrs)	Caledonia, MN	06/18/2001	NAFTA–5,016	Technical support of software.
TRW Automotive (UAW)	Milford, MI	06/21/2001	NAFTA–5,017	ABS proportionine valve.
Michigan Rivet (Wkrs)	Petoskey, MI	06/25/2001	NAFTA–5,018	Internally threaded fasteners.
Rivers West Apparel (Wkrs)	Manti, UT	06/25/2001	NAFTA–5,019	Apparel.
D'Clase Cutting Service (Wkrs)	Medley, FL	06/19/2001	NAFTA–5,020	Fabrics & pieces of pants.
Rich Products (Wkrs)	Winchester, VA	06/25/2001	NAFTA–5,021	Breads and rolls.
3M, Inc. (Wkrs)	Columbia, MO	06/25/2001	NAFTA–5,022	Flexable printers.
Magnolia International (Wkrs)	Harlingen, TX	06/26/2001	NAFTA–5,023	Cutting industrial wear
Visteon Systems (IUE/C)	Connersville, IN	06/22/2001	NAFTA–5,024	Radiators, compressors etc.
Coleman Cable (Wkrs)	McAllen, TX	06/25/2001	NAFTA–5,025	Power supply cords.
Textron Fastening Systems—Townsend (Co.).	Spencer, TN	06/25/2001	NAFTA–5,026	Metal fasteners.
Lear Corporation (Co.)	Romulus, MI	07/03/2001	NAFTA–5,027	Automobile seats.
Parker Hannifin (USWA)	Gashen, IN	07/02/2001	NAFTA–5,028	Rubber.
Winona, Inc. (Wkrs)	Winona, MN	06/06/2001	NAFTA–5,029	Sweaters.
Ross Allen Design (Wkrs)	Bean Station, TN	06/28/2001	NAFTA–5,030	Designs.
Cordis (Co.)	Miami Lakes, FL	06/29/2001	NAFTA–5,031	
National Textiles (Co.).	Gaffney, SC	06/27/2001	NAFTA–5,032	Active wear apparel products.
Blue Ridge Textiles Printers (Co.)	Statesville, NC	06/26/2001	NAFTA–5,033	Textile printing sheeting.
General Electric (IUE–C)	Fort Wayne, IN	06/25/2001	NAFTA–5,034	Permanent magnetic and AC motors.
Excel Group (Co.)	Murray, KY	06/27/2001	NAFTA–5,035	Mattel toys.
Andrew Corp.—RF Subsystems Group (Co.).	Orland Park, IL	06/27/2001	NAFTA–5,036	Coax cable assemblies.
Percision Mold (Co.)	Kent, WA	06/27/2001	NAFTA–5,037	Plastic injection.
MuRata Electronics North America (Wkrs)	State College, PA	06/27/2001	NAFTA–5,038	Microwave filters.
Louisiana Pacific (Wkrs)	Roeue River, OR	06/22/2001	NAFTA–5,039	Veneer.
Sheldahl (Wkrs)	Britton, SD	06/27/2001	NAFTA–5,040	Flexible circuit assembly.
Seagate Technology (Co.)	Oklahoma City, OK	06/28/2001	NAFTA–5,041	Refurbishment operations.
Exide Technologies (UAW)	Burlington, IA	06/28/2001	NAFTA–5,042	Automotive batteries.
Cooper Wiring Devices (USWA)	Georgetown, SC	06/29/2001	NAFTA–5,043	Wall plugs, light switches etc.

[FR Doc. 01–18153 Filed 7–19–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension of the Application for Continuation of Death Benefits for Student (LS–266).

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 18, 2001.

ADDRESSES: Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act. The Act provides for continuation of death benefits for a child or certain other surviving dependents after the age of 18 (to age 23) if the dependent qualifies as a student as defined in Section 2 (18) of the Act. Regulation 20 CFR 702.121 addresses the use of forms for the reporting of required information. The LS–266 is to be submitted by the parent or guardian of the dependent for whom continuation of benefits is sought. The statements contained on the form must be verified by an official of the educational institution. The information

is used by the Department of Labor to determine whether a continuation of the benefits is justified.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to ensure that eligible dependents may continue to receive benefits to which they are entitled.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for Continuation of Death Benefits for Student.

OMB Number: 1215–0073.

Agency Number: LS–266.

Affected Public: Individuals or households; Businesses or other for-profit.

Frequency: On occasion.

Total Respondents: 43.

Time per Response: 30 minutes.

Estimated Total Burden Hours: 22.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $15.91.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management andBudget approval of the information collection request; they will also become a matter of public record.

Dated: July 11, 2001.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and PlanningEmployment Standards Administration.

[FR Doc. 01–18149 Filed 7–19–01; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Act," shall be the minimum paid by constructors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled "General Wage determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT010001 (Mar. 02, 2001)
CT010003 (Mar. 02, 2001)
CT10004 (Mar. 02, 2001)
New York
NY010013 (Mar. 02, 2001)

Volume II

None

Volume III

Georgia
GA010004 (Mar. 02, 2001)
GA010006 (Mar. 02, 2001)

GA010022 (Mar. 02, 2001)
GA010033 (Mar. 02, 2001)
GA010073 (Mar. 02, 2001)
GA010086 (Mar. 02, 2001)
GA010087 (Mar. 02, 2001)
GA010088 (Mar. 02, 2001)

Volume IV

Michigan
MI010001 (Mar. 02, 2001)
MI010002 (Mar. 02, 2001)
MI010003 (Mar. 02, 2001)
MI010004 (Mar. 02, 2001)
MI010005 (Mar. 02, 2001)
MI010007 (Mar. 02, 2001)
MI010008 (Mar. 02, 2001)
MI010011 (Mar. 02, 2001)
MI010012 (Mar. 02, 2001)
MI010013 (Mar. 02, 2001)
MI010015 (Mar. 02, 2001)
MI010016 (Mar. 02, 2001)
MI010017 (Mar. 02, 2001)
MI010019 (Mar. 02, 2001)
MI010020 (Mar. 02, 2001)

Minnesota
MN010001 (Mar. 02, 2001)
MN010003 (Mar. 02, 2001)
MN010004 (Mar. 02, 2001)
MN010005 (Mar. 02, 2001)
MN010013 (Mar. 02, 2001)
MN010015 (Mar. 02, 2001)
MN010017 (Mar. 02, 2001)
MN010043 (Mar. 02, 2001)
MN010048 (Mar. 02, 2001)
MN010049 (Mar. 02, 2001)
MN010051 (Mar. 02, 2001)
MN010053 (Mar. 02, 2001)
MN010054 (Mar. 02, 2001)
MN010055 (Mar. 02, 2001)
MN010056 (Mar. 02, 2001)
MN010057 (Mar. 02, 2001)
MN010059 (Mar. 02, 2001)
MN010060 (Mar. 02, 2001)
MN010061 (Mar. 02, 2001)
MN010062 (Mar. 02, 2001)

Ohio
OH010002 (Mar. 02, 2001)

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Missouri
MO010001 (Mar. 02, 2001)
MO010004 (Mar. 02, 2001)
MO010005 (Mar. 02, 2001)
MO010008 (Mar. 02, 2001)
MO010015 (Mar. 02, 2001)
MO010039 (Mar. 02, 2001)
MO010042 (Mar. 02, 2001)
MO010045 (Mar. 02, 2001)
MO010054 (Mar. 02, 2001)
MO010058 (Mar. 02, 2001)

Nebraska
NE010001 (Mar. 02, 2001)
NE010003 (Mar. 02, 2001)
NE010007 (Mar. 02, 2001)
NE010009 (Mar. 02, 2001)
NE010010 (Mar. 02, 2001)
NE010011 (Mar. 02, 2001)
NE010019 (Mar. 02, 2001)

Volume VI

Colorado
CO010001 (Mar. 02, 2001)
CO010005 (Mar. 02, 2001)
CO010006 (Mar. 02, 2001)
CO010007 (Mar. 02, 2001)
CO010008 (Mar. 02, 2001)
CO010009 (Mar. 02, 2001)
CO010016 (Mar. 02, 2001)
CO010021 (Mar. 02, 2001)
CO010022 (Mar. 02, 2001)
CO010023 (Mar. 02, 2001)
CO010024 (Mar. 02, 2001)
CO010025 (Mar. 02, 2001)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

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Signed at Washington, DC, this 12th day of July, 2001.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–17903 Filed 7–19–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Safety Standards for Underground Coal Mine Ventilation

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperowrk and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before September 18, 2001.

ADDRESSES: Send comments to Lynnette M. Haywood, Deputy Director, Administration and Management 4015 Wilson Boulevard, Room 611, 4015, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to lhaywood@msha.gov, along with an original printed copy. Ms. Haywood can be reached at (703) 235–1383 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Lynette M. Haywood, Deputy Director, Administration and Management, U.S. Department of Labor, Mine Safety and Health Administration, Room 611, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Haywood can be reached at lhaywood@msha.gov (Internet E-mail), (703) 235–1383 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The preshift examination is the mine operator's fundamental tool for assessing the overall safety condition of the mine. During the examination, the examiner focuses on discovering both existing and developing hazards, such as methane accumulation, bad roof and water accumulation, and determining the effectiveness of the mine ventilation system. The examination has proven to be particularly effective in the discovery and correction of hazardous conditions

and practices before they lead to injuries or fatalities. Because conditions in the underground mining environment can change rapidly, recurring examinations are necessary to assure safety of the miners underground. A timely preshift examination assures the safety of the environment on a routine basis.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the Safety Standards for Underground Coal Mine Ventilation. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the information collection request may be viewed on he Internet by accessing the MSHA Home Page (*http://www.msha.gov)* and selecting "Statutory and Regulatory Information then "Paperwork Reduction Act Submissions" (*http://www.msha.gov/regspwork.htm*)", or by contacting the employee listed above in the For Further Information Contact section of this notice for a hard copy.

III. Current Actions

An underground mine is a maze of tunnels that must be adequately ventilated with fresh air to provide a safe environment for miners. Methane is liberated from the strata, and anxious gases and dusts from blasting and other mining activities may be present. The explosive and noxious gases and dusts must be diluted, rendered harmless, and carried to the surface by the ventilating currents. Sufficient air quality must be provided to maintain the level of respirable dust in accordance with MSHA standards.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Safety Standard for Underground Coal Mine Ventilation.

OMB Number: 1219–0125.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Cite/Reference/Form/etc: 30 CFR 75.360(a)(1), and 75.360(f).

Total Respondents: 127.

Total Responses: 102,000.

Average Time per Response: 46 minutes*.

Estimated Total Burden Hours: 78,001. *Discrepancies due to rounding.

Total Annualized Capital/Startup Costs: $0.

Total Operating and Maintenance Costs: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 16, 2001.

Lynnette M. Haywood,

Deputy Director, Administration and Management.

[FR Doc. 01–18154 Filed 7–19–01; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–2001]

TUV Product Services GmbH, Recognition as an NRTL

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of TUV Product Services GmbH for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on July 20, 2001, and will be valid until July 20, 2006, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of its recognition of TUV Product Services GmbH (TUVPSG) as a Nationally Recognized Testing Laboratory (NRTL). The scope of this recognition includes testing and certification of the equipment or materials, and the site, listed below. The recognition also includes TUVPSG's use of the supplemental programs described below. OSHA will detail TUVPSG's scope of recognition in an informational web page for the NRTL, which we will establish at (*http://www.osha-slc.gov/dts/otpca/nrtl/index.html*). We maintain such a web page for each NRTL.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansions or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope.

TUVPSG applied for recognition as an NRTL, pursuant to 29 CFR 1910.7, and OSHA published the required notice in the **Federal Register** on March 16, 2001 (66 FR 15291) to announce the application. The notice included a preliminary finding that TUVPSG could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by April 16, 2001. OSHA received one comment in response to the notice (see Exhibit 4–1).

The commenter did not support or oppose the application but requested certain documentation that the applicant has designated as confidential and requested an extension of the time to comment in order to review this documentation. Due to the designation

by the applicant, OSHA did not make these documents available for public review. The commenter said it sought to obtain these documents "to provide meaningful comment as to whether the NRTL meets the requirements of 29 CFR 1910.7." The commenter believes some of the documents withheld are "industry common procedures."

We follow provisions of 29 CFR Part 70 in determining whether we can or must disclose application information. This part generally deals with procedures to process a request for disclosure under the Freedom of Information Act (FOIA). Under Subpart B of this Part 70, information designated as confidential by a business submitter may be afforded protection under Exemption 4 of the FOIA. This exemption protects commercial or financial information, the disclosure of which would cause substantial competitive harm to the submitter. As part of our normal process for handling applications, OSHA requested that the applicant provide reasons for designating certain application documents as confidential, and specifically whether disclosure would cause it substantial competitive harm. In its original submission (see Exhibit 2–2), the applicant had marked virtually all of its documents "Confidential." The applicant provided the necessary justification (see Exhibit 2–3), and OSHA reviewed it and the applicable documents and determined that their disclosure could reasonably be expected to cause the applicant substantial competitive harm. Therefore, we did not make certain documents available for public review. These documents are detailed internal procedures that explain more specifically how the applicant will operate and could potentially give to prospective or current competitors knowledge that could cause the applicant substantial competitive harm. OSHA has previously withheld from disclosure similar such documents in response to FOIA requests received concerning documents submitted by other NRTLs.

Based on TUVPSG's justification, we also are unable to disclose the documents to the commenter. Since we cannot disclose this information and the commenter bases its request for extension to comment upon a review of this information, we denied the request for extension. The application information that we have made public, the on-site review report, both available in our docket office, and the information we provided in the preliminary notice, and repeat in this current notice, adequately demonstrate that the applicant meets the requirements for recognition, subject to the conditions included in that notice. OSHA has responded to the commenter to explain the denial of the extension and to address the remainder of its comment.

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, D.C. 20210. You should refer to Docket No. NRTL1–2001, the permanent record of public information on the TUVPSG recognition. Please note that in the preliminary notice we incorrectly referred to the docket number as NRTL–1–01.

The current address of the facility (site) that OSHA recognizes for TUVPSG is: TUV Product Services GmbH, Ridlerstrasse 65, D–80339, Munich, Germany.

Background on the Applicant and the Application

According to the application, TUV Product Services GmbH (TUVPSG) is a limited liability company founded under German law in 1988. TUVPSG states that it is an "international organization for testing, evaluation, and certification of products and management systems." Also, the applicant states that it traces its origins to German steam boiler inspection associations formed as early as 1866 "to protect workers against injury and to prevent damage to industrial installations." TUVPSG owns and operates a number of laboratories in Germany and in many other countries, including the U.S. However, the recognition applies only to the one location listed above.

The regulations for the NRTL Program in 29 CFR 1910.7 allow any testing organization, whether or not it is US-based, to apply to OSHA for recognition as an NRTL. However, in determining eligibility for a foreign-based testing organization, such as TUVPSG, the regulations require OSHA to take into consideration reciprocal treatment by the foreign government of certain US-based testing agencies. Germany is part of the European Union (EU), and the US and the EU have signed a Mutual Recognition Agreement (MRA) on conformity assessment, which went into effect in May 1999. The MRA includes provisions for the reciprocal treatment of US-based testing agencies by governments of countries that are part of the EU. As a result of the MRA, reciprocity is assumed for all countries in the EU, and OSHA does not have to go through a country-by-country determination. The MRA does not change any of the requirements or processes that OSHA follows under its NRTL Program. For more information on the MRA, refer to the U.S. Department of Commerce web site (http://www.doc.gov)

In the application, TUVPSG states that it is owned by TUV Suddeutschland and TUV Nord, both based in Germany. However, recently TUV Suddeutschland (TUVS) became sole owner of TUVPSG. Organizationally, the applicant falls within the "Product Division" of TUVS, one of its three main divisions. TUVS in general provides testing and other technical services in a number of areas throughout the world.

TUVPSG submitted an application for recognition, dated August 21, 1998 (see Exhibit 2–1). OSHA received this application from the European Commission (EC) on March 1, 1999, along with applications from other organizations located in the EU. The EC submitted the applications under the provisions of the Electrical Safety Annex of the MRA. However, none of these applications contained sufficient information for processing, and OSHA returned them to the Commission in April 1999 to obtain the additional information.

The Commission resubmitted the application for TUVPSG to OSHA, which the Agency received on March 3, 2000 (see Exhibit 2–2). This application includes the substantive portion originally submitted and is therefore dated August 21, 1998. In the application, TUVPSG requested recognition for four test standards, originally specifying international test standards but, to meet OSHA requirements, later specifying the equivalent US test standards. Some of the documents in the application needed translations, which were received on June 5, 2000 (see Exhibit 2–6). In response to requests from OSHA for clarification and additional information, TUVPSG supplemented its application in submissions dated August 11 and August 28, 2000 (see Exhibits 2–3 and 2–4). It also supplemented its application in a submission dated November 8, 2000 (see Exhibit 2–5), which included a request for recognition of 34 additional test standards, bringing the total standards requested for recognition to 38.

As explained above and in the preliminary notice, some documents in the submissions, and parts of the original application, have been designated as "confidential" by the applicant. Generally, the applicant

maintains the 4 levels of operational documentation mentioned in international quality standards. It generally considers its level 3 and 4 documents to be confidential or privileged.

Staff of the NRTL Program performed an on-site review (assessment) of the Munich, Germany, facility on September 18–22, 2000. In the on-site review report (see Exhibit 3), the program staff recommended a "positive finding."

The applicant has presented detailed documentation that describes how it currently performs its testing and certification activities. Many of the policies, procedures, work instructions, methods, and other practices described in this documentation would be used in its operations as an NRTL. Where appropriate, it has supplemented or modified the policies and procedures to conform to OSHA's requirements for an NRTL under 29 CFR 1910.7.

TUVPSG currently performs a large range of product testing and certification activities, primarily testing to European based testing standards, such as EN and IEC standards. For example, it currently performs testing required under EN 60950, and has provisions for addressing national deviations adopted by various countries, including those for the US. One of the test standards for which it requests recognition is UL 1950, which is equivalent to EN60950 but includes the US deviations. TUVPSG performs its testing and certification activities primarily to assure compliance of products to requirements under directives issued within the European Union. However, it has also performed testing to US based test standards, such as UL 1950. As part of its current certification activities, it conducts initial and follow-up inspections at manufacturers' facilities, one facet of the activities that NRTLs recognized by OSHA must perform. It also authorizes the use of certification marks, another aspect of the work that NRTLs must perform. However, the marks it authorizes are primarily necessary for the European marketplace. For purposes of its certification under OSHA's NRTL Program, TUVPSG will utilize a US registered certification mark that is owned by its subsidiary in the US.

The four recognition requirements of 29 CFR 1910.7 are presented below, along with an explanation illustrating how TUVPSG has met or plans to meet each of these requirements.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The application and on-site review report indicate that TUVPSG has adequate testing equipment and an adequate facility to perform the tests required under the test standards for which it seeks recognition. Security measures are in place to restrict or control access to their facility, and procedures exist for handling test samples. The report also indicates that testing and processing procedures are in place, and the application describes the program for the development of new testing procedures. The applicant submitted 24 specific test methods that it currently uses and would utilize for its proposed NRTL testing activities. For some of the test standards, it will develop testing report formats prior to performing testing and certification of products under the specific standard.

TUVPSG utilizes outside calibration sources and also has procedures for and performs internal calibrations of certain equipment. The application indicates that TUVPSG maintains records on testing equipment, which include information on repair, routine maintenance, and calibrations. The application and on-site review report address personnel qualifications and training, and identify the applicant's staff involved with product testing, along with a summary of their education and experience. Also, the report indicates that TUVPSG personnel have adequate technical knowledge for the work they perform. Moreover, the review report describes the applicant's quality assurance program, which is explained in more detail in TUVPSG's Quality Manual. Finally, the applicant performs internal system and internal technical audits of its operations on a regular basis.

Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. They include control procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

The applicant has procedures and related documentation for initially qualifying a manufacturer and for performing the required follow-up inspections at a manufacturer's facility. In its procedures, it identifies criteria it will use to determine the frequency with which it will perform these follow-up factory inspections. It has adopted the criteria detailed in OSHA policies for NRTLs, which specify that NRTLs perform no fewer than four (4) inspections per year at certain facilities and no fewer than two (2) inspections per year under certain conditions. The factory inspections are one part of the activities that the applicant will utilize in controlling its certification mark. In its application, TUVPSG included evidence of the application by its American subsidiary for registration of a TUV certification mark with the U.S. Patent and Trademark Office (USPTO).

The applicant currently performs product certifications, as previously mentioned, and has procedures for control and issuance of these certifications. According to the review report, it has issued in excess of 25,000 certifications under these procedures. The applicant maintains a detailed database of the product certifications, which would serve as its listing record. The report also states that the applicant has experience in authorizing and controlling the use of a certification mark, following many of the procedures and methods it uses for control of its certification certificates. For purposes of OSHA's NRTL Program, control by the NRTL of its certification mark is uppermost in importance. TUVPSG's control of a US registered certification mark under the NRTL Program will be a new activity for the applicant, and OSHA includes a condition related to this control.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

As previously stated, TUV Suddeutschland (TUVS) is currently the sole owner of TUVPSG. In addition, the information reviewed by OSHA has not indicated that TUVPSG has the kinds of relationships described in OSHA policy that would cause the applicant to fail to meet the independence requirement. This information shows that TUVPSG does not own or control and is not owned or controlled by the kind of entities of concern to OSHA. In addition, OSHA's review of information

on business activities and subsidiaries of the TUVPSG's parent company has not revealed any apparent conflicts of interest that could adversely influence the applicant's testing and certification activities. TUVPSG has policies to protect against conflicts of interest by its employees.

Credible Reports/Complaint Handling

Section 1910.7(b)(4) provides that an NRTL must maintain effective procedures for producing credible findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

The applicant utilizes standardized formats for recording and reporting testing data and inspection data. It has procedures for evaluating and reporting the findings for testing and inspection activities to check conformance to all requirements of a test standard. The applicant has included examples of completed inspection forms.

Regarding the handling of complaints and disputes, the applicant's complaint management procedure provides the framework to handle complaints it receives from its clients or from the public or other interested parties. According to the review report, under one certification system operated by the applicant, it must respond to an initial complaint within 24 hours. OSHA has no such requirements for NRTLs, but the review report indicates that the applicant will utilize its current form of system controls and documentation to handle complaints stemming from its NRTL certification activities.

Programs and Procedures

OSHA is granting the request by TUVPSG to use the supplemental programs listed below, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which (called supplemental programs) an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition always includes the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. The on-site review report indicates that TUVPSG appears to meet the criteria for use of the following supplemental programs for which it has applied:

Program 2: Acceptance of testing data from independent organizations, other than NRTLs
Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs
Program 4: Acceptance of witnessed testing data
Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme
Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

TUVPSG also sought recognition for the three remaining supplemental programs, but OSHA is not granting recognition for these programs at this time. Under these programs, an NRTL may use manufacturers' data in performing the testing and evaluation activities required for a test standard. However, as noted in the review report, the manufacturers for which TUVPSG performs testing could lack sufficient familiarity with testing to the US deviations. As stated in the report, TUVPSG may reapply for the 3 programs "in a few years when [the] manufacturers have participated" in the witnessed testing program, and it is familiar with their "testing capability and confidence in their ability to test US deviations, with respect to products destined for the US marketplace."

Additional Conditions

As already indicated, TUVPSG plans to utilize the proprietary US-registered mark of its US subsidiary in certifying products as an NRTL. This is a new undertaking for the applicant and although it has procedures for controlling a certification mark, it still needs to further develop and refine the detailed procedures it will use to control this particular mark. As a result, OSHA conditionally recognizes TUVPSG subject to an assessment of the detailed procedures and practices for controlling this mark once they are in place.

TUVPSG may use only the US registered mark for its NRTL certification activities. At the time of preparation of this current notice, the U.S. Patent and Trademark Office (USPTO) had not yet issued the Notice of Allowance for the mark. This notice must be issued before OSHA will place the mark on its web page that shows the marks used by NRTLs (*http://www.osha-slc.gov/dts/otpca/nrtl/nrtlmrk.html*). In addition, only the site listed in this notice may authorize use of this mark. Since this mark is specific to the NRTL Program, the US subsidiary may not authorize use of the mark unless it is recognized as an NRTL. Similarly, none of the other TUVPSG laboratories or locations may authorize the use of this mark. To ensure the applicant and the public understand this fact, OSHA imposes a condition to this effect.

As also noted, the applicant has just adopted procedures concerning the criteria for determining its frequency for conducting factory follow-up inspections. Here, too, it needs more detailed procedures to effectively and properly implement the criteria. OSHA would have to review TUVPSG's approach in implementing the criteria for twice per year inspections before it begins to conduct inspections at this frequency. As a result, OSHA conditionally recognizes TUVPSG subject to an assessment of the details of this approach once it is in place.

Imposing the conditions is consistent with OSHA's past recognition of certain organizations as NRTLs, which met the basic requirements but needed to further develop or refine their procedures (for example, see 63 FR 68306 12/10/1998; and 65 FR 26637, 05/08/2000). Given the applicant's current breadth of activities in testing and certification, OSHA is confident that TUVPSG will develop and implement procedures and practices to appropriately perform the activities in the areas noted above.

Therefore, OSHA includes appropriate conditions below that TUVPSG must meet for recognition as an NRTL. These conditions apply solely to the TUVPSG operations as an NRTL and solely to those products that it certifies for purposes of enabling employers to meet OSHA product approval requirements. These conditions, listed first under *Conditions* below, apply in addition to the other conditions below that OSHA normally imposes in its recognition of an organization as an NRTL. The NRTL Program staff includes these type of additional conditions on OSHA's informational web page for the NRTL, which we will establish under our web site at http://www.osha-slc.gov/dts/otpca/nrtl/index.html. When the staff determine that a particular condition has been satisfied, not only for TUVPSG but for any NRTL, they will remove the condition from the web page and notify

the NRTL accordingly. OSHA is not required to publish a public notice to remove conditions it imposes as part of its NRTL recognition activities.

Final Decision and Order

The NRTL Program staff has examined the application, the additional submissions, the on-site review report, and other pertinent documents. Based upon this examination and the program staff recommendation, OSHA finds that TUV Product Services GmbH has met the requirements of 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory. The recognition applies to the site listed above. In addition, it covers the test standards, listed below, and it is subject to the limitations and conditions, also listed below.

Limitations

OSHA hereby limits the recognition of TUVPSG to testing and certification of products for demonstration of conformance to the test standards listed below (see Listing of Test Standards). OSHA has determined that each test standard meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c).

The Agency's recognition of TUVPSG, or any other NRTL, for a particular test standard is always limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. Conversely, OSHA's recognition of an NRTL for a test standard excludes the testing of any product(s), falling within the scope of the test standard, for which OSHA has no such requirements.

Listing of Test Standards

UL 82 Electric Gardening Appliances
UL 122 Photographic Equipment
UL 507 Electric Fans
UL 508 Industrial Control Equipment
UL 561 Floor Finishing Machines
UL 745–1 Portable Electric Tools
UL 745–2–1 Particular Requirements of Drills
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
UL 745–2–4 Particular Requirements for Sanders
UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
UL 745–2–6 Particular Requirements for Hammers
UL 745–2–8 Particular Requirements for Shears and Nibblers
UL 745–2–9 Particular Requirements for Tappers
UL 745–2–11 Particular Requirements for Reciprocating Saws
UL 745–2–12 Particular Requirements for Concrete Vibrators
UL 745–2–14 Particular Requirements for Planers
UL 745–2–17 Particular Requirements for Routers and Trimmers
UL 745–2–30 Particular Requirements for Staplers
UL 745–2–31 Particular Requirements for Diamond Core Drills
UL 745–2–32 Particular Requirements for Magnetic Drill Presses
UL 745–2–33 Particular Requirements for Portable Bandsaws
UL 745–2–34 Particular Requirements for Strapping Tools
UL 745–2–35 Particular Requirements for Drain Cleaners
UL 745–2–36 Particular Requirements for Hand Motor Tools
UL 745–2–37 Particular Requirements for Plate Jointers
UL 775 Graphic Arts Equipment
UL 778 Motor-Operated Water Pumps
UL 987 Stationary and Fixed Electric Tools
UL 1017 Vacuum Cleaners, Blower Cleaners, and Household Floor Finishing Machines
UL 1419 Professional Video and Audio Equipment
UL 1459 Telephone Equipment
UL 1585 Class 2 and Class 3 Transformers
UL 1776 High-Pressure Cleaning Machines
UL 1950 Technology Equipment Including Electrical Business Equipment
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment, Part 1: General Requirements
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

The designations and titles of the above test standards were current at the time of the preparation of the preliminary notice.

Many of the test standards listed above are also approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we show the designation of the standards developing organization (e.g., UL 1950) for the standard, as opposed to the ANSI designation (e.g., ANSI/UL 1950). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or the ANSI web site (http://www.ansi.org) and click "NSSN" to find out whether or not a test standard is currently ANSI-approved.

Conditions

TUV Product Services GmbH must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

Within 30 days of certifying its first products under the NRTL Program, TUVPSG will notify the OSHA NRTL Program Director so that OSHA may review TUVPSG's implementation of its procedures for controlling the US registered certification mark of its US subsidiary, TUV Product Services, Inc., based in Danvers, Massachusetts;

Only TUV Product Services GmbH (TUVPSG) may authorize the US registered certification mark currently owned by its US subsidiary, TUV Product Services, Inc., based in Danvers, Massachusetts. TUVPSG may authorize the use of this mark only at the facility recognized by OSHA;

Prior to conducting inspections of manufacturing facilities based on a frequency of twice per year, OSHA must review and accept the detailed procedures that TUVPSG will utilize to determine when to use this frequency for such inspections;

OSHA must be allowed access to TUVPSG's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If TUVPSG has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

TUVPSG must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, TUVPSG agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

TUVPSG must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel,

and of any major changes in its operations as an NRTL, including details;

TUVPSG will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

TUVPSG will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC this 10th day of July, 2001.

R. Davis Layne,

Acting Assistant Secretary.

[FR Doc. 01–18148 Filed 7–19–01; 8:45 am]

BILLING CODE 4510–26–P

MERIT SYSTEMS PROTECTION BOARD

Membership of the Merit Systems Protection Board's Senior Executive Service Performance Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

DATES: July 20, 2001.

FOR FURTHER INFORMATION CONTACT: Linda Nicholson, Personnel Officer, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board is publishing the names of the new and current members of the Performance Review Board (PRB) as required by 5 U.S.C. 4314(c)(4). Clyde B. Blandford, Jr. has been appointed as a new member. Lonnie L. Crawford will continue to serve as Chairman. John Palguta, Robert Lawshe, and John Seal will continue to serve as members of the PRB.

Dated: July 17, 2001.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 01–18210 Filed 7–19–01; 8:45 am]

BILLING CODE 7400–01–M

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Proposed Collection, Comment Request, Study of User Needs Assessment in Digitization

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burdens, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of the needs assessment of end-users in library and museum digitization projects funded through the Institute of Museum and Library Services.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 18, 2001.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

ADDRESSES: Send comments to: Barbara Smith, Technology Officer, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Ms. Smith can be reached on Telephone: 202–606–5254, Fax: 202–606–1077 or by e-mail at bsmith@imls.gov

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services act, Public Law 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

Agency: Institute of Museum and Library Services.

Title: Study of User Needs Assessment in Digitization.

OMB Number n/a.

Agency Number: 3137.

Frequency: One time.

Affected Public: Museums and libraries.

Number of Respondents: 250.

Estimated Time Per Respondent: 45 minutes.

Total Burden Hours: 187.5 hours.

Total Annualized capital/startup costs: Zero.

Total Annual costs: $3,138.75.

Contact: Mamie Bittner, Director office of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW Washington, DC 20506, telephone (202) 606–4648.

Dated: July 16, 2001.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 01–18143 Filed 7–19–01; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation; Correction

On April 23, 2001, exemptions to 10 CFR part 50, Appendix G were published related to the Vermont Yankee Nuclear Power Station (66 FR 20486). The words "material heat 76492" on page 20487, column 1 on line 3 should be corrected to read "material heat C–3017–2"

Dated at Rockville, Maryland, this 2nd day of July 2001.

For the Nuclear Regulatory Commission.

Victor Nerses,

Acting Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–18173 Filed 7–19–01; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3073]

Environmental Assessment and Finding of No Significant Impact Related to Amendment No. 13 to Material License No. SNM–1999 Release of Portion of Site for Unrestricted Use Kerr-McGee Corporation Cushing Refinery Site

1. Introduction

1.1 Background

The U.S. Nuclear Regulatory Commission (NRC) is considering the Kerr-McGee Corporation's (Kerr-McGee or the licensee) request to have a portion of the property released, for unrestricted use, from the Cushing Refinery Site (Cushing) License, SNM–1999. This action is taken in response to Kerr-McGee's license amendment request, dated November 10, 2000, and supplemented by letter dated January 19, 2001, to release the portions of site blocks 116, 117, 124, and 125 that are south of Skull Creek for unrestricted use and to remove the areas from the license. The proposed boundary of the licensed area is shown in Figure 1, "Cushing, Oklahoma Refinery Site, Proposed Licensed Site," of the January 19, 2001, letter.

On April 6, 1993, NRC issued Materials License SNM–1999 authorizing possession of contaminated soil, sludge, sediment, trash, building rubble, and any other contaminated material, at the licensee's Cushing site. On March 26, 1999, NRC by license amendment released for unrestricted use and removed from the Cushing license Unaffected Area 1, portions of Unaffected Areas 2—4 that are south of Skull Creek, and a portion of the haul road corridor area partially surrounded by Unaffected Areas 2—4. These areas were used for oil refining and storage during the years that nuclear processing and disposal took place and were not to be affected by the nuclear processing or disposal. On August 23, 1999, NRC approved Kerr-McGee's Cushing Refinery Site Decommissioning Plan by license amendment. As part of that approval NRC performed an environmental assessment of the activities necessary to remediate the Cushing site to meet NRC's unrestricted use criteria. As noted in that environmental assessment, NRC concluded that those activities would not adversely affect the environment. That Environmental Assessment, including a Finding of No Significant Impact, was published in the **Federal Register** on April 1, 1999.[1]

The licensee now requests that other portions of the Cushing site be released for unrestricted use and removed from the Cushing license as those areas can be demonstrated to meet NRC's criteria for release for unrestricted release. Kerr-McGee, in its letter dated November 10, 2000, and supplemented by letter dated January 19, 2001, has requested that portions of site blocks 116, 117, 124, and 125 that are south of Skull Creek be released for unrestricted use and to remove this area from its license. The area that is being considered for release from the license encompasses a sediment pond located in Unaffected Area 2 (UA–2). This sediment pond is normally used as a collection area for sediments generated during treatment of water removed from Pit 5. A routine discharge of treated wastewater to Skull Creek in June 1998 resulted in the inadvertent release of some of the pond sediment not releasable under the licensee's discharge permit. Although Skull Creek was radiologically decontaminated in 1991, it is located within a radiologically affected area. Therefore, sediments removed from Skull Creek and placed into UA–2 Sediment Pond had a potential of containing licensed material.

1.2 Proposed Action

The proposed action is the release for unrestricted use, and the removal from License SNM–1999, the portions of site blocks 116, 117, 124, and 125 that are south of Skull Creek for unrestricted use and to remove the areas from the license. The proposed boundary of the licensed area is shown in Figure 1, "Cushing, Oklahoma Refinery Site, Proposed Licensed Site," of the January 19, 2001, letter.

1.3 Need for Proposed Action

The licensee seeks to release property that is currently under license for unrestricted use. This action was requested to remove the current limitations on the future use of this portion of the Cushing Refinery Site property.

2. Description of Cushing Refinery Site

2.1 Site Description

The Cushing Refinery site is comprised of 1.78 square kilometers (km^2) (440 acres) in Payne County, Oklahoma. The site is located 3.22 kilometers (km) (2 miles) north of the City of Cushing. The City of Cushing is located about midway between Tulsa and Oklahoma City on Highway 33. Neighboring communities include Yale (11.27 km (7 miles north-northeast)), Ripley (12.88 km (8 miles west-northwest)), Agra (16.1 km (10 miles southwest)), Oilton (17.71 km (11 miles east-northeast)), Quay (16.1 km (10 miles north-northeast)), Jennings (22.54 km (14 miles northeast)), and Drumright (12.88 km (8 miles east)). The Cushing site terrain is rolling pasture land. The elevation of the site ranges from 250 meters (m) (820 feet) to 280 m (920 feet) above mean sea level (MSL). Skull Creek runs through the Cushing site before joining the Cimarron River 6.44 km (4 miles) east-northeast of the site at an elevation of 232 m (760 feet) MSL.

2.2 Site Operating History

The Cushing site was operated as a refinery from approximately 1915 to 1972, when the refinery was closed and dismantled. The licensee operated the refinery site from 1956 to 1972. The licensee also processed nuclear fuel material at the Cushing site from 1963 to 1966, under two AEC licenses. AEC Source Material License SMB–664 authorized Kerr-McGee to possess unlimited quantities of natural uranium, depleted uranium, and thorium. AEC Special Nuclear Material License SNM–695 authorized Kerr-McGee to possess any enrichment of uranium, but limited it to 1,000 kilograms (2,205 pounds) of uranium-235. Kerr-McGee received, possessed, and processed these materials for the AEC. Both AEC licenses were terminated in 1966.

3. Environmental Impact of Proposed Action

An unaffected area, as defined in NUREG/CR–5849, "Manual for Conducting Radiological Surveys in Support of License Termination," is an area not expected to contain residual radioactivity from licensed operations. The unrestricted use criteria for enriched uranium and natural thorium are the Option 1 values in the 1981 Branch Technical Position on "Disposal or Onsite Storage of Thorium or Uranium Wastes From Past Operations."[2] The Option 1 criteria are 30 picoCuries per gram (pCi/g) for natural, depleted, and enriched uranium and 10 pCi/g for natural thorium.

The licensee performed final status surveys in the four unaffected areas and submitted the results to NRC in the "Final Radiation Survey of Four Unaffected Areas of the Cushing Refinery Site," dated April 17, 1995. Gamma radiation scans, gamma exposure rate measurements, soil radioactivity concentration

[1] 64 FR 15831

[2] 46 FR 52061.

measurements, and surface radioactivity survey were performed in each of the four unaffected areas. As a result of the surveys and soil sample analysis, one area of about one meter in diameter on the surface of the ground was found to be contaminated with Th–232. This spot was designated as a radioactive materials area and was removed from the areas that the licensee considered part of the four unaffected areas. The licensee's survey report provided data that indicated that the four unaffected areas meet NRC's criteria for unrestricted use.

The portions of site blocks 116, 117, 124, and 125 that are south of Skull Creek that are being considered for release for unrestricted use were surveyed as part of the four unaffected site areas. The results of the earlier four unaffected areas survey found that concentrations of radionuclides in the soil samples from survey units are as follows: less than 0.1 to 0.5 pCi/g for U–235; 0.3 to 3.0 pCi/g for U–238; 0.6 to 9.0 pCi/g for Th–228; and less than 0.8 to 10.0 pCi/g for Th–232. One small area of thorium, in excess of the criteria (9.0 pCi/g of Th–228 and 10.0 pCi/g of Th–232), is in unaffected area number 2. This area of elevated thorium levels, surveyed by Oak Ridge Institute for Science and Education (ORISE), an independent NRC contractor, is the same area that the licensee designated as a radioactive materials area (about 400 m^2) after it performed its final radiation survey. Thus, this small radioactive material area is not part of the licensee's request for unrestricted release. Of the areas that ORISE surveyed that were part of the licensee's request for unrestricted release, the concentrations of radionuclides in soil samples are as follows: 0.6 to 3.8 pCi/g for Th–228; and less than 0.8 to 3.0 pCi/g for Th–232. The soil samples are within the Option 1 soil criteria for uranium (natural, enriched and depleted) and natural thorium.

The licensee performed a final status survey of the sediment pond and submitted the results to NRC in the "Final Status Survey Report for Cushing Refinery Site UA–2 Sediment Pond," dated May 2, 2000, and supplemented by letters dated November 10, 2000, and January 19, 2001. The results of the exposure rate surveys of the sediment pond indicated that no location was more than 10 micoRoentgen per hour (μR/hr) above background. The soil samples yielded results indicating only background or slightly above background concentrations of uranium and thorium. The maximum concentration of each of the two radionuclides in the soil samples from the sediment pond survey were 10.84 pCi/g for total uranium and 2.72 pCi/g for total thorium. Soil sample concentration results are within the Option 1 criteria for both uranium and thorium. This licensee survey report provided data that indicated that the sediment pond area meets NRC's criteria for unrestricted use.

Groundwater under the Cushing site can be found in one of three water-bearing zones. The water-bearing zones are the shallow water-bearing zone (unconsolidated soil and the upper portion of the Vanoss Group), the lower portion of the Vanoss Group, and Vamoosa-Ada aquifer. The Vamoosa-Ada aquifer is the regional groundwater aquifer. The licensee notes that it appears that there is not a significant groundwater flow between the shallow water-bearing zone and the lower portion of the Vanoss Group. Further the licensee notes that the Vamoosa-Ada aquifer is isolated from the uppermost water-bearing zone by low-permeability strata within the Vanoss. Thus, the Vamoosa-Ada aquifer is unaffected by surface activities. The licensee based this finding on an evaluation of the dispersion of environmental tritium in the aquifer. The State of Oklahoma, Department of Environmental Quality (DEQ) [3] found the following: (1) The shallow groundwater unit yields low quantities of poor quality water; (2) it is highly unlikely that future residential or commercial drinking water wells will be established from the shallow groundwater at this site; and (3) no known drinking water wells are screened in the Vanoss within a one-mile radius of the site. Further, DEQ stated that the Vanoss should not be considered a viable drinking water source for the area and that DEQ would consider water quality standards other than maximum contamination levels as set by the U.S. Environmental Protection Agency (EPA) as appropriate for the shallow groundwater at this site. Further, based on EPA's guidance [4] the Vanoss groundwater would be classified as a Class III—Groundwater Not a Potential Source of Drinking Water and of Limited Beneficial Use.

The staff has reviewed the site potentiometeric surface map of the upper zone.[5] Based on this review the staff determined that: (1) The portions of site grid blocks 116, 117, 124, and 125 are up-gradient of any known sources of contamination; (2) the sediment pond does not contain any radioactive material that exceeds NRC's unrestricted release criteria; and (3) there are no known sources of radioactive contamination up-gradient of this area. Consequently, it is very unlikely that the groundwater in these areas could have been contaminated.

The Other Industrial Waste (OIW) disposal cell is located up-gradient of this area. Material from the remediation of Waste Acid Sludge Pit 4 (Pit 4) that meets NRC's Option 1 criteria for unrestricted release will be disposed of in the OIW. NRC reviewed this disposal activity as part of its review of the Pit 4 remediation plan. On September 3, 1998, NRC approved the Pit 4 remediation plan, License Amendment No. 8.

Based on the above NRC staff finds that because the NRC's unrestricted release criteria have been met for these areas, there is no significant impact on the environment, and this portion of the property can be released for unrestricted use.

4. Alternatives to Proposed Action

The only alternative to the proposed action is to not release this area for unrestricted use and keep the area under license until all site radiological remediation is completed and the Cushing license is terminated. The environmental benefit of maintaining an NRC license for this portion of the Cushing Refinery Site is negligible, but would reduce options for future use of the property.

5. Other Agencies or Persons Consulted

This environmental assessment was prepared entirely by NRC staff. No other sources were used beyond those referenced in this environmental assessment. NRC staff provided a draft of this environmental assessment to DEQ for review. DEQ had no comments or suggestions on this environmental assessment.

6. Conclusions

The NRC finds that because the Commission's unrestricted release criteria have been met, there is no significant impact on the environment, and the property can be released for unrestricted use.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the proposed unrestricted release, and removal from License SNM–1999, of

[3] Letter to Jeff Lux, Kerr McGee Corporation, from Darrell Shults, DEQ, dated September 19, 1997.

[4] "Guidelines for Ground-Water Classification Under the EPA Ground-Water Protection Strategy", Final Draft, dated November 1986, Office of Water, EPA.

[5] Figure 2.5, "Potentiometeric Surface Map of the Upper Zone," Kerr-McGee Corporation's Site Decommissioning Plan Cushing, Oklahoma, dated August 1998.

portions of site blocks 116, 117, 124, and 125 that are south of Skull Creek on the Cushing Refinery Site, in Cushing, Oklahoma. On May 11, 2001, the Commission provided notice of this proposed action and offered an opportunity for a hearing.[6] There were no requests for a hearing received. On the basis of the Environmental Assessment, the Commission has concluded that this licensing action would not significantly effect the quality of human environment and has determined not to prepare an environmental impact statement for this proposed action.

The above documents related to this proposed action are available for inspection on the Commission's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.*

Dated at Rockville, Maryland, this 13th day of July 2001.

For the U.S. Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–18174 Filed 7–19–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–31]

Yankee Atomic Electric Company Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214 to Yankee Atomic Electric Company (YAEC). The requested exemption would allow YAEC to deviate from the requirements of Certificate of Compliance 1025 (the Certificate), Appendix A, Technical Specifications (TS), Items 3.1.5, Canister Maximum Time in Vacuum Drying, and 3.1.6, Maximum Time in Transfer Cask. The exemption would allow YAEC to use extended operating times in Limiting Condition for Operation (LCO) 3.1.5 and 3.1.6 for the fuel loading campaign at Yankee Nuclear Power Station (YNPS) in Rowe, Massachusetts.

Environmental Assessment (EA)

Identification of Proposed: By letter dated April 3, 2001, as supplemented on June 6, 2001, YAEC requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214 to deviate from the requirements of Certificate of Compliance 1025, Appendix A, Items LCO 3.1.5 and 3.1.6. YAEC is a general licensee, authorized by NRC to use spent fuel storage casks approved under 10 CFR Part 72, Subpart K.

YAEC plans to use the NAC-MPC cask system to store spent nuclear fuel, generated at YNPS, at an independent spent fuel storage installation (ISFSI) located in Rowe, Massachusetts, on the YNPS site. The YNPS ISFSI has been constructed for interim dry storage of spent nuclear fuel.

By exempting YAEC from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214, YAEC will be authorized to extend loaded canister vacuum drying and the time spent fuel is in the transfer cask for canister heat loads that are lower than the design basis heat load.

The time duration from completion of draining the CANISTER through completion of vacuum dryness testing and the introduction of helium backfill shall not exceed the time shown for the specified heat loads:

Total heat loads (L)(kW)	Time limit (hours)
10.5 < L ≤ 12.5	38
8.5 < L ≤ 10.5	48
6.5 < L ≤ 8.5	58
4.5 < L ≤ 6.5	83
L ≤ 4.5	Not Limited

The time duration from end of external forced air or in-pool cooling of the CANISTER through completion of vacuum dryness testing and the introduction of helium backfill shall not exceed the time shown for the specified heat loads:

Total heat loads (L)(kW)	Time limit (hours)	
	Forced air	In-pool
10.5 < L ≤ 12.5	10	10
8.5 < L ≤ 10.5	12	12
6.5 < L ≤ 8.5	16	16
4.5 < L ≤ 6.5	40	40

The time duration from the introduction of helium backfill of the CANISTER through completion of the CANISTER transfer operation from the TRANSFER CASK to the CONCRETE CASK is not limited.

The specifications above would be in lieu of those in the current Certificate of Compliance No. 1025, Rev. 0, Appendix A, LCO 3.1.5 and 3.1.6. The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

On September 9, 2000, the cask designer, NAC International (NAC), submitted to NRC an application to amend Certificate of Compliance 1025. The requested amendment includes the same revisions to LCO 3.1.5 and 3.1.6 in Appendix A to the Certificate as requested in this exemption. The NRC staff has reviewed the application and determined that extending operating times in TS LCO 3.1.5 and 3.1.6 would have minimal impact on the design basis and would not pose a threat to public health and safety.

Need for the Proposed Action: The revised LCO 3.1.5 and 3.1.6 increase TS times, which are likely to reduce the frequency of entering LCO action statements, thus, reducing radiation doses to workers. The current TS LCO 3.1.5 and 3.1.6 time limits are based on canisters with maximum heat load and the probability for entering LCO action statements will significantly increase for canisters that are lower than the design basis heat load. If action statements are entered as a result of TS requirements without a safety significance, workers will be exposed to low radiation fields for longer periods of time. This would not be consistent with As Low As Reasonably Achievable (ALARA) practices. Workers should be able to conduct loading operations without facing unnecessary time/schedule pressure with sufficient operational flexibility. Unless the exemption is granted or the Certificate is amended, the TS LCO 3.1.5 and 3.1.6 action statements will likely be unnecessarily entered, resulting in additional radiation doses to workers. Because the 10 CFR Part 72 rulemaking to amend the Certificate will not be completed prior to the date that YNPS plans to begin loading fuel into the NAC-MPC cask systems, the NRC is proposing to grant this exemption based on the staff's technical review of information submitted by YAEC and NAC.

Environmental Impacts of the Proposed Action: It has already been determined by the Commission that spent fuel can be stored safely and without significant environmental impact at an onsite ISFSI in the NAC-MPC cask system (65 FR 12444, dated March 9, 2000). Extending the TS times will not increase the probability or consequences of accidents. No changes have been requested to the types or quantities of any radiological effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Occupational radiation exposure will be decreased by the

[6] 66 FR 24167

avoidance of unnecessarily entering the action statements in LCO 3.1.5 and 3.1.6. There are no significant radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption and use the TS times in the current Certificate. Denial of the exemption could potentially lead into unnecessarily entering the TS LCO action statements 3.1.5 and 3.1.6 resulting in increased radiation doses to workers.

Agencies and Persons Consulted: On June 22, 2001, Mr. Jim Muckerhide, Nuclear Engineer, Nuclear Safety, of Massachusetts Emergency Management Agency was contacted about the Environmental Assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214 so that YAEC may use revised TS time at YNPS ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland this 12th day of July 2001.

For the Nuclear Regulatory Commission

E. William Brach,

Director Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–18176 Filed 7–19–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Working Group on Integrated Materials Performance Evaluation Program (IMPEP) Lessons Learned

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of formation of working group and public meeting.

SUMMARY: The Nuclear Regulatory (NRC) is announcing a meeting and the formation of a working group on Integrated Materials Performance Evaluation Program (IMPEP) Lessons Learned. The working group will provide recommendations to the NRC on enhancements and lessons learned to strengthen the IMPEP process. The working group is composed of representatives from the NRC and Agreement States.

DATES: The first meeting will be held on July 31–August 2, 2001, from 8 am to 5 pm.

ADDRESSES: NRC Headquarters, 11555 Rockville Pike, Room O–3–B–6, Rockville, Maryland, 20852. These meetings will be open to the public. Future meetings will be announced on the NRC public meeting web site, *http://www.nrc.gov/NRC/PUBLIC/meet.html.*

FOR FURTHER INFORMATION CONTACT: Kathleen Schneider, Senior Health Physicist, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001. Telephone: 301–415–2320; e-mail: kxs@nrc.gov.

SUPPLEMENTARY INFORMATION: In FY 1996, NRC began implementation of IMPEP in the evaluation of Agreement State and Regional materials programs to assure that public health and safety are adequately protected from the hazards associated with the use of radioactive materials and that Agreement State programs are compatible with NRC's programs. The IMPEP process employs a team of NRC and Agreement State staff to assess both Agreement State and NRC Regional Office radioactive materials licensing and inspection programs. All reviews use common criteria in the assessment and place primary emphasis on performance. Additional areas have been identified as non-common performance indicators and are also addressed in the assessment. The final determination of adequacy of each NRC Regional Office and both adequacy and compatibility of each Agreement State program, based on the review team's report, is made by a Management Review Board (MRB) composed of NRC managers and an Agreement State program manager who serves as the Agreement State liaison to the MRB.

At the end of FY1999, NRC completed its first round of IMPEP reviews for all Agreement States. Regional reviews originally were performed every 2 years and are now performed every 4 years. Agreement State reviews occur at frequencies of 2–4 years. From its inception, IMPEP has been an iterative process. As the program progressed from the pilot, through interim implementation to final implementation, NRC staff has factored in experience, comments and suggestions to enhance IMPEP. At the completion of this first cycle of reviews, NRC believes that an independent examination by a working group of the IMPEP experiences to date could further enhance this program. The working group will evaluate IMPEP experiences for additional enhancements and lessons learned to strengthen the IMPEP process.

A copy of the working group charter is available through the NRC's Agencywide Document Access and Management System (ADAMS) at http://www.nrc.gov/NRC/ADAMS/index.html, where the accession number is ML011930478. Copies may also be obtained by contacting the NRC's Public Document Room (PDR) by calling (800) 397–4209, faxing a request to (301) 415–3548, or sending a request by electronic mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 16th day of July 2001.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

[FR Doc. 01–18175 Filed 7–19–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–11344]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Intermagnetics General Corporation, Common Stock, $.10 Par Value)

July 16, 2001.

Intermagentics General Corporation, a New York corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of

1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.10 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

The Issuer states in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of New York, in which it was incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

On May 30, 2001, the Board of Directors of the Issuer unanimously adopted resolutions to withdraw the Issuer's Security from listing on the Amex and, instead, list it on the Nasdaq Stock Market. In its application, the Issuer states that trading in the Security on the Amex will cease on July 10, 2001 and trading in the Security is expected to begin on the Nasdaq at the opening of business on July 11, 2001.

In making the decision to withdraw the Security from listing on the Exchange, the Issuer represents that (i) listing on the Nasdaq will be more beneficial to the Issuer's shareholders than the present listing on the Amex because of the Issuer's emergence and growing recognition as a technology-driven company; (ii) the Issuer's peers and similar companies are listed on Nasdaq; and (iii) the move to Nasdaq will further enhance the liquidity of the Issuer's stock, making it more attractive to institutional investors.

The Issuer's application relates solely to the Security withdrawal from listing on the Amex and from registration under section 12(b) of the Act[3] and shall affect neither its approval for trading on the Nasdaq, nor its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before July 30, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).
[2] 15 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,
Secretary.

[FR Doc. 01–18168 Filed 7–19–01; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27426]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 13, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 7, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of my notice or order issued in the matter. After August 7, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alliant Energy Corporation, et al. (70–9891)

Alliant Energy Corporation ("Alliant Energy"), a registered holding company, and Alliant Energy's direct nonutility subsidiary, Alliant Energy Resources, Inc. ("AER"), and AER's direct nonutility subsidiaries, Alliant Energy Integrated Services Company, Alliant Energy Investments, Inc., Alliant Energy Transportation, Inc., and Whiting Petroleum Corporation (collectively, "Applicants"),[1] on behalf of itself and its direct and indirect nonexempt nonutility subsidiary companies, both located at 222 West Washington Avenue, Madison, Wisconsin 53703, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32, 33, and 34 of the Act and rules 43, 45(a), 46(a), 53, 54, 58, and 80–92 under the Act.

Applicants request authority to engage in a variety of financing transactions, credit support arrangements, and other related proposals, as more fully discussed below, commencing on the effective date of an order issued under this filing and ending December 31, 2004 ("Authorization Period"). In addition, Alliant Energy seeks authority to finance exempt wholesale generator ("EWG") and foreign utility company ("FUCO") investments in an aggregate outstanding amount of up to $1.75 billion. This new proposal would replace certain authorizations that the Commission has previously granted to Alliant Energy.[2] Applicants state that the proceeds from the financings will be used for general corporate purposes, including: (1) Financing, in part, investments by and capital expenditures of Alliant Energy, AER and AER's current and future direct and indirect nonutility subsidiaries ("Nonutility Subsidiaries"), including, without limitation, the funding of future investments in EWGs, FUCOs, and companies engaged or formed to engage in energy-related activities; (2) acquiring, retiring or redeeming by Alliant Energy or any Nonutility Subsidiary of any of its own securities; and (3) financing working capital requirements of Alliant Energy as well as Alliant Energy's utility subsidiaries,

[1] AER is the holding company for substantially all of Alliant Energy's nonutility investments and subsidiaries.

[2] Alliant Energy's current financing authority is contained in three separate orders: *WPL Holdings, Inc., et al.*, HCAR No. 26856 (April 14, 1998) ("Merger Order"); *Alliant Energy, et al.*, HCAR No. 26956 (December 18, 1998), *as modified by Alliant Energy, et al.*, HCAR No. 27304 (December 15, 2000) (collectively, "Current Money Pool Order"), and *Alliant Energy, et al.*, HCAR No. 27069 (August 26, 1999), *as modified by Alliant Energy, et al.*, HCAR No. 27130 (February 4, 2000) and *Alliant Energy, et al.*, HCAR No. 27344 (February 12, 2001) (collectively, "Current Financing Order"). Applicants request that authorization granted in this proceeding replace the authorizations under the Merger Order (as it relates to the issuance of Common Stock under shareholder and employee plans) and the Current Financing Order. Applicants state that the Money Pool Order is unaffected by this application-declaration, except that Alliant Energy's utilization of proceeds of short-term debt to make investments in EWGs and FUCOs would be subject to the EWG/FUCO investment limitation proposed in this proceeding.

[5] 17 CFR 200.30–3(a)(1).

Wisconsin Power and Light Company, South Beloit Water, Gas and Electric Company, Interstate Power Company, and IES Utilities, Inc.; Alliant Energy's subsidiary service company, Alliant Energy Corporate Services, Inc.; and the Nonutility Subsidiaries ("Subsidiaries").

Specifically, Applicants seek authority for the following:

I. Alliant Energy External Financing

Alliant Energy requests authority to issue and sell from time to time equity and debt securities in an aggregate amount not to exceed $1.5 billion at any one time outstanding during the Authorization Period. These securities include common stock ("Common Stock"),[3] preferred stock ("Preferred Stock"), unsecured long-term debt ("Long-Term Debt") and other preferred or equity linked securities. These securities, further described below, would be sold at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

A. Common Stock

Alliant Energy requests authority to issue and sell from time to time common stock through underwriters,[4] dealers,[5] agents, or a limited number of purchasers directly. Alliant Energy may also issue Common Stock or options, warrants or others stock purchase rights exercisable for Common Stock in public or privately negotiated transactions in exchange for the equity securities or assets of other companies.[6]

Alliant Energy also proposes to issue and/or purchase shares of its Common Stock (either currently or under forward contracts) in the open market for purposes of reissuing shares at a later date under plans that are maintained for stockholders, officers and employees, and nonemployee directors. Currently, Alliant Energy maintains three plans under which it may directly issue or purchase in the open market shares of Common Stock: Alliant Energy Corporation Long Term Equity Incentive Plan; Alliant Energy Corporation 401(k) Savings Plan; and Alliant Energy Corporation Shareowner Direct Plant (collectively, "Stock Plans"). Alliant Energy also proposes to issue and/or purchase shares of Common Stock in accordance with the Stock Plans, as they are amended or extended, and similar plan(s) funding arrangements adopted in the future without any additional Commission approval.

B. Preferred Stock, Long-term Debt and other Preferred or Equity-Linked Securities

Alliant Energy proposes to issue Preferred Stock or other types of preferred or equity-linked securities issued in one or more series with such rights, preferences, and priorities as may be designated in the instrument creating each such series, as determined by Alliant Energy's board of directors. These securities will be redeemed no later than 50 days after issuance. The dividend rate on any series of Preferred Stock or other preferred or equity-linked securities will not exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of such securities.[7]

Long-term Debt of a particular series (1) may be convertible into any other securities of Alliant Energy, (2) will have a maturity ranging from one to 50 years, (3) will bear interest at a rate not to exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of such Long-term Debt, (4) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount, (5) may be entitled to mandatory or optional sinking fund provisions, (6) may provide for reset of the coupon pursuant to a remarketing arrangement, and (7) may be called from existing investors by a third party. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the Long-term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

C. Nonutility Subsidiary Financing

Alliant Energy states that, in almost all cases, financings by AER and other Nonutility Subsidiaries will be exempt from Commission authorization pursuant to rule 52(b). However, in the limited circumstances where the Nonutility Subsidiary making the borrowing is not wholly owned by Alliant Energy, directly or indirectly, authority is requested under the Act for Alliant Energy through AER or any other Nonutility Subsidiaries, to make loans to these subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If loans are made to a Nonutility Subsidiary, that subsidiary will not sell any services to any associate Nonutility Subsidiary unless that subsidiary falls within one of the categories of companies to which goods and services may be sold on a basis of other than "at cost."

II. Guaranties

Alliant Energy requests authorization to enter into guaranties, obtain letters of credit, enter into expense agreements or otherwise provide credit support ("Guaranties") with respect to the obligations of any subsidiary as may be appropriate to enable these companies to carry on their ordinary course of business in an aggregate principal or nominal amount not to exceed $3 billion outstanding at any one time ("Guaranty Limit"). Alliant Energy proposes that these Guaranties will be in addition to Guaranties by Alliant Energy authorized in the Money Pool Order. Alliant Energy requests authority to charge each Subsidiary a fee for providing credit support that is determined by multiplying the amount of the Guaranty Limit by the cost of obtaining the liquidity necessary to perform the Guaranty (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time the Guaranty remains outstanding.

In addition, AER and other Nonutility Subsidiaries request authority to provide to other Nonutility Subsidiaries guaranties and other forms of credit support ("Nonutility Subsidiary Guaranties") in an aggregate principal amount not to exceed $600 million outstanding at any one time, exclusive of any guaranties and other forms of credit support that are exempt under rule 45(b) and rule 52(b), provided that the amount of any Nonutility Subsidiary Guaranties in respect of obligations of

[3] Alliant Energy is authorized by the Merger Order to issue from time to time through December 31, 2001, up to 11 million shares of common stock.

[4] Common Stock is being sold in an underwritten offering, Alliant Energy may grant the underwriters a "green shoe" option, permitting the purchase from Alliant Energy at the same price of additional shares then being offered solely for the purpose of covering over-allotments.

[5] If dealers are utilized in the sale of Common Stock, Alliant Energy will see such securities to the dealers, as principals. Any dealer may then resell such Common Stock to the public at varying prices to be determined by such dealer at the time of resale.

[6] Alliant Energy states that these acquisitions would be either expressly authorized in a separate proceeding or exempt under the Act or the rules under the Act.

[7] Dividends or distributions on Preferred Stock or other preferred or equity-linked securities will be made periodically and to the extent funds are legally available for such purpose, but may be made subject to terms which allow the issuer to defer dividend payments or distributions for specified periods. Preferred Stock or other preferred or equity-linked securities may be convertible or exchangeable into shares of Common Stock.

energy-related companies as defined in rule 58 under the Act ("Rule 58 Companies") shall also be subject to the limitations of rule 58(a)(1). Any Nonutility Subsidiary providing any such credit support may charge is associate company a fee for each Guaranty provided on its behalf determined in the same manner as specified above.

III. Hedging Transactions

Alliant Energy and the Nonutility Subsidiaries request authority to enter into interest rate hedging transactions with respect to existing indebtedness ("Interest Rate Hedges"), subject to certain limitations and restrictions, in order to reduce or manage interestate cost using financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury Securities. Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior unsecured debt ratings, or the senior unsecured debt ratings of the parent companies of the counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors Service, Fitch Investor Service or Duff and Phelps. These transactions would be for fixed periods and stated notional amounts. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Alliant Energy and the Nonutility Subsidiaries also request authority to enter into interest rate hedging transactions with respect to anticipated debt offers ("Anticipatory Hedges"), subject to certain limitations and restrictions. These Anticipatory Hedges would only be entered into with Approved Counterparties, and would be used to fix and/or limit the interest rate risk associated with any new issuance through (1) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury Securities and/or forward swap ("Forward Sale"), (2) the purchase of put options on U.S. Treasury Securities ("Put Options Purchase"), (3) a Put Options Purchase in combination with the sale of call options on U.S. Treasury Securities ("Zero Cost Collar"), (4) transactions involving the purchase or sale, including short sales, of U.S. Treasury Securities, or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges. Applicants represent that each Interest Rate Hedge and Anticipatory Hedge will qualify for hedge accounting treatment under generallyacceptable accounting practices. Applicants would comply with the financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions.

IV. Changes in Capital Stock of Subsidiaries

Applicants represent that the portion of an individual Subsidiary's aggregate financing to be effected through the sale of stock to Alliant Energy or other immediate parent company during the Authorization Period under rule 52 and/or under an order issued in this proceeding cannot be ascertained at this time. The proposed sale of capital securities may in some cases exceed the then authorized capital stock of that Subsidiary. In addition, a Subsidiary may choose to use capital stock with no par value. Also, a Subsidiary may wish to engage in a reverse stock split to reduce franchise taxes or for other corporate purposes. As needed to accommodate these proposed transactions and to provide for further issuances of securities, the Applicants request authority to change the terms of any Subsidiary's authorized capital stock capitalization by an amount deemed appropriate by Alliant Energy or other intermediate parent company, provided that if a Subsidiary is not wholly owned, the consent of all other shareholders has been obtained for this change. A Subsidiary would be able to change the par value, or change between par value and no-par value stock, without additional Commission approval. Any such action by a utility subsidiary of Alliant Energy would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission in the state or states where the utility subsidiary is incorporated and doing business.

V. Financing Subsidiaries

Alliant Energy and the Nonutility Subsidiaries request authority to acquire, directly or indirectly, the equity securities of one or more subsidiaries to facilitate financing ("Financing Subsidiaries"). These Financing Subsidiaries would be organized specifically for the purpose of facilitating the financings of the authorized and exempt activities (including exempt and authorized acquisitions) of Alliant Energy and the Nonutility Subsidiaries through the issuance of long-term debt or equity securities, including but not limited to monthly income preferred securities, to third parties, and to transfer the proceeds of such financings to or as directed by the Financing Subsidiary's parent. Alliant Energy may, if required, guarantee or enter into expense agreements in respect of the obligations of any Financing Subsidiary that it organizes. The amount of any securities issued by a Financing Subsidiary of Alliant Energy would be counted against the limitation on the amounts of similar types of securities that Alliant Energy is authorized to issue directly, as set forth in this application-declaration or in an order or orders issued in any other proceeding. To avoid double counting, however, any credit support provided by Alliant Energy Financing Subsidiaries would not also be counted against the Guaranty Limit.

VI. Intermediate Subsidaries and Subsequent Reorganizations.

Alliant Energy and AER propose to acquire, directly or indirectly, the securities of one or more intermediate subsidaries ("Intermediate subsidaries"), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs, FUCOs, Rule 58 Companies, exempt telecommunication companies ("ETCs") as defined in section 34 of the Act, or other nonexempt Nonutility Subsidiaries authorized by order of the Commission. To the extent these transactions are not exempt from the Act or otherwise authorized or permitted by rule, regulation or order of the Commission, Alliant Energy requests authority for intermediate Subsidiaries to engage in development activities ("Development Activities").[8]

[8] Development Activities will be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal "hosts," fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other

and administrative activities ("Administrative Activities")[9] relating to these entities.

An Intermediate Subsidiary may be organized, among other things, (1) in order to facilitate the making of bids or proposals to develop or acquire an interest in any EWG or FUCO, Rule 58 Company, ETC or other nonexempt Nonutility Subsidiary; (2) after the award of a bid proposal, in order to facilitate closing on the purchase or financing of any acquired companies; (3) at any time subsequent to the consummation of an acquisition of an interest in any such company in order, among other things, to effect an adjustment in the respective ownership interests in such business held by Alliant Energy or AER and nonaffilated investors; (4) to facilitate the sale of ownership interests in one or more acquired nonutility companyies (5) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (6) as a part of tax planning in order to limit Alliant Energy's exposure to U.S. and foreign taxes; (7) to insulate Alliant Energy and the Utility Subsidiaries from operational or other business risks that may be associated with investments in nonutility companies; or (8) for other lawful business purposes.

Investments in Intermediate Subsidiaries may take the form of any combination of the following: (1) Purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests; (2) capital contributions; (3) open account advances with or without interest; (4) loans and (5) guaranties issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from: (1) Financings authorized in this proceeding; (2) any appropriate future debt or equity securities issuance authorization obtained by Alliant Energy from the Commission; and (3) other available cash resources, including proceeds of securities sales by AER or other Nonutility Subsidiary under rule 52. To the extent that Alliant Energy provides funds or Guaranties directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any EWG or FUCO or a Rule 58 Company, the amount of these funds or guaranties will be included in Alliant Energy's "aggregate investment" in these entities, as calculated in accordance with rule 53 or rule 58 under the Act,[10] as applicable.

Alliant Energy also requests authority to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries, and the activities and functions related to these investments. To effect these consolidations or other reorganizations, Alliant Energy or AER may either contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary (including a newly formed Intermediate Subsidiary) or sell (or cause a Nonutility Subsidiary to sell) the equity securities or all or part of the assets of one Nonutility Subsidiary to another one. These transactions may take the form of a Nonutility Subsidiary selling or transferring the equity securities of a Subsidiary or all or part of that Subsidiary's assets as a dividend to an Intermediate Subsidiary or to another Nonutility Subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of that Subsidiary, either by purchase or by receipt of a dividend. The purchasing Nonutility Subsidiary in any transaction structured as an intrasystem sale of equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable U.S. or foreign laws and accounting requirements, and any transaction structured as a sale would be carried out for a consideration equal to the book value of the equity securities being sold.

VII. Additional Investments in Energy Assets

AER and the other Nonutility Subsidiaries request authority to make additional investments in nonutility energy assets in the United States and Canada, specifically including natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities (collectively, "Energy Assets"), that are incidental to the ongoing oil and gas exploration and production and energy marketing, brokering and trading operations of AER's subsidiaries. AER requests authorization to invest up to $800 million ("Investment Limitation") at any one time outstanding during the Authorization Period in these Energy Assets or in the equity securities of existing or new companies substantially all of whose physical properties consist or will consist of these Energy Assets.[11] These Energy Assets (or equity securities of companies owning Energy Assets) may be acquired for cash or in exchange for Common Stock or other securities of Alliant Energy, AER, or other Nonutility Subsidiary of AER, or any combination of the foregoing. If Common Stock of Alliant Energy is used as consideration in connection with these acquisitions, the market value of that Common Stock on the date of issuance will be counted against the Investment Limitation. The stated amount or principal amount of any other securities issued as consideration in these transactions will also be counted against the Investment Limitation. Under no circumstances will AER or any oil or gas production or energy marketing subsidiary acquire, directly or indirectly, any assets or properties the ownership or operation of which would cause any of these companies to be considered an "electric utility company" or "gas utility company" as defined under the Act.

VIII. Sales of Goods and Services

AER and other Nonutility Subsidiaries propose to provide services and sell goods to each other at fair market prices determined and without regard to cost, and request an exemption (to the extent that rule 90(d) does not apply) under section 13(b) from the cost standards of rules 90 and 91 as applicable to each transaction, in certain instances.

IX. Energy-Related Activities Outside the United States

Applicants request authority for the Nonutility Subsidiaries to engage in energy-related activities both within and outside the United States. These activities include energy marketing, energy management and energy consulting services. Specifically, Applicants request authority to engage in energy marketing activities in Canada and request the Commission to reserve

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third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interests in new businesses.

[9] Administrative Activities will include providing ongoing personnel, accounting, engineering, legal, financial, operating, technical and other support services necessary to manage Alliant Energy's investments in Nonutility Subsidiaries.

[10] "Aggregate Investment" is defined in rule 53(a)(1)(i) to mean all amounts invested, or committed to be invested, in EWGs and FUCOs, for which there is recourse, directly or indirectly, to the holding company.

[11] Companies whose physical properties consist of Energy Assets may also be currently engaged in energy (gas or electric or both) marketing activities. To the extent necessary, Applicants request authorization to continue such activities in the event they acquire such companies.

jurisdiction over energy marketing activities outside the United States and Canada pending the completion of the record in this proceeding. Applicants also request authority for the Nonutility Subsidiaries to provide energy management services and consulting services anywhere outside the United States. Applicants request that the Commission reserve jurisdiction over other energy-related activities outside the United States, pending completion of this record.

X. Payment of Dividends Out of Capital or Unearned Surplus

AER proposes, on behalf of itself and each of its nonexempt Nonutility Subsidiaries, that these companies be permitted to pay dividends out of capital and unearned surplus and to acquire, retire, or redeem securities that AER or any Nonutility Subsidiary has issued to any associate company, to the extent permitted under applicable corporate law and the terms of any applicable credit or security agreements. AER anticipates that there will be situations in which it or one or more Nonutility Subsidiaries will have unrestricted cash available for distribution in excess of any such company's current and retained earnings. In these situations, the declaration and payment of a dividend would be charged, in whole or in part, to capital or unearned surplus.

AER, on behalf of itself and each nonexempt Nonutility Subsidiary represents that it will not declare or pay any dividend or acquire, retire or redeem any securities of which any of these Nonutility Subsidiaries is the issuer that are held by an associate company, out of capital or unearned surplus in contravention of any law restricting the payment of dividends or the terms of any credit or security agreements.[12]

XI. Investments in EWGs and FUCOs

Alliant Energy requests authority to use the proceeds of authorized financing and Alliant Energy Guaranties to make investments in EWGs and FUCOs in an amount which, when added to Alliant Energy's existing aggregate investment, would not exceed $1.75 billion. Based on Alliant Energy's aggregate investments as of March 31, 2001 (approximately $355.9 million), this would enable Alliant Energy to make incremental investments in EWGs and FUCOs of about $1.39 billion. Alliant Energy, through subsidiaries of AER, currently holds interests in various foreign electric generation and distribution utility companies that have been certified as FUCOs. Alliant Energy does not hold an interest in any EWG at this time, but is investigating several potential investments.[13] As of March 31, 2001, Alliant Energy's aggregate investment in all of these entities was approximately $355.9 million. An aggregate investment in EWGs and FUCOs in an amount equal to $1.75 billion would be equal to about 160% of Alliant Energy's average consolidated retained earnings [14] as of March 31, 2001 ($1.093 billion).

Alliant Energy further represents that it will maintain common equity as a percentage of its consolidated capitalization (inclusive of short-term debt) at 30% or above during the Authorization Period, and will also maintain common equity as a percentage of capitalization of each of Alliant Energy's utility subsidiaries at 30% or above during the Authorization Period.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18169 Filed 7–19–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [66 FR 36811].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: July 13, 2001.

CHANGE IN THE MEETING: Time Change.

The closed meeting scheduled for Thursday, July 19, 2001 at 11:00 a.m. time has been changed to Thursday, July 19, 2001 at 9:00 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 945–7070.

Dated: July 17, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–18297 Filed 7–18–01; 11:17 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44556; File No. SR–CBOE–2001–39]

Self-Regulatory Oganizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Addition of European-Style Exercise Option Series on the OEX

July 16, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 10, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The proposed rule changes has been filed by the CBOE as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to: (1) Introduce for trading new series of European-style exercise options on the Standard & Poor's 100 Stock Index ("OEX"); and (2) include the new European-style options in a pilot program ("Pilot Program") that eliminates position and exercise limits for OEX and other index options.[4]

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[12] The Commission has previously authorized substantial similar proposals. *See* Current Financing Order; *also see NiSource Inc.*, Holding Co. Act Release No. 27265 (Nov. 1, 2000).

[13] The largest concentration of Alliant Energy's foreign investments is in Brazil, followed by New Zealand and Australia. Alliant Energy has also made relatively small investments in China and Mexico.

[14] "Consolidated retained earnings" is defined in rule 53(a)(1)(ii) to mean the average of the consolidated retained earnings of the registered system as reported for the four most recent quarterly periods in the holding company's Annual Report on Form 10–K or Quarterly Report on Form 10–Q filed under the Securities Exchange Act of 1934.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6)

[4] On January 22, 1999, the Commission approved a two-year Pilot Program that eliminated position and exercise limits for options on the S&P 500 Index ("SPX"), OEX, and Dow Jones Industrial Average ("DJX") as well as for FLEX options overlying those indexes. *See* Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 49111 (Feb. 1, 1999) (approving SR–CBOE–98–23) ("Approval Order"). By order dated January 30, 2001, the Commission extended the Pilot Program

The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently lists for trading American-style options on the OEX.[5] "American-style" exercuse allows investors to exercise their positions on any given business day prior to expiration.[6] This creates what is known as early exercise or assignment risk. Specifically, when an OEX option is exercised prior to expiration, that option is"assigned" to an option writer. Thus, writers of OEX options are subject to the risk each day that same or all of their option may be exiercised. A writer that receives an assignment can have his trading strategy affected in a negative manner.

The Exchange believes that the risk of early exercise and assignment could be driving current users away from the OEX as well as deterring potential new users, both of which could have a negative effect on liquidity. Member firms have indicated to the Exchange the desire to trade OEX option series that do not subject them to early exercise and assignment risk. Accordingly, the Exchange proposes to introduce series of OEX options with European-style exercise.[7]

The same index will underlie both the "new" and existing series of OEX options. Contract specifications for the "new" series will be identical to the existing series with the exception of the exercise style. Thus, the "new" series also will be cash-settled and feature P.M.-settlement. The Exchange presently intends to trade the "new" European-style series of OEX options in the existing OEX pit under a separate symbol, XEO.[8] The Exchange notes that this is identical to the way that options on the SPX traded when the Exchange listed both A.M. and P.M.-settled SPX option series.[9]

As Noted above the American-style OEX series currently are not subject to position limits.[10] The Exchange hereby proposes to include European-style OEX series within the scope of that Pilot Program. Accordingly, both the American- and European-style series of the OEX will not be subject to position limits.

The CBOE believes it is reasonable to allow the European-style OEX series also to trade without position limits because they represent additional series of an existing product that the Commission has approved previously for non-position limit trading. The CBOE believes that waiving position limits for all OEX series, American- and European-style alike, will help to ensure that investors can continue to hedge SPX positions with OEX positions (and vice versa). The CBOE notes that, given the high correlation between the two indexes, many traders hedge positions in one index with positions in the other. The CBOE believes that subjecting European-style OEX series to position limits while allowing SPX to trade without position limits could limit severely the utility of this trading strategy.

The Exchange notes that it currently has the surveillance capabilities to detect any trading aberrations involving large positions in SPX and American-style OEX.[11] The Exchange states that upon introduction of European-style OEX series, these surveillance procedures will be expanded to monitor trading activity in the European-style series. Finally, the Exchanges notes that all of the representations it made in the Approval Order with respect to OEX options will apply to European-style OEX series as well.

The Exchange notes the Pilot Program altered the reporting thresholds applicable to OEX, DJX, and SPX options.[12] Specifically, the Pilot Program increased to 100,000 contracts the reporting threshold for positions in OEX options. The Exchange intends to require European-style OEX series be subject to the same reporting requirement. Moreover, the Exchange proposes that positions in the American- and European-style OEX series be aggregated for purposes of complying with this requirement. Accordingly, any combination of 100,000 contracts involving OEX American-style and OEX European-style series must be reported to the Exchange pursuant to CBOE Rule 24.4.03. The Exchange also notes that CBOE Rule 24.4.04, which authorizes the imposition of additional margin in OEX positions, will apply to all OEX series, whether European- or American-style.

Prior to commencement of trading of the "new" series, the Exchange will distribute to members an informational circular apprising them of the addition of the European-style OEX series. This circular will highlight the difference in exercise methodology between the series, identify the new symbols for the European-style series, and identify the initial expiration months and strike prices available for trading.[13] This circular also will indicate that, for purposes of the reporting requirement of CBOE Rule 24.4.03, positions in both series of OEX will be aggregated. The Exchange's public relations department will issue press releases to the media as a means to inform investors of the

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until May 22, 2001. *See* Securities Exchange Act Release No. 43867 (Jan. 22, 2001), 66 FR 8250 (Jan. 30, 2001) (approving SR–CBOE–01–01). By order dated May 22, 2001, the Commission extended the Pilot Program until September 22, 2001. *See* Securities Exchange Act Release No. 44335 (May 22, 2001), 66 FR 29369 (May 30, 2001) (approving SR–CBOE–2001–26). The Exchange has a requested permanent approval of the Pilot Progrram. *See* File No. SR–CBOE–2001–22. The Commission has not acted on File No. SR–CBOE–2001–22.

[5] The OEX is a broad-based, capitaliztion-weighted index taht is cash-settled.

[6] The amount of cash received upon exercise depends on the closing value of the index in comparison to the strike price of the option.

[7] European-style option can be exercised only during a specified time period prior to expiration.

[8] The existing American-style series will continue to trade under the existing OEX symbols.

[9] *See* Exchange Act Release 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving SR–CBOE–92–09) ("1992 Order").

[10] *See supra* note 4.

[11] The Approval Order required the Exchange to submit a report to the Commission on the status of the Pilot Program to allow the Commission to evaluate any consequences of the program and to determine whether to approve the elimination of position and exercise limits for these products on a permanent basis. The CBOE submitted the required report to the Commission on December 21, 2000. The report indicated that during the review period, the CBOE did not discover any instances where an account maintained an unusually large unhedged position. In fact, the data from the report found that only 12 accounts established positions in excess of 10% of the standard limit applicable to each index at the time the Pilot Program was approved. These positions were all in SPX and most were established by firms and market makers. All of the accounts were hedged. The CBOE's analysis did not discover any aberrations caused by large unhedged positions during the life of the Pilot Program.

[12] Reporting thresholds are the contract levels at which members are required to report information regarding customer positions to the Exchange.

[13] This information circular will clarify that the American-style OEX series will retain the existing OEX symbols while the European-style series will trade under the XEO symbol.

additional investment choices now available with the addition of the European-style OEX series. Finally, the Exchange will publicize on its website the introduction of the new European-style OEX series. The Exchange notes that these procedures, with the exception of the website publication, are similar to the procedures used when the Exchange listed both A.M.- and P.M.-settled SPX Index options in 1992.[14]

2. Statutory Basis

The addition of European-style OEX series will create an investment option that eliminates the risk of early exercise and assignment, which the CBOE believes will appeal to many institutions, professional traders, and investors. The Exchange believes that the introduction of new European-style exercise series will attract order flow back to the index floor. Moreover, the retention, and simultaneous trading, of American-style OEX options will allow investors to determine which product is most appropriate for them, thus enabling them to tailor more precisely their investment strategy. For these reasons, the Exchange believes that the proposed rule change is consistent with section 6 of the Act [15] in general, and furthers the objectives of section 6(b)(5) of the Act [16] in particular, because it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[18] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[19] The CBOE has requested that the Commission designate such shorter time period and accelerate the operative date of the proposal to July 20, 2001, so that the Exchange may begin trading the new European-style series of OEX options after the July expiration.

The CBOE states that introducing the new series of European-style OEX options on the first day after expiration Friday will allow investors to establish postions on the first day of the monthly cycle. The CBOE also believes that the proposal does not raise new, novel, or complex regulatory issues. In addition, the CBOE notes that the Commission previously approved OEX options for trading and European-style index options for trading, and that the proposal permits the trading of new European-style options series on the OEX.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative on July 20, 2001, to allow investors to establish positions in the new series of Euroopean-style OEX options on the first day of the monthly cycle.[20] The Commission believes that the new series of European-style OEX options will provide investors with an additional investment choice and may help to increase liquidity in OEX options.

The Commission believes that the proposal to include European-style OEX options in the position and exercise limit Pilot Program will provide consistent treatment of American-style and European-style OEX options for position and exercise limit purposes. In addition, the Commission believes that the aggregation of positions in American-style and European-style OEX options for purposes of the 100,000-contract reporting threshold is consistent with the purpose of the reporting threshold and will help to ensure the continued effectiveness of the reporting threshold.

The Commission notes that prior to the commencement of trading of the new European-style OEX series, the CBOE will distribute to members an information circular advising them of the addition of the new series. The information circular will note the difference in exercise style, identify the new symbols for the European-style OEX series, identify the initial expiration months and strike prices available for trading, and indicate that positions in American-style OEX options will be aggregated for purposes of the 100,000-contract OEX reporting threshold provided in the Pilot Program.

For all of the reasons set forth above, the Commission finds that it is consistent with the protection of investors and the public interest for the proposal to become operative on July 20, 2001. At any time within 60 day of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File no. SR–CBOE–2001–39 and should be submitted by August 10, 2001.

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[14] *See* 1992 Order, *supra* note 9.

[15] 15 U.S.C. 78f.

[16] 16 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] *See* 17 CFR 240.19b–4(f)(6)(iii).

[19] *Id.*

[20] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18170 Filed 7–19–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44558; File No. SR–NASD–99–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 by the National Association of Securities Dealers, Inc. To Establish a Pilot Program To Provide Daily Share Volume Reports via NasdaqTrader.com

July 16, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On March 24, 1999, Nasdaq amended the proposal.[3] The original proposal and Amendment No. 1 were published in the **Federal Register** on April 9, 1999 for notice and comment.[4] On May 30, 2001, the NASD again amended the proposal, which amendment completely replaces and supersedes the original filing and Amendment No. 1.[5] On July 10, 2001, Nasdaq again amended the proposal.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010, Systems Services, to establish a fee for the Volume and Issue Data Package provided through the NasdaqTrader.com web site. The text of the proposed rule change is below. Proposed new language is in italics.

Rule 7010 System Services

(a)–(o) No changes.

*(p) NasdaqTrader.com Volume and Issue Data Package Fee. The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be $70 per month. The charge to be paid by market data vendors for this information shall be $35 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members, Qualified Institutional Buyers * and data vendors. The Volume and Issue Data package includes:*

(1) Daily Share Volume reports
(2) Daily Issue Data
(3) Monthly Volume Summaries

** For purposes of this service, see definition of "Qualified Institutional Buyer" found in Rule 144A of the Securities Act of 1933.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In is filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on he proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to establish a fee for a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions (Qualified Institutional Buyers ("QIBs")[7] and market data vendors through its NasdaqTrader.com web site. Under the proposal, subscribers to this service, as well as retail customers of participating market data vendors, will be able to obtain the Volume and Issue Data Package, proposed to be name "Nasdaq Post Data" ("Post Data").

Post Data will consist of three separate reports that will be provided as a single package. The first item will be the Daily Share Volume Report, to be named "Nasdaq Volume Post," which will provide subscribes with access to T+1 daily share volume in each Nasdaq security, listing the volume by each NASD member firm that reports volume in the security and has voluntarily chosen to permit the dissemination of this information. The daily share volume will be verified for accuracy by Nasdaq's Automated Confirmation Transaction Service ("ACT"). The second item, the "Daily Issue Data" report, will contain a summary of the previous day's activity for every Nadaq issue. The third item, "Monthly Summaries," will provide monthly trading volume statistics for the top 50 market participants, broken down by industry sector, security, or type of trading (*e.g.*, block or total).

Post Data will be made available in two ways through the NasdaqTrader.com web site. The information will be provided to market data vendors to be redistributed to their retail customers for which the data vendor will pay a $35 per month fee to Nasdaq for each end user obtaining this information. The information will also be provided directly to subscribers, limited to NASD members and non-NASD member QIBs, for a fee of $70 per month.

Nasdaq filed this proposal in direct response to requests form professional Nasdaq market participants to increase the availability of Nasdaq-verified

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[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 18, 1999, Nasdaq submitted its initial proposal to provide only T+1 daily share volume reports in each Nasdaq security to market data vendors, NASD members, and non-NASD member Qualified Institutional Buyers ("QIBs") as defined in Rule 144A under the Securities Act of 1933. 17 CFR 230.114A. After discussions with at least one market data vendor, and internal discussions at Nasdaq, Nasdaq filed an amendment on March 24, 1999 ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposal.

[4] Securities Exchange Act Release No. 41244 (April 1, 1999), 64 FR 17429.

[5] *See* May 29, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC and attachments ("Amendment No. 2"). Amendment No. 2 completely replaced and superseded Amendment No. 1. In Amendment No. 2, Nasdaq proposed new fees.

[6] *See* July 9, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division, SEC ("Amendment No. 3"). In Amendment No. 3, Nasdaq: (1) Clarified that Amendment No. 2, as further amended by Amendment No. 3, should replace and supersede entirely the original proposal and Amendment No. 1; (2) clarified that the proposal is filed by the Association through its subsidiary, Nasdaq; (3) clarified that the asterisked footnote at the bottom of pages three and nine of Amendment No. 2 that defines "Qualified Institutional Buyer" should be included in the proposed rule language of Section 7010(p); (4) clarified that modifications to Nasdaq Post Data during the pilot period will be limited to minor enhancements to the content of the package made in accordance with Section 19(b) of the Act and Rule 19b–4 thereunder; and (5) provided an explanation of the rationale underlying the choice of the fees for Nasdaq Post Data.

[7] For purposes of this service, Nasdaq will rely on the definition of "Qualified Institutional Buyer" found in Rule 144A of the Securities Act of 1933. 17 CFR 230.144A.

trading data through NasdaqTrader.com. Sell-side traders use share volume to display their trading activity in specific Nasdaq issues, while buy-side representatives use similar data to determine which sell-side firm to select for execution of their orders. Post Data will provide a secure, controlled mechanism to allow these parties to view such data and make informed choices regarding their trading partners.

Modifications to Post Data during the pilot period will be limited to minor enhancements to the content of the package, and will be made in accordance with section 19(b) of the Act [8] and Rule 19b–4 thereunder.[9] Any such modifications will be provided at no additional cost to the subscribers and would be available to data vendors for redistribution.

Nasdaq recognizes the proprietary and confidential nature of the data contained in Post Data. As such, Nasdaq has established a secure information display and retrieval environment through the combined use of User Ids, passwords and digital certificates. To further protect NASD member firms' proprietary data, the service is designed so that the information will only be made available to the member firm itself, unless that member determines voluntarily to submit the information to be included in the Nasdaq Volume Post report for dissemination to other subscribers or vendors.

Concerns for data protection, and the system security requirements needed to encourage greater disclosure of proprietary trading statistics, also shaped Nasdaq's determination to make Post Data available only to NASD member firms, market data vendors, and QIBs. It is Nasdaq's belief that these groups represent the largest number of market participants who may benefit from the availability of the voluntarily disclosed, Nasdaq-verified, trading volumes. At the same time, these participants are also the most likely to possess the requisite staff and resources to comply with the system security mandates. Moreover, the QIBs defined in Rule 144A consist of entities registered with various regulatory bodies, which registration Nasdaq believes provides an additional layer of protection against the improper use of its members' proprietary trading data. Finally, the Rule 144A QIB definition upon which Nasdaq seeks to rely has already been adopted by the Commission as a standard delineating the characteristics of institutional market participants.

[8] 15 U.S.C. 78s.

[9] 17 CFR 240.19b–4.

Given the commercial uncertainties associated with the launching of any new data product, Nasdaq will establish this service as a 12-month pilot program, beginning from the date of Commission approval, to evaluate user interest. At the end of the 12-month pilot, Nasdaq will evaluate the program and make a determination to terminate the program, continue the program for an additional 12-month pilot, or continue the program as a permanent feature of NasdaqTrader.com.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of sections 15A9(b)(5) and (6) of the Act.[10] Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that the proposed fees represent an equitable allocation of reasonable fees among members and other users of the Nasdaq facilities associated with the offering of the Post Data product. Nasdaq established the fees in question based upon its consideration of numerous factors, including but not limited to: (1) The costs associated with the development, ongoing enhancement, maintenance, operation, and marketing of the Post Data product; (2) the cost associated with the ongoing maintenance and administration of the Nasdaq web security infrastructure that will be used to grant and validate access to the Post Data product; (3) reasonable overhead costs allocable to the Post Data product; and (4) projected subscriptions, usage, and revenues associated with the Post Data product during its initial period of availability. Nasdaq employed standard formulae to perform these projections, although such projections are inherently speculative.

In addition, Nasdaq believes that the proposed fees foster cooperation and coordination with persons engaged in facilitating transactions in securities and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq will make the Post Data product available to vendors on a wholesale basis for $35 per end user, and will charge $70 per direct user, who will access the product through the Nasdaq Trader web site. This fee differential reflects the projected cost of the incremental web security that is required to entitle direct users of the Post Data product. This fee structure also permits wholesale buyers to re-sell the Nasdaq product for up to a 100% premium before adding any value of any kind to the product. In other words, a vendor could purchase Post Data from Nasdaq for $35, and then re-sell it to end users without modification for $65 and still under-price Nasdaq vis a vis those end users. Nasdaq believes that this pricing structure, which Nasdaq will make available to all customers on a non-discriminatory basis, will stimulate, rather than stifle, competition.

[10] 15 U.S.C. 78o–3(b)(5) and (6).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited or nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views and arguments concerning the foregoing, including whether the proposed rule change is constituent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Communication and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–99–12 and should be submitted by August 10, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority: [11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18171 Filed 7–19–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3354]

State of Virginia

As a result of the President's major disaster declaration on July 12, 2001, I find that Tazewell County in the State of Virginia constitutes a disaster area due to damages caused by Severe Storms and Flooding occurring on July 8 through 10, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 10, 2001 and for economic injury until the close of business on April 12, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Virginia may be filed until the specified date at the above location: Bland, Buchanan, Russell and Smyth; and McDowell and Mercer counties in the State of West Virginia.

The interest rates are:

	In percent
For physicial damage	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 335406. For economic injury the number is 9M1700 for Virginia and 9M1800 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 13, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–18180 Filed 7–19–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 33877]

Illinois Central Railroad Company—Construction and Operation—In East Baton Rouge Parish, LA

AGENCY: Surface Transportation Board, Transportation.

ACTION: Notice of availability of environmental assessment and request for comments.

SUMMARY: The Illinois Central Railroad Company (IC) has petitioned the Surface Transportation Board (Board) for authority to construct and operate a rail line approximately 3.2 miles in length in East Baton Rouge Parish, Louisiana, to serve ExxonMobil Chemical Company's Baton Rouge Polyolefins plant. The Board's Section of Environmental Analysis (SEA) has prepared an environmental assessment (EA) for this project. Based on the information provided and the environmental analysis conducted to date, the EA preliminarily concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA recommends that, if the Board approves this project, IC be required to implement the mitigation set forth in the EA. Copies of the EA have been served on all interested parties and will be made available to additional parties upon request. SEA will consider all comments received when making its final environmental recommendations to the Board. The Board will then consider SEA's final recommendations and the complete environmental record in making its final decision in this proceeding.

DATES: The EA is available for public review and comment. Comments are due by August 20, 2001.

ADDRESSES: Comments (an original and 10 copies) regarding this EA should be submitted in writing to: Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423, to the attention of Dana White.

FOR FURTHER INFORMATION CONTACT: Dana White, (202) 565–1552 (TDD for the hearing impaired 1–800–877–8339). To obtain a copy of the EA, contact Da-To-Da Office Solutions, Room 405, 1925 K Street, NW., Washington, DC 20006, phone (202) 293–7776 or visit the Board's website at *www.stb.dot.gov.*

By the Board, Victoria J. Rutson, Acting Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 01–18182 Filed 7–19–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34063]

Dallas Area Rapid Transit—Acquisition Exemption—Lines of Union Pacific Railroad Company

Dallas Area Rapid Transit (DART), a political subdivision of the State of Texas, a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire (by purchase) pursuant to an agreement entered into with Union Pacific Railroad Company (UP), as indicated in its notice, approximately 60.78 miles of rail line in Collin, Dallas, Denton, Grayson and Rockwall Counties, TX, as follows: (1) The segment of the Denton Subdivision between approximately milepost K–741.3 (Frankford Road) in Carrollton and approximately milepost K–729.5 in Lake Dallas (approximately 11.8 miles); (2) the segment of the Sherman Subdivision between approximately milepost 285.1 (Spring Creek Parkway) in Plano and approximately milepost 324.7 at South Sherman Junction (approximately 39.6 miles); (3) the Rowlett Extension between approximately milepost 745.5 (near Kirby Road) in Rowlett and approximately milepost 741.3 in Rockwall (approximately 4.2 miles); (4)

[11] 17 CFR 200.30–3(a)(12).

the White Rock/Fair Park Connector between approximately milepost 6.93 (the GC&SF Overpass) at Tenison Park and approximately milepost 5.06 near Missouri Pacific Junction (approximately 1.87 miles); and (5) the Brookhollow Branch Line between the DFW Main at approximately milepost 0.0 and the Denton Subdivision at approximately milepost 3.31 (approximately 3.31 miles).

DART will acquire UP's interest in the rail right-of-way on the Denton Subdivision between approximately milepost K–729.5 in Lake Dallas and approximately milepost K–721.53 in Denton (City of Denton Line) that is presently subject to a trail use agreement between UP and the City of Denton. *See Missouri Pacific Railroad Company—Abandonment Exemption—In Denton County, TX*, Docket No. AB–3 (Sub-No. 99X) (ICC served May 28, 1993). Among other things, DART will acquire UP's right to restart freight service on the City of Denton Line. DART states that it has no intention of exercising that right at the present time, but that the right to restart freight service is a residual common carrier interest and the acquisition of that right requires Board approval. *See Norfolk & Western Railway Company—Abandonment Between St. Marys and Minster in Auglaize County, OH*, Docket No. AB–290 (Sub-No. 68) (ICC served Oct. 25, 1993).

DART will also acquire the above-referenced segment of the Denton Subdivision, the above-referenced segment of the Sherman Subdivision, the Rowlett Extension and the Brookhollow Branch Line, subject to the Dallas, Garland and Northeastern Railroad, Inc.'s (DGNO) leasehold interest in those lines for the operation of freight service and will acquire the White Rock/Fair Park Connector subject to the trackage rights of certain freight railroads in that segment.[1] DART certifies that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual freight revenues are not projected to exceed $5 million.

The transaction was scheduled to be consummated on or before June 28, 2001, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34063, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, 2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 13, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–18116 Filed 7–19–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 182X)]

Union Pacific Railroad Company-Discontinuance Exemption-In Weld and Boulder Counties, CO

On July 2, 2001, the Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over a segment of its Boulder Industrial Lead, extending from milepost 18.79 near Eagle Mine to milepost 31.0 near Valmont, a distance of 12.21 miles, in Weld and Boulder Counties, CO. The line traverses U.S. Postal Service Zip Codes 80026, 80303 and 80516 and includes the station at Eagle Mine.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 19, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 182X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001, and (2) Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the exemption petition are due August 10, 2001.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

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[1] DART will also acquire from UP: (1) All spur and lead tracks connecting with the Brookhollow Branch Line; (2) the approximately 0.5-mile lead track from the Denton Subdivision to the Coca Cola Bottling Plant; (3) the SSW bridge across I–30 at Dallas Convention Center and South Side Development, and (4) the H&TC bridge across I–30 between Dallas Farmer's Market and DART right-of-way north of the LRT Yard Lead. The acquisition of these spur tracks, lead tracks and other property interests do not require Surface Transportation Board approval. *See* 49 U.S.C. 10906.

DGNO's leasehold interest in the Sherman Subdivision, the Rowlett Extension, and the Brookhollow branch line will be the subject of a forthcoming petition for exemption, wherein DGNO will seek exemption from the Board for approval to convert most of its leasehold interests into trackage rights with DART. There is no freight traffic over the portion of the Sherman Subdivision being acquired by DART between approximately milepost 285.1 (Spring Creek Parkway) and approximately milepost 290.5 (Stacy Road). DART states that shortly after consummation of the acquisition of the above segment DART will seek Board authority to abandon that segment and DGNO will seek Board authority to discontinue its lease on that segment.

The Burlington Northern Santa Fe Railway Company, DGNO and possibly other freight railroads have trackage rights over the White Rock/Fair Park Connector. There is no current local freight service on the White Rock/Fair Park Connector segment, and any local or overhead freight railroad operations on the White Rock/Fair Park Connector in the future will be conducted by entities other than DART pursuant to such trackage rights.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 12, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–18115 Filed 7–19–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 13, 2001

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 20, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0192.

Form Number: IRS Form 4562.

Type of Review: Revision.

Title: Depreciation and Amortization (Including Information on Listed Property).

Description: Taxpayers use Form 4562 to: (1) claim for depreciation and/or amortization; (2) make a section 179 election to expense depreciable assets; and (3) answer questions regarding the use of automobiles and other listed property to substantiate the business use under section 274(d).

Respondents: Individuals or households, Business or other for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 6,500,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—37 hr., 19 min.
Learning about the law or the form—5 hr., 10 min.
Preparing and sending the form to the IRS—5 hr., 59 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 298,367,500 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–18144 Filed 7–19–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–53]

Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Customs broker license cancellations.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 USC 1641) and the Customs Regulations (19 CFR 111), the following Customs broker licenses are cancelled. Some of these entities continue to provide broker services under another of their multiple license numbers. Because previous publication of some records cannot be readily verified, the records are now being published to ensure Customs compliance with administrative requirements.

Name	License	Port name
A.J. Murray Co., Inc.	03571	New York.
A.W. Fenton Co., Inc.	06697	New York.
AA Customs Brokers Trueba Saldivar	14365	El Paso.
ABC Int'l	03154	New York.
Abramo, Frank C.	02026	New York.
Accelerated Customs Brokers	07411	San Francisco.
Accelerated Shipping Co.	10412	New York.
Aeolian Shipping Co., Inc.	02527	New York.
Aero Space Cargo, Inc.	06172	New York.
AF Int'l	09568	New York.
Air Marine Brokers Ltd.	05596	New York.
Air-Barr Shipping Corporation	03514	New York.
Airport Clearance Service, Inc.	04446	New York.
Allen Forwarding (NY), Inc.	05344	New York.
Altenberg, Hans	04126	New York.
Alternative Brokers Int'l, Inc.	09634	New York.
Am-Can Freight Forwarders	04784	New York.
Ambrosio, Dominc J.	02657	New York.
Amerford Int'l Corporation	03424	New York.
American Safe System, Inc.	04612	New York.
Amshico Corp.	05835	New York.
Anderson, Robert L.	04951	Seattle.
Arnold, Alfred H.	02209	New York.
Arthur J. Fritz Co., Inc.	02876	Seattle.
Ascione, Pasquale	00901	New York.
Augerot, William	03454	New York.
AUT Import Services, Inc.	07460	New York.
Avery, Dwain O.	04486	Tampa.
B & L Customs Brokers, Inc.	05837	New York.
Baker, Irons & Dockstader, Inc.	01445	New York.
Baldassano, Vincent	01807	New York.
Barbieri, Philip A.	02092	New York.

Name	License	Port name
Barbieri, Stephen	02222	New York.
Barnett, Lawrence	02587	New York.
Barnett/Novo Int'l Corp.	04364	New York.
BDP Int'l, Inc.	09097	New York.
Beacon Shipping Co., Inc.	03729	New York.
Becker, Stewart	09145	New York.
Bee Int'l, Inc.	05828	Tampa.
Behring Int'l, Inc.	05171	New York.
Benkart, F.J.	01148	New York.
BJG Int'l, Inc.	04407	New York.
Blankley, Joseph R.	01547	New York.
Bonvissuto, Michael	02249	New York.
Bowen, Albert E.	03721	New York.
Brian R. Glynn CHB, Inc.	07303	New York.
Bridgetts, Donald P.	02512	New York.
Bridgetts, William F.	01909	New York.
Bridgetts & Co., Inc.	01479	New York.
Briggs, Samuel Augustus, Jr.	03007	New York.
Bruce Duncan Company, Inc.	04321	New York.
Burlington Air Imports	07294	New York.
Burlington Air Imports, Inc.	06963	Los Angeles.
C.A. Haynes & Co., Inc.	03699	New York.
C.F. Liebert, Inc.	04297	Seattle.
C.H. Powell Co., Inc.	02501	New York.
C.H. Timm & Son, Inc.	02758	New York.
Cal-Asia Int'l, Inc.	05360	San Francisco.
California Capitol Exports	09769	San Francisco.
Cargo Clearance Corp.	04253	New York.
Cargo Express Custom Brokers, Inc.	05599	New York.
Cargo Network, Inc.	07081	New York.
Carney, John M.	03483	New York.
Centanni, Julius S.	04606	New Orleans.
Cerillo, Salvatore J.	01997	New York.
Chiarini, Joseph	02573	New York.
Christie, Roy G. W.	05843	Tampa.
Circle Int'l, Inc.	04460	New York.
Cizzon Corporation	04572	Chicago.
Coates, John	02437	New York.
Compagnie d'Affretement/Transport	07182	New York.
Conigliaro, Andrew S.	02571	New York.
Coniglio, Salvatore	02773	New York.
Connors, James	02589	San Francisco.
Consolidated Freightways Export Import	07874	New York.
Conway Customs Brokerage, Inc.	10063	New York.
Copeland Importing Services, Inc.	03697	New York.
Corff, Frank	02467	New York.
Coronet Brokers Int'l, Ltd.	04260	New York.
Courtney Int'l Forwarding, Inc.	12399	New York.
Cronin, Denis	01907	New York.
Cugus, Edward	02775	New York.
Culhane, Thomas F.	09003	New York.
Cunningham, Martin H.	07865	Tampa.
Cutroneo, Salvatore	02871	New York.
Danamar Associates, Ltd.	09359	Chicago.
Danheuser, Edwin J.	03695	New York.
Davis, A.D.	01080	New York.
DCI Int'l	05227	New York.
DCI Int'l	05007	San Francisco.
Dean Int'l, Ltd.	04002	New York.
DeMarco, Rosalie J.	09228	New York.
Dennis O'Donnell, Ltd.	06330	New York.
Desmond, Benjamin F.	02638	New York.
Dietrich, Peter J.	00844	New York.
Dingelstedt & Co.	05126	New York.
Distribution Services Int'l, Inc.	06184	San Francisco.
Division M, Inc.	04729	Chicago.
DNT Customs Services, Inc.	11516	Los Angeles.
Dorf Int'l, Inc.	01687	New York.
Dubienny, Theodore H.	02360	New York.
DUE Int'l, Inc.	10932	Los Angeles.
Dunlap, Alpers & Mott, Inc.	02343	New York.
Dunnington, Guy A.	01774	New York.
Dunnington & Arnold Int'l Inc.	06277	New York.
Dunnington & Arnold, Inc.	02654	New York.

Name	License	Port name
Dyson Shipping Co., Inc.	00219A	New York.
E.D.S. Int'l Shipping	07761	New York.
Eads, Larry W.	04561	San Francisco.
Echavarria, Rodlopho S.	16679	Laredo.
Edwards, Joseph	01749	New York.
Eilenberg, Carl	01897	New York.
Eisemann, Everett H.	02375	New York.
Emery Air Freight	06341	Dallas/Ft Worth.
Emery Distribution Systems, Inc.	04576	New York.
Encarnacion, Aurelio	06230	Los Angeles.
English, Edward J.	01627	New York.
Enterprise Shipping Corp.	09328	New York.
Enterprise Shipping Corp.	04021	San Francisco.
Ernst & Young	10913	San Francisco.
Eugene T. Gillen, Inc.	03748	New York.
Euramex Custom House Brokers, Inc.	06402	New York.
Express Forwarding and Storage Co., Inc.	02686	New York.
F.L. Kraemer & Co.	00040A	New York.
F.L. Kraemer & Co., Inc.	07349	New York.
F.W. Myers & Co., Inc.	04642	New York.
F.W. Myers & Co., Inc.	00729	Champlain.
F.W. Myers Co., Inc.	07612	Seattle.
Falkenmayer, Charles W.	02338	New York.
Fast Flowers, Inc.	09872	New York.
Feigelson, Alan	06594	New York.
Fenderson, Frank H.	02747	Portland, ME.
Forlenza, Nunzi A.	03629	New York.
Francesco Paris Forwarding Corp.	02846	New York.
Francis, Louis	01962	New York.
Frank P. Dow Co., Inc.	06996	San Francisco.
Freedman, Jerome	03041	New York.
Freedman & Slater Air Cargo Corp.	06138	New York.
Freedman & Slater Air Cargo Corp.	04348	New York.
Freedman & Slater Inc.	06137	New York.
Freight Base Customs Brokers, Inc.	06740	New York.
Freight Expediters, Inc.	05955	New York.
Freight Wings (Partnership)	09362	New York.
Friemel, Arnold L.	00043A	New York.
Frieson, Brenda Lyles	05727	St. Louis.
Fritz Companies, Inc.	07408	Tampa.
Fuschetto, Anthony	02755	New York.
G. Amador Corporation	05478	San Francisco.
G.A. Lopez Forwarding/Shipping Co.	03683	New York.
Gale, David	04474	New York.
Garcia, Michael, Jr.	02529	New York.
Gedenk of Panatlantic, Inc.	06205	New York.
Gehrig, John	02116	New York.
General Shipping/Trading Co., Inc.	04050	New York.
George S. Bush Co., Inc.	00096	Seattle.
Gerhard & Hey Co., Inc.	00731	New York.
GFI Customs Brokers, Inc.	07949	San Francisco.
Ginsberg, Lawrence	02470	New York.
Gladish & Associates	09384	San Francisco.
Glogower, Jack	04217	New York.
Glory Int'l Forwarders, Inc.	05760	New York.
Gommi, Julius W.	00900	New York.
Grealy, Eileen T.	04702	New York.
Gremillion, Ben L.	05046	New Orleans
Guglielmo, A.	10030	New York.
Gutman, Gertrude E.	05542	New York.
H.A. Gogarty	01514	New York
H.P. Lambert Company, Inc.	06579	Portland, ME.
H.W. Robinson Air Freight Corp.	02645	New York.
Halperin Shipping Co., Inc.	03059	New York.
Haniel-Phoenix Transport, Inc.	10042	New York.
Hannon, Timothy Otto	07277	San Francisco.
Hanrahan-Evans, Inc.	04084	New York.
Harder, Joseph E.	02348	New York.
Harlo-Air Cargo Brokers, Inc.	03142	New York.
Harper Robinson Company	03147	Seattle.
Harper, Robinson & Company	06529	Tampa.
Harris Brown, Inc.	07875	New York.
Harry F. Long, Inc.	04884	San Francisco.
Hauser Air Corp.	04504	New York.

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Name	License	Port name
HAV Int'l Freight Corp.	09507	New York.
Hayes & Cupitt	03072	New York.
Heer, Alfons	03927	New York.
Heidl's Incorporated	02293	New York.
Helstrom, Friedman, DiGiacoma, Inc.	03917	New York.
Henkell, Robert Edward	02258	New York.
Hermann Ludwig, Inc.	04479	New York.
Hirshbach & Smith, Inc.	00114A	New York.
Hocherman, Joseph	02365	New York.
Humphrey McGreggor, Inc.	02585	Tampa.
Hundt, Frederick W.	01657	New York.
Hyams, Jack P.	02660	New York.
Hyams Expedition Corp.	04714	New York.
I.T.C. Compu-Customs Corp.	04366	New York.
Imperial Brokerage Corp.	06663	New York.
Import Specialist Assoc., Ltd.	09618	New York.
INB Int'l, Inc.	04465	New York.
Inter-Maritime Forwarding Co.	07369	Los Angeles.
Inter-Maritime Forwarding Co.	07201	Chicago.
Intercontinental Customs Brokers, Inc.	04823	Los Angeles.
Intercontinental Forwarders, Inc.	06084	New York.
Int'l Consumer Sales Inc.	11865	New York.
Int'l Customs & Shipping	09378	New York.
Int'l Customs Services, Inc.	03431	San Francisco.
Int'l Expediters, Inc.	02565	New York.
Int'l Freight Consultants, Inc.	06691	New York.
Int'l Trade Services Inc.	09532	Chicago.
Intertrans Corporation	06729	New Orleans.
Ira Furman & Co., Inc.	04977	New York.
J.B. Wood Shipping Co., Inc.	01204	New York.
J.D. Smith Inter-Ocean, Inc.	04306	New York.
JFMNY. Inc.	09096	New York.
J.J. Boll, Inc.	03701	New York.
J.J. Gavin & Co.	00252A	New York.
J.M. Cargo, Inc.	11725	New York.
James, Thomas C.	05677	Tampa.
James A. Bronson, Inc.	04989	Seattle.
James E. Fox & Co., Inc.	01348	New York.
James G. Wiley Co.	03425	San Francisco.
James J. Boyle & Company	03728	San Francisco.
James Loudon & Co.	02992	San Francisco.
John H. Faunce, Inc.	03649	New York.
John J. Coates, Inc.	03698	New York.
John M. Carney, Inc.	06871	New York.
John V. Carr & Son, Corp. (NY)	06889	New York.
JTS AirFreight Corporation	06650	New York.
Judson Sheldon Int'l	03192	New York.
"K" Air Brokerage, Inc.	09610	New York.
K&M Customs Brokers Int'l, Inc.	04664	New York.
K&M Customs Brokers, Inc.	04261	New York.
Kamen, Howard	01007	New York.
Karl Roessner Cargo Service, Inc.	10164	New York.
Karl Schroff Associates, Inc.	04793	Seattle.
Karl Schroff Int'l, Inc.	14408	San Francisco.
Kelley, Lawrence W.	02617	Portland, ME.
Kelly, Thomas P.	07308	New Orleans.
Kennedy World Wide, Inc.	09601	New York.
Kimoto, Paul T.	05712	San Francisco.
Kimoto, Paul	06065	Los Angeles.
King Shipping Co., Inc.	04709	New York.
King Shipping Company	02867	New York.
Kirk, John	04980	San Francisco.
Knoring, Abraham J.	01333	New York.
Korbul, Joseph	03214	New York.
Kormin Shipping Co., Inc.	03419	New York.
Kraemer, John Frederick	02538	New York.
Kraemer, Albert E.C.	00030	New York.
L.A. Ferm Company, Inc.	02957	New York.
Landau, Sylvia J.	01062	New York.
Lang & Marshall Company, Inc.	02664	New York.
Lansen, John P.	01083	New York.
Lansen-Naeve Corporation	01504	New York.
LaRosa, John	00869	New York.
Latherow, Charles A.	10256	Tampa.

Name	License	Port name
Lauderdale, Melvin L.	07960	New York.
Leemar Import, Inc.	09641	New York.
Lefkowits, David	02574	New York.
Lehart-Schwartz Shipping Corp.	03061	New York.
Lehat-Schwartz & Associates, Inc.	03080	New York.
Lehder, Wilfred E.	06224	New Orleans.
Leiner, Melvin	03839	New York.
Leo Int'l	05903	New York.
LEP Transport, Inc.	05223	San Francisco.
Leyden Customs Expediters, Inc	03149	New York.
Liberty Int'l NY, Inc	11293	New York.
Linsenmeyer, Richard J	01802	New York.
Livingston Int'l Inc	04639	New York.
Locurto & Funk, Inc	02711	New York.
Losekamp, Bernard Mark	13475	Cleveland .
Lund Pullara, Inc	04438	Tampa.
M.J. Corbett & Co., Inc	00081A	New York.
M.J. Corbett Air Division Corp	02964	New York.
Mack, Isabelle E	02471	New York.
Mallon, Vincent J	04976	New York.
Marin, Juan E	12513	San Juan.
Marion Shipping Co., Inc	02728	New York.
Markwalter, Frank J	00591	New York.
Mazzola, Joseph J	09171	New York.
McCarthy, Michael Joseph	03429	New York.
McFarland, C.J	01470	New York.
McGarry, William J	02185	New York.
McGregor Sea & Air Services	04927	San Francisco.
McGuinness, James	05608	New York.
McLean Cargo Specialists, Inc	07629	New York.
Medina, Manuel H	03069	New York.
Meyers Group (USA), Inc	11970	New York.
Modern Intermodal Traffic Co	04009	New York.
Mohegan Int'l Corp	02485	New York.
Monahan, Joanne M	09724	Buffalo.
Monarch Customs Brokers/Forwarders	10770	New York.
Monroe, Carl G	04571	Chicago.
Movers Port Service, Inc	09382	New York.
MRH Int'l, Ltd	08012	New York.
Muklfelder, Ronald	05970	New York.
N.J. Defonte Co., Inc	03916	New York.
N.M. Albert Co., Inc	02405	New York.
Naeve, H.N	01118	New York.
Nardella, Michael	02718	New York.
New York Customs Brokers, Inc	03559	New York.
New York Forwarding, Inc	13351	New York.
New York Int'l Customs Service	04098	New York.
Newbalt Associates, Inc	03307	New York.
Newman, Nathan	01552	New York.
Nicol, Frank	02946	Los Angeles
Nordisk Transport, Inc	02885	New York.
Norman G. Jensen, Inc	02095	Duluth.
Norman G. Jensen, Inc	05373	San Francisco.
O'Connell, Joseph P	01632	New York.
Oishi, Karla	10604	Los Angeles.
Opera Shipping Corp	04683	New York.
Oujevolk, George B	02350	New York.
Overton & Co. CHB, Inc	05187	New York.
Pad Import, Inc	05628	San Francisco.
Panalpina Airfreight, Inc	04616	Dallas.
Panalpina, Inc	07577	Washington, DC.
Passman, Edward M	01611	New York.
Paulssen & Guice, Ltd	04387	New York.
Pederson, Walter L	00749	New York.
Penson & Company	04182	San Francisco.
Perel, Maurice	04259	New York.
Person & Weidhorn, Inc	03661	New York.
Plichta, Felix A	02374	New York.
Polese, John	02616	New York.
Porter Expediters, Inc	09599	New York.
Pratt, Ian C	17487	New York.
Preferred LSI, Inc	13840	Los Angeles.
Premier Shipping Company, Inc	04448	New York.
Prime Customs Brokers Inc	10798	New York.

Name	License	Port name
PS Clearance Associates, Inc	06177	New York.
Pui Ching Company, Inc	16232	Los Angeles.
Quigley, Laurence J	02483	New York.
R&Y Int'l Customs Brokers	09600	New York.
R.A. Leslie & Company	08093	New York.
R.G. Hobelman & Company, Inc	05009	San Francisco.
Radix Group Int'l, Inc	07175	San Francisco.
Radix Group Int'l, Inc	07492	Dallas.
Ray-Mar Expedition Corp	04737	New York.
Redondo, Leticia S	05788	San Francisco.
Reiss, Josiah	00720	New York.
Republic Interocean Corp	03110	New York.
Richard Castillo CHB	10014	New York.
Rijabatainer, Inc	06199	New York.
Robbins, Allen J	04451	New York.
Robbins, Stuart	05041	New York.
Robbins, Fleisig & Phelps, Inc	04662	New York.
Roberts, Chester G	06151	New York.
Rodgers, John Martin	01776	New York.
Roth, Charles S	02461	New York.
Royal Freight Brokers, Inc	06893	New York.
Rubino, Joseph A	01564	New York.
Ryan, Joseph F	02858	New York.
S. Jackson & Sons	00028	New Orleans.
S. Stern & Company	02075	New York.
Salehzadeh, Judith Ann	09637	Chicago.
Santarelli, Joseph C	02960	New York.
Sasson, Samuel H	05730	New York.
Scansped Flight, Inc	05297	New York.
Schaaf, Walter	01077	New York.
Schenkers Int'l Forwarders, Inc	04673	Norfolk.
Schmid, Baldwin R	03374	New York.
Schmid's Forwarding (NJ), Inc	05869	New York.
Schmitt, Albert C.	02521	New York.
Schraub, Jerome	03958	New York.
Schreter, Otto C.	00766	New York.
Schroff, Karl W., Jr.	13544	San Francisco.
Schwartz, Gerald	03494	New York.
Schwartz, Norman C.	04539	New York.
Scibelli, Eugene	07224	New York.
Sea Lanes Shipping Co., Inc.	03212	New York.
Sea-Lanes Freighting Corp.	04022	New York.
Seamodal Transport Corporation	06015	Chicago.
Seaport Shipping Co., Inc.	04677	San Francisco.
Seller, Charles W.	00536	New York.
Seven Seas Brokers, Inc.	05734	Miami.
Shigoto Customs Brokers, Inc.	03402	New York.
Shipco, Inc.	06630	New York.
Sichel, Edwin	01896	New York.
Sirota, Barney	02631	New York.
Skyline Cargo Services, Inc.	04850	New York.
Slater, Jerome	02259	New York.
Smith, Elaine A.	02414	New York.
Smith, Theodore B., Jr.	01755	New York.
Sobel Shipping Company	02749	New York.
SOL Int'l, Inc.	11675	New York.
Sopac Transport Corp.	02723	New York.
Southwest Customs Service Corp.	13271	Los Angeles.
Stair Cargo Brokers, Inc.	09442	New York.
Sterling Cargo Int'l, Inc.	13809	Dallas.
Strategic Transportation Company	05916	San Francisco.
Stringfield, William M.	06503	Los Angeles.
Suber, Julia Thomas	10975	Savannah.
Sullivan, Garrett X.	02332	New York.
Super Sonic Transport	04368	New York.
Superior Customs Brokers, Inc.	05019	New York.
Surface Air Int'l, Inc.	04941	New York.
Synodis, John	02136	New York.
T.J. Cavanagh Associates, Inc.	09225	New York.
Tarus, Charles J.	02204	New York.
Tassa, Nicholas	05511	New York.
Theodore B. Smith Company, Inc.	02077	New York.
Thomas, Charles M.	01418	New York.
Thornley & Pitt	02822	San Francisco.

Name	License	Port name
Three Way CHB	06274	New York.
Timke, Robert	02572	New York.
Tomas Shipping Company, Inc.	03088	New York.
Traffic Int'l Corp. (LAX)	13916	Los Angeles.
Trans Air Import, Inc.	03509	New York.
Trans-Orient Int'l Freight	06112	New York.
Transatlas Int'l, Inc.	04727	New York.
Turnpike Express Corp.	11903	New York.
Twis Int'l, Inc.	03984	New York.
Tyson, Donald B.	02622	New York.
Unit Int'l of Miami	13168	Miami.
United Customs Inc.	05423	New York.
United Import Services, Inc.	09847	New York.
Vanguard Import Services, Inc.	04865	New York.
VanWie, Joseph P.	02786	New York.
Venslovaitis, Virginia H.	11779	Champlain.
Vinson, Benjamin	01779	New York.
W.A. Phelps & Co., Inc.	04644	New York.
W.C. Auger & Company	03011	San Francisco.
W.J. Byrnes-Air Division, Inc.	00060	San Francisco.
W.J. Byrnes-Air Division, Inc.	02285	San Francisco.
W.R. Keating & Co., Inc.	01566	New York.
Waldron Bowers, Inc.	04201	Honolulu.
Wilcox, Sherri	11719	Los Angeles.
William L. Bane & Co.	02295	New York.
Winslow Manly, Inc.	03772	New York.
Wolf & Gerber	06313	New York.
World Express Group	13122	San Francisco.
World Freight Forwarders, Inc.	13055	New York.
World Trade Customs Brokers, Inc.	04122	New York.
WTC Import Services, Inc.	09997	New York.
WTC Int'l, Inc.	04501	San Francisco.
WTC Int'l, Inc.	04067	New York.
WTT Customs House Brokerage, Inc.	07181	Washington, DC.
XL Brokers Int'l, Inc.	10385	Seattle.
York Marine, Ltd.	07348	New York.
Young, James	02605	New York.

Dated: July 5, 2001.

John H. Heinrich,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–18163 Filed 7–19–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: "French Dermatological Laboratory"

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C.1124), of the trade name "French Dermatological Laboratory," used by Continental/Laboratories Medica, SARL, ("CLM"), located at Centre Nepture, Rue des Maraichers, 33260 La Teste, France.

The application states that the trade name is used in connection with soap. The particular cosmetics sold under the Trade Name include:

Lait "FAIR & WHITE" (Lightening milk)
Gel-creme "FAIR & WHITE" (Cream gel)
Gel actif plus "FAIR & WHITE" (Active lightening gel)
Creme "FAIR & WHITE" (Lightening cream)
Serum Eclaircissant "FAIR & WHITE" (Lightening Serum)
Soap "FAIR & WHITE"

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATES: Comments must be received on or before September 18, 2001.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Washington DC 20229 (202–927–2330).

Dated: July 17, 2001.

George F. McCray,

Acting Chief, Intellectual Property Rights Branch.

[FR Doc. 01–18162 Filed 7–19–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: "Labo. Derma"

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C.1124), of the trade name "Labo. Derma," used by Continental/ Laboratories Medica, SARL, ("CLM"), located at Centre Nepture, Rue des Maraichers, 33260 La Teste, France.

The application states that the trade name is used in connection with soap. The particular cosmetics sold under the Trade Name include:

Lait "FAIR & WHITE" (Lightening milk)
Gel-creme "FAIR & WHITE" (Cream gel)
Gel actif plus "FAIR & WHITE" (Active lightening gel)
Creme "FAIR & WHITE" (Lightening cream)
Serum Eclaircissant "FAIR & WHITE" (Lightening Serum)
Soap "FAIR & WHITE"

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATES: Comments must be received on or before September 18, 2001.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Washington DC 20229 (202–927–2330).

Dated: July 17, 2001.

George F. McCray,

Acting Chief, Intellectual Property Rights Branch.

[FR Doc. 01–18164 Filed 7–19–01; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 66, No. 140

Friday, July 20, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Certain Preserved Mushrooms From Indonesia: Final Results of Antidumping Duty Administrative Review

Correction

In notice document 01–17626 beginning on page 36754 in the issue of Friday, July 13, 2001, make the following correction:

On page 36754, in the second column, the **EFFECTVE DATE:** "August 13, 2001" is corrected to read "July 13, 2001".

[FR Doc. C1–17626 Filed 7–19–01; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Friday,
July 20, 2001

Part II

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Allowance System for Controlling HCFC Production, Import and Export; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6929–9]

RIN 2060–AH67

Protection of Stratospheric Ozone: Allowance System for Controlling HCFC Production, Import and Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is seeking comment on a proposed allowance system to control the United States (U.S.) production and consumption of class II controlled substances, the hydrochlorofluorocarbons (HCFCs), in accordance with U.S. obligations under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol). Under the Protocol, the U.S. is obligated to limit HCFC consumption (defined by the Protocol and this document as production plus imports, minus exports) under a specific cap, which will be reduced in a step-wise fashion over time. The U.S. is also a signatory to amendments to freeze HCFC production on January 1, 2004. EPA published an Advance Notice of Proposed Rulemaking (ANPRM) on April 5, 1999, laying out a variety of options for developing an allowance system. Having fully considered comments on the ANPRM, EPA is today proposing an HCFC allowance system, similar in many respects to the class I allowance system in place before January 1, 1996. Instituting such a system for HCFCs would allow EPA to ensure that the U.S. maintains compliance with the Protocol caps, while providing certainty and predictability to allowance holders. In addition, the Clean Air Act (CAA) requires EPA to establish an allowance system for HCFCs.

A slightly different version of this document was signed on December 28, 2000, by then Administrator Carol Browner. It was sent forward to the **Federal Register** and made available on the EPA Web site. It was not published in the **Federal Register**, but rather was recalled to EPA for review by the incoming Administration. In the interim, EPA was alerted to some potential discrepancies in baseline allocations; this led to the discovery that the tracking databases manifested some correlation errors. EPA reviewed all paper records to determine accurate baseline numbers, and the corrected numbers are included in this document.

DATES: Comments on this proposed rule must be received on or before September 4, 2001, unless a public hearing is requested. Comments must then be received on or before 45 days following the public hearing. Any party requesting a public hearing must notify the Stratospheric Ozone Protection Hotline listed below by 5 p.m. Eastern Standard Time on July 30, 2001. Following the period for requesting a hearing, you may call the Stratospheric Ozone Protection Hotline to find out whether a hearing will be held, and if a hearing is held, the date and location it will take place.

ADDRESSES: Comments on this proposed rule should be submitted in duplicate to: The Air and Radiation Docket (6102), Air Docket No. A–98–33, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Protection Hotline at 1–800–269–1996.

Materials relevant to this rulemaking are contained in Docket No. A–98–33. The Docket is located in Room M–1500, First Floor, Waterside Mall at the address above. The materials may be inspected from 8 am until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Vera Au, EPA, Global Programs Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, (202) 564–2216 or the Stratospheric Protection Hotline at (800) 296–1996.

SUPPLEMENTARY INFORMATION:

Regulated Entities

The HCFC allowance allocation system would affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing.	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers.
Chlorofluorocarbon gas importers	.....	.....	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas importers	.....	.....	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters.
Urethane and Other Foam Product (Except Polystyrene) Manufacturing.	326150	3086	Insulation and cushioning, foam plastics (except polystyrene) manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine these proposed regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Abbreviations and Acronyms Used in This Document

Act—Clean Air Act
ANPRM—Advance Notice of Proposed Rulemaking
Article 2 countries—industrialized countries
Article 5 countries—developing countries
CAA—Clean Air Act
Cap—limitation in level of production or consumption
CFC—chlorofluorocarbon
CFR—Code of Federal Regulations
EPA—Environmental Protection Agency
FDA—Food and Drug Administration
HCFC—hydrochlorofluorocarbon
NASA—National Aeronautics and Space Administration
ODP—ozone depletion potential (CFR 40, Part 82)
ODS—ozone-depleting substance
Party—Signatory country to the *Montreal Protocol on Substances that Deplete the Ozone Layer*
Protocol—*Montreal Protocol on Substances that Deplete the Ozone Layer*
SBREFA—Small Business Regulatory Enforcement Fairness Act
SNAP—Significant New Alternatives Policy
UNEP—United Nations Environment Program

U.S.—United States

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I. Background

A. How Does the Montreal Protocol Phase Out HCFCs?

Signatory countries that are Parties to the international agreement called the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol) identified HCFCs as transitional substitutes for CFCs and other more destructive ODSs during their second meeting in London in 1990. At the Parties' fourth meeting in Copenhagen in 1992, a detailed phaseout schedule for HCFCs (listed in Annex C, Group I of the Protocol) was created. The Parties established a cap on the consumption of HCFCs for developed countries, or what the Protocol refers to as Article 2 countries, at the same meeting. Note that consumption is defined by the Protocol as production plus imports minus exports. The cap on HCFC consumption for Article 2 countries went into effect on January 1, 1996, and was derived from the formula of 3.1 percent (reduced to 2.8 percent at the seventh meeting of the Parties) of a Party's CFC consumption in 1989, plus the Party's consumption of HCFCs in 1989. This formula puts the current U.S. cap for HCFC consumption at 15,240 ODP-weighted metric tons. The Parties to the Protocol then created a schedule for the gradual reduction and eventual phaseout of the consumption of HCFCs by 2030. The Copenhagen Amendments to the Protocol call for a 35 percent reduction of the cap in 2004, followed by a 65 percent reduction in 2010, a 90 percent reduction in 2015, a 99.5 percent reduction in 2020, and a total phaseout in 2030. The U.S. must, at a minimum, comply with this phaseout schedule under the Protocol.

A freeze on HCFC production for Article 2 countries was agreed to at the eleventh Meeting of the Parties in 1999. This level of production is derived from the average of the Party's consumption cap (2.8 percent of a Party's CFC consumption in 1989, plus the Party's HCFC consumption in 1989) and the result of the same formula for production (2.8 percent of the Party's CFC production in 1989, plus the Party's HCFC production in 1989). The cap for the U.S. for the HCFC production freeze is 15,537 metric tons with each different HCFC chemical being weighted according to its ODP. The ODP of a chemical is determined according to its ability to destroy ozone molecules in the stratosphere. The higher the ODP, the more destructive the chemical is to stratospheric ozone.

EPA was petitioned by environmental organizations and industry groups in 1993 to phase out the most ozone-depleting HCFCs first (58 FR 65018, December 10, 1993; 58 FR 15014, March 18, 1993). Based on the available data at the time, EPA determined that the U.S. could meet, if not exceed, the required Protocol reductions by the specified dates through a chemical-by-chemical phaseout. Therefore, the U.S., as authorized under the CAA, implemented a phaseout schedule carried out on a chemical-by-chemical basis for HCFCs (58 FR 65018), which was intended to meet or exceed the Protocol reductions required. U.S. implementation of the HCFC phaseout is described below in section I.B of this document.

B. How Does Title VI of the CAA Amendments of 1990 Phase Out HCFCs?

Section 605(c) of the CAA Amendments of 1990 requires the Administrator to promulgate, by December 31, 1999, regulations phasing out the production, and restricting the use of, class II substances, in accordance with the schedule in that section and subject to any acceleration of the phaseout of production under section 606. Section 605(c) further states that the Administrator shall promulgate regulations to ensure that the consumption of class II substances is phased out and terminated in accordance with the same schedule. The original phaseout schedule established in the Act has since been accelerated as authorized under section 606 and is outlined below.

Section 605 of the Act established the original U.S. phaseout schedule for class II substances. Section 605(a) states that, "Effective January 1, 2015, it shall be unlawful for any person to introduce into interstate commerce or use any class II substance unless such substance: (1) Has been used, recovered and recycled; (2) is used and entirely consumed (except for trace quantities) in the production of other chemicals; or (3) is used as a refrigerant in appliances manufactured prior to January 1, 2020." Section 605(b) states that, "Effective

January 1, 2015, it shall be unlawful for any person to produce any class II substance in an annual quantity greater than the quantity of such substance produced by such person during the baseline year. Effective January 1, 2030, it shall be unlawful for any person to produce any class II substance." This phaseout schedule has since been accelerated under authority of Section 606.

Section 606(a) specifically requires the Administrator to promulgate regulations accelerating the phaseout of production and consumption of ozone-depleting substances, "if (1) based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a class I or class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects, (2) based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable * * *, or (3) the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this title."

Thus, section 606(a)(3) requires EPA to accelerate the phaseout to conform to any acceleration under the Protocol. In addition, section 614(b) provides that in the case of a conflict between Title VI of the Act and the Protocol, the more stringent provision shall govern. Based on scientific evidence that losses of stratospheric ozone were occurring more rapidly than anticipated, the Parties accelerated the phaseout of class I substances and established the phaseout schedule for class II substances at the fourth Meeting of the Parties in Copenhagen in 1992.

Pursuant to authorities provided by Title VI, EPA amended its regulations on December 10, 1993 (58 FR 65018) to provide for these accelerations. Targeting the phaseout set by the Protocol, EPA chose to phase out production and consumption of HCFCs on a chemical-by-chemical basis, beginning with those with the highest ODP. EPA accelerated the phaseout of production and import of HCFC–22, HCFC–141b and HCFC–142b, the three HCFCs with the highest ODPs. Specifically, EPA's rule bans the production and import of HCFC–141b as of January 1, 2003. HCFC–141b has an ODP of 0.11. The production and import of HCFC–142b, with an ODP of 0.065, and HCFC–22, with an ODP of 0.055, are prohibited effective January 1, 2010, except for use in equipment manufactured prior to January 1, 2010. Beginning January 1, 2020, the production and import of HCFC–142b and HCFC–22 are banned. Production and import of the remaining HCFCs will be prohibited beginning January 1, 2015, except as a refrigerant in equipment manufactured before January 1, 2020. All HCFCs will be completely phased out by January 1, 2030. Because HCFC consumption did not approach the Protocol cap for the U.S. during mid-1990, EPA did not at that time establish an allocation system for class II substances, as it did for class I substances.

Section 605(d) of the Act speaks to exceptions to the original phaseout schedule for HCFCs. Beginning in 2030, EPA can authorize up to 10 percent of the baseline per year for production of class II substances for medical products considered essential by the U.S. FDA and for which no safe and effective alternative has been developed and approved. In addition, EPA can authorize use of these quantities beginning in 2015 as an exception to the use restrictions contained in 605(a). EPA can authorize this limited amount of production and use, to the extent consistent with the Protocol, if FDA, in consultation with EPA, determines that it is necessary. In addition, beginning in 2015, and continuing up until 2030, EPA may authorize production of up to 110 percent of the baseline per year solely for export to and use in developing countries, referred to as Article 5 countries in the Protocol. This production is intended to be solely for the purpose of satisfying basic domestic needs of the importing developing country. Between 2030 and 2040, no more than 15 percent of the baseline can be produced annually for export to Article 5 countries. Section 605(d) does not permit any production for export to and use in Article 5 countries after January 1, 2040.

Per section 602(b) of the Act, EPA published a list of class II substances in 40 CFR part 82, subpart A, appendix B. All HCFCs fall into one grouping under class II controlled substances, and, since publication of the initial list, no new class II substances have been added to the list.

Section 602(e) requires EPA to assign numerical values representing the ODP of all class II substances; Section 602(e) further states that, "Where the ozone depletion potential of a substance is specified in the Montreal Protocol, the ozone depletion potential specified for that substance under this section shall be consistent with the Montreal Protocol." Appendix B to part 82, subpart A in the regulatory text of this document lists the ODPs for all class II substances as currently specified by the Protocol. Note that some of the ODPs listed under Appendix B to Part 82, Subpart A of this document vary slightly from those listed under the current Appendix B to 40 CFR part 82, subpart A, due to revisions of those ODPs under the Protocol since May 10, 1995. Today's document proposes to amend the list of ODPs currently presented in 40 CFR Part 82, by reflecting the current Protocol list. Unless there are future revisions of the ODPs for class II substances under the Protocol, entities involved in the HCFC market can expect to use the ODPs listed in appendix B to part 82 subpart A of this document for any ODP-weighted calculations that may be necessary as part of an HCFC allowance system.

Section 607(b) of the Act requires EPA to permit the transfer of any class I or class II allowances, within each group or class, on an ozone depletion potential (ODP)-weighted basis. In allowing transfers, under section 607(a) of the Act, EPA must ensure that "the transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions." In other words, transfers cannot be made at a 1:1 ratio. Under the class I allowance system, EPA required an offset of one percent in any U.S. transfer to achieve the environmental benefit required by section 607. Those transfer requirements are set forth in 40 CFR part 82, subpart A, § 82.12 (60 FR 24970, May 10, 1995). Transfers of class II allowances between entities and inter-pollutant transfers on an ODP-weighted basis, along with an appropriate offset, are addressed under Section II.I.8 of today's document.

Section 616 of the Act states that the U.S. may transfer allowances to another Party, under certain conditions. Few countries currently have a system in place for allocating, trading and expending HCFC consumption allowances. As discussed in today's document, differences exist between the manners in which the Protocol and the U.S. have structured their respective HCFC phaseout systems. In addition, the Protocol language in paragraph 5 bis of Article 2 restricts the U.S. from trading away HCFC consumption to another Party because the U.S. per capita consumption of CFCs in 1989 was well above the per capita limit set by the Protocol for transferring HCFC consumption. A trading regime similar

to that implemented by EPA for transferring class I production allowances (40 CFR 82.9) (60 FR 24970, May 10, 1995), however, is possible, since the Parties established a cap on HCFC production for Article 2 countries during the eleventh meeting of the Parties in 1999. A proposed system for international trades of production allowances of class II substances is discussed in Section II.I.5 of this document.

Reporting requirements mandated in section 603 relative to HCFCs are currently in place in 40 CFR 82.13(n) and (o).

C. How Is Today's Document Arranged?

Because this proposed rulemaking follows an ANPRM on which we have received comments, we both respond to those comments and outline the provisions EPA is proposing today. The document is divided by issues. For each issue, we outline options presented in the ANPRM, discuss any relevant comments we received, then present and request comment on the related provision proposed by EPA. Next we propose several provisions that have arisen since the ANPRM was published and request comment on these provisions. Following these sections, we summarize the complete proposal. Proposed regulatory text follows this preamble.

It should be noted that the regulatory text of the class II allowance allocation system is found in the definitions of § 82.3, as well as the new sections being proposed today, §§ 82.15 through 82.24.

In this proposed rulemaking, the word "you" may be interpreted as "producer", "importer", or "exporter", depending on the situation under discussion.

II. Response to Comments on the April 5, 1999 ANPRM

Section 607 of the Act requires EPA to issue allowances for the production and consumption of class II substances. With this document, EPA is proposing an allowance system, similar in many respects to that of the class I system, with an allocation of baseline allowances, transfer capability, appropriate exemptions, and recordkeeping and reporting requirements. The proposed allowance system would ensure that U.S. consumption of class II substances does not exceed the consumption cap (currently at 15,240 ODP-weighted metric tons to be reduced over time) agreed to under the Protocol, and that U.S. production of class II substances does not exceed the production cap of 15,537 ODP-weighted metric tons agreed to at the eleventh Meeting of the Parties in 1999. It is important to remember when reading this proposal that consumption in the context of the Protocol, the CAA, and EPA regulations implementing Title VI of the CAA, does not mean use, but instead, represents a formula: *Production + Imports − Exports=Consumption*. When we speak of consumption allowances, then, we are referring to allowances for the calculated amount of production plus imports, minus exports.

For the class I substances, EPA considered many methods for achieving the required reductions that were agreed to under the Protocol (53 FR 30566, August 12, 1988). The approaches distinguished between economic incentives and engineering controls or bans. EPA concluded that the most economically efficient, market-based, and relatively simple to administer system for achieving the Protocol's required reductions for class I ODSs was a marketable allowance system. EPA established such a system for the class I ODSs, which proved highly successful. By January 1, 1996, the production and import of class I substances (other than methyl bromide, slated for phaseout in 2005) were completely phased out, except for narrow exemptions granted by the Parties to the Protocol. Anecdotal evidence from producers and importers indicated that the reduction steps and phaseout of class I ODSs through the allowance system was smooth and had minimal economic impact.

A. When Would the Allowance System Go Into Effect?

In the ANPRM, EPA considered an approach whereby an allowance system for class II substances would only become effective if a certain threshold (i.e., a certain percentage of the total U.S. cap set by the Protocol for class II substances) were reached or exceeded. However, the U.S. HCFC consumption in 1998 jumped to 92 percent. This percentage had been discussed in the ANPRM as a possible threshold that would allow for implementation of the allowance system. Because the average consumption was up to 95.5 percent of the cap by mid-1999, EPA believes we reached and could surpass that threshold unexpectedly. Therefore we are not proposing a threshold point.

Since publication of a final rule is expected during the last quarter of 2001, the requirements of the HCFC allowance system would likely take effect the quarter beginning January 1, 2002. EPA requests comment on any impact of allocating HCFC allowances for less than four quarters of 2002, if necessary, to ensure that EPA remains below the U.S. annual consumption cap. In this event, EPA would propose to allocate the remaining quarters of each entity's allowance allocation for 2002, unless that entity has exceeded past quarters of its allocation during 2002. In the case of an entity having exceeded the relevant quarter(s) of its allocation for 2002, the exceedance would be subtracted from the remaining quarters on a pro rata basis. EPA requests comment on this proposed HCFC allocation for the remaining quarters of 2002, if necessary. EPA also requests comment on the time needed to implement the new recordkeeping and reporting requirements, given their similarity to the class I recordkeeping and reporting.

B. What Types of Allowances Would Be Available?

Under the control system for class I substances, EPA created a unit of measure called an allowance. An allowance, for a class I substance, represented the marketable rights and privileges granted to a company to produce or import a specific quantity of that class I substance. Under the class I allowance program, there were two types of allowances: production allowances and consumption allowances. One allowance in the regulatory program for class I substances was equal to one kilogram of an ODS.

Under the class I phaseout regulations, a company was required to expend both production and consumption allowances to be able to produce. To be able to import a class I controlled substance, a company was required to expend consumption allowances (see 40 CFR 82.4). After proper documentation was presented to EPA reflecting an export of a class I controlled substance, consumption allowances were refunded or returned to the exporting company for future use (see 40 CFR 82.10).

In the ANPRM, EPA discussed two options: Allocating both production and consumption allowances, to be expended in the same manner as those in the class I system, as discussed above; and allocating only a consumption allowance, whereby one consumption allowance would be used to produce or to import one kilogram. One consumption allowance would be returned per kilogram exported.

Twelve commenters addressed this issue, with ten of the twelve favoring consumption allowances only. The proponents cited simplicity, and thus decreased regulatory burden. One commenter had no preference; however, the commenter stated that whichever type of allowance is used should be flexible enough to accommodate any

changes arising from ongoing international negotiations. Another commenter expressed a preference for production and consumption allowances, since this system worked well for class I substances; the commenter also felt that implementation of a proven and familiar system would promote simplification.

One commenter claimed that the use of two types of allowances could artificially alter the marketplace if capacity in the United States was underutilized but companies were not allowed to use other allowance holders' unused production rights for import of the class II substances domestically. This same commenter claimed that it would be equally a problem if import rights could not be used to obtain class II substances from a domestic supplier if the production capacity were available. EPA believes that the continued use of both allowances will not result in marketplace disruption. Under the class I system, companies that produced and imported were granted production and consumption allowances to continue producing and importing in response to market fluctuations; rather than disrupting the marketplace, the allowance system allowed market forces to prevail. EPA believes that import rights would not be necessary to obtain class II substances from a domestic supplier; a U.S. importer could purchase class II substances from any domestic supplier without using allowances. The Agency tried to assign baseline allowances as closely representative of each company's production and consumption as possible.

EPA considered the benefits of using one kind of allowance, the consumption allowance, and found that, on its face, such a system would be administratively easier. However, at the 1999 Beijing meeting of the Parties to the Protocol, the Parties agreed to a cap on production, in addition to the current cap on consumption of class II substances. This will require that EPA allocate both production and consumption allowances.

Additionally, because the majority of companies to whom allowances will be allocated in this action are familiar with expending, trading, reviewing, and reporting allowances according to the class I system, staying with the known and proven method is in many ways simpler for the companies. For example, reporting forms would not change significantly, negating the need to re-learn calculation and reporting of allowances.

For these reasons, EPA proposes to use both production and consumption allowances in its class II allocation system. EPA seeks comment on including both production and consumption allowances in a class II allowance allocation system. EPA also seeks input from commenters on the potential value of an allowance, taking into account the differing values of each HCFC and the proximity in time to that HCFC's phaseout.

C. What Would Be the Unit of Measure for Allowances?

In the class I allowance system, EPA assigned each allowance a value of one kilogram of a class I substance. To produce or import, allowances were expended by kilograms. Because ODSs have different potentials to cause ozone depletion, numbers are assigned to each chemical according to the ODP assigned by the Parties, calculated on the basis of CFC–11 having a potential of one (1.0). Since each chemical has its own ODP, any trades that took place between class I chemicals took into account the difference in ODPs, weighting the resulting allowances accordingly.

In the ANPRM, EPA discussed two options for the unit of measure to be used in allocating allowances and implementing the class II allowance system. One option is to retain the class I allocation and tracking on an absolute chemical-by-chemical basis, which relies on ODP-weighting for any inter-pollutant transfers that may occur. Expending, reporting and tracking of allowances would also be on a chemical-specific basis, with any trades between chemicals reflecting the differences in ODPs.

The second option for an allowance unit of measure discussed in the ANPRM was an ODP-weighted unit, tied to no specific chemical. To expend allowances, you would determine the chemical to be produced or imported, multiply it by its ODP and subtract the result from the total allowance units.

EPA received fourteen comments on the unit of measure to be used in allocating and tracking allowances. Ten of the commenters favored an ODP-weighted system, primarily due to the flexibility they believed it would allow. They argued that such a system would simplify transfers, respond to the needs of the marketplace without added burden, and provide for more trading. Three commenters stated their preference for an absolute chemical-by-chemical basis for allocation and transferring. One of those commenters believed that the class I system worked well on a chemical-by-chemical basis and that extending it to the class II system would likely succeed. One of the three commenters claimed that an entity should not be able to trade HCFC–141b for HCFC–22, because they serve two distinct and non-interchangeable markets. The same commenter stated that EPA could allow for revisions after the 2003 phaseout of HCFC–141b. Another of the three stated that both methods are flexible with no real difference, but expressed a preference for chemical-specific allocation. One commenter indicated no preference for either unit of measure but emphasized the importance of a flexible inter-company trading scheme.

One of the commenters who favored the ODP-weighted system elaborated that reporting would still need to happen on a chemical-by-chemical basis and that, should the 2003 phaseout of HCFC–141b result in a reduction greater than 35 percent, EPA should ensure that total allowances available in 2004 be at the 65 percent level.

After reviewing the comments and analyzing the potential outcomes in using each unit of measure for allowances, EPA is proposing to institute a chemical-by-chemical absolute kilogram system for allocating and transferring allowances. The baseline allocation for each company would be the total or a percentage of the number of kilograms of each chemical produced and consumed during the baseline year. To ensure compliance with the requirements of trading and to be able to report accurately to the Parties to the Protocol on production and importation of each of the class II substances, EPA would need allowance holder reports that included the kilograms of specific chemicals for which allowances are traded and expended. Tracking the associated chemicals, along with its associated ODP weighting, is imperative for reasons described below.

As noted in the Background section of today's document, the U.S. is slated to phase out HCFC–141b in 2003, HCFC–22 and HCFC–142b in 2010 (with some exceptions), and the remaining HCFCs in 2015 (with some exceptions). A complete phaseout is required in 2030. Because the U.S. is making reductions in class II substances by phasing out chemicals, EPA will need to have in its database the baseline allocation of kilograms of each of the chemicals as they are being phased out. On the first HCFC phaseout date of 2003, those companies that received baseline consumption allocations (or received a permanent baseline transfer) (see section II.I.7 of this document) of HCFC–141b would subtract that portion from their total consumption allocation. If permanent inter-pollutant trades had been made, an amount equal to the

ODP-weighted kilograms of baseline HCFC–141b allowances that had been received in the transfer would be deducted from the baseline allocation. Similarly, the person who transferred HCFC–141b permanent baseline allowances to someone else would no longer be responsible for deducting them from their allocation. That should have happened when the trade was made.

The same would occur in 2010 and 2015 for the relevant chemicals being phased out. Without chemicals associated with the various ODPs, EPA would be unable to enforce the regulation adequately. Furthermore, the U.S. would be unable to fulfill its obligation to report under the Protocol the volume of each chemical produced, imported and exported.

Under a chemical-by-chemical approach, allowances representing kilograms of the specific chemical expended would be the only information required, unless an inter-pollutant trade is made, as referenced above. The more rigorous reporting required under an ODP-weighted system would mean deciding which chemicals would be associated with which ODP units. This could both increase the regulatory and recordkeeping burden on companies and EPA and likely lead to inaccuracies. Blends could present further complication by requiring a calculation of the percentage of each HCFC in a substance (e.g., R–401A), that would need to be multiplied by its applicable ODP, then included in the total reported ODP and chemical produced or imported for a quarter. Reporting properly under the ODP-weighted system brings the reporter full-circle to a chemical-by-chemical analysis.

Proponents of an ODP-weighted system extol the ease of tracking and expending generic ODPs, as well as the advantages of avoiding an environmental offset for intra-company transfers, because an ODP-weighted system allows you to expend allowances for any chemical without actually trading internally. However, for the lesser ozone-depleting ODSs, such as HCFCs, EPA is proposing to impose an offset much lower than the one percent required in the class I system. (See discussion on proposed offset in section II.I.8 of today's action.) Therefore, the offset should not be a burden in transferring chemical-specific allowances.

Today's action thus proposes a chemical-by-chemical, absolute kilogram allocation system, whereby the amount of each HCFC produced and each HCFC consumed (production + imports − exports) would require the expending of one (1) allowance for one (1) kilogram of a specific substance. Inter-pollutant trades would involve calculating the ODP of each chemical and translating accordingly. EPA seeks comments on using an absolute chemical-by-chemical approach as presented above for implementing a class II allowance system, as well as on alternatives, including the ODP-weighting scheme described above.

D. How Would Allowances Be Distributed Each Year?

In the ANPRM, EPA discussed three methods for allocating allowances: a one-time allocation, a changing allocation on a periodic rolling basis, and a changing allocation on a year-by-year basis. The first method allocates baseline allowances on a one-time basis; these allowances continue until the time each associated chemical is phased out, unless adjustments are necessary to meet required Protocol reductions. Any distribution system must take into account: the approach of U.S. accelerated phaseouts for individual chemicals (e.g., those for HCFC–141b, HCFC–22 and HCFC–142b); the step-wise reduction of the consumption cap as mandated under the Protocol; and the new production cap agreed upon by the Protocol Parties. For example, in 2003, all production and consumption allowances associated with the HCFC–141b baseline allocation would be subtracted from holders' allowances. The same would happen as other chemicals are phased out in the specified years. At each phaseout, EPA must determine whether the aggregate chemical-specific phaseouts to that date are equal or greater than the reductions required by the Protocol in those years. If chemical-specific reductions are less than the Protocol requirement, EPA would then need to reduce the percentage of baselines to be allocated accordingly.

The one-time allocation of allowances was the method followed in the regulatory program for class I substances. For class I substances, a specified historical quantity of allowances was allocated to listed companies as a baseline in the **Federal Register**. Allocating allowances for the full time period until a phaseout date for a particular chemical provides certainty and stability for the market. Assuming the regulatory program includes smooth procedures for trading allowances, the full-term allocation of allowances establishes the basis for a "marketable permit" system.

The second option considered was a system for re-calculating and re-allocating allowances on a "rolling basis." This would essentially move the baseline forward in time so that the baseline would presumably be the most accurate reflection of the current HCFC market. Under this option, EPA would review data on the production, import and export of HCFCs on some periodic basis, establish a new baseline for each entity, and re-allocate the allowances accordingly. A re-allocation of allowances could require an amendment to the original list in the regulation of entities with their respective baseline allowances. Alternatively, an administrative mechanism could be established to re-allocate allowances automatically at regular intervals.

A final option discussed would involve re-allocating allowances on a year-by-year basis. Under the year-by-year approach, actual recalculation of baselines and re-allocations based on past year activity would take place prior to January 1 of each control period.

EPA received fifteen comments on the method of allowance distribution. All of the commenters favored allocating one time, such that allocations are consistent from control period to control period (except for reductions associated with phaseouts). One commenter stated that anything other than the one-time allocation would result in market uncertainty and complicate production planning processes. Another stated a dislike for using a rolling basis, because it encourages speculation, whereas a one-time allocation for the class I system was perceived as fair and unchanging.

EPA agrees with commenters on the disadvantages of using a rolling average. EPA believes that any rolling average allocation system would create administrative complications for both EPA and the regulated community, as well as introduce uncertainty into the market between periods when the allocation would roll over, and thus, change. The ability of producers, importers and exporters to plan for the longer term would also be hampered, and markets could be disrupted. EPA believes that if the regulatory system includes smooth procedures for trading allowances, shifts in demand and changes in market share will be addressed by individual companies, thus avoiding a need to re-allocate allowances. EPA chose not to propose a rolling average allocation system for these reasons.

EPA believes that re-allocating allowances on a year-by-year basis would create administrative complications for EPA and for the regulated community, similar to the reasons cited above regarding the rolling

basis allocation system. Consequently, EPA also chose not to propose allocations on a year-by-year basis.

EPA is proposing a baseline on a one-time basis, whereby the allowance allocations would remain consistent (or be moved through permanent trades) from control period to control period (one calendar year to the next), until each chemical is phased out via subtraction of its commensurate allowances, or until the percentage of baseline allocated is changed to ensure compliance with the Protocol cap. As in the class I allocation system, a baseline is based on one year of a company's production and consumption (as discussed in section II.F below). At the beginning of each year, EPA would notify each allowance holder in writing of the number and type of allowances it had for that control period. If the allowance holder believed there was a discrepancy in the number of allowances it should have for that control period, EPA would work with that entity to resolve the discrepancy. As under the class I system, the allowances for any control period can only be used during that control period and cannot be carried over into the following calendar year.

Because of uncertainties associated with current projections of actual reductions that will be realized through the 2010 phaseout of HCFC–142b and HCFC–22, EPA will likely need to re-evaluate allowance allocations prior to 2010, to ensure that the U.S. can meet the 65 percent reduction of the consumption cap required by the Protocol beginning in 2010. The least certain factor is the demand for these two chemicals after 2010 to be used in equipment manufactured before 2010. Neither the core regulations nor the baseline year would likely change, but the amount of allocations themselves could be adjusted on a pro rata or some other basis to account for any shortfall in reduction that might become imminent. Consequently, throughout the rule, we refer to specific allocation provisions as in effect until 2010. If EPA determines that the U.S. will meet its 65 percent reduction obligation in 2010 with the current allocation, then there may be no reason to adjust the percentage of baseline to be allocated, until it is necessary to re-evaluate them for the 2015 phaseout.

EPA is seeking comment on its proposal to distribute HCFC allowances on a one-time basis, to be adjusted accordingly as individual chemicals are phased out.

E. What Percentage of the Cap and What Percentage of the Baseline Would Be Distributed?

1. Consumption Allowances

As discussed in section I.A of this document, the current U.S. cap for HCFC consumption is 15,240 ODP-weighted metric tons. In the ANPRM, EPA considered a number of options for the percentage of baseline allowances to be allocated under the U.S. HCFC consumption cap. These options included 100 percent allocation under the consumption cap, 100 percent allocation of the baseline production and import, or any percentage under 100 percent. In the latter option, the remaining percentage could be allocated pro rata to those with production or importation activity in the baseline year, allowed to lapse by EPA to ensure a cushion if violations threatened to push the U.S. over its cap, or be set aside for some special situation allocation.

Because the sum of the individual companies' consumption baseline activity could fall under the 15,240-metric-ton consumption cap, the issue arises as to whether and how to allocate any remaining class II consumption allowances falling between the U.S. consumption cap and the sum of baseline consumption allowances (discussed in section II.F of this document). For example, if the year 1996 were chosen as the baseline for consumption allowances, this allocation would represent about 82 percent of the U.S. consumption cap, thus leaving open the question of how to allocate the remaining 18 percent, and also whether the remaining 18 percent should be allocated in its entirety. This remaining percentage, or a lower percentage that would provide for a margin of error, could be auctioned. Alternatively, it could be added pro rata to the allocated baseline consumption allowances of those companies that participated in the HCFC market in the baseline year. It could alternatively be set aside to offset any potential overruns, or it could be used as a set-aside for a specific allocation purpose.

EPA received fifteen comments from producers, importers, and trade associations on how much of the cap should be allocated. Thirteen commenters supported a 100 percent allocation. They stated that the 100 percent allocation under the class I system was successful; therefore, we should anticipate the same allocation for a class II system being successful. Two commenters claimed that companies keep their own allowance buffers, so EPA did not also need to retain a buffer. One commenter believed that EPA's penalties are enough of an incentive to remain within one's allocation. Another commenter said that any amount less than 100 percent would create artificial shortages. One commenter believed no allowances should be held back for new entrants into the market, because there is no certainty these entities will emerge in the future.

EPA agrees with the commenters that a 100 percent allocation of baseline consumption is likely to maintain compliance with the cap. A 100 percent baseline allocation worked well for the class I allocation system, the penalties discouraged people from exceeding their individual allocations, and many allowance holders consciously maintained individual allowance buffers to ensure compliance.

The current aggregate of individual baseline consumption allowances anticipated to be allocated is below the cap of 15,240 ODP-weighted metric tons. EPA believes that it would be prudent to allow the remaining percentage below the cap to be set aside for allocations specifically for narrow situational exemptions from the baseline. As described in Section F below, EPA is proposing a narrow exception for certain new entrants into the HCFC imports market: those businesses newly importing after the end of 1997 and before April 5, 1999, when the publication of the ANPRM put all potential stakeholders on notice of this rulemaking. The necessary portions of the remaining percentage below the cap could be available for allocations to those new entrants according to historical data. See the detailed discussion of this proposed exemption and allocation in the section addressing baseline in Section F.

Given the good faith evidenced by compliance throughout the class I system, EPA believes that allocating the full amount of baseline allowances, as permitted under the Protocol HCFC cap for the U.S. is prudent and equitable to both the allowance holders and their customers. By this action, EPA is proposing to allocate 100 percent of the listed individual companies' consumption baselines under the class II cap established under the Protocol. In 2010, the date at which the Copenhagen Amendments to the Protocol call for a 65 percent reduction in HCFC consumption, as stated earlier in this proposal, it may be necessary to reduce each allowance holder's allocations accordingly, in order to maintain U.S. consumption of HCFCs within limits and avoid possible violation of the cap.

EPA is not proposing to allocate the difference between the Protocol

consumption cap and the aggregate of the baseline consumption allowances on a pro rata basis, for the following reasons. The remaining amount above the aggregate baseline and below the consumption cap is small, and EPA believes it can best be used to allocate allowances to companies described in section F as eligible late entrants, and possibly as credits for reductions of substitutes regulated under Title VI that are created as by-product(s) in the manufacture of an HCFC, as discussed in section IV.E. Because EPA is proposing to individually assign a baseline to each company based on its highest ODP-weighted consumption year among 1989, 1994, 1995, 1996, and 1997 (see section II.F), EPA emphasizes that companies should receive their highest recorded consumption from among those years.

EPA is seeking comments on its proposal to allocate 100 percent of baseline consumption activity. EPA also seeks comment on its proposal to allocate portions of the remaining amount above the aggregate baseline and below the consumption cap to companies described in section F as eligible recent entrants.

2. Production Allowances

The Parties to the Protocol at the recent meeting in late 1999 in Beijing adopted a production cap, in addition to the existing consumption cap. Using the formula agreed to by the Parties for calculating the cap, the U.S. production is frozen at 15,537 metric tons beginning January 1, 2004.

The recent Protocol amendment maintains the production cap at this level through the various phaseout years. Some anticipate that the Parties may make changes in future meetings, which would likely reduce production in a step-wise fashion. If such a change occurs, EPA will amend its regulation to reflect the Protocol requirements.

In the case of production allowances, 100 percent of production activity in the aggregate of all baseline consumption years, as discussed in section II.F. below, is below the production cap allowed by the Protocol. EPA can allocate 100 percent of the production in the baseline year and remain in compliance with the Protocol. The aggregate allocation will equal less than 100 percent of the production cap allowed by the Protocol.

Because production is currently frozen at a constant level that will continue over time, EPA is proposing that entities with baseline production allowances could produce the phased-out HCFC following the respective phaseouts, using export production allowances, for export only to Parties listed in Appendix C as having ratified the Copenhagen Amendments. These entities would be allocated their full production baseline for that chemical in export production allowances, for export only. Following individual HCFC phaseouts, 15 percent of production baseline for that chemical is reserved for export to Article 5 countries to be used for their domestic needs. The manner in which these post-phaseout production allowances for export would be allocated and expended is discussed below in Section II.G.

EPA did not discuss a detailed process for allocating production allowances in the April 1999 ANPRM, because the production freeze had not yet been adopted by the Parties. Therefore, there are no comments in response to the ANPRM on this issue.

F. How Would EPA Establish an Equitable Baseline?

In developing the regulatory program for class I controlled substances, EPA collected information on the amounts of each class I substance produced, imported, and exported during a given calendar year that was established as a baseline in accordance with the CAA. EPA collected the data by publishing two notices in the **Federal Register** under authority of section 114 of the Act (52 FR 47489 (December 14, 1987) and 55 FR 49116 (November 26, 1990)). The data requested from U.S. companies included reports on production runs, quantities of feedstock chemicals used in production, bills of lading, invoices, and other documents for a specific calendar year. The data submitted to EPA was used to assign company-specific class I production and consumption rights (allowances) to companies.

The CAA does not prescribe one specific year to serve as the baseline for allowance allocations for class II substances. For class II substances, the definition of "baseline year" in the CAA is "* * * a representative calendar year selected by the Administrator." EPA explored a variety of options for establishing a baseline for HCFC allowances, analyzing available historical data for each company's production and consumption activities (reported to EPA) to identify a representative proposed class II baseline. EPA has been collecting quarterly reports on all HCFCs produced, imported and exported from 1994 on. Reliable data is thus available for years between 1994 and the present. Accurate data also exists for 1989 due to information gathering EPA conducted for class I baseline determinations, as discussed above.

In the ANPRM, EPA discussed some of the multiple options for establishing baseline allowances for class II controlled substances. The familiar use of historical information from one year, using an average of multiple years, or using some type of formula for combining multiple years were all covered in the ANPRM. EPA stated its belief that the process of establishing the baseline should take into account, inter alia, the agreements by the Parties to the Protocol to control and phase out class II substances, the 1990 CAA Amendments, the regulations under Title VI of the Act governing the phaseout of class II substances, and the development of the current HCFC market in the U.S. In arriving at the proposed baseline years for HCFC allowances, we believe we have taken into account each of the legal and policy guides considered above.

It is important to review the recent history of public notification and participation related to development of a class II allowance allocation rule. During the two stakeholder meetings in January and February, 1998, EPA stated that it would not consider the year 1998 or later years in baseline calculations and allocations. A primary reason was that once public discussion on a potential allowance system began, companies had much to gain by significantly increasing 1998 and 1999 activity—or entering the HCFC import market during those years to have activity on record—and subsequently advocating the use of those years as baseline years. EPA's opening the process to the public should not give unfair advantage to some and allow artificial market changes and baseline increases based on anticipated profit potentials. Consequently, EPA announced its intention not to include 1998 or later years in baseline calculations at both stakeholder meetings, in its subsequent ANPRM publication of April 1999, and in individual discussions with stakeholders.

All seventeen commenters stated their preferences for establishing a baseline. One company preferred 1989 as the baseline year. Five commenters believe that 1998 is most representative of the HCFC market. Two companies stated that 1997 reflects the current situation. Two commenters preferred 1996, one of them leaving open the option of 1996 or 1997 or an average of both. The second of the two commenters preferred 1996, because they stated that 1997, 1998, and 1999 include uncharacteristically high production and import for many

companies. Another commenter cited the growing HCFC market as we transition away from CFCs, and claimed that using an earlier year than 1998, which was a year of particularly high consumption, would not accurately reflect the continuing transition away from CFCs.

One commenter suggested recent years on a weighted basis, giving as an example, 100 percent of 1997 consumption plus 50 percent of 1996 consumption. This commenter also suggested that in 1998, industry may have artificially increased consumption in response to early EPA stakeholder meetings exploring the possibility of an ANPRM on this topic. Therefore, this commenter believed only 50 percent of 1998 numbers should be used. Two commenters believed that a single year baseline is necessary, one to avoid excessive record compilation and processing and the other because an averaged allocation would not adequately reflect the continuing transition away from CFCs. Four commenters preferred the average of 1996–1998 if the averaging option were selected; one commenter selected an even weighting of the years 1989, 1992, and 1995.

EPA did receive one general comment on allocations, however. Three commenters believed that producers exiting the HCFC market early should be required to return the unused allowances to EPA for distribution among the remaining allowance-holders on a pro rata basis. EPA believes otherwise. Under today's proposal, the allowances granted to the various companies would be the companies' to do with what they will.

If a company decides to decrease production, or importation, from its baseline, EPA believes the market should drive the outcome, in that the company can choose to transfer its excess allowances for the year or let those allowances lapse, and thereby benefit the environment. One advantage of the one-time allocation favored by commenters is that it provides certainty to all the players. Having EPA taking allowances from those who decrease production or import from their baseline and re-distributing allowances to other allowance holders would disrupt the market forces. It would also defeat the environmental purpose of encouraging companies to move toward substitutes. Consequently, EPA is proposing not to re-distribute unexpended allowances resulting from a company's decision to decrease or stop its production or importation of HCFCs.

EPA believes that because it is allocating to entities who have had very different production and import histories, there is no one year that is representative for all companies. Picking only one year, regardless of the year, could disadvantage many. EPA's intent is to find the most representative baseline possible within the constraints of the consumption cap and production freeze. EPA disagrees with the comments opposing an averaging or formula of multiple years. Once a multi-year allocation is made, using a one-time, or permanent allocation would require no additional data compilation over a single-year system. Once a baseline is determined for each company, EPA is proposing that the baseline remain unchanged through the duration of the program, with allocation reductions made according to the phaseout schedule and necessary increases in reductions to ensure the U.S. meets the 65 percent and later Protocol step-wise reductions.

In reviewing the consumption figures for the years before 1994, EPA believes that only one year can reasonably be considered. With the Protocol signed and the CAA close to passage and enactment in 1989, EPA has accurate data for that year. Additionally, the year 1989 was designated as the baseline year used for the allocations of several of the class I substances (Groups III, IV, and V), thus providing a complete database of ODS production, import, and export (when combined, equaling consumption) activity during that year.

Reviewing the production and consumption data on HCFCs from the most reliable reporting years, EPA found a wide spectrum of years that benefitted different companies. Looking at the available information from 1989, 1994, 1995, 1996, and 1997, EPA calculated that if it allocated allowances to every company based on their individual highest ODP-weighted consumption year among those five years, the U.S. would be able to remain just under the Protocol consumption cap. Any producers or importers entering the HCFC market for the first time in 1998 or 1999 would not be eligible to receive an allocation, except for a situation outlined later in this section. However, under the proposed transfer provisions, such a company could purchase allowances from another company that held allowances.

As discussed earlier in today's action, EPA is proposing to allocate and track on a chemical-by-chemical basis. However, for purposes of arriving at the baseline, EPA examined total ODP-weighted consumption in determining the highest year for each company. That way, the highest number of ODP-weighted kilograms, rather than highest number of absolute kilograms, could determine the most beneficial allocation for each entity. Actual allocations will be distributed and tracked on an absolute kilogram, chemical-by-chemical basis for production and for consumption.

Using the individual baseline approach based on the highest ODP-weighted consumption year brings total U.S. consumption to a small percentage below the cap of 15,240 metric tons. Total ODP-weighted production, aggregated from production in each relevant individual baseline year as proposed, brings the U.S. to below the U.S. production cap of 15,537 metric tons. Because the consumption baseline years include the highest production for each producer, EPA believes that using the same baseline year for production for each company is still the most equitable. EPA's proposed production baseline and allocations would be in compliance with the new Protocol production cap.

In exploring baseline years after 1997, EPA believes it is possible that, as two other commenters have noted, recent years' consumption is inflated, due to stockpiling in anticipation of an impending rulemaking. EPA does not believe, as discussed above, that 1998, when we began publicly discussing an allocation system, can serve as a truly representative baseline year or as an equitable factor in a multi-year baseline. Instead, the escalating 1998 figures may reflect an effort by some to dramatically increase consumption not only to stockpile, but also to ensure a high HCFC allowance allocation for those companies in the hopes that 1998 or 1999 would be selected. Such an aggregate number would likely place the U.S. in violation of the Protocol cap.

EPA recognizes that, in assigning a year or years prior to 1998, those with their highest consumption falling in 1998 or 1999 would receive fewer allowances from EPA than their most recent consumption would reflect. However, with transfers of allowances and the ability to import used HCFCs, the transition could likely be made without significantly disrupting consumption trends. Additionally, data on increased 1998 and 1999 consumption, as compared to earlier years, seems to indicate significant stockpiling, which should allow customer demand to be met.

For these reasons and the fact that using the most recent years could skew the market and disadvantage those who did not significantly increase consumption in those years, EPA is not proposing to use 1998 production or consumption in the HCFC baseline

calculation. For similar reasons, and because complete data for the year 1999 will not be available during the drafting of this rule, EPA also does not propose to use 1999 as part of the calculation for baseline.

EPA is, however, proposing one exception to its policy to not use 1998 or later years as part of a person's baseline. EPA proposes to grant available HCFC consumption allowances to late entrants into the HCFC import market that meet the following qualifications: the HCFC import market is their primary source of business income; they began importing HCFCs after the end of 1997 but before the publication of the ANPRM on April 5, 1999; and they have accurately reported all relevant required quarterly import information to EPA prior to publication of today's proposal. Businesses meeting these qualifications would be eligible to receive consumption allowances based on a full year's data, if available. If a full year's data is not available because the entity has not been in business for a complete year by April 5, 1999, EPA proposes to extrapolate based on the available reports for one, two, or three quarters.

EPA believes that such new entrants into the market during that time would likely be small businesses whose owners and operators were unfamiliar with EPA's plans to begin work on an allowance allocation system for HCFCs until the ANPRM appeared in the **Federal Register** on April 5, 1999. These businesses that began importing HCFCs after 1997 and before the ANPRM publication date might have had less access to information from standard industry sources and might not have heard the announcements at the stakeholders' meetings; they might not have had reason to know of an imminent rulemaking allocating allowances based on historical production and importation. In a case where a person, acting in good faith and prior to the publication of the ANPRM, established a business whose primary income was derived from importing HCFCs, EPA believes that it is appropriate to make an exception. Once public notice was given via the published ANPRM, businesses that desired an allocation of HCFC allowances would have known the risks of jumping into the business at this juncture. Prior to April 5, 1999, imperfect information left the door open for small new companies to observe the potential market in HCFCs and begin importing HCFCs as a new business. Therefore, EPA is today proposing to grant available allowances to any business who can successfully demonstrate that it meets these criteria. However, EPA will not allocate allowances in excess of the consumption cap. Although EPA does not anticipate an outpouring of new entrants who fit this description, to forestall the possibility of exceeding the cap as a result of allocations to new entrants, we will consider submissions on a pro rata basis, if necessary.

Through today's proposal, EPA requests notification from any business that fits the outlined criteria and wishes to request allowances by submitting a demonstration of eligibility during the 45-day comment period following publication of this proposal. This will allow EPA to process the submissions and include allocations for eligible new entrants in the final rulemaking. No submissions for eligibility will be accepted after September 4, 2001. To adequately demonstrate the eligibility of such a business, EPA requests the following information: records showing the date the first HCFC imports took place; business records showing that imported HCFCs are the primary source of the business's income; quantities (in kilograms) of each chemical imported; exporting country of each shipment; and port of entry of imported HCFC shipments, accompanied by bills of lading, invoices and Customs entry forms.

The Administrator will review only the complete submissions that meet the criteria outlined above. Incomplete submissions will not be considered. EPA will conduct a thorough review of the details of those submissions. The final rule will contain allowance allocations for new entrants that EPA has determined to be eligible.

EPA also considered the possibility of new entrants that entered or wish to enter the market following publication of the ANPRM in April of 1999. EPA believes that once the ANPRM was published, the public possessed adequate notice that an allocation system for HCFC allowances was in the development phase and that EPA was seriously discussing a period of historical data that would be used in the baseline designations. It was evident at that time that new entrants were unlikely to receive an allocation of allowances. Simultaneously, EPA emphasized its intention to phase out HCFCs in order to meet U.S. obligations under the Protocol and the CAA. Encouraging new companies to join the business after the ANPRM would counter the efforts of moving people out of HCFCs into more environmentally sound substitutes.

EPA believes that any new entrants following the ANPRM publication would not be precluded from entering the market, because they could purchase allowances from existing allowance holders who may not intend to use their full amount of allowances. They also have the opportunity to import used HCFCs through EPA's petition system or deal in substitutes to HCFCs, which would benefit the ozone layer and provide longer-term business security. Accordingly, EPA believes that the market will sufficiently allow for any new entrants after April 5, 1999, as appropriate.

It is important to note that, under any scenario, when the phaseout date for HCFC–141b is reached in 2003, all HCFC–141b import and production for domestic purposes will cease. Those who were not allocated HCFC–141b consumption allowances will not be affected in 2003, unless they had gained baseline allowances for HCFC–141b through a permanent trade (Section II.I.6-II.I.7). However, those who were allocated consumption allowances to produce or import HCFC–141b would no longer have annual consumption allowances associated with their baseline HCFC–141b activity, and thus have no authorization to produce or import HCFC–141b for domestic purposes (where both production and consumption allowances are necessary). EPA is proposing to allow production for export following phaseout, however, up to 115 percent of producers' HCFC–141b production baseline, as discussed below in Section II.G.

Any company that, through a baseline (or permanent) trade, received HCFC–141b consumption allowances associated with historic HCFC–141b consumption, would no longer have the consumption allowances associated with the baseline trade in 2003. However, that company's total baseline, for purposes of determining the amount of export production allowances and Article 5 allowances for which it would be eligible following the phaseout, would reflect the baseline trade.

In 2004, when the Protocol requires that the HCFC consumption cap be reduced from its current level by 35 percent, it is possible that holders of allowances for HCFCs other than HCFC–141b would be affected if the 35 percent reduction cannot be met. EPA does not intend to subtract both baseline HCFC–141b consumption allowances in 2003 and an additional 35 percent of the remaining consumption allowances in 2004. Instead, it intends, as laid out in its accelerated phaseout rule published December 10, 1993, to subtract the baseline HCFC–141b consumption allowances to fulfill the required 35 percent reduction. If a 35 percent reduction could not be achieved

through subtraction of baseline HCFC–141b consumption allowances, then EPA would need to reduce the remaining HCFC consumption allowances by the requisite percentage to achieve the full 35 percent reduction.

EPA wishes to clarify that allowances can only be allocated for which we were supplied verifying documentation, such as invoices, bills of lading, Customs documents, and/or canceled checks. Many companies supplied such information along with each quarterly report, and thus EPA had the information on record. We requested that companies without the information on file with EPA supply this information to us by mid-January of 2000, so that EPA could determine accurate production and consumption figures for purposes of allocating allowances. Allowance allocations, then, are based on verified production and consumption in each company's respective baseline year.

Additionally, allocations are listed in the proposal only for those companies that gave EPA permission to publish production and consumption figures for each HCFC in their baseline year. Because EPA considers individual company's production and consumption data to be Confidential Business Information, permission to publish these numbers is necessary.

EPA expects to receive additional verification from a small number of companies, permission from companies that have not yet permitted EPA to publish their potential allocation data, and new entrants as described above, before the final rule is completed and published. Consequently, additional companies and their allocations not in this proposal may be added to the final rulemaking and that potential allocation information would be reflected in the rulemaking docket.

EPA requests comment on its proposal to assign individual baseline years by company, using one of the years 1989, 1994, 1995, 1996, or 1997, in which the highest ODP-weighted consumption was accurately reported. EPA also seeks comment on its proposal to use data from the same year for production. EPA requests comment on allowing certain new HCFC importers established after 1997 and before April 5, 1999 to be eligible for allowances as discussed above.

G. Would Production for Export Be Allowed After Each Phaseout?

Because the U.S. adopted a different approach from the Protocol in phasing out HCFCs, i.e., chemical-specific phaseouts rather than by percentage, the continued ability to export to other countries after each HCFC is phased out becomes of interest. One factor driving foreign demand for HCFC–141b is the number of HCFC–141b projects being funded by the Multilateral Fund (MLF) that are intended to move Article 5 countries out of class I substances. The MLF was established by the 1992 London Amendment to the Protocol to enable developing countries to meet the requirements of the Protocol. The MLF helps pay for the incremental cost of projects that replace use of ODSs with ozone-friendly substances. Because HCFC–141b (ODP of 0.11) is intended to replace CFC–11 (ODP of 1.0) in most of these projects, the environmental benefit of these substitutions comes to a reduction of 0.89 in ODP weight per kilogram.

Another factor is the approach by which other developed countries are choosing to meet their Protocol reductions, i.e., by percentage (as outlined by the Protocol) rather than chemical-by-chemical (as in the U.S.). Consequently, there will likely be a continuing demand for HCFC–141b by Article 2 countries after the U.S. 2003 phaseout date for that chemical.

The decision by the Parties in Beijing in late 1999 to freeze production provides a vehicle for a suitable resolution to the export concern. In 2003, while production and import for domestic use of HCFC–141b is eliminated, production for exports and narrow domestic exceptions can continue at baseline levels. Because consumption allowances, necessary for production and importation, would no longer be available, production after January 1, 2003 of HCFC–141b for domestic sale or use would no longer take place. However, because production for export continues to be allowed under the Protocol production cap, EPA is proposing to allow production for export only to Parties listed in Appendix C (those who also have ratified the Copenhagen Amendments) after the phaseout of HCFC–141b on January 1, 2003.

Under the Montreal Protocol, 15 percent of production baseline would be available for export to Article 5 countries (listed in Appendix E) only for their domestic needs, while 100 percent of baseline of the phased-out chemical would be allowed for export to Article 2 or Article 5 countries, or any combination of the two. After all the export production allowances have been allocated, some of the production remaining between the aggregate export production allowances and the HCFC production cap could be allocated for production or import of HCFC–141b for space vehicle or defense needs, as discussed in Section III.B. Allowing an additional 15 percent of HCFC–141b production baseline for Article 5 countries ensures that developing countries will have adequate access to supplies to transition to class II ODSs before turning to non-ODP substances. The 15 percent of HCFC–141b production baseline for Article 5 countries is discussed in detail below.

1. Exports to Parties

Prior to each phaseout, EPA's allowance system would require that both production and consumption allowances be used for any production, with consumption allowances being returned when a chemical is exported. As with the class I allowance system, one kilogram of production allowance and one kilogram of consumption allowance would be expended to produce one kilogram of an HCFC. Under today's proposal, post-phaseout production could occur beginning January 1, 2003 up to 100 percent of HCFC–141b production baseline for export only to Parties listed in the third column of Appendix C (those who have ratified the Copenhagen Amendments). To distinguish between these post-phaseout production allowances and pre-phaseout allowances, EPA proposes calling the former "export production allowances."

Reporting provisions associated with production for export only after the relevant HCFC phaseout would require similar information and documentation as export reporting prior to a relevant phaseout. This requirement is outlined in the Recordkeeping and Reporting Section of today's proposal.

EPA requests comment on the proposed allocation of export production allowances equal to 100 percent of HCFC–141b production baseline, allowing production of phased-out HCFCs with these allowances for export only to Parties who have ratified the Copenhagen Amendments (Appendix C to Subpart A). EPA also requests comment on allocating some of the production remaining between the aggregate of export production allowances and the HCFC production cap for production or import of space vehicle/defense uses of HCFC–141b, as discussed in Section III.B.

2. Exports to Article 5 Countries

In the class I phaseout and allowance system, EPA allowed 15 percent of baseline to be produced after phaseout for export to Article 5 countries to satisfy their basic domestic needs. With the recent decision of the Protocol to freeze the production of HCFCs, the

Parties also decided to provide an additional 15 percent of baseline production for export to Article 5 countries. The 15 percent that EPA is proposing today would only be available for those HCFCs that have been phased out, would be over and above the production cap, and would differ from export production allowances in that exports could go only to Article 5 countries for their domestic need.

As in the class I system, Article 5 allowances would be expended, without accompanying consumption allowances, for production specifically for Article 5 countries. Because they are to be used specifically for the importing countries' basic domestic needs, these exports are not expected to compete with U.S. markets using substitutes.

EPA believes it is appropriate, following chemical-specific phaseouts, to permit production specifically for export only to Article 5 countries that may require the chemical to facilitate their transition to less ozone-depleting chemicals. In deciding to propose this approach, we have considered the current volume of U.S. exports to other Parties, the projected increased demand by Article 5 countries, the Protocol requirement that exports to Article 5 countries be used only for their domestic needs, and the precedent of allowing 15 percent of baseline production for export only in the class I system. EPA is proposing that 15 percent of each company's production baseline of phased-out HCFCs can be used for production for export only to any Article 5 country for their domestic needs, following the phaseout of each chemical, until 2030. For example, in 2003, when production and consumption allowances associated with HCFC–141b are eliminated, fifteen percent of HCFC–141b production baseline would be available after phaseout to enable HCFC–141b production for export to Article 5 countries for their domestic needs. As in the class I system, these post-phaseout production allowances would be called "Article 5 allowances."

EPA seeks comment on its proposal to allocate Article 5 allowances equal to 15 percent of a phased-out HCFC's baseline production after phaseout for export to Article 5 countries.

H. Would There Be Any Critical Needs Allowances?

EPA is proposing a narrow exception in Section III of today's action regarding continued production of HCFC–141b where necessary, for critical space vehicle and defense uses. A variety of criteria would need to be met for this exemption to be granted, e.g., a lack of availability of viable alternatives or substitutes. See Section III.B below for a detailed discussion.

I. Would I Be Able To Transfer Allowances?

In establishing the allowance program for class I controlled substances, EPA included provisions that permit the transfer of allowances. The provisions for trades and transfers of class I allowances are 40 CFR 82.9, 82.10, 82.11 and 82.12 as promulgated in the final rule published on May 10, 1995 (60 FR 24970). Today's document describes the many different types of transfers permitted for class II allowances, as well as other variations discussed in the ANPRM.

Under the current class I regulatory program, EPA is required to process all transfers of allowances within three working days from when EPA receives the request for an inter-pollutant or inter-company trade. Companies fax or send the request for a trade to EPA and within three working days EPA faxes a reply showing the new balance of unexpended allowances (See 40 CFR 82.12(a)(1), (b)(4)). EPA proposes to retain the above process schedule for class II trades and requests comment on the proposed process for requesting EPA approval of trades of class II substances and the three-day turnaround time for such requests.

1. Transfers Within Groups of HCFCs

To facilitate transfers among class II substances, EPA is permitted, under Section 607(b)(3) of the Act, to establish groups of HCFCs. Under such a framework, inter-pollutant transfers of allowances would be limited to chemicals within an assigned group. Class I controlled substances are listed in the Act in groups, and inter-pollutant transfers of class I allowances are restricted to transfers within each group. While class I substances are listed in groups in the Act, no such grouping exists for class II substances. One option discussed in the ANPRM was to establish HCFC groups based on each chemical's ODP. Another option was establishment of HCFC groups based on the U.S. phaseout dates. A third option would be not to group HCFCs at all.

Two of the eleven who commented on transfers indicated a preference for no grouping of HCFCs at all or for including all HCFCs in one single group. They both felt that grouping would reduce the flexibility necessary in inter-pollutant transfers. The remaining nine commenters did not address the grouping issues. Since transfers were limited to CFCs of the same group in the class I allowance system, allowance holders experienced some restrictions in their trading. EPA agrees that imposing a grouping system for HCFCs would unnecessarily restrict flexibility in inter-pollutant transfers.

EPA is not proposing to group the HCFCs. This will provide the greatest flexibility for allowance holders to transfer among chemicals.

2. Inter-Pollutant Transfers

Section 607(b) of the Act states that inter-pollutant transfers of ozone-depleting substance allowances shall be permitted. An inter-pollutant transfer is the transfer of an allowance of one substance to an allowance of another substance on an ODP-weighted basis. As an example, under the class I system, a company would transfer allowances for CFC–12 to allowances for CFC–115, taking into account ODP differences between the two chemicals. If a company wanted to transfer 1000 kilograms of their CFC–12 production allowances to CFC–115 production allowances, paperwork would be submitted with the following calculation: the 1000 kilograms of CFC–12 allowances are multiplied by the ODP of CFC–12 (1.0) and then divided by the lower ODP of CFC–115 (0.6), yielding 1667 kilograms of new CFC–115 production allowances minus the required offset. Section 607 of the CAA requires that any trade of ozone-depleting substance allowances result in a benefit to the environment. The offset is intended to fulfill this mandate.

Inter-pollutant transfers are sometimes called intra-company transfers or trades because a company might shift allowances internally from one substance to another to react to shifts in demand. Inter-pollutant transfers of allowances were fairly common for class I substances. There were an average of 95 inter-pollutant transfers for class I substances each year from 1992 through 1995.

For class II substances in the chemical-by-chemical allocation system proposed in section II.C, an example of an inter-pollutant transfer would be a transfer of 10,000 kilograms of HCFC–142b allowances for HCFC–141b allowances, which would result in 5,909 kilograms of HCFC–141b allowances because of the adjustment for the ODPs of the two chemicals. This calculation does not take into account the required offset for transfers as proposed and discussed in section II.I.8 of this document.

All eleven commenters advocated maximum flexibility in transfers. Two commenters were in favor of transfers with as little regulatory oversight as

possible. One felt no need for EPA permission prior to the trade, provided the actual amounts of individual HCFCs are shown in the quarterly reports.

EPA proposes to allow inter-pollutant transfers (or intra-company trades) in tandem with the proposed chemical-by-chemical system in section II.C above, similar to the program for the class I substances. As in the class I system, companies would fax or send the request for a trade to EPA and within three working days of receipt, EPA would fax a reply showing the new balance of unexpended allowances. EPA's oversight should ensure that the company making the transfer has the requisite number of unexpended allowances. EPA requests comment on the proposed inter-pollutant transfers (also referred to as intra-company trades) in tandem with the proposed chemical-by-chemical system, and the three-day turnaround time associated with such trades.

A major difference in the class II proposed system should be noted. Because the allowances for production and consumption fall away as of the phaseout date of an individual HCFC, inter-pollutant and inter-company trades among production and consumption allowances for that HCFC can no longer be made. For example, after HCFC–141b is phased out in 2003, a person cannot trade ODP-weighted HCFC–22 production allowances for HCFC–141b production allowances. No production or consumption allowances for HCFC–141b should exist (except for narrowly stated exemptions).

However, two new and separate sets of allowances—export production allowances and Article 5 allowances—would be available to that allowance holder once HCFC–141b is phased out. Export production allowances could only be used for production for export to countries that are Party to the Copenhagen Amendments. Article 5 allowances could only be used for production to export to Article 5 countries. Because HCFC–141b will be the only chemical with export production allowances and Article 5 allowances between 2003 and 2010, inter-pollutant trading of HCFC–141b would not be possible. Inter-company trades of each type of allowance could take place, to be used in the manner specified under that allowance.

3. Inter-Company Transfers

Another example of trades of class II allowances that EPA permits are inter-company transfers under Section 607(c) of the Act. Inter-company transfers are trades of allowances, for the same substance under a chemical-by-chemical system, from one company to another company. Under such a system, Company A would simply transfer its allowances for production of a class II substance to Company B who wished to have more allowances for production of that particular class II substance. The requisite offset would be deducted by EPA when processing the trade. It would be necessary for both companies to record and report the chemical(s) associated with that trade. The proposed chemical-by-chemical system (Section II.C) would eliminate any need for conversion in reporting the trade.

Of the eleven commenters in favor of maximum flexibility in transfers, two specifically recommended free inter-company trades.

EPA proposes to allow inter-company trades, with an environmental offset as described in Section II.I.8. EPA also proposes to process all transfer requests within three working days from when EPA receives the request, similar to the process used for the class I system. Companies fax or send the request for a trade to EPA and within three working days EPA faxes a reply showing the new balance of unexpended allowances.

4. Inter-Pollutant Transfers Combined With Inter-Company Transfers

Both inter-company and inter-pollutant transfers could be combined in the same transaction for class I substances, and EPA is planning to allow the same possibility for class II substances. Section 607(c) of the CAA states that EPA's transfer regulations for class I and class II substances shall permit combined inter-company and inter-pollutant transfers, subject to certain requirements. As an example of how this worked under the class I system, Company A would trade 35,000 kilograms of CFC–11 allowances to Company B who needed allowances to produce CFC–115. In the information submitted to EPA, the two companies would agree that Company A would deduct 35,000 allowances for CFC–11 from its balance and Company B would receive 58,333 kilograms of CFC–115, due to the ODP difference between the two chemicals. An additional 0.1 percent offset would be required in this calculation as discussed in Section II.I.8.

Under this combined system for class II substances in a chemical-by-chemical allocation system, a company that wishes, for example, to increase its production of HCFC–141b before the 2003 phaseout could: (1) Re-distribute its own allowances that have been allocated for another class II substance to HCFC–141b (inter-pollutant transfer); (2) purchase more HCFC–141b allowances from another company (an inter-company transfer); or (3) purchase more allowances from another company of a substance other than HCFC–141b and conduct a simultaneous inter-pollutant transfer for HCFC–141b production, making the related ODP adjustments (an inter-company/inter-pollutant transfer). After the 2003 phaseout of HCFC–141b, a company receiving export production allowances and Article 5 allowances for HCFC–141b could engage in inter-company transfers of those allowances, but could not engage in inter-pollutant transfers until 2010, when export production allowances and Article 5 allowances for HCFC–22 and HCFC–142b become available and thus, tradeable with the ones for HCFC–141b (Section II.I.2).

Only one commenter out of the eleven commenters discussing transfers singled out inter-pollutant transfers with inter-company transfers for special favorable mention. The remaining ten commenters generally advocated maximum flexibility in transfers without emphasizing inter-pollutant transfers with inter-company transfers.

EPA proposes to allow inter-pollutant transfers combined with inter-company transfers for class II substances, similar to what it allows in the system used for class I substances. EPA requests comment on its proposal to allow inter-pollutant transfers combined with inter-company transfers.

5. International Trades of Current-Year Allowances

Under the Protocol, international trades are recognized as a part of a process called "industrial rationalization." In Article 1 of the Protocol, industrial rationalization is defined as "the transfer of all or a portion of the calculated level of production of one Party to another, for the purpose of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures." International trades of production and consumption are permitted under the Protocol so Parties can consolidate the manufacturing of a chemical in order to be able to achieve economies of scale as demand shrinks. International trades of production and consumption allowances are permitted under EPA's current regulations for class I controlled substances (40 CFR 82.9(c)). The procedures for international trades involve more review than the procedures for inter-pollutant and inter-company trades.

The Protocol includes the following language in Article 2, paragraph 5 bis: "Any Party not operating under paragraph 1 of Article 5 [an

industrialized country] may, for one or more control periods, transfer to another such Party any portion of its calculated level of consumption set out in Article 2F [pertaining to HCFCs], provided that the calculated level of consumption of controlled substances in Group I of Annex A [CFCs] of the Party transferring the portion of its calculated level of consumption did not exceed 0.25 kilograms per capita in 1989 and that the total combined calculated levels of consumption of the Parties concerned do not exceed the consumption limits set out in Article 2F. Such transfer of consumption shall be notified to the Secretariat by each of the Parties concerned, stating the terms of such transfer and the period for which it is to apply."

The Protocol language in paragraph 5 bis of Article 2 discussed above clearly restricts the U.S. from trading away HCFC consumption to another Party. The U.S. per capita consumption of CFCs in 1989 was 1.28 kilograms, well above the 0.25 kilogram per capita limit for transferring HCFC consumption. However, the Protocol language allows the U.S. to potentially receive a transfer of HCFC consumption from another Party. Only two Article 2 countries, Norway and Poland, had a per capita consumption of CFCs in 1989 less than 0.25 kilograms. Thus, these are the only Parties from which the U.S. could potentially receive a transfer of HCFC consumption. EPA considered the likelihood of such international trades, and whether or not the establishment of provisions for class II international consumption trades is warranted.

During the eleventh Meeting of the Parties in 1999, with the adoption of a production cap, came the potential for transfers of production between Parties. The restrictions that exist for international consumption trades do not exist for production. Thus international production allowance trades may be of greater interest to U.S. entities.

Of the eleven commenters on transfers, only two addressed the issue of international trades. One commenter acknowledged that industrial rationalization is important and is a mechanism that tends to reduce overall consumption but stated that the absence of production allowances (comment submitted prior to Protocol adoption of production cap in late 1999) would mean that international trades must take place on a different basis than that established for class I substances. This commenter suggested that the material for U.S. consumption be produced "under license" in another country but was unsure how this would fit with international and foreign country regulations. The commenter's concern regarding the lack of production allowances would be answered by today's proposal to establish production allowances in addition to consumption allowances (Section II.B). The second commenter stated that although the Protocol supports such international trades, the limitations are severe and clearly discriminatory to multinationals operating in developed countries. EPA believes that this comment gives an indication of the possibility of international trades of consumption allowances occurring in view of the limitations imposed by the Protocol.

In light of the constraints on international trade of HCFC consumption described above, EPA is not proposing any provisions for international trades of consumption allowances. If the U.S. cannot transfer its consumption allowances to any other Party, and the only nations from which it could receive consumption rights to import are Norway and Poland, EPA believes that it appears unlikely that any such consumption trade would be desired or beneficial. Consequently, EPA has not included any such provisions in this proposal. EPA requests comment on its decision not to include provisions for international trades of consumption allowances. EPA also requests comment on provisions for transfer of consumption rights from Norway or Poland should the situation arise.

The Parties have placed a cap on production, in addition to the current cap on consumption of class II substances. This would allow for the possibility of transfers of production allowances. Because of the minimal restrictions placed on the trade of HCFC production between certain Parties, EPA proposes to allow such production transfers, using a process very similar to the class I process for international trades (see 40 CFR 82.9(c)).

Such transfers are authorized under section 616 of the CAA. The proposed regulations in today's document that would implement this authority are arranged consistent with international trades under the class I allowance system. For trades from a Party, EPA proposes that the person must obtain from the principal diplomatic representative in that nation's embassy in the U.S. a signed document stating that the appropriate authority within that nation has revised production limits for that nation equal to the lesser of: The maximum production that the nation is allowed under the Protocol minus the amount transferred; the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred; or the average of the nation's actual national production level for the three years prior to the transfer minus the production allowances allowed. The person would need to submit to EPA information on the contact person and Party authorizing the transfer; the chemical being transferred; the control period for that transfer; and a signed statement that the increased production is intended as an export to the relevant Party.

For trades to a Party, the person must submit to EPA the same information outlined, except for the signed statement. For these trades, the allowance revisions would be reflected at the individual trader level, as discussed below. In reviewing submissions for trades to a Party, the Administrator would have the discretion to take factors into account relating to possible economic hardships created by a trade, potential effects on trade, potential environmental implications, and the total amount of unexpended allowances held by entities in the U.S.

For both trades from and to Parties, the Administrator, following review, would issue a notice either granting or deducting the appropriate production allowances and specifying the affected control period(s), provided she determines it meets the proposed required conditions.

In approving an international trade, the Administrator would also need to ensure that the individual person or entity involved in the trade has made the appropriate revisions to his/her allowance balance. For trades from a Party, the Administrator would issue a notice revising the allowances of that entity to equal the unexpended production allowances held by the entity plus the level of allowable production transferred from the Party.

For a trade to a Party, section 616 of the CAA does not limit the quantity of production allowances that may be transferred but the Administrator is given the option to disapprove the proposed transfer if she/he believes the transfer is not consistent with domestic policy or if the transferor did not possess sufficient allowances to permit the reduction in aggregate domestic production to be reflected in the transferor's revised production limits. If EPA approves the proposed transfer, the Administrator is required to establish revised production limits for the transferor so that the aggregate domestic production permitted after the transfer reflects the effect of the transfer of production allowances because such trades cannot result in an increase in

production over what would have occurred in the absence of the trade. In certain circumstances, following a transfer of allowances to another Party, Section 616 requires that the aggregate national U.S. production of HCFCs be reduced by an additional amount beyond a simple deduction of the number of allowances transferred to another Party. Specifically, if the average U.S. production during the previous three years for the controlled substance transferred is less than the total allowable U.S. production under § 82.18(h) and (i), then following a transfer, U.S. production would need to be revised downward to equal the three-year average minus the amount transferred. This additional reduction would also need to be reflected in the revised production limits for U.S. production allowance holders. EPA believes that in these circumstances, it is appropriate for the required reduction in U.S. production to be allocated among all the transferors in the same control period in proportion to the number of allowances transferred by each entity. EPA would notify each transferor of the revised production limit after approving the transfer of production allowances to a Party rather than waiting to the end of the control period; the transferor would then be able to make timely market decisions with the remaining production allowances. Although there are perhaps other methods of revising production limits, EPA is proposing the following method to determine the transferor's balance of production allowances after a trade to a Party. Under today's proposal, the Administrator would issue a notice revising the transferor's balance of production allowances to equal the lesser of: (a) The unexpended production allowances held by the transferor minus the quantity of production allowances transferred; or (b) the quantity derived from (a) minus the quantity derived from the following calculation: the total U.S. allowable production for the HCFC being traded minus the U.S. average annual production of the HCFC for the three years prior to the transfer.

For those more comfortable with formulas, the proposed method could be expressed in this manner:

$$f = (a - d) - (c - b), \text{ if } c > b$$
$$a - d, \text{ if } c \leq b$$

Where a = the person's unexpended production allowances, b = the U.S. 3-year average production for that HCFC, c = the total allowable U.S. production for that HCFC, and d = the actual quantity being transferred, and f = the person's revised production allowance level.

EPA requests comment on the proposed method used to calculate revised production limits for those wishing to trade production allowances internationally; EPA requests comment on possible alternative methods to calculate revised production limits.

If more than one transfer of production allowances occurs in the same control period, the Administrator will need to issue revised production limits for all the transferors after each transfer. Each transferor's balance of production allowances previous to the current transfer would be adjusted upwards retroactively after each transfer and each transferor would be notified after the approved transfer rather than towards the end of the control period. Under EPA's proposal, if more than one company trades production of an HCFC to another Party or Parties in one control period, they would all equitably share the burden of absorbing any shortfall in national production. Although there are perhaps other methods of revising production limits, EPA is proposing the following method to determine the revised production limits for all transferors in the same control period since EPA believes that the potential allowance decrease, (c-b), would be allocated among all transferors. EPA is proposing that the formula for revising allocations after a transfer would be:

$$a - [(c - b) \times (d/D)] - d,$$

where D = the total amount of allowances transferred by all domestic producers in that control period.

EPA requests comment on the proposed method used to calculate revised production limits for all transferors transferring production allowances in the same control period; EPA requests comment on possible alternative methods to calculate these revised production limits.

6. Transfers of Current-Year Allowances

In the ANPRM, EPA considered approaches for permitting transfers of current-year allowances for class II controlled substances. A transfer of current-year allowances means the allowances being traded can only be expended for production or import in that specific control period, or calendar year. Transfers of current-year allowances do not change the quantity of baseline allowances assigned to a company. A trade of current-year allowances is a temporary trade, only reflected in a company's balance of allowances for that control period (calendar year) in which the trade occurs. Trades of current-year allowances were permitted in the class I regulatory program. From 1992 to 1995, many companies took advantage of the opportunity to trade current-year allowances for class I controlled substances.

Six of the eleven commenters on transfers were in favor of the free trade of current-year allowances. One commenter generally supported transfer of current-year allowances because it was consistent with the class I regulatory program. A commenter felt that it should be allowed while another commenter noted that the bureaucratic burden on companies and on EPA would not be too large and that such flexibility would be as complete as it could be within a system of controls. The remaining five commenters were silent on the issue. EPA agrees that trades of current-year allowances would allow companies the flexibility to respond to market forces and achieve economies of scale in production and import.

EPA proposes to allow trades of current year allowances similar to those permitted in the class I regulatory system and seeks comment on allowing current-year trades.

7. Permanent Transfers of Baseline Allowances

EPA also considered the merits of permitting permanent transfers of baseline allowances for class II substances in the ANPRM. A transfer of baseline allowances is a permanent shift of some quantity of a company's baseline allowances to another company. The permanent nature of the transfer of baseline allowances makes the trade different from the transfer of current-year allowances. For example, if Company A produced 1,000 kilograms of HCFC–22 in the baseline year, it would receive 1,000 baseline allowances of HCFC–22. Company A could in turn permanently trade away these baseline allowances to Company B. In all relevant subsequent years, Company A's quantity of baseline allowances would be permanently reduced, while Company B's quantity of baseline allowances would be permanently increased. At the 2010 phaseout of HCFC–22 and HCFC–142b, Company B would be responsible for deducting the HCFC–22 that it permanently received from Company A from its baseline allocation.

Under a chemical-by-chemical allocation approach, the historic consumption baseline amount for a given chemical would be deducted from the current holder of the permanent allowances in the relevant phaseout year for that chemical (e.g. 2003 for HCFC–141b). If a person purchases permanent baseline allowances, of

HCFC–141b, for example, then conducts an inter-pollutant trade within the company, that person would deduct the ODP-weighted equivalent consumption of the HCFC–141b that was traded to them on a permanent basis. In our example, in 2003, the purchaser of allowances associated with HCFC–141b would have that number of ODP-weighted allowances associated with HCFC–141b deducted, even if it had conducted an inter-pollutant trade within the company for another HCFC.

Six of the eleven commenters discussing transfers favored allowing permanent transfers of baseline allowances. Five of the eleven commenters did not discuss permanent transfers.

EPA proposes to allow permanent trades of allowances for class II substances. EPA requests comment on its proposal to allow these permanent trades.

8. Offset for a Transfer of Allowances

The final aspect of trades of class II allowances discussed in the ANPRM and considered in today's document is the manner of achieving greater total reductions than would occur in the absence of a trade, as required by section 607(a) of the Act. EPA believes that the offset required by section 607 of the Act is intended for inter-pollutant and inter-company transfers. Therefore, in the allowance program for class I substances, an offset was not included for international trades. International trades are governed by section 616 of the Act, rather than section 607.

Section 607(a) states that, "transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions." For the class I allowance program, EPA adopted a one percent offset, deducted from the transferor's allowance balance, for all inter-pollutant trades and all inter-company trades (40 CFR 82.12(a)(1)(i)(H), 82.12(b)(4)(i)(F)). However, for inter-pollutant trades combined with inter-company trades, only one offset was applied to the transfer of allowances.

Nine commenters on possible offset options preferred a lower offset than the one for the class I system, because CFCs are more ozone-depleting than HCFCs. There were two suggestions for an offset of 0.1 percent and there were two for an offset of 0.05 percent. Because the class II substances are less ozone-depleting than class I substances, EPA considered a smaller offset for trades of HCFC allowances. Yet, EPA recognizes that the offset must provide an environmental benefit, as called for by Congress. For class II controlled substances, EPA is therefore proposing a 0.1 percent offset for inter-company transfers. This 0.1 percent offset would simplify calculations for the affected companies and reflect the lower ODP of HCFCs compared to CFCs. This offset would still provide the environmental benefit intended by Congress without hampering market forces. If allocations are made and implemented on a chemical-by-chemical basis, both inter-pollutant trades and inter-company domestic trades would be affected.

EPA requests comment on its proposal to impose a 0.1 percent offset to afford an environmental benefit associated with domestic trades, in compliance with section 607 of the CAA.

J. Would Other Regulatory Options Be Used To Control HCFCs?

In the ANPRM, EPA also discussed other authorities under Title VI that are available to ensure that the U.S. adheres to its phaseout schedule for class II substances. The discussion outlined relevant provisions of EPA's current labeling program for products made with ODSs, its SNAP program and the nonessential products ban. These provisions would affect the *sale and/or use* of HCFCs rather than their production, import and export, which an allowance system would control directly. The purpose of including these regulatory tools in the ANPRM discussion of controlling HCFC emissions was to make readers aware of the variety of paths EPA could take in sustaining compliance with the Protocol.

Because EPA is proposing an allowance allocation system in today's action that it believes would be effective in maintaining compliance with the Protocol, it is not proposing today to include any amendments to these provisions to further control HCFCs. The approaches discussed briefly below however, could provide further options for HCFC control, if needed to ensure U.S. compliance.

Thirteen commenters were generally opposed to the imposition of any of the following regulatory tools.

1. Labeling

Under section 611 of the Act, EPA could require labels on products containing or made with specified class II substances. These labels would read as follows:

Warning: Contains/manufactured with [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

As a prerequisite to imposing such a labeling requirement, the Administrator would have to determine, "after notice and opportunity for public comment, that there are substitute products or manufacturing processes (A) that do not rely on the use of such class II substance, (B) that reduce the overall risk to human health and the environment, and (C) that are currently or potentially available. "Beginning January 1, 2015, all products containing or manufactured with a class II substance must bear the specified label regardless of whether the Administrator has made a determination regarding the availability of substitutes (Section 611(c)(2) and 611(e)(5)). Therefore, the issue upon which EPA is requesting comment is whether EPA should, prior to January 1, 2015, require labels on certain products containing or manufactured with class II substances.

Eleven commenters felt that imposing labeling requirements before 2015 would be undesirable and unnecessary. A couple of commenters stated that such labeling requirements might precipitate what they characterized as confusing labeling that occurred with CFCs, requiring the intervention of the Federal Trade Commission. This statement represents the commenters' characterization only, and not that of EPA. The commenter has apparently confused the Title VI labeling regulations with a different labeling rule issued by another federal agency. EPA was consulted on several cases where potentially deceptive "positive labeling" appeared on a product. Typically, such a label would read, "ozone-friendly" or "environmentally safe," while the product contained an ozone-depleting substance that may have had a lower ODP than found in other products in its category. These specific labels were not associated with the Section 611 labeling requirements of the CAA, and were subsequently referred to the Federal Trade Commission, because consumers were being sold products under potentially inaccurate labeling.

EPA does not currently see a need to use labeling to ensure compliance with the Protocol and is therefore not proposing in today's action to use this regulatory tool to control HCFC emissions.

2. SNAP Approval and Restrictions

Section 612 of the Act requires EPA to promulgate rules making it unlawful to replace any class I or class II substance with any substitute substance that may present adverse effects to

human health or the environment, where EPA has identified an alternative to such replacement that "(1) reduces the overall risk to human health and the environment; and (2) is currently or potentially available." In accordance with Section 612 of the Act, and under the SNAP program, EPA publishes lists of acceptable and unacceptable substitutes for class I and class II substances. In some SNAP sector end-uses, class II substances have been listed as acceptable substitutes. Class II substances are viewed by the Agency as transition chemicals that facilitate the transition out of more harmful class I chemicals. Since 1994, availability of zero-ODP alternatives has increased in a number of end-uses. It is therefore possible that SNAP determinations regarding existing HCFC acceptable uses could be revised. This could happen through three mechanisms.

First, EPA could receive a petition from a company to add a substance to or delete a substance from the SNAP list of acceptable and unacceptable alternatives (See section 612(d)). Second, EPA could receive notification from a company before introduction of a substitute into interstate commerce for significant new use as an alternative to an ODS (See section 612(e)). Finally, EPA can initiate changes to the SNAP determinations independent of any petitions or notifications received. Such changes could be based on new data either on additional substitutes or on characteristics of substitutes previously reviewed.

Thirteen commenters opposed the use of SNAP to control the use of HCFCs to sustain compliance with the Protocol. Four commenters supported delisting only if the alternative significantly reduced risk to human health and the environment. Seven commenters were concerned about the possibility of creating an unfair competitive advantage for the new alternative and impacting small businesses adversely.

Under this rulemaking, EPA believes that the tracking of consumption of HCFCs will allow the U.S. to remain under the cap. Therefore, in this rule, we are not including any SNAP-related provisions. It is possible, that on their own, SNAP approvals and restrictions might affect HCFC production and consumption sometime in the future.

3. Non-Essential Products Ban

Section 610(d) of the Act prohibits the sale, distribution, or offer for sale or distribution in interstate commerce, of certain nonessential products that contain or are made with class II substances. EPA is authorized to grant exceptions to the ban under certain conditions. Since the issuance of the final rule providing exemptions from the statutory class II nonessential products ban (58 FR 69638, December 30, 1993), EPA has received information, including information on new substitutes for making certain products, indicating that it may be necessary to reconsider the continued appropriateness of those exemptions. The Agency also is aware that since the issuance of that initial final rulemaking, there has been further substitution away from ozone-depleting substances in aerosols and pressurized dispensers. EPA is currently reviewing information concerning the aerosol products and pressurized dispensers that were given exemptions in the December 30, 1993 rulemaking, independent of the goals of this rulemaking. In particular, the Agency is evaluating whether there are technologically available substitutes for the HCFCs used in these products.

Two of the four commenters were opposed to the use of the ban to control use of HCFCs and thus sustain compliance with the Protocol. One commenter supported use of the ban to ensure the U.S. does not exceed its consumption and production caps for class II substances.

EPA does not currently see a need to use the nonessential products ban to ensure compliance with the Protocol and is therefore not proposing to use this regulatory tool to control HCFC use. It is possible, that on its own, the nonessential products ban might affect HCFC production and consumption sometime in the future.

III. Additional Proposed Provisions

EPA is proposing several provisions that were not discussed in the ANPRM. Some are definitions, necessary to implement portions of the class II allowance system discussed in the ANPRM. Others are additional issues that have arisen since publication of the ANPRM. EPA seeks comment on each of the proposed provisions below.

A. Would There Be Changes in Definitions?

To effectively establish an allowance allocation system for HCFCs, EPA is proposing to change and add several definitions to § 82.3 of the existing phaseout regulation. We are proposing modifications that will clarify throughout this proposal where a provision would apply only to a class I substance or to both class I and class II substances.

1. Modifications

EPA is proposing to modify the definitions for "baseline consumption allowances" and "baseline production allowances" to include class II ODSs, in addition to currently covered class I ODSs. EPA is also proposing to modify the definitions of "consumption allowances," "production allowances," and "Article 5 allowances" to include class II ODSs.

The definitions for "destruction credit" and "transformation credit" would not apply to the class II allowance system. To date, no one under the class I system has requested destruction or transformation credits after production allowances have been expended for a chemical that was later found to be destroyed or transformed in the manufacture of another chemical or product. EPA believes that, with less HCFCs being used in manufacturing systems that ultimately transform or destroy them than the earlier class I ODSs, the likelihood that any company would need or want to use these credits is minuscule. Normally, destruction or transformation is anticipated prior to production. Companies need not expend production allowances when producing ODSs specifically for destruction or transformation. EPA requests comment on its decision to follow suit with the accelerated phaseout program for class I substances (60 FR 24970, May 10, 1995) and not include the definitions for "destruction credit" and "transformation credit."

At this time, the definitions for "essential use allowances" and "unexpended essential use allowances" would not apply to the class II allowance system and EPA is proposing to modify them to make them explicitly apply to class I substances only. If the Parties approve any essential use exemptions for class II substances, EPA would consider such exemptions in light of the domestic phaseout and revisit these definitions as necessary.

2. Additions

EPA is proposing to add a definition of "export production allowances." Companies could use these allowances, calculated at 100 percent of their phased-out HCFC's production baseline, to produce certain HCFCs after the relevant phaseout date, for export only to any Party that has ratified the Copenhagen Amendments (such Parties would be listed in Appendix C). These export production allowances would become available to HCFC–141b producers on January 1, 2003 (the phaseout date for that chemical), and remain available at least until December 31, 2009. EPA expects to re-evaluate the possibility of export production allowances in 2009 in view of the 65 percent reduction in consumption in

2010. An export production allowance could be used for production for purposes of export only, where net consumption equals zero. A definition of "unexpended export production allowances" is also being proposed. It is not clear at this time the amount of export production allowances that would be available for HCFC–141b, as well as HCFC–22 and HCFC–142b, after January 1, 2010, when a 65 percent reduction in consumption of HCFCs is mandated by the Protocol. Following notice and comment, EPA plans to issue a rule prior to 2010, which would allocate relevant allowances, beginning in 2010, taking into account the declining consumption cap, the refrigerant servicing exemptions after 2010, and any relevant modifications to the Protocol or the CAA.

In proposing a class II petition system for used ODSs imports, EPA is proposing adding three definitions that will allow EPA to closely track used imports and make accurate determinations on the eligibility to import the used HCFCs. Three new definitions are proposed to help facilitate a rigorous petition system: "individual shipment," to distinguish one separate shipment from another; "non-objection notice," to indicate when a person is granted privileges to import an individual shipment of used HCFCs; and "source facility," to explain exactly what information the petitioner must provide regarding the equipment and place from which the used HCFC was recovered.

Definitions of "space vehicle/defense allowances" and of "unexpended space vehicle/defense allowances" are added to permit U.S. Federal government entities and certain other entities to import or order the production of HCFC–141b for critical uses related to space vehicle or narrow defense needs, where no substitute for HCFC–141b is viable. These allowances would not be tradeable.

B. What Type of Allowances Would Be Available for Space Vehicles and Defense Needs?

EPA is proposing to provide space vehicle/defense allowances to a U.S. agency, department or instrumentality, or related entities involved in space vehicle endeavors, for extremely narrow needs after demonstrating by petition to EPA that no viable alternative exists for HCFC–141b and that space vehicle or national security viability is at issue if HCFC–141b cannot be used for the specified purpose. NASA first brought this need to EPA's attention because space launch vehicles currently use HCFC–141b-blown foam as the only workable thermal protection system for several different areas of the space vehicle system. EPA is also proposing to provide allowances to U.S. military departments for extremely narrow needs after demonstrating by petition to EPA that no viable alternative exists for HCFC–141b in narrow defense uses such as cleaning of oxygen equipment and aircraft parts.

EPA believes U.S. government space vehicle entities, other space vehicle service entities and military departments have vital needs for small quantities of HCFC–141b for very specific needs beyond the phaseout date contained in § 82.15(a)(4) of today's rulemaking. These uses would include unique thermal protection system needs of space vehicles designed to travel beyond the limit of the earth's atmosphere (e.g., satellites, space stations, space transportation systems such as the Space Shuttle system), and the cleaning of oxygen equipment and aircraft parts. EPA believes that the new §§ 82.15(a)(1) and 82.18(e) will not adversely affect compliance with the provisions of the CAA Amendments of 1990 or the U.S. obligations under the Protocol as amended.

EPA considered other approaches to an exemption for the production and import of HCFCs critically needed for space vehicles intended to travel outside the earth's atmosphere or for narrow defense needs. EPA considered whether the exemption should be specific for one, or two, or all of the HCFCs (e.g., specific exemptions only for HCFC–141b, HCFC–22, or HCFC–142b for national security purposes.) To date, EPA has received only specific requests for space vehicle and defense exemptions for HCFC–141b. Therefore, EPA believes there is no need for a broader exemption and accordingly is proposing to limit the exemption to HCFC–141b. EPA requests comment on its proposal to limit a space vehicle/defense exemption to HCFC–141b.

A person seeking an exemption for the production and import of HCFC–141b for space vehicle purposes and for narrow defense needs under § 82.15(a)(1)would need to apply for the exemption under § 82.18. Today's action proposes a streamlined application and review process under § 82.18(e) for space vehicle/defense allowances. The application process would require a U.S. government or other entity involved in space vehicle endeavors or narrow defense uses to submit the following information to EPA prior to July 1, 2002: (a) Name and address of the entity; name of contact person and phone and fax numbers and e-mail address; (b) quantity (in kilograms) of HCFC–141b needed for each relevant control period for the space vehicle or defense interest; (c) a detailed description of the space vehicle or defense need met by the use of HCFC–141b; (d) a technical description of the processes in which HCFC–141b is being used; (e) a technical description of the area where the product will be applied; (f) a technical description of why alternatives and substitutes are not sufficient to eliminate the space vehicle or defense use of HCFC–141b; (g) a detailed analysis showing why stockpiled, recovered or recycled quantities are deemed to be technically infeasible for use; (h) an estimate of the number of control periods over which such an exemption would be necessary; and (i) a detailed description of continuing investigations into and progress on possible alternatives and substitutes.

EPA would review the application in order to determine whether to grant space vehicle/defense allowances for the specific quantity of HCFC–141b for the specified control period. If more information is needed, EPA would contact the applicant and specify the necessary information. EPA would retain the right to disallow the space vehicle/defense allowances based on information received regarding, *inter alia*, fraud, misrepresentation, inconsistency with Articles and Decisions under the Montreal Protocol, inconsistency with the CAA Amendments of 1990, or other reasons related to human health and the environment.

EPA is proposing a specific application period ending July 1, 2002. By limiting the time frame for accepting applications, EPA is providing a strong incentive for U.S. government and other space vehicle entities to periodically review their HCFC–141b needs for long-term planning. By limiting the time frame for the review of applications, EPA would also be reducing the Agency's long-term burden to continually review claims of space vehicle or defense interest.

EPA considered conducting a one-time period of review of petitions for space vehicle/defense allowances to be finalized by publication of a notice with a list of acceptable and unacceptable space vehicle/defense exemptions to the class II phaseout dates. EPA is not proposing this approach because the Agency expects very few applications for space vehicle/defense allowances for HCFC–141b, and EPA believes it is important for petitioners to periodically reassess the critical nature of continued HCFC–141b need. EPA expects that no more than one percent of the total

HCFC–141b allocations would be needed for this exemption. EPA is also proposing that the allocation be updated every three years, via submission of an update report which indicates the following: whether the entity has found no viable substitute and will need to extend their exemption for the next three years; why the entity believes no alternatives are viable for their application; and the efforts undertaken by that entity to find alternatives. The first period would provide allocations for January 1, 2003 through December 31, 2005. Updates would be due to EPA by March 1, of 2005 for the three-year period of 2006 through 2008, and so on until 2010. EPA would make a determination on the update within 90 days of receipt and notify the submitting entity accordingly.

Another option in the implementation of an exemption for the production and import of HCFCs beyond the accelerated phaseout would be a limit on the total quantity of HCFC–141b that one U.S. government entity or other space vehicle entity could request and obtain in a control period. Finally, EPA could limit the number of control periods for which a U.S. government or other space vehicle entity with these interests may apply for an HCFC–141b exemption. EPA is not proposing these options to limit the quantity of material or the control periods because the Agency expects the numbers of requests and the quantities to be very small. However, EPA is proposing to limit the total quantity of HCFC–141b produced or imported for space vehicle or narrow defense needs to one (1) percent of the aggregate of HCFC–141b baselines per year. This would reflect the expected small number of requests for small quantities while still allowing for export to Parties and Article 5 countries.

EPA is today proposing to create an exemption process for the continued production or import of HCFC–141b up to January 1, 2010, for applications related to critical space vehicle needs or narrow defense needs in cases where alternatives and stockpiled, recovered or recycled quantities are deemed to be technically infeasible for use. Upon request by the appropriate Agency or entity, the Administrator may grant authorization for production or import of a specified quantity, for a three year period, beginning on January 1, 2003. If need for HCFC–141b remains critical past 2005, exempted entities may renew their submission for an additional three years by updating the information submitted in the original application to EPA. Approval for production or import does not imply or mandate production; each user must locate a willing supplier and negotiate supply. It should be noted that the Parties at the 1999 Meeting of the Parties in Beijing adopted a production freeze, which requires that all production, which would include space vehicle/defense exemptions, remain below the cap. The 65 percent reduction in consumption in 2010 may preclude continued availability of this exemption; the more current consumption figures in the years leading up to 2010 may provide EPA with a more realistic picture of the possibility of granting the exemption for the years after 2010. The availability of this exemption will be revisited in the rulemaking implementing the January 1, 2010 phaseout. Consequently, today's action proposes that the exemption be available until January 1, 2010. EPA requests comment on its proposal to make the space vehicle/defense exemption available until January 1, 2010.

The Agency believes technically feasible alternatives will likely be available for commercial and the vast majority of non-commercial uses of HCFCs prior to their phaseout dates. However, there may be specialized uses where stockpiled, recovered, or recycled quantities are technically inadequate. At this time, the only foreseeable use of this authorization is for the thermal protection system used for space exploration and satellite launches and for cleaning applications in certain defense equipment.

Section 605 of the CAA contains certain constraints on use, production, and consumption of HCFCs. This exemption is limited by these constraints. For example, under CAA Section 605(a), effective January 1, 2015, no person may introduce into interstate commerce or use any virgin class II substance unless the substance is either used and entirely consumed (except for trace quantities) in the production of other chemicals, or the substance is used as a refrigerant in appliances manufactured prior to January 1, 2020. In addition, CAA section 605(b)(2) prohibits production of class II substances on or after January 1, 2030. Finally, EPA will not authorize quantities of HCFCs under the space vehicle/defense exemption that would cause the U.S. to exceed the HCFC consumption cap as agreed under the Montreal Protocol.

To facilitate accurate tracking of exempted HCFC–141b production and use, EPA proposes requiring the manufacturer of the applicable foam (or the formulation for spray foam) or the cleaning product to submit information quarterly to EPA delineating the quantity of HCFC–141b received; the quantity of HCFC–141b used or contained in the product; the identity of the producer or importer supplying the HCFC–141b; the identity of the recipient of the product made with or containing HCFC–141b; and the quantity of HCFC–141b used or contained in the product sent to the recipient. Additionally, the entity requesting allowances of the exempted material in space vehicles or defense purposes would report quarterly to EPA on: the type of product made with or containing HCFC–141b; the specific application of the product; the quantity of HCFC–141b used or contained in the product; and the identity of the manufacturer of the product.

C. Would There Be a Petition System for Importing Used HCFCs?

With today's action, EPA is proposing a petition system for use in importing used HCFCs. The Protocol allows used ODSs to be imported outside of the process required under the cap. Because the potential for abusing this exception was high in imports of class I substances (for example, by claiming that a CFC was used when in fact it was virgin, thus requiring allowances), EPA instituted a petition process in 1995 that requires those wanting to import used class I ODSs into the U.S. to petition EPA for approval before making the import. To ensure that relevant class II imports are legitimately used previous to import, EPA proposes a petition system for the import of used HCFCs. EPA will make a definitive determination that a shipment contains used HCFCs before granting a non-objection notice allowing the import. A description of the petition system that EPA is proposing is discussed below.

The original reason the Parties to the Protocol agreed to permit international trade in previously used ozone-depleting substances was to ease the transition to alternatives. In addition, the Parties believed that allowing trade in quantities of already existing used material would offset the need for new global production.

Evidence has increasingly indicated that new production overseas of class I material has been clandestinely diverted to the U.S. and other non-Article 5 countries as imports of "used" material. EPA anticipates that a similar situation will evolve as HCFCs are phased out and supply diminishes in the face of continued demands.

EPA is proposing today's petition system in the hopes that the provisions of the process can guard against abuses and guarantee that imported material is truly previously used, thus setting the stage for an effective class II petition

system for used imports. EPA requests comment on all aspects of the proposed petition system for the import of used HCFCs.

1. Petition for Each Individual Shipment

EPA is proposing that a petition to import used HCFCs may only be submitted on a shipment-by-shipment basis. The information in a petition and the quantity a person wishes to import into the U.S. must be limited to a specific shipment and a single U.S. Customs entry. If an importer cannot arrange for the entire quantity to be shipped as one entry through U.S. Customs, the importer would be required to submit more than one petition for the quantity in each individual Customs entry.

2. Threshold Quantity Requiring a Petition

EPA is proposing a threshold quantity of used HCFCs for an individual shipment for which a person is required to submit a petition to import. EPA is proposing that individual shipments of five (5) pounds or more require submitting a petition to import. A threshold quantity of five pounds allows a company to take three samples from a large ISO-tank for laboratory analysis and send those samples to a testing facility in the U.S. without being subject to the petition requirements. In developing today's proposal, EPA also considered requiring that a person who wishes to import any quantity of used HCFCs, regardless of the size, be required to submit a petition, thereby eliminating the threshold level altogether. EPA is not proposing to eliminate the threshold level altogether in order to minimize burden on the regulated community and conserve Agency resources.

3. Information Requirements

EPA is proposing that petitions to import used HCFCs include a comprehensive and detailed list of information. This reflects the type of information that EPA needs to independently verify the previous use of the HCFC. Today's action proposes under § 82.24 (c)(3) that contact information for the entire chain of custody of the used HCFC be provided in the petition. For example, a petition must include complete contact information for: every source equipment from which the used controlled substance was originally recovered; every company that collected the material from the equipment; every previous owner of the material; and every company that will be exporting the used controlled substance. EPA seeks comment on the effectiveness and potential burden associated with requiring such contact information.

Today's proposal calls for providing a copy of a contract for the purchase of the used HCFC in addition to the intended use. In light of efforts by Parties to the Protocol to implement a licensing system for exports as well as imports, EPA is proposing that the petitioner provide an export license from the appropriate government agency in the country of export. EPA requests comment on its proposal for detailed information to accompany each petition to import used HCFCs.

EPA also considered proposing that the petition to import used HCFCs include the name, make and model number of the equipment from which the HCFC was as a means to verify that the shipment of HCFC had been truly used to operate equipment. EPA requests comment on the likely utility and burden of requiring this information about the equipment from which the material was removed.

4. Timing for Review of a Petition

EPA considered many time frames for the review of petitions to import used HCFCs, including a complete elimination of any time limit for EPA's review of a petition. EPA also considered whether to include an automatic approval provision with any of these time limits. Through experience and the unexpected volume of petitions in the class I petition system to import used CFCs, EPA learned that the 15 working-day time limit for petitions was too short for a thorough review. Given the large number of petitions used being submitted (192 in 1997, 160 in 1998, and 120 in 1999), combined with the fact that EPA will likely require more time to independently verify the information required with today's document, EPA is proposing a time limit for the review of a petition by EPA of forty (40) working days. EPA believes that 40 working days allows it the time to thoroughly verify the information in the petition and decide whether to allow or disallow the petition. EPA requests comment on whether the 40 working-day time limit is practicable and appropriate or whether another time limit would be more appropriate.

EPA is specifying that the time for review begins on the working day after EPA's Global Programs Division actually receives the petition. EPA is proposing that a 40-day time frame with no automatic approval would allow the Agency to balance the goals of responsiveness to legitimate requests and thoroughness in identifying abuses of the petition process. EPA additionally proposes, that while EPA will make every effort to respond to the petitioner within the 40 working-day period, a lack of response does not constitute a grant of authority to import. EPA requests comment on the need for a definitive response from EPA before a person may import the used HCFCs.

5. Reasons for Issuing an Objection Notice

Under the class I petition process, EPA attempts to independently verify the information contained in a petition to import used HCFCs, with special attention given to confirming the prior use of the material. EPA's effort to confirm the information in a petition is conducted with support from other government agencies that are members of the inter-agency task force combating illegal imports of ozone-depleting substances. Since 1994, EPA has worked with the inter-agency task force members who include the Department of Justice, the Internal Revenue Service, the Customs Service, the State Department, and the Department of Defense. In the six years of implementing the petition process to import used class I controlled substances, EPA has received a variety of petitions. Many of the petitions provided insufficient information or provided information that EPA had reason to doubt was sufficient to confirm that the material was, in fact, previously used.

To adequately process class II petitions, EPA is proposing a list of reasons for which the Agency might issue an objection notice to a petition to import used HCFCs.

The first reason for disallowing a petition is a lack of sufficient information. If the importer of used HCFCs fails to supply the required information in § 82.24(c)(3), this would be a basis for disallowing a petition.

The second reason for disallowing a petition is if the Agency determines that the petition contains, or is believed to contain, false or misleading information.

EPA may issue objection notices for petitions to import used HCFCs if the transaction appears to be contrary to provisions of the *Vienna Convention on Substances that Deplete the Ozone Layer*, the Montreal Protocol and Decisions by the Parties, or the non-compliance procedures outlined and instituted by the Implementation Committee of the Montreal Protocol. Section 614(b) of the CAA states that in the case of conflict between the CAA and the Montreal Protocol, the more stringent provision shall govern. Thus, EPA proposes that if a petition contains information about a transaction that

indicates the transaction is contrary to the provisions of the Convention or the Protocol, including Decisions by the Parties to the Protocol or the Protocol's non-compliance procedures, that shall be grounds for issuing an objection notice.

If a country states that it is no longer allowing exports or if it reports that it has not granted any export licenses, EPA will treat this as grounds for issuing an objection notice for a petition to import from that country. EPA proposes to disallow a petition if the appropriate government agency in the exporting country has not agreed to issue any required export license for the individual shipment of used HCFCs that is cited in the petition.

Today's action also proposes that EPA may issue an objection notice for a petition when the Agency receives information indicating that a person listed in the petition has produced false or misleading information regarding transactions in ozone-depleting substances. In the past, EPA has received information from other U.S. government agencies, from other petitioners, from non-governmental organizations and from foreign governments that have implicated companies or individuals in activities designed to mislead government authorities about activities related to ozone-depleting substances.

Another proposed reason for disallowing a petition is the receipt by the Administrator of information regarding activities contrary to EPA regulations by any individual or company listed in a petition. Activities contrary to EPA regulations that have been reported to EPA or discovered by EPA personnel and that are related to ozone-depleting substances include, but are not limited to, un-certified recovery; un-certified reclamation; reclamation that does not meet the required specifications; improper labeling; diverted transhipment; mis-identification during import; forgery of EPA documents; and fraudulent claims regarding these activities. This action proposes that EPA may disallow a petition if the Agency receives information that any person or company listed in the petition is involved in an activity that is a potential violation any 40 CFR part 82 regulation or any evidence of false statements.

EPA also believes that conditions established for disbursing monies to specific country projects by the Executive Committee of the Montreal Protocol's Multilateral Fund may provide a basis for objecting to petitions. EPA believes as a general rule that no used HCFCs should be imported from Article 5 countries where reclamation capacity, for that specific controlled substance, has been or is being installed through assistance of the Multilateral Fund. The U.S. contributes approximately one fourth of all funds going to the Multilateral Fund, the general purpose of which is to assist countries operating under Article 5(1) of the Protocol to make the transition away from ozone-depleting substances; and a transition policy includes the development of reclamation facilities in order to optimize the use of existing ozone-depleting substances so as to avoid unnecessary production of virgin materials. Thus, EPA views the importation of used HCFCs from countries where reclamation capacity has been supported by the Multilateral Fund to run counter to U.S. interest, and counter to the aims of a global phaseout strategy. EPA requests comment on its proposal that importation of used HCFCs from Article 5 countries where reclamation facilities have been funded by the Multilateral Fund for reclaiming ODSs to be used for that country's basic domestic needs may provide a basis for objection to a petition.

EPA is proposing an appeals process through re-petitioning within 10 working days after the date of an objection notice from the Administrator, if the basis for the objection notice is "insufficient information." EPA proposes to allow only one re-petition for any original petition received by EPA. EPA requests comment on the appropriateness of the aspects proposed above for an appeals process.

6. Petition and Non-Objection Letter to Accompany the Shipment

EPA is proposing a requirement in § 82.24(c)(3) that the petition and the non-objection notice from EPA, approving the import of a used class II controlled substance, accompany each shipment through U.S. Customs. EPA believes that presenting the petition and EPA-approval letter with a shipment will facilitate the clearance through U.S. Customs.

D. Would There Be New Restrictions on Imports to and Exports From Specific Parties?

EPA is proposing a restriction on Parties to whom you (as defined in Section II.C) can export HCFCs and from whom you can import HCFCs, beginning in 2004, to comply with an amendment to the Protocol that the Parties agreed to at the eleventh meeting in late 1999. This amendment states that as of January 1, 2004, each Party shall ban imports from and exports to countries that have not ratified the 1992 Copenhagen Amendments, in addition to the original Montreal Protocol (1987) and London Amendments (1990). These bans on imports from and exports to non-Parties reflect an agreed strategy by Parties for encouraging ratification of the Protocol and each successive package of amendments.

Appendix C of this rulemaking will include all Parties to the Copenhagen Amendments as of the promulgation date of the final rule. The UNEP web site maintains a real-time list of current Parties to the Protocol and all its amendments, for those wishing to ensure they are viewing the most current list. The Internet address is: http://www.unep.org/ozone/ratif.htm.

E. Should There Be Consumption Allowance Credits for Reductions of HCFC Production By-products Regulated by Title VI?

In addressing emissions reductions with a view toward also avoiding increases in, and encouraging reductions of, other regulated emissions, EPA realizes that there is at least one case where the production of an HCFC creates a by-product that is also regulated under Title VI of the CAA. In an effort to encourage emissions reductions of other chemicals regulated under the CAA, EPA has in the past explored the ideas of reduction credits or offsets. Such an approach may be appropriately used in ensuring that a by-product (regulated under Title VI), created in the production process of an HCFC regulated under Title VI, is voluntarily controlled to the greatest extent possible. One option to consider is granting one available consumption allowance (one kilogram) and one available production allowance of the HCFC whose production creates the Title VI regulated by-product, for each kilogram of the by-product that is reduced as of a certain date from an established baseline. EPA believes that portions of the consumption allowances remaining below the U.S. cap, after allocations are made to eligible new entrants, could be available for such a program. Allowances could be granted only to the extent available under the cap.

EPA seeks comments on an incentive approach of providing allowance credits to producers of an HCFC who reduce emissions of that HCFC production's by-product that is also regulated under Title VI. EPA specifically requests comments on the advantages and disadvantages of this type of program and how such a program might work, if instituted.

EPA requests comments on any or all of the above additional provisions not discussed in the ANPRM.

IV. Summary of Today's Proposal

A. How Would Allowances Be Calculated and Allocated?

Both production and consumption allowances would be allocated to those with production and/or import activity in their individual baseline year (highest ODP-consumption year among 1989, 1994, 1995, 1996, and 1997). The recent decision by the Parties to freeze production of HCFCs requires two kinds of allowances: production and consumption. As in the class I system, a person would expend production allowances and consumption allowances to produce prior to the relevant HCFC phaseout. A person would need only to expend consumption allowances to import, and would receive consumption allowances in return following proof of export.

New entrants to the HCFC importing market, who began importing HCFCs after the end of 1997 and before April 5, 1999, when the ANPRM was published, may request allowances from EPA for historical HCFC importation during that time. These new entrants would be eligible for allowances if they submitted appropriate required quarterly reports to EPA prior to publication of this proposal; sent proper documentation of HCFC imports to EPA; and if the HCFC import market is their primary source of business income. EPA will issue available allowances to those companies determined eligible by EPA after review of the documentation.

EPA proposes to allocate and track allowances on a chemical-by-chemical basis, as done in the class I allowance system. Although EPA would analyze total baseline ODP-weighted consumption units to determine individual baseline years, the actual detailed allocations would be listed chemical-by-chemical. Consumption allowances would be allocated in the total amount of consumption in the baseline year. Production allowances would be allocated using total production for that same year. Tracking would work in the same way as under the class I system—any trades between chemicals would be ODP-weighted. Although many commenters prefer an ODP-weighted unit for allocation, trading and expenditure, EPA has studied its reporting obligations to the Protocol and its ability to ensure adequate compliance. To ensure company and U.S. compliance, EPA would need to know specific chemicals produced and consumed in order to maintain a chemical-by-chemical tracking system. EPA's required offset of 0.1 percent for inter-pollutant and inter-company trades would be significantly lower than the 1 percent used for class I substances. Therefore, the offset should not create an undue burden on trades.

EPA would annually allocate, based on the relevant baseline(s), for the entire period of time prior to each chemical's phaseout, unless the U.S. is unable to meet its 35 percent reduction by 2004. In that case, EPA would need to adjust allowances accordingly, on a pro rata basis. Before 2010, EPA would re-evaluate the percentage allocated from the baseline to determine whether modifications are necessary to meet the 65 percent consumption reduction required in 2010 by the Protocol. If reductions of HCFC–22 and HCFC–142b are not sufficient to reach the Protocol-required 65 percent reduction for 2010, EPA would allocate a lesser percentage of baseline. Any post-phaseout exceptions would be re-evaluated similarly.

At the beginning of each control period, EPA would officially notify each allowance holder of the amount available for that year, based on the relevant baseline. Between now and 2003, each allowance holder would receive 100 percent of their baseline consumption, and 100 percent of their historic production in the same baseline year as consumption, unless permanent trades occur that would transfer the traded portion of the allowance to the purchasing entity, or unless the U.S. would be unable to meet its 2004 35 percent reduction, as explained above. In 2003, HCFC–141b consumption allowances would be subtracted from the holders' allocations (other than any potential exceptions).

Because the Protocol freezes production at baseline but does not currently require further reductions, EPA is proposing to allow production after relevant phaseouts only for very narrow space vehicle or defense uses of HCFC–141b, and for export to any Party listed in Appendix C to Subpart A (Parties that have ratified the Copenhagen Amendments) after January 1, 2003. At that same time, an additional 15 percent of production baseline allocation of the phased out HCFC, over and above the Protocol production cap, would be allocated for production for export only to Article 5 countries for their basic domestic needs. This post-phaseout production (100 percent of production baseline to Parties that have ratified the Copenhagen Amendments plus 15 percent of baseline for Article 5 countries) would not require accompanying consumption allowances, only "export production allowances" or "Article 5 allowances," respectively. When EPA re-evaluates baseline allocations before the HCFC–22 and HCFC–142b phaseout to determine 2010 compliance with Protocol reductions, it would also evaluate the continued possibility of offering export production allowances and Article 5 allowances for HCFC–22 and HCFC–142b.

EPA is proposing to allocate 100 percent of the consumption baseline, which is below the U.S. consumption cap of 15,240 ODP-weighted metric tons. The total baseline figure for consumption represents the aggregate of companies' baselines, as described below. The baseline EPA is proposing in today's action would be as follows: each company with baseline production and/or consumption in 1989, 1994, 1995, 1996, and/or 1997 would take their highest ODP-weighted consumption year as their baseline. Both production and consumption allowances would be derived from the relevant individual baselines in the applicable year. The allowances remaining between the aggregate baseline and the consumption cap could be used for allocations for those eligible entrants new to the HCFC market between January 1, 1998 and April 5, 1999.

EPA is proposing to use 100 percent of the baseline years' production, which would keep the U.S. in line with its production cap.

We propose to include 1989 as a potential baseline year because we have very good numbers from our earlier requests for baseline data, and class II substances began to increase their presence in the market during that time. In 1990–1993, our data on consumption was poor, because reporting was not yet required on a regular basis. To obtain accurate numbers from those years, we would need to request the data from each participating company, along with invoices, bills of lading, and other documents that could help verify the accuracy of the production and consumption numbers submitted. The time entailed and the uncertainty of receiving complete and accurate information rules out attempting to obtain figures from 1990 to 1993. Detailed reporting, for which we have supporting documentation and/or which we have verified with individual companies, began in 1994. Additionally, activity in class II ODSs grew significantly from 1994 to 1997. Therefore, including those years beginning with 1994 is reasonable. The years 1998 and later would not be included, except for certain eligible new entrants as discussed above, because

they would likely be artificially high, reflecting companies' anticipation of EPA's allocation system and the desire to stockpile.

B. Would There Be Additional Import or Export Restrictions?

We are proposing a restriction on importing and exporting HCFCs to comply with the Beijing Amendments to the Montreal Protocol. The proposed restriction would ban imports from and exports to countries that have not ratified the Copenhagen Amendments, in addition to the original Protocol and the London Amendments. These bans are further discussed in Section III.D. of today's proposal.

We are also proposing a petition system—similar to the one provided for used class I ODSs, with strengthening modifications—for the import of used HCFCs. A person wishing to import a used HCFC into the U.S. would need to petition EPA by providing detailed information on the import, including: specific name and amounts of the HCFC; source from which it was recovered; contact information for that source; intended shipper; intended port; date of import; intended reclamation and use in the U.S., and more. EPA would thoroughly verify information in the petition, and either issue a "non-objection notice" allowing the person to import the shipment, or an "objection notice" disallowing the import. See Section III.C. of this action for further discussion.

C. How Would Transfers Function?

The proposal would allow intra-company, inter-pollutant transfers, using ODP-weighting to account for differing ODPs between chemicals. The proposal would also allow inter-company trading (both same pollutant and inter-pollutant trading) with ODP-weighting required if two or more different chemicals are involved. International transfer of production allowances only would be permitted. An environmental offset, required by the CAA, is proposed at 0.1 percent for inter-pollutant and inter-company trades. At one-tenth of one percent, EPA believes the burden on inter-pollutant and inter-company trades would be minimal.

Transfers could be made on a temporary basis, to be applied within the control period (1/1 through 12/31) in which the trade is made. EPA also proposes to allow permanent baseline trades, which would transfer the allowances for the remaining period prior to phaseout. The recipient of the allowances would add those to its baseline, while the transferor would subtract them from his/her baseline. For example, if a company was allocated 150 allowances of HCFC–141b as part of its baseline, and that company then received 100 HCFC–141b permanent baseline allowances from a transferring company, the receiving company could expend 250 HCFC–141b allowances each year until 2003, at which time that company would subtract the entire 250 HCFC–141b (or commensurate ODP-weighted equivalent) allowances from its baseline allowances. The company that transferred the 100 allowances to the receiving company would not subtract those 100 HCFC–141b allowances from its baseline in 2003, because it already subtracted those allowances when it transferred them on a permanent basis to the receiving company.

EPA is not proposing to supplement an allocation system with further regulation under sections 610, 611, or 612 of the CAA at this time. EPA believes that compliance with the consumption and production caps can be assured through the proposed allocation system of class II allowances.

D. How Would the Reporting and Recordkeeping Requirements Change?

Recordkeeping and reporting would be similar to that used for class I. EPA would require quarterly reports, outlining each chemical and the amounts produced, imported, transformed, destroyed, and exported. These forms would be intended for use between the effective date of the final rule and the next reporting changes made to the phaseout regulations by EPA, or modifications made to address the incremental phaseouts past 2010, whichever is earlier.

EPA is proposing that failure by producers to keep records on their production or to submit reports regarding their production would lead the Administrator to assume that the producer has produced at full capacity during the period for which records were not kept, for purposes of determining possible violations. EPA requests comment on this proposal to account for missing records or reports in order to determine possible violations.

EPA is proposing that reporting for exports be conducted quarterly, as is reporting for all other activities. Under the class I system, reporting on exports was required annually. However, due to the recent adjustment to the Protocol banning trade with non-Parties to the Copenhagen Amendments, EPA needs data that is more current for review. Forms for recording exports made using export production allowances after a phaseout would require information on the chemical and the volume, with accompanying copies of the bills of lading and invoices. Trades of class II substances would be reported in the same manner as class I trades. ODP-weighting and calculation of the environmental offset would need to be accounted for in the transfer calculations, as they were for class I substances.

Entities granted space vehicle/defense allowances would report quarterly on the quantity of exempted HCFC–141b that was received and used, and how it was used. The foam formulator/supplier would also report quarterly on the producer from whom the exempted HCFC–141b was received, the amount received, the amount used in fulfilling space vehicle or defense needs, and the amount sold to whom in which products. The same entities granted the allowances would certify to EPA before the beginning of each year that a viable alternative to HCFC–141b, or stockpiled, recovered, or recycled HCFC–141b was not adequate or not commercially available.

EPA is currently exploring the possibility of having reports filled out and submitted to the Agency over a secure Web site. If and when electronic reporting would occur, EPA would change its guidance document and its Information Collection Request to indicate a change in burden hours.

EPA requests comment on any and all portions of today's proposal.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as any regulatory action (including an advance notice of proposed rulemaking) that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this action is a "significant regulatory action" under the terms of Executive Order 12866 and is therefore subject to OMB review under the Executive Order even though the annual effect on the economy is expected to be less than $100 million. This document was reviewed by OMB and changes recommended by OMB have been made and documented for the public record.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that employs 1000 employees or less; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

We have determined that 13 small businesses, or 50 percent of the total businesses addressed, would receive allowances, for which recordkeeping and reporting to EPA is required. The administrative recordkeeping and reporting these small businesses will experience will amount to an impact of between 0.01 and 0.02 percent of their HCFC revenues alone. When considering that the vast majority deal in numerous chemicals and/or also obtain revenues from services provided, this percentage for the majority would be significantly lower.

Although this proposed rule would not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Although small entities receiving allowance allocations would be subject to the same recordkeeping and reporting requirements as the larger entities, for purposes of tracking allowance trades and expenditures, the small entities would be on the same footing as the larger entities; they would be receiving their best year of activity in the range of years discussed above as a baseline year for determining allowance allocations, and would be able to conduct their business with a degree of certainty in a competitive market. Like the large entities, the small entities would receive allowances for the entire phaseout period, with the necessary adjustments each calendar year to accommodate the required reductions in consumption agreed to by the Parties to the Protocol and the phaseouts of HCFC–141b, HCFC–22, and HCFC–142b.

EPA believes that the ability to transfer allowances among HCFCs provides the greatest flexibility for small entities to manage their allocation. Unlike the class I system for transfers, there is no restriction to limit inter-pollutant transfers to groups of substances. Inter-pollutant transfers, also known as intra-company transfers or trades, would allow a company to shift allowances internally from one HCFC to another to respond to market forces, e.g. HCFC–142b allowances for HCFC–22 allowances. Inter-company transfers of allowances would also be possible, either on a current-year basis or on a permanent basis. Current-year trades are temporary trades and are reflected in a company's balance of allowances in the control period in which the trade occurs.

By using the phaseout schedules and the option for current-year or permanent trades, a small entity could opt for short-term decisions or long-term decisions concerning the allowances it holds after evaluating its place in the market. In addition, the offset required by the CAA is proposed at 0.1 percent, 0.9 percent less than that required under the class I allowance trading system; such an offset would still provide the environmental benefit required by Congress without penalizing small entities should they wish to avail themselves of transfers. EPA estimates that the burden would be negligible on small businesses, while those same small businesses would gain a marketable asset in their allocated allowances. The actual burden would consist of quarterly reports on production, imports, exports, and allowance trades, as well as paperwork describing any trades in which the business decides to engage. The estimated recordkeeping and quarterly reporting burden on the affected small businesses would be about 40 hours per year per business, at an estimated cost of $3,070. Each trade made at the discretion of the small business would add a burden of 4 hours at a cost of $307, basing the calculation on a cost of $76.88 per hour.

EPA has also carefully reviewed the quarterly reports submitted by small entities for the baseline years under consideration to ensure that the correct quantities have been ascribed to each entity for each year. EPA consulted with the small entities in order to reconcile any disparities encountered during the record review.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

C. Executive Order 13045: Children's Health Protection

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it implements specific phaseout schedules established under the CAA and the Montreal Protocol.

D. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or

activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This proposed rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposals discussed in this document are directed to economic entities that either produce, import, export, transform, or destroy class II controlled substances, and not to State or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The options discussed are directed to entities that either produce, import, export, transform, or destroy HCFCs, and not to Indian tribal governments or their communities. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Entities in the private sector that either produce, import, export, transform, or destroy HCFCs will be operating under an allowance allocation system very similar to the system selected for CFCs (53 FR 30566, August 12, 1988), which was determined to be the most economically efficient, market-based, and simple to administer in meeting the requirements of the Protocol. Recordkeeping would be somewhat simplified due to the absence of essential use allowances and destruction credits. The experience gained by those entities familiar with the class I allowance allocation system would carry over in the class II allowance allocation system. Thus, today's rule is not subject to the requirements of Section s 202 and 205 of the UMRA.

H. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2014) and a copy may be

obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www/epa.gov/icr.

The recordkeeping and reporting requirements proposed in this rule are similar to those used in the class I allowance system that has been in place for several years. The information collected will be utilized to monitor business compliance with the proposed class II allowance system. The information will also be used to comply with the reporting requirements agreed to by the Parties to the *Montreal Protocol on Substances that Deplete the Ozone Layer*. The information is intended to ensure that the U.S. meets its obligations to control and administer the phaseouts of class II substances under the Protocol and the CAA Amendments of 1990.

Reporting requirements mandated in Section 603 of the CAA relative to class II substances are currently in place in 40 CFR 82.13(n) and (o). New recordkeeping requirements and expanded reporting requirements to ensure accurate expenditures of allowances and trades of allowances are proposed. Responses to the collection of information are mandatory pursuant to Section 114 of the CAA.

Information collected from businesses may be claimed as confidential by clearly identifying the material as confidential. Such information will be treated in accordance with EPA's procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B and will only be disclosed by the means set forth in that subpart.

It is estimated that the annual reporting burden for producers is 1,132 hours and for importers it is 1,800 hours. This includes maintaining records, preparing and submitting quarterly reports on production, import, exports, and claims for transfers of allowances and offsets. The average burden hours per response is estimated to be between 283 and 450 hours. The proposed frequency of response is four times per year and the likely number of respondents will be 7 producers and 14 importers, although some of the producers and some of the importers also function as exporters. The only industry requirements for the start-up phase are an evaluation of the impact of the allowance system and the development of a plan of action. The start-up burden is estimated to be 910 hours for producers and 1,820 hours for importers.

Start-up costs are estimated to amount to $209,882, after which annual industry cost is estimated to be $225,412 to maintain records of production, import, and export; submit quarterly reports to EPA on production, import and export; provide additional information requested by EPA; prepare transfer claims; and submit petitions to import used HCFCs. The latter two functions are not periodical tasks but are initiated by the person based on business decisions.

U.S. agencies, departments or instrumentalities, or related entities involved in space vehicle endeavors, are being asked in the initial application for an exemption to produce or import HCFC–141b for space vehicle or narrow defense needs to identify the quantity of HCFC–141b needed for each control period, an estimate of the number of control periods over which such an exemption would be necessary, and a detailed description of the need met by HCFC–141b in this proposal. EPA is proposing that the entities supply technical descriptions of the processes in which HCFC–141b is being used, the areas where the product will be applied, and why alternatives and substitutes are not sufficient to eliminate the use of HCFC–141b. EPA is also proposing that entities supply a detailed analysis showing why stockpiled, recovered, or recycled quantities are not technically feasible for use and a detailed description of continuing investigations into and progress on possible alternatives and substitutes by the applicants.

Entities granted space vehicle/defense allowances for the production of HCFC–141b products would be required to report quarterly to EPA on the type and application of the products received from the manufacturer and the quantity of HCFC–141b contained in the products. The manufacturer would report quarterly to EPA the quantity and supplier of HCFC–141b received because of space vehicle/defense allowances; the identity of the recipient of the products; and the quantity of HCFC–141b used or contained in the products. It is estimated that the annual reporting burden for the recipient of the allowances is about 20 hours at a cost of about $864 and the burden for the manufacturer is about 20 hours at a cost of about $1,538.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director; Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs; Office of Management and Budget; 725 17th St., NW; Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 20, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by August 20, 2001. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Reporting and recordkeeping requirements.

Dated: July 2, 2001.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Amend § 82.3 as follows:

a. Revise the section heading;

b. Revise the following definitions: "Article 5 allowances", "Baseline consumption allowances", "Baseline production allowances", "Consumption allowances", "Destruction credits", "Party", "Production allowances", and "Transformation credits';

c. Add new definitions in alphabetical order for the terms "Export production allowances", "Individual shipment", "Non-objection notice", "Source facility", "Space vehicle/defense allowances", "Unexpended space vehicle/defense allowances", and "Unexpended export production allowances".

The revisions and additions read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Article 5 allowances means the allowances apportioned under § 82.9(a) and § 82.18(a).

Baseline consumption allowances means the consumption allowances apportioned under § 82.6 and § 82.19.

Baseline production allowances means the production allowances apportioned under § 82.5 and § 82.17.

* * * * *

Consumption allowances means the privileges granted by this subpart to produce and import controlled substances; however, consumption allowances may be used to produce controlled substances only in conjunction with production allowances. A person's consumption allowances for class I substances are the total of the allowances obtained under §§ 82.6 and 82.7 and 82.10, as may be modified under § 82.12 (transfer of allowances). A person's consumption allowances for class II substances are the total of the allowances obtained under §§ 82.19 and 82.20, as may be modified under § 82.23.

* * * * *

Destruction credits means those privileges that may be obtained under § 82.9 to produce class I controlled substances.

* * * * *

Export production allowances means the privileges granted by § 82.18 to produce HCFC–141b for export following the phaseout of HCFC–141b on January 1, 2003.

* * * * *

Individual Shipment means the kilograms of a used controlled substance for which a person may make one (1) U.S. Customs entry, not to be disaggregated, as identified in the non-objection letter from the Administrator under § 82.13(g) and § 82.24(c)(4).

* * * * *

Non-Objection Notice means the privilege granted by the Administrator to import a specific individual shipment of used controlled substance in accordance with § 82.13(g) and § 82.24(c) (3) and (4).

* * * * *

Party means any foreign state that is listed in Appendix C to this subpart (pursuant to instruments of ratification, acceptance, or approval deposited with the Depositary of the United Nations Secretariat), as having ratified the specified control measure in effect under the Montreal Protocol. Thus, for purposes of the trade bans specified in § 82.4(l)(2) pursuant to the London Amendments, only those foreign states that are listed in Appendix C to this subpart as having ratified both the 1987 Montreal Protocol and the London Amendments shall be deemed to be Parties. For purposes of the trade bans specified in §§ 82.15(e)(1) pursuant to the 1999 Beijing Amendment, only those foreign states that are listed in the third column of Appendix C to this subpart as having ratified the Copenhagen Amendments shall be deemed to be Parties.

* * * * *

Production allowances means the privileges granted by this subpart to produce controlled substances; however, production allowances may be used to produce controlled substances only in conjunction with consumption allowances. A person's production allowances for class I substances are the total of the allowances obtained under §§ 82.7, 82.5 and 82.9, and as may be modified under § 82.12 (transfer of allowances). A person's production allowances for class II substances are the total of the allowances obtained under § 82.17 and as may be modified under §§ 82.18 and 82.23.

* * * * *

Source Facility means the exact location at which a used controlled substance was recovered from a piece of equipment, including the name of the company responsible for, or owning the location, a contact person at the location, the mailing address for that specific location, and a phone number and a fax number for the contact person at the location.

Space vehicle/defense allowances means the privileges granted to space vehicle program or a defense entity by this subpart to order production of or to import HCFC–141b, deemed critical by the Administrator for use on space vehicles intended for travel beyond the earth's atmosphere or for narrow defense needs, as determined by the Administrator in accordance with § 82.18(j).

* * * * *

Transformation Credits means those privileges that may be obtained under § 82.9 to produce class I controlled substances.

* * * * *

Unexpended export production allowances means export production allowances that have not been used. A person's unexpended export production allowances are the total of the quantity of the export production allowances the person has authorization under § 82.18(b) to hold for that control period, minus the quantity of class II substances that the person has produced at that time during the same control period.

* * * * *

Unexpended space vehicle/defense allowances means space vehicle/defense allowances that have not been used. A person's unexpended space vehicle/defense allowances are the total of the quantity of the space vehicle/defense allowances the person has authorization under § 82.18(j) to hold for that control period, minus the quantity of HCFC–141b that the person has had produced or has had imported at that time during the same control period.

* * * * *

3. Amend § 82.4 as follows:

a. Revise the section heading;

b. Remove paragraphs (n) through (s) and paragraph (u).

c. Redesignate paragraph (t) as (n).

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

4. Amend § 82.5 as follows:

a. Revise the section heading;

b. Remove paragraph (h).

§ 82.5 Apportionment of baseline production allowances for class I controlled substances.

* * * * *

5. Amend § 82.6 as follows:

a. Revise the section heading;

b. Remove paragraph (h).

§ 82.6 Apportionment of baseline consumption allowances for class I controlled substances.

§ 82.8 [Removed]

6. Section 82.8 is removed.

7. Section 82.9 is amended by revising the section heading as follows:

§ 82.9 Availability of production allowances in addition to baseline production allowances for class I controlled substances.

8. Section 82.10 is amended by revising the section heading as follows:

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances for class I controlled substances.

9. Section 82.11 is amended by revising the section heading as follows:

§ 82.11 Exports of class I controlled substances to Article 5 Parties.

10. Section 82.12 is amended by revising the section heading as follows:

§ 82.12 Transfers of allowances for class I controlled substances.

11. Amend § 82.13 as follows:

a. Revise the section heading;

b. Remove paragraphs (n) and (o).

c. Redesignate paragraphs (p) through (z) as (n) through (x)

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

12. Add §§ 82.15 through 82.24 to subpart A to read as follows:

§ 82.15 Prohibitions for class II controlled substances.

(a) *Production.* (1) Effective January 1, 2002, no person may produce class II substances in excess of the quantity of unexpended production allowances, unexpended Article 5 allowances, unexpended export production allowances, or unexpended space vehicle/defense allowances held by that person for that substance under the authority of this subpart at any time in any control period, unless the substances are transformed or destroyed domestically or by a person of another Party. Every kilogram of excess production constitutes a separate violation of this subpart.

(2) Effective January 1, 2002, no person may produce class II substances in excess of the quantity of unexpended consumption allowances, unexpended Article 5 allowances, unexpended export production allowances, or unexpended space vehicle/defense allowances held by that person under the authority of this subpart at any time in any control period, unless the substances are transformed or destroyed domestically or by a person of another Party, or unless they are produced using an exception granted in paragraph (f) of this section. Every kilogram of excess production constitutes a separate violation of this subpart.

(3) Effective January 1, 2002, no person may use production allowances to produce a quantity of class II substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class II substances. No person may use consumption allowances to produce a quantity of class II substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class II substances.

(4) Effective January 1, 2003, no person may produce HCFC–141b except for use in a process resulting in its transformation or its destruction, for export under § 82.18(a) using unexpended Article 5 allowances, for export under § 82.18(b) using unexpended export production allowances, for space vehicle/defense needs using unexpended space vehicle/defense allowances, or for exceptions permitted in paragraph (f) of this section.

(5) Effective January 1, 2010, no person may produce HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation or their destruction, for use in equipment manufactured before January 1, 2010, for export under § 82.18(a) using unexpended Article 5 allowances, or for exceptions permitted in paragraph (f) of this section.

(6) Effective January 1, 2015, no person may produce class II substances not previously controlled, for any purpose other than for use in a process resulting in their transformation or their destruction, for use as a refrigerant in equipment manufactured before January 1, 2020, for export under § 82.18(a) using unexpended Article 5 allowances, or for exceptions permitted in paragraph (f) of this section.

(7) Effective January 1, 2020, no person may produce HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation or their destruction, for export under § 82.18(a) using unexpended Article 5 allowances, or for exceptions permitted in paragraph (f) of this section.

(8) Effective January 1, 2030, no person may produce class II substances, for any purpose other than for use in a process resulting in their transformation or their destruction, for export under § 82.18(a) using unexpended Article 5 allowances, or for exceptions permitted in paragraph (f) of this section.

(9) Effective January 1, 2040, no person may produce class II substances for any purpose other than for use in a process resulting in their transformation or their destruction, or for exceptions permitted in paragraph (f) of this section.

(b) *Import.* (1) Effective January 1, 2002, no person may import class II substances (other than transhipments, heels or used class II substances), except for use in a process resulting in their transformation or their destruction, in excess of the quantity of unexpended consumption allowances held by that person under the authority of this subpart, at any time in any control period. Every kilogram of excess importation constitutes a separate violation of this subpart.

(2) Effective January 1, 2002, no person may import, at any time in any control period, a used class II substance, without having submitted a petition to the Administrator and received a non-objection notice from the Administrator in accordance with § 82.24(c)(3) and (4). A person issued a non-objection notice for the import of an individual shipment of used class II substances may not transfer or confer the right to import, and may not import any more than the exact quantity (in kilograms) of the used class II substance stated in the non-objection notice. Every kilogram of importation of used class II substance in excess of the quantity stated in the non-objection notice issued by the Administrator in accordance with § 82.24(c)(3) and (4) constitutes a separate violation.

(3) Effective January 1, 2003, no person may import HCFC–141b (other than transhipments, heels or used class II substances) in excess of the quantity of unexpended space vehicle/defense allowances held by that person except for use in a process resulting in its transformation or its destruction, or for exceptions permitted in paragraph (f) of this section.

(4) Effective January 1, 2010, no person may import HCFC–22 or HCFC–142b (other than transhipments, heels or used class II substances) for any purpose other than for use in a process resulting in their transformation or their destruction, for exceptions permitted in paragraph (f) of this section, or for use

in equipment manufactured prior to January 1, 2010.

(5) Effective January 1, 2015, no person may import class II substances not subject to the requirements of paragraph (b)(3) or (4) of this section (other than transhipments, heels or used class II substances) for any purpose other than for use in a process resulting in their transformation or their destruction, for exceptions permitted in paragraph (f) of this section, or for use as a refrigerant in equipment manufactured prior to January 1, 2020.

(6) Effective January 1, 2020, no person may import HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation or their destruction, or for exceptions permitted in paragraph (f) of this section.

(7) Effective January 1, 2030, no person may import class II substances not subject to the requirements of paragraph (b)(3) or (4) of this section for any purpose other than for use in a process resulting in their transformation or their destruction, or for exceptions permitted in paragraph (f) of this section.

(c) *Post-phaseout limits to Article 5 countries.* Effective January 1, 2003 for HCFC–141b; January 1, 2010 for HCFC–22 and HCFC–142b; and January 1, 2015 for all other HCFCs, no person may produce class II substances for export to Article 5 countries in excess of unexpended Article 5 allowances, as allocated under § 82.18(a), and unexpended export allowances, as allocated under § 82.18(b). No person may introduce into interstate commerce in the U.S. any class II substance produced explicitly for export to an Article 5 country.

(d) *Post-phaseout limits to non-Article 5 countries.* Effective January 1, 2003, no person may produce HCFC–141b for export to non-Article 5 countries in excess of unexpended export production allowances, as allocated under § 82.18(b). No person may introduce into interstate commerce in the U.S. any HCFC–141b produced using export production allowances.

(e) *Violations.* Every kilogram of a class II substance, and every class II product, imported or exported in contravention of this subpart constitutes a separate violation of this subpart. No person may:

(1) Import or export any quantity of a controlled substance listed as class II, in Appendix A to this subpart, from or to any foreign state not Party to the Copenhagen Amendments (as noted in Appendix C, Annex l, to this subpart), unless that foreign state is complying with the Copenhagen Amendments.

(2) [Reserved]

(f) Exemptions.

(1) Medical devices.

(2) [Reserved]

§ 82.16 Phaseout schedule of class II controlled substances.

(a) Effective January 1, 2002, each person is granted the specified percentage of the baseline production and consumption allowances allocated under §§ 82.17 and 82.19 in each control period as indicated in the table at the end of this section.

(b) On January 1 of the phaseout year designated for each class II substance, EPA will deduct from each company all baseline consumption and production allowances granted in 2002 for that substance. EPA will also deduct baseline consumption and production allowances received in a permanent trade after January 1, 2002 for that substance. Deductions do not include:

(1) Article 5 allowances granted under § 82.18(a).

(2) Export production allowances granted under § 82.18(b).

(3) Space vehicle/defense allowances granted under § 82.18(j).

(4) Baseline consumption and production allowances traded away permanently after January 1, 2002.

(5) Any other allowances associated with exceptions to production and import bans for class II substances.

(c) The following table lists the phase out schedule of class II controlled substances:

Control period	Percent of HCFCs (except for 141b, 22, and 142b)	Percent of HCFC–141b	Percent of HCFC–22 & HCFC–142b
2002	100	100	100
2003	100	[d]0	100
2004	100[a]	[d]0	100
2005	[a]100	[d]0	100
2006	[a]100	[d]0	100
2007	[a]100	[d]0	100
2008	[a]100	[d]0	100
2009	[a]100	[d]0	100
2010	[a]100	[d]0	[b d]0
2011	[a]100	[d]0	[d]0
2012	[a]100	[d]0	[d]0
2013	[a]100	[d]0	[d]0
2014	[a]100	[d]0	[d]0
2015	[c]0	[d]0	[d]0

[a] Allocations may be reduced pro rata for these years if EPA determines that Montreal Protocol consumption reduction requirements cannot be met through this schedule.

[b] On and after January 1, 2010, HCFC–22 and HCFC–142b may still be produced for use in equipment manufactured before January 1, 2010, providing the producer has adequate production and consumption allowances.

[c] On and after January 1, 2015, all other HCFCs, not previously phased out, may still be produced as a refrigerant for use in refrigeration equipment manufactured before January 1, 2020, providing the producer has adequate production and consumption allowances.

[d] Export production allowances may be available after the phaseout under § 82.18.

§ 82.17 Apportionment of baseline production allowances for class II controlled substances.

Effective January 1, 2002, a person who produced class II substances in any of the years 1989, 1994, 1995, 1996, and 1997, and who accurately reported such activity as required by EPA, is apportioned baseline production allowances based on the person's year of highest total ODP-weighted consumption as set forth in the following table. Companies whose names have been changed are listed under their official name in effect during the baseline year. Additional companies for whom EPA does not have complete information as of this

proposal, or who EPA determines are eligible for a late entrant exemption, may be listed with allocations in the final rule, pending receipt of such information or EPA determination:

Person	Controlled substance	Allowances (kg.)
Allied (Honeywell)	HCFC–22	36,094,556
	HCFC–124	3,227,086
	HCFC–141b	27,719,366
	HCFC–142b	2,334,508
Ausimont	HCFC–142b	4,418,767
DuPont	HCFC–22	52,072,484
	HCFC–123	10,410
	HCFC–124	6,390
	HCFC–141b	10,464
	HCFC–142b	53,978
Elf Atochem (ATOFINA Chemicals)	HCFC–22	22,230,306
	HCFC–141b	23,801,431
	HCFC–142b	15,577,099
MDA	HCFC–22	2,301,966

§ 82.18 Availability of production allowances in addition to baseline production allowances for class II controlled substances.

(a) Effective January 1, 2003 for HCFC–141b; January 1, 2010 for HCFC–22 and HCFC–142b; and 2015 for all other HCFCs, a person apportioned baseline production allowances under § 82.17 is also apportioned Article 5 allowances, equal to 15 percent of their baseline production allowances for the specified HCFC or HCFCs for each control period up until January 1, 2030, to be used for the production of the specified HCFC or HCFCs for export only to foreign states listed in Appendix E to this subpart. The quantity produced for export under this paragraph must not exceed the quantity of Article 5 allowances held by that person. Inter-pollutant trades of Article 5 allowances may only be made for other Article 5 allowances.

(1) Each person who exports a class II substance that was produced with an Article 5 allowance to an Article 5 country must submit a notice to the Administrator of such exports (except exports of used class II substances) at the end of the quarter, as set forth in § 82.24(d)(1) and (d)(3).

(2) [Reserved]

(b) Effective January 1, 2003, a person apportioned baseline production allowances for HCFC–141b under § 82.17 is also apportioned export production allowances equal to 100 percent of their baseline production allowances for HCFC–141b for each control period up until December 31, 2009, to be used for the production of HCFC–141b for export only, to foreign states listed in the third column of Appendix C to this subpart (Parties to the Copenhagen Amendments). The quantity produced for export under this paragraph must not exceed the quantity of unexpended export production allowances held by that person at that time for that control period. Inter-pollutant trades of export production allowances may only be made for other export production allowances.

(1) Each person who exports HCFC–141b that was produced with export production allowances must submit a notice to the Administrator of such exports at the end of the quarter, as set forth in § 82.24(d)(2).

(2) [Reserved]

(c) Effective January 1, 2002, a person may increase or decrease production allowances through trading allowed under § 82.23(a), (b), (c) and (d). Trades cannot be made for production of any substance after that class II substance's phaseout date, except as provided under paragraphs (a) and (b) of this section.

(d) Effective January 1, 2002, a person may increase its production allowances, its export production allowances, or its Article 5 allowances, through trades with another Party to the Protocol as set forth in this paragraph (d), and as allowed under § 82.23(d). Trades cannot be made for production of any substance after that class II substance's phaseout date, except as provided under paragraph (a) of this section (regarding Article 5 allowances) and paragraph (b) of this section (regarding export production allowances). A nation listed in the third column of Appendix C to this subpart (Parties to the Copenhagen Amendments) must agree either to transfer to the person for the current control period some quantity of production that the nation is permitted under the Montreal Protocol or to receive from the person for the current control period some quantity of production that the person is permitted under this subpart. If the class II substance is to be sold to the Party from whom the allowances are received, the person need not expend its consumption allowances allocated under § 82.19 in order to produce with the additional production allowances. If the class II substance is to be sold in the U.S. or to another Party (not the Party transferring the allowances), the person need not expend its consumption allowances allocated under § 82.19 in order to produce with the additional production allowances.

(e) *Trade from a Party—Information Requirements.* A person must submit the following information to the Administrator:

(1) A signed document from the principal diplomatic representative in that nation's embassy in the U.S. stating that the appropriate authority within that nation has established or revised production limits for the nation. The production limit must be equal to the lowest of the following three production quantities:

(i) The maximum production that the nation is allowed under the Protocol minus the quantity (in kilograms) transferred;

(ii) The maximum production that is allowed under the nation's applicable domestic law minus the quantity (in kilograms) transferred; or

(iii) The average of the nation's actual national production level for the three years prior to the transfer minus the production transferred.

(2) A transfer request that includes a true copy of this document and that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and quantity (in kilograms) of production being transferred;

(v) Documentation that the Party possesses the necessary quantity of unexpended production rights;

(vi) The control period(s) to which the transfer applies; and

(vii) For increased production intended for export to the Party from whom the allowances would be received, a signed statement of intent to export to the Party.

(f) *Trade to a Party—Information Requirements.* A person must submit the following information to the Administrator:

(1) A transfer request that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and quantity (in kilograms) of allowable production being transferred; and

(v) The control period(s) to which the transfer applies.

(g) *Review of transfer request to a Party.* After receiving a transfer request that meets the requirements of paragraph (f) of this section, the Administrator may, at his/her discretion, consider the following factors in deciding whether to approve such a transfer:

(1) Possible creation of domestic economic hardship;

(2) Possible effects on trade;

(3) Potential environmental implications; and

(4) The total quantity of unexpended production allowances held by U.S. entities.

(h) *Notice of trade.* If the request meets the requirement of paragraph (e) of this section for trades from Parties and paragraphs (f) and (g) of this section for trades to Parties, the Administrator will issue the person a notice. The notice will either grant or deduct production allowances or export production allowances or Article 5 allowances and specify the control period to which the transfer applies. The Administrator may disapprove the transfer request contingent on the consideration of factors listed in paragraph (d)(3) of this section for trades to Parties.

(1) Trade from a Party. The Administrator will issue a notice revising the allowances held by the transferee to equal the unexpended production allowances or unexpended Article 5 allowances held by the transferee under this subpart plus the quantity of allowable production transferred from the Party.

(2) Trade to a Party. The Administrator will issue a notice revising the production limit for the transferor to equal the lesser of:

(i) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the transferor minus the quantity transferred; or

(ii) The quantity derived in paragraph (i) of this section, minus the amount derived from the following calculation:

(A) The total U.S. allowable production of the class II substance being traded minus the three-year average of the actual annual U.S. production of the class II substance prior to the control period of the transfer.

(B) [Reserved]

(i) Revised notices of production limits. If after one person obtains approval of a trade of allowable production of a class II substance to a Party and other persons obtain approval for trades of the same class II substance during the same control period, the Administrator will issue revised notices.

(1) Production limit for subsequent transferors. The notices will revise the production limits for each of the other persons trading to equal the lesser of:

(i) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the transferor under this subpart minus the quantity transferred; or

(ii) The result of the following set of calculations:

(A) The total U.S. allowable production of the class II substance minus the three-year average of the actual annual U.S. production of the class II substance prior to the control period of the transfer;

(B) The quantity transferred divided by the total quantity transferred by all the other persons trading the same class II substance in the same control period;

(C) The result of paragraph (i)(1)(ii)(A) of this section multiplied by the result of paragraph (i)(1)(ii)(B) of this section;

(D) The quantity derived in paragraph (i) of this section, minus the result of paragraph (i)(1)(ii)(C) of this section;

(2) Production limit for previous transferors. The Administrator will also issue a notice revising the production limit for each transferor who previously obtained approval of a trade of the class II substance in the same control period to equal the result of the following set of calculations:

(i) The total U.S. allowable production of the class II substance minus the three-year average of the actual annual U.S. production of the class II substance prior to the control period of the transfer;

(ii) The quantity transferred by the person divided by the quantity transferred by all the persons who have traded that class II substance in that control period;

(iii) The result of paragraph (i)(2)(i) of this section multiplied by the result of paragraph (i)(2)(ii) of this section.

(iv) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the person plus the result of paragraph (i)(2)(iii) of this section;

(3) Effective date of revised production limits. The change in production allowances, export production allowances or Article 5 allowances will be effective on the date that the notice is issued.

(j) Petition for space vehicle/defense allowances. Effective January 1, 2002, an agency, department, or instrumentality of the U.S., or a non-governmental space vehicle entity, may petition the Director of the Office of Atmospheric Programs for space vehicle/defense allowances for HCFC–141b in accordance with this paragraph (j) and with § 82.15(a)(4).

(1) The agency, department, or instrumentality of the U.S., or a non-governmental space vehicle entity must submit the following information to the EPA HCFC Manager prior to July 1, 2002:

(i) Name and address of U.S. government entity or non-governmental space vehicle entity; name of contact person, phone number, fax number and e-mail address;

(ii) Quantity (in kilograms) of HCFC–141b needed for the control period beginning January 1, 2003 until December 31, 2005;

(iii) A description of the space vehicle/defense need met by the use of HCFC–141b;

(iv) A technical description of the processes in which HCFC–141b is being used;

(v) A technical description of the area where the product will be applied;

(vi) A technical description of why alternatives and substitutes are not sufficient to eliminate the space vehicle/defense use of HCFC–141b;

(vii) A detailed analysis showing why stockpiled, recovered or recycled quantities are deemed to be technically infeasible for use;

(viii) An estimate of the number of control periods over which such an exemption would be necessary; and

(ix) A detailed description of continuing investigations into possible alternatives and substitutes.

(2) Within 90 days of receipt of the petition, the Director of the Office of Atmospheric Programs will issue to an agency, department, or instrumentality of the U.S., or non-governmental space vehicle entity that has petitioned for space vehicle/defense allowances for HCFC–141b, based on information received in accordance with paragraph (j)(1) of this section, a notice indicating one of the following:

(i) The Director of the Office of Atmospheric Programs may decide to grant space vehicle/defense allowances if he/she determines that the space vehicle/defense allowances are necessary to maintain either safety or operational viability:

(A) The notice will indicate the quantity (in kilograms) that he/she will grant for the specified 3-year control period; and

(B) The grant of space vehicle/defense allowances will be effective on the date that the notice specified in paragraph (j)(2) of this section is issued, and shall not be applicable after December 31, 2009, unless otherwise authorized by EPA.

(ii) The Director of the Office of Atmospheric Programs may request additional information if he/she determines:

(A) The information received in accordance with paragraph (j)(1) of this section is not sufficient to make a determination.

(B) [Reserved]

(iii) The Director of the Office of Atmospheric Programs may decide not to grant space vehicle/defense allowances if he/she determines:

(A) The space vehicle/defense interest can be met by the use of a substance other than HCFC–141b;

(B) The space vehicle/defense interest can be met by the use of existing supplies of HCFC–141b;

(C) There is evidence of fraud or misrepresentation;

(D) Approval of the allowances would be inconsistent with the Montreal Protocol or Decisions of the Parties;

(E) Approval of the allowances would be inconsistent with the Clean Air Act Amendments of 1990; or

(F) Approval of the allowances may reasonably be expected to endanger human health or the environment.

(3) If the Director of the Office of Atmospheric Programs decides not to grant the request for space vehicle/defense allowances for any of the reasons stated in paragraph (j)(2)(iii) of this section, the Director of the Office of Atmospheric Programs will issue an objection letter disallowing the request for space vehicle/defense allowances. Within ten working days after receipt of the objection letter, the requestor may file a one-time appeal, with supporting reasons, with the Director of the Office of Atmospheric Programs. The Director of the Office of Atmospheric Programs may affirm the disallowance or grant an allowance, as she/he finds appropriate in light of the available evidence. If no appeal is taken by the tenth day after receipt of the objection letter, the disallowance will be final on that day.

(4) The total quantity of HCFC–141b produced or imported for space vehicle or narrow defense needs during each year is not to exceed 1 percent of the aggregate of HCFC–141b baselines for one year.

(5) The space vehicle/defense allowance allocation may be renewed every three years after the original petition and the petition for renewal must contain the following information:

(i) Name and address of U.S. government entity or non-governmental space vehicle/defense entity; name of contact person and phone and fax numbers and e-mail address;

(ii) Quantity (in kilograms) of HCFC–141b needed for the control period;

(iii) A description of the space vehicle/defense need met by the use of HCFC–141b;

(iv) A technical description of the process in which HCFC–141b is still being used;

(v) A technical description of the area where the product is still being applied;

(vi) A technical description of why alternatives and substitutes are still not sufficient to eliminate the space vehicle/defense use of HCFC–141b;

(vii) A detailed analysis showing why stockpiled, recovered or recycled quantities are still deemed to be technically and economically infeasible for use; and

(viii) A detailed description of continuing investigations into possible alternatives and substitutes.

(6) For the control period from January 1, 2006 through December 31, 2008, the agency, department, or instrumentality of the U.S., or a non-governmental space vehicle entity must submit the petition for renewal by March 1, 2005.

§ 82.19 Apportionment of baseline consumption allowances for class II controlled substances.

(a) Effective January 1, 2002, a person who produced, imported, or produced and imported class II substances, and accurately reported such activity to EPA as required, in any of the years 1989, 1994, 1995, 1996, and 1997, is apportioned baseline consumption allowances based on the year of the person's highest total ODP-weighted consumption as set forth in paragraphs (1) through (28) of this section. Companies whose names have been changed are listed under their official name in effect during the baseline year. Additional companies for whom EPA does not have complete information as of July 20, 2001, or who EPA determines are eligible for a late entrant exemption, may be listed with allocations in the final rule, pending receipt of such information or EPA determination:

Person	Controlled substance	Allowances (kg)
ABCO	HCFC–22	253,032
AGA	HCFC–225ca	109,653
	HCFC–225cb	134,024
Air Systems	HCFC–22	12,240
Allied (Honeywell)	HCFC–22	32,056,219
	HCFC–124	2,958,382
	HCFC–141b	18,793,538
	HCFC–142b	1,191,783
Altair	HCFC–22	241,367
Ausimont	HCFC–142b	4,418,767
Automatic Equipment	HCFC–22	48,989
Condor	HCFC–22	603,374
Continental	HCFC–141b	18,400
DuPont	HCFC–22	46,599,488

Person	Controlled substance	Allowances (kg)
	HCFC–123	71,063
	HCFC–124	6,302
	HCFC–141b	8,196
	HCFC–142b	47,820
Elf Atochem	HCFC–22	26,741,356
(ATOFINA Chemicals)	HCFC–141b	23,010,714
	HCFC–142b	15,101,025
HG Refrigeration	HCFC–22	36,291
ICC	HCFC–141b	73,568
ICI	HCFC–22	2,306,278
Kivlan (Dynatemp)	HCFC–22	1,837,718
Klomar	HCFC–22	7,776
MDA	HCFC–22	2,301,966
Mondy-Global	HCFC–22	255,258
National Refrigerants	HCFC–22	4,963,713
	HCFC–123	76,520
	HCFC–124	204,980
Refricenter	HCFC–22	345,350
Refricentro	HCFC–22	41,645
Rhone-Poulenc	HCFC–22	47,180
R-Lines	HCFC–22	57,217
Saez	HCFC–22	34,360
Solvay	HCFC–22	284,370
	HCFC–124	274,990
	HCFC–141b	3,568,700
Tesco	HCFC–22	43,520
Tulstar	HCFC–141b	78,720

(b) [Reserved]

§ 82.20 Availability of consumption allowances in addition to baseline consumption allowances for class II controlled substances.

(a) Effective January 1, 2002, a person may obtain at any time during the control period, in accordance with the provisions of this subsection, consumption allowances equivalent to the quantity of class II substances (other than used class II substances or transhipments) that the person has exported from the U.S. and its territories to a foreign state listed in the third column of Appendix C to this subpart (Parties to the Copenhagen Amendments).

(1) The exporter must submit to the Administrator a request for consumption allowances setting forth the following:

(i) The identities and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and the recipient;

(iv) The quantity (in kilograms) and type of class II substances reported;

(v) The source of the class II substances and the date purchased;

(vi) The date on which, and the port from which, the class II substances were exported from the U.S. or its territories;

(vii) The country to which the class II substances were exported;

(viii) A copy of the bill of lading and the invoice indicating the net quantity (in kilograms) of class II substances shipped and documenting the sale of the class II substances to the purchaser;

(ix) The commodity code of the class II substances reported; and

(x) A written statement from the producer that the class II substances were produced with expended allowances.

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section and will issue a notice.

(i) The Administrator will determine the quantity of class II substances that the documentation verifies was exported and issue consumption allowances equivalent to the quantity of class II substances that were exported.

(A) The grant of the consumption allowances will be effective on the date the notice is issued.

(B) The consumption allowances will be granted to the person the exporter indicates, whether it is the producer or the exporter.

(ii) The Administrator will issue a notice that the consumption allowances are not granted if the Administrator determines that the information and documentation do not satisfactorily substantiate the exporter's claims.

(b) Effective January 1, 2002, a person may increase consumption allowances through trading allowed under § 82.23(a), (b), and (c).

§ 82.21 [Reserved]

§ 82.22 [Reserved]

§ 82.23 Transfers of allowances of class II controlled substances.

(a) *Inter-company transfers.* (1) Effective January 1, 2002, a person ("transferor") may transfer to any other person ("transferee") any quantity of the transferor's class II consumption allowances, production allowances, export production allowances, or Article 5 allowances, as follows:

(i) The transferor must submit to the Administrator a transfer claim setting forth the following:

(A) The identities and addresses of the transferor and the transferee;

(B) The name and telephone numbers of contact persons for the transferor and the transferee;

(C) The type of allowances being transferred, including the names of the class II substances for which allowances are to be transferred;

(D) The quantity (in kilograms) of allowances being transferred;

(E) The control period(s) for which the allowances are being transferred;

(F) The quantity of unexpended allowances of the type and for the control period being transferred that the transferor holds under authority of this subpart on the date the claim is submitted to EPA; and

(G) For trades of consumption allowances, production allowances, export production allowances, or Article 5 allowances, the quantity of the 0.1

percent offset applied to the unweighted quantity traded that will be deducted from the transferor's allowance balance.

(ii) The Administrator will determine whether the records maintained by EPA indicate that the transferor possesses unexpended allowances sufficient to cover the transfer claim on the date the transfer claim is processed. The transfer claim is the quantity (in kilograms) to be transferred plus, in the case of transfers of production or consumption allowances, 0.1 percent of that quantity. The Administrator will take into account any previous transfers, any production, and allowable imports and exports of class II substances reported by the transferor. Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(A) The Administrator will issue a notice indicating that EPA does not object to the transfer if EPA's records show that the transferor has sufficient unexpended allowances to cover the transfer claim. In the case of transfers of production or consumption allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. In the case of transfers of export production or Article 5 allowances, EPA will reduce the transferor's balance of unexpended allowances, respectively, by the quantity to be transferred. The transferor and the transferee may proceed with the transfer when EPA issues a no objection notice. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee, where applicable, will be held liable for any knowing violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(B) The Administrator will issue a notice disallowing the transfer if EPA's records show that the transferor has insufficient unexpended allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination. Either party may file a notice of appeal, with supporting reasons, with the Administrator within 10 working days after receipt of notification. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) The transferor and transferee may proceed with the transfer if the Administrator does not respond to a transfer claim within the three working days specified in paragraph (a)(1)(ii) of this section. In the case of transfers of production or consumption allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. In the case of transfers of export production allowances or Article 5 allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. If EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and/or the transferee, where applicable, will be held liable for any knowing violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(b) *Inter-pollutant transfers.* (1) Effective January 1, 2002, a person (transferor) may convert consumption allowances or production allowances for one class II substance to the same type of allowance for another class II substance listed in Appendix B of this subpart, following the procedures described in paragraph (b)(3) of this section.

(2) Inter-pollutant transfers will be permitted at any time during the control period and during the 45 days after the end of a control period.

(3) The transferor must submit to the Administrator a transfer claim that includes the following:

(i) The identity and address of the transferor;

(ii) The name and telephone number of a contact person for the transferor;

(iii) The type of allowances being converted, including the names of the class II substances for which allowances are to be converted;

(iv) The quantity (in kilograms) and type of allowances to be converted;

(v) The quantity (in kilograms) of allowances to be subtracted from the transferor's unexpended allowances for the first class II substance, to be equal to 100.1 percent of the quantity of allowances converted;

(vi) The quantity (in kilograms) of allowances to be added to the transferor's unexpended allowances for the second class II substance, to be equal to the quantity (in kilograms) of allowances for the first class II substance being converted multiplied by the quotient of the ozone depletion potential of the first class II substance divided by the ozone depletion potential of the second class II substance, as listed in Appendix B to this subpart;

(vii) The control period(s) for which the allowances are being converted; and

(viii) The quantity (in kilograms) of unexpended allowances of the type and for the control period being converted that the transferor holds under authority of this subpart as of the date the claim is submitted to EPA.

(4) The Administrator will determine whether the records maintained by EPA indicate that the convertor possesses unexpended allowances sufficient to cover the transfer claim on the date the transfer claim is processed (i.e., the quantity (in kilograms) to be converted plus 0.1 percent of that quantity (in kilograms)). EPA will take into account any previous transfers, any transfers, and any production, imports (not including transshipments or used class II substances), or exports (not including transhipments or used class II substances) of class II substances reported by the convertor. Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the convertor as follows:

(i) The Administrator will issue a notice indicating that EPA does not object to the transfer if EPA's records show that the convertor has sufficient unexpended allowances to cover the transfer claim. EPA will reduce the transferor's balance of unexpended allowances by the quantity to be converted plus 0.1 percent of that quantity (in kilograms). When EPA issues a no objection notice, the transferor may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(ii) The Administrator will issue a notice disallowing the transfer if EPA's records show that the transferor has insufficient unexpended allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination. The transferor may file a notice of appeal, with supporting reasons, with the Administrator within 10 working days after receipt of notification. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) The transferor may proceed with the transfer if the Administrator does not respond to a transfer claim within the three working days specified in

paragraph (b)(4) of this section. EPA will reduce the transferor's balance of unexpended allowances by the quantity (in kilograms) to be converted plus 0.1 percent of that quantity (in kilograms). The transferor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer if EPA ultimately finds that the transferor did not have sufficient unexpended allowances or credits to cover the claim.

(c) *Inter-company transfers and Inter-pollutant transfers.* (1) If a person requests an inter-company transfer and an inter-pollutant transfer simultaneously, the quantity (in kilograms) subtracted from the transferor's unexpended production or consumption allowances for the first class II substance will be equal to 100.1 percent of the quantity (in kilograms) of allowances that are being converted and transferred.

(2) [Reserved]

(d) *Transfers of class II production between Parties.* (1) A person may increase or decrease its production allowances, export production allowances, or Article 5 allowances by trading such allowances with another Party to the Protocol, in accordance with the provisions in § 82.18(d).

(2) [Reserved]

§ 82.24 Recordkeeping and reporting requirements for class II controlled substances.

(a) *Recordkeeping and reporting.* Any person who produces, imports, exports, transforms, or destroys class II substances must comply with the following recordkeeping and reporting requirements:

(1) Reports required by this section must be mailed to the Administrator within 15 days of the end of the applicable reporting period, unless otherwise specified.

(2) Records and copies of reports required by this section must be retained for three years.

(3) Quantities of class II substances must be stated in terms of kilograms in reports required by this section.

(4) Reports and records required by this section may be used for purposes of compliance determinations. These requirements are not intended as a limitation on the use of other evidence admissible under the Federal Rules of Evidence. Failure to provide the reports, petitions and records required by this section and to certify the accuracy of the information in the reports, petitions and records required by this section, will be considered a violation of this subpart. False statements made in reports, petitions and records will be considered violations of Section 113 of the Clean Air Act and under 18 U.S. Code Section 1001.

(b) *Producers.* Persons ("producers") who produce class II substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) Reporting—Producers. For each quarter, each producer of a class II substance must provide the Administrator with a report containing the following information:

(i) The quantity (in kilograms) of production of each class II substance used in processes resulting in their transformation by the producer and the quantity (in kilograms) intended for transformation by a second party;

(ii) The quantity (in kilograms) of production of each class II substance used in processes resulting in their destruction by the producer and the quantity (in kilograms) intended for destruction by a second party;

(iii) The expended allowances for each class II substance;

(iv) The producer's total of expended and unexpended production allowances, consumption allowances, export production allowances, and Article 5 allowances at the end of that quarter;

(v) The quantity (in kilograms) of class II substances sold or transferred during the quarter to a person other than the producer for use in processes resulting in their transformation or eventual destruction;

(vi) A list of the quantities and names of class II substances exported, by the producer or by other U.S. persons, to a Party to the Protocol that will be transformed or destroyed and therefore were not produced expending production or consumption allowances;

(vii) For transformation in the U.S. or by a person of another Party, one copy of a transformation verification from the transformer for a specific class II substance and a list of additional quantities shipped to that same transformer for the quarter;

(viii) For destruction in the U.S. or by a person of another Party, one copy of a destruction verification paragraph (e) of this section for a particular destroyer, destroying the same class II substance, and a list of additional quantities shipped to that same destroyer for the quarter;

(ix) In cases where the producer produced class II substances using export production allowances, a list of U.S. entities that purchased those class II substances and exported them to a Party to the Protocol;

(x) In cases where the producer produced class II substances using Article 5 allowances, a list of U.S. entities that purchased those class II substances and exported them to Article 5 countries; and

(xi) A list of the space vehicle/defense allowance holders from whom orders were placed and the quantity (in kilograms) of HCFC–141b requested and produced.

(2) Recordkeeping—Producers. Every producer of a class II substance during a control period must maintain the following records:

(i) Dated records of the quantity (in kilograms) of each class II substance produced at each facility;

(ii) Dated records of the quantity (in kilograms) of class II substances produced for use in processes that result in their transformation or for use in processes that result in their destruction;

(iii) Dated records of the quantity (in kilograms) of class II substances sold for use in processes that result in their transformation or for use in processes that result in their destruction;

(iv) Dated records of the quantity (in kilograms) of class II substances produced with export production allowances or Article 5 allowances;

(v) Copies of invoices or receipts documenting sale of class II substances for use in processes that result in their transformation or for use in processes that result in their destruction;

(vi) Dated records of the quantity (in kilograms) of each class II substance used at each facility as feedstocks or destroyed in the manufacture of a class II substance or in the manufacture of any other substance, and any class II substance introduced into the production process of the same class II substance at each facility;

(vii) Dated records of the quantity (in kilograms) of raw materials and feedstock chemicals used at each facility for the production of class II substances;

(ix) Dated records of the shipments of each class II substance produced at each plant;

(x) The quantity (in kilograms) of class II substances, the date received, and names and addresses of the source of used materials containing class II substances which are recycled or reclaimed at each plant;

(xi) Records of the date, the class II substance, and the estimated quantity of any spill or release of a class II substance that equals or exceeds 100 pounds;

(xii) Transformation verification in the case of transformation, or the destruction verification in the case of destruction paragraph (e) of this section

showing that the purchaser or recipient of a class II substance, in the U.S. or in another country that is a Party, certifies the intent to either transform or destroy the class II substance, or sell the class II substance for transformation or destruction in cases when allowances were not expended;

(xiii) Written verifications from a U.S. purchaser that the class II substance was exported to a Party to the Copenhagen Amendments, in cases where export production allowances were expended to produce the class II substance;

(xiv) Written verifications from a U.S. purchaser that the class II substance was exported to an Article 5 country in cases where Article 5 allowances were expended to produce the class II substance;

(xv) Written verifications from a U.S. purchaser that HCFC–141b was manufactured for the express purpose of meeting critical space vehicle/defense needs in accordance with information submitted under § 82.18(j), in cases where space vehicle/defense allowances were expended to produce the HCFC–141b.

(3) For any person who fails to maintain the records required by this paragraph, or to submit the report required by this paragraph, the Administrator may assume that the person has produced at full capacity during the period for which records were not kept, for purposes of determining whether the person has violated the prohibitions at § 82.15.

(c) *Importers.* Persons ("importers") who import class II substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) Reporting—Importers. For each quarter, an importer of a class II substance (including importers of used class II substances) must submit to the Administrator a report containing the following information:

(i) Summaries of the record required in paragraphs (c)(2)(i) through (xiv) of this section for the previous quarter;

(ii) The total quantity (in kilograms) imported of each class II substance for that quarter;

(iii) The commodity code for the class II substances imported, which must be one of those listed in Appendix K to this subpart;

(iv) The quantity (in kilograms) of those class II substances imported that are used class II substances.

(v) The quantity (in kilograms) of class II substances imported for that quarter and totaled by chemical for the control period to date;

(vi) The importer's total sum of expended and unexpended consumption allowances by chemical as of the end of that quarter;

(vii) The quantity (in kilograms) of class II substances imported for use in processes resulting in their transformation or destruction;

(viii) The quantity (in kilograms) of class II substances sold or transferred during that quarter to each person for use in processes resulting in their transformation or eventual destruction; and

(ix) Transformation verifications showing that the purchaser or recipient of imported class II substances intends to transform those substances or destruction verifications showing that the purchaser or recipient intends to destroy the class II substances (as provided in paragraph (e) of this section).

(2) Recordkeeping—Importers. An importer of a class II substance (including used class II substances) must maintain the following records:

(i) The quantity (in kilograms) of each class II substance imported, either alone or in mixtures, including the percentage of each mixture which consists of a class II substance;

(ii) The quantity (in kilograms) of those class II substances imported that are used and the information provided with the petition as required under paragraph (c)(3) of this section;

(iii) The quantity (in kilograms) of class II substances other than transhipments or used substances imported for use in processes resulting in their transformation or destruction;

(iv) The quantity (in kilograms) of class II substances other than transhipments or used substances imported and sold for use in processes that result in their destruction or transformation;

(v) The date on which the class II substances were imported;

(vi) The port of entry through which the class II substances passed;

(vii) The country from which the imported class II substances were imported;

(viii) The commodity code for the class II substances shipped, which must be one of those listed in Appendix K to this subpart;

(ix) The importer number for the shipment;

(x) A copy of the bill of lading for the import;

(xi) The invoice for the import;

(xii) The quantity (in kilograms) of imports of used class II substances;

(xiii) The U.S. Customs entry form;

(iv) Dated records documenting the sale or transfer of class II substances for use in processes resulting in their transformation or destruction;

(xiv) Copies of transformation verifications or destruction verifications indicating that the class II substances will be transformed or destroyed (as provided in paragraph (e) of this section.

(3) Petition to Import Used Class II Controlled Substances and Transhipments—Importers. For each individual shipment (not to be aggregated) over 5 pounds of a used class II substance as defined in § 82.3, an importer must submit directly to the Administrator, at least 40 working days before the shipment is to leave the foreign port of export, the following information in a petition:

(i) The name and quantity (in kilograms) of the used class II substance to be imported;

(ii) The name and address of the importer, the importer ID number, the contact person, and the phone and fax numbers;

(iii) Name, address, contact person, phone number and fax number of all previous source equipment from which the used class II substance was recovered;

(iv) A detailed description of the previous use of the class II substance at each source facility and dated documents indicating the date the material was put into the equipment at each source facility (material must have remained in the equipment at least 24 months prior to recovery to be considered previously used);

(v) Name, address, contact person, phone number and fax number of the exporter and of all persons to whom the material was transferred or sold after it was recovered from the source facility;

(vi) The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the chemical. If at the time of submitting a petition the importer does not know the U.S. port of entry, the expected date of shipment and the vessel transporting the chemical, and the importer receives a non-objection notice for the individual shipment in the petition, the importer is required to notify the Administrator of this information prior to the actual U.S. Customs entry of the individual shipment;

(vii) A description of the intended use of the used class II substance, and a copy of the contract for the purchase of the class II substance that includes the name, address, contact person, phone number and fax number of the purchaser;

(viii) The name, address, contact person, phone number and fax number of the U.S. reclamation facility, where applicable;

(ix) If someone at the source facility recovered the class II substance from the equipment, the name and phone and fax numbers of that person;

(x) If the imported class II substance was reclaimed in a foreign Party, the name, address, contact person, phone number and fax number of any or all foreign reclamation facility(ies) responsible for reclaiming the cited shipment;

(xi) An export license from the appropriate government agency in the country of export and, if recovered in another country, the export license from the appropriate government agency in that country;

(xii) If the imported used class II substance is intended to be sold as a refrigerant in the U.S., the name and address of the U.S. reclaimer who will bring the material to the standard required under Subpart F of this Part, if not already reclaimed to those specifications; and

(xiii) A certification of accuracy of the information submitted in the petition.

(4) Review of Petition to Import Used Class II Controlled Substances and Transhipments—Importers. Starting on the first working day following receipt by the Administrator of a petition to import a used class II substance, the Administrator will initiate a review of the information submitted under paragraph (c)(3) of this section and take action within 40 working days to issue either an objection-notice or a non-objection notice for the individual shipment to the person who submitted the petition to import the used class II substance.

(i) For the reasons listed below, the Administrator may issue an objection notice to a petition:

(A) If the Administrator determines that the information is insufficient, that is, if the petition lacks or appears to lack any of the information required under paragraph (c)(3) of this section;

(B) If the Administrator determines that any portion of the petition contains false or misleading information or has reason to believe that the petition contains false or misleading information;

(C) If the transaction appears to be contrary to provisions of the Vienna Convention on Substances that Deplete the Ozone Layer, the Montreal Protocol and Decisions by the Parties, or the non-compliance procedures outlined and instituted by the Implementation Committee of the Montreal Protocol;

(D) If the appropriate government agency in the exporting country has not agreed to issue an export license for the cited individual shipment of used class II substance;

(E) If the exporting country states that it is no longer allowing exports or if it reports that it has not granted any export licenses;

(F) If the Administrator has received information indicating that a person listed in the petition has produced at any time false information regarding trade in class II substances as defined in this subpart, including information required by EPA or required by the appropriate government agency in the exporting country;

(G) If the Administrator has received information indicating that a person listed in the petition is in violation of a requirement in any regulation under Title VI of the Clean Air Act;

(H) If reclamation capacity is installed or is being installed for that specific class II substance in the country of recovery or country of export and the capacity is funded in full or in part through the Multilateral Fund.

(ii) Within ten (10) working days after receipt of the objection notice, the importer may re-petition the Administrator, only if the Administrator indicated "insufficient information" as the basis for the objection notice. If no appeal is taken by the tenth working day after the date on the objection notice, the objection shall become final. Only one re-petition will be accepted for any original petition received by EPA.

(iii) Any information contained in the re-petition which is inconsistent with the original petition must be identified and a description of the reason for the inconsistency must accompany the re-petition.

(iv) In cases where the Administrator has no reason to object to the petition based on the criteria listed in paragraph (c)(4)(i) of this section, the Administrator will issue a non-objection notice.

(v) To pass the approved used class II substances through U.S. Customs, the petition and the non-objection notice issued by EPA must accompany the shipment through U.S. Customs.

(vi) If for some reason, following EPA's issuance of a non-objection notice, new information is brought to EPA's attention which shows that the non-objection notice was issued based on false information, then EPA has the right to:

(A) Revoke the non-objection notice;

(B) Pursue all means to ensure that the class II substance is not imported into the U.S.; and

(C) Take appropriate enforcement actions.

(vii) Once the Administrator issues a non-objection notice, the person receiving the non-objection notice is permitted to import the individual shipment of used class II substance only within the same control period as the date stamped on the non-objection notice.

(viii) A person receiving a non-objection notice from the Administrator for a petition to import used class II substances must maintain the following records:

(A) A copy of the petition;

(B) The EPA non-objection notice;

(C) The bill of lading for the import; and

(D) U.S. Customs entry documents for the import that must include one of the commodity codes from Appendix K to this subpart.

(5) Recordkeeping for Transhipments—Importers. Any person who transhipps a class II substance must maintain records that indicate:

(i) That the class II substance shipment originated in a foreign country;

(ii) That the class II substance shipment is destined for another foreign country; and

(iii) That the class II substance shipment will not enter interstate commerce within the U.S.

(d) *Exporters.* Persons ("exporters") who export class II substances during a control period must comply with the following reporting requirements:

(1) Reporting—Exporters. For any exports of class II substances not reported under § 82.20 (additional consumption allowances), or under paragraph (b)(2) of this section (reporting for producers of class II substances), each exporter who exported a class II substance must submit to the Administrator the following information within 15 days after the end of each quarter in which the unreported exports left the U.S.:

(i) The names and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The type and quantity (in kilograms) of each class II substance exported and what percentage, if any of the class II substance is used;

(iv) The date on which, and the port from which, the class II substances were exported from the U.S. or its territories;

(v) The country to which the class II substances were exported;

(vi) The quantity (in kilograms) exported to each Article 5 country;

(vii) The commodity code for the class II substances shipped, which must be one of those listed in Appendix K to this subpart;

(viii) For persons reporting transformation or destruction, the invoice or sales agreement containing

language similar to the transformation verifications that the purchaser or recipient of imported class II substances intends to transform those substances, or destruction verifications showing that the purchaser or recipient intends to destroy the class II substances (as provided in paragraph (e) of this section).

(2) Reporting Export Production Allowances—Exporters. In addition to the information required in paragraph (d)(1) of this section, any exporter using export production allowances must also provide the following to the Administrator:

(i) The Employer Identification Number on the Shipper's Export Declaration Form or Employer Identification Number of the shipping agent shown on the U.S. Customs Form 7525;

(ii) The exporting vessel on which the class II substances were shipped; and

(iii) The quantity (in kilograms) exported to each Party.

(3) Reporting Article 5 Allowances—Exporters. In addition to the information required in paragraph (d)(1) of this section, any exporter using Article 5 allowances must also provide the following to the Administrator:

(i) The Employer Identification Number on the Shipper's Export Declaration Form or Employer Identification Number of the shipping agent shown on the U.S. Customs Form 7525; and

(ii) The exporting vessel on which the class II substances were shipped.

(4) Reporting Used Class II Controlled Substances—Exporters. Any exporter of used class II substances must indicate on the bill of lading or invoice that the class II substance is used, as defined in § 82.3.

(e) *Transformation and Destruction.* Any person who transforms or destroys class II substances must comply with the following recordkeeping and reporting requirements:

(1) Recordkeeping—Transformation and Destruction. Any person who transforms or destroys class II substances produced or imported by another person must maintain the following:

(i) Copies of the invoices or receipts documenting the sale or transfer of the class II substances to the person;

(ii) Records identifying the producer or importer of the class II substances received by the person;

(iii) Dated records of inventories of class II substances at each plant on the first day of each quarter;

(iv) Dated records of the quantity (in kilograms) of each class II substance transformed or destroyed;

(v) In the case where class II substances were purchased or transferred for transformation purposes, a copy of the person's transformation verification as provided under paragraph (e)(3)of this section.

(vi) Dated records of the names, commercial use, and quantities (in kilograms) of the resulting chemical(s) when the class II substances are transformed; and

(vii) Dated records of shipments to purchasers of the resulting chemical(s) when the class II substances are transformed.

(viii) In the case where class II substances were purchased or transferred for destruction purposes, a copy of the person's destruction verification, as provided under paragraph (e)(5) of this section.

(2) Reporting—Transformation and Destruction. Any person who transforms or destroys class II substances and who has submitted a transformation verification in paragraph (e)(3) of this section or a destruction verification in paragraph (e)(5) of this section to the producer or importer of the class II substances, must report the following:

(i) the names and quantities (in kilograms) of the class II substances transformed for each control period within 45 days of the end of such control period; and

(ii) the names and quantities (in kilograms) of the class II substances destroyed for each control period within 45 days of the end of such control period.

(3) Reporting—Transformation. Any person who purchases class II substances for purposes of transformation must provide the producer or importer with a verification that the class II substances are to be used in processes that result in their transformation.

(i) The transformation verification shall include the following:

(A) Identity and address of the person intending to transform the class II substances;

(B) The quantity (in kilograms) of class II substances intended for transformation;

(C) Identity of shipments by purchase order number(s), purchaser account number(s), by location(s), or other means of identification;

(D) Period of time over which the person intends to transform the class II substances; and

(E) Signature of the verifying person.

(ii) If any aspects of this verification change at any time, the person must submit a revised verification reflecting such changes to the producer from whom that person purchased class II substances intended for transformation.

(4) Reporting—Destruction. Any person who destroys class II substances shall provide EPA with a one-time report containing the following information:

(i) The destruction unit's destruction efficiency;

(ii) The methods used to record the volume destroyed;

(iii) The methods used to determine destruction efficiency;

(iv) The name of other relevant federal or state regulations that may apply to the destruction process;

(v) Any changes to the information in paragraphs (e)(4)(i), (ii), and (iii) of this section must be reflected in a revision to be submitted to EPA within 60 days of the change(s).

(5) Reporting—Destruction. Any person who purchases or receives and subsequently destroys class II substances that were originally produced without expending allowances shall provide the producer or importer from whom it purchased or received the class II substances with a verification that the class II substances will be used in processes that result in their destruction.

(i) The destruction verification shall include the following:

(A) Identity and address of the person intending to destroy class II substances;

(B) Indication of whether those class II substances will be completely destroyed, as defined in § 82.3, or less than completely destroyed, in which case the destruction efficiency at which such substances will be destroyed must be included;

(C) Period of time over which the person intends to destroy class II substances; and

(D) Signature of the verifying person.

(ii) If any aspects of this verification change at any time, the person must submit a revised verification reflecting such changes to the producer from whom that person purchased class II substances intended for destruction.

(f) *Heels—Recordkeeping and Reporting.* Any person who brings into the U.S. a container with a heel, as defined in § 82.3, of class II substances, must comply with the following requirements:

(1) Any person who brings a container with a heel must indicate on its bill of lading or invoice that the class II substance in the container is a heel.

(2) Any person who brings a container with a heel must report quarterly the quantity (in kilograms) brought into the U.S. and certify:

(i) That the residual quantity (in kilograms) in each shipment is no more

than 10 percent of the volume of the container;

(ii) That the residual quantity (in kilograms) in each shipment will either:

(A) Remain in the container and be included in a future shipment;

(B) Be recovered and transformed;

(C) Be recovered and destroyed; or

(D) Be recovered for a non-emissive use.

(3) Any person who brings a container with a heel into the U.S. must report on the final disposition of each shipment within 45 days of the end of the control period.

(g) Space vehicle/defense allowances—Reporting.

(1) Any person allocated space vehicle/defense allowances who submits an order to a producer or importer for a product made with or containing HCFC–141b must also submit quarterly reports to the Administrator containing the following information:

(i) The type of product made with or containing HCFC–141b;

(ii) The specific application of the product made with or containing HCFC–141b; and

(iii) The quantity (in kilograms) of HCFC–141b used or contained in the product received from the manufacturer; and

(iv) The identity of the manufacturer of the product made with or containing HCFC–141b.

(2) Any manufacturer of a product made with or containing HCFC–141b produced or imported as a result of space vehicle/defense allowances must submit quarterly reports to the Administrator containing the following information:

(i) The quantity (in kilograms) of HCFC–141b received;

(ii) The identity of the producer or importer supplying the HCFC–141b used or contained in the product;

(iii) The identity of the recipient of the product made with or containing HCFC–141b; and

(iv) The quantity (in kilograms) of HCFC–141b used or contained in the product sent to the recipient.

13. Revise Appendix B to Subpart A to read as follows:

APPENDIX B TO PART 82 SUBPART A—CLASS II CONTROLLED SUBSTANCES [a]

Dichlorofluoromethane (HCFC–21)	0.04
Monochlorodifluoromethane (HCFC–22)	0.055
Monochlorofluoromethane (HCFC–31)	0.02
Tetrachlorofluoroethane (HCFC–121)	0.01–0.04
Trichlorodifluoroethane (HCFC–122)	0.02–0.08
Dichlorotrifluoroethane (HCFC–123)	0.02
Monochlorotetrafluoroethane (HCFC–124)	0.022
Trichlorofluoroethane (HCFC–131)	0.007–0.05
Dichlorodifluoroethane (HCFC–132)	0.008–0.05
Monochlorotrifluoroethane (HCFC–133)	0.02–0.06
Dichlorofluoroethane (HCFC–141b)	0.11
Monochlorodifluoroethane (HCFC–142b)	0.065
Hexachlorofluoropropane (HCFC–221)	0.015–0.07
Pentachlorodifluoropropane (HCFC–222)	0.01–0.09
Tetrachlorotrifluoropropane (HCFC–223)	0.01–0.08
Trichlorotetrafluoropropane (HCFC–224)	0.01–0.09
Dichloropentafluoropropane (HCFC–225ca)	0.025
Dichloropentafluoropropane (HCFC–225cb)	0.033
Monochlorohexafluoropropane (HCFC–226)	0.02–0.10
Pentachlorofluoropropane (HCFC–231)	0.05–0.09
Tetrachlorodifluoropropane (HCFC–232)	0.008–0.10
Trichlorotrifluoropropane (HCFC–233)	0.007–0.23
Dichlorotetrafluoropropane (HCFC–234)	0.01–0.28
Monochloropentafluoropropane (HCFC–235)	0.03–0.52
Tetrachlorofluoropropane (HCFC–241)	0.004–0.09
Trichlorodifluoropropane (HCFC–242)	0.005–0.13
Dichlorotrifluoropropane (HCFC–243)	0.007–0.12
Monochlorotetrafluoropropane (HCFC–244)	0.009–0.14
Trichlorofluoropropane (HCFC–251)	0.001–0.01
Dichlorodifluoropropane (HCFC–252)	0.005–0.04
Monochlorotrifluoropropane (HCFC–253)	0.003–0.03
Dichlorofluoropropane (HCFC–261)	0.002–0.02
Monochlorodifluoropropane (HCFC–262)	0.002–0.02
Monochlorofluoropropane (HCFC–271)	0.001–0.03

[a] According to Annex C of the Protocol, "Where a range of ODPs is indicated, the highest value in that range shall be used for the purposes of the Protocol. The ODPs listed as a single value have been determined from calculations based on laboratory measurements. Those listed as a range are based on estimates and are less certain. The range pertains to an isomeric group. The upper value is the estimate of the ODP of the isomer with the highest ODP, and the lower value is the estimate of the ODP of the isomer with the lowest ODP."

14. Appendix C to Subpart A is revised to read as follows:

Appendix C to Part 82 Subpart A—Parties to the Montreal Protocol (as of May 1, 2001)

Updated lists of Parties to the Protocol and the Amendments can be located at: *www.unep.org/ozone/ratif.htm*. A check mark indicates ratification/accession/acceptance/approval of the agreement.

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Albania	✔				
Algeria	✔	✔	✔		
Angola	✔				
Antigua and Barbuda	✔	✔	✔	✔	
Argentina	✔	✔	✔	✔	
Armenia	✔				
Australia	✔	✔	✔	✔	
Austria	✔	✔	✔	✔	
Azerbaijan	✔	✔	✔		
Bahamas	✔	✔	✔		
Bahrain	✔	✔	✔	✔	
Bangladesh	✔	✔	✔		
Barbados	✔	✔	✔		
Belarus	✔	✔			
Belgium	✔	✔	✔		
Belize	✔	✔	✔		
Benin	✔	✔	✔		
Bolivia	✔	✔	✔	✔	
Bosnia & Herzegovina	✔				
Botswana	✔	✔	✔		
Brazil	✔	✔	✔		
Brunei Darussalam	✔				
Bulgaria	✔	✔	✔	✔	
Burkina Faso	✔	✔	✔		
Burundi	✔				
Cameroon	✔	✔	✔		
Canada	✔	✔	✔	✔	✔
Central African Republic	✔				
Chad	✔				
Chile	✔	✔	✔	✔	✔
China	✔	✔			
Colombia	✔	✔	✔		
Comoros	✔	✔			
Congo	✔	✔			
Congo, Democratic Republic of.	✔	✔	✔		
Costa Rica	✔	✔	✔		
Cote d'Ivoire	✔	✔			
Croatia	✔	✔	✔	✔	
Cuba	✔	✔	✔		
Cyprus	✔	✔			
Czech Republic	✔	✔	✔	✔	
Denmark	✔	✔	✔		
Djibouti	✔	✔	✔	✔	
Dominica	✔	✔			
Dominican Republic.	✔				
Ecuador	✔	✔	✔		
Egypt	✔	✔	✔	✔	
El Salvador	✔	✔	✔	✔	
Estonia	✔	✔	✔		
Ethiopia	✔				
European Community.	✔	✔	✔	✔	
Federated States of Micronesia	✔				
Fiji	✔	✔	✔		
Finland	✔	✔	✔		
France	✔	✔	✔		
Gabon	✔	✔	✔	✔	✔
Gambia	✔	✔			
Georgia	✔	✔	✔	✔	
Germany	✔	✔	✔	✔	
Ghana	✔	✔	✔		
Greece	✔	✔	✔		
Grenada	✔	✔	✔	✔	
Guatemala	✔				
Guinea	✔	✔			
Guyana	✔	✔	✔	✔	
Haiti	✔	✔	✔	✔	
Honduras	✔				

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Hungary	✔	✔	✔	✔	
Iceland	✔	✔	✔	✔	
India	✔	✔			
Indonesia	✔	✔	✔		
Iran, Islamic Republic of	✔	✔	✔		
Ireland	✔	✔	✔		
Israel	✔	✔	✔		
Italy	✔	✔	✔	✔	
Jamaica	✔	✔	✔		
Japan	✔	✔	✔		
Jordan	✔	✔	✔	✔	✔
Kazakhstan	✔				
Kenya	✔	✔	✔	✔	
Kiribati	✔				
Korea, Democratic People's Republic of	✔	✔	✔		
Korea, Republic of	✔	✔	✔	✔	
Kuwait	✔	✔	✔		
Kyrgyzstan	✔				
Lao, People's Democratic Republic	✔				
Latvia	✔	✔	✔		
Lebanon	✔	✔	✔	✔	
Lesotho	✔				
Liberia	✔	✔	✔		
Libyan Arab Jamahiriya	✔				
Liechtenstein	✔	✔	✔		
Lithuania	✔	✔	✔		
Luxembourg	✔	✔	✔	✔	✔
Madagascar	✔				
Malawi	✔	✔	✔		
Malaysia	✔	✔	✔		
Maldives	✔	✔			
Mali	✔	✔			
Malta	✔	✔			
Marshall Islands	✔	✔	✔		
Mauritania	✔				
Mauritius	✔	✔	✔		
Mexico	✔	✔	✔		
Moldova	✔				
Monaco	✔	✔	✔		
Mongolia	✔	✔	✔		
Morocco	✔	✔	✔		
Mozambique	✔	✔	✔		
Myanmar	✔	✔			
Namibia	✔	✔			
Nepal	✔	✔			
Netherlands	✔	✔	✔	✔	
New Zealand	✔	✔	✔	✔	
Nicaragua	✔	✔	✔	✔	
Niger	✔	✔	✔	✔	
Nigeria	✔				
Norway	✔	✔	✔	✔	
Oman	✔	✔	✔		
Pakistan	✔	✔	✔		
Panama	✔	✔	✔	✔	
Papua New Guinea	✔	✔			
Paraguay	✔	✔	✔	✔	
Peru	✔	✔	✔		
Philippines	✔	✔	✔		
Poland	✔	✔	✔	✔	
Portugal	✔	✔	✔		
Qatar	✔	✔	✔		
Romania	✔	✔	✔		
Russian Federation	✔	✔			
Saint Kitts & Nevis	✔	✔	✔	✔	
Saint Lucia	✔	✔	✔	✔	
Saint Vincent and the Grenadines	✔	✔	✔		
Samoa	✔				
Saudi Arabia	✔	✔	✔		
Senegal	✔	✔	✔	✔	
Seychelles	✔	✔	✔		
Singapore	✔	✔	✔	✔	
Slovakia	✔	✔	✔	✔	
Slovenia	✔	✔	✔	✔	

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Solomon Islands	✔	✔	✔	✔	
South Africa	✔	✔	✔		
Spain	✔	✔	✔	✔	
Sri Lanka	✔	✔	✔	✔	
Sudan	✔				
Suriname	✔				
Swaziland	✔				
Sweden	✔	✔	✔	✔	
Switzerland	✔	✔	✔		
Syrian Arab Republic	✔	✔	✔	✔	
Tajikistan	✔	✔			
Tanzania, United Republic of	✔	✔			
Thailand	✔	✔			
The Former Yugoslav Republic of Macedonia	✔	✔	✔	✔	
Togo	✔	✔	✔		
Tonga	✔				
Trinidad and Tobago	✔	✔	✔	✔	
Tunisia	✔	✔	✔	✔	
Turkey	✔	✔	✔		
Turkmenistan	✔	✔			
Tuvalu	✔	✔			
Uganda	✔	✔	✔	✔	
Ukraine	✔	✔	✔	✔	
United Arab Emirates	✔				
United Kingdom	✔	✔	✔		
United States of America	✔	✔	✔		
Uruguay	✔	✔	✔	✔	
Uzbekistan	✔	✔	✔		
Vanuatu	✔	✔	✔		
Venezuela	✔	✔	✔		
Viet Nam	✔	✔	✔		
Yemen	✔	✔	✔	✔	
Yugoslavia	✔				
Zambia	✔	✔			
Zimbabwe	✔	✔	✔		

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40 CFR Part 51

Proposed Guidelines for Best Available Retrofit Technology (BART) Determinations Under the Regional Haze Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6934–4]

Proposed Guidelines for Best Available Retrofit Technology (BART) Determinations Under the Regional Haze Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The purpose of this proposal is to request comment on EPA's proposed guidelines for implementation of the best available retrofit technology (BART) requirements under the regional haze rule which was published on July 1, 1999 (64 FR 35714). We propose to add the guidelines as appendix Y to 40 CFR part 51. We propose to add regulatory text requiring that these guidelines be used for addressing BART determinations under the regional haze rule. In addition, we are proposing one revision to guidelines issued in 1980 for facilities contributing to "reasonably attributable" visibility impairment.

DATES: We are requesting written comments by September 18, 2001. The EPA has scheduled two public hearings on this proposed rule. The first public hearing will be held on August 21 in Arlington, Virginia. The second public hearing will be held on August 27 in Chicago, Illinois. (See following section for times and addresses.)

ADDRESSES: *Docket.* Information related to the BART guidelines is available for inspection at the Air and Radiation Docket and Information Center, docket number A–2000–28. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

You should submit comments on today's proposal and the materials referenced herein (in duplicate if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–2000–28, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. You may also submit comments to EPA by electronic mail at the following address: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. All comments and data in electronic form must be identified by the docket number [A–2000–28]. Electronic comments on this proposed rule also may be filed online at many Federal Depository Libraries.

Public Hearings. The first public hearing on this proposed rule will be held on August 21 at 10:00 am at the Crowne Plaza Hotel, 1489 Jefferson Davis Highway, Arlington, VA 22202. The hotel is located near the Crystal City metro stop. The second public hearing will be held on August 27 at 10:00 am at the Metcalfe Federal Building, Room 331, 77 West Jackson Boulevard, Chicago, IL 60604.

If you wish to attend either public hearing or wish to present oral testimony, please send notification no later than one week prior to the date of the public hearing to Ms. Nancy Perry, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5628, e-mail *perry.nancy@epa.gov.*

Oral testimony will be limited to 5 minutes each. The hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below. Any member of the public may file a written statement by the close of the comment period. Written statements (duplicate copies preferred) should be submitted to Docket No. A–2000–28 at the address listed above for submitting comments. The hearing schedule, including lists of speakers, will be posted on EPA's webpage at *http://www.epa.gov/air/visibility/whatsnew.html.* A verbatim transcript of the hearings and written statements will be made available for copying during normal working hours at the Air and Radiation Docket and Information Center at the address listed above.

FOR FURTHER INFORMATION CONTACT: Tim Smith (telephone 919–541–4718), Mail Drop 15, EPA, Air Quality Strategies and Standards Division, Research Triangle Park, North Carolina, 27711. Internet address: smith.tim@epa.gov.

SUPPLEMENTARY INFORMATION: We are providing the public with the opportunity to comment on EPA's Proposed BART Guidelines and the accompanying regulatory text.

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I. Background on BART Guidelines

A. Commitment in the Preamble to the Regional Haze Rule

The EPA included in the final regional haze rule a requirement for BART for certain large stationary sources put in place between 1962 and 1977. We discuss these requirements in detail in the preamble to the final rule (see 64 FR 35737–35743). The regulatory requirements for BART are codified in 40 CFR 51.308(e). In the preamble, we committed to issuing further guidelines to clarify the requirements of the BART provision. The purpose of this notice is to provide the public with an opportunity to comment on the draft guidelines and the accompanying regulatory text.

B. Statutory Requirement for BART Guidelines

Section 169A(b)(1) of the Clean Air Act (CAA) requires EPA to provide guidelines to States on the implementation of the visibility program. Moreover, the last sentence of section 169A(b) states:

> In the case of a fossil-fuel fired generating powerplant having a capacity in excess of 750 megawatts, the emission limitations required under this paragraph shall be determined pursuant to guidelines, promulgated by the Administrator under paragraph (1)

We interpret this statutory requirement as clearly requiring EPA to publish BART guidelines and to require that States follow the guidelines in establishing BART emission limitations for power plants with a total capacity exceeding the 750 megawatt cutoff. The

statute is less clear regarding whether the guidelines must be used for sources other than 750 megawatt power plants; however, today's proposed rule would require States to use the guidelines for all of the 26 categories. We believe it is reasonable that consistent, rigorous approaches be used for all BART source categories. In addition, we believe it is important to provide for consistent approaches to identifying the sources in the remaining categories which are BART-eligible. We request comment on whether the regional haze rule should: (1) Require use of the guidelines only for 750 megawatt utilities, with the guidelines applying as guidance for the remaining categories, or (2)require use of the guidelines for all of the affected source categories.

II. Proposed Amendments to Part 51

We propose:

(1) BART guidelines, to be added as appendix Y to 40 CFR part 51,

(2) regulatory text, to be added as sub-paragraph 51.308(e)(1)(C), requiring the use of the guidelines.

Overview of Proposed Appendix Y

We discuss the following general topics in appendix Y, which are organized into the following sections:

—*Introduction.* Section I provides an overview of the BART requirement in the regional haze rule and in the CAA, and an overview of the guidelines.

—*Identification of BART-eligible sources.* Section II is a step-by-step process for identifying BART-eligible sources.

—*Identification of sources subject to BART.* Sources "subject to BART" are those BART-eligible sources which "emit a pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any Class I area." We discuss considerations for identifying sources subject to BART in section III of the proposed appendix Y.

—*Engineering analysis.* For each source subject to BART, the next step is to conduct an engineering analysis of emissions control alternatives. This step requires the identification of available, technically feasible, retrofit technologies, and for each technology identified, analysis of the cost of compliance, and the energy and non-air quality environmental impacts, taking into account the remaining useful life and existing control technology present at the source. For each source, a "best system of continuous emission reduction" is selected based upon this engineering analysis. Guidelines for the engineering analysis are described in section IV of the proposed appendix Y.

—*Cumulative air quality analysis.* The rule requires a cumulative analysis of the degree of visibility improvement that would be achieved in each Class I area as a result of the emissions reductions achievable from all sources subject to BART. The establishment of BART emission limits must take into account the cumulative impact overall from the emissions reductions from all of the source-specific "best technologies" identified in the engineering analysis. Considerations for this cumulative air quality analysis are discussed in section V.

—*Emission limits.* Considering the engineering analysis and the cumulative air quality analysis, States must establish enforceable limits, including a deadline for compliance, for each source subject to BART. Considerations related to these limits and deadlines are discussed in section VI.

—*Trading program alternative.* General guidance on how to develop an emissions trading program alternative to BART is contained in section VII of the guidance. (Note that more comprehensive guidance for emission trading programs generally is described in Section VII).

Regulatory Text

The proposed regulatory text would require that States follow the guidelines for all BART determinations required under the regional haze rule. We request public comment on all provisions of the guidelines and on the accompanying regulatory text.

III. Revision to 1980 BART Guidelines for "Reasonably Attributable" Visibility Impairment

As noted above, the primary purpose of today's proposed rule is to provide BART guidelines for the regional haze program. In addition, however, we are making limited revisions to longstanding guidelines for BART under the 1980 visibility regulations for localized visibility impairment that is "reasonably attributable" to one or a few sources.[1] The visibility regulations require that States must use a 1980 guidelines document when conducting BART analyses for certain power plants for reasonably attributable visibility impairment. The regulatory text for this requirement is found in 40 CFR 51.302(c)(4)(iii), as follows:

(iii) BART must be determined for fossil-fuel fired generating plants having a total generating capacity in excess of 750 megawatts pursuant to "Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities" (1980), which is incorporated by reference, exclusive of appendix E, which was published in the **Federal Register** on February 6, 1980 (45 FR 8210). It is EPA publication No. 450/3–80–009b and is for sale from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. It is also available for inspection at the Office of the Federal Register Information Center, 800 North Capitol NW., suite 700, Washington, DC.

While the analytical process set forth in these guidelines is still generally acceptable for conducting BART analyses for "reasonably attributable" visibility impairment, there are statements in the 1980 BART Guidelines that could be read to indicate that the new source performance standards (NSPS) may be considered to represent the maximum achievable control for existing sources. While this may have been the case in 1980 (e.g., the NSPS for sulfur dioxide (SO_2) from boilers had been recently issued in June 1979), the maximum achievable control levels for recent plant retrofits have exceeded NSPS levels. Thus, in order to ensure that there is no confusion regarding how the 1980 guidelines should be interpreted, EPA has included the following discussion in today's action and proposes limited clarifying changes to the visibility regulations.

In various sections of the 1980 guideline, the discussion indicates that the NSPS in 1980 was considered to generally represent the most stringent option these sources could install as BART (i.e., maximum achievable level of control). See, e.g., 1980 BART Guidelines at pp. 8, 11 and 21. For example, a flowchart in the 1980 guidelines indicates that if States establish a BART emission limitation equivalent to NSPS for the source, then the State would not need to conduct a full-blown analysis of control alternatives. See, 1980 BART Guidelines at p. 8. Similarly, the visibility analysis described in the guideline assumes as a starting point the level of controls currently achieved by the NSPS. See, 1980 Guideline at p. 11. In the 20-year period since these guidelines were developed, there have been advances in SO_2 control technologies that have significantly increased the level of control that is feasible, while costs per ton of SO_2 controlled have declined.

[1] U.S. Environmental Protection Agency, *Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities*, EPA–450/3–80–009b, Office of Air Quality Planning and Standards, Research Triangle Park, N.C., November 1980 (1980 BART Guidelines).

This is demonstrated by a number of recent retrofits or binding agreements to retrofit coal-fired power plants in the western United States. These plants include: Hayden (CO), Navajo (AZ), Centralia (WA), and Mohave (NV). These cases have shown that control options exist which can achieve a significantly greater degree of control than the 70 percent minimum required by the NSPS for power plants emitting SO_2 at less than 0.60 lb/million Btu heat input. These retrofits have achieved, or are expected to achieve, annual SO_2 reductions in the 85 to 90 percent range. Additionally, an EPA report [2] published in October 2000 shows that the SO_2 removal for flue gas desulfurization systems installed in the 1990s is commonly 90 percent or more for both wet and dry scrubbers, well above the minimum 70 percent control required by the 1979 NSPS.[3]

Given the advances in control technology that have occurred over the past 20 years, we believe that it should be made clear that the BART analyses for reasonably attributable visibility impairment should not be based on an assumption that the NSPS level of control represents the maximum achievable level of control. While it is possible that a detailed analysis of the BART factors could result in the selection of a NSPS level of control, we believe that States should only reach this conclusion based upon an analysis of the full range of control options, including those more stringent than a NSPS level of control. In sum, all "reasonably attributable" BART analyses should consider control levels more stringent than NSPS, including maximum achievable levels, and evaluate them in light of the statutory factors.

IV. Administrative Requirements

In preparing any proposed rule, EPA must meet the administrative requirements contained in a number of statutes and executive orders. In this section of the preamble, we discuss how today's regulatory proposal for BART guidelines addresses these administrative requirements.

[2] U.S. Environmental Protection Agency, *Controlling SO_2 Emissions: A Review of Technologies*, EPA–600/R–00–093, Office of Research and Development, National Risk Management Research Laboratory, Research Triangle Park, NC, October 2000, pp 32–34.

[3] Note also that part II of the 1980 BART guidelines includes an analysis of 90 percent control for three power plants burning low-sulfur coal.

A. Regulatory Planning and Review by the Office of Management and Budget (OMB) (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" and EPA has submitted it to OMB for review. The drafts of rules submitted to OMB, the documents accompanying such drafts, written comments thereon, written responses by EPA, and identification of the changes made in response to OMB suggestions or recommendations are available for public inspection at EPA's Air and Radiation Docket and Information Center (Docket Number A–2000–28).

Because today's guidelines clarify, and do not change, the existing rule requirements of the regional haze rule, the guidelines do not have any effect on the Regulatory Impact Analysis (RIA) that was previously prepared for the regional haze rule. This RIA is available in the docket for the regional haze rule (A–95–38). As part of the analyses included in this RIA, we provided an estimate of the potential cost of control to BART sources that is an average of the costs associated with the least stringent illustrative progress goal (1.0 deciview reduction over a 15-year period) and the most stringent illustrative progress goal (10 percent deciview reduction over a 10-year period). The annual cost of control to BART sources associated with the final Regional Haze rulemaking in 2015, the year for which impacts are projected, is $72 million (1990 dollars).

This estimate of the control costs for BART sources for the year 2015 was calculated after taking into account a regulatory baseline projection for the year 2015. The baseline for these calculations included control measures estimated to be needed for partial attainment of the PM and ozone NAAQS issued in 1997. These baseline estimates were contained in an analysis prepared for the RIA for the PM and ozone NAAQS, and are summarized in the RIA for the regional haze rulemaking. As a result, in this RIA, we calculated relatively small impacts for BART, in part because the baseline for the analysis assumed a substantial degree of emissions control for BART-eligible sources in response to the national ambient air quality standards (NAAQS) for $PM_{2.5}$.

The EPA provided a benefits analysis of the emissions reductions associated with the four illustrative progress goals in the RIA for the final rulemaking. This benefits analysis is also incremental to partial attainment of the PM and ozone NAAQS issued in 1997. We did not, however, include a benefits analysis for the reductions from controls specific to the potentially affected BART sources. For more information on the benefit analysis for the final Regional Haze rulemaking, please refer to the RIA in the public docket for the regional haze rule (Docket A–95–38).

B. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. The EPA has also determined that this proposed rule would not have a significant impact on a substantial number of small entities because the rule would not establish requirements applicable to small entities.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. No.104–121) (SBREFA), provides that whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available an initial regulatory flexibility analysis, unless it certifies that the proposed rule, if promulgated, will not have "a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. See *Motor and Equip. Mfrs. Ass'n* v. *Nichols*, 142 F.3d 449 (D.C. Cir. 1998); *United Distribution Cos.* v. *FERC*, 88 F.3d 1105, 1170 (D.C.

Cir. 1996); *Mid-Tex Elec. Co-op, Inc.* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the rule).

Similar to the discussion in the proposed and final regional haze rules, the proposed BART guidelines would not establish requirements applicable to small entities. The proposed rule would apply to States, not to small entities. The BART requirements in the regional haze rule require BART determinations for a select list of major stationary sources defined by section 169A(g)(7) of the CAA. However, as noted in the proposed and final regional haze rules, the State's determination of BART for regional haze involves some State discretion in considering a number of factors set forth in section 169A(g)(2), including the costs of compliance. Further, the final regional haze rule allows States to adopt alternative measures in lieu of requiring the installation and operation of BART at these major stationary sources. As a result, the potential consequences of the BART provisions of the regional haze rule (as clarified in today's proposed guidelines) at specific sources are speculative. Any requirements for BART will be established by State rulemakings. The States would accordingly exercise substantial intervening discretion in implementing the BART requirements of the regional haze rule and today's proposed guidelines. In addition, we note that most sources potentially affected by the BART requirements in section 169A of the CAA are large industrial plants. Of these, we would expect few, if any, to be considered small entities. We request comment on issues regarding small entities that States might encounter when implementing the BART provision.

For today's proposed BART guidelines, EPA certifies that the guidelines and accompanying regulatory text would not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act—Impact on Reporting Requirements

The information collection requirements in today's proposal clarify, but do not modify, the information collection requirements for BART. Reporting requirements related to BART requirements were included in an Information Collection Request document that was prepared by EPA (ICR No. 1813.02) and a copy may be obtained from Sandy Farmer, by mail at Collection Strategies Division; U.S. EPA (2822) 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year." A "Federal mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments," section 421(5)(A)(i), 2 U.S.C. 658 (5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

By proposing to release BART guidelines and to require their use, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. Thus, EPA is not obligated to develop under section 203 of the UMRA a small government agency plan.

Further, EPA carried out consultations with the governmental entities affected by this rule in a manner consistent with the intergovernmental consultation provisions of section 204 of the UMRA.

The EPA also believes that because today's proposal provides States with substantial flexibility, the proposed rule meets the UMRA requirement in section 205 to select the least costly and burdensome alternative in light of the statutory mandate for BART. The proposed rule provides States with the flexibility to establish BART based on certain criteria, one of which is the costs of compliance. The proposed rule also provides States with the flexibility to adopt alternatives, such as an emissions trading program, in lieu of requiring BART. The BART guidelines therefore, inherently provides for adoption of the least costly, most cost-effective, or least-burdensome alternative that achieves the objective of the rule.

The EPA is not reaching a final conclusion as to the applicability of the requirements of UMRA to this rulemaking action. It is questionable whether a requirement to submit a State Implementation Plan (SIP) revision

constitutes a Federal mandate. The obligation for a State to revise its SIP that arises out of sections 110(a), 169A and 169B of the CAA is not legally enforceable by a court of law and, at most, is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(A)(i) of UMRA (2 U.S.C. 658 (5)(A)(i)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(A)(i)(I) of UMRA (2 U.S.C. 658(5)(A)(i)(I)). As noted earlier, however, notwithstanding these issues, the discussion in section 2 and the analysis in chapter 8 of the RIA constitutes the UMRA statement that would be required by UMRA if its statutory provisions applied, and EPA has consulted with governmental entities as would be required by UMRA. Consequently, it is not necessary for EPA to reach a conclusion as to the applicability of the UMRA requirements.

E. Environmental Justice—Executive Order 12898

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The requirements of Executive Order 12898 have been previously addressed to the extent practicable in the RIA cited above, particularly in chapters 2 and 9 of the RIA.

F. Protection of Children From Environmental Health Risks and Safety Risks—Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The BART guidelines are not subject to Executive Order 13045 because they do not establish an environmental standard intended to mitigate health or safety risks.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

The EPA concludes that this rule will not have substantial federalism implications, as specified in section 6 of Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not directly impose significant new requirements on State and local governments, nor substantially alter the relationship or the distribution of power and responsibilities between States and the Federal government.

Although EPA has determined that section 6 of Executive Order 13132 does not apply, EPA nonetheless consulted with a broad range of State and local officials during the course of developing this proposed rule. These included contacts with the National Governors Association, National League of Cities, National Conference of State Legislatures, U. S. Conference of Mayors, National Association of Counties, Council of State Governments, International City/County Management Association, and National Association of Towns and Townships.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. The EPA developed this proposed rule, however, during the period when EO 13084 was in effect; thus, EPA addressed tribal considerations under EO 13084. The EPA will analyze and fully comply with the requirements of EO 13175 before promulgating the final rule.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This proposed action does not involve or impose any requirements that directly affect Indian tribes. Under EPA's tribal authority rule, tribes are not required to implement CAA programs but, instead, have the opportunity to do so. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No.

104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 13211. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action." Under Executive Order 13211, a Statement of Energy Effects is a detailed statement by the agency responsible for the significant energy action relating to: (i) any adverse effects on energy supply, distribution, or use including a shortfall in supply, price increases, and increased use of foreign supplies) should the proposal be implemented, and (ii) reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use. While this rulemaking is a "significant regulatory action" under Executive Order 12866, EPA has determined that this rulemaking is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

As discussed above in Unit IV.A, EPA provided an estimate of the potential cost of control to BART sources in the RIA for the regional haze rule for the year 2015. As specified in the CAA, these BART sources include certain utility steam electric plants and sources in 25 additional industrial source categories. In 1999, EPA estimated that BART would impose additional costs of $72 million per year (in 1990 dollars) in 2015 on affected utility and industrial sources.[4] It is expected that these annual costs will be lower in 2015 than currently projected due to continued improvements in scrubber operation and design. Included in the total cost is an estimate that roughly 35 utility units built between the years 1962 and 1977 would be required to install additional control equipment, typically scrubbers.

Consistent with the RIA, we have looked at the potential energy impacts associated with scrubbers. About 60 percent of the overall $72 million estimate, or about $40 million, was a result of scrubber cost calculations. These scrubber cost calculations are based on cost models which determine three types of costs for scrubbers: (1) Annualized capital costs, (2) fixed operation and maintenance costs, and (3) variable operating and maintenance costs. The cost models for variable operating and maintenance costs took into account the energy needs of the scrubber, which was assumed to be 2.0% of the electricity generated by a plant (or approximately 15,000 Megawatt-hours per year (MW–h/yr) for a 100 MW scrubber).[5] Although BART requirements may also be achieved with other control strategies and techniques (such as emission trading, or switching types of fuels used to produce power), these scrubber cost calculations can be used to provide an order of magnitude estimate of possible energy costs. The EPA estimates that of the total annual cost estimate of $40 million for scrubbers, about 20 to 35 percent, or about $9 million to $15 million, would be variable operating and maintenance costs. The energy costs for the scrubbers would be some fraction of this $9 to $15 million estimate, which also includes other elements such as the costs of reagents and disposal. Applying this energy use to the roughly 35 utility units requires a total of 525 million MW–h/yr, or 0.5 billion Kilowatt-hours/year (kWh–yr) of energy, which is valued at $17 million.[6]

The EPA also believes that an annual cost of $40 million for the electric utility sector for the year 2015 and beyond would not result in significant changes in electricity or fuel prices, or in significant changes in the consumption of energy.

For non-utility sources, the costs of the BART requirements may result from installing, operating and maintaining pollution control equipment or from other control strategies and techniques. As with utilities, a fraction of these costs in some cases would be related to the energy used to operate the pollution control equipment, thus increasing the overall demand for energy and fuels; however, such impacts are usually a small fraction of the overall annualized costs of control equipment. Thus, EPA believes that the energy costs for non-utility categories would be a relatively small fraction of the $72 million cost estimate. The EPA believes that the overall effects on energy supply and use for a small fraction of $72 million would be trivial, and that this would not significantly affect the price or supply of energy.

Therefore, we conclude that based on the analysis above that the BART requirements of the Regional Haze Rule will have a minimal impact, if any, on energy prices, or on the supply, distribution, or use of energy.

K. Guidelines for BART Determinations Under the Regional Haze Rule

We are proposing to adopt guidelines for BART determinations under the regional haze rule. The guidelines and areas on which comment is requested are described below. After we receive comments on these guidelines, we will add them to 40 CFR part 51 as appendix Y.

Guidelines for BART Determinations Under the Regional Haze Rule

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[4] *Regulatory Impact Analysis for the Regional Haze Rule.* U.S. EPA, Office of Air Quality Planning and Standards. April 22, 1999. Unit 6.6.3, pp. 6–40 through 6–42.

[5] U.S. Environmental Protection Agency, *Controlling SO2 Emissions: A Review of Technologies,* EPA–600/R–00–093, Office of Research and Development, National Risk Management Research Laboratory, Research Triangle Park, NC, October 2000, pp 32–34.

[6] Based on wholesale energy prices for the year 2000.

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I. Introduction and Overview

A. What Is the Purpose of the Guidelines?

The Clean Air Act (CAA), in sections 169A and 169B, contains requirements for the protection of visibility in 156 scenic areas across the United States. To meet the CAA's requirements, EPA recently published regulations to protect against a particular type of visibility impairment known as "regional haze." The regional haze rule is found in this part (40 CFR part 51), in §§ 51.300 through 51.309. These regulations require, in § 51.308(e), that certain types of existing stationary sources of air pollutants install best available retrofit technology (BART). The guidelines are designed to help States and others (1) identify those sources that must comply with the BART requirement, and (2) determine the level of control technology that represents BART for each source.

B. What Does the CAA Require Generally for Improving Visibility?

Section 169A of the CAA, added to the CAA by the 1977 amendments, requires States to protect and improve visibility in certain scenic areas of national importance. The scenic areas protected by section 169A are called "mandatory Class I Federal Areas." In these guidelines, we refer to these as "Class I areas." There are 156 Class I areas, including 47 national parks (under the jurisdiction of the Department of Interior—National Park Service), 108 wilderness areas (under the jurisdiction of the Department of Interior–Fish and Wildlife Service or the Department of Agriculture—US Forest Service), and one International Park (under the jurisdiction of the Roosevelt-Campobello International Commission). The Federal Agency with jurisdiction over a particular Class I area is referred to in the CAA as the Federal Land Manager. A complete list of the Class I areas is contained in 40 CFR part 81, §§ 81.401 through 81.437, and you can find a map of the Class I areas at the following internet site: *http://www.epa.gov/ttn/oarpg/t1/fr—notices/classimp.gif*

The CAA establishes a national goal of eliminating man-made visibility impairment from the Class I areas where visibility is an important value. As part of the plan for achieving this goal, the visibility protection provisions in the CAA mandate that EPA issue regulations requiring that States adopt measures in their State Implementation Plans (SIPs), including long-term strategies, to provide for reasonable progress towards this national goal. The CAA also requires States to coordinate with the Federal Land Managers as they develop their strategies for addressing visibility.

C. What Is the BART Requirement in the CAA?

Under section 169A(b)(2)(A) of the CAA, States must require certain existing stationary sources to install BART. The BART requirement applies to "major stationary sources" from one of 26 identified source categories which have the potential to emit 250 tons per year or more of any air pollutant. The CAA requires only sources which were put in place during a specific 15-year time interval to install BART. The BART requirement applies to sources that existed as of the date of the 1977 CAA amendments (that is, August 7, 1977)

but which had not been in operation for more than 15 years (that is, not in operation as of August 7, 1962).

The CAA requires BART when any source meeting the above description "emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility" in any Class I area. In identifying a level of control as BART, States are required by section 169A(g) of the CAA to consider:

—The costs of compliance,
—The energy and non-air quality environmental impacts of compliance,
—Any existing pollution control technology in use at the source,
—The remaining useful life of the source, and
—The degree of visibility improvement which may reasonably be anticipated from the use of BART.

The CAA further requires States to make BART emission limitations part of their SIPs. As with any SIP revision, this will be a public process that provides an opportunity for public comment and judicial review of any decision by EPA to approve or disapprove the revision.

D. What Types of Visibility Problems Does EPA Address in Its Regulations?

The EPA addressed the problem of visibility in two phases. In 1980, EPA published regulations addressing what we termed "reasonably attributable" visibility impairment. Reasonably attributable visibility impairment is the result of emissions from one or a few sources that are generally located in close proximity to a specific Class I area. The regulations addressing reasonably attributable visibility impairment are published in §§ 51.300 through 51.307.

On July 1, 1999, EPA amended these regulations to address the second, more common, type of visibility impairment known as "regional haze." Regional haze is the result of the collective contribution of many sources over a broad region. The regional haze rule regulations slightly modified 40 CFR 51.300 through 51.307, including the addition of a few definitions in § 51.301, and added new §§ 51.308 and 51.309.

E. What Are the BART Requirements in EPA's Regional Haze Regulations?

In the July 1, 1999 rulemaking, EPA added a BART requirement for regional haze. You will find the BART requirements in 40 CFR 51.308(e)(1). Definitions of terms used in 40 CFR 51.308(e)(1) are found in § 51.301.

As we discuss in detail in these guidelines, the regional haze rule codifies and clarifies the BART provisions in the CAA. The rule requires that States identify and list "BART-eligible sources," that is, that States identify and list those sources that fall within one of 26 source categories, that were put in place during the 15-year window of time from 1962 to 1977, and that have potential emissions greater than 250 tons per year. Once the State has identified the BART-eligible sources, the next step is to identify those BART eligible sources that may "emit any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility." Under the rule, a source which fits this description is "subject to BART." For each source subject to BART, States must identify the level of control representing BART based upon the following analyses:

— First, paragraph 308(e)(1)(ii)(A) provides that States must identify the best system of continuous emission control technology for each source subject to BART taking into account the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use at the source, and the remaining useful life of the source.
— Second, paragraph 308(e)(1)(ii)(B), provides that States must conduct an analysis of the degree of visibility improvement that would be achieved from all sources subject to BART that are within a geographic area that contributes to visibility impairment in any protected Class I area.

Once a State has identified the level of control representing BART (if any), it must establish an emission limit representing BART and must ensure compliance with that requirement no later than 5 years after EPA approves the SIP. States are allowed to establish design, equipment, work practice or other operational standards when limitations on measurement technologies make emission standards infeasible.

F. Do States Have an Alternative to Imposing Controls on Specific Facilities?

States are given the option under 40 CFR 51.308(e)(2) to adopt an alternative approach to imposing controls on a case-by-case basis for each source subject to BART. However, while States may instead adopt alternative measures, such as an emissions trading program, 40 CFR 51.308(e)(2)(i) requires States to provide a demonstration that any such alternative will achieve greater "reasonable progress" than would have resulted from installation of BART from all sources subject to BART. Such a demonstration must include:

— a list of all BART-eligible sources;
— an analysis of the best system of continuous emission control technology available for all sources subject to BART, taking into account the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use at the source, and the remaining useful life of the source. Unlike the analysis for BART under 40 CFR 51.308(e)(1), which requires that these factors be considered on a case-by-case basis, States may consider these factors on a category-wide basis, as appropriate, in evaluating alternatives to BART;
— an analysis of the degree of visibility improvement that would result from the alternative program in each protected Class I area.

States must make sure that a trading program or other such measure includes all BART-eligible sources, unless a source has installed BART, or plans to install BART consistent with 51.308(e)(1).[1] A trading program also may include additional sources. 40 CFR 51.308(e)(2) also requires that States include in their SIPs details on how they would implement the emission trading program or other alternative measure. States must provide a detailed description of the program including schedules for compliance, the emissions reductions that they will require, the administrative and technical procedures for implementing the program, rules for accounting and monitoring emissions, and procedures for enforcement.

G. What Is Included in the Guidelines?

In the guidelines, we provide procedures States must use in implementing the regional haze BART requirements on a source-by-source basis, as provided in 40 CFR 51.308(e)(1). We address general topics related to development of a trading program or other alternative allowed by 40 CFR 51.308(e)(2), but we will address most of the details of guidance for trading programs in separate guidelines.

The BART analysis process, and the contents of this guidance, are as follows:

[1] As noted in the preamble to the regional haze rule, States need not include a BART-eligible source in the trading program if the source already has installed BART-level pollution control technology and the emission limit is a federally enforceable requirement (64 FR 35742). We clarify in these guidelines that States may also elect to allow a source the option of installing BART-level controls within the 5-year period for compliance with the BART requirement [see section VI of these guidelines] rather than participating in a trading program.

–*Identification of all BART-eligible sources.* Section II of this guidance outlines a step-by-step process for identifying BART-eligible sources.
–*Identification of sources subject to BART.* As noted above, sources "subject to BART" are those BART-eligible sources which "emit a pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any Class I area." We discuss considerations for identifying sources subject to BART in section III of the guidance.
–*Engineering analysis.* For each source subject to BART, the next step is to conduct an engineering analysis of emissions control alternatives. This step requires the identification of available, technically feasible, retrofit technologies, and for each technology identified, analysis of the cost of compliance, and the energy and non-air quality environmental impacts, taking into account the remaining useful life and existing control technology present at the source. For each source, a "best system of continuous emission reduction" will be selected based upon this engineering analysis. Guidelines for the engineering analysis are described in section IV of this guidance.
—*Cumulative air quality analysis.* The rule requires a cumulative analysis of the degree of visibility improvement that would be achieved in each Class I area as a result of the emissions reductions achievable from *all* sources subject to BART. The establishment of BART emission limits must take into account the cumulative impact overall from the emissions reductions from all of the source-specific "best technologies" identified in the engineering analysis. Considerations for this cumulative air quality analysis are discussed in section V of this guidance.
—*Emissions limits.* Considering the engineering analysis and the cumulative air quality analysis, States must establish enforceable limits, including a deadline for compliance, for each source subject to BART. Considerations related to these limits and deadlines are discussed in section VI of the guidance.
—*Considerations in establishing a trading program alternative.* General guidance on how to develop an emissions trading program alternative is contained in section VII of the guidance.

H. Who Is the Target Audience for the Guidelines?

The guidelines are written primarily for the benefit of State, local and tribal agencies to satisfy the requirements for including the BART determinations and emission limitations in their SIPs or tribal implementation plans (TIPs). Throughout the guidelines, which are written in a question and answer format, we ask questions "How do I * * *?" and answer with phrases "you should * * *, you must* * *" The "you" means a State, local or tribal agency conducting the analysis.[2] We recognize, however, that agencies may prefer to require source owners to assume part of the analytical burden, and that there will be differences in how the supporting information is collected and documented.

II. How To Identify BART-Eligible Sources

This section provides guidelines on how you identify BART-eligible sources. A BART-eligible source is an existing stationary source in 26 listed categories which meets criteria for startup dates and potential emissions.

A. What Are the Steps In Identifying BART-Eligible Sources?

Figure 1 shows the steps for identifying whether the source is a "BART eligible source:"

Step 1: Identify the emission units in BART categories,

Step 2: Identify the start-up dates of those emission units, and

Step 3: Compare the potential emissions to the 250 ton/yr cutoff.

[2] In order to account for the possibility that BART-eligible sources could go unrecognized, we recommend that you adopt requirements placing a responsibility on source owners to self-identify if they meet the criteria for BART-eligible sources.

Figure 1. How to determine whether a source is BART-eligible:

Step 1: Identify emission units in the BART categories

Does the plant contain emissions units in one or more of the 26 source categories?
→ No → Stop
→ Yes → Proceed to Step 2

Step 2: Identify the start-up dates of these emission units

Do any of these emissions units meet the following two tests?

In existence on August 7, 1977 AND Began operation after August 7, 1962

→ No → Stop
→ Yes → Proceed to Step 3

Step 3: Compare the potential emissions from these emission units to the 250 ton/yr cutoff

Identify the "stationary source" that includes the emission units you identified in Step 2.

Add the current potential emissions from all the emission units identified in Steps 1 and 2 that are included within the "stationary source" boundary.

Are the potential emissions from these units 250 tons per year or more for any visibility-impairing pollutant?

→ No → Stop

→ Yes → These emissions units comprise the "BART-eligible source."

1. Step 1: Identify Emission Units in the BART Categories

The BART requirement only applies to sources in specific categories listed in the CAA. The BART requirement does not apply to sources in other source categories, regardless of their emissions. The listed categories are:

(1) Fossil-fuel fired steam electric plants of more than 250 million British thermal units (BTU) per hour heat input,

(2) Coal cleaning plants (thermal dryers),

(3) Kraft pulp mills,

(4) Portland cement plants,

(5) Primary zinc smelters,

(6) Iron and steel mill plants,

(7) Primary aluminum ore reduction plants,

(8) Primary copper smelters,

(9) Municipal incinerators capable of charging more than 250 tons of refuse per day,

(10) Hydrofluoric, sulfuric, and nitric acid plants,

(11) Petroleum refineries,

(12) Lime plants,

(13) Phosphate rock processing plants,

(14) Coke oven batteries,

(15) Sulfur recovery plants,

(16) Carbon black plants (furnace process),

(17) Primary lead smelters,

(18) Fuel conversion plants,

(19) Sintering plants,

(20) Secondary metal production facilities,
(21) Chemical process plants,
(22) Fossil-fuel boilers of more than 250 million BTUs per hour heat input,
(23) Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels,
(24) Taconite ore processing facilities,
(25) Glass fiber processing plants, and
(26) Charcoal production facilities.

Some plant locations may have emission units from more than one category, and some emitting equipment may fit into more than one category. Examples of this situation are sulfur recovery plants at petroleum refineries, coke oven batteries and sintering plants at steel mills, and chemical process plants at refineries. For Step 1, you identify *all* of the emissions units at the plant that fit into one or more of the listed categories. You do not identify emission units in other categories.

Example: A mine is collocated with a electric steam generating unit and a coal cleaning plant. You would identify emission units associated with the electric steam generating unit and the coal cleaning plant, because they are listed categories but not the mine, because coal mining is not a listed category.

The category titles are generally clear in describing the types of equipment to be listed. Most of the category titles are very broad descriptions that encompass all emission units associated with a plant site (for example, "petroleum refining" and "kraft pulp mills"). In addition, this same list of categories appears in the PSD regulations, for example in 40 CFR 52.21. States and source owners need not revisit any interpretations of the list made previously for purposes of the PSD program. We provide the following clarifications for a few of the category titles and we request comment on whether there are any additional source category titles for which EPA should provide clarification in the final guidelines:

—*"Steam electric plants of more than 250 million BTU/hr heat input."* Because the category refers to "plants," boiler capacities must be aggregated to determine whether the 250 million BTU/hr threshold is reached.

Example: Stationary source includes a steam electric plant with three 100 million BTU/hr boilers. Because the aggregate capacity exceeds 250 million BTU/hr for the "plant," these boilers would be identified in Step 2.

"Steam electric plants" includes combined cycle turbines because of their incorporation of heat recovery steam generators. Simple cycle turbines should not be considered "steam electric plants" because they typically do not make steam.

—*"Fossil-fuel boilers of more than 250 million BTU/hr heat input."* The EPA proposes two options for interpreting this source category title. The first option is the approach used in the regulations for prevention of significant deterioration (PSD). In the PSD regulations, this same statutory language has been interpreted in regulatory language to mean "fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input." The EPA proposes that this same interpretation be used for BART as well. Thus, as in the example above, you would aggregate boiler capacities to determine whether the 250 million BTU/hr threshold is reached.

Under the second option, this category would be interpreted to cover only those boilers that are individually greater than 250 million BTU/hr. This approach would result in differing language from the PSD program. It is possible, however, that different approaches may be justified. The PSD program ensures that new source projects do not circumvent the program by constructing several boilers with capacities lower than 250 million BTU/hr. Because the BART program affects only sources already in existence as of the date of the 1977 CAA amendments, there may be a lesser need to aggregate boilers that are individually less than 250 million BTU/hr. The EPA requests comment on both options proposed above.

—*Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels.* The 300,000 barrel cutoff refers to total facility-wide tank capacity for tanks that were put in place within the 1962–1977 time period, and includes gasoline and other petroleum-derived liquids.

—*"Phosphate rock processing plants."* This category descriptor is broad, and includes all types of phosphate rock processing facilities, including elemental phosphorous plants as well as fertilizer production plants.

—*"Charcoal production facilities."* In a letter sent to EPA on October 11, 2000, the National Association of Manufacturers (NAM) noted that there is some limited legislative history on this source category list. Specifically, there is discussion in the Congressional Record from July 29, 1976 (Cong. Record S. 12781–12784) which identifies a study in the 1970s by the Research Corporation of New England (the TRC report). The Congressional Record contains a table extracted from the TRC report that identifies 190 source categories considered in developing a list of 28 categories that led to the 26 categories eventually listed in the CAA. In its October 11, 2000 letter, NAM suggests that the Congressional Record and the TRC report are relevant to the interpretation of the source category "charcoal production facilities." While EPA does not believe that the TRC report or table contain any information that would suggest subdividing this category, EPA has included the NAM letter and the cited passage from the Congressional Record in the docket for this proposed rule. The EPA requests comment on whether and how the information cited by NAM is relevant to the interpretation of this or other categories.

2. Step 2: Identify the Start-Up Dates of the Emission Units

Emissions units listed under Step 1 are BART-eligible only if they were "in existence" on August 7, 1977 but were not "in operation" before August 7, 1962.

What does "in existence on August 7, 1977" mean?

The regulation defines "in existence" to mean that:

> The owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has (1) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed in a reasonable time. See 40 CFR 51.301.

Thus, the term "in existence" means the same thing as the term "commence construction" as that term is used in the PSD regulations. See 40 CFR 51.165(a)(1)(xvi) and 40 CFR 52.21(b)(9). Thus, an emissions unit could be "in existence" according to this test even if it did not begin operating until several years later.

Example: The owner or operator obtained necessary permits in early 1977 and entered into binding construction agreements in June 1977. Actual on-site construction began in late 1978, and construction was completed in mid-1979. The source began operating in September 1979. The emissions unit *was* "in existence" as of August 7, 1977.

We note that emissions units of this size for which construction commenced

AFTER August 7, 1977 (i.e., were not "in existence" on August 7, 1977) were subject to major new source review (NSR) under the PSD program. Thus, the August 7, 1977 "in existence" test is essentially the same thing as the identification of emissions units that were grandfathered from the NSR review requirements of the 1977 CAA amendments.

Finally, we note that sources are not BART eligible if the only change at the plant was the addition of pollution controls. For example, if the only change at a copper smelter during the 1962 through 1977 time period was the addition of acid plants for the reduction of SO_2 emissions, these emission controls would not by themselves trigger a BART review.

What does "in operation before August 7, 1962" mean?

An emissions unit that meets the August 7, 1977 "in existence" test is not BART-eligible if it was in operation before August 7, 1962. "In operation" is defined as "engaged in activity related to the primary design function of the source." This means that a source must have begun actual operations by August 7, 1962 to satisfy this test.

Example: The owner or operator entered into binding agreements in 1960. Actual on-site construction began in 1961, and construction was complete in mid-1962. The source began operating in September 1962. The emissions unit *was not* "in operation" before August 7, 1962 and is therefore subject to BART.

What is a "reconstructed source?"

Under a number of CAA programs, an existing source which is completely or substantially rebuilt is treated as a new source. Such "reconstructed" sources are treated as new sources as of the time of the reconstruction. Consistent with this overall approach to reconstructions, the definition of BART-eligible facility (reflected in detail in the definition of "existing stationary facility") includes consideration of sources that were in operation before August 7, 1962, but were reconstructed during the August 7, 1962 to August 7, 1977 time period.

Under the regulation, a reconstruction has taken place if "the fixed capital cost of the new component exceeds 50 percent of the fixed capital cost of a comparable entirely new source." The rule also states that "Any final decision as to whether reconstruction has occurred must be made in accordance with the provisions of §§ 60.15 (f)(1) through (3) of this title." [40 CFR 51.301]. "§§ 60.15(f)(1) through (3)" refers to the general provisions for New Source Performance Standards (NSPS). Thus, the same policies and procedures for identifying reconstructed "affected facilities" under the NSPS program must also be used to identify reconstructed "stationary sources" for purposes of the BART requirement.

You should identify reconstructions on an emissions unit basis, rather than on a plantwide basis. That is, you need to identify only the reconstructed emission units meeting the 50 percent cost criterion. You should include reconstructed emission units in the list of emission units you identified in Step 1.

The "in operation" and "in existence" tests apply to reconstructed sources. If an emissions unit was reconstructed and began actual operation before August 7, 1962, it is not BART-eligible. Similarly, any emissions unit for which a reconstruction "commenced" after August 7, 1977, is not BART-eligible.

How are modifications treated under the BART provision?

The NSPS program and the major source NSR program both contain the concept of modifications. In general, the term "modification" refers to any physical change or change in the method of operation of an emissions unit that leads to an increase in emissions.

The BART provision in the regional haze rule contains no explicit treatment of modifications. Accordingly, guidelines are needed on how modified emissions units, previously subject to best available control technology (BACT), lowest achievable emission rate (LAER) and/or NSPS, are treated under the rule. The EPA believes that the best interpretation for purposes of the visibility provisions is that modified emissions units are still "existing." The BART requirements in the CAA do not appear to provide any exemption for sources which were modified since 1977. Accordingly, if an emissions unit began operation before 1962, it is not BART-eligible if it is modified at a later date, so long as the modification is not also a "reconstruction." Similarly, an emissions unit which began operation within the 1962–1977 time window, but was modified after August 7, 1977, is BART-eligible. We note, however, that if such a modification was a major modification subject to the BACT, LAER, or NSPS levels of control, the review process will take into account that this level of control is already in place and may find that the level of controls are already consistent with BART. The EPA requests comment on this interpretation for "modifications." [3]

[3] Another possible interpretation would be to consider sources built before 1962 but modified during the 1962–1977 time window as a "new" source at the time of the modification. Under this approach, such sources would be considered to have commenced operation during the 1962–1977 time period, and thus would be BART eligible. Similarly, consistent with this interpretation, a source modified after the 1977 date would be treated as "new" as of the date of the modification and therefore would not be BART-eligible. The EPA believes that this approach may be much more difficult to implement, given that programs to identify "modifications" were not in place for much of the 1962–1977 time period.

3. Step 3: Compare the potential emissions to the 250 ton/yr cutoff

The result of Steps 1 and 2 will be a list of emissions units at a given plant site, including reconstructed emissions units, that are within one or more of the BART categories and that were placed into operation within the 1962–1977 time window. The third step is to determine whether the total emissions represent a current potential to emit that is greater than 250 tons per year of any single visibility impairing pollutant. In most cases, you will add the potential emissions from all emission units on the list resulting from Steps 1 and 2. In a few cases, you may need to determine whether the plant contains more than one "stationary source" as the regional haze rule defines that term, and as we explain further below.

What pollutants should I address?

Visibility-impairing pollutants include the following:

—Sulfur dioxide (SO_2),
—Nitrogen oxides (NO_X),
—Particulate matter. (You may use PM_{10} as the indicator for particulate matter. We do not recommend use of total suspended particulates (TSP). PM_{10} emissions include the components of $PM_{2.5}$ as a subset. There is no need to have separate 250 ton thresholds for PM_{10} and $PM_{2.5}$, because 250 tons of PM_{10} represents at most 250 tons of $PM_{2.5}$, and at most 250 tons of any individual particulate species such as elemental carbon, crustal material, etc).
—Volatile organic compounds (VOC), and
—Ammonia.

What does the term "potential" emissions mean?

The regional haze rule defines potential to emit as follows:

> "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

This definition is identical to that in the PSD program (40 CFR 51.166 and 51.18). This means that a source which actually emits less than 250 tons per year of a visibility-impairing pollutant is BART-eligible if its emissions would exceed 250 tons per year when operating at its maximum physical and operational design.

Example: A source, while operating at one-fourth of its capacity, emits 75 tons per year of SO_2. If it were operating at 100 percent of its maximum capacity, the source would emit 300 tons per year. Because under the above definition such a source would have "potential" emissions that exceed 250 tons per year, the source (if in a listed category and built during the 1962–1977 time window) would be BART-eligible.

A source's "potential to emit" may take into account federally enforceable emission limits.

Example: The same source has a federally enforceable restriction limiting it to operating no more than ½ of the year. Because you can credit this under the definition of potential to emit, the source would have a potential of 150 tons per year, which is less than the 250 tons/year cutoff.

The definition of potential to emit allows only federally enforceable emission limits to be taken into account for this purpose, and does not credit emission limitations which are enforceable only by State and local agencies, but not by EPA and citizens in Federal court. As a result of some court cases in other CAA programs, EPA is undertaking a rulemaking to determine whether only federally enforceable limits should be taken into account. This rulemaking will address the Federal enforceability restriction in the regional haze definition as well as other program definitions. We expect that this rulemaking will be complete well before the time period for determining whether BART applies.

How do I identify whether a plant has more than one "stationary source?"

The regional haze rule, in 40 CFR 51.301, defines a stationary source as a "building, structure, facility or installation which emits or may emit any air pollutant."[4] The rule further defines "building, structure or facility" as:

All of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities must be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972 as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0 respectively).

In applying this definition, it is first necessary to draw the plant boundary, that is the boundary for the "contiguous or adjacent properties." Next, within this plant boundary it is necessary to group those emission units that are under "common control." The EPA notes that these plant boundary issues and "common control" issues are very similar to those already addressed in implementation of the title V operating permits program and in NSR.

For emission units within the "contiguous or adjacent" boundary and under common control, you then group emission units that are within the same industrial grouping (that is, associated with the same 2-digit Standard Industrial Classification (SIC) code).[5] For most plants on the BART source category list, there will only be one 2-digit SIC that applies to the entire plant. For example, all emission units associated with kraft pulp mills are within SIC code 26, and chemical process plants will generally include emission units that are all within SIC code 28. You should apply this "2-digit SIC test" the same way you are now applying this test in the major source NSR programs.[6]

For purposes of the regional haze rule, you group emissions from all emission units put in place within the 1962–1977 time period that are within the 2-digit SIC code, even if those emission units are in different categories on the BART category list.

Examples: A chemical plant which started operations within the 1962 to 1977 time period manufactures hydrochloric acid (within the category title "Hydrochloric, sulfuric, and nitric acid plants") and various organic chemicals (within the category title "chemical process plants"), and has onsite an industrial boiler greater than 250 million BTU/hour. All of the emission units are within SIC 28 and, therefore, all the emission units are considered in determining BART eligibility of the plant. You sum the emissions over all of these emission units to see whether there are more than 250 tons per year of potential emissions.

A steel mill which started operations within the 1962 to 1977 time period includes a sintering plant, a coke oven battery, and various other emission units. All of the emission units are within SIC 33. You sum the emissions over all of these emission units to see whether there are more than 250 tons per year of potential emissions.

4. Final Step: Identify the Emissions Units and Pollutants That Constitute the BART-Eligible Source

If the emissions from the list of emissions units at a stationary source exceed a potential to emit of 250 tons per year for any visibility-impairing pollutant, then that collection of emissions units is a BART-eligible source. A BART analysis is required for each visibility-impairing pollutant emitted.

Example: A stationary source comprises the following two emissions units, with the following potential emissions:

Emissions unit A
- 500 tons/yr SO_2
- 150 tons/yr NO_X
- 25 tons/yr PM

Emissions unit B
- 100 tons/yr SO_2
- 75 tons/yr NO_X
- 10 tons/yr PM

For this example, potential emissions of SO_2 are 600 tons per year, which exceeds the 250 tons/yr threshold. Accordingly, the entire "stationary source" that is emissions units A and B are subject to a BART review for SO_2, NO_X, and PM, even though the potential emissions of PM and NO_X each are less than 250 tons/yr.

Example: The total potential emissions, obtained by adding the potential emissions of all emission units in listed categories at a plant site, are as follows:

200 tons/yr SO_2
150 tons/yr NO_X
25 tons/yr PM

Even though total emissions exceed 250 tons per year, no individual regulated pollutant exceeds 250 tons per year and this source is not BART-eligible.

III. How To Identify Sources "Subject To BART"

After you have identified the BART-eligible sources, the next step is determining whether these sources are subject to a further BART analysis because they emit "an air pollutant which may reasonably be anticipated to cause or contribute" to any visibility

[4] **Note:** Most of these terms and definitions are the same for regional haze and the 1980 visibility regulations. For the regional haze rule we use the term "BART-eligible source" rather than "existing stationary facility" to clarify that only a limited subset of existing stationary sources are subject to BART.

[5] The EPA recognizes that we are in transition period from the use of the SIC system to a new system called the North American industry Classification System (NAICS). Our initial thinking is that BART determinations, as a one-time activity, are perhaps best handled under the SIC classifications. We request comment on whether a switch to the new system for the regional haze rule is warranted—we expect that few if any BART eligibility determinations would hinge on this distinction.

[6] **Note:** The concept of support facility used for the PSD program applies here as well. As discussed in the draft *New Source Review Workbook Manual*, October 1990, pages A.3–A.5, support facilities, that is facilities that convey, store or otherwise assist in the production of the principal product, must be grouped with primary facilities even when more than one 2-digit SIC is present.

impairment in a Federal Class I area. As we discuss in the preamble to the regional haze rule at 64 FR 35739–35740, the statutory language represents a very low triggering threshold. In implementing the regional haze rule, you should find that a BART-eligible source is "reasonably anticipated to cause or contribute" to regional haze if the source emits pollutants within a geographic region from which pollutants can be emitted and transported downwind to a Class I area. Where emissions from a given geographic region contribute to regional haze in a Class I area, you should consider any emissions from BART-eligible sources in that region to contribute to the regional haze problem, thereby warranting a further BART analysis for those sources.

A. How Can I Identify "the Geographic Area" or "Region" That Contributes to a Given Class I Area?

As noted in the preamble to the regional haze rule, geographic "regions" that can contribute to regional haze generally extend for hundreds or thousands of kilometers (64 FR 35722). Accordingly, most BART-eligible sources are located within such a geographic region. For example, we believe it would be difficult to demonstrate that a State or territory's emissions do not contribute to regional haze impairment in a Class I area within that State or territory.

The regional haze rule recognizes that there may be geographic areas (individual States or multi-State areas) within the United States, (in virtually all cases involving States that do not have Class I areas) for which the total emissions make only a trivial contribution to visibility impairment in any Class I area. In identifying any such State or area, you or a regional planning organization must conduct an air quality modeling analysis to demonstrate that the total emissions from the State or area makes only a trivial contribution to visibility impairment in Class I areas.

One approach that can be used is to determine whether a State or area contributes in a non-trivial way would be to do an analysis where you compare the visibility impairment in a Class I area with the emissions from a State or area to the visibility impairment in the Class I area in the absence of the emissions from the State or area. This approach can be referred to as a "zero-out" approach where you zero out the emissions from the State or area that is suspected to make a trivial contribution to visibility impairment in a Class I area. Under this approach, you would compare:

(1) the visibility impairment in each affected Class I area (for the average of the 20 percent most impaired days and the 20 percent least impaired days) when the emissions from the State or area suspected to have a trivial contribution are included in the modeling analysis, and

(2) the visibility impairment in each affected Class I area (for the average of the 20 percent most impaired days and the 20 percent least impaired days), excluding from the modeling analysis the emissions from the geographic area suspected to have a trivial impact.

The difference in visibility between these two model runs provides an indication of the impact on visibility of emissions from the State(s) in question. In addition, it may be possible in the future to conduct analyses of the geographic area that contributes to visibility impairment in a Class I area through use of a source apportionment model for PM. Source apportionment models for PM are currently under development by private consultants. Guidance for regional modeling for visibility and PM is found in a document entitled "Guidance for Demonstrating Attainment of Air Quality Goals for $PM_{2.5}$ and Regional Haze." [**Note:** this document is currently in draft form, but we expect a final document before final publication of the BART guidelines]

IV. Engineering Analysis of BART Options

This section describes the process for the engineering analysis of control options for sources subject to BART.

A. What Factors Must I Address in the Engineering Analysis?

The visibility regulations define BART as follows:

Best Available Retrofit Technology (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by * * * [a BART-eligible source]. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

In the regional haze rule, we divide the BART analysis into two parts: an engineering analysis requirement in 40 CFR 51.308(e)(1)(ii)(A), and a visibility impacts analysis requirement in 40 CFR 51.308(e)(1)(ii)(B). This section of the guidelines address the requirements for the engineering analysis. Your engineering analysis identifies the best system of continuous emission reduction taking into account:

—The available retrofit control options,
—Any pollution control equipment in use at the source (which affects the availability of options and their impacts),
—The costs of compliance with control options,
—The remaining useful life of the facility (which as we will discuss below, is an integral part of the cost analysis), and
—The energy and non-air quality environmental impacts of control options.

We discuss the requirement for a visibility impacts analysis below in section V.

B. How Does a BART Engineering Analysis Compare to a BACT Review Under the PSD Program?

In this proposal, we are seeking comment on two alternative approaches for conducting a BART engineering analysis. EPA prefers the first approach. Under this first alternative, the BART analysis would be very similar to the BACT review as described in the New Source Review Workshop Manual (Draft, October 1990). Consistent with the Workshop Manual, the BART engineering analysis would be a process which provides that all available control technologies be ranked in descending order of control effectiveness. Under this option, you must first examine the most stringent alternative. That alternative is selected as the "best" unless you demonstrate and document that the alternative cannot be justified based upon technical considerations, costs, energy impacts, and non-air quality environmental impacts. If you eliminate the most stringent technology in this fashion, you then consider the next most stringent alternative, and so on.

The EPA also requests comment on an alternative decision-making approach that would not necessarily begin with an evaluation of the most stringent control option. Under this approach, you would have more choices in the way you structure your BART analysis. For example, you could choose to begin the BART determination process by evaluating the least stringent technically feasible control option or an intermediate control option drawn from the range of technically feasible control alternatives. Under this approach, you would then consider the additional emission reductions, costs, and other

effects (if any) of successively more stringent control options. Under such an approach, you would still be required to (1) display and rank all of the options in order of control effectiveness, including the most stringent control option, and to identify the average and incremental costs of each option; (2) consider the energy and non-air quality environmental impacts of each option; and (3) provide a justification for adopting the control technology that you select as the "best" level of control, including an explanation as to why you rejected other more stringent control technologies. While both approaches require essentially the same parameters and analyses, the EPA prefers the first approach described above, because we believe it may be more straightforward to implement than the alternative and would tend to give more thorough consideration to stringent control alternatives.

Although very similar in process, BART reviews differ in several respects from the BACT review process described in the NSR Draft Manual. First, because all BART reviews apply to existing sources, the available controls and the impacts of those controls may differ. Second, the CAA requires you to take slightly different factors into account in determining BART and BACT. In a BACT analysis, the permitting authority must consider the "energy, environmental and economic impacts and other costs" associated with a control technology in making its determination. In a BART analysis, on the other hand, the State must take into account the "cost of compliance, the remaining useful life of the source, the energy and nonair quality environmental impacts of compliance, any existing pollution control technology in use at the source, and the degree of improvement in visibility from the use of such technology" in making its BART determination. Because of the differences in terminology, the BACT review process tends to encompass a broader range of factors. For example, the term "environmental impacts" in the BACT definition is more broad than the term "nonair quality environmental impacts" used in the BART definition. Accordingly, there is no requirement in the BART engineering analysis to evaluate adverse air quality impacts of control alternatives such as the relative impacts on hazardous air pollutants, although you may wish to do so. Finally, for the BART analysis, there is no minimum level of control required, while any BACT emission limitation must be at least as stringent as any NSPS that applies to the source.

C. Which Pollutants Must I Address in the Engineering Review?

Once you determine that a source is subject to BART, then a BART review is required for each visibility-impairing pollutant emitted. In a BART review, for each affected emission unit, you must establish BART for each pollutant that can impair visibility. Consequently, the BART determination must address air pollution control measures for each emissions unit or pollutant emitting activity subject to review.

Example: Plantwide emissions from emission units within the listed categories that began operation within the "time window" for BART [7] are 300 tons per year of NO_X, 200 tons per year of SO_2, and 150 tons of primary particulate. Emissions unit A emits 200 tons per year of NO_X, 100 tons per year of SO_2, and 100 tons per year of primary particulate. Other emission units, units B through H, which began operating in 1966, contribute lesser amounts of each pollutant. For this example, a BART review is required for NO_X, SO_2, and primary particulate, and control options must be analyzed for units B through H as well as unit A.

D. What Are the Five Basic Steps of a Case-by-Case BART Engineering Analysis?

The five steps are:

Step 1—Identify all [8] available retrofit control technologies,
Step 2—Eliminate Technically Infeasible Options,
Step 3—Rank Remaining Control Technologies By Control Effectiveness,
Step 4—Evaluate Impacts and Document the Results, and
Step 5—Select "Best System of Continuous Emission Reduction."

1. Step 1: How Do I Identify All Available Retrofit Emission Control Techniques?

Available retrofit control options are those air pollution control technologies with a practical potential for application to the emissions unit and the regulated pollutant under evaluation. Air pollution control technologies can include a wide variety of available methods, systems, and techniques for control of the affected pollutant. Available air pollution control technologies can include technologies employed outside of the United States that have been successfully demonstrated in practice on full scale operations, particularly those that have been demonstrated as retrofits to existing sources. Technologies required as BACT or LAER are available for BART purposes and must be included as control alternatives. The control alternatives should include not only existing controls for the source category in question, but also take into account technology transfer of controls that have been applied to similar source categories and gas streams. Technologies which have not yet been applied to (or permitted for) full scale operations need not be considered as available; we do not expect the source owner to purchase or construct a process or control device that has not already been demonstrated in practice.

Where a NSPS exists for a source category (which is the case for most of the categories affected by BART), you should include a level of control equivalent to the NSPS as one of the control options.[9] The NSPS standards are codified in 40 CFR part 60. We note that there are situations where NSPS standards do not require the most stringent level of available control for all sources within a category. For example, post-combustion NO_X controls (the most stringent controls for stationary gas turbines) are not required under subpart GG of the NSPS for Stationary Gas Turbines. However, such controls must still be considered available technologies for the BART selection process.

Potentially applicable retrofit control alternatives can be categorized in three ways.

- Pollution prevention: use of inherently lower-emitting processes/practices, including the use of materials and production processes and work practices that prevent emissions and result in lower "production-specific" emissions,
- Use of, (and where already in place, improvement in the performance of) add-on controls, such as scrubbers,

[7] That is, emission uunits that were in existence on August 7, 1977 and which began actual operation on or after August 7, 1962.

[8] In identifying "all" options, you must identify the most stringent option and a reasonable set of options for analysis that reflects a comprehensive list of available technologies. It is not necessary to list all permutations of available control levels that exist for a given technology—the list is complete if it includes the maximum level of control each technology is capable of achieving.

[9] In EPA's 1980 BART guidelines for reasonably attributable visibility impairment, we concluded that NSPS standards generally, at that time, represented the best level sources could install as BART, and we required no further demonstration if a NSPS level was selected. In the 20 year period since this guidance was developed, there have been advances in SO_2 control technologies, confirmed by a number of recent retrofits at Western power plants. Accordingly, EPA no longer concludes that the NSPS level of controls automatically represents "the best these sources can install." While it is possible that a detailed analysis of the BART factors could result in the selection of a NSPS level of control, we believe that you should only reach this conclusion based upon an analysis of the full range of control options.

fabric filters, thermal oxidizers and other devices that control and reduce emissions after they are produced, and

• Combinations of inherently lower-emitting processes and add-on controls. Example: for a gas-fired turbine, a combination of combustion controls (an inherently lower-emitting process) and post-combustion controls such as selective catalytic reduction (add-on) may be available to reduce NO_X emissions.

For the engineering analysis, you should consider potentially applicable control techniques from all three categories. You should consider lower-polluting processes based on demonstrations from facilities manufacturing identical or similar products from identical or similar raw materials or fuels. Add-on controls, on the other hand, should be considered based on the physical and chemical characteristics of the pollutant-bearing emission stream. Thus, candidate add-on controls may have been applied to a broad range of emission unit types that are similar, insofar as emissions characteristics, to the emissions unit undergoing BART review.

In the course of the BART engineering analysis, one or more of the available control options may be eliminated from consideration because they are demonstrated to be technically infeasible or to have unacceptable energy, cost, or non-air quality environmental impacts on a case-by-case (or site-specific) basis. However, at the outset, you should initially identify all control options with potential application to the emissions unit under review.

We do not consider BART as a requirement to redesign the source when considering available control alternatives. For example, where the source subject to BART is a coal-fired electric generator, we do not require the BART analysis to consider building a natural gas-fired electric turbine although the turbine may be inherently less polluting on a per unit basis.

In some cases, retrofit design changes may be available for making a given production process or emissions unit inherently less polluting.[10] (Example: To allow for use of natural gas rather than oil for startup). In such cases, the ability of design considerations to make the process inherently less polluting must be considered as a control alternative for the source.

Combinations of inherently lower-polluting processes/practices (or a process made to be inherently less polluting) and add-on controls could possibly yield more effective means of emissions control than either approach alone. Therefore, the option to use an inherently lower-polluting process does not, in and of itself, mean that no additional add-on controls need to be included in the BART analysis. These combinations should be identified in Step 1 for evaluation in subsequent steps.

For emission units subject to a BART engineering review, there will often be control measures or devices already in place. For such emission units, it is important to include control options that involve improvements to existing controls, and not to limit the control options only to those measures that involve a complete replacement of control devices.

Example: For a power plant with an existing wet scrubber, the current control efficiency is 66 percent. Part of the reason for the relatively low control efficiency is that 22 percent of the gas stream bypasses the scrubber. An engineering review identifies options for improving the performance of the wet scrubber by redesigning the internal components of the scrubber and by eliminating or reducing the percentage of the gas stream that bypasses the scrubber. Four control options are identified: (1) 78 percent control based upon improved scrubber performance while maintaining the 22 percent bypass, (2) 83 percent control based upon improved scrubber performance while reducing the bypass to 15 percent, (3) 93 percent control based upon improving the scrubber performance while eliminating the bypass entirely, (this option results in a "wet stack" operation in which the gas leaving the stack is saturated with water) and (4) 93 percent as in option 3, with the addition of an indirect reheat system to reheat the stack gas above the saturation temperature. You must consider each of these four options in a BART analysis for this source.

You are expected to identify all demonstrated and potentially applicable retrofit control technology alternatives. Examples of general information sources to consider include:

• The EPA's Clean Air Technology Center, which includes the RACT/BACT/LAER Clearinghouse (RBLC);

• State and Local Best Available Control Technology Guidelines—many agencies have online information—for example South Coast Air Quality Management District, Bay Area Air Quality Management District, and Texas Natural Resources Conservation Commission;

• Control technology vendors;

• Federal/State/Local NSR permits and associated inspection/performance test reports;

• Environmental consultants;

• Technical journals, reports and newsletters, air pollution control seminars; and

• EPA's NSR bulletin board—http://www.epa.gov/ttn/nsr;

• Department of Energy's Clean Coal Program—technical reports;

• NO_X Control Technology "Cost Tool"—Clean Air Markets Division web page—http://www.epa.gov/acidrain/nox/noxtech.htm;

• Performance of selective catalytic reduction on coal-fired steam generating units—final report. OAR/ARD, June 1997 (also available at http:www.epa.gov/acidrain/nox/noxtech.htm);

• Cost estimates for selected applications of NO_X control technologies on stationary combustion boilers. OAR/ARD June 1997. (Docket for NO_X SIP call, A–96–56, II–A–03);

• Investigation of performance and cost of NO_X controls as applied to group 2 boilers. OAR/ARD, August 1996. (Docket for Phase II NO_X rule, A–95–28, IV–A–4);

• Controlling SO_2 Emissions: A Review of Technologies. EPA–600/R–00–093, USEPA/ORD/NRMRL, October 2000.

• OAQPS Control Cost Manual.

You should compile appropriate information from all available information sources, and you should ensure that the resulting list of control alternatives is complete and comprehensive.

2. Step 2: How Do I Determine Whether the Options Identified in Step 1 Are Technically Feasible?

In Step two, you evaluate the technical feasibility of the control options you identified in Step one. You should clearly document a demonstration of technical infeasibility and should show, based on physical, chemical, and engineering principles, that technical difficulties would preclude the successful use of the control option on the emissions unit under review. You may then eliminate such technically infeasible control options from further consideration in the BART analysis.

In general, what do we mean by technical feasibility?

Control technologies are technically feasible if either (1) they have been installed and operated successfully for the type of source under review, or (2) the technology could be applied to the source under review. Two key concepts are important in determining whether a technology could be applied: "availability" and "applicability." As explained in more detail below, a technology is considered "available" if

[10] Because BART applies to existing sources, we recognize that there will probably be far fewer opportunities to consider inherently lower-emitting processes than for NSR.

the source owner may obtain it through commercial channels, or it is otherwise available within the common sense meaning of the term. An available technology is "applicable" if it can reasonably be installed and operated on the source type under consideration. A technology that is available and applicable is technically feasible.

What do we mean by "available" technology?

The typical stages for bringing a control technology concept to reality as a commercial product are:

- Concept stage;
- Research and patenting;
- Bench scale or laboratory testing;
- Pilot scale testing;
- Licensing and commercial demonstration; and
- Commercial sales.

A control technique is considered available, within the context presented above, if it has reached the licensing and commercial sales stage of development. Similarly, we do not expect a source owner to conduct extended trials to learn how to apply a technology on a totally new and dissimilar source type. Consequently, you would not consider technologies in the pilot scale testing stages of development as "available" for purposes of BART review.

Commercial availability by itself, however, is not necessarily a sufficient basis for concluding a technology to be applicable and therefore technically feasible. Technical feasibility, as determined in Step 2, also means a control option may reasonably be deployed on or "applicable" to the source type under consideration.

Because a new technology may become available at various points in time during the BART analysis process, we believe that guidelines are needed on when a technology must be considered. For example, a technology may become available during the public comment period on the State's rule development process. Likewise, it is possible that new technologies may become available after the close of the State's public comment period and before submittal of the SIP to EPA, or during EPA's review process on the SIP submittal. In order to provide certainty in the process, we propose that all technologies be considered if available before the close of the State's public comment period. You need not consider technologies that become available after this date. As part of your analysis, you should consider any technologies brought to your attention in public comments. If you disagree with public comments asserting that the technology is available, you should provide an explanation for the public record as to the basis for your conclusion.

What do we mean by "applicable" technology?

You need to exercise technical judgment in determining whether a control alternative is applicable to the source type under consideration. In general, a commercially available control option will be presumed applicable if it has been or is soon to be deployed (e.g., is specified in a permit) on the same or a similar source type. Absent a showing of this type, you evaluate technical feasibility by examining the physical and chemical characteristics of the pollutant-bearing gas stream, and comparing them to the gas stream characteristics of the source types to which the technology had been applied previously. Deployment of the control technology on a new or existing source with similar gas stream characteristics is generally a sufficient basis for concluding the technology is technically feasible barring a demonstration to the contrary as described below.

What type of demonstration is required if I conclude that an option is not technically feasible?

Where you assert that a control option identified in Step 1 is technically infeasible, you should make a factual demonstration that the option is commercially unavailable, or that unusual circumstances preclude its application to a particular emission unit. Generally, such a demonstration involves an evaluation of the characteristics of the pollutant-bearing gas stream and the capabilities of the technology. Alternatively, a demonstration of technical infeasibility may involve a showing that there are unresolvable technical difficulties with applying the control to the source (e.g., size of the unit, location of the proposed site, or operating problems related to specific circumstances of the source). Where the resolution of technical difficulties is a matter of cost, you should consider the technology to be technically feasible. The cost of a control alternative is considered later in the process.

The determination of technical feasibility is sometimes influenced by recent air quality permits. In some cases, an air quality permit may require a certain level of control, but the level of control in a permit is not expected to be achieved in practice (e.g., a source has received a permit but the project was canceled, or every operating source at that permitted level has been physically unable to achieve compliance with the limit). Where this is the case, you should provide supporting documentation showing why such limits are not technically feasible, and, therefore, why the level of control (but not necessarily the technology) may be eliminated from further consideration. However, if there is a permit requiring the application of a certain technology or emission limit to be achieved for such technology (especially as a retrofit for an existing emission unit), this usually is sufficient justification for you to assume the technical feasibility of that technology or emission limit.

Physical modifications needed to resolve technical obstacles do not, in and of themselves, provide a justification for eliminating the control technique on the basis of technical infeasibility. However, you may consider the cost of such modifications in estimating costs. This, in turn, may form the basis for eliminating a control technology (see later discussion).

Vendor guarantees may provide an indication of commercial availability and the technical feasibility of a control technique and could contribute to a determination of technical feasibility or technical infeasibility, depending on circumstances. However, we do not consider a vendor guarantee alone to be sufficient justification that a control option will work. Conversely, lack of a vendor guarantee by itself does not present sufficient justification that a control option or an emissions limit is technically infeasible. Generally, you should make decisions about technical feasibility based on chemical, and engineering analyses (as discussed above), in conjunction with information about vendor guarantees.

A possible outcome of the BART procedures discussed in these guidelines is the evaluation of multiple control technology alternatives which result in essentially equivalent emissions. It is not EPA's intent to encourage evaluation of unnecessarily large numbers of control alternatives for every emissions unit. Consequently, you should use judgment in deciding on those alternatives for which you will conduct the detailed impacts analysis (Step 4 below). For example, if two or more control techniques result in control levels that are essentially identical, considering the uncertainties of emissions factors and other parameters pertinent to estimating performance, you may evaluate only the less costly of these options. You should narrow the scope of the BART analysis in this way, only if there is a negligible difference in emissions and energy and non-air quality environmental impacts between control alternatives.

3. Step 3: How Do I Develop a Ranking of the Technically Feasible Alternatives?

Step 3 involves ranking all the technically feasible control alternatives identified in Step 2. For the pollutant and emissions unit under review, you rank the control alternatives from the most to the least effective in terms of emission reduction potential.

Two key issues that must be addressed in this process include:

(1) Making sure that you express the degree of control using a metric that ensures an "apples to apples" comparison of emissions performance levels among options, and

(2) Giving appropriate treatment and consideration of control techniques that can operate over a wide range of emission performance levels.

In some instances, a control technology may reduce more than one visibility impairing pollutant. We request comment on whether and how the BART guidelines should address the process for ranking such control technologies against control technologies which reduce emissions of only one pollutant.

What are the appropriate metrics for comparison?

This issue is especially important when you compare inherently lower-polluting processes to one another or to add-on controls. In such cases, it is generally most effective to express emissions performance as an average steady state emissions level per unit of product produced or processed.

Examples of common metrics:

- Pounds of SO_2 emissions per million Btu heat input, and
- Pounds of NO_X emissions per ton of cement produced.

How do I evaluate control techniques with a wide range of emission performance levels?

Many control techniques, including both add-on controls and inherently lower polluting processes, can perform at a wide range of levels. Scrubbers and high and low efficiency electrostatic precipitators (ESPs) are two of the many examples of such control techniques that can perform at a wide range of levels. It is not our intent to require analysis of each possible level of efficiency for a control technique, as such an analysis would result in a large number of options. It is important, however, that in analyzing the technology you take into account the most stringent emission control level that the technology is capable of achieving. You should use the most recent regulatory decisions and performance data (e.g., manufacturer's data, engineering estimates and the experience of other sources) to identify an emissions performance level or levels to evaluate.

In assessing the capability of the control alternative, latitude exists to consider any special circumstances pertinent to the specific source under review, or regarding the prior application of the control alternative. However, you must document the basis for choosing the alternate level (or range) of control in the BART analysis. Without a showing of differences between the source and other sources that have achieved more stringent emissions limits, you should conclude that the level being achieved by those other sources is representative of the achievable level for the source being analyzed.

You may encounter cases where you may wish to evaluate other levels of control in addition to the most stringent level for a given device. While you must consider the most stringent level as one of the control options, you may consider less stringent levels of control as additional options. This would be useful, particularly in cases where the selection of additional options would have widely varying costs and other impacts.

Finally, we note that for retrofitting existing sources in addressing BART, you should consider ways to improve the performance of existing control devices, particularly when a control device is not achieving the level of control that other similar sources are achieving in practice with the same device.

How do I rank the control options?

After determining the emissions performance levels (using appropriate metrics of comparison) for each control technology option identified in Step 2, you establish a list that identifies the most stringent control technology option. Each other control option is then placed after this alternative in a ranking according to its respective emissions performance level, ranked from lowest emissions to highest emissions (most effective to least stringent effective emissions control alternative). You should do this for each pollutant and for each emissions unit (or grouping of similar units) subject to a BART analysis.

4. Step 4: For a BART Engineering Analysis, What Impacts Must I Calculate and Report? What Methods Does EPA Recommend for the Impacts Analysis?

After you identify and rank the available and technically feasible control technology options, you must then conduct three types of impacts analyses when you make a BART determination:

Impact analysis part 1: Costs of compliance, (taking into account the remaining useful life of the facility)

Impact analysis part 2: Energy impacts, and

Impact analysis part 3: Non-air quality environmental impacts.

In this section, we describe how to conduct each of these three analyses. You are responsible for presenting an evaluation of each impact along with appropriate supporting information. You should discuss and, where possible, quantify both beneficial and adverse impacts. In general, the analysis should focus on the direct impact of the control alternative.

a. *Impact analysis part 1: How do I estimate the costs of control?* To conduct a cost analysis, you:

—Identify the emissions units being controlled,

—Identify design parameters for emission controls, and

—Develop cost estimates based upon those design parameters.

It is important to identify clearly the emission units being controlled, that is, to specify a well-defined area or process segment within the plant. In some cases, multiple emission units can be controlled jointly. However, in other cases it may be appropriate in the cost analysis to consider whether multiple units will be required to install separate and/or different control devices. The engineering analysis should provide a clear summary list of equipment and the associated control costs. Inadequate documentation of the equipment whose emissions are being controlled is a potential cause for confusion in comparison of costs of the same controls applied to similar sources.

You then specify the control system design parameters. Potential sources of these design parameters include equipment vendors, background information documents used to support NSPS development, control technique guidelines documents, cost manuals developed by EPA, control data in trade publications, and engineering and performance test data. The following are a few examples of design parameters for two example control measures:

Control device	Examples of design parameters
Wet Scrubbers	Type of sorbent used (lime, limestone, etc.) Gas pressure drop Liquid/gas ratio.

Control device	Examples of design parameters
Selective Catalytic Reduction.	Ammonia to NO_x molar ratio Pressure drop Catalyst life.

The value selected for the design parameter should ensure that the control option will achieve the level of emission control being evaluated. You should include in your analysis, documentation of your assumptions regarding design parameters. Examples of supporting references would include the Office of Air Quality Planning and Standards (OAQPS) *Control Cost Manual* (see below) and background information documents used for NSPS and hazardous pollutant emission standards. If the design parameters you specified differ from typical designs, you should document the difference by supplying performance test data for the control technology in question applied to the same source or a similar source.

Once the control technology alternatives and achievable emissions performance levels have been identified, you then develop estimates of capital and annual costs. The basis for equipment cost estimates also should be documented, either with data supplied by an equipment vendor (i.e., budget estimates or bids) or by a referenced source (such as the *OAQPS Control Cost Manual*, Fifth Edition, February 1996, EPA 453/B–96–001).[11] In order to maintain and improve consistency, we recommend that you estimate control equipment costs based on the EPA/OAQPS *Control Cost Manual*, where possible.[12] The *Control Cost Manual* addresses most control technologies in sufficient detail for a BART analysis. While the types of site-specific analyses contained in the *Control Cost Manual* are less precise than those based upon a detailed engineering design, normally the estimates provide results that are plus or minus 30 percent, which is generally sufficient for the BART review. The cost analysis should take into account site-specific conditions that are out of the ordinary (e.g., use of a more expensive fuel or additional waste disposal costs) that may affect the cost of a particular BART technology option.

b. *How do I take into account a project's "remaining useful life" in calculating control costs?* You treat the requirement to consider the source's "remaining useful life" of the source for BART determinations as one element of the overall cost analysis. The "remaining useful life" of a source, if it represents a relatively short time period, may affect the annualized costs of retrofit controls. For example, the methods for calculating annualized costs in EPA's *Control Cost Manual* require the use of a specified time period for amortization that varies based upon the type of control. If the remaining useful life will clearly exceed this time period, the remaining useful life has essentially no effect on control costs and on the BART determination process. Where the remaining useful life is less than the time period for amortizing costs, you should use this shorter time period in your cost calculations.

For purposes of these guidelines, the remaining useful life is the difference between:

(1) January 1 of the year you are conducting the BART analysis (but not later than January 1, 2008);[13] and

(2) The date the facility stops operations. This date must be assured by a federally-enforceable restriction preventing further operation. A projected closure date, without such a federally-enforceable restriction, is not sufficient. (The EPA recognizes that there may be situations where a source operator intends to shut down a source by a given date, but wishes to retain the flexibility to continue operating beyond that date in the event, for example, that market conditions change.) We request comment on how such flexibility could be provided in this regard while maintaining consistency with the statutory requirement to install BART within 5 years. For example, one option that we request comment on is allowing a source to choose between:

(1) Accepting a federally enforceable condition requiring the source to shut down by a given date, or

(2) Installing the level of controls that would have been considered BART if the BART analysis had not assumed a reduced remaining useful life if the source is in operation 5 years after the date EPA approves the relevant SIP. The source would not be allowed to operate after the 5-year mark without such controls.

c. *What do we mean by cost effectiveness?* Cost effectiveness, in general, is a criterion used to assess the potential for achieving an objective at least cost. For purposes of air pollutant analysis, "effectiveness" is measured in terms of tons of pollutant emissions removed, and "cost" is measured in terms of annualized control costs. We recommend two types of cost-effectiveness calculations—average cost effectiveness, and incremental cost-effectiveness.

In the cost analysis, you should take care to not focus on incomplete results or partial calculations. For example, large capital costs for a control option alone would not preclude selection of a control measure if large emissions reductions are projected. In such a case, low or reasonable cost effectiveness numbers may validate the option as an appropriate BART alternative irrespective of the large capital costs. Similarly, projects with relatively low capital costs may not be cost effective if there are few emissions reduced.

d. *How do I calculate average cost effectiveness?* Average cost effectiveness means the total annualized costs of control divided by annual emissions reductions (the difference between baseline annual emissions and the estimate of emissions after controls), using the following formula:

$$\text{Average cost effectiveness (dollars per ton removed)} = \frac{\text{Control option annualized cost}^{14}}{\text{Baseline annual emissions} - \text{Annual emissions with Control option}}$$

[11] The *Control Cost Manual* is updated periodically. While this citation refers to the latest version at the time this guidance was written, you should use the version that is current as of when you conduct your impact analysis. This document is available at the following Web site: *http://www.epa.gov/ttn/catc/dir1/chpt2acr.pdf*.

[12] You should include documentation for any additional information you used for the cost calculations, including any information supplied by vendors that affects your assumptions regarding purchased equipment costs, equipment life, replacement of major components, and any other element of the calculation that differs from the *Control Cost Manual*.

[13] The reason for the year 2008 is that the year 2008 is the latest year for which SIPs are due to address the BART requirement.

[14] Whenever you calculate or report annual costs, you should indicate the year for which the costs are estimated. For example, if you use the year 2000 as the basis for cost comparisons, you would report that an annualized cost of $20 million would be: $20 million (year 2000 dollars).

Because you calculate costs in (annualized) dollars per year ($/yr) and because you calculate emissions rates in tons per year (tons/yr), the result is an average cost-effectiveness number in (annualized) dollars per ton ($/ton) of pollutant removed.

e. *How do I calculate baseline emissions?* The baseline emissions rate should represent a realistic depiction of anticipated annual emissions for the source. In general, for the existing sources subject to BART, you will estimate the anticipated annual emissions based upon actual emissions from a baseline period. For purposes of estimating actual emissions, these guidelines take a similar approach to the current definition of actual emissions in NSR programs. That is, the baseline emissions are the average annual emissions from the two most recent years, unless you demonstrate that another period is more representative of normal source operations.[15]

When you project that future operating parameters (e.g., limited hours of operation or capacity utilization, type of fuel, raw materials or product mix or type) will differ from past practice, and if this projection has a deciding effect in the BART determination, then you must make these parameters or assumptions into enforceable limitations. In the absence of enforceable limitations, you calculate baseline emissions based upon continuation of past practice.

Examples: The baseline emissions calculation for an emergency standby generator may consider the fact that the source owner would not operate more than past practice of 2 weeks a year. On the other hand, baseline emissions associated with a base-loaded turbine should be based on its past practice which would indicate a large number of hours of operation. This produces a significantly higher level of baseline emissions than in the case of the emergency/standby unit and results in more cost-effective controls. As a consequence of the dissimilar baseline emissions, BART for the two cases could be very different.

f. *How do I calculate incremental cost effectiveness?* In addition to the average cost effectiveness of a control option, you should also calculate incremental cost effectiveness. You should consider the incremental cost effectiveness in combination with the total cost effectiveness in order to justify elimination of a control option. The incremental cost effectiveness calculation compares the costs and emissions performance level of a control option to those of the next most stringent option, as shown in the following formula:

Incremental Cost Effectiveness (dollars per incremental ton removed) = (Total annualized costs of control option) − (Total annualized costs of next control option) ÷ (Next control option annual emissions) − (Control option annual emissions)

Example 1: Assume that Option F on Figure 2 has total annualized costs of $1 million to reduce 2000 tons of a pollutant, and that Option D on Figure 2 has total annualized costs of $500,000 to reduce 1000 tons of the same pollutant. The incremental cost effectiveness of Option F relative to Option D is ($1 million − $500,000) divided by (2000 tons − 1000 tons), or $500,000 divided by 1000 tons, which is $500/ton.

Example 2: Assume that two control options exist: Option 1 and Option 2. Option 1 achieves a 100,000 ton/yr reduction at an annual cost of $19 million. Option 2 achieves a 98,000 tons/yr reduction at an annual cost of $15 million. The incremental cost effectiveness of Option 1 relative to Option 2 is ($19 million − $15 million) divided by (100,000 tons − 98,000 tons). The adoption of Option 1 instead of Option 2 results in an incremental emission reduction of 2,000 tons per year at an additional cost of $4,000,000 per year. The incremental cost of Option 1, then, is $2000 per ton − 10 times the average cost of $190 per ton. While $2000 per ton may still be deemed reasonable, it is useful to consider both the average and incremental cost in making an overall cost-effectiveness finding. Of course, there may be other differences between these options, such as, energy or water use, or non-air environmental effects, which also deserve consideration in selecting a BART technology.

You should exercise care in deriving incremental costs of candidate control options. Incremental cost-effectiveness comparisons should focus on annualized cost and emission reduction differences between "dominant" alternatives. To identify dominant alternatives, you generate a graphical plot of total annualized costs for total emissions reductions for all control alternatives identified in the BART analysis, and by identifying a "least-cost envelope" as shown in Figure 2.

Example: Eight technically feasible control options for analysis are listed in the BART ranking. These are represented as A through H in Figure 2. The dominant set of control options, B, D, F, G, and H, represent the least-cost envelope, as we depict by the cost curve connecting them. Points A, C and E are inferior options, and you should not use them in calculating incremental cost effectiveness. Points A, C and E represent inferior controls because B will buy more emissions reductions for less money than A; and similarly, D and F will buy more reductions for less money than C and E, respectively.

In calculating incremental costs, you:

(1) Rank the control options in ascending order of annualized total costs,

(2) Develop a graph of the most reasonable smooth curve of the control options, as shown in Figure 2, and

(3) Calculate the incremental cost effectiveness for each dominant option, which is the difference in total annual costs between that option and the next most stringent option, divided by the difference in emissions reductions between those two options. For example, using Figure 2, you would calculate incremental cost effectiveness for the difference between options B and D, options D and F, options F and G, and options G and H.

[15] This is the approach in the current NSR regulations. It is possible that this definition of baseline period may change based upon a current effort to amend the NSR regulations. We propose that these guidelines should be amended to be consistent with the approach taken in that separate rulemaking.

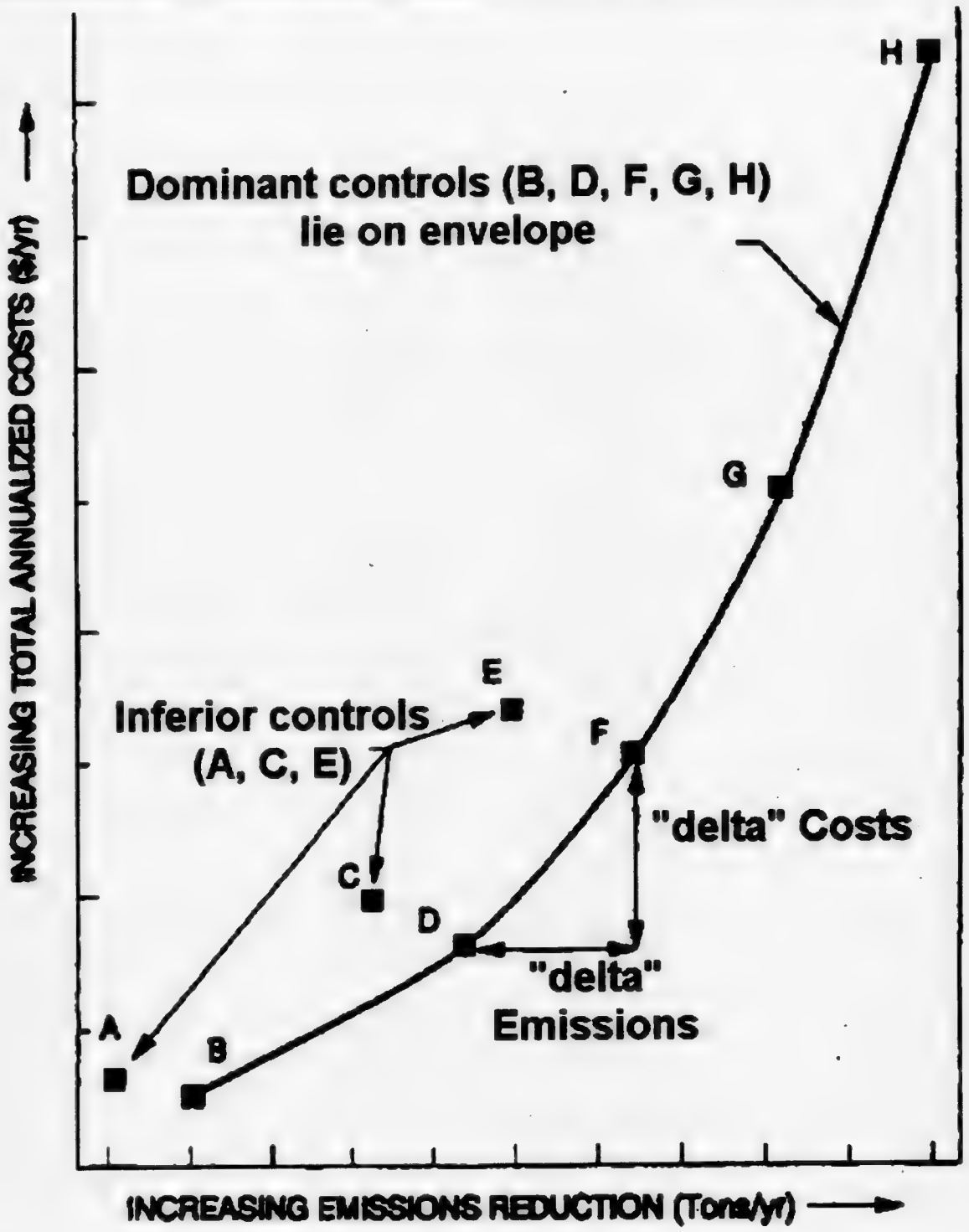

Figure 2. Least-cost Envelope.

A comparison of incremental costs can also be useful in evaluating the viability of a specific control option over a range of efficiencies. For example, depending on the capital and operational cost of a control device, total and incremental cost may vary significantly (either increasing or decreasing) over the operational range of a control device.

In addition, when you evaluate the average or incremental cost effectiveness of a control alternative, you should make reasonable and supportable assumptions regarding control efficiencies. An unrealistically low assessment of the emission reduction potential of a certain technology could result in inflated cost-effectiveness figures.

g. *What other information should I provide in the cost impacts analysis?* You should provide documentation of any unusual circumstances that exist for the source that would lead to cost-effectiveness estimates that would exceed that for recent retrofits. This is especially important in cases where recent retrofits have cost-effectiveness values that are within a reasonable range, but your analysis concludes that costs for the source being analyzed are not reasonable.

Example: In an arid region, large amounts of water are needed for a scrubbing system. Acquiring water from a distant location could greatly increase the cost effectiveness of wet scrubbing as a control option.

h. *Impact analysis part 2: How should I analyze and report energy impacts?* You should examine the energy requirements of the control technology and determine whether the use of that technology results in any significant or unusual energy penalties or benefits. A source owner may, for example, benefit from the combustion of a concentrated gas stream rich in volatile organic compounds; on the other hand, more often extra fuel or electricity is required to power a control device or incinerate a dilute gas stream. If such benefits or penalties exist, they should be quantified and included in the cost analysis. Because energy penalties or benefits can usually be quantified in terms of additional cost or income to the source, the energy impacts analysis can, in most cases, simply be factored into the cost impacts analysis. However, certain types of control technologies have inherent energy penalties associated with their use. While you should quantify these penalties, so long as they are within the normal range for the technology in question, you should not, in general, consider such penalties to be an adequate justification for eliminating that technology from consideration.

Your energy impact analysis should consider only direct energy consumption and not indirect energy impacts. For example, you could estimate the direct energy impacts of the control alternative in units of energy consumption at the source (e.g., BTU, kWh, barrels of oil, tons of coal). The energy requirements of the control options should be shown in terms of total (and in certain cases, also incremental) energy costs per ton of pollutant removed. You can then convert these units into dollar costs and, where appropriate, factor these costs into the control cost analysis.

You generally do not consider indirect energy impacts (such as energy to produce raw materials for construction of control equipment). However, if you determine, either independently or based on a showing by the source owner, that the indirect energy impact is unusual or significant and that the impact can be well quantified, you may consider the indirect impact.

The energy impact analysis may also address concerns over the use of locally scarce fuels. The designation of a scarce fuel may vary from region to region. However, in general, a scarce fuel is one which is in short supply locally and can be better used for alternative purposes, or one which may not be reasonably available to the source either at the present time or in the near future.

Finally, the energy impacts analysis may consider whether there are relative differences between alternatives regarding the use of locally or regionally available coal, and whether a given alternative would result in significant economic disruption or unemployment. For example, where two options are equally cost effective and achieve equivalent or similar emissions reductions, one option may be preferred if the other alternative results in significant disruption or unemployment.

i. *Impact analysis part 3: How do I analyze "non-air quality environmental impacts?"* In the non-air quality related environmental impacts portion of the BART analysis, you address environmental impacts other than air quality due to emissions of the pollutant in question. Such environmental impacts include solid or hazardous waste generation and discharges of polluted water from a control device.

You should identify any significant or unusual environmental impacts associated with a control alternative that have the potential to affect the selection or elimination of a control alternative. Some control technologies may have potentially significant secondary environmental impacts. Scrubber effluent, for example, may affect water quality and land use. Alternatively, water availability may affect the feasibility and costs of wet scrubbers. Other examples of secondary environmental impacts could include hazardous waste discharges, such as spent catalysts or contaminated carbon. Generally, these types of environmental concerns become important when sensitive site-specific receptors exist or when the incremental emissions reductions potential of the most stringent control is only marginally greater than the next most-effective option. However, the fact that a control device creates liquid and solid waste that must be disposed of does not necessarily argue against selection of that technology as BART, particularly if the control device has been applied to similar facilities elsewhere and the solid or liquid waste problem under review is similar to those other applications. On the other hand, where you or the source owner can show that unusual circumstances at the proposed facility create greater problems than experienced elsewhere, this may provide a basis for the elimination of that control alternative as BART.

The procedure for conducting an analysis of non-air quality environmental impacts should be made based on a consideration of site-specific circumstances. It is not necessary to perform this analysis of environmental impacts for the entire list of technologies you ranked in Step 3, if you propose to adopt the most stringent alternative. In that case, the analysis need only address those control alternatives with any significant or unusual environmental impacts that have the potential to affect the selection or elimination of a control alternative. Thus, any important relative environmental impacts (both positive and negative) of alternatives can be compared with each other.

In general, the analysis of impacts starts with the identification and quantification of the solid, liquid, and gaseous discharges from the control device or devices under review. Initially, you should perform a qualitative or semi-quantitative screening to narrow the analysis to discharges with potential for causing adverse environmental effects. Next, you should assess the mass and composition of any such discharges and quantify them to the extent possible, based on readily-available information. You should also assemble pertinent information about the public or environmental consequences of releasing these materials.

j. *What are examples of non-air quality environmental impacts?* The following are examples of how to conduct non-air quality environmental impacts:

- *Water Impact*

You should identify the relative quantities of water used and water pollutants produced and discharged as a result of the use of each alternative emission control system relative to the most stringent alternative. Where possible, you should assess the effect on ground water and such local surface water quality parameters as ph, turbidity, dissolved oxygen, salinity, toxic chemical levels, temperature, and any other important considerations. The analysis should consider whether applicable water quality standards will be met and the availability and effectiveness of various techniques to reduce potential adverse effects.

- *Solid Waste Disposal Impact*

You should compare the quality and quantity of solid waste (e.g., sludges, solids) that must be stored and disposed of or recycled as a result of the application of each alternative emission control system with the quality and quantity of wastes created with the most stringent emission control system. You should consider the composition and various other characteristics of the solid waste (such as permeability, water retention, rewatering of dried material,

compression strength, leachability of dissolved ions, bulk density, ability to support vegetation growth and hazardous characteristics) which are significant with regard to potential surface water pollution or transport into and contamination of subsurface waters or aquifers.

- *Irreversible or Irretrievable Commitment of Resources*

You may consider the extent to which the alternative emission control systems may involve a trade-off between short-term environmental gains at the expense of long-term environmental losses and the extent to which the alternative systems may result in irreversible or irretrievable commitment of resources (for example, use of scarce water resources).

- *Other Adverse Environmental Impacts*

You may consider significant differences in noise levels, radiant heat, or dissipated static electrical energy. Other examples of non-air quality environmental impacts would include hazardous waste discharges such as spent catalysts or contaminated carbon. Generally, these types of environmental concerns become important when the plant is located in an area that is sensitive to environmental degradation and when the incremental emissions reductions potential of the most stringent control option is only marginally greater than the next most-effective option.

- *Benefits to the Environment*

It is important to consider relative differences between options regarding their *beneficial impacts* to non-air quality-related environmental media. For example, you may consider whether a given control option results in less deposition of pollutants to nearby sensitive water bodies.

5. Step 5: How Do I Select the "Best" Alternative, Using the Results of Steps 1 Through 4?

a. *Summary of the Impacts Analysis.* From the alternatives you ranked in Step 3, you should develop a chart (or charts) displaying for each of the ranked alternatives:

- Expected emission rate (tons per year, pounds per hour);
- Emissions performance level (e.g., percent pollutant removed, emissions per unit product, lb/MMbtu, ppm);
- Expected emissions reductions (tons per year);
- Costs of compliance—total annualized costs ($), cost effectiveness ($/ton), and incremental cost effectiveness ($/ton);
- Energy impacts (indicate any significant energy benefits or disadvantages);
- Non-air quality environmental impacts (includes any significant or unusual other media impacts, e.g., water or solid waste), both positive and negative.

b. *Selecting a "best" alternative.* As discussed above, we are seeking comment on two alternative approaches for evaluating control options for BART. The first involves a sequential process for conducting the impacts analysis that begins with a complete evaluation of the most stringent control option. Under this approach, you determine that the most stringent alternative in the ranking does not impose unreasonable costs of compliance, taking into account both average and incremental costs, then the analysis begins with a presumption that this level is selected. You then proceed to considering whether energy and non-air quality environmental impacts would justify selection of an alternative control option. If there are no outstanding issues regarding energy and non-air quality environmental impacts, the analysis is ended and the most stringent alternative is identified as the "best system of continuous emission reduction."

If you determine that the most stringent alternative is unacceptable due to such impacts, you need to document the rationale for this finding for the public record. Then, the next most-effective alternative in the listing becomes the new control candidate and is similarly evaluated. This process continues until you identify a technology which does not pose unacceptable costs of compliance, energy and/or non-air quality environmental impacts.

The EPA also requests comment on an alternative decision-making approach that would not begin with an evaluation of the most stringent control option. For example, you could choose to begin the BART determination process by evaluating the least stringent, technically feasible control option or by evaluating an intermediate control option drawn from the range of technically feasible control alternatives. Under this approach, you would then consider the additional emissions reductions, costs, and other effects (if any) of successively more stringent control options. Under such an approach, you would still be required to (1) display and rank all of the options in order of control effectiveness and to identify the average and incremental costs of each option; (2) consider the energy and non-air quality environmental impacts of each option; and (3) provide a justification for adopting the technology that you select as the "best" level of control, including an explanation as to why you rejected other more stringent control technologies.

Because of EPA's experience in evaluating SO_2 control options for utility boilers, the Agency is proposing to establish a presumption regarding the level of SO_2 control that is generally achievable for such sources. Based on the cost models in the *Controlling SO_2 Emissions* report,[16] it appears that, where there is no existing control technology in place, 90–95 percent control can generally be achieved at cost-effectiveness values that are in the hundreds of dollars per ton range or less.[17] We are thus proposing a presumption that, for uncontrolled utility boilers, an SO_2-control level in the 90–95 range is generally achievable. If you wish to demonstrate a BART level of control that is less than any presumption established the final guidelines, you would need to demonstrate the source-specific circumstances with respect to costs, remaining useful life, non-air quality environmental impacts, or energy impacts that would justify less stringent controls than for a typical utility boiler. We believe that the "consideration of cost" factor for source-by-source BART, which is a technology-based approach, generally requires selection of control measures that are within this level of cost effectiveness. We recognize, however, that the population of utility boilers subject to BART may have case-by-case variations (for example, type of fuel used, severe space limitations, and presence of existing control equipment) that could affect the costs of applying retrofit controls. We invite comments on whether the 90–95 percent presumption is appropriate, or whether another presumption should be established instead. If commenters want to offer a different presumption they should provide documentation supporting the basis for their proposal.

For evaluating the significance of the costs of compliance, EPA requests

[16] Documentation of the presumption that 90–95 percent control is achievable is contained in a recent report entitled *Controlling SO_2 Emissions: A Review of Technologies*, EPA–600/R–00–093, available on the internet at *http://www.epa.gov/ORD/WebPubs/so2*. This report summarizes percentage controls for flue gas desulfurization (FGD) systems worldwide, provides detailed methods for evaluating costs, and explains the reasons why costs have been decreasing with time.

[17] The EPA has used the cost models in the *Controlling SO_2 Emissions* report to calculate cost-effectiveness ($/ton) estimates for FGD technologies for a number of example cases. (See note to docket A–2000–28 from Tim Smith, EPA/OAQPS, December 29, 2000).

comment on whether the final rule should contain specific criteria, and on whether such criteria would improve implementation of the BART requirement. For example, in the work of the Western Regional Air Partnership (WRAP),[18] a system is described which views as "low cost" those controls with an average cost effectiveness below $500/ton, as "moderate" those controls with an average cost effectiveness between $500 to 3000 per ton, and as "high" those controls with an average cost effectiveness greater than $3000 per ton.

c. *In selecting a "best" alternative, should I consider the affordability of controls?* Even if the control technology is cost effective, there may be cases where the installation of controls would affect the viability of continued plant operations.

As a general matter, for plants that are essentially uncontrolled at present, and emit at much greater levels per unit of production than other plants in the category, we are unlikely to accept as BART any analysis that preserves a source's uncontrolled status. While this result may predict the shutdown of some facilities, we believe that the flexibility provided in the regional haze rule for an alternative reduction approach, such as an emissions trading program, will minimize the likelihood of shutdowns.

Nonetheless, we recognize there may be unusual circumstances that justify taking into consideration the conditions of the plant and the economic effects of requiring the use of a given control technology. These effects would include effects on product prices, the market share, and profitability of the source. We do not intend, for example, that the most stringent alternative must always be selected, if that level would cause a plant to shut down, while a slightly lesser degree of control would not have this effect. Where there are such unusual circumstances that are judged to have a severe effect on plant operations, you may take into consideration the conditions of the plant and the economic effects of requiring the use of a control technology. Where these effects are judged to have a severe impact on plant operations you may consider them in the selection process, so long as you provide an economic analysis that demonstrates, in sufficient detail for a meaningful public review, the specific economic effects, parameters, and reasoning. (We recognize that this review process must preserve the confidentiality of sensitive business information). Any analysis should consider whether other competing plants in the same industry may also be required to install BART controls.

[18] *Technical Support Documentation. Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and a Backstop Market Trading Program. An Annex to the Report of the Grand Canyon Visibility Transport Commission.* Section 6A.

V. Cumulative Air Quality Analysis

A. What Air Quality Analysis Do We Require in the Regional Haze Rule for Purposes of BART Determinations?

In the regional haze rule, we require the following in 40 CFR 51.308(e)(1)(ii)(B):

> An analysis of the degree of visibility improvement that would be achieved in each mandatory Class I Federal area as a result of the emission reductions from all sources subject to BART located within the region that contributes to visibility impairment in the Class I area, based on the * * * [results of the engineering analysis required by 40 CFR 51.308(e)(1)(ii)(A)] * * *

This means that the regional haze rule requires you to conduct a regional modeling analysis which addresses the total cumulative regional visibility improvement if all sources subject to BART were to install the "best" controls selected according to the engineering analysis described above in section IV of these guidelines. We are developing guidelines for regional air quality modeling.[19]

B. How Do I Consider the Results of This Analysis in My Selection of BART for Individual Sources?

You use a regional modeling analysis to assess the *cumulative* impact on visibility of the controls selected in the engineering analysis for the time period for the first regional haze SIP, that is, the time period between the baseline period and the year 2018. You use this cumulative impact assessment to make a determination of whether the controls you identified, in their entirety, provide a sufficient visibility improvement to justify their installation. We believe that there is a sufficient basis for the controls if you can demonstrate for any Class I area that any of the following criteria are met:

(1) The cumulative visibility improvement is a substantial fraction of the achievable visibility improvement from all measures included in the SIP, or is a substantial fraction of the visibility goal selected for any Class I area (EPA believes that for such situations, the controls would be essential to ensure progress towards a long-term improvement in visibility); OR

(2) The cumulative visibility improvement is necessary to prevent any degradation from current conditions on the best visibility days.

Note that under 40 CFR 51.308(e)(1)(ii)(B), the passage cited above, the rule does not provide for modeling of subgroupings of the BART population within a region, nor for determinations that some, but not all, of the controls selected in the engineering analysis may be included in the SIP. Thus, to comply with 40 CFR 51.308(e)(1), the visibility SIP must provide for BART emission limitations for *all* sources subject to BART (or demonstrate that BART-level controls are already in place and required by the SIP), unless you provide a demonstration that *no* BART controls are justifiable based upon the cumulative visibility analysis.

[19] (The current draft of this document is entitled *Guidance for Attainment of Air Quality Goals for $PM_{2.5}$ and Regional Haze*. We expect this document will be released in final form before the publication of the final rule for the BART guidelines.)

VI. Enforceable Limits/Compliance Date

To complete the BART process, you must establish enforceable emission limits and require compliance within a given period of time. In particular, you must establish an enforceable emission limit for each subject emission unit at the source and for each pollutant subject to review that is emitted from the source. In addition, you must require compliance with the BART emission limitations no later than 5 years after EPA approves your SIP. If technological or economic limitations in the application of a measurement methodology to a particular emission unit would make an emissions limit infeasible, you may prescribe a design, equipment, work practice, operation standard, or combination of these types of standards. You should ensure that any BART requirements are written in a way that clearly specifies the individual emission unit(s) subject to BART review. Because the BART requirements are "applicable" requirements of the CAA, they must be included as title V permit conditions according to the procedures established in 40 CFR part 70 or 40 CFR part 71.

Section 302(k) of the CAA requires emissions limits such as BART to be met on a continuous basis. Although this provision does not necessarily require the use of continuous emissions monitoring (CEMs), it is important that sources employ techniques that ensure compliance on a continuous basis. Monitoring requirements generally applicable to sources, including those that are subject to BART, are governed by other regulations. See, e.g., 40 CFR

part 64 (compliance assurance monitoring); 40 CFR 70.6(a)(3) (periodic monitoring); 40 CFR 70.6(c)(1) (sufficiency monitoring). Note also that while we do not believe that CEMs would necessarily be required for all BART sources, the vast majority of electric generating units already employ CEM technology for other programs, such as the acid rain program. In addition, emissions limits must be enforceable as a practical matter (contain appropriate averaging times, compliance verification procedures and recordkeeping requirements). In light of the above, the permit must:

- Be sufficient to show compliance or noncompliance (i.e., through monitoring times of operation, fuel input, or other indices of operating conditions and practices); and
- Specify a reasonable averaging time consistent with established reference methods, contain reference methods for determining compliance, and provide for adequate reporting and recordkeeping so that air quality agency personnel can determine the compliance status of the source.

VII. Emission Trading Program Overview

40 CFR 51.308(e)(2) allows States the option of implementing an emissions trading program or other alternative measure instead of requiring BART. This option provides the opportunity for achieving better environmental results at a lower cost than under a source-by-source BART requirement. A trading program must include participation by BART sources, but may also include sources that are not subject to BART. The program would allow for implementation during the first implementation period of the regional haze rule (that is, by the year 2018) instead of the 5-year compliance period noted above. In this section of the guidance, we provide an overview of the steps in developing a trading program [20] consistent with 40 CFR 51.308(e)(2).

A. What Are the General Steps in Developing an Emission Trading Program?

The basic steps are to:

(1) Develop emission budgets;

(2) Allocate emission allowances to individual sources; and

(3) Develop a system for tracking individual source emissions and allowances. (For example, procedures for transactions, monitoring, compliance and other means of ensuring program accountability).

B. What Are Emission Budgets and Allowances?

An emissions budget is a limit, for a given source population, on the total emissions amount [21] that may be emitted by those sources over a State or region. An emission budget is also referred to as an "emission cap."

In general, the emission budget is subdivided into source-specific amounts that we refer to as "allowances." Generally, each allowance equals one ton of emissions. Sources must hold allowances for all emissions of the pollutant covered by the program that they emit. Once you allocate the allowances, source owners have flexibility in determining how they will meet their emissions limit. Source owners have the options of:

—Emitting at the level of allowances they are allocated (for example, by controlling emissions or curtailing operations),

—Emitting at amounts less than the allowance level, thus freeing up allowances that may be used by other sources owned by the same owner, or sold to another source owner, or

—Emitting at amounts greater than the allowance level, and purchasing allowances from other sources or using excess allowances from another plant under the same ownership.

A good example of an emissions trading program is the acid rain program under title IV of the CAA. The acid rain program is a national program—it establishes a national emissions cap, allocates allowances to individual sources, and allows trading of allowances between all covered sources in the United States. The Ozone Transport Commission's NO_X Memorandum of Understanding, and the NO_X SIP call both provide for regional trading programs. Other trading programs generally have applied only to sources within a single State. A regional multi-State program provides greater opportunities for emission trading, and should be considered by regional planning organizations that are evaluating alternatives to source-specific BART. The WRAP has recommended a regional market trading program as a backstop to its overall emission reduction program for SO_2. Although regional trading programs require more interstate coordination, EPA has expertise that it can offer to States wishing to pursue such a program.

C. What Criteria Must Be Met in Developing an Emission Trading Program as an Alternative to BART?

Under the regional haze rule, an emission trading program must achieve "greater reasonable progress" (that is, greater visibility improvement) than would be achieved through the installation and operation of source-specific BART. The "greater reasonable progress" demonstration involves the following steps, which are discussed in more detail below:

—Identify the sources that are subject to BART,

—Calculate the emissions reductions that would be achieved if BART were installed and operated on sources subject to BART,

—Demonstrate whether your emission budget achieves emission levels that are equivalent to or less than the emissions levels that would result if BART were installed and operated,

—Analyze whether implementing a trading program in lieu of BART would likely lead to differences in the geographic distribution of emissions within a region, and

—Demonstrate that the emission levels will achieve greater progress in visibility than would be achieved if BART were installed and operated on sources subject to BART.

1. How Do I Identify Sources Subject to BART?

For a trading program, you would identify sources subject to BART in the same way as we described in sections II and III of these guidelines.

2. How Do I Calculate the Emissions Reductions That Would Be Achieved If BART Were Installed and Operated on These Sources?

For a trading program under 51.308(e)(2), you may identify these emission reductions by:

—Conducting a case-by-case analysis for each of the sources, using the procedures described above in these guidelines in sections II through V;

—Conducting an analysis for each source category that takes into account the available technologies, the costs of compliance, the energy impacts, the non-air quality environmental impacts, the pollution control equipment in use, and the remaining useful life, on a category-wide basis; or

[20] We focus in this section on emission cap and trade programs which we believe will be the most common type of economic incentive program developed as an alternative to BART.

[21] An emission budget generally represents a total emission amount for a single pollutant such as SO_2. As noted in the preamble to the regional haze rule (64 FR 35743, July 1, 1999) we believe that unresolved technical difficulties preclude inter-pollutant trading at this time.

—Conducting an analysis that combines considerations on both source-specific and category-wide information.

For a category-wide analysis of available control options, you develop cost estimates and estimates of energy and non-air quality environmental impacts that you judge representative of the sources subject to BART for a source category as a whole, rather than analyze each source that is subject to BART. The basic steps of a category-wide analysis are the same as for a source-specific analysis. You identify technically feasible control options and rank them according to control stringency. Next, you calculate the costs and cost effectiveness for each control option, beginning with the most stringent option. Likely, the category-wide estimate will represent a range of cost and cost-effectiveness values rather than a single number.[22] Next, you evaluate the expected energy and non-air quality impacts (both positive and negative impacts) to determine whether these impacts preclude selection of a given alternative.

The EPA requests comment on an approach to the category-wide analysis of BART that would allow the States to evaluate different levels of BART control options (*e.g.*, all measures less than $1000/ton vs. all measures less than $2000/ton vs. all measures less than $3000/ton) through an iterative process of assessing relative changes in cumulative visibility impairment. For example, States or regional planning organizations could use $1000 or $2000/ton as an initial cutoff for selecting reasonable control options. The States or regional planning organizations could then compare the across-the-board regional emissions and visibility changes resulting from the implementation of the initial control option and that resulting from the implementation of control options with a $3000/ton cutoff (or $1500/ton, etc). This approach would allow States and other stakeholders to understand the visibility differences among BART control options achieving less cost-effective or more cost-effective levels of overall control.

[22] We request comment on whether these guidelines should recommend a weighted average of the values instead of presenting the values as a range.

3. For a Cap and Trade Program, How Do I Demonstrate That My Emission Budget Results in Emission Levels That Are Equivalent To or Less Than the Emissions Levels That Would Result If BART Were Installed and Operated?

Emissions budgets must address two criteria. First, you must develop an emissions budget for a future year[23] which ensures reductions in actual emissions that achieve greater reasonable visibility progress than BART. This will generally necessitate development of a "baseline forecast" of emissions for the population of sources included within the budget. A baseline forecast is a prediction of the future emissions for that source population in absence of either BART or the alternative trading program. Second, you must take into consideration the timing of the emission budget relative to the timetable for BART. If the implementation timetable for the emission trading program is a significantly longer period than the 5-year time period for BART implementation, you should establish budgets for interim years that ensure steady and continuing progress in emissions reductions.

In evaluating whether the program milestone for the year 2018 provides for a BART-equivalent or better emission inventory total, you conduct the following steps:

—Identify the source population included within the budget, which must include all BART sources and may include other sources,
—For sources included within the budget, develop a base year[24] emissions inventory for stationary sources included within the budget, using the most current available emission inventory,
—Develop a future emissions inventory for the milestone year (in most cases, the year 2018), that is, an inventory of projected emissions for the milestone year in the absence of BART or a trading program,
—Calculate the reductions from the forecasted emissions if BART were installed on all sources subject to BART,
—Subtract this amount from the forecasted total, and
—Compare the budget you have selected and confirm that it does not exceed this level of emissions.

Example: For a given region for which a budget is being developed for SO_2, the most recent inventory is for the year 2002. The budget you propose for the trading program is 1.2 million tons. The projected emissions inventory total for the year 2018, using the year 2002 inventory and growth projections, is 4 million tons per year. Application of BART controls on the population of sources subject to BART would achieve 2.5 million tons per year of reductions. Subtracting this amount from the project inventory yields a value of 1.5 million tons. Because your selected budget of 1.2 million tons is less than this value, it achieves a better than a BART-equivalent emission total.

4. How Do I Ensure That Trading Budgets Achieve "Greater Reasonable Progress?"

In some cases, you may be able to demonstrate that a trading program that achieves greater emissions progress may also achieve greater visibility progress without necessarily conducting a detailed dispersion modeling analysis. This could be done, for example, if you can demonstrate, using economic models, that the likely distribution of emissions when the trading program is implemented would not be significantly different than the distribution of emissions if BART was in place. If distribution of emissions is not substantially different than under BART, and greater emissions reductions are achieved, then the trading program would presumptively achieve "greater reasonable progress."

If the distribution of emissions is different under the two approaches, then the possibility exists that the trading program, even though it achieves greater emissions reductions, may not achieve better visibility improvement. Where this is the case, then you must conduct dispersion modeling to determine the visibility impact of the trading alternative. The dispersion modeling should determine differences in visibility between BART and the trading program for each impacted Class I area, for the worst and best 20 percent of days. The modeling should identify:

—The estimated difference in visibility conditions under the two approaches for each Class I area,
—The average difference in visibility over all Class I areas impacted by the region's emissions. [For example, if six Class I areas are in the region impacted, you would take the average of the improvement in deciviews over those six areas].

[23] As required by 40 CFR 51.308(e)(2)(iii), emissions reductions must take place during the period of the first long-term strategy for regional haze. This means the reductions must take place no later than the year 2018.

[24] The base year must reflect the year of the most current available emission inventory, in many cases the year 2002, and this base year should not be later than the 2000–2004 time period used for baseline purposes under the regional haze rule.

The modeling study would demonstrate "greater reasonable progress" if both of the following two criteria are met:

—Visibility does not decline in any Class I area

Example: In Class I area X, BART would result in 2.5 deciviews of improvement but the trading program would achieve 1.4 deciviews. The criterion would be met because the trading program results in improvement of 1.4 deciviews, rather than a decline in visibility.

—Overall improvement in visibility, determined by comparing the average differences over all affected Class I areas

Example: For the same scenario, assume that ten Class I areas are impacted. The average deciview improvement from BART for the ten Class I areas is 3.5 deciviews (the 2.5 deciview value noted above, and values for the remaining areas of 3.9, 4.1, 1.7, 3.3, 4.5, 3.1, 3.6, 3.8 and 4.5). The average of the ten deciview values for the trading program must be 3.5 deciviews or more.

5. How Do I Allocate Emissions to Sources?

Emission allocations must be consistent with the overall budget that you provide to us. We believe it is not appropriate for EPA to require a particular process and criteria for individual source allocations, and thus we will not dictate how to allocate allowances. We will provide information on allocation processes to State and local agencies, and to regional planning organizations.

6. What Provisions Must I Include in Developing a System for Tracking Individual Source Emissions and Allowances?

The EPA requests comment generally on what the BART guidelines should require in terms of the level of detail for the administration of a trading program and for the tracking of emissions and allowances. In general, we expect regional haze trading programs to contain the same degree of rigor as trading programs for criteria pollutants. In terms of ensuring the overall integrity and enforceability of a trading program, we expect that you will generally follow the guidance already being developed for other economic incentive programs (EIPs) in establishing a trading program for regional haze. In addition, we expect that any future trading programs developed by States and/or regional planning organizations will be developed in consultation with a broad range of stakeholders.

There are two EPA-administered emission trading programs that we believe provide good examples of the features of a well-run trading program. These two programs provide considerable information that would be useful to the development of regional haze trading programs as an alternative to BART.

The first example is EPA's acid rain program under title IV of the CAA. Phase I of the acid rain reduction program began in 1995. Under phase I, reductions in the overall SO_2 emissions were required from large coal-burning boilers in 110 power plants in 21 midwest, Appalachian, southeastern and northeastern States. Phase II of the acid rain program began in 2000, and required further reductions in the SO_2 emissions from coal-burning power plants. Phase II also extended the program to cover other lesser-emitting sources. Allowance trading is the centerpiece of EPA's acid rain program for SO_2. You will find information on this program in:

—Title IV of the CAA Amendments (1990),

—40 CFR part 73 at 58 FR 3687 (January 1993),

—EPA's acid rain website, at www.epa.gov/acidrain/trading.html.

The second example is the rule for reducing regional transport of ground-level ozone (NO_X SIP call). The NO_X SIP call rule requires a number of eastern, midwestern, and southeastern States and the District of Columbia to submit SIPs that address the regional transport of ground-level ozone through reductions in NO_X. States may meet the requirements of the rule by participating in an EPA-administered trading program. To participate in the program, the States must submit rules sufficiently similar to a model trading rule promulgated by the Agency (40 CFR part 96). More information on this program is available in:

—The preamble and rule in the **Federal Register** at 63 FR 57356 (October 1998),

—The NO_X compliance guide, available at www.epa.gov/acidrain/modlrule/main.html#126,

—Fact sheets for the rule, available at www.epa.gov/ttn/rto/sip/related.html#prop,

—Additional information available on EPA's web site, at www.epa.gov/acidrain/modlrule/main.html.

A third program that provides a good example of trading programs is the the Ozone Transport Commission (OTC) NO_X budget program. The OTC NO_X budget program was created to reduce summertime NO_X emissions in the northeast United States. The program caps NO_X emissions for the affected States at less than half of the 1990 baseline emission level of 490,000 tons, and uses trading to achieve cost-effective compliance. For more information on the trading provisions of the program, see:

—Memorandum of Understanding (MOU), available at www.sso.org/otc/att2.HTM,

—Fact sheets available at www.sso.org/otc/Publications/327facts.htm,

—Additional information, available at *www.epa.gov/acidrain/otc/otcmain.html*.

The EPA is including in the docket for this rulemaking a detailed presentation that has been used by EPA's Clean Air Markets Division to explain the provisions of NO_X trading programs with State and local officials. This presentation provides considerable information on EPA's views on sound trading programs.

The EPA recognizes that it is desirable to minimize administrative burdens for sources that may be subject to the provisions of several different emission trading programs. We believe that it is desirable for any emission trading program for BART to use existing tracking systems to the extent possible. At the same time, we request comment on whether States and/or regional planning organizations should conduct additional technical analyses (and, if so, to what extent) to determine whether the time periods for tracking of allowances under existing programs (i.e., annual allowances for SO_2 for the acid rain program, and allowances for the ozone season for NO_X) are appropriate for purposes of demonstrating greater reasonable regional progress vis a vis BART. The EPA expects that if such analyses are conducted, they would be conducted in conjunction with the timelines for development of SIPs for regional haze.

7. How Would a Regional Haze Trading Program Interface With the Requirements for "Reasonably Attributable" BART Under 40 CFR 51.302 of the Regional Haze Rule?

If a State elects to impose case-by-case BART emission limitations according to 40 CFR 51.308(e)(1) of the regional haze rule, then there should be no difficulties arising from the implementation of requirement for "reasonably attributable" BART under 40 CFR 51.302. However, if a State chooses an alternative measure, such as an emissions trading program, in lieu of requiring BART emissions limitation on specific sources, then the requirement for BART is not satisfied until alternative measures reduce emissions sufficient to make "more reasonable progress than BART." Thus, in that

period between implementation of an emissions trading program and the satisfaction of the overall BART requirement, an individual source could be required to install BART for reasonably attributable impairment under 40 CFR 51.302. Because such an overlay of the requirements under 40 CFR 51.302 on a trading program under 40 CFR 51.308 might affect the economic and other considerations that were used in developing the emissions trading program, the regional haze rule allows for a "geographic enhancement" under 40 CFR 51.308. This provision addresses the interface between a regional trading program and the requirement under 40 CFR 51.302 regarding BART for reasonably attributable visibility impairment. (See 40 CFR 51.308(e)(2)(v)).

The EPA recognizes the desirability of addressing any such issues at the outset of developing an emissions trading program to address regional haze. We note that the WRAP, the planning organization for the nine western States considering a trading program under 40 CFR 51.309 (which contains a similar geographic enhancement provision), has adopted policies which target use of the 51.302 provisions by the Federal Land Managers (FLMs). In this case for the nine WRAP States, the FLMs have agreed that they will certify reasonable attributable impairment only under certain specific conditions. Under this approach, the FLMs would certify under 40 CFR 51.302 only if the regional trading program is not decreasing sulfate concentrations in a Class I area within the region. Moreover, the FLMs will certify impairment under 40 CFR 51.302 only where: (1) BART-eligible sources are located "near" that class I area and (2) those sources have not implemented BART controls. In addition, the WRAP is investigating other procedures for States to follow in responding to a certification of "reasonably attributable" impairment if an emissions trading approach is adopted to address the BART requirement based on the sources' impact on regional haze.

The specific pollutants and the magnitude of impacts under the regional haze rule and at specific Class I areas may vary in different regions of the country. We expect that each State through its associated regional planning organization will evaluate the need for geographic enhancement procedures within any adopted regional emissions trading program.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: June 22, 2001.

Christine T. Whitman,

Administrator.

In addition to the guidelines described above, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7410–7671q.

2. Section 51.302 is amended by revising paragraph (c)(4)(iii) to read as follows:

§ 51.302 Implementation control strategies for reasonably attributable visibility impairment.

* * * * *

(c) * * *

(4) * * *

(iii) BART must be determined for fossil-fuel fired generating plants having a total generating capacity in excess of 750 megawatts pursuant to "Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities' (1980), which is incorporated by reference, exclusive of appendix E, which was published in the **Federal Register** on February 6, 1980 (45 FR 8210), except that options more stringent than NSPS must be considered. Establishing a BART emission limitation equivalent to the NSPS level of control is not a sufficient basis to avoid the detailed analysis of control options required by the guidelines. It is EPA publication No. 450/3–80–009b and is for sale from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

* * * * *

3. Section 51.308 is amended by adding paragraph(e)(1)(ii)(C) as follows:

§ 51.308 Regional haze program requirements.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(C) Appendix Y of this part provides guidelines for conducting the analyses under paragraphs (e)(1)(ii)(A) and (e)(1)(ii)(B) of this section. All BART determinations that are required in paragraph (e)(1) of this section must be made pursuant to the guidelines in appendix Y of this part.

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[FR Doc. 01–18094 Filed 7–19–01; 8:45 am]

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S. 657/P.L. 107–19

To authorize funding for the National 4-H Program Centennial Initiative. (July 10, 2001; 115 Stat. 153)

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Rules and Regulations

Federal Register
Vol. 66, No. 141
Monday, July 23, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 00–119–1]

Importation of Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products; Phytosanitary Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Policy statement.

SUMMARY: This document gives notice that we intend to begin consistently and routinely enforcing an existing requirement that a phytosanitary certificate of inspection accompany restricted articles, other than certain greenhouse-grown plants from Canada, that are offered for importation into the United States under our foreign quarantine regulations for nursery stock, plants, roots, bulbs, seeds, and other plant products. While the regulations provide that a phytosanitary certificate must accompany such items, this provision has not been consistently enforced with regard to all shipments of restricted articles arriving at U.S. ports of entry. Therefore, we are providing this notification to alert affected importers and members of the public that we intend to enforce this provision on a consistent, uniform basis. This action is necessary in order to more effectively mitigate the risk of introduction of foreign plant pests associated with the importation of these commodities into the United States.

EFFECTIVE DATE: September 21, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange, CITES and Plant Inspection Station Coordinator, Port Operations, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests into the United States. The regulations contained in "Subpart Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," §§ 319.37 through 319.37–14 (referred to below as the regulations), prohibit or restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

Nursery stock, plants, and other propagative plant material that cannot be feasibly inspected, treated, or handled to prevent them from introducing plant pests new to or not known to be widely prevalent in or distributed within and throughout the United States are listed in the regulations as prohibited articles. Prohibited articles may not be imported into the United States, unless imported by the U.S. Department of Agriculture (USDA) for experimental or scientific purposes under specified safeguards.

Nursery stock, plants, and other propagative plant material that can be inspected, treated, or handled to prevent them from spreading plant pests are listed in the regulations as restricted articles. Restricted articles may be imported into the United States if they are imported in compliance with conditions that may include permit and phytosanitary certificate requirements, inspection, treatment, or postentry quarantine.

Paragraph (a) of § 319.37–4 of the regulations requires that any restricted article offered for importation into the United States, other than certain greenhouse-grown plants from Canada, be accompanied by a phytosanitary certificate of inspection (phytosanitary certificate). Section 319.37–1 of the regulations defines a phytosanitary certificate as a document relating to a restricted article, which is issued by a plant protection official of the country in which the restricted article was grown, which is issued not more than 15 days prior to shipment of the restricted article from the country in which grown, which is addressed to the plant protection service of the United States (Plant Protection and Quarantine Programs), which contains a description of the restricted article intended to be imported into the United States, which certifies that the article has been thoroughly inspected, is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests, and is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States, and which contains any specific additional declarations required under the regulations.

A phytosanitary certificate documents the origin of the shipment and ensures inspection in the country of origin by a member of the national plant protection organization, thus helping to ensure the shipment of clean commodities. Phytosanitary certificates are governed under the International Plant Protection Convention (IPPC), a multilateral treaty which is acknowledged by the World Trade Organization in the Agreement on the Application of Sanitary and Phytosanitary Measures as the source for international standards for phytosanitary measures affecting trade.

Phytosanitary certificates are recognized as an internationally accepted form of pest risk mitigation. Pest risk mitigation at the place of origin is often viewed as the most viable means of preventing the introduction of plant pests. Signatories to the IPPC, which include the United States and over 100 other countries, agree that pest risk mitigation is a responsibility of the exporting country, and that they are willing and able to issue phytosanitary certificates.

To date, the Animal and Plant Health Inspection Service (APHIS) has not consistently and routinely enforced the phytosanitary certificate requirement in § 319.37–4 in all instances involving the importation of restricted articles under the regulations. Until now, our policy has been not to reject a shipment based solely on the lack of a phytosanitary certificate. We have enforced the requirement that a phytosanitary certificate accompany shipments of restricted articles in those situations where our regulations require that the phytosanitary certificate include an additional declaration, proof of treatment, or both. In other cases, our policy has provided APHIS inspectors the latitude to allow entry of the shipment, even though it is not

accompanied by a phytosanitary certificate.

Growth in Plant and Seed Trade

In recent years, the amount of nursery stock, plants, and other propagative plant material imported into the United States has grown dramatically. For example, based on APHIS records, over 694 million plants were imported into the United States in FY 1999, compared to 456 million plants in FY 1993. Seed imports into the United States have increased from 8.7 million kilograms in FY 1997 to 12 million kilograms in FY 1999. Based on Foreign Agricultural Trade of the United States (FATUS) data, the value of nursery stock, plants, and bulbs imported into the United States increased, in 1999 dollars, by 89 percent, from approximately $275 million in 1990 to $520 million in 1999. The above data for nursery stock, plants, and bulbs include certain greenhouse-grown plants from Canada, some of which are not subject to the phytosanitary requirement described in this notice. The value of seed imports over the same 1990 through 1993 period increased, in 1999 dollars, by 144 percent, from approximately $188 million to $459 million. The increased value of imports of these products coming from some of the United States' principal trading partners and regions is shown in Table 1.

TABLE 1.—VALUE OF U.S. IMPORTS OF NURSERY STOCK AND SEED FROM MAJOR TRADING PARTNERS AND REGIONS, IN 1990 AND 1999, EXPRESSED IN 1999 DOLLARS

Region	1990 million dollars	1999 million dollars	Percentage increase in imports, 1990–1999
Nursery Stock, Bulbs, etc.			
Asia	$17.19	31.14	81
Canada	94.17	234.35	149
European Union	128.03	187.30	46
Latin America	27.71	49.03	77
Mexico	7.41	13.65	84
Seeds—Field and Garden:			
Asia	57.59	100.09	74
Canada	49.01	94.29	92
European Union	29.29	65.95	125
Latin America	37.42	173.99	365
Mexico	6.36	14.23	124

Source: FATUS, USDA ERS. 1990 values are expressed in 1999 dollars, using a CPI inflation factor of 1.2821.

Just as important as the increased amounts of nursery stock, plants, and other propagative plant material being imported into the United States, more varieties and types of these commodities are being shipped here from a greater number of foreign regions as a result of improved transportation modes and technologies, as well as the general movement towards a more globalized marketplace.

The expanded trade in these commodities has placed a greater demand on APHIS' inspection services. It has also presented us with new challenges in better understanding the pest complexes and potential pest risks associated with the importation of these commodities from a wider variety of sources. Consequently, our need for verifiable information as to the place of origin, as provided in a phytosanitary certificate, has become vital with respect to each shipment of nursery stock, plants, and other propagative plant material offered for importation into the United States.

Safeguarding Report

In 1998, we asked the National Plant Board (NPB) to review our efforts to safeguard American agriculture and plant resources. The NPB assembled 43 stakeholders from States, industry, academe, and environmental groups to conduct extensive research, interviews, site visits, and other interactions with APHIS and its stakeholders, and to prepare a thorough analysis of the challenges facing the safeguarding system. The 1999 report, "Safeguarding American Plant Resources, A Stakeholder Review of the APHIS–PPQ Safeguarding System,"[1] evaluates APHIS' pest exclusion measures, international pest information systems, use of permits, and detection and response efforts. The report also provides a number of recommendations and action plans for improving APHIS' safeguarding efforts. Among its recommendations, the report urges APHIS to more vigorously pursue offshore pest mitigation measures, including the use of phytosanitary certificates consistent with the IPPC, as a means of supplementing its existing inspection efforts at U.S. ports of entry.

Change in Policy

In light of the increased quantities, types of articles, and sources of nursery stock, plants, and other propagative plant material offered for importation into the United States, coupled with the findings of the Safeguarding Report, which advocates greater use of offshore mitigating measures such as phytosanitary certificates, we have reevaluated our current policy of selective enforcement of the phytosanitary certificate requirement in § 319.37–4(a). We have decided that it is necessary for us to enforce the phytosanitary certificate requirement provided in § 319.37–4(a) on a consistent, mandatory basis with respect to all restricted articles offered for importation into the United States in order to effectively mitigate the risk of those articles introducing foreign plant pests into the United States.

Analysis

This policy statement does not entail new regulatory requirements. Rather, its purpose is to inform importers and the general public that we will enforce an existing phytosanitary certificate requirement on a mandatory, consistent basis, which is a change from our previous policy. Importers and members of the general public will not be allowed to import restricted nursery stock, plants, or other propagative plant material into the United States without

[1] The Safeguarding Report is available upon written request from the person listed under **FOR FURTHER INFORMATION CONTACT**. It is also available on the Internet at http://www.aphis.usda.gov/ppq/safeguarding.

an accompanying phytosanitary certificate.

Phytosanitary certificates must be obtained from an official agency of the country where the goods originate. Typically, the commodity to be imported must be inspected by a plant protection official of the foreign country, who must certify where in the country of origin the restricted article was grown or acquired its phytosanitary status and state that the shipment is free of injurious plant diseases and plant pests. The certifying country usually charges a fee for these services. The actual fee varies from country to country and is based solely on the criteria that the issuing country deems appropriate. As points of reference, Canada charges C$17 Canadian dollars ($11.25US) and Mexico charges 244 Mexican new pesos ($24.86US). Costs associated with shipment certification that result from this notice are costs that may not have been borne previously, only because phytosanitary certificate requirements have not been regularly and uniformly enforced.

The percentage of restricted nursery stock, plants, and other propagative plant material that currently enters the United States without phytosanitary certification is not known. We do not maintain such data. However, based on our own informal observations at ports of entry, we believe that the vast majority of imported commercial plant and seed shipments are accompanied by a phytosanitary certificate. We have found that phytosanitary certificates are more likely to be absent in small shipments imported by tourists, hobbyists, homeowners, small businesses, or importers who are newcomers to the plant trade. Mandatory, consistent enforcement of the phytosanitary certification requirement for all restricted nursery stock, plants, and other propagative plant material imported into the United States will help minimize the plant pest risks associated with these imports without subjecting affected importers and members of the general public to any costs that they are not already expected to bear.

Therefore, we intend to begin consistently enforcing, in accordance with § 319.37–4(a), the requirement that a phytosanitary certificate must accompany all shipments of restricted articles imported into the United States, except for certain greenhouse-grown plants from Canada.

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 17th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–18299 Filed 7–20–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–148–AD; Amendment 39–12308; AD 2001–13–26]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, and –40 Series Airplanes, and Model MD–10–10F and –30F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, and –40 series airplanes, and Model MD–10–10F and –30F series airplanes, that requires a general visual inspection to detect chafing or damage of the feeder cables of the external ground power in the forward cargo compartment between certain fuselage stations; and repair, if necessary. This amendment also requires installation of spiral wrap on the feeder cables of the external ground power. This action is necessary to prevent chafing of the feeder cables during removal of the sump panels of the cargo floor, which could result in electrical arcing and damage to adjacent structure, and consequent smoke and/or fire in the forward cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Effective August 27, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 27, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes, was published in the **Federal Register** on November 29, 2000 (65 FR 71076). That action proposed to require a general visual inspection to detect chafing or damage of the feeder cables of the external ground power in the forward cargo compartment between certain fuselage stations; and repair, if necessary. The action also proposed to require installation of spiral wrap on the feeder cables of the external ground power.

Change to the Applicability of Notice of Proposed Rulemaking (NPRM)

On May 9, 2000, the FAA issued a Type Certificate (TC) for McDonnell Douglas Model MD–10–10F and MD–10–30F series airplanes. Model MD–10 series airplanes are Model DC–10 series airplanes that have been modified with an Advanced cockpit. The feeder cables of the external ground power in the forward cargo compartment installed on Model MD–10–10F and MD–10–30F series airplanes (before or after the modifications necessary to meet the type design of a Model MD–10 series airplane) are identical to those on the affected Model DC–10 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition. In addition, the manufacturer's fuselage number and factory serial number are not changed during the conversion from a Model DC–10 to Model MD–10. We find that Model MD–10–10F and MD–10–30F series airplanes were not specifically identified by model in the applicability of the NPRM; however, they were identified by manufacturer's fuselage numbers in McDonnell Douglas Alert Service Bulletin DC10–24A147, Revision 02, dated March 6, 2000 (which was referenced in the applicability statement of the NPRM for determining the specific affected airplanes). Therefore, we have revised

the applicability throughout the final rule to include Model MD–10–10F and MD–10–30F series airplanes. We have also designated the specific affected Model DC–10 series airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request To Delete A Certain Access Requirement

One commenter requests that the FAA not require removal of the cargo sump panels, which is done as part of accessing the inspection area per McDonnell Douglas Alert Service Bulletin DC10–24A147, Revision 02, dated March 6, 2000 (which was referenced in the NPRM as the appropriate source of service information). The commenter states that it has received confirmation from Boeing that removal of the cargo sump panels is not required to accomplish the intent of the service bulletin. The commenter also states that this task adds substantial unnecessary work hours and cost.

The FAA agrees. Since issuance of the NPRM, the FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–24A147, Revision 03, dated April 30, 2001. This revision deletes the reference to the sump panels as a requirement to gain access and revises the effectivity heading to reflect Model MD–10 series airplanes. No additional work is required by this revision for airplanes previously modified by Revision 02 of the service bulletin. Therefore, we have revised the final rule to reference Revision 03 of the subject service bulletin as the appropriate source of service information for accomplishing the required actions and for determining the specific affected airplanes. In addition, we have included a new note to give operators credit for previously accomplishing the requirements of this AD per Revision 02 of the subject service bulletin.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 260 Model DC–10 and MD–10–10F and –30F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 171 airplanes of U.S. registry will be affected by this AD.

For Groups 1, 2, and 3 airplanes, it will take approximately 5 work hours per airplane (including gaining and closing access) to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $300 per airplane.

For Group 1 airplanes, it will take approximately 2 work hours per airplane (including gaining and closing access) to accomplish the required installation, at an average labor rate of $60 per work hour. Required parts will cost approximately $140 per airplane. Based on these figures, the cost impact of the installation required by this AD on U.S. operators of Group 1 airplanes is estimated to be $260 per airplane.

For Group 2 airplanes, it will take approximately 3 work hours per airplane (including gaining and closing access) to accomplish the required installation, at an average labor rate of $60 per work hour. Required parts will cost approximately $140 per airplane. Based on these figures, the cost impact of the installation required by this AD on U.S. operators of Group 2 airplanes is estimated to be $320 per airplane.

For Group 3 airplanes, it will take approximately 4 work hours per airplane (including gaining and closing access) to accomplish the required installation, at an average labor rate of $60 per work hour. Required parts will cost approximately $140 per airplane. Based on these figures, the cost impact of the installation required by this AD on U.S. operators of Group 3 airplanes is estimated to be $380 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–13–26 McDonnell Douglas: Amendment 39–12308. Docket 2000-NM–148–AD.

Applicability: Model DC–10–10, –15, –30, and –40 series airplanes, and Model MD–10–10F and –30F series airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC10–24A147, Revision 03, dated April 30, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the feeder cables during removal of the sump panels of the cargo floor, which could result in electrical arcing and damage to adjacent structure, and consequent smoke and/or fire in the forward cargo compartment, accomplish the following:

Inspection, Installation of Spiral Wrap, and Repair, if Necessary

(a) Within 1 year after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per McDonnell Douglas Alert Service Bulletin DC10–24A147, Revision 03, dated April 30, 2001.

(1) Do a general visual inspection to detect chafing or damage of the feeder cables of the external ground power in the forward cargo compartment between fuselage stations Y=879.000 and Y=1019.000 left of centerline. If any chafing or damage is detected, before further flight, repair the feeder cables of the external ground power and adjacent structure.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Install spiral wrap on the feeder cables of the external ground power.

Note 3: Accomplishment of the inspection, repair, and installation per McDonnell Douglas Alert Service Bulletin DC10–24A147, Revision 02, dated March 6, 2000, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A147, Revision 03, dated April 30, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 27, 2001.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17591 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–102–AD; Amendment 39–12309; AD 2001–13–27]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10 and –30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10 and –30 series airplanes. This action requires replacement of a certain circuit breaker in the navigation transfer circuit located on the overhead circuit breaker panel with a certain new circuit breaker; and installation of a new nameplate. This action is necessary to prevent damage to wires or equipment and consequent smoke/fire in the cockpit from heat generated in the wires during an overload condition. This action is intended to address the identified unsafe condition.

DATES: Effective August 7, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 7, 2001.

Comments for inclusion in the Rules Docket must be received on or before September 21, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–102–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all

aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received the results of an investigation that indicate the existing 10-amp circuit breaker in the navigation transfer circuit on certain McDonnell Douglas Model DC–9–10 and –30 series airplanes will not adequately protect the 24-gage wire during an overload condition. This condition, if not corrected, could result in damage to wires or equipment and consequent smoke/fire in the cockpit from the heat generated in the wires during an overload condition.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC9–34A075, Revision 01, dated April 30, 2001. The service bulletin describes procedures for replacement of a certain circuit breaker in the navigation transfer circuit located on the overhead circuit breaker panel with a certain new circuit breaker; and installation of a new nameplate. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent damage to wires or equipment and consequent smoke/fire in the cockpit from the heat generated in the wires during an overload condition. This AD requires procedures for replacement of a certain circuit breaker in the navigation transfer circuit located on the overhead circuit breaker panel with a certain new circuit breaker; and installation of a new nameplate. The actions are required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

None of the Model DC–9–10 and –30 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts would cost $114 per airplane. Based on these figures, the cost impact of this AD would be $174 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–102–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–13–27 McDonnell Douglas: Amendment 39–12309. Docket 2001–NM–102–AD.

Applicability: Model DC–9–10 and –30 series airplanes, as listed in Boeing Alert Service Bulletin DC9–34A075, Revision 01, dated April 30, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to wires or equipment and consequent smoke/fire in the cockpit from the heat generated in the wires during an overload condition, accomplish the following:

Replacement of Circuit Breaker and Installation of Nameplate

(a) Within 18 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per Boeing Alert Service Bulletin DC9–34A075, Revision 01, dated April 30, 2001.

(1) Replace the 10-amp MP703–DC8 circuit breaker (Item No. B10–162) in the navigation transfer circuit located on the overhead circuit breaker panel with a new 5-amp MP701–DC8 circuit breaker; and

(2) Install a new 7918246–502 nameplate (indicated "5A") over the existing 10-amp designation below the new circuit breaker.

Note 2: Accomplishment of the actions identified in paragraphs (a)(1) and (a)(2) of this AD per McDonnell Douglas DC9–34–75, dated January 21, 1969, before the effective date of this AD, is considered acceptable for the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin DC9–34A075, Revision 01, dated April 30, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 7, 2001.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17596 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–380–AD; Amendment 39–12339; AD 2001–15–05]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, –320, –500, and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Model ATR42–200, –300, –320, –500, and ATR72 series airplanes, that requires a revision of the Airplane Flight Manual to add instructions that prohibit the flightcrew from selecting the reverse position on the engines in the event of propeller thrust dissymmetry. The actions specified by this AD are intended to ensure that the flightcrew is advised of the hazard associated with selecting reverse thrust during propeller thrust dissymmetry, which could result in reduced controllability of the airplane during landing. This action is intended to address the identified unsafe condition.

DATES: Effective August 27, 2001.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR42–200, –300, –320, –500, and ATR72 series airplanes was published in the **Federal Register** on May 1, 2001 (66 FR 21699). That action proposed to require a revision of the Airplane Flight Manual to add instructions that prohibit the flightcrew from selecting the reverse position on the engines in the event of propeller thrust dissymmetry.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 69 Model ATR42–200, –300, –320, –500, and ATR72 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,140, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–15–05 Aerospatiale: Amendment 39–12339. Docket 2000–NM–380–AD.

Applicability: All Model ATR42–200, –300, –320, –500, and ATR72 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is advised of the hazard associated with selecting reverse thrust during propeller thrust dissymmetry, which could result in reduced controllability of the airplane during landing, accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) Within 5 days after the effective date of this AD, revise the Normal Procedures section of the FAA-approved AFM, under "APPROACH AND LANDING," to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

"NORMAL LANDING

- After nose wheel touchdown

Both PL: GI

Both LO PITCH lights: Check illuminated

CAUTION: If a thrust dissymmetry occurs or if one LO PITCH light is not illuminated, the use of any reverse is not allowed."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then

send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 2: The subject of this AD is addressed in French airworthiness directives 2000–436–080(B) and 2000–437–052(B), both dated October 18, 2000.

Effective Date

(d) This amendment becomes effective on August 27, 2001.

Issued in Renton, Washington, on July 16, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–18256 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–415–AD; Amendment 39–12340; AD 2001–15–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires modification of the forward and aft evacuation slide systems by replacing the Velcro restraints for the support logs with frangible link restraints. This amendment reduces the time to accomplish the modification from 3 years to 9 months. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the ingestion of sill support-log material into the aspirator of the evacuation slide, which could result in failure of the slide to inflate.

DATES: Effective August 27, 2001.

The incorporation by reference of Airbus Service bulletin A320–25–1215, dated April 29, 1999, as listed in the regulations was approved previously by the Director of the Federal Register as of March 30, 2000 (65 FR 9212, February 24, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, ANM–116, FAA, International Branch, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–04–06, amendment 39–11588 (65 FR 9212, February 24, 2000), which is applicable to certain Airbus Model A319, A320, and A321 series airplanes, was published in the **Federal Register** on April 30, 2001 (66 FR 21291). The action proposed to continue to require modification of the forward and aft evacuation slide systems by replacing the Velcro restraints for the support logs with frangible link restraints. The action also proposed to reduce the time to accomplish the modification from 3 years to 9 months.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 202 Model A319, A320, and A321 series airplanes of U.S. registry that will be affected by this AD.

The modification that is currently required by AD 2000–04–06 and retained in this AD was previously reported to take approximately 1 work hour per airplane to accomplish. That modification, however, is now estimated to take approximately 5 work hours per airplane to accomplish. The average labor rate is $60 per work hour. There is no charge for required parts. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $60,600, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11588 (65 FR 9212, February 4, 2000), and by adding a new airworthiness directive (AD), amendment 39–12340, to read as follows:

2001–15–06 Airbus Industrie: Amendment 39–12340. Docket 2000–NM–415–AD Supersedes AD 2000–04–06, Amendment 39–11588.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; equipped with any emergency evacuation slide having a part number (P/N) listed as:

D31516–103
D31516–105
D31516–107
D31516–109
D31517–103
D31517–105
D31517–107
D31517–109

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the ingestion of sill support-log material into the aspirator of the escape slide which could result in failure of the escape slide to inflate, accomplish the following:

Modification

(a) Within 9 months after the effective date of this AD, modify the forward and aft emergency evacuation slides by replacing the Velcro restraints for the support logs with frangible link restraints, in accordance with Airbus Service Bulletin A320–25–1215, dated April 29, 1999.

Note 2: Airbus Service Bulletin A320–25–1215 refers to Air Cruisers Service Bulletin 004–25–51, dated February 26, 1999, as an additional source of service information for accomplishment of the modification.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane an emergency evacuation slide having P/N D31516–103, D31516–105, D31516–107, D31516–109, D31517–103, D31517–105, D31517–107, or D31517–109.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The modification shall be done in accordance with Airbus Service Bulletin A320–25–1215, dated April 29, 1999. The incorporation by reference of that document was previously approved by the Director of the Federal Register as of March 30, 2000 (65 FR 9212, February 24, 2000). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–359–152(B) R1, dated December 29, 2000.

Effective Date

(f) This amendment becomes effective on August 27, 2001.

Issued in Renton, Washington, on July 16, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–18257 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–7]

Amendment of Class D and Class E2 Airspace; Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D and Class E2 airspace of Augusta, GA. As a result of a regional evaluation, it has been determined the Augusta Regional At Bush Field Airport Class D and Class E2 airspace areas should be increased to provide adequate controlled airspace for the Airport Surveillance Radar (ASR) Standard Instrument Approach Procedure (SIAP) Runway (RWY) 17. This action would amend the lateral limits of the existing Class D and E2 airspace from a 4.3-mile radius to a 5.3-mile radius of the Augusta Regional At Bush Field Airport.

EFFECTIVE DATE: 0901 UTC, November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On May 29, 2001, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class D and Class E2 airspace at Augusta, GA (66 FR 29057). Class D and Class E airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraphs 5000 and 6002 respectively, of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class D and Class E2 airspace at Augusta, GA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation, as the anticipated

impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO GA D Augusta, GA [Revised]

Augusta Regional At Bush Field Airport, GA
(Lat. 33°22′12″ N, long. 81°57′52″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.3-mile radius of the Augusta Regional At Bush Field Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice of Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E2 Airspace Designated as Surface Areas.

* * * * *

ASO GA E2 Augusta, GA [Revised]

Augusta Regional At Bush Field, GA
(Lat. 33°22′12″ N, long. 81°57′52″ W)

Within a 5.3-mile radius of the Augusta Regional At Bush Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on July 10, 2001.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–18224 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–6]

Amendment of Class D and Class E2 and E4 Airspace; Gainesville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D and Class E2 and E4 airspace at Gainesville, FL. As a result of relocating and renaming the Gainesville VORTAC (Airspace Docket 00–ASO–35), the VORTAC's position has been recalculated and final approach courses for the VHR Omni-directional Range (VOR) Standard Instrument Approach Procedures (SIAP) have been changed for the Gainesville Regional Airport, Gainesville, FL. This action amends the lateral limits of the existing Class D and E2 airspace from a 4.3-mile radius to a 4.9-mile radius of the Gainesville Regional Airport. The Class E4 airspace, designated as an extension to a Class D airspace area, will rotate clockwise 12° and amend the extension from the 4.3-mile radius to 7 miles northeast of the VORTAC to an extension from the 4.9-mile radius to 7 miles northeast of the VORTAC

EFFECTIVE DATE: 0901 UTC, November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On May 29, 2001, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amending Class D and Class E2 and E4 airspace at Gainesville, FL (66 FR 29056). Class D and Class E airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace areas designated as an extension to a Class D airspace area are published in Paragraphs 5000, 6002 and 6004 respectively, of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class D and Class E2 and E4 airspace at Gainesville, FL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 700.9H, Airspace Designations and Reporting Points,

dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Gainesville, FL [REVISED]

Gainesville Regional Airport, FL
(Lat. 29°41′24″ N, long. 82°16′18″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.9-mile radius of the Gainesville Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E2 Airspace Designated as Surface Areas.

* * * * *

ASO FL E2 Gainesville, FL [REVISED]

Gainesville Regional Airport, FL
(Lat. 29°41′24″ N, long. 82°16′18″ W)

Within a 4.9-mile radius of the Gainesville Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Airspace Area.

* * * * *

ASO FL E4 Gainesville, FL [REVISED]

Gainesville Regional Airport, FL
(Lat. 29°41′24″ N, long. 82°16′18″ W)
Gators VORTAC
(Lat. 29°41′32″ N, long. 82°16′23″ W)

That airspace extending upward from the surface within 2.4 miles each side of the Gators VORTAC 053° radial, extending from the 4.9-mile radius of Gainesville Regional Airport to 7 miles northeast of the VORTAC. This Class E4 airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on July 10, 2001.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–18238 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AEA–09FR]

Modification of Class E Airspace; Jamestown, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E2 airspace area at the Chautauqua County/Jamestown Airport (JHW), Jamestown, NY, by expanding the limits of the delegated airspace area. The intended affect of this action is to enhance safety for all potential users of this airspace operating under Instrument Flight Rules (IFR). The development of several Standard Instrument Approach Procedures (SIAP) for the Chautauqua County/Jamestown Airport, Jamestown, NY have made this action necessary. This action is intended to provide adequate Class E airspace for flights executing the revised Global Positioning System (GPS) Approaches. This area will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC, September 6, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On April 18, 2001, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the Class E2 airspace at Chautauqua County/Jamestown Airport, NY (66 FR 19908).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9H, dated September 1, 2000 and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) modifies the Class E airspace area at Jamestown, NY by expanding the Class E2 airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Adoption of the Amendment

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

AEA NY E2, Jamestown, NY [Revised]

Chautauqua County/Jamestown Airport, Jamestown, NY
(Lat. 42°09′12″ N., long 79°15′29″ W.)

Within a 6 mile radius of the Chautauqua County/Jamestown Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective dates and times will

thereafter be published continuously in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York on July 2, 2001.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 01–18231 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–18]

Revision of Class E Airspace, Vernal, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace at Vernal, UT. Newly developed Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) at the Vernal Airport made this action necessary. Additional Class E 700-feet and 1200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing the RNAV SIAP at Vernal Airport.

EFFECTIVE DATE: 0901 UTC, September 6, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–18, 1601 Lind Avenue SW., Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On April 10, 2001, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Vernal, UT, in order to accommodate new RNAV SIAP's at Vernal Airport, Vernal, UT (66 FR 18575). This amendment provides Class E5 airspace at Vernal, UT, to meet current criteria standards associated with the SIAP. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. A comment was received from the FAA, AVN–500, National Aeronautical Charting Office. A revision to the legal description as written in the Notice for Proposed Rule Making (NPRM) was required to amend a small discrepancy in the proposed action in order to make the airspace description easier to read and chart. The description is not referenced by Latitude and Longitude coordinates rather than as described by radials and DME.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) revises Class E airspace at Vernal, UT, in order to accommodate a new SIAP to the Vernal Airport, Vernal, UT. This amendment revises Class E5 airspace at Vernal, UT, to meet current criteria standards associated with the RNAV and SIAP. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Vernal Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700-feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700-feet or More Above the Surface of the Earth

* * * * *

ANM UT E5 Vernal, UT [REVISED]

Vernal Airport, UT

(Lat. 40°26′28″ N., long. 109°30′35″ W.)

That airspace extending upward from 700-feet above the surface within a 8-mile radius of the Vernal Airport, and within 8 miles west and 4 miles east of the 167° bearing from the airport extending to 18.8 miles, and within 8 miles northeast and 5 miles southwest of the 120° bearing from the airport extending 20.3 miles; and that airspace extending upward to 1,200 feet above the surface bounded by a line beginning at lat. 40°30′00″ N., long. 109°46′00″ W.; thence to lat. 40°41′00″ N., long. 109°22′30″ W.; to lat. 40°11′00″ N., long 109°00′00″ W.; to 39°43′00″ N., long 109°00′00″ W.; to lat. 39°43′00″ N., long. 109°46′00″ W., to point of origin; excluding those portions within Federal Airways and Roosevelt, UT Class E airspace area.

* * * * *

Issued in Seattle, Washington, on July 19, 2001.

David B. Johnson,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–18236 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210 and 211

[Release Nos. 33–7993; 34–44557; IC–25066; FR–50A]

Commission Policy Statement on the Establishment and Improvement of Standards Related to Auditor Independence

AGENCY: Securities and Exchange Commission.

ACTION: Policy statement.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") today amended Financial Reporting Release No. 50 ("FRR 50") to state that it will no longer look to the Independence Standards Board ("ISB" or "Board") for leadership in establishing and improving auditor independence standards applicable to auditors of the financial statements of Commission registrants. The deliberations and conclusions of the ISB contributed significantly to the development of the Commission's new auditor independence regulations and disclosure requirements, which were adopted in November 2000. In light of the Commission's new auditor independence rules, the Commission believes that many of the issues that led to the creation of the ISB have been resolved, and that going forward the best method to assure the independence of auditors is for the Commission and its staff to enforce and interpret its new rules. In addition, the Commission notes the recent increase in public participation on the American Institute of Certified Public Accountants' ("AICPA") Professional Ethics Executive Committee ("PEEC") and encourages greater public membership on PEEC. The Commission staff, when appropriate, may work with the PEEC on discrete auditor independence issues. Standards previously adopted by the ISB and interpretations previously issued by the ISB will continue to be authoritative to the extent they do not conflict with the Commission's rules and interpretations. In making this amendment to FRR 50, the Commission reaffirms that maintaining the independence of auditors is crucial to the credibility of financial reporting and, in turn, the capital formation process.

EFFECTIVE DATE: August 22, 2001.

FOR FURTHER INFORMATION CONTACT: John M. Morrissey, Deputy Chief Accountant, or Samuel L. Burke, Associate Chief Accountant, Office of the Chief Accountant, at (202) 942–4400, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1103.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal securities laws reflect the importance of independent audits in protecting investors by requiring, or permitting the Commission to require, that financial statements filed with the Commission by public companies, investment companies, broker/dealers, public utilities, investment advisers, and others, be certified (or audited) by independent public accountants,[1] and by granting the Commission the authority to define the term "independent."[2]

Since the Commission's creation in 1934, it consistently has emphasized the need for auditors to remain independent. The Commission's requirements are set forth in Rule 2–01 of Regulation S–X[3] and in the interpretations, guidelines and examples that are collected in Section 600 of the Codification of Financial Reporting Policies ("Codification") entitled "Matters Relating to Independent Accountants."[4] The Commission also makes publicly available the staff's written responses to requests for informal advice on its independence requirements.[5]

For approximately 60 years, the Commission developed and maintained its own auditor independence requirements.[6] In 1997, after several months of discussions with representatives of the accounting profession, the Commission determined that it would look to the ISB, a private sector body composed equally of members from the accounting profession and from the public, to take a leadership role in establishing and maintaining auditor independence standards. In FRR 50,[7] issued February 18, 1998, the Commission announced its endorsement of the ISB. In doing so, however, the Commission stated that it was not abdicating its authority to modify or supplement ISB standards, to bring enforcement actions, or to take such other action as it may deem appropriate. In addition, FRR 50 noted that before any ISB standard or interpretation that conflicted with an SEC rule or interpretation could take effect, the SEC would have to amend its regulations to remove the conflict. Because of the experimental nature of the ISB, the Commission also stated in FRR 50 that it would review the operations of the ISB as necessary or appropriate and evaluate, within five years, whether the framework of the ISB was serving the public interest and protecting investors.[8]

During its tenure, the ISB deliberated and provided guidance on several important auditor independence issues, including the need for communications on auditor independence issues among auditors, management, and audit committees,[9] and the impact on an auditor's independence of investments in mutual funds[10] and the retention by an audit client of a professional who formerly worked for the accounting firm.[11] The ISB members brought extensive and diverse business and professional experiences to the Board, and their discussions of these and other issues contributed significantly to the formulation of the Commission's new rules.[12]

In late 1999, the ISB members faced significant issues regarding the evolving alternative business structures being used by accounting firms and the nature and scope of non-audit services that the firms could perform for an audit client before they would be deemed to lack auditor independence. The public members of the ISB recognized that these were significant public policy issues that required input from a wider

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[1] For example, items 25 and 26 of Schedule A to the Securities Act of 1933 (the "1933 Act"), 15 U.S.C. 77aa(25) and (26), and 17(e) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. 78q, expressly require that financial statements be audited by independent public or certified accountants. Sections 12(b)(1)(J) and (K) and 13(a)(2) of the Exchange Act, 15 U.S.C. 78*l* and 78m, 5(b)(H) and (I), 10(a)(1)(G), and 14 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79e(b), 79j, and 79n, 8(b)(5) and 30(e) of the Investment Company Act of 1940, 15 U.S.C. 80a–8 and 80a–29, and 203(c)(1)(D) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–3(c)(1), authorize the Commission to require the filing of financial statements that have been audited by independent accountants. In accordance with these provisions, the Commission has required that independent accountants audit certain financial statements. *See, e.g.*, Article 3 of Regulation S–X, 17 CFR 210.3–01 *et seq.*

[2] Section 19(a) of the 1933 Act, 15 U.S.C. 77s(a), 3(b) of the Exchange Act, 15 U.S.C. 78c(b), § 20(a) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79t(a), and 38(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–37(a), grant the Commission the authority to define accounting, technical, and trade terms used in each Act.

[3] 17 CFR 210.2–01 (2000).

[4] Financial Reporting Codification, Section 600, "Matters Relating to Independent Accountants," reprinted in SEC Accounting Rules (CCH) ¶ 3,851, at 3,781.

[5] *See* FRR 33 (November 25, 1988) and FRR 4 (October 14, 1982). *See also*, Office of the Chief Accountant, "Application of Revised Rules on Auditor Independence—Frequently Asked Questions" (January 16, 2001), which is available on the Commission's web site: www.sec.gov.

[6] *See generally*, Office of the Chief Accountant, "Staff Report on Auditor Independence" (March 1994).

[7] Release Nos. 33–7507, 34–39676, IC–23029, FR–50 (February 18, 1998).

[8] *Id.*

[9] Independence Standards Board, Independence Standard No. 1, "Independence Discussions with Audit Committees" (January 1999) ("ISB No. 1").

[10] Independence Standards Board, Independence Standard No. 2, "Certain Independence Implications of Audits of Mutual Funds and Related Entities" (December 1999) ("ISB No. 2").

[11] Independence Standards Board, Independence Standard No. 3, "Employment with Audit Clients" (July 2000) ("ISB No. 3").

[12] *See generally* "Revision of the Commission's Auditor Independence Requirements," Release Nos. 33–7919; 34–43602; 35–27279; IC–24744; IA–1911; FR–56 (Nov. 21, 2000).

and more diverse audience than the ISB had been able to attract. These members, therefore, asked the Commission to assume this project.

The public ISB members' vision of the public interest in these issues was indeed correct. The Commission's rulemaking project generated approximately 3,000 comment letters and four days of public hearings in which the Commission heard directly the testimony of about 100 investors, accountants, lawyers, audit committee members, regulators, professional associations, and other witnesses.[13]

Although the Commission's rulemaking completely revised the Commission's auditor independence regulation, significant portions of the rule were built upon the foundation of the ISB's deliberations, draft documents, and standards. Upon completion of the Commission's rulemaking, it had addressed the vast majority of issues that had led to the creation of the ISB.

Following the Commission's rulemaking, the AICPA has begun a project to amend the ethics and independence rules established by its PEEC[14] to conform in several respects to the Commission's new rules.[15] Reducing the discrepancies between the Commission's and the profession's auditor independence regulations should reduce the confusion associated with having diverse standards and encourage compliance.

The AICPA Board of Directors and membership also voted to have public members (as opposed to members from the profession) comprise twenty-five percent of the PEEC membership, and to study whether additional public membership would be appropriate. The Commission believes that increased public participation on PEEC is essential to the credibility of the AICPA's independence and disciplinary processes and is hopeful that the AICPA Board will decide to further increase public participation on PEEC to achieve equivalent public and private representation.[16]

[13] The Commission's proposing and adopting releases, comment letters submitted electronically, and copies of the testimony at the Commission's public hearings are available at the Commission's web site: *www.sec.gov*.

[14] Among other things, PEEC develops the AICPA's standards of ethics and independence, promotes understanding and voluntary compliance with such standards, establishes and presents charges of violations of the standards to the Joint Trial Board for disciplinary action, and works to improve the profession's enforcement procedures.

[15] *See* AICPA, "Omnibus AICPA Proposal of Professional Ethics Division Interpretations and Rulings" (April 16, 2001).

[16] Other countries have mandated public participation on such committees. For example, in the United Kingdom the Department of Trade and Industry, with the support of the accounting profession, has instituted a new regulatory framework for the accountancy profession that includes a new Ethics Standards Board. Under that framework, at least sixty percent of the Ethics Standards Board is to be independent from the profession—that is, not themselves subject to the disciplinary procedures of the accountancy bodies. Further, members of the profession have indicated their support for increased public participation on the PEEC. *See* Arthur Andersen press release dated November 15, 2000, "* * * With respect to the profession's self-regulation, we believe that public participation is positive and beneficial. We support efforts to continue to expand such public participation. To that end, we will work hard to achieve equivalent public and profession participation on the AICPA's Profession Ethics Executive Committee." *See* Deloitte & Touche statement dated November 15, 2000, "* * * We believe that the recent addition by the AICPA of public members to the PEEC is an appropriate and positive step toward enhancement of the profession's governance process. We support continued review of the benefits of further expanding public membership in the profession's Ethics Committee." *See* Joint statement issued by the AICPA, Arthur Andersen, LLP, Deloitte & Touche, LLP and KPMG, LLP, "* * * We believe that substantially increased public participation on the PEEC would be both appropriate and beneficial * * *".

II. Amendment of Financial Reporting Release No. 50

After careful consideration, the Commission amends section II of FRR 50 in that the Commission no longer will look to the ISB to provide leadership in establishing, improving, or maintaining auditor independence standards applicable to the auditors of Commission registrants, and will not consider ISB principles, standards, interpretations, and practices established or issued after the date of this amendment as having substantial authoritative support for the resolution of auditor independence issues.

The Commission's new rules address many of the issues that led to the creation of the ISB. The ISB's remaining agenda may not be sufficient either to attract to the ISB the same exceptionally high caliber of individuals as those who served on the Board for the past four years or to justify the cost to the profession of maintaining the ISB. In light of the AICPA's increase in public representation on the PEEC and the AICPA's continuing study of whether additional public membership on PEEC would be appropriate, the Commission believes that, going forward and where appropriate, working with the PEEC on discrete issues provides an appropriate means to include the private sector in the process of maintaining and improving auditor independence requirements.

III. Continuing Authority of ISB Standards and Interpretations

The Commission will continue to consider ISB Standard Nos. 1, 2, and 3, and ISB Interpretations 00–1, 00–2, and 99–1, to have substantial authoritative support for the resolution of auditor independence issues.[17] In FRR 50, the Commission encouraged registrants and auditors to ask the ISB staff for assistance in interpreting the existing auditor independence regulations. FRR 50 stated, however, that, unless or until ratified by the ISB, positions issued by the ISB staff would not be considered to be authoritative with respect to anyone other than the particular party requesting the interpretation.[18] Accordingly, the Commission will continue to view positions issued by the ISB staff to a particular party before the effective date of this amendment to be authoritative, but only as to the party that requested the interpretation. Of course, compliance with ISB pronouncements does not relieve registrants and accounting firms from also having to comply with the Commission's auditor independence requirements.

IV. Regulatory Requirements

This general policy statement is not an agency rule requiring notice of proposed rulemaking, opportunities for public participation, or prior publication under the provisions of the Administrative Procedure Act ("APA").[19] Similarly, the provisions of the Regulatory Flexibility Act,[20] which apply only when notice and comment are required by the APA or another statute, are not applicable. For the reasons explained above the Commission believes that this statement of policy is in the public interest, considering the protection of investors and the promotion of efficiency, competition, and capital formation and provides a sound basis for the Commission to make significant contributions to meeting the needs of investors and capital markets.

V. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) is amended as follows:

Delete the current text in Section 601.04, which appears under the caption "Statement of Policy on the Establishment and Improvement of Standards Related to Auditor Independence," and replace it with the

[17] *See also* "Revision of the Commission's Auditor Independence Requirements" Release. Nos. 33–7919; 34–43602; 35–27279; IC–24744; IA–1911; FR–56 (Nov. 21, 2000) at n. 168 (discussing the Commission's interpretation of ISB Standard No. 1).

[18] FRR 50 at n.11.

[19] 5 U.S.C. 553.

[20] 5 U.S.C. 601–602.

text in sections I, II, and III of this release.

The Codification is a separate publication of the Commission. It will not be published in the **Federal Register**/Code of Federal Regulations.

Dated: July 17, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18261 Filed 7–20–01; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 99F–2533]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Change in Specifications for Gum or Wood Rosin Derivatives in Chewing Gum Base

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for a change in the softening point specifications of currently listed gum or wood rosin derivatives and to provide for their safe use as plasticizing materials (softeners) in chewing gum base. This action is in response to a petition filed by Hercules, Inc.

DATES: This rule is effective July 23, 2001. Submit written objections and requests for a hearing by August 22, 2001.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3072.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** on August 5, 1999 (64 FR 42699), FDA announced that a food additive petition (FAP 9A4655) had been filed by Hercules, Inc., c/o 1001 G St. NW., Washington, DC 20001. The petition proposed to amend the food additive regulations in § 172.615 *Chewing gum base* (21 CFR 172.615) to permit a change in the softening point specifications of currently listed gum or wood rosin derivatives and provide for their safe use as plasticizing materials (softeners) in chewing gum base. More specifically, the petition proposed to eliminate the upper limits on the permissible softening point ranges for these gum or wood rosin derivatives.

The gum or wood rosin derivatives, which are the subject of this petition, include glycerol ester of partially dimerized rosin, glycerol ester of partially hydrogenated gum or wood rosin, glycerol ester of polymerized rosin, glycerol ester of gum rosin, pentaerythritol ester of partially hydrogenated gum or wood rosin, and pentaerythritol ester of gum or wood rosin. Specifications for rosin derivatives conforming to this regulation include a melting point range (for glycerol ester of polymerized rosin) or a drop softening point range for other derivatives. The petitioner is proposing to modify these specifications by listing only a minimum melting point or softening point.

II. Conclusion

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the change in the melting point or softening point specifications for glycerol ester of partially dimerized rosin, glycerol ester of partially hydrogenated gum or wood rosin, glycerol ester of polymerized rosin, glycerol ester of gum rosin, pentaerythritol ester of partially hydrogenated gum or wood rosin, and pentaerythritol ester of gum or wood rosin is safe and that gum or wood rosin derivatives with the revised specifications will achieve their intended technical effect. Therefore, the agency concludes that the regulations in § 172.615 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

III. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IV. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by August 22, 2001. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.615 is amended in paragraph (a) by revising the following entries in the table under the subheading "Plasticizing Materials (Softeners)" to read as follows:

§ 172.615 Chewing gum base.

* * * * *

(a) * * *

Plasticizing Materials (Softeners)	
Glycerol ester of partially dimerized rosin	Having an acid number of 3–8, a minimum drop-softening point of 109 °C, and a color of M or paler.
Glycerol ester of partially hydrogenated gum or wood rosin	Having an acid number of 3–10, a minimum drop-softening point of 79 °C, and a color of N or paler.
Glycerol ester of polymerized rosin	Having an acid number of 3–12, a minimum melting-point of 80 °C, and a color of M or paler.
Glycerol ester of gum rosin	Having an acid number of 5–9, a minimum drop-softening point of 88 °C, and a color of N or paler. The ester is purified by steam striping.
* * * *	* * * *
Pentaerythritol ester of partially hydrogenated gum or wood rosin	Having an acid number of 7–18, a minimum drop-softening point of 102 °C, and a color of K or paler.
Pentaerythritol ester of gum or wood rosin	Having an acid number of 6–16, a minimum drop-softening point of 109 °C, and a color of M or paler.
* * * *	* * * *

* * * * *

Dated: July 9, 2001.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 01–18221 Filed 7–20–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 41 and 42

[Public Notice 3719]

Visas—Visa Classification Symbols: Corrections

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Correcting amendments.

SUMMARY: The Department of State (the Department) is publishing this document to correct errors in two final rules published in the **Federal Register**. The final rules revised the "SK" immigrant category and added a new nonimmigrant "V" classification.

DATES: This rule takes effect on July 23, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Office, (202) 663–1206.

SUPPLEMENTARY INFORMATION: On April 19, 2000, the Department amended section 42.11 of Part 22 of the Code of Federal Regulations by revising the "SK" immigrant category to include certain NATO employees, their spouses and unmarried children. [See 65 FR 20903.] These NATO aliens were added to the special immigrant category by section 421(a) of Public Law 105–277 and are properly classified as "SN" special immigrants. The Department added the new "SN" categories to the immigrant visa classification table in its rule published on June 18, 2001 [66 FR 32740], but failed to remove the NATO aliens from the SK category.

The Department's June 18, 2001 rule [66 FR 32740] also amended section 41.12 of Part 22 of the Code of Federal Regulations to add a new nonimmigrant "U" classification to implement section 107 of Pub. L. 106–386. The rule contained errors in the entries for the "U" visa classification symbols. The legal citations for these categories should have read 101(a)(15)(U)(i) for U1 and 101(a)(15)(U)(ii) for U2.

This rule corrects sections 41.12 and 42.11 to read as follows:

List of Subjects

22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas.

22 CFR Part 42

Aliens, Immigration, Passports and visas.

Accordingly, 22 CFR part 41 is corrected by making the following correcting amendments:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681 *et seq.*

2. In the table in § 41.12, correct the entries for U1 and U2 to read as follows:

§ 41.12 Classification symbols.

* * * * *

NONIMMIGRANTS

Symbol and class		Section of law
U1	Victim of criminal activity	101(a)(15)(U)(i)
U2	Spouse, child or parent of a U1	101(a)(15)(U)(ii)

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

3. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104.

4. In the table in § 42.11, correct the entries for SK1, SK2, SK3 and SK4 to read as follows:

§ 42.11 Classification symbols.

* * * * *

IMMIGRANTS

Symbol and class		Section of law
	Employment 4th Preference (Certain Special Immigrants)	
SK1	Certain Retired International Organization employees	101a(27)(I)(iii)
SK2	Spouse of SK1	101(a)(27)(I)(iv)
SK3	Certain Unmarried Sons or Daughters of an International Organization employee	101(a)(27)(I)(i)
SK4	Certain Spouses of a deceased International Organization employee	101(a)(27)(I)(ii)

Dated: July 6, 2001.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 01–18321 Filed 7–20–01; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 13–01–020]

RIN 2115–AE46

Special Local Regulations for Marine Events; Columbia River, Vicinity of Clover Island to Goat Island, Kennewick/Pasco, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.1303 during the annual Kennewick, Washington, Columbia Unlimited Hydroplane Races, over the waters of the Columbia River, adjacent to Columbia Park, Kennewick, Washington. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway, the high operating speeds of the hydroplanes, and expected vessel congestion during this annual event. The effect will be to restrict general navigation and anchoring throughout the regulated area for the safety of spectators, racers and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.1303 is effective on July 24, 2001 from 8:30 a.m. local time through July 29, 2001, 7:30 p.m. local time.

FOR FURTHER INFORMATION CONTACT: CWO Bob Coster, Marine Events Coordinator, Commander, Coast Guard Group/MSO Portland, 6767 N. Basin Avenue, Portland, OR, 97217–9399, (503) 240–9324/27.

SUPPLEMENTARY INFORMATION: The Tri-City Water Follies will sponsor the Columbia Cup Unlimited Hydroplane races from July 24, 2001 through July 29, 2001 over the waters of the Columbia River between a line bounded by position 46–14′–07″ north latitude, 119–10′–42″ west longitude and 46–13′–42″ north latitude, 119–10′–51″ west longitude, near Goat Island, and a second line bounded by position 46–13′–35″ north latitude, 119–07′–34″ west longitude and 46–13′10″ north latitude, 119–07′–47″ west longitude near Clover Island [Datum: NAD 83]. The special local regulation found at 33 CFR 100.1303 will be enforced from July 24, 2001, through July 29, 2001, between the hours of 8:30 a.m. local time until the last race is completed each day at approximately 7:30 p.m. local time. Under provisions of 33 CFR 100.1303, a vessel may not enter, transit or anchor in the regulated area unless it receives permission from the Coast Guard Patrol Commander. Vessels entering the regulated area under the control of the Patrol Commander shall do so only at speeds which will create minimum wake consistent with maintaining steerageway, and not to exceed seven (7) miles an hour. This speed may be adjusted at the discretion of the Patrol Commander to enhance the level of safety. Spectator vessels may anchor outside the regulated area but may not block a navigable channel.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine

information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: July 12, 2001.

James D. Spitzer,

Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.

[FR Doc. 01–18242 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–018]

Drawbridge Operating Regulation; Inner Harbor Navigation Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Florida Avenue bascule span drawbridge across the Inner Harbor Navigation Canal, mile 1.7 at New Orleans, Orleans Parish, Louisiana. This deviation allows the draw of the Florida Avenue bascule span drawbridge to remain closed to navigation daily from 6:45 a.m. until 12:15 p.m. and from 1:15 p.m. until 6:45 p.m. from October 15, 2001 through November 28, 2001. This temporary deviation will allow for replacement of the damaged fender system, an extensive but necessary maintenance operation. Presently, the draw opens on signal at all times.

DATES: This deviation is effective from 6:45 a.m. on Monday, October 15, 2001 until 6:45 p.m. on Wednesday, November 28, 2001.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obc), 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Florida Avenue bascule span drawbridge across the Inner Harbor Navigation Canal, mile 1.7, in New Orleans, Orleans Parish, Louisiana, has a vertical clearance of one foot above mean high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows small ships, fishing vessels, sailing vessels, and other recreational craft. The Board of Commissioners of the Port of New Orleans requested a temporary deviation for the operation of the drawbridge to accommodate maintenance work, involving removing portions of the existing damaged fender system, driving new pilings and replacing the timbers. This work is essential for continued safe transit of vessels through the bridge.

This deviation allows the draw of the Florida Avenue bascule span drawbridge to remain closed to navigation daily from 6:45 a.m. until 12:15 p.m. and from 1:15 p.m. until 6:45 p.m. from October 15, 2001 through November 28, 2001. In the event of an approaching tropical storm or hurricane, the draw will return to normal operation within 12 hours notice from the Coast Guard.

Dated: July 10, 2001.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 01–18245 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–087]

RIN 2115–AA97

Safety Zone; Lake Michigan, Pentwater, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Pentwater Homecoming fireworks in Pentwater, MI. This safety zone is necessary to protect vessels and spectators from potential airborne hazards during a planned fireworks display over Lake Michigan. The safety zone is intended to restrict vessels from a portion of Lake Michigan off Pentwater, Michigan.

DATES: This rule is effective from 9:15 p.m. to 10:45 p.m. (local), August 11, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–087] and are available for inspection or copying at Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois 60521, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Mike Hogan, U.S. Coast Guard Marine Safety Office, 215 W. 83rd Street, Suite D, Burr Ridge, IL 60521. The telephone number is (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments with regard to this event.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. The safety zone consists of the waters of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in the approximate position of 43°46′56.5″ N, 086°26′38″ W. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Chicago or the designated Patrol Commander. The designated Patrol Commander on scene may be contacted on VHF Channel 16. All geographic coordinates are North American Datum of 1983 (NAD83).

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)

(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in a portion of Lake Michigan from 9:15 p.m. to 10:45 p.m., August 11, 2001. This regulation would not have a significant economic impact for the following reasons. The regulation is only in effect for only one and one-half hours on one day. The designated area is being established to allow for maximum use of the waterway for commercial vessels to enjoy the fireworks display in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–972 is added to read as follows:

§ 165.T09–972 Safety Zone; Lake Michigan, Pentwater, MI.

(a) *Location.* The following area is designated a safety zone: the waters of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in the approximate position of 43°46′56.5″ N, 086°26′38″ W. (NAD 1983).

(b) *Effective time and date.* This section is effective from 9:15 p.m. until 10:45 p.m. (local), on August 11, 2001.

(c) *Regulations.* This safety zone is being established to protect the boating public during a planned fireworks display. In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated Patrol Commander.

Dated: July 5, 2001.

R.E. Seebald,

Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 01–18243 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–118]

RIN 2115–AA97

Safety Zone: Fireworks Display, New Jersey Pierhead Channel and Kill Van Kull

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks display located in the New Jersey Pierhead Channel and Kill Van Kull. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the New Jersey Pierhead Channel and Kill Van Kull.

DATES: This rule is effective from 9:15 p.m. until 10:45 p.m. on July 25, 2001.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD01–01–118) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM. Further, it is a local event with minimal impact on the waterway. Vessels may still transit through the eastern 260 yards of the 600-yard wide New Jersey Pierhead Channel, and the southern 360 yards of the 400-yard wide Kill Van Kull during the event. The zone is only in effect for one and one half hours and vessels can be given permission to transit the zone except for about 15 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: it is a local event with minimal impact on the waterway; vessels may still transit through the eastern 260 yards of the 600-yard wide New Jersey Pierhead Channel, and the southern 360 yards of the 400-yard wide Kill Van Kull during the event; the zone is only in effect for one and one half hours and vessels can be given permission to transit the zone except for about 15 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Background and Purpose

The Coast Guard has received an application to hold a fireworks program on the waters of the New Jersey Pierhead Channel and Kill Van Kull. This regulation establishes a safety zone in all waters of the New Jersey Pierhead Channel and Kill Van Kull within a 180-yard radius of the fireworks barge in approximate position 40°39′13.5″ N, 074°04′39.1″ W (NAD 1983), about 125 yards southeast of the New Jersey Pierhead South Entrance Lighted Gong Buoy 1 (LLNR 37010). The safety zone is in effect from 9:15 p.m. until 10:45 p.m. on Wednesday, July 25, 2001. The safety zone prevents vessels from transiting a portion of the New Jersey Pierhead Channel and Kill Van Kull and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 260 yards of the 600-yard wide New Jersey Pierhead Channel and through the southern 360 yards of the 400-yard wide Kill Van Kull during this event. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through the eastern 260 yards of the 600-yard wide New Jersey Pierhead Channel and the southern 360 yards of the 400-yard wide Kill Van Kull during the event, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone, and advance notifications which will be made.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 6″ mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit a portion of the New Jersey Pierhead Channel and Kill Van Kull during the times this zone is activated.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. It is a local event with minimal impact on the waterway. Vessels may still transit through the eastern 260 yards of the 600-yard wide New Jersey Pierhead Channel and the southern 360 yards of the 400-yard wide Kill Van Kull during the event. The zone is only in effect for one and one half hours and vessels can be given

permission to transit the zone except for about 15 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Before the effective period, public notifications will be made via the Local Notice to Mariners and Marine Information Broadcasts, which are widely available to users of the New Jersey Pierhead Channel and Kill Van Kull.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–118 to read as follows:

§ 165.T01–118 Safety Zone: Fireworks Display, New Jersey Pierhead Channel and Kill Van Kull.

(a) *Location.* The following area is a safety zone: All waters of the New Jersey Pierhead Channel and Kill Van Kull within a 180-yard radius of the fireworks barge in approximate position 40°39′13.5″ N, 074°04′39.1″ W (NAD 1983), about 125 yards southeast of the New Jersey Pierhead South Entrance Lighted Gong Buoy 1 (LLNR 37010).

(b) *Effective period.* This section is effective from 9:15 p.m. until 10:45 p.m. on July 25, 2001.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: July 12, 2001.

P.A. Harris,

Captain, U.S. Coast Guard, Acting Captain of the Port, New York.

[FR Doc. 01–18244 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AK52

Rules of Practice: Medical Opinions From the Veterans Health Administration

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for comments.

SUMMARY: This document amends the Department of Veterans Affairs' (VA) Appeals Regulations to clarify that the Board of Veterans' Appeals (Board) may obtain medical opinions from health care professionals in VA's Veterans Health Administration.

DATES: *Effective Date:* This interim final rule is effective July 23, 2001.

Comment Date: Comments must be received on or before September 21, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154,

Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK52." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller (01C), Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits. The Board's 59 Members decide about 35,000 to 40,000 cases per year.

For the purpose of deciding appeals, the Board sometimes obtains medical opinions from the Veterans Health Administration (VHA), the part of VA that provides medical treatment to veterans. The Board's current rules of practice at 38 CFR 20.901(a) state that "[t]he Board may obtain a medical opinion from the Chief Medical Director of the Veterans Health Administration of the Department of Veterans Affairs on medical questions involved in the consideration of an appeal when, in its judgment, such medical expertise is needed for equitable disposition of an appeal." This provision has always been intended to reflect that the Board may obtain medical opinions from appropriate health care professionals in VHA. However, there has been some confusion as to whether this provision permitted the Board to obtain a medical opinion from an individual in VHA other than the Under Secretary for Health (the title of Chief Medical Director was changed to Under Secretary for Health). This document amends the rules of practice at § 20.901(a) by deleting the reference to "Chief Medical Director" and by clarifying that the Board may obtain medical opinions from appropriate health care professionals in VHA.

Under 38 U.S.C. 7109 and 38 CFR 20.901(d), the Board can request an expert medical opinion, in addition to that available within the Department. Under 38 CFR 20.901, the Board can also request opinions from the "Chief Medical Director," *id.* 20.901(a); the Armed Forces Institute of Pathology, *id.* 20.901(b); and the Department's General Counsel, *id.* 20.901(c). The U.S. Court of Appeals for Veterans Claims has both recognized the Board's authority to seek a medical opinion under 38 CFR 20.901(a), *Perry* v. *Brown*, 9 Vet. App. 2, 6 (1996), and, in a 1998 case, noted that the Board's authority to obtain an expert medical opinion irrespective of 38 U.S.C. 7109 was "uncontested," *Winsett* v. *West*, 11 Vet. App. 420, 426 (1998), *aff'd*, 217 F.3d 854 (Fed. Cir. 1999) (unpublished decision), *cert. denied*, 120 S.Ct. 1251 (2000).

The Board has been using VHA medical opinions under 38 CFR 20.901(a) for many years. For example, from Fiscal Year (FY) 1993 through FY 1999, Board Members requested 1,235 such opinions. Reports of the Chairman, Board of Veterans' Appeals, Fiscal Years 1993–1999. In FY 1999, the Board requested 482 advisory opinions from VHA physicians, compared with 100 requests from non-VA medical experts under 38 U.S.C. 7109. Report of the Chairman, Board of Veterans' Appeals, Fiscal Year 1999 at 23.

Advisory opinions requested from VHA physicians have typically been provided in a much more timely manner than those obtained from non-VA physicians and generally have been well-reasoned, succinctly stated, and fully responsive to the questions asked by the Board. Additionally, the thoroughness and specificity of many VHA advisory opinions have provided sufficient information to allow the Board Members to issue final decisions without the need to remand cases to the regional offices to obtain the same information. As a result, this process reduces the time a veteran must wait for a final resolution of the appeal.

Since 1995, this process has been memorialized in a VHA "Directive," which allocates the responsibilities between VHA and the Board. VHA Directive 10–95–040 (Apr. 17, 1995); VHA Directive 2000–049 (Dec. 13, 2000). The latter directive, which replaces the former, may be found on VA's internet site at *http://www.va.gov/publ/direc/health/direct/12000049.pdf*.

This interim final rule concerns rules of agency procedure and practice. Accordingly, under the provisions of 5 U.S.C. 553, we are dispensing with prior notice and comment and a delayed effective date.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this interim final rule is exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: July 9, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

2. Section 20.901(a) is revised to read as follows:

§ 20.901 Rule 901. Medical opinions and opinions of the General Counsel.

(a) *Opinion from the Veterans Health Administration.* The Board may obtain a medical opinion from an appropriate health care professional in the Veterans Health Administration of the Department of Veterans Affairs on medical questions involved in the consideration of an appeal when, in its judgment, such medical expertise is needed for equitable disposition of an appeal.

(Authority: 38 U.S.C. 5107(a))

* * * * *

[FR Doc. 01–18172 Filed 7–20–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

[Docket No. NHTSA–2001–10145]

RIN 2127–AI23

Motor Vehicle Safety; Reporting the Sale or Lease of Defective or Non-Compliant Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule implements section 3(c) of the Transportation Recall Enhancement, Accountability, and Documentation Act (TREAD Act). Section 3(c) directed us to issue a final rule by January 30, 2001, implementing that Act's requirement of the submission of reports concerning sales and leases of defective or noncompliant tires by certain persons. Accordingly, we published an interim final rule and request for comments in the **Federal Register** on December 26, 2000 (65 FR 81409). We are now publishing a final rule requiring any person who knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire not in compliance with applicable safety standards and has actual knowledge that the manufacturer of such tire has notified its dealers of such defect or noncompliance to report that sale or lease to NHTSA. There have been no significant changes to the interim final rule.

DATES: *Effective date*: This rule is effective August 22, 2001.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than September 6, 2001.

ADDRESSES: Petitions for reconsideration may be submitted in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Petitions for reconsideration may also be submitted electronically by logging onto the Docket Management System website at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filing your petition electronically.

Regardless of how a petition is submitted, the docket number of this document should be referenced in that petition.

You may call Docket Management at 202–366–9324. You may visit the Docket from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA, telephone (202) 366–5226; for legal issues, contact Jennifer T. Timian, Office of Chief Counsel, NHTSA, telephone (202) 366–5263.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2000, the TREAD Act, Pub. L. 106–414, was enacted. The statute was, in part, a response to congressional concerns related to manufacturers' inadequate reporting to NHTSA of information regarding possible defects in motor vehicles and motor vehicle equipment, with specific reference to tires. The TREAD Act directed the Secretary of Transportation ("the Secretary") to issue various rules to improve reporting of information that is or could be related to defects and noncompliances with applicable Federal motor vehicle safety standards. The authority to carry out Chapter 301 of Title 49 of the United States Code, under which the rules directed by the TREAD Act are to be issued, has been delegated to NHTSA's Administrator pursuant to 49 CFR 1.50.

One of these congressionally mandated rules is found in section 3(c) of the TREAD Act, which added a new subsection (n) to 49 U.S.C. 30166. That subsection directs us to issue, within 90 days of enactment, a final rule requiring any person who knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire which is not compliant with an applicable tire safety standard, with actual knowledge that the manufacturer of such tire has notified its dealers of such defect or noncompliance as required under 49 U.S.C. 30118(c) or as required by an order under 49 U.S.C. 30118(b), to report that sale or lease to NHTSA. Under 30166(n)(2), reporting of such sales or leases is not required where: (A) prior to delivery of any such tire pursuant to a sale or lease, the defect or noncompliance is remedied as required under 49 U.S.C. 30120; or (B) notification of the defect or noncompliance is required pursuant to an order issued under section 30118(b), but enforcement of the order is restrained or the order is set aside in a civil action to which 49 U.S.C. 30121(d) applies.

In order to timely implement this statutorily-mandated final rule, we published in the **Federal Register** on December 26, 2000, an interim final rule implementing section 3(c) (65 FR 81409). That interim final rule amended 49 CFR Part 573 to add a new section 573.10, which specified who would be required to comply with this new reporting requirement, when such a report would be due to the Agency, and what information would be required within such a report.

With respect to who would be required to comply with this rule, we explained that because Congress chose to use the general terms "any person" to describe who would be expected to report sales or leases of defective or noncompliant tires, the rule would not be limited to particular classes or categories of persons such as manufacturers or dealers.[1] Rather, the rule would apply to the actions of all persons, to include individuals and corporate entities alike. We were careful to explain, however, that only those persons who sell or lease a defective or noncompliant tire *for use on a motor vehicle*, as opposed to persons who sell or lease a new or used vehicle equipped with a defective or noncompliant tire, are covered by the rule. Thus, we explained, motor vehicle dealers, lessors and rental companies would not be subject to the rule unless, of course, those persons were to sell or lease a defective or noncompliant tire separate from a motor vehicle.

Additionally, we explained that to be covered under section 573.10, the person must have actual knowledge that the manufacturer of the tire at issue had notified its dealers of the defect or noncompliance. We added, however, that a person need not have received notification directly from the manufacturer, but that a person's actual knowledge that the notification was made to dealers would be sufficient to invoke the reporting requirement under this section.

Lastly, we explained that the principle of *respondent superior* applied to this rule, such that employers, principals and other persons who are legally accountable for the actions of their employees or agents are required to report any covered sales or leases that their employees or agents cause while acting within the scope of their employment. We noted, however, that only one report per covered sale or lease is required, such that either an employee or his/her employer could file a report pursuant to section 573.10.

With regard to the timing of reports required under section 573.10, we provided that such reports would be due to NHTSA no more than five working days after the person to whom the tire was sold or leased took possession of the tire. We explained that a five-day rule was chosen because it would be consistent with 49 CFR 573.5, which requires defect and noncompliance information reports to be submitted within a five-day time frame.

In terms of what information will be required in a report submitted pursuant to section 573.10, we set forth seven categories of information: (1) A statement that the report was being provided pursuant to section 573.10 regarding the sale or lease of a defective or noncompliant tire; (2) the name, address and telephone number of the person who purchased or leased the tire; (3) the name of the manufacturer of the tire; (4) the tire's brand name, model name, and size; (5) the tire's DOT

[1] We also explained that the interim final rule would be applicable to both new and used tires.

identification number; (6) the date of sale or lease; and (7) the name, address and telephone number of the seller or lessor. We additionally noted that each report must be dated and signed with the name of the person printed or typed below the signature, together with the official position of the individual signing the report where such a report is filed on behalf of a corporation.

In our publication of the interim final rule we solicited the public's comments concerning this rule. We received three comments to our interim final rule. Those comments and our responses, organized by subject matter, follow.

Comments

Comments Relating to the Scope of Section 573.10

The National Automobile Dealers Association (NADA) commented that our rule should be amended to contain language specifying that it does not apply to the sale or lease of a new or used motor vehicle which is equipped with a tire that is defective or noncompliant. NADA suggested that such an amendment would clarify the rule's application to only those persons who sell or lease a defective or noncompliant tire "for use on a motor vehicle," as specified in section 3(c) of the TREAD Act, and implemented in our interim final rule.

We believe the phrase "for use on a motor vehicle" in the statute is sufficient to explain that section 573.10 does not apply to sales or leases of motor vehicles that are equipped with one or more defective or noncompliant tires. Thus, we do not believe that a specific provision within section 573.10 to further clarify the rule's application is necessary. The rule will remain unchanged in this regard. However, in this context, we note that the sale of a new vehicle equipped with a defective or noncompliant tire new tire is prohibited by 49 U.S.C. 30120(i).

The Rubber Manufacturers Associations (RMA) asked that we consider requiring commercial entities to report sales or leases of used motor vehicles equipped with defective or noncompliant tires. We do not agree that such a requirement should be added to 49 CFR 573.10 for several reasons.

Section 3(c) does not apply to persons who sell or lease new or used motor vehicles that come equipped with defective or noncompliant tires. Rather, Congress specified in section 3(c) that it covers sales and leases of defective or noncompliant tires "for use on a motor vehicle." An extension of our rule to sales and leases of vehicles by commercial entities would, therefore, be contrary to the terminology used within section 3(c).

Furthermore, extending the rule's application in this manner to only commercial entities would also be contradictory to the language and intent of section 3(c). As discussed in the preamble to the interim final rule, Congress chose to use the general terms "any person," as opposed to the more restricted categories of "manufacturer" and "dealer" used elsewhere within 49 U.S.C. Chapter 301, in describing who was to be subject to the reporting requirement. Our application of this final rule to sales and leases by commercial entities alone and not to other groups, therefore, would be inconsistent with the statutory language.

We are, however, amending the applicability section of Part 573 (e.g., section 573.3(a)) to assure that there is no misunderstanding that section 573.10 applies to all persons and not simply to manufacturers. As published today, sections 573.3(a) and (g) make clear (although we do not believe that there was any doubt otherwise) that section 573.10 applies to all persons.

Comment Concerning Section 573.10's Relationship to Petitions for Inconsequentiality

The RMA asked that we clarify our rule with respect to tires for which a manufacturer has filed a petition for exemption from the recall requirements of 49 U.S.C. Chapter 301 on the basis that a defect or noncompliance is inconsequential to motor vehicle safety pursuant to 49 U.S.C. 30118(d) and 30120(h). In particular, RMA requested we consider tolling section 573.10's reporting requirement until such a petition is ruled upon, and consider an exemption of that reporting requirement where the agency makes a determination of inconsequentiality.

A reading of section 573.10 together with another of its counterpart regulations, section 573.5(c)(8)(iii), demonstrates that a distinct tolling provision or exemption to take into consideration petitions for determinations of inconsequentiality is not necessary. Accordingly, we have decided not to add the suggested provisions to section 573.10. Our explanation follows.

As set forth in section 573.10, one prerequisite to the application of this reporting requirement is that the person have actual knowledge that the manufacturer of the tire sold or leased has notified its dealers of the defect or noncompliance. Such a notification would not be issued during the pendency of the agency's consideration of a timely inconsequentiality petition. Under 49 CFR 573.5(c)(8)(iii), where a manufacturer has filed a timely[2] petition for a determination of inconsequential defect or noncompliance, that manufacturer's notification concerning the defect or noncompliance at issue is not required unless and until the agency denies that petition. Thus, where a manufacturer has not issued a notification to its dealers concerning a defect or noncompliance—such as in the circumstance where a tire manufacturer has petitioned for a finding of inconsequentiality and is awaiting a final determination from the agency—section 573.10's reporting requirement is not applicable.[3]

Comment Suggesting Educational Outreach to Small Businesses and Individual Retailers

The Specialty Equipment Market Association (SEMA) commented that because our rule extends to all persons, including individuals and small businesses, there may be hardships in informing the individual salesperson or small business as to our rule and its application to their conduct. SEMA suggested that comprehensive and ongoing efforts be made to notify and educate companies and individuals involved in the sale or lease of tires as to the rule's purpose, requirements, application and penalties for non-compliance. SEMA did not offer suggestions or descriptions as to what kinds of efforts it felt we should undertake that would be helpful in providing effective and comprehensive information to the individual salesperson or small retailer. SEMA stated it was taking steps to educate its members of their obligations under the TREAD Act, which would include 49 CFR 573.10.

We do not agree that a comprehensive and ongoing educational campaign directed at small businesses and individual tire retailers is necessary with respect to today's final rule. To begin, this is not a matter to be addressed in a rule. Even if it were, this rule is not complex and is consistent with ordinary judgment relating to the intentional sale of defective or noncompliant tires—conduct which is prohibited pursuant to 49 U.S.C. 30120(i) and (j). In addition, while this rule applies to all persons, its

[2] The deadlines for filing such petitions are discussed in 49 CFR 573.5(c)(8)(iv).

[3] The same would hold true if a petition were granted. This final rule's reporting requirements would be inapplicable in that situation because the tire manufacturer would not notify its dealers of an inconsequential defect or noncompliance.

application is limited to persons who both knowingly and willfully sell or lease a defective or noncompliant tire, and have actual knowledge that the manufacturer of that tire notified its dealers of the defect or noncompliance. Under this rule, a very limited number of individuals would be obligated to file reports. In the interim final rule we stated that we expect to receive fewer than ten reports of such incidents a year, and no one suggested that this estimate was erroneous. Under these limited circumstances, we do not believe a government-directed educational campaign directed at small businesses and individual tire retailers is appropriate.

Regulatory Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking was not reviewed under E.O. 12866, "Regulatory Planning and Review." This rulemaking is not considered "significant" under the Department of Transportation's regulatory policies and procedures. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves reporting and the incidence of covered sales and leases of defective or noncompliant tires is expected to be small.

2. Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this rule will have no significant economic impact on a substantial number of small entities. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves reporting and the incidence of covered sales and leases of defective or noncompliant tires is expected to be small.

3. National Environmental Policy Act

We have analyzed this proposal under the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

4. Paperwork Reduction Act

NHTSA has determined that this final rule will impose new collection of information burdens within meaning of the Paperwork Reduction Act of 1995 (PRA). Pursuant to 5 CFR 1320.13 *Emergency processing,* NHTSA asked for, and received, approval from OMB for a temporary emergency clearance for this collection. In the interim final rule, NHTSA began the process of requesting a 3-year clearance for this collection. In that interim final rule we also requested comments from the public on this new collection of information burden. No comments were received. NHTSA has submitted its request for a 3-year clearance for this collection to OMB.

5. Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" requires us to develop an accountable process to ensure "meaningful and timely input" by State and local officials in the development of "regulatory policies that have federalism implications." The Executive Order defines this phrase to include regulations "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This rule, which requires the reporting of knowing and willful sales or leases of defective or noncompliant tires where the person selling or leasing the tire has actual knowledge that the manufacturer of such a tire has notified its dealers of that defect or noncompliance pursuant to either section 30118(c) or 30118(b) of the Safety Act, will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule making does not have those implications because it applies to those persons who sell or lease defective or noncompliant tires, and not to the States or local governments.

6. Civil Justice Reform

This rule does not have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

7. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (P.L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

Final Rule

Accordingly, the interim final rule amending 49 CFR part 573 which was published at 65 FR 81409 on December 26, 2000, is adopted as final with the following changes:

1. The authority citation for part 573 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

2. Section 573.3 is amended by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 573.3 Application.

(a) Except as provided in paragraph (g) of this section, this part applies to manufacturers of complete motor vehicles, incomplete motor vehicles, and motor vehicle original and replacement equipment, with respect to all vehicles and equipment that have been transported beyond the direct control of the manufacturer.

* * * * *

(g) The provisions of § 573.10 apply to all persons.

* * * * *

Issued on: July 18, 2001.

L. Robert Shelton,

Executive Director.

[FR Doc. 01–18309 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 001226367–0367–01; I.D. 121500E]

Magnuson-Stevens Act Provisions; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Corrections to the 2001 specifications for the Pacific Coast groundfish fishery.

SUMMARY: This document contains corrections to the 2001 groundfish fishery specifications and management measures for the Pacific Coast

groundfish fishery, which were published on January 11, 2001 and amended February 14, 2001, April 9, 2001, May 4, 2001, May 24, 2001, and July 5, 2001.

DATES: Effective July 23, 2001.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko at: phone, 206–526–6140; fax, 206–526–6736.

SUPPLEMENTARY INFORMATION: The 2001 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan, were published in the **Federal Register** on January 11, 2001 (66 FR 2338), and amended at 66 FR 10211 (February 14, 2001), at 66 FR 18409 (April 9, 2001), at 66 FR 22467 (May 4, 2001), at 66 FR 28676 (May 24, 2001), and at 66 FR 35388 (July 5, 2001). Table 3, 2001 Trip Limits for Limited Entry Trawl Gear, in the 2001 fishery specifications contained an error in the limit for petrale sole. This document corrects that error and republishes Table 3 in its entirety.

Correction

In the rule FR Doc.01–16801, in the issue of Thursday, July 5, 2001 (66 FR 35388), make the following correction:

1. On page 35391, Table 3 is corrected and republished in its entirety to read as follows:

IV. NMFS Actions

B. Limited Entry Fishery

* * * * *

BILLING CODE 3510–22–S

Table 3. 2001 Trip Limits [1] and Gear Requirements [2] for Limited Entry Trawl Gear
Read Section IV.A. NMFS Actions before using this table.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish**						
2	North	1,500 lb/ 2 months			2,000 lb/ 2 months		
3	South	14,000 lb/ 2 months			25,000 lb/ 2 months		
4	Splitnose - South	8,500 lb/ 2 months		14,000 lb/ 2 months	25,000 lb/ 2 months		
5	Pacific ocean perch[6]	1,500 lb/ month		2,500 lb/ month	3,500 lb/ month		1,500 lb/ month
6	**DTS complex - North**						
7	Sablefish	5,000 lb/ 2 months		14,000 lb/ 2 months			5,000 lb/ 2 months
8	Longspine thornyhead	6,000 lb/ 2 months		6,000 lb/ 2 months			6,000 lb/ 2 months
9	Shortspine thornyhead	1,500 lb/ 2 months		1,500 lb/ 2 months			1,500 lb/ 2 months
10	Dover sole	65,000 lb/ 2 months		20,000 lb/ 2 months	15,000 lb/ 2 months		7,500 lb/ month
11	**DTS complex - South**						
12	Sablefish	8,000 lb/ 2 months		11,000 lb/ 2 months			8,000 lb/ 2 months
13	Longspine thornyhead	6,000 lb/ 2 months		6,000 lb/ 2 months			6,000 lb/ 2 months
14	Shortspine thornyhead	1,500 lb/ 2 months		1,500 lb/ 2 months			1,500 lb/ 2 months
15	Dover sole	35,000 lb/ 2 months			30,000 lb/ 2 months		15,000 lb/ month
16	**Flatfish - North**						
17	Arrowtooth flounder	20,000 lb/ trip		Small footrope: 50,000 lb/month, of which no more than 15,000 lb may be petrale sole and 10,000 lb may be arrowtooth; Large footrope: arrowtooth, 15,000 lb/trip for May and 5,000 lb/trip for June; petrale sole, prohibited; all other flatfish, 1,000 lb/trip.	Small footrope: 45,000 lb/month, of which no more than 15,000 lb may be petrale sole; arrowtooth 7,500 lb/trip not to exceed 30,000 lb/month. Large footrope: arrowtooth, 5,000 lb/trip not to exceed 30,000 lb/month; petrale sole 100 lb/trip; all other flatfish, 1,000 lb/trip.		20,000 lb/ trip
18	Petrale sole	No restriction					No restriction
19	Rex sole	No limit					No limit
20	All other flatfish [3]	Small footrope, no limit; large footrope, 1,000 lb/ trip					Small footrope, no limit; large footrope, 1,000 lb/ trip
21	**Flatfish - South**						
22	Arrowtooth flounder	20,000 lb/ trip		small footrope, no limit; large footrope, 5,000 lb/ trip			20,000 lb/ trip
23	Petrale sole	No restriction		small footropoe, no limit; large footrope, included in "all other flatfish"			No restriction
24	Rex sole	No limit					
25	All other flatfish [3]	small footrope, no limit; large footrope, 1,000 lb/ trip					
26	**Whiting shoreside [4]**	20,000 lb/ trip		Primary Season			20,000 lb/ trip
27	**Use of small footrope bottom trawl [5] or midwater trawl required for landing all of the following species:**						
28	**Minor shelf rockfish**						
29	North	300 lb/ month		1,000 lb/ month			300 lb/ month
30	South	500 lb/ month		1,000 lb/ month			500 lb/ month
31	Canary rockfish	100 lb/ month		300 lb/ month			100 lb/ month
32	**Widow rockfish**						
33	mid-water trawl	20,000 lb/ 2 months		10,000 lb/ 2 months	July thru September, in trips where 10,000 lb or more of whiting are landed, 2,000 lb/ month, with a combined widow/yellowtail limit of 500 lb per trip, otherwise 1,000 lb/month; October 10,000 lb/month		10,000 lb/ 2 months
34	small footrope trawl	1,000 lb/ month					
35	**Yellowtail - North [6]**						
36	mid-water trawl	30,000 lb/ 2 months		15,000 lb/ 2 months	July thru September, in trips where 10,000 lb or more of whiting are landed, 3,000 lb/ month with a combined widow/yellowtail limit of 500 lb/trip, otherwise 1,500 lb/month; October 15,000 lb/month		20,000 lb/ 2 months
37	small footrope trawl	Without flatfish, 1,500 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 2,500 lb/ trip and 30,000 lb/ 2 months.		Without flatfish, 1,500 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 7,500 lb/ trip and not to exceed 15,000 lb/ 2 months.			Without flatfish, 1,500 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 2,500 lb/ trip and 20,000 lb/ 2 months
38	**Bocaccio - South [6]**	300 lb/ month		500 lb/ month			300 lb/ month
39	**Chilipepper - South [6]**						
40	mid-water trawl	25,000 lb/ 2 months					
41	small footrope trawl	7,500 lb/ 2 months					
42	**Cowcod**	Retention is Prohibited					
43	**Minor nearshore rockfish**						
44	North	200 lb/ month					
45	South	200 lb/ month					
46	**Lingcod [7]**	No retention		400 lb/ month			No retention

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border.
"South" means 40°10' N. lat. To the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.
2/ Gear requirements and prohibitions are explained at paragraph IV.A.(14).
3/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with a trip limit.
4/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. See IV.B.(3)(c).
The 20,000 lb/ trip limit applies before and after the primary season.
5/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.
Midwater gear also may be used; the footrope must be bare. See paragraph IV.A. (14).
6/ Yellowtail rockfish and POP in the south, and bocaccio, and chilepepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).
7/ The size limit for lingcod is 24 inches (61 cm) total length.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Dated: July 17, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–18323 Filed 7–20–01; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010413094–1178–02; I.D. 060701A]

RIN 0648–AP10

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues this interim final rule to amend regulations implemented through emergency interim rule for the Atlantic deep-sea red crab (*Chaceon quinquedens*) (red crab) fishery. This interim final rule revises the conversion factor for determining equivalent live weight of landings where red crab are landed in a butchered state. The intent of this interim final rule is to allow vessels that butcher at sea to land a true live weight equivalent trip limit, currently set at 65,000 pounds (29.5 metric tons (mt)).

DATES: Effective July 18, 2001, through November 14, 2001. Comments must be received no later than 5 p.m., local time on August 22, 2001.

ADDRESSES: Written comments should be sent to, and copies of the Environmental Assessment/Regulatory Impact Review supporting the original emergency interim action may be obtained from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, phone: 978–281–9221, fax: 978–281–9135, e-mail: *regina.l.spallone@noaa.gov*.

SUPPLEMENTARY INFORMATION: The red crab fishery is a relatively small trap fishery off the northeast coast generally prosecuted in waters deeper than 200 fathoms (365.7 m). Until one year ago, there were an estimated 5 vessels in the directed red crab fishery, all of which are reportedly under 120 ft (36.6 m) in length with an average hold capacity of 60,000 to 65,000 lb (27.2 to 29.5 mt) of whole crab product. While none of these 5 vessels has the ability to process completely (picked, cleaned, cooked, and frozen) crabs on board, one reportedly butchers the crabs on board. The 4 remaining vessels land their crabs whole and alive. In the last year, additional vessels have entered this fishery. These vessels have significantly larger hold capacities than the original 5 vessels and can process completely crabs on board.

NMFS issued an emergency interim rule (rule) for the red crab fishery on May 8, 2001 (66 FR 23182). The rule was intended to prevent or eliminate overfishing and provide immediate protection of the red crab resource in what had previously been an unregulated fishery. The rule implemented, among other measures, a possession limit of 65,000 lb (29.5 mt) of whole red crab (or its equivalent in butchered product) for directed trips. For non-red crab directed trips, the rule implemented an incidental catch limit of 100 lb (45.4 kg) of whole red crab per fishing trip, or its equivalent. These limits are in line with recent historical catches and will likely constrain the larger vessels that entered the fishery in the last year. The rule is effective through November 14, 2001. The New England Fishery Management Council is currently developing a fishery management plan for this fishery that will implement management restrictions on a permanent basis.

While the rule did not specifically define "butcher on board," it set the possession limit for crab parts (other than whole or meat-only) equivalent to the whole red crab when the weight of the red crab parts is multiplied by 1.72. This multiplier corresponds with a recovery rate of 58 percent noted in the environmental assessment (EA) drafted in support of the rule. The EA noted that butchered-at-sea red crab was about 58 percent (with a range of about 49 to 64 percent), by weight, of the whole red crab. The rule thus codified the conversion ratio that reflected a recovery rate of about 58 percent of whole to butchered red crab, or 1.72 to 1.

The EA noted in providing this estimate that when crabs are butchered at sea, unwanted parts of the crab are discarded, specifically, the carapace, gills, viscera. Since the publication of the rule, NMFS received information to clarify the process of butchering at sea and how that clarification affects the conversion ratio specified in the rule. By including the removal of the gills and viscera in addition to the carapace, the EA specified a slightly more thorough process in butchering red crab than is currently practiced. The process specified in the EA could be referred to as a "fully cleaned" butchered red crab section, which is typically not what is landed by those who butcher at sea.

According to industry, a less than fully cleaned butchered- at-sea red crab has not had the gills, mandibles, and a large percentage of the tail flaps removed. The additional weight remaining on the crab would shift the equivalent weight ratio towards the higher percentage in the range of multipliers identified in the EA. That is, more weight would remain on the product when it is landed versus what was considered in the rule. Based on information provided by industry and preliminarily corroborated by NMFS, a recovery rate of about 64 percent is more in line with the equivalent ratio of red crab landed as butchered than 58 percent. Therefore, the interim final rule revises the multiplier used to determine the equivalent possession limit for butchered red crab to 64 percent, or 1.56. Applying the revised multiplier to the current possession limit yields an equivalent possession limit of approximately 41,670 lb (18.9 mt), as compared to 37,791 lb (17.1 mt) using the current 1.72 multiplier.

The ratio of 4 to 1, or 25 percent, was used to convert the weight of whole crab to finished product weight for crabs that have been picked, cleaned, cooked, and frozen (that is, meat only). No similar information was received with respect to the processed equivalent conversion ratio.

Classification

This interim final rule amends an emergency rule by relieving a restriction on the possession limit for vessels that butcher at sea red crab. Immediate implementation will result in economic benefits to those vessels, while presenting no significant harm to the red crab resource or other vessels in the fishery. Because this interim final rule amends an action necessary to provide immediate protection to the Atlantic deep-sea red crab stock to protect it from overfishing, the Acting Assistant Administrator for Fisheries finds that there is good cause to waive the requirement to provide notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553 (b)(B), as such procedures would be contrary to the public interest. This rule allows an increase in the numbers of crabs that vessels that butcher crabs at sea may harvest. This change makes the trip limit for these vessels comparable to those vessels that land whole crab. Therefore, the rule relieves a restriction and is not subject to the 30–day delay in effective date otherwise required by 5 U.S.C. 553 (d).

Because prior notice and opportunity for public comment are not required for this interim final rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

An EA and Regulatory Impact Review (RIR) were drafted in support of the emergency rule. The RIR ensures that NMFS systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost effective way. This interim final rule adjusts a conversion ratio multiplier to reflect the upper limit of the range that was considered in the RIR analysis for the emergency rule. (See: Secretarial Emergency Action for the Deep-Sea Red Crab (*Chaceon quinquedens*) Fishery: Environmental Assessment/Regulatory Impact Review) This change is being made to respond to industry concerns that indicate their method of butchering at sea red crabs is different from that discussed in the EA, and results in a different recovery rate. Applying the revised multiplier to the current possession limit of 65,000 lbs (29.5 mt) could yield an equivalent possession limit of approximately 41,670 lb (18.9 mt), as compared to 37,791 lb (17.1 mt) with the 1.72 multiplier. This increase in landings will have a positive impact on those who butcher red crab at sea. The additional allowance of landings should have no impact on vessels that do not butcher at sea and on the overall total allowable catch level because the total weight of whole crabs harvested would remain the same. It is only the landings total that would change for the vessel(s) that butcher at sea. Thus, there should be no resulting loss in revenues for the rest of the fleet. No new information on landings is available since the preparation of the RIR. This interim final rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Vessel permits, Reporting and recordkeeping requirements.

Dated: July 17, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648, subpart M, which is effective through November 14, 2001, is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.265, paragraph (a) is suspended and paragraph (d) is added to read as follows:

§ 648.265 Possession and landing limits.

* * * * *

(d) A vessel or operator of a vessel that has been issued a valid LOA under this subpart may fish for, catch, possess, transport, land, sell, trade, barter, or process at sea up to 65,000 lb (29.5 mt) of whole red crab (including culls) or its equivalent, per fishing trip. For red crab meat-only, the equivalent weight of whole red crab is the weight of red crab meat multiplied by 4. For red crab parts other than whole or meat-only, the equivalent weight of whole red crab is the weight of red crab parts multiplied by 1.56.

§§ 648.262, 648.263, 648.265, and 648.268 [Amended]

3. In addition to the amendments set forth above, in the following sections, remove the words "§ 648.265(a)", each time it appears, and add in its place the words "648.265 (d)":

Section	Paragraph
648.262	(a)
648.263	(a)
648.265	(c)
648.268	(a) (1)
648.268	(a) (5)

[FR Doc. 01–18313 Filed 7–18–01; 4:11 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 071801D]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2001 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 18, through 2400 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2001 TAC of northern rockfish for the Western Regulatory Area was established as 600 metric tons (mt) by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2001 TAC for northern rockfish in the Western Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 550 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the 2001 TAC of northern rockfish for the Western Regulatory Area of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures

would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the 2001 TAC of northern rockfish for the Western Regulatory Area of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 18, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–18314 Filed 7–18–01; 4:11 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 071801C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2001 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 18, 2001, through 2400 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2001 TAC of Pacific ocean perch for the Central Aleutian District was established as 2,368 metric tons (mt) by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2001 TAC for Pacific ocean perch in the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,068 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the 2001 TAC of Pacific ocean perch for the Central Aleutian District of the BSAI constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the 2001 TAC of Pacific ocean perch for the Central Aleutian District of the BSAI constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 18, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–18315 Filed 7–18–01; 4:11 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 141
Monday, July 23, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–288–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, and –40 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, and –40 series airplanes. This proposal would require rework and reidentification of certain reflector assemblies of the passenger ceiling lights; and installation of a support channel above the reflector, as applicable. This proposal is prompted by reports of heat damaged lamp reflectors and scorched insulation blankets in the main cabin due to the lamps inside the reflectors creating high temperatures. The actions specified by the proposed AD are intended to prevent overheating of the lamp reflectors, which could result in smoke and fire in the main cabin.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–288–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 99–NM–288–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–288–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–288–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-

Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (*e.g.*, inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued airworthiness directives (AD) requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (*e.g.*, inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation. Such corrective action can be addressed in future ADs to provide an acceptable level of safety for the transport airplane fleet.

Identification of Unsafe Condition

The FAA has become aware of instances of heat damage to the reflector assemblies of the passenger compartment ceiling lights and scorching of the insulation blankets above the reflectors. These incidents occurred on McDonnell Douglas Model DC–9 series airplanes. Investigation revealed that the lamps inside the reflectors created high temperatures. The temperatures inside the reflector reached a point where the reflector material became soft enough to distort and come in contact with the lamps. The heat of the lamps melted holes through the reflectors and scorched the insulation blanket located directly above. Overheating of lamp reflectors, if not corrected, could result in smoke and fire in the main cabin.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC9–33A037, Revision 02, dated July 27, 1999, which describes procedures for rework and reidentification of the reflector assemblies of the passenger ceiling lights, and installation of a support channel above the reflector, as applicable. The rework involves replacing the resistor assemblies with new assemblies; and drilling a hole in the reflector parabola. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 273 Model DC–9–10, –20, –30, and –40 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 177 airplanes of U.S. registry would be affected by this proposed AD, that it would take between 8 and 12 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost between $1,607 and $6,463 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $369,399 and $1,271,391, or between $2,087 and $7,183 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–288–AD.

Applicability: Model DC–9–10, –20, –30, and –40 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC9–33A037, Revision 02, dated July 27, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the lamp reflectors, which could result in smoke and fire in the main cabin, accomplish the following:

Modification

(a) Within 1 year after the effective date of this AD, rework and reidentify the reflector assemblies of the passenger ceiling lights and install a support channel above the reflector, as applicable, in accordance with McDonnell Douglas Alert Service Bulletin DC9–33A037, Revision 02, dated July 27, 1999.

Note 2: Rework and reidentification of reflector assemblies, and installation of support channels prior to the effective date of this AD in accordance with McDonnell Douglas Service Bulletin DC9–33–037, dated July 18, 1968, or Revision 1, dated May 6, 1971, is an acceptable method of compliance for the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17584 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–291–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; C–9 (Military) Airplanes; Model DC–9–81, –82, –83, and –87 Series Airplanes; and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 (military) airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; and Model MD–88 airplanes. This proposal would require an inspection of the power feeder bus cables of the auxiliary power unit (APU) for overheat damage between certain fuselage stations; and corrective action(s), if necessary. This action is necessary to prevent loose terminal stud connections and consequent damage to the small copper terminals, which could result in overheating of the wires at the terminal strip. Such overheating could result in electrical failure, which could result in smoke and fire in the electrical/electronic compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–291–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–291–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–291–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–291–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued airworthiness directives (AD) requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation. Such corrective action can be addressed in future ADs to provide an acceptable level of safety for the transport airplane fleet.

Identification of Unsafe Condition

The FAA has become aware of incidents in which the electrical bus of the auxiliary power unit (APU) failed on McDonnell Douglas Model DC–9 series airplanes. Investigation revealed that these failures were due to overheated wires at a terminal strip as a result of loose terminal stud connections and consequent damaged copper terminals. A contributing factor to the loose terminal stud connections in this installation may be a "cold flow" phenomenon, which takes place when aluminum terminals expand during high electrical current flow and contract when current is reduced. Loose terminal stud connections require tightening, which can damage the copper terminals and cause overheating of the terminal strip wires. Such overheating could result in electrical failure, which could result in smoke and fire in the electrical/electronic (E/E) compartment.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC9–24A072, Revision 01, dated May 22, 2000. The service bulletin describes procedures for a general visual inspection of the power feeder bus cables of the APU for overheat damage between fuselage stations Y=160.000 (Item No. S3–287) and Y=148.000 (Item No. S3–23); and corrective action(s), if necessary. The corrective actions involve revising the wiring installation; repairing or replacing wiring with new wiring; and replacing the nameplate with a new nameplate; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 550 Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 (military) airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 450 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $27,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–291–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 (military) airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; and Model MD–88 airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC9–24A072, Revision 01, dated May 22, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical failure due to overheated wires at the terminal strip, which could result in smoke and fire in the electrical/electronic compartment, accomplish the following:

General Visual Inspection

(a) Within 1 year after the effective date of this AD, do a general visual inspection of the power feeder bus cables of the auxiliary power unit (APU) for overheat damage between fuselage stations Y=160.000 (Item No. S3–287) and Y=148.000 (Item No. S3–23), per McDonnell Douglas Alert Service Bulletin DC9–24A072, Revision 01, dated May 22, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Condition 1 (No Evidence of Damage)

(b) If no damage is detected during the inspection required by paragraph (a) of this AD, do the applicable action specified in paragraph (b)(1) or (b)(2) of Table 1 of this AD, per McDonnell Douglas Alert Service Bulletin DC9–24A072, Revision 01, dated May 22, 2000. Table 1 is as follows:

TABLE 1.—CONDITION 1.

For airplanes identified in the referenced service bulletin as . . .	Action	By
(1) Group 1	Revise the wiring installation and replace the nameplate with a new nameplate.	Before further flight.
(2) Group 2	Revise the wiring installation	Before further flight.
(3) Group 3	No further action is required by this AD	[Reserved]

Condition 2 (Evidence of Damage)

(c) If any damage is detected during the inspection required by paragraph (a) of this AD, do the applicable action(s) specified in paragraph (c)(1), (c)(2), or (c)(3) of Table 2 of this AD, per McDonnell Douglas Alert Service Bulletin DC9–24A072, Revision 01, dated May 22, 2000. Table 2 is as follows:

TABLE 2.—CONDITION 2.

For airplanes identified in the referenced service bulletin as . . .	Action	By
(1) Group 1	(i) Repair or replace wiring with new wiring; and	Before further flight.
	(ii) Revise wiring installation; and	Before further flight.
	(iii) Replace nameplate with a new nameplate	Before further flight.
(2) Group 2	(i) Repair or replace wiring with new wiring; and	Before further flight.
	(ii) Revise wiring installation	Before further flight.
(3) Group 3	(i) Repair wiring, or	Before further flight.
	(ii) Replace wiring with new wiring	Before further flight.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17585 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–292–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –30, and –40 Series Airplanes and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –30, and –40 series airplanes and C–9 (military) airplanes. This proposal would require an inspection to detect chafing of the wiring of the attendants' work light of the aft cabin, and repair of chafed wiring. This proposal also would require modification and reidentification of the attendants' work light assemblies of the aft cabin. This action is necessary to prevent chafing of the ground wire against the positive contact of the lamp of the attendants' work light of the aft cabin, and consequent arcing or arcing damage to the wiring of the attendants' work light and transformer of the aft cabin. Such arcing or arcing damage could result in short circuits and consequent smoke and fire in the aft cabin area. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–292–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–292–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–292–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–292–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation. Such corrective action can be addressed in future ADs to provide an acceptable level of safety for the transport airplane fleet.

Identification of Unsafe Condition

The FAA has become aware of incidents in which wiring of the attendants' work light of the aft cabin short circuited on McDonnell Douglas Model DC–9 series airplanes. The cause of such a short circuit has been attributed to chafing of the ground wire against the positive contact of the lamp of the attendants' work light. This condition, if not corrected, could result in arcing or arcing damage to the wiring of the attendants' work light and transformer of the aft cabin, which could result in short circuits and consequent smoke and fire in the aft cabin area.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000, which describes procedures for a general visual inspection to detect chafing of the wiring of the attendants' work light of the aft cabin, and repair of chafed wiring. The service bulletin also describes procedures for modification and reidentification of the attendants' work light assemblies of the aft cabin. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions

specified in the service bulletin described previously.

Differences Between Service Bulletin and Proposed AD

The proposed AD would differ from the referenced service bulletin in that it would require accomplishment of the inspection, modification, and reidentification within 1 year after the effective date of this AD. The referenced service bulletin recommends accomplishment of those actions within 9 months (after the release of the service bulletin). Since the issuance of the referenced service bulletin, the FAA has consulted with Boeing and determined that extending the compliance time by 3 additional months will not adversely affect safety, and will allow the inspection, modification, and reidentification to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. In light of these factors, we find that a 1-year compliance time for completing the proposed actions to be warranted.

Cost Impact

There are approximately 176 Model DC–9–10, –30, and –40 series airplanes and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 111 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection and modification, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,660, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–292–AD.

Applicability: Model DC–9–10, –30, and –40 series airplanes and C–9 (military) airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing or arcing damage to the wiring of the attendants' work light of the aft cabin due to chafing of the ground wire against the positive contact of the lamp of the attendants' work light and transformer of the aft cabin, which could result in short circuits and consequent smoke and fire in the aft cabin area, accomplish the following:

Inspection; Corrective Actions, If Necessary; Modification; and Reidentification

(a) Within 1 year after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD, per McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000.

(1) Do a general visual inspection to detect chafing of the wiring of the attendants' work light of the aft cabin. If any chafing is detected, before further flight, repair chafed wiring per the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Modify and reidentify the attendants' work light assemblies of the aft cabin.

Note 3: Inspections, repairs, modifications, and reidentifications done before the effective date of this AD per McDonnell Douglas Service Bulletin DC9–33–058, dated June 5, 1973, or Revision 1, dated November 26, 1975, are considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17586 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–294–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes. This proposal would require an inspection to detect chafing or damage at the conduit and support bracket interface in the forward electrical power center (EPC); and repair or replacement of wires with new wires, if necessary. For certain airplanes, this proposal also would require installation of grommets on the conduits of the forward EPC. This action is necessary to prevent chafing of electrical cables in the forward EPC and a possible short within a conduit, which could result in smoke and fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–294–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–294–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–294–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–294–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all

aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued airworthiness directives (AD) requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation. Such corrective action can be addressed in future ADs to provide an acceptable level of safety for the transport airplane fleet.

Identification of Unsafe Condition

The FAA has become aware that, during an electrical system test, smoke and a burning smell was detected in the cockpit on a McDonnell Douglas Model DC–9 series airplane. Investigation revealed that an electrical cable in the forward electrical power center (EPC) was chafed and shorted within a conduit. This condition, if not corrected, could result in smoke and fire in the cockpit.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC9–24A115, Revision 01, dated April 24, 2000, which describes procedures for a general visual inspection to detect chafing or damage at the conduit and support bracket interface in the forward EPC; and repair or replacement of wires with new wires, if necessary. The service bulletin also describes, for certain airplanes, procedures for installation of grommets on the conduits of the forward EPC.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 403 Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 380 airplanes of U.S. registry would be affected by this proposed AD.

For all airplanes, it would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $22,800, or $60 per airplane.

For certain airplanes, it would take approximately 1 work hour per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–294–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC9–24A115, Revision 01,

dated April 24, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the electrical cables in the forward electrical power center (EPC) and a possible short within a conduit, which could result in smoke and fire in the cockpit, accomplish the following:

Inspection; Corrective Action, If Necessary; and Installation of Grommets, If Applicable

(a) Within 1 year after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable, per McDonnell Douglas Alert Service Bulletin DC9–24A115, Revision 01, dated April 24, 2000.

(1) For Groups 1 and 2 airplanes identified in the service bulletin: Do a general visual inspection to detect chafing or damage at the conduit and support bracket interface in the forward EPC. If any chafing or damage is detected, before further flight, repair or replace wires with new wires, per the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) For Group 1 airplanes identified in the service bulletin: Install grommets on the conduits of the forward EPC.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17587 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–295–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; C–9 Airplanes; and Model DC–9–81, –82, and –83 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; and Model DC–9–81, –82, and –83 series airplanes. This proposal would require modification of the light switch of the applicable cargo compartments. This action is necessary to prevent generation of smoke and fire in a cargo compartment due to an illuminated light with a missing cover contacting cargo contents for an extended period of time. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–295–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–295–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–295–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–295–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued airworthiness directives (AD) requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received reports of heat damage to the contents of the cargo compartment and/or fire in that area on McDonnell Douglas Model DC–9 series airplanes. Investigation revealed that a cover was missing from the cargo compartment light, and that the cargo contents were in contact with the exposed light bulb. It also revealed that the cargo compartment light did not automatically shut off when the cargo compartment door was closed. These conditions, if not corrected, could result in generation of smoke and fire in a cargo compartment if the cargo contents contact an illuminated light with a missing cover for an extended period of time.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC9–33A081, Revision 01, dated November 8, 1999, which describes procedures for modification of the light switch of the applicable cargo compartments. The modifiation involves replacing nameplates with new nameplates, replacing brackets with new brackets, and installing a guard to the light switch. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 1,068 Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; and Model DC–9–81, –82, and –83 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 525 airplanes of U.S. registry would be

affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately between $1,147 and $2,332 per airplane depending on the airplane configuration. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $633,675 and $1,255,800, or $1,207 and $2,392 per airplane, depending on the airplane configuration.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–295–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; and Model DC–9–81, –82, and –83 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC9–33A081, Revision 01, dated November 8, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent generation of smoke and fire in a cargo compartment due to an illuminated light with a missing cover contacting cargo contents for an extended period of time, accomplish the following:

Modification

(a) Within 1 year after the effective date of this AD, modify the light switch of the applicable cargo compartments per McDonnell Douglas Alert Service Bulletin DC9–33A081, Revision 01, dated November 8, 1999.

Note 2: Modification before the effective date of this AD per McDonnell Douglas DC–9 Service Bulletin 33–81, dated January 19, 1987, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17588 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–296–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –30, and –40 Series Airplanes and C–9 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –30, and –40 series airplanes and C–9 airplanes. This proposal would require revising the wiring of the sidewall lights in the forward and aft passenger compartment. This action is necessary to prevent the control switch of the cabin sidewall lights on the forward attendant's panel from overheating, which could result in shorting of the dim, bright, and power terminals, and consequent smoke/fire in the passenger compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–296–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be

submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–296–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–296–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–296–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received reports of smoke in the passenger cabin on McDonnell Douglas Model DC–9 series

airplanes. Investigation revealed that the control switch of the cabin sidewall lights on the forward attendant's panel overheated, which resulted in shorting the dim, bright, and power terminals. This condition, if not corrected, could result in smoke/fire in the passenger compartment.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC9–33A062, Revision 01, dated April 24, 2000, which describes procedures for revising the wiring of the sidewall lights in the forward and aft passenger compartment. This revision involves coiling and stowing certain wires; terminating two wires; and adding one jumper wire in the forward and aft attendant's panel; as applicable.

The FAA also has reviewed and approved McDonnell Douglas Service Bulletin 33–63, dated May 6, 1976, which describes procedures for revising the wiring of the sidewall lights in the forward and aft passenger compartments. This revision involves replacing the existing circuit breaker with lower-rated primary circuit breaker; installing two contactors and circuit breakers in the primary wiring between transformer(s) and contactors; and modifying existing nameplates and/or installing new circuit breaker nameplates located in the circuit breaker panel of the upper electrical power center (EPC) and in the light transformer panels of the forward and/or aft passenger cabin.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between McDonnell Douglas Alert Service Bulletin DC9–33A062 and Proposed AD

The proposed AD would differ from McDonnell Douglas Alert Service Bulletin DC9–33A062 in that it would require revision of the wiring of the sidewall lights in the forward and aft passenger compartments within 1 year after the effective date of this AD. That service bulletin recommends accomplishment of those actions within 6 months (after the release of the service bulletin). Since the issuance of that service bulletin, the FAA has consulted with Boeing and determined that extending the compliance time by 6 additional months will not adversely affect safety, and will allow the wiring revision to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. In light of these factors, we find that a 1-year compliance time for completing the proposed actions to be warranted.

Cost Impact

There are approximately 588 Model DC–9–10, –30, and –40 series airplanes and C–9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 288 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 21 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $500 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $506,880, or $1,760 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–296–AD.

Applicability: Model DC–9–10, –20, –30, and –40 series airplanes and C–9 airplanes, as listed in McDonnell Douglas Alert DC9–33A062, Revision 01, dated April 24, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the control switch of the cabin sidewall lights on the forward attendant's panel from overheating, which could result

in shorting of the dim, bright, and power terminals, and consequent smoke/fire in the passenger compartment, accomplish the following:

Revision of Wiring

(a) Within 1 year after the effective date of this AD, revise the wiring of the sidewall lights in the forward and aft passenger compartments, per McDonnell Douglas Alert Service Bulletin DC9–33A062, Revision 01, dated April 24, 2000, and McDonnell Douglas DC–9 Service Bulletin 33–63, dated May 6, 1976.

Note 2: Revising the wiring before the effective date of this AD per McDonnell Douglas DC–9 Service Bulletin 33–62, dated February 11, 1976, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17589 Filed 7–20–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–297–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; C–9 Airplanes; Model DC–9–81, –82, –83, and –87 Series Airplanes; and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; and Model MD–88 airplanes. This proposal would require an inspection to detect chafing or overheat damage of the electrical wires located at fuselage station Y=110.000 bulkhead of the lower nose left tunnel; and corrective actions, if necessary. This proposal also would require replacing the external power ground stud with a new ground stud using new attaching parts; torquing new attachments; and installing a nameplate. This action is necessary to prevent loose external power ground wires, which could cause arcing and overheated wire insulation and consequent smoke/fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–297–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–297–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–297–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–297–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of

ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued airworthiness directives (AD) requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received reports of loose external power ground wires at the ground stud located in the lower nose left tunnel at fuselage station Y=110.00 bulkhead on McDonnell Douglas Model DC–9–82 series airplanes. The cause of such loose wires has been attributed to ground stud buildup becoming loose due to normal airplane vibration. Loose external power ground wires, if not corrected, could cause arcing and overheated wire insulation, which could result in smoke/fire in cockpit.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000, which describes procedures for a visual inspection to detect chafing or overheat damage of the electrical wires located at fuselage station Y=110.000 bulkhead of the lower nose left tunnel; and corrective actions, if necessary. The corrective actions include repairing damage; performing a continuity test to check the integrity of the wiring, and repair, if necessary; and replacing any damaged wire with a new wire; as applicable. The service bulletin also describes procedures for replacing the external power ground stud with a new ground stud using new attaching parts; torquing new attachments; and installing nameplate (includes applying silicone primer and adhesive/sealant). Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 1,908 Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 (military) airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 967 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $35 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $149,885, or $155 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–297–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; and Model MD–88 airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loose external power ground wires, which could cause arcing and overheated wire insulation and consequent smoke/fire in the cockpit, accomplish the following:

Inspection

(a) Within 18 months after the effective date of this AD, do a general visual inspection to detect chafing or overheat damage of the electrical wires located at fuselage station Y=110.000 bulkhead of the lower nose left tunnel, per McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Condition 1 (No Chafing or Damage)

(b) If no chafing or overheat damage is detected during the inspection required by paragraph (a) of this AD, before further flight, do the actions specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD per McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000.

(1) Replace the external power ground stud with a new ground stud using new attaching parts.

(2) Torque the new attachments.

(3) Install nameplate (includes applying silicone primer and adhesive/sealant).

Note 3: Accomplishment of the actions identified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD per McDonnell Douglas DC–9 Service Bulletin 24–135, datedApril 14, 1993, before the effective date of this AD, is considered acceptable for compliance with the requirements of paragraph (b) of this AD.

Condition 2 (Chafing or Damage Within Limits)

(c) If any chafing or damage is detected within the limits, before further flight, repair damage; perform a continuity test to check the integrity of the wiring, and repair, if necessary; and do the actions specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD; per McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000.

Condition 3 (Chafing or Damage Beyond Limits)

(d) If any chafing or damage is detected beyond the limits, before further flight, replace any damaged wire with a new wire; perform a continuity test to check the integrity of the wiring, and repair, if necessary; and do the actions specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD; per McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17590 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–95–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A and KDC–10 Military), and –40 Series Airplanes; and Model MD–10–10F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A and KDC–10 military), and –40 series airplanes; and Model MD–10–10F series airplanes. This proposal would require an inspection to verify that the wire connections at circuit breakers are properly connected, and correction of any incorrect wire connection at the circuit breakers. This action is necessary to prevent loss of protection by the circuit breakers in the flight engineer's

equipment panel due to improperly wired connections at the circuit breakers, which could result in wire damage and could lead to smoke and/or fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–95–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–95–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable

information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received a report indicating that two wire connections at the circuit breakers on the flight engineer's equipment panel were found to be improperly wired on a McDonnell Douglas Model DC–10 series airplane. A line check of five McDonnell Douglas Model DC–10–30F (KC–10A and KDC–10 military) series airplanes revealed four instances of the same problem. Improperly wired connections at the circuit breakers on the flight engineer's equipment panel, if not corrected, could result in loss of protection by the circuit breakers, which could result in wire damage and could lead to smoke and/or fire in the cockpit.

The wire connections at the circuit breakers on the flight engineer's equipment panel on certain Model MD–10–10F series airplanes are identical to those installed on the affected Model DC–10 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC10–24A130, Revision 01, dated March 12, 2001, which describes procedures for a visual inspection to verify that the wire connections at circuit breakers are properly connected, and correction of any incorrect wire connection at the circuit breakers. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 352 Model DC–10–10, –15, –30, –30F (KC–10A and KDC–10 military), and –40 series airplanes; and Model MD–10–10F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 259 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $15,540, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglass: Docket 2001–NM–95–AD.

Applicability: Model DC–10–10, –15, –30, –30F (KC–10A and KDC–10 military), and –40 series airplanes; and Model MD–10–10F series airplanes, as listed in Boeing Alert Service Bulletin DC10–24A130, Revision 01, dated March 12, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of protection by the circuit breakers in the flight engineer's equipment panel due to improperly wired connections at the circuit breakers, which could result in wire damage and could lead to smoke and/or fire in the cockpit, accomplish the following:

Inspection, and Corrective Action, If Necessary

(a) Within 1 year after the effective date of this AD, do a general visual inspection to verify that the wire connections at circuit breakers are properly connected, per Boeing Alert Service Bulletin DC10–24A130, Revision 01, dated March 12, 2001. If any

wire connection at a circuit breaker is found improperly connected, before further flight, correct that wire connection at the circuit breaker per the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: Inspection and correction of improper wire connection done before the effective date of this AD per Boeing (McDonnell Douglas) Service Bulletin DC10–24–130, dated October 2, 1985, are considered acceptable for the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17592 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–96–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes, and Model MD–10–10F and –30F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 series airplanes, that currently requires a one-time detailed visual inspection to determine if wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed, and corrective actions, if necessary. This action also would require revising the wire bundle support clamp installation at the flight engineer's station. This action is necessary to prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed through and consequent electrical arcing, which could result in smoke and fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–96–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–96–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of

ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Issuance of AD 2000–10–03

On May 8, 2000, the FAA issued AD 2000–10–03, amendment 39–11727 (65 FR 31253, May 17, 2000), applicable to all McDonnell Douglas Model DC–10 series airplanes, to require a one-time detailed visual inspection to determine if wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed, and corrective actions, if necessary. That action was prompted by a report of smoke coming out of the flight engineer's upper right circuit breaker panel, which was followed by circuit breakers popping and the panel lights going out. The requirements of that AD are intended to prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed through and consequent electrical arcing, which could result in smoke and fire in the cockpit.

Actions Since Issuance of Previous AD

Since the issuance of AD 2000–10–03, the FAA has determined that the revision of the wire bundle support clamp installation required by that AD for certain airplanes does not adequately address the identified unsafe condition. The airplane manufacturer has developed, and we have approved, a new, improved support bracket that provides for a more reliable installation and minimizes the possibility of wire failure due to chafing. In addition, we have determined that all affected airplanes must incorporate this new, improved support bracket to adequately address the identified unsafe condition of this AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001. The inspection and repair procedures described in this revision are identical to those described in Revision 01 of the service bulletin (which was referenced in AD 2000–10–03 as the appropriate source of service information). Revision 02 describes new procedures for revising the wire bundle support clamp installation at the flight engineer's station. The revision of this installation involves replacing the support bracket with a new bracket; filling two holes in partition; installing two inserts; installing a grommet; and installing a new support bracket; as applicable. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–10–03 to continue to require a one-time detailed visual inspection to determine if wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed, and repair, if necessary. This action also would require the revision of the wire bundle support clamp installation specified in the alert service bulletin described previously.

Explanation of Change to the Applicability of AD 2000–10–03

On May 9, 2000 (i.e., after issuance of AD 2000–10–03), the FAA issued a Type Certificate (TC) for McDonnell Douglas Model MD–10–10F and MD–10–30F series airplanes. Model MD–10 series airplanes are Model DC–10 series airplanes that have been modified with an Advanced cockpit. The wire bundle support clamp installation at the flight engineer's station installed on Model MD–10–10F and MD–10–30F series airplanes (before or after the modifications necessary to meet the type design of a Model MD–10 series

airplane) is identical to that on the affected Model DC–10 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Cost Impact

There are approximately 412 Model DC–10 series airplanes and Model MD–10–10F and –30F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 2000–10–03, and retained in this proposed AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $18,000, or $60 per airplane.

The new actions that are proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $36,000, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11727 (65 FR 31253, May 17, 2000), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2001–NM–96–AD. Supersedes AD 2000–10–03, Amendment 39–11727.

Applicability: Model DC–10 series airplanes, and Model MD–10–10F and –30F series airplanes; as listed in Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed through and consequent electrical arcing, which could result in smoke and fire in the cockpit, accomplish the following:

Restatement of Certain Requirements of AD 2000–10–03

Inspection and Repair, If Necessary

(a) Within 1 year after June 21, 2000 (the effective date of AD 2000–10–03, amendment 39–11727), perform a one-time detailed visual inspection to determine if the wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated July 28, 1999, or Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001. If any damaged or chafed wire is found, prior to further flight, repair in accordance with the alert service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

New Actions Required by This AD

Revision of Wire Bundle Support Clamp Installation

(b) Within 1 year after the effective date of this AD, revise the wire bundle support clamp installation at the flight engineer's station, per Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17593 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–97–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –30, –30F (KC–10A and KDC–10), and –40 Series Airplanes; and Model MD–10–10F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –30, –30F (KC–10A and KDC–10), and –40 series airplanes; and Model MD–10–10F series airplanes. This proposal would require an inspection of the power feeder cable assembly of the auxiliary power unit (APU) for chafing, correct type of clamps, and proper clamp installation; and corrective actions, if necessary. This action is necessary to prevent loss of the APU generator due to chafing of the generator power feeder cables and consequent electrical arcing and smoke/fire in the APU compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–97–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–97–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all

aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received a report of a generator power feeder cable of the auxiliary power unit (APU) chafing and shorting against adjacent structure on a McDonnell Douglas Model DC–10 series airplane. Investigation revealed the cause of such chafing and arcing to be installation of an incorrect cable clamp and improperly positioned clamp during manufacturing. These conditions, if not corrected, could result in loss of the APU generator due to chafing of the generator power feeder cables and consequent electrical arcing and smoke/fire in the APU compartment.

The generator power feeder cable installation on certain Model MD–10–10F series airplanes is identical to that installed on the affected Model DC–10 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC10–24A137, Revision 01, dated May 31, 2001. The service bulletin describes procedures for a general visual inspection of the power feeder cable assembly of the APU for chafing, correct type of clamps, and proper clamp installation; and corrective actions, if necessary. The corrective actions include repairing any discrepant part; replacing certain damaged power feeder cable with a new cable; and repositioning/replacing any incorrect power feeder cable clamp with a new clamp; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 372 Model DC–10–10, –30, –30F (KC–10A and KDC–10), and –40 series airplanes, and Model MD–10–10F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 282 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $16,920, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–97–AD.

Applicability: Model DC–10–10, –30, –30F (KC–10A and KDC–10), and –40 series airplanes; and Model MD–10–10F series airplanes; as listed in Boeing Alert Service Bulletin DC10–24A137, Revision 01, dated May 31, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the auxiliary power unit (APU) generator due to chafing of the generator power feeder cable and consequent electrical arcing and smoke/fire in the APU compartment, accomplish the following:

Inspection and Corrective Action(s), If Necessary

(a) Within 12 months after the effective date of this AD, do a general visual inspection of the power feeder cable assembly of the APU for chafing, correct type of clamps, and proper clamp installation, per Boeing Alert Service Bulletin DC10–24A137, Revision 01, dated May 31, 2001.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) Condition 1. If no wire chafing, correct type of clamps, and proper clamp installation are found, no further action is required by this AD.

(2) Condition 2. If any wire chafing, incorrect type of clamp, or improper clamp installation is found, before further flight, do applicable corrective action(s) (e.g., repair, replace, and modify discrepant part) per the Accomplishment Instructions of the service bulletin.

Note 3: Accomplishment of the inspection and any applicable corrective actions, per Boeing Service Bulletin DC10–24–137, dated September 15, 1987, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17594 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–98–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A and KDC–10), and –40 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A and KDC–10), and –40 series airplanes. This proposal would require modification of the battery ground cable installation in the center accessory compartment (CAC). This action is necessary to prevent a loose ground stud and/or cable attachments, and consequent chafing of adjacent structure and electrical arcing, which could result in smoke/fire in the CAC in the event of fuel leakage. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–98–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–98–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received a report of electrical arcing at the battery 1 ground stud in the center accessory compartment (CAC) on a McDonnell Douglas Model DC–10 series airplane. Investigation revealed that a ground stud and cable attachments had become loose due to vibration, which chafed against adjacent structure and caused electrical arcing. A loose ground stud and/or cable attachments can cause an auxiliary power unit (APU) non-start and/or a potential ignition source in an area of possible fuel leakage. These conditions, if not corrected, could result in smoke/fire in the CAC in the event of fuel leakage.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–24A174, dated June 29, 2001, which describes procedures for modification of the battery ground cable installation in the CAC. The modification includes the following:

1. Installation of a lockbolt and collar at the existing support bracket, a new support bracket assembly, two standoffs, and a new wire assembly;

2. Reroute of existing wire assembly and connecting to new ground stud; and

3. Reidentification of existing support bracket assembly.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 402 Model DC–10–10, –15, –30, –30F (KC–10A and KDC–10), and –40 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 312 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2,282 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $749,424, or $2,402 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–98–AD.

Applicability: Model DC–10–10, –15, –30, –30F (KC–10A and KDC–10), and –40 series airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC10–24A174, dated June 29, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a loose ground stud and/or cable attachments, and consequent chafing of adjacent structure and electrical arcing, which could result in smoke/fire in the center accessory compartment (CAC) in the event of fuel leakage, accomplish the following:

Modification

(a) Within 12 months after the effective date of this AD, modify the battery ground cable installation in the CAC per McDonnell Douglas Alert Service Bulletin DC10–24A174, dated June 29, 2001.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17595 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–103–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10 and –30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10 and –30 series airplanes. This proposal would require an inspection of the power feeder cable for evidence of chafing, and repair of any chafed power feeder cable. This proposal also would require replacement of the wiring support clip (standoff) of the power feeder cable with a new, improved wiring support clip. This action is necessary to prevent chafing and arcing of the power feeder cable and adjacent airplane structure and system components, and consequent smoke/fire in an engine nacelle. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted

via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–103–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–103–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received a report of chafing and arcing of the electrical power feeder cable on adjacent airplane

structure and system components on a McDonnell Douglas Model DC–9–30 series airplane. The chafing and arcing was the result of a failed wiring support clip (standoff), which allowed the power feeder cable to come in contact with a hydraulic line "B" nut. This condition, if not corrected, could result in chafing and arcing of the power feeder cable and adjacent airplane structure and system components, and consequent smoke/fire in an engine nacelle.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC9–24A160, Revision 02, dated March 14, 2001, which describes procedures for a general visual inspection of the power feeder cable for evidence of chafing, and repair of any chafed power feeder cable. The service bulletin also describes procedures for replacement of the wiring support clip (standoff) of the power feeder cable with a new, improved wiring support clip. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 162 Model DC–9–10 and –30 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 107 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $102 or $204 per airplane depending on the airplane configuration. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $17,334, or $28,248, or $162 or $264 per airplane depending on the airplane configuration.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–103–AD.

Applicability: Model DC–9–10 and –30 series airplanes, as listed in Boeing Alert Service Bulletin DC9–24A160, Revision 02, dated March 14, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and arcing of the power feeder cable and adjacent airplane structure and system components, and consequent smoke/fire in an engine nacelle, accomplish the following:

Inspection; Repair, If Necessary; and Replacement

(a) Within 12 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per Boeing Alert Service Bulletin DC9–24A160, Revision 02, dated March 14, 2001.

(1) Do a general visual inspection of the power feeder cable for evidence of chafing, and repair any chafed power feeder cable.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Replace the wiring support clip (standoff) of the power feeder cable with a new, improved wiring support clip.

Note 3: Inspection, repair, and replacement per McDonnell Douglas Service Bulletin DC9–24–160, dated January 4, 1996, or Revision 01, dated March 7, 1996, before the effective date of this AD is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los

Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17597 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–104–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, and –40 Series Airplanes and C–9 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, and –40 series airplanes and C–9 airplanes. This proposal would require modification of the spoiler control system, and installation of protective interlock box assemblies in the spoiler circuit. This action is necessary to prevent smoke/fire in the flight compartment in the event that the automatic spoiler actuator overheats, and/or loss of the spoiler control system, which could significantly reduce the braking effectiveness of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–104–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–104–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–104–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–104–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge

of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received reports of smoke in the flight compartment after takeoff on McDonnell Douglas Model DC–9 series airplanes. Investigation revealed that the automatic spoiler actuator had failed to shutoff, which resulted in overheating of the actuator. Failure of the automatic spoiler actuator, if not corrected, could result in smoke/fire in the flight compartment in the event that it overheats, and/or loss of the spoiler control system, which could significantly reduce the braking effectiveness of the airplane.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC9–27A147, Revision 03, dated May 8, 2001, which describes procedures for modification of the spoiler control system. The modification involves modifying the spoiler interlock box assembly; installing a relay and terminal block; and revising the wiring of the spoiler interlock box assembly and spoiler control system. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The FAA also has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 27–103, dated March 19, 1968, which describes procedures for installation of protective interlock box assemblies in the spoiler actuator circuit.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

There are approximately 504 Model DC–9–10, –20, –30, and –40 series airplanes and C–9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 272 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 5 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $937 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $336,464, or $1,237 per airplane.

It would take approximately 3 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would cost approximately $20 per airplane. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $54,400, or $200 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft

regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–104–AD.

Applicability: Model DC–10–10, –20, –30, and "40 series airplanes, and C–9 airplanes, as listed in Boeing Alert Service Bulletin DC9–27A147, Revision 03, dated May 8, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke/fire in the flight compartment in the event that the automatic spoiler actuator overheats, and/or loss of the spoiler control system, which could significantly reduce the braking effectiveness of the airplane; accomplish the following:

Modification of the Spoiler Control System

(a) Within 12 months after the effective date of this AD, modify the spoiler control system by accomplishing all actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–27A147, Revision 03, dated May 8, 2001, per the service bulletin.

Note 2: Modification per McDonnell Douglas Service Bulletin DC9–27–147, dated January 7, 1972; Revision 1, dated July 30, 1974; or Revision 2, dated May 9, 1975; before the effective date of this AD; is considered acceptable for compliance with paragraph (a) of this AD.

Installation of Protective Interlock Box Assemblies

(b) Prior to or in conjunction with the requirements of paragraph (a) of this AD, install protective interlock box assemblies in the spoiler circuit, per McDonnell Douglas DC–9 Service Bulletin 27–103, dated March 19, 1968.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17598 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–206–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; Model DC–9–81, –82, –83, and –87 Series Airplanes; Model MD–88 Airplanes; and C–9 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; Model MD–88 airplanes; and C–9 airplanes; that currently requires repetitive inspections to detect cracking of the rudder pedal adjuster hub assembly, and replacement of the assembly, if necessary. That AD also provides for an optional terminating action for the repetitive inspections. This action would require accomplishment of a new terminating action for the repetitive inspections. This proposal is prompted by that FAA's determination that further rulemaking is necessary. The actions specified by the proposed AD are intended to prevent loss of rudder pedal control and reduction of braking capability.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–206–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–206–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–206–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–206–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain flight control systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire and mechanical flight control systems degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Previously Issued AD 96–02–05

On January 17, 1996, the FAA issued AD 96–02–05, amendment 39–9493 (61 FR 6922, February 23, 1996), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; Model MD–88 airplanes; and C–9 airplanes; to require repetitive inspections to detect cracking of the rudder pedals adjuster hub assembly, and replacement of the assembly, if necessary. That AD also provides for an optional terminating action for the repetitive inspections. That action was prompted by several occurrences of failure of the rudder pedals adjuster hub assembly due to broken detent lugs. The requirements of that AD are intended to prevent loss of rudder pedal control and reduction of braking capability.

Actions Since Issuance of AD 96–02–05

Since the issuance of AD 96–02–05, the FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led us to consider placing less emphasis on inspections and more emphasis on

design improvements. Therefore, we now have determined that further rulemaking action is necessary to require a terminating action for the repetitive inspection requirements of AD 96–02–05.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems and structural components related to the mechanical flight control systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–27–325, Revision 02, dated December 12, 1995. The service bulletin describes procedures for replacing a magnesium casting hub assembly of the rudder pedal adjuster and bearing in the rudder pedal mechanism between stations X=69.000 and X=120.000 in the flight compartment with a new aluminum assembly and bearing, and reidentifying the rudder pedal adjuster. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–02–05 to continue to require repetitive inspections to detect cracking of the rudder pedals adjuster hub assembly, and replacement of the assembly, if necessary. The proposed AD would require a new terminating action for the repetitive inspections. The terminating action would be required to be accomplished in accordance with the service bulletin described previously.

Explanation of Change to Applicability of AD 96–02–05

The applicability of this proposed AD would differ from AD 96–02–05 in that it references McDonnell Douglas Service Bulletin DC9–27–325, Revision 02, dated December 12, 1995 (most current revision of service bulletin), for determining what airplanes are affected by this proposed AD. The applicability of AD 96–02–05 referenced McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 2, dated January 27, 1995. McDonnell Douglas Service Bulletin DC9–27–325 removes six airplanes from the effectivity of McDonnell Douglas DC–9 Alert Service Bulletin A27–325.

Cost Impact

There are approximately 1,845 Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; Model MD–88 airplanes; and C–9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,086 airplanes of U.S. registry would be affected by this proposed AD.

The inspection that is currently required by AD 96–02–05 takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $195,480, or $180 per airplane, per inspection cycle.

The new actions that are proposed in this AD action would take approximately 9 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,314 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $5,271,444, or $4,854 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9493 (61 FR 6922, February 23, 1992), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2001–NM–206–AD. Supersedes AD 96–02–05, Amendment 39–9493.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; Model MD–88 airplanes; and C–9 series airplanes; as listed in McDonnell Douglas Service Bulletin DC9–27–325, Revision 02, dated December 12, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder pedals control and reduction of braking capability, accomplish the following:

Restatment of Requirements of AD 97–02–05

Repetitive Inspections and Replacement, If Necessary

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletin A27–325, Revision 1, dated February 3, 1992: Prior to the accumulation of 15,000 landings or within 270 days after January 22, 1993 (the effective date of AD 92–27–07, amendment 39–8441), whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number 4616066, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 1, dated February 3, 1992, or Revision 2, dated January 27, 1995.

(1) If no cracks are detected as a result of the inspections required by this paragraph, repeat the inspections at intervals not to exceed 3,500 landings.

(2) If cracks are detected as a result of the inspections required by this paragraph, prior to further flight, replace the rudder pedal adjuster hub assembly, part number 4616066, with a new assembly having the same part number, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 2, dated January 27, 1995. Thereafter, conduct visual and eddy current inspections of the replacement rudder pedals adjuster hub assembly in accordance with this paragraph.

(b) For airplanes listed in McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 2, dated January 27, 1995, and not subject to paragraph (a) of this AD: Prior to the accumulation of 15,000 landings or within 270 days after March 25, 1996 (the effective date of AD 96–02–05, amendment 39–9493), whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number 4616066, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 1, dated February 3, 1992, or Revision 2, dated January 27, 1995.

(1) If no cracks are detected as a result of the inspections required by this paragraph, repeat the inspections at intervals not to exceed 3,500 landings.

(2) If cracks are detected as a result of the inspections required by this paragraph, prior to further flight, replace the rudder pedals adjuster hub assembly, part number 4616066, with a new assembly having the same part number, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 2, dated January 27, 1995. Thereafter, conduct visual and eddy current inspections of the replacement rudder pedals adjuster hub assembly in accordance with this paragraph.

New Actions Required By This Proposed AD

Replacement and Reidentification

(c) Prior to the accumulation of 15,000 total landings, or within 18 months after the effective date of this AD, whichever occurs later, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–27–325, Revision 02, dated December 12, 1995. Accomplishment of the these actions constitutes terminating action for the requirements of this AD.

(1) Replace the existing magnesium casting hub assembly of the rudder pedal adjuster, part number (P/N) 4616066–3, and bearing, P/N AN201KP4A, in the rudder pedal mechanism between stations X=69.000 and X=120.000 in the flight compartment with a new aluminum assembly, part number (P/N) 5965435–3, and new bearing, P/N MS27641–4; and

(2) Reidentify rudder pedal adjuster, P/N 5641294–501 or –503, as P/N 5641294–507.

Note 2: Installation of the aluminum rudder pedal adjuster hub assembly per McDonnell Douglas Service Bulletin DC9–27–325, Revision 1, dated November 30, 1994, before the effective date of this AD, is considered acceptable for the requirements of paragraph (c) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17599 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–210–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, that currently requires repetitive visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly, and replacement of the assembly with a new assembly, if necessary. This action would require accomplishment of a terminating action for the repetitive inspections. This action also adds airplanes to the applicability of the existing AD. This proposal is prompted by the FAA's determination that further rulemaking is necessary. The actions specified by the proposed AD are intended to prevent loss of rudder pedals control and reduction of braking capability.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–210–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–210–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Greg Diliberio, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5231; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–210–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–210–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain flight control systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire and mechanical flight control systems degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Previously Issued AD 92–27–06

On December 9, 1992, the FAA issued AD 92–27–06, amendment 39–8440 (57 FR 60115, December 18, 1992), applicable to certain McDonnell Douglas Model DC–8 series airplanes, to require repetitive visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly, and replacement of the assembly with a new assembly, if necessary. That action was prompted by several occurrences of failure of the rudder pedals adjuster hub assembly due to broken detent lugs. The requirements of that AD are intended to prevent loss of rudder pedals control and reduction of braking capability.

Actions Since Issuance of AD 92–27–06

Since the issuance of AD 92–27–06, the FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led us to consider placing less emphasis on inspections and more emphasis on design improvements. Therefore, we now have determined that further rulemaking action is necessary to require a terminating action for the

repetitive inspection requirements of AD 96–02–05.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems and structural components related to the mechanical flight control systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC8–27A275, Revision 03, dated April 5, 1996, which describes procedures for repetitive visual and eddy current inspections to detect cracks of the rudder pedals adjuster hub assembly, and replacement of the rudder pedals adjuster hub assembly with a new assembly having the same part number (P/N), if necessary. The service bulletin also describes procedures for eventual replacement of the adjuster hub assembly with a new adjuster hub assembly, P/N 5965435–1, which eliminates the need for the repetitive inspections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 92–27–06 to continue to require repetitive visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly. The proposed AD would require eventual and on-condition (i.e., any crack finding) replacement of the adjuster hub assembly with a new assembly, P/N 5965435–1, which would constitute terminating action for the repetitive inspections. The proposed AD also adds airplanes to the applicability of the existing AD. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as described below.

Differences Between the Service Bulletin and the Proposed AD

The referenced service bulletin allows replacement of the rudder pedals adjuster hub assembly with a new assembly having the same P/N, if any crack is detected, and follow-on repetitive inspections for an interim period. As discussed previously, the FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Therefore, this proposed AD requires replacement of the adjuster hub assembly with a new assembly, P/N 5965435–1.

Explanation of Change to Applicability of AD 92–27–06

The effectivity listing of McDonnell Douglas Alert Service Bulletin DC8–27A275, Revision 03, dated April 5, 1996, has been revised to include two additional serial numbers (i.e., 45646 and 45928) of the affected airplanes. The FAA finds that these airplanes also are subject to the identified unsafe condition of this proposed AD. Therefore, the applicability of this proposed AD includes serial numbers 45646 and 45928.

Cost Impact

There are approximately 264 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 245 airplanes of U.S. registry would be affected by this proposed AD.

The inspection that is currently required by AD 92–27–06 takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $44,100, or $180 per airplane, per inspection cycle.

The new actions that are proposed in this AD action would take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,296 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $1,170,120, or $4,776 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8440 (57 FR 60115, December 18, 1992), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2001–NM–210–AD. Supersedes AD 92–27–06, Amendment 39–8440.

Applicability: Model DC–8 series airplanes, serial numbers 45646 and 45928, and as listed in McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder pedals control and reduction of braking capability, accomplish the following:

Inspection

(a) For airplanes listed in McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992: Prior to the accumulation of 15,000 landings or within 270 days after January 22, 1993 (the effective date of AD 92–27–06, amendment 39–8440), whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number (P/N) 4616066, in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992, or Revision 2, dated August 5, 1992; or McDonnell Douglas Alert Service Bulletin DC8–27A275, Revision 03, dated April 5, 1996. As of the effective date of this AD only McDonnell Douglas Alert Service Bulletin DC8–27A275, Revision 03, dated April 5, 1996, shall be used.

(b) For airplanes having serial numbers 45646 and 45928: Prior to the accumulation of 15,000 total landings, or within 270 days after the effective date of this AD, whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, P/N 4616066, in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992, or Revision 2, dated August 5, 1992; or McDonnell Douglas Alert Service Bulletin DC8–27A275, Revision 03, dated April 5, 1996. As of the effective date of this AD, only McDonnell Douglas Alert Service Bulletin DC8–27A275, Revision 03, dated April 5, 1996, shall be used.

No Crack Found During Inspection Required By Paragraph (a) of This AD: Repetitive Inspections

(c) If no crack is detected as a result of the inspections required by paragraph (a) of this AD, repeat the inspections at intervals not to exceed 3,500 landings.

Any Crack Found: Replacement and Repetitive Inspections

(d) If any crack is detected as a result of the inspections required by paragraph (a), (b), or (c) of this AD, prior to further flight, replace the rudder pedals adjuster hub assembly, P/N 4616066, with a new assembly, P/N 5965435–1, in accordance with McDonnell Douglas Alert Service Bulletin DC8–27A275, Revision 03, dated April 5, 1996. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of this AD.

Terminating Action

(e) Prior to the accumulation of 15,000 total landings, or within 3,500 landings after the effective date of this AD, whichever occurs later, replace the existing adjuster hub assembly with a new assembly, P/N 5965435–1, per McDonnell Douglas Alert Service Bulletin DC8–27A275, Revision 03, dated April 5, 1996. Accomplishment of the replacement constitutes terminating action for the requirements of this AD.

Spares

(f) As of the effective date of this AD, no person shall install an adjuster hub assembly, P/N 4616066, on any airplane.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17600 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–217–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require a one-time inspection for chafing between the hose for the passenger oxygen system (hereinafter called the "oxygen hose") and adjacent electrical wire bundles at certain passenger service units, and corrective actions, if necessary. This proposal also would require rerouting or reorienting the oxygen hose to ensure sufficient clearance between the hose and electrical wire bundles. This action is necessary to prevent chafing between the oxygen hose and adjacent electrical wire bundles, which could result in arcing of a chafed electrical wire bundle and consequent burn-through of the oxygen hose. If this occurs when the oxygen system is pressurized, such arcing could represent a potential ignition source in an oxygen-enriched environment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–217–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–217–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–217–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–217–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received a report of damage to a hose for the passenger oxygen system (hereinafter called the "oxygen hose") on a Boeing Model 747 series airplane. The damage resulted from arcing of chafed electrical wiring adjacent to the oxygen hose located above a lavatory. Subsequent inspections of the oxygen hose on passenger service units (PSU) on other airplanes revealed insufficient clearance between the oxygen hose and electrical wire bundles at PSUs in the main deck passenger compartment, upper deck sculpted ceiling, personnel accommodation (crew rest) area, lower lobe forward galley, and aft galley. This condition, if not corrected, could result in chafing between the oxygen hose and adjacent electrical wire bundles, which could result in arcing of a chafed electrical wire bundle and consequent burn-through of the oxygen hose. If this occurs when the oxygen system is pressurized, such arcing could represent a potential ignition source in an oxygen-enriched environment.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–35A2035, Revision 1, dated July 22, 1999, as revised by Boeing Service Bulletin Information Notice 747–35A2035 IN 01, dated September 23, 1999. That service bulletin describes procedures for performing a one-time inspection for chafing between the oxygen hose and electrical wire bundles at the PSUs in the main deck passenger compartment, upper deck sculpted ceiling, personnel accommodation (crew rest) area, lower lobe forward galley, and aft galley; as applicable; and corrective actions, if necessary. Corrective actions involve replacing any chafed oxygen hose with a new oxygen hose and wrapping the new hose with protective sleeving, and repairing any chafed wire bundles. The service bulletin also provides instructions for rerouting the oxygen hose or installing an elbow at the oxygen mask inlet connector to reorient the oxygen hose away from the electrical wiring, to ensure a minimum of 2 inches clearance between the oxygen hose and electrical wire bundle. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

This proposed AD differs from the service bulletin in the following ways:

- The service bulletin recommends that the actions be accomplished "at the next suitable planned maintenance period." The FAA finds that such a compliance time would not ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition. In light of all relevant factors, we find a compliance time of 12 months after the effective date of the AD for completing the proposed actions is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.
- The service bulletin does not specify what method to use for the inspection described in the Accomplishment Instructions. We find that the procedures in the service bulletin describe a detailed visual inspection. A note has been included in this proposed AD to define such an inspection.

Cost Impact

There are approximately 469 airplanes of the affected design in the worldwide fleet. The FAA estimates that 166 airplanes of U.S. registry would be affected by this proposed AD, and that the average airplane has approximately 150 PSUs installed (though the actual number varies considerably between airplane configurations). It would take approximately 38 work hours per airplane (0.25 work hours per PSU) to accomplish the proposed actions, at the average labor rate of $60 per work hour. Required parts would cost approximately $5,250 per airplane ($35 per PSU). Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,249,980, or $7,530 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–217–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–35A2035, Revision 1, dated July 22, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing between the oxygen hose and electrical wire bundles at certain passenger service units (PSUs), which could result in arcing of a chafed wire bundle and consequent burn-through of the oxygen hose, with the arcing potentially representing an ignition source in an oxygen-enriched environment, accomplish the following:

Inspection and Follow-On Actions

(a) Within 12 months after the effective date of this AD, do a detailed visual inspection for chafing between oxygen hoses and electrical wire bundles at the passenger

service units (PSU) in the main deck passenger compartment, upper deck sculpted ceiling, personnel accommodation (crew rest) area, lower lobe forward galley, and aft galley; as applicable. Do the inspection according to Boeing Alert Service Bulletin 747–35A2035, Revision 1, dated July 22, 1999, as revised by Boeing Service Bulletin Information Notice 747–35A2035 IN 01, dated September 23, 1999. Before further flight following this inspection, do the corrective actions in paragraphs (a)(1) and (a)(2) of this AD, as applicable, and reroute the oxygen hose or install an elbow at the oxygen mask inlet connector to reorient the oxygen hose away from the electrical wiring, as applicable, to ensure a minimum of 2 inches clearance between the oxygen hose and electrical wire bundle, according to the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If any chafing of an oxygen hose is found: Replace the chafed oxygen hose with a new oxygen hose, and install protective sleeving over the new oxygen hose, according to the service bulletin.

(2) If any chafing of a wire bundle is found, repair the wire bundle according to the service bulletin.

Note 3: Inspections and follow-on actions done prior to the effective date of this AD according to Boeing Service Bulletin 747–35–2035, dated January 7, 1983, are acceptable for compliance with corresponding actions in paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17601 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–218–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200C and –200F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–200C and –200F series airplanes. This proposal would require installation of drip shields over certain shelves in the main equipment bay. This action is necessary to prevent water from dripping through floor panels in the cargo bay onto wire bundles and electronic components, which could lead to the loss of function of multiple electronic components and, consequently, could reduce the flight crew's ability to operate in adverse conditions. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–218–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–218–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received numerous reports of water infiltrating various electronic components on Boeing Model 747–200C and "200F series airplanes. When wet or snow-covered cargo is loaded into the forward sections of the main deck, the water runs through the floor sealing in floor panel numbers 56 and 58 and drips onto wiring bundles and electronic components located in the main equipment bay under those floor panels. This condition, if not corrected, could lead to the loss of function of multiple electronic components and, consequently, could reduce the flight crew's ability to operate in adverse conditions.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–38A2073, Revision 2, dated April 26, 2001, which describes procedures for installation of drip shields over the forward, outboard halves of the E1–1 and E3–1 shelves in the main equipment bay. The procedures involve installing a drip pan assembly, drain tubing, and attaching hardware. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed AD and Service Bulletin

The service bulletin recommends that the actions be accomplished during the next scheduled maintenance visit or when manpower is available. The FAA finds that such a compliance time would not ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition. In light of all relevant factors, we find a compliance time of 18 months after the effective date of the AD for completing the required actions is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 59 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 32 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour.

Required parts would cost approximately $4,497 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $134,757, or $6,417 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–218–AD.

Applicability: Model 747–200C and –200F series airplanes, as listed in Boeing Alert Service Bulletin 747–38A2073, Revision 2, dated April 26, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent water from dripping through certain floor panels in the cargo bay onto wire bundles and electronic components, which could lead to the loss of function of multiple electronic components and, consequently, could reduce the flight crew's ability to operate in adverse conditions, accomplish the following:

Installation of Drip Shields

(a) Within 18 months after the effective date of this AD, install drip shields (including drip pan assembly, drain tubing, and attaching hardware) over the forward, outboard halves of the E1–1 and E3–1 shelves in the main equipment bay, according to Boeing Alert Service Bulletin 747–38A2073, Revision 2, dated April 26, 2001.

Note 2: Installation done prior to the effective date of this AD according to Boeing Service Bulletin 747–38A2073, dated November 30, 1989, or Revision 1, dated June 21, 1990, are acceptable for compliance with corresponding actions in paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17602 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–219–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require performing a one-time inspection for chafing of certain electrical wire bundles behind the flight engineer's panel in the cockpit; repairing any chafed wire bundles, if necessary; and installing Teflon sleeving over the inspected wire bundles and rerouting them. This action is necessary to prevent burning of electrical wires, which could result in smoke in the cockpit and loss of function of several airplane systems. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–219–AD" in the subject line and need not be submitted

in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–219–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel proceeding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received reports of incidents in which several circuit breakers tripped and smoke emanated from the back of the flight engineer's panel in the cockpit on certain Model 747 series airplanes. Investigation revealed that several wires behind the flight engineer's panel were severely burned and fused together. These wires had chafed against the connector back shell. This condition, if not corrected, could result in smoke in the cockpit and loss of function of several airplane systems.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the

ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–24A2118, Revision 3, dated June 24, 1999, which describes procedures for a one-time inspection for chafing of certain wire bundles against the connector back shell behind the P4 flight engineer's panel aft of Station 340. The service bulletin also describes procedures for repairing any chafed wire bundles, installing Teflon sleeving over the wire bundles to protect the wire bundles, and rerouting them. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

This proposed AD differs from the service bulletin in the following ways:

- The service bulletin recommends that the actions therein be accomplished "at the earliest opportunity." The FAA finds that such a compliance time would not ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition. In light of all relevant factors, we find a compliance time of 12 months after the effective date of the AD for completing the proposed actions is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.
- The service bulletin specifies that certain procedures that would be required by this proposed AD may be accomplished according to specified chapters of the Boeing 747 Airplane Maintenance Manual (AMM) or "operator's comparable procedure." However, this proposed AD would require that the actions be accomplished per the procedures specified in the referenced chapter of the AMM. An "operator's comparable procedure" may be used only if approved as an alternative method of compliance under paragraph (c) of this proposed AD.
- The service bulletin does not specify what method to use for the inspection described in the Accomplishment Instructions. We find that the procedures in the service bulletin describe a detailed visual inspection. A note has been included in this proposed AD to define such an inspection.

Cost Impact

There are approximately 443 airplanes of the affected design in the worldwide fleet. The FAA estimates that 164 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of required parts per airplane would be negligible. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $29,520, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–219–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–24A2118, Revision 3, dated June 24, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and burning of electrical wires, which could result in smoke in the cockpit and loss of function of several airplane systems, accomplish the following:

One-Time Inspection and Follow-On Actions

(a) Within 12 months after the effective date of this AD, do a one-time detailed visual inspection for chafing of certain electrical wire bundles behind the P4 flight engineer's panel in the cockpit, according to Boeing Alert Service Bulletin 747–24A2118,

Revision 3, dated June 24, 1999. If any chafing is found, before further flight, repair the chafed wire bundles according to the service bulletin. Before further flight following the inspection and repair, as applicable, wrap the electrical wire bundles with Teflon sleeving and reroute them, according to the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Operator's Comparable Procedure

(b) Where Boeing Alert Service Bulletin 747–24A2118, Revision 3, dated June 24, 1999, specifies that certain procedures may be accomplished per an "operator's comparable procedure," the procedures must be accomplished per the applicable chapter of the Boeing 747 Airplane Maintenance Manual (AMM) specified in the service bulletin.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17603 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–220–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–200B, 747–200C, 747–200F, 747SP, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747–200B, 747–200C, 747–200F, 747SP, and 747SR series airplanes. This proposal would require a one-time inspection for chafing of certain wire bundles behind the flight engineer's panel; repairs, if necessary; and a modification to reroute a certain electrical wire bundle to ensure sufficient clearance between that wire bundle and an adjacent flood light support bracket. This action is necessary to prevent chafing of certain electrical wire bundles, which could result in smoke in the cockpit, and uncommanded discharge of fire extinguishing bottles for the No. 4 engine and consequent reduction of the ability to fight a fire in the No. 4 engine. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–220–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–220–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–220–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No.

2001–NM–220–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received a report that, during landing of a certain Model 747 series airplane, smoke emanated from the forward edge of the flight engineer's panel in the cockpit. The flight crew responded to the situation by immediately switching off galley power and undertaking smoke evacuation procedures. Investigation following landing revealed that a small section of electrical wire bundle W530, which was routed behind the flight engineer's panel, had chafed against a flood light support bracket and burned. The consequent short circuit caused several circuit breakers to open and both fire extinguisher bottles for No. 4 engine to discharge. This condition, if not corrected, could result in smoke in the cockpit. Also, if the fire extinguisher bottles for the No. 4 engine are inadvertently discharged, it could result in reduced ability to fight a fire in that engine.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–25A2407, Revision 1, dated September 23, 1999, which describes procedures for a modification to reroute electrical wire bundle W530 to ensure sufficient clearance between that wire bundle and an adjacent flood light support bracket. The modification relocates one existing wire bundle clamp farther away from the flood light support bracket and installs a caterpillar grommet on the flood light supports. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time detailed visual inspection for chafing of certain wire bundles behind the flight engineer's panel, and repair, if necessary. The proposed AD also would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

This proposed AD differs from the service bulletin in the following ways:

- The service bulletin does not contain procedures for the detailed visual inspection for chafing of certain wire bundles or for repair if any chafing is found, which would be required by the proposed AD. However, in view of the unsafe condition (chafing of electrical wire bundles, which could result in smoke in the cockpit), the FAA finds it necessary to propose to require such an inspection, and repairs, if necessary, to ensure that any chafed wire bundle is found and fixed in a timely manner. Therefore, this action proposes to require these actions before accomplishment of the modification described in the service bulletin. Also, Note 2 of this proposed rule defines what we mean by "detailed visual inspection." We find that this proposed

inspection requirement would not substantially increase the number of work hours necessary to accomplish this proposed AD over the time necessary for the modification described in the service bulletin. No additional access over that necessary for the modification is involved, the inspection area is small, and the number of wire bundles is few. Thus, the FAA has used the figure of 12 work hours provided in the service bulletin for the cost impact estimate in this proposed AD.

• The service bulletin recommends that the actions be accomplished "at the earliest opportunity when manpower and facilities are available." The FAA finds that such a compliance time would not ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition. In light of all relevant factors, we find a compliance time of 12 months after the effective date of the AD for completing the proposed actions is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

• The service bulletin specifies that installation of the caterpillar grommet on the flood light supports may be done according to a certain chapter of the Boeing 747 Overhaul Manual (OHM) or "your equivalent procedure." However, this proposed AD would require that the installation of the caterpillar grommet be accomplished per the referenced chapter of the OHM. An "equivalent procedure" may be used only if approved as an alternative method of compliance under paragraph (c) of this proposed AD.

Cost Impact

There are approximately 217 airplanes of the affected design in the worldwide fleet. The FAA estimates that 108 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of required parts per airplane would be negligible. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $77,760, or $720 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–220–AD.

Applicability: Model 747–100, 747–200B, 747–200C, 747–200F, 747SP, and 747SR series airplanes; as listed in Boeing Alert Service Bulletin 747–25A2407, Revision 1, dated September 23, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of certain electrical wire bundles located behind the flight engineer's panel, which could result in smoke in the cockpit, and uncommanded discharge of fire extinguishing bottles for the No. 4 engine and consequent reduction of the ability to fight a fire in the No. 4 engine, accomplish the following:

One-Time Inspection and Modification

(a) Within 12 months after the effective date of this AD, perform a one-time detailed visual inspection for chafing of wire bundles in the area of the forward upper corner of the P4 flight engineer's panel, outboard of the drip shield. Pay particular attention to wire bundles W528 and W530.

(1) If any chafing is found, before further flight, repair the chafed wire bundles according to Section 20–10–13 of the Boeing Standard Wiring Practices Manual, and do paragraph (a)(2) of this AD.

(2) If no chafing is found, or after chafing has been repaired, before further flight, modify the airplane by rerouting electrical wire bundle W530 to ensure sufficient clearance between that wire bundle and an adjacent flood light support bracket and installing a caterpillar grommet on the flood light supports, according to Boeing Alert Service Bulletin 747–25A2407, Revision 1, dated September 23, 1999.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Operator's Equivalent Procedure

(b) Where Boeing Alert Service Bulletin 747–25A2407, Revision 1, dated September 23, 1999, specifies that installation of a caterpillar grommet may be accomplished per "your equivalent procedure," the procedures must be accomplished per the applicable chapter of the Boeing 747

Overhaul Manual specified in the service bulletin.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17604 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–221–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, and –200C series airplanes. This proposal would require a one-time inspection for damage (i.e., chafing) of the power feeder wire bundle for the auxiliary power unit (APU) generator and the first officer's elevator down control cable and for proper separation between that wire bundle and control cable, and corrective action, if necessary. For certain airplanes, this proposal also would require attaching the power feeder wire bundle to adjacent wire bundles. This action is necessary to prevent a short circuit and resultant arcing between the wire bundle and control cable, which could sever the control cable. Failure of the first officer's elevator down control cable, if combined with a subsequent failure of the captain's elevator down control cable, could result in loss of elevator control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–221–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–221–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–221–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–221–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed

that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received reports of chafing between the power feeder wire bundle for the auxiliary power unit (APU) generator and the first officer's elevator down control cable beneath the right side cockpit floor on certain Boeing Model 737–100, –200, and –200C series airplanes. Investigation has revealed that this problem originates when the power feeder wire bundle for the APU generator is not properly repositioned during replacement of the circuit breaker for the APU generator. If certain clamps on the APU generator's power feeder wire bundle are not loosened, the wire bundle may be pulled up or pushed down and may start to form a loop. If this loop chafes against the first officer's elevator down control cable, a short circuit and resultant arcing between the wire bundle and control cable could occur, which could sever the control cable. The resultant failure of the control cable may not be evident because both the captain's and first officer's positions have elevator control cables and both positions can control the elevator using either cable. However, failure of the first officer's elevator down control cable, if combined with a subsequent failure of the captain's elevator down control cable for another (unrelated) reason, could result in loss of elevator control of the airplane.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 737–24–1144, Revision 1, dated June 21, 2001, which describes procedures for a one-time inspection for damage (i.e., chafing) of the power feeder wire bundle for the APU generator (wire bundle W146) and the first officer's elevator down control cable and for proper separation between that wire bundle and control cable. If necessary, corrective actions include the following:

- Replacing the first officer's elevator down control cable with a new cable if any damage is found.
- Repairing wire bundle W146 if any damage is found.
- Rerouting the wire bundle by turning wire bundle clamps to a position that provides minimum separation between the wire bundle and control cable, if the wire bundle and control cable are not separated by the minimum distance specified in the service bulletin.

For certain airplanes, the service bulletin also describes procedures to attach wire bundle W146 to adjacent wire bundles.

Accomplishment of the actions specified in the service bulletin is intended to address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

This proposed AD differs from the service bulletin in the following ways:

- The service bulletin recommends that the actions be accomplished "at the next normally scheduled maintenance period when manpower, materials, and facilities are available." The FAA finds that such a compliance time would not ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition. In light of all relevant factors, we find a compliance time of 18 months after the effective date of the AD for completing the proposed actions is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.
- The service bulletin does not specify what method to use for the inspection described in the Accomplishment Instructions. We find

that the procedures in the service bulletin describe a detailed visual inspection. A note has been included in this proposed AD to define such an inspection.

Cost Impact

There are approximately 136 airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,820, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–221–AD.

Applicability: Model 737–100, –200, and –200C series airplanes; as listed in Boeing Special Attention Service Bulletin 737–24–1144, Revision 1, dated June 21, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit and resultant arcing between the power feeder wire bundle for the auxiliary power unit (APU) generator and the first officer's elevator down control cable, which could sever the control cable, and, if combined with a subsequent failure of the captain's elevator down control cable, result in loss of elevator control of the airplane, accomplish the following:

Inspection and Corrective Actions

(a) Within 18 months after the effective date of this AD, perform a one-time detailed visual inspection for damage (i.e., chafing) of the power feeder wire bundle for the APU generator (wire bundle W146) and the first officer's elevator down control cable and for proper separation between that control cable and wire bundle, and attach wire bundle W146 to adjacent wire bundles, as applicable. Do these actions according to Boeing Special Attention Service Bulletin 737–24–1144, Revision 1, dated June 21, 2001.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no damage to the control cable or wire bundle is found, and if the distance between the control cable and wire bundle is equal to or greater than the minimum separation distance specified in the service bulletin: No further action is required.

(2) If any damage to the first officer's elevator down cable is found: Before further flight, replace the elevator down control cable with a new cable according to the service bulletin, and do paragraph (a)(4) of this AD.

(3) If any damage to the power feeder wire bundle for the APU generator (wire bundle W146) is found: Before further flight, repair the wire bundle according to the service bulletin, and do paragraph (a)(4) of this AD.

(4) If the distance between the control cable and wire bundle is less than the minimum separation distance specified in the service bulletin: Before further flight, reroute the wire bundle by turning wire bundle clamps to a position that provides minimum separation between the wire bundle and control cable, according to the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17605 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–222–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–70 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–8–70 series airplanes, that currently requires repetitive inspections and repair or replacement, if necessary, of the generator power feeder cables, supporting brackets, and clamps at all the engine pylons. This action would require accomplishment of a terminating action for the repetitive inspections. This action also would require replacement of the support clamps of the generator power feeder cable on engine nacelles/pylons 1, 2, 3, and 4 with new support clamps. This proposal is prompted by the FAA's determination that further rulemaking is necessary. The actions specified by the proposed AD are intended to prevent a fire on the ground if a fuel leak exists in an engine pylon.

DATES: Comments must be received by September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–222–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- Fo each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–222–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD–11, DC–8, DC–9, DC–10, and DC–9–80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take

appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD–11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

Previously Issued AD 88–11–03

On May 3, 1988, the FAA issued AD 88–11–03, amendment 39–5922 (53 FR 17018, May 13, 1988), applicable to all McDonnell Douglas Model DC–8–70 series airplanes, to require repetitive inspections and repair or replacement, if necessary, of the generator power feeder cables, supporting brackets, and clamps at the engine pylons. That action was prompted by reports indicating that the generator power feeder cable was chafing against the clamp and support bracket, resulting in shorting to the clamp, bracket, and structure in an engine pylon area. The requirements of that AD are intended to prevent a fire on the ground if a fuel leak exists in an engine pylon.

Actions Since Issuance of AD 88–11–03

Since the issuance of AD 88–11–03, the FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led us to consider placing less emphasis on inspections and more emphasis on design improvements. Therefore, we now have determined that further rulemaking action is necessary to require a terminating action for the repetitive inspection and verification requirements of AD 88–11–03.

In addition, the airplane manufacturer has informed the FAA of the possibility that support clamps of the generator power feeder cable in the forward pylon and engine nacelle areas could fail on airplanes subject to the requirements of AD 88–11–03. The cause has been attributed to the generator power feeder cable chafing against the support clamps and bracket. Such chafing, if not corrected, could result in electrical arcing and damage to the primary structure in the engine pylon area, which could result in a fire on the ground if a fuel leak exists in the engine pylon area.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas DC–8–70 Service Bulletin 24–72, dated January 14, 1992, which describes procedures for replacement of the support clamps of the generator power feeder cable on engine pylons 1, 2, 3, and 4 with new support clamps.

The FAA also has reviewed and approved McDonnell Douglas DC–8–70 Service Bulletin 24–71, Revision 1, dated February 25, 1991. The service bulletin describes procedures for performing an inspection of the terminal connections of the generator power feeder cable for general condition and to verify that the ground studs are tight and that the nuts securing the cable terminals to the terminal strip are tightened to a torque of 120 to 130 inch-pound; tightening terminal connections, if necessary; and applying a coat of certain sealants.

Accomplishment of the actions specified in McDonnell Douglas DC–8–70 Service Bulletin 24–72 and McDonnell Douglas DC–8–70 Service Bulletin 24–71 would eliminate the need for the repetitive inspection requirements of AD 88–11–03.

In addition, the FAA has reviewed and approved McDonnell Douglas DC–8–70 Service Bulletin 24–73, dated May 30, 1990, which describes procedures for replacement of the support clamps of the generator power feeder cable in the forward pylon on engine nacelles 1, 2, 3, and 4 with new support clamps.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 88–11–03 to continue to require repetitive inspections and repair or replacement, if necessary, of the generator power feeder cables, supporting brackets, and clamps at the engine pylons. The proposed AD also would require accomplishment of the actions specified in the service bulletins described previously, some of which would terminate the repetitive inspections.

Cost Impact

There are approximately 108 Model DC–8–70 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 98 airplanes of U.S. registry would be affected by this proposed AD.

The inspection that is currently required by AD 88–11–03, and retained in this proposed AD, takes approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $70,560, or $720 per airplane, per inspection cycle.

The new replacement specified in McDonnell Douglas DC–8–70 Service Bulletin 24–72, dated January 14, 1992, that is proposed in this AD action would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost

approximately $675 per airplane. Based on these figures, the cost impact of this replacement proposed by this AD on U.S. operators is estimated to be $83,790, or $855 per airplane.

The new inspection and application of sealants specified in McDonnell Douglas DC–8–70 Service Bulletin 24–71, Revision 1, dated February 25, 1991, that are proposed in this AD action would take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection and application of sealants proposed by this AD on U.S. operators is estimated to be $29,400, or $300 per airplane.

The new replacement specified in McDonnell Douglas DC–8–70 Service Bulletin 24–73, dated May 30, 1990, that is proposed in this AD action would take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $715 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $164,150, or $1,675 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5922 (53 FR 17018, May 13, 1988), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2001–NM–222–AD. Supersedes AD 88–11–03, Amendment 39–5922.

Applicability: All Model DC–8–70 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a fire on the ground if a fuel leak exists in an engine pylon, accomplish the following:

Restatement of Requirements of AD 88–11–03

Repetitive Inspections, Verification, and Corrective Actions, If Necessary

(a) Within 30 days after June 3, 1988 (the effective date of AD 88–11–03, amendment 39–5922), unless previously accomplished within the last 3,500 flight hours, inspect the generator power feeder cables, support brackets, and clamps between bulkhead feed-through at station YN=278.500 and terminal strip S3–7000 at engine pylons 1, 2, 3, and 4, for evidence of arcing, burning, chafing, damage, or cable droop, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin A24–72, dated April 6, 1988.

(1) If no evidence of arcing, burning, chafing, damage, or drooping exists, proceed to paragraph (a)(3) of this AD.

(2) If any evidence of arcing, burning, chafing, damage, or drooping exists, prior to further flight, repair or replace parts, as required, in accordance with the service bulletin.

(3) Verify that the nuts securing cable terminals to terminal strip S3–7000 are tightened to a torque of 120 to 130 inch-pounds.

Repetitive Inspection Interval

(b) Repeat the procedures specified in paragraph (a) of this AD at intervals not to exceed 3,500 flight hours.

New Actions Required by This AD

Terminating Actions for Repetitive Inspections and Verification

(c) Within 1 year after the effective date of this AD, replace the support clamps of the generator power feeder cable on engine pylons 1, 2, 3, and 4 with new support clamps, in accordance with McDonnell Douglas DC–8–70 Service Bulletin 24–72, dated January 14, 1992. The requirements of paragraphs (a)(1) and (a)(2) of this AD must be done prior to or in conjunction with the requirements of this paragraph.

(d) Within 1 year after the effective date of this AD, do the actions specified in paragraphs (d)(1) and (d)(2) of this AD in accordance with McDonnell Douglas DC–8–70 Service Bulletin 24–71, Revision 1, dated February 25, 1991. The requirements of paragraph (a)(3) of this AD must be done prior to or in conjunction with the requirements of this paragraph.

(1) Do a general visual inspection of the terminal strip of the terminal connections of the generator power feeder cable for general condition (i.e., loose connections) and to verify that the ground studs are tight and that the nuts securing the cable terminals to the terminal strip are tightened to a torque of 120 to 130 inch-pound, in accordance with the service bulletin. If any terminal connection is loose, not tight, or torqued improperly, prior to further flight, tighten terminal connection in accordance with the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Apply a coat of certain sealants per Figure 1 of the service bulletin.

(e) Accomplishment of the actions required by paragraphs (c) and (d) of this AD

constitute terminating action for the requirements of paragraphs (a) and (b) of this AD.

Replacement of Certain Support Clamps

(f) Within 1 year after the effective date of this AD, replace the support clamps of the generator power feeder cable in the forward pylon on engine nacelles 1, 2, 3, and 4 with new support clamps, in accordance with McDonnell Douglas DC–8–70 Service Bulletin 24–73, dated May 30, 1990.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17606 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–15]

Proposed Establishment of Class E Airspace, Scobey, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Scobey, MT. Newly developed Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to the Scobey Airport has made this proposal necessary. Class E 700-feet and 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing procedures in the Instrument Flight Rules (IFR). The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Scobey Airport, Scobey, MT.

DATES: Comments must be received on or before September 6, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–15, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–15, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ANM–15." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E airspace at Scobey, MT. Newly developed RNAV (GPS) SIAP to Runway 12 has made this proposal necessary. Class E 700-feet and 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing IFR procedures at Scobey Airport. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Scobey Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700-feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700-feet or more above the surface of the earth.

* * * * *

ANM MT E5 Scobey, MT [NEW]

Scobey Airport, MT
(Lat. 48°48′28″ N., long. 105°26′22″ W.)

That airspace extending upward from 700-feet above the surface within the 5.5-mile radius of the Scobey Airport; and that airspace extending upward from 1200-feet above the surface bounded by a line beginning at lat. 49°00′00″ N., long. 105°36′30″ W.; to lat. 49°00′00″ N., long. 105°00′00″ W.; to lat. 48°40′27″ N., long. 105°00′00″ W.; to lat. 48°25′00″ N., long. 104°00′00″ W.; to lat. 48°14′18″ N., long. 104°00′00″ W.; to lat. 48°36′40″ N., long. 105°30′00″ W.; to lat. 48°30′00″ N., long. 105°41′00″ W.; to lat. 48°30′00″ N., long. 106°00′00″ W.; to lat. 48°36′30″ N., long. 106°11′55″ W.; to the point of origin; excluding that airspace within the Glasgow, MT, and Williston, ND, Class E airspace and Federal Airways areas.

* * * * *

Issued in Seattle, Washington, on July 9, 2001.

Dan A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–18234 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–32]

Proposed Revision of Class E Airspace, Holyoke, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise the Class E airspace at Holyoke, CO. A newly constructed runway at the Holyoke Airport resulted in a change to the Airport Reference Point (ARP) coordinates. The change of the ARP coordinates requires an amendment of the legal description of Holyoke Airport Class E airspace to reflect the new coordinates.

DATES: Comments must be received on or before September 6, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–32, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–32, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ANM–32." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Yakima, WA. Additional Class E 700-feet and 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft conducting IRF operations at Yakima Air Terminal, Yakima, WA. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Yakima Air Terminal and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700-feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) doe not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9465, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700-feet or more above the surface of the earth.

* * * * *

ANM WA E5 Yakima, WA [Revised]

Yakima Air Terminal,
(Lat. 46°34′05″ N., long 120°32′38″ W.)
Yakima VORTAC
(Lat. 46°34′13″ N., long 120°26′41″ W.)

That airspace extending upward from 700 feet above the surface within the 7.5-mile radius of the Yakima Air Terminal, and within 4.3 miles northeast and 8.7 miles southwest of the Yakima VORTAC 115° and 295° radials extending from .9 miles northwest to 20.1 miles southeast of the VORTAC, and within 4.1 miles north and 5 miles south of the 287° bearing from the Yakima Air Terminal extending from the 7.5-mile radius to 19.5 miles northwest of the airport; that airspace extending upward from 1,200-feet above the surface within a 21.8-mile radius of the Yakima VORTAC, and bounded by a line beginning at lat. 46°10′00″ N., long. 119°45′00″ W.; thence to lat. 46°10′00″ N., long. 121°00′00″ W.; to lat. 46°50′00″ N., long. 121°00′00″ W.; to lat. 46°50′00″ N., long. 119°45′00″ W.; thence to the point of origin, excluding that and that airspace within Federal Airways, Restricted Area 6714 and its sub-areas during effective times, and the Ellensburg, WA Class E airspace area.

* * * * *

Issued in Seattle, Washington, on July 9, 2001.

Dan A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–18235 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ANM–07]

Proposed Modification of Class E airspace, Kemmerer, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace at Kemmerer, WY. Newly developed Area Navigation (RNAV) approaches at the Kemmerer Municipal Airport has made this proposal necessary. Additional Class E 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing the RNAV (Global Positioning System (GPS)) RWY 16 and RNAV (GPS) RWY 34 at Kemmerer Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Kemmerer Municipal Airport, Kemmerer, WY.

DATES: Comments must be received on or before September 6, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 01–ANM–07, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–07, 1601 Lind Avenue SW., Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–ANM–07." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW., Renton, Washington, 98044–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Kemmerer, WY. Newly developed Area Navigation (RNAV) approaches at the Kemmerer Municipal Airport has made this proposal necessary. Additional Class E 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing the RNSAV (GPS) RWY 16 and RNAV (GPS) RWY 34, at Kemmerer Municipal Airport, has made this proposal necessary. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Kemmerer Municipal Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700-feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA had determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700-feet or more above the surface of the earth.

* * * * *

ANM WY Kemmerer, WY [Revised]

Kemmerer Municipal Airport, WY
(lat. 41°49′30″N., long. 110°33′32PrimeW.)
That airspace extending upward from 700-feet above the surface within the 8-mile radius of the Kemmerer Municipal Airport, and within 4 miles each side of the 174° bearing from the Kemmerer Airport extending from the airport 11 miles south of the airport, and within 3.6 miles each side of the 354° bearing from the Kemmerer Airport extending from the airport to 16.1 miles northwest of the airport; and that airspace extending upward from 1,200-feet above the surface bounded by a line beginning at lat. 41°30′00″N., long. 111°00′00″W; to lat. 42°10′00″N., long. 111°00′00″W.; to lat. 42°10′00″N., long 110°00′00″W.; to lat. 41°30′00″N., long. 110°00′00″W.; to lat. 41°15′00″N., long 110°23′00″W.; to lat. 47°53′30″N., long. 104°29′40″W.; to lat. 48°10′00″N., long. 104°12′00″W.; to point of origin; and excluding that airspace within Federal airways; and the Fort Bridger, WY, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on July 3, 2001.

Dan A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–18237 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR 864

[Docket No. 95P–0315]

Hematology and Pathology Devices; Reclassification of Automated Differential Cell Counters; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of May 9, 2001 (66 FR 23634). The document proposes to reclassify from class III (premarket approval) to class II (special controls) the automated differential cell counter (ADCC). The document published inadvertently with the incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 01–11580, appearing in the **Federal Register** of Wednesday, May 9, 2001, the following correction is made: On page 23634, in the second column, "[Docket No. 95P–0351]" is corrected to read "[Docket No. 95P–0315]."

Dated: July 17, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18343 Filed 7–20–01; 8:45 am]

BILLING CODE 4160–01–S

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 260

[Docket No. 96–5 CARP DSTRA]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is requesting comment on proposed regulations that will govern the RIAA collective when it functions as the designated agent receiving royalty payments and statements of accounts

from nonexempt, subscription digital transmission services which make digital transmissions of sound recordings under the provisions of section 114 of the Copyright Act.

DATES: Comments are due no later than August 22, 2001.

ADDRESSES: An original and five copies of any comment shall be delivered to: Office of the General Counsel, Copyright Office, James Madison Building, Room LM–403, First and Independence Avenue, SE., Washington, DC; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Section 106(6) of the Copyright Act, title 17 of the United States Code, gives copyright owners of sound recordings an exclusive right to perform the copyrighted work publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain non-interactive digital audio services to transmit sound recordings under a compulsory license, provided that the services pay a reasonable royalty fee and comply with the terms of the license.

Section 114(f)(1)(A) outlines the procedural steps for setting these rates and terms for subscription transmissions by preexisting subscription services. The first step requires the Librarian of Congress to initiate a voluntary negotiation period to give the interested parties the initial opportunity of establishing the applicable rates and terms. If the parties are unable to reach an agreement, then section 114(f)(1)(B) directs the Librarian of Congress to convene a three-person Copyright Arbitration Royalty Panel ("CARP") for the purpose of determining the rates and terms for the compulsory license upon receipt of a petition filed in accordance with 17 U.S.C. 803(a)(1).

The first proceeding to set rates and terms for the section 114 license for preexisting subscription services began in 1995 and concluded with the issuance of a final rule and order by the Librarian of Congress on May 8, 1998. *See* 63 FR 25394 (May 8, 1998). The parties in this proceeding numbered four: The Recording Industry Association of America ("RIAA"); Digital Cable Radio Associates, now known as Music Choice; DMX Music, Inc. ("DMX"); and Muzak, L.P. ("Muzak") (collectively, "the parties"). In this proceeding, the parties proposed, and the CARP adopted, a term which gave the RIAA the responsibility for collecting and distributing the royalty fees to all copyright owners. *Id.* at 25397. The Librarian adopted this term, then crafted additional regulations that afforded copyright owners a means to verify the accuracy of the royalty payments made by the RIAA collective,[1] established the value of each performance, specified the nature of the costs that RIAA may deduct from the royalty fees prior to distribution, and set forth a procedure for handling royalty fees in the case where the collective is unable to identify or locate a copyright owner who is entitled to receive royalties collected under the statutory license.

RIAA appealed both the rate set by the Librarian and the additional conditions imposed on the RIAA collective in its capacity as the collection agent for copyright owners. *See, Recording Industry Ass'n* v. *Librarian of Congress,* 176 F.3d 528 (D.C: Cir. 1999). The United States Court of Appeals for the District of Columbia Circuit upheld the rate set by the Librarian and found that the Librarian has the authority to impose terms on copyright owners or their agents. However, it remanded for further consideration certain terms imposed on RIAA under 37 CFR 260.2(d), 260.3(d), 260.6(b), and 260.7, because the CARP had not considered these issues, leaving the record devoid of any evidence upon which to fashion any terms concerning the collection and distribution of the royalty fees. *Id.* at 536.

On February 13, 2001, the Copyright Office issued a scheduling order, directing the parties to this proceeding to file their direct cases with the Office on April 17, 2001. *See,* Order in Docket No. 96–5 CARP DSTRA (February 13, 2001). On that date, RIAA filed a petition to establish terms governing the RIAA collective and to suspend the scheduled proceeding.[2] DMX and Muzak, two of the three other parties to the original proceeding, authorized RIAA to inform the Office that they consent to the proposed terms offered by RIAA in its petition. The third party, Music Choice, had already informed the Office by letter dated February 26, 2001, of its intent not to participate further in this proceeding and that it did not object to the terms proposed by RIAA.

On June 22, 2001, RIAA requested a revision to the terms offered in its petition to remove a reference to the section 112 statutory license for the making of ephemeral copies and to make clear that membership in the collective is open only to those copyright owners whose works are subject to statutory licensing and thus generate the funds to be distributed by the collective. Neither DMX nor Muzak had any objections to the proposed changes. Music Choice, having previously withdrawn from the proceeding, took no position on the proposed changes. There being no objection from any party with a direct interest in this proceeding, the Copyright Office has incorporated the revision into the terms set forth in the petition.

Pursuant to § 251.63(b) of title 37 of the Code of Federal Regulations, the Librarian can adopt the parties' proposed terms without convening a CARP, provided that the proposed terms are published in the **Federal Register** and no party with an intent to participate in the proceeding files a comment objecting to the proposed terms. In other words, unless there is an objection from a party with an interest in the proceeding who is prepared to participate in a CARP proceeding, the purpose of which is to adopt terms governing the RIAA collective in its handling of royalty fees collected from the three subscription services, these terms will be adopted. This procedure to adopt negotiated rates and terms in the case where an agreement has been reached has been specifically endorsed by Congress.

> If an agreement as to rates and terms is reached and there is no controversy as to these matters, it would make no sense to subject the interested parties to the needless expense of an arbitration proceeding conducted under [section 114(f)(2) (1995)]. Thus, it is the Committee's intention that in such a case, as under the Copyright Office's current regulations concerning rate adjustment proceedings, the Librarian of Congress should notify the public of the proposed agreement in a notice-and-comment proceeding and, if no opposing comment is received from a party with a substantial interest and an intent to participate in an arbitration proceeding, the Librarian of Congress should adopt the rates

[1] In November 2000, RIAA formed "Sound Exchange," an unincorporated division of RIAA, to administer statutory licenses, including the section 114 statutory license. *See,* Memorandum in Support of RIAA Petition to Establish Terms Governing the RIAA Collective at 2.

[2] A copy of the RIAA Petition to Establish Terms Governing the RIAA Collective and To Suspend CARP Proceedings, its memorandum in support of its petition, and its letter requesting a revision of the terms proposed in its petition may be found on the Copyright Office website at: *http://www.loc.gov/copyright/carp#114remand.*

embodied in the agreement without convening an arbitration panel.

S. Rep. No. 104–128, at 29 (1995)(citations omitted).

The proposed terms shall govern the RIAA collective solely in its capacity as the agent designated to receive royalty payments from the three subscription services that were parties to this proceeding and operate under the section 114 statutory license. These terms have been developed to protect the interest of those copyright owners who are not members of the RIAA collective and who did not participate in this proceeding. Thus, due to the circumstances under which these terms are being promulgated, if they are adopted, they shall have no precedential value in any future CARP. Terms governing the administrative functions of any future collective shall be decided in future rate adjustment proceedings either through negotiations or after a hearing before a CARP based upon a fully developed written record. For this reason, parties must limit their comments to the terms offered in the context of the proceeding to set rates and terms for the three subscription services—Music Choice, DMX, and Muzak—for the period from the effective date of the Digital Performance Act through December 31, 2001.

Accordingly, the Copyright Office is granting RIAA's request to suspend further CARP proceedings and is publishing for public comment RIAA's proposed terms concerning the operations of the collective. Any party who objects to the proposed terms must file a written objection with the Copyright Office and an accompanying Notice of Intent to Participate, if the party has not already done so. However, it is unclear whether any party who did not participate in the early stages of the rate adjustment proceeding the purpose of which was to set rates and terms applicable to the three subscription services can join the proceedings at this stage. Any proceeding convened to consider these terms would be a continuation of the prior CARP proceeding, Docket No. 96–5 CARP DSTRA, on remand from the United States Court of Appeals for the District of Columbia Circuit. *See,* 17 U.S.C. 802(g). If a party does file an objection to the proposed terms, it must state why it believes the law permits a new party to commence participation at this stage. The content of the written challenge must also describe the party's interest in the proceeding, the proposed rule the party finds objectionable, and the reasons for the challenge. If no comments are received, the regulations shall become final upon publication of a final rule.

List of Subjects in 37 CFR Part 260

Copyright, Digital Audio Transmissions, Performance Right, Recordings.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes amending part 260 of 37 CFR as follows:

PART 260—USE OF SOUND RECORDINGS IN A DIGITAL PERFORMANCE

1. The authority citation for part 260 continues to read as follows:

Authority: 17 U.S.C. 114, 801(b)(1).

§ 260.2 [Amended]

2. In § 260.2, remove paragraph (d).

3. Section 260.3 is amended as follows:

a. By revising paragraphs (c), (d), and (e); and

b. By adding new paragraph (f).

The revisions to § 260.3 read as follows:

§ 260.3 Terms for making payments of royalty fees.

* * * * *

(c) The collective designated to receive the royalty payments and the statements of account shall have the responsibility of making further distribution of these payments to copyright owners of the exclusive right under 17 U.S.C. 106(6) whose sound recordings were performed by the services making the payments. Such copyright owners shall allocate their receipts according to the provisions set forth at 17 U.S.C. 114(g)(2).

(d) Before making the distributions specified in paragraph (c) of this section, the designated collective may deduct reasonable costs incurred in the administration of the collection and distribution of the royalty payments, so long as the reasonable costs do not exceed the actual costs incurred by the collective.

(e) In determining the share of each service's royalty payments to be distributed to copyright owners who are nonmembers of the designated collective, the collective shall attach the same weight to each performance of a sound recording made by that service; provided, however, that the collective may adopt a distribution methodology that weights each such performance according to its relative value. In determining relative value, the collective may consider factors such as the actual or estimated number of persons who listened to each performance by the service. The collective shall inform the Register of Copyrights of:

(1) The methodology for distributing royalty payments to nonmembers, and any amendment thereto, within 60 days after its adoption;

(2) Any written complaint that the collective receives from a nonmember concerning the distribution of royalty payments, within 60 days of receiving such written complaint; and

(3) The final disposition by the collective of any complaint specified by paragraph (e)(2) of this section, within 60 days of such disposition.

Nothing in these rules shall deprive any person from pursuing any remedies they may have under law against the collective.

(f) Commencing June 1, 1998, and until such time as a new designation is made, the collective established by the Recording Industry Association of America, Inc., known as "Sound Exchange," shall receive the royalty payments and statements of account under this part 260. Membership in the collective shall be open on a nondiscriminatory basis to all copyright owners of the rights subject to statutory licensing under 17 U.S.C. 114. In determining whether to make a new designation, the Register of Copyrights may consider any written complaints concerning the collective; provided, however, that the collective shall receive timely notice of, and an opportunity to respond to, any such complaints.

4. Section 260.6 is revised to read as follows:

§ 260.6 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which interested parties, as defined in paragraph (g) of this section, may verify the royalty payments made by the designated collective pursuant to § 260.3(c).

(b) *Frequency of verification.* Interested parties may conduct a single audit of the collective making the royalty payment during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must file with the Copyright Office a notice of intent to audit the collective making the royalty payments. Such notice of intent shall be served at the same time on the collective to be audited. Within 30 days of the filing of the notice of intent, the Copyright Office shall publish in the **Federal Register** a notice announcing such filing.

(d) *Retention of records.* The interested party requesting the

verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all interested parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more, in which case, the collective which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are:

(1) Those copyright owners who are nonmembers of the collective entitled to receive royalty payments pursuant to § 260.3(c); and

(2) Those persons who are entitled to receive a share of the copyright owners' receipts pursuant to 17 U.S.C. 114(g)(2), or their designated agents.

5. Section 260.7 is amended by removing the phrase "collecting agent" each place it appears and adding the word "entity" in its place; and in the last sentence, by removing the word "fees" and adding the word "payments" in its place.

Dated: July 18, 2001.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 01–18339 Filed 7–20–01; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–127–200114, KY–128–200115; FRL–7016–6]

Approval and Promulgation of Implementation Plans; Kentucky State Implementation Plan Revision, Source Specific Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to parallel process approval of revisions to the Kentucky State Implementation Plan (SIP) which concern the control of emissions of volatile organic compounds (VOC) at a specific source in Bullitt County, Kentucky, and a specific category of sources in Jefferson County, Kentucky. At the time of final EPA action, the completed SIP revisions must have been submitted to EPA.

In addition, EPA is proposing to approve negative declarations from Kentucky and from the Air Pollution Control District of Jefferson County (APCDJC) for certain categories of sources subject to Control Techniques Guidelines (CTGs).

DATES: Comments on the EPA's proposed action must be received by August 22, 2001.

ADDRESSES: Written comments should be addressed to: Raymond S. Gregory, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of Kentucky's submittals, as well as other information, are available for inspection during normal business hours at the following locations. People who are interested and want to examine these documents should make an appointment at least 24 hours in advance of the day they want to visit and they should reference files KY–127 and KY–128; U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Planning Section, 61 Forsyth Street, SW, Atlanta, Georgia 30303; Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403; Air Pollution Control District of Jefferson County, 850 Barret Avenue, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Raymond S. Gregory, Environmental Engineer, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303, (404) 562–9116,(*Gregory.Ray@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Applicability

EPA is proposing to approve into the Kentucky SIP two submittals. The first one which was adopted by the APCDJC (Regulation 6.49), specifies VOC reasonably available control technology (RACT) requirements for Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry (SOCMI). This rule was submitted by Kentucky to EPA on May 10, 2001, for parallel processing. The second submittal concerns source-specific VOC RACT requirements for an offset lithographic paper printing plant, Publisher's Printing, Inc., located in Bullitt County. The VOC RACT requirements for Publisher's Printing, Inc., were submitted by Kentucky on April 16, 2001, and supplemented with a request for parallel processing on May 4, 2001.

EPA received a negative declaration from Kentucky for the CTG categories of aerospace, SOCMI, shipbuilding, and wood furniture, and a negative declaration from the APCDJC for the CTG categories of aerospace, shipbuilding, and wood furniture. A negative declaration is a certification by an organization responsible for air pollution abatement in a state or local area that there are no facilities (a particular category, type, or size) under their jurisdiction in the planning area that meet the definition of an affected facility (i.e., for which specific control requirements would be applicable).

II. Background

Under the Clean Air Act (CAA) section 107(d)(4)(A), on November 6, 1991 (56 FR 56694), all of Jefferson County, portions of Bullitt and Oldham Counties in Kentucky, and the Indiana Counties of Clark and Floyd were designated as the Louisville moderate ozone nonattainment area, as a result of monitored violations of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) during the 1987–1989 time frame. Since that time, Kentucky, Indiana and the APCDJC have adopted and implemented programs required under the CAA for a moderate 1-hour ozone nonattainment area to reduce emissions of the precursors of ozone (VOCs and nitrogen oxides). As a result of these programs, air quality monitors in the Louisville area have recorded three years of complete, quality-assured, ambient air quality monitoring data for the 1998, 1999, and 2000 ozone seasons, thereby demonstrating that the area has attained the 1-hour ozone NAAQS. On May 17, 2001, (66 FR 27483) the EPA proposed to determine that the Louisville moderate ozone nonattainment area has attained the 1-hour ozone NAAQS. A complete discussion of the data and background that provides the basis for that proposed action can be found in the above-cited May 17, 2001, **Federal Register** action.

Kentucky on March 30, 2001, and Indiana on April 11, 2001, submitted requests to redesignate the Louisville area to attainment for the 1-hour ozone NAAQS. As further indicated in the May 17, 2001 **Federal Register**, the "determination of attainment" is not equivalent to redesignation of the area to attainment. Attainment of the ozone 1-hour ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E)

that must be satisfied for an area to be redesignated to attainment. Section 107(d)(3)(E) allows for redesignation providing among other things that the state containing such area has met all requirements applicable to the area under section 110 and Part D. EPA published on June 22, 2001, (66 FR 33505) proposed approval of the requests by Kentucky and Indiana for redesignation of the Louisville 1-hour ozone nonattainment area.

Subpart 1 of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of Part D establishes additional requirements for ozone nonattainment areas classified under Table 1 of section 181(a). Since the Louisville area was classified as moderate ozone nonattainment, in order to be redesignated, the Louisville area is required to meet the applicable CAA requirements of subpart 2 of Part D including RACT requirements for three classes of VOC sources (section 182(b)(2)). The categories are: (A) all sources covered by a CTG document issued between November 15, 1990, and the date of attainment; (B) all sources covered by a CTG issued prior to November 15, 1990; and (C) all other major non-CTG stationary sources. The non-CTG rules were due by November 15, 1992, and apply to the Louisville area.

The EPA, in this action, is proposing to approve a source-specific non-CTG VOC RACT determination for Publisher's Printing, Inc., submitted by Kentucky on April 16, 2001. Final approval of this action for Publisher's Printing, Inc., is a requisite (182(b)(2)(C)) for redesignation of the Kentucky portion of the Louisville 1-hour ozone nonattainment area.

Kentucky submitted a negative declaration on December 14, 1999, for the CTG categories of aerospace, SOCMI, shipbuilding, and wood furniture which would apply to the nonattainment portions of Oldham and Bullitt Counties. The APCDJC submitted a negative declaration for Jefferson County for the same four CTG categories on February 26, 2001. The APCDJC withdrew the negative declaration for the SOCMI category on May 1, 2001. EPA is proposing to approve the negative declaration from Kentucky (CTG categories of aerospace, SOCMI, shipbuilding, and wood furniture), and the negative declaration from the APCDJC (CTG categories of aerospace, shipbuilding, and wood furniture). These negative declarations fulfill the CAA requirements under 182(b)(2)(A) in the Kentucky portion of the Louisville 1-hour ozone nonattainment area.

APCDJC adopted Regulation 6.49 for control of VOCs from SOCMI sources and Kentucky submitted APCDJC's Regulation 6.49 for parallel processing on May 10, 2001. Final approval of this action for Regulation 6.49 is a CAA requirement relative to the Kentucky portion of the Louisville 1-hour ozone nonattainment area and is a requisite to redesignation of the Louisville area (182(b)(2)(A)).

III. EPA Evaluation and Proposed Action

In today's action, the EPA is proposing to take action on SIP revisions submitted by Kentucky to address outstanding VOC RACT requirements of subpart 2 of part D, in particular section 182(b)(2), of the CAA. The SIP revisions EPA is proposing to approve will establish VOC RACT requirements for sources subject to the SOCMI CTG for Jefferson County (Regulation 6.49), and source specific VOC RACT requirements for Publisher's Printing, Inc., in Bullitt County. These SIP revisions were submitted by Kentucky to meet the requirements of section 182(b)(2) of the CAA relating to VOC RACT for sources in ozone nonattainment areas. EPA must take final action on these required SIP revisions before action on the redesignation for the Louisville 1-hour ozone area can be finalized.

One of the revisions being proposed for approval into the Kentucky SIP is APCDJC's Regulation 6.49 which specifies VOC RACT requirements for sources subject to the SOCMI CTG. The APCDJC has indicated that there is one company (E. I. Dupont De Nemours & Co.) with two process streams which will be covered by Regulation 6.49. Since the process streams at the subject company are below the applicability limit which requires controls, the company will be required to keep records of the VOC concentrations for the two process streams to show that the VOC concentrations stay below the applicability limit. The company must retain these records for five years and make them available for inspection. This rule was submitted by Kentucky to EPA on April 16, 2001. Kentucky submitted a request for parallel processing of Regulation 6.49 on May 4, 2001. Following review of Regulation 6.49, EPA concluded that it follows the model rule in the CTG and can be approved into the Jefferson County portion of the Kentucky SIP.

The other SIP revision being proposed for approval in this action concerns source-specific VOC RACT requirements for a lithographic printing operation, Publisher's Printing, Inc., in Bullitt County, Kentucky. Publisher's Printing is an offset lithographic paper printing plant which prints magazines on ten offset lithographic presses, each equipped with a natural gas fired dryer. The present control system is to be replaced with a thermal oxidizer which is required to be in operation and having demonstrated compliance by June 1, 2002, in accordance with the draft compliance schedule. VOC RACT specified by Kentucky consists of: (1) a requirement for 90 percent VOC destruction efficiency for the regenerative thermal oxidizer controlling each press's dryer exhaust; (2) a requirement that the fountain solution as applied, should contain no alcohol and contain less than three percent by weight of alcohol substitutes; and (3) a requirement that the blanket wash have a vapor pressure of less than ten millimeters mercury at 20 degrees Celsius. These requirements follow the requirements in EPA's September 1993 draft, "Guideline Series—Control of Volatile Organic Compound Emissions from Offset Lithographic Printing" and EPA's June 1994, "Alternative Control Techniques Document: Offset Lithographic Printing" and are approvable as meeting section 182(b)(2)(C) requirements for Publisher's Printing, Inc. Kentucky is including these VOC RACT requirements along with applicable monitoring and reporting requirements as conditions in the source's title V permit, and intends to submit the permit as a source-specific SIP revision. The facility has provided documentation indicating that they are now complying with requirements (2) and (3) above.

EPA is proposing approval of Regulation 6.49 and the source specific VOC RACT requirements for Publisher's Printing, Inc., as part of the Kentucky SIP under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with Kentucky's procedures for amending its SIP. See 40 CFR part 51, appendix V. If the proposed revisions are substantially changed in areas other than those identified in the proposed rulemaking, EPA will evaluate those changes and may publish another proposed rule. If no substantial changes are made other than those areas cited in the proposal, EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the Regulation 6.49 and revisions related to Publisher's Printing, Inc., are submitted formally to EPA for incorporation into the SIP. EPA has reviewed Regulation 6.49 and the source-specific

requirements for Publisher's Printing, Inc., for completeness and found that both conform to the completeness criteria in 40 CFR part 51, appendix V (criteria for plans submitted explicitly for parallel processing). EPA issued a letter regarding completeness to Kentucky on June 18, 2001.

With the negative declaration, Kentucky is asserting that an evaluation has found that there are no sources within the Bullitt and Oldham Counties' portion of the Louisville 1-hour ozone nonattainment area that would be subject to a CTG rule for aerospace, SOCMI, shipbuilding, or wood furniture. Through its negative declaration, the APCDJC is asserting that an evaluation has found that there are no sources within the Jefferson County portion of the Louisville 1-hour ozone nonattainment area that would be subject to a CTG rule for aerospace, shipbuilding, or wood furniture. Therefore, EPA is proposing to approve the negative declaration from Kentucky for the CTG categories of aerospace, SOCMI, shipbuilding, and wood furniture, and the negative declaration from the APCDJC for the CTG categories of aerospace, shipbuilding, and wood furniture as meeting the section 184(b) VOC RACT requirement for these source categories in the Kentucky portion of the Louisville 1-hour ozone nonattainment area.

The EPA has reviewed Kentucky's requested revisions of the federally-approved SIP for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to the relevant statutory and regulatory requirements.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), the EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for the EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 12, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–18319 Filed 7–20–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–133–1–7499; FRL–7016–9]

Approval and Promulgation of Implementation Plans; Texas; Emissions Banking and Trading Revisions for the Mass Emissions Cap and Trade Program for the Houston/Galveston Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Through parallel processing, the EPA is proposing to approve a revision to the Texas State Implementation Plan (SIP). We are proposing approval of the NO_x Mass Cap and Trade program for the Houston/Galveston (HGA), one-hour ozone nonattainment area. If the State makes significant changes between the versions being parallel reviewed and the final adopted versions, other than those changes resulting from issues discussed in this proposed rulemaking, EPA will issue an additional proposed rulemaking prior to taking final action. If there are no significant changes (other than changes resulting from issues discussed in this proposed rulemaking) to the parallel-processed versions and Texas submits the final versions by October 1, 2001, the EPA will proceed with final rulemaking. The MECT program will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the HGA ozone nonattainment area.

DATES: Written comments must be received on or before August 22, 2001.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs,

Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action including the Technical Support Document (TSD) are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Merrit Nicewander, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214)665–7519.

SUPPLEMENTARY INFORMATION:

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Throughout this document "we," "us," and "our" means EPA.

I. Mass Emissions Cap and Trade Program

A. Proposed Action

What Action Are We Taking?

The EPA is proposing to approve the NO_X Mass Cap and Trade program for the Houston/Galveston one-hour ozone nonattainment area. The HGA ozone nonattainment area is required to attain the one-hour ozone standard of 0.12 parts per million (ppm) by November 15, 2007.

The rule adopted and submitted as this SIP revision by letter of the Governor dated December 22, 2000 is one element of the control strategy for the HGA nonattainment area to comply with the requirements of the Clean Air Act (CAA) and achieve attainment for ozone. The HGA ozone nonattainment area will need to reduce nitrogen oxides (NO_X) to reach attainment with the one-hour standard. The MECT emissions banking rule was evaluated as an integral component of the HGA control strategy to reduce NO_X emissions.

B. MECT EIP Contents

What Is the TNRCC MECT Program That Has Been Submitted for Approval as Part of the Texas SIP?

The proposed SIP revision submitted by the TNRCC is the Mass Emission Cap & Trade Program (30 Texas Administrative Code (TAC) Chapter 101, Subchapter H, Division 3). The MECT regulation is found at sections 101.350 through 101.363. The MECT program is mandatory for stationary facilities that emit NO_X in the HGA ozone nonattainment area (at sites that have a collective design capacity of 10 tons per year or more) and which are subject to the TNRCC NO_X rules as found at 30 TAC Chapter 117. NO_X is a precursor gas that reacts with volatile organic compounds (VOCs) in the presence of sunlight to form ground-level ozone. The program sets a cap on NO_X emissions beginning on January 1, 2002 with a final reduction to the cap occurring in 2007.

Facilities are required to meet NO_X allowances on an annual basis. Facilities may purchase, bank or sell their allowances. The program has a provision to allow a facility to use discrete emission reduction credits (DERCs) and mobile discrete emission reduction credits (MDERCs) in lieu of allowances if they are generated in the HGA area. Although EPA is today proposing to approve the MECT rules, EPA notes that the MECT rules were submitted along with rules authorizing the generation and use of DERCs and MDERCs. These rules are found in 30 TAC Chapter 101, Subchapter H, Division 4. The MECT rules authorize use of DERCs and MDERCs generated pursuant to the rules in Division 4 to meet the cap. EPA is not today proposing action on the rules in Division 4, but intends to act on them in a separate rulemaking at a later date. This schedule of action on the submitted Emissions Banking and Trading rules has been discussed with and is acceptable to the State.

The MECT EIP is mandatory for facilities in that if they meet the above conditions they must participate in the cap. However, the MECT program is a discretionary EIP since it is not a requirement of the Clean Air Act that it be adopted by the State.

TNRCC proposed revisions to the MECT rule on May 30, 2001. The EPA is proposing through parallel processing to approve the State's proposed revisions to the MECT rule submitted by the Governor on June 15, 2001. The proposed rule revision contains the inclusion of emission quantification protocols, the inclusion of an annual compliance summary report to EPA and the public, and a revised schedule of emission reduction factors. The proposed changes strengthen certain elements of the MECT SIP submittal.

What Is Parallel Processing?

Parallel processing means that EPA proposes action on a state rule before it becomes final under state law. Under parallel processing, EPA takes final action on its proposal if the final, adopted state submission is substantially unchanged from the submission on which the proposed rulemaking was based, or if significant changes in the final submission are anticipated and adequately described in EPA's proposed rulemaking or result from needed corrections determined by the State to be necessary through review of issues described in EPA's proposed rulemaking.

We cannot finalize action on the MECT EIP program unless and until the Governor submits the finally adopted regulation. The State has begun its rulemaking process and submission of the final rule is anticipated in September 2001. Significant changes between the versions being parallel reviewed and the final adopted versions, other than those changes resulting from issues discussed in this proposed rulemaking, will result in a new EPA proposed rulemaking. If there are no significant changes to the parallel-processed versions and they are submitted by October 1, 2001, the EPA will proceed with final rulemaking.

Has the MECT Rule Been Revised by TNRCC Since It Was Submitted To EPA as a SIP Revision?

Yes, the MECT rule was revised by TNRCC after it had been submitted to EPA as part of the Texas SIP on December 22, 2000. Rule Log # 2001–015–101–AI which clarified the applicability requirements of the rule at § 101.351 was adopted on May 23, 2001. This rule revision was effective on June 13, 2001. A SIP revision incorporating this clarification was submitted by the Governor on July 2, 2001. The TNRCC clarified section 101.351 to specify that the requirement to operate under the cap and trade program applied to all NO_X emitting facilities in the HGA area with emission standards under Chapter 117, Control of Air Pollution from Nitrogen Compounds, and which are located at a site where their collective design capacity to emit NO_X is ten tons or more per year. We are also proposing to approve this minor revision in this action.

What Areas of Texas Will Be Affected by the MECT Program?

The HGA ozone nonattainment area contains Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties in Texas.

What Is an Economic Incentive Program?

An economic incentive program is a regulatory program that achieves an air quality objective by providing market-based incentives or information to emission sources. A uniform emission reduction requirement, based for instance on installation of a required emission control technology, does not take account of variations in processes, operations, and control costs across sources even of the same type, such as electric utilities, or petroleum refiners. By providing flexibility in how sources meet an emission reduction target, an EIP empowers sources to find the means that are most suitable and most cost-effective for their particular circumstances.

What Is a CAP?

A cap is the total emission limitation for all participating sources in the EIP. The NO_X cap will be established at levels demonstrated as necessary and feasible to allow HGA to attain the NAAQS for ozone. The cap will consist of the summation of individual allowances allocated to each facility in the MECT EIP. The cap will be enforced by the allocation, trading, and banking of allowances. Each facility will be required to hold allowances in its compliance account on March 1 of each year equal to or greater than the total emissions of NO_X emitted during the previous control period.

What Sources Are Subject to the MECT Program?

The MECT program is mandatory for stationary facilities that emit NO_X in the HGA ozone nonattainment area and which are subject to the emission specifications under sections 117.106, 117.206 and 117.475 and which are located at a site where they collectively have a design capacity to emit of 10 tons per year or more of NO_X. If an individual stack is not subject to or is exempt from the requirements of 30 TAC Chapter 117, that stack is not subject to the MECT program regardless of its design NO_X capacity. Other stacks at the same facility may be subject to the MECT program ii they are subject to Chapter 117.

It should be noted that section 117.203(a)(1)historically provided exemptions for any new units that were placed in service after November 15, 1992, since these sources would have been subject to Best Available Control Technology (BACT) and /or Lowest Achievable Emission Reduction (LAER) new source review (NSR) requirements. These NSR requirements are typically more restrictive than the section 117 requirements. However, new section 117.203(b) revokes the exemption and the sources are subject to the MECT program. EPA approved 117.203(b) on September 1, 2000.

What Is the Definition of the Term, Facility?

The MECT regulation states that it applies to stationary facilities. The term, facility, however, is not defined in the rule. Facility is defined in at least two different places in the permitting regulations: TNRCC defines facility at 30 TAC 116.10(4) as "a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility." TNRCC further defines "building, structure, facility, or installation" at 30 TAC 116.12(4) as "All of the pollutant-emitting activities which belong to the same industrial grouping, are located in one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement." The technical review and proposed approval of the MECT rule is based upon the definition of the term, facility, as defined in 30 TAC 116.10(4). Facility within the context of the MECT rule is interpreted by the State and EPA to mean equipment that is vented to a stack.

What Is an Allowance?

Allowance means the authorization to emit one ton of NO_X per year. One compliance account shall be used for multiple sources located at the same site and under common ownership or control. The commission will maintain a registry of the allowances in each compliance account.

What Is a Control Period?

A control period or a compliance period is the 12-month period beginning January 1 and ending December 31 of each year. The initial control period will begin January 1, 2002.

When Will the cap Be Implemented?

The cap will be implemented on January 1, 2002 at historical emission levels, with three mandatory reductions increasing over time until achieving the final cap by January 1, 2007. These sections also require all new or modified sources in HGA to obtain unused allowances from other sources already participating under the cap to offset any increased NO_X emissions.

How Will the cap Be Determined?

The MECT rules at section 101.353 describe how allowances will be allocated to individual facilities. Initially, for any facility operating prior to January 1, 1997, allowances will be based on the average of its actual level of activity from 1997, 1998, and 1999 multiplied by the facility's actual emission factors from 1997, 1998, and 1999 (not to exceed any applicable federal or state regulation, rule, or permit limit).

How Will the cap Be Adjusted to the Level Relied Upon in the Attainment Demonstration?

All facilities in the MECT EIP program will have periodic reductions in allowances until 100% of the reductions is achieved in 2007. There are two categories of sources for which the reduction schedule has been developed. The first category is boilers, auxiliary steam boilers, and stationary gas turbines within an electric power generating system. The second category is all other sources. Beginning April 1, 2007 and for all subsequent control periods, allowances will be reduced by 100% of the required reductions.

TNRCC proposed revisions to the MECT rule on May 30, 2001 which is being parallel processed by this document. The proposed rule revision contains a potential revised schedule of emission reduction factors depending upon the results of a TNRCC study that is to be completed by 2002 and requires EPA approval. The EPA is proposing approval of the revisions to the MECT rule submitted to us on June 15, 2001 which we are parallel processing but not that portion of the proposed rule containing a potential modification to the reduction schedule. Specifically, we are not taking action on section 101.353(a)(3)(B) and (D) in this document.

Are There Allowances for New Sources in the cap?

No, any new or modified facility will not be allocated any allowances if that

facility has submitted a NSR permit application which has determined to be administratively complete on or after January 2, 2001.

How Will New Sources Participate in the MECT cap?

The new or modified facilities will be required to obtain allowances from other facilities already participating in the cap and trade program or by obtaining DERCs or MDERCs.

Can Allowances Be Used in Other Programs?

Allowances are valid only for MECT program purposes. An allowance does not constitute a security or a property right. Allowances cannot be used to exceed any NSR permit limitation or any other applicable rule or law. Allowances can be used for the 1:1 portion of NSR offsetting under section 101.352(e). Allowances can not be used for netting under the NSR program.

What Happens to a Facility That Has Less NO_x Emissions Than Allowances for a Compliance Period?

Allowances may generally be banked for future use or traded during the control period for which they are allocated or the following control period.

What Happens to a Facility That Has More NO_x Emissions Than Allowances for a Compliance Period?

If a facility emits more NO_x than was held in the compliance account on March 1 following the control period, allowances for the next control period will be reduced by the amount equal to the emissions exceeding the compliance account plus an additional 10%. This does not preclude additional enforcement action by the TNRCC and/or EPA.

Can Unused Allowances Be Banked for Future Use?

Yes, allowances may generally be banked for future use or traded during the control period for which they are allocated or the following control period. Any allowance not used for compliance may be banked or traded for use in the following control period. Allowances that are not expired or used can be traded at any time after they have been allocated.

How Are Trades of Allowances Conducted?

Only authorized account representatives may trade allowances. Trade requests are to be made through the submittal of a completed ECT–2 Form, Application for Transfer of Allowances. The completed form, including the price paid per allowance, will be submitted to TNRCC 30 days prior to the allowances being deposited into the account. Trades will be completed through the TNRCC executive director and will be considered complete when the executive director issues a letter finalizing the trade.

Will the Program Be Audited?

Yes, an audit of the cap and trade program will be conducted by TNRCC every three years. The audit will evaluate the impact of the program on the state's attainment demonstration, the availability and cost of allowances, compliance by the participants, and other elements. The TNRCC Executive Director will recommend measures to remedy any problems identified in the audit. The trading of allowances, discrete emission reduction credits, and/or mobile discrete emission reduction credits may be discontinued as a remedy for problems identified in the program audit. The audit data and results will be completed and submitted to the EPA and made available for public inspection within six months after the audit begins.

How Will Emissions Be Monitored by the Facilities in Order To Determine Compliance With the cap?

The proposed revision to the MECT EIP rule which is being parallel processed contains a revision to section 101.354 Allowance Deductions. The revision requires allowance deductions to be based upon the emission quantification protocols established in 30 TAC Chapter 117. The EPA is proposing to approve the Chapter 117 monitoring methodology in this action as the emission quantification protocols for the MECT program.

How Will a Facility Report Compliance With the Cap?

Facilities are required by March 31 of each year to submit a completed ECT–1 Form to TNRCC with the amount of actual NO_x emissions for the preceding control period. Also included are the methods used in determining the emissions and a summary of all final trades.

C. EPA's Analysis

How Did EPA Review and Evaluate the TNRCC MECT EIP SIP Submittal?

The document, Improving Air Quality with Economic Incentive Programs, (EPA–452/R–01–001) January 2001 is the EPA guideline for reviewing and approving discretionary EIP submittals for SIP credit. It will be referred to as the EPA EIP Guidance throughout this notice. The guidance pertains to discretionary EIPs that will be measures in State implementation plans. The guidance applies to the establishment of a discretionary EIP for attaining the NAAQS for criteria pollutants. The EPA technical review of the MECT SIP submittal against the expectations of the EPA EIP Guidance is contained in the Technical Support Document for the TNRCC Mass Emissions Cap and Trade Program for the HGA Nonattainment Area dated April 2001. The technical support document is available as specified in the section of this document identified as **ADDRESSES**.

What Does the EPA Mean by Guidance?

The EPA stated that the EIP guidance applies to discretionary EIPs, but does not represent the EPA's final action regarding discretionary EIPs. Final action occurs when the EPA has approved or disapproved the discretionary EIP submitted as a SIP revision. Congress did not address specific requirements for EIPs in the CAA. Consistent with our mandate, the EPA has interpreted what an EIP should contain in order to meet the requirements of the CAA. The document is a guidance document that sets forth EPA's non-binding policy for EIPs. The document does not represent final EPA action on the requirements for EIPs. Rather, the document identifies several different types of economic incentive programs, and proposes elements for each type that, if met, EPA currently believes would assure that the program would meet the applicable CAA provisions.

The guidance phrases these elements in the imperative—that is, using the terms "must" or "shall." This is done only to signify that EPA would propose to approve a SIP submittal of a program containing the indicated elements on grounds that under section 110(l) of the CAA, the SIP revision does not interfere with any applicable requirement concerning attainment, reasonable further progress, or any other applicable requirement.

Was the EPA EIP Guidance a Final Agency Action?

Because it is a guidance document, the EPA EIP Guidance does not represent the EPA's final action for any discretionary EIP. Final action occurs when the EPA has approved or disapproved the discretionary EIP submitted as a SIP revision.

Once an EIP SIP revision is submitted, EPA will take action through notice-and-comment rule making to determine if the statutory requirements have been

met. Only action taken after the conclusion of that rulemaking would constitute final Agency action. The EPA would take steps to expedite its proposed approval in the case of SIP revisions containing programs that contain the elements of the EPA EIP guidance.

If a program that does not contain the elements of the EPA EIP guidance for that type of program is submitted, EPA would still seek to determine whether the applicable CAA requirements were met, and, if so, EPA would approve the submission. The EPA would make the determination through notice-and-comment rulemaking.

What Criteria Did EPA Use To Analyze the MECT SIP Submittal?

There are three fundamental principles that apply to all EIPs; integrity, equity and environmental benefit. The MECT was evaluated against the Clean Air Act requirements for all three of these principles. The EPA EIP guidance contained elements for trading EIPs as well as provisions specific to mass cap and trade EIPs. Each of these principles, elements and provisions are addressed in this notice.

Fundamental EIP Principle One—Integrity

There are four elements that make up the EIP principle of integrity. The fundamental principle of integrity consists of the qualities of surplus, enforceable, quantifiable and permanent.

Integrity Element One—Surplus

The element of surplus as it applies to MECT EIPs provides that programmatic emission reductions are surplus as long as they are not otherwise relied on in any of the following air quality-related programs such as the SIP, SIP-related requirements such as transportation conformity, other adopted TNRCC air quality programs not in the SIP, and federal rules that focus on reducing precursors of criteria pollutants such as new source performance standards (NSPS), rules for reducing VOCs promulgated under section 183 of the CAA, and statutorily mandated mobile source requirements.

In multi-source emission cap-and-trade EIPs, the programmatic fundamental element of surplus, as used with reference to the EIP as a whole, has a special meaning. A program that conforms to the EIP Guidance will show that the cap on all emissions is below the threshold that would have been set before the program was implemented for the affected sources. It should be noted that the fundamental element of surplus does not apply to sources participating in multi-source emission cap-and-trade EIPs, only to the programmatic emission reductions.

EPA concluded that the TNRCC MECT SIP submittal at section 101.353(a)(3) demonstrated declining reductions of NO_X emissions over time in order to reach attainment. The cap is at least 80% lower than the emission level that existed prior to the implementation of the MECT EIP. In addition the MECT EIP will ensure lower NO_X emissions than implementation of 30 TAC Chapter 117 emission standards for the HGA attainment demonstration will ensure, since the MECT program limits mass emissions based on historical activity levels, and reduces the mass cap over time based on emission rate specifications in section 117. The Chapter 117 Emission Specifications for Attainment Demonstrations (ESAD) limitations are rate based and do not limit mass emissions. Thus, the programmatic surplus provision for the MECT EIP that the cap on all emissions be below the threshold that would have otherwise been set for the affected sources has been met. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for the integrity element of surplus.

Integrity Element Two—Enforceable

Emission reduction use, generation, and other actions are enforceable on a programmatic basis, if they are independently verifiable, define program violations and identify those liable for violations. The EPA EIP expectation for enforceable also is that the state and the EPA maintain the ability to apply penalties and secure appropriate corrective actions where applicable. Citizens should also have access to all the emissions-related information obtained from the source so that citizens can file suits against sources for violations. Required actions are enforceable on a programmatic basis if they are practicably enforceable in accordance with other EPA guidance on practicable enforceability.

In multi-source emission cap-and-trade EIPs, the source-specific fundamental elements of enforceable, and quantifiable, as used with reference to the actions of the individual sources participating in the EIP, have special meanings. Source-specific actions are enforceable if each source owner/operator is responsible for owning enough allowances to cover its emissions for the given time period and for providing clear title to the allowances it transfers.

On a source specific basis as spelled out in § 4.1(b), actions, emission reductions or emission limits as required by the MECT EIP are enforceable if the source is liable for any violations, the liable party is identifiable and the state, the public, and the EPA can independently verify a source's compliance. The expectation for enforcement elements common to all trading EIPs is that certain enforcement elements will be incorporated into all trading EIP rules submitted as a SIP revision. These include provisions for assessing liability, provisions to assess penalties against participating sources, and provisions for sources with title V permits.

1. Enforceable Element—Liability Assessment

The expectation for provisions for assessing liability common to all trading EIPs is discussed at section 6.1(a) of the EPA EIP guidance document. A program that conforms to the EIP Guidance will include provisions for assessing liability. Unlike traditional CAA regulatory mechanisms, emission trading involves more than one party. These parties can include those who own or operate the sources participating in the trade and sometimes another party who facilitated the trade (such as a broker).

To ensure there is integrity in the trading system, parties are also normally responsible for ensuring the validity of the trades or their use of emission reductions. At a minimum, each party is responsible for the truth, accuracy, and recording of all the information it provides to make the trade happen. The TNRCC MECT EIP rule should contain provisions to make users responsible for ensuring the validity of their use of emission reductions.

Traded emissions reductions are valid if they are true and accurate, generally meet all requirements of the MECT EIP rule, are properly measured in keeping with quantification protocols, satisfy monitoring, recordkeeping and reporting (MRR) provisions, and adhere to all other provisions for trading, such as no double counting. Sources using traded emission reductions are the main parties which will be held liable for any violations of applicable emission limitations. However, to discourage any possible collusion between sources, generators, and third parties, EPA may also hold other parties liable as explained in the EIP Guidance.

The revision to the MECT rule which is being parallel processed by this notice submitted the emission quantification protocols in 30 TAC Chapter 117. EPA is reviewing the submitted protocols in

accordance with the principles discussed herein, and CAA requirements. The revised section 101.354 speaks to the Executive Director approving other methods instead of the protocols in Chapter 117. Any use of a method other than the Chapter 117 protocols must be submitted to, and approved by, EPA.

The EIP states that in any enforcement action, the parties bear the burden of proof on each of their respective responsibilities. The MECT EIP submittal did not specifically address the assessment of liability for generators, third parties and users. EPA concluded that the MECT EIP rule itself did not contain the EPA EIP guidance specific expectation for liability assessment.

However, the TNRCC enforcement statute & rule are not typically in individual rules but have their own codification elsewhere. The Texas Water Code Chapter 7 contains the statutory provisions for enforcement of the MECT EIP regulation. The TNRCC enforcement rule is found at 30 TAC section 70.5. It provides remedies found in the state statutes (Texas Water Code and the Texas Health and Safety Code). It includes referrals to the EPA for civil, judicial or administrative action. Nothing in chapter 70 shall preclude the TNRCC executive director from seeking any remedy in law or equity not specifically mentioned in the rules. The Office of the Attorney General of the State of Texas cited State laws and regulations that regulate, at a minimum, the same sources as the Clean Air Act and do so with standards that are no less stringent than those specified by the CAA. The cited laws and regulations are: Texas Health and Safety Code Ann. sections 382.016 (Monitoring Requirements, Examination of Records), 382.021 (Sampling Methods and Procedures), 382.0514 (Sampling, Monitoring and Certification); 30 TAC sections 122.132 (Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits), 122.134 (Complete Application), 122.136 (Application Deficiencies), 122.142 (Permit Content Requirements), 122.143 (General Terms and Conditions), 122.144 (Recordkeeping Terms and Conditions), 122.145 (Reporting Terms and Conditions), 122.146 (Compliance Certification Terms and Conditions), 122.165 (Certification by Responsible Official; 30 TAC sections 101.8 (Sampling), 101.9 (Sampling Ports).

The MECT rules do not establish the number of days of violation when the cap is exceeded. Although not specifically included in the MECT EIP submittal, if the State can demonstrate to EPA's satisfaction that it has adequate authority regarding this issue, the enforcement expectations of the EPA EIP are met.

Other TNRCC programs requiring enforcement provisions consistent with the Clean Air Act have not been found deficient by EPA. The 40 CFR part 70, Title V operating permits program and the 40 CFR part 63, National Emission Standards for Hazardous Air Pollutants (NESHAPs) are two such programs. The Office of the Attorney General of the State of Texas has provided written opinions for these programs. The opinions state that TNRCC has the necessary legal authority to implement and enforce the programs. TNRCC has the authority to have reasonable requirements for measuring and monitoring air emissions and to require owners and operators of sources to make and maintain records of the emissions. The Attorney General has determined that TNRCC is allowed to prescribe sampling methods and procedures to be used to determine violations of and compliance with the TNRCC rules and orders. EPA concluded that the TNRCC MECT EIP SIP submittal will meet the Clean Air Act requirements and EPA EIP guidance expectations for liability assessment in the integrity element of enforceable if the State demonstrates to EPA's satisfaction adequate authority regarding the number of days of violation, and the rules are amended to provide that any use of monitoring protocols other than those specified in Chapter 117 will be approved by EPA.

2. Enforceable Element—Penalties and Corrective Action

The expectation for provisions for penalties and corrective actions common to all trading EIPs is that the monetary and non-monetary penalty provisions in the MECT emission trading EIP will include mechanisms that enable TNRCC to assess monetary penalties and impose corrective actions against the sources participating in the EIP. These mechanisms include making up any emission shortfall, paying a monetary penalty based on statutory penalties for source noncompliance, and surrender an additional punitive amount of emission reductions. They also include implementing corrective actions to ensure the violation will not occur in the future and to compensate for the environmental damage caused by an emissions violation. These corrective actions may consist of such items as better monitors, more effective emissions controls, more frequent monitoring and reporting and better monitoring procedures. The EIP Guidance expectation for penalty policy is described in section 5.1(c) and section 6.1(b).

The EIP Guidance expectation for penalty provisions includes provisions for imposing penalties when a source is in violation of MECT allowances, and record keeping. A program that conforms with the EIP Guidance will define a violation, establish the procedure for determining the magnitude of a violation, set potential penalties, and maintain the ability to impose a maximum monetary penalty of at least $10,000 per day per violation. Title V of the CAA currently requires States to have a maximum penalty authority of at least $10,000 per day per violation. The Federal CAA maximum is $27,500 per day per violation.

The MECT EIP SIP submittal at section 101.353(c) requires that if actual emissions of NO_x during a control period exceed the amount of allowances held in a compliance account on February 1 following the control period, allowances for the next control period will be reduced by an amount equal to the emissions exceeding the allowances in the compliance account plus an additional 10%. This does not preclude additional enforcement action by the TNRCC executive director.

The MECT EIP submittal was silent with respect to the authority for monetary penalty provisions up to the CAA statutory maximum on a per day and per unit basis. The Office of the Attorney General of the State of Texas has provided written opinions for the Title V operating permits program and the NESHAP program. The opinions of the Texas Attorney General indicate that TNRCC has the necessary legal authority to implement and enforce the programs in accordance with the requirements of the Clean Air Act. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for penalties and corrective action in the integrity element of enforceable.

3. Enforceable Element—Monitoring, Recordkeeping and Reporting

The expectation for monitoring, recordkeeping and reporting procedures is to ensure source compliance and State and Federal enforceability. Monitoring ensures the operator of the source that compliance is being achieved at all times. It also ensures an inspector that compliance has been achieved at times when the inspector is not on site to observe behavior. Retention of monitoring records ensures that the records are available for review by inspectors or source supervisors who are determining compliance.

Periodic and annual reports are also essential to summarize the compliance picture for State planning purposes, for review by the EPA and the public, as well as by source managers who wish to oversee the progress of their participation in the EIP. The EIP guidance provides the following as examples of MRR procedures: Continuous or periodic monitoring of emissions, production, activity levels, or emission control equipment operation; measurement devices to verify emission rates and operating conditions; measurement of mass emissions or emission rates using the EPA-approved reference test methods; operating and maintenance procedures or other work practices and record keeping of material usage, inventories, or throughput.

The MECT EIP SIP submittal at section 101.358 requires sources conducting compliance monitoring to use emission quantification methods. A condition for all sources in the MECT program is that they be subject to 30 TAC Chapter 117. For each source category in Chapter 117, there is a corresponding section covering the requirements for the initial demonstration of compliance, the continuous demonstration of compliance, as well as the requirements for notification, recordkeeping and reporting requirements. The following table cross references these requirements by source category.

TNRCC has submitted a revision to the MECT rule which is being parallel processed with this notice that is the submission of emission quantification protocols. The protocols in 30 TAC Chapter 117 specify initial and continuous monitoring methodologies. These requirements in Chapter 117 have met the public notice provisions for protocols. EPA concluded that the TNRCC MECT EIP SIP submittal will meet the Clean Air Act requirements and EPA EIP guidance expectations for emission quantification protocols, monitoring, recordkeeping and reporting in the integrity element of enforceable, if, as was discussed above, any use of protocols other than those specified in Chapter 117 will be approved by EPA.

Cross Reference of MECT Source Category by Compliance, Notification, Recordkeeping, and Reporting Requirements

30 TAC Chapter 117 Source Categories	Initial Demonstration of Compliance	Continuous Demonstration of Compliance	Notification, Recordkeeping and Reporting Requirements
Utility Boilers, Auxiliary Steam Boilers & Stationary Gas Turbines	§ 117.111	§ 117.113	§ 117.119
Industrial, Commercial and Institutional Boilers, Process Heaters, Stationary Gas Turbines, I.C. Engines, FCCs, BIFs, Duct Burners, Recovery Furnaces, Lime Kilns, Lightweight Aggregate Kilns, Heat Transfer Furnaces, Magnesium Chloride Fluidized Bed Dryers & Incinerators.	§ 117.209	§ 117.213	§ 117.219
Acid Manufacturing—Adipic Acid Manufacturing	§ 117.311	§ 117.113	§ 117.319
Acid Manufacturing—Nitric Acid Manufacturing	§ 117.411	§ 117.413	§ 117.419
Small Combustion Sources—Water Heaters, Small Boilers and Process Heaters.	Emission Specifications § 117.465.	Certification Requirements § 117.467.	117.469
Small Combustion Sources—Boilers, Process Heaters, and stationary Engines at Minor Sources.	Emission Specifications § 117.475.	Operating Requirements § 117.478.	§ 117.479

4. Enforceable Element—Evaluation

The EIP evaluation procedure is the process of retrospectively assessing the performance of the EIP. The primary purpose of program evaluation is to determine the overall effects of the MECT EIP on emissions and measure other aspects of program performance, such as increased flexibility or reduced costs.

The EIP performance procedures may include tracking and evaluating program performance measures that were raised by the stakeholders during the rule development process. The EIP Guidance includes program evaluation procedures. A program that conforms to the EIP Guidance will include procedures that make the public aware that the program is being evaluated, and give the public ample opportunity to help evaluate the program. The EIP Guidance specifies that a program evaluation will be conducted at least every 3 years. The schedule coincides with other periodic reporting provisions such as those applicable to emission inventory revisions required by the CAA. The EIP Guidance expectation is that the state will submit the results of the EIP program evaluation to EPA.

The evaluation program should include inspections to allow assessment of the implementation of the program and to confirm assumptions. Annual evaluation of the program is appropriate for at least 2 years, until the projected emissions have been adequately confirmed.

The MECT EIP SIP submittal at § 101.363 requires program audits every three years. The audit will evaluate the impact of the program on the state's attainment demonstration, the availability and cost of allowances, compliance by the participants, and any other elements the TNRCC executive director may choose to include. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for evaluation in the integrity element of enforceable.

5. Enforceable Element—Reconciliation

The expectation for EIP evaluation procedures is a commitment to develop and implement reconciliation procedures if the EIP evaluation determines that source emissions exceed the allowances for a control period. The primary purpose of conducting a program reconciliation is to correct any differences between allowances versus actual emissions. This allows for the opportunity to make mid-course corrections to the program.

A program that conforms to the EIP Guidance will include an enforceable commitment that if the program evaluation shows a problem with the EIP such as emissions exceeding allowances, the problem will be corrected as expeditiously as possible. The commitment to correct the problem should be based on what may be achieved using reasonable, sustained efforts within the context of the TNRCC's rule making process. Corrections should include any revisions to the program to ensure that subsequent problems do not occur. The EIP Guidance specifies that any problem will be corrected as soon as practicable,

but no later than the next triennial program evaluation.

The MECT EIP SIP submittal at section 101.363 requires program audits every three years. The audit will evaluate the impact of the program on the state's attainment demonstration, the availability and cost of allowances, compliance by the participants, and any other elements the TNRCC executive director may choose to include. The revised attainment demonstration submittal which is being parallel processed includes a TNRCC study to be completed in 2002 which will evaluate and potentially adjust Chapter 117 emission limitations. In addition, the 2004 mid-course correction by TNRCC will evaluate control measures and enforceable commitments necessary to reach attainment in 2007. There will be an opportunity at both of these occasions to adjust allowances to reach attainment if the audit results indicate that all issued allocations are higher than assumed in the attainment demonstration. The proposed revisions to the MECT rule have a different percent reduction if section 117.106(c)(5) and section 117.206(c)(18) apply. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for reconciliation procedures in the integrity element of enforceable.

6. Enforceable Element—Public Disclosure

The public disclosure provisions of an EIP were developed pursuant to the CAA (section 114(c)) and implementing regulations (40 CFR 2.301) which specify procedures and criteria for determining what information is available to the public and what information may be withheld from the public as confidential business information. These procedures and criteria apply to information in EIPs, just as they apply to information in other CAA programs.

Congress has recognized that regulatory failures can and do occur. To provide another avenue of protection, Congress ensured that the public has the right to access information and file suit in a Federal court. Because citizens have the right to bring legal actions under the CAA, a program that conforms to the EIP Guidance will ensure that the public has access to emission information. The public needs to be able to see the data in order to adequately judge the effectiveness of the EIP and exercise the right to file suit.

A program that conforms to the EIP Guidance will ensure that—

- Information will be disclosed in a manner that is transparent, allowing the public to easily and accurately calculate the emissions of each participating source,
- Facilities participating in the EIP will disclose violations to the state in an annual certification of compliance or non-compliance,
- Sources that violate permits will notify the affected community of the violation and of potential health and environmental impacts,
- The state will compile these disclosures into an annual comprehensive report on emissions and violations,
- The state will submit the report to EPA and make it available to the public, and
- The state will obtain from the participating sources and disclose to the public all information necessary to calculate every source's or source category's emissions.

The MECT EIP SIP submittal stipulates at section 101.352(i) that TNRCC will maintain a registry of allowances in each compliance account. Section 101.359 requires facilities with a compliance account to submit an ECT–1 form annually for each control period to TNRCC with account emissions and transfers. TNRCC rules at 30 TAC section 1.5 require public disclosure of information held by the agency, presumably including the annual report. There are, however, exemptions for information relating to trade secrets and "economics of operation." If these provisions are interpreted to cover activity levels, it could impede the public from obtaining information necessary to determine emissions from some units. Activity levels are necessary to determine mass emissions from sources without monitoring devices such as continuous emission monitoring systems (CEMS). This issue regarding confidentiality of records has been transmitted to TNRCC as a comment on the proposed MECT rule revisions which are being parallel processed.

The proposed revision to the MECT rule that is being parallel processed contains a new section 101.363, Program Audits and Reports. The rule at section 101.363(b) requires TNRCC to annually develop and make available to EPA and the public a report that includes the number of allowances allocated to each compliance account, the number of actual NO_x allowances subtracted from each compliance account based on the actual NO_x emissions from the site and a summary of all trades completed. If the State demonstrates to EPA's satisfaction that the confidentiality provisions will not prevent public disclosure of activity level data necessary to determine emissions under the cap program, the TNRCC MECT EIP SIP submittal will meet the Clean Air Act requirements and EPA EIP guidance expectations for public disclosure procedures in the integrity element of enforceable.

7. Enforceable Element—Sources With Title V Permits

The EPA EIP expectation for sources with Title V permits is that the facility's operating permit will be modified to include the detailed compliance provisions necessary to assure compliance with the EIP. Thus, the permit becomes a valuable tool to ensure the source meets the requirements of the CAA. Also, Title V program requirements, such as permit modification requirements, may not be subsumed, overridden, or otherwise affected by requirements of a discretionary EIP approved into a SIP.

Once the Title V permit includes terms and conditions necessary to implement the EIP, the source may typically make individual trades under the EIP without the need for future formal permit revisions. This is true because most trading activity under such a permit would already be addressed and allowed by the specific terms and conditions of the permit and such trading would not normally conflict with the permit. This is the principle expressed by 40 CFR 70.6(a)(8), which states that permit revisions are not required for trading program changes that are "provided for" in the permit.

Concerning permit content, the MECT EIP program would—in order to conform to the EIP Guidance—provide that sources subject to title V place a copy of any notices specified by the EIP in the operating permit file, and make these notices available to the public. These notices should be designed to provide meaningful information in the permitting context, and should help the public to determine the lawful emissions credits generated by or available to the source at any given time.

This expectation centers upon the requirement that a facility's Title V operating permit list all of the CAA requirements that apply to that facility, including monitoring and other provisions necessary to assure compliance with the MECT EIP. By identifying MECT EIP requirements as alternate operating scenarios, for instance, the modifications of the permit can be held to a minimum.

Requirements of the MECT EIP to be included in the Title V permit include the compliance, monitoring, record keeping, reporting and public notice provisions. The TNRCC MECT EIP SIP submittal did not include a showing that the TNRCC title V operating permit regulations do not interfere with the incorporation of MECT EIP provisions into title V permits as specified by section 16.8 of the EIP guidance. Since the Title V program is outside the SIP process, the expectations of this section, if not met by the facility, do not serve as grounds for not approving the MECT EIP SIP submittal and/or the attainment demonstration SIP.

8. Enforceable Element—Tracking Mechanisms

The expectations for setting up tracking mechanisms in a multi-source emission cap-and-trade EIP are to facilitate a full and open trading of allowances. The EIP Guidance expectation is that the MECT EIP will have an efficient, effective method to track and record allowance transfers. The TNRCC MECT SIP submittal at section 101.353 established the allocation of allowances procedure in the MECT EIP. The allowance and authorized account representative will initially be identified by TNRCC by January 1, 2002. A secure data management system, enforceable procedure for data reporting, and time frame establishment are required by section 101.359. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for tracking mechanisms in the integrity element of enforceable.

Integrity Element Three—Quantifiable

The EPA EIP guidance at section 4.1(a) defines the EIP expectations for the integrity element of quantifiable for all EIPs on a programmatic basis. The EIP states that the creation and use of emission reductions are quantifiable if the source can reliably calculate the amount of emissions and/or emission reductions occurring during implementation of the program, and replicate the calculations. It further states that when quantifying results, sources will use same methodology used to measure baseline emissions, unless there are good technical reasons why this is not appropriate. The only source specific expectation for quantifiable in MECT EIPs found at section 4.1(b) is that sources will quantify total emissions per unit of time.

The EIP quantification procedures should ensure that these fundamental elements are applied throughout the life of the EIP. For the MECT EIP, the source of the data used in quantification of allowances includes using data already reported or available. The expectation is that quantification will be performed continuously throughout the compliance period to demonstrate compliance with the allowances. A program conforming to the EIP Guidance will also include quantification protocols—the technical plans and procedures used to quantify emissions during the control period.

1. Quantifiable Element—Predicting Results

The expectation for predicting EIP results is that the program include projections of the emission reductions associated with program implementation. These projected results would be based on technical assumptions related to and consistent with the assumptions used to develop the area's attainment demonstration, and provide sufficient supporting information showing what the impact would be on the applicable inventory. The MECT EIP may not interfere or be inconsistent with SIP or SIP-related requirements including the attainment plan or maintenance plan, reasonable further progress, and rate of progress. Reliable and replicable forecasts of HGA's pre- and post-EIP emission levels are part of EPA's evaluation of the SIP submittal.

The TNRCC SIP narrative for the attainment demonstration contains the emission reduction projections associated with MECT EIP implementation. The EIP SIP submittal at section 101.353(a)(3) demonstrates that the MECT has increasing reductions of NO_X emissions over time in order to reach attainment. The MECT implements an approximate reduction in NO_X emissions of over 80%. The reductions are achieved by implementation of the emission factors required for applicable stationary sources as found at 30 TAC sections 117.106, 117.206 and 117.475. These reduction levels were developed to support, and are consistent with, the attainment demonstration. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for predicting results in the integrity element of quantifiable.

2. Quantifiable Element—Uncertainty

The expectation for addressing uncertainty is to provide greater rule effectiveness, elimination of alternative emission limits, and other environmental benefits. However, implementing any type of EIP may result in higher or lower emissions than projected, due to geographic or timing uncertainties in emission distributions. A program that conforms to the EIP Guidance will provide a range of estimates of the emission reductions attributable to the EIP, judge the likelihood that the EIP will interfere with state air quality planning requirements and demonstrations, demonstrate that emission projections in the air quality management plan have been adjusted and determine whether that level of uncertainty is acceptable and document the decision.

The regulation for the MECT EIP was submitted with other control measure implementing regulations to be approved as part of the SIP. These implementing SIP approved rules have been determined to be necessary for the implementation of the attainment demonstration SIP. The SIP narrative for the attainment demonstration contains the degree of uncertainty associated with reaching attainment. Enforceable commitments and other measures have been incorporated in the attainment demonstration SIP. Thus the MECT EIP is an integral part of the air quality planning procedure and the measures necessary to reach attainment of the NAAQS. The MECT rules therefore will not interfere with attainment of the NAAQS, they are part of the strategy to attain those standards. Although not submitted with the MECT EIP SIP submittal, the EPA EIP guidance expectations for addressing uncertainty have been incorporated into other attainment demonstration SIP submittals.

Uncertainty is addressed in the EIP guidance at section 6.4(c). With respect to uncertainty in emissions measurement, the Chapter 117 monitoring provisions are adequate to reduce uncertainty to a reasonable level. In particular, the larger sources are required to have monitoring with the least uncertainty—CEMS and parametric emission monitoring systems (PEMS). This section of the EIP focuses on the different levels of uncertainty associated with using reductions from one type of source at another type of source, which is very relevant to using MDERCS and DERCS in the MECT. The MECT rules authorize the use of DERCS and MDERCS generated pursuant to 30 TAC Chapter 101, Subchapter H, Division 4 to comply with the annual cap. The DERC and MDERC rules are being reviewed for conformance with the EIP Guidance section 6.4(c) as part of EPA's evaluation of Subchapter H, Division 4. EPA will shortly propose action on the rules in Subchapter H,

Division 4. MDERCS and DERCS may not be utilized for compliance with MECT program annual caps until the DERC and MDERC rules are approved by EPA. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for uncertainty in the integrity element of quantifiable.

3. Quantifiable Element—Approving Quantification Protocols

EIPs rely on emission quantification protocols to determine source compliance and overall program performance. An EIP quantification protocol is the technical procedure a source uses to calculate the amount of emissions associated with that source's activities under an EIP.

TNRCC has submitted a revision to the MECT rule which is being parallel processed with this notice that is the submission of emission quantification protocols. The protocols which are contained in 30 TAC Chapter 117 specify initial and continuous monitoring methodologies. These requirements in Chapter 117 have met the public notice provisions for protocols. The Chapter 117 rules do not, however, contain missing data provisions establishing how to determine emissions when required NO_X monitoring equipment is not functioning properly. EIP section 5.2(c) states that protocols should contain such provisions.

EPA concluded that the TNRCC MECT EIP SIP submittal will meet the CAA requirements and EPA EIP guidance expectations for approving emission quantification protocols, if the rules are revised to specify missing data provisions as described in EIP guidance section 5.2(c).

4. Quantifiable Element—Selecting Emission Measurement Protocols

The expectation for the hierarchy for selecting emission measurement protocols is based upon site-specific information almost always being more reliable as an indicator of emissions than emission factors. Sources should use site-specific data whenever available or feasible. The EPA EIP guidance document recommends the following emission quantification approaches in the priority order described in the hierarchy below:

a. CEMS data on the unit generating the emissions during the generation.

b. CEMS data on the unit generating the emissions at a time other than the generation, but at representative conditions.

c. Multiple emission tests at the affected unit(s) at representative conditions.

d. Emission test at the affected unit(s) at representative conditions.

e. Emission test at maximum load or stack tests at identical unit.

f. Emission factors (where allowed) or material balance.

The proposed approval of this notice is based upon the review that the hierarchy for selecting emission measurement protocols has been consistent with the EPA EIP guideline document. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for selecting emission measurement protocols in the integrity element of quantifiable.

Integrity Element Four—Permanent

The EPA EIP guidance defines the expectations for the integrity element of permanent for all EIPs on a programmatic basis. The EIP states that emission reductions are permanent if a source commits to actions or achieves reductions for a future period of time as defined in the EIP.

For compliance flexibility EIPs, the results of an EIP are permanent if you are able to ensure that no emission increases (compared to emissions if there was no EIP) occur over the time defined in the SIP. For programmatic reduction EIPs, the results of an EIP are permanent if the EIP is able to ensure that the programmatic reductions occur over the duration of the EIP rule, and for as long as they are relied on in the SIP or SIP-related requirements. The only source specific provision for permanent in MECT EIPs found at section 4.1(b) is that the integrity element of permanent does not apply to emission reductions made by sources

The TNRCC MECT EIP SIP submittal at section 101.352(b) requires for every control period, each site to hold allowances equal to or greater than the total NO_X emissions. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for the integrity element of permanent.

Fundamental EIP Principle Two—Equity

Equity issues can be caused by an uneven distribution of emissions, or other non-emission effects. Some communities are considered communities of concern, because they have historically experienced higher emission levels than other communities in the same locale. These higher emissions often result in less healthy air quality. Equity issues may need resolution if the EIP continues or exacerbates existing pollutant concentrations in existing communities of concern, or causes new communities to experience higher emission levels than other communities in the same locale. There are two elements that comprise the fundamental principle of equity in EIPs. They are general equity and environmental justice.

Equity Element One—General Equity

General equity means that an EIP ensures that all segments of the population are protected from public health problems, and no segment of the population receives a disproportionate share of a program's disbenefits. The MECT EIP SIP submittal consists of an overall reduction of NO_X emissions of 80%. Although allowances can be traded annually to meet compliance requirements, the overall trend at all sources will be a reduction of NO_X levels. In addition, the TNRCC submittal at section 101.353(c) requires for a source, exceeding the allowances in the compliance account, allowances for the next control period to be reduced by a like amount plus an additional 10%. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for general equity in the fundamental principle of equity.

Equity Element Two—Environmental Justice

The environmental justice element applies if the MECT EIP covers VOCs, and could disproportionately impact communities populated by racial minorities, people with low incomes, and/or Tribes. The localized hazardous air pollutant (HAP) provisions of an EIP could occur if the EIP allowed VOC HAPs to be shifted from one facility to another. Although the TNRCC MECT EIP SIP submittal is a mass cap and trade program for NO_X stationary sources only, section 101.356(f) provides for sites to use VOC DERCs and MDERCs in place of allowances for compliance provided a demonstration has been made and approved by TNRCC and EPA. The use of VOC reductions in place of NO_X allowances will only drive the VOC emissions lower. The MECT EIP rule does not allow VOC HAPs to be shifted from one facility to another. There is no likelihood under the MECT EIP for disproportionate impact on communities of concern. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for environmental justice in the fundamental principle of equity.

Fundamental Principle Three—Environmental Benefit

EPA EIP expectations for the fundamental principle of environmental benefit are that a MECT EIP ensures a declining budget or emission caps that set an absolute limit on mass emissions which would otherwise have increased or would have increased at a greater rate. The TNRCC MECT EIP SIP submittal at section 101.353(a)(3) provides for increasing reductions of NO_X emissions over time in order to reach attainment. In addition the MECT EIP will ensure lower NO_X emissions than the implementation of 30 TAC Chapter 117 emission standards for the HGA attainment demonstration will ensure, since the MECT program limits mass emissions based on historical activity levels, and reduces the mass cap over time based on the emission rate specifications in section 117. The Chapter 117 ESAD limitations are rate based and do not limit mass emissions. Thus, the environmental benefit expectation for the MECT EIP cap on all emissions to be below the level that would have otherwise been set for the affected sources has been met. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for the fundamental principle of environmental benefit.

Other Elements of All Trading EIPs

The other provisions of a trading EIP are discussed at § 6.5 of the EPA EIP guidance document. These include provisions for geographic trading across boundaries, provisions for notifying the relevant Federal Land Manager (FLM) in a Class I area, accounting for emission reductions that occur prior to the approval of the EIP, and restricting use of Alternative Emission Limits (AELs).

1. Other Trading EIP Elements—New Source Review and Trading

The expectation is for trading EIPs to contain provisions that include new source review and trading since the NSR program may affect implementation of a trading EIP and, in turn, the EIP may affect implementation of some portions of the NSR program. To meet this expectation, sources allowed to comply with offset or netting requirements with EIP emission reductions may only use those emission reductions which independently meet relevant NSR requirements in the CAA, EPA NSR regulations and guidance, and provisions of the EPA EIP guidance document. The EIP expectation is that TNRCC will ensure that major sources and major modifications are not exempted from any NSR or Prevention of Significant Deterioration of Air Quality (PSD) requirement because of the implementation of the MECT EIP. Another expectation is that a major source or major modification may not avoid NSR review by using an EIP except for the use of emission reductions that meet the NSR/PSD requirements for netting when the EIP emission reductions occur contemporaneously with their use and occur at the same source as the emission increase.

The TNRCC MECT SIP submittal at section 101.352(d) states that allowances cannot be used for netting requirements under 30 TAC Chapter 116, Subchapter B, Divisions 5 and 6 which relate to Nonattainment Review and Prevention of Significant Deterioration Review. However, section 101.352(e) does permit allowances to occur simultaneously to satisfy the correlating one to one portion of the offset requirements for new or modified facilities subject to federal nonattainment NSR requirements as provided at 30 TAC Chapter 116, Subchapter B, Division 7 relating to Emission Reductions Offsets. It is understood that the use of allowances for the offset requirements will be accomplished by a permanent transfer of the allowances to the source undergoing permitting. The proposed MECT revision which is being parallel processed by EPA in this notice contains the new section 101.356(c) which provides for the permanent selling of the annual allowances. The permanent transfer of the allowances would meet the requirements of section 116.115(b)(2)(C)(iii) for the life of the source. EPA concluded that if the State clarifies that the new source will have to obtain offsets for the life of the source the TNRCC MECT EIP SIP submittal will meet the Clean Air Act requirements and EPA EIP guidance expectations for new source review and trading for the category of other trading EIP elements.

2. Other Trading EIP Elements—Limitations on Emission Reduction Use

The expectations are for trading EIPs to provide limitations on emission reduction use to be consistent with provisions of the CAA and other existing EPA policies. A program that conforms to this expectation will not allow the use of NO_X emission reductions generated outside the modeling domain, emission reductions to meet NSPS, BACT, LAER, NSR offset requirements, title IV Acid Rain requirements, and any air toxic requirement under section 112 of the CAA. Nor would emission reductions be used to meet various statutorily-mandated mobile source requirements, including exhaust and evaporative emission standards for both highway and non-road vehicles and engines; Federal Reid Vapor Pressure (RVP), reformulated gasoline (RFG), anti-dumping and detergent additive requirements, emission reductions to meet the municipal waste combustion rules and federally-mandated inspection/maintenance (I/M) program requirements.

The TNRCC MECT SIP submittal at section 101.351 limits the MECT EIP to only stationary sources within the eight county Houston Galveston ozone nonattainment area. The MECT EIP rule at section 101.356 does not allow the use of NO_X emission reduction credits (ERCs) from 30 TAC Chapter 101, Subchapter H, Division 1 ERC EIP program for MECT banking and trading. Likewise, section 101.352(c) allows unused allowances to be used as ERCs but the use of ERCs as allowances is not permitted. DERCs or MDERCs allowed for use as allowances would by definition be surplus to the statutory mobile source, NSPS, BACT, LAER, NSR, sulfur in fuel Tier II, and municipal waste combuster (MWC) requirements. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for limitations on emission reduction use for the category of other trading EIP elements.

3. Other Trading EIP Elements—Banking Emission Reductions

The expectations for trading EIPs for banking emission reductions center on emission spiking. The expectation is that, if the banking of emission reductions is allowed in the EIP, an evaluation would be performed to examine how likely it is that emission spiking will occur, and that safeguards would be included in the EIP to prevent emission spiking commensurate with the probability that spiking will occur.

The TNRCC MECT SIP submittal at section 101.356(a) allows a source participating in the EIP to bank the allowances not used in one control period to be used in the following control period. The MECT EIP also requires that the oldest allowances must be used first. This also tends to prevent carryover for more than one year and thus prevent emission spiking. The MECT rules so restrict "banking" that any potential for emissions "spiking" would be minimal. Banking is limited to just one year, and the chance of carryover to subsequent years is

minimized by section 101.354(b) (requiring Executive Director to debit most recently allocated allowances before banked allowances—thus increasing likelihood that banked allowances will expire). Use of the banking provision will be random, and with the significantly declining cap, chances of spiking should be minimal. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for banking emission reductions for the category of other trading EIP elements.

4. Other Trading EIP Elements—General Conformity

The expectations for trading EIPs for general conformity are to ensure that a federal entity can not use emission reductions generated by an EIP to meet the offset or mitigation options of the general conformity requirements. The general conformity requirements will be contained in the revised general conformity rules that EPA will propose shortly. The EIP guidance will be revised as appropriate following promulgation of the general conformity rules. The EIP guidance does not specify that the MECT rules contain any provision on general conformity, so the MECT meets this EIP expectation on general conformity.

5. Other Trading EIP Elements—Specific Pollutant Effects

The expectation for provisions to address specific pollutant effects may need to be included in the EIP SIP submittal. If NO_X is in the MECT EIP, provisions for localized increases in emissions of criteria pollutants in section 16.11 of the EPA EIP guidance may apply. If VOCs are in the MECT EIP, provisions for localized increases in HAPs in section 16.2 may apply. If inter-precursor trading is included in the MECT EIP, provisions for ozone inter-precursor trading in section 16.9 may apply.

With respect to localized increases on NO_X, the expectation applies to trading EIPs which can potentially exceed the annual significant emissions increase threshold of 40 tons per year (tpy). This increase applies only to emission increases above what the source was emitting before the implementation of the EIP. Since the MECT EIP will result in a substantial overall emissions decrease it is highly unlikely that this provision will be triggered.

With respect to VOCs, if the MECT EIP could cause localized increases in HAPs, the provisions of section 16.2 of the EPA EIP guidance would be applicable. Since the only potential VOC participation in the EIP is the use of DERCs and MDERCs, there could be no increase in VOCs above the baseline. For this reason the Hazardous Air Pollutant (HAP) framework is not applicable to the MECT EIP. For the same reasons the expectations of section 16.9 of the EIP guidance for provisions for ozone inter-precursor trading are not applicable to the MECT EIP submittal. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for specific pollutant effects for the category of other trading EIP elements.

6. Other Trading EIP Elements—Transportation Conformity

The expectations for trading EIPs to ensure consistency with transportation conformity are that the MECT EIP rule contain requirements that mobile sources generating mobile discrete emission reductions credits certify the reductions are not used to meet transportation conformity requirements. To meet the expectation, the EIP rule would require notification to TNRCC, the HGA Metropolitan Planning Organization (MPO), and the Texas Department of Transportation of the generator's intention to generate MDERCs. Once notified, the MPO may not use these MDERCs to satisfy the requirement for transportation conformity. The expectation is that the generator will provide enough information to the MPO about the likely emission reductions from the activity to allow the MPO to adjust its regional conformity analyses appropriately. TNRCC must also include provisions for assessing penalties against sources that use EIP MDERCs that are not surplus to transportation conformity requirements.

The MECT rules do not require notification to the MPO as stated in the EIP guidance. It is understood that any MDERC to be traded must be surplus to any state or federal law, regulation or agreed order. This would mean that the MDERC has to be surplus to the conformity analysis relied upon in the SIP attainment demonstration which is required by a federal rule. The TNRCC MECT SIP submittal at section 101.356(f)requires any MDERCs traded must be surplus in accordance with the emission quantification protocols established in 30 TAC Chapter 101, Subchapter H, Division 4. If the State commits to EPA's satisfaction to provide for notification of MDERC generation to the MPO, EPA will conclude that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for transportation conformity for the category of other trading EIP elements.

7. Other Trading EIP Elements—Inter-Credit Trading

The expectations for trading EIPs to contain provisions for inter-credit trading center on the acquisition and use of an emission reduction generated under one EIP to meet the requirements of another EIP. The expectation is that if the EIP includes inter-credit trading, the provisions of section 16.12 will be met. The TNRCC MECT SIP submittal at section 101.356(f) requires any DERCs or MDERCs traded must be generated in accordance with the emission quantification protocols established in 30 TAC Chapter 101, Subchapter H, Division 4. The DERC and MDERC rules are being reviewed for conformance with the EIP section 16.12 as part of EPA's evaluation of 30 TAC Chapter 101, Subchapter H, Division 4. EPA will shortly propose action on the rules in Subchapter H, Division 4. MDERCs and DERCs may not be utilized for compliance with MECT program annual caps until the DERC and MDERC rules are approved by EPA.

EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for inter-credit trading for the category of other trading EIP elements.

8. Other Trading EIP Elements—EIPs That Include Reasonably Available Control Technology (RACT) Sources

The expectations for trading EIPs that include RACT sources are that if the EIP covers RACT sources, the provisions of the EIP guidance document section 16.13 be met. Sources with an alternative RACT limit usually are allowed to emit at a higher rate than sources covered under the presumptive RACT limit. Sources subject to presumptive and alternative RACT limits may generate reductions for use in a trading EIP. However, in a program that conforms to the EIP Guidance, the amount of the reduction would be based on application of the presumptive RACT limit rather than the alternative RACT limit. Sometimes alternative RACT determinations are considered a type of Alternative Emission Limitation. Once the MECT EIP is adopted TNRCC may not issue any new AELs.

The RACT and ESAD for the HGA area in Chapter 117 are as stringent if not more stringent than the presumptive limits contained in the Control Technology Guideline (CTG) documents. Therefore these presumptive national limits will be above the rates used to establish MECT

allowances. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for EIPs that include RACT sources for the category of other trading EIP elements.

9. Other Trading EIP Elements—Geographic Trading Across Jurisdictional Boundaries

The expectations for trading EIPs for geographic trading across jurisdictional boundaries does not provide additional geographic restrictions to trading if the MECT EIP only covers areas that are not needing and lacking an attainment demonstration. In this case the geographic restrictions contained in the approved SIP will apply to the MECT EIP. The TNRCC MECT SIP submittal at section 101.351 limits the MECT EIP only to stationary sources within the eight county Houston Galveston ozone nonattainment area. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for geographical trading across jurisdictional boundaries for the category of other trading EIP elements.

10. Other Trading EIP Elements—Federal Land Manager (FLM) Notification

The expectations for trading EIPs for Federal Land Manager notification in PSD Class I areas is found at section 16.6 for trading EIPs located in or within 100 km of a PSD Class I area. The nearest PSD Class I area to the HGA area is Breton Island National Wildlife preserve off the coast of Louisiana. It is more than 300 kilometers from the HGA area. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for FLM notification for the category of other trading EIP elements.

11. Other Trading EIP Elements—Tracking Systems and Market Clearinghouses

The expectations for trading EIPs for tracking systems and market clearinghouses is that both TNRCC and the sources participating in trading EIPs will obtain accurate information about market activities related to trading emission reductions. Specifically, the State will obtain information that would allow the tracking of generation/use of emission reductions, ensure compliance, target enforcement resources and conduct periodic EIP performance audits. A tracking system is needed to meet these provisions. The information would be made readily available to the public.

The TNRCC MECT SIP submittal at section 101.356(e) requires all trades to be completed by the TNRCC executive director following the submittal of a completed TNRCC ECT–2 form, Application for Transfer of Allowances. The completed ECT–2 shall include the price paid per allowance. The ECT–2 shall be submitted to TNRCC at least 30 days prior to the allowances being deposited into the transferee's broker or compliance account. The TNRCC executive director will issue a letter to the purchaser and seller reflecting the trade. The trade will be considered finalized upon issuance of the letter. The MECT SIP submittal at section 101.363 requires each source to report trades annually in the compliance report using TNRCC form ECT–1. Performance audits of allowance trading is required by section 101.363. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for tracking systems and market clearinghouses for the category of other trading EIP elements.

12. Other Trading EIP Elements—Multi-Claimants

The expectations for trading EIPs concerning multi-claimants focuses on certain situations where ownership of an EIP emission reduction strategy could be claimed by more than one party. When these situations occur, it is important that the MECT EIP ensure that ownership is successfully claimed by only one party to avoid double counting of reductions. From the MECT EIP SIP submittal, all sources in the cap must participate by receiving allocations of allowances as per section 101.353. The banking and trading of allowances are specified by section 101.356. The allocation, banking and trading of allowances is controlled by TNRCC at each phase by the submission and approval of forms such that there should be no practical question of ownership of allowances. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for multi-claimants for the category of other trading EIP elements.

13. Other Trading EIP Elements—Emission Reductions Prior to EIP Approval

The expectations for trading EIPs address the condition that there may be sources that reduce emissions before the development of an EIP. Some generators may want these old emission reductions to participate in the trading EIP. Any emission reductions that result from emission reduction strategies that were started before November 30, 1990 may not be allowed to participate in a trading EIP. In the MECT EIP SIP submittal at section 101.353, all sources in the cap must participate by receiving allocations of allowances. The allocations are based upon the level of activity and emission rates of all sources for the annual periods of 1997, 1998 and 1999. There is no provision for ERCs to occur prior to the approval of the EIP or outside the process of initial allocation of allowances. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for emission reductions prior to EIP approval for the category of other trading EIP elements.

14. Other Trading EIP Elements—Compliance Margins

The expectation for trading EIPs for provisions for compliance margins is that the MECT trading EIP will include provisions to account for compliance margins when sources participating in an EIP are initially complying with an emission limit. The provision for compliance margins is for sources participating in an EIP to comply with an emission limit. Since the MECT EIP is based upon allowances consisting of mass emissions determined from historical actual emissions, the provision does not apply. The eighty percent reduction of emissions from historical levels will leave little if any room for compliance margins. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for compliance margins for the category of other trading EIP elements.

15. Other Trading EIP Elements—Alternative Emission Limits

The trading EIPs expectation is for provisions restricting the use of alternative emission limits. Under traditional air quality management approaches, sources are required by regulation to meet emission limitations. In some cases, sources may find it difficult to meet these requirements by the required deadline. In such events, States have granted sources some form of relief (e.g., waivers, exemptions, compliance deadline extensions, and temporary relaxations to the regulatory requirements). These forms of relief are known as alternative emission limits, or AELs. While AELs may be necessary in limited cases, widespread use of AELs ultimately means that expected emission reductions will be delayed. A benefit of trading EIPs is that they provide sources an alternative means for obtaining required emission reductions

on time. This means that in many cases, sources will not need AELs as a means of regulatory relief.

The TNRCC MECT EIP SIP submittal at section 101.353 specifies that all allowances are based upon the level of activity and emission rates of all sources in the cap for the annual periods of 1997, 1998 and 1999. Once the MECT EIP is operational, if a source cannot meet the allowance limitation additional allowances must be purchased. The EIP Guidance expectation is that the MECT program will prohibit the issuance of AELs which would raise the annual cap unless the source demonstrates that it can not purchase allowances. The MECT program contains no explicit prohibition against issuance of AELs. EPA concluded that the TNRCC MECT EIP SIP submittal will meet the Clean Air Act requirements and EPA EIP guidance expectations for alternative emission limits for the category of other trading EIP elements, if the state demonstrates how existing provisions will prevent issuance of an AEL that increases an annual allocation, or the state commits not to issue such an AEL, unless the source demonstrates that it cannot acquire allowances.

Provisions for a Multi-Source Emission Cap-and-Trade EIP

The expectations for additional provisions needed for a multi-source emission cap-and-trade EIP are found in the EPA EIP guidance document. A multi-source emission cap-and-trade EIP is an emission trading EIP that limits the total emissions from a group of sources to a level needed for an area to attain a NAAQS, and allows sources flexibility in complying with their emission limits.

The following list presents several conditions that an EIP that conforms to the Guidance would meet to ensure the integrity of the emission cap. It also includes references to the TNRCC MECT SIP submittal which ensure the integrity of the emission cap.

- Sources have the ability to measure and report all capped emissions. TNRCC has revised the MECT rule by submitting emission quantification protocols that meet the EPA EIP guidance.
- Each affected source must designate an authorized account representative as per section 101.356(d) who is responsible for the source's emissions, trading and allowances.
- The SIP submittal demonstrated that sources cannot shift a significant amount of production, and therefore emissions, to non-affected sources outside the EIP since all regulated stationary sources of NO_X in the HGA area must participate in the MECT.
- Penalties for non-compliance are known in advance, are automatic when a unit's emissions in the control period exceed its allowances, and are equivalent to traditional CAA penalties as per TNRCC's enforcement statutes, regulations and policies.
- All the emissions, allowance, and transaction information are to be publicly available on the TNRCC world wide web site.
- The MECT EIP covers sources with RACT requirements. Rather than allow RACT sources to comply using the EIP, the MECT EIP has incorporated the RACT and limitations to reach attainment into the allowances of the EIP.
- The MECT EIP rule can not increase localized emissions of HAPs since the only use of VOCs allowed to be traded are reductions below the baseline for the attainment demonstration.

EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for additional provisions needed for a multi-source emission cap and trade EIP.

1. Other Multi-Source Cap & Trade Provisions—Setting the Budget

The expectations for setting the budget for a multi-source emission cap-and-trade EIP are that the program baseline for the cap-and-trade program will be no greater than the sum of the historical average emissions of the participating sources.

The MECT program baseline is based almost entirely on the sum of historical emissions from sources in the program. For some newer sources, allocations are based on allowable emissions for two years, but this is only until an actual emissions baseline is established as required by 30 TAC 101.353(a)(2)(B) and (4)(B).

EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for setting the budget needed for a multi-source emission cap and trade EIP.

2. Other Multi-Source Cap & Trade Provisions—Defining the Affected Sources

The expectations for defining the affected sources for a multi-source emission cap-and-trade EIP are found at section 7.4(c) of the EPA EIP guidance document. A multi-source emission cap-and-trade EIP contains a certain set of sources. The aggregate emissions from these sources are capped. The emission cap aspect of a multi-source emission cap-and-trade EIP will be compromised, however, if TNRCC defines the population of sources in a way that allows production from sources covered under the EIP to shift to those that are not covered. The TNRCC MECT SIP submittal at section 101.351 establishes the MECT EIP cap for stationary sources with emissions greater than 10 tpy. Significant emission shifts are unlikely since any sources with emissions less than 10 tpy whose sources increase above 10 tpy are required to obtain allowances from other sources and become part of the cap. Section 101.353(b) requires new or modified sources not in the cap to obtain allowances for each control period from sources participating in the MECT EIP. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for defining the affected sources for a multi-source emission cap and trade EIP.

3. Other Multi-Source Cap & Trade Provisions—Opt-in Sources

The expectations for provisions for opt-in sources in a multi-source emission cap-and-trade EIP are found at section 7.4(d) of the EPA EIP guidance document. Additional sources may want to "opt-in" to the multi-source cap-and-trade EIP. These additional sources could be smaller, located in a different geographic area, or represent another sector than the originally defined affected sources. All trading units are within the HGA area. There is no provision for opt-ins. Section 101.353(b) requires new or modified sources not in the cap to obtain allowances for each control period from sources participating in the MECT EIP. The TNRCC MECT SIP submittal at section 101.353(b) requires new or modified sources not in the cap to obtain allowances for each control period from sources participating in the MECT EIP. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for opt-in sources for a multi-source emission cap and trade EIP.

4. Other Multi-Source Cap & Trade Provisions—Distributing Allowances

The expectations for provisions for distributing allowances in a multi-source emission cap-and-trade EIP are found at section 7.4(e) of the EPA EIP guidance document. The expectation is that after the emission budget is set, the population of covered sources would receive a share of the emission budget. Factors that may be used to assign a share of the budget include historical,

current or projected emission levels and existing control technology requirements. The TNRCC MECT SIP submittal at section 101.351 applies to all stationary NO_X facilities subject to TNRCC Rule 117 emission specifications at sites with emissions design capacity above 10 tpy in the HGA ozone nonattainment area. The emission budget in the MECT EIP was established based on historical emission levels. From section 101.351(a), the initial allowances in the MECT EIP will be based on the actual historical emissions for each source from 1997, 1998 and 1999. Section 101.351(a)(3) requires three steps from January 1, 2002 through April 1, 2007 where the allowances are reduced to reach the final goal of approximately 80% overall reduction from the historical levels. The program will be audited every three years to evaluate its impact on the attainment demonstration. The TNRCC Executive Director will recommend any measures necessary to remedy problems.

The revised attainment demonstration submittal which is being parallel processed includes a TNRCC study to be completed in 2002 which will evaluate and potentially adjust Chapter 117 emission limitations. In addition the 2004 mid-course correction by TNRCC will evaluate control measures and enforceable commitments necessary to reach attainment in 2007. There will be an opportunity at both of these occasions to readjust allowances to reach attainment if the audit results indicate that all issued allocations are higher than assumed in the attainment demonstration.

Section 101.353(g) of the MECT Rules states that in "extenuating circumstances" the TNRCC executive director may deviate from the requirements for determining the amount of allowances to be issued to a facility. TNRCC explained the purpose of this provision as being to "prevent significantly low allocations" in "extraordinary circumstances, for example a catastrophe which required a facility to shut down during the historic period upon which allocations would normally be based." TNRCC Chapter 101 Rule Log No. 1998–089–101–AI, at 74. Existing sources that wish to utilize section 101.353(g) were required by paragraph (1) of the rule to file applications by June 30, 2001. We are informed that approximately 15 sources filed applications by the deadline, and that their NO_X emissions represent approximately one half of one percent of total emissions regulated by the MECT program.

Section 101.353(g) allows executive director discretion. It is expected, however, that prior to the time that EPA takes final action on the MECT rules, the state will have made decisions on all applications that were submitted by June 30, 2001. In order for EPA to approve the MECT rules, the state must demonstrate prior to final EPA action that any allocations issued pursuant to section 101.353(g)(1) are not inconsistent with the attainment demonstration, and comply with the CAA.

Paragraph (2) of section 101.353(g) allows a finite group of relatively new sources to submit applications after June 30, 2001. In order for EPA to approve the MECT rules, the state must either (1) demonstrate that the allocations that could be issued pursuant to section 101.353(g)(2) would not be inconsistent with the attainment demonstration and would comply with the CAA, or (2) modify the rule to eliminate executive director discretion or require EPA approval of any allocation issued pursuant to paragraph (g)(2).

EPA concluded that the TNRCC MECT EIP SIP submittal will meet the Clean Air Act requirements and EPA EIP guidance expectations for distributing allowances for a multi-source emission cap and trade EIP, if the above-described demonstrations or modifications are made.

5. Other Multi-Source Cap & Trade Provisions—Emissions Banking

The TNRCC MECT SIP submittal at section 101.356(a) allows a source participating in the EIP to bank the allowances not used in one control period to be used in the following control period. The EIP Guidance expectation at section 16.15 is that a banking EIP would safeguard against emissions spiking. The MECT rules so restrict "banking" that any potential for emissions "spiking" would be minimal. Banking is limited to just one year, and the chance of carryover to subsequent years is minimized by section 101.354(b)(requiring Executive Director to debit most recently allocated allowances before banked allowances—thus increasing likelihood that banked allowances will expire), Use of the banking provision will be random, and with the significantly declining cap, chances of spiking should be minimal. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for emissions banking for a multi-source emission cap and trade EIP.

6. Other Cap & Trade Provisions—Allowing Shutdowns to Generate Reductions

Shutdowns may be allowed to generate emission reductions within the context of a multi-source cap-and-trade program if the emissions reductions resulting from the shutdown are still in the applicable emissions inventory and the EIP has provisions to address shifting demand. The MECT EIP at section 101.353(h) states that if allowances are being allocated based on allowable emissions and the facility does not achieve two complete consecutive calendar years of actual level of activity data, then allowances will not continue to be allocated if the facility ceases operation or is not built. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for allowing shutdowns to generate reductions for a multi-source emission cap and trade EIP.

7. Other Cap & Trade Provisions—Shifting Demand

Shifting of activity levels is a potentially serious problem for all multi-source cap-and-trade EIPs. A source in a cap could decide to shift production to a source outside the cap within the same non-attainment area. Shifting demand from sources within the cap to sources outside the cap is unlikely to occur due to the fact that the regulated industries (refineries, petrochemical, chemical, etc.) are made up of relatively large sources. In other words, all significant sources that could do the work performed by capped sources are also within the cap. The under 10 ton sources just are not capable of assuming any significant portion of the activity. If emissions at a non-capped source increase to over ten tons per year, it will become regulated under the cap. It was concluded that significant shifting of demand is unlikely to occur, due to the nature of the EIP. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for shifting demand for a multi-source emission cap and trade EIP.

8. Other Cap & Trade Provisions—True-up Period

Within the context of a multi-source emission cap-and-trade EIP a source may be allowed to obtain emission allocations after the end of the compliance period. The time between the end of the compliance period and when the source would demonstrate compliance is called the true-up period.

The length of a true-up period should be based on the length of the compliance period. In general, for a compliance periods of several months up to a year the true-up period should not be more than 60 days. For shorter compliance periods the true-up period should be shorter than 60 days. The MECT EIP at section 101.352(b) and at section 101.354(d) requires each site no later than March 1 of each year to hold a quantity of allowances in its compliance account that equals or exceeds the total emissions of NO_X emitted during the control period just ended. This requirement will begin March 1, 2003. This "true up" period is 60 days. EPA concluded that the TNRCC MECT EIP SIP submittal meets the Clean Air Act requirements and EPA EIP guidance expectations for a true-up period for a multi-source emission cap and trade EIP.

D. Conclusion

EPA reviewed the TNRCC MECT SIP submittal with respect to the expectations of the EPA EIP Guidance document and the requirements of the Clean Air Act. Overall EPA has concluded, after review and analysis, that the TNRCC MECT EIP regulation can provide a positive contribution toward the attainment of the one-hour ozone standard in the HGA area. EPA proposes to conclude that the program will satisfy all requirements of the Clean Air Act, if certain modifications and/or demonstrations described above are made.

II. Background

A. Date of State's SIP Submission

What Was the Date of the State's SIP Submission?

EPA received the proposed MECT SIP revision submitted by the TNRCC on December 22, 2000. The MECT SIP revision consisted of new sections to 30 TAC Chapter 101, Subchapter H, Division 3 which had been promulgated by TNRCC in December 2000. The MECT regulation is found at new sections 101.350 through 101.363. The Governor submitted revisions to the MECT submittal by letter dated June 15, 2001 and requested parallel processing of the revisions.

Was the TNRCC MECT Rule Subject to Public Notice?

The TNRCC held public hearings on the proposed MECT rules at the following locations: September 18, 2000, in Conroe and Lake Jackson; September 19, 2000 in Houston (2 hearings); September 20, 2000, in Katy and Pasadena; September 21, 2000, in Beaumont, Amarillo, and Texas City; September 22, 2000, in Dayton, El Paso, and Arlington; and September 25, 2000, in Austin and Corpus Christi. The comment period closed at 5 p.m. on September 25, 2000. Fifteen individuals opposed the cap and trade concept. Eight individuals expressed general support for the cap and trade concept. The public input was incorporated into the final TNRCC regulation.

What Are the Sections of the MECT Rule?

New section 101.350 contains definitions of terms used in the rule. Other sections are: section 101.351 Applicability, section 101.352 General Provisions, section 101.353 Allowances, section 101.354, Allowance Deductions, section 101.356 Allowance Banking and Trading, section 101.358 Emission Monitoring and Compliance Demonstration, section 101.359 Reporting and section 101.360 Level of Activity Certification. The revised MECT rule contains section 101.363, Program Audits and Reports.

B. General Criteria for an EIP

What Are the General Criteria for an EIP?

The document, Improving Air Quality with Economic Incentive Programs, (EPA–452/R–01–001) January 2001 is the EPA guideline for discretionary EIP submittals for SIP credit. As previously stated, the guidance document does not represent the EPA's final action for any discretionary EIP. Final action occurs when the EPA has approved or disapproved the discretionary EIP submitted as a SIP revision.

What Is the Applicability of Previous EPA EIP Regulations and Guidance?

The EPA EIP Guidance will take precedence over the discretionary EIP guidance provided in prior documents such as the 1994 EIP (published at 59 FR 16690) and the guidance in the emission trading policy statement (ETPS) (published on December 4, 1986 at 51 FR 43813). In addition, the guidance represents the EPA's final action on the Open-Market Trading Rule (OMTR) (proposed in August 3, 1995 at 60 FR 39668, and on August 25, 1995 at 60 FR 44290). While the proposed OMTR rule was never made final, the EPA EIP Guidance addresses the public comments received for that proposal, and provides guidance on other types of EIPs as well. These previously published documents provide supplementary information and useful background for designing an EIP. The requirements for mandatory EIPs remain in the Code of Federal Regulations (CFR), title 40, part 51, subpart U (59 FR 16690).

How Does the EPA EIP Guidance Affect the EPA's 1994 EIP Rule?

The EPA's 1994 EIP rule established requirements for mandatory EIPs, and guidance for discretionary EIPs. The rule still remains in effect for mandatory EIPs. The new EPA EIP document updates the guidance the EPA's 1994 EIP rule provides for developing discretionary EIPs. The EPA removed § 51.490(b) of the EPA's 1994 EIP rule when the final version of the EIP guidance was published.

Why Was the EPA EIP Guidance Developed?

The EPA intended for the EPA EIP to be the primary guidance for use in EIP development. The EPA intended for the EIP guidance to achieve the following:

- Update the existing guidance using a new plain language format.
- Tie together, for reference purposes, all of the existing related guidance in one document.
- Provide additional information on issues not discussed in previously existing guidance.

The EPA EIP guidance document provides strategic advice on choosing a program and determining which sources to include in the program. It provides information on using emission reductions attributable to a discretionary EIP to meet the air quality-related programs such as SIP or SIP-related requirements. It also discusses the important tasks in program implementation such as tracking and evaluation.

What Are the Goals of the EPA EIP Guidance?

The goals of the EPA EIP guidance are as follows:

- Define economic incentive programs.
- Select the best type of EIP for a given situation.
- Provide help in understanding the process for getting an EIP rule approved as part of the SIP.
- Provide the information needed to implement an approved EIP.
- Provide information regarding evaluation and updating an approved EIP.
- Describe other guidance that might applicable.

Is the EPA EIP Guidance Information on the Program-Level or the Source-Level?

Both, the guidance provides information at two levels, a program-level and a source-level. Program-level

guidance applies to the EIP as a whole. States are primarily responsible for implementing these provisions. Source-level guidance applies to specific sources participating in the EIP. While the State is responsible for establishing the appropriate requirements for sources in the rule, the sources themselves are responsible for implementing these other provisions. Program-level and source-level guidance will apply to the majority of EIPs, but there are some exceptions where source-level guidance is not applicable. The EPA intended the guidance to be a "living document," and plans to update the guidance periodically as the EPA establishes new policies and standards.

How Will EPA Act on an EIP SIP Submittal?

Once an EIP SIP revision is submitted, EPA will take action through notice-and-comment rule making to determine if the statutory requirements have been met. Only action taken after the conclusion of that rulemaking would constitute final Agency action. The EPA would take steps to expedite its proposed approval in the case of SIP revisions containing programs that contain the elements of the EPA EIP guidance.

If a program that does not contain the elements of the EPA EIP guidance for that type of program is submitted, EPA would still seek to determine whether the applicable CAA requirements were met, and, if so, EPA would approve the submission. The EPA would make the determination through notice-and-comment rule making.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 16, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 01–18318 Filed 7–20–01; 8:45 am]

BILLING CODE 6560–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

[Docket No. NHTSA–2001–9599]

RIN 2127–AI30

Motor Vehicle Safety; Limitations on Sale and Lease of Noncompliant and Defective Motor Vehicles and Items of Motor Vehicle Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: NHTSA proposes to add regulations limiting the sale or lease of noncompliant and defective motor vehicles and items of motor vehicle equipment. The Intermodal Surface Transportation Efficiency Act (ISTEA) and the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act amended federal motor vehicle safety laws by limiting the sale or lease of defective and noncompliant vehicles and equipment. The proposed rules would codify the limitations set forth in ISTEA and the TREAD Act and reduce questions relating to the meaning of those limitations.

DATES: *Comment Closing:* Comments must be received by September 21, 2001. The effective date of a final rule based on this proposal would be 30 days after publication of the final rule.

ADDRESSES: You should mention the docket number of this document in your comments, and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at

http://dms.dot.gov. Click on "Help and Information" or "Help/Info" to obtain instructions for filing the document electronically.

You may call Docket Management at 202–366–9324. You may visit the Docket from 9:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lloyd S. Guerci, Office of Chief Counsel, NCC–10, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone 202–366–5263.

SUPPLEMENTARY INFORMATION:

Background

Since the enactment of the National Traffic and Motor Vehicle Safety Act in 1966, now codified as 49 U.S.C. Chapter 301 (Safety Act), Federal law has prohibited the sale of new motor vehicles and motor vehicle equipment that fail to comply with an applicable Federal motor vehicle safety standard (FMVSS). See section 108(a) of Pub. L. 89–563, 80 Stat. 722, codified as 49 U.S.C. 30112(a). However, until 1991, the Safety Act did not contain specific provisions limiting the sale or lease of defective vehicles and equipment. On December 18, 1991, the Intermodal Surface Transportation Efficiency Act ("ISTEA"), Pub. L. 102–240, 105 Stat. 2083, was enacted. Section 2504 of ISTEA amended Section 154 of the Safety Act, by adding a new subsection, (d), which is codified at 49 U.S.C. 30120(i).

Section 30120(i) states:

> [i]f notification is required by an order under section 30118(b) of this title or is required under section 30118(c) of this title and the manufacturer has provided to a dealer (including retailers of motor vehicle equipment) notification about a new motor vehicle or new item of replacement equipment in the dealer's possession at the time of notification that contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter, the dealer may sell or lease the motor vehicle or item of replacement equipment only if—(A) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease; or (B) when the notification is required by an order under section 30118(b) of this title, enforcement of the order is restrained or the order is set aside in a civil action to which section 30121(d) of this title applies.[1]

Section 30120(i) does not prohibit a dealer from offering the vehicle or equipment for sale or lease. Thus, the dealer can offer the vehicle in the showroom but cannot sell or lease it. In the 1990s, NHTSA did not engage in rulemaking with regard to this statutory prohibition.

On November 1, 2000, the TREAD Act, Pub. L. 106–414, was enacted. The statute was, in part, a response to congressional concerns regarding the manner in which various entities dealt with defective motor vehicles and motor vehicle equipment, including tires. During congressional consideration of the bill that eventually was adopted as the TREAD Act, there had been media reports that some persons were selling defective Firestone ATX or Wilderness tires that had been returned to dealers for replacement tires under an ongoing safety recall. The Safety Act did not expressly prohibit such actions, since section 30120(i) does not apply to the sale or lease of used vehicles or equipment. The TREAD Act added various provisions related to safety-related defects and noncompliances with applicable Federal motor vehicle safety standards to the Safety Act.

Section 8 of the TREAD Act added a new subsection (j), "Prohibition on sales of replaced equipment," to 49 U.S.C. 30120, effective November 1, 2000. This subsection provides that no person may sell or lease any motor vehicle equipment (including a tire), for installation on a motor vehicle, that is the subject of a decision under 49 U.S.C. 30118(b) or a notice required under 49 U.S.C. 30118(c) in a condition that it may be reasonably used for its original purpose. Under section 30120(j)(1) and (2), the foregoing prohibition does not apply if the defect or noncompliance is remedied as required by 49 U.S.C. 30120, including implementing regulations, before delivery under the sale or lease; or notification of the defect or noncompliance is required under section 30118(b) but enforcement of the order is set aside in a civil action to which 49 U.S.C. 30121(d) applies.

While sections 30120(i) and (j) do not require rulemaking for their effectuation, NHTSA believes that there will be two benefits to rulemaking. First, rules will largely reduce, if not eliminate, questions relating to the meaning of the prohibitions. Second, there are benefits to codifying the prohibitions, which complement other rules, in the Code of the Federal Regulations.

In view of the TREAD Act, we are proposing to reorganize and amend 49 CFR Part 573 to include the limitations established by sections 30120 (i) and (j).

Section 30120(i): Limitation on Sale or Lease

Who Would Be Covered?

Section 30120(i) applies to dealers, including retailers of motor vehicle equipment. Dealer is defined in 49 U.S.C. 30102(a)(1) as "a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale."

What Motor Vehicles and Equipment Would Be Covered?

The section covers the sale and lease of new motor vehicles and motor vehicle equipment. It provides that a dealer may not sell or lease noncompliant or defective new motor vehicles or new items of replacement equipment. Section 30102(a)(6) defines the term, "motor vehicle," as "a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads and highways, but does not include a vehicle operated only on a rail line." Section 30102(b)(1)(D) defines replacement equipment as "motor vehicle equipment (including a tire) that is not original equipment." By its terms, section 30120(i) applies to new motor vehicles and new items of replacement equipment. Thus, the proposed requirements relating to section 30120(i) would not apply to used motor vehicles and used replacement equipment.

Under What Circumstances Would the Limitation on the Sale or Lease of Motor Vehicles or Equipment Apply?

In order for the limitation on the sale or lease of motor vehicles and equipment under section 30120(i) to apply, several things must occur. First, notification of a defect or noncompliance must have been required by an order under section 30118(b) or under section 30118(c). Second, a dealer must have been notified of the defect or noncompliance under section 30120(d)(4). Finally, the dealer must be in possession of the vehicle or equipment. This could include, for example, items in inventory and subsequently received items covered by the notification.

Section 30120(i) also provides for two situations where the dealer may sell or

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[1] Section 30118(c) requires manufacturers of motor vehicles or equipment to provide notification of safety-related defects or noncompliances with motor vehicle safety standards to NHTSA, as well as to the owners, purchasers and dealers of the vehicle or equipment.

Section 30118(b) authorizes the Secretary to make a final decision that motor vehicles or equipment contain a safety-related defect and/or do not comply with an applicable motor vehicle safety standard and, in that event, order the manufacturer to give notification of the defect or noncompliance to owners, purchasers, and dealers of the vehicles or equipment, and order the manufacturer to remedy the defect or noncompliance without charge.

lease motor vehicles or equipment that have been determined to be defective or noncompliant. First, the dealer may sell or lease the motor vehicle or item of replacement equipment if the defect or noncompliance is remedied as required by section 30120 before delivery under the sale or lease. Second, the sale or lease is permissible when notification is required by an order under section 30118(b) but enforcement of the order is restrained or the order is set aside in a civil action to which section 30121(d) applies. Thus, if the order is set aside by a court, as stated above, the prohibition would not apply and the sale would be permissible. Finally, section 30120(i) states that it does not prohibit a dealer from simply offering the vehicle or equipment for sale or lease.

Section 30120(j): Limitation on Sale or Lease of Equipment [2]

Who Would Be Covered?

Section 30120(j) provides that "*no person* may sell or lease any motor vehicle equipment (including a tire) for installation on a motor vehicle, that is the subject of a decision under section 30118(b) or a notice required under section 30118(c) in a condition that it may be reasonably used for its original purpose." (Emphasis added). In this section, Congress chose to use the general terms "no person" as opposed to the more restricted categories of "manufacturer" and "dealer" used elsewhere within section 30120 and Chapter 301. In view of the breadth of the term "no person," the section is not limited to persons in particular classes or categories. Thus, the proposed rule's prohibition would apply to the actions of all persons, including individuals and entities such as corporations.

What Activities Would Be Covered?

The activities that are covered by section 30120(j) and the proposed rule are selling or leasing, "*for installation on a motor vehicle,*" any motor vehicle equipment (including a tire), that is the subject of a decision under section 30118(b) or a notice required under section 30118(c) (emphasis added). Accordingly, the rule would apply to businesses and individuals that sell used automobile parts, including tires. While this proposed rule would prohibit the sale or lease of equipment including tires for *installation* on a motor vehicle, it would not prohibit a person from selling or leasing a new or used vehicle with defective or noncompliant equipment or tires.[3] For example, a motor vehicle dealer is not subject to the prohibition of this proposed rule except with respect to equipment and tires that the dealer sells or leases separately from a vehicle. Similarly, motor vehicle lessors and motor vehicle rental companies would not be subject to the rule because these groups are selling and leasing vehicles, not equipment or tires for use on motor vehicles. Thus, the rule would generally apply to equipment and tire retailers, including individuals.

What Motor Vehicle Equipment Would Be Covered?

Section 30120(j) prohibits the selling or leasing of any motor vehicle equipment (including a tire), for installation on a motor vehicle, that is the subject of a decision under section 30118(b) or a notice required under section 30118(c). Section 30102(a)(7) defines "motor vehicle equipment" as:

> (A) any system, part, or component of a motor vehicle as originally manufactured; (B) any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle; or (C) any device or an article or apparel (except medicine or eyeglasses prescribed by a licensed practitioner) that is not a system, part, or component of a motor vehicle and is manufactured, sold, delivered, offered, or intended to be used only to safeguard motor vehicles and highway users against risk of accident, injury, or death.

In section 30120(j), Congress chose to restrict the sale of equipment, without limitation. Thus, the prohibition includes all equipment, including used equipment as well as new equipment.[4]

Section 30120(j) prohibits the sale of equipment *in a condition that it may be reasonably used for its original purpose* (emphasis added). Accordingly, the rule would only prohibit the sale of equipment and tires that are still in a condition in which they can be used for the purpose for which they were originally intended. Thus, the rule would not apply to equipment and tires that have been altered in a way that they can no longer be reasonably used for their original purpose. For example, a tire that is drilled with holes for eye-bolts may be sold for use as part of a playground swing.

Section 30120(j)(1) provides that the prohibition on the sale of equipment applies unless "the defect or noncompliance is remedied as required by this section before delivery under the sale or lease." Therefore, the equipment could be sold if it has been repaired so that it is no longer defective or noncompliant.

The sale of the equipment would also be allowed if "notification of the defect or noncompliance is required under section 30118(b) but enforcement of the order is set aside in a civil action to which section 30121(d) applies." Under 30118(b), if it is determined that a motor vehicle or replacement equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard, the manufacturer is ordered to give notification of the defect or noncompliance under section 30119 to owners, purchasers and dealers of the vehicle or equipment.[5] However, if this order is set aside by a court, the prohibition in section 30120(j) would not apply, and, therefore, the sale would be permissible during the period when the order was not effective.

Regulatory Analyses and Notices

1. E.O. 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866, "Regulatory Planning and Review." After considering the impacts of this proposed rulemaking action, we have determined that the action is not "significant" within the meaning of the Department of the Transportation regulatory policies and procedures. There are statutory provisions in place and these proposed rules would not increase the burdens on those covered by the prohibitions. The impact of this proposed rule would be so minimal as not to warrant preparation of a full regulatory evaluation because these provisions only involve prohibitions on sales of defective and noncompliant vehicles and equipment, which are rare even absent the rule. In light of the statutory provisions, this action does not involve a substantial public interest or controversy. The rulemaking action would not have a substantial impact on any transportation safety program or on state and local governments.

2. Regulatory Flexibility Act

We have also considered the effects of this action in relation to the Regulatory

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[2] We recognize that the title of section 30120(j) refers to a "prohibition" on the sale of equipment. However, we have used the word "limitation" consistently throughout this document.

[3] As discussed above, the sale or lease of a new vehicle with defective or noncompliant equipment or tires is already prohibited by 49 U.S.C. 30120(i).

[4] We recognize that the title of section 30120(j) refers to "replaced equipment." The U.S. Supreme Court has long held that a subtitle of an act cannot overcome the plain and unambiguous meaning of the words used in the text of the statute. *See Knowlton* v. *Moore*, 178 U.S. 41 (1900). Thus, since the language of section 30120(j) is not limited, its reach extends to all equipment that has been found to be defective or noncompliant.

[5] Section 30119 sets out the notification procedures the manufacturer must follow

Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would have no significant economic impact on a substantial number of small entities. The impact of this proposed rule would be expected to be so minimal as not to warrant preparation of a full regulatory flexibility analysis because this provision only involves the prohibition on sales or leases of vehicles or equipment that have been determined to be defective or noncompliant, and the incidence of covered sales and leases would have been small even absent this rule. Governmental jurisdictions will not be affected.

3. E.O. 13132 (Federalism)

E.O. 13132 (64 FR 43255, August 10, 1999), revokes and replaces E.O.s 12612 "Federalism" and 12875 "Enhancing the Intergovernmental partnership." E.O. 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." E.O. 13132 defines the term "policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the E.O. do not apply to this proposed rule.

4. National Environmental Policy Act

We have analyzed this proposed action for purposes of the National Environmental Policy Act. The action would not have a significant effect upon the environment.

5. Civil Justice Reform

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

6. Paperwork Reduction Act

NHTSA has determined that this notice will not impose a new collection of information burden within the meaning of the Paperwork Reduction Act of 1995 (PRA).

7. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more that $100 million annually. Because a final rule based on this proposal would not have an effect of $100 million, no Unfunded Mandates assessment has been prepared.

8. Plain Language

E.O. 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language include consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirement in the proposed rule clearly stated?

—Does the proposed rule contain technical language or jargon that is unclear?

—Would a different format (grouping and order of sections, use of heading, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

Request for Comments

How Can I Influence NHTSA's Thinking on This Rule?

In developing this notice of proposed rulemaking, we tried to address the anticipated concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views, new approaches we have not considered, new data, how this rule may affect you, or other relevant information. Your comments will be most effective if you follow the suggestions below:

Explain your views and reasoning as clearly as possible.

Provide solid information to support your views.

If you estimate potential numbers or reports or costs, explain how you arrived at the estimate.

Tell us which parts of the rule you support, as well as those with which you disagree.

Provide specific examples to illustrate your concerns.

Offer specific alternatives.

Refer your comments to specific sections of the rule, such as the units or page numbers of the preamble, or the regulatory sections.

Be sure to include the name, date, and docket number with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachment, to Docket Management at the beginning of this document, under **ADDRESSES.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at

the address given at the beginning of this document under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation, 49 CFR part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket management at the address and times given near the beginning of this document under **ADDRESSES.**

You may also see the comments on the internet. To read the comments on the internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation. (*http://dms.dot.gov/*).

(2) On that page, click on "search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were NHTSA–2000–1234, "you would type A1234."

(4) After typing the docket number, click on "search."

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

List of Subjects in 49 CFR Part 573

Defects, Motor vehicle safety, Noncompliance, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 573 as set forth below.

PART 573—REQUIREMENTS AND PROHIBITIONS APPLICABLE TO SAFETY DEFECT AND NONCOMPLIANCE RECALLS

1. The authority citation for Part 573 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

2. Revise the heading of part 573 to read as set forth above.

3. In § 573.3, revise paragraph (a) and add paragraphs (h) and (i) to read as follows:

§ 573.3 Application.

(a) Except as provided in §§ 573.3(g), 573.3(h) and 573.3(i), this part applies to manufacturers of complete motor vehicles, incomplete motor vehicles, and motor vehicle original and replacement equipment, with respect to all vehicles and equipment that have been transported beyond the direct control of the manufacturer.

* * * * *

(h) The provisions of § 573.11 apply to dealers.

(i) The provisions of § 573.12 apply to all persons.

* * * * *

4. Add § 573.11 to read as follows:

§ 573.11 Limitation on sale or lease of new motor vehicles and new items of replacement equipment.

(a) If notification is required by an order under 49 U.S.C. 30118(b) or is required under 49 U.S.C. 30118(c) and the manufacturer has provided to a dealer (including retailers of motor vehicle equipment) notification about a new motor vehicle or new item of replacement equipment in the dealer's possession at the time of notification that contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard issued under 49 CFR part 571, the dealer may sell or lease the motor vehicle or item of replacement equipment only if:

(1) The defect or noncompliance is remedied as required by 49 U.S.C. 30120 before delivery under the sale or lease; or

(2) When the notification is required by an order under 49 U.S.C. 30118(b), enforcement of the order is restrained or the order is set aside in a civil action to which 49 U.S.C. 30121(d) applies.

(b) Paragraph (a) of this section does not prohibit a dealer from offering the vehicle or equipment for sale or lease, provided that the dealer does not sell or lease it.

5. Add § 573.12 to read as follows:

§ 573.12 Limitation on sale or lease of new and used defective and noncompliant motor vehicle equipment.

(a) Subject to § 573.12(b), no person may sell or lease any new or used item of motor vehicle equipment (including a tire) as defined by 49 U.S.C. 30102(a)(7), for installation on a motor vehicle, that is the subject of a decision under 49 U.S.C. 30118(b) or a notice required under 49 U.S.C. 30118(c) in a condition that it may be reasonably used for its original purpose.

(b) Paragraph (a) of this section is not applicable where:

(1) The defect or noncompliance is remedied as required under 49 U.S.C. 30120 before delivery under the sale or lease; or

(2) Notification of the defect or noncompliance is required by an order under 49 U.S.C. 30118(b), but enforcement of the order is restrained or the order is set aside in a civil action to which 49 U.S.C. 30121(d) applies.

Issued on: July 17, 2001.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 01–18249 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 66, No. 141
Monday, July 23, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part.

EFFECTIVE DATE: July 23, 2001.

FOR FURTHER INFORMATION CONTACT: Holly Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202)482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (2000), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Tapered Roller Bearings and Parts Thereof from the People's Republic of China and Polyethylene Terephthalate Film, Sheet and Strip (Pet Film) from the Republic of Korea.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2002.

	Period to be reviewed
Antidumping Duty Proceedings	
JAPAN:	
Hot-Rolled Flat-Rolled Carbon-Quality Steel Products	
A–588–846	06/01/00–05/31/01
Kawasaki Steel Corporation	
Structural Steel Beams	
A–588–852	02/11/00–05/31/01
Kawasaki Steel Corporation	
Nippon Steel Corporation	
NKK Corporation	
Sumitomo Metal Industries, Ltd.	
Tokyo Steel Manufacturing Co., Ltd.	
Topy Industries, Ltd.	
Republic of Korea:	
Polyethylene Terephthalate Film, Sheet and Strip (Pet Film)	
A–580–807	06/01/00–05/31/01
H.S. Industries Co., Ltd.	
Hyosung Corporation	
Taiwan:	
Certain Stainless Steel Butt-Weld Pipe Fittings	
A–583–816	06/01/00–05/31/01
Liang Feng Stainless Steel Fitting Co., Ltd.	
Ta Chen Stainless Steel Pipe, Ltd.	
Tru-Flow Industrial Co., Ltd.	
The People's Republic of China:	
Certain Non-Frozen Apple Juice Concentrate [1]	
A–570–855	11/23/99–05/31/01
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.	
Sanmenxia Lakeside Fruit Juice Co., Ltd.	
Shandong ZhongLu Juice Group Co./Rushan Shangjin-Zhonglu Foodstuff Co., Ltd./Shandong Luling Fruit Juice Co., Ltd./Rushan Dongjin Foodstuffs	
Yantai Oriental Juice Co., Ltd.	
Qingdao Nannan Foods Co., Ltd.	
Xian Asia Qin Fruit Co., Ltd.	
Xian Yang Fuan Juice Co., Ltd.	
Changsha Industrial Products & Minerals Import & Export Co.	
Shandong Foodstuffs Import & Export Corporation	
Shaanxi Hengxing Fruit Juice Co., Ltd.	

	Period to be reviewed
Shaanxi Machinery and Equipment Import and Export Corporation	
Shaanxi Gold Peter Natural Drink Co., Ltd.	
Synthetic Indigo [2]	
A–570–856	09/15/99–05/31/01
China Jiangsu International Economic Technical Cooperation Corp.	
Wonderful Chemical Industrial Ltd./Jiangsu Taifeng Chemical Industry	
Tapered Roller Bearings [3]	
A–570–601	06/01/00–05/31/01
Zhejiang Machinery Import & Export Copr.	
China National Machinery Import & Export Corp.	
Luoyang Bearing Corporation	
Tianshui Hailin Import & Export Corp.	
Wanxiang Group Corporation	
Weihai Machinery Holding (Group) Co., Ltd.	
Shanghai China Bearing Factory	
Shanghai Zhenhua Bearing General Company	
SKF Automobile Bearing Co., Ltd. (SKF—Zhenhua or SKF—Zhenghua)	
Beijing SKF—Nankou Railway Bearings Corp., Ltd.	
Xi'an Haihong Bearings Factory	
Dalian Metallurgical Bearings Group Corp.	
Hebei Rolling Bearing China	
Hebei Rolling Mill Bearing Group Company	
Hunan Hengyang Bearing Factory	
China Machine-Building International Corp.	
City Bearings Industrial Co., Ltd.	
Fujian Yong'an Bearing Co., Ltd.	
Ningbo Huanchi Group Corporation	
Shandong Lunan Bearing Co., Ltd.	
Xinjiang Bearing General Company	
Nanjing Bearing Factory	
Renben Group (Hangzhou Bearing Factory)	
Qingdao No. 2 Bearing Factory	
Shandong Liangshan Jingjiu Bearing Co., Ltd.	
Hubei Xishui Bearing Factory	
Zhangjiagang AAA Bearing Co., Ltd.	
Baishan Bearing Co., Ltd.	
Dandong Bearing Factory	
Xiantao Special Bearing Co., Ltd.	
Jamusi Bearing Factory	
Shandong Wendeng Bearing Factory	
Jingjiang Bearing Factory	
Yunnan Honghe Bearing Factory	
Dalong Bearing Factory	
Beijing Renmin Bearing Factory	
Xiangyang No. 2 Bearing Factory	
Sichuang Dongfang Bearing Factory	
Shanxi Baoji Bearing Factory	
Shanghai Lianhe (United) Rolling Bearing Co., Ltd.	
FAG Automotive Bearing (Shanghai) Co., Ltd.	
Guyang Bearing Factory	
Harbin Bearing Group Corporation	
Xiangyang Automobile Bearing Co., Ltd.	
Xiangyang Bearings	
Chengdu Bearing Factory	
Changzhi Bearing Factory	
Wuxi No. 3 Bearing Factory	
Chongqing Bearing Industrial Company	
Changge Bearing Factory	
Guizhou Hongshan Bearing Factory I/E Corp.	
Hunan Zhuzhou Bearing General Factory	
Nanan General Bearing Works	
Ningbo Cixi Nailin Bearings Co., Ltd.	
Ningxia Xibei Bearing Factory	
Shenyang General Bearings	
Taizhou Guotai Bearing Co., Ltd.	
Zhejiang Lishui Waite Bearing Industrial Co., Ltd.	
Shijiazhuang Imported Bearings	
China Metals, Minerals, Machinery & Chemicals Import Export Corporation	
Chin Jun Industrial, Ltd.	
China National Machinery Import/Export Corporation, Yantai	
Shanghai Machinery Import/Export Corp.	
Hubei Provincial Machinery Import & Export Corp.	
Tianshui Hailin Import & Export Corporation	

	Period to be reviewed
Heilongjang Machinery Import/Export	
Shanghai Pacific Machinery Import & Export Corp.	
Direct Source International	
Goldhill International Trading & Services Co.	
Bilop International	
China Aeolus Automotive Industries Import Export Corporation	
Flying Dragon Machinery	
Harbin Bearing Factory	
Xiangyang Bearing Factory	
Suzhou Bearing Factory	
Chengdu General Bearing Factory	
Hongshan Bearing Factory	
Guiyang Bearing Factory	
Haihong Bearing Factory	
Lanzhou Bearing Factory	
Beijing People Bearing Factory	
Handan Bearing Factory	
Jining Bearing Factory	
Shenyang Bearing Factory	
Chaoyang Bearing Factory	
Gongzhuling Bearing Factory	
Jiamusi Bearing Factory	
Zhongguo Bearing Factory	
Xiamen Bearing Factory	
Shanghai Hongxing Bearing Factory	
Wuxi Bearing Factory	
Hangzhou Bearing Factory	
Hefei Bearing Factory	
Huainan Bearing Factory	
Longxi Bearing Factory	
Jiangxi Bearing Factory	
Liangshan Bearing Factory	
Jinan Bearing Factory	
Huangshi Bearing Factory	
Changsha Bearing Factory	
Guangzhou Bearing Factory	
Guangxi Bearing Factory Yishan County	
Chongqing General Bearing Factory	
Yunnan Bearing Factory	
Datong Bearing Factory	
Hebei Rolling Mill Bearing Factory	
Hebei Bearing Factory	
Chengde Bearing Factory	
The Third Bearing Factory of Shanxi	
Anshan Bearing Factory	
Yingkou Bearing Factory	
Xingcheng Bearing Factory	
Hunjiang Bearing Factory	
Daan Bearing Factory	
Shanghai Hunan Bearing Factory	
Shanghai Pujiang Bearing Factory	
Shanghai Changning Bearing Factory	
Xuzhou Revolving Support Factory	
Taian Bearing Factory	
Changshu Bearing Factory	
Northwest Bearing Plant	
Huangshi Bearing Factory	
Guangxi Bearing Factory Yizhou	
Chongqing Bearing Factory	
Baoji Bearing Factory	
Xiangtan Bearing Factory	
Shaoguan Bearing Factory	
Xinjiang Bearing Factory	
The Second Bearing Factory of Xuzhou	
Houzhou Bearing Factory	
Yuxi Bearing Factory	
Chifeng Bearing Factory	
Huangyian Bearing Factory	
Xingchang Bearing Factory	
Liuan Bearing Factory	
Zibo Bearing Factory	
Jining Bearing Factory (Shandong)	
Kaifeng Bearing Factory	

	Period to be reviewed
Shashi Bearing Factory	
Wuhan Bearing Factory	
Changde Bearing Factory	
Hengyang Bearing Factory	
Hubei Bearing Factory '	
Yueyang Bearing Factory	
Zhuzhou Bearing Factory	
Fanchang Bearing Factory	
Dongguan Bearing Factory	
Sichuan Small Size Bearing Factory	
Leshan Bearing Factory	
Honghe Bearing Factory	
Shaanxi Bearing Factory	
Shijiazhuang Bearing Factory	
Shanxi Bearing Factory	
Xiangtan Bearing Factory	
Shaoguan Bearing Factory	
Beijing-Pinggu Bearing Factory	
Huhhot Bearing Factory	
Nantong Bearing Factory	
Qingjiang Bearing Factory	
Wuhu Bearing Factory	
Yiyang Bearing Factory	
Zhongshan Bearing Factory	
Handan Bearing Factory	
Xingcheng Bearing Factory	
China National Machinery/Equipment Corp., Harbin Branch	
Far East Enterprising Co. (H.K.) Ltd.	
China Ningbo Int'l Economic & Technical Cooperation Corp.	
China Ningbo Cixi Import/Export Corp.	
Ningbo Xing Li Bearing Co., Ltd.	
Ningbo Yinxian Import/Export Corp. China	
Ningbo Yinxian Import/Export Corp. Hong Kong	
Santoh HK Ltd.	
Huuzhou Import and Export Corp.	
Fortune Network Ltd.	
China Jiangsu Technical Import/Export Corp.	
Zhejang Expanded Bearing Co. China	
Zhejang Expanded Bearing Co. Hong Kong	
Zhejang Yongtong Company China	
Zhejang Yongtong Company Hong Kong	
China National Bearing Joint Export Corp.	
Sui Jun International Ltd.	
Aempac System, Inc.	
Xinguang Ind. Prod. Import/Export Corp. of Sichuan Province	
Long Trend Ltd.	
Wing Tung Wei (China) Ltd.	
China Merchants S & E Co., Ltd.	
Zhejiang Huangli Bearing Co., Ltd.	
China Ningbo International Economic & Technical Cooperation Corporation	
Ningbo Free Trade Zone	
China National Machinery Imp. & Exp. Corp., Chongquing Branch	
China-East Resources International	
Distribution Services Ltd.	
Inteks Inc. N.V.O.C.C.	
China Tiancheng Jiangsu Corp. Nanjing	
China Tiancheng Jiangsu Corp. Shanghai	
Wholelucks Industrial Lim.	
Peko Incorporation	
O/B Manfred Development Co., (HK) Ltd.	
Asia Stone Company Limited	
Asia (USA) Inc. (Shanghai)	
Xiamen Special Economic Zone Trade Co. Ltd.	
Transunion International Company Hong Kong	
Distribution Services Ltd. Shanghai	
Phoenix Shanghai China	
Shanghai Dong Yu Materials Co., Ltd.	
Guandong Lingnan Industrial Products	
Guandong Lingnan Industrial Products Import & Export Corporation	
Dongguan Industry Development Corp.	
Hi Light Int'l, Inc.	
Ever Concord Ltd.	
Sino Eagle Co.	

	Period to be reviewed
Ever Concord Ltd. (Guangzhou)	
China Mudanjiang Heading factory	
Dalian Machine Tools Parts Factory	
Ningbo Tiansheng Bearing Corp.	
Shenzhen Rising Sun Bearing	
Goldline Ltd.	
Shenzhen Jinyuan Industrial	
Capital Distribution Services	
Versatile Int'l Corp.	
Panalpina China, Ltd.	
Wah Hing Trading Co.	
China North Industries	
Point Talent International Ltd.	
Votainer Far East BV	
Wuxi Viking General	
Shenzen South China International	
Oceanic Bridge International Inc.	
China Jiansu Technical Import & Export Corp.	
Ever Concord Ltd.	
OAG International, Inc.	
Zhejiang Xinchang Foreign Economic	
Heicone Jiang Machinery Import & Export	
Wenling Foreign Trading Corporation	
Shanghai Dongyu Materials Co.	
Ensign Freight (China) Ltd.	
Amec International Co., Inc.	
China Dong Feng Motor	
Rong Shang International Corp.	
STS Machinery, Inc.	
USA International Business	
China Xian Import & Export Corporation	
China Jiangsu Machinery Import and Export (Group) Corp.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of non-frozen apple juice concentrate from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of synthetic indigo from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of tapered roller bearings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 17, 2001.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, AD/CVD Enforcement.

[FR Doc. 01–18342 Filed 7–20–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Automotive Replacement Glass Windshields From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of preliminary determination of antidumping duty investigation.

EFFECTIVE DATE: July 23, 2001.

FOR FURTHER INFORMATION CONTACT: Rick Johnson at (202) 482–3818; Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Statutory Time Limits

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to issue the preliminary determination of an antidumping duty investigation within 140 days after the date of initiation. However, if the case is extraordinarily complicated and additional time is necessary to make the preliminary determination, and the parties concerned are cooperating in the investigation, section 733(c)(1)(B) of the Act allows the Department to extend the time limit for the preliminary determination until not later than 190 days after the date of initiation.

Background

On March 20, 2001, the Department initiated the above-referenced investigation. *See Notice of Initiation of Antidumping Duty Investigation: Automotive Replacement Glass Windshields from the People's Republic of China*, 66 FR 16651 (March 27, 2001). The preliminary determination is currently due no later than August 7, 2001.

Postponement of Preliminary Determination

The Department has now concluded, consistent with section 733(c)(1)(B) of the Act, that this investigation is extraordinarily complicated, and that additional time is necessary to issue the preliminary determination due to the complexity of certain issues raised in this case. Specifically, the Department is investigating a novel product with complex issues related to the scope of the investigation, as well as to the development and identification of appropriate criteria used to define individual models for margin comparison purposes. Moreover, because this case involves a non-market economy country, an extremely large number of surrogate values must be obtained and analyzed in order to construct normal values for the voluminous number of individual models reported by the mandatory respondents in this investigation.

Therefore, in light of the fact that the parties to this proceeding have been cooperating, pursuant to section 733(c)(1) of the Act, and that additional time is necessary to make this preliminary determination in accordance with section 733(c)(1)(B)(ii) of the Act, the Department is postponing the deadline for issuing this determination until August 31, 2001.

Dated: July 17, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–18340 Filed 7–20–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rod From India: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: July 23, 2001.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Rick Johnson, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3207 or (202) 482–3818, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351 (2001).

Background

On December 27, 2000, the Department of Commerce (the Department) received a request from the Viraj Group, Limited, ("Viraj") for an administrative review of the antidumping duty order on stainless steel wire rod from India. On January 31, 2001, the Department published a notice of initiation of this administrative review, covering the period of December 1, 1999 through November 30, 2000 (66 FR 8378). The preliminary results are currently due no later than September 2, 2001.

Extension of Time Limit for Preliminary Results

There are several complex issues in this case with respect to respondent's reported cost of manufacturing. Therefore, it is not practicable to complete this review within the initial time limits mandated by section 751(a)(3)(A) of the Act. Therefore, we are fully extending the due date for the preliminary results by 120 days until December 31, 2001. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: July 17, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary Enforcement, Group III.

[FR Doc. 01–18341 Filed 7–20–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description of each trade mission, obtain a copy of the mission statement from the Project Officer indicated for each mission below. Recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

CRECEX Trade Mission to San Jose, Costa Rica
September 3–17, 2001
Recruitment closes on July 31, 2001
For further information contact: Mr. Dennis Millard, U.S. Department of Commerce, Telephone 501–324–5797; or e-Mail: Dennis.Millard@mail.doc.gov

Corporate Executive Office Mission at Expopharm '01
Munich, Germany
September 13–16, 2001
Recruitment closes on August 15, 2001
For further information contact: Ms. Sabine Winkels, U.S. Consulate, Dusseldorf, Germany, Telephone 011–49–211–737–767–40; or e-Mail: Sabine.Winkels@mail.doc.gov

or

Mr. David Fiscus, U.S. Department of Commerce, Telephone 202–482–1599; or e-Mail: David.Fiscus@mail.doc.gov
Corporate Executive Office Mission at the K'Show '01
Dusseldorf, Germany
October 25–November 1, 2001
Recruitment closes on August 30, 2001
For further information contact: Ms. Kirsten Hentschel, U.S. Consulate, Dusseldorf, Germany, Telephone 011–49–211–737–767–30; or e-Mail: Kirsten.Hentschel@mail.doc.gov
or
Mr. David Fiscus, U.S. Department of Commerce, Telephone 202–482–1599; or e-Mail: David.Fiscus@mail.doc.gov
Oil and Gas Equipment and Services Trade Mission to Kazakhstan, with optional stop in Azerbaijan Almaty, Astana, Atyrau and Baku
October 1–9, 2001
Recruitment Closes on August 31, 2001
For further information contact: Mr. Michael Beeman, U.S. Department of Commerce, Telephone 202–482–3492; or e-Mail: Michael_Beeman@ita.doc.gov
Internet and Telecommunications Trade Mission to Germany
Munich, Frankfurt and Berlin or Hamburg
November 4–9, 2001
Recruitment closes on September 7, 2001
For further information contact: Ms. Danielle_Kriz, U.S. Department of Commerce, Telephone 202–482–0568; or e-Mail: Danielle_Kriz@ita.doc.gov
Franchising Trade Mission to China, Hong Kong (SAR) and Taiwan
Beijing, Hong Kong, Shanghai and Taipei
November 4–9, 2001
Recruitment closes on September 30, 2001
For further information contact: Mr. Raj_Dwivedy, U.S. Department of Commerce, Telephone 202–482–4581; or e-Mail: Raj_Dwivedy@ita.doc.gov
Corporate Executive Office Mission at Medica
Dusseldorf, Germany
November 21–24, 2001
Recruitment closes on October 5, 2001
For further information contact: Ms. Sabine Winkels, U.S. Consulate, Dusseldorf, Germany. Telephone 011–49–211–737–767–40; or e-Mail: Sabine.Winkels@mail.doc.gov
or
Mr. David Fiscus, U.S. Department of Commerce, Telephone 202–482–1599; or e-Mail: David.Fiscus@mail.doc.gov
For further information contact Mr. Thomas Nisbet, U.S. Department of Commerce, Telephone 202–482–5657, or e-Mail Tom_Nisbet@ita.doc.gov

Dated: July 17, 2001.

Thomas H. Nisbet,

Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.

[FR Doc. 01–18292 Filed 7–20–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071101A]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for a renewal of its Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to seismic retrofit construction of the Richmond-San Rafael Bridge (the Bridge), San Francisco Bay (the Bay), CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to renew a small take authorization to CALTRANS to incidentally take, by harassment, small numbers of Pacific harbor seals and possibly California sea lions for 1 year.

DATES: Comments and information must be received no later than August 22, 2001.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application may be obtained by writing to this address or by telephoning one of the contacts listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Christina Fahy, Southwest Regional Office, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101 (a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

> ...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101 (a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On June 8, 2001, NMFS received a letter from CALTRANS, requesting reauthorization of an IHA that was first issued to it on December 16, 1997 (62 FR 6704, December 23, 1997), and renewed on January 8, 2000 (65 FR 2375, January 14, 2000), with an effective date for the IHA beginning on

September 1, 2000, and expiring on August 31, 2001. The renewed authorization would be for the possible harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) and possibly some California sea lions (*Zalophus californianus*), incidental to seismic retrofit construction of the Bridge.

The Bridge is being seismically retrofitted to withstand a future severe earthquake. Construction is scheduled to extend until the year 2005. A detailed description of the work planned is contained in the Final Natural Environmental Study/Biological Assessment for the Richmond-San Rafael Bridge Seismic Retrofit Project (CALTRANS, 1996). Among other things, seismic retrofit work will include excavation around pier bases, hydro-jet cleaning, installation of steel casings around the piers with a crane, installation of micro-piles, and installation of precast concrete jackets. Foundation construction will require approximately 2 months per pier, with construction occurring on more than one pier at a time. In addition to pier retrofit, superstructure construction and tower retrofit work will also be carried out. Because seismic retrofit construction between piers 52 and 57 has the potential to disturb harbor seals hauled out on Castro Rocks, an IHA is warranted. The duration for the seismic retrofit of foundation and towers on piers 52 through 57, which has not taken place as of this date, will take approximately 7 to 8 months to complete.

Description of Habitat and Marine Mammals Affected by the Activity

A description of the Bay ecosystem and its associated marine mammals can be found in the CALTRANS application (CALTRANS 1997) and in CALTRANS (1996).

Castro Rocks are a small chain of rocky islands located next to the Bridge and approximately 1500 ft (460 m) north of the Chevron Long Wharf. They extend in a southwesterly direction for approximately 800 ft (240 m) from pier 55. The rocks start at about 55 ft (17 m) from pier 55 and end at approximately 250 ft (76 m) from pier 53. The chain of rocks is exposed during low tides and inundated during high tide.

Marine Mammals

General information on harbor seals and other marine mammal species found in Central California waters can be found in Forney *et al.* (2000). The marine mammals likely to be found in the Bridge area are limited to California sea lions and harbor seals.

The California sea lion primarily uses the Central San Francisco Bay area to feed. California sea lions are periodically observed at Castro Rocks. No pupping or regular haulouts occur in the project area.

The harbor seal is the only marine mammal species expected to be found regularly in the Bridge area. A detailed description of harbor seals was provided in the 1997 notification of proposed authorization (62 FR 46480, September 3, 1997) and is not repeated here. Corrections and clarifications to the first IHA were provided in the notice of IHA issuance (62 FR 67045, December 23, 1997). Additional information on harbor seals in San Francisco Bay, impacts on harbor seals, and on mitigation and monitoring of the activity were provided in the 2000 IHA authorization document (65 FR 2375, January 14, 2000).

Potential Effects on Marine Mammals

The impact to the harbor seals and California sea lions is expected to be disturbance by the presence of workers, construction noise, and construction vessel traffic. Disturbance from these activities is expected to have a short-term negligible impact to a small number of harbor seals and sea lions. These disturbances will be reduced to the lowest level practicable by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

During the work period, the incidental harassment of harbor seals and, on rare occasions, California sea lions is expected to occur on a daily basis upon initiation of the retrofit work. If harbor seals no longer perceive construction noise and activity as being threatening, they are likely to resume their regular haul out behavior. The number of seals disturbed will vary daily depending upon tidal elevations. It is expected that disturbance to harbor seals during peak periods of abundance will not occur since construction activities will not take place within the restricted work area during the peak period (see Mitigation).

Whether California sea lions will react to construction noise and move away from the rocks during construction activities is unknown. Sea lions are generally thought to be more tolerant of human activities than harbor seals and are, therefore, less likely to be affected.

Potential Effects on Habitat

Short-term impacts of the activities are expected to result in a temporary reduction in utilization of the Castro Rocks haulout site while work is in progress or until seals acclimate to the disturbance. This will not likely result in any permanent reduction in the number of seals at Castro Rocks. The abandonment of Castro Rocks as a harbor seal haulout and rookery is not anticipated since existing traffic noise from the Bridge, commercial activities at the Chevron Long Wharf used for off-loading crude oil, and considerable recreational boating and commercial shipping that currently occur within the area have not caused long-term abandonment. In addition, mitigation measures and proposed work restrictions are designed to preclude abandonment.

Therefore, as described in detail in CALTRANS (1996), other than the potential short-term abandonment by harbor seals of part or all of Castro Rocks during retrofit construction, no impact on the habitat or food sources of marine mammals are likely from this construction project.

Mitigation

Several mitigation measures to reduce the potential for general noise will be implemented by CALTRANS as part of their activity. General restrictions include: with the exception of the Concrete Trestle Section, no piles will be driven (i.e., no repetitive pounding of piles) on the Bridge between 9 p.m. and 7 a.m.; an imposition of a construction noise limit of 86 dBA at 50 ft (15 m) between 9 p.m. and 7 a.m.; and, a limitation on construction noise levels for 24 hrs/day in the vicinity of Castro Rocks during the pupping/molting restriction period (February 15 through July 31).

To minimize potential harassment of marine mammals, NMFS proposes to require CALTRANS to comply with the following mitigation measures: (1) A February 15 through July 31 restriction on work in the water south of the Bridge center line and retrofit work on the Bridge substructure, towers, superstructure, piers, and pilings from piers 52 through 57; (2) no watercraft will be deployed by CALTRANS employees or contractors, during the year within the exclusion zone located between piers 52 and 57, except for when construction equipment is required for seismic retrofitting of piers 52 through 57; and (3) minimize vessel traffic to the greatest extent practicable in the exclusion zone when conducting construction activities between piers 52 and 57. The boundary of the exclusion zone is rectangular in shape (1700 ft (518 m) by 800 ft (244 m)) and completely encloses Castro Rocks and piers 52 through 57, inclusive. The northern boundary of the exclusion zone will be located 300 ft (91 m) from the most northern tip of Castro Rocks,

and the southern boundary will be located 300 ft (91 m) from the most southern tip of Castro Rocks. The eastern boundary will be located 300 ft (91 m) from the most eastern tip of Castro Rocks, and the western boundary will be located 300 ft (91 m) from the most western tip of Castro Rocks. This exclusion zone will be restricted as a controlled access area and will be marked off with buoys and warning signs for the entire year.

Monitoring

NMFS will require CALTRANS to monitor the impact of seismic retrofit construction activities on harbor seals at Castro Rocks. Monitoring will be conducted by one or more NMFS-approved monitors. CALTRANS is to monitor at least one additional harbor seal haulout within San Francisco Bay to evaluate whether harbor seals use alternative haulout areas as a result of seismic retrofit disturbance at Castro Rocks.

The monitoring protocol will be divided into the Work Period Phase (August 1 through February 14) and the Closure Period Phase (February 15 through July 31). During the Work Period Phase and Closure Period Phase, the monitor(s) will conduct observations of seal behavior at least 3 days/week for approximately one tidal cycle each day at Castro Rocks. The following data will be recorded: (1) Number of seals and sea lions on site; (2) date; (3) time; (4) tidal height; (5) number of adults, subadults, and pups; (6) number of individuals with red pelage; (7) number of females and males; (8) number of molting seals; and (9) details of any observed disturbances. Concurrently, the monitor(s) will record general construction activity, location, duration, and noise levels. At least 2 nights/week, the monitor will conduct a harbor seal census after midnight at Castro Rocks. In addition, during the Work Period Phase and prior to any construction between piers 52 and 57, inclusive, the monitor(s) will conduct baseline observations of seal behavior at Castro Rocks and at the alternative site(s) once a day for a period of 5 consecutive days immediately before the initiation of construction in the area to establish pre-construction behavioral patterns. During the Work Period and Closure Period Phases, the monitor(s) will conduct observations of seal behavior, and collect appropriate data, at the alternative Bay harbor seal haulout at least 3 days/week (Work Period) and 2 days/week (Closure Period), during a low tide.

In addition, NMFS proposes to require that, immediately following the completion of the seismic retrofit construction of the Bridge, the monitor(s) will conduct observations of seal behavior, at Castro Rocks, at least 5 days/week for approximately 1 tidal cycle (high tide to high tide) each day, for one week/month during the months of April, July, October, and January. At least 2 nights/week during this same period, the monitor will conduct an additional harbor seal census after midnight.

Reporting

CALTRANS will provide weekly reports to the Southwest Regional Administrator (Regional Administrator), NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of harbor seals that may have been disturbed as a result of seismic retrofit construction activities. These reports will provide dates, time, tidal height, maximum number of harbor seals ashore, number of adults, sub-adults and pups, number of females/males, number of harbor seals with a red pelage, and any observed disturbances. A description of retrofit activities at the time of observation and any sound pressure levels measurements made at the haulout will also be provided. A draft interim report must be submitted to NMFS by April 30, 2002.

Because seismic retrofit activities are expected to continue beyond the date of expiration of this IHA (presumably under a new IHA), a draft final report must be submitted to the Regional Administrator within 90 days after the expiration of this IHA. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

CALTRANS will provide NMFS with a follow-up report on the post-construction monitoring activities within 18 months of project completion in order to evaluate whether haulout patterns are similar to the pre-retrofit haul-out patterns at Castro Rocks.

National Environmental Policy Act

NMFS prepared an Environmental Assessment (EA) in 1997 that concluded that the impacts of CALTRANS' seismic retrofit construction of the Bridge will not have a significant impact on the human environment. A copy of that EA, which includes the Finding of No Significant Impact is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of the seismic retrofit construction of the Bridge, as described in this document, should result, at worst, in the temporary modification in behavior by harbor seals and, possibly, by some California sea lions. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Proposed Authorization

NMFS proposes to renew an IHA to CALTRANS for the potential harassment of small numbers of harbor seals and California sea lions incidental to seismic retrofit construction of the Bridge, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals and possibly California sea lions and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: July 17, 2001.

Wanda L. Cain,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–18322 Filed 7–20–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 21, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to, ATTN: DFAS–GAG/CL, Rodney Winn, Assistant General Counsel for Garnishment Operations, Defense Finance and Accounting Service—Cleveland, P.O. Box 998002, Cleveland, OH 44199–8002.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call, Mr. Rodney Winn, (216) 522–5118.

Title, Associated Form, and OMB Number: Application for Former Spouse Payments From Retired Pay, DD Form 2293; OMB Number 0730–0008.

Needs and Uses: Under 10 U.S.C. 1408, state courts may divide military retired pay as property or order alimony and child support payment from that retired pay. The former spouse may apply to the Defense Finance and Accounting Service (DFAS) for direct payment of these monies by using DD Form 2293. This information collection is needed to provide DFAS the basic data needed to process the request.

Affected Public: Individuals and households.

Annual Burden Hours: 5130 hours.

Number of Respondents: 20,520.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The respondents of this information collection are spouses or former spouses of military members. The applicant submits a DD Form 2293 to the Defense Finance and Accounting Service (DFAS). The information from the DD Form 2293 is used by DFAS in processing the applicant's request as authorized under 10 U.S.C. 1408. The DD Form 2293 was devised to standardize applications for payment under the Act. Information on the form is also used to determine the applicant's current status and contains statutory required certifications the applicant/former spouse must make when applying for payments.

Dated: July 10, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–18260 Filed 7–20–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Nomination for Appointment to the United States Military Academy, Naval Academy, and Air Force Academy; DD Form 1870; OMB Number 0701–0026.

Type of Request: Extension.

Number of Respondents: 16,200.

Responses Per Respondent: 1.

Annual Responses: 16,200.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 8,100.

Needs and Uses: The information collection requirement is necessary in order to receive nominations from all Members of Congress, Vice President, Delegates to Congress, and the Governor and Resident Commissioner of Puerto Rico annually to each of the three service academies as legal nominating authorities. This information collection which results in appointments made to the academies is in compliance with 10 U.S.C. 4342, 6954, 9342, and 32 CFR 901. The completed form provides the required information for a nomination to be processed.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 10, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–18259 Filed 7–20–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Richard Freund

AGENCY: Department of the Navy, DOD.

SUMMARY: The Department of the Navy hereby gives notice of it's intent to grant a prospective license to Richard Freund to the Government-owned invention described in U.S. Patent Serial No. 06/076,174 entitled "Scheduling Framework for a Heterogeneous Computer Network," issued 13 June 2000.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 7, 2001.

ADDRESSES: Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, D0012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey Fendelman, Patent Counsel, Space and Naval Warfare Systems Center, Code D0012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765, telephone (619) 553–3001.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: July 21, 2001.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–18262 Filed 7–20–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–126–000, et al.]

Northeast Empire Limited Partnership #1, et al.; Electric Rate and Corporate Regulation Filings

July 17, 2001.

Take notice that the following filings have been made with the Commission:

1. Northeast Empire Limited Partnership #1, Northeast Empire Limited Partnership #2, Boralex Livermore Falls, Inc., and Boralex Ashland, Inc.

[Docket No. EC01–126–000]

Take notice that on July 11, 2001, Northeast Empire Limited Partnership #1 (NELP#1), Northeast Empire Limited Partnership #2 (NELP#2), Boralex Livermore Falls, Inc. (Boralex Livermore Falls), and Boralex Ashland, Inc. (Boralex Ashland) (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act (FPA) for authorization of a disposition of jurisdictional facilities whereby NELP#1 will divest, and Boralex Livermore Falls will acquire, a 37 megawatt (net) wood-burning qualifying small power production facility located in Livermore Falls, Maine, and NELP#2 will divest, and Boralex Ashland will acquire, a 37 megawatt (net) wood-burning qualifying small power production facility located in Ashland, Maine, including the facilities' appurtenant interconnection facilities, power purchase agreements and rights and interest in an interconnection service agreement for one of the facilities. Applicants state that Federal Energy Regulatory Commission approval is required for the divestiture and acquisition pursuant to section 203 of the FPA and the Public Utility Regulatory Policies Act of 1978 requirements applicable to qualifying facilities with a total capacity between 30 MW and 80 MW.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Walton Electric Membership Corporation

[Docket No. ER01–1400–003]

Take notice that on July 12, 2001, Walton Electric Membership Corporation ("Walton") tendered for filing the Power Supply and Energy Call Agreement by and between Williams Energy Marketing & Trading Company and Walton as requested by Commission Staff.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER01–2567–000]

Take notice that on July 12, 2001, New England Power Company (NEP) submitted a revised Service Agreement for Network Integration Transmission Service (Service Agreement) between NEP and Danvers Electric Division. The Service Agreement is designated First Revised Service Agreement No. 127 under NEP's open access transmission tariff—New England Power Company, FERC Electric Tariff, Second Revised Volume No. 9.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Boralex Ashland, Inc.

[Docket No. ER01–2568–000]

Take notice that Boralex Ashland, Inc. (Boralex Ashland), on July 12, 2001, tendered for filing an application for authorization to sell capacity, energy and ancillary services at market-based rates pursuant to Section 205 of the Federal Power Act. Boralex Ashland also requests that the Commission accept for filing a long-term power purchase agreement for the sale of power from Boralex Ashland to WPS Energy Services, Inc., as a stand-alone rate schedule to Boralex Ashland's proposed market-based rate tariff.

Copies of the filing were served upon the Maine Public Service Commission and WPS Energy Services, Inc.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Boralex Livermore Falls, Inc.

[Docket No. ER01–2569–000]

Take notice that Boralex Livermore Falls, Inc. (Boralex Livermore Falls), on July 12, 2001, tendered for filing an application for authorization to sell capacity, energy and ancillary services at market-based rates pursuant to Section 205 of the Federal Power Act.

Copies of the filing were served upon the Central Maine Power Corporation.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service Corporation

[Docket No. ER01–2571–000]

Take notice that on July 12, 2001, Wisconsin Public Service Corporation (WPSC) filed an executed long-term service agreement with Madison Gas and Electric Company (MG&E) under WPSC's market-based rate tariff, FERC Electric Tariff, Third Revised Volume No. 10 (Tariff). WPSC requests that the Commission allow the service agreement to become effective on September 22, 2001.

A copy of the filing was served upon MG&E.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Central Maine Power Company

[Docket No. ER01–2572–000]

Take notice that Central Maine Power Company (CMP), on July 12, 2001, tendered for filing pursuant to Section 205 of the Federal Power Act (FPA) of the Federal Energy Regulatory Commission (Commission or FERC), (i) an Amendment to Hydroelectric & Biomass Entitlement Agreement; and (ii) an Amendment to Cogeneration and Waste-to-Energy Entitlement Agreement (collectively, the Amendments between CMP and Engage Energy America LLC (Engage). In compliance with Order No. 614, FERC Stats. & Regs. 31,096 (2000), CMP also tendered for filing a Second Revised Hydroelectric & Biomass Entitlement Agreement and a Second Revised Cogeneration and Waste-to-Energy Entitlement Agreement (collectively, the Second Revised Agreements), each revised pursuant to the Amendments.

CMP respectfully requests that the Commission accept the Amendments and the Second Revised Agreements effective as of June 26, 2001, without modification or condition, and grant waiver of any and all requirements, including the Commission's notice requirements for good cause, for these agreements to become effective. Copies of this filing have been served on Engage and the State of Maine Public Utilities Commission.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. ER01–2573–000]

Take notice that on July 12, 2001, Northern Indiana Public Service Company (Northern) tendered for filing a First Revised Northern Indiana Public Service Company Electric Rte Schedule FERC No. 11. The revision eliminates periodic facilities charges, effective May 1, 2001. Northern requests an effective date of May 1, 2001, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Michigan Public Service Commission, the Michigan Electric Transmission Company and the Indiana Utility Regulatory Commission.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. NorthWestern Public Service Company

[Docket No. ER01–2574–000]

Take notice that on July 12, 2001, NorthWestern Public Service Company (NorthWestern) enclosed for filing executed service agreements for Firm Point-to-Point Transmission Service with the City of Bryant, South Dakota and the City of Miller, South Dakota (collectively, Transmission Customers). Copies of this filing were served on the Transmission Customers.

NorthWestern seeks an effective date of July 1, 2001 for these service agreements.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Central Power and Light Company

[Docket No. ER01–2575–000]

Take notice that on July 12, 2001, Central Power and Light Company (CLP) submitted for filing an Interconnection Agreement, dated September 2, 1998, between CPL and South Texas Electric Cooperative, Inc. (STEC) amended to include four additional points of interconnection between the parties. CPL served copies of the filing on STEC and the Public Utility Commission of Texas.

CPL seeks an effective date of September 8, 2001 for one of these points of interconnection and September 9, 2001 for the other three, and, accordingly, seeks waiver of the Commission's notice requirements.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Black Hills Generation, Inc.

[Docket No. ER01–2576–000]

Take notice that Black Hills Generation, Inc. (Black Hills) tendered for filing on July 12, 2001, the following long-term service agreements. Power Purchase Agreement Between Black Hills Generation, Inc. and Municipal Energy Agency of Nebraska. Power Purchase Agreement Between Black Hills Generation, Inc. and Cheyenne Light, Fuel and Power Company. Gillette Turbine Power Purchase Agreement Between Black Hills Generation, Inc. and Cheyenne Light, Fuel and Power Company.

Copies of the filings were provided to the Municipal Energy Agency of Nebraska, Cheyenne Light, Fuel and Power Company, Xcel Energy Markets, and Black Hills Power, Inc.

Black Hills Generation, Inc. has requested that further notice requirement be waived and the executed service agreements be allowed to become effective June 15, 2001.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Black Hills Corporation, n/k/a Black Hills Power, Inc.

[Docket No. ER01–2577–000]

Take notice that Black Hills Corporation, d/b/a Black Hills Power, Inc., a wholly-owned subsidiary of Black Hills Corporation, Inc. (a South Dakota holding corporation), on July 12, 2001, tendered for filing a Power Purchase Agreement Between Black Hills Power, Inc. and Municipal Energy Agency of Nebraska. Copies of the filing were provided to the Municipal Energy Agency of Nebraska and Black Hills Generation, Inc.

Black Hills Power, Inc. has requested that further notice requirement be waived and the executed service agreement be allowed to become effective June 15, 2001.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Orion Power MidWest, L.P.

[Docket No. ER01–2578–000]

Take notice that on July 12, 2001, Orion Power MidWest, L.P. (Orion Power MidWest) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application and revised tariff sheets seeking authorization to amend its rate schedule enabling Orion Power MidWest to reassign transmission capacity.

Comment date: August 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Great River Energy

[Docket No. ER01–2583–000]

Take notice that on July 11, 2001, Great River Energy (Great River), filed a Request for Waiver of Section 1.14a of the Midwest Independent System Operator, Inc. (MISO) Open Access Transmission Tariff. If approved by the Commission, Great River's Request for Waiver would allow MISO to Grandfather Great River's network service agreements with Minnesota Power.

Copies of the filing have been served on each of MISO and Minnesota Power.

Comment date: August 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,

Secretary.

[FR Doc. 01–18253 Filed 7–20–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

July 18, 2001.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: July 25, 2001, 10:00 A.M.

Place: Room 2C, 888 First Street, NE., Washington, DC 20426.

Status: Open.

Matters To Be Considered: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

Contact Person for More Information: David P. Boergers, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It Does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

772nd—Meeting July 25, 2001 Regular Meeting 10 A.M.

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
Omitted
CAE–2.
Docket# ER01–2251, 000, New York Independent System Operator, Inc.
CAE–3.
Docket# ER01–2195, 000, Mid-Continent Area Power Pool
Other#s ER01–2195, 001, Mid-Continent Area Power Pool
CAE–4.
Docket# ER01–2213, 000, Allegheny Energy Supply Company, LLC
Other#s ER00–2998, 001, Southern Company Services, Inc.; ER00–2999, 001, Southern Company Services, Inc.; ER00–3000, 001, Southern Company Services, Inc.; ER00–3001, 001, Southern Company Services, Inc.
CAE–5.
Docket# ER01–2201, 000 Entergy Services, Inc.
CAE–6.
Docket# ER01–2214, 000 Entergy Arkansas, Inc.
CAE–7.
Docket# ER01–2207, 000 Mid-continent Area Power Pool
CAE–8. Omitted
CAE–9.
Docket# ER01–2115, 000, New England Power Pool
Other# EL01–85,000, ISO New England, Inc.,; ER01–2192, 000, ISO New England, Inc.; ER01–2223, 000, New England Power Pool; ER01–2329, 000, New England Power Pool and ISO New England, Inc.; RT01–99, 000, Regional Transmission Organizations
CAE–10.
Docket# ER01–2092, 000, Allegheny Energy Supply Lincoln Generating Facility, LLC
Other#s ER00–2998, 001, Southern Company Services, Inc.; ER00–2999, 001, Southern Company Services, Inc.; ER00–3000, 001, Southern Company Services, Inc.; ER00–3001, 001, Southern Company Services, Inc.
CAE–11.
Docket# ER01–2307, 000, Dayton Power and Light Company
CAE–12.
Docket# ER01–2091, 000, Arizona Public Service Company, El Paso Electric Company and Public Service Company of New Mexico
Other#s NJ01–7, 000, Salt River Agricultural Improvement and Power District
CAE–13.
Docket# ER01–66, 000, Pacific Gas and Electric Company
Other#s ER01–66, 001, Pacific Gas and Electric Company
CAE–14.
Docket# ER01–1417, 000, Richmond County Power, LLC
CAE–15.
Docket# ER01–1519, 000, Arizona Public Service Company
CAE–16.
Omitted
CAE–17.
Docket# ER01–2099, 000, Neptune Regional Transmission System LLC
CAE–18.
Docket# ER01–282, 000, Duke Energy Corporation
Other#s ER01–282, 001, Duke Energy Corporation; ER01–283, 000, Duke Energy Corporation; ER01–283, 001, Duke Energy Corporation
CAE–19.
Docket# ER01–2230, 000, New York Independent System Operator, Inc.
CAE–20.
Docket# EL00–66, 002, Louisiana Public Service Commission and the Council of the City of New Orleans v. Entergy Corporation, Entergy Services, Inc., Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy New Orleans, Inc. and Entergy Gulf States, Inc.
Other#s EL95–33, 004, Louisiana Public Service Commission v. Entergy Services, Inc.; ER00–2854 003, Louisiana Public Service Commission and the Council of the City of New Orleans v. Entergy Corporation, Entergy Services, Inc., Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy New Orleans, Inc. and Entergy Gulf States, Inc.
CAE–21.
Docket# ER01–770, 002, Arizona Public Service Company
Other#s ER01–917, 002, Arizona Public Service Company
CAE–22.
Docket# EL00–62, 026, ISO New England, Inc.
CAE–23.
Docket# ER99–3487, 000, Montana Power Company
Other#s ER00–1992 001 Montana Power Company
CAE–24.
Docket# EC01–70, 000, Wisvest-Connecticut, LLC
Other#s ER01–1259, 000, NRG Connecticut Power Assets, LLC
CAE–25.
Docket# EC01–80, 000, Minnesota Power, Inc. and Superior Water, Light and Power Company
CAE–26.
Docket# EF00–5092, 000, United States Department of Energy—Western Area Power Administration (Boulder Canyon Project)
CAE–27.
Docket# ER01–1639, 001, Pacific Gas and Electric Company
CAE–28.
Docket# EC01–63, 001, Niagara Mohawk Holdings, Inc. and National Grid USA
Other#s EL01–56, 001, Niagara Mohawk Holdings, Inc. and National Grid USA
CAE–29.
Docket# ER01–1763, 001, Duke Electric Transmission
CAE–30.
Docket# EL01–41, 001, Strategic Energy L.L.C. v. California Independent System Operator Corporation
CAE–31.
Docket# TX93–4, 004, Florida Municipal Power Agency v. Florida Power & Light Company
Other#s EL93–51, 003, Florida Municipal Power Agency v. Florida Power & Light Company
CAE–32.
Docket# EF98–3011, 001, United States Department of Energy—Southeastern Power Administration
CAE–33.
Docket# ER95–1042, 003, System Energy Resources, Inc.
CAE–34.
Docket# OA01–6, 000, Exelon Corporation
CAE–35.
Docket# RM95–9, 014, Open Access Same-Time Information System (Oasis) and Standards of Conduct
CAE–36.
Docket# RM01–8, 000, Revised Public Utility Filing Requirements
CAE–37.
Omitted
CAE–38.
Docket# EL01–74, 000, Western Systems Coordinating Council
Other#s ER01–2058, 000, Western Systems Coordinating Council
CAE–39.
Docket# EL01–78, 000, LG&E Energy Marketing, Inc. v. Southern Company Services, Inc. and Georgia Transmission Corporation
CAE–40.
Omitted
CAE–41.
Omitted
CAE–42.
Docket# SC97–4, 000, City of Alma, Michigan
CAE–43.
Docket# EC01–119, 000, Genholdings I, LLC, Millennium Power Partners, L.P., Athens Generating Company, L.P., Covert Generating Company, LLC and Harquahala Generating Company, LLC
Other#s EL01–91, 000, Athens Generating Company, L.P.
CAE–44.
Docket# EL01–47, 005, Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States
CAE–45.
Docket# ER01–2163, 000, American Electric Power Service Corporation
CAE–46.
Docket# EL01–80, 000, National Grid USA
CAE–47.
Docket# ER01–2215, 000, American Electric Power Service Corporation
CAE–48.
Docket# ER01–1587, 001, Consumers Energy Company
CAE–49.
Docket# EL00–95, 031, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets

Operated by the California Independent System Operator Corporation and the California Power Exchange
Other#s EL00–95, 004, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange; EL00–95, 005, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated By the California Independent System Operator Corporation and the California Power Exchange; EL00–98, 030, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange; EL00–98, 033, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange; EL00–98, 004, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange; EL00–98, 005, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange; RT01–85, 000, California Independent System Operator Corporation; RT01–85, 001, California Independent System Operator Corporation; EL01–68, 000, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council; EL01–68, 001, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council; EL01–10, 000, Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement; EL01–10, 001, Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement

CAE–50.
Docket# EL00–95, 039, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
Other#s EL00–98, 037, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange; RT01–85, 002, California Independent System Operator Corporation; EL01–68, 002, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council

CAE–51.
Docket# EL01–35, 000, Mirant Delta, LLC and Mirant Potrero, LLC v. California Independent System Operator Corporation
Other#s EL00–95, 005, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange; EL00–95, 012, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange; EL00–95, 030, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 029, RT01–85, 000, RT01–83, 000, RT01–82, 000, RT01–92, 000, San Diego Gas & Electric Company V. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange; California Independent System Operator Corporation; Pacific Gas and Electric Company; San Diego Gas & Electric Company; Southern California Edison Company

CAE–52.
Docket# ER01–1209, 001, Commonwealth Edison Company

Consent Agenda—Markets, Tariffs and Rates—Gas

CAG–1.
Omitted

CAG–2.
Omitted

CAG–3.
Docket# RP01–467, 000, ANR Pipeline Company

CAG–4.
Docket# RP01–458, 000, Tennessee Gas Pipeline Company

CAG–5.
Docket# RP01–478, 000, Transcolorado Gas Transmission Company

CAG–6.
Docket# RP01–232, 001, Northwest Pipeline Corporation

CAG–7.
Docket# RP01–465, 000, Migc, Inc.

CAG–8.
Omitted

CAG–9.
Docket# RP99–159, 002, Southern Natural Gas Company

CAG–10.
Docket# RP97–288, 009, Transwestern Pipeline Company
Other#S RP97–288, 010, Transwestern Pipeline Company
RP97–288, 011, Transwestern Pipeline Company
RP97–288, 012, Transwestern Pipeline Company
RP97–288, 013, Transwestern Pipeline Company
RP97–288, 014, Transwestern Pipeline Company
RP97–288, 015, Transwestern Pipeline Company
RP97–288, 016, Transwestern Pipeline Company

CAG–11.
Docket# RP00–405, 000, Gulf States Transmission Corporation
Other#s RP00–617, 000, Gulf States Transmission Corporation
RP00–617, 001, Gulf States Transmission Corporation

CAG–12.
Docket# RP00–399, 000, National Fuel Gas Supply Corporation
Other#s RP00–399, 002, National Fuel Gas Supply Corporation
RP01–2, 000, National Fuel Gas Supply Corporation

CAG–13.
Docket# RP00–408, 000, Ozark Gas Transmission, L.L.C.
Other#s RP01–10, 000, Ozark Gas Transmisison, L.L.C.

CAG–14.
Docket# RP00–402, 000, Paiute Pipeline Company
Other#s RP00–587, 000, Paiute Pipeline Company
RP00–587, 001, Paiute Pipeline Company

CAG–15.
Docket# RP00–471, 000, Southwest Gas Storage Company

CAG–16.
Omitted

CAG–17.
Omitted

CAG–18.
Docket# RP00–323, 000, ANR Storage Company

CAG–19.
Docket# RP00–324, 000, Blue Lake Gas Storage Company

CAG–20.
Docket# RP01–419, 001, Transcolorado Gas Transmission Company

CAG–21.
Docket# RP01–382, 001, Northern Natural Gas Company
Other#s RP01–382, 000, Northern Natural Gas Company

CAG–22.
Docket# RP01–388, 002, Northern Border Pipeline Company

CAG–23.
Docket# RP92–137, 051, Transcontinental Gas Pipe Line Corporation
Other#s RP93–136, 011, Transcontinental Gas Pipe Line Corporation

CAG–24.
Omitted

CAG–25.
Docket# RM01–9, 000, Reporting of Natural Gas Sales to the California Market

CAG–26.
Docket# RP01–246, 000, Natural Gas Pipeline Company of America

CAG–27.
Docket# RP01–253, 000, Transcontinental Gas Pipe Line Corporation
Other#s RP01–245, 000, Transcontinental Gas Pipe Line Corporation

Consent Agenda—Miscellaneous

CAM–1.
Docket# RM01–10, 000, Standards of Conduct for Transmission Providers

Consent Agenda—Energy Projects—Hydro

CAH–1.
Docket# P–4515, 010, Eric R. Jacobson
Other#s P–4515, 014, Eric R. Jacobson

CAH–2.
Omitted

CAH–3.
Omitted
CAH–4.
Docket# P–2188, 054, PP&L Montana, LLC

Consent Agenda—Energy Projects—Certificates

CAC–1.
Docket# CP00–233, 003, Southern Natural Gas Company
CAC–2.
Docket# CP01–111, 000, Algonquin Gas Transmission Company and Texas Eastern Transmission LP
CAC–3.
Docket# CP01–141, 000, PG&E Gas Transmission, Northwest Corporation
CAC–4.
Docket# CP01–31, 000, Kern River Gas Transmission Company
Other#s CP01–31, 001, Kern River Gas Transmission Company
CAC–5.
Docket# CP01–45, 000, Colorado Interstate Gas Company
CAC–6.
Omitted
CAC–7.
Docket# CP99–615, 001, Petal Gas Storage, L.L.C.
CAC–8.
Docket# CP00–401, 001, Suprex Energy Corporation and Altagas Facilities (U.S.), Inc.
CAC–9.
Docket# CP01–145, 000, Otay Mesa Generating Company, LLC
CAC–10.
Docket# CP00–40, 000, Florida Gas Transmission Company
Other#s CP00–39, 000, Gulf South Pipeline Company, LP (Formerly Koch Gateway Pipeline Company);
CP00–40, 001, Florida Gas Transmission Company;
CP00–40, 002, Florida Gas Transmission Company
CAC–11.
Docket# CP01–34, 000, Transcontinental Gas Pipe Line Corporation
Other#s CP01–32, 000, Williams Gas Processing-Gulf Coast Company, L.P.
CAC–12.
Docket# CP01–103, 000, Transcontinental Gas Pipe Line Corporation
Other#s CP01–104, 000, Williams Gas Processing-Gulf Coast Company, L.P.
CAC–13.
Docket# CP01–157, 000, Georgia-Pacific Corporation
CAC–14.
Docket# CP01–46, 001, National Fuel Gas Supply Corporation
CAC–15.
Docket# CP00–65, 003, Tennessee Gas Pipeline Company
CAC–16.
Docket# CP01–259, 000, Ohio Valley Hub, L.L.C.
CAC–17.
Docket# CP96–711, 001, Discovery Producers Services LLC
Other#s CP96–712, 001, Discovery Gas Transmission LLC
CP96–719, 001, Discovery Gas Transmission LLC
CAC–18.
Docket# CP00–350, 000, Bangor Gas Company, L.L.C.

Energy Projects—Hydro Agenda

H–1.
Reserved

Energy Projects—Certificates Agenda

C–1.
Reserved

Markets, Tariffs and Rates—Electric Agenda

E–1.
Reserved

Markets, Tariffs and Rates—Gas Agenda

G–1.
Reserved

David P. Boergers,
Secretary.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7012–6]

Final Issuance of National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges From Concentrated Animal Feeding Operations in Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final NPDES General Permit.

SUMMARY: The Regional Administrator, EPA, Region 9, is today issuing an NPDES general permit (permit No. AZG800000) for discharges from concentrated animal feeding operations (CAFOs) in Arizona. A notice of EPA's proposal to issue the permit was published in the **Federal Register** on Friday, September 1, 2000. The public comment period for this general permit ended on November 20, 2000. The final permit establishes effluent limitations, prohibitions, best management practices and other conditions governing the discharge of pollutants to waters of the United States from CAFOs in Arizona.

DATES: This general permit shall be effective on August 27, 2001. Deadlines for submittal of notices of intent to be governed by the permit are provided in part III, section B of the general permit. Today's general permit also provides additional dates for compliance with permit requirements.

ADDRESSES: The index to the administrative record for the final general permit is available from the EPA Region 9 office in San Francisco. The NPDES general permit and other related documents in the administrative record are on file at the EPA Region 9 office at the following address: U.S. EPA, Region 9, CWA Standards and Permits Office (WTR–5), 75 Hawthorne Street, San Francisco, CA 94105–3901. The records are available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. For appointments to examine the administrative record, please call Jacques Landy at (415) 744–1922 or Shirin Tolle at (415) 744–1898. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information on this permit please contact Jacques Landy or Shirin Tolle, EPA Region 9, at the address listed above or telephone Jacques Landy at (415) 744–1922 or Shirin Tolle at (415) 744–1898. Copies of the permit, permit appendices, fact sheet and response to comments document will be provided upon request and are also available at EPA, Region 9's website at *http://www.epa.gov/region09/water/npdes/index.html* (permit link located under section heading Final NPDES Permits).

SUPPLEMENTARY INFORMATION:

Summary of Terms and Conditions of General Permit

A. Facility Coverage

This permit covers Concentrated Animal Feeding Operations (CAFOs as defined in 40 CFR 122.23(b)) in Arizona and in Indian Country in Arizona as set forth in part II, section A of the permit. An owner or operator of a CAFO eligible for coverage under this general permit may apply for an individual permit rather than seek coverage under the general permit.

An owner or operator of a CAFO seeking coverage under this permit must submit a Notice of Intent (NOI) to EPA, and to the Arizona Department of Environmental Quality (ADEQ) or the appropriate Indian Tribe. A NOI for an existing CAFO must be submitted within 180 days after the effective date of this permit. An owner or operator seeking coverage for a new facility must submit a NOI, and additional information identified in Appendix C of the permit, at least ninety days before the facility becomes a CAFO.

This permit will terminate five years after its effective date. In accordance with 40 CFR 122.28(b)(3), EPA may require any discharger authorized by this permit to apply for and obtain an individual NPDES permit, and terminate or revoke coverage under the general permit. Owners or operators authorized by this permit may also

request to be excluded from the general permit's coverage by applying for an individual permit.

B. Effluent Limitations

This permit includes technology-based effluent limitations and standards based on the effluent limitations guidelines for the Feedlots Point Source Category, 40 CFR part 412. The permit also includes conditions designed to achieve water quality standards established under CWA, section 303, including Arizona's water quality criteria codified at Arizona Administrative Code Title 18, Chapter 11, and federally promulgated water quality standards codified at 40 CFR 131.31. Provisions requiring the use of best management practices (BMPS) to control or abate the discharge of pollutants are included in the permit pursuant to Clean Water Act (CWA) section 402(a)(1) and 40 CFR 122.43 and 122.44(k). Monitoring requirements are included pursuant to 40 CFR 122.48 and 122.44(i), and conditions applicable to all permits are included pursuant to 40 CFR 122.41.

A fact sheet briefly setting forth the principal facts and significant factual, legal, methodological and policy questions considered in preparing this final general permit is available as part of the public record for this action. In addition, a response to the comments received in response to the public notice of this permit has been prepared pursuant to 40 CFR 124.17.

C. EPA issuance of General Permits

Arizona has not received approval to issue NPDES permits and otherwise administer the NPDES program. Accordingly, EPA Region 9 is issuing this general permit governing discharges from CAFOs pursuant to CWA section 402.

EPA may issue either individual or general NPDES permits. General permits, and the conditions under which they may be issued, are described at 40 CFR 122.28. EPA may issue a general permit to regulate a category of point sources, if the sources all involve substantially similar types of operations, discharge the same types of wastes, require the same effluent limitations, require similar monitoring, and are more appropriately controlled under a general permit than under individual permits. EPA has determined that CAFOs eligible for coverage pursuant to Part II of the permit meet the criteria set forth in 40 CFR 122.28 and that issuance of the general permit is appropriate pursuant to that provision.

D. National Environmental Policy Act

Pursuant to CWA section 511(c), and 40 CFR part 6, EPA has conducted an environmental review of the proposed action, and has determined that no significant impacts are anticipated and that an Environmental Impact Statement (EIS) is not required. EPA has prepared an environmental assessment and Finding of No Significant Impact (FNSI), which are available as part of the public record for this action.

This permit requires that a person seeking coverage for a new CAFO must submit to EPA, and to the State or Indian Tribe, as appropriate, an Environmental Information Document (EID), containing the information identified in Appendix C, no later than 90 days before the operation becomes a CAFO. This requirement will provide EPA an opportunity to conduct an environmental review, determine if any significant impacts are anticipated, determine if an environmental impact statement is required and otherwise ensure compliance with NEPA requirements, with respect to the proposed new source.

E. Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA) requires that Federal agencies consult with the U.S. Fish and Wildlife Service (FWS) to insure that any action authorized, funded or carried out by them (also known as an "agency action") is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Part II, section B.2 of the permit expressly prohibits coverage under the permit of any CAFO which is likely to adversely affect a listed or proposed to be listed threatened or endangered species or its critical habitat. Any such facility would be required to apply for and obtain an individual NPDES permit, and the process of issuing the individual permit would fully address protection of endangered and threatened species and their habitat though the section 7 consultation process of the Endangered Species Act (ESA).

Following discussions with FWS, EPA has decided to issue the permit pursuant to ESA section 7(d), without concluding the consultation with FWS, based on the finding that this action will not result in an irreversible or irretrievable commitment of resources.

F. National Historic Preservation Act

The National Historic Preservation Act (NHPA) and implementing regulations require the Regional Administrator, before issuing a permit, to adopt measures when feasible to mitigate potential adverse effects of the permitted activity on properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation. This permit provides that CAFOs which are likely to adversely affect properties listed or eligible to be listed in the National Register of Historic Places are ineligible for coverage under the permit. This permit also requires that a person seeking coverage for a new CAFO must submit to EPA, and to the State or Indian Tribe, as appropriate, an Environmental Information Document (EID), containing information related to impacts upon historical or archeological resources, no later than 90 days before the operation becomes a CAFO. This requirement will provide EPA an opportunity to ensure compliance with NHPA requirements with respect to the proposed new source.

G. Permit Appeal Procedures

Within 120 days following notice of EPA's final decision for the general permit under 40 CFR 124.15, any interested person may appeal the permit in the Federal Court of Appeals in accordance with section 509(b)(1) of the CWA. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21 (and authorized at 40 CFR 122.28) and then petition the Environmental Appeals Board to review any condition of the individual permit pursuant to 40 CFR 124.19.

H. Paperwork Reduction Act

The information collection required by this permit has been approved by Office of Management and Budget under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

I. Economic Impact (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of

the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this final general permit is not a "significant regulatory action" under the terms of Executive Order 12866.

J. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)"). UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedures Act (APA)], or any other law * * *"

As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the Clean Water Act. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

EPA has determined that this final general permit does not contain a Federal requirement that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that this final general permit will not significantly nor uniquely affect small governments. For UMRA purposes, "small governments" is defined by reference to the definition of "small governmental jurisdiction" under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) "Small governmental jurisdiction" means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

This final general permit also will not uniquely affect small governments because compliance with the permit conditions affects small governments in the same manner as any other entities seeking coverage under the final general permit.

K. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. Under 5 U.S.C. 605(b), no Regulatory Flexibility Analysis is required where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Agency takes the position that NPDES general permits are not subject to rulemaking requirements under APA section 553 or any other law. The requirements of APA section 553 apply only to the issuance of "rules," which the APA defines in a manner that excludes permits. See APA section 551(4), (6) and (8). The CWA also does not require publication of a general notice of proposed rulemaking for general permits. EPA publishes draft general NPDES permits for public comment in the **Federal Register** in order to meet the applicable CWA procedural requirement to provide "an opportunity for a hearing." See CWA section 402(a), 33 U.S.C. 1342(a).

Nevertheless, the Agency has determined that this permit will not have a significant economic impact on a substantial number of small entities. The permit requirements have been designed to minimize significant administrative and economic impacts on small entities and should not have a significant impact on regulated sources in general. Moreover, the final general permit reduces a significant burden on regulated sources of applying for individual permits.

L. Signature

Accordingly, I hereby find consistent with the provisions of the RFA, that this final general permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*), owners or operators of a concentrated animal feeding operation that submit a completed Notice of Intent in accordance with part III, section A for a concentrated animal feeding operation located in the area specified in part II, section A and eligible for permit coverage under part II, section B are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit becomes effective on August 27, 2001.

This permit and the authorization to discharge expire at midnight, August 26, 2006.

Dated: July 5, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

Environmental Protection Agency Region 9 Concentrated Animal Feeding Operations (CAFOs) National Pollutant Discharge Elimination System (NPDES) General Permit NO. AZG800000 For the State of Arizona

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Part I. Authority

This permit is issued pursuant to Clean Water Act, section 402.

Part II. Permit Coverage

A. Area

The permit covers the State of Arizona and Indian Country in Arizona subject to the jurisdiction of the following Indian Tribes: Ak-Chin, Cocopah, Colorado River, Fort McDowell Mohave-Apache, Fort Mohave, Fort Yuma-Quechan, Gila River, Havasupai, Hopi, Hualapai, Kaibab Paiute, Navajo, Pascua Yaqui, Salt River Pima-Maricopa, San Carlos, San Juan Southern Paiute, Tohono O'odham, Tonto Apache, White Mountain Apache, Yavapai-Apache (Camp Verde), and Yavapai-Prescott.

B. Sources

The permit covers concentrated animal feeding operations (CAFOs) in the permit area, except any CAFO that:

1. has been notified by the Director to apply for an individual permit pursuant to 40 CFR 122.28(b)(3);

2. is likely to adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat;

3. is likely to adversely affect properties listed or eligible to be listed in the National Register of Historic Places; or

4. becomes a CAFO after the effective date of this permit and meets any of the following conditions: (a) Discharges to a water quality limited segment listed for: Total nitrogen, nitrogen species, total phosphorus, turbidity, fecal coliform or E.Coli, (b) discharges to a "Unique Water" identified in Arizona Administrative Code R18–11–112, or (c) is located within the 100 year floodplain.

C. Reopener Clause for Endangered Species Protection

This permit may be modified or revoked and reissued based on the results of Endangered Species Act section 7 consultation with the U.S. Fish and Wildlife Service.

Part III. Application for Coverage

A. Notice of Intent

An owner or operator of a CAFO seeking coverage under this permit must submit a completed "Notice of Intent to be Covered by General Permit No. AZG800000 for Concentrated Animal Feeding Operations" (NOI), attached as Appendix A, to: US EPA, Region 9, Attn.: AZG800000/NOI, WTR–7, 75 Hawthorne St., San Francisco, CA 94105.

An owner or operator seeking coverage for a CAFO not in Indian Country subject to the jurisdiction of an Indian Tribe identified in Part II.A. must submit a copy of the completed NOI to: Arizona Department of Environmental Quality, Water Quality Compliance Section, Mail Code M0501, 3033 N. Central Avenue, Phoenix, AZ 85012.

An owner or operator seeking coverage for a CAFO in Indian Country subject to the jurisdiction of an Indian Tribe identified in Part II.A. must submit a copy of the completed NOI to the appropriate Indian Tribe. See, Appendix D, Contact Names and Addresses.

B. Deadline for Notice of Intent

The deadline for submitting a completed NOI is:

1. For an operation which is a CAFO on the effective date of the permit, 180 days after the effective date of the permit;

2. For an operation designated as a CAFO pursuant to 40 CFR 122.23(c), 90 days after designation as a CAFO; and

3. For an operation which becomes a CAFO after the effective date of the permit, 90 days before the operation becomes a CAFO.

C. Additional Information Regarding New CAFOs

A person seeking coverage under this permit for an operation which becomes a CAFO after the effective date of the permit and which meets the definition of a "new source" as provided in Part VII.S of this permit, must also submit to EPA, and to the State or Indian Tribe, as appropriate, an "Environmental Information Document" (EID), containing the information identified in Appendix C, no later than 90 days before the operation becomes a CAFO. For assistance in determining whether an operation which becomes a CAFO after the effective date of the permit meets the definition of new source, please contact Shirin Tolle at (415) 744–1898 or Jacques Landy at (415) 744–1922.

D. Commencement of Authorization to Discharge

Authorization to discharge from an eligible CAFO in accordance with the permit begins:

1. For an operation which is a CAFO on the effective date of the permit, or designated as a CAFO pursuant to 40 CFR 122.23(c), 24 hours after a complete and timely NOI is mailed to EPA; and

2. for an operation which becomes a CAFO after the effective date of the permit, 90 days after a complete and timely NOI and EID is mailed to EPA, unless the CAFO is notified by EPA during the 90-day period following mailing of the NOI and EID, that more than 90 days are required to process the NOI and conduct the National Environmental Policy Act review required by 40 CFR 122.29(c).

E. Expiration, Termination or Revocation of Coverage

This permit expires five years after its effective date. If this permit is not reissued prior to its expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and any discharger authorized by this permit prior to the expiration date will remain authorized under this permit until (i) the permit is reissued or (ii) EPA publishes a determination not to reissue this permit. In accordance with 40 CFR 122.28(b)(3), EPA may require any discharger authorized by the permit to apply for and obtain an individual NPDES permit, and terminate or revoke coverage under this general permit. In accordance with 40 CFR 122.28(b)(3), any owner or operator authorized by the permit may request to be excluded from coverage of the general permit by applying for an individual permit.

Part IV. Permit Requirements

A. Effluent Limitations and Discharge Prohibitions

1. There shall be no discharge of waste, process waste water, or process waste water pollutants to waters of the United States except when storm events, either chronic or catastrophic, cause an overflow of process waste water from a

facility properly designed, constructed, maintained, and operated to contain:

a. All process generated waste waters resulting from the operation of the CAFO (such as wash water, parlor water, watering system overflow); plus

b.All contaminated runoff from a 25-year, 24-hour storm event.

2. Except for discharges which are

a. composed entirely of storm water runoff, snow melt runoff and/or

b. return flows from irrigated agriculture, originating from a land area upon which manure and/or waste water from a CAFO has been applied in accordance with a Best Management Practices Plan (BMP Plan) under Part IV.B.1 and with a Nutrient Management Plan (NMP) under Part IV.B.3.a, there shall be no discharge which causes or contributes to a violation of a State or, if appropriate, tribal water quality standard.

3. Discharges of manure or process waste water from waste water control or retention structures to waters of the United States by means of a hydrologic connection are prohibited.

B. Special Conditions

1. Best Management Practices (BMP) Plan

a. Deadlines for developing and implementing a BMP Plan

A permittee must develop and implement a BMP Plan for the CAFO covered by this permit:

i. For an operation which is a CAFO on the effective date of the permit, by one year after the effective date of the permit;

ii. For an operation designated as a CAFO pursuant to 40 CFR 122.23(c), by one year after designation as a CAFO; and

iii. For an operation which becomes a CAFO after the effective date of the permit, by the date on which the NOI for the CAFO is submitted.

b. Submission of BMP Plans for New CAFOs

A permittee for an operation which becomes a CAFO after the effective date of the permit must submit the BMP Plan with the original and the copy of the NOI for that CAFO to the agencies listed in Part III.A, as appropriate.

c. Content of BMP Plan

A BMP Plan must:

i. be developed in accordance with standard engineering practices as defined by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), National Engineering Handbook, Part 651, Agricultural Waste Management Field Handbook available at *ftp://ftp.ftw.nrcs.usda.gov/pub/awmfh*, or any subsequent NRCS revision of Part 651 which the permittee references in the BMP Plan;

ii. describe the BMPs and Minimum Standards which the permittee will implement to assure compliance with the permit;

iii. demonstrate that the waste water control or retention structures are adequately designed (in accordance with NRCS Conservation Practice Standard Code 313—Waste Storage Facilities or any subsequent NRCS revision of Standard 313 which the permittee references in the BMP Plan) and can achieve the effluent limitations and discharge prohibitions of Part IV.A. above;

iv. identify the persons responsible for developing, implementing, and revising the BMP Plan (including its inspection and record keeping procedures), and describe their respective activities and responsibilities;

v. include a map showing the drainage pattern, surface water bodies, and existing waste water control or retention structures;

vi. list the significant chemicals and/or hazardous substances that are used, stored or disposed of at the CAFO, and describe any significant spills of these chemicals and/or hazardous substances at the CAFO after the effective date of this permit;

vii. describe activities and chemicals and/or hazardous substances which may be a potential pollutant source, including sources which may reasonably be expected to add pollutants to runoff from the facility;

viii. include all existing sampling data obtained pursuant to Part V.B;

ix. describe the inspection and record keeping procedures which the permittee will implement pursuant to Part IV.B.4;

x. describe an appropriate schedule for preventive maintenance and good housekeeping;

xi. identify areas which have a high potential for significant soil erosion and describe measures to limit erosion and pollutant runoff;

xii. describe an employee training program pertaining to permit compliance;

xiii. be signed in accordance with Part VI.E.; and

xiv. Be updated as appropriate.

2. Minimum Standards

Minimum Standards are applicable to the CAFO operation upon issuance of the permit and are to be incorporated into the CAFO's BMP Plan.

a. Diversion of Run-on

The permittee shall isolate feedlots and associated wastes from outside surface drainage by ditches, dikes, berms, terraces or other waste water control or retention structures, designed to carry, store or contain peak flows during the 25-year, 24-hour storm event. The permittee must protect any waste water control or retention structure by berms or other appropriate structures to prevent inundation that may occur during a 25-year, 24-hour flood event. The permittee should consult with the County Flood Control District in order to ensure that any measures taken to comply with this requirement are consistent with Arizona law.

b. Waste Water Control or Retention Structure Freeboard

To maintain adequate capacity in waste water control or retention structures, the permittee shall establish and maintain a minimum freeboard for all waste water control or retention structures adequate to prevent berm failure and overflow during normal operating conditions and to ensure compliance with the permit conditions.

c. CAFO Expansion

The permittee shall not expand its CAFO, either in size or number of animals, before making a determination and ensuring that wastes generated by the expansion will not exceed the design capacity of the waste water control or retention structures.

d. Land Application of Manure

Manure or process waste water must not be applied on land that is flooded, saturated with water, frozen or snow covered, where such conditions could reasonably be expected to result in a discharge of manure or process waste water to waters of the United States.

e. Buffers and Equivalent Practices

The permittee shall maintain buffer strips or other equivalent practices near feedlots, manure storage areas, and land application areas that are sufficient to minimize discharge of pollutants to waters of the United States.

f. Chemical Handling

The permittee shall ensure that wastes from facility activities such as dipping and/or pest/parasite control and hazardous substances or toxic pollutants do not enter any waters of the United States.

g. Disposal of Material into Waste Water Control or Retention Structures

The disposal of any hazardous substances or toxic pollutants, other

than discharges associated with proper operation and maintenance of the CAFO, into waste water control or retention structures is prohibited.

h. Dead Animals

The permittee must dispose of dead animals in a manner that prevents contamination of waters of the United States.

i. Spills

The permittee must take appropriate measures to prevent and clean up spills of any pollutants, and to report spills as required by Part VI.D.3.

j. Facility Closure

The permittee shall close all waste water control or retention structures in accordance with NRCS Conservation Practice Standard Code 360—Closure of Waste Impoundments or any subsequent NRCS revision of Conservation Practice Standard Code 360 which the permittee references in the BMP Plan.

l. Liner Requirements for New Waste Water Control or Retention Structures

Waste water control or retention structures constructed after the effective date of this permit shall incorporate either a synthetic or soil liner in accordance with NRCS Agricultural Waste Management Field Handbook Part 651.1080 Appendix 10D—Geotechnical, Design and Construction Guidelines as posted at *http://www.ncg.nrcs.usda.gov/awmfh.html* or *ftp://ftp.ftw.nrcs.usda.gov/pub/awmfh/* on August 24, 1998, or any subsequent NRCS revision of Part 651.1080 Appendix 10D which the permittee references in the BMP Plan.

3. Nutrient Management

a. Nutrient Management Plan (NMP)

If manure or process waste water is applied to land under the operational control of the permittee, the permittee shall, no later than (i) two years after the effective date of the permit or (ii) thirty (30) days before beginning land application, whichever is later, develop a Nutrient Management Plan (NMP) approved by Arizona NRCS or a Certified Nutrient Management Planning Specialist. The NMP must provide that waste, process waste water and soil sampling shall be conducted in accordance with the most current version of NRCS Conservation Practice Standard—Arizona Nutrient Management, Code 590.

b. On-site Land Application of Manure or Process Waste Water

The permittee shall not land apply manure or process waste water unless the permittee has completed an NMP and determined a site-specific, quantified land application rate that does not exceed the capacity of the soil and the planned crops to assimilate nutrients based on the most limiting nutrient in the soil (e.g., phosphorus or nitrogen), type of crop, realistic crop yields, soil type, and all nutrient inputs in addition to those from the manure or process waste water. The permittee shall not land apply manure or process waste water in excess of the land application rate which it has determined under the NMP.

c. Land Application Monitoring

On each day during which manure or process waste water is land applied by the permittee, the permittee shall record the following information to determine compliance with the land application rate:

i. Quantity of manure or process waste water applied (in gallons/day, cubic feet/day, or acre-inches/day),

ii. Land application rate (in tons/acre or lbs/acre of process waste water or manure), and

iii. Application area (in acres).

d. Off-Site Land Application of Manure or Process Waste Water

If the permittee provides manure or process waste water generated at the CAFO to another person for off-site land application, the permittee must:

i. Provide to the applier the nutrient values expected to be found in the manure or process waste water;

ii. Inform the applier of the requirements of Arizona Administrative Code Title 18, Chapter 9, Article 4, pertaining to Agricultural General Permits (reproduced in Appendix E);

iii. Record the amount of manure or process waste water that leaves the permitted operation; and

iv. For quantities greater than 100 tons provided to a single recipient per week, record the name and address of the recipient.

4. Inspections and Record Keeping

a. The permittee shall retain a copy of the NOI, permit, BMP Plan, NMP and other records required to be maintained under the permit at the CAFO.

b. The permittee shall ensure each year that the person or persons identified pursuant to Part IV.B.1.c.iv as responsible for implementing the BMP Plan's inspection and record keeping procedures completely inspects the CAFO and completes a report of the findings of the inspection. The report must state:

i. Whether the BMP Plan's description of potential pollutant sources is accurate,

ii. If the drainage map shows current conditions or must be updated,

iii. What pollutants have entered the waste water control or retention structures, and

iv. Whether the minimum standards are being implemented and are adequate.

c. Waste Water Control or Retention Structure Inspection and Monitoring

i. Monthly (and in any event within five days of each chronic rainfall or catastrophic storm event), the permittee shall inspect the waste water control or retention structures for berm integrity, cracking, slumping, excess vegetation, burrowing animals and seepage.

ii. Quarterly (and in any event within five days of each chronic rainfall or catastrophic storm event), waste water control or retention structure freeboard (in feet) shall be monitored and recorded. Freeboard records shall be kept with the BMP plan.

Part V. Discharge Notification and Monitoring

A. Discharge Notification

The permittee must report any discharge: within 24 hours, by verbal notification to EPA at (415) 744–1905; and, within five (5) days of the discharge, by written notification to EPA and to the State or Indian tribe, as appropriate. The notification must include:

1. A description of the discharge and cause, whether excess precipitation, snow melt, or other specified causes;

2. The date and time of the discharge, its duration and, if not corrected, the anticipated time the discharge is expected to continue;

3. A description of the path to the receiving water and the name of the receiving stream;

4. An estimate of the flow and volume discharged;

5. If the discharge was caused by a precipitation event, information concerning the size of the precipitation event from the National Weather Service or on-site rain gauge;

6. The name of the person recording the discharge; and

7. A description of steps being taken to reduce, eliminate and prevent recurrence of the discharge.

B. Discharge Monitoring

The permittee must sample and analyze grab samples from all overflows or discharges from the waste water control or retention structures for the following analytes:

1. Fecal coliform bacteria;

2. 5-day Biochemical Oxygen Demand (BOD_5);

3. Total Suspended Solids (TSS);

4. ammonia (NH_3–N); nitrite (as N), nitrates (as N), total Kjeldahl nitrogen (TKN as N); and

5. total phosphorus (as P);

The permittee shall: (a) collect the sample within 30 minutes of commencement of the discharge; or (b) if sampling in that period is inappropriate due to dangerous weather, flooding or other conditions, collect the sample as soon as possible after suitable conditions occur, and document the reason for the delay.

C. Sampling Methods and Procedures

Within 60 days of commencement of authorization to discharge as provided by Part III.D of this permit, the permittee shall select a licensed Arizona laboratory and inform the laboratory of the analytes to be sampled. The permittee shall obtain the following polyethylene sampling bottles from the laboratory: one 250 ml bottle for bacterial analysis, one 500 ml bottle for BOD_5 and TSS, and one 500 ml bottle for nutrients. These bottles shall be kept ready on-site along with an ice-chest. An on-site source of ice shall be identified for sample preservation. Samples shall be taken as grab samples directly from the end of pipes or from ditches or surface waters. Sample bottles shall not touch solid surfaces during sampling. Sample bottles shall be filled completely, and shall be packed in ice in the ice-chest and delivered to the identified laboratory within six hours of sampling. At the laboratory, the sampler or a designee identified by the sampler in the field log shall sign the 'relinquished by' box on a form which shall be provided by the laboratory. On this form, the sampler or designee shall note date and time when the samples are delivered. The sampler or designee shall inform laboratory of sample type (waste water) and analyses to be performed.

D. Sample Documentation and Transport

The permittee shall record the following information at the time of the sampling event and shall include the information with the facility's BMP plan pursuant to Part IV.B.1.c.viii of this permit:

1. Sample location and description of discharge;

2. Sampler's name(s);

3. Date and time of sample collection;

4. Date and time that sample arrived at laboratory; and

5. Name of person delivering sample to laboratory.

Part VI. Standard Permit Conditions

A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR 122.41, et seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the "Act") as well as ALL applicable regulations.

2. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation, and reissuance; for denial of a permit renewal application; and/or for requiring a permittee to apply for and obtain an individual NPDES permit.

3. Toxic Pollutants

The permittee shall comply with effluent standards and prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request for a permit modification, revocation and re issuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State/Tribal or local laws or regulations.

6. Duty To Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

7. Criminal and Civil Liability

Nothing in this permit will be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations which avoids or effectively defeats the regulatory purpose of the permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

8. State/Tribal Laws

Nothing in this permit will be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Indian Tribe law or regulation under authority preserved by section 510 of the Act.

9. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, will not be affected thereby.

B. Proper Operation and Maintenance

1. Need to Halt or Reduce Activity Not a Defense

It will not be a defense for a permittee in an enforcement action to plead that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

The permittee shall, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

C. Monitoring and Records

1. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect, at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor, at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative Sampling

Samples and measurements taken for the purpose of monitoring will be representative of the monitored activity.

3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

4. Record Content

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

5. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator. The requirements at 40 CFR Part 136 may be accessed at the following web-site: *http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1*

D. Reporting Requirements

1. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned physical alterations or additions or changes in activity which may result in noncompliance with permit requirements.

2. Transfers

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act (CWA). (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory.)

3. Twenty-Four Hour Reporting

The permittee shall report any noncompliance which may endanger human health or the environment. Any information must be provided orally to the EPA Region IX, via its 24-hour voice mail system, telephone number 415/744–1905 within 24 hours from the time the permittee becomes aware of the noncompliance circumstances. Notice will also be provided to ADEQ or the Tribal Authority, as appropriate. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances.

The report must contain the following information:

a. A description of the noncompliance and its cause;

b. The period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and,

c. Steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.

4. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, the permittee shall promptly submit such facts or information to the Director.

E. Signatory Requirements

All applications, reports, or information submitted to the Director will be signed and certified consistent with 40 CFR 122.22:

1. All permit applications will be signed as follows:

a. For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

i. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,

ii. The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; or

b. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively, By the co-permittee (if determined to be operator).

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,

c. The written authorization is submitted to the Director.

F. Certification

Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

G. Availability of Reports

Any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

H. Penalties for Violations of Permit Conditions

1. Criminal Penalties

a. Negligent violations: The Act provides that any person who negligently violates Section 301, 302, 306, 307, 308, 318, or 405 of the Act or any condition or limitation implementing those provisions in a permit issued under Section 402 is subject to a fine of not less that $2,750 nor more than $27,500 per day of violation, or by imprisonment for not more than one year, or both.

b. Knowing violations: The Act provides that any person who knowingly violates Section 301, 302, 306, 307, 308, 318 or 405 of the Act or permit conditions implementing those provisions and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $275,000, or by imprisonment for not more than 15 years, or both.

c. Knowing endangerment: The Act provides that any person who knowingly violates Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act or permit conditions implementing those provisions and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $275,000, or by imprisonment for not more than 15 years, or both.

d. False statements: The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring devise or method required to maintained under the Act, shall upon conviction, be punished by a fine of not more than $11,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $22,000 per day of violation, or by imprisonment of not more than four years, or by both. (See Section 309(c)4 of the Clean Water Act)

2. Civil Penalties

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $27,500 per day for each violation. (See Section 309(d))

3. Administrative Penalties

The Act provides that the Administrator may assess a Class I or Class II administrative penalty if the Administrator finds that a person has violated Sections 301, 302, 306, 307, 308, 318, or 405 of the Act or a permit condition or limitation implementing these provisions, as follows (See Section 309(g))

a. Class I penalty; Not to exceed $11,000 per violation nor shall the maximum amount exceed $27,500.

b. Class II penalty: Not to exceed $11,000 per day for each day during which the violation continues nor shall the maximum amount exceed $137,500.

I. Upset

1. Definition

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with Part IV.A.1 of this permit because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. Effect of an Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with Part IV.A.1 of this permit if the requirements of Part VI.I.3 of this permit are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

3. Conditions Necessary for a Demonstration of Upset

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated;

(iii) The permittee submitted notice of the upset as required in Part V.A of this permit (24-hour notice); and

(iv) The permittee complied with any remedial measures required under Part VI.B.2 of this permit.

4. Burden of Proof

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

Part VII. Definitions

A. 25-Year, 24-Hour Storm Event

Means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom. A current map showing the 25-year, 24-hour precipitation event may be viewed at the following website: *http://www.wrcc.dri.edu/pcpnfreq/az25y24.gif*, which is maintained by the Western Regional Climate Center, accessible through the Homepage for the Hydrometeorological Design Studies Center, part of the National Weather Service's Office of Hydrology.

B. Animal Feeding Operation

Is defined at 40 CFR 122.23(b) as: "(1)* * * a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. (2) Two or more animal feeding operations under common ownership are considered, for the purposes of these

regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes."

C. Application

Means a written "notice of intent" pursuant to 40 CFR 122.28.

D. Best Management Practices ("BMPs")

Means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. Best Management Practices also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

E. Catastrophic Storm Event

Is equivalent to a 25-year, 24-hour storm event. Catastrophic events include tornadoes, hurricanes or other catastrophic conditions that would cause an overflow from a waste water control or retention structure that is designed, constructed, operated and maintained to meet all the requirements of this permit.

F. Certified Nutrient Management Planning Specialist

Is a person, including a CAFO operator or other third party vendor, who has completed the following training and who has received approval by the Natural Resources Conservation Service (NRCS) as a "Certified Nutrient Management Planning Specialist." A Certified Nutrient Management Planning Specialist has the authority to plan or approve Nutrient Management Plans (NMPs) under this permit.

1. The following NRCS web-based classes, located at *http://www.ftw.nrcs.usda.gov/nedc/homepage.html*, must have been completed and passed by a person training to be a Certified Nutrient Management Planning Specialist prior to that person undertaking the training described in subsection 2 below:

a. "Introduction to Water Quality",

b. "Nutrient Management Considerations in Conservation Planning", and

c. "Agricultural Waste Management Systems—A Primer".

2. The following NRCS-Arizona 1-day Nutrient Management Training Course must have been completed and passed by a person training to be a Certified Nutrient Management Planning Specialist prior to that person being eligible to obtain approval by the NRCS as a Certified Nutrient Management Planning Specialist:

a. Conservation Planning Course Modules 1–5,

b. Federal Regulations,

c. Arizona Regulations, and

d. "Arizona Nutrient Management Considerations in Conservation Planning".

G. Chronic Rainfall

Is a series of wet weather conditions that preclude de-watering of properly maintained waste water control or retention structures.

H. Concentrated Animal Feeding Operation (CAFO)

Is defined at 40 CFR 122.23(b) to mean an animal feeding operation which meets the criteria in appendix B of 40 CFR 122, or which the Director so designates. Appendix B to Part 122-Criteria for Determining a Concentrated Animal Feeding Operation (122.23) states that: "An animal feeding operation is a concentrated animal feeding operation for purposes of 122.23 if either of the following criteria are met.

(a) More than the numbers of animals specified in any of the following categories are confined:

(1) 1,000 slaughter and feeder cattle,

(2) 700 mature dairy cattle (whether milked or dry cows),

(3) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),

(4) 500 horses,

(5) 10,000 sheep or lambs,

(6) 55,000 turkeys,

(7) 100,000 laying hens or broilers (if the facility has continuous overflow watering),

(8) 30,000 laying hens or broilers (if the facility has a liquid manure system),

(9) 5,000 ducks, or

(10) 1,000 animal units; or

(b) More than the following number and types of animals are confined:

(1) 300 slaughter and feeder cattle,

(2) 200 mature dairy cattle (whether milked or dry cows),

(3) 750 swine each weighing over 25 kilograms (approximately 55 pounds),

(4) 150 horses,

(5) 3,000 sheep or lambs,

(6) 16,500 turkeys,

(7) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(8) 9,000 laying hens or broilers (if the facility has a liquid manure system),

(9) 1,500 ducks, or

(10) 300 animal units;

and either one of the following conditions are met: pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar man-made device; or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24-hour storm event."

I. Discharge

Means the "discharge of a pollutant".

J. Discharge of a Pollutant

Means any addition of any pollutant or combination of pollutants to waters of the United States from any point source. This definition includes additions of pollutants into waters of the United States from: surface water runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works. [See, 40 CFR 122.2.]

K. Effective Date of the Permit

Is August 27, 2001.

L. Feedlot

Means a concentrated, confined animal or poultry growing operation for meat, milk, or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth or production is not sustained in the area of confinement.

M. Freeboard

Means the linear distance in feet from the structural top of a berm (usually defined by a road or access path) to the operational level of waste water in a retention structure.

N. Ground Water

Means any subsurface waters.

O. Hazardous Substance

Means any substance designated under 40 CFR Part 116 pursuant to section 311 of the Act. A list of currently designated hazardous substances is included in 40 CFR 116.4, Table 116.4A. 40 CFR 116.4 may be obtained at the following web-site: *http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1*, by entering the following numbers: Title 40, Part 116, and Section 4 for the "most recent available" revision year. Alternatively, a

paper copy of 40 CFR 116.4, Table 116.4A may be obtained by contacting U.S. EPA Region 9's CWA Standards and Permits Office at (415) 744–1898 or (415) 744–1922.

P. Hydrologic Connection

Means a discrete connection between groundwater and surface water, e.g. percolation from a waste impoundment or improper land application resulting in down-gradient seepage into waters of the United States.

Q. Land Application

Means the application of process waste water or waste onto or incorporation into the soil.

R. Manure

Means animal waste.

S. New Source

Means the following as defined under 40 CFR 122.29 (b)(1):

"(i) It is constructed at a site at which no other source is located; or (ii) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or (iii) Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Director shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source."

T. Nutrient Management Plan (NMP)

Means a plan, approved by Natural Resources Conservation Service (NRCS) or a Certified Nutrient Management Planning Specialist, which, among other elements, establishes the rates at which manure or process waste water can be land applied so as to meet crop nutrient needs while minimizing the amount of pollutants discharged in agricultural return flows. The requirements for NMPs have been established by NRCS under the NRCS Conservation Practice Standard—Arizona Nutrient Management, Code 590. An NMP must contain the following minimum information: a Field Map, Soil Test Results, Crop Sequence, Realistic Yield Goals, Manure and Waste Water Nutrient Values, Recommended Application Rates, Recommended Application Methods, and Guidance for implementation, operation, maintenance and record keeping.

U. Pollutant

Means the following as defined under 40 CFR 122.2: "dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials * * *, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water."

V. Process Waste Water

Means any process generated waste water; and any precipitation (*e.g.*, rain or snow) which comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (*e.g.*, milk, eggs).

W. Process Generated Waste Water

Means water directly or indirectly used in the operation of a feedlot for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning or flushing pens, barns, manure pits or other feedlot facilities; direct contact swimming, washing or spray cooling of animals; and dust control.

X. Spill

Means discharge, usually (but not exclusively) a small, inadvertent discharge of a toxic pollutant or hazardous substance.

Y. The Act

Means Federal Water Pollution Control Act as amended, also known as the Clean Water Act, found at 33 U.S.C. 1251 *et seq.*

Z. Toxic Pollutants

Means any pollutant listed as toxic under Section 307(a)(1) of the Act. Toxic pollutants are listed in 40 CFR 401.15, which may be obtained at the following web-site: *http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1* by entering the following numbers: Title 40, Part 401, and Section 15 for the "most recent available" revision year. Alternatively, a paper copy of 40 CFR 401.15 may be obtained by contacting U.S. EPA Region 9's CWA Standards and Permits Office at (415) 744–1898 or (415) 744–1922.

AA. Waste

Means manure as well as bedding, feed and other by-products of an animal feeding operation.

BB. Waste Water Control or Retention Structure

Means any structure such as a pond, impoundment or lagoon used for the retention of liquid wastes or sludges (including manure, liquid waste, and runoff from the feedlot area) on the premises until their ultimate disposal. This includes all collection ditches, conduits and swales for the collection of runoff and waste water.

CC. Water Quality Limited Segment

Means a water body identified as Water Quality Limited Segment pursuant to 40 CFR 130.7. At the time of permit issuance the most recent list of water quality limited waters in Arizona may be found in: "Arizona's 1998 Water Quality Limited Waters List," ADEQ, July 1998, EQR–98–8.

DD. Water Quality Standard

Is defined at 40 CFR 130.2(d) as: "Provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act." The State of Arizona's water quality standards are contained in Arizona Administrative Code Title 18 (Environmental Quality) Chapter 11 (Department of Environmental Quality Water Quality Standards) Article 1 (Water Quality Standards for Surface Waters). The website where they may be found is: *http://www.sosaz.com/public_services/Title_18/18–11.htm.*

EE. Waters of the United States

Is defined at 40 CFR 122.2 as: "(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (b) All interstate waters, including interstate "wetlands;"(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes; (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (3) Which are used or could be used for industrial purposes by industries in interstate commerce; (d) All impoundments of waters otherwise

defined as waters of the United States under this definition; (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition; (f) The territorial sea; and (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.
* * * *."

Part VIII. Availability of Technical and Legal References

Hard copies or electronic versions of all citations and technical or other documents referenced in this permit may be obtained by contacting Shirin Tolle at (415) 744–1898 or Jacques Landy at (415) 744–1922.

[FR Doc. 01–18193 Filed 7–20–01; 8:45 am]
BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; Comments Requested

July 13, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 21, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0661.

Title: Section 21.931 Partitioning of BTAs.

Form No.: n/a.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 10.

Estimated Hours Per Response: 7 hours (1 hour respondent, 4 hours contract attorney, 2 hours contract engineer).

Frequency of Response: on occasion.

Cost to Respondents: $11,000.

Estimated Total Annual Burden: 10.

Needs and Uses: Section 21.931 permits a Basic Trading Area (BTA) to enter into contracts with eligible parties to partition any contiguous portion of its service area. Under Section 21.931(a)(2), applicants are required to submit partitioning contracts with the Commission within 30 days of the date the contracts are reached. These contracts will be submitted with one of the following: (1) An MDS long-form application; (2) an application for assignment or transfer; or (3) a statement of intention. These collections have separate OMB control numbers. These partitioning contracts will facilitate the development of successful wireless cable systems in rural areas and will make the most efficient use of the available spectrum. The contracts designate the specific geopolitical boundaries used to partition the BTA. The Commission will apply the same MDS technical rules to partitioned service areas.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 01–18293 Filed 7–20–01; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 16, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 22, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0788.

Title: DTV Showings/Interference Agreements.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 350.

Estimated Time Per Response: 5 hours.

Frequency of Response: On occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 1,750 hours.

Total Annual Cost: $2,800,000.

Needs and Uses: The technical showings and interference agreements submitted by DTV respondents will be used by FCC staff to determine if the public interest would be served by the grant of the application and to ensure that the proposed facilities will not result in additional interference to other stations. This collection of information has been revised to remove all references to industry frequency coordination committees. These committees did not evolve. Respondents have been using consulting engineers and attorneys to prepare the technical showings and interference agreements.

OMB Control No.: 3060–0979.

Title: Spectrum Audit Letter.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents: 300,000.

Estimated Time Per Response: .50 hours.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 150,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The information collected is required for an audit of the construction and operational status of all of the Private Land Mobile Radio (PLMR) and Fixed Microwave Radio (FMR) stations in the Commission's licensing database that are subject to rule-based construction and operational requirements. The Commissions' rules for the PLMR and FMR services require construction within a specified time frame and require a station to remain operational in order for the license to remain valid.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–18294 Filed 7–20–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

July 16, 2001.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 22, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fec.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0004.

Title: Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Second Memorandum Opinion and Order, ET Docket No. 93–62.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions; Individuals or households; and State, local, or tribal governments.

Number of Respondents: 126,550.

Estimated Time per Response: 2 hrs. (avg.).

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 239,620 hrs.

Total Annual Costs: $849,000.

Needs and Uses: The National Environmental Policy Act of 1969 (NEPA) required Federal agencies to evaluate the effects of their actions on "human environmental quality." To comply with NEPA, the Commission adopted rules, 47 CFR 1.1307, which revised the RF exposure guidelines for FCC-regulated facilities. The new guidelines reflect more recent scientific studies of RF electromagnetic fields and their biological effects and are designed to ensure that the public and workers receive adequate protection from exposure to potentially harmful RF electromagnetic fields. The Commission staff uses the information required under 47 CFR 1.1307 to determine whether the environmental evaluation is sufficiently complete and in compliance with the FCC Rules to be acceptable for filing.

OMB Control Number: 3060–0844.

Title: Carriage of the Transmission of Digital Television Broadcast Stations, R&O, and FNPRM.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 12,700.

Estimated Time per Response: 30 mins. to 40 hrs.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 93,221 hours.

Total Annual Costs: $2,414,894.

Needs and Uses: The FCC adopted a Report and Order (R&O) on January 23, 2001 and Further Notice of Proposed Rulemaking (FNPRM). The R&O modified 47 CFR 76.64(f) to provide that stations that return their analog spectrum and broadcast only in digital format are entitled to elect must-carry or retransmission consent status following the procedures previously applicable to new television stations. The R&O also provides only carriage rights for a very limited number of digital-only television broadcast stations (DTV) and may result in voluntary carriage for a subset of other DTV stations. Furthermore, the R&O established a

framework for voluntary retransmission consent agreements between DTV station licensees and multichannel video programming distributors and modified several sections of the rules accordingly. The FNPRM seeks additional comments on carriage requirements relating to digital television stations generally, as proposed in the initial NPRM.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–18295 Filed 7–20–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Request for Comment on Study of Banking Regulations Regarding the Online Delivery of Banking Services; Correction

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Request for comment; correction.

SUMMARY: The FDIC published a document in the **Federal Register** of July 16, 2001, concerning request for comments on issues arising from the electronic delivery of financial products and services. The document inadvertently omitted the FDIC's EPC (electronic public comment) address.

FOR FURTHER INFORMATION CONTACT: Jenetha M. Hickson, Alternate Liaison Officer, (202) 898–3807.

Correction

In the **Federal Register** of July 16, 2001, in FR Doc. 01–17666, on page 37029, in the second column, correct the **ADDRESSES** caption to read:

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (facsimile number (202) 898–3838. Comments may be submitted to the FDIC electronically over the Internet at *<http://www.fdic.gov/regulations/laws/publiccomments/index.html* or *comments@fdic.gov <mailto:comments@fdic.gov>*), and may be posted on the FDIC internet site at *http://www.fdic.gov/regulations/laws/federal/propose.html*. Comments may also be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

Dated: July 18, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–18300 Filed 7–20–01; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 7, 2001.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. David Foster McAnelly, Liberty, Kentucky; to acquire additional voting shares of Casey County Bancorp, Inc., Liberty, Kentucky, and thereby indirectly acquire voting shares of Casey County Bank, Liberty, Kentucky.

2. Robert T. and June Dowell Rousey (as a control group), Liberty, Kentucky; to acquire additional voting shares of Casey County Bancorp, Inc., Liberty, Kentucky, and thereby indirectly acquire additional voting shares of Casey County Bank, Liberty, Kentucky.

Board of Governors of the Federal Reserve System, July 18, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–18334 Filed 7–20–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 01-16870) published on pages 35639-35640 of the issue for Friday, July 6, 2001.

Under the Federal Reserve Bank of New York heading, the entry for North Fork Bancorporation, Melville, New York, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. North Fork Bancorporation, Inc., Melville, New York; to acquire through North Fork Bank, Melville, New York, the voting shares of Commercial Bank of New York, New York, New York.

In connection with this application, North Fork Bank has applied to become a bank holding company.

Comments on this application must be received by July 30, 2001.

Board of Governors of the Federal Reserve System, July 18, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–18335 Filed 7–20–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the

BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 17, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Chemical Financial Corporation, Midland, Michigan; to acquire Bank West Financial Corporation, Grand Rapids, Michigan, and Bank West, Grand Rapids, Michigan, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y, and to acquire Sunrise Mortgage Company, Grand Rapids, Michigan, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 18, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–18333 Filed 7–20–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Friday, July 27, 2001, from 8:30 a.m. to 4 p.m. and is open to the public.

ADDRESSES: The meeting will be held at 6010 Executive Boulevard, Fourth Floor, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Anne Lebbon, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852, (301) 594–7216. For press-related information, please contact Karen Migdail at 301/594–6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHRQ, on (301) 594–6662 no later than February 26, 2001.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Healthcare Research and Quality. In accordance with its statutory mandate, the Council is to advise the Secretary and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the agency to enhance the quality, improve outcomes, reduce costs of health care services, improve access to such services through scientific research, the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members. Donald M. Berwick, M.D., the Council chairman, will preside.

II. Agenda

On Friday, July 27, 2001, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairman. The Director, AHRQ, will present the status of the Agency's current research, programs and initiatives. Tentative agenda items include HCUP quality indicators, U.S./U.K. collaboration, and evidence-based management research. The official agenda will be available on AHRQ's website at *www.ahrq.gov* no later than July 20, 2001. The meeting will adjourn at 4 p.m.

Dated: July 17, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–18301 Filed 7–20–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding "National Quality Measures Clearinghouse". The RFP was published in the Commerce Business Daily on April 27, 2001.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision and procurement rules that protect the free exchange of candid views and facilitate Department and Committee operations.

Name of TRC: The Agency for Healthcare Research and Quality—"National Quality Measures Clearinghouse".

Date: August 9, 2001 (Closed to the public).

Place: Agency for Healthcare Research & Quality, 6010 Executive Blvd, 4th Floor, Conference Room D, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Jean Slutsky, Center for Practice and Technology Assessment, Agency for Healthcare Research and Quality, 6010 Executive Blvd, Suite 300, Rockville, Maryland, 20852, 301–594–4042.

Dated: July 13, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–18302 Filed 7–20–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01151]

Development of Model Voluntary Counseling and Testing Services in the Democratic Republic of Ethiopia; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the

availability of fiscal year (FY) 2001 funds for a cooperative agreement program for the development of pilot voluntary counseling and testing (VCT) services in the Federal Democratic Republic of Ethiopia.

The purpose of this cooperative agreement is to increase access to quality VCT services in Addis Ababa by involving, encouraging and supporting the Addis Ababa HIV/AIDS Prevention and Control Secretariat for pilot VCT services in the city of Addis Ababa.

Since the implementation of VCT services to the general population has been identified as a key strategy for the prevention of HIV transmission, these collaborative activities could profoundly change the focus and activities of the Ethiopian National AIDS Policy and improve AIDS control programs and prevention efforts in Ethiopia and eventually throughout sub-Saharan Africa.

The U.S. Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through its Leadership and Investment in Fighting an Epidemic (LIFE) initiative. Through this LIFE program, CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of (1) HIV primary prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. Government agencies are already active. Ethiopia is one of these targeted countries.

As a key partner in the U.S. Government's LIFE initiative, CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic in LIFE initiative countries. In particular, CDC's mission in Ethiopia is to work with Ethiopian and international partners to develop and apply effective interventions to prevent HIV infection and associated illness and death from AIDS.

Ethiopia is among the world's countries most adversely affected by the HIV/AIDS epidemic and TB. With an estimated three million adults infected with HIV by end of 1999, Ethiopia has the third largest population of HIV-infected persons in the world, accounting for about 9 percent of the world's HIV/AIDS cases. The estimated percent of adults aged 15 to 49 infected with HIV is 10.6 percent, making Ethiopia sixteenth in the world in HIV prevalence. There have been over a million cumulative deaths due to AIDS, with 280,000 occurring in 1999 alone. UNAIDS estimated that 150,000 children are currently living with HIV and that 1.2 million children have been orphaned by AIDS, making Ethiopia third in the number of HIV orphans in the world. The principal routes of HIV transmission are heterosexual and mother-to-infant; HIV and other STIs are closely associated. The World Health Organizations (WHO) estimated TB incidence, prevalence and deaths rates for Ethiopia in 1997 were 260, 367, and 82 per 100,000 population respectively, which represented 156,000 new cases, 221,000 infections and 49,000 deaths for that year. TB cases have been increasing over the years coincident with HIV epidemic; HIV prevalence among TB patients is estimated at 40–50 percent. Data on STIs, however, are scant. These statistics suggest the need for the expansion and improvement of a range of surveillance, care, and prevention activities and services.

Voluntary counseling and testing is one of the major strategies in the prevention of HIV transmission which also serves as a tool to reduce and/or avoid risky behaviors. It provides increased opportunities for the early diagnosis of HIV infection, prevention and/or treatment of opportunistic infections, prevention of mother-to-child HIV transmission (PMTCT), and improvement of surveillance systems. Implementing quality VCT has not been feasible thus far because of the unavailability of standard counseling and testing guidelines, training manuals and established referral systems linked to care and support. In Addis Ababa during the past two years, the few "VCT" centers established were primarily owned and operated by private clinics and faith-based organizations. Findings from studies and personal observations indicate that although the community demand for testing is on the increase in the city, most of the services were found to be unaffordable financially and also lacked standard approaches for testing and counseling. To address this public demand and further intensify the prevention efforts, the establishment of quality VCT is very important. This project is therefore aimed at setting up standardized integrated VCT service at one of the general hospitals (Princess Zewditu Memorial Hospital) and free-standing VCT services at an NGO (OSSA) in Addis Ababa.

B. Eligible Applicants

Assistance will be provided only to the Addis Ababa HIV/AIDS Prevention and Control Secretariat. No other applications are solicited.

The Addis Ababa HIV/AIDS Prevention and Control Secretariat is the only appropriate and qualified organization to conduct a specific set of activities supportive of the CDC Global AIDS Program's technical assistance to Ethiopia because:

1. The Addis Ababa HIV/AIDS Prevention and Control Secretariat is uniquely positioned, in terms of legal authority, ability, and credibility among Ethiopian citizens, to develop and implement a model VCT system in public and non-governmental organization sites in Addis Ababa, Ethiopia.

2. The Addis Ababa HIV/AIDS Prevention and Control Secretariat already has established mechanisms to develop and implement VCT services in Addis Ababa, enabling it to immediately become engaged in the activities listed in this announcement.

3. The purpose of the announcement is to build upon the existing framework of HIV prevention activities that the Addis Ababa HIV/AIDS Prevention and Control Secretariat itself has developed or initiated.

4. The Addis Ababa HIV/AIDS Prevention and Control Secretariat has been mandated by the Ethiopian government to coordinate and implement HIV prevention activities including VCT within the Addis Ababa region.

C. Availability of Funds

Approximately $500,000 is available in FY 2001 to fund this award. It is expected that the award will begin on or about September 30, 2001 and will be made for a 12-month budget period within a project period of up to five years. Annual funding estimates may change.

Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

1. Use of Funds

Funds received from this announcement will not be used for the

purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in PMTCT cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

No funds awarded under this announcement shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services) for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exception;

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organizations, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

D. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Dorimar Rosado, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2782, e-mail: dpr7@cdc.gov.

For program technical assistance, contact: Tadesse Wuhib, MD, MPH, CDC Ethiopia, U.S. Embassy, P.O. Box 1014, Entoto Road, Addis Ababa, Ethiopia, Telephone: 251–9–22–00–84 e-mail: tew7@cdc.gov.

Dated: July 17, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18283 Filed 7–20–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01146]

Expansion of HIV/AIDS Prevention Activities in the Republic of Kenya; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for Global AIDS Program.

The purpose of the program is to provide assistance in developing a disease Surveillance program for the control of HIV/AIDS in the country of Kenya, and to support activities to reduce the burden of tuberculosis.

B. Eligible Applicants

Single Source

Assistance will be provided only to the Ministry of Health (MOH) of the Country of Kenya. No other applications are solicited.

This announcement is restricted to the MOH or subservient agencies of the government of Kenya as they are the only legislated entity with the authority and responsibility to collect such data for the purpose of the control of HIV/AIDS, communicable disease and the maintenance of public health.

A. Availability of Funds

Funds are available under this announcement to fund two specific activities with funding amounts identified for each activity. These activities are:

1. HIV/AIDS Surveillance Activities including:

(a) Monitoring of Blood Safety

(b) Overall monitoring of HIV VCT and Mother to Child Transmission within Kenya—$500,000

2. Tuberculosis Surveillance and Control as it relates to HIV/AIDS—$1 million

Each component or program activity for which funds are requested should be specifically identified with Goals, Plan, Objectives, Activities, Method of Evaluation and budget provided. A summary budget by line item should be provided.

It is expected that the awards will begin on or about September 30, 2001 and will be made for a 12-month budget period within a project period of up to five (5) years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Antiretroviral Drugs

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in PMTCT cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities including program management and operations and delivery of prevention services for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Needle Exchange

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number (770) 488–2782, E-mail address: dpr7@cdc.gov.

For program technical assistance, contact: Lawrence H. Marum, M.D., FAAP, MPH, CDC LIFE Initiative P.O. Box 30137, Nairobi, National AIDS/ASTD Control Programme (NASCOP), P.O. Box 30137, Nairobi, Kenya.

US Mail: Unit 64112, APO, AE 09831–4112, Telephone number: +254–72–721–781 or +254–2–729–549, Fax: +254–2–714–745, E-mail: Lmarum@nairobi.mimcom.net.

Dated: July 17, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18285 Filed 7–20–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01191]

Human Immunodeficiency Virus Prevention Intervention Research Studies—Efficacy of Condom Skills Building Demonstrations for Human Immunodeficiency Virus (HIV)/Sexually Transmitted Disease (STD) Prevention Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for efficacy of condom skills building demonstrations for HIV/Sexually Transmitted Disease (STD) prevention. This program addresses the "Healthy People 2010" focus area of HIV.

The purpose of the program is to study condom use skills-building demonstrations for HIV/STD prevention.

Research Topic

This announcement seeks research applications aimed at developing and evaluating brief (30 minutes or less), condom skills-building interventions that can be conducted with groups of patients in waiting room settings. Refer to Attachment II in the application kit for additional background information on the research topic.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, small, minority, women-owned businesses.

Additional Eligibility Requirements

Eligible applicants must demonstrate:

1. Access to a clinical laboratory capable of conducting urine-based nucleic acid amplification tests (NAATs) for gonorrhea and chlamydia.

2. For this study, the clinic(s) must have at least 180 incident cases of STD over six months among men and at least 180 incident cases of STD over six months among women. STDs among men include gonorrhea, chlamydia, non-gonococcal urethritis (NGU), cervicitis, trichomonas or syphilis. STDs among women include gonorrhea, chlamydia, NGU, cervicitis, trichomonas or syphilis.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $700,000 is available in FY 2001 to fund approximately two to three awards. It is expected that the average award will be $240,000 per year, ranging from $190,000 to $290,000. It is expected that the awards will begin on or about September 30, 2001 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

1. Use of Funds

Funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to supplant State or local funds available for HIV Prevention. Funds may not be used to provide direct medical care or prevention case management.

2. Funding Preferences

Funding preference may be given to achieve geographical diversity for condom use skills-building demonstrations in a variety of locations.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities:

a. Form a Coordinating Committee including all recipients, to design, implement and evaluate project activities, and wherever appropriate, include participation of State and local health departments.

b. Review the literature on (1) new condom technologies and (2) existing brief, waiting room interventions that have been used in STD/HIV prevention and other health-related areas (e.g., family planning, smoking cessation).

c. Based on existing research, conduct formative research that involves (1) brief, pilot studies to help develop a single condom-use skills-building intervention that can be conducted in a waiting room setting, and (2) brief, pilot studies developing new, less costly ways of following study participants for STD outcomes over time. Prior to implementation, pilot study proposals must be submitted to the local and CDC Institutional Review Boards (IRBs) for review and approval or deferral.

d. Based on the results recipient pilot studies, the Coordinating Committee will develop a single research study protocol, quality assurance mechanisms, training tools, data collection instruments and techniques, specimen collection protocols, and data management procedures that will be used across sites.

e. Identify, recruit, obtain informed consent, enroll, and follow for six months an adequate number of study participants as determined by the study protocol.

f. Perform brief data collection as determined by the study protocol. Possible outcomes might include measures such as reported condom use in participants and sex partner(s), and characteristics of sex partners.

g. Collaborate with one or more local clinical laboratories that have the capacity to conduct HIV tests and NAATs for detection of chlamydia and gonorrhea.

h. Conduct data analysis with all collaborators and present and publish research findings.

2. CDC Activities:

a. Provide technical assistance, as needed, in the design and conduct of the research study.

b. Submit the protocol to the CDC IRB for review and approval.

c. Assist, as needed, in developing specific systems such as a randomization scheme, quality assurance and training procedures, and a data management system, as applicable, a single data set for the collaborators to use for data analysis.

d. Collaborate, as needed, with investigators from the participating research sites to analyze, present and publish research findings.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to follow them in laying out your program plan. The narrative should be no more than 25 pages double-spaced, printed on one side, with one inch margins, and unreduced font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm

On or before August 27, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the Special Emphasis Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late: Applications which do not meet the criteria in 1. or 2. above will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and objectives (10 points): The degree to which the application includes a detailed review of the scientific and other literature pertinent to new condom technologies and condom skills-building and other single session skills-building demonstrations for use in waiting room settings. The literature review should discuss the strengths and limitations of previous research in this area, including discussion of pros and cons of various research designs. The degree to which the application also includes one or more potential condom skills-building demonstrations from the literature that are brief (30 minutes or less), feasible for use in waiting room settings, and acceptable for both men and women. Potential control conditions should also be described. Presentation of data on acceptability of the proposed intervention based on previous research, focus groups, or pilot studies would enhance the application.

2. Site selection (25 points): The extent to which the application includes a description of the clinic in which the demonstrations are anticipated to be conducted, including waiting room characteristics, size of the clinic population (e.g., number of men and women aged 15–34 years seen each month), and STD (gonorrhea, chlamydia, syphilis, NGU, cervicitis, or trichomonas) prevalence among men and women. Sufficient patient enrollment is estimated to be 60 to 80 STD-infected clients aged 15–34 years per month, of which at least 30 are women. Participant refusal should be taken into account. Previous research in STD clinic settings indicates that no more than 50% of eligible participants will enroll in a study with long-term follow-up for STD infection. Enrollment rates are typically lower for men than women; The extent to which the application also includes a description of the collaborating laboratory and its capabilities, including experience with new NAATs. The extent to which the application includes a description of the proposed investigators and their previous research in conducting brief, group interventions aimed at STD/HIV prevention, including condom-based interventions. Letters of support from cooperating organizations, including clinic, laboratory, and (if applicable) health department directors and other participating staff should be included, and these should detail the nature and extent of such cooperation. The letter from the clinic director should specifically address patient volume, STD control, and the number of patients that potentially could be enrolled in a specific time period.

3. Methods (30 points): The extent to which the goals and objectives for the proposed research study are clearly stated and include a detailed discussion of the intervention(s) and control conditions, description of an appropriate study design, estimated sample size for men and women, and follow-up requirements using existing STD information.

The extent to which the application includes a detailed description of: (a) One or more brief, waiting room interventions that involve condom use demonstrations that could potentially be studied; and (b) a control condition that could potentially be used.

The extent to which the proposed intervention condition(s) includes supporting data on: The appropriateness of the intervention for the clinic and for the intended audience (including men and women), brevity (preferably less than 30 minutes), use of new condom technologies and a variety of condom types, use of appropriate and effective intervention techniques (e.g., role play scenarios, skills-building demonstrations as opposed to information-only approaches), feasibility and appropriateness of the intervention for waiting room settings, simplicity to allow existing staff to conduct the intervention, ease of the intervention in fitting in with current waiting room and clinic patterns, and discussion about how the proposed intervention(s) could be transferred to other high risk populations.

The extent to which the application identifies potential barriers to implementing the intervention and how these will be overcome.

The extent to which the application includes detailed methods for implementing and evaluating the intervention using a controlled design that minimizes bias (e.g., randomized controlled trial using group-level or individual randomization). Sample size calculations should be presented, as

well as discussion of appropriateness of the sample size (separate evaluation for men and women).

The extent to which the application includes a description of the outcome measures planned including new NAATs for gonorrhea and chlamydia and use of other outcomes (e.g., behavioral outcomes such as condom appeal and correct and consistent use, and process outcomes including quality assurance plans).

In addition, applications will be evaluated on the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

4. Research Capacity (20 points): The extent to which the application includes a description of the capacity and experience of the research team in prior interventions, including clinical and prevention trials, condom use research, skills-building demonstrations, outcomes research (e.g., laboratory capacity for nucleic acid amplification testing). Curriculum vitae's and position descriptions for key staff and project participants should be included. (Note: Previous experience in testing of condom efficacy in laboratory or in vitro settings would not be considered relevant experience).

5. Evaluation Plan (15 points): The extent to which the application includes a detailed discussion of objectives for the pilot studies, and separate discussion for the intervention phase including enrollment and follow-up objectives. The extent to which plans for enrollment are clearly outlined, and discussion of means to reduce recidivism in follow-up is included. A detailed time-line should also be included.

6. Budget (not scored): The extent to which the budget is reasonable, clearly justified, and consistent with the intent of the announcement.

The 12 month budget should anticipate the organizational and operational needs of the study. The budget should include staff, supplies, and travel (including two trips per year for two members of the study team to meet with CDC staff and other investigators).

7. Human Subjects (not scored): Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original and two copies of:

1. Annual progress reports to be submitted with subsequent continuation applications;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act sections 317 (42 U.S.C. 241(a) and 247b); 301 (42 U.S.C. 241); and 311 (42 U.S.C. 243), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documentation, business management technical assistance may be obtained from: Annie Camacho, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Mailstop E–15, Atlanta, GA 30341–4146, Telephone: (770) 488–2735, Email address: atc4@cdc.gov.

For program technical assistance, contact: Cassandra Walker, MPH, Acting Deputy Chief, Prevention Services Research Branch, Division of HIV/AIDS Prevention, Surveillance & Epidemiology, National Center for HIV, STD, TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E–46, Atlanta, GA 30333, Telephone Number: (404) 639–6191, Email address: cwalker5@cdc.gov.

Dated: July 17, 2001.

John L. Williams,

Director, Procurement and Grants Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18286 Filed 7–20–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01152]

Expansion of HIV/AIDS/STI/TB Surveillance and Laboratory Activities in the Federal Democratic Republic of Ethiopia; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for the expansion of communicable disease surveillance and laboratory activities in the Democratic Republic of Ethiopia.

The purpose of this cooperative agreement is to improve human immunodeficiency virus/Acquired Immuno-Deficiency Syndrome/other sexually transmitted infections/ tuberculosis (HIV/AIDS/STI/TB) surveillance and to improve laboratory capacity to assist in the diagnosis of these and other diseases related to HIV infection and transmission in Ethiopia. This will be accomplished by cooperation between CDC and the Ethiopian Health and Nutrition Research Institute (EHNRI) in Addis Ababa, Ethiopia. These collaborative activities could profoundly change the focus and activities of the Ethiopian National AIDS Policy. Most importantly, having a better understanding of the association between specific behaviors and HIV/STI/TB prevalence will likely improve AIDS control programs and prevention efforts in Ethiopia and eventually throughout sub-Saharan Africa.

The U.S. Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through its Leadership and Investment in Fighting an Epidemic (LIFE) initiative. Through this LIFE program, CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of (1) HIV primary prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. Government agencies are already active. Ethiopia is one of these targeted countries.

As a key partner in the U.S. Government's LIFE initiative, CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic in LIFE initiative countries. In particular, CDC's mission in Ethiopia is to work with Ethiopian and international partners to develop and apply effective interventions to prevent HIV infection and associated illness and death from AIDS.

Ethiopia is among the world's countries most adversely affected by the HIV/AIDS epidemic and TB. With an estimated 3 million adults infected with HIV by end of 1999, Ethiopia has the third largest population of HIV-infected persons in the world, accounting for about 9 percent of the world's HIV/AIDS cases. The estimated percent of adults aged 15 to 49 infected with HIV is 10.6 percent, making Ethiopia sixteenth in the world in HIV prevalence. There have been over a million cumulative deaths due to AIDS, with 280,000 occurring in 1999 alone. UNAIDS estimated that 150,000 children are currently living with HIV and that 1.2 million children have been orphaned by AIDS, making Ethiopia third in the number of HIV orphans in the world. The principal routes of HIV transmission are heterosexual and mother-to-infant; HIV and other STIs are closely associated. WHO estimated a TB incidence rate of 260 per 100,000, prevalence rate of 367 per 100,000 and death rate of 82 per 100,000 for Ethiopia in 1997. This represents 156,000 new cases, 221,000 infections and 49,000 deaths for that year. TB cases have been increasing over the years coincident with HIV epidemic; HIV prevalence among TB patients is estimated at 40–50 percent. Data on STIs, however, are scant. These statistics suggest the need for the expansion and improvement of a range of surveillance, care, and prevention activities and services.

Accurate surveillance, as the mainstay of public health programs, provides essential information to focus prevention activities, allocate resources, and monitor effectiveness of programs. Improvement in laboratory capacity to assist in the diagnoses of these and other diseases related to HIV infection and transmission is essential to the HIV/AIDS prevention and control efforts of the Ethiopian people.

B. Eligible Applicants

Assistance will be provided only to the Ethiopian Health and Nutrition Research Institute (EHNRI), a government entity. No other applications are solicited.

EHNRI is the only appropriate and qualified organization to conduct a specific set of activities supportive of the CDC Global AIDS Program's technical assistance to Ethiopia because:

1. EHNRI is uniquely positioned, in terms of legal authority, ability, and credibility among Ethiopian citizens, to collect crucial data on HIV/AIDS prevalence and incidence, as well as other health information, among Ethiopian citizens.

2. EHNRI already has established mechanisms to access health information, enabling it to immediately become engaged in the activities listed in this announcement.

3. The purpose of the announcement is to build upon the existing framework of health information and activities that EHNRI itself has collected or initiated.

4. EHNRI has been mandated functionally by the Ethiopian government to serve as the National Reference Laboratory for HIV/STIs/TB, and to coordinate and implement laboratory diagnostic and quality assurance activities related to these diseases including supporting regional laboratories.

C. Availability of Funds

Approximately $500,000 is available in FY 2001 to fund this award. It is expected that the award will begin on or about September 30, 2001 and will be made for a 12-month budget period within a project period of up to five years. Annual funding estimates may change.

Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Use of Funds

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in PMTCT cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

No funds under this announcement shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services) for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exception:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations

located outside the territorial limits of the United States or to international organizations regardless of their location.

D. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Dorimar Rosado, Grants Management Specialist Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention 2920 Brandywine Road, Room 3000 MS–15 Atlanta, GA 30341–4146, Telephone number: (770) 488–2782, e-mail: dpr7@cdc.gov

For program technical assistance, contact: Tadesse Wuhib, MD, MPH CDC Ethiopia, U.S. Embassy, P.O. Box 1014, Entoto Road, Addis Ababa, Ethiopia, Telephone: 251–9–22–00–84 e-mail: tew7@cdc.gov

Dated: July 17, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease and Prevention (CDC).

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BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01155]

Improving the Quality of HIV/AIDS Care in the Republic of Zimbabwe; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement with the University of Zimbabwe (UZ), School of Medicine, Clinical Epidemiology Unit(CEU) for improving the quality of health care services for HIV/AIDS and of related clinical preventive services in the Republic of Zimbabwe.

The U.S. Government seeks to reduce the impact of HIV/AIDS and related conditions in specific countries within sub-Saharan Africa, Asia, and the Americas through its Global AIDS Initiative. Through this initiative, CDC's Global AIDS Program (GAP) aims to strengthen capacity and expand activities in the areas of (1) HIV primary prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. Government agencies are already active. Zimbabwe is one of these targeted countries.

To carry out its activities in these countries, CDC is working in a collaborative manner with national governments, non governmental organizations (NGOs), other national and international agencies to develop programs of assistance to address the HIV/AIDS epidemic. CDC's program of technical assistance to Zimbabwe focuses on several areas including strengthening surveillance and laboratory measures, scaling up promising prevention and care strategies, supporting behavior change communication projects, promoting technology transfer, and other capacity building efforts.

Zimbabwe is experiencing one of the world's most severe AIDS crises that looms as a disaster of unprecedented proportions. Zimbabwe has one of the world's highest HIV prevalence rates among adults, life expectancy has declined from 63 years to 38 years in only a decade, and the proportion of children orphaned by AIDS is expected to reach 35 percent by 2010.

The need for appropriate, quality health care corresponding to the generalized epidemic of HIV/AIDS in Zimbabwe is enormous. Approximately 2 million of the 12 million Zimbabweans are infected with HIV. An estimated 60 percent of hospital inpatients in Zimbabwe suffer from HIV-related conditions, and more than 2,000 deaths per week result from AIDS. A recent burden of disease assessment in Zimbabwe found that nearly 45 percent of all lost disability-adjusted life years (DALYs) in Zimbabwe can be attributed to HIV/AIDS. Tuberculosis rates have increased 10-fold since the mid-1980s, and the World Health Organization(WHO) now lists Zimbabwe as having the highest estimated incidence rates of tuberculosis in the world at more than 500 new cases/100,000 population annually. Despite the tremendous stress on hospitals from the high proportion of patients suffering from HIV-related conditions, the majority of persons diagnosed with or suspected as suffering from HIV/AIDS related conditions in Zimbabwe have in fact been discharged to either self care or systems of "community and home-based care," services that may range from quite helpful to being of very little help.

In response to HIV/AIDS, Zimbabwe has taken many positive steps. It was one of the first governments in the world to negotiate a large World Bank loan for AIDS prevention in 1992. In December 1999, the Government of Zimbabwe (GOZ) declared AIDS a national disaster, created a new ministerial-level multi-sectoral National AIDS Council (NAC), announced a new National AIDS Policy, and instituted an "AIDS levy" payroll tax to underwrite improved national AIDS prevention and care services.

The national response has also included many examples of creative programming and successful grassroots initiatives in the face of staggering adversity. Many of these grassroots initiatives were in the domain of home-based care and support for persons living with HIV/AIDS (PLWA). Several excellent evaluations of home-based care for PLWA have been conducted in Zimbabwe at specific points in time. However, no consistent focus or organizational entity has been established that is dedicated to systematically monitoring, evaluating, and attempting to improve the quality of care for HIV/AIDS across all levels of the health system and society, from central hospitals to community and home-based care programs. The AIDS and TB Unit of the Ministry of Health and Child Welfare (MOHCW), which is responsible for public sector health care for HIV/AIDS within the Ministry, has only one physician, who also oversees all health sector aspects of HIV/AIDS prevention and care, as well as all governmental programs for STDs and TB. Therefore, the MOHCW critically needs allied organizations that can assist in coordinating and implementing a broad range of activities to improve quality and coverage of care for HIV/AIDS and related conditions.

The Clinical Epidemiology Unit (CEU) at the University of Zimbabwe (UZ) School of Medicine was established in 1989, after training of an initial cadre of clinical epidemiologists in the United States and Australia. Supported through the International Clinical Epidemiology Network (INCLEN) by the Rockefeller Foundation (until 1992) and by Australia AID (from 1994 to 2001), the UZ CEU has trained 16 persons in clinical epidemiology (including 7 currently in training), 3 in Health Social Science, 3 in Biostatistics, 2 in Health Economics, and 3 in Pharmaco-epidemiology. This diversity and extent of training in clinical epidemiologic disciplines is superimposed on an underlying further diversity of clinical

specialties represented in the UZ CEU, including internal medicine, pediatrics, obstetricians, surgeons, laboratory scientists, health social scientists, biostatisticians, pharmacists, and others.

For the past 7 years, clinical epidemiology training at UZ has been supported by the University of Newcastle-Australia through technical assistance, distance learning curriculum, and teaching technology. Over the past several years, the CEU petitioned for and has received approval from the University of Zimbabwe to offer a local Masters training program in Clinical Epidemiology, beginning in 2001. The UZ CEU has been solicited by the World Health Organization (WHO) to offer this degree training program to qualified candidates from other countries in the Region, who will be supported by WHO to be trained at the UZ CEU. The UZ CEU is the only existing organizational entity in Zimbabwe with the overall mission, structure, and multidisciplinary capacity to develop the proposed Quality of HIV/AIDS Care Initiative, while simultaneously supporting it through a degree-granting training program in clinical epidemiology.

The purpose of this cooperative agreement is to contribute systematically and strategically to improving the quality of HIV/AIDS care in Zimbabwe, and related clinically-oriented prevention services (such as prevention of mother-to-child-transmission (PMTCT) of HIV infection), with a focus on care at the district hospital level and below. Since the needs for HIV/AIDS care and clinical prevention services will intensify over time, a second and related purpose is to train more clinical epidemiologists in Zimbabwe and support them to systematically address priority issues in HIV/AIDS clinical care that will inevitably arise over the coming decade. This will be accomplished through cooperation between CDC and the Clinical Epidemiology Unit, University of Zimbabwe School of Medicine, in collaboration with relevant policy-setting authorities such as the MOHCW and the National Drugs and Therapeutics Policy Advisory Committee (NDTPAC). These collaborative activities are expected to contribute meaningfully, immediately, and over the coming decade to assist Zimbabwe to develop tools needed to increase the quality and coverage of HIV/AIDS clinical services.

B. Eligible Applicants

Assistance will be provided only to the University of Zimbabwe, School of Medicine, Clinical Epidemiology Unit (CEU). No other applications are solicited.

The UZ/CEU is the only appropriate and qualified organization to fulfill the requirements set forth in this announcement because:

1. As an established inter-departmental unit organized around the cross-cutting discipline of clinical epidemiology, the CEU is uniquely positioned to bring together faculty of the School of Medicine (and other faculty within the University of Zimbabwe) to design and implement a systematic program of clinical epidemiologic investigation, systematic reviews, support for guidelines development, and related activities to support an initiative to improve the quality of HIV/AIDS care in Zimbabwe. The development of the CEU with its generalist focus on clinical epidemiology as a core discipline has now been successfully implemented, and has resulted in a committed, enthusiastic and capable faculty.

2. The UZ/CEU is the only entity in Zimbabwe, and one of the few in Africa, that offers training leading to a master degree in clinical epidemiology. Since the Quality of HIV/AIDS Care Initiative is a long-term endeavor that depends critically on building up human capacity in Zimbabwe for assessing and improving the quality of clinical care for HIV-related conditions, the CEU is the only potential applicant able to be responsive to this critical need to generate trained manpower in the domain of clinical epidemiology to address continually emerging issues in HIV/AIDS care that will confront Zimbabwe over the coming decade.

3. Candidates for the Master of Clinical Epidemiology degree all conduct investigations and write theses on some aspect related to quality, cost-effectiveness, or other properties of clinical care in Zimbabwe. To the extent that these trainees can be guided by a carefully derived, coordinated set of key health services questions related to increasing quality and coverage of HIV/AIDS care, and supported specifically by resources dedicated to addressing that agenda, this pool of Masters trainees, with their CEU mentors, constitutes an immediately available reservoir of human resources available to quickly begin addressing high priority issues in HIV/AIDS care.

C. Availability of Funds

Approximately $500,000 is available in FY 2001 to fund this agreement. It is expected that the award will begin on or about September 30, 2001 and will be made for a 12-month budget period within a project period of up to five years. Annual funding estimates may change. Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Direct Assistance

Direct provision of equipment and supplies (e.g., vehicles, computer hardware/software, specific consumables & supplies) may be requested as direct assistance in lieu of a portion of this financial assistance.

Use of Funds

Funds received from this announcement may not be used for the purchase of the direct purchase of drugs for the treatment of active TB disease. Funds may not be used for new construction, although limited renovation of existing space may be acceptable.

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in PMTCT cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested).

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2782, E-mail: dpr7@cdc.gov

For program technical assistance, contact:

Michael St. Louis, MD, Global AIDS Program (GAP), Zimbabwe Country Team, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), Zim-CDC AIDS Project Team, 38 Samora Machel Avenue, 2nd Floor, Harare, Zimbabwe, Tel: 263 4 796040, 796048, Fax: 263 4 796032 E-mail: stlouism@zimcdc.co.zw

Dated: July 17, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18284 Filed 7–20–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Science and Program Review Subcommittee (SPRS) and the Advisory Committee for Injury Prevention and Control (ACIPC): Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee and committee meetings.

Name: Science and Program Review Subcommittee to ACIPC.

Time and Date: 1 p.m.–4:30 p.m., August 7, 2001.

Place: The Westin Atlanta Airport, 4736 Best Road, College Park, Georgia 30337.

Status: Open: 1 p.m.–1:30 p.m., August 7, 2001; Closed: 1:30 p.m.–4:30 p.m., August 7, 2001. Open to the public, limited only by the space available.

Purpose: The Subcommittee provides advice on the needs, structure, progress and performance of the National Center for Injury Prevention and Control's programs. The Subcommittee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Subcommittee also advises on priorities for research to be supported by contracts, grants, and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: Agenda items include status of program announcements for fiscal year 2002, schedule of monitoring workshops, general announcements and updates, and second-level scientific and programmatic review, discussion, and evaluation of grant applications relating to the support of injury control research centers, individual research grants, and Small Business Innovation Research.

Name: Advisory Committee for Injury Prevention and Control.

Time and Date: 4:45 p.m.–5:45 p.m., August 7, 2001.

Place: The Westin Atlanta Airport, 4736 Best Road, College Park, Georgia 30337.

Status: Open: 4:45 p.m.–5:10 p.m., August 7, 2001; Closed: 5:10 p.m.–5:45 p.m., August 7, 2001.

Purpose: The Committee advises and makes recommendations to the Secretary, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance of intramural and extramural research, and also provides guidance on the needs, structure, progress and performance of intramural programs, and on extramural scientific program matters. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee also recommends areas of research to be supported by contracts and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: Agenda items include an update from the Director, National Center for Injury Prevention and Control (NCIPC), format proposed for future ACIPC meetings, and consideration, discussion, and vote on SPRS funding recommendations regarding grant applications.

On August 7, 2001, from 1:30 p.m. to 4:30 p.m., the SPRS will convene in closed session, and from 5:10 p.m. to 5:45 p.m., the ACIPC voting members will convene in closed session to discuss and evaluate grant applications. These portions of the meetings will be closed to the public in accordance with provisions set forth in section 552(c)(4) and (6) title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Thomas E. Blakeney, Acting Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE., M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1481.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 10, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–18287 Filed 7–20–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organizations, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organizations, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 66 FR 36790–36791, dated July 13, 2001) is amended to modify the mission statement for the Office of the Director, Division of Public Health Systems Development and Research, Public Health Practice Program Office.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the mission statement for the *Office of the Director (CH51), Division of Public Health Systems Development and Research (CH5), Public Health Practice Program Office (CH),* and insert the following:

(1) Directs and coordinates the activities of the Division toward their achievement and evaluates results: (2) Develops long-range plans, sets annual objectives, and monitors progress; (3) Provides leadership and management oversight; (4) Serves as a focal point for development State and local public

health capacity, for providing core training to ensure competency of the State and local public health workforce and for assessing State and local health capacity to achieve Year 2010 health objectives; (5) Interacts with public, private, academic, and voluntary sectors of the public health community to foster consensus and adoption of health systems that ensure the capacity for effective response to the National health objectives; (6) Increases the collaboration and fosters the application of resources and capabilities of academic institutions and public health agencies to achieve priority public health goals; (7) Establishes information and knowledge management policies, data systems, and information resources required to support State, local, and Divisional needs; (8) Serves as an advisor to the Director, Public Health Practice Program Officer, on matters related to public health systems, health systems assessment, policy development and assurance, and health system capacity improvement; (9) Coordinates collaborative activities of the Division with other Centers, Institute, and Offices; other Federal agencies; States and local agencies; professional societies; and private health organizations.

Dated: July 13, 2001.

Jeffrey P. Koplan,

Director.

[FR Doc. 01–18211 Filed 7–20–01; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0006]

Agency Information Collection Activities; Announcement of OMB Approval; New Animal Drug Application, Form FDA 356 V

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "New Animal Drug Application, Form FDA 356 V," has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 8, 2001 (66 FR 23266), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0032. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 13, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18222 Filed 7–20–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0064]

Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry on Special Protocol Assessment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry on Special Protocol Assessment" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 9, 2000 (65 FR 6377), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0470. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 17, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18344 Filed 7–20–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0051]

Agency Information Collection Activities; Announcement of OMB Approval; Adverse Event Pilot Program for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Adverse Event Pilot Program for Medical Devices" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 20, 2001 (66 FR 33099), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0471. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 17, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18345 Filed 7–20–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1515/1572]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Home Health Agency Survey and Deficiencies Report, Home Health Functional Assessment Instrument and Supporting Regulations in 42 CFR part 484.1–484.52; *Form No.:* HCFA–1515/1572 (OMB# 0938–0355); *Use:* In order to participate in the Medicare program as a Home Health Agency (HHA) provider, the HHA must meet Federal Standards. These forms are used to record information about patients' health and provider compliance with requirements; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 6,997; *Total Annual Responses:* 13,994; *Total Annual Hours:* 13,994.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Attn.: HCFA 1572, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 13, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–18263 Filed 7–20–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

American Indians Into Psychology Program

AGENCY: Indian Health Service, HHS.

ACTION: Notice of competitive grant applications for American Indians Into Psychology Program.

SUMMARY: The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for the American Indians Into Psychology Program. These grants are established under the authority of section 217 of the Indian Health Care Improvement Act, Pub. L. 94–437, as amended. This program is described at 93.970 in the Catalog of Federal Domestic Assistance. Costs will be determined in accordance with applicable Office of Management and Budget Circulars. Executive Order 12372 requiring intergovernmental review is not applicable to this program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010*, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Educational and Community-based programs. Potential applicants may obtain a copy of *Healthy People 2010*, summary report in print, Stock No. 017–001–00547–9, or via CD–ROM, Stock No. 017–001–00549–5, through the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7945, (202) 512–1800. You may access this information via the Internet at the following website: *www.health.gov/healthypeople/publication*.

Smoke Free Workplace: The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

DATES: a. Application Receipt Date—An original and two copies of the completed grant application must be submitted with all required documentation to the Grants Management Branch, Division of Acquisition and Grants Management, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, by close of business August 31, 2001.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with hand carried applications received by close of business 5 p.m.; or (2) postmarked on or before the deadline and received in time to be reviewed along with all other applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications not accepted for processing will be returned and will not be considered for funding.

b. Additional Dates:

1. Application Review: September 7, 2001. Field readers will conduct the review.

2. Applicants Notified: of Results on or about September 11, 2001 (approved), recommended for approval but not funded, or disapproved.)

3. Anticipated Start Date: September 12, 2001.

Contacts for Assistance: For American Indians Into Psychology program information, contact Dr. Marlene EchoHawk, Office of Public Health, Division of Clinical and Preventive Services, 12300 Twinbrook Parkway, Suite 605, Rockville, Maryland 20852, (301) 443–2038. For grant application and business management information, contact Ms. Martha Redhouse, Grants Management Branch, Indian Health Service, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, (301) 443–5204.

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose, eligibility and documentation, program requirements, required affiliations, funds available, limitations, period of

support, and application procedures for FY 2001.

A. General Program Purpose

The purpose of the American Indians Into Psychology Program is to develop and maintain American Indian psychology career recruitment programs as a means of encouraging Indians to enter the mental health field.

B. Eligibility and Documentation

Public and non-profit private colleges and universities are eligible to apply for a grant, however, only one grant will be awarded and funded to a college or university per funding cycle.

C. Program Requirements

Each proposal must address the following objectives to be considered for funding:

1. Provides outreach and recruitment for health professions to Indian communities including elementary, secondary and community colleges located on Indian reservations that will be served by the program.
2. Incorporates a program advisory board comprised of representatives from the tribes and communities that will be served by the program.
3. Provides summer enrichment programs to expose Indian students to the varied fields of psychology through research, clinical, and experiental activities.
4. Provides stipends to undergraduate and graduate students to pursue a career in clinical psychology. Stipends for individuals will not be funded during the first year of the project because the first year will involve recruiting individuals. Stipends must be included in the budget and narrative for the second and third years of the project.
5. Develops affiliation agreements with tribal community colleges, the IHS, university affiliated programs, and other appropriate entities to enhance the education of Indian students.
6. To the maximum extent feasible, utilizes existing university tutoring, counseling and student support services.
7. To the maximum extent feasible, employs qualified Indians in the program.

D. Required Affiliations

The grant applicant must submit official documentation indicating a tribe's cooperating with the support of the program within the schools on its reservation and its willingness to have a tribal representative serving on the program advisory board. Documentation must be in the form prescribed by the tribe's governing body, i.e., letter of support or tribal resolution. Documentation must be submitted from every tribe involved in the grant program.

E. Funds Available, Limitations and Period of Support

1. Funds available—It is anticipated that approximately $200,000 will be available for one award.
2. Limitations—Only one grant project will be awarded to a college or university.
3. Period of support—Project will be awarded for a budget term of 12 months, with a maximum project period of up to 3 years. Grant funding levels include both direct and indirect costs. Funding of succeeding years will be based on the FY 2001 level, continuing need for the program, satisfactory performance, and the availability of appropriations in those years.

F. Application Process

The IHS Grant Application Kit, Form PHS 5161–1 (Revised 7/00), OMB Approval No. 0920–0428, may be obtained by writing or calling the Division of Acquisition and Grants Management, Grants Management Branch, Indian Health Service, Twinbrook Plaza, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, telephone (301) 443–5204. (This is not a toll free number.)

G. Grant Application Requirements

All applications must be single-spaced, typewritten, and consecutively numbered pages using black type not smaller than 12 characters per one inch, with conventional one-inch border margins, on only one side of standard size 8½ × 11 paper that can be photocopied. The application narrative (not including the Appendix) must not exceed 5 typed pages as described above. An additional page may be used for each additional year of funding requested. All applications must include the following in the order presented:

—Standard Form 424, Application for Federal Assistance
—Standard Form 424A, Budget Information—Non-Construction Programs and instructions (pages 1–4)
—Project Narrative (5 pages)
  1. Introduction and Potential Effectiveness of Project
  2. Project Administration
  3. Accessibility to Target Population
  4. Relationship of Objectives to Manpower Deficiencies
  5. Project Budget
—Brief Multi-Year Narratives and Budgets—Limited to one page for each additional year of funding
—Appendix

Once an application is approved for funding, the following documents *must* be submitted prior to award:

—SF 424B, Assurance—Non-Construction Programs
—Certifications (PHS–5161–1—pages 17–19)

H. Application Narrative Instructions, Application Standards (Evaluation Criteria) and Weights

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned each section are noted in parenthesis.

Narrative: Please describe the complete project in clear and succinct style. It should be organized as described in section 1–5 and not exceed 5 single spaced pages, and address the following:

1. Introduction and Potential Effectiveness of Project (30 pts)

a. Describe your legal status and organization.

b. State specific objectives of the project, which are measurable in terms of being quantified, significant to the needs of Indian people, logical, complete and consistent with the purpose of Section 217.

c. Describe briefly what the project intends to accomplish. Identify the expected results, benefits, and outcome or products to be derived from each objective of the project.

d. Provide a project specific work plan (milestone chart), which lists each objective, the tasks to be conducted in order to reach the objective, and the time frame needed to accomplish each task. Time frames should be projected in a realistic manner to assure that the scope of work can be completed within each budget period. (A work plan format is provided.)

e. In the case of proposed projects of identification of Indians with a potential for education or training, include a method of assessing the potential of interested Indians for undertaking necessary education or training.

f. State clearly the criteria by which the project's progress will be evaluated and by which the success of the project will be determined.

g. Explain the methodology that will be used to determine if the needs, goals, and objectives identified and discussed in the application are being met and if the results and benefits identified are being achieved.

h. Identify who will perform the evaluation and when.

2. Project Administration (20 pts.)

a. Provide an organizational chart and describe the administrative, managerial and organizational arrangement and the facilities and resources to be utilized to conduct the proposed project.

b. Provide the name and qualifications of the project director or other individuals responsible for the conduct of the project; the qualifications of the principal staff carrying out the project; and a description of the manner in which the applicant's staff is or will be organized and supervised to carry out the proposed project. Include biographical sketches of key personnel (or job descriptions if the position is vacant.)

c. Describe any prior experience in administering similar projects.

d. Discuss the commitment of the organization, i.e., although not required, the level of non-Federal support. List the intended financial participation, if any, of the applicant in the proposed project specifying the type of contribution such as cash or services, loans of full or part-time staff, equipment, space, materials or facilities or other contributions.

3. Accessibility to Target Population (20 pts.)

a. Describe the current and proposed participation of Indians (if any) in your organization.

b. Identify the target Indian population to be served by your proposed project and the relationship of your organization to that population.

c. Describe the methodology to be used to access the target population.

4. Relationship of Objectives to Manpower Deficiencies (20 pts.)

a. Provide data and supporting documentation to substantiate need for recruitment.

b. Indicate the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.

5. Project Budget (10 pts.)

a. Provide a budget for the budget period requested. The funds requested should be appropriate and necessary for the scope of the project.

b. The available funding level of $200,000 is inclusive of both direct and indirect costs. Because this project is for a training grant, the Department of Health and Human Services' policy limiting reimbursement of indirect cost to the lesser of the applicant's actual indirect costs or 8 percent of total direct costs (exclusive of tuition and related fees and expenditures for equipment) is applicable. This limitation applies to all institutions of higher education other than agencies of State and local government.

c. Projects requiring a second and third year must include a brief narrative and budget for each additional year of funding.

Appendix to include:

- Resumes and position descriptions for key staff
- Organizational chart
- Work Plan
- Tribal Resolution(s)/letters of support
- Application Receipt Card, PHS–3038–1 Rev. 5–90

I. Assurances

Assurances (SF–424B), and Certifications (PHS–5161–1—pages 17–19) need not be submitted with the application. They will be required prior to actual award if the application is approved for funding.

J. Reporting

1. Annual Progress Report—An annual progress report is due 60 days before the end of each budget period prior to the final budget period for all multi-year projects. This report will include a brief description of program accomplishments to the goals established, reasons for slippage, other pertinent information as required, and plans for the next budget period.

2. Final Progress Report—A final progress report is due 90 days after expiration of the project period. This report will include a description of program accomplishments to the goals established, reasons for slippage, and other pertinent information as required.

3. Financial Status Report—A final financial status report is due 90 days after expiration of the project period. Standard Form 269 (long form) will be used for financial reporting.

K. Grant Administration Requirements

Grants are administered in accordance with the following documents:

1. 45 CFR part 92, HHS, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 45 CFR part 74, Administration of Grants to Non-profit Recipients.

2. PHS Grants Policy Statement, and

3. OMB Circular A–21, Cost Principles and Educational Institutions.

L. Application Consideration

1. Application Review

Application submitted by the closing date and verified by the postmark under this program announcement will undergo a review to determine that the applicant is eligible in accordance with the Eligibility and Documentation Section of this announcement; the application narrative, form and materials submitted are adequate to allow the reviewers to undertake an in-depth evaluation; and that the application complies with this announcement; otherwise it will be returned without consideration.

2. Competitive Review of Accepted Applications

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by Reviewers appointed by the IHS. The review will be conducted in accordance with PHS review procedures. The review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated on the basis of the evaluation criteria listed above. These criteria are used to evaluate the quality of the proposed project, to assign a numerical score to each application, and to determine the likelihood of its success. Applications scoring below 60 points will not be funded.

3. Results of the Review

The results of the review are forwarded to the Division Director, Division of Health Professions Support (DHPS), for final review and approval. The Division Director will also consider the recommendations from the Grants Management Branch. After the decisions have been made on all applications, applicants are notified by September 11, 2001. Unsuccessful applicants will be notified in writing.

Successful applicants are notified through an official Notice of Grant Award (NGA) document. The NGA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, and the budget period.

Dated: July 16, 2001.

Michel E. Lincoln,

Deputy Director, Indian Health Service.

[FR Doc. 01–18291 Filed 7–20–01; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indians Into Medicine Program

AGENCY: Indian Health Service, HHS.

ACTION: Extension of deadlines and change in funds availability for competitive grant applications for the Indians Into Medicine Program.

The Notice of funding availability for competitive grants for the Indians Into Medicine Program was published at 66 FR 27665 on May 18, 2001, and corrected at 66 FR 30219 on June 5, 2001.

The Indian Health Service announces the extension of dates for the following:

1. Application Receipt Date: August 1, 2001.
2. Application Review: August 13, 2001.
3. Applicants Notified of Results (approved, approved unfunded, or disapproved): August 27, 2001.

It is anticipated that approximately $220,100 will be available for one award. This is a change from the $400,000 previously announced and published on May 18, 2001. The available funding level of $220,100 is inclusive of both direct and indirect costs.

Applicants are notified in writing on or about August 27, 2001.

This extension provides applicants approximately five additional weeks to prepare and submit competitive applications.

All other information contained in the **Federal Register** announcements remains unchanged.

Dated: July 16, 2001.

Michel E. Lincoln,

Deputy Director.

[FR Doc. 01–18290 Filed 7–20–01; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute (NCI); Development of Therapeutic Antibodies and Vaccines From Tumor Associated Antigens in Human Lymphoma

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice of an opportunity for Cooperative Research and Development Agreement (CRADA).

An opportunity for a Cooperative Research and Development Agreement (CRADA) is available for collaboration with the NCI intramural Center for Cancer Research (CCR) to develop therapeutic antibodies and vaccines from novel tumor associated antigens in human lymphoma. This collaboration specifically excludes idiotype as the lymphoma antigen. Collaborative projects will focus upon cancer and/or areas of high public health significance and high national and international priority.

SUMMARY: Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710 as amended; and Executive Order 12591 of April 10, 1987, the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks one Cooperative Research and Development Agreement (CRADA) with a pharmaceutical or biotechnology company to develop therapeutic antibodies and vaccines from tumor associated antigens in human lymphoma. The CRADA would have an expected duration of one (1) to five (5) years. The goals of the CRADA include the rapid publication of research results and timely commercialization of products, and/or methods of treatment or prevention that may result from the research. The CRADA Collaborator will have an option to negotiate the terms of an exclusive or non-exclusive commercialization license to subject inventions arising under the CRADA and which are the subject of the CRADA Research Plan.

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to Jeffrey W. Thomas, Ph.D., Technology Transfer Branch, National Cancer Institute, Fairview Center, Room 502, Frederick, MD 21701 (phone: 301–846–5465; fax: 301–846–6820; email: jeffreyt@mail.nih.gov). Scientific inquires should be submitted to Larry W. Kwak, M.D., Ph.D., CCR, National Cancer Institute, Bldg. 567, Room 205, Frederick MD, 21702–1201 (phone: 301–846–1607; Fax: 301–846–6107; e-mail kwak@mail.ncifcrf.gov).

EFFECTIVE DATE: Inquiries regarding CRADA proposals and scientific matters may be forwarded at any time. Confidential, preliminary CRADA proposals, preferably two pages or less, must be submitted to the NCI on or before August 22, 2001. Guidelines for preparing final CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest. CRADA proposals may be accepted after the initial 30 day period if a CRADA Collaborator is not identified from the initial pool of respondents.

SUPPLEMENTARY INFORMATION:

Technology Available

The intramural CCR NCI is seeking a collaborative partner to develop therapeutic antibodies and vaccines from novel tumor associated antigens (TAAs) in human lymphoma. Identification of novel TAA proteins differentially expressed in human lymphoma samples may be useful targets for the development of such therapeutic antibodies and vaccines. This collaboration specifically excludes idiotype as the lymphoma antigen. The CCR has experience with collection and characterization of primary human lymphomas, understanding of basic lymphoma immunobiology, and unique reagents generated from patients who have undergone immunotherapy. As part of the proposed collaboration, the CCR will utilize its expertise to collect and characterize human lymphoma samples prior to protein and genetic analysis. Also, clinical data from well-characterized vaccinated patients will be available for clinical correlation. CCR is seeking a collaborative partner with experience in proteomics to identify TAAs differentially expressed in lymphoma samples that may have potential as therapeutic or diagnostic targets. For example, the partner may have expertise in liquid chromatography and mass spectrometry to identify proteins differentially expressed in lymphomas, compared to normal B lymphocytes. Additionally, the use of gene expression techniques to confirm the proteomics results is envisioned. Genetic analysis of the identified TAAs will be essential in the development of effective immunotherapies; thus, the collaborative partner must have a strong background in genetic analysis to understand the effects of variations (e.g. polymorphisms) and to recognize genetic components that could be used to develop effect vaccines and therapeutic antibodies. Thus, the potential collaborator must be a leader in proteomics, bioinformatics and genomics and have a demonstrated interest, expertise, or ability in the development of cancer vaccines.

NCI and Collaborator Responsibilities

The role of the National Cancer Institute in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.

2. Providing the Collaborator with human lymphoma samples suitable for proteomic and genomic analysis.

3. Planning research studies and interpreting research results.

4. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.

2. Providing essential research materials, such as enzymes or other reagents, extracts, compounds, hardware, software and access to databases.

3. Planning research studies and interpreting research results.

4. Providing technical expertise and/or financial support (e.g. facilities, personnel and expertise) for CRADA-related research as outlined in the CRADA Research Plan.

5. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on research and development of this technology involving the development of lymphoma vaccines. This ability can be demonstrated through experience, expertise, and the ability to contribute intellectually in this or related areas.

2. The demonstration of adequate resources to perform the research, development and commercialization of this technology (e.g. facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

3. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology as defined above.

4. The demonstration of expertise in the commercial development, production, marketing and sales of antitumor products.

5. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

6. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, PHS policies relating to the use and care of laboratory animals, and the dissemination of research tools according to NIH policy.

7. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or non-exclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: July 11, 2001.

Kathleen Sybert,

Chief, Technology Transfer Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 01–18281 Filed 7–20–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodation, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: September 13, 2001.

Closed: 8:30 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852

Open: 1 pm to 5 pm.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by staff of the Institute and discussions concerning Institute programs and policies.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.

Contact Person: Lore Anne McNicol, Director, Division of Extramural Research, National Eye Institute, National Institutes of Health, Bethesda, MD 20892, 301–496–9110.

Information is also available on the Institute's/Center's home page: www.nei.nih.gov, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18274 Filed 7–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: September 6, 2001.

Open: 8:30 am to 2 pm.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 2 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Edward M Donohue, Acting Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

Information is also available on the Institute's/Center's home page: www.nhlbi.nih.gov/meetings/index.htm, where an agenda and any addition information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Disease Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHD)

Dated: July 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18275 Filed 7–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: July 30, 2001.

Time: 12 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NHGRI, 31 Center Drive, Bldg. 31, Conference Room B2B32, 9000 Rockville Pike, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rudy O Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18276 Filed 7–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, REP–NIH–01–12—Research on the Inhalation Toxicology of Environmental Chemicals.

Date: August 13, 2001.

Time: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research & Training, Nat. Institute of Environmental Hlth. Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: July 17, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18269 Filed 7–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Instituted of Health

National Institute of Nursing Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Nursing Research Special Emphasis Panel, July 11, 2001, 8 a.m. to July 11, 2001, 5 p.m., Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD, 20852 which was published in the **Federal Register** on June 29, 2001, FR 66:34701–34702.

The meeting will be held on 7/30/2001 instead of 7/11/2001. The meeting is closed to the public.

Dated: July 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18270 Filed 7–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: August 2, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hotel La Jolla, 7955 La Jolla Shores Drive, La Jolla, CA.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: August 7, 2001.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 17, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18271 Filed 7–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the contract proposals and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committe: Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: October 9, 2001.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6700–B Rocklegde Dr., Bethesda, MD 20892–7616 (Telephone Conference Call).

Contact Person: Vassil S. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 17, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18272 Filed 7–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 30, 2001.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, National Institute of Mental Health, DEA, National Institutes of Health, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1340, rweise@mail.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 30, 2001.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, National Institute of Mental Health, DEA, National Institutes of Health, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1340, rweise@mail.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18277 Filed 7–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 19, 2001, 9 a.m. to July 20, 2001, 4 p.m., St. James Hotel, 950 24th Street, NW., Washington, DC, 20037 which was published in the **Federal Register** on July 9, 2001, 66 FR 35803–35804.

The meeting will be one day only, July 19, 2001. The time and location remain the same. The meeting is closed to the public

Dated: July 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18273 Filed 7–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 24, 2001.
Time: 12 pm to 2 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 2001.
Time: 2:30 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Prabha L Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–8367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 3, 2001.
Time: 12 pm to 2 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Martin L. Padarathsingh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 6, 2001.
Time: 9 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Courtyard By Marriott, 805 Russell Avenue, Gaithersburg, MD 20879.
Contact Person: Abubakar A. Shaikh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042, shaikha@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 6, 2001.
Time: 11 am to 12:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Everett E. Sinnett, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, sinnett@nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 6, 2001.
Time: 2 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sharon K. Pulfer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 6, 2001.
Time: 12 pm to 1 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 7, 2001.
Time: 9 am to 5:30 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Yvette M. Davis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 7, 2001.
Time: 1 pm to 3 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexander D. Politis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306, 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18278 Filed 7–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 6.

Date: July 19–20, 2001.

Time: 8 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 23, 2001.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Weller, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 23, 2001.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victoria S. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levin@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis panel.

Date: July 26, 2001.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis panel.

Date: July 26, 2001.

Time: 11 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26, 2001.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Charles N. Rafferty, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, Bethesda, MD 20892, (301) 435–3562.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26, 2001.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cheri Wiggs, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis panel.

Date: July 26, 2001.

Time: 12 pm to 1 pm

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 1, 2001.

Time: 2 pm to 3 pm

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681, schwarte@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 1, 2001.

Time: 2:30 pm to 3:45 pm

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheri Wiggs, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2–3, 2001.

Time: 8:30 am to 5:30 pm

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Eugene Vigil, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2, 2001.

Time: 1 pm to 2:30 pm

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jerrold Fried, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2, 2001.

Time: 2 pm to 4 pm

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2, 2001.

Time: 3 pm to 4 pm

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Pulfer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine,

93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–18279 Filed 7–20–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Therapeutic Blockage of ICER Synthesis To Prevent ICER-Mediated Inhibition of Immune Cell Activity

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Application No. 09/643,548 and International patent application entitled "Therapeutic blockage of ICER synthesis to prevent ICER-mediated inhibition of immune cell activity", to Virimmune Inc., having a place of business in Rockville, Maryland. The patent rights of these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to the treatment of infectious disease and cancer.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before September 21, 2001 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comment and other materials relating to the contemplated exclusive license should be directed to: Percy S. Pan, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone 301–496–7736, ext. 256; Facsimile 301–402–0220; E-mail *panp@od.nih.gov*.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 12, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 01–18280 Filed 7–20–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–49]

Notice of Submission of Proposed Information Collection to OMB; Low-Income Public and Indian Housing Financial Statements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 22, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also list the following information:

Title of Proposal: Low-Income Public and Indian Housing Financial Statements.

OMB Approval Number: 2577–0067.

Form Numbers: HUD–52599.

Description of the Need for the Information and its Proposed Use: Public.

Housing Agencies (PHAs) report operating receipts and expenditures of projects under an Annual Contributions or Administrative Contract which have been in the operations period for all or a part of the fiscal year. Form HUD–52599 has been designed for use in reporting operating receipts and expenditures of the various types of Projects, such as (a) PHA-owned rental projects, (b) PHA-leased rental projects, (c) PHA-owned homeowner projects, and (d) PHA-leased homeownership projects.

Respondents: State, Local or Tribal Governments.

Frequency of Submission: Annually.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	3,300		1		1		3,300

Total Estimated Burden Hours: 3,300.
Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 17, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–18332 Filed 7–20–01; 8:45 am]
BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4451–N–08]

Notice Terminating Funding Availability for Public Housing Drug Elimination Program Gun Buyback Violence Reduction Initiative

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice terminating funding availability for public housing drug elimination program gun buyback violence reduction initiative.

SUMMARY: On November 3, 1999, the Department of Housing and Urban Development (HUD) published in the **Federal Register** a Notice of Funding Availability (NOFA) announcing funding for its Gun Buyback Violence Reduction Initiative. On February 3, 2000, HUD amended and republished this NOFA. The purpose of the notice published today is to announce that HUD is terminating funding under its Gun Buyback Violence Reduction Initiative NOFA. HUD is also announcing that it will recapture and reprogram any PHDEP matching gun buyback funds that are not expended by Public Housing Authorities (PHAs) by the termination date of their grant agreements.

DATES: Termination of funding for the PHDEP Gun Buyback Violence Reduction Initiative is effective immediately.

FOR FURTHER INFORMATION CONTACT: Sonia Burgos, Director, Community Safety and Conservation Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4206, Washington, DC 20410, telephone (202) 708–1197 ext. 4227. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On November 3, 1999, HUD published in the **Federal Register** (at 64 FR 60080) a Notice of Funding Availability (NOFA) for the Public Housing Drug Elimination Program Gun Buyback Violence Reduction Initiative. The NOFA provided funding information and program guidelines for gun buyback initiatives. The NOFA stated that Public Housing Agencies (PHAs) may reprogram a portion of their FY 1999 PHDEP grant dollars in order to devote such resources to gun buyback violence reduction initiatives. The Department through the NOFA also made an additional $4.5 million available for gun buyback initiatives to PHAs that reprogrammed PHDEP funds for gun buyback violence reduction initiatives. This $4.5 million was to be awarded on a basis of $43 for every $100 of FY 1999 PHDEP funds reprogrammed for gun buyback violence reduction initiatives.

On February 3, 2000, HUD published in the **Federal Register** (at 65 FR 5400) a Notice of Amendment and Republication of the NOFA for the PHDEP Gun Buyback Violence Reduction Initiative. The amendment made clear that while HUD's matching funds are to be drawn only from the FY 1999 PHDEP set-aside, PHA's expenditures were not restricted to FY 1999 grant funds, but may come from PHDEP grant funds regardless of fiscal year.

The notice published in today's **Federal Register**, announces that HUD is terminating funding under its Gun Buyback Violence Reduction Initiative NOFA and, consequently, will no longer accept applications for funding. HUD is also announcing that it will recapture and reprogram any PHDEP matching gun buyback funds that are not expended by Public Housing Authorities by the termination date of their Grant Agreements.

Basis for Termination

Despite their good intentions, gun buyback initiatives are limited in their effectiveness as a strategy to combat violent and gun-related crimes, particularly in public and assisted housing communities. Buyback initiatives are likely to have more impact on reducing the number of gun-related accidents and deaths in homes than gun violence in public and assisted housing communities. There are several reasons why buyback projects are ineffective in reducing gun-related violent crimes in these neighborhoods.

First, the most effective strategies to combat gun violence are locally developed solutions initiated by PHAs working in partnership with state and local law enforcement agencies. In light of the top-down nature of this gun buyback initiative, PHAs across the nation have shown little interest in applying for or reprogramming PHDEP funding for gun buyback activities. This is underscored by the fact that only 100 PHAs out of 1,000 have reprogrammed and used $2,256,029 in PHDEP funding set-aside for gun buyback purposes out of $10.5 million that was available. Additionally, only $970,192 of the $4.5 in PHDEP technical assistance funding was used for gun buybacks.

Second, as an effort targeted at public and assisted housing, the results of gun buybacks are minimal. The buyback initiatives that are open to the general public have no guarantee of decreasing the supply of guns available to criminals who commit gun violence and related crimes that adversely impact residents living in public and assisted housing communities. At best, these buybacks may marginally be effective in reducing the at-large supply of guns held by the public. However, in light of the sheer volume of guns available in the United States and the tactics criminal use to acquire firearms, buybacks remove generally no more than 1 or 2 percent of the guns estimated to be in the hands of citizens across the nation.

Moreover, studies show that lawbreakers rarely surrender their weapons to buyback programs and many people who sell their guns have other firearms at home, or soon purchase new ones. In general, the age and type of guns turned in as a part of buyback programs are older guns. For example, in 1999, more than half the 2,912 weapons bought by the District of Columbia police for $100 apiece were 15 years old. These are not the same firearms as those used by youth or adult offenders to commit violent or drug-related criminal activity. The guns of choice for young offenders are fast, firing 9 millimeter or .380 caliber semiautomatic pistols that more often show up in crime records than at sites

where buyback programs take place. According to the Bureau of Alcohol, Tobacco and Firearms, more than one-third, and it is estimated that possibly as many as one-half, of all guns seized from young adults nation-wide are new guns purchased legally within the previous 3 years.

Conclusion

HUD acknowledges the importance of raising awareness regarding gun safety and supporting law enforcement efforts to decrease gun-related violent crimes that impact the general public and, more particularly, public and assisted housing communities across the nation. However, the Department strongly believes other State and local resources and federally-supported gun control and crime-prevention efforts should be targeted toward getting guns out of the hands of criminals. Equally important, HUD believes the Department's limited appropriations should be targeted to more conventional drug elimination and crime prevention activities that are consistent with the core HUD mission and are more effective in reducing gun violence in neighborhoods surrounding public and assisted housing communities. As a result, HUD has decided to terminate the gun buyback initiative as a special set-aside under PHDEP.

Dated: June 29, 2001.

Paula O. Blunt,

Acting General Deputy Assistant, Secretary for Public and Indian Housing.

[FR Doc. 01–18331 Filed 7–20–01; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4558–N–05]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: D. Jackson Kinkaid, Secretary to the Mortgagee Review Board, 451 7th Street, SW., Washington, DC 20410, telephone: (202) 708–3041 extension 3574 (this is not a toll-free number). A Telecommunications Device for Hearing and Speech-Impaired Individuals (TTY) is available at 1 (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, approved December 15, 1989), requires that HUD "publish a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from June 1, 2000 through April 13, 2001.

1. 1st Republic Mortgage Bankers, Inc., Floral Park, NY

Action: Settlement Agreement signed 12/21/2000. Without admitting fault or liability, 1st Republic Mortgage Bankers, Inc. ("1st Republic") agreed to an administrative payment to HUD of $50,000. 1st Republic also agreed to indemnify HUD for any losses incurred on 19 loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: 1st Republic failed to identify and resolve falsified or conflicting documentation prior to approving HUD/FHA mortgagors; 1st Republic failed to reconcile incongruities within the Uniform Residential Appraisal report prepared by the appraiser; 1st Republic failed to adequately document the mortgagor's source of funds used for the down payment and/or closing costs; and 1st Republic submitted HUD–1 settlement statements to the Department that contained false or inaccurate information.

2. American City Mortgage Corporation, Carson, CA

Action: Settlement Agreement signed April 6, 2001. Without admitting fault or liability, American City Mortgage Corporation ("ACMC") agreed to voluntarily withdraw from participation in all HUD programs and not to reapply for FHA mortgagee approval for three years. ACMC also agreed to pay a $50,000 civil money penalty.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: ACMC failed to provide quality control review reports during an on-site review; ACMC permitted false information to be used in originating four loans and obtaining HUD/FHA mortgage insurance; ACMC permitted loans to be submitted for HUD/FHA (single family) insurance on properties with more than four living units; ACMC permitted loan officers to originate loans on properties they owned either directly or indirectly and submit them for HUD/FHA mortgage insurance; ACMC failed to ensure that the borrower met the three percent minimum cash investment; and ACMC permitted loans to be approved without adequately analyzing the mortgagors' ability to make the mortgage payments.

3. American Investment Mortgage, Inc., Dallas, TX

Action: In a letter dated October 24, 2000, the Board withdrew American Investment Mortgage, Inc.' ("AIM") HUD/FHA approval for five years.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: AIM was operating Branch Offices as "doing business as" companies—"d/b/a companies"—under the net arrangement and/or was allowing a Branch Office to submit loans for underwriting prior to being approved to originate FHA insured loans; AIM accepted and processed loan applications from people not employed exclusively by AIM; AIM failed to implement a quality control plan prior to November 1998 and the one it did put in place failed to meet HUD/FHA requirements; AIM failed to timely submit Mortgage Insurance Premiums for 103 loans; AIM submitted 20 loans for endorsement more than 60 days after closing and failed to comply with the requirements for late endorsement; AIM used false information in originating FHA loans; AIM used inaccurate income to qualify the mortgagors or failed to properly verify employment for the mortgagors; AIM omitted mortgagor liabilities and/or the liabilities of the non-purchasing spouse were not considered in loan qualification; AIM failed to verify the source of funds, had insufficient documentation and submitted incomplete gift letters; AIM failed to perform underwriting within HUD/FHA established guidelines; AIM used non-traditional credit documentation to qualify mortgagors that did not meet HUD/FHA guidelines; AIM failed to provide dollar for dollar reduction to the sales price for inducement to purchase and/or make revisions to the maximum mortgage amount based on the actual closing costs paid by the mortgagor; AIM charged borrowers' fees that were not disclosed and/or were unallowable; AIM failed to clarify or document important file discrepancies;

and AIM failed to perform pre-approval field reviews.

4. American SkyCorp, Inc., Timonium, MD

Action: In a letter dated November 17, 2000, the Board withdrew American SkyCorp, Inc.'s ("ASI") HUD/FHA approval for five years. The Board also voted to impose a civil money penalty in the amount of $220,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: ASI permitted borrowers to receive seller contributions for down payment and closing costs that were disguised as gifts or grants in four loans; ASI used falsified documentation in originating loans and obtaining mortgage insurance in one loan; ASI approved loans with ratios that exceeded HUD/FHA guidelines without noting significant compensating factors in 15 loans; ASI failed to ensure that borrowers qualified for the FHA insured mortgages in 12 loans; ASI failed to adequately document and analyze income that was used to qualify the borrower in 8 loans; ASI failed to properly verify the source and adequacy of funds for the down payment and/or closing costs in 20 loans; ASI failed to reconcile conflicting information concerning the Uniform Residential Appraisal Report in one loan; ASI failed to obtain and analyze the terms and conditions of the real estate transaction and to consider the acquisition cost of recently acquired properties in the underwriting of one loan; ASI failed to ensure that all charges and credits to the borrower were reflected on the HUD–1 settlement statement in one loan; and ASI employed a loan officer who was not an exclusive employee.

5. Approved Home Mortgage Corp., Pembroke Pines, FL

Action: Settlement Agreement signed 12/18/2000. Without admitting fault or liability, Approved Home Mortgage Corp. ("Approved") agreed to a civil money penalty of $3,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Approved failed to implement its quality control plan; Approved failed to file annual loan origination reports for 1997 and 1998 which supplements the requirements of the Home Mortgage Disclosure Act; Approved failed to adopt, maintain and implement a Quality Control Plan that meets HUD guidelines; Approved failed to maintain complete origination files; and Approved charged an unacceptable fee.

6. Assurety Mortgage Group, Inc., Decatur, GA

Action: In a letter dated October 24, 2000, the Board withdrew Assurety Mortgage Group, Inc.'s ("AMGI") HUD/FHA approval for five more years. This was in addition to the three years imposed by the Board in its February 15, 2000 Notice to AMGI (see 65 FR at 53731, September 5, 2000). The Board also voted to impose a further civil money penalty of $150,000, which was in addition to the $45,500 penalty previously determined in the February 15, 2000 Notice.

Cause: Follow up by Departmental Enforcement Center staff to the February 15, 2000 withdrawal notice revealed that AMGI violated HUD/FHA requirements, prudent lending practices and engaged in business practices that did not conform with accepted practices of an approved lender by the following: AMGI originated and/or provided underwriting approval for 90 loans in order to obtain HUD/FHA insurance after AMGI had been withdrawn by the Board; and AMGI opened 8 branches and added 14 loan correspondents to originate and/or underwrite HUD/FHA insured loans after being withdrawn by the Board.

7. Avstar Mortgage Corporation, Blue Bell, PA

Action: In a letter dated August 3, 2000, the Board withdrew Avstar Mortgage Corporation's ("Avstar") HUD/FHA approval for eight years. The Board also voted to impose a civil money penalty in the amount of $192,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Avstar failed to conduct a face-to-face interview with the mortgagors; Avstar failed to document the mortgagors' source of funds used for down payment or closing costs; Avstar failed to document two full years of employment for the mortgagors; Avstar knowingly approved loans with an ineligible borrower; Avstar used falsified documentation or conflicting information in originating loans and obtaining HUD/FHA mortgage insurance; Avstar failed to ensure that the borrowers met their minimum required investment; Avstar failed to provide lender credits in accordance with the Mortgage Credit Analysis Worksheet; Avstar approved loans where the verification forms passed through the hands of an interested third party; Avstar failed to use HUD assigned fee personnel in cases where the seller was an employee; Avstar charged a higher document preparation fee than permitted by HUD field offices having jurisdiction where the loans were originated; and Avstar failed to maintain a Quality Control Plan in compliance with HUD requirements.

8. Bankers Choice Mortgage Corp., Miami, FL

Action: Settlement Agreement signed 2/7/2001. Without admitting fault or liability, Bankers Choice Mortgage Corp. ("BCMC") agreed to a civil money penalty of $12,000. BCMC also refunded mortgagors in cases where unallowable fees were charged.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: BCMC failed to file an annual loan origination report for 1998 which supplements the requirements of the Home Mortgage Disclosure Act; BCMC failed to establish and maintain a Quality Control Plan for the origination of HUD/FHA insured mortgages; BCMC failed to address a conflict of interest issue in four loans; BCMC charged unacceptable fees in three loans; and BCMC failed to maintain complete origination files in seven cases.

9. Budget Mortgage Bankers, Ltd., Lake Success, NY

Action: Settlement Agreement signed 11/28/2000. Without admitting fault or liability, Budget Mortgage Bankers, Ltd. ("Budget") agreed to a civil money penalty of $15,000. Budget agreed to indemnify HUD for any losses incurred on 9 loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Budget failed to maintain and implement a Quality Control Plan in compliance with HUD requirements; Budget failed to ensure falsified or conflicting documentation was not used to approve HUD/FHA mortgagors in 2 loans; Budget closed a loan that was overinsured by $867.35; Budget failed to properly underwrite a loan with a non-occupying co-borrower; Budget failed to properly verify income in 3 loans; and Budget failed to properly verify the source and adequacy of funds for the down payment and/or closing in 7 loans.

10. Capitol Mortgage Bankers, Inc., Millersville, MD

Action: In a letter dated August 3, 2000, the Board withdrew Capitol Mortgage Bankers, Inc."s ("Capitol") HUD/FHA approval for five years. The Board also voted to impose a civil money penalty in the amount of $280,500.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: In 36 loans, Capitol relied upon inadequate and invalid compensating factors for loan approval in circumstances of excessive debt-to-income ratios; Capitol failed to identify and/or resolve false or conflicting documentation prior to approving HUD/FHA mortgages; Capitol failed to obtain required documentation in lieu of Verifications of Deposit; Capitol failed to properly verify the source and adequacy of funds for the down payment and/or closing; Capitol failed to close the loans in compliance with the loan approval; Capitol failed to adequately analyze income that was used to qualify the borrower; Capitol failed to ensure that the mortgagors' credit profile used to underwrite the loan met HUD/FHA requirements; and Capitol obtained endorsement for HUD/FHA insurance on an ineligible loan.

11. Community Home Mortgage Corporation, Melville, NY

Action: Settlement Agreement signed January 15, 2001. Without admitting fault or liability, Community Home Mortgage Corporation ("CHMC") agreed to a civil money penalty of $120,000. CHMC agreed to indemnify HUD for any losses incurred on 17 loans. [See 65 FR at 53732, September 5, 2000, for a prior notice of the proposed settlement.]

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: CHMC failed to maintain and implement a compliant quality control plan; CHMC failed to file annual loan origination reports since 1991 which supplement the requirements of the Home Mortgage Disclosure Act; CHMC failed to ensure 203(k) rehabilitation work was complete prior to release of escrow funds on 14 loans; CHMC failed to ensure 203(k) rehabilitation completion within 6 months of closing on seven loans; CHMC failed to ensure verification forms did not pass through the hands of an interested third party on one loan; CHMC failed to ensure that mortgagors met minimum required investment requirements on two loans; CHMC failed to adequately document source of funds for downpayment and/or closing costs on two loans; CHMC charged improper fees on one loan; and CHMC failed to properly document two full years of employment on one loan.

12. DMR Financial Services, Inc., Farmington Hills, MI

Action: In a letter dated September 29, 2000, the Board withdrew DMR Financial Services, Inc."s HUD/FHA approval for three years.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: DMR Financial Services, Inc. ("DMR") failed to make timely payment of Upfront Mortgage Insurance Premiums ("UMIPs") for 30 loans; DMR failed to include payment of UMIPs as a requirement of DMR's Quality Control Plan.

13. Executive Funding Services, Camp Springs, MD

Action: Settlement Agreement signed April 6, 2001. Without admitting fault or liability, Executive Funding Services ("EFS") agreed to a civil money penalty of $10,000. [See 65 FR at 53732, September 5, 2000 for a prior notice of the proposed settlement.]

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: EFS failed to maintain a Quality Control Plan; EFS failed to report Home Mortgage Disclosure data for 1996, 1997, and 1998; EFS failed to meet specific requirements that apply to office facilities; EFS allowed the approving underwriter to be paid origination commission on the same transaction; EFS used falsified documentation or conflicting information in originating loans and obtaining HUD/FHA mortgage insurance; EFS closed loans that exceeded HUD/FHA maximum allowable mortgage amounts; EFS failed to properly verify the source and/or adequacy of funds for the downpayment and/or funds to close; EFS failed to maintain all records pertaining to the mortgage loan; EFS approved loans where the ratios exceeded HUD guidelines without compensating factors; EFS failed to adequately verify child support income; EFS failed to document two full years of employment; EFS approved loans where the verification forms passed through the hands of an interested third party; EFS failed to adequately document the satisfaction of collection accounts and judgments; and EFS failed to include all liabilities when calculating the mortgagor's total fixed payment to income ratio.

14. Farmers Bank, Greenwood, Arkansas

Action: Settlement Agreement signed November 28, 2000. Without admitting fault or liability, Farmers Bank ("Farmers") agreed to a civil money penalty of $40,000. Farmers agreed to indemnify HUD for any losses incurred on 9 loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Farmers failed to ascertain whether the water supply was safe before submitting the loan for insurance in 1 loan; Farmers failed to establish that borrowers had sufficient funds to close in 6 loans; Farmers failed to include all borrowers' debts in the loan analysis in 2 loans; Farmers failed to consider contingent liability in 1 loan; Farmers failed to provide complete verification of employment documentation in 2 loans; Farmers failed to evidence whether required repairs to property had been completed in 1 loan; Farmers failed to establish the adequacy of a borrower's income in 1 loan; Farmers failed to consider a history of derogatory credit in approving one loan; and Farmers failed to follow HUD/FHA's late endorsement procedures in 3 loans.

15. FFS Mortgage Corporation, Miami Lakes, FL

Action: Settlement Agreement signed 10/14/2000. Without admitting fault or liability, FFS Mortgage Corporation ("FFSMC") agreed to a civil money penalty of $2000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: FFSMC failed to file an annual loan origination report for 1998 which supplements the requirements of the Home Mortgage Disclosure Act; FFSMC failed to establish, maintain and implement a Quality Control Plan for the origination of HUD/FHA insured mortgages; and FFSMC charged unallowable fees.

16. Fidelity Home Mortgage Corporation, Timonium, MD

Action: Settlement Agreement signed 2/16/2001. Without admitting fault or liability, Fidelity Home Mortgage Corporation ("Fidelity") agreed to a civil money penalty of $27,500. Fidelity agreed to indemnify HUD for any losses incurred on one loan. (See 65 FR at 53732, September 5, 2000, for a prior notice of the proposed settlement.)

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Fidelity failed to file annual loan origination reports for 1993 through 1998 which supplements the requirements of the Home Mortgage Disclosure Act; Fidelity failed to maintain separate accounts for MIP/escrow payments; Fidelity failed to maintain and implement an adequate Quality Control Plan; Fidelity failed to provide loan origination files and documents for review for 11 loan files; Fidelity used falsified or conflicting documentation to approve mortgagors in one loan; and Fidelity failed to properly

verify income to approve mortgagors in 2 loans.

17. Financial Funding Services, Inc., Coral Gables, FL

Action: Settlement Agreement signed 10/14/2000. Without admitting fault or liability, Financial Funding Services, Inc. ("FFSI") agreed to a civil money payment of $2,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: FFSI failed to file an annual loan origination report for 1998 which supplements the requirements of the Home Mortgage Disclosure Act; FFSI failed to develop, implement, and maintain a Quality Control Plan for the origination of HUD/FHA insured mortgages; FFSI failed to use complete gift letters; FFSI failed to retain documents originating mortgagees are required to maintain; and FFSI failed to address a conflict of interest issue.

18. First United Mortgage Company, Kenilworth, NJ

Action: Settlement Agreement signed 2/7/2001. Without admitting fault or liability, First United Mortgage Company ("FUMC") agreed to a civil money penalty of $50,000. FUMC agreed to indemnify HUD for any losses on three loans. In addition, FUMC agreed to refund commitment fees, plus interest, to 16 mortgagors. (For the prior **Federal Register** notice on the proposed settlement agreement, see 65 FR at 53733, September 5, 2000.)

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: FUMC failed to file timely annual loan origination reports for 1994 through 1997 which supplements the requirements of the Home Mortgage Disclosure Act; FUMC failed to properly calculate a mortgagor's principal loan amount; FUMC released funds on a 203 (k) rehabilitation loan prior to the work being completed; FUMC used false documentation or conflicting information to approve HUD/FHA mortgagors for three loans; FUMC improperly charged commitment fees in 16 loans; and FUMC failed to maintain an adequate Quality Control Plan.

19. GAMA Mortgage Corporation, New Orleans, LA

Action: Settlement Agreement signed June 8, 2000. Without admitting fault or liability, GAMA Mortgage Corporation agreed to a civil money penalty of $1,000. (For the prior **Federal Register** notice on the proposed settlement agreement, see 65 FR at 53733, September 5, 2000.)

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: GAMA Mortgage Corporation failed to file an annual loan origination report which supplements the requirements of the Home Mortgage Disclosure Act.

20. Gateway Funding Diversified Mortgage Services, Conshohocken, PA

Action: Settlement Agreement signed January 22, 2001. Without admitting fault or liability, Gateway Funding Diversified Mortgage Services ("Gateway Funding") agreed to a civil money penalty of $25,000. In addition, Gateway Funding paid HUD $2,095 to buy down the overinsured amounts for two loans. (For the prior **Federal Register** notice on the proposed settlement agreement, see 65 FR at 53733, September 5, 2000.)

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Gateway Funding failed to implement and maintain a Quality Control Plan in compliance with HUD/FHA requirements; Gateway Funding failed to ensure that mortgagors met their minimum required investment; and Gateway Funding charged mortgagors fees that were not specifically permitted.

21. Greater Chicago Mortgage Corp., Tinley Park, IL

Action: In a letter dated November 21, 2000, the Board withdrew Greater Chicago Mortgage Corp.'s HUD/FHA approval for three years.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Greater Chicago Mortgage Corp. ("GCMC") failed to have, implement, and maintain an adequate Quality Control Plan that meets HUD guidelines; GCMC failed to maintain complete origination files in 6 loans; and GCMC failed to ensure loan documents did not pass through the hands of an interested third party in one loan.

22. Hanover Capital Mortgage Corporation, Edison, NJ

Action: Settlement Agreement signed 8/8/2000. Without admitting fault or liability, Hanover Capital Mortgage Corporation agreed to a civil money payment of $5,000.

Cause: HUD's legal services contractor reported that Hanover Capital Mortgage Corporation failed to disclose on the mortgagee certificate a negotiated agreement in which the mortgagor of the multifamily housing project agreed to pay extension fees for late completion of the project. This violated HUD requirements that the mortgagee disclose the financial terms of the agreement for HUD approval.

23. Heartland Mortgage, Inc., Tucson, AZ

Action: In a letter dated 2/1/2001, the Board withdrew Heartland Mortgage, Inc.'s ("Heartland") HUD/FHA approval for three years. The Board also voted to impose a civil money penalty in the amount of $33,000. This action resulted from the Department's inability to finalize a settlement agreement proposed at the March 13, 2000 Mortgagee Review Board meeting, as noted in 65 FR at 53733 (September 5, 2000).

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Heartland failed to implement its quality control plan; Heartland failed to file annual loan origination reports for 1997 and 1998 which supplements the requirements of the Home Mortgage Disclosure Act; Heartland employed two loan officers who were also real estate agents/brokers; Heartland failed to properly document gift letters in two loans; Heartland failed to properly document liabilities in one loan; and Heartland failed to maintain complete loan origination files in 7 loans.

24. Hollywood Mortgage, Inc., Palmdale, CA

Action: Settlement Agreement signed February 7, 2001. Without admitting fault or liability, Hollywood Mortgage, Inc. ("Hollywood") agreed to a civil money penalty of $40,000. The Department rescinded its Notice of Proposed Withdrawal dated April 3, 2000. [For the prior **Federal Register** notice on the proposed withdrawal, see 65 FR at 53733, September 5, 2000.]

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Hollywood failed to implement and maintain a quality control plan; Hollywood failed to report rejected and withdrawn loans under the Home Mortgage Disclosure Act (HMDA); Hollywood operated also as a real estate office using its office space and staff; and Hollywood allowed employees to work for more than one company involved in the real estate finance business at the same time.

25. Home Mortgage Company, Gardendale, AL

Action: Settlement Agreement signed December 18, 2000. Without admitting fault or liability, Home Mortgage Company ("HMC") agreed to a payment to HUD of $7,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Home Mortgage Company ("HMC") failed to file an annual loan origination report for 1998 which supplements the requirements of the Home Mortgage Disclosure Act; HMC failed to establish, maintain, and implement a Quality Control Plan for the origination of HUD/FHA insured mortgages; and HMC allowed non-employees to process loans to be insured by FHA.

26. Irwin Mortgage Corporation, Indianapolis, IN

Action: Settlement Agreement signed June 8, 2000. Without admitting fault or liability, Irwin Mortgage Corporation ("Irwin") agreed to indemnify HUD for any losses incurred in 16 loans. [For the prior **Federal Register** notice on the proposed settlement agreement, see 65 FR at 53734, September 5, 2000.]

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Irwin failed to follow HUD required procedures in calculating maximum mortgage amounts, thereby originating HUD/FHA loans that exceeded HUD limits; Irwin failed to reconcile discrepancies between its files and the Uniform Residential Appraisal Report; Irwin failed to conduct face-to-face interviews with prospective borrowers as certified on the Uniform Residential Loan Application ("URLA"); Irwin failed to properly verify the source and adequacy of the funds used for the down payment and/or closing costs; Irwin failed to adequately document income that was used to qualify the borrower; Irwin accepted a Power of Attorney signature for all documentation and failed to obtain the signature of the borrower on the draft or final URLA; Irwin failed to resolve conflicting file information; Irwin failed to obtain required signatures on origination documents; and Irwin failed to re-access CAIVRS when making more loans to a Section 203 (k) investor.

27. Island Mortgage Network, Inc., Melville, NY

Action: Immediately suspended by letter dated August 3, 2000. [Note, this is a separate action from the immediate withdrawal noted at 65 FR at 53734, September 5, 2000. The immediate nature of the withdrawal was resolved by a Settlement Agreement and the issue of withdrawal and civil money penalties are pending an administrative appeal.]

Cause: On June 30, 2000, the New York State Banking Department suspended Island Mortgage Network, Inc.'s (IMN) license and issued a Notice of Hearing and Statement of Charges for IMN's license revocation. By allowing its license to be suspended, IMN failed to comply with HUD/FHA approval requirements.

28. Liberty Mortgage Corporation, Birmingham, AL

Action: Settlement Agreement signed August 8, 2000. Without admitting fault or liability, Liberty Mortgage Corporation ("LMC") agreed to a civil money penalty of $1,000. [For the prior **Federal Register** notice on the proposed settlement agreement, see 65 FR at 53734, September 5, 2000.]

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: LMC failed to file annual loan origination reports for 1995 through 1999 which supplement the requirements of the Home Mortgage Disclosure Act; LMC failed to develop a Quality Control Plan in compliance with HUD/FHA requirements; and LMC failed to implement a Quality Control program in compliance with HUD/FHA requirements.

29. Madison Home Equities, Inc., Lake Success, NY

Action: Settlement Agreement signed July 7, 2000. Without admitting fault or liability, Madison Home Equities, Inc. ("MHE") agreed to a civil money penalty of $71,500. MHE agreed to voluntarily withdraw from participation in all HUD programs and not to reapply for HUD/FHA mortgagee approval for five years. [For the prior **Federal Register** notice concerning an immediate withdrawal, see 65 FR at 53734, September 5, 2000.]

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: MHE falsely certified that it did not have a financial interest in Better Homes Depot, Inc.; MHE's President violated underwriting requirements prohibiting interested third parties from performing processing/review functions of borrowers' credit reports and verification forms; MHE used false documentation and failed to resolve conflicting information in HUD/FHA loan origination; in underwriting a loan, MHE ignored the borrower's substantial liability that was attributable to the borrower's home improvement loan that MHE's affiliate entity made to the borrower during the same period of time; MHE relied upon inadequate compensating factors for loan approval in circumstances of excessive debt-to-income ratios; MHE failed to adhere to HUD/FHA credit requirements for mortgage loan approval; MHE failed to ensure that the borrower met the requirements to purchase a three-unit property; MHE, by ignoring discrepancies between appraisal reports and sales contracts failed to ensure that the appraisals were reliable; and MHE failed to ensure that appraisals met the existing requirements of HUD/FHA for inclusion of at least one conventional comparable.

30. Mann Financial, Inc., d/b/a Mann Mortgage Financial Services, Kalispell, MT

Action: Settlement Agreement signed 12/18/2000. Without admitting fault or liability, Mann Financial ("Mann") agreed to a civil money penalty of $75,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Mann engaged in improper "net branching" practices; and Mann had not implemented a quality control plan in compliance with HUD requirements.

31. Mark 1 Mortgage, Glendale, CA

Action: Settlement Agreement signed 10/14/2000. Without admitting fault or liability, Mark 1 Mortgage ("M1M") agreed to a civil money penalty of $7,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: M1M failed to file annual loan origination reports for 1997 and 1998 which supplement the requirements of the Home Mortgage Disclosure Act; M1M failed to maintain an acceptable Quality Control Plan for the origination of HUD/FHA insured mortgages; M1M failed to ensure that its employees performing quality control reviews have no direct loan processing or underwriting responsibilities; and M1M allowed one of its loan officers to also work for another real estate business while employed with M1M.

32. Merit Mortgage Corporation, Boise, Idaho

Action: Settlement Agreement signed 9/25/2000. Without admitting fault or liability, Merit Mortgage Corporation ("MMC") agreed to a civil money penalty of $2000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: MMC failed to file annual loan origination reports for the years 1993–1999 which supplement the requirements of the Home Mortgage Disclosure Act; and MMC failed to maintain and implement a Quality

Control Plan in compliance with HUD requirements.

33. Milestone Mortgage Corporation, LaPalma, CA

Action: In a letter dated January 23, 2001, the Board withdrew Milestone Mortgage Corporation's ("MMC") HUD/FHA approval for five years. The Board also voted to impose a civil money penalty of $88,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: MMC used fraudulent documents, when it knew or had reason to know the documents used were false, in the origination of HUD/FHA insured loans; MMC allowed non-employees to take FHA loan applications; MMC failed to ensure that the mortgagors met their minimum required investment; MMC permitted "strawbuyers" to qualify for HUD/FHA insured mortgages; and MMC allowed mortgagors to sign documents in blank.

34. Molton, Allen & Williams Corporation, Birmingham, AL

Action: Settlement Agreement signed June 8, 2000. Without admitting fault or liability, Molton, Allen & Williams Corporation ("MAW") agreed to a civil money penalty of $20,000. [For the prior **Federal Register** notice on the proposed settlement agreement, see 65 FR at 53735, September 5, 2000.] MAW agreed to indemnify HUD for any losses incurred in 15 loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: MAW failed to initiate timely contact with delinquent mortgagors; MAW failed to conduct pre-foreclosure reviews prior to approving foreclosure; MAW failed to evaluate all loss mitigation techniques when three full monthly installments were past due on the mortgage; MAW failed to notify all mortgagors of record of the mortgage default; MAW failed to meet the Department's monthly default reporting requirements; and MAW failed to implement and maintain an adequate Quality Control Plan for the servicing of HUD/FHA insured mortgages.

35. Morgan Home Funding Corporation, Rockville, MD

Action: In a letter dated 2/12/2001, the Board withdrew Morgan Home Funding Corporation's ("MHF") HUD/FHA approval for three years. The Board also voted to impose a civil money penalty of $25,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: MHF failed to implement a quality control plan; MHF failed to file annual loan origination reports for the years 1994–1998 which supplement the requirements of the Home Mortgage Disclosure Act; MHF failed to notify HUD when patterns of fraud were discovered; MHF used falsified documentation or conflicting information to originate loans and obtain HUD/FHA mortgage insurance; and MHF failed to provide loan origination files and documentation for review.

36. Mortgage Lending of America, Inc., Huntington Station, NY

Action: In a letter dated August 17, 2000, the Board withdrew Mortgage Lending of America, Inc.'s (MLA) HUD/FHA approval for five years. The Board also voted to impose a civil money penalty of $533,500.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements relating to 97 loans with a nonprofit mortgagor: MLA failed to require the mortgagor to make the total investment noted on each HUD–1 settlement statement; MLA failed to reduce the sales price on all transactions by the amount of recent non-arms-length property sales; MLA failed to determine the source of funds for the mortgagor's total investment noted on each HUD–1 settlement statement; MLA failed to provide true and accurate underwriter and mortgagee certifications; MLA failed to conduct the required application interview with the mortgagor for each transaction; MLA failed to adjust the sales price on each purchase transaction for known incentive payments made to the mortgagor; MLA failed to exclude a participant that was on the List of Parties Excluded from Federal Procurement and Non-procurement Programs; MLA failed to determine that minimum repair escrow eligibility requirements were met; MLA failed to obtain accurate appraisals; MLA failed to approve true and accurate construction draw requests; MLA failed to provide true and accurate HUD–1 settlement statements; MLA allowed the loan proceeds to be disbursed inaccurately; MLA failed to properly monitor the progress of rehabilitation work; and MLA failed to maintain an arms-length transaction with the closing agent.

37. National Charter Mortgage Corporation, Gardena, CA

Action: In a letter dated September 29, 2000, the Board withdrew the HUD/FHA approval of National Charter Mortgage Corporation ("NCMC") for 3 years. The Board also voted to impose a civil money penalty of $100,000. This action resulted from the Department's inability to finalize a settlement agreement with NCMC as noted in 65 FR at 53736, September 5, 2000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: NCMC failed to conduct Quality Control reviews and to maintain an adequate written Quality Control Plan for origination of HUD/FHA insured mortgages; NCMC failed to comply with the HUD/FHA reporting requirements of the Home Mortgage Disclosure Act (HMDA); and NCMC failed to remit Up Front Mortgage Insurance Premiums within 15 days of loan closing, and to submit these loans for endorsement within 60 days of loan closing.

38. Northstar Mortgage Corporation, Dallas, TX

Action: Settlement Agreement signed 4/6/2001. Without admitting fault or liability, Northstar Mortgage Corporation ("NMC") agreed to a civil money penalty of $8,000. NMC agreed to indemnify HUD on any losses incurred on two loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: NMC failed to properly address derogatory credit information in two loans; NMC failed to properly verify the borrowers' effective income in one loan; NMC failed to properly verify the borrowers' source of funds for the down payment and/or closing costs in two loans; NMC filed to resolve inconsistencies on property appraisal reports in two loans; NMC failed to screen a borrower through the Credit Alert Interactive Voice Response System in one loan; NMC failed to complete loan documentation in three loans; and NMC used gift letters that did not meet HUD/FHA requirements in three loans.

39. Ocwen Federal Bank, FSB, West Palm Beach, FL

Action: Settlement Agreement signed 12/18/2000. Without admitting fault or liability, Ocwen Federal Bank, FSB ("OFB") agreed to an administrative payment of $50,000. OFB will include certain miscellaneous expenses as essential when calculating income available for payment.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: OFB failed to comply with the terms of the Loan Sale Agreement regarding forbearance agreements; and OFB failed

to provide HUD with sufficient information to respond to complaints.

40. Pacific Charter Mortgage Corporation, Los Alamitos, CA

Action: Settlement Agreement signed January 18, 2001. Without admitting fault or liability, Pacific Charter Mortgage Corporation ("PCMC") agreed to a civil money penalty of $100,000. PCMC agreed to indemnify HUD for any losses incurred on two loans. (For the prior **Federal Register** notice on the proposed settlement agreement, see 65 FR at 53736, September 5, 2000.)

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: PCMC failed to timely remit Up-Front Mortgage Insurance Premiums; PCMC failed to submit loans to HUD/FHA for endorsement in a timely manner; PCMC failed to segregate escrow funds; PCMC failed to implement and maintain a Quality Control Plan for Title I and Title II loan originations; PCMC failed to properly verify and/or document effective income; PCMC failed to document the source of funds; PCMC failed to properly evaluate mortgage credit risk; PCMC failed to include all liabilities in underwriting; PCMC operated as a real estate office, PCMC allowed non-employees to originate loans; and PCMC employed ineligible participants.

41. Republic Bank, d/b/a Capitol Mortgage, St. Petersburg, FL

Action: Settlement Agreement signed 12/18/2000. Without admitting fault or liability, Republic Bank, d/b/a Capitol Mortgage agreed to the indemnification of one loan.

Cause: HUD's Quality Assurance Division found that Republic Bank failed to provide requested 203(k) rehabilitation documentation for review.

42. Republic Mortgage Corp., now known as Old Kent Mortgage Company, Salt Lake City, UT

Action: Settlement Agreement signed 4/6/2001. Without admitting fault or liability, Old Kent Mortgage Company agreed to a payment to HUD of $206,000. Old Kent Mortgage Company agreed to indemnify HUD for any losses incurred on up to 3 loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Republic Mortgage Corp. operated branch offices under a net branch arrangement and accepted loans originated by entities not approved to do HUD business; Republic Mortgage Corp. allowed non-FHA approved entities to originate and process FHA loans using its lender ID number; Republic Mortgage Corp. accepted loans from FHA approved mortgagees who allowed non-approved entities the use of their FHA approval to originate, process, and close FHA insured loans using Republic Mortgage Corp.'s ID number, or an approved loan correspondent's ID number; Republic Mortgage Corp. failed to provide evidence that properties met FHA eligibility criteria; Republic Mortgage Corp. failed to retain the entire case file pertaining to loan origination; Republic Mortgage Corp. used language on a Trust Deed Note requiring mortgagors to pay interests on advances of escrow account balances on no-cost streamline refinances; and Republic Mortgage Corp. charged fees of $50, $300, and $350 in four loans which were not in compliance with HUD guidelines.

43. Rhode Island Housing and Mortgage Finance Corporation, Providence, RI

Action: Settlement Agreement signed June 8, 2000. Without admitting fault or liability, Rhode Island Housing and Mortgage Finance Corporation ("RIHMFC") agreed to a civil money penalty of $16,500. [For the prior **Federal Register** notice on the proposed settlement agreement, see 65 FR at 53736, September 5, 2000.]

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements RIHMFC failed to conduct Quality Control reviews and failed to have a written Quality Control Plan; RIHMFC failed to properly document loss mitigation efforts; RIHMFC failed to conduct property inspections timely or at all; RIHMFC failed to initiate management reviews of forbearance, deed-in-lieu and foreclosure recommendations; RIHMFC failed to issue "How to Avoid Foreclosure" pamphlets in a timely manner or at all; RIHMFC failed to identify the reason for default; RIHMFC failed to provide acceptable methods of forbearance relief; RIHMFC failed to adequately contact delinquent borrowers by telephone; RIHMFC failed to accurately report defaulted loans to HUD/FHA; and RIHMFC failed to comply with HUD's policies regarding paid-in-full loans.

44. Security National Mortgage Company, Murray, UT

Action: Settlement Agreement signed 11/28/2000. Without admitting fault or liability, Security National Mortgage Company ("SNMC") agreed to a civil money penalty of $75,000. SNMC agreed to indemnify HUD for any losses incurred on 18 loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: SNMC failed to comply with its own policy and procedures pertaining to discontinuing impermissible net branch arrangements outlined in a July 17, 1997 letter to the Department; SNMC accepted loans originated by personnel not employed by or not exclusively employed by SNMC; SNMC accepted loans originated by non-HUD approved entities; SNMC paid fees/compensation to unauthorized entities or individuals in connection with FHA insured mortgages; SNMC certified to inaccurate HUD–1 settlement statements; SNMC failed to require complete gift letters; SNMC failed to retain the entire case file pertaining to loan origination; and SNMC closed a loan in excess of the maximum allowable resulting in an over-insured mortgage.

45. Shore Financial Group, Fresno, CA

Action: Settlement Agreement signed 2/7/2001. Without admitting fault or liability, Shore Financial Group ("SFG") agreed to a civil money penalty of $6,000. In addition SFG paid HUD $38,237.87 for losses incurred on one loan.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: SFG failed to maintain and implement a quality control plan in compliance with HUD requirements; SFG failed to file annual loan origination reports for the years 1995 through 1999, which supplement the requirements of the Home Mortgage Disclosure Act; SFG allowed non-employees to originate HUD/FHA mortgage loans; SFG used false information in originating FHA loans and obtaining HUD/FHA mortgage insurance; and SFG failed to maintain complete origination files.

46. SimCorp Mortgage Corporation, Aliquippa, PA

Action: Settlement Agreement signed December 18, 2000. Without admitting fault or liability, SimCorp Mortgage Corporation ("SMC") agreed to a civil money penalty of $1,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: SMC failed to have, implement, and maintain an adequate Quality Control Plan that meets HUD guidelines.

47. SMN Mortgage Corp., Rio Piedras, Puerto Rico

Action: In a letter dated 9/21/2000, the Board withdrew SMN Mortgage Corp's HUD/FHA approval for three years.

Cause: HUD's Quality Assurance Division found that SMN Mortgage Corp. violated HUD/FHA requirements by failing to ensure that mortgage brokers not approved by HUD/FHA did not participate in the origination and processing of 41 loans insured by the Department.

48. Somerset Investors Corp., Ozone Park, NY

Action: Settlement Agreement signed 11/28/2000. Without admitting fault or liability, Somerset Investors Corp. ("Somerset") agreed to a civil money penalty of $3,000. Somerset agreed to indemnify HUD for any losses incurred on 3 loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Somerset failed to file annual loan origination reports for the years 1996, 1997, and 1998, which supplement the requirements of the Home Mortgage Disclosure Act; Somerset failed to properly verify the source and adequacy of funds for the down payment and/or closing costs in 2 loans; Somerset failed to adequately verify the income used to qualify the borrowers in 1 loan; Somerset failed to resolve conflicting information contained in the property appraisal and other documents in the file in 1 loan; and Somerset failed to have, implement and maintain an adequate Quality Control Plan that meets HUD guidelines.

49. Southern Mortgage Investment Corp., Marietta, GA

Action: Settlement Agreement signed 11/28/2000. Without admitting fault or liability, Southern Mortgage Investment Corp. ("SMIC") agreed to a civil money penalty of $1000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: SMIC failed to develop, implement, and maintain a Quality Control Plan.

50. Specialty Mortgage Corporation, Hialeah, FL

Action: In a letter dated February 5, 2001, the Board withdrew Specialty Mortgage Corporation's ("SMC") HUD/FHA approval for three years. In addition, the Board voted to impose a civil money penalty of $8,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: SMC failed to establish, maintain and implement a Quality Control Plan; SMC used false documents to originate HUD/FHA mortgages; and SMC failed to maintain complete origination files in 11 loans.

51. Summit Mortgage Corporation, Houston, TX

Action: Settlement Agreement signed December 18, 2000. Without admitting fault or liability, Summit Mortgage Corporation ("Summit") agreed to a civil money penalty of $75,000. Summit agreed to indemnify HUD for any losses on 19 loans. [For the prior **Federal Register** notice on the proposed settlement agreement, see 65 FR at 53736, September 5, 2000.]

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Summit falsely certified mortgagors' income and/or number of dependents to the HUD-funded HOME and/or State Program to obtain unwarranted grants for downpayments; Summit used false information in originating FHA loans and obtaining HUD/FHA mortgage insurance; Summit falsely certified that Verifications of Employment were sent directly to the applicants' employers and/or provided false verbal employment certifications; Summit provided false Traditional and/or Non-Traditional credit documentation to qualify mortgagors and/or accepted Non-Traditional credit documentation that does not meet FHA guidelines; Summit failed to verify the source of funds required for closing; Summit failed to provide a dollar-for-dollar reduction to the sales price for an inducement to purchase; Summit used inaccurate income to qualify a mortgagor; Summit failed to clarify or document major file discrepancies; Summit failed to perform Direct Endorsement underwriting within HUD/FHA established guidelines; Summit failed to perform pre-approved field reviews; and Summit failed to require complete gift letters.

52. Sunstate Mortgage, Inc., d/b/a Sun America Mortgage, Daytona Beach, FL

Action: Immediately suspended by letter dated December 13, 2000.

Cause: On October 25, 2000, the State of Rhode Island Department of Business Regulation issued an Emergency Order Suspending the Lender License of Sunstate Mortgage ("SM"). On October 26, 2000, the State of Rhode Island issued an Emergency Order withdrawing SM's approval to conduct lending activity. By allowing its license to be suspended and withdrawn, SM failed to comply with HUD/FHA approval requirements.

53. SunTrust Mortgage, Inc., f/k/a Crestar Mortgage Company, Richmond, VA

Action: Settlement Agreement signed 2/7/2001. Without admitting fault or liability, SunTrust Mortgage, Inc. ("SunTrust") agreed to a civil money penalty of $25,000. SunTrust also agreed to indemnify HUD for any losses incurred on 19 loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: SunTrust failed to ensure that repairs were completed prior to the release of escrow funds in 7 loans; SunTrust failed to ensure that contractors obtained the required building permits in 8 loans; SunTrust failed to provide adequate descriptions of each work item in the 203(k) plans in 22 loans; SunTrust failed to acquire prior approval of the mortgagor and underwriter prior to allowing contingency reserves to be used in 23 loans; SunTrust failed to document the stability of income in one loan; SunTrust failed to verify the source of funds used for the down payment and/or closing costs in one loan; and SunTrust failed to provide different choices to mortgagors regarding the selection of 203(k) consultants and/or general contractors in 5 loans.

54. Union Planters Bank, Cordova, TN

Action: Settlement Agreement signed 12/21/2000. Without admitting fault or liability, Union Planters Bank ("UPB") agreed to a payment of $30,000. UPB indemnified HUD $21,308.59 for losses incurred in one loan. In addition, UPB agreed to indemnify HUD for any losses incurred on eight other loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: UPB failed to adequately document the sufficiency and/or source of funds required to close loan transactions; UPB failed to adequately document the liabilities of a non-purchasing spouse; UPB failed to calculate the applicant's income properly and omitted liabilities in the loan analysis resulting in an excessive debt to income ratio; UPB failed to clarify or document an important file discrepancy and approved a loan with an unpaid judgment on a borrower who was a questionable credit risk; UPB failed to resolve discrepancies related to paid earnest money deposits; and UPB failed to follow HUD's guidelines in verifying a borrower's employment.

55. Whitehall Funding Inc., Indianapolis, IN

Action: In a letter dated December 20, 2000, the Board withdrew Whitehall Funding, Inc.'s ("Whitehall") HUD/FHA approval for five years. In addition, the Board voted to impose a civil money penalty of $5,500.00.

Cause: HUD acquired information that revealed the following serious violation of HUD/FHA requirements: Whitehall diverted and misappropriated reserve for replacement funds held on behalf of HUD Project No. 071–36627, Waterford Estates.

Dated: July 2, 2001.

John C. Weicher,

Assistant Secretary for Housing-Chairman, Mortgagee Review Board.

[FR Doc. 01–18330 Filed 7–20–01; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[5420–D024; IDI–33416]

Disclaimer of Interest in Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An application has been filed by the City of Coeur d'Alene, Idaho, for a recordable disclaimer of interest in certain land by the United States.

DATES: Comments should be received by October 22, 2001.

ADDRESSES: Comments or objections should be sent to: Eric Thomson, Field Manager, BLM Coeur d'Alene Field Office, 1808 N. Third St., Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Scott Forssell, BLM Coeur d'Alene, Field Office, 1808 N. Third St., Coeur d'Alene, ID 83814. Phone (208) 769–5044.

SUPPLEMENTARY INFORMATION: Pursuant to Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), the City of Coeur d'Alene has filed an application requesting the United States to issue a recordable disclaimer of interest in the following described land: Boise Meridian, Idaho T. 50 N., R. 4 W., section 14, lot 48, containing 20 acres more or less, (including that portion of lot 48 encumbered by right-of-way serial number IDI–1335, issued to the Coeur d'Alene and Spokane Railroad Co., Ltd., on May 8, 1903) as described in the official survey record approved October 28, 1904.

The above described land was conveyed to the City of Coeur d'Alene by an Act of Congress on April 28, 1904. However, the survey completed in 1904 erroneously portrayed the railroad right-of-way as a separate parcel. A recordable disclaimer of interest will be issued to remove the ambiguity created by the survey, allowing the City ownership of the entire parcel subject to outstanding rights that may have been in place at the time the Act was passed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed disclaimer may present their views in writing to the undersigned officer at the above address. Accordingly, a recordable disclaimer of interest will be issued no sooner than 90 days after the date of this publication.

Dated: July 2, 2001.

Eric R. Thomson,

Field Manager.

[FR Doc. 01–18267 Filed 7–20–01; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(ID–957–1020–BJ)]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., on the dates specified: The supplemental plat to correct certain inadvertently depicted distances on the line between corners 1 and 2 of the SBMS–2 millsite, as noted on the plat accepted March 4, 1992, T. 13 N., R. 15 E., Boise Meridian, Idaho, and was accepted March 19, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The supplemental plat to correct the bearing between traverse point Nos. 23 and 24, inadvertently depicted as S.0°38′ W., on the plat accepted April 14, 1998, T. 17 N., R. 23 E., Boise Meridian, Idaho, and was accepted March 19, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the First Standard Parallel South on the south boundary of T. 6 S., R. 39 E., Boise Meridian, Idaho, was accepted May 25, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management. The plat representing the dependent resurvey of a portion of the First Standard Parallel South on the south boundary of T. 6 S., R. 40 E., and a portion of the subdivisional lines, and the subdivision of section 5, T. 7 S., R. 40 E., Boise Meridian, Idaho, was accepted May 25, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management. The plat representing the dependent resurvey of a portion of the subdivisional lines of T. 5 S., R. 8 E., Boise Meridian, Idaho, was accepted May 25, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey and corrective dependent resurvey of portions of the east boundary (west boundary of T. 6 S., R. 13 E.), portions of the subdivisional lines, and portions of the subdivision of certain sections, and the dependent resurvey of portions of the west boundary and Lot 1, section17 in T. 6 S., R. 12 E., Boise Meridian, Idaho, was accepted June 6, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Duane Olsen, Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657, 208–373–3980.

Dated: July 2, 2001.

Jeff A. Lee,

Acting Chief, Cadastral Surveyor for Idaho.

[FR Doc. 01–18268 Filed 7–20–01; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM 103686]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; NM

AGENCY: Bureau of Land Management (BLM), Interior

ACTION: Notice.

SUMMARY: The United States Forest Service has filed an application to withdraw approximately 80 acres of National Forest System land for protection of the Davenport Electronic Site located on the Magdalena Ranger District on the Cibola National Forest. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments and requests for meeting should be received on or before October 22, 2001.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Cibola National Forest, 2113 Osuna Road NE., Suite A, Albuquerque, NM 87113.

FOR FURTHER INFORMATION CONTACT: Sue McHenry, Cibola National Forest, Recreation and Lands Staff, 2113 Osuna Road NE., Suite A, Albuquerque, NM 87113.

SUPPLEMENTARY INFORMATION: On May 3, 2001, the Forest Service filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian

Cibola National Forest

T. 1 N., R. 10 W.,
Sec. 29, S½NW¼.

The area described contains approximately 80 acres in Socorro County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor of the Cibola National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Forest Supervisor of the Cibola National Forest within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300. For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: May 29, 2001.

Kate Padilla,

Field Manager.

[FR Doc. 01–18265 Filed 7–20–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM 103685]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service has filed an application to withdraw approximately 851.72 acres of National Forest System lands for protection of the Langmuir Principal Research Site located on the Magdalena Ranger District on the Cibola National Forest. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments and requests for meeting should be received on or before October 22, 2001.

ADDRESSES: Comments and meeting requests should be sent to Forest Supervisor, Cibola National Forest, 2113 Osuna Road NE., Suite A, Albuquerque, NM 87113.

FOR FURTHER INFORMATION CONTACT: Sue McHenry, Cibola National Forest, Recreation and Lands Staff, 2113 Osuna Road NE, Suite A, Albuquerque, NM 87113.

SUPPLEMENTARY INFORMATION: On April 12, 2001, the Forest Service filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian
Cibola National Forest
T. 4 S., R. 3 W.,
Sec. 5, lot 2, and W½SW¼;
Sec. 6, lots 5 and 6, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, NE¼, E½NW¼, and N½SE¼;
Sec. 8, W½NW¼ and NW¼SW¼.

The area described contains approximately 851.72 acres in Socorro County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor of the Cibola National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Forest Supervisor of the Cibola National Forest within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300. For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are all land uses permitted by the Forest Service under existing laws and regulations including, but not limited to, construction and operation of the research site.

Dated: May 29, 2001.

Kate Padilla,

Field Manager.

[FR Doc. 01–18266 Filed 7–20–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale 178, Part 2

AGENCY: Minerals Management Service, Interior.

ACTION: Final Notice of Sale 178, Part 2.

SUMMARY: This Final Notice of Sale 178, Part 2, offers for lease only those blocks in the Central Gulf of Mexico that are beyond the United States Exclusive Economic Zone (in the area formerly known as the Northern Portion of the Western Gap) (in the Amery Terrace Area (NG15–09)), except for those blocks or portions of blocks which are in the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico.

On August 22, 2001, the Minerals Management Service will open and publicly announce bids received for blocks offered in Sale 178, Part 2, Central Gulf of Mexico, pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR Part 256). Bidders can obtain a "Final Notice of Sale 178, Part 2 Package" containing this Notice of Sale and

several supporting and essential documents referenced herein, from the MMS Gulf of Mexico Region's Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200-GULF, or via the MMS Gulf of Mexico Region's Internet site at http://www.gomr.mms.gov. The "Final Notice of Sale 178, Part 2 Package" contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the package.

LOCATION AND TIME: Public bid reading for this sale will begin after the public bid reading for Western Gulf Sale 180 (which begins at 9 a.m.), Wednesday, August 22, 2001, in the Hyatt Regency Conference Center (Cabildo Rooms), 500 Poydras Plaza, New Orleans, Louisiana. All times referred to in this document are local New Orleans time.

FILING OF BIDS: Bidders must submit sealed bids to the Regional Director, MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, between 8 a.m. and 4 p.m., prior to the Bid Submission Deadline of 10 a.m., Tuesday, August 21, 2001. If the bids are mailed, mark on the envelope containing all the sealed bids the following: *Attention:* Mr. John Rodi, Contains Sealed Bids for Sale 178, Part 2.

If the RD receives bids later than the time and date specified above, he will return the bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, August 21, 2001. In the event of widespread flooding or other natural disaster, the MMS Gulf of Mexico Regional Office may extend the bid submission deadline. Bidders may call (504) 736–0557 for information about the possible extension of the bid submission deadline due to such an event.

AREAS OFFERED FOR LEASING: The MMS is offering for leasing all blocks and partial blocks listed as offered below. All of these blocks are shown on the following Official Protraction Diagram (which may be purchased from the MMS Gulf of Mexico Regional Office Public Information Unit).

Outer Continental Shelf Official Protraction Diagram

(This diagram sells for $2.00)
NG15–09 Amery Terrace (revised October 25, 2000)

See the map titled "Lease Terms and Economic Conditions, Deferred Blocks, Sale 178, Part 2, Final" included in this Sale Notice Package.

Note: A CD–ROM (in ARC/INFO and Acrobat (.pdf) formats) containing all of the Gulf of Mexico Leasing Maps and Official Protraction Diagrams, except for those not yet revised to digital format, is available from the MMS Gulf of Mexico Regional Office Public Information Unit for a price of $15.00. The Leasing Maps and Official Protraction Diagrams are also available on our Internet site. See also 66 FR 28002, published on May 21, 2001, for the current status of Central and Western Gulf of Mexico Leasing Maps and Official Protraction Diagrams.

The blocks and partial blocks offered in this sale are beyond the United States Exclusive Economic Zone (formerly known as the Western Gap). Not offered in this sale are those blocks or portions of blocks which are in the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico. Both the zone, in which leasing is prohibited for ten years, and the boundary were established by the "Treaty Between The Government Of The United States Of America And The Government Of The United Mexican States On The Delimitation Of The Continental Shelf In The Western Gulf Of Mexico Beyond 200 Nautical Miles" signed by the United States and Mexico on June 9, 2000; the U.S. Senate gave advice and consent to ratification on October 18, 2000, and the Mexican Senate gave its approval on November 28, 2000. The provisions of the treaty entered into force upon exchange of the instruments of ratification of the treaty on January 17, 2001.

The following blocks or partial blocks are offered in this sale:

Amery Terrace (Area NG15–09) Blocks
133 through 135
177 through 184
221 through 238
265 through 279
309 through 317

The portions of the following blocks lying within the 1.4 nautical mile buffer zone are deferred from this sale:

Amery Terrace (Area NG15–09) Blocks
235 through 238
273 through 279
309 through 317

The available Federal acreage of all whole and partial blocks in this sale is given in the document "List of Blocks Available for Leasing, Sale 178, Part 2" included in the Sale Notice Package. The available acreage for all blocks in this sale with deferred portions lying within the 1.4 nautical mile buffer zone is provided in the document, "Available Unleased Acreage of Blocks with Irregular Portions Deferred" which is included in the Final Sale Notice Package. Also, Supplemental Official OCS Block Diagrams for these blocks and for blocks which contain the "U.S. 200 Nautical Mile Limit" line and the "U.S.-Mexico Maritime Boundary" line are available from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519. All these SOBDs can also be found on the MMS Homepage Address on the Internet: http://www.mms.gov. For additional information, please call Mr. Charles Hill (504) 736–2795.

Note: In addition to the previously noted partially deferred blocks, the following blocks of the former Western Gap are wholly within the 1.4 nautical mile buffer zone and are *not* offered in this sale:

Amery Terrace (Area NG15–09) Blocks
280, 281
318 through 320
355 through 359

Leasing Terms and Conditions: Primary lease terms, minimum bids, annual rental rates, royalty rates, and royalty suspension areas for leases resulting from this sale are:

Primary lease terms: 10 years;

Minimum bids: $37.50 per acre or fraction thereof;

Annual rental rates: $7.50 per acre or fraction thereof, to be paid on or before the first day of each lease year until a discovery in paying quantities of oil or gas is made, then at the expiration of each lease year until the start of royalty-bearing production;

Royalty rates: 12½ percent royalty rate, except during periods of royalty suspension, to be paid monthly on the last day of the month next following the month in which the production is obtained;

Minimum royalty: After the start of royalty-bearing production: $7.50 per acre or fraction thereof per year, to be paid at the expiration of each lease year;

Royalty Suspension Areas: Leases are being offered in this sale subject to the regulations in 30 CFR Part 260, published in the **Federal Register** at 66 FR 11512 on February 23, 2001. Deep water oil and gas royalty suspension will apply to all blocks; see the document contained within the Sale 178, Part 2, Final Notice Package titled "Royalty Suspension Provisions (Sale 178, Part 2)" for the specific details regarding royalty suspension eligibility and implementation. In addition to those provisions, the royalty payment stipulation included at the end of this Notice will be made a part of any lease resulting from this sale.

Rounding: The following procedure must be used to calculate minimum bid, rental, and minimum royalty on blocks with fractional acreage: Round up to the next whole acre and multiply by the applicable dollar amount to determine the correct minimum bid, rental, or minimum royalty.

Note: For the minimum bid only, if the calculation results in a decimal figure, round up to the next whole dollar amount (see next paragraph). The minimum bid calculation, including all rounding, is shown in the document "List of Blocks Available for Leasing in Central Gulf of Mexico OCS Oil and Gas Sale 178, Part 2" included in the Sale Notice Package.

Method of Bidding: For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 178, Part 2, not to be opened until 9 a.m., Wednesday, August 22, 2001." The total amount bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document "Bid Form and Envelope" contained in the Sale Notice Package.

The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 66 FR 17731, on April 3, 2001. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Regional Office. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the 1/5th bonus on all high bids. A statement to this effect must be included on each bid (see the document "Bid Form and Envelope" contained in the Sale Notice Package).

BID Deposit: Submitters of high bids must deposit the 1/5th bonus by using electronic funds transfer procedures, following the detailed instructions contained in the document "Instructions for Making EFT Bonus Payments" included in the Sale Notice Package. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

Note: Certain bid submitters (i.e., those that do NOT currently own or operate an OCS mineral lease OR those that have ever defaulted on a 1/5th bonus payment (EFT or otherwise)) are required to guarantee (secure) their 1/5th bonus payment. For those who must secure the EFT 1/5th bonus payment, one of the following options may be used: 1. Provide a third-party guaranty; 2. Amend Development Bond Coverage; 3. Provide a Letter of Credit; or 4. Provide a lump sum payment via EFT prior to the submission of bids. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks: The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids: The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated Sale Notice Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of the current procedures, "Modifications to the Bid Adequacy Procedures" (64 FR 37560 of July 12, 1999), effective July 1, 1999, is available from the MMS Gulf of Mexico Regional Office Public Information Unit and is also on our Internet site.

Successful Bidders: As required by MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the cash bonus bid along with the first year's annual rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. Each bidder in a successful high bid must have on file, in the MMS Gulf of Mexico Regional Office Adjudication Unit, a currently valid certification (Debarment Certification Form) certifying that the bidder is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, the MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR, Part 12, Subpart D. A copy of the Debarment Certification Form is contained in the Sale Notice Package.

Affirmative Action: The MMS *requests* that the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985), be on file in the MMS Gulf of Mexico Regional Office Adjudication Unit prior to bidding. In any event, these forms are *required* to be on file in the MMS Gulf of Mexico Regional Office Adjudication Unit prior to execution of any lease contract. Bidders must also comply with the requirements of 41 CFR 60.

INFORMATION TO LESSEES: The Sale Notice Package contains a document titled "Information to Lessees." These Information to Lessees items provide information on various matters of interest to potential bidders.

STIPULATION: There is only one stipulation applicable to leases resulting from this sale.

Law of the Sea Convention Royalty Payment Stipulation

The following stipulation will apply to all available blocks in this sale; these blocks are beyond the United States Exclusive Economic Zone in the area formerly known as the Western Gap:

If the U.S. becomes a party to the 1982 Law of the Sea Convention (Convention) prior to or during the life of a lease issued by the U.S. on a block or portion of a block located beyond the U.S. EEZ and subject to such conditions that the Senate may impose through its constitutional role of advice and consent, then the following royalty payment lease provisions will apply to

the lease so issued, consistent with Article 82 of the Convention:

1. The Convention requires payments annually by coastal States party to the Convention with respect to all production at a site after the first five years of production at that site. Any such payments will be made by the U.S. government and not the lessee.

2. For the purpose of this stipulation regarding payments by the lessee to the U.S., a site is defined as an individual lease whether or not the lease is located in a unit.

3. For the purpose of this stipulation, the first production year begins on the first day of commercial production (excluding test production). Once a production year begins it shall run for a period of 365 days whether or not the lease produces continuously in commercial quantities. Subsequent production years shall begin on the anniversary date of first production.

4. If total lease production during the first five years following first production exceeds the total royalty suspension volume(s) provided in the lease terms, or through application and approval of relief from royalties, the following provisions of this stipulation will not apply. If after the first five years of production but prior to termination of this lease, production exceeds the total royalty suspension volume(s) provided in the lease terms, or through application and approval of relief from royalties, the following provisions of this stipulation will no longer apply effective the day after the suspension volumes have been produced.

5. If, in any production year after the first five years of lease production, due to lease royalty suspension provisions or through application and approval of relief from royalties, no lease production royalty is due or payable by the lessee to the U.S., then the lessee will be required to pay, as stipulated in paragraph 9 below, Convention-related royalty in the following amount so that the required Convention payments may be made by the U. S. government as provided under the Convention:

a. In the sixth year of production, one percent of the value of the sixth year's lease production saved, removed, or sold from the leased area;

b. After the sixth year of production, the Convention-related royalty payment rate shall increase by one percent for each subsequent year until the twelfth year and shall remain at seven percent thereafter until lease termination.

6. If the U.S. becomes a party to the Convention after the fifth year of production from the lease, and a lessee is required, as provided herein, to pay Convention-related royalty, the amount of the royalty due will be based on the above payment schedule as determined from first production. For example, U.S. accession to the Convention in the tenth year of lease production would result in a Convention-related royalty payment of five percent of the value of the tenth year's lease production, saved, removed, or sold from the lease. The following year, a payment of six percent would be due, and so forth as stated above, up to a maximum of seven percent per year.

7. If, in any production year after the first five years of lease production, due to lease royalty suspension provisions or through application and approval of relief from royalties, lease production royalty is paid but is less than the payment provided for by the Convention, then the lessee will be required to pay to the U.S. government the Convention-related royalty in the amount of the shortfall.

8. In determining the value of production from the lease if a payment of Convention-related royalty is to be made, the provisions of the lease and applicable regulations shall apply.

9. The Convention-related royalty payment(s) required under paragraphs 5 through 7 of this stipulation, if any, shall not be paid monthly but shall be due and payable to MMS on or before 30 days after the expiration of the relevant production lease year.

10. The lessee will receive royalty credit in the amount of the Convention-related royalty payment required under paragraphs 5 through 7 of this stipulation, which will apply to royalties due under the lease for which the Convention-related royalty accrued in subsequent periods as non-Convention related royalty payments become due.

11. Any lease production for which the lessee pays no royalty other than a Convention-related requirement, due to lease royalty suspension provisions or through application and approval of relief from royalties, will count against the lease's applicable royalty suspension or relief volume.

12. The lessee will not be allowed to apply or recoup any unused Convention-related credit(s) associated with a lease that has been relinquished or terminated.

Approved: July 13, 2001.

Thomas R. Kitsos,

Acting Director, Minerals Management Service.

Approved: July 13, 2001.

Piet deWitt,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 01–18399 Filed 7–20–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Request for Comments on the Draft Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2002–2007

AGENCY: Minerals Management Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: Minerals Management Service (MMS) requests comments on the Draft Proposed 5-year OCS Oil and Gas Leasing Program for 2002–2007. This is the first proposal for a new program to succeed the current program that expires on June 30, 2002.

Section 18 of the OCS Lands Act (43 U.S.C. 1344) specifies a multi-step process of consultation and analysis that must be completed before the Secretary of the Interior may approve a new 5-year program. The required steps following this notice include the development of a proposed program, a proposed final program, and Secretarial approval. Pursuant to the National Environmental Policy Act, MMS also will prepare an Environmental Impact Statement (EIS) for the new 5-year program.

DATES: Please submit comments and information to the MMS on or before September 21, 2001.

ADDRESSES: Respondents should mail comments and information to: Ralph V. Ainger, Minerals Management Service (MS–4010), Room 2324, 381 Elden Street, Herndon, Virginia 20170. MMS will accept hand deliveries at 1849 C Street, NW., Room 4230, Washington, DC. Envelopes or packages should be marked "Comments on the Draft Proposed 5-Year OCS Oil and Gas Leasing Program for 2002–2007." When submitting any privileged or proprietary information, respondents should mark the envelope, "Contains Proprietary Information."

MMS will accept comments submitted by electronic mail. Send e-mail comments to MMS5-year.document@mms.gov. The draft proposed program decision document may be downloaded from the MMS internet website at www.mms.gov, and copies of all comments received will be posted at that website after the comment period closes.

Public Comment Procedures

Our practice is to make comments, including the names and home addresses of respondents, available for public review. An individual commenter may ask that we withhold

name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must state so prominently at the beginning of your submission.

We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations and businesses.

FOR FURTHER INFORMATION CONTACT: Ralph V. Ainger at (703) 787–1215.

SUPPLEMENTARY INFORMATION: MMS requests comments from States, local governments, Native groups, tribes, the oil and gas industry, Federal Agencies, environmental and other interest organizations, and all other interested parties to assist in the preparation of a 5-year OCS oil and gas leasing program for 2002–2007 and applicable EIS.

Background

Section 18 of the OCS Lands Act requires the Secretary of the Interior to prepare and maintain a schedule of proposed OCS oil and gas lease sales determined to "best meet national energy needs for the 5-year period following its approval or reapproval." This draft proposed program is the first proposed schedule of OCS lease sales for the 2002–2007 timeframe. Before the new 5-year program may be approved and implemented, MMS must accept and consider comments on the draft program and then issue for public review a proposed program and draft EIS, as well as a proposed final program and final EIS.

Summary of the Draft Proposed Program

In developing the draft proposed program for 2002–2007, MMS considered leasing only in the areas of the OCS that have not been withdrawn from disposition by leasing through June 30, 2012, under section 12 of the OCS Lands Act. The program proposes sales in the available offshore areas that have the highest oil and gas resource values and highest industry interest while recognizing concerns relating to potential environmental impacts and competing uses of ocean and coastal areas. The proposed schedule also is consistent with the recommendations of affected state and local governments.

The draft program proposes a total of 20 OCS lease sales in 8 areas (5 off Alaska and 3 in the Gulf of Mexico). Maps A and B show the areas proposed for leasing, and Table A lists the location and timing of the proposed lease sales.

Alaska Region

In the Alaska Region, the draft proposed program schedules multiple lease sales in the Beaufort Sea and Cook Inlet/Shelikof Strait Planning Areas, which are the two areas of most interest to the oil and gas industry. Multiple offerings are consistent with the Governor of Alaska's recommendations and the state's administration of its offshore oil and gas program. Portions of these areas that have been excluded from previous OCS programs and sales are excluded as recommended by the Governor. In addition, the Chukchi Sea and Hope Basin Planning Areas are combined for leasing as they have been in previous programs. Two lease sales are proposed to pursue the high resource potential of the Chukchi Sea area in conjunction with potential natural gas resources extending into the adjacent Hope Basin area.

The Norton Basin Planning Area is included on the schedule as a potential source of natural gas for local residents and businesses, and it would be offered under a new approach to OCS leasing. The Norton Basin sale is proposed for 2003, but before MMS proceeds, it will issue a request for nominations and comments and will move forward only if environmentally acceptable blocks are nominated by industry. If this does not occur, the sale will be postponed and a request for nominations and comments will be issued again the following year (and so on through the 5-year schedule until the sale is held or the schedule expires).

Gulf of Mexico Region

In the Central and Western Gulf of Mexico Planning Areas, which are the two areas of highest resource potential and interest, the draft proposed program would continue the long-running policy of scheduling annual areawide lease sales to which the industry has become accustomed. In the Eastern Planning Area, the program proposes two lease sales in a portion of the area that was identified for Sale 181 in the 5-year program for 1997–2002. That original Sale 181 area is the only part of the Eastern Planning Area not withdrawn under section 12. The portion of that area proposed for leasing in this draft proposed program consists of 256 blocks in deeper waters adjacent to the Central Gulf Planning Area. Selection of this area reflects the Secretary's decision in the proposed Notice of Sale for Sale 181 to exclude areas in the original Sale 181 area to address concerns expressed by the State of Florida and to minimize potential conflicts with military operations.

Maps A and B show the areas proposed for leasing consideration in the new program. Table A is a summary of the proposed schedule of lease sales for the new program. Individual planning area maps are included in the draft proposed program decision document.

TABLE A.—DRAFT PROPOSED PROGRAM FOR 2002–2007—LEASE SALE SCHEDULE

Sale No.	Area	Year
184	Western Gulf of Mexico	2002
185	Central Gulf of Mexico	2003
186	Beaufort Sea	2003
187	Western Gulf of Mexico	2003
188	Norton Basin	2003
189	Eastern Gulf of Mexico	2003
190	Central Gulf of Mexico	2004
191	Cook Inlet/Shelikof Strait	2004
192	Western Gulf of Mexico	2004
193	Chukchi Sea/Hope Basin	2004
194	Central Gulf of Mexico	2005
195	Beaufort Sea	2005
196	Western Gulf of Mexico	2005
197	Eastern Gulf of Mexico	2005
198	Central Gulf of Mexico	2006

TABLE A.—DRAFT PROPOSED PROGRAM FOR 2002–2007—LEASE SALE SCHEDULE—Continued

Sale No.	Area	Year
199	Cook Inlet/Shelikof Strait	2006
200	Western Gulf of Mexico	2006
201	Central Gulf of Mexico	2007
202	Beaufort Sea	2007
203	Chukchi Sea/Hope Basin	2007

Assurance of Fair Market Value

Section 18 of the OCS Lands Act requires receipt of fair market value for OCS oil and gas leases and the rights they convey. The draft proposed program provides for setting minimum bid levels by individual lease sale based on market conditions and for continuing to use a two-phase bid evaluation process.

Information Requested

We request all interested and affected parties to comment on the size, timing, and location of leasing and the procedures for assuring fair market value that are proposed in the Draft Proposed 5-Year OCS Oil and Gas Leasing Program for 2002–2007. Respondents who submitted information in response to the December 12, 2000, **Federal Register** notice requesting comments on preparing the 5-year program for 2002–2007 may wish to reference that information, as appropriate, rather than repeating it in their comments on the draft proposed program. We also invite comments and suggestions on how to proceed with the section 18 analysis for the next draft of the new program, the proposed program.

Section 18(g) authorizes confidential treatment of privileged or proprietary information that is submitted. In order to protect the confidentiality of such information respondents should include it as an attachment to other comments submitted and mark it appropriately. On request MMS will treat such information as confidential from the time of its receipt until 5 years after approval of the new leasing program, subject to the standards of the Freedom of Information Act. MMS will not treat as confidential any aggregate summaries of such information, the names of respondents, and comments not containing such information.

Next Steps in the Process

MMS plans to issue the proposed program and draft EIS in autumn 2001 for a 90-day comment period. We plan to issue the proposed final program and final EIS in spring 2002. The Secretary may approve the new 5-year program 60 days later to go into effect as of July 1, 2002.

Dated: July 16, 2001.

Thomas R. Kitsos,

Acting Director, Minerals Management Service.

BILLING CODE 4310–MR–U

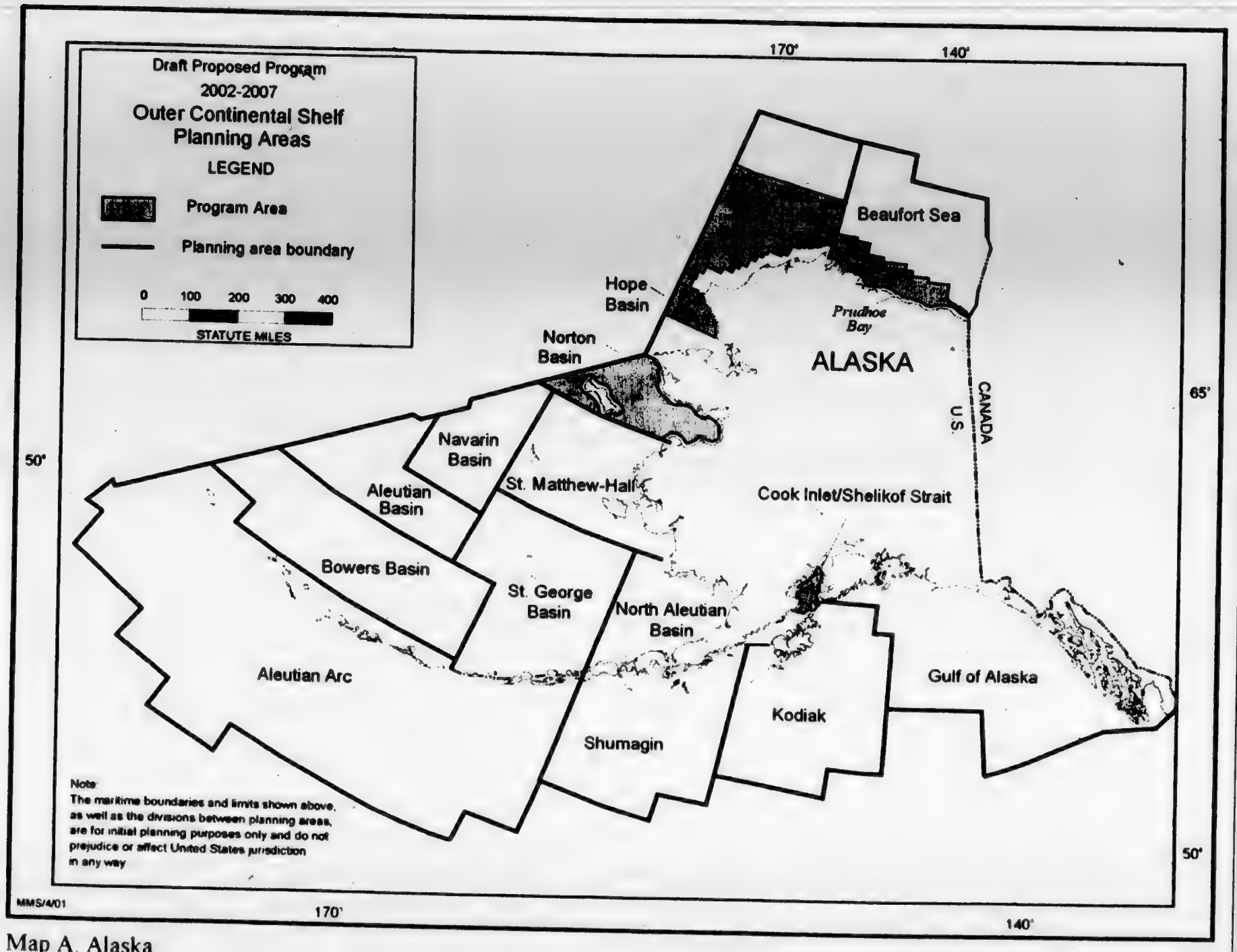
Draft Proposed Program
2002-2007
Outer Continental Shelf
Planning Areas
LEGEND
Program Area
Planning area boundary
0 100 200 300 400
STATUTE MILES
170°
140°
65°
50°
Beaufort Sea
Hope Basin
Prudhoe Bay
ALASKA
Norton Basin
CANADA
U.S.
Navarin Basin
Aleutian Basin
St. Matthew-Hall
Cook Inlet/Shelikof Strait
Bowers Basin
St. George Basin
North Aleutian Basin
Aleutian Arc
Gulf of Alaska
Kodiak
Shumagin
Note:
The maritime boundaries and limits shown above, as well as the divisions between planning areas, are for initial planning purposes only and do not prejudice or affect United States jurisdiction in any way
MMS/4/01
170°
140°
50°

Map A. Alaska

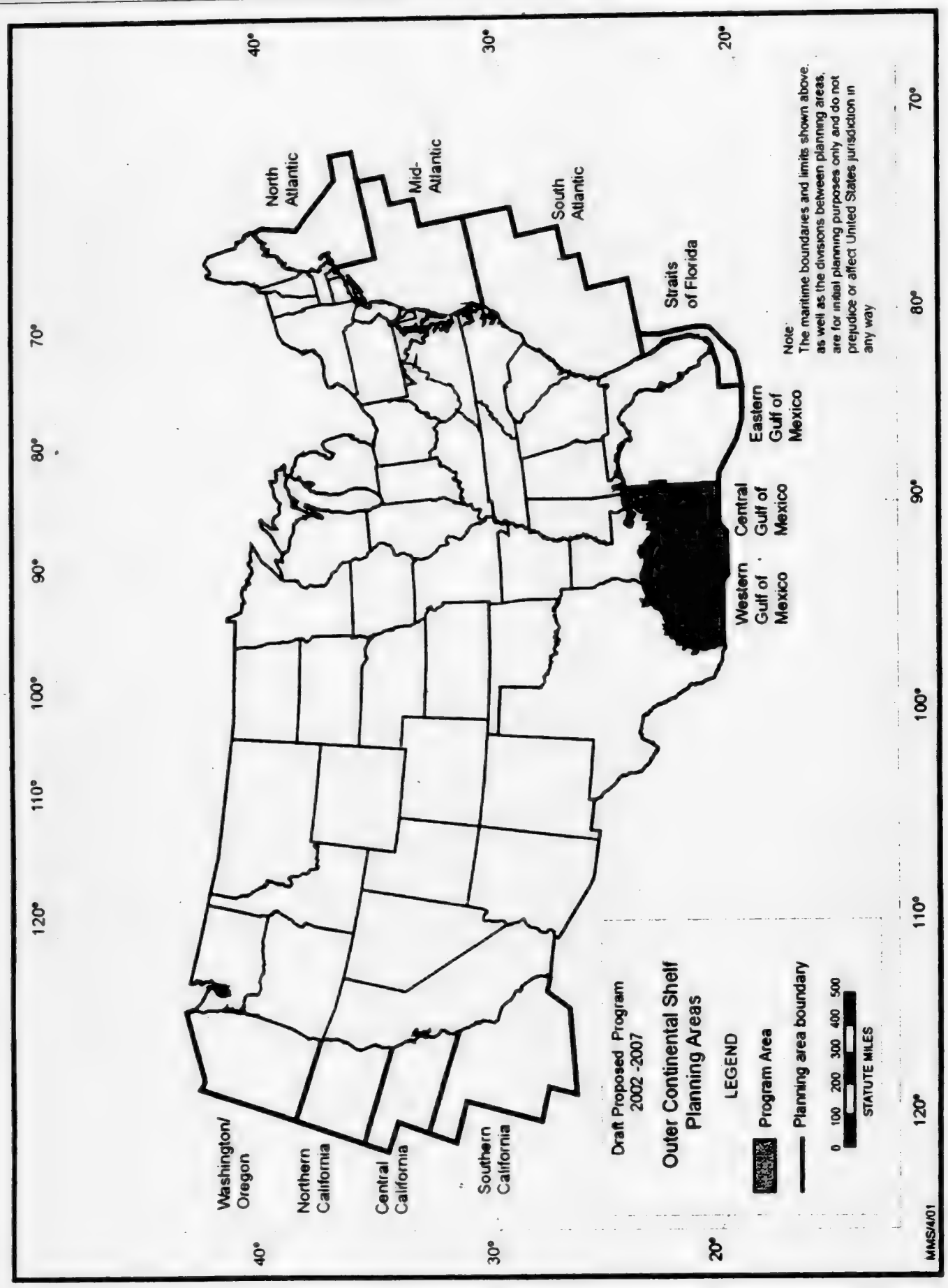

Map B. Lower 48 States

[FR Doc. 01–18118 Filed 7–20–01; 8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 180

AGENCY: Minerals Management Service, Interior.

ACTION: Final notice of sale 180.

SUMMARY: On August 22, 2001, the Minerals Management Service will open and publicly announce bids received for blocks offered in Sale 180, Western Gulf of Mexico, pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR Part 256). Bidders can obtain a "Final Notice of Sale 180 Package" containing this Notice of Sale and several supporting and essential documents referenced herein, from the MMS Gulf of Mexico Region's Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF, or via the MMS Gulf of Mexico Region's Internet site at http://www.gomr.mms.gov. The MMS also maintains a 24-hour Fax-on-Demand Service at (202) 219–1703. The "Final Notice of Sale 180 Package" contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the package.

Location and Time: Public bid reading will begin at 9 a.m., Wednesday, August 22, 2001, in the Hyatt Regency Conference Center (Cabildo Rooms), 500 Poydras Plaza, New Orleans, Louisiana. All times referred to in this document are local New Orleans time.

Filing of Bids: Bidders must submit sealed bids to the Regional Director, MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, between 8 a.m. and 4 p.m., prior to the Bid Submission Deadline at 10 a.m., Tuesday, August 21, 2001. If the bids are mailed, mark on the envelope containing all the sealed bids the following:

Attention: Mr. John Rodi
Contains Sealed Bids for Sale 180

If the RD receives bids later than the time and date specified above, he will return the bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, August 21, 2001. In the event of widespread flooding or other natural disaster, the MMS Gulf of Mexico Regional Office may extend the bid submission deadline. Bidders may call (504) 736–0557 for information about the possible extension of the bid submission deadline due to such an event.

Areas Offered for Leasing: The MMS is offering for leasing all the blocks and partial blocks listed in the document "List of Blocks Available for Leasing, Sale 180" included in the Sale Notice Package. All of these blocks are shown on the following Leasing Maps and Official Protraction Diagrams (which may be purchased from the MMS Gulf of Mexico Regional Office Public Information Unit).

Outer Continental Shelf Leasing Maps—Texas, Nos. 1 through 8. These 16 maps sell for $2.00 each:

TX1 South Padre Island Area (revised November 1, 2000)
TX1A South Padre Island Area, East Addition (revised November 1, 2000)
TX2 North Padre Island Area (revised November 1, 2000)
TX2A North Padre Island Area, East Addition (revised November 1, 2000)
TX3 Mustang Island Area (revised November 1, 2000)
TX3A Mustang Island Area, East Addition (revised November 1, 2000)
TX4 Matagorda Island Area (revised November 1, 2000)
TX5 Brazos Area (revised November 1, 2000)
TX5B Brazos Area, South Addition (November 1, 2000)
TX6 Galveston Area (revised November 1, 2000)
TX6A Galveston Area, South Addition (revised November 1, 2000)
TX7 High Island Area (revised November 1, 2000)
TX7A High Island Area, East Addition (revised November 1, 2000)
TX7B High Island Area, South Addition (revised November 1, 2000)
TX7C High Island Area, East Addition, South Extension (revised November 1, 2000)
TX8 Sabine Pass Area (revised November 1, 2000)

Outer Continental Shelf Official Protraction Diagrams. These diagrams sell for $2.00 each:

NG14–03 Corpus Christi (revised November 1, 2000)
NG14–06 Port Isabel (revised November 1, 2000)
NG15–01 East Breaks (revised November 1, 2000)
NG15–02 Garden Banks (revised November 1, 2000)
NG15–04 Alaminos Canyon (revised November 1, 2000)
NG15–05 Keathley Canyon (revised November 1, 2000)
NG15–08 Sigsbee Escarpment (revised November 1, 2000)

Note: A CD–ROM (in ARC/INFO and Acrobat (.pdf) formats) containing all of the Gulf of Mexico Leasing Maps and Official Protraction Diagrams, except for those not yet revised to digital format, is available from the MMS Gulf of Mexico Regional Office Public Information Unit for a price of $15.00. The Leasing Maps and Official Protraction Diagrams are also available on our Internet site. See also 66 FR 28002, published on May 21, 2001, for the current status of Central and Western Gulf of Mexico Leasing Maps and Official Protraction Diagrams.

Acreage of all blocks is shown on these Leasing Maps and Official Protraction Diagrams. The available Federal acreage of all whole and partial blocks in this sale is shown in the document "List of Blocks Available for Leasing, Sale 180" included in the Sale Notice Package. Some of these blocks may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line, or partially included in the Flower Garden Banks National Marine Sanctuary (in accordance with the President's June 1998 withdrawal directive, portions of blocks lying within National Marine Sanctuaries are no longer available for leasing). Information on the unleased portions of such blocks, including the exact acreage, is found in the document titled "Western Gulf of Mexico Lease Sale 180—Unleased Split Blocks and Available Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease or Deferred," included in the Sale Notice Package.

Areas not Available for Leasing: The following blocks in the Western Gulf of Mexico Planning Area are not available for leasing:

Blocks currently under lease; and the following unleased block:

High Island Area Block 170 (which is currently under appeal); and

High Island Area, East Addition, South Extension, Blocks A–375 and A–398 (at the Flower Garden Banks), and the portions of other blocks within the boundary of the Flower Garden Banks National Marine Sanctuary; portions of High Island Area, East Addition, South Extension, Blocks A–367 and A–401; High Island Area, South Addition, Block A–513; and Garden Banks Area Block 135; and

Mustang Island Area Blocks 793, 799, and 816 (blocks located off Corpus Christi which have been identified by

the Navy as needed for testing equipment and training mine warfare personnel).

Blocks or portions of blocks beyond the United States Exclusive Economic Zone (in the area formerly known as the Western Gap) which are in the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico. Both the zone, in which leasing is prohibited for ten years, and the boundary were established by the "Treaty Between The Government Of The United States Of America And The Government Of The United Mexican States On The Delimitation Of The Continental Shelf In The Western Gulf Of Mexico Beyond 200 Nautical Miles" signed by the United States and Mexico on June 9, 2000; the U.S. Senate gave advice and consent to ratification on October 18, 2000, and the Mexican Senate gave its approval on November 28, 2000. The provisions of the treaty entered into force upon exchange of the instruments of ratification of the treaty on January 17, 2001.

The following blocks lie wholly within the 1.4 nautical mile buffer zone and are deferred from this sale:

Sigsbee Escarpment (Area NG15–08) Blocks

11, 57, 103, 148, 149, 194, 239, 284
331 through 341

The portions of the following blocks lying within the 1.4 nautical mile buffer zone are deferred from this sale:

Keathley Canyon (Area NG15–05) Blocks

978 through 980

Sigsbee Escarpment (Area NG15–08) Blocks

12 through 14
58 through 60
104 through 106
150, 151, 195, 196, 240, 241
285 through 298
342 through 349

The available acreage in these blocks with deferred portions lying within the 1.4 nautical mile buffer are provided in the "Unleased Split Blocks and Available Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease or Deferred" document included in the Final Sale Notice Package. Also, Supplemental Official OCS Block Diagrams for these blocks are available from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519. The SOBDs are also available for blocks which contain the "U.S. 200 Nautical Mile Limit" line and the "U.S.-Mexico Maritime Boundary" line. These diagrams can also be found on the MMS Homepage Address on the Internet: http://www.mms.gov. For additional information, please call Mr. Charles Hill (504) 736–2795.

Leasing Terms and Conditions: Primary lease terms, minimum bids, annual rental rates, royalty rates, minimum royalty, and royalty suspension areas are shown on the map "Lease Terms and Economic Conditions, Sale 180, Final" for leases resulting from this sale:

Primary lease terms: 5 years for blocks in water depths of less than 400 meters; 8 years for blocks in water depths of 400 to 799 meters; and 10 years for blocks in water depths of 800 meters or deeper;

Minimum bids: $25 per acre or fraction thereof for blocks in water depths of less than 800 meters and $37.50 per acre or fraction thereof for blocks in water depths of 800 meters or deeper;

Annual rental rates: $5 per acre or fraction thereof for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof for blocks in water depths of 200 meters or deeper, to be paid on or before the first day of each lease year until a discovery in paying quantities of oil or gas is made, then at the expiration of each lease year until the start of royalty-bearing production;

Royalty rates: 16⅔ percent royalty rate for blocks in water depths of less than 400 meters and a 12½ percent royalty rate for blocks in water depths of 400 meters or deeper, except during periods of royalty suspension, to be paid monthly on the last day of the month next following the month in which the production is obtained;

Minimum royalty: After the start of royalty-bearing production: $5 per acre or fraction thereof per year for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof per year for blocks in water depths of 200 meters or deeper, to be paid at the expiration of each lease year;

Royalty Suspension Areas: Leases are being offered in this sale subject to the regulations in 30 CFR Part 260, published in the **Federal Register** at 66 FR 11512 on February 23, 2001. Royalty suspension will apply for blocks in water depths less than 200 meters where new deep gas (15,000 feet or greater subsea) is drilled and commences production within the initial primary 5-year lease term, and in water depths of 800 meters or deeper (for oil and gas); see the map titled "Lease Terms and Economic Conditions, Sale 180, Final" for specific areas. See the document contained within the Sale 180, Final Notice Package titled "RoyaltySuspension Provisions (Sale 180)" for the specific details regarding royalty suspension eligibility and implementation. For blocks beyond the U.S. EEZ, see Stipulation 4 in the document "Lease Stipulations for Oil and Gas Lease Sale 180" contained in the Sale Notice Package.

The map titled "Stipulations and Deferred Blocks, Sale 180, Final" depicts the blocks where the Topographic Features, Military Areas, Naval Mine Warfare Area, and Law of the Sea Convention Royalty Payment stipulations apply. The texts of the lease stipulations are contained in the document "Lease Stipulations for Oil and Gas Lease Sale 180, Final" included in the Sale Notice Package. Also shown on this map are the deferred blocks noted above.

Rounding: The following procedure must be used to calculate minimum bid, rental, and minimum royalty on blocks with fractional acreage: Round up to the next whole acre and multiply by the applicable dollar amount to determine the correct minimum bid, rental, or minimum royalty.

Note: For the minimum bid only, if the calculation results in a decimal figure, round up to the next whole dollar amount (see next paragraph). The minimum bid calculation, including all rounding, is shown in the document "List of Blocks Available for Leasing, Sale 180" included in the Sale Notice Package.

Method of Bidding: For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 180, not to be opened until 9 a.m., Wednesday, August 22, 2001." The total amount bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document "Bid Form and Envelope" contained in the Sale Notice Package.

The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 66 FR 17731, on April 3, 2001. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Regional Office. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against

violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the 1/5 bonus on all high bids. A statement to this effect must be included on each bid (see the document "Bid Form and Envelope" contained in the Sale Notice Package).

Bid Deposit: Submitters of high bids must deposit the 1/5 bonus by using electronic funds transfer procedures, following the detailed instructions contained in the document "Instructions for Making EFT Bonus Payments" included in the Sale Notice Package. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

Note: Certain bid submitters (i.e., those that do not currently own or operate an OCS mineral lease OR those that have ever defaulted on a 1/5 bonus payment (EFT or otherwise)) are required to guarantee (secure) their 1/5 bonus payment. For those who must secure the EFT 1/5 bonus payment, one of the following options may be used: 1. Provide a third-party guaranty; 2. Amend Development Bond Coverage; 3. Provide a Letter of Credit; or 4. Provide a lump sum payment via EFT prior to the submission of bids. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks: The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids: The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated Sale Notice Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of the current procedures, "Modifications to the Bid Adequacy Procedures" (64 FR 37560 of July 12, 1999), is available from the MMS Gulf of Mexico Regional Office Public Information Unit and is also on our Internet site.

Successful Bidders: As required by MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the cash bonus bid along with the first year's annual rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. Each bidder in a successful high bid must have on file, in the MMS Gulf of Mexico Regional Office Adjudication Unit, a currently valid certification (Debarment Certification Form) certifying that the bidder is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, the MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR, Part 12, Subpart D. A copy of the Debarment Certification Form is contained in the Sale Notice Package.

Affirmative Action: The MMS *requests* that the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) be on file in the MMS Gulf of Mexico Regional Office Adjudication Unit prior to bidding. In any event, these forms are required to be on file in the MMS Gulf of Mexico Regional Office Adjudication Unit prior to execution of any lease contract. Bidders must also comply with the requirements of 41 CFR 60.

Information to Lessees: The Sale Notice Package contains a document titled "Information to Lessees." These Information to Lessees items provide information on various matters of interest to potential bidders.

Thomas R. Kitsos,

Acting Director, Minerals Management Service.

Dated: July 13, 2001.

Piet deWitt,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 01–18398 Filed 7–20–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), This is notice that on January 18, 2001, Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of 4-Bromo-2, 5-dimethoxyphenethylamine (7392), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture small quantities of the listed controlled substance for reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 21, 2001.

Dated: July 13, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–18213 Filed 7–20–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations

(CFR), this is notice that on January 4, 2001, High Standard Products Corp., 14441 Beach Boulevard, #225, Westminster, California 92683, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315).	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Heroin (9200)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture analytical reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 21, 2001.

Dated: July 13, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–18216 Filed 7–20–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 14, 2000, and published in the **Federal Register** on November 28, 2000 (65 FR 70937), ISP Freetown Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts 02702, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396)	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to block manufacture amphetamine for a customer and to bulk manufacture the phenylacetone for the manufacture of the amphetamine. the bulk 2,5-Dimethoxyamphetamine will be used for conversion into a Non-controlled substance.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of ISP Freetown Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated ISP Freetown Chemicals, Inc. to ensure that the company's registration is consistent with the public interest.

This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and O.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the a basic classes of controlled substances listed above is granted.

Dated: July 13, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–18212 Filed 7–20–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 12, 2000, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Difenoxin (9168)	I
Propriam (9649)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Anileridine (9020)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Morphine (9300)	II
Thebaine (9333)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances in bulk to supply final dosage from manufacturers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comment or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: July 13, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–18218 Filed 7–20–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on March 7, 2001, Abbott Laboratories, DBA Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comment or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 21, 2001.

Dated: July 13, 2001.

Laura M. Nagel,

Deputy Assitant Administratòr, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–18214 Filed 7–20–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on December 7, 2000, Lifepoint, Inc., 1205 S. Dupont Street, Ontario, California 91761, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II

The firm plans to use gram quantities of the listed controlled substances to manufacture drug abuse test kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 21, 2001.

Dated: July 13, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administrator.

[FR Doc. 01–18217 Filed 7–20–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 4, 2001, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 21, 2001.

Dated: July 13, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–18219 Filed 7–20–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on April 18, 2000, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The institute will manufacture small quantities of cocaine derivatives and marihuana derivatives for use by their customers primarily in analytical kits, reagents and standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 21, 2001.

Dated: July 13, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–18220 Filed 7–20–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 9, 2001, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture bulk controlled substances for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 21, 2001.

Dated: July 13, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–18215 Filed 7–20–01; 8:45 am]

BILLING CODE 4410–09–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2000–9 CARP DTRA1&2]

Digital Performance Rights in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Initiation of arbitration and announcement of the schedule for the proceeding.

SUMMARY: The Copyright Office of the Library of Congress is announcing the initiation of and schedule for the 180-day arbitration period to set the rates and terms for two compulsory licenses. One license allows certain eligible nonsubscription services to perform sound recordings publicly by means of digital audio transmissions and the other allows a transmitting organization to make an ephemeral recording of a sound recording for the purpose of making a permitted public performance.

EFFECTIVE DATE: July 23, 2001.

ADDRESSES: All hearings and meetings for the proceeding to set rates and terms for the sections 112 and 114 licenses shall take place in the James Madison Memorial Building, Room LM–414, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Gina Giuffreda, CARP Specialist, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

This notice fulfills the requirement of 37 CFR 251.64 and 17 U.S.C. 803(a)(1). Section 251.64 of the CARP rules, 37 CFR provides that:

> After the end of the 45-day precontroversy discovery period, and after the Librarian has ruled on all motions and objections filed under § 251.45, the Librarian will determine the sufficiency of the petition, including, where appropriate, whether one or more of the petitioners' interests are "significant." If the Librarian determines that a petition is significant, he or she will cause to be published in the **Federal Register** a declaration of a controversy accompanied by a notice of initiation of an arbitration proceeding.

On November 27, 1998, the Library of Congress published a notice, pursuant to 17 U.S.C. 112(e)(4) and 114(f)(2)(A), initiating a voluntary negotiation period for the purpose of establishing rates and terms for the digital public performance of sound recordings license (as it pertains to webcasters) under section 114 and for the making of ephemeral copies in furtherance of a digital public performance under section 112 for the period beginning on October 28, 1998, and ending on December 31, 2000. 63 FR 65555 (November 27, 1998). No voluntary agreements were reached. On July 23, 1999, the Recording Industry of America, Inc. ("RIAA") filed a petition in accordance with 17 U.S.C. 112(e)(5) and 114(f)(2)(B) to convene a Copyright Arbitration Royalty Panel ("CARP") for the purpose of setting rates and terms for these licenses.

After the filing of the petition, the Library requested the filing of notices of intent to participate in the proceeding and set the schedule for the 45-day precontroversy discovery period. 64 FR 52108 (September 27, 1999). After the filing of notices of intent to participate and upon a party's request to extend the filing date for direct cases, the Library vacated the schedule set forth in the September 27, 1999, notice. See Order, Docket No. 99–6 CARP DTRA (December 22, 1999).

During the pendency of the proceeding, the Library published a notice, in accordance with 17 U.S.C. 112(e)(6) and 114(f)(2)(C)(i)(II), initiating a voluntary negotiation period for the purpose of establishing rates and terms for the two licenses for the period 2001 and 2002. 65 FR 2194 (January 13, 2000). On August 8, 2000, the RIAA again filed a petition to convene a CARP to set these rates. RIAA asserted that it has a significant interest in such a proceeding because it has "established a collective that is comprised of more than 200 different recording labels and artists, including all of the major record companies in the United States * * * [and its] members own the copyrights in approximately 90% of the legitimate sound recordings sold in the United States." Petition at 2.

Prior to the establishment of a new precontroversy discovery schedule for the 1998–2000 proceeding and the establishment of a precontroversy discovery schedule for the 2001–2002 proceeding, the Library consolidated the two proceedings before a single CARP and assigned a single docket number applicable to both proceedings. Order, Docket Nos. 99–6 CARP DTRA and 2000–3 CARP DTRA2 (December 4, 2000).

The Library has conducted a precontroversy discovery period under § 251.45 of the rules. See 65 FR 77394 (December 11, 2000); Orders, Docket No. 2000–9 CARP DTRA1&2 (January 18, 2001, and March 16, 2001). While the 45-day precontroversy discovery period is complete, a few motions are pending before the Library. However, the disposition of these motions will in no way affect the Librarian's determination regarding the sufficiency of the petitions filed in this proceeding; and the motions will be ruled upon in advance of July 30, 2001, the beginning of the 180-day arbitration period. Consequently, the Librarian is announcing the initiation of this proceeding at this time so that the schedule of the proceeding may be published in the **Federal Register** within seven calendar days of the first meeting as required by § 251.11(b) of the rules.

Determination of Petitioner's Significant Interest in Proceeding

The Librarian has considered the petitions of the RIAA and determines that RIAA has a significant interest in the CARP proceedings to establish the rates and terms of the section 112 and 114 licenses for the periods 1998–2000 and 2001–2002. RIAA has set up a collective comprised of more than 200 different recording labels and artists, including all of the major record companies in the United States, and its members own the copyrights in approximately 90% of the legitimate sound recordings sold in the United States. Petition at 2 (August 8, 2000). Further, the former Copyright Royalty Tribunal recognized that RIAA had a significant interest in copyright compulsory license rate proceedings affecting the recording industry. See *Recording Industry Association of America* v. *Copyright Royalty Tribunal*, 662 F.2d 1 (D.C. 1981) (17 U.S.C. 115 license). Consequently, the Librarian determines that RIAA has a significant interest in this proceeding within the meaning of 17 U.S.C. 803(a)(1).

Selection of Arbitrators

In accordance with § 251.6 of the CARP rules, the arbitrators have been selected for this proceeding. They are:

The Honorable Eric E. Van Loon (Chairperson)
The Honorable Jeffrey S. Gulin
The Honorable Curtis E. von Kann

Initiation of the Proceeding

Pursuant to § 251.64 of the CARP rules, the Librarian is formally announcing the existence of a controversy as to the establishment of rates and terms for the digital public performance of sound recordings license (as it pertains to webcasters) under 17 U.S.C. 114 and for the making of ephemeral copies in furtherance of a digital public performance under 17 U.S.C. 112 and is initiating an arbitration proceeding under chapter 8 of title 17 of the United States Code to set the rates and terms for these licenses. The arbitration proceeding commences on July 30, 2001, and runs for a period of 180 days. The arbitrators shall file their written report with the Librarian by January 28, 2002, the end of the 180-day period, in accordance with § 251.53 of the rules.

Schedule for Proceeding

Section 251.11(b) of the regulations governing the Copyright Arbitration Royalty Panels ("CARPs"), 37 CFR subchapter B, provides that:

At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the **Federal Register** at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and if so, which ones, and the name and telephone number of the person to contact for further information.

This notice fulfills the requirements of § 251.11(b) for the proceeding to set rates and terms for the digital public performance of sound recordings license (as it pertains to webcasters) under 17 U.S.C. 114 and for the making of ephemeral copies in furtherance of a digital public performance under 17 U.S.C. 112.

On June 25, 2001, the parties to this proceeding met with the arbitrators for the purposes of discussing the mechanism for payment of the arbitrators and of setting a schedule for this proceeding. At that meeting, the parties and the arbitrators agreed to the following schedule:

Opening Statements: July 30, 2001.

Presentation of Direct Cases: July 31-September 13, 2001.

Witnesses for the Copyright Owners and Performers: [1]

July 31–August 2, 2001: Cary Sherman, Hilary Rosen, David Altschul, Linda McLaughlin, Paul Katz, Charles Ciongoli.

August 6–10, 2001: James Griffin, Ronald Wilcox, Paul Vidich, LaVerne Evans, Jay Samit, Lawrence Kenswil, Anthony Pipitone, Gregory Hessinger, Gary Himelfarb.

August 13–16, 2001: Jennifer Warnes, Kevin Dorsey, Harold Bradley, Steven Marks, Thomas Nagle, Robert Yerman, Steven Wildman.

Witnesses for Broadcasters/ Webcasters;[2] DMX Music, Inc.; AEI Music Network; and National Public Radio ("NPR"):

For Broadcasters: Dan Halyburton (Susquehanna Radio Corp.), Stephen F. Fisher (Entercom Communication Corp.), Dan Mason (Infinity Broadcasting Corp.), James Patrick Donahue (Clear Channel Radio Group), Joe Davis (Salem).

For Webcasters: Scott Mills (BET Interactive), Joe Lyons (Comedy Central), Michael Peterson (Coollink Broadcast Network), Tuhin Roy (Echo Networks, Inc.), Robert D. Roback (Launch Media, Inc.), David Goldberg (Launch Media, Inc.), Rob Reid (Listen.com, Inc.), John O. Jeffrey (Live365, Inc.), Brad Porteus (MTVi Radio of the MTVi Group, Inc.), Quincy McCoy (MTVi Group), Robert Ohlweiler (MusicMatch, Inc.), David Bean (MusicMatch, Inc.), David Pakman (Myplay, Inc.), Michael Wise (NetRadio Corp.), Charlie Moore (RadioActive Media Partners, Inc.), Nathan W. Pearson, Jr. (RadioWave.com, Inc.), Fred McIntyre (AOL Music/ Spinner), Diego Ruiz (Univision Online, Inc.), Clifton Gardiner (Westwind Media.com, Inc.), David Juris (XACT Radio LLC), David Fagin (singer, songwriter, recording and performing artist), Alanis Morissette (singer, songwriter, recording and performing artist).

For Background Music:[3] Barry Knittel (AEI Music Network, Inc.)

Experts: William W. Fisher III, Jonathan Zittrain, Adam B. Jaffe, Michael Fine, Paul William Kempton, Michael Mazis.

For NPR: Kenneth P. Stern (NPR), Dr. Jane Murdoch (Charles River Associates), Dr. John Woodbury (Charles River Associates).

Filing of Written Rebuttal Testimony: October 4, 2001.

Presentation of Rebuttal Cases: October 15–20, 22–25, 2001.

Filing of Proposed Findings of Fact and Conclusions of Law: November 14, 2001.

Filing of Replies to Proposed Findings of Fact and Conclusions of Law: December 3, 2001.

Oral Argument: December 7, 2001.

Close of 180-day period: January 28, 2002.

Opening statements will begin at 1 p.m. on July 30. Thereafter, all hearings will begin at 9:00 a.m.

At this time, the parties have not moved to close any portion of the proceeding to the public. Further refinements to the schedule will be announced in open meetings and issued as orders to the parties participating in the proceeding. All changes will be noted in the docket file of the proceeding, as required by the Copyright Office regulations governing the administration of CARP proceedings. 37 CFR 251.11(c).

[1] "Copyright Owners and Performers" consist of the Recording Industry Association of America, the American Federation of Television and Radio Artists, the American Federation of Musicians of the United States and Canada, and the Association for Independent Music.

[2] "Broadcasters/Webcasters" consist of Clear Channel Communications, Inc.; the National Religious Broadcasters Music License Committee; Salem Communications Corp.; Bet.com; Comedy Central; Infinity Broadcasting Corp.; Launch Media, Inc.; Listen.com; Live365.com; the MTVi Group LLC; MusicMatch, Inc.; Myplay, Inc.; Netradio Corp; RadioActive Media Partners, Inc.; Radiowave.com, Inc.; Spinner Networks, Inc.; Susquehanna Radio Corp.; Univision Online; Westwind; and XACT Radio Network, LLC.

[3] "Background Music" consist of AEI Music Network, Inc. and DMX Music, Inc.

Dated: July 18, 2001.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 01–18338 Filed 7–20–01; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by September 21, 2001 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to splimpto@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Title of Collection: Survey of Industrial Research and Development

OMB Control No.: 3145–0027.

Expiration Date of Approval: December 31, 2001.

1. Abstract

The proposed continuing information collection involves the estimation of the expenditures on research and development performed within the United States by industrial firms. A mail survey, the Survey of Industrial Research and Development, has been conducted annually since 1953. Industry accounts for over 70 percent of total U.S. R&D each year and since its inception, the survey has provided continuity of statistics on R&D expenditures by major industry groups and by source of funds. The survey is the industrial component of the NSF statistical program that seeks to "provide a central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and technical resources in the United states, and to provide a source of information for policy formulation by other agencies of the Federal government" as mandated in the National Science Foundation Act of 1950. Statistics from the survey are published in NSF's annual publication series Research and Development in Industry. The proposed collection will continue the survey for three years.

2. Expected Respondents

The survey will be mailed to a statistical sample of approximately 24,200 companies to collect information on the amount and sources of funds for and character of R&D performed and contracted out by industrial firms, and information on sales and employment of the firms themselves.

3. Burden on the Public

To minimize burden, over 90-percent of the companies selected for the Survey of Industrial Research and Development are asked to respond to the Form RD–1A, the abbreviated version of the basic survey questionnaire, Form RD–1. Further, only companies with five paid employees or more are asked to participate in the survey and extensive use is made of the descriptive codes and information on the establishment list that is the source of the survey sample to avoid sampling firms in industries that traditionally do not perform R&D. NSF, with input from the Bureau of the Census, the collection and compiling agent for the survey, estimates that the average annual reporting and record keeping burden on each Form RD–1A respondent will be 1 hour and on Form RD–1 respondents will be 18 hours. The total annual burden is estimated at 51,400 hours, calculated as follows:

RD–1A respondents: 22,600 respondents × 1 response × 1 burden Hour = 22,600 hours/year.

RD–1 respondents: 1,600 respondents × 1 response × 18 burden hours=28,800 hours/year.

All respondents: 22,600 + 28,800 = 51,400 burden hours/year during 2002, 2003, and 2004.

Dated: July 17, 2001.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 01–18223 Filed 7–20–01; 8:45 am]

BILLING CODE 7555–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of Meeting.

SUMMARY: The Compact Commission will hold its regular monthly meeting to consider matters relating to administration and enforcement of the price regulation. This meeting will be held in Mystic, Connecticut, continuing the Commission's program of holding a meeting in each of the Compact states. In addition to receiving reports and recommendations of its standing Committees, the Commission will receive a number of informational reports about the impact of the over-order price regulation in Connecticut.

DATES: The meeting will begin at 10 a.m. on Wednesday, August 8, 2001.

ADDRESSES: The meeting will be held at the Best Western Hotel, 9 Whitehall Avenue, Mystic, Connecticut 06355.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, 64 Main Street, Room 21, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: July 17, 2001.

Daniel Smith,

Executive Director.

[FR Doc. 01–18289 Filed 7–20–01; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Oconee Nuclear Station, Units 1, 2, and 3; Exemption

1.0 Background

The Duke Energy Corporation (the licensee) is the holder of Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, which authorize operation of the Oconee Nuclear Station, Units 1, 2, and 3 (ONS). The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of three pressurized water reactors located in Seneca County in South Carolina.

2.0 Request/Action

By letter dated July 26, 2000, Duke Energy Corporation, licensee for the ONS, requested an exemption from certain requirements of 10 CFR 50.44, 10 CFR part 50, Appendix A, General Design Criterion 41, and 10 CFR part 50, Appendix E, Section VI pertaining to the hydrogen control system requirements (*i.e.*, recombiners and containment post-accident hydrogen monitors) and the removal of these requirements from the ONS design basis.

Regulatory requirements for the hydrogen control system are specified in 10 CFR 50.44 and 10 CFR part 50, Appendix A, (General Design Criteria 41, 42, and 43). Additional staff guidance is provided in Regulatory Guide (RG) 1.7. Staff review and acceptance criteria are specified in Section 6.2.5 of the Standard Review Plan. With regard to combustible gas control system requirements, ONS is subject to the requirements of 10 CFR 50.44(g).

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

For this exemption, these special circumstances include consideration that the quantity of hydrogen prescribed by 10 CFR 50.44(d) and RG 1.7 which necessitated the need for hydrogen recombiners would be bounded by the hydrogen generated during a severe accident. As shown in the attached safety evaluation, the staff has found that the relative importance of hydrogen combustion for large, dry containments with respect to containment failure is quite low. This finding supports the argument that the hydrogen recombiners are not risk significant from a containment integrity perspective and that the risk associated with hydrogen combustion is not from design basis accidents but from severe accidents. Studies have shown that the majority of risk to the public is from accident sequences that lead to containment failure or bypass, and that the contribution to risk from accident sequences involving hydrogen combustion is actually quite small for large, dry containments such as Oconee's. This is true despite the fact that the hydrogen produced in these events is substantially larger than the hydrogen production postulated by 10 CFR 50.44(d) and RG 1.7. Hydrogen combustion sequences that could lead to early containment failure typically involve up to 75 percent core metal-water reaction. Hydrogen combustion sequences that could lead to late containment failure involve additional sources of hydrogen due to the interaction of corium and the concrete basemat after vessel breach. Although the recombiners are effective in maintaining the RG 1.7 hydrogen concentration below the lower flammability limit of 4 volume percent, they are overwhelmed by the larger quantities of hydrogen associated with severe accidents that would typically be released over a much shorter time period (*e.g.*, 2 hours). However, NUREG/CR–4551 states that hydrogen combustion in the period before containment failure is considered to present no threat to large, dry containments. Table A.4–5 of NUREG/CR–4551 shows that the contribution of hydrogen combustion to late containment failure is also very small. Therefore, the relative importance of hydrogen combustion for large, dry containments with respect to containment failure has been shown to be quite low.

The recombiners can, however, prevent a subsequent hydrogen burn if needed due to radiolytic decomposition of water and corrosion in the long term. Analysis performed in accordance with the methodology of RG 1.7 shows that the hydrogen concentration will not reach 4 volume percent for 15 days after initiation of a design basis Loss of Coolant Accident (LOCA). Additionally, as described in the attached safety evaluation, hydrogen concentrations on the order of 6 percent or less are bounded by hydrogen generated during a severe accident and would not be a threat to containment integrity since there is ample time between burns to reduce elevated containment temperatures using the installed containment heat removal systems. The ONS Individual Plant Examination (IPE) concluded that containment survival is almost certain following hydrogen combustion when the Reactor Building Cooling Units and the Reactor Building Spray System are operating.

The underlying purpose of 10 CFR 50.44 is to show that, following a LOCA, an uncontrolled hydrogen-oxygen recombination would not take place, or that the plant could withstand the consequences of uncontrolled hydrogen-oxygen recombination without loss of safety function. Based on the analysis, which includes the staff's evaluation of the risk from hydrogen combustion, resolution of Generic Issue 121, "Hydrogen Control for PWR Dry Containments," and the ONS IPE, the plant could withstand the consequences of uncontrolled hydrogen-oxygen recombination without loss of safety function without credit for the hydrogen recombiners for not only the design basis case, but the more limiting severe accident with up to 100 percent metal-water reaction. Therefore, the requirements for hydrogen recombiners as part of the ONS design basis are unnecessary and their removal from the design basis is justified. Additionally, elimination of the hydrogen recombiners from the Emergency Operating Instructions would simplify operator actions in the event of an accident and, therefore, would be a safety benefit. Consequently, pursuant to 10 CFR 50.12(a)(2)(ii), application of the regulation is not necessary to achieve the underlying purpose of the rule.

In the submittal, the licensee also requested an exemption from the functional requirement for hydrogen monitoring as promulgated in part 50, Appendix E, Section VI, "Emergency Response Data System (ERDS)," or any commitments made in regard to NUREG–0737, Item II.F.1, Attachment 6, "Containment Hydrogen Monitor." In the Statement of Considerations for Appendix E to part 50, the Commission stated that the ERDS data (which includes the continuous hydrogen monitors) provides the data required by the NRC to perform its role during an emergency. This conclusion is still valid

for not only the staff but licensees. The major vendors' core damage assessment methodologies continue to include continuous hydrogen monitoring. Core damage assessment methodologies were reviewed by the staff in response to NUREG–0737, Item II.B.3(2)(a). Continuous hydrogen monitoring is needed to support a plant's emergency plan as described in 50.47(b)(9). Implementing documents such as Regulatory Guide (RG) 1.101, Revision 2, which endorsed NUREG–0654, and RG 1.101, Revision 3, which endorsed NEI–NESP–007, Revision 2 define the highest Emergency Action Level, a General Emergency, as a loss of any two barriers and potential loss of the third barrier. Potential loss of a third barrier depends on whether or not an explosive mixture exists inside containment. The continuous hydrogen monitors are used for determining whether an explosive mixture exists inside containment. Therefore, the licensee's request for exemption from the functional requirements for hydrogen monitoring is not approved.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption pertaining to the recombiners is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances are present. Therefore, the Commission hereby grants Duke Energy Corporation an exemption from the recombiner requirements of 10 CFR 50.44 and 10 CFR part 50, appendix A, General Design Criterion 41 for the Oconee Nuclear Station, Units 1, 2, and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 37073).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of July 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–18326 Filed 7–20–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Company; Shearon Harris Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from 10 CFR 55.59(a) for Facility Operating License No. NPF–63, issued to Carolina Power & Light Company (the licensee), for operation of the Shearon Harris Nuclear Power Station, Unit 1 (HNP), located in Wake and Chatham Counties, North Carolina. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensed operator requalification examinations for HNP to be rescheduled. The requested exemption would extend the completion date for the examinations from December 31, 2001, to March 31, 2002.

The proposed action is in accordance with the licensee's application dated January 19, 2001, as supplemented by letter dated May 7, 2001.

The Need for the Proposed Action

The proposed action would extend the current HNP requalification program from December 31, 2001, to March 31, 2002. HNP is scheduled to be in extended shutdown for refueling, steam generator replacement, and power uprate modifications during the end period of the current requalification cycle and when the full annual examination (comprehensive written examination and annual operating test) would need to be given. The licensee has stated that based on the training required for the new site procedures, modifications of the simulator to support outage modifications, training prior to the outage, and the implementation of the extended outage, the ability to complete the full annual examination within the 24-month requalification cycle is not possible.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no environmental impacts associated with the extension of the operator requalification examinations from December 31, 2001, to March 31, 2002. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types or amounts of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for HNP.

Agencies and Persons Consulted

On June 29, 2001, the staff consulted with the North Carolina State official, Mr. Johnny James, of the Division of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 19, 2001, as supplemented by letter dated May 7, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike

(first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 13th day of July 2001.

For the Nuclear Regulatory Commission.

N. Kalyanam,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–18327 Filed 7–20–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Nuclear Management Company, LLC; Point Beach Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License Nos. DPR–24 and DPR–27, issued to Nuclear Management Company, LLC, (NMC, or the licensee, formerly Wisconsin Electric Power Company), for operation of the Point Beach Nuclear Plant, Units 1 and 2 (PBNP), respectively, located in Manitowoc County, Wisconsin.

Environmental Assessment

Identification of the Proposed Action

The proposed action would be a full conversion from the current technical specifications (CTS) to a set of improved technical specifications (ITS) based on NUREG–1431, "Standard Technical Specifications for Westinghouse Plants," Revision 1, dated April 1995. The proposed action is in accordance with the licensee's application dated November 15, 1999, as supplemented by letters dated March 15, June 15, June 19, July 28, August 17, September 14, October 19 and December 21, 2000, February 6, February 23, March 19, May 11 and June 13, 2001.

The Need for the Proposed Action

The NRC staff has recognized that nuclear safety in all plants would benefit from improvement and standardization of technical specifications (TSs). The "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors" (52 FR 3788) contained proposed criteria for defining the scope of TSs. Later, the "NRC Final Policy Statement on TS Improvement for Nuclear Power Reactors" (58 FR 39132) incorporated lessons learned since publication of the interim policy statement and formed the basis for a revision to 10 CFR 50.36. The "Final Rule" (60 FR 36953) codified criteria for determining the content of TSs. To facilitate the development of standard TSs, each reactor vendor owners group and the NRC staff developed standard TSs (STS). The NRC Committee to Review Generic Requirements reviewed the STS, made note of their safety merits, and indicated its support of conversion by operating plants to the STS. For Point Beach Nuclear Plant, Units 1 and 2, the STS are NUREG–1431, Revision 1, "Standard Technical Specifications, Westinghouse," dated April 1995. This document formed the basis for the Point Beach Nuclear Plant, Units 1 and 2, conversion.

Description of the Proposed Change

The proposed changes to the CTS are based on NUREG–1431, and guidance provided in the Final Policy Statement. The objective of this action is to completely rewrite, reformat, and streamline the CTS (*i.e.*, to convert the CTS to ITS). Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1431, portions of the CTS were also used as the basis for the development of the Point Beach Nuclear Plant, Units 1 and 2 ITS. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee.

The proposed changes from the CTS can be grouped into four general categories. These groupings are characterized as administrative changes, technical changes—relocations, technical changes—more restrictive, and technical changes—less restrictive. They are described as follows:

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation, and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1431 and does not involve technical changes to the existing TS. The proposed changes include: (a) Identifying plant-specific wording for system names, etc., (b) changing the wording of specification titles in the CTS to conform to STS, (c) splitting up requirements that are currently grouped, or combining requirements that are currently in separate specifications, (d) deleting specifications whose applicability has expired, and (e) wording changes that are consistent with the CTS but that more clearly or explicitly state existing requirements. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocation changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TS. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in the Commission's regulation, 10 CFR 50.36 and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria to PBNP is described in Attachment 6 to the November 15, 1999, submittal. The affected structures, systems, components, or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables, will be relocated from the TSs to administratively controlled documents such as the Final Safety Analysis Report, the ITS Bases, or other licensee-controlled documents. Once these items have been relocated to other licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC-approved control mechanisms, which provide appropriate procedural means to control changes by the licensee.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses.

Less restrictive changes are those where CTS requirements are relaxed, relocated or eliminated, or new plant

operational flexibility is provided. The more significant "less restrictive" requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TSs may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the Improved Standard Technical Specifications. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. Each less restrictive change in the Point Beach conversion was justified by the licensee in a Discussion of Change and reviewed by the NRC staff.

In addition, there are eighteen changes that are different from the requirements in both the CTS and NUREG–1431, or that are beyond the changes that are needed to meet the overall purpose of the conversion. These changes are as follows:

1. Adopts more restrictive action requirements for the emergency safety feature actuation system (ESFAS). The more restrictive action requirements pertain to instrumentation channels for the following functions: steam line isolation on manual, high steam flow, and high high steam flow (ITS 3.3.2).

2. Adds an exception to Mode 3 applicability of the ESFAS instrument function. The ITS is modified to allow reactor coolant system hydrostatic testing in Mode 3 without the steam line pressure—low safety injection function instrumentation being operable (ITS 3.3.2).

3. Adds a requirement for the condensate isolation functions to be operable in Modes 1, 2, and 3, except when all main feedwater regulating valves and associated bypass valves are closed and deactivated (ITS 3.3.2).

4. Adopts STS requirements to perform a trip actuating device operational test on containment isolation valve position indication post-accident monitoring instrumentation function (ITS 3.3.3).

5. Increases action requirements for loss of power diesel generator start and load sequence instrumentation functions. This item also imposes additional restrictions by adopting the STS-required actions for two inoperable channels of 480 volt buses (ITS 3.3.5).

6. Relocates reactor coolant system pressure temperature limits to the pressure temperature limits report (PTLR) and adopts STS required actions to ensure operation within the pressure and temperature limits (ITS 3.4.3 and ITS 5.6.5). This item is beyond-scope because the licensee's proposed ITS differed from some of the STS requirements.

7. Increases operability and surveillance requirements for reactor coolant system (RCS) loops. For Mode 3, the CTS currently requires one reactor coolant pump to be in operation and one steam generator to be operable. ITS adds the requirement that two RCS loops be operable, which also means that two steam generators are required in Mode 3. ITS also adopts a surveillance to verify one RCS loop is in operation consistent with the current limiting condition for operation (ITS 3.4.1).

8. Adds explicit operability, action, and surveillance requirements for the containment sump monitor (ITS 3.4.15).

9. Revises applicability and frequency for surveillance of the auto actuation of emergency core cooling system (ECCS) valves and auto start of ECCS pumps in Mode 4. ITS specifies an 18-month frequency as opposed to the once each refueling frequency in CTS. ITS also requires the surveillance requirements to be met during all Mode 4 conditions (ITS 3.5.3).

10. Imposes more restrictive changes to main steam isolation valve and non-return check valve action requirements. The Point Beach plant has a different arrangement for main steam isolation valves and therefore, could not adopt the STS requirements for these TSs (ITS 3.7.2).

11. Adds operability, action, and surveillance TS requirements for main feedwater isolation valves (ITS 3.7.3).

12. Imposes more restrictive changes to the atmospheric dump valve flow path action and surveillance requirements (ITS 3.7.4).

13. Revises the frequency of surveillance requirements for the auxiliary feedwater (AFW) system. This change also revises some of the nomenclature to the AFW system (ITS 3.7.5).

14. Incorporates changes to the component cooling water system operability and action requirements. Also, adds a note to clarify action requirements when a residual heat removal loop is made inoperable by component cooling system components (ITS 3.7.7).

15. Adds surveillance requirements to verify the manual start and alignment capabilities of the control room emergency ventilation system (ITS 3.7.9).

16. Adds a limiting condition for operation and an action pertaining to a containment air temperature limit. In addition, a Bases section is added to provide background for the new TS limit (ITS 3.6.5).

17. Adds a surveillance requirement to verify that one residual heat removal loop is in operation during Mode 6 conditions (ITS 3.9.5).

18. Relocates cycle-specific parameters to a core operating limits report (COLR) and establishes administrative control requirements for the COLR in ITS 5.6.4 (ITS 5.6.4).

An additional action being implemented with the ITS is the creation of a Pressure Temperature Limits Report (PTLR). This action relocates pressure temperature (P/T) limits and low overtemperature pressure protection limits to a licensee controlled PTLR. The licensee submitted its methodology for calculating P/T and low-temperature overpressure protection limits in a separate letter dated March 10, 2000, as supplemented July 28, November 20, 2000, and April 10, 2001. The licensee requested to implement PTLR coincident with ITS, so this amendment is being issued with ITS.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed revision to the CTS. Changes which are administrative in nature have been found to have no effect on the technical content of the TSs and are acceptable. The increased clarity and understanding these changes bring to the TSs are expected to improve the operators' control of the plant in normal and accident conditions. Relocation of requirements to other licensee-controlled documents does not change the requirements themselves nor does 10 CFR 50.36(c)(2)(ii) mandate that the TSs include these requirements. Further changes to these requirments may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms that ensure continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1431 and the Final Policy Statement, and are, therefore, acceptable.

Changes involving more restrictive requirements have been found to enhance plant safety and to be acceptable.

Changes involving less restrictive requirements have been reviewed individually. When requirements have

been shown to provide little or no safety benefit or to place unnecessary burden on the licensee, their removal from the TSs was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic action, or of agreements reached during discussions with the Owners Groups, and have been found to be acceptable for PBNP. Generic relaxations contained in NUREG–1431 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revisions to the CTS were found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

These TS changes will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment involves features located entirely within the restricted area as defined in 10 CFR part 20 and does not have a potential to affect any historical sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed TS amendment.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*ie.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the PBNP, dated May, 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on June 26, 2001 the staff consulted with the state of Wisconsin State official, Mr. Jeff Kitsembel of the Public Service Commission of Wisconsin, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated November 15, 1999, as supplemented by letters dated March 15, June 15, June 19, July 28, August 17, September 14, October 19 and December 21, 2000, February 6, February 23, March 19, May 11 and June 13, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 13th day of July 2001.

For the Nuclear Regulatory Commission.

Beth Wetzel,

Senior Project Manager, Section 1, Project Directorate III; Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–18329 Filed 7–20–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meeting Concerning the Revision of the Oversight Program for Nuclear Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of public meeting.

SUMMARY: NRC will hold a public meeting near Wilmington, NC to provide the local public, facility employees, citizens' groups, and local officials with information about, and an opportunity to provide views on, how the NRC plans to revise and improve its oversight program for commercial nuclear fuel cycle facilities regulated under 10 CFR parts 40, 70, and 76. The facilities include gaseous diffusion plants, high- and low-enriched uranium fuel fabrication facilities, and a uranium hexafluoride (UF_6) production plant. These facilities possess large quantities of materials that are potentially hazardous (radioactive, toxic, or flammable) to workers, the public, or the environment. Also, some of the facilities possess information and material important to national security. One of these regulated facilities, Global Nuclear Fuel—America, is located near Wilmington.

The goal of this revision project is to have an oversight program that: (1) Provides earlier and more objective indications of facility performance in the areas of safety and national security, (2) increases stakeholder confidence in the NRC, and (3) increases regulatory effectiveness, efficiency, and realism. To this end, the NRC is striving to make the oversight program more risk-informed and performance-based. The oversight revision project is described in SECY–99–188, "Evaluation and Proposed Revision of the Nuclear Fuel Cycle Facility Safety Inspection Program," and in SECY–00–0222, "Status of Nuclear Fuel Cycle Facility Oversight Program Revision." SECY–99–188 and SECY–00–0222, as well as other background information, are available in the Public Document Room and on the NRC Web Page at *http://www.nrc.gov*.

Purpose of Meeting: To obtain stakeholder views for improving the NRC oversight program for ensuring fuel cycle licensees and certificate holders maintain protection of worker and public health and safety, protection of the environment, and safeguards for special nuclear material and classified matter in the interest of national security. The public meeting will focus on the revisions that are being made to the program, and on how interested parties can provide input to the change process.

Date and Location: Members of the public, industry, and other stakeholders are invited to attend and participate in the meeting, which is scheduled for 10 to 10:30 a.m. on Tuesday, August 7, 2001. The meeting will be held at the Global Nuclear Fuel—Americas, L.L.C., facility on Highway 117 North.

FOR FURTHER INFORMATION CONTACT: Patrick Castleman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, telephone (301) 415–8118, e-mail *pic@nrc.gov*.

Dated at Rockville, Maryland this 17th day of July, 2001.

For the Nuclear Regulatory Commission.

Patrick Castleman,

Project Manager, Inspection Section, Safety and Safeguards Support Branch, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 01–18328 Filed 7–20–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of July 23, 30, August 6, 13, 20, 27, 2001.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 23, 2001

There are no meetings scheduled for the Week of July 23, 2001.

Week of July 30, 2001—Tentative

Tuesday, July 31, 2001

1:25 p.m.—Affirmation Session (Public Meeting) (If needed)

Week of August 6, 2001—Tentative

There are no meetings scheduled for the Week of August 6, 2001.

Week of August 13, 2001—Tentative

Tuesday, August 14, 2001

9:30 a.m.—Briefing on NRC International Activities (Public Meeting) (Contact: Elizabeth Doroshuk, 301–415–2775)

Wednesday, August 15, 2001

9:30 a.m.—Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

1:25 p.m.—Affirmation Session (Public Meeting) (If needed)

1:30 p.m.—Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–1277)

Week of August 20, 2001—Tentative

There are no meetings scheduled for the Week of August 20, 2001.

Week of August 27, 2001—Tentative

There are no meetings scheduled for the Week of August 27, 2001.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: July 18, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–18380 Filed 7–19–01; 11:17 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a regulatory guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Draft Regulatory Guide DG–1110 is a proposed Revision 1 of Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis." DG–1110 is being developed to provide guidance to licensees on methods acceptable to the NRC staff for assessing the nature and impact of licensing basis changes when the licensee chooses to support, or is requested by the NRC staff to support, such changes with risk information.

A proposed Revision 1 of Chapter 19, "Use of Probabilistic Risk Assessment in Plant-Specific, Risk-Informed Decisionmaking: General Guidance," of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," is being issued for public comment as a companion document. Chapter 19 of the Standard Review Plan will be used by the NRC staff for evaluating licensee submittals that use the guidance in Regulatory Guide 1.174 on risk-informed decisionmaking that uses probabilistic risk assessment.

The NRC staff is soliciting comments on these proposed revisions. In addition, the NRC staff is considering incorporating the impact of power uprates on success and failure criteria and the appropriateness of the evaluation models into this guidance. The staff is soliciting comments on this issue and will incorporate appropriate changes to these documents based on comments received.

This draft guide and draft standard review plan chapter have not received complete staff approval and do not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by September 17, 2001.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; email *CAG@NRC.GOV*. For information about the draft guide and the related standard review plan chapter, contact Ms. M.T. Drouin at (301) 415–6675; email MXD@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of this draft regulatory guide are available on the NRC's web site *www.nrc.gov* in the Reference Library under Regulatory Guides. Electronic copies are also available in NRC's Public Electronic Reading Room at the same web site; DG–1110 is under ADAMS Accession Number ML011770102. Regulatory guides are available for inspection at the NRC's Public Document Room, 11555

Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; email PDR@NRC>GOV. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by email to *DISTRIBUTION@NRC.GOV;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.
(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 17th day of July 2001.

For the Nuclear Regulatory Commission.

Scott F. Newberry,

Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 01–18325 Filed 7–20–01; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Certification Regarding Rights to Unemployment Benefits.

(2) *Form(s) submitted:* UI–45.

(3) *OMB Number:* 3220–0079.

(4) *Expiration date of current OMB clearance:* 11/30/2003.

(5) *Type of request:* Extension of a current approved collection.

(6) *Respondents:* Business or other for profit, Individuals or Households.

(7) *Estimated annual number of respondents:* 1,950.

(8) *Total annual responses:* 2,900.

(9) *Total annual reporting hours:* 487.

(10) *Collection description:* In administering the disqualification for the voluntary leaving of work provision of Section 4 of the Railroad Unemployment Insurance Act, the Railroad Retirement Board investigates an unemployment claim that indicates the claimant left voluntarily. The certification obtains information needed to determine if the leaving was for good cause.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Marcie Brown (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 01–18264 Filed 7–20–01; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 66 FR 38046 (July 20, 2001).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: July 17, 2001.

CHANGE IN THE MEETING: Cancellation of Meeting.

The closed meeting scheduled for Thursday, July 19, 2001 at 9 a.m. has been canceled.

Dated: July 19, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–18374 Filed 7–19–01; 11:09 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

The Ticket To Work and Work Incentives Advisory Panel Design and Evaluation Committee Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meeting.

DATES: July 27, 2001, 8:30 a.m. to 5 p.m.

ADDRESSES: Holiday Inn-Capitol, 550 C Street, SW., Washington, DC 20024 Phone: (202) 479–4000, (202) 479–4353 Fax. The hotel is located near the Federal Center, SW and the L'Enfant Metro Stations. Call-in number: 1–888–790–1713. Pass code 12211.

SUPPLEMENTARY INFORMATION: *Type of meeting:* This is a meeting of the Design and Evaluation Committee of the Ticket to Work and Work Incentives Advisory Panel (the Panel). The meeting is a research roundtable meeting and is open to the public. The public is invited to participate by coming to the address listed above or calling in to the number listed. Public comment will be taken. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration announces that the Design and Evaluation committee of the Ticket to Work and Work Incentives Advisory Panel (the Panel) will host an Expert Roundtable on the Ticket Program Evaluation for People with Significant Disabilities and the Adequacy of Incentives Study. Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive public testimony, hear presentations from invited experts, receive briefings on the implementation of TWWIIA and conduct discussions. The roundtable discussion will focus on questions and issues presented in this announcement.

Agenda: Interested parties may attend the meeting or call in to listen between the hours of 8:30 a.m. to 5 p.m. Eastern Time. Public testimony will be heard on Friday, July 27, 2001 from 11 a.m. to 12 noon. Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Members of the public must schedule a timeslot in order to comment. Since the time slot is limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Theda Zawaiza at *Theda.W.Zawaiza@ssa.gov* or calling (202) 358–6421.

Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in person or by mail, fax or e-mail on an on-going basis to the Panel for consideration.

In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

The full agenda for the meeting will be posted on the Internet at http://www.ssa.gov/work/panel/ one week before the meeting or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory.
- Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.
- Telephone contact with Kristen Breland by telephone at (202) 358–6423.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: July 16, 2001.

Deborah M. Morrison,

Designated Federal Officer.

Expert Roundtable on the Ticket Program Evaluation for People With Significant Disabilities and the Adequacy of Incentives Study

Date: July 27, 2001, 8:30 a.m. to 5 p.m.

Roundtable Questions and Issues

- Discussion of SSA's overall evaluation and Adequacy of Incentives Study design and methodology. SSA question: What are the outcomes of interest? What needs to be accomplished by the study, included in the Report to Congress, and implemented prior to the end of the three-year period? What does Congress need to know and how should the information be provided?
- Discussion of SSA's question: "What are objective means of identifying, through SSA administrative data, the target populations as defined in Section 101(h)(5)(C) of P. L. 106–170, the Ticket to Work and Work Incentives Improvement Act? What other sources are available to identify the target population as defined in the statute?
- Who are the experts and what information resources should be considered regarding current and past projects and successful efforts to support individuals with significant disabilities to achieve integrated jobs in the community, at or above minimum wage? (i.e. What have we learned from the PASS plans, Choice projects, successful supported employment and other employment?)
- What other means of identifying the information needed in order for individuals in the target populations to achieve employment should be considered, i.e. review of the literature and best practice, targeted studies, demonstration projects? What should the timing and design be, and what expertise is necessary to conduct reviews, projects, studies, etc.?"
- How can SSA study/review/demonstrate how individualized milestones [1] could be used effectively to achieve employment for these individuals?
- What is the best way to address the SSA question: What about the array of services, e.g. cost, is of interest? How can SSA determine what services are most effective in assisting individuals in the four categories obtain and retain successful employment? What do the services cost and how are they provided?
- What are the best ways to ensure that various and diverse populations are represented in the research study?
- How should consumers, family members, and/or their representatives be included in the study design planning process and study implementation?
- How should Employment Networks [2] be consulted as part of the Adequacy of Incentives Study regarding the incentives needed to serve individuals in the four target populations defined in the statute?

[FR Doc. 01–18282 Filed 7–20–01; 8:45 am]

BILLING CODE 4191–02–U

[1] SSA will address, in the Adequacy of Incentives Report due to Congress in December 2002, the efficacy of individualized milestones. The Work Incentives Advisory Panel recommends that SSA should also consider the immediate implementation of an individualized milestone system. The system would provide individualized milestones for individuals with a need for on-going support services, individuals who need high-cost accommodations, individuals who earn a sub-minimum wage, and individuals who work and receive partial cash benefits along the lines of systems already in use in Massachusetts, Oklahoma and other states. These systems use the individualized planning process to determine if and when a different set of milestones is necessary, and establish a plan for payments and accountability for payments.

[2] Each EN serving under the Ticket to Work program shall consist of an agency or instrumentality of a State (or political subdivision thereof) or a private entity that assumes responsibility for the coordination and delivery of services under the program to beneficiaries assigning tickets to it. An EN may consist of a one-stop delivery system established under subtitle B of title I of the Workforce Investment Act of 1998.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance John H. Batten Airport, Racine, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is giving notice that a portion of the airport property for intersection improvements to Hwy 32 and Three Mile road is not needed for aeronautical use as currently identified on the Airport Layout Plan.

This parcel was originally acquired through Grant No. 3–55–0068–06. The parcel is presently open and undeveloped. The land comprising this parcel is no longer needed for aeronautical purposes and there are no impacts by allowing the airport to dispose of this property. The airport wishes to transfer ownership of the land to the Wisconsin Department of Transportation to provide for right of way for the intersection improvements for Hwy 32 and Three Mile Road. Income from the sale will be used to improve the airport.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the Federal Register 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra E. DePottey, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4363/FAX Number (612) 713–4364. Documents reflecting this FAA action may be reviewed at this same location or at the John H. Batten Airport, Racine, WI.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA intends to authorize the disposal of the subject airport property at John H. Batten Airport, Racine, WI. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination that all measures covered by the program are eligible for Airport Improvement Program funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and

Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Minneapolis, MN on June 13, 2001.

Nancy M. Nistler,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 01–18239 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release the City From Its Obligations to Operate and Maintain Runway 17/35 for Aeronautical Use at the Lambert-St. Louis International Airport, St. Louis, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request.

SUMMARY: The FAA proposes to rule and invites public comment on the request to release the City from its obligations to operate and maintain Runway 17/35 for aeronautical use at the Lambert-St. Louis International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before August 22, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, ACE–600, 901 Locust, Kansas City, Missouri 64106–2325. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Leonard Griggs, Airport Director, Lambert-St. Louis International Airport, at the following address: City of St. Louis, Missouri, St. Louis International Airport, P.O. Box 10212, Lambert Station, St. Louis, Missouri 63145.

FOR FURTHER INFORMATION CONTACT: Mrs. Nicoletta Oliver, Airports Compliance Specialist, Federal Aviation Administration, Central Region, Airports Division, ACE–615C, 901 Locust, Kansas City, Missouri 64106–2325. The request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release the City from its obligations to operate and maintain Runway 17/35 for aeronautical use at the Lambert-St. Louis International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

On june 22, 2001, the FAA determined that the request to release the City of its obligations to operate and maintain RW 17/35 for aeronautical use at the Lambert-St. Louis International Airport submitted by the City was substantially complete within the requirements of Section 125 of AIR 21. The FAA will approve or disapprove the request no later than September 10, 2001.

The following is a brief overview of the request.

The Lambert-St. Louis International Airport requests the FAA release the City of its obligations to maintain Runway 17/35 for aeronautical use. This release will allow the runway to be closed and the Boeing Company to construct a development area that will be used for aviation related nonaeronautical purposes. The property remains part of the Lambert-St. Louis International Airport and remains subject to the obligations of the Federal grant agreements.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

Issued in Kansas City, Missouri, on June 28, 2001.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 01–18241 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 194 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation.

DATES: The meeting will be held August 6–9, 2001, starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Apendeix 2), notice is hereby given for a Special Committee 194 meeting. The agenda will include:

August 6

- Opening Plenary Session (Welcome and Introductory Remarks, Agenda Overview, Approve Minutes of Previous Meeting, Working Group Reports, Other Business)
- Working Group 2, Flight Operations and ATM Integration

August 7, 8

- Working Group 1, Data Link Ops Concept & Implementation Plan
- Working Group 2, Flight Operations and ATM Integration
- Working Group 3, Human Factors

August 9

- Closing Plenary Session (Agenda Overview, Working Group Reports, Other Business, Data and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 10, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 01–18311 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

511 Traveler Information Telephone Number Program Support Assistance Program; Request for Applications

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for applications.

SUMMARY: This document requests applications for assistance from public agencies in developing plans for implementing systems to provide traveler information over the telephone using the common three-digit national

access number, 511. When an implementation plan exists, this assistance also may be used to convert existing traveler information telephone numbers to 511. This assistance program provides Federal funding to public agencies to develop regional and statewide plans for implementing 511 traveler information services, and/or to help defray the costs of telephone service providers in converting traveler information telephone numbers. Applications in response to this notice will be assessed to determine: (1) The readiness of the applicant to develop an implementation plan for 511 services; (2) the adequacy of the proposed approach related to geographic areas, institutional coordination, and information to be provided; and/or (3) if assistance is to be used for converting traveler information telephone numbers, the readiness of the applicant to convert in a timely fashion. This notice replaces, in its entirety, the notice of request for applications for conversion to 511, published August 9, 2000, at 65 FR 48797.

DATES: Applications for 511 program support assistance must be received prior to June 1, 2002. Decisions regarding the acceptance of specific applications for funding will be made within 60 business days of receipt.

ADDRESSES: Applications for 511 program support assistance should be submitted electronically via e-mail to *511CONVERT@FHWA.DOT.GOV*, or mailed directly to the Federal Highway Administration, Intelligent Transportation Systems (ITS) Joint Program Office, 511 Planning Support, HOIT–1, 400 Seventh St., SW., Room 3416, Washington, D.C. 20590–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rupert, Office of Travel Management (HOTM–1), (202) 366–2194; Mr. William S. Jones, ITS Joint Program Office (HOIT–1), (202) 366–2128; or Ms. Gloria Hardiman-Tobin, Office of Chief Counsel (HCC–32), (202) 366–0780; U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov/nara*.

The document may also be viewed at the U.S. Department of Transportation's ITS home page at *http://www.its.dot.gov*.

Background

On March 8, 1999, the U.S. Department of Transportation petitioned the Federal Communications Commission (FCC) to adopt a new, national three-digit telephone number to allow Americans to access on-the-spot transportation and traveler information such as road conditions and bus schedules. The burgeoning traffic reporter industry reflects the hunger that citizens have for more travel information, and the positive role the government can play as a partner in providing that information.

The nationwide three-digit number will utilize and significantly advance the intelligent transportation infrastructure already in place to assist some States and cities in providing traveler information. The traveler information will continue to be provided by private companies or public/private partnerships already delivering this service. The number will provide information about bad weather, construction, or traffic jams that cause delays for businesses and the general public, as well as information about the status of transit buses, ferries, light rail, and other public transportation in local communities. In addition, by directing drivers away from congestion and hazardous conditions, the nationwide three-digit number will provide better access for emergency vehicles responding to accidents.

The FCC placed the DOT's petition in its docket (File No. NSD–L–99–24, CC Docket 92–105; 57 FR 22681, May 29, 1992), and comments submitted to the FCC were favorable to adoption of a national three-digit traveler information number. On July 21, 2000, the FCC assigned 511 as the nationwide traveler information telephone number and granted responsibility for it to government transportation agencies.

Using 511 as a single number to provide traveler information that might now be provided by a number of telephone numbers associated with various transportation agencies or jurisdictions demands a significant degree of coordination within any State or region. Therefore, transportation officials must consider how a telephone call to 511 will be handled depending on the caller's location before they begin discussions with telecommunications providers to implement 511 telephone services.

In order to assist locations in the planning necessary to convert existing telephone access numbers and facilitate implementing the 511 telephone service, the DOT developed a program to provide Federal funding assistance. As an initial implementation of this assistance, the FHWA published a notice on August 9, 2000, at 65 FR 48797, requesting participation in a program to help defray the costs associated with converting existing traveler information telephone numbers to 511. Based upon early applications and initial work by States such as Kentucky, Virginia, and Arizona, it became clear that some sort of assistance to areas to develop 511 traveler information systems would be more beneficial toward deployment of 511 services nationwide than just converting existing telephone numbers. Therefore, this 511 support assistance program replaces the earlier conversion program, and offers funding to State transportation departments to develop plans for 511 services. If 511 deployment plans exist, the funds may be used to defray the costs of conversion to 511 or the development of 511 services. The development of 511 services may include development of basic traveler information services, if none exist or are inadequate for delivery by 511. A critical element of developing 511 deployment plans is determining the available traveler information services and the "gaps" that may exist when considering statewide deployment.

This is expected to be a two-year program beginning in fiscal year (FY) 2001 with approximately $5 million in Federal funds available. The maximum amount of Federal funding provided under this program for any State is limited to $100,000. The number of applications approved for funding each FY will depend upon the number of applications submitted and the total funding available for each FY.

Objectives of the 511 Support Assistance Program

The goal of the 511 support assistance program is to accelerate the implementation of 511 nationwide for traveler information. Through this program, the Intelligent Transportation Systems Joint Program Office (ITS–JPO) expects to enable every State to develop plans or programs that result in the deployment of traveler information services delivered through the 511 telephone number. The creation of statewide 511 deployment plans will facilitate discussions with

telecommunications firms on implementing 511 services, and serve as a key building block for a 511 system available nationwide.

Applications for 511 support assistance may be submitted by any State transportation department able to serve as a facilitator or manager for 511 within the State, acting on behalf of the effected parties in the State and surrounding areas, as appropriate, for delivering 511 services.

Funding

The FHWA anticipates that applications selected for funding will begin in FY 2001. The instrument to provide funding, on a cost reimbursable basis, will be an ITS partnership agreement. Federal funding authority is derived from section 5001(a)(5) of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 419 (1998). Actual award of funds will be subject to funding availability.

Federal ITS funding for 511 support assistance may be used to:

1. Develop materials to support, conduct, or participate in meetings with potential participants in 511 service programs, including researching available traveler information services, legal and regulatory issues related to traveler information and telephone services, and technical issues related to 511 deployment;
2. Prepare summary materials of 511 deployment plans;
3. System design; or
4. Providing that a statewide 511 deployment plan exists, conversion of existing telephone number including software modifications, necessary hardware changes, and system or acceptance testing.

Matching Share/Cost Sharing

There is a 20 percent matching share that must be from non-federally derived funding sources, as statutorily required, and must consist of either cash, substantial equipment contributions that are wholly utilized as an integral part of the project, or personnel services dedicated full-time to the proposed integrated deployment for a substantial period, as long as such personnel are not otherwise supported with Federal funds. The non-federally derived funding may come from State, local government, or private sector partners. Note that funding identified to support continued operations, maintenance, and management of the system will *not* be considered as part of the partnership's cost-share contribution.

In an ITS partnership, as with other ITS–JPO cost-sharing programs, it is inappropriate for a fee to be included in the proposed budget as part of a partner's contribution to the project. This does not prohibit appropriate fee payments to vendors or others that may provide goods or services to the partnership. It also does not prohibit business relationships with the private sector, which result in revenues from the sale or provision of ITS products or services. The DOT regulations (49 CFR 18.25) require program income to be deducted from expenditures before billing. Given prior approval, program income can be used either as match or cost share.

The ITS–JPO and the Comptroller General of the United States have the right to access all documents pertaining to the use of Federal ITS funds and non-Federal contributions. Non-Federal partners must maintain sufficient documentation to substantiate these costs. Such items as direct labor, fringe benefits, material costs, consultant costs, public involvement costs, subcontractor costs, and travel costs should be included in that documentation.

Instructions to Applicants

An application for 511 support assistance shall consist of two parts: A proposed approach for coordinating the deployment of 511 and a financial plan, that together describe the proposed activities to be conducted with this funding. The complete application shall not exceed 10 pages in length, including the 511 Deployment Coordination Approach, the Financial Plan, the title page, index, and tables. A page is defined as one side of an 8½ by 11-inch paper, with a type font no smaller than 12 point.

Applications shall be submitted in an electronic format compatible with Microsoft Office 2000. The cover sheet or title page of the application shall include the name, address, and phone number of an individual to whom correspondence and questions about the application may be directed. Any portion of the application or its contents that may contain proprietary information shall be clearly indicated; otherwise, the application and its contents shall be non-proprietary.

Selection Criteria

Applicants must submit an acceptable 511 Deployment Coordination Approach and Financial Plan that together provide sound evidence that a plan for deploying and/or converting 511 traveler information telephone services can successfully be completed in a timely fashion.

Applications should be organized into the following two sections:

1. 511 Deployment Coordination Approach

The application should describe the proposed approach for coordinating 511 deployment across a State or, as appropriate, across multiple States. The following paragraphs illustrate the general information that applicants should include in this section of the application.

(a) The application should describe the region(s) that will be included in the 511 deployment plan. This may include neighboring States or other jurisdictions that will need to be included as 511 services are deployed, as well as metropolitan areas within the State. At a minimum, the State should be considered as the total region to be addressed for 511 deployment in the plan.

(b) The application should identify candidate agencies or organizations that will be engaged in discussions about deploying 511 services. These organizations may include, but not limited to: Highway and transit operating agencies, public safety agencies, sources of traveler information, regulatory agencies, and telephone service providers. It is expected that the slate of organizations, agencies, and firms involved in deploying 511 will be adjusted as deployment plans are developed.

(c) The application should discuss institutional or organizational issues that will affect the deployment of 511 services, and what candidate techniques or activities will be used to address these issues. Prior activities that identified or addressed 511 deployment issues may be described in this section to provide a complete portrayal of the breadth of effort by the applicant to develop a plan for regional deployment. If a 511 deployment plan is completed and the requested funding will be used for converting existing telephone numbers to 511, a copy of the 511 deployment plan should be included.

(d) The application should describe the expected product(s) of the activities described in paragraph (c) of this section. It is expected that reports, plans, presentations, or other discrete outputs would be produced by these activities for use by the applicant. The applicant should propose which of these products, in addition to the 511 deployment plan, may serve as deliverables to the ITS–JPO under any resultant agreement from this request. The final deliverables will be determined in negotiations between the ITS–JPO and the selected locations.

(e) The application should include a proposed schedule or timeline depicting the development of the 511 deployment plan. The schedule should include milestone events or targeted activities, especially indicating any activities that require ITS–JPO actions or actions by organizations typically not influenced by the applying agency. The schedule should also indicate targets for delivery of any products or outputs from development activities.

2. Financial Plan

The Financial Plan should demonstrate that sufficient funding is available to successfully complete all aspects of the proposed development of the 511 deployment plan as described in section 1. The Financial Plan should also provide the financial information described under the heading, Matching Share/Cost Sharing.

An acceptable Financial Plan should:

(a) Provide a clear identification of the proposed funding for activities leading to the development of a comprehensive plan for deploying 511 services, and a commitment that no more than 80 percent of the total cost will be supported by these Federal ITS funds. As appropriate, financial commitments from other public agencies and from private firms should be documented in appropriate documents, such as memorandums of understanding.

(b) Describe how the 511 deployment plan will be developed to ensure its timely implementation and the continued, long-term operations of the system.

(c) As appropriate, include corresponding public and/or private investments that minimize the relative percentage and amount of Federal ITS funds, and evidence of continuing fiscal capacity and commitment from anticipated public and private sources.

Alternate Use of Funding

If a 511 deployment plan is developed and development activities do not exhaust all funding allocated under agreements resulting from this request, or if a 511 deployment plan exists, this funding may be used to offset the capital costs associated with converting traveler information telephone numbers to 511. Conversion activities that will be considered appropriate include telephone call routing or other call handling software modifications, necessary hardware changes, and system or acceptance testing. In addition, upon completion of a 511 deployment plan, this funding may also be used toward activities to develop 511 services. These activities may include development of basic traveler information services if none exist or are inadequate for delivery by 511.

Financial records shall be maintained that detail the activities or equipment provided by Federal funding, indicating appropriate total matching requirements, as described under the heading, Matching Share/Cost Sharing. As noted under that heading, the ITS–JPO and the Comptroller General of the United States have the right to access all documents pertaining to the use of Federal ITS funds and non-Federal contributions.

Authority: sec. 5001(a)(5), Pub. L. 105–178, 112 Stat. 107, 420; 23 U.S.C. 315; and 49 CFR 1.48.

Issued on: July 12, 2001.

Christine M. Johnson,

Program Manager, Operations Director, ITS Joint Program Office.

[FR Doc. 01–18303 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Intelligent Transportation Systems (ITS) Architecture; New User Service Procedure

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the U.S. Department of Transportation, through the ITS Joint Program Office (JPO), has developed a procedure for the introduction and integration of a new user service into the National ITS Architecture, as well as other significant changes encompassing several existing user services in the National ITS Architecture . This procedure will aid stakeholders in determining how to articulate their transportation needs for integration into the National ITS Architecture. Additionally, this procedure will increase public awareness of the incorporation process and will enable all interested parties to participate in the user service integration into the National ITS Architecture.

FOR FURTHER INFORMATION CONTACT: *For information on the National ITS Architecture User Service Procedure:* Mr. Lee Simmons, (202) 366–8048, ITS Joint Program Office (HOIT–1). *For Legal Questions:* Ms. Gloria Hardiman-Tobin, (202) 366–1397, Office of the Chief Counsel (HCC–40). Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web site at: *http://www.access.gpo.gov/nara.*

The entire National ITS Architecture may be reviewed and retrieved from the ITS web site: *http://www.its.dot.gov.* Follow the available link to Architecture.

Background

The National ITS Architecture provides a common framework for planning, defining, and integrating intelligent transportation systems. This common framework represents the starting point for more detailed regional and/or project architectures in which local characteristics are more appropriately addressed. The scope of the National ITS Architecture is defined by a set of user services. Each user service represents the most common activities and operations that transportation stakeholders perform to sustain efficient and safe travel.

The National ITS Architecture began as a program in 1993 to incorporate the 29 user services that were defined in the National ITS Program Plan. That stakeholder-based consensus effort was completed in 1996. Since that time, three new user services have been defined as follows: Highway Rail Intersection User Service was incorporated into the National ITS Architecture in January 1997, Archived Data User Service was incorporated into the current version (version 3.0) of the National ITS Architecture in December 1999, and the Maintenance and Construction Operations User Service, published in the **Federal Register** on April 18, 2001, at 66 FR 20026, has been defined and is in the process of being incorporated into the National ITS Architecture. The stakeholders involved represent a broad cross section of the ITS, construction, and maintenance communities, including transportation practitioners, systems engineers, system developers, technology specialists, and consultants.

The National ITS Architecture describes, for each of the user services, the functions required to perform the

services, and the key interfaces required to perform these functions.

The current set of user services can be grouped into the following categories:

1. Travel and Traffic Management;
2. Public Transportation Management;
3. Electronic Payment;
4. Commercial Vehicle Operations;
5. Emergency Management;
6. Advanced Vehicle Safety Systems;
7. Information Management; and
8. Maintenance and Construction Management.

The DOT recognizes that the current set of 32 user services do not cover all possible aspects of transportation systems, and there could be additions made to enhance the National ITS Architecture or to add new user services. Because the National ITS Architecture is a consensus architecture, the DOT would like to encourage continued involvement by the stakeholder community that best understands the need for enhancing the National ITS Architecture.

The following paragraphs describe a procedure for the development of a new user service and the introduction and integration of this new user service into the National ITS Architecture. It may also be used for a significant change cutting across a number of existing user services that does not call for the specific addition of a new user service. The procedure is not intended to be all-encompassing, nor is it intended to be restrictive. It should serve only as a guide to stakeholders who are interested in amending the National ITS Architecture to incorporate additional transportation practices and activities that are not currently reflected.

National ITS Architecture New User Service Procedure

The procedure consists of two phases. Phase one of the procedure is the principal responsibility of the stakeholder community and involves addressing its transportation system needs, formalizing them in an acceptable user service, and securing acceptance for integration into the National ITS Architecture. Phase two of the procedure is the principal responsibility of the ITS JPO and involves its actions to integrate the user service into the National ITS Architecture, coordinate its activities with the stakeholders, and ensure that the final product has stakeholder consensus and support. In both phases, it is necessary to engage in public outreach activities to ensure adequate awareness among the stakeholder and ITS communities and to offer the opportunity for them to participate.

Phase I

a. The first step is for the interested group of stakeholders to determine their collective concerns. Although it is not required, there are three sources of advocacy where the stakeholders may go for advice before proceeding. They are the ITS JPO, the applicable office or modal administration in the DOT, and ITS America. Voicing stakeholder concerns to an advocate should lead to a partnership and understanding of these concerns, and a better stakeholder understanding of the process to cause the National ITS Architecture to be modified.

b. The second step is for the stakeholders to review Volume II of the "National ITS Program Plan, Intelligent Transportation Systems".[1] This volume describes each of the 29 original user services. The 30th and 31st user services, addressing highway-rail intersection and archived data, have been separately developed and approved, and have been added to the appendix of the "National Intelligent Transportation Systems Program Plan, Five-Year Horizon."[2] The description of the "Maintenance and Construction Operations User Service" represents the 32nd user service that is now being incorporated into the National ITS Architecture.[3] The review of these three documents enables the stakeholders to better understand the user needs currently addressed by the National ITS Architecture and how they are described. If their current needs are not satisfied in the three plans, then the stakeholders may choose to propose actions to add a newly defined user service to the National ITS Architecture.

At this point, the ITS JPO, in conjunction with other modal administrations as appropriate, will make a decision regarding the appropriateness and viability of the proposed new user service. If the decision is to proceed, there will be a notification to the broader transportation community of the intent to modify the National ITS Architecture in response to stakeholder concerns. This can be accomplished through a notice in the **Federal Register**; press releases to other print media; notices posted on the ITS DOT and ITS America websites;[4] notification to specific transportation committees including those of the Transportation Research Board (TRB), the Institute of Transportation Engineers (ITE), the American Association of State Highway Transportation Officials (AASHTO), and the American Public Transportation Association (APTA); and notification to appropriate ITS America technical committees and task forces.

After reviewing the proposal for a new user service, the ITS JPO may determine that a new user service is not needed as the problem may be addressed by amending and/or modifying the existing user services. If they are not significant, recommendations in these areas should be forwarded to the ITS JPO for subsequent disposition and National ITS Architecture modification. If they are significant and cut across a number of existing user services, the same steps outlined below may be followed.

c. The third step is for the stakeholders to identify their specific transportation needs. It should be noted that the National ITS Architecture is a consensus architecture, and no individual or small group of persons will be able to change it without the full consent of the larger stakeholder community.

d. The fourth step is the development of the user service which will become an addendum to Volume II of the National ITS Program Plan, Intelligent Transportation Systems (see footnote 1) or an appendix to the National ITS Program Plan, Five-Year Horizon (see footnote 2). The definition of the new user service follows the general format shown in Volume II of the National ITS Program Plan, Intelligent Transportation Systems, and thus may require assistance from one of the advocacy sources. Prior to completing development, it is suggested that public outreach similar to the second step of Phase I be used again to invite reviews of the draft user service from within the known stakeholder community, as well as from the broader ITS community.

e. The fifth step is an ITS screening process used by the ITS JPO, working in conjunction with other modal administrations as appropriate. This entails a review of the definition of ITS to ensure that the user service improves the availability, efficiency, and safety of operations of the transportation system.

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[1] Volume II of the National ITS Program Plan, Intelligent Transportation Systems, dated March 1995 is available at the following URL: *http://www.itsdocs.fhwa.dot.gov/jpodocs/repts_pr/2x601!.pdf*

[2] The National Intelligent Transportation Systems Program Plan, Five-Year Horizon, dated August 2000, is available at the following URL: *http://www.itsdocs.fhwa.dot.gov/jpodocs/repts_pr/97r01!.pdf*

[3] The Maintenance and Construction Operations User Service is available at the following URL: *http://www.itsdocs.fhwa.dot.gov/jpodocs/repts_pr/13465.pdf*

[4] The URLs for the following web sites are provided: ITS JPO: *http://www.its.dot.gov*; National ITS Architecture: *http://www.its.dot.gov/arch/arch.htm*; ITS America: *http://www.itsa.org*

The screening process also ensures that the user service is consistent with the goals of integration and standardization. The ITS JPO will make the appropriate changes to the draft user service to ensure that its scope is consistent with the other user services.

f. The final step in Phase I is for the ITS JPO, with formal advice from ITS America, to determine whether or not to accept and include the completed user service into the National ITS Program Plan or the National ITS Five-Year Program Plan. Once accepted by the ITS JPO, the user service will be incorporated into the National ITS Architecture.

Phase II

a. The first step is for the ITS JPO to coordinate the revision of the National ITS Architecture that will satisfy the intent of the stakeholder community.

b. The second step is to develop a milestone schedule that includes a kickoff meeting and interim program review(s) to engage representatives of the stakeholder community, address the user service, and begin a formal National ITS Architecture integration effort.

At this stage, it is appropriate to invite a group of stakeholders who, where possible, will be involved in the kickoff meeting and each of the reviews to lend continuity and understanding to the overall effort and to ensure stakeholder concerns and needs are met. This will require an outreach effort prior to the kickoff meeting, again similar to the second step in Phase I.

c. The third step is to integrate the new user service into the National ITS Architecture. In addition to the technical work, the effort involves program reviews, and the possibility of outreach meetings with selected members of the stakeholder community.

d. The fourth step is to render a final report to the stakeholder community representatives by the ITS JPO. This is a brief oral report highlighting the changes and indicating that the integration effort is complete.

e. The final step is to post the changed National ITS Architecture on the ITS JPO and National ITS Architecture websites and to release the next version of the National ITS Architecture on CD–ROM, if appropriate.

There will be an outreach effort to announce the change and new version of the National ITS Architecture through the same media used previously. Phase II of the ITS JPO integration activities should be accomplished within 6 to 9 months, depending upon the detail and complexity of the new user service.

Authority: 23 U.S.C. 101, 106, 109 ,133, 315, and 508; sec 5206(e), Pub. L. 105–178,112 Stat. 457 (23 U.S.C. 502 note); and 49 CFR 1.48.

Issued on: July 12, 2001.

Christine M. Johnson,

Program Manager, Operations Director, ITS Joint Program Office.

[FR Doc. 01–18246 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7744; Notice 2]

General Motors Corporation; Denial of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan, determined that certain headlamps on 1999 Buick Century and Buick Regal models do not meet the photometric requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment," and filed the report required by 49 CFR part 573, notifying the agency of the noncompliance. GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published in the **Federal Register** (65 FR 49632) on August 14, 2000. Opportunity was afforded for public comment until September 13, 2000. One comment was received from Advocates for Highway and Auto Safety (Advocates).

GM manufactured 201,472 Buick Century and Buick Regal models between October 1998 and June 1999, some of whose headlamps do not meet the photometric requirements in FMVSS No. 108 for test points above the horizontal (intended for overhead sign illumination). To evaluate the noncompliance, GM randomly collected 10 pairs of lamps from production and photometrically tested them. Additionally, GM tested the same 10 pairs of lamps using accurately-rated bulbs. These are bulbs that have their filaments positioned within strict tolerances. In large scale bulb production, the filament positions vary slightly and, therefore, can produce varying photometric output. The photometric output of a lamp using an accurately-rated bulb is intended to closely represent the output that was intended in its design, and not that which would occur in a mass produced headlamp as sold on motor vehicles.

The test results indicate that five test points (production bulbs) and three test points (accurately-rated bulbs), respectively, failed to meet the minimum candela requirements. The test results also indicate that the amount of light below the minimum required was generally less than 10 percent at all noncomplying test points. However, seven failures at certain test points that were greater than 16 percent below the minimum, with the maximum variation being 24.4 percent (at 1.5 degrees up) with a production bulb. Transport Canada conducted tests on headlamps used on the same types of vehicles, and found that all the test points in question met the requirements. GM believes that these results show the noncomplying results were related to manufacturing variations and were present in only a portion of the lamps.

GM supports its application for inconsequential noncompliance with the following statements:

> The test points at issue are all above the horizon and are intended to measure illumination of overhead signs. They do not represent areas of the beam that illuminate the road surface, and the headlamps still fulfill applicable Federal Motor Vehicle Safety Standard 108 requirements regarding road illumination.
>
> For years the rule of thumb has been that a 25 percent difference in light intensity is not significant to most people for certain lighting conditions.
>
> GM has not received any complaints from owners of the subject vehicles about their ability to see overhead signs.
>
> GM is not aware of any accidents, injuries, owner complaints or field reports related to this condition for these vehicles.

GM also cites a number of inconsequentiality applications that the agency has granted in the past as support for granting its application. Those cited were submitted by GM [59 FR 65428; December 19, 1994], Subaru of America, [56 FR 59971; November 26, 1991], and Hella, Inc. [55 FR 37602; September 12, 1990]. GM also cites a University of Michigan Transportation Research Institute (UMTRI) report entitled "Just Noticeable Differences for Low-Beam Headlamp Intensities" (UMTRI–97–4, February 1997).

In the only public comment received, Advocates stated its "strongest opposition to NHTSA granting a finding of inconsequential noncompliance for the GM headlamps which are the subject of this notice." Advocates first points out that it believes GM's purported lack of complaints about inadequate headlamp illumination has "no merit whatever." It believes that it is unlikely that drivers would attribute

their driving errors or crashes to a faulty beam. Further, it believes it unlikely that an investigating officer at a crash scene would consider the characteristics of the beam pattern as the causal factor. It goes on to say that crashes may have occurred as a result of the noncompliance of which GM is not aware.

Advocates also discusses the importance of overhead lighting. It states that:

> It is especially crucial for adequate levels of lighting to fall on the surfaces of high-mounted retroreflectorized traffic control devices which advise of vehicle maneuvers, speed limit changes, warnings of hazardous conditions, and destination information to ensure driver confidence and safety in executing the moment-to-moment driving task.

Advocates refers to the amendment of FMVSS No. 108 on January 12, 1993 [58 FR 3856] which added minimum photometric requirements for headlamps for illumination of overhead signs. Advocates reiterates the agency's rationale for this rulemaking, that some manufacturers were introducing headlamps in the 1980s and 1990s which widely departed from the traditional U.S. beam pattern. These headlamps were providing inadequate light above the horizontal to illuminate overhead signs.

We have reviewed the application and disagree with GM that the noncompliances are inconsequential to motor vehicle safety. As Advocates correctly noted in its comment, the sole purpose of the 1993 final rule was to establish photometric minima above the horizon so that headlamps would sufficiently illuminate overhead signs. Without any test point minima specified, some manufacturers were designing headlamps that provided very little light above the horizon. Because States were choosing retroreflectorized overhead signs rather than the more expensive self-illuminated ones, the agency determined that it should address the increasing need for illumination of overhead reflectorized signs.

In setting these minima, the agency expected the industry to design its headlamps to ensure that production variability would not result in noncompliances. GM's own compliance tests show failures that are as much as 24.4 percent below the required minima. Each of the ten headlamps GM tested had noncomplying test points, with all but two having failures that were greater than 14.1 percent below the minimum requirement. This testing indicates that there may be a serious flaw in the design and/or production of these lamps.

Although GM states that Transport Canada tested and found all lamps to be compliant, the company did not provide any substantiating data, or even the number of headlamps tested by Transport Canada. The agency contacted Transport Canada and obtained the test data on the subject vehicles. Initially, there were four failures at the relevant test points. The failures were resolved by reaiming the headlamps one quarter degree, an adjustment allowed by the standard. After reaiming, Transport Canada found the lamps to be in compliance at the four test points where they had previously failed. Although these four lamps were found to be in compliance, the need to reaim and the marginal compliance at others shows that the design of the lamps was marginal.

A January 1991 study conducted by UMTRI (UMTRI–91–3) recommended certain minimum intensity levels for test points above the horizontal that are intended to illuminate signs. UMTRI divided its recommendations for minima between three types of retroreflectorized signs: enclosed lens, encapsulated lens, and microprismatic, each respectively more reflective than the previous. The first two are most relevant, as microprismatic signs comprised only about three percent of the current signs at that time. UMTRI concluded that, for a test point 1.5 degrees up, the minimum intensities for the enclosed and encapsulated lens signs were 700 and 250 candela (cd), respectively. The standard currently requires a minimum of 200 cd. In setting this level, the agency expected manufacturers to factor in a certain level of design variability to assure compliance. GM's poorest performing lamp provided about 150 cd at this test point. The agency finds this unacceptable. As Advocates pointed out in its comments, there are many critical maneuvers that must be undertaken in low light situations, and to not provide sufficient light to illuminate signs is a detriment to motor vehicle safety.

GM cites a number of the agency's previous grants of inconsequentiality applications that were based upon our conclusion that a change in luminous intensity of approximately 25 percent must occur before the human eye can discern a difference. GM also cited an UMTRI report [UMTRI–97–4; February 1997] to support its position.

We believe that these past agency actions and the 1997 UMTRI report do not support GM's conclusion. The previous actions and the UMTRI report all deal with an observer's ability to see a headlamp or a signal light, not the ability to see the light reflected back from headlamp-illuminated signs or other reflectors. The inconsequential applications which GM cites all involved signal lighting with deficiencies in photometric requirements. In all cases, the agency was confident that the noncompliant signal lights would still be visible to nearby drivers. Because signal lighting is not intended to provide roadway illumination to the driver, a less than 25 percent reduction in light output at any particular test point is less critical.

Regarding the UMTRI study on just-noticeable differences for lower-beam headlamps, the research and findings are mostly analogous to those of the signal lighting research. UMTRI's study was designed to evaluate the just-noticeable differences for glare intensities of oncoming headlamps. Like the signal light research, it was performed from the point of view of a driver observing differences in headlamp intensities. We are not persuaded by GM's contentions about the meaning of this research. In its report, UMTRI states

> The applications of (just noticeable differences) derived from judgments about the subjective brightnesses of lamps viewed directly seems less of a leap in the case of signal lamp functions, and of those aspects of headlamps that involve direct viewing (primarily discomfort glare), than in the case of headlamp functions that involve the illumination of objects. The primary reason for caution in extending the current results to illuminated objects is that the range of luminances of such objects (e.g., a pedestrian at 100 meters illuminated by headlamps at night) will be much lower than the luminances of the headlamps themselves. The [research] can therefore be used more confidently to justify applying the 25 percent limit for inconsequential noncompliance to a photometric test point that specifies a maximum for glare protection than to one that specifies a minimum for seeing light. Further work on the effects of changes in lamp intensity on the visibility of illuminated objects is desirable to clarify more completely the issue of inconsequential noncompliance for headlamps.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, its application is hereby denied, and it must proceed to notify and remedy as required by statute.

(49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 17, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–18307 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8014; Notice 2]

Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance

Mercedes-Benz, U.S.A., L.L.C., (MBUSA) of Montvale, New Jersey, determined that a number of Mercedes-Benz CL500 vehicles were produced with upper beam headlamps that exceed the photometric limits of FMVSS No. 108, "Lamps, Reflective Devices, and Associated Equipment." MBUSA has applied to be exempted from the notification and remedy requirements of 49 U.S.C. chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published in the **Federal Register** (65 FR 59247) on October 4, 2000. Opportunity was afforded for public comment until November 3, 2000. No public comments were received.

Mercedes-Benz CL500 vehicles are equipped with high intensity discharge headlamps (HIDs). When the HIDs are activated, their light is, through the use of a mechanical flap, directed at an angle that optimizes illumination of the road surface in front of the vehicle. When the upper beam mode is activated, a mechanical flap alters the angle of the HID illumination to provide a higher angle of illumination. In 613 model year 2000 CL500 vehicles, a separate H7 lamp was improperly wired to illuminate at the same time the mechanical flap was activated to increase the HID light angle. In the upper beam mode, the HID and H7 lamp combination produce 89,000 candela (cd) at test point H–V and 12,731 cd at test point 4D–V. FMVSS No. 108 establishes maximums of 75,000 cd at H–V and 12,000 cd at 4D–V. When they are in the lower beam mode, these headlamps meet all photometric requirements of FMVSS No. 108.

MBUSA supports its application for inconsequential noncompliance with the following statements:

(1) Only a very limited number of Mercedes-Benz CL500 vehicles were produced containing the foregoing noncompliance (613 units). This number represents only minimal percentage of all vehicles operating in the United States.

(2) Upper beam headlamps are not legal in states for operation in the presence of oncoming traffic. Therefore, the higher output upper beam headlamps will likely not even be noticed by other drivers or vehicle occupants. Moreover, MBUSA believes that the approximately 20% increase in upper beam headlamp output in affected CL500's is indistinguishable to occupants of oncoming vehicles.

(3) With regards to the driver of the affected vehicles, MBUSA believes that the increase in output for upper beam headlamps may actually enhance vehicle safety in that drivers will have a greater view down the road thereby providing earlier warning of obstacles in the vehicle's intended path of travel.

(4) MBUSA has not received, nor is the Company aware of any complaints, accidents or injuries caused by the higher output upper beam headlamps.

The agency has reviewed the application and has decided that the noncompliances are not inconsequential to motor vehicle safety. The noncompliant vehicles' headlamps, in their upper beam mode, produce 18.6 percent more light at H–V and 6.1 percent more light at 4D–V than the standard allows. The noncompliance at H–V is particularly troubling in that it could be further exacerbated by factors such as poor aiming and increased voltage. This could increase the light intensity significantly and, thus, contribute more problematic glare at the distances prescribed by the various states for dimming headlamps in the presence of oncoming vehicles.

We are aware of a University of Michigan Transportation Research Institute (UMTRI) report titled "Just Noticeable Differences for Low-Beam Headlamp Intensities" (UMTRI–97–4, February 1997). This report concludes that drivers in oncoming vehicles will not notice differences in the intensity of headlamps that are less than 25 percent.

We believe, however, that it would not be appropriate to use this study to judge the merits of MBUSA's application. This is based on two factors. First, the study focuses only on the lower beam mode in headlamp systems. The MBUSA vehicles do not comply when the upper beam mode is activated. We cannot presume that a study which examines light intensity associated with the lower beam mode would also apply to the light intensity of the upper beam mode. The upper beam mode produces substantially more intensity down the road. UMTRI does not mention any correlations between upper and lower beam modes in its study.

Second, the research finds that the just noticeable differences, under controlled conditions, are between 11 and 19 percent. UMTRI concludes that, in real world conditions, the just noticeable differences would be somewhat larger due to the rather simple and uncluttered environment of a controlled study. In a controlled study, observers can devote much more attention to small differences due to the lack of other distractions that are common during driving. This leads UMTRI to conclude that 25 percent is a reasonable value upon which to judge inconsequential noncompliance applications. However, we have noticed in the many complaints received that consumers are very aware of and sensitive to the glare produced by oncoming drivers' headlamps. This public sensitivity leads us to believe that glare in the "real-world" is not necessarily like that in laboratory studies. Many of these complaints can be found on the Department of Transportation's Docket Management System website, *http://dms.dot.gov* docket NHTSA–98–4820. This demonstrates that glare is of great significance to the public.

MBUSA attempts to support its rationale for granting the application by pointing out that there is a limited number of noncompliant vehicles (613). In order for the agency to grant an inconsequentiality application, it is necessary to determine whether the particular noncompliance is likely to increase the risk that the requirement is intended to prevent. Arguments that only a small number of vehicles or pieces of motor vehicle equipment are affected generally will not justify granting a petition. But, more importantly, the key issue is whether the noncompliance is likely to increase the safety risk.

MBUSA states that there are State laws prohibiting the operation of upper beam headlamps in the presence of oncoming traffic. For this reason, it believes that the increased output of the subject lamps will not be noticed by other drivers. The agency does not concur with this rationale. State laws generally require drivers to dim their headlamps at a prescribed distance from oncoming traffic. This distance is based on the intensity of available upper beams. Therefore, if the intensity of upper beams is increased, this distance may not be effective in reducing glare for oncoming drivers.

Finally, MBUSA states that the increase in output from the subject lamps may actually enhance vehicle safety as drivers will have greater visibility. We agree with MBUSA that

the increased output of the subject lamps will increase drivers' views down the road. However, the purpose of the minimum light intensity requirements for upper beam headlamps is to protect oncoming drivers from problematic glare. There must be a balance between the need of drivers to have a clear view of the roadway and the need to reduce glare for oncoming drivers. While MBUSA is correct in assuming that the extra light provided by the subject lamps would be advantageous to drivers of the vehicle, it does not mention the obvious ill effects it would have on oncoming drivers. For this reason, we do not accept MBUSA's rationale.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety, and it should not be exempted from the notification and remedy requirements of the statute. Accordingly, its application is hereby denied.

(49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 17, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–18305 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7705; Notice 2]

Mootness of Application for Decision of Inconsequential Noncompliance

The following companies, Osram Sylvania Products, Inc., (Osram); Subaru of America, Inc., (Subaru); Koito Manufacturing Co., LTD. (Koito); North American Lighting, Inc. (NAL); Stanley Electric Co., LTD, (Stanley); and General Electric Company (GE) have determined that certain H1 replaceable light sources they manufactured or used in lamp assemblies did not have the "DOT" marking required under 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment." These companies have also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Under the requirements of S7.7(a) of FMVSS No. 108, each replaceable light source shall be marked with the symbol "DOT."

Notice of receipt of the application was published in the **Federal Register** (66 FR 10052) on February 13, 2001. Opportunity was afforded for public comment until March 15, 2001. No comments were received.

Between January 1998 and January 2000, Osram produced 841,283 H1 replaceable light sources without the required "DOT " marking. In its Part 573 report, Osram stated that it was not possible to determine exactly how many light sources were used in headlamp assemblies as opposed to those which were used in fog lamp assemblies. However, the point is irrelevant, since light sources are subject to the requirements of the standard if they are, in fact, capable of being used as a replaceable light source in a headlamp.

Between February 1999 and January 2000, NAL used 118,756 of these Osram replaceable light sources in headlamp assemblies. Subaru installed 110,784 of these NAL headlamp assemblies in model year 2000 Legacy vehicles from February 1999 through February 2000.

Stanley used 30,426 of the Osram replaceable light sources in headlamp assemblies intended for Honda Preludes produced between October 22, 1998 and January 27, 2000. Koito used 12,340 of the Osram replaceable light sources in headlamp assemblies it manufactured between June 1999 and January 2000.

Also, a separate group of replaceable light sources with similar certification problems were manufactured by GE. GE produced 2,490 of these between April 1, 1999 and March 23, 2000. The GE replaceable light sources are included in this notice because of these similarities.

All of the applicants have indicated that the subject replaceable light sources, with the exception of the absence of the "DOT" marking, fully comply with all the performance and design requirements of FMVSS No. 108 and do not constitute any risk to motor vehicle safety. Osram has submitted confidential test data to show this.

We have reviewed the applications. Since the purpose of the "DOT" marking is to certify that the replaceable light sources comply with all applicable standards, the failures to mark light sources with DOT symbols are considered as violations of 49 U.S.C. 30115, *Certification*, which does not require notification or remedy. Therefore, after due consideration, we have decided that the applications referenced above are moot.

(49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 17, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–18308 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8808; Notice 2]

Philips Lighting Company; Mootness of Application for Decision of Inconsequential Noncompliance

Philips Lighting Company (Philips), of Somerset, New Jersey, has determined that certain H3–55W replaceable light sources it manufactured do not have the "DOT" marking required under 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Philips has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety. Under the requirements of S7.7(a) of FMVSS No. 108, each replaceable light source shall be marked with the symbol "DOT."

Notice of receipt of the application was published in the **Federal Register** (66 FR 10053) on February 13, 2001. Opportunity was afforded for public comment until March 15, 2001. No comments were received.

Between January 1998 to December 1999, Philips produced 67,299 H3–55W replaceable light sources that do not have the "DOT" marking. Philips has indicated that the subject replaceable light sources, with the exception of the absence of the "DOT" marking, fully comply with all the performance and design requirements of FMVSS No. 108 and do not constitute any risk to motor vehicle safety. Philips has submitted test results to support this.

We have reviewed the application. Because the purpose of the "DOT" marking is to certify that the replaceable light sources comply with all applicable standards, the failure to mark light sources with a DOT symbol is considered a violation of 49 U.S.C.

30115, *Certification*, which does not require notification or remedy. Therefore, after due consideration, we have decided that this application is moot.

(49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 17, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–18306 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34062]

C & C Railroad, Inc.—Reincorporation Exemption—C&C Railroad, LLC

C & C Railroad, Inc., a Class III rail carrier, and C&C Railroad, LLC, a noncarrier (collectively applicants), have filed a notice of exemption under 49 CFR 1180.2(d)(6) wherein C&C Railroad, Inc. will be merged with and into C&C Railroad, LLC.[1]

The parties reported that they intended to consummate the transaction immediately following the effective date of the exemption. The earliest the transaction could have been consummated was July 2, 2001, 7 days after the exemption was filed.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction. However, applicants have stated that they will provide their employees with the protections and benefits of *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34062, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael A. Abramson, Esq., 120 S. Riverside Plaza, Suite 1200, Chicago, IL 60606.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: July 16, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–18183 Filed 7–20–01; 8:45 am]

BILLING CODE 4915–00–P

[1] C&C Railroad, LLC is a newly formed limited liability company organized by the shareholders of C & C Railroad, Inc. for the sole purpose of reincorporating in the State of Delaware. The separate existence of C & C Railroad, Inc. shall cease and C&C Railroad, LLC shall be the surviving entity. C&C Railroad, LLC will continue the operations formerly provided by C & C Railroad, Inc. *See C & C Railroad, Inc.—Operation Exemption—Centerpoint Properties, L.L.C.*, STB Finance Docket No. 33990 (STB served Jan. 17, 2001).

DEPARTMENT OF THE TREASURY

Customs Service

Second Test: Importer Compliance Monitoring Program

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document announces the second test to be conducted regarding the Importer Compliance Monitoring Program (ICMP). The test is intended to be run for three years whereupon a decision will be made whether to extend the test. The ICMP is intended to promote importer compliance with Customs laws and regulations pertaining to cargo processing and will afford mutual benefits to both Customs and the importing community. By a document published in the **Federal Register** on April 24, 1998, Customs initially announced a test of the ICMP that was thereafter conducted with limited participation. Customs now seeks to achieve more extensive participation in the program test in order to ensure a more comprehensive and effective evaluation of the program. Written requests to participate in the program test, as well as public comments on any aspect of the test, are solicited.

EFFECTIVE DATES: The program test will commence no earlier than August 22, 2001, and will continue for three years. Comments on any aspect of the planned test must be received on or before August 22, 2001. Written requests to participate in the program test may be submitted on or after July 23, 2001.

ADDRESSES: Written applications to participate in the program test should be addressed to: Director, Regulatory Audit, Office of Strategic Trade, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229. Written comments on any aspect of the planned test may be addressed to: Matthew Krimski, Director, Compliance Assessments, Regulatory Audit Division, 1300 Pennsylvania Avenue, NW, Room 6.3–A, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: ICMP program coordinator for the application process: Mark Zaepfel, Senior Auditor, Regulatory Audit Division, (202) 927–0809.

ICMP program coordinator for marketing: Russell Ugone, Director, Trade Agreements Branch, Regulatory Audit Division, (202) 927–0728.

For general information about the ICMP: Matthew Krimski, Director, Compliance Assessments Branch, (202) 927–0411; Joseph Palmer, Field Director, Regulatory Audit, (312) 983–9615; Russell Ugone, Director, Trade Agreements Branch, (202) 927–0728.

SUPPLEMENTARY INFORMATION:

Background

Since passage of the Customs Modernization provisions (107 Stat. 2170) contained in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993), the primary goal of the trade compliance process has been to maximize importer compliance with U.S. trade laws, while facilitating the importation and entry of admissible merchandise. To meet these challenges, Customs has extensively reviewed and sought to improve and redesign the trade compliance process using established business practices, re-engineered tools, and new methodologies that enhance service to importers without compromising the enforcement aspect of the Customs mission.

To this end, one of the methodologies that Customs has developed is the Compliance Assessment Process which has been subject to continual process improvement since its introduction (see § 163.11, Customs Regulations (19 CFR 163.11)). The Compliance Assessment Process allows Customs to determine the level of compliance based on an overall assessment of a company's import operations.

Also, Customs has under development a new program called the

Focused Assessment Process. The Focused Assessment Process is an additional tool that will be used by Customs for purposes of assessing the compliance levels of major importers. Similar to the Compliance Assessment Process, the Focused Assessment Process will be a more closely defined assessment program designed to focus on those areas of a particular importer's transactions that pose a risk to Customs and the importer.

Both the Compliance Assessment Process and the Focused Assessment Process are geared toward the company's import operations that occurred prior to the time the assessment is conducted.

However, events can occur within a company, such as mergers, system changes, and loss of key personnel, that may potentially have an impact on the company's continuing compliance with Customs laws and regulations.

Accordingly, the Importer Compliance Monitoring Program (ICMP) was initiated to enable interested importers to participate in a program to assess their own ongoing compliance with Customs laws and regulations related to cargo processing on a continuing basis.

After identifying necessary policies and procedures upon which to test the ICMP, Customs, by a document published in the **Federal Register** (63 FR 20442) on April 24, 1998, announced that a test of the ICMP would be conducted and requested that companies apply to participate in the test. Participation in the program test, however, was limited to no more than 50 companies. Following the selection of test participants, a test of the ICMP was thereafter conducted for a period of one year.

Due to the limited participation in the test, Customs has found that a further test of the ICMP is warranted in which increased importer participation is requested, and encouraged. Customs seeks to develop additional and more complete information that will help ensure a more comprehensive and effective evaluation of the ICMP.

Generally, the procedures and approach to be used in the new ICMP test will be consistent with those that will be adopted in the new Focused Assessment procedure under development by Customs. These procedures will be similar to those employed under the Compliance Assessment process, but will be oriented to those areas that are identified as posing the most risk to Customs and the importer.

It is also noted, as more fully explained below, that as a result of the prior test, Customs has made some alterations to the ICMP test procedures. In particular, only those areas of a company's import operations that are initially identified by Customs as posing a risk to both the importer and Customs will be covered in the new test. Customs will review these areas periodically for current applicability. ICMP participants can expect that these areas may change over the duration of the importer's participation in the ICMP as the importer's business evolves.

Low Risk Designation

The new ICMP test also includes significant benefits for participation. Customs recognizes that many companies have voluntarily invested extensive resources in an effort to heighten their compliance with Customs import requirements. In consideration of this, the ICMP will now provide a framework, with significant commensurate benefits, for those companies to maintain their efforts at increased compliance. These benefits will include having the company designated as Low Risk for Customs purposes on a conditional basis as long as the company meets the requirements of the ICMP. This Low Risk designation can result in a marked decrease in the number of cargo examinations performed by Customs. It should be clearly understood, however, that this Low Risk designation may be withdrawn at Customs discretion if, for example, a company fails to meet its commitments regarding the ICMP program or if there are significant departures from Customs law and regulation by the company.

It should be recognized that the benefit of the Low Risk designation is specifically tied to the importations associated with individual company IRS numbers. If a company uses multiple numbers in its importations, only those numbers identified by the company and reviewed and evaluated by Customs will be identified for Low Risk.

Components of ICMP Test: Application and Implementation

The new ICMP test is comprised of two parts: the application part of the test and the implementation phase.

The first part of the test is an application phase that will allow Customs to review the company's operations to determine its readiness to be recommended for Low Risk. If issues arise during this phase, the company will have the opportunity to take corrective action before participating in the program. Customs recognizes that companies volunteering for the ICMP are demonstrating a commitment to a continuing program of compliance. As such, Customs makes a similar commitment to assist importers with their efforts to participate in the program including working with importers to resolve initial issues in the application process.

The second part of the test, the implementation phase, will provide the company Low Risk benefits as long as it meets the commitments it has made to Customs to stay in the program and does not engage in any misconduct (see section below on Misconduct and Removal from Test Participation). These commitments include testing the company's business transactions for specific areas identified by Customs using Customs approved testing procedures. The commitments also provide for the company to meet certain reporting requirements on an annual basis to ensure Customs is made aware of the most recent significant information regarding the company's activities.

As with the initial test, this program test is undertaken pursuant to ' 101.9(a), Customs Regulations (19 CFR 101.9(a)), which permits the implementation of a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise.

Overview of Importer Compliance Monitoring Program

In general, the ICMP is designed to enhance the cargo processing of participating importers as well as their level of compliance with Customs laws and regulations. After the company is notified of acceptance into the program, Customs will continue the consultation process with the company. This consultation process, which is an essential cornerstone of the ICMP, is necessary to ensure that all parties involved with the company's import functions have a mutual understanding of the company's business practices and the ICMP requirements for their successful participation in the program.

While the ICMP is voluntary and does not require a company to have undergone or been scheduled for a Customs compliance or focused assessment, the ICMP employs many of the same procedures that are used in a compliance or focused assessment. In this regard, the ICMP will require the importer to conduct a systemic overview of a selected group of its import operations that will involve both import process and transactional reviews of those operations. An objective group, independent of the company's importing function, may

conduct these reviews; use of outside professionals for this purpose is not required but may be done at the discretion of the importer.

Once accepted into the ICMP program, the company will conduct tests of the trade areas identified by Customs using sampling procedures meeting Customs standards. The company will test each area identified once during the three year test period. The company will notify Customs of the timing of the tests in order to develop an approved sampling plan and to allow Customs to monitor and validate the sampling procedures if it so chooses.

The participating company will also prepare an annual submission that will update the flowchart and narrative of the company's internal controls over its import process. Also, the company will identify for Customs those areas of its import operations that it plans to test in the upcoming year. This submission will form the basis of the annual consultation conducted by Customs with the ICMP participant every year that will provide needed guidance to the participant to effectively carry out its testing program. Customs will provide ongoing guidance and assistance to the company through continual communication by the ICMP Customs Regulatory Audit team and the company's Customs Account Manager, if one is assigned. A Customs Account Manager is a Customs employee (from Customs Office of Field Operations) who may be assigned to a major importing company in order to act as a facilitator between the company and Customs. Because of their role, Customs Account Managers can provide significant benefits in the ICMP coordination process.

The above process will continue for three years. If the test is extended beyond three years, a new three year program will be developed by Customs and the importer taking into account any significant changes to the importer's Customs transactions.

Transactional reviews under the program will use testing procedures or statistical and judgmental sampling methodologies that are also fully coordinated with Customs during the consultation process and will be the same or equivalent testing procedures and sampling programs utilized in compliance and/or focused assessments. Errors detected in a company's import transactions will be evaluated based on the number, nature and the materiality of these errors, and, where applicable, a compliance improvement plan will be prepared and submitted to Customs outlining actions taken or proposed to correct any identified deficiencies. Reports of errors that are detected by the importer through its own review may be treated as prior disclosures under part 162 of the Customs Regulations (19 CFR part 162) if they meet these prior disclosure regulatory requirements.

Test participants are expected to retain all applicable documentation pertaining to these import process and transactional reviews. As necessary, Customs will validate these import process and transactional reviews.

Benefits of participation in the ICMP accruing to an importer, as stated, include the preferential designation of Low Risk that will be accorded the importer upon acceptance into the program and will be retained as long as the importer meets the conditions and requirements of the program (see section below on Misconduct and Removal from Test Participation). This Low Risk category can significantly decrease the number of cargo examinations conducted by Customs. Additionally, Customs, through the interaction of the company's Customs Account Manager, can decrease the information demands made by Customs on the company.

Duration of Test; Selection of Test Participants

The ICMP program test will commence not earlier than August 22, 2001, and will proceed for three years at which time it may be extended. Once Customs determines to extend or end the program test, reasonable advance notice of this will be published in the **Federal Register**. Customs seeks and encourages increased importer participation in this ICMP test, in order that additional and more complete information may be gathered during the course of the test. This information will help Customs ensure a more comprehensive and effective evaluation of the ICMP. Written requests to participate in the program test may be submitted on or after July 23, 2001.

Test Application

In order to apply for the test, the applicant must provide in writing the following information:

1. The name of the company;
2. The address of the company;
3. All importer Internal Revenue Service (IRS) numbers used by the company;
4. The location of the business records dealing with the Customs transactions of the company; and
5. The name and telephone number of a person in the company that will be a contact point for the ICMP application and who is knowledgeable about the company's Customs business transactions.

The application containing the above information should be sent to: Director, Regulatory Audit, Office of Strategic Trade, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229.

Customs reserves the right in its discretion to approve or disapprove an application. Applications may be sent to Customs at any time. Further, in selecting applicants for participation in the program test, Customs reserves the right, if necessary, depending upon the number of applications received, to prioritize the processing of such applications based upon the volume and/or nature of each applicant's Customs transactions. Customs will notify each applicant in writing of its selection or non-selection to participate in the test, and give the reason(s) for non-selection, should that be the case.

In the event that an applicant should not be selected for participation as a result of an initial review by Customs, the applicant may appeal in writing to the Director, Regulatory Audit Division, Office of Strategic Trade, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229, within 10 days of the date of Customs written notification of non-selection.

Due to the voluntary nature of the program, a company selected for participation in the test may discontinue its participation at any time. It should be kept in mind, however, that participation in this program does not insulate a company from enforcement actions on specific imports.

Upon receipt of the application from the importer, Customs will immediately conduct an internal review within Customs of the company's current transactions to determine if there are any immediate issues that may impact further processing the application. If there are issues, Customs will attempt to resolve them with the importer. Customs will work closely with the applicant throughout this process.

The application process requires that a company intending to participate in the program apply by filling out a questionnaire and a process map detailing its Customs transactions and compliance processes. Customs will schedule an on-site review to validate the information and identify those areas posing the highest risk to the company and Customs.

The Customs on-site review will include a review of the company's internal controls over the compliance processes outlined in the questionnaire and a limited review of supporting transactions. The purpose of the review will be to identify those areas of the

company's internal controls that pose the maximum risk to the company and Customs. Under the previous test, the ICMP involved a continuing general overview of all of a company's import operations. In this test, only the identified group of higher risk import operations will be reviewed and subsequently monitored.

If Customs finds the internal controls to be in place and working effectively, then a recommendation can be made for acceptance into the program. If there are indications of weak internal controls or non-compliance, Customs will work with the company to develop a Compliance Improvement Plan to correct the situation.

Any company seeking to participate in the ICMP should be aware that any issues concerning non-compliance that come to light during the application/evaluation process must be corrected and can result in enforcement actions depending upon the circumstances. In fact, the ICMP entails an effective commitment by the company to resolve any issues of non-compliance that arise during either the application process or the subsequent program process of the test.

Misconduct and Removal From Test Participation

If a test participant makes late or inadequate submissions to Customs of its annual report or other information, fails to exercise reasonable care in the execution of its test obligations, or otherwise fails to follow the procedures, as outlined in this document, or applicable laws and regulations, the participant may be suspended or removed from the test program and/or subject to penalties or liquidated damages. Customs has the discretion to suspend or remove a test participant based on a determination that an unacceptable compliance risk exits. This action may be invoked at any time after acceptance in the test.

At any time during the test, the appropriate Field Director of Regulatory Audit may propose in writing to remove a company from participation in the program. The notice of proposed removal will inform the company of the facts or conduct warranting removal. Removal from participation in the program test, and elimination of all benefits that were received as a result of test participation including the Low Risk designation, may result from activities including, but not limited to, the following:

(1) Failure of the company to comply with ICMP requirements (such as failing to successfully implement a Compliance Improvement Plan after two attempts); or

(2) The presence of documented or alleged fraud, other investigative activity, or failing to follow applicable Customs laws and regulations.

Any decision proposing to remove a company from participation in the test may be appealed in writing to the Director, Regulatory Audit Division, Office of Strategic Trade, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington D.C. 20229, within 30 days of the date of the written notice of proposed removal. This decision will notify the company of the facts or conduct warranting removal. In appealing this notice of proposed removal, the company should address the facts or conduct referenced in the notice and state how it complies or will achieve compliance with the requirements for program participation.

In the case of willfulness or where the public health, interest or safety is involved, program removal and elimination of the Low Risk benefit may be effective immediately at Customs discretion. In all other cases, the removal of participation will be effective after 30 days from the date of the notice of removal unless the notice is timely appealed.

Program Consultation

One of the cornerstones of the ICMP is the consultation and review process that Customs affords the importer. Prior to approval for participation in the test, the importer's Customs transactions will be reviewed by Customs during the application/evaluation process and the results of this information will be shared with the importer. The test participant will have continuing access to the Customs Account Manager, if one is assigned, as well as Customs Regulatory Audit sources to provide guidance and information regarding the test and the importer's progress throughout the test. Additionally, Regulatory Audit will consult annually with the company regarding its progress over the prior year and its plans for the upcoming year and will provide guidance toward the accomplishment of the company's scheduled testing.

Comments and Evaluation of Test

Customs will review all public comments that are received concerning any aspect of the planned program test. The test is planned to run for three years, at which time it will be evaluated as to whether it should continue as a test, be adopted for implementation as a permanent program, or be terminated. If Customs determines to end the program test, reasonable notice of the expiration date will be published in the **Federal Register**. In addition, approximately 90 days after conclusion of the test, evaluations of the test will be conducted and final results will be made available to the public upon request. Participation in the test is not confidential and may be disclosed.

Dated: July 17, 2001.

Cynthia A. Covell,

Director, Regulatory Audit Division.

[FR Doc. 01–18252 Filed 7–20–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds-Termination: Developers Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 19 to the Treasury Department Circular 570; 2000 Revision, published June 30, 2000 at 65 FR 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: Developers Insurance Company, a California corporation, has formally merged with and into Developers Surety and Indemnity Company, an Iowa corporation, effective December 29, 2000. Developers Insurance Company was last listed as an acceptable surety on Federal bonds at 65 FR 40878, June 30, 2000, and Developers Surety and Indemnity Company was last listed as an acceptable surety on Federal bonds at 65 FR 40878, June 30, 2000.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Developers Insurance Company, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is hereby terminated. With respect to any bonds currently in force with Developers Insurance Company, bond-approving officers may let such bonds run to expiration and need not secure new bonds.

A new Certificate of authority as an acceptable surety on Federal bonds, dated today, is hereby issued under sections 9304 to 9308 of Title 31 of the United States Code, to Developers Surety and Indemnity Company, Des Moines, Iowa. This new certificate replaces the Certificate of Authority issued to the company prior to the merger. A revised underwriting

limitation of $1,506,000 is now established for Developers Surety and Indemnity Company.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–0536–5.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 22, 2001.

Jennifer Fitzmaurice,

Acting Director, Financial Accounting and Service Division, Financial Management Service.

[FR Doc. 01–18298 Filed 7–20–01; 8:45 am]

BILLING CODE 4810–35–M

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S. 657/P.L. 107–19

To authorize funding for the National 4-H Program Centennial Initiative. (July 10, 2001; 115 Stat. 153)

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

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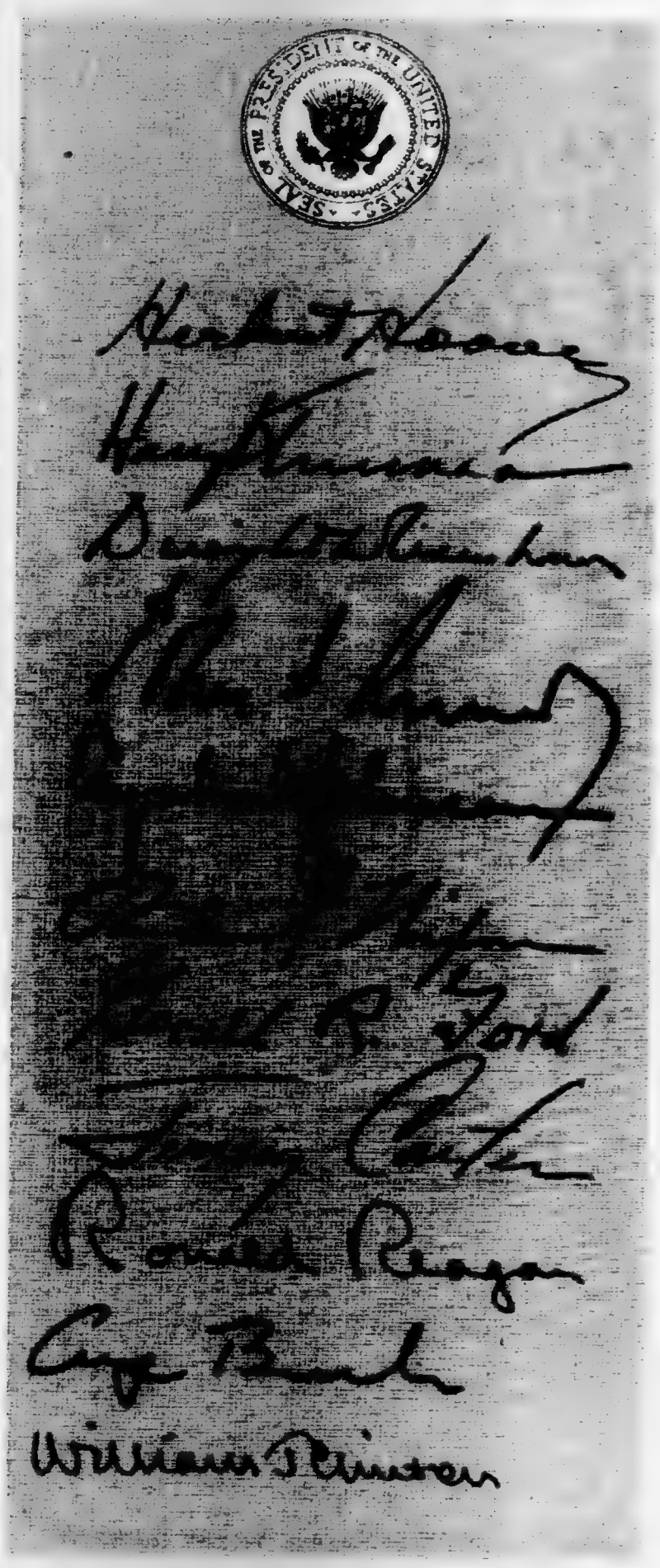

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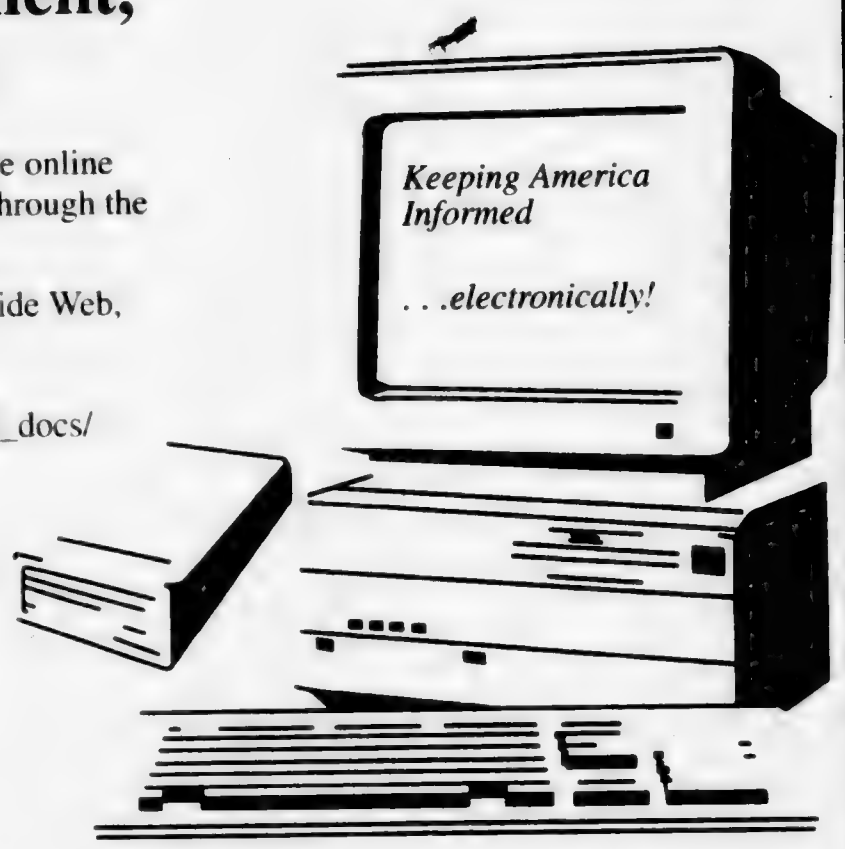

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